

ORIGINAL

VOLUME III OF X

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Horry County
Honorable Larry B. Hyman, Circuit Court Judge

JAN 11 2017

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

LUZENSKI ALLEN COTTRELL,

APPELLANT

APPELLATE CASE NO 2015-000731

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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COURT’S EXHIBIT NO. 12 (CD)
STATE’S EXHIBIT NO. 10 (CD)

NATHAN JOHNSON - DIRECT EXAMINATION

1 white male running mate?

2 A Yes, sir. We were trying to get pedigree
3 information not only on Cottrell, but also on an
4 individual that was identified by several people as
5 someone -- as a friend or acquaintance of
6 Mr. Cottrell.

7 Q And did you get a call from somebody that evening
8 to go to Grand Strand Hospital in relation to
9 Mr. Cottrell -- the shooting incident involving
10 Mr. Cottrell?

11 A The morning of the 29th I received a call from --
12 I can't remember if it was Solicitor Hembree or Deputy
13 Solicit Humphries at the time, but they requested that
14 I come to the ER because Mr. Cottrell had been
15 involved in a shooting. They knew that we had some
16 information on individuals that he knew and were with,
17 and that is why I was there.

18 Q Okay. And did you, in fact, see Mr. Cottrell
19 that evening?

20 A Yes -- well, that morning.

21 Q That morning. After Mr. Officer McGarry was shot
22 and Mr. Cottrell was transported to the hospital, that
23 is the time frame I'm talking about.

24 A That was the first time I saw him, at the
25 hospital.

NATHAN JOHNSON - DIRECT EXAMINATION

1 A Yes. Yes. Very non-confrontational, carried on
2 a conversation. Yes.

3 Q Let me show you State's Exhibit 3 -- Court's 3.
4 Do you recognize that?

5 A Yes. That is a portion of my Report of
6 Investigation.

7 Q In this Report of Investigation, I guess there
8 are excerpts relating to the statement as you recall
9 it that Mr. Cottrell gave?

10 A Yes.

11 MR. HIXSON: We move Court's Exhibit 3.

12 MR. McGUIRE: I've seen it, no objection, Judge.

13 (Court's Exhibit 3 was admitted.)

14 Q (MR. HIXSON) What do you recall the Defendant in
15 this case, Mr. Cottrell, telling Agent Thomason as
16 well as you about the incident that night?

17 A Well, he indicated that he was at the Dunkin'
18 Donuts, and he and some folks were there. An officer
19 came into the Dunkin' Donuts, and Mr. Cottrell
20 indicated that he saw him eyeing him. He recognized
21 that officer as having dealt with him on traffic
22 issues or something previously.

23 At that point in time, he indicated that the
24 officer approached him, wanted to see his ID and I
25 think Mr. Cottrell said that he knew the officer and

NATHAN JOHNSON - DIRECT EXAMINATION

1 Q He indicated that he claimed ownership of a 357
2 Rossi revolver in the car with him?

3 A Yes, he indicated there was a 357 in the car.

4 Q And he indicated it was his? I'm reading from
5 your report.

6 A We asked him about the weapons, both weapons, and
7 he indicated that he had gotten it from a guy, but
8 didn't want to tell us who it was or anything like
9 that.

10 Q Okay. Now, subsequent to this I believe you also
11 asked him questions about other matters; isn't that
12 correct?

13 A Yes. That is much later in the day after the
14 6 o'clock meeting with him.

15 Q Specifically did you ask him questions concerning
16 your investigation of Richard Hartman's murder?

17 A Yes.

18 Q Was he cooperative during that discussion?

19 A Yes. Yes.

20 Q And at any time during the discussion did he
21 invoke his right to an attorney, or did he continue to
22 discuss freely with you the Richard Hartman situation?

23 A He did not invoke any of those, and, yes, he was
24 coherent and cooperative with that.

25 Q And during the course of that interview did he

NATHAN JOHNSON - CROSS-EXAMINATION

1 MR. HIXSON: Beg the Court's indulgence.

2 (A brief pause in the proceedings.)

3 Q (MR. HIXSON) In your opinion, Mr. Cottrell gave
4 that information to law enforcement after being
5 advised of his Miranda warnings freely and
6 voluntarily?

7 A Yes.

8 MR. HIXSON: Nothing further.

9 CROSS-EXAMINATION

10 BY MR. MCGUIRE:

11 Q Why did you leave being a detective?

12 A Family business and my father-in-law is not doing
13 good, just decided to do that.

14 Q You probably get better pay.

15 A Some days; some days not.

16 THE COURT: We all know that, Mr. McGuire.

17 Q (MR. MCGUIRE) I want to talk to you about the
18 Hartman matter first. You go to the hospital around
19 6 o'clock in the morning, and you were with Thomason?

20 A That's when we got to the hospital, yes.

21 Q You interview Mr. Cottrell with regard to the
22 McGarry case?

23 A Yes -- well, Mr. Thomason was asking most of the
24 questions. I was just there sort of taking notes if
25 he needed help with information or whatever.

NATHAN JOHNSON - CROSS-EXAMINATION

1 conversation with regard to McGarry. A return later
2 at 1:30 p.m. is further discussion about Hartman.

3 THE COURT: I was thinking at 4:00. Am I losing
4 track?

5 MR. McGUIRE: There are a lot of times, but now
6 we're talking about 1:30. 4 o'clock is when Special
7 Agent Thomason returned with the search warrant.

8 THE COURT: Who was present at 1:30?

9 THE WITNESS: Myself and Detective Allen Large.

10 THE COURT: All right. All right. And just let
11 me set the stage, you were also present at the
12 6:00 a.m.?

13 THE WITNESS: Yes.

14 THE COURT: How long was the 6:00 a.m. interview
15 as far as you can recall? Extensive?

16 THE WITNESS: Maybe ten minutes.

17 THE COURT: And at 1:30 it was about how long?

18 THE WITNESS: Probably at least maybe 15 minutes.

19 THE COURT: Less than an hour?

20 THE WITNESS: Oh, yes.

21 THE COURT: And did you come back at 4:00?

22 THE WITNESS: No.

23 THE COURT: So just detective -- Agent Thomason,
24 okay.

25 Q (MR. McGUIRE) So, again, to be clear for the

NATHAN JOHNSON - CROSS-EXAMINATION

1 Q And to the best of your recollection, the only
2 additional information you had connecting Mr. Cottrell
3 with Mr. Hartman's death was the fact that
4 Mr. Cottrell sometimes sold him marijuana?

5 A That is what we were told, yes.

6 Q And may have supposed to sell him marijuana the
7 night he died?

8 A Correct.

9 Q And beyond that, you had no other information
10 linking Mr. Cottrell to Mr. Hartman's death?

11 A I would have to go look at the entire case file
12 on Hartman, but that seems to be accurate. There
13 wasn't enough there obviously for an arrest.

14 Q Right. No probable cause for an arrest?

15 A Correct.

16 Q And not even to say he was a suspect in the
17 murder?

18 A Which one? Hartman?

19 Q Hartman.

20 A Well, a strong person of interest, suspect, sort
21 of the same thing on that one.

22 Q Suspect would indicate you have evidence,
23 potential evidence, indicating that they actually did
24 the deed; you didn't have that, did you?

25 A Not at that point in time.

NATHAN JOHNSON - CROSS-EXAMINATION

1 Q Mr. Cottrell wasn't caught trying to pawn
2 Mr. Hartman's property, for instance?

3 A Not to my knowledge, no.

4 Q Or didn't have anything that you would say would
5 be a normal stolen item in a robbery; for instance,
6 anything of value including large cash amounts of
7 money?

8 A Not at that time, no.

9 Q With regard to why this happened and why this
10 turned out to be a physical struggle and an eventual
11 gun fight, Mr. Cottrell's answer to you was he felt he
12 was being harassed?

13 A Yes -- well, that he had known the officer from
14 previous experience --

15 THE COURT: Let me interrupt you. I'm just
16 trying to stay on track. Would the statements of that
17 nature be made at 6:00 a.m.?

18 THE WITNESS: Yeah. The only time I spoke to
19 Mr. Cottrell about anything involving Officer
20 McGarry -- and Mr. Thomason did the majority of asking
21 the questions -- that was at 6:00 a.m.

22 THE COURT: So when you went back at 1:00,
23 1:30, you were talking about something entirely
24 different?

25 THE WITNESS: Yes.

NATHAN JOHNSON - CROSS-EXAMINATION

1 Cottrell talks about why it happened or motive, what
2 he was thinking when it happened, he never said
3 anything about being a suspect in the Hartman case?

4 A No. No.

5 Q He never mentioned Hartman's name?

6 A Nope, not during the 6 o'clock.

7 Q Never said anything, Well, I had to get away
8 because I knew I was going to be arrested for
9 Hartman's murder, nothing like that?

10 A No.

11 Q In fact -- now I'll jump back to 1:30. When you
12 returned to the hospital at 1:30 and talked to him
13 about the Hartman case, the only thing he tells you
14 is, well, I think I was with Rick maybe three days
15 before, I'm not sure what he was doing around that
16 time, he was vague and basically said he didn't know
17 anything about it?

18 A In a nutshell, yes.

19 Q To sum it up?

20 A Yes, sir.

21 THE COURT: How much later was it that the
22 warrants were taken in the Hartman case?

23 THE WITNESS: Again, I don't -- I might have it
24 in here.

25 THE COURT: Was it a period of time? Did you

NATHAN JOHNSON - CROSS-EXAMINATION

1 Mr. McGarry pulling a gun on him.

2 Q The reason I ask that is because Special Agent
3 Thomason has that in his memorandum, but I didn't see
4 it in yours. So it is fair to say he's getting some
5 information and getting into his report?

6 A Your question is based on the fact that I wrote
7 that Joe McGarry pulled a gun, or Cottrell had a gun
8 and pulled it?

9 Q My question is, Did Cottrell tell you that
10 McGarry pulled McGarry's gun and pointed it at
11 Cottrell and said if I do -- I'll pat you down, or I'm
12 going to drop you; do you remember that?

13 A I don't remember him saying he pulled a gun. The
14 only physical contact I recall Mr. Cottrell saying is
15 that he was walking away and was grabbed by Joe
16 McGarry.

17 Q Well, if Special Agent Thomason was to have that
18 in his report, and Cottrell said it, it is fair to say
19 that Thomason is getting information in his report
20 that you are not getting, and you are getting stuff,
21 perhaps, that he is not getting?

22 A That is a fair statement. I mean, I can't really
23 answer for Mr. Thomason, what he heard.

24 Q I don't mean to take you to task, but whether or
25 not McGarry had a gun out, that is a pretty important

NATHAN JOHNSON - CROSS-EXAMINATION

1 went to speak to Mr. Cottrell at 6 o'clock in the
2 morning about the McGarry incident, clearly there was
3 no probable cause to arrest him for Hartman?

4 A At that point in time, no. Again, I would have
5 to -- I mean, two different cases and I was focused on
6 the Cottrell case. The Hartman file, I don't have
7 access to. I would have to review that. To my
8 knowledge, no, there was no probable cause that
9 morning.

10 Q And we might ask the Court to hold this open so
11 you can do that.

12 With regard to Amber Counts (phonetic), you
13 mentioned her in your statement. You left messages
14 for her to call you; is that correct?

15 A I'm sure we did, yes.

16 Q And you might have a tough time remembering this,
17 but do you recall that she worked for Rick Hartman?

18 A Yes. Amber was one of the girls that worked for
19 Rick, yes.

20 Q And did you also know at this time that Amber
21 Counts was a girlfriend to Mr. Cottrell?

22 A I'm pretty sure that that had been -- I mean,
23 there were several girls that worked for Mr. Hartman,
24 and I think they were all sort of -- I don't know if
25 "involved" is the right word, but friendly with

NATHAN JOHNSON - CROSS-EXAMINATION

1 that?

2 A No.

3 Q Do you remember reviewing statements that
4 indicated that the initial interaction between
5 Mr. Cottrell and Officer McGarry was cordial and easy
6 going, laid back?

7 A No.

8 Q You don't remember that?

9 A I reviewed no statements. I just basically heard
10 what Mr. Cottrell said.

11 Q That is my fault. Sometimes something can happen
12 or not, and you don't remember; and sometimes you can
13 remember and say definitely that did not happen. You
14 are saying, no, I did not review those statements, I
15 just talked to Mr. Cottrell at 6:00 in the morning,
16 right?

17 A That is correct, 6:00 that morning I spoke with
18 Mr. Cottrell.

19 MR. McGUIRE: That is all. Thank you.

20 MR. HIXSON: Nothing further on the Jackson V.
21 Denno.

22 THE COURT: You may step down. Thank you. May
23 this witness be excused?

24 MR. HIXSON: Yes, sir.

25 THE COURT: You are excused. Well, Mr. McGuire,

1
2
3 **CERTIFICATE OF REPORTER**

4 STATE OF SOUTH CAROLINA

5 COUNTY OF CHARLESTON

6 I, Natalie Dahl, Official Court Reporter for
7 the State of South Carolina, do hereby certify that
8 the foregoing is a true and accurate PARTIAL
9 Transcript of Record of **ONLY THE REQUESTED PORTIONS OF**
10 **THE PROCEEDINGS** captioned on the 18th day of August
11 2014.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14
15
16
17 August 20, 2014

18
19
20 

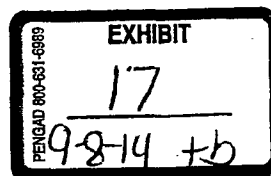
21 Natalie Dahl, RPR

22 Court Reporter
23
24
25

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

FIREARMS DEPARTMENT

SA Rodney Thomason
South Carolina Law Enforcement Division
1021 Justice Way
Effingham, SC 29541

January 21, 2003
SLED Lab No: L02-15098
Your Case No: Not Listed
Incident Date: 12/29/02
(S) Cottrell, Luzenski Allen
(V) McGarry, Joseph
(V) Guthinger, George Mike

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

- Item 10:** One fired 45 Auto caliber cartridge case headstamped "R-P 45 AUTO" from parking lot (Marker 1).
- Item 11:** One fired 45 Auto caliber cartridge case headstamped "R-P 45 AUTO" from parking lot (Marker 3).
- Item 12:** One fired 45 Auto caliber cartridge case headstamped "SPEER .45 AUTO" from parking lot (Marker 4).
- Item 13:** One fired 45 Auto caliber cartridge case headstamped "R-P 45 AUTO" from parking lot (Marker 5).
- Item 14:** One fired 45 Auto caliber cartridge case headstamped "SPEER .45 AUTO" from parking lot (Marker 6).
- Item 15:** One fired 45 Auto caliber cartridge case headstamped "R-P 45 AUTO" from parking lot (Marker 7).
- Item 16:** One fired 45 Auto caliber cartridge case headstamped "R-P 45 AUTO" from



parking lot (Marker 8).

- Item 17:** One fired 45 Auto caliber cartridge case headstamped "SPEER 45 AUTO" from parking lot (Marker 9).
- Item 18:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 10).
- Item 19:** One fired 45 Auto caliber cartridge case headstamped "R-P 45 AUTO" from parking lot (Marker 11).
- Item 20:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 12).
- Item 21:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 13).
- Item 22:** One fired 45 Auto caliber cartridge case headstamped "SPEER .45 AUTO" from parking lot (Marker 19).
- Item 23:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 20).
- Item 24:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 21).
- Item 25:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 24).
- Item 26:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 25).
- Item 27:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 26).
- Item 28:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 27).
- Item 29:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 28).
- Item 30:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 30).



- Item 31:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 32).
- Item 32:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 33).
- Item 33:** One fired 40 S&W caliber cartridge case headstamped "FEDERAL 40 S&W" from parking lot (Marker 34).
- Item 34:** One fired bullet from parking lot (Marker 2).
- Item 35:** One fired bullet from parking lot (Marker 17).
- Item 35.1:** Swab from Item 35.
- Item 36:** One fired bullet jacket fragment from parking lot (Marker 39).
- Item 36.1:** Swab from Item 36.
- Item 36.2:** Fiber removed from Item 36.
- Item 37:** One fired bullet jacket fragment from parking lot (Marker 40).
- Item 38:** One fired bullet core from parking lot (Marker 41).
- Item 38.1:** Swab from Item 38.
- Item 39:** One fired bullet core from driver's seat of Toyota parked in lot at Dunkin Donuts.
- Item 40:** One fired bullet jacket from passenger side back seat floor board of Toyota parked in lot at Dunkin Donuts.
- Item 41:** One fired bullet and fragment removed from victim McGarry at autopsy.
- Item 42:** One metal fragment from parking lot (Marker 29).
- Item 43:** One metal fragment from parking lot (Marker 36).
- Item 44:** One metal fragment from parking lot (Marker A).
- Item 45:** One metal fragment from parking lot (Marker B).



- Item 46:** One unfired 40 S&W caliber cartridge headstamped "FEDERAL 40 S&W" from roadway near rear driver side tire of suspect vehicle-Honda.
- Item 47:** One Smith and Wesson Model 4043 pistol, 40 S&W caliber, serial number VDV2065, with magazine and eleven unfired 40 S&W caliber cartridges headstamped "FEDERAL 40 S&W" (McGarry).
- Item 48:** One Smith and Wesson Model 4043 pistol, 40 S&W caliber, serial number VDK7603, with two magazines and eighteen unfired 40 S&W caliber cartridges headstamped "FEDERAL 40 S&W" (Guthinger).
- Item 49:** One Ruger Model P90 pistol, 45 Auto caliber, serial number 662-27332 and seven unfired 45 Auto caliber cartridges headstamped "R-P 45 AUTO".
- Item 49.2:** One Ruger magazine assembly from Item 49.
- Item 50:** One Rossi M971 revolver, 357 Magnum caliber, serial number F129662, with six unfired 357 Magnum caliber cartridges headstamped "FEDERAL 357 MAGNUM".
- Item 51:** One S&W magazine assembly and three unfired 40 S&W caliber cartridges headstamped "FEDERAL 40 S&W" from parking lot (Marker 14) (Guthinger).
- Item 52:** One Ruger magazine assembly from parking lot (Marker 18).
- Item 53:** One Remington-UMC ammunition box containing 31 unfired 45 Auto caliber cartridges headstamped "R-P 45 AUTO" from suspect vehicle.
- Item 54:** One Winchester-USA ammunition box containing 38 unfired 357 Magnum caliber cartridges headstamped "WINCHESTER 357 MAG" from suspect vehicle.
- Item 55:** One Federal ammunition box containing six unfired 357 Magnum caliber cartridges headstamped "FEDERAL 357 MAGNUM" from suspect vehicle.
- Item 69:** One fired bullet removed from exterior wall of Calabash Seafood.

RESULTS:

The Item 47, 48, 49, and 50 firearms were examined, testfired, and found to be in working order except for Item 50, which occasionally could not be cocked or fired. The magazine



assemblies received with the Item 47, 48, and 49 pistols were correct assemblies for use in those pistols. The unfired cartridges received with these firearms were the correct calibers of ammunition for use in the respective firearms.

Test specimens fired by the Item 47, 48, 49, and 50 firearms were microscopically compared to the appropriate evidence specimens with the following results:

- Items 10, 11, 12, 13, 14, 15, 16, 17, 19, 22, 35, 40, the Item 41 bullet, and 69 were fired by the Item 49 pistol.
- Item 23 was fired by the Item 47 pistol.
- Items 18, 20, 21, 24-34, and 36 were fired by the Item 48 pistol.

Item 37 was a fired bullet jacket fragment which was unsuitable for identification with a specific firearm. It could have been fired by the Item 47, 48, or 49 pistols, but it was not fired by the Item 50 revolver.

Item 38 was most consistent with being a fired bullet core from a "40" or other similar caliber jacketed bullet. Item 38 was unsuitable for identification with a specific firearm.

Item 39 was most consistent with being a fired bullet core from a "45" or other similar caliber jacketed bullet. Item 39 was unsuitable for identification with a specific firearm.

The Item 41 fragment was unsuitable for identification with a specific firearm, but was consistent with being part of the Item 41 bullet.

Items 42, 44, and 45 were not consistent with being ammunition components.

Item 43 was consistent with being part of a bullet, bullet core, or some other projectile, however, it was unsuitable for identification with a specific firearm.

Item 46 was an unfired cartridge whose physical characteristics were consistent with those of the Item 47, 48, and 51 unfired cartridges.

Items 49.2 and 52 were correct magazine assemblies for use in the Item 49 pistol.

The Item 51 magazine assembly was a correct magazine for use in the Item 47 and 48 pistols, and the Item 51 cartridges were the proper caliber for use in the Item 47 and 48 pistols.

The Item 53 unfired cartridges were the proper caliber for use in the Item 49 pistol.



MYRTLE BEACH
FACTORY OUTLET

46

MG-flashlight

31

SC REG 543 LYF

21

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1

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Halcomb's DL

HALCOMB VEH

MORGAN VEH

SC REG 449 NEP

45 Bullet Jacket Floor Board back seat

45 Bullet Hole

45 Fired bullet case Drivers seat

34

35

36

37

38

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0

S21 .40-MG

S35-.45 bullet-LC

S51 Magazine - MG

S29-.40-MG

S30-.40-MG

S27-.40-MG

S25-.40-MG

S24-.40-MG

S22.45 Casing-LC

S23-.40 Casing-1M

S26-.40-MG

S31-.40-MG

S32-.40-MG

S33-.40-MG

S40

S39

S43-Bullet Fragment Couldn't ID

White Out

Keys—MG

JM Keys

S47-1M Gun

Scissors

Bullet Fragment S36

Blue—Mike Guthinger

Red—Luzenski Cottrell

Green—Officer McGarry

Brown—Fred Halcomb

Black—No Value

45 Bullet Benjamin's Calabash Wall

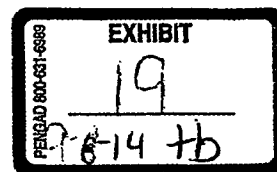
Blue—Mike Guthinger
Red—Luzenski Cottrell
Green— Officer McGarry
Brown—Fred Halcomb
Black—No Value

S43-Bullet Fragment Couldn't ID

▲ White Out

.45 Bullet Benjamin's Calabash Wall

\$69



For the purpose of this hearing, the State & defense stipulate that a fired cartridge ^{case} was located at the crime scene (the Dunkin Donuts parking lot). The approximate location where the fired cartridge ^{case} was found is represented by the number 20 on the State's crime scene diagram (marked as Exhibit 18). The fired cartridge ^{case} is listed as SLED item number 23. This fired

1020
cartridge ^{case}, SLED item number 23,
was fired by Officer Joseph
McGarry's service weapon,
listed as SLED item number
47.

1021

Discovery Supp. A 6/18/13 325

CASE NUMBER

NCIC

AC INCY I.D.
SCO 260600MYRTLE BEACH POLICE DEPARTMENT
INCIDENT REPORT

D.6-3.6.1.1.0.-0.2

NO. ENTD.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM																						
1. PWID Marijuana		☒ YES ☐ NO	☐ YES ☐ NO	Roadway		☐ Individual ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.																						
2. Simple Possession of Marijuana		☒ YES ☐ NO	☐ YES ☐ NO	Roadway																								
3.		☐ YES ☐ NO	☐ YES ☐ NO																									
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)					ZIP CODE	WEAPON TYPE																						
Food Depot 1101 10th Ave N. Myrtle Beach, SC					29577																							
INCIDENT DATE		24 HR CLOCK	TO	DATE	24 HR CLOCK	LOCATION NO																						
06-03-02		2050		06-03-02	2050	30-F																						
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX																						
Starr, Robert J.		Stranger		☒ YES ☐ NO	W	M																						
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO																						
101 Oak St.		Myrtle Beach		SC	29577	30-E																						
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX																						
Society				☒ YES ☐ NO																								
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.																								
				IMPRISONED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL																								
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO																						
		Myrtle Beach		SC	29577																							
VISIBLE INJURY (VICT 1) ☐ YES ☐ NO ☐ EXPLAIN —																												
COMPLAINANT OF ANY NON-VISIBLE INJURIES ☐ YES ☐ NO ☐																												
VICTIM (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS ☐ YES ☐ NO ☐ UNK ☐ TYPE																												
TWO-MAN VEN ☐ ONE-MAN VEN ☐ DETECTIVE/PLASMT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ J — This Jurisdiction, S — State, O — Out of State, U — Unknown																												
<table border="1"> <thead> <tr> <th>SUSPECT</th> <th>NAME (LAST, FIRST, MIDDLE)</th> <th>RACE</th> <th>SEX</th> <th>AGE</th> <th>ETH</th> <th>DATE OF BIRTH</th> <th>HEIGHT</th> <th>WEIGHT</th> <th>HAIR</th> <th>EYES</th> </tr> </thead> <tbody> <tr> <td>☒</td> <td>Cottrell, Luzenski Allen</td> <td>B</td> <td>M</td> <td>24</td> <td>N</td> <td>11-10-77</td> <td>509</td> <td>190</td> <td>Blk</td> <td>B</td> </tr> </tbody> </table>							SUSPECT	NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES	☒	Cottrell, Luzenski Allen	B	M	24	N	11-10-77	509	190	Blk	B
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☒				☒			06-03-02 2050	06-03-02 2050																				
On 06-03-02 at approx. 2050 hrs Officer Starr & McBarry observed the defendant, Luzenski Cottrell, operating a 1990 Honda 4dr silver in color bearing SC/224-LTD with Billie Jo Hamilton, W/F, as the passenger. Cottrell was east bound on 10th N stopped at the red light at the intersection of 10th N & Bob Crissom Hwy. The officer observed the defendant open the drivers door of the vehicle and proceed east on 10th Ave N with the door open. A traffic stop of the vehicle was done at the Food Depot 1101 10th Ave N. Upon checking Cottrell's South Carolina drivers license via dispatch it was discovered his license was suspended. The defendant was placed under arrest and search of person incident to arrest revealed one small clear plastic baggie containing a green plant-like substance inside of his left front																												
<table border="1"> <thead> <tr> <th>TYPE (GROUP)</th> <th>THIEF</th> <th>STOLEN</th> <th>DAMAGED</th> <th>BURNED</th> <th>RECOVERED</th> <th>RECEIVED</th> <th>TOTAL VALUE</th> </tr> </thead> <tbody> <tr> <td>Marijuana</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>							TYPE (GROUP)	THIEF	STOLEN	DAMAGED	BURNED	RECOVERED	RECEIVED	TOTAL VALUE	Marijuana													
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☒			☒			☐	☐	☐	☐																			
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AGENCY I.D.
SCO 260600MYRTLE BEACH POLICE DEPARTMENT
SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

NCIC

INQ. ENTQ.

0.6.1.3.6.1.1.0.2

☒ ORIGINAL REPORT ☐ MODIFIED ORIGINAL		☐ SUPPLEMENTAL REPORT ☐ CASE STATUS CHANGE		☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS		☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY		PAGE 2 of 2 PAGES	

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #	Hamilton Billie Jo							0600	W	F	28	3-31-74	N	
	☒ SUBJECT # 2	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	☐ RUNAWAY	506 130 28 HAZ													
	☐ WANTED	ADDRESS													
	☐ WARRANT	4226 Minnie Mikes Rd Little River SC 29566													
	☐ ARREST	CITY STATE ZIP CODE LOCATION NO. DAY PHONE EVENING PHONE													
	☐ JAIL	0/c 280-5931 280-5936													
	☐ SUMMONS	☐ VICTIM NO. _____ VISIBLE INJURY: ☐ NO ☐ YES ☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES ☐ EXPLAIN: _____ ☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK ☐ DRUGS: ☐ NO ☐ YES TYPE: _____ ☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASMT. ☐ ALONE ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED													
	☐	☒ SUBJECT NO. 2: USING ALCOHOL: ☐ NO ☐ YES USING DRUGS: ☐ NO ☐ YES → TYPE: _____ ☐ UNK													

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #														
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	☐ RUNAWAY														
	☐ WANTED	ADDRESS													
	☐ WARRANT	CITY STATE ZIP CODE LOCATION NO. DAY PHONE EVENING PHONE													
	☐ ARREST														
	☐ JAIL														
	☐ SUMMONS	☐ VICTIM NO. _____ VISIBLE INJURY: ☐ NO ☐ YES ☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES ☐ EXPLAIN: _____ ☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK ☐ DRUGS: ☐ NO ☐ YES TYPE: _____ ☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASMT. ☐ ALONE ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED													
	☐	☐ SUBJECT NO. _____: USING ALCOHOL: ☐ NO ☐ YES USING DRUGS: ☐ NO ☐ YES → TYPE: _____ ☐ UNK													

NARRATIVE	pants pocket. During the inventory of the vehicle prior to it being towed revealed one hand rolled cigarette containing a green plant-like material inside of a box of Newport cigarettes and one large clear plastic zip-lock bag containing four smaller clear plastic zip-lock baggies each containing a green plant-like material all believed to be marijuana. The handrolled cigarette was located on the passenger side dash board and the large clear plastic zip-lock bag containing suspected marijuana was located under the driver's seat. Subject #2, Billie Jo Hamilton, was charged with simple possession of marijuana due to the hand rolled cigarette being in close proximity to her.													
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY													
	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY													
	STATUS TYPE													
	☐ STOLEN ☐ VEHICLE ☐ RECOVERED ☐ GUN ☐ FOUND ☐ BOAT ☐ TOWED ☐ LICENSE PLATE ☐ SUSPECT ☐ SECURITIES/BONDS, STOCKS ☐ VICTIM ☐ ARTICLE													
	VIN AND/OR LICENSE NO. BOAT HULL NO. AND/OR REG. NO.													
	SERIAL AND/OR OWNER APPLIED NO. STATE													
	YEAR OF REGISTRATION YEAR OF EXPIRATION YEAR OF ORIGINAL MAKE TYPE													
	MODEL STYLE COLOR BRAND NAME CALIBER													
	NIC NO. DENOMINATION ISSUES SECURITIES DATE													

VEH. / GUN / ETC. 1	MISCELLANEOUS													
	TYPE (GROUP)													
	STOLEN													
	DAMAGED													
	BURNED													
	RECOVERED													
	SEIZED													
	SUBJECT IDENTIFIED													
	SUBJECT LOCATED													
	☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED													

ADMINISTRATIVE PROPERTY EST.	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY													
	REPORTING OFFICER(S) DATE UNIT NUMBER													
	Star, Robert J. PFC 6-3-02 369													
	McGarry, Joseph J. PFC 6-3-02 263													
	APPROVING OFFICER DATE UNIT NUMBER													
	CPL. A.A. Mitchell 06-03-02 232													
	FOLLOW-UP INVESTIGATION ☐ YES ☐ NO ☐													
	OFFICER													
	TOTAL VALUE													
	T.M.S.													

Discovery Supp. A 6/18/13 327

AGENCY I.D.
SCB 263600

SUPPLEMENTARY REPORT

CASE NUMBER

0161-1316111101-1012

NCIC

INQ. ENTD.

ORIGINAL
REPORT
☒ LOCATED
ORIGINAL☐ SUPPLEMENTAL
REPORT
☐ EX-STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 OF 3 PAGES

NARRATIVE

Subject #1, Luzenski Cottrell, was charged with PWID marijuana due to large clear plastic zip-lock bag containing four smaller clear plastic zip-lock bags each containing a green plant-like material being found underneath the driver's seat. The approximate total gross gram weight is one hundred twenty five grams. All appropriate evidence paperwork was completed and the suspected substance was dropped in the Drug Drop at the Myrtle Beach Police Dept. A field test of the suspected substance by PFC. Star proved positive for marijuana.

CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL

Sherry S. Acker

DIS-3

ADMINISTRATIVE

SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER(S) Star, Robert J. PFC		DATE 6-3-02	UNIT NUMBER 369	APPROVING OFFICER CPL. A.G. Mitchell		DATE 06-03-02
						UNIT NUMBER 232

AGENCY I.D.
SC0 260600

SUPPLEMENTARY REPORT

CASE NUMBER

0161-13161110-102

NCIC

ING. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

NARRATIVE

After arresting both individuals, the female was mirandized at the scene and questioned. The female Billie Jo Hamilton made statements to myself, officer McGraw. Mrs. Hamilton stated that she and Cantrell, Luranski were at Broadway Station apartments. Mr. Cantrell met a white male, in his thirties and walked back to the garage. Mrs. Hamilton stated when Mr. Cantrell arrived back to the car, he had the marijuana. Mrs. Hamilton also stated the male had a beard. At the time of the arrest Mr. Hamilton was working at the Foki Tiki on Ocean Blvd. in the city of Myrtle Beach.

CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL

Shirley S. Askey

D-154

ADMINISTRATIVE	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE:		1 ☐ OFFENDER DEATH		2 ☐ NO PROSECUTION		3 ☐ EXTRADITION DENIED		4 ☐ VICTIM DECLINES COOPERATION	
	REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
	J. McGraw		11-25-02		263		Chris A. Stan		11-25-02	
					FOLLOW-UP		OFFICER		UNIT NUMBER	
									500	

Initial Discovery 6/18/13 2234

Follow-up

On December 29, 2002, at approximately 4:00 a.m., Myrtle Beach Police Narcotics Officers Robert Todd and Robert Starr spoke with a Confidential Source (hereafter referred to as CS) and showed the CS a photo of Luzenski Allen COTTRELL, and the CS provided the following information.

The CS stated, COTTRELL and Fred LNU opened a tinting business on Seaboard Street in Myrtle Beach, South Carolina sometime last year. Both COTTRELL and FRED always bragged about how much marijuana they sold and what big marijuana suppliers they are. COTTRELL and FRED also like to talk about being loan sharks. The CS also stated COTTRELL was known to carry a handgun. The CS believes that FRED loans money to people and has COTTRELL collect past due debts. FRED uses COTTRELL to collect his money since COTTRELL is more violent in nature.

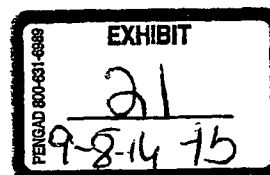
Sometime last winter Lloyd Mangrum spoke with Myrtle Beach Police Officer Joseph McGarry via telephone and stated MANGRUM was in New York City with the owners of Sensational Window Tinting located on Seaboard Street, Myrtle Beach, South Carolina, and they were keeping him with them until he paid them what he owed. MANGRUM asked Officer McGarry to check on his wife, that they were holding his wife hostage at MANGRUM's residence and that if he didn't pay them what he owed they would kill her.

Officer McGarry drove by the residence while on duty to check on MANGRUM's wife. Once at the residence McGarry spoke with MANGRUM's wife and she stated that she was ok, but Officer McGarry got into a small confrontation with COTTRELL, but since everything was ok he left the residence.

Officer McGarry, called Myrtle Beach Narcotics Officer Robert Todd via telephone and told him what had happened and wanted to know if he knew anything about COTTRELL. No other information was ever passed on reference COTTRELL or the incident, which occurred at the MANGRUM residence.



December 29, 2002



1 State of South Carolina) Court of General Sessions
2 County of Horry) 2003-GS-26-00020

3

4

5 State of South Carolina)

6

vs.)

7

Luzenski Allen Cottrell)

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9

Transcript of Record

10

September 11, 2014
Conway, South Carolina

11

BEFORE:

12

Honorable Larry B. Hyman, Judge.

13

APPEARANCES:

14

Scott R. Hixson, Chief Deputy Solicitor
Jimmy A. Richardson, II, Solicitor
Attorneys for the State

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16

17

William S. McGuire, Esq.
Teresa L. Norris, Esq.
Attorneys for the Defendant

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21

22

Teresa J. F. Bautz, RPR
Official Court Reporter

23

24

25

1 (The hearing commenced at approximately 9:43 a.m.)

2 THE COURT: All right, good morning, thank you.

3 Please be seated. Please excuse me for being a few
4 minutes late, I was reading some things. Okay. Ms.

5 Norris, Mr. Hixson, Mr. Richardson, Mr. McGuire. I see

6 we've got Mr. Cottrell here. Good morning,

7 Mr. Cottrell.

8 THE DEFENDANT: Good morning, Your Honor.

9 THE COURT: Would someone, one of you, like to
10 tell me where we are and what we need to do today,
11 okay.

12 MR. HIXSON: Be glad to, Your Honor. Let's start
13 out, if that's okay, with we're trying to arraign the
14 defendant. I believe Ms. Norris indicated that she
15 wanted to take that up first.

16 THE COURT: All right, let's go ahead and do the
17 arraignment. And let the record indicate that is
18 Thursday morning, September 11th, 2014 at, the clock
19 says 9:42.

20 LUZENSKI A. COTTRELL, after being duly sworn,
21 testified as follows:

22 MR. RICHARDSON: Your Honor, I'll just read the
23 paragraph, and I believe that they've got a copy of it.
24 Luzenski Allen Cottrell, if you answer by that name,
25 please raise your right hand.

1 THE COURT: Let the record reflect he has done so.

2 MR. RICHARDSON: State of South Carolina, County
3 of Horry, indictment for murder. At a Court of General
4 Sessions convened on January 9th, 2003, the grand
5 juries of Horry County, presented upon narrow, murder,
6 CDR code number 116-16031020, that Luzenski Allen
7 Cottrell did in Horry County on or about the 29th day
8 of December 2002, willfully, feloniously, intentionally
9 and with malice aforethought kill the victim, Joseph J.
10 McGarry, Jr., a sworn law enforcement officer, employed
11 by the Myrtle Beach Police Department and while on
12 active duty, by means of shooting PFC McGarry in the
13 face with a .45 caliber semi-automatic handgun. And
14 PFC McGarry did die as a proximate result thereof in
15 Horry County on or about December 29th, 2002, in
16 violation of section 16-310, South Carolina Code of
17 Laws, 1976, as amended and the common law of South
18 Carolina against the peace and dignity of the State and
19 contrary to the statute in such case made and provided.

20 What say you, Luzenski Allen Cottrell, are you
21 guilty or not guilty of the felony wherein you stand
22 indicted?

23 THE WITNESS: Not guilty.

24 MR. RICHARDSON: How shall you be tried?

25 THE WITNESS: By God and country.

1 MR. RICHARDSON: These good, lawful jurors will
2 pass between you and the State upon the trial of this
3 case. If you challenge them or any of them, you will
4 do so as each is called to the bar to be sworn and
5 before he or she is sworn. May God grant you a just
6 deliverance.

7 And Your Honor, we met on Tuesday, and the
8 defense, I believe, waived any sort of scheduling
9 conflict. As far as timing, I believe that we are
10 allotted three days before the trial begins. We still
11 should be good with it being Thursday, the 11th, but
12 just in case, they did waive that on Tuesday.

13 MS. NORRIS: That's correct, Your Honor.

14 THE COURT: All right. Mr. Cottrell, let me make
15 sure that you are not confused by the arraignment. The
16 arraignment language, and I note that as Mr. Richardson
17 read the arraignment colloquy to you, your attorney,
18 Ms. Norris, also had a copy that she was sort of going
19 along and showing you so you could understand it.

20 In that, it indicates that or suggests that we're
21 about to begin the jury selection process. I want
22 you to make sure that you understand, we're not doing
23 that this afternoon.

24 THE WITNESS: Yes, I understand.

25 THE COURT: We will do that on Monday, we'll begin

1 that process. It may take several days, but we will
2 certainly begin on Monday if at all possible, that's
3 the schedule. And you will of course be present during
4 the qualification of that jury panel, the roll call of
5 the jurors and things of that nature and any
6 instructions that I may give them. And you will also
7 be available during the voir dire process.

8 And following that we will select the panel. And
9 you have been through this, I believe, before, but we
10 will select a panel. And from that panel we will
11 select the jurors; do you understand that?

12 THE WITNESS: Yes, sir.

13 THE COURT: I just want to make sure that you are
14 not confused or you're not under the impression that
15 we'll be doing that today; all right?

16 THE WITNESS: All right, thank you.

17 THE COURT: Okay, thank you. Is there anything
18 you want to ask me about that process, Mr. Cottrell?

19 THE WITNESS: No, sir.

20 THE COURT: Anything that you're confused about?

21 THE WITNESS: No, sir.

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

23 MR. RICHARDSON: The only other thing in
24 explanation is when I talk about strikes, I believe
25 Mr. Cottrell will get ten, and we will a get five.

1 THE COURT: That's my understanding. And I think
2 we've already discussed that at a prior hearing, ten
3 and five. Okay, now --

4 MR. HIXSON: Thank you, Your Honor.

5 THE COURT: -- let me also as a preliminary
6 matter, let's just sort of get this out of the way. I
7 have signed an order appointing Ms. Norris and
8 Mr. McGuire as counsel for Mr. Cottrell. In my order I
9 set forth that they were qualified under the statute to
10 handle or be appointed as his capital case counsel.
11 But just out of an abundance of caution, Ms. Norris,
12 would you mind placing your qualifications on the
13 record.

14 MS. NORRIS: Yes, sir. I graduated from the
15 University of South Carolina Law School in 1990. From
16 that I did felony appeals, including capital cases, for
17 four years in the Army. So since 1992 I've been doing
18 capital work. Since 1994, 99 percent of my experience
19 is in death penalty cases.

20 As far as trial cases, I've served on two that
21 have gone all the way to the jury in capital cases and
22 probably eight to ten that ended up pleading out, and I
23 did one other federal case. So as far as capital cases
24 going to the jury, this will be the third one.

25 THE COURT: All right. Mr. McGuire?

1 MR. McGUIRE: Thank you, Your Honor. Graduated
2 1995 from the University of South Carolina, School of
3 Law. I clerked for two judges at the circuit court
4 level, the Honorable Rodney Peoples and the Honorable
5 David Peeber, who later retired from the Court of
6 Appeals. I was a public defender in Charleston County
7 for nearly five years and tried approximately 60
8 criminal cases in those courts.

9 I worked for Andy Savage in Charleston for a time,
10 was a judge in -- a city judge in Hanahan for some
11 time. I was a capital defender in Georgia for several
12 years handling just death penalty cases, and I'm the
13 chief attorney at the South Carolina Capital Trial
14 Division. I probably tried a half dozen capital cases
15 and a number of murder cases, and my office has been
16 involved in probably about 30 capital cases.

17 THE COURT: Thank you. And I just asked you to do
18 that so that the record would verify my findings in my
19 order appointment, which was signed some while back.
20 And I do, again, find that both counsel are imminently
21 qualified for appointment in a capital case. All
22 right.

23 MR. HIXSON: Thank you, Your Honor. State's
24 recollection, as Your Honor is well aware, we had some
25 evidentiary matters that we were introducing to the

1 Court for the Court's information on Monday. I think
2 there were some other tangential matters during that
3 period of time, I think they resolved but we undertook,
4 and then we recessed to come back on Thursday, I really
5 think, for more the argument and the discussion about
6 what the import of some of those -- the proffer of
7 information that we provided. And I think that's where
8 we are and to go forward now.

9 THE COURT: Let me tell you what my understanding
10 is of where we're going this morning is. It's my
11 understanding that I essentially have two matters, two
12 core matters, forming. On the one hand, the State
13 moves for a ruling that the arrest or the attempt to
14 arrest Mr. Cottrell was a legal arrest based upon
15 reasonable articulable suspicion.

16 MR. HIXSON: Just not that --

17 THE COURT: Or not so much the arrest.

18 MR. HIXSON: Just it was a Terry pat down, not an
19 arrest --

20 THE COURT: The Terry pat down, I'm sorry. I
21 shouldn't have said the seizure.

22 MR. HIXSON: Yes, the brief detention is how we
23 determined it.

24 THE COURT: Okay, that detention. On the other
25 hand, and in part and parcel from that ruling would be

1 the defense position that it was not lawful. And as a
2 result of that unlawful arrest, the subsequent
3 information obtained by the State in the form of two
4 statements would be inadmissible under a wansong
5 (phonetic) type of analysis; am I correct in my
6 understanding?

7 MS. NORRIS: Yes.

8 THE COURT: Where are we going with these?

9 MR. HIXSON: I slightly disagree, Your Honor, with
10 just the setting up of it. We believe they are
11 entirely two separate issues in that the indictment
12 that Mr. Cottrell was convicted of at trial, the
13 indictment in that, the arrest that he was resisting is
14 Mike Guthinger's arrest for the murder of Joe McGarry.
15 So he -- Joe McGarry -- excuse me, Mike Guthinger had
16 probable cause to arrest Cottrell because he saw
17 Cottrell shooting --

18 THE COURT: I understand.

19 MR. HIXSON: So that was the arrest that he was in
20 custody for when he gave a post Miranda statement, not
21 the brief detention. So they are clearly two separate
22 issues.

23 THE COURT: And I am sure you are making a
24 Sprinkler type argument; is that right? Federal case
25 US versus Carl Sprinkler, it's actually a Charleston

1 County case, I think, fourth circuit.

2 MR. HIXSON: Yeah, I'm not familiar with that
3 name.

4 THE COURT: I think you need to look at that.

5 MR. HIXSON: Okay.

6 THE COURT: And of course there have been quite a
7 line of cases after that. Essentially, your position
8 is that subsequent illegal activity on the part of the
9 defendant purges the taint of illegality that may have
10 resulted from any illegal arrest or an illegal seizure.
11 That's where we're going; right?

12 MR. HIXSON: I understand that analysis, Your
13 Honor. My analysis perhaps is a little more simplistic
14 than that, in that we believe step one is Terry and the
15 good law of the State of South Carolina. In other
16 words, when Joseph McGarry -- let's just boil it down
17 to the ten codes, when he says, 1061, 1032, and all the
18 information that we were provided that he knew about
19 Cottrell, at that moment can he lawfully detain him the
20 least invasive means for a records check, or would a
21 reasonably prudent person believe that he may be armed
22 at that period of time. And then we have -- and we'll
23 talk factually speaking later on, so --

24 THE COURT: Let me --

25 MR. HIXSON: -- if Terry is good, can he detain

1 him for ID and touch him without violating his
2 constitutional rights. And so our argument would be
3 yes, and we'll get -- so that's analysis one. Totally
4 separate event, later on Mike Guthinger sees a crime
5 committed in his presence, a muzzle flash in his face.
6 At that moment there's brand new probable cause. There
7 is no illegal arrest by Mike Guthinger, and that is the
8 offense that Cottrell's convicted of, resisting that
9 arrest. And that is a lawful arrest, it's not illegal,
10 there's no taint at all. He was under arrest for
11 shooting a police officer, and that's when he --

12 THE COURT: And then there's also, wasn't there a
13 grand larceny?

14 MR. HIXSON: Yes, sir.

15 THE COURT: And assault with intent to kill?

16 MR. HIXSON: That's correct, sir.

17 THE COURT: And those convictions stand?

18 MR. HIXSON: That's correct. So we believe it's a
19 two separate analysis. Part two is a straightforward
20 analysis because it wasn't an illegal arrest, he's
21 convicted of it, and that's when he was under that
22 arrest when he gave the statement.

23 THE COURT: Okay.

24 MR. HIXSON: So that is relatively easily disposed
25 of compared to the proffer of evidence that we did

1 Monday. That's the -- to boil it down, step one, did
2 Joseph McGarry have more than just a hunch when he
3 briefly detained him for an ID check and for a weapons
4 pat down. Cottrell's own statement that the Court has
5 seen says that's what happened to him. I need to pat
6 you down, and Cottrell said, no, and tried to walk
7 away. That's the defendant's statement that he said
8 that's what happened.

9 THE COURT: Is that in this record on this
10 particular thing?

11 MR. HIXSON: It's the Court's Exhibit, Court --
12 it's Court's-2 and Court's-3.

13 THE COURT: Okay. All right, all right.

14 MR. HIXSON: Okay. So that's Cottrell's version
15 of the events. So for the framework, we believe that
16 what the indictment reads, the resisting arrest of
17 Michael Guthinger, he was arresting him for the murder
18 of Joe McGarry, there is no illegal arrest there,
19 that's a proper arrest, the jury found it proper. The
20 defendant's statements are voluntary and --

21 THE COURT: Let me just ask you this, Mr. Hixson,
22 and you tell me whether you believe it's even
23 significant. It would first --

24 MR. HIXSON: Yes, sir.

25 THE COURT: -- appear to be a Terry stop frisk

1 situation. Terry frisk situation is one where the
2 officer has articulable suspicion that criminal
3 activity may be afoot. And he makes a brief detention,
4 and for officers' safety -- and it's sort of a
5 two-prong thing here, it must be articulable suspicion
6 that he may be armed -- he does a pat down. Most of
7 the cases that concern Terry issues are cases where
8 there's some contraband, weapon, something found as a
9 result of the pat down, okay.

10 It's pretty much undisputed, well, I think it is
11 undisputed, that at some point Officer McGarry for
12 whatever reason moved this to a higher level, and it
13 went beyond a Terry frisk situation. The Court in
14 reversing the prior conviction at the end of the
15 opinion says, unlike the trial judge, we do not find
16 the evidence acceptable of only one inference. We hold
17 he erred by holding that as a matter of law, the victim
18 was effectuating a lawful arrest.

19 Now, a Terry stop and frisk, while it does involve
20 something in the nature of a seizure, I mean, you're
21 stopped, you're free to go, but at some point it may go
22 beyond that. Like he was holding the identification.
23 There's some case law that if an officer takes my
24 identification card, my driver's license, whatever, I'm
25 seized while he holds that.

1 But there's no question that when this physical
2 altercation arises, Officer McGarry has got him by the
3 arm and perhaps by the shirt or on the back or
4 whatever, he's got him, okay. That goes beyond Terry.
5 And the Court seems to be talking about or speaking in
6 terms of arrest, not a Terry pat down. So it looks
7 like it went to a point where the officer was, lawfully
8 or not, effectuating an arrest, okay.

9 Now, Judge Dennis essentially made a finding that
10 the evidence is susceptible to only one interpretation,
11 and that is that he put up his arms, and the officer
12 saw the gun and he was arrested. The Court said that
13 was improper. In taking the evidence in the light most
14 favorable to Mr. Cottrell there was an alternative, and
15 that was that simply the officer was effectuating an
16 arrest in an unlawful manner, okay. So that was there.

17 But what difference does it really make, in your
18 view, as to whether or not we're talking about a
19 situation, or we have to make a determination, was the
20 officer making an arrest or was he simply trying to do
21 a Terry pat down.

22 MR. HIXSON: I think those are tremendous points,
23 I think that's right on the money, judge. And let me
24 add some authority for our position. It's a classic
25 Terry analysis because you see the officer himself

1 using a sliding scale of the intrusive means to go
2 about effectuating officer safety.

3 I'll be providing the Court a packet, I believe,
4 of 17 items of authority. And I think over six of
5 those indicate that the modern trend of Terry is to
6 handcuff an individual, take him to the ground, guns
7 drawn on that individual.

8 There are some cases, I think it's Lashuda, if I
9 mispronounce it, Tillman especially and Escue, all of
10 those are handcuffed individuals on the ground because
11 there are concerns over officer safety, that the
12 officer doesn't have to wait to be fired upon to
13 determine -- and if they were wrong they let them go
14 and they were never under arrest. It never rises to
15 the level of probable cause for the arrest.

16 Terry allows them to do that because the Court
17 shouldn't be in a position to second guess an officer
18 that's trying to protect himself and the community.
19 And the constitution allows that, and the authority
20 supports it.

21 THE COURT: Let me tell you why I ask you that.
22 Let me tell you why I ask you about the difference.

23 MR. HIXSON: Yes.

24 THE COURT: In ruling, the Court very clearly,
25 what it essentially has said that under the evidence in

1 this case -- and quite frankly, I don't think I've
2 heard anything that wasn't presented in the trial, was
3 there anything new that's been presented to me, and
4 we'll get to that in a minute.

5 MR. HIXSON: Yes, sir.

6 THE COURT: But the Court says that is a jury
7 question, whether the arrest was lawful but effectuated
8 through defendant's unnecessary use of violence, Two
9 things respecting it.

10 MR. HIXSON: I understand.

11 THE COURT: Now, that's what gets me concerned.

12 MR. HIXSON: I understand that. And this is
13 somewhat awkward to get through there. Our effort to
14 present this to the Court was to allow -- was outside
15 the presence of the jury to understand the universe of
16 information. We do not intend to produce this entire
17 case that we gave to you in front of the jury.

18 The problem was especially in light of recent
19 events, such as in Ferguson, Missouri, for instance,
20 where there's an issue, the issue is the citizen law
21 enforcement encounter, that this guy, if we can't --
22 what we would like to do is to say that McGarry walks
23 up with Guthinger and says, that individual is a
24 suspect in an unrelated shooting.

25 THE COURT: And I understand that.

1 MR. HIXSON: And then if -- and then that's really
2 all we're asking for. We want to show the universe of
3 information on why he had that manifested belief. Then
4 we can argue to the jury whether it's Terry or not.
5 And that, I think, is appropriate.

6 But if we can't lay that little piece of
7 foundation in front of the jury, then -- which has
8 happened in the first trial. Judge Dennis told and the
9 Court told Officer Guthinger, don't talk about any of
10 the -- any of that stuff, and as a result to the jury
11 it sounds as if the officer showed up a Dunkin Donuts
12 and said, hey, let's go take this guy outside and pat
13 him down. And that's what we're concerned about is
14 that, that.

15 THE COURT: Let me, and I understand what you're
16 doing, but I think the defense is kind of between a
17 rock and a hard place, okay. In order to -- and I can
18 only assume, I may be incorrect, but this is the
19 assumption I'm laboring under -- I can only assume that
20 the defense will at the end of this trial again request
21 a manslaughter, voluntary manslaughter charge. I can
22 only assume that, okay.

23 If that is the case, we'd have to look at the
24 totality of the seizure, arrest, whatever word you want
25 to use, that occurred immediately preceding the

1 shooting. Because in the case of a police officer, in
2 order to show sufficient provocation to support a
3 charge to the jury on manslaughter, we have to show two
4 things, heat of passion on sufficient provocation.

5 And there are a number of cases in this state
6 concerning whether or not an arrest is sufficient
7 provocation to justify a charge of voluntary
8 manslaughter. Those cases, that line of cases, and you
9 can correct me if I'm wrong, but that line of cases
10 seem to say that where we got a police officer making
11 an arrest, if that's what you want to do, you want to
12 show that as provocation, you've got to show an illegal
13 arrest or excessive force. That's what you got to show
14 to get it, okay. Am I correct?

15 MR. HIXSON: Yes.

16 THE COURT: As far as you're concerned, okay. And
17 aren't we going to have to go back and address those
18 issues, those address -- those arrest or seizure
19 issues. And if we do so, one of those factors is going
20 to be whether or not there was articulable suspicion
21 too. Let's try to pat him down or anything of that
22 nature, because that seems to have been the initial
23 desire to pat down, you know, maybe he saw something,
24 maybe he didn't. Maybe he had reason to then
25 effectuate an arrest.

1 Maybe he did see the gun. There's no question
2 Mr. Cottrell had a gun, maybe he did see the gun. But
3 how would we know that, there's no way. So, we're
4 going to have to get into that. Back to my position
5 that that now puts the defense in somewhat of a
6 quandary. If they do that, then those matters
7 concerning Mr. McGarry's knowledge -- and I'll tell
8 you, Mr. McGuire and Ms. Norris may talk me out of this
9 or may convince me otherwise -- but I come into this
10 hearing today with a basic feeling that there was
11 articulable suspicion.

12 And I'll tell you why. First of all, there's no
13 question that Mr. McGarry, Officer McGarry, had
14 knowledge concerning Mr. Cottrell. The lady officer,
15 and I have forgotten her name.

16 MR. HIXSON: Amy Stanley Prock, Your Honor.

17 THE COURT: Ms. Prock testified that she was
18 contacted by Horry County concerning a homicide
19 involving a firearm in which Mr. Cottrell had been
20 identified at, as a minimum, a person of interest,
21 okay. She says she gave that information, upon their
22 request, to Officer McGarry and asked for any other
23 information he might have about Mr. Cottrell.

24 That her testimony is corroborated by the fact
25 that I think I saw somewhere where Mr. McGarry, in

1 response and within 30 days or so of this incident, he
2 responds by giving some supplement, he responds. So
3 there's no question that he had knowledge of
4 Mr. Cottrell being a person of interest in a homicide
5 in the county, okay.

6 It's further borne out by Officer -- I'm sorry.

7 MR. HIXSON: Guthinger.

8 THE COURT: Guthinger, Guthinger's testimony that
9 when they went into the Dunkin' Donuts and saw
10 Mr. Cottrell, that Officer McGarry said, 1061, 1032,
11 which the evidence would show means homicide or
12 something of that nature and man with a gun, okay, or
13 person with a gun. Officer Guthinger has testified to
14 that.

15 That is corroborated by the fact that
16 Mr. Guthinger says, or Officer Guthinger says, we sort
17 of conducted a ruse and said, let me talk to you about
18 these tickets or whatever, in the meantime running an
19 NCIC to determine whether or not there were outstanding
20 warrants resulting from that.

21 That's borne out by the fact that there was in
22 fact a request for an NCIC. You know, we've been at
23 this for a long time. You don't NCIC someone over a
24 traffic ticket. And it didn't appear -- it's probably
25 not even in the NCIC over a driving with expired

1 license or suspension or whatever. He runs that NCIC.
2 I'm somewhat confused as to whether he ever got that
3 information back or not. It came back, but I don't
4 know whether he got it or not.

5 So there we have this scenario where this officer
6 is contacted, he's arrested him before, did not have
7 any firearms on him. Apparently there's never any
8 exchange prior to this night between Mr. Cottrell and
9 Mr. McGarry that would indicate that he is carrying a
10 gun.

11 But we have this intervening thing where there was
12 a homicide with a gun. There's no question that
13 Mr. McGarry has in his mind when he sees Mr. Cottrell,
14 this is a person of interest, he may be a wanted
15 suspect in that now. He says, 1032, which is gun,
16 1061, homicide. They are very cordial, he hasn't
17 escalated anything, he goes out and he talks with him.

18 I think, and I'm going to hear Mr. McGuire and Ms.
19 Norris, but this is sort of what's in my mind now. And
20 we've talked for a while about this, this is sort of
21 what's in my mind. But I don't know what happened
22 after that. I know that violence erupted between the
23 defendant and the police officer. I know from all
24 accounts that the police officer was apparently, for
25 whatever reason, trying to make an arrest or a seizure

1 of Mr. Cottrell. I don't know what happened after
2 that.

3 All I know is what initiated the first level, the
4 Terry frisk. And I have a feeling about that, of
5 course I want to hear from everybody, but I have that.
6 So it looks like we're in sort of a two-stage thing
7 here.

8 MR. HIXSON: Can I follow up. I think on -- I
9 think that we're not going to be able to -- I
10 understand the Court's concern, I can see it more
11 clearly, and thank you for that. I think the jury is
12 going to have to decide those issues, and we're going
13 to have to make those arguments that it's a Terry
14 frisk. And then if you find it's a Terry frisk, then
15 you can decide whether voluntary manslaughter provides
16 and make that argument.

17 THE COURT: Precisely.

18 MR. HIXSON: I just want the ability to get there
19 is what we're trying to do.

20 THE COURT: It appears to me that it is an issue
21 that's going to have to be addressed by the jury. It
22 opens the door to a lot of other information. The
23 things that I just discussed with you are propelling at
24 least in my mind. And, again, that's the quandary, I
25 think, that the defense is in, do you go there.

1 Because if we do a 403 analysis of the evidence,
2 all of a sudden, whereas in the first trial prejudice
3 was way up here and probative value was way down here,
4 but as that becomes a more significant issue, the
5 scales start moving the other way. And it becomes
6 almost imperative that that information be brought in,
7 obviously with some sort of instruction to the jury.
8 But that's what gives me some concern.

9 MR. HIXSON: Perhaps this would help the Court on
10 what our -- our intention is, is just to get guidance,
11 it's our burden on what to say. We don't want to start
12 right out of the gate by saying too much. So our
13 intentions, what we hoped to do, was to have, say, for
14 instance, either Nathan Johnson or perhaps Amy Prock
15 saying, I was contacted by the county in an unrelated
16 shooting case, and I relayed that information to Joseph
17 McGarry. No details, as benign as we can get it to
18 show that's when he sees him, he says, that's 1061, and
19 then leave it there in our presentation.

20 And then if there's opening the door issues or
21 something like that, we want to try to keep it as least
22 prejudicial, not talk about prior drug stop, not talk
23 about any prior record, none of that stuff because it
24 will tip the scale. But and we believe that it comes
25 under a res justae analysis, are the facts and

1 circumstances of that information of generating him as
2 a person of interest and a suspect in an unrelated
3 shooting, are those facts intimately connected with the
4 facts of the case at bar that a full presentation of
5 what happened can't be done unless there's some mention
6 of it. We're not talking about --

7 THE COURT: And I understand the res gestae
8 analysis, and we may get there. I went back from
9 yesterday and I read the portion of the transcript that
10 where there was an exchange between the defense, the
11 prosecution and the judge about how to do that. And
12 the judge did not let the State do it, introduce that
13 type of testimony initially. But the State took the
14 position that then we would have the opportunity to
15 bring it in by way of reply, a reply witness.

16 And I guess what you were trying to do is find out
17 whether or not for me, we're going to do that in your
18 case in chief rather than as some sort of reply, or
19 hold it out and then try to figure out what's going on.
20 And I think in fairness to the defense, you need to
21 know that, you need to know how it's going to develop.

22 There's been many times when I tried cases when I
23 thought I had this great line of questioning, you know,
24 that was really working real well until they brought in
25 the reply witness, and it would appear perhaps as less

1 of a lawyer than I should have been. But, you know,
2 that sort of thing happens.

3 So I think it -- I wish it was -- I hope it's
4 something we can resolve here by -- I don't want the
5 defense to have to show cards or anything like that.
6 If we knew, perhaps we could approach it in some way
7 that would be more -- that would flow better, would
8 work better for the defense as well as the State in the
9 presentation of the evidence.

10 I don't know. What about that, Ms. Norris, what
11 about it, Mr. McGuire? I mean, we all understand the
12 problem.

13 MS. NORRIS: Yes, sir. And if we're being asked
14 to disclose something?

15 THE COURT: And I'm not going to put you on the
16 spot unless you -- if you don't want to, please
17 understand I am not making you do that. I am just
18 saying, is there a simple solution to this?

19 MS. NORRIS: Well, judge, I've never seen a simple
20 solution in any capital case.

21 THE COURT: No, you're probably right.

22 MS. NORRIS: I wouldn't have been doing it all
23 these years if there were.

24 THE COURT: And I understand. And there again, I
25 don't want to put you on the spot, I'm not going to

1 require you to do that. I think what was done in the
2 first trial, if we exercise an abundance of caution,
3 it's probably the way it may have to play out, you
4 know. If you object to it and until such time as you
5 challenge the arrest and the subsequent activities of
6 the police, the relevance of that testimony is much
7 less than it would be otherwise.

8 MS. NORRIS: Yes, sir. I understand that, Your
9 Honor, but we really are talking about two different
10 things right here. For today's purposes and our motion
11 to suppress statements, we certainly are challenging
12 the arrest. But will we go as full blown as we have
13 here, I think we have to wait and see how all this
14 plays out.

15 THE COURT: All right. Well, why don't we do
16 that, are you going to -- I thought we would put up
17 witnesses. Do you have some other evidence or
18 testimony you want to put up in that regard, or you
19 just want to argue it?

20 MS. NORRIS: Not -- not on this motion, just
21 argument.

22 THE COURT: And that's the suppression argument?

23 MS. NORRIS: Yes, sir.

24 THE COURT: Okay. Why don't I hear you on that,
25 and then let's see what we've got, okay.

1 MS. NORRIS: Yes, sir. If it please the Court, we
2 submit that this was not a valid Terry stop. Terry in
3 all these cases that we see, you're talking about a
4 reasonable suspicion of ongoing activity or criminal
5 activity afoot, as Your Honor is talking.

6 THE COURT: Let me ask you one thing. I've heard
7 so many ways that it has been said, from Terry to
8 the -- right on down through the whole line of cases.
9 We hear language like, criminal activity was afoot. We
10 hear -- we see cases that say the defendant or the
11 suspect or whatever you want to call him, was involved
12 in criminal activity, okay, which would suggest at the
13 time.

14 And then even in your brief, you cite language
15 from, and I can't recall the case, it says, is involved
16 in criminal activity or has committed a crime. You
17 know, what's the real standard in your view, Ms.
18 Norris? I mean, that's language cited in your brief,
19 or had committed a crime.

20 MS. NORRIS: Yes, sir. And that's exactly where I
21 was going. These cases they're talking about where an
22 officer sees something that he thinks a crime is
23 happening, or else one of the State Supreme Court
24 cases, you know, somebody calls in and there's been a
25 robbery at the pawn shop, a description of the guy, and

1 the officer sees him very close by.

2 You know, we're talking about contemporaneous
3 timings. There's no question from our evidence that
4 Mr. Cottrell went to Dunkin' Donuts for coffee.
5 There's no allegation, no suspicion, never been said,
6 not said now, that he was doing something criminal
7 there. What we're talking about is five weeks before,
8 and that's why we get arrest warrants when we know that
9 this is the person we want.

10 Terry is something different. That is an
11 articulable suspicion that criminal activity is
12 happening then, is how I would phrase that. We don't
13 have that. You know, you can potentially look at this
14 as an initially consensual encounter, but even if so,
15 it elevates from that.

16 And for the second part of Terry, there has to be
17 a reasonable articulable suspicion that the person may
18 be armed and dangerous. There's -- I submit that is
19 simply not there. The transmission of information that
20 went from Horry County Police Department to Myrtle
21 Beach was that he's a person of interest in this
22 shooting five weeks ago.

23 There's nothing to say that he's known to carry a
24 weapon. And Officer McGarry's prior encounters with
25 him patted down, no weapon on him, as far as there's

1 just nothing there. Officer Guthinger said, you know,
2 we looked, couldn't see anything. And they both
3 describe, both Guthinger and Dianne Lawson Serro, that
4 at the point when Officer McGarry goes to grab him,
5 Cottrell's back was turned.

6 So if he's got this gun in his waistband, which he
7 clearly did, Officer McGarry could not have seen that.
8 So it certainly moved beyond Terry.

9 He retained the ID. He pulled and pointed his
10 firearm saying essentially, I'll pat you down or drop
11 you where you stand. And we submit that there's
12 actually a reasonable inference that Officer McGarry
13 did, in fact, shoot Mr. Cottrell in this incident.

14 THE COURT: And there, don't we move to sort of
15 the second tier of whether or not -- of analysis of
16 whether or not an improper or unlawful, however you
17 want to categorize it, arrest would suffice as
18 sufficient provocation to entitle the defendant to a
19 manslaughter charge. And that would be whether or not
20 excessive force or unlawful force was used, and I think
21 the Supreme Court even talked about that issue.

22 And I know we're kind of getting off on another
23 prong of where you're going, but we first have to look
24 at the legality. You can have every reason in the
25 world to effectuate a legal arrest.

