

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 09-CP-23-0741

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S.C. Supreme Court

FREDDIE EUGENE OWENS Petitioner,

v.

STATE OF SOUTH CAROLINA Respondent.

APPENDIX
VOLUME I OF VIII

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 FREDDIE EUGENE OWENS,) 1998-gs-23-5220
7 Defendant.) September 28, 2006
8 Greenville, South Carolina

9
10 B E F O R E:

11 THE HONORABLE LARRY R. PATTERSON, JUDGE.
12

13
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EXHIBITS

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(1 (PROCEEDINGS, September 28, 2006).

2 THE COURT: Okay. Today we are here just for
3 administrative purposes in regard to the State versus
4 Freddie Eugene Owens and the resentencing proceeding
5 scheduled for Monday. And the jury is coming in at -- is
6 scheduled to come in at two o'clock. And the thing that we
7 have today, we have some jurors that the attorneys could not
8 agree on as to whether or not they should be excused, and we
9 will take up any motions or anything that's pending in the
10 case at this time too.

11 We have friends from the news media here, which we
12 are always happy to have the news media, if they want to be
13 here, but today we will not be getting into anything --
14 well, as far as I know, we probably -- we will not be
15 getting into anything in regard to the merits of the trial
16 or anything of that nature, except it could come up in some
17 motions, but I'm not -- I don't anticipate that.

18 But be that as it may, we will go over the jurors.

19 And first of all, juror number 39 --

20 MR. ARIAIL: Judge, if I could, just to -- could
21 we -- I would like to request that we do the motions first,
22 and then -- that's a selfish request, because it would allow
23 me, after we do that, I could leave and Ms. Strom could
24 handle that, because I have got a couple of witnesses it
25 wanted to -- had planned to meet with shortly, so if we

1 could do that. Otherwise, I'll wait. But I was going to
2 put in that selfish request.

3 THE COURT: Okay. I have no preference as to at
4 this particular time, and if you want to do the motions, we
5 can do that. If the State has any motions or the defense,
6 we can take those up.

7 MR. ARIAIL: Well, we have -- I think we have six
8 that we would like to -- and I'll -- I don't have them in
9 any particular order, but I can read them out and give Your
10 Honor an opportunity to --

11 THE COURT: We got a little notebook here. I
12 think we have -- we should have most of them.

13 MR. ARIAIL: You should.

14 The first one is State's motion to require the
15 defense to submit a witness list to the court for purposes
16 of the jury qualification.

17 I think the case law cited therein and the basis
18 of that is self-explanatory in the motion, but primarily it
19 is to prevent a problem developing at a later time when a
20 witness testifies that a juror realizes they may have known
21 a witness for the defense, and had that name been listed on
22 the witness list. We don't particularly care about the
23 State knowing about that, but just so the court will have
24 that, and can submit that as part of that listing that the
25 court will submit to the jury, along with all the State's

1 witnesses.

2 THE COURT: Well, the technique you used in the
3 past there is a compromise, I noticed, from some of the
4 cases that you have handled, Mr. Ariail, is that both sides
5 gives the list to the court and we make it alphabetically
6 without saying who the witnesses may be testifying for, and
7 just give that to the jurors to look over before they come
8 in for voir dire.

9 MR. ARIAIL: That's right. Then if they know one,
10 they identify them by number. You will have the list and
11 you will know who they are talking about. And then you ask
12 the question whether if that's who you think it is, they are
13 going to be a problem for you, or create a problem. And I
14 don't think we have ever had one create a problem. The only
15 one that we ever had created a problem was one that we
16 didn't get a list from the defense and in the middle of the
17 trial the juror stood up and said judge, I have got a
18 problem, this a good friend of mine.

19 THE COURT: I know the case law -- there is a --
20 there is one significant case in regard to that.

21 Does the defense have any objection to submitting
22 those to the court and letting the court prepare a list for
23 the jurors to go over before they come in for voir dire?

24 MR. GODFREY: None whatsoever.

25 THE COURT: The prosecution says they have no --

1 they don't really want to know any -- you know, not -- at
2 least not experts that you have.

3 MR. GODFREY: We have no objection to his request.

4 THE COURT: Okay.

5 MR. ARIAIL: All right. Thank you, judge.

6 The second one that they won't have any objection
7 to, I believe also, the State's motion for notice of the
8 defendant's intention to raise competency or present any
9 issue or expert testimony on the issue of his lack of
10 competency to stand trial.

11 And that also includes as a second subpart whether
12 the issue of mental retardation is going to be raised as an
13 issue. And if it does, we will have to have a proceeding
14 prior to trial to deal with that issue.

15 MR. GODFREY: May it please the court?

16 THE COURT: Yes.

17 MR. GODFREY: Mr. Owens has no issue regarding
18 competency, and there is no issue regarding retardation.

19 THE COURT: All right, sir.

20 MR. ARIAIL: We have provided them the notice of
21 evidence in aggravation, which we have served on them, with
22 six enumerated grounds set forth therein, and that was done
23 back on August 16th. For purposes of the record, that's
24 been served on them.

25 THE COURT: Okay. I have that notice that was

1 filed on August 16th of 2006, in regard to evidence in
2 aggravation. There are two statutory allegations --

3 MR. ARIAIL: Correct.

4 THE COURT: -- in regard to that, and that one
5 is that the murder was allegedly committed during the
6 commission of a robbery, armed robbery with a deadly weapon,
7 and that the murder occurred during the commission of the
8 larceny. And, of course, those are things that the State
9 must prove beyond a reasonable doubt.

10 And then the State's also stated they would put
11 victim impact testimony; the defendant's prior criminal
12 history; character or characteristics of the defendant;
13 circumstances of the crime; and any propensity for future
14 dangerousness. And that was dated August 15th, signed by
15 Mr. Ariail.

16 Any issues about notice in regard to the evidence
17 in aggravation?

18 MR. GODFREY: We have no issues regarding the
19 notice of aggravation.

20 THE COURT: Okay.

21 MR. ARIAIL: The next motion by the State was to
22 produce the defendant's school records. And the basis is
23 set forth in the motion.

24 My understanding, they were going to try to do
25 that ahead of time, but we have not yet received that. We

1 are still -- so that motion is still outstanding.

2 MS. STROM: There's a summary in the previous
3 trial that we have.

4 MR. ARIAIL: We have the summary from the previous
5 trial, but we don't have the records themselves, and we
6 would like to have the records themselves, because they are
7 going to be relied upon, I'm sure, by defense experts, and
8 we would like to go ahead and get those.

9 MR. GODFREY: What we discovered when we obtained
10 the old file is that there were some significant holes in
11 the school records. The school records were not complete.

12 We have subpoenas outstanding right now in
13 Greenville County to complete the school records. What we
14 have is in the file presently is grossly incomplete.

15 We have discussed the matter with Marjorie
16 Hammock, who testified in the first two trials. She does
17 not have the school records in her old files.

18 So, you know, I have talked with the mitigation
19 investigator this morning. I know that the subpoenas have
20 been out there, and I know they are trying to get all of
21 them. We will fax them what we have, or deliver to them,
22 one or the other, what we have right now by the end of the
23 day, but right now we don't have all of the records. The
24 school system says that they have them, but they can't
25 exactly get their hands on them.

1 MR. ARIAIL: And I don't need them by the end of
2 the day. I just need them -- I would like to have them
3 prior to any expert going up -- you know, reasonable period
4 of time, 24 hours ahead of time, expert going up on the
5 stand, so that expert is going to use either the old records
6 or any new records that they could get, we just like to have
7 them to be able to review them and examine them. We will
8 just go forward with that understanding that if they are
9 going to use them, they will provide them to us.

10 THE COURT: The solicitor says that he needs --
11 would need the records maybe 24 hours in advance in order to
12 cross-examine any experts who relied on the school records
13 in regard to their testimony. So as I surmise from what's
14 been said, the defense has no objections to providing those.

15 MR. GODFREY: That's correct, Your Honor.

16 THE COURT: Anything that the experts rely upon.
17 Okay.

18 MR. ARIAIL: Also the State has filed a motion to
19 secure, prior to the testimony of any experts, the
20 underlying data and documents and facts supporting testimony
21 by that defense expert, including any written reports. If
22 there are no written reports, a summary from that expert as
23 to what the opinions are and what the facts and basis of
24 those opinions. If they haven't produced a summary, it's
25 our request that the court would direct them to prepare a

1 summary so that -- the sole purpose of that is that history
2 has taught us what happens is the defense places an expert
3 on the witness stand, with absolutely no prior knowledge
4 notice of any information being given to the State. And
5 what that results in is a significant time delay, because
6 I'm not able to cross-examine that witness. All I'm allowed
7 to do is cross-examine that witness to begin with, get the
8 data from them that they have done or used. And then once I
9 get the data, I ask for a recess from the court to go and
10 review that data with whatever appropriate experts I may
11 have. It ends up sending the jury out, having a long delay.
12 If I can go ahead and have that ahead of time, including the
13 summary.

14 Now, in this case Donna Schwartz-Watts I know is
15 expected to testified as a psychiatrist. The last trial she
16 provided me a summary in advance, somewhat in advance. She
17 laid it on my table as she walked to the witness stand. I
18 would like to get it a little bit sooner than that, but if
19 we have those, we can speed up the process.

20 MR. GODFREY: May it please the court, no reports
21 have been completed, and I have requested that the experts
22 in the case provide summaries to me. I don't have any yet.
23 I'll check on them again. And we will make every effort to
24 get the solicitor a summary before the witness walks up to
25 testify on the stand.

1 THE COURT: Do you anticipate them testifying
2 without -- well, you want a summary before they testify?

3 MR. ARIAIL: That's correct.

4 THE COURT: Okay. And they have no objection to
5 that, it appears to me.

6 MR. ARIAIL: And if we run into the issue of they
7 put the witness on the stand and I haven't gotten one, then
8 we will deal with it at that point.

9 THE COURT: Okay.

10 MR. ARIAIL: The last one is a fairly lengthy
11 motion entitled State's motion to prohibit the defendant
12 from staking out the jurors during voir dire. That motion
13 is probably premature at this time.

14 THE COURT: I think we can handle that during voir
15 dire.

16 MR. ARIAIL: We can. The purpose was to put the
17 court on notice and also defense on notice that what we are
18 going to object to and the evidence we are going to make to
19 try to keep voir dire two-fold; one under the control of the
20 court, where it should be, not in control of the lawyers;
21 and, two, not to cause undue embarrassment probing into the
22 backgrounds and lives of these jurors who we have ordered to
23 come in here and serve.

24 Those are the extent of our motions.

25 THE COURT: Okay.

1 I believe that motion is premature. We would not
2 address that at this particular time. I'm well aware of the
3 feelings along those lines and the directions from our
4 appellate courts, particularly our Supreme Court, in
5 regard -- this case, I believe, it's State v. Smart. Is
6 that right? I'm not real good at reciting cases by the
7 numbers, but that's a significant case in regard to jury
8 voir dire. And we would look into that to a great extent,
9 and I think we can handle that. Knowing the attorneys on
10 both sides of this particular case, I'm sure that the
11 question of the jurors would be thorough and go as far as
12 necessary without doing the personality inventories or
13 whatever. And so we will deal with that when we face them.
14 Okay.

15 That's all the motions from the State?

16 MS. STROM: That's all our motions.

17 MR. ARIAIL: That's all our motions.

18 MR. GODFREY: May it please the court, yesterday
19 we filed a notice of motion and motion for a continuance.
20 Our forensic psychiatrist, Dr. Donna Schwartz-Watts, has
21 indicated to the defense that she would like to have an
22 additional 30 days in which to assess Mr. Owens and also to
23 review some records. She says that she has discovered that
24 he was fairly recently put on medication in the Department
25 of Corrections, and she wanted to see him at least two more

1 times before. Of course, she is going to see him again this
2 Friday. So based on the request of the forensic
3 psychiatrist say stating that she needs 30 more days, we
4 would respectfully request the court consider that.

5 MR. ARIAIL: Obviously we would oppose that. We
6 have 450 jurors going to show up here Monday and I have got
7 witnesses already with flight reservations from Virginia.

8 THE COURT: Well, we have 400 that have been
9 subpoenaed, but we may have about 196 as of right now would
10 show up.

11 MR. ARIAIL: Right. That's a pretty good turnout.

12 THE COURT: Yeah.

13 MR. ARIAIL: And I have got witnesses, doctors,
14 pathologists, psychiatrists, flying in from as far away as
15 Minnesota, and, you know, we have been running for this
16 date.

17 I know Ms. Schartz-Watts. Also the basis --
18 although there is no affidavit in here, I would certainly
19 take Mr. Godfrey's representation as to what she said, but
20 I do believe that Ms. Schwartz-Watts lives and practices in
21 Columbia. The Department of Corrections can make the
22 defendant available to her at any time. We have four days
23 next week probably while we would be picking -- qualifying
24 the jurors, that she would have ample time to do that. And
25 if necessary, there is one reference in here that she would

1 like to talk to the prison psychiatrist. I'm certain if she
2 can't get that done, that I could get that done, or you
3 could get that done by directions to the Department of
4 Corrections to avoid a continuance. We can certainly make
5 him available.

6 Also I would submit that this case has been
7 scheduled for low these many months, and I would assume that
8 Ms. Schwartz-Watts was retained sometime back, and it's just
9 a little bit late to be coming up with something not even
10 more substantive than that. The State would vigorously
11 oppose a continuance. There is just too much planning
12 already gone into this.

13 THE COURT: All right. I think that -- at this
14 time I'm aware of the fact, and I don't think it's anything
15 that the State does not have to know about it, but at this
16 time Mr. Owens is scheduled to see Dr. Donna Schwartz-Watts
17 tomorrow and will be transported to her office tomorrow. I
18 signed that order yesterday. I'm sure it was filed with the
19 court. And so, therefore, it would not be anything,
20 effective trial strategy, or anything that's not supposed to
21 be known by both parties.

22 But, in any event, we do have -- we have
23 subpoenaed 400 jurors, and we have had, as I was told, maybe
24 more responses than 196, but that was the last time I
25 checked. And so we will -- I would -- I just won't make a

1 definite ruling at this particular time, but depending upon
2 how the examination goes tomorrow.

3 I do not know the nature of what her testimony was
4 she's looking for, but she has testified in court on
5 numerous occasions and been in courts where I have held
6 court and testified as a witness, and so we are familiar
7 with the doctor and we will just probably revisit that
8 tomorrow after she talks with Mr. Owens. And then -- right
9 now the court would not be inclined to do that. Okay.

10 Do you have any other motions at this time?

11 MR. GODFREY: No further motions from the defense,
12 judge.

13 THE COURT: Yes, ma'am.

14 MS. STROM: As a housekeeping matter, one of the
15 things that we do in these types of cases is run criminal
16 records on the potential jurors, the ones that have
17 responded. And because our contract with SLED does not
18 allow us to give them to defense counsel, I need for you to
19 order me to give them to defense counsel so they would have
20 the same records as we do.

21 THE COURT: All right. I will do that.

22 MS. STROM: Thank you, judge.

23 THE COURT: Okay.

24 MS. STROM: And, Your Honor, one other
25 housekeeping matter, if I may?

1 THE COURT: All right.

2 MS. STROM: And I have spoken with defense counsel
3 about that, the fact that we have heard one motion from the
4 defense counsel, the motion for a continuance. However,
5 it's my understanding they have filed no other motions in
6 this case. And having talked with them, it's my
7 understanding that that was a strategic and thought out
8 decision on their part, because they have already been filed
9 previously in the prior trials of this matter, but I did
10 want that to be on the record. I would like you to talk
11 with the defense counsel about that, so that way we don't
12 have this issue come up later on that maybe it was just a
13 mistake or they had forgotten.

14 MR. GODFREY: May it please the court, this case
15 has already been tried twice. Motions have been filed in
16 this case on two prior occasions. Those motions were
17 somewhat duplicative of each other. The case has -- the
18 rulings were made on those motions. The case went up on
19 appeal, and on neither occasion did the appellate court
20 reverse on the basis of any motions that were filed.

21 In this case we could see no reason to refile
22 motions which had already been heard, already had been
23 decided and had been reviewed by the appellate court, with
24 no finding of fault. So we did talk about it and we don't
25 believe that it's necessary to file a whole bunch of the

1 usual motions, like the one requesting for more than ten
2 strikes on the jury. We just decided that that was not
3 necessary, since that had already been handled on two
4 further -- on two other occasions. So, yes, it was a
5 strategic move on our part. We just didn't see the
6 necessary -- necessity to take up the time to do that.

7 And as co-counsel just pointed out, it's also our
8 understanding that they are not seeking to admit anything
9 that they have not already -- that has not already been
10 admitted into evidence.

11 MS. STROM: Judge, they did ask me that this
12 morning and I had relayed that to them.

13 There may be an additional piece of evidence, but
14 we will obviously show that to them ahead of time and if
15 they need to make a motion on that, we will obviously not
16 object to them making any motion on that, but 99 percent of
17 the case is what has already been previously presented in
18 the last two cases.

19 THE COURT: And essentially the evidence and
20 testimony from the State would be, as Ms. Strom says, 99
21 percent of what it was in earlier trials. Of course, we are
22 going to have another jury that doesn't know anything
23 about -- that much about the case, so you will, I'm sure, go
24 into the -- the other one happened to be a bench trial, but
25 as a jury trial you would go into the facts and

1 circumstances surrounding the offense for which he was
2 convicted.

3 MS. STROM: Yes, sir.

4 THE COURT: And --

5 MS. STROM: I think I have to do that.

6 THE COURT: The transcripts have been available to
7 the court and to both parties, both sides, the State and the
8 defense. Okay. That's our understanding. And if there is
9 the one percent out there, you will make it known to them
10 that --

11 MS. STROM: I will make it available to them.

12 THE COURT: As soon as you are aware of what you
13 are going to do.

14 MS. STROM: Yes, sir, absolutely.

15 THE COURT: Okay.

16 MS. STROM: And as I have told Mr. Godfrey, and
17 he's been aware, he's welcome to come and look at our file.
18 And it's my understanding he has our file. We have given
19 him everything. And if there is anything that we are going
20 to have in addition, we will show it to him and give it to
21 him in advance.

22 THE COURT: Okay.

23 MS. STROM: Thank you, judge.

24 THE COURT: Mr. Gibson, Ms. Ariail and Ms. Strom
25 have spoken. If you want to -- I'm not going to limit it to

1 one argument, the one-person thing like we would probably do
2 in court, but if you have anything that you want to say. I
3 saw you talking to Mr. Godfrey. You feel free to stand up
4 and speak.

5 MR. GIBSON: Nothing further, Your Honor. I was
6 just telling him that I had spoken with Ms. Strom and that
7 she did, in fact, relay to me that -- at least as of the
8 time of our conversation there was not anything that had not
9 already been admitted into evidence in the previous trials
10 in this case that she planned to admit or try to admit.

11 THE COURT: Okay.

12 MS. STROM: That's all the housekeeping matters
13 that I have, other than our going through the jurors. I
14 don't know if defense counsel has any others.

15 THE COURT: Okay.

16 MR. GODFREY: We have nothing further, Your Honor.

17 THE COURT: All right. Then we will go through
18 the jurors then.

19 Mr. Blucas, B-L-U-C-A-S, juror number 39, has
20 requested that he would like to be excused because he is
21 self-employed and he has a part-time employee.

22 Do all of you have these?

23 MS. STROM: Yes, sir.

24 THE COURT: And that if he were out of work for
25 two weeks, not only would he not get paid, but his employee

1 would not get paid. He says he had deadlines on his job.

2 Ms. Strom?

3 MS. STROM: Yes, sir, Your Honor.

4 Just to sort of give you the overall philosophy
5 that we have regarding work-related issues, obviously anyone
6 who is employed, if they are called to serve on the jury,
7 especially a sequestered jury, is going to have work-related
8 issues. And I think we can better handle it at the time,
9 because once we break the jurors into individual panels, it
10 could be that we don't even reach this juror.

11 And also he's talking about being out for two
12 weeks. We all know that they look at it and say oh, my
13 goodness, I'm going to be out for two weeks, but in reality
14 it's not going to take us the full two weeks in order to try
15 this case and get a verdict in this case.

16 So, unless the work-related issue is so extreme,
17 then I would suggest that we bring them in, and, if
18 necessary, we can question them a little further. It may be
19 that they get disqualified on some other ground and they are
20 not needed to serve. So I think just because they say that
21 they have a work-related issue, which I'm sure they do, I
22 don't think that's reason to out and out excuse them. I
23 think we should explore it a little further at the time of
24 voir dire.

25 THE COURT: Okay.

1 MR. GODFREY: May it please the court, if this was
2 an employee of a corporation, I think it would be
3 considerably different. I have a great heart for people who
4 are self-employed and plight that they have in being able to
5 make money to support their business, their employees and
6 themselves.

7 Based upon what this gentleman has put in the
8 questionnaire, it appears to me that this would work an
9 extreme hardship on him. And I guess the philosophy from
10 the defense, if you are self-employed and you have the type
11 of statement that this man has made, perhaps it would be
12 better to transfer him to a different term of court.

13 I don't have any particular problem with what the
14 solicitor said about perhaps bringing him in and questioning
15 him further, but I think his statement is pretty clear about
16 how this impacts on him, and I would suggest that he be
17 transferred.

18 THE COURT: Okay. On the work-related issues,
19 I'm -- for a number of years I have had the same philosophy
20 that if it's not more evident than what he has submitted, I
21 think we should bring him in at a later time, because people
22 we are hear from most often are people like doctors and
23 dentists who take three or four weeks of vacation and then
24 don't seem to be able to find time for jury service. I say
25 that publicly without much hesitation, because there are a

1 lot of doctors and dentists who are friends of mine, but
2 everyone needs to have the opportunity -- or needs to serve
3 on juries. It's our civic responsibility. So we will bring
4 him in, and we may reach him and we may not. And then we
5 will go into a little bit more detail on voir dire about
6 his occupation and what he does and how much work he may
7 need, and so we will excuse that gentleman, Mr. Blucas.

8 Mr. Sharon Breazeale.

9 Apparently the only thing I see she's concerned
10 about her daughter and her being out of work. We will bring
11 her in for voir dire and go into more detail with that.

12 Ms. Bessie Butler has --

13 THE CLERK: Your Honor, that's the only response.

14 THE COURT: Okay.

15 THE CLERK: That is the only response we had
16 received from that lady when I sent the affidavit over.

17 THE COURT: Any objection to Ms. Butler being
18 excused, from the State?

19 MS. STROM: Butler or Byler.

20 THE COURT: Bessie Butler.

21 THE CLERK: Butler, 61.

22 THE COURT: Juror number 61.

23 MS. STROM: I don't have that one. I'm sorry.

24 THE CLERK: It's a copy of an affidavit, sheriff's
25 affidavit only.

1 THE COURT: She told the sheriff's deputy that she
2 had had a stroke and could not serve. I have affidavit from
3 the sheriff's deputy.

4 MS. STROM: Okay. That says that they couldn't
5 find her? I'm sorry, I don't have that sheet.

6 THE COURT: She had a stroke.

7 MS. STROM: Oh, I'm sorry, judge.

8 THE COURT: And could not serve.

9 MS. STROM: No objection to her being excused.

10 THE COURT: Any objection?

11 MR. GODFREY: No objection, judge.

12 THE COURT: She's excused.

13 Okay. She says it just might make it financially
14 difficult most for this, but we will bring this juror in and
15 not excuse.

16 THE CLERK: 62?

17 THE COURT: 62.

18 Number 86, Ms. Collins.

19 MR. ARIAIL: Did she have a request to be excused?

20 THE COURT: We will bring Ms. Collins in for
21 further examination.

22 Mr. Crusco, number 97. We will bring that juror
23 in also. Not excuse him.

24 Juror number 99.

25 MR. ARIAIL: Judge, may I excuse myself?

1 THE COURT: Yes, sir.

2 MR. ARIAIL: Ms. Strom would be here.

3 THE COURT: Yes, sir.

4 MR. ARIAIL: Thank you.

5 THE COURT: Juror number 99, her mother was
6 admitted to a nursing home. She had been taken to the
7 emergency room three times. She cannot walk and they call
8 her. She's concerned about having an emergency. Her mother
9 has been to the emergency room three times from June the
10 25th to July the 27th. She's concerned about an emergency
11 during the trial.

12 MS. STROM: I don't have any problem with her
13 being excused.

14 THE COURT: Mr. Godfrey?

15 MR. GODFREY: Without objection.

16 THE COURT: Okay. The juror number 99 is Peggy
17 Dacus is excused.

18 Juror number 133. I won't -- I probably should
19 not mention their names, but, in any event, juror number 133
20 is -- I will not. Is going through a divorce and presently
21 staying in Pickens County instead of Greenville County.
22 That's all we have.

23 MS. STROM: And, judge, I don't know if that is
24 a -- you know, if he's changed his residency. I mean, if
25 he's changed his residency, then obviously he would not be

1 allow to serve.

2 THE COURT: Right.

3 MS. STROM: But if he hasn't changed his
4 residency, I think he needs to come in.

5 THE COURT: I think that we need to bring that
6 juror in.

7 Juror number 141. We need to bring that juror in.

8 149. The juror works in the clinical pharmacy at
9 Greenville Memorial Hospital. "My job responsibilities
10 involve daily care of 40 ICU patients who are critically
11 ill. Student resident teaching responsibilities and require
12 that juror's presence from 6:30 a.m. to six p.m. in the
13 evening." Do y'all have that information?

14 MS. STROM: Yes, sir.

15 THE COURT: What's the State's position for that
16 juror?

17 MS. STROM: Your Honor, we would submit this juror
18 needs to come in and then we can explore further in terms
19 of, you know, if she actually -- or if he would actually get
20 reached.

21 THE COURT: Okay.

22 MS. STROM: We believe that he needs to come in.

23 THE COURT: The court will bring that juror in.
24 Not -- not hearing from the defense, but in looking at the
25 statement, I think that -- I'm sure these individuals take

1 vacation, Mr. Godfrey and Mr. Gibson, and realistically I
2 would think that we would go from anywhere from four, five,
3 six, or eight days at the most in this trial, so I believe
4 we should bring a lot of these people in who think that they
5 cannot be away from their jobs and question them at more
6 extensively during voir dire.

7 MR. GODFREY: Very well.

8 My concern on this one was the sentence that he
9 put in there that there was a lack of qualified specially
10 trained personnel at this particular time.

11 I have no problem with bringing him in and
12 questioning him further regarding that.

13 THE COURT: Okay. I agree.

14 We need to look into that in more detail, because
15 anyone can get sick and have the flu and have to be out away
16 from work. All of us can reach that situation. So we need
17 to question these people who have job conflicts in more
18 detail on Monday or Tuesday.

19 This juror number 151 has a work sensitive project
20 out of the state and pretty far away.

21 What's the State's position in regard to this
22 gentleman?

23 MS. STROM: Your Honor, my note when I first read
24 over this was if he could give us some confirmation that
25 he -- travel plans, or anything like that, I would have no

1 objection to him being released.

2 MR. GODFREY: I would agree with that, judge.

3 THE COURT: The jury coordinator has spoken with
4 this individual and he was not very cooperative, but the
5 last thing that we -- information that we gave him was that
6 he had to appear. I think based on where he's working out
7 of state, out west, probably -- and we have a 196, we will
8 excuse this juror from service.

9 188. We will bring that juror in to discuss work
10 with that juror.

11 Number 194. Okay. We will bring that juror in to
12 discuss his work in more detail.

13 Next juror, we will bring in 214, that juror.

14 I have a doctor's statement from the Riverside
15 Family Practice for juror number 218. That juror has had
16 pneumonia as of September the 22nd. No jury duty for that
17 particular time, but I don't know about presently.

18 MS. STROM: I prefer not to be exposed to it. I
19 don't have a problem with him being excused, if there is any
20 chance that the juror still has it.

21 THE COURT: Juror number 218.

22 MR. GODFREY: We agree.

23 THE COURT: All right. That juror is excused for
24 medical reasons.

25 238. We will have that juror come in to discuss

1 their employment.

2 No, I'm sorry, I had the wrong one. 245.

3 MS. STROM: You were right.

4 THE COURT: Okay. We will have 245 -- 238 and 245
5 come in.

6 Without identifying these people specifically, I
7 would say that a lot of these folks are professionals and
8 they need to come in and explain to us in more detail why
9 they couldn't serve.

10 Number 256. Juror number 256.

11 MS. STROM: Your Honor, I don't have a strong
12 opinion one way or the other. I think the first issue
13 that's mentioned, without going into any detail, I think we
14 could probably work with this juror. And then the second
15 one is a job issue, but I don't have a strong position one
16 way or the other.

17 THE COURT: The medical problem I have a little
18 concern about. I don't know if the --

19 What's the defense position? Would you like for
20 me to bring this juror in and go into more detail about her
21 medical problem?

22 MR. GODFREY: Judge, I would ask that she be
23 excused.

24 MS. STROM: I have no objection.

25 THE COURT: I'm going to excuse that juror. Okay.

1 Number 258.

2 MS. STROM: Judge, on this one, on juror number
3 258, it's not that I think this juror needs to serve, based
4 upon the comment, but I don't think this juror needs to just
5 be excused and allowed to avoid giving civic duty, just
6 based upon that comment. If nothing else, made to come up
7 here and sit through a trial. I know that you have done
8 that before in the past, judge.

9 THE COURT: We will bring in juror number 258 to
10 determine during voir dire what problems he may have with
11 the court system. Okay.

12 Number 260.

13 MS. STROM: I'm thinking we can probably work
14 around it and make sure that he's in a panel -- that this
15 person is in a panel that does not come on that date so they
16 can make their court date. If it turns out we get the jury
17 early enough and that sort of thing, we have got to work
18 with it, but I think it's premature to excuse this juror at
19 this time. I think we can work with that date.

20 MR. GODFREY: I think we can work around. I would
21 agree with that.

22 THE COURT: Yeah, October the 5th he's got a court
23 date, family court. I know that's a high priority on most
24 people's agenda. I have been there and -- in Family Court
25 not --

1 MS. STROM: Right.

2 THE COURT: But as a judge, so I know that's high
3 priority on a lot of people's list and we can work around
4 that. I would say we would bring that juror in.

5 265. I think that's work related. We need to
6 bring that juror in.

7 302. What's the State's position on juror number
8 302? Essentially the employer wants the juror rescheduled.

9 MS. STROM: And, Your Honor, you know, I say that
10 that's -- I'm sure every employer would like their employees
11 rescheduled. I think it's just premature at this time.

12 THE COURT: It may be premature but -- with the
13 large number of jurors that we have, I'll require her to
14 come in on Monday.

15 318.

16 MS. STROM: Judge, my only thought on that juror
17 was if the -- this juror sent in something saying that they
18 were on FMLA, but it was expiring on September 23rd. My
19 question is if they are continued on FMLA, then obviously I
20 would have no objection to this injure being excused. It
21 just said it expired on the 23rd. I don't know if they
22 were -- if he or she were reapplying.

23 MR. GODFREY: Maybe we should bring her in and get
24 more information.

25 THE COURT: I'll bring that juror in.

1 331. I think we will have to bring that juror in.

2 That juror only wanted to be excused for October
3 the 2nd, but that would be one of our more important days in
4 qualifying the jury, so that juror would have to come in.

5 MS. STROM: And the fact they are not coming in
6 until two, so he probably get what he needs done prior to
7 that.

8 THE COURT: Before two o'clock.

9 Juror number 332. He just says pressing business
10 matters. We better bring that juror in.

11 379. Okay. Another small business operator. We
12 will have to bring that juror in.

13 392. Okay.

14 MS. STROM: There again, judge, I don't know that
15 we --

16 THE COURT: We will bring that juror in.

17 MS. STROM: Thank you.

18 THE COURT: 399.

19 Okay. What about 399? I'll hear from the State
20 first.

21 MS. STROM: Yes, Your Honor. It is a small
22 business owner. I know that there are specifics as to the
23 first two weeks of October. My thought is let's bring her
24 in, find out, you know, when they -- exactly when they are
25 scheduled and it may be that it doesn't conflict, or it may

1 be that she's not selected.

2 THE COURT: Well --

3 MR. GODFREY: We would agree to bring her in for
4 further --

5 THE COURT: We have been pretty consistent. We
6 will bring that juror in.

7 414.

8 MS. STROM: Your Honor, 414, I have no objection.

9 THE COURT: School employee.

10 MS. STROM: School employee.

11 THE COURT: Okay. That juror would be permitted
12 to serve during the --

13 MS. STROM: It is 414 you are transferring to
14 another term?

15 THE COURT: We will transfer 414 to another term.

16 MS. STROM: All right, sir.

17 THE COURT: Number 423. Another job problem. We
18 better bring that juror in.

19 444, the last one. Oh, we got another one.

20 A statement from East Piedmont Orthopedics. How
21 about that juror. Ms. Strom, I'll hear from the State first
22 on 444.

23 MS. STROM: Yes, sir. It appears that this juror
24 is not asking to be excused. Just it seems to be just
25 making us aware of his condition, and perhaps we can work

1 with her. I don't see that actually being asked --

2 THE COURT: Okay.

3 MS. STROM: -- to be excused.

4 THE COURT: She noted that she has a condition
5 that would interfere with her jury service.

6 MS. STROM: With her walking for long distances,
7 or is it for long periods of time.

8 THE COURT: Her major -- this major problem would
9 be getting into the courthouse on the daily basis. Her
10 longest distance would have to be walking from the parking
11 lot. We better bring her in and see if we can work around
12 that.

13 Now, I have been handed number 13.

14 MS. STROM: I think these next three we were
15 waiting on additional information.

16 THE CLERK: Well, 13 only received a summons, and
17 I have mailed him two letters requesting that questionnaire
18 but have received no response to date. I do not know how to
19 handle it.

20 MS. STROM: I would say bring him in, judge, if
21 he's not responding to her letters to do a questionnaire.

22 THE COURT: We would bring this juror in to find
23 out why he hasn't submitted the questionnaire.

24 That's what we have. All right.

25 Anything else?

1 MS. STROM: The only other two that I see on the
2 list, I take it that I received from you, Judy, is number
3 296 and number 438. Did we get the necessary --

4 THE CLERK: No, ma'am, we still are waiting on
5 those two documents.

6 MS. STROM: Okay. Your Honor, I would think until
7 we get the actual affidavits necessary for y'all's records
8 on 296 and 438, I think they need to come in.

9 THE CLERK: We are waiting on the child affidavit
10 from those two.

11 THE COURT: Okay.

12 MR. GODFREY: We agree.

13 THE COURT: All right, sir.

14 Anything else.

15 MS. STROM: Nothing further from the State, Your
16 Honor.

17 THE COURT: Okay. Anything else from the defense?

18 MR. GODFREY: I beg the court's indulgence.

19 THE COURT: All right.

20 (Off the record)

21 (Back on the record)

22 MR. GODFREY: Nothing further, Your Honor.

23 THE COURT: Just as a matter of administrative, we
24 will have the roll call downstairs at two o'clock on Monday
25 and we will have to set a procedure for what we will do with

1 the jurors during the qualifications and while they are
2 waiting for the panels to begin, we will handle that with
3 security and Sergeant McCall and the bailiffs.

4 And the panel procedure, some judges have five per
5 panel, some have six, just depending on.

6 Do you -- do y'all have any preferences?

7 MS. STROM: It seems as though five worked better.
8 Just in the experiences when we had six, we always seemed to
9 run a little late and that pushed us later in the other
10 panel, but quite honestly, judge, we can work them in any
11 way.

12 THE COURT: Whether the panels are five or six is
13 not any big deal with me, or whatever.

14 MS. STROM: Not with me either, judge.

15 MR. GODFREY: I'll do whatever you think is best,
16 judge.

17 THE COURT: All right. Well, we will not have to
18 decide that today, but maybe we will take a look at the
19 jurors and see. And I -- I would not anticipate the
20 questioning of the jurors to be maybe lengthy as in some
21 other proceedings. Of course, we won't have any way of
22 knowing that until we get into the voir dire.

23 We would start the panel procedure as soon as we
24 get the jurors generally qualified. That would be sometime
25 Monday afternoon, I would think. Hopefully we can work

1 through a few panels on Monday, and then get into it on
2 Tuesday morning and work the whole day. I could foresee us
3 having enough individuals possibly to select a jury by late
4 Tuesday afternoon, maybe.

5 MS. STROM: Judge, I hope you are right, but my
6 experience has shown that it doesn't go quite that fast, but
7 it just depends on how many fall out, you know --

8 THE COURT: Okay.

9 MS. STROM: -- during voir dire.

10 Quite honestly my experience has been that the
11 earliest we have ever gotten a jury has been Thursday
12 morning, but hopefully we can go a little faster. I'm
13 always up for that.

14 THE COURT: Okay. We just won't know. We will
15 just see. We will make sure that the process is done fairly
16 for everyone concerned, and we will start -- I was hoping --
17 well, I was anticipating that. We will just not force or
18 push the procedure because we do have two weeks, if we need
19 it.

20 MS. STROM: Right.

21 THE COURT: And we will see how the questions are
22 going and we will have a better idea sometime next week, but
23 I would ask that y'all be prepared to start, if we can, by
24 Wednesday morning.

25 MS. STROM: We will be.

1 THE COURT: Okay. Mr. McCloud and the SLED -- the
2 jury will be sequestered from the public after they are --
3 after we have selected the jury in this case. I think the
4 normal procedure has been in Greenville -- I know how it's
5 been in other places maybe too, but to have a jury with two
6 alternates. I think normally you would have two alternates,
7 and maybe you have had three in some of the other cases, I
8 do not know.

9 MS. STROM: I know in the last one we had three.
10 I want to say in the last two or three capital cases we have
11 had three alternates.

12 THE COURT: Judge Cole and Judge Hayes were here,
13 and some of the other cases I'm familiar with only had two
14 alternates.

15 MS. STROM: And, judge, we sort of played that by
16 ear, too, as it goes on, how many we have in the qualified
17 panel and everything, so I think that's flexible as well.

18 THE COURT: Okay. All right. As we are selecting
19 the jury, we will take a look and see how healthy they look.
20 And if we think they could make it through a week, we will
21 decide then if we are going to have two or three alternates.
22 That's about like the panels, I don't think that's critical
23 except unless we start losing some jurors.

24 All right. That is pretty much all the matters
25 that we may need to take up today.

1 Should we take up or address any issues in regard
2 to anything else, Mr. Godfrey?

3 MR. GODFREY: Judge, I only have one that I would
4 like to call to the court's attention to, it is my
5 understanding that Mr. Owens would prefer to attend trial in
6 prison uniform, as opposed to civilian clothes.

7 And Mr. Owens, is that still your desire?

8 THE DEFENDANT: Yes.

9 MR. GODFREY: I wanted to let the court be aware
10 of that, and I have already advised the solicitor's office.

11 THE COURT: All right. Mr. Owens, you have a
12 perfect right not to appear in prison clothes. The State
13 and the court could not prevent you from appearing in
14 ordinary dress and not prison clothes, if you want to -- if
15 you do that, and we would do everything that we could to
16 accommodate you to appear in regular clothing and not prison
17 clothes, if you would like that. But if you -- if you waive
18 that opportunity, then that would be a decision for you. I
19 would not require the State to force you in any way to
20 change and put on other clothing.

21 Mr. Owens, are you aware of your absolute right to
22 wear what we may call civilian clothes, as opposed to prison
23 clothes?

24 THE DEFENDANT: Yes, sir, I did that twice.

25 THE COURT: You have done that twice?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. I just want to make sure in
3 some depth that you are fully aware of your right that you
4 do not have to appear in front of this court or the jury in
5 prison clothes, and that we would do everything to
6 accommodate you to appear in what we will refer to as
7 civilian dress, if you want to.

8 Now, you are completely aware of that. You have
9 talked to Mr. Godfrey and/or Mr. Gibson about that, is that
10 correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you have made the decision
13 individually, after fully discussing it with them, and you
14 have balanced your choices and understand that it may or may
15 not prejudice the jury against you in some way, if you
16 appear in those prison clothes?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And you considered the effect it may
19 have on the jury, and you have decided on your own that you
20 want to appear in prison clothes?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And nobody has influenced you to do
23 that? You had made that decision on your own?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Any additional statements or

1 questions from the State?

2 MS. STROM: The only thing is, and I'm sure he is
3 aware of this, but if he should change his mind in any
4 course of the proceeding, just notify his attorneys to
5 notify you and we can make that happen.

6 THE COURT: Mr. Godfrey?

7 MR. GODFREY: Nothing further, Your Honor.

8 THE COURT: Okay. I will let the record reflect
9 that --

10 Mr. Gibson, do you have any other comments on
11 that?

12 MR. GIBSON: No, sir.

13 THE COURT: Are you convinced -- I know Mr.
14 Godfrey has made his statement and brought this issue to the
15 court.

16 Do you have anything that you want to add to that,
17 or have you discussed it with Mr. Owens about him wearing
18 prison clothes and whether or not it may prejudice the jury?
19 One way or the other.

20 MR. GIBSON: Your Honor, we have had that
21 discussion. My sense is that Mr. Owens is extremely
22 competent and that's the decision that he's made, and I'm --
23 I'm going to defer to his decision in that regard.

24 THE COURT: All right. And Mr. Owens, do you have
25 anything else that you want to say about that?

1 THE DEFENDANT: No, sir.

2 THE COURT: All right. You would tell me that you
3 knowingly and intelligently made this decision and you, as
4 you stated, have been here twice before on this case, is
5 that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you are telling me that both of
8 those times that you appeared in what we would call civilian
9 clothes, and that this time you are prepared to go forward
10 with your prison clothes?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Then the court has gone
13 into it as much as we can or as deeply as we can on this
14 particular occasion, and certainly the court is convinced
15 that Mr. Owens is competent to go forward and to make this
16 decision, after consulting with his lawyers. He realizes --
17 he's been to court two other times. This is a proceeding to
18 determine the sentence for Mr. Owens, and it's not the trial
19 for the murder, which is already been determined. And in
20 that regard, the court can -- would not do anything to
21 oppose Mr. Owens' intelligent, knowing decision to appear in
22 what we will call the prison clothes, if that's his choice
23 at this time. Okay.

24 I believe that would conclude all the matters that
25 we have before us today. And in this particular matter we

1 will assemble at two o'clock for jury qualifications on
2 Monday of next week, October the 2nd. Thank you very much.

3 MR. ARIAIL: Thank you.

4 MR. GODFREY: Thank you, Your Honor.

5 (END OF REQUESTED TRANSCRIPT OF RECORD)
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for GREENVILLE County, South Carolina, on the 28th day of September, 2006.

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

February 14, 2007

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 FREDDIE EUGENE OWENS,) 1998-GS-23-5220
7 Defendant.) NOVEMBER 6, 2006
8) Greenville, South Carolina

9 (VOLUME I)

10 B E F O R E:

11 THE HONORABLE LARRY R. PATTERSON, JUDGE. ; and a jury.
12

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

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16 BETTY C. STROM, DEPUTY SOLICITOR
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(1 (PROCEEDINGS, NOVEMBER 6, 2006)

2 THE COURT: Okay. It's November 6th of 2006, and
3 we are about to begin the sentencing proceeding trial in
4 regard to Freddie Eugene Owens. And before we go downstairs
5 for the jury qualification, Mr. Owens will probably
6 appear -- he will appear in front of the jury. At the last
7 hearing we had, Mr. Owens indicated to me that he wished to
8 appear in this trial with his prison clothes, if we can
9 refer to those as prison clothes. That's the term we will
10 use. The clothes that he wears while he's incarcerated in
11 prison.

12 The law provides that if he so desires, we have a
13 duty, both the court and the State, to provide him with
14 civilian clothes, which he could probably provide his own,
15 and he certainly is entitled to have those civilian clothes,
16 that we will call. And he has an absolute right to appear
17 in front of the jury without being in his prison dress.

18 We do have a case that said it would be error for
19 the court to require him to go to trial in his prison
20 clothes, but in this particular case, there is no case in
21 point. If the defendant wants to appear in prison clothes,
22 I can find no authority in this state to prohibit him from
23 doing that.

24 And Mr. Owens, for the purposes of this hearing,
25 I'm going to make sure that he has freely, voluntarily,

1 knowingly and intelligently waiving his right to have
2 civilian clothes, and it's his choice freely and voluntarily
3 made to appear in prison clothes.

4 Now, I am convinced we have all had transcripts
5 available to us. And at the previous hearing before Judge
6 Kittredge, the court and both attorneys went in depth into
7 Mr. Owens competency. And I'm not -- I don't think there is
8 any question about Mr. Owens being competent. He has an
9 above average IQ, as I saw it in some phases. He spent
10 seven and a half hours taking written tests from a Dr. Evans
11 at the previous trial. He has talked and been evaluated,
12 and he has, as I have noticed on the witness list, some
13 excellent psychiatrists and others that have interviewed
14 him, I'm sure, for this hearing.

15 Just for the record, I would say that Mr. Owens in
16 his first trial was represented by Mr. John Rollins of the
17 Greenville Bar, and Mr. Karl Allen, a member of the
18 Legislature. Mr. Rollins is an experienced criminal lawyer.

19 In his second trial he was represented by Mr. Alex
20 Kinlaw and Mr. Steve Sumner.

21 And this time he's represented by Mr. Bill
22 Godfrey, who has had extensive criminal experience, done an
23 excellent job as the Public Defender in Pickens County, and
24 Mr. Ken Gibson, who is a very intelligent, young -- I say
25 young lawyer. He might not consider himself a young lawyer.

1 But, anyway, he's represented by competent counsel. He
2 graduated from the Military Academy at West Point. And I'm
3 sure -- these lawyers have assured me that Mr. Owens is
4 competent.

5 In looking at the record, Mr. Owens indicates that
6 he did not take any drugs. He said the strongest thing he
7 took -- well, he might have said he didn't even take
8 Tylenol. I cannot remember exactly how that went. He has
9 been incarcerated now for some time. This alleged offense
10 occurred in 1997, I believe. November the 1st, 1997, this
11 offense now there has been a conviction, but I know and can
12 discern nothing that would indicate that Mr. Owens is not
13 competent to make decisions for himself in this case.

14 Mr. Godfrey, do you know anything to the contrary
15 or have you discussed it with Mr. Owens about his decision?

16 MR. GODFREY: May it please the court, I have not
17 discussed it today with Mr. Owens, but the last time we
18 talked, he indicated that he did want to be in his prison
19 attire.

20 There is absolutely no question in my mind that he
21 is competent, intelligent, and doing this of his own free
22 will.

23 I think it's a steadfast decision on his part.
24 And if he wants to go forward with his prison attire, then
25 we would support that.

1 THE COURT: Mr. Gibson, you have talked with Mr.
2 Owens?

3 MR. GIBSON: Yes, Your Honor. I would just confer
4 and affirm everything that Mr. Godfrey has said. I have no
5 question regarding his competence. He has steadfastly
6 stated to us that this is his desire. With that in mind,
7 Your Honor, we would affirm his choice, Your Honor.

8 THE COURT: All right, Mr. Owens, I'm not -- I
9 know that -- in the other trials I know that you felt people
10 asked you a lot of questions and just redundant, but I need
11 to make sure that you understand that you have an absolute
12 right to have other clothes, other than your prison clothes.

13 Would you raise your hand, please? Let me swear
14 you.

15 FREDDIE EUGENE OWENS, having been first duly
16 sworn, testified as follows:

17 THE COURT: Mr. Owens, you have an absolute right
18 and we would provide you with prison clothes -- I mean with
19 civilian clothes. Do you understand that?

20 THE DEFENDANT: (Shaking head yes)

21 THE COURT: Now, under the case law and under some
22 thinking, and I'm not sure -- I'm not going to comment one
23 way or the other whether the jury would hold it against you,
24 or be biased or prejudiced in some way, but do you
25 understand that some people might think that it would

1 prejudice you if you wore prison clothes?

2 THE DEFENDANT: Yeah.

3 THE COURT: But now I have concluded it would be
4 in the best interests of everybody that we -- I'm not going
5 to require you or require the department to try to make you
6 wear civilian clothes. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Owens, are you freely and
9 voluntarily making this decision? Nobody influenced you one
10 way or the other?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: This is your decision?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you want to appear in the clothes
15 that you have on today?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. I believe from -- I see Mr.
18 Owens today and he is -- I am convinced that he's making
19 this decision freely, voluntarily, knowingly and
20 intelligently. He understands. He's been through two
21 previous hearings, just one before a jury and one before a
22 judge, and this is his second trial before a jury, and he
23 understands the process. And I'm not -- I would not comment
24 on how it may affect the jury, because I really don't know,
25 but I just wanted to explain to him his legal rights.

1 Do you have anything else, Ms. Strom?

2 MS. STROM: No, sir. The only thing I can thing
3 of is if at any time during the trial he wishes to change
4 his mind, all he would need to do would be to notify the
5 court.

6 THE COURT: Okay.

7 Anything else, Mr. Godfrey.

8 MR. GODFREY: Nothing further, Your Honor --

9 THE COURT: Okay.

10 MR. GODFREY: -- on this matter.

11 THE COURT: All right. We need to take up a few
12 other things?

13 MR. GODFREY: Yes, Your Honor.

14 If it please the court, it appears that we are
15 going to have at least three officers from Perry
16 Correctional Institution and they are dressed in their vests
17 with SCDC. They have their weapons. And I find it to be
18 very prejudicial to my client to have these three officers
19 dressed in this manner. While I understand -- can I
20 proceed?

21 THE COURT: I do not know how we are going to
22 proceed with this during the trial. Somebody would have to
23 tell me.

24 COURTROOM SECURITY OFFICER: I can't give that you
25 answer, judge.

1 THE COURT: Okay.

2 COURTROOM SECURITY OFFICER: That's why sergeant
3 McCall is paid the big bucks.

4 MR. GODFREY: The initial problem that I have is
5 the vests with SCDC on it. If these gentlemen were dressed
6 in plainclothes and we knew where they were going to sit, it
7 may resolve the issue. But to have them dressed this way in
8 this particular type of case I think is grossly prejudicial
9 to my client in the presentation of his case in the penalty
10 phase.

11 THE COURT: I think -- I do not know. Sergeant
12 McCall is not here. He's kind of in charge of this process
13 in the courtroom. He's in charge of the security in the
14 courtroom.

15 It was my understanding that it was going to be
16 the security in -- the courtroom was going to be provided by
17 the sheriff's department and not SCDC. I don't know where
18 they were going to be, but I had talked to Sergeant McCall
19 about it. I will get him up here and we will resolve that.

20 Would you get him up here?

21 (Off the record)

22 (Back on the record)

23 THE COURT: We would have to follow the request of
24 Mr. Godfrey. And if the SCDC can appear without their
25 vests -- can y'all take those office, or not?

1 SCDC OFFICER: At your request. At your request.
2 It's as our policy to have these on when and we are
3 transporting.

4 THE COURT: Well, we are going to have to either
5 turn the security over completely to the sheriff's office
6 or have y'all -- I don't know if you could appear without
7 your vests and sit in the courtroom at some point, maybe,
8 but the defense --

9 I didn't know what your plan was for security,
10 Sergeant McCall. I talked to you about it Friday. You told
11 me that you were going to have a couple or three officers.
12 My understanding was that you were going to provide
13 security.

14 SERGEANT MCCALL: Yes, sir.

15 THE COURT: The defense is objecting to SCDC being
16 here with those vests on.

17 SERGEANT MCCALL: Okay.

18 THE COURT: In front of the jury.

19 SERGEANT MCCALL: That's nothing to me one way or
20 the other. I didn't know they were coming. I guess they
21 are here because of his classification or something, but
22 they came up with him. I told the defense attorneys they
23 would need to address that with you this morning, whether or
24 not they could sit in the courtroom dressed as they are or
25 however.

1 THE COURT: Have you got anything that you want to
2 add to that? Ms. Strom has been here.

3 MS. STROM: Judge, my only concern is if --
4 obviously they wear their vests for security purposes. I
5 didn't know if there was something they could wear over that
6 that could, you know, block the SCDC logo, or whatever, but
7 that's a security issue that I think y'all -- that would be
8 my only suggestion, is that they are wearing it for security
9 reasons, for their own personal security and safety. If
10 there was something that they could wear over it that would
11 hide the logo.

12 THE COURT: Mr. Ariail, we had the hearing. I
13 just wanted to make sure that Mr. Owens understood he didn't
14 have to appear in his prison clothes. He's voluntarily
15 waived that. And I'm sure he's made that decision knowingly
16 and intelligently.

17 Now, Mr. Godfrey raises an issue, even though he's
18 going to be in prison clothes, he thinks that the way this
19 appears with SCDC and is armed and everything as they are,
20 that that be prejudicial to his client. And I would agree
21 with him. And I would direct Sergeant McCall to work it out
22 so that he would not be -- give me your security plan so
23 that there would be no prejudice to this defendant.

24 I think that in every trial we have Greenville
25 County deputies, so you may have to provide the security.

1 SERGEANT MCCALL: Okay.

2 I was going to ask you this. Well, I guess a
3 question for everybody. Mr. Owens is going to wear his
4 prison clothes, like he is now, then the jacket and all, is
5 there any reason to have him unrestrained? You can't even
6 see his restraints and stuff on him. If he sits that way,
7 then, of course, I'm sure SCDC would be more comfortable not
8 being in here.

9 MR. GODFREY: Judge, he is here for the
10 resentencing. He's wearing his prison clothes, but I don't
11 want him to be restrained during this whole process. I
12 think the restraint itself -- we are going to be in here far
13 too long for the jury people not to notice that he has belly
14 chains on.

15 Now, I thought we had arrived at the solution of a
16 stun belt. I think that is sufficient in this situation,
17 and I think that remaining shackled like this in front of
18 the jury panel is prejudicial to him.

19 THE COURT: He will not appear with shackles. He
20 will have the stun belt, and we cannot have it looking like
21 an armed camp with SCDC completely armed in here. We are
22 just going to have to correct that. They cannot be here
23 dressed the way they are and armed the way they are. And
24 the security would be turned over to Sergeant McCall. It's
25 not a matter of debate and that's the way it's going to be.

1 If you can position the officers where they are
2 inconspicuous to make sure that security is maintained,
3 Sergeant McCall.

4 If we are not happy with it, we will take it up
5 with you. Thank you.

6 SERGEANT MCCALL: Okay.

7 THE COURT: We will be in recess.

8 Now, do you have -- oh, you got some other
9 motions.

10 MR. GODFREY: Well, we had discussed last week in
11 chambers about the possibility of having the court raise
12 questions with the jury regarding Islam and race. And after
13 consultation with Mr. Gibson and consultation with further
14 members on our defense team and a couple of outside experts,
15 we would request that questions regarding Islam and race be
16 questioned to the jury.

17 Also at the chambers meeting, Solicitor Ariail and
18 Deputy Strom had suggested that there be a question going to
19 the incident at the jail where there was another homicide.
20 And in talking with co-counsel about that, we talked with
21 you a little bit about that this morning, with Deputy Betty
22 Strom here, we would like to resolve that by asking the
23 question ourselves if there have -- if it would make any
24 difference if there have been any future crimes after this
25 crime had occurred.

1 MS. STROM: No.

2 MR. ARIAIL: No.

3 We would strenuously object to that. That's
4 getting into -- that's expanding the scope of voir dire/
5 that's something that ought to be -- if asked at all, it
6 ought to be controlled tightly by the court. It's got --
7 it's got huge issues that are prejudice that might result to
8 the defendant, as they objected to bringing it up to start
9 with. If that question is allowed to be opened up for voir
10 dire, we are going to get into it, they are going to get
11 into it, and then the jury is going to be -- we are going to
12 be in the second trial. So I would strenuously object to
13 anybody -- counsel having that. I think the court can
14 control that, if they want that asked, and that's what the
15 Supreme Court has ordered, is that the court be the
16 repository for voir dire and gatekeeper, and I think that's
17 a role the judge should play and not the lawyers.

18 THE COURT: Okay. We did have a meeting, as Mr.
19 Godfrey has mentioned, for administrative purposes to
20 determine the number of panels and when we would start and
21 how we would proceed. And then for the purposes of any
22 matters such as this, Mr. Owens would have to be present, so
23 all these things would have to be brought up, and are being
24 brought up this morning, before we begin this trial in the
25 selection of the jury.

1 As to the question, as I understand the law at the
2 present time, the case that I have found was one in regard
3 to previous crimes, and I may have even mentioned that this
4 Bell case, that was sometime ago, he had committed a murder
5 and had been sentenced to death, I believe, for -- one of
6 the cases. I don't remember. I just remember the facts of
7 the cases. He had been sentenced to death already and some
8 of the jurors may have known that.

9 This is a subsequent crime that may be brought
10 out, or alleged crime. I'm not sure there has been any
11 charges. I do not know. Subsequent offenses or bad acts
12 may be brought in in this case. And without -- and
13 considering it kind of as a motion in limine type situation,
14 the court could ask -- and the law is in regard to any prior
15 offenses, or subsequent offenses, crimes, or bad acts that
16 may or may not have been committed, if that comes out, it
17 goes to the character of the individual defendant alone and
18 not as it would bear on his -- well, it goes to his
19 character and not as to any aggravating circumstances or --
20 statutory aggravating circumstances.

21 Any subsequent crimes that may have been committed
22 would not bear on aggravating circumstances, but would only
23 apply under the law -- I'm not saying it does apply. I'm
24 not making any rulings. I'm not commenting on the facts,
25 but just as a ruling -- as a motion in limine, I would

1 probably ask the question if it were to come out in evidence
2 of subsequent crimes or bad acts, could they consider that
3 as it would just bear on his individual character and not as
4 it would bear on an aggravating circumstance. And that
5 would be probably my charge on the law, because it would
6 only go to future dangerousness, if it goes to anything at
7 all. And as I understand it, that only bears on character.

8 The sentencing authority focuses on the specific
9 circumstances of this crime and the individual
10 characteristics of the defendant when they are making their
11 sentence, and they hear evidence in extenuation, mitigation,
12 and aggravation. That's the way I understand it.

