

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case Number: 2025-001377

RECEIVED

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S.C. SUPREME COURT

RICKY LEE BLACKWELL, SR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
VOLUME 5 OF 18

ROSALIND S.D. MAJOR

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TRANSCRIPT DATED OCTOBER 19, 2022	8735

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- 1 I knew exactly what was going on, you know.
- 2 Q Uh-huh. (Affirmative).
- 3 A You know---
- 4 Q So, you know some things about this case?
- 5 A Yes, sir, I do, and I have---
- 6 Q Well, let me ask you, let me---
- 7 A Go ahead.
- 8 Q ---take it a step further in this.
- 9 A Uh-huh. (Affirmative).
- 10 Q The information that you know about this case, has that
- 11 caused you to already form or express some opinions about
- 12 issues that might be involved in this case?
- 13 A Somewhat. Anything involving a child. I mean I'm a
- 14 mother of two daughters.
- 15 Q Oh, I understand.
- 16 A Anything involving a child, I'm, I'm -- that makes my
- 17 blood boil.
- 18 Q All right. Do you think then that you're to a position
- 19 that you couldn't give this trial a fair hearing if you were
- 20 on the jury?
- 21 A Um.
- 22 Q By fair, that means you come in with no preconceived
- 23 ideas. You come in with an open mind.
- 24 A Okay.
- 25 Q You're able to decide the issues in the case.

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1 A Okay. I, I'm not---

2 Q Could you do that or not do that?

3 A I don't know because I remember the case. But it has
4 been several years ago. I remember when, when it did
5 happen.

6 Q Uh-huh. (Affirmative).

7 A I don't remember -- I remember the gist of the case. I
8 don't remember the individual details.

9 Q Uh-huh. (Affirmative).

10 A And I certainly didn't go try digging for them.

11 Q I understand.

12 A However, in knowing that this does involve a child,
13 that does, that does influence me a bit. I have---

14 Q So, you think you would have a preconceived notion?

15 A It -- unless you could totally change my mind, I---

16 Q Well---

17 A Yeah.

18 Q I hope you understand that a defendant, in a criminal
19 case in this State, is never required to prove anything to
20 anybody.

21 A I understand that. I---

22 Q And you're telling me somebody'd have to come change
23 your mind cause that tells me you've already got your mind
24 made up about things?

25 A Knowing what I know, and, again, this is been from

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1 years ago, I didn't -- as you instructed, I did not go
2 digging. I did not try and look anything up.

3 Q I haven't accused you of that.

4 A Yeah, yeah, but I don't know. I mean I have to answer
5 honestly and say I don't know. I would hope that I could
6 come in and be fair to someone as I would want someone to be
7 fair with me. I don't think that everything is black or
8 white.

9 Q All right.

10 A I think that you do have to listen to all the facts in
11 a case a lot of times before you make a decision. You can't
12 just say, in reading that form, you can't just say it's this
13 or this. There's always extenuating circumstances.
14 However, for what I remember about it, I, I don't agree. I
15 mean I---

16 Q So, you've made up your mind on some things?

17 A From what I remember, yeah.

18 Q Okay.

19 All right. Anybody wish to follow-up on any questions
20 with this witness, this juror?

21 MR. MCGUIRE: No, sir.

22 THE COURT: State.

23 SOLICITOR BARNETTE: No, sir.

24 THE COURT: All right. Ma'am, because you have that
25 knowledge, you're from that community, I understand, I'm

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1 just gonna go ahead and disqualify you from the case.

2 THE WITNESS: Okay.

3 THE COURT: Okay?

4 THE WITNESS: Okay.

5 THE COURT: The bailiffs will show you out. You're
6 free to go.

7 THE WITNESS: Okay.

8 THE COURT: Thank you for spending some time with us.

9 THE WITNESS: Okay. Thank you, guys.

10 THE COURT: Yes, ma'am.

11 (WHEREUPON, the following takes place outside the
12 presence of the juror.)

13 THE COURT: All right. Let's bring in John Lindsey.
14 I found her to be disqualified by the way.

15 MR. MCGUIRE: Yes, sir.

16 (WHEREUPON, the following takes place within the
17 presence of the juror.)

18 JOHN LINDSEY, having been previously
19 sworn, testified as follows:

20 EXAMINATION

21 BY THE COURT:

22 Q Have a seat.

23 A (Witness complies.)

24 Q You're John Lindsey, is that right?

25 A Yes.

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1 Q How you, how you doing today?

2 A I'm doing good.

3 Q Mr. Lindsey, I asked the last person that was in that
4 seat if they ever thought they would be sitting in a
5 courtroom in a witness stand at about five o'clock on a
6 Saturday afternoon, and they didn't think they'd ever there.

7 Did you ever think you'd be here?

8 A No, sir.

9 Q Okay. Well, I can understand that.

10 First of all, I want to thank you for coming in and
11 talking with us this afternoon. We're in the process of
12 qualifying a jury in this case, and what we're doing is
13 we're getting together a pool of people from which a jury
14 will be selected.

15 A Okay.

16 Q So, we're not picking the jury today. We will probably
17 do that early next week sometime, and so right now we're
18 just, just gathering more information to assist us in that
19 process.

20 A Okay.

21 Q So, do you understand what we're doing?

22 A Yes, sir.

23 Q We're gonna be asking you some questions. When I say
24 we, it's gonna be me and the attorneys that are involved in
25 this case can be asking -- can ask questions of you. I will

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1 tell you there are no right or wrong answers to our
2 questions. This is not something you're gonna be graded on.
3 That's not what this is about. The only answers we're
4 seeking are your own answers and we want truthful and honest
5 answers from you.

6 A Okay.

7 Q I'll remind you you're still under oath. When you came
8 in Monday you were sworn to tell the truth. You remain
9 under oath now.

10 Do you understand that that's the case?

11 A Yes, sir.

12 Q Okay. And when you left the courthouse on Monday I
13 instructed the jurors that were leaving to -- not to listen
14 to any media reports, not to discuss the case with anyone,
15 not to try to gather evidence or information about the case
16 from any source, and if anybody contacted them to let us
17 know in the Clerk's Office.

18 You remember my instructions?

19 A Yes, sir.

20 Q Have you been able to follow them?

21 A Yes, sir.

22 Q Okay. So, you're okay as far as my instructions that
23 were given?

24 A Yes, sir.

25 Q All right. Now, let me ask you this.

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1 Are you the type of juror who, who could set aside any
2 information you may have outside that -- from any source
3 about any issue in any criminal case?

4 Could you set aside that information and decide a case
5 based upon the law and the evidence that you hear inside the
6 courtroom?

7 A I think I can.

8 Q Okay. Now, have you ever participated in any
9 discussions, they call them blogs on the Internet or
10 Internet chat rooms, or anything like that where the subject
11 matter might of been the death penalty?

12 A No, sir.

13 Q Have you ever participated in any political activities
14 that surrounded the issue of the death penalty?

15 A No.

16 Q Never wrote a letter to the editor, never sent
17 anybody -- a representative a letter or something like that?

18 A No.

19 Q Okay. Now, back in the jury room I had a list of
20 people's names.

21 You remember that list?

22 A Uh-huh. (Affirmative).

23 Q Did you look over that for me?

24 A Yes, sir.

25 Q Now, as you looked over that list, did you see anybody

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1 on that list that you have ever been related to either by
2 marriage, now or formerly, or by blood?

3 A No.

4 Q Did you see anybody on that list that you have ever had
5 a personal, social, or a business relationship with?

6 A Yes.

7 Q Tell me who that might of been.

8 A It was Chris Leso.

9 Q All right. Chris Leso?

10 A Uh-huh. (Affirmative).

11 Q Can you tell me where you might of known him from?

12 A We just use to hang out and play ball at the Y
13 together.

14 Q Basketball player, isn't he?

15 A Yeah.

16 Q Use to play at Carolina I believe, didn't he?

17 A Yes.

18 Q Know a little something about him too.

19 A Yeah.

20 Q Went to Dorman High School I believe?

21 A Yeah, that's where I went to high school at too, sir.

22 Q Okay. Well, I did too.

23 A Okay.

24 Q There's a lot of us around.

25 All right. Now, let me ask a question about that.

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1 If Mr. Leso happened to be a witness in the trial of
2 the case, would the fact that he testified, would that
3 affect your ability though to be fair and impartial to both
4 sides of the case?

5 A No.

6 Q So, just because he testified you wouldn't give one
7 side or the other any advantage over his testimony?

8 A No.

9 Q Okay. Now, let me go over something with you that I
10 want to be sure we've got an understanding on because it's
11 an important concept and I want to be sure you understand
12 this.

13 A Yes.

14 Q I touched on this Monday.

15 Anytime you've got a case where the State is, is
16 charged somebody with murder, and they are seeking the death
17 penalty, that case is different from the average criminal
18 case as you would expect.

19 A Uh-huh. (Affirmative).

20 Q In the normal criminal case, somebody's charged. The
21 jury comes in and they try the facts in the case. In other
22 words, they decide who's telling the truth. They decide
23 what story is correct. They determine the facts in the
24 case, and then the judge always gives the jury the law. He
25 charges them with the law. So, I explain to the jury what

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1 the law is.

2 A Uh-huh. (Affirmative).

3 Q So then the jury gathers the facts, they take the law
4 that I give to them, and then they reach a verdict in the
5 case.

6 Now, that verdict can be either guilty or not guilty.
7 If the jury finds a defendant guilty of the crime, it's the
8 judge's responsibility normally to set the penalty, to give
9 the sentence, whatever it is. Probation, some time in jail,
10 a fine, whatever the penalty is.

11 You understand that's how it normally works?

12 A Yes.

13 Q Now, in a case like we're talking about here, that's
14 where there's been an allegation of murder, and the State is
15 seeking a death penalty. The law provides that that type of
16 case is divided into actually two trials, two separate
17 hearings.

18 Now, the first hearing is a hearing to determine
19 whether or not the defendant is either guilty or not guilty
20 of the charges that have been lodged against the defendant.
21 Now, once that trial's completed, if the jury, if the jury
22 finds the defendant not guilty, then there's no need to go
23 to decide what the penalty is because there is no penalty
24 when you're not guilty, but if the defendant is found guilty
25 of murder, then the issue becomes what is the appropriate

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1 penalty and there is a second trial.

2 A Uh-huh. (Affirmative).

3 Q Now, the law that sets this up provides that the same
4 jury that hears the first part of the trial has to hear the
5 second part of the trial.

6 A Okay.

7 Q Now, I'm going through all this to explain a concept to
8 you. Okay. I know I'm going around -- my dad use to say go
9 around your elbow to get to your ear or something like that.
10 That's kind of what I'm doing here.

11 But I want to explain to you that a defendant, in every
12 criminal case, is always presumed to be innocent of the
13 crime that he's charged with.

14 Do you understand that?

15 A Yes.

16 Q And that's true in, in this case.

17 So, the fact that -- later on I'm gonna start asking
18 you about the penalty phase of this trial, what kind of
19 penalty ought to be given or should -- how, how that should
20 be done. The fact that I'm talking about that should not be
21 taken by you as any reflection against the defendant or his
22 case cause we haven't even tried the first part of the trial
23 yet. But since the same jury hears both trials, if we're
24 gonna talk to the potential jurors about all of the issues
25 that could come up in the case, we got to do it now because

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1 once we select the jury we can't re-pick the jury.

2 A Okay.

3 Q The same one has to hear both sides.

4 A Yes, sir.

5 Q So, do you understand that, while I may be asking you
6 about penalty matters, that doesn't mean we -- no one's been
7 found guilty yet. We haven't skipped that first part of the
8 trial. It's just this is the only time that I could talk
9 about those things.

10 Do you appreciate that?

11 A Okay.

12 Q Do you understand that?

13 A Yes, sir.

14 Q Can you accept that?

15 A Yes, sir.

16 Q Okay. Good.

17 Now, let's go over some other criminal law matters and
18 see if you understand these things as well. Okay. I'm
19 gonna kind of, each time, add to it and change.

20 I told you that, in a normal case, the jury decides the
21 facts. The judge decides the law.

22 A Uh-huh. (Affirmative).

23 Q Are you the kind of juror, if you were on a case and
24 I'll say -- let's say it's a shoplifting case. You're
25 sitting on that jury.

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1 Can you take the law from the judge, could you accept
2 the law as he gives it to you?

3 A Can I?

4 Q Yes, sir.

5 A Yes, sir.

6 Q Okay. So, you, you would recognize that the judge has
7 the authority---

8 A Yes.

9 Q ---to give you the law?

10 A Yes, sir.

11 Q Some people don't recognize that. That's the reason I
12 got to ask that question.

13 All right. Now, would you also take the law as the
14 judge gave it to you and then apply it to the facts as the
15 jury find those facts in order to reach a verdict in the
16 case?

17 A Yes.

18 Q Would you do that?

19 A Yes, sir.

20 Q Now, let me take this a step further. You may see why
21 I'm asking these questions.

22 Let's say that you were sitting over there in that jury
23 box right there and we were trying one of those cases. Like
24 I said, a shoplifting case. You've heard all the evidence.
25 The lawyers have argued and then I start explaining the law

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1 to you. I start giving you or charging you with the law
2 concerning shoplifting, and as I'm telling you that law I
3 say something that maybe you say well, I didn't think the
4 law was that way or you -- I may say something about the law
5 and you might say well, I don't agree with that.

6 Now, would you be the kind of juror that could set
7 aside your personal beliefs, your personal feelings as to
8 what the law ought to be, and accept the law as the judge
9 gives it to you in reaching a verdict in a case?

10 A I would think I would set aside my personal belief and
11 accept---

12 Q And accept it the way the judge told you?

13 A Yes, sir.

14 Q Okay. All right. Now, we're gonna talk about some
15 more principles under the law, and I'm gonna start off
16 pretty basic and then we're gonna work our way up on this
17 thing.

18 okay?

19 A okay.

20 Q I want to be sure that these are concepts you can agree
21 with.

22 A okay.

23 Q The first concept is, I mentioned, every defendant is
24 always presumed to be innocent of the crime for which a
25 charge has been entered until guilt has been proven to a

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1 jury in a trial.

2 A Uh-huh. (Affirmative).

3 Q Do you agree that all defendants should be presumed to
4 be innocent?

5 A Yes.

6 Q Do you agree then that, because a defendant is presumed
7 to be innocent, that a defendant should never -- is never
8 required and should never have to prove his innocence?

9 A I think he should prove his innocence.

10 Q Well, let me back up now. He's presumed to be
11 innocent.

12 A Okay.

13 Q So, do you understand that a defendant is not required
14 to prove his innocence cause the law presumes he's innocent.

15 A Okay.

16 Q Do you follow that?

17 A Okay.

18 Q Can you agree with that?

19 A Yes.

20 Q Okay. Now, the next step I'm gonna ask you, because a
21 defendant is presumed to be innocent and because a defendant
22 is not required to prove his innocence since he's presumed
23 to be innocent --

24 A Okay.

25 Q -- do you understand that a defendant is not required

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1 to offer any proof at a criminal trial?

2 In fact, a defendant has the right to remain silent and
3 offer no evidence during the criminal trial if he chooses to
4 do so.

5 Do you agree that that's true and that's a concept you
6 can accept?

7 A Yes.

8 Q Okay. Now I'm gonna go to the other -- have you got a
9 question?

10 A No.

11 Q I'll be glad to answer it for you.

12 A No, sir.

13 Q All right. Follow me now.

14 A Okay.

15 Q I'm gonna go to the other side of a criminal case.

16 A Okay.

17 Q We're gonna talk about the State and that's the other
18 side of the criminal case.

19 A Okay.

20 Q That's the group or the entity that is brought the
21 charges. They've accused somebody of committing a crime.

22 A Okay.

23 Q Now, because the State makes an accusation, just
24 because someone's been arrested, just because they may have
25 been charged, do you believe that automatically makes

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1 somebody guilty just because they've been charged?

2 A No, sir.

3 Q Okay. Now, the State brings the charge, and the law
4 imposes upon the State a burden of proof. In other words,
5 they've got to come to Court and prove the facts and
6 circumstances that make the defendant guilty of the crime by
7 proof beyond a reasonable doubt.

8 Now, do you understand that concept under the law?

9 A Yes, sir.

10 Q Do you agree that that's the way that ought to be?

11 A Yes, sir.

12 Q Now, again, you're on the shoplifting jury. You and
13 your fellow jurors have listened to the evidence in a trial.

14 A Uh-huh. (Affirmative).

15 Q The judge is charged you concerning the law.

16 A Uh-huh. (Affirmative).

17 Q You go back into the jury room and you're deliberating.
18 You-all are talking about what the, what the trial showed
19 you, and the jury comes to the conclusion that the State did
20 not offer enough evidence to prove a person guilty beyond a
21 reasonable doubt.

22 A Okay.

23 Q When the State does not offer enough evidence to do
24 that, do you have any problem in signing a not guilty
25 verdict?

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1 A No, sir.

2 Q Now, by the same token, you're back there in
3 deliberations and you decide the State did offer enough
4 evidence. They did prove that the person did the crime
5 beyond a reasonable doubt.

6 would you have any problem or disagreement --
7 difficulty in signing a guilty verdict against that
8 defendant?

9 A No, sir.

10 Q So, are you telling me that you could decide either
11 guilty or not guilty, but it's based upon the law and the
12 evidence that's been shown at the trial, whether it
13 convinces you that it's true, and how much weight you choose
14 to give to that evidence?

15 Is that what the -- the way you would decide that case?

16 A Yes, sir.

17 Q Okay. Now, I've reached the stage where I'm gonna put
18 the cart in front of the horse. I told you I was gonna get
19 there.

20 A Okay.

21 Q Okay. I want you to, again, imagine that you are that
22 juror, but now this time you're a jury -- you're a juror in
23 a case where the State is alleged murder, and the State has
24 told everyone they are seeking the death penalty for that
25 murder, murder.

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1 So, do you understand what kind of case I'm talking
2 about?

3 A Yes.

4 Q All right. Now, you've been in that case with your
5 fellow jurors. You've gonna through the first part of that
6 trial. I told you we divide them into two trials.

7 A Okay.

8 Q You've gone through the first part of the trial and you
9 and your fellow jurors have determined, during your
10 deliberations, that the State did offer enough evidence to
11 prove the defendant guilty of the crime of murder beyond a
12 reasonable doubt. So, you and your fellow jurors have found
13 the defendant guilty of murder, and that verdict has been
14 entered. So, the defendant now is a convicted murderer.

15 Okay?

16 A Okay.

17 Q The law says that, at that point in time, since the
18 State is seeking the death penalty, we must start a second
19 trial. That second trial is referred to as the penalty
20 phase or the sentencing phase of the trial.

21 A Okay.

22 Q The same jury sits on that trial that sat on the first
23 trial.

24 A Okay.

25 Q New evidence is put into the record during that

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1 hearing, that trial. There would be evidence -- and the
2 statute talks about evidence concerning aggravating
3 circumstances and evidence concerning mitigating
4 circumstances. I'm gonna tell you what those -- what that
5 means.

6 okay?

7 A okay.

8 Q The statute has some 12 to 15 or maybe more things that
9 are aggravating circumstances. Those are things that
10 tend -- while a murder is a bad thing. We can all agree
11 murder is a bad thing. That while that's a bad thing, those
12 factors might tend to make the sentence -- situation worse.
13 They might tend to make a jury want to give someone a higher
14 level penalty. So, those are aggravated circumstances, and
15 the law says that in order for the death penalty to be
16 imposed the State must prove at least one of those
17 aggravating circumstances by proof beyond a reasonable
18 doubt.

19 A Just one?

20 Q Just one. That's to be eligible for the death penalty.

21 A Right.

22 Q That don't mean he gets it.

23 A Okay.

24 Q That means he's eligible. If they don't prove any of
25 them, they can't get it.

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1 A Okay.

2 Q So you see what I'm saying?

3 A Okay.

4 Q They got to prove at least one of them. They may prove
5 more than one.

6 A Okay.

7 Q But we're not really trying a case today. I just want
8 you to understand---

9 A Okay.

10 Q ---those are factors and at least one of them has to be
11 proven beyond a reasonable doubt to go forward.

12 Now, the other type of evidence that comes into that
13 trial is referred to as mitigating factors, and I'll tell
14 you there's ten of those in that statute, ten different
15 things that the Legislature has said that a jury could and
16 should consider in deciding what the appropriate penalty
17 might be, and those are factors which might, while the
18 person's been convicted of murder, might tend to make
19 someone give someone a lesser penalty, something less than
20 the death penalty.

21 Do you follow what I'm saying?

22 A Uh-huh. (Affirmative).

23 Q And, again, I'll be -- I've got them. I can read them
24 to you, but we're not trying the case today.

25 A Okay.

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1 Q But I will tell you that there are ten different
2 factors that they tell you that a jury can consider, and the
3 law says that a juror, sitting on that case, can consider
4 any factor the juror considers to be a mitigating factor if
5 the juror wishes to do that.

6 Do you follow me?

7 See, you're not limited to that list.

8 A Okay.

9 Q The jury, the jury members can consider other factors.
10 In fact, the cases have said the jury can even consider the
11 element of mercy in this situation. So, there's a lot of
12 factors that a jury can consider both ways.

13 A Okay.

14 Q You understand what would go on at that hearing?

15 A Okay.

16 Q Now -- and you're getting ready to come back now.
17 You're on that jury to go into that hearing is where we are.

18 A Uh-huh. (Affirmative).

19 Q You understand that?

20 A Okay.

21 Q Now, I put a piece of paper on the table back there.

22 A Okay.

23 Q I described three different jurors on that piece of
24 paper.

25 Did you read that piece of paper?

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1 A Yes, sir.

2 Q I'm gonna go back over it with you again. I'm gonna
3 refresh your memory. We're gonna assign a number to each of
4 those types of jurors.

5 okay?

6 A okay.

7 Q So, you're on the jury. The gentlemen has been found
8 guilty of murder.

9 A okay.

10 Q We're coming back down the hall to come into the
11 courtroom to start the second part of the trial.

12 A okay.

13 Q The first juror in line has already made up his mind.
14 That juror -- nobody's heard any evidence yet, but that
15 juror believes that the only appropriate punishment for
16 someone who's been convicted of a murder is the death
17 penalty, and every time that juror's faced with that choice
18 that juror will vote for the death penalty.

19 The second juror who's coming down the hall, that
20 juror's also made up his mind, and that juror believes that
21 it is never appropriate for the State to take the life of
22 someone because of the commission of a crime. No matter how
23 serious that crime is, no matter what the factors are, that
24 juror will always vote for life imprisonment without the
25 possibility of parole, and that's what that sentence means.

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1 It means you go to jail and you stay there for life.

2 A Okay.

3 Q The third juror that I described to you coming down
4 that hall, that juror hadn't made his or her mind up yet.

5 That juror wants to listen to the aggravating circumstances
6 and the mitigating circumstances. That juror wants to hear
7 the law given to them by the judge, and that juror then
8 would want to go back into the jury room, take into

9 consideration both aggravating factors, things that make it
10 worse, take into consideration things that might lessen it,
11 and then, after deliberations with their fellow jurors, make
12 a decision as to what they think the appropriate sentence
13 might be, either death or life imprisonment without parole.

14 Do you understand the difference between jurors one,
15 two, and three?

16 A Yes, sir.

17 Q Now, I told you too that you're on that jury.

18 A Yes, sir.

19 Q You're walking down that wall.

20 As you come into that door, which one of those three
21 jurors would be most like how you would feel?

22 A Number three.

23 Q Now, that means to me that you're somebody who wants to
24 listen to the evidence, aggravating factors and mitigating
25 factors, that you want to listen to the law from the judge,

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1 and that you will not decide the question of the penalty
2 until you've had a chance to hear all that evidence, weigh
3 it, listen to the charge on the law, and then make a
4 decision during deliberations with your fellow jurors?

5 Is that correct?

6 A That's correct.

7 Q I'm gonna take it a step further.

8 Let's say that you were in that situation. You heard
9 all that evidence. You heard the judge charge the law. You
10 went back into the jury room, and if, after deliberations
11 with your fellow jurors, you decided that the only
12 appropriate penalty was life in prison without the
13 possibility of parole.

14 Could you sign a verdict in that fashion?

15 A Yes.

16 Q By the same token, if you did all that deliberation,
17 looked at the facts, looked at the law, looked at the
18 evidence that was presented in that hearing, and you and
19 your fellow jurors decided that the only appropriate verdict
20 was the death penalty, could you sign a verdict giving
21 death?

22 A Yes.

23 Q All right. Now, I've got some other things I need to
24 talk to you about.

25 First of all, I have signed a sequestration order in

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1 this case. That means that I have ordered that, once the
2 jury is formed, while they'll be in the courtroom and listen
3 to all the evidence during the day, at night they're gonna
4 be staying at the Marriott with a group of people who will
5 be sitting with the jury. They will be sequestered. That
6 means that the jury will have all of their meals paid for.
7 They'll have all their lodging paid for. They will be
8 transported back and forth to the courthouse as the trial
9 goes forward.

10 Now, that jury will be in that position from the
11 beginning of the trial until it's over. I expect the trial
12 will last about a week and a half.

13 During that period -- now, let me tell you, when we
14 start the trial, we don't stop. We go seven days a week
15 until it's over. So, we try to take as little time out of
16 peoples' lives as we can, but we're gonna give it a full
17 trial. So, we'll be here till it's finished, and that week
18 and a half is about my best estimate as to how long I think
19 it will take.

20 Now, as I said, during the period of time that you're
21 in there, you'll receive jury pay as allowed by law and
22 you'll receive the travel money. You'll be allowed to talk
23 to family members and friends on the phone, but those calls
24 will be monitored because we don't want you talking about
25 the case. We don't want any outside influences affecting

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1 the jury while that trial goes on.

2 You can understand why we would want it that way, can't
3 you?

4 A Yes, sir.

5 Q Now, let me ask you a question.

6 If you were on the jury, you were put in that
7 situation, would that pose any serious risk to your personal
8 health or well being?

9 A Yes.

10 Q Tell me how.

11 A I think that I would be more afraid for my family and
12 what might happen after I, you know, agree with the jury,
13 that we'd come up with a verdict. I don't want to put my
14 family in jeopardy like that.

15 Q I'm not sure how your family would be in jeopardy.
16 Maybe you can help me with that.

17 A You know, I would think that, you know, the word might
18 get out that I was on the jury, and I came with a verdict,
19 after the jury decided this man is guilty --

20 Q Uh-huh. (Affirmative).

21 A -- or life in prison or the death penalty.

22 Q All right. Do you have any reason to believe there
23 would be any reprisals or something against you in this
24 case?

25 A Well, no, I just think, you know, how the world is

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- 1 today. The people fight away---
- 2 Q So, you're just worried that there might be something?
- 3 A Yeah.
- 4 Q You know the police would help you with that.
- 5 A Okay.
- 6 Q You understand that?
- 7 A Yes, sir.
- 8 Q We try to take care of jurors around here.
- 9 A Okay.
- 10 Q You understand that?
- 11 A Yes, sir.
- 12 Q So, it's just that you have that concern?
- 13 A Yes, sir.
- 14 Q Okay.
- 15 A Yes, sir.
- 16 Q Well -- and that's the, that's the concern -- is that
- 17 the concern you'd have for your family and dependents as
- 18 well?
- 19 A Yes, sir.
- 20 Q Any other concerns concerning your family or
- 21 dependents---
- 22 A No, sir.
- 23 Q ---other than your safety and something like that?
- 24 A That's it.
- 25 Q Okay. Like I say, we'll be glad to help you with those

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1 problems.

2 A Okay.

3 Q So, I don't think that's gonna be a problem. I don't
4 think that it would be.

5 A Okay.

6 Q I'll allow the attorneys, at this point in time, to ask
7 questions.

8 Mr. McGuire.

9 MR. MCGUIRE: Thank you, judge.

10 EXAMINATION

11 BY MR. MCGUIRE:

12 Q Hey, Mr. Lindsey.

13 How you doing?

14 A I'm doing good.

15 Q My name's Bill, Bill McGuire. I'm one of the lawyers
16 in this case and this is my opportunity to ask you some
17 questions.

18 A Yes, sir.

19 Q I don't -- I don't mean to pry or get in your personal
20 business, but this is my only chance to talk to you about
21 some of your views and your understanding of the law and
22 kind of probe your knowledge of the system and see if you
23 can follow the law basically.

24 Okay?

25 A Okay.

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1 Q Just so you know, did you know that the death penalty
2 is never required in a murder case?

3 A No.

4 Q What I mean by that is -- you said no. I didn't mean
5 to talk over you.

6 What I mean by that is a lot of people show up here and
7 they think if the, if the evidence is A, B, and C, then you
8 like check those boxes off and then the verdict
9 automatically has to be death. That's never the case in
10 South Carolina.

11 Did you know that?

12 A No, sir.

13 Q Okay. Now -- but now you know it.

14 A Yeah.

15 Q Okay. And the judge would tell you too, and he would
16 say you have to understand that there's never ever a
17 requirement that any juror automatically voted for death.

18 A Okay.

19 Q It's voting your conscience.

20 Okay?

21 A Yes, sir.

22 Q And I'm gonna tell you a little bit more about that
23 system.

24 Okay. The -- in fact, the, the State of South Carolina
25 is always satisfied with a life verdict in any case, the

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1 worst case, this case.

2 Okay?

3 A Yes, sir.

4 Q And the -- the penalty phase is different from a
5 traditional trial. You know, we all watch TV, the news, and
6 Law & Order shows, stuff like that, and I think we all have
7 a good idea of how a first trial works or a regular trial
8 works, and that is every juror has to agree that he's guilty
9 beyond a reasonable doubt, they got the right guy, that sort
10 of thing, and if they can't agree, some people think not
11 guilty, some people think guilty. Well, if they end in
12 disagreement, then they have to start over again with
13 another jury and retry the case and that's true in the first
14 phase of a capital trial.

15 That jury that the judge put you on, you know with you
16 and 11 other people, you already found the person guilty.
17 After you get past that point, you would come into the
18 courtroom for basically a second trial, trial number two,
19 and they'd be one thing in front of you, what penalty, life
20 or death.

21 Okay?

22 A Okay.

23 Q Did you know that's how it worked?

24 A No, sir.

25 Q Okay. Now you do.

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1 A Yes, sir.

2 Q Okay. Is that a system you think you can follow and
3 participate in?

4 A Yes, sir.

5 Q Now, in that penalty phase, you get to look at
6 everything, what's called aggravation evidence, mitigation
7 evidence, and, and you hadn't seen anything and you don't
8 really -- my guess is you don't know anything about the
9 case.

10 A No, sir.

11 Q Okay. But you want to see everything before making up
12 your mind with regard to that penalty?

13 A Yes, sir.

14 Q All the aggravation evidence, things that make it
15 worse, you'd want to hear that?

16 A Yes, sir.

17 Q And if there was evidence about the man, his walk in
18 life, who he is, his personality, his characteristics,
19 sometimes even the things that go on with the crime, like
20 his mentality and his emotional state, you'd want to hear
21 all that too?

22 A Yes, sir.

23 Q Okay. So, you could look at the, the facts of the
24 crime itself, but you can also look at the man himself too?

25 A Yes, sir.

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1 Q Are there, are there situations in your mind where a, a
2 man can commit a crime, a murder, but when you look at the
3 man and say he doesn't deserve the death penalty?

4 Do you think you could do that?

5 THE COURT: Objection, Your Honor. Staking out the
6 juror, just bringing out the mitigators instead of the---

7 THE COURT: Well, he asked if there were. He didn't
8 ask for a situation. He just asked if there were any
9 situations that he thought that there -- that he could not
10 give the death penalty by looking at the walk in life of the
11 man. I'll let him ask that question. That's not fact
12 specific. That's just asking if there were situations that
13 this juror would consider.

14 So, you can answer.

15 A Can you repeat that please?

16 Q Yeah, it was a -- it was a little long.

17 So, let's go back to that.

18 Are there situations where you could find a man guilty
19 of the crime, murder, and he's guilty beyond a reasonable
20 doubt, you got the right guy, no doubt about it, guilty
21 guilty, but then you can also look at the man, his walk in
22 life, his life history, and say he did the crime, but I can
23 look at the man and think there's some situations where,
24 when I look at the man, he doesn't deserve the death
25 penalty?

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1 A Yes, I think I could.

2 Q Okay. And cause they're two separate things.

3 A Yes, sir.

4 Q And you can see how, in that penalty phase, it's not a
5 focus just on the facts of the crime.

6 A Yes.

7 Q It's also a focus on the man.

8 A Yes.

9 Q And could you focus on the man --

10 A Yes.

11 Q -- as well as the crime?

12 A Yes, his character, yes.

13 Q Exactly.

14 And what I want to do is I'm gonna give you an example
15 of how this penalty phase works, and, and you tell me if
16 this is something you, you can do and respect and follow.

17 When it comes to that penalty phase, the jury does not
18 have to be unanimous. All 12 ultimately do not have to
19 agree on punishment. Six people might want the death
20 penalty, six people might want the life penalty, and no
21 one's gonna change your mind. In that situation they can
22 end the day in disagreement, and the judge would take the
23 case and he would sentence to life without parole.

24 Did you know it worked that like?

25 A No, sir.

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1 Q Are you okay with that?

2 A Yes, sir.

3 Q Okay. If that was the law you'd follow it?

4 A Yes.

5 Q And, in fact, even if just one person wanted to vote
6 for the life penalty and said my conscience tells me I want
7 to vote for the life penalty, just one out of eleven, then
8 the case would go to the judge and the judge would sentence
9 to life without parole just based on one juror wanting life.

10 would that be okay with you?