1 MS. NORRIS: Yes, sir.

2 THE COURT: But you can do it improperly. And
3 while doing it improperly might raise the passions to
4 the point that it would be provocation for a, say,
5 manslaughter charge, does it, does it invalidate an
6 otherwise legal arrest?

7 MS. NORRIS: Well, Your Honor --

8 THE COURT: Do you have any case law that would
9 suggest that the improper effectuation of a legal
10 arrest would invalidate the arrest and make any
11 evidence acquired as a result of that arrest proofs of
12 what was true? Do you understand the question I'm
13 asking you?

14 MS. NORRIS: Essentially --

15 THE COURT: And maybe it's just such a simple
16 question that it doesn't even deserve an answer. But
17 it seems -- it's just something that in my analysis
18 that I just have difficulty with.

19 MS. NORRIS: Essentially, I believe Terry itself
20 talks about, you know, once it's an unlawful arrest, I
21 mean, there's certainly a lot of cases out there, but
22 again, I understand that we're talking about down the
23 road too. But there are two different ways to look at
24 this. Even under the State Supreme Court's opinion the
25 last time, a lawful arrest or Terry stop conducted

1 improperly, that gets you to manslaughter.

2 What we're talking about is even before that step.

3 We're saying this was an unlawful --

4 THE COURT: Well, you know, the Supreme Court
5 doesn't talk in terms of a Terry stop, the Supreme
6 Court talks in terms of an arrest.

7 MS. NORRIS: Yes, sir.

8 THE COURT: The Supreme Court seemed to without
9 discussion describe this as an arrest, not a Terry
10 stop, an arrest.

11 MS. NORRIS: Yes, sir.

12 THE COURT: I mean, would you agree with that?

13 MS. NORRIS: That's basically the way that they
14 describe it, yes.

15 THE COURT: All right.

16 MS. NORRIS: But because, and again, I think this
17 goes back to Mr. Hixson's concern, it really wasn't
18 discussed in front of the jury about whether the
19 officer had the right to go up and take the actions he
20 did.

21 THE COURT: The judge made a ruling as a matter of
22 law.

23 MS. NORRIS: Yes, sir.

24 THE COURT: And that was improper.

25 MS. NORRIS: I'm not faulting the State for that,

1 I'm just saying that that's probably why they're
2 relying on that footnote three.

3 THE COURT: Let me -- and I understand your
4 position, I know where you're going, Ms. Norris, you've
5 made that abundantly clear to me. And I realize that
6 there may be some issues we have to talk about, the
7 passage of time and things, the voluntariness of his
8 later statements. But have you seen the case of United
9 States versus Sprinkler?

10 MS. NORRIS: Yes, sir. I've got it right in front
11 of me here.

12 THE COURT: Isn't that case dispositive, isn't
13 that case almost -- I mean, it's as close to being on
14 point as you can possibly get. They attempt to make a
15 Terry stop, and the defendant tears away and he flees.
16 While he's fleeing he shoots back at the police
17 officer. He's then arrested. He's charged with felony
18 possession of a firearm, or the federal equivalent of
19 that.

20 And the Court -- for argument sake -- the Court
21 made a finding that the -- the Court made a finding
22 that the arrest or the Terry stop was unlawful,
23 therefore the gun had to be suppressed, and the
24 indictments were dismissed. On appeal, the Court held
25 that, yes, the trial judge was right, it was a bad

1 Terry frisk. Had no articulable suspicion, shouldn't
2 have done it, okay.

3 But when the defendant fled and then committed a
4 subsequent crime, shooting at the police officer, even
5 though it flowed out of the arrest, was causally
6 connected to the attempt -- or not arrest but the frisk
7 -- was precipitated by the police unlawful conduct,
8 even so, the new -- the commission of a new offense
9 purged the tank of the illegality of the attempted
10 Terry frisk.

11 And essentially, of course, if he had stood there
12 and they found a gun on him, could not have used it,
13 could not have prosecuted him. It was proper for the
14 Court to dismiss the charge. But running and
15 committing a crime, in this case, I think the facts are
16 even stronger, there's no question that he has now
17 been -- not only of the facts but we have convictions
18 that have been sustained by the Supreme Court of
19 resisting Officer Guthinger's attempt to arrest, grand
20 larceny of an automobile and assault and battery or
21 attempted, what was it, attempted -- grand larceny,
22 resisting arrest with a deadly weapon and assault with
23 intent to kill.

24 Those were unarguably committed following the
25 shooting of Officer McGarry, which is another offense

1 or possibly. We don't even have to talk about that.
2 After the arrest these are the things that happened
3 during the flight. How does that square with Sprinkle?

4 MS. NORRIS: Well, Your Honor, several things.

5 THE COURT: How do we distinguish it?

6 MS. NORRIS: In Sprinkle I don't believe the
7 officer actually grabbed, which can be -- it's on
8 assault if it's unlawful or shot the defendant. The
9 defendant just turns around and shoots. Our facts are
10 different. But, again, there's no question that
11 Officer McGarry was grabbing him from behind, and we
12 submit there is a reasonable inference that Officer
13 McGarry shot him.

14 THE COURT: And we're going to assume for this
15 argument's sake that it was an unlawful act by Officer
16 McGarry. That's not a finding, just for the purpose of
17 argument, for your argument, I will assume that's the
18 case. It doesn't make any difference whether it's an
19 illegal arrest or it's a improper attempt to pat down,
20 doesn't make any difference, it's illegal police
21 conduct. That's why what Sprinkle talks about --

22 MS. NORRIS: Yes, sir. And, again, I think on our
23 facts we are different than Sprinkle and this. When
24 Officer Guthinger testified on Monday, Your Honor
25 actually asked him the question, after Officer McGarry

1 fell, did you fire first at Mr. Cottrell, or did he
2 fire first at you. He couldn't answer that question.

3 So to the extent that this is an unlawful arrest
4 committed in an unlawful fashion, essentially at that
5 point Officer Guthinger joined in that unlawful arrest.
6 So we don't -- we submit that this is not a separate
7 incident.

8 THE COURT: How about stealing the car then, we'll
9 just go with that --

10 MS. NORRIS: Well, at that point --

11 THE COURT: -- Mr. Morgan do anything?

12 MS. NORRIS: Mr. Morgan ran in the Dunkin' Donuts.
13 At that point if he's defending himself from unlawful
14 shots at him, we submit there is potential necessity
15 there to get away from that scene. And the resisting
16 arrest, if you're defending yourself from unlawful
17 conduct in an unlawful manner, you're not resisting a
18 lawful arrest.

19 So we submit factually that it is very different.
20 Legally we've got, again, as Your Honor put it, we've
21 got a quandary in the case in that in the first trial
22 the State didn't offer the statements of Mr. Cottrell,
23 so the defense never had reason to be making the
24 arguments we're making now in terms of the suppression.

25 And because of that, the defense never really got

1 into resisting arrest, is the assault valid, is the
2 stolen car valid. We submit Mr. Cottrell actually has
3 defenses to all of that. But, you know --

4 THE COURT: But he was convicted of it, how can he
5 now challenge those convictions?

6 MS. NORRIS: Well, Your Honor, to the extent that
7 he should have challenged those convictions, we got
8 another problem. Because --

9 THE COURT: Well, that may be something to raise
10 on PCR, but can you -- can you now challenge, can you
11 challenge those convictions and ask those to
12 essentially be retried in a subsequent trial?

13 MS. NORRIS: You can't do that in the subsequent
14 trial. What you can do is stay these trial proceedings
15 and let us go file the PCR. Otherwise, I think the
16 convictions are there, but if you just accept that as
17 res judicata and deny us that defense, it is denying a
18 defense if we can't argue that. And, I mean, it's not
19 going to change the fact that those convictions are
20 there.

21 THE COURT: But the time for filing a PCR has long
22 since passed. That -- you know, this was in 2012,
23 there's no PCR available for that. Those -- there has
24 been a final appeal of those charges in the Supreme
25 Court, not the Court of Appeals, in the Supreme Court.

1 They were upheld or were -- they may not even have
2 appealed them, I don't know. But that is a final
3 adjudication, and the time for any PCR -- I mean, the
4 PCR would be time barred now by ten years or so.

5 MS. NORRIS: Well, Your Honor --

6 THE COURT: Well, 2008.

7 MS. NORRIS: Since 2008. But, Your Honor, I
8 submit that when you look at our Supreme Court case
9 law, certainly the statute says one year, can't argue
10 with the statute. But there's not a lot of case law on
11 this in South Carolina. But when you compare it to
12 federal habeas and the statute of the limitations --

13 THE COURT: You're saying you can file a belated
14 PCR?

15 MS. NORRIS: I am saying that there is an
16 exceptional argument here for equitable tolling and
17 judicial economy. All of these crimes or acts, we
18 differ about whether they are crimes or not, but all of
19 these acts occurred within 10, 15 minutes tops. So if
20 Mr. Cottrell was expected to file a PCR on the
21 convictions that were affirmed then, and then come back
22 down for these trial proceedings, go back up on a
23 murder and file a second PCR --

24 THE COURT: Well, that's what the statute would
25 have required; wouldn't it?

1 MS. NORRIS: Well, Your Honor, I agree with that.
2 But I'm saying that this might be one of those cases
3 where the Court would find that there should be
4 equitable tolling. You know, even in federal habeas
5 they have started recognizing that you can argue that
6 there was ineffective assistance of State post
7 conviction help.

8 Here, if we're bound by that, then we're compelled
9 to say his initial trial counsel were ineffective, as
10 in Bill Nettles and the public defender then.
11 Appellate counsel was ineffective for not filing that
12 PCR for him. Mr. Axelrod and Ms. Armstrong were, but
13 Mr. McGuire and I weren't appointed until after that
14 one-year period anyway. But I think we definitely have
15 good arguments on that. And if we're held to that and
16 we can't argue this, then we're taking away half of his
17 defense.

18 THE COURT: I understand. Well, wait a minute,
19 now. Let me make sure that I understand where we are
20 with your argument.

21 MS. NORRIS: Yes, sir.

22 THE COURT: I thought we were arguing your
23 suppression hearing as it relates to the two statements
24 made by Mr. Cottrell some hours later at the Myrtle
25 Beach hospital, okay.

1 But now have we moved on to something else, are we
2 talking about a motion to continue the trial until a
3 writ of habeas corpus could be filed, a federal writ or
4 perhaps a PCR, and did we go beyond the suppression
5 hearing?

6 MS. NORRIS: We might have, Your Honor. Just on
7 this suppression hearing itself, I think that was
8 really what I had to say on that. Because as we left
9 last time, Your Honor asked that we think about those
10 intervening events and how it affects --

11 THE COURT: Right.

12 MS. NORRIS: -- the suppression motion. And that
13 was my argument. I don't think it suppresses it, I
14 think it's all one event. And from there, that first
15 statement is just three hours later, and the other
16 statement was later that day. So we don't think that
17 the taint has been purged.

18 THE COURT: Well, that's the reason I gave you two
19 extra days to do this, I was concerned about the
20 intervening acts of the defendant. And Mr. Postal has
21 been working on that, I have been working on that.
22 Reply?

23 MR. HIXSON: Yes, sir. Just a couple of little
24 small points.

25 THE COURT: Did you have an opportunity to look at

1 Sprinkle?

2 MR. HIXSON: Yeah, I read it. I certainly agree
3 with the finding in Sprinkle.

4 THE COURT: I see you have your helper there with
5 you, the solicitor.

6 MR. HIXSON: Yeah, he'll get his turn soon enough.
7 And I completely agree with the finding of it, I think
8 to me I guess that was intuitive, I had pulled several
9 cases relating to that. But the indictment clearly
10 reads that the intervening act is the crime that he
11 commits against Joe McGarry.

12 There is a couple of tidbits. Criminal activity,
13 ongoing criminal activity, is the act of being a
14 fugitive, so we're talking about timing. If he doesn't
15 check the NCIC, Joe McGarry is negligent in his duties
16 to determine if that's a fugitive from justice in a
17 homicide case right there. That is ongoing criminal
18 activity. It doesn't have to be remote in time, the
19 cases overwhelmingly say.

20 THE COURT: And let me stop you, and that was in
21 my mind, it was in my notes. I meant to ask Ms. Norris
22 what her position was on that. Or would you take the
23 position that given the fact that I think it's
24 unquestionable that Mr. McGarry at a minimum, or
25 Officer McGarry at a minimum, had information that

1 Mr. Cottrell was a person of interest related to a
2 shooting homicide in the county, okay. I don't think
3 there's any dispute that he had been asked to
4 supplement his report to provide any information that
5 he may have about Mr. Cottrell.

6 And then within -- and I was unclear, I think the
7 Hartman shooting was about 32, 33 days.

8 MR. HIXSON: 34 days.

9 THE COURT: 34 days before. So somewhere, I don't
10 know when, but somewhere in that 34 days they got
11 around to asking Mr. McGarry for this information. I
12 don't know whether it was the week before he
13 encountered Mr. Cottrell, or it was two weeks. It
14 could have been 30 days before, I'm not sure. I don't
15 think it really makes any difference.

16 The fact is that recently he had been given
17 information that Mr. Cottrell was, at minimum, a person
18 of interest. Would it not have been reasonable for him
19 to at least make sure, if he encounters a person he
20 believes is Mr. Cottrell, under those circumstances,
21 and would it not be reasonable for him to say, I need
22 to find out if that's who he is and running, run the
23 NCIC? I mean, wouldn't he almost did derelict in his
24 duties if he didn't do that?

25 MS. NORRIS: Well, Your Honor, there's another way

1 to do that. You can keep view of the person and
2 observe them while you call and find out.

3 THE COURT: But wasn't Mr. Cottrell leaving at
4 that point, wasn't he coming -- they started to leave
5 the donut shop with their coffees and things that they
6 had. And they were going to outside to get in the car
7 and leave.

8 MS. NORRIS: There were two police officers on the
9 scene. They still could have kept him in view while
10 they called to find out.

11 THE COURT: Okay.

12 MS. NORRIS: And I submit, Your Honor, that being
13 a fugitive --

14 THE COURT: But my question was, wouldn't it have
15 been prudent for Officer McGarry to have, under those
16 circumstances, those minimal circumstances, to have, I
17 need to call this in, this guy may have a warrant on
18 him?

19 MS. NORRIS: I understand that, Your Honor. And
20 that's why as part of our argument we did say that to
21 the extent you can consider this consensual. I don't
22 think there was anything in the world wrong with
23 Officer McGarry identifying himself, he had on his
24 uniform, they knew each other from a prior encounter.
25 I don't think there's anything wrong with asking him

1 for his name, his date of birth.

2 But when he takes his ID and certainly when he
3 grabs him, and again, there's a reasonable inference
4 there is a gunshot from Officer McGarry's gun, that
5 went beyond.

6 THE COURT: Do you believe this went from a Terry
7 pat down, for whatever reason, from a Terry pat down
8 and essentially an investigatory detention to an
9 arrest?

10 MS. NORRIS: Absolutely.

11 THE COURT: Okay.

12 MS. NORRIS: Physical -- well, an attempt at
13 arrest. The arrest wasn't completed. But once you
14 pull a gun, you tell him freeze, and then you actually
15 grab him, you're certainly beyond Terry frisk.

16 THE COURT: Okay. All right, Mr. Hixson, I'm
17 sorry, I keep interrupting everybody.

18 MR. HIXSON: No, not at all, judge. It's terribly
19 important, terribly important for all of us at this
20 stage. If I can, I guess, I'd like to just go through
21 start to finish, I'm trying to respond individually,
22 and I don't know how productive it is for the Court.

23 But I'm just going to go initially through my
24 understanding of the facts that we proffered that we
25 know for sure what Joe McGarry that substantiates

1 articulable suspicion. Of course I'm doing this for
2 the Court of Appeals as well as the trial court.

3 There's no question Joe McGarry arrested this
4 individual for possession with intent to district
5 marijuana, possession with intent to distribute, June
6 3rd of 2002, no question. And the case that I provided
7 to the Court, specifically Rhodes and Wyatt, I have
8 testimony from an Officer Prock that guns are the tools
9 of the drug trade, that when you see and know about
10 drug activity, guns go hand in hand with that -- those
11 are federal opinions that I've given you -- and
12 testimony from a narcotics lieutenant that guns and
13 drugs go hand in hand.

14 That's the importance of a possession with intent
15 to distribute marijuana conviction, not a simple
16 possession. So he's aware of that nature of that.

17 He, the defendant, unlike some of these cases, for
18 instance, this -- I apologize ahead of time -- this
19 King Si Pan case that I know that I did not pronounce
20 that correctly, Your Honor, that I will refer to
21 several times. And that situation is somewhat similar
22 in that another agency contacts Mecklenberg and says,
23 we identified an Asian man as a suspect in a shooting.
24 Doesn't have a guy's name, it's a fairly beef. And
25 that articulable suspicion held up, we'll continue that

1 analysis.

2 This we ID Luzenski Cottrell as a suspect with a
3 date of birth, everything, it's not just a black male
4 wearing a baggy shirt somewhere. This guy is who we're
5 talking about.

6 THE COURT: Well, I think you add to that the fact
7 that the police went to Mr. McGarry, Horry County
8 contacted Mr. McGarry for identifying information.

9 MR. HIXSON: That's correct, Your Honor. We know
10 by the nature of --

11 THE COURT: So he's sort of the source of
12 identification.

13 MR. HIXSON: That's right. The reason why I just
14 made very clear, I talked to Bill and Teresa earlier
15 on, the reason in the packet that the State offered the
16 NCIC check on the part of Mr. McGarry, that's the NCIC
17 that he ran June 3rd of 2002, and on that is an
18 attempted murder charge. It didn't have any
19 disposition on the charge. And we have no intention to
20 introduce that and facts in the trial.

21 We're trying to recreate for the Court what
22 information Joe McGarry may have had prior to seeing
23 Cottrell on that. And we think we can show Your Honor
24 beyond a preponderance of the evidence that he would
25 have certainly knew circumstantially there was an

1 attempted murder, a violent felony, in Mr. Cottrell's
2 past. That was the only reason that it was offered to
3 the Court.

4 The description of the request says we've
5 identified Luzenski Cottrell, we were trying to ID this
6 white male that we don't know about that drives a
7 champagne gold-colored Acura. Joseph McGarry sees a
8 champagne gold-colored Acura in the car -- in the
9 parking lot as the defendant is heading towards it, and
10 the debate on what was happening there is the issue at
11 trial.

12 But he's heading towards the victim. But once
13 again, you can continue to update your reasonable
14 suspicion through the totality once the initial Terry
15 stop occurs, it's refreshed by conduct and continues.

16 So he sees that. He also sees a black -- a black
17 Acura and a champagne gold Honda that matches exactly
18 the description color of the vehicle that's in the
19 e-mail, once again, confirming the validity of the
20 e-mail that we're talking about.

21 We introduce the color of the clothing, that's a
22 triple X jersey and baggy clothing that was -- that
23 successfully conceal a handgun. Mr. Guthinger said he
24 did not see it. Cottrell's statement himself said, I
25 had a gun in my waistband. And there was a gun, he was

1 armed in the Dunkin' Donuts, he was armed during that
2 interaction on the street there.

3 The standard under King Si Pan is, do you know for
4 sure the guy is armed, no, you have to have an
5 objective minimal level of objective that would a
6 reasonable person think this person is armed. And
7 that's the standard, it's very low. It can't be a
8 hunch, can't be let's see that guy because he's got a
9 baggy jersey. Request, suspect and baggy jersey is all
10 part of it.

11 And baggy jersey, baggy clothing as specifically
12 articulated in, once again, in this King Si Pan case,
13 the officer or the trial court in that case,
14 specifically in the language the Court used in
15 determining that said he had the right to search the
16 suspect with baggy clothes only for which a gun or
17 oozie or another dangerous type of weapon could have
18 been underneath those clothes, if he had a right to
19 search him.

20 In that case, man yielded a gun, officer didn't
21 know where it came from, grabbed him, patted him down,
22 and upheld that as a proper brief detention for officer
23 safety. We also know that Joe McGarry confirms that
24 information because he asked Cottrell, hey, you
25 remember me, and Cottrell says, yes, I do, confirming

1 the interaction, I got the right guy, this is who I'm
2 talking about to.

3 We also know that he was acting in response to
4 that e-mail because he sends his partner to ID a white
5 male. They see them together in the Dunkin' Donuts,
6 and he says, go check that guy, I need that guy, that's
7 what Horry County wants me to do. That's one of the
8 ways we know that's what he was thinking about.

9 Now, interestingly enough, the tone goes from
10 conversational to aggressive. And the moment that
11 happens is when that information goes to NCIC.
12 Cottrell offers his ID in a conversational nice tone,
13 but Joseph McGarry can see it develop, you're harassing
14 me, you're harassing me. Well, we played the audio of
15 it, there's no harassing tone in his voice.

16 The officer circumstantially, which says -- King
17 Si Pan says we can use it circumstantially. Why is
18 there a conversational tone, and then the defendant
19 becomes aggressive. I have his ID, but he's leaving
20 it. Tillman and Escue, several of those cases indicate
21 furtive movements away from what was a consensual
22 activity, it becomes articulable suspicion, taken in
23 the totality, not by itself. Innocent behavior that
24 becomes furtive is, hey, hey, what are you doing, hey,
25 what are you doing.

1 As an example, Smith is illustrative on this part,
2 US v. Smith, I provided that in the Court's packet, in
3 that case the narrative from the trial court indicates
4 they were asking the defendant who was walking by a
5 group of officers in a hurry -- they had heard an
6 allegation of a shooting in the area, an assault with a
7 handgun in the area.

8 And the trial transcript says the officer
9 testified, well, I just -- the defendant says, well,
10 let me see an ID. He said, well, I just -- I got an
11 ID. And at that point he started to reach into his
12 jacket. The Smith made a movement towards his coat,
13 there was a big rush of officers to grab him, both of
14 his arms.

15 During that time period the officer overheard them
16 saying, keep your hands out, keep your hands out, what
17 are you reaching for, and then they grabbed him. It
18 all happened very, very fast. The officer testified
19 that he didn't exactly see what happened, but he did
20 observe a distinct motion and saw the defendant move
21 very abruptly. And all of it took less than two
22 minutes from the time the officers got in the building
23 until the time they had grabbed him, held him, and then
24 he found a gun in Smith's waistband.

25 In this situation, one of the reasons we played

1 the tape, Your Honor, is that it was a minute 21, end
2 to end, which is one of the things we have to show for
3 a valid Terry stop is that it's the least intrusive
4 means. In other words, Officer McGarry didn't take him
5 to the ground, handcuff him, any of that stuff. He
6 asked for ID. And then when obviously he tried to
7 control that hand, he still didn't use lethal force
8 against him. And of course we would submit that's an
9 issue for the jury is --

10 THE COURT: Let me ask, I asked Ms. Norris this,
11 let me just ask you. Let's see if we have agreement on
12 something. Do you agree that Officer McGarry started
13 out with a Terry stop and frisk?

14 MR. HIXSON: Yes, sir.

15 THE COURT: Okay.

16 MR. HIXSON: As soon as he sees him and he can
17 articulate that, yes, sir.

18 THE COURT: And for the reasons that you've
19 articulated --

20 MR. HIXSON: Yeah, but I'm --

21 THE COURT: -- you say he had articulable
22 suspicion that some criminal activity was afoot or --
23 and that he may be armed and dangerous, okay. So your
24 position is he starts out with a justifiable Terry stop
25 and frisk; right?

1 MR. HIXSON: Yes, sir.

2 THE COURT: And that's how you described it?

3 MR. HIXSON: Yes, sir.

4 THE COURT: All right. Do you agree that at some
5 time, for whatever reason, from your point of view he
6 feels, sees or finds out or whatever, that he's armed
7 and has a gun, all of a sudden things escalate. At
8 that time do you believe we go from Terry frisk to
9 effectuating an arrest? Do you think --

10 MR. HIXSON: The timing is off a little bit in the
11 State's position. And let me answer the question by
12 going to the end and going backwards.

13 THE COURT: Okay.

14 MR. HIXSON: And by that I mean, there is no
15 question, no question, that Joseph McGarry sees a
16 firearm on Luzenski Cottrell, no question at all,
17 because that weapon was fired directly in his face. It
18 was 18 inches to 24 inches from his face.

19 THE COURT: Well, I'm sure he did then, yeah,
20 absolutely.

21 MR. HIXSON: So he sees it. Now we know that,
22 prove that uncontroverted that he had an illegal
23 weapon. And for the brief moment of Joe McGarry's
24 life, he was trying to arrest him and could have
25 arrested him, could have shot and killed him when he

1 sees a weapon on that person brandished against him.

2 Now, we go back in time from there till what point
3 in time prior to that does he see the weapon. Because
4 we know the end result is yes, he was going to try to
5 arrest him and use lethal force against him when he
6 realizes lethal force is going to be used against the
7 officer. So completely justified.

8 But now we go back in time, did he see it when he
9 turned, did he see it before that, did he see it was
10 coming out of the waistband, did he feel it. Because
11 we know it was there and we know it got there.

12 So to answer Your Honor's question directly, I
13 believe it was still and the State would put forth to
14 the jury that when he grabs him it's still a Terry
15 frisk. He's still trying to determine. He can pat him
16 down for weapons, he can lay hands on him. Just the
17 act of touching is not an arrest.

18 THE COURT: Okay. And that's what I want to know.

19 MR. HIXSON: Yes. He can pull him up against the
20 car and say, let me see your hands. For instance,
21 Lashuda, Escue, Tillman, all of them, take a man to the
22 ground and handcuff him, pat him down and they had
23 weapons. But if they didn't they were still not under
24 arrest through that process. All of those situations
25 --

1 THE COURT: Well, they certainly weren't free to
2 walk away.

3 MR. HIXSON: No, they're not free. They're
4 detained for a brief period of time in Tillman. And so
5 to answer your question, yes, he was going to be placed
6 under arrest, a lawful arrest for unlawful carrying of
7 a weapon, if he had never fired a shot. Cottrell knew
8 that he had a weapon in his waistband because of his
9 subsequent statements.

10 He also knows that Joe McGarry didn't shoot him.
11 His statement to the Court is, who shot you, the guy I
12 didn't get's the one that shot me. Joe McGarry didn't
13 shoot him. And that's the defendant's own words.

14 So at some point in time, and that's probably a
15 jury decision, he was lawfully detained but not under
16 arrest because he didn't have probable cause. Once Joe
17 touches a weapon or sees it, it's there, and
18 unfortunately it was a very short period of time when
19 that happened.

20 THE COURT: Did Officer McGarry ever -- did he
21 ever hear, and I can't recall, my impression is he did
22 not -- but he did he ever hear the response from the
23 NCIC?

24 MR. HIXSON: We have no proof of that, no proof of
25 that. We know that that was his last transmission, and

1 then it was 37 seconds from the time --

2 THE COURT: Between there and the response is
3 when?

4 MR. HIXSON: That's right. The whole event is
5 1:21, the first response he calls in, finishes his NCIC
6 request. 37 seconds go by until the station calls
7 back, that's negative, local clear 1074, which means
8 negative. And then there was 18 seconds until shots
9 fired.

10 The testimony that we have from Officer Guthinger
11 was he was confident that he did not hear that because
12 it was more than 37 seconds, and they were into it.
13 Whether he had been shot by that time or not, don't
14 know. But --

15 THE COURT: All right.

16 MR. HIXSON: -- and we may never know because of
17 the earpiece issue and stuff like that. So our
18 position is, and I understand the Court's -- let me
19 touch a couple things to get on through there --
20 through this:

21 Escue or in Tillman specifically says that we are
22 not required to second guess, and the officers are not
23 required to use the least intrusive where options,
24 other options, are available. They don't have to back
25 off and say, let's watch him and see if he goes

1 anywhere. Matter of fact, they have a duty to protect
2 the community under Tillman and Escue.

3 And if I see a problem, they are paid to go
4 confront that problem, not to say, well, we could have
5 called it in, we should have. And the Court should
6 never second guess that is the standing of those and
7 tell them how they should do it when they are
8 confronted, which is a lethal situation in a minute 21.
9 And that's the holding in those particular cases.

10 Lloyd specifically talks about holding a man at
11 gunpoint. He would not comply, continued to walk away.
12 Our argument would be, according to Dianne Lawson, is
13 he kept wanting to get to the car and that officer
14 said, don't go to that car. The officer must not have
15 wanted him to get to that car. We can infer the reason
16 why is because that car's been identified as one of the
17 partners in the NCIC of the e-mail request that we get.
18 Doesn't know what weapons are in the car, doesn't know
19 that. That's additional articulable suspicion that we
20 believe justifies that Terry situation.

21 And then we obviously know he's manifesting a
22 concern for officer safety when he repeatedly calls,
23 show me your hands, show me your hands, show me your
24 hands, and he does not comply to the point that he
25 feels he has to lay hands on him.

1 And the last little tidbit is we don't,
2 unfortunately will not know how early in that continuum
3 Joe McGarry saw a gun in Cottrell's hands. We know
4 that he did at the end, unfortunately. But the furtive
5 moments is movement from a -- Joe McGarry is a field
6 trained officer, he teaches other people how to do
7 this. And you can take the training and experience of
8 the officer into account, the Court can in determining
9 if you believe that he assembled articulable suspicion
10 and furtive movements.

11 In this situation we know that this hand was
12 involved, and we know if a man's turned his back to you
13 and you do this (indicating), any officer knows that an
14 elbow with a waistband is a furtive movement.
15 Something triggered that. He doesn't have to see a gun
16 through training experience to know, I got an officer
17 safety problem right here.

18 And he ultimately has proved -- that's a
19 bootstrapping argument -- we know that he did have an
20 officer safety problem. But that's, I understand,
21 that's bootstrapping, we can't use what happened at the
22 end to prove that he was reasonable in his belief
23 earlier on.

24 Let's see. That's pretty much -- I can go into
25 more of the case law specifically how it applies.

1 Perhaps to get some closure, I understand the Court's
2 reticence to rule on the validity of that stop now,
3 that maybe a jury needs to figure this out instead of
4 the Court kind of deciding such an issue right here.

5 And so I suppose perhaps what we would do is just
6 ask for some, if you want to call it a ruling or not,
7 the State intends to start off the testimony with
8 Joseph McGarry -- I mean, excuse me, Guthinger
9 indicating that he was a suspect in a -- 1061, 1032,
10 suspect in a shooting.

11 And then we intend to start with that in our case
12 in chief. And then we just ask for 403 balancing on
13 the probative value of that statement alone. And then
14 if the door opens, it opens, then we can deal it from
15 there. But we have to have some idea on how to get up
16 and out of the gate on a narrow issue at least, perhaps
17 not ruling on the validity of the stop, that's a jury
18 issue, and we'll argue which it should be in front of
19 the jury.

20 But we do have to have some guidance on -- and let
21 me add one other little tidbit to that. That's the
22 probative value of the wedding comment about why are
23 you there. Why were you at the Dunkin' Donuts? Well,
24 we were not there going on street crimes, 10th Avenue,
25 cruising around trying to find somebody dealing drugs.

1 He was there to talk to his friend about a wedding.
2 And I understand Your Honor was concerned about how
3 prejudicial saying, we're here to talk about a wedding
4 is, and that's why we indicated, we can limit --

5 THE COURT: I don't know that I raised that issue.

6 MR. HIXSON: No, no, we had talked about it in the
7 other pretrial hearings, we had talked about it briefly
8 that because of the past trial the solicitor came out
9 the gate in his opening statement and said, we're here
10 to talk about a wedding and get shot.

11 I think we can help mitigate the prejudicial value
12 of that to say he was there in good news talking about
13 a happy experience or something and not saying the
14 wedding, to tell the 403 balancing to help it be not
15 that prejudicial. And then talk about the fact that he
16 immediately walks into the door, he's talking about
17 this and he immediately sees him and manifests safety
18 concerns right away and says, uses gestures, 1061,
19 1032, county right there. That is how important it is,
20 his concern over safety seeing that individual there is
21 the probative value of that.

22 And I suppose perhaps to wrap it up, we would just
23 ask, I guess, then for -- that's our intention to move
24 forward in that regard and preliminarily see if Your
25 Honor finds that is a 403 balancing which has to be on

1 the record before -- it doesn't do any good to get up
2 there and say that in front of a jury, pull everybody
3 back out, hear it and then go from there, if that
4 helps.

5 MS. NORRIS: Your Honor, just briefly, if I may, I
6 still don't think we're getting to, there's an
7 articulable suspicion that he's armed and dangerous.
8 And I recall the testimony, I'm sure the guns go hand
9 in hand with drugs, and Mr. Cottrell has a prior drug
10 arrest. Well, plain and simple fact is he didn't have
11 a gun on him, he didn't have a gun on him other times
12 that the --

13 THE COURT: And that's been an issue with some of
14 the prior decisions where there was prior contact and
15 there was no firearm, it was a matter to be considered.

16 MS. NORRIS: So I don't think that we can say that
17 just because there's this general knowledge at the
18 narcotics division that guns go hand and hand with
19 drugs that we get there. And, in fact, and I --

20 THE COURT: And I would agree with you 100 percent
21 on that, I would agree with you on that point.

22 MS. NORRIS: All right, sir. The only other thing
23 I want to address is Mr. Hixson talked about Tillman
24 and you could handcuff somebody, throw them to the
25 ground in a Terry stop. Well, Tillman is a fourth

1 circuit case from 1994, and there is some language in
2 there. But the restraint has to be reasonably related
3 to the known facts.

4 And particularly when you've got traffic stops,
5 that's typically a more dangerous situation. But when
6 we look at our State Supreme Court law, if I may
7 approach, in State versus Brannon, the Court of Appeals
8 a few years back did a very nice analysis analyzing
9 what Supreme Court case law says on what you've got
10 going on here. And it is clear on page seven, if you
11 look at the top right corner, that that's where they
12 start the analysis.

13 And they quote in there: To constitute an arrest,
14 however, the quintessential seizure of the person under
15 our fourth amendment juris prudence the mere grasping
16 or application of force, that's an arrest, or an
17 attempt at arrest in any event.

18 We've gone beyond Terry stop. A Terry stop is
19 you're not applying force.

20 THE COURT: And, you know, I think that is what
21 the Supreme Court is telling us. The Supreme Court
22 seemed to have placed little or no significance on
23 whether or not he was authorized under Terry to make
24 contact with Mr. Cottrell.

25 But the Supreme Court in its discussion says,

1 seems to say this was an arrest, an arrest was being
2 effectuated. And whether it was a lawful arrest in a
3 lawful manner was a question for the jury. That's what
4 the Supreme Court said. So Judge Dennis erred when he
5 said the evidence was susceptible to only one
6 interpretation or one inference, and that is that
7 the -- as a matter of law, the victim, that being
8 Officer McGarry, was effectuating a lawful arrest in a
9 lawful manner, a lawful arrest in a lawful manner.
10 We're not talking about a Terry situation. That's the
11 reason I asked you.

12 You know, we can start out with the Terry
13 situation. In almost every case, almost every case you
14 see with Terry, it's where the pat down resulted in the
15 recovery or discovery of some type of evidence, and the
16 issue is whether that evidence should be admissible in
17 trial.

18 Well, we don't -- that's not the issue here. I
19 don't think anything came of the Terry stop and frisk.
20 I don't think it was ever completed. It would appear
21 to me that at some point in time Officer McGarry
22 decided by pulling a gun, shouting, show me your hands,
23 show me your hands, show me your hands, for whatever
24 reason he was arresting Mr. Cottrell for some offense.
25 I don't know why, I don't know why. We don't usually

1 have a deceased police officer in these situations, the
2 officer can tell us what happened.

3 So the jury is going to have to listen to the
4 evidence and draw reasonable inferences from that
5 evidence. And I think that's what the Sprinkle is
6 telling us. That is an issue that is going to have to
7 be decided by the Court -- I mean, by the jury, whether
8 or not it was a lawful arrest and it was being
9 conducted in a lawful manner.

10 Now, the defense assumes that Mr. McGarry shot
11 Mr. Cottrell. There's certainly evidence on the other
12 side of that, including Mr. Cottrell's own statement,
13 which brings us to that statement. I would
14 respectfully deny your motion to suppress. I think
15 that the matter or that United States versus Sprinkler,
16 or Sprinkle, is dispositive. That case is cited and
17 followed by the juris prudence in this state.

18 That was a '97 case, but I think it has been cited
19 by the Supreme Court in the interest of Jeremiah W., a
20 minor under the age of 17. That references State of
21 South Carolina versus Eric Peter Nelson, it's actually
22 an Horry County case that came up that went to the
23 Supreme Court.

24 I believe that these cases are not
25 distinguishable, that their holdings are applicable and

1 that the intervening commission of criminal offenses,
2 to wit, the theft of an automobile, resisting Officer
3 Guthinger's attempted arrest and the other charge which
4 is, I think, assault with intent to kill, those charges
5 certainly were committed after the shooting of this
6 officer and after any conduct that he could have
7 committed.

8 So that situation had certainly ended. And I
9 think they purged the taint of any -- without finding
10 that he did anything wrong. If I say for argument sake
11 I take your position that he did, just for argument
12 sake, and I do not make that finding, if I do that, I
13 still believe that it is purged by any taint by the
14 subsequent commission of offenses and the arrest for
15 those offenses.

16 And also we have the issue of whether they're free
17 and voluntary that came along later. And I've already
18 ruled on the Jackson v. Deno matter anyway, and I refer
19 back to the record on that.

20 All right. Now, what else do we have. So my
21 rulings are the jury will determine whether there was a
22 Terry, whether it was an arrest, whether it was lawful
23 and in a lawful manner in keeping with the Supreme
24 Court's ruling.

25 Now, as this case develops, that could change.

1 And I want everybody to understand that. If during the
2 trial there is evidence presented which is not
3 susceptible but one interpretation, we're in a new
4 trial. But I think the evidence is out there at this
5 point. And a showing could certainly be made that
6 there is an alternative to the State's position, and
7 that there is some evidence that Officer McGarry was
8 acting improperly when he made the arrest and he used
9 improper force. That's what the Supreme Court found,
10 and that's what I'm going to rely on.

11 Okay. Now, what else do we have?

12 MS. NORRIS: Your Honor, we had filed additional
13 motions that haven't been addressed. One of those is
14 the motion to strike the jury or alternatively exclude
15 those with knowledge. I handed up a copy of that on
16 Monday.

17 Just very simply, Your Honor, we had proposed a
18 questionnaire that did not identify Mr. Cottrell or
19 Officer McGarry. The Court rejected that and submitted
20 the State's proposal. So we already have a case that's
21 been ongoing for a long time that a number of jurors
22 recalled this case from before. But by identifying
23 them, them being Mr. Cottrell and Officer McGarry, a
24 number of jurors have already said explicitly on that
25 questionnaire, I didn't know about this case until I

1 saw this, and I looked it up on the internet.

2 THE COURT: And they're being honest. And we can
3 certainly ask them about that, and we can weed them out
4 if they've formed any improper opinions or they gained
5 any improper information about it.

6 From a practical matter, for a practical matter,
7 Ms. Norris, this is a retrial. There is essentially no
8 way that we could isolate this case from the general
9 public. There are people who are going to know about
10 it. I'm sure that there are going to be jurors that we
11 bring in that say, man, I followed that thing so
12 closely, I have, you know, kept up with it and I'm
13 really interested in it, and I've been on the internet
14 to see if there's anything new. It's going to happen
15 in every case, every case.

16 But I think that with the proper voir dire, and
17 I'm going to be lenient, I'm going to allow you to ask
18 questions, I think that we could overcome that. What
19 else do you have?

20 MS. NORRIS: Your Honor, I --

21 THE COURT: And I will also say, it's not a matter
22 of me just saying, well, we're not going to do that.
23 The clerk has put in a tremendous amount of work
24 already getting these jurors empaneled and getting
25 scheduled and telling when they will come back. It's

1 not a simple thing. And I think we could deal with
2 this as we proceed through the jury selection process.

3 MS. NORRIS: Well, Your Honor, given that ruling,
4 we would ask for reconsideration on sequestering the
5 jury. Because what we had proposed is they don't know
6 ahead of time what case, so the first thing we can do
7 when they come to court is tell them, you're not
8 permitted to go research the internet. So these folks
9 who got the names in the questionnaires and did
10 research them didn't have the opportunity for
11 instruction.

12 So our primary concern about putting jurors in a
13 hotel away from their lives, their children, their
14 homes, was to avoid the risk of media. That's gone by
15 the questionnaire that was used.

16 THE COURT: Well, we can certainly minimize it by
17 making sure that as this case progresses they don't get
18 out there on the internet and start doing their own
19 research and decide what the law is or what the law
20 should be or posting things on Facebook or looking up
21 the lawyers and the judge and things of that nature. I
22 think that sequestering of the jury is more beneficial
23 to Mr. Cottrell than it is to the State.

24 I want to protect this record, and that's why --
25 in this trial -- and that's why I'm going to sequester

1 them, and I'm not going to -- I'm going to stand by
2 that decision. It's a great expense, I understand, to
3 the County and State, but I think it's necessary to
4 preserve the overall fairness of this trial. All
5 right. What else do we have?

6 MS. NORRIS: Your Honor, we had e-mailed three
7 motions yesterday afternoon and hand served those this
8 morning. I don't know if the State would like us to
9 wait to address that, or they've had sufficient
10 opportunity.

11 MR. HIXSON: We hadn't had sufficient opportunity,
12 but I say let's get into it and let's see if we can
13 flush it out and --

14 THE COURT: All right.

15 MR. HIXSON: -- please, by all means.

16 THE COURT: How about your motion to prevent magic
17 questions?

18 MS. NORRIS: Yes, sir. That, essentially, our
19 concern about that is no matter how -- no matter how
20 hard Your Honor tries, and there's no allegation from
21 us whatsoever that you're anything other than
22 impartial, you have great influence during questioning,
23 even when you're not trying to. So once a juror comes
24 in and says, I would always vote for the death penalty,
25 you know, if Your Honor follows that up with, could you

1 be fair, could you consider all of the evidence with
2 leading questions in order to get that person
3 rehabilitated, so that they qualify for the jury,
4 that's what we're really arguing about.

5 Once a person essentially admits that they are
6 biased, there's no rehabilitating them in ten minutes.
7 You might get them to answer a leading question, or the
8 State might get them to answer that to say, yeah, I
9 could set aside my personal beliefs and opinions.

10 THE COURT: Well, I mean --

11 MS. NORRIS: That's what we're talking about.

12 THE COURT: There has to be some inquiry by the
13 Court to some extent. For instance, in general voir
14 dire, usually you ask the jury, has anyone on the jury
15 panel ever been the victim of a crime. I'm sure you
16 want me to ask that question; don't you?

17 MS. NORRIS: Absolutely.

18 THE COURT: Absolutely.

19 MS. NORRIS: And I promise not to object to it.

20 THE COURT: And that's a question that is
21 typically asked of a juror. And the typical response
22 by the Court is, please don't tell me anything about it
23 because I don't want to pollute the other jurors, don't
24 tell me anything about it. But could you set that
25 aside, could you be a fair and impartial juror, could

1 you give both the State and the defense a fair trial?

2 Now, that's done in every trial in this state.

3 It's the basic question that I have to ask. And
4 sometimes I have jurors, quite frankly, in response to
5 that question that say, no. And I excuse them. Say,
6 no, I can't set it aside, I cannot be fair and
7 impartial.

8 Typically a juror will say, I could set that aside
9 and I could be fair and impartial. But, you know, is
10 that the kind of question you're asking about?

11 MS. NORRIS: Your Honor, we're talking about once
12 we get to individual voir dire, what I submit on the
13 Court's general questions of that nature, that the
14 Court ask the questions and we all write down who
15 answered yes to that. And we don't ask them right then
16 and there, can they set that aside. We need to bring
17 them in and --

18 THE COURT: I'll do that for you.

19 MS. NORRIS: Yes, sir. And, you know, certainly
20 we don't object to the Court asking open questions to
21 find out whether this person may be bias or not. But
22 once they have admitted a bias to the level that they
23 are subject to challenge for cause, we submit that to
24 go then and get them to backtrack --

25 THE COURT: Well, the ultimate question is whether

1 or not they can be fair and impartial, whether they can
2 set aside any perceived bias. Now, whether I ask the
3 question, you ask the question or Mr. Hixson asks the
4 question, someone needs to ask that juror that very
5 thing, can you be a fair and impartial juror. That's
6 what we're trying to find out. We need to know if the
7 juror can do that.

8 Now, do you suggest that you ask the question or
9 that Mr. Hixson asks the question, or that I do?

10 MS. NORRIS: Well, Your Honor, I --

11 THE COURT: I mean, don't we have to ask them
12 that.

13 MS. NORRIS: -- I think we can get the information
14 without asking them. And I submit that under Morgan
15 versus Illinois, the US Supreme Court, 1992, even a
16 person who is biased, very clearly biased, if you're
17 ask -- if Your Honor in your robe and with all the
18 power of the Court as far as the juror is concerned --

19 THE COURT: Well, you don't have a robe and
20 Mr. Hixson doesn't have a robe. If you ask the
21 questions and I'm satisfied that you've asked the
22 question, I won't ask it. But if I have a doubt in my
23 mind, I need to ask that person, I need to say, you
24 know, no one's asked you, but I want to ask you, could
25 you set that, the fact that you were a victim of a

1 crime, the fact that this happened or that happened or
2 whatever, could you set it aside and could you be a
3 fair and impartial juror.

4 MS. NORRIS: I think we get the information a
5 different way. You ask them if they might be
6 influenced by that. And if the answer to that is yes,
7 regardless of if we ask them a leading question and
8 they say yes, I can be a fair and impartial juror, we
9 still know that they've already told us they are going
10 to be influenced.

11 THE COURT: But that's not a leading question.
12 It's not leading to ask them -- you haven't suggested
13 the answer. A leading question is one where you say,
14 you can be a fair and impartial juror; can't you?
15 That's a leading question.

16 MS. NORRIS: Your Honor?

17 THE COURT: It's not leading when you say, could
18 you be a fair and impartial.

19 MS. NORRIS: Let me phrase it this way, Your
20 Honor. In all of your years of experience on the bench
21 when you ask all those potential jurors, can you be
22 fair and impartial, and if I heard Your Honor
23 correctly, you said one person said no.

24 THE COURT: No. I said sometimes people do. It's
25 not uncommon. I've had it many, many times in this

1 very courtroom to say no. And it's usually in the
2 context of a person who's a victim of a crime. Or we
3 have a crime of a particular nature, something like
4 involving a child, sexual abuse of a child. Many
5 people will say, I can't set it aside. And if that's
6 the case, I excuse them, quite frankly.

7 MS. NORRIS: Well, this one, Your Honor, it might
8 be better to leave it open and just address it if it
9 comes up with the jurors. Really what we're talking
10 about is not up front, you know, Your Honor certainly
11 will ask the general questions, can you set this aside,
12 do you believe you can do this.

13 What we're talking about is after they've said
14 something that clearly raises a challenge for cause and
15 the defense has challenged that, that we not try to
16 rehabilitate.

17 THE COURT: Well, why don't you let me ask the
18 question first and then give you a chance to
19 rehabilitate them.

20 MS. NORRIS: Well, one of our motions does include
21 our request that we be allowed first after the Court on
22 individual voir dire. So certainly give us the
23 opportunity afterwards.

24 THE COURT: All right, you want to go first on
25 individual voir dire?

1 MS. NORRIS: After the Court.

2 THE COURT: Okay.

3 MS. NORRIS: Just before the State.

4 THE COURT: Well, isn't that what you did in the
5 last trial; did you?

6 MS. NORRIS: I don't know what they did in the
7 last trial. I've seen different judges do it different
8 ways.

9 MR. HIXSON: Your Honor, our position is pretty
10 straightforward, it's much more of a holistic, simple
11 approach to it. I don't know what mechanism there can
12 be to qualify a jury. They have to be qualified to the
13 satisfaction of the Court, and that's your primary role
14 is to do that.

15 You have to be engaged in that process. When you
16 instruct them on a matter of law, the reason why you
17 are where you are is because you control the outcome of
18 a fair jury selection for the process. So you have to
19 do that. It's not -- I can't conceive any other way we
20 can, so you have to ask that. Rehabilitation is a
21 fundamental process for you to instruct them on what
22 they are to consider or not, and part of that is the
23 process of that you're asking those questions.

24 THE COURT: Well, I don't think my job is to
25 rehabilitate them --

1 MR. HIXSON: I didn't mean that.

2 THE COURT: -- a potential juror. My job is to
3 find out whether or not that juror is going to be fair
4 and impartial. That's what I try to do, not to
5 rehabilitate.

6 MR. HIXSON: I agree. I apologize for that
7 inartful word. What I meant was you have to be assured
8 that they follow your instructions, I guess, not
9 necessarily rehabilitation, that they are able to
10 follow instructions. That's part of your process with
11 jury instruction, not jury selection, but the judge's
12 role in the overall trial as being much more broad than
13 that.

14 And as far as an order of voir dire, certainly
15 defense has the right to engage in it under the
16 statute. But the primary responsibility is determine
17 bias is the Court's and the Court itself to ask those
18 questions. There's really no other way to do it. As
19 far as the order is concerned, you know, we generally
20 start because we have the burden of proof related to
21 that. But that's Your Honor's discretion the way you
22 see fit.

23 THE COURT: All right, okay. And I'll make that
24 decision on that morning. I'll look at the panel and
25 see what we have.

1 MS. NORRIS: Your Honor, just one point.

2 Certainly there's only one answer when the jury makes
3 their determination of the facts. When elements of the
4 offense are given, there's only one answer to that. So
5 certainly the judge will instruct them the law to be
6 applied.

7 The problem when it comes to the death penalty and
8 people who say, I'm automatically death qualified, they
9 might think that they can answer are automatically
10 going to apply the death penalty. They might answer,
11 believing it in their hearts and minds that they will
12 take the facts and apply the judge's law. But there is
13 no law that says there's one right answer on the death
14 penalty. It is a reasoned, moral choice. So when
15 we're talking about those questions, that's very
16 different than can you follow the law.

17 THE COURT: But that in itself is a part of the
18 law.

19 MS. NORRIS: Well, certainly the elements of the
20 offense, etcetera.

21 THE COURT: Yes.

22 MS. NORRIS: But I was pointing out --

23 THE COURT: But when it comes to death penalty,
24 this jury is going to be instructed for no reason, they
25 could decide just to, even with the finding of many

1 aggravating circumstances, they can grant mercy. I
2 mean, they know that. They will be told all this too.

3 MS. NORRIS: And I understand that. And that's
4 why I say we may have put the cart before the horse
5 here, but we wanted you to have our position and the
6 case law. It may be that we'll be perfectly satisfied.
7 We will certainly object if we don't.

8 THE COURT: Okay. What else do we have this
9 morning?

10 MS. NORRIS: We also had a filing, the defendant's
11 requested jury panel procedures and instructions. One
12 of those, because of the concern about the prior
13 knowledge and everything, essentially up front when we
14 get jurors here, we submit that we ought to swear
15 people in and immediately after the roll call tell the
16 people essentially what this case is about. And then
17 tell them, you know, you can't talk about this anymore,
18 or else we're going to have a lot of jurors talking
19 amongst themselves.

20 THE COURT: Wait a minute, wait a minute, wait a
21 minute. Ms. Norris, if I understand you, you're
22 wanting us to conduct witness examination, analyze it,
23 review it, proffer it while the jury sits in the back,
24 then bring them back out and we do it again?

25 MS. NORRIS: I'm talking about the separate motion

1 right now.

2 THE COURT: Which motion?

3 MS. NORRIS: I'm talking about the one,
4 defendant's requested jury panel procedures and
5 instructions. I'm happy to address the other one
6 first.

7 THE COURT: Oh, I'm sorry, I'm sorry.

8 MS. NORRIS: And on Your Honor's question
9 specifically, I suggest that that proffer could be made
10 tomorrow, if we're going to do that. I wasn't asking
11 to hold up our jury. We're happy to come back and do
12 that.

13 THE COURT: Well, this is very much like what my
14 instruction. What specifically do you want me -- I
15 mean, you just want me to add this to my preliminary
16 instruction to the jury?

17 MS. NORRIS: Well, essentially in that first point
18 is first opportunity we think the Court needs to
19 instruct people not to be telling what case we're here
20 on and instruct them, we'll ask later what you know
21 about it, but don't be talking amongst yourselves.

22 THE COURT: And I will do that.

23 MS. NORRIS: The other part of that, at some point
24 in the instructions we're asking, specifically that
25 bottom paragraph on page one, we're asking that they be

1 instructed that they're not to speculate about the
2 reasons for a 12-year delay, that they be told neither
3 the defendant nor the State are to be blamed for the
4 process essentially, just the judicial process is slow.

5 THE COURT: I don't really have -- I don't have a
6 problem with that.

7 MS. NORRIS: Number two, we are essentially asking
8 that the jury be instructed, once they're told we're
9 going to sequester you, we are asking that they be
10 informed that the defense opposed that, that it's the
11 Court's discretion. Otherwise, we feel like they're
12 going to be blaming Mr. Cottrell for the fact that they
13 are stuck in a hotel for however long.

14 THE COURT: I'm not going to read this part about
15 the Defendant Cottrell requests that you not be
16 restricted or inconvenienced in this matter. I'm just
17 not going to do that. I don't mind telling them that
18 that's my decision, and I'll take the responsibility
19 for it. I'll be happy to do that. But, no, it's the
20 Court's decision.

21 MS. NORRIS: Okay.

22 THE COURT: Okay.

23 MS. NORRIS: Number three, the requested
24 instruction essentially just tells the jurors in the
25 first paragraph that we've got to ask you questions

1 about the death penalty, but taking extra caution there
2 that they understand that there are no right or wrong
3 answers when they're asked about their feelings and
4 opinions on the death penalty, and that they can't
5 infer from the fact that we're asking this question
6 anything related to guilt.

7 And we ask that up front they be instructed on
8 exactly what murder is, malice is. That's our proposed
9 instruction there, including that you can't infer by
10 the use of a deadly weapon that malice was present.
11 And that is State versus Stango. And I do have a copy
12 of that if Your Honor would like.

13 THE COURT: Yeah, there's a -- what's the most
14 recent case on that, the use of firearm presumptions or
15 inference.

16 MS. NORRIS: Your Honor, what I have is State
17 versus Stango.

18 THE COURT: Well, Stango, yeah, I think there was
19 one that came out just...

20 MR. MCGUIRE: It was Belzer or --

21 THE COURT: Belzer, Belzer, you're absolutely
22 right. And there are some things we have to address in
23 determining whether or not it would be -- and we
24 couldn't do that, Ms. Norris, until we've had -- heard
25 the evidence. I mean, because there are certain

1 situations in which that charge would be appropriate.

2 MS. NORRIS: Yes. On the inference part.

3 THE COURT: Yes.

4 MS. NORRIS: Yes, sir, I understand. I believe
5 we -- did we address number four?

6 MR. HIXSON: I've just been following you --

7 MS. NORRIS: I think we argued different ways on
8 our request to proceed first on individual voir dire.

9 MR. HIXSON: My position it's up to the Court.
10 The Court will tell us which way to go.

11 THE COURT: I will make that determination after
12 I've looked at it.

13 MS. NORRIS: Number five, we are essentially
14 objecting to any mention during voir dire at any point
15 that there's, one of the aggravating factors alleged in
16 this case is a prior murder conviction. We don't have
17 any problem telling them up front specifically about
18 this case, the other two aggravating factors, or if in
19 questioning, the Court or the State or us want to talk
20 generally about aggravating factors without talking
21 about these specific facts. I just want to make sure
22 that we're all real careful not to mention the charge
23 or --

24 THE COURT: I mean, why would you not -- and this
25 is jury selection -- why would you not want to know if

1 that's going to be a real issue with the jury? It's
2 going to come out in trial as an aggravating or the --
3 I guess that's it, you don't want to -- it's not
4 something we'll hear in the first phase or guilt phase.

5 MS. NORRIS: Exactly, Your Honor.

6 THE COURT: But would be something that you would
7 see in the penalty phase.

8 MS. NORRIS: We can talk about it generally. I'm
9 just saying let's not anybody say the State's going to
10 allege that these three aggravating factors apply to
11 Mr. Cottrell. We just want to make sure that we're not
12 giving the jury information up front prior to our trial
13 here that he's already got a prior murder conviction.

14 THE COURT: Well, I don't think that would be
15 appropriate. I don't think it would be right to do
16 that. I mean, that would essentially be telling the
17 jury that he has a prior conviction in the guilt phase.
18 And I would grant that.

19 MS. NORRIS: Number six just asks that we not --
20 that we likewise not be telling jurors about prior --
21 the convictions that were affirmed on our direct appeal
22 that we've been talking about, resisting arrest and --

23 THE COURT: And there's no reason for that; is
24 there?

25 MR. HIXSON: Not during jury selection.

1 THE COURT: Not during jury selection. Okay, go
2 ahead.

3 MS. NORRIS: And number seven sort of jumps from
4 jury selection to we're asking that the State be
5 prohibited, if we should get to sentencing and they are
6 admitting prior convictions, that they be prohibited
7 from informing the jury what sentence was given there.

8 THE COURT: During jury selection?

9 MS. NORRIS: No, during sentencing. That one, I
10 said, looks like I jumped to sentencing on that one,
11 but certainly we don't want to do that during jury
12 selection either.

13 THE COURT: That the State also be precluded
14 during sentencing from any mention of the fact he was
15 sentenced to life without parole on a prior murder
16 conviction or mentioning any other sentence. Why would
17 you care?

18 MR. HIXSON: I think that's an issue we're going
19 to have to address if the time comes, maybe you start
20 it now.

21 THE COURT: And it may have something to do with
22 adaptability and that sort of thing. Can't you see it
23 arising during the sentencing phase perhaps?

24 MS. NORRIS: Well, Your Honor --

25 THE COURT: Because your -- you have told me he's

1 been a model prisoner --

2 MS. NORRIS: Yes.

3 THE COURT: -- for 12 years, whatever.

4 MS. NORRIS: The murder conviction can come in.
5 My concern is this, I've had cases where the client had
6 a separate murder conviction, and when they get into
7 the capital sentencing, when the jury is told that, the
8 prosecutor's arguing it's buy one get one free on
9 murder day. So if you give him life, he's already got
10 a life sentence.

11 I submit that when they're making a determination,
12 the only thing he's on trial for now is the murder of
13 Officer Joseph McGarry. And when the jury is making
14 that question, we are lessening their responsibility as
15 they make the determination whether he deserves life or
16 death based on --

17 THE COURT: Well, I don't see where it's relevant,
18 quite frankly, as to what sentence he's got. Certainly
19 relevant that he was convicted of murder on the
20 sentencing phase.

21 MS. NORRIS: We don't disagree with that. We'll
22 even stipulate that he has been convicted of murder.

23 THE COURT: We're going to do that. I just --
24 what relevance would whatever sentence he got was? I
25 mean, I'm going to essentially tell the jury that in a

1 murder case you get life without parole or you -- well,
2 you could get 30-year to life, but essentially life
3 without parole or the death penalty. I mean, they're
4 going to have all that information.

5 MR. HIXSON: The problem is a little bit more
6 unique in that Torrance is out there, State v.
7 Torrance, which talks about if the defense requests the
8 jury instruct on parole eligibility if you're already
9 in there on one, the fact that the jury can consider
10 that as a mitigating factor saying he's already get --
11 he ain't getting out, so let's go home. And that can
12 be considered a PCR issue down the road if the jury
13 doesn't know that, if defense counsel requests it.

14 Now, that's the only issue is if you request it,
15 request like a Torrance type charge, that's fine. It
16 sounds like you don't want to get into that, and I'm
17 just concerned about reversible error and the
18 mitigation phase and PCR. So I just see two issues, I
19 don't have a position on it yet till I see how you try
20 it, and that's the --

21 MS. NORRIS: Well, I can answer that now, Your
22 Honor. If the --

23 THE COURT: Let's do this, Ms. Norris, let's wait
24 until you've tried this case, and we'll look at what we
25 need to do in that.

1 MS. NORRIS: Yes, sir.

2 THE COURT: I just want to allow you -- I don't
3 want to rule on it now. I want to let you see what
4 you're doing, how your case develops, what your
5 verdicts are, and then we'll talk about it; okay?

6 MS. NORRIS: Yes, sir.

7 THE COURT: I'm not denying it, I'm just simply
8 deferring it.

9 MS. NORRIS: Yes, sir, I understand. Our last one
10 was the defendant's notice of motion --

11 THE COURT: Before we get past that, do you want
12 to do a little order --

13 MS. NORRIS. Yes, sir.

14 THE COURT: -- for the record on this, what I've
15 done?

16 MS. NORRIS: Yes.

17 THE COURT: Compare it with the solicitor's, make
18 sure we're all in agreement as to what I did. I think
19 that would, might be the better way to proceed with
20 this.

21 MS. NORRIS: Yes, sir. On the last one,
22 essentially, essentially the concern is this in three
23 respects. One, if Dianne Lawson Serro is going to be
24 called, we want a proffer of her testimony so that we
25 can make our objections up front. Because we already

1 had the experience on Monday where for the first time
2 in 12 years she's made new statements.

3 So we have concern that this witness is definitely
4 emotional, she definitely is hostile. We just want to
5 proffer that. And I'm not saying take the jury out, we
6 can do that tomorrow.

7 THE COURT: And this is whose testimony?

8 MS. NORRIS: Dianne Lawson Serro, who testified on
9 Monday.

10 THE WITNESS: Yes, okay. All right.

11 MS. NORRIS: Our emotional witness.

12 THE COURT: What do you want to do with her, you
13 want to?

14 MS. NORRIS: We're going to have a number of
15 objections. But given that we have different
16 solicitors and she tends to add statements as we go
17 along, we want to address that up front out of the
18 presence of the jury.

19 So we're asking so as not to hold up the jury,
20 that we just do that beforehand, so that we will get
21 that testimony there, we'll have a transcript. So we
22 can address up front what we object to and hopefully
23 not have a situation where we've got stuff going to the
24 jury that we're in the position of you sustaining our
25 objections and the jury's already heard it, or we're

1 having to send the jury out every four or five minutes
2 while she's on the stand.

3 MR. HIXSON: Just a not, well, it's not briefly,
4 she's testified three times, I think it was. She's
5 testified in the guilt phase the first time for the
6 defense. She's testified in the penalty phase for the
7 prosecution in the same trial. She's testified, to my
8 recollection, in John John Love's trial in Marion
9 County about those offenses. There's a substantial
10 record on her testimony, those have all been
11 transcribed.

12 And this issue in question the other day on
13 Monday, that was a fence witness, as it was called.
14 The State didn't generate any -- didn't cross-examine
15 her on any of that, we haven't proffered any
16 information out of her from there. And I know the
17 statements were new in that -- but the case theory --

18 THE COURT: But they were elicited by the defense.

19 MR. HIXSON: That's correct. The case theory had
20 never been heard before that Joe McGarry shot Luzenski
21 Cottrell, that's new from 12 years ago. The witness --
22 the evidence we have is Guthinger says Cottrell shot
23 first. She -- I don't know why that would -- she said
24 she never been asked the question. I don't know the
25 question's been posited, did Joe McGarry shoot him.

1 That is a brand new theory also, so that wasn't --

2 THE COURT: Was it even -- even an issue in the
3 first trial?

4 MR. HIXSON: It was not an issue in the first
5 trial.

6 THE COURT: Is that why Mr. Cottrell's statements
7 made at the hospital were not introduced?

8 MR. HIXSON: That's correct. The Supreme Court
9 gave both parties some guidance, you know, with the
10 opinion that came back on a different way of looking at
11 this thing. And obviously Your Honor is careful as
12 well as I am on trying to speculate on what defense
13 counsel will do. But we did hear the question posed to
14 Mike Guthinger, so tell me what part of this theory is
15 not correct on Joe -- Officer McGarry shooting
16 Cottrell, Cottrell shooting back in self-defense. And
17 that prompted a response that I have not heard from
18 Officer Guthinger saying, because Cottrell shot him
19 first, the flashing -- I'm very much paraphrasing, and
20 you guys got the transcript on what he said -- so also
21 that response was.

22 In addition, I had objected, I think, three times.
23 We get along pretty well in here, but I objected three
24 times on leading questions on his witness. And she did
25 have an emotional outburst on the coffee issue and

1 things like that. So I think there was a fair amount
2 of confrontation in their own witness to get her to
3 that point that caused an emotional outbreak and then
4 causes a basis to claim she may not be reliable because
5 she's emotional, so let's hear her entire testimony.

6 THE COURT: Are you calling her?

7 MR. HIXSON: There's a potential to call --
8 certainly we're going to call her in the penalty phase.
9 But we will see what happens as the case develops in
10 the guilt phase.

11 THE COURT: Ms. Norris, I've given you guys a lot
12 of money for investigators and everything else, and she
13 is obviously available to you.

14 MS. NORRIS: Only when we get her down to the
15 courthouse, Your Honor, to question her yesterday.
16 Well, you need to -- have you sent an investigator to
17 discuss it with her? I mean, you're not trying to keep
18 her from --

19 MR. HIXSON: Absolutely can't, absolutely not.
20 Let me just address two little quick ones just for
21 housekeeping purposes.

22 MR. McGUIRE: Let me just address that real quick.

23 MR. HIXSON: All right, go ahead.

24 MR. McGUIRE: Judge, we have been out to Ms.
25 Lawson Serro's house a number of times. She has my

1 cell phone number, she has my investigator's cell phone
2 number, I have her cell phone number. She at one point
3 offered to meet us at attorney Bert von Herrmann was
4 kind enough to give us some space. She canceled on our
5 appointment and has basically ducked all of our calls
6 and efforts to have any communication with her
7 whatsoever. We've made every effort to fully,
8 thoroughly and completely investigate the case, and
9 that would include talking to Ms. Lawson.

10 MR. HIXSON: Just briefly, because this does
11 come -- it's important for -- Leesburg says, you have
12 to allege what specific instances of conduct that we
13 might get into relating to the penalty phase stuff.
14 And we provided notice and from the prior attorneys as
15 well as us on statements that we have come across that
16 may not be traditionally discoverable and impeachment
17 stuff, but we make sure that they're aware of it
18 because we have to specifically allege.

19 And we provided a document after getting this
20 motion. We believe he provided notice of we intend to
21 use the conduct surrounding the events surrounding John
22 John Love's death as part of the aggravators in the
23 trial. And then there's some nuance to it to be
24 provided there. So if we come across a statement that
25 we believe is of concern, we certainly want to provide

1 that to them so to mitigate the necessity for a
2 protracted -- try and get another bite at the apple and
3 get a record and do it again and again and again.

4 And so but we also intend to instruct Ms. Lawson
5 to maintain her testimony consistent with the
6 transcript. It doesn't benefit anybody else. I mean,
7 there's a transcript of everything she said, so -- and
8 we intend to instruct her on, you know what you said
9 before, don't add anything else. It may help mitigate
10 the concerns of...