13 So I -- the answer to the question is instead of
14 letting it come out on individual voir dire, I would ask the
15 question how they would be affected if evidence were
16 presented about subsequent crimes or bad acts. I would add
17 to that prior crimes of bad acts, if the defense wanted me
18 to do that, and if that's what the evidence is going to be.
19 I'm not sure.

20 MR. ARIAIL: Your Honor, are you suggesting that
21 you are going to ask that in voir dire?

22 THE COURT: Yeah.

23 MR. ARIAIL: Well, we would -- we would object to
24 that also strenuously, because that may be the proper
25 subject of a charge at the end that you can only consider

1 evidence of bad acts as it relates to the defendant's
2 character, but that -- and I would submit in this case
3 that's probably not even a relevant issue. It may be -- it
4 might be relevant if you had a guilt phase going, but here,
5 if it's admissible, anything is admissible. It's admissible
6 solely for the purpose of jury weighing what the proper
7 sentence is going to be. So you as the gatekeeper, if you
8 let it in, they are going to -- they are entitled to
9 consider it.

10 Every juror has got to say if you bring me
11 evidence of bad acts, of course, it's going to impact them.
12 That's the whole reason I'm putting it in, because it's
13 going to impact. So if you ask them that question, they
14 will say, yes, it will impact me. And then if you follow it
15 up and we get into this area of going off on pretrial
16 publicity, can you set that -- I don't know where we would
17 go with that, because if I put in evidence of a defendant's
18 subsequent act of murder, then you, as the judge, are asking
19 them will you fairly consider that. Well, obviously they
20 have got to consider that. I want them to consider that.
21 You want them to. They want them. Everybody wants the jury
22 to consider every possible piece of evidence they get. So
23 there is no way I would submit they could answer the
24 question except yes, that would impact me. But there is
25 nothing wrong with that impacting them. That's what's

1 supposed to happen when we present it.

2 So I would say to cross that bridge -- where we
3 started with this -- I want to go back on the record because
4 this was in chambers, the issue is whether or not the jury
5 panel or an individual juror would be prejudiced by the fact
6 that if they learned that Mr. Owens was subsequently charged
7 with killing his cellmate when he went back to the jail
8 after the original trial and he was found guilty, the issue
9 would be would that prejudice that juror to the point that
10 they could not set aside that pretrial publicity that they
11 had heard about that event. And by not setting it aside,
12 then they would, therefore, have rendered impartial and
13 unfair jurors. But that would be the only issue, because if
14 they were to say yes, I can set that aside and base my
15 verdict only on what comes from that witness stand, which is
16 the question that the court would subsequently ask them, if
17 they said they were, in fact, prejudiced, can you set aside
18 what you have heard outside the record and base your
19 decision solely on the record, if it comes in from the
20 record, then they are entitled to hear it, and they
21 certainly shouldn't be excluded because if they have heard
22 it, they would think that impacted their decision to vote
23 one way or the other.

24 So I think if we ask that question, we are going
25 to get -- we are going to get into -- we are going to cross

1 the rail and get inside the jury box, and I would -- I would
2 object to asking those types of questions that get into
3 their deliberation process.

4 Now, if there is something that's on this side of
5 the rail that's prejudicing them ahead of the case, you
6 certainly have a right -- we have a right to get into that -
7 pretrial publicity, things that they read in the paper, what
8 they may have heard about this case, something the neighbors
9 told them all of that - but once it comes from that witness
10 stand and it's in this trial, they certainly ought to be
11 able to consider it. So I would say we would -- that's a
12 longwinded way for saying that I don't think that we ought
13 to get into that sort of questioning and I would object to
14 it.

15 MR. GODFREY: May it please the court, you know,
16 the primary purpose of voir dire is to determine if you can
17 impanel a fair and impartial jury.

18 We know, as from the previous two cases, case
19 number one, the incident at the jail came in. Case number
20 two, the incident at the jail came in in the penalty phase.
21 I would be amazed if it wasn't coming in this time.

22 We have to be concerned with pretrial publicity.
23 Many people in this community have no idea what happened at
24 the Speedway station on Augusta Road and Irene Graves.
25 Pretrial publicity on the incident at the jail was fairly

1 extensive. And what we -- as the defense for Mr. Owens,
2 what we want to do is make sure that the people that sit in
3 that jury box are not going to have any type of preconceived
4 opinion. They may have none regarding the incident charge,
5 but they may have an opinion regarding what happened at the
6 detention center. And I think the -- I don't know the
7 proper question to ask, but some way we have to find out if
8 there is some prejudice or if there is something written on
9 the slate in somebody's mind about the incident at the jail.

10 THE COURT: My job is to see that we have a fair
11 and impartial jury to try this case. It will be fair to
12 decide the case on the law, instructions from the court and
13 the evidence that comes from the witness stand.

14 At this particular juncture -- and we can think --
15 we still got some time before we get into individual voir
16 dire, but I think that the law is -- they have to follow the
17 law, and most judges go into -- I don't know -- they go into
18 presumption of innocence and the fact that he doesn't
19 testify and all that sometimes voir dire, but the law is I
20 would not -- I will not let y'all get into specific evidence
21 that may or may not come in, but we have got to make sure
22 that the jury can follow the law.

23 The law is that this subsequent offense, not that
24 he was charged, that's not -- or whatever. If he committed
25 it, and you are going to present evidence that he committed

1 a subsequent offense, the law is that only comes in for his
2 future dangerousness. Future dangerousness bears on
3 character. I'm not going to mention future dangerousness.
4 It only comes in as it bears on his character in the
5 sentencing part. It cannot come in to prove a statutory
6 aggravating circumstance. That's the only thing the State
7 has to prove beyond a reasonable doubt is the statutory
8 aggravating circumstance for the jury to get to the
9 sentencing phase.

10 At this particular time I may ask them if any
11 evidence comes in in regard to previous crimes or subsequent
12 crimes, if they would just consider that as it would bear on
13 his individual characteristics in the sentencing process. I
14 think that's the law. But I would not permit y'all to start
15 going into any specific facts about the subsequent crime.
16 That's going to have to come out in evidence, ever how it
17 may come out. We have got to treat this just like it's a
18 totally new proceeding.

19 Okay. Let's take a break now and just go
20 generally qualify the jury and -- I have thought about it
21 over the weekend. I looked at a lot of material. Rushing,
22 Pyle, Moore, anybody that has ever done these things. Some
23 judges only did panels every hour, ten minutes per witness.
24 That may be a little bit fast for y'all in modern times, now
25 that the world is flat, since some of these judges were on

1 the bench, but I think an hour and a half would be a
2 reasonable time, schedule panels initially every hour and a
3 half, six per person. This is just a sentencing
4 procedure -- not just a sentencing procedure. It's a very,
5 very serious heavy procedure, and I say that to emphasize we
6 are not trying a murder case, but we have got to go into the
7 circumstances of the crime. So it's like trying two. But I
8 would like -- once we get into the juror qualifications,
9 individual voir dire, it will be slow at first, but it will
10 pick up as we get into it. And we will probably work late
11 tonight, but probably hopefully finish at a reasonable time
12 tomorrow afternoon.

13 I think we would need 45 or 50 qualified jurors
14 before we start the jury selection. I don't want to run any
15 risks. I personally believe two alternates would be
16 sufficient for this trial, but if you would like -- I don't
17 have no problem with choosing three alternates.

18 Mr. Ariail, do you have any preference?

19 MR. ARIAIL: Two is enough, I believe, since we
20 are not going to have a guilt face, it's a relatively short
21 period of time and we will be actually in trial from when
22 the jury starts.

23 THE COURT: We don't have to have the 24 hour
24 waiting period.

25 MR. ARIAIL: Right.

1 THE COURT: And I foresee us finishing this coming
2 weekend sometime.

3 MR. GODFREY: May it please the court, normally I
4 always agree to two alternates. The only thing that sticks
5 in my mind, I tried a murder case in Greenwood in August.
6 It was a four day case and both alternates had to be used.
7 This case is at least going to go into the weekend. Out of
8 an abundance of caution we might need three. I mean, I have
9 never --

10 THE COURT: Okay. Well, seeing your witness list
11 this morning and the witness list that we have, I may have
12 been optimistic about completing this trial in three or four
13 days. I don't know, but hopefully if we can. I plan on
14 working like about nine to six. We might stop at 5:15 or
15 5:30 to take up legal matters after the day is over, but I
16 think that all the court personnel and staff and the
17 attorneys could plan on about nine to six every day. And I
18 am looking at y'all's witness list. I don't know. It may
19 take a little bit longer than I had anticipated.

20 MR. ARIAIL: Judge, that witness list we have
21 is --

22 MS. STROM: It includes any possible thing.

23 MR. ARIAIL: Oh, sure, you know our case is going
24 to take day and a half, max, unless it gets dragged out by
25 cross-examination. Those are on there just in case we call

1 that witness. I want to make sure these jurors have been
2 questioned as to their relationship, but we don't intend to
3 call --

4 MS. STROM: 15.

5 MR. ARIAIL: Yeah, a third of those.

6 THE COURT: Day and a half.

7 If -- my feeling is if we work on Sunday -- I kind
8 of leave that up to the jury, if they are sequestered. My
9 feeling is that they probably want to go ahead and proceed,
10 and I would be inclined to do that. That would be the way I
11 intend us going. So hopefully we can finish before the
12 weekend is over. Not that -- we are not going to rush
13 anything. I can assure you of that, but both sides have
14 some idea of what the evidence is going to be.

15 All right. Let's go downstairs for general
16 qualifications. I'll go through just the general
17 qualifications, the statutory qualifications and exemptions.

18 The law has been changed a little bit this year.
19 It permits the Clerk of Court to draw the jurors at random
20 with computer software, if they use that, and we have been
21 doing that in Greenville. I don't think either side has to
22 waive the right for a minor child or blind person anymore
23 since the statute has been changed. And so I assume the
24 clerk is going to draw these jurors by computer with the
25 computer software that they have and that they use for every

1 case that we try during the week.

2 Do y'all have any comments or any input in that?

3 The only other alternative is for an impartial person to
4 draw the jury by hand.

5 MR. ARIAIL: We have no objection to the clerk's
6 method.

7 MR. GODFREY: I have no objection to random
8 computer draw.

9 THE COURT: Okay. I think it's provided by
10 statute, but I just wanted, since -- I think the statute was
11 just passed this year.

12 And also those people who have custody and look
13 after a disabled person over 65, and then a few other things
14 like that that may have been added, but I don't think we
15 will have any problem with that..

16 If y'all have any questions about that, just come
17 up to the bench down there and mention it to me and I'll
18 certainly be glad to recognize you. We will talk in
19 private.

20 MR. ARIAIL: Our normal experience has been when
21 you ask the final question if anybody has got any reasons,
22 you are going to get about 50 percent of the panel is going
23 to stand up and want to come up and talk to you and give you
24 an excuse as to why. That is going to require a large
25 amount of time for you to interview each one of them and

1 make a decision. That's just been our history, however you
2 want to handle that, but -- you know, my guess would be
3 that's going to be 90 percent of what we are going to do
4 down there this morning is tell these people they can't get
5 off because their job is not any more important than anybody
6 else's.

7 THE COURT: Okay. All right. I'll see y'all
8 downstairs. Thank you.

9 (Whereupon, proceedings were adjourned and the
10 following proceedings were reconvened in the jury assembly
11 room)

12 THE COURT: Ladies and gentlemen, I'm Judge
13 Patterson and I'm going to be working with most of you for
14 the first part of a couple of days of this week, and either
15 14 or 15 of you for the remainder of the week. I apologize
16 a little bit this morning for the delay, but we were working
17 in regard to legal issues.

18 You can tell by the large group that we are here,
19 and this case -- and I know some of you have been concerned
20 about what you were going to do when you came and things of
21 that nature. Well, we do not expect you to know anything
22 about the law of the case, or how we are going to proceed,
23 or what you have seen on television about the law, because
24 it's our responsibility, or my responsibility, to go over
25 the law with you, tell you what the law is in this state,

1 and you will take an oath that you will follow the law that
2 I go over with you. And to the best of my ability I will
3 explain the law and the procedure in this case in clear
4 terms. Being a Clemson man, I'm not sure I can use
5 complicated language. But be that as it may, I will explain
6 it in language that all of us can understand as to what the
7 law is. I cannot discuss the facts of any case with you,
8 and I would not do that.

9 As jurors, you do not have to bring anything with
10 you this morning to the court or to a judicial proceeding as
11 jurors, except your good judgment and your common sense from
12 your every-day experiences in life as citizens of Greenville
13 County.

14 You, ladies and gentlemen, are the sole judges of
15 the facts and the circumstances of any case, and this case,
16 if you sit as a juror, and it's important, and I'll probably
17 go over that with you again. I just want to make sure my
18 cell phone was turned off, and it is turned off.

19 I was going to mention that to you that our Chief
20 Justice is a little bit sensitive about cell phones and them
21 going off in the courtroom and maybe disturbing the
22 proceedings. So I would ask you not to bring your cell
23 phones to any proceedings that you have to be here for.

24 Now, again, you just need your good judgment and
25 common sense, and then I will go over the law that applies

1 to this case under the Constitution of the United States and
2 under the laws of the State of South Carolina. I will
3 explain that to you, and then you will determine the facts
4 and circumstances, apply it to that law, and that's the way
5 that you reach your verdict.

6 So to answer many of your questions what did you
7 need to bring with you? You didn't need to bring anything.
8 We will deal with that.

9 Ladies and gentlemen, this trial is in regard to
10 the State and Mr. Freddie Eugene Owens. Our state law
11 provides for two separate proceedings when the State of
12 South Carolina seeks the death penalty in a case.

13 The first proceeding is the guilt or innocence
14 phase. A jury has already found Mr. Owens guilty of the
15 crime, the murder of Irene Graves on November the 1st, 1997.
16 So, this jury will be impaneled to determine how Mr. Owens
17 will be sentenced. Our state law provides for a second
18 proceeding to determine how Mr. Owens will be sentenced.
19 The procedure for that, we will go into that with you in
20 more detail with subsequent instructions.

21 Now, when the State seeks the death penalty, we go
22 into a little bit more detail than we do in other cases,
23 because in this proceeding the defense attorneys have the
24 right under the law to ask you some individual questions.

25 Now, these questions -- I will question you

1 initially. Then the attorneys will be able to ask you some
2 questions. These questions will not be personal. We will
3 not get into your personal lives. You have filled out a
4 questionnaire and submitted those questionnaires and
5 returned them to the court. So we already know a good bit
6 about you. And those questions that were asked, some of
7 them you may have considered them to be somewhat personal,
8 but they weren't intended to be that way, but the attorneys
9 are entitled to find out a little bit about you. Each
10 side -- the State will get five peremptory challenges. The
11 defense will have ten. So it's important to them to know
12 something about you, but that -- that's as much input into
13 the case as they have.

14 Now, the way jurors are drawn, we have to make
15 sure that you don't have any personal feelings, and we will
16 go into the questions in regard to your personal feelings
17 about when the State seeks the death penalty; particularly
18 if you could write a verdict, if you reach that stage, as to
19 whether or not the verdict should be life imprisonment or
20 whether it should be the death penalty. I have to be
21 convinced that you are a fair and impartial juror in
22 qualifying you to sit on this case, so we will listen to the
23 questions. They will not be personal questions, as I said.
24 They are no right or wrong answers to any question that will
25 be posed to you. All we need are truthful and honest

1 answers. There are no right or wrong answers. So as long
2 as you walk in, you are not going to be on trial. You just
3 give us your truthful honest answers to the questions, and
4 I'm sure that you will. That's all we ask. And as I have
5 said, there are no right or wrong answers to these
6 questions.

7 We will make you feel at ease as much as we can,
8 even though we do not want you to think for the first second
9 that this is not an important proceeding. Serving on a jury
10 is a heavy responsibility, and I know that you will pay
11 close attention to all the evidence and testimony and the
12 law in this case. I have been all over the State and I find
13 that the jury system works well in South Carolina. I hope
14 that those remarks answers some of your questions.

15 I will first have to go over some statutory
16 requirements that the legislature says that you must meet in
17 order to be able to serve on a jury, and most of you who are
18 here, I feel, meet those requirements, but I have to ask you
19 those questions. And before we do that, I'm going to have
20 to place all of you under oath.

21 If you would stand and raise your right hand,
22 please. The clerk will swear you to answer these questions
23 truthfully, or you can affirm.

24 THE CLERK: You shall true answer make to all such
25 questions that may be demanded of you touching the matter

1 now before the court, by the court, order thereof, you shall
2 speak the truth, the whole truth, and nothing but the truth?
3 The correct answer is I will, and then so help you God.
4 Your answer is?

5 JURY VENIRE PANEL: I will so help me God.

6 THE CLERK: Thank you.

7 THE COURT: Y'all may be seated. Thank you.

8 Is there anyone here who could not take that oath?
9 If so, you can come and speak to me privately.

10 (No response)

11 THE COURT: The jury has been sworn.

12 The clerk will now call the roll. And as your
13 name is called, if you would just stand up to indicate you
14 are that person and that you are present.

15 Madam Clerk.

16 THE CLERK: Sonya K. Ables.

17 JUROR NUMBER 1: Yes.

18 THE CLERK: John T. Adams.

19 JUROR NUMBER 2: Here.

20 THE CLERK: Meredith G. Alexander.

21 JUROR NUMBER 6: Here.

22 THE CLERK: Robert M. Allen.

23 JUROR NUMBER 7: Here.

24 THE CLERK: Nathan K. Asire.

25 JUROR NUMBER 12: Here.

1 THE CLERK: Franklin L. Autry, Jr..
2 JUROR NUMBER 13: Here.
3 THE CLERK: Dorothy E. Bakeman.
4 JUROR NUMBER 15: Here.
5 THE CLERK: Rebekah J. Baker.
6 JUROR NUMBER 16: Here.
7 THE CLERK: Michael N. Barr.
8 JUROR NUMBER 21: Here.
9 THE CLERK: Patsy Ghent Barton.
10 JUROR NUMBER 22: Here.
11 THE CLERK: Donald C. Beaman.
12 JUROR NUMBER 24: Here.
13 THE CLERK: Jack J. Bender.
14 JUROR NUMBER 28: Here.
15 THE CLERK: Pamela S. Benfield.
16 JUROR NUMBER 29: I'm here.
17 THE CLERK: Julian C. Blackmon, III.
18 JUROR NUMBER 35: Here.
19 THE CLERK: Mary E. Blalock.
20 JUROR NUMBER 36: Here.
21 THE CLERK: Richard M. Blucas.
22 JUROR NUMBER 39: Here.
23 THE CLERK: Bradley J. Boisher.
24 JUROR NUMBER 40: Here.
25 THE CLERK: Rita A. Bonofiglio.

(1 JUROR NUMBER 41: Here.
2 THE CLERK: E. Croft Bradley, III.
3 JUROR NUMBER 46: Here.
4 THE CLERK: Patricia O. Bradshaw.
5 JUROR NUMBER 47: Here.
6 THE CLERK: Sharon Breazeale.
7 JUROR NUMBER 51: Here.
8 THE CLERK: Mose Byler.
9 JUROR NUMBER 62: Here.
10 THE CLERK: Susan B. Campbell.
11 JUROR NUMBER 66: Here.
12 THE CLERK: Darla W. Carie.
(13 JUROR NUMBER 71: Here.
14 THE CLERK: Chadwik J. Carter.
15 JUROR NUMBER 73: Here.
16 THE CLERK: Lori P. Center.
17 JUROR NUMBER 74: Here.
18 THE CLERK: Donna Reaves Coleman.
19 JUROR NUMBER 84: Here.
20 THE CLERK: Tommy L. Coleman.
21 JUROR NUMBER 85: Here.
22 THE CLERK: Lafiece D. Collins, Jr..
23 JUROR NUMBER 86: Here.
24 THE CLERK: Stephanie A. Cox.
(25 JUROR NUMBER 93: Here.

1 THE CLERK: Gregory L. Crusco.
2 JUROR NUMBER 97: Here.
3 THE CLERK: Cynthia C. Davies.
4 JUROR NUMBER 102: Here.
5 THE CLERK: David M. Dehaven.
6 JUROR NUMBER 106: Here.
7 THE CLERK: Ronald D. Dillard.
8 JUROR NUMBER 111: Here.
9 THE CLERK: Janice W. Dimsdale.
10 JUROR NUMBER 113: Here.
11 THE CLERK: Jill Duple Morrison.
12 JUROR NUMBER 117: Here.
13 THE CLERK: Wendy E. Eastland.
14 JUROR NUMBER 120: Here.
15 THE CLERK: Tara D. Edens.
16 JUROR NUMBER 122: Here.
17 THE CLERK: Rainer P. Ellis.
18 JUROR NUMBER 123: Here.
19 THE CLERK: Jeffery Lee Ethridge.
20 JUROR NUMBER 127: Here.
21 THE CLERK: G. Keith Faust.
22 JUROR NUMBER 133: Here.
23 THE CLERK: Jacqueline G. Fayyaz.
24 JUROR NUMBER 134: Here.
25 THE CLERK: Marvin Foster.

1 JUROR NUMBER 141: Here.
2 THE CLERK: Thomas K. Foster, Jr..
3 JUROR NUMBER 142: Here.
4 THE CLERK: Carolyn R. Fowler.
5 JUROR NUMBER 143: Here.
6 THE CLERK: Michael R. Fowler.
7 JUROR NUMBER 145: Here.
8 THE CLERK: Douglas L. Furmanek.
9 JUROR NUMBER 149: Here.
10 THE CLERK: Jean S. Gaines.
11 JUROR NUMBER 150: Here.
12 THE CLERK: Linda L. Garren.
13 JUROR NUMBER 156: Here.
14 THE CLERK: Linda M. Gawrych.
15 JUROR NUMBER 158: Here.
16 THE CLERK: Letitia P. Glenn.
17 JUROR NUMBER 166: Here.
18 THE CLERK: Gina R. Griffin.
19 JUROR NUMBER 173: Here.
20 THE CLERK: Stephen F. Grose.
21 JUROR NUMBER 174: Here.
22 THE CLERK: Robert J. Hall.
23 JUROR NUMBER 180: Here.
24 THE CLERK: Donna L. Hanvy.
25 JUROR NUMBER 184: Here.

1 THE CLERK: Jimille A. Hardy.
2 JUROR NUMBER 185: Here.
3 THE CLERK: Sarah N. Hart.
4 JUROR NUMBER 189: Here.
5 THE CLERK: William E. Harvey, Jr..
6 JUROR NUMBER 190: Here.
7 THE CLERK: John E. Heatherly, Jr..
8 JUROR NUMBER 193: Here.
9 THE CLERK: Joseph G. Hedrick.
10 JUROR NUMBER 194: Here.
11 THE CLERK: Janice E. Hendrix.
12 JUROR NUMBER 197: Here.
13 THE CLERK: Wanda L. Hines.
14 JUROR NUMBER 202: Here.
15 THE CLERK: James S. Howell.
16 JUROR NUMBER 204: Here.
17 THE CLERK: Brandy N. Howle.
18 JUROR NUMBER 205: Here.
19 THE CLERK: Julius F. Hudson.
20 JUROR NUMBER 208: Here.
21 THE CLERK: Rebecca J. Hunter.
22 JUROR NUMBER 211: Here.
23 THE COURT: Joel R. Irvine.
24 JUROR NUMBER 214: Here.
25 THE CLERK: Roger D. James.

1 JUROR NUMBER 217: Here.
2 THE CLERK: Pamela Jennings Gregg.
3 JUROR NUMBER 221: Here.
4 THE CLERK: Summer L. Johnson.
5 JUROR NUMBER 226: Here.
6 THE CLERK: Catherine E. Jones.
7 JUROR NUMBER 227: Here.
8 THE CLERK: Benjamin S. Jordan.
9 JUROR NUMBER 232: Here.
10 THE CLERK: Conrad A. Joseph.
11 JUROR NUMBER 233: Here.
12 THE CLERK: Kimberly A. Kargus.
13 JUROR NUMBER 234: Here.
14 THE CLERK: Jesse A. Keck.
15 JUROR NUMBER 238: Here.
16 THE CLERK: Louisa M. Koken.
17 JUROR NUMBER 245: Here.
18 THE CLERK: Anna D. Lapointe.
19 JUROR NUMBER 251: Here.
20 THE CLERK: William J. Law.
21 JUROR NUMBER 252: Here.
22 THE CLERK: Thomas S. Ledbetter.
23 JUROR NUMBER 255: Here.
24 THE CLERK: Richard Lemons, Jr..
25 JUROR NUMBER 258: Here.

1 THE CLERK: Tracey A. Ling.
2 JUROR NUMBER 260: Here.
3 THE CLERK: Ann G. Looney.
4 JUROR NUMBER 263: Here.
5 THE CLERK: Keith L. Lorenzen.
6 JUROR NUMBER 265: Here.
7 THE CLERK: Dorothy L. Lowe.
8 JUROR NUMBER 266: Here.
9 THE CLERK: Shannon N. Madison-Thurman.
10 JUROR NUMBER 267: Here.
11 THE CLERK: Stanley Manigault.
12 JUROR NUMBER 269: Here.
13 THE CLERK: Angela D. Martin.
14 JUROR NUMBER 270: Here.
15 THE CLERK: Randy R. Mathena.
16 JUROR NUMBER 274: Here.
17 THE CLERK: Katherine E. Matheson.
18 JUROR NUMBER 275: Here.
19 THE CLERK: William T. Maxwell, Jr..
20 JUROR NUMBER 277: Here.
21 THE CLERK: Douglas A. McCarthy.
22 JUROR NUMBER 280: Here.
23 THE CLERK: Robert Meek.
24 JUROR NUMBER 288: Here.
25 THE CLERK: Scott Jeffrey Merriam.

1 JUROR NUMBER 290: Here.
2 THE CLERK: Jacob C. Metcalf.
3 JUROR NUMBER 291: Here.
4 THE CLERK: Dale E. Meyer.
5 JUROR NUMBER 292: Here.
6 THE CLERK: Kevin T. Monroe.
7 JUROR NUMBER 295: Here.
8 THE CLERK: Kelley S. Moss.
9 JUROR NUMBER 302: Here.
10 THE CLERK: Judy M. Mullinax.
11 JUROR NUMBER 304: Here.
12 THE CLERK: Jonathan E. Mumma.
13 JUROR NUMBER 306: Here.
14 THE CLERK: James E. Nightingale.
15 JUROR NUMBER 310: Here.
16 THE CLERK: Robert J. Noble.
17 JUROR NUMBER 311: Present.
18 THE CLERK: Robin A. Olding.
19 JUROR NUMBER 313: Here.
20 THE CLERK: Frances C. Oliver.
21 JUROR NUMBER 314: Here.
22 THE CLERK: Steven L. Oliver.
23 JUROR NUMBER 315: Here.
24 THE CLERK: Patricia C. Owen.
25 JUROR NUMBER 318: Here.

1 THE CLERK: Tony L. Park.
2 JUROR NUMBER 322: Here.
3 THE CLERK: Margaret J. Payne.
4 JUROR NUMBER 324: Here.
5 THE CLERK: Bramlett M. Porter.
6 JUROR NUMBER 330: Here.
7 THE CLERK: Christopher M. Poteat.
8 JUROR NUMBER 331: Here.
9 THE CLERK: Daniel D. Poulton.
10 JUROR NUMBER 332: Here.
11 THE CLERK: Michael H. Price.
12 JUROR NUMBER 335: Here.
13 THE CLERK: Shachi D. Puttaswamy. Is that
14 correct?
15 JUROR NUMBER 336: Yes.
16 THE CLERK: Thank you.
17 Allyson G. Raeckelboom.
18 JUROR NUMBER 338: Here.
19 THE CLERK: Richard A. Reid, Jr..
20 JUROR NUMBER 342: Here.
21 THE CLERK: Eric D. Reinholz.
22 JUROR NUMBER 343: Here.
23 THE CLERK: Deborah P. Reno.
24 JUROR NUMBER 344: Here.
25 THE CLERK: Charles D. Roach.

1 JUROR NUMBER 349: Here.
2 THE CLERK: Bobbie B. Sanders.
3 JUROR NUMBER 358: Here.
4 THE CLERK: Althea D. Satterwhite.
5 JUROR NUMBER 360: Here.
6 THE CLERK: Michael A. Shaffer, Jr..
7 JUROR NUMBER 364: Here.
8 THE CLERK: Dorothy E. Shaw.
9 JUROR NUMBER 366: Here.
10 THE CLERK: Erica D. Sharper.
11 JUROR NUMBER 365: Here.
12 THE CLERK: Thank you.
13 Scottie D. Shockley, Jr..
14 JUROR NUMBER 369: Here.
15 THE CLERK: Sabrina M. Simpson.
16 JUROR NUMBER 371: Here.
17 THE CLERK: Donald D. Smith.
18 JUROR NUMBER 377: Here.
19 THE CLERK: William C. Smith.
20 JUROR NUMBER 381: Here.
21 THE CLERK: Jody C. Solomon.
22 JUROR NUMBER 382: Here.
23 THE CLERK: Donald F. Spenny.
24 JUROR NUMBER 383: Here.
25 THE CLERK: Julius T. Styles.

1 JUROR NUMBER 392: Here.
2 THE CLERK: Cassandra D. Talbert.
3 JUROR NUMBER 394: Here.
4 THE CLERK: Linda D. Terry.
5 JUROR NUMBER 399: Here.
6 THE CLERK: Vicki S. Thompson.
7 JUROR NUMBER 403: Here.
8 THE CLERK: Stephanie B. Thorne.
9 JUROR NUMBER 404: Here.
10 THE CLERK: Frances E. Thorpe.
11 JUROR NUMBER 405: Here.
12 THE CLERK: James W. Thrift, Jr..
13 JUROR NUMBER 407: Here.
14 THE CLERK: Matthew L. Thrift.
15 JUROR NUMBER 408: Here.
16 THE CLERK: Daryl G. Thurston.
17 JUROR NUMBER 409: Here.
18 THE CLERK: Hong A. Tran.
19 JUROR NUMBER 411: Here.
20 THE CLERK: Debra Jones Tucker.
21 JUROR NUMBER 415: Here.
22 THE CLERK: David M. Vaughan.
23 JUROR NUMBER 418: Here.
24 THE CLERK: Jonathan W. Wagner.
25 JUROR NUMBER 419: Here.

1 THE CLERK: William S. Webster, Jr..
2 JUROR NUMBER 423: Here.
3 THE CLERK: Peggy H. Westmoreland.
4 JUROR NUMBER 425: Here.
5 THE CLERK: JoAnn S. White.
6 JUROR NUMBER 428: Here.
7 THE CLERK: Kim Anne H. White.
8 JUROR NUMBER 429: Here.
9 THE CLERK: Christine Williams Balogun.
10 JUROR NUMBER 431: Here.
11 THE CLERK: Kenneth B. Williams.
12 JUROR NUMBER 433: Here.
13 THE CLERK: Rodney A. Wilson.
14 JUROR NUMBER 436: Here.
15 THE CLERK: Ana M. Wolfe.
16 JUROR NUMBER 439: Present.
17 THE CLERK: Cindy Pace Woodruff.
18 JUROR NUMBER 440: Here.
19 THE CLERK: Kathryn J. Woods.
20 JUROR NUMBER 441: Here.
21 THE CLERK: Kathy B. Wright.
22 JUROR NUMBER 444: Here.
23 THE CLERK: Todd A. Ashcraft.
24 JUROR NUMBER 451: Here.
25 THE CLERK: Geraldine D. Blandin.

1 JUROR NUMBER 452: Here.
2 THE CLERK: Walter E. Booker.
3 JUROR NUMBER 453: Here.
4 THE CLERK: Karen C. Carnes.
5 JUROR NUMBER 454: Here.
6 THE CLERK: Charles S. Crumpton, Jr..
7 JUROR NUMBER 455: Here.
8 THE CLERK: Lisa A. Gibson.
9 JUROR NUMBER 456: Here.
10 THE CLERK: Bryan A. Gosnell.
11 JUROR NUMBER 457: Here.
12 THE CLERK: Sherry L. Gratzner.
13 JUROR NUMBER 458: Here.
14 THE CLERK: Richard P. Grube.
15 JUROR NUMBER 459: Here.
16 THE CLERK: Tersia E. Harris.
17 JUROR NUMBER 460: Here.
18 THE CLERK: Earnestine G. Hunter.
19 JUROR NUMBER 461: Here.
20 THE CLERK: Harriet S. Johnson.
21 JUROR NUMBER 462: Here.
22 THE CLERK: Azadali A. Ladhani.
23 JUROR NUMBER 464: Yes.
24 THE CLERK: Is that correct, sir?
25 JUROR NUMBER 464: Yes, sir.

1 THE CLERK: Thank you.

2 Roselynn Lawen.

3 JUROR NUMBER 465: Here.

4 THE CLERK: Daniel A. Nickles.

5 JUROR NUMBER 466: Here.

6 THE CLERK: Fawn Norton.

7 JUROR NUMBER 467: Here.

8 THE CLERK: Margaret W. Punch.

9 JUROR NUMBER 468: Here.

10 THE CLERK: Teresa A. Quinn.

11 JUROR NUMBER 469: Here.

12 THE CLERK: Anita Stevens Stiles.

13 JUROR NUMBER 470: Here.

14 THE CLERK: Ivory J. Taylor.

15 JUROR NUMBER 471: Here.

16 THE CLERK: Dennis J. Tudor.

17 JUROR NUMBER 472: Here.

18 THE CLERK: Lisa W. Wilson.

19 JUROR NUMBER 473: Here.

20 THE CLERK: And Christian L. Zeimet.

21 JUROR NUMBER 474: Here.

22 THE CLERK: Is there anybody here whose name I
23 have not called? If so, please stand.

24 (No response)

25 THE COURT: Thank you very much.

1 Ladies and gentlemen, I know that -- from
2 observing and everything, I know this is may be an
3 inconvenience to you, but a lot of people in the room and
4 whatnot, but serving on the jury is something that you have
5 to do because you are a citizen and resident of the country,
6 the State, and Greenville County. And I think it was
7 Winston Churchill said it's the most important service in
8 time of peace, but we are not in time of peace now, but it's
9 a very important service. And I'm sure that if you, or your
10 friends, or relatives had a trial in this court, you would
11 want a jury that would be fair and impartial to both sides
12 and decide the case on the law and the evidence. And I'm
13 sure that hopefully you will have a better appreciation
14 after this is over of the legal system, and we will do
15 everything that we can, and we have planned to do everything
16 that we can, not to impose upon you anymore than we have to.
17 Your service is the only thing that I know when the
18 government can require you to be somewhere now that we don't
19 have the mandatory draft. I can remember the days when the
20 government could send you a letter and tell you to report to
21 Fort Jackson. Some of you might be old enough to remember
22 when they could require you to go to Donaldson Air Force
23 Base, but they can't require you to go to Fort Jackson any
24 more for two years. We don't have the draft, but you have
25 to come and be here for jury service. As I see it, it's

(1 kind of a small price to pay for being a citizen of this
2 country, and we will -- after today we are going to break
3 you down into groups, and hopefully you won't have to be
4 here more than two hours, or more, in your groups. You will
5 come back in groups. I will explain that a little bit more
6 to you in detail, but we have gone to a great deal of effort
7 with the staff and all the personnel here in the court to
8 try to make this process as easy for you jurors as we can,
9 consistent with our duties to perform our duties the way we
10 should, in a professional manner.

(11 Now, all the staff or no one can discuss this case
12 with you. You should not discuss this case with anyone or
13 permit anyone to discuss the case with you.

14 Now, in regard to that, we will ask you some more
15 questions about that when you appear with your panels and
16 for your individual questioning, but that's just something
17 that I would instruct you that from this time forward you
18 cannot discuss this with anyone, and hopefully you have not
19 since the letters and the summons that I gave you went out.

(20 Now, there may be some publicity in regard to the
21 case. You should not let this affect you one way or the
22 other. If there is any coverage, the press is prohibited
23 from identifying you as a juror or showing you in any way to
24 the public, either through any media, television, newspaper
25 or any other thing, so you will not be identified by the

1 press. That's their instructions. They understand that.
2 We have never had any problem with them. They usually come
3 up here on something every week, so I'm sure they are
4 familiar with that, so you should not be concerned about
5 that.

6 And after we finish today, we will break you down
7 into six person panels or groups and then we will bring you
8 back. I will speak to each of you, each of the panels, and
9 then we will ask you some questions. I will ask you some
10 questions and the attorneys will, and then that process
11 hopefully will get through with all six of you in about an
12 hour and a half, and then we will start with the next panel.
13 We will give each panel a time to report back. And then you
14 will report at that time. Sergeant McCall from the
15 sheriff's office is supposed to have you ten parking spaces
16 back here right behind the courthouse, and you will come in
17 the door on this floor and be taken upstairs to the
18 courtroom with your other panel members. There will be six
19 of you total each time. And that will facilitate you coming
20 in and out and not having to be concerned about parking, and
21 then we will get you out in a couple of hours and then get
22 you back out to whatever you need to be doing. But if
23 anybody mentions the case to you, tell them that you are a
24 potential juror. You cannot discuss this case with anyone
25 until your duties here are through, either the case is over

1 or you are excused as juror.

2 So with that said, let me ask you these questions
3 now that I need to ask you.

4 Jurors are chosen from those people who are
5 registered to vote or those people who are registered with
6 the Department of Transportation. Registered voters and
7 people with driver's license and people with identification
8 cards represent a cross-section of the community, which is
9 what is jury is supposed to be composed of.

10 If you are not either a registered voter,
11 registered to have a driver's license or an identification
12 card, would you please stand.

13 (No response)

14 THE COURT: Okay. Now, another requirement is
15 that you be a citizen and resident of the United States, the
16 State of South Carolina and Greenville County. People may
17 have driver's license and may not be citizens and residents.

18 If you are not a citizen and resident of the
19 country, the State, and if you are not a citizen and
20 resident of Greenville County, would you please stand.

21 (No response)

22 THE COURT: Is any member of the panel -- and I
23 hate to ask this question, and sometimes I don't ask it in
24 every case, but the law requires that you be able to read,
25 write and speak and understand the English language. I have

1 to ask you is any person here who does not read, write, or
2 understand and speak the English Language?

3 (No response)

4 THE COURT: Is there any member of the jury panel
5 who has less than a 6th grade education or its equivalent?

6 (No response)

7 THE COURT: Is there any member of the jury panel
8 who feels that you cannot perform jury service because of a
9 physical condition, a medical condition, a certain type of
10 infirmity? You may have brought with you a medical
11 statement from your doctor, or you may have a disability or
12 a medical condition of some type.

13 Yes, sir. Would you stand up and give me your
14 name and jury number, please?

15 JUROR NUMBER 322: My name is Tony L. Park.

16 THE COURT: All right.

17 THE CLERK: 322.

18 THE COURT: 322. I'll speak to you about that in
19 just a minute. Thank you.

20 Number 322.

21 Yes, ma'am, your name?

22 JUROR NUMBER 469: Teresa Quinn.

23 THE COURT: What is your jury number?

24 JUROR NUMBER 469: 469.

25 THE COURT: 469. Okay. I'll speak to you.

1 Yes, ma'am.

2 JUROR NUMBER 302: Kelley S. Moss.

3 THE COURT: Your number?

4 JUROR NUMBER 302: 302.

5 THE COURT: Okay.

6 JUROR NUMBER 141: Marvin Foster, 141.

7 THE COURT: 141?

8 JUROR NUMBER 141: Yes, sir.

9 THE COURT: Okay.

10 JUROR NUMBER 40: Brad Boisher.

11 THE COURT: Your number?

12 JUROR NUMBER 40: 40.

13 THE COURT: 40, okay.

14 Yes, ma'am.

15 JUROR NUMBER 440: Cindy Woodruff, 440.

16 THE COURT: 440.

17 Okay. I believe that's it.

18 Okay. Now, is there any person here who works in
19 a Clerk of Court's office or in a courthouse of this state?
20 If so, would you please stand. Do you work in any
21 courthouse anywhere?

22 (No response)

23 THE COURT: Okay. Is there any person here who is
24 a constable, sheriff, commissioned law enforcement officer,
25 probate judge, county commissioner or magistrate, or other

1 county officer?

2 Yes, sir, your name, please?

3 JUROR NUMBER 180: Robert Hall.

4 THE COURT: And what number?

5 JUROR NUMBER 180: 180.

6 THE COURT: What is your situation?

7 JUROR NUMBER 180: Codes enforcement officer.

8 THE COURT: Codes enforcement officer.

9 JUROR NUMBER 180: Greenville County.

10 THE COURT: Okay. Do you have a commission with
11 the powers to make arrests?

12 JUROR NUMBER 180: No, sir.

13 THE COURT: Thank you. And your number was what?

14 JUROR NUMBER 180: 180.

15 THE COURT: 180, okay.

16 Yes, sir. Your name?

17 JUROR NUMBER 208: Julius Hudson.

18 THE COURT: Do you know your number, sir?

19 JUROR NUMBER 208: 208.

20 THE COURT: 208. Yes, sir.

21 JUROR NUMBER 208: I'm a licensed security
22 officer. I do have the power to make an arrest. I have
23 recently stepped down. I don't know if that -- but I do
24 want you to know that I am licensed as a security officer.

25 THE COURT: But you are not doing that currently?

1 JUROR NUMBER 208: At this moment.

2 THE COURT: Not at this moment?

3 JUROR NUMBER 208: Right.

4 THE COURT: And you are juror number, sir?

5 JUROR NUMBER 208: 208.

6 THE COURT: 208. Thank you.

7 Yes, ma'am.

8 JUROR NUMBER 211: I'm Rebecca Hunter. I'm a
9 field deputy with the Employment Security Commission. I do
10 not have the authority to arrest anyone.

11 THE COURT: Okay. What is your number?

12 JUROR NUMBER 211: 211.

13 THE COURT: 211.

14 Okay. You are a field deputy with who, ma'am?

15 JUROR NUMBER 211: The Employment Security
16 Commission.

17 THE COURT: Thank you.

18 Anyone else?

19 (No response)

20 THE COURT: Has anyone here served on a jury,
21 other than Magistrate's Court, in the last year?

22 Yes, sir, your name?

23 JUROR NUMBER 73: Chad Carter.

24 THE COURT: And your number?

25 JUROR NUMBER 73: 73.

1 THE COURT: And where did you serve on a jury,
2 sir?

3 JUROR NUMBER 73: In summary court.

4 THE COURT: Summary court?

5 JUROR NUMBER 73: Okay.

6 THE COURT: You don't -- okay. That doesn't
7 count. That will not permit you to be exempt. Okay? Thank
8 you.

9 Now, is there anyone -- if you served in the last
10 year, you cannot serve in this court. If you have served
11 within the last three years, you may be exempt. It's your
12 choice.

13 If anyone has served on a jury here in the last
14 three years, other than Magistrate's Court?

15 JUROR NUMBER 97: I served on the Grand Jury.

16 THE COURT: In Greenville County?

17 JUROR NUMBER 97: No, for -- down in Columbia.

18 THE COURT: In Columbia?

19 JUROR NUMBER 97: They called me from here to go
20 down to Columbia.

21 THE COURT: Okay. That was the --

22 THE CLERK: State Grand Jury.

23 THE COURT: What is your name, sir?

24 JUROR NUMBER 97: Greg Crusco.

25 THE COURT: And what is your number?

1 JUROR NUMBER 97: Number 97.

2 THE COURT: Okay. Was that -- that was the State
3 Grand Jury, sir?

4 JUROR NUMBER 97: That's right.

5 THE COURT: Okay. I'll speak with you just as
6 soon as we finish.

7 Yes, ma'am.

8 JUROR NUMBER 22: Patsy Barton. I served on a
9 federal jury within the last three years.

10 THE COURT: Okay. I can't excuse you from the
11 federal. It's the state. Thank you.

12 Yes, ma'am.

13 JUROR NUMBER 270: Angela Martin, 270. I served
14 on a civil case here.

15 THE COURT: In this court?

16 JUROR NUMBER 270: Uh-huh.

17 THE COURT: And when did you serve, ma'am?

18 JUROR NUMBER 270: Maybe it's been a year and a
19 half.

20 THE COURT: About a year and a half?

21 JUROR NUMBER 270: Yes.

22 THE COURT: Okay.

23 THE CLERK: Do you want to us check on it?

24 THE COURT: Yes.

25 Your name, please?

1 JUROR NUMBER 270: Angela Martin.

2 THE COURT: I'm sorry, and your number again?

3 JUROR NUMBER 270: 270.

4 THE COURT: 270.

5 Okay. I will have the clerk verify that. And if
6 you want to be excused, you may, okay?

7 Now, is there any person here who has custody of a
8 minor child seven years of age, or less, and you have no one
9 to look after that child while you are here on jury service?
10 If so, would you please stand.

11 Yes, ma'am.

12 JUROR NUMBER 189: Sarah Hart, 189.

13 THE COURT: 189.

14 Okay. I'm going to let you come down and speak to
15 me when we take a break. Okay.

16 Is there any person here who is the primary
17 caretaker of a person aged 65, or older? Are you the
18 primary caretaker of an elderly person?

19 Yes, ma'am.

20 JUROR NUMBER 411: I take care of my mom. She is
21 disabled.

22 THE COURT: I'll go into it in detail on -- what's
23 your number, please?

24 JUROR NUMBER 411: 411.

25 THE COURT: 411?

1 JUROR NUMBER 411: Yes, sir.

2 THE COURT: Thank you.

3 JUROR NUMBER 35: Julian Blackmon. I give care to
4 my mother also.

5 THE COURT: What's your number, please?

6 JUROR NUMBER 35: 35.

7 THE COURT: 35. Okay.

8 Yes, ma'am, your name?

9 JUROR NUMBER 16: I'm Rebekah Baker. The number
10 is 16.

11 THE COURT: Okay. Thank you, ma'am. I'll talk to
12 you later.

13 Is there any person here who is the primary
14 caretaker of a severely disabled person?

15 JUROR NUMBER 277: William Maxwell, 277.

16 THE COURT: Thank you.

17 JUROR NUMBER 270: Angela Martin again, 270.

18 THE COURT: 270.

19 JUROR NUMBER 431: Christine Williams Balogun,
20 431.

21 THE COURT: 139?

22 JUROR NUMBER 431: 1.

23 THE COURT: 139?

24 JUROR NUMBER 431: 1-4-3-1.

25 THE COURT: I'm sorry, 1-4 --

1 THE CLERK: 4-3-1, sir.

2 THE COURT: 4-3-1?

3 JUROR NUMBER 431: Yes.

4 THE COURT: Okay. Thank you.

5 Is there any person here who is 65 years of age,
6 or older, who would like to be excused? I'm sure that you
7 are more than qualified. We would not discriminate against
8 you because of age, but if you are 65, or older, the
9 legislature has said that the choice is yours.

10 Is there anybody 65, or older, who would like to
11 be excused? We are more than happy for you to serve. We
12 want you to serve.

13 (No response)

14 THE COURT: All right. Now, are there any -- is
15 there any juror here, or potential juror, who is a student
16 in school and you would have to miss class and you would
17 need to be transferred to a time when you were not in
18 school? If so, would you please stand.

19 Yes, ma'am, your name?

20 JUROR NUMBER 371: Sabrina Simpson, 371.

21 THE COURT: 371?

22 JUROR NUMBER 371: Yes, sir.

23 THE COURT: All right. Thank you.

24 Is there any person here who is employed within
25 the school district, or employed as a teacher, certified

1 personnel in the school area, a bus driver for a school, or
2 employed by the school district in any way offering
3 educational programs from K through 12 and for institutions
4 of higher learning? If you are employed in the school
5 system or the educational field and you need to be
6 transferred to a time when you are not in school, would you
7 please stand.

8 (No response)

9 THE COURT: Very good. Okay.

10 Now, is there any person -- and I'm not going to
11 ask you to stand, but if any person here has been convicted
12 of a crime in any court and the punishment for that crime
13 carried a sentence of more than one year. The sentence, you
14 may have gotten probation and not served time, but if you
15 could have been sentenced to a term of more than a year, I
16 need to speak with you down front. I'm not going to ask you
17 to stand up now and answer that question, but if that
18 question applies to you, I'm going to ask you to come down,
19 tell me about that down front privately with me and the
20 attorneys.

21 Now, this concludes all the questions that I need
22 to ask you. And you can see a little bit about why we need
23 so many jurors in a case like this, because we do not know
24 what your situations are at home and in your work, and
25 whether or not that you are exempt for any reason, but I

1 will speak to all those people whose numbers I took down.
2 If the questions applied to you, I'm going to ask you to
3 come down front and speak to me privately down here, and I'm
4 going to give everyone else a break, which I'm sure a lot of
5 you want right now. But this case, once we impanel the
6 jury, hopefully by Wednesday, sometime Wednesday, it will
7 require in these cases that you be sequestered; that is, you
8 will spend the time together in a local motel or hotel. The
9 county will provide you your meals and you will be in the
10 custody of some SLED agents, who will make sure that you
11 have transportation to where you need to go and bring you
12 back to the courthouse, and that is to take you to your
13 motel and bring you back to the court every day. You may be
14 permitted to have visitors, but they cannot discuss the case
15 with you and you cannot, of course, discuss the case with
16 anyone, as I have told you from this time forward. The only
17 thing you will need to know about this case is what you hear
18 in the courtroom. Anything else, if you have heard anything
19 about it, we will go over it with you individually. You
20 have to be able to dismiss that from your mind as a fair and
21 an impartial juror. So that will be -- if that's going to
22 be a hardship for you, it may be best that you explain that
23 to us when you appear in your groups. If for some reason
24 you have a hardship or a difficulty in packing your clothes
25 to be available for what I think will be four days or four

1 nights, maybe five days. That's just an estimate to give
2 you an idea of how long it may be. It may be shorter and it
3 may be longer. I'm not committed to that and we don't know.
4 It's like a medical procedure or something. I can't tell
5 you exactly how long it's going to take, or any procedure is
6 going to take, but we are going to be here as long as we
7 have to be to ensure that this is a fair trial and we have a
8 fair and impartial jury. And I know that you will bear with
9 me, and hopefully I'm sure that you can appreciate that.

10 Now I'm going to let everybody take a break and do
11 not come back in until about 11:30, and you can start coming
12 back in at that time, but it will take me a few minutes to
13 talk to the folks here.

14 If there is any other reason that you cannot serve
15 or you feel that you cannot serve in this case and you need
16 maybe to be transferred to another week, I will let you come
17 down and speak to me about that. You may have, I hope not,
18 a heart catheterization or something scheduled, or some
19 medical procedure that you cannot postpone; or we will
20 consider work related issues, but it's going to be very
21 difficult for me to work around your work, but I will be
22 happy to talk to you about it, if you want to discuss that
23 with me. But everyone who has stood and gave me your number
24 in regard to the questions come down and speak to me.

25 If you have been convicted of a crime that carries

1 a sentence of more than other year, I'm going to ask you to
2 come down and speak to me.

3 And if for any other reason you want to speak to
4 me briefly, I'll be glad to do that.

5 Everyone else take a break until -- don't start
6 coming back in until 11:30. But now when you go outside,
7 make sure that you don't discuss the case with anyone or
8 permit anyone to discuss this case with you.

9 Thank you. Y'all may take a recess at this time
10 and I'll speak to the others. If you would just come down
11 this wall on the far side, I'll speak to you one at a time.

12 (Off the record)

13 (Back on the record)

14 THE COURT: On the record prior to coming in we
15 stipulated that, and the attorneys for the defendant Mr.
16 Godfrey and Mr. Gibson went back and discussed with Mr.
17 Owens about his presence to be in here with the jury this
18 morning on jury qualifications and he waived that. The
19 attorneys waived that and it was their preference that he
20 not be here for this proceeding.

21 MR. GODFREY: Thank you, Your Honor.

22 THE COURT: And they asked he not be present and
23 he waived it after they personally talked with him.

24 Do you have any objection to anything that I have
25 said so far?

1 MS. STROM: No, sir.

2 MR. GODFREY: No.

3 (Whereupon, the following were on the record
4 individual juror conferences with the court, with all
5 attorneys present)

6 THE COURT: This is Stephanie Cox, juror number
7 93. Her grandmother passed away last night. She lives in
8 Pittsburgh, Pennsylvania, and she would like be --

9 JUROR NUMBER 93: To go home for the funeral.

10 THE COURT: To go home for the funeral by
11 Wednesday.

12 MS. STROM: No objection.

13 THE COURT: Okay. I'll excuse you. Juror Number
14 93.

15 We will transfer you to another week.

16 THE CLERK: Number 288.

17 JUROR NUMBER 288: My wife has back problems.
18 They are probably going to do surgery Friday or Monday.

19 THE COURT: Your wife?

20 JUROR NUMBER 288: My wife, yes.

21 THE COURT: Okay. Tomorrow?

22 JUROR NUMBER 288: They are doing the biopsy
23 tomorrow. And if it comes back positive, they want to go
24 ahead and set up the surgery Friday or Monday, as soon as
25 possible. She's already had a mammogram and sonogram.

1 There is a lump there and that's why they are doing the
2 biopsy.

3 THE COURT: Okay. I tell you what. I think that
4 we can work -- you will just not have to be here tomorrow.

5 JUROR NUMBER 288: Well, possibly Friday.

6 THE COURT: But when will you know?

7 JUROR NUMBER 288: Tomorrow we are staying.

8 THE COURT: You are staying?

9 JUROR NUMBER 288: To get the result, yeah.

10 THE COURT: We will just work around that.

11 JUROR NUMBER 288: Okay.

12 THE COURT: Now, you will be through tomorrow and
13 then see -- if something turns up, we will excuse you.

14 JUROR NUMBER 288: Okay. Thank you.

15 JUROR NUMBER 468: My mother is 83. She lives in
16 North Carolina. She has already had several strokes. I
17 have to take her to the doctor and I come up there at least
18 twice a week to take care of her. As long as she is fine,
19 I'm fine, but if something were to happen to her. If we are
20 sequestered, or whatever, I would have to leave. There is
21 nobody but me.

22 THE COURT: How old is she?

23 JUROR NUMBER 468: 83.

24 THE COURT: 83?

25 JUROR NUMBER 468: Yes.

1 THE COURT: And she's in North Carolina?

2 JUROR NUMBER 468: Hickory, North Carolina.

3 THE COURT: Hickory, North Carolina.

4 How often do you normally go up there?

5 JUROR NUMBER 468: Twice a week. For sure once a
6 week. Sometimes twice a week. At this point she's okay.

7 But she was okay the day before she had a major stroke too.

8 It's -- you know, it's one of those kind of things where you
9 don't know.

10 THE COURT: Okay.

11 If you would just take a break. I'll let you
12 know.

13 MR. GIBSON: I can't speak for him, but I have no
14 problem with that.

15 MS. STROM: No problem.

16 THE COURT: Yes, ma'am.

17 THE CLERK: 211.

18 JUROR NUMBER 211: Rebecca Hunter. Field deputy
19 with the Employment Security Commission.

20 THE COURT: Okay.

21 THE CLERK: 258.

22 JUROR NUMBER 258: I have eyelid surgery scheduled
23 for Wednesday.

24 THE COURT: The surgery is scheduled for
25 Wednesday?.

1 JUROR NUMBER 258: Yes, sir.

2 THE COURT: Okay. Who is going to do the surgery?

3 JUROR NUMBER 258: Jervy Eye Group.

4 THE COURT: Jervy Eye Group.

5 JUROR NUMBER 258: Yes, sir.

6 THE COURT: Any problem with transferring him?

7 THE CLERK: No, sir.

8 371.

9 JUROR NUMBER 371: I'm a student and -- but today
10 was like my first day of class.

11 THE COURT: Where do you go to school?

12 JUROR NUMBER 371: I'm taking transfer classes at
13 Greenville Tech.

14 THE COURT: What hours.

15 JUROR NUMBER 371: From nine a.m. until four p.m.,
16 and it's a six week course, but, I mean, I missed today,
17 so -- I mean I thought that since I wrote the letter, you
18 know, but --

19 THE COURT: Okay.

20 JUROR NUMBER 371: I don't even know if this is
21 worth my time to even take classes since I missed my first
22 day.

23 THE COURT: Do you want to be transferred? It's
24 up to you.

25 JUROR NUMBER 371: I guess not.

1 THE COURT: Okay.

2 JUROR NUMBER 371: Since I missed today.

3 THE COURT: Thank you.

4 THE CLERK: 322, Mr. Parks.

5 JUROR NUMBER 322: I have problems from a motor
6 vehicle accident almost a year ago. Right at a year ago.

7 THE COURT: Why do you go to the doctor in
8 Columbia?

9 JUROR NUMBER 322: Workers comp. That's where
10 the -- they have had me -- I was actually living in Columbia
11 at the time and I moved back up here in Greenville.

12 THE COURT: You don't think that you could do
13 that?

14 JUROR NUMBER 322: No, sir. I have trouble
15 staying awake, actually.

16 THE COURT: Okay. Let me keep this and I'll let
17 you know.

18 JUROR NUMBER 322: Okay.

19 THE CLERK: 180.

20 JUROR NUMBER 180: I'm a codes enforcement officer
21 for Greenville County.

22 THE COURT: You can stay.

23 JUROR NUMBER 180: Okay.

24 THE COURT: Thank you.

25 THE CLERK: Number 399.

1 JUROR NUMBER 399: I have a -- I'm self employed.
2 I do weddings and catering and flowers for weddings and I
3 have a contract that I got to fulfill on Saturday. And
4 being sequestered, I don't know how in the world I would be
5 able to ensure that this person I have been contracted with
6 for, you know, all these months. That, and I have a -- I
7 didn't mention this as far as the medical condition, but
8 I -- I have a tendency to have migraine headaches and I
9 never know when that might happen.

10 THE COURT: Okay. I'll let you know, okay.

11 JUROR NUMBER 399: I'm excused or --

12 THE COURT: No, I can't tell you right now.

13 JUROR NUMBER 399: Okay. Thank you.

14 THE CLERK: Number 330.

15 JUROR NUMBER 330: I'm Bramlett Porter and I have
16 a conflict. The conflict is when it was scheduled
17 initially, I think a month ago, I didn't have a problem.
18 I'm a volunteer to do mission work down in the Gulf Coast
19 and I'm building a house down there. I have a team leaving
20 Monday morning and if I'm sequestered and the trial runs
21 over, I'm responsible for taking these people down.

