

VOL. II OF VI

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge

TAVARUS LEE ROGERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

A P P E N D I X

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

ASHLEIGH R WILSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
PRE-TRIAL HEARING (dated June 8, 2000)	1
PRE-TRIAL HEARING (dated August 17, 29, 2001)	133
PRE-TRIAL MOTIONS HEARING (dated October 4, 2001)	427
JURY TRIAL TRANSCRIPT (dated October 8-16, 2001)	507
APPLICATION FOR POST-CONVICTION RELIEF	2312
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2317
RETURN	2342
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated September 5, 2012)	2348
ORDER OF DISMISSAL	2449
INDICTMENTS	2461
SENTENCE SHEETS	2475
FINAL BRIEF OF APPELLANT	2482
COURT OF APPEALS' OPINION	2506

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Pretrial Motions Hearing of October 4th, 2001 before Judge Gregory

1 MR. KULP: Yes, sir. Thank you.

2 THE COURT: Anything else we can put on the
3 record?

4 MR. KULP: Nothing at this time, Your Honor.

5 THE COURT: Okay, then. I will see you'all.
6 Is there anything else? Have I got any other business
7 with you until Monday?

8 MR. FLEMING: No, sir, I don't think so.

9 MR. KULP: No, sir, Your Honor. Thank you.

10 COURT REPORTER: Judge, on the tape that Mr.
11 Murdaugh wants to take back and copy, Exhibit 2, does
12 he have your permission on the record to do that or
13 should I turn it in the Clerk and he, in turn, check it
14 out from them?

15 THE COURT: No, he has my permission. I've
16 given Mr. Murdaugh the tape back to make a copy of it.

17 MR. MURDAUGH: Yes, sir.

18 THE COURT: Do they already have a copy of it?

19 MR. MURDAUGH: No, sir, I don't think they do have
20 a copy. I'll make two copies.

21 THE COURT: Make two copies. Give them one, and
22 then on Monday we'll -- you can ---

23 MR. MURDAUGH: Should I return -- have Ms. Wilson
24 return this to the Clerk of Court today?

25 THE COURT: What do you'all want?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Pretrial Motions Hearing of October 4th, 2001 before Judge Gregory

1 MR. FLEMING: Yes.

2 THE COURT: Yes. So then you can return it to
3 the Clerk of Court's Office today.

4 MR. MURDAUGH: Make two copies, one for you and
5 one for me.

6 THE COURT: All right.

7 COURT REPORTER: Exhibit 3, another audio tape,
8 is in lockup and we are reserving the number for that
9 but I have not received it. Can we note for the record
10 when that will be delivered?

11 THE COURT: Exhibit Number 3 that's in lockup,
12 we never have received that.

13 MR. FLEMING: Ms. Wilson, would you ---

14 MR. MURDAUGH: I'm sorry. I didn't hear you,
15 Judge.

16 THE COURT: Exhibit 3 that was in lockup ---

17 MR. FLEMING: The second tape, can you bring that
18 over on Monday?

19 THE COURT: Why don't you do that? It has been
20 introduced into evidence.

21 MR. FLEMING: We can do it Monday.

22 MR. MURDAUGH: Then we'll have a court reporter
23 and a record being made, so why don't I do that, if it
24 suits you?

25 MR. FLEMING: That's fine.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Pretrial Motions Hearing of October 4th, 2001 before Judge Gregory

1 THE COURT: Well, you can do the same way with
2 the other one and not do it, too, if you want to keep
3 them together. How do you'all want to do that?

4 MR. FLEMING: I just need a copy. That's okay.

5 THE COURT: All right. State how you're going
6 to do them.

7 MR. MURDAUGH: Due to the fact that it's in
8 evidence and I've got to get the evidence custodian to
9 bring it over here, I suggest that on tape number two
10 that I just present it on Monday morning.

11 THE COURT: Okay. Without objection?

12 MR. FLEMING: Without objection.

13 THE COURT: Okay. But you're still going to
14 return the other one, you're going to -- Ms. Wilson is
15 going to turn that back over to the Clerk?

16 MR. MURDAUGH: Make two copies, and we'll turn it
17 over to the Clerk of Court today.

18 THE COURT: And that is the original?

19 MR. MURDAUGH: That is the original. She will
20 turn the original back over to the Clerk.

21 THE COURT: And that's tape two, or is it
22 exhibit two?

23 MR. MURDAUGH: Exhibit 1 (sic).

24 COURT REPORTER: Tape one is Exhibit 2, and
25 Tape two will be Exhibit 3.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Pretrial Motions Hearing of October 4th, 2001 before Judge Gregory

1 THE COURT: Tape one is Exhibit 2, and tape two is
2 Exhibit 3, I think. Okay.

3 COURT REPORTER: The transcript of tape one,
4 tape one being Exhibit 2, is Exhibit 1.

5 THE COURT: All right, I want to make sure that
6 we get it right.

7 COURT REPORTER: I have it, Your Honor.

8 THE COURT: All right, I will see you on
9 Monday. Here is what I wrote, (tenders to law clerk).

10 (CONCLUDED)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

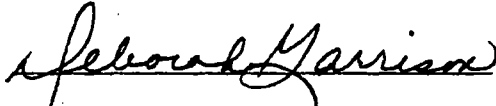
State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Pretrial Motions Hearing of October 4th, 2001 before Judge Gregory

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON)
3

4 CERTIFICATE OF COURT REPORTER
5

6 I, the undersigned, Deborah Garrison,
7 Official Court Reporter for the Ninth Judicial Circuit
8 of the State of South Carolina, do hereby certify that
9 the foregoing is a true, accurate and complete
10 transcript of the Pretrial Motions Hearing in the
11 above-captioned case before the Honorable Jackson V.
12 Gregory in Courtroom No. 1 of the Beaufort County
13 Government Center on the 4th day of October, 2001;

14 I do further certify that I am neither kin nor
15 counsel to any of the parties and have no interest in
16 the outcome of this action.
17

18
19 
20 Deborah A. Garrison
21

22
23
24 Charleston, South Carolina

25 November 10, 2001

**THIS PAGE INTENTIONALLY
LEFT BLANK**

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	99-GS-07-221 thru 222
	)	99-GS-07-281 thru 288
TAVARUS ROGERS	)	
	)	
Defendant.	)	

JURY TRIAL
OCTOBER 8, 2001 - Volume 1 of 7 Volumes

The within Jury Trial was held before the Honorable Jackson V. Gregory, on October 8-16, 2001, in Courtroom No. 1 of the Beaufort Government Center, Beaufort, South Carolina; attended by counsel, as follows:

APPEARANCES:

Randolph Murdaugh, Solicitor
Steven Knight, Deputy Solicitor
Angie McCall, Deputy Solicitor
Appearing for State of South Carolina

Cory H. Fleming, Esq.
MOSS & KUHN, P.A.
Post Office Drawer 507
Beaufort, South Carolina 29901-0507
-and-

Timothy Clay Kulp, Esq.
RIESEN LAW FIRM
3660 West Montague Avenue
North Charleston, South Carolina 29418
Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29457
(843) 768-1438
www.CourtReporting@aol.com

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Index
Jury Trial October 8-16, 2001

1	INDEX FOR JURY TRIAL				
2					Page No.
3	JURY VOIR DIRE				5-1097
4	OPENING STATEMENTS				
5	Mr. Murdaugh for State				1190
6	Mr. Kulp for Defendant				1195
7	TESTIMONY	DIRECT	CROSS	REDIRECT	RECROSS
8	Jocelyn Wendel	1202	1225	1240	1243
9	Kristal Wire	1245	1257		
10	Toby Reischl	1300	1320		
11	Bonita Reyes	1357			
12	Curt Copeland	1371			
13	Matt Averill	1377	1382	1409	1417
14	Kim Collins	1419			
15	Richard Rivers	1424			
16	Kenneth Williams	1432			
17	Phil Foote	1434			
18	John Black	1437	1447	1450	
19	CLOSING ARGUMENTS				
20	Mr. Murdaugh for State				1472
21	Mr. Fleming for Defendant				1485
22	JURY CHARGE				1496
23	VERDICT				1545
24	PENALTY PHASE				1562
25	SENTENCE				1780

INDEX

PENALTY PHASE OF JURY TRIAL

Page No.

OPENING STATEMENTS

Mr. Murdaugh for State 1565

Mr. Kulp for Defendant 1567

TESTIMONY

DIRECT

CROSS

REDIRECT

RECROSS

Matthew Averill 1573

Curt Copeland 1577

Connie Rogers 1582 1612 1613

William Damude 1614 1617

Jeffrey Youngman 1645 1678

James Aiken 1682 1692

RE: JUROR CONCERN

Kenneth Mears 1748

Richard McLeod 1750

Harvey Rutland 1752

DEFENDANT'S WAIVER OF RIGHT TO STATEMENT 1589

CLOSING ARGUMENTS

Mr. Murdaugh for the State 1698

Mr. Kulp for Defendant 1710

JURY CHARGE PENALTY PHASE 1717

VERDICT PENALTY PHASE 1762

SENTENCE 1780

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Index
Jury Trial October 8-16, 2001

1	INDEX OF EXHIBITS FOR STATE		
2	No.	Description	Page No.
3	1	Photograph (side of trailer)	1216
4	2	Photograph (front of trailer)	1216
5	3	Photograph (front of trailer)	1216
6	4	Photograph (back of trailer)	1216
7	5	Diagram (bathroom)	1218
8	6	Diagram (bedroom)	1218
9	7	Diagram (living room)	1218
10	8	Autopsy of James Mitchell Riley	1419
11	9	Autopsy of Paul Reischl	1419
12	10	Photograph lineup	1241
13	11	Photograph lineup	1276
14	12	Photograph lineup	1462
15	13	Note (passed via magazine in jail)	1429
16	14*	Rogers Fingerprint Card	1443
17	15	<i>Sports Illustrated</i> magazine	1452
18	16	Photograph of Paul Reischl	1579
19	17	Photograph of James Riley	1579
20	18	Photograph of James Riley	1579
21	19	Photograph of James Riley	1579
22	20	Photograph of James Riley	1579
23			
24			
25	*ID Only		

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Index
Jury Trial October 8-16, 2001

5

1	INDEX OF EXHIBITS FOR DEFENDANT		
2	No.	Description	Page No.
3	1	Tape of 911 call	1293
4	2	Statement of Kristal Wire	1264
5	3	Statement of Kristal Wire	1264
6	4	Statement of Kristal Wire	1264
7	5	Statement of Kristal Wire	1264
8	6	Statement of Toby Reischl	1323
9	7	Beer cans (in box)	1389
10	8	Telephone Receiver	1389
11	9	Playing cards (red)	1389
12	10	Playing cards (blue)	1389
13	11	List of crime scene evidence	1392
14	12*	Extension cord (taped)	ID Only
15	13*	Fitness belt	ID Only
16	14*	Wooden paddle	ID Only
17	15	Photograph of T.J. Rogers	1610
18	16	Photograph of T.J. Rogers	1610
19	17	Photographs (14)	1579
20	18	Photographs of T.J. Rogers	1579
21	19	Family Tree chart	1623
22			
23			
24			
25	*ID Only		

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Index
Jury Trial October 8-16, 2001

1

INDEX OF COURT'S EXHIBITS

2	No.	Description	Page No.
3	1	Jury List (5 pages)	76
4	2	Beaufort Gazette 10-9-01	191
5	3	Island Packet 10-9-01	236
6	4	Carolina Morning 10-10-01	573
7	5	Beaufort Gazette 10-10-01	573
8	6	Doctor's Excuse for Norman Argast	788
9	7	Jury List (2 pages)	1092
10	8	Photocopies of news articles	1095
11	9	Sequestration Order	1151
12	10	List of Juror's reading material	1183
13	11	January 20, 1999 Status Report	1363
14	12	Denied Charges	1614
15	13	Defendant's Request to Charge	1619
16	14	Note from Jury	1735
17	15	Note from Jury	1735
18	16	Note from Jury	1735
19	17	Instructions/Verdict Forms	1735
20	18	Note from Jury	1739
21	19	Note from Jury	1743
22	20	Note from Jury	1743
23	21	Note from Judge re: future contact	1769

24

25

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 THE COURT: Those that they could not locate
2 they -- could we get Mrs. Smith down here? I want to
3 make sure that those are not excused. If they show up
4 then they waive -- they might be good jurors.

5 MR. KULP: Good point.

6 THE COURT: I don't think that they're on here,
7 are they?

8 MR. KULP: I don't know.

9 THE COURT: Mrs. Smith, ---

10 CLERK: Yes, sir?

11 THE COURT: --- the ones that they said that
12 they could not located, you haven't excused those --
13 because some of those might show up.

14 CLERK: Oh, no, sir. We just have the
15 affidavit from the Sheriff's Department that says that
16 they ---

17 THE COURT: Weren't able to locate them?

18 CLERK: Yes, sir.

19 THE COURT: Now, I want it clearly understood,
20 don't call those in there and excuse me, because if
21 they could not locate them and they show up, then
22 they're in the pool.

23 CLERK: Correct.

24 THE COURT: Because sometimes they will be
25 deferred -- somehow, who knows. Isn't that right,

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

9

1 Solicitor?

2 MR. MURDAUGH: Yes, sir.

3 THE COURT: But the rest of them, without
4 objection, which are the age or the ones that had
5 information that they had moved out of the county --
6 but the forty-three that are on here that we're unable
7 to locate, don't excuse those. We'll wait until their
8 name is called. If they respond, then they will be
9 part of the panel. If they do not respond, then it is
10 my understanding that the attorneys for both sides
11 accept the fact that they were unable to serve them
12 after due diligence.

13 MR. KULP: That's right.

14 THE COURT: Is that right, Solicitor?

15 MR. MURDAUGH: Yes, sir.

16 THE COURT: So you (Clerk) can go ahead with
17 the roll call, since we got rid of that. I just wanted
18 to make sure that any of them that they were unable to
19 locate, that if they happened to show up that ---

20 CLERK: Yes, sir.

21 MR. KULP: And there was one last category,
22 Judge, on that list provided by the Clerk as to other
23 requests. I don't know if those may show up and
24 petition the court to be released ---

25 THE COURT: Well, they all are listed --

1 specifically, like No. 24, he is out of the country.

2 If he is back, then we can bring him in here.

3 There is one of them that sent an airline ticket,
4 stating that they would return tomorrow.

5 MR. KULP: Madame Clerk, are those nine
6 excused on the last category?

7 CLERK: None of these were excused, Mr. Kulp.
8 These were just folks that had requested, but they have
9 heard no response from the Court.

10 MR. KULP: That is my point. As we're going
11 over this, they may in fact show up, as well. We may
12 have to deal with those.

13 THE COURT: If they do, we will. I don't
14 anticipate -- I noticed that one is on a cruise from
15 the 6th to the 13th.

16 MR. KULP: Yes, sir.

17 THE COURT: Mr. Robinson confirmed that they
18 had a problem, No. 343 is said to be mentally retarded.
19 So if any of these show up, we will address it but I
20 don't anticipate a problem.

21 MR. KULP: Very good, Your Honor.

22 THE COURT: James Smith is in the hospital with
23 a stroke. Landon Thorne is deployed during the week of
24 October 8th.

25 MR. KULP: Yes, sir.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

11

1 THE COURT: All right, any other thing that we
2 need to say? If you have got any questions, please
3 just bring it back and forth and we'll rule on it at
4 that time.

5 CLERK: I think number nine down there at the
6 bottom that ---

7 THE COURT: I want to be clear. The one that
8 is stated to be mentally retarded, if he is out there I
9 don't think that we would him to be -- do you want to
10 bring him in here and examine him?

11 MR. KULP: I don't think so, Your Honor. I
12 think that it would be farfetched for someone to make
13 that representation.

14 THE COURT: So if they are out there, you can
15 go ahead and excuse them.

16 CLERK: Yes, sir.

17 MR. KULP: As well, Your Honor, the other
18 juror who the Clerk confirmed would be ineligible or
19 disqualified because of the prior conviction. That
20 would be Juror No. 326. We would have no objection to
21 those two people, if they are here, being summarily
22 excused by the Clerk from being considered.

23 THE COURT: And if any of the rest of them are
24 out there, I'll probably have a conference up here at
25 the bench or something and we can take care of it.

1 rather quickly. We can make a preliminary ruling.

2 Okay, that takes care of all our jury issues; doesn't
3 it?

4 MR. KULP: Yes, sir, Your Honor.

5 MR. MURDAUGH: If Your Honor please, while you are
6 up there, let me -- I have handed up to your clerk a
7 witness list. That list isn't realistic, I just put
8 every person's name on it that I could conceive of
9 being a witness in the case.

10 I added No. 47, the name John Black, but I found
11 out that he was already listed as No. 6, so you can
12 strike that off.

13 I need to add the name of Pam Collingsworth to the
14 list.

15 THE COURT: P-a-m?

16 MR. MURDAUGH: Sir?

17 THE COURT: P-a-m, Pam?

18 MR. MURDAUGH: P-a-m Collingsworth.

19 THE COURT: C-o-l-l-I--g-s-w-o-r-t-h?

20 MR. MURDAUGH: Correct, sir. I think.

21 THE COURT: How about the State, do you'all
22 have a witness list also?

23 MR. KULP: Yes, sir, Your Honor. I have also
24 included a list of the members of Mr. Fleming's firm
25 for your reference and also the members of my firm, as

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

13

1 is proper for the introductions.

2 MR. MURDAUGH: I would also add that I gave the
3 defense counsel my list.

4 MR. KULP: We have a copy.

5 MR. MURDAUGH: Can I have one of yours?

6 MR. KULP: Just one second, certainly.

7 THE COURT: What Judge Cooper tells me that he
8 does is that he -- and I think that since it is so long
9 that it will actually be better when I go over it, is
10 that I am going to ask them all this but I'm also going
11 to have copies of this witness list in the jury when
12 they're reading -- when they read that other thing,
13 that we've been over before, -- everything, that they
14 can look at it. And if they've got any questions about
15 it, then we can -- and of course you'all can follow up
16 with questions if they do. Any objection to that?

17 MR. MURDAUGH: None from the State, sir.

18 MR. KULP: None from the defense, Your Honor.

19 THE COURT: Do you have anything else? From
20 the State? Do you have any other Motions? I believe
21 that you said that you have some Motions?

22 MR. KULP: Yes, Your Honor, we have one other
23 Motion. We respectfully move for a continuance.

24 We feel incumbent to move for a continuance of the
25 trial at this time, for the record, considering the

1 severity of the case, based on the news of developments
2 yesterday afternoon regarding the response of the
3 Government to the terrorist threat and the war activity
4 that was undertaken, considering the notion that --
5 which may certainly come out in *voir dire* if someone
6 has a legitimate concern -- the attention of the jurors
7 would not be properly and completely focused on the
8 serious matter of the trial while such activity in the
9 world is going on that involves the interest of United
10 States citizens.

11 Then, again, we would have to concede that if
12 someone has, say, a family member that is engaged on
13 the fronts developing and they would feel distracted
14 by their concern over the welfare of that person. I
15 think that they would certainly bring that before the
16 Court, but we just feel that we need to make that
17 Motion for continuance based upon the developments.

18 THE COURT: Well, I think that certainly if you
19 think that it is important enough, when you do your
20 *voir dire*, that you can ask them if they have any
21 problems with that or if they have any family members
22 involved or something like that. I think myself that
23 if it was September 11th, when I did call off court,
24 something out of the ordinary like that and nobody knew
25 what was going on, that's one thing. But I don't think

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

15

1 that -- so far, I can't see that there is anything that
2 is going to be especially significant about the next
3 week or ten days. We'd have to address that if we get
4 there, but I don't -- your Motion is duly noted and
5 denied.

6 MR. KULP: Yes, sir. Thank you, Your Honor.
7 One of the other grounds would be that one of our
8 mitigating witnesses is located out of the country,
9 Okinawa. We have taken steps to procure his appearance
10 here at trial. It's related to the first ground. And
11 based on the recent developments in that arena of
12 theater, he is unable to appear. Our efforts to get
13 him here have ground to a halt as a result of
14 yesterday's activities. We would move for a
15 continuance of the trial based on his inability to
16 appear. It does, however, appear that we may be able
17 to speak with the Solicitor and agree on a method of
18 having his testimony, which would be subject to cross-
19 examination, as well, by telephone. I did that
20 recently in a murder trial in Charleston, with consent
21 of the parties, as to an expert stuck in the Boston
22 airport in a snow storm. I hadn't had the call in the
23 courtroom and it worked very well, getting that
24 testimony before the jury for their consideration.
25 I will address that. That's our second ground for a

1 Motion for continuance.

2 THE COURT: Please state for the record what it
3 is that you anticipate that the witness will testify
4 about.

5 MR. KULP: Yes, sir, the witness would be --
6 if that point in the trial is approached, he would be a
7 witness as to issues of mitigation in the penalty
8 phase.

9 THE COURT: Only in the penalty phase?

10 MR. KULP: Yes, sir, Your Honor.

11 THE COURT: Solicitor?

12 MR. MURDAUGH: If Your Honor please, I have no
13 idea what he is going to testify to. If they'll tell
14 me what his testimony would be, I may stipulate that if
15 he were present that he would testify to 'this'.

16 THE COURT: And it might be that you could talk
17 to him by telephone and then stipulate?

18 MR. MURDAUGH: I may not even need to talk to him
19 by telephone.

20 THE COURT: Okay. Well, obviously we're a long
21 way from that testimony now. So your Motion for a
22 continuance in the case, that Motion is denied also.

23 MR. KULP: Thank you, Your Honor.

24 THE COURT: Is there anything else?

25 MR. KULP: Not that I am aware of, sir.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

17

1 THE COURT: And, of course, the Clerk is in
2 here calling the roll of the -- let's see, she is not
3 calling the whole roll. In just a moment, when she
4 finishes, -- I think she is calling the preliminary
5 roll, not the whole roll. We will get the jury in here
6 and call the roll and then start. We've been over the
7 procedure that we're going to use. After the roll is
8 called, then Mr. Shanklin will then proceed to draw the
9 jurors. That will be the final list and then we will
10 work from that. Let's stand at-ease then.

11 (THREE POTENTIAL JURORS ENTER COURTROOM)

12 THE COURT: We have one lady, the lady in brown
13 back there, that says that she can't write or read. We
14 want to go ahead and excuse her, obviously.

15 MR. MURDAUGH: I think that she is disqualified.

16 THE COURT: I think that she is, too.

17 CLERK: There are two ladies back there, one has
18 a child with her. I don't know whose child that it is,
19 but they are sisters and one of them says that she is
20 sick.

21 THE COURT: If you would, bring those two
22 jurors up and we will take care of that. Would you
23 ladies come on up, please?

24 (JURORS APPROACH BENCH)

25 THE COURT: Your name and number, please?

1 POTENTIAL JUROR: 0057.

2 THE COURT: What is your situation, Ms.

3 Cochran?

4 POTENTIAL JUROR: I don't feel very well. I was
5 sick all last night and I have a two-year-old daughter.
6 My sister drove me here.

7 THE COURT: Okay. Do you stay home with your
8 daughter?

9 POTENTIAL JUROR: I work.

10 THE COURT: But you just woke up -- yesterday,
11 you were sick yesterday and today?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: Any questions, Solicitor?

14 MR. MURDAUGH: None from the State. No objection.

15 MR. KULP: No objections from the Defense,
16 Your Honor.

17 THE COURT: You are excused. Thank you very
18 much. I hope that you feel better soon.

19 POTENTIAL JUROR: Thank you.

20 THE COURT: Are you the sister?

21 POTENTIAL JUROR: Yeah.

22 THE COURT: And your name, please?

23 POTENTIAL JUROR: I am Michelle (Cochran)
24 Sutton.

25 THE COURT: Okay, Ms. Sutton.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

21

1 POTENTIAL JUROR: I guess if I could get a ride
2 back to Hilton Head, she could take my car.

3 SHARON COCHRAN: I can't drive.

4 MICHELLE SUTTON: Oh, you can't drive.

5 THE COURT: Well, let me ask you this, Ms.
6 Sutton. Are you okay to serve?

7 POTENTIAL JUROR: Yeah.

8 THE COURT: Excellent. I am going to ask the
9 Sheriff, if they can, to get this lady back home and
10 you keep your car.

11 DEPUTY: Yes, sir, we will take care of it.

12 CLERK: What is your first name?

13 POTENTIAL JUROR: Michelle.

14 THE COURT: Okay, you were summoned under your
15 maiden name; correct?

16 POTENTIAL JUROR: Yeah.

17 THE COURT: You can just go back across the
18 hall, if you will. Your sister -- where do you want
19 her to wait?

20 DEPUTY: Out in the hall. They're already
21 working on getting a unit to take her to Hilton Head.

22 THE COURT: Okay. If you will, just have a
23 seat on the bench out there and you will be taken back
24 by law enforcement.

25 MICHELLE SUTTON: Do you have your key?

1 THE COURT: You can go back and talk with her.

2 MR. MURDAUGH: Judge, does that take care of that?

3 THE COURT: It does.

4 MR. MURDAUGH: Might I make an inquiry of the
5 Court, sir? We're under a gag Order regarding talking
6 about this case. I have received a telephone call
7 asking that I return a call to a television station in
8 Charleston. Is it permissible for me to have them call
9 and say that the jury selection in the trial will begin
10 this morning? Is that all right?

11 THE COURT: I think so, and you can tell them
12 that the trial will be begin on Thursday or that it is
13 projected to begin on Thursday. Wait just a second,
14 let me get the other side's ---

15 MR. KULP: I ---

16 THE COURT: Because until we get the jury we
17 obviously can't get the ---

18 MR. KULP: I really appreciate the Solicitor
19 bringing that to the Court's attention. I don't think
20 that it would make any difference who calls them back
21 to tell them that available information, whether it be
22 the clerk or ---

23 THE COURT: If you want me to, I will be glad
24 to have my secretary call them and tell them that.

25 MR. MURDAUGH: I can have my victim's/witness

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

23

1 advocate call. It doesn't make any difference to me.
2 I just didn't want to do anything -- I didn't want to
3 go to jail.

4 THE COURT: Sometimes I'd love to put you
5 there, you know.

6 MR. MURDAUGH: I understand that, too, sir.

7 THE COURT: What do you'all want to do?

8 MR. KULP: That's fine, as long as the
9 information is court approved.

10 THE COURT: Well, that's all that you can say.
11 When I bring the jury in, one of the things that I am
12 going to tell them is that if there is any media
13 coverage that they should not expose themselves to it.
14 If I should forget to tell them that, please remind me.

15 MR. KULP: Thank you, Your Honor.

16 CLERK: Do you want me to announce these, Your
17 Honor?

18 THE COURT: Yes. The Clerk wants to make a
19 followup report on the list. Go ahead, Madame Clerk.

20 CLERK: Yes, sir. Gentlemen, the handwritten
21 Xerox that you'all got at the Motions Hearing last
22 week, are you both in possession of it, both sides?

23 MR. KULP: Defense has it.

24 CLERK: Mr. Solicitor?

25 THE COURT: That is State's Exhibit 1 for that

1 Hearing that we had on Thursday. I don't think that he
2 needs it, go ahead.

3 CLERK: The jurors listed as deceased are not
4 present. The jurors listed as over the age of sixty-
5 five and who are requesting to be excused, those eight
6 jurors are not present. The jurors listed as moved
7 out of Beaufort County, as reported by the Sheriff's
8 Department with a signed juror return, none of those
9 thirty-one jurors are present. The "Other Requests",
10 those nine jurors at the end, none of those jurors are
11 present.

12 I have not announced anything about the forty-
13 three jurors listed as "Unable to locate".

14 THE COURT: And when you call the roll, Madame
15 Clerk, you will just state, if they don't stand up,
16 "unable to locate." If they stand up, then you will go
17 ahead and we'll have them. Isn't that right?

18 MR. KULP: Very good, Your Honor.

19 CLERK: Okay.

20 THE COURT: You can go back and complete your
21 work. Then when you're ready to bring this in -- in
22 fact, if you want to, you can bring them in here and do
23 your roll call in here. However you want to do it.

24 CLERK: If that is all right with you, I will,
25 seeing that they are not in that other room.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

25.

1 THE COURT: Yeah, just bring them on in here.
2 Then when you start to call the roll, they of course
3 will be in here. And the defendant will stay here
4 today, so he will be in here.

5 CLERK: Okay.

6 THE COURT: Wait just a second before you do.
7 Can you get all of them in the middle section?

8 CLERK: It is going to be tough. There's a lot
9 of them.

10 THE COURT: What I am going to do is ask that
11 the people who are on both sides, the nonjurors, if you
12 will, just stay on the side that you're on but go back
13 to the last couple of rows so that the jurors will have
14 the use of those seats up here on the front. I think
15 that that will work.

16 CLERK: I will be right back, Your Honor.

17 (POTENTIAL JURY PANEL ENTERS COURTROOM)

18 (ROLL CALL)

19 THE COURT: Members of the Jury Panel, good
20 morning. My name is Jackson Gregory. I'm the judge in
21 this circuit and I will be presiding this week.

22 I understand that you've been here for some time
23 while the roll is being called. For your comfort and
24 convenience, we will take a recess of about ten minutes
25 so if you'all want to use the facilities or whatever.

1 We will reconvene about fifteen until 12:00. I want to
2 go ahead and see if we can get through this other part
3 before lunch, but please go ahead and take a break at
4 this time. If you want to, please do so.

5 (RECESS 11:34 to 12:10 P.M.)

6 THE COURT: Solicitor, could I have the
7 indictments, please.

8 MR. MURDAUGH: (Tenders).

9 THE COURT: Mr. Harris, are all jurors back?

10 DEPUTY HARRIS: Yes, sir.

11 THE COURT: Ladies and Gentlemen, as I told
12 you, my name is Jackson Gregory. I'm the Judge of the
13 Circuit Court. We are here today for a trial. This
14 call upon your time does not come frequently, it may
15 never again be repeated in your lifetime, but it is one
16 of the obligations of citizenship, to represent your
17 contribution to our democratic way of life. This is an
18 assurance or your guarantee that should chance or
19 design bring you into any court of law that your rights
20 and liberties will be regarded by the same standard of
21 justice and protected by the same considerations that
22 you discharge here in your duties as jurors. You are
23 being asked to perform one of the highest duties that
24 can be imposed upon any citizen, and that is to sit in
25 judgement of the facts by which you'll determine the

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

27

1 guilt or innocence of persons charged with a crime.

2 The right to a trial by jury is a right guaranteed to
3 every citizen.

4 After you have been selected as a juror and been
5 qualified by taking the oath, you become the sole
6 judges of the weight to be given to the evidence and
7 credibility of each witness. Any decision agreed to by
8 all twelve jurors, reached in sound and conscientious
9 judgement, based on credible evidence in accordance
10 with the Court's instructions becomes the final result
11 of the case.

12 First, Madame Clerk, would you please swear in the
13 jury panel?

14 CLERK: Would you all rise and raise your right
15 hand? (Jurors comply). Do you solemnly swear or
16 affirm that the testimony you shall give the Court in
17 this trial shall be the truth, so help you, God?

18 (WHEREUPON POTENTIAL JURY PANEL SWORN)

19 THE COURT: Thank you. I will try not to go
20 over anything that Mrs. Smith has previously gone over
21 with you.

22 But, first, is there any member of the panel who
23 did not receive the jury questionnaire, either earlier
24 or this morning, and who hasn't filed out one by now?

25 Is there anybody who has not filled out one?

1 (No response by Jurors).

2 THE COURT: Excellent. Does any juror wish to
3 add or to modify any of the information on this
4 questionnaire? If so, please stand? (No response.)

5 I take it, then, that all the information on the
6 form is accurate to the best of your knowledge and
7 belief. If not, please stand. (No response).

8 Members of the jury panel, we are about to begin
9 the trial of a case of the State of South Carolina
10 versus Tavarus Rogers. That's T-a-v-a-r-u-s, Rogers,
11 R-o-g-e-r-s, charged in ten indictments by the Beaufort
12 Grand Jury with the offense of murder, a second count
13 of murder, armed robbery, possession of a firearm
14 during the commission of certain crimes, burglary in
15 the first degree, kidnaping, kidnaping, kidnaping,
16 kidnaping and another kidnaping. Each one of those
17 are kidnapings.

18 I tell you, Ladies and Gentlemen, that the
19 indictments are simply charges and not allegations
20 of the -- of the allegations contained within them.
21 At a later time, in a few moments, I will explain to
22 you more specifically what these crimes relate to but
23 I have some additional questions that I have to go
24 over with you.

25 We with empanel a jury that is capable of

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

29

1 listening to the testimony and the evidence to be
2 presented, capable of deciding what is believable
3 testimony and capable of finding that the testimony and
4 law as I will instruct you and that is capable of
5 returning a fair verdict; and a recommendation of
6 sentence, if appropriate.

7 A qualified juror is one who will conscientiously
8 apply the law and find the facts. A qualified juror is
9 one who is capable of returning a verdict and a
10 recommendation of sentence based on the evidence and
11 law.

12 A qualified juror is one that is capable of
13 setting aside his or her opinions and deciding a matter
14 based on the law and evidence.

15 A juror is not qualified if the juror's views
16 would prevent or substantially impair the performance
17 of his or her views as a juror, in accordance with the
18 oath of a juror and the instructions of the court.

19 As I told you, the defendant in this case is
20 Tavarus Rogers. This is Mr. Rogers seated on my right
21 with his attorneys. Mr. Rogers, would you please stand
22 and face the jury panel. (Mr. Rogers complies/stands).
23 This is the defendant, Tavarus Rogers.

24 Thank you, you may be seated.

25 Is there any member of the panel who is related by

1 blood, connected by marriage or who is a close friend
2 or business associate of the defendant, Tavarus Rogers?
3 Is so, please stand. (No response).

4 MR. MURDAUGH: Your Honor please, may we approach
5 the bench for just a moment?

6 (OFF RECORD SIDEBAR)

7 THE COURT: Before I resume, I have some other
8 general questions that I will ask you and then I'll get
9 back to more specific questions.

10 Are each of you now residents of Beaufort County,
11 South Carolina? If you do not now live or reside in
12 Beaufort County, please stand. (Juror stands).

13 Yes, ma'am, your name and number?

14 POTENTIAL JUROR: My name is Jennie Mulligan and
15 I live in Jasper County.

16 THE COURT: Can you'all hear her?

17 MR. MURDAUGH: No, sir.

18 THE COURT: Would you please come forward, up
19 here, so that we can hear you.

20 CLERK: This is Juror No. 69, Jennie L. Cribb
21 Mulligan.

22 THE COURT: Okay. Ms. Mulligan, go ahead.

23 POTENTIAL JUROR: I said that I was residing in
24 Beaufort County but about two weeks ago I moved and now
25 I live in Jasper County.

1 THE COURT: So you just moved in the last week
2 or so?

3 POTENTIAL JUROR: Yes, sir.

4 THE COURT: What is her number?

5 CLERK: Juror No. 69.

6 THE COURT: Any objections to excusing Ms.
7 Mulligan?

8 MR. MURDAUGH: No, sir.

9 MR. KULP: No, sir, Your Honor.

10 THE COURT: Mrs. Mulligan, since our law
11 requires that you be a resident of Beaufort County
12 today and since you are not, you are excused. Thank
13 you for coming.

14 Is there any juror who is not a U.S. citizen? If
15 so, please stand. (No response).

16 Is there any juror that is unable to read, write,
17 speak or understand the English language? If so,
18 please stand. (No response).

19 Is there any juror who has less than a sixth grade
20 education or its equivalent? If so, please stand. (No
21 response).

22 Is there any juror who is incapable by reason of
23 mental or physical infirmities to render sufficient
24 jury service? If so, please stand. (Juror stands).
25 Your name, sir?

1 POTENTIAL JUROR: Robert Patterson, No. 271.

2 THE COURT: Thank you, you can be seated.

3 Has any juror been convicted, by guilty plea or a
4 prior trial in a State or Federal court of record of a
5 crime punishable by imprisonment for more than one year
6 and whose civil rights have not been restored by pardon
7 or amnesty? If so, please stand. (No response).

8 That does not mean that a person actually served a
9 year but for which the penalty would provide for the
10 service of more than one year. If so, please stand.
11 (No response).

12 I tell you, members of the Jury, that if any juror
13 to any of these questions -- I realize that some of
14 them are quite personal. If any juror would suffer any
15 embarrassment by responding to any question, I would
16 ask that that juror please stand and then I will confer
17 with the juror up here at the bench now or at a later
18 time. But if you would, -- (Juror stands). Okay.
19 Do you wish to confer up here at the bench?

20 POTENTIAL JUROR: Yes, sir.

21 THE COURT: Would you please come around?.

22 CLERK: This is Juror No. 342 (Deveree T. Scott,
23 Sr.).

24 THE COURT: Yes, sir?

25 POTENTIAL JUROR: I spent eighteen months in the

**THIS PAGE INTENTIONALLY
LEFT BLANK**

1 brig with the Marine Corps.

2 MR. FLEMING: And he is my client.

3 THE COURT: Do you (Mr. Murdaugh) have any
4 objection to his being excused?

5 MR. MURDAUGH: No, sir.

6 THE COURT: Okay. Excused for cause.

7 CLERK: Juror No. 342 is excused.

8 THE COURT: Thank you. Is there any juror who
9 is a clerk, deputy clerk, constable, sheriff, probate
10 judge, county commissioner, magistrate or other county
11 officer or any person who works within the walls of any
12 courthouse? If so, you are not eligible and should
13 please stand. (Juror stands). Your name please?

14 POTENTIAL JUROR: Tim Winget, Juror No. 430. I
15 work for the Sheriff's Department.

16 THE COURT: Are you a deputy?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Any objection to this juror being
19 excused?

20 MR. KNIGHT: None from the State.

21 MR. MURDAUGH: No, sir.

22 MR. KULP: No, Your Honor.

23 THE COURT: You are excused. Thank you.

24 Our State General Assembly has provided -- is there any
25 juror who is a member of the jury panel who has

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

34

1 religious beliefs that might interfere with his or her
2 duty of serving as a juror? If so, please stand.

3 POTENTIAL JUROR: Delores V. Lawyer, Juror No.
4 192.

5 THE COURT: Thank you. You can be seated.
6 Anyone else? (No response).

7 All right, our State General Assembly has provided
8 certain exemptions for jury service. An exemption does
9 not mean that you're not qualified to serve, it simply
10 means that you have a right to chose not to serve.

11 Is there any member of the panel that is over the
12 age of sixty-five years and wishes to be excused, that
13 does not wish to serve? If so, please stand. (Juror
14 stands). Yes, sir?

15 POTENTIAL JUROR: Yes, sir. Gilbert Calhoun,
16 Juror No. 42.

17 THE COURT: And you are over the age of sixty-
18 five?

19 POTENTIAL JUROR: I am sixty-eight.

20 THE COURT: And you wish to be excused?

21 POTENTIAL JUROR: That's correct. It's only
22 because of a medical problem with my wife's mother, she
23 has been diagnosed with cancer and we are leaving in
24 the morning to be with her during her surgery.

25 THE COURT: You have a right to be excused, so

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 you are excused. Would you like to be transferred or
2 do you ---

3 POTENTIAL JUROR: I would love to serve on a
4 jury sometime in the future.

5 THE COURT: Would you just transfer him then?

6 CLERK: Yes, sir. Mr. Calhoun, we will send you
7 another summons later in the year, beginning of next
8 year. Thank you.

9 THE COURT: Is there any member of the panel --
10 this is another exemption. Is there any member of the
11 panel who has served as a juror in this court within
12 the last three calendar years, with this year being
13 counted as one? In other words, during 1999, 2000 or
14 2001. Magistrate's courts and City court does not
15 count, neither does Federal Court. Is there any member
16 of the panel who has served as a juror within the last
17 three calendar years. If so, please stand. (No
18 response).

19 Is there any member of the panel that has small
20 children under the age of seven years that does not
21 work outside the home, that stays at home with the
22 child or children and has the principal care, custody
23 and control of the child or children? Anybody in this
24 category, please stand. (Jurors stand).

25 POTENTIAL JUROR: I have a two-and-a-half year

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

36

1 old.

2 THE COURT: Your name and number, please.

3 POTENTIAL JUROR: I am Teresa Haefner, Juror No.
4 132.

5 THE COURT: Mrs. Haefner, any objection?

6 MR. KULP: No, sir, Your Honor.

7 MR. MURDAUGH: No, sir.

8 THE COURT: You are excused. Thank you.

9 Your name?

10 POTENTIAL JUROR: Meredith Gaskin, I have a two-
11 year-old and I am the primary daycare giver although
12 she is in preschool two days a week.

13 THE COURT: I couldn't hear the last part.

14 POTENTIAL JUROR: She is only in preschool two
15 days a week, otherwise I am the sole caregiver.

16 THE COURT: Do you work?

17 POTENTIAL JUROR: I have a business out of my
18 home.

19 THE COURT: What says the State?

20 MR. MURDAUGH: I think that she is entitled to the
21 exception.

22 MR. KULP: As well, (affirmative nod).

23 THE COURT: You are excused. Thank you.

24 CLERK: What was her name?

25 THE COURT: Just a second. Would you give your

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 name and number again, please?

2 POTENTIAL JUROR: Meredith Gaskin.

3 CLERK: Juror No. 116

4 THE COURT: Thank you. Yes, ma'am?

5 POTENTIAL JUROR: Mitzi Louden, I have a two-
6 year-old. I believe that my number is 210 and I'm the
7 primary caregiver.

8 THE COURT: What is your name again?

9 POTENTIAL JUROR: Mitzi Louden.

10 THE COURT: Are you employed?

11 POTENTIAL JUROR: No.

12 THE COURT: And you wish to be excused?

13 POTENTIAL JUROR: Yes, sir.

14 THE COURT: Any objection?

15 MR. MURDAUGH: None from the State.

16 MR. KULP: No, sir, Your Honor.

17 THE COURT: You are excused. Thank you.

18 Yes, ma'am?

19 POTENTIAL JUROR: I have three children, ages
20 five, seven and ten. They go to year-round school.

21 I had taken this week off for vacation and I have no
22 one else to watch them right now.

23 THE COURT: Will the attorneys approach,
24 please?

25 (OFF RECORD SIDEBAR)

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

38

1 THE COURT: If you want a conference on any of
2 them, just let know. You are excused.

3 CLERK: We don't have her name.

4 THE COURT: And your name?

5 POTENTIAL JUROR: I am Juror No. 19.

6 THE COURT: And your name?

7 POTENTIAL JUROR: Mary Bendlin.

8 THE COURT: Thank you, Ms. Bendlin. You are
9 excused. Yes, ma'am?

10 POTENTIAL JUROR: I have a daughter that is
11 seven-and-a-half and a son that is one-and-a-half.
12 Tuesday would be fine, but Wednesday I have a child
13 support Hearing against the father.

14 THE COURT: If you would, first give me your
15 name and number, please.

16 POTENTIAL JUROR: My name is Patricia Williams.
17 I think that I am ---

18 CLERK: Juror No. 425.

19 POTENTIAL JUROR: I only want to be excused for
20 Wednesday so that I can have the child support Hearing.

21 THE COURT: That won't be a problem. So it is
22 just Wednesday that you have a conflict?

23 POTENTIAL JUROR: Right.

24 THE COURT: Okay. Did you get her number?

25 CLERK: Yes, sir, Juror No. 425.

1 THE COURT: Yes, ma'am?

2 POTENTIAL JUROR: My name is Eather Washington
3 and I am Juror No. 408. I have a two-year-old and I
4 also attend the Technical College of the Lowcountry.

5 THE COURT: Any objection to her being excused?

6 MR. MURDAUGH: None from the State, sir.

7 MR. KULP: No, Your Honor.

8 THE COURT: You are excused. Thank you.

9 Yes, ma'am?

10 POTENTIAL JUROR: My name is Jacqueline Young,
11 my number is 444. I have a three-year-old and a five-
12 year-old. My five-year-old gets out of school at 2:30.

13 THE COURT: Do you work?

14 POTENTIAL JUROR: I do work but I work until
15 3:00 and then I am home with them for the rest of the
16 day. Is this going to be a 5:00, 6:00, 7:00 o'clock
17 thing? Or sequestered? Or -- you know?

18 THE COURT: Okay. You'all want to conference
19 on that or any objection to her being excused?

20 (OFF RECORD SIDEBAR)

21 MR. MURDAUGH: No objection, Your Honor.

22 MR. KULP: No objection.

23 THE COURT: Thank you, you are excused.

24 Yes, ma'am?

25 POTENTIAL JUROR: My number is 374. My name is

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

40

1 Michelle Spicer. I have a two-year-old and a four-
2 year-old.

3 THE COURT: Do you want to be excused?

4 POTENTIAL JUROR: (Affirmative nod).

5 THE COURT: You are asking to be excused,
6 right?

7 POTENTIAL JUROR: No.

8 THE COURT: Are you asking to be excused?

9 CLERK: She is just telling you about her
10 children because you asked who ---

11 THE COURT: Oh, okay. You're just telling us
12 about that but you're not asking to be excused, is that
13 right?

14 POTENTIAL JUROR: (Affirmative nod).

15 THE COURT: We're glad to have you.

16 CLERK: Juror No. 374.

17 THE COURT: Yes, sir?

18 POTENTIAL JUROR: I have three daughters that I
19 have to take care of. My wife works -- goes to work at
20 5:30 in the morning, she works over on Hilton Head, and
21 I have to get the children ready and off to school.
22 Then they get out at -- she doesn't get off until 5:30
23 and I have to pick them up and take care of them until
24 she gets home.

25 THE COURT: Your name and number, sir?

1 POTENTIAL JUROR: Juror No. 12, Lee Webb. Would
2 it be an all-day thing?

3 THE COURT: Yes, sir, it is going to last
4 several days. Okay. What says the State?

5 MR. MURDAUGH: No objection, sir.

6 THE COURT: What says the Defense?

7 MR. FLEMING: Could we approach, Your Honor?

8 THE COURT: Yes, sir.

9 (OFF RECORD SIDEBAR)

10 THE COURT: Sir, I am going -- we are going to
11 interview each of the jurors individually. So I am
12 going to ask that you be seated and we will address
13 that again. Yes, ma'am?

14 POTENTIAL JUROR: When you say several days, how
15 many days?

16 THE COURT: Well, ---

17 POTENTIAL JUROR: Two days? A week?

18 THE COURT: This is the way that we will
19 proceed. We are going to -- myself, as the judge, and
20 the attorneys will have some brief questions to ask
21 each of the jurors individually. That will take place
22 later this afternoon and probably on Tuesday and into
23 Wednesday. Then it is anticipated that the trial of
24 the case will actually start Thursday morning. I would
25 suggest that it is probably going to -- we'd have to

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

42

1 say that you need to be prepared to stay until early
2 next week. I don't know exactly how long that it will
3 last but I think that a good estimate would be -- would
4 possibly be that it would be over no later than Monday
5 or Tuesday. Does that ---

6 MR. MURDAUGH: I would say no longer than that.

7 THE COURT: No longer than that. That's what I
8 am saying. I want to give you the outside. I don't
9 want anybody to say that I misled them on the short
10 side. So the case will start, it is anticipated that
11 we will start the trial itself on Thursday and would go
12 no later than Monday or Tuesday of next week.

13 So you don't have any other questions? And your
14 name? Just for the record. And your number?

15 POTENTIAL JUROR: My name is Sharra Pierce,
16 Juror No. 283.

17 THE COURT: Thank you, ma'am. Yes, sir?

18 POTENTIAL JUROR: I got a ---

19 THE COURT: I tell you what, would you come on
20 up here and I'll talk to you up here at the sidebar.

21 POTENTIAL JUROR: (Complies).

22 THE COURT: You name again, sir?

23 POTENTIAL JUROR: Lee Webb.

24 THE COURT: Mr. Webb, we are going to have
25 individual voir dires after lunch, so what I am going

1 to tell you is that you'll just hold it, I will put you
2 in first and then we will talk to you at that time and
3 make a decision after the voir dire.

4 POTENTIAL JUROR: Okay. I only have a tenth
5 grade education.

6 THE COURT: That's fine. What kind of work do
7 you do?

8 POTENTIAL JUROR: I work at, uh, did some
9 construction and ---

10 THE COURT: Okay. We'll try to work with you
11 but we will talk with you more in detail after while.

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: Yes, ma'am?

14 POTENTIAL JUROR: I have three children: ten,
15 seven and five. They're out of school today, but I'm
16 here because I want to do my civic duty. But I heard
17 that word "sequester" and I have them ---

18 THE COURT: Your name and number, first?

19 POTENTIAL JUROR: Oh, Leslie Richardson. Juror
20 No. 316.

21 THE COURT: Okay.

22 POTENTIAL JUROR: I have organized pick-ups for
23 them every day for car pool and I could serve that time
24 but ---

25 THE COURT: Are you employed?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

44

1 POTENTIAL JUROR: Pardon me?

2 THE COURT: Do you work?

3 POTENTIAL JUROR: No, I don't. I'm the primary
4 -- I'm the person that is there for them. I pick them
5 up every day from school and organize the rides for
6 them. But if we are going to be sequestered and spend
7 the night, I need to be home at night.

8 THE COURT: Okay. What says the State?

9 MR. MURDAUGH: I think that she is entitled to be
10 exempt if she cares to be.

11 THE COURT: Defense?

12 MR. KULP: Without objection, Your Honor.

13 THE COURT: You do have a statutory exemption
14 that you have exercised, so you are excused.

15 POTENTIAL JUROR: I would like to serve another
16 time.

17 THE COURT: Okay. If you would, -- your name
18 and number again, please?

19 POTENTIAL JUROR: Leslie Richardson, Juror No.
20 316.

21 THE COURT: You will be transferred to another
22 term. Thank you, Ms. Richardson. Yes, sir?

23 POTENTIAL JUROR: Lee Talley, Juror No. 390.
24 Judge, my wife is sixty-nine years old and she's had
25 cancer, three catherizations of the throat and she

1 cannot be left alone at night. I don't like to leave
2 her alone for long during the daytime. She's got
3 extremely high blood pressure, is under the doctor's
4 care right now, incapable of driving and ---

5 THE COURT: Are you over sixty-five?

6 POTENTIAL JUROR: No, I am sixty-three, sir.
7 She is sixty-nine. She has serious medical problems
8 and shouldn't be left alone for long.

9 THE COURT: Okay. So you're now asking to be
10 excused?

11 POTENTIAL JUROR: Yes, sir.

12 THE COURT: Would the attorneys approach,
13 please?

14 MR. KULP: Yes, sir.

15 (OFF RECORD SIDEBAR)

16 THE COURT: Without objection, you are excused.
17 Your number, sir?

18 POTENTIAL JUROR: Juror No. 390, Lee Talley.

19 THE COURT: Yes, ma'am?

20 POTENTIAL JUROR: My name is Thelma Albany, I am
21 Juror No. 2. My mother also had cancer and requires
22 care day and night.

23 THE COURT: I have got some other questions.

24 POTENTIAL JUROR: I've got a doctor's thing in
25 case you need to see that.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

46

1 CLERK: Yes, sir, that's true. Ms. Albany wrote
2 in ahead of time.

3 THE COURT: Would the attorneys approach again?

4 (OFF RECORD SIDEBAR)

5 THE COURT: Ms. Albany, we will address that
6 when we come back after lunch. If you will, just
7 please be seated and -- if you're not asked about it
8 again, please mention it when we come back and we will
9 take that up again.

10 POTENTIAL JUROR: All right.

11 THE COURT: Is there anyone else? (No
12 response). I am not asking about inconvenience or
13 excuses or anything now. I'm asking about
14 qualifications. Does any juror know of any reason why
15 he or she is not duly qualified to serve? If so,
16 please stand. (Juror stands).

17 POTENTIAL JUROR: Could I come up there?

18 THE COURT: Yes, ma'am. For the record, your
19 number is what?

20 POTENTIAL JUROR: Shirley Jones, Juror No. 176.
21 Sir, my husband has been real sick and so have I and I
22 don't believe that I could be sequestered.

23 (OFF RECORD SIDEBAR)

24 THE COURT: Ms. Jones, you are excused without
25 objection.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 POTENTIAL JUROR: Your Honor, sir?

2 THE COURT: Yes, sir.

3 POTENTIAL JUROR: Denise Barry.

4 CLERK: Juror No. 13.

5 POTENTIAL JUROR: Your Honor, I object to guns.

6 I have a friend who was raped and I just don't believe
7 that people should have access to guns.

8 THE COURT: Well, are you saying that you
9 couldn't be fair and impartial?

10 POTENTIAL JUROR: I don't think that I could.

11 I just don't think that people ought to be allowed to
12 have guns.

13 THE COURT: Without objection, you're excused.

14 POTENTIAL JUROR: Annie Underwood, Juror No. 402

15 I am diabetic and I have to put something in my
16 stomach, and have to go the bathroom a lot.

17 THE COURT: If you feel that you need to take a
18 break or something, we will certainly accommodate you.

19 MS. UNDERWOOD: All right, sir. Just wanted
20 the court to know, didn't want to scare you.

21 BAILIFF: Juror 111.

22 THE COURT: Your name and number, sir?

23 POTENTIAL JUROR: William A. Galloway, Juror No.

24 111. I am the director for the funeral home and we
25 have a funeral that I have to get ready for tomorrow.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

48

1 I promised them that I would have the body in the
2 casket this afternoon.

3 THE COURT: Well, I am going to address all of
4 that, all those kinds of concerns, here shortly when we
5 do the individual voir dieres.

6 MR. GALLOWAY: How long will that be?

7 THE COURT: Before lunch.

8 (OFF RECORD SIDEBAR WITH COUNSEL)

9 THE COURT: Without objection, Mr. Galloway,
10 you're dismissed.

11 POTENTIAL JUROR: Thank you, sir.

12 BAILIFF: Juror No. 250.

13 POTENTIAL JUROR: Your name and number, ma'am?

14 POTENTIAL JUROR: Jeanne M. Mullett, Juror No.

15 250. Your Honor, my husband has had a stroke and
16 needs a great deal of attention. I would not be able
17 to be sequestered and leave him alone overnight.

18 MR. MURDAUGH: No objection.

19 MR. KULP: Likewise, as well.

20 THE COURT: Without objection, you're excused.

21 CLERK: Juror No. 250 is excused.

22 THE COURT: Mr. Patterson, would you come
23 forward please? You had indicated a previous question.

24 POTENTIAL JUROR: Yes, sir. I have Hepatitis-C
25 that I'm being treated for, so I need to make the

1 treatments and I just don't think that physically I
2 could serve.

3 THE COURT: You'all agree?

4 MR. MURDAUGH: Yes, sir.

5 MR. KULP: Yes, Your Honor.

6 THE COURT: All right, sir. You're excused.

7 COURT REPORTER: That was Mr. Robert Patterson,
8 Juror No. 271.

9 CLERK: Juror 271 is excused.

10 THE COURT: Okay, Ladies and Gentlemen, we've
11 just got a couple of more questions but I have saved
12 this one for last. As the judge, I am not allowed to
13 excuse a qualified juror from jury service, but under
14 compelling circumstances I may excuse a juror from
15 attending this term of court.

16 As we have spoken about this case, and I am going
17 to get into it in a little more detail later, it will
18 be necessary that there be a sequestration. In other
19 words, the jury will be put up at County expense after
20 the trial starts -- which we anticipate will be
21 Thursday. I don't know exactly how long that it will
22 be but it will be, uh, certainly we'd probably
23 anticipate three days or three nights, something like
24 that.

25 At this time, I would invite any of you who have

State vs. Tavaris Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

50

1 compelling personal or business reasons that would make
2 it unduly burdensome for you to serve to please stand
3 at this time. (Number of jurors stand).

4 I can tell you that you can see by the numbers --
5 of course, the importance of the case to the State, and
6 to the Defendant, that merely inconvenience is not
7 going to be sufficient. Else we possibly would not
8 have enough. So I would be glad to -- I will ask you
9 to come around and we will talk to you individually.
10 (Number of Jurors line up).

11 Obviously with the amount -- this looks to be
12 about half the panel. What I am going to have to do,
13 since so many people have these personal and business
14 reasons that might make it unduly or what they think is
15 unduly burdensome, it is going to be a whole -- it is
16 going to be a lot more complicated than I first
17 thought. So what I am going to do is we will -- when
18 we set up panels where we interview the jurors
19 individually, we will just have to take it up at that
20 time. There's no way for me to know -- and I assure
21 you that we're going to have enough jurors to try this
22 case. So I think that what I am going to do is just
23 let the clerk go ahead and draw the jury, then it is
24 just the luck of the draw as to which ones that we get.
25 I know some of you have what are much more pressing

1 needs than others do, and I understand that it is an
2 inconvenience to all.

3 It is approaching 1:00 o'clock and we'd be here
4 until 4:00 or 5:00 if I tried to take it up now, and
5 that would throw us off schedule.

6 So I am going to ask that you -- let's go forward.
7 I've got some other questions that I can ask you before
8 I get to those questions. (Jurors take seats).

9 At this time I am going to introduce the attorneys
10 involved in the case and so forth. Solicitor, we will
11 start with you. This is Solicitor Randolph Murdaugh.
12 If you will, introduce everyone else at the counsel
13 table.

14 MR. MURDAUGH: Good morning. This is Steve
15 Knight, the Chief Deputy; Angie McCall; Sam Roser, a
16 detective with the Sheriff's Department; and Matt
17 Averill, a detective with the Sheriff's Department.

18 THE COURT: Mr. Kulp, Mr. Fleming, would you do
19 the same, please? This is Attorney Timothy Kulp.

20 MR. KULP: Thank you, Your Honor. My name is
21 Tim Kulp. I am from Charleston. This is Flo Marks, my
22 assistant.

23 MR. FLEMING: And I am Cory Fleming, from here in
24 Beaufort. This is my assistant, Shannon DeBellis, also
25 from here in Beaufort.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

52

1 THE COURT: Is there any member of the panel
2 related by blood or connected by marriage or a close
3 friend or business associate of or been represented by
4 any of the attorneys involved in this case or have any
5 dealings with anyone seated at either table who has
6 just been introduced to you?

7 POTENTIAL JUROR: (Stands)

8 THE COURT: Yes, ma'am.

9 POTENTIAL JUROR: We are close family friends
10 with one of the Solicitors.

11 THE COURT: Your name, please.

12 POTENTIAL JUROR: My name is Ann Lafitte, and --
13 I'm sorry, I don't remember my number.

14 CLERK: 186.

15 THE COURT: Thank you. We will take that up a
16 little bit more.

17 I am going over the indictments. The first murder
18 that I come to is -- as I told you, an indictment is
19 simply a charge and not evidence of the allegations
20 contained within it.

21 All of these events are alleged to have occurred
22 on or about January 2, 1999.

23 The first indictment alleges that the defendant,
24 Tavarus Rogers, with malice aforethought killed one
25 Paul Reischl. R-e-I-s-c-h-l.

1 The second indictment is for murder at the same
2 time, it is alleged at the same time and place, did
3 kill and murder one James Mitchell Riley. R-I-l-e-y.

4 And also did commit an armed robbery on the --
5 that the defendant did commit an armed robbery on Paul
6 Reischl, who is now deceased. That he possessed a
7 firearm during the commission of that.

8 And burglary in the first degree of the dwelling
9 of Paul Reischl.

10 And it is alleged that the defendant, Tavarus
11 Rogers, kidnaped Jocelyn Wendel and also Kristal Wire.
12 Also a kidnaping of Toby Reischl, a kidnaping of James
13 Mitchell Riley and also a kidnaping of Paul Reischl.

14 Solicitor, where did these -- where is it alleged
15 that these crimes occurred?

16 MR. MURDAUGH: Beaufort County. Coffin Point,
17 sir.

18 THE COURT: In the Coffin Point area of
19 Beaufort County. Is there any member of the panel
20 that has any prior knowledge of any such instances or
21 formed or expressed an opinion as to the guilt or the
22 innocence of this defendant, Tavarus Rogers, on one or
23 more of these charges? If so, please stand. (No
24 response).

25 Is there any member of the panel that is related

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 by blood or marriage, or was related by blood or
2 marriage or a close personal friend or business
3 associate of Paul Reischl, now deceased?

4 James Mitchell Riley, now deceased?

5 Or Toby Reischl?

6 Or Kristal Wire?

7 Or Joyce (sic) Wendell?

8 If so, please stand.

9 (Juror stands)

10 Your name and number, sir?

11 POTENTIAL JUROR: Lee Webb, No. 412, again.

12 THE COURT: You can be seated. I am going to
13 put you in -- I will get back to you. Anyone else?

14 (No response).

15 Is there any member of the panel that has
16 expressed or formed an opinion about any issue or
17 matter involved in this case? If so, please stand?

18 (No response).

19 Are there any members of the jury panel aware of
20 any bias or prejudice in this case for or against the
21 State or against the defendant? If so, please stand.

22 (No response).

23 Has any member of the jury panel seen, heard or
24 read any account of this matter in any TV, newspaper,
25 radio or in just talking with friends or associates?

1 If so, please stand. (Several jurors stand).

2 Your name and number, please?

3 POTENTIAL JUROR: Mike Everette, Juror No. 95.

4 THE COURT: Yes, sir?

5 POTENTIAL JUROR: Juror No. 119.

6 THE COURT: Your name?

7 POTENTIAL JUROR: Earl Gibson.

8 THE COURT: Thank you, sir. Let me ask each of
9 you a followup question. Would the two of you stand
10 again? Based on these accounts, have you formed or
11 expressed any opinion about this matter?

12 MIKE EVERETTE: No, sir.

13 EARL GIBSON: No.

14 THE COURT: Thank you, you may be seated.

15 Thank you. At this time I am going to read a list of
16 the possible witnesses who may testify. I am going to
17 read through the list. If you need further
18 clarification about any of these people, as to where
19 they live or something else, if you think you might
20 know them or something, just go ahead and stand and we
21 will clarify any other things about them later:

22 Don Annis

23 Matt Averill, who I introduced to you,

24 John Barron

25 Teddy Binette

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1	Robert Bishop
2	John Black
3	Eva Campbell
4	Dr. Kim Collins
5	Curt Copeland, Coroner
6	Dan Defreese
7	Sean Fowler
8	Josh Galloway
9	Michael Hatfield
10	Jodie Hiers, H-I-e-r-s
11	Allen Horton
12	Ira Jeffcoat
13	John Keough
14	Lisa Kiser
15	Mark Mattox
16	Phil Foote, F-o-o-t-e
17	Jeff Purdy
18	Tripp Rentz
19	Benito Reyes, R-e-y-e-s
20	Sam Roser
21	Patti Ruff
22	Dr. Russell Uptegrove
23	Jason Baker
24	John Byers
25	Paul Fisher

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 Shamira Holmes
2 James Pope
3 Toby Reischl
4 Jimmy Studdard
5 Jocelyn Wendel Shough, S-h-o-u-g-h
6 Scott Wendel
7 Kristal Wire
8 R. Anderson
9 C. Ellis
10 R. Morgan
11 T. Morgan
12 Rusty Hollingsworth
13 C. Torrey
14 Collins Eric Gadson
15 Jonathon Gadson
16 West McKinnon
17 Clinton Atkins
18 Pam Collingsworth.
19 Is any member of the panel related by blood or
20 connected by marriage or is a close friend or business
21 associate of any of those persons? If so, please
22 stand. (Jurors stand).
23 Starting over here, your name and jury number
24 first.
25 POTENTIAL JUROR: My name is Janet Player and my

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

58

1 husband works for the Sheriff's Department.