11 THE COURT: I mean, we had her on the stand just
12 the other day, I mean, just two days ago. We have done
13 it, we have --

14 MS. NORRIS: With respect to the trial. She is --
15 we haven't done it with respect to sentencing. And --

16 MR. HIXSON: Simply put, it's the State's position
17 it's improper to have two bites at the apple on a
18 witness there. We've disclosed the --

19 THE COURT: And I'm just not going to do that. I
20 just don't think it's appropriate, and I'm not going to
21 do that, okay. Your motion is respectfully declined
22 or denied.

23 MS. NORRIS: The second person addressed there is
24 Lindsey Bolton. In the initial sentencing her
25 testimony was proffered, but essentially she was

1 Mr. Cottrell's girlfriend prior to all of this. After
2 he's arrested she writes him numerous letters, visits
3 with him, calls him. And the State has provided us
4 probably 25 CD's of jail calls. You can hear her on
5 there, she loves him, wants to be with him forever.

6 At some point that changes. So 18 months or so
7 after he's arrested, she makes a statement to Detective
8 Johnson, Horry County Police Department, that's about
9 68 pages long and provides substantial information that
10 that helps them essentially find Jonathan Love's body.

11 But after that, another more than a year goes by,
12 and then she adds additional statements that talk about
13 Mr. Cottrell essentially beating her and abusing her,
14 threatening her while they were together. But our
15 prior judge did limit -- order that her testimony be
16 limited to what was in that initial statement. She
17 apparently was confrontational and emotional, and a
18 judge just found that it wasn't reliable. I provided
19 that portion of the transcript.

20 We're asking essentially that if she's going to be
21 called that we proffer that again, to know if it's
22 going to go outside of her statement to law
23 enforcement.

24 MR. HIXSON: We certainly don't agree with the
25 proffer, but I can say that we can limit her statement

1 to the order of the judge concerning that prior
2 statement as it relates to Lindsey Bolton.

3 THE COURT: He's willing to do that.

4 MR. HIXSON: Unless we get into something where
5 claimed that anybody's a liar, then we have to do
6 something else. But as far as our case in chief in the
7 penalty phase, that --

8 MS. NORRIS: It's limited to what she said in
9 May 2003?

10 MR. HIXSON: I don't think that's any problem
11 comporting with what the trial judge then said in that
12 statement, that's fine. It's got a transcript --

13 THE COURT: So y'all are agreeing to bound by
14 Judge --

15 MS. NORRIS: We agree to that.

16 THE COURT: -- with Judge Dennis' order or finding
17 in that --

18 MR. HIXSON: On Ms. Bolton, is this?

19 THE COURT: You won't need to adopt it.

20 MR. HIXSON: Yes, with the caveat --

21 MS. NORRIS: Yes.

22 MR. HIXSON: -- that if we get into the weeds,
23 then we have a rebuttal witness kind of on, kind of
24 rebuttal that.

25 THE COURT: Okay.

1 MS. NORRIS: Oh, I'm not sure I can agree with
2 that.

3 MR. HIXSON: If you get up and call her a liar --

4 THE COURT: Regardless of what she says, he may be
5 able to call some other witness for prior inconsistent
6 statement, prior consistent statement, depending on the
7 rules.

8 MS. NORRIS: I think it's sufficient now if we
9 just adopt the judge's prior ruling. If we get into
10 something else, we can certainly argue it.

11 THE COURT: By consent, agreement by stipulation,
12 you two adopt that?

13 MR. HIXSON: Yes, sir.

14 MS. NORRIS: Yes, sir, we'll stipulate.

15 THE COURT: Okay.

16 MR. HIXSON: Couple little small housekeeping
17 matters that just wanted to address, if I can. Of
18 course, I gave this copy on the record, I gave this to
19 prior counsel, and I'm referring to the statements, the
20 potential statements of prior bad conduct imputed to
21 Dianne Lawson.

22 We believe they aren't even noticed through the
23 John John Love events earlier, but we may as well
24 address them initially. That's what the copy that you
25 gave --

1 THE COURT: Are they offered for impeachment as to
2 that witness?

3 MR. HIXSON: What they would be offered for is,
4 for instance, the allegation that Ms. Lawson had made
5 was that she was under the impression that they were
6 that night going to Socastee, she thought they were
7 going down to kill, potentially kill Erin, and that was
8 one of the --

9 THE COURT: Kill who?

10 MR. HIXSON: Erin, her -- a witness that was
11 involved in a current, ongoing thing. It's just a
12 statement, it's not really borne out by much of
13 anything else, I didn't want that to be -- that's
14 events surrounding the Dunkin' Donuts. We don't really
15 intend necessarily to use that, depends on where it
16 goes, but it's not a case --

17 THE COURT: Well, how about you giving those to
18 Ms. Norris.

19 MR. HIXSON: That's fine.

20 THE COURT: And we definitely have some small
21 housekeeping matters that we have to take care of.

22 MR. HIXSON: Very good. Thank you.

23 THE COURT: We've been at it for several hours.
24 We'll be at ease for just a moment.

25 (WHEREUPON, a brief recess was taken at

1 11:58 a.m.)

2 THE COURT: Please be seated.

3 MR. HIXSON: Approach, Your Honor?

4 THE COURT: Yes.

5 (Discussion off the record.)

6 THE COURT: All right. I see Mr. Cottrell is back
7 with us and all of our attorneys. All right,
8 solicitor.

9 MR. HIXSON: We have just some housekeeping
10 matters. I think Your Honor is aware we had entered
11 some stipulations as it relates to the admissibility
12 of, I think, a forensic report and a crime scene
13 sketch. I think we had agreed to that in the last
14 hearing on Monday.

15 In the July and August hearings we also kind of
16 tentatively agreed to dispense with the fungible,
17 non-fungible chain of evidence to shorten it up by a
18 couple of witnesses here and there, and get a draft of
19 the order and forward it to Ms. Norris. And that's
20 without objection.

21 THE COURT: All right. Ms. Norris, I assume
22 you've seen this order; is that correct?

23 MR. McGUIRE: I've seen it.

24 THE COURT: Or Mr. McGuire, you have seen it?

25 MR. McGUIRE: Yes, sir, Your Honor.

1 THE COURT: And does it correctly set forth your
2 stipulation?

3 MR. McGUIRE: It does. There's a little bit that
4 I probably need to add on the record. And that would
5 be, our position would be that if we're going to
6 stipulate to the chain that both the State's diagrams
7 be marked in evidence before we start the trial. And
8 we have a very, very similar one except larger.

9 We would mark ours in evidence before the trial so
10 we can both use them in opening. And it's my
11 understanding is that essentially any witness that's
12 involved with those items can use the diagram, and they
13 represent what they are and where they came from.

14 MR. HIXSON: Yeah, that's correct.

15 THE COURT: Is that correct?

16 MR. HIXSON: That's correct. It's just to be able
17 to use those summaries ahead of time, I think, is that
18 safe to say more than anything else.

19 THE COURT: Mr. Cottrell, let me ask you this.
20 Your attorneys or the attorneys in this case have
21 stipulated or agreed to certain evidentiary matters
22 that would normally be addressed in the trial.

23 Specifically, whenever an item of evidence is
24 introduced, physical evidence, typically the State or
25 defense would need to put up a number of witnesses who

1 would testify to things like, I located this piece of
2 evidence at this location, and then I turned this piece
3 of evidence over to this particular person. And that
4 person would then be called and would testify that he
5 or she received it, and they've not altered it in any
6 way, and then it was passed on to the next person.

7 And typically we see it where the evidence has
8 been analyzed, or often we do through some process or
9 other. And in this case, your attorneys have and the
10 State have agreed that they've all discussed these
11 matters, and they've looked at them and they've agreed
12 to dispense with that requirement for the introduction
13 of evidence, and agreed to the chain of evidence.

14 And have you discussed that with your attorneys?

15 MR. McGUIRE: Not really. To be quite honest with
16 you, that was a decision we made on our own as a matter
17 of trial strategy.

18 THE COURT: Well, and I understand that, and
19 that's certainly a valid trial strategy. And it
20 shortens and makes everything much clearer to the jury
21 and dispenses with many witnesses that are essentially
22 going to be nothing more than just foundational. And
23 they don't testify as any interpretation of the
24 evidence but only how it was handled.

25 Do you want an opportunity to discuss that with

1 your attorneys.

2 THE WITNESS: Yes, sir, I would.

3 THE COURT: Okay. Well, let's take a moment and
4 explain that to him. Let's make sure that Mr. Cottrell
5 understands what you're stipulating to and that he
6 agrees to it.

7 MR. HIXSON: And I'm handing the Court one of the
8 copies that we had talked about as well, the State's
9 copy.

10 THE COURT: Also, Mr. Cottrell, as Mr. McGuire
11 said, that they each generated diagrams of, and I
12 imagine those diagrams would show where evidence was
13 collected and things of that nature. And they all
14 agreed that the other can use their diagrams. The
15 State agrees that your attorneys can use their diagram,
16 and your attorneys agreed the State can use their
17 diagram to help explain the evidentiary matters. You
18 understand, okay.

19 THE WITNESS: Yes, sir, thank you.

20 (WHEREUPON, a brief recess was taken at
21 12:20 p.m.)

22 THE COURT: All right. Mr. Cottrell, have you had
23 an opportunity to discuss this issue with your
24 attorneys.

25 THE WITNESS: Yes, sir.

1 THE COURT: And do you agree with their
2 stipulations?

3 THE WITNESS: Yes, sir, I do.

4 THE COURT: Okay. You think that that's the
5 proper way to proceed; right?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right, very well.

8 MR. HIXSON: We just forward that order for your
9 signature at your convenience, Your Honor. And then we
10 had prepared that.

11 THE COURT: Sign it right here.

12 MR. HIXSON: And we had also indicated to madam
13 court reporter that I think it was SLED report 17 as
14 well of the documents. I don't think they're --

15 THE COURT: Mr. Hixson, you're going to make
16 copies of all this when you get in the back, okay.

17 MR. HIXSON: I don't believe we have a copy of
18 Bill's document that obviously we'll be up here going
19 to publish your diagram.

20 MR. McGUIRE: Okay.

21 THE COURT: Isn't that this document right here?

22 MR. HIXSON: That's the State's document.
23 Bill's is down -- or, excuse me, Mr. McGuire and Ms.
24 Norris' phone board is down in our conference room.

25 THE COURT: You have seen it?

1 MR. HIXSON: Yes, no question.

2 THE COURT: And you agree that they should be
3 permitted to use it during their opening and throughout
4 the trial?

5 MR. HIXSON: That's right. They'll be able to
6 establish it, so they can easily work off of it.

7 THE COURT: Okay. And they likewise, Mr. McGuire
8 agreed that the solicitor may use his diagram and refer
9 to it in opening and throughout the trial. Will there
10 be a larger one prepared?

11 MR. HIXSON: Absolutely, sir, absolutely.

12 THE COURT: So you understand, this is a small
13 document?

14 MR. HIXSON: Right.

15 MR. McGUIRE: Right. I'm assuming he's going to
16 shoot for as big as mine.

17 THE COURT: We're going to see who has the bigger
18 document.

19 MR. McGUIRE: Right now I'm winning.

20 THE COURT: Okay.

21 MR. HIXSON: I think that's all the substantive.

22 THE COURT: We've taken care of arraignment. I've
23 put the qualifications on the record, although they are
24 set forth in my findings on the appointment order. Is
25 there anything that anyone can think of that might

1 create delay on Monday?

2 Has the clerk, I'm sure she's informed me, but I
3 cannot recall, when is the jury coming in on Monday?

4 CLERK OF COURT: I think it's ten.

5 THE COURT: Peggy, do you know?

6 DEPUTY: 10 o'clock.

7 THE COURT: At 10 o'clock, okay. So and they're
8 coming directly to courtroom B for preliminary
9 instruction. And then as I understand it, after
10 preliminary instruction at which Mr. Cottrell will be
11 present as well as counsel and the introduction of
12 counsel, we will instruct the jury, or the jury will be
13 given an opportunity to amend their questionnaires, of
14 course, or supplement their questionnaires. And then
15 we will give them specific times to return in panels
16 of, I believe, six; is that correct?

17 CLERK OF COURT: Yes, sir. Yes, sir.

18 THE COURT: In panels of six. And upon
19 qualification of, I think we had some agreement as to
20 how many.

21 MR. McGUIRE: You need 47. We asked for the
22 maximum number of alternates. And I think the -- I'm
23 sorry -- the number was constrained by the -- by
24 wanting to put the entire jury on a single floor of a
25 hotel. So I asked for, I think, six alternates, but it

1 was cut down to --

2 THE COURT: Four, because we had a problem with
3 that. But I think, I believe my conversation was with
4 the clerk that we go ahead and try to empanel or
5 qualify 60 so we will have a good panel, an adequate
6 panel. And then we'll proceed with the selection
7 process, okay. All right.

8 I would assume that we have addressed all
9 outstanding motions; is that correct?

10 MR. HIXSON: Everything for the State, Your Honor.

11 MR. McGUIRE: Judge, if I could just, just to sort
12 of get ready for Monday, jury selection and striking,
13 is it Your Honor's intention when we strike the 60,
14 essentially they will be number one, two, three, all
15 the way to 60 and when we strike it will be, strike
16 state, what do you say to number one, on peremptories,
17 peremptories rather. Is that how you proceed or do we
18 strike all over the sheets?

19 THE COURT: Well...

20 MR. McGUIRE: I can tell you, we'd request that we
21 go one, two, three, in the order that we qualify them.

22 THE COURT: Well, that's generally the way it's
23 done.

24 MR. RICHARDSON: Yes, sir. We'd request the same
25 thing. That way they can determine how to use their

1 strikes better as could we. In other words, if juror
2 number 485 is the first one up and she is qualified
3 into that panel, super panel of 60, that will be the
4 first person that come in in the group of six.

5 THE COURT: Right.

6 MR. RICHARDSON: Is that correct?

7 THE COURT: Well, my understanding is we're going
8 to end up with a large panel of 60 qualified jurors.
9 And typically what would happen is we would call their
10 names at random and they would come forward, and there
11 would be the usual strike process.

12 Are you proposing something more along the lines
13 of a Common Pleas type strike?

14 MR. MCGUIRE: Well, I've done it probably four
15 different ways. And I just -- I'm trying to get an
16 understanding of what Your Honor wants to do.

17 THE COURT: My understanding, and I'm -- all I
18 want to do is make sure that everybody gets a fair
19 opportunity to see a fair and impartial process.

20 Now, typically what I would think would happen
21 would be after we get qualified the jurors, those
22 jurors would be called at random through generation of
23 some random sequence by the clerk's office since they
24 usually do. And they would come forward, turn around,
25 and we would go through the usual general sessions

1 process, either present or excuse, swear or excuse.

2 MR. MCGUIRE: Yes, sir, that's fine.

3 THE COURT: And but if there is another process
4 that you can agree upon, I will be happy to entertain
5 the use of that process. Mr. Richardson?

6 MR. RICHARDSON: I think -- I think we're on the
7 same page. It's just that when they go down from the
8 panel of 60 into the panels, they would be jumbled up
9 and come out one time. But we wouldn't re-jumble them,
10 they would come out, whoever the first one, whether her
11 number would be 467 or --

12 THE COURT: I mean, isn't that how the clerk's
13 office usually does it? I mean, I'm up here trying
14 cases all the time, and all of a sudden once we have
15 the panel qualified they start calling names.

16 CLERK OF COURT: Yes, sir. And from what I've
17 been told, just like you, it'll come back -- they'll
18 come back in a group of six, and like that panel may be
19 labeled A, and then the next group labeled B.

20 THE COURT: And they'll strike the panels in
21 groups of six?

22 CLERK OF COURT: Yes, sir.

23 MR. HIXSON: Let me see if I can take this -- once
24 the panels and the Court voir dres and we do that,
25 then Your Honor qualifies. Then the first one that you

1 qualify becomes number one. If you qualify three from
2 that panel, they'll be one, two, three in the order
3 that they are qualified, they won't re-jumble them
4 then.

5 THE COURT: Okay.

6 MR. HIXSON: That way Mr. McGuire can look at his
7 list and say, we got to get rid of four, we got to get
8 rid of ten, we got to get rid of 28, and he'll be able
9 to predict that. And we'll --

10 THE COURT: I understand. That's why any usually
11 generate a list somehow. I don't know if they
12 re-jumble them or it's just how they come out.

13 CLERK OF COURT: Right. We won't re-jumble them.

14 MR. HIXSON: They are just jumbled into the
15 panels, but then they're in order once Your Honor says
16 they are qualified, that --

17 THE COURT: They go on the list and the list goes
18 down; okay?

19 MR. MCGUIRE: We're happy to speed things up and
20 strike as we go. And you don't have to qualify another
21 separate panel, just keep going.

22 THE COURT: Let's go ahead. I think that
23 Mr. Cottrell would be better served if you were able to
24 look at the list and see what's coming up. I'll tell
25 you, I've struck many juries, and usually my strike was

1 based upon the fact I was just hoping to reach somebody
2 else further down the list.

3 And that was always a big factor to me. If I look
4 down and I saw somebody and said this would really be a
5 good juror, I need to strike somebody and see if I can
6 get to him. And I think that's helpful to know what's
7 coming up and who you're going to get. So let's do it
8 that way, okay. All right.

9 Of course, there may be a situation where, if you
10 choose to, I would let you, after the qualification of
11 all the jurors and we have the list, if you want to
12 look at them again, I would let you strike right
13 through the list. I'll do it any way that you can
14 agree upon that I believe is going to result in a fair
15 and impartial jury; okay?

16 Otherwise, we will do it as we traditionally do
17 when the jury is qualified, we strike right down. Call
18 them up, strike right down the list; okay? All right.

19 MR. McGUIRE: I'm just going to restate that for
20 the record, make sure I'm -- this is my fault, I might
21 not be understanding it. I think I've got it. So if
22 we qualify, say, in the first panel of six people --

23 THE COURT: Two people, talking about two people.

24 MR. McGUIRE: -- they're going to be number,
25 whoever was first --

1 THE COURT: They will be one or two on the list.

2 MR. McGUIRE: And then we get to 60. We come
3 back, we got 60 potential jurors behind us, and the
4 clerk's going to call whoever is number one. And they
5 are going to come up, and it will be a traditional
6 strike.

7 THE COURT: Right.

8 MR. McGUIRE: Okay.

9 THE COURT: Unless you agree to something else;
10 okay? Or give me some compelling reason why that's not
11 fair; okay?

12 MR. HIXSON: The State has nothing further, Your
13 Honor.

14 THE COURT: Ms. Norris, Mr. McGuire?

15 MS. NORRIS: No, sir.

16 THE COURT: All right. The sheriff's department
17 tells me that we are backwards, that the Cottrell
18 jury -- and there's two separate jury panels coming in
19 for next week -- the Cottrell jury panel is coming in
20 at nine, and the General Sessions, Common Pleas normal
21 jurors are going to be downstairs in the jury assembly
22 room and that they are coming in at ten.

23 Now, typically that's when our usual jury panels
24 come in at ten. So I think she might be correct when
25 she says they're coming in at nine.

1 All right. It's always or I think it's
2 appropriate in this case since we're dealing with one
3 case to early on in my preliminary instructions, to
4 identify or introduce the jurors -- I mean, the
5 attorneys. Would you simply just like to stand and me
6 say, this is Bill McGuire?

7 What I'd prefer to do is give you an opportunity
8 to make a very benign statement who you are, I'm Bill
9 McGuire, Columbia, I represent the defendant, and my
10 firm is so and so or whatever, okay, or I work for.
11 That's how I propose to do it. If you have an
12 objection to it, let me know; okay?

13 MR. McGUIRE: The only thing I would ask that I
14 when I introduce myself, I also have the opportunity to
15 introduce Mr. Cottrell.

16 THE COURT: Certainly, certainly.

17 MR. RICHARDSON: No objections to that, Your
18 Honor.

19 THE COURT: Certainly. It's typical that
20 sometimes the judge will give the jurors a -- well, he
21 did in the first trial -- a questionnaire, additional
22 question to take home with them, and it just simply
23 says, what type of juror best describes you. Are you
24 familiar with that, Mr. McGuire?

25 MR. McGUIRE: I am.

1 THE COURT: Okay. Are you familiar with it,
2 Mr. Hixson and Mr. Richardson?

3 MR. RICHARDSON: I think in the past what they
4 have done is when they were empaneled in the groups of
5 six they would meet up, and those sheets would be here
6 where they would be able to read over them ahead of
7 coming into court. But the paperwork will be here,
8 they wouldn't go hem with them.

9 THE COURT: Okay. Well, I think that would work
10 just as well.

11 MR. McGUIRE: The only thing --

12 THE COURT: Is there anything else that we need to
13 give them? Seems like there was something else.

14 MR. McGUIRE: We would -- well, our position on
15 the three questions, judge, is that you're going to
16 have people that are going to put themselves as number,
17 however you number them, as the I can fairly consider
18 the death penalty and the life penalty in a case of
19 murder. That's the number that we're kind of all
20 looking for.

21 It's been my experience that if you don't have,
22 and even if you do have a very detailed definition of
23 murder, because these people are not lawyers, they are
24 not law school students, they actually don't know what
25 the definition of murder is. Because when they come

1 in, they -- even when you get them on the stand, you
2 start to hear answers to questions, well, if it was
3 self-defense, I would not vote the death penalty, if it
4 was a car accident I wouldn't vote the death penalty.
5 If it's a struggle over a gun and it goes off
6 accidentally, I wouldn't vote for the death penalty.

7 Well, these are first base offenses, guilt face
8 offenses, and in some cases the person would actually
9 be innocent. So there's normally a great deal of
10 confusion with the word murder. And if we're going to
11 do the three questions, we would ask that we be able to
12 craft a very detailed definition of murder.

13 THE COURT: I'll tell you what I'm going to do.
14 I'm going to let each of you submit one; okay?

15 MS. NORRIS: Your Honor, I thought that was part
16 of what you granted in the preparing an order. You
17 said that you wouldn't give the whether there's an
18 inference from use of a deadly weapon, but on page two
19 or the bottom of that motion is the definition of
20 murder and the definition of malice.

21 THE COURT: Well, it's in my preliminary charge to
22 the jury. I mean, I'm going to cover all that stuff.
23 But typically that is usually given to the jurors after
24 preliminary instructions, before they report in their
25 panels of six, and they hand it up as they come in.

1 MS. NORRIS: Yes, sir. I think that takes care of
2 the concern.

3 MR. McGUIRE: And we would also agree if people
4 mark on the one, two, three sheet that they are either
5 always going to vote life, never death or always death
6 and never life, that we don't question them at all and
7 we just agree to just let them go.

8 MR. RICHARDSON: Your Honor, the only thing we
9 would ask is instead of --

10 THE COURT: I don't know if we'll go that far, but
11 we'll see.

12 MR. RICHARDSON: -- instead of them having an
13 actual paper to say this is what murder is, the time
14 for that is when they come up and they are able to have
15 a colloquy with the Court, you can explain then to them
16 what murder is. Does that change your interpretation
17 of one, two or three, juror. That's the only thing
18 that we would ask.

19 THE COURT: I think that's fair. I'll re -- I'll
20 tell them again what murder is.

21 MR. McGUIRE: We'll obviously propose a definition
22 of murder to go on the sheet.

23 THE COURT: Okay, all right.

24 MR. RICHARDSON: The only other thing that I can
25 think of in the back, of course, not only are you a

1 one, two or three juror, but in times past we've sent
2 back a list that is maybe by alphabetical order, the
3 defense witnesses and the State's witnesses. And they
4 may be able to go through and look over those ahead of
5 time to determine --

6 THE COURT: And if -- you have both provided me
7 with a witness list, okay. Have you exchanged them?

8 MR. McGUIRE: We provided ours ex parte. The last
9 trial that I was in, that's how the judge wanted them.
10 And he wanted the -- he combined them both. There was
11 no -- you couldn't tell who was a State's witness, who
12 was a defense witness, so --

13 THE COURT: Well, that's what I was going to do.
14 I've already looked at that, and there's a 50-witness
15 overlap, 50 witnesses appear on both lists. And what I
16 can do is have Alison prepare a list of those
17 witnesses. But I want to make sure that -- I'd rather
18 you agree as to what that list will show, what question
19 you want to ask.

20 MR. McGUIRE: Oh, I see. Well, the only question
21 we would ask would be --

22 THE COURT: I mean, I can just give them a list of
23 witnesses, and -- but I think that if it was prepared
24 in chart form or whatever, acquaintance, close personal
25 friend, related by blood or marriage, then that would

1 be much more informative than just to give them a list
2 and write yes or no at the bottom.

3 MR. McGUIRE: I agree.

4 MR. RICHARDSON: And from the State's perspective,
5 of course it's certainly up to Your Honor, but they
6 could look over the list, and if they were to see any
7 person and could come back outside, not only would they
8 answer either one, two or three juror, but did you
9 notice anyone on the list that we need to talk about.
10 Yes, I know Mike Guthinger. And then --

11 THE COURT: Couldn't we put a question, would your
12 relationship -- at the bottom -- with any -- first of
13 all, let them check it off, make like a chart and just
14 tell us, is it a close personal friend, an
15 acquaintance, is it related by blood or marriage. You
16 put any number that you want.

17 And then at the bottom have them answer, would
18 your relationship with this witness in any way affect
19 your ability to be a fair and impartial juror if that
20 witness were to testify in this case, or something of
21 that nature. I mean, wouldn't that be helpful if we
22 could do that?

23 MR. McGUIRE: I do agree with that. And the way
24 I've had other courts do this is that we supply our
25 witnesses, they supply theirs, the list is combined.

1 And then the jurors report out, well, I'm related to
2 number 53. And at that point both sides agree, okay,
3 now, we need to know who 53 is, let's talk about it.
4 And then that's -- we just go from there. And it works
5 with our people and their people as well.

6 THE COURT: Well, are you proposing just simply
7 listing all the witnesses, and at the bottom ask the
8 juror, is there any potential witness on this case
9 whose testimony might affect your ability to remain
10 fair and impartial in this case. And then ask them to
11 list them.

12 MR. McGUIRE: I think we don't ask them would it
13 affect, I think we just ask them if they know them.
14 And then we flush out the degree of the relationship
15 and would they.

16 THE COURT: On voir dire?

17 MR. McGUIRE: Yes, sir.

18 MR. RICHARDSON: I would agree with that, Your
19 Honor.

20 THE COURT: Okay. Well, I'll have Alison prepare
21 a list. And I'll simply ask at the bottom, do you know
22 or are you related by blood or marriage to any of these
23 witnesses. And if they know them or if they are
24 related, just ask do you know any potential witnesses
25 in this case.

1 MR. McGUIRE: Yes, sir.

2 THE COURT: Is that benign enough?

3 MR. RICHARDSON: Yes, sir.

4 THE COURT: Okay. All right. I'll have Alison do
5 that and have that list prepared. I would like for
6 each of you to, if you can agree to submit the
7 questionnaire as to what type of a remark to me, and I
8 will consider those. If you can agree on one, fine. I
9 think it's a lot to agree on. I just like to have it
10 at hand on Monday morning or be close.

11 MR. McGUIRE: We'll have our proposed one to you
12 by noon tomorrow.

13 THE COURT: One other thing I wanted to discuss
14 with you that -- and have you think about, and we're a
15 long way away. It's been my practice ever since I've
16 been on the bench to always prepare a transcript of my
17 charge and charge directly -- I'm talking about charge
18 at the end of the trial, sentencing or guilt phase --
19 and give that charge verbatim to the jury with an
20 additional instruction that they are not to isolate or
21 consider any part of the charge by itself. They are to
22 consider the charge as a whole.

23 The document is one document, and all parts of the
24 document are important to other parts of the document.
25 That's usually the charge that I give them. They

1 should consider it as a whole document, consider every
2 part of it.

3 In doing that, I don't think I have ever had a
4 jury come back and ask for additional charge on the
5 law. It just never happened. I don't think anyone
6 else does it, I don't think they do. It's a lot of
7 work plus, but I always do it. This is a capital case,
8 and I want -- I would like for you to share your
9 thoughts with me in that regard.

10 MR. MCGUIRE: We're happy to have a written charge
11 go back with the jury.

12 THE COURT: What I do is I have it marked as a
13 Court's Exhibit, and I submit it with the verdict
14 forms. And in this case there will only be one verdict
15 form, I'll submit it to the jury. And jurors have come
16 back many times and told me how helpful it was to them.
17 Okay?

18 MR. RICHARDSON: Yes, sir, Your Honor.

19 THE COURT: All right. Any objection to that
20 process from the State?

21 MR. RICHARDSON: No, sir.

22 THE COURT: Defense has none. All right, very
23 well. And I usually try to have it in advance, so that
24 you can use it during your closing arguments. You can
25 review it prior to your closing arguments.

1 MR. McGUIRE: Yes, sir.

2 THE COURT: Okay. Thank you very much. I look
3 forward to seeing you on Monday at, I think we've
4 established it's 9 o'clock in courtroom B. I'm sure
5 that we'll take some time to get them all rounded up
6 and get them in, so I don't anticipate us actually
7 starting probably until 9:30 or ten. They are to
8 report at that time; okay?

9 MR. McGUIRE: Yes, sir.

10 THE COURT: And then we'll do the roll call.

11 MR. HIXSON: Thank you, Your Honor.

12 MR. McGUIRE: Thank you, Your Honor.

13 (The hearing concluded at approximately
14 12:54 p.m.)

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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)
5

6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of General Sessions for Horry
13 County, South Carolina, on the 30th day of January,
14 2015.
15

16 I FURTHER CERTIFY that I am neither of
17 kin, counsel nor interest to any party hereto.
18
19
20

21 Teresa J. F. Bautz
22 TERESA J.F. BAUTZ, RPR
23 Official Court Reporter
24
25

1 State of South Carolina
2 County of Horry In the Court of General Sessions

3
4 STATE OF SOUTH CAROLINA,)
5) 2003-GS-26-20
6 -vs-) September 15, 2014
7 LUZENSKI ALLEN COTTRELL,)
8 Defendant.) Volume I of X
9 -----) Pages 1 - 209
10) Transcript of Record

11 B E F O R E:

12 The Honorable Larry B. Hyman, Jr., Judge

13
14 A P P E A R A N C E S:

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16 Jimmy A. Richardson, II, Solicitor
17 Scott R. Hixson, Assistant Solicitor
Fifteenth Circuit Solicitor's Office

18 Attorneys for the Defendant:
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20 Teresa L. Norris, Attorney at Law
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21 Diana Holt, Attorney at Law
22
23

24 Diane L. Thommes, RPR, CRR
25 Circuit Court Reporter

1

I N D E XPage

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3

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3

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5

E x h i b i t s

6

For the State:

7

MarkedDescriptionI.D.Admitted

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No exhibits offered.

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For the Defendant:

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MarkedDescriptionI.D.Admitted

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No exhibits offered.

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State v. Luzenski A. Cottrell 2003-GS-26-20
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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 10:52 a.m.)

4 THE COURT: I admonish you, y'all, please do not
5 use any cell phones or read any written materials
6 during the process that we're about to begin. My name
7 is Larry Hyman. I am a circuit judge here --

8 (The Clerk approached the bench.)

9 THE COURT: I am Larry Hyman. I am a circuit
10 judge here in South Carolina. Like all circuit judges,
11 I am required to travel about the state and hold court
12 in all of the counties. However, this week I am
13 privileged to be here in my home circuit. My office is
14 here, and this is where I usually hold court when I'm
15 not required to be traveling.

16 You were all summoned here this morning for the
17 purpose of selecting a jury in a case that we are about
18 to proceed in, and I will tell you more about that in a
19 moment. Please, again, let me admonish you that from
20 this point over -- forward you are not to read
21 anything, listen to any news reports, watch any news
22 reports, do any research on the Internet or make any
23 comment on social media concerning this case. I tell
24 you that that is very important, so please do not do
25 any of that.

1 Now, I'm going to ask our clerk of court at this
2 time to call the roll and swear this jury. Please be
3 reminded when the clerk calls your name, I don't want
4 you to do anything but tell us how many miles you have
5 driven in order to get here today from your home.

6 Madam Clerk.

7 THE CLERK: Yes, sir. I was looking for the
8 podium. Before we start, I would like to swear you in.

9 Will you all please stand and raise your right
10 hand.

11 Do you solemnly swear the information you are
12 about to give the Court is the truth, the whole truth,
13 and nothing but the truth so help you God?

14 If you agree with this statement, please be
15 seated. If you disagree, please remain standing.

16 THE COURT: Let the record reflect that no juror
17 remained standing.

18 THE CLERK: Thank you.

19 And there's several here, so this will take a few
20 moments, so please bear with me. And all I need is
21 your mileage.

22 Number 1, Anthony Adams.

23 POTENTIAL JUROR: 14 miles.

24 THE CLERK: Thank you.

25 Number 3, Jessica Adams.

1 POTENTIAL JUROR: 17 miles.
2 THE CLERK: 17?
3 POTENTIAL JUROR: Yes, ma'am.
4 THE CLERK: Thank you.
5 Number 7, Leah Aizenman.
6 POTENTIAL JUROR: Ten miles.
7 THE CLERK: Thank you.
8 8, Linda Albrecht.
9 POTENTIAL JUROR: Zero miles.
10 THE CLERK: Excuse me?
11 POTENTIAL JUROR: Zero miles. Six blocks.
12 THE CLERK: Thank you.
13 10, Joseph M. Allen.
14 POTENTIAL JUROR: Eight.
15 THE CLERK: Thank you.
16 11, Amber Alsdorf.
17 POTENTIAL JUROR: About ten.
18 THE CLERK: Thank you.
19 15, Ivory Anderson.
20 POTENTIAL JUROR: About ten.
21 THE CLERK: 16, Joann Anderson.
22 POTENTIAL JUROR: About 15.
23 THE CLERK: 15?
24 POTENTIAL JUROR: Yeah.
25 THE CLERK: Thank you.

1 Could you please stand when you respond so we can
2 see who you are, where you are.

3 18, William J. Argenti.

4 POTENTIAL JUROR: 12.

5 THE CLERK: Thank you.

6 19, Michael Arnold.

7 POTENTIAL JUROR: 15.

8 THE CLERK: Thank you.

9 21, Broadus Averette, Jr.

10 POTENTIAL JUROR: 15.

11 THE CLERK: Thank you.

12 22, Richard Bagnall.

13 POTENTIAL JUROR: About 15.

14 THE CLERK: Thank you.

15 27, Justin Barney.

16 POTENTIAL JUROR: About 20.

17 THE CLERK: 28, Benjamin Barr.

18 (No response from potential juror.)

19 THE CLERK: 31, Gina Beasley.

20 POTENTIAL JUROR: 15.

21 THE CLERK: Thank you.

22 35, Penny Bellamy.

23 POTENTIAL JUROR: One.

24 THE CLERK: Thank you.

25 36, Perry Bellamy.

1 POTENTIAL JUROR: Six miles.
2 THE CLERK: Thank you.
3 37, Patricia Benton Herndon.
4 POTENTIAL JUROR: 20 miles.
5 THE CLERK: Thank you.
6 39, Philip Berg.
7 POTENTIAL JUROR: Nine.
8 THE CLERK: Thank you.
9 42, Jeffrey Bialecki.
10 POTENTIAL JUROR: 20.
11 THE CLERK: Thank you.
12 43, Shannon Bizyah.
13 POTENTIAL JUROR: 20.
14 THE CLERK: Thank you.
15 45, Jack Bledsoe.
16 POTENTIAL JUROR: Ten.
17 THE CLERK: Thank you.
18 47, Scott Bona.
19 POTENTIAL JUROR: Two.
20 THE CLERK: Thank you.
21 48, Mark Bostick.
22 POTENTIAL JUROR: Eight miles.
23 THE CLERK: Thank you.
24 54, Leon Boyd, Jr.
25 POTENTIAL JUROR: Eight miles.

1 THE CLERK: Thank you.
2 55, William A. Bradshaw.
3 POTENTIAL JUROR: About 20.
4 THE CLERK: Thank you.
5 56, Donna Brady.
6 POTENTIAL JUROR: Ten.
7 THE CLERK: Thank you.
8 57, Tanya Bralley.
9 POTENTIAL JUROR: About 15.
10 THE CLERK: Thank you.
11 59, Jan B. Breadmore.
12 POTENTIAL JUROR: 20.
13 THE CLERK: Thank you.
14 63, Jennifer Brockway.
15 POTENTIAL JUROR: About 17.
16 THE CLERK: Thank you.
17 65, Beatrice Brown.
18 POTENTIAL JUROR: 15.
19 THE CLERK: Thank you.
20 71, Bradley D. Bullard.
21 POTENTIAL JUROR: 30.
22 THE CLERK: Thank you.
23 79, Lewis Butler.
24 POTENTIAL JUROR: 15.
25 THE CLERK: Thank you.

1 81, Michael Byork.

2 POTENTIAL JUROR: 18.

3 THE CLERK: Thank you.

4 83, William D. Caddell.

5 POTENTIAL JUROR: Approximately four.

6 THE CLERK: Thank you.

7 84, Dean Caldwell.

8 POTENTIAL JUROR: One mile.

9 THE CLERK: Thank you.

10 89, Janice Carmody.

11 POTENTIAL JUROR: 20.

12 THE CLERK: Thank you.

13 92, Mina A. Carr.

14 I have paperwork on her, sir --

15 THE COURT: All right.

16 THE CLERK: -- I'll address the Court with. Thank
17 you.

18 95, Alisa Cashion.

19 POTENTIAL JUROR: 20.

20 THE CLERK: Thank you.

21 98, Robin T. Causey.

22 POTENTIAL JUROR: About four.

23 THE CLERK: Thank you.

24 111, Carla Collins Villalpando.

25 POTENTIAL JUROR: 15.

1 THE CLERK: Thank you.
2 113, Dawn Collins.
3 POTENTIAL JUROR: 20.
4 THE CLERK: 20?
5 POTENTIAL JUROR: Uh-huh..
6 THE CLERK: Thank you.
7 118, Emily Cook.
8 POTENTIAL JUROR: 30.
9 THE CLERK: Thank you.
10 119, Rembert Cook.
11 POTENTIAL JUROR: About 11.
12 THE CLERK: Thank you.
13 120, Karen Cope.
14 POTENTIAL JUROR: 12.
15 THE CLERK: Thank you.
16 122, David Corbett.
17 POTENTIAL JUROR: Approximately 20 miles.
18 THE CLERK: Thank you.
19 123, Timothy M. Cornell.
20 POTENTIAL JUROR: 20 miles.
21 THE CLERK: Thank you.
22 128, Kyle Crawford.
23 POTENTIAL JUROR: 15.
24 THE CLERK: Thank you.
25 129, Amanda Crosland Singleton.

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1 POTENTIAL JUROR: Six.
2 THE CLERK: Thank you.
3 130, Karen Croson.
4 POTENTIAL JUROR: Approximately 20.
5 THE CLERK: Thank you.
6 132, Donna Crump.
7 POTENTIAL JUROR: Four.
8 THE CLERK: Thank you.
9 138, Joseph Damiano.
10 POTENTIAL JUROR: 16.
11 THE CLERK: Thank you.
12 140, Salvatore F. Davi.
13 (No response from potential juror.)
14 THE CLERK: 143, Michael Dean.
15 POTENTIAL JUROR: 16.
16 THE CLERK: Thank you.
17 148, Daniel Decker.
18 POTENTIAL JUROR: Five.
19 THE CLERK: Thank you.
20 154, Martha Demeo.
21 POTENTIAL JUROR: Approximately 25.
22 THE CLERK: Thank you.
23 137, Manish Desai. Manish Desai.
24 (No response from potential juror.)
25 THE CLERK: 165, Marlene Dottellis.

1 POTENTIAL JUROR: Approximately 30.
2 THE CLERK: Thank you.
3 168, Patrick Dozler.
4 POTENTIAL JUROR: 11.
5 THE CLERK: Thank you.
6 171, Tara Duffy.
7 POTENTIAL JUROR: 20.
8 THE CLERK: Thank you.
9 173, Trina Dunn.
10 POTENTIAL JUROR: 18.
11 THE CLERK: Thank you.
12 175, Kareem Easton.
13 POTENTIAL JUROR: Approximately 20.
14 THE CLERK: Thank you.
15 177, Darlene Edwards.
16 POTENTIAL JUROR: 15.
17 THE CLERK: Thank you.
18 183, Mark Elmore.
19 POTENTIAL JUROR: Eight.
20 THE CLERK: Thank you.
21 188, Mark Evans. 188, Mark Evans.
22 (No response from potential juror.)
23 THE CLERK: 193, Kenneth Farmer, Jr.
24 POTENTIAL JUROR: Ten.
25 THE CLERK: Thank you.

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1 199, Thomas Filetto.
2 POTENTIAL JUROR: 17.
3 THE CLERK: Thank you.
4 201, Maurice Fink.
5 POTENTIAL JUROR: 12.
6 THE CLERK: 202, Rebecca L. Flauto.
7 POTENTIAL JUROR: 23.
8 THE CLERK: Thank you.
9 208, Kimmarie Forte.
10 POTENTIAL JUROR: 15.
11 THE CLERK: Thank you.
12 210, Robert L. Fowler, II.
13 POTENTIAL JUROR: Four.
14 THE CLERK: Thank you.
15 213, David Freedman. 213, David Freedman.
16 (No response from potential juror.)
17 THE CLERK: 218, Karie Fussaro.
18 POTENTIAL JUROR: Approximately 20.
19 THE CLERK: Thank you.
20 219, Eric Galley.
21 POTENTIAL JUROR: Approximately 17.
22 THE CLERK: Thank you.
23 223, William H. Gately.
24 POTENTIAL JUROR: 13.
25 THE CLERK: Thank you.

1 225, Myrranda Gee.
2 POTENTIAL JUROR: 20.
3 THE CLERK: Thank you.
4 230, Silont Gibson.
5 POTENTIAL JUROR: 20.
6 THE CLERK: Thank you.
7 232, Veronica Gilbert.
8 POTENTIAL JUROR: About nine.
9 THE CLERK: Thank you.
10 233, Kathy Gizzi. 233, Cathy Gizzi.
11 (No response from potential juror.)
12 THE CLERK: 235, Joseph J. Glavan, Jr.
13 POTENTIAL JUROR: Seven.
14 THE CLERK: Thank you.
15 236, Sharon S. Goodrow.
16 POTENTIAL JUROR: 24.
17 THE CLERK: Thank you.
18 239, Heather Gosnell.
19 POTENTIAL JUROR: 25.
20 THE CLERK: Thank you.
21 243, William A. Graham, Jr.
22 POTENTIAL JUROR: Seven.
23 THE CLERK: Thank you.
24 244, Lauren Graham-Pope.
25 POTENTIAL JUROR: Four miles.

1 THE CLERK: Thank you.

2 246, Evelyn Greco.

3 POTENTIAL JUROR: Approximately 20.

4 THE CLERK: Thank you.

5 247, Brantley Green.

6 POTENTIAL JUROR: 38.

7 THE CLERK: 43? What did you say? I'm sorry.

8 POTENTIAL JUROR: .38.

9 THE CLERK: Oh. We'll give you a whole mile on
10 that one.

11 248, Fred Green.

12 POTENTIAL JUROR: Three miles.

13 THE CLERK: Thank you.

14 250, Hannah L. Griffin.

15 POTENTIAL JUROR: 17.

16 THE CLERK: Thank you.

17 253, Mary A. Grissett.

18 POTENTIAL JUROR: Eight.

19 THE CLERK: Thank you.

20 256, James J. Gross. 256, James J. Gross.

21 (No response from potential juror.)

22 THE CLERK: 261, Harold R. Gunter. 261, Harold R.
23 Gunter.

24 (No response from potential juror.)

25 THE CLERK: 264, Theresa Hall.

1 POTENTIAL JUROR: One mile.
2 THE CLERK: Thank you.
3 267, Julie Harbaugh.
4 POTENTIAL JUROR: 30.
5 THE CLERK: 270, Cady Hardy.
6 POTENTIAL JUROR: 15 miles.
7 THE CLERK: Thank you.
8 273, Barbara Harris.
9 POTENTIAL JUROR: Ten.
10 THE CLERK: Thank you.
11 276, Joann Harris.
12 POTENTIAL JUROR: 18.
13 THE CLERK: Thank you.
14 277, Donna Harry.
15 POTENTIAL JUROR: 15.
16 THE CLERK: Thank you.
17 278, Kenneth A. Harth.
18 POTENTIAL JUROR: 18.
19 THE CLERK: Thank you.
20 279, Rebecca A. Hartnett.
21 POTENTIAL JUROR: 20.
22 THE CLERK: Thank you.
23 280, Tonya Harvey.
24 POTENTIAL JUROR: 20.
25 THE CLERK: 20?

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1 POTENTIAL JUROR: Yes.
2 THE CLERK: Thank you.
3 281, Rhonda Hasan.
4 POTENTIAL JUROR: Four.
5 THE CLERK: Thank you.
6 282, Minoza Hasko.
7 POTENTIAL JUROR: Around 25.
8 THE CLERK: Thank you.
9 283, Jason Hawber.
10 POTENTIAL JUROR: 20.
11 THE CLERK: Thank you.
12 284, Christopher R. Hayes.
13 POTENTIAL JUROR: 24.
14 THE CLERK: Thank you.
15 287, Joseph A. Heindlmeyer.
16 POTENTIAL JUROR: 25.
17 THE CLERK: Thank you.
18 288, Cornelius Hemingway.
19 POTENTIAL JUROR: 30.
20 THE CLERK: Thank you.
21 291, Kayla Herriott.
22 POTENTIAL JUROR: 20.
23 THE CLERK: Thank you.
24 293, Joel High.
25 POTENTIAL JUROR: 25.

1 THE CLERK: Thank you.
2 304, Timothy M. Hopkins.
3 POTENTIAL JUROR: 24.
4 THE CLERK: Thank you.
5 312, Summer B. Hucks.
6 POTENTIAL JUROR: 15.
7 THE CLERK: Thank you.
8 313, Michael J. Hufford.
9 POTENTIAL JUROR: 20.
10 THE CLERK: Thank you.
11 319, Crystal A. Hummer.
12 POTENTIAL JUROR: 20.
13 THE CLERK: 20?
14 POTENTIAL JUROR: Yes, ma'am.
15 THE CLERK: Thank you.
16 321, Janet Huntley.
17 POTENTIAL JUROR: 25.
18 THE CLERK: Thank you.
19 322, Heidi Hutley.
20 POTENTIAL JUROR: 15.
21 THE CLERK: Thank you.
22 323, Brandy Incorvia.
23 POTENTIAL JUROR: Around ten.
24 THE CLERK: Thank you.
25 325, Beth Jaeger.

1 POTENTIAL JUROR: 25.
2 THE CLERK: Thank you.
3 326, Anthony Jefferson.
4 POTENTIAL JUROR: 15.
5 THE CLERK: Thank you.
6 328, Karen Jenerette.
7 POTENTIAL JUROR: About ten miles.
8 THE CLERK: Thank you.
9 329, Jack F. Johns.
10 POTENTIAL JUROR: 11.
11 THE CLERK: Thank you.
12 330, Eston Johnston.
13 POTENTIAL JUROR: 26 miles.
14 THE CLERK: Thank you.
15 331, Michelle Johnson.
16 POTENTIAL JUROR: 20 miles.
17 THE CLERK: Thank you.
18 326, Sabrina M. Jolly.
19 POTENTIAL JUROR: 25.
20 THE CLERK: Thank you.
21 337, Anthony S. Jones.
22 POTENTIAL JUROR: 17.
23 THE CLERK: Thank you.
24 342, Thomas D. Jordan.
25 POTENTIAL JUROR: 21.

1 THE CLERK: Thank you.

2 345, Derick Keel.

3 POTENTIAL JUROR: About 30.

4 THE CLERK: Thank you.

5 346, Heather R. Kethan.

6 POTENTIAL JUROR: About 20.

7 THE CLERK: Thank you.

8 349, Donielle King.

9 POTENTIAL JUROR: About ten.

10 THE CLERK: Thank you.

11 354, Angela Knight.

12 POTENTIAL JUROR: 20.

13 THE CLERK: Thank you.

14 355 showed up today. I have her paperwork and
15 copies for everyone.

16 THE COURT: Very well.

17 THE CLERK: Pamela Knight.

18 POTENTIAL JUROR: About 20.

19 THE CLERK: Thank you.

20 359, Kevin Lachut. 359, Kevin Lachut.

21 (No response from potential juror.)

22 THE CLERK: 371, Christopher Lepera.

23 POTENTIAL JUROR: 20.

24 THE CLERK: Thank you.

25 372, Michael D. Lester.

1 POTENTIAL JUROR: Ten.
2 THE CLERK: Thank you.
3 376, Jason Lineweber.
4 POTENTIAL JUROR: 25.
5 THE CLERK: Thank you.
6 380, David W. Livingston.
7 POTENTIAL JUROR: 24.
8 THE CLERK: Thank you.
9 381, Morris Livingston.
10 POTENTIAL JUROR: Seven.
11 THE CLERK: Thank you.
12 384, Hannah Lockaby.
13 POTENTIAL JUROR: Five.
14 THE CLERK: Thank you.
15 388, Michelle -- Loscalzo? Help me out.
16 POTENTIAL JUROR: "Loscalzo."
17 THE CLERK: What was it?
18 POTENTIAL JUROR: 15.
19 THE CLERK: Thank you.
20 390, David Lovern.
21 POTENTIAL JUROR: 15.
22 THE CLERK: Thank you.
23 391, Tommy G. Lovett, Jr.
24 POTENTIAL JUROR: About 30.
25 THE CLERK: Thank you.

1 393, Lisa Luft.
2 POTENTIAL JUROR: 13.
3 THE CLERK: Thank you.
4 397, Sherretta Magness.
5 POTENTIAL JUROR: Six.
6 THE CLERK: Thank you.
7 398, Wendy Margulies.
8 POTENTIAL JUROR: Approximately 22.
9 THE CLERK: Thank you.
10 402, Gloria Martinez.
11 POTENTIAL JUROR: Ten.
12 THE CLERK: Thank you.
13 405, Jayne Matlock.
14 POTENTIAL JUROR: 15.
15 THE CLERK: Thank you.
16 406, William A. Maxey.
17 POTENTIAL JUROR: Seven miles.
18 THE CLERK: Thank you.
19 407, Rachel Susan May.
20 POTENTIAL JUROR: 12.
21 THE CLERK: Thank you.
22 408, Michelle Mayer.
23 POTENTIAL JUROR: Ten.
24 THE CLERK: Thank you.
25 411, Joanne McClean.

1 POTENTIAL JUROR: 25.

2 THE CLERK: Thank you.

3 413, Stacey McClure.

4 POTENTIAL JUROR: 30.

5 THE CLERK: Thank you.

6 419, Catherine McDowell. 419, Catherine McDowell.

7 (No response from potential juror.)

8 THE CLERK: 425, Leonard (sic) McKenzie-Morris.

9 POTENTIAL JUROR: 19.

10 THE CLERK: What's your first name?

11 POTENTIAL JUROR: Lenore.

12 THE CLERK: Thank you. 15?

13 POTENTIAL JUROR: 19.

14 THE CLERK: 19? Thank you.

15 426, J.S. McLean.

16 POTENTIAL JUROR: 20.

17 THE CLERK: Thank you.

18 431, James Messer.

19 POTENTIAL JUROR: 15.

20 THE CLERK: Thank you.

21 434, Gennaro Miglorie.

22 POTENTIAL JUROR: Four.

23 THE CLERK: Thank you.

24 435, Teresa Mills.

25 POTENTIAL JUROR: 11.

1 THE CLERK: Thank you.

2 436, Chad M. Mims.

3 POTENTIAL JUROR: 25.

4 THE CLERK: Thank you.

5 437, I have the paperwork for that one as well.

6 That came in today.

7 THE COURT: Very well.

8 THE CLERK: Randy K. Mims, Jr.

9 POTENTIAL JUROR: 25.

10 THE CLERK: How much?

11 POTENTIAL JUROR: 25.

12 THE CLERK: Thank you.

13 446, Jodi Moore.

14 POTENTIAL JUROR: Seven.

15 THE CLERK: Thank you.

16 447, Marie Morales.

17 POTENTIAL JUROR: 15.

18 THE CLERK: 15?

19 POTENTIAL JUROR: Yes.

20 THE CLERK: Thank you.

21 450, Dawn Moses.

22 POTENTIAL JUROR: 15.

23 THE CLERK: Thank you.

24 452, Rebecca Murphy.

25 POTENTIAL JUROR: Two.

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1 THE CLERK: Thank you.
2 453, Cheri Murray.
3 POTENTIAL JUROR: 25.
4 THE CLERK: Thank you.
5 460, Nancy Neece.
6 POTENTIAL JUROR: 13.
7 THE CLERK: Thank you.
8 461, Bradley Neff.
9 POTENTIAL JUROR: Ten.
10 THE CLERK: Thank you.
11 464, Andrea Nezich.
12 POTENTIAL JUROR: 15.
13 THE CLERK: Thank you.
14 466, Ricky G. Norris.
15 POTENTIAL JUROR: Eight.
16 THE CLERK: Thank you.
17 467, Maryjo Novi.
18 POTENTIAL JUROR: 25.
19 THE CLERK: Thank you.
20 469, Paige Odom.
21 POTENTIAL JUROR: 30.
22 THE CLERK: Thank you.
23 472, Cotisha M. Pagan.
24 POTENTIAL JUROR: 20.
25 THE CLERK: Thank you.

1 478, Lisa Parsons.
2 POTENTIAL JUROR: 13.
3 THE CLERK: 13?
4 POTENTIAL JUROR: Yes.
5 THE CLERK: Thank you.
6 479, Chaitali Patel. 479, Chaitali Patel.
7 (No response from potential juror.)
8 THE CLERK: 480, Nilesesh Patel.
9 POTENTIAL JUROR: Nine.
10 THE CLERK: Thank you.
11 482, Charles Paxton.
12 POTENTIAL JUROR: 25.
13 THE CLERK: Thank you.
14 487, Sharon A. Peet.
15 POTENTIAL JUROR: 31.
16 THE CLERK: Thank you.
17 488, Wanda Penn.
18 POTENTIAL JUROR: 19.
19 THE CLERK: Thank you.
20 490, John Phelan.
21 POTENTIAL JUROR: One.
22 THE CLERK: Thank you.
23 494, Abby Pinder.
24 POTENTIAL JUROR: Ten.
25 THE CLERK: Thank you.

1 495, Kelly Pirc.
2 POTENTIAL JUROR: 15.
3 THE CLERK: Thank you.
4 497, Sheila Plowden.
5 POTENTIAL JUROR: About 497 -- 25.
6 THE CLERK: Thank you.
7 500, Jimmy C. Powell, Jr.
8 POTENTIAL JUROR: 15.
9 THE CLERK: Thank you.
10 502, Crystal L. Price.
11 POTENTIAL JUROR: Approximately 18.
12 THE CLERK: Thank you.
13 505, Beate Rackley.
14 POTENTIAL JUROR: Approximately 15.
15 THE CLERK: Thank you.
16 506, Redouane Rakbi.
17 POTENTIAL JUROR: 21.
18 THE CLERK: Thank you.
19 510, Amy A. Reaves.
20 POTENTIAL JUROR: Approximately 15.
21 THE CLERK: Thank you.
22 511, Corlane Reed.
23 POTENTIAL JUROR: One mile.
24 THE CLERK: Thank you.
25 512, Darrel Reid.

1 POTENTIAL JUROR: 25 miles.

2 THE CLERK: Thank you.

3 514, Herman Rice.

4 POTENTIAL JUROR: 13.

5 THE CLERK: Thank you.

6 515, Brenda Richards.

7 POTENTIAL JUROR: About 15.

8 THE CLERK: Thank you.

9 517, John B. Richardson.

10 POTENTIAL JUROR: 13.

11 THE CLERK: Thank you.

12 519, Mona Richardson.

13 POTENTIAL JUROR: Eight.

14 THE CLERK: Thank you.

15 521, Marjorie Ritner -- Ritter. I'm sorry.

16 POTENTIAL JUROR: 14.

17 THE CLERK: Thank you.

18 522, Donna Roberts.

19 POTENTIAL JUROR: About 23.

20 THE CLERK: Where are you? Thank you.

21 525, Vicky Rockey.

22 POTENTIAL JUROR: 15.

23 THE CLERK: Thank you.

24 526, Peter Roditis.

25 POTENTIAL JUROR: One.

1 THE CLERK: Thank you.
2 531, Donna Rubin.
3 POTENTIAL JUROR: 25.
4 THE CLERK: Thank you.
5 532, Robert Ruch.
6 POTENTIAL JUROR: 11. It's "Ruch."
7 THE CLERK: "Ruch." Thank you.
8 540, Beverly Sanders. 540, Beverly Sanders.
9 (No response from potential juror.)
10 THE CLERK: 549, Michael Schroll.
11 POTENTIAL JUROR: Approximately 22 miles.
12 THE CLERK: 22?
13 POTENTIAL JUROR: Yes.
14 THE CLERK: Thank you.
15 550, Joseph B. Schrum.
16 POTENTIAL JUROR: About 25.
17 THE CLERK: Thank you.
18 554, Vivian Scott.
19 POTENTIAL JUROR: Nine.
20 THE CLERK: Thank you.
21 557, Keith Sevor.
22 POTENTIAL JUROR: 20.
23 THE CLERK: Thank you.
24 561, Kayla Sharwell. She came in this morning.
25 She just had a C-section and a three-week-old baby,

1 wasn't supposed to be driving, and I sent her home.
2 THE COURT: We'll discuss that with counsel later.
3 THE CLERK: Thank you.
4 563, Donna K. Shelley.
5 POTENTIAL JUROR: Approximately 22 miles.
6 THE CLERK: Thank you.
7 566, Frank A. Shields.
8 POTENTIAL JUROR: 25.
9 THE CLERK: Thank you.
10 569, Bertha Simmons.
11 POTENTIAL JUROR: 35.
12 THE CLERK: Thank you.
13 573, Corie Sisbarro.
14 POTENTIAL JUROR: 30.
15 THE CLERK: How many?
16 POTENTIAL JUROR: 30.
17 THE CLERK: Thank you.
18 574, Anthony Skipper.
19 POTENTIAL JUROR: Four miles.
20 THE CLERK: Four? Thank you.
21 576, Alfreda Small.
22 POTENTIAL JUROR: 30.
23 THE CLERK: Thank you.
24 577, Donna Smekal.
25 POTENTIAL JUROR: 20.

1 THE CLERK: Thank you.
2 578, Edward C. Smith.
3 POTENTIAL JUROR: 20.
4 THE CLERK: Thank you.
5 579, Marilyn W. Smith.
6 POTENTIAL JUROR: Seven blocks.
7 THE CLERK: Seven blocks? We'll give you a mile,
8 too, then.
9 580, Randall Smith.
10 POTENTIAL JUROR: 28.
11 THE CLERK: 582, James T. Soles.
12 POTENTIAL JUROR: Six.
13 THE CLERK: Thank you.
14 585, Naim Sorra.
15 POTENTIAL JUROR: Two miles.
16 THE CLERK: Two?
17 POTENTIAL JUROR: Yes.
18 THE CLERK: Thank you.
19 586, Felicia Spain.
20 POTENTIAL JUROR: 12 miles.
21 THE CLERK: Thank you.
22 587, Carrie Spielman.
23 POTENTIAL JUROR: 28.
24 THE CLERK: Thank you.
25 588, Benjamin Spivey.

1 POTENTIAL JUROR: 30.
2 THE CLERK: Thank you.
3 596, Michael Stamm.
4 POTENTIAL JUROR: 15.
5 THE CLERK: Thank you.
6 597, Lesley Standish.
7 POTENTIAL JUROR: 17.
8 THE CLERK: Thank you.
9 600, Michelle Stearns.
10 POTENTIAL JUROR: Approximately 15.
11 THE CLERK: Thank you.
12 603, Bobby Stine.
13 POTENTIAL JUROR: About 23.
14 THE CLERK: Thank you.
15 605, Michael Stopp.
16 POTENTIAL JUROR: 20.
17 THE CLERK: Thank you.
18 608, Jennifer M. Strickland.
19 POTENTIAL JUROR: Ten.
20 THE CLERK: Thank you.
21 615, Anthony Tecco.
22 POTENTIAL JUROR: 24.
23 THE CLERK: Thank you.
24 619, David Thebeau.
25 POTENTIAL JUROR: "Thebeau." It's 12.

1 THE CLERK: Thank you.
2 623, Kenny Thompkins.
3 POTENTIAL JUROR: 17.
4 THE CLERK: Thank you.
5 624, Clarence Thompson.
6 POTENTIAL JUROR: 15.
7 THE CLERK: Thank you.
8 625, Shannon Thornburg.
9 POTENTIAL JUROR: 20.
10 THE CLERK: Thank you.
11 628, Laura Tobey.
12 POTENTIAL JUROR: Four.
13 THE CLERK: Thank you.
14 630, Melissa Todd.
15 POTENTIAL JUROR: I don't drive. I came with the
16 deputy.
17 THE CLERK: Thank you.
18 631, Margaret Torrone.
19 POTENTIAL JUROR: 15.
20 THE CLERK: 632, Christina Trevathan.
21 POTENTIAL JUROR: 25.
22 THE CLERK: Thank you.
23 637, Donald Trunkett.
24 POTENTIAL JUROR: Six.
25 THE CLERK: Thank you.

1 638, George B. Trussell.

2 POTENTIAL JUROR: 20.

3 THE CLERK: Thank you.

4 643, Jason Vannostrand.

5 POTENTIAL JUROR: One.

6 THE CLERK: Four?

7 POTENTIAL JUROR: One.

8 THE CLERK: Thank you.

9 646, La-Nina J. Vaughn. 646, La-Nina J. Vaughn.

10 (No response from potential juror.)

11 THE CLERK: 647, Verlon Vaught.

12 POTENTIAL JUROR: 20.

13 THE CLERK: Thank you.

14 648, Garcia Velazquez.

15 POTENTIAL JUROR: Four.

16 THE CLERK: Thank you.

17 651, Caroline Viola.

18 POTENTIAL JUROR: 17.

19 THE CLERK: Thank you.

20 655, Mary M. Walker.

21 POTENTIAL JUROR: 28.

22 THE CLERK: Thank you.

23 667, Timothy Welter.

24 POTENTIAL JUROR: Seven.

25 THE CLERK: Thank you.

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1 670, Karen West.

2 POTENTIAL JUROR: 17.

3 THE CLERK: Thank you.

4 674, Brian Whatley.

5 POTENTIAL JUROR: 32.

6 THE CLERK: 22?

7 POTENTIAL JUROR: 32.

8 THE CLERK: 32. Thank you.

9 679, Bryan M. Wideman. 679, Brian M. Wideman.

10 (No response from potential juror.)

11 THE CLERK: 688, Ronald W. Williamson.

12 POTENTIAL JUROR: Seven.

13 THE CLERK: Thank you.

14 693, Kenneth Wise.

15 POTENTIAL JUROR: Eight.

16 THE CLERK: Thank you.

17 698, Jason A. Youmans, Sr.

18 POTENTIAL JUROR: 15.

19 THE CLERK: Thank you.

20 Did I miss anyone? If I did, please stand.

21 Thank you very much for your patience.

22 THE COURT: Let the record reflect there was no
23 response to that last question. Let it also reflect
24 that Mr. Cottrell is here -- was here during the jury
25 roll call with his attorneys and remains here as I

1 speak.

2 I would like to point out some key people here in
3 the courtroom for you that may be of assistance to you.
4 I realize that we have a lot of people crammed into
5 this courtroom, so in addition to the normal staff, I
6 have asked the sheriff to give me some help handling
7 all of you. I wanted to have ample staff here who
8 could address any problems that you might have.

9 Please understand that these persons cannot answer
10 any questions you might have about this case. They
11 cannot give you any kind of advice. But I want to have
12 them available so if a problem arises, there would be
13 someone available to you who can bring those issues to
14 me.

15 Normally in a courtroom setting I'll have
16 Mr. Bobby Ropp, who's over here. Mr. Ropp, stand up if
17 you would.

18 Where is Mr. Williams? There's Mr. Williams.
19 Mr. Ropp and Mr. Williams are our bailiffs, and they
20 normally are able to adequately handle anything that
21 comes up, but because we had so many people, as I said,
22 we needed just some extra folks to help us move you
23 around and answer any questions.

24 We have staff here from the sheriff's department.
25 Mr. Oliver Parmley is this distinguished-looking

1 gentleman right here. I see over by him he has
2 Mr. Keaton Capps. Those are the sort of rovers this
3 morning. There's some others placed around --
4 Mr. Parmley, if you would point out -- I see Ms. Avant
5 back by the door.

6 MR. PARMLEY: Yes, sir. And we have Deputy Casey
7 Hayden over in the corner.

8 THE COURT: Right.

9 And if you have any problems at all or any
10 questions that need to be answered by me, please bring
11 it to those fine officers' attention, and they will
12 certainly make sure that we take care of that for you.

13 Ladies and gentlemen of the jury, this case
14 involves the allegation -- again it is an allegation.
15 There has been no proof presented that Luzenski Allen
16 Cottrell fatally shot Myrtle Beach police officer
17 Joseph McGarry in Myrtle Beach, South Carolina on
18 December 29th of 2002. At the proper time you will be
19 asked individually what, if anything, that you know or
20 recall of the publicity surrounding this death and
21 investigation from print, radio, Internet, television
22 or any other source, whether it be your neighbor, your
23 cousin, or anyone you may have met on the street.

24 You are instructed at this time not to discuss
25 what you have heard or read about this matter with

1 other jurors. During the course of our examination, I
2 may pose to you questions concerning what you may have
3 heard or what you may have said or seen or know about
4 this case. If you stand and respond and your fellow
5 juror says, "Well, what do you know?" please do not
6 respond to that question. Tell them that I have
7 admonished you not to discuss even among yourselves
8 what you may know about this case. You will not share
9 that information.

10 You are further instructed not to try to gain
11 information or gather other information about the case
12 from any source now that you are a possible juror in
13 this case. From this point on do not read anything,
14 look up anything, or do any investigation of this
15 matter.

16 You are also instructed not to speculate about the
17 reasons for this trial to be delayed about 12 years
18 now. Neither the defendant nor the State are to blame
19 for that delay. It is entirely the responsibility of
20 the judicial process which sometimes moves very slowly.

21 You have been called by the officials of Horry
22 County to perform an important task. Your civic duty
23 and responsibility will be called upon for your service
24 as potential jurors in the case of the State of South
25 Carolina versus Luzenski Allen Cottrell. The State has

1 charged Mr. Cottrell with the crime or offense of
2 murder. I have made a ruling that the jury is to be
3 sequestered in this trial such that the jurors will
4 have to stay in a hotel and remain together at all
5 times. That was -- that was my decision and mine
6 alone. Do not hold any party to this proceeding
7 responsible for my decision concerning sequestration.