22 THE COURT: I got a feeling we are going to be
23 through. I feel like we are going to be through by Monday
24 next week.

25 JUROR NUMBER 330: But I have to leave like Monday

1 morning at seven o'clock.

2 THE COURT: You will be all right.

3 JUROR NUMBER 330: Thank you.

4 THE CLERK: 469.

5 JUROR NUMBER 469: I want to stay. I really would
6 like to serve. I have Crohn's Disease. It's under control
7 at this moment, but I felt I needed to be fair and honest.

8 THE COURT: You can stay. Thank you so much.

9 THE CLERK: 197.

10 JUROR NUMBER 197: I would like to persuade you
11 that I be transferred to another date, if that's possible
12 like. I work for Greenville Anesthesiology and there are
13 only administrative office. I was one and the second person
14 just started last week because of my co-worker quit a month
15 ago. We are going through recredentiaing with the doctors.
16 And if they are not recredentialed on time, they lose their
17 privileges at the hospital.

18 THE COURT: I'll let you go. Okay.

19 JUROR NUMBER 197: All right, sir.

20 THE CLERK: 40.

21 THE COURT: Yes, sir.

22 JUROR NUMBER 40: My son was arrested the other
23 day on some criminal charges and we are in the process of
24 meeting with the criminal lawyer tomorrow at 3:30. We have
25 a lot of things going in our family at this point in time.

1 I don't feel my mind would be there on this trial because
2 he's in a lot of trouble and we are trying to get him some
3 help.

4 THE COURT: You stay with us, okay? We will get
5 into smaller groups.

6 THE CLERK: 16.

7 THE COURT: Yes, ma'am.

8 JUROR NUMBER 16: I'm Rebekah Baker. My husband
9 is in his late sixties and he has a seizure disorder. He
10 can be in the shower and just hit the floor. So I usually
11 just call 9-1-1. I usually don't -- but I'm the only one in
12 the house with him. So being sequestered is what I kind of
13 have, you know, a fear about.

14 THE COURT: I'm let you know. Let us see how many
15 we have.

16 THE CLERK: 409.

17 THE COURT: Yes, ma'am.

18 JUROR NUMBER 409: This my employer.

19 THE COURT: I'm sorry, we will just see how it
20 goes. You may have to -- you may have to serve.

21 JUROR NUMBER 409: Okay.

22 THE CLERK: 407.

23 JUROR NUMBER 407: I have got sleep apnea real
24 bad. I mean, I don't mind staying on the jury, but inactive
25 I'm going to sleep a lot, but I just wanted you to know

1 that.

2 THE COURT: Stay with us.

3 JUROR NUMBER 407: I don't mind.

4 THE COURT: Okay.

5 THE CLERK: 39.

6 JUROR NUMBER 39: I'm self-employed. I have got
7 two employees. If I don't work, they don't work. And then
8 I have got a seven year old that I have to have ready for
9 school every morning.

10 THE COURT: Where do you work?

11 JUROR NUMBER 39: Mason.

12 THE COURT: Mason?

13 JUROR NUMBER 39: Yes.

14 THE COURT: Does the seven year old live with you?

15 JUROR NUMBER 39: Yes, sir.

16 THE COURT: And the mother is not there to help?

17 JUROR NUMBER 39: She has to be at work at 6:30 in
18 the morning.

19 THE COURT: And they work for you?

20 JUROR NUMBER 39: Yes, they work for me.

21 THE COURT: They work for you?

22 JUROR NUMBER 39: Yes, sir.

23 THE COURT: I'll let you know, okay?

24 THE CLERK: 270, and this is Ms. Martin. We did
25 not find her in our records.

1 THE COURT: Do you remember when you served?

2 JUROR NUMBER 270: It's been a year and a half,
3 two years.

4 THE COURT: If it was before 2005, we would have
5 no records.

6 JUROR NUMBER 270: It was there something about
7 awards for a road blocking the restaurant, something to that
8 effect, water damage.

9 THE COURT: Okay. And you had a disabled person?

10 JUROR NUMBER 270: Yes, sir, my son.

11 THE COURT: Who?

12 JUROR NUMBER 270: My son.

13 THE COURT: And what's his condition?

14 JUROR NUMBER 270: He is severely autistic. They
15 won't let -- I'm the primary caregiver. I only care for
16 him.

17 THE COURT: You are -- if you are the -- I'm going
18 to excuse you for that reason and I'm accepting your word
19 that you served.

20 JUROR NUMBER 270: Yes.

21 THE COURT: I have excused her because she served
22 on jury duty and had a case which they gave actual damages.
23 She remembers that. The clerk's records don't go back to
24 2005, plus she has a disabled child.

25 THE CLERK: 97.

1 JUROR NUMBER 97: Your Honor, I served on the
2 State Grand Jury for a year in 2003.

3 THE COURT: The Grand Jury in Greenville County is
4 five years.

5 How many times did you have to go down there?

6 JUROR NUMBER 97: Twelve times. Once a month we
7 would go down and spend the day hearing.

8 THE COURT: Do you want to be excused in this
9 case?

10 JUROR NUMBER 97: It would be helpful. This time
11 I'm -- my house was under contract and I have got to move in
12 three weeks.

13 THE COURT: Okay. Without objection they are
14 going to agree to let you go because you served on the State
15 Grand Jury twelve times. Okay, you are excused.

16 Without objection, both sides agree the State
17 Grand Jury can be excused. Local Grand Jury is five years.

18 THE CLERK: 411.

19 JUROR NUMBER 411: My mom.

20 THE COURT: Your mom?

21 JUROR NUMBER 411: She's 68 and she's disabled.
22 She's had diabetes for 20 years and now she has kidney
23 failure, heart failure.

24 THE COURT: You have to be there to look after
25 her?

1 JUROR NUMBER 411: In the morning I have to give
2 her injections for her insulin and I give her medicine.

3 THE COURT: You couldn't be sequestered then. I'm
4 going to excuse you.

5 JUROR NUMBER 411: Okay.

6 THE CLERK: 431.

7 JUROR NUMBER 431: Hi. I have a ten year old son
8 that's severely autistic and I'm the primary caregiver.

9 THE COURT: And you stay with him during that
10 time?

11 JUROR NUMBER 431: Yes.

12 THE COURT: I think she's -- she's excused. Okay.

13 THE CLERK: 332.

14 JUROR NUMBER 332: I own a pawn shop and I'm the
15 only employee there and I have to close. I have customers
16 who would like to get their merchandise and stuff like that.

17 THE COURT: Oh, me. I'm not sure I can excuse you
18 for that. Let's see. Let's see if you are drawn on the
19 panel.

20 JUROR NUMBER 322. Thank you.

21 THE CLERK: 277.

22 THE COURT: Yes, sir.

23 JUROR NUMBER 277: My wife just had an emergency
24 cesarean section Wednesday. And, therefore, I'm the primary
25 caregiver for her right now. She's heavily sedated

1 medicated. I'm the only one who is there to help her.

2 THE COURT: That's y'all's first child?

3 JUROR NUMBER 277: Actually the third.

4 THE COURT: Third child?

5 JUROR NUMBER 277: Yeah.

6 THE COURT: Okay. Without objection he's excused.

7 Thank you.

8 THE CLERK: 302.

9 JUROR NUMBER 302: I just had a doctor's note that
10 I sent four weeks ago.

11 THE COURT: Dr. Rycoff says that she would have
12 difficulty serving on a jury duty because of Crohn's
13 Disease.

14 I'll let you know, okay?

15 JUROR NUMBER 302: Okay.

16 THE CLERK: 189.

17 JUROR NUMBER 189: Yes, I have a five year old son
18 that I do not have -- I won't have child care for in about a
19 week.

20 THE COURT: You have to look after that five year
21 old?

22 JUROR NUMBER 189: Yes, I do.

23 THE COURT: Okay. Will you be available after
24 that?

25 JUROR NUMBER 189: I will be available. What it

1 is is my mother has to go back to work and she won't be back
2 for six months. I could work -- or I mean I could serve as
3 a juror like in the summertime when she comes back.

4 THE COURT: We will transfer her.

5 THE CLERK: 142.

6 JUROR NUMBER 142: This is my problem. I'm
7 illiterate and I can't read that good, and that's my
8 problem.

9 THE COURT: That's all right.

10 JUROR NUMBER 142: Do you think that would be all
11 right?

12 THE COURT: Yeah.

13 THE CLERK: 440.

14 JUROR NUMBER 440: I didn't put this on my form
15 and my husband reminded me of it later, but I'm totally deaf
16 in my left ear and I have been diagnosed with Meniere's
17 Disease, which I have good hearing in my right ear. I mean,
18 I hear as good as most people, but it's the directional
19 thing more than anything.

20 THE COURT: I think you would be all right.

21 JUROR NUMBER 440: I just wanted to let you know.

22 THE CLERK: 208.

23 THE COURT: Yes, ma'am.

24 JUROR NUMBER 208: I am a licensed security
25 officer. I'm not currently working as a security officer.

1 My license is invalid.

2 THE COURT: What type security work did you do?

3 JUROR NUMBER 208: With Bravo One, Waffle Houses,
4 clubs, that type of thing.

5 I also was convicted in '01 as a burglary with
6 another adult male. I have been employed as of '06,
7 January.

8 THE COURT: What was your sentence for that
9 burglary?

10 JUROR NUMBER 208: Two years suspended to six
11 months.

12 THE COURT: I have to excuse you.

13 JUROR NUMBER 208: Okay.

14 THE CLERK: 315.

15 JUROR NUMBER 315: Your Honor, I'm a licensed
16 insurance adjuster in North and South Carolina. When I
17 first got my notice to come to trial, I scheduled my
18 continuing education for North Carolina for this coming
19 Thursday, but then it got continued, which is for this
20 Thursday during this time period, and I'm scheduled -- and I
21 have to have my license for a condition of my employment for
22 North Carolina. It's this coming Thursday all day. And if
23 I could be excused until the next term of court, I would
24 appreciate it.

25 THE COURT: I believe he's going to have to have

1 his license, so I'm going to transfer him.

2 THE CLERK: 111.

3 JUROR NUMBER 111: I didn't give you my number,
4 but I have two hearing aids and I would not like to be
5 exempt, but I thought maybe --

6 THE COURT: You can stay.

7 THE CLERK: 145.

8 JUROR NUMBER 145: I have three children under
9 five. Two of them are sick at present. My wife said she
10 would kill me if I got chosen. I would love to serve at any
11 time but --

12 THE COURT: You are going to have to tell her that
13 mean judge made you stay.

14 JUROR NUMBER 145: Okay.

15 THE COURT: Thank you.

16 THE CLERK: 415.

17 THE COURT: Yes, ma'am.

18 JUROR NUMBER 415: I used to work for Bob Ariail
19 in the solicitor's office.

20 THE COURT: How long ago?

21 JUROR NUMBER 415: About 20 years.

22 THE COURT: 20 years ago?

23 JUROR NUMBER 415: Uh-huh.

24 THE COURT: But you didn't --

25 JUROR NUMBER 415: Here, the solicitor's office.

1 THE COURT: We will just go into that with you on
2 individual voir dire.

3 JUROR NUMBER 415: Okay. All right. Thank you.

4 THE CLERK: 73.

5 JUROR NUMBER 73: I believe they sent you a letter
6 asked that I be excused on the necessity of me being at work
7 I guess.

8 THE COURT: You will have to stay.

9 JUROR NUMBER 73: Okay.

10 THE COURT: Thank you.

11 THE CLERK: 51.

12 JUROR NUMBER 51: I have got to have a tape, and I
13 don't get paid for being on a jury.

14 THE COURT: We will let you do the eye drops.
15 Stay with us.

16 THE CLERK: 392.

17 JUROR NUMBER 392: I'm a self-employed house
18 painter and it would be a very hard financial burden on me
19 if I have to stay.

20 THE COURT: I'm going to have to let you stay,
21 okay?

22 JUROR NUMBER 392: Okay.

23 THE COURT: We need house painters too.

24 THE CLERK: 204.

25 JUROR NUMBER 204: I don't know if this is the

1 time or place, but I believe I know the defendant and I
2 believe I know their mother and I fired her a couple of
3 times and --

4 THE COURT: We will go into that later.

5 JUROR NUMBER 204: It would be a panel?

6 THE COURT: Yeah on the panel.

7 JUROR NUMBER 204: Thanks.

8 THE CLERK: 84.

9 JUROR NUMBER 84: I'm Donna Coleman. I had
10 requested another week because I work. I only have three
11 people in my department. One of them is out on medical
12 leave.

13 THE COURT: On this case I'm going to need you.

14 JUROR NUMBER 84: Okay.

15 THE COURT: Thank you.

16 THE CLERK: 365.

17 JUROR NUMBER 365: I just started a new job. I
18 was wondering if I can just get it changed to serve a
19 different time.

20 THE COURT: On this case I'm going to have to
21 require you to stay.

22 JUROR NUMBER 365: Okay.

23 THE COURT: We will see if you are -- how it goes
24 on the panel, okay?

25 JUROR NUMBER 365: Okay.

1 THE CLERK: 418.

2 JUROR NUMBER 418: Yes, I need to get rescheduled
3 if I can. I'm a two-man operation and we do uplifts on
4 trucks and this is me peak year until about January 15th. I
5 got no problem with serving. It's just inconvenient.

6 THE COURT: You are number 418?

7 JUROR NUMBER 418: Uh-huh. I'll take my chances
8 the rest of the week, if I need, but --

9 THE COURT: I may have to require you to stay.

10 JUROR NUMBER 418: Okay.

11 THE CLERK: 267.

12 JUROR NUMBER 267: I just wanted to make mention
13 that I do know one of the attorneys. I don't know if the
14 childhood friend, family friend, or if that makes a
15 difference.

16 THE COURT: We will go into that with you when we
17 go through.

18 JUROR NUMBER 267: Thank you.

19 THE CLERK: 457.

20 JUROR NUMBER 457: Bryan Gosnell. I'm
21 self-employed. I would serve if I didn't have any work
22 right now. I have a major work load and I need to work. I
23 have not been working. I'm behind on my house payments and
24 all. I need to be transferred to where it's more
25 convenient.

1 THE COURT: Okay. I'll let you know.

2 THE CLERK: 295.

3 JUROR NUMBER 295: Kevin Monroe. I had a job
4 offer up in Pennsylvania that they wanted me to start next
5 week, but I actually have for a different company another
6 interview for them that we are trying to set up for Friday.

7 THE COURT: I'm going to have try to keep you here
8 because this is an important case. Okay.

9 JUROR NUMBER 295: Okay.

10 THE COURT: Thank you.

11 As to Mrs. Punch, I don't think that I excused
12 her.

13 MR. GIBSON: She was woman with the --

14 THE COURT: 468.

15 MR. GIBSON: That's the woman with the relative in
16 Hickory?

17 THE COURT: Yeah, her mother. She says that if
18 something happened to her, she would have to leave.

19 MR. GIBSON: Ms. Strom said, you know, if she
20 comes up, we can get a -- what happened if during the middle
21 of deliberations and something happens?

22 MS. STROM: We have had that happen and someone
23 leaves and someone comes on.

24 THE COURT: They are deliberating, I don't think
25 that can under the law.

1 MS. STROM: You said deliberate. I'm sorry, I was
2 thinking --

3 MR. GODFREY: The only thing that concerns me is
4 she lives such a distance away, I don't understand how --
5 because this one travels back and forth from Hickory, right?

6 THE COURT: Hickory. No, she lives here, the lady
7 does. Her mother -- her mother lives in Hickory.

8 MR. GIBSON: She goes two times a week to Hickory
9 to take care of her. My only concern is, you know, I mean,
10 if we impanel her and something happens during deliberations
11 and she has to go to Hickory to take care of her mother,
12 what do we do then?

13 MR. GODFREY: I agree with that. I just think
14 that if you have got an invalid person, you don't normally
15 keep them that far away.

16 THE COURT: That's what I was thinking.

17 MR. GODFREY: Hopefully if -- she says that if
18 something happens, she would have to go up there.

19 THE COURT: I'm inclined to keep her right now.
20 How about 399?

21 MR. GIBSON: I'm sorry?

22 THE COURT: 399 is the one that had a wedding.

23 MR. GODFREY: She needs to be transferred.

24 THE COURT: She said that she doesn't know about
25 what she would do about the wedding for the weekend.

1 MS. STROM: I guess I don't have any a problem
2 with that.

3 THE COURT: 399 would be transferred.
4 197?

5 MS. STROM: Greenville Anesthesiologist. It's a
6 billing cycle and --

7 MR. GIBSON: Credentialing of the doctors.

8 MR. GODFREY: How does billing cycle --

9 THE COURT: We are going to excuse her.
10 39?

11 MS. STROM: All I heard he was self-employed.

12 MS. VERDIN: They have a child.

13 THE COURT: He was the that was a bricklayer had
14 two people that work for him and he had to get the child
15 ready every morning. His wife went to work at 6:30.

16 MR. GODFREY: He has somebody.

17 THE COURT: What?

18 MR. GODFREY: His wife can take care of the
19 children but --

20 MS. STROM: I take the position, judge, I'll leave
21 it in your discretion.

22 MR. GODFREY: I'll do the same.

23 THE COURT: I'm going to transfer him. He looked
24 do me like he needed to work. I don't think he couldn't
25 serve.

1 418. He retrofits trucks. His business would
2 have -- we will have to keep him.

3 MR. GODFREY: I know it's his busy season.

4 MR. ARIAIL: He needs to stay.

5 THE COURT: Gosnell said he hadn't had work and
6 he's behind on his house payments.

7 MR. GODFREY: Transfer him in a heartbeat.

8 MS. STROM: I have no problem with that.

9 THE COURT: Transfer him.

10 THE CLERK: Gosnell is 457.

11 MR. GODFREY: What about the guy that came back
12 and he had back problems his doctor was in Columbia.

13 THE COURT: Yeah, I have got two of those, Mr.
14 Kirkland -- Mr. Parks from the doctor. Kirkland, he's got a
15 workman's comp injury.

16 MR. GODFREY: Is this the guy from Columbia.

17 THE COURT: No, he goes to the doctor in Columbia.
18 He's been hurt on the job.

19 MR. GODFREY: He was walking awfully --

20 THE COURT: It looked to me like he was okay.

21 MR. GODFREY: Yeah.

22 THE COURT: You know how the workmen's comp
23 injuries are.

24 MR. GODFREY: This lady, Kelly Moss that has
25 Crohn's Disease, Dr. Rycoff, I think she's one -- she works.

1 THE COURT: I don't think that we should excuse
2 her. I don't think that we should excuse her if her Crohn's
3 is under control. It could be under control.

4 THE COURT: One of them was under control.

5 MR. GODFREY: This Rycoff said it would be
6 difficult for her to serve but --

7 MS. STROM: But she works.

8 THE COURT: But she works. Don't excuse her.

9 MS. STROM: I would keep them both.

10 THE COURT: Yeah.

11 (Off the record)

12 (Back on the record)

13 THE COURT: Ladies and gentlemen, that took a
14 little bit longer than I thought, but what we will do now,
15 we have everybody who is qualified as a juror in this case.
16 Now, these people who did come by, we made notes and as to
17 what we can do at this particular point and I will meet with
18 you again. The numbers -- we will call out the numbers or
19 those numbers that those people that I had you wait and I
20 told you that I would give you an answer. I'll ask you
21 again to come down and speak to you briefly in just a
22 minute.

23 What the clerk will do now is we have computer
24 software. I may have told you and it will choose jurors at
25 random. That's the way the jurors are chosen. In the past

1 we had a blind person or a child less than ten years old
2 draw the names out of the hat or the box. But now with
3 computer software the computer under the statute picks your
4 names at random. You may be picked on the first panel. You
5 may be picked on the sixth panel. You may be picked on the
6 twelfth panel, or whatever, I do not know, but the clerk
7 will have to do that now. And these Mondays it always takes
8 us longer than any other day, usually. So what I'm going to
9 do is give you another 30 minute break. And I just couldn't
10 let you leave and come back because it's just to much, too
11 difficult to do that. We will have you out of here before
12 lunch, though. And I need to break -- we need to break you
13 down into these panels. As I said, we do that for your
14 convenience. We got reserved parking spots for you, if you
15 need them, to come back right behind the courthouse, and we
16 will be bringing you in and helping you any way we can. And
17 as I said, there is no right or wrong answers to the
18 questions that we are going to ask you after this. Just
19 tell us honestly the answer to the question, and they will
20 not be that difficult, I'm sure.

21 But the clerk will now use the computer software
22 and we will pick the panels at random. You will be on a
23 panel with six -- with five other people. Then you will
24 come in and I have a question about three kind of standard
25 jurors. You will just read that question and pick out what

1 kind of juror that you may or may not be when you come in
2 for that panel.

3 I will also have a list of witnesses that you will
4 be able to review to see if you know anyone on that witness
5 list, if you have had any relationship with any potential
6 witnesses. And you will just simply tell us how you know
7 that person, or what contact that you have had with a
8 witness, if you recognize their name on the witness list.
9 It's going to be a fairly long list, but you will have time.
10 It won't be any difficulty. You will just be looking at the
11 names and see if you know them. And you will tell us about
12 that. Then you will tell us what type juror that you think
13 you may be. And then we will ask you some questions. And
14 then you will be released and told when to report back, if
15 you have to report back on a group to be chosen.

16 We look to qualify 45 or 50 people, hopefully 50,
17 maybe, to be on the panel. Then you will come back in and
18 from that group the State will get five challenges and the
19 defense will get ten. And then as the names that are drawn
20 out in that particular order, that will be our jury.

21 So at ten minutes after twelve if y'all are start
22 coming back in and sitting down, we will give you the panel
23 that you are on and we will give you a time, an approximate
24 time, that you need to come back today. If you do not have
25 to come back today, we will tell you when you have to come

1 back tomorrow, when your panel will need to report. And I
2 would say come in looking over everything and getting back
3 out of here, a lot, at least two hours for that.

4 Okay. Take another 30 minute break and we will
5 break it down into panels. You can just sit and relax.
6 Thank.

7 (Whereupon, proceedings were recessed)

8 (Whereupon, proceedings were reconvened)

9 THE COURT: Ladies and gentlemen, we have you in
10 panels now. You will not have to reassemble in a large
11 group like this again.

12 We will go through panels of six, starting at two
13 o'clock today. The bailiffs will be out here to meet you on
14 the back in the back parking lot. If you have any questions
15 about where that is, it's just the -- I know sometimes you
16 get disoriented in the building, but it's straight behind
17 the courthouse. There is the old courthouse and the new
18 section, which we are in now where the trial courts are
19 held. It's right behind it, closest to the back door near
20 the wall on this side. The bailiffs are out there now
21 getting ten parking spaces available. I hope we get those
22 cars moved. We will. If not, we will let you park
23 illegally or something. If we have any trouble, we will
24 just have to talk to those people about that, and I'm sure
25 they will work with us, but there will be ten spaces there,

1 because some of you may want to come a little early with
2 your group. You only have to come back with your groups.

3 As we go through the groups, some of you will be
4 excused and some of you will be qualified. And the ones
5 that are qualified, once we reach about 50, then all those
6 people will have to come back. And from that group the jury
7 that sits on this case will be chosen. So that's the way we
8 have to work it. So you will come back in your groups.

9 The first group will report at two o'clock today.

10 The second group would report at 3:30.

11 The third group would report at five o'clock.

12 And we are going to try to work in the next group
13 at six o'clock.

14 Once we get into the process, I foresee the
15 attorneys and the court being able to move along a little
16 bit faster as we reach each panel. But then tomorrow,
17 hopefully giving allowances for breaks and things of that
18 nature, we are going to start the panel for in the morning
19 at nine o'clock. Then 10:30, twelve o'clock. And then I
20 think it's two o'clock, and then 3:30. The time will be
21 listed on the panel. You will give them the notice it will
22 be there.

23 Once we get through all of the panels on Tuesday,
24 maybe we will have enough to select from. If not, all the
25 people on the subsequent panels call in and we will inform

1 you as to the time to report.

2 Now, under the law every person who has a jury
3 trial is entitled to a representation from people from all
4 walks of life. A jury is supposed to be composed of a
5 cross-section of the community for Greenville County. And
6 so that's the reason that we have to do it this way. That's
7 the reason we draw the juries and do it this way and take in
8 order in which you are drawn. As I have said we have no
9 control -- no one has any control over which panel that you
10 are in. You may be on the first panel or the eighth panel.
11 You may be chosen. You may not. But it is as I told you.

12 And do not discuss this case again, as I have told
13 you before. Please do not discuss this case. That would
14 just cause problems for all of us. We trust you to go and
15 come.

16 We will not sequester you or put the jury in a
17 motel until we are ready to begin the trial, and then you
18 will be in the custody -- not in the custody, but you will
19 be chauffeured around. How about that? You will be
20 chauffeured around. I was asking my little grandchild how
21 to spell chauffeur the other day. That comes to mind.
22 Around by the SLED agents, and you will be taken out for
23 your meals, and whatever, but you will be -- you may have
24 some input into it. They handle all cases of this nature,
25 so they are very well experienced in that.

1 So I want you to feel comfortable. I want to put
2 you at ease as much as I can, but I don't want you to reach
3 the point that you lose sight of the seriousness of this for
4 the State and for the defense. As I told you this morning,
5 the nature of this case is the sentencing proceeding for a
6 person who has been convicted of murder. And both
7 sentences, when you reach that point, if you reach that
8 point, and the State proves an aggravating circumstance
9 beyond a reasonable doubt, if the jury concludes that, then
10 the sentence will be life imprisonment until the death of
11 the individual without the possibility of parole; or it will
12 be punishment by death, either be lethal injection or
13 electrocution.

14 So realizing the seriousness of it, we will meet
15 every timeline, if we can. Our job is to see that we
16 impanel a fair and an impartial jury to decide this case for
17 the State and for the defendant, based on the law and the
18 evidence and testimony that you hear.

19 Now, again, we are going to ask you some
20 questions. We are not going to get into your personal
21 lives. When you come back on the panel, there are no right
22 or wrong answers. Just give us truthful and honest answers
23 about everything that you are asked, and you will not have
24 any trouble, and hopefully we won't have any trouble.

25 Do not discuss the case. If you are on the panel,

1 the first panel, be here at two. If you are on the second
2 panel, you will be here at 3:30. If you are on the next
3 panel, you will be back at five. And the last panel,
4 hopefully we can work you in at six this evening. We have
5 to work a little bit later today than we would most other
6 days, because it takes a good bit in the morning, but we
7 finished up here by 12:30. She will notify you.

8 THE CLERK: I'll call their names by panel here.

9 THE COURT: She's going to call you by panels.
10 She's calling the first panel first. That panel will be
11 excused and not have to be back until one o'clock -- I mean,
12 two o'clock. Thank you very much.

13 (Whereupon, proceedings were recessed)

14 (Whereupon, proceedings were reconvened)

15 (Whereupon, the following proceedings were
16 conducted in the courtroom)

17 MR. ARIAIL: When Mr. Gibson gets here, I have one
18 matter I would like to go over before we get started with
19 voir dire.

20 THE COURT: Okay.

21 (Off the record)

22 (Back on the record)

23 THE COURT: Okay.

24 MR. ARIAIL: I want to go back to the issue of the
25 pretrial publicity and the jail evidence of what happened at

1 the jail that may come in as part of this case.

2 At first this morning you were talking about
3 telling the jurors -- asking the jurors if they could
4 consider that evidence solely as evidence applying to the
5 defendant's character as opposed to evidence of an
6 aggravating circumstance.

7 THE COURT: Statutory aggravating circumstance.

8 MR. ARIAIL: I'm sorry?

9 THE COURT: Statutory aggravating circumstance.

10 MR. ARIAIL: Statutory aggravating circumstance,
11 correct.

12 Let me just address that part. I'm not sure that
13 if you go over that with these jurors in voir dire they are
14 going to have any idea what they are talking about. They
15 are not going to know what a statutory aggravating
16 circumstance is, or a mitigating statutory circumstance, or
17 they are not going to know what the terms that we are
18 talking about are until such time as the jury has been
19 impaneled and you have instructed them.

20 THE COURT: I'm not telling them what you have
21 asserted as statutory aggravating circumstance, which is
22 robbery while during the commission of a murder while armed
23 with a deadly weapon and larceny.

24 MR. ARIAIL: Okay.

25 THE COURT: Those are the only two.

1 MR. ARIAIL: Well, my point is that the evidence
2 that relates to the jail issue is a specific aggravating
3 piece of evidence. In other words, it goes -- it might not
4 go to the statutory aggravating circumstance, but it's going
5 to go as part of the State's evidence in aggravation,
6 evidence which they could find would be aggravating. And I
7 think if the judge in the beginning gets specific --

8 THE COURT: I think the only thing they can
9 consider under the law, and I have read all the cases, Mr.
10 Ariail, is the specific circumstances of this crime and the
11 individual characteristics of the defendant. That's the
12 only thing that the jury can consider in their sentencing,
13 and y'all offer evidence in extenuation or mitigation or
14 aggravation. These other crimes or bad acts can only come
15 in as it would reflect upon his character.

16 MR. ARIAIL: And I agree with all of that. I
17 agree with that. That's exactly right.

18 THE COURT: What are we arguing about?

19 MR. ARIAIL: What we are -- I'm not arguing about
20 anything. I'm just concerned that if you mention in voir
21 dire a specific incident involving the detention center --

22 THE COURT: We are not going to mention any
23 specific incidents.

24 MR. ARIAIL: All right. All right. Then we
25 are --

1 THE COURT: We can't talk about specific crimes.

2 MR. ARIAIL: All right.

3 THE COURT: We can't ask them about that.

4 MR. ARIAIL: That's exactly --

5 THE COURT: We don't know how it's going to come
6 out.

7 MR. ARIAIL: Then I'm satisfied.

8 The second point is I thought I heard counsel for
9 the defendant ask that the court or they be allowed to go
10 into the issue of the jail, and I didn't know if they were
11 asking for that in terms of -- we had talked about in
12 chambers, about pretrial publicity, because I do think if
13 they are going to ask -- if they want to ask in terms of
14 pretrial publicity, the State is not objecting to that. I
15 think they have a right to ask the jury or a juror "are you
16 aware Mr. Owens was charged with this crime? This evidence
17 may come out. Is that going to prejudice you in any way you
18 can't be a fair and impartial juror?" I think that can be
19 asked in that context, but it can't be asked in the context
20 of aggravating, mitigating, specific evidence that they
21 would have to consider.

22 THE COURT: I don't want that question asked
23 because that's going to ask them to make a decision on the
24 evidence and the law before they have even heard it. I
25 don't think that we can go into that.

1 Okay. What I intend to do is just bring the
2 entire panel in. I guess the best place is to set them over
3 here, the six people, and -- I don't think I'll swear them
4 as a group, because they have been sworn downstairs to
5 answer these questions truthfully. When they come in
6 individually to testify, I'll put them under oath. Okay.

7 Now, I have given them the three types of jurors
8 and a list of the potential witnesses by the State and the
9 defense and they are going to be able to discern which
10 witnesses are for whom in the course of the trial, in any
11 event, but I just clipped off the top and just put it this
12 way. I don't know that it's going to make a lot of
13 difference anyway.

14 I'm going to mark for the record the three types
15 of jurors questions, which they have. The six jurors who
16 are here on panel one, they are looking at those now, and
17 the list of witnesses.

18 Would you mark those for the record?

19 MS. STROM: The three type jurors?

20 THE COURT: Yes.

21 (Witness List marked as Court's Exhibit No. 1 for
22 identification)

23 (Three Types of Juror Form marked as Court's
24 Exhibit No. 2 for identification)

25 THE COURT: Now, do y'all want to alternate on the

1 questioning of these individual jurors?

2 MR. ARIAIL: That suits us.

3 MR. GODFREY: That's fine, Your Honor.

4 THE COURT: Okay.

5 Do y'all want to flip a coin, or do y'all want
6 to --

7 MR. ARIAIL: We will defer to them.

8 THE COURT: Let's the make --

9 MR. ARIAIL: They can go first. I'll let them go
10 first.

11 Did you -- I'm unsure also about the issue of
12 Muslim and how we are approaching that. Are we going to
13 tell them anything in particular about that issue coming up,
14 or how are we going to -- is that something left to us to
15 question, or are you going to take care of that, or --
16 because I think once we --

17 THE COURT: On the racial and the religious issue,
18 do you want me to ask the question, Mr. Godfrey?

19 MR. GODFREY: Yes, Your Honor.

20 THE COURT: I'll ask them the question if race or
21 the -- the race of the victim or the defendant would make
22 any difference in regard -- could they be fair and
23 impartial; or, if would religion make any difference if any
24 of the parties were Islamic, Muslim, Catholic, or whatever.

25 MR. ARIAIL: Well, I guess my question is how far

1 were you going? Were you going to get the Methodist
2 involved in this? You know, we are opposed to the death
3 penalty too.

4 I'm a little concerned about the race, because my
5 understanding of the law is for that question to be
6 relevant, it has to be a difference in race between the
7 defendant and the victim.

8 THE COURT: Absolutely.

9 MR. ARIAIL: And in this case there is no
10 difference in race.

11 THE COURT: Except for the victim in the --

12 MR. ARIAIL: Ms. Graves is black. The defendant
13 was black.

14 THE COURT: The one in the jail was different.
15 Christopher Lee was white, as I understand it.

16 MR. ARIAIL: He is, but my position on that would
17 be that case isn't what this jury is here to decide. If we
18 were trying Christopher Lee, I think they could ask.

19 THE COURT: If you don't want to present that,
20 that would be okay, but I have got a feeling that you are
21 going to put that in.

22 MR. ARIAIL: Well, I am, but I don't -- well --

23 THE COURT: We don't ever have a case normally
24 where there is allegedly two crimes where a person has been
25 murdered or killed.

1 MR. ARIAIL: Okay.

2 THE COURT: And I think that if I don't -- that I
3 think that the courts would require me to explore that.

4 MR. ARIAIL: Okay.

5 THE COURT: Okay. Bring the entire panel, if you
6 would.

7 (Whereupon, Jury Panel No. 1 was brought into the
8 courtroom)

9 THE COURT: Okay. This is panel number one.

10 Ronald D. Dillard.

11 Cynthia C. Davis.

12 Joseph G. Hedrick.

13 Douglas A. McCarthy.

14 Patricia C. Owen.

15 You are panel number one and you have been sworn
16 this morning, so the answers that you give will be subject
17 to that oath.

18 When you testify individually, we will bring you
19 back in and we will let you testify under oath.

20 The answers to the questions, as I told you this
21 morning, there are no right or wrong answers that we will go
22 into and ask you today. We are simply gathering information
23 for the purposes of selecting a jury for this particular
24 case. And I want you to understand that throughout this
25 entire proceeding I have no opinion about the facts of this

1 case. That's solely for the jury and I am prohibited in the
2 Constitution from discussing the facts with you. My
3 responsibility is just to go over the law with you and to
4 ensure that we have a fair and an impartial jury to
5 determine the issues that are presented to you in this case.
6 Now, so anything that I say, do not construe that as bearing
7 on the facts of the case.

8 Now, I would ask if any of you have discussed this
9 case with anyone in regard to the case of the State and
10 Freddie Eugene Owens, who was convicted of the murder of
11 Irene Graves that occurred on November 1st, 1997. Have you
12 discussed this case with anyone?

13 (No response)

14 THE COURT: Darla W. Carie. I'm sorry Ms. Carie.
15 I thought I covered all six.

16 There are two -- as I briefly explained to you
17 this morning, when the State seeks the death penalty in
18 South Carolina, there are two proceedings. There is a
19 proceeding for the guilt or the innocence before a jury, and
20 then there is a sentencing proceeding before a jury. Now,
21 this case is the second of those, the sentencing proceeding.
22 Mr. Owens was convicted before a jury for the murder that
23 occurred.

24 Now, this proceeding is for a jury to determine
25 how he would be sentenced. The State has the burden of

1 proving beyond a reasonable doubt an aggravating
2 circumstance that occurred during this murder.

3 The allegations are that during this murder there
4 was a robbery committed with possession of a deadly weapon,
5 and/or larceny was committed during this murder with the
6 possession of a deadly weapon.

7 Now, the State has got to prove an aggravating
8 circumstance, one of those two, or both, to a jury beyond a
9 reasonable doubt. If that is proven to a jury, and I'm not
10 saying whether it should be or should not be, but if it is
11 proven beyond a reasonable doubt, then the jury determines
12 the sentence of Mr. Owens.

13 At that point there are only two possible
14 verdicts: A sentence of life imprisonment, which in this
15 case would be service in prison for life until the death of
16 the defendant without the possibility of any parole; or, the
17 other sentence would be death by lethal injection or
18 electrocution.

19 Now, in that point of the case you would hear
20 evidence or a jury would hear evidence in extenuation or
21 mitigation and the jury would be required to focus on the
22 specific circumstances of the crime - the murder of Ms.
23 Graves - and the individual characteristics of the
24 defendant. And in focusing on that, you would hear evidence
25 in extenuation, mitigation, or aggravation.

1 Now, aggravating circumstances are facts or
2 incidents or an occurrence which the General Assembly has
3 declared would aggravate or worsen the crime of murder.
4 Aggravating circumstances accompanying a murder increases
5 the enormity of it, adds to the injury of the crime.

6 Mitigating circumstances are incidents, facts or
7 occurrences which the General Assembly has declared by
8 statute, or which the jury may determine from the evidence,
9 which reduces the severity of the offense of murder may be
10 considered as extenuating or reducing the degree of
11 responsibility or culpability.

12 Now, at that particular time you would consider
13 any evidence of aggravating circumstances or mitigating
14 circumstance and have to write a verdict in the case.

15 Now, attorneys in this case are representing the
16 State is the solicitor for Greenville and Pickens County,
17 Mr. Bob Ariail, Betty Strom and Leticia Verdin. Okay.

18 Do any of you ladies and gentlemen know any of
19 these lawyers?

20 (No response)

21 THE COURT: Are any of you personally acquainted
22 with anyone who works in the office of the circuit
23 solicitor?

24 (No response)

25 THE COURT: Mr. Bill Godfrey, William Godfrey, I

1 call him Bill, and Mr. Ken Gibson are the attorneys for the
2 defendant. And the gentleman seating here at this end of
3 the table is Mr. Freddie Eugene Owens.

4 Do any of you know anyone at the defense table?

5 (No response)

6 THE COURT: Are you friends or relatives with
7 anyone who is acquainted with them or may work with them in
8 any way?

9 (No response)

10 THE COURT: Okay. Now, I have given you an
11 extensive list of potential witnesses that you have had, for
12 whatever amount of time that you were in the other room, and
13 I have given you a list of three questions of three
14 potential jurors.

15 In regard to the list of potential witnesses in
16 this case, have you reviewed that list and do any of you --
17 do you know or are you acquainted with anyone on the list?

18 (No response)

19 THE COURT: Okay. All right.

20 We will proceed and I will ask you about the three
21 types of jurors questions when I bring you back in
22 individually.

23 Would y'all like to approach the bench and have me
24 ask them any more questions at this time, or are we ready to
25 begin the individual questioning?

1 MR. ARIAIL: We're ready.

2 MR. GODFREY: We're ready, Your Honor.

3 THE COURT: Okay. I would let you step out and I
4 will take you in the order that you were drawn.

5 And Mr. Dillard, if you would -- you can either
6 stay or you can step out, whichever you prefer and --

7 JUROR NUMBER 111: I will stay.

8 THE COURT: If you need to look over the list
9 again, you can do that.

10 JUROR NUMBER 111: No, I don't.

11 (Whereupon, Jury Panel Number 1 was taken out of
12 the courtroom)

13 THE COURT: I would have to ask you to come up and
14 be sworn.

15 RONALD D. DILLARD, #111, having been first duly
16 sworn, testified as follows:

17 VOIR DIRE EXAMINATION BY THE COURT:

18 Q. Mr. Dillard, I'm going to ask you some questions to
19 begin with, and then these lawyers will have a few things
20 they may want to ask you about this case.

21 Okay. I have told you that this case arises from a
22 murder that one jury has found on Mr. Owens guilty of that
23 occurred on November the 1st, 1997, in Greenville County, at
24 a Speedway on --

25 MR. ARIAIL: Laurens.

1 THE COURT: Laurens Road?

2 MR. ARIAIL: Laurens Road.

3 BY THE COURT:

4 Q. Do you know anything about this case or have you heard
5 anything about this case prior to being called as a juror?

6 A. Well, the only thing I can tell you about that is I
7 work at Hollingsworth and where that happened was on
8 Hollingsworth property, but I don't know anything about it
9 or haven't talked to anybody about it.

10 Q. Okay. Now, there has been publicity in regard to this
11 case on TV, radio, and maybe in the newspaper.

12 Have you read or heard anything or seen anything about
13 this case from any source?

14 A. No, sir.

15 Q. Okay. Have you heard or read anything about this case
16 or seen anything since you were called as a juror?

17 A. No.

18 Q. Or summonsed as a juror?

19 A. No, sir.

20 Q. Would you serve in this case as a fair and an impartial
21 juror and reach a verdict based on the facts presented at
22 trial and in accordance with the instructions of law that I
23 would give you?

24 A. Yes, sir.

25 Q. Have you -- if you didn't know anything about the case,

1 you have not formed an opinion as to any facts in this case
2 or as to how this defendant should be sentenced?

3 A. No, sir.

4 Q. Now, in this phase or this proceeding then the issue
5 would be how Mr. Owens would be sentenced, and I have
6 explained that to you this morning and today. Do you
7 understand that?

8 A. Yes, sir.

9 Q. Okay. Now, as to evidence in aggravation or
10 mitigation, you would under your oath be required to abandon
11 any preconception that you may have and you would have to
12 follow the law and you would be required to give serious and
13 meaningful consideration to circumstances of aggravation and
14 circumstances of mitigation.

15 Would you, under your oath, give meaningful and serious
16 consideration to both aggravation and mitigation evidence?

17 A. Yes, sir.

18 Q. If, based on the instructions from the court and the
19 evidence and testimony that you heard and your consideration
20 of aggravation and mitigation evidence and the circumstances
21 surrounding the crime and the individual characteristics of
22 the defendant, if I were to instruct you and you considered
23 those factors, could you, depending upon the facts and
24 circumstances, return a sentence of life imprisonment?

25 A. Yes, sir.

1 Q. If you were a juror under the same facts and
2 circumstances and you considered the aggravating and
3 mitigating circumstances and based on the law and the
4 evidence as you determined it to be, could you return a
5 verdict of a sentence of death?

6 A. Yes, sir.

7 Q. Okay. Based on these three potential jurors, types of
8 jurors, that list that I gave you, I assume that you would
9 fall into which category?

10 A. Number three.

11 Q. You could, or depending upon the facts?

12 A. Yes.

13 Q. And you have reviewed those three types of jurors?

14 A. Yes, sir.

15 Q. It's Exhibit No. 1.

16 Okay. Now, in the event of a death sentence, South
17 Carolina law requires that each juror sign your name to the
18 verdict if you were on the jury. Could you sign your name
19 to a death sentence verdict?

20 A. Yes, sir.

21 Q. Okay. If you were selected, you would honor your oath
22 and serve as a fair and impartial juror and you would
23 approach this jury service with an open mind to find the
24 truth from the evidence and apply the law?

25 A. Yes, sir.

1 Q. Okay. Now, if I instructed you that evidence may or
2 may not come out of other crimes committed or bad acts
3 committed by the defendant, I would instruct you that that
4 evidence could only be considered as to it bearing on the
5 general character of the defendant. You could not consider
6 that or any of the bad acts or crimes in any way as evidence
7 of a statutory mitigating circumstance of robbery or larceny
8 in the commission of a murder. Could you follow that
9 instruction?

10 A. Yes, sir.

11 Q. Now, if a victim or a defendant of any offense, if the
12 defendant happened to be black and a victim or another
13 person happened to be white, would race make any difference
14 in your decision?

15 A. No, sir.

16 Q. Would religion play any part in your decisions? By
17 that I mean based on any religious beliefs that you may
18 hold, or if a party or a person were a Muslim or of the
19 Islamic faith, or any other religion, would that have any
20 bearing on your decision in this case?

21 A. No, sir.

22 Q. All right. Do you know of any reason why you should
23 not serve in this case?

24 A. No, sir.

25 Mr. Godfrey?

1 MR. GODFREY: May it please the court.

2 VOIR DIRE EXAMINATION BY MR. GODFREY:

3 Q. Good afternoon Mr. Dillard. I'll Bill Godfrey. This
4 is Ken Gibson, the co-counsel, and this is Freddie Owens.

5 A. How are you doing?

6 Q. Mr. Dillard, I just have a couple of questions for you.

7 Now, if you were a juror in this case, you say that you
8 could be fair and impartial, is that correct?

9 A. Yes, sir.

10 Q. And you agree to follow the law as the judge tells you
11 that the law is?

12 A. Yes, sir.

13 Q. Even if that turns out to be something that you thought
14 the law was different, you would follow what the judge had
15 to say?

16 A. Yes, sir.

17 Q. Do you have any relatives or friends that presently
18 work in this courthouse or have worked in this courthouse?

19 A. Not that I know of.

20 Q. Do you have any relatives or friends who have worked
21 for the sheriff's department or for the Greenville County
22 detention center?

23 A. Yes, sir, I had an uncle that used to be a jailer years
24 ago. He's not alive now.

25 Q. Now, years ago, back in the eighties, I guess?

1 A. I would think so, because he would -- if he was living,
2 he would be in his late eighties now.

3 Q. And do you agree to keep an open mind throughout this
4 case and to not make any decision about the case until the
5 judge tells you that you all can consider what the verdict
6 should be?

7 A. Yes, sir.

8 Q. Once you have heard all of the evidence from both the
9 State and from the defense and once you have heard the
10 charge on the law from the judge, would you have any qualms
11 at all about giving a life sentence, if that's what you
12 believed the evidence proved to be?

13 A. No, sir.

14 Q. And in the alternative, would you have any trouble
15 giving a death sentence, if you thought that's what the
16 evidence was?

17 A. I don't think so, no, sir.

18 MR. GODFREY: Nothing further.

19 THE COURT: Mr. Ariail?

20 VOIR DIRE EXAMINATION BY MR. ARIAIL:

21 Q. Mr. Dillard, by name is Bob Ariail and I'm the
22 solicitor for the Thirteenth Circuit, which is Greenville
23 and Pickens Counties. That simply means that I'm the
24 district attorney, as they have on TV. And as such we would
25 be responsible -- the judge told you the State has to carry

1 the burden of proof in any criminal case both as to guilt
2 and in the sentencing phase. And our role would be to
3 present the evidence to you that we believe bears on this
4 case. So you understand what our role would be?

5 A. Yes, sir.

6 Q. Ms. Strom, my deputy solicitor seated here, would be
7 assisting, along with Ms. Verdin.

8 The State is seeking the death penalty. And when the
9 State seeks the death penalty, as the judge has informed
10 you, we have two separate proceedings; a guilt phase, which
11 we have already been through. Do you understand that?

12 A. Yes, sir.

13 Q. As the defendant sits before you, he is guilty of the
14 crime of murder and other crimes, which the judge will
15 explain to you. So you don't have -- that's not a decision
16 that you need -- that you would concern yourself with.

17 What you will concern yourself with is the appropriate
18 sentence. And the choices that you will have will be life
19 imprisonment without parole or the death sentence. Now, do
20 you understand that?

21 A. Yes, sir.

22 Q. The judge talked to you about aggravating factors. The
23 law requires that -- the General Assembly has enacted law
24 that requires that before a jury can consider the death
25 penalty, it has to find an aggravating circumstance. One of

1 those aggravating circumstances. They are defined. There
2 are about 19 of them that are defined in the law.

3 In this case the judge will tell you the State is
4 advancing two; murder in the commission of an armed robbery,
5 or murder during the commission of a larceny.

6 And the State, before you could consider the death
7 penalty, would need to prove to you before you began
8 consideration of your sentence that one of those aggravating
9 factors exists? Do you understand?

10 A. Yes, sir.

11 Q. So you would be required to consider the evidence to
12 determine in that exists.

13 If that factor you find as a jury does exists, then you
14 proceed with the next step, to what is the appropriate
15 sentence, based on the evidence that's presented.

16 A. Yes, sir.

17 Q. That's how the process works.

18 Now, the -- you said that you were a number three
19 juror, a juror that could consider both a life imprisonment
20 without parole and the death sentence?

21 A. Yes, sir.

22 Q. Now, you understand that life imprisonment without
23 parole means exactly what the judge told you; that is, the
24 defendant would die in prison. He would be imprisoned for
25 the rest of his life.

1 A. Yes.

2 Q. And do you understand what the death penalty means?

3 A. Yes.

4 Q. That the State would impose a sanction of death upon
5 him.

6 Do you know of any religious, or moral, social,
7 philosophical views that would prevent you or impede you in
8 any way from considering the imposition of the death
9 penalty?

10 A. No, sir.

11 Q. Do you believe the death penalty is an appropriate
12 punishment in our society under certain circumstances?

13 A. Yes, sir.

14 Q. Okay. And do you also understand that the defendant
15 does not have to testify? He doesn't have to present any
16 evidence. The burden is always on the State. And that if
17 he doesn't testify or present any evidence, the judge will
18 explain to you you can't hold that against him.

19 A. Yes.

20 Q. Do you understand that?

21 A. Yes.

22 Q. Do you agree with that principle of law?

23 A. Yes, sir.

24 Q. Thank you.

25 MR. ARIAIL: That's all I have, Your Honor.

1 Thank you, Mr. Dillard.

2 THE COURT: Mr. Dillard, if you would just step
3 out briefly, and Doris, would you have him wait in the jury
4 room?

5 THE BAILIFF: Yes, sir.

6 (Whereupon, Juror Number 111 was taken out of the
7 courtroom)

8 THE COURT: Okay. I think he's qualified.

9 MR. GODFREY: He's qualified, judge.

10 MR. ARIAIL: Qualified.

11 THE COURT: I believe he's qualified.

12 I have got some orders for qualified jurors that
13 I'm going to give every person who is qualified. Jeffery
14 was typing it. I'm going to let him bring my copy in and
15 then let the juror wait and give him a copy of the order,
16 but I'm going to read it, what's included in it, when I call
17 him back in.

18 Yes, sir.

19 MR. GIBSON: Your Honor, I think you -- if my
20 recollection was wrong, but I think you had misspoken on
21 that issue regarding the prior bad facts or the other bad
22 facts. You had said that they can't -- that they are not
23 authorized to look at that as a mitigating circumstance as
24 opposed to an aggravating circumstance.

25 THE COURT: I'll correct that with him, if I

1 misstated that. Thank you. I didn't realize that.

2 MR. GIBSON: Thank you.

3 THE COURT: Ask him if he would step back in,
4 please.

5 (Whereupon, Juror Number 111 was brought into the
6 courtroom)

7 THE COURT: Mr. Dillard, you can stand right
8 there. You are -- I'm going to give you an order in just a
9 few minutes. It tells you that you are qualified as a
10 potential juror in this case. That means that you will come
11 back with another group and be a part of a group from which
12 the jury will be selected. Okay. You should return. And I
13 anticipate you being at the motel and sequestered, if you
14 are chosen, for no more than five nights. So you should
15 pack a sufficient amount of clothing for those five nights.

16 When you are told to come back, you will park in
17 the Hyatt parking garage, along with 45 other people,
18 approximately. And if you are selected to serve, you will
19 be permitted to drive your automobile to the motel, and
20 someone else can pick it up, or you can leave it there as
21 you are brought back and forth, okay?

22 JUROR NUMBER 111: Yes.

23 THE COURT: And SLED will assist you in going and
24 making arrangements with your family, if you wanted your
25 automobile or anything picked up.

1 You have the follow the court's instructions. You
2 are not to the discuss this issue with anyone. Do not
3 undertake any independent investigations. Do not check
4 anything on the Internet or anything of that nature about
5 the law, or this case, or any cases such as this. And this
6 order will continue in effect until the jury selection
7 process is over and the case is concluded. Do you
8 understand that?

9 JUROR NUMBER 111: Yes, sir.

10 THE COURT: All right. Now, we are in the process
11 of preparing the order. If you would just wait in the jury
12 room for just a few minutes until my clerk gets the orders
13 prepared and I'll give you a copy of it, sir. And then you
14 can leave and just call back -- call back I think after six
15 okay tomorrow.

16 THE BAILIFF: Judge, I have it here.

17 THE COURT: Oh, you do?

18 THE BAILIFF: Yes.

19 THE COURT: Just call back after six o'clock
20 tomorrow night and hopefully we will be so far along in the
21 process that we can tell you when you need to come back.

22 JUROR NUMBER 111: They will tell me at that time
23 when to come back?

24 THE COURT: The message will be on there.

25 JUROR NUMBER 111: If I want to leave my car

1 wherever it's at, it's okay? I mean, when we tow it to the
2 hotel, I can leave it there? I don't have to have it picked
3 up?

4 THE COURT: No, you can leave it at the hotel.
5 I'm sure you can. Just wait over there until I give you the
6 order, sir.

7 (Whereupon, Juror Number 111 was taken out of the
8 courtroom)

9 THE COURT: Do y'all want to review this?

10 MR. ARIAIL: Yes.

11 MR. GODFREY: Yes.

12 THE COURT: Sergeant McCall tells me they will let
13 them drive their cars to the motel with their clothes in it,
14 so they can leave their clothes in the car while they are
15 here picking the jury. If they are chosen, they can do
16 that. If they are not chosen, they will just -- they can go
17 home.

18 MR. ARIAIL: No objection from the State.

19 THE COURT: All right. Cynthia G. Davies.

20 (Whereupon, Juror Number 102 was brought into the
21 courtroom)

22 CYNTHIA C. DAVIES, #102, having been first duly
23 sworn, testified as follows:

24 MR. ARIAIL: Your Honor, could we approach just a
25 moment?

1 THE COURT: Yes.

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 VOIR DIRE EXAMINATION BY THE COURT:

5 Q. Ms. Davies, this is a case in regard to a murder that
6 occurred on November the 1st -- on Laurens Road in
7 Greenville County, on November the 1st of 1997, in regard to
8 a -- at a Speedway on Laurens Road where Ms. Irene Graves
9 was killed, and Mr. Owens has been convicted of that murder,
10 and this is a sentencing proceeding in order to determine
11 how he should be sentenced.

12 And the State would have to prove a statutory
13 aggravating circumstance beyond a reasonable doubt. And
14 this case its allegation is robbery was committed during
15 this murder while the defendant possessed a deadly weapon,
16 and/or larceny was committed during this murder while the
17 defendant possessed a deadly weapon. If that is proven
18 beyond a reasonable doubt, then the jury would determine the
19 sentence of Mr. Owens.

20 Now, that sentence, there are only two possible
21 verdicts. One is life imprisonment without the possibility
22 of parole until the death of the defendant, and the other
23 sentence would be death by lethal injection or
24 electrocution.

25 Could you hear this case -- and I noticed from your

1 questionnaire you made a statement in regard to your
2 feelings about the death penalty.

3 So just initially as the judge -- and I want you to
4 understand anything that I have to say doesn't have anything
5 to do with the facts of this case. It's just -- I'm
6 going -- I can only discuss the law with you.

7 A. Uh-huh.

8 Q. But could you write a sentence for life imprisonment
9 considering the aggravating and mitigating circumstances?

10 A. Repeat the question.

11 Q. Could you write a sentence of life imprisonment and
12 consider the aggravating or mitigating circumstances?

13 A. I could write a sentence of life in prison.

14 Q. Could you write a sentence of death considering the
15 aggravating or mitigating circumstances?

16 A. At this point I'm just not sure. I would lean toward
17 saying that -- as I stated in my paperwork, that I generally
18 don't approve of the death penalty, but I have never had my
19 convictions tested before, so it's difficult to say, but
20 I -- I have a real problem with the death penalty.

21 Q. Okay. Well, to serve on the jury, you would need to
22 waive the -- consider. Not waive. Consider whatever
23 circumstances of aggravation or mitigation is presented.
24 And after considering those, you would have to determine --
25 you may be called upon to determine the sentence of Mr.

1 Owens. And in order to reach that point, we need for you to
2 consider very carefully if you could follow the instructions
3 of the court. You will take an oath to do that.

4 Could you follow the instructions of the court in
5 regard to the law, or would your feelings about the death
6 penalty prevent you or substantially interfere with your
7 writing a sentence of death, if you were considering this
8 case?

9 A. I believe that my personal feelings would very strongly
10 sway -- sway me. I would -- I would come into the courtroom
11 with a strong bias against the death penalty.

12 You know, if it's the law and I have to make the
13 decision, then I'll make the decision, but it would be a
14 very strong struggle for me.

15 Q. Of course, I'm not indicating that that would even be
16 the conclusion of the jury, or -- but if -- if you did reach
17 that point, if the jury was considering life imprisonment
18 and death, if -- as to the questionnaire or the sentence I
19 will give you the possible verdict forms for life
20 imprisonment for death and whether or not you find beyond a
21 reasonable doubt an aggravating circumstance. You will have
22 those forms, all twelve of you. You would have to sign your
23 name to a verdict of death, if that were your decision and
24 the decision of that jury. Could you sign your name to that
25 verdict form?

1 A. At this point I would have to say no.

2 Q. Okay. Do not -- if I told you there are absolutely no
3 right or wrong answers, except just honest answers, and I
4 appreciate that.

5 I may have some more questions, several more questions
6 to ask you, but let me let you step outside just a minute.

7 A. Okay. Should I take my things with me?

8 Q. No, just leave them there. Go into the jury room over
9 there and just make yourself comfortable.

10 (Whereupon, Juror Number 102 was taken out of the
11 courtroom)

12 THE COURT: Mr. Godfrey.

13 I don't -- as I understand it, her -- just because
14 she has feelings like that, but if she's going to be
15 prevented or if it's going to substantially affect her
16 ability to write a verdict in this case, I'm not sure she
17 can qualify.