2 THE COURT: What position does your husband
3 have with the Sheriff's Department?

4 POTENTIAL JUROR: Sergeant.

5 THE COURT: Would you give your number, please?

6 POTENTIAL JUROR: 185 (sic) (285).

7 THE COURT: Thank you. Yes, ma'am?

8 POTENTIAL JUROR: I am Annie Mae Underwood but I
9 don't remember my number. The two Gadson boys and the
10 McKinnon boys, I am a very close friend of the family.

11 CLERK: Her number is 402.

12 THE COURT: Yes, ma'am.

13 POTENTIAL JUROR: Maureen Byrnes. I do not
14 recall my number but I had some dealings with one of
15 the witnesses.

16 THE COURT: Thank you.

17 POTENTIAL JUROR: Duane Ward, Juror No. 406. I
18 have a unique situation. I am a school bus driver and
19 I'd like to know what area that it was in, because I
20 do know some of these kids. Well, they are kids to
21 me. I don't know.

22 THE COURT: Okay, well, we will get into that
23 when we talk to you. Thank you for standing. Yes,
24 sir?

25 POTENTIAL JUROR: Brian Smith, Juror No. 358.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 Clayton Ellis, I know him.

2 THE COURT: Thank you. Okay. The first few
3 are repeats, on your list (Defense Exhibit List)?

4 MR. KULP: Yes, sir, that's correct, there may
5 be some duplication between the two of them.

6 THE COURT: Yes, there's some duplication. I
7 note the first two or three are but -- I am going to
8 read through another list:

9 John Keough

10 Eva Campbell

11 Jeff Purdy

12 John Barron

13 Lisa Kiser

14 Ira Jeffcoat

15 Chris Wilson

16 Jack Brigham

17 Beth Gaskins

18 James Martin

19 Connie Rogers

20 Tennile Rogers

21 Benjamin Rogers, Jr.

22 Jim Aiken

23 Jeff Youngman

24 Michael Marshall

25 William Damude

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

60

1 Stroud Armstrong and

2 Donna Schwarz-Watts.

3 Is there any member of the panel related by blood,
4 connected by marriage or who is a close friend or
5 business associate of any of those persons? If so,
6 please stand. (Jurors stand).

7 Yes, ma'am?

8 POTENTIAL JUROR: I know -- I am a daycare
9 worker and I know some of -- I take care of some of
10 those children.

11 THE COURT: Anyone else?

12 MR. FLEMING: Your Honor, we didn't hear what the
13 last juror said.

14 MR. KULP: Or her number, as well?

15 COURT REPORTER: That was Pamela Stewart, Juror
16 No. 379. She said that she is a daycare worker and may
17 have taken care of some of the children of some of the
18 witnesses.

19 MR. FLEMING: Thank you.

20 THE COURT: As I told you -- okay. Has any
21 juror or member of their immediately family been the
22 victim of a crime of violence? If so, please stand.
23 (Jurors stand). Your name and number?

24 POTENTIAL JUROR: Kristen Moore, I am Juror No.
25 241. My sister-in-law was murdered.

1 THE COURT: Thank you. Yes, ma'am.

2 POTENTIAL JUROR: Juror No. 253, Susan Murphy.

3 My sister-in-law was murdered.

4 THE COURT: Thank you.

5 POTENTIAL JUROR: Juror No. 65, Katherine Cook,

6 my sister was murdered.

7 THE COURT: Yes, ma'am.

8 POTENTIAL JUROR: Juror No. 80 (Dion Kelsie) my

9 cousin was murdered.

10 THE COURT: Yes, ma'am?

11 POTENTIAL JUROR: Juror No. 283 (Sharra M.

12 Pierce), my two sisters were shot and one is paralyzed.

13 POTENTIAL JUROR: Juror No. 448, Steven Ziplow,

14 my wife's son was murdered.

15 THE COURT: Just for clarification, the
16 defendant has pled not guilty to each of the charges
17 against him. That plea requires the State to prove
18 that he is guilty. A defendant in South Carolina is
19 never required to prove his innocence, and I will tell
20 you more about that later.

21 In this case, the State is seeking the death
22 penalty against the defendant. This trial are
23 bifurcated. That's means that it is broken into two
24 parts.

25 The first part is what we refer to as the guilt

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

62

1 phase. During this phase of the trial, the jury will
2 decide whether the defendant is guilty of the crime
3 charged.

4 If the defendant is found guilty of murder in the
5 guilt phase, then you would move into the second part,
6 the penalty phase. In that part of the trial, the jury
7 would decide whether the defendant should receive a
8 penalty of life imprisonment or a penalty of death by
9 electrocution or by lethal injection.

10 The fact that I have mentioned a penalty in this
11 case indicates nothing about the guilt of the
12 defendant. He is presumed innocent, as I told you.
13 But we simply discuss penalty now as a convenient means
14 of explaining the process to you.

15 We will have a *voir dire* process, which means that
16 we will talk to each of you until a panel of
17 approximately forty to forty-five jurors has been
18 selected. From that panel, fourteen will be sworn to
19 hear the case. And we ask for your patience.

20 I want to caution you that you cannot read any
21 account, view any account or listen to any account of
22 these proceedings. You cannot discuss these matters
23 with anyone, even among your fellow jurors, until I
24 instruct you to do so. Then you may discuss it only
25 during the course of your deliberations in the jury

1 room.

2 If anyone tries to discuss this matter with you,
3 please advise that person that you are a prospective
4 juror and that it is improper for you to have a
5 discussion and please report that discussion to one of
6 the bailiffs, to the Clerk, or to myself.

7 I caution you also -- you never know, there could
8 be some media accounts on TV or in the newspaper,
9 whatever. As I say, it is anticipated that we will
10 actually start this trial on Thursday. But we're going
11 to set up -- we are going to draw panels and assign
12 times for you to be interviewed between now and
13 Thursday. We hope to have that accomplished by
14 Wednesday.

15 It is approaching 1:00 o'clock now. I am going to
16 excuse you in just a moment until 3:00 o'clock, which
17 will give the Clerk time to draw the jurors and then we
18 will start. At 3:00, we will come back and we will see
19 where you go from there.

20 Before I let them go, is there anything else,
21 Solicitor?

22 MR. MURDAUGH: Nothing from the State, sir.

23 MR. KULP: And nothing from the defendant.

24 MR. MURDAUGH: Sorry, sir, there is one other
25 thing. I would like for you to ask the jurors if any

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

64

1 member of the panel has been represented by the Moss
2 Law Firm or any member thereof?

3 THE COURT: Okay.

4 MR. MURDAUGH: And, of course, if that would
5 interfere with their ability to render a fair and
6 impartial decision.

7 THE COURT: Okay. Counsel Cory Fleming is a
8 member of the Moss & Kuhn Law Firm. The attorneys in
9 that firm are Jim Moss, Fred Kuhn, Jr., of course Mr.
10 Fleming, Deborah Malphrus, Manning Smith and Dan Saxon.
11 Is that correct?

12 MR. FLEMING: Yes, sir.

13 THE COURT: Mr. Kulp is a member of the Riesen
14 Law Firm in Charleston. I will list those attorneys
15 for you, too: Fred Riesen, Paul Gibson, Gary Ling, Phil
16 Berlinsky, Allison Stover, Ellen Howard and J.V.
17 McKnight.

18 Is there any member of the panel that has ever
19 been represented, now or formerly represented by any
20 of the attorneys involved in this case or their law
21 firms?

22 And I think that I previously asked you if you'd
23 had any dealings with any of the attorneys in the
24 Solicitor's Office. Didn't I ask that earlier? Yeah,
25 I did.

1 Anybody that has ever been represented -- yes,
2 sir, your name and number, please?

3 POTENTIAL JUROR: Gerald Daniels, I think that I
4 am Juror No. 71.

5 THE COURT: Who represented you?

6 POTENTIAL JUROR: Mr. Fleming.

7 THE COURT: Let me just ask you generally, was
8 it a criminal matters, domestic relations, personal
9 injury, contract or -- just generally, what was it?

10 POTENTIAL JUROR: It was a criminal matter for
11 my son.

12 THE COURT: Oh, he represented your son?

13 POTENTIAL JUROR: Yes, sir.

14 THE COURT: Is that matter concluded?

15 POTENTIAL JUROR: No, sir.

16 THE COURT: He is still representing your son?

17 POTENTIAL JUROR: No, it's been turned over to a
18 public defender.

19 THE COURT: Would that fact have any influence
20 or impact on you if you were selected to serve as a
21 juror on this case?

22 POTENTIAL JUROR: (Affirmative nod), I think so.

23 THE COURT: Any objection to this juror being
24 excused? Well, you don't have to answer that. We can
25 take care of that at a later time.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

66

1 MR. KULP: Thank you, Your Honor.

2 THE COURT: Your name, please?

3 POTENTIAL JUROR: Ron Tucker, Juror No. 401.
4 Manning Smith was a lawyer in a lawsuit where I was
5 suing someone.

6 THE COURT: Is that matter concluded?

7 POTENTIAL JUROR: It is concluded except for the
8 people against who I brought the lawsuit have not ---

9 THE COURT: Well, okay. We will get into the
10 details of that a little more at a later time. Yes,
11 ma'am?

12 POTENTIAL JUROR: Juror No. 274 (Laurette
13 Pazant), over twenty-five years ago, Mr. Jim Moss.

14 THE COURT: Would that fact have any impact or
15 influence on you if you're selected to serve as a juror
16 in this case?

17 POTENTIAL JUROR: No.

18 THE COURT: Thank you, you can be seated.
19 Yes, ma'am?

20 POTENTIAL JUROR: Juror No. 2, Thelma Albany.
21 Mr. Moss and Mr. Fleming handled a personal injury
22 matter.

23 THE COURT: I couldn't hear you.

24 POTENTIAL JUROR: Thelma Albany, Juror No. 2,
25 represented by Mr. Jim Moss and, uh, Fleming.

1 THE COURT: And has that matter -- what kind of
2 matter was it?

3 POTENTIAL JUROR: Property and injury.

4 THE COURT: Is that matter concluded or is it
5 still ongoing?

6 POTENTIAL JUROR: The personal injury is
7 concluded but not the property.

8 THE COURT: So they are still representing you?

9 POTENTIAL JUROR: (Affirmative nod).

10 THE COURT: Any objection to this lady being
11 excused?

12 MR. KULP: No, sir, Your Honor.

13 THE COURT: Okay, I will excuse you since
14 you've still got some business with the Moss Firm.
15 Yes, sir?

16 POTENTIAL JUROR: Mark Morris, Juror No. 243. I
17 was represented by Fred Kuhn.

18 THE COURT: Is the matter concluded?

19 POTENTIAL JUROR: Yes, sir.

20 THE COURT: What that fact have any influence
21 or impact upon you if you were selected to serve as
22 juror in this case?

23 POTENTIAL JUROR: No, sir.

24 THE COURT: You're qualified. Okay, anything
25 else at this stage?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

68

1 MR. MURDAUGH: One more, Your Honor.

2 THE COURT: Sorry, sir. I didn't see you.

3 POTENTIAL JUROR: Scott Yeomans, Juror No. 441.

4 Mr. Manning handled something for me about five years
5 ago, and it's settled. A personal matter.

6 THE COURT: Is that matter concluded?

7 POTENTIAL JUROR: Yes, it is.

8 THE COURT: Would that have any influence or
9 impact on you if you were selected to serve as a juror
10 in this case?

11 POTENTIAL JUROR: No, sir.

12 THE COURT: Thank you, sir. I am going to ask
13 then if -- everybody has had a trying morning but I
14 think that if we could get back here at 3:00 o'clock, I
15 think that we would be in a position to move forward
16 with this case.

17 As I told you, don't discuss the case with anyone
18 or allow anyone to discuss the case with you. Please
19 report back at 3:00 o'clock.

20 CLERK: May I see Juror No. 39, Ms. Burton, up
21 here before she leaves?

22 (1:10 P.M. JURORS EXIT FOR LUNCH RECESS)

23 (DEFENDANT REMAINS PRESENT)

24 THE COURT: Mr. Kulp, Mr. Fleming, I want to
25 get an idea of how we are to proceed. First, there are

1 no jurors in the courtroom. Please close that back
2 door.

3 Before we start -- and Mr. Knight is standing in
4 for the Solicitor, -- I want to get an idea of what the
5 Defense wants to be -- what you'all want to be present
6 for so far as the drawing of the jury, putting them in
7 the capsules and so forth. Mr. Shanklin, of course, is
8 here and is ready to go to work. What I propose is
9 that sometime -- and, of course, this will be a random
10 drawing.

11 They need the list that we have now and that --
12 and I here assert that this jury is qualified subject
13 to *voir dire*, of course, and to the statutory
14 qualifications. Of course, I have not considered
15 personal reasons yet, because there were so many of
16 them.

17 At some time during the next two hours, the Clerk
18 is going to put the jurors' names in the capsules and
19 then let Mr. Shanklin draw them out. I want you'all to
20 have the opportunity to be present when that is done,
21 if you want to. I just want to get an idea if you'all
22 want to do it now or if you want to go ahead and let
23 them put them in the capsules or how do you want to do
24 it?

25 MR. KULP: I hate to be easy to get along with

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

70

1 it, but I don't think that it -- I leave that to the
2 Clerk and her staff.

3 MR. MURDAUGH: In this situation, I would propose
4 that we put them somewhere and let Mr. Shanklin draw
5 them. Whether they be in the capsules, I have no
6 problem with that but ---

7 THE COURT: Well, they have to go into the
8 capsules so that they can mix up. It takes a few
9 minutes to put them in.

10 What I am going to do is, let's do it this way, --
11 it is now about twenty -- let's let you'all take a
12 break, talk to your clients, whatever and then -- the
13 Clerk says that they are going to order their lunch out
14 or do whatever they want to. But in about twenty
15 minutes it will be 1:30. They will work on putting
16 them in the capsules now and then at that time, they
17 will draw them out -- then or soon thereafter. So if
18 the defendants want to go back and get lunch and see
19 about all that, go ahead, and we'll try to do that at
20 1:30. Does that suit everybody?

21 MR. MURDAUGH: Suits me.

22 MR. KULP: That's fine.

23 THE COURT: Very good. You'all can go ahead
24 and put them in the capsules, then about 1:30 we will
25 get back together and set up the interview groups.

1 (LUNCH RECESS 1:14 to 1:40 P.M.)

2 THE COURT: Okay, where is the defendant?

3 MR. KULP: We are going to waive his presence
4 during this administrative process.

5 THE COURT: That's fine. But he, of course,
6 knows that he has got a right to be here and -- you've
7 talked to him about it?

8 MR. KULP: Absolutely, Your Honor.

9 THE COURT: He okay as long as his counsel is
10 here?

11 MR. KULP: Yes, sir.

12 THE COURT: Madame Clerk, are you ready to
13 proceed?

14 CLERK: Yes, sir.

15 THE COURT: Then we will proceed with the
16 attorneys here, and I find that the defendant has made
17 a knowing waiver of his right. Solicitor, you are
18 here. I don't know if you want to sit here with them
19 but you've got the right to. Is that sufficient,
20 Solicitor?

21 MR. MURDAUGH: Yes, sir, I think that covers it.
22 How many panels did we decide that we want to do? Four
23 per hour?

24 MR. MURDAUGH: I would say no less than four per
25 hour in view of the fact that we've got a number of

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

72

1 people that are going to be asking to get out of it.
2 Some fifty-some-odd of them. It started off with
3 thirty-one and it's ended up with about fifty.

4 THE COURT: All right. Well, my thinking is it
5 is just going to be kind of the luck of the draw. I
6 don't think that I am going to be able to let any of
7 them out, quite frankly, unless it real serious.

8 MR. MURDAUGH: I am in agreement with you on that
9 but some of them may have some legitimate reasons.

10 THE COURT: How many jurors are there?

11 CLERK: 140, I believe.

12 THE COURT: Still here?

13 CLERK: Yes, sir, I believe. Joni has got that
14 list.

15 THE COURT: So we have 140 still here?

16 MR. MURDAUGH: Of which about 50 are trying to get
17 out of it?

18 CLERK: That's right.

19 MR. MURDAUGH: Or nearly 60. It's hard to tell,
20 sir. You'll have a bunch of people saying that they
21 can never ---

22 THE COURT: We don't need this to be on the
23 record.

24 (OFF RECORD DISCUSSION)

25 THE COURT: Okay, they are working on the

1 panels and will bring us copies of the entire jury
2 list. Do you'all have those?

3 MR. KULP: Yes, sir.

4 MR. MURDAUGH: Yes, sir.

5 THE COURT: There was only one juror that I
6 have apparently said that we would interview after we
7 excused that other gentleman. Is the defendant right
8 there? You can bring him on in.

9 (DEFENDANT ENTERS COURTROOM)

10 THE COURT: I was going to take that one man
11 out of order. I can't remember the reason why but
12 there was some reason why we were going to take him
13 first.

14 And I've been doing some computing and since so
15 many people have personal reasons that they want to be
16 excused, I -- you know, I had originally thought that
17 we would do four an hour, which we would not
18 necessarily get through on Wednesday if we did it that
19 way. What I now propose, if the attorneys feel like
20 they can be pretty brief on the *voir dire*, on the
21 routine -- obviously, I am not going to try to restrict
22 you but if you could do -- if we could schedule them
23 four every forty-five minutes, that would give us five
24 panels each morning and five panels each afternoon for
25 Tuesday and Wednesday; which would be a total of eighty

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

74

1 jurors we'd go through plus whatever we do today. It
2 would appear to me that that might be a sufficient
3 number. It would give us a good chance of being able
4 to go forward.

5 But you're more familiar with the facts of the
6 case and how long you are going to take. What do
7 you'all think? Is that a good way to do it?

8 MR. MURDAUGH: Suits me, sir.

9 MR. KULP: I don't see any problem with that
10 approach, Your Honor.

11 THE COURT: Okay. What I would propose is that
12 we do them forty-five minutes at a time, which -- say
13 that we start at 9:00 and then at 9:45, 10:30, 11:15
14 and 12:00 Noon. Then start back -- and we might not be
15 able to stick exactly to this schedule -- at 2:00,
16 2:45, 3:30, 4:15 and 5:00. That would get us out of
17 here about 6:00 o'clock each day.

18 I believe that might work. What do you all think?

19 MR. KULP: Yes, sir.

20 THE COURT: Okay. As soon as they've got
21 copies of the thing I want to make the official list a
22 Court's Exhibit.

23 CLERK: It is my understanding that both sides
24 have got a copy of the jury panel selection document.

25 THE COURT: And this is the original one?

1 CLERK: Yes, sir.

2 THE COURT: Okay. Now, as we say, these things
3 are not numbered other than just pages -- no page
4 numbers. They've got jury numbers. This then,
5 starting with Rose Ewing (Juror No. 96) is the first
6 juror on the random list. Is that correct?

7 CLERK: Yes, sir.

8 THE COURT: And you all of course were here
9 when Mr. Shanklin drew the names?

10 MR. KULP: Yes, sir. And, for the record, the
11 defendant was not present but we indicated that we'd
12 discussed that with him and that he understood that he
13 had the right to be present; that he waived that, and
14 that he is comfortable with that as well.

15 THE COURT: Is that right, Mr. Rogers?

16 DEFENDANT: Yes, sir.

17 THE COURT: Very good. Okay. And I would
18 propose -- and you have a copy of that, Madame Court
19 Reporter?

20 COURT REPORTER: Yes, sir.

21 THE COURT: Then we will make that a Court's
22 Exhibit, make the original a court's exhibit and then
23 work from copies. Any objection to that?

24 MR. KULP: None from the Defendant.

25 MR. MURDAUGH: No, sir.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

76

1 COURT REPORTER: Will be Court's Exhibit 1,
2 consisting of five pages.

3 THE COURT: All right, let's talk about -- it
4 will take us probably thirty minutes or so to assign
5 the panels. So we could work until 6:00 o'clock today,
6 if you want to.

7 MR. MURDAUGH: That's fine.

8 THE COURT: If we start at 3:30, that would be
9 -- we could do three panels today, I believe. What do
10 you'all think?

11 MR. MURDAUGH: Yes, sir.

12 THE COURT: Okay. So the first three panels
13 today. Now, on that list, and I will point it out to
14 you, there was one man that I've taken up out of order.
15 Of course, his order is as on the jury list, not when
16 he is going to be done. It might be that there are
17 some other ones that will be taken up or voir dired out
18 of order. But it doesn't make any difference, they're
19 going to be -- that is the official list.

20 MR. MURDAUGH: Do you know what number that he
21 would be on the panels selected?

22 THE COURT: I will when they get the copies
23 back down here. I don't have it before me. They are
24 making copies of that now.

25 What we are going to do is we are going to do

1 three panels today and then set them up one panel every
2 forty-five minutes tomorrow and Wednesday. If you
3 would, give them your (Clerk's) card and put their
4 time to appear on there, with your telephone number.
5 Or pass them out and tell them to write down their time
6 when they're to report back.

7 CLERK: Yes, sir.

8 THE COURT: The jury is coming in in a minute,
9 so all the people in the audience need to sit back,
10 both sides, all the way back so that you aren't
11 commingling with the jurors.

12 THE COURT: I invite everybody's attention to
13 Panel 1, first juror, Patricia Williams, Juror No. 425.
14 You have the list as Mr. Shanklin drew it, and that's
15 on page three of the official list. You see her name
16 there?

17 MR. KNIGHT: Yes, sir.

18 THE COURT: You see what I am saying? We're
19 taken her out of order but actually for jury selection
20 purpose she is on page three.

21 MR. KNIGHT: Okay, sir.

22 THE COURT: I can't remember the reason ---

23 LAW CLERK: She has the Hearing Wednesday with
24 the child support issue.

25 MR. KULP: I understand, she is number one,

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 we're going to deal with her but she stays on page
2 three of the ultimate list.

3 THE COURT: Right, she stays on page three
4 where she was pulled.

5 MR. KULP: Yes, sir.

6 THE COURT: In other words, the ultimate list
7 is the official list. I did not change that order.
8 She will stay there, although we are going to handle
9 her today.

10 MR. KULP: Very good.

11 THE COURT: So that we don't interfere with her
12 court case.

13 MR. KULP: Yes, sir.

14 THE COURT: Let's go ahead. And you notice on
15 the list that these panels have already been numbered.
16 We said that we're going to take up three of them
17 today, starting at basically 3:30, 4:15 and 5:00 p.m.

18 Panel 4 will be called on Tuesday at 9:00;

19 Panel 5 will be 9:45;

20 Panel 6 will be 10:30;

21 Panel 7 is 11:15; -- if I miss up, let me know.

22 Panel 8 is 12:00 Noon.

23 Panel 9 at 2:00.

24 Panel 10 at 2:45.

25 Panel 11 is 3:30.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 Panel 12 at 4:15, and

2 Panel 12 at 5:00.

3 Then Panel 13 starts on Wednesday the 10th:

4 9:00, 9:45 10:30, 11:15 for Panel 17 and 12:00 Noon for

5 Panel 18. Panel 19 at 2:45, Panel 20, Panel 21 at

6 3:30, Panel 22, Panel 23 at 5:00 p.m. That's the end

7 of Tuesday.

8 CLERK: Wednesday.

9 THE COURT: Wednesday. Okay, that's the end of
10 Wednesday. Then starting with Panel 24, what do
11 you'all propose that we do with that?

12 That gives us -- we have got them in panels. What
13 I would propose that we do is that everybody else -- we
14 can't see any more than that, I don't believe. Do
15 you'all think so?

16 Of course, we've got their telephone numbers,
17 don't we, Madame Clerk?

18 CLERK: Yes, sir.

19 'THE COURT: We have their telephone numbers. I
20 would suggest that we just tell everybody else to call
21 back tomorrow after 5:00 o'clock and we'll have a
22 message for them.

23 MR. MURDAUGH: Okay.

24 THE COURT: Because I think by then that we
25 will be worn out and we will know where we are going.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

80

1 We'll either have plenty of jurors or we are going to
2 have to two more tough days of it. Don't you'all
3 agree?

4 MR. MURDAUGH: I do, sir.

5 MR. KULP: Yes, sir.

6 THE COURT: That's Panel 23, then. So everyone
7 else call back after 5:00 on Tuesday.

8 MR. MURDAUGH: Who is the one person that we are
9 taking out of -- and where does he fall?

10 THE COURT: Right, is that within the first
11 twenty-three? Look on that list and find out where
12 Ricky Shumate or Ronnie Tucker are.

13 CLERK: It would have been within the panel of
14 the three days.

15 MR. MURDAUGH: Okay, I just ---

16 THE COURT: So it's within the twenty-three
17 panels. Okay. That is a good question, though. I
18 think that we are all set, aren't we?

19 MR. KULP: Your Honor, there is a problem,
20 there is a request -- (pause).

21 MR. FLEMING: Let me see that, (reviewing jury
22 selection).

23 THE COURT: After the jurors are released, you
24 can tell the jurors who are still waiting to be
25 interviewed that they can read the things about the --

1 the thing that we did. What do you think about putting
2 copies of the potential witnesses in there, too, so
3 that they can look over that?

4 MR. MURDAUGH: I have no problem with that, sir.

5 THE COURT: Judge Cooper always does that and
6 it sounds like a good idea when you've got that many.
7 And I want them to look at the proposed witnesses too,
8 in case that there are any questions about that.
9 Just leave it in there.

10 MR. KULP: If your Honor please, regarding the
11 list of witnesses we don't want to indicate whether the
12 witness is either a witness for the State or for the
13 Defense. So if we could compile it into one list.

14 THE COURT: Well, I am just going to leave that
15 off. I have already *voir dired* on the thing, and I
16 will just leave it off. That is probably a better idea
17 anyway.

18 MR. KULP: Very good, Your Honor.

19 THE COURT: They can ask them about them, if
20 they'd like.

21 MR. KULP: I just didn't want them to get the
22 impression that ---

23 THE COURT: And then you might not call
24 somebody.

25 MR. KULP: Precisely.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

82

1 THE COURT: And hopefully the State is not
2 going to call all their witnesses either. We will be
3 here a while, if they do.

4 MR. KULP: Your Honor, there is one other
5 issue. We have identified a document, the Solicitor
6 has got it before him now but I think that you have a
7 copy -- and if you don't, then I can pass one up
8 through the Clerk. We appreciate your precharge, as a
9 whole, Your Honor, but we just were concerned about a
10 natural phenomena in this process that since we are
11 talking about the penalty, putting the cart before the
12 horse, that out of an abundance of caution we thought
13 that it would be appropriate to give at least --
14 however you want to do it logistically, Your Honor, --
15 and I don't know of any other way at this point to do
16 it other than individually or when they all come back
17 in.

18 THE COURT: I can do it when they all come back
19 in.

20 MR. KULP: Right. But just say -- and I think
21 that is what is addressed here in our request for
22 instructions, just to simply remind them that the mere
23 fact that we're talking about a penalty here before we
24 ever even hear any testimony does not mean that we will
25 get to that stage.

1 THE COURT: I thought that I told them that but
2 I will be glad to read this again, if there is no
3 objection from the State.

4 MR. MURDAUGH: No, sir. I thought that you also
5 included in that thing that we give to them, but I
6 can't find mine.

7 THE COURT: It is. It is in there, same thing.
8 And I told them that I was just asking them, that it
9 wasn't a complete charge on the law, that I just wanted
10 them to understand -- well, obviously, I think that
11 that's why we were talking about this thing; I told
12 them that it was a death penalty case, and that's why
13 we were talking about it at that point. That was the
14 reason we went through it, the importance of it and so
15 forth.

16 MR. KULP: Yes, sir. Your Honor, I think that
17 the -- I've got the copy of the amended pretrial
18 questionnaire, what we called the handout, that you
19 gave to all of them. After we labored over it and came
20 up with this product, it makes reference to if you do
21 so and so, so forth. I think at this junction, now
22 that they have been hit with all these issues today,
23 that it really wouldn't harm anything if you do read
24 them that reminder. Because I think a jury can get an
25 impression when we come in here and we start talking

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

84

1 about their ---

2 THE COURT: Well, let me ask you this. Is
3 there any objection to reading this?

4 MR. MURDAUGH: No, sir.

5 THE COURT: Then I am going to read that.
6 That's what you want me to do, isn't that right?

7 MR. KULP: Yes, sir, Your Honor. Thank you
8 very much.

9 THE COURT: Okay. Are we ready for the jury?

10 MR. MURDAUGH: Yes, sir.

11 MR. KULP: Yes, sir.

12 THE COURT: You may bring them in.

13 (3:05 JURY PANEL RETURNS TO COURTROOM)

14 (DEFENDANT PRESENT)

15 THE COURT: Good afternoon, Ladies and
16 Gentlemen. I appreciate your patience in this long and
17 laborious process. Obviously it is very important and
18 it is necessary.

19 Before I go over the list of the jurors, I want to
20 -- I told you this earlier, but I want to emphasize it
21 once more. I have asked and, and I along with the
22 attorneys will be asking you, questions about your
23 feelings about the possible punishments for murder,
24 which are death or life imprisonment. In addition, I
25 want you to understand that the law requires that these

1 questions be asked of you. These questions have
2 nothing whatsoever to do with whether the defendant is
3 guilty or not guilty of the offenses as charged. He
4 sits before you now and he is presumed to be innocent.
5 The State must prove his guilt to you beyond a
6 reasonable doubt before you can find him guilty.

7 Since we will only have a chance to question you
8 about your feelings about the death penalty at this
9 stage of the trial, before the State produces any
10 evidence, I must caution you that you should not
11 conclude that just because I or the attorneys ask you
12 about a possible penalty that they believe that the
13 defendant is guilty. It is simply a part of the jury
14 selection process that occurs in each of these type
15 cases.

16 AS I told you before lunch, we are going to -- so
17 that you don't have to stay here during all of the
18 questions, we will at this stage go into individual
19 questioning of individual jurors. So what we propose
20 to do is to bring you up into panels of four and we're
21 going to have panels of four each forty-five minutes.

22 In the first panel, which will commence as soon as
23 we are finished, approximately 3:30 hopefully, will be
24 -- if you don't understand or if you can't hear me,
25 please let me know and I will repeat the instructions.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

86

1 I want you to please write down -- if you don't have a
2 pen or your neighbor sitting near you doesn't have one,
3 if you will signal the bailiffs or the officers who are
4 in the courtroom we will get you one. I want to make
5 sure that everybody writes down on the jury information
6 card the date and time that they are to report for
7 this. It is important that everybody be prompt so that
8 we won't delay and we can get through this process as
9 soon and as painless as possible.

10 The first panel, that we hope will start somewhere
11 around 3:30 this afternoon, that would be:

12	Patricia Williams	No. 425
13	Rose Ewing	No. 96
14	Haskell Sopshier	No. 371
15	William Camp	No. 43

16 The second panel will be at approximately 4:15,
17 and that ---

18 MR. MURDAUGH: Why don't we get those four to
19 stand up?

20 THE COURT: Okay. Each time your name is
21 called, would you please stand so that we will know
22 that you're here and that you understand that?
23 (Jurors comply) -- two, three, four. Very good.

24 Panel 2 will meet about 4:15 this afternoon:

25	John Lazzo	No. 193

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 Joseph Stonebraker No. 380

2 Samantha Aiken No. 1

3 Janet Player No. 285

4 Panel 3, at 5:00 p.m. today:

5 Lucille Morrison No. 245

6 Clyletha Williams No. 423

7 David Lewis No. 200

8 Michael Speir No. 373

9 And I apologize if I mispronounce your name. I am
10 doing the best that I can.

11 That will conclude today.

12 MR. MURDAUGH: Did No. 423 stand up, Judge.

13 POTENTIAL JUROR: (Stands)

14 THE COURT: There she is. Thank you.

15 And I might say this, too. If anybody has a conflict
16 with these particular times, for something like a
17 medical appointment or something, we can give them a
18 time and possibly change those. See myself or my law
19 clerk, who is seated on my right, Ms. Rhoad, and we
20 will change that.

21 Beginning at 9:00 tomorrow morning, Tuesday
22 morning, October 9th:

23 Panel 4:

24 Leonard Kieny No. 183

25 Daniel McClellan No. 220

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

88

1 Valarie Vaughn No. 403

2 Anthony Gardner No. 113.

3 MR. MURDAUGH: I missed one.

4 THE COURT: Everybody remain standing so that
5 all the lawyers will know that all four have stood up.

6 Panel 5 is at 9:45 tomorrow:

7 Christine Burton No. 39

8 Judith Hillis No. 151

9 Earl Gibson No. 119

10 Michael Everett No. 95

11 Also write down and remember your panel number,
12 too.

13 Panel 6 at 10:30 tomorrow:

14 Christopher Youman No. 441

15 June Gambla No. 112

16 Richard Mitchell No. 239

17 Steven Ziplow No. 448

18 Panel 7 at 11:15 tomorrow:

19 Leslie Rhodan No. 329

20 Susan Singleton No. 352

21 James Rivers No. 321

22 Kristen Moore No. 241

23 Panel 8 at 12:00 Noon tomorrow:

24 Tracey Dingle No. 79

25 Donna Johnston No. 172

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 Judith Carrington No. 47
2 Molly Strimpfel No. 383
3 That's at 12:00 Noon tomorrow.
4 Panel 9, 2:00 p.m. tomorrow:
5 Sharra Pierce No. 283
6 Doris Allen No. 4
7 Ruth Sellers No. 345
8 Cheryl Martin No. 213
9 Panel 10, 2:45 tomorrow:
10 Franklin Primus No. 298
11 Estelle Gray No. 124
12 Nancy Fitzpatrick No. 102
13 Suzanne Munford No. 251
14 Panel 10 at 2:45 tomorrow.
15 Panel 11 at 3:30 tomorrow:
16 Pamela Darden No. 72
17 Doris Miller No. 234
18 Joseph Poloschan No. 289
19 Carmalita McMuller No. 228
20 Panel 12 at 4:15 tomorrow:
21 Harvey Rutland No. 334
22 Betty Middleton No. 232
23 Barbara Barrett No. 12
24 Thomas Shau No. 340
25 4:15 on Tuesday, tomorrow.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 Panel 13 at 5:00 p.m. tomorrow:

2 Janice Roeder No. 328

3 John J. Smith No. 361

4 John J. Harkins No. 138

5 Nikkia S. Rivers No. 322

6 5:00 p.m. on Tuesday, tomorrow.

7 Then on Wednesday:

8 Panel 14 at 9:00 a.m. Wednesday morning:

9 Sam R. McLaughlin No. 226

10 Teri L. Derouen No. 78

11 Pamela Stewart No. 379

12 Laurie Durham No. 87

13 That's 9:00 a.m. on Wednesday.

14 Panel 15, 9:45 on Wednesday:

15 Charles Hood No. 156

16 Jane L. McKay No. 224

17 Joanne Stanley No. 375

18 Mary Bouilly No. 28

19 Panel 16, which is 10:30 on Wednesday:

20 Koren Pope No. 290

21 Michelle Spicer No. 374

22 Jeff Rhodan No. 313

23 Maureen Byrnes No. 41

24 Panel 17, 11:15 on Wednesday

25 Janet Belle-Isle No. 18

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1	Sharon DeMars	No. 76
2	Delores Mitchell	No. 238
3	Geneva Wright	No. 437
4	Panel 18, at 12:00 Noon on Wednesday:	
5	James Lindsey	No. 202
6	Susan Olsen	No. 263
7	John Stanton	No. 376
8	Dianne Garnett	No. 114
9	Panel 19, 2:00 p.m. on Wednesday:	
10	Carol Womack	No. 432
11	William Jarkoski	No. 165
12	George Heelan	No. 145
13	Annie Underwood	No. 402
14	Panel 19 at 2:00 p.m. on Wednesday.	
15	Panel 20, 2:45 on Wednesday:	
16	Judy Messer	No. 230
17	James Locke	No. 205
18	Brian Smith	No. 356
19	Daniel Connelly	No. 62
20	2:45 on Wednesday.	
21	Panel 21, 3:30 on Wednesday:	
22	Carole Howe	No. 158
23	Gloria Ciresi	No. 53
24	Nancy Small	No. 354
25	Lauretta Pazant	No. 274

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

92

1 Panel 21, 3:30 on Wednesday.

2 Panel 22, 4:15 on Wednesday:

3 May Langhorne No. 189

4 Debra Heitmann No. 146

5 Norma Argast No. 9

6 Gerald Daniels No. 71

7 4:15 on Wednesday, Panel Number 22

8 Panel 23, at 5:00 p.m. on Wednesday:

9 Lawrence Hughes No. 161

10 Susan Murphy No. 253

11 Walter Burns No. 36

12 Katherine Cook No. 65

13 Panel 23, 5:00 p.m. on Wednesday

14 Anybody whose name was called, do you have any
15 questions about your panel number, your time, the date
16 or anything? Of course, you've written it on a card.
17 If you should have any questions, please call the
18 Clerk's Office and somebody will get back in touch with
19 you. As I say, please be prompt.

20 Those of you who were not placed in a panel, I am
21 going to ask that you please call the number on the
22 card after 5:00 o'clock tomorrow, Tuesday. There will
23 be a message telling you when you need to report or
24 when to please call back for a later report.

25 Call anytime after 5:00 o'clock ---

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

1 CLERK: 6:00, Judge.

2 THE COURT: After 6:00 o'clock, 6:00 p.m.,
3 tomorrow/Tuesday. As I told you earlier, don't discuss
4 the case with anyone or allow anyone to discuss the
5 case with you.

6 Now, before I excuse you, is there anything else
7 from the State before the jurors who ---

8 MR. MURDAUGH: Nothing from the State if Your
9 Honor please.

10 MR. KULP: Yes, Your Honor, may we approach?

11 THE COURT: Yes, sir.

12 MR. KULP: We would ask that you admonish them not
13 to watch any media or news reports and not to discuss
14 it with any members of their family.

15 THE COURT: Yes, sir. Members of the jury, as
16 I told you earlier this morning, it is basic and
17 fundamental that a case be decided solely from the
18 testimony of sworn witnesses here in court, along with
19 evidence introduced in the trial. For that reason, you
20 should not and you must not discuss the case with
21 anyone or allow anyone to discuss the case with you.
22 It is certainly appropriate that you can tell your
23 family and your spouse, whatever, or your job, that
24 you're subject to being called on a case and that it
25 may be that you'll have to, if you are selected that

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

94

1 you might have to be sequestered later on this week and
2 that sort of thing. But so far as the facts of the
3 case or anything dealing with the names of the
4 witnesses or anything dealing with the facts of this
5 case, facts specifically to the case, you must not
6 discuss it with anyone or allow anyone to discuss it
7 with you. Also you must not allow yourself to be
8 exposed to any media reports if there should be any,
9 such as TV or newspaper or radio or whatever.

10 If anyone should attempt to discuss the case with
11 you, tell them that you cannot do that. If the person
12 should persist, as I told you earlier you should report
13 it the bailiffs or to me upon your coming back to the
14 courthouse.

15 Is there anything else?

16 MR. KULP: Nothing, Your Honor. Thank you.

17 THE COURT: As I say, those of you who have
18 your assignments today, obviously you're going to stay
19 here or at least be here at your appointed time. The
20 rest of you are excused.

21 Mrs. Smith, for your convenience and ours, is
22 going to ask that you please -- how are you going to do
23 that?

24 CLERK: Ladies and Gentlemen -- this thing is
25 off. Can you all hear me? We've got some tablets at

1 the back of the courtroom. I would like for you'all to
2 write down the telephone number where we can reach you
3 during the daytime and the evening. I know that you
4 filled that stuff out on here but I need a quick list
5 of how to get in touch with you at any time of the day.
6 If you would be so kind as to do that for me, I would
7 appreciate it -- before you leave today. In case
8 something happens and I have to call you, it's for your
9 convenience. Pete (Senior Bailiff) has them and there
10 are several back there. Thank you.

11 THE COURT: With that, thank you very much.
12 You're excused until you're scheduled to come back
13 again.

14 (3:40 POTENTIAL JURY PANEL DISMISSED)

15 POTENTIAL JUROR: I'm Amanda McGuire (Jury No.
16 223). I was late.

17 CLERK: We have already called the roll.

18 THE COURT: I have closed qualifications.

19 MR. MURDAUGH: We would have to open it up again?

20 THE COURT: Well, any objection to excusing
21 her?

22 MR. MURDAUGH: No, sir.

23 MR. KULP: That's fine.

24 THE COURT: Your name, sir?

25 POTENTIAL JUROR: David Lewis (Juror No. 200).

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Qualification of Jury
Jury Trial October 8-16, 2001

96

1 THE COURT: You are David Eugene Lewis?

2 POTENTIAL JUROR: Correct.

3 THE COURT: And you say -- go ahead and tell
4 the counsel what you told me off the record just now.
5 You said that you had a conviction for grand larceny?

6 POTENTIAL JUROR: Yes.

7 THE COURT: In what state?

8 POTENTIAL JUROR: This state.

9 THE COURT: South Carolina?

10 POTENTIAL JUROR: Right.

11 THE COURT: And that you had it expunged?

12 POTENTIAL JUROR: I was -- right. It was years
13 ago, twenty-eight years ago. I was seventeen.

14 THE COURT: The record doesn't show that.

15 MR. MURDAUGH: It does not show it, sir. The law
16 does not provide for an expungement for a conviction in
17 General Sessions court, but the record doesn't show it.

18 THE COURT: Were you pardoned?

19 POTENTIAL JUROR: I don't know. I pled guilty
20 and served a year's probation. So I guess there was a
21 pardon, but I don't know.

22 THE COURT: You didn't apply for one?

23 POTENTIAL JUROR: Not to my knowledge.

24 THE COURT: Okay. So Mr. Moss represented you?

25 POTENTIAL JUROR: That's correct. I was called

1 to court before, about three years ago and I went
2 through the same thing. I didn't know if it was a
3 legal reason or not.

4 MR. MURDAUGH: If Your Honor please, if he has a
5 conviction then it would invalidate any verdict that
6 was returned.

7 THE COURT: I think that he needs to be
8 disqualified myself.

9 MR. MURDAUGH: (Affirmative nod), even though I
10 would like to have him on the jury.

11 THE COURT: Do you'all agree with that?

12 MR. KULP: Yes, sir.

13 MR. FLEMING: Yes, sir.

14 THE COURT: Well, I want to be overly cautious
15 and both sides agree that this would disqualify you, so
16 you are excused. Without objection, isn't that
17 correct?

18 MR. KULP: Yes, sir.

19 MR. FLEMING: Yes, sir, Your Honor.

20 THE COURT: And you were in one of the panels
21 today, weren't you?

22 CLERK: Panel 3 this afternoon.

23 MR. FLEMING: Your Honor, when that juror leaves,
24 we have a Motion concerning the handling of the jury by
25 the bailiffs and Sheriff's Office personnel.

1 THE COURT: Okay.

2 MR. FLEMING: I thought that I put a copy of it
3 on your desk or on your bench this morning.

4 Essentially the Motion is that we ask that you order
5 that all bailiffs and deputies maintain a written log
6 of the individuals involved and their handling and
7 transportation of the sequestered petit jury. That
8 would actually begin now as we are talking with the
9 jury and prospective jurors, including dates and time
10 of travel movements, we well as names and identities of
11 the bailiffs and deputies involved.

12 Additionally, we would ask that the bailiffs and
13 deputies should also be required to maintain a written
14 list of those jurors who comment on the case or
15 question matters involved in the case. In other words,
16 if any juror -- if a bailiff or deputy sheriff either
17 hears a juror discussing the case or is actually
18 approached and asked about something concerning the
19 case. Obviously that is prohibited under our law and
20 we would ask that in this circumstance that the
21 bailiffs and the deputies be required to make a written
22 log of any such contact.

23 Then they should be ---

24 THE COURT: I am going to do the same thing but
25 I am going to do it a little bit differently.

1 MR. FLEMING: All right, sir.

2 THE COURT: As is customary, the bailiffs are
3 here and what they've done in the ten years that I've
4 been a judge is that if any juror makes some comment
5 that they bring it my attention. If there should be
6 one, then I will of course discuss it with you on the
7 record and we will take what action needs to be taken.

8 But insofar as any written log, I am not going to
9 do that. But they will come to me and tell me that
10 and, so, -- all court personnel knows that is the
11 procedure and that's the procedure that we always go
12 on. So I don't anticipate any problem with that.
13 Rather than a written log, uh, which -- we will take it
14 up immediately if there is anything that is -- and the
15 deputies and the bailiffs, they know what is proper.
16 So I don't anticipate any problem with that.

17 What do you say to that, Solicitor?

18 MR. MURDAUGH: I am in agreement with you, sir?

19 THE COURT: Does that satisfy you, sir?

20 MR. FLEMING: Well, Your Honor, for purposes of
21 the record, I would like to just ask that it be written
22 and allow your ruling to stand.

23 THE COURT: Okay. Well, I am not going to
24 write anything down. I think that if they -- that if a
25 potential juror comments to court personnel about the

1 actual case, I want them to bring it to my attention so
2 that I can take appropriate action immediately.

3 MR. FLEMING: Yes, sir.

4 THE COURT: I think that is a better way to
5 keep control of the situation. Anything else?

6 MR. KULP: No, sir.

7 THE COURT: Are you ready for the first panel?

8 MR. MURDAUGH: Ready.

9 THE COURT: Patricia Williams.

10 MR. MURDAUGH: One thing that we need to discuss.
11 We need an order of questioning, and I made mention of
12 this a minute ago. What did we decide?

13 MR. KULP: The first thing that I mentioned to
14 the Solicitor is that we have no objection, that we
15 could probably work it out, but if he wants to go
16 first, we have no problem with that. The Court, the
17 State, then Defense.

18 THE COURT: Do you'all want to do it the same
19 way every time?

20 MR. MURDAUGH: Yes, sir. Let's get it going one
21 way.

22 THE COURT: All right. Of course, all the
23 jurors have been sworn. Let me ask you this, all the
24 jurors have been sworn and, so, I will assume that they
25 do not then need to be sworn in individually.

1 MR. MURDAUGH: Just remind them.

2 THE COURT: I will remind them that they are
3 under oath. And they will, of course, come sit in the
4 jury box?

5 MR. MURDAUGH: Yes, sir.

6 MR. KULP: Yes, sir.

7 THE COURT: All right. If you would, please
8 send in Patricia Williams, Juror No. 425.

9 (POTENTIAL JUROR TAKES STAND)

10 PATRICIA WILLIAMS, being
11 duly sworn to tell the truth, the whole truth and
12 nothing but the truth, testified as follows:

13 EXAMINATION

14 BY THE COURT:

15 Q. Ms. Williams, this will be pretty brief. You
16 probably didn't have a chance to review it but there
17 was a pretrial questionnaire in the room in there.
18 Did you see this, in the jury room?

19 A. Yes, sir, I saw that.

20 Q. Did you read that?

21 A. Yes, sir.

22 Q. Did you understand what was written in there?

23 A. Yes, sir.

24 Q. You were sworn in but I just want to remind you
25 that you're still under oath.

1 A. Okay.

2 THE COURT: I am going to let you go ahead and
3 ask the questions, if you want. Mr. Murdaugh.

4 EXAMINATION

5 BY MR. MURDAUGH:

6 Q. How are you doing?

7 A. Fine, sir.

8 Q. I am Randolph Murdaugh, I am the solicitor for the
9 State of South Carolina. I need to ask you a few
10 questions. There are no right answers nor any wrong
11 answers. You understand that?

12 A. (Affirmative nod).

13 Q. But we need to know, both the State and the
14 Defendant needs to know a little bit about you.

15 A. Okay.

16 Q. Find out whether we want you to serve on this jury
17 or not.

18 A. Okay.

19 Q. Do you understand that in a case of this sort that
20 there is -- that the State is asking for the death
21 penalty in this case?

22 A. Yes, sir.

23 Q. Generally jurors are divided into one of three
24 categories:

25 Those people who would always give the death

1 penalty, in every murder case;

2 Those that would never give the death penalty, in
3 any case, irregardless of how bad it was; or

4 Those people who would listen to both sides, the
5 State and the Defendant and then make a decision that
6 they could give the death penalty if they thought that
7 it was bad enough or that they could give life
8 imprisonment if they didn't think that it was so bad.

9 Do you understand what I am asking you?

10 A. Yes, sir.

11 Q. Which category would you fit in?

12 A. I would listen to both sides and then from that I
13 would make my decision.

14 Q. So you could give the death penalty?

15 A. Yes, sir.

16 Q. And you could give life imprisonment. It just
17 would depend on how you saw it?

18 A. Yes, sir.

19 Q. Let me ask you this question. If you decided that
20 the case was bad enough and if you decided that it was
21 a proper case for the death penalty, you would be
22 required to sign your name, in writing, under a thing
23 that says "I recommend that the defendant die by lethal
24 injection or suffer the death penalty." Could you sign
25 your name to that?

1 A. Yes, sir.

2 Q. You work at Disneyland in Hilton Head?

3 A. Yes, sir.

4 Q. How long have you worked there?

5 A. My ninety days were up like two days ago.

6 Q. Where did you work before that?

7 A. Hudson Seafood.

8 Q. You can get a good meal there.

9 A. Yeah.

10 Q. I am gonna ask you a question that I don't
11 particularly want to ask you but I need to. When you
12 come into the court, would you make a decision based on
13 the facts and not the race or religion of a person
14 involved?

15 A. When I came into the courtroom, I was saying that
16 to myself. Regardless of the race or color, (affirma-
17 tive nod). No, it doesn't matter -- not to me.

18 MR. MURDAUGH: Thank you. We have no further
19 questions, if Your Honor please.

20 MR. KULP: May it please the court, Your
21 Honor.

22 THE COURT: Mr. Kulp.

23 EXAMINATION

24 BY MR. KULP:

25 Q. Ms. Williams, my name is Tim Kulp. This is Cory

1 Fleming, my co-counsel in this case. You understand,
2 do you not, that all these questions about this
3 penalty, this potential penalty that is associated with
4 this case, that we may in fact in the course of a trial
5 never get to that point? That a defendant could be,
6 as presumed, innocent and could be found not guilty.

7 A. Right.

8 Q. And you understand, as well, that that could end
9 the case?

10 A. Right.

11 Q. Depending on the evidence or lack of evidence that
12 comes forth during the trial of the case?

13 A. (Affirmative nod).

14 THE COURT: Anything else?

15 MR. KULP: Nothing from the Defense, Your
16 Honor.

17 THE COURT: I think that the juror is
18 qualified. Before we go, let me -- approach a
19 sidebar just briefly.

20 SIDEBAR:

21 THE COURT: Shall I tell her to call back on
22 Wednesday night? Or should I just tell her to
23 come back on Thursday and bring her clothes with
24 her?

25 MR. MURDAUGH: Yeah, that will work. Why don't we

1 do that?

2 MR. KULP: Wednesday night?

3 MR. MURDAUGH: Yes, sir. There's no possibility
4 that we're going to have a jury before Thursday.

5 THE COURT: All right, so let's do that.

6 (SIDEBAR CONCLUDED)

7 THE COURT: Okay. Ms. Williams, you are deemed
8 qualified and you are a candidate for potential
9 selection. That means that you're not on the jury but
10 you are one of the smaller group from which there will
11 be the possibility of being selected.

12 I want you -- so you are excused until 9:30, I am
13 going to say, on Thursday. When you come back, you
14 bring your clothes. That's when we anticipate that we
15 are going to start the trial. Have your arrangements
16 made for, say, three nights worth of clothes and so
17 forth, so that you -- we will put you in a hotel and
18 everything. So if you will, come ready to stay and
19 ready to go to work on Thursday at 9:30.

20 MS. WILLIAMS: 9:30 on Thursday. Okay.

21 THE COURT: Now, it might be that you'll have
22 something else. We've got your telephone number, don't
23 we?

24 MS. WILLIAMS: So if there is any change, we will
25 be in touch with you.

1 THE COURT: Of course, as I told you, don't
2 talk to anybody about the case other than what you need
3 to to tell them that you have been called on a case and
4 that it would be necessary for you to be sequestered.
5 I think that it will be at the Hampton Inn right here
6 in Beaufort that they will put you up.

7 MS. WILLIAMS: Well, I live in Beaufort. I stay
8 not too far from the courthouse.

9 THE COURT: So you know where that is.

10 MS. WILLIAMS: But I would have to stay?

11 THE COURT: Yes, you would. The jury has to be
12 kept together.

13 MS. WILLIAMS: Oh, okay.

14 THE COURT: Have a nice evening.

15 MS. WILLIAMS: Okay. You, too, sir.

16 (POTENTIAL JUROR STEPS DOWN)

17 CLERK: Rose Ewing.

18 THE COURT: The next one is Ms. Ewing, Juror
19 No. 96.

20 MR. MURDAUGH: You want to do this one the same
21 way?

22 THE COURT: Yeah. I think that's just as good
23 a way to do it, don't you?

24 (POTENTIAL JUROR TAKES STAND)

25 THE COURT: How are you, Ms. Ewing?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

108

1 POTENTIAL JUROR: I'm good. Thank you.

2 THE COURT: Do you want to say something to me?

3 POTENTIAL JUROR: Yeah, I do.

4 THE COURT: I didn't know this before, but the
5 lady seated in the back of the courtroom, I know here.
6 I didn't realize it until now.

7 THE COURT: That's okay. I am going to ask you
8 about that.

9 POTENTIAL JUROR: Oh, okay.

10 THE COURT: I remind you, Ms. Ewing, that
11 you're still under oath. I will ask you a couple of
12 questions and then the attorneys will.

13 ROSE EWING, being duly sworn
14 to tell the truth, the whole truth and nothing but the
15 truth, testified as follows:

16 EXAMINATION

17 BY THE COURT:

18 Q. You just spoke to me and you said that you just
19 noticed that there is a lady seated in the back of the
20 court that you know.

21 A. Yes.

22 Q. Do you know her name?

23 A. No, I don't but I see her about three or four
24 times a week.

25 Q. Who is the lady? Right over here?

1 A. Yes, in the white.

2 Q. Okay.

3 THE COURT: Ma'am, could you identify yourself,
4 please?

5 MS. ROGERS: Connie Rogers.

6 THE COURT: Thank you.

7 EXAMINATION CONTINUED

8 BY THE COURT:

9 Q. Where do you see her?

10 A. I see her at the Post Office on Ladys Island. I
11 go there about five times a week, but sometimes I go
12 when she is not working.

13 Q. Oh, she works at the Post Office?

14 A. Yes.

15 Q. Is that the one right there at the Winn-Dixie?

16 A. Yes.

17 Q. Okay. Would the fact that you know her and that
18 she may or may not be a witness in this case -- if she
19 were a witness, would that have any influence on you if
20 you were selected to serve as a juror in the case?

21 A. No, I don't think so. If she was related to the
22 Defendant, it would make me feel very bad because she
23 is very nice.

24 THE COURT: Okay. Solicitor, I turn it over to
25 you.

EXAMINATION

1

2 BY MR. MURDAUGH:

3 Q. Ms. Ewing, how are you doing?

4 A. Fine, thank you.

5 Q. I am Randolph Murdaugh. I am the Prosecutor for
6 the State of South Carolina, the Solicitor. In this
7 case that we are about to try is Tavarus Rogers, who is
8 the son of Mrs. Rogers that you're talking about back
9 there. Is that going to cause you not to be able to
10 reach a fair and impartial decision in this case?

11 A. She is a very nice lady. I am not saying that I
12 couldn't do it, it would just upset me greatly. I see
13 her about three or four times a week, and she is very
14 nice.

15 Q. All of us have to do thing occasionally that
16 aren't the most pleasant things in the world. It is
17 not the most pleasant for me to be trying this case,
18 but I've got to do it.

19 What I am asking you, though, is would it have an
20 influence in your decision as to whether or not he is,
21 first of all, guilty or innocent and, secondly, if you
22 find him guilty whether or not he should suffer the
23 death penalty or life imprisonment.

24 A. The second part of that, yes. I could never
25 condemn someone to death.

1 Q. Ever?

2 A. No.

3 Q. In other words, what you're telling me and the
4 Court is that under no circumstances would you ever
5 give the death penalty in a case, recommend the death
6 penalty?

7 MR. FLEMING: Your Honor, I would object at this
8 time to this line of questioning. Could we be heard
9 outside the presence of the witness?

10 THE COURT: I am going to overrule your
11 objection. I will let you put it on the record in a
12 minute after the juror leaves. I think that it is a
13 proper question.

14 EXAMINATION CONTINUED

15 BY MR. MURDAUGH:

16 Q. I noticed on your questionnaire, Ms. Ewing, that
17 you checked that you could not be fair and impartial in
18 a case involving guns. Is that correct?

19 A. I have very strong feelings about handguns.

20 Q. Nor could you be fair and impartial if it involved
21 the use and sale of illegal drugs.

22 A. That's correct.

23 Q. Further, that you have such strong feelings about
24 alcohol and drug abuse that you could not fairly weigh
25 the evidence and give a fair and impartial decision; is

1 that correct?

2 A. Yes, it is.

3 Q. If in this case there was evidence of drug usage
4 by anybody, would that weigh against that person?

5 A. Yes, it would.

6 Q. To the extent that you couldn't be fair and
7 impartial? Or could you be fair and impartial?

8 A. Are you asking me if the person was using drugs
9 willingly?

10 Q. Yes, ma'am.

11 A. If someone is going to be that careless and use
12 drugs and alcohol, I think they should be held
13 responsible because they're willingly taking those
14 things.

15 Q. Let's suppose just a second that both sides, the
16 victims and the Defendant, were all using drugs. I am
17 not saying that you will hear that. But if they were,
18 would that change it around to where you could be fair
19 and impartial?

20 A. No.

21 MR. MURDAUGH: I have no further questions, I
22 don't think, for this lady. I have no further
23 questions.

24 THE COURT: Mr. Kulp?

25 MR. KULP: If it please the Court, Your Honor.

1 EXAMINATION

2 BY MR. KULP:

3 Q. My name is Tim Kulp. My co-counsel, Cory
4 Fleming, and I represent the Defendant in this case.
5 You understand why you're here today, don't you?

6 A. (Affirmative nod).

7 Q. You understand what it means to be -- have you
8 ever served on a jury before?

9 A. No.

10 Q. Do you understand that you were called here today
11 as a prospective or possible juror in a criminal trial?
12 I am sure that you've seen a little bit of television
13 about how trials are conducted and the roles that
14 people play in trials?

15 A. (Affirmative nod).

16 Q. You know when the entire group of you first came
17 here today and the judge asked you to raise your hands
18 and take an oath -- you know what an oath is, don't
19 you?

20 A. (Affirmative nod).

21 Q. And you know that a juror is an essential part of
22 a case, you know that, don't you? We can't make a
23 decision in a jury trial unless we have a jury.

24 A. Yes.

25 Q. Now, in a case, if you were selected as a juror,

1 you would be asked to take a oath, another time to
2 raise your hand, and part of that oath that the judge
3 would give you would be well and truly try the case and
4 to render a fair and impartial decision based upon the
5 law that the judge would give you that applies to the
6 facts that you and the other eleven jurors decided was
7 the truth. Now, that's what your oath would be as a
8 juror. Do you understand that?

9 A. I do.

10 Q. To fairly and impartially apply the law that is
11 relevant to the facts that you, the jurors, determine
12 to be. That would be your goal. Do you understand
13 that?

14 A. Yes, I do.

15 Q. And if you were given that oath as a juror and
16 those instructions for your work or your duty pursuant
17 to that oath, you could follow the law and apply it to
18 the facts of the case; couldn't you?

19 A. Yes, I could.

20 Q. And in the course of doing that under your oath
21 you could be fair and impartial, as well; couldn't you?

22 A. Yes.

23 MR. KULP: Thank you.

24 BY MR. MURDAUGH: Being fair and impartial,
25 could you ever impose the death penalty?

1 MS. EWING: No.

2 MR. MURDAUGH: Under any circumstances?

3 MS. EWING: No.

4 MR. KULP: I beg the Court's indulgence.

5 EXAMINATION CONTINUED

6 BY MR. KULP:

7 Q. As to that issue, ma'am, and at this point in this
8 case, what facts or evidence would ensue is not an
9 issue, but based on the Solicitor's question -- (pause)
10 -- can you imagine any circumstance that came out
11 during the trial of the case, in a criminal case that
12 involved the death of someone, or more than one person,
13 where you would feel that the appropriate penalty or
14 punishment would be the death penalty?

15 A. Yes, I could but being Catholic, I would not want
16 to be a part of that decision. I mean, in extreme
17 circumstances, like for example the Timothy McVeigh
18 case, what is going on right now with Osama Bin Laden.
19 I mean, obviously those individuals would deserve
20 nothing but -- but, being Catholic, I could not
21 sentence someone to death.

22 Q. Even in those cases?

23 A. Maybe in those two specific instances, I could.

24 Q. Prior to the occurrence of those tragic
25 circumstances, you wouldn't know prior to you learning

1 about those tragic circumstances, Oklahoma and the
2 Trade Center disaster/tragedy, -- it sounds silly to
3 say but prior to you knowing those things happened you
4 wouldn't be in a position to say that there might be
5 something in the future that 'I would think would
6 warrant it'?

7 THE COURT: Excuse me. Would the attorneys
8 approach a sidebar, please, just a minute?

9 *SIDEBAR:*

10 MR. MURDAUGH: I think she's already said
11 that she couldn't.

12 THE COURT: I think that she has already
13 said that she can't.

14 MR. KULP: Yes, sir.

15 *(SIDEBAR CONCLUDED)*

16 MR. KULP: Thank you, ma'am.

17 THE COURT: Based on everything that you've
18 said, your conscience and also the fact that you have a
19 problem because of Mrs. Rogers, with whom you have sort
20 of a business acquaintance with, I am going to deem
21 that because of the difficulty that only in the most
22 extreme type cases you could give the death penalty,
23 like the World Trade Towers being thousands of people,
24 and Timothy McVeigh was over a hundred -- maybe two
25 hundred, I don't recall right now, -- I am going to

1 deem that you are not qualified and will excuse you.

2 POTENTIAL JUROR: Thank you.

3 (POTENTIAL JUROR STEPS DOWN)

4 MR. KULP: For the record, we would
5 respectfully note our exception to the Court's ruling.

6 THE COURT: Okay. Please send in Juror No.
7 371, Haskell Sopshier. I will ask the questions. I
8 frankly didn't before because I was a little unsure of
9 exactly what you wanted to say but maybe this will
10 help.

11 (POTENTIAL JUROR ENTERS COURTROOM)

12 THE COURT: Sir, come up and have a seat. How
13 are you doing, sir?

14 POTENTIAL JUROR: Good.

15 (POTENTIAL JUROR TAKES STAND)

16 THE COURT: I remind you, sir, that you are
17 still under oath.

18 HASKELL SOPSHIRE, being
19 duly sworn to tell the truth, the whole truth and
20 nothing but the truth, testified as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q. Did you read this document or this copy of the
24 pretrial questionnaire where it basically speaks of
25 your three possible kinds of jurors in a death penalty

1 case. Do you understand that, that there's types one,
2 two and three?