8 It is possible that this trial may last for up to
9 two weeks. This trial potentially has two parts. And
10 the first part, the jury would be called upon to
11 unanimously decide whether the State has proven beyond
12 a reasonable doubt that Mr. Cottrell is guilty of the
13 offense of murder.

14 If and only if the jury unanimously decides or
15 finds that Mr. Cottrell is guilty of that crime would
16 we then proceed to the second stage in which the jury
17 would be called upon to decide a sentence -- death or
18 life imprisonment without the possibility of parole.

19 After we finish the general qualification process
20 today, you will be assigned to certain panels by random
21 draw. The clerk of court will tell you when and what
22 date and time you will report back. When you report,
23 you will be given two sheets of paper. On one you will
24 be asked to circle the category of juror which best
25 describes you. And we will have three sentences or a

1 couple sentences there that describe a type of juror.

2 The second will be a potential witness list, and
3 you will be asked to circle anyone on that potential
4 juror (sic) list that you might know. And let me tell
5 you right now that that is, as I said, a potential
6 juror (sic) list. I have asked the attorneys for both
7 sides to provide me with the names of anyone that they
8 think might be called as a witness.

9 If someone you see on that list is not called as a
10 witness in the trial, you will attach no significance
11 whatsoever to that. As I said, I have asked for the
12 names of every person who might potentially be called.
13 And during the preparation of this case, it will be --
14 presentation of this case, it may be determined that
15 several or many witnesses are simply not necessary for
16 your adequate consideration of the case. You will be
17 asked to sign and date each page. We will use those
18 pages that you have produced and signed to -- during
19 your individual voir dire or qualification.

20 I understand and the participants in this most
21 important trial understand the time, the efforts and
22 sacrifice that the 12 jurors and four alternates that
23 we will select will be asked to make to serve on this
24 case. And I want to thank you all and the officials of
25 Horry County thank you for your time and attention and

1 sacrifice in this regard. The justice system of this
2 state cannot operate without the help and cooperation
3 of its citizens.

4 Now, some of you may have served on a jury before.
5 But experience tells us that this is something new for
6 the vast majority of you. Experience also tells us
7 that some of you are apprehensive about this service.
8 You're worried or scared about being called. These
9 feelings I'll tell you are natural and normal, so don't
10 let that bother you. By the time we finish this
11 process, I believe that you will feel comfortable and
12 good about being called whether or not you're actually
13 selected to serve on the jury.

14 It has been said that jury service is the highest
15 service you can perform for your country and state
16 other than serving your country during a time of war.
17 But let me stress for you that jury service is also a
18 right that we have. Each of us has the right to
19 participate in this most important process.

20 You know, legal scholars tell me that 90 percent
21 of the jury trials in the world are conducted in the
22 United States. The jury process is a unique element of
23 the judicial process in the United States. It's not
24 what it is in many other countries. In fact, most
25 countries. In this country the jury is the foundation

1 of our system. And service on a jury, that is the
2 right to come in and participate, the right to come in
3 and be a part of the process where you decide the fate
4 of the participants, whether it be a civil case or a
5 criminal case. That is a right that you enjoy. And
6 unless for some reason you are disqualified, you should
7 not just look at jury service as a civic obligation. I
8 hope that by the end of this process that we're
9 involved in you will see it for what it really is and
10 that is your right to participate in this
11 decision-making process.

12 Since the State is seeking the death penalty
13 against the defendant, this case is not like most cases
14 where someone is charged with a crime. The death
15 penalty allows -- the death penalty law allows the
16 lawyers and the Court to ask questions; so it may take
17 several days before we actually select a jury and start
18 the trial of this case. That is, you will each be
19 examined individually, which is not the case in a
20 normal or a non-death penalty criminal trial.

21 Now, by asking you these questions, I want to
22 assure you we are not trying to get personal with you
23 or invade your privacy. I am sure you can understand
24 that this is a very serious matter, and it's necessary
25 for us to learn about certain of your beliefs and

1 opinions.

2 The defendant has pled not guilty to the charges
3 against him. Therefore, the State must prove him
4 guilty beyond a reasonable doubt. A defendant never
5 has to call a witness. A defendant has nothing to
6 prove to you. The burden is always upon the State to
7 prove the guilt of the defendant beyond a reasonable
8 doubt.

9 A reasonable doubt is the kind of doubt that would
10 cause a reasonable person to hesitate to act. If after
11 hearing and considering all the testimony and evidence
12 in this case you have a reasonable doubt of his guilt,
13 you must resolve that doubt in his favor. You must
14 acquit him. But if after hearing and considering the
15 testimony and evidence in this case you do have -- you
16 do not have a reasonable doubt, you may find him
17 guilty.

18 You may have already read or heard about this
19 case, and there is certainly nothing wrong with that.
20 If you do know something, though, about this case, the
21 Court will ask you if you can set that aside and reach
22 a fair and impartial verdict. This is important
23 because in every criminal case the defendant always
24 comes in court presumed innocent of the crime charged.
25 The real question will be whether or not you have

1 formed or expressed any opinion concerning the guilt or
2 innocence of the defendant. In other words, do you
3 know any reason why you could not give the defendant
4 and the State a fair trial. Can you be fair and an
5 impartial juror.

6 As I said earlier, you may have -- you may already
7 have some knowledge about the case. However, from this
8 point I order you not to read any news accounts, nor
9 watch or listen to any TV or radio accounts about this
10 case. Do not look on the Internet. Do not talk to
11 your fellow prospective jurors about the case including
12 even members of your own family.

13 If anyone contacts you or tries to contact you
14 about this case, please try to get their names and
15 addresses and report that to me immediately. And in
16 doing so, you can speak to any of these officers or
17 bailiffs or courtroom staff that you may encounter, and
18 they will certainly help you do that. I promise you
19 that I will deal with that issue. You can bring any
20 such problem, as I said, to any of the courtroom staff
21 and we will -- they will make sure that it comes to my
22 attention.

23 Now, all of you, we hope, were provided with a
24 jury questionnaire. Is there anyone here who did not
25 receive the jury questionnaire and fill it out and

1 return it to the clerk of court? If you did not
2 receive one, if you did not fill it out, please stand
3 and let us get your name.

4 Sir, you are?

5 POTENTIAL JUROR: Michael Stopp.

6 THE COURT: And your number, Mr. Stopp?

7 POTENTIAL JUROR: 605.

8 THE COURT: You did not receive a jury
9 questionnaire?

10 POTENTIAL JUROR: I do not recall receiving one,
11 no.

12 THE COURT: Madam Clerk, would you look? You have
13 one?

14 THE CLERK: Yes, sir.

15 THE COURT: It would appear, Mr. Stopp, that you
16 did fill one out. It's been a while. And you get a
17 lot of paperwork, that's understandable.

18 POTENTIAL JUROR: I didn't get one. Joann
19 Anderson.

20 THE COURT: Your number?

21 POTENTIAL JUROR: 16.

22 THE COURT: 16. All right.

23 Madam Clerk, would you look and see if
24 Ms. Anderson got one.

25 Ms. Anderson, we do have one. Thank you.

1 Is there anyone else who did not receive one or
2 has not returned one?

3 I see that there is no further response.

4 Has anyone or anything changed -- let me put it
5 that way -- since you filled out your jury
6 questionnaire? Is any of the information while correct
7 at the time, incorrect now? If so, please stand.

8 Yes, ma'am.

9 POTENTIAL JUROR: I'm in school full-time now. I
10 wasn't at the time I filled that out.

11 THE COURT: All right. Your number?

12 POTENTIAL JUROR: 3.

13 THE COURT: Number 3. And your name?

14 POTENTIAL JUROR: Jessica Adams.

15 THE COURT: Ms. Adams, would you, please, when we
16 take a break, meet -- could she come right up where you
17 are, Madam Clerk?

18 THE CLERK: Yes, sir.

19 THE COURT: Ms. Huggins-Ward is right here. If
20 you could come up when we take a break. Not right now,
21 but when we do, she will retrieve your information so
22 that you can make a change. Okay?

23 Yes, ma'am.

24 POTENTIAL JUROR: Yes. I had to bring in
25 paperwork to show that I'm a full-time student, too, so

1 I brought that in with me today.

2 THE COURT: But you indicated that on your
3 paperwork -- I mean your questionnaire?

4 POTENTIAL JUROR: Right, but the gentleman who
5 called me said I was supposed to have put something in
6 the packet.

7 THE COURT: If you will, you can come and give
8 that to Ms. Huggins.

9 Again, your name and number?

10 POTENTIAL JUROR: It's Kelly Pirc, 495.

11 THE COURT: Kelly Pirc, 495.

12 Yes, ma'am, with the green.

13 POTENTIAL JUROR: I'm Leah Aizenman, Number 7.

14 THE COURT: Yes, ma'am.

15 POTENTIAL JUROR: I had indicated that I was a
16 school principal and I thought I would be excused, but
17 when I was called this week, it is well said that
18 there's some -- either I didn't understand what I
19 should have done further --

20 THE COURT: Let me ask you this: Are you still a
21 school principal?

22 POTENTIAL JUROR: Yes.

23 THE COURT: So nothing has changed from what you
24 put on the document?

25 POTENTIAL JUROR: Nothing has changed, but what

1 they indicated to me is that I should have enclosed a
2 note specifically asking to --

3 THE COURT: We're going to get to that. We're
4 going to get to that, I promise. I just want to know
5 now if anything has changed.

6 See, we give those questionnaires to the attorneys
7 involved in the case. And the purpose of that is so
8 that when we go through individual jury examination,
9 that cuts down a lot of questions. It makes it much
10 quicker, much simpler for these attorneys. So we want
11 to make sure that the information that they have
12 available to them is correct.

13 Yes, ma'am.

14 POTENTIAL JUROR: Donna Roberts, 522, and my
15 employer changed.

16 THE COURT: Your employer changed. All right.

17 Would you meet Ms. Huggins up here when we take a
18 break and she will retrieve it and you can make a
19 change. All right?

20 Yes, ma'am.

21 POTENTIAL JUROR: Sheila Plowden, 497. I also had
22 an employer change.

23 THE COURT: All right. And, again, would you do
24 that for us?

25 POTENTIAL JUROR: Sure.

1 THE COURT: Okay.

2 Yes, sir.

3 POTENTIAL JUROR: Thomas Filetto, Number 199.
4 Medical emergency, so availability due to medical
5 necessity. I got paperwork.

6 THE COURT: Okay. All right. And we'll address
7 that in just a moment.

8 Yes, ma'am.

9 POTENTIAL JUROR: Ivory Anderson, Number 15.
10 Employment change.

11 THE COURT: I'm sorry?

12 POTENTIAL JUROR: Employment change.

13 THE COURT: An employment change, all right.
14 Would you come up to the clerk as well so we can make a
15 note of that.

16 Yes, ma'am.

17 POTENTIAL JUROR: My father has Stage IV lung
18 cancer. Hospice is with him, and they informed me
19 that, you know, he would need for me to have him there
20 at this time.

21 THE COURT: All right. Let me ask you to do this.
22 We don't need to go into what you want to change. All
23 we need to do is know that you want to change
24 something, and if you would meet the clerk up here and
25 we'll get all that. She'll do whatever is necessary to

1 get your report back or your questionnaire. And your
2 number was?

3 POTENTIAL JUROR: It was Number 37.

4 THE COURT: Number 37. And we'll get that back
5 for you. Okay? Thank you, ma'am.

6 And you, sir?

7 POTENTIAL JUROR: 615, Anthony Tecco. Employment
8 change.

9 THE COURT: All right. And if you would, come up
10 at the break and speak to the clerk and we can make
11 those corrections.

12 Yes, ma'am.

13 POTENTIAL JUROR: Alfreda Small, 576, and it's a
14 school change.

15 THE COURT: A school change?

16 POTENTIAL JUROR: Uh-huh. Full-time student now.

17 THE COURT: All right. Very well. And I'll again
18 ask you to come up right in this area when we take a
19 break and the clerk can make sure those changes are
20 made.

21 POTENTIAL JUROR: I'm 95, Alisa Cashion. I had an
22 employer change as well.

23 THE COURT: All right. Employer change. Thank
24 you, ma'am, Ms. Cashion.

25 Anyone else?

1 Yes, sir.

2 POTENTIAL JUROR: Surgical evaluation.

3 THE COURT: All right. If you would, come up and
4 we'll make that change.

5 And your number, please?

6 POTENTIAL JUROR: I have no idea.

7 THE COURT: I'm sorry. I could not hear.

8 THE BAILIFF: There's no number on his, Judge.

9 THE COURT: He does not have a number on his jury
10 summons?

11 THE CLERK: Are you Mr. Justin Barney?

12 POTENTIAL JUROR: Yes, ma'am.

13 THE CLERK: Thank you.

14 THE COURT: All right. What number would that be,
15 Madam Clerk?

16 THE CLERK: Number 27.

17 THE COURT: Yes, sir.

18 POTENTIAL JUROR: Number 514. I'm not sure. When
19 did these surveys come out? I was still working
20 possibly, but I have since retired.

21 THE COURT: All right. You can just check on
22 that.

23 Your name and number?

24 POTENTIAL JUROR: Herman Rice, 514.

25 THE COURT: 514. Yes, sir.

1 Yes, ma'am.

2 POTENTIAL JUROR: Michelle Johnson, 331. I have
3 also had an employment change.

4 THE COURT: It's what number?

5 POTENTIAL JUROR: 331.

6 THE COURT: 331, okay. We'll note those.

7 Yes, ma'am.

8 POTENTIAL JUROR: 165. I would like to make an
9 amendment to question number 39.

10 THE COURT: All right. I'll let you come up and
11 do it. You don't need to do it in front of everyone
12 else, but we can do it at the break. All right? I
13 just want to make sure that you do that.

14 All right. Is there anyone else?

15 Yes, sir.

16 POTENTIAL JUROR: Charles Paxton, 482. Employment
17 change.

18 THE COURT: Okay. If you would, just come up.

19 All right. Is all the information other than
20 these changes that you've indicated you will make,
21 other than those folks, is the information on your jury
22 questionnaire correct to the best of your knowledge?

23 Is there anyone whose information is not correct?

24 And there is no response.

25 All right. Counsel, the jurors have answered

1 under oath concerning all the information contained in
2 their questionnaires. There will be corrections made,
3 and those will be made available to you, so I don't
4 think there's any real reason to examine these jurors
5 to elicit any of that information when we get into
6 individual voir dire.

7 Now, let me introduce some other folks to you.
8 Seated here to my right, this fine young attorney, his
9 name is Drew Postal. He has been with me a year.
10 He -- we're allowed to have what we call law clerks.
11 And most judges keep their law clerk one year, but the
12 maximum is two. And I'm going to keep him every day I
13 can. He is a great help to me, and he will always be
14 up here assisting me. And I promise you when you see
15 me leaning over and talking to him, I'm not telling him
16 to go fetch coffee. He is a great aide to me and to
17 the process and the attorneys. He helps us with our
18 research and things of that nature. So he plays a very
19 important role.

20 I believe you have met Ms. Huggins-Ward. She is
21 our very able clerk of court. She has various staff
22 members around in the courtroom who will always be
23 assisting us.

24 Do you want to introduce your staff who you have
25 here today?

1 THE CLERK: I do.

2 This is Heather Lewis. She is in my general
3 sessions department. This is Kenneth Morrow. He's my
4 office manager.

5 THE COURT: All right. Now, I think I covered the
6 staff that we have here in the courtroom. But I want
7 to introduce to you the attorneys that we will be
8 seeing this week. I can tell you right now we're very
9 fortunate. I have nothing to do with who will
10 represent the State or who will represent the defense
11 in any case, and sometimes I'm not as pleased as I am
12 with other cases when I find out who will be doing or
13 handling the case.

14 But in this case I am very pleased to tell you
15 that we have Mr. Jimmy Richardson and Mr. Scott Hixson
16 who are going to be representing the State, and we have
17 very fine attorneys who will be representing
18 Mr. Cottrell. We have Mr. Bill McGuire and Ms. Teresa
19 Norris.

20 And what I want to do is give -- Mr. Richardson,
21 stand and tell us a little bit about yourself, and I'll
22 let Mr. Hixson do it, and then we'll get over to
23 Mr. McGuire and Ms. Norris, and they would introduce
24 their client as well.

25 MR. RICHARDSON: Thank you, your Honor. May it

1 please the Court. My name is Jimmy Richardson. I'm
2 the Solicitor for Horry and Georgetown Counties, and I
3 look forward to being with you guys during the course
4 of this trial.

5 This is Mr. Scott Hixson.

6 MR. HIXSON: Hi, everybody. My name is Scott
7 Hixson. I'm the Chief Deputy Solicitor for the 15th
8 Judicial Circuit. As Solicitor Richardson indicated,
9 that that encompasses Horry and Georgetown Counties.
10 I've been prosecuting cases for about 13 years, right
11 in that neighborhood. I tried a few cases during that
12 period of time.

13 Thanks, your Honor.

14 THE COURT: All right. Ms. Norris or Mr. McGuire,
15 whatever order you would like.

16 MR. MCGUIRE: Thank you, your Honor.

17 Good morning. My name is Bill McGuire. I'm a
18 lawyer in South Carolina. I've been a lawyer for about
19 19 years, and I represent Allen Cottrell to my left
20 here. Thank you.

21 MS. NORRIS: Good morning. I'm Teresa Norris.
22 I've been an attorney since 1990. I practice with the
23 law firm of Blume, Norris & Franklin-Best.

24 THE COURT: All right.

25 Now, I am going to pose to you a series of

1 questions. In response to some of these questions, I
2 would like for you to stand and respond as I ask the
3 question. Some of the questions I will ask you simply
4 to come forward if they apply to you. So remember or
5 pay attention to how I am asking the question.

6 As I said, we all have the right to sit as jurors
7 unless for some reason a disqualification should occur
8 or we have not met all of the qualifications of a
9 potential juror.

10 Please remember that you are under oath to answer
11 my questions truthfully. It is ultimately important
12 that we have the correct information concerning you.

13 Now, is there any juror who has not attained his
14 or her 18th birthday? If that's the case, please
15 stand.

16 And let the record reflect that there is no
17 response.

18 Oh, I forgot to introduce you to Ms. Diane
19 Thommes. She is our court reporter. When I say things
20 like "let the record reflect," everything that we do
21 here has to go on the record. So if there's no
22 response from you, Ms. Thommes will indicate on the
23 record that I have said there was no -- Ms. Thommes --
24 that there was no response.

25 Is there any member of this jury panel who is not

1 a citizen of the United States? Now, you may say how
2 in the world could that possibly be, someone would be
3 here who is not a citizen? It used to be that in order
4 to be eligible for jury duty you had to be a registered
5 voter. That was changed several years back so that now
6 you can be a registered voter or you can be a licensed
7 South Carolina driver -- that is, you have a South
8 Carolina driver's license -- or you can have a South
9 Carolina identification card. If you fall into any of
10 those categories, you go into the jury pool, I guess
11 you would call it.

12 Is there -- in some cases we end up with people
13 who are legally here who are not citizens but may have
14 a driver's license, and they end up in our jury panels.
15 So you must be a citizen of the United States.

16 Is there anyone who is not a citizen of the United
17 States?

18 And there is no response to that inquiry. Okay.

19 Is there any person who is not a resident of Horry
20 County? You heard Mr. Hixson say and you probably know
21 that this is the 15th judicial circuit. The judicial
22 circuit is comprised of Horry and Georgetown County.
23 And, for instance, I'm the chief judge for
24 administrative purposes of all civil cases for the 15th
25 circuit. And my authority would extend down into

1 Georgetown County.

2 But in order to serve as a juror in this county,
3 Horry County, you must live -- presently live -- in
4 Horry County. And the same would apply to Georgetown
5 County. If we were trying this case there, you would
6 have to live in Georgetown County. But you must reside
7 for this case in Horry County.

8 And as I said a moment ago, is there any member of
9 the jury panel who is not a registered voter or a
10 licensed driver or a holder of a state identification
11 card? You don't have to have them all, but you must
12 have one.

13 Is there any person who does not fall into one of
14 those three categories?

15 And there was no response.

16 And I believe there was no response to my
17 inquiries -- is there anyone -- let me ask it again --
18 who is not a resident of Horry County presently?

19 And there's no response to that question.

20 Is there any member of the jury panel who is a
21 commissioned law enforcement officer? That is, you
22 have the power to arrest.

23 All right, sir.

24 POTENTIAL JUROR: Clarence Melvin Thompson, 6 --

25 THE COURT: I'm sorry?

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1 POTENTIAL JUROR: Clarence Melvin Thompson.

2 THE COURT: Yes, sir.

3 POTENTIAL JUROR: I hold a SLED card, armed, that
4 I have powers to arrest.

5 THE COURT: Who do you -- it was issued by SLED?
6 You were a constable or --

7 POTENTIAL JUROR: I was a security officer.

8 THE COURT: And when was that?

9 POTENTIAL JUROR: It was issued last year.

10 THE COURT: Okay. And is that on -- you're a
11 security officer on specific property?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: Okay. So you could arrest on specific
14 property but not in general?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: All right. You stay with us.

17 Yes, ma'am.

18 POTENTIAL JUROR: Same thing.

19 THE COURT: Same thing, you have power of arrest
20 as a security guard on the property of your employer?

21 POTENTIAL JUROR: Yes, sir.

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

23 And could you give us your numbers again, please.

24 POTENTIAL JUROR: 624.

25 THE COURT: 624 and?

1 POTENTIAL JUROR: 37.

2 THE COURT: 37. Thank you very much.

3 Is there any member of the jury panel who is a
4 prison guard, works for the Department of Corrections
5 as a prison guard?

6 And there is no response to that question.

7 Is there any member of the jury panel who is a
8 clerk, deputy clerk, constable, sheriff, or other
9 commissioned law enforcement officer, probate judge,
10 county commissioner, magistrate, or other county
11 officer of any type or who is employed within the walls
12 of any courthouse?

13 Yes, sir.

14 POTENTIAL JUROR: 210. I'm employed with code
15 enforcement.

16 THE COURT: Okay. Is code enforcement in this
17 building or --

18 POTENTIAL JUROR: It's in the next building.

19 THE COURT: The next building. All right. I
20 believe you're fine. Thank you for giving us that
21 information.

22 Yes, ma'am.

23 POTENTIAL JUROR: Mary Grissett. I'm a 911
24 operator.

25 THE COURT: You're a 911 operator. And where is

1 your office?

2 POTENTIAL JUROR: Right across the street. In the
3 next building over.

4 THE COURT: It's not in this courthouse?

5 POTENTIAL JUROR: No, sir.

6 THE COURT: And your number?

7 POTENTIAL JUROR: 253. Yeah, 253.

8 THE COURT: Thank you very much.

9 Yes, sir.

10 POTENTIAL JUROR: Number 84. Work at the
11 detention center, the jail.

12 THE COURT: All right. You are a detention
13 officer?

14 POTENTIAL JUROR: No, I work at food service.

15 THE COURT: At the food service?

16 POTENTIAL JUROR: Right.

17 THE COURT: But you are not a detention officer?

18 POTENTIAL JUROR: No, sir.

19 THE COURT: Give us your name and number, please.

20 I do not think that disqualifies you.

21 POTENTIAL JUROR: Dean Caldwell, Number 84.

22 THE COURT: Number 84. Thank you very much.

23 Anyone else?

24 Yes, ma'am.

25 POTENTIAL JUROR: Number 11, Amber Alsdorf. I

1 work over in the county courthouse in traffic court.

2 THE COURT: And you work -- where is your office
3 now?

4 POTENTIAL JUROR: Central traffic court.

5 THE COURT: Central traffic court. And that would
6 be at the old courthouse?

7 POTENTIAL JUROR: Yes, sir.

8 THE COURT: That is a courthouse. And you work
9 for central traffic?

10 POTENTIAL JUROR: Yes, sir.

11 THE COURT: And what do you do there?

12 POTENTIAL JUROR: I am an administrative
13 assistant. I transferred over there from --

14 THE COURT: All right. I believe that you would
15 then be disqualified by the fact that you work in the
16 courthouse. All right?

17 POTENTIAL JUROR: Okay.

18 THE COURT: You would be excused. But would you
19 remain with us for just a minute. But you do not have
20 to answer any more of my questions. All right?

21 Yes, sir.

22 MS. NORRIS: Your Honor, I'm sorry. What was her
23 number again?

24 THE COURT: What was your number again?

25 POTENTIAL JUROR: Number 11.

1 Number 11, okay.

2 Yes, sir.

3 POTENTIAL JUROR: Joseph Schrum, 550. I was a
4 chaser for the United States Marine Corps two years
5 ago.

6 THE COURT: Are you now?

7 POTENTIAL JUROR: No, sir.

8 THE COURT: All right. Thank you very much. You
9 may stay with us.

10 All right. Is there any member of the jury panel
11 who has served on a jury in the court of common
12 pleas -- that would be common pleas or general
13 sessions -- within this past calendar year? From
14 January 1st of 2014 forward, have you served either in
15 a court of common pleas or a court of general sessions?
16 And let me help you with that. That doesn't mean
17 federal court; it doesn't mean magistrate's court; it
18 doesn't mean municipal court. A good way to make sure
19 that you understand which court we're talking about is
20 were you summonsed to come to this courthouse? You
21 wouldn't have been brought necessarily to this room.
22 You would have probably been brought to the jury
23 assembly room downstairs. But you were summonsed to
24 come to this courthouse within the last calendar year.

25 Any response to that inquiry?

1 And there is none.

2 Was any one of you a member of the Grand Jury
3 which issued the indictment in this case?

4 And there is no response to that question.

5 Okay. Now, I have a series of questions here that
6 I want to ask you. Some of these might be -- the
7 responses might cause you some embarrassment, and
8 that's certainly the last thing we want to do.

9 So these are the questions where I want you to, if
10 the question applies to you -- and I'll go through all
11 the questions first. If these questions apply to you,
12 what I want you to do is come right down here where
13 Mr. Ropp is and he will sort of help you line up, and
14 we'll announce your number, and I'll let you come
15 forward right down here one at a time, and we will
16 discuss it as privately as possible.

17 Of course the attorneys have a right to know who I
18 am excusing on a case, particularly in light of the
19 severity or the seriousness of this type of case. So
20 they will overhear. But we will keep it as private as
21 possible. So listen carefully to my questions.

22 Is there anyone who has less than a sixth grade
23 education?

24 Is there anyone who is unable to read, write,
25 speak or understand the English language?

1 Is there anyone who has been convicted or pled
2 guilty to any crime for which you could have received
3 imprisonment for more than one year? It does not mean
4 that you did. You could have gotten a probationary
5 sentence. You could have gotten a sentence much less
6 than one year. But if you could have received a
7 sentence greater than one year, we need to know about
8 that. And that can be in any court. That can be in
9 the federal system or any other state or South
10 Carolina.

11 Let me tell you that, generally speaking, if you
12 had an offense charged against you and you were in the
13 magistrate's court or the municipal court, generally
14 those are not disqualifying. Those don't carry more
15 than a year. But if you have any question at all about
16 whether or not you have had a conviction for an offense
17 carrying more than one year, please come forward and we
18 can find out the answer for you.

19 Is there anyone who is unable to render efficient
20 jury service by reason of mental or physical
21 infirmities? And that would be things like your
22 hearing, your speech or your heart or things like that.
23 If you have a mental or physical infirmity that you
24 believe would prevent you from rendering efficient jury
25 service, we need to know about it.

1 I will tell you this, that I, during the trial of
2 my cases, I try not to go more than about an hour and a
3 half at a stretch. I figure if you can make it through
4 preaching, you can make it through one of my -- one of
5 my series.

6 Also during the trial of my cases, I implore
7 jurors if at any time you become uncomfortable, you
8 need to take a break, I have forgotten my promise not
9 to go over about an hour and a half, you need to
10 refresh yourself, all you have to do is raise your
11 hand. Please don't worry about interrupting the Court.

12 You know, the trial of a case is a process by
13 which the lawyers present information to you. And if
14 you're uncomfortable and you can't pay attention,
15 you're distracted, that's a disservice to the State and
16 to Mr. Cottrell. So I encourage you to do that.

17 Also, there will not be a moment in which there is
18 not a deputy or a bailiff with you just outside the
19 door. If any problems arise, I promise you we will
20 address it. Also we have a very fine clerk of court
21 who will make sure that there are always soft drinks,
22 coffee, water, refreshments available to you in your
23 jury room.

24 And the Horry County Council really stepped up to
25 the plate when they built this courthouse. They have

1 extremely comfortable and commodious jury rooms for
2 you. So the service is not going to be physically
3 taxing. And I want you to understand that. I promise
4 you we will take good care of you while you're on that
5 jury panel.

6 But if you have a mental or physical infirmity
7 that you believe nevertheless will cause you some
8 difficulty that will prevent you from being an
9 efficient juror, please, we need to know that.

10 So if any of those questions apply to you, that
11 is: Less than a sixth grade education; unable to read,
12 write or speak the English language; convicted of a
13 crime carrying more than one year; or physically
14 impaired, please come forward.

15 Now, I promise you we're going to get to other
16 issues as we go through this. I only need to see you
17 if one of those four questions apply to you. That's
18 what I need to do at this time. Please don't come
19 forward if you have another issue. We're going to
20 address those issues. Just come forward if one of
21 those things pertaining to your disqualification --
22 come forward.

23 That's important because the clerk is having to
24 make a record of who was disqualified, who was
25 exempted. They go in all these categories. So we want

1 to make sure we have you in the right category.

2 Come forward at this time, please.

3 Right down there anywhere you think you can round
4 them up, Mr. Ropp.

5 THE COURT: Let's make the best use of our time.
6 While I am doing this, let's try to keep it as quiet as
7 possible. But if you need to take a restroom break,
8 please help yourself. You can tell by my age that I'm
9 very sympathetic to that.

10 But if you need to use the restroom -- please keep
11 it down. I need to be talking to these folks.

12 THE COURT: Mr. Ropp.

13 THE BAILIFF: Number 508 (sic).

14 THE COURT: 508. Yes, sir. Let's let him come
15 right around here.

16 Yes, sir. Your name?

17 POTENTIAL JUROR: George Trussell.

18 THE COURT: George Trussell. All right,
19 Mr. Trussell.

20 POTENTIAL JUROR: I have back problems. I have
21 had several operations, possibly facing another one. I
22 have diabetes. And I have problems with it dropping
23 for that reason, and the doctor is trying to get it
24 regulated, but it's not regulated as of yet.

25 THE COURT: Do you take medications, any

1 narcotics?

2 POTENTIAL JUROR: Yes, sir.

3 THE COURT: Are you taking them on a daily basis?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: I am going to carry you over to
6 another term, perhaps in six months or so. And let's
7 see if we can sort of get him in better physical
8 condition so that he can serve as a juror. Okay?

9 MS. NORRIS: What's his number again?

10 POTENTIAL JUROR: 508, I believe it is.

11 THE CLERK: 5-0-8.

12 THE COURT: Thank you, sir.

13 THE CLERK: No, hold on. That is wrong.

14 THE COURT: It's 638.

15 Mr. Trussell, you are excused. You may leave.

16 THE CLERK: 638. Thank you.

17 You will receive another summons in the mail.

18 THE BAILIFF: Number 630.

19 THE COURT: Yes, ma'am.

20 POTENTIAL JUROR: I have a -- I'm -- I have had a
21 DUI second and a failure to stop for blue light, which
22 are misdemeanors.

23 THE COURT: DUI second will not be disqualifying.
24 Failure to stop for a blue light, is that one year?

25 POTENTIAL JUROR: It was under a misdemeanor

1 charge. I didn't do it as a felony.

2 THE COURT: Where was it?

3 POTENTIAL JUROR: Here in Horry County.

4 THE COURT: Horry County, failure to stop for a
5 blue light. That's three years, isn't it?

6 MR. RICHARDSON: Yes, sir.

7 THE COURT: Three. And that was a conviction that
8 you had, failure to stop?

9 POTENTIAL JUROR: I pled for it under a
10 misdemeanor.

11 THE COURT: I understand it is a misdemeanor, but
12 it still carries up to three years. That would be
13 disqualifying.

14 MR. RICHARDSON: What number are you?

15 POTENTIAL JUROR: 630.

16 THE BAILIFF: Number 201, Fink.

17 THE COURT: Your name, sir?

18 POTENTIAL JUROR: Maurice Fink.

19 THE COURT: All right, Mr. Fink, and your number?

20 POTENTIAL JUROR: 201.

21 THE COURT: All right. And what problem do we
22 have?

23 POTENTIAL JUROR: Sir, I have a difficult time
24 focusing and paying attention. I have tinnitus in my
25 ears, and it's pretty loud. For me it's just difficult

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1 to focus and pay attention.

2 THE COURT: Are you under a doctor's care?

3 POTENTIAL JUROR: No, sir, I'm not.

4 THE COURT: Can you hear?

5 POTENTIAL JUROR: I can.

6 THE COURT: All right. I'm going to ask you to
7 stay with us. Thank you, sir.

8 POTENTIAL JUROR: Okay.

9 THE BAILIFF: Number 437, Mims.

10 THE COURT: Yes, sir.

11 POTENTIAL JUROR: I have a couple felonies.

12 THE COURT: You have felonies? What?

13 POTENTIAL JUROR: Contributing to the delinquency
14 of a minor.

15 THE COURT: Contributing to the delinquency of a
16 minor?

17 POTENTIAL JUROR: Yes, sir. Grand larceny and --

18 THE COURT: Mr. Solicitor, is that confirmed?

19 MR. RICHARDSON: I'll get his paper.

20 THE CLERK: He just brought it in this week.

21 MR. RICHARDSON: 437?

22 THE COURT: Where were these charges?

23 POTENTIAL JUROR: In South Carolina.

24 THE COURT: Do you know where, what county?

25 POTENTIAL JUROR: In Williamsburg County. I mean,

1 it's on my record. I can't even get a job at Home
2 Depot or Lowe's.

3 MR. RICHARDSON: It should have come up, but every
4 time it happens, we don't get all of them. But he said
5 grand larceny and?

6 POTENTIAL JUROR: Grand larceny and Schedule IV
7 narcotics and -- grand larceny, contributing to the
8 delinquency of a minor.

9 THE COURT: Do you have access to NCIC?

10 MR. RICHARDSON: Yes.

11 THE COURT: I want you to get his information, his
12 birth date and everything you need from the juror
13 rolls. Unless --

14 MR. RICHARDSON: I'm going to give her a sheet of
15 paper with your stuff.

16 THE CLERK: You don't have paperwork on that one
17 because he just turned it in this morning.

18 MR. RICHARDSON: Randy, what's your social?

19 POTENTIAL JUROR: [REDACTED].

20 MR. RICHARDSON: Okay.

21 THE COURT: Is that all you need?

22 MR. RICHARDSON: Yes, sir.

23 THE COURT: Have a seat. Stay with us, and we
24 will check on that for you. Thank you.

25 Shows as pending? Okay. Good. All right.

1 THE BAILIFF: Number 16, Anderson.

2 THE COURT: Come around, Ms. Anderson. This lady
3 is going to have to hear what you're saying.

4 POTENTIAL JUROR: I can't read some. I can't read
5 some. I can't read that much.

6 THE COURT: Okay. How far did you go in school?

7 POTENTIAL JUROR: I don't know.

8 THE COURT: You don't know how far you went?

9 POTENTIAL JUROR: Huh-uh. To the ninth grade.

10 THE COURT: You were in the ninth grade. Do you
11 remember how far you went?

12 POTENTIAL JUROR: To the ninth grade. I remember
13 that. But, you know, I could read some.

14 THE COURT: You can read some; you can't read
15 much.

16 POTENTIAL JUROR: Like homework. Homework.

17 THE COURT: With whole words?

18 MS. NORRIS: No objection, your Honor.

19 THE COURT: I'm going to excuse you. Thank you.

20 THE BAILIFF: Number 511, Reed.

21 THE COURT: Yes, ma'am.

22 POTENTIAL JUROR: Yes. I have a problem with
23 reading and --

24 THE COURT: You've got a problem reading. How far
25 did you go in school?

1 POTENTIAL JUROR: I can't read. Probably to the
2 ninth grade.

3 THE COURT: Can you read?

4 POTENTIAL JUROR: No.

5 THE COURT: You can't read?

6 POTENTIAL JUROR: No.

7 THE COURT: Okay. Any objection?

8 MS. NORRIS: No, sir.

9 THE COURT: Any objection?

10 MR. RICHARDSON: No, sir.

11 THE COURT: All right. I'm going to excuse you.
12 Okay?

13 POTENTIAL JUROR: Okay.

14 THE COURT: Your number?

15 POTENTIAL JUROR: 511.

16 THE COURT: 511. Okay. Thank you, ma'am.

17 POTENTIAL JUROR: Thank you.

18 THE BAILIFF: Number 480, Patel.

19 POTENTIAL JUROR: Hello.

20 THE COURT: Mr. Patel, how are you?

21 POTENTIAL JUROR: I'm good. I never go school
22 here.

23 THE COURT: Okay. Can you read?

24 POTENTIAL JUROR: I cannot read. I can write. If
25 I see, I can copy it, but I cannot read.

1 THE COURT: You cannot read at all?

2 POTENTIAL JUROR: No. I cannot read English. I
3 can in my language.

4 THE COURT: Okay.

5 MS. NORRIS: No objection.

6 MR. RICHARDSON: No.

7 THE COURT: Without objection, you are excused.
8 You may leave.

9 POTENTIAL JUROR: Okay.

10 THE BAILIFF: Number 371, Lepera.

11 THE COURT: Yes, sir.

12 POTENTIAL JUROR: I wasn't convicted but I was
13 charged of pointing and presenting a handgun.

14 THE COURT: What does that carry, Mr. Solicitor?

15 MR. RICHARDSON: Five.

16 THE COURT: Five?

17 MR. RICHARDSON: Did you say you were convicted?

18 POTENTIAL JUROR: No, I was not.

19 THE COURT: You were not convicted?

20 POTENTIAL JUROR: I was charged but never
21 convicted.

22 MS. NORRIS: I thought it was pending.

23 POTENTIAL JUROR: No, it's not pending. No.

24 THE COURT: You're good to go. Stay with us.

25 THE BAILIFF: Number 643, Vannostrand.

1 THE COURT: Yes, sir.

2 POTENTIAL JUROR: I was convicted -- I'm a
3 convicted felon.

4 THE COURT: We both have to hear you.

5 POTENTIAL JUROR: I'm a convicted felon.

6 THE COURT: You're a convicted felon. What number
7 are you?

8 POTENTIAL JUROR: 643.

9 THE COURT: 643. All right. We have confirmation
10 of that. What were you convicted of, burglary third,
11 B&E and grand larceny?

12 POTENTIAL JUROR: Yeah.

13 THE COURT: All right. You're excused. Thank
14 you.

15 POTENTIAL JUROR: All right. Do you want me to
16 stay here?

17 THE COURT: No. You can leave.

18 THE BAILIFF: Number 282, Hasko.

19 POTENTIAL JUROR: Hello.

20 THE COURT: Yes, ma'am.

21 POTENTIAL JUROR: I speak Albanian as my primary
22 language. I'm very good at speaking. I don't feel
23 comfortable with terms like jury terms, like I don't
24 know all that language. I never went to school for it.
25 I learned it through TV and communication, so I don't

1 feel that I have that skill of --

2 THE COURT: Well, your English seems to be very
3 good.

4 POTENTIAL JUROR: Yeah, because I'm a hair
5 dresser. I talk all day. But if you make me write it.

6 THE COURT: I am sure that it's adequate. If you
7 have a question on anything, you just send a note to me
8 and we'll explain it to you. Okay?

9 POTENTIAL JUROR: Also another reason, I am the
10 only parent of my two kids.

11 THE COURT: We'll talk about that in a little
12 while. We just want to take care of this right now.
13 You're qualified.

14 THE BAILIFF: Number 506, Redouane.

15 POTENTIAL JUROR: How you doing, sir? I have a
16 son, five years old.

17 THE COURT: Can you hear him? Speak up so that
18 she can hear you as well. She has to record what we're
19 talking about. I have to hear it as well.

20 POTENTIAL JUROR: Okay. I have a son, five years
21 old. I'm the one that picks him from the school every
22 day 2:15.

23 THE COURT: Okay. Let's talk about that. I only
24 want to talk about the disqualifications, and that
25 wasn't one of the disqualifications. We'll get to that

1 in a minute. Okay? Just stay with us.

2 Do you have any problem reading, writing, anything
3 like that?

4 POTENTIAL JUROR: Yeah. That's the problem. I'm
5 not reading. I speak a little bit, but I'm not right
6 now getting --

7 THE COURT: Hold on. How far did you go in
8 school?

9 POTENTIAL JUROR: From my house to school?

10 THE COURT: No, no. How many years did you go to
11 school?

12 POTENTIAL JUROR: It's not me. My son.

13 THE COURT: I understand. How many years did you
14 go to school? Did you go to school?

15 POTENTIAL JUROR: In here, no, sir.

16 THE COURT: Where is your home originally?

17 POTENTIAL JUROR: In Morocco.

18 THE COURT: Okay. How far did you go in Morocco?
19 How many years did you go in school?

20 POTENTIAL JUROR: 12 years.

21 THE COURT: Okay. There you go. Are you able to
22 speak and understand English?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Okay. Can you read and write English?

25 POTENTIAL JUROR: No, sir.

1 THE COURT: Can you read English?

2 POTENTIAL JUROR: Read, but sometimes I don't
3 understand. I understand easy words, but --

4 THE COURT: Okay. What do you say?

5 MS. NORRIS: No objection.

6 THE COURT: How about the State?

7 MR. RICHARDSON: No objection.

8 THE COURT: I'm going to disqualify you. Thank
9 you.

10 MS. NORRIS: What's his number again, please?

11 MR. RICHARDSON: 506.

12 THE COURT: If you have an objection, we'll stand
13 them off to the side. If you have no objection to
14 excusing him, just say it. But if you do, say, "Can we
15 speak?" and we'll talk about that. Okay?

16 Mr. Ropp.

17 THE BAILIFF: Number 84, Caldwell.

18 THE COURT: Yes, sir.

19 POTENTIAL JUROR: I had --

20 THE COURT: She has got to hear you now. I'm the
21 primary one, but she has to hear you, too.

22 POTENTIAL JUROR: I have a CDV in I think it was
23 '81, '2, something like that.

24 THE COURT: CDV first? One offense?

25 POTENTIAL JUROR: Yeah, just one, but I went to

1 court for it.

2 THE COURT: Okay. But that would not disqualify
3 you.

4 POTENTIAL JUROR: Huh?

5 THE COURT: That would not disqualify you. Stay
6 with us. Unless you have something you could have
7 gotten more than a year.

8 POTENTIAL JUROR: They gave me five years'
9 probation. It was in Catawba.

10 MS. NORRIS: This was in Colorado, your Honor.

11 THE COURT: It couldn't have been more than --
12 hold on a second.

13 MR. RICHARDSON: We'll have to find out.

14 POTENTIAL JUROR: I put it on the paper.

15 THE COURT: All right. You have a seat and we'll
16 check on that.

17 MR. RICHARDSON: Let me get some information from
18 him and I'll go out and run an NCIC.

19 THE COURT: He said he reported it on the report.

20 THE CLERK: He probably did. All of them had
21 copies.

22 MS. NORRIS: It was on the questionnaire.

23 THE COURT: It was on his questionnaire?

24 MS. NORRIS: But I didn't see it in NCIC that
25 backed it up.

1 MR. RICHARDSON: I can run another NCIC.

2 THE COURT: Jimmy, let's get somebody up here that
3 can just take information of these jurors and run the
4 NCICs. How about Peggy? Let's get somebody up here
5 off to the side to find out whether these folks have
6 these convictions or not.

7 Any objection to referring the potential juror
8 over to one of the secretaries so she can check it?

9 MR. McGUIRE: No, sir.

10 MS. NORRIS: No.

11 THE BAILIFF: 585, Sorra.

12 THE COURT: Yes, sir.

13 POTENTIAL JUROR: Hi, your Honor.

14 THE COURT: You need to come up here. You need to
15 speak to me but she needs to hear.

16 POTENTIAL JUROR: Hi. I think I have problem
17 writing and reading.

18 THE COURT: Okay. And where are you from?

19 POTENTIAL JUROR: Albania.

20 THE COURT: Albania. How far do you go in school?

21 POTENTIAL JUROR: I finished 12 years over there.

22 THE COURT: Okay.

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Can -- can you understand English? Do
25 you speak English?

1 POTENTIAL JUROR: Yes, sir, but not everything.
2 Some words.

3 THE COURT: All right. Do you have any problems
4 reading and writing in English?

5 POTENTIAL JUROR: I make a lot of mistake with
6 reading, some writing.

7 MS. NORRIS: No objection.

8 MR. RICHARDSON: No objection.

9 THE COURT: All right. I'm going to excuse you.
10 Thank you very much.

11 POTENTIAL JUROR: Thank you.

12 THE COURT: You may leave.

13 POTENTIAL JUROR: Thank you.

14 THE BAILIFF: Number 39, Berg.

15 THE COURT: Yes, sir. You need to speak to me and
16 so she can hear you.

17 POTENTIAL JUROR: Parkinson's.

18 THE COURT: You have Parkinson's?

19 POTENTIAL JUROR: Yes.

20 THE COURT: Does that cause you problems that
21 would prevent you from being an efficient juror?

22 POTENTIAL JUROR: Yes, it does.

23 THE COURT: What kind of problems do you have?

24 POTENTIAL JUROR: I doze off frequently in the
25 middle of a conversation. I concentrate more on my

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1 symptoms, than I do on what's going on around me. My
2 attention is not good.

3 MS. NORRIS: No objection.

4 MR. RICHARDSON: No objection.

5 THE COURT: I'm going to excuse you. And good
6 luck to you.

7 POTENTIAL JUROR: Thank you.

8 THE BAILIFF: Number 193, Farmer.

9 THE COURT: Yes, sir. Speak to me in a fashion
10 that she can hear you.

11 POTENTIAL JUROR: Okay. On July 13th, 2013, I
12 pled guilty to passing a stopped school bus. I don't
13 know if that's more than a year.

14 THE COURT: That does not carry --

15 POTENTIAL JUROR: And '85, 1985, I was DUI first
16 offense.

17 THE COURT: Just one?

18 POTENTIAL JUROR: Yes, sir.

19 THE COURT: That does not disqualify you, sir.
20 You're good to go. Stay with us.

21 THE BAILIFF: 54, Boyd.

22 THE COURT: Yes, sir.

23 POTENTIAL JUROR: I have a hearing problem. I got
24 a lot of ringing in my ears.

25 THE COURT: Let me ask you something, Mr. Boyd.

1 We have a Boyd with an indecent exposure conviction.

2 MR. McGUIRE: Judge, court reporter can't hear.

3 THE COURT: They told you that that was just a
4 30-day conviction?

5 POTENTIAL JUROR: Yeah, but it turned out to be --

6 THE COURT: What is the penalty on that?

7 MR. RICHARDSON: Well, indecent exposure is a
8 year, but if they changed it to something like peeing
9 in public, it would be 30 days. I don't know what's on
10 that sheet.

11 THE COURT: At the most it's a year, right?

12 MR. McGUIRE: At the most is my understanding.

13 THE COURT: Okay. All right. Now, so we're not
14 concerned about that, but you had another problem.

15 POTENTIAL JUROR: The hearing.

16 THE COURT: What sort of hearing impairment do you
17 have?

18 POTENTIAL JUROR: It's just I got ringing in my
19 ears. I hear part of what you say.

20 THE COURT: Could you hear what I was talking
21 about today?

22 POTENTIAL JUROR: Part-time.

23 THE COURT: We're going to be in a much better
24 situation. Where do you work?

25 POTENTIAL JUROR: Richardson Service. I've worked

1 on heavy equipment for years and years. That's what
2 caused it.

3 THE COURT: I understand. But are you -- do you
4 wear any hearing aids or anything of that nature?

5 POTENTIAL JUROR: No. I use speaker phones at
6 work.

7 THE COURT: Okay. But are you under a doctor's
8 care or do you have any --

9 POTENTIAL JUROR: For hearing? I haven't went
10 yet. I'm like my mom.

11 MR. McGUIRE: We have no objection.

12 THE COURT: You have no objection?

13 MR. RICHARDSON: No objection.

14 THE COURT: Okay. We'll excuse you then. Okay.

15 POTENTIAL JUROR: Thank you.

16 THE BAILIFF: 482, Paxton.

17 THE COURT: Yes, sir. Now speak to me. I have to
18 have the information, but this lady needs to hear it as
19 well.

20 POTENTIAL JUROR: I'm currently seeing a therapist
21 for psychological evaluation. They haven't told me
22 anything yet.

23 THE COURT: What kind of problems have you been
24 having?

25 POTENTIAL JUROR: I have severe anxiety. I don't

1 like being around people, you know.

2 THE COURT: That I understand, but what's the
3 extent of it? How does it interfere or how would it
4 interfere with your efficient jury service? Would you
5 not be able to listen to the evidence, consider the law
6 as I told it to you, and would you not be able to do
7 that?

8 POTENTIAL JUROR: Yeah. I don't know. I just --
9 it's really unnerving for me to be here right now. And
10 the other day at my job, I see police officers all the
11 time, you know.

12 THE COURT: What kind of job do you have?

13 POTENTIAL JUROR: I'm an -- I work at a gas
14 station.

15 THE COURT: All right.

16 POTENTIAL JUROR: And I like cops. They keep it
17 safe.

18 MS. NORRIS: No objection.

19 MR. RICHARDSON: No objection.

20 THE COURT: I'm going to excuse you. Okay?

21 MR. HIXSON: Can I approach? NCIC, no record, and
22 self-employed. He put it on his questionnaire.

23 THE COURT: That would be the gentleman from
24 Colorado?

25 MR. HIXSON: That's right. He worked at J.

1 Reuben, '84. He reported it as a conviction out of
2 Colorado. NCIC just ran once again shows no record.

3 THE COURT: No record?

4 MR. McGUIRE: So keep him.

5 THE COURT: I think he knows.

6 MR. HIXSON: That's what we have. As relates to
7 Mr. Mims, there is a charge pending in Orangeburg
8 County. NCIC doesn't show it, but it shows a multitude
9 of aliases involved, so I can't answer the Court's
10 question. It doesn't show a conviction, just a bunch
11 of aliases.

12 MS. NORRIS: What number, 437, that just showed up
13 today?

14 THE CLERK: He just showed up with his paperwork
15 today.

16 MS. NORRIS: No objection to excusing him.

17 THE COURT: All right. Let's give him the benefit
18 of the doubt and excuse him then.

19 THE CLERK: What number was he, though?

20 MS. NORRIS: 437, I thought.

21 THE COURT: Where is Mr. Mims?

22 MS. NORRIS: Okay. Mims, I see.

23 THE COURT: All right.

24 Mr. Ropp.

25 THE BAILIFF: Number 1, Adams.

1 MR. RICHARDSON: Did you cut Mims loose?

2 THE COURT: Yes.

3 Mr. Adams, yes, sir.

4 POTENTIAL JUROR: I'm on two different kinds of
5 pain medicine, and I was falling asleep back there.

6 THE COURT: Are you taking narcotics?

7 POTENTIAL JUROR: Yeah.

8 THE COURT: What do you take?

9 POTENTIAL JUROR: Tramadol.

10 THE COURT: And how often do you take it?

11 POTENTIAL JUROR: Like three times a day, plus I
12 take --

13 THE COURT: Three times a day?

14 POTENTIAL JUROR: Plus I take Benadryl four times
15 a day because I have this gagging problem, so I go in
16 and out. I don't drive anymore because I fall asleep.

17 THE COURT: So you don't even drive?

18 POTENTIAL JUROR: (Shaking head.)

19 MS. NORRIS: No objection.

20 MR. RICHARDSON: No objection.

21 THE COURT: Without objection, you're excused.

22 POTENTIAL JUROR: Okay. Thank you.

23 MR. RICHARDSON: What number was that?

24 MR. McGUIRE: Number 1.

25 MS. NORRIS: Number 1.

1 THE BAILIFF: Number 143, Dean.

2 THE COURT: Yes, sir.

3 POTENTIAL JUROR: Your Honor, I got --

4 THE COURT: You need to speak to me but so she can
5 hear you, too.

6 POTENTIAL JUROR: I had my neck operated on and
7 I'm going to physical therapy every other day, and they
8 got me on medicines and I'm falling asleep.

9 THE COURT: So you have appointments that you have
10 to go to physical therapy every other day?

11 POTENTIAL JUROR: Yeah, for the next --

12 THE COURT: I don't want to interrupt your
13 therapy. What we're going to do is I'm going to allow
14 you to be transferred to some other time. You will get
15 another notice.

16 POTENTIAL JUROR: Thank you. Appreciate it.

17 THE BAILIFF: Number 580, Smith.

18 THE COURT: Yes, sir, Mr. Smith. And speak to me,
19 but the court reporter also has to hear you.

20 POTENTIAL JUROR: I got a couple of things. I got
21 a business, one employee.

22 THE COURT: We'll talk about that later. What I
23 need to know is whether you have a disqualification.

24 POTENTIAL JUROR: 1974 B&E.

25 THE COURT: You had a breaking and entering in

1 1974. And I think there is record of that one.

2 MS. NORRIS: Yes, your Honor. No objection.

3 THE COURT: You are excused. Thank you, sir.

4 THE BAILIFF: 129, Singleton.

5 THE COURT: Yes, ma'am.

6 POTENTIAL JUROR: The only issue I would have is
7 if I were sequestered, I have to make accommodations to
8 get my stitches out.

9 THE COURT: Stitches?

10 POTENTIAL JUROR: I had surgery on my foot.

11 THE COURT: Okay. And they could be removed when?

12 POTENTIAL JUROR: Monday.

13 THE COURT: Today is Monday.

14 POTENTIAL JUROR: Next Monday.

15 THE COURT: That would be a week from now?

16 POTENTIAL JUROR: Yeah.

17 THE COURT: That creates quite a problem. I think
18 that what I need to do is carry you over to another
19 term. I will -- I'm going to excuse you. You're going
20 to have to have that done. We just might not be able
21 to accommodate that, so I'm going to release you for
22 this term. You will get another notice. Thank you.

23 POTENTIAL JUROR: So can I leave?

24 THE COURT: You can leave. Thank you.

25 THE BAILIFF: Number 372, Lester.

1 THE COURT: Yes, sir.

2 POTENTIAL JUROR: I'm currently --

3 THE COURT: You have to speak up so I can hear and
4 this lady.

5 POTENTIAL JUROR: I apologize. I'm currently
6 under the care of a doctor for a car accident I was in.
7 I'm prescribed narcotic pain medication for my back.
8 On top of that, I'm sole provider. I have sole
9 custody --

10 THE COURT: I'm not concerned about that right
11 now, but I am concerned about whether or not you are
12 taking a narcotic. Are you taking a narcotic?

13 POTENTIAL JUROR: I can't right now, no, sir,
14 because I'm coming here.

15 THE COURT: Did your doctor prescribe --

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: And have you been taking it?

18 POTENTIAL JUROR: Yes, sir.

19 THE COURT: Do you know how long you're going to
20 need to take it?

21 POTENTIAL JUROR: Yes, sir. Until my surgery.

22 THE COURT: How long will that be?

23 POTENTIAL JUROR: They haven't set a date. It's
24 back surgery.

25 THE COURT: What kind of pain medicine?

1 POTENTIAL JUROR: Hydrocodone, ten milligrams.

2 THE COURT: How often are you taking it?

3 POTENTIAL JUROR: About every six hours.

4 MR. McGUIRE: We'd have no objection, Judge.

5 THE COURT: I'm going to carry you over to some
6 other term.

7 Reschedule him.

8 Thank you.

9 MR. RICHARDSON: They will send you something in
10 the mail for another time.

11 THE BAILIFF: 434, Miglorie.

12 THE COURT: Yes, sir. She has to hear you and I
13 have to hear you.

14 POTENTIAL JUROR: I'm a hundred percent disabled
15 Vet -- permanent, total Social Security disability for
16 combat PTSD. I filled all that out in the application.

17 THE COURT: How old are you?

18 POTENTIAL JUROR: I'm 64. I'll be 65 in two
19 months.

20 THE COURT: Are you currently under a doctor's
21 care.

22 POTENTIAL JUROR: Yes, sir. I've been with the
23 Veterans Administration since 2004.

24 THE COURT: The issue is not whether you're under
25 a doctor's care. The issue is whether your condition

1 will affect your ability to be an efficient juror.

2 POTENTIAL JUROR: Yes, sir. There's no way. I
3 take 13 pills a day, sir. I can't concentrate. Can't
4 stand to be in crowds. I'm already having a problem.

5 MS. NORRIS: No objection.

6 THE COURT: Without objection from the defense,
7 I'm going to excuse you. Thank you, sir.

8 THE BAILIFF: 407, May.

9 THE COURT: Yes, ma'am. Come around. And I need
10 to hear you and the court reporter needs to hear you.

11 POTENTIAL JUROR: Okay. I have had previous back
12 surgery and had two discs removed. I have a ruptured
13 disc now, so if I'm in one position for a long time, it
14 starts hurting.

15 THE COURT: How long can you sit?

16 POTENTIAL JUROR: I passed up what I could sit
17 over there. The gentleman next to me asked one of the
18 people if I could move up on one of these softer seats.

19 THE COURT: Do you take any medication?

20 POTENTIAL JUROR: Yes, sir. I take Lorcet pills
21 but I'm not taking anything because I knew I needed to
22 be here.

23 THE COURT: Do you normally take a narcotic?

24 POTENTIAL JUROR: It's a pain pill, yes, sir.

25 THE COURT: And you take it every day?

1 POTENTIAL JUROR: Mostly I do take it every day.
2 There are some days that I have good enough days in
3 between.

4 THE COURT: Do you think that would affect your
5 ability to be an efficient juror?

6 POTENTIAL JUROR: It just makes it hard to
7 concentrate, dealing with this much pain.

8 MR. MCGUIRE: No objection.

9 MS. NORRIS: No objection.

10 THE COURT: I'm going to excuse you without
11 objection.

12 And reschedule her six months down the road.

13 You may leave.

14 THE BAILIFF: Number 45, Bledsoe.

15 THE COURT: Yes, sir. Mr. Bledsoe, I need to hear
16 you and the court reporter needs to hear you.

17 POTENTIAL JUROR: Okay, sir. I have kidney
18 problems. I have had a couple of heart attacks past
19 couple of years, and I urinate about every hour. If I
20 sit longer than an hour and a half, my feet start to
21 swell as well as my lower back. It's been killing me
22 since I've been in here due to mostly my kidneys for
23 sitting over about an hour, hour and a half.

24 THE COURT: All right.

25 Any objection from the State?

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1 MR. RICHARDSON: No, sir.

2 MS. NORRIS: (Shaking head.)

3 THE COURT: Without objection, you are excused.

4 Okay, sir?

5 POTENTIAL JUROR: Thank you, sir.

6 THE BAILIFF: Number 183, Elmore.

7 THE COURT: Yes, sir. She needs to hear you and I
8 need to hear you. I know that's a little difficult,
9 but it's what we have to do.

10 POTENTIAL JUROR: I can't read or write too well.

11 THE COURT: How far did you go in school?

12 POTENTIAL JUROR: I graduated but still, you know,
13 they put me on and on.

14 THE COURT: Where did you go to school?

15 POTENTIAL JUROR: Conway High.

16 THE COURT: You cannot read or write?

17 POTENTIAL JUROR: Not too well.

18 THE COURT: You mean if I gave you this sheet of
19 paper, could you read it? That's not fair.

20 MR. MCGUIRE: Lawyers can't even read those
21 things, Judge.

22 THE COURT: Even this list of names, could you
23 read that?

24 POTENTIAL JUROR: Probably not. Some of it I can.

25 MS. NORRIS: He filled out the questionnaire.

1 THE COURT: You filled out your questionnaire?

2 POTENTIAL JUROR: My wife did.

3 THE COURT: She did the writing on it, too, and
4 answered the questions?

5 POTENTIAL JUROR: Yes.

6 MS. NORRIS: No objection.

7 THE COURT: What about the State?

8 MR. RICHARDSON: No objection.

9 THE COURT: Without objection, I'm going to excuse
10 you. Okay? Thank you, sir. You can leave.

11 POTENTIAL JUROR: Thank you.

12 THE BAILIFF: Number 526, Roditis.

13 THE COURT: Yes, sir.

14 POTENTIAL JUROR: Hi. I was arrested --

15 THE COURT: You need to speak so this lady can
16 hear you and I can hear you, too.

17 POTENTIAL JUROR: I was arrested years ago, maybe
18 like 2000. I can't remember exactly what the charges
19 were.

20 THE COURT: What's your number, 526?

21 POTENTIAL JUROR: Yes, sir.

22 THE COURT: Okay. And you have a conviction for
23 possession with intent to distribute?

24 POTENTIAL JUROR: Yeah, I think so.

25 THE COURT: That would be disqualifying. Thank

1 you.

2 THE CLERK: You may leave.

3 POTENTIAL JUROR: I can leave?

4 THE COURT: Yes.

5 THE BAILIFF: 37, Herndon.

6 THE CLERK: Her name has changed. She has
7 married.

8 THE COURT: You need to speak so that my court
9 reporter can hear you and I can hear you.

10 POTENTIAL JUROR: Okay. The reason why I came up
11 is because I've been put on medication because the
12 situation with my dad, to kind of help calm me down.
13 So I'm on an antidepressant and also Xanax. So my --
14 the last doctor I went to, because I had transferred
15 here with my job.

16 THE COURT: Let me go back. You're taking Xanax
17 and what?

18 POTENTIAL JUROR: An antidepressant, Zoloft.

19 THE COURT: You're talking Xanax and Zoloft?

20 POTENTIAL JUROR: But I don't take the Xanax every
21 day. But when I go to be with my dad --

22 THE COURT: You were having anxiety problems?

23 POTENTIAL JUROR: Yep, because it's just upsetting
24 to see him like that. And plus now I need to go up
25 there and take care of him.

1 THE COURT: Okay. So you have a sick family
2 member, too?

3 POTENTIAL JUROR: Uh-huh.

4 MS. NORRIS: No objection.

5 POTENTIAL JUROR: Terminally ill.

6 THE COURT: All right. I'm going to excuse you.
7 Thank you.

8 THE BAILIFF: Number 349, King.

9 THE COURT: Yes, ma'am. You need to talk to me
10 and so this lady can hear you.

11 POTENTIAL JUROR: I have a DUI guilty plea three
12 years ago.

13 THE COURT: That doesn't disqualify you. You're
14 good to go.

15 POTENTIAL JUROR: I thought so, but I thought I
16 would check.

17 THE BAILIFF: Number 596, Stamm.

18 THE COURT: Yes, sir. Speak so this lady can hear
19 you and I can hear you.

20 POTENTIAL JUROR: I don't know if it qualifies to
21 anything. I have a rare blood disease. It stops me
22 from sitting for long periods of time. It gives me
23 blood clots. It's called Factor V.

24 THE COURT: Have you gotten anything from your
25 doctor or can you be more specific about it? How often

1 do you --

2 POTENTIAL JUROR: Probably 30, 45 minutes at a
3 time I can sit.

4 THE COURT: Do you work?

5 POTENTIAL JUROR: Part-time. Whenever my body --

6 THE COURT: What do you do?

7 POTENTIAL JUROR: I drive. I drive a van.

8 THE COURT: Okay.

9 POTENTIAL JUROR: Trying to get out of doing that,
10 too, but.

11 THE COURT: And how long have you had this
12 condition?

13 POTENTIAL JUROR: Christmas.

14 THE COURT: And it's called what?

15 POTENTIAL JUROR: Factor V. It's where your blood
16 keeps getting thicker. It don't get thinner.

17 THE COURT: I'll tell what you I'm going to do.

18 If you can get us something from your physician that

19 tells me that you have this condition and that you

20 cannot sit more than 30, 45 minutes, I will excuse you.

21 Okay?

22 POTENTIAL JUROR: Okay.

23 THE COURT: Thank you. Get that back for us.

24 Okay.

25 THE BAILIFF: Number 119, Cook.

1 THE COURT: Yes, sir, Mr. Cook. Now speak so that
2 this lady can hear what you say.

3 POTENTIAL JUROR: Okay. I had a breach of --
4 breach of trust with fraudulent intent.

5 THE COURT: Conviction?

6 POTENTIAL JUROR: No, sir, just restitution \$324.

7 THE COURT: Did you plead guilty to it or --

8 POTENTIAL JUROR: I just made restitution, thought
9 I would tell you, back in '94.

10 THE COURT: So you never went to court with it?

11 POTENTIAL JUROR: No, sir. I met the Solicitor's
12 assistant --

13 MS. NORRIS: The NCIC showed that it was
14 dismissed.

15 THE COURT: Okay. Very good. Stay with us.

16 POTENTIAL JUROR: Oh, yeah. Also the hearing
17 disability.

18 THE COURT: You seem -- were you able to hear
19 everything today?

20 POTENTIAL JUROR: Yes, so far. Just want to let
21 you know.

22 THE COURT: Okay.

23 THE BAILIFF: Number 619, Thebeau.

24 POTENTIAL JUROR: Hey, Judge. Just want you to
25 know I have got diverticulitis, which what that means

1 is when I got to go to the bathroom, I got to go. So
2 I'm not trying to get out of jury duty, but if I put my
3 hand up --

4 THE COURT: You put your hand up, I'll let you go.

5 POTENTIAL JUROR: All right.

6 THE COURT: Thank you, sir.

7 THE CLERK: Let me tell you about one. We have
8 one, 391, has not been convicted of anything but he
9 does have on an ankle bracelet he told me when he
10 checked in.

11 THE COURT: He could be out on bond.

12 MR. McGUIRE: This is the safest place for him,
13 right here.

14 THE CLERK: I wanted to let the Court know he has
15 an ankle bracelet on.

16 MS. NORRIS: Did we get a questionnaire from him?

17 THE CLERK: I e-mailed it to you on Friday.

18 THE COURT: Okay.

19 I've got juror 140, Frances Salvatore.

20 MR. RICHARDSON: He didn't show up.

21 THE CLERK: They have gone to get him.

22 THE COURT: Okay. We're going to take a break in
23 just a minute.

24 You can all take a quick break if you like.

25 THE CLERK: Ten minutes?

1 THE CLERK: You can take a ten-minute break. Be
2 in here no later than ten minutes. Remember your green
3 pieces of paper. Show them to security when you come
4 back in, and they will know to send you straight on
5 upstairs. Quick little break. Then we're going to try
6 to get you to lunch.

7 (WHEREUPON, recess taken from 12:54 p.m.
8 to 1:09 p.m.)