11 A Yes, sir.

12 Q You can respect that?

13 A Yes, sir.

14 Q Even if it was just the one person, you could respect
15 their position?

16 A Yes, sir.

17 Q Okay. And the way that works is, I'm gonna give you an
18 example of how this works, and, again, just tell me if
19 you're okay with it and this is something you can follow.
20 Not only does the jury not have to be unanimous as to
21 penalty ultimately, they can also be in disagreement about
22 what kind of evidence exists in the case when it comes to
23 mitigation evidence, and what I mean by that is somebody
24 sitting right here could say I saw something in the person's
25 walk in life, their life history, how they were raised,

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1 their upbringing, that meant something to me, and this
2 person can say I want to vote for life for that reason. I'm
3 gonna give that the weight of life and vote for life.

4 The 11 other jurors could say, you know, we didn't see
5 that. I don't think, I don't think what you say exists
6 exist. But this person can say well, I saw it, and I'm
7 voting for life, and that's what I'm gonna do, and they have
8 a right to do that.

9 Is that something that's okay with you?

10 A Yes.

11 Q Okay. Somebody right here might say I saw that that
12 man had a relationship with his children, his grandchildren,
13 and that was redeeming to me, I'm gonna vote for life for
14 that reason, and all of the 11 others could say, you know
15 what, I didn't really see that, but he can say well, I saw
16 it, I'm gonna give it the weight of life, I want to vote
17 life, and do you see how this person has a right to do that?

18 A Yes.

19 Q Okay. The judge would also charge the jury they can
20 vote for the life penalty for any reason, no reason, or
21 mercy alone, and somebody might say I don't want to vote for
22 the death penalty, I can't put it into words, that's where I
23 am, and I hope everybody respects my position, and that
24 might be where they are.

25 Could you respect that?

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1 A Yes.

2 Q Okay. And as a juror, you are the number three juror
3 that the judge described. Somebody who comes in here with
4 an open mind.

5 Is that right?

6 A Yes.

7 Q Ready to hear evidence from both sides?

8 Is that right?

9 A Yes.

10 Q And be fair to both sides?

11 A Yes.

12 Q And in the penalty phase, you can look at the facts of
13 the crime, but you can also look at the man?

14 A Yes.

15 Q Okay. And you'd be okay, at the end of the day, to
16 disagree if that's what it came to?

17 A Yes.

18 Q Okay. And you would always respect somebody else's
19 position?

20 A Yes.

21 Q And you want your position respected?

22 A Yes.

23 Q That's all I have for you, sir. Thank you.

24 THE COURT: Mr. Barnette.

25 SOLICITOR BARNETTE: May it please the Court, Your

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1 Honor?

2 THE COURT: Yes, sir.

3 EXAMINATION

4 BY SOLICITOR BARNETTE:

5 Q Hello, Mr. Lindsey.

6 A How you doing?

7 Q We're about in the evening now. So, it's one of those
8 days.

9 My name's Barry Barnette and this is Derrick Bulsa.
10 We're representing the State in the case from there. I just
11 need -- let me apologize. I'm gonna ask you some questions
12 that we normally wouldn't ask people or talk about. But
13 since it's a death penalty case, we're gonna be doing that
14 and I apologize ahead of time from there.

15 I noticed you paused when the judge asked you about the
16 death penalty, signing the death warrant --

17 A Yes.

18 Q -- sentencing sheet.

19 why did you pause if I can ask you?

20 A Because I have that -- you know, I was thinking about
21 it. You know, the death penalty that is taking somebody's
22 life.

23 Q Uh-huh. (Affirmative).

24 A And, to me, you know, I really thought about it. He's
25 got to have all the evidence of like -- everything have to

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1 be concrete, you know, facts first and I thought about it,
2 and, you know, if all the facts are there, and, you know, I
3 would consider, you know, the death penalty.

4 Q What, what's your -- what's your feelings about the
5 death penalty?

6 Maybe that's a better question to ask you about that.

7 A My feeling about the death penalty is I really think
8 the death penalty is taking somebody life, but if this
9 person took somebody else life for no reason at all, you
10 know, I really think, you know, you're hurting families and
11 loved ones. Just like that. Just, just come out, just,
12 just, you know, just take somebody life, I really think, you
13 know, you consider the death penalty because I think that
14 person did not have the, the feelings of caring about
15 somebody else's life.

16 Q I understand. I know it's tough to think about. It's
17 tough to talk about.

18 A Yes.

19 Q Stuff that we don't think about everyday from that
20 standpoint. I understand from there.

21 Is there anything -- is that a personal feeling to you
22 or is there anything from your background, I don't know,
23 from church or anything that's factoring into that or is
24 that just your personal belief?

25 A You know, it's my belief and, you know, I believe in

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1 God and I know God put peoples on this Earth for a reason,
2 but I don't think it's fair for nobody to take somebody's
3 life.

4 Q I understand.

5 And if you felt, in that situation, and -- let's say
6 that 11 others -- let's say y'all agreed on the death
7 penalty, all 12 jurors in the sentencing phase, you got
8 through the guilt and found him guilty, came to the
9 sentencing phase and there's -- all 12 of you decided that
10 the death penalty is appropriate from what you've seen, and
11 what's been produced in Court.

12 Could you -- if -- let's say that sheet of paper, and
13 you got to sign it, that sheet of paper is handed to you,
14 and you're the twelfth juror, you're the last person -- for
15 some reason you wind up being the last person, I hope you
16 wouldn't be, but, you know, in that situation, but if you
17 did, could you sign that sheet knowing that your signature
18 is the last signature required on that sheet?

19 A I think so. It would be hard, but I think so.

20 Q Okay. Based off if the circumstances was there from
21 there?

22 A Based on the circumstances and evidence that it was
23 proven.

24 Q Okay. So, you'd look at the crime obviously --

25 A Yes.

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1 Q -- and how it affected -- one moment, Your Honor,
2 please.

3 THE COURT: Yes, sir.

4 (Pause.)

5 Q Thank you, sir. I apologize again for asking you all
6 those questions.

7 A Okay. Thank you.

8 THE COURT: Anything further?

9 MR. MCGUIRE: No, sir.

10 THE COURT: Sir, if you'll step back to the jury room
11 for just a moment please, sir. Thank you.

12 (WHEREUPON, the following takes place outside the
13 presence of the juror.)

14 THE COURT: Defense position.

15 MR. MCGUIRE: He's qualified.

16 THE COURT: State.

17 SOLICITOR BARNETTE: I agree, Your Honor.

18 THE COURT: All right. I'll find him to be qualified.
19 Ask Mr. Lindsey to step back please.

20 (WHEREUPON, the following takes place within the
21 presence of the juror.)

22 THE COURT: Have a seat, sir.

23 (Witness complies.)

24 THE COURT: Mr. Lindsey, I have found that you are
25 qualified to proceed in our process. So, what that means is

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1 you're not on the jury, but that means you could be on the
2 jury.

3 THE WITNESS: Okay.

4 THE COURT: So, what that means is that we will be
5 calling you sometime early next week. We'll give you
6 additional instructions as to what you should do and what
7 you should be prepared for. Ms. Camp is gonna give you a
8 piece of paper here, and these are some of the things you
9 might want to consider when you come back because, when you
10 come back, we ask that you come prepared to stay with us in
11 case you do get on a jury.

12 You understand that?

13 THE WITNESS: Yes, sir.

14 THE COURT: Now, I'm gonna tell you my instructions
15 continued. You should not listen to, watch, or read media
16 reports about this case. Don't discuss it with anyone.
17 Don't allow anyone to discuss it with you. You should not
18 attempt to gather any information about this matter from any
19 source, and if anybody tried to contact you about your
20 service, report that to the Clerk's Office. Their number is
21 there that you can do that.

22 Do you understand the instructions?

23 THE WITNESS: Yes, sir.

24 THE COURT: Can you follow those for me?

25 THE WITNESS: Yes, sir.

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1 THE COURT: Now, the exception to that is you have the
2 right to tell your family or people at your work that if you
3 are, in fact, selected on a jury that you will be out of
4 pocket for a few days. Let them know, let them know you're
5 gonna be somewhere staying at the hotel and here at the
6 courthouse.

7 You understand that?

8 THE WITNESS: Yes, sir.

9 THE COURT: So, you can make arrangements. But, in
10 doing so, don't talk about what kind of case this is. Just
11 tell them that you may be picked for a jury and, if you are
12 picked, then you may be away for a few days.

13 You understand that?

14 THE WITNESS: Yes, sir.

15 THE COURT: So, don't get into a discussion with anyone
16 about what the case is about or what the issues might be.

17 THE WITNESS: Okay.

18 THE COURT: You can do that for me?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. We will call you next. You
21 don't have to call us anymore.

22 THE WITNESS: Okay.

23 THE COURT: Okay.

24 THE WITNESS: So, can I go to my everyday life, going
25 to work?

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1 THE COURT: Oh, absolutely.

2 THE WITNESS: Okay then.

3 THE COURT: Please do. Until we call you back---

4 THE WITNESS: All right.

5 THE COURT: ---and tell you what we need for you to do
6 next in the case.

7 THE WITNESS: Okay.

8 THE COURT: That call can come as early as next
9 Tuesday.

10 THE WITNESS: Okay.

11 THE COURT: Okay. That will be not -- tomorrow is
12 Sunday. The Tuesday following.

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. All right. Thank you for coming
15 today. The bailiffs will check you out and we'll be in
16 touch with you.

17 THE WITNESS: Okay.

18 THE COURT: Thank you, sir.

19 And is Mr. Leso a pretty good basketball player?

20 THE WITNESS: Yes, sir.

21 THE COURT: He's still pretty good.

22 Okay. All right.

23 (WHEREUPON, the following takes place outside the
24 presence of the juror.)

25 THE COURT: All right. We're gonna adjourn until

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1 Monday at nine o'clock.

2 Just a couple things. Let me put one thing on the
3 record though.

4 Concerning the report of Doctor Schwartz-Watts, does
5 the State have any authority you want us to consider in
6 regard to that?

7 SOLICITOR BARNETTE: Can we hand that to you Monday
8 morning, Your Honor?

9 That's when we---

10 THE COURT: Whenever you want to get it to me. I won't
11 make a decision until I've seen that.

12 SOLICITOR BARNETTE: Yes, sir.

13 THE COURT: Of course, if there's any authority from
14 the defense, we welcome that as well. We're glad to have
15 it. So, give us anything you might have on that subject so
16 we can take a look at it.

17 SOLICITOR BARNETTE: Yes, sir.

18 THE COURT: All right. Now, let's, let's just -- I'll
19 ask the attorneys to approach. Let's discuss a couple of
20 things.

21 (WHEREUPON, a bench conference was held at this time.)

22 THE COURT: All right. I'll see you at nine o'clock on
23 Monday.

24 MR. MCGUIRE: Yes, sir.

25 SOLICITOR BARNETTE: Thank you, Your Honor.

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1 THE COURT: Y'all have a good week -- long weekend,
2 short weekend.

3 MR. MCGUIRE: Yes, sir.

4

5 (WHEREUPON, Court was in recess for the evening.)

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1 Monday, March 10th, 2014

2

3 THE COURT: The carry over from Saturday is running
4 late. We've called and he's on his way. When he gets here
5 we'll get started.

6 MR. MCGUIRE: Yes, sir.

7 (Pause.)

8 SOLICITOR BARNETTE: Your Honor, may we approach about
9 another matter?

10 THE COURT: Please do. Yes, sir.

11 Mr. McGuire or Mr. Allen.

12 (WHEREUPON, a bench conference was held at this time.)

13 THE COURT: Can I ask the attorneys to approach?

14 (WHEREUPON, a bench conference was held at this time.)

15 THE COURT: All right. I'm gonna step back.

16 SOLICITOR BARNETTE: Your Honor, can we go up to the
17 office then if he's gonna go---

18 THE COURT: If he's where he says he is, he is near
19 Hatcher Gardens. So, we're gonna send somebody to pick him
20 up. We'll be in recess until we get him.

21 (WHEREUPON, a short recess was taken at this time.)

22 MR. ALLEN: Your Honor, if I may step out and ask the
23 officers to bring in---

24 THE COURT: Yes.

25 (WHEREUPON, the defendant comes into the courtroom at

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1 this time.)

2 THE COURT: All right. We had sent a deputy out to
3 Mr. White's house. When the deputy arrived he was told that
4 Mr. White had already left with a friend on his way here.

5 Is that what we've been told, is that right?

6 THE CLERK: Yes, sir.

7 THE COURT: Okay. I'm gonna go ahead with Jennifer
8 Salley. When Mr. White arrives, then we will discuss
9 matters with him.

10 All right. Bring in Ms. Jennifer Salley.

11 (WHEREUPON, the following takes place within the
12 presence of the juror.)

13 JENNIFER SALLEY, having been previously
14 sworn, testified as follows:

15 EXAMINATION

16 BY THE COURT:

17 Q Good morning.

18 A Good morning.

19 Q You must be Jennifer Salley?

20 A Yes, sir.

21 Q All right. Ms. Salley, you may want to slide back a
22 little bit. You're gonna be talking with me for a little
23 while and this gets in the way.

24 A Okay.

25 Q And then, once I finish asking some questions and going

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1 over some things with you, I'm going to allow the attorneys
2 to ask some questions of you as well.

3 Okay?

4 A Okay.

5 Q Now, first of all, I want to let you know that there
6 aren't any right or wrong answers to the things we're gonna
7 talk about today. There's only your answers and we want
8 your honest responses to what we're asking about.

9 Some of the things we may talk about might -- you might
10 consider to be personal cause we're gonna talk about some of
11 your opinions and ideas about some things. I hope you feel
12 comfortable enough about how you think about things that you
13 can tell us truthfully that and not feel threatened.

14 Is that correct?

15 A Yes, sir.

16 Q I know that's the hot seat in my courtroom usually.
17 That's the witness stand. But it's not a hot seat today.
18 Everybody's gonna be respectful and, again, there's only
19 your answers and no right or wrong answers. We're not
20 looking for any particular answer.

21 Now, ma'am, you took an oath last Monday to tell the
22 truth. It's been a while, a week ago. But you're still
23 under that oath now to tell the truth to the court.

24 You understand that?

25 A Yes, sir.

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1 Q You also were instructed some things about your
2 behavior. Not to try to go out and gather any information
3 on your own or not to try to talk about it with anyone or
4 allow anybody to talk to you about it. Not to watch, listen
5 to, or read media reports, and report any contact should
6 someone contact you.

7 You remember those instructions?

8 A Yes, sir.

9 Q Did you follow those instructions since Monday?

10 A Yes, sir.

11 Q Okay. Now, I noticed on your, your responses to my
12 questions last Monday you may have stood and indicated that
13 you had seen, heard, or seen some reports that may of had
14 something to do with this case.

15 A Yes, sir.

16 Q Is that true?

17 A Yes, sir.

18 Q Now, ma'am, I guess my question would be is it -- would
19 you be the kind of juror who could put aside outside
20 factors, put aside anything that you had seen that, that may
21 have anything to do with the case whatsoever, whatsoever and
22 decide the case based upon what you hear during the trial in
23 the Court?

24 A I already have a strong opinion --

25 Q Okay. So, you---

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1 A ---based on what I knew before last week.

2 Q You have formed an opinion about the case?

3 A Yes, sir.

4 Q And that opinion would not be changed by anything that
5 you heard in the courtroom.

6 Is that what I'm hearing?

7 A I struggled with it --

8 Q Uh-huh. (Affirmative).

9 A -- all week, but I feel very strongly.

10 Q Well, I just want your honest answer.

11 A Yes, sir, I feel very strongly about---

12 Q So, you've, you've formed an opinion already before
13 you've heard anything else -- other than what you saw in the
14 media?

15 A Yes, sir.

16 Q Okay. Of course, as a juror, it's necessary that you
17 be able to decide the case based upon what goes on in the
18 courtroom.

19 You're telling me your ability to do that has been
20 impaired?

21 A I feel like it has.

22 THE COURT: Does anyone wish to ask any questions,
23 State?

24 SOLICITOR BARNETTE: None from the State, Your Honor.

25 THE COURT: Defense.

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1 MR. MCGUIRE: No, sir.

2 THE COURT: Ma'am, I'm gonna release you from any
3 further responsibility in the case. The bailiffs will check
4 you out. You're free to go.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you.

7 (WHEREUPON, the following takes place outside the
8 hearing of the juror.)

9 THE COURT: The next one is David Long.

10 DAVID LONG, having been previously
11 sworn, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Sir, have a seat in the witness stand for me.

15 A (Witness complies.)

16 Q Your name is David W. Long?

17 A That's correct, Your Honor.

18 Q Mr. Long, first of all, I want to thank you for your
19 cooperation in our process so far. I know it's probably
20 unlike anything you've ever been involved in before and
21 that's the way it should be.

22 A Yes, sir.

23 Q Well, that's what jury duty is and it is a duty and we
24 appreciate your willingness to do that duty and cooperate
25 thus far. Thank you very much.

Individual Juror Qualification

1 Today I'm going to be asking you some questions. When
2 I finish the attorneys will be able or allowed to ask
3 questions of you. I will tell you that, during this
4 questioning, there are no right or wrong answers to our
5 questions. There's only your answers and we would like to
6 have your honest responses to what we're going to be asking
7 you about.

8 Can we get those from you?

9 A Yes, sir.

10 Q Some of the things we may ask about might involve
11 things concerning your beliefs, opinions, just kind of where
12 you are on some things, and I hope you feel comfortable
13 enough in people talking to you about those things to be
14 able to participate.

15 Can you do that for me?

16 A I'm not a public orator, but, yeah.

17 Q Okay. Well, we're not gonna invade your privacy and
18 that's not a hot seat today. People are gonna treat you
19 with respect here. We're just here to gather information
20 cause what we're doing right now is we're in the process of
21 forming a pool from which a jury will be selected. We're
22 not selecting the jury today. Well, we might. It depends
23 on where we get as far as numbers are concerned. But once
24 we get the pool large enough from which we can select a
25 jury, then we will be proceeding with doing that.

Individual Juror Qualification

1 So, today, right at this moment, we're not actually
2 selecting a jury. We're selecting people who might be
3 qualified for the jury.

4 You understand what we're doing?

5 A Yes, sir.

6 Q Now, you took an oath last Monday to tell the truth to
7 the Court. I'll remind you of that fact and let you know
8 that oath is continuing at this time.

9 Do you understand that?

10 A Yes, sir.

11 Q And you acknowledge that that's true?

12 A That's true, yes, sir.

13 Q Also I gave you some instructions about your behavior.
14 I asked you not to try to gather any information about the
15 case, not to read, watch, or listen to media reports, not to
16 discuss the case with anyone, and not to allow anyone to
17 discuss the case with you.

18 A Yeah.

19 Q Did I cover that in a nutshell?

20 A Yes, sir.

21 Q All right. Now, have you been able to follow my
22 instructions---

23 A Yeah.

24 Q ---since last Monday?

25 A Yes, sir.

Individual Juror Qualification

1 Q All right. Now, as I said, I'm going to ask some
2 questions. They'll be some conceptual questions. They'll
3 be some, some factual questions, but I think we can, we
4 can -- if you'll follow along with me we can get through
5 this okay.

6 First of all, have you ever participated in or
7 responded to any type of discussion, forum, whether it's on
8 the Internet, whether it's in the public, any, any place
9 where the question of the issues that might surround the
10 death penalty might have been discussed?

11 A No, sir.

12 Q Have you ever participated in any political action in
13 regard to that issue?

14 A No, sir.

15 Q So, you've never written a letter to an editor?

16 You've never called a representative or sent a letter
17 to a representative or anything of that nature?

18 A No.

19 Q Okay. Now, are you the kind of person who, if you were
20 selected on a jury, could put aside anything that you've
21 heard that might pertain to an issue to -- that was on trial
22 before you and try a case based upon what is going on in the
23 trial during, during that trial in the courtroom?

24 A I feel I could.

25 Q Okay. So, you think you could do that?

Individual Juror Qualification

1 A I think so.

2 Q Okay. Now, there was a list of people back in the jury
3 room, about three sheets of paper.

4 Did you look over that list?

5 A Yes, sir.

6 Q And now let me see -- do you have those names that
7 were -- needed to be added to that?

8 SOLICITOR BARNETTE: Yes, sir, I do.

9 Can I just hand those up to you?

10 THE COURT: Please do.

11 SOLICITOR BARNETTE: May I approach, Your Honor?

12 THE COURT: Yeah. Thank you.

13 Q There's, there's a couple of additions to that list. A
14 person named Amy Nunnary who lives in Reidville, South
15 Carolina, and a person named Reggie Frye who lives in
16 Chesnee, South Carolina. So, the list I went over with you,
17 as well as those two additional names, are people who have
18 been identified as possible witnesses in the case. I don't
19 know that they'll all testify. They have -- they can and
20 may testify.

21 As you read over that list, and those two people I just
22 mentioned, is -- was there anybody on that list that you
23 recognized as someone that you were related to in anyway?

24 A No, sir.

25 Q Was there anyone on that list that you may of had some

Individual Juror Qualification

1 previous personal connection with such as a business
2 relationship, personal relationship, something of that
3 nature?

4 A No, sir.

5 Q Okay. So, if those people or these people were to
6 testify, that would not affect your ability then to be fair
7 and impartial to both sides, is that correct?

8 A That's correct.

9 Q Okay. Now, there's one thing that I want to go over
10 with you that's a little different about this case, and, and
11 explain to you a little bit about legal concepts and why
12 this is an unusual process as you've already noted.

13 All right. This case, as I mentioned last Monday, will
14 be divided into -- potentially into two parts. There would
15 be a trial at which the question of the defendant's guilt or
16 innocence of the crimes alleged would be held. Depending on
17 the result of that trial, if the defendant were to be found
18 guilty of the crime of murder, the State has requested the
19 imposition of the death penalty. That would require a
20 separate hearing at which time evidence concerning that
21 question would be received. But I want to point out to you,
22 depending on the result of that first trial, we may never
23 get to that second trial depending on what that result is.

24 It's a little unusual that, when you talk with a jury,
25 juror or work or prepare a jury list, that you start talking

Individual Juror Qualification

1 about questions of penalty because normally the judge sets
2 the penalty, not the jury, and, and, of course, again, we
3 don't know if we'll get to that stage of the trial or not.

4 I'd been describing it to jurors as we're putting the
5 cart in front of the horse by talking about that, but I want
6 to point out to you the law says the same jury will hear
7 both sets, both trials. In other words, the, the jury that
8 hears the question of guilt or innocence will also then, if
9 a guilty verdict results, hear that second hearing. So, in
10 preparing a list of people for the jury, the only time we
11 can talk about these issues is now.

12 So, the fact that we're talking about the penalty part
13 of the, the trial should not be taken as an adverse
14 reflection upon the defendant in anyway or against his case
15 that he may present during the trial. It's simply the only
16 time that we can talk about potential jurors and talk about
17 all of the issues that could come up.

18 So, do you understand that this should not be taken, in
19 anyway, against the defendant that we're gonna talk about
20 those things?

21 A Yes, sir.

22 Q Okay. You can appreciate that?

23 A Yes, sir.

24 Q Okay. Now, I'm going to go over some, some things with
25 you, and, and these are -- some of them are very basic

Individual Juror Qualification

1 concepts about our criminal law. Some of them are -- we
2 develop a little more complicated questions as we move
3 along. But just follow along with me and I think we'll get
4 through this okay.

5 Now, first of all, if, if you were a juror in any
6 criminal case, not talking just about this one, I've been
7 using a shoplifting case as an example of any criminal case,
8 would you be willing to listen to the law as you were
9 instructed by the judge?

10 A Yeah.

11 Q Now, would you be willing to accept the law given to
12 you by the judge and then apply that law to the facts as a
13 jury determines those facts?

14 A Yes.

15 Q And I'll tell you the jury always is the judge of the
16 facts in every criminal case.

17 Okay. So, you could take the law the judge gave you
18 and apply to the facts as the judge found them on the jury
19 panel?

20 A I could, yes, sir.

21 Q Okay. Take it a step forward -- further.

22 Let's say that, in that shoplifting case, you're in the
23 jury box. The judge is explaining the law, and you hear the
24 judge say something about the law as he charges you that
25 maybe you didn't understand the law was that way or maybe

Individual Juror Qualification

1 you actually disagreed with what he says the law is, but the
2 judge says this is the law in this state that you must
3 follow.

4 Now, are you the kind of person who could set aside
5 your personal beliefs or feelings about the law and accept
6 the law exactly as the judge gives, gives it to you and then
7 apply it to the facts?

8 A I would say so. I mean it's kind of a vague question,
9 but, yeah, I would.

10 Q Well, it's vague, but I just -- I want to know are you
11 the kind of person though that if you have such a strong
12 belief as to what the law is that you would refuse to accept
13 the judge's instructions?

14 A I would say not.

15 Q Okay. So, you could accept what the judge told you the
16 law is?

17 A Yes, sir.

18 Q Okay. All right. Now, some other basic things about
19 the criminal law.

20 First of all, do you agree with these premises I'm
21 gonna tell you about, that, under the law, every defendant,
22 no matter what the seriousness of the crime might be, is
23 always presumed to be innocent of the crime for which that
24 defendant has been charged?

25 A It's tough to swallow sometimes, but yes, Your Honor.

Individual Juror Qualification

1 Q You understand that's, that's the, that's the premise
2 of the law?

3 A Yes, sir.

4 Q You understand that?

5 A Yes, sir.

6 Q Can you accept that premise?

7 A Yes, sir, I can.

8 Q Okay. Now, let me take that a step further.

9 Because a defendant is always presumed to be innocent
10 under the law, and we've agreed that's what the law is, then
11 a defendant is never required then to prove his innocence
12 because he's presumed to be innocent. So, we don't make
13 defendants prove their innocence. They're presumed to be
14 innocent.

15 Do you agree with that concept in the law?

16 A Yes, sir.

17 Q Let me take that a step further then.

18 Because a defendant is presumed to be innocent under
19 the law, and is never required to prove that he's innocent,
20 then, at a criminal trial, a defendant is not required to
21 prove anything. In other words, a defendant has no burden
22 of proof under the law.

23 Do you understand that's, that's -- do you accept that
24 that's the way it is?

25 A Yes, sir.

Individual Juror Qualification

1 Q Now, let's flip the coin over.

2 Of course, the State is the, is the entity that brings
3 a charge against any defendant. They file the charges, and
4 our law then says, because they are the prosecuting
5 authority, they do have a burden of proof in a criminal
6 trial. The State has to prove the defendant's guilt beyond
7 a reasonable doubt to a jury before the defendant can be
8 convicted.

9 Do you understand that theory of law?

10 Do you agree that that's the way that ought to be?

11 A Yes, sir.

12 Q So, let me ask you the next question.

13 Let's say you were on that shoplifting jury. You heard
14 the judge's charge on the law, you heard all the evidence,
15 and you and your fellow jurors are deliberating, and, after
16 your deliberations, you and the other jurors come to the
17 conclusion that the State did not reach its burden of proof.
18 It did not prove that the defendant was guilty beyond a
19 reasonable doubt.

20 Would you have any difficulty, in that situation,
21 signing a verdict that found the defendant not guilty?

22 A No, sir.

23 Q All right. Now, the second thing is, let's say you and
24 your jury did find the State proved the defendant's guilt
25 beyond a reasonable doubt.

Individual Juror Qualification

1 would you have any difficulty in signing a verdict of
2 guilty against that defendant?

3 A No, sir.

4 Q So, are you telling me that you are the kind of person
5 or a juror who could listen to the evidence, determine
6 whether it's true or not true, determine the value and the
7 weight of the evidence, and based upon the weight of the
8 evidence when compared to the law, you could find a
9 defendant either guilty or not guilty depending on what that
10 evidence showed?

11 A Yes, sir.

12 Q So, you could do that?

13 A I'd say so, yes, sir.

14 Q Beg your pardon?

15 A I'd say so, yes, sir.

16 Q Okay. Now, I'm going to talk a little more detail
17 about the case that we're involved in. I talked about that
18 two step trial that we're involved in. The law calls it a
19 bifurcated trial. It's been broken into two parts, and this
20 is the only time this is done in our law because normally a
21 jury comes in, hears the evidence, listens to the law, and
22 they find a defendant either guilty or not guilty. If the
23 defendant is found guilty, then the judge is the one who
24 sets the penalty, gives the sentence.

25 You understand that's how it normally works?

Individual Juror Qualification

1 A Correct.

2 Q Okay. In this situation, again, the jury handles both
3 steps of the proceedings. They either find the defendant
4 guilty or not guilty and then the same jury, if a guilty
5 verdict's given on murder, would consider the appropriate
6 penalty for that.

7 So, do you understand that that's the concept we have?

8 A Yes.

9 Q Now, the way that works is, again, the jury is
10 selected. Then there is -- in that second trial, the only
11 issue is the appropriateness of the penalties that are
12 sought, and there's two possibilities, either a penalty of
13 life in prison without the possibility of a parole or the
14 death penalty.

15 You understand that those are the two options?

16 A Yes, sir.

17 Q Now, that same jury that hears the first part of the
18 trial, if they find the defendant guilty, then comes back
19 for what is called that sentencing phase, and the law
20 provides that, at that sentencing phase or the penalty phase
21 of the, of the proceeding, that there would be evidence of
22 both aggravating circumstances and mitigating circumstances.

23 So, I want, this time, for you to put yourself in the
24 position that you are a juror. You've been selected in a
25 case. The case is one where the State is seeking the death

Individual Juror Qualification

1 penalty for a murder. You and your fellow jurors have heard
2 the first part of that trial, and that will be the, the
3 guilt question.

4 So, you've heard all the evidence that tells what the
5 charges are, who, what, when, where, all the different
6 factors. You've decided the truth of the evidence that
7 you've heard, the voracity or the credibility of the, of the
8 evidence that you've heard, and after that particular
9 proceeding, you and your fellow jurors have found the
10 defendant guilty of murder beyond a reasonable doubt.

11 So now we're getting ready to go into the second phase
12 of the trial, and, as I told you, at that phase of the trial
13 the law allows for evidence of aggravating circumstances and
14 mitigating circumstances, and I want to explain to you
15 what's meant by that so that you'll get some idea of what
16 we're talking about there because, again, those are words
17 you may have heard, but probably not in this context before.

18 The statute that sets up that second trial provides for
19 a list of statutorily aggravating circumstances and at least
20 one of those has to be proven beyond a reasonable doubt
21 before a death penalty could be issued, and there's a list
22 of them in the statute. I'm not gonna read all of them to
23 you. Some of them apply to this case and some don't. But
24 the State would have to prove at least one of those
25 aggravating matters before the defendant would be eligible

Individual Juror Qualification

1 to receive that penalty. Now, the -- and, again, that's by
2 proof beyond a reasonable doubt.

3 The other thing the statute provides for is proof of
4 mitigating circumstances, and there's a list of ten of those
5 in the statute. And, again, unless it becomes an issue in
6 this, this discussion, I'm not gonna read them all to you
7 because not all of them would apply to this case, and, and
8 that's what the trial is about, to determine which ones do
9 apply and which ones don't apply. But, at any rate, those
10 are found by whatever evidence the jury wishes to accept on
11 that, and, in addition to that list, the law says the jury
12 can consider other matters in mitigation, that is make the,
13 the crime lessened, or they can even consider the question
14 of mercy in this situation.

15 So, aggravators are factors which tend to make the
16 murder -- get -- he's found guilty of murder. So they tend
17 to make the event worse, more severe, so that a jury might
18 give the more severe punishment. Mitigators are factors
19 that a jury may consider that they may lessen, while it's a
20 bad thing that a murder's occurred, they may lessen the
21 leave of penalty that a jury might give.

22 So, do you understand the difference between
23 aggravating circumstances and mitigating circumstances?

24 A Yes, sir.

25 Q Now, I tell you, once that evidence is put into the

Individual Juror Qualification

1 record during that second trial, the judge charges the jury
2 to consider all of those factors, and to go and, and
3 deliberate and then come back with a recommendation as to
4 the appropriate penalty that might be involved.

5 So, do you understand what would happen at that trial

6 --

7 A Yes, sir.

8 Q -- and the kinds of evidence that you'd hear?

9 A Yes, sir.

10 Q And I'll tell you they'll be different witnesses
11 testifying at that trial than even testify at the first
12 because it's a different question because it's no longer
13 guilt or innocence. The defendant is a convicted murderer
14 at that stage. The question is simply what is the
15 appropriate penalty for that murder.

16 So, do understand where we are?

17 A Yes.

18 Q And I've told you to pretend that you're on that jury,
19 and the jury's found the defendant guilty of murder. You're
20 walking down the hallway, coming back to the jury -- to the
21 courtroom from the jury room, and you're about to start that
22 second phase of the trial.

23 So, do you understand where I put you?

24 A Okay. I understand.

25 Q Can you put yourself there?

Individual Juror Qualification

1 A I'm getting -- I'm there.

2 Q Okay. So, you're with, you're with the jury that is
3 found a defendant guilty of murder. You're walking down the
4 hallway. You're about to walk back into the courtroom.
5 You're gonna start that sentencing or penalty phase of the
6 trial and I just explained to you what would go on there.

7 Now, there was a sheet of paper back in the jury room I
8 asked you to read and on that I put down three different
9 types of jurors.

10 Did you read that for me?

11 A Yes, sir.

12 Q I'll go back over it and we're gonna assign numbers to
13 those jurors so that we've got an understanding of who we're
14 talking about.