3 A. Yes, sir.

4 Q. Do you have an idea about which type of juror that
5 you are?

6 A. One.

7 Q. One?

8 A. (Affirmative nod).

9 Q. Which one is one?

10 A. For the death penalty.

11 Q. In other words, are you telling me that any time
12 that there is someone who is guilty of murder that the
13 only correct punishment is the death penalty?

14 A. Yeah.

15 THE COURT: Solicitor?

16 MR. MURDAUGH: We're satisfied with his answer, so
17 we don't want to ask him any questions.

18 MR. KULP: Nothing from the Defense, Your
19 Honor. Thank you.

20 THE COURT: Okay. Well, then, I am going to
21 have to excuse you, sir, because under our law a
22 qualified juror is one who would look at the facts in
23 the case and make a decision based on the facts and
24 circumstances of each case whether it should be a life
25 sentence or a death sentence. So you are excused.

1 POTENTIAL JUROR: Thank you, sir.

2 (POTENTIAL JUROR STEPS DOWN)

3 THE COURT: William Camp, Juror No. 43. Come
4 on up, sir, Mr. Camp, and have a seat.

5 (POTENTIAL JUROR TAKES STAND)

6 THE COURT: I remind you, sir, that you're
7 still under oath.

8 EXAMINATION

9 BY THE COURT:

10 Q. Did you read the pretrial questionnaire that was
11 in the jury room?

12 A. Yes, sir.

13 Q. Of course it speaks in terms of basically a case
14 which could call for the death penalty.

15 A. Right.

16 Q. There are three types of jurors. Did you
17 understand that?

18 A. Yes, I did.

19 Q. Do you have an opinion as to which type juror that
20 you are?

21 A. I believe that it was the third category, where
22 the decision on the punishment would be based on the
23 facts of the trial.

24 Q. There was a third type of juror who, if the crime
25 of murder has been proven by the State and the jury was

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

1 considering punishment, would not his or her mind made
2 up in advance concerning the punishment. This juror
3 would consider what the facts and circumstances were
4 and would listen to the law as the judge charged the
5 jury in court.

6 A. That's the kind.

7 Q. You would not have a predisposition as to whether
8 you thought that it ought to be life imprisonment or
9 the death penalty, that you would want to hear it and
10 make up your mind as to the facts and circumstances; is
11 that fair?

12 A. That's fair to say.

13 THE COURT: Solicitor?

14 EXAMINATION

15 BY MR. MURDAUGH:

16 Q. Mr. Camp, I am Randolph Murdaugh. I am the
17 Prosecutor for the State of South Carolina, the
18 Solicitor for Beaufort County among four other
19 counties. How are you doing, sir?

20 A. I'm fine.

21 Q. I need to ask you some questions and find out,
22 quite frankly, whether we want you to serve on this
23 jury or not.

24 A. Okay.

25 Q. Where do you work, sir?

1 A. I work for a consulting engineering company. I
2 have my office here in Beaufort.

3 Q. Doing what, sir? What kind of engineer?

4 A. Environmental.

5 Q. Who is that you work with?

6 A. The company is called Environmental Resources
7 Management.

8 Q. Okay, sir. How long have you lived in Beaufort?

9 A. Eleven years.

10 Q. Does your wife work?

11 A. She has her own consulting practice, works at
12 home.

13 Q. What kind of consulting practice?

14 A. Medical/legal.

15 Q. What does she do in medical/legal, sir?

16 A. She does case reviews for, -- primarily for
17 automotive type accidents.

18 Q. Okay, sir. Mr. Camp, you have answered the
19 judge's question that you were one of those jurors who
20 would listen to all of the evidence before you decided
21 what your thoughts would be about giving the final
22 sentence in a death penalty case; is that correct?

23 A. Yes.

24 Q. And if you thought that the case was bad enough,
25 you could vote for the death penalty?

1 A. That's correct.

2 Q. If you didn't think that it was of such a heinous
3 nature, you could vote life imprisonment?

4 A. That's correct.

5 Q. And neither one, one way or the other, would hurt
6 your conscience?

7 A. That's correct.

8 Q. One of the things that you would have to do, Mr.
9 Camp, if you found, first of all, that the defendant is
10 guilty -- number one, that would be the first part of
11 the trial, what they call the guilt phase, whether he
12 is guilty or not guilty of murder.

13 If you found him guilty there, you go to the
14 second part of the bifurcated or two-part trial, and
15 that is to determine what sentence that he should
16 receive. One of two sentences. You will recommend a
17 sentence -- and the Judge is going to be bound by what
18 your recommendation is, so you would be sentencing him
19 to one of two things. Either death by lethal injection
20 or electrocution or life in prison.

21 If you found that the appropriate punishment was
22 the death penalty, it would be required of you, along
23 with the other eleven members of the panel, to sign a
24 piece of paper that says, "We, the Jury, find that the
25 Defendant should suffer the death penalty." Then there

1 would be a list of twelve lines where each juror would
2 have to sign his name to it. Would that give you a
3 problem, sir, if you thought that it was bad enough?

4 MR. MURDAUGH: Okay, sir. I have no further
5 questions.

6 MR. KULP: May it please the Court, Your
7 Honor.

8 EXAMINATION

9 BY MR. KULP:

10 Q. Good afternoon, sir. My name is Tim Kulp. Mr.
11 Fleming and I represent the accused in this case, Mr.
12 Rogers. I just wanted to ask you one question. As the
13 Solicitor indicated, in a case like this we may never
14 get to the portion of the trial or the phase of it
15 where that issue ever needs to be determined. Do you
16 understand that?

17 A. I understand.

18 Q. Do you understand why?

19 A. I would assume that it would be in the case if he
20 was found innocent.

21 Q. Correct. And you understand that on the other
22 hand that if you did get to the portion of the trial
23 that did address the issue of punishment that not just
24 the crime but you would also consider, in making that
25 decision, both individually and collectively as a jury,

1 if you were a juror serving on that jury, everything
2 about the defendant?

3 A. I understand.

4 MR. KULP: Thank you.

5 MR. MURDAUGH: I have no further questions.

6 THE COURT: I find the juror qualified.

7 POTENTIAL JUROR: Sir, could I raise the issue
8 now about the professional or business conflicts?

9 THE COURT: Yes, sir. I'm sorry. I meant to
10 ask you about that. Go ahead.

11 POTENTIAL JUROR: I have a commitment for a
12 professional association meeting that starts on
13 Saturday in Atlanta, so I have to leave Saturday
14 morning to go up to Atlanta. I have guests coming to
15 meet me for dinner, I'm registered for the conference,
16 presiding in the session. That goes Saturday through
17 the following Wednesday.

18 THE COURT: Would the attorneys approach the
19 sidebar, please?

20 MR. KULP: Yes, sir, Your Honor.

21 SIDEBAR:

22 THE COURT: He is qualified. What do you say?

23 MR. MURDAUGH: We'd be glad to have him.

24 MR. KULP: Well, if he is registered -- but
25 there's no reason to excuse him.

1 It would be a reversible error to
2 excuse him.

3 MR. MURDAUGH: I don't object.

4 MR. KULP: I think he's qualified.

5 THE COURT: Do you want to take exception to my
6 excusing him? In this case, I
7 think we can accommodate his prior
8 business commitment.

9 (SIDEBAR ENDED)

10 THE COURT: Mr. Camp, I am going to go ahead
11 and excuse you. Hopefully we will have enough without
12 you, but I can see that your plans and everything at
13 this time -- if I understood it correct, you committed
14 from Saturday until Wednesday, that you're tied up with
15 this conference in Atlanta?

16 POTENTIAL JUROR: That's correct.

17 THE COURT: Well, you are excused. Thank you,
18 sir, for coming in.

19 POTENTIAL JUROR: Thank you very much.

20 (POTENTIAL JUROR STEPS DOWN)

21 THE COURT: Okay. Are you'all ready to keep
22 going?

23 MR. MURDAUGH: I am.

24 MR. KULP: Yes, sir. We would respectfully
25 note our exception to the Court's ruling on that juror.

1 THE COURT: Yes, sir. I do find that -- I
2 think that it is within my discretion and I think --
3 okay. All right, John Lazzo, Juror No. 193.

4 (POTENTIAL JUROR TAKES STAND)

5 JOHN LAZZO, being duly
6 sworn to tell the truth, the whole truth and nothing
7 but the truth, testified as follows:

8 EXAMINATION

9 BY THE COURT:

10 Q. How are you doing, Mr. Lazzo?

11 A. I'm all right.

12 Q. First off, before I get into it, are you avail-
13 able? Did you have any problems about serving?

14 A. I am fine. I've got plane tickets at the end of
15 the month, the week of the 28th through -- to go to --
16 that's the only thing.

17 Q. Well, we won't be here on this case then.

18 MR. MURDAUGH: I promise you that we won't.

19 THE COURT: I would probably put both lawyers
20 in jail, all the lawyers in jail, if I have to stay
21 with it that long.

22 MR. MURDAUGH: We would deserve it.

23 EXAMINATION RESUMED

24 BY THE COURT:

25 Q. Did you read the pretrial questionnaire?

1 A. I did.

2 Q. And it speaks in terms of basically if a person
3 was convicted of murder that there are two possible
4 verdicts, one of life imprisonment and one of death.
5 Did you feel that you came within one of those three
6 categories?

7 A. Oh, yeah.

8 Q. Which one is that?

9 A. Well, I feel that if I -- if a person is guilty
10 because he murdered somebody out of meanness, I feel
11 that that person -- that his life should be taken if he
12 took someone else's life in meanness. I mean, he
13 shouldn't be put in jail to be punished. If he took
14 that person's life out of meanness, his life should be
15 taken, too. Now, if he takes somebody's life to
16 protect his own or his family, that is a different
17 story.

18 Q. Would you be able to -- would you want to listen
19 to what the facts and circumstances of a particular
20 case were?

21 A. Yes, I would listen to it. But if that person was
22 guilty, found guilty, -- my wife and I have talked
23 about this many times when things come on TV. You
24 know, if you take a life and it is out of meanness,
25 that person's life should be taken themselves. They

1 deserve death. That's the way that I feel.

2 THE COURT: Solicitor?

3 EXAMINATION

4 BY MR. MURDAUGH:

5 Q. Mr. Lazzo, how are you doing?

6 A. I am all right. Thank you.

7 Q. I am Randolph Murdaugh. I am the Prosecutor for
8 the State of South Carolina, the Solicitor. I need to
9 ask you some questions.

10 A. That's fine

11 Q. Frankly to find out whether we want you to serve
12 on this jury or not.

13 A. Okay.

14 Q. Have you worked with anybody -- does anybody from
15 Hampton work with you, by any chance?

16 A. Chris, yeah.

17 Q. Who is that?

18 A. Chris Nettles.

19 Q. Chris?

20 A. And Greg Markum.

21 Q. Greg doing all right now?

22 A. Um-humm.

23 Q. You have said that in every case where a person
24 commits a killing out of meanness that he ought to
25 serve the death penalty?

1 A. I feel, yes.

2 Q. Let me ask you this question. The law in South
3 Carolina says that before the death penalty can be
4 given, a number of things have to happen.

5 Number one, the jury has to find that there is a
6 thing called an aggravating circumstance. There are a
7 number of aggravating circumstances, but you would have
8 to make a specific finding of an aggravating
9 circumstance.

10 If there was an aggravating circumstance, you then
11 would consider the character of the defendant and the
12 nature of the -- and the characteristics of the crime.

13 In other words, what happened and what kind of
14 fellow that he was.

15 It also says that before you could impose the
16 death penalty that you would be required to consider
17 things called mitigating circumstances. That is
18 reasons why the death penalty shouldn't be given, such
19 as just one example the man is sixteen, seventeen years
20 old. Ninety years old. Various and sundry, there's a
21 whole list of those things.

22 If you served on this jury and if you had found
23 the fellow guilty of murder, that is the unlawful
24 killing of another person with malice aforethought,
25 that implies a mean and wicked heart, would you

1 consider the mitigating circumstances?

2 A. Of course, I would. I would surely listen to it.

3 Q. And if you listened to it, is there ever a way
4 that you could impose the life imprisonment as opposed
5 to the death penalty, even though from what I gather
6 from you that you're more in favor of death penalty
7 than you are life imprisonment?

8 A. No, I would listen to the -- I would listen. I am
9 a very good listener. But when it comes to down to
10 'this person murdered that person', you know, after
11 listening to everything if he still killed somebody, I
12 would still -- the death penalty is still.

13 Q. Even if he is sixteen?

14 A. Hummm, -- boy, that's a rough one. Let me study
15 about that.

16 Q. I understand. Nobody said that it would be easy.

17 A. Yeah. Yeah, even at sixteen -- I don't know. At
18 sixteen, you should still know right from wrong, you
19 know?

20 Q. Um-humm.

21 A. There are so many kids out there that are just so
22 mean, you know. I don't know. I don't want to say on
23 a sixteen-year-old. I don't know. Seventeen and
24 eighteen, yes.

25 Q. Thank you, sir.

1 MR. KULP: Nothing from the Defense, Your
2 Honor.

3 THE COURT: Okay. Would you just go back there
4 and stand outside and wait for a few minutes?

5 (POTENTIAL JUROR STEPS DOWN)

6 THE COURT: It won't take us but a second.

7 (JUROR EXITS COURTROOM)

8 THE COURT: What says the State? To my mind,
9 he's not qualified under the law.

10 MR. MURDAUGH: I think when he said that he would
11 consider the mitigating circumstances that -- while
12 that isn't somebody, if I were defending, that I would
13 put on the jury, I think that he is -- I think that he
14 is eligible. I don't think that he is death penalty
15 disqualified because of his feelings.

16 MR. KULP: Your Honor, I think that it kind of
17 boils down to one expression. That is, the potential
18 juror testified that the only way that he would never
19 vote or decide to impose the death penalty was if
20 someone was convicted of homicide or a killing
21 protecting their family. I think that -- we can --
22 it's just kind of logic that if it were someone
23 protecting their family, I don't think that we would
24 ever even get to the punishment aspect of the case.
25 Therefore, he would always impose the death penalty.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

1 As well, Your Honor, he said many, many times -- five
2 or six times, I think -- that -- well, the most that he
3 got out of him was that he would listen. Of course, he
4 would listen.

5 THE COURT: I think that he's got to be
6 excused. He was in "every case" and all. He tried,
7 almost, when you gave him the thing but he did not,
8 uh, -- based on the totality of his responses, I think
9 that he has to be excused.

10 Please send Mr. Lazzo back in.

11 (POTENTIAL JUROR ENTERS COURTROOM)

12 THE COURT: Based on your -- I am going to
13 excuse you based on the law. You are excused. Thank
14 you, sir. Please send in Joseph Stonebraker, Juror
15 No. 380.

16 CLERK: Mr. Stonebraker sent me a letter this
17 morning that his employer --

18 MR. MURDAUGH: Does he say that he is going to
19 fire him?

20 CLERK: No, he says that he needs him at work.

21 (POTENTIAL JUROR TAKES STAND)

22 JOSEPH STONEBRAKER, being duly
23 sworn to tell the truth, the whole truth and nothing
24 but the truth, testified as follows:

25 EXAMINATION

1 BY THE COURT:

2 Q. How are you doing, sir?

3 A. Good.

4 Q. Mr. Stonebraker, did you read the pretrial
5 questionnaire about the three types of jurors and so
6 forth?

7 A. Yes, I did.

8 Q. I remind you that you're still under oath.

9 A. Yes, sir.

10 Q. Do you have an opinion as to what sort of juror
11 that you would be as far as with regard to the
12 imposition of a death penalty upon a person convicted
13 of murder?

14 A. I would say juror type three.

15 Q. What kind of juror is that?

16 A. I guess one that would be objective and weigh the
17 facts and see whether the death penalty was warranted.

18 Q. Okay. All right. I have here a letter from
19 Harold C. Jones, Jr., owner of Two Stroke
20 International, asking for you to be continued.

21 Is there anything that you want to tell me about your
22 ability to serve this week?

23 A. It is very bad timing for the plant. As it
24 mentions in the letter, we just ended up a contract, a
25 military contract ---

1 MR. MURDAUGH: Could you speak up a little bit?

2 POTENTIAL JUROR: Can you hear now?

3 MR. MURDAUGH: Yes, sir. Thank you.

4 POTENTIAL JUROR: We just finished up a contract
5 for the U.S. Marines. So that leaves the plant at a
6 time when there is not a lot of work for people to do.
7 We've got forty-seven people in our plant. We decided
8 to keep the workforce intact and there's a couple -- we
9 have a few commercial jobs working now, but the big
10 thrust right now is to get our engines ready for a
11 symposium that is occurring October 23-24 and 25th for
12 the Department of Defense and the Navy. We have been
13 invited to take our product down there and show them.
14 From this, we expect to get a lot of orders.

15 The contract that we just finished was for our
16 engines going to an M17 decontamination unit. We just
17 finished a contract of 1,600 units for the Marines.
18 We have 39 units that that we're going to start
19 retrofitting for the Navy, starting this week. That's
20 only a short period of time as far as work for the
21 shop.

22 Beyond that, we're working on a contract for the
23 Army for engines for the M17 decontamination units. We
24 hope to wrap that up. This fiscal year started October
25 1 of this year.

1 Our engines run on jet fuel or diesel fuel. We
2 have eliminated the need for gasoline in the field,
3 which the military has asked us to do. They are asking
4 all suppliers of engines to get the gasoline out of the
5 battlefield. We have achieved that.

6 So it is a great opportunity for us to get work
7 for the plant. If we miss this window of opportunity
8 there will be a lot of people out there that will
9 possibly have to pick up and ---

10 THE COURT: This case, we hope to start it
11 Thursday or maybe Friday, so most of the time would
12 possibly be the weekend anyway. Would that not
13 alleviate some of your problems?

14 POTENTIAL JUROR: Not really because I am very
15 heavily involved in getting the product to final design
16 and then getting it made and in getting this
17 presentation ready to do down there. I mean, if I am
18 sequestered, there are things that I could be doing in
19 the evenings back at work that this would prevent me
20 from doing.

21 There is one other item, and I don't know what
22 bearing that it would have on this case or not, but I
23 feel like I could be fair but I worked at the R.E.
24 Phelon plant where shortly after I left a person went
25 in there and killed four people and wounded three

1 others.

2 THE COURT: Where was that?

3 POTENTIAL JUROR: In Aiken.

4 THE COURT: Is that the one that just happened
5 several years ago?

6 POTENTIAL JUROR: Yeah.

7 MR. MURDAUGH: Two and a half years ago.

8 POTENTIAL JUROR: Yeah. So, you know, I think
9 that I could be objective but I do have strong
10 feelings. Three of those people worked for me when
11 I was up there. One of them survived, fortunately.
12 He's retired now but -- I don't know if that has any
13 bearing on this or not but it does -- I do have certain
14 feelings about some violence. But I think that I could
15 be very fair in hearing a case.

16 THE COURT: What do you say, Solicitor?

17 EXAMINATION.

18 BY MR. MURDAUGH:

19 Q. You were here on the 21st, I believe, and asked to
20 be excused at that time?

21 A. Yes. That's right.

22 Q. And I think that the judge told you that he would
23 address that today?

24 A. Yes.

25 Q. Is there no one else at the plant that you work

1 with that could fulfill the duties that you're talking
2 about?

3 A. I feel not.

4 Q. Where do you fit in the hierarchy of things?

5 A. I am the President and General Manager of
6 Operations.

7 Q. And a working president?

8 A. Yes. It is a small plant, so I am heavily
9 involved in design, in getting the parts made and
10 coordinating things through the shop; as well as
11 marketing, working heavily with military people in
12 discussions with them and negotiations. It is just a
13 very, very critical time for the plant. We are just on
14 the verge of getting this contract behind us.

15 If we don't, there's probably going to be a lot of
16 people that we will have to lay off.

17 MR. MURDAUGH: I have no further questions of this
18 gentleman.

19 MR. KULP: No questions.

20 THE COURT: Okay. If you will, just step
21 outside and I will discuss it with you before you
22 depart.

23 (POTENTIAL JUROR STEPS DOWN/EXITS COURTROOM)

24 THE COURT: I think that he is qualified. And
25 I think that -- I think with a plant that large, I

1 don't know that he is not -- he doesn't have any travel
2 plans or anything. I am inclined to -- I just feel
3 like we've just got to have him. What do you'all say?

4 MR. MURDAUGH: I don't disagree with you.

5 MR. KULP: I beg the Court's indulgence.

6 (After consulting with Mr. Fleming and Defendant),
7 we understand, Your Honor.

8 THE COURT: Would you show Mr. Stonebraker back
9 in, please?

10 (POTENTIAL JUROR RE-ENTERS COURTROOM)

11 THE COURT: Mr. Stonebraker -- you can stand
12 right there, -- based on the requirements of the Court,
13 this does not mean that you're necessary going to serve
14 on the jury, but I find that you are qualified.

15 So the process, you will remain in the pool for
16 the drawing. On Thursday, it is our plan to have
17 everyone come prepared to stay for three or four
18 nights. Of course, they will have laundry service
19 available. So if you would, please report back here on
20 Thursday morning if you don't hear to the contrary at
21 9:00 o'clock. The jury will be seated at that time.

22 I'm sorry that I am not able to grant your request
23 for a continuance at this time.

24 If you will, please report Thursday morning.

25 POTENTIAL JUROR: You say that that is when the

1 drawing is?

2 THE COURT: That's right.

3 POTENTIAL JUROR: Okay. All right. What time?

4 THE COURT: 9:00 a.m.

5 POTENTIAL JUROR: Yes, sir.

6 LAW CLERK: You told that other lady 9:30.

7 THE COURT: I did. Please tell him 9:30 and
8 not 9:00. Thank you. If you can't reach him, we will
9 call him up and tell it. It was 9:30.

10 Please send in Samantha Aiken, Juror No. 1.

11 (POTENTIAL JUROR TAKES STAND)

12 SAMANTHA AIKEN, being
13 duly sworn to tell the truth, the whole truth and
14 nothing but the truth, testified as follows:

15 EXAMINATION

16 BY THE COURT:

17 Q. I remind you, ma'am, that you are still under
18 oath.

19 A. Yes, sir.

20 Q. Did you read the questionnaire in the jury room
21 about the three different types of jurors that there
22 are. Did you read that?

23 A. Yes, I did.

24 Q. About the three kind of jurors if a person is
25 found guilty by -- what kind of juror do you think that

1 you are? -- Type one, two or three? And, if you would,
2 just explain how you feel about that.

3 A. Well, I guess number three.

4 Q. Does that mean -- is that the one that says that
5 you will listen to the facts of a particular case and
6 that you would make a decision based on the facts and
7 the law before you decide on the punishment?

8 A. Yes, sir.

9 THE COURT: Solicitor?

10 MR. MURDAUGH: Thank you, sir.

11 EXAMINATION

12 BY MR. MURDAUGH:

13 Q. Good afternoon, Ms. Aiken.

14 A. Good afternoon.

15 Q. I am Randolph Murdaugh. I am the Prosecutor for
16 the State of South Carolina, the Solicitor for Beaufort
17 County. We need to ask you some questions, primarily
18 to find out if we want you on this jury.

19 A. Okay.

20 Q. You are twenty?

21 A. Yes, sir.

22 Q. And work where?

23 A. Nowhere.

24 Q. Oh, that's right. You're babysitting?

25 A. Right.

1 Q. Do you understand, ma'am, that if you sat on this
2 jury that it would be a two-part trial? The first part
3 of the trial would be to determine whether or not the
4 Defendant was guilty or whether he was innocent.

5 A. I understand.

6 Q. If you found him not guilty, that would be the end
7 of it.

8 A. Right.

9 Q. If you found him guilty, then you would have to go
10 to the second part of the bifurcated or two-part trial
11 and you would have to determine whether or not he
12 should serve life in prison or be given the death
13 penalty. Do you understand that?

14 A. Uh-huh, (affirmative nod).

15 Q. And the things that you would have to consider is
16 whether or not there was an aggravating circumstances.
17 That's something that His Honor would charge you at the
18 end of the trial. You would have to find that there
19 was one of those. And if you found that there was one
20 of those, when you would look at the character of the
21 defendant and the circumstances of the crime. In other
22 words, how bad a fellow that he was or how good a
23 fellow that he was; how bad a crime it was or how
24 immaterial that the crime was.

25 A. Yeah.

1 Q. You would then have to listen to things called
2 mitigating circumstances, that is circumstances as to
3 why he should not be given the death penalty. Would
4 you always give life imprisonment or would you always
5 give the death penalty?

6 A. Life imprisonment.

7 Q. Could you ever give the death penalty?

8 A. No, I could not.

9 Q. Under any circumstances?

10 A. None.

11 Q. Irregardless of how bad the crime was?

12 A. None

13 Q. Irregardless of how bad the defendant was?

14 A. None.

15 Q. Just no death penalty?

16 A. No death penalty.

17 MR. MURDAUGH: Thank you.

18 THE COURT: Any questions?

19 EXAMINATION

20 BY MR. FLEMING:

21 Q. Good afternoon, Ms. Aiken. My name is Cory
22 Fleming. How are you?

23 A. Fine. You?

24 Q. Good. I represent Mr. Rogers, along with Tim
25 Kulp. I work here in Beaufort, -- we've introduced

1 ourselves already.

2 A. (Affirmative nod).

3 Q. You just told the Solicitor that you could never
4 give the death penalty, however in talking with the
5 judge earlier he asked you what type of juror that you
6 were. Remember that?

7 A. (Affirmative nod).

8 Q. And you said that there was one type, a second
9 type and a third type and you told the Judge that you
10 were the third type, that you would be willing to
11 listen to both the State and Defense; didn't you?

12 A. Yes.

13 Q. In fact, if we ever get to a penalty phase in this
14 case, wouldn't you be willing to listen to both the
15 State and the defense?

16 A. Yes.

17 Q. Then if the circumstances warranted it in a case
18 in which you were sworn to follow the law, would you
19 follow the law?

20 A. Yes, I would.

21 Q. So if the Judge charges you on the law that you
22 must apply in this case, will you follow the law?

23 A. I don't think nobody should have to have the death
24 penalty. I mean -- that's all that I've got to say.

25 THE COURT: No, go ahead and say what you mean.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

1 POTENTIAL JUROR: Well, if somebody gets the
2 death penalty then I will -- the person that is doing
3 the killing, what's going to happen to him?

4 MR. FLEMING: In other words, you don't agree
5 with the law; do you?

6 POTENTIAL JUROR: Not on that. No, I do not.

7 EXAMINATION CONTINUED

8 BY MR. FLEMING:

9 Q. Let me ask you this question. Despite the fact
10 that you don't agree with the law, you are a law
11 abiding person, aren't you?

12 A. Uh-huh.

13 Q. You follow the law, don't you?

14 A. Pretty much, (affirmative nod).

15 Q. Yet if the Judge tells you what the law is in this
16 case and says that you have a choice in determining the
17 sentence in this case, if you ever get that far, --
18 okay?

19 A. (Affirmative nod).

20 Q. And the Judge says that you must consider as a
21 possibility the death penalty, will you consider it as
22 a possibility?

23 A. No, I would not. I would not consider it.

24 MR. FLEMING: One second, Your Honor. We don't
25 have any more questions.

1 THE COURT: I am going to excuse you, Ms.

2 Aiken. You are excused for the week.

3 POTENTIAL JUROR: Thank you.

4 (POTENTIAL JUROR STEPS DOWN)

5 THE COURT: Before the next one comes in, is
6 that Deputy Neil Player's wife?

7 MR. MURDAUGH: Yes, sir, that's what the report
8 says.

9 THE COURT: I notice that he is working up
10 here, that's why I was asking. I don't know about it
11 being his wife. Do you'all agree that -- do you think
12 that we need to voir dire her?

13 MR. FLEMING: We would obviously move to have her
14 struck for cause.

15 MR. MURDAUGH: Maybe you'd like to hear what she
16 says.

17 MR. FLEMING: I think we'd rather she be struck.
18 Her husband's close working relationship with all or
19 about eleven of the State's witnesses is probably
20 cause.

21 MR. KULP: And the close working relationship
22 between a man and his wife?

23 MR. FLEMING: Right. Pillow talk.

24 THE COURT: Do you object? Do you want to
25 bring her in?

1 MR. MURDAUGH: I don't object, really. I would
2 like to.

3 THE COURT: Would you send in Mrs. Player,
4 please.

5 (POTENTIAL JUROR ENTERS COURTROOM)

6 THE COURT: Mrs. Player, I understand that
7 you're the spouse of Neil Player, the deputy?

8 POTENTIAL JUROR: Yes, sir.

9 THE COURT: Because of his employment, we can't
10 use you. We wish that we could. Thank you so much for
11 coming. You are excused. We don't have to ask you
12 anything else.

13 (POTENTIAL JUROR EXITS COURTROOM)

14 MR. MURDAUGH: All right. We've only got four
15 more people and they don't come in until 5:00 o'clock.

16 THE COURT: Well, some of them might be here
17 now.

18 MR. MURDAUGH: Why don't we take about five
19 minutes?

20 THE COURT: We can take a break and then come
21 back. We'll take a ten minute break.

22 (BRIEF RECESS 4:45 to 4:50 P.M.)

23 THE COURT: Are we ready? Are there any jurors
24 in the jury room. If there are, please bring in
25 Lucille Morrison, Juror No. 245.

1 MR. MURDAUGH: And we don't have but three left,
2 because we excused number ten (Panel 3), Juror No. 200.

3 THE COURT: That's right.

4 (POTENTIAL JUROR TAKES STAND)

5 LUCILLE MORRISON, being
6 duly sworn to tell the truth, the whole truth and
7 nothing but the truth, testified as follows:

8 EXAMINATION

9 BY THE COURT:

10 Q. Ms. Morrison, I remind you that you're still under
11 oath.

12 A. (Affirmative nod).

13 Q. Did you read this pretrial questionnaire in the
14 jury room which speaks about the three types of jurors
15 in a case which provides for the death penalty if there
16 is a conviction?

17 A. Yes.

18 Q. Assuming that there is a conviction for murder,
19 what type juror do you think that you are with regard
20 to the death penalty?

21 A. I think that I am probably three.

22 Q. Which one is that?

23 A. That is the person who would consider the option
24 of the death penalty or life imprisonment as punishment
25 for a person who committed murder.

1 Q. Is that ---

2 A. Now, you are talking about murder and not
3 manslaughter?

4 Q. No, this is strictly murder.

5 A. Okay. Yeah.

6 Q. So if I understand what you're saying, you would
7 consider all the facts and circumstances and do
8 whatever you thought that was appropriate given certain
9 circumstances?

10 A. Yes.

11 Q. Are you -- have you requested to be excused for
12 any particular reason?

13 A. No.

14 Q. So you are available?

15 A. (Affirmative nod).

16 THE COURT: Solicitor Murdaugh, any questions?

17 EXAMINATION

18 BY MR. MURDAUGH:

19 Q. Ms. Morrison, how are you doing?

20 A. Fine, thank you.

21 Q. Been to Harold's lately?

22 A. Yes.

23 Q. Ms. Morrison, I need to ask you a few questions
24 to, to be quite honest with you, find out whether or
25 not we want you to sit on this jury or not. I want you

1 to understand that there are no right answers or wrong
2 answers.

3 A. Okay.

4 Q. You have told the judge that you were a category
5 three. In other words, that you would listen to all of
6 the evidence and if the crime were appropriate in the
7 guilt phase that you could give the death penalty?

8 A. I think that I could.

9 Q. On the other hand, if you thought that it was not
10 such a heinous crime, you could give life imprisonment
11 and your conscience would not bother you any way?

12 A. Well, I don't know that it wouldn't ---

13 Q. Not saying that you wouldn't be concerned about it
14 but you ---

15 A. It would be very difficult but I think that I
16 could do it.

17 Q. One of the things that you would have to do, Ms.
18 Morrison, if you found him guilty in the first -- this
19 would be a two-part trial. The first part would deal
20 only with guilt or innocence of the Defendant, for
21 murder among other things, and you heard all the
22 indictments that we read out earlier.

23 A. (Affirmative nod).

24 Q. And if you find him guilty of murder in the first
25 party, you would then go to the second part of the

1 bifurcated or two-part trial and you would have to be
2 concerned with a number of things, one of which would
3 be whether or not the State had proved a thing called
4 aggravating circumstances. At some point in trial, we
5 would explain what an aggravating circumstances is and
6 you'd hear testimony to that regard.

7 You would also be concerned with the character of
8 the defendant and the circumstances of the crime. In
9 other words, whether he is a good guy or a bad guy,
10 where the crime was not so bad or whether it was really
11 bad.

12 You would also be required, before you could make
13 a decision, to listen to things called mitigating
14 circumstances. Mitigating circumstances are things
15 that would tend to make the crime of the Defendant less
16 bad -- that's not very good English. You went to
17 Sweetbriar, I believe, didn't you?

18 A. Yes.

19 Q. Make it not quite as bad. Then you would have to
20 make a decision, death penalty or life imprisonment.

21 If you decided that the crime was such that the
22 death penalty would be the appropriate crime to be --
23 the appropriate sentence to be given, you would then
24 have to sign a sheet of paper. At the top of it, it
25 would say "We, the undersigned jurors recommend that

1 the Defendant receive the death penalty." And while it
2 says "recommend", it isn't really a recommendation.
3 That is just the verbiage that they use. And it would
4 be binding on the judge. So you, in essence, would be
5 sentencing him to death. You would have to sign your
6 name on one of the twelve lines that were there. Would
7 that give you a problem if you thought that the crime
8 was bad enough?

9 A. I guess not. No, I mean, it's -- I could do it.

10 Q. Your son is a lawyer, I believe?

11 A. Yes, and my husband.

12 Q. And your husband?

13 A. Yes.

14 MR. MURDAUGH: Just one second, please. Counsel
15 (Knight) just called my attention to one thing. You
16 answered my question that you, under the scenario that
17 I just set out, believed that you could sign the paper.

18 POTENTIAL JUROR: Right.

19 MR. MURDAUGH: I realize life is sort of ---

20 POTENTIAL JUROR: Well, yeah. As I -- I have
21 always thought that I could but when you get right down
22 to it, I -- yeah, I could.

23 MR. MURDAUGH: Thank you, ma'am. And you could
24 give life imprisonment just as well if you thought that
25 it was an appropriate sentence?

1 POTENTIAL JUROR: Yeah.

2 THE COURT: Mr. Kulp?

3 MR. KULP: Thank you, Your Honor, may it
4 please the court.

5 EXAMINATION

6 BY MR. KULP:

7 Q. Mrs. Morrison, good afternoon.

8 A. Good afternoon.

9 Q. I am Tim Kulp and I represent the accused, along
10 with Mr. Fleming, my co-counsel. I really just have
11 one or two questions. You understand that there is
12 certainly the possibility, even though the trial has
13 been described for you as bifurcated, that we might
14 never even arrive at the second portion of the case?

15 A. I do understand.

16 Q. You understand that if the decision of the jury on
17 the first part of the two-part process is that the
18 State failed to prove him guilty of any or all of the
19 offenses, beyond a reasonable doubt, that you will be
20 required under the law, and the Judge will tell you
21 that the decision that you and the jury would have to
22 render would be a verdict of not guilty.

23 A. I understand.

24 Q. And if you rendered a decision of not guilty as a
25 jury, that's it. You'd never get to the penalty phase?

1 A. Right.

2 MR. KULP: Thank you, ma'am.

3 MR. MURDAUGH: No further questions.

4 THE COURT: Any objection to this juror being
5 deem qualified?

6 MR. MURDAUGH: None from the State, sir.

7 MR. KULP: None from the Defendant.

8 THE COURT: Okay. Ms. Morrison, I find that
9 you are qualified. Unless you hear or get a phone call
10 to the contrary, please report back here at 9:30 on
11 Thursday morning and bring your bag and have your
12 arrangements made because we plan to start the trial.
13 Of course, you will be sequester until the conclusion.
14 I'd say three nights, possibly four.

15 POTENTIAL JUROR: Over the weekend?

16 THE COURT: Over the weekend. Have a nice
17 evening.

18 MR. KULP: Your Honor, if you could give her
19 the standard admonitions?

20 THE COURT: Of course, do not discuss the case
21 with anyone or allow anyone to discuss the case with
22 you, as I -- if anybody should -- and also don't let
23 yourself read any newspaper reports, if there should be
24 any, or hear anything on television or radio about it
25 either.

1 POTENTIAL JUROR: Yes, sir.

2 MR. KULP: And that would extend to -- and I
3 certainly respect the profession very much, but with
4 the family being lawyers, as well.

5 THE COURT: Well, I -- I see. Since you do
6 have family members that are attorneys, it would not be
7 appropriate for you to discuss possible facts or law or
8 anything about that. It is basic and fundamental, as I
9 said earlier, that the case be decided solely from the
10 testimony of the witnesses along with the evidence
11 introduced in the trial. I am sure that your family
12 members, being attorneys, will understand the
13 sensitivity of this and I would not anticipate it but
14 do not let them -- you should get all your information
15 about the case from here in Court, from the sworn
16 witnesses, along with the evidence introduced in the
17 trial.

18 Have a nice couple days and we will look forward
19 to seeing you on Thursday.

20 POTENTIAL JUROR: Thank you.

21 (POTENTIAL JUROR STEPS DOWN)

22 THE COURT: Ms. Morrison is Juror No. 2.
23 Would you please bring in Clyletha Williams, Juror No.
24 423, if she is here?

25 (POTENTIAL JUROR TAKES STAND)

1 CLYLETHA WILLIAMS, being
2 duly sworn to tell the truth, the whole truth and
3 nothing but the truth, testified as follows:

4 EXAMINATION

5 BY THE COURT:

6 Q. Ms. Williams, I remind you that you're under oath.

7 A. Okay.

8 Q. How are you doing?

9 A. Okay. And you?

10 Q. I am doing fine. First off, are you available to
11 serve this week?

12 A. Yes, sir.

13 Q. Excellent. And did you read this pretrial
14 questionnaire?

15 A. I sure did.

16 Q. Did you understand what they were talking about in
17 there, that if a person is convicted of murder the
18 possible verdicts are either life imprisonment or the
19 death penalty?

20 A. Yes, sir.

21 Q. If you were sitting on the jury and a person has
22 been convicted of murder, then the second phase is --
23 it is called a bifurcated trial and you do the guilt or
24 innocence first and then you go into -- assuming --
25 that if the person is convicted of murder, then -- of

1 course, in this particular case there are other -- you
2 would only go into the penalty phase as to the murder
3 convictions. The others would not go into the second
4 phase, but the -- what sort of juror do you think that
5 you are? The person who could never give the death
6 penalty or a person who would always give the death
7 penalty to a person convicted of murder or someone who
8 was a type three, that would consider the circumstances
9 of the crime and the victim and the defendant and,
10 based on all the facts presented, would sometimes feel
11 that a death penalty was appropriate and would
12 sometimes feel that a death penalty was not
13 appropriate.

14 A. I think I would just have to go with the life
15 sentence, couldn't go to the death penalty.

16 Q. You say.

17 A. Life sentence but not the death penalty.

18 Q. In other words, are you telling me that you would
19 not -- that you can't think of any time that you
20 thought that the death penalty would be appropriate?

21 A. Yes. Yes, but I haven't heard the case. And it
22 doesn't matter about the case right now, because you
23 asked me how I feel right now about that? Or are you
24 asking me about this particular case?

25 Q. No, I am not asking you about this case because we

1 don't know about this case yet.

2 A. That's what I am saying.

3 Q. So I am not asking you anything about this case.

4 I am just talking about in general when cases are --
5 when -- because we don't know about this case. I am
6 not trying to get you to guess what this case is going
7 to be about.

8 A. No.

9 Q. I am just talking about that there are some cases
10 that -- you said -- I think what you said is that in
11 this case that you'd just go ahead and say that a life
12 sentence would be appropriate, is that what you said?

13 A. Yeah. If I had to choose one or the other.

14 Q. No, no. You don't choose ---

15 A. After I hear the case, I know that's when I choose
16 but I'm saying that -- I thought that you were talking
17 about right now, as far as what I have heard so far,
18 you know.

19 Q. Okay. But -- are you -- so if I understood you,
20 you're not talking about this case but just talking
21 about life imprisonment or the death penalty in cases
22 in general.

23 A. Yeah.

24 Q. Are you telling me that you'd been able to
25 consider ---

- 1 A. I am just talking about cases in general. In
2 general. I mean, I couldn't find the death penalty.
3 You know, I -- I'm serious, I couldn't. I would not.
4 I guess that I could if it was bad enough, if I knew
5 the case, you know. But as far as just saying a
6 murder trial, I'd just go with a life sentence
7 probably.
- 8 Q. You say that you would be more inclined to go with
9 a life sentence?
- 10 A. (Affirmative nod).
- 11 Q. Would you keep an open mind and consider all the
12 facts and circumstances of a case before you made that
13 decision?
- 14 A. Yeah.
- 15 Q. Or would you have already made up your mind ---
- 16 A. No.
- 17 Q. --- before you get into the case that it would be
18 a life sentence?
- 19 A. No, it would be on a case by case. I could change
20 once I get into the case, you know.
- 21 Q. Okay.
- 22 A. Once I know the circumstances. As far as just
23 murder, I don't think that I would go with, like, the
24 death penalty. After I hear the case, you know,
25 there's a possibility that I might depending on how it

1 happened, why it happened. I'm basically opposed to
2 the death penalty.

3 Q. If you should decide and the jury should reach a
4 unanimous verdict that it should be the death penalty
5 and you were sitting on the jury, one of the things
6 that you would have to do is to sign the verdict.

7 Could you -- in a case where you had, along with other
8 jurors, had decided unanimously that the death penalty
9 was called for, would you be able to sign the verdict?

10 A. If that's how I felt, the same way that they did.
11 If that's how I felt, (affirmative nod).

12 THE COURT: Solicitor Murdaugh?

13 EXAMINATION

14 BY MR. MURDAUGH:

15 Q. How are you doing, Ms. Williams?

16 A. Okay. I need to ask you some questions to find
17 out whether or not we want you to sit on this jury or
18 not. Where are you from?

19 A. Hilton Head.

20 Q. Who were you before you -- you're married now?

21 A. No.

22 Q. Oh, you're not married?

23 A. No.

24 Q. So you were a Williams originally?

25 A. Yeah.

1 Q. Where on Hilton Head?

2 A. Spanish Royal area.

3 Q. Muddy Creek?

4 A. Yeah.

5 Q. Okay. Could circumstances ever be bad enough that
6 you could send somebody to the death penalty?

7 A. Yeah, of course.

8 Q. You could?

9 A. Yes. Yeah.

10 Q. And you'd have no problem signing your name to a
11 sheet of paper?

12 A. Not at all in certain circumstances.

13 Q. Can I ask you what those circumstances are?

14 A. Rape.

15 MR. KULP: I am not sure that -- I am not sure
16 that is a proper line of inquiry.

17 THE COURT: Would you please rephrase the
18 question? Maybe you could give an example or
19 something. I am not sure that -- (pause).

20 EXAMINATION CONTINUED

21 BY MR. MURDAUGH:

22 Q. From my understanding, you would be more inclined
23 to give life imprisonment than the death penalty
24 although you could give the death penalty?

25 A. Yeah, I could. I mean, under certain

1 circumstances. Yeah.

2 Q. If it were a bad, bad crime?

3 A. Maybe it depends on who it is, too. I mean, for
4 certain with the death penalty -- I am just not for the
5 death penalty. Like if it was some of my people that
6 it happened to, maybe I could give the penalty or
7 something like that.

8 Q. If someone killed one of your family you'd give
9 the death penalty?

10 A. I mean -- it would mean ---

11 Q. But if they killed one of mine, you wouldn't?

12 A. Well, I guess it'd depend on how they killed them,
13 it'd depend on the circumstances.

14 Q. I'm just cutting the fool with you. Please
15 understand that.

16 A. I don't want to be somebody that takes somebody's
17 life, you know.

18 Q. In other words, if they didn't kill one of your
19 family you wouldn't give them the death penalty?

20 A. I mean some kind of really brutal killing, like a
21 child of something like that, maybe I could see it. I
22 don't know. I just don't too much care for the death
23 penalty.

24 MR. MURDAUGH: I have no further questions.

25 EXAMINATION

1 BY MR. KULP:

2 Q. Ms. Williams, good afternoon. My name is Tim Kulp
3 and this is my co-counsel, Cory Fleming. We represent
4 the accused young man in this case.

5 Is what you were trying to say here in this
6 setting of a courtroom that you don't know anything
7 about this case right now?

8 A. (Affirmative nod), no.

9 Q. Nothing?

10 A. Nothing.

11 Q. And you are saying -- when you kept saying that it
12 depended on the circumstances, your decision in the
13 case would be based on the evidence in the case?

14 A. Yeah.

15 Q. And how you concluded that it was believable, not
16 believable, what weight that you gave it, you'd
17 deliberate over it?

18 A. Yeah.

19 Q. Now, you understand, as well, that there are two
20 parts to this case?

21 A. Um-humm.

22 Q. The first part is for a jury to determine if the
23 accusation are proven under the standard that the State
24 has to prove, it must be beyond a reasonable doubt.

25 And very much if a jury concluded that that proof

1 failed and their verdict was "not guilty", then the
2 jury would never get to that other phase. Do you
3 understand that?

4 A. Yeah.

5 MR. KULP: Thank you.

6 MR. MURDAUGH: No further questions.

7 THE COURT: Ms. Williams, would you just step
8 outside the door for just a second and I will discuss
9 it with the attorneys.

10 POTENTIAL JUROR: Okay.

11 (POTENTIAL JUROR STEPS DOWN/EXITS COURTROOM)

12 THE COURT: What says the State?

13 MR. MURDAUGH: Well, I don't believe one word that
14 she said from the witness stand. So I think that she
15 said everything that is necessary to qualify.

16 THE COURT: I think that she is qualified, too.
17 I would have to agree with her that most murder cases
18 are not death penalty cases. And that's the gist of
19 what she said, but said that if it was bad enough that
20 she could give it. That, to mind, -- and it is obvious
21 that most murder cases are not death penalty cases.

22 MR. MURDAUGH: No question. I agree.

23 THE COURT: Do you'all agree that she is
24 qualified?

25 MR. KULP: We do, Your Honor.

1 THE COURT: Would you ask her to please step
2 back in?

3 (POTENTIAL JUROR RETURNS TO COURTROOM)

4 THE COURT: Ms. Williams, just walk down the
5 aisle here so that I can talk to you a second. You
6 don't have to come back up here (on the witness stand).
7 You are qualified, Ms. Williams.

8 We hope to start this case on Thursday morning at
9 9:30. If you will, please report back here. Bring
10 your bags for a good three nights in the motel under
11 sequestration.

12 Now that you're in the prequalified pool, you must
13 not discuss the case with anyone or allow anyone to
14 discuss the case with you. You, of course, can tell
15 your employment, your job or boss or whatever, you can
16 tell the members of your family that you may be
17 selected on this jury but you can't talk about the
18 facts or circumstances in it. It's just a case that
19 you may be serving on.

20 Anything else of this juror before she is excused?

21 POTENTIAL JUROR: You want me to come back
22 Thursday?

23 THE COURT: Come back Thursday.

24 POTENTIAL JUROR: Is this for the jury or just
25 to be selected on Thursday?

1 THE COURT: The final jury will be selected on
2 Thursday morning.

3 POTENTIAL JUROR: Okay. 9:00 o'clock. Thank
4 you.

5 THE COURT: 9:30 -- wait just a second.
6 Anything else?

7 MR. KULP: No, sir.

8 MR. MURDAUGH: Thank you.

9 THE COURT: I said 9:30, didn't I? I meant to
10 say 9:30. In other words, what we are doing, so that
11 you will understand is that we're trying to get a pool
12 and if we don't -- and if you do get to set on the
13 jury, we don't want to have to send you back down to
14 Hilton Head so bring your clothes. You may or may not
15 be on the jury, but bring your clothes as if you are.

16 POTENTIAL JUROR: Okay.

17 THE COURT: Hope you have a nice evening.

18 (POTENTIAL JUROR EXITS COURTROOM)

19 THE COURT: Bring in Michael Speir, please.
20 The last juror for today.

21 (POTENTIAL JUROR TAKES STAND)

22 MICHAEL SPEIR, being duly
23 sworn to tell the truth, the whole truth and nothing
24 but the truth, testified as follows:

25 EXAMINATION

1 BY THE COURT:

2 Q. Mr. Speir, first off, had you made any requests or
3 are you available for jury service this week?

4 A. No, sir, I am not. I am currently working on the
5 Beaufort Air Station. I am a Staff Sargent over there,
6 in MWS270-273. Right now with the circumstances going
7 on, my unit has been on alert since September 11th.
8 So for right now -- I'd be interested, but you never
9 know. I could be called to duty. My unit right now is
10 planning on deploying over to California anyway, I was
11 on that detachment. Right now, I don't know. I could
12 get the word that I'm leaving whenever, and I'd hate to
13 fold and disrupt the court.

14 Q. Well, we would have alternates and all that it
15 would not -- if you get called, you know, we would have
16 arrangements made that would take care of that
17 contingency. Would that take care of your problem?

18 A. Right now, I don't have the permission of my unit.
19 I'd have to call and request leave to do that.

20 Q. If you ---

21 A. Have I let my people know? Yes, sir, I have let
22 them know. But as for everybody's thinking, the way
23 things are going, I probably wouldn't be -- I'd have to
24 call them and request leave to do this.

25 Q. It is not necessary yet because you have not --

1 this is a preselection pool. On Thursday the final
2 jury will be drawn.

3 A. All right.

4 Q. It sounds like to me -- and, of course, at that
5 time you'd probably have a better idea about whether or
6 not you ---

7 A. Yes, sir.

8 Q. So I want to go ahead and qualify you. If your
9 situation should change, then we -- we'll assume at
10 this stage that it is going to work out okay.

11 A. All right, sir.

12 Q. But if something should come up, obviously with
13 the situation in Afghanistan and all, we will have that
14 taken care of if it should arise. Any objection to
15 that?

16 A. (No verbal response).

17 Q. Mr. Speir, have you read this pretrial
18 questionnaire that talks ---

19 A. Yes, sir, I have.

20 Q. --- about the three types of jurors and so forth?

21 A. Yes, sir.

22 Q. And the three types, of course, are that -- of
23 course, not to prejudge whether the Defendant in this
24 case would be convicted or not but assuming for the
25 purposes of this question if he was found guilty of

1 murder, then in the second or bifurcated part of the
2 trial the sentence for murder is either life
3 imprisonment or the death penalty.

4 Do you have an opinion as to if a person has been
5 convicted or found to be guilty of the murder what sort
6 of juror that you would be, as to what type of
7 punishment that you think that the defendant should
8 receive?

9 A. The kind of juror that I would be, sir, I would
10 need the facts, I would need the facts. And in looking
11 at the individual himself, how he is, what has happened
12 in his past resulting into the problem that has
13 happened now, that is how I would kind of look at this
14 individual. Then as we see the world, the kind of
15 person that I am, too, if a person is just outright
16 evil, then whatever is decided, then I am all for it.

17 THE COURT: Solicitor Murdaugh?

18 EXAMINATION

19 BY MR. MURDAUGH:

20 Q. How are you doing?

21 A. Fine, sir. How are you doing?

22 Q. I am Randolph Murdaugh. I am your Solicitor and
23 Prosecutor for the State of South Carolina. I need to
24 ask you some questions to find out whether we want you
25 on the jury or not.

1 A. Yes, sir.

2 Q. What I just heard you say is that if you had found
3 him guilty in the guilt part of the trial, a two-part
4 trial, ---

5 A. Yes, sir.

6 Q. That if you had found him guilty that you could
7 consider the death penalty or life imprisonment
8 depending on the character of the defendant, the
9 circumstances of the crime?

10 A. Yes, sir.

11 Q. And you would listen to all of those things plus
12 any mitigating circumstances that they may have.
13 Mitigating circumstances being those reason why they
14 shouldn't give him the death penalty?

15 A. Yes, sir.

16 Q. You are not wed to the death penalty or to life
17 imprisonment, or is that a miscorrect statement?

18 A. Repeat it for me.

19 Q. I say you are not wed, that you could do either
20 or?

21 A. Yes, sir, I could do either one.

22 Q. One as easy as the other?

23 A. Yes, sir.

24 Q. What do you do in the Marine Corps?

25 A. I am in Motor Transport, sir.

1 Q. Okay. So you're the fellow that is going to take
2 our people up to the front lines?

3 A. Supplies and all, yes, sir.

4 THE COURT: Any questions?

5 MR. KULP: Yes, Your Honor.

6 EXAMINATION

7 BY MR. KULP:

8 Q. Mr. Speir, my name is Tim Kulp. Along with Mr.
9 Fleming, we represent the accused young man in this
10 case.

11 A. Yes, sir.

12 Q. Do I understand it correctly that you are on
13 active duty status?

14 A. Yes, sir.

15 Q. With the United States Marine Corps?

16 A. Yes, sir.

17 Q. Do you have a beeper?

18 A. Do I have a beeper? No, sir.

19 Q. But your Command knows where you are?

20 A. Yes, sir.

21 Q. And you could get a phone call at any time and be
22 ordered to ---

23 A. Yes, sir, if ---

24 Q. You could be ordered to leave immediately?

25 A. Yes, sir.

1 Q. You might have to leave within an hour?

2 A. No, sir, it would probably take about a day but we
3 have been, since September 11th, preparing to do.

4 Q. Now, you testified that if a person -- and correct
5 me if I am wrong, I just had to write as you were
6 talking -- listening and writing at the same time.

7 That "if a person is outright evil, I'm all for it."

8 My question is, by "all for it" you mean all for the
9 death penalty?

10 A. Yes, sir.

11 Q. So is it the case that your answer is that if in
12 your deliberation and in your consideration of the
13 information in the case at the second penalty phase
14 that if you, Mr. Speir, concluded that what happened in
15 the case or that the person in the case was evil, then
16 you would automatically, by virtue of what you
17 testified to a minute ago, impose the death penalty?

18 A. Yes, sir.

19 MR. KULP: Thank you, sir.

20 THE COURT: Anything further?

21 MR. MURDAUGH: You're going to listen to the
22 testimony to determine whether or not he is evil?

23 POTENTIAL JUROR: I will listen to all the
24 facts, sir.

25 MR. MURDAUGH: Thank you, sir.

1 THE COURT: Well, when you say that you'd
2 listen to all the facts, I presume that you'd -- do you
3 mean the facts as to both the crime, the character of
4 what happened, everything?

5 POTENTIAL JUROR: Yes, sir.

6 THE COURT: And make your decision after
7 listening to all the ---

8 POTENTIAL JUROR: What was the reason for it;
9 the person on trial, what has happened to him in his
10 past; basically describing what type of person that he
11 is, what he has been through in his life resulting into
12 what has happened to him today. With all the facts
13 given to me, I will look at that.

14 THE COURT: The reason that I asked you that, I
15 just wanted to -- because -- so I take it from that
16 answer that -- are you saying, and I am not trying to
17 lead you or anything, but are you saying that you'd
18 listen to all the facts and not just the narrow
19 question of whether the person was evil or not? You'd
20 listen to the whole circumstances of the entire case?

21 POTENTIAL JUROR: Yes, sir.

22 THE COURT: Anything else?

23 MR. KULP: May it please the Court, in
24 response to those questions, have you ever served as a
25 member on a court martial?

1 POTENTIAL JUROR: No, sir. Yes, sir, I have.

2 Excuse me, I sure have.

3 MR. KULP: Was that here or some other duty

4 assignment?

5 POTENTIAL JUROR: It was at Parris Island.

6 MR. KULP: What was the offense you heard?

7 POTENTIAL JUROR: It was an offense on Parris

8 Island of a Drill Instructor for abuse.

9 MR. KULP: What is evil?

10 POTENTIAL JUROR: Describe to you what is evil?

11 MR. KULP: Yes, sir.

12 POTENTIAL JUROR: Someone that basically has

13 lost all his morals and all his ethics.

14 MR. KULP: I'm sorry? Morals and ---

15 POTENTIAL JUROR: All his ethics. Yes, sir.

16 MR. KULP: Ethics?

17 POTENTIAL JUROR: (Affirmative nod).

18 MR. KULP: If you got, as a potential juror,

19 to the point in the penalty phase, the second part of

20 the case, and you concluded that there were some

21 mitigating circumstances pertaining to, as you said,

22 the background or looking into some the past but at the

23 same time you also concluded that the person was evil,

24 isn't it true, based on your testimony, that you would

25 automatically find that the death penalty should be

1 imposed? --

2 POTENTIAL JUROR: Sir, I'd have to hear the
3 whole story to make -- to jump to that decision.

4 MR. KULP: But if after hearing the whole
5 story you concluded, as you defined on the witness
6 stand here today under oath, that that person was
7 "evil", you testified, and isn't it the case, that you
8 would automatically vote for the death penalty?

9 POTENTIAL JUROR: No, sir.

10 MR. KULP: All right. Thank you.

11 MR. MURDAUGH: No further questions.

12 THE COURT: Any discussion on this juror?

13 MR. MURDAUGH: Not from the State, sir.

14 MR. KULP: I think that there would, Your
15 Honor.

16 THE COURT: Mr. Speir, if you would, please
17 retire outside so that we can discuss it and we will be
18 right back to you.

19 (POTENTIAL JUROR STEPS DOWN/EXITS COURTROOM)

20 THE COURT: Solicitor, I am going to return
21 your indictments to you.

22 MR. MURDAUGH: Thank you, sir.

23 THE COURT: Okay, you wish to be heard?

24 MR. KULP: Yes, Your Honor, may it please the
25 court. I think that this juror, potential candidate,

1 is certainly impressive. He is a fine young man
2 serving our country, in time of need or otherwise. But
3 there are some concerns that I have about his ability
4 to be fair and impartial.

5 The person who injected the notion of "evil" into
6 the colloquy as something that would be a factor in
7 making a determination as to the appropriate punishment
8 was the juror himself. The witness/juror.

9 You know, regardless of his later answers, Your
10 Honor, ---

11 THE COURT: That is somewhat what "malice
12 aforethought" is, isn't it?

13 MR. KULP: No, I -- I -- (pause). Right now,
14 I think there is a fairly easy definition of what
15 "evil" is. I think we'll never know exactly what this
16 particular juror feels "evil" to be.

17 Your Honor, I think that while he says that he
18 could do either way, he -- right out of the chute --
19 said, "If I make the determination that he is evil,
20 then I am all for it."

21 THE COURT: Well, I think that you have to --
22 people have a preconceived notion about the whole
23 thing. Of course, different people have different
24 levels of knowledge about the criminal laws, too.

25 So by asking the witnesses, to my mind he is a

1 very thoughtful person and he very clearly, based on
2 the totality of his answers, said that he would
3 consider all the facts and circumstances of the case.
4 Based on that, I feel that he is qualified.

5 I do think and agree with you, and that's the
6 reason that I asked the followup question to try to
7 clarify it, that he was going to base it solely on
8 whether or not the "evilness", and I use that word in
9 quotes because that is what he used, of the perpetrator
10 -- and that would not be the law. That would be
11 incorrect and he couldn't do that. He wouldn't be
12 qualified under that.

13 Based on all the answers, I think that he is a
14 well qualified jury.

15 MR. KULP: For the record, Your Honor, we
16 would respectfully note our exception to your ruling.

17 We would make an additional argument that I think
18 that he in a unique circumstance as an active member of
19 the military. At first I thought that he was a member
20 of the Reserves, and that's the reason why we asked
21 that question.

22 I think that while we have a large number of
23 jurors to go through, and while we certainly didn't get
24 as many today as we thought that we could, and that
25 while we could replace him with an alternate it seems

1 to be that as -- whether it is as long as day, much less
2 an hour, that under the circumstances that exists that
3 -- he seems very honest and seems very committed to the
4 fact that he could be pulled in a day.

5 THE COURT: Or that he could not be?

6 MR. KULP: Right. And I think also -- and I
7 didn't ask me about this -- but he did say that he
8 could -- that he was put on notice to be ready.

9 THE COURT: I bet there's not ten percent of
10 the active duty military personnel worldwide of the
11 United States forces that haven't been put on notice of
12 some sort.

13 MR. MURDAUGH: And they're all in the Pentagon.

14 MR. KULP: Thank you, Your Honor.

15 THE COURT: I find that he is qualified.
16 Anything that you want to say, Solicitor, for the
17 record?

18 MR. MURDAUGH: No, sir. Just that under *State v.*
19 *Gilbert Gleaton*, it says that the trial judge may
20 consider the entire colloquy with the voir dire in
21 order to determine qualification. And his entire
22 answers, taken in view, just happens to be that he
23 qualifies.

24 THE COURT: And, plus, I don't think that that
25 sort of question -- people will make a quick answer and

1 then you have to ask a couple other questions. That's
2 the whole purpose, to determine just exactly what -- it
3 goes both ways, those for the death penalty and those
4 against it. Then you can -- I think normally that you
5 can discern what they really feel as opposed to that
6 first answer that they give anyway. I've noticed that
7 so far.

8 Please show Mr. Speir back in, please.

9 (POTENTIAL JUROR RETURNS TO COURTROOM)

10 THE COURT: Mr. Speir, of course we'll evaluate
11 your situation based on what happens but I find that
12 you are qualified. You are in the pool. If something
13 should transpire to change your availability, if you
14 would please contact the number at the Clerk's Office.

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: Assuming nothing does, please
17 report back here at 9:30 on Thursday morning.

18 POTENTIAL JUROR: All right.

19 THE COURT: The jury for the case will be drawn
20 at that time. If there any change, we will be in touch
21 with you by telephone.

22 Now that you're in this prequalification pool, you
23 must not discuss the case with anyone -- I mean the
24 facts of the case, not the fact that you may be drawn
25 on a jury, that sort of thing in general.

1 Solicitor, do you have something?

2 MR. MURDAUGH: Yes, be prepared to stay three or
3 four nights.

4 THE COURT: Yeah, that's right. Bring your
5 clothes because there will be sequestration for at
6 least three nights.

7 POTENTIAL JUROR: All right..

8 THE COURT: And if -- and I tell you, do not
9 allow yourself to be exposed to anything on TV or in
10 the newspapers about the case. As I told you earlier,
11 don't discuss the case with anyone or allow anyone to
12 discuss the case with you.

13 POTENTIAL JUROR: Yes, sir.

14 THE COURT: With that, I hope that you have a
15 nice evening and we will see you Thursday.

16 POTENTIAL JUROR: Yes, sir.

17 (POTENTIAL JUROR EXITS).

18 THE COURT: We got five. We started real slow
19 and then we came back a little bit, sort of like the
20 stock market.

21 For the record, juror one is Joseph Stonebraker;
22 two is Lucille Morrison; three is Clyletha Williams;
23 and four is Michael Speir.

24 Patricia Williams, the first one that we selected
25 of course will be inserted in her proper place on ---

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

1 MR. MURDAUGH: That would be No. 65.

2 THE COURT: Well, she would be in the qualified
3 list wherever she falls, -- that is No. 65 ---

4 MR. MURDAUGH: When you number the original list,
5 she would be the sixty-fifth name drawn.

6 THE COURT: Okay, so she will take her place in
7 the spot that she falls.

8 MR. KULP: Yes, or less.

9 MR. MURDAUGH: No, she will be the sixty-fifth
10 juror that was drawn.

11 THE COURT: Yes, but obviously she is not going
12 to be the sixty-fifth one because she is not --
13 hopefully she is something like thirty-five.