9 THE COURT: While we wait for those other jurors,
10 Madam Clerk, did you note jurors who did not respond to
11 their subpoena today?

12 THE CLERK: Yes, sir.

13 THE COURT: And will you list those jurors to
14 provide to the Sheriff?

15 THE CLERK: I have.

16 THE COURT: Would you have those jurors picked up
17 and escorted to court so that I may address their
18 problem?

19 THE CLERK: We are. And also when I was calling
20 the roll, there was one that I overlooked that is not
21 here. That is number 672, Erica Westmoreland. And she
22 will be here in about ten minutes.

23 THE COURT: Is she being picked up?

24 THE CLERK: Is she being picked up now or is she
25 coming in independent, on her own?

1 The Sheriff is bringing her in.

2 THE COURT: All right. Well, I will take care of
3 that.

4 THE CLERK: And then I have some others that did
5 not show up, but I also have --

6 THE COURT: All right. We'll put that on the
7 record.

8 All right. Ladies and gentlemen of the jury
9 panel, I have sort of looked at where we are in the
10 qualification. It is 1:15 now. I don't want anybody
11 falling out from malnutrition. So what I'm going to do
12 is let you go to lunch. I will ask you to be back in
13 the courtroom at 2:30. That will give you about an
14 hour and 20 minutes.

15 THE CLERK: Before they leave, can I say something
16 to them?

17 THE COURT: Yes.

18 Hold it.

19 THE CLERK: Make sure that the little green piece
20 of paper you were given when you checked in, that you
21 have it with you when you come back. So it runs a lot
22 smoother when you're going through security. Okay?

23 THE COURT: I'll remind you, some of you were
24 going to make changes to your --

25 THE CLERK: They did.

1 THE COURT: That's already been done. Excellent.
2 Then all right.

3 Yes, sir.

4 POTENTIAL JUROR: I have a request for a release,
5 but I didn't get in line because it wasn't regarding
6 one of those four questions.

7 THE COURT: We're going to get to that. We'll
8 just have to follow this through a set process that we
9 have to do due to the nature of the trial.

10 THE CLERK: The gentleman with the broken foot, he
11 wants to ask you a question.

12 POTENTIAL JUROR: Your Honor, I have a -- I can't
13 be here no more.

14 THE COURT: You need to be back at 2:30 and we'll
15 discuss that. We're going to get to those things, I
16 promise you. We'll be at ease for about an hour and
17 20 minutes.

18 (WHEREUPON, the prospective jury panel exited the
19 courtroom at 1:11 p.m.)

20 THE COURT: The defense and the State have agreed
21 that there are circumstances surrounding the juror,
22 Hannah Lockaby, number 384, that would justify her
23 release from jury service, and I hereby release her
24 without objection from either the State or the defense.

25 MR. McGUIRE: That's correct.

1 MR. RICHARDSON: Yes.

2 THE COURT: Without objection, Mr. Mims, Randy
3 Mims, juror number 437, is excused or found to be
4 disqualified. Let's put it that way.

5 Counsel, we have a couple matters we have to take
6 up.

7 Come to order.

8 Madam Clerk.

9 THE CLERK: Yes, sir.

10 THE COURT: All right. The juror that you called
11 for the wheelchair, he did not indicate to me that he
12 had any condition that would have prevented --
13 physically that would prevent him from being an
14 effective juror. Perhaps he didn't understand what I
15 was asking, but that's something we'll need to address
16 whenever he returns.

17 What do you have, Madam Clerk?

18 THE CLERK: Okay. What I have is these are people
19 that anyone that did not show up that I called their
20 name, the Sheriff has gone to pick up except for these
21 individuals. Made you a copy of everything, too. This
22 is number 92, Ms. Carr. We called everybody on
23 Thursday and Friday to remind them to show up for jury
24 duty. She told me that she was disabled, in the bed,
25 therefore she said the officer knew it when they went

1 out there. So Sherry Smith from the sheriff's office
2 did an affidavit stating that she was bedridden. So I
3 did not send them after her because, according to
4 Ms. Smith -- I don't know where she is -- they would
5 pretty much have to send an ambulance to bring her down
6 here.

7 MS. NORRIS: Your Honor, we don't have any
8 objection to excusing her. She did, in fact, put that
9 information on her questionnaire.

10 THE COURT: Mr. Richardson?

11 MR. RICHARDSON: No objection, your Honor.

12 THE COURT: Very well. She is excused.

13 THE CLERK: This is number 233. I think her name
14 was Ms. Gizzi. Gizzi. Yes, Ms. Gizzi. She's number
15 233. She -- her mother passed away. They're in the
16 process of doing the funeral arrangements today. She
17 said there was no way that she could come.

18 I printed out the obituary, and I told her we
19 would call her if you wanted her to still come.

20 MS. NORRIS: No objection, your Honor.

21 MR. RICHARDSON: No objection.

22 THE COURT: Without objection, she will be
23 excused. Please transfer her.

24 THE CLERK: This is juror number 256, which is
25 Mr. Gross. When I called him, he also stated that he

1 was bedridden and that the officer was aware of it.
2 Mr. Perry Richardson with the sheriff's office went out
3 there to see him. And I have an affidavit from
4 Mr. Richardson stating that he is bedridden and that
5 also EMS would have to go pick him up to make him
6 report.

7 MS. NORRIS: No objection, your Honor. He put
8 that on his questionnaire.

9 THE COURT: Mr. Richardson?

10 MR. RICHARDSON: No objection.

11 THE COURT: All right. Without objection, he is
12 excused.

13 THE CLERK: All right. This is 261, Mr. Howard
14 Gunter. He is the one that we spoke with, that I spoke
15 with on Friday, that his wife had the brain tumor and
16 was taken off of life support and still living. And
17 Grand Strand Hospital was making him take her home on
18 Saturday.

19 MS. NORRIS: No objection, your Honor.

20 MR. RICHARDSON: No objection.

21 THE COURT: All right. Without objection, that
22 juror is excused.

23 THE CLERK: That is all for the ones that did not
24 report.

25 This here is number 355 who showed up. He had an

1 affidavit saying unable to locate. She showed up this
2 morning with her paperwork. I made her wait and fill
3 it out and I made copies for everyone. So she is here.

4 THE COURT: She is here. That's 355?

5 THE CLERK: Yes, sir.

6 THE COURT: All right.

7 THE CLERK: That is all I have.

8 THE COURT: All right. Are there other issues?

9 I think, Mr. McGuire, there was an addition of
10 about three witnesses to the witness list?

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: What I will do is we will address that
13 in individual voir dire. I had initially intended,
14 among other things -- of course I was going to ask if
15 anyone is related by blood or marriage to the victim,
16 the attorneys, has a personal relationship with law
17 enforcement, that sort of thing.

18 But one of the things that I was going to ask them
19 was if they have -- if they are or anyone in their
20 family has ever been the victim of a crime of violence.
21 I think that I'm going to defer that question because
22 it was asked on the questionnaire, and I will let you,
23 based on what was in the questionnaire, question them
24 about that during the individual voir dire.

25 You know, it's just another stand up and take

1 names thing, but they have answered that question on
2 their voir dire. I think it's exactly the same
3 question. I don't see it now, but I know it's in here.

4 THE CLERK: This is number 391, Mr. Lovett. Y'all
5 said the paperwork did not come through when I e-mailed
6 it to you. So there's his paperwork.

7 THE COURT: Well, I was sure that that question
8 was on the questionnaire.

9 MS. NORRIS: Your Honor, the question about being
10 a victim of a crime, I believe, is question 34 or
11 thereabouts.

12 THE COURT: Yes. Okay. There. I'm sorry. And
13 it's even more general than the one I proposed in my
14 thinking. I believe that's answered, and I'll let you
15 address that. Okay?

16 All right. Anything else we need to take up
17 before we take a break and then continue our voir dire?

18 THE CLERK: Officer Parmley just informed me that
19 they're picking up the lunch at 1:45. I provided lunch
20 for you, the court reporter, my staff, defense and the
21 State.

22 THE COURT: Okay. All right. Thank you. Did you
23 say you have it for the attorneys?

24 THE CLERK: I do.

25 THE COURT: Thank you. How kind of you.

1 MR. McGUIRE: Thank you.

2 THE COURT: Is there a place where Mr. McGuire and
3 Ms. Norris might take their lunch?

4 THE CLERK: We have a room set up for them as
5 well.

6 THE COURT: How about Mr. Cottrell?

7 THE CLERK: We provided lunch for him as long as
8 he doesn't eat any tomatoes or peaches. That's on his
9 affidavit filed with my office.

10 THE COURT: Where will they be?

11 THE CLERK: I don't know that.

12 THE COURT: What I'm getting at, do you have a
13 place for Mr. McGuire and Ms. Norris that Mr. Cottrell
14 can be?

15 THE BAILIFF: Only the holding cell area.

16 THE COURT: I want him available.

17 (Off-the-record discussion with the deputy.)

18 (WHEREUPON, lunch recess taken from 1:27 p.m.
19 to 2:33 p.m.)

20 (Whereupon, the jury panel came into open court at
21 approximately 2:33 p.m.)

22 THE COURT: Counsel, the jurors were instructed to
23 return at 2:30. I think most of our jurors are here.
24 But I will -- where is the State?

25 Let's just proceed without them.

1 MR. McGUIRE: Let's keep going, Judge.

2 THE COURT: Will somebody remind them that I
3 require them here.

4 (WHEREUPON, Mr. Richardson entered the courtroom.)

5 THE COURT: Thank you, Mr. Richardson.

6 MR. RICHARDSON: Thank you, your Honor.

7 THE COURT: All right. Gentlemen, I believe that
8 at this part of the qualification, the clerk is
9 actually going to call the names again and place them
10 in groups of six, and we will thereby know whether
11 anyone has failed to report back at this hour.

12 Do either of you require or would you like to have
13 a roll call at this time?

14 MR. McGUIRE: Judge, we would not request a formal
15 roll call.

16 THE COURT: Mr. Richardson, I think what we're
17 going to do is have the equivalent of that whenever
18 we're done.

19 MR. McGUIRE: If the Court could just have the
20 jurors stand when their number is called to be placed
21 in a panel, that's our only request.

22 THE COURT: All right. Very well. All right.

23 Ladies and gentlemen, let me tell you what we are
24 looking for by way of jurors. We are attempting and
25 will impanel a jury that's capable of listening to the

1 testimony and the evidence to be presented and capable
2 of deciding what the believable testimony is and
3 capable of applying that to the testimony -- or
4 applying the testimony and evidence to the law that I
5 will give you in my final instruction.

6 And, most importantly, we want a jury that is
7 capable of returning a fair verdict and, if necessary,
8 a recommendation of an appropriate sentence. A
9 qualified juror is one who will conscientiously apply
10 the law and the findings of fact. A qualified juror is
11 one who is capable of returning a verdict and a
12 recommendation of sentence, if necessary, based on the
13 evidence and the law.

14 And let me suggest to you that nothing I say,
15 nothing I say is to indicate that I have any opinion as
16 to whether or not we will ever reach that second phase.
17 That is entirely up to you as a jury. I don't have a
18 right to even have such an opinion, and I don't mean to
19 suggest that. It's simply that I have to refer to the
20 sentencing phase as well as the phase to determine
21 guilt as I speak to you.

22 A qualified juror is one that's capable -- and
23 this has to do with the questions that we're going to
24 ask you -- is capable of setting aside his or her
25 opinion and deciding a matter based on the law and the

1 evidence. A juror is not qualified if that juror's
2 views would prevent or substantially impair the
3 performance of his or her duties as a juror in
4 accordance with the oath that you will be given and the
5 instructions this Court will give you at the end of
6 this case. That's the goal that we hope and will
7 achieve in the selection of jurors.

8 Now, for the benefit of the attorneys, there's
9 some questions that I need to ask you concerning the
10 knowledge that you may have concerning this case. What
11 I would like for you to do as I ask the question, if it
12 applies to you, to simply stand. Do not respond to the
13 question other than to say, "Yes, that applies to me,"
14 or, "No, it doesn't" -- well, in this case it would be,
15 "Yes, it applies to me."

16 We will talk about your situation when we get into
17 individual voir dire. But right now what we want to do
18 is to simply identify you as having any particular
19 knowledge or relationship with any of the parties in
20 this action.

21 Now, I ask you: Is there any member of the jury
22 panel who is related by blood or marriage or has any
23 personal relationship with the defendant, Mr. Luzenski
24 Allen Cottrell? And there -- or any member of his
25 family?

1 And there is no response to that question.

2 Is there any member of the jury panel who is
3 related by blood or marriage or who enjoys any personal
4 relationship with the alleged victim, Officer Joseph
5 McGarry, or with any member of his family?

6 And there is -- yes, ma'am. And could you just
7 simply give us your name and number.

8 POTENTIAL JUROR: 505, Beate Rackley.

9 THE COURT: Pardon?

10 POTENTIAL JUROR: 505, Beate Rackley.

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

12 Is there any member of the jury panel who is
13 related by blood or marriage or who enjoys any personal
14 relationship with the attorneys involved or, as far as
15 you know, any member of their immediate families? And
16 the attorneys introduced themselves to you a little bit
17 earlier.

18 I'm sorry, ma'am. I did not see you back there.
19 Your name?

20 POTENTIAL JUROR: Lauren Pope. Lauren
21 Graham-Pope, number 244.

22 THE COURT: And you are responding that you --

23 POTENTIAL JUROR: Know Officer McGarry.

24 THE COURT: -- did know or are related in some
25 fashion to Officer McGarry?

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1 POTENTIAL JUROR: Correct.

2 THE COURT: Thank you very much for that
3 information.

4 Mr. Powell?

5 POTENTIAL JUROR: Yes, sir. 500.

6 THE COURT: 500.

7 POTENTIAL JUROR: Yes, sir.

8 THE COURT: Okay. And you are responding as to
9 knowing some of the attorneys or at least one of the
10 attorneys --

11 POTENTIAL JUROR: Yes, your Honor.

12 THE COURT: -- involved? Okay. Thank you very
13 much.

14 Yes, sir.

15 POTENTIAL JUROR: Number 461, Bradley Neff.

16 THE COURT: Mr. Neff. And you are responding that
17 you do have a relationship or are related in some form
18 or fashion with one or more of the attorneys involved
19 in this case; is that correct?

20 POTENTIAL JUROR: Not related but relationship.

21 THE COURT: Okay. All right. You have a
22 relationship with one or more of the attorneys. Thank
23 you very much for that information.

24 Is there any member of the jury panel who is
25 related by blood or marriage or enjoys any personal

1 relationship with any law enforcement officer involved
2 or with any member of their family?

3 POTENTIAL JUROR: 670, Karen West. I used to work
4 for --

5 THE COURT: Please. Please just give me your name
6 and number.

7 POTENTIAL JUROR: 670, Karen West.

8 THE COURT: Karen West. And you are responding to
9 the question I just asked? That's correct?

10 POTENTIAL JUROR: (Nodding).

11 THE COURT: Thank you, ma'am.

12 Yes, sir.

13 POTENTIAL JUROR: Number 123, Timothy Cornell.

14 THE COURT: Timothy Cornell. All right.

15 Yes, ma'am.

16 POTENTIAL JUROR: 435, Teresa Mills.

17 THE COURT: Teresa Miller.

18 POTENTIAL JUROR: Mills.

19 THE COURT: Mills; is that right?

20 POTENTIAL JUROR: Yes.

21 THE COURT: Thank you very much.

22 Is there any member of the jury panel who is
23 represented -- oh, I'm sorry. I have another one
24 there.

25 POTENTIAL JUROR: 239.

1 THE COURT: And your name?

2 POTENTIAL JUROR: Heather Gosnell.

3 THE COURT: And you are responding that you are
4 related by blood or marriage or have a personal
5 relationship with the law enforcement officer who was
6 involved in this matter?

7 POTENTIAL JUROR: No. I thought you just said law
8 enforcement.

9 THE COURT: Thank you very much.

10 Is there any member of the jury panel who is
11 represented by or who has in the past been represented
12 by or who has been the subject of a lawsuit brought by
13 any of the attorneys or members of their law firms as
14 far as you know?

15 And there's no response to that.

16 Have you or any member of your immediate family
17 ever had any matters whatsoever handled by the 15th
18 Circuit -- that's Horry and Georgetown Counties --
19 Solicitor's Office?

20 All right, sir. And your name?

21 POTENTIAL JUROR: Brad Bullard.

22 THE COURT: Brad Bullard. And your number?

23 POTENTIAL JUROR: 71.

24 THE COURT: Thank you for that response.

25 Yes, ma'am.

1 POTENTIAL JUROR: Myrranda Gee, 225.

2 THE COURT: Myrranda Gee, 225. All right. Thank
3 you, ma'am.

4 Yes, ma'am.

5 POTENTIAL JUROR: 59, Jan Breadmore.

6 THE COURT: 59, Jan Breadmore. Thank you.

7 POTENTIAL JUROR: 569, Bertha Simmons.

8 THE COURT: Bertha Simmons. All right. Thank
9 you, ma'am.

10 POTENTIAL JUROR: 390, David Lovern.

11 THE COURT: All right, sir.

12 POTENTIAL JUROR: 464, Andrea Nezich.

13 THE COURT: All right.

14 Anyone else? All right.

15 Are you related by blood or marriage or a personal
16 friend or acquaintance of anyone employed as far as you
17 know by the 15th Circuit Solicitor's Office? And.

18 That would be Mr. Powell. Again, your number?

19 POTENTIAL JUROR: 500.

20 THE COURT: 500. All right.

21 Have you or any member of your family ever had any
22 matters -- I'm sorry.

23 POTENTIAL JUROR: Derick Keel, 345.

24 THE COURT: And you were responding that you
25 have -- you're a personal friend or an acquaintance of

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1 someone employed by the 15th Circuit Solicitor's
2 Office?

3 POTENTIAL JUROR: Yes.

4 THE COURT: And your number?

5 POTENTIAL JUROR: 345.

6 THE COURT: 345.

7 Anyone else? Okay.

8 Has any of you or have any of you or a member of
9 your immediate family ever had any matters whatsoever
10 handled by the South Carolina Commission on Indigent
11 Defense?

12 And there is no response to that question.

13 Are you related by blood or marriage to or a
14 personal friend or acquaintance of anyone or have you
15 had any matters -- let me change that.

16 Have you or any member of your immediate family
17 ever had any matters whatsoever handled by the law firm
18 known as Blume, Norris & Franklin-Best LLC?

19 And there's no response to that question.

20 Are you related by blood or marriage to or
21 personal friend or acquaintance of anyone employed by
22 the law firm known as -- I think that's a repeat. I'm
23 sorry.

24 Are you a personal friend or acquaintance of
25 anyone employed by the law firm known as Blume, Norris

1 and Franklin-Best? My first question was whether or
2 not you had ever been represented or had anything
3 handled. The second question is do you know or are you
4 personal friends with anyone employed by that firm.

5 Yes, ma'am -- yes, sir. Your name?

6 POTENTIAL JUROR: 122, David Corbett.

7 THE COURT: Okay. And you are responding that you
8 are related to or an acquaintance of someone employed
9 by that firm?

10 POTENTIAL JUROR: Yes.

11 THE COURT: Thank you, sir.

12 Now, have any of you expressed or formed an
13 opinion in this case or about this case?

14 All right. Everyone stand that's going to.

15 Okay. All right. We're going to start right
16 here. And, again, all I want you to do is just give me
17 your name and your number, please.

18 And we'll start with the lady with the black
19 jumper.

20 Yes, ma'am.

21 POTENTIAL JUROR: Number 250. My name is Hannah
22 Griffin.

23 THE COURT: Hannah Griffin. All right.

24 Yes, ma'am.

25 POTENTIAL JUROR: 494, Abby Pinder-Sink.

1 THE COURT: Abby Pinder-Sink. You may be seated.
2 Yes, ma'am.
3 POTENTIAL JUROR: 632, Christina Trevathan.
4 THE COURT: Christina Trevathan.
5 Yes, sir.
6 POTENTIAL JUROR: 376, Jason Lineweber.
7 THE COURT: Jason?
8 POTENTIAL JUROR: Lineweber.
9 THE COURT: Lineweber. All right, sir.
10 POTENTIAL JUROR: 279, Rebecca Hartnett.
11 THE COURT: Yes, ma'am.
12 POTENTIAL JUROR: 346, Heather Kethan.
13 THE COURT: Thank you.
14 POTENTIAL JUROR: 631, Margaret Torrone.
15 THE COURT: Thank you.
16 Right on the front here.
17 POTENTIAL JUROR: 566, Frank Shields.
18 THE COURT: Frank Shields. Thank you.
19 POTENTIAL JUROR: 349, Donielle King..
20 THE COURT: Danielle?
21 POTENTIAL JUROR: Donielle King.
22 THE COURT: All right.
23 Gentleman right behind her.
24 POTENTIAL JUROR: 431, James Messer.
25 THE COURT: All right, sir.

1 POTENTIAL JUROR: 122 David Corbett.

2 THE COURT: All right, sir.

3 The lady in the green.

4 POTENTIAL JUROR: 321, Janet Huntley.

5 THE COURT: All right.

6 The lady in the green.

7 POTENTIAL JUROR: 89, Janice Carmody.

8 THE COURT: All right. Thank you.

9 POTENTIAL JUROR: 615, Andy Tecco.

10 THE COURT: Thank you.

11 POTENTIAL JUROR: 236, Sharon Goodrow.

12 THE COURT: What was that number again?

13 POTENTIAL JUROR: 236.

14 THE COURT: Thank you.

15 POTENTIAL JUROR: 171, Tara Duffy.

16 THE COURT: Tara Duffy. All right.

17 POTENTIAL JUROR: 500, Beate Rackley.

18 THE COURT: Thank you.

19 Lady in the gold right behind her.

20 POTENTIAL JUROR: 232, Veronica Gilbert.

21 THE COURT: Thank you.

22 Gentleman behind her.

23 POTENTIAL JUROR: 128, Kyle Crawford.

24 THE COURT: Thank you.

25 In the blue shirt.

1 POTENTIAL JUROR: 436, Chad Mims.
2 THE COURT: Thank you.
3 POTENTIAL JUROR: 550, Joseph Schrum.
4 POTENTIAL JUROR: 464, Andrea Nezich.
5 POTENTIAL JUROR: 519, Mona Richardson.
6 THE COURT: And behind her.
7 POTENTIAL JUROR: 313, Mike Hufford.
8 POTENTIAL JUROR: 355, Angela Knight.
9 POTENTIAL JUROR: 331, Michelle Johnson.
10 THE COURT: All right. The gentleman on the back.
11 POTENTIAL JUROR: 284, Christopher Hayes.
12 POTENTIAL JUROR: 531, Donna Rubin.
13 POTENTIAL JUROR: 84, Dean Caldwell.
14 POTENTIAL JUROR: 588, Benjamin Spivey.
15 POTENTIAL JUROR: 411, Joanne McClean.
16 POTENTIAL JUROR: 452, Rebecca Murphy.
17 THE COURT: And back over here.
18 POTENTIAL JUROR: 48, Mark Bostick.
19 THE COURT: Thank you.
20 POTENTIAL JUROR: 36, Perry Bellamy.
21 THE COURT: Thank you.
22 POTENTIAL JUROR: 81, Mike Byork.
23 THE COURT: Thank you.
24 POTENTIAL JUROR: 244, Lauren Graham-Pope.
25 THE COURT: Thank you.

1 POTENTIAL JUROR: 398, Wendy Margulies.

2 POTENTIAL JUROR: 79, Lewis Butler.

3 POTENTIAL JUROR: 273, Barbara Harris.

4 THE COURT: Thank you.

5 POTENTIAL JUROR: 574, Anthony Skipper.

6 THE COURT: Thank you.

7 POTENTIAL JUROR: Number 10, Joseph Allen.

8 THE COURT: Thank you.

9 POTENTIAL JUROR: 201.

10 THE COURT: Thank you. Maurice Fink.

11 POTENTIAL JUROR: 239, Heather Gosnell.

12 THE COURT: Thank you.

13 POTENTIAL JUROR: 487, Sharon Peet.

14 THE COURT: Thank you.

15 POTENTIAL JUROR: 132, Donna Crump.

16 THE COURT: Thank you, Ms. Crump.

17 POTENTIAL JUROR: 47, Scott Bona.

18 THE COURT: Thank you, Mr. Bona.

19 POTENTIAL JUROR: I have no number on my sheet.

20 Morris Livingston.

21 THE CLERK: 381.

22 THE COURT: You are 381, Mr. Livingston. If you
23 would remember that, please. Thank you, sir.

24 POTENTIAL JUROR: 371, Chris Lepera.

25 THE COURT: Thank you.

1 POTENTIAL JUROR: 464 (sic), Brantley Green.

2 POTENTIAL JUROR: 264, Theresa Hall.

3 THE COURT: Thank you.

4 POTENTIAL JUROR: 267, Julie Harbaugh.

5 POTENTIAL JUROR: 165, Marlene Dottellis.

6 THE COURT: Thank you very much.

7 All right. Are any of you aware of any bias or
8 prejudice in this case either for or against the State
9 or for or against the defendant? Please stand.

10 And there was no response to that inquiry.

11 Has any member of the jury panel seen, heard, or
12 read any account of this matter?

13 Okay. I'm not sure it's not easier to go the
14 other way. Let's begin here on my right. If you
15 would, again your name and number. Just your name and
16 number, please.

17 POTENTIAL JUROR: 398, Wendy Margulies.

18 THE COURT: Thank you.

19 POTENTIAL JUROR: Ronald Williamson, 688.

20 POTENTIAL JUROR: Ken Harth, 278.

21 POTENTIAL JUROR: Carla Collins Villalpando, 111.

22 POTENTIAL JUROR: 79, Lewis Butler.

23 POTENTIAL JUROR: 608, Jennifer Strickland.

24 POTENTIAL JUROR: 218, Karie Fussaro.

25 POTENTIAL JUROR: Number 10, Joseph Allen.

1 POTENTIAL JUROR: 574, Anthony Skipper.

2 POTENTIAL JUROR: 273, Barbara Harris.

3 POTENTIAL JUROR: 59, Jan Breadmore.

4 POTENTIAL JUROR: 95, Alisa Cashion.

5 POTENTIAL JUROR: 253, Mary Grissett.

6 POTENTIAL JUROR: 201, Maurice Fink.

7 THE COURT: Yes, ma'am, in the corner.

8 POTENTIAL JUROR: 239, Heather Gosnell.

9 POTENTIAL JUROR: 487, Sharon Peet.

10 THE COURT: I'm sorry?

11 POTENTIAL JUROR: 487, Sharon Peet.

12 THE COURT: Thank you.

13 POTENTIAL JUROR: 354, Angela Knight.

14 THE COURT: Thank you.

15 POTENTIAL JUROR: 132, Donna Crump.

16 POTENTIAL JUROR: 47, Scott Bona.

17 POTENTIAL JUROR: 474 (sic), Cotisha Pagan.

18 POTENTIAL JUROR: 381, Morris Livingston.

19 POTENTIAL JUROR: 371, Chris Lepera.

20 POTENTIAL JUROR: Verlon Vaught. I don't remember
21 my number.

22 THE CLERK: 647.

23 THE COURT: Your number is 647.

24 It's important that we remember these numbers.

25 These are important. That's how we identify you.

1 Yes, sir.

2 POTENTIAL JUROR: 42, Jeffrey Bialecki.

3 POTENTIAL JUROR: Number 605, Michael Stopp.

4 POTENTIAL JUROR: 464 (sic), Brantley Green.

5 POTENTIAL JUROR: 19, Michael Arnold.

6 THE COURT: Yes, sir.

7 POTENTIAL JUROR: 288, Cornelius Hemingway.

8 POTENTIAL JUROR: 623, Kenny Thompkins.

9 THE COURT: Thank you.

10 POTENTIAL JUROR: 165, Marlene Dottellis.

11 POTENTIAL JUROR: 277, Donna Harry.

12 THE COURT: Thank you.

13 POTENTIAL JUROR: 264, Theresa Hall.

14 POTENTIAL JUROR: 267, Julie Harbaugh.

15 POTENTIAL JUROR: 281, Rhonda Hasan.

16 POTENTIAL JUROR: 467, Maryjo Novi.

17 THE COURT: Thank you.

18 POTENTIAL JUROR: 452, Rebecca Murphy.

19 POTENTIAL JUROR: 411, Joanne McClean.

20 POTENTIAL JUROR: 406, William A. Maxey.

21 POTENTIAL JUROR: 84, Dean Caldwell.

22 THE COURT: That takes care of the back row.

23 Let's come around to the front right here.

24 POTENTIAL JUROR: 408, Michelle Mayer.

25 POTENTIAL JUROR: 349, Donielle King.

1 THE COURT: And right behind them, with the --
2 POTENTIAL JUROR: 431, James Messer.
3 THE COURT: There you are.
4 POTENTIAL JUROR: 122, David Corbett.
5 THE COURT: Thank you.
6 POTENTIAL JUROR: 469, Paige Odom.
7 POTENTIAL JUROR: 177, Darlene Edwards.
8 POTENTIAL JUROR: 202, Rebecca Flauto.
9 POTENTIAL JUROR: 566, Frank Shields.
10 THE COURT: Thank you.
11 POTENTIAL JUROR: 119, Rembert Cook.
12 POTENTIAL JUROR: 557, Keith Sevor.
13 THE COURT: Right on the end, the lady.
14 POTENTIAL JUROR: Janice Carmody --
15 THE COURT: No, in front here.
16 POTENTIAL JUROR: Oh, I'm sorry.
17 POTENTIAL JUROR: 321, Janet Huntley.
18 POTENTIAL JUROR: 287, Joe Heindlmeyer.
19 POTENTIAL JUROR: 587, Carrie Spielman.
20 THE COURT: Thank you.
21 POTENTIAL JUROR: 120, Karen Cope.
22 POTENTIAL JUROR: 670, Karen West.
23 THE COURT: Yes, sir.
24 POTENTIAL JUROR: 615, Anthony Tecco.
25 THE COURT: Thank you.

1 POTENTIAL JUROR: 236, Sharon Goodrow.
2 THE COURT: Thank you.
3 POTENTIAL JUROR: 171, Tara Duffy.
4 THE COURT: Thank you.
5 POTENTIAL JUROR: 505, Beate Rackley.
6 THE COURT: Thank you.
7 Yes, ma'am.
8 POTENTIAL JUROR: 208, Kimmarie Forte.
9 THE COURT: Thank you.
10 POTENTIAL JUROR: 600, Michelle Stearns.
11 THE COURT: Thank you.
12 POTENTIAL JUROR: 232, Veronica Gilbert.
13 THE COURT: Yes, ma'am.
14 POTENTIAL JUROR: 65, Beatrice Brown.
15 THE COURT: Thank you.
16 POTENTIAL JUROR: 128, Kyle Crawford.
17 THE COURT: Thank you.
18 POTENTIAL JUROR: 293, Joel High.
19 POTENTIAL JUROR: 210, Robert Fowler.
20 POTENTIAL JUROR: 89, Janice Carmody.
21 THE COURT: Thank you.
22 POTENTIAL JUROR: 519, Mona Richardson.
23 THE COURT: Yes, ma'am.
24 POTENTIAL JUROR: 655, Mary Walker.
25 THE COURT: Thank you.

1 You on the end.

2 POTENTIAL JUROR: 425, Lenore McKenzie-Morris.

3 THE COURT: Thank you.

4 POTENTIAL JUROR: 342, Thomas Jordan.

5 THE COURT: Thank you.

6 POTENTIAL JUROR: 219, Eric Galley.

7 THE COURT: Yes, sir.

8 POTENTIAL JUROR: 313, Michael Hufford.

9 THE COURT: All right. And the lady right behind
10 you there.

11 POTENTIAL JUROR: 579, Marilyn Smith.

12 POTENTIAL JUROR: 500, Jim Powell.

13 POTENTIAL JUROR: 154, Martha Demeo.

14 POTENTIAL JUROR: 355, Pamela Knight.

15 POTENTIAL JUROR: 331, Michelle Johnson.

16 POTENTIAL JUROR: Erica Westmoreland.

17 THE COURT: Pardon?

18 POTENTIAL JUROR: Erica Westmoreland.

19 THE COURT: Number?

20 POTENTIAL JUROR: Don't know it.

21 THE COURT: Did we get her number?

22 THE CLERK: 672, I think she said.

23 THE COURT: Thank you.

24 Who on the back row has not answered?

25 Yes, sir.

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1 POTENTIAL JUROR: 84, Dean Caldwell.
2 POTENTIAL JUROR: 531, Donna Rubin.
3 POTENTIAL JUROR: 578, Edward Smith.
4 POTENTIAL JUROR: 628, Laura Tobey.
5 THE COURT: Thank you.
6 POTENTIAL JUROR: 284, Christopher Hayes.
7 POTENTIAL JUROR: 391, Tom Lovett, Jr.
8 THE COURT: Okay.
9 Yes, sir.
10 POTENTIAL JUROR: 48, Mark Bostick.
11 THE COURT: Thank you.
12 POTENTIAL JUROR: 380, David Livingston.
13 THE COURT: Thank you.
14 Yes, ma'am.
15 POTENTIAL JUROR: 279, Rebecca Hartnett.
16 THE COURT: Thank you.
17 POTENTIAL JUROR: 376, Jason Lineweber.
18 THE COURT: Thank you.
19 POTENTIAL JUROR: 632, Christina Trevathan.
20 THE COURT: Thank you.
21 POTENTIAL JUROR: 435, Teresa Mills.
22 THE COURT: Thank you.
23 POTENTIAL JUROR: 494, Abby Pinder-Sink.
24 THE COURT: Yes, ma'am.
25 POTENTIAL JUROR: 235, Joe Glaven.

1 THE COURT: Thank you.
2 POTENTIAL JUROR: 250, Hannah Griffin.
3 THE COURT: Thank you.
4 POTENTIAL JUROR: 175, Kareem Easton.
5 THE COURT: Kareem?
6 POTENTIAL JUROR: Easton.
7 THE COURT: Easton. Okay.
8 Yes, ma'am.
9 POTENTIAL JUROR: 346, Heather Kethan.
10 POTENTIAL JUROR: 631, Margaret Torrone.
11 POTENTIAL JUROR: 514, Herman Rice.
12 POTENTIAL JUROR: 113, Dawn Collins.
13 POTENTIAL JUROR: 597, Lesley Standish.
14 POTENTIAL JUROR: 525, Vicky Rockey.
15 POTENTIAL JUROR: 495, Kelly Pirc.
16 POTENTIAL JUROR: 56, Donna Brady.
17 POTENTIAL JUROR: Anthony Jefferson, 326.
18 POTENTIAL JUROR: Donald Trunkett, 637.
19 POTENTIAL JUROR: Jodi Moore, 446.
20 POTENTIAL JUROR: 36, Perry Bellamy.
21 POTENTIAL JUROR: 388, Michelle Loscalzo.
22 POTENTIAL JUROR: 413, Stacey McClure.
23 POTENTIAL JUROR: 651, Caroline Viola.
24 POTENTIAL JUROR: 193, Kenneth Farmer, Jr.
25 POTENTIAL JUROR: 123, Timothy Cornell.

1 POTENTIAL JUROR: 81, Michael Byork.

2 POTENTIAL JUROR: 244, Lauren Graham-Pope.

3 THE COURT: And is that everybody?

4 I'm sorry, I didn't get that one.

5 POTENTIAL JUROR: 280, Tonya Harvey.

6 THE COURT: Thank you.

7 POTENTIAL JUROR: 397, Sherretta Magness.

8 THE COURT: All right. Based on your account that
9 you have heard, have you formed or expressed an opinion
10 of this matter?

11 Okay. Now, again, I do not want you to express to
12 me what your opinion may be. We will explore that
13 later. What I want to know is just whether you have
14 formed or expressed any opinion about this case.

15 Yes, ma'am, if you would, name and number, please.

16 POTENTIAL JUROR: 398, Wendy Margulies.

17 POTENTIAL JUROR: Ronald Williamson, 688.

18 POTENTIAL JUROR: Ken Harth, 278.

19 POTENTIAL JUROR: 79, Lewis Butler.

20 POTENTIAL JUROR: Number 10, Joseph Allen.

21 POTENTIAL JUROR: 574, Anthony Skipper.

22 POTENTIAL JUROR: 273, Barbara Harris.

23 POTENTIAL JUROR: 201, Maurice Fink.

24 POTENTIAL JUROR: 253, Mary Grissett.

25 POTENTIAL JUROR: 487, Sharon Peet.

1 POTENTIAL JUROR: /OEUG /OEUG.
2 POTENTIAL JUROR: 132, Donna Crump.
3 POTENTIAL JUROR: 47, Scott Bona.
4 POTENTIAL JUROR: 381, Morris Livingston.
5 POTENTIAL JUROR: 371, Chris Lepera.
6 POTENTIAL JUROR: 19, Michael Arnold.
7 POTENTIAL JUROR: 464 (sic), Brantley Green.
8 POTENTIAL JUROR: 277, Donna Harry..
9 POTENTIAL JUROR: 264, Theresa Hall.
10 POTENTIAL JUROR: 267, Julie Harbaugh.
11 POTENTIAL JUROR: 165, Marlene Dottellis.
12 THE COURT: All right. Let's come around back up
13 front.
14 POTENTIAL JUROR: 408, Michelle Mayer.
15 POTENTIAL JUROR: 349, Donielle King.
16 POTENTIAL JUROR: 566, Frank Shields.
17 POTENTIAL JUROR: 431, James Messer.
18 POTENTIAL JUROR: 122, David Corbett.
19 POTENTIAL JUROR: 469, Paige Odom.
20 POTENTIAL JUROR: 177, Dorothy Edwards.
21 POTENTIAL JUROR: 505, Beate Rackley.
22 POTENTIAL JUROR: 171, Tara Duffy.
23 POTENTIAL JUROR: 321, Janet Huntley.
24 POTENTIAL JUROR: 615, Anthony Tecco.
25 POTENTIAL JUROR: 236, Sharon Goodrow.

1 POTENTIAL JUROR: 232, Veronica Gilbert.
2 POTENTIAL JUROR: 128, Kyle Crawford.
3 POTENTIAL JUROR: 210, Robert Fowler.
4 POTENTIAL JUROR: 89, Janice Carmody.
5 POTENTIAL JUROR: 519, Mona Richardson.
6 POTENTIAL JUROR: 425, Lenore McKenzie-Morris.
7 POTENTIAL JUROR: 342, Thomas Jordan.
8 POTENTIAL JUROR: 219, Eric Galley.
9 POTENTIAL JUROR: 313, Michael Hufford.
10 POTENTIAL JUROR: 355, Angela Knight.
11 POTENTIAL JUROR: 331, Michelle Johnson.
12 POTENTIAL JUROR: 452, Rebecca Murphy.
13 POTENTIAL JUROR: 411, Joanne McLean.
14 POTENTIAL JUROR: 588, Benjamin Spivey.
15 POTENTIAL JUROR: 84, Dean Caldwell.
16 POTENTIAL JUROR: 531, Donna Rubin.
17 POTENTIAL JUROR: 284, Christopher Hayes.
18 POTENTIAL JUROR: 391, Tom Lovett.
19 POTENTIAL JUROR: 48, Mark Bostick.
20 POTENTIAL JUROR: 250, Hannah Griffin.
21 POTENTIAL JUROR: 494, Abby Pinder-Sink.
22 POTENTIAL JUROR: 632, Christina Trevathan.
23 POTENTIAL JUROR: 376, Jason Lineweber.
24 POTENTIAL JUROR: 279, Rebecca Hartnett.
25 POTENTIAL JUROR: 514, Herman Rice.

1 POTENTIAL JUROR: 631, Margaret Torrone.

2 POTENTIAL JUROR: 346, Heather Kethan.

3 POTENTIAL JUROR: 175, Kareem Easton.

4 POTENTIAL JUROR: 113, Dawn Collins.

5 POTENTIAL JUROR: 597, Lesley Standish.

6 POTENTIAL JUROR: 525, Vicky Rockey.

7 POTENTIAL JUROR: 495, Kelly Pirc.

8 POTENTIAL JUROR: 56, Donna Brady.

9 POTENTIAL JUROR: 637, Donald Trunkett.

10 POTENTIAL JUROR: 446, Jodi Moore.

11 POTENTIAL JUROR: 36, Perry Bellamy.

12 POTENTIAL JUROR: 388, Michelle Loscalzo.

13 POTENTIAL JUROR: 193, Kenneth Farmer, Jr.

14 POTENTIAL JUROR: 123, Kenneth E. Cornell.

15 POTENTIAL JUROR: 81, Mike Byork.

16 POTENTIAL JUROR: 244, Lauren Graham-Pope.

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

18 Do any of you know any reason whatsoever why you

19 could not give a fair trial to both the State and the

20 defendant in this matter with special emphasis upon you

21 being a fair and impartial juror?

22 All right. Let's start again.

23 POTENTIAL JUROR: 398, Wendy Margulies.

24 POTENTIAL JUROR: 79, Lewis Butler.

25 POTENTIAL JUROR: 345, Derick Keel.

1 POTENTIAL JUROR: Number 10, Joseph Allen.
2 POTENTIAL JUROR: 574, Anthony Skipper.
3 POTENTIAL JUROR: 273, Barbara Harris.
4 POTENTIAL JUROR: 201, Maurice Fink.
5 POTENTIAL JUROR: 239, Heather Gosnell.
6 POTENTIAL JUROR: 487, Sharon Peet.
7 POTENTIAL JUROR: 132, Donna Crump.
8 POTENTIAL JUROR: 47, Scott Bona.
9 POTENTIAL JUROR: 271, Chris Lepera.
10 POTENTIAL JUROR: 381, Morris Livingston.
11 POTENTIAL JUROR: Vivian Scott. I don't have my
12 number.
13 THE COURT: Did you give me your number, ma'am?
14 POTENTIAL JUROR: They didn't give me a number.
15 They just gave me a paper. Vivian Scott.
16 THE COURT: Vivian Scott?
17 POTENTIAL JUROR: Yes.
18 THE COURT: All right. We'll get you a number
19 right now. 554 will be your number.
20 Yes, ma'am.
21 POTENTIAL JUROR: 647, Verlon Vaught.
22 POTENTIAL JUROR: 464, Brantley Green.
23 POTENTIAL JUROR: 277, Donna Harry.
24 POTENTIAL JUROR: 264, Theresa Hall.
25 POTENTIAL JUROR: 267, Judy Harbaugh.

1	POTENTIAL JUROR: 165, Marlene Dottellis.
2	POTENTIAL JUROR: 467, Maryjo Novi.
3	POTENTIAL JUROR: 291, Kayla Herriott.
4	POTENTIAL JUROR: 408, Michelle Mayer.
5	POTENTIAL JUROR: 349, Donielle King.
6	POTENTIAL JUROR: 566, Frank Shields.
7	POTENTIAL JUROR: 431, James Messer.
8	POTENTIAL JUROR: 122, David Corbett.
9	POTENTIAL JUROR: 479, Paige Odom.
10	POTENTIAL JUROR: 177, Darlene Edwards.
11	POTENTIAL JUROR: 505, Beate Rackley.
12	POTENTIAL JUROR: 171, Tara Duffy.
13	POTENTIAL JUROR: 321, Janet Huntley.
14	POTENTIAL JUROR: 596, Michael Stamm.
15	POTENTIAL JUROR: 615, Anthony Tecco.
16	POTENTIAL JUROR: 236, Sharon Goodrow.
17	POTENTIAL JUROR: 232, Veronica Gilbert.
18	POTENTIAL JUROR: 128, Kyle Crawford.
19	POTENTIAL JUROR: 89, Janice Carmody.
20	POTENTIAL JUROR: 519, Mona Richardson.
21	POTENTIAL JUROR: 655, Mary Walker.
22	POTENTIAL JUROR: 313, Michael Hufford.
23	POTENTIAL JUROR: 355, Pamela Knight.
24	POTENTIAL JUROR: 331, Michelle Johnson.
25	POTENTIAL JUROR: 588, Benjamin Spivey.

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1 POTENTIAL JUROR: 84, Dean Caldwell.
2 POTENTIAL JUROR: 531, Donna Rubin.
3 POTENTIAL JUROR: 284, Christopher Hayes.
4 POTENTIAL JUROR: 391, Tom Lovett, Jr.
5 POTENTIAL JUROR: 48, Mark Bostick.
6 POTENTIAL JUROR: 250, Hannah Griffin.
7 POTENTIAL JUROR: 494, Abby Pinder-Sink.
8 POTENTIAL JUROR: 632, Christina Trevathan.
9 POTENTIAL JUROR: 376, Jason Lineweber.
10 POTENTIAL JUROR: 279, Rebecca Hartnett.
11 POTENTIAL JUROR: 175, Kareem Easton.
12 POTENTIAL JUROR: 346, Heather Kethan.
13 POTENTIAL JUROR: 631, Margaret Torrone.
14 POTENTIAL JUROR: 113, Dawn Collins.
15 POTENTIAL JUROR: 56, Donna Brady.
16 POTENTIAL JUROR: 637, Donald Trunkett.
17 POTENTIAL JUROR: 36, Perry Bellamy.
18 POTENTIAL JUROR: 388, Michelle Loscalzo.
19 POTENTIAL JUROR: 71, Brad Bullard.
20 POTENTIAL JUROR: 123, Timothy Cornell.
21 POTENTIAL JUROR: 244, Lauren Graham-Pope.
22 POTENTIAL JUROR: 225, Myrranda Gee.
23 THE COURT: All right. Is that everyone?
24 All right. Let me talk to you a moment about the
25 procedure that we will follow now.

1 Whenever a criminal case comes to court by way of
2 a legal indictment, called an indictment, a document
3 called an indictment, let me explain that that
4 indictment is not evidence of any kind whatsoever and
5 should not be considered by you as evidence.

6 The fact the defendant has been indicted or an
7 indictment exists is nothing more than part of the
8 process by which the defendant is put on notice of the
9 charges against him, and it brings the charge or the
10 case to trial. It's merely a vehicle that allows a
11 case to come to the circuit court to be tried. It is
12 not evidence. Nothing contained in it is evidence.
13 And if you are selected as a juror in this case, you
14 should not consider the statement of facts in the
15 indictment as evidence in the case.

16 I tell you that because I'm going to read to you
17 what the indictment alleges. The indictment, as I have
18 told you earlier, charges the defendant, Luzenski Allen
19 Cottrell, with murder, and it alleges -- and, again,
20 these are mere allegations that the State must prove
21 beyond a reasonable doubt -- Luzenski Allen Cottrell
22 did in Horry County on or about the 29th day of
23 December 2002 willfully, feloniously and intentionally
24 with malice aforethought kill the victim, Joseph F.
25 McGarry, Jr., a sworn law enforcement officer employed

1 by the Myrtle Beach Police Department and while on
2 active duty by means of shooting PFC McGarry in the
3 face with a .45 caliber semiautomatic handgun and PFC
4 McGarry did die as a proximate result thereof in Horry
5 County on or about December the 29th, 2002 in violation
6 of Section 16-3-10 South Carolina Code of Laws 1976 as
7 amended and the common law of South Carolina. That is
8 what the indictment alleges.

9 I want to tell you again that the defendant is
10 presumed innocent unless and until the State has proved
11 his guilt of murder as I will define it for you beyond
12 a reasonable doubt to all 12 jurors who are seated
13 unanimously.

14 If and only if the State is able to overcome the
15 presumption of innocence with proof of guilt beyond a
16 reasonable doubt, this Court will take at least a
17 24-hour recess, and then we'll return for a sentencing
18 proceeding in which the State will seek the death
19 penalty. But, again, I am not suggesting that we will
20 ever reach that point. It is for you, the jury, to
21 make that determination as to whether or not the
22 defendant, Mr. Cottrell, is in fact guilty of the
23 offense of murder.

24 Because of that, I and the parties are required by
25 law to question you concerning your views about the

1 death penalty in order to determine whether you are
2 qualified to serve as a juror in this case.

3 Please understand when these questions are put to
4 you, there are no right answers. There are no wrong
5 answers. The attorneys who are involved in this case
6 only seek to understand how you feel about that issue.
7 We simply need to know your views, whatever they are.

8 You are not to infer from these questions about
9 possible punishment, as I have said, that Mr. Cottrell
10 is guilty. That is an issue for you to determine at
11 the conclusion of all the trial's evidence, arguments
12 by counsel and instructions by the Court.

13 Solely to assist you in understanding the charge
14 during the questioning concerning your qualifications
15 as a juror, I'm going to provide you with the following
16 simple instructions. There will be a more complete, a
17 more detailed instruction if you are seated as a juror
18 at the end of the trial.

19 But murder is the killing of a person with malice
20 aforethought, either expressed or implied. And malice
21 is something which springs from wickedness, from
22 hatred, from depravity, and from a heart devoid of
23 social duty and fatally bent on mischief. A person
24 cannot be found to act with malice aforethought if
25 their actions were taken with just cause or legal

1 defense or provocation.

2 Now, ladies and gentlemen, I'll remind you again
3 that an indictment, as I have said, is not proof of any
4 kind. It is simply a piece of paper that has the
5 charge written on it. To the charge contained in this
6 indictment, Mr. Cottrell has pled not guilty and has
7 requested a jury trial at the hands of 12 jurors to be
8 drawn from you. And, again, that plea of not guilty
9 places the burden on the State of South Carolina to
10 prove the allegations and each element of the offense
11 beyond a reasonable doubt.

12 In this case, as I have said, the State of South
13 Carolina is seeking the death penalty. The law in
14 South Carolina provides that the State cannot seek the
15 death penalty in every murder case. That is not
16 permitted. The State can only seek the death penalty
17 in a case where there is a murder and the murder is
18 accompanied by at least one aggravating circumstance.

19 The term "aggravating circumstance" is a term of
20 art in the law. And aggravating circumstances are
21 specifically defined in the Code of Laws of South
22 Carolina. The State, then, can only seek the death
23 penalty in a case where there is a murder and the
24 murder is accompanied by at least one aggravating
25 circumstance identified by the law. By the term

1 "aggravate" we mean to make worse or exacerbate the
2 circumstance.

3 Under the law, if we go into the second phase or
4 the sentencing phase, the jury, even if it finds an
5 aggravating circumstance, is required to consider any
6 mitigating circumstance of any nature whatsoever.
7 "Mitigating" means to lessen, to reduce fault and
8 culpability, to reduce the punishment.

9 If we reach the second phase or the sentencing
10 phase, the jury, after considering all the evidence,
11 could impose the death penalty only if the jury
12 unanimously finds the existence of an aggravating
13 circumstance beyond a reasonable doubt.

14 In the event the jury under the law determines
15 that the death penalty is appropriate, it is required
16 that each member of the jury sign his or her name to
17 the verdict form. The jury further has the authority
18 to sentence the defendant to life imprisonment
19 regardless of the finding of an aggravating
20 circumstance.

21 I reiterate to you that we reach the second phase
22 only if the defendant is found guilty of murder in the
23 first part of the trial. If the defendant is not
24 convicted of murder, that would conclude the trial.

25 I speak to you about the death penalty only

1 because it would be an issue if you first find the
2 defendant guilty of the crime of murder. Because this
3 is a capital case, we will take the time to question
4 you individually, privately and under oath. We will
5 spend a couple of days going through this process.

6 There's -- thus far I've only asked you questions
7 regarding your general eligibility to serve as jurors
8 in the circuit court. When I question you
9 individually, we'll be discussing specific questions.
10 For example, whether you are related to or acquainted
11 with any of the witnesses in this case.

12 We anticipate that you may have been exposed to
13 publicity about this case. And that's expected.
14 Please do not worry too much about that. When you are
15 questioned, we want to know what you recall from the
16 press or others about this case and whether you have
17 already formed an opinion about the facts of the case
18 and whether you could serve as a fair and impartial
19 juror in this case.

20 For those of you who will serve in this case, you
21 must accept and apply the law exactly as I give it to
22 you. It would be a further part of your oath to find
23 the truth from the evidence presented in the courtroom.
24 And you are not permitted to be swayed or influenced by
25 anything occurring outside of this courtroom such as

1 the publicity regarding this case.

2 Ladies and gentlemen, I'm going to question you
3 regarding your view on the death penalty. Please
4 understand again that there are no right or wrong
5 answers. I trust you will understand that we must have
6 a full and honest disclosure from you to be able to
7 select a fair and impartial jury.

8 In questioning each of you individually, here is
9 what we will do. Your names will be randomly drawn and
10 selected in groups or panels of six. We will be doing
11 panels of six every 90 minutes to two hours to keep you
12 from waiting and staying at the courtroom. We will
13 assign you a specific time to return. Each panel will
14 be given a specific time to return. And we will talk
15 to each of you individually until a panel of qualified
16 jurors has been selected. We ask for your patience and
17 cooperation. We will proceed in that fashion until we
18 have selected a jury.

19 It is customary that in a case such as this the
20 jury would be sequestered. Therefore, as I mentioned
21 earlier, the Court has decided that the jury which is
22 ultimately selected will be sequestered until the trial
23 is over.

24 What sequestration means is that you will report
25 to the courthouse for jury selection. And if you are

1 put on the jury, then you stay with us until the trial
2 is concluded. This means that you will spend the night
3 at a hotel at the County's expense, and you will also
4 be fed at local restaurants at the County's expense.
5 During sequestration your activities and who you can
6 talk to will be somewhat controlled. Please don't be
7 alarmed by that. This is a process we have been
8 following in South Carolina for many years, and we have
9 become very capable and experienced at that, and we
10 have capable and experienced people from the South
11 Carolina Law Enforcement Division who will be handling
12 that process so that it will not be too big a burden on
13 you or we certainly hope it will not.

14 However, until the jury is selected, you will not
15 be sequestered. In that regard from this moment on, I
16 am ordering you not to read any news accounts or watch
17 or listen to any television or radio accounts about
18 this case. Do not talk to your fellow prospective
19 jurors or anyone about this case including members of
20 your own family. If anyone, as I have said earlier,
21 contacts you or tries to contact you about this case,
22 get the name of that individual who contacted you and
23 report that to me immediately.

24 I cannot overemphasize the importance of those
25 instructions. Do not speak to anybody about the case

1 or any potential issue in the case. Do not expose
2 yourself to any publicity about this case.

3 I recognize that some of you may already have some
4 information about the case. That most assuredly is the
5 case here. And we're going to talk about that with you
6 privately. But from this moment on do not gain any
7 other information. Do not discuss the case with anyone
8 or expose yourself to any publicity.

9 Part of my instruction to you, of course, includes
10 the admonishment not to undertake any investigation as
11 to the law or the facts, the location of the alleged
12 crime.

13 Now, let me say this. I am going to have the
14 clerk select the panels in just a moment. But I am
15 required to administer a second oath to you at this
16 time regarding your obligations to honor the
17 instructions I have given you.

18 So I'm going to ask you to please all stand and
19 raise your right hand. Listen very carefully.

20 Will you faithfully comply with the instruction
21 the Court has given you including your duty not to
22 expose yourself to any future or further information
23 about the case from the press or any other person? If
24 you agree to be bound by this oath, please say "I will"
25 and have a seat. If you do not take the oath, please

1 remain standing. Will you?

2 If you have taken the oath, please be seated.

3 Yes, ma'am.

4 POTENTIAL JUROR 398: I can only affirm.

5 THE COURT: Your affirmation is accepted by the
6 Court. Thank you very much.

7 Please remember that under your oath as a
8 potential juror in this case you are prohibited
9 again -- I can't stress it too much -- from watching,
10 reading or listening to any news about this case. And,
11 again, do not discuss it with anyone. Do not do any
12 investigation whatsoever on your own part. A failure
13 to do so would be considered as contempt of my order,
14 contempt of court.

15 Now, I know you will all accept the challenges of
16 citizenship in this system of ours and the
17 responsibilities that go along with it. I want to
18 thank you for your patience. This is a very, very
19 important case. We will do our best to work with you
20 in good faith and in a professional manner. We will do
21 our best to put you at ease. I assure you that you
22 will be treated with courtesy and respect. If that is
23 not the case, bring that to my attention and I promise
24 you I will take care of that.

25 I have tried to arrange the scheduling of the jury

1 panels to minimize inconvenience to you. You must
2 return to the courtroom at the set time. You're going
3 to be given a set time. It is imperative that you be
4 prompt and that you attend at the time you are given.

5 In the meantime, if you have any questions,
6 please -- I pointed out several bailiffs and sheriff's
7 deputies that are around. If you have got any problems
8 or questions you need to bring to my attention, those
9 folks will certainly assist you in doing that.

10 Thank you very much. The clerk will now call the
11 roll and assign the panel.

12 (WHEREUPON, a bench conference was held off the
13 record in the presence of the jury, but out of the
14 hearing of the jury, during which time the following
15 statement was made for the record:

16 MR. MCGUIRE: Yeah. I mean, I just, if you
17 don't mind, I'm just going to put on the record
18 that we made a request to take the jurors that
19 indicated they could not be fair either to the
20 State or the defense, to take them and excuse them.
21 The prosecutor's position is that he wants to have
22 a chance to voir dire them and --

23 THE COURT: He does have that opportunity.

24 MR. MCGUIRE: He does that have right. I don't
25 disagree with that. And that based on the fact

1 that we have about 270 people present and about 70
2 indicated they could not be fair, that it would be
3 a violation of Mr. Cottrell's constitutional rights
4 to a fair trial. It would be a violation of both
5 substantive and procedurally due process under the
6 Fifth and --

7 MS. NORRIS: Keep your voice down. We are very
8 close to the jury.

9 MR. MCGUIRE: -- that it would be a violation
10 of his Fifth and 14th Amendment due process rights
11 and Sixth Amendment right to an unbiased jury not
12 to have that procedural prophylactic protection.)

13 THE COURT: All right, ladies and gentlemen.
14 Thank you for your patience. As I said, the clerk is
15 going to have this random selection of panels. Once
16 you learn which panel you are on, you will be free to
17 go.

18 Do you anticipate we'll be able to do a panel
19 today?

20 MR. RICHARDSON: I think, your Honor, if the
21 defense and your Honor is okay with that, I think we
22 could probably do one.

23 Is that right, Madam Clerk?

24 THE CLERK: Well, it's going to take us about
25 30 minutes because I'm going to have about 35 panels to

1 pull.

2 THE COURT: Then you have got to go through each
3 panel.

4 THE CLERK: I have got to go through each panel
5 and put what number it is, what date, time they have to
6 be back --

7 THE COURT: Let's start in the morning. Very
8 well.

9 POTENTIAL JUROR: Your Honor, I have a personal
10 and private matter that I would like to speak with you
11 about.

12 THE COURT: I tell you what I'm going to do. I'm
13 going to release you in just a moment.

14 Does it involve your service?

15 POTENTIAL JUROR: Yes. It's my availability..

16 THE COURT: Counsel, come here.

17 Yes, sir. Come around here.

18 Yes, sir.

19 POTENTIAL JUROR: Your Honor, I have a similar
20 issue about my availability.

21 THE COURT: We can't get into all these issues.
22 It involves this gentleman's health.

23 POTENTIAL JUROR: My son's health.

24 THE COURT: Yes. Your son?

25 POTENTIAL JUROR: My son is being treated for

1 cancer for the last 12 months in Sloan Kettering. Here
2 is his schedule. I have to pick him up tomorrow. Go
3 to New York, pick him up.

4 THE COURT: Do you have any objection?

5 MR. McGUIRE: No objection.

6 THE COURT: You're excused. Thank you.

7 What was your name and number?

8 POTENTIAL JUROR: 199.

9 THE CLERK: I have one juror that has an issue on
10 the 18th, September 18th, and wants to make sure that I
11 can put him in a different panel that he doesn't have
12 to be here the 18th. He has a meeting with his child.

13 THE COURT: Can't you arrange that?

14 THE CLERK: I can -- I just want to make sure.

15 THE COURT: It doesn't make any difference to me
16 when he's on the panel.

17 THE CLERK: Just because if he pops up prior to
18 the 18th, I'm going to have to pull him out and put him
19 back in.

20 THE COURT: We understand.

21 I've got to take a break. We'll be right back.

22 (WHEREUPON, recess taken from 3:36 p.m.
23 to 3:38 p.m.)

24 THE CLERK: I have four students, full-time
25 students. Number 3, Jessica Adams. You may leave.

1 Thank you.

2 Number 35, Penny Bellamy. You may leave. Thank
3 you.

4 Number 495, Kelly Pirc. You may leave.

5 Number 576, Alfreda Small, you may leave. Thank
6 you.

7 These four have been excused. They're full-time
8 students with confirmation.

9 THE COURT: Very well. Now you will be about
10 35 minutes?

11 THE CLERK: Give me about 30 minutes.

12 THE COURT: Okay. I'm going to excuse this jury
13 for about 30 minutes, let you take a break.

14 If you want to take a break, be back in here at
15 about ten after.

16 (WHEREUPON, the prospective jury panel exited the
17 courtroom at 3:42 p.m.)

18 (WHEREUPON, recess taken from 3:42 p.m.
19 to 4:05 p.m.)

20 THE COURT: As we call your name, please come
21 forward as best you can right here and the clerk will
22 give you a form which tells you when you're expected to
23 return. You will come at your assigned time to right
24 up here on the third floor.

25 As you get off the elevator, you will note there

1 will be someone there at a table. That person will
2 give you the two forms we talked about, one that asks
3 what kind of juror you are, and the second is a witness
4 list where you will let us know if you know anyone on
5 that witness list. You will then be taken into a
6 waiting area so you will have an opportunity to
7 complete those two forms, and then you will wait there
8 until you are called into the courtroom one at a time
9 for individual voir dire.

10 Madam Clerk.

11 THE CLERK: Yes, sir.

12 THE COURT: Again, if your name is called, just
13 please come forward.

14 THE CLERK: And I will disburse copies to all
15 parties at the end.

16 Okay. Number 5 -- these six names that I will
17 call, will you please stand and come forward. And
18 y'all are to report back Tuesday morning,
19 September 16th, in the morning at 9 o'clock a.m. And
20 you do need to be here at least 30 minutes prior to
21 that.

22 You will come upstairs to the third floor up here
23 to the desk, and someone will guide you where you need
24 to be. Please be here 30 minutes in advance for all
25 panels that I call. Whatever time I give you, try to

1 be here 30 minutes earlier.

2 Okay. Number 512, Darrel Reid. 512, Darrel Reid.

3 He said there's still a bunch downstairs.

4 THE COURT: Well, let's just wait a moment and
5 make sure everyone gets here.

6 THE COURT: 512, Darrel Reid.

7 Come around, Mr. Reid, right up here.

8 THE CLERK: 132, Donna Crump.

9 THE COURT: Let's get them all up here at one
10 time.

11 THE CLERK: 467, Maryjo Novi; 450, Dawn Moses;
12 148, Daniel Decker; and 218, Karie Fussaro.

13 THE COURT: All right. You will be the first
14 panel. Please be here in the morning for individual
15 voir dire at 9 o'clock. The clerk asked that you be
16 here at least 30 minutes early -- that would be 8:30 --
17 so that you could complete the two forms that she will
18 have for you. Please be prompt. Thank you very much.
19 You are excused for the day.

20 THE CLERK: The next panel is panel two. They are
21 to report -- their questions start at 11:00. I ask you
22 to please be here by 10:30 a.m. on Tuesday,
23 September 16th.

24 This is panel two scheduled for 11 o'clock a.m.:
25 469, Paige Odom; 243, William A. Graham, Jr.; 264,

1 Theresa Hall; 337, Anthony S. Jones; 326, Anthony
2 Jefferson; and 27, Justin Barney.

3 THE COURT: Please remember that you're to be here
4 at 10:30 in the morning. Again, come up to the third
5 floor. There will be someone to meet you there. They
6 will take you to a waiting room. You will be given
7 your two forms to fill out, some writing materials, and
8 you will await there until we bring you in individually
9 for voir dire. Remember, 8:30 tomorrow morning. Thank
10 you.

11 THE CLERK: No.

12 THE COURT: 9:30 -- 10:30. I have everybody here
13 at 8:30.

14 THE CLERK: He was just seeing if y'all were
15 paying attention.

16 This here is for panel three, who is to report
17 Tuesday. Scheduled time is Tuesday, September 16th,
18 1:30 p.m. Please be here no later than 1:00 p.m.:
19 554, Vivian Scott; 55, William Bradshaw; 505, Beate
20 Rackley; 342, Thomas D. Jordan; 478, Lisa A. Parsons;
21 and 18, William Argenti.

22 THE COURT: 1 o'clock tomorrow afternoon, please.
23 There will be someone to meet you out in the hallway,
24 and they will take you to where you're supposed to be.
25 Thank you very much.

1 THE CLERK: This is panel four scheduled for 3:30
2 on Tuesday, September 16th. Please be here no later
3 than 3:00 p.m.: 637, Donald Trunkett; 236, Sharon
4 Goodrow; 83, William Caddell; 208, Kimmarie Forte; 380,
5 David W. Livingston; and 631, Margaret D. Torrone.

6 THE COURT: Is she here?

7 THE CLERK: Yes, she is.

8 THE COURT: And remember, this panel should be
9 here by 3 o'clock.

10 I believe that's right, Madam Clerk?

11 THE CLERK: They need to be here by 3 o'clock,
12 yes, sir.

13 THE COURT: Thank you. We will see you in the
14 morning -- or tomorrow afternoon. Thank you.

15 THE CLERK: The next panel is panel five for
16 5:30 p.m. on Tuesday, September 16th.

17 Please be here no later than 5 p.m. tomorrow,
18 Tuesday, September 16th: 235, Joseph Glavan, Jr.; 232,
19 Veronica Gilbert; 282, Mimoza Hasko; 43, Shannon
20 Bizyah; 171, Tara Duffy; and 128, Kyle Crawford.

21 THE COURT: And do they all have their sheets now?

22 THE CLERK: Yes, sir.

23 THE COURT: Okay. And we will look to see you
24 tomorrow afternoon at 5 o'clock. Thank you. You are
25 excused until then.

1 The next panel will need to come at 8:30 on
2 Wednesday?

3 THE CLERK: That's correct. The next panel is
4 panel six scheduled for 9 o'clock on Wednesday,
5 September 17th. Please be here no later than 8:30 on
6 Wednesday, September 17th: 647, Verlon Vaught; 248,
7 Fred Green; 608, Jennifer Strickland; 287, Joseph
8 Heindlmeyer; 277, Donna Harry; and 490, John Phelan.

9 THE COURT: All right. And this group will be
10 here at 8:30.

11 THE CLERK: Yes, sir, on Wednesday morning.

12 THE COURT: 8:30 on Wednesday. Thank you very
13 much.

14 THE CLERK: This is panel seven. They're
15 scheduled for 11:00 am on Wednesday, September 17th;
16 asked to report at 10:30 on Wednesday, September 17th:
17 531, Donna Rubin; 569, Bertha Simmons; 319, Crystal
18 Hummer; 280, Tonya Harvey; 452, Rebecca Murphy. And I
19 have a gentleman to join you, Number 19, Michael
20 Arnold.