18 MR. GODFREY: Beg the court's indulgence.

19 MR. GIBSON: Just a second, Your Honor.

20 (Off the record)

21 (Back on the record)

22 THE COURT: Mr. Gibson?

23 MR. GIBSON: Your Honor, we have discussed the
24 matter and we unfortunately agree that given her answers,
25 there may be a strong inability of her to justifiably

1 consider the option and do not want to be handed down. And
2 given that, we would concur with the finding of the court
3 that she's not qualified.

4 THE COURT: Mr. Ariail?

5 MR. ARIAIL: We would concur with that.

6 THE COURT: Ask her to step back in.

7 (Whereupon, Juror Number 102 was brought into the
8 courtroom)

9 THE COURT: Ms. Davies, I appreciate your honesty,
10 and because of your personal feelings about the death
11 penalty I'm going to have to excuse you from the case
12 legally, but don't feel bad. We really -- we respect you
13 answering those questions. There are many attorneys and
14 scholars and other people that have the same feelings that
15 you do.

16 JUROR NUMBER 102: Thank you.

17 THE COURT: I'm going to excuse you. You do not
18 have to come back. Thank you so much.

19 JUROR NUMBER 102: Thank you.

20 (Whereupon, Juror Number 102 was taken out of the
21 courtroom)

22 THE COURT: Okay. Joseph G. Hedrick.

23 Is there anything we should explore on his
24 questionnaire? Both of y'all have it.

25 MR. ARIAIL: Are you ready for the next one?

1 THE COURT: I'm just reading this order.

2 MS. STROM: Okay. Sorry.

3 (Off the record)

4 (Back on the record)

5 THE COURT: Joseph G. Hedrick.

6 (Whereupon, Juror Number 194 was brought into the
7 courtroom)

8 JOSEPH G. HEDRICK, #194, having been first duly
9 sworn, testified as follows:

10 VOIR DIRE EXAMINATION BY THE COURT:

11 Q. Mr. Hedrick, this case arises out of an incident on
12 November the 1st, 1997, on Laurens Road in Greenville County
13 at a Speedway, where an Irene Graves was killed. Mr. Owens
14 has been convicted of that murder. This is a sentencing
15 proceeding to determine how he would be sentenced. Do you
16 understand that?

17 A. Yes, sir.

18 Q. Now, there has been publicity regarding this case,
19 maybe on TV, radio, newspapers. Have you read, heard or
20 seen anything about this case?

21 A. I did read something about it.

22 Q. Okay. When did you read something about it?

23 A. It was in the Greenville News. Before we came down
24 here in October, there was a blurb in the Metro section
25 about it. I read it. And then when it said that you were

1 going to be the judge and that jury selection was going to
2 be October, whatever the date, at two o'clock, I pretty well
3 figured that was the case I was going to be on.

4 Q. Okay. Now, do you understand that under your oath and
5 if you are chosen as a juror in this case, you would be
6 required to disregard anything that you have read, seen or
7 heard about this case and you would have to decide it on the
8 evidence and testimony that you heard in this courtroom
9 only?

10 A. Yes, sir.

11 Q. Nothing that you heard in any form or fashion outside
12 this courtroom?

13 A. Yes, sir.

14 Q. And could you disregard anything that you read about
15 this case on that date?

16 A. I would like to hope that I could, yes, sir.

17 Q. Well, you would take an oath to do that.

18 A. Yeah.

19 Q. And I would instruct you on the law about that and I
20 would tell you that just absolutely up front you could only
21 decide it on what you heard in the courtroom.

22 A. Yes, sir.

23 Q. Would you follow those instructions?

24 A. Yes, sir.

25 Q. Now, you don't have any reservations? You would follow

1 the instructions of the court? I have no feelings about the
2 facts of this case. I want you to understand that.

3 A. Yes.

4 Q. Anything that I ask you here today has nothing to do
5 with the facts, because I'm not a part of that and I
6 appreciate a jury more than any person.

7 A. Yes.

8 Q. But you believe that you could serve as a fair and an
9 impartial juror in this case?

10 A. Yes, sir.

11 Q. All right. Have you formed any opinion about this case
12 as to what sentence, if any, the defendant should receive?

13 A. No, sir.

14 Q. Now, in this phase the State has to prove an
15 aggravating circumstance in the commission of this murder
16 beyond a reasonable doubt before the jury would sentence Mr.
17 Owens.

18 Now, the two aggravating circumstances or allegations
19 are that robbery occurred during the commission of this
20 murder while the defendant was armed with a deadly weapon
21 and/or larceny occurred while the defendant was armed with a
22 deadly weapon.

23 Now, you would have to hear that evidence, the burden
24 of proof being on the State. There is never any burden on
25 the defendant. He does not even have to testify. That

1 cannot be held against him in any way. That's part of the
2 law.

3 Could you follow the law and consider the evidence and
4 in regard to whether or not a statutory aggravating
5 circumstance has been proven beyond a reasonable doubt?

6 A. Yes, sir.

7 Q. All right. Now, in determining that, if the jury were
8 to find that unanimously, then you would go to the
9 sentencing phase.

10 There would be only two possible sentences in the case.
11 That would be life imprisonment or death.

12 Life imprisonment would mean life as long as -- until
13 the death of the person, defendant, without the possibility
14 of parole.

15 Death would mean death by lethal injection or
16 electrocution.

17 Now, you as the juror, if you were chosen as a juror in
18 this case, would be required under the law to consider
19 circumstances of aggravation and circumstances of
20 mitigation. In considering those, then you would have to
21 write a verdict, either for life or for death. Do you
22 understand that?

23 A. Yes, sir.

24 Q. Could you give meaningful and serious consideration to
25 any aggravation and mitigation evidence in the case?

1 A. Yes, sir.

2 Q. Now, in the event -- in considering the aggravating and
3 mitigating circumstances, as I would instruct you, based on
4 the view of particular -- of the facts and the circumstances
5 of this case, could you write a verdict of life
6 imprisonment?

7 A. Yes, sir.

8 Q. Based on the consideration of the particular facts and
9 circumstances of this case, giving meaningful consideration
10 to aggravation and mitigation evidence, could you write a
11 sentence of death?

12 A. Yes, sir.

13 Q. In considering the three types of juror questionnaire
14 that I submitted to you, which type of juror do you consider
15 yourself?

16 A. Number three.

17 Q. Okay. Now, in regard to any other crimes that may have
18 been committed prior or subsequently to this November the
19 1st of 1997, if any of that evidence were to come in, and
20 the court would instruct you that these crimes or bad acts
21 could not be considered as evidence in any way as to the two
22 statutory aggravating circumstances, that this evidence, if
23 any, could only be considered as evidence as to the
24 defendant's character in general. Could you follow that
25 instruction?

1 A. Yes, sir.

2 Q. If the defendant and any victim were of a different
3 race - black, white, or other - would race have any effect
4 on your decision in the case?

5 A. No, sir.

6 Q. Would any religious feelings that you may have in
7 regard to whatever religion that you are and your religious
8 beliefs, or if it were to come out that any party or anyone
9 was of the Muslim or Islamic faith, would that have any
10 effect on your decision in the case?

11 A. No, sir.

12 Q. Okay.

13 THE COURT: Mr. Ariail --

14 BY THE COURT:

15 Q. I'm going to let these lawyers now ask you some
16 individual questions.

17 A. Okay.

18 VOIR DIRE EXAMINATION BY MR. ARIAIL:

19 Q. Mr. Hedrick, my name is Bob Ariail. I'm the solicitor
20 for Greenville -- for the Thirteenth Circuit, which is
21 Greenville and Pickens. And as such I'm the district
22 attorney. We call them solicitors in South Carolina.

23 Assisting me in this case would be my Deputy Betty
24 Strom and one of my assistants, Leticia Verdin, seated at
25 counsel table.

1 The judge told you earlier and I just want to make sure
2 that you understand the situation, the process. The
3 defendant in this case -- because the State is seeking the
4 death penalty, there are two phases. The first is the
5 determination of whether or not the defendant is guilty.
6 The second is the determination of whether or not -- of what
7 sentence should be imposed.

8 The first phase is over. The defendant is guilty, been
9 found guilty by a jury. Now it's down to the second phase.
10 The second phase will involve you, so you won't be concerned
11 with guilt. Do you understand that?

12 A. Right.

13 Q. So when it says proof beyond a reasonable doubt of the
14 defendant's guilt, those issues are not before you.

15 What is before you is the State's request for the death
16 penalty. And when that occurs, the State has a right to ask
17 for the death penalty only in certain limited circumstances,
18 and the judge mentioned those to you. The legislature of
19 this state has said the State can't seek the death penalty
20 until there is a murder accompanied by an aggravating
21 circumstance. And that aggravating circumstance is what the
22 legislature says allows a jury to consider the death
23 penalty. So not every murder you can seek the death
24 penalty. Only in those -- some of them are, for example,
25 murder of a police officer; murder of more than one person;

1 murder of a child under seven years of age; those type
2 things.

3 So your role would be to determine if the State has
4 proved the aggravating circumstances that it alleges and
5 then to consider beyond that all the evidence in aggravation
6 and mitigation that may be presented to determine what
7 sentence that you believe is appropriate. Okay. So you
8 understand what your role will be?

9 A. Yes, sir.

10 Q. And as the judge said, you will bring your common sense
11 and good judgment into the jury box and you will use that to
12 apply it to the law that he will give you about how -- or
13 what to consider in terms of the appropriate sentence.

14 You said that you were, you felt, a number three
15 juror --

16 A. Yes, sir.

17 Q. -- that could fairly consider and return a sentence of
18 life imprisonment without parole, if that was what was
19 merited --

20 A. Yes.

21 Q. -- or the death penalty?

22 A. Yes, sir.

23 Q. And you understand life imprisonment without parole
24 means exactly that, that the defendant would stay in the
25 Department of Corrections the rest of his life and he would

1 come out. He would die. That would be the only chance that
2 he would have to come out.

3 A. Yes, sir.

4 Q. Okay. Is there anything in your background that you
5 are aware of that would prohibit you from fairly considering
6 the imposition of the death penalty in a case that you
7 thought was appropriate?

8 A. No, sir.

9 Q. You think that capital punishment has a role as a
10 punishment under certain circumstances in our law?

11 A. Yes.

12 Q. Do you understand also that the defendant does not have
13 to testify or present any evidence? And if he doesn't do
14 either, that the judge will explain to you and charge you
15 that, and you will have to be bound by that, that you cannot
16 consider that against him?

17 A. Yes, sir.

18 Q. And if you find, along with your fellow jurors, that
19 the death sentence is the appropriate sentence to be
20 imposed, the law would require that you sign the verdict
21 form that's sent back with you, and each juror would need to
22 sign that. Would you have any problem in physically signing
23 the document if, in fact, that was your verdict?

24 A. No, sir.

25 Q. Okay. So the act of physically signing it would not

1 influence your judgment as to what penalty should be
2 imposed?

3 A. No, sir.

4 Q. Thanks, sir.

5 MR. ARIAIL: That's all I have.

6 VOIR DIRE EXAMINATION BY MR. GIBSON:

7 Q. Mr. Hedrick, how are you?

8 A. I'm fine. How are you?

9 Q. Good. Thanks.

10 I'm Ken Gibson. This is my co-counsel Bill Godfrey.

11 That's my client -- our client Freddie Owens.

12 I was going to ask you a few things, okay?

13 A. Sure.

14 Q. Now, as Mr. Ariail stated to you, Mr. Owens has already
15 been convicted of the murder in this case.

16 Would the fact that he's already been convicted of the
17 murder make you unwilling or unlikely or in any way
18 incapable of giving him a sentence of life in prison without
19 the possibility of parole?

20 A. No, sir.

21 Q. Okay. He also talked to you about the State having the
22 need in this case or obligation in this case to prove
23 aggravating circumstances.

24 A. Uh-huh.

25 Q. And in this case they are going after two. They are

1 going to try to prove that during the commission of this
2 murder it was in the commission of an armed robbery or in
3 the commission of larceny. If either of those aggravating
4 circumstances or if any aggravating circumstances were
5 proven beyond a reasonable doubt, would you still be able to
6 give a sentence of life without the possibility of parole,
7 if you thought that the facts warranted that?

8 A. Yes, sir.

9 Q. Okay. Now, Mr. Ariail also asked and said is there
10 anything in your background which would keep you from
11 imposing a death penalty or death sentence. Is there
12 anything in your background that would keep you from giving
13 a sentence of life imprisonment without the possibility of
14 parole?

15 A. No, sir.

16 Q. And he also asked you a number of questions about the
17 role of the death penalty. And I think you said -- or he
18 asked you whether or not there was certain circumstances
19 whether the death penalty would be allowed, okay?

20 A. Uh-huh.

21 Q. I don't want to go too far, and you tell me if I am,
22 Your Honor, can you tell me what those circumstances are?

23 MR. ARIAIL: I would object to that, Your Honor,
24 being case specific and staking the juror out.

25 THE COURT: All right.

1 BY MR. GIBSON:

2 Q. All right. Do you understand that the law says that
3 even if you find those aggravating circumstances present,
4 that you don't have to give the death sentence?

5 A. Yes, sir.

6 Q. Okay. Do you think that you would be able to be fair?

7 A. Yes, sir.

8 Q. Do you think that you would be able to be fair to Mr.
9 Owens?

10 A. Yes, sir.

11 Q. Thank you Mr. Hedrick.

12 THE COURT: Mr. Hedrick, I'm going to ask you to
13 step out just to the other jury room and wait just for a
14 minute and I'll call you right back in.

15 (Whereupon, Juror Number 194 was taken out of the
16 courtroom)

17 THE COURT: Okay. I believe he's qualified.
18 Mr. Ariail?

19 MR. ARIAIL: He's qualified.

20 THE COURT: Mr. Gibson?

21 MR. GIBSON: Qualified, Your Honor.

22 THE COURT: Okay, sir.

23 If you would ask him to step back in.

24 (Whereupon, Juror Number 194 was brought into the
25 courtroom)

1 THE COURT: Mr. Hedrick, you would be -- I'm
2 qualifying you as a juror in this case. Now, what that
3 means is that you are a potential juror still. You cannot
4 discuss this case with anyone. Do not let anyone discuss it
5 with you. Do not watch any news reports of any type about
6 the case.

7 You would call the court after six p.m. I put the
8 number on this order. This order is more -- goes into a
9 little bit more detail about what you would be required to
10 do.

11 JUROR NUMBER 194: Uh-huh.

12 THE COURT: You need to bring sufficient clothes
13 in your automobile when you come back for approximately five
14 nights in a motel or a hotel. And you will be one of maybe
15 45 or 50 other people and the jury would be chosen from that
16 group. You can drive your car and park in the Hyatt garage.
17 And then if you are chosen as a juror, the SLED agents will
18 let you drive your car to the motel or whatever you prefer.
19 You can just take your clothes from your car to that place.
20 Okay. And, otherwise, just call after six o'clock starting
21 tomorrow evening and we will leave a message for you at this
22 number as to when you need to report back.

23 JUROR NUMBER 194: Okay.

24 THE COURT: Thank you so much.

25 JUROR NUMBER 194: Thank you.

1 (Whereupon, Juror Number 194 was taken out of the
2 courtroom)

3 THE COURT: Douglas A. McCarthy.

4 (Whereupon, Juror Number 280 was brought into the
5 courtroom)

6 DOUGLAS A. MCCARTHY, #280, having been first duly
7 sworn, testified as follows:

8 THE COURT: Have a seat, Mr. McCarthy.

9 VOIR DIRE EXAMINATION BY THE COURT:

10 Q. You are Douglas A. McCarthy?

11 A. Douglas A. McCarthy, yes.

12 Q. Mr. McCarthy, this incident -- this case arises from an
13 incident in Greenville County on November the 1st, 1997,
14 when Ms. Irene Graves was killed at a Speedway on Laurens
15 Road. Mr. Owens has been convicted of that murder. And as
16 I explained, this is a two-part proceeding. Another jury
17 will sentence -- determine Mr. Owens' sentence or how he
18 will be sentenced.

19 There has been publicity regarding this case on TV,
20 radio, and in the newspaper. Have you read, heard or seen
21 anything about this case from any source?

22 A. No, I have not.

23 Q. Do you understand that if you had, you would have to
24 disregard that?

25 A. Yes, sir.

1 Q. You could only decide it on what you heard in the
2 courtroom.

3 A. Yes, sir.

4 Q. Okay. Could you be a fair and an impartial juror and
5 reach a verdict in this case based on the facts presented at
6 trial and in accordance with the instructions and law?

7 A. Yes.

8 Q. You would?

9 A. Yes.

10 Q. You have filled out a questionnaire before coming today
11 and you have answered that truthfully in regards to that
12 questionnaire?

13 A. Yes.

14 Q. Okay. Have you formed any opinion about how Mr. Owens
15 should be sentenced in this case?

16 A. No.

17 Q. All right. In this case in the sentencing phase our
18 law requires that the State of South Carolina prove beyond a
19 reasonable doubt that this murder was committed during a
20 statutory aggravating circumstance.

21 In this case the State alleges that this murder was
22 committed during a robbery while the defendant was armed
23 with a deadly weapon, and/or that it was committed during a
24 larceny when the defendant possessed a deadly weapon.

25 The State has to prove those -- one of those two

1 things, or both, to a jury beyond a reasonable doubt before
2 the jury would reach the -- could determine the sentence of
3 the defendant. Do you understand that?

4 A. Yes.

5 Q. All right. Now, there is no burden of proof upon the
6 defendant in that regard, or any regard. He does not even
7 have to testify, and that could not be held against him
8 under the law. Do you understand those legal principles?

9 A. Yes, sir.

10 Q. All right, sir. And reaching the phase, the sentencing
11 phase, if the jury found unanimously that the State could
12 prove beyond a reasonable doubt that this murder was
13 committed during the commission of a statutory aggravating
14 circumstance, then the sentence -- or the two possible
15 sentences would be life in prison without the possibility of
16 parole until the death of the defendant. That would be one
17 of the sentences. Do you understand that?

18 A. Yes, sir.

19 Q. When you considered the aggravating and mitigating
20 circumstances, you would consider those, could you write a
21 sentence of life imprisonment?

22 A. Yes.

23 Q. The sentence of death would be the only other
24 alternative.

25 In considering the particular facts and circumstances

1 of this case, the aggravating circumstances and mitigating
2 circumstances, could you write a sentence of death?

3 A. I don't believe so.

4 Q. You could not?

5 A. I would have a very difficult time doing that.

6 Q. That's your personal feelings about the death penalty?

7 A. Yes.

8 Q. Okay. Did you indicate that on your questionnaire?

9 A. It was two months ago.

10 Q. You don't know?

11 A. I don't recall.

12 Q. That's fine.

13 And the jury, if the death sentence was determined,
14 would have to sign -- all twelve individuals would have to
15 sign their name to the death sentence. Could you do that?

16 A. I would have a very difficult time doing that.

17 Q. Under the law the court has to determine if your
18 personal feelings about the death penalty would prevent you
19 from substantially interfering with my instructions to you
20 in regard to writing a sentence in this case, would your
21 personal feelings about the death penalty prevent you or
22 substantially interfere with you writing one of those two
23 verdicts in this case?

24 A. That's a pretty difficult question. Could you repeat
25 it? Sorry.

1 Q. Well, my question is would your personal feelings about
2 the death penalty prevent you or substantially interfere
3 with you writing a sentence of either life imprisonment or
4 death?

5 A. I believe they would.

6 Q. All right. Let me let you step out just across the
7 hall just one moment.

8 A. Okay.

9 (Whereupon, Juror Number 280 was taken out of the
10 courtroom)

11 THE COURT: Mr. Godfrey, do you want to pursue
12 that a little more with this defendant?

13 MR. GODFREY: Judge, based upon the potential
14 juror's answers, we don't wish to pursue it.

15 THE COURT: I believe Mr. McCarthy is being
16 perfectly honest with the court. He has strong reservations
17 about indicating to me in any way that this would not
18 substantially affect his ability to write a verdict, or may
19 even prevent him from writing a verdict in this case.

20 Anything else you want to put on the record?

21 MR. ARIAIL: No, Your Honor.

22 THE COURT: Okay.

23 (Whereupon, Juror Number 280 was brought into the
24 courtroom)

25 THE COURT: Mr. McCarthy, I appreciate your honest

1 answers to these questions. There is nothing -- no problem
2 with that, because a lot of people may be opposed to the
3 death penalty and that's one of the reasons we are going
4 through the process.

5 If -- and I do not believe that asking you
6 numerous other questions or permitting the lawyers to go
7 into it. It appears to me that you would be prevented --
8 because of your personal feelings, you would be
9 substantially affected and may not be able to write a
10 sentence of death. So in reaching that conclusion, I'm
11 going to excuse you and just thank you so much for being a
12 part of our process.

13 JUROR NUMBER 280: Sure.

14 THE COURT: Thank you.

15 JUROR NUMBER 280: You are welcome.

16 (Whereupon, Juror Number 280 was taken out of the
17 courtroom)

18 THE COURT: Darla Carie.

19 (Whereupon, Juror Number 71 was brought into the
20 courtroom)

21 DARLA W. CARIE, #71, having been first duly sworn,
22 testified as follows:

23 VOIR DIRE EXAMINATION BY THE COURT:

24 Q. Ms. Carie, I'm going to ask you a few questions about
25 this incident which occurred on about November the 1st of

1 1997, in which Mrs. Irene Graves was murdered at a Speedway
2 on Laurens Road in Greenville. Mr. Owens has been convicted
3 of that by another jury. And the purpose of this jury is to
4 determine how we will sentence Mr. Owens. Do you understand
5 that?

6 A. Yes, sir.

7 Q. There has been some publicity regarding this case on TV
8 and radio and in the newspaper. Have you read, heard or
9 seen anything about this case?

10 A. Not recently, no.

11 Q. Do you know anything about this case at all?

12 A. No, I don't.

13 Q. In this case could you be a fair and impartial juror in
14 determining how he would be sentenced?

15 A. I'm not sure what you mean by that.

16 Q. Okay. This case is solely to determine how he would be
17 sentenced.

18 A. Uh-huh.

19 Q. The State -- and under our proceeding the State of
20 South Carolina must prove a statutory aggravating
21 circumstance when this murder was committed. The
22 allegations here are that this murder was committed during a
23 robbery while the defendant was armed with a deadly weapon
24 and/or it was committed during a larceny when the defendant
25 was armed with a deadly weapon.

1 If the State can prove a statutory aggravating
2 circumstance, then the jury determines the sentence that Mr.
3 Owens is to receive. That would be either life imprisonment
4 until the death of the defendant without the possibility of
5 parole, or the other sentence would be death by lethal
6 injection or electrocution.

7 Now, could you hear the evidence and testimony from the
8 State? The defendant does not have to prove anything, does
9 not even have to testify and it cannot be held against him
10 in any way.

11 Could you consider the evidence and testimony in regard
12 to the statutory aggravating circumstance and determine if
13 the State had proven it beyond a reasonable doubt? Could
14 you be fair and impartial?

15 A. Yes, sir.

16 Q. I'm not -- I cannot comment on the facts and I do not
17 know what the decision will be. It's got to be unanimous by
18 the jury, but if the jury determined the statutory
19 aggravating circumstance was proven, then you would
20 determine the sentence, either life imprisonment or death.

21 A. Yes, sir.

22 Q. Do you understand that?

23 A. Yes, sir.

24 Q. Okay. During the sentencing phase and reaching that
25 part in regard to life imprisonment or death, you would

1 consider aggravating circumstances.

2 Aggravating means that it increases the enormity of the
3 crime of murder, that it worsens the crime, aggravates it.

4 Mitigating circumstances are incidents or facts or
5 occurrences that reduces the severity of the offense of
6 murder.

7 You would consider extenuation, mitigation and
8 aggravating circumstances and determine whether or not Mr.
9 Owens is sentenced to life or death. Do you understand
10 that?

11 A. Yes, sir.

12 Q. Could you do that?

13 A. Yes, sir.

14 Q. Would you be fair and impartial?

15 A. Yes, sir.

16 Q. Be fair to the defendant and fair to the State? Would
17 you do that?

18 A. Yes, sir.

19 Q. Okay. Now, would you do that?

20 A. Yes.

21 Q. You have not formed any opinion as to how you should
22 decide this case?

23 A. No, sir.

24 Q. If it were concluded by the jury that death was the
25 sentence, each juror would be required to sign their name to

1 the death sentence. Could you do that?

2 A. I believe so.

3 Q. Well, I would ask you affirmatively again. If you --
4 I'm not saying again what you should find, but if you should
5 find life or if you should find death, could you sign your
6 name to that sentence?

7 A. Yes, sir.

8 Q. And depending upon your view of the particular facts
9 and circumstances of aggravation and mitigation, you could
10 write a life sentence and you could write a death sentence.
11 I think I have already asked you that. Is that your answer?

12 A. Yes, sir.

13 Q. From the three types of jurors on this sheet that I
14 gave you, what type juror would you classify yourself?

15 A. Number one.

16 Q. Number one?

17 A. Uh-huh.

18 Q. Do you feel that you would give the death penalty in
19 each and every case of murder?

20 A. A proven case, yes.

21 Q. I'm sorry?

22 A. A proven case, yes.

23 Q. You would do that no matter what the circumstances of
24 aggravation and mitigation would be?

25 A. That could have a bearing on it.

1 Q. Did you read all three of the types of jurors in that?

2 A. I did.

3 Q. You would be strongly -- would you -- you understand
4 that he's already been convicted of murder?

5 A. Correct.

6 Q. And your inclination from what you tell me under oath
7 is that you would give the death penalty as you sit there
8 now?

9 A. Based on the conviction, yes.

10 Q. Based on that conviction?

11 A. Right.

12 Q. Let me let you step across the hall just a minute.

13 (Whereupon, Juror Number 71 was taken out of the
14 courtroom)

15 THE COURT: Mr. Ariail, she says she's number one
16 and would give the death penalty in each and every case of
17 murder.

18 MR. ARIAIL: That's right. When you asked her
19 about this specific aggravating circumstances, she said that
20 would have a bearing on it. I think that the -- I would
21 like to pursue a little further questioning and make sure
22 she's not confused about what we are asking her.

23 THE COURT: Well, I believe that --

24 Mr. Godfrey, have you got anything that you would
25 to say about that?

1 MR. GODFREY: Well, may it please the court, this
2 is a lady who is a college graduate, but I think as far as
3 the aggravating circumstances the solicitor was talking
4 about, it's murder and armed robbery. And on the
5 questionnaire, her father was twice robbed at gunpoint. Her
6 sister was raped at gunpoint, and she has very clearly
7 advised the court that she is a number one type juror. I
8 think she's totally unqualified.

9 THE COURT: Based on her questionnaire and her
10 answer is type one, I think she's being truthful to the
11 court and I'm not going to qualify her.

12 (Whereupon, Juror Number 71 was brought into the
13 courtroom)

14 THE COURT: Ms. Carie, thank you so much for your
15 truthful answers, and based on your questionnaire and
16 truthfulness, nobody has any dispute with you. We thank you
17 for being honest with us, but I'm going to excuse you as a
18 juror. You don't have to come back.

19 JUROR NUMBER 71: Thank you.

20 THE COURT: Thank you.

21 (Whereupon, Juror Number 71 was taken out of the
22 courtroom)

23 THE COURT: Patricia C. Owen.

24 (Whereupon, Juror Number 318 was brought into the
25 courtroom)

1 PATRICIA C. OWEN, #318, having been first duly
2 sworn, testified as follows:

3 VOIR DIRE EXAMINATION BY THE COURT:

4 Q. Ms. Owen, this case arises from an incident that
5 occurred on November the 1st, 1997, on Laurens Road at a
6 Speedway where Ms. Irene Graves was murdered, or killed, and
7 Mr. Owens has been convicted of the murder for that, for Ms.
8 Graves.

9 Now, there has been publicity regarding the case on
10 television, radio and the newspapers. Have you read or
11 heard anything about this case?

12 A. Not this one, no.

13 Q. I'm sorry?

14 A. Not this particular one, no.

15 Q. Not this particular case?

16 A. No.

17 Q. Do you understand that you would have to disregard
18 anything that you may have heard or read? You said not this
19 one, but anything that you may have read or heard outside
20 this courtroom, could you do that, and decide it only on the
21 evidence and testimony that you hear in the courtroom?

22 A. Yeah, I think so.

23 Q. I'm sorry?

24 A. Yeah, I think so.

25 Q. Well, that would be the law. I would instruct you that

1 that's what you would have to do. Could you follow my
2 instructions and do that?

3 A. Yeah.

4 Q. Would you be a fair and an impartial juror and reach a
5 verdict based on the facts presented at the trial in
6 accordance with my instructions?

7 A. Yeah.

8 Q. Have you formed any opinion as to what the sentence of
9 this defendant should be? This is a proceeding to determine
10 how he will be sentenced for the murder.

11 A. No.

12 Q. Do you understand that?

13 A. Yeah.

14 Q. All right. Could you follow the legal principles I
15 would instruct you and go over with you and apply the facts
16 that you find them to be?

17 A. Yeah.

18 Q. Now, in the sentencing phase, and this is what we are
19 here about, the State alleges that this murder was committed
20 under the statutory circumstances of aggravation, and that's
21 the only way that the jury can determine the sentence of
22 life or death. The State must prove beyond a reasonable
23 doubt one, or both, of the alleged aggravating circumstances
24 and they must be proven beyond a reasonable doubt. They are
25 that this murder was committed during a robbery while the

1 defendant was armed or possessed a deadly weapon, or that it
2 was committed during a larceny when the defendant was in the
3 possession of a deadly weapon. The State would have to
4 prove one of these, at least, beyond a reasonable doubt
5 before the jury could sentence this defendant.

6 The defendant does not have to prove anything. He does
7 not even have to testify and that cannot be held against
8 him.

9 Could you sit as a juror, listen to the evidence and
10 testimony, be fair and impartial and determine whether or
11 not an aggravating circumstance existed beyond a reasonable
12 doubt?

13 A. Yes.

14 Q. Okay. If that were determined unanimously by the jury,
15 then the jury would determine his sentence. It could only
16 be life in prison without the possibility of parole until
17 the death of the defendant, or the sentence could be death
18 by electrocution or lethal injection. Do you understand
19 that?

20 A. Yes, sir.

21 Q. You, as a juror, would be instructed that you would
22 have to consider circumstances of aggravation and
23 mitigation. And aggravating circumstance is one that
24 accompanies a murder that increases the enormity of that
25 crime. It's an incident or occurrence which aggravates or

1 worsens the crime.

2 A mitigating circumstance is one that reduces the
3 severity of the offense of murder.

4 Could you consider any evidence in aggravation and
5 mitigation in determining the sentence of this defendant?

6 A. Yes.

7 Q. On your particular view of the facts and circumstances
8 could you write a sentence for life imprisonment for this
9 defendant?

10 A. I think.

11 Q. Why do you say that you think you could --

12 A. Well, I mean --

13 Q. -- on your particular view of the facts and
14 circumstances?

15 A. Well, nobody wants to see anybody die. I mean, that's
16 the way I look at it.

17 Q. Okay.

18 A. I mean, if he done wrong, he needs to be punished,
19 but -- you know.

20 Q. So -- well, the question is, could you, depending upon
21 on the particular facts and circumstances, in aggravation or
22 mitigation, could you write either a life sentence or a
23 death sentence?

24 A. Yeah, I think I could.

25 Q. If it were determined that the sentence would be death,

1 then all twelve jurors would have to sign that verdict.

2 Could you do that?

3 A. Well, I mean, if it was determined that, you know, what
4 he did, you know, was, you know, deserved it, yeah.

5 Q. Now, in reading this sheet of which type juror that we
6 consider three types of jurors, which type juror do you
7 consider yourself?

8 A. Which type?

9 Q. Uh-huh, of these three.

10 A. I would say the first one, because I do believe in the
11 death penalty.

12 Q. Well, the question is not whether you believe in the
13 death penalty or not, if you didn't or you did. The
14 question is could you write either a sentence of life in
15 prison or death?

16 A. I don't understand what you mean by that. I mean --

17 Q. Well, you would hear the evidence and testimony in the
18 case.

19 A. Yes.

20 Q. You would have to focus on the circumstances of the
21 crime.

22 A. Yeah.

23 Q. And you would have to consider the individual
24 characteristics of the defendant.

25 A. Uh-huh.

1 Q. And in focusing on those two things, this murder and
2 characteristics of the defendant, then you would consider
3 aggravating circumstances and mitigation circumstances. You
4 would consider those. And considering all of that evidence,
5 the jury would then determine whether or not the sentence
6 would be death or life.

7 A. Uh-huh.

8 Q. So the question is, based on your consideration, fair
9 consideration of the evidence, extenuation -- the
10 extenuation and mitigation or aggravation evidence, could
11 you write a sentence of life in prison?

12 A. I guess, yeah.

13 Q. Is it your feeling that every murder, the penalty
14 deserves death?

15 A. Not every murder, no. Not every --

16 Q. Not every one --

17 A. No.

18 Q. -- deserves death?

19 A. No, some of them that are brutal, yeah, but just some
20 that are accidentally, then no.

21 Q. In other words, murder was defined legally as not being
22 accidental.

23 A. Well, you know, there is such a thing as like overkill.
24 That's the way I look at it, murder.

25 Q. All right. I'm going to let these lawyers ask you some

1 questions. Answer them just as honestly and truthfully and
2 listen to their questions.

3 VOIR DIRE EXAMINATION BY MR. GIBSON:

4 Q. Good afternoon Ms. Owen.

5 A. Yes.

6 Q. I'm Ken Gibson. This is my co-counsel Bill Godfrey,
7 and this is our client Freddie Owens.

8 I just want to ask you a few questions regarding some
9 things that are relative as to whether or not you would be
10 qualified as a juror.

11 Judge Patterson just finished asking you a bunch of
12 questions and I believe one of your responses was that if it
13 was accidental, you didn't think the death penalty should be
14 imposed?

15 A. Uh-huh.

16 Q. If someone were convicted of an intentional
17 premeditated murder, do you think under those circumstances
18 you could issue a sentence of life without the possibility
19 of parole?

20 MR. ARIAIL: Objection, Your Honor.

21 THE COURT: All right.

22 MR. ARIAIL: He's asking a question to stake out
23 the juror on specific evidence.

24 MR. GIBSON: No, Your Honor.

25 THE COURT: I overrule the objection. Answer the

1 question.

2 MR. GIBSON: Thank you.

3 BY MR. GIBSON:

4 Q. If someone were convicted of committing an intentional
5 premeditated murder, do you think that you could give a
6 sentence of life without the possibility of parole?

7 MR. ARIAIL: I'm going to object on that, because
8 premeditation does not have anything to do with murder.

9 THE COURT: Okay.

10 MR. GIBSON: I'll strike premeditation, if that
11 will make you feel better.

12 May I rephrase, Your Honor, then you can consider
13 it. I'll take out the premeditated, because my concern is
14 that if someone was --

15 THE COURT: Mr. Owens has been convicted of
16 murder.

17 MR. GIBSON: Yes, Your Honor.

18 THE COURT: And she has not heard anything in
19 aggravation or mitigation. There is no question he has been
20 convicted of murder and she knows that, so you can ask the
21 question. Go ahead.

22 MR. GIBSON: Can I ask --

23 BY MR. GIBSON:

24 Q. If the murder in the case was not accidental, but was
25 intentional, could you under those circumstances render a

1 sentence of life without parole as opposed to the death
2 penalty?

3 A. No, because if he done it intentionally, you know,
4 that's -- that's wrong. You don't -- no.

5 Q. Okay. And you read that, the three types of jurors
6 that are on that list, is that correct?

7 A. Yeah.

8 Q. And based on your reading of that list, you believe
9 that you are a number one type juror, is that not correct?

10 A. If it's -- if it's on purpose, yes.

11 Q. Okay.

12 A. If he done it on purpose, then yes.

13 Q. Okay. All right.

14 MR. GIBSON: May I have just a second, please?

15 (Off the record)

16 (Back on the record)

17 BY MR. GIBSON:

18 Q. All right. Well, let me ask you this. If -- given
19 that as your opinion, if the judge ordered you to follow
20 instructions which basically said under those circumstances
21 you must still consider life without the possibility of
22 parole as a sentence, could you follow those instructions?

23 A. Even though I know that he went in there in the state
24 of mind that he was deliberately going to kill?

25 Q. Yes, ma'am.

1 A. Then --

2 Q. Could you still give a sentence of life without the
3 possibility of parole?

4 A. I don't think so.

5 Q. Okay.

6 MR. GIBSON: Thank you.

7 A. Uh-huh.

8 VOIR DIRE EXAMINATION BY MR. ARIAIL:

9 Q. Ms. Owen, my name is Bob Ariail. I'm the solicitor.
10 That's the prosecutor, district attorney.

11 I want to make sure that you understand what we are
12 asking you. Normally in a criminal case, when a defendant
13 is convicted, the judge sentences.

14 A. Uh-huh.

15 Q. It's only when the State asks for the death penalty
16 that the law says that the jury is the sentencing authority,
17 not the judge. All right?

18 A. Uh-huh.

19 Q. Do you understand that?

20 A. Yes.

21 Q. So this is a unique situation. This only applies to
22 death penalty.

23 A. Uh-huh.

24 Q. So, therefore, what we are looking for are people who
25 can sit on the jury who can act as a judge and be

1 fair-minded in sentencing, okay?

2 A. Uh-huh.

3 Q. Just like if any other case the judge has to be
4 fair-minded in sentencing, in a death penalty case jurors
5 have to be fair-minded to qualify. And to be fair-minded,
6 they have two verdicts, so they have to be able to fairly
7 consider both potential sentences. There are two. All
8 right?

9 A. Uh-huh.

10 Q. They can't just because of the fact that somebody
11 committed murder say that's automatic death or that's
12 automatic life. They have to be able to consider both. So
13 that's what we are trying to get to is to whether or not you
14 could sit on this jury and listen to all of the evidence
15 that comes in, both evidence in aggravation, which it tends
16 to make the crime worse, or evidence in mitigation, which
17 tends to make the crime less egregious or less horrible, and
18 to sit there and consider that fairly, knowing what your two
19 decisions are and not already have a bias.

20 Now, would you already have a bias, or could you sit
21 and listen to that evidence and fairly consider it, and if
22 the evidence was such that you felt life imprisonment was
23 the appropriate sentence, you could vote to impose life
24 imprisonment after hearing all of the evidence and fairly
25 considering it?

1 A. I think I could.

2 Q. You think you could be fair-minded?

3 A. Yeah.

4 Q. Okay. Now, you told the judge that you thought because
5 a murder had been committed, you would be in category one;
6 therefore, somebody thinks that the crime should be punished
7 more with the death penalty.

8 After understanding what we are asking you to do, which
9 type of juror do you think that you are are, one, two, or
10 three? Do you remember the others?

11 A. Yeah. I would still say one.

12 Q. Still say one?

13 A. Yes.

14 Q. Okay. Thank you.

15 THE COURT: I'm going to ask you to step outside.

16 (Whereupon, Juror Number 318 was taken out of the
17 courtroom)

18 THE COURT: I do not believe she's qualified.

19 MR. ARIAIL: Not qualified.

20 THE COURT: Ask her to come back in.

21 (Whereupon, Juror Number 318 was brought back into
22 the courtroom)

23 THE COURT: Thank you so much for your honest
24 answers. We have had honest answers from this whole panel
25 and I appreciate that, and I believe that your feelings

1 about the death penalty would prevent you or substantially
2 affect you in reaching either one of the two verdicts, so
3 I'm going to excuse you from the case. Thank you so much.

4 (Whereupon, Juror Number 318 was taken out of the
5 courtroom)

6 THE COURT: Do y'all need five minutes?

7 MR. GODFREY: Yes.

8 THE COURT: We will take a five minute recess.

9 MR. ARIAIL: Your Honor, could we, either when we
10 come back, give me a minute, I have got a couple of issues I
11 would like to raise when we get back?

12 THE COURT: Okay.

13 (Whereupon, proceedings were recessed)

14 (Whereupon, proceedings were reconvened)

15 THE COURT: Let me just say the reason I permitted
16 that question is because that's just the definition pretty
17 much of murder. I didn't let it go to the facts. He has
18 been convicted of murder, which was not accidental. He
19 couldn't have been convicted of murder if it was not
20 intentional.

21 MR. ARIAIL: I didn't object to the intentional.

22 THE COURT: No, I meant he just asked him --

23 MR. ARIAIL: He asked premeditated. I objected to
24 that.

25 THE COURT: Premeditated.

1 MR. ARIAIL: Premeditated is not the definition of
2 murder.

3 THE COURT: He agreed with that. Oh, I'm sorry.

4 MR. ARIAIL: I'm good with that, if that becomes
5 an issue.

6 THE COURT: Okay.

7 (Whereupon, proceedings were recessed)

8 (Whereupon, proceedings were reconvened)

9 THE COURT: All right, Mr. Ariail, do you have
10 something?

11 MR. ARIAIL: No, sir. No, sir, we have cleared
12 them up. Got them.

13 THE COURT: Bring the whole panel in.

14 (Whereupon, Jury Panel Number 2 was brought into
15 the courtroom)

16 THE COURT: Ladies and gentlemen, this is panel
17 number two, and I would make sure that we have the right
18 people.

19 Daniel D. Poulton. All right, sir.

20 Kathryn J. Woods. Okay.

21 Ivory J. Taylor.

22 Scottie D. Shockley.

23 Robert Meek.

24 And Margaret Payne.

25 Very good.

1 Ladies and gentlemen, y'all are under oath and it
2 will extend throughout these questions, and we will put you
3 under oath when we ask you some individual questions. There
4 are no right or wrong answers, just straightforward, honest
5 answers in this case.

6 I want you to understand that I have no feeling
7 about the facts of this case or anything of that nature.
8 I'm just going to cover legal principles with you. The jury
9 is the one that determines the facts of the case.

10 This is a case where we are in a sentencing
11 proceeding. Under our law, when the State seeks the death
12 penalty, there are two proceedings; one to determine guilt
13 or innocence, and one by a jury to determine the sentencing
14 of a defendant.

15 In this particular case the defendant has been
16 convicted of murder of Irene Graves on November the 1st,
17 1997. And the purpose of this proceeding is to select a
18 jury to determine how he will be sentenced.

19 Now, the burden of proof is on the State to prove
20 a statutory aggravating circumstance beyond a reasonable
21 doubt in this case. The defendant does not have to prove
22 anything. He does not even have to testify. None of that
23 can be held against him. Do all of you understand that
24 principle?

25 (All jurors shaking head affirmatively)

1 THE COURT: Now, in this proceeding, if the jury
2 finds beyond a reasonable doubt that the State has proven a
3 statutory aggravating circumstance, then the jury would
4 determine the sentence of the defendant, and this court
5 would determine that sentence, and there would only be two
6 possible sentences; that is life in prison without any
7 possibility of parole until the death of a defendant, or
8 death by lethal injection or electrocution.

9 At that point the jury would hear evidence in
10 extenuation, mitigation or aggravation of the crime. The
11 jury would have to consider, based on my instructions,
12 mitigating circumstances or aggravating circumstances.

13 An aggravating circumstance is a fact, an incident
14 or an occurrence which aggravates or worsens the crime of
15 murder. Aggravating circumstances increases the enormity of
16 the offense.

17 A mitigating circumstance reduces the severity of
18 the offense of murder and it may be considered as
19 extenuating or reducing the degree of responsibility or
20 fault.

21 The jury would be called upon to consider
22 aggravating circumstances and mitigating circumstances and
23 determine the sentence of the defendant.

24 Do all of you have understand that concept?

25 (All jurors shaking head in the affirmative)

1 THE COURT: They all indicate they do.

2 All right. Now, the attorneys in this case are
3 Mr. Ariail, who represents the State of South Carolina, the
4 solicitor in Greenville and Pickens counties, Ms. Strom and
5 Ms. Verdin.

6 The attorneys for the defense are Mr. Godfrey and
7 Mr. Gibson.

8 Do any of you know these lawyers in this case?

9 (All jurors shaking head in the negative)

10 THE COURT: This is Mr. Freddie Eugene Owens. Do
11 any of you know Mr. Owens?

12 (No response)

13 THE COURT: Are any of you friends or relatives
14 with anyone who works in the office of the circuit
15 solicitor?

16 (No response)

17 THE COURT: Ladies and gentlemen, you were given a
18 list of potential witnesses and you have reviewed that list.
19 Do any of you know any of those possible witnesses that may
20 not be called, but do you know anyone on that list?

21 (All jurors shaking head in the negative)

22 THE COURT: They all indicate that they do not.

23 I would ask you to review the three types of
24 jurors, the exhibit that I gave you that you have in the
25 other jury room with you. When you come in individually, we

1 are going to ask you which type juror that you feel that you
2 may be.

3 I'm going to let you step back over to the other
4 room and then we will bring you back in for individual
5 questioning.

6 We are going to start with Mr. Poulton. How do
7 you pronounce your name?

8 JUROR NUMBER 332: Poulton.

9 THE COURT: Poulton, I'm sorry.

10 JUROR NUMBER 332: That's fine.

11 THE COURT: We will start with Mr. Poulton and
12 then we will go down the list in order.

13 Mr. Poulton, you can just stay with us.

14 (Whereupon, Jury Panel Number 2 was taken out of
15 the courtroom)

16 DANIEL D. POULTON, #332, having been first duly
17 sworn, testified as follows:

18 VOIR DIRE EXAMINATION BY THE COURT:

19 Q. Mr. Poulton, this case arises from an incident on the
20 1st of November, 1997, where Ms. Irene Graves was killed and
21 Mr. Owens has been convicted of murder for that.

22 Do you know anything about this case or have you heard
23 anything about this case?

24 A. No, sir.

25 Q. This case was -- there was publicity on TV, radio and

1 in the newspaper. You have not seen or heard or read
2 anything about that?

3 A. No, sir.

4 Q. Okay, sir.

5 In my explanation to you during the day about what this
6 proceeding is about, a sentencing proceeding, could you
7 serve as a fair and an impartial juror and reach a verdict
8 based on the facts presented at the trial with instructions
9 from the court?

10 A. I could.

11 Q. Have you formed any opinion as to what the sentence
12 should be for Mr. Owens in this case?

13 A. No, sir.

14 Q. In this case you would be referred to evidence in
15 aggravation and mitigation, if we reach that point, if the
16 State has proven robbery and/or larceny that was committed
17 during this murder when the defendant was possessed with a
18 deadly weapon. They must prove that beyond a reasonable
19 doubt before we reach that point. But if we reach that
20 point, could you fairly give serious and meaningful
21 consideration to aggravation evidence and mitigation
22 evidence and honor your oath and consider all those factors
23 and all that evidence and testimony and write a fair and
24 impartial verdict?

25 A. I could, yes.

1 Q. Depending on the particular facts and circumstances of
2 the case, including circumstances of aggravation and
3 mitigation and the law that I would instruct you, could you
4 return a verdict of life imprisonment?

5 A. I could.

6 Q. If you were a juror, depending on the particular facts
7 and circumstances in aggravation and mitigation evidence and
8 the law that I gave you, could you return a verdict of
9 death?

10 A. Yes, sir.

11 Q. In the event of a death sentence, the South Carolina
12 law requires that each individual juror sign your name to
13 the death sentence, if that is the case. In that event
14 could you sign your name to a death sentence verdict?

15 A. Yes, sir.

16 Q. From the three types of jurors that I gave you, what
17 type juror would you consider yourself?

18 A. I can be the third one. I could be the first one too.
19 I'm trying to -- I'm open minded enough not to -- do you
20 understand what I'm trying to say? I'm -- you know.

21 Q. All right. Now, the murder has already been decided by
22 another jury.

23 A. That's right.

24 Q. That is not a consideration for you.

25 You would receive instructions from the court in regard

1 to circumstances of aggravation and mitigation. Could you
2 write a verdict of life imprisonment?

3 A. I could.

4 Q. Okay. Would you honor your oath and serve as a fair
5 and an impartial juror? Would you approach your jury
6 service with an open mind in search for the truth of this
7 case and apply the law, based on evidence?

8 A. Yes, sir.

9 Q. Do you know of any reason why you should not serve as a
10 juror?

11 A. Persons, that wouldn't pertain to this, I guess.

12 Q. You are right, but you answered the questionnaire and
13 you answered all those questions truthfully?

14 A. Yes, sir.

15 Q. All right. I'm going to let these attorneys ask you
16 some questions, sir. Just answer them.

17 VOIR DIRE EXAMINATION BY MR. ARIAIL:

18 Q. Mr. Poulton, my name is Bob Ariail and I'm the
19 solicitor for the 13th Circuit, which is composed of
20 Greenville and Pickens Counties. The solicitor is -- well,
21 they refer to them now on TV as the district attorney.
22 South Carolina still calls them the solicitor, but our role
23 in this case would be to represent the State in bringing the
24 case to the jury and prosecuting the case and seeking the
25 death penalty. We have asked the court to allow the jury to

1 consider that. So you understand what our role would be?

2 A. Yes, sir.

3 Q. Assisting me in this case would be my deputy Betty
4 Strom and then Ms. Verdin, one of my assistants seated at
5 counsel table.

6 The judge explained to you that the defendant has
7 already been found guilty and we move to a second stage of a
8 death penalty case.

9 The State is not allowed to seek the death penalty in
10 just every or any murder case. I want to make sure that you
11 understand that. Not only -- not any murder case. The
12 legislature of this state has said the State can seek the
13 death penalty only in those cases where there is a murder
14 accompanied by an aggravating circumstance, and the
15 legislature has defined those aggravating circumstances.
16 They have listed them out in the law. You can turn in the
17 section and you can see them. There are about 16 or 19 of
18 them, such things as murder of a police officer during the
19 line of duty; murder or more than two people; those sorts of
20 things. And that's what the judge is talking about when you
21 are sitting on the jury in the penalty phase. The State has
22 to bring you now only the fact the defendant has been
23 convicted of murder, but also that murder occurred during
24 one of those aggravating circumstances, or was accompanied
25 by one of those aggravating circumstances.

1 It's not the aggravating circumstance that tells you
2 you got to impose the death penalty or you don't have to
3 impose the death penalty. That is just the trigger to allow
4 the jury to consider what sentence is appropriate. You can
5 still return a verdict of life imprisonment, even though you
6 find that aggravating circumstance. Do you understand that?

7 A. Yes, sir.

8 Q. All right. So after the jury begins deliberation,
9 assume that you find the aggravating circumstance, then you
10 would hear evidence, additional evidence on behalf of the
11 State, and you may hear evidence on behalf of the defendant.
12 You may not. That's his choice and he has no obligation to
13 come forward. But whatever evidence that you hear, you
14 would then retire to the jury room and consider what is the
15 proper punishment of the two under this evidence that's been
16 presented to me for this crime. All right?

17 A. Yes, sir.

18 Q. Part of that evidence would be the circumstances of the
19 crime, which you will have some information about.

20 Do you believe in that hypothetical sort of situation
21 you would be able to say consider it and impose a life
22 sentence, if you thought that was appropriate, and also
23 consider and impose the death sentence, if you thought the
24 evidence was appropriate?

25 A. Yes, sir.

1 Q. Either one?

2 A. Yes.

3 Q. So you wouldn't have your mind made up when you went
4 back in the jury room or you wouldn't have mind your mind up
5 now just because of the fact the defendant has been
6 convicted of murder?

7 A. Now once it's over with, I would make the decision.

8 Q. You are one of those jurors listed as number three.
9 You would want to hear it all and make your decision based
10 on that evidence?

11 A. Yes.

12 Q. Do you believe that the death sentence or capital
13 punishment is a legitimate and appropriate punishment under
14 the law of our country in certain circumstances?

15 A. Yes, sir, I do.

16 Q. So there is nothing philosophically, or religiously, or
17 moral, or ethical that you have that would prevent you from
18 imposing the death penalty, if you felt the facts and
19 circumstances were appropriate for that punishment?

20 A. No, sir.

21 Q. You could do that?

22 A. Oh, yes, sir.

23 Q. And the judge asked you also if you would be able to
24 sign the form at the end of the case. The jury, all twelve
25 of you, your fellow jurors, determined that the death

1 sentence was the appropriate sentence, you would have to
2 sign a form and bring back to the court, which would be
3 forwarded on to the Department of Corrections to carry out
4 the sentence. Would you have any hesitancy about signing
5 that form, if that was your verdict?

6 A. If I make the decision, I'll sign the form.

7 Q. The physical act of signing, that is not going to
8 intimidate you?

9 A. No, sir.

10 Q. Okay. Thank you, Mr. Poulton.

11 A. Yes, sir.

12 THE COURT: Mr. Poulton, let me ask you a couple
13 more questions before the defense lawyers do that and I
14 meant to ask you these before.

15 In regard to a sentence in this case, the jury,
16 the sentencing authority, is required to focus on the
17 specific circumstances of this crime and the individual
18 characteristics of the defendant.

19 Now, if any evidence were to come in about other
20 bad acts or crimes, and I'm not commenting on what facts or
21 may come out, but if any other evidence came out in regard
22 to crimes or bad acts, I would instruct you that that could
23 only be considered as evidence as it applied to the
24 character of the defendant. You could not consider that in
25 any way as evidence of the statutory aggravating

1 circumstance. Do you understand that, sir?

2 THE WITNESS: Yes, sir.

3 THE COURT: Do you understand what the focus has
4 to be and you would consider circumstances of aggravation
5 and mitigation?

6 THE WITNESS: Yes, sir.

7 THE COURT: Now, I don't know what the evidence
8 may be, but I need to ask you this question. It may come
9 out, and it may not, but if a victim or another person -- if
10 the defendant was black and another person were white, would
11 race have any effect on your decision?

12 THE WITNESS: No, sir.

13 THE COURT: I don't know what religious faith or
14 whatever, or what you may think about religion, but would
15 any religious teachings or beliefs, would that affect your
16 decision in any way?

17 THE WITNESS: No, sir.

18 THE COURT: If any evidence came out in regard to
19 a person's religion or faith - Islamic, or Muslim, or
20 Catholic, or anything - would that affect your ability in --

21 THE WITNESS: No, sir.

22 THE COURT: -- your decision?

23 THE WITNESS: No, sir.

24 THE COURT: All right.

25 MR. GODFREY: If it please the court.

1 VOIR DIRE EXAMINATION BY MR. GODFREY:

2 Q. Good afternoon, Mr. Poulton.

3 A. Good afternoon.

4 Q. My name is Bill Godfrey. This is Ken Gibson, and this
5 is our client Freddie Owens.

6 Mr. Poulton, you believe that you could be a fair and
7 impartial juror in this case?

8 A. Yes, sir.

9 Q. I believe when you were answering the questions of the
10 judge, you said that you could be both a number one juror
11 and a number three juror, is that correct?

12 A. Yes, sir, I said that.

13 Q. Does that mean that you believe that the death penalty
14 is an appropriate sentence?

15 A. Yes, sir, I do.

16 Q. Does that mean that you believe that it's an
17 appropriate sentence in cases of murder?

18 A. In some cases, yes, sir.

19 Q. Would you be able to listen to the judge and apply the
20 law as he gives it to you and then relate the law that he
21 gives to you to the facts that you hear from both the State
22 and from the defense in order to render your decision?

23 A. Yes, sir.

24 Q. Would you have any hesitation or any qualms at all,
25 whether it be religious, moral, or for some other reason, if

1 the evidence showed you that it should be a life sentence,
2 would you be able to vote for life?

3 A. Yes, sir.

4 Q. You have no hesitation about that?

5 A. No, sir.

6 Q. Do you have any relatives or friends who presently work
7 in this courthouse or used to work in this courthouse?

8 A. I have a friend that's a deputy in this courthouse.

9 Q. He's a deputy in the courthouse?

10 A. Yes, sir.

11 Q. Have you had any conversations or do you know anything
12 about this case through that deputy?

13 A. I have had conversations with him, but not about that,
14 though. I saw him leaving. I said hello and that was it.

15 Q. Do you have any relatives or friends that presently
16 work or have worked for either the sheriff's department or
17 for the Greenville County detention center?

18 A. I have an acquaintance -- I own a pawn shop for -- I
19 have acquaintance with the sheriff's department. I deal
20 with them on a regular basis.

21 Q. Would you wait until you have heard all the evidence in
22 the case, both from the State and from the defense, and wait
23 until the judge tells you to consider what the verdict
24 should be before you consider what the verdict should be?

25 A. Yes, I would not prejudge. I will wait until the end

1 of it.

2 Q. Do you believe that you can fairly weigh the
3 information?

4 A. Yes, sir.

5 Q. Are you inclined to the death penalty?

6 A. I believe in the death penalty. I -- I -- I believe
7 it's -- I believe it's necessary.

8 Q. But you also believe that you could be fair and
9 impartial and listen to the evidence and render a verdict
10 that's required by the evidence?

11 A. Yes, sir, I believe it's -- it's necessary when if it's
12 proved it's necessary. I'm not going to just say everything
13 that killed somebody should get the death penalty. There is
14 circumstances around everything.

15 Q. And so you will keep an open mind throughout the case?

16 A. Yes, sir.

17 THE COURT: Mr. Poulton, just to emphasize the
18 fact that under our law, the law is that every murder, just
19 because it's murder, the State cannot seek the death
20 penalty. Do you understand that?

21 THE WITNESS: Yes, sir.

22 THE COURT: Only upon the statutory aggravating
23 circumstances. Okay.

24 Step outside just for a minute. Go in the other
25 jury room.

1 (Whereupon, Juror Number 332 was taken out of the
2 courtroom)

3 THE COURT: I believe he will have to be
4 qualified.

5 MR. ARIAIL: He's qualified.

6 THE COURT: All right, sir.

7 (Whereupon, Juror Number 332 was brought back into
8 the courtroom)

9 THE COURT: Mr. Owen -- I mean Mr. Poulton, you
10 are qualified as a juror in this case. That means that you
11 will have to report back to the court. But if you would
12 call this number that I'm going to give you after six
13 o'clock tomorrow night, we will leave word that you need to
14 come back. You will come back with 45 or 50 other people,
15 and the jury would be selected from those people. You
16 should bring in your car some clothes for about five days in
17 the motel.