14 MR. MURDAUGH: Yes, sir.

15 MR. KULP: True.

16 THE COURT: Is there anything else that we need
17 to take up today?

18 MR. MURDAUGH: No, sir.

19 THE COURT: Anything else from the Defense?

20 MR. KULP: Your Honor, I appreciate your
21 caution to the prospective jurors as they were leaving.
22 However, now that we have gone one day, I would move
23 the Court to ask the members of these little panels as
24 they come up, to ask them if you would as one of the
25 first topics if they have seen anything, been exposed

1 to anything ---

2 THE COURT: I have already asked them that.

3 MR. KULP: The ones coming tomorrow.

4 MR. MURDAUGH: If they saw anything overnight.

5 MR. KULP: Right, just to be sure that they
6 are still pristine and -- yes, sir.

7 MR. MURDAUGH: I think that's proper.

8 THE COURT: Okay. I didn't understand what --
9 yes, I will do that.

10 MR. KULP: I will try to draw that to your
11 attention first thing in the morning.

12 THE COURT: Now that we have had some -- as I
13 say, if you'all have any questions that you want me to
14 ask, I am pretty well open on this. This is something
15 -- I don't want to intrude too much.

16 MR. MURDAUGH: I think that it going about as
17 smooth as it can go, myself.

18 THE COURT: I don't believe that we could do it
19 much faster.

20 MR. KULP: One other thing that I may ---

21 THE COURT: Does this need to be on the record?

22 MR. KULP: No, sir.

23 THE COURT: Okay, we are off the record.

24 (COURT IN RECESS @ 6:10 P.M.)

25 (TRANSCRIPT CONTINUED NEXT PAGE)

**THIS PAGE INTENTIONALLY
LEFT BLANK**

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	99-GS-07-221 thru 222
	)	99-GS-07-281 thru 288
TAVARUS ROGERS	)	
	)	
Defendant.	)	

JURY TRIAL

OCTOBER 9, 2001 - Volume 2 of 7 Volumes

The within Jury Trial was held before the Honorable Jackson V. Gregory, on October 8-16, 2001, in Courtroom No. 1 of the Beaufort Government Center, Beaufort, South Carolina; attended by counsel, as follows:

Randolph Murdaugh, Solicitor
 Steven Knight, Deputy Solicitor
 Angie McCall, Deputy Solicitor
 Appearing for State of South Carolina

Cory H. Fleming, Esq.
 MOSS & KUHN, P.A.
 Post Office Drawer 507
 Beaufort, South Carolina 29901-0507

-and-

Timothy Clay Kulp, Esq.
 RIESEN LAW FIRM
 3660 West Montague Avenue
 North Charleston, South Carolina 29418
 Appearing for Defendant

DEBORAH GARRISON

Circuit Court Reporter - 9th Judicial Circuit

Post Office Box 901

Johns Island, South Carolina 29457

(843) 768-1438

www.CourtReporting@aol.com

1 OCTOBER 9, 2001

9:00 A.M.

2 THE COURT: Good morning. Please bring Mr.
3 Rogers in.

4 (DEFENDANT PRESENT)

5 THE COURT: I understand that Mr. Kulp is not
6 here. Did he go all the way back to Charleston?

7 MR. FLEMING: No, sir, he is here in town.
8 What we believe happened is we told those 9:30 jurors
9 to come back at 9:30 and I think that there was a
10 misunderstanding about that. We've called him and I
11 believe that he is on his way.

12 THE COURT: Okay. A couple of preliminary
13 matters. There were some panels that we did not put on
14 notice -- I've forgotten exactly how many, but anyway
15 we've added what would take us through 3:30, actually
16 it would be 4:40, on Thursday.

17 My thinking is, based on the number, that we ought
18 to start calling those. Let's check it out until noon
19 today but I'm getting ready to go ahead and call those
20 and put them on notice for Thursday. I've been
21 thinking and I don't believe that we can do them any
22 faster. Like Ms. Player, we didn't even do her.

23 From what I understand, we are doing them just
24 about as fast as we can do them. But I believe that
25 we are going to need to go through all the jurors.

1 And it'll be very easy to call back the other jurors to
2 come in on Thursday. We wouldn't need to call them
3 until tomorrow actually. What do you'all think about
4 that?

5 MR. FLEMING: Yes, sir, Judge.

6 MR. MURDAUGH: If we have to work a little longer,
7 we will just do it.

8 THE COURT: Right. Is there anything else --
9 oh, yeah, one other thing. I presume that -- we
10 haven't got there yet, but we were taking down -- not
11 "we" but Gloria and Martha were both taking down when
12 somebody would stand up and say that they had read
13 something about it in the paper or something. We
14 haven't gotten to any of those yet and I wasn't
15 questioning any of them about that. I have the ---

16 MR. MURDAUGH: There were two, I believe, sir.

17 THE COURT: Well, we've got -- they're coming
18 up in Panel 5, both of them had read something about it
19 in the paper. Let me just quickly go through these
20 things, if you want to.

21 MR. MURDAUGH: Yes, sir. I don't want to act like
22 a defense attorney but I read an article in the paper
23 this morning, I think that it might be wise if you'd
24 even ask them if they read -- I think that it was in
25 the Beaufort Gazette.

1 MR. FLEMING: My paralegal is pointing it out to
2 me -- right now, I don't have the paper, but I did read
3 the article.

4 THE COURT: I saw it.

5 MR. FLEMING: It contained information that will
6 not be in this case. It's highly problematic, to say
7 the least, concerning ---

8 MR. MURDAUGH: I just think that we ought to think
9 twice.

10 MR. FLEMING: Yes, sir, we need to be very
11 diligent in our questioning of these witnesses.

12 THE COURT: Do you'all want me to inquire about
13 if they read it?

14 MR. MURDAUGH: Yes, sir. I say that it would
15 probably be wise for your questioning, 'Did you read
16 the newspaper or watch television?' I don't think that
17 there was anything on television, but ---

18 THE COURT: Well, let me ask you this.

19 MR. MURDAUGH: Yes, sir?

20 THE COURT: How specific do you want me to be?
21 I've asked that already. 'Since I questioned you
22 yesterday, have you read anything or heard anything?'
23 as opposed to, 'Did you read the article in the Gazette
24 today?'

25 MR. MURDAUGH: If you could. Like I say, I ain't

1 trying to tend to your business but ---

2 THE COURT: I want to do what you all want to
3 do.

4 MR. FLEMING: My question would be, 'Did you in
5 any way look at the *Beaufort Gazette*, did you talk to
6 anybody about the *Beaufort Gazette*?' Not specifically
7 referring to whether or not there is even an article in
8 there.

9 MR. MURDAUGH: Or any other newspaper that
10 contained information about this trial.

11 MR. FLEMING: Yeah. Newspaper, period.

12 THE COURT: So you want me to ask specifically
13 about the *Beaufort Gazette*?

14 MR. FLEMING: Yes, sir. And then when we bring
15 the entire panel back again to be qualified, we will
16 again ask them. I don't know that there is any other
17 way that we can inquire.

18 And, Your Honor, when we get those newspapers..
19 If we may make them an exhibit, a Court's Exhibit,
20 and also make an exhibit the prior newspaper ---

21 THE COURT: Well, if it is not in today's paper
22 tomorrow it will probably be in the *Savannah Morning*
23 *News* and the *Carolina News*, which is Savannah, and the
24 *Hilton Head Island Packet*.

25 MR. FLEMING: Yes, sir, they typically do that.

1 THE COURT: Okay. I presume -- do you want to
2 wait on Mr. Kulp?

3 MR. FLEMING: Before we proceed with any of the
4 panels, yes, sir.

5 THE COURT: All right.

6 MR. FLEMING: Your Honor, I have a couple of
7 matters that I want to bring to the Court's attention,
8 not related to the jury, but which are timely and I
9 wanted to bring to the Court's attention because it
10 may affect the way that we proceed in this trial. It
11 may affect the outcome of the case.

12 The Solicitor, as you have seen, has listed
13 several SLED agents from the laboratory as witnesses in
14 this case. He has previously informed me, and we
15 appreciate that, that he only intends, most likely, to
16 only call one SLED agent; who, of course, will be here.
17 And he informed me if we needed them in any way to send
18 them subpoenas. So we contacted their office and have
19 served them subpoenas.

20 The two particular ones that are a problem are
21 Lisa Kiser and Ira Jeffcoat. Both of them appear as
22 SLED forensic experts involved in this case. They
23 inform me that they are leaving town Wednesday'ish,
24 possibly Thursday morning, and will not be available.

25 That's all well and good, but I have not released

1 them from their subpoena. I have, however, told them
2 that we are not certain that we are going to call them
3 but ---

4 THE COURT: Ira Jeffcoat and who?

5 MR. FLEMING: Lisa Kiser.

6 THE COURT: Okay.

7 MR. FLEMING: Are the two that we have been
8 informed of as of now.

9 THE COURT: They are leaving town?

10 MR. FLEMING: They are leaving town on various
11 conferences. And I have informed them, 'please go to
12 your conference, but you must be back if we need you
13 and SLED needs to put you on a plane to get you back.'
14 This is a professional courtesy but I do not want them
15 to use that against me and say, 'you let us go.' I
16 told them that 'as long as you' -- and I have informed
17 the Solicitor of it, 'as long as you can be back' ---

18 THE COURT: What do you want me to do? If you
19 have subpoenaed them, they are going to have to be here
20 or they are going to have to go to jail. I mean, even
21 though they're SLED agents they can't mess up this
22 trial.

23 MR. FLEMING: Yes, sir. And my problem, of
24 course, is that I don't want to be sitting here Friday
25 or Saturday morning with the jury sequestered and no

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

189

1 witness on an issue that obviously we feel is important
2 for the jury to hear.

3 THE COURT: Well, you ---

4 MR. FLEMING: And I wonder what we are going to
5 do if that happened. If they were in Las Vegas or, as
6 I said, wherever they are supposed to be, and they
7 don't show back up -- you know, obviously I don't want
8 to burden the jury to have to sit two extra days in
9 sequestration without hearing anything while these
10 witnesses are waiting to return to South Carolina.

11 THE COURT: Well, I am not going to put up with
12 that either. What are you asking me to do?

13 MR. FLEMING: Well, I don't know that I can ask
14 you anything other than to tell the Court that ---

15 THE COURT: What you can do is call them and
16 tell them that I have said that they must be here.
17 Right now they must be here on Friday. It appears that
18 it is actually more likely going to be Saturday before
19 -- I don't know how long your case -- whether this is
20 called -- which case they are to be called in, the
21 guilt phase or the penalty phase, whatever. I have no
22 idea about any of that.

23 MR. FLEMING: Yes, sir.

24 THE COURT: But all that I can say is that the
25 way we're going, and I think that we will know this

1 afternoon whether we are going to start testimony in
2 this case on Thursday or Friday.

3 Unless we start having better luck with the
4 qualifications, it is very likely that we will start
5 the case on Friday.

6 MR. FLEMING: Yes, sir.

7 THE COURT: What do you say, Solicitor?

8 MR. MURDAUGH: I think that's correct, sir.

9 THE COURT: And, now, -- so all I can tell you
10 is that I would not tell them anything that would give
11 them the impression that they have been released from
12 the subpoenas unless you intend them to be released
13 from it.

14 MR. FLEMING: And I have not, sir.

15 THE COURT: I am not particularly concerned
16 about their schedule except as to how it relates to
17 this case.

18 MR. FLEMING: With regard to the previous matter
19 that we took up concerning the article that appeared in
20 the local *Beaufort Gazette*, this is a -- we've cut out
21 a copy of that article, in lieu of giving the entire
22 newspaper. May we make it a Court's Exhibit?

23 THE COURT: Certainly.

24 COURT REPORTER: It will be Court's Exhibit 2.

25 (SO ENTERED AS COURT'S EXHIBIT 2)

1 THE COURT: Did you put the page or the place
2 where that was in the paper, because it was way back in
3 there on page seven or eight or something; wasn't it?

4 MR. FLEMING: Yes, sir. It is Page 5. It says
5 it on the top line.

6 (MR. KULP ARRIVES IN COURTROOM)

7 THE COURT: That was in the October 9th edition
8 of the *Beaufort Gazette*.

9 MR. FLEMING: Yes, Your Honor.

10 THE COURT: Are we ready to proceed? Mr.
11 Kulp, you said that you had some questions that you
12 wanted me to inquire of the jurors. Did you get those
13 prepared for me?

14 MR. KULP: I did, and the Solicitor is looking
15 over them right now, Your Honor.

16 THE COURT: That looks awful lengthy.

17 MR. KULP: Well, it is just spaced big.

18 MR. MURDAUGH: It is pretty lengthy, too.

19 THE COURT: Well, I might shorten them up a
20 bit.

21 MR. KULP: I figured that you would pick and
22 choose, Your Honor.

23 THE COURT: Are we ready for the next person?

24 MR. KULP: Yes, sir.

25 THE COURT: Of course, I will ask them if

1 they've read the Beaufort Gazette or any other media or
2 seen anything about the case.

3 MR. KULP: Yes, sir, Your Honor.

4 THE COURT: The first juror is Leonard Kieny,
5 Juror No. 183, from Panel 4. Would you bring him in?

6 (POTENTIAL JUROR TAKES STAND)

7 LEONARD KIENY, being duly
8 sworn to tell the truth, the whole truth and nothing
9 but the truth, testified as follows:

10 EXAMINATION

11 BY THE COURT:

12 Q. Good morning, sir.

13 A. Good morning.

14 Q. I will first ask you a couple of questions and
15 then I will turn you over to the lawyers. I would
16 remind you, sir, that you are still under oath from
17 yesterday.

18 A. Okay.

19 Q. First of all, since you were in here yesterday
20 have you seen any media coverage about the case, such
21 as the Gazette or any other newspaper?

22 A. No, I avoided that.

23 Q. Have you discussed the case in any way with
24 anyone?

25 A. No.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

193

1 Q. Have you discussed anything with any of your
2 fellow jurors or heard anything about the case at all?

3 A. No.

4 Q. Did you read the pretrial questionnaire that was
5 in the jury room?

6 A. Yes, sir.

7 Q. So you understand from that there are, in a death
8 penalty case, basically three types of jurors: the
9 first as listed on that feels that in a murder case
10 that the death penalty is the only appropriate
11 punishment; the second type could under no
12 circumstances in a murder case given the death penalty;
13 and then the third type of juror is one who would
14 consider all the facts of the case and the law and then
15 make a decision as to whether they felt a life sentence
16 or a death penalty was most appropriate.

17 Do you have an opinion as to which one of those
18 categories that you fall in?

19 A. I lean strongly to number one, the first juror.

20 Q. Okay. That any time that there has been a murder
21 that the death penalty is the only appropriate penalty?

22 A. I have leanings towards that, yes. One case is
23 absolute. But I do lean that way.

24 Q. You do lean that way?

25 A. Yes.

1 Q. So are you -- would you -- are you so certain of
2 that that you would not listen to the law and consider
3 -- and under our law there are certain things that are
4 within the statute that are designated aggravating
5 circumstances and then there are certain things that
6 are designated as mitigating circumstances. Under our
7 statutory law, a juror can consider all these different
8 things, keep an open mind, listen to the witnesses,
9 listen to the arguments of counsel, and then decide
10 whether or not a death penalty is appropriate in a
11 particular case.

12 A. It would be hard for me to control my objectivity.

13 THE COURT: Solicitor, any questions?

14 MR. MURDAUGH: Yes, sir.

15 EXAMINATION

16 BY MR. MURDAUGH:

17 Q. Mr. Kieny, how are you doing?

18 A. Fine.

19 Q. I am Randolph Murdaugh. I am the Prosecutor for
20 the State of South Carolina, the Solicitor in this
21 Circuit. I need to ask you some questions, quite
22 frankly to find out whether we want you to serve on
23 this jury or not. And I want you to understand that
24 there are no right or wrong answers. We just need to
25 know as much about you as we can find out.

1 A. I understand.

2 Q. As His Honor told you, generally there are three
3 kinds of jurors. You tell the judge that you have
4 strong leanings towards the death penalty.

5 A. Yes, sir.

6 Q. Okay, sir. The law provides that in this kind of
7 case that it a two-part trial. The first part would
8 deal only with guilt or innocence of murder; that is
9 the felonious killing of another person with malice
10 aforethought.

11 If you find the defendant guilty in the first
12 part, you then would go to the second part of the
13 bifurcated or two-part trial, in which you determine
14 what sentence that the defendant should receive: either
15 life imprisonment or the death penalty.

16 The law provides that before you can consider the
17 death penalty that you have to make an affirmative
18 finding that there is a thing called an aggravating
19 circumstances, and that will be explained to you in
20 more detail later. But that has to have happened, you
21 have to find that aggravating circumstance.

22 Then you consider testimony about the character of
23 the defendant and the circumstances of the crime
24 itself. You also have to considering things called
25 mitigating circumstances, that is reasons why he should

1 not be electrocuted.

2 While you tell me that you have strong leanings
3 towards the death penalty, would you consider all of
4 those things in make your determination as to what
5 sentence should be given to the defendant?

6 A. I would like to tell you 'absolutely yes', but I
7 am not so sure in my heart that I would consider
8 everything.

9 Q. Are you telling me that you just would not listen
10 to what the judge said that you would have to do if you
11 sat on this jury, or are you telling me that it would
12 be hard to consider it? There is a difference.

13 A. It would be hard to consider it.

14 Q. But would you consider them? It doesn't mean --
15 by way of example, when you're hearing these mitigating
16 circumstances, it doesn't mean that you have to do
17 that. It means that you have to consider them and that
18 if you believe the mitigating circumstances, then you
19 would have to give him life imprisonment.

20 On the other hand, you would have to listen to the
21 character of the defendant, the circumstances of the
22 crime, whether or not there is an aggravating
23 circumstance and if you felt it you could give him the
24 death penalty.

25 What I am asking you is, would you consider all of

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

1 those things before you did what you did?

2 A. I would really have to work on it but probably I
3 would.

4 Q. And if you thought that the crime was appropriate,
5 could you give the death penalty?

6 A. Yes, sir.

7 Q. I note that you are Catholic. I have heard the
8 Bishop talking about his opposition to the death
9 penalty. Does that relate to you, sir?

10 A. We have our differences of opinion.

11 Q. Okay, sir. If you felt that this was not an
12 appropriate case, after listening to those mitigating
13 circumstances, and the case that the State put up,
14 would you find life imprisonment?

15 A. Yes, I would.

16 Q. Okay, sir. I notice that you are 62? You're
17 eight months older than I am, by the way. I notice
18 that you're still playing softball?

19 A. Three times a week, sir.

20 Q. Are you on one of the seniors league?

21 A. Yes, sir.

22 Q. I want to talk to you before you leave, sir.

23 MR. MURDAUGH: Thank you, I have no further
24 questions.

25 MR. KULP: May it please the Court.

1 THE COURT: Mr. Kulp.

2 EXAMINATION

3 BY MR. KULP:

4 Q. Good morning. My name is Tim Kulp. My co-
5 counsel, Mr. Fleming, and I are the lawyers for the
6 accused in this case, Mr. Rogers.

7 One of the things that I would like to tell you
8 that I think you're very well aware of is that nothing
9 at this stage of this proceeding could be more
10 important than your candor and frankness with the Court
11 about these issues. It's very critical, important.

12 In that regard, I want to ask you a few questions
13 about these issues and I appreciate you answering them
14 and your attention. It seems from your answers that
15 you have extremely strong feelings about these issues
16 and about the death penalty.

17 A. I do, sir.

18 Q. And your first response was that "It would be hard
19 for me to control my objectivity."

20 A. Right.

21 Q. Now, you said that to the court in advance of
22 hearing anything about this case, any of the facts or
23 circumstances, whatever, because that is the way that
24 you feel.

25 A. That's the way that I feel.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

199

1 Q. And that's the way that you feel in your heart?

2 A. Yes.

3 Q. And you said, as well, 'I am not so sure in my
4 heart that I would consider everything.' And your
5 feelings are so strong, are they not, Mr. Kieny, that
6 you feel that even after hearing everything in the case
7 that because of your strong feelings about the death
8 penalty that you might very well make that decision
9 based upon your feelings?

10 A. I am biased in that regard, yes.

11 MR. KULP: Thank you, sir.

12 THE COURT: Anything else?

13 MR. MURDAUGH: No, sir, I have no further
14 questions.

15 THE COURT: Mr. Kieny, if you would, please
16 step outside and we will discuss your case and then
17 we'll get you back in here in just a moment.

18 (POTENTIAL JUROR STEPS DOWN/EXITS COURTROOM)

19 THE COURT: What do you say, Solicitor?

20 MR. MURDAUGH: Your Honor, I think that he is
21 qualified. The law says that people who are not death
22 penalty qualified as those who would never consider the
23 death penalty, those who would never consider life
24 imprisonment. He said that even though his feelings
25 leaned towards the death penalty that he would consider

1 everything and that he would be fair, even though his
2 leanings would be towards the death penalty. I just
3 think this is one that the defendant is going to have
4 to strike, sir.

5 And the purpose of this proceeding is not to take
6 off jurors that would be unfavorable to the defendant,
7 only those people who would never consider either one
8 or the other -- accept either one or the other.

9 MR. KULP: May it please, the Court, Your
10 Honor.

11 THE COURT: Mr. Kulp.

12 MR. KULP: Your Honor, we have grave concerns
13 about the objectivity of this juror in this regard and
14 under the standards which apply, which are
15 determination whether he would be substantially impair
16 by his predisposition. And there were some catch or
17 buzz or significant phrases and words that he said
18 during his testimony: "it would be hard", "not so
19 sure", "very strong feeling" and then that last word he
20 said, "bias". He said that, Your Honor, after I asked
21 him about consideration of all the elements. He said
22 that he could or would still be biased.

23 What I submit to you about this juror is something
24 that we haven't seen so far in the examinations of the
25 prospective jurors and that is an internal conflict.

1 His use of the word "heart" indicates that he is going
2 to have a serious problem regardless of any of the
3 issues involved not to give the death penalty if he in
4 fact finds that the defendant is guilty of murder.

5 His candor was extremely important and I think
6 that he told us just right out of the chute, his
7 response was, "It would be hard for me to control my
8 objectivity." I think that was his selection of that
9 word, "objectivity". That is -- this is -- that is
10 what this determination is all about, whether or not he
11 could put aside those predispositions and be fair and
12 impartial.

13 THE COURT: Let me ask you this. I am looking
14 at the cases and our line of decisions doesn't
15 necessarily seem to go straight down the middle, you
16 know. They seem to be -- I noticed that when they were
17 talking about qualifications of death prone jurors,
18 like *State v. James Caine*, (reading): "The trial judge
19 did not error in qualifying juror who stated that
20 mitigating circumstances of age and background would
21 make not difference to him when all other pertinent
22 questions were answered correctly."

23 MR. KULP: Your Honor, I think our courts have
24 recognized that there are really two standards. One is
25 the automatic answer, that's the easy one that we have

1 experienced so far, i.e. 'Yes, sir, in every case I
2 would give the death penalty.'

3 And over yonder we have those people who would
4 say, 'Well, yeah, I could give the death penalty and I
5 think that it is an appropriate circumstance' -- so
6 forth -- 'if I hear everything.' Which is, you know,
7 kind of between the one and three. At least, not
8 exactly ---

9 THE COURT: Basically what he seems to say is
10 that there might be some circumstances that would give
11 rise to it but he's pretty much prone to give the death
12 penalty. Is that what you're saying?

13 MR. KULP: Yes, sir, and I think that it is a
14 substantial impairment. I think that this juror is
15 impaired substantially, because of the specific reasons
16 that he gave: a predisposition, a moral "in his heart"
17 concern that that is the appropriate remedy if it is a
18 murder. And I think that puts on him a burden of
19 overcoming that impairment before he could be the kind
20 of juror that we think is best in this case, someone
21 who is completely fair and impartial about the death
22 penalty.

23 THE COURT: What do you think, Solicitor?

24 MR. MURDAUGH: If the reverse were said -- if
25 a juror gets up there and says, 'Look, I am opposed to

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

203

1 the death penalty but under -- but I would consider
2 everything and I could give the death penalty, that
3 would not disqualify him. Which is exactly what
4 they're asking to be on the other side, sir.

5 The question is can he consider everything and in
6 the proper case, irregardless of his leanings or his
7 thoughts, can he give either the death penalty or
8 either life imprisonment? And in this case, he said
9 that he could do that, sir, even though -- they give
10 them ten strikes, sir. And the reason that they give
11 them is because if it a bad juror, they can strike
12 them. What he said doesn't disqualify him, in my
13 opinion.

14 THE COURT: He never said that he could not
15 give life imprisonment in this case and that, in my
16 mind, is the *Richard Longworth* case.

17 MR. KULP: Judge, in the Solicitor's analogy,
18 I would suggest that the Court consider that his juror
19 said, "It would be hard to control my objectivity."
20 "I am not so sure in my heart that I would consider
21 everything." "I have very, very strong feelings about
22 life imprisonment", suggesting that the juror would
23 have to overcome some moral predisposition to be able
24 to impose the death penalty.

25 It puts this juror in a position, regardless of

1 what his predisposition is, whether it is for death or
2 for life, that he is afflicted, that he is impaired, he
3 is substantially impaired by the strong -- you saw him
4 there, he was committed. He thought about it, shook
5 his head, and even expressed, Your Honor, that he so
6 strongly feels about it that he would be willing to go
7 against the tenants promulgated by his own religion
8 when the Solicitor asked him about the Bishop.

9 THE COURT: That didn't impress me very much, I
10 might have answered the same way. He didn't say the
11 Pope either, he said the Bishop.

12 MR. KULP: My words. He is so strongly
13 compelled, without hearing anything about the case, to
14 go with the death penalty if there is murder found by
15 the jury.

16 THE COURT: Okay. I am going to rule that he
17 is qualified. If you would, please send him back in
18 please.

19 (POTENTIAL JUROR RETURNS TO COURTROOM)-

20 THE COURT: Mr. Kieny, come right up. Won't
21 take but a second. I have ruled that you are qualified
22 to go into the panel as a potential juror.

23 I instruct you -- of course, this is the same
24 thing that I've told you, but I reiterate that you
25 should not discuss this case with anyone, family

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

205

1 members, other potential jurors, neighbors,
2 employer/employees, anybody, and you're not to allow
3 anyone else of course to discuss the case in your
4 presence. If that happens, please report it to the
5 court immediately.

6 Also, as I say, and as we have talked about, don't
7 allow yourself to be exposed to media coverage of the
8 matter: newspaper, television or radio.

9 And, lastly, I instruct you that you must not
10 read, research or try to educate yourself or inquire
11 into the criminal proceedings or the criminal charge,
12 whatever, through magazines, books, the internet or any
13 other source until this case -- until you are excused
14 from this case.

15 We have your telephone number. We do not know
16 right now whether we will seat this jury on Thursday
17 morning or Friday morning, but it will be one of the
18 two. If you will -- just give me your number and we
19 will ---

20 CLERK: We have it.

21 THE COURT: You have it, okay. What I was
22 going to suggest is that there will be a message
23 tonight on the answering machine. I think that we will
24 know then when the jury will be qualified. You'll have
25 a card -- do you have your card?

1 POTENTIAL JUROR: Yes, sir.

2 THE COURT: If you will call it, as I say,
3 there will be a message tonight stating when the
4 persons who have been qualified as jurors in the panel
5 will report. And when you do report, please bring
6 clothes enough for three nights for sequestration while
7 the case is being tried.

8 POTENTIAL JUROR: Okay. I will do that, Your
9 Honor.

10 THE COURT: Yes, sir. Have a nice day.

11 MR. KULP: Your Honor, for the record, we
12 would note our exception to the ruling.

13 THE COURT: I understand.

14 MR. KULP: Respectfully. Thank you.

15 THE COURT: Daniel McClellan.

16 (POTENTIAL JUROR TAKES STAND)

17 DANIEL MCCLELLAN, being
18 duly sworn to tell the truth, the whole truth and
19 nothing but the truth, testified as follows:

20 EXAMINATION

21 BY THE COURT:

22 Q. Mr. McClellan, I advise you, of course, that
23 you're still under oath from yesterday. I have a
24 couple of preliminary matters. Since we were here
25 yesterday, have you discussed this case with anyone or

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

1 has anyone discussed the case with you, other than just
2 general questions about being called to jury duty?

3 A. No, sir.

4 Q. Have you seen any media coverage, the *Beaufort*
5 *Gazette* or any newspaper, TV or radio about the case at
6 this time?

7 A. No, sir.

8 Q. And has anyone approached you or while you were
9 waiting did anyone have any discussions with you about
10 the case with any of your fellow jurors?

11 A. No, sir.

12 Q. Did you read the pretrial questionnaire about the
13 three types of jurors in a death penalty case?

14 A. Yes, sir.

15 Q. Type one basically says that if there is a murder
16 that you'd automatically give the death penalty, type
17 two if there a murder, that it wouldn't matter what the
18 circumstances, that you could never give the death
19 penalty; and, type three, would consider the facts
20 involved of what is called aggravating circumstances
21 and mitigating circumstances and make a decision in a
22 particular case if a person were found guilty of the
23 charge of the murder as to what is an appropriate
24 disposition, life imprisonment or death penalty.
25 Which of these categories do you feel like you fit in?

1 A. Type one.

2 Q. Type one?

3 A. Type one.

4 Q. In other words, you feel like anytime that there
5 is a person who is found guilty of murder that you
6 would always -- that the only acceptable penalty would
7 be the death penalty?

8 A. Yes, sir, without any exception.

9 Q. No matter if the person was under a mental
10 disability or extremely young, extremely old, or any
11 other extenuating circumstances?

12 A. I would still go with being a type one, I'd always
13 chose the death penalty.

14 MR. MURDAUGH: I agree, sir.

15 THE COURT: Then you are excused. Thank you,
16 sir.

17 (POTENTIAL JUROR STEPS DOWN)

18 THE COURT: Okay. Valerie Vaughn, Juror No.
19 403, is next.

20 (POTENTIAL JUROR TAKES STAND)

21 VALERIE VAUGHN, being
22 duly sworn to tell the truth, the whole truth and
23 nothing but the truth, testified as follows:

24 EXAMINATION

25 BY THE COURT:

1 Q. Good morning, Ms. Vaughn. How are you doing
2 today?

3 A. Good morning. Very well. Judge, ---

4 Q. Did you have something that you want to say on the
5 record?

6 A. Could I just tell you?

7 Q. No, I am still going to have to ask you to state
8 it on the record. Go ahead, and then we'll get to the
9 questions.

10 A. Okay. Well, -- (pause).

11 Q. Or I have a couple of preliminary questions.
12 First of all, you had something that you wanted to say.
13 I will just let you go ahead and say what you wanted to
14 say.

15 A. Well, something happened last night that changed
16 my feelings on whether I could be fair. I have a
17 daughter who is blind and, years ago, I started a
18 graduate degree in Education of the Blind at the
19 University of Pittsburgh, in the evening classes.
20 We were well into the courses when we began being
21 stalked by a black man who eventually attacked,
22 kidnaped and raped one of our girls. Then the same
23 thing happened with a different person about a month
24 later. One of them wasn't caught and he came back to
25 stalk us. I eventually gave up the course.

1 Last night my daughter called me with questions on
2 orientation mobility, which I could not answer because
3 I wasn't able to -- that was a part that I didn't take
4 in the course. And it just all came back, (becomes
5 emotional), and I really don't feel that I could be
6 fair. Sorry.

7 THE COURT: In other words, this other thing --
8 this incident happened in what year?

9 POTENTIAL JUROR: It was back in the '80s.

10 THE COURT: Back in the '80s?

11 POTENTIAL JUROR: But because she needed my help
12 last night and I couldn't give it, it just all came
13 back, sir.

14 THE COURT: The incident with your daughter ---

15 POTENTIAL JUROR: The fear and -- well, the fact
16 that I couldn't finish the program, I can't help her
17 now with what she wanted. It brought it all back and
18 I'm -- I'm ashamed to admit it, but I don't think that
19 I could be fair.

20 THE COURT: Okay. Solicitor, any questions?

21 MR. MURDAUGH: If Your Honor please, our
22 sympathies are with the juror and while we would like
23 for her to be a part of this panel, I can full well
24 understand her feelings.

25 MR. KULP: We agree, Your Honor.

1 MR. MURDAUGH: I have no objection to her being
2 excused.

3 POTENTIAL JUROR: You need to be fair and I
4 don't think that I could.

5 THE COURT: Ma'am, I am sorry for putting --
6 that you had to relive these incidents but, Ms. Vaughn,
7 you are excused without objection.

8 POTENTIAL JUROR: Thank you.

9 (POTENTIAL JUROR STEPS DOWN)

10 THE COURT: The next juror is Anthony Gardner,
11 Juror No. 113.

12 MR. KULP: Your Honor, may I approach? Before
13 we -- it's a minor point but I would ask the Court to
14 say "if" you got ---

15 THE COURT: Excuse me?

16 MR. KULP: I would say "if you got that that
17 point", "if that decision had to be made".

18 THE COURT: Oh, okay. I see what you're
19 saying.

20 MR. KULP: Thank you, Judge.

21 (POTENTIAL JUROR TAKES STAND)

22 ANTHONY GARDNER, being
23 duly sworn to tell the truth, the whole truth and
24 nothing but the truth, testified as follows:

25 EXAMINATION

1 BY THE COURT:

2 Q. Mr. Gardner, I have a couple of preliminary
3 questions to ask you. Since you were here yesterday,
4 have you had any discussions with anyone about this
5 case?

6 A. Yes, sir.

7 Q. Who was that?

8 A. My wife.

9 Q. What was the nature of those discussions?

10 A. She was asking me what was going on, what was the
11 case all about and like that.

12 Q. Did that have any influence or impact upon you
13 insofar as serving as a juror in this case?

14 A. Oh, no, sir.

15 Q. Have you heard anything or read anything in the
16 newspaper, such as the Beaufort Gazette or any other
17 media or TV or radio about the case?

18 A. No, sir.

19 Q. Have you talked to anyone else about the case?

20 A. No, sir.

21 Q. Tell me exactly what you told your wife. You said
22 that she just asked you what was going on. What was
23 her question?

24 A. She said, uh, what was the case about. I told her
25 what it was about.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

213

1 Q. What is it about?

2 A. About that this young man is on trial for murder.

3 Double murder. Sorry.

4 Q. And -- okay. Did you discuss what your feeling
5 about the case was, whether it was -- in any way about
6 the nature of the case?

7 A. No, sir.

8 Q. Did you, while you were waiting, have any
9 discussions with any potential jurors or anything about
10 the case?

11 A. No, sir.

12 Q. Have you heard any other discussions about the
13 case in your presence?

14 A. No, sir.

15 Q. Have you read the pretrial questionnaire?

16 A. Yes, sir.

17 Q. From that do you understand that here are
18 basically three types of jurors?

19 A. (Affirmative nod).

20 Q. And that if a person is found guilty of murder
21 that you have one type, designated as type one, who
22 would always feel that the only appropriate punishment
23 for a murder would be the death penalty; a second type,
24 type two, that if a person is found guilty of a murder
25 would never feel that the death penalty was the

1 appropriate sentence and could not vote for the death
2 penalty; and then a type three that would, if a person
3 is found to have committed a murder by the jury in the
4 guilt phase, as we call, who would consider the
5 aggravating circumstances, the mitigating circumstances
6 -- in other words, the things are that the bad things
7 and the good things -- and all the other facts, listen
8 to the arguments and the testimony, the arguments of
9 the attorneys, the charge on the law, and make a
10 decision as to whether in a particular case it should
11 be life imprisonment or the death penalty. Which of
12 these do you feel like coincide with your beliefs?

13 A. Number two.

14 Q. That is that you feel that you could not give the
15 death penalty no matter what the circumstances were?

16 A. Yes, sir.

17 THE COURT: Solicitor, any questions?

18 MR. MURDAUGH: If Your Honor please, I have no
19 questions but would like the right to ask after Mr.
20 Kulp.

21 THE COURT: All right.

22 MR. KULP: May it please the Court, Your
23 Honor.

24 THE COURT: Yes, sir. Mr. Kulp?

25 EXAMINATION

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

1 BY MR. KULP:

2 Q. Good morning, Mr. Gardner.

3 A. Good morning.

4 Q. How are you?

5 A. Good.

6 Q. My name is Tim Kulp. Along with my co-counsel,

7 Mr. Fleming, we represent the accused, Mr. Rogers.

8 Based on your answers, I wanted to ask you a few

9 questions about this specific issue that the Court

10 brought you in this morning to address, as a potential

11 juror in this case.

12 You indicated that you consider yourself to fall

13 within that category two set forth on the notice or

14 questionnaire that you were given when you were here

15 Monday. Is that correct?

16 A. Yes, sir.

17 Q. In looking at that issue, do you feel that there

18 would be cases or could be cases where if someone was

19 found guilty of murder that there would be facts,

20 circumstances and details about that murder case and

21 things that might be introduced about a person who a

22 jury decided after hearing everything had committed

23 that murder that just might lead you in your

24 deliberation on the appropriate penalty to decide that

25 among the choices of life imprisonment or death that

1 the decision that would be appropriate would be death?

2 A. No, sir. When you say "death", I don't want that
3 on my conscience, that I gave somebody -- made that
4 decision that this young man got the death penalty. I
5 can't live with that.

6 Q. No matter what he did?

7 A. No matter what he did.

8 MR. KULP: Thank you.

9 THE COURT: Thank you, sir. You are excused.
10 Thank you very much.

11 (POTENTIAL JUROR STEPS DOWN)

12 THE COURT: Okay, I presume -- let's see, we're
13 thirty minutes behind. The next juror is Christine
14 Burton, Juror No. 39.

15 (POTENTIAL JUROR TAKES STAND)

16 CHRISTINE BURTON, being
17 duly sworn to tell the truth, the whole truth and
18 nothing but the truth, testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q. Good morning, Ms. Burton. How are you today?

22 A. Pretty good.

23 Q. Ms. Burton, since we were here yesterday, have you
24 had any discussions about this case with anyone?

25 A. No.

1 Q. Have you read anything in the *Beaufort Gazette* or
2 any of the newspapers or on TV or the radio heard
3 anything about the case?

4 A. No.

5 Q. Did you have any discussion with any of the
6 potential jurors about the case at all?

7 A. No.

8 Q. Did you read the material out there about the
9 three types of ---

10 A. Yes.

11 Q. The pretrial questionnaire about the three types
12 of jurors?

13 A. (Affirmative nod).

14 Q. Of course, the types are -- so that we know that
15 we are talking about the same thing, that if a person
16 is found guilty of murder in each one of these examples
17 -- the type one person would always give the death
18 penalty; the type two person would never give the death
19 penalty; and the type three person would consider the
20 facts and circumstances, both aggravating against the
21 defendant or mitigating, in favor of the defendant, and
22 make a decision as to what was an appropriate penalty
23 in a particular case, whether it be the death penalty
24 or life imprisonment. Do you have an opinion as to
25 which one of these opinions (sic) that you fall --

1 which is your opinion?

2 A. Yeah, the first.

3 Q. The first?

4 A. Yes. I had an uncle murdered in an armed robbery.

5 I didn't remember that -- it triggered the memory, you
6 know, of this uncle.

7 Q. So you feel like no matter what the circumstances,
8 whether the youth of the defendant or a very elderly
9 defendant or whether the person was retarded or
10 whatever the circumstances were of the defendant would
11 not have any influence, that you feel like the
12 appropriate penalty in each case would be the death
13 penalty?

14 A. For murder, (affirmative nod).

15 Q. For murder?

16 A. (Affirmative nod).

17 THE COURT: Solicitor?

18 EXAMINATION

19 BY MR. MURDAUGH:

20 Q. Ms. Burton, how are you doing?

21 A. Pretty good.

22 Q. I am Randolph Murdaugh. I am your Solicitor or
23 the Prosecutor and I need to ask you a few questions.

24 A. Okay.

25 Q. Are you aware that there are some murders,

1 "murder" being the felonious killing of another person
2 with malice aforethought, that there are some murders
3 in South Carolina that you cannot get the death penalty
4 for?

5 A. No.

6 Q. For example, ---

7 MR. KULP: I don't know if that is -- I don't
8 want to ---

9 THE COURT: Go ahead and ask the question.

10 MR. KULP: Within the confines of this case
11 that is not an aspect.

12 THE COURT: Solicitor, I believe that he is
13 right there. Go ahead and ask the question and I will
14 rule on it.

15 EXAMINATION RESUMED

16 BY MR. MURDAUGH:

17 Q. An example, if a husband or wife shoots their
18 spouse and nothing else happens, that is not eligible
19 for the death penalty.

20 MR. KULP: Your Honor, we would respectfully -
21 object to ---

22 THE COURT: Okay. That's a hypothetical. I am
23 going to sustain the objection to that.

24 MR. MURDAUGH: That wasn't even a question. That
25 was an explanation.

1 THE COURT: Okay. Well, what was your
2 question?

3 EXAMINATION CONTINUED.

4 BY MR. MURDAUGH:

5 Q. My question is, in a case like this or in a case
6 where the death penalty is being asked for, several
7 things have to happen. Number one, there has to be a
8 first part trial, the first part of a bifurcated trial,
9 in which the defendant has to be found "not guilty" or
10 "guilty".

11 A. Um-humm.

12 Q. You cannot proceed to the second part unless he is
13 found guilty. In the second part, you would be
14 required, if you were selected on the jury, to consider
15 a number of things.

16 First of all, you would have to find out whether
17 there is a thing called an aggravating circumstance.

18 If there was no aggravating circumstances, then
19 you would stop right here. You couldn't give the death
20 penalty.

21 If you found an aggravating circumstances, you
22 would then be required to consider the character of the
23 defendant, the circumstances of the crime itself. You
24 would also be required to determine whether or not
25 there were any mitigating circumstances. That is,

1 reasons for not giving the death penalty.

2 That being the framework that you would have to
3 operate in, I ask you this question: If you had found
4 the defendant guilty and if you had found the existence
5 of an aggravating circumstances, would you always give
6 the death penalty?

7 A. Yeah.

8 MR. MURDAUGH: I have no further questions.

9 THE COURT: Thank you. You are excused.

10 (POTENTIAL JUROR STEPS DOWN)

11 THE COURT: Judith Hillis, Juror No. 151. Ms.
12 Hillis, please come around and have a seat right up
13 here.

14 (POTENTIAL JUROR TAKES STAND)

15 JUDITH HILLIS, being duly
16 sworn to tell the truth, the whole truth and nothing
17 but the truth, testified as follows:

18 EXAMINATION

19 BY THE COURT:

20 Q. How are you today?

21 A. Fine, thank you.

22 Q. Ms. Hillis, since we left here yesterday or at any
23 time since you came yesterday have you had any
24 discussions about this case with anyone?

25 A. Just told my husband that it was an important

1 trial.

2 Q. But not any facts of the case?

3 A. No.

4 Q. Have you seen any media coverage such as in the
5 newspapers, *Beaufort Gazette*, or any other newspaper
6 about the case?

7 A. I saw the headline in the *Packet*, the *Island*
8 *Packet*, about selecting the jury.

9 Q. That was in the *Island Packet*?

10 A. This morning, yeah.

11 Q. Did you read the article?

12 A. No. My husband did, though.

13 Q. Did he talk to you about it?

14 A. I said, 'I think they got something in there.'
15 He says, 'yeah, I read it.' He was on his way out the
16 door, so -- (pause).

17 Q. But you specifically did not read it?

18 A. (Negative gesture).

19 COURT REPORTER: Is that a "no"?

20 POTENTIAL JUROR: That's a "no".

21 COURT REPORTER: Thank you.

22 EXAMINATION CONTINUED

23 BY THE COURT:

24 Q. Of course, you're under instructions not to read
25 anything about the case because it is basic and

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

223

1 fundamental that the case be decided solely here from
2 the testimony here in court.

3 A. Right.

4 Q. Did anything that you saw in the paper, would that
5 have any influence or impact upon you if you are
6 selected to serve as a juror in the case?

7 A. I don't think so.

8 Q. Are you sure in your own mind?

9 A. Well, things change. Even if you read something
10 it might not be true tomorrow. It changes. You know,
11 it's nebulous.

12 Q. I understand but what I mean is would you be able
13 to set aside anything that you might have seen in the
14 paper and decide the case solely from the testimony
15 here in this court, along with the instructions and
16 evidence as testified to here in court?

17 A. Yes.

18 Q. Okay. Thank you. Did you read the pretrial
19 questionnaire out there about three types of jurors?

20 A. Yes.

21 Q. Did ---

22 MR. KULP: Your Honor, excuse me for
23 interrupting but could we be allowed to voir dire on
24 this issue at this juncture before we ---

25 THE COURT: Sure. I don't have any objection.

1 read it.' That was pretty much it.

2 Q. And he knows -- silly question. He knows that
3 you're here for purposes of being considered as a juror
4 in this case?

5 A. Right.

6 Q. He knew that you were heading out here this
7 morning?

8 A. Right.

9 Q. Did you have any discussions with him last night
10 about your prospective role in this case when you got
11 home?

12 A. It was mostly about that if I did get chosen that
13 I would be sequestered, that I would have to be over
14 here for the weekend, just sort of practical matters
15 like that.

16 Q. Did he ask you if you had learned anything about
17 what the case was all about?

18 A. No. I just told him that it was a serious case.
19 You know, a criminal case.

20 Q. When he spoke to you this morning about the
21 article, he didn't say anything to you about the
22 content of the article, whatever those contents may
23 have been?

24 A. No, because he was in a rush to go to work. It
25 was just a few words, not a long conversation. S

1 Q. I see. What did the headline say?

2 A. Something about the jury being interviewed or
3 selected -- not selected, because we are not selected
4 yet. Something about the jury.

5 Q. Now, you just happened to see that headline as you
6 were rushing out the door?

7 A. No, as I was sort of flipping the paper in my
8 abbreviated reading -- I read the paper every morning.

9 Q. Do you happen to remember where in the paper that
10 headline was located?

11 A. Yes, I do. It was on the third page.

12 Q. Whereabouts on the third page?

13 A. Left-hand corner, about halfway down. I remember
14 stuff like that.

15 Q. Big article? Small article?

16 A. Medium.

17 Q. Couple of final questions, and I appreciate your
18 patience. What exactly did you read on the third page?

19 A. I read the headline and something about jurors
20 were going to be interviewed and I said, 'Oh, yeah,
21 that's me.' You know.

22 Q. You have a natural interest in what this case is
23 about, a natural human interest, curiosity. True?

24 A. I am more of a national world news than local news
25 person, I guess.

1 Q. Yes, ma'am. And other than what you have
2 testified to, your husband mentioned nothing else about
3 the article, its' contents or ---

4 A. No.

5 Q. Nor did anyone else, on the way here, at your home
6 or anywhere else?

7 A. No, I called a woman that I worked with,
8 yesterday, to tell her that it was an important case
9 and that there was chance that I might be sequestered
10 and not be able to work. But I didn't go into detail.

11 Q. And you didn't receive any telephone calls this
12 morning?

13 A. No.

14 MR. KULP: Thank you very much.

15 THE COURT: Okay, I will go back to this time
16 about the pretrial questionnaire.

17 MR. KULP: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 EXAMINATION RESUMED

20 BY THE COURT:

21 Q. Back to this thing about the pretrial
22 questionnaire, of course you understand that in a
23 murder case that it is a bifurcated trial. You first
24 go to -- there's a trial as to the guilt or the
25 innocence of the defendant. But in a situation where a

1 defendant is found guilty of a murder in the first
2 phase, you go to the second phase where the jury
3 decides the punishment..

4 A. Right.

5 Q. And there are two possible punishments, death or
6 life imprisonment..

7 A. Right.

8 Q: And this questionnaire explains all that in a lot
9 more words but basically it talks in terms of three
10 types of jurors. That if there is a finding of being
11 guilty of murder, there's a juror who would always go
12 with the death penalty as the only -- no matter what
13 the circumstances -- as the only form of punishment.

14 A second type, no matter what the circumstances,
15 would find that the death penalty was never an
16 appropriate sentence.

17 And the third type would consider the aggravating
18 circumstances and the mitigating circumstances, the law
19 and make a decision one way or the other based upon the
20 facts as they found them to be.

21 What type person -- which one of these
22 classifications do you feel that you fall within?

23 A. The third.

24 Q. The third, being that you would listen to
25 everything and make a decision as to what was an

1 appropriate sentence in a particular set of
2 circumstances?

3 A. Right.

4 THE COURT: Thank you. Solicitor?

5 EXAMINATION

6 BY MR. MURDAUGH:

7 Q. Good morning, Ms. Hillis. I'm Randolph Murdaugh.
8 How are you doing?

9 A. Fine, thank you.

10 Q. I need to ask you some questions, quite frankly,
11 to find out whether we want you to sit on this jury or
12 not. Please understand that in my asking that there
13 are no right answers nor are there any wrong answers,
14 we just need to know a little bit about you.

15 A. Okay.

16 Q. As His Honor has told you, this may be a
17 bifurcated trial. In other words, the first part of
18 the trial would deal only with the guilt or innocence
19 of the defendant.

20 A. Okay.

21 Q. And before you could go to the second part of the
22 trial it would be necessary that the jury found him
23 guilty of murder. If that happens, in the second part
24 of the trial you would be required to listen to
25 testimony that had already been presented or that may

1 be presented anew in which you'd consider the character
2 of the defendant, the circumstances of the crime,
3 whether or not there is a thing called an aggravating
4 circumstance. Before the death penalty could be
5 imposed, it would be required that the jury make an
6 affirmative finding that there is in existence an
7 aggravating circumstances. You follow me so far?

8 A. That last thing that you said?

9 Q. Before the death penalty could be imposed -- not
10 have to be imposed but could be imposed -- there would
11 have to be a finding by the jury that there was in
12 existence in this case an aggravating circumstance.
13 And His Honor will charge you later on what those
14 aggravating circumstances are.

15 A. Okay.

16 Q. At that point, once you found that, then you could
17 then proceed with what sentence should be given, either
18 life imprisonment or the death penalty.

19 A. Um-humm.

20 Q. You would have to consider, as I told you, the
21 circumstances of the crime, the character of the
22 defendant, whether or not there are any mitigating
23 circumstances, and after listening to all of that --
24 "mitigating circumstances" being reasons why the death
25 penalty shouldn't be given.

1 A. Um-humm.

2 Q. You would have to listen to all of that. After
3 doing that, do you feel that you could give either the
4 death penalty or life imprisonment, depending on what
5 your feelings were?

6 A. I could do either one depending on the
7 circumstances and the instructions.

8 Q. So you're telling me that you would not always
9 give the death penalty, that you would not always give
10 life imprisonment?

11 A. Correct.

12 Q. You work where on the Island?

13 A. It's a company called "Baskets by Jean".

14 Q. And your husband, I believe, is a CPA?

15 A. Correct.

16 Q. What religious affiliation do you have?

17 A. Presbyterian.

18 Q. Where is Mariners Cove?

19 A. That's when you're driving over the bridge onto
20 the island and you look over to your right and you see
21 those ---

22 Q. First place on the right?

23 A. That's right.

24 Q. That name rang a bell with me but I couldn't
25 remember.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

232

1 A. Um-humm.

2 Q. You have been there how long?

3 A. I have been -- I have been on the Island since
4 1970. I've been in Mariners Cove since about '93.

5 Q. The island has changed a little bit, hasn't it?

6 A. A little bit.

7 THE COURT: Mr. Kulp?

8 MR. KULP: Thank you, Your Honor, may it
9 please the Court.

10 EXAMINATION

11 BY MR. KULP:

12 Q. Good morning, ma'am.

13 A. Good morning.

14 Q. Again. My name is Tim Kulp and along with Mr.
15 Fleming, my co-counsel, we represent Mr. Rogers, the
16 accused young man in this case. I would like to ask
17 you a few questions about the issues that are important
18 to this part of the proceeding. First off, do you miss
19 the City of Brotherly Love?

20 A. No. I would like to have a good steak sandwich,
21 but other than that "no".

22 Q. To the issues of this case, you understand -- and
23 it certainly appeared to us when the Judge was asking
24 you that you understand -- that this is a two-part
25 process, the entire process. And that if the State

1 fails to meet the burden of proof, that they must prove
2 beyond a reasonable doubt, that a jury in this case may
3 decide -- may decide -- a verdict of "not guilty". If
4 so, the penalty phase, the second part of the trial,
5 may never be addressed.

6 A. Right.

7 Q. You understand that?

8 A. (Affirmative nod).

9 Q. And simply because we are talking to jurors and
10 asking them questions about their predisposition on the
11 issue of penalty or punishment, that doesn't mean
12 anything about the case. It may very well have no
13 meaning at all if we don't get to that portion of the
14 trial. Do you understand that?

15 A. I do.

16 Q. Now, I saw your questionnaire that you returned to
17 the Court, the long questionnaire that you filled out.
18 On one of the pages when you were asked questions about
19 predispositions on certain topical issues, that you
20 checked every column indicating that you could be fair.

21 A. Correct.

22 Q. And impartial?

23 A. Um-humm.

24 Q. And that you have very strong feelings about the
25 commitment to the entire process?

1 A. Yes.

2 Q. And that you would listen to each and every bit of
3 evidence in the case that ensued, or the lack of it,
4 before you made any decision about either guilt or --
5 if we got to that point, and we very well may not --
6 the penalty that would be appropriate under the
7 circumstances?

8 A. Yes.

9 Q. You also understand that if we were in the second
10 part of the proceeding that there are also mitigating
11 circumstances in evidence that would be presented to
12 the jury about the individual on trial in a variety of
13 respects and that that would be something that you as a
14 juror would take into consideration in rendering a
15 decision in that phase, as well?

16 A. Yes.

17 MR. KULP: Thank you.

18 THE COURT: Any discussion? I feel that the
19 juror is ---

20 MR. FLEMING: We have a Motion outside the
21 presence of the juror.

22 THE COURT: All right. If you will, please,
23 Mrs. Hillis, if you will just retire back to the room
24 we will be back to you in just a moment.

25 POTENTIAL JUROR: All right.

1 (POTENTIAL JUROR STEPS DOWN/EXITS COURTROOM)

2 THE COURT: Yes, sir, Mr. Fleming?

3 MR. FLEMING: Your Honor, we would move at this
4 time that the juror be struck for cause based on the
5 following: I hold in my mind, and would like to make
6 it a Court's exhibit, the first section of *The Island*
7 *Packet* entitled Tuesday, October 9, 2001.

8 As we turn to the third page, as the juror just
9 indicated, it is manifestly inconceivable that this
10 juror was able to read two to three paragraphs of this
11 article and not see, within literally one inch from
12 that, and I will quote "A later ruling stated that an
13 alleged confession given while Rogers was detained on
14 the coroner's warrant was not admissible in court
15 because he was given while Rogers was detained
16 illegally."

17 It is manifestly unbelievable that this witness
18 did not read that. And if in fact this witness read
19 that, she is tainted and will taint the rest of the
20 jury panel.

21 I would leave this, Your Honor, as a Court's
22 exhibit for you to look at because I cannot -- it is
23 beyond human nature that she could stop reading that
24 article halfway through. I do not believe that she is
25 credible in her answers regarding that. She

**THIS PAGE INTENTIONALLY
LEFT BLANK**

1 specifically remembered that it was on page three,
2 exactly where it was. It is -- again, it is
3 unbelievable that she could ever stop herself from
4 continuing reading that page. And if that error comes
5 into this trial, it is clear that she will taint the
6 entire jury panel and this man may be sentenced to
7 death as a result of it.

8 (SO ENTERED AS COURT'S EXHIBIT 3)

9 THE COURT: Solicitor?

10 MR. MURDAUGH: If Your Honor please, I do not feel
11 as Mr. Fleming does that it is unbelievable. She said
12 that she did not read the article and until somebody
13 disproves that, sir, I think that you've got to take
14 that at face value unless there is some reason for you
15 to believe that she is lying.

16 THE COURT: Well, I listened to all of her
17 answers very carefully. I thought that she was very
18 forthright and believable in exactly what she said that
19 she did and I think that there was no -- I could
20 discern no intent on her part to mislead the court or
21 the attorneys in this matter. I find that her
22 credibility as to exactly what happened to be
23 believable and choose to believe her. And over the
24 objections of the defendant, I deem Ms. Hillis is
25 qualified.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

1 If you would, please ask her to come back in.

2 I am going to go ahead and start telling jurors
3 that we are going to start this case on Friday. I
4 think it's clear that that is when we are talking
5 about. Tell the Gloria to call the first six -- that
6 she can go ahead and call those other panels when she
7 gets ready.

8 (POTENTIAL JUROR RETURNS TO COURTROOM)

9 THE COURT: Ms. Hillis, I've found that you are
10 qualified to go into the panel from which the jury will
11 be selected. I instruct you again, and specifically be
12 very careful so that we don't go through this again
13 about the newspapers because we don't know if there has
14 been any articles. Please do not read any newspapers
15 unless your husband has already taken any articles out
16 about this case, because you will asked again about
17 that I assure you.

18 Don't discuss the case with anyone, family
19 members, other potential jurors, neighbors, lawyers or
20 anybody around this courthouse or allow anyone to
21 discuss the case with you. And you should and must
22 take steps to avoid any media coverage of this matter
23 in the newspapers, television or radio.

24 Furthermore, I instruct you that you must not do
25 any reading, research or try to educate yourself or

1 inquire into the criminal proceedings or the criminal
2 charge, whatever, such as through magazines, books, the
3 internet or any other source until this case -- until
4 you are excused from this case. In other words, I
5 don't want you to do any investigation to try to
6 prepare yourself for this trial as it will all be laid
7 out for you in the trial.

8 With that, I am going to ask -- we had said
9 yesterday that we were going to attempt to start this
10 case on Thursday. It has taken us longer, as always
11 happens it seems like. It will now be on Friday
12 morning. So please report to the courthouse with your
13 bags for three nights lodging. We have reservations at
14 the Hampton Inn here in Beaufort. If you would, please
15 bring your bag with you so that whoever is selected
16 Friday morning at 9:30 -- report here at 9:30 on Friday
17 morning. We feel like we will be in a position to draw
18 the jury and to begin the trial.

19 POTENTIAL JUROR: May I ask a question?

20 THE COURT: Yes, ma'am.

21 POTENTIAL JUROR: Reporting at 9:30 on Friday,
22 does that mean that you're definitely on the jury?

23 THE COURT: Does not mean that. No, it
24 doesn't. In other words, from the panel that reports
25 here, we hope to have some thirty-five to forty jurors.

State vs. Tavaris Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial-October 8-16, 2001

239

1 The jury will be drawn from those. So it is not a
2 certain for-sure thing that you will be.

3 But obviously -- since we know, we're asking
4 everybody to bring their bags because those that are,
5 we don't want them to have to go all the way back to
6 Hilton Head to get your clothes to wear. Do you see
7 what I am talking about?

8 POTENTIAL JUROR: Right. Am I free to work from
9 now until Friday, though?

10 THE COURT: Yes, ma'am, you are.

11 POTENTIAL JUROR: Okay.

12 THE COURT: Okay. Have a nice day. Thank you
13 very much.

14 (JUROR EXITS COURTROOM)

15 MR. MURDAUGH: Let's take two minutes.

16 THE COURT: Okay, we will take a ten-minute
17 break now before we continue. This will be our morning
18 break...

19 (BRIEF RECESS 10:20 to 10:35)

20 THE COURT: The next juror is Earl Gibson,
21 Juror 119. Are we ready for the next one?

22 MR. FLEMING: Your Honor, we have a Motion in
23 view of the testimony of the last juror, if we could be
24 heard.

25 THE COURT: Go ahead.

1 MR. FLEMING: At this time, on behalf of Mr.
2 Rogers, we would move for the transfer of venue to
3 another venue for the trial of this case. As a result
4 of the witness' response, it is apparent that the
5 contemporaneous media coverage that occurred in this
6 morning's paper, while the entire jury panel has not
7 been sequestered, leads us to believe and to conclude
8 that the defendant cannot get a fair trial as a result
9 of this media coverage, based on the fact that the
10 media coverage contains information highly prejudicial
11 to the defendant which will not be introduced in trial.

12 With all due respect to Your Honor's ruling
13 concerning this particular juror, we believe that the
14 likelihood of the panel being infected by the media
15 coverage will mean that he is unable to receive a fair
16 trial, which would be in violation of the Fourth,
17 Fifth, Sixth, Eighth and Fourteenth Amendments to the
18 United States Constitution.

19 THE COURT: What do you say, Solicitor?

20 MR. MURDAUGH: I don't think that there's any
21 merit to that, sir.

22 THE COURT: Okay. I don't either, but I do
23 regret the media coverage and feel like it could make
24 us run out of jurors, and I don't know what we'd do
25 then if we -- but we're going to keep trying. We are

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

241

1 going to voir dire, obviously, with them as you have
2 done in the past, so we'll just have to keep working on
3 it.

4 MR. MURDAUGH: I am in agreement with you, sir, in
5 that I regret that the articles came out but there's
6 not a thing in the world that God Almighty can do about
7 the newspapers.

8 THE COURT: Okay.

9 MR. MURDAUGH: We will just to have see that we've
10 got a clean jury panel; which we are addressing, and
11 you are addressing.

12 THE COURT: Okay, next juror is Earl Gibson,
13 Juror No. 119. And here's one who indicated he had
14 seen some media coverage, I believe. I have no problem
15 with doing him like we did this last one, if you'all
16 want to go on and ask him questions first.

17 Mr. Gibson, please come right around, sir.

18 POTENTIAL JUROR TAKES STAND)

19 EARL GIBSON, being duly sworn to tell the truth, the
20 whole truth and nothing but the truth testified, as
21 follows:

22 EXAMINATION

23 BY THE COURT:

24 Q. How are you doing today, sir? Good morning. Mr.
25 Gibson, I remind you that you're still under oath from

1 yesterday. And I've got a couple of preliminary

2 questions to ask you. Since we were here yesterday,

3 have you discussed this case with anyone in any way?

4 A. No, I haven't.

5 Q. Have you seen any media coverage about the case.

6 Now, I recall that when we were qualifying, you said

7 you had read something about this case. Is that right?

8 A. I remember that I did, but that was probably two

9 years ago.

10 Q. Do you remember what you read?

11 A. That a trailer somewhere on Land's End or St.

12 Helena ---

13 Q. Speak into the microphone so they can hear you

14 over there.

15 A. That a trailer had been entered on St. Helena and

16 a couple of people had been killed.

17 Q. Go ahead. Tell me everything that you can

18 remember. Is that all? Just tell me when you've

19 finished and tell me everything that you can recall.

20 A. That's pretty much all I recall.

21 Q. Okay. Have you seen any media coverage

22 since you were here yesterday, by the Beaufort Gazette

23 or any other newspaper, radio, television or anything?

24 A. No, sir, I have not.

25 Q. Okay. Have you talked to anybody or has anybody

1 approached you that tried to talk about the case?