15 All right. As you walk down that hall, juror number
16 one, getting ready to walk into the courtroom, that juror is
17 already made up his or her mind before that hearing ever
18 starts as to what that juror is gonna do. That juror
19 believes that, when someone takes the life of someone else
20 in a murder, that's an intentional killing of an innocent
21 person -- and I'm not gonna go through the whole definition
22 at this time, but it's a murder. He's been found guilty of
23 murder. So, that jurors believes that anytime that occurs
24 that the only appropriate penalty is the death penalty.
25 That juror, regardless of what's said during that second

Individual Juror Qualification

1 hearing, is always gonna vote for the death penalty when
2 someone's been convicted of murder.

3 The second juror on that list is also made up his or
4 her mind before that juror ever walks into the courtroom.
5 That juror believes that it's never appropriate for the
6 State to take someone's life in response to the commission
7 of a crime. Regardless of the aggravating factors,
8 regardless of how serious it is, that juror, every time, is
9 gonna vote for life in prison without the possibility of
10 parole because that juror simply does not believe that the
11 State should ever take someone's life in response to a
12 crime. So, that juror's already made up his or her mind as
13 well.

14 Now, the third juror I described is a juror who is
15 walking into the courtroom, hasn't made up his or her mind.
16 That juror doesn't have a predisposition one way or the
17 other. That juror wants to listen to the evidence that's
18 presented, both the things that make it worse, the
19 aggravators, and the mitigators, the things that might not
20 make it so worse, that juror wants to listen to those
21 factors, listen to the evidence, listen to the charge and
22 the law by the judge, and once all that information is been
23 completed, would like to go back and deliberate with their
24 fellow jurors and then decide what the appropriate penalty
25 is from what's been presented.

Individual Juror Qualification

1 Do you understand the difference between jurors one,
2 two, and three?

3 A Yes, sir.

4 Q Now, I told you also to pretend, or in your mind's eye,
5 you're on that jury too. You're walking back into the
6 courtroom getting ready to start that second phase of the
7 hearing after the verdict in the first phase.

8 Of the three jurors I described, which one best
9 describes you?

10 A I would say juror number three.

11 Q So, you think you're somebody who would want to listen
12 to the aggravating and mitigating evidence, listen to the
13 law, and then make a decision after that -- you hearing that
14 information as to what the appropriate thing was to do?

15 A Yes, sir.

16 Q All right. Let me take this a step farther.

17 Let's say you had the hearing. All the evidence was
18 presented to you. You went back into the jury room and you
19 deliberated with your fellow jurors, and y'all -- all of you
20 or you came to the conclusion that the appropriate penalty
21 was life imprisonment without the possibility of parole,
22 that that was the proper thing to do.

23 would you have any difficulty, in that circumstance,
24 signing a verdict for life imprisonment without the
25 possibility of parole?

Individual Juror Qualification

1 A No.

2 Q Now, by the same token, let's say you heard all the
3 evidence, the aggravating matters and the mitigating
4 matters, and discussed it with your fellow jurors, and you
5 came to the conclusion that the appropriate penalty was the
6 death penalty.

7 Could you sign a verdict for the death penalty?

8 A Yes, sir.

9 Q So, you could sign a verdict either way depending on
10 what the law, the evidence, and the facts showed you, both
11 aggravating and mitigating circumstances?

12 A Yes, sir.

13 Q Okay. One other thing I want to mention to you.

14 I have signed a sequestration order in this case. That
15 means that, when the jury, once it's formed, once we have
16 the jury together, they'll hear the case during the day and
17 then, in the evenings, they'll be staying at the Marriott
18 Hotel with a group of people who will be with them. The
19 purpose of the sequestration is so that the jury will not be
20 influenced by any outside factors during the trial. In
21 other words, we try the case based on what goes on in the
22 courtroom.

23 During that time, those jurors will have all of their
24 meals taken care of, their lodging taken care of. They'll
25 be transported wherever they need to go. You'll receive

Individual Juror Qualification

1 jury pay during the period of time that you're there. It's
2 not as much as people make in the real world, but it's all
3 the law allows us to pay jurors and those jurors would
4 receive their mileage or travel to and from the courthouse.

5 So, do you understand what a sequestration would be
6 like?

7 A Yes, sir.

8 Q Now, you still get -- you're allowed to talk to family
9 and friends during that period of time, but those calls
10 would be monitored to be sure that there's no information
11 being discussed concerning the trial.

12 You understand that that could happen?

13 A Yes, sir.

14 Q Now, if you were selected on the jury, if you were in
15 that situation, would that pose any serious risk to either
16 your health or your personal well being to be in that
17 situation?

18 A My personal well being---

19 Q Yes, sir.

20 A ---or health?

21 Q Yes, sir.

22 A No, sir.

23 Q Now, would it pose any serious risk of harm to the
24 personal health or well being of anybody who is dependent
25 upon you?

Individual Juror Qualification

1 A No, sir.

2 Q All right. Now I have completed my questions. The
3 lawyers are gonna ask you some questions and so, at this
4 point in time, they'll -- I'll allow them to do so.

5 Mr. Barnette, you gonna go first?

6 SOLICITOR BARNETTE: Yes, sir.

7 May it please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 EXAMINATION

10 BY SOLICITOR BARNETTE:

11 Q Morning, Mr. Long.

12 A Morning, sir.

13 Q My name is Barry Barnette and this is Derrick Bulsa.
14 We'll be representing the -- two of the attorneys for the
15 State in this case.

16 Just want to ask you a few questions I know may be
17 personal questions, but being a death penalty we just need
18 to ask you these questions. I apologize ahead of time from
19 that standpoint.

20 I notice you work at Carolina Hydraulics?

21 A Carolina Hose Hydraulics.

22 Q Okay. And what do you do there, sir?

23 A I pretty much run the business.

24 Q You do?

25 A Yeah, and both on the counter and the repair side as

Individual Juror Qualification

1 well as the business end of it.

2 Q And how long you been there, sir?

3 A Since 1985. We bought the business in 2000 I believe
4 it was.

5 Q Okay. I got you on that.

6 And where's it located at if I could ask?

7 A Southwest Park over in the Fairforest area.

8 Q Okay. I got you on that.

9 And just one other question I need to ask just to
10 clarify.

11 Where do you go to church at?

12 A At Westminster Presbyterian.

13 Q Okay. I go to church there, but I don't know you. I
14 don't think we've met from that, which is kind of unusual on
15 that church.

16 A Yeah.

17 You go to the 9:30 service?

18 Q I do. I go to the 9:30 service. Steve Wise preaches
19 at it. So --.

20 A Yes. Yes, he does.

21 Q So, I don't -- I'm in the back row all the time. So,
22 I'm one of those back row Presbyterians.

23 A I don't know how we hadn't bumped into each other cause
24 that's where I normally sit.

25 Q I know. But I just wanted to make sure that was clear

Individual Juror Qualification

1 cause honestly I wish I had met you before now, but, like I
2 said, it's kind of interesting from there. But we both -- I
3 do go to the 9:30 service too so from there. But I just
4 wanted to clarify that.

5 The judge's went through different factors with you. I
6 just want to go through some of those with you.

7 If I understand it right, you're the type of juror that
8 could listen to both sides before you make a decision?

9 A Yes, sir, I think so.

10 Q Okay. And, like you said, we'll have two phases.
11 We'll go through a guilt phase and the charges in this case
12 is murder and kidnapping in this case, and they will lead
13 on, and if he's found guilty of the murder, it would go to
14 the sentencing phase. At the sentencing phase, we go first.
15 We present the aggravating circumstances, and to let you
16 know ahead of time, one of the aggravators in this case is
17 the death of a child as well as kidnapping.

18 And then after we present our aggravators -- we have to
19 prove those aggravators beyond a reasonable doubt just like
20 we do in the guilt or innocence phase. After that, the
21 defense will get a chance to present their mitigators, and
22 there's a list of them and the judge will be glad to give
23 them to you because we've, we've been through this before.
24 But there's a list of ten statutory. One's background,
25 mental retardation of the defendant, disability, things like

Individual Juror Qualification

1 that to bring up, and that's, that's not the only thing the
2 jury can consider. They can also consider anything they
3 want to. They can even consider mercy if they want to.

4 And understanding that, would you listen to both sides,
5 listen to the aggravating circumstances as well as the
6 mitigating circumstances, before you made a decision in this
7 case?

8 A Yeah.

9 Q So, you're not predisposed to death or predisposed to
10 life without parole?

11 You'd wait before you, in making a decision like that,
12 you'd hear from everybody first?

13 A Yes.

14 Q Is that correct, sir?

15 A Yes, sir. I'm sorry. Yes, sir.

16 Q Yes, sir, I'm sorry. I know she's recording it. So
17 sorry.

18 A Oh.

19 Q From there. Just trying to help her out from there.

20 And, like you said, the defense don't have to prove
21 anything. The State has to prove everything beyond a
22 reasonable doubt.

23 You, you understand that from that standpoint?

24 A (Witness nods affirmatively.)

25 Q And I believe you've been through a criminal case

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1 before?

2 A No.

3 Q You never have?

4 A No, my wife has, but I have not.

5 Q Your wife has.

6 Okay. So, it wasn't, wasn't you in that case?

7 A No, sir.

8 Q Well, the reason -- they may ask one question. I know,
9 on your -- make sure I'm correct about this. I'm about to
10 ask you that question.

11 was she on a death penalty jury?

12 A Yes, sir.

13 Q Okay. She -- it put on your thing -- can I approach
14 the witness --

15 THE COURT: You may.

16 Q -- just to make sure please.

17 That was not you?

18 A Oh, I'm sorry. I thought it was your spouse or you---

19 Q Well, that's true. It did say your spouse. I'm sorry.

20 A Yeah.

21 Q Okay. I'm glad I asked that question.

22 So, your spouse was on a jury?

23 It wasn't you?

24 A Yes, sir.

25 Q I just wanted to make sure about that.

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1 Okay. which case was she on?

2 Do you remember?

3 A I think it was back early '94, '95, right before we got
4 married. I think it was Rosemond or something of that sort.

5 Q Okay. That's -- I know which case that is. I'm
6 familiar with that.

7 So, that wasn't you?

8 It was her on that case?

9 A Excuse me?

10 Q It was her on that case?

11 It wasn't you?

12 A Yes, sir.

13 Q Okay. So, you haven't been through that proceedings.

14 You haven't been through these proceedings before or
15 anything like that?

16 A No, sir.

17 Q Got you from there.

18 But as the judge told you, you'd listen to both sides
19 in the sentencing phase, the second part?

20 A (Witness nods affirmatively.)

21 Q And you'd wait until you hear all the evidence before
22 you would decide anything?

23 A Yes.

24 Q Is that right?

25 A Yes.

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1 Q And if you felt like death was appropriate, could you
2 sign -- at the end of the case, all 12 jurors have to sign a
3 sentencing sheet saying death is their sentence.

4 Could you do that, sir?

5 A Yes, sir.

6 Q On the other hand, if all 12 of y'all agreed -- and to
7 let you know, if all 12 jurors don't agree on the
8 sentencing, it would go to the judge and life without parole
9 would be what the sentence would be. If the jurors -- only
10 the jury can give the death sentence. The judge can't from
11 that standpoint.

12 So, so, if all 12 did not agree, if it was 11 guilty
13 for -- or 11 for the death penalty, one for life, and then
14 it'd go to the judge, the judge would decide that and he has
15 to give life without parole. He can not give a death
16 sentence in that case.

17 Do you understand that?

18 A Yes, sir.

19 Q But the same token, if all 12 of you agreed on a life
20 sentence without parole, could you sign -- could you also
21 agree with that sentence if that's what the evidence shows?

22 A If that's what it shows, yes, sir.

23 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
24 please.

25 THE COURT: Yes, sir.

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1 (Pause.)

2 Q Mr. Long, thank you for answering my questions. I hope
3 we get to see each other at church sometime. I don't know.

4 A I'll look for you this time.

5 Q Yes, sir.

6 THE COURT: Mr. McGuire.

7 MR. MCGUIRE: Bear with us, judge.

8 (Pause.)

9 EXAMINATION

10 BY MR. MCGUIRE:

11 Q Good morning, Mr. Long.

12 How you doing?

13 A Just fine, sir. Thank you.

14 Q I'm from Columbia. So, there's no chance you could of
15 run into me -- run into me at church. You'd have to go
16 pretty far to commute to my church.

17 Do you think we use the death penalty too much, too
18 seldom, about right?

19 Do you have an opinion on that?

20 A Not, not really. No, I mean I, I don't really follow
21 cases that much. So, I don't, I don't know what the
22 frequency is to be honest with you.

23 Q Okay. That's fair enough. Probably the last one you
24 heard about was the one your wife was on.

25 A well, for any kind of extended time, yeah.

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1 Q And I wanted to ask you, if you were king of South
2 Carolina for a day, and you could decide if we're gonna have
3 the death penalty or not, what would you decide?

4 A I would decide for the death penalty.

5 Q Okay. And why is that?

6 A I just feel that there's, there's times that it's
7 warranted.

8 Q The way our law works -- well, the prosecutor told you
9 that the aggravating -- an aggravating factor in this case
10 is the death of a child.

11 A Yes, sir.

12 Q There is a list of mitigating circumstances, and like
13 Mr. Barnette said, it can be -- a mitigating circumstance
14 doesn't have to be on that list. It could be anything. For
15 instance, you could hear evidence about the man, the man
16 accused of the crime. You could hear evidence about the
17 man's upbringing, how he was raised, his relationship with
18 God, relationship with his family, that sort of thing, maybe
19 even the emotional condition that he was under at the time,
20 whether he does have any kind of educational or learning
21 disability or mental retardation, things along those lines,
22 and, and some people, when they hear that some crimes are
23 just so bad, like the death of a child, they might say I'm
24 the, I'm the kind of person that doesn't need to hear that
25 background stuff about the defendant.

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1 Is that you?

2 A The death of the child thing, I mean that does -- I
3 don't know how to put it. I know -- I mean the death of a
4 child thing, if, if anything else would -- it would have to
5 be something pretty substantial for me to, for it to
6 overrule the death of a child aspect of it.

7 Q Okay. Now, we're not talking about an accident or like
8 somebody cleaning a gun and it goes off---

9 A Right.

10 Q ---accidentally.

11 A Yes, sir.

12 Q The judge would define murder to you and it's the
13 intentional, deliberate taking of an innocent life with
14 malice aforethought, and malice is described as hatred, ill
15 will, hostility towards somebody in a deliberate attempt to
16 harm them with no justification or excuse under
17 circumstances that would imply an evil intent. So, it's
18 the, it's a deliberate taking of a child's life.

19 And, and knowing all about this background and
20 mitigation evidence, I'm gonna ask you, again, are you, are
21 you the type of juror who the factor that is a death of a
22 child, would that be so impactful or so profound to take you
23 to a death penalty?

24 A I mean I can't -- you can't overlook the factor of it
25 being a child. I mean, I mean I don't know how, how to

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1 really to answer---

2 Q Sure.

3 A ---that question, but---

4 Q Well, you know---

5 THE COURT: Well, I've asked you, Mr. McGuire, to
6 indicate though that the mitigating circumstances that would
7 be possible in that case. So, there are -- you do -- there
8 would be evidence of mitigating circumstances introduced. I
9 can't go into what they might be cause I don't know yet.

10 THE WITNESS: Right.

11 THE COURT: That's up to the proof. So, there would
12 be -- but there would be evidence introduced. The law
13 allows for it and requires that the jury consider it.

14 Q See the whole process we're here for is, for instance,
15 there are some people that have beliefs and they're just in
16 disagreement with what the law is and that's okay.

17 For instance, they're plenty of people who don't think
18 alcohol should be sold on Sunday, right?

19 A (Witness nods affirmatively.)

20 Q Some people, depending on what county you're in, you
21 can't buy a hammer on Sunday, and people disagree with that.
22 And some people would say, you know, if a, if a hardware
23 store owner sold a hammer on Sunday and they prosecuted him
24 for that, even though I know it's the law, he shouldn't have
25 done it, my personal view is that that law is just kind of

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1 silly and I can't vote guilty on that man and then we would
2 not let that person be a juror in the system because they
3 couldn't follow the law and, and that's okay. That's fine
4 cause some people have personal opinions---

5 SOLICITOR BARNETTE: Your Honor, I don't know if that
6 characterization, that's okay that you don't follow the law.
7 I understand talking about personal opinions, but not saying
8 it's okay not to follow the law.

9 THE COURT: Well---

10 MR. MCGUIRE: I can rephrase that, judge.

11 THE COURT: Well, I think what he's, what he's asking
12 is, in this case, we are looking for jurors who would be
13 capable of participating in the system. The system requires
14 that you hear both aggravating and mitigating circumstances
15 and consider both before you reach a verdict. So, the
16 issue's whether or not we find jurors who can function
17 within that system.

18 MR. MCGUIRE: Sure.

19 THE COURT: This juror's indicated thus far that he
20 could, but you certainly have the right to explore that, Mr.
21 McGuire. So, I'll -- to that extent, I'll overrule the
22 objection and let you go forward.

23 MR. MCGUIRE: Thank you, Your Honor.

24 Q And, and it's because I don't want to put you in a, a
25 place where you're just so uncomfortable that you can't

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1 execute the juror oath basically. We've had plenty of
2 people come here and say I can never vote for the death
3 penalty. I just have a moral issue with it. I don't think
4 the State should take another human being's life and they're
5 not qualified, and they have been excused and they've gone
6 home because they can't follow the law because if you're on
7 the jury, that's when you have to follow the law. It's okay
8 to say my personal view wouldn't allow me to do that, and if
9 the, the death of a child has the home run weight of, of a
10 death penalty thought for you or that's your opinion, and
11 you couldn't consider that mitigation stuff that the judge
12 talked about or the prosecutor talked about, then, then you
13 would be not -- we couldn't qualify you as a juror. I'm
14 just trying to figure out if that's---

15 A To be honest, I mean I've got a little girl that's just
16 turned nine. My little boy's just turned 12.

17 All right. Being at -- I could do my best, but I can
18 not guarantee right now, I mean, what in terms of mitigating
19 circumstances it's---

20 THE COURT: Let me mention to you, sir.

21 A ---looking at it at this time.

22 THE COURT: You're not being asked to make the decision
23 today.

24 THE WITNESS: Okay.

25 THE COURT: You're being asked as to whether you could

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1 follow the process or not. In other words, the process, I
2 explained to you, they'll be aggravating evidence and
3 mitigating evidence and the question is whether or not you'd
4 be willing to consider both in reaching a decision. So,
5 we're not asking you to make a decision today. I hope you
6 don't feel that you're being asked to make a decision today
7 because I don't allow that. We're not gonna make a decision
8 today.

9 You understand me?

10 THE WITNESS: Yeah.

11 THE COURT: Okay. So, maybe that puts it in context as
12 to what he's asking.

13 A I'll do my best to listen to the mitigating
14 circumstances and involve that in my decision I guess is
15 what you're asking me.

16 Q That -- what I'm asking is, you're -- just your
17 personal belief. If the case involved the intentional
18 taking of a child's life, in that situation is that so
19 powerful with you that you wouldn't really need to hear
20 anything else?

21 It would be basically, for you, that would just cry out
22 for the death penalty?

23 Everything you say here is a right answer. If it's---

24 A I'm sorry. Yes, it would.

25 Q Okay.

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1 A It would.

2 Q It would and that's because of---

3 A I mean I, I'm so passionate about kids. I can not --
4 when, when I see things on TV about violence against kids or
5 something like that, I can't hardly watch it at all.

6 Q Okay.

7 A I'm sorry. I mean --.

8 Q No, no, no, no, no. I have two six year old boys. I
9 feel a lot of the same thing you're talking about.

10 Okay?

11 A Uh-huh. (Affirmative).

12 Q We all do. We wouldn't be good human beings if we
13 didn't feel that way, and we're only here to get your views.
14 We don't want to put somebody on a jury who could never vote
15 for the death penalty and put them in a position where they
16 can't follow the law. I don't want to put you on this jury
17 if you feel so passionate about a child that that would
18 pretty much cry out for the death penalty for you

19 What I hear you say is that's describing you right now?

20 A I'm sorry, but, yes, sir.

21 Q No, no, there's nothing to be sorry about. We have
22 plenty of other people. We're gonna get a jury. We've
23 excused plenty of people. That's okay and -- judge, based
24 on those answers, I'm gonna stand down.

25 That's all I have for you right now, sir.

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1 A Okay.

2 THE COURT: Mr. Barnette.

3 Q I appreciate your answers.

4 SOLICITOR BARNETTE: Yes, sir.

5 May it please the Court.

6 EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q Mr. Long, I just want to follow-up on a few questions
9 he, he asked.

10 Obviously you're passionate about what you're feeling
11 right now.

12 A Yes, sir.

13 Q Would you always give the death penalty in that
14 situation or would you consider a life sentence without
15 parole in that case listening to the mitigators?

16 A I, I guess it could be life without parole depending on
17 the circumstances. I'd still be leaning highly toward the
18 death penalty. I guess I could, I could.

19 Q Well, I guess the answer -- the question is this.

20 Could you give meaningful consideration to both sides?

21 I guess what I'm asking is would you automatically give
22 the death penalty in a death of a child or would you listen
23 and possibly give life without parole -- because leaning one
24 way or the other, there's nothing wrong with that. The
25 issue is are you automatically a, a death penalty vote or

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1 are you automatically a life vote, or are you somewhere
2 in-between.

3 A The death of a child, I mean I'm just -- I'm sorry.
4 I'm more death penalty.

5 Q I understand.

6 But would you automatically give the death penalty
7 every time in the death of a child?

8 A No, not every time for the death of a child. I would
9 say not.

10 Q No.

11 Could you consider a life without parole sentence if
12 the circumstances warranted that?

13 A I guess I could consider it.

14 Q Would you give meaningful consideration to the
15 mitigating circumstances and to the life sentence?

16 A I -- yeah, I guess, yeah. I'm sorry. I'm --.

17 Q I know. It's, it's a situation you don't plan to ever
18 be in, I understand that, and talking about this. But
19 that's, that's the question the Court needs to know because
20 the judge has to make a decision on it from that standpoint.

21 A I'm sorry. I mean I'm sorry, but in the death of a
22 child, I just -- I would lean -- I got to go with the death
23 penalty. I, I --.

24 Q Would that be automatic or would you just lean towards
25 it?

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1 A In my heart?

2 Q Yes, sir.

3 A I'm sorry, it would -- to me, it would be automatic.

4 Q Okay. You answered my questions. You're being honest.
5 I appreciate it.

6 A I'm sorry. I mean I'm --.

7 Q Don't be sorry. I mean we want truthful answers and
8 that's what we needed to know. But thank you, Mr. Long.

9 THE COURT: Anything further from the defense?

10 EXAMINATION

11 BY MR. MCGUIRE:

12 Q Mr. Long, you said I'm sorry a couple of times. I'm
13 standing up just to tell you we both -- all we want is
14 honest answers. You were honest. That's all we can do.
15 The Court's gonna thank you, I thank you, and the prosecutor
16 thanks you.

17 THE COURT: Sir, I'm gonna excuse you from the process.
18 I find you not qualified. You're free to go. Thank you for
19 your cooperation.

20 THE WITNESS: Thank you, judge.

21 THE COURT: Yes, sir.

22 (WHEREUPON, the following takes place outside the
23 presence of the juror.)

24 THE COURT: I'm informed that Mr. White is here, but
25 I'm gonna allow him to wait just a little while before we

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1 start. We're gonna continue at this time.

2 MR. MCGUIRE: Fair enough.

3 THE COURT: I do have that right.

4 MR. MCGUIRE: Of course.

5 THE COURT: Christopher Guenther maybe. Let's see
6 how -- what that is. Thank you.

7 (WHEREUPON, the following takes place within the
8 presence of the juror.)

9 CHRISTOPHER GUENTHER, having been previously
10 sworn, testified as follows:

11 EXAMINATION

12 BY THE COURT:

13 Q Have a seat please, sir.

14 A (Witness complies.)

15 Q You are Christopher -- and I think it's Guenther?

16 A Guenther, yes, sir.

17 Q Did I get that right?

18 A Yes, sir.

19 Q Okay. Good morning.

20 A Good morning.

21 Q Appreciate your cooperation with us thus far. I
22 realize this is a little different than anything you've ever
23 been involved in before.

24 A Yes, sir.

25 Q I guess it ought to be cause not everyone gets selected

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1 for jury duty and not everyone gets in a situation such as
2 this one. So, again, I want to thank you for your
3 cooperation so far.

4 This morning we're continuing to try to gather a pool
5 of jurors from which we will select the jury in the case.
6 We are not selecting the jury at this moment, and, at
7 sometime in the near future, we will be.

8 A Yes, sir.

9 Q I'm gonna ask you some questions this morning, and I
10 will tell you that -- and the attorneys will be allowed to
11 follow-up and ask some questions themselves, and I will tell
12 you that there are no right or wrong answers to our
13 questions. There's only your answers, and, you know, that's
14 all we want is your honesty.

15 I'll remind you that you were put under oath Monday a
16 week ago, a week from, from today, to tell the truth.
17 You're still under oath now.

18 Do you understand that, sir?

19 A Yes, sir.

20 Q And you acknowledge that?

21 A Yes, sir.

22 Q Okay. Now, I also asked you to follow some
23 instructions along with your fellow jurors and that was not
24 to watch, listen to, or read media reports, not to discuss
25 the case with anyone. Don't allow anyone to discuss it with

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1 you and to report anyone who might contact you.

2 Now, do you recall the instructions?

3 A Yes, sir.

4 Q Have you been able to follow them since last Monday?

5 A Yes, sir.

6 Q Okay. Now, in that regard, are you the kind of person
7 who, if you were on a jury, that you could put aside matters
8 that you may have heard that had anything whatsoever to do
9 with the case you're hearing and focus on and decide the
10 case based upon the law and the evidence that you hear in
11 the courtroom during the trial?

12 A Yes, sir.

13 Q Now, there was a list of -- well, let me go over two
14 more things and then I'll get to that list.

15 Have you ever participated in any type of discussions
16 of any nature where, where the discussion topic would of
17 been the death penalty or issues surrounding the death
18 penalty?

19 A Yes, sir.

20 Q And can you tell me in what regard that you've done
21 that?

22 Is it family or friends or have you participated in a
23 more formal situation?

24 A Probably just family and friends.

25 Q Okay. People -- it's come up because maybe stories in

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1 the news or cases that are going on or something of that
2 nature?

3 A Yes, sir.

4 Q Okay. Now -- and I think probably everybody in America
5 has done that at some point in time.

6 Now, the next question I have for you, have you ever
7 been involved in any political activities, however, that
8 would of involved that issue?

9 A No, sir.

10 Q So, you've never written a letter to the editor about
11 it or called a representative or sent a letter to a
12 representative or anything of that nature?

13 A No, sir.

14 Q Okay. Now, there was a list of people back in the jury
15 room, about three sheets of paper.

16 Did you look over that list of names for me?

17 A Yes, sir, I did.

18 Q And I'm gonna add two names to that list. Amy Nunnary
19 from Reidville, and Reggie Frye from Chesnee.

20 Now, of the people that we just -- that you read and
21 those two, was there anyone on there that you recognized
22 them as someone you were related to either by blood or
23 marriage or have you ever had a close social, personal, or
24 business relationship with anyone on that list?

25 A No, sir.

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1 Q So, if those people were -- and those people have been
2 identified as possible witnesses in the case.

3 If those people were to testify, would their testimony
4 affect your ability to be fair and impartial to both sides
5 in the case?

6 A No, sir.

7 Q So, you could be fair and impartial regardless of the
8 witnesses?

9 A Yes, sir.

10 Q Okay. Now, I want to set the stage on one thing
11 because this is a, as I said, it's a different situation
12 than our normal cases.

13 Normally a jury would come into the courtroom. In a
14 criminal case, the jury would hear the evidence presented
15 during the trial, then the judge would charge the jury with
16 the law to be applied, and then the jury would render a
17 verdict, and we call the jury the judge of the facts in a
18 courtroom. In other words, the jury is the group of
19 individuals who decide who's telling the truth, who's not
20 telling the truth, what the facts are. They give whatever
21 weight they wish to give to the evidence as they hear it.
22 So, the judge -- the juries are called the judges of the
23 facts.

24 But normally a jury would hear those facts, decide the
25 case based on the law, and then, if a defendant is found

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1 guilty, it would be up to the judge to issue the sentence in
2 the case.

3 You understand that's how it normally works in the
4 courtroom?

5 A Yes, sir.

6 Q The exception to that general rule is a case where the
7 State has alleged that a murder has occurred, and then, in
8 addition to that, they have alleged that the -- that murder
9 is death penalty eligible, and they are asking for the death
10 penalty. Not all murders are death penalty eligible, but
11 they are asking that the death penalty be assigned in the
12 case.

13 Now, when that occurs, the case is divided into two
14 different stages. There is a stage at which the jury
15 decides, just like I said the other jury did, they decide
16 guilt or innocence based on the evidence and the law, and,
17 in this case, though, if the jury finds the defendant guilty
18 of a murder, that same jury then would hear a second
19 hearing, and that is called the penalty phase of the trial
20 or the sentencing phase, and they would hear from totally
21 different witnesses concerning the question of the
22 appropriate penalty to be issued.

23 So, these people aren't testifying as to whether or not
24 the defendant is guilty or not. That's already been
25 determined. The defendant, when we get to that second

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1 stage, is -- has been found guilty of the crime of murder.

2 So, do you understand that, that -- and I want you to
3 appreciate the fact that we are going to talk about issues
4 that involve both phases of that trial. Just because we are
5 talking about things that involve the penalty phase of the
6 trial, that that fact should not be held against the
7 defendant in anyway or the case that he might present
8 because the defendant is presumed to be innocent.

9 I hope you appreciate that this is the only time,
10 however, that we will get to talk to prospective jurors who
11 might hear both trials if we got that far cause we don't
12 know if we're gonna get to that second trial. But if we got
13 that far, then we can't stop in the middle and re-pick a
14 jury cause the same jury has to hear both cases. So, we're
15 gonna be talking about penalties today and we don't even
16 know if we're gonna get into the penalty hearing.

17 Do you appreciate that?

18 A Yes, sir.

19 Q And, again, I, I want you to understand that the fact
20 that we talk about that should not be held against the
21 defendant.

22 Can you do that --

23 A Yes, sir.

24 Q -- as well?

25 Okay. Now, I'm going to go over what I think are some

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1 basic concepts about the law, and some people know these
2 things, some people don't. So, I -- we want to go over it
3 and be sure that, that we can -- that we have an
4 understanding about these things.

5 First of all, are you the kind of person, if you were
6 serving on a jury, could you accept the law as given to you
7 by the judge?

8 A Yes, sir.

9 Q Could you take the law then and apply it to the facts
10 as the jury finds the facts, since they're the judge of the
11 facts, could you then take the law the judge gave you and
12 apply it to the facts in an effort to reach a verdict?

13 A Yes, sir, I could.

14 Q Now, I'm gonna take this a step further because this
15 is, this is an important question.

16 Let's say that you were on a shoplifting case. You
17 were sitting on the jury. The judge is in the process of
18 charging you with the law to be applied. And, during that
19 charge, you hear something that either you didn't agree with
20 about the law or it was something that you didn't understand
21 the law was that way. You thought it was a different way
22 than that.

23 If you were to hear something like that, would you
24 still be willing to accept the law as the judge gave it to
25 you and apply it to the facts in an effort to reach a

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1 verdict?

2 A Yes, sir.

3 Q So, you could set aside your personal misgivings and
4 take the law as the judge gave it to you?

5 A Yes, sir.

6 Q Okay. Now, some more questions that have to do with
7 your understanding of the law.

8 Do you understand that it's a basic principle of our
9 judicial system that all defendants are presumed innocent of
10 the crime for which they've been charged?

11 A Yes, sir.

12 Q While -- so, so, if a defendant is presumed to be
13 innocent, that means that -- and it's also a basic concept
14 of our law that a defendant is not required to prove his
15 innocence. In other words, the defendant is not -- is
16 presumed innocent. So, there's no requirement that he prove
17 that.

18 You understand that?

19 A Yes, sir.

20 Q And we'll take it a step further then.

21 In a criminal trial, do you understand that a, a
22 defendant, in a criminal case, has no burden of proof?

23 In other words, the law doesn't require that a
24 defendant prove anything at that trial because the law
25 presumes his innocence.

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1 You understand that concept?

2 A Yes, sir.

3 Q Now, by the same taken, the State is the party, in a
4 criminal case, that is brought the charge. They -- whatever
5 the charge is. And because of that, since they've made the
6 accusations, the law requires that the State does have a
7 burden of proof. The State is required to prove those
8 allegations to a jury by proof beyond a reasonable doubt
9 before a defendant can be convicted.

10 Do you understand that that's a basic concept of the
11 law?

12 A Yes, sir.

13 Q Now, if you were on that shoplifting jury, you and your
14 fellow jurors heard the evidence, went back into the jury
15 room and deliberated, and you, you came to the conclusion
16 that the State had not met its burden of proof, it had not
17 proved the defendant guilty beyond a reasonable doubt, would
18 you have any problem or difficulty signing a not guilty
19 verdict?

20 A No, sir.

21 Q Now, by the same token, if you deliberated and you
22 determined that the State had proved the defendant guilty
23 beyond a reasonable doubt, would you have any difficulty in
24 signing a guilty verdict?

25 A No, sir.

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1 Q Are you telling me then that you could find a defendant
2 either guilty or not guilty depending on the truth of the
3 evidence, the strength of the evidence, the value of the
4 evidence, and the law that the judge gives?

5 A Yes, sir.

6 Q So, you could go either way?

7 A Yes, sir.

8 Q All right. Do you also understand that it's, it's a
9 basic concept of the law that just because someone has been
10 arrested, and charged, and even indicted in a case, because
11 those have happened, that doesn't mean that that person is
12 automatically guilty of the, the charge?