21 THE COURT: All right. And this panel will be
22 here at 10:30 on Wednesday; is that correct?

23 THE CLERK: Yes, sir.

24 THE COURT: Thank you. You are excused for the
25 day.

1 THE CLERK: This is panel eight scheduled for
2 Wednesday, September 17th at 1:30 p.m. Please be here
3 no later than 1:00 p.m.: 521, Margie Ritter; 600,
4 Michelle Stearns; 500, Jimmy C. Powell, Jr.; 698, Jason
5 Youmans, Sr.; 566, Frank Shields; and 371, Christopher
6 Lepera.

7 THE COURT: And you folks will be here on
8 Wednesday at 1 o'clock, please. Again, just come up to
9 the third floor. There will be someone to meet you and
10 greet you and take you where you need to be. 1:00 on
11 Wednesday.

12 THE CLERK: This panel is scheduled for Wednesday,
13 September 17th at 3:30 p.m. Please be here no later
14 than 3:00 p.m.: 330, Eston Johnson; 582, James T.
15 Soles; 5 -- I'm sorry -- 563, Donna Shelly; 63,
16 Jennifer Brockway; 579, Marilyn Smith; 57, Tanya
17 Bralley.

18 THE COURT: And this group will be here on
19 Wednesday at 3 o'clock; is that correct, Madam Clerk?
20 3 o'clock?

21 THE CLERK: Yes, sir.

22 THE COURT: 3 o'clock on Wednesday. And again,
23 there will be someone to meet you on the third floor
24 and get you to the right place. We'll see you then.
25 Thank you. You are excused.

1 THE CLERK: This is panel 10 scheduled for
2 Wednesday, September 17th at 5:30 p.m. Please be here
3 by 5 o'clock p.m.: 688, Ronald Williamson; 165,
4 Marlene Dottellis; 345, Derick Keel; 328, Karen
5 Jenerette; 397, Sherretta Magness; 7, Leah Aizenman.

6 THE COURT: And this is the 5 o'clock group; is
7 that correct?

8 THE CLERK: Yes, sir.

9 THE COURT: 5 o'clock on Wednesday. Thank you
10 very much. You are excused until then.

11 THE CLERK: This is panel 11. They're scheduled
12 for Thursday, September 18th for 9 o'clock. Please be
13 here no later than 8:30: 230, Silont Gibson; 413,
14 Stacey McClure; 291, Kayla Herriott; 619, David
15 Thebeau; 488, Wanda Penn; 577, Donna Smekal.

16 THE COURT: And this group should be here at 8:30
17 Thursday; is that correct?

18 THE CLERK: That's correct.

19 THE COURT: 8:30 Thursday morning. Report to the
20 third floor. Thank you.

21 THE CLERK: This is panel 12 scheduled for
22 Thursday, September 18th at 11 o'clock a.m. Please be
23 here no later than 10:30: 517, John B. Richardson;
24 625, Shannon M. Thornburg; 628, Laura Tobey; 278,
25 Kenneth A. Harth; 667, Tammy L. Welter; and 250, Hannah

1 L. Griffin.

2 THE COURT: This is the 10:30 Thursday group, I
3 believe; is that correct?

4 THE CLERK: Yes, sir.

5 THE COURT: We look forward to seeing you each at
6 10:30. Please be prompt and just report to the third
7 floor. Thank you. You are excused.

8 THE CLERK: This is panel 13. They are scheduled
9 to report Thursday, September 18th at 1:30 p.m. Please
10 be here no later than 1 o'clock p.m.: Christopher R.
11 Hayes, 284; 273, Barbara Harris; 267, Julie Harbaugh;
12 402, Gloria Martinez; 679, Brian Wideman. Hold on one
13 second.

14 Mr. Wideman, you didn't show up first thing this
15 morning, did you?

16 POTENTIAL JUROR: No.

17 THE CLERK: Take his paper back. Panel 13 will
18 only have five on the panel.

19 276, Joanne Harris.

20 This is the Thursday, September 18, 1:30 panel.
21 Please be here no later than 1 o'clock. Thank you.

22 THE COURT: All right. This is 1 o'clock on
23 Thursday. Please be here.

24 THE CLERK: This panel is panel 14 for Thursday,
25 September 18th at 3:30 p.m. Please be here no later

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1 than 3 o'clock p.m.: 59, Jan Breadmore; 648, Garcia
2 Velazquez; 322, Heidi Hutley; 393, Lisa Luft; 381,
3 Maurice Livingston; and number 8, Linda Albrecht.

4 THE COURT: And this group is to be here when?

5 THE CLERK: Thursday at 3 o'clock.

6 THE COURT: 3 o'clock on Thursday. We do look
7 forward to seeing you. Please be prompt.

8 THE CLERK: This is panel 15. They are scheduled
9 for Thursday, September 18th at 5:30 p.m. Please be
10 here no later than 5:00 p.m.: 574, Anthony Skipper;
11 487, Sharon Peet; 497, Sheila Plowden; 36, Perry
12 Bellamy; 519, Mona Richardson; and 514, Herman Rice.

13 THE COURT: And this is the 5 o'clock group?

14 THE CLERK: Yes, sir.

15 THE COURT: All right. Ladies and gentlemen,
16 5 o'clock on Thursday. Thank you very much.

17 THE CLERK: This here is for Friday,
18 September 19th beginning at 9:00 a.m. Panel 16.
19 Please be here no later than 8:30: 312, Summer Hucks;
20 168, Patrick Dozler; 472, Cotisha Pagan; 549, Michael
21 Schroll; 120, Karen Cope; and 460, Nancy Neece.

22 THE COURT: All right. This will be 8:30 on
23 Friday?

24 THE CLERK: Yes, sir.

25 THE COURT: I look forward to seeing you 8:30 on

1 Friday morning. Thank you.

2 THE CLERK: This is panel 17 scheduled for Friday,
3 September the 19th at 11:00 am. Please be here no
4 later than 10:30: 111, Carla Villalpando; 578, Edward
5 Smith; 655, Mary Walker; 246, Evelyn Greco; 597, Lesley
6 Standish; and 557, Keith Sevor.

7 THE COURT: All right. Now I believe this group
8 should report at 10:30 on Friday; is that correct?

9 THE CLERK: Yes, sir.

10 THE COURT: 10:30. Everybody got that? We look
11 forward to seeing you at 10:30 on Friday morning.

12 THE CLERK: Yes, sir. It's all written on that
13 sheet as well.

14 This panel is scheduled for Friday, September 19th
15 at 1:30 p.m. This is panel 18. Please be here no
16 later than 1:00 p.m.: 431, James Messer; 336, Sabrina
17 Jolly; 446, Jodi Moore; 219, Eric Galley; 376, Jason
18 Lineweber; and 48, Mark Bostick.

19 THE COURT: And this panel is to be at 1:00?

20 THE CLERK: 1 o'clock on Friday.

21 THE COURT: 1 o'clock on Friday. Look forward to
22 seeing you.

23 THE CLERK: This is for Friday, September 19th.
24 It's panel 19 scheduled for 3:30. Please be here no
25 later than 3:00 p.m.: 515, Brenda Richards; 123,

1 Timothy Cornell; 270, Cady Hardy; 349, Donielle King;
2 247, Brantley Green; 411, Joanne McClean.

3 THE COURT: This is for?

4 THE CLERK: Friday 3:30, no later than 3:00.

5 THE COURT: Be here, please, by 3 o'clock on
6 Friday.

7 THE CLERK: This is for Friday, September 19th at
8 5:30 p.m., panel 20. Be here no later than 5 p.m. on
9 Friday: 138, Joseph Damiano; 283, Jason Hawver; 154,
10 Martha Demeo; 42, Jeffrey Bialecki; 532, Robert Ruch;
11 and 329, Jack FF. Johns.

12 THE COURT: And this group should appear at
13 5 o'clock, Madam Clerk?

14 THE CLERK: Yes, sir.

15 THE COURT: 5 o'clock on Friday afternoon. Thank
16 you very much.

17 THE CLERK: This is panel 21 for Saturday,
18 September 20th for 9 o'clock a.m. Be here no later
19 than 8:30 a.m.: 466, Ricky Norris; 21, Broadus
20 Averette; 313, Michael Hufford; 323, Brandy Incorvia;
21 588, Benjamin Spivey; 331, Michelle Johnson. This is
22 panel 21, Saturday, September the 20th, 9:00 a.m., no
23 later than 8:30 a.m.

24 THE COURT: All right. You have got your time.
25 Thank you.

1 THE CLERK: This is for panel 22 for Saturday,
2 September the 20th at 11:00 a.m. please be here no
3 later than 10:30 a.m.: 279, Rebecca Hartnett; 304,
4 Timothy Hopkins; 321, Janet Hutley; 81, Michael Byork;
5 391, Tommy Lovett, Jr.; and 354, Angela Knight.

6 THE COURT: This is what time, Madam Clerk?

7 THE CLERK: This one here is for 11:00, no later
8 than 10:30, this group.

9 THE COURT: 10:30 on Saturday, Saturday morning,
10 10:30.

11 THE CLERK: This is panel 23 to be here Saturday,
12 September 20th, 1:30 p.m., no later than 1 o'clock
13 p.m.: 632, Christina Trevathan; 494, Abby Pinder; 447,
14 Maria Morales; 587, Carrie Spielman; 223, William
15 Gately; and 65, Beatrice Brown.

16 THE COURT: That's 1 o'clock on Saturday.

17 THE CLERK: Yes, sir.

18 THE COURT: All right. Look forward to seeing you
19 at 1 o'clock.

20 THE CLERK: This is panel 24 scheduled for
21 Saturday, September 20th at 3:30 p.m. Please be here
22 no later than 3:00 p.m.: 244, Lauren Graham-Pope; 31,
23 Gina Beasley; 390, David Lovern; 435, Teresa Mills;
24 453, Cheri Murray; and 502, Crystal Price.

25 THE COURT: What time?

1 THE CLERK: 3:30, no later than 3 o'clock.

2 THE COURT: Please be here at 3:00 on Saturday.

3 THE CLERK: This is panel 25 scheduled for
4 Saturday, September 20th, 5:30 p.m. Please be here no
5 later than 5 o'clock p.m.: Karen West, 670; Ivory
6 Anderson, 15; Janice Carmody, 89; 281, Rhonda Hasan;
7 406, William Maxey; and 22, Richard Bagnall.

8 THE COURT: That's 5 o'clock on Saturday. Thank
9 you very much.

10 THE CLERK: This is panel 26. They're scheduled
11 for September 21st at 1 o'clock p.m. You don't have to
12 report until 1 o'clock Sunday: 651, Caroline Viola;
13 71, Bradley Bullard; 95, Alisa Cashion; 325, Beth
14 Jaeger; 461, Bradley Neff; and 510, Amy Reid.

15 THE COURT: All right. This panel should be here
16 at 1 o'clock and we will conduct voir dire at 1:30.

17 THE CLERK: We have it scheduled for 1:00, so
18 shortly after 1:00. Probably about ten after 1:00.

19 THE COURT: Be here at 1 o'clock. Thank you.

20 THE CLERK: This is panel 27 scheduled for Sunday,
21 September 21st at 3:00 p.m. Please be here no later
22 than 2:30 p.m. on Sunday: 398, Wendy Marguiles; 293,
23 Joel High; 693, Kenneth Wise; 388, Michelle Loscalzo;
24 623, Kenny Thompkins; and 119, Rembert Cook.

25 Sunday, be no later than 2:30 to start at 3:00.

1 THE COURT: 2:30 on Sunday. Thank you.

2 THE CLERK: This is panel 28 scheduled for Sunday,
3 September 21st, 5 o'clock p.m. Please be here no later
4 than 4:30: 47, Scott Bona; 122, David Corbett; 425,
5 Lenore McKenzie-Morris; 10, Joseph M. Allen; 624,
6 Clarence Thompson; and 203, Mary Grissett.

7 THE COURT: All right. That will be 9 o'clock.
8 Be here at -- no.

9 THE CLERK: This is Sunday, be no later later than
10 4:30 on Sunday.

11 THE COURT: I'm sorry. I thought we had gotten
12 through that. Be here no later than 4:30 on Sunday.

13 THE CLERK: Thank you.

14 THE CLERK: Monday, September 22, 9 o'clock. Be
15 here no later than 8:30 a.m.: Maurice Fink, 201; 522,
16 Donna Roberts; 550, Joseph Schrum; 130, Karen Croson;
17 355, Pamela Knight; and 615, Anthony Tecco. This is
18 for Monday, September 22nd at 8:30.

19 This is panel 30 for Monday, September 22nd, 11:00
20 a.m. Please be here no later than 10:30: 98, Robin
21 Causey; 225, Myrranda Gee; 288, Cornelius Hemingway;
22 346, Heather Kethan; 674, Brian Whatley; and 464,
23 Andrea Nezich.

24 Judge.

25 THE COURT: What group is this, 10:30?

1 THE CLERK: This is the group to be here at 10:30
2 on Monday, September 22nd.

3 THE COURT: 10:30 on Monday. Look forward to
4 seeing you all. Thank you.

5 THE CLERK: This is panel 31 for Monday,
6 September 22, 1:30 p.m. Please be here no later than
7 1:00 p.m.: 210, Robert Fowler; 605, Michael Stopp; 84,
8 Dean Caldwell; 193, Kenneth Farmer, Jr.; 239, Heather
9 Gosnell; 175, Kareem Easton. It's 1:30 on Monday,
10 September 22nd.

11 THE COURT: Okay. 1:30 on Monday. 1:30.

12 THE CLERK: It starts at 1:30. Please be here no
13 later than 1:00 Monday, September 22nd.

14 This is panel 32. It's scheduled for Monday,
15 September 22, 3:30 p.m. Please be here no later than
16 3:00 p.m.: 118, Emily Cook; 525, Vicky Rockey; 79,
17 Lewis Butler; 56, Donna Brady; 603, Bobby Stine; 177,
18 Darlene Edwards. This is to be here no later than 3:00
19 on Monday, September 22nd.

20 THE COURT: All right. 3 o'clock on Monday. No
21 later than 3:00.

22 THE CLERK: This is for Monday, September 22nd,
23 5:30 p.m., panel 33. Please be here no later than
24 5 o'clock p.m.: 573, Corie Sisbarro; 426, J.S.
25 McLean; 173, Trina Dunn; 202, Rebecca Flauto; 408,

1 Michelle Mayer; and 405, Jayne Matlock. 5 o'clock
2 Monday, September 22nd.

3 THE COURT: All right. 5 o'clock next Monday.
4 Thank you.

5 THE CLERK: Okay. These are the only three in
6 this panel. This is panel 34 scheduled for Tuesday,
7 September the 23rd, 9 o'clock a.m. Please be here no
8 later than 8:30 a.m.: 596, Michael Stamm; 586, Felicia
9 Spain; and 113, Dawn Collins.

10 THE COURT: That's Tuesday at what time they are
11 to report?

12 THE CLERK: No later than 8:30.

13 THE COURT: No later than 8:30 on Tuesday morning,
14 next Tuesday.

15 THE CLERK: This will be panel 35 --

16 THE COURT: Wait a minute. I'd like to know
17 names.

18 THE CLERK: I'm going call them.

19 THE COURT: And bring them right up here.

20 THE CLERK: I will. I'm going call them. This is
21 panel 35 to report Tuesday, September 23rd at
22 10 o'clock a.m.

23 THE COURT: Before we go there. First of all, I
24 want to just call the names of the people who were
25 late.

1 THE CLERK: 28, Benjamin Barr.

2 THE COURT: Where is Mr. Barr?

3 THE CLERK: They're trying to locate him with the
4 sheriff's office, but he will be in this group for
5 then.

6 THE COURT: Who else?

7 THE CLERK: The next one is -- I want to make sure
8 I don't forget anybody. 140, Salvatore Davi.

9 THE COURT: Is Mr. Davi here?

10 THE CLERK: He will be here in the morning at
11 8:30.

12 THE COURT: Okay.

13 THE CLERK: 157, Manish Desai.

14 THE COURT: Who is that?

15 THE CLERK: Manish Desai.

16 THE COURT: Is he here?

17 THE CLERK: Who is that back there?

18 Do you know status of 157?

19 He will be here in the morning.

20 THE COURT: All right.

21 THE CLERK: The next one, 188, Mark Evans.

22 THE COURT: All right.

23 Mr. Evans, you were late. What happened this
24 morning?

25 THE CLERK: Please come forward.

1 THE COURT: Did you receive your subpoena and your
2 questionnaire?

3 POTENTIAL JUROR: Yes, sir, I did receive it a
4 couple months ago and I returned it to the court.

5 THE COURT: Why didn't you appear today?

6 POTENTIAL JUROR: On Friday I went to West
7 Virginia for a court date, and I was convicted of a
8 felony on Friday.

9 THE COURT: Why?

10 POTENTIAL JUROR: For what?

11 THE COURT: For what? What were you convicted of?

12 POTENTIAL JUROR: For transaction of a fraudulent
13 access device.

14 THE COURT: Financial transaction card fraud?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: Mr. Richardson, can you follow up with
17 that with an NCIC? Or do you have a record of your
18 conviction?

19 POTENTIAL JUROR: Yes, sir.

20 THE COURT: All right. Let me see it.

21 Looks like he was convicted of fraud with an
22 access device. I would assume that would be similar to
23 our financial transaction card fraud. He was given
24 18 months probation.

25 THE CLERK: It was just Friday, this past Friday.

1 THE COURT: Mr. McGuire, I have the probation
2 documents here. Do you have any questions as to
3 whether he should be disqualified?

4 MR. McGUIRE: No, sir.

5 THE COURT: Mr. Richardson?

6 MR. RICHARDSON: No, sir.

7 THE COURT: All right, sir. You are disqualified.
8 You are free to go.

9 POTENTIAL JUROR: I'm sorry, your Honor.

10 THE COURT: It's all right. Well, it's not all
11 right. You caused us quite a bit of inconvenience.

12 Who else do we have?

13 THE CLERK: 213, David Freedman.

14 POTENTIAL JUROR: Hello.

15 THE COURT: Mr. Freedman, can you tell me why you
16 were not here today?

17 POTENTIAL JUROR: The storms last night knocked
18 out my electric, and the clock just didn't go off.

19 THE COURT: All right. Well, what I'm going to do
20 is I'm going to put you with a group that must report
21 on -- what time?

22 THE CLERK: This will be Tuesday, September the
23 23rd at 10 o'clock a.m.

24 THE COURT: Do not fail to be here at 10
25 o'clock --

1 THE CLERK: No later than 9:30.

2 THE COURT: Excuse me. 9:30 because I'm going to
3 have to repeat my voir dire or my qualifications to a
4 group that was not here.

5 What time did you arrive today?

6 POTENTIAL JUROR: 2:30.

7 THE COURT: Did you take the oath where I placed
8 you under oath and instructed you not to discuss this
9 case with anyone, seek out any information, read any
10 print materials, TV or radio reports?

11 POTENTIAL JUROR: Yes, your Honor.

12 THE COURT: Do you fully understand that?

13 POTENTIAL JUROR: I do.

14 THE COURT: All right. And you will abide by
15 that?

16 POTENTIAL JUROR: I will.

17 THE COURT: All right. I look forward to seeing
18 you then on Tuesday at -- what time?

19 THE CLERK: Be here Tuesday no later than --
20 Tuesday, September the 23rd.

21 THE COURT: All right. Give him a sheet.

22 THE CLERK: We have to run them. He'll have to
23 wait. He'll have to have a seat.

24 No later than 9:30. Needs to be here no later
25 than 9:30. But please wait right there.

1 THE COURT: All right.

2 Who else?

3 THE CLERK: 359, Kevin Lachut.

4 THE COURT: Mr. Lachut, you were not here this
5 morning. Can you tell me why?

6 POTENTIAL JUROR: Never received a summons, sir.
7 Found out at 1:22 p.m., left work, and showed here -- I
8 was approximately here about 2:50. I never received
9 the questionnaire as well.

10 THE COURT: He says he never received a
11 questionnaire or a subpoena.

12 Hold on one second, sir.

13 POTENTIAL JUROR: Here's his paperwork you filled
14 out.

15 THE COURT: Well, Mr. Lachut, I have here the jury
16 questionnaire which you apparently returned when you
17 received it. Do you not remember doing that?

18 POTENTIAL JUROR: I do. It was -- I received it
19 on a Thursday, the previous day that I returned it.
20 They said it was sent out several weeks ahead of time,
21 and I got it Thursday afternoon about 3:30 and returned
22 it about 3:30 on Friday afternoon.

23 THE CLERK: Did an officer take you the paper or
24 did you receive it in the mail?

25 POTENTIAL JUROR: Actually he dropped it in the

1 door. I was at work when he was there. They called
2 me.

3 THE CLERK: Whether the officer told him to be
4 here this morning, but we called everywhere --

5 POTENTIAL JUROR: He did not.

6 THE CLERK: I called on Thursday but we could not
7 leave a message. His machine didn't allow us to leave
8 a message.

9 THE COURT: All right. Mr. Lachut, you are to be
10 here Tuesday -- what time.

11 THE CLERK: Tuesday, September the 23rd no later
12 than 9:30 a.m.

13 THE COURT: All right, sir. We look forward to
14 seeing you then.

15 THE CLERK: If you wait right here, we'll give you
16 a piece of paper stating that.

17 THE CLERK: 419, Catherine McDowell.

18 THE COURT: Ms. McDowell, you were not here this
19 morning. Can you tell me why?

20 POTENTIAL JUROR: Yes, sir. I'm a substitute
21 teacher and I was filling in for a teacher today.

22 THE COURT: Well, did you receive a subpoena?

23 POTENTIAL JUROR: I did -- are you talking about
24 the paperwork to come?

25 THE COURT: Yes.

1 POTENTIAL JUROR: I did. I thought that y'all
2 would have sent me something else back. I didn't
3 realize that was the only form, so I did not write it
4 down.

5 THE CLERK: We left her a message on the machine
6 on the number she provided for us on that paperwork on
7 Thursday, September 11th, reminding her of jury duty
8 this morning.

9 THE COURT: Did you not get that message?

10 POTENTIAL JUROR: Did you leave it on the 399
11 number?

12 THE CLERK: Whatever number you provided to us,
13 that's the number we left it on.

14 THE COURT: All right. Ms. McDowell, let's be
15 back at 9:30 on -- 9:30?

16 THE CLERK: Yes, sir, on Tuesday.

17 THE COURT: 9:30 next Tuesday. Please do not fail
18 to do that. Okay?

19 THE CLERK: Please have a seat right here and
20 we'll give you a piece of paper as soon as we get them
21 printed up.

22 479, Chaitali Patel.

23 (Ms. Patel is coming forward with her husband.)

24 THE COURT: Ms. Patel, did you receive a subpoena
25 to appear today?

1 MR. PATEL: Yes, sir, she received it.

2 THE COURT: All right. Can you tell me why she
3 did not comply with the subpoena?

4 MR. PATEL: We responded to that. She cannot
5 understand English. She has language barrier issues,
6 so we responded that to effect. I spoke with Mr. Ken,
7 and he requested me to send a fax with detail. I sent
8 him fax. Then I was thinking like it was over. But we
9 got the message --

10 THE COURT: Let me ask you this, Mr. Patel. Does
11 your wife not speak English?

12 MR. PATEL: Yeah. She can understand very little
13 English. She cannot speak English.

14 THE COURT: How long has he been here?

15 MR. PATEL: We've been here around nine years.

16 THE COURT: And she doesn't speak English?

17 MR. PATEL: She can speak, but it's very little.
18 Only certain words like she can --

19 THE COURT: All right. Mr. McGuire?

20 MS. NORRIS: She can be excused, your Honor.

21 THE COURT: Mr. Richardson?

22 MR. RICHARDSON: No objection from the State.

23 THE COURT: I'm going to excuse her. You may
24 leave.

25 THE CLERK: Thank you. You're free to go. Sorry

1 you had to wait.

2 MR. PATEL: Thank you. Thank you so much. Thank
3 you.

4 THE CLERK: 540, Beverly Sanders.

5 THE COURT: Ms. Sanders.

6 POTENTIAL JUROR: Hi, Judge.

7 THE COURT: Did you not receive notice that you
8 had jury duty this morning?

9 POTENTIAL JUROR: Well, I did.

10 THE COURT: You did what now?

11 POTENTIAL JUROR: I did, the summons, the paper,
12 when I got it. I don't even remember when I got the
13 paper. But I had did my health reasons, purposes on
14 there, and I never got a response. And I -- my phone
15 just got cut off, so I wasn't able to talk to anyone.

16 THE COURT: They left a message for you last
17 Friday.

18 POTENTIAL JUROR: I didn't have a phone.

19 THE CLERK: We left a message with the number you
20 provided on the paperwork.

21 THE COURT: Whose number is this?

22 POTENTIAL JUROR: That phone was my
23 mother-in-law's phone. I have my phone now, and it's
24 not the same number.

25 THE COURT: Is that the number you gave them?

1 POTENTIAL JUROR: That's the number I had at the
2 time. I don't have the phone right now, your Honor,
3 because my mother --

4 THE COURT: Ms. Sanders, let me advise you, you
5 need to appear 10:30 next Tuesday. Not tomorrow, but a
6 week from Tuesday. Do not fail to be here. Do you
7 understand?

8 THE CLERK: 9:30.

9 THE COURT: At 9:30. 9:30, right here. Do not
10 fail to appear, Ms. Sanders. Okay?

11 THE CLERK: 646, La-Nina Vaughn.

12 THE COURT: Ms. Vaughn, did you receive notice
13 that you were to appear for jury duty?

14 POTENTIAL JUROR: I sent the paperwork in and I
15 forgot about it.

16 THE CLERK: We called on Friday --

17 THE COURT: Did you get a message, a phone
18 message, on Friday?

19 THE CLERK: It said it cannot accept calls. We
20 called 467-0690 and 213-1992 and both of them said they
21 would not accept calls.

22 THE COURT: Ms. Vaughn, Tuesday -- next Tuesday,
23 not tomorrow -- Tuesday a week at 9:30. Do not fail to
24 be here.

25 THE CLERK: Please have a seat right here and

1 we'll get you the piece of paper.

2 672, Erica Westmoreland.

3 THE COURT: Ms. Westmoreland, did you not receive
4 notice that you were to appear here today?

5 POTENTIAL JUROR: No, sir. I got a questionnaire.
6 I don't know. This is my first time doing jury duty.

7 THE COURT: Did you get a subpoena that said you
8 were to appear here today?

9 THE CLERK: We left a message on the number
10 provided by her on her paperwork on Friday.

11 THE COURT: What is your phone number?

12 POTENTIAL JUROR:

13 THE CLERK: 619 what?

14 POTENTIAL JUROR:

15 THE COURT: You did not get a message?

16 POTENTIAL JUROR: No, sir.

17 THE CLERK: We left it on -- hold on. I'll give
18 you the number that was provided to us.

19 THE COURT: I understand.

20 THE CLERK: The number we have is an 808 number
21 that was provided to us was (843) 808-2216.

22 THE COURT: All right. I want you back here at
23 2 o'clock -- excuse me. What time?

24 THE CLERK: 9:30.

25 THE COURT: 9:30 next Tuesday. Don't fail to be

1 here, please.

2 POTENTIAL JUROR: Okay.

3 THE CLERK: Please have a seat right here and
4 we'll get you your paperwork.

5 679, Brian Wideman.

6 THE COURT: Mr. Wideman, can you tell me why you
7 have not appeared for jury duty?

8 POTENTIAL JUROR: I totally forgot.

9 THE COURT: You just forgot?

10 POTENTIAL JUROR: Yes, sir.

11 THE COURT: For right now all I can do is tell you
12 to be here Tuesday -- a week from Tuesday at 9:30 in
13 the morning. It is in your best interest not to forget
14 again, I promise you. Okay? Do you understand?

15 POTENTIAL JUROR: Uh-huh.

16 THE COURT: You will be here.

17 THE CLERK: Have a seat right here, please.

18 I'm not sure who the other two individuals are.

19 POTENTIAL JUROR: 436. I was here on time.

20 THE CLERK: You've been here the whole time?

21 MS. NORRIS: I believe that's Mr. Mims that we
22 disqualified earlier.

23 THE COURT: Yeah.

24 THE CLERK: I thought we disqualified 437, Randy
25 Mims. Your name is Chad Mims?

1 POTENTIAL JUROR: Yes, ma'am.

2 THE CLERK: You weren't disqualified. Randy Mims
3 was disqualified.

4 THE COURT: That's correct. It was Randy Mims.

5 You were just never called as one of the panel
6 members?

7 THE CLERK: She might not have had him scanned in.

8 THE COURT: All right. Let's add him to the panel
9 that had three.

10 THE CLERK: I'm looking for that one right now.

11 THE COURT: I'm looking at my sheet here, and I
12 don't even see Randy Mims. I just see Chad Mims.

13 THE COURT: Randy is 437.

14 POTENTIAL JUROR: I had attached a note when I
15 sent my paperwork back asking to be excused. I had
16 planned on going out of town at the end of this week,
17 but I changed those plans because I wasn't sure if I
18 was going to be here or not.

19 THE COURT: Just put him on the panel of three.

20 THE CLERK: I'm looking for that. That is the one
21 for Tuesday, September 23rd at 9 o'clock. Be here no
22 later than 8:30. Your number is 436, Chad Mims.

23 Just have a seat right over there and they will
24 take care of you.

25 This lady was scheduled on panel 25 to appear

1 Saturday, September 20th at 5:30, no later than 5:00,
2 and she has a problem.

3 POTENTIAL JUROR: I'm not trying to get out of
4 coming or anything, but I was wondering if I could get
5 it set earlier. I have a cruise that I had paid for
6 months ago.

7 THE COURT: You have a what?

8 POTENTIAL JUROR: A cruise that's from Thursday to
9 Monday.

10 THE COURT: Did you put that on your
11 questionnaire?

12 POTENTIAL JUROR: When I paid for the cruise, I
13 didn't look at the time.

14 THE COURT: Wait a minute. When you did the
15 questionnaire, you had not scheduled your cruise?

16 POTENTIAL JUROR: No. It was already scheduled,
17 but I did not look at the times until much recently.
18 But it's only a weekend cruise. It's not a week or
19 anything. If I could just get a different panel.

20 THE COURT: It's from when to when?

21 POTENTIAL JUROR: Thursday until Monday morning
22 8 o'clock.

23 THE COURT: Thursday until Monday morning. All
24 right. Put her with that last, that short list which
25 was when, Monday?

1 THE CLERK: You're talking about the one with
2 three that I just added him to? That would be Tuesday,
3 9 o'clock. Be here no later than 8:30.

4 THE COURT: Can you reflect that, Ms. Melanie?
5 She's to be here Tuesday, on Tuesday, at what time?

6 THE CLERK: 8:30 a.m.

7 THE COURT: 8:30 a.m. Give her a new sheet. Let
8 her come in on Tuesday.

9 MR. HIXSON: Thank you.

10 MS. NORRIS: I'm sorry, your Honor. What's the
11 juror number?

12 THE COURT: The juror number is juror what?
13 Ma'am.

14 POTENTIAL JUROR: Oh, excuse me. 281.

15 THE CLERK: 281.

16 THE COURT: 281, Ms. Norris.

17 THE CLERK: Rhonda Hasan.

18 THE COURT: We'll expect you here on Tuesday.

19 POTENTIAL JUROR: Okay. Thank you.

20 THE COURT: What's the problem, ma'am?

21 POTENTIAL JUROR: I stay at home. I'm a
22 stay-at-home mother. I have a ten-month-old baby girl.

23 THE COURT: You have a ten-month-old child?

24 POTENTIAL JUROR: Yes, sir.

25 THE COURT: Well, let me tell you this. You may

1 claim that as an exemption. Do you work outside the
2 home?

3 POTENTIAL JUROR: I do not work. I stay at home.

4 THE COURT: What is your name?

5 POTENTIAL JUROR: Heather Kethan.

6 THE COURT: What is your number?

7 POTENTIAL JUROR: 346.

8 THE COURT: Did you report that on your original
9 jury questionnaire?

10 POTENTIAL JUROR: I did not originally, no, sir, I
11 did not originally. It wasn't an issue.

12 THE COURT: Well, did you have a child then?

13 POTENTIAL JUROR: I did. It wasn't an issue then.

14 Now that I'm unemployed I have no way of paying for a
15 baby-sitter. She's with her father this morning.

16 THE COURT: Mr. McGuire, would you like to
17 question this juror concerning this?

18 MS. NORRIS: She can be excused, your Honor.

19 THE COURT: Mr. Richardson?

20 MR. RICHARDSON: She can be excused, your Honor.

21 THE COURT: All right. You can be excused.

22 All right. Ms. Huggins, please let me address
23 these jurors.

24 Are any of you jurors who came in so late that you
25 did not hear my admonitions against seeing any

1 newspaper reports, reading anything, listening to
2 anything, watching anything about this case? Is there
3 anyone who came in after I had that conversation with
4 the jury? Raise your hand.

5 All right. Then I'll start all over again,
6 Ms. Sanders. That's what happens when you're late.

7 You must not -- and I'm instructing you -- you
8 must not discuss this case with anyone including your
9 fellow jurors. You must not discuss it with any of
10 your family members, your friends or anyone else. You
11 must not read any newspaper reports about it. You must
12 not watch any TV or radio or Internet reports about
13 this. Do not discuss it on Facebook or social media in
14 any form or fashion. You must not seek out any
15 information or put yourself in a position to be exposed
16 to any information concerning this case. That is the
17 order of this Court.

18 Now, I am going to require you all -- well
19 Ms. Sanders is the only one here who didn't take the
20 oath; is that right? Did the rest of you take the oath
21 that I required of the jurors concerning my
22 instructions? All right.

23 Everybody stand. Everybody stand and raise your
24 right hand. Everybody.

25 Will you faithfully comply with the instructions

1 the Court has given you including your duty not to
2 expose yourself to any further information about the
3 case from the press or any other person? If you agree
4 to be bound by this oath, say "I will."

5 All right. Is there anyone who did not take that
6 oath? Raise your hand if you did did not take it just
7 now. You didn't take it just now?

8 POTENTIAL JUROR: I just did.

9 THE COURT: I want to make sure. That is
10 important. Please remember that.

11 Do you have the sheets for them to come back on?

12 THE CLERK: She's working on it now.

13 THE COURT: When you receive those sheets, you may
14 leave.

15 THE CLERK: They will have to sit down because the
16 computer is trying to get a glitch in it.

17 THE COURT: All right. Please be seated.

18 POTENTIAL JUROR: Your Honor, I don't know what
19 information I'm avoiding, so.

20 THE COURT: Any information about the case at
21 hand. The case at hand is the State of South Carolina
22 versus Luzenski Allen Cottrell. Mr. Cottrell is
23 charged with the murder of Officer McGarry, who was a
24 Myrtle Beach police officer. This was an incident, an
25 alleged incident, that occurred back in 2012 (sic). It

1 occurred in the city of Myrtle Beach. That's what I
2 can tell you at this juncture about it. Please avoid
3 any exposure to anything about that.

4 Yes, sir.

5 MR. HIXSON: 2002, your Honor.

6 THE COURT: 2002. I'm sorry. 2002. It's a
7 rather old case. That's not your concern. That's not
8 anybody's fault that we're trying it now. Why we're
9 trying it now is also not your concern. Your only
10 concern is that you not expose yourself to any
11 information about this particular case.

12 Now do we have it?

13 THE CLERK: I think so.

14 THE COURT: All right. Do each of them have one
15 now?

16 THE CLERK: Yes, sir.

17 THE COURT: They are excused.

18 THE CLERK: Until that day.

19 THE COURT: Until that day.

20 Hold it. Stop. Is there something wrong? Is he
21 the only one? The rest of you may leave.

22 This is Mr. Wideman right here?

23 THE CLERK: Yes.

24 THE COURT: Just write his name in and give him
25 one.

1 (WHEREUPON, those prospective jurors exited the
2 courtroom at 5:28 p.m.)

3 THE COURT: All right. Ms. Huggins, does that
4 take care of all the jurors? Are there any other
5 jurors left in the courtroom?

6 Close the door, please, just in case they're
7 outside.

8 All right. Ladies and gentlemen, what we've been
9 trying to do is deal with this last group of jurors who
10 were late and did not hear all of my qualifying
11 instructions to the jury. We met and several options
12 were proposed, and it's my understanding that everyone
13 has agreed that what we will do is bring these folks in
14 as the last panel if we need to have them, and we will
15 then requalify them. And hopefully we will have a jury
16 before then, but if we do not, we'll requalify them and
17 allow some extended voir dire for you, if we get to
18 that point.

19 Now, is there anything else, Mr. McGuire, before
20 we get to individual voir dire that the defense would
21 like me to add to what I've done or give them as
22 preliminary information before we begin voir dire?

23 MR. MCGUIRE: No, sir.

24 THE COURT: All right. How about Mr. Richardson?

25 MR. HIXSON: Nothing additional, your Honor. We

1 just have this opportunity outside the presence of the
2 jury to address Mr. McGuire's objection which I believe
3 was in a sidebar.

4 THE COURT: All right. Let's hear it. What was
5 it and, I'm sorry --

6 MR. HIXSON: I think the issue was Mr. McGuire
7 indicated a proposal to strike those jurors.

8 THE COURT: Oh, yeah. He wanted to -- those that
9 said that they had formed an opinion or did not feel
10 that they could be fair, he wanted to just strike them
11 globally, I guess, and just not even bring them back.
12 And I heard Mr. McGuire's argument concerning that.

13 And I believe that if you would like to place it
14 on the record, Mr. McGuire.

15 MR. McGUIRE: Yes, sir, your Honor. For the
16 record, I believe it was about 70-some-odd jurors
17 indicated they could not be fair. And so we have a
18 panel of approximately 270. Given that overwhelming
19 number of folks that said they can't be fair, we move
20 to have them excused in whole and to bring in --
21 because while it's a substantial number, 70, we also
22 have a substantial number remaining, 200.

23 And there's no need to infect the panel that will
24 be coming in with these people that said they can't be
25 fair. If it was just a couple, a few, then I would say

1 I don't have -- I would not have a problem. But given
2 the overwhelming number, I believe that it would be --
3 well, I'm asking the Court to protect Mr. Cottrell's
4 constitutional right to an impartial and indifferent
5 jury. And when they are coming in saying they can't be
6 fair, we're starting so far behind from where we need
7 to be, that it is infringing on his constitutional
8 right to an impartial and indifferent jury, which is
9 guaranteed by the Sixth and Fourteenth Amendment. And
10 this problem being so significant would also be a
11 procedural and substantive due process violation.

12 And while -- and while normally we refer to the
13 right to rehabilitate or address jurors even though
14 they indicate some initial bias or publicity or
15 something like that, it's actually the defendant has
16 the constitutional right. And the State has a
17 corresponding strong interest. But it's actually not a
18 right. It's not based on the Constitution. It's just
19 a corresponding interest that they have.

20 But I would say that given the high number of 70
21 people saying they're unfair, to have a trial where we
22 start off with the State perhaps getting an advantage
23 by the people who are showing up with already having an
24 opinion and already saying that the opinion is they
25 can't be fair, I think that is a violation of

1 Mr. Cottrell's rights.

2 THE COURT: And I don't know in what respect
3 they're biased because we didn't explore that. Could
4 be that they're biased in favor of the defense. I
5 don't know.

6 MR. McGUIRE: I understood the --

7 THE COURT: It's possible.

8 MR. McGUIRE: -- Court's comments --

9 THE COURT: It's possible. But I think that it's
10 improper -- and Mr. Richardson raised an objection, and
11 I'm just repeating what he said. Mr. Richardson,
12 please supplement, hop in any time you want, but I
13 believe it's his position that the State has the right
14 under the case law in this state -- and it does, as I
15 understand the case law -- have the right to have an
16 opportunity to voir dire the jurors.

17 The question, of course, is whether or not any
18 bias they may have or any opinions they may have formed
19 would substantially interfere with their ability to be
20 fair and effective jurors. And I think it's
21 improper -- and I believe the case law supports this
22 position -- it's improper for the Court on its own to
23 strike jurors or to exclude jurors for cause without
24 giving the State or the defense, as the case may be, an
25 opportunity to at least question them on those issues.

1 MR. RICHARDSON: Your Honor, I agree. I would
2 also cite *State v. Bell*. Even though the juror had
3 some knowledge of the case, it found that each juror
4 had not formed a conclusive opinion as to the guilt or
5 innocence of the accused.

6 Certainly even a larger number than the 66 that
7 stood up said that they had heard something about it.
8 So I think it's certainly fair to Mr. Cottrell and to
9 the State to go through, find out what they have heard,
10 find out if they are biased toward the State or toward
11 the defendant, and then of course the State's objection
12 was just to flesh that out and see where it goes in
13 individual voir dire.

14 THE COURT: What, Mr. Richardson, would you say --
15 and we have a lot of work to do here in getting the
16 jury selected in this case. What would be your
17 position -- I mean, I have a series of questions that
18 I'm going to ask the jury. One of the first questions
19 is -- concerns their responses to voir dire.

20 And if I ask them if they in fact responded that
21 they had formed an opinion about the case, and my next
22 question would be, And did you respond by saying that
23 that opinion was such that you could not give the
24 defendant a fair trial -- or give the parties, let's
25 say it this way -- give the parties a fair trial in

1 this matter, what if I then in a sense bifurcated this
2 process and at that time let you and Mr. McGuire, you
3 and Ms. Norris or Mr. Hixson make inquiries concerning
4 that issue at that time? I don't know how that would
5 work.

6 But if we have a witness who just clearly says, "I
7 absolutely have formed an opinion about this case and I
8 cannot be fair; I cannot follow the law," do you think
9 it might shorten up the process or help us along or
10 help us get to the point that we could in good faith
11 eliminate that particular witness -- I mean juror?

12 We may get to the point where, Mr. Richardson, you
13 and Mr. McGuire could say, "Yeah, there's no question
14 this witness here just cannot set that aside. He has
15 formed an opinion," or, "She has formed an opinion and
16 that would substantially impair his or her ability to
17 be a fair and effective juror."

18 Do you see that as a possibility, Mr. Richardson?

19 MR. RICHARDSON: Yes, sir. And, again, I think
20 that what you asked today is what is asked in every
21 trial, not just death penalty. It's a process
22 question.

23 THE COURT: Absolutely.

24 MR. RICHARDSON: And, generally, if we didn't have
25 500 people or 300 people, we would bring them up at

1 that time and discuss it.

2 THE COURT: Exactly.

3 MR. RICHARDSON: So what we're going to do is just
4 discuss it when they come in in their individual
5 panels. And certainly we will also have the benefit at
6 that time of which one that they have circled. If they
7 are a 1, 2 or 3-type juror. So we'll be able to flesh
8 all of that out.

9 THE COURT: Well, what I want to do, I don't want
10 to get too far afield because I want to ask some
11 questions before and clarify some things before you
12 attorneys do your individual voir dire.

13 But I'm thinking that if we have a juror who tells
14 me that he feels so strongly about the bias that he may
15 have or the opinion that he may have about this case
16 that he just absolutely could not be -- could not set
17 it aside, could not be fair in the trial of the case,
18 my question is can we address that issue before we go
19 into everything else? It may be a situation where we
20 can agree --

21 MR. RICHARDSON: Yes, sir.

22 THE COURT: -- that that -- or it may be a
23 situation where you have explored that issue and
24 Mr. McGuire or Ms. Norris has explored that issue, I am
25 able to say we need to go no further. This witness

1 cannot be fair and impartial for whatever reason. I
2 mean, that may be the situation.

3 Do you believe, Mr. McGuire or Ms. Norris, that
4 that might move us along or help us a little bit
5 considering the large number that we have? I will do
6 it. I want to do it in a fashion that both of you
7 believe will result in a fair and impartial jury.

8 MR. McGUIRE: Judge, I think our first request
9 would be that every person that's indicated whether
10 they have either formed an opinion about the case or if
11 they have indicated they couldn't be fair, that we
12 always in every instance be allowed to go first with
13 voir dire of those particular jurors.

14 Never mind. I misstated it. I've been corrected
15 by co-counsel that that's the process we're following
16 anyway.

17 THE COURT: Yeah. You go first. I have made that
18 decision. But what I'm talking about is before we go
19 too far afield concerning mitigating, aggravating
20 circumstances, following the law and those things,
21 before we go too far afield, if a witness is so firm in
22 his or her statement to me that they have -- he or she
23 has formed an opinion and that would absolutely prevent
24 them from being fair and impartial in this trial, could
25 we then simply address that issue, that issue alone?

1 And if we're not satisfied, if there's not agreement
2 concerning that witness, because I have a sense that
3 there's going to be some witnesses that both sides will
4 realize would probably not be able to be fair and
5 impartial in this case. When we get to that point,
6 then we drop back, I'll complete my examination and
7 then allow you to address the other issues.

8 MR. McGUIRE: If I could have just have one
9 moment, Judge.

10 (WHEREUPON, an off-the-record discussion was held
11 between Mr. McGuire and Ms. Norris.)

12 MR. McGUIRE: Judge, what we're going to propose
13 is that we actually draft some language regarding
14 having formed an opinion or not being fair to either
15 the State or the defense and we put it as a supplement
16 to the 1, 2, 3 questions and have them answer it, and
17 that we make the decision just simply based on the
18 written response, if possible.

19 THE COURT: No, I'm not going to do that. Again,
20 that does not give the State an opportunity to question
21 the witness. Or you, depending on which way they go
22 with it.

23 I'm trying to shorten it, and we'll go and do it
24 the way it's traditionally done, or we'll try to
25 shorten it up and address that issue right up front and

1 then the other issues. But that would be the only way
2 that I would really do it. I'm not going to let them
3 just sign off on something and be excused.

4 MR. McGUIRE: In that case, Judge -- and I
5 understand the Court's ruling -- if we could draft some
6 language in the form of a question regarding those
7 issues and have that as a starting point.

8 THE COURT: If you want to draft a question that I
9 ask -- I mean, I'll ask them their name and if they
10 realize they're still under oath and if they have
11 followed my cautionary instructions about publicity and
12 things of that matter, and then the very next thing
13 I'll do is I'll ask them questions concerning their
14 response to the inquiries about opinion, bias and
15 whether or not they can give a fair trial.

16 MR. RICHARDSON: And, your Honor --

17 MR. McGUIRE: I'm sorry, go ahead.

18 MR. RICHARDSON: The only other thing that I would
19 add is to allow the State also on that specific
20 question to present something to your Honor along
21 with --

22 THE COURT: Why don't we do that. Each of you
23 think about it tonight and present something. It
24 should be fairly simple. I want to keep the question
25 simple. "Did you respond that you had formed an

1 opinion concerning this case?" And if they answer,
2 "Yes, I did," then we have a record of that. They
3 follow that with, "Yes, I did," and, "Did you believe
4 or do you believe you can set that aside," or something
5 of that nature. Or, "Did you respond that you had --
6 you felt that your opinion was so engrained that you
7 could not be fair?"

8 Come up with some language and let's look at it in
9 the morning and see how we can best address these. I
10 want both of you to be satisfied that we're being fair
11 in this matter. Okay?

12 MR. McGUIRE: And, your Honor, we would, if your
13 Honor is inclined to ask them if despite having this
14 opinion that they hold strongly or whatever their bias
15 is against the defense or State, if the questioning is
16 going to be, "Can you set that aside and decide the
17 case on the law and the evidence," we would renew our
18 objection to that type of language because the jury is
19 going to want to be -- appear fair, to be a good juror.
20 They're going to want to --

21 THE COURT: But that question has to ultimately be
22 asked. I'm trying to get to the point where -- I feel
23 that there's some jurors -- we don't even have to go
24 that far. If the juror just says, "I am so biased
25 because of my opinion I can't be fair," that gives me

1 some concern.

2 MR. RICHARDSON: That's true, your Honor. And
3 that's all we were saying. I believe it to be a
4 process question. I don't believe they have been able
5 to ferret it out. But given the question and us
6 narrowing in on that issue, I think that the State and
7 Mr. McGuire and Ms. Norris will be able to agree on a
8 lot of those just like your Honor was saying. Some of
9 these guys are going to say, "Look, I can't be fair."
10 And in that case we can go ahead and skip all the rest
11 of the questions. If they're not going to be fair,
12 they're not going to be fair.

13 THE COURT: And that's what I'm getting at,
14 Mr. McGuire. If the Solicitor agrees that a juror
15 cannot be fair to your client, I think that that's
16 probably the juror that we can just excuse.

17 MR. MCGUIRE: I agree with that. I mean,
18 obviously if the State -- if it's so overwhelming that
19 the State agrees they can't be fair, we should
20 absolutely excuse them. There's no doubt about that.

21 THE COURT: That's kind of what I'm talking about.
22 Let me ask them up front about their bias and what's
23 the basis of it, and did they say that they could not
24 be fair and why do they feel that they could not be
25 fair. And then I'll ask Mr. Richardson, perhaps,

1 "Mr. Richardson, do you feel that further inquiry is
2 necessary?" And if he says no, I believe that then we
3 could excuse the juror. I mean, he's conceding that
4 the juror could not be fair to your client.

5 MR. McGUIRE: I would agree then in that situation
6 we would absolutely have to excuse them. I mean, I'm
7 not -- the category of juror that I'm concerned about
8 is the person who comes in and says, "Based on what
9 I've seen, what I've been exposed to, I have a very,
10 very strong opinion that Mr. Cottrell's guilty of this
11 crime."

12 THE COURT: You're going to have jurors who come
13 in and say, "I've heard that he's already been
14 convicted and he's got off on a technicality and he's
15 guilty now." If you get a juror like that, that juror
16 should be excluded, obviously.

17 MR. McGUIRE: Obviously. And any kind of language
18 about, "Could you set that aside and just decide the
19 case based on what you hear in this courtroom based on
20 the evidence and the law given by the Court," I think
21 they would want to try to say yes, they would want to
22 try to please the Court, and they would put themselves
23 in that category. But I agree with your Honor that if
24 somebody says, "I've heard about this; I've heard about
25 the prior trial; I know he's been convicted of other

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Jury Qualification September 15, 2014

1 murders," I think we can all agree there is no language
2 that can rehabilitate that person. And I would agree
3 with the Court's comments on that.

4 MR. RICHARDSON: And I would just simply point out
5 the last time we did one of these was Stephen Stanko.
6 And where there was 66 people here, in the Stanko
7 trial, it was a lot more recent. And a lot of those
8 guys, many of them, even knew that he was under the
9 death penalty at the time. And so many of those people
10 even sat on the new jury.

11 The simple thing is I believe they were honest
12 when they were first asked about the process question.
13 And I think they will be honest again tomorrow. And if
14 they can't set that aside, can't set that opinion aside
15 and give a fair and unbiased trial not only to the
16 State but also to Mr. Cottrell, then those are the ones
17 that should be easy to ferret out.

18 And I've got a list of the 66 people that did
19 answer affirmatively to that question about being fair
20 and impartial to the State. But I'll point out to your
21 Honor the language -- again, it was just process
22 language -- but it was, "Do any of you know any reason
23 whatsoever why you could not give a fair trial to both
24 the State and the defendant in this matter with special
25 emphasis upon you being fair and impartial jurors?"

1 So, again, it's a process question. I don't --
2 they didn't have anything really to base that
3 information on except some of them had said that they
4 had read certain articles. I think some of them can be
5 rehabilitated. Some of them may have such a bias one
6 way or the other that they cannot, and that should be
7 fairly easy to ferret out. And I'm all for having sort
8 of a bifurcated hearing especially on these 66 that we
9 can go through and --

10 THE COURT: Well, you know, I think if they tell
11 me that they have that, Mr. McGuire, I simply ask, "Is
12 there any circumstance where you could set that aside
13 and forget about it and be fair to this defendant and
14 the State in this case," and at that point they just
15 say no, what can we do at that point?

16 MR. MCGUIRE: At that point we follow the United
17 States Supreme Court in *Illinois vs. Morgan* where the
18 court very clearly says there are categories of people
19 who have some sort of bias that's impermissible. And
20 when the Court says, "But could you go ahead and put
21 that aside and just follow my instructions," the court
22 recognizes explicitly there are a number of people who
23 will want to say, "Yes, I can be fair; yes, I can do
24 that." And they do want to, and they believe --
25 they're not lying to you -- they believe they can do

1 it, but the bias -- the court says you have to
2 recognize that there are instances where --

3 THE COURT: Well, if someone tells me they can,
4 I'm certainly going to let you question them on that.
5 I'm going to let you explore it. But if I ask them
6 that question and they say no, it pretty much ends the
7 inquiry, does it not, as to that particular juror?

8 MR. McGUIRE: Yes. I agree with you, your Honor.
9 If you say, "Can you put that aside? Is your opinion
10 so strong or whatever where you cannot put it aside and
11 be perfectly fair to the State and the defense," and
12 they say, "No, I can't put it aside," then of course we
13 have to excuse them. I mean, there's no use to try to
14 keep them here.

15 But there's going to be -- if we use that
16 language, you're going to get people who are
17 substantially impaired where they do have a profound
18 bias. But when they say they can set it aside, the
19 answer, despite their wanting to believe that --

20 THE COURT: Well, what do you do in that
21 situation, Mr. McGuire?

22 MR. McGUIRE: Then what you do is you don't put
23 reliance on their self-rating of their ability to be
24 fair and put this stuff aside. You look at all of
25 their answers to open-ended questions to see what their

1 genuine feelings are where they're not being led and
2 they're not being asked, say, "Can you be fair?" If
3 that's the question, we pose it to them, "Can you set
4 that aside and be fair," you're going to get a large
5 number of people who are going to say yes. And they're
6 going to believe that they can do it, but they simply
7 can't because the bias is too significant.

8 And that's what the United States Supreme Court
9 said in *Illinois vs. Morgan*.

10 THE COURT: What did they say in *Morgan*? What did
11 they say to do? I've read it, but what did they say to
12 do? What was their suggestion?

13 MR. McGUIRE: Their suggestion was to ask
14 questions about their predisposition to vote for the
15 death penalty on the elements of murder, and that it
16 has to be questions where they can actually give candid
17 information. It's not the leading manner. And you
18 don't -- if they say -- you can't let them self-rate.
19 You can't let them say, "I can be a fair person. I can
20 set that aside." You have to look at their answers to
21 questions.

22 And I think that's -- if we put all the reliance
23 on them saying, "Yes, I can be a fair person, set that
24 aside and decide the case on the evidence and the law,"
25 if we put a hundred percent reliance on that answer and

1 we don't look at their real information, we're going to
2 have a problem.

3 THE COURT: All right. What we're going to do is
4 I'm just going to go through my usual -- I mean the
5 voir dire that I have, I'm going to ask it. And I'm
6 sorry I brought it up. We're going to go another way
7 with it.

8 MR. RICHARDSON: So we don't need to prepare
9 any --

10 THE COURT: No, you don't need to do that. We're
11 just going to tough it out on everyone.

12 MR. McGUIRE: Judge, if I could just make one more
13 very respectful request. And that would be, if that's
14 where we're going, that there be no question --

15 THE COURT: I tried to go elsewhere, but I wasn't
16 making any headway, Mr. McGuire.

17 MR. McGUIRE: I understand. I don't mean to be
18 difficult, Judge. But if that is where we're going, I
19 would just request that there not be any questions from
20 the Court regarding bias or fairness or an opinion;
21 just let us start asking the questions.

22 THE COURT: No, I'm going to ask any questions
23 that I feel are appropriate.

24 MR. McGUIRE: Yes, sir.

25 THE COURT: Okay. Anything further?

1 MR. RICHARDSON: No, sir.

2 THE COURT: All right. Thank you very much. I'll
3 see you in the morning..

4 (WHEREUPON, the hearing adjourned at 5:56 p.m.)
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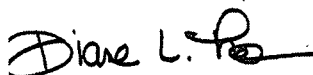
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in the trial of the captioned case, relative to appeal,
in the Circuit Court for Horry County, South Carolina,
on the 15th day of September 2014.

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I do further certify that I am neither of kin, counsel,
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January 15, 2015



Diane L. Thommes, RPR, CRR
Circuit Court Reporter

1 State of South Carolina
2 County of Horry In the Court of General Sessions

3
4 STATE OF SOUTH CAROLINA,)
5) 2003-GS-26-20
6 -vs-) September 16, 2014
7 LUZENSKI ALLEN COTTRELL,)
8 Defendant.) Volume II of X
9 -----) Pages 210 - 781
10) Transcript of Record

11 B E F O R E:

12 The Honorable Larry B. Hyman, Jr., Judge

13
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25

Diane L. Thommes, RPR, CRR
Circuit Court Reporter

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1 E x h i b i t s

2 For the State:

3 Marked Description I.D. Admitted

4 None offered.

5

6 For the Defendant:

7 Marked Description I.D. Admitted

8 1 Proposed jury voir dire
9 questions

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 8:58 a.m.)

4 THE COURT: All right. I see that we have defense
5 counsel present in the courtroom today and
6 Mr. Cottrell.

7 Good morning, Mr. Cottrell.

8 THE DEFENDANT: Good morning.

9 THE COURT: We also have Mr. Richardson and
10 Mr. Hixson here with us this morning, and I'm informed
11 that the first panel is present and they are here
12 early.

13 I think we have an issue here with jurors, the two
14 jurors who refused to appear yesterday.

15 Are those persons here?

16 THE BAILIFF: They're in the waiting room outside.

17 THE COURT: Do you want to bring those two
18 individuals in, please, one at a time.

19 THE BAILIFF: Your Honor, this is Mr. Barr.

20 THE COURT: All right. Mr. Barr, I understand
21 that you refused to appear yesterday; is that correct?

22 POTENTIAL JUROR: I was not here yesterday, that's
23 correct, sir.

24 THE COURT: Well, is this the individual that I
25 had to issue the arrest warrant for?

1 THE CLERK: Yes, sir.

2 THE COURT: It is?

3 THE CLERK: Yes, sir.

4 THE COURT: I understand that I -- a deputy went
5 to your home on yesterday to pick you up and that you
6 refused to accompany him to the courthouse; is that
7 right?

8 POTENTIAL JUROR: I was not there, sir. I called
9 back as soon as I found out.

10 THE COURT: You were not there?

11 THE CLERK: It was when they served the original
12 paperwork the other ordeal occurred.

13 THE COURT: I understand. Well, tell me, sir, why
14 did you not appear on yesterday?

15 POTENTIAL JUROR: I did not know I was supposed to
16 be here.

17 THE COURT: You did not know you were supposed to
18 be here?

19 POTENTIAL JUROR: I didn't, no, sir. I didn't
20 have mail or a phone call or. . .

21 THE CLERK: We called, and his machine was not set
22 up to remind him where we could leave a message, but we
23 called on Friday.

24 THE COURT: All right, sir. Well, Mr. Barr, you
25 have caused a substantial inconvenience to the Court

1 and to your fellow jurors. Do you understand that this
2 is your obligation to serve?

3 POTENTIAL JUROR: Yes, sir.

4 THE COURT: Mr. Barr, please put him with the --
5 that last panel and tell Mr. Barr when he is to appear.

6 THE CLERK: Yes, sir. It will be Tuesday,
7 September the 23rd at 10:00 a.m., but be here no later
8 than 9:30. This is your information with your date and
9 time up there.

10 THE COURT: Mr. Barr, I would suggest that you be
11 on time and that you be here. Do you understand, sir?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: All right, Mr. Barr. You are free to
14 go.

15 All right.

16 Was that the juror that I had arrested yesterday?
17 Was he arrested yesterday? Came in this morning?

18 THE CLERK: Yes, sir.

19 THE COURT: All right.

20 THE BAILIFF: Your Honor, this is Mr. Desai.

21 THE CLERK: This is number 157.

22 THE COURT: Mr. Desai, you did not appear as
23 subpoenaed on yesterday for jury voir dire or jury
24 qualifications. Were you aware that you were supposed
25 to appear?

1 POTENTIAL JUROR: No, sir. I was not aware. And
2 this officer, he came to my house and my son called me.
3 I was at work. And I know nothing about it. But, in
4 fact, the first time the deputy came to my house, the
5 address was six years old. That was three houses
6 before where I used to live, I
7 had rectified it with the responses. The officer told
8 me to send it in. After that I got no response until I
9 heard last night.

10 THE CLERK: I called on Friday and left a message
11 on the number he provided on the paperwork to remind
12 him that he was to be here yesterday. It was a message
13 left.

14 POTENTIAL JUROR: On this phone?

15 THE COURT: Mr. Desai, I'm going to require you to
16 appear on not this coming Tuesday, next Tuesday, at --

17 THE CLERK: 10 o'clock. No later than 9:30. Be
18 here no later than 9:30. Next Tuesday, the 23rd.
19 Okay? Just come to that desk up on the third floor and
20 there will be someone to guide you where you need to
21 be. Okay?

22 THE COURT: Do you understand that, Mr. Desai?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: You are not to seek out any
25 information concerning this case. This case is the

1 State versus Mr. Luzenski Allen Cottrell. Do not read
2 any newspaper reports, do not seek out any information,
3 do not expose yourself to any information or reports
4 concerning this case. Do you understand that?

5 POTENTIAL JUROR: Yes, your Honor.

6 THE COURT: All right. You be back here at
7 2 o'clock. All right?

8 POTENTIAL JUROR: Your Honor, I have a question.

9 THE COURT: Yes, sir.

10 POTENTIAL JUROR: Am I selected on the jury?

11 THE COURT: No, you're not at this point.

12 POTENTIAL JUROR: Okay. How do I recuse myself or
13 excuse myself?

14 THE COURT: We will take that up next Tuesday.

15 POTENTIAL JUROR: Thank you, your Honor.

16 THE COURT: All right, sir.

17 Before we bring him in -- one moment. One moment,
18 please. Don't bring him in yet.

19 Ladies and gentlemen, I need to share with you
20 some information that has been related to me concerning
21 this juror. I'm informed that this juror has -- please
22 close the door -- an outstanding warrant for his arrest
23 from the state of Ohio. I don't know what will happen
24 in reference to that outstanding warrant. I will tell
25 this juror that he must respond next Tuesday, just as

1 we have discussed with these others. However, I will
2 just give you information now that it's very unlikely
3 that he will be here next Tuesday. Okay?

4 Yes, sir.

5 THE BAILIFF: Your Honor, this is Mr. Salvatore.
6 First name Salvatore.

7 THE COURT: First or last name?

8 THE BAILIFF: First name. I couldn't pronounce
9 his last name.

10 THE COURT: Your name?

11 POTENTIAL JUROR: Salvatore Davi.

12 THE COURT: "Davi"? All right. Mr. Davi, were
13 you provided with a subpoena to appear on yesterday for
14 jury qualifications in the case that we're about to
15 try, and that is the case of the State of South
16 Carolina versus Luzenski Allen Cottrell?

17 POTENTIAL JUROR: Yes, sir, a few months ago I did
18 receive a summons.

19 THE COURT: All right. Is there any reason why
20 you did not appear on yesterday?

21 POTENTIAL JUROR: I mismarked it in my calendar,
22 sir, and I moved since, and I'm sorry. I apologize to
23 this Court.

24 THE COURT: All right, sir. I'm going to require
25 you to come back to court next Tuesday, one week from

1 today. Be here no later than --

2 THE CLERK: 9:30.

3 POTENTIAL JUROR: Next Tuesday, sir?

4 THE COURT: On that date.

5 POTENTIAL JUROR: Is there something I can have in
6 writing? I just got a new job. Just to provide them,
7 ma'am, please.

8 THE CLERK: I'll just make you a copy of this.

9 THE COURT: All right. If you will step outside,
10 the clerk will send somebody out with that for you.
11 Okay?

12 POTENTIAL JUROR: Okay, sir.

13 THE COURT: All right. Is that it now, Madam
14 Clerk?

15 THE CLERK: It is. That's the last one the
16 sheriff's office has informed me of.

17 THE COURT: All right. Do we have our first panel
18 in place?

19 THE BAILIFF: Yes, sir.

20 THE COURT: Are they here?

21 THE BAILIFF: Yes, sir.

22 THE COURT: Would you bring that entire panel and
23 put it in the jury box for me, please.

24 MR. McGUIRE: Judge, while they're coming out, one
25 quick matter.

1 THE COURT: Yes. Okay. Please close the door for
2 me, someone, please.

3 MR. McGUIRE: I can take care of it before they
4 get here.

5 Just regarding the witness list, one of the
6 witnesses, Nicole Pyle, has had a name change based on
7 marriage, and her last name is now Sheldon. I didn't
8 know if you wanted to alter the witness list.

9 THE COURT: Do we have the name of the three new
10 witnesses?

11 MR. McGUIRE: Actually, I've got them handwritten
12 right here, Judge.

13 THE COURT: Okay. That will suffice because I
14 will ask them separately about those.

15 MR. McGUIRE: Yes, sir. Nicole Pyle, the one who
16 has a name change, is on top, and then the new
17 witnesses are right underneath it.

18 THE COURT: And you have given this to
19 Mr. Richardson?

20 MR. McGUIRE: I will give him another handwritten
21 copy.

22 THE COURT: And that is Christine?

23 MR. McGUIRE: Del Fonzo.

24 THE COURT: William Nettles, Michelle Light?

25 MR. McGUIRE: Yes, sir.

1 THE COURT: And John Tatum?

2 MR. McGUIRE: Yes, sir.

3 THE COURT: You have excellent penmanship.

4 MR. McGUIRE: Thank you, Judge.

5 THE COURT: I was being very facetious when I said
6 that.

7 MR. RICHARDSON: Your Honor, if I may, and I just
8 don't understand the process. We're going to bring six
9 in --

10 THE COURT: Let me tell you what I'm going to do,
11 Mr. Richardson. I thought I made it clear yesterday.
12 You will notice that on yesterday I did not discuss
13 with the jurors exemptions.

14 MR. RICHARDSON: Oh, yes, sir.

15 THE COURT: And possible transfer. The reason I
16 did not is sometimes it has been my experience -- and
17 that's just anecdotal -- that essentially it starts a
18 floodgate. So what I propose to do is bring the entire
19 panel in and just take a moment to determine if any of
20 those have an exemption that they wish to claim.

21 I think overall it will be a time saver to do it
22 this way. It's something we're going to try. And then
23 we'll send them out, and then we'll bring them back in
24 one at a time. I don't think it will take but just a
25 minute to do that, but I think that's what we need to

1 do.

2 MR. RICHARDSON: Thank you, your Honor.

3 THE COURT: All right.

4 MR. McGUIRE: And, Judge, just quickly. We're
5 having a little difficulty with the realtime feed.

6 THE REPORTER: Did you turn it on?

7 THE COURT: That would help.

8 MR. McGUIRE: I have no computer skills, Judge.

9 THE REPORTER: Press "connect." See, his is
10 going.

11 THE COURT: Mr. Hixson, maybe you could help
12 Mr. McGuire if you wouldn't mind giving him some
13 assistance, show him how to do it.