2 A. No, sir.

3 Q. Okay. Any questions about the media coverage?

4 Let me ask you this. With what you read and remember
5 about the article some time in the past, would that
6 have any influence or impact upon you if you were
7 selected to serve as a juror in this case?

8 A. No, sir.

9 Q. In other words - and I tell you that if you are
10 selected as a juror that it's basic and fundamental
11 that the case be decided solely from the testimony of
12 the sworn witnesses here in Court along with other
13 evidence introduced in the trial. And what you or
14 anyone else may have seen or heard outside the case
15 should not and must not be considered. Did you follow
16 my instructions on that?

17 A. Yes, sir, I did.

18 THE COURT: Any questions on the media aspect?

19 MR. KULP: Yes, sir, Your Honor, if it please
20 the Court.

21 THE COURT: Mr. Kulp?

22 EXAMINATION

23 BY MR. KULP:

24 Q. Mr. Gibson, good morning.

25 A. Good morning.

1 Q. How are you?

2 A. Good.

3 Q. Good. My name's Tim Kulp. I'm counsel and co-
4 counsel with Cory Fleming. We represent the accused,
5 Mr. Rogers, in this case. I just want to ask a few
6 questions about whatever you saw and heard.

7 Do you remember when you saw any media coverage,
8 such as that which you described?

9 A. Well, I saw no media. This was in the newspaper.

10 Q. Beaufort -

11 A. Beaufort Gazette.

12 Q. Do you remember when you saw that?

13 A. I would say two years ago, a year and a
14 half.

15 Q. Do you remember how many articles you saw in the
16 newspaper about it?

17 A. One.

18 Q. Just one?

19 A. Yes, sir.

20 Q. You don't remember when it was exactly?

21 A. No, sir.

22 Q. And when you read it were you at home or at some
23 other location? Do you recall?

24 A. Work.

25 Q. At work?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

245

1 A. Yes.

2 Q. And where do you work?

3 A. I work on Parris Island.

4 Q. And do you remember discussing the article or the
5 event with any other people at work as a result of
6 reading the article? Do you recall that?

7 A. No.

8 Q. And since that time do you specifically remember
9 not seeing any additional newspaper articles about the
10 matter?

11 A. No, I have not.

12 Q. Now, when you read that article, do you remember
13 all of the contents or substance of that article two
14 years ago?

15 A. No, I do not.

16 Q. All that you remember is that, as you testified, a
17 trailer had been entered on St. Helena and a couple of
18 people had been killed?

19 A. Correct.

20 Q. Is that all you remember about the article?

21 A. That's all I remember.

22 Q. And, certainly, you would agree with me, would you
23 not, that it would be very unlikely for an article
24 about such an event to be two sentences long.

25 A. Correct.

1 MR. KULP: Beg the Court's indulgence. (After
2 consulting with Mr. Fleming) -- thank you, Your Honor.

3 EXAMINATION RESUMED

4 BY MR. KULP:

5 Q. Thank you, sir, Mr. Gibson.

6 A. You're welcome.

7 EXAMINATION RESUMED

8 BY THE COURT

9 Q. Okay, moving on, you, of course, read
10 this pretrial questionnaire back there while you were
11 waiting?

12 A. Yes, sir.

13 Q. And you understand from that that in a capital
14 murder case, such as this, where the death penalty is
15 being sought, that the trial is bifurcated? And if the
16 defendant is found to have committed a murder, there
17 are two possible punishments. One is death, the other
18 is life imprisonment.

19 And if you have a person who has been found to
20 have committed a murder, this questionnaire divides
21 people up as to three types: one, if the murder is
22 done, one would always feel that the only -- the
23 punishment should be death, one that would feel that
24 the punishment should always be life imprisonment and,
25 type three -- the others are types one and two. And

1 type three is a person who would consider the facts and
2 circumstances, listen to the evidence presented and
3 make a decision as to what the juror thought was an
4 appropriate one for a particular case.

5 Which type do you feel like you fall within?

6 A. Type three.

7 Q. Meaning that you would consider the facts and
8 circumstances and make a decision as to what you
9 thought was the proper punishment?

10 A. Yes, sir.

11 THE COURT: Solicitor Murdaugh, any questions?

12 EXAMINATION

13 BY MR. MURDAUGH:

14 Q. Mr. Gibson, how do you do?

15 A. Good morning,

16 Q. I'm Randolph Murdaugh. I'm your Solicitor. I
17 need to ask you some questions, quite frankly, to find
18 out whether we want you to sit on this jury or not.

19 A. Sure.

20 Q. You have indicated that you would be the type
21 juror that would listen to everything before you made a
22 decision.

23 A. Correct.

24 Q. In this type of trial, Mr. Gibson, it's a two-part
25 trial. The first part deals only with the guilt or

1 innocence of the defendant. And before you could go to
2 the second part, you would have to have found him
3 guilty in the first part. Are you following me so far?

4 A. Yes, sir.

5 Q. If you find him guilty -- and when I say "you",
6 I'm talking about the jury. If the jury found him
7 guilty, then they would be required to listen to
8 testimony that already occurred and may be put in at
9 that point. And they would have to find the existence
10 of a thing called an aggravating circumstance, which
11 the judge will define to you and explain to you later.
12 But you would have to find the existence of that
13 aggravating circumstance. If you didn't find it, that
14 would be the end of it. You would not consider the
15 death penalty.

16 If you did find the existence of an aggravating
17 circumstance, then you would go to the remaining part
18 of the second phase of the trial, that is what type
19 sentence he should get.

20 A. I understand.

21 Q. And in that regard you would listen to the
22 circumstances of the crime itself, the character of the
23 defendant, any mitigating circumstances that may be
24 presented. Those are things why you shouldn't give him
25 the death penalty.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

249

1 And before making your decision, you would listen
2 to all of those things, you would weigh the evidence.
3 and decide whether or not it is such a heinous crime
4 that he deserves the death penalty, or whether it's not
5 such a heinous crime that he should get life
6 imprisonment. Do you understand that?

7 A. Yes, I do.

8 Q. Could you give life imprisonment if you didn't
9 think it was so bad?

10 A. I could.

11 Q. Could you give him the death penalty if you
12 thought it was bad?

13 A. I could.

14 Q. One of the things that you would have to do if the
15 jury decided that this was an appropriate case for the
16 death penalty, you would have to sign your name to a
17 firm that says "we, the undersigned jurors, find,
18 recommend that the defendant should suffer the death
19 penalty". And you would have to sign your name to it.
20 Would that give you a problem if you thought it was a
21 bad enough case?

22 A. No, it would not.

23 Q. Have you caught any fish?

24 A. A few.

25 Q. Thank you, sir.

1 EXAMINATION

2 BY MR. KULP:

3 Q. Mr. Gibson, you put on your questionnaire that
4 your mother was a dispatcher for the Beaufort City
5 Police Department.

6 A. Yes, sir.

7 Q. When was that?

8 A. 1968 to probably '75.

9 Q. Let's see, you're 51.

10 A. Fifty.

11 Q. What age would you have been then?

12 A. Going way back. Probably from the time I was 15
13 to 20.

14 Q. Did you ever have occasion to go down there and
15 see her at the station when she was working?

16 A. Oh, yes. I picked her up.

17 Q. Did you get to know some of the police officers
18 down there?

19 A. Oh, sure.

20 Q. And your exposure to the police as a result of
21 your mother's employment, would that have any effect on
22 your ability to be fair and impartial about the serious
23 issues in these types of cases?

24 A. No, it would not.

25 Q. Your wife is a photographer?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

251

1 A. Correct.

2 Q. Has she ever done any outdoor shots?

3 A. She mainly does children's portraits, weddings,
4 things of that nature.

5 Q. Now, you indicated - when you said in response to
6 the Solicitor's questions, that if you didn't think a
7 murder was so bad, that you could very well vote or
8 decide that life imprisonment would be the appropriate
9 thing. Is that true?

10 A. Yes.

11 Q. Now, would you tell the judge why you think that
12 life imprisonment would be an appropriate circumstance
13 in this circumstance?

14 MR. KNIGHT: If Your Honor please, I think --

15 MR. KULP: Let me ask it this way.

16 THE COURT: Rephrase the question.

17 MR. KULP: Yes, sir.

18 EXAMINATION RESUMED

19 BY MR. KULP:

20 Q. Mr. Gibson, you answered the question when the
21 Solicitor asked you when he said if you didn't think it
22 was so bad, you could consider life imprisonment.

23 A. Correct.

24 Q. As a penalty. If you as a juror and the jury had
25 concluded that the State had met the burden of proof

1 beyond a reasonable doubt that the defendant was guilty
2 of murder, correct?

3 A. I would have to hear the evidence to make a
4 decision.

5 Q. I understand. You answered the question -- but I
6 would like to ask you. You said "a murder that's not
7 so bad", and that was the phrase used by the Solicitor.
8 Do you -- I don't understand what you mean by that.

9 A. He more or less asked me if I was capable of
10 making that decision, is what I understood. And I am.
11 But there again, I'd have to hear the case.

12 Q. Yes, sir. So you do not automatically feel that
13 if a jury concluded that a person was guilty of murder,
14 the killing of someone with malice aforethought, that
15 that would warrant the death penalty?

16 A. I believe it would.

17 Q. That if someone killed a person.---

18 MR. MURDAUGH: If Your Honor please, that's a
19 hypothetical.

20 THE COURT: Well, I think it's misconstrued,
21 too. Because any murder has to have -- "malice
22 aforethought" is a technical term. It's a term of art.
23 And so I don't think it's proper to -- without going
24 through -- I know you're not trying to instruct the
25 things about the elements of murder. But just -- so I

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

253

1 think that it is improper.

2 MR. KULP: That's a phrase the Solicitor has
3 used over six times, Your Honor.

4 THE COURT: Okay, what?

5 MR. KULP: Defining "murder" as "malice
6 aforethought". As the killing of another human being
7 -- at least six times in his questions.

8 THE COURT: Well, I have a problem with you
9 asking questions that set up hypothetical examples.
10 You can do it by generalizing that some -- well, go
11 ahead and ask your question. I'll listen to it again.

12 EXAMINATION RESUMED

13 MR. KULP:

14 Q. Mr. Gibson, I asked you that if you, as a jury --
15 or you were participating -- I'm asking about you, as a
16 juror. You were a juror and you were a part of jury
17 deliberating. And you concluded that someone was
18 guilty of murder. And that you were advised that the
19 definition of "murder" was "the unlawful killing of
20 another human being with malice aforethought". And you
21 concluded it was murder. And if you concluded as well
22 that it was an aggravating circumstance and the judge
23 had explained to you how to assess that and make that
24 determination, isn't it the case that if you got to
25 that point, that you would automatically find that the

1 appropriate punishment was the death penalty?

2 A. Correct.

3 EXAMINATION RESUMED

4 BY MR. MURDAUGH:

5 Q. I'm a little bit confused. Are you telling the
6 Court that in every case where a person was convicted
7 of murder, irregardless of what else happened, you
8 would give them the death penalty?

9 A. No.

10 Q. Excuse me?

11 A. No, I would not.

12 Q. Okay, sir.

13 A. He said "malice aforethought".

14 Q. Sir?

15 A. His question was phrased different. It's getting
16 a little confusing. He said "beyond a doubt", didn't
17 he?

18 Q. What I really need to know, sir, is this. If they
19 are convicted in the first phase of the trial, would
20 you always give the death penalty? Would you always

21 give life imprisonment? Or would you consider

22 everything that came out before you made your decision?

23 A. I would consider everything.

24 THE COURT: And you could either give the death
25 penalty or life imprisonment, depending on what your

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

255

1 feelings were after you heard it?

2 POTENTIAL JUROR: Correct.

3 THE COURT: Okay, sir.

4 EXAMINATION

5 BY MR. KULP:

6 Q. If you were told -- you understand, do you not,
7 that regardless of any other types of homicide in the
8 State of South Carolina, that in this case, that if
9 you, as a jury -- you as a member of a jury who
10 rendered a verdict of guilty of murder, that that
11 decision would have to be based -- that you would have
12 to have found that the killing was done with malice
13 aforethought. Do you understand that?

14 A. Yes.

15 Q. And that if you rendered that decision of murder
16 based upon that legal standard, it's true, is it not,
17 that you would feel, yourself, that your vote and your
18 position would be that the death penalty would be
19 warranted and you would automatically give it. Isn't
20 that true?

21 A. That would depend on both phases of the trial, the
22 first and second phase.

23 Q. In what respect, Mr. Gibson?

24 A. The evidence.

25 Q. Well, that's what I'm telling you. And I think

1 it's important that you understand. And I don't, you
2 know, expect you to understand the ins and outs of the
3 process. So I want to make it clear and I think that
4 we need to know for sure if you understand. There are
5 two parts to the trial.

6 The first part is what we call the guilt phase.

7 A. Correct.

8 Q. Now, if the State does not carry their burden of
9 proof and the jury's verdict is "not guilty",
10 logically, the second phase is never entered or
11 considered. You understand that?

12 A. Correct.

13 Q. Now, however, if the jury were to conclude at the
14 conclusion of their deliberations that the defendant
15 was guilty of murder, that decision would have to be
16 made based upon the legal standard the Court would give
17 you, that there was proof beyond a reasonable doubt
18 that the defendant committed the crime of murder. Do
19 you understand that?

20 A. Correct.

21 Q. That if a jury got to that decision and the
22 decision was murder, that that decision, by law, would
23 have to be based and the jury's finding that beyond a
24 reasonable doubt that the killing occurred with malice
25 aforethought. Do you understand that?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

257

1 A. Yes.

2 Q. That if that happened, that at that point of the
3 case, part one is over. And that the movement, then,
4 is into the second phase. And I explain that to you
5 and ask you to understand it because you indicated that
6 it would depend upon both phases. But I'm asking you
7 if you understand that that is not the case? That once
8 you had made that decision -- a jury had made that
9 decision, that the guilt phase is over and then you
10 move into the penalty phase.

11 A. I understand.

12 Q. Now, in the penalty phase, if you had concluded
13 that there was sufficient evidence under the legal
14 standards that apply, to convict the defendant of
15 murder, at that point, with that prior determination
16 being made, is it not the case, as you testified to a
17 minute ago, that if that murder was based upon a
18 conviction that required malice aforethought, that it
19 would be your decision that an appropriate penalty
20 would automatically be the death penalty?

21 A. Correct.

22 Q. Thank you.

23 THE COURT: Okay, let me ask you a couple of
24 questions, because the way the attorneys are asking
25 this -- we talk about the law of homicide means an

1 unlawful killing. And there's certain levels of
2 unlawful killing. The worst level is murder.

3 MR. KULP: I apologize immensely for
4 interrupting you, but could we address a matter outside
5 the presence of the witness juror, please, sir?

6 THE COURT: Okay. Would you please step
7 outside, and I'll get right back to you, Mr. Gibson.

8 (POTENTIAL JUROR STEPS DOWN/EXITS COURTROOM)

9 THE COURT: Go ahead, Mr. Kulp.

10 MR. KULP: I'm sorry, Your Honor. I do
11 apologize for interrupting the Court. But I feel it
12 necessary, and I was going to do this anyway before you
13 engaged in that and ask the juror to step outside. But
14 I think that in this case that we're considering
15 nothing but murder. And I do not believe that there
16 will be a possibility of the jury being giving a
17 decision at the point of the conclusion of the guilt
18 phase of the case that they may return any other
19 verdict than murder.

20 THE COURT: Well, the reason that I asked that
21 is because of the way you phrased the question and when
22 you broached the thing, that if this is a murder with
23 malice aforethought, basically, the way I interpret
24 what you asked him ---

25 MR. KULP: Yes, sir.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

259

1 THE COURT: You can't have murder without it
2 being malice aforethought.

3 MR. KULP: Yes, sir.

4 THE COURT: And, of course, as you well know,
5 but the potential juror doesn't know -- he's thinking
6 you're talking about that malice aforethought being, to
7 my thinking, an aggravating circumstance, as opposed to
8 being -- because, as you well know, you have to define
9 "malice aforethought" is a term of art. And it means
10 what the law says it means. It doesn't mean what it
11 means out on the street.

12 And so I don't know how we're going to do this.
13 But I feel like that it's not necessary that I ask
14 that. And so I won't delve into it further. But I
15 will hear you then at this time.

16 MR. KULP: Yes, sir.

17 THE COURT: Because my impression is that the
18 juror, by the line of question, as I would be if I were
19 a first-year law student and maybe even a second-year
20 one, I would have been mislead on that, to. Because
21 you lead him down that line that says then this is that
22 malice aforethought, which -- for all they know, that
23 means that it's an aggravated circumstance, basically.
24 And I think that's the way I took the question, is in
25 the way that you asked.

1 MR. KULP: Yes, sir. First, I never posed the
2 question to the juror associating an aggravating
3 circumstance was a legal requirement of murder. And
4 secondly, the only reason I asked the question and
5 thought it would be appropriate certainly is because
6 the Solicitor has said that on a number of occasions.

7 THE COURT: Well, I don't see why that it's
8 necessary for either side any more to talk about malice
9 aforethought. Because it is a technical word. And I
10 don't quite understand how, until they're instructed on
11 the law -- and I'll hear both of you on this -- for
12 you'all to ask questions built around malice
13 aforethought is asking for confusion.

14 MR. KULP: I think, Your Honor, that the
15 tactic was that I suggested the Solicitor did it
16 because he had a juror there he thought might say they
17 could never impose the death penalty. And so in
18 defining what murder was, he was trying to get them to
19 say, "Well, if it was malice aforethought, I could."
20 And that's why it happened.

21 I did the same thing but for another reason.

22 THE COURT: Well, and I think you might agree
23 with my ruling then.

24 MR. KULP: Yes, sir. But the third thing is
25 that I just didn't mean to interrupt the Court. But I

1 did so because I wanted to avoid where, for example,
2 the Court might ---

3 THE COURT: Well, I think you're probably
4 right. There's no reason for a juror to be instructed
5 on the law.

6 MR. KULP: On voluntary and involuntary, yes,
7 sir.

8 THE COURT: So I'm satisfied from what I heard
9 that the juror, when he was asked in common sense,
10 straightforward language, indicated that he was a Type
11 Three juror who would listen to all the facts and
12 circumstances before making his decision. And it's not
13 necessary at this time to clear it up. But to my
14 thinking, malice aforethought has no meaning except as
15 to a legal definition for murder. And as the Court's
16 instructions say, it's a term of art. And for you'all
17 to ask him, the State or the defense -- to ask them
18 that if this is murder with malice aforethought,
19 regardless of from whom it comes, is wrong. -

20 Do you disagree with that?

21 MR. MURDAUGH: No, sir.

22 MR. KULP: Can we discuss one thing?

23 THE COURT: Yes.

24 (Discussion between defense counsel)

25 MR. KULP: Judge, co-counsel and I think that

1 we believe that there is a case that addresses the
2 issue wherein a juror had some confusion as to what
3 murder may mean. And that he was potentially confused
4 that it could fall within a category of ---

5 THE COURT: Well, you object to explaining what
6 murder means, and I've agreed with you. So why do you
7 want to do it? I can't do it both ways. If you're
8 going to ask him -- but it's wrong to ask him, for
9 either side to ask him, "Now, this is murder. And if
10 there's malice aforethought, you can't have murder
11 unless you've got malice aforethought."

12 And so I'm getting confused about it, too. We're
13 still on the second morning. I hope we're going to
14 move this thing along.

15 MR. MURDAUGH: I am in agreement with you, and I
16 will attempt to refrain from asking that again. If I
17 do, I hope you'll holler at me and just remind me.

18 THE COURT: But I do think it is confusing to a
19 jury.

20 MR. MURDAUGH: I agree, sir.

21 THE COURT: And, like I say, I'm learning a
22 whole lot as this process goes on. I'm learning a lot
23 more than I ever wanted to know. But I think when you
24 ask if there's murder with malice aforethought, that no
25 wonder you get some funny answers with those things,

1 because it's a trick question.

2 MR. MURDAUGH: I agree, sir. And I will attempt
3 to refrain from doing that. But sometimes it's hard to
4 ---

5 THE COURT: All, right. Well, let me hear your
6 authority.

7 MR. FLEMING: We're looking for it right now,
8 Judge. But what I can paraphrase is that if the juror
9 has confusion concerning what the elements of the crime
10 of murder are, then they should be told what the
11 elements of the crime are in a standard jury charge
12 fashion. In other words, if a juror believes that they
13 may be called to give the death penalty on a
14 manslaughter case, certainly that is not the correct
15 standard of law. And they should be disavowed of that
16 thought.

17 And what Mr. Kulp attempted to do was to let the
18 juror-witness know that in this case if the defendant
19 was found guilty, he would have been found guilty of
20 murder, premeditated murder or murder with malice
21 aforethought. And the juror's response is in a murder
22 case with malice aforethought, I would give the death
23 penalty. And under that analysis, that means in South
24 Carolina every murder case he would give the death
25 penalty.

1 And that's the distinction that's important with
2 this juror, particularly. And so the attempt to
3 dissuade ---

4 THE COURT: I see your point, but I don't agree
5 with it. Because I don't believe -- we're assuming and
6 we've put throughout this thing that the person has
7 already been found guilty of murder. And I think
8 people have a pretty good idea about what murder is.

9 I agree with you that they don't know exactly what
10 murder is. And, of course, I don't think that it is
11 necessary and I would be interested in seeing the
12 charge.

13 You know, the *voir dire* on these things is kind of
14 taking -- you know, I remember back in the seventies,
15 you know, lawyers would get up and they'd *voir dire* a
16 juror for hours -- you know, every hypothetical in the
17 world, you know. That was just ---

18 MR. MURDAUGH: It took us four weeks to get a jury
19 in the Plath-Arnold trial.

20 THE COURT: Four weeks?

21 MR. MURDAUGH: Four weeks.

22 THE COURT: In other words -- and you'd have
23 the jurors staked out and promise that if he's selected
24 and this hypothetical is the case, he'll do such-and-
25 such. Cases say can't do that. Because they're

1 supposed to hear the thing. And that was back then.

2 That was seventy-something, wasn't it, or '80 -- early
3 eighties?

4 MR. MURDAUGH: In the early seventies.

5 MR. KULP: Your Honor, the Solicitor has been
6 an absolute gentleman in the case. But when he refers
7 to the jurors that he is "their Solicitor", while
8 that's true -- I think one time I heard him say that
9 "I'm the Solicitor". In terms of ---

10 THE COURT: Okay.

11 MR. MURDAUGH: I'm just politicking. Every
12 juror's a voter.

13 THE COURT: Well, anyway, let's be a little
14 more formal with them on that, as opposed to you are
15 representing the State, or something like that, as
16 opposed to any ---

17 MR. MURDAUGH: I am the Solicitor.

18 THE COURT: --- any connection with the
19 individual juror. That you don't represent them.
20 You're representing the State. And I think that he's
21 correct on that.

22 Well, I don't much care what the authority says
23 unless it's right on point. I've pretty well made up
24 my mind. I'm going to let you'all go forward, but I'm
25 going to bring Mr. Gibson back in. And, of course,

1 that could be -- and find that he is qualified.

2 MR. MURDAUGH: If Your Honor please, I would like
3 to be able to ask him one additional question. And let
4 me tell the Court my reason for it. I have found two
5 additional witnesses that were not listed on my witness
6 list. I'd like to ask him if he knows those people.

7 THE COURT: And you'll ask every other one
8 that, too?

9 MR. MURDAUGH: Yes, sir.

10 THE COURT: And who are those witnesses?

11 MR. MURDAUGH: Kenneth Williams and Richard
12 Rivers.

13 MR. KULP: Your Honor, we would object to that
14 at this stage of the trial. We are ---

15 THE COURT: What's Rivers' first name?

16 MR. MURDAUGH: Richard.

17 THE COURT: Richard. Now, what's your
18 objection to that?

19 MR. KULP: Your Honor, we're in the second day
20 of jury selection regarding a death penalty case.
21 They've now named two new witnesses. The entire jury
22 panel has been voir dired over their extensive witness
23 list.

24 THE COURT: They haven't been sworn in. It's
25 not too late to voir dire them. And if you've got some

1 kind of rule violation or something or Constitutional
2 violation -- but just the fact that they've got a
3 witness' name -- I don't know that the State has to
4 name all the witnesses.

5 MR. MURDAUGH: If Your Honor please, I might also
6 tell the Court that -- and I'm sure that Mr. Fleming
7 has read this file extensively and he would have found
8 those two names. I inadvertently left them off, sir.

9 And talked to one of them last week, I understand.

10 MR. FLEMING: What I do in the defense of this
11 case is of no import to the State.

12 THE COURT: Okay.

13 MR. FLEMING: And furthermore ---

14 THE COURT: Well, certainly you knew about
15 them, though.

16 MR. FLEMING: I believe that their names are
17 contained in the voluminous information given to me by
18 the State of South Carolina pursuant to discovery.

19 THE COURT: Excuse me. I'll hear you later on
20 that. I'm going to go ahead. And before I do another
21 thing I'm going to get Mr. Gibson back in. And unless
22 you'all have got something else to do on the
23 qualifications, I'll hear you at a later time, I'm
24 sure, on that.

25 MR. FLEMING: All right, sir.

1 THE COURT: Will you send Mr. Gibson back in,
2 please?

3 (POTENTIAL JUROR RE-ENTERS COURTROOM)

4 THE COURT: Would you just come straight up
5 here, Mr. Gibson?

6 (POTENTIAL JUROR COMPLIES)

7 THE COURT: Sir, I find that you are qualified
8 to go in the jury pool.

9 POTENTIAL JUROR: Yes, sir.

10 THE COURT: It's our present intention to start
11 this trial on Friday morning. Between now and then you
12 must not discuss this case with anyone or allow anyone
13 to discuss it with you. You, of course, are allowed to
14 talk to your job, your family and tell them about that
15 you are serving as a juror and that it's likely -- of
16 course, you will be sequestered for about three days or
17 three nights and four days or whatever. But that we
18 anticipate that it will be about three nights. And do
19 not allow anyone to discuss this case in your presence.
20 Don't read any newspaper or television or radio
21 coverage of this.

22 Also, don't take any steps to do any reading,
23 research by books, magazine or the internet or
24 anything, to try to bring yourself up-to-date on
25 anything about it. In other words, you'll find the

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

1 case as it develops during the trial. Please report
2 back here at 9:30 on Friday morning. Bring your bag
3 with you prepared to stay, and we will go forward.

4 There's one other thing that I neglected to ask
5 you. There's a possibility of two other witnesses
6 being Kenneth Williams and Richard Rivers. Do you
7 know, related by blood, connected by marriage or close
8 friends, business associate or have any acquaintance
9 with either Kenneth Williams or Richard Rivers?

10 POTENTIAL JUROR: No, sir.

11 THE COURT: Thank you, sir. I look forward to
12 seeing. You're not on the jury. You're part of the
13 panel from which it will be selected on Friday morning.
14 In other words, we're asking everybody to bring their
15 clothes with them, so that when the twelve jurors and
16 two alternates -- when they're selected, we'll be ready
17 to go to work.

18 POTENTIAL JUROR: I understand.

19 THE COURT: Have a good day.

20 POTENTIAL JUROR: Thank you.

21 (TESTIMONY OF EARL GIBSON CONCLUDED)

22 THE COURT: Our next juror is Michael Everette

23 (POTENTIAL JUROR TAKES STAND)

24 MICHAEL EVERETT, being
25 duly sworn to tell the truth the whole truth and

1 nothing but the truth, was examined and testified, as
2 follows:

3 EXAMINATION

4 BY THE COURT:

5 Q. Come right around, sir. I first apologize for not
6 being more current. But we've been slow today.

7 A. Yes, sir.

8 Q. I remind you, sir, that you are still under oath
9 from yesterday.

10 Have you had any discussions of this case with
11 anyone?

12 A. No, sir. No, Your Honor.

13 Q. Have you read anything in the newspaper, heard
14 anything on radio or TV, or been approached by any
15 person about this case?

16 A. Well, I read an article in the newspaper when this
17 incident first happened.

18 Q. That's right. You did -- I was going to ask you
19 about that. But I'm talking about since yesterday.
20 You, of course, stood up yesterday and indicated that.
21 I'm going to ask you about that in just a second.

22 A. I just read the headlines concerning it this
23 morning. But when I realized that it was that article
24 I did not read it.

25 Q. You did not read the article itself?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

271

1 A. No.

2 Q. And that was in the ---

3 A. -- Beaufort Gazette.

4 Q. -- Beaufort Gazette. Okay. I notice that you did
5 respond yesterday, Mr. Everett, that you had recalled
6 some media coverage about that. Would you tell myself,
7 the attorneys and so forth what you recall and when it
8 was?

9 A. Well, I had read where I believe it was two
10 individuals entered a house and, if I recollect, held
11 some people at gunpoint and basically what I would
12 consider executed them.

13 Q. Uh-huh, (affirmative nod). Do you remember when
14 you read that?

15 A. Humm ---

16 Q. In other words, I guess what I'm asking you, do
17 you recall that the article you read was right about
18 the time after it happened? Or did you read something
19 that was some time after it happened?

20 A. I believe it was right after the incident.

21 Q. Is that the only article you recall having read
22 about the case?

23 A. Well, I believe -- I know I read two articles
24 regarding it, and it may have been three over a period
25 of time, you know, a few weeks.

1 Q. Okay. What else do you recall from reading in
2 those articles, that you recall from reading all three
3 -- two or three of them, however many there were?

4 A. Basically, it give the suspects' names, which I
5 didn't remember the name until now, until this trial
6 started. And it all basically covered the same thing,
7 that there was some people held against their will. I
8 don't know for how long a period of time. And, like I
9 say, if I remember correctly, the two people that were
10 killed were told to get down on their knees or get down
11 on the ground or on the floor. And then they were
12 just, like I say, executed.

13 Q. Do you understand that if you are selected as a
14 juror in this case that it would be basic and
15 fundamental that the case be decided solely from the
16 testimony from the sworn witnesses along with evidence
17 introduced in the trial? And would you be able to set
18 aside anything that you may have read about this case
19 and decide the case, which would be to follow my
20 instructions and your oath as a juror, and decide the
21 case solely from the testimony that you hear here in
22 Court?

23 A. Yes, Your Honor. The only problem that I would
24 have if the individual is found guilty is I would have
25 to recommend the death penalty, period, no question

1 about it.

2 Q. Is that because of the facts that you've heard
3 about the case?

4 A. Yes, Your Honor.

5 Q. You feel that your mind would be closed, that you,
6 of course, read this pretrial questionnaire?

7 A. Yes, Your Honor.

8 Q. And there are three types of jurors. But not this
9 case. What I'm asking you in every case -- of course,
10 you understand that a trial is bifurcated, in other
11 words it's two parts, the first the jury decides
12 whether or not a person is guilty of murder. And then
13 if they find that the person is guilty of murder, then
14 the jury goes in to a penalty phase and then decides
15 what the proper punishment is in that case.

16 Of course, if a person has been convicted of
17 murder there's two possible punishments. There's life
18 imprisonment and then there's the death penalty. I'm
19 not asking you about this case here. I'm just talking
20 about in general. Are you -- and, of course, this
21 questionnaire talks in terms of Type One, which, if
22 there's a murder would always give the death penalty.
23 Type Two would never give the death penalty. And Type
24 Three would be open to listen to the facts and what are
25 called aggravating circumstances and what are called

1 mitigating circumstances. In other words, things good
2 for the defendant and "aggravating" means things that
3 would be bad for the defendant.

4 So would you be able to consider mitigating
5 circumstances and aggravating circumstances and decide
6 what is a proper punishment in a given case?

7 A. Yes, Your Honor, I could do that.

8 Q. So you're telling the Court that in a case that
9 you would not -- are you telling me that you do not
10 necessarily feel that the death penalty is the only
11 proper punishment in every murder case?

12 A. No, sir, I don't believe it is.

13 Q. You do not?

14 A. I do not believe that execution is proper in all
15 murder cases.

16 Q. Okay. So, basically, then, I take it, then,
17 you're saying that based upon what you heard the facts
18 and circumstances to be of this case, you feel that the
19 death penalty -- right now it would be your opinion
20 that the death penalty is a proper punishment?

21 A. If it goes as I understand it, or as I read it,
22 yes, sir.

23 Q. Well, of course, we haven't heard the case yet.

24 And newspapers sometimes get things wrong.

25 A. I understand that.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

1 Q. In fact, sometimes I'd say they frequently get
2 things wrong. Would you be able to put aside things
3 that you read in the paper and not decide it from what
4 you read, whenever you read it, some time ago, and
5 decide it solely from the testimony and the evidence
6 that you hear in court?

7 A. Yes, Your Honor.

8 THE COURT: Solicitor, anything?

9 MR. MURDAUGH: We're satisfied with his answers
10 and do not wish to question him.

11 THE COURT: Mr. Kulp?

12 EXAMINATION

13 BY MR. KULP:

14 Q. May it please the Court, Mr. Everett?

15 A. Yes, sir.

16 Q. Good morning.

17 A. Good morning.

18 Q. How are you?

19 A. Fine, thank you.

20 Q. Have you ever heard of Sweetwater, Tennessee?

21 A. Yes, I have.

22 Q. Philadelphia?

23 A. Philadelphia?

24 Q. Up 411?

25 A. I'm not sure.

1 Q. My name's Tim Kulp, and this is Cory Fleming.
2 We're co-counsel. We represent the accused, Mr.
3 Rogers. I'd like to ask you a few questions, please,
4 sir. You testified a minute ago that the only problem
5 you would have if the defendant is found guilty is you
6 have to recommend -- you have to recommend the death
7 penalty.

8 A. If the facts come out as they were reported in the
9 paper, yes, I would.

10 Q. In other words, as you've testified, if you
11 concluded or the facts showed, in your opinion, that
12 someone executed someone, then it would be appropriate
13 to execute them?

14 A. Yes, I would.

15 Q. And that would be your only decision. And that
16 would be your automatic decision in that case?

17 A. If the facts are as, like I say, I read in the
18 paper.

19 MR. MURDAUGH: If Your Honor please, these are, in
20 essence, hypotheticals.

21 POTENTIAL JUROR: I would definitely have my
22 choice.

23 THE COURT: I think I'll allow the question and
24 the answer.

25 EXAMINATION RESUMED

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

277

1 BY MR. KULP:

2 Q. Now, you testified you read possibly three
3 articles?

4 A. I believe it was two, possibly three.

5 Q. Do you remember anything else about those articles
6 or the substance of those articles that you haven't
7 mentioned, that if you really think about it, you can
8 recall?

9 A. As well as I can remember, there was a party. It
10 was interrupted by -- I'm not sure if it was two people
11 that came in with guns. And it seems like they made
12 one of the victims get down in the living room or
13 something and the other one in the bedroom and then
14 shot them. That's the way I remember it.

15 Q. Do you remember how long ago it was that you read
16 that particular article?

17 A. Well, from what I understand, this happened in
18 '99, which I didn't realize it was that long ago. But
19 it was shortly thereafter. Evidently, it was right
20 after the case had happened or the incident.

21 Q. Do you remember reading about any other
22 developments in the case?

23 A. It doesn't really come to mind, no. I may have,
24 but I just don't remember.

25 Q. I think you testified that you didn't recall the

1 accused or an accused's name until you came in and
2 heard the charges read. And then you matched it up?

3 A. Yeah. Well, like I say, I don't remember the
4 accused's name. But I remember there was two people
5 murdered and people kidnaped or something like that. I
6 do remember that from the article. So I just assumed
7 that this is the same case.

8 Q. In hearing the charges that the Court read to
9 everyone in the courtroom on Monday, did that kind of
10 help you recall some of the information that you'd read
11 back then in the article or articles?

12 A. Well, no, not really. It just kind of -- like I
13 say, I assumed this was the same case that happened
14 then.

15 Q. Do you think it would -- having read three
16 articles or two or three articles, do you think as you
17 heard more about the case that you might tend to recall
18 more about what you read in those articles?

19 A. Possibly, right, yes, sir.

20 Q. Please tell the judge how you -- what mechanism
21 you would use to get all of that information that you
22 gained from reading the articles about this event out
23 of your mind so that you would not be able to consider
24 it in any respect during the course of the case so that
25 you would be absolutely fair and impartial. How would

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

279

1 you do that? You couldn't, could you?

2 A. I'm not sure I could.

3 Q. And do you recall if the word "executed" was used
4 in any of those newspaper articles that you read?

5 A. I really can't say. I don't really remember if
6 they were used.

7 Q. Thank you, sir. No further questions.

8 THE COURT: Mr. Everett, if you'd just step out
9 back, then, we'll talk about it and get right back to
10 you.

11 (POTENTIAL JUROR STEPS DOWN/EXITS COURTROOM)

12 THE COURT: What's the State's position?

13 MR. MURDAUGH: This is one of those ones that get
14 right on top of the fence, sir -- one you've got to
15 make a decision on. He gave the correct answers.

16 THE COURT: I think he's qualified myself.

17 MR. MURDAUGH: I also do, sir.

18 THE COURT: I think it's clear that just
19 because someone has read something about it, and I
20 can't see from the preliminary matters in this that
21 what he read is going to be basically the same thing
22 you're going to argue. And he answered everything
23 correctly.

24 MR. MURDAUGH: That's correct.

25 THE COURT: And he seemed to be doing his best

1 to be forthcoming.

2 MR. MURDAUGH: Absolutely. He said that he would
3 consider everything. He could do one or the other and
4 not one all the time, even though his statement leaned
5 towards the death penalty in this case if what he had
6 read in the paper was the same.

7 THE COURT: Well, I think ---

8 MR. MURDAUGH: And that wasn't in response to
9 anybody's question, either.

10 THE COURT: Exactly. I think that if the State
11 can prove it, you're dealing with some bad
12 circumstances here. And I can see that -- because, you
13 know, if he feels -- you know -- so, anyway, what's
14 defense's ---

15 MR. KULP: I think, Your Honor, that the
16 threshold issue is what came at the last, when I asked
17 a very daring question. And that is tell the judge how
18 you're going to be able to get this image and these
19 ideas, thoughts and conclusions and perceptions about
20 this from your reading of the article out of your mind.
21 And then I got a little riskier and said, "You couldn't
22 do it, could you?" And he may very well could have
23 answered, "Well, yes, I can." He didn't. He said he
24 couldn't. So regardless of his assertion that he could
25 be fair and impartial and that he could consider all

1 the circumstances, there's a roadblock there between
2 consideration -- presentation of those circumstances
3 and his consideration of them. And that is the fact
4 that he is absolutely and completely predisposed about
5 this. One significant reason I asked him about the
6 phrase and the assessment of execution is this. We
7 have all the news articles. We've proffered to the
8 Court or would. That word is not ---

9 THE COURT: You can proffer them if you want
10 to. But if you don't put them up can make them Court's
11 exhibits or something. I'm not going to -- I think the
12 record needs to be ---

13 MR. KULP: I agree.

14 THE COURT: So I'm not privy to what you have
15 unless it's been made an exhibit. I just want to be
16 clear on that.

17 MR. KULP: What we'll offer as an exhibit is
18 the publications. But I guess what I was saying was as
19 an officer of the Court, I represent to you and we do
20 that that word "executed, execution, execute" is not
21 used in any of those articles. And therefore, he is
22 predisposed about this, having concluded that what he
23 read constitutes that.

24 As well, he said and did not disagree that if he
25 concluded that his predisposition was proven --

1 foreshadowed, mirrored by the proof in the case, that
2 there would be no other choice but to execute the
3 defendant.

4 THE COURT: Well, I would suppose -- and, of
5 course, we don't know. But I would supposed that the
6 position -- the issue in this case is not so much what
7 happened but who did it, from the preliminary matters.
8 And I think that's of some relevance in deciding
9 whether or not he is a juror. Because we've had
10 numerous preliminary matters involved in this case.
11 And the issue at the first stage is -- apparently
12 there's plenty of proof about what happened. There's
13 less proof about who did it.

14 MR. KULP: Yes, Your Honor ---

15 THE COURT: I'm not sure of the relevance of
16 that at this stage, but I do think that it is important
17 to know that.

18 MR. KULP: But not only who, but what happened
19 is critical in the penalty phase. And so he's
20 predisposed about that. And additionally, Your Honor,
21 there's one important point I'd like to make for you
22 and for the record as well, is that he said that it's
23 possible that if he heard more about the case as it
24 developed, that he would recall more about what he had
25 read. And one of the articles ---

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir-Dire
Jury Trial October 8-16, 2001

283

1 THE COURT: Well, anything's possible.

2 MR. KULP: Sure. Well, he could have
3 disagreed with that and said, "No, that's all I
4 remember." But he didn't. And as well, one of the
5 articles, of course, in the paper in the collection
6 that we will offer the Court as exhibits, indicates a
7 factor which is -- it's something the Court knows is a
8 virtual landmine. And if he recalls that and shares
9 that during deliberations, that completely destroys any
10 aspect of a fair trial for the defendant's case.

11 I just think, Judge, as the Solicitor first said,
12 this is a fellow who, considering his responses to the
13 expected questions from the State, we think he's off
14 the fence. But if he's on the fence, I think, Your
15 Honor, it's the last question saying that he could not
16 get it out of his mind, puts him in a position where he
17 could taint the entire jury panel both in the guilt
18 phase and in the penalty phase.

19 Thank you very much, Your Honor.

20 THE COURT: What do you say, Solicitor? Any
21 followup?

22 MR. MURDAUGH: If Your Honor please, I think he's
23 qualified. I don't recall his answer as Mr. Kulp says
24 as saying that "I could not get it out of my mind." I
25 just don't recall that, sir.

1 THE COURT: I don't either.

2 MR. MURDAUGH: And I think he's qualified.

3 THE COURT: I feel that he's qualified, too.

4 MR. KULP: Your Honor, it is a critical point,
5 and I think the record would reflect that I said, "And
6 you couldn't get that out of your mind?" And he said
7 at least, "I don't think so." I was writing at the
8 time.

9 Mr. Fleming says he's not sure he could get it out
10 of his mind.

11 THE COURT: But in response to a question that
12 I asked him specifically, as least I recall that I did,
13 I asked him, I said, "You know, newspapers, they
14 sometimes get things mixed up and all. And would you
15 decide it from what you said?" At least that's what I
16 intended to. With the newspaper article -- because you
17 must decide it if you're on a jury, you must decide
18 from the testimony and evidence you hear in Court. And
19 my recollection is he said he would decide it from what
20 the testimony was and not rely on that newspaper
21 article.

22 MR. KULP: I qualified, Your Honor, a lady who
23 said that she had read only the title. This is, by
24 distinction, different. This gentleman has read three
25 articles about the case.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

285

1 THE COURT: There is numerous authority for
2 doing that. I know this one who had read the case --
3 they had read where the person had been convicted and
4 sentenced to death in a previous trial. And, yeah,
5 they're still qualified if they answer the questions
6 right.

7 MR. KULP: Exactly. My respectful submission
8 to the Court is that he did not answer the last
9 question right. And the lingering notion is that
10 regardless of any other representations he has made, he
11 has indicated that he could not get that out of his
12 mind. And if, Your Honor, if it was what this lady
13 juror said that she couldn't get the title of the
14 article out of her mind, so what? It just says the
15 jury's being formed. But this gentleman said what he
16 can't get out of his mind is that these defendants
17 executed someone.

18 THE COURT: Okay. Well, now, if you asked a
19 hypothetical in the Charles Manson case and it said
20 that somebody did that. Would you think they probably
21 ought to get the death penalty? And I think anybody
22 who said they didn't think so would be ---

23 MR. KULP: All the world thinks so. This is
24 hypothetical. This is what this juror read in the
25 article. And he, himself, volunteered.

1 THE COURT: And he also said that he would
2 consider the facts and that he was not wed to those
3 facts. He did not necessarily believe those. And he
4 would listen to the testimony and see what developed in
5 the trial.

6 MR. KULP: I'm not going to argue with you any
7 more, Judge. I respect your opinion. But I just want
8 to say that if it's the case that the Judge finds him
9 qualified and for some reason -- what do they say about
10 freezing over? If we have to strike him, then I think
11 that we would ask that -- the logical possibility is if
12 we're out of strikes and he comes up, we would have to
13 ask the Court for a special individual instruction to
14 this singular juror not to disclose to the petit jury
15 during any deliberations any of the articles he read
16 about anything. I've never heard of that. And that
17 dilemma would be greater if we have to seat him because
18 we're out of strikes.

19 THE COURT: Well, I have a feeling that
20 everything he said he read about there will be
21 testimony.

22 MR. KULP: But some people believe everything
23 they read in the newspaper.

24 THE COURT: And what you're saying is you are
25 taking -- he said that he had a conclusion that it was

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

287

1 an execution -- double execution. And you yourself
2 said that wasn't in the article.

3 MR. KULP: The word "execute". The point, I
4 guess, I'm trying to make is that what we want the jury
5 to consider is only the evidence in the case. That's
6 why we want to keep media articles out. But if that
7 comes in through his mouth -- if he says, "Okay, you're
8 right," and you'all agree to that ---

9 THE COURT: If he sits on that jury and you
10 wish me to instruct them at the very first, I will be
11 glad to instruct him individually or the jury as a
12 whole. And I always do. That's part of the opening
13 remarks anyway, so I don't think that's out of the
14 ordinary.

15 MR. KULP: Since the deliberations of the
16 petit jury are absolutely secret and inviolate, we will
17 never, ever know if, in fact, he fails to follow the
18 instructions.

19 Thank you, Your Honor.

20 THE COURT: Would you send Mr. Everett back in,
21 please?

22 (POTENTIAL JUROR RESUMES STAND/RE-ENTERS COURTROOM)

23 THE COURT: Okay, Mr. Everett, I've found that
24 you are qualified to be on this jury. This does not
25 mean you're necessarily on the jury. We will attempt

1 to seat this jury and select it on Friday morning at
2 9:30 right here. I would request that you bring
3 clothes for three nights because -- not that you're
4 guaranteed to be on it, but those people who are
5 selected, we don't want to have to -- after we select
6 them, then have to send them home to get their clothes.
7 In other words, everybody's going to bring their
8 clothes.

9 Now that you are in this panel, as I told you
10 yesterday and I reiterate in the strongest possible
11 way, you must not discuss anything about this case with
12 any other person other than to tell them that you are
13 on a jury -- if you are selected -- not that you're on
14 the jury, but you may be on the jury, that you may be
15 sequestered over the weekend, Friday through possibly
16 Monday or whenever. But don't allow anybody to discuss
17 the case with you or in your presence. Take whatever
18 steps are necessary to avoid any exposure to any media
19 coverage, whether it's newspaper, television or radio.
20 And lastly, do not take any steps to do any research,
21 any reading or try to educate yourself about criminal
22 proceedings or anything to do with criminal charges or
23 crime, whether through other persons, books magazines
24 or the internet. In other words, you will take what
25 you hear about this case -- it'll all come from right

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

289

1 here in Court.

2 With that, I hope you have a nice day, and we'll
3 look forward to seeing you on 9:30 on Friday.

4 MR. MURDAUGH: If Your Honor please, could you ask
5 him about the two additional witnesses?

6 THE COURT: I'm sorry. There are two other
7 possible witnesses, Kenneth Williams and Richard
8 Rivers. Do you know anybody with those names?

9 POTENTIAL JUROR: No, Your Honor.

10 THE COURT: Thank you. You are excused.
11 Please report back at 9:30 Friday.

12 (TESTIMONY OF MICHAEL EVERETT CONCLUDED)

13 THE COURT: There's something else that Gloria
14 said, that somebody called her. The daughter has
15 classes that's on the Wednesday panel. She's a college
16 student. She may have told Ms. Smith, but she didn't
17 tell me, as I know. And I don't really ever mention
18 college students unless they mention it. And anyway,
19 her father called up here all upset because she was
20 going to be missing out on her classes and couldn't
21 even come at the time. I told him to have him just
22 come on up here whenever and we would take care of that
23 right here. So I expect to be able to work her in
24 sometime. Do you know about that? Anyway, if you hear
25 anything about this -- and I don't even remember her

1 name.

2 CLERK: I think I know who she is. I told her
3 to tell you that before she left, and she just didn't.

4 THE COURT: Well, that's what it was. And I
5 didn't know exactly ---

6 CLERK: I think it's that Laurens girl.

7 THE COURT: Well, she probably changed her mind
8 and said she wanted to serve. You know how that goes.

9 Okay, we're at 10:30. We're only an hour and a
10 half behind. Christopher Youmans, Juror No. 441.

11 I believe we're slowing down, but we are getting
12 more jurors.

13 (POTENTIAL JUROR TAKES STAND)

14 CHRISTOPHER YUMANS,
15 being duly sworn to tell the truth, the whole truth and
16 nothing but the truth, was examined and testified, as
17 follows:

18 EXAMINATION

19 BY THE COURT:

20 Q. How are you doing, sir?

21 A. Fine.

22 Q. Have a seat.

23 A. (Complies)

24 Q. Mr. Youmans -- is it Youman or Youmans?

25 A. Youmans.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

291

1 Q. With an "s"?

2 A. Yes, sir.

3 Q. It's written wrong, then. Mr. Youmans, first off,
4 I've got a couple of preliminary matters. I remind you
5 that you're still under oath because you were sworn in
6 yesterday. Since you came in yesterday and answered
7 the questions, have you had any discussions with anyone
8 about anything dealing with this case?

9 A. No, sir.

10 Q. Have you heard any discussions in your presence
11 about it?

12 A. No, sir.

13 Q. Have you read anything about any -- done any
14 research through trials or books or anything looking
15 into it?

16 A. No, sir.

17 Q. I think I asked you this before, but I'll ask you
18 again. Have you read anything like the Gazette or seen
19 any news articles regarding this?

20 A. Not since we were told to yesterday, no, sir.

21 Q. Excellent. You read this pretrial
22 questionnaire?

23 A. Yes, sir.

24 Q. And I'd like to ask you just a couple of things.
25 You understand that a murder trial is bifurcated,

1 meaning that the first trial, the jury decides whether
2 a person is guilty or not guilty of the crime of
3 murder. They may decide that the person's not guilty
4 and then that's the end of it.

5 If they do find a person is guilty of murder, they
6 go into the second phase which is commonly known as the
7 penalty phase. And when the jury goes into the penalty
8 phase there are three types of jurors. And there's no
9 right or wrong answer, as it says. But some jurors,
10 they feel that any time that there is a person who's
11 guilty of murder, that the person should receive the
12 death penalty. A second type of juror would feel that
13 if a person has been found guilty of murder that no
14 matter what the circumstances, they should receive life
15 imprisonment. In other words, that that person would
16 never give the death penalty in a murder case.

17 The third type of juror would listen to the facts
18 from the witnesses and would consider aggravating
19 circumstances, meaning things bad about the case, and
20 mitigating circumstances, meaning things good or in
21 favor of the defendant, and would, after hearing all
22 the facts and deliberating and thinking about it, would
23 decide whether in a given case a person should get the
24 death penalty or not get the death penalty.

25 Do you have an opinion as to which one of these

1 categories you would fall in?

2 A. Category three.

3 Q. Category three?

4 A. Yes, sir.

5 Q. And that would be that you would feel that some
6 cases a person who is guilty of murder should receive
7 the death penalty, some cases a person guilty of murder
8 should receive a life sentence?

9 A. Yes, sir.

10 Q. And you would make that decision after hearing all
11 the facts and evidence presented?

12 A. Yes, sir.

13 THE COURT: Solicitor?

14 EXAMINATION

15 BY MR. MURDAUGH:

16 Q. Mr. Youmans, I am Randolph Murdaugh, the Solicitor
17 for the Fourteenth Circuit, which means I'm the
18 prosecuting attorney. I need to ask you some
19 questions, find out whether or not we want you to sit
20 on this jury, to be honest with you.

21 A. Okay.

22 Q. I've listened to your responses, and I understand
23 you have told the judge that you would listen to
24 everything before you made any kind of a decision.

25 A. Yes, sir.

1 Q. Then after listening to everything, if you thought
2 it was a case that the death penalty was warranted and
3 in accordance with the law, you could give the death
4 penalty.

5 A. Yes, sir.

6 Q. If, after listening to everything, you thought it
7 was a case that did not warrant the death penalty, you
8 could find life in prison.

9 A. Yes, sir.

10 Q. Okay, sir. If you should get to the point to
11 where you had found the defendant guilty of murder in
12 the first phase of the trial and got to the second
13 phase where you were considering sentence, you -- and
14 when I say "you", I'm talking about "the jury" -- would
15 make the decision as to whether or not this person
16 lived or died.

17 A. Yes, sir.

18 Q. And in that regard, if you had decided that this
19 was an appropriate case for the death penalty, you
20 would be required, if you served on the jury, each
21 juror would be required to sign a piece of paper that
22 said, "We, the undersigned jurors, recommend" -- and
23 while it says "recommend" it doesn't really mean
24 "recommend". It means they get whatever you suggest --
25 "recommend that the defendant suffer the death

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

295

1 penalty." There'd be a line for you to sign.

2 A. Yes, sir.

3 Q. Could you sign your name? Would it give you any
4 problem?

5 A. No, sir, it would not.

6 Q. Okay, sir. Do you know Kenneth Williams or
7 Richard Rivers?

8 A. No, sir.

9 MR. MURDAUGH: I have no further questions.

10 EXAMINATION

11 BY MR. KULP:

12 Q. May it please the Court, Your Honor. Mr. Youmans,
13 good morning.

14 A. Good morning.

15 Q. Good afternoon. What time is it? My name is Tim
16 Kulp. I'm a lawyer in this case for the accused, along
17 with co-counsel, Mr. Fleming.

18 You understand -- and this is kind of rehashing a
19 bit of what we've already gone over this morning. But
20 there are two parts at issue here, two parts of the
21 proceeding at trial we're talking about, the first part
22 being a determination of whether the State has proven
23 their case against the charges, under the burden of
24 proof they bear beyond a reasonable doubt. Do you
25 understand that?

1 A. Yes, sir.

2 Q. And that, in fact, you understand as well that if
3 the State were not to prove or meet that burden of
4 proof then the decision of the jury would be not guilty
5 and there would be no need or logically no necessity to
6 proceed to any further proceeding.

7 A. Yes, sir.

8 Q. And that that could be a possibility.

9 A. Yes, sir.

10 Q. Thank you.

11 THE COURT: Anything further on this one?

12 MR. MURDAUGH: No, sir, I have nothing.

13 THE COURT: Any objection?

14 MR. KULP: No, sir, Your Honor.

15 THE COURT: Okay, Mr. Youmans, you are
16 qualified to be a part of the pool that will -- from
17 which the jury of fourteen, twelve and two alternates
18 will be selected. We intend to start this at 9:30 on
19 Friday morning. If you would, please come prepared to
20 stay three nights at the -- I forgot the name of the
21 place now -- Hampton Inn, right over here. Of course,
22 you can tell your job and all that you are on -- that
23 you will be sequestered. But you cannot tell them any
24 of the facts of the case or anything about the case.

25 Also, I caution you again not to allow yourself to

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

297

1 be exposed to any newspaper, TV or radio, or don't let
2 anybody discuss the case in your presence. If anybody
3 should try to contact you about the case, please report
4 it to me or to my office or to the Clerk of Court and
5 we will check into it.

6 Also, don't take any steps to do any reading or
7 research or do anything about this case or criminal
8 proceedings or criminal charges in general, like
9 reading magazines or books or the internet about that.
10 You'll learn everything you need to know from the case
11 if you're selected right here in Court.

12 With that, I hope you have a nice afternoon and
13 we'll see you -- and the reason we're asking everybody
14 to bring their things is because, obviously, we don't
15 want to have to select a jury. We want to go straight
16 into it and not have to have people going back home
17 again. I hope you have a nice afternoon.

18 (TESTIMONY OF CHRISTOPHER YOUMANS CONCLUDED)

19 THE COURT: Before we do another one, I want to
20 kind of find out -- we're a full panel behind. I was
21 thinking that with people who are coming before we take
22 up the next one, we've empaneled six. We've done one.
23 The panel's scheduled for 12:00 noon. If we slide
24 those back till -- why don't we just slide them back to
25 1:30 and try to that ahead of time and catch it up then

1 with a little shorter lunch?

2 Does that sound okay?

3 MR. MURDAUGH: That's fine, sir.

4 MR. KULP: Yes, sir.

5 THE COURT: Mr. Harris, I'll let you do this.

6 You've got a list and you go back there with Mr.

7 Harris. Tell them that we are running behind and to

8 please report that they are excused until 1:30.

9 CLERK: I'll be happy to.

10 THE COURT: Excellent. That's fine. And also . . .

11 would you please send in Juror No. 112, Ms. Gambla?

12 (CLERK EXITS COURTROOM)

13 (POTENTIAL JUROR TAKES STAND)

14 JUNE GAMBLA, being duly

15 sworn to tell the truth, the whole truth and nothing

16 but the truth, was examined and testified, as follows:

17 EXAMINATION

18 BY THE COURT:

19 Q. How are you doing?

20 A. Good. How are you?

21 Q. Fine. Ms. Gambla, before we start, first, I

22 remind that you're still under oath. There have been

23 two additional possible witnesses, Kenneth Williams and

24 Richard Rivers. Do you know either one of those?

25 A. No.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

299

1 Q. Okay. Since you appeared in the courthouse
2 yesterday, and I asked you these same questions, have
3 you had any discussions about this case or has anybody
4 attempted to discuss the case with you?

5 A. No.

6 Q. Have you read any media coverage, either newspaper
7 or TV or radio about the case?

8 A. No, I haven't.

9 Q. Have you had any discussions with any other
10 potential jurors about the case?

11 A. No, sir.

12 Q. Okay. Let me ask you this. Did you read this
13 pretrial questionnaire?

14 A. Yes, I did.

15 Q. Let me ask you this. You pronounce it "Gambla"?

16 A. Uh-huh, (affirmative nod).

17 Q. Ms. Gambla, in a case such as this when a person
18 is charged with murder, the trial is bifurcated meaning
19 that it's a two-phase process. First, there is the
20 trial to determine whether the person is guilty or not
21 guilty. In the case if the person is determined by the
22 jury to be not guilty, then that's the end of it. If
23 the person is determined to be guilty of murder, then
24 it goes to the second phase called the penalty phase.
25 And in the penalty phase there are two possible

1 verdicts, one of death, the other of life imprisonment.

2 It's been found that there are basically three
3 types of jurors in these types of cases. And if a
4 person has been found guilty of murder, there's one
5 type who would say they should automatically and in
6 every case get the death penalty. The type two juror
7 is a person who would say no matter what the
8 circumstances are, if a person has been determined to
9 be guilty of murder, it doesn't matter what the facts
10 and circumstances are, that juror could never give the
11 death penalty. And the third type, or we call it "Type
12 Three" juror is -- would consider the punishment and
13 would not have his or her mind made up in advance and
14 would need to hear what the facts, circumstances are,
15 listen to the law, the charge of the Court, the
16 arguments of counsel and would make a decision. And in
17 some cases would think that life imprisonment would be
18 appropriate, and in some cases would feel that the
19 death penalty would be appropriate.

20 Which one of these types would you consider
21 yourself to be?

22 A. I think I'm a Type Three. I think I could be
23 fair, and I would like to hear both sides and make a
24 decision based on the evidence and what I heard, and
25 after thinking about it for awhile.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

301

1 THE COURT: Solicitor?

2 EXAMINATION

3 BY MR. MURDAUGH:

4 Q. Ms. Gambla, how are you?

5 A. Good. How are you?

6 Q. I am Randolph Murdaugh, the solicitor for this
7 Circuit. I need to ask you some questions, quite
8 frankly, to find out whether we want you to sit on this
9 jury or not.

10 A. Okay.

11 Q. And please understand there aren't any right or
12 wrong answers. We need to know a little bit about you.
13 You have indicated to the judge that you would have no
14 problem in listening to everything that was put up
15 before making a decision. Is that correct?

16 A. Yes.

17 Q. And my understanding of what you told him is that
18 you would have no problem, if you thought the crime was
19 appropriate, of giving the death penalty?

20 A. I think I'd have to think about it after I saw the
21 evidence, how I would feel about it.

22 Q. Yes, ma'am. But I'm talking about if you felt
23 that it was appropriate to give the death penalty, you
24 could give it?

25 A. I'm not sure. I'd have to think about it. You

1 know, I've seen some thing, being a nurse, and I've
2 seen electric shock therapy and different things. I
3 mean, I'd have to think about it.

4 Q. Well, I hate to require you to do it -- I can't
5 require you to do it. I hate to ask you to do it. But
6 I need you to think about it, because we need an answer
7 to that. I need to know -- and let me explain a little
8 bit for you. A fellow's charged with murder. I'm not
9 talking about this case now, understand that. We're
10 just talking in general. A fellow is charged with
11 murder or a woman is charged with murder. The jury in
12 a two-part trial would have to determine whether or not
13 he was guilty of the murder. And there would be a lot
14 of law that would be given to you and give you guidance
15 in how to do that. You would listen to the testimony.

16 If you find them guilty, you would then go to the
17 second part of the bifurcated or two-part trial. That
18 second part would not deal with whether he's guilty or
19 whether he's innocent because you've already found
20 that. Do you understand?

21 A. Uh-huh, (affirmative nod).

22 Q. What you would be required to do in that second
23 part is to determine whether or not, first of all,
24 there was an aggravating circumstance. And His Honor
25 will charge you later on it if you are selected for

1 this jury. And if you find an aggravating
2 circumstance, you are then required to listen to the
3 character of the defendant and the circumstances of the
4 crime. And you're required to listen to any mitigating
5 circumstances that there may be regarding this
6 defendant. That are reasons not to give him the death
7 penalty.

8 Would you listen to all of the evidence with an
9 eye towards giving him the death penalty or life in
10 prison, but never one or the other? Do I make myself
11 clear?

12 A. Right.

13 Q. Would you always do one thing or would you be open
14 where you could do either?

15 A. I would be open to do either.

16 Q. Okay. Now we get back to the answer you gave me
17 just a minute ago. You said you would have to think
18 about it. Could you give the death penalty? Could you
19 vote to give the death penalty if you thought it was
20 appropriate in a case?

21 A. Possibly. I'd have to weigh everything and make a
22 decision.

23 THE COURT: Excuse me. Let me just try to
24 clarify. He's asking you -- this is a case that you
25 have determined is appropriate for the death penalty.

1 Assuming that you find one that is, would you be
2 conscientiously able to give the death penalty in that
3 case? In other words, you've thought it over and
4 thought it over and you've decided that this one is one
5 that is appropriate for the death penalty.

6 POTENTIAL JUROR: I probably could, yes.

7 THE COURT: Could you be more specific? You
8 say you probably could. Is that a way just of
9 speaking, or -- I want you to think it over and give a
10 definitive answer if you can.

11 POTENTIAL JUROR: I would say "yes". If I had
12 to make a choice, I would say "yes", if I thought it, I
13 would.

14 EXAMINATION RESUMED

15 BY MR. MURDAUGH:

16 Q. In that regard, if you'all had gone through the
17 first phase of the trial and found a defendant guilty,
18 gone through the second phase of the trial, listened to
19 everything everybody had to say, weighed it and decided
20 that this is an appropriate case for the death penalty
21 -- you've gotten to that point now. You've already
22 decided that this is an appropriate case. You would be
23 required -- and when I say "you", I'm talking about the
24 twelve members of the jury -- would be required to sign
25 a sheet of paper that said, "We, the undersigned

1 jurors, recommend that the defendant suffer the death
2 penalty." And while it says "recommend", it's really
3 not a recommendation. It is your decision. Could you
4 sign that piece of paper?