13 A Yes, sir.

14 Q You understand that?

15 A Yes, sir.

16 Q And you can accept that principle as well?

17 A Yes, sir.

18 Q Okay. Now, I'm -- I, I touched briefly on the fact
19 that we're gonna talk about the penalty phase of the trial
20 before we ever get there, and I'm getting to the point when
21 we're gonna talk about that now. So, I'm putting the cart
22 in front of the horse, but that's the only time I can do
23 this. So, we're gonna talk about this now.

24 I want to ask you to imagine that you've been selected
25 on a jury in a case where the State is seeking the, the

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1 death penalty for a murder. Murder's been alleged, and
2 they're asking that the death penalty be imposed.

3 So, do you understand where I'm asking you to put
4 yourself?

5 A Yes, sir.

6 Q All right. Let's say that you and your fellow jurors
7 have come to Court, you've heard all the evidence concerning
8 who did what, when, where, all the testimony's come in,
9 you've weighed that evidence, and you've decided the State
10 did meet its burden of proof and has proven the defendant
11 guilty of the murder beyond a reasonable doubt. So, you and
12 your fellow jurors have signed a verdict indicating that the
13 defendant is guilty of that crime.

14 So, do you understand where we are?

15 A Yes, sir.

16 Q All right. Now, I've told you already that that case
17 would be divided into two parts. The statute that sets this
18 process up provides that that second part of the, of the
19 process, the sentencing phase, it provides for the
20 introduction of two types of evidence or two types of
21 factors or circumstances is what the statute calls it.
22 Those circumstances are referred to as aggravating
23 circumstances or mitigating circumstances.

24 Aggravating circumstances would be evidence presented
25 by the State that would tend to make, while a murder is a

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1 bad thing, that aggravating circumstances, if the State is
2 able to prove one of those beyond a reasonable doubt, that
3 makes the crime death penalty eligible. As I said, not all
4 murders are death penalty eligible.

5 So, the State has to prove at least one of those
6 aggravating circumstances. They can allege more than one
7 and can prove more than one, but they have to prove at least
8 one of those aggravating circumstances, and there's a list
9 of the factors that can aggravate the crime of murder.
10 Now -- and I'm not gonna read all those to you unless you
11 want me to. I'll be glad to go over it with you, with them
12 with your, but some of them may or may not apply to this
13 case because we haven't gotten to that stage. I don't know
14 what would apply and what wouldn't apply at this point in
15 time. But at any rate, those are the aggravating
16 circumstances.

17 The other side of that coin is the statute also
18 provides for the introduction of mitigating circumstances.
19 That's a list of ten of those in the statute that, that
20 lists the different factors that a jury could consider. of
21 course, aggravating factors tend to make, while the crime of
22 murder is bad, tend to make that crime worse and maybe make
23 the defendant, the defendant more culpable for a higher
24 level of penalty.

25 The mitigating circumstances are factors which the

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1 State -- the Legislature has said would tend to lessen the
2 level of penalty a jury might give or factors that a jury
3 might consider, and those don't have to be proven beyond a
4 reasonable doubt. They just have to be shown to the jury
5 and the jury can give them whatever weight they choose to
6 give to those factors, and the law says the jury can
7 consider other mitigating factors that aren't in the list if
8 they want to, and it says the jury can even consider the,
9 the concept of mercy if, if the jury wishes to do so.

10 So, the jury's not limited to that list of mitigating
11 factors, but at any rate, there is a list and it's defined,
12 and if you'd like to hear those, I can go over those with
13 you. And, again, I don't know which ones would apply in
14 this case. But there's a good -- there's ten of them that
15 are enumerated in the statute.

16 Then that statute says that, once that jury in that
17 second phase has heard the aggravating factors and the
18 mitigating factors, that the judge is to charge the jury
19 with the fact that they should consider both sets of
20 factors, go back and deliberate, and then come out with a
21 recommendation concerning sentencing. The choices are, for
22 the jury, either life in prison without ever being paroled,
23 and that's exactly what that means, someone goes to prison,
24 never gets out, and/or the death penalty. So, those are the
25 two, two choices a jury could make.

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1 So, do you understand what that second phase of the
2 trial would be like, what it would be about?

3 A Yes, sir.

4 Q You understand the concept there --

5 A Yes, sir.

6 Q -- what the law sets up?

7 Okay. Now, I asked you to imagine that you were on
8 that jury, that you and your fellow jurors had found a
9 defendant guilty of murder. The question then becomes what
10 is the appropriate penalty. The same jury that hears that
11 first phase has to hear the second phase to make that
12 decision. So, you and your fellow jurors now are leaving
13 the jury room. You're walking back to the courtroom.
14 You're getting to walk into the door to start that hearing
15 to hear the evidence, aggravating evidence and mitigating
16 evidence.

17 Do you understand where you are?

18 A Yes, sir.

19 Q Okay. Back in the, the jury room I had a list -- a
20 sheet of paper, not a list, a paper that described three
21 different types of jurors.

22 Did you read that paper?

23 A Yes, sir, I did.

24 Q All right. Now, I'm gonna go over that with you
25 briefly so you and I have an understanding of what I'm

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1 talking about. I'm gonna give each one of these jurors I'm
2 talking about a number so we can refer to them as to who
3 they are.

4 You're walking down the hall about to come into the
5 courtroom and juror number one has already made up his mind.
6 That juror believes that, anytime someone is convicted of a
7 murder, that that juror doesn't need to listen to the
8 aggravating circumstances or the mitigating circumstances.
9 That juror believes that the only appropriate penalty for
10 someone who committed a murder is the death penalty. So,
11 every time that juror is in that situation or walks into a
12 courtroom, before the hearing is even held, that juror has
13 made up his or her mind to vote for the death penalty.

14 Juror number two is walking down the hall and that
15 juror has already made up his or her mind. That juror
16 believes that the State is never justified in taking a life
17 in response to a crime, and so for that -- therefore, that
18 juror has decided that he or she would never vote for the
19 death penalty. That juror would vote for life in prison
20 without parole every time regarding (sic) of the aggravating
21 circumstances or the mitigating circumstances.

22 Do you understand that juror?

23 A Yes, sir.

24 Q Juror number three in line, that juror has not yet made
25 up his or her mind. That juror wants to listen to the

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1 aggravating circumstances and also listen to the mitigating
2 circumstances, and then weigh those two, make -- then, in
3 deliberations with the fellow jurors, decide what the
4 appropriate penalty is. So, that juror -- even though that
5 juror is, is participated in the conviction of the crime of
6 murder, that juror wants to listen to all the factors,
7 listen to the things that the statute lays out, and then
8 make a decision based upon the evidence and the law as
9 charged by the judge.

10 So, do you understand the difference -- the three
11 different jurors, one, two, and three?

12 A Yes, sir.

13 Q Now, I asked you to put yourself in that position.
14 You're walking down the hall. You're about to walk into the
15 courtroom.

16 which of those three jurors would more closely describe
17 how you would feel?

18 A Juror number three.

19 Q So, you feel that you're a juror who would listen to,
20 regardless of how serious the murder was, that you would
21 want to listen to the aggravating factors and the mitigating
22 factors and to weigh those things before you made a decision
23 as to the appropriate penalty?

24 A Yes, sir.

25 Q Now, let me ask you this question.

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1 If you and your fellow jurors, after hearing that
2 evidence and hearing the law and then making a decision, if
3 you decided that the, that the appropriate penalty for the
4 murder was life without parole, could you sign a verdict in
5 that fashion?

6 A Yes, sir.

7 Q By the same token, if you and your fellow jurors heard
8 the aggravating factors and the mitigating factors, you
9 decided that the appropriate penalty was the death penalty,
10 could you then sign a piece of paper giving someone the
11 death penalty?

12 A Yes, sir.

13 Q All right. Now, one other thing I need to go over with
14 you.

15 I've signed an order sequestering the jury. Now, what
16 that means is, once the jury is picked and we start the
17 trial, the jury will hear the case during the day and at
18 night that juror will, jury will be staying at the Marriott
19 with some people we have who handle juries, and that's to
20 keep the jury away from any outside influences during the,
21 the progress of the trial.

22 During that time the jury would have all your meals
23 paid for. You'd have transportation back and forth. You'd
24 have lodging paid for. So, there's no expense to a jury in
25 this process. The jury would receive their regular jury pay

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1 for everyday that they're there. It's not as much as people
2 get paid in the real world, but it's what the law allows us
3 to pay jurors. So, there would be some, some payment for
4 your time, and then there would be a, an amount for your
5 travel back and forth.

6 I expect the trial of the case to take a little better
7 than a week. I will tell you that, once we start the trial,
8 we don't stop. We go seven days a week till we finish. The
9 reason is we want to take as little time out of people's
10 lives as we, as we can, but we want to have a full hearing,
11 full trial. So, we just start and we go till we get done.

12 So, you understand -- can you understand where we are
13 as far as sequestration?

14 A Yes, sir.

15 Q And I'll tell you that jurors in that situation are
16 allowed to talk to family and friends. It's just those
17 calls are monitored to be sure no discussion about the case
18 goes on.

19 So, do you understand where you'd be?

20 A Yes, sir.

21 Q Now, if you were in that situation, if you were
22 sequestered with the jury, would that process pose any risk
23 of harm to your personal health or well being?

24 A No, sir.

25 Q Would it pose any risk of harm to the health or well

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1 being of anyone who's dependent upon you?

2 A No, sir.

3 Q All right. Now I've completed my questioning. The
4 attorneys will want to talk to you, and then, when they
5 finish, I may have some follow-up questions.

6 Mr. Bulsa.

7 SOLICITOR BULSA: Yes, sir.

8 THE COURT: Yes, sir.

9 EXAMINATION

10 BY SOLICITOR BULSA:

11 Q Morning, Mr. Guenther.

12 A Good morning.

13 Q How are you?

14 A Good.

15 Q I'm Derrick Bulsa. This is Barry Barnette. We're
16 prosecuting this case.

17 A Yes, sir.

18 Q I have a few questions for you.

19 Do you mind asking -- answering them?

20 A No, sir.

21 Q Okay. I first want to go over your questionnaire some
22 and get some clarification.

23 what brought you to Spartanburg County?

24 A My job.

25 Q Your job?

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- 1 A Yes, sir.
- 2 Q That's with CSX?
- 3 A Yes, sir.
- 4 Q What kind of -- is that the railway, transportation?
- 5 A It's the railroad, yes, sir.
- 6 Q So, you work around trains?
- 7 A I do. I work in management. So, I work with managers.
- 8 Q Okay. All right. Do you get to ride on the trains?
- 9 A I do sometimes.
- 10 Q Okay. It sounds kind of fun to me. My boy would love
- 11 it.
- 12 Where were you a firefighter?
- 13 A In Boiling Springs.
- 14 Q Are you a volunteer firefighter?
- 15 A I was several years ago.
- 16 Q Okay. About how long ago was?
- 17 A I think I stopped that in 2003.
- 18 Q Okay. And I notice you -- your wife oversees a
- 19 children's ministry?
- 20 A Yes, sir.
- 21 Q Is that -- would that be with your church?
- 22 A Yes, sir.
- 23 Q At New Spring?
- 24 A Yes, sir.
- 25 Q Okay. And is that the one that meets at the Marriott?

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1 A Yes, sir.

2 Q Okay. It's part of the big church out of Anderson?

3 A Yes, sir.

4 Q Okay. All right. And I also noticed you listed that
5 you're currently a full-time student?

6 A Yes, sir.

7 Q And where do you attend school?

8 A I do it online through Excelsior College.

9 Q Okay. You understand that, during this process, you
10 probably won't be able to do that?

11 A Yes, sir.

12 Q Is that---

13 A Yeah, I'm not in a class this term.

14 Q Okay.

15 A Yes, sir.

16 Q So, that's gonna be okay. I didn't want to get you
17 locked into something you'd regret it later.

18 Okay. And you said your wife got a B.S. in Psychology?

19 A Yes, sir.

20 Q What school was that at?

21 A American Public University.

22 Q Is that an online college?

23 A It is, yes, sir.

24 Q Okay. All right. Now, did you and she ever discuss
25 the death penalty?

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1 A No, sir.

2 Q Never have.

3 You said in, to the judge's question, that you
4 discussed it among family and friends?

5 A Yes, sir.

6 Q Oh, what kind of conversations did you have?

7 A Probably more along the lines with friends at work or
8 something during major events, things like that. I don't
9 recall anything specific.

10 Q Okay. What would your view of the death penalty be?

11 A That if it's warranted, that, that I'm okay with it.

12 Q Okay. Do you have an understanding of what murder is
13 in South Carolina?

14 A I think so.

15 Q Okay. I'll -- I'm gonna briefly define it. It's the
16 unlawful killing of another human being with malice
17 aforethought. It's basically an unjustified homicide. It's
18 not an accident or self-defense.

19 A Okay.

20 Q Not all people that are killed or people that kill
21 people are subjected to the death penalty. Not all victims
22 qualify for the death penalty -- I mean their cases qualify
23 for the death penalty.

24 You understand that?

25 A Yes, sir.

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1 Q And I want to make sure, you've told the judge you're a
2 type three juror.

3 A Yes, sir.

4 Q You can consider both aggravating and mitigating
5 circumstances.

6 Regardless of the type of victim, would you consider
7 mitigating circumstances in deciding whether you could give
8 a life sentence or a death sentence?

9 A Yes, sir.

10 Q So, the type of victim would not matter to you?

11 A No, sir.

12 Q Okay. So, you could fairly consider any mitigation
13 regarding life or death?

14 A Yes, sir.

15 Q Okay. As well as consider the aggravating
16 circumstances?

17 A Yes, sir.

18 Q Okay. I noticed you said that you had some property
19 stolen.

20 Was your home burglarized at some point?

21 A It was not -- well, I guess it was. My wife had some
22 friends over and I had some handguns stolen.

23 Q Okay. Oh, goodness.

24 Were they ever found?

25 A Actually one was found and I've got a court date later

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1 in the month to testify about it being stolen.

2 Q Is that a case here in Spartanburg?

3 A It is, yes, sir.

4 Q So, you're a victim of a crime here in Spartanburg?

5 A Yes, sir.

6 Q Oh, do you know who's been charged?

7 A I don't remember the gentleman's -- the gentleman's
8 name that was on the, was on the letter. It was not the
9 individual that we suspect stole the weapons.

10 Q Okay. Okay. Is our office prosecuting it, the
11 solicitor's office?

12 A I think so, yes, sir.

13 Q Okay. Do you know who the attorney is?

14 A I don't. I've got the letter at home. I didn't even
15 pay it a whole lot of attention.

16 Q Okay. Okay.

17 A It was two, maybe three years ago.

18 Q Does that affect your ability to be unbiased in this
19 case?

20 A No, sir.

21 Q Now, the alleged victim in this case is a small child.
22 Okay. Did you know that?

23 A No, sir.

24 Q Okay. Coupled that with the information that you told
25 us about mitigating circumstances, did that affect your

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1 opinion in anyway about your ability to be fair and
2 impartial?

3 A No, sir.

4 Q So, would you still consider the mitigating
5 circumstances --

6 A Yes, sir, I would.

7 Q -- as well as the aggravating circumstances --

8 A Yes, sir.

9 Q -- before you decide with your fellow jurors what the
10 appropriate punishment would be?

11 A Yes, sir, I would.

12 Q Okay. Thank you, sir.

13 A Thank you.

14 THE COURT: Mr. McGuire.

15 MR. MCGUIRE: Thank you, judge.

16 THE COURT: Yes, sir.

17 EXAMINATION

18 BY MR. MCGUIRE:

19 Q Good morning, Mr. Guenther.

20 A Good morning.

21 Q How are you doing?

22 A Good.

23 Q Where are your thoughts about the death penalty in
24 terms of the frequency with which we use it?

25 Do you think we use it not enough, too much, about

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1 right?

2 Do you have an opinion?

3 A I think it's probably used enough. I would say about
4 right.

5 Q Okay.

6 A I'm not, I'm not sure exactly how often it is used, but
7 you know --.

8 Q Okay. If you were king for a day in South Carolina,
9 and a bill came across your desk, have the death penalty,
10 not have the death penalty, which one would you go with?

11 A Have it.

12 Q Okay. Why is that?

13 A Cause I believe some, some things justify that.

14 Q Some types of killing?

15 A Some types of crimes, yes, sir.

16 Q Okay. And I want to talk to you a little bit more
17 about this process, and that is -- first I'm gonna start
18 with mitigation and what that is in concrete terms.

19 Okay. That's a list. They're called statutory
20 mitigating evidence, statutory mitigators, and I think the
21 ones that apply in this case might be that the person
22 doesn't have a significant record of violence, that they
23 might be having some emotional influence on them or some
24 mental health issues, or learning issues like learning
25 disability or mental retardation, and then there's also

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1 anything, and the judge would tell you it can be anything.

2 A juror could see that the man had a redeeming relationship
3 with his grandchildren, his family, or his relationship to
4 God, something like that. It could really just be anything
5 and the judge would tell the jury that they could vote for
6 the life penalty for any reason, no reason, or just mercy
7 alone.

8 Okay. So, they're a whole lot of reasons to vote for
9 the life penalty if a juror wants to.

10 okay?

11 A Yes, sir.

12 Q But there's some people who will find that the
13 aggravator, aggravating factor, the death of a child, might
14 be so impactful, so profound that they not -- might not be
15 able to consider that mitigation evidence relevant, and
16 where you're sitting right now, it's perfectly acceptable to
17 have views that are -- that don't square with the law.

18 what's not okay is if you cross over to here and you
19 sit as a juror, you can't have views that don't square with
20 the law. So, now's the time -- that's why we're talking to
21 you now.

22 okay?

23 A Yes, sir.

24 Q For instance, I've got people in my family that build
25 houses, and there's a law in my county that you can't buy a

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1 hammer---

2 SOLICITOR BULSA: Your Honor, I'm gonna object. He
3 went into a recitation of mitigation and aggravation and
4 never asked him a question.

5 THE COURT: I agree.

6 MR. MCGUIRE: I'm getting there.

7 THE COURT: Well, let's get there. I mean this is a
8 long question.

9 MR. MCGUIRE: Yes, sir.

10 Q Do you understand---

11 THE COURT: The length of the question is not
12 necessarily important, but if you're testifying to him,
13 that's a different matter.

14 MR. MCGUIRE: Sure.

15 THE COURT: So, that's not what we're gonna allow. I
16 want you to ask questions. Not testify.

17 MR. MCGUIRE: Yes, sir.

18 THE COURT: Thank you.

19 Q Just wanted you to be fully informed when I, when I get
20 finally to that question, and in that question is you -- for
21 instance, I'm gonna give you an example. People in my
22 family build houses, and in my county you can't buy a
23 hammer---

24 SOLICITOR BULSA: Objection, Your Honor. That has
25 nothing to do with mitigation or aggravating circumstances.

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1 THE COURT: well, he hasn't finished the question.

2 Let's hear what it is and then you can make an objection if
3 you still feel it's objectionable.

4 SOLICITOR BULSA: Okay.

5 THE COURT: I don't know---

6 SOLICITOR BULSA: To give the witness---

7 THE COURT: I don't know where he's going with it.

8 This is a new one. So, let's see where he's going.

9 MR. MCGUIRE: Thank you, judge.

10 THE COURT: Thank you.

11 Q If I was called as a juror on a case where a hardware
12 store owner was being prosecuted for selling a hammer, I
13 could never convict him. I could never convict and take a
14 chance on---

15 SOLICITOR BULSA: Objection, Your Honor. That's not
16 relevant to the proceeding at hand.

17 THE COURT: I'll sustain the objection.

18 MR. MCGUIRE: Just trying to give an example about how
19 it's necessary to follow the law and -- but it's okay
20 sometimes to actually---

21 THE COURT: well, you've explained that to him already.

22 MR. MCGUIRE: All right.

23 THE COURT: You explained it a couple of times I think
24 now.

25 MR. MCGUIRE: Okay.

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1 THE COURT: So, it is, it is what -- our inquiry here
2 is to try to find jurors who are fair, open minded, and are
3 willing to follow the process. I agree.

4 MR. MCGUIRE: Okay.

5 THE COURT: That's all this is suppose to be about.

6 MR. MCGUIRE: Sure. Exactly.

7 THE COURT: Yes, sir.

8 Q So, Mr. Guenther, as you sit there, it's okay to have
9 views that don't square with the law.

10 Do you understand that?

11 A Yes, sir.

12 Q But if we swear you in and make you a juror, you can't
13 have views. You have to follow the law.

14 Okay. Do you understand that?

15 A Yes, sir.

16 Q And this is the time, this is the moment where, if the
17 aggravating, aggravating factor of the victim being a child
18 is so impactful or, or profound to you that you wouldn't
19 consider that mitigating evidence relevant, now is time to
20 tell us.

21 In, in that case, in a child, in an intentional killing
22 of an innocent child, would the mitigation evidence really
23 be relevant in fixing punishment between life and death?

24 A For me, the mitigation would, yes, sir.

25 Q Okay. And why is that?

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1 A I think, when you're looking at the death penalty, you
2 have to look at everything.

3 Q would you agree---

4 A Regardless of what it is, you got to look at
5 everything.

6 Q Okay. You agree with -- is it -- is it your position
7 that the death penalty is a last resort?

8 A Yes, sir.

9 Q Okay. And we should look at other options before the
10 death penalty?

11 Is, is that what you would try to do?

12 A I would look at all the facts and the crime.

13 Q Okay. What about the man, his walk in life, his life
14 history, who he is, would that be important?

15 A Yes, sir.

16 Q Okay. Are there situations that you think where a man
17 can commit a crime, and where a victim is a child, but
18 looking at the man, you might say he doesn't deserve the
19 death penalty?

20 A Yes, sir.

21 Q And that could be based on the man and who he is?

22 A Yes, sir.

23 Q Okay. What I want to talk to you a little bit now
24 about is how this process is a little bit different than a
25 typical trial. You know, the judge put you in that position

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1 of you and 11 others jurors convicted somebody beyond a
2 reasonable doubt, you got the right guy, guilty guilty.

3 Okay. Are you with me?

4 A Yes, sir.

5 Q You're in that position?

6 A Uh-huh. (Affirmative).

7 Q In that case, the jury has to be 100 percent unanimous
8 to convict somebody. All 12 have to agree.

9 Did you know that?

10 A Yes, sir.

11 Q Okay. Most people understand that from TV and stuff.
12 And, likewise, all 12 could say not guilty, and the person
13 would be released from custody.

14 Did you know that?

15 A Yes, sir.

16 Q Okay. And obviously there's the possibility of
17 disagreement. Some vote guilty, some vote not guilty, and
18 ultimately they can not come together. In that case, the
19 case would have to be declared a mistrial and tried over
20 again. It would have to be brought in front of a whole
21 other jury another time.

22 Did you know that?

23 A Yes, sir.

24 Q Okay. And the reason I tell you that and discuss that
25 with you, there was a pamphlet that was given out the, the

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1 first day everybody came to the big room and it talked about
2 that mistrial situation, but those rules are different in
3 the penalty phase. So, if you, if you and 11 other people
4 convict and find somebody guilty of murder, then the whole
5 second trial would begin with the same jury, and the only
6 issue between -- before that jury would be punishment, life
7 and death. Okay. That's the only two choices.

8 Now, in that situation, ultimately if the jury did not
9 agree, some people wanted to vote life penalty, some people
10 death penalty, ultimately the judge would take the case and
11 he would sentence, and the case would never have to be tried
12 again.

13 Did you know that?

14 A No, sir.

15 Q Okay. Well, that's where it so -- that's a very rare
16 aspect of the, the procedure, and I tell you that because I
17 don't want you to think that the jury failed in its mission
18 because they can't agree on something. I'm gonna ask you --
19 I'm gonna explain a little bit more about the process and
20 ask you if these are principles of law that you can follow.

21 Again, going to the penalty phase where the only
22 question is life and death, with regard to that mitigation
23 evidence, each individual juror can find what's mitigating
24 to them and no one else has to agree with them.

25 Did you know that?

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1 A No, sir.

2 Q Okay. For instance, one of the, one of the items on
3 the list is that somebody's has -- is suffering a mental
4 health issue. Well, they know right from wrong, but they,
5 they have some mental health issues.

6 One juror right here could say I, I believe that's the
7 case, and I'm gonna vote for the life penalty for that.
8 Everybody else could say I didn't really see that, and
9 nobody has to agree with this person.

10 Did you know that's how it worked?

11 A I do now.

12 Q Okay. And is that something you can respect and
13 follow?

14 A Yes, sir.

15 Q And you know another juror right here could say I saw
16 something in the man's upbringing, his walk in life, his
17 relationship with his family, I saw a spark of humanity
18 there, I'm gonna vote for life for that, and somebody --
19 other people could say well, I don't want to agree with
20 that, but they can do that. And then, like I said earlier,
21 the judge would charge the jury anybody can vote for the
22 life penalty for any reason, no reason, or mercy alone.

23 And some juror might say I can't put it in words, my
24 position, but the death penalty just doesn't sit right with
25 me, and I'm gonna vote for life. That's my conscience and

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1 I'm gonna vote that.

2 Can you respect different people having different
3 reasons to vote for the life penalty?

4 A Yes, sir.

5 Q Okay. Even though their reason could be in
6 disagreement with other people?

7 A Yes, sir.

8 Q And no matter what you came to, your decision -- by the
9 way, it's called an individual moral judgment. This isn't a
10 question science or math can solve. This is a moral issue.

11 You would want your conscience, your moral decision
12 respected?

13 A Yes, sir.

14 Q And you'd respect everybody else?

15 A Yes, sir.

16 Q Even in a situation where say 11 people wanted to vote
17 for the death penalty and one person wanted to vote for
18 life, could you respect their right to have that vote heard
19 in Court --

20 A Yes, sir.

21 Q -- knowing that the judge would sentence to life?

22 A Yes, sir.

23 Q Okay. The only other thing that I want to tell you and
24 ask if you can follow is, in a case like this, since there's
25 the two parts, there's the first trial and then there's the

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1 second trial. The judge would tell you it's absolutely
2 wrong to start talking about the penalty in that first trial
3 cause you hadn't heard the reasons for life or the other
4 penalty yet, and it would be wrong to prematurely start
5 talking about that or even really thinking about it.

6 If you saw people talking about what penalty should be
7 appropriate in the first phase, could I count on you to stop
8 that?

9 A Yes, sir.

10 Q Okay. That's all I have for you, sir.

11 A Thank you.

12 THE COURT: Mr. Bulsa.

13 SOLICITOR BULSA: Nothing further, Your Honor.

14 THE COURT: Sir, I'm gonna ask you to step back in the
15 jury room. Don't discuss the process with those folks back
16 there. I'll call you back in just a moment.

17 THE WITNESS: Yes, sir.

18 THE COURT: Thank you.

19 (WHEREUPON, the following takes place outside the
20 presence of the juror.)

21 THE COURT: Defense's position.

22 MR. MCGUIRE: He's qualified.

23 THE COURT: State.

24 SOLICITOR BULSA: Yes, sir.

25 THE COURT: Bring Mr. Guenther back.

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1 (WHEREUPON, the following takes place within the
2 presence of the juror.)

3 THE COURT: All right, sir. I have determined that you
4 are qualified to proceed in our process. We're not
5 selecting a jury at this moment. We will, in the very near
6 future, be selecting a jury.

7 Ms. Camp is gonna give you a sheet of paper.

8 THE WITNESS: Okay.

9 THE COURT: There's some suggestions on that concerning
10 some things you might want to consider. If you are called
11 back for jury duty, you will need to bring with you whatever
12 personal belongings and things you need to stay for a little
13 over a week I would expect. Of course, the hotel has
14 laundry facilities and things like that. So, don't bring
15 everything you own.

16 THE WITNESS: Right.

17 THE COURT: But bring enough to get by, and you may
18 want to -- well, let's see.

19 Let me tell you my instructions concerning no
20 communication about the case, and not listening to or
21 watching media reports, and not trying to gather any
22 information on your own continues. They'll continue until
23 we let you know you've been released from those
24 instructions.

25 THE WITNESS: Okay.

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1 THE COURT: You understand that?

2 THE WITNESS: Yes, sir.

3 THE COURT: And can you follow that?

4 THE WITNESS: Yes, sir.

5 THE COURT: The exception to that is you can talk to
6 family, or employees, or employers to let them know that if
7 you are called back for jury duty, you'll go missing for a
8 few days so that you can make arrangements to take care of
9 those things.

10 THE WITNESS: Yes, sir.

11 THE COURT: All right, sir. So, at this point in time,
12 I'm gonna, I'm gonna excuse you. Do not call us now. We'll
13 be calling you from this point forward and let you know how
14 to proceed in this matter.

15 THE WITNESS: Okay.

16 THE COURT: Okay. Thank you very much.

17 THE WITNESS: Thank you.

18 (WHEREUPON, the following takes place outside the
19 presence of the juror.)

20 THE COURT: Okay. We're gonna take about a five to ten
21 minute break. Court will be in recess.

22 SOLICITOR BARNETTE: May I approach the bench, Your
23 Honor?

24 THE COURT: Yes, sir.

25 SOLICITOR BARNETTE: This is not related to the case.

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1 THE COURT: Okay. Come forward.

2 (WHEREUPON, a short recess was taken at this time.)

3 THE COURT: State ready to proceed?

4 SOLICITOR BULSA: Yes, sir.

5 THE COURT: Defense ready?

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: Pamela Pruitt.

8 MR. MCGUIRE: Is Mr. White gonna be last?

9 THE COURT: Beg your pardon?

10 MR. MCGUIRE: Is Mr. White gonna be last?

11 THE COURT: Absolutely. The other choice would be I
12 can lock him up until the trial is over. I've done that
13 too.

14 (WHEREUPON, the following takes place within the
15 presence of the juror.)

16 PAMELA PRUITT, having been previously
17 sworn, testified as follows:

18 EXAMINATION

19 BY THE COURT:

20 Q Hi.

21 A Hi.

22 Q How are you today?

23 A Fine.

24 How are you?

25 Q I'm fine. Thank you.

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1 You are Pamela Pruitt?

2 A Yes, sir.

3 Q All right. Ms. Pruitt, we're gonna talk about some
4 things that have to do with the jury service in this case
5 and I want to thank you for your cooperation in coming in
6 this morning, and your patience in waiting back there till
7 we got to you. We do appreciate that.

8 Ma'am, I want to tell you that I'm going to be asking a
9 series of questions of you and putting up some factual
10 situations and asking you about how you would -- what you
11 would do in certain situations and what we're looking for
12 are your honest answers concerning these matters. There's
13 not a right answer. There's not a wrong answer. There's
14 only your answers and we would like for you to truthfully
15 tell us how you feel about certain things or your position
16 in regard to certain things.

17 Do you understand that, ma'am?

18 A Uh-huh. (Affirmative).

19 Q Now, last Monday you took an oath to tell the truth.
20 You're still under that oath today.

21 Do you acknowledge that fact?

22 A (Witness nods affirmatively.)

23 Q You have to answer me verbally.

24 A Yes.

25 Q That lady's taking everything down.

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1 A Yes.

2 Q I appreciate you shaking your head and people do that
3 in conversation all the time, but we have to be on the
4 record here. So, if you don't mind answering verbally.

5 I gave some instructions when you left the courthouse
6 about not trying to gather any information about the case,
7 not discussing the case with anyone, not allowing anyone to
8 discuss the case with you.

9 So, do you recall the discussions that---

10 A Yes.

11 Q The instructions that I gave?

12 A Yes, sir.

13 Q Have you been able to follow my instructions---

14 A Yes.

15 Q ---since you left the courthouse?

16 A I have.

17 Q Now, ma'am, are you the kind of person who could set
18 aside anything that you might have heard about this case or
19 know about this case on the outside, if any, anything that
20 would apply to this matter, and decide this case based upon
21 the law and the evidence presented to you or before you in a
22 trial in the courtroom?

23 Could you do that?

24 A I could.

25 Q Okay.

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1 A I know people talk.

2 Q Uh-huh. (Affirmative).

3 A And, you know---

4 Q Right.

5 A ---just weigh it against each other, but it's mostly
6 talk.

7 Q I understand.

8 A I would want to look at the evidence.

9 Q So, you can, you can weigh the evidence in a trial?

10 A Yes.

11 Q Okay. Very good.

12 Now, have you ever participated in any types of
13 discussions, I guess formal or informal, about issues that
14 might surround the imposition of the death penalty?

15 A No.

16 Q Okay. Have, have you ever participated in any type of
17 political activity regarding that issue?

18 A No, sir.

19 Q All right. Now, back in the jury room there was a list
20 of people.

21 Do you remember that, about three sheets of paper?

22 A Yeah.

23 Q Had a long list of names on it.

24 Did you read over that list?

25 A Yes, sir.

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1 Q And I'm gonna give you two more names to think about
2 just quickly. Someone named Amy Nunnary who lives in
3 Reidville, South Carolina, and someone named Reggie Frye who
4 lives in Chesnee, South Carolina.

5 Now, considering the names that were on the list back
6 in the jury room, and the two people I just mentioned, is
7 there anybody that involved in that that you might know that
8 you are related to either by blood, marriage, now or
9 formerly?

10 A No.

11 Q Is there anyone on those lists that you may have known
12 personally or through business or social contact?

13 A No, sir.

14 Q So, if any of those people that I named, that the two I
15 named of the people on the list, if they were to testify
16 during a trial, would the fact that they were testifying,
17 would that have any affect on your ability to be fair and
18 impartial to both sides of the case?

19 A No, sir.

20 Q Okay. Now, ma'am, I want to go over something with you
21 that I want to be sure that we have in mind cause this case
22 is different than most.