18 JUROR NUMBER 332: Do you know when this will be?

19 THE COURT: No, I can't tell you. Hopefully
20 sometime Wednesday.

21 JUROR NUMBER 332: I have got a house closing
22 Wednesday night. I'll have to change that.

23 THE COURT: Wednesday night.

24 JUROR NUMBER 332: Seven o'clock.

25 THE COURT: At seven o'clock?

1 JUROR NUMBER 332: Yes.

2 THE COURT: You probably will be able to make
3 that. Don't cancel that right now.

4 JUROR NUMBER 332: Okay.

5 THE COURT: And -- well, I can't promise you that.
6 I don't know. That would be up in the air. Okay.

7 But you call after six o'clock tomorrow night and
8 we will leave instructions for you. If you are selected as
9 a juror, you can just have your clothes in your car and
10 drive your car to the motel.

11 JUROR NUMBER 332: Okay.

12 THE COURT: Okay. I'm going to give you this
13 order to follow and be sure and read it. Okay?

14 JUROR NUMBER 332: Yes, sir. Thank you.

15 (Whereupon, Juror Number 332 was taken out of the
16 courtroom)

17 THE COURT: I'm not sure that we can reach the six
18 o'clock panel tonight. I don't want to push y'all too hard.

19 MS. STROM: Thank you.

20 THE COURT: Sorry?

21 MS. STROM: Thank you. We thank you.

22 THE COURT: We may call the six o'clock panel and
23 just have them come in at nine o'clock in the morning.
24 Let's do that.

25 Kathryn J. Woods.

1 (Whereupon, Juror Number 441 was brought into the
2 courtroom)

3 KATHRYN J. WOODS, #441, having been first duly
4 sworn, testified as follows:

5 VOIR DIRE EXAMINATION BY THE COURT:

6 Q. You are Kathryn Woods?

7 A. Yes, sir.

8 Q. Is that -- you go by that?

9 A. Kathy.

10 Q. Kathy. I'll call you Ms. Woods.

11 A. That's all right.

12 Q. I just didn't know.

13 Ms. Woods, this case arises from an incident which
14 occurred in Greenville County, on Laurens Road, on or
15 about -- on November the 1st of 1997, where Irene Graves was
16 killed, and Mr. Owens has been convicted of murder for that.
17 Do you understand that?

18 A. Yes, sir.

19 Q. Now, this case received publicity in the newspaper and
20 on the radio and television. Have you read, heard or seen
21 anything about that case?

22 A. Not that I can remember.

23 Q. Okay. Now, could you serve in this case, which is, and
24 I have explained that to some extent, the sentencing phase.
25 This jury is to determine how Mr. Owens will be sentenced.

1 Do you understand that?

2 A. Yes, sir.

3 Q. Could you be a fair and an impartial juror and reach a
4 verdict, based on the facts presented in this trial, based
5 on my instructions of law?

6 A. I believe so.

7 Q. Have you formed any opinion as to what the sentence
8 should be of this defendant?

9 A. No, sir.

10 Q. Okay. Did you read the three types of jurors that I
11 gave you?

12 A. Yes.

13 Q. Which classification would you fall into?

14 A. I would say number three.

15 Q. You would fall into number 3.

16 Okay. Now, you filled out a form or a questionnaire
17 and submitted it to the court and all those answers you gave
18 us were truthful?

19 A. Yes, sir.

20 Q. Now, in this case the State of South Carolina seeks the
21 death penalty. Under our law every murder -- the State
22 cannot seek a death penalty for every murder that we have.

23 A. Okay.

24 Q. The State has to prove to you, to a jury, beyond a
25 reasonable doubt an aggravating circumstance, a statutory

1 aggravating circumstance, one that the legislature had said
2 has got to be one of these, or more, before the jury can
3 even consider the death penalty or life imprisonment. Do
4 you understand that?

5 A. Yes, sir.

6 Q. Even though there is a statutory aggravating
7 circumstance, as the jury they could still write a sentence
8 of life imprisonment, depending on what you heard in the
9 courtroom. Do you understand that?

10 A. Yes, sir.

11 Q. Okay. Now, an aggravating circumstance is a fact or an
12 incident or an occurrence which aggravates or worsens the
13 crimes. It increases the enormity of the crime or adds to
14 it. Do you understand that?

15 A. Yes.

16 Q. A mitigating circumstance is one which reduces the
17 severity of the offense of murder. It may be considered as
18 extenuating or reducing the degree of responsibility or
19 fault. Do you understand that?

20 A. Okay.

21 Q. If you reached that stage and determined the sentence
22 of the defendant, could you consider the evidence in
23 aggravation and the evidence in mitigation and write a
24 sentence of life imprisonment?

25 A. Yes.

1 Q. Could you consider the particular facts and
2 circumstances in aggravation and mitigation and write a
3 sentence of death?

4 A. Yes.

5 Q. Life in prison would mean life until the death of the
6 defendant without the possibility of parole. Do you
7 understand that?

8 A. Yes, sir.

9 Q. Death would be death by lethal injection or
10 electrocution. Do you understand that?

11 A. (Shaking head yes)

12 Q. If the jury were to reach the point where it was
13 determined that a death sentence should be rendered as the
14 verdict, and I'm not indicating -- I have no feelings about
15 the facts, and I would not, or the verdict. Do you
16 understand that?

17 A. Yes, sir.

18 Q. If you reach that point, the law requires that each
19 juror sign their name to the sentence of verdict for death.
20 Do you understand that?

21 A. Yes, sir.

22 Q. Could you do that if that circumstance arose?

23 A. Yes, sir.

24 Q. Okay. Do you -- you would honor your oath and you
25 would serve as a fair and impartial juror?

1 A. I would do my best.

2 Q. Okay. I'm going to let these attorneys ask you a few
3 questions.

4 THE COURT: Mr. Gibson.

5 MR. GIBSON: Your Honor --

6 THE COURT: Oh, I'm sorry, I need to ask those
7 other questions.

8 MR. GIBSON: Yes, sir.

9 BY THE COURT:

10 Q. Let me ask you other questions now.

11 The sentencing authority under our law, and the
12 sentencing authority in this case would be the jury, is
13 required to focus on the circumstances, the specific
14 circumstances, of this murder and any individual
15 characteristics of the defendant in sentence determination,
16 as well as evidence which you would be presented in
17 extenuation, mitigation, or aggravation.

18 If -- and I don't know how any evidence may come out,
19 or what the facts may be, if there was evidence of other bad
20 acts or crimes, I would instruct the jury that they could
21 only consider that evidence as it would bear on the
22 defendant's character and not in any way as evidence of a
23 statutory aggravating circumstance.

24 A. Okay.

25 Q. Could you follow that instruction?

1 A. Yes, sir.

2 Q. Now, I do not know what evidence may come out, but if
3 the defendant were black and another party or person were
4 white, would race make any difference in your decision?

5 A. No, sir.

6 Q. Okay. I don't know what your religious training is, or
7 has been, and I don't want to inquire into anything
8 personal, but would religion or anything that you have
9 learned in your faith affect your ability to write a
10 decision in this case?

11 A. No.

12 Q. If it were to come out that any person were Muslim, or
13 Islamic, or anything of that nature, would that affect or
14 have any bearing on your decision?

15 A. No, sir.

16 THE COURT: All right.

17 MR. GIBSON: Thank you Your Honor.

18 VOIR DIRE EXAMINATION BY MR. GIBSON:

19 Q. Good afternoon.

20 A. Hi.

21 Q. I'm Ken Gibson. This is Bill Godfrey. He's my
22 co-counsel, and this is our client Freddie Owens.

23 I just want to ask you a few questions to try to
24 clarify some things.

25 Now, the judge explained some things to you, but I just

1 want to make sure you absolutely understand certain aspects
2 of this case.

3 Now, in this particular case the only thing that we are
4 going to be dealing with is the quote, unquote, sentencing
5 phase.

6 A. Yes.

7 Q. Mr. Owens has already been convicted of murder in this
8 case, and the only thing the jury is going to have to decide
9 is whether or not you should give him life without the
10 possibility of parole or issue a death sentence.

11 Now, do you understand that life without the
12 possibility of parole means absolutely that, it means he
13 will never see the light of day again as a free man?

14 A. Okay.

15 Q. He would spend the rest of his life in jail and he will
16 die there in jail. Okay, do you understand that?

17 A. Yes, sir.

18 Q. Okay. Given that, and given that Mr. Owens has already
19 been convicted of murder, would you be able to, under those
20 circumstances, if you deemed it appropriate, give him a
21 sentence of life without the possibility of parole?

22 A. Yes, sir.

23 Q. If the State -- I think as the court started to explain
24 to you before, the State has to prove certain aggravating
25 factors, okay, and they are going to be looking at primarily

1 two. One, that this -- the allegation that this murder was
2 committed in the pursuit at the same time a larceny
3 occurred, and the second, that it was committed at the same
4 time that a robbery was occurring, or in the commission of a
5 robbery.

6 If the State is able to prove those two things beyond a
7 reasonable doubt, could you still give Mr. Owens a sentence
8 of life without the possibility of parole, if you deemed it
9 appropriate?

10 A. Yes.

11 Q. All right. Do you think that -- now, you looked at
12 those three types of jurors?

13 A. Yes.

14 Q. And you said that you believed that you are a number
15 three type juror?

16 A. Yes, sir.

17 Q. Okay. Which means that, if I remember correctly from
18 that definition, that you would be able to look at the
19 evidence and you would not be predisposed either way as to a
20 death sentence or a sentence of life without the possibility
21 of parole, is that correct?

22 A. Yes, sir.

23 Q. And do you believe that you would be able to be fair in
24 all aspects of this case?

25 A. Yes.

1 Q. Do you believe that you could be fair -- be able to be
2 fair to Mr. Owens in this case?

3 A. Yes, sir.

4 Q. Okay. Just a second, please.

5 (Off the record)

6 (Back on the record)

7 BY MR. GIBSON:

8 Q. Thank you Ms. Woods. I appreciate it.

9 Please answer any questions that Mr. Ariail may have
10 for you.

11 VOIR DIRE EXAMINATION BY MR. ARIAIL:

12 Q. Ms. Woods, my name is Bob Ariail and I'm what we call
13 the solicitor in this state, which is the State's attorney,
14 district attorney, if you watch TV, but my role is to
15 represent the State in any criminal prosecutions. And in
16 particular in this case I will be representing the State
17 bringing the evidence to the jury. Do you understand?

18 A. Yes, sir.

19 Q. Okay. Assisting me in this case would be my deputy,
20 Ms. Strom, and one of my assistants, Ms. Verdin.

21 If you were -- and we are putting you in this
22 hypothetical. You are on a jury and you are being asked to
23 give us answers as to what you would do in this situation
24 when you are placed on the jury in the sentencing aspect of
25 this case, or just any case.

1 Do you understand that you, as the jury, as a group,
2 would be hearing evidence, both in mitigation and in
3 aggravation? And those terms are used as descriptive terms.
4 It doesn't -- what we think may be aggravation you may not
5 think would be aggravation.

6 A. Okay.

7 Q. What somebody else thinks is mitigation you may not
8 think it's mitigation, but those are just general
9 descriptive terms.

10 But in all of that, there are two potential verdicts
11 that you as a juror are being asked to consider, and that's
12 assuming that the State proves the aggravating
13 circumstance -- and that let me back up just a second.

14 Just because somebody is guilty of murder does not mean
15 they get the death penalty, or are they even eligible for
16 the death penalty, because the State can only seek the death
17 penalty in cases that the legislature has defined as being
18 accompanied by aggravating circumstances. Certain murders
19 do not even merit consideration for the death penalty.

20 A. Right.

21 Q. It's only those that the legislature has defined.
22 There is about 19 different circumstances; killing of a
23 police officer during the line of duty; murder of more than
24 one person; the killing of a child under the age of seven;
25 things like that.

1 Once the aggravating circumstance, however, that the
2 legislature has defined is proven by the State, then the
3 jury can determine the sentence, and that's when and only at
4 that time will the jury be vested with that authority. The
5 judge will explain all that to you.

6 Do you believe in that circumstance that you are being
7 asked to decide, do you believe that the death penalty is an
8 appropriate sentence under our law in certain circumstances?

9 A. Yes, sir.

10 Q. You do.

11 And do you believe that if those circumstances which
12 you felt were appropriate existed in the evidence that were
13 brought to you as you were sitting as a juror, that you
14 could vote to impose the death penalty?

15 A. Yes.

16 Q. And the judge told you, I believe, that if you voted to
17 impose the death penalty and the jury found that that was
18 the appropriate sentence in your collective reasoning
19 process, you would be required to sign a document with your
20 name that says this is my verdict, the death penalty is the
21 appropriate sentence, do you believe that if that was your
22 verdict that you would have any hesitancy or would hesitate
23 to sign that document?

24 A. No, I would consider it very -- a weighty
25 responsibility. I would take it very seriously, but I could

1 sign it.

2 Q. Seriously?

3 A. Yes, sir.

4 Q. The whole process you would take very seriously, I
5 assume?

6 A. Yes.

7 Q. And all of that would weigh on you at the time, but the
8 fact that you had to physically put your name down on a
9 document that would be used to carry out the execution,
10 would that cause you to hesitate in any way --

11 A. No, sir.

12 Q. -- or cloud your reasoning or impede you in any way?

13 A. No.

14 Q. Okay. Thank you.

15 MR. ARIAIL: That's all I have.

16 THE COURT: If you would just step outside just
17 for a minute.

18 (Whereupon, Juror Number 441 was taken out of the
19 courtroom)

20 THE COURT: I believe that she's qualified.

21 MR. ARIAIL: The State agrees.

22 MR. GODFREY: Defense agrees.

23 (Whereupon, Juror Number 441 was brought back into
24 the courtroom)

25 THE COURT: Ms. Wood, you are a qualified

1 potential juror in this case. I'm going to give you an
2 order for qualified jurors and ask that you call this number
3 tomorrow after six o'clock and you would to report back. We
4 will leave a message on when you would have to come back
5 with 45 or 50 other people. And from that group the jury
6 would be chosen in that case. It does not mean that you are
7 a juror, but it means that you are still a potential juror.

8 You should bring clothes for approximately five
9 days. Leave them in your car, or whatever way that you want
10 to handle it, but you can drive your car after the jury is
11 selected, if you are chosen as a juror, you can drive it to
12 the motel, if you want to and after when you leave the
13 courthouse. Okay.

14 JUROR NUMBER 441: Yes, sir.

15 THE COURT: Now, follow this. Do not discuss the
16 case with anyone. Do not expose yourself to any television
17 or news coverage about it. Do not do any investigations on
18 the Internet, or any other way. Just come into the
19 courtroom and we will do the jury selection. And if you are
20 a juror, you will decide it on what you hear in the
21 courtroom.

22 JUROR NUMBER 441: Yes, sir.

23 THE COURT: Here is an order. Thank you so much.
24 Call back tomorrow night after six.

25 JUROR NUMBER 441: Okay.

1 (Whereupon, Juror Number 441 was taken out of the
2 courtroom)

3 THE COURT: Ivory J. Taylor.

4 (Whereupon, Juror Number 471 was brought into the
5 courtroom)

6 IVORY J. TAYLOR, #471, having been first duly
7 sworn, testified as follows:

8 VOIR DIRE EXAMINATION BY THE COURT:

9 Q. Mr. Taylor, you returned a questionnaire in regard to
10 this case?

11 A. Yes, sir.

12 Q. And all those questions that you answered as truthfully
13 as you could?

14 A. That's right.

15 Q. Okay. Mr. Taylor, this incident arises -- it occurred
16 on Laurens Road, in Greenville County, on November the 1st,
17 1997, when Mrs. Irene Graves was killed at a Speedway early
18 in the morning hours, and Mr. Owens has been convicted of
19 that murder.

20 A. Right.

21 Q. This case, there was some publicity on television, the
22 radio and in the newspapers. Have you read, heard or seen
23 anything about this case?

24 A. No, sir, I don't -- I don't listen to news. I don't --
25 you know, I don't hardly watch TV.

1 Q. All right.

2 A. So I haven't heard nothing about it, no.

3 Q. So you have no prior knowledge of this case?

4 A. No, sir.

5 Q. Okay. Now, this -- our law in this state for every
6 murder the State cannot seek the death penalty.

7 A. That's true.

8 Q. And the State can only seek the death penalty if they
9 can prove an aggravating circumstance --

10 A. Uh-huh.

11 Q. -- beyond a reasonable doubt.

12 In this case the allegations are robbery and/or larceny
13 when this murder was committed, when the defendant was armed
14 with a deadly weapon. The State has got to prove that
15 beyond a reasonable doubt. The defendant does not have to
16 prove anything. He does not even have to testify. None of
17 that can be held against him.

18 A. Right.

19 Q. Could you be a fair and impartial juror and consider
20 the evidence and testimony in this case in regard to the
21 statutory aggravating circumstance?

22 A. I will. I could, yeah.

23 Q. Have you formed any opinion in this case about what the
24 sentence should be in regard to Mr. Owens?

25 A. Not as of yet, no.

1 Q. Now, we gave you a three types of jurors. Did you have
2 a chance to review that?

3 A. That's correct, yes.

4 Q. What type juror would you classify yourself?

5 A. Number three.

6 Q. Number three. All right, sir.

7 Now, if the jury were to find, and I don't know what
8 they would find, but if the jury found beyond a reasonable
9 doubt a statutory aggravating circumstance, and all the
10 jurors agreed, then the jury would determine the sentence
11 for Mr. Owens for this murder. Do you understand that?

12 A. Right.

13 Q. All right, sir.

14 Now, the jury would have to focus on the specific
15 circumstances of this crime in regard to the murder --

16 A. Uh-huh.

17 Q. -- on November the 1st, and the individual
18 characteristics of the defendant.

19 A. Right.

20 Q. And you would hear evidence in extenuation -- in
21 mitigation and aggravation. You may hear that.

22 You would have to consider any evidence in regard to
23 aggravation on mitigation that was presented. Do you
24 understand that?

25 A. Yes, sir.

1 Q. Could you consider evidence in aggravation?

2 Now, aggravation are facts and incidences or
3 occurrences which aggravates or makes the crime or murder
4 worse. Do you understand that?

5 A. Yes.

6 Q. It increases the enormity of that.

7 Mitigation circumstances are facts and circumstances
8 that reduces the severity of the offense of murder and
9 reduces the degree of responsibility of fault for murder.
10 Do you understand that?

11 A. Right. Right.

12 Q. Could you fairly and impartially and meaningfully
13 consider circumstances of aggravation and circumstances of
14 mitigation and write a verdict in this case?

15 A. Yeah, once I have heard it.

16 Q. Once you have heard it?

17 A. Uh-huh.

18 Q. Now, based on that, depending upon the particular facts
19 and circumstances that were presented in the case, could you
20 write a verdict of life imprisonment, which means life in
21 prison without any possibility of parole until the death of
22 the defendant? Could you write a verdict?

23 A. After I heard everything, yeah, I could, yeah.

24 Q. Could you write a verdict of death --

25 A. Oh, yeah.

1 Q. -- if you -- after you heard everything?

2 A. After I have heard everything.

3 Q. You could be fair and listen to the evidence --

4 A. Uh-huh.

5 Q. -- in aggravation and evidence in mitigation?

6 A. Right. Right.

7 Q. All right. Now, if I instructed you under the law that
8 any other bad acts or crimes -- I don't know what the
9 evidence is going to be, but if those facts were to come in
10 about other crimes or other bad acts, the law in this state
11 is that that evidence only comes in as it bears on the
12 character of the defendant. It cannot be considered by you
13 as evidence of a statutory aggravating circumstance. Could
14 you follow that instruction?

15 A. I would have to disregard it, if that's what you mean?

16 Q. You would have to -- you would have to use that
17 evidence -- you would focus on the specific circumstances of
18 this crime and the character of the defendant, individual
19 character of the defendant.

20 A. Right. Right. Right. Right.

21 Q. And you would not consider any evidence of other bad
22 acts or crimes bearing on the statutory aggravating
23 circumstances alleged by the State.

24 A. Right. Right.

25 Q. You would follow that instruction?

1 A. Yes, sir.

2 Q. Would the race of any victim or defendant -- the
3 defendant is black, and if any of the victims were white.
4 Or Hispanic, or any other race, would that have any effect
5 on your decision?

6 A. No, sir.

7 Q. I don't know what your religious background or training
8 may be. Have you had any training in religion or anything
9 that would influence your decision in a case such as this?

10 A. No. No. Uh-uh.

11 Q. If a person were of the Islamic or Muslim faith, or
12 anything of that nature, Catholic, or whatever, would that
13 affect your decision in any way?

14 A. No, sir.

15 Q. I'm going to permit these lawyers to ask you a few more
16 questions.

17 A. That's fine.

18 VOIR DIRE EXAMINATION BY MR. ARIAIL:

19 Q. Mr. Taylor, my name is Bob Ariail and I'm the solicitor
20 for the 13th Circuit. Solicitor is what South Carolina
21 still uses the name to describe its state prosecutors.

22 A. Uh-huh.

23 Q. On TV they are all known as DA's, now district
24 attorneys. We are still called the solicitor. So do you
25 understand what my role in this case would be? I represent

1 the government of the State and bring evidence.

2 A. Right.

3 Q. And in this case the State is seeking the death
4 penalty, so we would be bringing to you the evidence that we
5 believe justifies the imposition of the death penalty.

6 A. Okay.

7 Q. Do you understand that's what I would be doing?

8 A. Yeah, yeah.

9 Q. And assisting me in this case would be my deputy, Betty
10 Strom, and also Ms. Verdin, one of my assistants.

11 A. All right.

12 Q. The case is a little bit different than your normal
13 case. Normally when a defendant comes into court and he's
14 tried and he's convicted, the judge sentences him.

15 A. Right.

16 Q. But in a case where the state seeks the death penalty,
17 the law is different and the jury becomes the sentencing
18 authority. Not the judge.

19 So what occurs is we are talking to you and asking you
20 all these questions, because you are going to have to be --
21 if you were to sit on this jury, you would have to be a --
22 take on the responsibility of a judge.

23 A. That's correct.

24 Q. Do you understand?

25 A. Yeah.

1 Q. You would have to be somebody who could fairly consider
2 the imposition as to what the appropriate penalty would be
3 under the evidence, just like a judge would have done, had
4 the sentencing been his responsibility.

5 A. Right.

6 Q. And do you believe that under our law as exists in this
7 country that the death penalty is an appropriate punishment
8 for certain crimes?

9 A. For certain crimes, yeah.

10 Q. And the judge has already explained to you that the
11 certain crimes are those crimes in this state in which
12 murder is committed in a -- or accompanied by a circumstance
13 which the legislature has defined as being an aggravating
14 circumstance.

15 A. Right. Right.

16 Q. See there are only about 16 or 19 of these situations.
17 Some of them, give you an example, murder of a police
18 officer during the line of duty; murder of more than one
19 person; murder of a child under the age of seven years.
20 Some of those. Those are what the State or the legislature
21 says is the time that the death penalty can be sought by the
22 State. It doesn't mean that you have to impose the death
23 penalty.

24 A. Right.

25 Q. But it means that the State can seek it.

1 And do you believe that if you were sitting on a jury
2 and you heard the facts and circumstances, you could fairly
3 consider imposing the death penalty, if you believed that
4 the evidence was such to justify that particular punishment?

5 A. That's right.

6 Q. And do you believe that -- also I assume then you
7 believe that a life imprisonment sentence, if the evidence
8 were such, would be appropriate?

9 A. Right. Right.

10 Q. Now, do you know of any reason, either morally, or
11 ethically, or religious, or social, or any philosophical --
12 anything in your background that would cause you to hesitate
13 or to have difficulty in considering the imposition of the
14 death penalty?

15 A. No. No.

16 Q. You believe the death penalty is an appropriate
17 punishment. Have you held that view for some period of
18 time?

19 A. Well, I mean, you know, I haven't thought about it a
20 whole lot, but, you know, I always feel like it all depends
21 upon what kind of state of mind when the crime was
22 committed, how bad was it, you know, stuff like that.

23 Q. Have you ever talked about it with anybody? Have you
24 ever discussed it with family or friends or --

25 A. Well, not that I can recall. I'm assuming it coming

1 up, you know what I mean.

2 Q. Okay. You have just read about it in the paper? You
3 would see a crime and you thought about it, well, that would
4 be appropriate for the death penalty, or wouldn't be, or --

5 A. Not really. Just -- you know, it's just -- you know, a
6 crime is a crime, no doubt, but when you are talking about
7 taking another man's life, that is -- you know, that's --
8 that's just about a totally different story. Because, I
9 mean, whether or not you thought about it how long; you
10 thought about it; you know, what kind of preparations that
11 you made in order to do the crime; all that would have to be
12 considered, you know what I mean?

13 Q. Uh-huh. All right.

14 And you believe that you would be able to do that?

15 A. Without a doubt, yeah.

16 Q. And if the -- I believe the judge mentioned this to
17 you, that if you found with your fellow jurors that the
18 death sentence was the appropriate sentence, you would have
19 to sign the verdict form with your name, along with the
20 other eleven jurors.

21 A. That's right. That's right.

22 Q. Would you have any hesitancy in signing your name, if
23 that was, in fact, your verdict?

24 A. No, I wouldn't have.

25 Q. The fact that you have to sign would not --

1 A. No, sir.

2 Q. -- intimidate you or give you concern that would make
3 you think about maybe not voting for the death penalty?

4 A. No. No.

5 Q. Okay. Did I make that clear that last question? Did
6 you understand that?

7 A. Yeah, you pretty much summed it up.

8 Q. Some people don't want to have to sign it, don't want
9 to put their name on it, so they wouldn't vote for it.

10 A. Right, they don't want to put their -- it's like
11 putting your hand to it, you know what I mean.

12 Q. That's putting your hand on it?

13 A. Right.

14 Q. That wouldn't bother you?

15 A. No. No. No.

16 Q. Just one moment. Hold on one second.

17 (Off the record)

18 (Back on the record)

19 BY MR. ARIAIL:

20 Q. Let me just ask you one last question.

21 I noticed on your -- well, in the information that I
22 have, you have had a couple of prior arrests where there
23 have been no convictions recorded --

24 A. Right. Right.

25 Q. -- but arrests. Would -- and I'm not indicating that

1 that would in any way disqualify you from serving, but would
2 that in any way -- if police officers were called to
3 testify, would that in any way affect your ability to give
4 their testimony fair consideration?

5 A. Lordy, no. No.

6 MR. ARIAIL: That's all I have. Thank you, sir.

7 THE WITNESS: Thank you.

8 VOIR DIRE EXAMINATION BY MR. GODFREY:

9 Q. Good afternoon Mr. Taylor.

10 A. Good afternoon.

11 Q. I'm Bill Godfrey. This is Ken Gibson, and this is
12 Freddie Owens, our client.

13 Mr. Taylor, I just have a couple of questions for you.

14 A. That's fine.

15 Q. Do you believe that you can be a fair and impartial
16 juror in this case?

17 A. I believe so, yeah.

18 Q. And obviously from your conversation with the
19 solicitor, you understand that they are going to be
20 presenting evidence trying to get you to put our client to
21 death, right?

22 A. That's correct.

23 MR. ARIAIL: Your Honor, I'm going to object to
24 the form of the question. I don't think that's exactly what
25 we are doing.

1 THE COURT: I sustain the objection to that. They
2 would be presenting the evidence, not trying to --

3 You can rephrase it.

4 BY MR. GODFREY:

5 Q. Do you understand that they are going to be presenting
6 evidence supporting their position?

7 A. Yeah. Yeah.

8 Q. And you understand they are going to be asking you to
9 return a verdict of death?

10 A. If they can prove it, right.

11 Q. If they can prove it?

12 A. Right.

13 Q. And do you believe that you can fairly weigh that
14 evidence, right?

15 A. Without a doubt.

16 Q. By the same token, we are going to be presenting
17 mitigation evidence, evidence which shows that he should be
18 receiving a life sentence or life sentence without parole.

19 A. Uh-huh.

20 Q. And you can fairly weigh that, you believe?

21 A. Right. Right.

22 Q. Let me ask you, Mr. Taylor, after all the evidence is
23 in, after the judge has charged you on the law and you go
24 back and deliberate, would you have any hesitation, or would
25 there be any hesitation either from religious, moral, or any

1 other reason, if the evidence indicated to you that you
2 should return a life sentence, would you be able to vote for
3 life?

4 A. After hearing everything, yeah, yeah, yeah, I could do
5 that.

6 MR. GODFREY: Beg the court's indulgence.

7 (Off the record)

8 (Back on the record)

9 MR. GODFREY: Nothing further.

10 THE COURT: Mr. Taylor, if you will step out just
11 for a minute and I'll bring you back in.

12 (Whereupon, Juror Number 471 was taken out of the
13 courtroom)

14 THE COURT: I believe the juror is qualified.

15 MR. ARIAIL: State concurs.

16 MR. GODFREY: Defense concurs.

17 (Whereupon, Juror Number 471 was brought back into
18 the courtroom)

19 THE COURT: Mr. Taylor.

20 JUROR NUMBER 471: Yes, sir.

21 THE COURT: You are qualified as a potential juror
22 in this case.

23 JUROR NUMBER 471: All right.

24 THE COURT: You will have to come back maybe on
25 Wednesday, but we are going to leave a message Tuesday

1 night, tomorrow night, after six o'clock on this number.

2 JUROR NUMBER 471: All right.

3 THE COURT: If you will call it, we will tell you
4 when you need to report back.

5 JUROR NUMBER 471: Okay.

6 THE COURT: You need to bring with you clothes for
7 about five days in the motel.

8 JUROR NUMBER 471: Okay.

9 THE COURT: It may be that long. It may not, I
10 don't know, but you can drive your car to the motel. If you
11 travel by car, or any other way, and leave your clothes in
12 the car.

13 JUROR NUMBER 471: All right.

14 THE COURT: If you are not selected, you can go
15 home. If you are one of the jurors, you will stay and drive
16 your car to the motel.

17 JUROR NUMBER 471: Okay.

18 THE COURT: Do not discuss the case with anyone or
19 watch anything on TV or in the newspaper or read about it,
20 okay?

21 JUROR NUMBER 471: That's correct.

22 THE COURT: Here is an order. You can read that.
23 Follow that, and we will see you later.

24 JUROR NUMBER 471: I call this number tomorrow
25 sometime?

1 THE COURT: You call that number tomorrow after
2 six and we'll leave a message as to when you need to come
3 back.

4 JUROR NUMBER 471: Thank you.

5 (Whereupon, Juror Number 471 was taken out of the
6 courtroom)

7 THE COURT: The clerk has reminded me, and I think
8 Ms. Strom and defense counsel were there, with Mr. Robert
9 Meek. He -- his wife was going in for a biopsy tomorrow for
10 breast cancer and they were going to wait and get the
11 results back tomorrow at that time. Right now as it stands
12 we are working around that and hopefully his results will be
13 good, positive, and he won't get any bad news, but I just
14 want to call that to y'all's attention. That was Robert
15 Meek. He informed us of that this morning. He's not the
16 next one. He's the one after the next one.

17 Scottie Shockley.

18 (Whereupon, Juror Number 369 was brought into the
19 courtroom)

20 SCOTTIE D. SHOCKLEY, JR., #369, having been first
21 duly sworn, testified as follows:

22 VOIR DIRE EXAMINATION BY THE COURT:

23 Q. Mr. Shockley, I'm going to ask you a few questions and
24 then the attorneys may ask you a few questions, okay?

25 A. Okay.

1 Q. Now, you were given a questionnaire to read over in
2 when you came in this afternoon with the three types of
3 jurors?

4 A. Uh-huh.

5 Q. How would you describe yourself as which one of these
6 three types?

7 A. Number three.

8 Q. Number three. Okay, sir.

9 Now, you returned a questionnaire, which we have, and
10 all those answers that you gave were truthful, to the best
11 of your knowledge and ability, is that correct?

12 A. Yes, sir.

13 Q. Mr. Shockley, this case arises out of an incident on
14 November the 1st, 1997, where Ms. Irene Graves was killed at
15 a Speedway on Laurens Road in the early morning hours.

16 Now, when the State seeks the death penalty, there are
17 two proceedings; one for the guilt phase and one for the
18 sentencing phase.

19 Mr. Owens has been found guilty of that murder.

20 Now, every murder -- a lot of murders are not -- the
21 State cannot seek the death penalty. Just because there are
22 seeking the death penalty does not mean the death penalty is
23 necessarily appropriate. This jury is going to determine
24 how the penalty -- what will be, how it will be imposed. Do
25 you understand that?

1 A. Yes, sir.

2 Q. All right. This case had some television, radio, and
3 newspaper publicity. Have you read, heard or seen anything
4 about this case?

5 A. No, sir.

6 Q. All right, sir.

7 Now, could you be a fair and impartial juror and reach
8 a verdict based on the facts and the evidence presented in
9 the courtroom in regards to sentencing?

10 A. Yes, sir.

11 Q. Have you formed any opinion about the facts or
12 circumstances of this case?

13 A. Uh-uh.

14 Q. The State would have to prove to you beyond a
15 reasonable doubt, if you were on the jury, or have to prove
16 to the entire jury, that this murder was committed
17 accompanied by a statutory circumstance of aggravation.
18 That's the only way the State could possibly seek the death
19 penalty. They have to prove to you beyond a reasonable
20 doubt that this murder was committed during the course of a
21 robbery while the defendant was armed with a deadly weapon,
22 or a larceny while he was armed with a deadly weapon. They
23 would have to prove their case beyond a reasonable doubt.
24 The defendant doesn't have to prove anything. He doesn't
25 even have to testify. That cannot be held against him.

1 A. Uh-huh.

2 Q. Could you follow those instructions and be a fair and
3 impartial juror in this case?

4 A. Yeah, I believe so, sir.

5 Q. All right. If it were determined by all the jurors
6 that there was a statutory aggravating circumstance, then
7 the sentence could be life or death. It does not have to be
8 death. It could be life or death. Do you understand that?

9 A. Yes, sir.

10 Q. Now, life in this case means life without parole until
11 the death of the defendant. Do you understand that?

12 A. Yes, sir.

13 Q. You would consider evidence in aggravation and
14 mediation -- I mean mitigation, I'm sorry.

15 Aggravating circumstances are facts and incidents or
16 occurrences which aggravate or worsen the crime of murder.
17 They make it more enormous and increases the enormity of the
18 crime. It adds to the injury of the crime of murder.

19 Mitigating circumstances are facts and occurrences
20 which reduces the severity of the offense of murder, reduces
21 the degree of responsibility or fault. Do you understand
22 that?

23 A. Yes, sir.

24 Q. You would be called upon to focus on the specific
25 circumstances of this crime in regard to Ms. Graves and the

1 individual characteristics of the defendant, consider all
2 the evidence that may come in in regard to aggravating
3 circumstances and mitigation circumstances. And considering
4 that, based on your view of the evidence, could you write a
5 verdict for life imprisonment?

6 A. Yes, sir.

7 Q. Based on your view of the particular facts and
8 circumstances, could you write a verdict of death?

9 A. Yes, sir.

10 Q. If you had to write a verdict for death and that was a
11 decision of the jury, you would have to sign your name
12 personally to the verdict form. Could you do that?

13 A. Yes, sir.

14 Q. Now, if there was any evidence of any other crimes or
15 any other bad acts by the defendant -- I don't know what's
16 going to come in. I cannot discuss the facts with you. We
17 just have to hear the case. But if that evidence were to
18 come in, it could only be considered by the jury as it would
19 bear on the character of the defendant. It could not be
20 considered in any way as to evidence of a statutory
21 aggravating circumstance. Do you understand that?

22 A. Yes, sir.

23 Q. Could you follow that instruction?

24 A. Yes, sir.

25 Q. I have no idea what the evidence may be, but if one

1 party was of a different race than another party, would race
2 have any bearing on your decision in this case?

3 A. No, sir.

4 Q. I don't know what your religious background may be, but
5 if -- have you garnered anything in your religious
6 background or beliefs, or whatever, and I'm not saying that
7 you should or shouldn't, but have you gathered anything that
8 would affect your ability to determine the issues in this
9 case?

10 A. No, sir.

11 Q. If evidence were to be presented in regard to the
12 religion of any person that may be involved in this case,
13 the defendant or any other parties, about their faith,
14 either the Islamic faith, or Muslim faith, or anything else,
15 would that have any bearing on your decision in this case?

16 A. No, sir.

17 Q. All right, sir. I'm going to let these attorneys ask
18 you some questions, sir.

19 A. Okay.

20 VOIR DIRE EXAMINATION BY MR. GIBSON:

21 Q. Good afternoon Mr. Shockley.

22 A. Good afternoon.

23 Q. I'm Ken Gibson. This is co-counsel Bill Godfrey. This
24 is our client Freddie Owens.

25 I'm going to ask you a few questions and try to get a

1 better understanding about your ability to be fair in
2 situation, okay?

3 A. Okay.

4 Q. Now, I think on at least a couple of occasions it's
5 been explained that this is sort of a different type of
6 circumstance than normal.

7 A. Uh-huh.

8 Q. Normally you would, as a jury, if you get on the jury,
9 you would determine not only the sentence, but also the
10 guilt. In this case you are only determining the sentence.
11 What we mean by that is that Mr. Owens has already been
12 convicted of murder, okay?

13 A. Okay.

14 Q. Now, the fact that he's been convicted of murder, do
15 you understand that does not necessarily mean that you
16 should impose a death sentence, is that correct?

17 A. Yeah.

18 Q. Because he has been convicted of murder, would that
19 keep you from imposing a sentence of life without the
20 possibility of parole in this circumstance?

21 A. (Shaking head no)

22 THE COURT: His answer was no.

23 MR. GIBSON: I'm sorry. For the record, yeah.

24 THE COURT: Okay. Go ahead.

25 THE WITNESS: I'm sorry.

1 BY MR. GIBSON:

2 Q. Do you understand that life without possibility of
3 parole means exactly that?

4 A. Yes, sir.

5 Q. It means that he will never get out of jail, ever. Do
6 you understand that?

7 A. Yes, sir.

8 Q. Right.

9 With that said, it's going to be explained to you, I'm
10 sure, by Mr. Ariail, and it's been explained somewhat by the
11 court, in order for the State to even get you to be able to
12 consider the death sentence, they have to prove certain
13 statutory aggravating facts, okay?

14 A. Okay.

15 Q. In this case -- well, the legislature allows that
16 consideration in certain circumstances. There are a whole
17 bunch of them, but in this case they are contending that
18 because this murder happened during the commission of a
19 robbery and because it happened during a commission of a
20 larceny, that, therefore, you should be able to consider the
21 death penalty.

22 If they are able to prove those statutory aggravating
23 circumstances beyond a reasonable doubt, do you understand
24 that you still are not required to sentence Mr. Owens to
25 death?

1 A. Yeah, I understood that, sir.

2 Q. If they are able to prove those aggravating factors
3 beyond a reasonable doubt, would you still be able to impose
4 a sentence of life without the possibility of parole?

5 A. Yes, sir.

6 Q. Okay. Now, would you be able to consider -- would you
7 be able to consider all the evidence in the case and
8 determine what you think would be the best result?

9 A. Yes, sir.

10 Q. And you would be able to do that fairly and
11 impartially?

12 A. Yes.

13 Q. Do you think that you would be able to make sure that
14 your decision is your decision --

15 A. Yes.

16 Q. -- and not somebody else's?

17 A. Yes, sir.

18 Q. Okay. Thank you, Mr. Shockley.

19 VOIR DIRE EXAMINATION BY MR. ARIAIL:

20 Q. Mr. Shockley, my name is Bob Ariail. I'm the solicitor
21 for the Thirteenth Circuit. That means I represent the
22 State. Do you understand what role we would play?

23 A. Yes.

24 Q. We would be bringing the evidence to you.

25 A. Yeah.

1 Q. We call them solicitors in this state, but district
2 attorneys on TV now, but we still have the old word.

3 Assisting me would be my deputy, Ms. Strom, seated in
4 the middle, and Ms. Verdin, one of my assistants on this
5 end.

6 Do you believe that the death penalty is an appropriate
7 penalty in certain circumstances under our law?

8 A. In certain circumstances, yeah.

9 Q. And you have thought about this before you came here,
10 or is this the first time that you have been --

11 A. It's hard -- like at the dinner table or something like
12 that.

13 Q. You have talked about it before?

14 A. Yeah.

15 Q. And you understand as a juror you would be the person
16 making the decision, or one of the persons making the
17 decision, in a group setting of juror discussions as to what
18 the appropriate punishment would be under the evidence that
19 has been presented during the course of the trial --

20 A. Yes, sir.

21 Q. -- as to the proper sentence.

22 And you would have two choices; life imprisonment
23 without parole and the death sentence?

24 A. Yes, sir.

25 Q. Do you think life imprisonment without parole is a

1 serious sentence?

2 A. Yes, sir.

3 Q. And obviously you think the death penalty is a serious
4 sentence?

5 A. (Shaking head yes)

6 Q. Okay. I noticed on the information that I have that
7 you have been arrested a couple or three times with no --
8 well, one conviction, but it's of a minor nature.

9 Would the fact that you have had previous involvement
10 with law enforcement or been arrested, would that in any way
11 affect your ability to be fair or give fair consideration to
12 testimony of anybody that works for law enforcement?

13 A. No, that shouldn't affect me.

14 Q. It shouldn't affect you?

15 A. No.

16 Q. Would it in any way make you give less believability to
17 an officer's testimony, or would it make you be more
18 critical of the way that they -- of the evidence that they
19 bring to you?

20 A. It doesn't being critical. You have got to be fair to
21 him and you have got to hear from both sides of the story.

22 Q. Okay. Thank you.

23 THE COURT: Mr. Shockley, I'm going to let you
24 step out just for a minute, okay.

25 JUROR NUMBER 369: Okay.

1 (Whereupon, Juror Number 369 was taken out of the
2 courtroom)

3 THE COURT: I would find he's qualified. Okay.
4 No objection from either party.

5 MR. ARIAIL: State concurs.

6 (Whereupon, Juror Number 369 was brought back into
7 the courtroom)

8 THE COURT: Mr. Shockley, you are qualified as a
9 potential juror in this case. That means that you will have
10 to come back at some time. Bring some clothes with you for
11 about five days in a motel. You can leave them in your car,
12 if you drive a car here.

13 JUROR NUMBER 369: Okay.

14 THE COURT: And park it at the Hyatt. I have got
15 the instructions on this order.

16 JUROR NUMBER 369: Okay.

17 THE COURT: And you can -- after the jury
18 selection, if you happen to be selected as one of the 15,
19 then you would to drive your car to the motel and leave it
20 there, any way that you wanted to. You would have your
21 clothes with you.

22 JUROR NUMBER 369: Okay.

23 THE COURT: Now, I'm going to give you this order.
24 Do not discuss the case with anyone and do not permit anyone
25 to talk to you. Don't watch any news coverage or anything

1 like that, if there is anything about this case or read
2 anything about it, and call this number that I have in this
3 order after six o'clock tomorrow night.

4 JUROR NUMBER 369: Okay.

5 THE COURT: We will leave a message as to when you
6 need to come back.

7 JUROR NUMBER 369: Okay.

8 THE COURT: Thank you.

9 JUROR NUMBER 369: You are welcome.

10 (Whereupon, Juror Number 369 was taken out of the
11 courtroom)

12 THE COURT: I guess we should go ahead and qualify
13 Mr. Meek, or --

14 MR. ARIAIL: Uh-huh. Even if he got bad news, I
15 don't think that they are going to be anything during this
16 trial.

17 MS. STROM: If they are got bad news, they are
18 going to do it this Friday.

19 MR. ARIAIL: Okay. Well, let's qualify him.

20 THE COURT: I hope that it's good news, so I was
21 going to say we might -- we might as well as go ahead and
22 qualify him. Bring him in.

23 (Whereupon, Juror Number 288 was brought into the
24 courtroom)

25 ROBERT MEEK, #288, having been first duly sworn,

1 testified as follows:

2 VOIR DIRE EXAMINATION BY THE COURT:

3 Q. Mr. Meek, we are aware that your wife is having a
4 serious medical procedure tomorrow.

5 A. Yes, sir.

6 Q. And, of course, you will be there with her, and we are
7 all optimistic everything is going to go well.

8 A. Oh, yes, sir. Thank you.

9 Q. And then I believe if everything goes well for you, you
10 could potentially serve.

11 A. Yes, sir.

12 Q. All right. I need to ask you some questions about
13 this. You submitted a questionnaire and you answered all
14 those questions truthfully as best you could?

15 A. Yes, sir.

16 Q. Now, you have looked at the juror sheet that I had, the
17 three types of jurors. How would you classify yourself as
18 those, in regard to those three jurors?

19 A. Number 3.

20 Q. Number 3.

21 A. Yes.

22 Q. Mr. Meek, this case arises out of an incident on
23 November the 1st of 1997, on Laurens Road, at the Speedway
24 early in the morning hours Irene Graves was killed, and Mr.
25 Owens has been convicted of that murder.

1 Now, when the State seeks the death penalty, it's a
2 two-proceeding process. The jury has to determine guilt or
3 innocence. That's been decided.

4 A. Uh-huh.

5 Q. For every murder the State cannot ask for the death
6 penalty. Do you understand that?

7 A. Yes, sir.

8 Q. In order to obtain the death penalty, the State must
9 prove beyond a reasonable doubt a statutory aggravating
10 circumstance. And in this case they alleged a statutory
11 aggravating circumstance of robbery during the commission of
12 this murder while the defendant was armed with a deadly
13 weapon, or larceny during the commission of this murder
14 while the defendant was armed with a deadly weapon.

15 The State must prove their case to you beyond a
16 reasonable doubt. Do you understand that?

17 A. Yes, sir.

18 Q. Now, the defendant does not have to prove anything. He
19 does not even have to testify in the case, and you
20 understand that? You cannot hold that against him in any
21 way.

22 A. Yes, sir.

23 Q. All right, sir.

24 Now, this case was publicized on the television, radio,
25 and in the newspaper. Have you read, heard or seen anything

1 about this case?

2 A. Just when it first came -- when it happened on -- or
3 when it happened. I didn't follow it or keep up with it.

4 Q. When was that? That was in 1997?

5 A. It's probably been -- yeah. Yes, sir, '97.

6 Q. Did you see anything in the newspaper after you got
7 your summons to come to court?

8 A. No, sir.

9 Q. You did not.

10 Now, would anything that you have seen or heard about
11 this case, could you -- you would be required to decide the
12 case only on the evidence presented in this courtroom.

13 Could you dismiss anything that you have previously read or
14 heard about this case from your mind?

15 A. Yes, sir.

16 Q. And you would decide it only on what you heard in the
17 courtroom?

18 A. Yes, sir.

19 Q. All right, sir.

20 And if the jury unanimously found beyond a reasonable
21 doubt the commission of a statutory aggravating
22 circumstance, then there are two possible sentences in this
23 case. Do you understand that?

24 A. Yes, sir.

25 Q. The jury would hear evidence in aggravation and

1 evidence in mitigation in this case. You may.

2 You could actually find the statutory aggravating
3 circumstance and still give the defendant a sentence of life
4 imprisonment. Do you understand that?

5 A. Yes, sir.

6 Q. Now, an aggravating circumstance are facts and
7 incidences or occurrences which aggravate or worsen the
8 crime of murder. It increases the enormity or adds to the
9 injury of the crime of murder. Do you understand an
10 aggravating circumstance?

11 A. Yes, sir.

12 Q. A mitigating circumstance is one which reduces the
13 severity of the offense of murder. It reduces the degree of
14 responsibility or fault. Do you understand that?

15 A. Yes, sir.

16 Q. All right. If you reach that stage, could you
17 seriously and meaningfully consider circumstances of
18 mitigation and circumstances of aggravation and write a
19 verdict based on the facts and circumstances that you heard?
20 Do you understand that?

21 A. Yes, sir.

22 Q. Based on the particular facts and circumstances, could
23 you write a verdict of life imprisonment?

24 A. Yes, sir.

25 Q. That means in this case life in prison without the

1 possibility of parole. That means until the death of the
2 defendant. Do you understand that?

3 A. Yes, sir.

4 Q. Death means by lethal injection or by electrocution.

5 A. Yes, sir.

6 Q. If you reach that point and the decision of the jurors
7 was for death, the law requires that every juror sign their
8 name, their original signature to the death sentence. Could
9 you sign your name to that sentence?

10 A. Yes, sir.

11 Q. And you understand that under our law you are not
12 required in any way to sentence the defendant to death?

13 A. Yes, sir.

14 Q. Except based on the evidence and testimony that you
15 heard in the courtroom, giving him a fair trial and the
16 State a fair trial?

17 A. Yes, sir.

18 Q. Now, the sentencing authority under our law in this
19 case which we are here about is required to focus on the
20 specific circumstances of this crime with Ms. Graves and the
21 individual characteristics of this defendant in arriving at
22 the sentence. Do you understand that?

23 A. Yes, sir.

24 Q. You would consider evidence in extenuation, mitigation
25 and aggravation in the sentencing.

1 Now, if it should -- and I do not know what the
2 evidence would be, and I can't comment on the facts, but if
3 there were other -- if there was evidence of any other bad
4 acts or crimes by this defendant, I would instruct you that
5 that evidence could only be considered as it may bear upon
6 the character of this defendant. You could not consider bad
7 acts or crimes as evidence of proof of a statutory
8 aggravating circumstance. Do you understand that?

9 A. Yes, sir.

10 Q. Could you follow that instruction?

11 A. Yes, sir.

12 Q. Now, if -- the defendant is black. If any other victim
13 or party or any person was of a different race, would that
14 have any bearing on your decision?

15 A. No, sir.

16 Q. Would any religious training or anything in your
17 background in regard to religion or moral convictions affect
18 your ability to write a sentence of death or life
19 imprisonment?

20 A. No, sir.

21 Q. Would the fact that a person is of a different
22 religious faith - either Muslim, or Islamic, or Catholic, or
23 any other faith - would that have any effect on your
24 decision?

25 A. No, sir.

1 Q. We will let these lawyers ask you a few questions.

2 A. Okay.

3 VOIR DIRE EXAMINATION BY MR. ARIAIL:

4 Q. Mr. Meek, my name is Bob Ariail and I'm the solicitor
5 for the 13th Circuit. Solicitor is the name that South
6 Carolina retains to describe its district attorneys.

7 A. Okay.

8 Q. And it's an old English term that we haven't
9 relinquished yet. So I would be representing the State,
10 bringing the evidence on behalf of the State. And assisting
11 me in this case would be my deputy, Betty Strom, and also
12 Ms. Verdin, one of my assistants.

13 We sort of bring you in here and throw you a lot of
14 terms and dazzle you with some words. I'm going to try to
15 explain what we are doing to make sure you understand.

16 Normally in a criminal case when a defendant is
17 convicted, the judge would sentence him.

18 A. Right.

19 Q. But when the State asks for the death penalty, the law
20 changes. Now, the State can't seek the death penalty in
21 this state, except under certain circumstances that the
22 legislature has approved. And those are the cases where the
23 judge is talking about aggravating circumstances. The
24 legislature says if you have a murder and it's accompanied
25 by what we define as an aggravating circumstance, then the

1 State can seek the death penalty. Those aggravating
2 circumstances, there are a number of them. That could be
3 killing a police officer during the number of line of duty,
4 killing more than two people, killing a child under seven
5 years of age, so they have been defined.

6 And once the State proves that the murder was
7 accompanied or committed during the course of one of those
8 aggravating circumstances, then the sentencing authority
9 rests with the jury, not the judge. So we are looking for
10 people who can act like judges, be fair and consider both
11 sentences that would be available to them, and there would
12 only be two at that point. One would be life imprisonment
13 without parole, and that's exactly what it means. The
14 defendant would never come under out the current law of
15 South Carolina. He would never come out of prison, or the
16 death penalty. Now, and I think that's self-explanatory
17 what that means. Do you understand that?

18 A. Yes.

19 Q. Now, the judge asked you if you could fairly consider
20 both of those sentences. Do you believe that the death
21 penalty is a fair -- not fair, but an appropriate sentence
22 under our law in certain cases?

23 A. In certain cases, yes, sir.

24 Q. And is that a view that you held before you came into
25 court, or is that something that you just started thinking

1 about when you were summonsed for this case?

2 A. That's a view I have had for awhile.

3 Q. And over the years you have adhered to that view and
4 looking at different cases you have seen in the newspaper or
5 seen at various --

6 A. Yes.

7 Q. So you do believe that there are certain circumstances,
8 certain cases, in which the imposition of the death penalty
9 is appropriate?

10 A. Yes, sir.

11 Q. You also believe that there are certain cases where the
12 imposition of a life imprisonment sentence without parole is
13 appropriate?

14 A. Yes, sir.

15 Q. But you could consider both of those?

16 A. Yes, sir.

17 Q. Depending upon what the evidence proved to you?

18 A. Yes, sir.

19 Q. And you understand there wouldn't be any check list
20 that you would go down and check off this. It would be --
21 it would be you as an individual juror collectively
22 reasoning with the rest to determine what would be the
23 appropriate punishment, as you see it, under the facts of
24 this case?

25 A. Yes, sir.

1 Q. Okay. And do you also -- you have told the judge that
2 you had seen or heard or read something about this when it
3 happened back in 1997?

4 A. Yes, sir.

5 Q. Did you form any opinions based on what you read?

6 A. No, sir. Not really, no.

7 Q. And do you understand that you would have to set
8 aside -- if you were in the case and something came up and
9 you said oh, yeah, now I remember that. You would have to
10 be able to set that aside --

11 A. Yes, sir.

12 Q. -- and only decide the case from the evidence produced
13 at the witness stand. Not something that may -- you may
14 remember reading in the paper or seeing on the TV. Can you
15 do that?

16 A. Oh, yes, sir.

17 Q. Okay. And the fact that if you were on the jury, if
18 you found that the death penalty was the appropriate
19 sentence, you would have to sign a verdict form with your
20 name, along with your other eleven jurors, actually
21 physically put your name down. And that document would be
22 used to go to the Department of Corrections to carry out the
23 imposition of the death penalty.

24 Would the fact that you had to sign that in any way
25 give you any hesitancy, if that was your verdict?

1 A. If that's my verdict, it wouldn't.

2 Q. Okay. The physical act wouldn't bother you?

3 A. No.

4 Q. Okay. Thank you.

5 MR. ARIAIL: That's all I have.

6 VOIR DIRE EXAMINATION BY MR. GIBSON:

7 Q. Thank you Mr. Meek.

8 I'm Ken Gibson. This is my co-counsel Bill Godfrey.

9 This is my client Freddie Owens.

10 I want to ask you a few more questions, okay?

11 A. Okay.

12 Q. Mr. Ariail asked you did you believe in certain cases
13 that the death penalty was appropriate. I'll take it one
14 step further. Do you believe in certain murders that a
15 sentence of life without the possibility of parole would be
16 appropriate?

17 A. Certain murders?

18 Q. Yes, sir.

19 A. Yes, sir.

20 Q. Okay. Now, I think you have been hit on it already
21 twice and I think another time in the general qualification
22 about what the status of this case is. You were aware that
23 Mr. Owens has already been convicted of murder, is that
24 correct?

25 A. Yes, sir.

1 Q. Okay. Would that fact keep you from rendering a
2 verdict of life without the possibility of parole, if you
3 thought that was appropriate?

4 A. If that was appropriate, it wouldn't have any effect.

5 Q. Okay. And you are aware that, based on our statute
6 here in South Carolina, in order for you to even -- the jury
7 to even get a chance to consider sentence, the State has to
8 prove beyond a reasonable doubt certain aggravating
9 circumstances?

10 A. Yes, sir.

11 Q. Okay. Do you understand that even if the State proves
12 those aggravating circumstances beyond a reasonable doubt,
13 it in no way mandates that you guys enter a sentence of
14 death?

15 A. Yes, sir, I understand that.

16 Q. And that you can still come back with the sentence of
17 life without the possibility of parole?

18 A. Yes, sir.

19 Q. Okay. Now, Mr. Meek, in entering into your
20 deliberations and finding your verdict, would you be able to
21 make sure that your verdict is your verdict and not the
22 opinion of somebody else, but your verdict and your verdict
23 alone?

24 A. It would be mine.

25 Q. Okay. Would you be able to be fair in this case?

1 A. Yes, sir.

2 Q. Would you be able to be fair to Mr. Owens in this case?

3 A. Yes, sir.

4 Q. Thank you, Mr. Meek.

5 THE COURT: Mr. Meek, if you would step out just
6 briefly.

7 JUROR NUMBER 288: Okay.

8 (Whereupon, Juror Number 288 was taken out of the
9 courtroom)

10 MR. ARIAIL: The State submits he's qualified.

11 THE COURT: I would find that he's qualified, and
12 the defense consents with the State. And provided he gets
13 good news tomorrow, he would come back. Okay.

14 All right.

15 (Whereupon, Juror Number 288 was brought back into
16 the courtroom)

17 THE COURT: Mr. Meek, you are qualified as a
18 potential juror in this case, which means that you would
19 have to come back probably on Wednesday.

20 JUROR NUMBER 288: Okay.

21 THE COURT: But now I want to -- I have got an
22 order here and you are not to discuss the case or read
23 anything about it or anything at all.

24 JUROR NUMBER 288: Yes, sir.

25 THE COURT: And bring enough clothes for you to --

1 for about five days and we will be safe. Leave them in your
2 car, or any way that you want to handle it, but if you are
3 selected, you can drive your car to the motel.

4 JUROR NUMBER 288: Okay.

5 THE COURT: -- with your clothes in the car, if
6 that's what you want to do.

7 JUROR NUMBER 288: Bring them Wednesday?

8 THE COURT: But you bring them on Wednesday, and
9 I'm hoping it's going to be Wednesday. You call the number,
10 this number, after six o'clock tomorrow night.