5 A. Yes.

6 Q. Just so you'll understand that those
7 questionnaires we make you fill out, that we do read
8 them. You said that you lived in Jasper and Beaufort
9 County. And the reason I ask that is you're required
10 to be a resident of Beaufort County in order to serve
11 on the jury. And it says, "What county do you live
12 in?" You said, "Beaufort/Jasper."

13 A. I guess it would be Beaufort.

14 Q. Where do you live?

15 A. On Lady's Island.

16 Q. That's Beaufort County. Thank you, ma'am.

17 MR. KULP: If it please the Court?

18 THE COURT: Mr. Kulp?

19 EXAMINATION

20 BY MR. KULP:

21 Q. Good afternoon, Ms. Gambla.

22 A. Hi, how are you?

23 Q. Fine, thanks. My name is Tim Kulp and my co-
24 counsel, Mr. Fleming, and I represent the accused in
25 this case, Mr. Rogers. I just want to ask you a couple

1 of questions.

2 You understand and it's been reviewed that with
3 this being a two-part trial or process, that the
4 decision to be made in the first phase of the
5 proceedings is whether there's proof beyond a
6 reasonable doubt offered by the Solicitor that the
7 charges -- as to the charges. And if that burden has
8 not been met, that the Court would instruct you that
9 your verdict as a jury would be not guilty.

10 A. Uh-huh, (affirmative nod).

11 Q. And if so, that we'd never enter, logically, the
12 second phase of the proceedings. Do you understand?

13 A. I understand.

14 Q. Thank you, ma'am.

15 MR. MURDAUGH: I think I may have asked you this
16 question, but I need to ask. If I did, just tell me.
17 Do you know Kenneth Williams or Richard Rivers?

18 POTENTIAL JUROR: No, I don't.

19 MR. MURDAUGH: Did I just do that?

20 POTENTIAL JUROR: No, I think the judge did
21 that.

22 THE COURT: I did it.

23 MR. MURDAUGH: No wonder I didn't remember that.

24 THE COURT: Any comments?

25 MR. KULP: No, sir. Thank you, Your Honor.

1 THE COURT: Ms. Gambla, you are qualified. I
2 find that you are qualified to go into the panel from
3 which this jury will be selected. We said yesterday
4 we'd hoped to start on Thursday, but it looks like to
5 me we're now going to start on Friday. If you would
6 report back here at 9:30 on Friday, bring your clothes
7 for three nights, stay at the -- and it's going to be
8 at the Hampton Inn, right across the marsh. I guess
9 it's that way.

10 I further need to caution you not to talk to
11 anyone about the case. Of course, you can tell
12 somebody that you'll be on a case, you know, so that
13 you can make your arrangements -- but not the
14 specifics. Do not read any newspaper articles about
15 it, listen to any TV or radio about
16 it. Also, don't take any steps to do any reading or
17 research or try to educate yourself about criminal
18 proceedings in general or criminal charges or anything
19 about this case specifically, whether this is from
20 other persons, books magazines, the internet or any
21 other source.

22 In other words, you'll be told everything that you
23 need to know about the case right here in Court.

24 And with that, I hope you have a nice afternoon
25 and we look forward to seeing you on Friday.

1 POTENTIAL JUROR: I just have one concern, is I
2 have a seven and a ten-year-old and I'm going through a
3 separation. And I'm their sole caregiver. I'm just a
4 little concerned about the length of being away from
5 the children.

6 THE COURT: Well ---

7 POTENTIAL JUROR: I could arrange a few days,
8 but if it's a long time, I'm just concerned for my
9 children.

10 THE COURT: I don't think this will be too
11 long. It will basically -- I think Friday, over the
12 weekend, I think we'll be through with it. Does that
13 present too much of a burden?

14 POTENTIAL JUROR: That's probably fine.

15 THE COURT: We look forward to seeing you on
16 Friday then.

17 POTENTIAL JUROR: 9:30? Thank you.

18 (TESTIMONY OF JUNE GAMBLA CONCLUDED)

19 CLERK: Judge, remember that student -- and
20 indeed it was the one I thought it was. She's in the
21 jury assembly room.

22 THE COURT: Bring her in.

23 CLERK: It's the young lady that just came
24 in with the long, blonde hair. I can't remember her
25 name.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

309

1 (POTENTIAL JUROR TAKES STAND)

2 LORI DURHAM, having been
3 duly sworn to tell the truth, the whole truth and
4 nothing but the truth was examined and testified, as
5 follows:

6 EXAMINATION

7 BY THE COURT:

8 Q. Come on up, please.

9 A. (Complies)

10 Q. How are you doing?

11 A. Fine.

12 Q. Your name, please?

13 A. Lori Durham

14 Q. And where are you in school?

15 A. University of South Carolina, Beaufort at Hilton
16 Head.

17 Q. And I understand you've got classes this week?

18 A. Yeah, I have class every week.

19 Q. Are you asking to be excused from this by virtue
20 of being a student?

21 A. Yes. That and I work two jobs.

22 Q. Well, I can't excuse you because of that. Are you
23 a full-time student?

24 A. Yes, I am.

25 Q. Any objection to -- do you know your juror number?

1 A. 87.

2 Q. What was that?

3 A. 87.

4 THE COURT: Okay. Any objection, Mr. Kulp?

5 MR. KULP: No, sir, Your Honor. I think the
6 law applies.

7 THE COURT: You are entitled to be excused and
8 so you are excused. Have a nice afternoon.

9 Number 87 excused.

10 (TESTIMONY OF LORI DURHAM CONCLUDED)

11 THE COURT: We're going to do the rest of this
12 one.

13 MR. KULP: What's her name?

14 CLERK: Lori Durham. She's on Panel 14.

15 THE COURT: 14th panel, okay. Would you please
16 show in Richard Mitchell, Juror No. 239?

17 (POTENTIAL JUROR TAKES STAND)

18 RICHARD MITCHELL, having been previously sworn to tell
19 the truth, the whole truth and nothing but the truth,
20 continued under his oath and testified, as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q. Come around, Mr. Mitchell. How are you doing,
24 sir?

25 A. All right, sir.

1 Q. Mr. Mitchell, I remind you, sir, that you are
2 still under oath from the oath I gave you yesterday.

3 Have you had any -- have you talked to anybody or
4 anybody talked to you about this case since yesterday?

5 A. No, sir.

6 Q. Would you get close to the microphone so they can
7 hear you all over the courtroom?

8 A. (Complies). No, sir.

9 Q. Have you read any newspapers or magazines or
10 television or radio articles about this case?

11 A. When it first happened I read the paper about it.

12 Q. Okay. I was actually asking you about like
13 yesterday or today.

14 A. No, sir.

15 Q. You say you read something about it when it first
16 happened. Tell me about what you read -- you remember
17 reading.

18 A. It was in the *Packet*.

19 Q. The *Island Packet*?

20 A. Yes, sir.

21 Q. And what do you recall from the article?

22 A. All I can recall from it is that two people were
23 shot. That's about all I can recall.

24 Q. Let me tell you the law on this is that it's basic
25 and fundamental that the case be decided solely and

1 only from the testimony from the witnesses who have
2 testified here in Court, that are sworn and testify,
3 along with the evidence introduce in the trial. And
4 you should not be influenced by anything you may have
5 heard or read about the case before the trial.

6 Would you be able to set aside or put aside
7 anything you may have read about the case back, you
8 say, when it first happened? Because, you know,
9 newspapers could be wrong. And here you're hearing the
10 testimony right here. Would you be able to do that?

11 A. I think I can.

12 Q. Well, why can't you? What gives you a problem on
13 that?

14 A. Well, just what I read.

15 Q. And so all you read is that two people had been
16 shot? Did you read who did the shooting?

17 A. No, no, sir.

18 Q. You don't recall who did the shooting?

19 A. No, sir.

20 Q. Have you read any other newspaper articles about
21 this?

22 A. No, sir.

23 Q. Mr. Mitchell, did you read this pretrial
24 questionnaire out there about how a death penalty trial
25 works?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

313

1 A. Yes, sir.

2 Q. In other words -- and I'll go into a little bit
3 and ask you a couple of questions. In a case where the
4 State is seeking the death penalty, it's bifurcated
5 which is a word we use but means it's split into two
6 parts.

7 In the first part, there's a trial to determine
8 whether the -- and the jury will decide whether a
9 defendant is actually guilty of the crime charged, the
10 murder. In other words, the jury in that first trial
11 could decide he's guilty or they could decide he's not
12 guilty.

13 Assuming for our purposes here that a jury decides
14 that the defendant was guilty of murder, in the second
15 phase the jury would then consider what the punishment
16 would be.

17 A. Yes, sir.

18 Q. And there's two possible punishments for murder.
19 One is the death penalty. The other one is life
20 imprisonment.

21 And we've found that there's three types of jurors
22 when a person has been determined to be guilty of
23 murder. One type of juror says that if a person is
24 guilty of murder they ought to get the death penalty.
25 It doesn't matter how it happened or anything else

1 about it. The second type of jury says that they don't
2 believe in the death penalty in any circumstances.
3 They could not give the death penalty. That they would
4 always give life imprisonment, no matter how it
5 happened.

6 The third type of juror would say that in a proper
7 case of what they, the juror themselves thought to be a
8 proper case, if there are aggravating circumstances
9 that they could give the death penalty. But there are
10 also sometimes -- the person who has been determined to
11 be guilty of murder should not get the death penalty.
12 That he should have the life imprisonment.

13 Do you have an opinion as to which of these three
14 categories you fall within?

15 A. The second one, sir.

16 Q. The second one is that you could, under no
17 circumstances, give the death penalty. Is that the one
18 you would fall within?

19 A. Yes, sir.

20 Q. Okay. So no matter how bad the case or what the
21 circumstances are, you would not feel like the death
22 penalty would be appropriate?

23 A. No, sir. I'm opposed to the death penalty, sir.

24 THE COURT: Any questions?

25 MR. MURDAUGH: None, sir.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

315

1 THE COURT: Mr. Kulp?

2 MR. KULP: Yes, Your Honor, if it please the
3 Court.

4 EXAMINATION

5 BY MR. KULP:

6 Q. Good afternoon, Mr. Mitchell.

7 A. Good afternoon, sir. How are you doing?

8 Q. Very good. Thank you. My name's Tim Kulp, and
9 along with my co-counsel, Mr. Fleming, we represent the
10 accused in this case, Mr. Rogers.

11 Mr. Mitchell, considering what the judge has asked
12 you and informed you about this process that's involved
13 in this type of trial, you are aware, are you not, that
14 if the jury convicted the defendant and we moved to the
15 second part, to the penalty phase, that the State has
16 the ability then to introduce a range of evidence,
17 exhibits and testimony to support their assertion to
18 the jury that there is an aggravating circumstance or
19 circumstances that they would submit and argue to the
20 jury would warrant a finding by the jury that the
21 appropriate penalty decided by the jury would be the
22 death penalty. Do you understand that?

23 A. (Affirmative nod).

24 Q. And at this stage -- you need to speak up. Do you
25 understand that?

1 A. Not quite.

2 Q. You understand that if we got to the second part
3 of this trial proceeding, that would be where the jury
4 is asked to decide what the appropriate penalty would
5 be. Do you understand that?

6 A. Yes, sir.

7 Q. And in this type of case the jury would make that
8 finding.

9 A. Yes, sir.

10 Q. And that the State, the Solicitor, has the ability
11 at that stage to come and call witnesses and present
12 evidence to support their argument to the jury that
13 there's an aggravating circumstance or circumstances.
14 There are things that they could present as evidence to
15 try to convince the jury that the crime and the aspects
16 of the case are so significant and serious that it
17 would support the jury's decision that the penalty
18 should be the death penalty. You understand that's
19 what the State's trying to do in that second stage or
20 would do?

21 A. Yes, sir.

22 Q. And you haven't heard anything at this point --
23 it's a silly question -- about what the evidence in
24 this case or about what the Solicitor would present in
25 the case as to -- to support their argument that the

1 death penalty would be the right decision by the jury.

2 You haven't heard anything so far.

3 Q. No, sir.

4 A. And you don't know what that is. So my question
5 is do you think and is it possible that regarding your
6 position about this issue on the death penalty and the
7 appropriate punishment there now are, in fact, some
8 things that you could hear during that phase or that
9 part of the proceedings that just might convince you
10 that the death penalty would be the appropriate thing
11 on those facts and circumstances.

12 A. No, sir.

13 Q. Thank you, sir. I appreciate it. Thank you, Your
14 Honor.

15 THE COURT: Any objection to the witness being
16 excused?

17 MR. KULP: No, sir.

18 THE COURT: Mr. Mitchell, you are excused.
19 Thank you for coming. That will conclude your jury
20 service this week.

21 (TESTIMONY OF RICHARD MITCHELL CONCLUDED)

22 MR. MURDAUGH: Judge, before you bring in the next
23 juror can we just -- he is suffering apparently
24 everything between dandruff and athlete's foot.

25 THE COURT: You're talking about Mr. Ziplow?

1 MR. MURDAUGH: Yes, sir.

2 THE COURT: I notice he said he's had a murder
3 in his family, too.

4 MR. MURDAUGH: Yes, sir. He's had a murder in his
5 family. He's got bipolar disorder.

6 THE COURT: In other words, you feel like it's
7 not necessary to even voir dire him unless they want
8 to?

9 MR. MURDAUGH: Unless they want to, sir.

10 THE COURT: You'all want to voir dire him?

11 MR. KULP: One second, Your Honor.

12 THE COURT: You want to look at this list?

13 Okay.

14 MR. KULP: Thank you, Your Honor.

15 MR. MURDAUGH: Every time I try to shorten
16 something, it lengthens. Not everything.

17 THE COURT: Assuming we don't have to go
18 through him, that leaves four more before lunch.

19 MR. FLEMING: I'm sorry. I didn't mean to
20 interrupt. But we've looked at our information kind of
21 briefly, Solicitor, and we don't think there's a need
22 to voir dire the witness.

23 THE COURT: Excused by Motion of both sides.

24 MR. FLEMING: Yes, sir. Significant medical
25 problems, the record, there's a mention of bipolar

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

319

1 disorder and the murder of his wife's child or robbery
2 of the child.

3 THE COURT: Would you show Mr. Ziplow in,
4 please? Just tell him he can just stay back there.

5 (POTENTIAL JUROR TAKES STAND)

6 STEVEN ZIPLOW, being duly
7 sworn to tell the truth, the whole truth and nothing
8 but the truth, was examined and testified, as follows:

9 EXAMINATION

10 BY THE COURT:

11 Q. Just come right here, Mr. Ziplow.

12 A. (Complies)

13 Q. Based upon the history that you have given,
14 including the unfortunate family situation that you
15 have, the parties have agreed that due to the
16 circumstances of this case that you would not -- that
17 you wouldn't have to serve. So you are excused, sir.
18 Thank you very much.

19 (TESTIMONY OF STEPHEN ZIPLOW CONCLUDED)

20 THE COURT: Leslie Roldan, Juror No. 329.

21 (POTENTIAL JUROR TAKES STAND)

22 LESLIE ROLDAN, being duly
23 sworn to tell the truth, the whole truth and nothing
24 but the truth, was examined and testified, as follows:

25 EXAMINATION

1 BY THE COURT:

2 Q. Ms. Roldan, would you please come right up here
3 and have a seat?

4 A. (Complies)

5 Q. I have a couple of preliminary questions to ask
6 you. First, I remind you, ma'am, that you're still
7 under oath from yesterday.

8 A. Yes, sir.

9 Q. Have you talked to anyone or anyone talked to you
10 about this case since we were here yesterday?

11 A. No.

12 Q. Have you had any -- have you read anything in any
13 of the newspapers, such as the *Island Packet* or
14 the *Beaufort Gazette* or heard anything about it on the
15 TV or the radio?

16 A. No.

17 Q. Did you read the pretrial questionnaire?

18 A. Yes.

19 Q. Basically, what that says is that -- a little
20 background. First, in a case where the State is
21 seeking the death penalty is called a bifurcated trial.
22 In other words, it's a two-part trial. The first part,
23 the jury would decide whether or not a defendant is
24 guilty or not guilty. And if the person is found not
25 guilty, then that's the end of it. If a defendant is

1 found guilty of the murder, he goes into the second
2 phase which is called the penalty phase.

3 And in the penalty phase a jury would decide, if
4 you get that far, what the punishment would be. And
5 there are two possible punishments. One is the death
6 penalty. The other is life in prison, life
7 imprisonment.

8 And there are three types of jurors. Basically,
9 there's one juror who feels that if a person's guilty
10 of murder ---

11 MR. KULP: Judge, can we interrupt you just a
12 moment?

13 (OFF-RECORD DISCUSSION)

14 Q. Ms. Roldan, you work for Louis Dore?

15 A. I do.

16 Q. What do you do?

17 A. I'm his receptionist.

18 Q. You're his receptionist?

19 A. Uh-huh, (affirmative nod).

20 Q. I'm advised that -- have you ever heard anything
21 about this case?

22 A. I have not.

23 Q. How long have you worked for Mr. Dore?

24 A. Almost two years.

25 Q. Okay. So you went to work with him about when?

1 A. February of last year.

2 Q. Okay. Well I'll go forward. Have you ever heard
3 anything -- you've never heard about this case at all?

4 A. I don't recall.

5 Q. We've then move it along. I have gone through
6 this. I'm not sure how far I got. But we get in the
7 penalty phase. And I said there's basically --
8 assuming a person is found guilty of murder, there's
9 three possible verdicts. And it's at that time that a
10 jury could return one of guilty of murder, which
11 they're guilty of murder in all three of these things.

12 But one type juror would feel that if a person is
13 guilty of murder, he should always get the death
14 penalty.

15 A second type of juror would be of the opinion
16 that there would always be life imprisonment, no matter
17 what the facts and circumstances are of the case. They
18 would always vote life imprisonment because they could
19 not vote for the death penalty.

20 And the third type of juror would say, "I need to
21 know something about the fact and circumstances of the
22 case," what are called aggravating circumstances, the
23 bad things about the case. And I'd like to consider
24 the mitigating circumstances, which is the good things
25 about the person who's charged. And I would feel that

1 in some cases I would feel the death penalty would be
2 appropriate. In some cases I would feel life
3 imprisonment would be appropriate.

4 Which one of these categories would you feel that
5 you would fall within?

6 A. I would need to hear more about the case.

7 Q. So you would have an open mind as to what should
8 be the appropriate punishment?

9 A. Yes.

10 Q. Solicitor? Oh, one thing I didn't ask you about.
11 Do you know Kenneth Williams or Richard Rivers?

12 A. No, neither.

13 THE COURT: Go ahead, Solicitor. Sorry for the
14 interruption.

15 EXAMINATION

16 BY MR. MURDAUGH:

17 Q. Ms. Roldan, how are you doing?

18 A. I'm fine.

19 Q. I'm Randolph Murdaugh. I'm the Solicitor for this
20 Circuit. I need to ask you some questions and find
21 out, frankly, whether we want you to sit on the jury or
22 not. There aren't any right or wrong answers.
23 Understand that. But we just need to get a little
24 feeling about you.

25 I notice that on your questionnaire you checked

1 that you have strong feelings about firearms and that
2 you could not be fair and impartial in a case involving
3 the alleged use of or illegal possession of firearms.

4 Is that your feelings?

5 A. Yes and no. It depends on what question you ask
6 me regarding firearms.

7 Q. What I need to know -- and I'm not trying to be
8 short with you -- but you've put this on there. And I
9 need to know about it. Question, if somebody uses a
10 firearm to kill somebody, would that cause you not to
11 be able to be fair and impartial?

12 A. No.

13 Q. How is it that you put that on there. I just
14 don't understand it.

15 A. Probably because when I checked it off I had so
16 much things to check I just went along and checked.

17 Q. I understand that. No question. In addition, on
18 number 28 you did not answer the thing about drugs,
19 whether you could be fair or impartial where drugs are
20 involved.

21 A. I don't remember the question. I don't know. I
22 don't remember.

23 Q. I hate to even ask you to do this. But do you
24 mind reading this one right here (indicating)?

25 A. (Complies). Okay, I can answer that for you.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury *Voir Dire*
Jury Trial October 8-16, 2001

325

1 Q. Okay.

2 A. I could be fair.

3 Q. Okay, good. The judge asked you a moment ago if
4 you had heard the names Kenneth Williams and Richard
5 Rivers.

6 A. He did ask.

7 Q. And you had not heard of them?

8 A. No.

9 Q. Have you ever heard of Jonathan Collins, Jonathan
10 Gadson or Collins Gadson and West McKinnon?

11 A. No.

12 Q. My understanding from listening to your answers to
13 the judge is that you would listen to everything that
14 occurred during a trial?

15 A. Yes.

16 Q. And after hearing everything -- and I'm not
17 talking about this case -- a case. If you thought it
18 was bad enough, you could give the death penalty?

19 A. Yes, I could.

20 Q. And if you didn't think it was bad enough, you'd
21 have no problems giving the ---

22 A. No problems.

23 Q. --- life imprisonment.

24 A. No problems.

25 Q. If you decided -- and when I say "you", I'm

1 talking about the jury, the twelve people sitting on
2 the jury, decided that this case was bad enough that
3 the death penalty was appropriate, you would have to
4 sign your name to a sheet of paper that would have up
5 at the top, "We, the undersigned jurors recommend that
6 the defendant suffer the death penalty." And there
7 would be lines on it and you would have to sign your
8 name to it. Would that create a problem with you?

9 A. No.

10 Q. Thank you, ma'am. I appreciate you being honest
11 and straightforward with me.

12 MR. KULP: May it please the Court?

13 THE COURT: Mr. Kulp?

14 EXAMINATION

15 BY MR. KULP:

16 Q. My name is Tim Kulp and I'm counsel, along with
17 Cory Fleming, co-counsel, Mr. Cory Fleming, for the
18 accused, Mr. Rogers. I'd just like to ask you one
19 quick question and then I can proceed along.

20 We kind of went over this, but it's important.
21 You understand that considering this trial and
22 procedure is two parts, one to examine whether the
23 finding of the jury would be guilty or not guilty. And
24 if it's not guilty, then you don't proceed to the
25 second proceeding. It's only logical. If someone's

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

327

1 found not guilty, there's no punishment, correct?

2 A. Yes.

3 Q. And that in the process of doing that that the
4 issue to be decided by the jury is whether the State
5 has met their burden of proof in proving all the
6 charges beyond a reasonable doubt.

7 A. Yes.

8 Q. And if they fail to do that, then the Court would
9 instruct you that your verdict would be "not-guilty".

10 A. Uh-huh, (affirmative nod).

11 Q. Thank you, ma'am.

12 THE COURT: Any questions? Any Motions,
13 anything regarding this juror?

14 MR. KULP: No, sir, Your Honor. Just one
15 matter, Your Honor, that we -- no, not at this time.

16 THE COURT: How about the State?

17 MR. MURDAUGH: (Indicates negative response)

18 THE COURT: Ms. Roldan, I find that you are
19 qualified to go into the panel from which the jury will
20 be drawn. Yesterday we said we would hopefully draw
21 this jury on Thursday. We're not running quite as fast
22 as we thought we would. So it looks like we're going
23 to start it on Friday morning at 9:30. Please be here
24 at the courthouse. Bring your bag with clothes for
25 three nights. I say you're not on the jury panel, but

1 we want everybody to bring their bags so if they are
2 selected we won't have to send back around the county
3 and waste a day for everybody to go out and get their
4 luggage together and their clothes for the
5 sequestration.

6 Don't discuss the case with anyone or allow anyone
7 to discuss the case with you. And if anyone should
8 attempt to do so, please report that to the Court
9 immediate. And also, you must take steps to make sure
10 you don't read anything about it in the newspaper or on
11 TV or radio.

12 And lastly, particularly since you are employed by
13 a law office, you must not take any steps to do any
14 reading, research or educate yourself or to make any
15 inquiry into criminal proceedings or criminal charges
16 or crimes in general through books, persons, magazines,
17 the internet or anything else. In other words, when
18 you come in, if you are selected on this jury you'll be
19 told everything you should know about the case here in
20 the courtroom from the arguments of the attorneys and
21 the charge and so forth.

22 Do you understand that?

23 POTENTIAL JUROR: Yes.

24 THE COURT: Have a nice afternoon and we'll see
25 you, then, Friday at 9:30.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

329

1 POTENTIAL JUROR: So am I free to go back to
2 work?

3 THE COURT: You are free to go back to work,
4 yes, ma'am.

5 And, like I say, since you are in a law firm, you
6 might just tell everybody that you are in a panel and
7 make sure that nobody asks you any questions or makes
8 any comment about it. But I feel like Mr. Dore,
9 Anthony and Ms. Dore and all will be very sensitive
10 about that. But you can just put them on notice right
11 away and the other people in the office about that.

12 POTENTIAL JUROR: Yes, sir.

13 (TESTIMONY OF LESLIE ROLDAN CONCLUDED)

14 THE COURT: Susan Singleton, Juror No. 352.

15 (POTENTIAL JUROR TAKES STAND)

16 SUSAN SINGLETON, being
17 duly sworn to tell the truth, the whole truth and
18 nothing but the truth, was examined and testified, as
19 follows:

20 EXAMINATION

21 BY THE COURT:

22 Q. How are you, Ms. Singleton?

23 A. Fine, thank you.

24 Q. Before we start, first I would remind you, Ms.
25 Singleton, that you are still under oath from

1 yesterday.

2 A. Uh-huh, (affirmative nod).

3 Q. I have a couple of preliminary questions, and this
4 shouldn't take very long.

5 Since you appeared yesterday have you discussed
6 this case with anyone in any manner whatever?

7 A. No.

8 Q. Have you read anything in the newspapers, like the
9 Gazette or Island Packet or whatever?

10 A. No.

11 Q. Heard anything about it on the radio or TV or
12 anything?

13 A. No.

14 Q. Have you had any discussions with any other
15 potential jurors about the case?

16 A. No.

17 Q. Or any family members?

18 A. No.

19 Q. Very good. Did you read the pretrial
20 questionnaire out there?

21 A. Yes, I did.

22 Q. Briefly, I'll go over that with you. In a case
23 where the death penalty is being sought by the State,
24 the trial is bifurcated, meaning it has two parts.
25 There is the first phase which is the guilt phase.

1 And in that phase a defendant -- and I'm not talking
2 about this case. I'm just talking about cases in
3 general. A jury decides whether a defendant is guilty
4 of the crime, of the murder or murders as the case may
5 be, charged.

6 If they find the person is guilty then you go to
7 the second phase, which is the penalty phase... If a
8 person is found not guilty, that's the end of it.

9 Assuming for our discussion that a defendant is
10 found guilty, and then you go to the second phase, the
11 penalty phase, and there are two possible verdicts at
12 that stage. One of death, the other is life
13 imprisonment.

14 It's been found that basically there are three
15 types of jurors when you get to this phase. The first
16 type that we will talk about is the person who says if
17 a person is found guilty of murder the only appropriate
18 sentence is the death penalty. A second type says that
19 the only appropriate sentence, no matter what the
20 circumstances are, is life imprisonment. That they
21 could not give a death sentence, no matter what the
22 circumstances were.

23 And the third type of juror is one who would feel
24 that in some circumstances a person guilty of murder
25 should receive the death penalty, and in some time,

1 even though a person is guilty of murder, they should
2 receive life imprisonment and would have an open mind
3 and need to hear facts concerning aggravating circum-
4 stances or bad things about the whole situation or good
5 things which are known as mitigating factors, which
6 would lessen what the punishment would be.

7 What category do you feel that you are?

8 A. I'm probably the third category by process of
9 elimination. I'm not in the first or the second.

10 Q. In other words, you would consider what the case
11 was about, all the factors involved in the case, listen
12 to them all?

13 A. Uh-huh, (affirmative nod). I really don't know
14 how I feel. I mean, I'm not sure how I feel about the
15 death penalty. I'm not sure how I feel about mandatory
16 sentencing.

17 Q. Well, that was one of the reasons that I had this
18 placed out there, is for you to read it so that you
19 wouldn't be blind-sided, so to speak, on it. That you
20 would have read this in some detail and would have a
21 chance to gather your thoughts about that.

22 Do you feel that if a case -- what you determined,
23 and it would be up to you and the jury to determine --
24 what you determined to be a bad case, a very aggravated
25 case. And I'm not going to go into any examples of

1 what would constitute a bad case. But you can arrive
2 at that yourself. In other words, I'm saying that
3 there's some murder cases that would be extremely --
4 that would strike you as very bad. And then there's
5 some cases that would be still murder, but you would
6 feel something -- some sympathy or empathy or something
7 about the circumstances that you would feel -- not that
8 murder would ever be justified, but it was not quite as
9 bad a situation as the other.

10 Would you, if a case you thought was bad enough,
11 would you be able to give a death penalty sentence to
12 a defendant?

13 A. I think so. By the same token, I'm not sure that
14 life in prison isn't worse than a death penalty.

15 Q. Do you feel that if a case that you would be able
16 to give a life sentence, in an appropriate case?

17 A. Certainly.

18 Q. So if I understand the tone of your answers, your
19 question -- you don't have any problem feeling that a
20 life sentence is an appropriate sentence in a murder?

21 A. Correct.

22 Q. You have a little problem or are a little less
23 certain about whether -- what it would take before you
24 would feel that the death penalty was an appropriate
25 sentence?

1 A. Correct.

2 Q. Have I misspoken and said something ---

3 A. No, I think it's right. I think it's appropriate.

4 Q. I'm going to turn you over to the attorneys.

5 THE COURT: Solicitor Murdaugh.

6 EXAMINATION

7 BY MR. MURDAUGH:

8 Q. How are you doing?

9 A. Good morning.

10 Q. I'm Randolph Murdaugh.

11 A. We're into afternoon already, aren't we?

12 Q. We are. Sometimes we get bogged down in our
13 ability to question. In listening to some of the
14 answers that you gave today, what I'm doing is trying
15 to get a little bit of insight into you to find out
16 whether we want you to sit on the jury in the case.

17 A. I understand.

18 Q. There aren't any right or wrong answers.

19 A. I understand.

20 Q. We just need to know a little bit about you. In
21 listening to the answers that you gave the judge, I

22 felt that there was a little bit of hesitancy about
23 whether you could, in fact, impose the death penalty.

24 Am I incorrect?

25 A. No, I think you're right. I do have some

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

335

1 hesitancy about it. I have some hesitancy about a
2 life sentence, too. As I said, I have concerns about
3 mandated punishments, you know, by law. However, it
4 is the case, it is the situation in our legal system,
5 and so one abides by it.

6 Q. Well, if you had gotten -- the way this trial
7 works it's a two-part trial, as His Honor explained
8 to you.

9 A. Right.

10 Q. The way it works is if you find the defendant
11 guilty of murder in the first part -- you're finished
12 with whether he's guilty or innocent ---

13 A. Then you decide ---

14 Q. --- the punishment.

15 A. Right.

16 Q. Okay. And in that part of it, it would be
17 required that you -- and when I say "you", I'm talking
18 about the jury.

19 A. People on the jury.

20 Q. It would be required that the jury find the
21 existence of a thing called an aggravating
22 circumstance, which His Honor will charge you what
23 that's about later in the trial if you get selected.
24 If you find that -- they have already found the murder.
25 If you find there's an aggravating circumstance, then

1 you would be required to listen to the testimony, have
2 the character of the defendant, the circumstances of
3 the crime and any evidence in mitigation. "Evidence in
4 mitigation" mean reasons not to give the death penalty.

5 A. I understand.

6 Q. After doing all of that, could you ever impose --
7 vote to impose the death penalty?

8 A. I think so.

9 Q. And we're not talking about this case. You
10 understand that?

11 A. I know. I understand.

12 Q. You think you could?

13 A. Uh-huh, (affirmative nod). I don't know how much
14 more certain I can convey to you.

15 Q. I understand.

16 A. I have served on civil juries before, and I
17 understand the dynamics of the jury decision-making and
18 how, you know, a group reaches a decision.

19 Q. I wish I did. Sometimes I wonder why juries do
20 some of the things they do. But that's neither here
21 nor there. I shouldn't even have brought that up.

22 A. Yes, sir.

23 Q. In an appropriate case you think you could impose
24 the death penalty?

25 A. Yes. And as I said, I think there are also times

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

337

1 were death penalty is kinder than life imprisonment.

2 Q. One other question. You work with International
3 Paper.

4 A. In Hampton.

5 Q. I thought you'all had closed down.

6 A. Uh-uh, (negative gesture).

7 Q. Oh, you work up at West End?

8 A. We're at the old Westinghouse plant.

9 Q. Oh, that's right. I forget about that.

10 A. Yeah.

11 Q. Excuse me. There's been so many things there,
12 Plywood Plastic, Westinghouse and IP.

13 A. I don't know. But, yes, it's still running.

14 Q. You go to Hampton every day?

15 A. Every day. And I'm appreciating the lack of
16 commute this week. Thank you.

17 Q. What, exactly, do you do with IP?

18 A. I work in customer service. I deal with the
19 public. I deal with manufacturing. I deal with
20 management interfacing with customers.

21 Q. Thank you, ma'am.

22 THE COURT: Any questions?

23 MR. MURDAUGH: Did I ask about the two witnesses?

24 THE COURT: No, you didn't.

25 BY MR. MURDAUGH: Do you know Kenneth Williams or

1 Richard Rivers?

2 MS. SINGLETON: No.

3 MR. MURDAUGH: Thank you.

4 MR. KULP: May it please the Court?

5 EXAMINATION

6 BY MR. KULP:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. My name is Tim Kulp. And along with my co-
10 counsel, Mr. Fleming, we represent the accused ---

11 A. Uh-huh, (affirmative nod).

12 Q. --- Mr. Rogers. And I almost don't want to ask
13 you this. And in the course of my career I've
14 developed a phrase that I tell clients. Sometimes this
15 is a stupid lawyer question, because sometimes it's
16 really obvious. But I feel like I need to do so
17 anyway. Sometimes we kind of put the cart before the
18 horse or it seems like we are in a circumstance such
19 as this. We're talking about penalties and your
20 appreciation or consideration or that before we ever
21 even get to the issue of whether or not the State has
22 met their burden of proof, to prove the defendant
23 guilty of the charges they've accused him of. So this
24 is kind of one of those "stupid lawyer" questions.

25 You understand that while we are talking about

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

339

1 your appreciation and consideration of possible
2 penalties in a case of this nature, we may very well
3 never even get to that place in the trial.

4 A. Right.

5 Q. Thank you, ma'am.

6 A. No problem.

7 THE COURT: Anything else?

8 MR. MURDAUGH: No discussions.

9 THE COURT: Ms. Singleton, I find that you are
10 qualified. That means that we've -- and when we
11 started out we hoped we were going to do this on
12 Thursday. But now we're up to Friday. We're going to
13 select this jury at 9:30 on Friday right here.

14 Please come, bring your clothes, your luggage or
15 whatever and be prepared to stay for three nights.
16 It'll be at the Hampton Inn, right across the marsh
17 there. And at that time we will select the jury.

18 The reason we do it this way is so that when we
19 start, the fourteen people, the twelve people plus the
20 two alternates, will be able to go to work and they
21 won't have to go all over the county trying to get
22 people's luggage together.

23 I want to caution you on several things. Now that
24 you are a potential juror do not discuss this case with
25 anyone or allow anybody to discuss it with you.

1 Obviously, you can tell your family and your job that
2 you are on a case and about the sequestration.

3 Don't allow yourself to see or read any news-
4 papers, such as the Gazette or whatever. And do not
5 do any reading or research or try to educate yourself
6 about criminal law. In other words, you'll find
7 everything you need to know about this case right here
8 in court when we begin the trial. Like I say, don't
9 read any books, magazines or the internet to try to
10 bring yourself up-to-date on that.

11 POTENTIAL JUROR: Okay.

12 THE COURT: With that, I hope you have a nice
13 afternoon and we look forward to seeing you Friday at
14 9:30.

15 POTENTIAL JUROR: Question. Is it your intent
16 to work through the weekend?

17 THE COURT: Yes.

18 POTENTIAL JUROR: Thank you.

19 THE COURT: We hope to just when we start on it
20 to keep on trucking till we finish it.

21 POTENTIAL JUROR: I understand. Thank you.

22 THE COURT: Thank you.

23 (TESTIMONY OF SUSAN SINGLETON CONCLUDED)

24 THE COURT: Ms. Jane Rivers, Juror No. 321.

25 (POTENTIAL JUROR TAKES STAND)

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

341

1 JANE RIVERS, being duly
2 sworn to tell the truth, the whole truth and nothing
3 but the truth, was examined and testified, as follows:

4 EXAMINATION

5 BY THE COURT:

6 Q. Would you please come right on up here to the
7 front?

8 A. (Complies)

9 Q. How are you doing?

10 A. Fine.

11 Q. Sorry we're running late, but we do the best we
12 can. Ms. Rivers, first off, do you know Kenneth
13 Williams or Richard Rivers?

14 A. No, I don't.

15 Q. Speak loud enough so that the attorneys over here
16 can hear you. Since we left here yesterday have you
17 had any discussions with anybody about this case or
18 heard any discussion about the case?

19 A. No, sir.

20 Q. Have you read any news reports in the newspapers
21 or on TV or anything like that?

22 A. No, sir.

23 Q. Did you read this pretrial questionnaire?

24 A. Yes, I did.

25 Q. I'll briefly ask you about that. In a case where

1 the State is seeking the death penalty, the trial is
2 bifurcated, meaning it's split into two parts. The
3 first part is -- and I'm not talking about this case
4 here, but I'm talking about just the way it's done, the
5 procedure. There is a trial to determine whether the
6 defendant -- whether the State has proven the defendant
7 to be guilty of the crime, the murder, which is called
8 the guilt phase.

9 After the guilt phase, and if a person has been
10 found guilty, because they might find him not guilty
11 and then that's the end of it. But if the jury finds a
12 person to be guilty of the murder, then we go into
13 what's called the penalty phase. And in the penalty
14 phase there are two possible verdicts, one of the death
15 penalty, the other one is life imprisonment.

16 It's been found that there are basically three
17 types of jurors. In a case where a person has been
18 found guilty of the murder there's one type juror who
19 says that in every such case the proper punishment is
20 the death penalty. There's a second type juror who
21 says that I cannot give the death penalty. I feel like
22 that life imprisonment is the appropriate sentence.
23 And a third type juror is one who says or feels that
24 you have to look at the facts and circumstances,
25 consider what are the aggravating factors of the crime,

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

343

1 in other words, the thing that make it bad or worse,
2 plus you can consider mitigating factors such as good
3 things about the person who's charged, the defendant.
4 And you hear all the facts, listen to the arguments,
5 the law and then a decision is then made as to whether
6 -- in other words, the juror is open-minded and goes in
7 and will try to determine what, in that case, would be
8 a proper verdict, whether it would be the death
9 penalty, which they could feel they could give in a
10 proper case, or life imprisonment, which the juror
11 feels they could give in a proper case.

12 Which one of these three categories do you feel
13 that you fall in?

14 A. Type two.

15 Q. Type two?

16 A. (Affirmative nod).

17 Q. In other words, are you saying that no matter what
18 the facts and circumstances of the case, you could
19 never give a person the death penalty?

20 A. Never.

21 Q. And it's your firm belief that under no
22 circumstances would you ever give the death penalty?

23 A. That's right.

24 THE COURT: Any further questions?

25 MR. MURDAUGH: No, sir.

1 THE COURT: Mr. Kulp?

2 MR. KULP: Beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 MR. KULP: May it please the Court, Your
5 Honor.

6 EXAMINATION

7 BY MR. KULP:

8 Q. Ms. Rivers, good afternoon. My name is Tim Kulp.
9 And I represent the accused, Mr. Rogers, along with co-
10 counsel, Mr. Fleming. And we certainly appreciate your
11 responses today.

12 I just wanted to ask you this. If, in fact, the
13 jury convicted and found there was sufficient proof
14 beyond a reasonable doubt that the defendant committed
15 the crime which he is accused of, and the proceeding
16 then went into the phase of punishment and you were a
17 juror on the jury, of course, as the judge said, in
18 that portion or phase of the proceedings, you have the
19 opportunity to hear a great deal of information,
20 testimony, evidence, whatever that would support or be
21 offered to support the prosecution's submission or
22 argument to the jury that these circumstances would
23 constitute aggravating circumstances. That when,
24 matched to the charged or considered under the charge
25 would give you about how to go about the decision, the

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

345

1 State's argument would be that that would support your
2 finding that the death penalty was appropriate.

3 Now, you haven't heard any of the facts and
4 circumstances, evidence or anything about this case,
5 of course. You've also, I think, indicated that you
6 would listen to all the evidence in the case fairly and
7 impartially, whether it was presented by the defense or
8 by the State in the course of making a decision. Is
9 that correct?

10 A. Yeah, I guess.

11 Q. Would you follow the judge's instructions?

12 A. I would absolutely.

13 Q. Absolutely.

14 A. To my best ability.

15 Q. I'm sorry? To the best of your ability?

16 A. Yeah.

17 Q. And can you imagine a circumstance where the facts
18 and the evidence that came out during a penalty phase
19 -- it's a very difficult question to ask because we
20 don't know what that is. But it would be so
21 substantial and so significant it would make you
22 consider that the appropriate penalty might be the
23 death penalty?

24 A. No, sir.

25 Q. Thank you, ma'am.

1 THE COURT: Okay. Thank you very much, Ms.
2 Rivers. I'm going to have to excuse you on those
3 grounds. You are excused for the week. Thank you.

4 (TESTIMONY OF JANE RIVERS CONCLUDED)

5 THE COURT: Kristen Moore, Juror No. 241.

6 (POTENTIAL JUROR TAKES STAND)

7 KRISTEN MOORE, being duly
8 sworn to tell the truth, the whole truth and nothing
9 but the truth, was examined and testified, as follows:

10 THE COURT: This is one that had a murder in
11 her family.

12 EXAMINATION

13 BY THE COURT:

14 Q. Ms. Moore, would you please come around and have a
15 seat up here?

16 A. (Complies)

17 Q. How are you doing?

18 A. Hey.

19 Q. Ms. Moore, before I get to it, I didn't ask you.
20 You stood up when everybody was out here and you said
21 that you had a tragedy in your family where your
22 sister-in-law was murdered.

23 A. Yes.

24 Q. And tell me something about that. When was that?

25 A. That was about a year ago from this month. And it

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

347

1 was my stepbrother's wife. And I'd met her like twice.

2 But they had been married for about a year.

3 Q. And where did the crime occur?

4 A. At an Army base in Georgia.

5 Q. Okay. Would that have any impact or influence
6 upon you if you are selected to serve as a juror in
7 this case?

8 A. No, I don't think so.

9 Q. You don't? Okay. I remind you again that you're
10 still under oath from yesterday. Have you talked about
11 this case or has anyone mentioned anything about it to
12 you?

13 A. No.

14 Q. Have you read anything in the newspaper or heard
15 anything on the radio or TV or anything about this
16 case?

17 A. No.

18 Q. Have you heard anybody discuss the case, here or
19 fellow jurors or anybody else discuss the case
20 whatever?

21 A. No.

22 Q. Okay. Did you read the jury pretrial
23 questionnaire?

24 A. Yes.

25 Q. Just briefly, in a case where the State is seeking

1 the death penalty, the trial is bifurcated, meaning
2 that there's a guilt phase and then there's a penalty
3 phase. And so the way that works is that a defendant
4 is tried, and unless the State proves him guilty beyond
5 a reasonable doubt, the defendant is found not guilty.
6 If the person is proven guilty and convicted or found
7 guilty by the jury, the jury then goes to phase two
8 which is the penalty phase.

9 There are two possible verdicts, one of death, the
10 death penalty. The other is life imprisonment.

11 It's been found that there are three types of
12 jurors on the penalty phase only. I'm not in any way
13 talking about this particular case. I'm just talking
14 about in general. But there's one type of juror who
15 feels that if a person is guilty of murder, the only
16 proper punishment is the death penalty. There's a
17 second juror who feels that they would never find a
18 circumstance that the death penalty -- that they're
19 against the death penalty, and would always vote for
20 life imprisonment. And then there's a third one who,
21 if a person is found guilty of murder, would say,
22 "There's some circumstances I feel the death penalty is
23 appropriate. There's other circumstances where life
24 imprisonment is appropriate." That juror would say, "I
25 have to hear the facts and circumstances of the case,

1 the law. I would hear aggravating or bad things about
2 the case, the severity of it, and good things in
3 mitigation before I would make a decision as to what I
4 thought should be the result of a particular case."

5 A. Uh-huh, (affirmative nod).

6 Q. Which category do you feel that you are in?

7 A. I would say that -- I would want to hear the whole
8 case first, without a doubt. And in my mind right now
9 I would say that I definitely lean towards life in
10 prison more so than any other action. I would say
11 ninety-eight percent I would lean toward life in
12 prison.

13 Q. Even before you heard the facts?

14 A. Humm ---

15 Q. Are you saying that most murders should not
16 warrant the death penalty and that there's some ---

17 A. Right. Yes. But I would definitely hear the case
18 first before I made up my mind.

19 Q. But it would have to be a really, really bad case
20 before you would ever ---

21 A. Yes.

22 Q. --- vote for the death penalty?

23 A. Right.

24 Q. But if you found the case that was bad enough,
25 would you be able to -- then you make the decision, of

1 course, as to what a bad case is. Would you be able to
2 join in a guilty verdict and vote for the death
3 penalty?

4 A. I don't know. I would have to say "no".

5 Q. One thing you have to do that's a requirement of
6 the law is that after -- if a jury votes for the death
7 penalty, each juror has to sign the verdict which says,
8 "We, the jurors" -- something to the effect, "We the
9 jurors recommend the death penalty."

10 A. Uh-huh, (affirmative nod).

11 Q. And the language says "recommend", but it means
12 that you are actually giving the death penalty. So
13 would you be able to sign your name to such a document?

14 A. No.

15 Q. Are you satisfied clearly in your mind that you
16 would not be able to sign a verdict that would give the
17 death penalty to a defendant?

18 A. Yes.

19 Q. No matter what the facts and circumstances of the
20 case were?

21 A. The only way that there was a danger of that
22 person getting out and hurting somebody again or
23 hurting someone in prison, killing somebody in prison.

24 THE COURT: Solicitor?

25 EXAMINATION

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

351

1 BY MR. MURDAUGH:

2 Q. How do you do?

3 A. All right.

4 Q. I'm Randolph Murdaugh. I'm the Solicitor down
5 here. And I need to ask you some questions, frankly,
6 to find out whether we want you to sit on the jury or
7 not. Before we start with that, let me ask you do you
8 know Kenneth Williams or Richard Rivers?

9 A. No.

10 Q. In listening to your answers to the judge, I
11 thought at one time you could never give the death
12 penalty. And then I ain't so sure now.

13 A. Uh-huh, (affirmative nod).

14 Q. Could you sign a piece of paper saying, "We,
15 the undersigned jurors, impose the death penalty on
16 a particular defendant?"

17 A. I could, depending on the case. There's a
18 possibility.

19 THE COURT: "I could", or "there is a
20 possibility"?

21 POTENTIAL JUROR: I meant it as the same thing.
22 But there is a possibility, depending on the extreme
23 circumstances of the case.

24 THE COURT: So, in other words, if you thought
25 the case was bad enough -- let me digress just a

1 minute.

2 POTENTIAL JUROR: Not if the case was bad
3 enough. If the person was -- if other people were --
4 there was a possibility that somebody else could be
5 killed if this person wasn't, or if more people could
6 be killed if this person wasn't killed. Like, if this
7 person wasn't -- couldn't be contained in one spot, and
8 he was putting many, many people -- their life --
9 putting their life under risk. Then I could see it.
10 But it would be a very extreme person to have to do
11 that.

12 EXAMINATION RESUMED

13 BY MR. MURDAUGH:

14 Q. Just one second, please. Let me ask you a question
15 to make sure I understand what your testimony is. You
16 are telling me that if a person who has been convicted
17 of murder is a danger to the community, then you could
18 give him the death penalty?

19 A. If he's in prison -- I've seen so many movies.
20 But if he's just like this ---

21 Q. Don't believe everything you see in the movies or
22 the newspaper, please, ma'am.

23 A. I know. I just usually think of -- it's just this
24 outrageous person who's just uncontrollable in prison.

25 Q. Like a Charles Manson.

1 A. Right, like Charles Manson is who I'm thinking of.
2 Then I could absolutely -- that's a case I could lean
3 towards it, or I could do that. But it would have to
4 be that extreme.

5 Q. Okay.

6 THE COURT: Mr. Kulp?

7 MR. KULP: If I please the Court, Your Honor.

8 EXAMINATION

9 BY MR. KULP:

10 Q. Ms. Moore, good afternoon.

11 A. Good afternoon.

12 Q. My name is Tim Kulp and I represent the accused,
13 Mr. Rogers, along with co-counsel, Mr. Fleming. Am I
14 correct in assuming that you fully understand how
15 important and serious these proceedings are?

16 A. (Affirmative nod)

17 Q. And am I also correct in assuming that your
18 testimony is that you would follow the Court's
19 instructions and you would follow the law given to you
20 by the Court?

21 A. Absolutely.

22 Q. And is part of your confusion, or at least what
23 sounds like confusion in making an extremely clear
24 answer, that you just don't know what facts and
25 circumstances might be offered by the State in this

1 case because we haven't given you any yet.

2 A. Right, right.

3 Q. And, in fact, you very well -- you indicated that
4 if it was warranted, that you could sign a document
5 indicating your vote as one of twelve people about a
6 penalty that was appropriate in the case. Did you not?
7 You could do that if you found that that was the
8 appropriate penalty? To sign a verdict or a form
9 indicating that that was the collective decision of the
10 jury, one vote of which would be yours. You could do
11 that?

12 A. If I agreed with it, yes.

13 Q. Yes. And based on what the Solicitor asked you, I
14 think you understand. It's very important the way the
15 question was phrased. Do you understand that it
16 wouldn't be your sole decision about the outcome of the
17 jury. It would be everyone's collective decision,
18 based on their individual considerations?

19 A. Uh-huh, (affirmative nod).

20 Q. And assessment and application of the law to the
21 facts as they found them, right?

22 A. Right.

23 Q. So you understand it wouldn't be just Ms. Moore's
24 decision?

25 A. Right, right.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

355

1 Q. In short, is it your testimony that you would be
2 able to make a choice between a penalty of life
3 imprisonment and the death penalty, based upon the
4 facts and circumstances of the case and the law that
5 the judge gives you? Isn't that correct?

6 A. Yes.

7 Q. This is kind of a strange animal, because we're
8 talking about, as the judge told you, a two-part
9 process. Of course, one is the guilty phase which is
10 what ever trial has in a criminal court. And then the
11 other part is a penalty phase. And that's what this
12 screening process involves. And that's why we're both
13 asking you questions about that and the Court's making
14 its inquiry.

15 But you understand that even though we're kind of
16 putting the cart before the horse, you understand that
17 if the State doesn't bear its burden of proof of
18 proving the accusations against Mr. Rogers that we very
19 well never get to a penalty phase.

20 A. Right.

21 Q. Thank you, ma'am.

22 A. Uh-huh, (affirmative nod).

23 Q. Let me understand this. I've got one last
24 question. I'm not talking about what happens to the
25 defendant afterwards, I mean, that danger or whatever.

1 You say that if he were a danger to the community.

2 A. Correct.

3 THE COURT: Is that your main concern, or are
4 you mainly concerned about the crime itself or the
5 events that occurred at the time of the crime?

6 POTENTIAL JUROR: Which one am I more concerned
7 with?

8 THE COURT: Uh-huh, (affirmative nod). And I'm
9 speaking solely as to whether or not you think that a
10 person should receive -- that you would be able to vote
11 for the death penalty in a proper case or life
12 imprisonment in a proper case.

13 POTENTIAL JUROR: Let's see. I'm concerned with
14 -- if somebody that breaks the law. I definitely think
15 that they should have to have something -- they should
16 have to pay for it. But I'm also concerned with where
17 that person fits in after they've done something like
18 that.

19 THE COURT: Uh-huh, (affirmative nod). Well,
20 then, the question I'll ask you is without concern
21 about whether the person is a continuing danger.

22 POTENTIAL JUROR: Uh-huh, (affirmative nod).

23 THE COURT: Do you feel that there are cases
24 where you would be able to give someone the death
25 penalty if you were on the jury? That you'd be able to

1 vote for the death penalty, sign the verdict and all
2 that, aside from just the simple fact that the person
3 might be a continuing danger while they were in prison
4 or something like that? Would you be able to -- do you
5 think there are events or crimes that would warrant the
6 death penalty?

7 POTENTIAL JUROR: No.

8 THE COURT: You say "no"?

9 POTENTIAL JUROR: No.

10 THE COURT: And so your sole concern is as to
11 whether they're going to be a continuing danger to
12 society and people in prison or wherever?

13 POTENTIAL JUROR: Right, yes.

14 THE COURT: Anything further?

15 MR. KULP: Beg the Court's indulgence.

16 EXAMINATION RESUMED

17 BY MR. KULP:

18 Q. Ms. Moore, you answered the question when I asked
19 it that you would follow the law given to the by the
20 judge and you'd listen to all the facts and
21 circumstances of the case?

22 A. Yes.

23 Q. It's not true, is it, that you would automatically
24 give or make a decision or be predisposed to give life
25 imprisonment automatically and absolutely, no matter

1 what you heard, is it? You wouldn't automatically
2 yield or make a decision of life imprisonment without
3 hearing any of the evidence?

4 A. Oh, no, no, no. Definitely not.

5 Q. Thank you.

6 FURTHER EXAMINATION

7 BY MR. MURDAUGH:

8 Q. Ma'am, I'm confused. The way the system works --
9 I think I told you this a moment ago -- there would
10 have to be a finding of the jury of guilt before you
11 got to the second part. In the second part there would
12 have to be a finding of whether or not there was the
13 existence of an aggravating circumstance. His Honor
14 will charge what an aggravating circumstance is later
15 in the trial if you get selected. If you find the
16 existence of an aggravating circumstance, you are then
17 entitled to listen to evidence about the nature of the
18 crime itself, circumstances of the crime and the
19 character of the defendant, and where there are
20 mitigating circumstances which are reasons which are
21 not to give the death penalty.

22 And I'm not sure what your answer to my next
23 question is. I got sort of mixed answers a minute ago
24 in my mind, and maybe I'm mistaken. Would the nature
25 of the crime and the character of the defendant and

1 mitigating circumstances have any play in what penalty
2 you assessed? Do you understand what I'm asking?

3 A. I think so. That's why I'm hesitant to answer.

4 As far as the death penalty, I would never want to give
5 that to anybody unless they were going to harm or kill
6 other people, that they couldn't be controlled or
7 contained. If someone was guilty of murdering somebody
8 but they could be contained, I would choose life in
9 prison. If they were found innocent of murder, then

10 ---

11 Q. How would we ever know that, ma'am?

12 A. If they were proved innocent.

13 Q. A moment ago I asked you about signing that piece
14 of paper, whether you could sign your name to it saying
15 that, "We, the undersigned, recommend the defendant
16 suffer the death penalty." Could you sign it?

17 A. No.

18 Q. Ever?

19 A. No, not ever. What we just discussed,

20 THE COURT: In other words, what you're saying
21 -- if I understood you, now, and I'm not trying to put
22 words in your mouth -- the only time that you could
23 sign that is if you thought the person would be a
24 continuing danger?

25 POTENTIAL JUROR: Right, yes.

1 THE COURT: You're very clear on that?

2 POTENTIAL JUROR: Very clear.

3 THE COURT: So to my mind you know exactly what
4 you're saying?

5 POTENTIAL JUROR: Exactly, yes.

6 MR. KULP: Just one more question, Your Honor.

7 FURTHER EXAMINATION

8 BY MR. KULP:

9 Q. Ms. Moore, if you found, based on all the evidence
10 that came out during the second phase of the
11 proceedings, that there was a basis under the standard
12 that the judge gave you to judge that evidence, there
13 was a basis to conclude there was an aggravating
14 circumstance, and you also concluded that there was
15 some aspect and proof of further dangerousness, could
16 you, then, render a decision that the death penalty was
17 appropriate? After you heard it all? In other words,
18 if you found there was sufficient evidence to conclude
19 that there was proof of an aggravating circumstance and
20 you also heard information that was sufficient for you
21 to conclude there was some future dangerousness, then
22 you could sign the death penalty?

23 A. Yes.

24 THE COURT: You may go right back to the back
25 and we'll get back to you in just a moment.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

361

1 (POTENTIAL JUROR STEPS DOWN/EXITS COURT ROOM)

2 THE COURT: What time are we going to come
3 back? We're going to stop now. Let's say 2:30. I
4 think 2:30 is the most we can press.

5 Mr. Harris, you can, I guess, let Ms. Smith do it
6 to keep continuity on that. Please apologize to the
7 other ones, but we're doing all we can do. But the
8 original 12:00 noon being Panel 8, we'll now have to
9 see them at 2:30, because we've been working straight
10 through and we've got to take a break.

11 CLERK: It's Panel 9 that's scheduled for
12 2:00 o'clock.

13 THE COURT: Well, just move them back. Tell
14 them if they're out there -- that's right. If they're
15 there or when they come it's 2:30, so you can move them
16 back to 3:00.

17 Excuse me, I thought it was the press. Just wait
18 one second. We haven't gotten around to you, please.

19 Okay, what's the State's position? Let's leave
20 the press out there until we get through with this.

21 MR. MURDAUGH: I'll be honest with you, sir. I've
22 got -- I do not think ---

23 THE COURT: I think it's clear she's not
24 qualified. And I'll tell you why.

25 MR. MURDAUGH: I think that you're correct, sir.

1 THE COURT: Every time -- and I asked her at
2 least three times -- that the only thing she would
3 consider is future dangerousness. She was precluded on
4 everything else. And when Mr. Kulp would ask her, he'd
5 put it two ways. As long as it had that future
6 dangerousness in it, a threat, she would do it.

7 So in my mind, she's going to have to consider
8 everything. She's got to be more open than that.

9 MR. MURDAUGH: I agree with you, sir.

10 THE COURT: Do I hear Mr. Kulp?

11 MR. KULP: Briefly, Your Honor. Thank you.

12 You know, it's an interesting situation. As I
13 understand it, pre-Schaefer the State certainly argued
14 future dangerousness. It might, then, open the door to
15 a realistic definition or charge of the life sentence
16 to the jury. Now they don't have that peril to suffer
17 if they get into that arena. So now the door's wide
18 open to argue that aspect of character in terms of
19 consideration by the jury what the appropriate penalty
20 would be. So they can argue that. While there's no
21 statutory requirement that they find that addition to
22 aggravating circumstances, it just simply seems --

23 THE COURT: Let me just stop you right there,
24 because intellectually ---

25 MR. KULP: Yes, sir.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

363

1 THE COURT: --- if this was a situation when
2 somebody could say, said, "I could give the death
3 penalty in a CSC case, but I couldn't give it in any
4 other." Well, that's too narrow because they've got to
5 consider everything. If they can say, "I could give
6 the death penalty only in our Harvard case." And
7 that's basically what she's saying. She, herself, has
8 narrowly defined what she thinks is appropriate. And I
9 think our law requires as common sense says that she
10 ought to be open enough to consider whatever, because
11 we don't know whatever. She doesn't know yet.

12 Of course, you'all know more about it than me.
13 She's too narrowly defined it, and I think that
14 therefore she's just become disqualified by defining it
15 so narrowly.

16 MR. KULP: If I may, Your Honor, and I
17 certainly could be corrected. However, I believe that
18 because we are not allowed to inquire of the juror's
19 decision on the facts and circumstances of this case,
20 we are only to discuss and to take into account what
21 the juror's position is regarding the death penalty and
22 whether or not she's substantially impaired in her
23 ability to return a verdict of death.

24 She indicated specifically future dangerousness.
25 But what that means is the character of the defendant.

1 She has to make a character judgment as to whether or
2 not the individual could be a danger in the future.

3 THE COURT: Let me stop you right there, and
4 I'll get you to come back. If she says that the
5 character of the defendant is all that she'd be
6 concerned with, I think the law, to my mind, would
7 require that she has to consider the nature of the
8 crime. She's got to consider everything and got to be
9 open to consider it.

10 MR. KULP: And the mitigating circumstances.

11 THE COURT: And the mitigating circumstances,
12 not only the character of it, the mitigating, the
13 aggravating. She's got to -- she can't, herself,
14 preclude that. She can hear it and say, "I don't think
15 must of that mitigating circumstance or that
16 aggravating circumstance." And that's fine. But she's
17 got to -- she takes an oath to consider them. And the
18 law says she should. Go ahead and state yourself, for
19 the record.

20 MR. KULP: And furthermore, if because we are
21 not to analyze this particular juror on the facts and
22 circumstances of this case, but in general, as to her
23 predilection or her inability to give the death penalty
24 under any circumstance, and because she is able to give
25 the death penalty under circumstances in which she

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

365

1 believes that the character of the individual is so bad
2 that they will pose a future dangerousness to somebody
3 either out of jail or in jail, because she is not
4 impaired to give the death penalty, she should be
5 qualified to serve in a death penalty case.

6 We can't help it that this particular juror may
7 not believe when she hears the facts of this case that
8 it merits the death penalty. However, she is not
9 impaired in general to give the death penalty. And
10 that is what the law requires. And that's why she
11 should be qualified as a death penalty juror.

12 Now, again, if the Solicitor doesn't think that
13 his facts and circumstances will persuade this juror to
14 give the death penalty, he has five challenges and can
15 use one for this juror. Thank you.

16 THE COURT: If you please, I'm going to excuse
17 the juror as not being qualified. Would you send her
18 in, please.

19 MR. KULP: Please note our exceptions.

20 THE COURT: Duly noted.

21 (POTENTIAL JUROR RESUMES STAND)

22 THE COURT: Ms. Moore, after considering your
23 answers and your reluctance except in such a small,
24 narrow time to consider the death penalty, I find that
25 I must excuse you and find that you are not qualified.

1 So you are excused for the week. Have a nice rest of
2 the week.

3 We're in recess till 2:30.

4 (TESTIMONY FOR KRISTEN MOORE CONCLUDED)

5 (LUNCH RECESS)

6 THE COURT: Are we ready to continue?

7 MR. KULP: Defense is ready, Your Honor.

8 MR. MURDAUGH: Yes, sir. We have one-third of
9 what we need, almost.

10 THE COURT: Almost. We've got 13, I believe.

11 MR. MURDAUGH: Yes, sir.

12 THE COURT: One of them -- for your
13 information, and I'll find the name in a second -- had
14 a 3:00 o'clock appointment. So I told Ms. Smith to
15 carry that one over till tomorrow and into the slot
16 that the young lady who was the college student. And
17 so that gives us just three in this first group. And
18 I'm not sure which one it is, but we'll know when we
19 get to it.