23 Usually, when I try cases, criminal cases, of course,
24 the, the jury comes into the courtroom and they hear the
25 evidence, the testimony in the case, and any documents or

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1 other pieces of evidence that come into the record, and then
2 I charge the jury with the law. I give them the law to, to
3 be applied to the facts that they decide, and so the jury is
4 the judge of the facts. They decide who's telling the
5 truth, who's not telling the truth, when things happen, how
6 they happen, that sort of thing. And then they take the
7 law, as I give it to them, and reach a verdict. If they
8 reach a guilty verdict, then it's my responsibility to issue
9 the appropriate sentence in the case.

10 Do you understand how cases normally go?

11 A Yeah.

12 Q That's what's -- the way you expect the case to go?

13 A Yeah.

14 Q Okay. This case is a little different because it's an
15 exception to that general rule.

16 What happens in this case is the State has, has alleged
17 that a murder occurred. They have, in addition to that,
18 requested that the death penalty be imposed as a penalty for
19 that murder. When that happens, the law provides for a
20 different kind of trial to be held. That particular trial
21 used in that situation is a trial that's what we call is
22 bifurcated. It's divided into two segments.

23 The first segment is just like the trial I described
24 to you earlier. The jury decides whether or not the State
25 proved the, proved the crime occurred beyond a reasonable

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1 doubt, and if they do, then they issue a verdict. If the
2 verdict is guilty as to a murder, then a second trial is
3 held. The only subject of that second trial is what is the
4 appropriate penalty for the crime that was committed.
5 That's called the sentencing phase or penalty phase of the
6 trial.

7 Now, the same jury hears both phases of the trial. In
8 other words, the people who participated in the guilt phase
9 then are called back to participate in the penalty phase.
10 Now, they'll hear different witnesses during that second
11 part of the trial concerning the issue of appropriate
12 penalties.

13 So, do you understand what I mean by a bifurcated
14 trial?

15 A Yes, sir.

16 Q It's divided into two, two segments.

17 A Yes, sir.

18 Q Another thing I want to point out to you is that
19 because the same jury hears both hearings, the only time
20 that either I or the lawyers will have a chance to talk to
21 the jurors about the issues that can come in both segments
22 of the trial is before the case starts because, once the
23 case starts, we can't redraw the jury or change the jury.
24 We have to use the same jury that's drawn in both cases.

25 So, what I'm pointing out to you is the defendant, in

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1 that kind of case and in this case, is presumed to be
2 innocent of the crime that's been charged, and the fact that
3 we're talking about the penalty phase should not, in anyway,
4 reflect upon the defendant or his case in this matter. It's
5 simply the only time that we have the ability to talk about
6 those things.

7 So, we're kind of putting the cart in front of the
8 horse because, should a jury find a defendant not guilty of
9 the murder, we won't ever get to that second phase of the
10 trial.

11 So, do you understand that we're kind of talking about
12 something that should not be taken against the defendant in
13 this matter?

14 A Yes, sir.

15 Q We just have to do it now.

16 You appreciate that fact?

17 A Yes, sir, I do.

18 Q Okay. All right. Now, ma'am, I'm going to go over
19 some matters that are common. Some of them are very basic
20 matters that go on in criminal cases, and some of them are a
21 little more complicated, and we'll walk, we'll walk through
22 this so that you understand what I'm talking about. But I
23 want to be sure that we have an understanding on some basic
24 principles of the law as it relates to criminal trials.

25 The first thing I want to mention to you is, I'll ask

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1 you, are you the kind of person who could take the law as
2 the judge gives it to you?

3 could you accept that law?

4 A well, I guess I could.

5 Q well, would you?

6 A You're suppose to know more about it than I am.

7 Q well, I have had a little training and a little
8 experience. I'll say that.

9 so, would you be willing to accept the law as the judge
10 gave it to you?

11 A Yes.

12 Q All right. Now, the next question I have, would you be
13 willing to take the law as the judge gives you and apply it
14 to the facts as the jury finds the facts to be in an effort
15 to reach a verdict?

16 A Yes.

17 Q Now, the next step, and this is a little bit -- twist
18 on that, and I want to be sure we have an understanding
19 about this.

20 Let's say you were a jury and y'all -- you were trying
21 someone for shoplifting something, and you heard all the
22 evidence, all the facts are in, heard the arguments from the
23 lawyers during the trial, and we're at the stage of the
24 hearing, hearing where the judge is charging the jury with
25 the law. In other words, giving the jury the law to be

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1 applied.

2 As you were listening to the judge give that law, maybe
3 you heard the judge say something that maybe you didn't
4 think the law was that way, didn't square with what you
5 thought the law was, or let's say you heard something that
6 you just didn't agree with. You didn't think the law ought
7 to be that way, that's not the way it ought be.

8 Could you then set aside your personal beliefs or
9 feelings and accept the law as the judge gave it to you?

10 In other words, take the law just like the judge tells
11 you and use that in applying that to the facts?

12 A Yes, sir, I'm not there to change the law.

13 Q Okay. All right. That's what I wanted to find out, if
14 you were willing to accept it as the judge gives it.

15 A No, sir, I'm not there to change it. I'm just there---

16 Q Okay. All right. Very good. That's what I wanted to
17 talk to you about.

18 Now, the next thing I want to talk to you about are
19 some other basic principles of the criminal law.

20 First of all, do you understand that, under our system
21 of justice, the one we use in the United States and in this
22 state, that a defendant is always presumed to be innocent of
23 the alleged crime until such time as it is been proven to a
24 jury in a Court of law?

25 A Yes, sir.

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1 Q So, you understand that?

2 A Uh-huh. (Affirmative).

3 Q And do agree with that principle?

4 A I do agree with it.

5 Q Now, for that reason, the, the -- a defendant, in a
6 criminal case, is never required, by the law or the State,
7 to prove his innocence. In other words, he's not required
8 to prove that he's innocent.

9 You understand that concept?

10 A Yes, sir.

11 Q I'll take it a step forward then -- farther then.

12 Do you understand that, at a criminal trial, because a
13 defendant is presumed to be innocent of -- under the law and
14 because he has -- does not have to prove his innocence, a
15 defendant has no -- what the law calls burden of proof or
16 responsibility to prove anything at a criminal trial. In
17 other words, a defendant has the right to remain silent and
18 say nothing at a trial if a defendant chooses to.

19 You understand that concept?

20 A Uh-huh. (Affirmative).

21 Q And do---

22 A Yes, sir.

23 Q Do you agree with that?

24 A I do.

25 Q Now, the next thing I'll ask you is -- we'll go to the

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1 other side of the, of the case.

2 The State of -- the State, in this case, the State of
3 South Carolina is the entity that brings charges. Charges
4 are accusations. In other words, someone's accused of
5 committing a crime. So, a charge has been brought.

6 Do you understand that it then is the State's burden,
7 because they are the ones bringing the charge, they have to
8 prove the defendant guilty by proof that satisfies the jury
9 of guilt beyond a reasonable doubt?

10 You understand that that's another basic principle of
11 the law?

12 A Yes, sir.

13 Q And do you agree that the State should have to prove
14 the allegations beyond a reasonable doubt?

15 A They brought the charge.

16 Q They ought to prove it.

17 A Uh-huh. (Affirmative).

18 Q Okay. Now, let me ask you the next stage.

19 If you were on a jury in a case involving shoplifting,
20 your fellow jurors have heard all the evidence, you've heard
21 the charge on the law, if you went back into the jury room
22 and you decided that the State did not meet its burden of
23 proof, in other words it did not prove that the defendant
24 had committed the crime beyond a reasonable doubt, would you
25 have any difficulty in signing a not guilty verdict for that

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1 defendant?

2 A Not if they didn't prove it.

3 Q Okay. Then, by the same token, if they did prove it
4 beyond a reasonable doubt to you and your fellow jurors,
5 would you have any difficulty in signing a guilty verdict
6 against someone?

7 A No, sir.

8 Q All right. Now, ma'am, I'm going to get now to the, to
9 the stage that I'm going to talk to you about this type of
10 case that we're in, a situation where the State has alleged
11 that a murder has occurred, and they're alleging that they
12 should be able or the death penalty should be a possible
13 penalty in the case, and I want you to presume or assume
14 that you are a juror who's been selected in that type of
15 case.

16 So, can you imagine that for me for just a little bit?

17 A I will.

18 Q Now, let's, let's kind of walk through this a little
19 bit so you'll understand where you are and what your
20 situation is.

21 You're -- you've been selected in this case. You and
22 your fellow jurors come together, and there is a trial, the
23 first part of the trial, the guilt phase of that trial where
24 the State presents the evidence that it has against the
25 defendant concerning whether or not the defendant is guilty

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1 of the offense that's been charged, and let's say you've
2 completed that trial, you've heard all the evidence, you've
3 seen all the evidence, you've heard the law from the judge
4 on the question of the crime that was committed, what the
5 elements of the crime were, and based upon your review of
6 that, and review of the truthfulness and the value of the
7 evidence, you and your fellow jurors have found, beyond a
8 reasonable doubt, that the defendant is guilty of the crime
9 of murder.

10 So, do you understand that that's -- that has occurred
11 and a guilty verdict has been issued?

12 A Yes, sir.

13 Q You understand that?

14 A Yes, sir.

15 Q And at this point in time the defendant then stands as
16 a convicted murderer in the case.

17 You understand that?

18 A Yes, sir.

19 Q All right. Now, the law that sets this process up then
20 says we'll start that second trial, the one where the
21 question of penalty or sentencing is the issue, and that
22 statute that sets that up provides for two types of evidence
23 to be considered by a jury during that process, and it's
24 referred to as aggravating circumstances or mitigating
25 circumstances. I want to explain to you what we mean by

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1 those phrases so you'll understand what I'm talking about as
2 far as the type of evidence.

3 Okay. Aggravating circumstances are circumstances
4 which might cause a juror, if they're proven -- and
5 aggravating circumstances at that hearing have to been
6 proven beyond a reasonable doubt just like any other
7 accusation by the State. It's got to be proven beyond a
8 reasonable doubt, and the State's required to prove at least
9 one aggravating circumstance before a murder is death
10 penalty eligible. Not all murders are death penalty
11 eligible.

12 Okay. So, the State has to prove at least one of those
13 aggravating circumstances, and, again, those are factors
14 that might cause a juror, when you hear what that is, might
15 cause you to tend to give a higher sentence or a more severe
16 sentence.

17 So, do you understand what an aggravating circumstances
18 is?

19 A (Witness nods affirmatively.)

20 Q Now, I haven't read them to you. But if you feel that
21 you need to know them I can read them to you. We don't know
22 which ones apply to this case and don't apply to this case
23 at this point in time.

24 A Okay.

25 Q But there's a list of them. There's some 12 or so and

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1 some of them have subparts as to how things that might
2 aggravate a situation so that it would be death penalty
3 eligible.

4 So, do you understand what I'm referring to?

5 A I'm sure when the time comes I would understand it.

6 Q Well, and, again, I'll be glad to read them all to you
7 if you want me to.

8 A No, that's fine.

9 Q I've got them right here on my computer, but, but there
10 are -- and so those are the aggravating circumstances, and
11 if it -- again, if it helps you answer my question better
12 I'll be glad to explain them in more detail.

13 Then there's also, in that same part of that statute, a
14 set of circumstances referred to as mitigating
15 circumstances. Those are things that a juror, if you, if
16 they're shown to you -- and they don't have to be proven
17 beyond a reasonable doubt. They just have to be shown to
18 the jury and the jury can give them whatever weight they
19 think they deserve. They can weigh heavily or not weigh
20 heavily depending on the juror and once you hear the
21 evidence and whether you want to weigh it. But anyway,
22 there's ten of those factors in the statute.

23 But then the statute says that a juror can consider any
24 other factor a juror wishes to consider in mitigation. In
25 other words making the crime less severe. A murder is not a

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1 good thing. It could be a bad thing, but these are things
2 that might tend to lessen the level of penalty that someone
3 would give to someone convicted of that crime.

4 A Okay.

5 Q So, do you understand the difference between
6 aggravating circumstances and mitigating circumstances?

7 A Uh-huh. (Affirmative).

8 Q All right. Now, the law says that, once that evidence
9 has been presented in that second trial, that the judge
10 charges -- is to charge the jury. In other words, tell the
11 jury that you are to consider both aggravating and
12 mitigating circumstances, and I'll point out to you, I was
13 about to get there, but I missed it, I told you there's a
14 list of mitigating circumstances. The jury can consider any
15 other factors the jury wishes to consider in mitigation. In
16 fact, a jury can consider simple mercy if they wish to grant
17 mercy in a case. So, those are the things that a jury can
18 consider in reaching that verdict.

19 The judge then would charge the jury to go consider
20 those factors, aggravation factors and mitigating factors,
21 and then come back with a recommendation as to the
22 appropriate verdict. The choices are life in prison without
23 the possibility of ever being paroled and that's what that
24 means. That means someone goes to jail and they stay there
25 till they pass away or the death penalty, and that's what

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1 that means.

2 A Uh-huh. (Affirmative).

3 Q Now, do you understand what that second hearing is like
4 and what it's about?

5 A Yes, sir.

6 Q Okay. And, again, there's the two types of evidence
7 that would be introduced.

8 Do you understand that would come in?

9 A (Witness nods affirmatively.)

10 Q Now, back in the jury room I had a sheet of paper on
11 the table. It described three different jurors.

12 Did you read that paper?

13 A Yes, sir.

14 Q Now, I've told you to imagine you're on this jury in
15 this imaginary case that I've got you in. You've heard the
16 first part of the trial, and you have found this defendant
17 guilty of a murder. So, he is a convicted murderer at this
18 point in time.

19 You're about to walk down the hallway from the jury
20 room and walk back into the courtroom, and the purpose of
21 you going back there is to start this hearing where you'll
22 hear aggravating factors and mitigating factors.

23 You understand where I've asked you to put yourself---

24 A Uh-huh. (Affirmative).

25 Q ---with that jury, coming back to the courtroom to hear

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1 that evidence.

2 A (Witness nods affirmatively.)

3 Q Now, I'm gonna talk about those three jurors I put on
4 that piece of paper and I'm gonna give them a number so that
5 you and I can refer to them and understand what we're
6 talking about.

7 Juror number one on that piece of paper would be a
8 juror, before that juror ever walked into the courtroom for
9 the sentencing or penalty phase of the trial, would of
10 already made up his or her mind. That juror believes that
11 anytime someone's convicted of a murder, the intentional
12 killing of an innocent person with malice aforethought,
13 anytime somebody's convicted of a murder, that the only
14 appropriate penalty is the death penalty, and every time
15 that juror was put in that situation that juror would vote
16 for the death penalty.

17 The second juror in line, walking back into the
18 courtroom, that juror's also made up his or her mind. That
19 juror believes that the State is never justified in taking
20 the life of someone in response to the commission of a crime
21 no matter how serious the event was, no matter what that
22 person did in committing that crime. That person will
23 always vote for life in prison without the possibility of
24 parole because that person, again, doesn't believe the
25 state's justified in taking a life in that situation.

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1 The third juror about to walk into that courtroom, that
2 juror has not yet made his or her mind up as to how that
3 person would vote on the penalty issue. That juror wants to
4 listen to the evidence, both the aggravating factors, the
5 things that make it worse, and the mitigating factors, the
6 things that make it less severe. That juror wants to hear
7 both types of evidence. That juror wants to hear the charge
8 given by the judge concerning those matters, and then that
9 juror would like to deliberate with their fellow jurors in
10 trying to reach a verdict as to the appropriate penalty that
11 might be issued. Again, either death or life. So, that
12 juror has not yet made up his or her mind.

13 So, do you understand jurors one, two, and three?

14 A Yes, sir.

15 Q Now, I've told you to put yourself in the position that
16 you're about to walk back into the courtroom, and you
17 have -- and, and you're about to go into that hearing to
18 decide concerning the penalties.

19 So, you understand where you are?

20 A Yes, sir.

21 Q Now, as you were walking in that door to the courtroom,
22 which one of those three jurors would most closely resemble
23 you and your feelings as you walked into the courtroom?

24 A I'd have to say I'd be number three.

25 Q Now, number three is the person who is willing to hear

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1 the bad things, things that make it worse, and the things
2 that make, that modify it and make a decision then based
3 upon the -- those factors, and any other factors the juror
4 wanted to consider in mitigation, and the charge on the --
5 from the judge on the law before reaching a verdict.

6 Does that describe you?

7 A That's what I was gonna say. I hadn't heard it all
8 yet.

9 Q Okay. So, you'd like to hear all those things before
10 you decide---

11 A I would.

12 Q -- what's appropriate?

13 Now, let me ask you a question. Let's say that you
14 heard that hearing, you and your fellow jurors discussed it,
15 and you came to the conclusion, with your fellow jurors,
16 that -- you came to the conclusion that life without parole
17 is the appropriate penalty.

18 Could you sign a verdict sentencing someone to the --
19 in that fashion?

20 A I could if I knew what the aggravating---

21 Q Well, again, ma'am, I'm not---

22 A You'd have to lean up to it.

23 Q I'm not trying to tell you -- I don't want you deciding
24 the case today.

25 A I could do it.

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1 Q What I want to find out is if you were willing to
2 follow the process. If you were willing to, to go through
3 the process, reach an understanding, and make a decision
4 based on---

5 A Yes.

6 Q ---the law and the evidence is what I'm asking.

7 A Yes.

8 Q Okay. Now, by the same token though, if you and your
9 fellow jurors decided that the most appropriate penalty in
10 this situation is the death penalty, would you be willing to
11 sign a verdict which is -- by the way it's required by law
12 that the jurors sign a verdict giving the death penalty,.

13 A Yes, I could do that.

14 Q You could do that.

15 So, you could do either depending on the evidence and
16 what it showed?

17 A I could.

18 Q All right. A couple other questions, ma'am.

19 I have signed an order sequestering the jury.

20 Now, what that means is, once the jury is seated, the
21 jury will be in the courtroom during the day. They will be
22 trying the case. In the evening though the jury will be
23 staying at the Marriott hotel with a group of people who
24 handle jurors. That's what they do. And that, that -- the
25 effort or the purpose of that or the effort in that is to

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1 try to keep the jury from being influenced from any outside
2 influence during the process of the trial.

3 Now, while you're sequestered on a jury, you would be,
4 if you're in that situation, you would be allowed to call
5 family or friends, but that would be monitored during that
6 period of time.

7 A Uh-huh. (Affirmative).

8 Q Also, while you're sequestered, you would be able to
9 receive or you would receive jury pay. Now, jury pay's not
10 nearly what people make on the outside. It's what is
11 allowed, what is allowed by law. But you would be paid for
12 the days that you were there. All of your meals, lodging,
13 and travel back and forth to the courthouse would be taken
14 care of. There'd be no expense to a juror in that
15 situation.

16 I expect the trial of this case to take in excess of a
17 week, but less than two weeks. I will tell you that, once
18 we start a trial of this nature, we go seven days a week.
19 We don't stop because we try to take as little time as we
20 have to take out of people's lives in handling this. But we
21 want a full, fair trial is what -- so, we would go until we
22 were finished, and I will tell you, at the Marriott, there's
23 laundry facilities and that sort of thing.

24 So, do you understand what it would be to be
25 sequestered though on a jury?

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1 A Yes, sir.

2 Q Okay. Now, my question to you about all of that is, if
3 you were sequestered on a jury, would you, in anyway, pose
4 any serious risk to your personal health or well being?

5 A No, not really.

6 Q Would that pose any serious risk or danger to the
7 personal health or well being of anybody dependent on you?

8 A No.

9 Q Okay. You've answered my questions. I appreciate your
10 cooperation thus far. The lawyers are gonna ask you some
11 questions now and I may follow-up on their questions once
12 they finish. So, you may want to turn so you can face them.

13 A Okay.

14 THE COURT: Mr. Bulsa.

15 SOLICITOR BULSA: Thank you, Your Honor.

16 EXAMINATION

17 BY SOLICITOR BULSA:

18 Q Good morning, ma'am.

19 A Hey.

20 Q How are you?

21 I'm Derrick Bulsa. This is Barry Barnette. We're
22 prosecuting this case.

23 Okay?

24 A Okay.

25 Q Appreciate you talking with the judge and then talking

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1 with me.

2 I noticed that you kept -- the comment you kept making
3 to the judge is you wanted to hear it all before you made up
4 your mind.

5 A Well, shouldn't you?

6 Q You should, but you'd be surprised some people don't
7 want to hear it all.

8 A Oh.

9 Q Some people have their mind already made up.

10 A Okay.

11 Q Okay. But you don't have your mind made up regardless
12 of any of the circumstances?

13 A No.

14 Q And you don't know anything about this case?

15 A Not really and I couldn't look it up cause I don't even
16 remember the guy's name.

17 Q Okay. Well, good. We appreciate that.

18 A My mind was wondering when y'all introduced him.

19 Q Okay. Well, that's what we need. We need you to be
20 fair and unbiased.

21 Okay?

22 A Uh-huh. (Affirmative).

23 Q Now, the first part of this case, it's a murder case.
24 Murder is the unlawful killing of another human being with
25 malice aforethought.

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1 A Yeah.

2 Q Okay. So, in the first case we're gonna be trying to
3 prove somebody guilty of killing another person without
4 justification or any kind of accident or something like
5 that.

6 You understand that?

7 A (Witness nods affirmatively.)

8 Q Okay. And if we do our job and we convict the man, the
9 jury finds him guilty, and then we go to the second stage.

10 Now, regardless of the victim, would you consider both
11 sides, the aggravating and circumstances -- aggravating and
12 mitigating circumstances --

13 A Yes, sir.

14 Q -- before you decide the fate of the defendant?

15 A Yeah.

16 Q Okay. So, that -- and that's what I'm trying to get
17 to. Some people consider the age of the victim for --
18 perhaps.

19 would that affect your ability to look at the
20 aggravating and the mitigating circumstances?

21 A No, sir, I don't think it would.

22 Q Okay. So, you need -- that's what we're trying to find
23 out, if you're gonna go into this with an open mind.

24 Assuming that we've got the conviction, we're walking
25 into the second courtroom for the second phase, your mind is

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1 not made up yet?

2 Is that what you're telling me?

3 A Wait a minute. You lost me.

4 Q Okay. I understand.

5 A Have we convicted him yet?

6 I mean---

7 Q We've already convicted him.

8 A Oh, okay.

9 Q We're in the sentencing phase.

10 A Uh-huh. (Affirmative).

11 Q Your mind is not made up?

12 A No.

13 Q Even if the victim is a child?

14 A No.

15 Q Okay.

16 A I'd still have to hear the rest of it.

17 Q Okay. Good. And that's what we need to know.

18 Let me ask you a few questions, if I may, about your
19 juror questionnaire.

20 I notice you have two children.

21 A Yes.

22 Q Do you have grandchildren?

23 A Yes.

24 Q How many?

25 A Four.

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- 1 Q Four.
2 what are their approximate ages?
3 A Seventeen, fourteen, seven, and five.
4 Q Okay. Good.
5 Do they live local?
6 A Yes.
7 Q So, you get to see them a lot?
8 A Well, I don't get to see the teenagers. They don't
9 want to see anybody, but I see the other ones.
10 Q Okay. And it appears that you're disabled on the job?
11 A Yes.
12 Q Okay. All right. Sorry for that.
13 And your husband is retired from M&S Truck?
14 A Yes, sir.
15 Q Is that a trucking company?
16 A He was the owner and operator of the trucking. It's a
17 mechanical place. He was like a mechanic over the truck
18 stop --
19 Q Okay.
20 A -- down on Howard Street.
21 Q Did he ever drive the trucks?
22 A Huh?
23 Q Did he ever drive the trucks?
24 A He did, but he gave it up to work on them.
25 Q To work on them.

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1 Okay.

2 A More money in it to work on them than drive them.

3 Q And when he did drive, was it over the road, long haul?

4 A We wasn't married at that time.

5 Q Okay.

6 A But I think it was over the road.

7 Q Okay. All right. And---

8 A We've been married -- I don't guess it matters. That's
9 okay.

10 Q Well, I'll ask.

11 How long?

12 A Thirty-eight years.

13 Q Thirty-eight years.

14 Okay. Good relations.

15 Okay. And you've -- you put on your questionnaire that
16 you knew somebody who was a security guard I believe.

17 A I was a security guard.

18 Q Oh, you were a security guard?

19 A Uh-huh. (Affirmative).

20 Q How about that?

21 When was that?

22 A All my life. I was at Hoechst Celanese for 24 years,
23 and then I went to BMW. I was over there six years. That's
24 when I got hurt on-the-job.

25 Q So, you actually got -- you were actually a security

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1 guard when you got hurt?

2 A Yes.

3 Q Okay. Okay. Well, I'm sorry.

4 And you attend Calvary Baptist Church in Boiling
5 Springs?

6 A Yes, sir.

7 Q Who's that pastor?

8 A Linnerud.

9 Q Linnerud?

10 A Scott Linnerud.

11 Q Did y'all ever have discussions about the death penalty
12 in church?

13 A Hu huh. (Negative).

14 I've only been going to that church a couple of years,
15 that church. But no, that's never been in his sermon.

16 Q Okay. What are your general views of the death
17 penalty?

18 A I don't have any views. There's some cases that yes, I
19 believe it's called for.

20 Q Okay.

21 A And there's some cases that it's not.

22 Q Okay. And with that view in mind, do you understand
23 you shouldn't make up your mind until you listen to both
24 sides of the story?

25 A Yes.

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1 Q Are you willing to do that?

2 A Yes, sir.

3 Q Okay. And give the -- both the defendant and the State
4 a fair trial?

5 A Yes, sir.

6 Q Okay. So, you could fairly consider both aggravating
7 and mitigating circumstances?

8 A (Witness nods affirmatively.)

9 Q All right. Thank you, ma'am. I appreciate it.

10 A Yeah.

11 THE COURT: Mr. McGuire.

12 EXAMINATION

13 BY MR. MCGUIRE:

14 Q Almost good afternoon, Ms. Pruitt. We're almost at
15 noon.

16 Let me ask you just a couple questions about the death
17 penalty to start off.

18 Do you think we use it too seldom, too often, about
19 right?

20 Do you have an opinion?

21 A I honestly don't keep up with it.

22 Q Okay.

23 A I couldn't tell you if we use it too much or too often.

24 Q Okay. Fair enough.

25 If you were queen of South Carolina for a day, and you

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1 could choose to have the death penalty or not have the death
2 penalty, which would you choose?

3 A I -- again, that's circumstances. I mean --.

4 Q I mean should we have -- should the law provide for the
5 option of the death penalty?

6 Is that your position?

7 A I think it should.

8 Q Okay. And why is that?

9 A Because -- I don't know. It's hard to explain. But
10 it -- I just feel like it's necessary.

11 Q Do you, do you think it deters crime?

12 Does it stop other people from committing crime?

13 A I don't think it does.

14 Q Okay. Is it more just a punishment, a retribution on a
15 person that, that commits a crime?

16 A No.

17 Q Okay.

18 A No.

19 Q With regard to the life penalty, life in prison without
20 parole, the judge would tell you that, in South Carolina,
21 life means life. You go in the prison, you never leave the
22 walls, and you die in prison.

23 Did you know that?

24 A (Witness nods affirmatively.)

25 Q Okay. Some other states have parole. We don't and,

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1 and---

2 A Well, that's the way I think it should be. If you got
3 life in prison it ought to mean life in prison.

4 Q Okay. Okay. And that's -- I just want to make sure
5 you understand that is exactly the way it is South Carolina.

6 Okay. You don't have any question about that?

7 A No.

8 Q Okay. You know, we've had, we've some people, some
9 jurors come and, and say, you know, my position is I could
10 never give the death penalty for a moral, religious, or
11 personal reason, and we've had some people say I think an
12 eye for an eye. I think murder deserves the death penalty.
13 I don't need to hear anything else. And we've let those
14 people go with our thanks. Judge thanked them. I thanked
15 them. The prosecutor thanked them. And it's okay. They
16 didn't -- their -- they did what -- exactly what the Court
17 wanted them to do, which was to give honest answers to the
18 questions.

19 And what I want to do is, is tell you this. It's okay
20 to sit where you are right now and have views that don't
21 square with the law, but what's not okay is to come over
22 here in this jury box and be a juror and have views that
23 don't square with the law.

24 Are you with me?

25 A Uh-huh. (Affirmative).

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1 Q Okay. So, did you hear the judge's definition of
2 mitigating circumstances?

3 A (Witness nods affirmatively.)

4 Q And there's a, there's a list. With some of them --
5 there's a list in the law. The law actually gives a little
6 list, but then the judge would expound upon that and say
7 mitigation can be really just any reason that a jury sees to
8 vote for the life penalty. It can just be a man's walk in
9 life, what's been done to him, what he's done to other
10 people, his intellect, his emotional state, whether he has
11 mental struggles, whether he's had a history where he, where
12 he's never been violent before. These are some things that
13 could be considered.

14 Do you understand that that's what's called mitigation
15 evidence?

16 A Yes, sir.

17 Q Okay. Now, there's some folks that -- and, again, it's
18 perfectly fine to feel this way in that chair, but not in
19 this chair. Some folks, when they hear about the
20 aggravating factor of a child being the victim, that it's
21 the intention deliberate taking of a child's life, that
22 the -- they don't need to hear anything else, that the
23 mitigation evidence, the background of the evidence, and
24 those other things that I listed, that those would not be
25 relevant in fixing punishment for a man who took the life of

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1 an innocent child.

2 Does that describe you?

3 A No.

4 Q Okay. Why not?

5 A There's a reason. There's a reason.

6 Q For?

7 A Why, why they would do that, but it doesn't mean that
8 they had the right to do it.

9 Q Sure. In the case where---

10 A Not a right to do it, but a reason to do it.

11 Q Okay. But if the person knew right from wrong, and
12 took the life of a child, would that mitigation stuff matter
13 to you in deciding punishment, life or death?

14 A You say right from wrong, if they knew right from
15 wrong, they made a choice.

16 Q And how does that -- what does that mean to you?

17 A If they made the choice to take a child's life or
18 anyone's life, I won't say that they, they should be put
19 into the death penalty, but it doesn't mean that they can't
20 be. I would have to hear the rest of the case.

21 Q Okay. Can you imagine a situation where somebody did
22 deliberately choose to take the innocent life of a child,
23 but then you look at---

24 SOLICITOR BULSA: I believe -- objection, Your Honor.
25 She's already answered this question as to whether she can

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1 be unbiased or not.

2 THE COURT: It sounds eerily familiar to a previous
3 question you've already asked, but I don't know what the end
4 of the question is.

5 MR. MCGUIRE: Sure. It's a little bit different.

6 THE COURT: I don't know. We'll see.

7 Q Can you imagine a scenario, a situation or could you
8 make room for the possibility that a man could commit a
9 crime, like taking the innocent life of a child, but then
10 when you look at the man as a whole and his walk in life,
11 could you say that maybe he doesn't deserve, deserve the
12 death penalty based on who he is?

13 A I don't exactly understand what you're asking me, but
14 not based on who he is. I mean---

15 THE COURT: Well, there's -- ma'am, there's actually
16 ten mitigating factors. I don't know. The way the attorney
17 has asked the question is not exactly the way the mitigating
18 factors describe -- none of them say who he is, but they do
19 include the -- things that might be contained in someone's
20 background. If you'd like for me to read the mitigating
21 factors to you, ma'am, I'll be glad to do that so you'll
22 know exactly what types of things we're talking about.

23 THE WITNESS: Okay.

24 THE COURT: Would you like to hear that?

25 THE WITNESS: I -- it may help me.

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1 THE COURT: Yes, ma'am. Give me a moment.

2 These are defined under the statute as mitigating
3 circumstances.

4 Number one. The defendant has no significant history
5 of prior criminal conviction involving the use of violence
6 against another person.

7 Number two. The murder was committed while the
8 defendant was under the influence of mental or emotional
9 disturbance.

10 Number three. The victim was a participant in the
11 defendant's conduct or consented to the act.

12 Number four. The defendant was an accomplice in the
13 murder committed by another person and his participation was
14 relatively minor.

15 Number five. The defendant acted under duress or under
16 the domination of another person.

17 Number six. The capacity of the defendant to
18 appreciate the criminality of his conduct or to conform his
19 conduct to the requirements of law was substantially
20 impaired.

21 Number seven. The age or mentality of the defendant at
22 the time of the crime.

23 Number eight. The defendant was provoked by the victim
24 into committing the murder.

25 Number nine. The defendant was below the age of 18 at

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1 the time of the crime.

2 Number ten. The defendant had mental retardation at
3 the time of the crime. Mental retardation means
4 significantly subaverage general intellectual functioning
5 existing concurrently with deficits in adaptive behavior and
6 manifested during the developmental period.

7 So, those are the -- all the factors that the statute
8 lists that could be mitigating factors, but then the law
9 says that a, a juror can consider other factors that the
10 juror considers to be mitigated. So, you're not limited to
11 that list, but those are some of the things that a jury
12 could consider, depending on whether they've been shown or
13 proven to have existed in the case. So, I'm not saying that
14 any, any particular of these would be listed, but those are
15 the kinds of things we're talking about when we talk about
16 mitigating factors.

17 Do you have a better picture now of what we're talking
18 about?

19 THE WITNESS: Yeah, a better picture.

20 THE COURT: Okay. Go ahead, Mr. McGuire.

21 A Okay.

22 Q So -- and I think the ones I mentioned were the mental
23 retardation, operating under an emotional condition or
24 mental disturbance, that sort of thing, no significant
25 history of violence, these things. But then, like the judge

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1 said, it's -- it actually opens up to more than that.
2 There's sort of a catchall, which could be -- you could see
3 anything in somebody's background, their record and
4 character, to say I just don't think that man, despite
5 committing this heinous act, I'm looking at the man and, and
6 everything that makes up a man, and it's okay to say I've,
7 I've considered that, and I don't see that he deserves the
8 death penalty.