14 MR. HIXSON: I can't think of anything to say.

15 MS. NORRIS: I have got what we had up yesterday
16 open, but how do we get back into it?

17 THE COURT: Ms. Norris, are you more computer
18 literate?

19 MR. McGUIRE: Oh, yes.

20 MS. NORRIS: Much more than him, but --

21 THE COURT: Are you able to?

22 THE REPORTER: Yes.

23 (Brief recess to adjust the realtime feed.)

24 THE COURT: May I have the first panel.

25 (WHEREUPON, Prospective Jury Panel Number 1 came

1 into open court at approximately 9:14 a.m.)

2 THE COURT: Good morning. It's good to see you.
3 It's good to see you in a smaller group where I can
4 actually see your faces and interact with you on a more
5 intimate basis.

6 As I told you yesterday, this morning we brought
7 you in so that we may question you concerning certain
8 views that you may have. And please understand there
9 are no right answers to any of these questions; there
10 are no wrong answers to any of these questions. No one
11 here will criticize you for an opinion that you may
12 have on the issues that we are going to ask you about.

13 It's simply a process where the Court and the
14 attorneys try to determine what your views may be and
15 whether or not those views may be such that they might
16 or would substantially prevent you from carrying out or
17 interfere with your ability to carry out your duties as
18 a juror in this case. That's the only thing that we're
19 doing.

20 And let me again stress there are no right answers
21 or no wrong answers. We're all different. We're all
22 the products of our environment and our life
23 experiences, and no one is going to criticize you,
24 again, for any views that you may have. All we ask you
25 to do is give us honest and fair answers to the

1 questions that are put to you. This is not an
2 adversarial scenario here. No one is trying to beat up
3 on you in any way, form or fashion.

4 The reason I brought you all in here this morning
5 is I wanted to talk with you before we start discussing
6 these matters with you individually. I wanted to talk
7 with you about the existence of certain exemptions. We
8 all have a duty to appear and a right to appear as
9 jurors.

10 However, there are certain circumstances, and they
11 are statutory, they are spelled out in the law, where
12 you may claim an exemption from jury duty. And if you
13 claim that exemption, you will be excused from jury
14 service. You also have that right.

15 Let me explain that an exemption does not mean
16 that you are disqualified from service as a juror. You
17 certainly can continue to serve if you do not want to
18 claim your exemption. So there are a few exemptions
19 that I wanted to run by you this morning and see if any
20 of them might apply.

21 For instance, if you are 65 years of age or older
22 and you choose not to serve, you may claim that as an
23 exemption and you have a right to be excused.

24 Is there any member of this jury panel who is
25 65 years of age or older who wishes to claim his or her

1 exemption?

2 And let the record reflect that there is none.

3 Is there any juror who has served as a juror in
4 this courtroom, that is, you would have been brought,
5 not particularly this particular courtroom, but you
6 would have been brought to the Horry County courthouse
7 and you would have been downstairs in the jury pool,
8 and you would have been subject to be called within the
9 last three years? You only have to serve once every
10 three years. Would that apply to any of you?

11 And let the record reflect there was no response.

12 If you had served on the Grand Jury of Horry
13 County within the last five years, that would also be
14 an exemption that you could claim if you wished. Now,
15 some of you may say, "What is the Grand Jury?" You may
16 not be familiar with that. Let me assure you if you
17 had been on the Grand Jury, you would know it.

18 The Grand Jury is a very intensive position. You
19 would have to meet like once a month for at least a
20 year and probably two years, or very likely could have
21 been two years. So if you were on the Grand Jury, you,
22 certainly know it. But if you served on the Grand Jury
23 within the last five years, you could claim that as an
24 exemption.

25 Is there anyone on the Grand Jury in the last five

1 years?

2 And there is no response.

3 Also, if you have children under the age of seven
4 who are your children or you have custody of those
5 children and your job is to take care of those children
6 on a daily basis, that's what you do, you may claim
7 that as an exemption.

8 Would that apply to anyone?

9 Yes, ma'am. Your name?

10 POTENTIAL JUROR: Karie Fussaro.

11 THE COURT: I'm sorry, I didn't get your last
12 name.

13 POTENTIAL JUROR: Fussaro.

14 THE COURT: Fussaro. All right, Ms. Fussaro. Do
15 you have children under the age of seven?

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: Are those your children?

18 POTENTIAL JUROR: Yes, sir.

19 THE COURT: Do you work outside the home?

20 POTENTIAL JUROR: I work while they're in school.

21 THE COURT: Okay. And explain it to me.

22 POTENTIAL JUROR: My husband is a CPA, and I work
23 in his office from about 9 o'clock to 2:30. And I have
24 a five-year-old -- or six-year-old. She just turned
25 six -- that gets off the school bus from kindergarten

1 at 2:50.

2 THE COURT: Then do you take care of the child?

3 POTENTIAL JUROR: Yes, sir.

4 THE COURT: And that's what you do every day?

5 POTENTIAL JUROR: Every day.

6 THE COURT: And the child again is how old?

7 POTENTIAL JUROR: She just turned six.

8 THE COURT: She just turned six.

9 POTENTIAL JUROR: I also have two others, but
10 they're older.

11 THE COURT: You have one that's under seven?

12 POTENTIAL JUROR: Yes.

13 THE COURT: Are you able to make arrangements for
14 someone else to take care of that child?

15 POTENTIAL JUROR: My husband could get her off the
16 bus, but it would impact his work. We have our own
17 firm, and he is the sole CPA. So it would be possible
18 but a hardship for him to take care of all three of
19 them on his own.

20 THE COURT: All right. So the only way you could
21 do it would be to close down his business in the
22 afternoons?

23 POTENTIAL JUROR: In the afternoon, yes.

24 THE COURT: And in the evening -- but in the
25 evening he could take care of the children?

1 POTENTIAL JUROR: In the evening he could. It
2 would be rough because of their sporting activities,
3 but --

4 THE COURT: Well, let me say this then. Because
5 you have a child under the age of six and that you take
6 care of that child on a daily basis, you are
7 responsible for picking the child up and caring for the
8 child in the afternoon, I will allow you to exercise
9 that exemption and you are excused. You may leave.
10 Okay?

11 POTENTIAL JUROR: Thank you.

12 THE COURT: Mr. Ropp, can you see that this lady
13 is able to get out of the courthouse? Okay.

14 Of course we have already asked if any of you
15 might be full-time students, but let me ask again.

16 Is there anyone who is a full-time student or
17 employed of any school or institution of higher
18 education?

19 And there's no response.

20 Are any of you the primary caretaker inside the
21 home of a person over 65 or a severely disabled person
22 who cannot be left alone -- and that applies to the
23 person over 65 as well -- who cannot be left at home
24 and your job, what do you on a daily basis is you take
25 care of that person, you are the caretaker and

1 responsible for that person and you have no one else
2 who can take care of that person? Is there anyone who
3 would fit into that category?

4 And there is no response.

5 And, finally, this is not an exemption, but it is
6 an issue upon which I can perhaps transfer you.

7 Is anyone the owner or operator of a business or a
8 commercial or agricultural enterprise whose position
9 within that enterprise is so critical that the business
10 has to close down and the employees are sent home, it
11 cannot operate unless you are there?

12 And there is no response.

13 Now, I also would like to know, is there any juror
14 who has an extreme personal problem that would prevent
15 from you being available for service on this jury?

16 And, again, it would need to be something that results
17 in an extreme hardship. For example, you have a
18 surgical procedure that has been scheduled for some
19 time that would be within the next week or so, your
20 daughter or son is getting married this weekend and you
21 don't want to miss the wedding, things of that nature.
22 Are there any problems in that regard?

23 And there are no none.

24 Okay. May you take or would you please take this
25 jury back into the waiting room and bring out our first

1 juror who would be -- who's Mr. Reid? Who is Mr. Reid?

2 Mr. Reid, you can stay with us. We'll have you
3 first. Thank you.

4 (WHEREUPON, Prospective Jury Panel Number 1, with
5 the exception of Mr. Reid, exited the courtroom
6 at approximately 9:24 a.m.)

7 THE COURT: All right. Mr. Reid, would you please
8 come right around here. Show Mr. Reid how to come
9 around out of the jury box, and let's have you come up
10 here where there is a microphone so we can record
11 Mr. Reid's responses.

12 THE CLERK: May I place him under oath?

13 THE COURT: Yes, ma'am.

14 **DARREL REID,**

15 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

16 MR. REID: I do.

17 THE CLERK: Thank you. Will you please state your
18 name and spell your last for the court reporter. Have
19 a seat, speak into the microphone.

20 MR. REID: Middle name or just first and last?

21 THE CLERK: The whole thing. And just spell your
22 last.

23 MR. REID: Darrel Eugene Reid, R-e-i-d.

24 **EXAMINATION BY THE COURT:**

25 Q Mr. Reid, it's good to see you this morning. I

1 wanted to ask you some questions about what we did
2 yesterday as well as some new questions today.

3 I see here, Mr. Reid, that you did prepare for me
4 the two documents that we gave you this morning. You
5 have done that?

6 A Yes.

7 Q And I appreciate that. All right. Now, have you
8 abided by my instructions on yesterday concerning
9 pretrial publicity, Internet information and things of
10 that nature?

11 A Yes.

12 Q You have not violated my order in any way?

13 A No.

14 Q Thank you, sir.

15 Now, Mr. Reid, I am -- have before me the first
16 form that you have signed and dated, and that form asks
17 you to check which of these descriptions would best
18 describe you as a juror, and you have indicated C. And
19 C says, "One who, although the crime of murder has been
20 proved by the State beyond a reasonable doubt, and
21 while in the sentencing phase considering punishment,
22 would not have his or her mind made up in advance
23 considering punishment, this juror would need to hear
24 the facts and circumstances in aggravation and in
25 mitigation before he or she could make the decision

1 regarding punishment. This juror could, based on the
2 facts presented by the State and the defendant, bring
3 in a verdict of death or life imprisonment."

4 Is that your feeling concerning a case of this
5 type?

6 A Yes.

7 Q All right, sir. Now, Mr. Reid, I look at my
8 notes, and I asked you several questions yesterday
9 concerning information that you may have received or
10 opinions that you may have formed as a result of things
11 that you heard or saw about this case in the past.

12 My notes indicate that you did not indicate that
13 you have formed any opinions or expressed any opinions
14 about this case; is that correct? Are my notes
15 correct?

16 A That's correct.

17 Q You have not done that?

18 A No.

19 Q Okay. Do you, sir, have any interest, prejudice,
20 bias towards either the defendant or the State in this
21 case?

22 A No.

23 Q Okay. I look at your witness list, and I do not
24 see where you have indicated that you know any of the
25 potential witnesses in this case; is that correct?

1 A That's correct. I have a question, though.

2 Q Yes, sir.

3 A I have more not really a question yet. Names, I
4 have a hard time remembering names.

5 Q Yes, sir. And I as well.

6 A Faces I never forget.

7 Q Okay. But as far as you know --

8 A As far as I know, there's nobody on that list.

9 Q Well, let me ask you this. If you, in fact, had a
10 close personal relationship or a business relationship
11 with someone on this list, do you think you would
12 remember that person?

13 A Oh, yeah.

14 Q So you're talking about the person you may have
15 met in passing somewhere?

16 A Yeah.

17 Q All right, sir. Now, I want to add to that list
18 William Nettles, John Randle, Christine Del Fonzo, and
19 Frank Daniel. Do any of those names ring a bell?

20 A No.

21 Q Do you think that you know any of those people?

22 A No.

23 Q All right, sir. Thank you very much. Now, we
24 don't intend or we're certainly not trying to invade
25 your privacy in any way, but due to the nature of these

1 proceedings, we're going to be asking you some other
2 questions, and I want to again impress upon you there
3 are no right or wrong answers. Do you understand?

4 A Yes.

5 Q Okay. Now, among other things, we're going to be
6 talking about penalty. But the mere fact -- I want you
7 to understand this -- that we talk about penalty does
8 not indicate anything about this defendant. I
9 explained to you yesterday that we would only reach the
10 penalty phase if and when a jury had found beyond a
11 reasonable doubt unanimously that Mr. Cottrell was
12 guilty of the offense of murder. Do you understand
13 that?

14 A Yes.

15 Q So I want you to understand that the fact that
16 we're going to ask you questions about penalty does not
17 suggest, if you're placed on this jury, that that's the
18 verdict you should render by anyone. Do you
19 understand?

20 A Yes.

21 Q Thank you, sir. Now, if you were a juror in this
22 case, would you listen to the law as I give it to you?

23 A Yes.

24 Q And could you accept and apply the law that I
25 instruct you as the judge -- that is my duty -- could

1 you apply the law as I instruct you even though you
2 might not agree with it, or you might think it ought to
3 be something else, could you still follow the law as I
4 give it to you?

5 A Yes.

6 Q All right, sir. Could you decide this case, can
7 you set aside everything that you have heard, any bias
8 or prejudices you might have in your mind, could you
9 set it all aside and decide this case solely on the
10 evidence presented here in this courtroom and disregard
11 anything that you may have heard or read or seen about
12 this case?

13 A Yes.

14 Q Okay. Do you understand that in a criminal case
15 the defendant has absolutely nothing to prove. He has
16 no burden whatsoever. The burden of proof is entirely
17 upon the State, and the State must convince each and
18 every juror that the defendant is guilty beyond a
19 reasonable doubt. And if the State fails to do that,
20 the defendant is entitled to a verdict of acquittal.
21 Do you understand that?

22 A Yes.

23 Q And could you follow that premise --

24 A Yes.

25 Q -- in your deliberations as a juror?

1 Do you understand that the defendant has what we
2 call a presumption of innocence?

3 A Yes.

4 Q All right, sir. Could you, based on the evidence
5 and facts in this case either find the defendant guilty
6 or not guilty, you could do either one, based on the
7 evidence that's presented?

8 A Yes.

9 Q All right, sir. If, as I said earlier, if -- and
10 I don't suggest that that is the appropriate thing. I
11 don't want to put that in anyone's mind. But if the
12 jury found the defendant guilty of murder, we would
13 then move on to the sentencing phase. And I believe
14 you understand that; is that correct?

15 A Yes.

16 Q Okay. Aggravating circumstances are facts or
17 incidents or details of an occurrence which the
18 legislature or general assembly has declared by statute
19 or law to make it worse, that is, aggravate the
20 offense. In other words, aggravating circumstances,
21 when accompanying a murder, increases the enormity or
22 adds to the injury of the crime of murder. Do you
23 understand that?

24 A Yes.

25 Q Okay. Mitigating circumstances are incidents or

1 details or occurrences which the general assembly has
2 declared by statute or law again to reduce the severity
3 of the offense of murder and may be considered as
4 extenuating or reducing the degree of moral culpability
5 or responsibility. Do you understand those two
6 concepts of mitigating and aggravating circumstances?

7 A Yes, sir.

8 Q If you were a juror in the sentencing phase, could
9 you, depending upon particular facts and circumstances
10 of the case including the consideration of aggravating
11 and mitigating circumstances and the law which I will
12 instruct you on that applies to this case, return a
13 sentence of life imprisonment? Could you do that?

14 A Yes.

15 Q Okay. If you were a juror and we considered the
16 same things and you considered the aggravating and
17 mitigating circumstances and the law that I give you,
18 could you return a sentence of death by electrocution
19 or lethal injection?

20 A Yes.

21 Q All right, sir. If you were chosen for this jury,
22 you will be housed in a hotel here for several days.
23 That would be at the county's expense, and you will be
24 fed and cared for. Except for personal inconvenience,
25 would this pose a serious danger to your health or

1 well-being or the health and well-being of those
2 dependent on you?

3 A No.

4 Q All right, sir.

5 Yes, sir.

6 EXAMINATION BY MR. McGUIRE:

7 Q Good morning, Mr. Reid.

8 A Good morning.

9 Q I'm going to come up here and talk with you. It's
10 a little hard to do it from way over there. But I'm
11 pretty good about keeping my voice up, so I think
12 everybody will hear us.

13 A All right.

14 Q What I want to talk to you a little bit is the
15 kind of case that brings us here, capital murder. I'm
16 going to start with, to make sure we are communicating
17 and we're on the same page, the definition of murder in
18 South Carolina.

19 I looked at your questionnaire, and I didn't see
20 where you had any legal experience or training; is that
21 right?

22 A That's correct.

23 Q Okay. You probably never heard the definition,
24 the technical definition, of murder before?

25 A No.

1 Q Okay. I'm going to give it to you. And I'm not
2 picking on you. There's no reason for you to know
3 that. In South Carolina the offense of murder is
4 defined as the unlawful killing of another human being
5 with malice aforethought. And malice aforethought is
6 described as somebody operating with a black, malignant
7 heart bent on evil. So it's killing an innocent person
8 intentionally with an evil intent. Are you with me?

9 A Yep.

10 Q Okay. In that scenario, my first question to you
11 is: What are your thoughts about the death penalty as
12 appropriate punishment for that case?

13 A If proven without -- without a doubt, I have no
14 problem with it.

15 Q Okay. Do you -- do you believe that the life
16 penalty, letting somebody live out their years in
17 prison after committing such an act, do you think the
18 life penalty is sufficient?

19 A Yes. If the facts prove that, yes.

20 Q Okay. What I'm going to do now is talk to you a
21 little bit about what's called aggravation evidence.
22 There are some types of categories of cases where
23 people might say it just kind of calls out for or
24 demands the death penalty. For instance, killing a
25 child. Or maybe somebody who commits multiple murders,

1 kills, kills and kills, or maybe a police officer in
2 the line of duty.

3 Are any of these categories resonating with you
4 where you would say they pretty much demand the death
5 penalty?

6 A What was the question?

7 Q It's a little wordy.

8 THE COURT: Mr. McGuire, step lightly. We're
9 getting specific.

10 BY MR. MCGUIRE:

11 Q I'm not going to talk to you about the detailed
12 facts about any case. I'm just talking about sort of
13 categories of cases. And again, it might be rape
14 murder, killing of a child, killing of a police
15 officer, multiple murders, some sort of aggravating
16 element that for you as a person just kind of calls out
17 for the death penalty. Are there any categories like
18 that for you?

19 A I can't say --

20 MR. HIXSON: Your Honor, I object prior to that
21 answer. We're specifically charged with specific
22 aggravators. Can't do that.

23 THE COURT: Mr. McGuire, I'm not going to let you
24 question this juror on any specific aggravator or ask
25 him to give his opinion on any specific aggravator. I

1 think *Morgan* clearly allows you to speak generally as
2 to aggravators and *Hill* as well, but neither of those
3 cases allows you to ask this juror to give his opinion
4 specifically as to how he viewed any specific
5 aggravator.

6 MR. McGUIRE: Yes, sir; your Honor. If I could
7 have just one second.

8 (WHEREUPON, an off-the-record discussion was held
9 between Mr. McGuire and Ms. Norris.)

10 MR. McGUIRE: Judge, I think I need to be heard on
11 that. And I think it's probably --

12 THE COURT: All right. Let this juror just step
13 into the hall for a moment, Mr. Ropp, and have him
14 there and make sure that no one speaks to him.

15 THE BAILIFF: Yes, sir.

16 (WHEREUPON, Mr. Reid exited the courtroom
17 at 9:41 a.m.)

18 THE COURT: Yes, sir.

19 MR. McGUIRE: Thank you, your Honor. With regard
20 to specifics, I'm going to rely on the cases of
21 *Longworth* and *Davis*, South Carolina cases. I'm having
22 them printed up right now. But what I'll do is
23 summarize the facts of those cases for the Court and
24 I'll provide the cases in a second.

25 *Longworth* and *Davis* involve questions by the

1 prosecutor, and the questions were essentially if you
2 found that the defendant was not a triggerman in the
3 case, it was a hand of one, hand of all theory. If you
4 found that he was not a triggerman, would that fact
5 prevent you from considering the death penalty? So
6 that's, you know, that's a category of defendant that
7 the prosecutor was allowed to ask in those cases.

8 They were also allowed to ask, Would the youth of
9 the defendant, being 22 years old, would that prevent
10 from you considering the death penalty? And there's
11 also a mild mental retardation, If you found that the
12 defendant was mildly mentally retarded, would that
13 prevent you from considering the death penalty?

14 And the case, the quote in the cases that's
15 crystal clear is if -- they say the questions are
16 appropriate, they pass on the questions and they say
17 the questions are completely appropriate, and it's
18 because if one of these factors is significant enough
19 to have sort of the home run weight of predisposing a
20 juror to a particular verdict or sentence, then they're
21 not going to be able to comply with the juror oath to
22 fairly consider all the evidence in aggravation, all
23 the evidence in mitigation, and fairly consider both
24 penalties. And they do talk about specifics --

25 THE COURT: But what does *Morgan* say? Doesn't

1 Morgan very clearly and Hill say that you don't go into
2 specifics?

3 MR. McGUIRE: No, sir.

4 THE COURT: All right. Let me take a quick break.
5 And would you get that case for me, please.

6 MR. McGUIRE: Yes, sir.

7 (Pause in proceedings.)

8 THE COURT: Please keep your seats.

9 All right. Let me see what you've got.

10 MR. McGUIRE: Judge, they're still working on
11 pulling that. I apologize for the delay. If I could
12 just follow my thought on that.

13 I think sort of the common sense way to look at it
14 is are there people, potential jurors, who are going to
15 come in here and could they be a good juror if it was
16 just maybe a murder case and it wasn't particularly
17 aggravated? Sure. But if you add -- if you add
18 somebody -- the prosecutor is going to put in evidence
19 that Mr. Cottrell committed two other murders in
20 addition to the killing of Officer McGarry.

21 Now, the question we have to ask ourselves, is
22 that so significant, that aggravation, is it so
23 significant where it could move a juror to be so in
24 favor of the death penalty where they're really not
25 going to be able to comply with their oath and consider

1 all the evidence in mitigation, aggravation, and fairly
2 consider both penalties.

3 And the other issue would be killing of a police
4 officer, could that be so significant, could that be so
5 impactful and resonate with the juror that that would
6 predispose them --

7 THE COURT: But the issue here is whether or not a
8 juror -- the juror can comply with the requirements of
9 jury service or the duties of a juror to determine
10 whether or not there's anything that would
11 substantially interfere or prevent that juror from
12 being a fair and effective juror.

13 Now, jury voir dire is not to develop some sort of
14 personality profile for the juror. And, you know, I
15 look at the case law, and it seems to be very clear to
16 me that the defendant -- neither the defendant nor the
17 State are allowed to go into specific matters of
18 aggravation or mitigation. Only -- they're only
19 allowed to ask questions to determine whether or not
20 the juror can consider mitigating and aggravating
21 circumstances.

22 Now, there's the *Mu'Min* case in Virginia where
23 that court, the U.S. Supreme Court, said -- it's an
24 older case. It's a 1991 case. It's certainly after
25 *Morgan* -- or before *Morgan*. And the supreme court held

1 that a defendant is entitled to specific questions only
2 if the failure to ask them would render his trial
3 fundamentally unfair.

4 Let me hear from Mr. Hixson.

5 MR. HIXSON: Yes, your Honor. You're hitting some
6 of the cites that I was going to bring up.
7 Specifically, the level of questioning that requires
8 additional voir dire on the part of the defense under
9 *Morgan* is so fundamentally unfair. And that's the
10 cite, the follow-up cite, you're referring to, *Mu'Min*
11 *vs. Virginia*, the case law under *Hill* and *Powers*,
12 *Stanko*, even *Platt*, that general questions concerning
13 aggravation is the standard. General questions
14 concerning can you follow the law, that's really the
15 number one query that the Court is getting into. Can
16 you follow the law as your Honor charges it? Can you
17 follow the law as I apply it to statutory aggravators,
18 statutory mitigators, and if you can set aside anything
19 else and it doesn't substantially impair their ability
20 to do that, then they're properly qualified.

21 To allow staking out jurors on specific opinions
22 is what the Court and why there is a statute limiting
23 the scope of this to develop personality profiles and
24 we believe feel controls on this as well --

25 THE COURT: I believe an inquiry as to whether or

1 not the juror can follow the law, whether a juror will
2 consider both aggravating and statutory -- or
3 aggravating and mitigating factors is sufficient.

4 I don't think we need to go into the specifics of
5 what aggravating circumstances may be present in order
6 to determine whether or not these jurors are qualified.
7 It is whether they can follow the law and evidence in
8 this case. And I'm not going to get into or allow you
9 to get into specific aggravating circumstances. I
10 think to do so would be to try to develop some sort of
11 personality profile or stake out these potential
12 jurors, put them in a position where they felt that
13 they would have to vote one way or the other prior to
14 hearing the evidence in the case. I'm just not going
15 to allow it.

16 Okay. Let's bring him back in.

17 MR. McGUIRE: Your Honor, I've got *Longworth* and
18 *Davis*.

19 THE COURT: All right. I'll look at them.

20 MR. McGUIRE: In *Davis* -- let me give these to
21 you.

22 You can see where they are. I mean, they allow
23 the lawyers to get very specific into areas of
24 mitigation to see if it would prevent the juror from
25 considering one of the penalties which is the life

1 sentence. And the Court -- I'm sorry, I'm just going
2 to let you read for a second.

3 THE COURT: I'm looking at *Davis* and I'm looking
4 at the language you have marked, and it simply would
5 suggest that perhaps the judge did allow that question,
6 that specific question about mental retardation. But
7 the court was not called upon to rule whether that was
8 proper or not, just whether the court properly excluded
9 the juror after the question was asked.

10 Do you find language in that case that would
11 suggest that the court ever visited that issue, that
12 is, the court considered whether or not the judge
13 should have allowed specific questions concerning
14 retardation?

15 MR. McGUIRE: Well, Judge, I mean, I think I would
16 just point out that obviously the South Carolina
17 Supreme Court, if it was an inappropriate question,
18 they would have said so. They have been very quick to
19 say so in many, many other cases. For instance, using
20 hypotheticals to try to get sort of a profile. They're
21 very quick to say this is not an appropriate question.
22 They did not take that opportunity in that case --

23 THE COURT: I agree they certainly did not. And
24 in the *Longworth* case we essentially have the same
25 situation where apparently there was no objection to

1 that question and the court did not have that issue
2 before it.

3 You know, I look at *Morgan* and I look at the way
4 the court has interpreted *Morgan* and in subsequent
5 cases such as *Powers* and *Hill*, and, quite frankly, I
6 believe that it is improper to question the potential
7 juror as to specific aggravating or mitigating
8 circumstances and I'm just not going to allow that. I
9 do not believe that it would be fundamentally unfair or
10 render his trial fundamentally unfair to disallow that
11 type of questioning.

12 I believe that *Morgan* clearly says that the
13 defendant's entitled to know if jurors would consider
14 general mitigating evidence, but that court had an
15 opportunity to do so but did not hold that the
16 defendant was entitled to know if a juror could
17 consider specific mitigating evidence. And that was
18 exactly where we were going with this thing, and I'm
19 just not going to allow it. Thank you.

20 Mr. Ropp, please bring in the juror.

21 THE BAILIFF: Yes, sir.

22 MR. McGUIRE: Judge, if I could.

23 THE COURT: All right.

24 MR. McGUIRE: Just, I'm sorry. I don't want to
25 be --

1 THE COURT: One other thing. Please keep him out.

2 Yes, sir.

3 MR. McGUIRE: Judge, I just -- the rules of issue
4 preservation are pretty hard nowadays. I don't want to
5 fail Mr. Cottrell in at that regard.

6 THE COURT: I understand.

7 MR. McGUIRE: I just need to put on the record
8 that if we're not allowed to ask these questions about
9 specific aggravation evidence, and not specifically
10 factually but specifically in a category -- rape
11 murder, child murder, officer killing, multiple
12 murder -- if we're not allowed --

13 THE COURT: What's the difference, Mr. McGuire?
14 What's the difference? You say in categories but not
15 specific. What's the difference?

16 MR. McGUIRE: Well, I think the difference would
17 be taking a pistol and shooting an officer in the face
18 or making a man dig his own grave and then shooting him
19 and putting him in the grave or taking advantage of a
20 personal relationship with a friend and luring him out
21 so you can rob him, rob your former friend of money and
22 shoot him in his own truck, I think those would be
23 specific details, facts that could you -- you know, I
24 could certainly see where they would render the juror
25 in a kind of worked up emotional state because those

1 facts are so graphic.

2 And we would never ever propose to do that. We
3 would just use categories -- rape murder, child murder,
4 officer killing --

5 THE COURT: Which are the specific aggravating
6 circumstances set forth by the legislature.

7 MR. McGUIRE: Yes, sir.

8 THE COURT: So I think we're just talking in
9 circles. I think that is the specific -- your
10 categorization as categories rather than specifics
11 essentially is the same thing.

12 MR. McGUIRE: And I understand the Court's --
13 there is a lot of case law out there that disapproves
14 of staking out, that sort of thing, and going into
15 specifics. And that's because lawyers would attempt in
16 the past to try to sort of broker a deal with a juror.

17 You know, if I was to be able to prove that
18 somebody had a harsh childhood, grew up in abject
19 poverty, had a father who was a drug dealer who left,
20 you know, that sort of thing, you know, would those
21 things -- could those things commit you to considering
22 the life penalty. And that's what's called staking
23 out, trying to get the juror in your corner, stake them
24 out, and you're trying to broker a deal with them.

25 Now what I'm trying to do is just merely discover

1 bias. If these aggravating facts, just like the
2 mitigation facts in *Longworth* and *Davis* -- youth, not
3 triggerman, mild mentally retarded -- if these very,
4 very, very significant aggravating facts of multiple
5 murders in an officer killing would with a particular
6 person, if their personal view was based on that
7 significant aggravating circumstance, would that
8 prevent them from considering the life penalty. I'm
9 just trying to discover bias. Does that resonate with
10 them, does it commit them so much in favor of the death
11 penalty that they wouldn't consider the life penalty.
12 I'm not trying to broker a deal with them or stake them
13 out. And that's where all the case law is on
14 specifics.

15 And I agree with the Court that that would be
16 improper. I would not do that. I would never do that.
17 What I need to do is just put on the record if we're
18 not allowed to discover if jurors are biased based on
19 the aggravating circumstances --

20 THE COURT: I'm not going to fall into that trap,
21 Mr. McGuire. Certainly I want you to uncover bias.
22 What I am instructing you to do is refrain from
23 discussing with the juror specific aggravators or
24 mitigating circumstances that may be applicable in this
25 case. Do not talk to them about that. Ask them

1 generally if they could consider aggravating and
2 mitigating circumstances in their decision on
3 punishment. That's where I will let you go with this.
4 I think that's in keeping with *Powers, Hill, Morgan*.

5 MR. McGUIRE: Your Honor, could I -- would the
6 Court allow me just to read the list of statutory
7 aggravators, the 21 statutory aggravators that we have
8 in South Carolina, and just ask them if any particular
9 aggravator --

10 THE COURT: No, sir. We're not going to talk,
11 Mr. McGuire, about the specific aggravators. You're
12 not going to read a list of 21 and say, "Okay. Which
13 ones of these do you really feel are the most severe or
14 the less severe of the aggravators?" We're not going
15 to get into that. We're just not going to do it.

16 There again you're talking about even more
17 specific to ask a juror, "Tell us what you think about
18 these aggravators." The issue is whether or not the
19 juror will, upon my instruction, consider aggravating
20 and mitigating circumstances. That's the issue.
21 That's what we're looking for here. Can that juror
22 perform his duties as a juror. And that's where we're
23 going to go with it.

24 MR. HIXSON: Your Honor, just a brief addition
25 relating to authority. We also believe that's asking a

1 hypothetical. To ask a laundry list of aggravators
2 that aren't charged in this case is asking to comment
3 on hypotheticals and we know that's improper.

4 THE COURT: You're quite right there.

5 Your position is well stated, Mr. McGuire. It's
6 on the record. It is noted.

7 All right, sir.

8 MR. McGUIRE: If I can just put -- just state the
9 constitutional grounds for the record.

10 THE COURT: Go ahead.

11 MR. McGUIRE: Judge, your ruling disallowing us to
12 uncover bias regarding the specific aggravators --

13 THE COURT: Don't say that, Mr. McGuire. That's
14 not what my ruling is. I'm going to let you uncover
15 any bias you want. What we're going to do is we're
16 going to follow the case law in doing so.

17 We're going to do that without talking about
18 specific -- or a juror's specific view on any
19 aggravator or any mitigating circumstance. And I'm
20 going to apply the same standard to the State as well.

21 I'm going to let you explore bias, but we're not
22 going to talk about the specific aggravators and the
23 specific mitigators.

24 MR. McGUIRE: Yes, sir. And if I could just state
25 the constitutional grounds that -- I'm not going to

1 paraphrase your ruling. It speaks for itself.

2 I would just state that the Court's ruling would
3 be a violation of Mr. Cottrell's due process rights
4 under the Fifth and Fourteenth Amendment, his right to
5 impanel an indifferent, unbiased jury pursuant to both
6 the Sixth and Fourteenth Amendment, and because this is
7 a capital case, that it would be a violation of a
8 heightened reliability standard as demanded by the
9 Eighth Amendment to the United States Constitution.

10 THE COURT: All right. Thank you, sir.

11 All right. Now let's bring him in.

12 (WHEREUPON, Mr. Reid entered the courtroom
13 at 10:02 a.m.)

14 THE COURT: All right. Come back around. All
15 right.

16 Mr. McGuire, you may continue.

17 BY MR. McGUIRE:

18 Q Welcome back, Mr. Reid.

19 Let me just ask sort of a general question. If
20 you were governor of South Carolina or king for a day,
21 would you have the death penalty, and if you could just
22 tell us a little bit about your answer. If you had the
23 ability to pass a law, we would keep the death penalty
24 or not have it, what would you do?

25 A I'd keep it.

1 Q And why is that?

2 A The wages of sin is death.

3 Q I'm sorry?

4 A The wages of sin is death.

5 Q Okay.

6 A I truly believe that if all the facts are there,
7 the death sentence is what should be.

8 Q Okay. So if all the facts line up, they're beyond
9 a reasonable doubt, a person with malice, with an evil
10 intent took an innocent life, they should forfeit
11 theirs?

12 A Correct.

13 Q And the life penalty would not be available for
14 that type of person, that type of killing?

15 A It depends on the -- if all the facts proved that
16 he is guilty with malice; am I correct?

17 Q Yes, that would be -- that would be the Court's
18 definition.

19 THE COURT: I think he's asking if that's the law.
20 BY MR. McGUIRE:

21 Q Oh, the judge will charge the law. But I will
22 just tell you that --

23 A I'm saying that if all the facts are there and all
24 points to that, yes, I would say that. If not, if
25 there's doubt, then life imprisonment, yes.

1 Q Okay. So if you had some doubt about whether the
2 person committed the crime, then life would be
3 appropriate for that person?

4 A Yes.

5 Q But now if all the facts lined up beyond a
6 reasonable doubt and it was proven to your satisfaction
7 that the defendant intentionally took an innocent life
8 with malice aforethought and there was no doubt, then
9 the case deserves the death penalty?

10 A Yes.

11 Q Always?

12 A Yes.

13 Q Okay. And when fixing punishment in these types
14 of cases, the background factors of a defendant --
15 whether he grew up poor, maybe addicted to drugs,
16 background characteristics of the defendant -- are
17 those things relevant in fixing punishment for that
18 kind of killing?

19 A No.

20 Q Okay. I'm going to ask you a little bit about
21 kind of a touchy subject. It's about race. Obviously
22 Mr. Cottrell, Allen Cottrell, is a black man, and
23 Officer McGarry is a white police officer. And if I
24 told you that I guaranteed Allen Cottrell, that race
25 was not going to play any part of his case in Horry

1 County in Conway, South Carolina, that the fact that
2 he's black and the officer is white, that would have no
3 role in his case whatever, do you think maybe I spoke
4 too soon or do you think race would be involved
5 somehow?

6 MR. HIXSON: Your Honor, I object to the form of
7 that question. He can certainly probe into the racial
8 bias, but he can't posit a hypothetical and say what
9 may happen in the trial.

10 THE COURT: How would this person know,
11 Mr. McGuire?

12 MR. McGUIRE: Well, I'm going to ask him.

13 THE COURT: Okay. Ask him that first, would you
14 know that.

15 BY MR. McGUIRE:

16 Q Do you think race might play a role with some of
17 your fellow jurors maybe?

18 MR. HIXSON: Your Honor, once again, I object.
19 How you think what race may play a role in fellow
20 jurors' minds. He can ask him --

21 THE COURT: I'm going to let him answer that
22 question.

23 MR. REID: I can tell you what's on my mind, you
24 know, but I can't tell you what my fellow jurors' minds
25 are.

1 BY MR. MCGUIRE:

2 Q Tell me what's on your mind about that.

3 A I have no dislike for -- for any color, creed or
4 religion.

5 Q I'm going to talk to you a little bit about some
6 legal principles that apply in a capital case and just
7 ask you basically if you can follow that law because a
8 capital case is different from any other case.

9 Now, the judge has already talked to you a little
10 bit about how a capital case has two separate phases.
11 The first phase is like a regular case like, a regular
12 murder trial. If there is a finding of murder, then
13 the jury would go into a second phase, and that's the
14 sentencing phase. And you heard the judge say that.

15 A Uh-huh.

16 Q And I'm going to -- the court reporter is going to
17 remind us from time to time to say "yes" instead of nod
18 your head.

19 A Pardon?

20 Q Every once in a while the court reporter is going
21 to say, "Please answer out loud and not nod."

22 A Okay.

23 Q So I'll remind you, too. Okay?

24 A All right.

25 Q I think you were nodding your head "yes," you got

1 the judge's instructions?

2 A Yes, I understand.

3 Q Yes. Okay. In the first phase, you've probably
4 heard of what's called a hung jury or a mistrial where
5 a jury couldn't agree in a case, a criminal case.
6 You've heard that term before?

7 A Yes.

8 Q Okay. And most people understand from TV -- in
9 fact, there is a pamphlet in the courthouse here that
10 actually talks about what happens with a mistrial in a
11 first phase of a case or a regular case. And that is
12 the case would have to be retried. It would have to
13 come to court again if the jury couldn't agree one
14 hundred percent, 12 guilty or not guilty. Is that your
15 understanding?

16 A Yes.

17 Q Okay. And that's how it is in this case for the
18 first phase. But in the second phase, the sentencing
19 phase of a capital case, because it is so different and
20 because it involves a human being, whether they live or
21 die, the law makes room for a jury that can agree to
22 disagree. Did you know that?

23 A I'm not sure I understand.

24 Q Okay. Well, if the jury didn't agree as to
25 punishment -- and there can only be two options as the

1 judge told you, the death penalty and the life penalty.
2 If the jurors didn't agree, all 12 of them, on one or
3 the other, the judge would take the case and he would
4 sentence and it would end. It would not have to be
5 retried.

6 MR. HIXSON: Your Honor, I object to that line of
7 questioning, simply to the form of the questioning and
8 a burden shifting on. That doesn't have anything to do
9 with bias and prejudice at all, shifting the role of
10 the jury in the sentencing phase.

11 THE COURT: I agree.

12 Mr. McGuire, what does that have to do with this
13 juror's ability to follow the law?

14 MR. McGUIRE: Well, my next question would be --
15 well, let me -- I guess my answer is I'm getting there.

16 THE COURT: Okay.

17 BY MR. McGUIRE:

18 Q And the judge would charge the jury that they
19 could find for the life penalty for any reason, no
20 reason or mercy alone. Did you know that? Have you
21 ever heard that before?

22 A I don't know. No, I don't. The answer is no.

23 Q Okay. And a lot of times people -- people, when
24 they hear that they could vote for a particular verdict
25 for no reason, they have a problem with that.

1 What I want to ask you is if there was somebody on
2 the jury and you were serving with them and they said,
3 "I heard the judge's instructions and I'm going to
4 follow his instructions and follow the law. I'm going
5 to vote for the life penalty, and I can't give you a
6 reason. It's for no reason," could you respect that
7 and let them have a different view if your view was
8 different?

9 A Oh, yeah. I think their -- that's up to them.

10 Q Okay.

11 A I'm only in charge of myself.

12 Q Sure. Sure. And that would be even if they said,
13 "I don't have a reason for it. The judge said I could
14 vote for life for no reason," and you could let them
15 have that position?

16 A Yeah, I guess so.

17 Q Okay. Even if it resulted in a jury that didn't
18 agree -- you had some people wanting the death penalty,
19 some people wanting the life penalty -- you could let
20 them all have their own personal judgment?

21 A Yes.

22 MR. HIXSON: Once again, your Honor -- well, it's
23 absolutely the same line of questioning. We're staking
24 out a hung jury here. That's the effort, to do that --

25 THE COURT: Mr. McGuire, please be careful here.

1 Okay? Try to limit your questions to whether or not
2 this juror could follow the law.

3 BY MR. McGUIRE:

4 Q Okay. And the law is that once a decision -- the
5 juror's decision in a capital case is described by our
6 courts as a personal moral judgment. You've probably
7 never heard that phrase before.

8 A No.

9 Q Okay. And I'm pointing out the differences
10 between a normal trial, a first phase case, whether
11 somebody is guilty or not. Those questions are decided
12 by science and fact -- did something happen, did
13 something not happen, is the bullet a .38 or a .45.
14 And there is a right or wrong answer to almost every
15 question in a first phase case or a regular case.

16 But a sentencing case, whether a human being lives
17 or dies, science is not going to answer that question.
18 It's not a factual question. It's a personal moral
19 judgment. And what I'm asking you is, if you saw a
20 fellow juror reach their own personal moral judgment
21 and it looked like it would cause them to harm their
22 conscience to change their position --

23 MR. HIXSON: Your Honor, once again, this entire
24 line of questioning is based on staking out a hung
25 jury. It's not the charge on the law. This is not a

1 charge on aggravating circumstances.

2 THE COURT: Mr. McGuire --

3 Can we take this juror out.

4 (WHEREUPON, Mr. Reid exited the courtroom
5 at 10:12 a.m.)

6 THE COURT: Mr. McGuire, I don't think this line
7 of questioning is proper. And I'll tell you why. I
8 believe that what you're doing is fishing for a hung
9 jury. I think that's evident by the fact that you
10 began by misstating the law to this juror. You said,
11 "Did you know that if you can't reach a verdict on the
12 sentence, then the judge will sentence." You know very
13 well what happens there. It becomes a life sentence,
14 period.

15 Now, this whole line of questioning that you're
16 following is essentially suggesting to this juror that
17 you can -- want to get in your mind that you can sort
18 of cop out on this thing and not reach a verdict, that
19 the judge then will take the burden of doing -- of
20 doing this from you. That's not appropriate. It has
21 nothing to do, Mr. McGuire, with whether or not this
22 juror can follow the law. And that's where we want to
23 stay.

24 I mean, what you're doing here is asking questions
25 about the willingness of this juror to participate in a

1 hung jury, and I don't think that that's appropriate.
2 Now I'll hear you on it, but I don't think it's
3 appropriate.

4 MR. McGUIRE: Yes, sir. First off, I would never
5 misstate the law to a juror intentionally --

6 THE COURT: Well, you did, though.

7 MR. McGUIRE: -- I did leave off the fact that the
8 sentence would be life. And, quite honestly, Judge, I
9 have no problem telling them that.

10 The issues that I'm asking him about -- and,
11 again, the Court is absolutely right. This is about
12 can you follow the law. And the law, when it comes to
13 the capital sentencing portion of a trial, it does
14 require each individual juror to reach their individual
15 moral judgment.

16 THE COURT: You know, I think that you can do, if
17 that's what you want to do, all you have to ask this
18 juror is simply a question that has been approved. "If
19 we got right down to it and 11 of your fellow jurors
20 voted one way and you felt that you should vote the
21 other way, would you concede, would you give up, would
22 you fold your tent and go with the majority or would
23 you stand by your decision, whatever that may be?"
24 That is an appropriate question. And it does what you
25 are seeking to do.

1 We have a case on point in that regard. If you
2 want to ask this juror, "Would you go with the
3 majority, or if you have reasonable doubt, if you had a
4 substantial position or you had formulated a position
5 on sentencing, would you stick to it? Would you stick
6 to your guns or would you just concede because you
7 wanted to be a part of the majority and not because it
8 was your true feeling?" That's the appropriate way to
9 proceed.

10 MR. MCGUIRE: I'll phrase the questions along
11 those terms, Judge.

12 THE COURT: All right. Very well. Bring him
13 back.

14 MR. HIXSON: Just one point in that regard. My
15 understanding of *Bennett* in that regard is that the
16 question is appropriate if it says you're only doing it
17 just to go along with the majority.

18 THE COURT: Exactly.

19 MR. HIXSON: But you can take facts and
20 circumstances and you agree with the position of the
21 majority through the give-and-take of the jury process,
22 but it's improper if they do it just to give up and go
23 along because you can flesh out why they would change.

24 THE COURT: That's what we're talking about.

25 Okay.

1 (WHEREUPON, Mr. Reid entered the courtroom
2 at 10:16 a.m.)

3 BY MR. McGUIRE:

4 Q Welcome back, Mr. Reid. You're getting some
5 exercise. Sorry about that.

6 I want to rephrase those questions a little bit
7 differently. They were a little wordy, and sometimes
8 I'm not a very good communicator despite the fact I'm
9 supposed to be a professional communicator.

10 I was talking to you about how the sentencing
11 phase of a capital case is completely different from
12 any other trial. Because it's an individual moral
13 judgment. That's what the sentencing decision is
14 called when it comes to a juror, that it's an
15 individual choice. And it is -- it's improper in our
16 law to have a juror throw in with the majority and let
17 their opinion or their views sort of substitute for
18 their own. Do you understand what I'm saying?

19 A Yes.

20 Q It would be completely improper and it's unlawful
21 because -- we call it unlawful because it's a violation
22 of the juror's oath. The juror oath is that each
23 individual juror is going to make their decision, and
24 if they abandon that oath, it becomes an unlawful act.

25 So if it was 11 to 1, say, 11-4 the life penalty

1 and you were the one that said the death penalty, would
2 you -- and that was your individual moral judgment and
3 it would harm your conscience to abandon that position,
4 would you maintain your position and not go in with the
5 majority for the sake of a unanimous verdict?

6 MR. HIXSON: Your Honor, once again, it's the form
7 of the question. If that's the only reason. The
8 "just" is the issue.

9 THE COURT: He said "for the purposes of joining
10 the majority." I think that was it.

11 You understand the question? Would you just
12 become a part of the majority just because you wanted
13 to be a part of the majority or would you stand by your
14 position?

15 MR. REID: No. I stand by my judgments.

16 BY MR. McGUIRE:

17 Q Okay. And you would have respect for other
18 people's decisions if it was different?

19 A Correct.

20 Q And you would not try to get somebody to come over
21 to the majority just for the sake of a unanimous
22 verdict?

23 A No, I would not.

24 Q And, you know, there are a lot of rules in court.
25 Some are for me, some are for Mr. Cottrell, some are

1 for the State. Some are for you. And there is a
2 United States Supreme Court case that says these types
3 of proceedings would always be conducted with dignity
4 and respect.

5 And on that question I asked earlier about trying
6 to get somebody to throw in with the majority just for
7 the majority sake, how that would be wrong, if you saw
8 that happening, could you step in and stop that?

9 MR. HIXSON: Your Honor, once again, I have to
10 object relating to hypotheticals on this role inside
11 the jury room on what his role to change -- they're
12 entitled to give and take and change each other's
13 opinions. That is a misstatement of the law. That's
14 the process.

15 THE COURT: And I don't think that's an
16 appropriate question when it comes to whether or not
17 this juror could follow the law. This juror said that
18 he would not, just for the sake of being part of the
19 majority, change his vote. Now you're asking him
20 questions concerning his affirmative actions if he saw
21 some other juror doing that.

22 Let's limit it to whether or not this juror can
23 follow the law.

24 BY MR. McGUIRE:

25 Q I appreciate all your answers, and it appears

1 you're putting significant thought in your responses.

2 Is that true?

3 A Yes.

4 Q And your answers are under oath and true?

5 A Yes.

6 Q And they emanate from your core, your moral core,
7 who you are as a person?

8 A Yes.

9 Q Your value system?

10 A Yes.

11 Q And I can't change that, your value system?

12 A No.

13 Q And all of the answers to these questions are
14 going to remain consistent; you wouldn't change your
15 answers if somebody asked you to change them?

16 A No.

17 MR. McGUIRE: If I could just have one second,
18 Judge.

19 (WHEREUPON, an off-the-record discussion was held
20 between Mr. McGuire and Ms. Norris.)

21 MR. McGUIRE: Mr. Reid, thank you so much. That's
22 all I have for you.

23 THE COURT: All right. Mr. Hixson or Mr.
24 Richardson.

25 MR. HIXSON: Thank you, your Honor. May it please

1 the Court.

2 EXAMINATION BY MR. HIXSON:

3 Q Good morning, sir. How are you?

4 A Good.

5 Q You got to answer a bunch of questions this
6 morning. I'll kind of get straight to the point on
7 some of it, give you an idea.

8 The judge asked you some questions relating to the
9 process that we're going through, and I just want to
10 make sure that there's some understanding. I think it
11 got a little confused.

12 You know, the judge talked to you about the fact
13 that the first stage of this trial is going to be the
14 guilt phase. So assuming we get to the next phase, the
15 penalty phase, the jury is already going to have to
16 have come to a decision on whether the defendant is
17 guilty of murder, right? So you're going to know that.
18 That's going to kind of be in your pocket, right? This
19 guy is guilty of murder.

20 Now, the second stage, you're going to hear a
21 bunch of other information to decide what the
22 appropriate penalty is from there. Safe to say?

23 A Okay.

24 Q And that's what the judge was talking about what
25 aggravation is. We already know he's convicted of

1 murder, but what about this makes it worse? And the
2 State will put up information about that. And I think
3 you indicated you could consider that. Is that what
4 you said?

5 A Yes.

6 Q And I also think the defense may, if they want
7 to -- they're under no burden to, but if they want to,
8 they can put up information to you to say, "Hey, this
9 isn't as bad as what the State is saying. It isn't
10 that bad. Listen to this." I think you said that you
11 could listen to that as well and consider that; is that
12 right?

13 A That's correct.

14 Q Okay. The reason I'm asking you this is you
15 indicated earlier, I think, that you thought the murder
16 (sic) was an appropriate punishment. And I wanted to
17 make sure you understood that this process allows for
18 more information after that murder decision up until
19 the time all you guys go back in the back and decide
20 what Mr. Cottrell's fate should be. Do you understand
21 where the process is, where we are?

22 A I think so.

23 Q Okay. So you, as a juror, if you put your hand on
24 the Bible, take an oath to be a juror in this case, can
25 you consider all that aggravating circumstances and the

1 mitigating circumstances before you decide whether he
2 should be sentenced to death or sentenced to life
3 imprisonment?

4 A Yes.

5 Q Can you consider all of it, good and bad, before
6 you make the decision? In other words, once you leave
7 the first phase, if he is convicted of murder, are you
8 absolutely no matter what going to sentence him to
9 death without considering any other information?

10 A No.

11 Q Will you consider that?

12 A I will consider, yes.

13 Q Okay. And also the judge is going to charge the
14 law on the case. And you indicated that you could
15 follow the law even if you disagree with it. And do
16 you affirm that that's in fact the truth on your
17 opinion?

18 A Yes.

19 Q Okay. Also relating to the jury information, the
20 jurors, that's a private process. Just a statement on
21 process. Back in the jury room. Solicitor is not
22 going to be there. The defense counsel is not going to
23 be back there. The judge is not going to be back
24 there. And that give-and-take between jurors is the
25 process. And I think Mr. McGuire indicated, you know,

1 that -- and you indicated that you wouldn't change your
2 mind just to go along, but could you take other
3 people's opinions and evolve and think about it as you
4 all collectively come to a decision?

5 A Yes, I could do that.

6 Q Okay. One final question. At the end of this
7 process, it's a little different than other things. If
8 the jury comes back after you've considered all this
9 information, and let's just hypothetically -- well,
10 let's just say you came back with a verdict of guilty
11 and your sentence, guilty of murder, this process says
12 we, the jury, believe that he should be sentenced to
13 death. There will be a verdict form back in that jury
14 room, and it will have signatures on the bottom of all
15 12 jurors. And they have to take a pen and you have to
16 write on that jury form that you agree with it. You
17 have to put your name to that piece of paper in order
18 for that verdict to be death. Do you believe that you
19 would be able to do that?

20 A Yes.

21 MR. HIXSON: I have no further questions..

22 THE COURT: All right.

23 Mr. Reid, I think I know what you were telling me,
24 but let me make absolutely certain that I understand.

25 A moment ago Mr. McGuire questioned you about your

1 thoughts as to whether the death penalty should be
2 given in a murder where the State proves beyond a
3 reasonable doubt malice aforethought. And you said if
4 the circumstances -- if I understood you right --
5 warranted it.

6 Let me make sure you understand our process.
7 There could be no conviction for a murder without
8 malice aforethought, a show or proof beyond a
9 reasonable doubt of malice aforethought. Murder is the
10 killing of another person with malice aforethought.
11 Okay?

12 Once that is established -- so there would have to
13 be, for a conviction to take place, proof beyond a
14 reasonable doubt of malice aforethought. And I'm not
15 suggesting that the State can do that. I'm just
16 telling you that's what the State would have to do.

17 The death penalty would only be appropriate if, in
18 addition to that, beyond proving malice aforethought
19 which is necessary just to prove the verdict, beyond
20 that, the State would have to prove beyond a reasonable
21 doubt that one of several statutory -- and it is
22 described by law -- the statutory aggravating
23 circumstances also existed at the time of the murder in
24 addition to malice aforethought. And unless the State
25 had done that you could not -- unless you find

1 unanimously, the jury, that at least one of these other
2 aggravating circumstances existed, you could not even
3 consider the death penalty. Do you understand that?

4 MR. REID: I understand that.

5 THE COURT: So your process would be first let's
6 determine if there is an aggravating circumstance. And
7 if you were unable to reach that conclusion
8 unanimously -- and again I am not suggesting that you
9 should. Please do not think that I am. But if you did
10 not reach that conclusion, first, after a conviction
11 for murder where you found malice, you would go no
12 further. It would be life imprisonment. It would have
13 to be.

14 But if you did find, then you should also consider
15 extenuating circumstances. We call those mitigating
16 circumstances. And if you found mitigating
17 circumstances -- and they're spelled out by the law,
18 some of them are, but I would also tell you that in
19 addition to those, you could consider any others that
20 you found to be in this case. You could consider them.
21 Or none at all. We call that granting mercy. For no
22 reason you could say, "We're just not going to give the
23 death penalty. We have found an aggravating
24 circumstance, but we're just not going to do it." Do
25 you understand that that would also be an option?

1 A Yes.

2 Q All right. And if I instructed you as to the law
3 and I told you -- and I will tell you -- that that is
4 the law -- I will tell you that in a more formal
5 fashion -- but could you follow that law? Could you
6 follow it as I've described it to you?

7 MR. REID: Yes.

8 THE COURT: Could you return, based on what you
9 hear in the case -- now you haven't heard anything --
10 but based on what you have heard in the case, if you
11 got, if you got to the penalty phase, and if you
12 determine -- you as a jury determined that there was an
13 aggravating circumstance, could you consider all the
14 mitigators and either return a sentence of death or the
15 sentence of life based on the circumstances? You could
16 consider either one.

17 MR. REID: Yes.

18 THE COURT: That's what I want to know. All
19 right, sir.

20 I'll let you re-examine, Mr. McGuire.

21 MR. MCGUIRE: No further questions.

22 THE COURT: State?

23 MR. HIXSON: Nothing further, your Honor.

24 THE COURT: All right. Would you just step
25 outside for just one moment.

1 (WHEREUPON, Mr. Reid exited the courtroom
2 at 10:29 a.m.)

3 THE COURT: You want to be heard?

4 MR. McGUIRE: Just briefly.

5 Move to strike for cause that his responses were
6 if the facts all lined up and it was beyond a
7 reasonable doubt, it was murder with malice, he
8 indicated it was the death penalty for him. And I
9 asked him specifically, I asked the question always?
10 He said yes. I think it was very clear that if it's
11 beyond a reasonable doubt, it's murder. He's what
12 would be referred to as an automatic death penalty
13 juror. And when I asked him also regarding mitigation
14 evidence, in layman's terms would background
15 characteristics of a defendant be relevant in fixing
16 punishment for murder, he indicated that, no, they
17 would not be. And he also told me his answers were
18 truthful, they were under oath, they were a reflection
19 of his moral values. And if we take him as being
20 honest when I was talking to him in just plain
21 language, then he needs to be struck for cause.

22 MR. HIXSON: Yes, your Honor. Briefly, as it
23 relates to his opinion, I believe Mr. McGuire's biggest
24 concern it appeared to be confusion over the process.
25 In other words, does his background, does his schooling

1 have anything to do with if he is convicted of murder
2 beyond a reasonable doubt. And my perception of it was
3 that he was thinking of the murder process not so much
4 the penalty process. But that is, nonetheless, he did
5 not answer up unrelated to the opinion question. He
6 didn't have any prior opinion. He didn't answer when
7 your Honor asked him yesterday about that. He was not
8 one of the ones who said he had any predispositions or
9 opinions on these facts.

10 And, additionally, the totality of the voir dire
11 taken as a whole and his questionnaire on question 47
12 as well, I believe -- it's not very -- the standard is
13 totality of the voir dire as a whole. We believe that
14 he does not have an opinion, that he is properly
15 qualified. He is a classic -- on the totality of his
16 voir dire, he is a classic C juror, that he said he
17 would consider that. He did feel strongly about it.
18 He has strongly held beliefs, but those strongly held
19 beliefs are not alone sufficient to strike as to the
20 totality of voir dire. We believe he's qualified.

21 THE COURT: All right. I find that he is
22 qualified. I have considered his responses to the
23 jury-type questionnaire. His responses to the voir
24 dire that he was subjected to leads me to believe that
25 that is, in fact, his feeling on it. I have detected

1 no racial bias. I have -- he has indicated that he had
2 no prior conceived opinions, and there was none
3 developed during voir dire that he had any or that he
4 had any interest or bias about the case.

5 He, in response to your questions, Mr. McGuire, I
6 found them confusing to begin with. When you asked him
7 if he would give the death penalty in every case, and
8 he clearly was trying to qualify this by saying "if the
9 circumstances in fact lined up" or similar language.
10 This juror was trying to, I believe, respond by saying
11 he would follow the law. We had already talked about
12 aggravating and mitigating circumstances.

13 Finally, again to make absolutely certain that he
14 understood, I think the questions that I asked him at
15 the close of voir dire clearly showed that he now
16 understands the process, that he would consider
17 mitigating and aggravating circumstances, he
18 understands that this jury could grant mercy and give a
19 life sentence. There is no doubt in my mind this juror
20 is qualified. There is nothing to suggest to me that
21 his ability to perform these duties is substantially
22 impaired in any way and I will qualify this juror.

23 Bring him back in.

24 (WHEREUPON, Mr. Reid entered the courtroom
25 at 10:34 a.m.)

1 THE COURT: Mr. Reid, I have found you to be
2 qualified for service on this jury. That does not mean
3 that you will become a juror on this case. We still
4 have the final jury selection process to go through,
5 but you are qualified as a juror.

6 We're going to be several days at this, so what I
7 ask you to do is this. Go home. My order concerning
8 avoiding any publicity or doing any research or any
9 investigation on your part, you remember that, do you
10 not?

11 MR. REID: Yes.

12 THE COURT: It is still in effect. You remain
13 under that order. But I'm going to let you go home.

14 On Sunday evening -- that's this coming Sunday --
15 I hope we will have a panel by then. On Sunday evening
16 after 6 o'clock, if you will call the number that you
17 have right there on that piece of paper that the clerk
18 of court has given you, there will be a recorded
19 message that tells you when you are to reappear here at
20 this courtroom.

21 Please understand you may at that time be selected
22 to serve as a juror. If you are, you will be
23 immediately sequestered. So please have with you a bag
24 packed, sufficient clothing for several days, and you
25 will be taken to a place if you are selected to await

1 the beginning of the trial of the case.

2 All right, sir?

3 MR. REID: All right.

4 THE COURT: Thank you, Mr. Reid. We look forward
5 to seeing you back. Okay?

6 MR. REID: Thank you.

7 (WHEREUPON, Mr. Reid exited the courtroom
8 at 10:36 a.m.)

9 THE COURT: All right. How about Ms. Crump?
10 Does anyone need to take a break while we're
11 waiting for Ms. Crump?

12 Very good. We'll take five minutes.

13 (WHEREUPON, recess taken from 10:37 a.m.
14 to 10:42 a.m.)

15 THE COURT: All right. Let's get our next lady
16 in.

17 DONNA CRUMP,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: Please state your name for the record
20 spelling your last.

21 MS. CRUMP: Donna Crump, C-r-u-m-p.

22 EXAMINATION BY THE COURT:

23 Q Now, Ms. Crump, do you remember my instructions
24 yesterday concerning exposure to publicity concerning
25 this case and --

1 A I do.

2 Q -- research? Did you comply with my order?

3 A Yes, sir.

4 Q And you have not violated it in any way?

5 A No, sir.

6 Q Thank you.

7 Ms. Crump, it's good to see you this morning. I
8 have here the two forms you were asked to fill out for
9 us this morning. And I see that you have indicated
10 that you are a C type juror; is that correct?

11 A Yes, sir.

12 Q That is you're one that would need to hear the
13 facts and circumstances in aggravation and mitigation
14 before you could make a decision concerning punishment;
15 is that correct?

16 A That's correct.

17 Q And is that your honest opinion of your thought
18 processes or your ideas towards your function?

19 A I believe so.

20 Q All right. Now, Ms. Crump, you also filled out
21 our potential witness list sheet, and you, as far as I
22 can tell, have not indicated that you know any of the
23 persons who might be witnesses in this case, correct?

24 A Correct. I didn't recognize any names.

25 Q Certainly, if you had any significant relationship

1 with any of those persons, you would recognize the
2 names?

3 A Uh-huh, yes, sir.

4 Q As far as you know, you don't have any?

5 A Correct.

6 Q All right. And I would add to that three more
7 names or four more names: William Nettles, John
8 Randle, Christine Del Fonzo and Frank Daniel. Do those
9 names original a bell?

10 A No, sir.

11 Q Again, if you had any significant relationship --
12 business, social, family, otherwise -- you think you
13 would recognize those names if it was significant?

14 A Yes, sir.

15 Q All right. Very well. Now, Ms. Crump, I did
16 notice from my notes here, I think you are juror 132;
17 is that right?

18 A Yes, sir.

19 Q That you indicated that you did not feel that you
20 would be able to be a -- be fair in your deliberations
21 in this case. Is that -- was that your -- what you
22 indicated?

23 A I did indicate that, yes.

24 Q Let me make sure that you understand something,
25 Ms. Crump. I tried to make you understand this this

1 morning, but I want to repeat it because it's so
2 important.

3 There is absolutely no right or wrong answers
4 here. No one is going to criticize you for your
5 opinion. In fact, we all appreciate you being honest
6 in your responses. And it is absolutely critical that
7 you are -- critically important that you are honest in
8 your responses.

9 Now, could you tell me why you feel that you could
10 not be fair and impartial and unbiased in your
11 deliberations in this case?

12 A Well, I was raised in a family with my grandfather
13 and my uncle and a cousin in law enforcement, and I was
14 just raised with a very strong respect for authority
15 figures and so forth. And I want to be fair to
16 everybody, so I just feel like I'm, you know, not
17 knowing all the circumstances, that I feel like I'm
18 already, you know, tending to side on the side of the
19 law -- of law enforcement.

20 Q You said something interesting. You said "not
21 hearing the circumstances, I feel that I would side
22 with the law." Let me ask you this. Could you listen
23 to the evidence in this case, could you consider all
24 the evidence in this case, including evidence that may
25 or may not be put up by the defense, evidence that's

1 put up by the State, could you consider all of the
2 evidence in this case fairly and impartially? And I
3 know you don't know what that evidence is, but by the
4 end of the trial you would know.

5 A I would certainly try, but there again, I -- I
6 just have some very strong feelings as far as -- that
7 goes --

8 Q Well, let me just ask you the question. Would
9 those feelings that you have, do you believe that you
10 could set them aside or do you feel that those feelings
11 that you have might substantially impair your ability
12 to serve as a juror in this case?

13 A Yes, I do. I do feel like they could impair my
14 ability.

15 Q Okay.

16 THE COURT: I'm going to at this juncture allow
17 limited voir dire on that issue. Okay? I will, if
18 necessary, continue voir dire myself and then will
19 allow you to question on that. But as to what this
20 witness has said so far, Mr. McGuire.

21 MR. McGUIRE: Thank you very much, Judge.

22 EXAMINATION BY MR. McGUIRE:

23 Q Good morning, ma'am.

24 A Good morning.

25 Q I appreciate your candor and your honesty today.

1 When we were in the big group with the judge and
2 you were under oath and the judge asked the question,
3 "Is there anybody that thinks they can't be fair to the
4 State or the defense," you indicated that you believed
5 you could not be fair?

6 A Yes, I did.

7 Q Okay. And that's because you have this background
8 of being raised in what somebody might call a law
9 enforcement family?

10 A (Nodding.)

11 Q I'm going to ask you very politely to say "yes" or
12 "no."

13 A I'm sorry.

14 THE COURT: Our court reporter down here, she is
15 kind of around the corner. You don't see her probably,
16 but she has to record everything that's done and a nod
17 or if you shake --

18 MS. CRUMP: She can't hear me shaking my head.

19 THE COURT: My wife tells me she can't hear my
20 head rattle. But they have to record this.

21 MS. CRUMP: Okay. Yes, sir.

22 BY MR. McGUIRE:

23 Q And I believe you said that was a grandfather?

24 A Grandfather, uncle and cousin.

25 Q Okay. And they all served in law enforcement?

1 A Uh-huh. Yes, sir.

2 Q Were they patrol officers on the street?

3 A Yes.

4 Q They would be the sort of person who would have to
5 respond to crimes?

6 A Yes. Yes, sir.

7 Q And they carried a weapon?

8 A Yes, sir.

9 Q And in your growing up, did you ever know anybody,
10 any officer that was killed in the line of duty?

11 A Yes, sir.

12 Q And did that have a profound impact on you?

13 A Yes, sir.

14 Q Okay. And the judge told you a little while ago
15 that there are no right or wrong answers. Actually,
16 all of your answers are right as long as they're
17 honest. Okay?