20 MR. MURDAUGH: Maybe we'll hit some easy ones, for
21 a change.

22 THE COURT: Well, sometimes I believe they make
23 them harder than they are.

24 MR. MURDAUGH: Right, sir.

25 THE COURT: Tracey Dingle, please, Juror No.

~~79~~

2 CLERK: I think Dingle was the one to come
3 back at 9:00 o'clock.

4 THE COURT: Okay, that's tomorrow, then. Then
5 Donna Johnston, Juror No. 172. So that's 9:00 o'clock
6 tomorrow.

7 (POTENTIAL JUROR TAKES STAND)

8 DONNA JOHNSTON, being
9 duly sworn to tell the truth, the whole truth and
10 nothing but the truth, was examined and testified, as
11 follows:

12 EXAMINATION

13 BY THE COURT:

14 Q. Hello.

15 A. Hello.

16 Q. Please have a seat. Ms. Dingle (sic), I apologize
17 for the time getting away from us, but that sometimes
18 happens. I remind you that you're still under oath.
19 And I've just got a couple of preliminary questions and
20 a couple of things I'll ask you. Then I'll let the
21 lawyers ask you any questions if they have any.

22 Since we were here yesterday have you discussed
23 this case with anyone or had anybody discuss it with
24 you?

25 A. No.

1 Q. Have you read any news reports, such as the
2 Gazette or the Hilton Head Island Packet or heard radio
3 or TV coverage about anything?

4 A. No.

5 Q. Do you know anybody named Kenneth Williams or
6 Richard Rivers?

7 A. No, I don't.

8 Q. Did you read the pretrial questionnaire?

9 A. Yes, I did.

10 Q. Let me go into that a little bit. In a case where
11 the State is seeking the death penalty, the trial is
12 bifurcated, meaning it's split up. You have the first
13 phase called the guilt phase. And then a defendant --
14 and I'm not talking about this case. I'm just talking
15 about the procedures in general. The defendant will be
16 tried. And if the State can prove that he is guilty of
17 murder, then it goes to the penalty phase.

18 Of course, it could end right there because the
19 defendant could be found by the jury to be not guilty.
20 And that would be the end of it.

21 But assuming that a person is found guilty in
22 what's called the guilt phase of murder, then it would
23 go back to the jury, after taking evidence and so forth
24 from both sides as to what the proper penalty would be.
25 There are two possible sentences that the jury would

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

369

1 decide upon. One is the death penalty for a person
2 who's found guilty of murder. The other one is life
3 imprisonment.

4 Now, it's been found there are basically three
5 types of jurors. One type juror feels like that if a
6 person is guilty of murder, they should have the death
7 penalty, no matter what the facts and circumstances
8 are, but the death penalty basically every time.

9 A second type juror would feel that -- basically
10 doesn't believe in the death penalty and does not feel
11 that the death penalty is appropriate and would always
12 find for a life sentence.

13 The third type juror is one who would consider the
14 facts and circumstances of the case and then make a
15 decision as to whether a person should be given the
16 death penalty or receive a sentence of life
17 imprisonment. And they would consider aggravating
18 circumstances, in other words bad things about the
19 defendant and the crime, and also mitigating factors,
20 which would be good things or whatever, or things that
21 might lessen -- tend to lessen the matter in the jury's
22 eyes.

23 Do you know which one of these that you would fall
24 within?

25 A. I would be the third.

1 Q. The third. In other words, you could go either
2 way, and that you would feel that it would be -- that
3 you would have to know what the facts and circumstances
4 are. That some murder cases you feel should receive
5 the death penalty, some you feel like they should
6 receive life imprisonment?

7 A. That's correct.

8 THE COURT: Solicitor Murdaugh?

9 EXAMINATION

10 BY MR. MURDAUGH:

11 Q. How are you doing, Ms. Johnston?

12 A. Fine, thanks.

13 Q. I'm Randolph Murdaugh. I'm the Solicitor or
14 prosecutor for this area. I need to ask you a few
15 questions, quite frankly, to find out whether we want
16 you to sit on this jury or not. And I want you to
17 understand that there are no right or wrong answers.
18 We're just trying to get a little insight into you.
19 You live on Hilton Head?

20 A. I do.

21 Q. And have lived there for nine years, I think?

22 A. Nine years.

23 Q. And you came from where?

24 A. I came from southwest Florida.

25 Q. Fort Myers?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

371

1 A. Fort Myers.

2 Q. What business are you in?

3 A. I'm in the interior design furniture business.

4 Q. And the name of the company?

5 A. Plantation Interiors.

6 Q. Okay. And your husband, what does he do?

7 A. He is sales/marketing for a builder on Hilton
8 Head, McNair Construction.

9 Q. I've listened to your answers that you gave to the
10 judge and am of the impression that you would listen to
11 everything that's brought out in court.

12 A. Correct.

13 Q. And after listening and all that and applying the
14 law as His Honor would charge you, would be open-minded
15 and in a particular case, could give the death penalty,
16 other cases, give life in prison?

17 A. That's correct.

18 Q. And you are not wed to one or the other?

19 A. No, I'm not.

20 Q. I need to ask you, ma'am. One of the things, if
21 you'all had found the defendant guilty in the first
22 phase, you would then go to the second phase. If you
23 found him not guilty, it'd be over and we could all go
24 home. I'm not suggesting that. But if we got to that
25 second phase, you would then have to make a finding as

1 to whether or not there was an existence, an
2 aggravating circumstance. His Honor will charge you
3 what an aggravating circumstance is. If you found
4 there was an aggravating circumstance, you then would
5 listen to testimony in regard to the character of the
6 defendant, the circumstances of the crime, mitigating
7 circumstances, which are reasons not to give the death
8 penalty, and after listening to all of that, make a
9 decision of life or death.

10 If, as a member of a twelve-person jury, you'all
11 voted to decide to give the death penalty, one of the
12 things that you would have to do is to sign a sheet of
13 paper. At the top there'd be twelve lines on it. Up
14 at the top it says, "We, the undersigned jurors,
15 recommend that the defendant suffer the death penalty."
16 If you thought it was an appropriate case, would you
17 have a problem signing your name to that document?

18 A. No, I wouldn't.

19 Q. Do you know Kenneth Williams or Richard Rivers?

20 A. No, I don't.

21 Q. Thank you, ma'am. Answer any questions for Mr.

22 Kulp.

23 EXAMINATION

24 MR. KULP:

25 Q. If it please the Court, Ms. Johnston, my name is

1 Tim Kulp and I represent Mr. Rogers, the accused, along
2 with Cory Fleming, my co-counsel.

3 Ms. Johnson, I see on your questionnaire that you
4 suffered a very unfortunate circumstance in that your
5 home was broken into?

6 A. Uh-huh, (affirmative nod).

7 Q. When did that occur?

8 A. That occurred when I was living in Fort Myers.
9 That was probably ten years ago, eleven years ago
10 maybe.

11 Q. Were you home at the time?

12 A. No, I wasn't.

13 Q. And I think you noted there were no witnesses, so
14 I assume that no one was charged and prosecuted.

15 A. No.

16 Q. Did you suffer a substantial financial loss
17 because of that?

18 A. Yes, I did.

19 Q. How might that tragic experience affect your
20 ability to remain impartial in a case such as this?

21 A. I don't think that would have any bearing on it.

22 Q. Because you recognize, if you're selected to serve
23 and you take an oath, to follow the Judge's
24 instructions. And those instructions would include
25 being fair and impartial and not making up your mind

1 until all the evidence or the lack of it was in. You'd
2 follow those instructions?

3 A. Right, I would.

4 Q. You did note, however, you thought on your
5 questionnaire that you could not be fair if firearms
6 were involved. That you could not be fair and
7 impartial if firearms were involved in a case that
8 alleged the use or possession of firearms. Would you
9 please explain that?

10 A. What my thinking was there, if someone already
11 illegally has a firearm, they've already broken a law
12 and have exhibited guilt. So I'd have a problem with
13 that. It was difficult to say whether I'd be fair or
14 unfair when I already believe there is guilt present,
15 because they illegally have done something and own
16 something. So that was my thinking. That was a
17 difficult one for me to answer, but that's what I mean
18 there.

19 Q. So, if in the course of the development of
20 information or evidence about a case, if it was
21 revealed that someone had possessed or acquired a
22 firearm, is what you're saying that that would prevent
23 you. That they might, having made that decision, be
24 guilty of other things as well?

25 A. If they had illegally acquired that firearm or

1 illegally possessed that firearm, then I believe there
2 is guilt present.

3 Q. For other things besides the offense?

4 A. No, for that particular thing, yes. If that is
5 involved in a crime, they've already expressed a bit of
6 guilt in that crime for having done this to start.
7 That was, to me, the first step in the crime.

8 Q. Right.

9 A. So the first step in the guilt process.

10 Q. And are your feelings so strongly about that that
11 that would color your decisions about potentially other
12 aspects of the activities or the charged conduct or
13 accusations or other offenses in the case?

14 A. I think it may, because I feel the law has already
15 been broken. And once we do that, what more can we do?
16 How far would this go? They've already taken that
17 first step.

18 Q. Are those feelings so strong that they would color
19 or affect your decision in a second phase of a trial of
20 this nature such that it was proven that a firearm was
21 involved or used, and that came out during the first
22 part of the case. And that the jury made a decision
23 that the verdict should be guilty. Would that then,
24 because of your strong feelings, would that color your
25 approach to the issue of punishment between life and

1 death in that second stage?

2 A. No.

3 Q. It would not?

4 A. No, I don't think so. No.

5 Q. I think the judge asked you a very general
6 question. But did you happen to see anything

7 pertaining to this case in any way in this morning's
8 newspaper publications or any other form of media?

9 A. I haven't had a chance to see the paper yet.

10 Q. Yes, ma'am. Thank you. You understand, and I
11 think the judge made it clear as well or the Solicitor
12 made it clear. But, if, in fact, as the case
13 progresses from the first phase -- you understand -- it
14 almost sounds silly to say, because I know you know how
15 the process goes and it seems that you do. That at the
16 end of the first part, we very well could never go into
17 the second phase if, in fact, the State's unable to
18 prove the accusations beyond a reasonable doubt.

19 A. Right.

20 Q. And you also understand that when we make
21 reference to "mitigating circumstances" that the law
22 would require you and every other juror, should we go
23 into the second phase, to consider and give impartial
24 and complete and due consideration of any mitigating
25 circumstances if they were offered for your

1 consideration during that phase? That you would be
2 required to do that.

3 A. Yes, sir.

4 Q. So it's not the case that you, if you, as a member
5 of the jury, had come to the decision that the
6 defendant was guilty of the offense of murder, that you
7 would automatically, in the second phase, conclude that
8 the appropriate penalty was death?

9 A. Would I automatically assume that?

10 Q. (Affirmative nod).

11 A. No, it would depend on what the other
12 circumstances were, all the evidence was, whether I
13 would say that or a life in prison.

14 Q. So it depends on ---

15 A. Right. It depends on what I hear in the courtroom
16 during the trial process, not just automatically
17 because of the crime, that that's what my suggestion
18 would be.

19 Q. And that you'd be fair and impartial in
20 consideration of all that information before you made a
21 decision?

22 A. Yes.

23 Q. Thank you, ma'am.

24 THE COURT: Anything else? Any more discussion
25 needed on this juror?

1 MR. KULP: One other question, Your Honor.

2 EXAMINATION RESUMED

3 BY MR. KULP:

4 Q. You've indicated -- quickly -- in your
5 questionnaire that you served on a criminal case
6 before.

7 A. Uh-huh, (affirmative nod).

8 Q. Was that here in the Beaufort County area?

9 A. Yes.

10 Q. How long ago was that?

11 A. That was in the mid-eighties.

12 Q. Was it in the circuit-level court or in a lower
13 court?

14 Q. I believe it was the circuit level.

15 A. It was? Was it a long trial?

16 Q. It was a few days.

17 THE COURT: In this same courtroom?

18 POTENTIAL JUROR: Yes, yes. It was a drug
19 trafficking trial.

20 EXAMINATION RESUMED

21 BY MR. KULP:

22 Q. As a result of your experience there and exposure
23 to the process of that trial conducting, do you feel
24 like that would color your approach to this case and
25 affect your ability to do what the judge is asking or

1 telling you you have to do in being fair and impartial
2 and open to all the evidence?

3 A. That would not color it, no.

4 Q. Thank you, ma'am.

5 THE COURT: Is there any discussion needed
6 about this juror?

7 MR. KULP: No, sir.

8 MR. MURDAUGH: No, sir, Your Honor. Thank you
9 very much.

10 THE COURT: Very good. Ms. Johnston, I find
11 that you are qualified to serve as a juror. And you'll
12 be placed in the panel. We will draw this jury --
13 yesterday I said we hoped to do it on Thursday. We're
14 already running a little bit behind that. So it would
15 probably -- we're scheduling it for 9:30 on Friday
16 morning right here. Would you please be here at that
17 time. Bring your clothes for a three-day stay. You'll
18 be staying at the Hampton Inn which is right across the
19 marsh over here due to the sequestration which is, as I
20 say, about three nights we think will take care of
21 that.

22 Do not discuss the case with anyone or allow
23 anyone to discuss the case with you. You, of course,
24 may tell people you might be on a jury and make family
25 arrangements. But don't discuss any of the facts of

1 the case or anything other than just general stuff like
2 that. And don't allow yourself to see or be exposed to
3 any media reports from newspapers, TV or anything else.

4 One last thing. Do not take any steps to do any
5 reading, research or try to educate yourself about
6 criminal law or criminal procedure by asking people or
7 books, magazines or the internet or anything. In other
8 words, you, of course, will be told everything you need
9 to know about the case right here in the trial.

10 Do you have a question?

11 POTENTIAL JUROR: Yes, I do. If this went into
12 next week, I would have a business problem.

13 THE COURT: How far into next week?

14 POTENTIAL JUROR: Well, Tuesday we prepare for
15 the International Furniture Market where I have to buy
16 for my store for the next six months. I have
17 reservations made there.

18 THE COURT: For Tuesday?

19 POTENTIAL JUROR: Tuesday, Wednesday -- Tuesday
20 night.

21 THE COURT: Your reservations are for Tuesday
22 night?

23 POTENTIAL JUROR: My reservation is for
24 Wednesday morning. Tuesday we review. We have our
25 meeting and review with my staff all of our

1 appointments and prepare for the meeting. We leave at
2 6:00 in the morning.

3 THE COURT: I think and I'll ask the attorneys.
4 I believe that we can safely find that you would
5 probably -- if we start on Friday, that on Tuesday that
6 you will certainly be out of here. Wouldn't you agree
7 with that?

8 MR. MURDAUGH: (Affirmative nod).

9 THE COURT: What about it, Mr. Kulp?

10 MR. KULP: I think feasibly, Your Honor, but I
11 don't if it'd be etched in stone.

12 THE COURT: I think we can say safely that you
13 would be out of here by midday Tuesday. If that fair
14 enough?

15 POTENTIAL JUROR: Uh-huh, (affirmative nod).

16 THE COURT: And so if something should change,
17 we'll let you know. But I think that I don't in any
18 way anticipate that we'll be there that long. So we'll
19 look forward to seeing you ---

20 POTENTIAL JUROR: Friday?

21 THE COURT: --- Friday morning at 9:30 and hope
22 you have a nice rest of the day.

23 POTENTIAL JUROR: Thank you.

24 (TESTIMONY OF DONNA JOHNSTON CONCLUDED)

25 THE COURT: We're now ready for Ms. Carrington,

1 Judith Carrington, Juror No. 47.

2 (POTENTIAL JUROR TAKES STAND)

3 JUDITH CARRINGTON, being
4 duly sworn to tell the truth, the whole truth and
5 nothing but the truth, was examined and testified, as
6 follows:

7 EXAMINATION

8 BY THE COURT:

9 Q. Have a seat right here, please, Ms. Carrington.

10 A. (Complies)

11 Q. How are you doing?

12 A. These seats are a lot nicer than in there.

13 Q. First, I've got a couple of preliminary things to
14 ask you, then I'll turn you over to the lawyers.

15 First, I remind you that you're still under oath. Have
16 you, since yesterday when I asked you these same
17 questions, have you discussed this case with anyone or
18 has anyone discussed the case with you?

19 A. No.

20 Q. Have you seen any media coverage, such as the
21 Beaufort Gazette or the Hilton Head paper or heard
22 anything on the radio or seen anything on TV about this
23 case?

24 A. I had a friend that came over. Before we went out
25 for dinner she talked about a double-murder case that

1 was going to be in Beaufort.

2 Q. And when was that?

3 A. That was last night. But I didn't tell her that I
4 was a juror or that I knew anything about it. She
5 happened to see it on the news.

6 Q. Did she just mention that?

7 A. She just mentioned it.

8 Q. Did she say anything else about it?

9 A. No.

10 Q. Did what she say have any influence or impact upon
11 you so far as any effect that it would have if you are
12 chosen as a juror in this case?

13 A. No.

14 Q. In other words, it was just the mere fact that she
15 saw something or heard something on the radio about a
16 double-murder case?

17 A. Right.

18 Q. Because you understand, don't you, that it's basic
19 and fundamental that a case be decided solely from the
20 testimony here in open court from the sworn witnesses,
21 along with the evidence introduced in the trial. And
22 that nothing that you hear outside this courtroom
23 should have any impact upon you?

24 A. I understand that.

25 Q. Do you have any problem doing that?

1 A. No.

2 Q. Did you have any discussions or anything with any
3 of the fellow jurors yesterday when you were here?

4 A. No.

5 Q. Did you read this pretrial questionnaire that was
6 in the jury room?

7 A. Yes.

8 Q. In a case where the State seeks the death penalty,
9 let me explain a couple of things I want you to
10 understand. I'm not talking about this case. I'm just
11 talking about the procedures of the way they're
12 handled. First, it's bifurcated. And what that means,
13 it's done in two parts. The first part is called the
14 guilt phase. There's a trial where the State must
15 prove a defendant guilty beyond a reasonable doubt.
16 And, of course, the jury might find the person not
17 guilty. And that would end the matter.

18 But in that first phase if they do find a
19 defendant guilty of murder where the death penalty is
20 being sought, then it would go to the second phase
21 which is known as the penalty phase. In the penalty
22 phase there will be testimony offered normally by both
23 sides as to aggravating circumstances, meaning things
24 that make the crime or the case against the defendant,
25 and then mitigating factors that would try to explain

1 somewhat the situation and make it less serious for the
2 defendant.

3 It's been found that there are basically three
4 types of jurors. The first time, in the event that a
5 person goes to the penalty phase, in other words a
6 defendant has been found guilty, the first type of
7 juror feels that a person -- if they are found guilty
8 of murder, they should get the death penalty, purely
9 and simply. In other words, it doesn't much matter
10 about it. If they've been found guilty of murder, they
11 think the death penalty is the only sensible verdict or
12 the right verdict.

13 The second type juror basically is against capital
14 punishment or the death penalty. And they feel like
15 that no matter what the facts and circumstances of the
16 case, a person should not get the death penalty. In
17 other words, that they would vote for life
18 imprisonment, because those are the two choices. The
19 death penalty and life imprisonment are the only two
20 choices available to the jury.

21 Then, of course, there's a third type of juror who
22 feels that the facts of the situation should be gone
23 into and that they would listen to both sides and make
24 a decision as to -- that in some cases they feel a
25 death sentence is appropriate. In other cases they

1 feel a life imprisonment sentence is appropriate. And
2 after listening to the facts they would then make a
3 decision as to what they thought about a given case.

4 Which one of these type jurors do you feel that
5 you are?

6 A. I think I'd be two.

7 Q. Two. That being that you basically do not believe
8 in the death penalty?

9 A. No, I had a sister that had a fiancée that was
10 murdered. It upset our whole family for a long, long
11 time. But I still didn't think that he should be
12 executed.

13 Q. So the perpetrator was tried and found guilty?

14 A. Yes.

15 Q. So you feel that basically you, deep down, are
16 against the death penalty?

17 A. I am.

18 THE COURT: Solicitor, any questions?

19 EXAMINATION

20 BY MR. MURDAUGH:

21 Q. Yes, sir. Ms. Carrington, how are you doing?

22 A. Good, thank you.

23 Q. I'm Randolph Murdaugh. I am the Solicitor for
24 this area and I need to ask you some questions,
25 frankly, to find out whether we want you on this jury

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

387

1 or not.

2 You said that you do not favor the death penalty.

3 A. No, I do not.

4 Q. Let me ask you a more specific question, please.

5 But before I do that, let me give you a little

6 background about how this case will proceed or would
7 proceed.

8 It's a two-part trial. The first part deals with
9 the guilt or innocence of the defendant for the crime
10 of murder. If the jury should find that he is not
11 guilty, that's the end of it and everybody goes home.
12 If they should find that he is guilty, you then proceed
13 to the second part of this trial.

14 The second part is to determine one of two
15 punishments, death penalty or life imprisonment. The
16 law says that you would have to -- before you could go
17 into what the sentence would be, you would have to
18 determine whether or not there was any existence of
19 aggravating circumstances. His Honor will charge you
20 what are aggravating circumstances if you sit on this
21 jury.

22 If you found there was an aggravating
23 circumstance, you then would listen to the evidence
24 relating to the character of the defendant and the
25 circumstances of the crime and evidence in mitigation,

1 which are reasons not to electrocute the defendant.

2 Are you telling me after hearing all of that, that
3 you could never vote for the death penalty?

4 A. I could never.

5 Q. Under any circumstances?

6 A. Under any circumstances.

7 Q. Thank you, ma'am.

8 MR. KULP: Beg the Court's indulgence.

9 EXAMINATION

10 BY MR. KULP:

11 Q. Ms. Carrington, good afternoon.

12 A. Good afternoon.

13 Q. My name is Tim Kulp. I am counsel for Mr. Rogers,
14 the accused, along with Mr. Fleming.

15 I wanted to ask you as part of your testimony here
16 today, and since we, of course, know nothing about this
17 case at this point -- and "nothing" would include what
18 evidence the State would introduce in a second phase of
19 this proceeding to support their argument that there
20 are aggravating circumstances. Is it the case that if
21 the judge instructed you to consider the evidence and
22 to give it weight, in your consideration as to whether
23 or not it was an aggravating circumstance or not, that
24 you could follow those instructions?

25 A. Yes.

1 Q. And not knowing what that evidence or testimony
2 would be, is it the case that it might very well be
3 that which would lead you to think, not off the cuff,
4 but based upon that evidence and testimony, that the
5 appropriate penalty would be the death penalty, which
6 could include both electrocution and a lethal
7 injection? In other words, not knowing what it could
8 be, if you concluded and that evidence was sufficient
9 to convict (sic) you that an aggravating circumstance
10 existed, could you, in fact, conclude that was
11 sufficient evidence upon which to sign that the
12 appropriate penalty would be the death penalty?

13 A. Even if I was convinced that the person was
14 guilty, I still don't believe in the death penalty.

15 Q. Thank you, ma'am.

16 MR. MURDAUGH: Make a motion to dismiss.

17 THE COURT: Thank you very much, Ms.
18 Carrington. I'm going to excuse you from the trial of
19 this case. Thank you very much for coming. That will
20 excuse you for the week.

21 (TESTIMONY OF JUDITH CARRINGTON CONCLUDED)

22 THE COURT: Ms. Strimpfel, Juror No. 383.

23 (POTENTIAL JUROR TAKES STAND)

24 MOLLY STRIMPFEL, being
25 duly sworn to tell the truth, the whole truth and

1 nothing but the truth, was examined and testified, as
2 follows:

3 EXAMINATION

4 BY THE COURT:

5 Q. Come right around, please, ma'am, and sit right up
6 here beside me.

7 A. (Complies)

8 Q. How are you doing?

9 A. Good.

10 Q. Ms. Strimpfel, a couple of preliminary questions.
11 Since you left yesterday have you discussed this matter
12 with anyone or anybody discussed it with you?

13 A. No, I have not.

14 Q. Have you read any newspaper reports or heard
15 anything on the radio or TV or anything about this
16 case?

17 A. No.

18 Q. Did you read this pretrial questionnaire?

19 A. Yes, I did.

20 Q. Let me ask you a couple of questions about it. In
21 a case where the State is seeking the death penalty,
22 it's bifurcated which basically means that it's
23 separated into two phases, a guilt phase or innocence
24 phase, and then a penalty phase. In the guilt phase if
25 a person is found not guilty, then that's the end of

1 the trial.

2 But in a case where the charge is murder where the
3 death penalty is being sought, if a jury should find a
4 defendant guilty of murder, then you would go to the
5 penalty phase. And I just have a couple of questions
6 to ask you strictly about that. Because the two
7 possible verdicts for the jury to determine is, one,
8 the death penalty, and, two, life imprisonment.

9 With regard to that, it's been found that there
10 are basically three types of jurors. The first type of
11 juror that I'll discuss is one who, if a person is
12 found guilty of murder, feels like the death penalty is
13 the only appropriate sentence. That they feel that
14 they would vote for the death penalty every time and
15 not be concerned about the facts and circumstances
16 behind the incident.

17 A second person we call a Type Two and feels like
18 that no matter what happened or how bad the crime, they
19 basically do not believe in the death penalty and would
20 always feel that they would vote for life imprisonment.

21 And then there's a third juror who -- Type Three
22 -- who would feel that there are some cases of murder,
23 when a person has been convicted of murder, that the
24 death penalty is appropriate, and there are some cases
25 where a person has been convicted of murder where they

1 feel like life imprisonment is more appropriate. And
2 that they would listen to the facts, the charge and all
3 the questions in the penalty phase and then make a
4 decision based upon everything that transpires as to
5 whether they would be in favor of a life imprisonment
6 or a death penalty for a particular crime.

7 And when I'm giving this, I'm not talking about
8 this case. I'm just talking about the procedures in
9 general.

10 Do you have any idea -- I know you have an idea.
11 That's not a good way to say it. Tell me, if you
12 would, which category you feel that you fall within.

13 A. The last category.

14 Q. The last category. And that is the one that you
15 feel that there are some cases of murder where the
16 death penalty is appropriate, and there's some cases
17 where a life sentence is appropriate?

18 A. Yes.

19 Q. Is that ---

20 A. Yes, that's right.

21 Q. I will now let the attorneys propound some
22 questions to you.

23

EXAMINATION

24 BY MR. MURDAUGH:

25 Q. How do you do?

1 A. Fine.

2 Q. I'm Randolph Murdaugh. I am the Solicitor for
3 this area, that is the prosecuting attorney. And I
4 need to ask you some questions to find out whether we
5 want you to sit on this jury or not.

6 A. Okay.

7 Q. Before we start let me ask you question. Do you
8 know either Kenneth Williams or Richard Rivers?

9 A. No.

10 Q. I notice you were subpoenaed to Court as Molly
11 Strimpfel?

12 A. That's correct.

13 Q. And you are now married to Ryan McDonough.

14 A. McDonough.

15 Q. I can't hardly read this. McDonough?

16 A. Yes.

17 Q. Are you keeping your last name?

18 A. No.

19 Q. So it has now changed?

20 A. Right.

21 Q. You are now Ms. McDonough?

22 A. Uh-huh, (affirmative nod).

23 THE COURT: Would you spell that, please.

24 POTENTIAL JUROR: M-C-D-O-N-O-U-G-H.

25 THE COURT: Thank you.

1 EXAMINATION RESUMED

2 BY MR. MURDAUGH:

3 Q. You've lived practically all your life in Beaufort
4 County?

5 A. Yes.

6 Q. Where do you live on Hilton Head?

7 A. I live in Island House.

8 Q. Where is that?

9 A. It's near North Forest Beach, south end of the
10 island.

11 Q. I know where you're talking about. Did your
12 parents live on the island?

13 A. Yes.

14 Q. Where do they live?

15 A. Right now they live in Rose Hill, which is
16 considered Bluffton.

17 Q. They lived in Bluffton?

18 A. Well, they live in Bluffton now.

19 Q. I'm from away from there. But I didn't consider
20 Rose Hill, Bluffton. I always considered Bluffton that
21 little old tiny place that's gotten bigger and bigger
22 and bigger. Where did they live before Rose Hill?

23 A. Port Royal.

24 Q. Port Royal? In listening to your answers to the
25 judge I felt, and you correct me if I misstate what you

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

395

1 told him, that you would listen to everything that came
2 out in this courtroom, listen to what his instructions
3 regarding the law were, and only after hearing and
4 considering everything that happened in this courtroom
5 could you consider either the death penalty or life in
6 prison. Is that correct?

7 A. That's correct.

8 Q. And it's my understanding from what you said to
9 the judge that depending on the facts of a particular
10 case, you could give the death penalty or you could
11 give life in prison?

12 A. That's right.

13 Q. If you had gotten to the point to where you were
14 sitting on the jury and the jury determined that this
15 was an appropriate for death by electrocution -- excuse
16 me, the death penalty, you would, then, have to sign a
17 sheet of paper. It would have twelve lines on it. It
18 would be entitled up at the top, "We, the undersigned
19 jurors, recommend that the defendant suffer the death
20 penalty." If you thought it was an appropriate case,
21 would you have a problem signing your name to that
22 sheet of paper?

23 A. No, I would not.

24 Q. Where do you work?

25 A. I'm a full-time student.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

396

1 Q. At USC?

2 A. No, at Ivester University. It's a branch out of
3 Atlanta, Georgia. I actually take classes in Savannah.

4 Q. What do you study?

5 A. I'm in the Master's program in professional
6 counseling.

7 Q. When you say "professional counseling" -- I ain't
8 too smart. Tell me what you're talking about.

9 A. What I did to be licensed to be a licensed
10 professional counselor.

11 Q. Okay. One other question. I think you said your
12 husband was self-employed?

13 A. That's correct.

14 Q. Where does he work?

15 A. He owns a carpet cleaning company on Hilton Head.

16 Q. What's the name of it?

17 A. The Carpet Wizard.

18 Q. Thank you. I have no further questions.

19 EXAMINATION

20 BY MR. KULP:

21 Q. If it please the Court. Ms. McDonough?

22 A. That's right.

23 Q. My name is Tim Kulp. I represent the accused in
24 this case, Mr. Rogers. My co-counsel is Mr. Fleming.

25 Is it the case that you considered -- first, let me ask

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

397

1 you this. You understand that this trial, this
2 proceeding we're talking about is, as the judge
3 explained to you, can be a two-part process. It might
4 be a one-part process. Do you understand that?

5 A. Uh-huh, (affirmative nod).

6 Q. You understand that what I'm saying is that it may
7 very well be the case that at the conclusion of the
8 first part of the trial that the jury's decision in
9 such a case might be "not guilty" if they determine
10 that the burden of proof has not been carried or met by
11 the State to prove charges against the accused beyond a
12 reasonable doubt? Do you understand that?

13 A. Yes.

14 Q. In fact, if that was the decision, there's no need
15 to logically go forward with any aspect of the
16 appropriate punishment under those circumstances?

17 A. Yes.

18 Q. But if it was the case that that second phase was
19 entered into, am I correct in understanding that you're
20 saying you have a complete and full appreciation for
21 the gravity of that decision and the need to consider
22 each and every piece of relevant evidence in the case,
23 including mitigating evidence, that would be in favor
24 of the defendant and certainly against the death
25 penalty. Do you understand that?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

398

1 A. Yes.

2 Q. Thank you.

3 THE COURT: Any discussion needed about this
4 juror?

5 MR. KULP: None by defense.

6 THE COURT: Ms. McDonough, I find that you are
7 qualified to go into the panel from which the jury will
8 be selected. We will select that jury at 9:30 on
9 Friday. Yesterday I said we would do it on Thursday,
10 but we are obviously running behind.

11 Please be back here at 9:30 on Friday. Bring your
12 clothes to stay for three nights, because you will be
13 sequestered over the weekend while this case is being
14 tried. A couple more things. Do not, of course, talk
15 to anyone about the case. And I don't mean that you
16 can't tell whoever you need to tell that you're going
17 to be involved in a criminal case. You can't talk
18 about the charge of the defendant or anything specific
19 to it. But you can certainly tell the people where you
20 are. And you will be staying at the Hampton Inn which
21 is right across the marsh over here, behind Applebee's.
22 But do not discuss the case with anyone or allow
23 anybody to discuss the case with you. Also, as a
24 potential juror, do not read, research or educate
25 yourself about any aspects of the criminal procedure or

1 criminal law, whether through books, magazines or
2 asking someone or on the internet. In other words,
3 you'll hear everything you need to hear about sitting
4 on this jury, if you are chosen, during the trial.

5 And with that, you are excused. I hope you have a
6 nice afternoon and we'll see you Friday morning.

7 POTENTIAL JUROR: Thank you.

8 (TESTIMONY OF MOLLY STRIMPFEL CONCLUDED)

9 THE COURT: Mr. Harris, did Ms. Bengal ever
10 come back, or not yet?

11 MR. HARRIS: Ms. Bengal?

12 THE COURT: Yeah, she's the one who had the
13 medical appointment. I understand she's coming back
14 this afternoon. So we'll work her in. And with that,
15 if you'll send in, please, Ms. Pierce, Sharra Pierce.

16 (POTENTIAL JUROR TAKES STAND)

17 SHARRA PIERCE, being duly
18 sworn to tell the truth, the whole truth and nothing
19 but the truth, was examined and testified, as follows:

20 EXAMINATION

21 BY THE COURT:

22 Q. How are you doing? Please have a seat.

23 A. (Complies)

24 Q. Ms. Pierce, a couple of things before I get into
25 it. I remind you that you're still under oath. And

1 you had stood up yesterday when we went over it and
2 said you knew one of the witnesses?

3 A. (Shakes head)

4 Q. You don't know any of the witnesses?

5 A. It came from something else, but not knowing these
6 people.

7 Q. What did you answer to?

8 A. I forgot what it was. I was asking how long is it
9 going to be.

10 Q. Oh, how long the trial is going to be?

11 A. Yeah. And I told the Clerk of Court that I am a
12 student in school. And I just registered today. So I
13 don't know, I mean.

14 Q. Okay, well, let me ask you this. Where are you in
15 school?

16 A. TCI.

17 Q. When do classes start?

18 A. The 17th.

19 Q. The 17th?

20 A. Uh-huh, (affirmative nod), which that Monday, I
21 have a meeting with my nursing advisor. And Tuesday I
22 have an info session with ---

23 Q. This case won't be -- it will be over by this
24 coming Tuesday. This is the 9th.

25 A. I can't deal with this. This is like horrifying.

1 And I could not sleep at all last night. I can't --
2 uh-uh (negative nod).

3 Q. Let me ask you some more questions. So far as the
4 time is concerned, it's now the 9th. And I can't
5 conceive of this case lasting past this coming Tuesday,
6 which would be the 16th. Now, the trial is actually
7 not going to start until Friday, which is the 12th.

8 A. And then don't forget I have a son. I'm a single
9 parent. And I have to, like -- you know, I have to be
10 there for my son. I can't let this take ---

11 Q. How old is your son?

12 A. He's six.

13 Q. And so you are a single parent?

14 A. Yes, I am a single parent. I live alone. I live
15 with my six-year-old son.

16 THE COURT: Will the attorneys approach the
17 sidebar, please?

18 MR. KULP: Yes, sir, Your Honor. Your Honor,
19 could I -- I just have a couple of questions.

20 THE COURT: Go ahead. I'll let you ask her.

21 EXAMINATION

22 BY MR. KULP:

23 Q. Thank you, Your Honor. Ms. Pierce, my name is Tim
24 Kulp and I represent the accused, Mr. Rogers, along
25 with Mr. Fleming. I just have a couple of questions

- 1 for you. Your six-year-old is a boy?
- 2 A. (Affirmative nod), a little boy.
- 3 Q. Where is he right now?
- 4 A. Where is he right now?
- 5 Q. Yes, ma'am.
- 6 A. He's with a friend.
- 7 Q. Are you employed?
- 8 A. Yes, I am employed. I am a full-time student.
- 9 Q. Do you work part-time?
- 10 A. I work full-time.
- 11 Q. You do?
- 12 A. Yes.
- 13 Q. Who keeps your little boy during ---
- 14 A. My son is in school. He goes to school during the
- 15 day.
- 16 Q. Yes, ma'am.
- 17 A. But after school hours I do have to pay for him to
- 18 go to a (sic) after-school program that only lasts
- 19 until a certain hour.
- 20 Q. Yes, ma'am. It's like an after-care program after
- 21 school?
- 22 A. Yes.
- 23 Q. I have the same thing for my seven-year-old. And
- 24 what time does the after-care finish up?
- 25 A. What time does what?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

403

1 Q. The after care?

2 A. I have it to where when I get out of school that I
3 will be able to pick him up. Which I don't go to
4 school during the night because -- but I'm a single
5 parent and I have to be there for my six-year-old son.

6 Q. Yes, ma'am.

7 A. Because I don't have -- you know, his father is
8 not there. And my mother is sick and she cannot care
9 for him. She lives miles away from me. So I have to
10 deal with him alone.

11 Q. I understand. I just have to ask these questions.
12 It's part of my job. I hear you loud and clear, but I
13 just need to ask this. My question was before you
14 start school on the 17th, as you're working now about
15 what time do you pick him up? What time does your work
16 conclude?

17 A. I have a friend. And she -- you know, depending
18 on what her schedule is, sometimes I can depend on her.
19 But sometimes I cannot depend on her. Like, now, my
20 friend, she's at an intersection now. And that was
21 going to be kind of hard for me to even take off a week
22 from work to, you know, deal with him, you know, to be
23 home with him. So it's like this right here is not --
24 I can't.

25 Q. Yes, ma'am. Did you read over the questionnaire

1 that was handed out to all the jurors about different
2 categories you might fall in in terms of your approach
3 to the issue of potential punishments. If the first
4 part of this proceeding or trial, the determination of
5 guilt phase, resulted in a decision by the jury that
6 the State had met their burden of proof and the jury
7 found the defendant guilty. I want to ask you about
8 that second phase. Did you understand or do you have
9 any questions about the list which identified the
10 different types of jurors, category one and category
11 two and category three?

12 A. Yes, I did.

13 Q. Where do you think you would fall in terms of that
14 outline of types of potential jurors?

15 A. That's something that's against my religion and
16 I'm not believing in.

17 THE COURT: You don't believe in what?

18 POTENTIAL JUROR: In death.

19 THE COURT: In the death penalty?

20 POTENTIAL JUROR: Yes. I don't believe in that.

21 And also, I don't like to judge people. I don't know
22 what -- I mean, I don't think I would fall in any of
23 those categories.

24 EXAMINATION RESUMED

25 BY MR. KULP:

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

1 Q. Is it your testimony that it would be impossible
2 for you or that you would always feel that you needed
3 to give a life sentence if you had to choose between a
4 life sentence as a penalty and the death penalty?

5 A. I wouldn't give any. I don't want to give any.

6 Q. Any?

7 A. No.

8 THE COURT: What denomination are you?

9 POTENTIAL JUROR: Excuse me?

10 THE COURT: You said it's against your
11 religion. I just wondered what denomination.

12 POTENTIAL JUROR: Christian.

13 THE COURT: A Christian?

14 POTENTIAL JUROR: Yes. I have been brought up
15 as a Christian as a little girl.

16 MR. KULP: Thank you, ma'am. I appreciate
17 that.

18 THE COURT: Any objection?

19 MR. MURDAUGH: The State has none, Your Honor.

20 THE COURT: Mr. Kulp?

21 MR. KULP: None, Your Honor. Thank you,
22 ma'am.

23 THE COURT: Excused without objection. I think
24 she's asked to be excused on the grounds that she's a
25 full-time student, she's a parent. And I think that.

1 since this is a sequestration that that's clear
2 grounds. And, thirdly, she said she couldn't give the
3 death penalty either. But I think that without getting
4 into any more detail about her beliefs about the death
5 penalty, unless you want to and you're given the
6 opportunity, I don't even feel that it's necessary.

7 MR. KULP: I think that's verification for the
8 record. I appreciate it. Thank you.

9 THE COURT: But you don't object to her being
10 excused?

11 MR. KULP: I think based upon your outline of
12 those issues, I don't think we have a valid basis to do
13 so. They're pretty clear.

14 THE COURT: Thank you for coming. You are
15 excused for the week.

16 POTENTIAL JUROR: Thank you.

17 (TESTIMONY OF SHARRA PIERCE CONCLUDED)

18 THE COURT: Doris Allen, Juror No. 4.

19 (POTENTIAL JUROR TAKES STAND)

20 DORIS ALLEN, being duly
21 sworn to tell the truth, the whole truth and nothing
22 but the truth, was examined and testified, as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q. Ms. Allen, would you come and have a seat right up

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

407

1 here, please?

2 A. (Complies)

3 Q. How are you doing?

4 A. Fine. You?

5 Q. I'm doing fine. Thank you. Ms. Allen, first off,
6 I remind you that you are still under oath after having
7 been sworn in yesterday.

8 A. Uh-huh, (affirmative nod).

9 Q. A couple of things and then I'll let the attorneys
10 ask you some questions if they wish to. Since we left
11 here have you discussed this case with anyone or has
12 anybody tried to discuss the case with you?

13 A. No.

14 Q. Have you read anything in the newspaper, heard
15 anything on TV, radio or anything about the case?

16 A. No.

17 Q. Did you read the pretrial questionnaire?

18 A. Yes, I did.

19 Q. And I'll kind of talk about that a little bit.
20 Basically, Ms. Allen, in a case where the State is
21 seeking the death penalty, the trial is bifurcated,
22 meaning it's split into two parts. The first is called
23 the guilt phase. It could be called the guilt or the
24 not guilty phase. And the second is called the penalty
25 phase. So what that means is that the first thing they

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

408

1 do when somebody is charged with murder where the death
2 penalty is being sought, the case proceeds and the
3 evidence relates to the charge. In other words, can
4 the State prove beyond a reasonable doubt that a
5 defendant is guilty of murder. I'm not talking about
6 these charges. I'm talking about in general, just the
7 way the procedures work.

8 Of course, at that stage a jury could find a
9 person not guilty. And that would be the end of it.
10 If a jury were to find a person guilty of murder, the
11 jury, then, would go to phase two or the penalty phase.

12 There are two possible verdicts in the penalty
13 phase for someone who has been convicted of murder.
14 One is the death penalty and the other is life
15 imprisonment. The jury decides the punishment.

16 It's been found that there are three types of
17 jurors. One type of juror feels that if a person is
18 guilty of murder, they ought to receive the death
19 penalty no matter what the facts and circumstances and
20 the background of the case are. A second type of juror
21 doesn't believe in the death penalty, basically, and
22 feels that they could not, no matter what the
23 circumstances of the case are, give a death penalty.
24 If they were sitting on a jury, they could not give the
25 death penalty, no matter what they are -- what the

1 facts and circumstances are. And the third type, if
2 they felt that it was a bad enough case, they could and
3 would consider the death penalty. And they could give
4 it if they thought it was appropriate in a case. And
5 they could also consider the facts and circumstances
6 and felt that if it was warranted, that they could give
7 life imprisonment, too. And that they would listen to
8 the law, listen to the facts, the arguments of the
9 attorneys and all the things that happen in a trial and
10 make a decision as to what the verdict should be. And
11 they would consider both a death penalty and a life
12 sentence.

13 Do you know which -- would you please tell me
14 which one of these classes or type do you fall within?

15 A. It would probably be two.

16 Q. Phase two.

17 A. Uh-huh, (affirmative nod).

18 Q. And that's the phase that says that you do not
19 believe in the death penalty and could not give the
20 death penalty under any circumstances. Is that

21 correct?

22 A. Right. I just don't believe in the death penalty.

23 Q. You just don't believe in the death penalty?

24 A. No.

25 Q. No matter how bad the crime?

1 A. I guess it would be up to -- if I had a choice, it
2 would be up to the circumstances and the facts in the
3 case. I'd have to listen to it.

4 Q. Well, that's what I was trying to ask. The way I
5 explained it to you, a person who could, if they
6 thought it was appropriate -- and I'm not asking you to
7 say about any particular case, because we haven't heard
8 the facts in this case yet.

9 A. Yes.

10 Q. But if you thought that it was appropriate, you
11 could conscientiously vote to give the death penalty?
12 On the other hand, if you thought that it wasn't
13 appropriate, you could give life imprisonment? But
14 then you said first that you believed ---

15 A. Phase two, not the death penalty.

16 Q. Are you taking back what you just said?

17 A. I'm getting confused is what it is.

18 Q. I don't want you to be confused. And I'll go
19 through it again.

20 A. Okay.

21 Q. Type one is if a person is convicted of murder
22 they ought to get the death penalty. Don't need to
23 hear any facts or what happened or anything. Just the
24 death penalty ought to be automatic.

25 A. Uh-huh, (affirmative nod).

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

411

1 Q. Type two also doesn't need to hear any facts about
2 the case and doesn't want to hear any because they're
3 going to vote life imprisonment every time.

4 A. Uh-huh, (affirmative nod).

5 Q. Type three is going think about it, going to
6 listen to the testimony of both sides. And they have
7 what are called aggravating circumstances which are
8 things that obviously make the matter worse or
9 aggravations to it. And then you have mitigating
10 factors which seek to explain or to understand why a
11 person may have done what they did.

12 So the question to you is do you feel -- and take
13 your time. I'm not trying to rush you. Just take your
14 time and think about it, because, obviously, this is
15 not something that somebody throws out all these
16 important things to you all the time. Do you feel that
17 you are type one? No, you said you are not type one.

18 A. No.

19 Q. So it's basically between types two and three.
20 Type two is a person who wouldn't be interested and it
21 wouldn't do any good to tell them what the facts are.
22 They are going to vote for life imprisonment and
23 against the death penalty. Or type three, the person
24 who is going to listen to everything and then make a
25 well thought-out decision as best they can within their

1 conscious and do what they thought was right and not go
2 in saying, before you know anything, that it's going to
3 be life and that's it.

4 A. Phase three.

5 Q. Huh?

6 A. Phase three.

7 Q. Now you think you're phase three.

8 A. Yes, sir.

9 Q. You feel like you could listen to the facts and
10 circumstances?

11 A. Uh-huh, (affirmative nod).

12 THE COURT: All right. I'll turn it over to
13 the lawyers, then, and let them follow up with some
14 questions on that.

15 EXAMINATION

16 BY MR. KNIGHT:

17 Q. Ms. Allen, I'm Steve Knight. I'm the Deputy
18 Solicitor and prosecutor. I have a few questions for
19 you. There's not a right answer and there's not a
20 wrong answer. Okay?

21 A. Okay.

22 Q. The first question is on one page I see you as
23 "Doris Allen". And the next page I see you as "Doris

24 A. Rhodin, R-h-o-d-I-n.

25 Q. Rhodin is correct?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

413

1 A. I got married, but I'm divorced.

2 Q. So it's "Allen" now?

3 A. It never changed. It's "Rhodin." It's still
4 "Rhodin".

5 Q. Okay.

6 A. It's still Rhodin.

7 Q. It's still Rhodin?

8 A. Uh-huh, (affirmative nod).

9 Q. Do you know Kenneth Williams?

10 A. No.

11 Q. Do you know Richard Rivers?

12 A. No.

13 Q. The judge has asked you some questions concerning
14 juror type number one and juror type number two and
15 juror type number three. Let's go back a minute.

16 Juror type number one, once a person is found guilty,
17 no matter what that person would give the death penalty
18 automatically.

19 A. Okay.

20 Q. Number two is what we consider as a group phase --
21 another type, panel two. That the jury would find the
22 defendant guilty or a person guilty, I should say. And
23 no matter what the facts are, they would not give the
24 death penalty but would give him a life sentence.

25 Okay? And that's what you understand as two?

1 A. Okay. No matter what?

2 Q. You would give him a life sentence.

3 A. A life sentence. No death penalty.

4 Q. No death penalty.

5 A. How about phase three?

6 Q. Phase three or juror pool type number three is the
7 individual that would listen to the testimony, listen
8 to the aggravating circumstances, if there are any
9 aggravating circumstances, and listen to the mitigating
10 factors, youth, things of these nature. Aggravation,
11 we'll just say is bad. Mitigating shows some good
12 things. Listening to both sides of the testimony could
13 you make an independent decision to give the death
14 penalty as a number three group?

15 A. So phase three would be an automatic death
16 penalty?

17 Q. No, phase three is you have to make your decision
18 based upon all the facts.

19 A. Listening to both sides?

20 Q. Right.

21 A. Yeah, phase three. I would have to listen to the
22 facts and circumstances.

23 Q. So you would now put yourself in category three?

24 A. Uh-huh, (affirmative nod).

25 Q. In response to His Honor's question you indicated

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

415

1 that you were absolutely opposed to the death penalty.

2 A. Uh-huh, (affirmative nod).

3 Q. Could you explain that to the judge and to Mr.
4 Kulp and Mr. Fleming?

5 A. Explain what?

6 Q. Why you indicated to the judge why you were
7 absolutely opposed to the death penalty?

8 A. I was raised as a Christian. Just don't believe
9 in the death penalty.

10 Q. So as a result of your rearing and becoming an
11 adult and your religious belief, whatever it may be,
12 you do not believe in the death penalty?

13 A. No, sir.

14 Q. Based upon your history and your development as an
15 adult you just indicated that you don't believe in the
16 death penalty.

17 A. Uh-huh, (affirmative nod).

18 Q. Could you in a case vote for the death penalty?

19 A. No, I could not.

20 Q. You could not?

21 A. I could not.

22 Q. Under any circumstances? Could you under any
23 circumstances vote for the death penalty?

24 A. What type of circumstances?

25 Q. Any circumstances? The testimony and the evidence

1 presented to the jury. Based upon all that. Under any
2 circumstances could you ever vote for the death
3 penalty?

4 A. No, sir.

5 Q. Thank you, ma'am.

6 MR. KULP: If it please the Court, Your Honor.

7 THE COURT: Yes, sir, go ahead.

8 EXAMINATION

9 BY MR. KULP:

10 Q. Ms. Rodin, my name is Tim Kulp. And I represent
11 Mr. Rogers, the accused, with Mr. Fleming.

12 A. Uh-huh, (affirmative nod).

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Thank you for enduring this process. I appreciate
16 your answering all questions. You testified just a few
17 minutes ago that you, on reflection, consider yourself
18 to be among those categories of jurors the type three,
19 as someone who would consider all the facts and
20 circumstances but still yet be --- but that if the
21 facts and circumstances -- and you're right, we don't
22 know anything right now -- that came out was sufficient
23 to create an aggravating circumstance or more than one
24 aggravating circumstance or whatever, but would
25 convince you that what was before you was so

1 significant, so severe, so serious that based on those
2 facts and circumstances and that despite your belief,
3 that you would follow the judge's law that he gives
4 you, his instructions. And if you found that severity,
5 that you would be able to weigh it out, as you said,
6 and decide that the appropriate sentence might, under
7 those circumstances, very well be that the death
8 penalty should be the decision.

9 A. (No response).

10 Q. The question is -- and you hit it right on the
11 head. We don't know what the facts and circumstances
12 are. But what we're trying to determine -- okay -- is
13 that are there -- you know yourself better than anyone.

14 A. Right.

15 Q. And do you conceive and do you have the ability
16 that if the facts and circumstances were so significant
17 and serious you could, after careful deliberation and
18 consideration of all the evidence as to sentencing,
19 that you could, in fact -- and after deliberating
20 yourself and thinking about it -- decide that the
21 appropriate punishment could be the death penalty?

22 A. No.

23 Q. So is it your testimony that no matter what you
24 heard in this courtroom from that witness stand in the
25 penalty phase or the punishment phase, you would

1 always, without even consider that, without following
2 the judge's instructions to consider that, you would
3 always, between the two choices, decide that the
4 penalty should be life imprisonment?

5 A. Life imprisonment.

6 Q. You would?

7 A. Uh-huh, (affirmative nod).

8 MR. KULP: Thank you, Judge. Thank you,
9 ma'am. I appreciate you answering my questions.

10 THE COURT: Any discussion on this one?

11 MR. KNIGHT: From the State, no.

12 THE COURT: Any discussion, Mr. Kulp?

13 MR. KULP: No, sir.

14 THE COURT: Ms. Rodin, thank you for coming.
15 I'm going to excuse you from the trial of this case.

16 POTENTIAL JUROR: Okay.

17 THE COURT: And that will conclude your
18 service.

19 JUROR: Thank you.

20 (TESTIMONY OF DORIS ALLEN CONCLUDED)

21 THE COURT: I'm advised that Tracey Dingle,
22 Juror No. 79, is back, in Panel 8. So we'll take her
23 up at this time.

24 (POTENTIAL JUROR TAKES STAND)

25 TRACEY DINGLE, being duly

1 sworn to tell the truth, the whole truth and nothing
2 but the truth, was examined and testified, as follows:

3 EXAMINATION

4 BY THE COURT:

5 Q. Come around, Ms. Dingle.

6 A. (Complies)

7 Q. If you'll just come up here and have a seat.

8 A. (Complies)

9 Q. Sorry we messed up your schedule a little bit, but
10 we're glad we're getting to you now. As you can see,
11 we're doing as best we can. I remind you, ma'am, that
12 you're still under oath.

13 A. Yes.

14 Q. Please speak directly into the microphone so they
15 can hear you in the audience. Have you talked to
16 anybody about this case or has anybody talked to you
17 about it?

18 A. No.

19 Q. Have you read anything, like the *Beaufort Gazette*
20 or *Hilton Head Island Packet* or any other newspaper,
21 any radio, TV or anything about the case?

22 A. The *Beaufort Gazette*.

23 Q. The *Beaufort Gazette*?

24 A. Yes.

25 Q. When was that?

1 A. I think right after the incident.

2 Q. You're talking about right after the incident?

3 A. Yes.

4 Q. And what do you remember from that article?

5 First, I was asking you did you read anything in
6 today's paper about the incident?

7 A. No.

8 Q. Tell me what you recall from the *Beaufort Gazette*
9 that you read right after the incident.

10 A. That two men had been murdered. Basically, that's
11 it.

12 Q. Okay.

13 MR. KULP: Judge, if it please the Court, the
14 microphone needs to be moved up a little bit.

15 EXAMINATION RESUMED

16 BY THE COURT:

17 Q. Could you slide the microphone to you? You've got
18 a soft voice and Mr. Kulp needs to hear you over there,
19 the defendant and so forth.

20 A. (Complies)

21 MR. KULP: Thank you, ma'am.

22 EXAMINATION RESUMED

23 BY THE COURT:

24 Q. Go ahead and say that again, just what you just
25 said.

1 A. Basically, what I remember is that two men had
2 been murdered.

3 Q. Do you remember any other details of the case?

4 A. No.

5 Q. And that's all that you recall having read since
6 then? And that was right after it happened?

7 A. Right..

8 Q. I tell you that it's basic and fundamental that a
9 case be decided solely upon the testimony from sworn
10 witnesses here in Court. And anything you may read or
11 hear about the case should not and must not have
12 anything to do with that. Could you put aside anything
13 you may have -- that you read about the case or
14 remember from reading about the case or heard about the
15 case? And if you are selected as a juror, decide the
16 case solely on the testimony here now in Court in the
17 next few days?

18 A. Yes. Excuse me, but I have a problem.

19 Q. And what's your problem?

20 A. I do not work, and I am the primary caregiver for
21 my daughter who is ten. And I would not have a way of
22 getting her to or from school. She goes to a private
23 school. My husband works in Colleton County. He
24 leaves at 6:30 and does not get home before 5:30.

25 Q. So she goes to school in Colleton County?

1 A. My daughter goes to school here in Beaufort

2 County, but is in a private school. So there's no
3 transportation.

4 Q. And where is the private school?

5 A. Parris Island/Gateway, Praise Christian Academy.

6 Q. Okay. What did you say about Colleton County?

7 A. My husband works in Colleton County. So he can't
8 take her to or pick her up from school. And I'm on
9 medication.

10 Q. What kind of medication are you on?

11 A. I was in a vehicle accident a year ago, and I get
12 migraines almost daily. So I'm on prescribed
13 medication for the pain and a muscle relaxer. And when
14 I take it which is like every six hours, it puts me to
15 sleep.

16 Q. And are you, for these reasons, asking to be
17 excused?

18 A. Yes.

19 Q. Okay. Let me go on to something else. I'll take
20 that -- did you read this pretrial questionnaire?

21 A. Yes.

22 Q. In a death penalty case where the death penalty is
23 being sought for a murder, it's a bifurcated trial
24 which means it's cut into two parts or divided into two
25 parts. You have the guilt phase where the person --

1 it's determined whether or not the person is actually
2 guilty of the crime, the person being charged. And, by
3 the way, I'm not talking about this case. I'm just
4 talking about in general. And if the person's found
5 not guilty, that's the end of the case.

6 If the person is found guilty of the murder, then
7 it would go to the second phase. And the second phase
8 of the case is called the penalty phase. As you
9 noticed from that pretrial questionnaire, it's been
10 found that there are three types of jurors. One type
11 of juror feels that if a person is found guilty of
12 murder it doesn't matter what the facts and
13 circumstances of the case are. The person who is
14 convicted ought to receive the death penalty. A type
15 two juror feels that they basically do not believe in
16 the death penalty. They feel that if a person is found
17 guilty of murder, no matter what the facts and
18 circumstances of the case, they ought to receive life
19 imprisonment. And that's the only two options, is
20 either life imprisonment or the death penalty.

21 The third type of juror feels that if a person is
22 found to be guilty of murder that a jury ought to
23 consider all the facts and circumstances of the case,
24 aggravating circumstances, mitigating factors, listen
25 to the lawyers on that issue and then in some cases.

1 they would feel that a death penalty was proper. In
2 other cases they would feel that a life sentence was
3 proper. But they would have to hear the individual
4 facts dealing with the case that was being tried and
5 would not say every time it is life imprisonment or
6 every time it is the death penalty. They could go
7 either way, depending on the facts and circumstances.

8 Which one of those categories would you be in?

9 A. One.

10 Q. In one?

11 A. Yes.

12 Q. That would be, if I understand you correctly, is
13 you feel like that any time a person is convicted of
14 murder he ought to receive the death penalty?

15 A. Yes.

16 THE COURT: Would the attorneys approach the
17 sidebar, please?

18 SIDEBAR:

19 THE COURT: I think she would be exempt
20 because of the child. What
21 you'all think?

22 MR. MURDAUGH: Yes, sir.

23 MR. KULP: And he mentioned the
24 medications. We have no
25 objection.

1 THE COURT: All right. Anything else that
2 you want me to ask her?

3 MR. MURDAUGH: No, sir.

4 MR. KULP: No, Your Honor.

5 (SIDEBAR CONCLUDED)

6 EXAMINATION

7 BY THE COURT:

8 Q. Is there any question -- should we ask your
9 feelings about this juror at the present time? And
10 you, basically -- you've asked to be excused, have you
11 not?

12 A. Yes.

13 Q. Because of your child and because of your
14 medications you are taking?

15 A. Yes.

16 MR. KNIGHT: The State, based upon the responses
17 by Ms. Dingle that she's under heavy medication and she
18 has substantial problems with child care, the State
19 would not have any objection to excusing her from the
20 trial of this case.

21 MR. KULP: We concur, Your Honor.

22 THE COURT: You are excused for the week.
23 Thank you for coming.

24 (TESTIMONY OF TRACEY DINGLE CONCLUDED)

25 THE COURT: Ruth Sellers, Juror No. 345.

1 (POTENTIAL JUROR TAKES STAND)

2 RUTH SELLERS, being duly
3 sworn to tell the truth, the whole truth and nothing
4 but the truth, was examined and testified, as follows:

5 EXAMINATION

6 BY THE COURT:

7 Q. Ms. Sellers, would you please come around and have
8 a seat right up here?

9 A. (Complies)

10 Q. Ms. Sellers, first, I would apologize to you that
11 we're running late. But we're working just as hard as
12 we can, I assure you. I have a couple of preliminary
13 questions and then I will turn you over to the lawyers.

14 First off, have you discussed this case with
15 anyone or has anyone discussed the case with you?

16 A. No, sir.

17 Q. Have you seen any media coverage about the case?
18 By that I mean, of course, newspapers, radio, TV or
19 anything?

20 A. Reading the paper this morning I saw the headline,
21 but I did not read the article.

22 Q. Very good. Did you read the pretrial
23 questionnaire?

24 A. Is that the one -- yes, sir.

25 Q. It was in the jury room.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

427

1 A. Yes, sir, I did.

2 Q. I have a couple of points to make about that. In
3 a case where the State is seeking the death penalty,
4 it's bifurcated, in other words cut into two parts,
5 divided into two parts. The first phase is called the
6 guilt phase. And in that the issue to be decided by a
7 jury is whether or not a defendant is guilty of the
8 charges in the indictment. And if he is found -- he
9 may be found innocent. I'm not talking about this
10 case. I'm talking about procedures generally. If a
11 person is found not guilty, then that's the end of it.

12 But if a person is found guilty of murder, a jury
13 then goes into the second phase. And that's commonly
14 known as the penalty phase. In the penalty phase there
15 are two verdicts allowed under our law. One is the
16 death penalty. The other one is life imprisonment for
17 someone in this situation who is convicted of murder.

18 It's been found that there are basically three
19 types of jurors. They're referred to as types one, two
20 and three. A type one is basically a person who says
21 if a person is convicted of murder, he ought to get the
22 death penalty, period. Don't need to know any facts,
23 background, nothing else. Just if it's murder that
24 this person should receive the death penalty.

25 A type two person says, "I don't need to hear any

**THIS PAGE INTENTIONALLY
LEFT BLANK**

1 facts and circumstances, but I don't believe in the
2 death penalty. I think he ought to have life
3 imprisonment, regardless of the background and
4 circumstances."

5 Type three is a person that feels like there are
6 cases that are appropriate for the death penalty --
7 murder cases that are appropriate to receive the death
8 penalty. And there are murder cases where a defendant
9 ought not to receive the death penalty, that he ought
10 to receive life imprisonment. And that person before
11 deciding it would not have any preconceived ideas
12 concerning which one the person should receive. But
13 would want to hear the facts and circumstances behind
14 it and hear aggravating facts as well as mitigating
15 factors.

16 Which one of these categories would you fall
17 within?

18 A. I think probably number two.

19 Q. Number two?

20 A. Yes, sir.

21 Q. In other words, you do not believe in the death
22 penalty?

23 A. No, sir, I do not believe in the death penalty.

24 Q. And regardless of the facts and circumstances of
25 the case you feel that the death penalty should not be

1 given?

2 A. Yes, sir.

3 THE COURT: Any questions?

4 MR. KNIGHT: Not at this time.

5 THE COURT: Mr. Kulp?

6 MR. KULP: Yes, sir, Your Honor. Beg the
7 Court's indulgence.

8 THE COURT: Yes, sir.

9 MR. KULP: No questions, Your Honor. Thank
10 you.

11 THE COURT: Any argument or anything regarding
12 this juror?

13 MR. KULP: No, sir.

14 THE COURT: Ms. Sellers, then I must excuse you
15 from the trial of this case. Thank you very much for
16 coming, but that will conclude your jury service.