9 Could you put yourself in that type of situation?

10 A Again, I'm gonna have to hear the case. I'm sure
11 you're gonna put it to me that all of this applies to him.
12 I'm sure the prosecutors is gonna show me that these
13 probably don't apply to him. I'd have to hear the case.

14 Q Okay. Fair enough. Fair enough.

15 A That's all I can tell you.

16 Q Okay. I'm gonna talk to you a little bit about how the
17 process works, and point out some differences in the law
18 between how this type of case works and how a regular case
19 works. So, I'm just gonna ask you if you can follow these
20 principles of law.

21 okay?

22 A Okay.

23 Q There was a pamphlet that was handed out in the big
24 room when all the jurors got here last Monday --

25 A Uh-huh. (Affirmative).

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1 Q -- and it said that if a, if the jury didn't agree,
2 guilty or not guilty in a case, that the trier would have --
3 the trial would have to be retried, it would be a mistrial,
4 and the case would have to be tried over, all over again with
5 the new jury.

6 Do you remember reading that?

7 A (Witness nods affirmatively.)

8 Q Okay. You have to say yes for this lady here.

9 A Yes.

10 Q Okay.

11 A Yes.

12 Q Sorry to remind you of that, but she has to take down
13 everything, and she can't take down nodding. So --.

14 A I forget peoples needs to hear me.

15 Q Sure. Yes, ma'am.

16 Well, now, the way this trial would work, that
17 principle would apply in the first part.

18 Remember how the judge said there would be two parts?

19 One's did the person do it, and the other part is just
20 the penalty part of the trial.

21 A Yes.

22 Q Do you remember the judge saying that?

23 A (Witness nods affirmatively.)

24 Q And that mistrial would -- the rules regarding mistrial
25 would apply to the first part. The juror didn't agree on

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1 guilty, not guilty, the case would have to be tried over.

2 A Yes, sir.

3 Q But now, if, if there's a conviction here, got the
4 right guy, beyond a reasonable doubt conviction, and the
5 jury goes to the next phase, which is really a whole new
6 trial, in that trial the jury does not have to -- cause the
7 only thing the jury would be considering would be life or
8 death, the punishment, and if the jury ultimately did not
9 agree, the case would not be a mistrial. It wouldn't in the
10 sense that it would have to be tried over again. The judge
11 would take the case and he would sentence.

12 Did you know it worked like that?

13 A I figured it would. I mean I didn't know, but I
14 figured it would.

15 Q Okay. And I tell you that -- I don't want you to think
16 that the jury would fail in their mission if they didn't
17 agree on one thing or the other.

18 Is that something that you could accept?

19 A well, if you've already found him guilty, I'm sure
20 there's gonna be a punishment in there somewhere.

21 Q Okay.

22 A He's gonna do it or we're gonna do it.

23 Q I can tell you, after a conviction of guilt, the jury
24 could just walk out of the courthouse and he would go to
25 prison at least for life without parole.

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1 Okay. So, by, by convicting in this case, you're
2 guaranteeing a sentence of life without parole as the
3 minimum.

4 okay?

5 A Uh-huh. (Affirmative).

6 Q So, yes, there is a punishment in there.

7 And this -- the way this works about how the jury can
8 disagree, I want to talk to you a little bit more about
9 that.

10 The decision making process in the penalty phase is
11 called an individual moral judgment. It's basically voting
12 somebody's conscience, and each individual juror comes to
13 their own individual moral judgment. It's not a group
14 decision.

15 Do you understand that?

16 A Yes, sir.

17 Q Okay. And the way that works is, somebody's sitting
18 right here in this seat could say I saw something in the
19 man's relationship with his family, his grandkids, his role
20 as a father that I found redeeming to me, and I'm gonna vote
21 for life for that reason. The 11 other jurors could say we
22 didn't really see that. We don't agree with you. But this
23 person has the right to vote for life for any reason they
24 want to even if everybody disagrees.

25 Do you see how that works?

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1 A Yes, sir.

2 Q Is that, is that a principle of the law you could
3 follow --

4 A Uh-huh. (Affirmative).

5 Q -- and allow somebody to have a position different from
6 yours?

7 A Yes.

8 Q Okay. And the judge would charge, charge the jury that
9 any individual juror could vote for the life penalty for any
10 reason, no reason, or mercy alone. Somebody might not even
11 be able to put into words why they don't want to vote for a
12 death penalty. They can just say it just doesn't feel right
13 for me, my individual moral position, so I just can't do it.

14 Even if they didn't have the words to defend their
15 position, could you still let them have that?

16 If they said my position is I want to vote for the life
17 penalty and I can't even really describe why, could you
18 still---

19 A Oh, yeah, if that's the way they feel.

20 Q Okay. Right.

21 So, if they just said they feel that way---

22 A Yeah, you lost me there, but if that's the way they
23 feel, there's no reason for me to question them.

24 Q Okay. Okay. And another important principle is that,
25 and the judge would tell everybody, that it's, it's

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1 inappropriate to talk about penalty in that first part of
2 the trial. When the jury's deciding do they have the right
3 person, did he commit a crime beyond a reasonable doubt,
4 that, that penalty should not be discussed because the jury
5 hasn't heard the penalty evidence yet.

6 Do you see how---

7 A Yes.

8 Q ---that would be an appropriate rule?

9 A Yeah, if he's not guilty, yeah.

10 Q Exactly.

11 And, and if you saw people saying what they thought the
12 penalty should be or discussing penalty before the end of
13 the first trial, could you stop that or tell the judge about
14 it?

15 A I probably would.

16 Q Okay. Okay. Thank you, ma'am. That's all I have for
17 you. Thank you very much.

18 THE COURT: You may follow-up, Mr. Bulsa.

19 SOLICITOR BULSA: Excuse me. I got choked.

20 EXAMINATION

21 BY SOLICITOR BULSA:

22 Q Just want you to make sure you understand one concept.
23 Only the jury can decide death.

24 Do you understand that?

25 A Uh-huh. (Affirmative).

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1 Q If the jury gets deadlocked and they can't reach a
2 unanimous decision, the decision goes to the judge and he
3 would impose a life sentence.

4 You understand that?

5 A I do now.

6 Q Okay. Mr. McGuire went over a lot of concepts with
7 you. I just want to make sure you understood that.

8 okay?

9 A Uh-huh. (Affirmative).

10 Q That would be their prerogative, life or death, and the
11 judge would only give life.

12 okay?

13 A Okay.

14 Q Thank you, ma'am.

15 THE COURT: Ma'am, I'm gonna ask you to step back into
16 the jury room for just a moment. Don't discuss our process
17 with anyone back there and I'll call you back shortly.

18 THE WITNESS: Okay.

19 THE COURT: Thank you, ma'am.

20 THE WITNESS: Thank you.

21 (WHEREUPON, the following takes place outside the
22 presence of the juror.)

23 THE COURT: Defense position.

24 MR. MCGUIRE: Qualified.

25 THE COURT: State.

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1 SOLICITOR BULSA: Qualified, yes, sir.

2 THE COURT: All right. Bring her back.

3 (WHEREUPON, the following takes place within the
4 presence of the juror.)

5 THE COURT: Have a seat please, ma'am.

6 (Witness complies.)

7 THE COURT: Ms. Pruitt, I've determined that you are
8 qualified to proceed in our process. That means that, while
9 we're not picking a jury right now, but we're picking a pool
10 of people from which a jury can be selected. You're still
11 in that pool.

12 Now, at this point in time I'll tell you my
13 instructions concerning your behavior continue. Don't
14 discuss the case with anyone. Don't allow anyone to discuss
15 it with you. Don't try to gather information on your own,
16 and if anybody contacts you about the case, let the Clerk's
17 office know that.

18 Ms. Camp is gonna give you a sheet of paper. It has
19 some things on there that you might want to think about if
20 you're called to come because we'll be calling you next
21 about what you're to do next. If you were to be selected on
22 the jury, you may want to consider some of those things in
23 being prepared for our sequestrations so that you'll be in a
24 position to take care of that.

25 Now, ma'am, do you understand my instructions?

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1 THE WITNESS: Don't talk to anybody. Don't listen to
2 anybody.

3 THE COURT: That's right. Don't, don't get involved in
4 anything that has to do with this case.

5 THE WITNESS: Keep it simple.

6 THE COURT: Right. There we go. Very simple.

7 Now, ma'am, there is an exception to that rule. If you
8 need to talk to someone about the fact that if you're called
9 back for jury duty, I say you'll go missing for a few days.
10 You'll be with us.

11 THE WITNESS: Uh-huh. (Affirmative).

12 THE COURT: Now, of course, we're gonna let you talk to
13 people and call people and that sort of thing. But if you
14 need to make preparations with family, friends -- you don't
15 work. So, I don't think you have an employment situation.
16 But if you make situation -- arrangements with them, it's
17 okay to tell them that you might be selected on a jury, but
18 don't get into a discussion about the case with them and
19 don't let them---

20 THE WITNESS: As long as I can tell my husband where
21 I'll be at I'm fine.

22 THE COURT: There we go. We will, we will keep him
23 posted as to what's going on.

24 THE WITNESS: I'm fine.

25 THE COURT: All right. Well, you -- we'll check you

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1 out at this time. The bailiffs will check you out. You'll
2 hear from us next. You don't have to call us any longer.
3 We'll be calling you.

4 Okay?

5 THE WITNESS: Okay.

6 THE COURT: Thank you, ma'am. You're free to go.

7 THE WITNESS: Well, if you're gonna call me, how long
8 should I look for you to call me or not?

9 A week?

10 THE COURT: I think we'll call you with 24 hours.

11 THE WITNESS: Oh, okay.

12 THE COURT: Okay.

13 THE WITNESS: That's what I want to know.

14 THE COURT: Thank you, ma'am.

15 THE WITNESS: Thank you.

16 (WHEREUPON, the following takes place outside the
17 presence of the juror.)

18 THE COURT: All right. Let's bring in Mr. Wendell
19 White.

20 (WHEREUPON, the following takes place within the
21 presence of the juror.)

22 WENDELL WHITE, having been previously
23 sworn, testified as follows:

24 EXAMINATION

25 BY THE COURT:

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1 Q Have a seat, sir.

2 A Yes, sir.

3 Q All right. Mr. White, you could of been first this
4 morning. You didn't get here on time.

5 A I know. My little girl kept me up this morning.

6 Q Well, I'm sorry that happened, but we could of had you
7 out of here a long time ago if you'd been here on time.

8 A I'm sorry about that.

9 Q Well, okay. Thank you, sir.

10 Now, I'm gonna go over some things with you today that
11 might have to do with your participation in this trial.
12 There's no right or wrong answers to my questions. There's
13 only your answers and I want truthful answers from you
14 today.

15 Can you do that for me?

16 A Yes, sir.

17 Q I remind you that last Monday you swore to tell the
18 truth.

19 Do you remember that?

20 A Yes, sir.

21 Q That oath still applies to our discussion right now.

22 A Okay.

23 Q Do you acknowledge that you're under oath?

24 A Yes, sir.

25 Q Now last Monday I also gave you some instructions about

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1 this case. I said not to listen to, watch, or read any
2 media reports, not to try to gather any information on your
3 own, not to discuss the case with anyone, not to let anyone
4 discuss the case with you, and if anybody were to contact
5 you about this case to please let us know.

6 A Yes, sir.

7 Q You remember those instructions?

8 A Yes, sir.

9 Q Have you been able to follow them since Monday?

10 A Yes, sir.

11 Q All right. Now, I'm going to go over some, some, some
12 questions as I said. When I finish my questioning the
13 attorneys may have some questions for you. In fact, I'm
14 sure they will. So, they'll be asking you some things, and
15 again, all we want is honest answers.

16 A Yes, sir.

17 Q Do you understand that?

18 A Yes, sir.

19 Q Okay. Now, let me ask you this.

20 If you, if you were a juror in this case, are you the
21 kind of person who could put aside anything you may have
22 heard that may have any relationship to this matter
23 whatsoever and decide the case based upon the law and the
24 evidence as presented in the courtroom during the trial?

25 A Yes, sir.

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1 Q You could do that?

2 A (Witness nods affirmatively.)

3 Q Have you participated in any discussions that involved
4 issues surrounding the death penalty?

5 A No, sir.

6 Q Have you ever been involved in any political activities
7 that involved matters involving the death penalty?

8 A No, sir.

9 Q All right. Now, there was a list of individuals back
10 in the jury room.

11 Did you read that list?

12 A Yes, sir.

13 Q All right. Now, stay awake for me now.

14 Have you -- so, you, you read the list?

15 A Yes, sir.

16 Q Now, I'm gonna add two names to that list. Somebody
17 named Amy Nunnary from Reidville, and Reggie Frye from
18 Chesnee.

19 Now, as to the people on that list or those two people,
20 do you have a belief that you have ever been related by
21 law -- by law -- marriage or blood to any of those folks?

22 A No, sir.

23 Q Have you ever had any business relationships, personal
24 relationships, or friend, friendly relationships with any of
25 those people?

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1 A Doctor Nelson from Greenville.

2 Q Yes, sir, tell me about that.

3 A That's my back doctor.

4 Q That's your back doctor?

5 A Yes, sir.

6 Q So, you -- he actually has been your doctor---

7 A Yes, sir.

8 Q ---in the case -- in your case?

9 A Yes, sir.

10 Q Now, let me ask you a question. I'm not sure exactly
11 what he may testify to in the case. Those are people who
12 are listed as possible witnesses, but let's say he came and
13 he testified in the case.

14 would that affect your ability to be fair and impartial
15 to the -- both sides?

16 A No, sir, he's just a doctor.

17 Q And would you judge his testimony just like you judged
18 everybody's testimony?

19 You'd listen to it and determine whether it's truthful,
20 honest, and you'd give it whatever weight you think it
21 deserves?

22 A Yes, I would.

23 Q You would do that?

24 A Yes, sir.

25 Q So, the fact that he's a doctor -- he is your doctor,

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1 would that make him any more important of a witness or --
2 than any other witness in the case?

3 A No, sir.

4 Q And would it make him any more believable than any
5 other witness in the case just cause he was your doctor?

6 A No, sir.

7 Q Okay. Now, I want to explain one thing to you and I
8 touched on this last Monday.

9 This case, because it's a case where the State is
10 alleging a murder, and the State is asking that the death
11 penalty be imposed, because of that fact, this case is
12 divided into two different trials. They'll be a trial first
13 to determine whether or not the defendant is guilty or not
14 guilty of the crime of murder and kidnapping.

15 A Okay.

16 Q Now, depending on the result of that trial, there may
17 or may not be a second hearing. If he was found innocent of
18 murder, then there's no reason to hold a penalty phase. But
19 today, we're talking to jurors, since the same juror would
20 hear the first part of the trial and the second part of the
21 trial if that were necessary, today we're going to be
22 talking about both sides of that trial.

23 You understand that?

24 A Yes, sir.

25 Q Because this is the only chance we get to talk to

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1 jurors and talk to them about those things.

2 A Okay.

3 Q So, we got to talk about it now.

4 You understand that?

5 A Yes, sir.

6 Q Now, I will tell you the defendant is presumed to be
7 innocent of those charges.

8 A Okay.

9 Q And he is not -- he would not be guilty until a jury
10 found him guilty.

11 Do you understand that?

12 A Yes, sir.

13 Q So, it shouldn't be taken as a reflection against him
14 or his case that we are talking about these penalty issues
15 today. This is simply the only time we can talk about them
16 with the jurors.

17 Do you understand that?

18 A Yes, sir.

19 Q Can you appreciate that?

20 A Yes, sir.

21 Q Okay. Now, I'm going to go over some matters that
22 would be -- I guess these are kind of basic issues or, or
23 concepts under the criminal law.

24 First of all, I will tell you -- I will ask you if you
25 were a juror in a case, would you take the law as the judge

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1 gave it to you?

2 A Yes, sir.

3 Q Would you take that law then and apply it to the facts
4 as you find those facts to be?

5 A Yes, sir.

6 Q Now, in doing that, let me take this one step further.

7 Let's say you were a juror in a case. You heard all
8 the evidence, all the facts, the judge is in the process of
9 telling you or charging you the law to be used in the case.
10 While the judge is telling you that law, you hear something
11 that you say well, I didn't know the law was that way --

12 A Uh-huh. (Affirmative).

13 Q -- or you hear something to say well, I don't really
14 agree with that. That's, that's not the way the law ought
15 to be.

16 Would you, would you be willing to set aside your
17 personal opinions or beliefs and take the law exactly as the
18 judge gave it to you in reaching a verdict in the case?

19 A Yes, sir.

20 Q So, you could do that?

21 A Yes, sir.

22 Q All right. Now, there's some other basic factors of
23 criminal law that I want to talk -- go over with you.

24 Do you understand that, under our law, our system of
25 justice, that every defendant, no matter what the

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1 seriousness of the crime that's been alleged, is always
2 presumed to be innocent?

3 A Yes, sir.

4 Q Do you understand that?

5 A (Witness nods affirmatively.)

6 Q Do you agree with that concept --

7 A Yes, sir.

8 Q -- that people should be presumed to be innocent --

9 A Yes, sir.

10 Q -- as long as they're just charged with a crime.

11 Now, for that -- by that same taken, a defendant, in a
12 criminal case, is not required to prove himself innocent.

13 Do you understand that concept?

14 A Yes, sir.

15 Q Do you agree with that --

16 A Yes, sir.

17 Q -- that a defendant is not required to prove his
18 innocence?

19 He's presumed to be innocent.

20 Do you agree with that?

21 A Yes, sir.

22 Q Now, because of -- a defendant is presumed to be
23 innocent and is not required to prove his innocence, do you
24 understand that a defendant, at a criminal trial, is not
25 required to prove anything at that trial?

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1 He's presumed to be innocent, and he's not required to
2 prove his innocence. So, at a trial, a defendant has no
3 burden of proving anything.

4 Do you understand that?

5 A Yes, sir.

6 Q And you agree with that?

7 A I agree.

8 Q So, a defendant has a right to remain silent if he
9 wants to.

10 Do you understand that?

11 A Yes, sir.

12 Q Okay. Now, let's go over to the, to the other side of
13 the criminal case.

14 The State of South Carolina, in this case, is the
15 entity that has brought charges, and because they are the
16 ones that is accusing someone of committing a crime, our law
17 says that the State has a burden of proof, and they have to
18 prove the defendant's guilt by proof beyond a reasonable
19 doubt.

20 Do you understand that the law requires the, the
21 accusing party, the State, to offer proof to prove those
22 allegations?

23 A Yes, sir.

24 Q And you agree that that ought to be true that way?

25 A Yes, sir.

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1 Q Now, if you were on a jury, you heard all the evidence
2 in a case, the judge charged you on the law, you and your
3 jurors, fellow jurors went into the jury room, you're
4 considering all those things, if you determined that the
5 State did not prove the defendant guilty beyond a reasonable
6 doubt, would you be willing to sign a verdict that said the
7 defendant was not guilty?

8 A Yes, sir.

9 Q By the same taken, if you, if you believed or found
10 that the State did prove the defendant guilty by proof
11 beyond a reasonable doubt, would you be -- then be willing
12 to sign a verdict that found the defendant guilty of
13 committing a crime?

14 A Yes, sir.

15 Q Okay. So, you're telling me that you're the kind of
16 person who would want to, depending upon the strength of the
17 evidence, or the truthfulness of the evidence, and whatever
18 the law is, that you could find the defendant either guilty
19 or not guilty?

20 A Yes, sir.

21 Q Is that correct?

22 A Yes, sir.

23 Q Do you also have a belief that, just because a
24 defendant has been arrested, charged, perhaps even indicted,
25 somebody's -- they've been accused, that that fact doesn't

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1 automatically make him guilty?

2 Do you agree with that?

3 A Yes, sir.

4 Q Now I want to talk about the situation that we're in
5 now, and I will tell you that, in a case where the State has
6 alleged that a murder occurred --

7 A Uh-huh. (Affirmative).

8 Q -- and the State is asking for the imposition of the
9 death penalty, I mentioned just a minute ago and I'll remind
10 you again, the law that sets that situation up provides for
11 a two step or a bifurcated trial.

12 A Uh-huh. (Affirmative).

13 Q It's divided into two parts.

14 Now, the first part, the jury does what the jury
15 normally does. The jury would come in, listen to the law
16 and the evidence, and then make a decision as to whether the
17 State has met its burden of proof, and either find the
18 defendant guilty or not guilty.

19 Now, in my example, I'm going to ask you to pretend
20 that you're on a jury in such a case.

21 A Yes, sir.

22 Q And you and your fellow jurors have conducted that
23 first trial, and you have found the defendant guilty of the
24 crime of murder. So, the defendant, at that point in the
25 trial now, is a convicted murderer.

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1 Do you understand that?

2 A Yes, sir.

3 Q Been found guilty of killing someone, with malice
4 aforethought, without legal justification, the things that
5 go into a murder.

6 So, you understand what that is?

7 A Yes, sir.

8 Q All right. Now, you and your fellow jurors then are
9 about to start the second part of that trial because the
10 State has requested the death penalty.

11 A Uh-huh. (Affirmative).

12 Q And we have a statute that sets up how that particular
13 part of the trial is to be conducted as well, and that
14 statute provides for the introduction of two types of
15 evidence.

16 The first type of evidence is evidence of what is
17 called aggravating factors or circumstances. While a
18 murder's a bad thing, the law says that those things might
19 make a juror think a -- the murder was worse or that the
20 defendant was deserving of a higher level of penalty because
21 of those factors. And I will tell you that, in order for a
22 murder -- and not all murders are death penalty eligible in
23 our state. For a murder to be death penalty eligible, the
24 State has to prove at least one of those aggravating factors
25 by proof to the jury beyond a reasonable doubt.

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1 Do you understand that concept?

2 A Yes, sir.

3 Q Okay. So, there would be some evidence of some
4 aggravating circumstance at that hearing.

5 Then at the -- the other side of that coin is though
6 the law also provides that there be mitigating circumstances
7 presented at that trial. Those are factors which might,
8 while a murder's a bad thing, might make people think that
9 the defendant who committed that murder is deserving of a
10 lower level of penalty, and the statute lists ten of those
11 different factors that a jury can consider. And if you
12 would like for me, later on, to answer your questions more
13 fully or the questions, I'll be glad to go over those with
14 you so you understand exactly what kinds of things are
15 listed. But I'll tell you, the law also says that jurors
16 can consider other mitigating factors, and can consider the
17 concept of mercy in reaching a decision as to what the
18 appropriate penalty is.

19 So, those are the factors that could be considered by a
20 jury, aggravating things, things that tend to make it worse,
21 and mitigating things, things that tend to make it not so
22 worse or deserving of a lower level of penalty. The choices
23 of penalties during that phase of the trial is obviously the
24 death penalty, which you know what that means.

25 A Yes, sir.

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1 Q And life in prison without the possibility of parole,
2 and that does mean someone would go to jail for their life.
3 They would not get out.

4 So, do you understand those two penalties?

5 A Yes, sir.

6 Q Okay. Now, I told you to pretend you were on that
7 jury. You have completed the first part of the trial. You
8 and the other people on the jury have found the defendant
9 guilty of a murder.

10 A Yes, sir.

11 Q So, the issue now is what's the appropriate penalty.

12 There was a sheet of paper back in the jury room, and
13 on that sheet of paper I described three different jurors.

14 Did you read that paper?

15 A Yes, sir.

16 Q All right. Now, as you're walking into that room, I'm
17 gonna describe those three jurors. I'm gonna give them a
18 number so you and I can talk about them and refer to them by
19 number.

20 okay?

21 A Okay.

22 Q Juror number one, the first fellow in line, he's
23 already made up his mind before he ever goes into that
24 hearing as to the appropriate penalty, because, you see,
25 that juror believes that anytime someone's convicted of a

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1 murder, the intentional killing of an innocent person with
2 malice aforethought, anytime that occurs, that juror
3 believes the only appropriate penalty is the death penalty,
4 and that juror does not want to hear any mitigating factors
5 because that juror is already made up his mind. He knows
6 how he's gonna vote before he walks in the door.

7 Juror number two in line, that juror has also made up
8 his or her mind. That juror believes the State is never
9 justified in taking someone's life because they've committed
10 a crime. No matter what the crime is, no matter what those
11 aggravating circumstances might be, that juror believes that
12 the death penalty is never justified, and, therefore, that
13 juror will always vote for life in prison without the
14 possibility of parole. That's number two.

15 Number three. That juror hasn't made his or her mind
16 up yet. Now that juror has, has found the defendant guilty
17 of the crime of murder. But that juror wants to listen to
18 the facts and circumstances surrounding the event, any other
19 factors that the law allows them to consider, and after
20 hearing both the, the things that tend to make it worse or
21 the things, things that tend to, to modify or mitigate the
22 case, after hearing that evidence, and after hearing the
23 judge charge the law to be used, then that juror wants to go
24 into deliberations and make a decision as to what the
25 appropriate penalty is. So, that juror has not yet made up

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1 his or her mind coming into that hearing.

2 So, do you understand the difference between the
3 jurors?

4 Number one---

5 A Yes, sir.

6 Q ---would always vote for the death penalty. Number two
7 would always vote for life in prison without parole, and
8 number three would vote depending on the factors and
9 circumstance shown during the hearing.

10 A Yes, sir.

11 Q You understand the three jurors?

12 A Yes, sir.

13 Q Now, I told you to pretend you're on that jury too.

14 A Uh-huh. (Affirmative).

15 Q You're about to walk through that door and walk back
16 into the courtroom to start that second trial.

17 Now, which one of those jurors most closely describes
18 you?

19 A The third one.

20 Q The third one.

21 So, you would want to hear the bad things that make it
22 worse and also then hear the good things --

23 A Yes, sir.

24 Q -- and decide which things might weigh in your
25 discussion --

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1 A Yes, sir.

2 Q -- and then make a decision as to the appropriate
3 penalty?

4 A Yes, sir.

5 Q Now, let me take it a step further.

6 Let's say you and your fellow jurors finished that
7 hearing.

8 A Uh-huh. (Affirmative).

9 Q You heard the judge tell you to go out and consider
10 both kinds of factors in making your decision.

11 A Yes, sir.

12 Q And let's say you did that, and then, after considering
13 all those factors, you and your fellow jurors would come to
14 the conclusion that life without parole is the appropriate
15 penalty.

16 Could you sign a verdict under those circumstances---

17 A Yes, sir.

18 Q ---for that?

19 A I could.

20 Q Now, by the same token, if you and your fellow jurors
21 decided that the death penalty was the appropriate penalty,
22 could you sign a verdict in that fashion?

23 A I really couldn't.

24 Q You don't think you could sign a paper for the death
25 penalty?

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- 1 A No, sir.
- 2 Q Even if you found that it was justified?
- 3 A I mean could -- I don't think---
- 4 Q I'll tell you, the law requires that, in this case, all
- 5 jurors must sign the verdict. Everybody has to sign it.
- 6 A Yes, sir.
- 7 A I mean I would---
- 8 Q Could you sign a verdict?
- 9 A I probably wouldn't be able to live with myself later.
- 10 Q Well, tell me, could you do it?
- 11 Yes or no.
- 12 A Yes, sir, I could.
- 13 Q You could sign that?
- 14 A Yes, sir.
- 15 Q Okay. Now, a couple things I want to go over with you.
- 16 I have signed a sequestration order in this case.
- 17 Now, what that means is that the jury, once they're
- 18 formed, will be hearing the case during the day, but at
- 19 night they'll be staying at the Marriott hotel.
- 20 A Okay.
- 21 Q During that time they'll have all their meals paid for.
- 22 They'll have their travel paid for, their lodging paid for.
- 23 It would be no expense to a juror in that situation.
- 24 A Okay.
- 25 Q The jury also would receive pay for being on the jury.

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1 Not -- it's not as much as people make in a regular job.
2 It's all the law allows and you'd receive travel coming to
3 and from the courthouse from your home.

4 A Okay.

5 Q You'll be allowed to talk to family or friends, but
6 those calls would be monitored. There's a group of people
7 who would sit with the jury and be sure there weren't any
8 outside influences cause that's the reason we do that. We
9 don't want any outside influences affecting the decision of
10 the jury.

11 A I understand.

12 Q So, that's the reason we go through that.

13 You understand that?

14 A Yes, sir.

15 Q Now, if you were in that situation, would that pose any
16 serious risk to your safety, health, or well being?

17 A No, sir.

18 Q Would it pose any serious risk to the safety, health,
19 or well being of anyone who's dependent upon you?

20 A No, sir.

21 Q All right. I'm gonna let the attorneys now ask some
22 questions.

23 A Okay.

24 Q Can you answer those folks for me?

25 A Yes, sir.

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1 Q They're gonna be nice to you. They're not gonna be
2 mean.

3 A All right.

4 THE COURT: Yes, sir, Mr. McGuire.

5 MR. MCGUIRE: Thank you, Your Honor.

6 EXAMINATION

7 BY MR. MCGUIRE:

8 Q Good afternoon, Mr. White.

9 A How you doing?

10 Q I'm doing good and how are you doing?

11 A Good.

12 Q Good.

13 what we're doing is, is we're seeing if we can get
14 people who can follow the law. That's the judge's role
15 here. He has to just listen to the answers to the questions
16 and see, if you get on the jury, can you follow the law.
17 That's the test.

18 A Okay.

19 Q And you haven't heard anything about the case yet.

20 A Yes, sir.

21 Q You don't know anything about the case?

22 A No, sir.

23 Q You don't know how bad this murder might be?

24 A No, sir.

25 Q And you don't know what the mitigation circumstances

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1 might be?

2 A No, sir.

3 Q But I think I heard you tell the judge that you were a
4 number three juror, the one who would want to listen to all
5 that?

6 A Yes, sir.

7 Q Okay. And that means you would listen to everything
8 the state had to offer?

9 A Yes, sir.

10 Q And you would consider it?

11 A Yes, sir.

12 Q And you would listen to everything the defense had to
13 offer?

14 A Yes, sir.

15 Q And you'd consider that?

16 A (Witness nods affirmatively.)

17 Q And, again, that makes you the number three juror that
18 can consider everything?

19 A Yes, sir.

20 Q Okay. And I want to tell you a little bit about the
21 law and just see if you know these principles and if you
22 could follow them.

23 Okay?

24 A (Witness nods affirmatively.)

25 Q First off, the -- no juror is ever required to vote for

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1 the death penalty in any case.

2 Did you know that?

3 A No, sir.

4 Q Okay. Not in any case, the worse case, this case.

5 Never -- it's never automatic.

6 Did you know that?

7 A No, sir.

8 Q Okay. A lot of people come here and they think, you
9 know, if the State, if the government proves A, B, and C,
10 then it automatically has to be the death penalty.

11 A Yes, sir.

12 Q And that's not the case.

13 Now you know that?

14 A Yes, sir.

15 Q Okay. Does that make you feel a little bit better?

16 A Yes, sir.

17 Q Okay. Now, the only time and I mean let's face it.

18 The deck is stacked against the State a little bit. The
19 only time the State can get the death penalty is to have all
20 12 jurors agree unanimously, beyond a reasonable doubt, that
21 an aggravating circumstance exist.

22 okay?

23 A Yes, sir.

24 Q And then, even if they find the aggravating
25 circumstance, the jurors are let loose individually to talk

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1 about and find mitigation evidence.

2 Did you know that?

3 A No, sir.

4 Q Okay. And the way that works is, again, the jury would
5 have to find that aggravator beyond a reasonable doubt and
6 all 12 would have to agree. But for mitigation evidence,
7 it's different and I want to show you how it works and you
8 just tell me if this is a principle of law you can respect.

9 A Okay.

10 Q Okay. A juror sitting right here might say I saw
11 something in the man's background, his walk in life, how he
12 interacted with his children, his grandchildren, his role as
13 a father, and I saw some humanity there, and I'm gonna vote
14 for life for that reason. And some other jurors might say
15 well, I didn't see that. I disagree with you. I don't
16 think that exists. But this person has the absolute right
17 to find that mitigation evidence, find that it exists, and
18 to give it the weight, whatever weight that juror wants
19 including the weight of life.

20 And then somebody else over here might say I saw
21 something about his relationship with God or, or his, his
22 spiritual outlook on life and how he was, how he was as a
23 Christian. And the person could say I'm voting for life for
24 that reason. And the other jurors might say yeah, I didn't,
25 I didn't see that. I don't think that's there. But this

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1 juror can say well, I saw it, I find it, I'm gonna give it
2 the weight of life, and I'm gonna vote for life for that
3 reason.

4 Can you see how people can vote each way though people
5 disagree?

6 A Yes, sir.

7 Q Okay. And the judge would charge the jury that any
8 individual juror could vote for the life penalty for any
9 reason, no reason, or mercy alone. Somebody on the end
10 might just say I'm just gonna vote for mercy, and everybody
11 else might say I don't think he deserves mercy.

12 But can you see how that individual juror has the
13 absolute right to say I'm gonna bestow mercy --

14 A Yes, sir.

15 Q -- that's my right?

16 You could follow that principle of law and let people
17 disagree?

18 A Yes, sir.

19 Q Okay. In a regular trial, if the jury doesn't agree on
20 guilty, not guilty, in fact, in the first phase of this
21 trial, if the jury couldn't agree on guilt or not guilt,
22 then the trial, whole trial would have to be done again, but
23 that's a regular particular trial. We call that a
24 mistrial---

25 A Okay.

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1 Q ---and we'd have to redo it. Bring back another jury,
2 same lawyers, same evidence. However, if there's a
3 conviction in the first part of this case---

4 A Uh-huh. (Affirmative).

5 Q ---the first trial, then the whole jury moves to a
6 second trial, and that's only to decide life or death.

7 okay?