18 A Yes, sir.

19 Q And this type of case, you saw how many people
20 were here earlier. It's, for lack of a better phrase,
21 this is quite a large production, and the judge has put
22 aside probably two weeks to try the case. And to keep
23 the jury free from outside influence, they would be in
24 hotel rooms and sequestered, and we would not want to
25 start this proceeding off with questions about the

1 jury, okay, because we're just now starting out. We
2 don't want to get to the end and have questions about
3 did we make a mistake in the jury. So as you sit there
4 in that chair, all of your answers are one
5 hundred percent correct and right as long as they're
6 honest.

7 And if you were to sit in this chair, you would
8 have to conform to some rules. And what I'm asking you
9 is your respect for law enforcement and your upbringing
10 in a law enforcement family, that's something that that
11 is a part of you?

12 A Correct.

13 Q We can't cut that out of you?

14 A No.

15 Q And based on that background, I think you
16 indicated that you had concerns whether that
17 background, that upbringing, that world view could
18 influence how you saw the case?

19 A And that's -- that's correct. I do have some
20 concerns.

21 Q And I think what you said was you would start off
22 kind of siding with law enforcement?

23 A Yes, that's what I said, and that's kind of how I
24 feel.

25 Q Right. And if you were to tell the judge, "Judge,

1 I'm just being honest. I think that this could have
2 some influence on how I saw the case, how I might
3 deliberate, how I might think about the case, might
4 decide the case," if you tell him that you honestly
5 think that that is something you can't put aside, that
6 that's part of you, we can't get it out of you, that it
7 would influence your decision-making, if you tell him
8 that, what we'll do is we'll discharge you with our
9 thanks, with the Court's thanks, with my thanks, with
10 the State's thanks --

11 MR. HIXSON: Your Honor, I object to the form of
12 the question. He can't tell her what to say to get out
13 of jury duty.

14 THE COURT: Mr. McGuire, that would be for me to
15 do. Okay?

16 BY MR. MCGUIRE:

17 Q Well, again, in the chair that you're sitting in,
18 you have a right to think anything, everything you want
19 and have personal beliefs. But if you were to make the
20 transition and be selected for the jury and be over
21 here, it would be wrong if you were -- if you had some
22 sort of bias or some sort of world view or value that
23 could influence your decision-making in a way that
24 would be negative to the defendant. And it sounds like
25 you do have those concerns; is that right?

1 A I do have those concerns, yes.

2 Q Okay. And if I asked you just to put it out of
3 your mind and pretend you didn't have that background,
4 just kind of put it off to the side, that would be
5 really sort of impossible?

6 A I'm not sure I could do that.

7 Q And I appreciate you being honest. That's exactly
8 what we're here for. And, again, all your answers are
9 one hundred percent right.

10 MR. McGUIRE: If I could just have one second,
11 Judge.

12 (WHEREUPON, an off-the-record discussion was held
13 between Mr. McGuire and Ms. Norris.)

14 MR. McGUIRE: Ma'am, that's all I have for you.
15 Thank you very much.

16 THE COURT: Mr. Richardson, do you need to ask
17 this witness any questions?

18 MR. RICHARDSON: Just a couple, your Honor.

19 EXAMINATION BY MR. RICHARDSON:

20 Q Ms. Crump, we met yesterday in a bigger group, but
21 my name's Jimmy Richardson. And Mr. McGuire and the
22 judge has told you all your answers are fine. We're
23 just trying to figure out where you're at. So there's
24 no right or wrong answers. I just want to make sure
25 that you understand that. And I understand that you

1 come siding with law enforcement from the beginning
2 because of your background?

3 A (Nodding.)

4 Q Is that true?

5 A Yes, sir.

6 Q Yes, ma'am. And we all have some predisposed
7 ideas. The question here is really can you set aside
8 those ideas. If the judge were to tell you for you to
9 be able to properly sit on a jury, you've got to hear
10 the facts from that stand, the witnesses that the State
11 would put up and the defense, if they wanted to put up
12 anybody. Could you listen to those guys and be fair
13 whether it was a law enforcement officer or a person
14 that was in the chain of custody, somebody from the
15 defense's team, could you hear them out, listen to them
16 and decide those facts as they were presented to you?

17 A That's my whole problem. I -- I would certainly
18 try to, but I'm not -- I have some concerns that it
19 wouldn't influence me.

20 Q You think you would be -- you would believe a
21 police officer over other people?

22 A I do think I would, yes, sir.

23 Q All right. And you don't believe that you could
24 set that aside?

25 A I would try. I just want to be fair, and I don't

1 want to -- I don't want to have any preconceived
2 notions of something and get in there and mess up the
3 whole process.

4 Q Would you say that it substantially impairs your
5 ability because to have concerns or to lean one way or
6 the other is fine. - But if it substantially impairs
7 your ability to be fair to both sides, then you
8 wouldn't be a qualified juror.

9 A Yes, I would say it does.

10 Q That it substantially impairs --

11 A Yes, substantially impairs.

12 MR. RICHARDSON: All right. No further questions.

13 THE COURT: Thank you.

14 Step right out, if you would, just a moment,
15 Ms. Crump, and I'll be right back with you.

16 (WHEREUPON, Ms. Crump exited the courtroom
17 at 10:58 a.m.)

18 MR. McGUIRE: I've got nothing, Judge.

19 THE COURT: All right. I think Ms. Crump has very
20 candidly expressed that she has a law enforcement bias
21 based upon her family history. I think that's
22 increased probably by the fact or made more relevant by
23 the fact that our victim here was obviously, of course,
24 a law enforcement officer. She repeatedly has said or
25 responded affirmatively to questions as to whether or

1 not -- both mine and Mr. Richardson's and I think
2 Mr. McGuire's -- that she would be substantially
3 impaired in her ability to carry out her duties as a
4 juror by the fact that she does have this bias towards
5 police officers.

6 So if you would bring her back in.

7 (WHEREUPON, Ms. Crump entered the courtroom
8 at 11:00 a.m.)

9 THE COURT: Thank you, Ms. Crump. You are
10 released from further service in this trial. Thank
11 you.

12 MS. CRUMP: Thank you.

13 THE COURT: Next.

14 MR. MCGUIRE: Judge, I've got one issue real
15 quick.

16 THE COURT: Yes.

17 MR. MCGUIRE: The witness list that you're reading
18 from is actually the one I gave your law clerk
19 yesterday. I actually took two names off the list and
20 added one. If could I change that. It's my fault.

21 MARYJO NOVI,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: Please speak into the microphone and
24 state your name and spell your last for the record.

25 MS. NOVI: My name is Maryjo Novi, N-o-v, as in

1 Victor, -i.

2 EXAMINATION BY THE COURT:

3 Q Ms. Novi, how are you this morning?

4 A I'm well, sir. And you?

5 Q I'm well as well.

6 Ms. Novi, do you recall my instructions on
7 yesterday concerning not exposing yourself to any sort
8 of publicity about this case?

9 A Yes, I do.

10 Q And did you follow my instructions?

11 A Yes, I did.

12 Q Has anyone tried to contact you about this case?

13 A No.

14 Q Okay. Very well.

15 Now, Ms. Novi, you have been kind enough to
16 provide the forms for us this morning. And as I look
17 at the two forms that you filled out, I see here that
18 you had indicated that you would be a C category juror;
19 is that correct?

20 A That is correct.

21 Q And simply stated, that would be a juror who would
22 need to hear the facts and circumstances in aggravation
23 and mitigation before you would make a decision
24 regarding punishment?

25 A Yes, that's correct.

1 Q And, you know, Ms. Novi, we're going to talk about
2 punishment here this morning and the punishment phase,
3 but I want to stress -- and I think I said this ad
4 nauseam throughout the last two days -- we are not to
5 that point yet. We would only reach the penalty phase
6 if and only if the State had convinced whatever jury is
7 selected unanimously that the defendant committed the
8 offense of murder beyond a reasonable doubt. Do you
9 understand that?

10 A Yes.

11 Q That would have to be done first. And I don't
12 want to suggest that we're ever going to get to the
13 penalty phase, but as we select jurors, we have to
14 consider that. And that's why we're going to be asking
15 you the questions concerning that. I don't know if we
16 will ever reach it. We may; we may not.

17 A Okay.

18 Q All right. Now, do you still consider that to be
19 an accurate assessment of your -- your views as a
20 juror?

21 A Yes, I do.

22 Q And a moment ago I mentioned aggravating and
23 mitigating circumstances. Do you recall my explanation
24 yesterday about how the case would proceed, and if we
25 reached the sentencing phase of the trial, that we

1 would be discussing aggravating and mitigating
2 circumstances?

3 A Yes.

4 Q Do you understand that the issue with punishment
5 is relevant to that because there -- the jury could
6 never recommend a sentence of death without first
7 finding unanimously that there was an aggravating
8 circumstance. Do you understand that?

9 A Yes.

10 Q And thereafter the jury would have to -- they must
11 consider all mitigating circumstances, both statutory
12 and nonstatutory mitigating circumstances, and even the
13 jury could just grant mercy even on a finding that
14 there was aggravating circumstances and give a life
15 sentence. Do you understand that?

16 A Yes.

17 Q All right. I just wanted to make sure that you
18 understood that when you classified yourself.

19 The potential witness list was provided to you,
20 and I note that you have not indicated that -- I don't
21 see anyone in here that you say that you know.

22 A None of the names seem familiar.

23 Q If you're like me, it's hard to remember names.
24 I'm much better on faces than I am on names. But to
25 the best of your knowledge, you do not know any of

1 those persons?

2 A No, I do not.

3 Q Okay. And there's been a couple of additions:
4 Nicole Pyle, John Taylor (sic), Christine Del Fonzo,
5 William Nettles, and Michelle Light. Do those names
6 ring a bell?

7 A No.

8 Q Now, do you believe that if you had any
9 significant relationship -- social, familial,
10 business -- if it was significant that you probably
11 would remember those names?

12 A I think so, yes.

13 Q Okay. So to the best of your knowledge, you don't
14 know these people?

15 A That's correct.

16 Q All right. I was looking at my notes, and I
17 believe you are juror 467; is that correct?

18 A That's correct.

19 Q You had indicated on -- in your responses and --
20 at least I think you did. I think -- things were
21 moving along quickly -- I think that you stood up when
22 I asked if there were any jurors who felt that they
23 could not be fair in this trial. Did you respond to
24 that question? You may not have. I just had a note
25 here that I thought you did.

1 A Well, yes, I did.

2 Q Okay. Do you have a reason for holding that
3 opinion? And, again, let me impress upon you, I like
4 to tell jurors there are no right or wrong answers, and
5 one of the attorneys a moment ago suggested that every
6 answer is a right answer. And that's true. Everything
7 you tell me is the right answer. Our only purpose this
8 morning is to determine if you have any interest,
9 prejudice, bias, information, anything that would --
10 that you could not set aside that would substantially
11 impair your ability to be a fair and impartial juror.
12 That's where we're going --

13 A Okay.

14 Q -- in these questions.

15 So I would like to know why you harbored that
16 opinion.

17 A Well, it was many years ago, in my twenties, so --

18 Q Just a couple.

19 A Just a couple years ago. A few more than a
20 couple. But I had relatives, a whole family, who were
21 robbed and murdered.

22 Q All right. And where was that?

23 A This happened in Texas, in Hearne, Texas.

24 Q Okay. How long ago was that?

25 A Oh --

1 Q When you were in your twenties.

2 A When I was in my twenties, and I'm -- I'll be 61.
3 So many years ago. But I was very close to -- the girl
4 was my age, and we spent every summer together. I
5 would go to Texas in the summer.

6 Q So they were close relatives?

7 A Uh-huh. Aunt, uncle and daughter.

8 Q And has that impacted your opinion concerning
9 crime and general law enforcement over the years?

10 A I think so. I think that -- I think I feel that
11 punishment was deserved and that I wanted them
12 punished. So I don't know whether that would affect
13 now or not. I'd like to think I could put it aside and
14 say that was something that happened in the past, but
15 you don't know until you're in that situation.

16 Q Well, let me ask you this. You know, a moment ago
17 we talked about the two parts of this trial. It's a
18 unique trial because the State is seeking the death
19 penalty. And the first part of the trial would involve
20 simply the guilt phase. And, again, if we got past
21 that, we would go to a sentencing phase.

22 If I were to instruct you after you had heard all
23 the evidence in this case, if I were to instruct you
24 that you were to weigh and consider all the evidence in
25 the case and you were to make a determination from that

1 evidence of the facts in the case, could you do that?

2 Would you be affected by your prior experience?

3 A I would like to say no. I would like to say that
4 I could put that aside, but I'm not sure if that
5 wouldn't affect --

6 Q Your view of the evidence?

7 A My view of -- I -- I don't know. I would like to
8 say no. I would like to say that I know enough, I'm a
9 strong enough person and I'm a wise enough person to
10 consider facts and only facts. But we don't know. I'm
11 just not sure.

12 Q Could you apply the law as I gave it to you?

13 A I think I could.

14 Q You would have no problem with that. Even if you
15 might disagree with that law, you could still apply --
16 if I told you that was the law that you must apply,
17 could you do that?

18 A I think so. We do that every day of our lives,
19 don't we?

20 Q Yes, we do. Most of us do.

21 If we moved on to the penalty phase, would your
22 experience affect your view of the evidence and
23 assessment of the evidence? Could you weigh the
24 evidence -- or let me change that. You don't weigh
25 evidence. Consider it. Could you consider --

1 A I believe I could.

2 Q -- the evidence in the penalty phase? All right.

3 Do you understand -- I think I made this clear to
4 you and you made it clear to me that you do
5 understand -- that the first thing the State would have
6 to do is prove to every juror beyond a reasonable doubt
7 that a statutory aggravating circumstance existed.

8 Okay?

9 And an aggravating circumstance is something that
10 makes the crime more serious or makes it worse. It's
11 different from proof of malice that the State would
12 have to prove just to prove murder. But if they moved
13 on to the sentencing phase, they would be required to
14 prove one of the statutory -- the legislature -- when I
15 say "statutory" is by law, said these are what
16 aggravating circumstances are. And the State would
17 have to prove one of those beyond a reasonable doubt.
18 That's something that makes it worse than a basic
19 situation where there is a murder, something that
20 specifically makes it worse.

21 The State would have to first prove that beyond a
22 reasonable doubt. And could you set aside your past
23 experience in making that determination?

24 A I believe I could.

25 Q Okay. And as to the sentence, you would then have

1 to consider any of the statutory mitigating
2 circumstances. And mitigating circumstances are, of
3 course, things that make it less culpable, make it less
4 bad, or extenuating circumstances. And the law not
5 only sets out some, but you can also consider other
6 nonstatutory mitigators. You can't consider
7 nonstatutory aggravating circumstances, but you could
8 consider nonstatutory mitigating circumstances, things
9 you think are important.

10 And in the end when you consider the aggravating
11 and mitigating circumstances together, even if you were
12 inclined to give the death penalty, even if you didn't
13 find a single mitigating circumstance, you could still
14 grant mercy. Do you understand?

15 A Uh-huh.

16 Q Would your feelings about crime, about law
17 enforcement, based on your experience, your unfortunate
18 experience, could you set that aside and could you do
19 that? Would those feelings impact your decision in
20 that sentencing phase?

21 A I'm not sure. I would like to say no, they would
22 not.

23 Q But you can --

24 A I don't know. Until I heard all of the facts, I
25 wouldn't know.

1 Q Okay. Well --

2 A I'm trying to be honest. I wouldn't know.

3 Q And you are being honest and we appreciate that.

4 And as I said, every answer you give me is the right
5 answer. All we want to know is what your feelings are.

6 Okay?

7 You tell me you don't know without hearing the
8 facts. You will hear the facts. You will hear all the
9 testimony concerning that. But you cannot tell me that
10 you could set aside your prior experiences?

11 A I -- I can't guarantee it.

12 Q Would it be a bias in favor of the State or would
13 it be a bias in favor of the defense?

14 A I believe it would be a bias in favor of the
15 State.

16 Q Okay. All right. Do you understand that in a
17 criminal case no defendant has to prove anything, the
18 burden is --

19 A I do understand.

20 Q -- entirely on the State. The State must prove
21 the case beyond a reasonable doubt. Do you understand
22 that?

23 A Yes.

24 Q And do you understand that in addition to that
25 there's what we call the presumption of innocence, a

1 legal presumption that the defendant is innocent when
2 the trial starts?

3 A Yes, I understand that.

4 Q And unless you strip away or unless the State can
5 strip away that presumption, he's entitled to a verdict
6 of not guilty. Do you understand that?

7 A Yes.

8 Q And could you follow that, do you think?

9 A I think I could.

10 Q Okay. Could you -- have you read or heard
11 anything about this case?

12 A Well, when we first got the questionnaire, I have
13 to admit that I was curious and I did look a little bit
14 of it up on the Internet when this questionnaire first
15 came.

16 Q Could you set that part aside, anything that you
17 may have read --

18 A Yes.

19 Q -- could you ignore that?

20 A Right. I could.

21 Q Could you base your decisions in this case solely
22 upon the law and the evidence that's presented?

23 A Yes, I think I could.

24 Q Okay. Other than your --

25 A Other than just that. And, hopefully, that's

1 something that I would be able to just keep -- keep as
2 a personal thing.

3 Q Do you believe that in this case, after hearing
4 the evidence in the guilt phase and then if we reach
5 the sentencing phase, that you could listen to the
6 evidence concerning aggravating and mitigating
7 circumstances, and based upon your view of the
8 evidence, that you could give the sentence of life?

9 A I think I could, yes.

10 Q Could you give a sentence of death if it was --

11 A Yes, I could.

12 Q -- appropriate?

13 A I believe I could.

14 Q Okay. Do you understand -- and I think I've asked
15 you -- that you would be sequestered during this trial?

16 A Yes.

17 Q Would that cause any -- except for personal
18 inconvenience, would it pose any serious danger to your
19 health or the --

20 A No.

21 Q -- health of those people dependent upon you?

22 A No.

23 THE COURT: Okay.

24 Mr. McGuire.

25 MR. MCGUIRE: Thank you, Judge.

1 EXAMINATION BY MR. McGUIRE:

2 Q Good morning, ma'am.

3 A Good morning.

4 Q First off, I'm sorry to hear about your family
5 tragedy.

6 A Thank you.

7 Q And I can see how it would impact you profoundly,
8 and it sounds like it has.

9 A Yes.

10 Q That event. And the judge told you a little bit
11 about the proceedings and the law and that sort of
12 thing.

13 In a capital case, there's sometimes what's
14 presented as victim impact evidence. And I think you
15 said you knew a little bit about the case. This is an
16 officer who was shot and killed. That's the
17 allegation. That's the indictment.

18 And it sounds like you might have, because of this
19 background, this event in your life, that it might --
20 it might have some influence on how you saw the case or
21 saw the witnesses in the case. Is that true?

22 A How I would see or how I do see?

23 Q Well, let me rephrase that. It's very common in a
24 case like this to hear from the person who is killed,
25 to hear from his family. And it sounds like you're in

1 the same shoes as --

2 A Yes. I see what you mean.

3 Q -- as they are. And it sounds like you might be
4 very empathetic towards them having suffered the same
5 loss.

6 A I would -- I would agree with that, yes.

7 Q And even if you wanted to put this aside, your
8 background and being in sort of the same shoes as the
9 victim's family, when it comes to deciding the case and
10 deliberating and your decision-making, this background
11 event in your life, even though you want to put it
12 aside, it could be with you?

13 A That's -- that's possible, yes.

14 Q Okay. And it would be possible that it could make
15 you more readily identify with the victims or empathize
16 with them?

17 A Empathize probably.

18 Q And you stated that your bias would be -- you felt
19 that your bias would be in favor of the State?

20 A Yes.

21 Q And even though you could -- obviously if you were
22 on the jury, you wouldn't close your ears to anything.
23 You could hear everything, listen to everything, and
24 you would try to consider everything in the case, but
25 the fact of the matter is this background event, this

1 tragedy in your family could be with you and it could
2 still influence you throughout the proceedings?

3 A I would say as much as I would like to say I could
4 put it aside, that it probably -- it could probably be
5 there.

6 Q Sure. And, again, like the judge said, all of
7 your answers are correct and right as long as they're
8 honest and candid. And it sounds like when you reached
9 deep down and you tried to be as honest with the Court
10 and as candid as you can, you're saying, "Judge, I'd
11 like to say I could put this aside but I have a fear
12 that I can't"?

13 A I would -- I don't know if it's a fear, but there
14 is that inkling that tells me that could happen.

15 Q Okay. And you've obviously seen the start of
16 these proceedings where we had hundreds of people here.
17 It's set for two weeks. It's a large, enormous
18 proceeding. And we don't want to make any errors right
19 now with jury selection. And if you have -- if you
20 have a concern that you have a bias that you can't set
21 aside, now is the time where we rely on you to let us
22 know, and it sounds like you're doing that.

23 A Okay.

24 Q Is that true?

25 A I'm afraid I would have the bias. I can't

1 guarantee I would, but I'm afraid I would.

2 THE COURT: All right. And that's a sufficient
3 answer.

4 MR. McGUIRE: Yeah. I think that -- yeah, I think
5 that is a sufficient answer.

6 I have no further questions.

7 THE COURT: Okay. Mr. Hixson.

8 EXAMINATION BY MR. HIXSON:

9 Q Good morning, ma'am. How are you?

10 A Good morning.

11 Q Let's just talk about a couple things that you
12 indicated on your questionnaire. First off, I think
13 you indicated that you were a C type juror; is that
14 right?

15 A Yes. Yes.

16 Q And so at the onset of this process, I think you
17 indicated to the Court and to all the parties that you
18 would be more than willing -- in fact, you would listen
19 to the information from the prosecution, if the defense
20 put anything up, and evaluate both in coming up with
21 your decision?

22 A That's correct.

23 Q Okay. And the first thing, sometimes the tone
24 gets accusatory in here and it's not intended to be.

25 It's perfectly okay to have bias. We all have bias and

1 opinions. And that's absolutely proper.

2 The question is: Does it become so much that
3 you're just incapable of doing the job? And that's
4 really the question that we're trying to talk about and
5 find out.

6 A Uh-huh.

7 Q So that's why the Court has asked you some
8 questions, specifically, would you follow the law that
9 the judge gives you. Because there's -- you know, the
10 judge is in control of all that. He doesn't control
11 any of the facts coming out of the jury box. That's
12 for you to decide whether the light was red or blue, so
13 to speak -- or red or green. But it's for to the judge
14 to say, "Can you follow my instructions in the matter
15 of your personal bias, your personal opinion?" Does
16 that make sense?

17 A Yes.

18 Q And so you indicated with your initial response
19 that you could do that. And that's what we're
20 continuing to ask you about. The first part of the
21 process is if the jury decides the defendant committed
22 a murder, okay, and then once that happens we move to
23 number two. So you will already know that happened.
24 You already know --

25 A Uh-huh.

1 Q -- this guy, we just convicted this guy of murder.
2 Now what in the world should happen with that. So you
3 kind of got that in your back pocket. That's been
4 compartmentalized.

5 So now we move to the next part. And that is what
6 the question when you answered C is about. Fair to
7 say? Can you listen to aggravating circumstances --
8 what makes it bad -- can you listen to other
9 information, potentially mitigating circumstances --
10 makes it not so bad -- or can you just decide to give
11 mercy even if you have a bias towards one side or the
12 other. Can you do that?

13 A I think I could. Once the facts were there, if I
14 felt the facts deserved that, that I could because not
15 all facts are the same as what I experienced.

16 Q Absolutely right. I'm glad you answered that and
17 asked that question because the circumstances that you
18 went through, unfortunately, in Texas, none of the
19 parties, none of the people that -- totally unrelated
20 to this incident, right?

21 A Correct.

22 Q And kind of somewhat remote in time, although I
23 can understand how difficult it may be for you.

24 Let me ask you this. You said that you could
25 follow the law. And you said that you could be a type

1 C juror. As the -- and say -- let's just say that you
2 were impaneled on the jury, qualified and you're
3 impaneled on the jury. You have a duty to continue to
4 follow the law all the way through this process.

5 And so at some point in time you believe that you
6 are no longer capable of following your duty, that your
7 position has fundamentally changed, "I am so
8 fundamentally biased that I'm so substantially impaired
9 that I cannot do this anymore," would you make an
10 effort to instruct the Court that, "I can no longer
11 follow your instructions. I can't do this anymore,
12 Judge. I've realized I have moved to this category and
13 I can't do this and I'm violating my oath"? Would you
14 be able to identify that and tell the Court that?

15 A If that's what I was feeling. It would be more
16 dishonest not to tell.

17 Q That's right. So, in essence, would you -- can
18 you continue to follow the law throughout this process
19 so that it does not substantially impair your ability
20 to be an effective juror?

21 A I would hope so.

22 Q Okay. Let me ask you just one last question, too.
23 If, in fact, we went through the murder process and the
24 defendant was found guilty of murder, all that
25 information. Then subsequent to that through the

1 penalty phase, additional information and aggravating
2 and mitigation comes in. And you indicated you thought
3 you could consider both; is that --

4 A Uh-huh.

5 Q And then all of you collectively come up with a
6 verdict or a -- not a verdict, a sentence. And let's
7 just say that sentence was death. In South Carolina
8 you actually have to take a piece of paper and write
9 your name. 12 slots. Every juror, write your name
10 down, put your name on that piece of paper so you're
11 signing that document. Would you be able to do that in
12 the sentence of death?

13 A Yes, I would.

14 Q Okay. Thank you for your time.

15 MR. HIXSON: No further questions, your Honor.

16 EXAMINATION BY THE COURT:

17 Q All right.

18 Ms. Novi, let me just ask you a couple of
19 questions just to clarify what you have said. Okay? I
20 don't think there's any doubt in your responses --
21 correct me if I'm wrong -- but I don't think there's
22 any doubt from your responses to me that you would
23 follow the law as I instruct you; is that correct?

24 A Yes.

25 Q Okay. And that would be true even if perhaps you

1 didn't agree with the law. But if I told you it was
2 the law, you would follow the law?

3 A That's correct. I'm pretty much a rule follower.

4 Q Now, the deliberation process is -- back when I
5 was an attorney, I used to explain it to juries like
6 this. I'd say it's a two-part process. It's kind of
7 like great big gears in a mill or something. One gear
8 represents the facts and the other gear represents the
9 law. This gear over here, the law gear, is the easy
10 gear because the judge is going to -- I'm going to tell
11 you what the law is. You're not going to have to worry
12 about that. And you said you would have no problem at
13 all with that.

14 But the other gear is the facts. And the facts
15 are determined by a jury's view of the evidence.
16 Usually in every case there's conflicting evidence.
17 There would be no reason for the trial if there wasn't
18 disagreement as to what the facts are, would there?

19 A No.

20 Q Okay. So what becomes really important is a
21 juror's view, a juror's perception of that evidence
22 because that will determine what facts, what part of
23 the big gear is built by that juror's view of the
24 evidence.

25 So my concern is whether or not you can tell me

1 that your previous life experiences would not affect
2 your perception of the evidence that's presented in the
3 trial. Evidence is one thing; facts are something
4 else. You draw facts from evidence.

5 But would your view -- can you tell me your view
6 of the evidence would not be biased, it would not be
7 influenced to the detriment of this defendant by your
8 life experiences?

9 A I guess it all depends what those facts were. I
10 mean, what the whole situation around it was.

11 Q Well, a good answer, then, would be, "No, I can't
12 promise you that."

13 A So I can't promise you.

14 Q Is that what you're saying?

15 A Yes.

16 Q I can't say --

17 A Because if they were so similar, it would be hard
18 for me not to separate.

19 Q Okay. All right.

20 MR. McGUIRE: Nothing further, Judge.

21 MR. HIXSON: No, sir.

22 THE COURT: All right. Would you step out for
23 just one moment.

24 (WHEREUPON, Ms. Crump exited the courtroom
25 at 11:31 a.m.)

1 THE COURT: Mr. McGuire.

2 MR. McGUIRE: Judge, I don't have an argument
3 other than just to state that every time when it was
4 really put to her, can you put it aside, she keeps
5 coming back with, "I just can't tell you that. I just
6 can't tell you that."

7 MR. HIXSON: I concur with that position. When
8 put to the test on that, she can't indicate that she
9 would be able to set that aside. I think that's a
10 little bit too much of a concern at this stage.

11 THE COURT: All right. I think it gives me some
12 concern. You know, the court in *Denny* talked about it,
13 uncertainty. There the juror was uncertain as to
14 whether he could impose the death penalty. And the
15 court said it was improper not to exclude that witness
16 because of that uncertainty. And I think this witness
17 has been very candid -- I mean this juror has been very
18 candid with us, tried to answer our questions, but she
19 is certainly not certain that she could set aside this
20 very traumatic event that occurred in her early life.
21 And so I'm going to disqualify this particular
22 witness -- or juror. I keep calling them witnesses.
23 Jurors. They're witnesses today but they're jurors
24 ultimately.

25 Bring her in.

1 (WHEREUPON, Ms. Novi entered the courtroom
2 at 11:33 a.m.)

3 THE COURT: Ms. Novi.

4 MS. NOVI: Yes.

5 THE COURT: Thank you so much for your attendance
6 and your candor in answering our questions. But your
7 presence will no longer be required in any form or
8 fashion in this matter.

9 MS. NOVI: Okay. Thank you very much.

10 THE COURT: Thank you. You are excused.
11 Ms. Moses.

12 (WHEREUPON, Ms. Moses entered the courtroom
13 at 11:34 a.m.)

14 THE COURT: Good afternoon. Or good morning.
15 It's still morning.

16 Come around.

17 DAWN MOSES,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: Please have a seat, speak into the
20 microphone. State your name and spell your last for
21 the record. Thank you.

22 MS. MOSES: Dawn Moses, M-o-s-e-s.

23 EXAMINATION BY THE COURT:

24 Q Ms. Moses, good to see you back. Do you remember
25 my instructions yesterday concerning avoiding publicity

1 about this case, not reading anything, not doing any
2 research, things of that nature?

3 A Yes, sir.

4 Q And have you followed my instructions in that
5 regard?

6 A Yes, sir.

7 Q Thank you very much for doing that.

8 Ms. Moses, I've looked at the forms you were kind
9 enough to fill out this morning, and you have indicated
10 to me that you are a C type juror; is that correct?

11 A Yes, sir.

12 Q And just so we understand, a C type juror;
13 generally speaking, is one who would need to hear the
14 facts and circumstances in aggravation and in
15 mitigation before you could make a decision regarding
16 punishment; is that correct?

17 A Yes. Yes, sir.

18 Q And is that still your understanding --

19 A Yes, sir.

20 Q -- what you believe? All right.

21 Now, in that you have marked that, I would assume
22 that you then have at least to some extent or you
23 remember what we talked about yesterday when we spoke
24 in terms of how this type of case would proceed?

25 A Yes, sir.

1 Q Do you recall my telling you that in this type of
2 case there would be a first phase. We call it the
3 guilt phase. Not that anybody at this point is guilty.
4 That's just how we refer to it. And in that part of
5 the trial we would begin with a legal presumption that
6 the defendant is innocent?

7 A Yes.

8 Q That is a legal presumption that is precious to
9 our judicial system. Do you understand that?

10 A Yes, sir.

11 Q And from there the State would have to prove
12 beyond a reasonable doubt that the defendant committed
13 the offense of murder. Do you understand that?

14 A Yes, sir.

15 Q And they would have to prove it to every juror.
16 Jurors would have to be unanimous in their decision
17 that the State had proved its case. Do you understand
18 that?

19 A Yes, sir.

20 Q And the definition of murder would include that
21 the killing of another person was accompanied by
22 malice. Do you understand that?

23 A Yes, sir.

24 Q And I think yesterday I told you a little bit
25 about malice. If and when we were to reach that point,

1 we would move on to what we call the penalty phase.
2 And in that phase the burden would be on the State to
3 prove one of several statutory -- statutory means
4 established by law -- statutory aggravating
5 circumstances. And those would be circumstances that
6 make the murder worse, that increased the culpability
7 of the act. The State would have to prove that
8 unanimously to the jury beyond a reasonable doubt.

9 And if the State did not do that, the inquiry
10 would end right there and a sentence of life
11 imprisonment would be appropriate. Do you understand
12 that?

13 A Yes, sir.

14 Q But if they, the State, if the State were able to
15 establish beyond a reasonable doubt to the unanimous
16 satisfaction of the jury, then the jury would be
17 obligated, must consider any mitigating or attenuating,
18 anything that extenuates this offense. Do you
19 understand that?

20 A Yes, sir.

21 Q And there are some that are statutory, that is,
22 established by law. But the unique thing about the
23 mitigating circumstances is you, as the jury, could
24 also consider any nonstatutory factors about the case
25 that you felt were appropriate in mitigation.

1 And even if could you not find any mitigating
2 justification there, the jury could still grant mercy
3 even if there had been a finding of an aggravating
4 circumstance and recommend a life sentence. Do you
5 understand that?

6 A Yes, sir.

7 Q Okay. Now, would you be able to follow my
8 instructions and the law in that regard? Could you
9 engage in that process?

10 A Yes, sir.

11 Q All right. Now, I have noticed that you have also
12 provided a witness list, and on the witness list you do
13 not indicate that you know anyone; is that right?

14 A Correct.

15 Q Now, if you're like me, I'm not as good with names
16 as I am faces. I would remember faces. But to your
17 knowledge, you don't know any of these people?

18 A Correct.

19 Q Okay. I would add to that list a couple more
20 names: Nicole Pyle, John Taylor, Christine Del Fonzo,
21 William Nettles and Michelle Light. Do those names
22 ring a bell to you?

23 A No, sir.

24 Q Now, if you had a significant relationship with
25 any of these people, do you think you would remember

1 the name?

2 A Yes, sir.

3 Q If it was a business relationship or a significant
4 friend or a relation, that you would remember those
5 names?

6 A Yes, sir.

7 Q To the best of your knowledge, you do not know
8 these people?

9 A Correct.

10 Q Okay. Thank you very much.

11 Now, if you were a juror in this case and I
12 instructed you as to the law, could you follow that
13 law?

14 A Yes, sir.

15 Q Okay. Would you follow the law even if you felt
16 very strongly that the law shouldn't be that way or
17 that the law is not right? Could you still, upon my
18 instruction, apply the law as I give it to you to the
19 facts as the jury found them in this case?

20 A Yes, sir.

21 Q Would you be guided by the law as I gave it to
22 you? Okay.

23 Now, if you were a juror in this case, and you
24 have indicated essentially this by saying that you were
25 a C juror, but I want to make absolutely certain. If

1 you were a juror in this case and the facts and
2 circumstances, as unanimously found by the jury, if
3 they fit the law as I give it to you, if the State had
4 made its showing and you applied the law as I give it
5 to you, could you give a life sentence?

6 A Yes, sir.

7 Q If the facts and the evidence supported it, could
8 you give a death sentence?

9 A Yes, sir.

10 Q Okay. Do you understand that if you were to give
11 or recommend the death sentence, you would be required
12 to sign your name, every juror would need to sign that
13 recommendation?

14 A Yes, sir.

15 Q Could you do that?

16 A Yes, sir.

17 Q Do you understand that during this trial you would
18 be housed in a hotel at the county's expense, of
19 course, and they would provide meals and staff to take
20 care of your needs, and that could be for several days.
21 If that were to occur, would it, except for
22 inconvenience, pose a serious danger to your health or
23 well-being or health and well-being of people dependent
24 upon you?

25 A Yes, sir.

1 Q It would?

2 A No. I would be able to do it.

3 Q You would be able to do it. Very well.

4 Now, Ms. Moses, is there anything or any reason
5 that you can think of that you should not serve as a
6 juror on this case?

7 A No, sir.

8 Q Okay. If you are selected as a juror on this
9 case, is there anything that can you think of that
10 would substantially impair your ability to be a fair
11 and impartial juror?

12 A No, sir.

13 THE COURT: All right. Answer any questions
14 Mr. McGuire might have.

15 EXAMINATION BY MR. MCGUIRE:

16 Q Good morning, Ms. Moses.

17 A Good morning.

18 Q I was looking for the clock to see if we had hit
19 noon yet. Sorry to keep you waiting so long.

20 A That's okay.

21 Q What I want to do is make sure we're on the same
22 page and communicating. And I want to start with sort
23 of the basics. I looked at your questionnaire. I
24 didn't see where you had any legal training or
25 experience with the judicial system.

1 A No, sir.

2 Q You have probably never heard the technical
3 definition of murder.

4 A Probably not, sir.

5 Q Okay. What I'm going to do is help you and give
6 it to you, and then we're going to go from there.

7 A Okay. Thank you.

8 Q In South Carolina, murder is defined and the judge
9 would charge you on it as the unlawful killing of
10 another human being with malice aforethought. And the
11 malice aforethought is defined as somebody acting with
12 a malignant heart, a depraved heart, fatally bent on
13 evil. So it's the intentional killing of an innocent
14 person with an evil intent. Are you with me?

15 A Yes, sir.

16 Q It's not self-defense, it's not accident, it's not
17 somebody so crazy they don't know what they are doing.
18 Somebody who chose to kill, intended to kill and
19 killed.

20 In that situation, what are your thoughts about
21 the death penalty as the appropriate punishment?

22 A Well, it's pretty harsh. I mean, if somebody is
23 going to take somebody else's life without even
24 thought, they have no course of recall of what they're
25 doing to everybody else's family, you know, I just

1 think that they might need to be put to death
2 themselves.

3 Q Okay. In that situation that I just described to
4 you --

5 A Uh-huh.

6 Q -- would the life penalty, letting the person live
7 out their years in prison --

8 MR. HIXSON: Your Honor, just object to him
9 staking these folks out on the elements of murder. We
10 objected to that prior to that including the
11 self-defense, including all those discussions in this
12 context of this question. So object to the form of the
13 question.

14 THE COURT: I'm going to let him ask the question
15 he's asking. I think I know where he's going.

16 MR. McGUIRE: Thank you, your Honor.

17 BY MR. McGUIRE:

18 Q In that situation, and just to refresh your
19 memory, we're talking about the intentional killing of
20 an innocent person with an evil intent. In that
21 situation, you and 11 other jurors convicted that
22 person that did that, would the life penalty, where the
23 person would go to prison and live their years out in
24 prison -- there would be no parole -- is that penalty
25 appropriate or severe enough to punish that intentional

1 killing I told you about?

2 A Yes, sir.

3 Q And why is that?

4 A Well, I think that they would be punished enough
5 by spending their life in prison, not seeing the
6 outside world, not having the luxuries that we have,
7 and I think that would be a fair punishment also.

8 Q Okay. You consider prison a severe environment?

9 A Yes, sir.

10 Q And life without parole and prison to be a very
11 severe sentence?

12 A Yes, sir.

13 Q When it comes to fixing punishment in this type of
14 case, for that intentional killing -- murder -- the
15 background characteristics of the person who committed
16 the murder, like if they grew up poor, if they were a
17 drug addict in their past or something like that, would
18 background characteristics of the defendant be relevant
19 in fixing that punishment?

20 A No, sir.

21 Q Okay. It's because the facts of the crime are
22 what control?

23 A Yes, sir.

24 Q And basically how sort of evil or heinous the
25 facts of the murder was, that's what would determine

1 the punishment?

2 A I think we all know right from wrong.

3 Q And so if the person is not so mentally ill not to
4 distinguish right from wrong, they know what they're
5 doing --

6 MR. HIXSON: Your Honor, once again, I'm objecting
7 to specific mitigating circumstances, questioning on
8 mental illness, on background, on --

9 THE COURT: I don't think that's where he's going.
10 I'm going to let him ask that question.

11 MR. McGUIRE: Thank you very much, Judge.

12 BY MR. McGUIRE:

13 Q What it sounds like you're saying is a person
14 knows what they're doing, they are responsible for
15 their acts and they know right from wrong and they know
16 that the killing is wrong, then you would contend the
17 facts of the case, what they actually did, to determine
18 punishment?

19 A Yes, sir.

20 Q Let me ask you a more general question. If you
21 were governor of South Carolina for a day or king --
22 queen of South Carolina for a day and there was a bill
23 on your desk and it said you get to decide if we have
24 the death penalty in the state or not, what would you
25 do? Would you say we need to have it or let's get rid

1 of it?

2 A I really don't know, sir.

3 Q Okay. Why are you -- why don't you know?

4 A Again, I think that everything is based on
5 individual acts, and so overall to say that the death
6 penalty is for everybody, I just don't think that's how
7 it should be.

8 Q Okay. A capital trial, like the judge told you
9 earlier, is actually divided up into two parts.
10 There's the first phase, and that's like every other
11 trial that we have in the country. Just like you see
12 on TV. The person doing it, did he commit the crime,
13 and the jurors are asked to decide yes or no did he do
14 it, did he not do it.

15 And then there's a second phase. We call it the
16 sentencing phase, which we might not even get to. And
17 I'm kind of putting the cart before the horse a little
18 bit to ask you these questions about punishment even
19 though we haven't had a trial.

20 As you might expect, Mr. Cottrell has pled not
21 guilty to this charge. And I will eventually come to
22 you and tell you that the verdict should be not guilty
23 not because I asked for it but because the evidence
24 suggests it. But if you rejected that and we ended up
25 in the penalty phase, would you hold it against

1 Mr. Cottrell that I defended him zealously and asked
2 for a not guilty verdict?

3 A Again, it's based upon the facts and --

4 Q What do you mean by that?

5 A I can't say that he's guilty or not guilty until I
6 hear the whole thing.

7 Q Exactly. I'm going to go now into that penalty
8 phase and talk to you about it, even though I'm going
9 to do everything to make sure we don't get there. But
10 that's what I'm going to have to talk about now. It's
11 my only chance to talk to you about it.

12 A Uh-huh.

13 Q The law and the judge will tell you that, that the
14 decision-making process that a juror goes through when
15 in that part of the case, it's called an individual
16 moral judgment. You've probably never heard that
17 phrase before.

18 A No, sir.

19 Q And it's different from the first part of the
20 case, like a regular case, because all those questions
21 are pretty much determined by fact or science,
22 something either is or is not, or the car is green or
23 red or a bullet is a .32 or .38. Science, in fact,
24 controls that phase.

25 But it's more of an emotional moral decision in

1 the second phase. Is that something that you can --
2 that you understand now?

3 A Yes, sir.

4 Q Okay. And when it comes to that second phase, you
5 would expect people in a matter so grave as to whether
6 another human being lived or died to have different
7 moral positions on that?

8 A (Nodding.)

9 Q You have to say "yes."

10 A I'm sorry. Yes.

11 Q She can't write down a head nod. You're doing
12 fine. I'll politely remind you from time to time if I
13 need to.

14 And if you were selected as a juror, you would
15 take a juror oath and you would swear or affirm that
16 you would decide the case based on the evidence and the
17 law. And that refers to the first part. Okay?

18 A Yes, sir.

19 Q But there's also the oath that once you come to
20 your individual moral judgment, that you'll have your
21 voice heard in court on that issue. And the judge
22 would tell you, after he gives you the oath, that --
23 that -- well, let me rephrase it. I want to step back
24 a little bit from that.

25 But it would be wrong. It's against the law in

1 our state to, if you see a majority forming in a case
2 like this, to just join the majority for the sake, the
3 sole sake of having a unanimous verdict or to join a
4 majority. That's actually unlawful because it's a
5 violation of the juror oath. Did you know that?

6 A Yes, sir.

7 Q Does that make sense to you?

8 A It does make sense.

9 Q And that's a principle of the law that you can
10 embrace and follow?

11 A Yes, sir.

12 Q You can allow somebody to have an opinion
13 different from you?

14 A Yes, sir.

15 Q And respect that?

16 A Correct.

17 Q But you're entitled to respect for your opinion?

18 A Yes, sir.

19 Q And they can be different?

20 A Yes, sir.

21 Q Okay. And the law is if it would harm somebody's
22 conscience to -- we expect civil discourse and change
23 of ideas, that sort of thing. But if it harms
24 somebody's conscience to change their position,
25 that's also --

1 MR. HIXSON: Your Honor, I object once again to
2 the form of this relating to minimizing the juror's
3 role in setting up a hung jury situation. Same
4 objection we had had before in staking these jurors
5 out.

6 THE COURT: All right. Mr. McGuire, please limit
7 your questions to those questions to be determinative
8 of whether this witness -- I mean this juror is able to
9 fairly and impartially carry out her duties as a juror.

10 MR. McGUIRE: Yes, sir.

11 BY MR. McGUIRE:

12 Q What we're here for is to see if you can follow
13 the law.

14 A Yes, sir.

15 Q And the law is that if somebody reaches an
16 individual moral judgment --

17 MR. HIXSON: Once again --

18 THE COURT: Sit down, Mr. Hixson. Let's let him
19 ask the question and just get it over with.

20 MR. HIXSON: Thank you, your Honor.

21 BY MR. McGUIRE:

22 Q Again, we're here to see if you can follow the
23 law, and I'm going to state a principle of the law, and
24 if I'm wrong, the judge will correct me if it's
25 inaccurate. The law is that once a juror, when

1 considering all the evidence in the case in the penalty
2 phase or punishment or sentencing phase, and they come
3 to their individual moral judgment, and if it would
4 harm or do violence to their conscience to change that,
5 that would be a violation of the juror oath. Is that a
6 principle of law that you could follow?

7 A Yes, sir.

8 Q The judge would instruct the jury that in a
9 capital case, and again, you know how they're very
10 different. The fact phase is fact based, and this is
11 an individual moral assessment. He would instruct the
12 jury that any individual juror can vote for the life
13 penalty for any reason, no reason or mercy alone. Did
14 you know that?

15 A No, sir.

16 Q Okay. Some people think that sometimes if the
17 State proves sort of A, B, C, that there's only one
18 option and that would be the death penalty. Is that
19 kind of what you were thinking before you got here?

20 A Yes, sir.

21 Q Okay. That's a common view. And that why we have
22 this question-and-answer process so we can ask you
23 about your thoughts and preconceptions. And this is
24 the point where I would tell you again, just restating
25 what the judge would tell you, that any individual

1 juror could vote for life for any reason, no reason or
2 mercy alone. Now you understand that?

3 A Yes, sir.

4 Q And that's a principle of the law that you could
5 follow?

6 A Yes, sir.

7 Q Okay. And with regard to mercy, is mercy
8 something that is -- that is earned by somebody or is
9 it freely bestowed or given?

10 A I really don't know, sir.

11 Q That's a perfect answer. Like the judge said
12 earlier, all of your answers are right. Sometimes "I
13 don't know" is the most accurate answer. That's fine.
14 The no reason part is not just for Mr. Cottrell. It's
15 also for you. It would be wrong for the government to
16 ask a juror to take a human life and then regret it as
17 they contemplate the rest of their life.

18 So the no reason as you contemplate the rest of
19 your life, you could just say, "I don't want that mark
20 on my record," and you could vote for life for no
21 reason. Is that something that you could contemplate?

22 A I think so, yes, sir.

23 Q Okay. And let's say it's not you. Somebody else
24 says, "I heard the judge, I heard the law, and I have a
25 right to follow the law. And that is I could vote for

1 the life penalty for no reason." Even if they didn't
2 have a reason, is that something you could respect?

3 A I would think that I would base my opinion on a
4 reason.

5 Q Sure.

6 A The facts.

7 Q Sure. I think most people want to do that. But
8 if somebody just said, "As I contemplate the rest of my
9 life, I don't want to contemplate going to Saint
10 Peter's gates having taken the life of another" --

11 MR. HIXSON: I have to object.

12 THE COURT: Mr. McGuire, please. We're getting
13 far afield and you're staking this witness out.
14 Please, Mr. McGuire, keep the questions relevant to
15 whether or not this witness, there's anything that
16 would substantially impair this witness' -- or this
17 juror's ability to carry out her duties as a juror.
18 Please.

19 MR. McGUIRE: Yes, sir.

20 BY MR. McGUIRE:

21 Q But if somebody had a different opinion and they
22 couldn't really articulate it to you, you would still
23 respect their position?

24 A Yes, sir.

25 Q Sometimes, especially in the South, we hear the

1 phrase "an eye for an eye" or "if you take a life you
2 forfeit yours." Do these phrases resonate with you?

3 A No, sir.

4 Q That's not your belief?

5 A No, sir.

6 Q Ma'am, that's all I have for. Thank you so much.

7 THE COURT: All right. Mr. Richardson.

8 MR. RICHARDSON: Thank you, your Honor.

9 EXAMINATION BY MR. RICHARDSON:

10 Q Ms. Moses.

11 A Yes, sir.

12 Q I'm Jimmy Richardson. I was introduced to you
13 yesterday. Scott Hixson is our chief deputy, and we're
14 going to be with you for a while if you qualify as a
15 jury -- a juror. I just want to ask you a couple of
16 questions. And, basically, it's to restate some of the
17 stuff that you have already said.

18 You realize already that this is a two-part trial,
19 could be a two-part trial?

20 A Yes, sir.

21 Q And what we're looking at is, first of all, simply
22 did the defendant do this crime. Is he guilty of
23 murder. That's called the guilt phase, correct?

24 A Yes, sir.

25 Q And all 12 of you guys would have to come together

1 and believe unanimously beyond a reasonable doubt that
2 he did, in fact, take the life of another with malice
3 aforethought.

4 A Yes, sir.

5 Q All right. So once you get past that stage,
6 because, unfortunately, we have quite a few murders,
7 and not all of them are death penalty cases. This is a
8 little different. Not all murder cases end up as death
9 penalty. And you realize that, right?

10 A Yes, sir.

11 Q Okay. So, after stage one, if you all determine
12 that he is, in fact, guilty of murder, and Mr. McGuire
13 has already said, "I'm going to ask you to find him not
14 guilty," but suppose for now y'all decide that he is
15 guilty of murder. Okay?

16 A Yes, sir.

17 Q Now, you realize the State would have to show a
18 statutory -- in other words, in a code book, a reason
19 why this murder is much worse than other murders?

20 A Yes, sir.

21 Q And what you're saying to us is if you can show
22 that he did, in fact, murder, commit the crime of
23 murder plus an aggravating circumstance or several
24 aggravating circumstances, what you're saying is, I can
25 then go anywhere from life in prison to the death

1 penalty?

2 A Yes, sir.

3 Q All right. Now, realizing that the death penalty
4 is a possibility, Judge Hyman will -- now we're
5 assuming a lot. But we're assuming that you have found
6 him guilty of murder. We're assuming that you have
7 found him guilty of that aggravating circumstance, and
8 now you guys are deciding to give him the death penalty
9 as opposed to life.

10 A Yes, sir.

11 Q You need to realize that Judge Hyman will pass to
12 you a sheet of paper with 12 lines on it. Okay?

13 A Yes, sir.

14 Q And you will have to sign your name saying, I'm
15 basically sentencing this person to death. If the
16 facts and circumstances -- if the State is able to
17 prove and give you sufficient facts, sufficient
18 circumstances, enough evidence for murder and for the
19 aggravating circumstances and y'all decide that that's
20 enough for the death penalty, could you sign your name
21 to that sheet of paper?

22 A Yes, sir.

23 Q Okay. I have no further questions. Thank you for
24 your honesty and your patience with us today.

25 A Thank you.

1 THE COURT: All right. Would you have this
2 witness -- I mean this juror step out for just a
3 moment.

4 MS. MOSES: Do I take my stuff, Judge?

5 THE COURT: Yes, you can take your things.

6 (WHEREUPON, Ms. Moses exited the courtroom
7 at 12:03 p.m.)

8 THE COURT: Defense?

9 MR. MCGUIRE: Move to strike for cause. She's
10 mitigation impaired, indicated that background
11 characteristics of the defendant would not be relevant
12 in determining punishment for murder.

13 THE COURT: I didn't hear that.

14 Let me hear from you, Mr. Richardson.

15 MR. RICHARDSON: Your Honor, I believe throughout
16 the totality of her testimony she has said that she
17 could be fair and impartial. She has stated that she
18 would listen to all the evidence as it was presented
19 which does include not only aggravating circumstances
20 but your Honor talked to her about mitigating
21 circumstances, and she said she would weigh all of that
22 before determining.

23 She also believed that if he were found guilty
24 that there were several different sentences and that
25 she could be fair and unbiased to both of them. I

1 believe you did talk with her about mitigating
2 circumstances, and I believe she did say that she could
3 weigh all of that.

4 THE COURT: I am confident that this juror is
5 qualified to serve on this jury. I questioned her and
6 I listened very carefully as the defense and the State
7 questioned her. I have no doubts in my mind that she
8 is free of any bias or prejudice in this case. I do
9 not hear anyone even suggest that. She was very clear
10 in her responses to me that she could, in fact, follow
11 the law as I instructed her. She was familiar with the
12 concept of the presumption of innocence. She
13 understood the State must prove its case beyond a
14 reasonable doubt. And there was no question in my mind
15 that she understood the concept of aggravating and
16 mitigating circumstances as well as the granting of a
17 life sentence for no other reason than sheer mercy.

18 I believe that this juror has clearly indicated
19 that she will follow the law as instructed by the
20 Court. As to any statement she may have made
21 concerning the background of the defendant, she's
22 indicated she will follow the law. I have not
23 discussed with her any specific mitigating
24 circumstances, but I am confident she will follow my
25 instruction in that regard and I believe she is a

1 qualified juror.

2 Bring her in, Mr. Ropp.

3 (WHEREUPON, Ms. Moses entered the courtroom
4 at 12:06 p.m.)

5 THE COURT: Yes, ma'am. Ms. Moses, you are found
6 to be qualified to serve on this jury. You are not on
7 the jury yet. I'm going to ask you, we're going to be
8 working all week trying to get qualified jurors. I'm
9 going to ask you anytime after 6:00 p.m. on Sunday
10 evening to call the number that's on the sheet that's
11 provided to you. There will be a message, a message
12 for qualified jurors, telling you when we would like to
13 have you come on back to court. Okay?

14 MS. MOSES: Yes, sir.

15 THE COURT: Any questions about that?

16 MS. MOSES: No, sir.

17 THE COURT: Please remember that my order
18 concerning pretrial publicity, research, things of that
19 nature remains in effect.

20 MS. MOSES: Yes, sir.

21 THE COURT: Can you abide by that?

22 MS. MOSES: Yes, sir.

23 THE COURT: Thank you very much. Look forward to
24 seeing you back.

25 Mr. Decker.

1 MR. McGUIRE: Judge, can I put something on the
2 record?

3 THE COURT: Yes.

4 MR. McGUIRE: Yes, sir, Judge. I understand your
5 ruling with regard to specifics, category types of
6 cases on aggravating circumstances, and I'm not arguing
7 with your ruling.

8 What I'd like to do is I have written down two
9 questions that we would like to ask. They're obviously
10 contrary to your ruling. And I just want to mark it.

11 THE COURT: What are the questions?

12 MR. McGUIRE: The questions are: "If the State
13 was to prove that the defendant killed with malice
14 aforethought an officer in the line of duty and also
15 committed previously two other murders, would you
16 consider the death penalty to be the only appropriate
17 penalty in that case?"

18 THE COURT: That goes to specific aggravating
19 circumstances.

20 And, Mr. McGuire, I have a problem with you asking
21 jurors if the State proved murder -- excuse me, in the
22 killing of a person accompanied by malice as sufficient
23 for the death penalty. That's not the law. And I
24 think it's somewhat misleading, and it's almost
25 tricking a juror.

1 I would appreciate it if you would say, "And if
2 the State proved one of the statutory aggravating
3 circumstances." Because these jurors are trying to
4 say, "Well, if the facts and circumstances warranted
5 it." They're being asked to make a judgment on an
6 improper statement of the law. I mean, the law
7 requires that the State must prove at least one
8 statutory aggravating circumstance, so I have a problem
9 with you asking them that question.

10 MR. McGUIRE: Actually, the *Morgan* case from the
11 United States Supreme Court actually says that that is
12 the question that we're certainly allowed to ask which
13 is, "Upon the conviction of the elements of murder, are
14 your thoughts about the death penalty that it's the
15 only appropriate punishment?" That is the question
16 that the U.S. Supreme Court says that in *Morgan* we are
17 at least allowed to ask that. And I'd like to ask
18 about aggravating circumstances, but I understand I'm
19 not allowed to.

20 The second question that we would propose -- and
21 I'm not rehashing our argument, Judge. What I want to
22 do is mark this, and then when I'm talking to a juror,
23 what I'll do is I'll say, "Judge, this is the point
24 where I would ask question one and two." And that way
25 I can preserve the record.

1 THE COURT: What's the other question?

2 MR. McGUIRE: Yes, sir. The other question is:
3 "Are there any types or categories of murder that you
4 believe require the death penalty and that the life
5 penalty would not be an appropriate penalty option?"

6 THE COURT: All right, sir. I will not allow
7 either of those questions.

8 MR. McGUIRE: I'm not rearguing. I'm just saying
9 I can go ahead and mark it for the record, and I can
10 say, "Judge, at this point I would ask one and two."

11 THE COURT: Why don't you just put on the record
12 that you would ask every juror those two questions
13 right now, and I will acknowledge but for my ruling you
14 would ask those questions.

15 MR. McGUIRE: Yes, sir. Then that's exactly my
16 position.

17 THE COURT: All right. Good.

18 (WHEREUPON, Defendant's Exhibit Number 1
19 was marked for identification.)

20 MR. McGUIRE: I would just restate the grounds
21 which would be, of course, the Sixth Amendment
22 inability to pick an unbiased, impartial jury, and it
23 would be a procedural and substantive due process
24 violation contrary to the Fifth and Fourteenth
25 Amendment and violating the heightened reliability

1 standard of the Eighth Amendment.

2 (WHEREUPON, Mr. Decker entered the courtroom
3 at 12:12 p.m.)

4 DANIEL DECKER,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 THE CLERK: Please have a seat. Please speak into
7 the microphone and state your name and spell your last
8 name for the record. Thank you.

9 MR. DECKER: Daniel Decker, D-e-c-k-e-r.

10 EXAMINATION BY THE COURT:

11 Q Mr. Decker, good morning. How are you?

12 A Good.

13 Q Mr. Decker, do you recall my instructions
14 yesterday concerning pretrial publicity and research
15 into this case?

16 A Yes.

17 Q And have you followed those instructions?

18 A Yes.

19 Q You have not violated them?

20 A No.

21 Q Thank you very much.

22 Now, Mr. Decker, I see here that you have been
23 kind enough to provide us with completed forms in this
24 case.

25 A Yes.

1 Q And the first thing we ask you to do is indicate
2 what kind of juror you were, and you've indicated you
3 were a C type juror; is that right?

4 A Correct.

5 Q Now, simply stated, a C type juror is one that
6 would need to hear the facts and circumstances in
7 aggravation and in mitigation before he or she could
8 make the decision regarding punishment. Is that your
9 feeling today?

10 A Yes.

11 Q And you think that best describes you as a juror?

12 A Yes.

13 Q Now, since you indicated that you are the type of
14 juror that would want to hear about aggravation and
15 mitigation, I would assume then that you recall our
16 conversations yesterday about aggravating and
17 mitigating circumstances?

18 A Yes.

19 Q Do you understand and recall that in South
20 Carolina if the State were to prove beyond a reasonable
21 doubt that the defendant committed the offense of
22 murder -- now that is murder or the unlawful killing of
23 another person with malice aforethought -- if the State
24 has proved murder, the unlawful killing of another
25 person with malice aforethought, and that proof was

1 beyond a reasonable doubt to the satisfaction of every
2 juror, the State would then be entitled to a conviction
3 for murder. Do you understand that?

4 A Yes.

5 Q Okay. But do you understand that if the State
6 convicts somebody of murder, even though murder
7 includes the element of malice -- the State must prove
8 malice -- that that would not entitle the State to even
9 ask for the death penalty unless certain statutory
10 requirements were met and the State moved to the second
11 phase of the trial. Do you understand that?

12 A Yes.

13 Q And in the second phase of the trial, there would
14 be no considering of a death penalty by the jury unless
15 the State had convinced each and every juror that the
16 murder was accompanied by one of several statutory --
17 that is legally established, established by law --
18 aggravating circumstances. That is something that goes
19 along with murder. It's not malice. It's something
20 that goes along with murder. Something about the
21 murder that makes that murder more heinous, makes it
22 worse, makes the perpetrator more culpable. Do you
23 understand what I'm saying about aggravating
24 circumstances?

25 A Yes.

1 Q Something that makes it worse. The State would
2 have to establish one of those, have to prove it to
3 every juror beyond a reasonable doubt. And each juror
4 would have to sign a paper that says that they have
5 found that. Do you understand that?

6 A Yes.

7 Q Okay. Even after that, the State would not be
8 entitled to a recommendation of the death penalty until
9 the jury had also considered evidence of mitigation.
10 Mitigation means things that make something less
11 culpable, less serious, extenuating circumstances. Do
12 you understand what I mean by that?

13 A Yes, sir.

14 Q Okay. So unless -- or if that evidence was put
15 up, you would be required as a juror to consider it.
16 And even when the State had established beyond a
17 reasonable doubt and if the State can do that. I'm not
18 suggesting they can. But if that was done, an
19 aggravating circumstance, the jury could consider not
20 only the legally established mitigation but any
21 mitigating circumstance that the jury found
22 appropriate. You could decide what would be an
23 appropriate mitigator.

24 Or for no reason at all. Just because the jury
25 wanted to grant mercy, the jury could say life instead

1 of death. Do you understand that?

2 A Yes, sir.

3 Q Okay. And if I were to instruct you as to the
4 law, could you follow it that way?

5 A Yeah.

6 Q Could you do what I tell you the law is? Could
7 you apply the law as I give it to you in the guilt
8 phase?

9 A Yes, sir.

10 Q If I told you what murder was, if I told you what
11 any possible defenses were, if I told you what the law
12 was in this state, could you follow that law and apply
13 it in your deliberations even if you disagreed with it?

14 A Yes, sir.

15 Q Even if you -- somebody else told you, "Well,
16 that's not the law," would you still follow the law as
17 I gave it to you?

18 A Yes.

19 Q All right, sir. Now, you did not indicate,
20 according to my records, Mr. Decker, that you knew
21 anything about this case or had any interest, prejudice
22 or bias in it or knew of any reason why you could not
23 be fair. Was that your response to my questions
24 yesterday?

25 I tried to make notes of what everybody said, and

1 I did not see in my notes where you made or responded
2 that you had any interest or prejudice or bias or knew
3 of any interest, prejudice or bias that you might have
4 in the case or knew any reason why you couldn't be fair
5 and impartial.

6 A Well, I had no knowledge of the case. I had just
7 moved here a year ago.

8 Q You just recently moved here?

9 A Yes.

10 Q How long have you been living here?

11 A Since June of 2013.

12 Q All right, sir.

13 Now, do you understand the concept of the
14 presumption of innocence?

15 A Say that again, sir.

16 Q Let me explain it to you. In our law, when
17 someone is accused of a crime, the jury is instructed
18 that there is a legal presumption that that person is
19 not guilty. Do you understand that that person is
20 innocent, and every one of us has that presumption of
21 innocence that protects us. And a person could not be
22 convicted of a crime unless the State overcomes that
23 presumption of innocence and the State convinces a jury
24 unanimously that the person has committed a crime, and
25 that proof is proof beyond a reasonable doubt. Do you

1 understand that?

2 A Yes, sir.

3 Q And could you follow that principle in
4 deliberations in this case?

5 A Yes, sir.

6 Q All right, sir. Now, if, after having heard the
7 evidence in a case and after having received the law as
8 I gave it to you, if you consider the evidence, the
9 facts that you as a jury would determine and apply them
10 to the law, would you have any problem finding a
11 defendant not guilty or guilty? Could you do either
12 one based on the evidence, the facts in the case and
13 the law?

14 A Yes, sir.

15 Q All right, sir. A moment ago I explained to you
16 what aggravating and mitigating circumstances was and
17 how they were important in this case if we ever get to
18 the sentencing phase. There again, I don't want to
19 suggest to you that this defendant will be found
20 guilty. I don't want to suggest to you that you will
21 ever get to a sentencing phase. That will be up to the
22 jury to determine.

23 But if we got to that phase and if the State were
24 to produce evidence of aggravation and if the defendant
25 were required to produce -- or did produce evidence in

1 mitigation, would you listen to the evidence offered by
2 each party, the defendant and the State, would you
3 consider all that evidence, would you consider the law
4 as I give it to you and could you -- could you -- based
5 upon your consideration of the mitigating and
6 aggravating circumstances and the application of the
7 law impose either the life sentence or the death
8 penalty?

9 A Yes, sir.

10 Q You could, under the proper circumstances, impose
11 or vote for the death penalty?

12 A Yes.

13 Q You could, under the proper circumstances, vote
14 for life imprisonment?

15 A Yes, sir.

16 Q You would have no problem -- no bias in favor or
17 against either sentence, you would base it on the
18 evidence that was presented?

19 A Yes, sir..

20 Q All right, sir. If and only if you were on this
21 jury and there were to be a recommendation of a death
22 penalty -- and there again, I am not suggesting that
23 that is what you do. I'm just saying if you were to
24 find you in that situation -- yourself in that
25 situation, the jurors would be required, each juror, to

1 sign the recommendation.

2 Could you affix your name to that if that was the
3 case? If you were on the jury and if the jury had
4 decided the death penalty was appropriate, could you
5 sign the recommendation of a death penalty?

6 A If that's what I thought the facts led to, yes.

7 Q And that's what I'm assuming. If we ever got to
8 the sentencing phase and if you were on the jury and if
9 the jury had decided that that was appropriate, could
10 you also sign it?

11 A Yes, sir.

12 Q All right, sir. Now, if you're chosen to be on
13 this jury, you would be housed in a motel room or a
14 hotel at the county's expense, and they would feed you
15 and take care of you during that time. Is there any
16 compelling reason why you could not do that other than
17 personal inconvenience? Is there any reason why that
18 would be a danger to your health or well-being or the
19 health and well-being of people who depend on you?

20 A Just financial. I'm sharing a home with my
21 brother covering bills, but other than that, no.

22 Q All right. Can you think of any reason at all --
23 any reason -- Mr. Decker, why you should not serve as a
24 juror on this particular case with particular emphasis
25 being placed on your ability to be fair and impartial?

1 A No, sir.

2 Q Can you be a fair and impartial juror?

3 A Yes, sir.

4 Q All right.

5 EXAMINATION BY MR. McGUIRE:

6 Q Good afternoon, Mr. Decker. I'm going to come up
7 here and talk to you. It's a little awkward talking to
8 you from way over there.

9 A Could you hear me?

10 Q I can hear you fine. I just want to have a more
11 conversational tone with you as opposed to shouting at
12 you from over there.

13 I am going to ask you about some of your personal
14 thoughts and your opinions, feelings about some things,
15 and I'm going to be a little personal right off the
16 bat. And I hope you don't mind, but this is our
17 opportunity to gauge your feelings about certain
18 things -- punishment, that sort of thing.

19 A Okay.

20 Q You indicated on your questionnaire you knew
21 somebody who was in prison?

22 A Yes.

23 Q Could you tell the Court and me a little bit about
24 that.

25 A A couple -- well, my brother has been to jail, but