11 JUROR NUMBER 288: Okay.

12 THE COURT: And we will leave a message as to when
13 you should report back, okay?

14 JUROR NUMBER 288: Okay.

15 THE COURT: And we are all thinking that you are
16 going to get good results.

17 JUROR NUMBER 288: I hope so.

18 THE COURT: Okay. Thank you so much.

19 JUROR NUMBER 288: Thank you.

20 (Whereupon, Juror Number 288 was taken out of the
21 courtroom)

22 THE COURT: Margaret J. Payne.

23 (Whereupon, Juror Number 324 was brought into the
24 courtroom)

25 MARGARET J. PAYNE, #324, having been first duly

1 sworn, testified as follows:

2 VOIR DIRE EXAMINATION BY THE COURT:

3 Q. Ms. Payne, this is a case where the jury is being
4 selected to consider the punishment for Mr. Owens, which he
5 has been convicted by another jury of murder, and that's
6 what our process requires.

7 Now, this jury would be to determine how he should be
8 punished.

9 Did you review the three types of jurors questionnaire?

10 A. Yes.

11 Q. And which type of juror would you qualify yourself?

12 A. Probably two.

13 Q. Probably two. All right.

14 So you have some strong feelings about the death
15 penalty?

16 A. Yes, sir.

17 Q. And what are those feelings, Ms. Payne?

18 A. I just feel like that God is the one that gives us life
19 and he's the one that is supposed to take it, not me.

20 Q. Okay. If you heard the evidence and testimony and I
21 instructed you the law on this case, is there any way that
22 you could follow the instructions of this court and write a
23 sentence of either life imprisonment or death?

24 A. Excuse me? Would you repeat that?

25 Q. If you heard the case and I instructed you on the law,

1 could you be fair and impartial and either write a sentence
2 of life or death for Mr. Owens?

3 A. I could if you so instructed me to do so.

4 Q. I would not instruct you to as to what sentence you
5 would write. You would have to determine that. Could you
6 ever write a sentence for death?

7 A. No, sir.

8 Q. You could not?

9 A. No, sir.

10 Q. All right. I'm going to let you step outside just
11 briefly and let me see if the attorneys want to ask you
12 anything else.

13 A. Okay.

14 (Whereupon, Juror Number 324 was taken out of the
15 courtroom)

16 THE COURT: I would -- if the attorneys would so
17 move or anything, I would attempt to ask her some other
18 questions, but I'm not too sure that I could -- if she's
19 that strongly opinionated, she -- she's very attentive this
20 morning in juror qualifications. I just remember her for
21 some reason sitting out there, and she was very attentive
22 sitting over there, and she was very strong about her
23 opinions. I'm not sure that it's a pretext.

24 Mr. Godfrey?

25 MR. GODFREY: May it please the court, in

1 reviewing her questionnaire, it is very clear that she is a
2 very strongly religious lady, and she just told us that,
3 based on what she believes, that she could never vote for
4 death.

5 THE COURT: We can't fault her for that. There is
6 a lot of people who feel that way, so -- but we --

7 MR. GODFREY: You know, I don't think any other
8 questions would be necessary. I don't think she's
9 qualified.

10 THE COURT: I think that her strong views would
11 prevent her or substantially affect her being a fair and
12 impartial juror and exercising her duty under the law, as I
13 would instruct it, so I'm going to excuse her and we will
14 take a break until six o'clock and start the next panel. I
15 have excused the third panel for the evening -- the fourth
16 panel for the evening.

17 Let me let her go and then we will take a recess.

18 (Whereupon, Juror Number 324 was brought into the
19 courtroom)

20 THE COURT: Ms. Payne, we certainly appreciate
21 your honest answers. There is a lot of people in this
22 country of ours that feel the same way as you do, and that's
23 the reason we have to bring you in. I hope you appreciate
24 our situation. We appreciate your position on the case and
25 I'm going to excuse you. You would not have to come back.

1 JUROR NUMBER 324: Okay.

2 THE COURT: Thank you.

3 JUROR NUMBER 324: Y'all have been wonderful.

4 THE COURT: You paid close attention this morning
5 during the qualifications. You paid close attention when I
6 brought the six of you in and I appreciate that.

7 JUROR NUMBER 324: Thank you.

8 THE COURT: Thank you so much.

9 JUROR NUMBER 324: Thank you.

10 THE COURT: Have a good evening.

11 JUROR NUMBER 324: You too.

12 (Whereupon, Juror Number 324 was taken out of the
13 courtroom)

14 THE COURT: We will be in recess until six o'clock
15 and we will start the last panel.

16 (Whereupon, proceedings were recessed)

17 (Whereupon, proceedings were reconvened)

18 THE COURT: Bring the entire panel in, please.

19 (Whereupon, Jury Panel Number Three was brought
20 into the courtroom)

21 THE COURT: Ladies and gentlemen, we have been
22 working the whole time and we do appreciate you being here.

23 This is panel number three.

24 William J. Law.

25 Matthew L. Thrift.

1 Daryl G. Thurston.

2 Tony L. Park.

3 Robin A. Olding.

4 Pamela Benfield.

5 Now, y'all are still under oath and we are going
6 to ask you some individual questions here in just a few
7 minutes, but do you understand that this is a case where
8 when the State seeks the death penalty in South Carolina,
9 it's a two-phase process. There are two proceedings. One
10 is to determine the guilt or the innocence by a jury. The
11 second phase is called the sentencing proceeding, and that's
12 the reason we are here, for a jury to determine how we
13 sentence Mr. Owens.

14 Now, all of you had questionnaires that you sent
15 in and all the information that you answered on those
16 questionnaires was truthful as best you could answer those,
17 is that correct?

18 (All jurors shaking head in the affirmative)

19 THE COURT: Okay. Involved in this case is Mr.
20 Ariail, Bob Ariail, who is the solicitor for Greenville and
21 Pickens County. He represents the State. Ms. Strom is his
22 deputy and Ms. Verdin, right?

23 MS. VERDIN: Yes.

24 THE COURT: Representing the defendant is Mr.
25 Godfrey and Mr. Gibson.

1 Do any of you know these lawyers?

2 (All jurors shaking head in the negative)

3 THE COURT: Okay. Do any of you have any close
4 friends or relatives who work in the office of the circuit
5 solicitor?

6 (All jurors shaking head in the negative)

7 THE COURT: Do any of you know Mr. Owens, who is
8 sitting here at the counsel table, the defendant in this
9 case?

10 (No response)

11 THE COURT: Okay. You had a fairly lengthy list
12 of potential witnesses. Were you able to review that list
13 of witnesses while you were waiting?

14 (All jurors shaking head in the positive)

15 THE COURT: Did any of you know anyone on that
16 list?

17 Yes, sir.

18 JUROR NUMBER 409: Number 12, Jeff Kindley.

19 THE COURT: And your name, sir?

20 JUROR NUMBER 409: Daryl Thurston.

21 THE COURT: Okay. Mr. Thurston.

22 Okay. I think I have got that list somewhere.

23 Number 12, Jeff Kindley. And how did you know Mr.
24 Kindley?

25 JUROR NUMBER 409: He used to work for one of my

1 dad's company before he started with law enforcement, and
2 just a family friend.

3 THE COURT: Okay. Very good. We may ask you a
4 few more questions about that. All right, sir.

5 Now, ladies and gentlemen, understanding this
6 proceeding is a sentencing proceeding, the State cannot seek
7 the death penalty in every case and you would have to be
8 fair and impartial jurors in this case.

9 Do any of you have any reason at this particular
10 time to tell me that you could not be fair and impartial in
11 this case as of this particular time?

12 (No response)

13 THE COURT: Okay. What I'm going to do is let you
14 step back over to the jury room and we will start with the
15 person -- as the names were drawn. We will start with Mr.
16 Law. Okay. Y'all just step back out, please.

17 (Whereupon, Jury Panel Number Three was taken out
18 of the courtroom)

19 WILLIAM J. LAW, #252, having been first duly
20 sworn, testified as follows:

21 VOIR DIRE EXAMINATION BY THE COURT:

22 Q. Mr. Law, this case arises out of an incident where
23 Irene Graves was killed on the 1st day of November of 1997,
24 on Laurens Road, here in Greenville County. Mr. Owens has
25 been convicted by another jury of that murder.

1 This case received publicity on the television, the
2 radio, and in the newspaper. Have you read, heard or seen
3 anything about this case?

4 A. No, sir.

5 Q. You don't know anything about the circumstances or
6 anything surrounding this case?

7 A. Uh-uh.

8 Q. All right, sir.

9 Now, you have answered the question a minute ago.
10 Would you be under -- you will take an oath to be fair and
11 impartial and decide this case only on the evidence and
12 testimony that you hear in the courtroom. Could you be a
13 fair and impartial juror in this sentencing proceedings of
14 Mr. Owens?

15 A. I can.

16 Q. Okay. Have you formed any opinion as to what the
17 sentence of Mr. Owens should be in regard to this offense?

18 A. No, sir.

19 Q. All right. Now, the State must prove -- every murder
20 in South Carolina does not carry the death penalty. A
21 murder only carries the death penalty if it's accompanied by
22 statutory aggravating circumstances. The legislature in the
23 law has stated the circumstances under which the State can
24 seek the death penalty. It doesn't mean that you have to
25 give the death penalty. That means that they can seek the

1 death penalty. And if the jury finds beyond a reasonable
2 doubt a statutory aggravating circumstance, then the jury
3 determines what the sentence will be. Do you understand
4 that?

5 A. Yes, sir.

6 Q. Now, the defendant does not have to prove anything.
7 The burden of proof to prove their case is on the State. He
8 does not even have to testify, and none of that can be held
9 against him. Do you understand that?

10 A. Yes, sir.

11 Q. All right, sir. Now, if the jury by unanimous consent
12 finds that the State has proven beyond a reasonable doubt a
13 statutory aggravating circumstance, in this case the State
14 alleges robbery and/or larceny during the commission of this
15 crime of murder while the defendant was armed with a deadly
16 weapon. They would have to prove that aggravating
17 circumstance, one or both, before the jury could even
18 consider a sentence. Do you understand that?

19 A. Yes, sir.

20 Q. Even if you found an aggravating circumstance, the jury
21 could still sentence Mr. Owens to life imprisonment. Do you
22 understand that?

23 A. Yes, sir.

24 Q. Now, an aggravating circumstance is a fact or
25 circumstance which aggravates or worsens the crime of

1 murder. It in increases the enormity of that crime. It
2 adds to the crime of murder.

3 A mitigating circumstance is a fact or circumstance
4 which reduces the severity of the offense of murder. It
5 reduces the degree of responsibility or fault or
6 culpability. Do you understand what a mitigating
7 circumstance is?

8 A. I think so.

9 Q. If the State had proven to you the statutory
10 aggravating circumstance beyond a reasonable doubt, then you
11 would be required to focus on this crime - the murder in
12 this case - and the individual characteristics of this
13 defendant and consider evidence of aggravation and
14 mitigation. Could you give fair and meaningful
15 consideration to the circumstances of mitigation and the
16 circumstances of aggravation and write a verdict in this
17 case?

18 A. Yes, sir.

19 Q. Depending on the particular facts and circumstances
20 that you heard, could you write a verdict of life
21 imprisonment, which in this case would mean the defendant
22 would serve life in prison until his death, without any
23 possibility of parole. Could you consider that sentence
24 under that evidence and testimony?

25 A. Yes, sir.

1 Q. And could you write a sentence based on the particular
2 facts and circumstances, if you deem that was the sentence
3 of life imprisonment?

4 A. Yes, sir.

5 Q. Based on the facts and circumstances that you would
6 hear, could you write a sentence of death?

7 A. Yes, sir.

8 Q. That would mean death by either lethal injection or by
9 electrocution, do you understand that?

10 A. Yes, sir.

11 Q. Now, if there was any evidence to come in about any
12 other bad acts or any other crimes, I would instruct you
13 that that evidence only comes in as it would bear on his
14 character and it would not be evidence of any statutory
15 aggravating circumstance. Do you understand that?

16 A. Yes, sir.

17 Q. Could you follow that instruction?

18 A. I believe so, yes, sir.

19 Q. All right, sir. And if the parties were of a different
20 race, and I'm not saying that they were, or will be, or
21 whatever, but if any evidence of that comes out, would race
22 play a factor in your decision?

23 A. No, sir.

24 Q. I don't know what if you -- some people's religious
25 training and background, they may have an effect upon the

1 death and sentence or life imprisonment. Would any
2 religious training or moral feelings have any effect on your
3 ability to enter into a sentence of life or death?

4 A. No, sir.

5 Q. Would -- if any evidence came out that anyone was of
6 the Islamic faith, or the Muslim faith, or Catholic faith,
7 or anything like that, would that have any effect on your
8 decision?

9 A. No, sir.

10 Q. You would serve as a fair and impartial juror and you
11 would honor your oath and your commitment to be a fair and
12 impartial juror and decide it only on the evidence and
13 testimony?

14 A. Yes, sir.

15 Q. I'll let these lawyers ask you a few questions.

16 THE COURT: Okay.

17 VOIR DIRE EXAMINATION BY MR. GODFREY:

18 Q. Good afternoon Mr. Law.

19 A. Good afternoon.

20 Q. My name is Bill Godfrey. This is Ken Gibson and this
21 is our client Freddie Owens.

22 I have just a couple of questions for you.

23 There is no question in your mind that you can be fair
24 and impartial?

25 A. No, sir. No -- I mean no question in my mind.

1 Q. No question in your mind that you could be fair and
2 impartial when you consider the evidence?

3 A. Yes, sir.

4 Q. And you clearly understand that you will be considering
5 evidence in the penalty phase, as Freddie has already been
6 found guilty of murder?

7 A. Yes, sir.

8 Q. And you understand that the State is going to be
9 presenting evidence and they will be asking that you return
10 a verdict of death? Do you understand that?

11 A. Yes, sir.

12 Q. Do you understand that we are going to be presenting
13 evidence asking that you return a verdict of life, life in
14 prison without the possibility of parole, that he would
15 actually end up -- he would die in the prison. Do you
16 understand that?

17 A. Yes, sir.

18 Q. Do you believe that you can fairly weigh all the
19 evidence in the case that you are going to be able to hear?

20 A. I believe so.

21 Q. Once you have heard all of the evidence from the State
22 and from the defense, is there any reason or any hesitation
23 at all -- if the evidence were to warrant it, would there be
24 any hesitation for religious reasons, moral reasons, or any
25 other reason why you could not give a sentence of life

1 without parole?

2 A. Could you repeat -- you are asking is there any reason
3 why I could not give life without parole?

4 Q. Right.

5 A. No, sir, there is not.

6 MR. GODFREY: Nothing further.

7 VOIR DIRE EXAMINATION BY MR. ARIAIL:

8 Q. Mr. Law, my name is Bob Ariail. I'm the solicitor for
9 the Thirteenth Circuit. Solicitor is the person in this
10 state who is responsible for representing the State in all
11 criminal proceedings. On TV they call them district
12 attorneys. Most other states is district attorney, but in
13 South Carolina he's still the solicitor, just so you
14 understand what our role is.

15 Assisting me in this case would be my deputy, Ms.
16 Strom, seated at counsel table, along with Ms. Verdin, who
17 is also one of my assistants.

18 Prior to coming in here or being summonsed for this
19 case, had you ever thought about or talked about the death
20 penalty, it's something that had come up in discussions or
21 you had a class that you had to make a report on, or any
22 reason that you remember that you may have discussed it?

23 A. Nothing like in an educational forum or -- I think
24 really the only thoughts I probably have were just mine in
25 general, when you see something on TV that this person has

1 been executed, or this person gets life in prison, on CNN,
2 or whatever else, but nothing in a lengthy educational
3 discussion, no.

4 Q. And through your life experiences that you talking
5 about, seeing various crimes and hearing various sentences,
6 do you believe that the death penalty is an appropriate
7 punishment under certain circumstances and for certain
8 crimes in our society?

9 A. Under certain circumstances, yes.

10 Q. And do you understand that the State is not allowed in
11 South Carolina to seek the death penalty, except in cases of
12 murder, and only in those cases a very limited set of
13 circumstances that involve a murder? Not all murders, just
14 certain murders.

15 A. Okay.

16 Q. All right. Well, let me go ahead and explain that,
17 because the judge talked to you a little bit about
18 aggravating circumstances.

19 A. Uh-huh.

20 Q. Our legislature has said that the death penalty is not
21 available for the State to seek, unless, one, there is a
22 murder, and two, it is accompanied by an aggravating
23 circumstance, and that was the word they used, aggravating
24 circumstance.

25 And what aggravating circumstance -- they then went

1 forward to define about 16 of these -- or 19 of these
2 aggravating circumstances.

3 To give you an example, murder of a police officer
4 during the line of duty; murder of more than two people;
5 murder of a child under seven years of age. Those are the
6 things that they defined.

7 A. Okay.

8 Q. So the State -- the State law says the State can't seek
9 the death penalty until you get one of those aggravating
10 circumstances accompanying a murder. When that happens, the
11 jury becomes the sentencing authority. All right?

12 A. Yes.

13 Q. So you, if you were on the jury, would have to then act
14 as a judge, be able to consider all of the evidence
15 presented, to reach a verdict as to the appropriate
16 sentence, either life imprisonment without parole or the
17 death sentence.

18 A. Uh-huh.

19 Q. So that's why we are asking you if you can fairly
20 consider the imposition of both of those sentences while you
21 are sitting as a juror.

22 A. Uh-huh.

23 Q. All right. And your response is that you can, you
24 believe, fairly consider, depending upon what those
25 circumstances are, imposing the death penalty or imposing

1 life in prison without parole?

2 A. Yes, sir.

3 Q. And you understand life in prison without parole means
4 the defendant will die in the Department of Corrections?

5 A. Yes, sir.

6 Q. All right. In looking at the information, in addition
7 to your questionnaire, and I see that you have a new child
8 that is additional responsibility. I was looking back at
9 your record there. It shows an occasion of two or three
10 times where you were arrested. I'm not concerned with the
11 substance of the arrest. What my concern is, would the fact
12 that you had encountered law enforcement as a part of an
13 arrest situation, would that in any way interfere or impede
14 your ability to give the State a fair consideration or to be
15 able to give an officer's testimony the same weight as
16 anybody else?

17 A. Can you repeat the question again? Sorry.

18 Q. That was a long one.

19 The fact that you were arrested, would that in any way
20 affect your ability to give a police officer's testimony the
21 same credibility or believability as someone else?

22 A. No, I don't think it would.

23 Q. Or ask it in reverse, would the fact that you have been
24 arrested, would that have left a bad taste in your mouth or
25 bad impression that you might hold against law enforcement

1 or to be more critical of law enforcement?

2 A. No.

3 Q. Okay.

4 A. I was -- both times, I was -- I mean, I was guilty of
5 what I did, so I took the punishment, so I don't hold any
6 hard feelings that was.

7 Q. That's my question.

8 A. Okay.

9 Q. And do you understand if you were on the jury and you
10 and your fellow jurors decided that the death penalty was
11 the appropriate sentence, you would be required to sign a
12 document with your name, all twelve of you, saying that was
13 your verdict and bring that back to the court as a record of
14 that verdict?

15 A. Yes, sir.

16 Q. Would you have any hesitancy about signing that
17 document, if that was your verdict?

18 A. No, sir.

19 Q. Okay. What I'm asking is, would the physical act of
20 signing in any way bother you or intimidate you as a part of
21 putting your name on a permanent record?

22 A. No, sir.

23 Q. Okay. Thank you.

24 MR. ARIAIL: That's all I have. Thank you.

25 THE COURT: Okay. If you would just step outside

1 just briefly and I'll bring you back in.

2 JUROR NUMBER 252: Okay.

3 (Whereupon, Juror Number 252 was taken out of the
4 courtroom)

5 THE COURT: I think he's -- I find he's qualified.

6 MR. GODFREY: Defense agrees.

7 MR. ARIAIL: State agrees.

8 (Whereupon, Juror Number 252 was brought into the
9 courtroom)

10 THE COURT: Mr. Law, you are qualified to be a
11 potential juror. That means that you are going to have to
12 come back hopefully on Wednesday sometime --

13 JUROR NUMBER 252: Okay.

14 THE COURT: -- with about 45 other people or 50
15 and the jury would be selected from your group.

16 JUROR NUMBER 252: Okay.

17 THE COURT: You would need to bring some clothes
18 in your automobile, or whatever, to go for about five days.
19 If you are selected, you would have to stay in a hotel. But
20 if you want to, they can remain in your car and you can
21 drive your car out to the motel and leave it there, or any
22 way that you want to handle that.

23 JUROR NUMBER 252: Okay.

24 THE COURT: You cannot discuss the case with
25 anyone or watch anything, any news report or anything about

1 this case, or read anything about it. And call the number
2 that I have here after six o'clock tomorrow night.

3 JUROR NUMBER 252: Okay.

4 THE COURT: We will leave a message for you as to
5 when you would need to report back.

6 JUROR NUMBER 252: Okay.

7 THE COURT: Okay. All right. I'll give you this
8 order.

9 JUROR NUMBER 252: All right.

10 THE COURT: Thank you so much.

11 (Whereupon, Juror Number 252 was taken out of the
12 courtroom)

13 THE COURT: All right. Well, do any of y'all have
14 a questionnaire on Tony Lewis Park?

15 MR. ARIAIL: Tony what?

16 THE CLERK: They don't have it.

17 THE COURT: He's on this panel.

18 MS. STROM: No, sir, I have a note that --

19 THE COURT: This -- he's submitted this
20 questionnaire to be sealed, and I have taken this up to see
21 what if we wanted to something else with him. "To be sealed
22 due to my participation with the State's Attorney General in
23 the matter of State v. Shephard." He's a graduate of the
24 University of Tennessee, and I might know a few University
25 of Tennessee graduates, but I don't know a lot. I do not

1 know what his participation is.

2 I think he brought a statement this morning saying
3 that he wanted to be excused, is that right?

4 THE CLERK: Yes, sir.

5 THE COURT: Because of workman's comp back
6 condition. And he indicates that he was a witness because
7 of the subpoena in the Home Gold Carolina Investors federal
8 bankruptcy case.

9 MR. ARIAIL: That's the one that hasn't been
10 tried, I think.

11 THE COURT: I have no idea. And I have never had
12 one submitted conditionally before. I will read it and see,
13 but I haven't read it that much either.

14 Did you tell me he called? He says he's going to
15 be a witness in January of 2007.

16 MR. ARIAIL: We will be through by then.

17 THE COURT: I don't know. Have you ever had a
18 questionnaire completed with the agreement that it be under
19 seal?

20 MR. ARIAIL: No.

21 THE COURT: Okay. I'm going to call him in and
22 just tell him that.

23 MR. ARIAIL: He's not next, is he?

24 THE COURT: No, but I was -- if y'all wanted to
25 let him go, I was going to let him go. He wanted to be

1 excused because of his back.

2 I'm going to call him in first and tell him we are
3 going to do that.

4 MR. ARIAIL: We will let him go.

5 MR. GODFREY: We agree.

6 THE COURT: Okay.

7 MR. ARIAIL: Let the Attorney General have him.

8 THE COURT: I'm going to excuse him for cause.
9 because he apparently has a whole lot of --

10 MR. ARIAIL: Issues.

11 THE COURT: -- issues about not wanting to be on
12 this case. Okay.

13 You can call him out and tell him that he can be
14 excused.

15 THE CLERK: Okay.

16 THE COURT: We will go ahead with Matthew L.
17 Thrift.

18 (Whereupon, Juror Number 408 was brought into the
19 courtroom)

20 MATTHEW L. THRIFT, #408, having been first duly
21 sworn, testified as follows:

22 VOIR DIRE EXAMINATION BY THE COURT:

23 Q. Mr. Thrift, you were paying close attention, I know, in
24 the jury qualifications this morning and when you came in
25 today. You understand that when the State seeks the death

1 penalty, it's a two-trial proceeding; one for the guilt or
2 innocence by a jury, and another one as to what the -- to
3 defendant how he should be sentenced?

4 A. Yes, sir.

5 Q. And you understand this incident arises from an
6 incident on Laurens Road in Greenville on November the 1st
7 of 1997, when Ms. Irene Graves was killed. Mr. Owens has
8 been convicted by a jury of that murder.

9 The purpose for this proceeding is to determine how he
10 will be sentenced. Do you understand that?

11 A. Yes, sir.

12 Q. Do you know -- there has been publicity about this case
13 on TV and in the radio and in the newspaper. Have you read,
14 heard or seen anything about this case?

15 A. I hadn't seen nothing about this, sir.

16 Q. Okay. Now, we are going to ask you a few questions to
17 understand about -- so to make sure that you understand this
18 proceeding and to determine if you can be fair and impartial
19 in this case.

20 Understanding that this case, every murder that -- the
21 State cannot seek the death penalty for every murder. There
22 can be murders and they cannot seek the death penalty. And
23 just because they seek the death penalty does not mean that
24 the death penalty would be the appropriate sentence under
25 the facts and circumstances. Do you understand that?

1 A. I do.

2 Q. The sentence the jury -- if the State proves a
3 statutory aggravating circumstance, the legislature says the
4 State may seek the death penalty in that kind of case.

5 In this case the allegations are that this murder was
6 committed in the process of a robbery and/or a larceny when
7 the defendant was armed with a deadly weapon. The State has
8 to prove that beyond a reasonable doubt in order for the
9 jury to determine the sentence on Mr. Owens. Okay?

10 A. Yes, sir.

11 Q. Do you understand that?

12 A. I do.

13 Q. Now, could you be fair and impartial? There is no
14 burden of proof on the defendant. The burden of proof is on
15 the State in that regard, and the defendant doesn't have to
16 prove anything. He doesn't even have to testify in the case
17 and that cannot be held against him in any way. Do you
18 understand that?

19 A. I do.

20 Q. Could you be a fair and impartial juror in a case, a
21 sentencing proceeding, and base your decision on the
22 evidence and testimony submitted?

23 A. Yes, sir.

24 Q. Okay. Now, have you formed an opinion as to what the
25 sentence ought to be in this particular case?

1 A. No, sir.

2 Q. All right, sir. Now, if the jury found by unanimous
3 consent a statutory aggravating circumstance accompanying
4 this murder, then the jury, twelve jurors, would determine
5 the sentence for Mr. Owens, and there are only two
6 possibilities: Life imprisonment without the possibility of
7 parole until the death of the defendant, and death by lethal
8 injection or electrocution. Do you understand that?

9 A. Yes, sir.

10 Q. Now, in determining the sentence for Mr. Owens, if you
11 reach that point, and I can't comment on the facts. I'm not
12 saying that. I'm just covering the law with you to make
13 sure that you can be fair and impartial, okay?

14 A. I understand.

15 Q. Now, if you reach that point, you would consider
16 circumstances in aggravation and mitigation in regard to
17 this case.

18 An aggravating circumstance is a circumstance that
19 would worsen the crime of murder, to increase the enormity
20 of that offense, add to the injury of the crime of murder.
21 It's facts and circumstances or occurrences that may
22 indicate an aggravation. Do you understand that?

23 A. I do.

24 Q. And mitigating circumstance is a circumstance that
25 reduces the severity the offense of murder. It reduces the

1 degree of responsibility or fault. Do you understand that?

2 A. Yes, sir.

3 Q. Understanding the circumstances of aggravation and the
4 circumstances of mitigation, you would be called upon to
5 consider those in the sentence of Mr. Owens. Could you do
6 that?

7 A. Sure.

8 Q. And be fair to Mr. Owens and fair to the State?

9 A. Yes, sir.

10 Q. All right. Now, depending on your view of the
11 particular facts and circumstances, in aggravation and
12 mitigation, could you write a sentence of life imprisonment
13 for Mr. Owens?

14 A. Could you ask me that one more time?

15 Q. Considering the particular facts and circumstances, if
16 you considered that were the appropriate sentence, you could
17 write a sentence of life imprisonment in this case for the
18 murder of Ms. Graves?

19 A. Depending on the circumstances, yes, sir.

20 Q. Depending on the circumstances?

21 A. Sure.

22 Q. Depending on the particular facts and circumstances,
23 could you write a sentence of death?

24 A. Yes.

25 Q. In this state the law requires that upon a sentence of

1 death, each juror must sign their name to the death
2 sentence. Do you understand that?

3 A. Yes, sir.

4 Q. If you reach that point, could you sign your original
5 signature to that document?

6 A. Yes, sir.

7 Q. Okay. Let me ask you this question. The sentencing
8 authority is required to focus on the specific circumstances
9 of this crime - the murder of Ms. Graves - and to consider
10 the individual characteristics of the defendant, Mr. Owens,
11 in this sentence. Could you do that?

12 A. Yes.

13 Q. If there were evidence -- and I'm not indicating what
14 the evidence would be and what may come out during the
15 testimony or the evidence, but if there was evidence of any
16 other bad acts or crimes, I would instruct you -- not in
17 regard to this one, but prior to this or subsequent to that,
18 I would instruct the jury that they could only consider that
19 evidence as it would bear upon the character of the
20 defendant. Could you do that?

21 A. Yes.

22 Q. You could not consider any evidence of any prior crimes
23 or bad acts or any subsequent crimes or bad acts as evidence
24 of a statutory aggravating circumstance. That would have to
25 be proven independently, based on the evidence. Could you

1 follow that instruction?

2 A. Yes, sir.

3 Q. All right. If the parties are or if any persons were
4 of different race, would that have any bearing on a sentence
5 that you may have in this case?

6 A. Not at all.

7 Q. Is there anything in your religious training or
8 background that would prevent you from writing a verdict of
9 life imprisonment or death?

10 A. No.

11 Q. If anyone were of the Islamic faith, or Muslim, or
12 Catholic, or anything of that nature, would religion, would
13 that have any effect on your sentence in this case?

14 A. No.

15 Q. I'm going to let these attorneys ask you some
16 questions.

17 THE COURT: Mr. Ariail.

18 VOIR DIRE EXAMINATION BY MR. ARIAIL:

19 Q. Mr. Thrift, my name is Bob Ariail and I'm the solicitor
20 for Greenville and Pickens Counties.

21 I saw where on your questionnaire you indicated that
22 you had been in law enforcement with the Greenville police
23 department?

24 A. Yes, sir.

25 Q. So I assume that you understand then what the solicitor

1 is and that that name doesn't confuse you as to the fact
2 that we are not called district attorneys?

3 A. I understand exactly who you are.

4 Q. Okay. You were asked to read a sheet out there that
5 talked about the different types of jurors - one, two, or
6 three. And I'm gathering from your responses that you are a
7 number three juror?

8 A. You are correct.

9 Q. All right. And a number three juror, so we understand
10 each other, is one is that when asked to consider the issue
11 of what the appropriate punishment would be for a crime,
12 such as murder accompanied by an aggravating circumstance
13 where the State seeks the death penalty, you could consider
14 the evidence and write a verdict as to -- based on that
15 evidence of either life imprisonment without parole or
16 death, depending upon your view of the circumstances?

17 A. Yes, sir.

18 Q. All right. And the judge told you that what you will
19 be focusing on in this case will be the aggravating
20 circumstances, the nature of the crime, and character and
21 characteristics of the defendant.

22 A. Yeah.

23 Q. Because, as you are well aware from your law
24 enforcement background, almost every case where a defendant
25 is convicted, he's sentenced by the judge.

1 Where the state seeks the death penalty, however, the
2 procedure changes, and a juror then becomes and sits in the
3 role of the judge. So that juror will become the sentencing
4 authority. And that's why we are pursuing these questions
5 about being able to consider fairly all of the possible
6 verdicts or sentences before -- not making a decision before
7 you have heard everything, and you say that you can do that?

8 A. Sure.

9 Q. And you are confident that you can do that?

10 A. Yes.

11 Q. Okay. I didn't ask you, and I don't know if the judge
12 did or not, did you say that you had heard or seen -- or
13 didn't know anything about this case?

14 A. I wasn't here during that time.

15 Q. And the judge was asking you at one point about writing
16 a verdict and there was a little confusion, but I think --
17 make sure I'm right. The confusion was he was asking you
18 about could you write a verdict for life or could you write
19 a verdict for death. Your answer is until you hear the
20 evidence, you can't make a determination about that, but you
21 can say, in anticipation of that, that you would be open
22 minded until the end, until you have made that decision?

23 A. Yes.

24 Q. To consider both possible verdicts?

25 A. Certainly.

1 Q. All right. And I gather also from your answers that
2 you believe that the death penalty is an appropriate form of
3 punishment in our society for certain crimes, particularly
4 in this state for the crime of murder under certain
5 circumstances that our legislature has specified where it's
6 accompanied by an aggravating circumstance?

7 A. Yes.

8 Q. You agree with that?

9 A. I do.

10 Q. All right. And also life imprisonment without parole
11 was an appropriate circumstance for the crime of murder
12 where the circumstances are appropriate?

13 A. Certainly.

14 Q. Okay. And the judge explained to you that you would
15 need to sign the verdict form if you found that the death
16 penalty was the appropriate punishment, and you, along with
17 your other eleven jurors, would actually write your name on
18 that and that would go forward to carry out the sentence at
19 the Department of Corrections.

20 Would that in any way -- if that was your verdict,
21 would that in any way give you -- cause you to hesitate,
22 that actual physical signing of that?

23 A. Not as of right now, no.

24 Q. And if that was your verdict, would it cause you to
25 hesitate?

1 A. No.

2 Q. So you wouldn't be deterred or impeded or intimidated
3 by the fact that you had to put your name on an official
4 document confirming that was the sentence?

5 A. No, sir.

6 Q. Okay. Thank you, sir.

7 A. You are welcome.

8 VOIR DIRE EXAMINATION BY MR. GIBSON:

9 Q. Good evening Mr. Thrift.

10 I'm Ken Gibson. That is my co-counsel Bill Godfrey,
11 and this is our client Freddie Owens.

12 I just want to ask you a few questions, if I might. I
13 see from your questionnaire that you actually have a long
14 history in law enforcement?

15 A. That's correct.

16 Q. You were at -- you were a city of Pembroke Pines police
17 officer for some time?

18 A. That's correct.

19 Q. How long was that?

20 A. From '95 to 2001.

21 Q. Okay. And you were also a city of Greenville police
22 officer for some time. How long was that?

23 A. A year, from 2002 to 2003.

24 Q. And during that time frame you never had any contact
25 with Investigator Silvaggio, or Wes Smith, or -- have you

1 ever heard of Wes Smith?

2 A. No, sir.

3 Q. Did you ever deal with any detectives?

4 A. Just in my training, but I can't remember any of the
5 names that are on that list.

6 Q. Okay. Did you ever have any court cases where you had
7 to come to court while you were an officer for the City of
8 Greenville?

9 A. Municipal court. Not summary or General Sessions.

10 Q. Okay. And you have looked at this list, this witness
11 list --

12 A. Yes, sir.

13 Q. -- and you are not familiar with any of the people on
14 that list?

15 A. No, sir.

16 Q. Okay. Now, based on all those years in law
17 enforcement, have you formed an opinion regarding the
18 credibility of law enforcement officers?

19 A. I think it depends upon who the law enforcement officer
20 is and how they answer.

21 Q. Have you seen both in your experience?

22 A. Certainly.

23 Q. I saw also from your questionnaire that you look at a
24 television show called Shield, is that correct?

25 A. Yes.

1 Q. And in that show, if I recall, they show officers who
2 are somewhat aggressive but also somewhat corrupt?

3 A. I agree.

4 Q. Is that a realistic experience for you?

5 A. Are you asking me whether I did that as a law
6 enforcement officer?

7 Q. Oh, no, no, no. I'm asking is that portrayal based on
8 your -- I want to use the right word. Based on your opinion
9 of law enforcement, is that a credible and realistic show as
10 to some law enforcement officers?

11 A. I think it could be a select few around the country.

12 Q. Okay. Do you feel that most law enforcement officers
13 are credible?

14 A. Yes.

15 Q. Do you believe that most law enforcement officers, if
16 they were to come to trial, they would tell the truth?

17 A. I would believe that most of them would tell the truth.

18 Q. Would you believe that law enforcement officers, when
19 they come to trial, would tell the truth more often than say
20 your average citizen?

21 A. Yes.

22 Q. So, in general, you would believe that a law
23 enforcement officer would be more credible than Joe Blow off
24 the street?

25 MR. ARIAIL: Your Honor, I'm going to have to

1 object. I think we have gone too far.

2 THE COURT: I'm going to sustain the objection. I
3 think that he would have to see the evidence and testimony.

4 THE WITNESS: Thank you, sir.

5 BY MR. GIBSON:

6 Q. Is that, in fact, true? You would have to see the
7 evidence and testimony?

8 A. Again, I answered based upon who the law enforcement
9 officer is and how his testimony was.

10 Q. Okay. Well, let me ask you this. Is there anything,
11 based on your experience, which would keep you from -- keep
12 you from or in any way impair your ability to question the
13 veracity of a law enforcement officer's statement?

14 A. I'm going to have to ask you to repeat that. I'm
15 trying to understand what you have just asked me.

16 Q. Is there anything in your experience from being a law
17 enforcement officer and dealing with law enforcement
18 officers for the better of apparently, what, eight years?

19 A. Approximately.

20 Q. Eight years. Was there anything in that experience
21 that would in any way substantially impair your ability to
22 question as to whether or not a law enforcement officer was
23 telling the truth?

24 MR. ARIAIL: Your Honor, I'm going to object.

25 THE COURT: I'm going to sustain that.

1 MR. ARIAIL: I don't think that has anything to do
2 with the sentencing phase.

3 MR. GIBSON: Your Honor, I can explain why Bob
4 believes isn't important and why it is relevant.

5 THE COURT: He has been a -- he has worked in law
6 enforcement, but he's not -- he said that he would, as I
7 understood, not always believed. He would have to evaluate
8 their testimony if he heard it.

9 Are you asking him to comment on something that he
10 can't answer until he hears the testimony and the evidence,
11 Mr. Gibson?

12 MR. GIBSON: Your Honor, I'm just trying to make
13 sure there is -- given his experience in law enforcement,
14 I'm trying to make sure that there is nothing in his past
15 that would keep him from being able to -- or actually would
16 make him more likely than anyone else to believe a law
17 enforcement officer if he came to the stand.

18 Now, Mr. Ariail has given us a witness list with
19 54 people. Over half of those people are law enforcement
20 personnel. Clearly that is going to be an issue in this
21 case. And if Mr. Thrift -- and God bless him. I think he's
22 a fine, upstanding man. If, because of his experience, he
23 is unable in any way whatsoever to question that testimony
24 or to treat it with same respect he would anybody else, I
25 think that would be unfair to my client.

1 THE COURT: There is absolutely no way he can
2 answer that question, unless he hears the evidence and
3 testimony specifically. It would be like asking you would
4 you believe every military officer you went to West Point
5 and you took the oath and you dealt with them for five or
6 six years, or however many years that you were in the
7 military. It's like asking you would you believe an
8 officer's testimony, and you can't answer that, unless you
9 hear and know who that person is and hear the testimony.

10 MR. GIBSON: Your Honor, with all due respect,
11 that's not really what I'm asking is there anything that --
12 now, me, personally if a West Point officer got on that
13 stand --

14 THE COURT: I'll telling you -- well --

15 MR. GIBSON: I would believe it more than anybody
16 else. And if he's -- if he has a bias the same way for a
17 police officers, I think that I'm allowed to explore that.

18 THE COURT: Under the law you can't ask him about
19 whether he would believe a police officer as opposed to a
20 civilian witness, compare the two.

21 Just ask that question up front. You can't ask it
22 in that fashion.

23 MR. GIBSON: Okay.

24 BY MR. GIBSON:

25 Q. Is there anything in your past which -- without

1 comparing it to a civilian witness, is there anything in
2 your past which would make you more likely to believe a law
3 enforcement officer?

4 MR. ARIAIL: Same objection.

5 MR. GIBSON: Your Honor, with all due respect, he
6 asked the exact same question against three people who came
7 up here with arrests in their past. He asked them point
8 blank would your arrest keep you from being able to believe
9 a police officer.

10 THE COURT: We will talk about the nature of that
11 question, but I think the law is clear on asking him if he
12 would believe a police officer over another witness, so I'm
13 going to have to sustain that objection.

14 MR. GIBSON: Okay.

15 BY MR. GIBSON:

16 Q. Well, Mr. Thrift, let me ask you something.

17 A. Yes, sir.

18 Q. Do you understand that just because --

19 Well, let me back up. This situation is sort of
20 different from most situations --

21 A. Certainly.

22 Q. -- and Mr. Ariail has told you and as the judge has
23 told you.

24 In this case Mr. Owens has already been convicted of
25 murder. And you know from your police experience that that

1 means that it was an intentional act underneath the law,
2 okay?

3 A. Yes.

4 Q. Would the fact that he's been convicted of
5 intentionally killing someone under the law, would that keep
6 you in any way from rendering a sentence of life without
7 parole in this case?

8 A. Sir, I don't have any -- I can't answer that. I have
9 not heard the facts of the case. I wasn't living here at
10 that point. I know nothing about that. I can't make that
11 decision.

12 Q. So you are -- I understand. Are you telling me that
13 you can't tell me whether or not that would affect your
14 ability to give a sentence of life without parole?

15 A. I'm not making that statement whatsoever. I'm saying I
16 can't determine whether I would make a decision one way or
17 the other at this point. I haven't heard anything about the
18 case. Is that what you are asking me?

19 Q. No, sir, I'm not. And let's -- I just want to be
20 clear. I'm not trying to -- I'm not trying to corner you
21 into a position on this case.

22 A. I understand that.

23 Q. I'm just trying to find out if you are going to be able
24 to be fair and impartial. And I just want to make sure
25 that --

1 Back up. As you were certainly aware, the State in
2 this case is going to be seeking the sentence of death. We
3 are going to be seeking a sentence of life in prison without
4 the possibility of parole.

5 I need to make absolutely certain that there is nothing
6 in your belief system, background, experience, or anything
7 else like that which would keep you from, if you heard the
8 facts and for whatever reason thought it was appropriate,
9 giving that sentence.

10 A. With all due respect, counselor, I answered the judge
11 very honestly in every one of his questions about whether I
12 could be fair and impartial, and I did.

13 Q. Okay.

14 A. I'm telling you the same thing. Yes, I can be fair and
15 an impartial juror.

16 Q. Thank you, Mr. Thrift.

17 A. Yes, sir.

18 THE COURT: Okay. Mr. Thrift, I'm going to ask
19 you to step outside for a just a minute. I'll bring you
20 back.

21 JUROR NUMBER 408: Yes, sir.

22 (Whereupon, Juror Number 408 was taken out of the
23 courtroom)

24 THE COURT: I looked at the law for a long time.
25 I think the law is real clear on about asking him about

1 whether you believe a police officer as opposed to someone
2 else. You just can't ask that question.

3 I'm not sure I would testify that I would believe
4 an army officer over anyone else. You might believe
5 somebody from West Point over anyone else, but I'm not sure
6 that you could say that generally for all army officers, but
7 that's neither here nor there.

8 I think -- I have observed the demeanor of the
9 witness and I think he answered the questions honestly.
10 Just because he's been a police officer does not disqualify
11 him. I did not know he was a police officer and I have
12 never seen him in court. Certainly if it -- it would be a
13 serious problem if it turned up if he -- he says he didn't
14 recognize any of the names he didn't work with. I don't
15 know what the evidence or the testimony is going to be, but
16 based on the evidence I have heard I believe he's qualified.

17 MR. ARIAIL: Well, Your Honor, he -- also he was a
18 police officer in 2002, so it happened in 1997. This case
19 was -- we had already tried it twice by the time he became a
20 police officer.

21 THE COURT: He said he never worked in this court.

22 MR. ARIAIL: Yeah, he didn't know anything about
23 it.

24 THE COURT: So --

25 MR. ARIAIL: And he worked for a different agency.

1 MR. GIBSON: Your Honor, I will -- well, I
2 disagree. I mean, I don't -- I mean, you know, based on
3 what's come out and what I have been allowed to ask, I mean,
4 he hasn't said anything, but, Your Honor I mean, that's
5 just -- that's just ludicrous. I mean, I can't -- I can't
6 believe him.

7 THE COURT: Well, I don't think we can say that a
8 person, because they worked in law enforcement, is
9 disqualified. That -- that was in 2002. And certainly if
10 he had worked in law enforcement with a lot of these
11 witnesses, I would have to agree with you.

12 I'm going to find he's qualified.

13 MR. ARIAIL: The State concurs.

14 (Whereupon, Juror Number 408 was brought into the
15 courtroom)

16 THE COURT: Mr. Thrift, I have found that you are
17 qualified to continue as a potential juror in this case.

18 JUROR NUMBER 408: Yes, sir.

19 THE COURT: That means that you will probably have
20 to report back on Wednesday, hopefully, and maybe the 45 or
21 50 other people, and from that group we will select a jury
22 for this case.

23 JUROR NUMBER 408: Yes, sir.

24 THE COURT: You need to bring with you in your car
25 your clothes for about five days. If you are selected, then

1 you can drive your car to the motel. If not, then you can
2 drive your car home and leave.

3 JUROR NUMBER 408: Yes, sir.

4 THE COURT: Whatever.

5 Do not discuss this case with anyone and call this
6 number and do not read or anything in the news reports about
7 this case, okay?

8 JUROR NUMBER 408: I understand.

9 THE COURT: And call the number tomorrow night
10 after six and we will leave a message as to when you need to
11 report back.

12 JUROR NUMBER 408: Yes, sir.

13 THE COURT: Thank you.

14 (Whereupon, Juror Number 408 was taken out of the
15 courtroom)

16 THE COURT: What's he do now? Y'all were looking
17 at the computer?

18 MR. ARIAIL: Computer. He owns his own computer
19 company. He's been out of law enforcement since 2003.

20 THE COURT: Y'all are reviewing the questionnaires
21 and I think that we probably should make the questionnaires
22 a part of the record. Any objection?

23 MR. GODFREY: Without objection.

24 MS. STROM: None from the State.

25 THE COURT: Okay. Madam Clerk, we need to make

1 all the questionnaires a part of the record --

2 THE CLERK: Yes.

3 THE COURT: -- of all the jurors that we do voir
4 dire on.

5 Daryl Thurston.

6 (Whereupon, Juror Number 409 was brought into the
7 courtroom)

8 DARYL G. THURSTON, #409, having been first duly
9 sworn, testified as follows:

10 VOIR DIRE EXAMINATION BY THE COURT:

11 Q. Mr. Thurston, you have reviewed the three types of
12 jurors that I had on this Exhibit No. 1 that I had given
13 you. Of those three types of jurors, how would you classify
14 yourself?

15 A. One.

16 Q. As number one?

17 A. Yes.

18 Q. The number one juror states that if a crime of murder
19 has been proved by the State, and you are considering
20 punishment, that you feel that the death penalty in each and
21 every case?

22 A. Yes, sir.

23 Q. That's the way that you feel?

24 A. Yes, sir.

25 Q. Now, you understand that Mr. Owens has already been

1 convicted of murder?

2 A. Yes, sir.

3 Q. So you feel like that you would be committed for the
4 death penalty?

5 A. Yes, sir.

6 Q. And your feelings about this case, you would be
7 prevented from rendering a verdict or substantially
8 prevented from considering a life sentence?

9 A. Yes, sir.

10 Q. Okay. I'll let you step out just a minute.

11 A. Thank you.

12 (Whereupon, Juror Number 409 was taken out of the
13 courtroom)

14 THE COURT: On his questionnaire he indicates that
15 his uncle was shot and killed when he was young; his
16 ex-wife's family had a murder, family dispute early this
17 year.

18 He seems to me, based on his answers, I'm not sure
19 that he could serve as a juror.

20 Now, I would not cut off the questions at this
21 point if we could -- if either side felt like that further
22 questioning would convince us that he could carry out his
23 instructions.

24 Mr. Godfrey?

25 MR. GODFREY: Judge, I don't believe he's

1 qualified.

2 THE COURT: Let's --

3 MR. ARIAIL: Well, I would -- Ms. Strom won't let
4 me try to rehabilitate him, so she said -- she said she
5 didn't want to sit here and watch it, and I'm not going to
6 do it.

7 THE COURT: Under his questionnaire, too, plus his
8 statements, I think he's firmly entrenched in that position.

9 Okay.

10 (Whereupon, Juror Number 409 was brought into the
11 courtroom)

12 THE COURT: Thank you very much for your honest
13 answers. I appreciate it, and we have looked at your
14 questionnaire and the answers that you gave, and I believe
15 that your views -- we have had some both ways, and it would
16 prevent you from considering the other sentence or
17 substantially considering it, so I'm going to excuse you.
18 Thank you so much. I appreciate it. You would not have to
19 come back. Thank you.

20 (Whereupon, Juror Number 409 was taken out of the
21 courtroom)

22 THE COURT: Robin Olding.

23 (Whereupon, Juror Number 313 was brought into the
24 courtroom)

25 ROBIN G. OLDING, #313, having been first duly

1 sworn, testified as follows:

2 VOIR DIRE EXAMINATION BY THE COURT:

3 Q. Mrs. Olding, you were able to review the three types of
4 jurors on the list that I gave you?

5 A. Yes, sir.

6 Q. And how would you classify yourself as to those three
7 types?

8 A. Number one.

9 Q. Number one?

10 A. Yeah.

11 Q. And that is that the juror, once the crime of murder
12 has been proved by the State, and the jurors are considering
13 punishment, feels that he or she should give the death
14 penalty in each and every case?

15 A. Yeah.

16 Q. And --

17 A. I do.

18 Q. I noticed on your questionnaire that you submitted back
19 to the court, which the attorneys have a copy of, that your
20 grandson was killed in a shooting?

21 A. Yeah.

22 Q. And, now, was he killed by the police or by someone
23 else?

24 A. By the police.

25 Q. He was fleeing the residence of a girlfriend?

1 A. Yeah.

2 Q. Are there any other particular reasons why you feel
3 that the death penalty is appropriate for every murder?

4 A. It's just very black and white for me. I'm -- I
5 believe you take a life, you forfeit it.

6 Q. Okay.

7 A. I -- I -- as I have gotten older, it's just that's my
8 belief. I see too many bad things in what I do.

9 Q. Okay. What's your profession?

10 A. I'm a -- I work for organ tissue and eye*donation. I
11 procure.

12 Q. Oh, okay.

13 A. So I see a lot of very bad things happen to people, and
14 good things might come out of it, but you see -- you see the
15 senselessness so much of the time and it really makes you
16 take a stand of black or white. And I have always felt that
17 if you take somebody's life, then you have forfeited your
18 own.

19 Q. Okay. I'm going to let you step outside just briefly
20 and I'll bring you back in. Thank you.

21 (Whereupon, Juror Number 313 was taken out of the
22 courtroom)

23 THE COURT: I am not sure that we can rehabilitate
24 that witness. She seems to be very emphatic about what
25 she's --

1 MR. ARIAIL: I agree.

2 THE COURT: Mr. Godfrey?

3 MR. GODFREY: Defense agrees.

4 THE COURT: I find that she is not qualified.

5 All right.

6 (Whereupon, Juror Number 313 was brought into the
7 courtroom)

8 THE COURT: I appreciate your honesty. We have
9 got people that felt both ways and that's the reason we are
10 here.

11 JUROR NUMBER 313: I'm sorry.

12 THE COURT: No, that's -- that's exactly -- you
13 are supposed to be honest with us, and we have no problem
14 with that.

15 JUROR NUMBER 313: I have -- I will say that this
16 is the most interesting thing that I have ever seen.

17 THE COURT: All right. We have had the situation
18 where people maybe do not believe in the death penalty, and
19 so we have to make sure that you can follow your
20 instructions, depending on the facts and circumstances, and
21 go with either sentence.

22 JUROR NUMBER 313: I understand.

23 THE COURT: I'm going to excuse you and you will
24 not have to come back.

25 JUROR NUMBER 313: Thank you, sir. I'm sorry.

1 (Whereupon, Juror Number 313 was taken out of the
2 courtroom)

3 THE COURT: Pamela Benfield.

4 (Whereupon, Juror Number 29 was brought into the
5 courtroom)

6 THE COURT: You are Ms. Pamela Benfield?

7 JUROR NUMBER 29: Yes, sir.

8 PAMELA S. BENFIELD, #29, having been first duly
9 sworn, testified as follows:

10 VOIR DIRE EXAMINATION BY THE COURT:

11 Q. Ms. Benfield, you have had an opportunity to review the
12 questionnaire or the statements about three types of jurors.
13 Have you done that?

14 A. I have, yes.

15 Q. And what classification or what type juror do you
16 believe that you are?

17 A. I believe I'm number three.

18 Q. You are number three?

19 A. Uh-huh.

20 Q. Okay. And that's a juror who could, even though the
21 guilt of the defendant has already been convicted of murder,
22 and this proceeding is solely to determine how he will be
23 sentenced. Do you understand that?

24 A. I do. I understand that.

25 Q. Now, this case arises from an incident on November the

1 1st of 1997, on Laurens Road in Greenville, at a Speedway
2 where Ms. Irene Graves was killed, and Mr. Owens has been
3 convicted of that murder. Do you understand that?

4 A. (Shaking head yes)

5 Q. This case received publicity on TV, radio, and in the
6 newspapers. Have you read, heard or seen anything about
7 this case?

8 A. No, I haven't.

9 Q. Do you understand that -- he has been convicted of
10 murder and the State cannot seek the death penalty in any
11 murder case. It's only if the murder is accompanied by
12 statutory aggravating circumstances.

13 Do you understand the fact that he's been convicted of
14 murder does not mean that in any way that the sentence would
15 have to be death or life imprisonment? That would be
16 determined by this jury. That's the reason we are here. Do
17 you understand that?

18 A. Yes, I do.

19 Q. Do you believe that you could be a fair and an
20 impartial juror in this sentencing proceeding?

21 A. Yes, sir.

22 Q. Our state law provides that a jury would determine his
23 guilt or innocence first, and then a second proceeding will
24 take place where the punishment is determined. Do you
25 understand that?

1 A. I understand.

2 Q. Now, the State is required to present evidence and
3 convince a jury, each and every juror, beyond a reasonable
4 doubt that the defendant committed this murder while he was
5 engaged in a robbery and armed with a deadly weapon, or in
6 larceny while he was armed with a deadly weapon. The State
7 has got to prove that to you beyond a reasonable doubt.

8 The defendant does not have any burden of proof. He
9 does not even have to testify, and that could not be held
10 against him in any way. Do you understand that legal
11 principle?

12 A. I do.

13 Q. Do you have any problem with that?

14 A. No.

15 Q. Now, in this case, if the jury found beyond a
16 reasonable doubt one, or both, of the aggravating
17 circumstances, if it's been proven to you beyond a
18 reasonable doubt, then the jury would determine what
19 sentence Mr. Owens would receive. Do you understand that?

20 A. I do.

21 Q. And this court would follow the sentence that was
22 determined. We use the word recommend, but it's
23 determined -- or the court would follow that sentence on
24 whatever the jury determined. Do you understand that?

25 A. I do.

1 Q. Now, in this case the jury or the sentencing authority
2 would focus on the specific circumstances of this crime, the
3 murder of Ms. Graves, and the individual characteristics of
4 the defendant in arriving at your recommendation or
5 determination of sentence. Do you understand that?

6 A. I do.

7 Q. Now, you would consider any aggravating circumstances
8 and any mitigating circumstances that came into evidence,
9 and you would consider the aggravating and mitigating
10 circumstances and determine what the sentence should be.
11 Okay? Do you understand that?

12 A. I understand that, yes.

13 Q. Now, aggravating circumstance is facts, incidents, or
14 occurrences which aggravates or worsens the crime of murder.
15 It increases the enormity of that crime.

16 A mitigating circumstance is one that reduces the
17 severity of the crime of murder or it reduces the degree of
18 responsibility or fault.

19 Do you understand what a mitigating circumstance can
20 be?

21 A. Yes.

22 Q. Your duty under the law and instructions of the court
23 would be to consider extenuating or mitigating circumstances
24 and aggravating circumstances and determine a sentence.

25 Could you give serious and meaningful consideration to

1 any mitigating circumstances that you determined existed or
2 any aggravating circumstances that were established by the
3 evidence and render a verdict in this case?

4 A. I think so, yes.

5 Q. Based on your hearing particular facts and
6 circumstances, could you write a verdict of life
7 imprisonment, which in this case would mean life without the
8 possibility of parole until the death of the defendant?
9 Based on you hearing particular facts and circumstances,
10 could you write that verdict?

11 A. Sure, yes.

12 Q. Based on you hearing particular facts and
13 circumstances, could you write a verdict of death, which
14 would be death by lethal injection or by electrocution?

15 A. Yes.

16 Q. The law requires, if you reach that stage, that you
17 would have to sign your name in your original signature to
18 the death sentence. Could you do that?

19 A. Yes.

20 Q. All right. Now, even though you found an aggravating
21 circumstance, you could write a verdict for life
22 imprisonment. If you found a statutory aggravating
23 circumstance, or any aggravating circumstance, you could
24 still write a sentence of life in prison. Do you understand
25 that?

1 A. Yes.

2 Q. You would have to consider the evidence and testimony,
3 be fair to both sides, and write a verdict in this case that
4 would speak the truth, based on the evidence and testimony,
5 and you would do that --

6 A. Yes.

7 Q. -- under your oath.

8 Okay, ma'am, I'm going to let you answer some questions
9 of these attorneys briefly. Okay.

10 THE COURT: Mr. Godfrey.

11 VOIR DIRE EXAMINATION BY MR. GODFREY:

12 Q. Well, Ms. Benfield, I think I just have one question
13 for you, actually.

14 Do you believe in your heart that you can be fair both
15 to the State and to the defense in rendering a verdict in
16 this case?

17 A. Yes.

18 MR. GODFREY: I don't have anything further.

19 THE COURT: Before you stand, I need to go over
20 two other things with you.

21 There may or may have not be evidence of other bad
22 acts or crimes that occurred before this offense or after
23 this crime. I would instruct you that if there were any
24 evidence of that nature, of any other bad acts or crimes
25 before or after this, you could not consider that evidence

1 as it would bear on a statutory aggravating circumstance.
2 That evidence would only come in as it may bear on the
3 character of the defendant. Could you follow that
4 instruction?

5 THE WITNESS: Yes.

6 THE COURT: If any parties were of a different
7 race, would race have any bearing on your decision in the
8 case?

9 THE WITNESS: No.

10 THE COURT: Is there anything your religious
11 background that would prevent you from writing a verdict of
12 life imprisonment or death?