8 A Okay.

9 Q Did you know that's how it worked?

10 A Yes, sir.

11 Q Okay. And in that second phase, if, ultimately the
12 jury, the jurors disagreed, some wanted to vote for the life
13 penalty, some wanted to vote for the death penalty, and they
14 never could get together, all 12, one way or the other,
15 ultimately the judge would take the case and he would
16 automatically sentence to life without parole.

17 Did you know that?

18 A No, sir.

19 Q Now you know it?

20 A Yes, sir.

21 Q Is that a principle of law you can agree with?

22 A Yes, sir.

23 Q And let people have their own individual conscience?

24 A Yes, sir.

25 Q And you'd respect that?

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1 A Yes, sir.

2 Q And you'd want your position to be respected?

3 A Yes, sir.

4 Q Even if it was eleven to one, eleven people wanted the
5 death penalty, one person wanted the life penalty, if that
6 person said that's where I am, that's my individual moral
7 judgment, that's my conscience, then the judge would have to
8 take the case and sentence to life without parole.

9 Are you okay with that?

10 A Yes, sir.

11 Q Now, if the State brought aggravation evidence, and
12 aggravation evidence, there's a whole list the judge has.
13 There's 21 of them, 21 aggravating circumstances in South
14 Carolina and they're the things that make the crime worse.
15 Some people use the term heinous.

16 If they brought to you the amount of evidence, the kind
17 of evidence that would convince you that the case, that the
18 case warranted the death penalty, you could vote for the
19 death penalty?

20 A Yes, sir.

21 Q And, and you -- but you could also consider a life
22 sentence?

23 A Yes, sir.

24 Q Okay. And that makes you that number three juror where
25 you consider fairly both life and death?

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1 A Yes, sir.

2 Q And you could sign the paperwork for a life sentence?

3 A Yes, sir.

4 Q And you can sign your name voting for the death
5 penalty?

6 A Yes, sir.

7 Q And you don't have any doubt about that?

8 A No.

9 MR. MCGUIRE: Okay. That's all I have. Thank you,
10 judge.

11 THE COURT: Mr. Barnette.

12 SOLICITOR BARNETTE: May it please the Court, Your
13 Honor?

14 THE COURT: Yes, sir.

15 EXAMINATION

16 BY SOLICITOR BARNETTE:

17 Q Mr. White, I just want to ask you a few questions. I'm
18 Barry Barnette and this is Derrick Bulsa. We're
19 representing the State.

20 Just in response to the judge's questions, when he
21 asked you about signing the sheet of paper, and you said I
22 can't sign the paper requiring the death penalty, make
23 sure -- is that what you said?

24 A Yes, sir.

25 Q I just want to make sure.

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1 could you tell me why you said that to the judge?

2 A I said that because didn't nobody leave me God. So, I
3 couldn't take nobody's life. I just couldn't be in charge
4 of doing that.

5 Q So, it becomes (sic) from your religious beliefs or
6 whatever?

7 A Yes, sir.

8 Q That God's the only one that can take somebody's life?

9 A Yes, sir.

10 Q And that you couldn't take anybody's life?

11 A Yes, sir.

12 Q And that's something that you've learned through church
13 and through your religion?

14 A Yes, sir.

15 Q And that's something that -- and I think you said you
16 couldn't live with yourself?

17 A No, sir.

18 Q And that would be something that you -- I mean that's
19 your inner core that---

20 A Yes, sir.

21 Q And you think that you could never judge somebody or
22 take somebody's life?

23 A I couldn't.

24 Q And you---

25 THE COURT: What was your answer just then?

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1 What was your answer just then?

2 I couldn't hear you.

3 THE WITNESS: Oh, I couldn't.

4 THE COURT: Okay.

5 Q Okay. So, so, in other words, you, you can't -- you
6 couldn't do it?

7 I mean you couldn't sign a sheet of paper because you
8 think you would be judging somebody else?

9 A Yes, sir.

10 Q And only God can do that?

11 A Yes, sir.

12 Q That's your religious beliefs?

13 A Yes, sir.

14 SOLICITOR BARNETTE: Thank you, Your Honor.

15 Thank you, sir.

16 THE WITNESS: Yeah.

17 EXAMINATION

18 BY THE COURT:

19 Q All right. Well, let me, let me just follow-up,
20 Mr. White, because we've gotten some -- a little bit of a
21 conflicting message here, and I just kind of want to be sure
22 I know exactly where you are and how you feel.

23 You had indicated to me that you were coming back into
24 the courtroom, number three juror, and you could decide --
25 you wanted to hear all the evidence, all the facts before

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1 you decided which way you could vote.

2 A Yes, sir.

3 Q You could vote for the death penalty or not vote for
4 the death penalty.

5 A Yes, sir.

6 Q You indicated to me that, based on the evidence, if you
7 found that it was -- that the evidence was sufficient that
8 you could vote for the death penalty.

9 A Yes, sir.

10 Q Is that true?

11 A Yes, sir.

12 Q So, you could vote either way?

13 A I really wouldn't wanted to vote for the death penalty.

14 Q Well, I'm not asking you what you would want to do. I
15 would -- well, again, my question is, depending on what the
16 evidence showed you, depending on what the law was the
17 judge -- and I'm not trying to pin you down as to any
18 particular factor or anything else.

19 What I want to know is, if the evidence -- if you felt
20 the evidence convinced, convinced you that the appropriate
21 penalty was the death penalty, could you vote for the death
22 penalty?

23 A No, sir.

24 Q So, you could never vote for the death penalty?

25 A No.

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1 Q So, you're not really a number three?

2 A I, I---

3 Q You're a number two?

4 A Yeah.

5 Q Number two was the person who said that, that no matter
6 what, the State's never justified in taking a life, and so
7 that person would always vote for life.

8 A Yes, sir.

9 Q So, now, which are you, one, two, or three?

10 A I'm number two.

11 Q So, you're number two you're telling me now?

12 A Yes, sir.

13 Q Okay. And you would never vote for the death penalty
14 then---

15 A No, sir.

16 Q ---or sign the paper?

17 A No, sir.

18 Q Okay. That's different from what you told me earlier.

19 A Yes, sir.

20 Q As you thought about this, you changed your mind today?

21 A Yes, sir.

22 THE COURT: Okay. Anybody want to follow-up on those
23 questions?

24 MR. MCGUIRE: Just very briefly.

25 THE COURT: Yes, sir.

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1 EXAMINATION

2 BY MR. MCGUIRE:

3 Q Hey, Mr. White.

4 A Hi.

5 Q Sometimes when I, I talk to people like this I have
6 jurors point out to me that there's church law and there's
7 people's law and we need both of them, and that despite
8 someone of their views not squaring with people's law, man's
9 law, or the law of this country or the State, once -- but if
10 they find themselves on the jury, and the judge says this is
11 the law, can you follow it, they can say yes.

12 Are you that kind of person?

13 A Could you explain that a little bit more?

14 Q Sure.

15 What, what I want you to do is be just completely
16 honest and free with your answers.

17 Right now, in that chair that you're sitting in --

18 A Yes, sir.

19 Q -- it's okay to have views that don't square with the
20 law. But if we, if we put you on the jury and you swear to
21 follow the judge's instructions and you end up in one of
22 these seats, you've got to follow the judge's instructions.

23 Do you see what I'm saying?

24 A Yes, sir.

25 Q So, right now, you're not on the jury. You're free to

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1 have whatever views you have no matter where they come from.
2 But if you get -- take an oath and you're in one of these
3 chairs, you got to follow that man's instructions right down
4 the line.

5 Do you see what I'm saying?

6 A Yes, sir.

7 Q If you, if you took the oath and you ended up on the
8 jury, could you follow the judge's instructions right down
9 the line?

10 A Yes, sir.

11 Q And if the State brought you evidence, the kind of
12 evidence where, where you said this warrants the death
13 penalty, could you, if you're on the jury, and you were
14 sworn to follow the law, could you vote for the death
15 penalty?

16 A Since you put it in that point of view, yes, sir, I
17 could.

18 Q Okay. So, if you found yourself participating in the
19 jury system as a citizen, you can follow people's law and
20 you could vote for the death penalty in the right case?

21 A Yes, sir.

22 Q And the right case would be like a really bad killing?

23 A Yes, sir.

24 Q And you'd listen to all their aggravation evidence and
25 to determine if it's a really bad enough killing?

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1 A Yes, sir.

2 Q And if it was you with other jurors, other citizens,
3 you can make the decision to vote for the death penalty?

4 A Yes, sir.

5 Q And sign the paperwork?

6 A Yes, sir.

7 Q Thank you, sir.

8 That's all I have.

9 THE COURT: Mr. Barnette.

10 SOLICITOR BARNETTE: Thank you, Your Honor.

11 May it please the Court.

12 EXAMINATION

13 BY SOLICITOR BARNETTE:

14 Q Mr. White, just a couple questions and I hate to ask
15 you all these questions.

16 A Yes, sir, it's okay.

17 Q We got to keep going through it.

18 One thing he left out, the judge will never tell you
19 you have to give the death penalty.

20 You realize that?

21 He don't tell you that. That's an individual judgment
22 that you make from that standpoint. And, like I said, you
23 have to make that judgment yourself.

24 A Yes, sir.

25 Q And if I heard you right and when you was talking to

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1 the judge and everything, religiously you don't, you don't
2 believe in that?

3 I mean you believe God's the only person who can take
4 life?

5 A Yes, sir.

6 Q So, if the judge didn't tell you to give the death
7 penalty -- I mean he's not going to cause, you know, it's
8 not his job. Y'all are the judges of the facts.

9 What you're telling me is your religious beliefs would
10 impair -- would not allow you to sign a death sentence in
11 this case?

12 A No, it won't.

13 SOLICITOR BARNETTE: Thank you, Your Honor.

14 THE COURT: All right. Step back to the jury room,
15 sir.

16 THE WITNESS: Yes, sir.

17 THE COURT: I'll call you back in just a minute.
18 Please don't discuss our process with anyone.

19 THE WITNESS: I wouldn't.

20 THE COURT: Thank you.

21 (WHEREUPON, the following takes place outside the
22 presence of the juror.)

23 THE COURT: Defense's position.

24 MR. MCGUIRE: While he gave answers that were
25 unequivocal, equivocal, I think we've had other jurors that

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1 have been qualified that were pro-death and indicated they
2 were automatic death or mitigation impaired, and I -- if
3 we're fed from the same spoon, he's qualified.

4 THE COURT: All right. Yes, sir.

5 SOLICITOR BARNETTE: Your Honor, Reynolds versus State,
6 it's 314 S.C. Reporter 1, 443 S.E.2d 557. It's a 1994 -- I
7 can't remember which one that was, but basically says
8 religious beliefs prevent imposition of the death penalty.
9 His religious beliefs does.

10 THE COURT: Yes, I find that, that his testimony would
11 leave him substantially impaired from being able to consider
12 both sides. I'm gonna disqualify the juror.

13 Please bring him in.

14 (WHEREUPON, the following takes place within the
15 presence of the juror.)

16 THE COURT: Mr. White, I want to thank you, thank you
17 for your cooperation with us this morning. I'm releasing
18 you from any further responsibility in the case. You're
19 free to go at this time.

20 Thank you very much.

21 THE WITNESS: Thank you.

22 THE COURT: The bailiffs will check you out.

23 THE WITNESS: Yes, sir.

24 (WHEREUPON, the following takes place outside the
25 presence of the juror.)

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1 MR. MCGUIRE: Judge, just---

2 THE COURT: All right. We'll resume at two o'clock with
3 Panel 17.

4 MR. MCGUIRE: Judge, can I put something on the record
5 just very briefly?

6 THE COURT: Certainly.

7 MR. MCGUIRE: I just don't want to fail Mr. Blackwell
8 on the issue of preservation and the rules are getting
9 pretty tough nowadays, and even though I, I indicated I
10 thought he was qualified, I don't -- I just think I need to
11 lodge an objection on the record that he was excused.
12 That's it.

13 THE COURT: Thank you.

14 Two o'clock.

15 SOLICITOR BARNETTE: Your Honor, if I could ask Mr.
16 McGuire does he want to do a dry strike at this point?

17 THE COURT: Oh, I understood he wanted to get the, the
18 entire number, and the entire number requires one more.

19 SOLICITOR BARNETTE: Yes, sir.

20 THE COURT: Two o'clock.

21 (WHEREUPON, Court was in recess for the lunch hour.)

22 THE COURT: All right. All right. Veronica Flowers.

23 MR. MCGUIRE: Judge, before you bring her out, could I
24 just---

25 THE COURT: Wait one second. Hold her.

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1 THE BAILIFF: Yes, sir.

2 THE COURT: Yes, sir.

3 MR. MCGUIRE: Thank you, judge.

4 We talked at lunch and we've looked over the, the
5 alternates, the potential alternates, and our gut tells us
6 that we can probably strike now and get the two that you
7 need, and then if they want -- if he wants to still do that,
8 we can do that.

9 THE COURT: I'm gonna finish.

10 MR. MCGUIRE: Okay. That's -- just wanted to let you
11 know.

12 THE COURT: We've gone this far. We'll finish it.

13 MR. MCGUIRE: Sure.

14 THE COURT: Bring in Ms. Flowers.

15 (WHEREUPON, the following takes place within the
16 presence of the juror.)

17 VERONICA FLOWERS, having been previously
18 sworn, testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q All right. Ma'am, your name is Veronica Flowers?

22 A Yes.

23 Q Okay. Ms. Flowers, I'm gonna be talking to you first.
24 So, you may want to move your chair back. This is -- kind
25 of gets in the way. So, you, you and I can look at each

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1 other.

2 Okay. And then, when I finish talking with you, I'll
3 give the attorneys an opportunity to talk with you as well.

4 Okay?

5 A Yes.

6 Q First of all, thank you for your cooperation thus far.
7 We appreciate your help in this system, and, last Monday,
8 you took an oath to tell the truth.

9 Do you remember that?

10 A Yes.

11 Q That oath still applies to your conversations with the
12 Court and with the lawyers today.

13 Do you understand that?

14 A Yes.

15 Q And acknowledge it, is that right?

16 A Yes, sir.

17 Q All right. Now, I'm gonna be asking some questions and
18 I'm sure the lawyers will have some questions for you.

19 There are no right or wrong answers to our questions.

20 There's just your answers and we want your truthful
21 responses to the things we're gonna talk about.

22 Some of the questions we're going to ask you may
23 involve your opinions or your beliefs about certain things.
24 I hope you don't feel threatened by those kinds of
25 conversations. We're not here to try to invade anyone's

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1 privacy, but we do want to gather some information that
2 would assist us in selecting a jury later on.

3 So, do you understand what this is?

4 A Yes, sir.

5 Q You have any problem with cooperating with that?

6 A No.

7 Q All right. Now, ma'am, I gave you some instructions
8 when you left the courthouse on Monday. That was not to
9 discuss the case with anyone, not to look at any media
10 reports, read, watch, or listen to any of those, not to
11 discuss the case with anyone, not to allow anyone to discuss
12 it with you, and if anybody calls you, to let us know --

13 A Right.

14 Q -- or contacted you about the case.

15 Now, have you been able to follow my instructions?

16 A Yes.

17 Q Okay. So, we're okay on that regard?

18 A Yes.

19 Q Okay. All right. Now, ma'am, let me ask you, in that,
20 in that manner or -- about that sort of thing, are you the
21 kind of person who would put aside anything you may have
22 heard about this case, that it pertained to this case in
23 anyway, and decide the case based upon the evidence and the
24 law that you hear inside the courtroom---

25 A Yes.

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1 Q ---during the trial?

2 A Yes.

3 Q And that's what you'd want to do, wouldn't you?

4 A Yes.

5 Q Okay. Now, have you ever been involved in any
6 discussions or any, any situations where the issue, issues
7 involving or surrounding the death penalty might have been
8 discussed?

9 A No.

10 Q Have you ever been involved in any type of political
11 actions involving that issue?

12 A No.

13 Q So, you've never called a representative, written a
14 representative, wrote a letter to an editor of a newspaper,
15 anything of that nature?

16 A No.

17 Q Okay. Now, ma'am, there was a list of people back in
18 the jury room about -- there's three different sheets of
19 paper or list of people.

20 Did you read that list for me?

21 A Yes.

22 Q Now, I want to tell you that that list is, is a list of
23 people who've been identified to me as people who could
24 possibly be witnesses in the case, and I'm not sure if
25 they'll all testify, but we're going to assume that they do,

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1 and I'm gonna add two names to that list that were not back
2 there. That is a person by the name of Amy, Amy Nunnary who
3 lives in Reidville, and a person named Reggie Frye who lives
4 in Chesnee.

5 Now, ma'am, as far as those names are concerned, did --
6 when you went over those, did you notice anybody that you
7 have ever been related to either by marriage or blood?

8 A No.

9 Q Did you notice anyone that you may have had any kind of
10 close social, personal, or business relationship with?

11 A No.

12 Q So, I take it you didn't recognize anyone on that list?

13 A No.

14 Q Okay. So, ma'am, would it be true then that if any of
15 those people were to testify, the fact that they testified
16 would not affect your ability to be fair and impartial to
17 both parties, is that correct?

18 A No.

19 Q That's correct?

20 A That's correct.

21 Q Okay. Now, ma'am, I'm going to go through some
22 questions and eventually I will tell you I will get to some
23 questions that might have to be with or pertain to the issue
24 of the death penalty. I want to point out one thing to you
25 and be sure that we've got an understanding on this

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1 particular point.

2 I mentioned on Monday that this type of case is one
3 where the law requires that it be bifurcated or broken into
4 two parts of a trial. The first part of this trial will
5 involve the charges that have been brought as to whether or
6 not the defendant is guilty or not guilty.

7 A Uh-huh. (Affirmative).

8 Q And depending on the verdict in that case, if the
9 verdict were guilty on the charge of murder, then the issue
10 would come before the Court as to the proper penalty for
11 that. Now, the law -- and that's a separate hearing,
12 separate trial.

13 Now, the law provides that the same jury that hears the
14 first part of that trial must hear the second part of that
15 trial.

16 A Uh-huh. (Affirmative).

17 Q And I want to point out one thing to you. We have not
18 gotten to the point where the defendant has been found
19 guilty of anything. In fact, the law presumes the defendant
20 is innocent of the charges that are before the Court.

21 Do you understand that?

22 A Yes.

23 Q So, for us to be talking about the penalty phase before
24 we ever decided those questions concerning guilt or
25 innocence is premature.

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1 A Uh-huh. (Affirmative).

2 Q Putting the cart in front of the horse is what some
3 people say. But I want to point out to you, since the same
4 jury hears both parts of the case, we don't have any choice
5 but to talk about both parts of the case when we talk to
6 people concerning their, their participation on the jury.

7 So, do you understand that this is not a reflection on
8 the defendant --

9 A Uh-huh. (Affirmative).

10 Q -- or his case that we're talking about the penalty
11 part of the case now?

12 Do you understand that?

13 A Yes.

14 Q Okay. Now, ma'am, I'm going to go over some concepts
15 under the law. I want to be sure you understand some things
16 or we have an understanding about these things, and if you
17 have a question about what I ask cause some of this stuff
18 can be confusing --

19 A Uh-huh. (Affirmative).

20 Q -- let me know. I'll be glad to try to explain it so
21 that we get accurate answers.

22 okay?

23 A Okay.

24 Q First of all, if you were on a jury, would you be
25 willing to accept the law as told to you by the judge?

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1 A Yes, sir.

2 Q Would you be willing to take that law given by the
3 judge and apply it to the facts as decided by the jury in
4 trying to reach a verdict?

5 A Yes.

6 Q I want to take this a step further and add a little
7 twist to it and be sure we have an understanding.

8 I'm gonna ask you to pretend that you're on a, another
9 case, a shoplifting case, something like that, and, in any
10 case, any criminal case that comes before the Court, the
11 judge is the giver of the law, and so I would tell the jury
12 the law to be applied.

13 The jury is considered and is called, quite often, the
14 judge of the facts. In other words, there -- they decide
15 whether someone's telling the truth or not. They decide --
16 the jury decides what, what happened, when it happened,
17 where it happened, how it happened. So, all the factual
18 issues are up to the jury to decide. So, they're the, the
19 judge of the facts.

20 So, you understand that there's a dual role, one for
21 the judge to be the giver of the law, and the other for the
22 jury to be the finders of fact?

23 A Yes, sir.

24 Q Now, if you were on a jury, and you heard the -- all
25 the facts, all the testimony, and the judge was charging you

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1 on the law, and as you were listening to the judge's charge
2 on the law there was something that you heard that perhaps
3 you didn't agree with or perhaps you thought the law was
4 different than that, and when the judge told it to you, it's
5 kind of a surprise that that's the way the law is.

6 So, do you understand what I'm talking about?

7 A Uh-huh. (Affirmative).

8 Q Now, would you be willing, as a juror, to set aside
9 your personal feelings, set aside your personal beliefs, and
10 would you be willing to accept the law as the judge gave it
11 to you and apply that to the facts as you determine them to
12 be?

13 A Yes.

14 Q You'd be willing to do that?

15 A Yes.

16 Q Okay. Now, I'm gonna take that a step farther.

17 If you were on the jury, and if you heard that, would
18 you -- if you went back into the jury room and you and your
19 fellow jurors found that the, the State had proved its case
20 beyond a reasonable doubt, could you find the defendant
21 guilty of a crime?

22 A Yes.

23 Q And if you found that the State did not prove its case
24 by proof beyond a reasonable doubt, could you find that -- a
25 defendant not guilty of a crime?

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1 A Yes.

2 Q I want to add -- go over some more legal concepts.

3 Do you agree with and understand that every defendant
4 is innocent, is considered, under the law, to be innocent
5 until they're proven to be guilty?

6 A Yes.

7 Q And, in that regard, do you understand that a defendant
8 is -- has no obligation and is not required to prove his
9 innocence because he's presumed to be innocent?

10 A Yes.

11 Q Do you understand that?

12 A Yes.

13 Q And, at a trial, do you also understand that, that,
14 because a defendant is presumed to be innocent, and because
15 the defendant has no obligation to prove anything at a
16 trial, since they're presumed to be innocent, that there,
17 that there is no burden of proof in a criminal trial?

18 In other words, a defendant would have the right not to
19 say anything, remain silent during a trial, if the defendant
20 chose to do that.

21 A Uh-huh. (Affirmative).

22 Q You understand that's -- that is the law and you, you
23 agree with that concept?

24 A Yes.

25 Q On the other hand, of course, the State is the, is the

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1 entity that has brought the charges in any criminal case.
2 So, they've made accusations. The law does put a burden on
3 the State, and that burden is that the State, in order to
4 get a conviction, must prove the allegations contained in
5 the indictment, so the -- must prove its allegations by
6 proof beyond a reasonable doubt.

7 Do you understand that concept?

8 A Yes.

9 Q And do you agree with that concept as well?

10 A Yes.

11 Q Now, I told you I was gonna talk to you in more detail
12 about this penalty phase of the trial.

13 A Yes.

14 Q And I asked you to understand the defendant has -- is
15 presumed innocent. It's no reflection on the defendant that
16 we're talking about this now, but I've gotten to the point I
17 want to talk about that.

18 A Okay.

19 Q Now, let's, let's -- I want you, in your mind's eye,
20 pretend for a moment that you are a juror in a trial where
21 the State has alleged a murder, and the State is, is about
22 to go forward and has asked that the penalty be the death
23 penalty in the case.

24 So now do you understand that we're going to have a two
25 part trial because that's where we are?

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1 A Yes.

2 Q And you've been selected as a juror in the case, and
3 you and your fellow jurors come into Court, and like in
4 every, every criminal case, it's the, as I said, the jury's
5 job to find the facts and then take the law and decide
6 whether or not the defendant is either guilty or not guilty.

7 So, let's pretend you're in that case. The charge is
8 murder. There is a trial on that charge. The State proves
9 the defendant committed a murder by proof beyond a
10 reasonable doubt, and the jury has found the defendant
11 guilty of committing a murder. You know, the intentional
12 killing of an innocent person -- a party with malice
13 aforethought is what they have proven.

14 So, at that point in time, in this case that I'm asking
15 you to pretend that you're in, the defendant is a convicted
16 murderer at this point in time.

17 A Okay.

18 Q Now, the law says, where the State is seeking the death
19 penalty, there must be a separate hearing held by the same
20 jury, and, at that second hearing, the law provides for two
21 types of evidence to be presented to the jury. The first
22 type of evidence is about matters that are referred to as
23 aggravating circumstances.

24 Now, aggravating circumstances are those kinds of
25 things, and there's a long list of them, and I'm not gonna

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1 go over them all because -- unless you want me to. I'll be
2 glad to go over with them you. But not all of them apply to
3 the case that we're about to try, and, and -- but until we
4 try the case, we don't know exactly how that will come out.

5 But at any rate, those are factors that will tend to
6 make, while a, a murder is not, not a good thing, that's a
7 bad thing, those tend to aggravate the situation, make it
8 worse, make a juror who hears those factors more likely to
9 give a more severe penalty. So, in other words, we
10 understand those things would make someone probably lean
11 toward a worst penalty.

12 A Uh-huh. (Affirmative).

13 Q So, that's the aggravating circumstances, and the State
14 must prove at least one of those aggravating circumstances
15 by proof beyond a reasonable doubt in order for a murder to
16 be death penalty eligible. So, not all murders are death
17 penalty eligible.

18 Do you understand that?

19 A Uh-huh. (Affirmative).

20 Q Okay. Now, the other type of evidence that, that the
21 statute says can be put into that hearing is what's called
22 mitigating factors, mitigating circumstances. Those are
23 factors which, if a jury considered that, perhaps the jury
24 would be more likely to give someone a lesser penalty, a --
25 to modify the situation or make someone less culpable for

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1 what happened.

2 So, again, we have a murder, it's a bad thing, but
3 these factors might go toward a lesser penalty.

4 A Uh-huh. (Affirmative).

5 Q Now, the law also says that a jury can consider any
6 factor that it wants to consider in mitigation, and the law
7 says -- and those don't have to be proven beyond a
8 reasonable doubt. If they're shown, the jury can consider
9 them or give them what weight the jury wants to give them,
10 and, in fact, the law provides that a jury, in that second
11 hearing, can consider the, the question of mercy as well.
12 So, those are all factors that are to be presented to a
13 jury.

14 Now, once all the evidence has come in in that second
15 hearing on either aggravating factors, that try, that tend
16 to make something worse or more -- give, someone give a
17 higher penalty, or mitigating factors that go the other way,
18 that somebody, somebody might consider in giving the lower
19 penalty, the law says the judge will charge the jury to go
20 into the jury room and consider those factors, both
21 aggravating and mitigating, in making a decision as to the
22 appropriate penalty, and the choices for the jury are either
23 life in prison without the possibility of parole, and that's
24 exactly what that means in South Carolina.

25 A Uh-huh. (Affirmative).

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1 Q And the -- what it says -- it means what it says, and
2 the other thing is the death penalty. So, that's what a
3 jury would be faced with considering at that point in time.

4 Now, I've asked you to pretend, in your mind's eye,
5 that you're on a jury. You've reached the stage of the
6 trial where the defendant has been found guilty of murder.
7 You're about to walk down the hallway, walk into the
8 courtroom, and start that second hearing where there will be
9 aggravating evidence and mitigating evidence.

10 So, do you understand where I've put you?

11 A Uh-huh. (Affirmative).

12 Q Now, back in the jury room there was a piece of paper.
13 It had described on there three different jurors.

14 Did you read that paper?

15 A Yes.

16 Q I'm gonna go back over that with you so you and I have
17 an understanding as to what we're referring to when we're
18 talking about those jurors---

19 A Okay.

20 Q ---and I'm gonna give them a number so we can refer to
21 them.

22 okay?

23 A Okay.

24 Q As you walked down the hall, and as you're about to
25 walk into the courtroom, juror number one has already made

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1 up his mind as to what he's gonna do before he's heard any
2 of the testimony in the second hearing. You see, that juror
3 believes that when someone is been convicted of a murder,
4 and, again, that's the, the killing of someone without just
5 cause with malice aforethought, if -- when that happens,
6 that juror believes the only appropriate penalty is the
7 death penalty, and, therefore, every single time that juror
8 walks into the courtroom that juror is gonna vote for the
9 death penalty.

10 The second juror in line coming in is also made up his
11 or her mind. That juror believes that the State is never
12 justified in taking someone's life as a result of the
13 commission of a crime, and that juror believes that, no
14 matter how serious the crime is, no matter what the
15 aggravating circumstances are and no matter what the
16 mitigating circumstances are, that juror will always vote
17 for life in prison without the possibility of a parole every
18 time just like the first juror will vote for the death
19 penalty every time.

20 Now, the third juror is walking into that courtroom and
21 that juror has not made up his or her mind. That juror
22 wants to listen to the evidence, aggravating factors, things
23 that make it worse, and mitigating factors, things that
24 might lessen the response -- the criminal responsibility.
25 So, that juror wants to listen to that evidence, that juror

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1 wants to listen to the judge's charge, and then the juror
2 wants to go into the, into the jury room and with -- in
3 deliberations with their fellow jurors, come up with a
4 recommendation as to sentencing.

5 Now, I told you to imagine that you were in that line
6 walking into the courtroom with those other jurors, one,
7 two, or three.

8 Now, as to, as to you, which one of those three jurors
9 would most closely resemble you walking into that courtroom?

10 A Two.

11 Q Number two.

12 So, you believe that it would -- the State is never
13 justified in taking a life in response to the commission of
14 a crime?

15 Is that true?

16 A True.

17 Q And so you would never vote for the death penalty no
18 matter how serious the crime were, no matter what the
19 aggravators were?

20 Is that true?

21 A Yes.

22 Q All right. Let me see if the attorneys want to ask you
23 any questions.

24 Any questions from the defense?

25 MR. MCGUIRE: No, sir.

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1 THE COURT: Any from the State?

2 SOLICITOR BARNETTE: No, sir.

3 THE COURT: All right. Ma'am, I'm, at this time, going
4 to release you from any further responsibility in the case.

5 THE WITNESS: Okay.

6 THE COURT: They will check you out. You're free to
7 go.

8 THE WITNESS: Thank you.

9 THE COURT: Thank you for your cooperation.

10 THE WITNESS: Thank you.

11 (WHEREUPON, the following takes place outside the
12 presence of the juror.)

13 THE COURT: All right. I found Ms. Flowers
14 disqualified -- unqualified -- disqualified.

15 MR. MCGUIRE: Yes, sir.

16 THE COURT: David Blackstone.

17 (WHEREUPON, the following takes place within the
18 presence of the juror.)

19 DAVID BLACKSTONE, having been previously
20 sworn, testified as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q Come in, sir. Have a seat.

24 A Okay.

25 Q How are you this afternoon?

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1 A Just fine.

2 Q Good. Thank you.

3 I want to thank you for your cooperation with us thus
4 far. I appreciate you coming in and waiting. And whatever
5 time you've spent with us, I know that's -- this is a, a
6 process like nothing you've ever been involved in probably
7 before.

8 A No, sir, I haven't.

9 Q Okay. Well, thank you very much for your cooperation.
10 what we're gonna do, at this point in time, is go over
11 some matters with you. We're in the process of developing a
12 pool of people from which a jury will be selected. We're
13 not selecting a jury right now.

14 A Okay.

15 Q We're just going over things with people and seeing who
16 will continue in the process and who will not.

17 There -- as we ask questions today, I'll start off
18 asking you some questions, then the attorneys will be given
19 a chance to do so. I will tell you today -- at this point
20 in time, there are no right answers. There are no wrong
21 answers. There's only your answers. And we're interested
22 in your honest responses to our questions.

23 You understand that?

24 A Yes, sir.

25 Q And where you're sitting is normally a hot seat in my

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1 courtroom. That's the jury box -- I mean the witness stand.
2 And sometimes that gets pretty warm for some people, but I
3 can promise you you're gonna be treated with respect.

4 A Okay.

5 Q It's not gonna be a hot seat today.

6 Okay?

7 A Thank you.

8 Q All right. Now, on Monday you took an oath to tell us
9 the truth.

10 A Yes, sir.

11 Q You remember that?

12 A Yes, sir, I do.

13 Q That oath still applies to these discussions today.
14 You acknowledge that?

15 A Yes, sir.

16 Q All right. And also I gave you some instructions when
17 you left the courthouse on Monday not to try to gather any
18 information independently, not to discuss the case with
19 anyone, not to allow anyone to discuss it with you, not to
20 listen to, watch, or read media reports concerning the case,
21 and if anybody contacted you about your service to please
22 let us know.

23 Do you recall those instructions?

24 A Yes, sir.

25 Q Have you been able to follow those instructions since

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1 last Monday?

2 A Yes, sir.

3 Q Okay. Now, let me ask you, in that regard, if there
4 were anything that you might have heard that pertained to
5 this case in anyway outside of the courtroom, could you put
6 aside any matters that you -- extraneous matters that might
7 apply to this matter and decide this case based upon the law
8 and the evidence that you hear inside the courtroom?

9 A I prefer making my own judgment.

10 Q Okay. During the trial?

11 A Yes, sir.

12 Q Okay. Thank you.

13 Now, have you ever participated in any types of
14 discussions that might have involved issues surrounding or
15 about the death penalty?

16 A No, sir.

17 Q Have you ever participated in any political activities
18 in regard to that issue?

19 A No, sir.

20 Q All right. Now, back in the jury room there was a list
21 of people, about three sheets of paper.

22 A Yes, sir.

23 Q Did you read over that part?

24 A Yes, sir, I did.

25 Q I'm gonna add two names to that list that was back

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1 there. A person named Amy Nunnary from Reidville, and a
2 gentleman named Reggie Frye from Chesnee.