17 POTENTIAL JUROR: Thank you.

18 (TESTIMONY OF RUTH SELLERS CONCLUDED)

19 THE COURT: Cheryl Martin. Please send Ms.
20 Martin in.

21 (POTENTIAL JUROR TAKES STAND)

22 CHERYL MARTIN, being duly
23 sworn to tell the truth, the whole truth and nothing
24 but the truth, was examined and testified, as follows:

25 EXAMINATION

1 BY THE COURT:

2 Q. How are you, Ms. Martin. Please come around and
3 have a seat right here.

4 A. (Complies)

5 Q. How are you doing?

6 A. Good.

7 Q. Ms. Martin, a couple of things. First off, since
8 I asked you these same questions yesterday, have you at
9 any time read anything or heard anything about this
10 case from anyone?

11 A. I briefly remember them bringing one of the people
12 to the hospital. I work at Beaufort Memorial. All I
13 remember is there being at Coffin Point. I don't
14 remember any of the people in it.

15 Q. Do you remember that from when it happened?

16 A. Yes.

17 Q. Do you recall having read anything in the
18 newspaper about the case?

19 A. No.

20 Q. Since yesterday when you were here have you read
21 anything or heard anything about the case?

22 A. No.

23 Q. What department do you work at at the hospital?

24 A. I work in rehab.

25 Q. In rehab?

1 A. Uh-huh, (affirmative nod).

2 Q. You say you just have a recollection of something
3 -- of an event happening at Coffin Point and of hearing
4 or seeing or something when they brought some of the
5 victims in?

6 A. Yeah, the transporters, they let us know what's
7 going on in case we've got patients, transfer patients
8 from units to units.

9 Q. Did you do any kind of work on anybody who was
10 involved in this matter?

11 A. No.

12 Q. And that's the extent of your knowledge about the
13 case?

14 A. Yes.

15 Q. As a result of what you heard have you formed any
16 impression as to the guilt or innocence of the
17 defendant, Tavarus Rogers, in this case?

18 A. No.

19 Q. Have you talked to anybody about the case?

20 A. No.

21 Q. Especially I'm asking now since yesterday?

22 A. No.

23 Q. Ms. Martin, did you read this thing called a jury
24 questionnaire, pretrial questionnaire?

25 A. Yes, sir.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

432

1 Q. In that it explains that in a case where the State
2 is seeking the death penalty in a murder that a trial
3 is bifurcated. The first phase of the trial is called
4 the guilt phase. And in that guilt phase a defendant
5 -- and I'm not talking about this case. I'm just
6 talking about in general, about how it works -- a
7 person, a defendant, if he's found not guilty by the
8 jury, that's the end of it.

9 If a person is found by the jury to be guilty,
10 then the case goes to a second phase called the penalty
11 phase. And in that penalty phase the jury must decide
12 what is the appropriate punishment. And under our law
13 there's only two possible punishments that a jury can
14 give. They can say -- they can sentence a person to
15 the electric chair which is to death -- the death
16 penalty. They say the electric chair or injection or
17 whatever. The second one is that they can give life
18 imprisonment.

19 It's been found that there are basically three
20 types of jurors in these kinds of cases. There's one
21 type of juror which is called a type one that doesn't
22 need to know what happened or the facts and
23 circumstances. They think that if a person is guilty
24 of murder, he ought to get the death penalty.

25 The second type is against the death penalty and

1 doesn't need to hear any of the facts and circumstances
2 in a case, because they're against it, no matter what
3 the facts and circumstances are.

4 And the third type person is type three. And they
5 feel -- that person would feel that a death penalty is
6 appropriate and would give the death penalty in certain
7 cases, but not every case of murder. They feel that
8 some people who are convicted of murder should receive
9 the death penalty and some who are convicted of murder
10 ought to have life imprisonment. And they would
11 consider the testimony and evidence on that part,
12 listen to the law and decide which one they felt was
13 appropriate in the case that they are deciding.

14 Which one of these categories would you be in?

15 A. The third one.

16 Q. The third one?

17 A. Uh-huh, (affirmative nod).

18 Q. Just to be clear, that's the case where you feel
19 that the death penalty is appropriate for some cases of
20 murder but not every case. There are some cases that
21 life imprisonment is the appropriate sentence?

22 A. Right.

23 Q. With that I will let the attorneys ask you some
24 questions. Mr. Murdaugh?

25 EXAMINATION

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

434

1 BY MR. MURDAUGH:

2 Q. Ms. Martin, how do you do?

3 A. I'm fine.

4 Q. I'm Randolph Murdaugh. I'm the Solicitor in this
5 area, and I need to ask you some questions to find out
6 whether we want you to sit on this jury or not.

7 A. Okay.

8 Q. I want you to understand there are no right and no
9 wrong answers. Just want to get a feel from you to
10 find out, as I say, whether we want you to sit on the
11 jury or not. I've listened to your answers to the
12 judge and I gather -- and you correct me if I misstate
13 what they are -- that you would listen to everything
14 that happens in this courtroom. And if we got to the
15 part to where you were doing the sentencing, you would
16 listen to everything. And at times you could give the
17 death penalty. And we're not talking about this case.
18 You understand that?

19 A. Yes.

20 Q. Other times you could give life imprisonment,
21 depending on what your view of the facts was? Is that
22 correct?

23 A. Yes.

24 Q. You would never always vote death penalty or
25 always vote life in prison?

**THIS PAGE INTENTIONALLY
LEFT BLANK**

1 A. No.

2 Q. But you would be fair and impartial. You would
3 consider everything that happened?

4 A. Uh-huh, (affirmative nod).

5 Q. If you got to the point to where the jury decided
6 that this was an appropriate case for the death
7 penalty, it would be incumbent upon you to sign a sheet
8 of paper. And it would have twelve lines on it. And
9 up at the top it would say, "We, the undersigned jury,
10 recommend that the defendant suffer the death penalty,"
11 or words to that effect. And it would be required that
12 each and every juror sign that paper if you thought it
13 was a death penalty case. Not a death penalty case.
14 If you thought the death penalty was the appropriate
15 sentence, could you sign that paper?

16 A. Yes.

17 Q. No qualms about it?

18 A. No.

19 Q. Do you know Kenneth Williams or Richard Rivers?

20 A. No.

21 Q. Where do you work?

22 A. Beaufort Memorial Hospital.

23 Q. That's right. You're a physical therapist, nurse.

24 A. I'm a nurse.

25 Q. Nurse, okay. Thank you, ma'am.

1 THE COURT: Mr. Kulp.

2 EXAMINATION

3 BY MR. KULP:

4 Q. If it please the Court. Ms. Martin, my
5 name's Tim Kulp. I represent the accused, Mr. Rogers,
6 along with Mr. Fleming. I just want to ask you a
7 couple of questions.

8 Am I correct in gathering that you appreciate and
9 have a full appreciation of the serious and severity of
10 these matters here?

11 A. Yes.

12 Q. And although we talk about a determination of
13 punishment or appropriate punishment phase of
14 proceedings as this second part, you understand that it
15 is certainly implied that there is a first part. And
16 that first part is very important. The first part is
17 the -- the judge, I think, or someone else may have
18 referred to as the guilty or not guilty phase. Do you
19 understand that?

20 A. Yes.

21 Q. And, certainly, it is logical as well that, and
22 you understand that if the decision of the jury is "not
23 guilty" in a case, that we'll never have need for or
24 get to any determination of punishment?

25 A. Yes.

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

437

1 Q. So they are distinct and separate proceedings.

2 A. Yes.

3 Q. You have a full understanding of that?

4 A. Yes.

5 Q. And also that should a need be to go into a phase

6 of the proceedings that would be a determination of

7 punishment that it is incumbent upon you and the judge

8 would instruct you that the law would require you to

9 consider, review and make a determination of all the

10 mitigating circumstances in a case and any other

11 information that would help you decide on a correct and

12 appropriate punishment. Do you understand that?

13 A. Yes.

14 Q. You started at the hospital about three years ago?

15 A. Uh-huh, (affirmative nod)..

16 Q. So you started as a physical therapist and now ---

17 A. I'm a nurse on the rehab unit.

18 Q. The rehab unit.

19 A. Yes.

20 Q. So that involves a lot of physical therapy?

21 A. Yes.

22 Q. Very good. Thank you, ma'am.

23 THE COURT: Any questions about this juror?

24 MR. MURDAUGH: No, sir.

25 MR. KULP: No, sir.

1 THE COURT: Ms. Martin, I find that you are
2 duly qualified to serve as a member of the panel. This
3 is not the final selection. We will select the jury on
4 Friday at 9:30 right here. Please be back at that
5 time. Bring with you your suitcase, because the jury
6 will be sequestered for probably three nights.

7 I caution you again don't talk to anyone or allow
8 anybody to talk to you about it. Of course, you can
9 tell someone about your job that you are on a case, a
10 criminal case, and that you are going to be sequestered
11 and you are not available and that sort of thing. But
12 don't talk about the facts and circumstances of this
13 case.

14 And also make sure and take whatever steps are
15 necessary so that if there is anything in the Beaufort
16 Gazette or on TV or anything about the case that you
17 don't see that. Because it's basic and fundamental
18 that the case is decided solely from the testimony from
19 the witness stand along with the evidence introduced in
20 the trial.

21 One last thing that is very important. Don't take
22 any steps to do any reading or research or to educate
23 yourself or inquire about criminal procedures or
24 criminal charges of this crime. You will find out
25 everything you need to know about the case from right

1 here in Court. And that's the way that it must be
2 done. So, like I say, don't go on the internet to look
3 up anything about criminal law at all.

4 With that, I hope you have a nice afternoon --
5 rest of the afternoon. And I look forward to seeing
6 you Friday.

7 POTENTIAL JUROR: Okay.

8 (TESTIMONY OF CHERYL MARTIN CONCLUDED)

9 THE COURT: Ms. Smith says that she's got 41
10 no-shows that was never any accounting, that just
11 didn't show. These people were served but didn't show
12 up?

13 CLERK: These were folks that were mailed
14 the jury summons on September 4, and we did not get it
15 returned by the Post Office. And we've not heard
16 anything from them.

17 THE COURT: Any objections to her compiling a
18 list of those and we see what ---

19 MR. MURDAUGH: No, sir. I think that would be
20 appropriate.

21 CLERK: Additionally, since we're talking,
22 I have about -- I have about six that came back in the
23 mail today or Friday, and three that the Sheriff's
24 deputies weren't able to serve. I'll include that on
25 the exhibit.

1 THE COURT: Just go ahead and keep up-to-date
2 with those. And then we will address that maybe Friday
3 morning or Thursday afternoon or something.

4 CLERK: Okay.

5 THE COURT: If you would, please, send in
6 Frankie Primus, Juror No. 298.

7 Have you got something else?

8 MR. KULP: Just very quickly. We would just
9 ask you -- a minute ago in your examination you said in
10 the guilty or not guilty phase. I took it from you a
11 minute ago. But I think that's extremely appropriate
12 for me to ask you to incorporate that description in
13 phase one of your remarks to the jury.

14 THE COURT: "Innocence", I always try to stay
15 away from that.

16 MR. KULP: Guilty or not guilty, that's, in
17 fact, accurate.

18 THE COURT: That's what I say. That's the
19 reason I said that.

20 MR. KULP: Right.

21 THE COURT: You liked the way I did that?

22 MR. KULP: Right, thank you.

23 (POTENTIAL JUROR TAKES STAND)

24 FRANKIE PRIMUS, being
25 duly sworn to tell the truth, the whole truth and

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

441

1 nothing but the truth, was examined and testified, as
2 follows:

3 EXAMINATION

4 BY THE COURT:

5 Q. How are you, Ms. Primus?

6 A. Fine. How are you?

7 Q. Doing fine. Ms. Primus, I'm going to have a
8 couple of questions to ask you and then I'll let the
9 attorneys ask you something -- a few things, if they
10 want to. First off, I remind you that you were sworn
11 in yesterday and that you're still under oath.

12 The first question is have you read or heard
13 anything about this case from anywhere since -- ever?

14 A. No.

15 Q. And since you were up here yesterday have you
16 heard or read anything about the case?

17 A. No.

18 Q. Not from any newspapers or persons?

19 A. No.

20 Q. Get a little closer to the microphone, if you
21 don't mind, Ms. Primus. Have you heard any TV, any
22 radio, anything at all?

23 A. No.

24 Q. Ms. Primus, did you read this document, copies of
25 which are in the jury room? This is it right here, the

1 pretrial questionnaire?

2 A. Yes.

3 Q. I'm going to explain that to you a little bit and
4 then ask you a couple of questions. In a case where
5 the Solicitor or the State is seeking the death penalty
6 for someone who is charged with murder, a case is
7 bifurcated. And basically, what that means is it is
8 divided into two phases.

9 The first phase is called the guilt phase. And
10 basically, during that part of the trial the jury
11 decides whether a person is guilty of the offense or
12 not guilty. If they find the person to be not guilty,
13 that's the end of the trial.

14 In the event that a person is determined to be
15 guilty, the trial goes into the second phase which is
16 called the penalty phase. The penalty phase has -- in
17 a situation like this there are two possible
18 punishments provided for in our law -- two punishments.
19 One is the death penalty. The other is life
20 imprisonment. It would be up to the jury to decide
21 which of these is appropriate under the circumstances.
22 And, of course, this is a case where the person has
23 been determined to be guilty of murder only.

24 It's been found that there are three types of
25 jurors when it comes to the penalty phase. One type

1 feels that if a person is convicted or guilty of murder
2 they should receive the death penalty. That person
3 doesn't need to hear any facts or background about the
4 case. He just feels like if the person is guilty of
5 the murder they ought to get the death sentence.

6 The second one -- and we call that type two, or it
7 is referred to on this pretrial questionnaire as type
8 two -- is a person who does not believe in the death
9 penalty under any circumstances. That feels like that
10 they don't need to hear any of the facts and
11 circumstances surrounding the case. That if a person
12 is found guilty of murder that they believe in life
13 imprisonment. They do not believe in the death penalty
14 and could not give it, so they don't need to hear any
15 background either.

16 The type juror is a person who feels like there
17 are some cases where the death penalty is appropriate
18 and there are some murder cases -- I'm talking about
19 murder cases where a person is convicted of murder --
20 is found guilty of a murder, some cases that a person
21 ought to be given the death penalty and some cases they
22 ought to be given life imprisonment. And that person
23 would hear the facts and circumstances of the case,
24 listen to the law and all the witnesses who testify
25 about the case and then make a decision after hearing

1 everything.

2 Which one of these type jurors would you be if you
3 were sitting on a case like this?

4 A. Third.

5 Q. The third?

6 A. Uh-huh, (affirmative nod).

7 Q. And by that, you feel like there are some cases
8 where the death penalty is proper and that you could
9 vote to give the death penalty. And then there are
10 some cases where you feel that a life sentence is
11 proper, and you would vote where you think it is
12 appropriate to give life imprisonment?

13 A. Yes.

14 Q. Thank you very much. I'll let you speak to
15 Solicitor Murdaugh, if he has questions.

16 EXAMINATION

17 BY MR. MURDAUGH:

18 Q. How are you doing?

19 A. Fine.

20 Q. Before I start talking, I'm Randolph Murdaugh. I
21 need to talk to you a little bit and find out what your
22 feelings are so we'll know whether we want you on this
23 jury or not.

24 A. Okay.

25 Q. Before I start I want to ask you a question. Do

1 you know Kenneth Williams or Richard Rivers?

2 A. No.

3 Q. I listened to the answers that you gave to the
4 judge and I want to make sure I understand. As he told
5 you, this is a two-part trial.

6 A. Uh-huh, (affirmative nod).

7 Q. In the first part of the trial you would only be
8 interested, if you are a juror -- you would only be
9 interested in is the defendant guilty or not guilty of
10 murder. If you found him guilty, then you would go to
11 the second part. If you found him not guilty, that
12 would be the end of it and you would go home.

13 If you find him guilty then you go to the second
14 part. In the second part of the trial you would have
15 to make a determination, after listening to all of the
16 evidence that was presented to determined whether or
17 not there was a thing called an aggravating
18 circumstance. His Honor will charge you what an
19 aggravating circumstance is. And if you found an
20 aggravating circumstance, you would then, after having
21 listened to all of the testimony about the character of
22 the defendant, the circumstances of the crime, things
23 in mitigation, that is reasons not to give the death
24 penalty. You would then vote on one of two penalties,
25 life imprisonment, death penalty.

1 Would you consider everything and would you ever
2 vote for the death penalty?

3 A. I would consider everything, and I would vote for
4 the death penalty if it was a heinous crime, you know.

5 Q. Where do you work?

6 A. United States Postal Service.

7 Q. Post Office. That's right. You've got the bumper
8 sticker on your car that says "Post Office" and
9 "frequent stops".

10 A. That's right, I do.

11 Q. See, we do read that thing you filled out. One of
12 the things that would happen, if you were put on the
13 jury and if you, as a jury, decided that the case was
14 appropriate for the death penalty and you'all had
15 decided that the death penalty was what you wanted to
16 do, you would then have to sign a sheet of paper. It's
17 not this sheet, but I'm just holding it up. And at the
18 top of it, it would have twelve lines on it. And it
19 would say at the top something to this effect, "We, the
20 undersigned jurors, recommend that the defendant suffer
21 the death penalty."

22 A. Uh-huh, (affirmative nod).

23 Q. If you thought it was a heinous enough crime could
24 you put your name on that thing without having any
25 qualms?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

447

1 A. Yes.

2 Q. I've got to ask you a question, and I don't really
3 want to ask you. But I've got to. Would the race of
4 the people involved have anything to do in your
5 decision?

6 A. No.

7 Q. Thank you, ma'am. I appreciate your answers.

8 MR. KULP: No questions, Your Honor.

9 THE COURT: Any questions about the
10 qualifications of this juror?

11 MR. KULP: No, sir, Your Honor.

12 THE COURT: Solicitor?

13 MR. MURDAUGH: No, sir.

14 THE COURT: Ms. Primus, I find that you are
15 duly qualified to be in the panel to serve as a juror.
16 So that doesn't mean you are on the jury, but you are
17 in the panel. The jury will be selected -- we are
18 going to do that at 9:30 on Friday morning. I ask that
19 you bring three days worth of clothes -- three nights'
20 change, anyway. You're going to stay at the Hampton
21 Inn. The jury will be sequestered. Of course, the
22 jury that is selected, so that we're going to have to
23 select them and then they go home, get their clothes
24 and come back. Bring your clothes prepared to stay and
25 have it worked out with the families. Then we will

1 select the jury.

2 But before you go there's a couple of other things
3 I want to tell you. One is as you have done in the
4 past, do not discuss the case with anyone or allow
5 anyone to discuss the case with you. Do not let
6 yourself see any media coverage, whether by TV, radio
7 or newspaper about the case. And lastly, don't read or
8 research or try to educate or inquire into anything
9 dealing with this case or anything about criminal law
10 or anything through books, magazines, the internet or
11 any other source. In other words, you're fully
12 qualified as a juror now and don't do anything else.
13 Just show up with your clothes. Because it's basic and
14 fundamental that the case be decided from what the
15 witnesses say sworn under oath here in court.

16 And with that in mind, have a nice rest of the day
17 and we'll see you at 9:30 on Friday.

18 POTENTIAL JUROR: Can I get something saying I
19 was here today? Anything?

20 THE COURT: Yes, you can. Madam Clerk, could
21 you give a statement for her stating -- so she can ---

22 POTENTIAL JUROR: So I can go to work tomorrow
23 and Thursday?

24 THE COURT: Exactly. If you would -- what does
25 she do? Go down to the end?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

449

1 CLERK: Ms. Primus, if you could go down to
2 the Clerk's Office which is at the far end of the hall
3 they'll be glad to give you something for work.

4 THE COURT: And it can state about your service
5 up here yesterday and today and the fact that you are
6 going to be here Friday, too, if you want to.

7 (TESTIMONY FOR FRANKIE PRIMUS CONCLUDED)

8 THE COURT: Estella Gray?

9 (POTENTIAL JUROR TAKES STAND)

10 ESTELLA GRAY, being duly
11 sworn to tell the truth, the whole truth and nothing
12 but the truth, was examined and testified, as follows:

13 EXAMINATION

14 BY THE COURT:

15 Q. How are you, Ms. Gray?

16 A. Okay.

17 Q. Have a seat and I'll ask you a couple of
18 questions. And then I'll let the lawyers ask you some
19 things.

20 First, I'd like to remind you, ma'am, that you're
21 still under oath.

22 A. Uh-huh, (affirmative nod).

23 Q. Has anybody tried to talk to you about the case or
24 have you talked to anyone about the case?

25 A. No.

1 Q. Have you seen any media coverage from the
2 newspaper, *The Gazette* or the *Hilton Head Packet* or TV
3 or radio or anything?

4 A. No.

5 Q. Ms. Gray, did you read this pretrial questionnaire
6 in the jury room?

7 A. Yes, I did.

8 Q. Let me explain to you a little bit about it. I
9 know I'll be repeating some of the things that you read
10 in there, but I want to make sure that you understand
11 everything. In a case where the State is seeking the
12 death penalty, it's a bifurcated trial. That's a legal
13 word that basically means it's divided into two parts.

14 The first part is the part that's called the guilt
15 phase. And in that part the jury decides whether a
16 particular defendant -- and I'm not even talking about
17 the case that's being tried now. I'm just talking
18 about the procedures. The jury decides whether or not
19 a defendant or the defendant that's being tried is
20 guilty or not guilty of the crime. If a jury should
21 determine he's not guilty, that's the end of it. You
22 don't go to the second phase or the penalty phase,
23 obviously.

24 If they find that he is guilty of murder, then it
25 goes to the penalty phase. And under the law of South

1 Carolina there are two possible verdicts or two
2 verdicts that are provided for. One is the death
3 penalty. The other is life imprisonment.

4 And it's been found out or discovered that
5 basically there are three types of jurors. There's one
6 type of juror who feels that a person who is guilty of
7 murder should receive the death penalty. That juror
8 doesn't need to hear any of the background, facts or
9 circumstances of the case. He feels like that if the
10 person committed murder, he ought to receive the death
11 penalty.

12 Type two as referred to in that questionnaire is
13 the type who -- is a person who feels -- they're on the
14 other side. They don't believe in the death penalty,
15 and feels like they don't need to hear the facts and
16 circumstances and background of the case because they
17 are against the death penalty and could not
18 conscientiously sentence someone to death.

19 The third type is the one that's in the middle,
20 even though it's a type three. But the person who
21 feels like there are some cases where a person is
22 guilty of murder that the person deserves and that the
23 juror would vote for the death penalty. Of course,
24 decide whether they deserve it or not is for the jury
25 to decide. But they would, if they thought it was

1 appropriate, they would find that there are cases where
2 they believe a person should receive the death penalty.
3 And by the same token, there are other murder cases
4 where a person who has committed a murder, that they
5 feel that a person should receive life imprisonment.
6 And if they felt like that life imprisonment was
7 appropriate, that's what they would vote for. But they
8 would hear the facts, the testimony, the arguments of
9 the attorneys and any other information they could get
10 and discuss it with the jurors. And they'd make a
11 decision based upon their consciences as to whether a
12 verdict -- assuming there is a conviction, all this
13 does -- of either life imprisonment or death. And they
14 would consider both of them.

15 Which category of juror are you?

16 A. Three.

17 Q. So you do believe that there are cases where you
18 think a death penalty is appropriate. And by the same
19 token, you feel like there are cases involving murder
20 that you feel life imprisonment is appropriate?

21 A. Uh-huh, (affirmative nod).

22 THE COURT: Solicitor Murdaugh?

23 MR. MURDAUGH: Ms. McCall.

24 EXAMINATION

25 BY MS. MCCALL:

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

453

1 Q. Good afternoon, Ms. Gray. My name is Angie
2 McCall, and I am one of the Assistant Prosecutors for
3 the State here in Hampton County. I've got a couple of
4 questions for you.

5 The judge mentioned to you about the two-part
6 system we have in these types cases. The first stage
7 being a trial stage where the jury will decide either
8 guilty or not guilty. If they find him not guilty,
9 then that's it. However, if the jury finds the suspect
10 guilty, then we'll move to the second phase which would
11 be the penalty phase. That's what the questions I'm
12 going to ask you about real briefly here.

13 If you were to get into a guilt phase there would
14 be a part where you'd be asked to consider whether or
15 not there was an aggravating circumstance in the facts
16 of the case. Would you be able to look at all the
17 facts, including aggravating circumstances, as well as
18 any mitigating, which are -- it's the opposite of
19 "aggravating".

20 THE COURT: Mitigating.

21 EXAMINATION RESUMED

22 BY MS. McCALL:

23 Q. Mitigating. I don't think that would be the
24 opposite. Would you be able to consider all those
25 facts equally?

1 A. Uh-huh, (affirmative nod), yes.

2 Q. After consider all those facts equally, if you and
3 other jurors were to decide that there was an
4 aggravating circumstance, after even considering
5 mitigating circumstances, would you, as a juror, be
6 able to sentence someone to the death penalty?

7 A. Yes.

8 Q. If you did decide that the death penalty was
9 warranted in this case, circumstances of a case
10 warranted the death penalty, would you be able to sign
11 your name personally to that death sentence?

12 A. Yes.

13 Q. You may have been asked this so far, but just to
14 clarify, do you know a Richard Rivers or a Kenneth
15 Williams?

16 A. No.

17 Q. Thank you, ma'am.

18 THE COURT: Mr. Kulp?

19 MR. KULP: Thank you very much. No questions.

20 THE COURT: Any discussion about this juror?

21 MR. MURDAUGH: No.

22 MR. KULP: No, sir, Your Honor.

23 THE COURT: I find that Ms. Gray is qualified.

24 So you, therefore, are on the panel. We are going to
25 draw this jury -- of course, you are one of the other

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

455

1 ones who will be in the overall panel from which the
2 jury will be selected. That will be done at 9:30 on
3 Friday morning right here. You should bring your
4 clothes for a three-day stay. You're staying at the
5 Hampton Inn, right across the marsh over here. So
6 bring enough clothes for three nights.

7 With that, a couple of other things. Now that you
8 have been qualified as a juror or potential juror, you
9 must not discuss the case with anyone, as I've told you
10 before, or allow anybody to discuss the case with you.
11 You also must not allow yourself to get exposed to any
12 newspaper, radio or TV regarding the case. And if
13 anybody should try to discuss the case with you, please
14 report it to the Court, to me or someone else here.

15 One other thing. Do not take any steps to read or
16 do any research or to go -- look at books, magazines or
17 the internet or anything about how a case is to be
18 tried or the facts of this case. In other words,
19 you'll be told everything you need to know during the
20 trial of this case.

21 I hope you have a nice evening, and I'll look
22 forward to --- You've got a question?

23 POTENTIAL JUROR: I have problems being
24 sequestered, other obligations?

25 THE COURT: Tell me what you're talking about.

6 POTENTIAL JUROR: 12, 11 and nine.

9 POTENTIAL JUROR: Uh-uh, (negative nod).

19 MR. MURDAUGH: We certainly regret losing such a
20 candidate. We think she would be an excellent juror.
21 But under the circumstances, you don't have any choice.

24 POTENTIAL JUROR: Okay.

25 (TESTIMONY OF ESTELLA GRAY CONCLUDED)

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

457

1 THE COURT: Nancy Fitzpatrick.

2 (POTENTIAL JUROR TAKES STAND)

3 NANCY FITZPATRICK, being
4 duly sworn to tell the truth, the whole truth and
5 nothing but the truth, continued under her oath and
6 testified, as follows:

7 EXAMINATION

8 BY THE COURT:

9 Q. Come right around here, please, and have a seat
10 right here.

11 A. (Complies)

12 Q. How are you doing?

13 A. Fine.

14 Q. Ms. Fitzpatrick, I have a couple of entry
15 questions and then I'll let the lawyers ask you a
16 couple of things. First of all, have you talked to
17 anyone about this case or has anyone talked to you
18 about it since yesterday?

19 A. No.

20 Q. Had you ever heard anything about the case before
21 you were summoned?

22 A. Not specifically, no.

23 Q. Did you see any media coverage about it in today's
24 Beaufort Gazette or Hilton Head Packet or anything else
25 like that?

1 A. I just saw the headline in the article in the
2 Hilton Head paper, but I didn't read it.

3 Q. You did not read it?

4 A. Yes.

5 Q. Ms. Fitzpatrick, did you read the pretrial
6 questionnaire?

7 A. Yes.

8 Q. I'll discuss that with you briefly. In a case
9 where the State is seeking the death penalty for a
10 murder -- and I'm not speaking of this case. I'm just
11 talking about the procedure in general. The trial is
12 bifurcated, meaning it is divided into two parts. The
13 first part is called the guilt phase. And in that one
14 the jury will decide whether the defendant is guilty or
15 not guilty of the charges against him.

16 In the second phase, assuming -- of course, if it
17 is not guilty, then that's the end of it. But if it
18 goes to the second phase it means that the jury has
19 found a defendant to be guilty of murder and it goes to
20 the second phase. In the second phase under our law
21 there are two possible verdicts for a person guilty of
22 murder. One is the death penalty and the second is
23 life imprisonment.

24 And in that regard -- and the jury makes the
25 decision. In that regard, it has been found that there

1 are basically three types of jurors.. One type of juror
2 -- and that's referred to as a type one juror -- is a
3 person who feels the death penalty is appropriate in
4 every case of a person guilty of murder. And that
5 person's mind is closed and he doesn't need to hear
6 anything about the facts and circumstances of a
7 particular case.

8 The second case is a person who does not believe
9 in the death penalty and does not need to hear any of
10 the facts and circumstances of a case because they will
11 not or could not give the death penalty in any case.

12 And a third type juror -- the second one was type
13 two, of course. And the third type juror is one that
14 feels that if a person is convicted of murder that
15 there are some cases where the death penalty is
16 appropriate and they could give the death penalty. And
17 there are other cases where they feel like that the
18 death penalty is not appropriate. And in those cases
19 they think that life imprisonment is the more
20 appropriate sentence.

21 With those matters in mind, which class or type
22 person, so far as types one, two or three, do you feel
23 that you are?

24 A. Type two.

25 Q. Type two. That being that you do not believe in

1 the death penalty and could not give the death penalty
2 no matter what the circumstances are?

3 A. Correct.

4 MR. MURDAUGH: I did not hear the response,
5 please.

6 POTENTIAL JUROR: That's correct.

7 THE COURT: Anything else?

8 EXAMINATION

9 BY MR. MURDAUGH:

10 Q. How are you, Ms. Fitzpatrick?

11 THE COURT: This is Solicitor Murdaugh.

12 EXAMINATION RESUMED

13 BY MR. MURDAUGH:

14 Q. I'm Randolph Murdaugh. I'm the prosecutor down
15 here, the Solicitor. We don't sell anything either.

16 Do I understand that never, under any
17 circumstances, would you impose the death penalty?

18 A. Not any that I can think of.

19 Q. I don't have any other questions. Thank you for
20 being so open and fair with us.

21 THE COURT: Mr. Kulp?

22 EXAMINATION

23 BY MR. KULP:

24 Q. Just a couple of questions. You, of course, have
25 heard none of the facts and circumstances which are

1 being offered in this case, the evidence that would
2 pertain to be offered to support the Solicitor's
3 assertions in the penalty phase, should that be
4 encountered, as to why he would be urging those -- that
5 evidence would support an aggravating factor. This is
6 all speculative, you understand. Can you imagine any
7 circumstances where whatever evidence was offered by
8 the State in support of his assertions of the existence
9 of an aggravating factor that would convince you that
10 the death penalty would be wrong?

11 A. I'm sorry. I didn't understand your question.

12 Q. Are you aware of any circumstances that would be
13 offered by the State that you can fathom as to the
14 issue of punishment in the penalty phase that you can
15 imagine that would make you feel that the death penalty
16 would be wrong?

17 A. I can't think of any now.

18 Q. Thank you.

19 THE COURT: Any discussion about Ms.
20 Fitzpatrick?

21 MR. KULP: No, sir, Your Honor.

22 THE COURT: Thank you very much. You are
23 excused and this will take care of your service for the
24 week.

25 POTENTIAL JUROR: Thank you.

1 (TESTIMONY OF NANCY FITZPATRICK CONCLUDED)

2 THE COURT: Send in, please, Suzanne Mumford,
3 Juror No. 252.

4 (POTENTIAL JUROR ENTERS ROOM)

5 SUZANNE MUMFORD, being
6 duly sworn to tell the truth, the whole truth and
7 nothing but the truth, was examined and testified, as
8 follows:

9 EXAMINATION

10 BY THE COURT:

11 Q. Ms. Mumford, would you come around and have a seat
12 right here, please?

13 A. (Complies)

14 Q. How are you doing, ma'am?

15 A. Fine, thank you.

16 Q. First off, I'll remind you that you are still
17 under oath from yesterday in this matter. Ms. Mumford,
18 have you at any time heard anything about this case
19 from anybody, including any newspapers, TV, radio or
20 anything?

21 A. No.

22 Q. And specifically, since we were here yesterday,
23 have you seen any media coverage or has anybody tried
24 to talk to you or have you heard anybody say anything
25 about the case?

1 A. No.

2 Q. Have you talked to anyone else about the case?

3 A. No.

4 Q. Did you read the pretrial questionnaire?

5 A. Yes.

6 Q. I have a couple of questions to ask you about it

7 and then I will let the attorneys ask you some things.

8 In a case where the State is seeking the death penalty,

9 the trial is bifurcated, meaning that it is split into

10 two parts. The first part is called the guilt phase.

11 And in the guilt phase the jury, after hearing

12 testimony and evidence on that issue, would decide

13 whether a particular defendant is guilty or not guilty.

14 And, by the way, I'm not talking about the facts in the

15 case that we're trying here. I'm just talking about

16 the procedures generally.

17 If the jury finds the defendant to be not guilty,

18 then that's the end of it. But if a jury should find a

19 defendant to be guilty of murder, then the case would

20 go to the second or the penalty phase. And in the

21 penalty phase in South Carolina there are two possible

22 verdicts. One possible verdict is the death penalty.

23 A second possible verdict is life imprisonment. And

24 it's up to the jury to decide what the verdict should

25 be.

1 In this regard there are basically three types of
2 jurors. The first type referred to in that
3 questionnaire -- it's not really a questionnaire, but
4 that article or whatever, that memo -- is a person who
5 believes that if a person is found guilty of murder
6 they ought to receive the death penalty no matter what
7 the circumstances. In fact, the person doesn't need to
8 hear any of the background or the facts or
9 circumstances because they feel like it's just pretty
10 much called for in every case.

11 The type two juror feels like they also -- that
12 juror does not need to hear any of the facts and
13 circumstances of the case because that juror does not
14 believe in the death penalty and would, in every
15 instance, vote for life imprisonment.

16 The type three juror feels that there are some
17 cases of murder where a person is guilty of murder .
18 where the death penalty is called for and the person
19 could vote for the death penalty in some cases. And by
20 the same token, there are some cases where the death
21 penalty is not called for. And in those cases they
22 would vote for life imprisonment. But before they
23 decided what to do, they would want to hear all the
24 background, the facts and circumstances of a particular
25 case and then make a decision after due deliberation as

1 to what was the appropriate verdict in that particular
2 case.

3 Which type of juror do you feel that you are?

4 A. I've really given this a lot of thought since
5 yesterday.

6 Q. Would you get closer to the microphone so they can
7 hear you?

8 A. I've given this some thought since yesterday, and
9 I don't think I could sentence anyone to death. I
10 don't think I could do that.

11 Q. You feel like you could not?

12 A. No.

13 Q. So you feel like you would have to -- that no
14 matter what the facts and circumstances are, you would
15 always be for life imprisonment. This, of course,
16 presupposes that they are guilty of the murder.

17 A. No, not in every case, I couldn't. Like a Timothy
18 McVeigh-sort of thing, I definitely thought that he
19 should die -- something like that.

20 Q. Well, in that case would you be able -- one of the
21 things about our procedure is that the jury has to --
22 each member of the jury -- there's a line and it says
23 it's the recommended verdict. But it is the final
24 verdict. And each juror, if they give the death
25 penalty, has to sign a statement under the thing that,

1 "We hereby recommend", or words to this effect, "the
2 death penalty." Would you be able to sign that form?

3 A. I don't believe so.

4 Q. Not even in the Timothy McVeigh case?

5 A. Yeah, I could in that. Uh-huh, (affirmative nod).

6 Q. In any other case would you be able to sign that
7 verdict?

8 A. I guess it would depend on the case.

9 Q. It would depend on the case?

10 A. (Affirmative nod).

11 Q. Tell me, do you feel like after our discussion
12 that maybe you feel like that there is a place for the
13 death penalty in certain cases and that there's a place
14 -- not ever case, but there are some that you would
15 vote for the death penalty and be willing to sign the
16 verdict?

17 A. Yes.

18 Q. And that you would make your decision that you'd
19 hear the testimony and the evidence presented, and that
20 you would make a decision based upon how you feel about
21 the -- things called aggravating circumstances that
22 will be presented. And there are things called
23 mitigating. Obviously, "aggravating" means things that
24 make it sound bad for a defendant who is convicted of
25 murder. Matters taken in mitigation means things that

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

467

1 the jury should consider that lessen what they think --
2 that it is thought would lessen what the punishment
3 should be. In other words, to try to persuade the jury
4 to give a life imprisonment verdict rather than a death
5 penalty.

6 Would you be able to listen to the matters in
7 aggravation, the matters in mitigation and decide the
8 case based upon what you thought was appropriate along
9 those lines?

10 A. Yes.

11 THE COURT: Solicitor?

12 EXAMINATION

13 BY MR. MURDAUGH:

14 Q. Thank you, ma'am. How are you doing?

15 A. Good, thank you.

16 Q. I'm Randolph Murdaugh. I'm the Solicitor down
17 here. And I need to ask you some questions, quite
18 frankly, to find out if we want you to sit on the jury
19 or not. I want you to understand there are no right
20 answers nor wrong answers. It's just the attorneys and
21 I want to get a feeling from you as to whether or not
22 we want you to sit on the jury. And I need to ask you
23 several questions.

24 You put in your questions that you work part-time?

25 A. Yes.

1 Q. Where?

2 A. First Union Bank.

3 Q. All over the bank?

4 A. Right.

5 Q. Duplicating what the judge has already done, I
6 need to talk with you about your feelings. In this
7 kind of a case, the first part of the trial will be to
8 determine whether or not the defendant is guilty or
9 innocent of murder. If you find him not guilty, then
10 it's over with and everything goes home.

11 If you find him guilty, then in that event, you go
12 to that second part of the trial where you have two
13 things to consider. No, not to consider. To
14 determine. Those two things are death penalty and life
15 imprisonment. And in that regard, the State is
16 required to prove the existence of an aggravating
17 circumstance. His Honor will charge you what an
18 aggravating circumstance is if you sit on the jury.

19 If you find that there is in existence an
20 aggravating circumstance, you will then listen to the
21 character of the defendant, the circumstances of the
22 crime, any evidence in mitigation -- that is, reasons
23 not to give him the death penalty.

24 Would you listen to everything with an ear to
25 either giving the death penalty or life imprisonment?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

469

1 A. Yes.

2 Q. You could in certain circumstances give the death
3 penalty?

4 A. Yes. I would have to hear everything.

5 Q. I understand. And that is one of the premises of
6 the statement I just made to you, that you would listen
7 to everything that came out in the courtroom before
8 making your determination.

9 A. Yes.

10 Q. And if you thought it was a bad enough case, you
11 could vote for the death penalty?

12 A. I think so.

13 THE COURT: Speak into the microphone.

14 POTENTIAL JUROR: I think so.

15 THE COURT: You say you guess so?

16 POTENTIAL JUROR: I think so.

17 THE COURT: Let me ask you to do this. You
18 know people say, "I think so," and that's just the way
19 people talk.

20 POTENTIAL JUROR: I'm on the fence.

21 THE COURT: But you're really on the fence.

22 POTENTIAL JUROR: Yes.

23 THE COURT: Well, I want you to go ahead and
24 think about it for a minute and just say that you've
25 thought about it. Because if you feel like you can --

1 because that's the essence of your qualifications as a
2 juror on this.

3 THE COURT: Solicitor, go ahead.

4 EXAMINATION RESUMED

5 BY MR. MURDAUGH:

6 Q. Ms. Mumford, I hate to be aggravating you. But I
7 need to get an answer from you. You responded to a
8 question either that I asked or the judge asked that
9 you were on the fence. You didn't know, I think is
10 what you said. "I'm on the fence. I don't know
11 whether I could vote death penalty or not."

12 A. (Affirmative nod).

13 THE COURT: Make a verbal response, please.

14 POTENTIAL JUROR: Yes.

15 THE COURT: And into the microphone, too.

16 Because I want opposing counsel to be able to hear you
17 over there.

18 EXAMINATION RESUMED

19 BY MR. MURDAUGH:

20 Q. And I hate to be persistent and aggravating. But
21 I need to know from you if, in reality, under the
22 appropriate circumstances you could vote -- ever vote
23 for the death penalty?

24 A. Ever? I'd have to say yes, I could. Because I
25 gave that example.

1 Q. And that was Timothy McVeigh?

2 A. Yes.

3 Q. In any other case other than Timothy McVeigh?

4 A. I can't say definitely "yes".

5 THE COURT: I can't hear you.

6 EXAMINATION RESUMED

7 BY MR. MURDAUGH:

8 Q. Ma'am?

9 A. I can't say definitely "yes".

10 Q. Do I take it that the reason you would vote the
11 death penalty for Timothy McVeigh is because he killed
12 more than one person?

13 A. The magnitude of the crime.

14 THE COURT: The what?

15 POTENTIAL JUROR: The magnitude of the
16 crime.

17 EXAMINATION RESUMED

18 BY MR. MURDAUGH:

19 Q. The more people that are killed, the more apt you
20 are to give the death penalty? Let me ask you this
21 question. Can you, in any case that comes along,
22 consider everything that comes out in the courtroom,
23 follow the judge's instruction and listen to it with an
24 ear towards the death penalty or life in prison?

25 A. Yes.

1 Q. I'm trying to figure out how to ask you the
2 question I want to ask you. If it were not a case
3 where a multitude of people were killed -- that's a
4 hypothetical. I apologize. I shouldn't ask that.

5 If it were not a case similar to Timothy McVeigh,
6 could you ever vote for the death penalty?

7 A. I really don't know.

8 Q. I notice that on your questionnaire, Ms. Mumford,
9 you put in there that you could not be fair if firearms
10 were involved.

11 A. Uh-huh, (affirmative nod).

12 Q. One of the things that we have to do is have
13 people with open minds who will listen to the testimony
14 that comes into this Court without any preconceived
15 prejudices. I realize all of us have got a little bit
16 of them. But you've basically got to set them aside
17 when you come into this courtroom.

18 A. Uh-huh, (affirmative nod).

19 Q. Could you -- and I know not what your feels are
20 about firearms. But could you, in this case, if a
21 firearm is involved, be fair and impartial?

22 A. Yes.

23 Q. Ma'am?

24 A. Yes.

25 Q. May I ask you why it is that you put that on your

1 questionnaire?

2 A. I'm just anti-firearms.

3 Q. If the fact in this case it came out that the
4 defendant had a firearm ---

5 MR. KULP: I object. I think that clearly
6 falls within the prescriptions.

7 THE COURT: I sustain the objection.

8 COURT REPORTER: I didn't hear you.

9 MR. KULP: I think that clearly falls within
10 the prescriptions against the nature of the question.

11 THE COURT: I didn't understand what you said.

12 MR. KULP: I object because I believe that it
13 falls within the prescription or the prohibition
14 against asking questions that are related to
15 speculation about the facts of this case.

16 THE COURT: I don't see any reason to followup
17 on that. I think I'm going to sustain it.

18 EXAMINATION RESUMED

19 BY MR. MURDAUGH:

20 Q. You also put on your questionnaire that you could
21 not be fair and impartial if the use or sale of illegal
22 drugs were involved, did you not?

23 A. Yes.

24 Q. If somebody in this case were involved with drugs,
25 could you be fair and impartial to either side?

1 A. No.

2 Q. Okay. Okay. And that would have -- I shouldn't
3 say it wouldn't have anything to do with it, because
4 everything has something to do with it. But that
5 wouldn't make you prejudiced in this case?

6 A. No.

7 THE COURT: Any questions, Mr. Kulp?

8 EXAMINATION RESUMED

9 BY MR. MURDAUGH:

10 Q. One additional question. Do you know Richard
11 Rivers or Kenneth Williams

12 A. No.

13 Q. Thank you, ma'am. I appreciate it. And I
14 apologize for having to ask you hard questions. But it
15 is something that we need to know, both sides. And I
16 think you for being so fair and open.

17 A. Okay.

18 EXAMINATION

19 BY MR. KULP:

20 Q. May it please the Court? Ms. Mumford, my name is
21 Tim Kulp. And I represent the accused, Mr. Rogers,
22 along with my co-counsel, Mr. Fleming. Again, from
23 that side of the courtroom, thank you for going through
24 this process. But it is important, as Mr. Murdaugh
25 said.

1 Let me go over a few things. You indicated, did
2 you not, that you could be fair and impartial as to all
3 issues in this case?

4 A. Yes.

5 Q. And you indicated, did you not, that you would
6 listen to -- or maybe you didn't indicate. But I'm
7 asking you now would you listen to and follow the
8 judge's instructions on the law that would apply to any
9 facts in the case that you and the other jurors
10 determine to be the truth?

11 A. Yes.

12 Q. And I don't want to get into that circumstance
13 that you mentioned. But you testified, did you not,
14 that in certain circumstances you could, if being fair
15 and impartial and listening to all the facts and
16 circumstances, you could consider the death penalty.
17 And you wouldn't automatically just say, "I'm only
18 going to give life imprisonment, no matter what the
19 facts."

20 A. Right.

21 Q. What are the facts and circumstances of this case?

22 A. I don't know.

23 Q. You don't know?

24 A. I know that he was murdered.

25 Q. You know what the judge told you about when he

1 read to the entire group of people.

2 A. Right.

3 Q. But without being coy, you don't anything about
4 this case.

5 A. Right.

6 Q. So you have no way of determining those facts and
7 circumstances. But you would approach whatever those
8 facts and circumstances are fairly and impartially and
9 carefully and weigh them out. And if, in fact, those
10 facts and circumstances, whatever they are, after
11 careful deliberation and consideration warranted the
12 imposition of the death penalty, or to that degree, it
13 is, is it not, the case that you could decide that the
14 death penalty would be the appropriate circumstance and
15 decision?

16 A. Yes.

17 Q. Thank you.

18 THE COURT: Anything further?

19 MR. MURDAUGH: No further.

20 THE COURT: Any discussion about the case?

21 MR. KULP: Yes, sir.

22 THE COURT: Ms. Mumford, would you please
23 retire to the outside of the courtroom and I'll get
24 back to you in just a moment.

25 JUROR: All right.

1 (POTENTIAL JUROR STEPS DOWN/EXITS ROOM)

2 THE COURT: I'm glad to hear from you,
3 Solicitor?

4 MR. MURDAUGH: Indulge me for just one moment,
5 please.

6 THE COURT: Okay.

7 MR. MURDAUGH: If Your Honor please, I have no
8 motion.

9 THE COURT: I find the juror to be qualified.

10 MR. MURDAUGH: Thank you, Your Honor. And I
11 apologize for taking the time, sir. But it was
12 something I needed to discuss.

13 THE COURT: One thing I want to discuss before
14 we bring the next jurors in. It's been very apparent
15 we have some -- we are right now -- that was a 2:45.
16 We're at 3:30. We've got three. So that's twelve more
17 to go. And I can't help but notice that the lawyers
18 are getting longer and longer as you get tired and
19 tired.

20 MR. MURDAUGH: That happens every time, sir. And
21 I apologize.

22 THE COURT: Okay. What I propose to do is ask
23 Ms. Smith to go over, find out if any of them would
24 like to come in tomorrow at 8:00 o'clock as opposed to
25 waiting. If any of them say they can't get here or

1 they want to stay here and work, we're willing to work.

2 But that way I think some of them will say yeah,
3 they'll go. And then we'll have eight or nine. And
4 even myself, I might fine myself if I'm late tomorrow.
5 And Mr. Kulp, he's already a first offender.

6 So if you would do that. And if any of them wish
7 to come, we will start at 8:00 o'clock tomorrow. And
8 some of them might just say they want to stay. And
9 we'll stay as long as any of them do, because some of
10 them that are here, they'd rather stay.

11 But I don't want anybody to feel like they're just
12 trapped, because it looks like we're going to be here
13 until about 8:00 o'clock. I pour that out. It's in
14 your hands. But it's getting longer and longer, and
15 it's just so obvious. That was a juror that took some
16 time, and I understand that one. But a lot of the
17 other ones didn't take nearly as long as that.

18 CLERK: I'll tell you what they say.

19 THE COURT: We'll stay.

20 MR. MURDAUGH: While she's talking can we take a
21 little break?

22 THE COURT: We'll just take a five-minute
23 stand-up break. She's qualified.

24

25

(BRIEF RECESS)

1 (POTENTIAL JUROR RESUMES STAND)

2 THE COURT: Is somebody here from the
3 Solicitor's Office?

4 MS. McCALL: Yes.

5 THE COURT: You are qualified. We've been in
6 here so long we're getting a little punchy, and I
7 apologize for that. This thing is going and we are
8 trying to figure out what we're doing. But anyway, you
9 will go in the pool. What that means is we are going
10 to try to select this jury -- we're certain that we
11 will -- at 9:30 on Friday.

12 If you will come here Friday with your bags packed
13 for three nights, the jury will be selected. The
14 reason we do it that way is to make sure that whoever
15 the fourteen people -- the twelve plus the two
16 alternates are -- we don't have to then break and
17 everybody go worry about their clothes. You'll have
18 them with you if you're selected.

19 Do not discuss the case with anyone or allow
20 anyone to discuss the case with you. Likewise, do not
21 do any research, go on the internet, read any books
22 about criminal law, criminal procedures or anything
23 like that. You should decide the case from the
24 testimony here in Court, along with the arguments and
25 so forth of the counsel.

1 I'm sorry this has taken so long and I look
2 forward to seeing you on Friday at 9:30. And I'm sorry
3 I forgot about you when I did. We were in such a
4 hurry.

5 (TESTIMONY OF SUZANNE MUMFORD CONCLUDED)

6 THE COURT: Just tell us so we'll know.

7 CLERK: In Panel 12, Barbara Barrett is
8 coming at 8:45 tomorrow morning. And in Panel 13, John
9 Harkins is coming at 8:30 tomorrow morning.

10 THE COURT: Ms. Smith, one last thing. If you
11 would, when Joanie gets through with that, if any of
12 them -- since they are going to be here awhile -- if
13 they want to make a phone call, could you get them --
14 they can take them down some please and let them.

15 CLERK: I've even offered them Cokes.

16 THE COURT: And they're okay? You've already
17 mentioned about phone calls if they need to make them?

18 CLERK: Yes.

19 THE COURT: Is everybody here? Then we are now
20 ready for -- you weren't here, Solicitor, but we forgot
21 about Ms. Mumford. And I announced to the room and
22 gave her -- Ms. McCall was in here. So she's told you
23 about it?

24 MR. MURDAUGH: Yes, sir.

25 THE COURT: Pamela Darden, Juror No. 72.

1 (POTENTIAL JUROR TAKES STAND)

2 PAMELA DARDEN, being duly
3 sworn to tell the truth, the whole truth and nothing
4 but the truth, was examined and testified, as follows:

5 EXAMINATION

6 BY THE COURT:

7 Q. Ms. Darden, please come around and have a seat
8 right up here.

9 A. (Complies)

10 Q. How are you doing?

11 A. Fine.

12 Q. And I'm sorry we're running late. We're doing the
13 best we can, but the tireder we get, the slower we get,
14 I think, sometimes.

15 I remind you, Ms. Darden, that you are still under
16 oath.

17 A. Uh-huh, (affirmative nod).

18 Q. And I, first, have a couple of questions. Had you
19 ever heard anything about this case prior to this thing
20 -- ever read anything or heard anything about this
21 case?

22 A. I've been thinking hard about it. I know, because
23 my father was sick and we were running back and forth
24 to the hospital in Charleston.

25 Q. Let me ask you this. Did you read anything about

1 it in today's paper or heard anything on TV or any
2 newspaper reports of it?

3 A. No, sir.

4 Q. Anybody try to talk to you about it, or did you
5 talk to anyone else about the case?

6 A. No, sir.

7 Q. Did you read the pretrial -- the thing designated
8 "pretrial questionnaire"?

9 A. Yes, sir.

10 Q. In that, I'm going to go over that just with you
11 briefly. In a case where the State is seeking the
12 death penalty, our law provides for a bifurcated trial.
13 That's just a big word. What it actually means is the
14 trial is split. It's split into two parts called the
15 guilt phase and the penalty phase.

16 The guilt phase means just what it says.
17 Basically, it is the first part of it is a person who
18 is charged with murder. The jury then goes in and
19 decides whether a person is guilty or not guilty of the
20 crime charged. And if a jury decides he is not guilty,
21 that's end of it.

22 But if a jury decides that a defendant -- and I'm
23 not even talking about this case. I'm talking about
24 just the procedure in general. If they decide that a
25 defendant is guilty then it goes into the penalty

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

483

1 phase.

2 And the penalty phase the jury then must decide --
3 and there are only two penalties provided for in a
4 murder case. The jury must decide whether a defendant
5 gets the death penalty or gets a life sentence.

6 And in that regard it's been found that there are
7 basically three types of jurors. It's listed in that
8 questionnaire and we gave to you so you would have a
9 little chance to think about it before we hit you with
10 all this. The type one juror says and feels that if a
11 person is guilty of murder he ought to get the death
12 penalty. He doesn't need to hear any of the facts and
13 background of the case or circumstances or whatever.
14 He just feels that if you commit the crime of murder,
15 you ought to get the death penalty.

16 Type two is the second type that is explained in
17 there is a person who feels -- who is against the death
18 penalty, could not give the death penalty in any case.
19 That feels like if a person is found guilty of murder,
20 there's no use to worry about the facts and
21 circumstances of the case. They don't believe in the
22 death penalty and feel like the person ought to have a
23 life sentence.

24 Type three is a person who feels like in certain
25 circumstances there are some cases that the death

1 penalty is called for for murder. By the same token
2 there are some cases where a person may commit the
3 crime of murder but should not receive the death
4 penalty. In other words, that person would consider
5 the facts from both sides, aggravating circumstances
6 and mitigating circumstances, and would make a decision
7 after hearing the facts and all the evidence on that
8 and would make a choice as to a particular person, as
9 to whether the death penalty was appropriate or a life
10 sentence was appropriate in a given case.

11 Hearing all that, which type juror you feel that
12 you are?

13 A. Type three.

14 Q. Type three?

15 A. Yes, sir.

16 Q. And that means that you would hear -- that you
17 feel there are cases where a death penalty is
18 appropriate. You feel there are murder cases where a
19 life sentence is appropriate and the death penalty is
20 not appropriate. Is that a fair statement?

21 A. Yes, sir.

22 Q. And that you would hear the facts and
23 circumstances of a particular case if you serve as a
24 juror. And if a person is convicted of murder you
25 would make your decision based upon how you feel about

1 a particular case?

2 A. Yes, sir.

3 THE COURT: I'll let the attorneys ---

4 EXAMINATION

5 BY MR. MURDAUGH:

6 Q. Ms. Darden, how do you do?

7 A. Good.

8 Q. I'm Randolph Murdaugh. I'm the Solicitor for this
9 area. And I need to ask you some questions to find out
10 if we want you to sit on the jury.

11 A. Okay.

12 Q. Your husband is a minister where?

13 A. No, he's not a minister. He works for Minister
14 Machine.

15 Q. Okay, I misread this thing.

16 A. He works in assembly and he's ---

17 Q. Minister Automation?

18 A. Yes, sir.

19 Q. And what is that he does?

20 A. Well, they make machines and stuff for different
21 companies, like dryers and refrigerators.

22 Q. And you are ---

23 A. I'm a teacher's assistant.

24 Q. Teacher's assistant?

25 A. Yes.

1 Q. And how long have you done that?

2 A. Four years. Yes, three or four years.

3 Q. You are a life-long resident of Beaufort County?

4 A. Yes, sir.

5 Q. There aren't many of you'all around, are there?

6 A. No, sir.

7 Q. Ms. Darden, in listening to your answers to the
8 judge, I gather that what you are telling him is that
9 you would listen in every case -- I'm not talking about
10 this case now.

11 A. Yes, sir.

12 Q. But in an individual case you would listen to
13 everything that was said. And after listening to it,
14 you could then, if you thought it was appropriate, vote
15 for the death penalty?

16 A. Yes, sir.

17 Q. If you didn't think it was, vote for life
18 imprisonment.

19 A. Yes, sir.

20 Q. Okay. I've got to ask you a question. Would the
21 race of either the victim or the defendant have any
22 play in what you would do?

23 A. No, sir.

24 Q. Thank you, ma'am.

25 MR. KULP: May it please the Court?

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

1 THE COURT: Yes, sir, Mr. Kulp.

2 EXAMINATION

3 BY MR. KULP:

4 Q. Ms. Darden, I am Tim Kulp. And I represent the
5 accused, along with Mr. Fleming. We represent the
6 accused, Mr. Rogers.

7 You understand that when the judge went over all
8 of this, this special kind of trial, the fact that
9 we're talking about your feelings and approach to the
10 issue of punishment is a little bit of the cart before
11 the horse. In other words, the first part of our
12 proceeding is like any other trial where the jury is
13 asked to determine if the State has met or failed to
14 meet the burden of proof they have as to each of the
15 charges they've accused the defendant with.

16 And that, in fact, if that burden of proof is not
17 met in the eyes of the jury and the decision is not
18 guilty, that we never even get to that part, the second
19 part, about which all the questions are being posed.

20 Do you understand that?

21 A. Yes, sir.

22 THE COURT: Any questions regarding the jury
23 qualifications?

24 MR. KULP: None

25 THE COURT: Any comments?

1 MR. MURDAUGH: None.

2 THE COURT: Ms. Darden, I find that you are
3 well qualified to serve as a juror on this case. If
4 you will, please show up back here at this courthouse
5 at 9:30 on Friday morning. Bring a bag packed to stay
6 three nights. You'll be put up at the Hampton Inn,
7 right here just across the marsh.

8 Now that you are in the panel from which the jury
9 is to be selected you must not, of course, as I told
10 you before -- you must continue not to discuss the case
11 with anyone or allow anyone to discuss the case with
12 you. You may, of course, tell people that you are on a
13 serious case and that you are going to be sequestered
14 for your time and all. But just don't talk about the
15 facts of the case. If anybody should attempt to talk
16 to you about the case please report it.

17 Also, make sure that you don't see -- let yourself
18 get exposed to any TV, newspaper or television or radio
19 reports of the case.

20 Lastly, you are not to take any steps to do any
21 reading, research or try to educate yourself about
22 criminal procedure, proceedings of criminal law or --
23 like through any books, magazines or the internet or
24 anything like that. Everything that you need to know
25 about the case will be explained to you during the

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

489

1 trial of the case.

2 And with that, we look forward to seeing you on
3 Friday morning at 9:30. I apologize once again for
4 running a little bit behind. Have a nice evening.

5 POTENTIAL JUROR: I have one question for
6 you. This is just for Friday, Saturday and Sunday?

7 THE COURT: That's what we anticipate.

8 POTENTIAL JUROR: You anticipate. Because
9 the only problem I would have, I have a four-year-old.
10 He's in preschool. And my husband will be working
11 mandatory on overtime, and the only problem would be
12 with getting him to school and from school for Monday
13 morning. Because my older kids are in middle school
14 and they end a session this Friday and go back to
15 school on Monday. And it would be a problem with
16 daycare for him. That's why I ask.

17 THE COURT: Do you feel like maybe -- I know it
18 won't -- it could go over into Monday. I'm satisfied
19 it won't go any longer than that.

20 POTENTIAL JUROR: Okay.

21 THE COURT: So if something should -- where do
22 you live?

23 POTENTIAL JUROR: In Laurel Bay.

24 THE COURT: If necessary and you run into some
25 sort of emergency thing, would it be okay if I sent

1 somebody out there to pick him up and take him to
2 school?

3 POTENTIAL JUROR: But the problem is my
4 kids leave at -- my husband leaves for work at 5:30,
5 and my kids -- the older three catch the bus at 6:40.
6 And someone has to be there to take him to school.

7 THE COURT: At what time?

8 POTENTIAL JUROR: At 8:00 o'clock.

9 THE COURT: I would think that based upon the
10 shortness of it, if we should run into that, that we
11 could arrange it to have your child -- could you have
12 your child dropped off by there and you take care of
13 him until court starts. Since it's such a small child
14 or something I think we could work something out.
15 Couldn't we work something out like that?

16 POTENTIAL JUROR: Uh-huh, (affirmative
17 nod).

18 THE COURT: What do you'all say on that, with
19 just the one child?

20 MR. KULP: Yes, sir.

21 THE COURT: So if we do run into that and no
22 other arrangements are made, then your husband could
23 certainly drop the youngster off at the Hampton Inn.

24 POTENTIAL JUROR: Okay.

25 THE COURT: Or something. And we would get the

State vs. Tavarus Rogers
99-GS-07-221 thru 222 and 99-GS-07-281 thru 288
Jury Voir Dire
Jury Trial October 8-16, 2001

491

1 child to school.

2 POTENTIAL JUROR: Okay. All right.

3 THE COURT: So if we have to make some sort of
4 arrangements, we'll do it.

5 POTENTIAL JUROR: Okay.

6 THE COURT: If you're sitting on the jury. Of
7 course, we don't know that yet.

8 POTENTIAL JUROR: Okay.

9 THE COURT: Have a nice day. See you Friday.

10 POTENTIAL JUROR: Okay.

11 (TESTIMONY OF PAMELA DARDEN CONCLUDED)

12 THE COURT: Doris Miller, Juror No. 234.

13 (POTENTIAL JUROR TAKES STAND)

14 DORIS MILLER, being duly
15 sworn to tell the truth, the whole truth and nothing
16 but the truth, was examined and testified, as follows:

17 EXAMINATION

18 BY THE COURT:

19 Q. Come right up here, please, Ms. Miller.

20 A. (Complies)

21 Q. How are you doing?

22 A. Fine, thank you. And you?

23 Q. Fine. Thank you for bearing with us. We've been
24 working as hard as we could, but we just haven't been
25 able to keep up.

1 Ms. Miller, I remind you that you are still under
2 oath from yesterday. Have you heard anything about
3 this case prior to yesterday?

4 A. No, sir.

5 Q. And since yesterday have you heard anything from
6 anybody? Anybody contact or talk to you about the
7 case, or have you seen anything about it in any
8 newspaper or radio, TV or anything like that?

9 A. I saw it in the newspaper this morning.

10 Q. Tell me what you saw.

11 A. That the incident occurred in 1999 and that they
12 had pleaded guilty, I guess, before the coroner's ---

13 Q. So you read that entire article?

14 A. Yes.

15 THE COURT: Since you have read that and I had
16 specifically told you not to, I'm going to have to
17 disqualify you from serving on this jury.

18 POTENTIAL JUROR: I'm sorry. The minute I read
19 it, I'm like, "I wasn't supposed to do that."

20 THE COURT: Thank you for being candid with us
21 today.

22 MR. KULP: I do have one question. When you
23 saw the headline in the article ---

24 MR. MURDAUGH: If Your Honor please ---

25 THE COURT: I think so. I think I'm not going