13 THE WITNESS: No.

14 THE COURT: If any evidence came out in this case
15 if any person was of a Muslim or the Islamic faith, would
16 that affect your decision?

17 THE WITNESS: No.

18 MR. ARIAIL: All right, Mr. Ariail.

19 VOIR DIRE EXAMINATION BY MR. ARIAIL:

20 Q. Ms. Benfield, my name is Bob Ariail and I'm the
21 solicitor for the Thirteenth Circuit. That's a term that
22 South Carolina retained, which means the same as district
23 attorney. So South Carolina keeps the old English term
24 solicitor. And representing -- I would be representing the
25 State. And assisting me in this case would be my deputy,

1 Betty Strom, seated at counsel table, along with Ms. Verdin,
2 one of my assistants. And we would bring to you the
3 evidence on behalf of the State as to the appropriate
4 punishment.

5 But I want to make sure -- the judge was talking about
6 statutory aggravating circumstances and we were throwing
7 some terms at you that maybe not in your every day
8 vocabulary, not having been involved, so to make sure we
9 understand. I think the bottom line of this is that you are
10 a fair and impartial juror and could consider both verdicts,
11 but just bear with me just a minute.

12 Normally in a criminal case when a defendant is
13 convicted, the judge sentences. That's 99.9 percent of the
14 time. However, when the State seeks the death penalty, the
15 procedure changes and the judge does not sentence. The jury
16 sentences. So the jurors become judges, and they have to
17 act like judges, and they have to have the same temperament
18 as judges, and they have to have the same overall view of
19 the big picture of things and be able to fairly consider all
20 of the evidence and not have certain biases or prejudices
21 and that kind of set those aside. That's why we are asking
22 you these questions, because the State can't seek the death
23 penalty except in murder cases. And only then can they seek
24 it in certain murder cases that the legislature has said the
25 murder is accompanied by an aggravating circumstance. The

1 aggravating circumstance is what the legislature says must
2 accompany the murder to allow the State to seek the death
3 penalty. Not every murder the State can do that. It can
4 only do that, say -- I'll give you some examples; murder of
5 a police officer while in the line of duty. That's an
6 aggravating -- that's a murder that's got an aggravating
7 circumstance. The legislature calls that an aggravating
8 circumstance. Murder of a child under 11. That's an
9 aggravating circumstance. Murder of more than one person.
10 Double murder would be aggravating circumstance.

11 So when you have those aggravating circumstances, the
12 jury becomes a sentencing authority and you -- if you were
13 sitting on a jury in the case in which the aggravating
14 circumstance had been established, that's one of the things
15 the jury has to determine, has the State proven the
16 aggravating circumstance so we can go forward and discuss
17 the appropriate sentence. Then you hear all the evidence
18 bearing on sentencing. And you told us that you were three
19 juror? You could --

20 A. Yes, I felt I was a number three.

21 Q. Before you made a determination, you would want to hear
22 all the evidence, both that evidence that bore on the
23 character of the defendant, the nature of the crime, the
24 circumstances, what was going on, and also you would want to
25 hear any mitigating evidence that may be presented?

1 A. Yeah, definitely.

2 Q. Okay. And you would not make up your mind? As I
3 understand what you are telling us, you would keep your mind
4 open until such time as you had heard enough evidence to
5 convince you that the appropriate sentence was either life
6 imprisonment or the death penalty?

7 A. Yes.

8 Q. All right. And you believe that you could -- the fact
9 that somebody had been convicted of murder, you wouldn't
10 automatically say he's entitled to life imprisonment or
11 automatically he should get the death penalty?

12 A. No.

13 Q. You would want to wait and hear it all?

14 A. Yes.

15 Q. So assuming that you are on this jury and this
16 hypothetical case that we have been talking about and the
17 jury comes to the conclusion, and you voted with them, that
18 the death penalty is the appropriate punishment, the law
19 requires that you would sign a form, along with all of the
20 eleven other jurors, sign your name to it. Then that form
21 would come back to the court and go forward to the
22 Department of Corrections to carry out the sentence.

23 If that was your verdict, that is death was the
24 appropriate sentence, would you have any hesitancy in
25 signing that sheet or that verdict form?

1 A. No. I mean, that's a normal procedure.

2 Q. Okay. And the fact that the procedure required you to
3 do that would couldn't cause to you hesitate or you wouldn't
4 be sitting in the jury room saying oops, I don't think I
5 want to sign that form, so I better not make it -- vote for
6 the death penalty? It wouldn't impair your ability to be
7 fair?

8 A. No.

9 Q. Okay.

10 MR. ARIAIL: Just one moment.

11 (Off the record)

12 (Back on the record)

13 BY MR. ARIAIL:

14 Q. And I'm gathering from your comments that you believe
15 that the death penalty -- well, let me ask it a different
16 way. I don't want to gather from your comments. I'll just
17 ask you directly.

18 Do you believe that the death penalty is an appropriate
19 form of punishment under our law in certain circumstances?

20 A. Yes.

21 Q. And have you held that belief for some time, or is that
22 something that you just started thinking about when you got
23 your summons?

24 A. No, no, I have thought about that for some time.

25 Q. So that's not recently?

1 A. No.

2 Q. Okay. And you discussed it with other people before,
3 or just thought about it when reading about certain cases,
4 or --

5 A. In different classes we would have that as a
6 discussion.

7 Q. Okay. You have been taking courses where you would
8 talked about that sort of thing?

9 A. Well, not just specifically that subject, but if it --

10 Q. Come up?

11 A. It would come up, yes.

12 Q. And you wouldn't have any hesitancy if you thought the
13 evidence was such to vote to impose the death penalty?

14 A. No.

15 Q. Okay. No religious, moral, philosophical, social, or
16 anything in your background that would prevent you from
17 fairly considering that.

18 A. No.

19 Q. Thank you, ma'am.

20 THE COURT: If you would just step outside for
21 just a minute, please, ma'am.

22 (Whereupon, Juror Number 29 was taken out of the
23 courtroom)

24 THE COURT: I find that she's qualified.

25 Any objections from the defense?

1 MR. GODFREY: No objection.

2 MR. ARIAIL: State concurs.

3 THE COURT: All right.

4 (Whereupon, Juror Number 29 was brought into the
5 courtroom)

6 THE COURT: Ms. Benfield, you have been qualified
7 as a potential juror in this case, which means that you will
8 have to report back hopefully Wednesday and spend some time,
9 along with 45 other people, probably. And then from your
10 group the jurors will be chosen to sit on this case.

11 Now, you should come back with approximately five
12 days of clothing, or something, to stay in a hotel. You can
13 drive your car or have someone drive you. You can come here
14 and leave your clothes in the car. If you are chosen, you
15 can drive your car to the motel. You will be escorted by
16 the SLED agents. And if you are not chosen, you can get in
17 your car and drive back home.

18 JUROR NUMBER 29: Okay.

19 THE COURT: But, in any event, from this time
20 forward you are potential juror. Do not discuss this case
21 with anyone or permit anyone to talk to you about the case,
22 and do not read any newspapers or advertisement or TV or
23 anything. Do not be exposed to any news media about this
24 case.

25 And call this number that I have in this order,

1 which I'm going to give to you, after six o'clock tomorrow
2 night, and at that time I hope that we can tell you when you
3 need to come back.

4 JUROR NUMBER 29: Okay.

5 THE COURT: After six o'clock tomorrow evening.
6 Thank you so much.

7 (Whereupon, Juror Number 29 was taken out of the
8 courtroom)

9 THE COURT: Thanks everyone. I appreciate
10 everyone that's here in the courtroom and we will be
11 adjourned until nine o'clock in the morning. Thank you.

12 (Whereupon, proceedings were adjourned to November
13 7, 2006)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 FREDDIE EUGENE OWENS,) 1998-GS-23-5220
7 Defendant.) NOVEMBER 7, 2006
8) Greenville, South Carolina

9 (VOLUME II)

10 B E F O R E:

11 THE HONORABLE LARRY R. PATTERSON, JUDGE. ; and a jury.
12

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

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16 BETTY C. STROM, DEPUTY SOLICITOR
17 LETICIA VERDIN, ASSISTANT SOLICITOR
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(1 (PROCEEDINGS, November 7, 2006)

2 THE COURT: Two of the jurors just arrived. Of
3 course, today is election day. I'm giving them a chance to
4 look at the types of jurors. And as soon as they do that,
5 I'm going to bring all twelve in here simultaneously and go
6 over the general voir dire and introduce you all and see if
7 they know anybody and see if they know anyone on the list.
8 Then we'll take them individually.

9 (Off the record)

10 (Back on the record)

11 THE COURT: Bring all twelve in.

(12 (Whereupon, Jury Panel Number 4 and Jury Panel
13 Number 5 were brought into the courtroom)

14 THE COURT: Ladies and gentlemen, I know that it's
15 raining out there and it's election day and I think y'all
16 will have plenty of time to vote, if you need to. We
17 wouldn't want to interfere with that. Some of the state
18 employees are taking a holiday, I believe.

19 Let me see if I can identify everyone on the panel
20 so we know who everyone is.

21 This is panel number four and five, Madam Clerk,
22 is that correct.

23 THE CLERK: Yes, sir.

24 THE COURT: Okay.

(25 Harriet Jones.

1 Benjamin Jordan.

2 Roger James.

3 Letitia Glenn.

4 Cassandra Talbert.

5 Kelley Moss.

6 Christian Zeimet.

7 Nathan Asire.

8 Douglas Furmanek.

9 Judy Mullinax.

10 Wanda Hines.

11 Sherry Gratzner.

12 Thank you very much.

13 We all appreciate you being here for this
14 important trial for both sides.

15 As you know, this is a case in which the State
16 seeks the death penalty, and we are going to ask you some
17 questions. And as I told you yesterday, there are no right
18 or wrong answers. But just as a few preliminary matters for
19 all of you, I would ask you some common questions.

20 I'm going to ask you if you know any of the
21 attorneys. The State is represented by the circuit
22 solicitor for Greenville and Pickens County, Mr. Bob Ariail.
23 He's sitting by his deputy Betty Strom and assistant Leticia
24 Verdin.

25 The defense is represented by Mr. Bill Godfrey and

1 Mr. Ken Gibson.

2 First of all, do any of you know these lawyers
3 involved in the case?

4 Yes, ma'am.

5 JUROR NUMBER 462: I know Bob Ariail.

6 THE COURT: How do you know Mr. Ariail? Socially.

7 JUROR NUMBER 462: Yes.

8 THE COURT: The fact that you know him socially,
9 could you be fair and impartial in this case, if he's
10 involved in it?

11 JUROR NUMBER 462: Yes.

12 THE COURT: You could set your knowledge of him
13 socially aside and decide that case on the evidence and the
14 law, is that correct?

15 JUROR NUMBER 462: Yes.

16 THE COURT: Do any of you have any close
17 friends --

18 Well, let me ask you -- this is Mr. Freddie Eugene
19 Owens sitting over here. And do any of you know Mr. Owens?

20 (No response)

21 THE COURT: Do any of you have any close friends
22 or relatives who work or are employed in the circuit
23 solicitor's office?

24 (No response)

25 THE COURT: Now, I gave you a rather extensive

1 list and some of you have had a little bit more time than
2 others to look over the list of potential witnesses in this
3 case. I need to ask you if any of you know anyone on the
4 witness list. It's a long list.

5 Yes, ma'am, Ms. Mullinax.

6 JUROR NUMBER 304: I know Terrance Brooks, his
7 wife. I worked with her about 16 years ago. Second on the
8 list right on the --

9 THE COURT: Terrance Brooks, I'm sorry.
10 Greenville County sheriff's office?

11 JUROR NUMBER 304: Yes, sir.

12 THE COURT: Okay. Would your knowledge of
13 Terrance Brooks, would that affect your ability to be fair
14 and impartial in this trial?

15 JUROR NUMBER 304: No, sir.

16 THE COURT: Now, in addition to that, I have given
17 you a copy of three types of jurors, and I would ask that
18 y'all would review that carefully. And when we call you in
19 individually, we will go over that with you.

20 Now, all of you are under oath and I hope that you
21 haven't heard or talked to anyone or seen anything about
22 this case or read anything about it. If you have, would you
23 please raise your right hand.

24 (No response)

25 THE COURT: Okay. Now, you cannot discuss this

1 case with anyone, not even anyone that you live with or
2 anything of that nature, until the case is over, and then I
3 will give you some written specific instructions to talk
4 about it, if you want to. You don't have to talk about it.
5 But up until this matter is concluded and you are dismissed
6 as a juror, do not discuss this case with anyone, not even
7 with each other, and at this time we will start bringing
8 y'all in individually.

9 I'm going to ask you to step back into the other
10 courtroom and we will take Ms. Johnson first.

11 (Whereupon, Jury Panel Number 4 and Jury Panel
12 Number 5 was taken out of the courtroom)

13 MR. ARIAIL: Could you take a matter up outside
14 the presence?

15 THE COURT: Okay.

16 MR. ARIAIL: We want to take up a matter before we
17 go into that.

18 (Whereupon, Juror Number 462 was taken out of the
19 courtroom)

20 MR. ARIAIL: I know she's --

21 THE COURT: Wait just one second.

22 (Off the record)

23 (Back on the record)

24 THE COURT: I'm sorry, I was just wanting to do a
25 little legal stuff for me.

1 MR. ARIAIL: I know Ms. Johnson says that she
2 knows me socially and she said that wouldn't affect her, but
3 I want to put on the record, just so the defense counsel
4 knows, Ms. Johnson has been a long time friend of mine, and
5 her husband, Jim Johnson, was a lawyer here in Greenville
6 for a number of years. Jim and I were in the same golf from
7 up until his untimely death. We played golf every week, so
8 this is not just an acquaintance social relationship.
9 Harriet Johnson and her children are friends of my children
10 and it's a -- it's a -- it's a -- you know, it's not just a
11 casual relationship. She knows my wife. She knows my
12 children. I know her children. I even wrote a
13 recommendation for her son to go to law school, so there is
14 more to it than just her. And I think she probably thinks
15 she could put it aside, but I want to put it on the record
16 that I think it might be a little difficult for her.

17 MR. GODFREY: May it please the court, I would
18 like to thank Solicitor Ariail for advising us of that
19 information.

20 Your Honor, given the fact of the close social
21 relationship that Solicitor Ariail has had with Harriet
22 Johnson, we would respectfully request that she be excused
23 from this case.

24 THE COURT: Thank you, Mr. Godfrey.

25 Ms. Strom?

1 MS. STROM: Oh, Your Honor --

2 THE COURT: You stood up just a second.

3 MS. STROM: Yes, sir, I was going to put one other
4 matter on the record. When you asked the individuals if
5 they knew any anyone on the witness list, obviously one
6 person I believe -- or testified or stated they knew
7 Terrance Brooks.

8 THE COURT: Terrance Brooks.

9 MS. STROM: I just wanted the record to reflect
10 that was juror Judy Mullinax.

11 THE COURT: Yeah.

12 MS. STROM: That way -- I couldn't remember if you
13 called her name when you said it, so I just wanted the
14 record to be clear.

15 THE COURT: I remembered her name and I have
16 instructed my clerk to make notes of anybody that says
17 anything so that I can remember it when they came back in
18 here.

19 MS. STROM: That's great. Thank you, judge.

20 THE COURT: I'm not sure that's a catch-all.

21 MR. ARIAIL: You will note the questionnaire
22 also --

23 THE COURT: Let me say that I appreciate that for
24 the defense for Mr. Owens and everything, Mr. Ariail. I
25 appreciate you as an officer of the court you putting that

1 on the record. I didn't recognize her, and I knew Mr.
2 Johnson. Some of these younger lawyers might not know Jim,
3 but I thought of him as a young man too. When he -- I think
4 he had a sudden heart attack. He practiced with David Ward
5 and that group, I think.

6 Okay, based on the statements by Mr. Ariail, I'm
7 going to excuse her for cause.

8 (Whereupon, Juror Number 462 was brought back into
9 the courtroom)

10 THE COURT: Ms. Johnson, I'm sorry we didn't
11 recognize you. Your husband was an attorney and Mr. Ariail
12 has gone into a good bit of detail about y'all's social
13 relationship.

14 JUROR NUMBER 462: Right.

15 THE COURT: And based on that I'm going to excuse
16 you from this case.

17 JUROR NUMBER 462: Thank you so much.

18 THE COURT: You don't have to come back.

19 JUROR NUMBER 462: I appreciate it. Thank you.

20 (Whereupon, Juror Number 462 was taken out of the
21 courtroom)

22 THE COURT: The next juror is Benjamin Jordan.

23 THE CLERK: Yes, sir.

24 (Whereupon, Juror Number 232 was brought into the
25 courtroom)

1 BENJAMIN S. JORDAN, #232, having been first duly
2 sworn, testified as follows:

3 VOIR DIRE EXAMINATION BY THE COURT:

4 Q. Mr. Jordan, as you know, this is a trial under our
5 state law in which the State seeks the death penalty. We
6 normally refer to that as a capital case. Do you understand
7 that, the State is seeking the death penalty?

8 A. Yes.

9 Q. Now, this is a very important, very serious matter for
10 Mr. Owens and for the State. Do you understand that?

11 A. Yes, sir.

12 Q. Now, this case arises from an incident that occurred on
13 Laurens Road on the 1st of November, 1997, in the early
14 morning hours when Ms. Irene Graves was killed.

15 Now, a jury has convicted has -- tried and convicted
16 Mr. Owens of murder. Do you understand that?

17 A. Yes.

18 Q. Okay. Now, our state law provides a two-step process,
19 a bifurcated trial. There's two steps. A separate
20 proceeding to determine the punishment or the sentence or
21 how Mr. Owens would be sentenced. Do you understand that?

22 A. Yes.

23 Q. And that's the reason we are here. Okay.

24 Now, there has been some publicity around this case on
25 TV and the radio and the newspaper. Have you read, seen or

1 heard anything about this case?

2 A. No.

3 Q. All right, sir.

4 Now, could you serve in this matter as a fair and an
5 impartial juror?

6 A. Yes.

7 Q. Have you reviewed this document called three types of
8 jurors, which was in the other courtroom?

9 A. Yes.

10 Q. Out of those three types, how would you classify
11 yourself?

12 A. Number three.

13 Q. Number three?

14 A. Yes.

15 Q. All right, sir.

16 And that states that you would not have made up your
17 mind concerning the punishment; that you would hear the
18 facts and circumstances in aggravation and mitigation; you
19 would listen to and follow the law; is that correct?

20 A. Yes.

21 Q. As I would instruct that to you before you made your
22 decision regarding punishment, is that correct?

23 A. Yes, uh-huh.

24 Q. All right. Now, in this case the sentencing authority
25 or the jury is required to focus on the specific

1 circumstances surrounding the killing of Mrs. Graves and the
2 individual characteristics of the defendant and you would
3 hear evidence in extenuation, mitigation and aggravation in
4 regard to the punishment. Do you understand that?

5 A. Yes.

6 Q. Before you reached that decision, the State would have
7 to prove to you beyond a reasonable doubt that a statutory
8 aggravating circumstance existed. In this case, robbery
9 during the commission of the murder while the defendant was
10 armed with a deadly weapon, or larceny during the commission
11 of the murder while the defendant was armed with a deadly
12 weapon. The jury has the burden of proof on that -- I mean,
13 the State has the burden of proof on that beyond a
14 reasonable doubt and the defendant doesn't have to prove
15 anything. He doesn't have to testify. Do you understand
16 that?

17 A. Yes.

18 Q. And you couldn't hold that against him in any way. Do
19 you understand that?

20 A. Yes.

21 Q. Okay, sir.

22 Now, if the jury unanimously agrees that an aggravating
23 circumstance -- a statutory aggravating circumstance exists,
24 then the jury would determine the sentence of Mr. Owens, and
25 that would either be life imprisonment, which in this case

1 means life in prison until the death of Mr. Owens, without
2 the possibility of parole; or, death by lethal injection or
3 electrocution. Do you understand that?

4 A. Yes, sir.

5 Q. When you heard evidence -- aggravating circumstance is
6 facts, incidents, or occurrences which aggravate or worsen
7 the crime, which increases the enormity of the crime.

8 Mitigating circumstances or facts, circumstances, or
9 occurrences which reduce the severity of the offense, that
10 reduce the degree of responsibility and fault.

11 Could you listen fairly and impartially to all the
12 evidence in aggravation and mitigation and write a verdict
13 based on your view of the particular facts and circumstances
14 for either life imprisonment or death?

15 A. Yes.

16 Q. Okay, sir.

17 The law -- if the jury chose the death penalty, every
18 juror would have to sign their name to the sentencing form,
19 a personal endorsement and signature. If you reached that
20 point, could you do that?

21 A. Yes.

22 Q. You could follow my instructions on the law? Not what
23 you think the law should be, but when I go the over with
24 you, you would listen to the facts in mitigation, in
25 aggravation, and you could impose a fair -- and be a fair

1 and impartial juror and impose a sentence that would be fair
2 and impartial?

3 A. Yes.

4 Q. I'm going to let you answer some questions from these
5 fine lawyers, okay?

6 THE COURT: Mr. Gibson.

7 BY THE COURT:

8 Q. I'm sorry, let me ask you two other questions. I need
9 to ask you these questions.

10 If you -- during the course of this trial, if it were
11 come out, I'm not sure, if there were other bad acts by the
12 defendant or crimes either before this murder or after this
13 murder, I would instruct you that you could not consider
14 these as evidence of a statutory aggravating circumstance.
15 You could only consider those issues, if they were
16 introduced in evidence, as to the fact that they may or may
17 not bear on the character of the defendant. Could you
18 follow those instructions?

19 A. Yes.

20 Q. Okay, sir. If any parties were of different race in
21 this case, would race make any difference to you?

22 A. No.

23 Q. If the parties were of different religions, either
24 Muslim, Islamic, or any other faith, would that have any
25 bearing on your sentence?

1 A. No.

2 VOIR DIRE EXAMINATION BY MR. ARIAIL:

3 Q. Mr. Jordan, my name is a Bob Ariail and I'm the
4 solicitor for the Thirteenth Circuit. The solicitor is in
5 this state what most states refer to as a district attorney,
6 prosecuting attorney. That's my role, and will be my role,
7 in this case. And as judge said, assisting me in this case
8 would be my deputy Betty Strom in the red coat, and Ms.
9 Verdin in the green outfit is one of my assistants.

10 Other than the judge introducing me earlier, do you
11 know me from Action Video, Inc.?

12 A. No.

13 Q. Okay. Let me ask you a couple of questions about
14 Action Video. Action Video is owned by a gentleman or was
15 owned by a gentleman whose name escapes me?

16 A. Thomas Cabaniss.

17 Q. Yes, sir, Mr. Cabaniss.

18 And I have done some business with Mr. Cabaniss, both
19 professionally through the solicitor's office and also
20 personally. Are you aware of any of that or have you worked
21 on any of the work that we did?

22 A. No, actually Thomas called -- I called to check in
23 yesterday and he said if you get a chance, see if they have
24 made a bid on a video, or something and --

25 Q. Okay.

1 A. Some kind of video that the jurors have to watch or
2 something. I don't know what it was.

3 Q. I don't think that's -- that might be -- that may be
4 another case in my office.

5 But, in any event, this particular case there is a
6 video that the jury will be shown that was worked on by
7 Action Video for purposes of putting it in a format that
8 could be shown to a jury.

9 A. Okay. We do a lot of that.

10 Q. And this would have been done in 19 -- probably 1999.
11 I noticed on your questionnaire that you were working there
12 then. Are you familiar with that particular work or did you
13 have anything to do with that?

14 A. I may have, but I don't remember it.

15 Q. You don't remember it?

16 A. No.

17 Q. All right. And if you did have anything to do with it,
18 would that in any way affect your ability to be fair and
19 impartial?

20 A. Not at all.

21 Q. Okay.

22 A. I noticed my name was number 32 on the list.

23 Q. Your name?

24 A. I'm talking about that, that list right there.

25 Q. Ben Jordan?

1 A. Yes.

2 Q. Okay. And Ben Jordan, is that someone that you know?

3 A. That's me.

4 Q. Oh, okay.

5 THE COURT: Benjamin S. Jordan.

6 A. I thought that was all the jurors or something on
7 there, so I didn't know.

8 MR. ARIAIL: Okay. All right. Well, that
9 means -- that means he worked on this video. I don't know
10 where that leaves us, but apparently he doesn't remember
11 that.

12 THE WITNESS: We do a lot of those so --

13 MR. ARIAIL: Right.

14 THE COURT: Well --

15 MR. ARIAIL: He won't be called as a witness, but
16 we have listed him as a witness, because he would have been
17 the person we dealt with who put the video on four separate
18 cameras onto one VHS, is what he did.

19 THE COURT: All right. Y'all go ahead and
20 continue with your questioning.

21 MR. ARIAIL: Your Honor --

22 THE COURT: I think he's as much surprised he's on
23 the list as we were.

24 MR. ARIAIL: Well, I'm surprised he didn't
25 recognize his name on the list.

1 THE WITNESS: I did. I thought -- it thought it
2 was supposed to be on the list.

3 THE COURT: He did recognize his name because he
4 told you about it.

5 MR. ARIAIL: I would submit this probably is too
6 much of a compromise to put him as a juror. That would be
7 my position, whatever the defense wishes.

8 MR. GIBSON: We would concur with his assessment.

9 THE COURT: All right, Mr. Jordan, I'm sorry.
10 Since you were listed as a witness, unknown to you, or me or
11 anybody else, but I appreciate you bringing that to our
12 attention.

13 THE WITNESS: I thought it was supposed to be like
14 that.

15 THE COURT: You would have probably been a good
16 juror.

17 THE WITNESS: Thank you.

18 THE COURT: You don't have to come back.

19 THE WITNESS: Thank you.

20 (Whereupon, Juror Number 232 was taken out of the
21 courtroom)

22 THE COURT: He said 32, and the clerk says 242 or
23 232.

24 THE CLERK: Well, he's 232.

25 MR. ARIAIL: According to that witness he's on

1 that list. He did the tape. That's why I asked him. I
2 thought he looked familiar.

3 THE COURT: Roger D. James.

4 (Whereupon, Juror Number 217 was brought into the
5 courtroom)

6 ROGER D. JAMES, #217, having been first duly
7 sworn, testified as follows:

8 VOIR DIRE EXAMINATION BY THE COURT:

9 Q. You are Mr. Roger D. James?

10 A. Yes, sir.

11 Q. Mr. James, you submitted a questionnaire to the court,
12 and the attorneys have a copy of that, and you answered all
13 of those questions truthfully to the best of your knowledge
14 and ability at the time?

15 A. Yes.

16 Q. All right, sir. We are here in a case where the State
17 is seeking the death penalty in regard to Mr. Freddie Eugene
18 Owens.

19 When the State seeks the death penalty in South
20 Carolina, the trial has two phases. The first trial the
21 jury considers guilt or innocence. The second proceeding,
22 which this is, is to determine how Mr. Owens will be
23 sentenced. Do you understand that?

24 A. Yes.

25 Q. Now, this case arises from an incident on the 1st of

1 November of 1997, where Ms. Irene Graves was killed in the
2 early morning hours, and Mr. Owens has been convicted of
3 that murder. Do you understand that?

4 A. Yes.

5 Q. There has been publicity in regard to this case on TV,
6 radio, and the newspaper. Have you read, heard or seen
7 anything about the case?

8 A. No.

9 Q. Now, in this case you were given this form of three
10 types of jurors?

11 A. Yes.

12 Q. Have you reviewed that?

13 A. Yes.

14 Q. And which type of juror do you believe that you would
15 be?

16 A. The third one.

17 Q. The third one?

18 A. Yes.

19 Q. All right, sir.

20 That states that even though he has been found guilty
21 of murder, you would not have made up your mind concerning
22 punishment, is that correct?

23 A. Correct.

24 Q. And you would hear the facts and circumstances in
25 aggravation and mitigation. You would listen to and follow

1 the law before you made up a decision regarding punishment?

2 A. Yes, sir.

3 Q. And based upon the facts presented, if it warranted it,
4 you would write a verdict of life imprisonment, or you would
5 write a verdict of death?

6 A. Correct.

7 Q. All right, sir.

8 Now, aggravating circumstances -- you would hear
9 evidence first. Before the State can seek the death
10 penalty, they have to prove a statutory aggravating
11 circumstance beyond a reasonable doubt. All the jurors
12 would have to find unanimously that the State had proven
13 either that a robbery was committed during this murder while
14 the defendant was armed with a deadly weapon, or larceny was
15 committed during this murder while the defendant was armed
16 with a deadly weapon. The State has to prove that beyond a
17 reasonable doubt. The defendant does not have to prove
18 anything. He does not even have to testify. That cannot be
19 held against him. You would follow that as the law?

20 A. Yes, sir.

21 Q. If the jury found a statutory aggravating circumstance,
22 Mr. Owens could be sentenced to either life imprisonment or
23 death, depending on the particular facts and circumstances
24 in mitigation and aggravation.

25 Aggravating circumstances are circumstances or facts

1 that aggravate or worsen the crime or increase the enormity
2 of the crime.

3 Mitigating circumstances are facts and circumstances
4 which reduce the severity of the offense and reduce the
5 degree of responsibility and fault. Do you understand that?

6 A. Uh-huh.

7 Q. You could hear the facts in extenuation, mitigation and
8 aggravation with an open mind?

9 A. Yes.

10 Q. And you could focus on the specific circumstances of
11 this crime and the individual characteristics of the
12 defendant and write an appropriate punishment, is that
13 correct?

14 A. Yes.

15 Q. In this case I would tell you that life in prison means
16 until the death of the defendant without the possibility of
17 any parole. And death means death by lethal injection or
18 electrocution. Do you understand that?

19 A. Yes.

20 Q. If you reach that point, every juror would have to sign
21 his name to a death sentence or verdict. Could you put your
22 original signature on the document such as that, if the
23 facts and circumstances warranted it?

24 A. Yes, sir.

25 Q. If any evidence came out about prior bad acts or

1 crimes, something that may have occurred before this
2 incident or after this incident, I would then instruct you
3 that that could not be considered as evidence of a statutory
4 aggravating circumstance. Could you follow that
5 instruction?

6 A. Yes, sir.

7 Q. I would instruct you that that evidence could only be
8 considered as it would bear on the character of the
9 defendant. Could you follow that instruction?

10 A. Yes, sir.

11 Q. If in any situation the defendant and other people were
12 of a different race, would that make any difference?

13 A. No.

14 Q. Would the religion -- if any evidence came out about
15 the Islamic faith, or the Muslim faith, or anything of that
16 nature, would that have any effect on your decision?

17 A. No.

18 Q. I'm going to let you answer some questions from these
19 lawyers.

20 VOIR DIRE EXAMINATION BY MR. GODFREY:

21 Q. Good morning, Mr. James.

22 A. Good morning.

23 Q. My name is Bill Godfrey. Co-counsel is Ken Gibson and
24 this is Freddie Owens.

25 I just have a couple of questions for you, sir.

1 If you were to be a juror on this case, you would have
2 to come in here and take an oath to be fair and impartial.
3 Do you believe that you could do that?

4 A. Yes.

5 Q. And, of course, you are going to be hearing evidence
6 from the State and you will be hearing evidence from the
7 defense. At the close of the evidence the State is going to
8 be asking you to consider returning a verdict of death, and,
9 of course, we are going to be asking you to consider
10 returning a verdict of life in prison without the
11 possibility of parole.

12 If after considering the evidence, you believe that the
13 evidence warranted a life sentence, would you have any
14 hesitation whatsoever in voting for life?

15 A. No.

16 Q. Would there be any problems because of personal moral
17 beliefs or religious beliefs or political beliefs? Would
18 anything interfere with that?

19 A. No.

20 Q. And you are certain that you could be fair and
21 impartial?

22 A. Yes.

23 MR. GODFREY: Nothing further.

24 THE COURT: Mr. Ariail.

25

1 VOIR DIRE EXAMINATION BY MR. ARIAIL:

2 Q. Mr. James, my name is Bob Ariail. I'm the solicitor
3 for Greenville, Pickens Counties. And solicitor is the old
4 term that South Carolina still uses to designated state
5 prosecutors. And if you are watching TV, they probably call
6 us DA's, but in South Carolina we are still solicitors. So
7 you understand what my role would be?

8 A. Yes.

9 Q. Okay. And assisting me to my right is Ms. Strom and
10 Ms. Verdin. Ms. Strom is my deputy in the red coat.

11 From your answers, do you believe that the death
12 penalty is an appropriate punishment under our law in
13 certain circumstances?

14 A. Yes, sir.

15 Q. And have you held that view for some time prior to
16 coming into this court, or is that something that you just
17 thought about as a result of being sent a summons?

18 A. I have held it for some time.

19 Q. Now, as a result of being called in here, you will be
20 put in a situation where it's a little bit unique and I want
21 to make sure that you understand what we are doing.

22 Normally when a criminal defendant is convicted, at trial
23 the judge sentences. In this case, because the State asked
24 for the death penalty, the jury would be the sentencer.

25 And even though the defendant is before you, he's

1 convicted of the crime of murder, he still is entitled to a
2 jury trial or jury consideration of what the proper
3 punishment is. And if you were seated as a juror, that
4 would be what your role would be. So you, in essence, would
5 be acting as a judge, taking the place of the judge.

6 And as I understood your comments, you said that you
7 could consider or wait to hear all of the evidence and
8 consider whether or not such was appropriate to impose the
9 death penalty or life imprisonment?

10 A. Correct.

11 Q. Okay. And you don't know of anything socially,
12 politically, religious, philosophically, or anything in your
13 background that would prevent you from or impede your
14 ability to fairly consider either life imprisonment without
15 parole or the death penalty as the appropriate punishment?

16 A. No.

17 Q. No beliefs or training or background that you may have?

18 A. No.

19 Q. All right. And do you believe that life imprisonment
20 without parole is a significant punishment for certain
21 crimes under our law?

22 A. Certain crimes.

23 Q. Oh, one other thing. The judge asked you about your
24 ability to sign. Do you understand that if you found the
25 death penalty was appropriate, and your other eleven jurors

1 also agreed, that you would have to sign a document that
2 would come back to the court to be used -- to be sent to the
3 Department of Corrections to carry out that sentence. Would
4 the fact that you had to sign that document in any way
5 interfere with your ability to consider the death penalty as
6 an appropriate punishment?

7 A. No, sir.

8 Q. Okay. So could you physically sign it if that was your
9 verdict?

10 A. Yes.

11 Q. I noticed on your questionnaire that you -- what you
12 filled out before the case was continued that there was a
13 family illness that was having some impact on your small
14 company because you were running it yourself. Does that
15 situation still existing, or has it --

16 A. Well, it was a one-man company. I run my own company.
17 It's a trucking company.

18 Q. Okay. So --

19 A. The family illness is not there anymore.

20 Q. Not there. Okay. Very good. All right.

21 MR. ARIAIL: Thank you. That's all I have. Thank
22 you, sir.

23 THE COURT: Mr. James, if you would step out just
24 for a minute.

25 (Whereupon, Juror Number 217 was taken out of the

1 courtroom)

2 THE COURT: Anything from the State?

3 MR. ARIAIL: I believe he's qualified.

4 THE COURT: By defense?

5 MR. GODFREY: He's qualified.

6 THE COURT: He's qualified.

7 Bring him back.

8 (Whereupon, Juror Number 217 was brought into the
9 courtroom)

10 THE COURT: Mr. James, you are a qualified juror
11 in this case, a potential juror. You will have to come back
12 hopefully on Wednesday with a group of other people,
13 approximately 45 of you. And from that group the jury and
14 the alternates will be chosen. Still until that time you
15 cannot talk to anyone about the case or discuss it.

16 If you would just call this number after six
17 o'clock tonight, we will leave a message for you as to when
18 you should call back or when you would report.

19 When you have to report, you can drive your car
20 and leave your clothes for about five days in the car, if
21 you want to do that, because if you are chosen as a juror,
22 you probably have to spend about five nights in the motel.

23 JUROR NUMBER 217: Okay.

24 THE COURT: And you can drive your car out to the
25 motel after you leave the court here and just leave it or

1 have someone pick it up.

2 JUROR NUMBER 217: Okay.

3 THE COURT: All right. Now, you can read this
4 order and follow this instructions, but just call us back
5 after six tonight, okay?

6 JUROR NUMBER 217: Okay.

7 THE COURT: Thank you so much.

8 JUROR NUMBER 217: Thank you, sir.

9 (Whereupon, Juror Number 217 was taken out of the
10 courtroom)

11 THE COURT: Letitia Glenn.

12 MR. ARIAIL: Your Honor, she's pregnant.

13 THE COURT: She is?

14 MR. ARIAIL: Yes.

15 (Whereupon, Juror Number 166 was brought into the
16 courtroom)

17 LETITIA P. GLENN, #166, having been first duly
18 sworn, testified as follows:

19 VOIR DIRE EXAMINATION BY THE COURT:

20 Q. Ms. Glenn, you have reviewed the three types of jurors
21 statement that I gave you?

22 A. Yes, sir.

23 Q. And you submitted a questionnaire before you came?

24 A. Yes.

25 Q. Which type juror would you consider yourself to be?

1 A. I believe I would be number two.

2 Q. Okay. And on your questionnaire you stated that you
3 did not believe in the death penalty?

4 A. Yes, sir.

5 Q. Okay. And you would be a juror who, although guilt had
6 been determined, under no circumstances could you give the
7 death penalty?

8 A. No, sir.

9 Q. You would not be able to do that?

10 A. No, I would be fine with life imprisonment, but not the
11 death penalty.

12 Q. Not under any circumstances?

13 A. No, sir.

14 Q. Okay. I'm going to let you step out, Ms. Glenn.

15 JUROR NUMBER 166: Okay.

16 (Whereupon, Juror Number 166 was taken out of the
17 courtroom)

18 THE COURT: You know, under the law I know that
19 their belief there, but in some cases in society there is
20 some people that just don't believe in it. And yesterday we
21 find two people that just believed in it in every case, and
22 that's what we are finding here. From a legal standpoint I
23 hesitate to disqualify anyone, but, again, sometimes we just
24 go over things and go over things and they lose respect for
25 the law in that regard. So I'm not sure that any further

1 questioning would affect this juror one way or the other. I
2 have observed her demeanor and I think that her belief would
3 prevent or substantially affect her ability to write a
4 sentence in accordance with the law and the instructions in
5 the case.

6 Does the defense have any objection to that?

7 MR. GIBSON: No, Your Honor.

8 THE COURT: Anything from the prosecution?

9 MR. ARIAIL: None.

10 THE COURT: Okay. Bring her in.

11 (Whereupon, Juror Number 166 was brought into the
12 courtroom)

13 THE COURT: Ma'am, we respect your opinion.

14 JUROR NUMBER 166: Uh-huh.

15 THE COURT: We certainly appreciate you telling us
16 that. We have had people tell us both ways. Thank you so
17 much and I'm going to excuse you. You will not have to come
18 back on this case.

19 JUROR NUMBER 166: Okay. Thank you.

20 THE COURT: Thank you.

21 (Whereupon, Juror Number 166 was taken out of the
22 courtroom)

23 THE COURT: Cassandra Talbert.

24 (Whereupon, Juror Number 394 was brought into the
25 courtroom)

1 CASSANDRA D. TALBERT, #394, having been first duly
2 sworn, testified as follows:

3 VOIR DIRE EXAMINATION BY THE COURT:

4 Q. Ms. Talbert, have you reviewed this questionnaire about
5 three types of jurors?

6 A. Yes.

7 Q. And if you had to classify yourself, what type juror do
8 you think that you would be?

9 A. Fair.

10 Q. Okay. Would you be one that would give the death
11 penalty in every case of murder?

12 A. No.

13 Q. Would you be one who would never give the death penalty
14 in any case of murder?

15 A. Yes, I think I could.

16 Q. Even though the guilt of the defendant has been
17 determined, as in this case, under no circumstances could
18 you give the death penalty?

19 A. No, I don't believe -- no.

20 Q. I'm sorry?

21 A. No.

22 Q. You could not?

23 A. Uh-uh.

24 Q. Let me go into a little bit more detail about this
25 case.

1 This case arises from an incident on November the 1st
2 of 1997, when Mrs. Irene Graves was working at a Safeway on
3 Laurens Road in the early morning hours and she was killed,
4 and Mr. Owens has been convicted of murder for that.

5 Now, the law recognizes that there are two trials
6 before a jury, or two proceedings. There is a guilt or
7 innocence proceeding and then there is a sentencing
8 proceeding, okay? And the purpose of this is to determine
9 how Mr. Owens will be sentenced for this. He's already been
10 convicted of murder. Do you understand that?

11 A. Yes.

12 Q. Now, in this case before the State can seek the death
13 penalty -- they cannot seek the death penalty for just any
14 murder. Do you understand that?

15 A. Yes.

16 Q. They can only seek the death penalty if they can prove
17 a statutory aggravating circumstance.

18 In this case that means the State has got to prove to a
19 jury beyond a reasonable doubt that this murder was
20 committed while a robbery was being committed or in the
21 commission of a robbery while the defendant was armed with a
22 deadly weapon, or in the commission of a larceny while the
23 defendant was armed with a deadly weapon.

24 Do you understand the State has the burden of proving
25 that beyond a reasonable doubt?

1 A. Yes, I understand.

2 Q. There is no burden on the defendant. He doesn't have
3 to prove anything or even testify. You couldn't hold that
4 against him. Do you understand that?

5 A. Yes.

6 Q. Now, you as the juror, if you were on the jury, would
7 have to hear evidence in extenuation, mitigation, or
8 aggravation and determine a fair and an impartial sentence
9 under the law. Do you understand that?

10 A. Uh-huh, yes.

11 Q. The law provides that if the facts and circumstances
12 warrant that, the defendant can be sentenced to death. Do
13 you understand that?

14 A. Yes, I understand.

15 Q. The law provides that if the facts and circumstances
16 that you consider in aggravation and mitigation warrant the
17 fact, he could be sentenced to life imprisonment. Do you
18 understand that?

19 A. Yes.

20 Q. Even though you found an aggravating circumstance you
21 could sentence him to life imprisonment. Do you understand
22 that?

23 A. Right, yes.

24 Q. Now, if the facts, the particular facts and
25 circumstances in extenuation and mitigation warranted that

1 and it was determined by the jury that the sentence should
2 be death, could you sign your name personally to the
3 sentence of death?

4 A. Yes, I could.

5 Q. Okay. Now, under the facts and circumstances, if the
6 facts and circumstances indicated that the sentence should
7 be life imprisonment, could you do that?

8 A. I could do that too, yes.

9 Q. All right. And in this case life imprisonment would
10 mean life until the death of the defendant with no
11 possibility of parole. Do you understand that?

12 A. Yes.

13 Q. Death would be by lethal injection or electrocution.
14 Do you understand that?

15 A. Yes.

16 Q. And you could sign your name to either sentence,
17 depending on the facts and the circumstances and the law?

18 A. Yes, I could.

19 Q. If evidence came in as to any prior crimes or bad acts
20 before or any bad acts or crimes after this murder, that
21 could only be considered as it would bear on the defendant's
22 character, not as evidence of any statutory aggravating
23 circumstance. Could you follow that instruction?

24 A. Yes, I can.

25 Q. If people were of different race, would that affect

1 your ability to decide this case?

2 A. No, it would not.

3 Q. If religion came into the case in any way, Muslim faith
4 or the Islamic's faith, would that affect your decision?

5 A. No, it wouldn't.

6 Q. You would be fair and impartial and honor your oath,
7 follow the instructions from the court and the law and write
8 a verdict that speaks the truth under the facts and
9 circumstances?

10 A. Yes.

11 Q. You would be fair to the State?

12 A. Yes.

13 Q. And fair to this defendant?

14 A. Yes.

15 Q. I'm going to let you answer some questions from the
16 these lawyers.

17 VOIR DIRE EXAMINATION BY MR. ARIAIL:

18 Q. Ms. Talbert, my name is Bob Ariail and I'm the
19 solicitor for the Thirteenth Circuit, which means I'm the
20 State's prosecutor. You watch TV, they call them DA's. We
21 still call them solicitors, and my role would be to
22 represent the State in this case, and Ms. Strom, my deputy,
23 would be assisting, along with Ms. Verdin, who is also
24 seated at counsel table.

25 I want to go back a little bit because I got a little

1 confused during the questioning, because in the beginning
2 the judge asked you what kind of juror and you said that you
3 were a juror two that could not give -- you felt that life
4 imprisonment was the appropriate sentence in any murder
5 case. And then later you said -- you indicated that you
6 thought that you could -- sitting as a juror on the jury
7 could give -- that you could impose the death sentence. Is
8 that what I heard?

9 A. Yes, you heard that.

10 Q. Let me go back and explain what you would be doing and
11 make sure that I'm clear.

12 This defendant has been convicted of the crime of
13 murder. The question only before you, if you were picked
14 for this jury, would be what is the sentence to be imposed.

15 Normally in a case where the defendant is tried and
16 convicted, his sentence is imposed by a judge, not by a
17 jury, in South Carolina. But in cases where the State seeks
18 the death penalty, it changes, and the law says that a jury
19 must sentence a defendant.

20 When we are picking jurors, we are looking for people
21 who have the qualities of a judge; that is, that can be
22 fair, they can be -- they can consider all available
23 punishments. They don't have preconceived biases. They can
24 open themselves to reviewing all of the evidence and then
25 make a big picture determination of what the appropriate

1 sentence should be. So you can see what kind of person we
2 are looking for, because they have got a big responsibility
3 to carry out.

4 Now, you said earlier that you felt that if the
5 defendant had been convicted of murder, the appropriate
6 sentence in all cases was life imprisonment.

7 A. Uh-huh.

8 Q. All right. Is that what you are saying, that the
9 defendant, if he's convicted of murder, should get a life
10 imprisonment sentence?

11 A. Yes.

12 Q. All right. Well, what the State is asking -- if that's
13 your belief and you are on the jury sitting as a judge and
14 the State is seeking the death penalty, will you be able to
15 give fair consideration or meaningful consideration to the
16 State's request to impose the death penalty?

17 A. Yeah, I -- I feel I could be fair towards that, uh-huh.

18 Q. All right. Well, let's talk a little bit about being
19 fair. Do you think that being fair that you could vote to
20 impose the death penalty?

21 A. To impose a --

22 Q. To impose. To give the death penalty to a defendant?

23 A. Yes, I could.

24 Q. Do you think that you could vote to do that?

25 A. Yes.

1 Q. All right. Well, explain to me then, if you could, why
2 you say that you are a number two juror, but you say that
3 you can vote to impose the death penalty.

4 A. Because I would look at it, depending on the case and
5 the circumstances of the case. And I think that I could
6 weigh to the other side, you know. I don't really like the
7 death penalty. I'm not saying that I wouldn't go that way.

8 Q. All right. Would you in -- as a result of not liking
9 the death penalty, would you be pre -- sort of have in your
10 mind going into the trial that you are not going to vote for
11 the death penalty unless the State really comes forward and
12 gives me a real reason to do it?

13 A. Right.

14 Q. And you understand that the jury determines, and you
15 are a part of that jury determination to impose the death
16 penalty, that you would, along with your fellow jurors, have
17 to sign your name on the document that would come back to
18 the court and would go to the Department of Corrections to
19 be used to carry out the execution?

20 A. Could I sign my name?

21 Q. Could you sign your name?

22 A. Yes.

23 Q. Okay.

24 MR. ARIAIL: Thank you, Your Honor. That's all.

25 Thank you, ma'am.

1 VOIR DIRE EXAMINATION BY MR. GODFREY:

2 Q. Good morning again, Ms. Talbert. My name is Bill
3 Godfrey. This is Ken Gibson, and we represent Freddie
4 Owens.

5 If you were a juror in this case, do you believe that
6 you could be fair and impartial to both sides?

7 A. Yes.

8 Q. Now, you understand that in a case like this you will
9 hear evidence from the State and a request from the State at
10 the very end that you return a verdict of death for Freddie
11 Owens.

12 You also understand that you will be hearing evidence
13 from the defense, and at the very end we will be asking that
14 you return a verdict of life without parole for Freddie
15 Owens? Do you understand that, right?

16 A. Yes.

17 Q. Before you can go back as a jury, or as a juror, and
18 deliberate, you have to have an instruction of law from the
19 judge. The judge will tell you what the law is that you
20 need to use in this case. Do you understand that?

21 A. Yes.

22 Q. Do you also understand that the judge would -- excuse
23 me, that you also understand that you would have to take the
24 law that the judge gave you and apply it to the evidence in
25 order to come up with a verdict in this case?

1 A. Yes, I do.

2 Q. Do you believe that you could be fair and impartial in
3 doing that?

4 A. Yes, I do.

5 Q. Based on your testimony, is it my understanding you
6 sort of lean to life imprisonment?

7 A. Right.

8 Q. But that doesn't mean that you couldn't impose the
9 death sentence in certain circumstances?

10 A. Yes.

11 Q. And you are willing to put your leaning aside and give
12 both the State and the defense a fair and an impartial
13 hearing?

14 A. Yes.

15 Q. And you believe that you could do that?

16 A. I could do that.

17 Q. After you have considered all of the evidence, would
18 you have any problem at all -- if the evidence warranted a
19 death sentence, would you have any problem at all -
20 religious, moral, social, or otherwise, for any reason - if
21 the evidence warranted it, could you vote death?

22 A. Yes, I can. I can.

23 Q. And you believe that you can be fair and impartial
24 throughout this process?

25 A. Yes.

1 MR. GODFREY: Nothing further.

2 THE COURT: Ms. Talbert, if you would just step
3 outside for just a minute and I'll bring you back in.

4 (Whereupon, Juror Number 394 was taken out of the
5 courtroom)

6 THE COURT: I think under the law of this state,
7 even though she's inclined to life imprisonment, that that
8 does not disqualify her, if she, under the facts and
9 circumstances, could follow the law and impose the sentence.

10 I find she's qualified.

11 MR. GODFREY: Defense believes she's qualified.

12 THE COURT: Okay.

13 MR. ARIAIL: State concurs.

14 (Whereupon, Juror Number 394 was brought into the
15 courtroom)

16 THE COURT: Ms. Talbert, you have been qualified
17 as a potential juror in this case, okay? That means that
18 you will have to report back hopefully Wednesday with about
19 45 other people and sit and the jury would be selected from
20 that group. All right?

21 JUROR NUMBER 394: Yes.

22 THE COURT: You cannot discuss the case with
23 anyone, read any newspapers, be exposed to any publicity
24 about the case, okay?

25 JUROR NUMBER 394: Okay.

1 THE COURT: I'm going to give you this order to
2 qualified jurors and you are to call back this number after
3 six o'clock tonight. We will inform you as to when to come
4 back.

5 When you come back in the car, you should bring
6 some clothes for about five nights, okay, in case you are
7 chosen on the jury. You can drive your car to the motel
8 when you leave the courthouse here, and leave it there,
9 whatever you want to do. All right?

10 JUROR NUMBER 394: Okay.

11 THE COURT: Now, call this number after six
12 tonight and we will leave a message as to when you need to
13 come back.

14 JUROR NUMBER 394: Okay.

15 THE COURT: Thank you.

16 (Whereupon, Juror Number 394 was taken out of the
17 courtroom)

18 THE COURT: All right. Kelly Moss works for the
19 Bank of Travelers Rest. She's the next one. And we had a
20 note from Gastroenterology, it was all of our thinking from
21 Dr. Rycoff that she had --

22 THE CLERK: Crohn's Disease.

23 THE COURT: Crohn's disease?

24 THE CLERK: Yes, sir.

25 THE COURT: Okay. And she goes on to say that she

1 works for the Bank of Travelers Rest. Her employer wants
2 her excused.

3 Then she throws in the fact that her
4 brother-in-law has worked for Mr. Ariail. And I don't know
5 who that might have been.

6 MR. ARIAIL: I may have fired him. We better find
7 out.

8 THE COURT: I'm sorry?

9 MR. ARIAIL: I may have fired him. I would want
10 to excuse her, but --

11 THE COURT: I mean, if y'all have looked. I don't
12 know who her brother-in-law is. I thought you might have
13 helped me on that.

14 MR. GIBSON: Defense does not know yet.

15 MR. ARIAIL: Step-brother.

16 THE COURT: Her step-brother?

17 MR. ARIAIL: Yes, it says step-brother is a police
18 officer and also advised investigator for the solicitor.

19 THE COURT: Okay.

20 MR. ARIAIL: Was. She will be all right, I guess.

21 MR. GIBSON: Your Honor, we are inclined to ask
22 that she be dismissed. Given the number of things that she
23 has done to try to get off this jury, given her, you know,
24 admitted relationship with the solicitor's office, no matter
25 how it ended, and also given the number of things in her

1 past. If you look at her questionnaire, she has had a
2 number of things where she has been very closely related to
3 robberies. She was the victim of an armed robbery. She had
4 a number of people, at least two, who were -- who suffered
5 for murder. Given all that, Your Honor, we would ask that
6 she be dismissed for cause. I don't think that -- given
7 that how hard she's worked to get off this jury, I don't
8 think she's going to be able to be fair.

9 MR. ARIAIL: Well, I mean, that may be true, Your
10 Honor, but I think we better ask her before we just
11 summarily dismiss. She may be a -- she may be a life prone
12 juror.

13 THE COURT: Maybe. I better ask her a few
14 questions.

15 MR. ARIAIL: Your Honor, she also said she had two
16 kids under seven, but she never produced the affidavits
17 either --

18 THE CLERK: She works.

19 MR. ARIAIL: -- as requested.

20 MR. ARIAIL: She works full time.

21 (Whereupon, Juror number 302 was brought into the
22 courtroom)

23 KELLEY S. MOSS, #302, having been first duly
24 sworn, testified as follows:

25

1 VOIR DIRE EXAMINATION BY THE COURT:

2 Q. Ms. Moss, let me ask you just a couple of preliminary
3 questions. You indicated that you had a step-brother who
4 was a police officer and an investigator for Solicitor
5 Ariail?

6 A. Uh-huh.

7 Q. Who was that, ma'am?

8 A. John Pagan.

9 Q. John who?

10 A. Pagan.

11 Q. How do you spell that?

12 A. P-A-G-A-N.

13 Q. Okay. And when did he work for Solicitor Ariail?

14 A. I think he -- I think it's been a couple of years.

15 Q. A couple of years?

16 A. Since he -- you know, he's not here anymore, but he
17 worked here for a few years.

18 Q. What's he doing now?

19 A. It's not police related. It's like head hunting. He
20 works for -- he helps find jobs for people who are
21 unemployed.

22 Q. Okay.

23 A. So he's not involved with that.

24 Q. You have had a chance to review the three types of
25 jurors?

1 A. Yes, sir.

2 Q. Which type do you feel that you would fall into?

3 A. Probably -- probably the first one?

4 Q. The first one?

5 A. Yes.

6 Q. That states that once a crime of murder has been
7 committed, you feel that that person should receive the
8 death penalty in each and every case?

9 A. I just try to put myself in the victim's family's
10 shoes. I mean, that's all. I just try to think if these
11 were my kids, would I want somebody to do for me. I just --

12 Q. What is the -- I won't put hypotheticals to you, not
13 just children, but --

14 A. Somebody in my family.

15 Q. I'm sorry?

16 A. Somebody in my family that I cared about.

17 Q. In your questionnaire you indicated that -- did you
18 live with your step-brother? Did you have a close
19 relationship with him?

20 A. He lives in Greenville. I live in Travelers Rest, but
21 we grew up together. Our parents had been married for over
22 20 years.

23 Q. Okay. You indicated that you had a step-friend whose
24 mother and stepfather were murdered about three years ago?

25 A. Correct.

1 Q. And could you tell us who that might have been?

2 A. It was Leann Fosky is my friend. And the lady involved
3 that was murdered was a teacher up at Marietta elementary
4 school.

5 Q. Ms. Moss, the defendant has been convicted of murder,
6 and the purpose of this proceeding is to determine his
7 sentence.

8 A. Yes, sir.

9 Q. We need a jury that would be fair and impartial and
10 decide this case only on the evidence that's presented and
11 you would have to consider facts in mitigation and
12 extenuation.

13 A. Sure.

14 Q. A juror would need to not have his or her mind made up
15 in regard to the punishment. The feelings about the death
16 penalty could not in any way prevent them from giving a
17 sentence of life or a sentence of death.

18 Do you think that you would be prevented or
19 substantially affected in writing a fair sentence in this
20 case?

21 A. I wouldn't think so.

22 Q. I'm sorry?

23 A. I wouldn't think so. I would hope I would be fair. I
24 have never been in this situation before.

25 Q. This is a very important case for Mr. Owens here.

1 A. Yes, sir.

2 Q. It's a very important case for the State, Mr. Ariail
3 and his -- and the State. He's representing the State. Do
4 you understand this is important for both sides?

5 A. Yes, sir.

6 Q. Ms. Moss, the State cannot seek the death penalty for
7 every murder.

8 A. Uh-huh.

9 Q. That's the law.

10 A. Uh-huh.

11 Q. Can you understand that?

12 A. Sure.

13 Q. You are a college graduate. I'm sure that you
14 understand that.

15 A. Yes, sir.

16 Q. These questions may seem basic, but for the record I
17 need to cover these with you, okay?

18 A. Sure.

19 Q. This arises from an incident that occurred on November
20 the 1st of 1997, in the early morning hours when Ms. Irene
21 Graves was killed in a Speedway on Laurens Road. Okay?

22 A. Okay.

23 Q. Mr. Owens has been convicted of that murder by another
24 jury. Okay?

25 A. Okay.

1 Q. Now, the law provides that if the State seeks the death
2 penalty, there is a second proceeding before a jury to
3 determine how Mr. Owens will be sentenced for that crime.
4 Do you understand that?

5 A. Yes, sir, I do.

6 Q. I would tell you, Ms. Moss, that the State has to prove
7 beyond a reasonable doubt a statutory aggravating
8 circumstance; that is, in this case that this murder was
9 committed while a robbery was being committed with the
10 defendant armed with a deadly weapon, or that the defendant
11 committed a larceny while armed with a deadly weapon. The
12 State has got to prove a statutory aggravating circumstance
13 beyond a reasonable doubt before the jury can determine the
14 sentence. Do you understand that?

15 A. I do.

16 Q. The defendant would have no burden of proof at all and
17 he would not even have to testify. The burden of proof in
18 that regard is always on the State. Do you understand that?

19 A. Uh-huh.

20 Q. If the jury unanimously found Mr. Owens committed this
21 murder while involved in a statutory aggravating
22 circumstance and that was found beyond a reasonable doubt by
23 all twelve jurors, then the jury would determine the
24 sentence. Do you understand that?

25 A. Uh-huh.

1 Q. Do you understand that?

2 A. I do.

3 Q. This court would follow the recommendation of the jury
4 and that would be the sentence of Mr. Owens.

5 A. Yes.

6 Q. Now, could you focus on the specific circumstances of
7 this crime in regard to Ms. Graves and the individual
8 characteristics of the defendant, consider all the evidence
9 in extenuation, mitigation, and aggravation, and if the
10 facts and circumstances warranted it, could you write a
11 sentence of death?

12 A. Yes.

13 Q. If the facts and circumstances in extenuation,
14 mitigation and aggravation -- and an aggravating
15 circumstance is a fact or circumstance or occurrence that
16 makes the crime worse or increases the enormity of the
17 crime.

18 A mitigating circumstance is one that reduces the
19 severity of the offense. It reduces the degree of
20 responsibility and culpability of murder.

21 Under the law you would be required to consider all the
22 evidence and testimony in regard to aggravation and
23 mitigation, and considering those, be able to write a
24 sentence of life imprisonment. Could you do that?

25 A. I could.

1 Q. If the facts and circumstances warranted it?

2 A. I could.

3 Q. All right. And do you understand that life in prison
4 in this case that we are trying in regard to Mr. Owens would
5 be life imprisonment without the possibility of parole until
6 the death of the defendant?

7 A. Correct.

8 Q. Do you understand that what's life is?

9 A. Yes.

10 Q. Death means by lethal injection or electrocution.

11 A. Uh-huh, correct.

12 Q. Now, if the jury were to find, all twelve agreed that
13 the sentence should be death, you would have to sign -- and
14 I'm not indicating anything about the facts. Do you
15 understand that?

16 A. Sure.

17 Q. You would have to sign your name, your original
18 signature to a document sentencing Mr. Owens to death.
19 Could you do that?

20 A. Yeah, I could. It would be hard.

21 Q. All right. But you could follow the instructions of
22 the court and you could reach either a life sentence or a
23 death sentence. Is that your testimony?

24 A. Yes.

25 Q. And you would faithfully and impartially do that on my

1 instructions about the law and the facts and circumstances
2 that you heard?

3 A. Yes.

4 Q. If any evidence -- and I don't know what the evidence
5 is going to be, and that's for the jury to decide, but if
6 any evidence came out about prior crimes or bad acts or
7 subsequent crimes or bad acts, that evidence could not be
8 considered in any way as it would bear on the statutory
9 aggravating circumstance. Could you follow that
10 instruction?

11 A. Yes.

12 Q. I would instruct you that that evidence could only be
13 considered as it would bear on the character of the
14 defendant. Could you follow that instruction?

15 A. Yes.

16 Q. Would race have any effect on your decision in this
17 case?

18 A. No.

19 Q. Would religion have any effect on your decision?
20 Either Muslim faith, Islamic faith, or any of your personal
21 opinions about religion, would that have any effect on your
22 decision?

23 A. No, sir.

24 Q. I'm going to let you answer some questions from these
25 lawyers.

1 A. I want -- you told me to mention I had given you a
2 doctor's note yesterday.

3 Q. Yeah.

4 A. Do I need to speak with you in private about that?

5 Q. I don't think we got -- do I?

6 A. To be honest with you, the stress is not good for me.
7 It's may can cause me to get really sick.

8 Q. It's a stressful experience for everybody.

9 A. Yes.

10 Q. Let's just see how we do, okay?

11 A. Okay.

12 THE COURT: Mr. Gibson.

13 VOIR DIRE EXAMINATION BY MR. GIBSON:

14 Q. All right. Hi, Ms. Moss, I'm Ken Gibson. This is Bill
15 Godfrey, my co-counsel, and this is my client, our client,
16 Freddie Owens.

17 I just want to ask you a couple of things.

18 Now, just as a preliminary matter, you know there are a
19 number of ways in which a juror can be excluded from jury
20 service?

21 MR. ARIAIL: Your Honor, I'll object to that. He
22 can't talk to witness on how to be excluded.

23 THE COURT: I'm sorry, I was talking to my law
24 clerk.

25 What's your question, Mr. Gibson?

1 MR. GIBSON: I was telling her that there are
2 number of ways a juror could be excluded from juror service.

3 THE COURT: That's okay.

4 MR. GIBSON: Okay.

5 BY MR. GIBSON:

6 Q. Do you have any children?

7 A. I do.

8 Q. How old are they?

9 A. A nine month old and one that just turned four this
10 weekend.

11 Q. Do you work?

12 THE COURT: She works all the time.

13 BY MR. GIBSON:

14 Q. And you work full time as well?

15 A. I do.

16 MR. GIBSON: Can I ask her if she's aware that
17 that is an option to her?

18 MR. ARIAIL: Your Honor --

19 THE COURT: We told them that.

20 MR. GIBSON: Okay.

21 BY MR. GIBSON:

22 Q. All right. Ms. Moss, I have looked at your
23 questionnaire that you filled out, okay. And I think
24 initially the judge asked you what type of juror that you
25 thought that you were and you said a number one juror?

1 A. That's what I thought.

2 Q. Do you still think that?

3 A. I don't know. I will be honest with you, I don't know.

4 Q. Okay. And I think when he asked you about that, you
5 made the statement that if you ever thought that you were in
6 that position, you thought that you would do what you
7 thought the family members wanted -- or you thought that you
8 would want to do what you would hope the people would do for
9 you?

10 A. Correct.

11 Q. Okay. If a family member of yours was killed, in any
12 way murdered, deliberately murdered, would you want that
13 person to get the death penalty?

14 A. Probably.

15 Q. So if you were in that situation of having to decide
16 someone's life, you would be thinking along those same lines
17 as to what and making your decision?

18 A. I would probably keep going back to that in my head.

19 Q. Okay. Would you be able to put that out of your mind?

20 A. I don't know.

21 Q. Are you certain?

22 A. Maybe -- maybe if there was, you know, other jurors
23 that swayed me, maybe.

24 Q. But now this is going to have to be your decision and
25 your decision only.

1 A. Yes.

2 Q. Okay. Are you certain that you would be able to put
3 that out of your mind if you were selected to serve on this
4 jury?

5 A. I guess it depended upon what he did because I have no
6 clue.

7 Q. Okay. Well, let's talk about that. Now, you said that
8 in your questionnaire that you had been a victim of an armed
9 robbery?

10 A. In the spring.

11 Q. Okay. And so you know this situation is going to be
12 very similar to that. It involves allegations of an armed
13 robbery.

14 A. Yes.

15 Q. Okay. And it's going to involve allegations of someone
16 taking out a weapon, and pretty much the exact same thing
17 that happened to you.

18 A. Okay.

19 Q. Now, I imagine if it were me, it would be very
20 difficult for me to put that out of my mind.

21 MR. ARIAIL: I think that's an improper form of
22 the question.

23 THE COURT: Yeah.

24 BY MR. GIBSON:

25 Q. Okay. Would it be difficult for you to put that out of

1 your mind in trying to decide whether or not Mr. Owens' life
2 should be spared?

3 A. That might be hard.

4 Q. Okay. Can you say for certain that you would be able
5 to put that out of your mind?

6 A. Probably not be able to.

7 Q. All right. Now, from your questionnaire it seems that
8 you have actually been exposed to two murders, is that
9 correct?

10 A. Yes.

11 Q. One was your friend's mother and stepfather and then
12 the other one?

13 A. That's the -- that's the only one. I think that might
14 be the only one.

15 Q. Is that the same one, just probably stated differently?

16 A. My husband was just on a capital case this past winter.

17 Q. Okay. And how did your -- well, did they give the
18 death sentence?

19 A. They did.

20 Q. Have you had any conversations with your husband about
21 that death penalty?

22 A. Yes. His -- yeah.

23 Q. Based on those conversations, have you -- have they
24 affected your opinion regarding the death penalty?

25 A. I think we see eye to eye on a lot of things, so no.

1 Q. So you both support the death penalty?

2 A. Yes.

3 Q. Okay. Now, let me ask you about your Crohn's disease.
4 Can you explain to the court what that is?

5 A. It's an intestinal disease that causes ulcerations in
6 the intestines and it causes -- stress can cause flare-ups
7 and put -- put you in the hospital. I mean, I'm on several
8 medications.

9 Q. What medications are you on for that?

10 A. Prevacid, Potaza, sometimes Prednisone.

11 Q. Okay.

12 A. I have had some surgeries for my intestines removed.

13 Q. So this is a fairly serious condition?

14 A. I have had it since I was twelve, and I'm 31, so
15 it's -- yeah.

16 Q. And when you are under stress, it makes your condition
17 flare up?

18 A. It can.

19 Q. When your condition flares up and really exacerbates,
20 is it possible for you --

21 Or let me ask you this. If your condition were to
22 flare up and get exacerbated in the case, would it be
23 possible for you to continue as a juror?

24 A. It depends upon how bad.

25 Q. I mean if it got really bad?

1 A. I don't know. I would have to leave the courtroom
2 several times probably.

3 Q. All right. Do you think that this would be a stressful
4 situation for you?

5 A. I'm stressed now, yes.

6 Q. Okay. In your -- I want to go back to the
7 questionnaire one more time.

8 In your questionnaire you were asked whether or not
9 there was any pressing business or personal matter that
10 might impair your abilities to serve as a juror. You listed
11 two things. One, that you were a mother of two small
12 children?

13 A. Yes.

14 Q. And the second was that you had a brother, I presume
15 your step-brother --

16 A. Yes.

17 Q. -- who was an investigator for the solicitor's office?

18 A. He was, yes.

19 Q. Why do you believe the fact that you are a mother of
20 two small children would affect your ability to serve?

21 A. Because I wouldn't -- I don't know. Just being away
22 from my kids, my family, I mean.

23 Q. Okay.

24 A. That's -- it would be hard for me personally.

25 Q. And do you understand that you would be sequestered in

1 this trial --

2 A. I do.

3 Q. -- for several days?

4 A. I do, because my husband was last year, so, yeah, I
5 understand.

6 Q. Okay. Now, let me ask you. You also said that you
7 felt the fact that your brother was an investigator for the
8 solicitor, that would also impair your ability. Why do you
9 think that?

10 A. Just because he's been -- he was a police officer for
11 several years and we used to just talk about stuff a lot.

12 Q. Well, what --

13 A. Some of the stuff that he would do or cases.

14 Q. I'm sorry, what kind of stuff did y'all talk about that
15 you think would impair your ability?

16 A. Nothing with like a setting like this, because I don't
17 think that he ever dealt with a trial, but just arrests that
18 he made, he had made, and just stuff in passing.

19 Q. So --

20 A. When we would social, but it's been like a couple of
21 years.

22 Q. How do you think that would impair your ability?

23 A. I don't know if that would, to be honest with you.
24 Now, I don't know if that would.

25 Q. Could I have just a second please, Ms. Moss.

1 (Off the record)

2 (Back on the record)

3 BY MR. GIBSON:

4 Q. Thank you, Ms. Moss. If you would please answer any
5 questions that Mr. Ariail may have.

6 VOIR DIRE EXAMINATION BY MR. ARIAIL:

7 Q. Ms. Moss, I'm Bob Ariail. The judge introduced us.
8 I'm the solicitor for the Thirteenth Circuit, which means --
9 that's the word for South Carolina for the district
10 attorney.

11 A. Yes.

12 Q. We are prosecutors.

13 You know what the solicitor's office does?

14 A. Uh-huh.

15 Q. And as your stepbrother worked there.

16 As I understood what you told the judge, regardless of
17 what you thought your feelings were now when you came in
18 here?

19 A. Yeah.

20 Q. Now, having gotten in here and understood what your
21 role is, that is if you were on the jury, you would have to
22 determine what a fair sentence would be?

23 A. Yes.

24 Q. And after the judge explained the process to you, my
25 understanding is that you told him that you could be fairly

1 consider both of those sentences, depending upon what the
2 evidence produced?

3 A. Correct.

4 Q. And that if the evidence warranted it, you could impose
5 a sentence of life imprisonment; and if the evidence
6 warranted it, you could impose a death sentence, is that
7 correct?

8 A. Correct.

9 Q. Now, do you feel that you -- is that still your feeling
10 that you would be able to do that, in spite of what you
11 thought when you came in here?

12 A. Yeah.

13 Q. Okay. And the judge asked you about signing the
14 document. You would only sign the document if all twelve
15 jurors agreed that the death penalty was the appropriate
16 sentence. And then all twelve jurors would sign their names
17 to report that back to the court.

18 If you had decided that the evidence warranted the
19 imposition of the death penalty and all twelve jurors had
20 agreed on that and you were asked to sign the document,
21 along with everybody else, would you be able to do that?

22 A. Probably.

23 Q. It will be a tough decision?

24 A. Sure.

25 Q. But imposing the death sentence would be a tough

1 decision?

2 A. Yes.

3 Q. Well, the whole process would be a tough decision.

4 A. Yes.

5 Q. Okay. Thank you.

6 THE COURT: Ms. Moss, let me let you step outside
7 for just a minute, okay?

8 (Whereupon, Juror Number 302 was taken out of the
9 courtroom)

10 THE COURT: Okay. I'll hear from either side.

11 MR. GIBSON: Your Honor, we believe she's not
12 qualified. She initially expressed that she was a number
13 one type juror. She had a husband who served on a death
14 penalty jury who gave the death penalty. She has been the
15 victim of a crime extremely similar to the case here. She
16 could not say that she was certain that she could put that
17 out of her mind in determining what she -- what kind of
18 sentence she would come down with.

19 Initially, Your Honor, she has Crohn's disease.
20 She's already exhibited -- stated that she's under great
21 stress. The condition is something that if it flares up, it
22 is highly unlikely that she's going to be able to serve
23 throughout this trial.

24 She has two kids who meet that statutory
25 allegation.

1 She has expressed that she does not want to be on
2 this jury, even though she has not -- evidently not aware
3 that she could -- that she should do it under those grounds.
4 She is --

5 THE COURT: She can't -- that was just an improper
6 question. And, you know, I don't want to interrupt y'all
7 too much when y'all are questioning these people, but we go
8 over the exclusions and they are fully aware of that, you
9 know, when we qualify downstairs, Mr. Gibson, but go ahead.

10 MR. GIBSON: I don't doubt that it was gone over
11 with her, but it would seem sort of strange to me for
12 somebody who is trying so hard to get off this jury and has
13 something that by statute allows her off to not express
14 that. That's all I'm saying, Your Honor.

15 But with that said, back to my arguments, Your
16 Honor, she -- she has clear disposition to the death
17 penalty. She's been a victim of a crime extremely similar
18 to this. She's been -- she has been exposed to at least a
19 murder -- at least one murder in her life. She's expressed
20 that if somebody in her family was killed, she would want
21 the person to get the death penalty, and that in her
22 deliberations she -- in deciding whether or not she should
23 give the death penalty, she would take that into account and
24 try to do for them what she would want somebody to do for
25 her.

1 MR. ARIAIL: Your Honor, first, let me say I don't
2 think this lady is trying to get off the jury. I think she
3 has reported to the court a number of her concerns, but I
4 don't think that that's an effort to get off the jury.

5 Secondly, this woman is the exact opposite of Ms.
6 Talbert, Carol, the lady who was before. This juror is
7 obviously death prone, just as Ms. Carol is -- Ms. Talbert,
8 or Ms. Carroll, or whatever name -- she used a different
9 name on her questionnaire, as she is life prone, but that
10 doesn't disqualify them. That's why we have peremptory
11 challenges.

12 This juror told you she could fairly consider both
13 sentences. When she came in here, she thought she was one
14 juror. When you went through the process, she thought she
15 was another one. Ms. Carroll did the same thing. She
16 thought she was -- would always give life, but then after
17 you explained the process, she said well, no, I think I
18 could be fair and I could consider both sentences. And so
19 that's -- what's good for the goose is good for the gander.
20 You can't strike one because they are death prone and then
21 not strike another one life prone, or vice versa. That's
22 just the way the system works, and then that's why we have
23 peremptory challenges. I would say she's qualified.

24 MR. GIBSON: Your Honor, just very quickly.

25 THE COURT: I'm just going to give y'all one

1 argument each.

2 The court understands and has heard everything
3 fully. And I -- I have got to make sure that this is a fair
4 and impartial jury to follow my instructions.

5 She does have a statement from a person that I,
6 for all practical purposes, she's testified in this court
7 and -- Piedmont Gastroenterology. I'm aware of who they
8 are, and she states that she's got a physical condition,
9 which she's expressed again on the stand here today to the
10 court. But my feelings in that regard, if everybody in this
11 case is not under stress, when you are talking about the
12 punishment for somebody for murder, then I'm not sure they
13 ought to be on the jury. If somebody were to come in here
14 and say they are not under stress, I would find out what
15 kind of tranquilizers they are taking, or something. I'm
16 not going on say too much, but the difference between this
17 juror and the other juror who testified earlier, I think
18 because they are predisposed one way or the other clearly
19 does not disqualify them. And I am convinced that from what
20 I have heard, the ones we have qualified, could go in there
21 and I believe fairly consider this. And I believe that this
22 juror might be able to do that. She does have two children.
23 She has a husband, and I don't know who looks after these
24 children in the evening. She says that her medical
25 condition would effect her. Those things don't sway the

1 court that much, but the fact that she was the victim of an
2 armed robbery and the fact that her husband worked for the
3 office of the solicitor disqualifies her in the case. Thank
4 you.

5 (Whereupon, Juror Number 302 was brought into the
6 courtroom)

7 THE COURT: Ms. Moss, we appreciate the truthful
8 answers that you gave. And based on the number of things
9 that we went over, I'm going to excuse you from the case.

10 JUROR NUMBER 302: Okay.

11 THE COURT: You do not have to come back. Thank
12 you so much.

13 JUROR NUMBER 302: Thank you.

14 (Whereupon, Juror Number 302 was taken out of the
15 courtroom)

16 THE COURT: Let's take five and then we will start
17 back. Not a long break, all right?

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 THE COURT: Christian Zeimet.

21 (Whereupon, Juror Number 474 was brought into the
22 courtroom)

23 CHRISTIAN L. ZEIMET, #474, having been first duly
24 sworn, testified as follows:

25

1 VOIR DIRE EXAMINATION BY THE COURT:

2 Q. Mr. Zeimet, I hope I'm pronouncing it correctly.

3 A. Zeimet.

4 Q. And this case arises from an incident which occurred in
5 Greenville County on the 1st of November of 1997, in the
6 early mourning hours. Ms. Irene Graves was killed. Mr.
7 Owens has been convicted of that murder.

8 Have you heard anything or seen anything on TV, the
9 radio, or newspaper about this case?

10 A. I have not.

11 Q. Now, you have reviewed the three types of jurors?

12 A. Yes, sir.

13 Q. Which type do you think that you fell into?

14 A. Number three.

15 Q. Number three.

16 All right. In this case when the State seeks the death
17 penalty -- in murder cases the State cannot seek the death
18 penalty in every murder case. Do you understand that?

19 A. (Shaking head yes)

20 Q. That can only be done if they can prove a statutory
21 aggravating circumstance. In this case that means that they
22 would have to prove that the murder was committed during the
23 commission of a robbery while the defendant was armed with a
24 deadly weapon, or a larceny when the defendant was armed
25 with a deadly weapon, and they would have to prove that

1 beyond a reasonable doubt. The defendant would not have to
2 prove anything or not even testify. Do you have any problem
3 with that rule of law?

4 A. No.

5 Q. If the State proved the statutory aggravating
6 circumstance beyond a reasonable doubt, then the sentencing
7 authority, which is the jury in this case, would determine
8 what the sentence would be.

9 A. Uh-huh.

10 Q. That would only be two options: Life imprisonment or
11 the death penalty.

12 Now, the jury would have to consider evidence in
13 extenuation, mitigation and aggravation. Do you understand
14 that?

15 A. Yes.

16 Q. They would have to do that fairly and impartially,
17 being fair to Mr. Owens, being fair to the State, and
18 determine what the sentence would be.

19 Life imprisonment would be life until the death of the
20 defendant without the possibility of parole. Do you
21 understand that?

22 A. (Shaking head yes)

23 Q. Death would be death by lethal injection or by
24 electrocution. Do you understand that?

25 A. Yes.

1 Q. Okay. I'm sorry. Now, you would consider aggravating
2 circumstances, which worsens the crime of murder, that's the
3 word, or increases the enormity of the offense. Do you
4 understand that?

5 A. Yes.

6 Q. A mitigating circumstance would and could be anything
7 that would lessen the severity of the crime, reduce the
8 severity or the degree of responsibility or culpability. Do
9 you understand that?

10 A. Yes.

11 Q. It could be anything you heard in the evidence. It
12 would not have to be designated. Do you understand that?

13 A. Yes.

14 Q. Just because you found statutory aggravating
15 circumstances, you could sentence the defendant to life
16 imprisonment, based on anything that you heard. Do you
17 understand that?

18 A. Yes, sir.

19 Q. And you could sentence him to death, if you seriously
20 and meaningfully considered evidence in aggravation and
21 mitigation. Do you understand that?

22 A. Yes.

23 Q. Do you believe that under the facts and particular
24 circumstances of a case where the defendant has been
25 convicted of murder, considering the evidence in aggravation

1 and mitigation, you could write a sentence of life
2 imprisonment?

3 A. Yes.

4 Q. Do you believe under the particular facts and
5 circumstances of a case that you could write a sentence of
6 death?

7 A. Yes.

8 Q. Under our law it is the requirement of each juror, if a
9 sentence of death is determined and imposed, they must sign
10 their name, an original signature, to the death sentence.

11 Could you personally sign your name to that sentence, if the
12 facts and circumstances warranted such a sentence?

13 A. Yes, sir.

14 Q. Okay. Mr. Zeimet, if I instructed you -- and I don't
15 know what the evidence is going to be. I cannot discuss the
16 facts with you, but if any evidence came out about prior bad
17 acts before this crime or subsequent bad acts after this
18 crime, I would instruct you that you could not consider that
19 in any way as evidence of a statutory aggravating
20 circumstance. Would you follow that instruction?

21 A. Yes, sir.

22 Q. I would instruct you that that evidence could only be
23 considered as it may bear upon the character of the
24 individual. Do you understand that?

25 A. Yes.

1 Q. And you would be focusing on the specific circumstances
2 of this crime and the individual characteristics of the
3 defendant in considering evidence in extenuation and
4 mitigation and aggravation. Could you follow your oath and
5 be a fair and impartial juror to the State?

6 A. Yes.

7 Q. And to this defendant Mr. Owens here?

8 A. Yes.

9 Q. All right. Would race have any bearing on your
10 consideration of this case?

11 A. No, sir.

12 Q. All right. Would religion, either your personal
13 feelings or if you had any special feelings about the Muslim
14 religion or the Islamic faith, would that have any bearing
15 on your decision, if there were any evidence of that?

16 A. No, sir.

17 Q. All right. Mr. Zeimet, I'm going to let you answer
18 some questions that these attorneys may have.

19 VOIR DIRE EXAMINATION BY MR. ARIAIL:

20 Q. Mr. Zeimet, my name is Bob Ariail and I'm the solicitor
21 for State of South Carolina's Thirteenth Circuit, which is
22 composed of Greenville and Pickens Counties. The solicitor
23 is a name that South Carolina retains to designate its state
24 prosecutors. In other states we would be known as district
25 attorneys, but here we are the solicitors, so understand

1 what my role would be?

2 A. Yes, sir.

3 Q. And assisting me in this case would be my deputy Betty
4 Strom and Ms. Verdin, seated here at counsel table.

5 The judge has gone over the process with you a little
6 bit and talked about a couple of things, but I want to go
7 back and just pick up on one or two.

8 Normally in a criminal case after a trial a defendant
9 is sentenced by a judge. However, when the State is allowed
10 to seek the death penalty -- and the State can only seek the
11 death penalty in only very limited cases. First the case
12 has to be a murder case. And, secondly, that murder has to
13 be accompanied by what our legislature has defined as an
14 aggravating circumstance. Our legislature said the State
15 can seek the death penalty only in 19 different instances of
16 murder. Those would be, to give you an example, murder of a
17 police officer during the line of duty; murder of a child
18 under the age of 11; murder of more than two people. So
19 it's not only just murder, it has to be a murder that's
20 accompanied by what the judge was telling you an aggravating
21 circumstance.

22 Now, aggravating circumstance means -- that's what the
23 legislature calls an aggravating circumstance. It's not
24 necessarily what we may call it or you think an aggravating
25 circumstance, but they call an aggravating circumstance.

1 It's something that accompanies murder.

2 When that happens, when the State seeks the death
3 penalty on one of those circumstances, the jury becomes the
4 judge for sentencing purposes. So obviously we are looking
5 for people who can be judicial.

6 A. Right.

7 Q. Who can see the big picture, consider all the evidence,
8 have judicial temperament, cannot be biased or prejudiced in
9 any way. So you understand where we are going?

10 A. Yes, sir.

11 Q. Okay. And as I understand your answer, I think I do;
12 do you believe that the death sentence is an appropriate
13 punishment under our law in certain circumstances?

14 A. Yes.

15 Q. And is that something that you have believed for some
16 period of time or is that something that you just started
17 thinking about when you got your summons to come to this
18 case?

19 A. No, it's something that I have thought of before.

20 Q. Okay. And I noticed in your questionnaire that you are
21 Roman Catholic. And my understanding -- I'm Methodist, and
22 Methodist church is opposed to the death penalty, and Roman
23 Catholic church is opposed to the death penalty.

24 Does that -- does that background of your religion have
25 in any way affect your ability to fairly consider the

1 imposition of the death penalty?

2 A. No.

3 Q. Okay. The judge went over the fact that you are not
4 here to consider the guilt of Mr. Owens. Mr. Owens has
5 already been convicted of the murder involved in this case,
6 but you are here for the sentencing.

7 Having the responsibility to deciding on both sides,
8 likewise, do you think that imposition of a life in prison
9 sentence is also a significant punishment under certain
10 circumstances?

11 A. Yes, sir.

12 Q. But you could consider imposition of both, depending
13 upon what the evidence revealed?

14 A. Yes, sir.

15 Q. Okay. And he went over the fact that you had to -- if
16 the jury concluded that the death sentence was the
17 appropriate sentence based on the evidence, the law requires
18 that each and every juror sign their name to a verdict form
19 and pass this back to the court. Would the fact that you
20 had to sign that document in any way give you cause to
21 hesitate if that was your verdict?

22 A. No.

23 Q. So the physical act of signing would not bother you?

24 A. No, sir.

25 Q. Okay. Where did you teach and coach up until 2004,

1 what?

2 A. I taught and coached in Charleston, South Carolina and
3 Atlanta, Georgia.

4 Q. So it wasn't in Greenville?

5 A. No, sir.

6 Q. And the 84 Lumber regional manager install sales, you
7 are based in Greenville and travel from here?

8 A. I cover eastern Kentucky, Tennessee, and both the
9 Carolinas.

10 Q. Okay. I think that's all I have, sir. Thank you.

11 THE COURT: Mr. Godfrey?

12 VOIR DIRE EXAMINATION BY MR. GODFREY:

13 Q. Good morning, Mr. Zeimet. My name is Bill Godfrey.
14 Co-counsel is Ken Gibson and we represent Freddie Owens.

15 I just have a couple of questions for you.

16 In your questionnaire you indicated that at your high
17 school there was a drive-by shooting and a couple of
18 teachers were killed.

19 A. It wasn't a drive-by shooting. It was a drive into --
20 a person drove their truck through the Hardee's striking
21 those teachers that I knew.

22 Q. Okay. Was that a purposeful thing that happened?

23 A. No, he passed out while he was driving.

24 Q. So it was accidental?

25 A. Yes.

1 Q. In this particular case that you are here for, if you
2 were chosen as a juror, do you have any reservations at all
3 about being able to be fair and impartial both to the State
4 and to the defense?

5 A. I don't.

6 Q. After all of the evidence is heard, after the judge has
7 charged on the law, would there be any reason, whether it be
8 moral, religious, political, that if the evidence warranted
9 it, would you have any hesitation in going with life without
10 parole?

11 A. No.

12 Q. The same question regarding the death penalty, would
13 you have any reservation?

14 A. No.

15 Q. And you are certain that you could be fair and open and
16 unbiased throughout this process?

17 A. Yes, sir.

18 Q. And there is nothing that could get in the way?

19 A. No.

20 MR. GODFREY: Nothing further.

21 THE COURT: Mr. Zeimet, would you just step out
22 the door for a minute.

23 (Whereupon, Juror Number 474 was taken out of the
24 courtroom)

25 THE COURT: I would find he's qualified.

1 Anything from the State.

2 MR. ARIAIL: Concur.

3 THE COURT: Defense?

4 MR. GODFREY: Concur.

5 (Whereupon, Juror Number 474 was brought into the
6 courtroom)

7 THE COURT: Mr. Zeimet, you have been qualified as
8 a potential juror in this case with Freddie Owens. You
9 cannot discuss the case require anyone, not even anyone at
10 home, until the case is over. And do not watch any
11 television or anything, any news media about the case.

12 JUROR NUMBER 474: Yes, sir.

13 THE COURT: And you would need to call this number
14 back after six o'clock tonight so we can let you know how
15 far along we are. And hopefully you will need to report
16 back in sometime tomorrow with clothes for a stay in the
17 hotel for five days. You can leave those in your
18 automobile. You don't have to bring them in or anything.
19 Then if you are chosen, you can drive your automobile to the
20 motel, or whatever you decide.

21 JUROR NUMBER 474: Okay.

22 THE COURT: Now, follow the instructions in this
23 order and call this number after six tonight and we will
24 leave a message for all our qualified jurors.

25 JUROR NUMBER 474: Okay.

1 THE COURT: Thank you.

2 JUROR NUMBER 474: Thank you.

3 (Whereupon, Juror Number 474 was taken out of the
4 courtroom)

5 THE COURT: Now, I'm moving the 2:00, 3:30 and
6 5:00 groups back to 3:00, 4:30 and 6:00. The clerk is going
7 to call them now.

8 All right, the next juror would be Nathan K.
9 Asire.

10 (Whereupon, Juror Number 12 was brought into the
11 courtroom)

12 NATHAN K. ASIRE, #12, having been first duly
13 sworn, testified as follows:

14 VOIR DIRE EXAMINATION BY THE COURT:

15 Q. And is it Asire?

16 A. It's Asire.

17 Q. Asire?

18 A. That's all right.

19 Q. Asire.

20 Have you reviewed the three types of jurors
21 description?

22 A. Yes, sir, Your Honor.

23 Q. And which classification do you think that you would
24 fall into?

25 A. Under the third classification.

1 Q. Okay. That is that although guilt of the defendant has
2 been determined, and it has in this case, do you understand
3 that?

4 A. Yes, sir.

5 Q. That would not have -- you would not have made up your
6 mind concerning punishment, is that correct?

7 A. Correct.

8 Q. You would need to hear facts and circumstances in
9 aggravation and in mitigation, and you would listen to and
10 follow the instructions of the court?

11 A. Yes, sir.

12 Q. Before you made your decision regarding punishment?

13 A. Yes, sir.

14 Q. If the facts warranted and presented so warranted, you
15 could impose a verdict of life imprisonment?

16 A. Yes, sir, I could.

17 Q. And you could impose a verdict of the death penalty?

18 A. Yes, sir.

19 Q. That's your statement to the court under oath?

20 A. Yes, sir.

21 Q. Mr. Asire, this case arises from an incident on the 1st
22 of November, 1997, in Greenville County, on Laurens Road at
23 a Speedway early in the morning hours where Ms. Irene Graves
24 was killed. Now, Mr. Owens has been convicted by a jury of
25 murder in that case.

1 There was publicity regarding that case on the radio,
2 TV and in the newspapers. Have you read, heard, or seen
3 anything about this case?

4 A. No, sir, I have not.

5 Q. All right, sir.

6 Now, do you have an opinion about this case now for any
7 reason as to what the sentence may be?

8 A. No, not at this time.

9 Q. All right, sir.

10 Now, as far as you know at this particular time and
11 under your oath, you sat in that jury box as a juror, would
12 you be fair and impartial?

13 A. Yes, sir.

14 Q. You would be fair to Mr. Owens sitting over here and to
15 the State, both sides?

16 A. Yes, sir.

17 Q. Not be influenced -- you could only decide it on the
18 evidence and testimony and the law?

19 A. Yes, sir.

20 Q. Let me go over a little bit of that with you, Mr.
21 Asire.

22 Now, for murder -- under the law of this state the
23 State cannot seek the death penalty for every murder, okay?

24 A. Yes.

25 Q. The State can only seek the death penalty based on an

1 aggravating -- statutory aggravating circumstance declared
2 by the legislature. In this case the State would have to
3 prove beyond a reasonable doubt that this murder was
4 committed while a robbery was being committed and the
5 defendant was armed with a deadly weapon, or a larceny was
6 being committed and the defendant was armed with a deadly
7 weapon.

8 Do you understand that that particular statutory
9 aggravating circumstance would have to be proven by the
10 State beyond a reasonable doubt?

11 A. Yes, sir.

12 Q. There will be no other statutory aggravating
13 circumstances that you would have to consider.

14 A. Yes.

15 Q. Now, the defendant doesn't have to prove anything. He
16 doesn't even have to testify. The burden is on the State to
17 prove that, and you would have to, as a juror, consider
18 whether that's been established beyond a reasonable doubt.
19 Do you understand that?

20 A. Yes, sir.

21 Q. And the fact that he didn't -- if he doesn't testify,
22 you couldn't hold that against him. Do you understand that?

23 A. Yes.

24 Q. And could you follow that law?

25 A. Yes, sir.

1 Q. All right, sir.

2 Now, if the juror determined that an aggravating
3 circumstance existed, a statutory aggravating circumstance
4 existed, one of the two that I mentioned beyond a reasonable
5 doubt, and all twelve of you agree, then the jury would
6 determine what Mr. Owens' sentence is going to be, okay?

7 A. Yes, sir.

8 Q. Now, in doing that, you would, being a sentencing
9 authority, you would be the jury, whatever sentence that you
10 determined would be followed by this court. Do you
11 understand that?

12 A. Yes, sir.

13 Q. Life imprisonment would be life without the possibility
14 of parole until the death of the defendant.

15 Death would be by lethal injection or electrocution.
16 Do you understand that?

17 A. Yes, sir.

18 Q. Okay. You would be required as a juror to focus on the
19 specific circumstances of the crime and the individual
20 characteristics of the defendant, consider all the evidence
21 in aggravation, extenuation and mitigation. You would be
22 required to do that. Do you understand that?

23 A. Yes, sir.

24 Q. Aggravating circumstances are facts and incidents or
25 occurrences which aggravates or worsens the crime, makes it

1 more enormous or increases the enormity of the crime.

2 Mitigating circumstances are circumstances and facts
3 which reduces the severity of the offense of murder, reduces
4 the degree of fault and responsibility, and any other
5 factors or evidence that you may consider. Do you
6 understand --

7 A. Yes, sir.

8 Q. -- aggravation and mitigation?

9 A. Yes, sir.

10 Q. Could you fairly and impartially and seriously consider
11 factors in aggravation and mitigation, and based on the
12 particular facts and circumstances of the case, impose a
13 sentence of life imprisonment, if the facts and
14 circumstances warranted that?

15 A. Yes, sir, I could.

16 Q. If the particular facts and circumstances so warranted
17 it and you considered evidence in aggravation and
18 mitigation, could you impose a death sentence?

19 A. Yes, sir, I could.

20 Q. Could you sign your name personally to that death
21 sentence?

22 A. Yes, sir, I could.

23 Q. Okay. I don't know what the evidence will be, but if
24 the evidence came in as to any crimes or bad acts that
25 occurred before this incident on November the 1st, or after

1 this incident, that evidence would be admitted solely for
2 one purpose, and that as how it would bear on the character
3 of the defendant, and I would instruct you you could not
4 consider these alleged crimes or bad acts in any way as
5 evidence of the statutory aggravating circumstance. Could
6 you follow that instruction?

7 A. Yes, sir.

8 Q. Would the race of any party have any effect on your
9 decision?

10 A. No, sir, it wouldn't.

11 Q. Would religion in any way, your background, your
12 religious training, or if any evidence came in about Islamic
13 for the Muslim faith, would any of that affect your decision
14 in this case?

15 A. No, sir.

16 Q. I'm going to let you answer some questions from the
17 attorneys.

18 A. Thank you.

19 VOIR DIRE EXAMINATION BY MR. GIBSON:

20 Q. Mr. Asire?

21 A. Yes, sir.

22 Q. I'm Ken Gibson. This is my co-counsel Bill Godfrey,
23 and this is our client Freddie Owens.

24 I just want to ask you a few questions, if I may.

25 Now, you understand that this situation is a little

1 different from most situations, in the sense that in this
2 case all the jury is going to be -- well, the primary thing
3 the jury is going to be asked to consider in this case is
4 the sentencing and what kind of sentence Mr. Owens should be
5 given, okay?

6 Do you understand he's already been convicted of
7 murder?

8 A. Yes.

9 Q. Given that he's already been convicted of murder, do
10 you believe that, even given that fact, you could still, if
11 you thought the circumstances warranted it, give him a
12 sentence of life without the chance of parole, as opposed to
13 a death sentence?

14 A. Yes, sir, if the facts presented that mitigated, I
15 guess. The situation then, yes, life imprisonment.

16 Q. Do you also understand that the only way that you would
17 be considering that sentence is if the State has already
18 proven that at least one of the aggravating factors
19 occurred?

20 A. Okay.

21 Q. Okay. And given that situation, the situation that the
22 murder by statute is aggravated, could you in that
23 circumstance still give Mr. Owens a sentence of life without
24 the possibility of parole, as opposed to a sentence of
25 death, if you thought the circumstances warranted it?

1 A. Could you clarify that a little bit? You said if only
2 one of the evidences of aggravation was present?

3 Q. Well, let's say -- let me ask you this. Both of them
4 were present, do you believe that in that circumstance you
5 could still give a sentence of life without parole?

6 A. How many, I guess, areas are there to be chosen from?
7 How many?

8 Q. There are only going to be two that are going to be
9 submitted to you.

10 A. Okay, that's fine.

11 Q. And those are the murder occurred in the commission of
12 a robbery --

13 A. Okay.

14 Q. -- and the murder occurred in the commission of a
15 larceny.

16 A. Okay, like Your Honor said, okay.

17 Q. If those facts are proven and by statute this murder is
18 determined to be aggravated, worse than a normal murder,
19 could you in that situation still find and give a sentence
20 of life without the possibility of parole as opposed to the
21 death sentence, if you thought the circumstances warranted
22 it?

23 A. I could, but not likely.

24 Q. All right.

25 MR. GIBSON: Could I have just have a second,

1 please?

2 (Off the record)

3 (Back on the record)

4 BY MR. GIBSON:

5 Q. Mr. Asire, what do you mean by you could but not
6 likely?

7 A. You said they proved -- if they proved both of those
8 points.

9 Q. Yes, sir.

10 A. Is it my understanding that under the statute those
11 proven points do call for a death sentence?

12 Q. No.

13 A. Okay. They do not?

14 Q. They do not.

15 A. Okay.

16 Q. What they do is they put you in a position -- let me
17 back up.

18 A. Okay.

19 Q. The only way that the jury gets a chance to even
20 consider whether or not it should or wants to sentence Mr.
21 Owens to death is if those two aggravating circumstances are
22 proven. They do not in any way mandate --

23 A. Okay.

24 Q. -- or in any way say that you should by law give him
25 the sentence of death. Did I misspeak?

1 MR. ARIAIL: Only one has to be there.

2 BY MR. GIBSON:

3 Q. Okay. He's right.

4 And if they have proved either one of them, okay, the
5 jury considers, based on all the evidence what the sentence
6 should be, and you are free under that circumstances in that
7 situation to give whichever those sentences that you deem
8 most appropriate.

9 A. Okay, I see.

10 Q. Does that clear it up?

11 A. I understand now.

12 Q. Okay.

13 A. I should have corrected it. Before I thought we were
14 under statute we were kind of expected to give a certain
15 sentence, but -- so if you want to re-ask the question, I
16 can re-answer it.

17 Q. Given my explanation -- and I presume your new
18 understanding of what is required of you and what's
19 available to you?

20 A. Right.

21 Q. If those two -- if either one or two, or both of those
22 aggravating -- statutory aggravating circumstances were
23 proven, would you be able, given the circumstances, to
24 sentence Mr. Owens to a sentence of life without the
25 possibility of parole as opposed to the death sentence?

1 A. Yes, sir.

2 Q. Okay. Do you understand that life without the
3 possibility of parole means exactly that? It means he will
4 never be paroled. He will never be free. He will spend the
5 rest of his days in jail.

6 A. Yes, sir.

7 Q. Okay. Thank you, Mr. Asire.

8 THE COURT: Mr. Ariail?

9 VOIR DIRE EXAMINATION BY MR. ARIAIL:

10 Q. Mr. Asire, my name is Bob Ariail and I'm the solicitor
11 for the Thirteenth Circuit, which means that I'm the -- in
12 South Carolina that's the State prosecutor.

13 A. Yes, sir.

14 Q. If somewhere else it would be the district attorney,
15 but here we call them solicitor. And in this case I will be
16 representing the State, along with my deputy, Betty Strom,
17 in the red coat, and Ms. Verdin, one of my assistants seated
18 at counsel table.

19 Let me just go back and go through the process.
20 Normally when a defendant is convicted at trial, the judge
21 sentences them. But when the State is allowed to seek the
22 death penalty, and there are only limited circumstances.
23 The State can only seek the death penalty when there is a
24 murder, and when that a murder is accompanied by one of the
25 aggravating circumstances that the legislature has defined.

1 Now, what -- those are some 19 different instances the
2 legislature has said if you have a murder and it's
3 accompanied by this circumstance, which we call an
4 aggravating circumstance, then the State can seek the death
5 penalty.

6 So the term aggravating circumstance is the trigger
7 that sort of -- that gives the jury the ability or the
8 authority to sentence. All right.

9 If there were no aggravating circumstances, the judge
10 would sentence. But if there is an aggravating
11 circumstance, then the jury listens to all of the evidence,
12 including the nature of the crime, the characteristics of
13 the defendant, and anything else that may be brought in to
14 determine whether or not the crime deserves life
15 imprisonment or the death penalty.

16 So just because you found an aggravating circumstance
17 doesn't mandate the death penalty, nor does it mandate life
18 imprisonment. Do you understand that?

19 A. Yes, sir.

20 Q. You would -- once you had found the aggravating
21 circumstance, then you go forward to determine what the
22 appropriate sentence is. It's sort of the -- it gives you
23 the authority as the jury to do that.

24 Do you believe that the death penalty is an appropriate
25 punishment under our law for certain crimes?

1 A. For certain crimes, yes.

2 Q. And is that something -- is that a view that you held
3 for some period of time, or is that something that you just
4 started thinking about when you got your summons to appear
5 in this case?

6 A. No, I have always believed that.

7 Q. Okay. And you have thought about that when you would
8 read about it or hear about various cases that you think
9 about it?

10 A. Yes, sir.

11 Q. Okay. Now, you told the judge that you were a number
12 three type juror, which means that you can consider both
13 punishments equally?

14 A. Yes, sir.

15 Q. Is there anything that you are aware of, either
16 philosophically, religiously, social, political, that would
17 impair or impede or affect your ability to consider imposing
18 the death penalty?

19 A. No, sir.

20 Q. Or life imprisonment without parole?

21 A. No, sir, I see those as both being set forth in all
22 those institutions, like society and religious and culture,
23 so I think they are -- well, both well established.

24 Q. So you are not going to -- you are not going to -- when
25 you get on -- if you were put on the jury, you are not going

1 to get on the jury and then at some point decide oops, maybe
2 I haven't have been on here, I have got this philosophical
3 opposition or social problem, I don't want to -- that's not
4 going to be a problem?

5 A. No, sir.

6 Q. And the judge told you about having to sign, if you
7 find along with your fellow jurors. Would the act of
8 signing off on a document that imposed the death penalty?
9 Would that in any way affect you?

10 A. No, sir, I hadn't thought about it before. I never
11 pictured that before, but, no, it wouldn't affect me.

12 Q. If that was your verdict?

13 A. Correct.

14 Q. You wouldn't -- the actual physical act of signing
15 wouldn't be a problem?

16 A. No, sir.

17 Q. Okay. Thank you, sir.

18 MR. ARIAIL: That's all I have Your Honor.

19 THE COURT: Mr. Asire, if you would just step out
20 for just a minute.

21 JUROR NUMBER 12: Okay.

22 THE COURT: I'll bring you back in.

23 (Whereupon, Juror Number 12 was taken out of the
24 courtroom)

25 THE COURT: I would find him qualified.

1 Anything from the defense?

2 MR. GIBSON: No, sir, Your Honor.

3 THE COURT: State?

4 MR. ARIAIL: State concurs.

5 THE COURT: Okay.

6 (Whereupon, Juror Number 12 was brought back into
7 the courtroom)

8 THE COURT: Mr. Asire, you have been qualified as
9 a potential juror in this case.

10 JUROR NUMBER 12: Okay.

11 THE COURT: Hopefully you will have to report back
12 sometime tomorrow. I'm going to ask you to call this number
13 tonight that I have on this order after six p.m.. We will
14 leave a message as to when the qualified jurors are to come
15 back.

16 JUROR NUMBER 12: Okay.

17 THE COURT: You and about 45 or 50 people will be
18 here. The jury would be selected from that.

19 Still you cannot discuss this case with anyone or
20 be exposed to any news media about it.

21 JUROR NUMBER 12: Yes, sir.

22 THE COURT: Okay. And if you come back, bring
23 enough clothes for about five days in a motel. You can
24 leave them in your car.

25 JUROR NUMBER 12: Starting tomorrow?

1 THE COURT: Starting tomorrow, and if you are
2 chosen, you can drive your car out to the motel with your
3 clothes, or whatever. Anyway that you want to handle that,
4 or else if you are not chosen, you can probably go home.

5 JUROR NUMBER 12: Okay.

6 THE COURT: If you drive. Anyway that you want to
7 handle that. Call back after six.

8 JUROR NUMBER 12: I have dropped a book from my
9 packet when I was in here earlier. I see it there.

10 THE COURT: Yes.

11 (Whereupon, Juror Number 12 was taken out of the
12 courtroom)

13 THE COURT: Douglas Furmanek.

14 (Whereupon, Juror Number 149 was brought into the
15 courtroom)

16 DOUGLAS L. FURMANEK, #149, having been first duly
17 sworn, testified as follows:

18 VOIR DIRE EXAMINATION BY THE COURT:

19 Q. Mr. Furmanek, have you reviewed the three types of
20 jurors? This is our Exhibit No. 1 that you had with you
21 over in another courtroom?

22 A. I have.

23 Q. And which classification of juror would you be?

24 A. I am a type one.

25 Q. Type one?

1 A. Yes, sir.

2 Q. That states that the juror who, once the crime of
3 murder has been proved by the State, and the juror is
4 considering punishment, you feel that you would give the
5 death penalty in each and every case?

6 A. Yes, sir.

7 Q. All right. And you feel that once a murder has been
8 committed, the death penalty is the appropriate sentence, no
9 matter what the circumstances?

10 A. Yes, sir.

11 Q. So in every single murder you would feel like the death
12 penalty is appropriate?

13 A. Yes, if -- as I'm -- if the jury has already found
14 someone guilty of murder, yes.

15 Q. Do you understand in this case Mr. Owens has been found
16 guilty of murder?

17 A. I do understand that.

18 Q. Okay. So, in effect, you already have an opinion about
19 what the sentence should be?

20 A. I do. I am biased, yes, sir.

21 Q. And do you feel that you could not fairly and honestly
22 consider any evidence in aggravation or mitigation in regard
23 to him?

24 A. No, sir, I feel I would have a biased opinion on that.

25 Q. Okay. I will let you step out just a minute.

1 (Whereupon, Juror Number 149 was taken out of the
2 courtroom)

3 THE COURT: I guess he's a doctor, medical doctor
4 at Greenville Hospital center.

5 MR. ARIAIL: Pharmacist.

6 THE COURT: A what?

7 MR. ARIAIL: Pharmacist.

8 MR. GODFREY: Doctor of pharmacy.

9 THE COURT: Doctor of pharmacy?

10 MR. GODFREY: Yes, sir.

11 THE COURT: Oh, I thought he worked in critical
12 care.

13 MR. ARIAIL: Clinical pharmacy specialist,
14 critical care. I think he is in the pharmacy.

15 THE COURT: I have no idea what the clinical
16 specialist would be, but --

17 MR. ARIAIL: Sounded to me like somebody told him
18 how to get off.

19 MR. GODFREY: May it please the court, I have to
20 take him at his word. He testified that he was biased, that
21 he would automatically put someone to death if they were
22 found guilty.

23 MR. ARIAIL: I agree.

24 THE COURT: All right. I think I'm going to have
25 to disqualify him.

1 (Whereupon, Juror Number 149 was brought into the
2 courtroom)

3 THE COURT: Mr. Furmanek, thank you for your
4 honesty. I appreciate that. I'm going to disqualify you in
5 this case.

6 JUROR NUMBER 149: Thank you, sir.

7 THE COURT: You do not have come back. Thank you.

8 (Whereupon, Juror Number 149 was taken out of the
9 courtroom)

10 THE COURT: All right. Judy M. Mullinax.

11 Do y'all know who that witness is?

12 MS. STROM: What now?

13 THE COURT: Terrance Brooks.

14 MS. STROM: He will not be called.

15 MR. ARIAIL: She said it didn't make any
16 difference whether he was called or not. She doesn't know
17 him. She knew his wife.

18 THE COURT: Y'all can ask her about that.

19 MR. GIBSON: Okay, Your Honor.

20 (Whereupon, Juror Number 304 was brought into the
21 courtroom)

22 JUDY M. MULLINAX, #304, having been first duly
23 sworn, testified as follows:

24 VOIR DIRE EXAMINATION BY THE COURT:

25 Q. Ms. Mullinax, have you had an opportunity to review the

1 three types of jurors?

2 A. I have.

3 Q. And can you put yourself into one of those three
4 classifications?

5 A. Yes, sir, I would. I went with juror three.

6 Q. Do you feel like that you -- you understand that Mr.
7 Owens here has been convicted of murder. The purpose of
8 this proceeding is a sentencing procedure by the jury. Do
9 you understand that?

10 A. Yes, sir, I do.

11 Q. And you could hear the facts and circumstances in
12 aggravation and in mitigation and you would listen to and
13 follow the instructions of the court or the law before you
14 made your decision as to what the punishment should be?

15 A. Yes, sir.

16 Q. If the facts and circumstances warranted it, you could
17 bring back a sentence of life imprisonment, considering the
18 facts in aggravation and mitigation?

19 A. Yes, sir.

20 Q. And if the facts presented it, you could bring back a
21 verdict for the death penalty?

22 A. Yes, sir.

23 Q. Now, do you understand that an aggravating circumstance
24 is a circumstance that makes the crime or murder worse or
25 increases its severity or enormity?

1 A. Yes, sir.

2 Q. A mitigating circumstance is something that reduces the
3 severity of the offense. It makes the responsibility and
4 fault less.

5 A. Yes, sir.

6 Q. It would be the duty of the jury in this case to
7 determine how we sentence Mr. Owens. Do you understand
8 that?

9 A. Yes, sir.

10 Q. Okay. And for every murder the State cannot seek the
11 death penalty. I'll tell you that.

12 In order for the jury to determine the sentence of Mr.
13 Owens, the State would have to prove to you beyond a
14 reasonable doubt an aggravating circumstance before the jury
15 could determine the sentence. They would have to prove to
16 you beyond a reasonable doubt that this murder was committed
17 while a robbery was being committed and the defendant was
18 armed with a deadly weapon, or that this murder was
19 committed during a larceny while the defendant was armed
20 with a deadly weapon.

21 The State would first have to prove one of those two,
22 or both of those aggravating circumstances. Those are the
23 only ones that you would consider in this case.

24 If the jury found by unanimous consent that the State
25 had proven those aggravating circumstances beyond a

1 reasonable doubt, then the jury would determine what
2 sentence he would receive. Do you understand that?

3 A. Yes, sir.

4 Q. It would only be two possibilities after that: The
5 sentence of life imprisonment until the death of the
6 defendant without the possibility of parole, and a sentence
7 of death by lethal injection or electrocution. Do you
8 understand that?

9 A. Yes, sir.

10 Q. Now, could you have an open mind and listen, consider
11 all of the evidence in aggravation and mitigation and write
12 a sentence of life imprisonment, if the facts and
13 circumstances warranted that?

14 A. Yes, sir.

15 Q. Could you consider all of the particular facts and
16 circumstances in the case and write a sentence of death, if
17 those facts and circumstances warranted it?

18 A. Yes, sir.

19 Q. Could you sign your name to a death sentence, if that
20 were the decision of the jury?

21 A. Yes, sir.

22 Q. This incident occurred on November the 1st, 1997, in
23 the early morning hours. Mrs. Irene Graves was killed and
24 Mr. Owens has been convicted of that. This proceeding is
25 before a jury under our law to determine how he would be

1 sentenced.

2 This case has received publicity in the news media,
3 television and radio. Maybe otherwise. Have you heard
4 anything about this case?

5 A. Yes, sir.

6 Q. What did you hear about this case?

7 A. Prior to being subpoenaed as a juror, I knew that it
8 was coming to court. Other than that, I do not know any of
9 the details. I don't remember anything even from -- and I'm
10 an avid reader. I don't remember anything from the details
11 of when it happened.

12 Q. Okay. If you happen to recall any of those details, as
13 a juror you would have to remove those things from your
14 mind. Under our law in the jury system, you can only
15 consider evidence and testimony you hear in the courtroom.
16 What you heard outside the courtroom cannot be considered by
17 you in any way.

18 Could you dismiss from your mind anything that you may
19 have heard outside the courtroom and decide this case only
20 on the evidence and testimony that you heard in here?

21 A. Yes, sir.

22 Q. All right. If evidence of any other bad acts or
23 offenses were to come into evidence, and I'm not saying what
24 the evidence would be, because I cannot discuss the facts
25 with you, and I don't want you to think that, but if any

1 evidence were to come in in regard to offenses or bad acts
2 before this murder or after this murder, that could not be
3 considered as evidence of a statutory aggravating
4 circumstance. You only have to focus on the specific
5 circumstances. You only can focus on the specific
6 circumstances of this murder and the individual
7 characteristics of the defendant. Could you follow that
8 instruction?

9 A. Yes, sir.

10 Q. And I would tell you that that evidence could only come
11 in as it may bear on his character. Would you follow that
12 instruction?

13 A. Yes, sir.

14 Q. All right. Would the race of any party have any effect
15 on your decision in this case?

16 A. No, sir.

17 Q. Any religious training in your background or any
18 feelings you may have about the Muslim or Islamic faith,
19 would that have any effect on your decision in this case?

20 A. No, sir.

21 Q. I'll let you answer some questions from the lawyers.

22 Okay. Thank you.

23 VOIR DIRE EXAMINATION BY MR. ARIAIL:

24 Q. Ms. Mullinax, my name is Bob Ariail and I'm the
25 solicitor for the Thirteenth Circuit, which means that in

1 South Carolina the State's attorneys are called solicitors.
2 And if you are watching TV, that would be the DA, but we are
3 called solicitors rather than DA's. And I would be
4 representing the State in this case, along with my deputy,
5 Betty Strom, seated here in the red coat, and Ms. Verdin,
6 one of my assistants also seated at counsel table.

7 You told the judge that you were -- after reading the
8 list, that you were -- you thought that you were a number
9 three time juror. Is it fair to say then that you believe
10 that capital punishment or the death penalty is an
11 appropriate sentence under our law in certain circumstances?

12 A. Yes, sir, because the law makes it that way.

13 Q. Okay. Now, the purpose of this proceeding is to
14 determine the sentence. The defendant has already been
15 convicted.

16 A. Yes, sir.

17 Q. Normally a judge would try after a trial would sentence
18 a defendant, if he has been convicted. But when the State
19 is allowed to seek the death penalty, the sentencing
20 responsibility is transferred to a jury. By that I mean the
21 State is allowed to seek the death penalty only in a very
22 limited set of circumstances. First, the case has to be a
23 murder case. And secondly, it has to be a murder case
24 that's accompanied by what our legislature has defined as an
25 aggravating circumstance. That's the name given to these

1 accompanying circumstances: For example, murder of a police
2 officer during the line of duty; murder of a child under the
3 age of eleven; murder of more than two people. So it's not
4 just a murder. It's a murder accompanied by what the
5 legislature says is an aggravating circumstance. All right?

6 A. Yes, sir.

7 Q. So before the jury can determine sentence, they have to
8 find the existence of one of the aggravating circumstances
9 that the legislature has defined. But once they find that,
10 then they can proceed to listen to the remainder of the
11 evidence or evidence about the crime, the evidence of
12 character, the characteristics of the defendant, his
13 background or whatever other evidence, like the judge was
14 talking about. Other bad acts could come in, things of that
15 nature.

16 There will be no check list where you can go down and
17 check off and say the law mandates this. You as a juror
18 will have to listen and weigh the evidence as a judge would
19 in sentencing. Do you understand that?

20 A. Yes, sir.

21 Q. All right. And you would feel comfortable that you can
22 fairly do that and reach a decision based on that evidence
23 to either impose a life imprisonment sentence or a death
24 penalty, depending upon what the evidence shows?

25 A. Yes, sir.