3 Now, as to those people and the people that were on the
4 sheet back there, as you read over that, did you notice
5 anyone that you had ever been related by marriage or that
6 you're related by blood to?

7 A No, sir.

8 Q Did you notice anyone on those lists that you have had
9 any social, personal, or business relationships with?

10 A Not that I'm aware of.

11 Q Well, okay. So, as far as you know, if any of those
12 people were to appear as witnesses during the trial, that --
13 the fact that they were a witness, just their personality or
14 them alone, would not affect your ability to be fair and
15 impartial to both sides of this case?

16 A I can be fair and impartial.

17 Q Okay. Thank you.

18 Now, there's one concept I want to make you aware of in
19 this case and be sure we've got an understanding on it.

20 I mentioned, on Monday, that this would be a bifurcated
21 or divided trial if it went all the way through to the end.
22 That means there would be a -- and that's the case in every
23 case where the State is seeking the death penalty for a
24 murder. They're always then divided into two sides, two
25 sides of the trial.

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1 A Yes, sir.

2 Q Now, today we're going to be asking you about issues
3 that involve both parts of that trial, and, to a certain
4 extent, that means we're putting the, the cart in front of
5 the horse in respect to we don't know the result of the
6 first part of the trial, which is a guilt or innocence of
7 the crime trial to determine whether or not the defendant is
8 guilty or not guilty of the crime. And if the defendant
9 were to be found not guilty of the crimes, then there would
10 be no need for the second part of that trial. There
11 wouldn't be any penalty when someone's found not guilty.

12 So, I want you to understand the fact that I'm gonna
13 ask you, and I'm sure the attorneys will ask you about
14 matters involving that second hearing, which would be a
15 penalty phase of the trial, that should not be taken against
16 or held against the defendant in any manner or his case in
17 this matter. He's presumed to be innocent, and that --
18 that's true in every criminal case that's tried in this
19 court. It's simply that, if we're gonna talk about issues
20 that might be involved in that penalty phase with potential
21 jurors, since the same jury hears both sides of the trial,
22 we've got to do that before we start. We can't do that in
23 the middle.

24 So, you understand this is the only chance we can talk
25 to you about those issues?

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1 A Yes, sir.

2 Q And you understand that this should not be held against
3 the defendant in any manner?

4 A No, sir.

5 Q Okay. And you're okay with that?

6 A Yes, sir.

7 Q All right. I'm going to go over some things that will
8 be -- that are going to be fairly basic things about
9 criminal cases. I've kind of built on these things as we go
10 along to be sure we've got an understanding about how things
11 are done in the, in the Criminal Court and some of the rules
12 and things that we have here so that we got an understanding
13 about that.

14 Now, I will point out to you that, in the normal
15 situation, a jury would come in. The jury is considered to
16 be the judge of the facts in a trial. The judge is referred
17 to as the judge of the law in the, in the case, and what
18 that means is that the judge would give the jury or charge
19 the jury with the law to be applied in whatever case it is.
20 But the jury would be the sole judge of the facts. In other
21 words, the jury would decide credibility of witnesses, will
22 decide who did what, when they did it, how they did it, and
23 how that applied to the law. So, the jury's the judge of
24 the facts and the judge is the judge of the law.

25 You understand that concept?

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1 A Yes, sir.

2 Q Okay. Now, would you be the kind of jury -- juror who
3 would be willing to listen to the law as instructed to you
4 by the judge?

5 A Yes, sir.

6 Q Would you then be willing to take that law and apply it
7 to the facts as the jury found the facts in trying to reach
8 a verdict in the case?

9 A Yes, sir.

10 Q I'm gonna put a little twist on that and see if this
11 changes your mind.

12 okay?

13 A Okay.

14 Q Now, let's say that you were in a shoplifting case.
15 You and your fellow jurors had heard all the evidence, the
16 arguments by the lawyers, and the judge is in the process of
17 charging you the law that relates to shoplifting, and as you
18 were listening to that judge charge the law, you heard
19 something that maybe you didn't agree with or perhaps you
20 heard something that you thought the law was different from
21 that. You didn't think it was the way the judge said it.

22 would you, nevertheless though, be willing to let the
23 judge give the law and set aside your personal beliefs or
24 feelings and take the law as the judge gave it to you and
25 apply that law to the facts in reaching a verdict in the

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1 case?

2 A Yes, sir.

3 Q All right. Now I'm gonna ask you about some basic
4 concepts in the law and we'll kind of build on these as we
5 move along.

6 First of all, do you agree with the concept that a
7 defendant is always innocent until they're proven to be
8 guilty?

9 A Yes, sir.

10 Q So, a defendant is always presumed to be innocent to
11 begin with.

12 A Yes, sir.

13 Q You agree with that?

14 Now, because a defendant is presumed to be innocent, do
15 you understand that a defendant, in a criminal case, no
16 matter what the case is, is never required to prove himself
17 innocent of the crime?

18 A That's true.

19 Q Now, let's take it a step further.

20 Because a defendant is presumed to be innocent, because
21 a defendant's never required to prove his innocence, that,
22 at a criminal trial, a defendant has no burden of proof. In
23 other words, the defendant is not required to prove anything
24 in a criminal trial. The defendant could remain silent if
25 he chose to.

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1 You understand that?

2 A Yes, sir.

3 Q And do you agree with that concept?

4 A Yes, sir.

5 Q Now, by the -- on the other side of that, the State,
6 however, is the party that is made accusations or has
7 charged somebody with the crime. In our law, because they
8 are the accusing party, places a burden of proof on the
9 State, and that means that the -- what that means is the
10 State has the burden of proving the allegations that they've
11 made in the indictment. They have to prove those
12 allegations by proof beyond a reasonable doubt.

13 Do you understand that concept?

14 A Yes, sir.

15 Q And do you agree that that concept is correct?

16 A Yes, sir.

17 Q Now, let's say that you were on that trial I was
18 talking about, that shoplifting case. You heard all the
19 evidence, you heard all the arguments by the lawyers, you
20 heard the charge from the judge, you and your fellow jurors
21 are back in the jury room, you're discussing the matter, and
22 you decide, among yourselves, that the State did not produce
23 enough evidence to prove the defendant guilty beyond a
24 reasonable doubt.

25 In those circumstances, would you have any difficulty

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1 in signing a not guilty verdict for a defendant?

2 A No, sir.

3 Q Now, on the other hand, let's say you and your fellow
4 jurors determined the State did produce enough evidence to
5 prove the defendant guilty beyond a reasonable doubt.

6 would you have any difficulty in signing a guilty
7 verdict against a defendant?

8 A No, sir.

9 Q So, are you telling me that you would want to be the
10 kind of jury -- juror that listened to the evidence, weighed
11 the evidence, determined the truthfulness, credibility, the
12 weight, the value of the testimony that you heard, and then
13 use that, along with the law, before you made a decision as
14 to the guilt or the innocence of any defendant?

15 A Yes, sir.

16 Q Now I'm going to talk to you some about that penalty
17 part of the trial that I told you was putting the cart in
18 front of the horse. We'll -- and I'll try to take you
19 through this so you'll understand what my questions are.

20 First of all, I want you to imagine now that you're a
21 juror in a different case. This case is a case where the
22 State has alleged a murder, and the State has informed all
23 the parties that they intend to seek the death penalty for
24 that murder.

25 So, do you understand where I've asked you to be?

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1 A Yes, sir.

2 Q Now, as a juror in that situation, you and your fellow
3 jurors would come into Court, and the State -- and would
4 conduct a trial in which the question was is the defendant
5 either guilty or not guilty of the murder. You and your
6 fellow jurors hear all evidence, you hear all the law, you
7 hear the arguments by the lawyer, lawyers, you go back and
8 you go into the deliberations, and you reach a verdict, and
9 that verdict is that the defendant is guilty of the crime of
10 murder, the intentional killing of an innocent person
11 without legal justification and with malice aforethought.

12 So, the defendant is guilty of a murder, and so now the
13 issue is whether or not -- what the appropriate penalty
14 would be. So, there's going to be a second hearing
15 concerning that, concerning the penalty, and the same jury
16 is required to hear the second, second hearing.

17 Do you understand where you are?

18 A Yes, sir.

19 Q The defendant has been found -- he's a convicted
20 murderer at this point in time.

21 A Yes, sir.

22 Q Now, I want you to imagine that you're about to come
23 back into the courtroom to do that second trial, and I will
24 tell you that the statute that sets up that second hearing,
25 the penalty phase or the sentencing phase, that statute

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1 provides for the introduction of basically two types of
2 evidence. One is evidence of what are called aggravating
3 circumstances.

4 Now, while a murder is, is not a good thing, that's a
5 bad thing, these factors are factors that the law says, if
6 proven to a jury, might tend to make a jury lean toward a
7 heavier or more stringent penalty. So, they're aggravating
8 matters, and I will tell you that the law requires the State
9 must prove at least one aggravating factor beyond -- by
10 proof beyond a reasonable doubt before a defendant is death
11 penalty eligible.

12 So, one of those factors would have to be proven. I'll
13 tell you there's a list in the statute. The list is about
14 12 items long with subparts under there. So, I'm not going
15 to try to read them all to you right now because some of
16 them have nothing to do with this case. Some of them could
17 have some application to this case. But I want you to
18 understand there's a list of factors that the Legislature
19 has said would be aggravating factors and the State's
20 allowed to put in evidence on those factors.

21 Now, the same statute says that the other type of
22 evidence that can come into that sentencing hearing is
23 what's called mitigating circumstances, and there's a list
24 of ten of those in the statute, and, of course, the statute
25 even goes on to say that the jury can consider other

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1 mitigating factors not in the list if the jury wants to, and
2 the jury can consider the -- whether or not mercy might
3 apply in this situation. That's not on the list, but that's
4 something a jury could consider.

5 So, do you understand that there's evidence both of
6 things that tend to make the situation worse, perhaps
7 deserving of a higher penalty, or there's information that
8 the statute allows to be introduced that would mitigate the
9 crime or the culpability. Therefore, make a jury go toward
10 the lesser crime or the penalty.

11 So, do you understand that --

12 A Uh-huh. (Affirmative).

13 Q -- hearing?

14 A Yes, sir.

15 Q Do you understand the types of evidence that I'm
16 talking about?

17 A Yes, sir.

18 Q Now, I'll tell you, if you feel like you need to know
19 what those factors are, I'll be glad to read them to you,
20 but, but I don't know if it's necessary. But if, at anytime
21 in this process, you'd like to know exactly what they all
22 are, I can read them to you. That's---

23 A No, sir.

24 Q The law's just in the book. I'll be glad to read them
25 if you need me to do that.

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1 But, anyway, that's the, that's the kind of things
2 you'd consider in that second hearing.

3 Okay. And I'll tell you, once all that evidence is
4 presented to a jury, the judge is suppose to charge the jury
5 and would charge the jury that they should consider all of
6 the evidence, aggravating and mitigating, deliberate and
7 then make a recommendation as to the appropriate sentence.

8 The choices in that case, life in prison without the
9 possibility of parole, and that sentence is exactly what it
10 says. Someone would go to jail. They'd be there until they
11 pass away. The second sentence is the death penalty. So,
12 those are the two things the jury could consider in that
13 hearing.

14 Now, I told you, when I started this discussion with
15 you, pretend you're on that jury in your mind's eye. You
16 finished the first part of the trial. The defendant is been
17 convicted of murder. So, he's a convicted murderer at this
18 point in time. You and your fellow jurors are walking down
19 the hall. You're about to walk into the courtroom.

20 Do you remember a sheet of paper that I put on the
21 table in the jury room --

22 A Uh-huh. (Affirmative).

23 Q -- it described three different jurors?

24 A Yes, sir.

25 Q I'm gonna go over that piece of paper again with you

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1 and I'm gonna give you -- those jurors a number as we go
2 through talking about these.

3 A Okay.

4 Q As you walk in that door, the very first guy in line,
5 juror number one has already made up his mind about this
6 case. He hasn't heard the, the information in the, in the
7 sentencing hearing. But his belief is that, if anybody is
8 convicted of the crime of murder, the only appropriate
9 penalty is the death penalty, and every time he's in that
10 situation, and in every case regardless of what the factors
11 are, he will vote for the death penalty.

12 The second juror in that line is also made up his or
13 her mind. That juror believes that it's never appropriate
14 for the State to take someone's life in response to the
15 commission of a crime, and that juror doesn't care how
16 serious the crime is, what the factors were. That juror
17 will always vote for life in prison without the possibility
18 of parole regardless of what the facts and factors are that
19 are shown during that hearing.

20 So, those two jurors, one is made up his mind, and two
21 is made up his mind, her mind too.

22 Number three, walking into the courtroom, hasn't made
23 up his or her mind. That juror wants to listen to the
24 factors that are, that are allowed by law, the aggravating
25 factors and the mitigating factors. That juror wants to

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1 listen to the law charged by the judge, and then would want
2 to go back into the jury room and discuss those factors with
3 their fellow jurors, deliberate concerning them, and then
4 reach a decision as to what the appropriate penalty would be
5 in that circumstance.

6 Now, do you understand the differences between jurors
7 one, two, and three?

8 A Yes, sir.

9 Q Now, you're in that same line now. You're on that jury
10 and you're about to walk into the courtroom to start that
11 second hearing.

12 And as you walk into that courtroom, which one of those
13 three jurors would most closely resemble your feelings in
14 that situation?

15 A Number three.

16 Q So, you would want to hear the evidence about
17 aggravating matters as well as mitigating matters, is that
18 right?

19 A Yes, sir.

20 Q You'd want to hear the law charged by the judge, is
21 that correct?

22 A Yes, sir.

23 Q And then you would want to decide, in discussions with
24 your fellow jurors, as to what the appropriate, appropriate
25 penalty to recommend would be?

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1 A Yes, sir.

2 Q So, let me take this a step further.

3 Let's say that you went through those discussions with
4 your fellow jurors, and you came to the conclusion that the
5 appropriate penalty was life in prison without the
6 possibility of parole.

7 Could you sign a verdict in that fashion for that
8 defendant?

9 A Yes, sir.

10 Q By the same token, if you and your fellow jurors went
11 through that information and came to the conclusion that the
12 death penalty was the appropriate penalty, given all those
13 factors that you were suppose to look at, could you sign a
14 verdict of death in that case?

15 A Yes, sir.

16 Q Now, one other thing I want to talk to you about.

17 We have, we have, I have, I've signed an order. The
18 order is that the jury will be sequestered in this case.
19 The purpose of sequestration is so that the jury will not be
20 influenced by any outside factors once the trial begins.

21 Now, sequestration means the jury would be in the
22 courtroom during the day trying the case. In the evening
23 the jury will be going over to the Marriott hotel. They
24 will be there taking -- they will be -- have some people
25 there who handle jurors with them.

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1 Now, sequestered jurors have their lodging paid for,
2 their meals paid for, their travel will be provided to them
3 back and forth to the courthouse, out to dinner, wherever
4 they go. They'll be accompanied by some people who will be
5 there with them checking on them.

6 Now, the jury, during sequestration, can call family,
7 friends, or business people, things like that. But those
8 calls are monitored. People keeping the jury will be sure
9 nothing about the case is discussed during, during those
10 discussions.

11 Now, the jury will receive jury pay during that time,
12 but I tell jurors all the time not to plan to retire on jury
13 pay cause it won't work, and you'd receive travel when you
14 come to and from the courthouse if you were sequestered.

15 I expect this trial will last longer than a week, but
16 probably less than two weeks. I will tell you that, once we
17 start one of these trials, we go seven days a week. We
18 don't stop cause we want to take as little time out of
19 people's lives as we can for these things, but we want to
20 have a full fair trial as well. So -- but once we start, we
21 keep going until the case is been completed.

22 Now -- excuse me.

23 Do you understand what sequestration is --

24 A Yes, sir.

25 Q -- and what that means?

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1 All right. Now, my question to you is if you were put
2 in that situation, would that pose any serious risk or
3 danger to your health or your safety or your well being?

4 A No, sir.

5 Q Would it pose any serious risk to your health or well
6 being of anyone who's dependent upon you?

7 A No, sir.

8 Q All right. Now I've completed my questions. I'm gonna
9 allow the attorneys to ask you some questions, and when they
10 finished I may want to follow up with some things they've
11 talked to you about.

12 A Okay.

13 THE COURT: Mr. McGuire.

14 MR. MCGUIRE: Thank you, judge.

15 EXAMINATION

16 BY MR. MCGUIRE:

17 Q Good afternoon, Mr. Blackstone.

18 A Hello.

19 Q I want to ask you -- my name's Bill. I'm one of the
20 lawyer's in the case, Bill McGuire, and this is my shot to
21 talk to you.

22 Okay?

23 A Okay.

24 Q I'm gonna ask you some, some questions and they'll
25 involve your personal opinions. I'm not trying to pry.

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1 But, again, this is our only opportunity to talk to you
2 about your thoughts about capital punishment.

3 A Okay.

4 Q Do you think we use the death penalty too seldom, about
5 right, too much?

6 A I think we use it about right.

7 Q About right.

8 If you were king of South Carolina for a day, and could
9 pass a law saying we would have or not have the death
10 penalty, what would you do?

11 A I would probably leave it --

12 Q As it is?

13 A -- just the way it is.

14 Q And why is that?

15 A I believe that there are people that do crimes in this
16 world that don't deserve to walk among us ever, ever, ever
17 again.

18 Q Okay. Now, the judge talked to you about mitigation
19 circumstances, and I want to expound upon that a little bit
20 more.

21 A Okay.

22 Q That can be -- it can be sort of a person's makeup,
23 their walk in life, their life history. I can -- it can be
24 their record in terms of having no record of violence in
25 their past. It can be whether they have a learning

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1 disability or intellectual disability, mental retardation,
2 if they're suffering mental health issues or emotional
3 conditions -- emotional issues, things like that, and it can
4 also be just anything a juror sees. You know, a man's role
5 as a father, his relationship with God. It can be anything.
6 Those are mitigating circumstances.

7 Do you understand?

8 A Yes, sir.

9 Q Okay. And then aggravating circumstances are anything
10 that -- there's a law that says if, if this is in the case,
11 the State can say that's an aggravating circumstance, and
12 based on that, they can ask for the death penalty.

13 A All right.

14 Q Now, the aggravating circumstance in this case is the
15 death of a child.

16 Did you know that?

17 A No.

18 Q Okay. And what I, what I'm gonna do is I'm gonna tell
19 you one or two things and I'm just gonna ask you a question
20 about that.

21 okay?

22 A Okay.

23 Q Right now, in the chair that you're sitting in, it's
24 perfectly fine to have views, personal views, that don't
25 square with the law. What's not okay is if we swear you in

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1 as a juror and you're in one of these seats. Then your
2 views have to allow you to follow the judge's law.

3 okay?

4 A Uh-huh. (Affirmative).

5 Q We've had plenty of people come in here. Some said
6 they could never give the death penalty, and some said that
7 the aggravating factor of a child would demand the death
8 penalty.

9 Now, my question for you is, is the aggravating,
10 aggravating factor, the death -- the intentional killing of
11 an innocent child, not an accident, deliberate intent to
12 kill a child, is that factor so profound, so impactful to
13 you that the mitigation evidence would not be relevant in
14 fixing the punishment?

15 SOLICITOR BARNETTE: Your Honor, I would object. He
16 don't go into the mitigation evidence at this point.

17 THE COURT: Well, I understand he's not given -- he has
18 given a specific aggravator. He is not given any specific
19 mitigators. I told you there was a list of ten factors that
20 can be considered in mitigation.

21 THE WITNESS: Uh-huh. (Affirmative).

22 THE COURT: If you would like to know what those are in
23 order to answer that question I'll be glad to go over them
24 with you and read them to you or if you don't feel that you
25 need to do that, that will be fine too. I, I want you to be

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1 able to answer the question fairly, and so, if you'd like to
2 know what those mitigating factors specifically are, I can
3 go over them with you.

4 THE WITNESS: I mean if---

5 THE COURT: And, again---

6 THE WITNESS: Depending on the mitigating
7 circumstances, I mean yeah, I could possibly not give the
8 death penalty---

9 THE COURT: Okay.

10 THE WITNESS: ---if that's what you're asking me.

11 Q That is what I'm asking.

12 what I'm asking is can you, can you leave room for the
13 real possibility of, even though you find somebody guilty of
14 the intentional taking of the life of a child, can you leave
15 room for the, real room for the possibility to look at the
16 defendant, look at his life, look at the mitigating
17 circumstances, and say, even though he did it, this
18 particular human being doesn't deserve to die?

19 A It would depend on the mitigation.

20 Q Okay. And when you think of mitigation, what are you
21 thinking about?

22 A He would -- some sort of mental illness or something
23 like that that may have -- the man may be afflicted with
24 that may have caused him to take a life.

25 Q Okay. And the judge would tell you mitigation evidence

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1 doesn't rise to the level of a defense. For instance, the
2 mental condition that you talk about---

3 SOLICITOR BARNETTE: Your Honor, I would object at this
4 point. I think he needs to identify the guilt phase,
5 sentencing phase, whatever, because obviously that could
6 factor into it.

7 MR. MCGUIRE: I can do that.

8 THE COURT: All right. Thank you.

9 Q what we're talking about is, in the first phase, the
10 trial is just about do they have the right guy, is he guilty
11 beyond a reasonable doubt.

12 Right?

13 A Yes, sir.

14 Q You understand that?

15 A Yes, sir.

16 Q And mitigation evidence is not the kind of evidence
17 that would make somebody not guilty. Like if they were so
18 insane they didn't know right from wrong.

19 Do you understand that?

20 A Yes, sir.

21 Q Okay. So, when you talk about the mental condition, it
22 wouldn't rise to the level of somebody, somebody not knowing
23 right from wrong.

24 A Okay.

25 Q Okay. So, beyond that mental condition, can you think

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1 of anything that could take you from the death penalty -- in
2 the death of a child, is there anything that would be
3 relevant in fixing that life and death punishment besides
4 this mental condition?

5 A Not that I can think of, sir.

6 Q Okay. So---

7 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
8 this time. That's not a fair question.

9 THE COURT: It's not a fair question. I'm gonna go
10 over the mitigating factors with him because there are some
11 that refer to mental conditions, but not in the terms that
12 you asked him.

13 MR. MCGUIRE: Sure.

14 THE COURT: So, I think you need the benefit of knowing
15 it --

16 THE WITNESS: Okay.

17 THE COURT: -- what we're talking about.

18 THE WITNESS: Yeah, I mean---

19 THE COURT: Cause you don't know what exactly I don't
20 think -- what's being asked of you. So -- and I'm just gonna
21 give you the ones under the statute. Again, some of them
22 may apply. Some of them may not apply.

23 THE WITNESS: Okay.

24 THE COURT: We're not trying the case now.

25 THE WITNESS: I understand.

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1 THE COURT: We're trying to determine the people are
2 qualified to hear the case.

3 THE WITNESS: Okay.

4 THE COURT: Okay. Now, the mitigating circumstances,
5 under the law are:

6 Number one. The defendant has no significant history
7 of prior criminal conviction involving the use of violence
8 against another person. That's the first one.

9 Number two. The murder was committed while the
10 defendant was under the influence of mental or emotional
11 disturbance.

12 Number three. The victim was a participant in the
13 defendant's conduct or consented to the act.

14 Number four. The defendant was an accomplice in a
15 murder committed by another person and his participation was
16 relatively minor.

17 Number five. The defendant acted under duress or under
18 the domination of another person.

19 Number six. The capacity of the defendant to
20 appreciate the criminality of his conduct or to conform his
21 conduct to the requirements of the law was substantially
22 impaired.

23 Number seven. The age or the mentality of the
24 defendant at the time of the crime.

25 Number eight. The defendant was provoked by the victim

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1 into committing the murder.

2 Number nine. The defendant was below the age of 18 at
3 the time of the crime.

4 Number ten. The defendant had mental retardation at
5 the time of the crime. Mental retardation means
6 significantly subaverage general intellectual functioning
7 existing concurrently with deficits in adaptive behavior and
8 manifested during the developmental period.

9 And as I stated, a, a juror can consider additional
10 mitigating circumstances as a juror chooses or the factor of
11 mercy.

12 So, that's -- when we talk about mitigating factors,
13 that's the list.

14 THE WITNESS: Okay.

15 THE COURT: I'm not saying -- some, some of them may --
16 it depends on the proof in the case as to what aggravating
17 factors apply and what mitigating circumstances apply.

18 THE WITNESS: Okay.

19 THE COURT: We haven't tried the case yet.

20 THE WITNESS: Okay.

21 THE COURT: But I can tell you those are the ones
22 allowed by the statute.

23 THE WITNESS: Okay.

24 THE COURT: Does that give you a better idea of what
25 we're talking about?

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1 THE WITNESS: Yes, sir.

2 THE COURT: All right. You may proceed.

3 Q That's a lot to, to chew off there, and I'm telling you
4 law school students have a tough time with a lot of these
5 issue we're talking about.

6 But, again, where you're sitting right now, it's fine
7 if your views don't square with the law. What's not fine
8 is---

9 SOLICITOR BARNETTE: Your Honor, I, I, I object to that
10 line of questioning. I think that he says he can follow the
11 law. It don't matter of that personal views. He has to
12 follow the law. If he says he's going to---

13 THE COURT: Well, the question is -- I think we're
14 getting into semantics now and splitting some hairs. But
15 jurors are expected to follow the law, and we're trying to
16 determine those who are qualified to be the jurors.

17 You may proceed.

18 MR. MCGUIRE: Sure.

19 This process, we're not just talking to people
20 obviously for the fun of it.

21 A Yes, sir.

22 Q And everybody that comes here is not automatically a
23 juror. You've probably figured that out. A lot of people
24 have come here and said I can't give the death penalty.
25 we've let them go with our thanks. A lot of people came and

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1 say the death of a child pretty much makes it automatic for
2 me for the death penalty. We've let them go with our, our
3 thanks.

4 It would a danger and a tragedy to put you in a
5 position on the jury---

6 SOLICITOR BARNETTE: Objection, Your Honor. Now he's
7 preaching to the juror what he should do.

8 THE COURT: Sustained. Let's move on to something
9 else.

10 Q It would be wrong---

11 THE COURT: Your job's not to instruct the juror.

12 MR. MCGUIRE: Sure.

13 I don't -- no one, no wants to put you in a position
14 where you find yourself on the jury, and you think I'm not
15 sure I can follow the law. My views are too strong about
16 the child factor.

17 Now, this is the moment, the opportunity for you to
18 tell us.

19 SOLICITOR BARNETTE: Objection, Your Honor. I mean
20 we're just preaching to the juror at this point about what
21 he should do. He keeps asking him the---

22 THE COURT: I'm gonna let him finish that question.

23 Q Now's the moment, the point in time where you need to
24 search your feelings and just tell us.

25 Do you think that, that the factor of the child death

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1 is so profound to you that you really can't consider the
2 mitigation type evidence, that the death penalty would be---

3 A No, I don't think.

4 Q You don't think so?

5 A No.

6 Q Okay. Why not?

7 A I would just -- I mean there are occasionally
8 mitigating circumstances that, for whatever reason, would of
9 caused a gentleman to, to do what he did and sometimes that
10 happens.

11 Q Okay. So, are you, are you telling us that you can
12 look at a case where, beyond a reasonable doubt, a person
13 committed the intentional act of taking the life of a child,
14 and you can leave room for looking at the human being and
15 say that particular human being doesn't deserve to die?

16 A Yes, sir.

17 Q And it's based on his make up as a human being?

18 A Yes, sir.

19 Q And those other factors of the judge?

20 A Yes, sir.

21 Q Okay. So, you're promising us that mitigation is
22 relevant and you can consider it?

23 A Yes, sir.

24 Q Okay. The -- one thing -- I want to talk to you a
25 little about the, the procedure and how we have a first

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1 phase trial and a second phase trial. There was a pamphlet
2 that was passed out in the big jury room when everybody was
3 here on Monday.

4 A Uh-huh. (Affirmative).

5 Q Monday past. Seems like forever ago to me.

6 But in that book it said that, if the jurors couldn't
7 agree on guilty or not guilty, that the case would be a
8 mistrial, and it would have to be tried all over again with
9 a new jury.

10 Do you remember reading that?

11 A Yes, sir.

12 Q Okay. And that is true, but only for the first part of
13 this proceeding. If the jury convicts in the first phase,
14 and we go to the second trial where the only focus would be
15 life and death, ultimately the jury does not have to agree,
16 and if they end the day in disagreement as to punishment,
17 the judge would take the case and he would sentence.

18 Did you know that?

19 A No, sir.

20 Q Okay. A lot of people don't know that cause we always
21 think of a jury speaking with one voice, and having to do
22 things over if they don't. And the sentence would
23 automatically be life without parole.

24 Did you know that?

25 A No, sir.

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1 Q Okay. You wouldn't -- if the, if the jury's in
2 disagreement, the, the judge would not have the ability to
3 sentence to death.

4 Now you know that?

5 A Yes, sir.

6 Q Okay. The way the penalty phase works is that we call
7 each individual juror's decision making process an
8 individual moral judgment. Kind of like your conscience.
9 It's not a question that math or science can solve. It kind
10 of what resonates with people as human beings.

11 A Okay.

12 Q And the way it works is we give complete freedom to the
13 jurors to act as individuals, and what I mean -- I want to
14 give you an example and just show you how it works and you
15 just tell me if that's a principle of the law you can
16 follow.

17 Okay. One juror sitting here can say I saw something
18 in the man's relationship with his children, his
19 grandchildren, his relationship with God that resonated with
20 me, I saw a spark of humanity there, and I want to vote for
21 life for that reason. Eleven other jurors could say I don't
22 really see what you -- I don't see that. I disagree. I
23 don't think that exists. This person has the absolute right
24 to say well, I see it, I find it, and I'm gonna give it the
25 weight that I see fit and, for me, that's the weight of a

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1 life penalty.

2 Do you see how that person can have their individual
3 moral judgment and based on a fact where people disagree?

4 A Yes, sir.

5 Q And is this a principle of law that you could respect?

6 A Yes, sir.

7 Q Okay. The judge would tell the jury that they can
8 sentence, for the life penalty, for any reason, no reason,
9 or mercy alone. Another juror might say I heard that, and I
10 can't put into words why I want to, I want to vote for the
11 life penalty, but I don't want to contemplate the rest of my
12 life having done that. So, I'm gonna vote for the life
13 penalty. I don't want to vote for the death penalty and
14 they might not even be able to articulate that.

15 Could you still respect their right to have their
16 individual moral judgment?

17 A Yeah.

18 Q Okay. Even if it's based on things they can't put into
19 words?

20 A Right.

21 Q Okay. And the law is, if it would harm somebody's
22 conscience or do violence to their conscience to change
23 their individual moral judgment just to try to get a
24 majority vote, that would be wrong.

25 If you saw somebody being pressured and you thought

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1 that was going on---

2 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
3 this point. Obviously they can talk and discuss among
4 themselves, but it would be left to the jury how to do that.

5 THE COURT: Well, the Court never instructs the jury as
6 to how to deliberate. That's left up to the jury. The
7 Court would only get involved if there was some kind of
8 issue that prevented the jury from having a free and fair
9 discussion of the issues, which is what a deliberation is.

10 So, jurors are expected to deliberate on that point and
11 discuss it, and they're -- they would be instructed, if
12 asked to, to respect the opinion of each other and reassess
13 their opinions based on what their other fellow jurors might
14 say.

15 So, deliberations are a free, fair discussion of both
16 sides.

17 Q And the reason I say that is because there are a lot of
18 rules in Court. Some are for me, some are for the lawyers,
19 but some are for you as a juror, and the rule is that the
20 proceedings be conducted with dignity, and we expect civil
21 discourse and exchange of ideas. But if somebody reaches
22 their individual moral judgment, and it would be clear that
23 it would violate their conscience or do harm to their
24 conscience to be -- change it, just go with the majority,
25 that would be wrong.

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1 If you saw that, could you step in and stop it?

2 A You mean stop somebody else from trying to change
3 somebody's---

4 Q Yeah, if it was---

5 A ---opinion?

6 Q Yeah, if it was unfair. Like bullying.

7 A Yeah.

8 Q Okay. We could count on you to do that?

9 A Yes, sir.

10 Q Okay. Another important concept, and the judge will
11 tell everybody this, is that, in the first part of the
12 trial, it can be very emotional obviously and especially
13 with -- we are talking about the death of a child. It's
14 improper to talk about penalty before the end of the penalty
15 phase. What I mean is---

16 THE COURT: You mean the guilt phase. You said the
17 penalty phase. Before the end of the guilt phase.

18 MR. MCGUIRE: Well, actually before the end of the
19 penalty phase too. It would actually be the end of both
20 phases.

21 THE COURT: Oh, I would instruct them not to discuss
22 the case at all during the---

23 MR. MCGUIRE: Exactly, and I'll break it down just to
24 be clear.

25 Obviously, you know, in the guilt phase, it's did the

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1 person do it beyond a reasonable doubt, are they guilty, and
2 the judge would tell everybody A, not to discuss the case
3 until the end of the first phase so they can deliberate, and
4 it certainly would be wrong to consider what the appropriate
5 punishment would be in the first phase.

6 You would agree with that?

7 A Yes.

8 Q Okay. And it's actually you have to wait until the
9 very end of the penalty phase to make sure you have all of
10 the evidence about all the collateral factors, who the
11 defendant is, who he is as a man, that sort of thing. You
12 have to wait till you hear all that before you can consider
13 punishment.

14 If people started talking about punishment before it
15 was appropriate, could you stop that?

16 A Yes.

17 Q Okay. That's all I have for you, sir. Thank you.

18 THE COURT: Thank you.

19 THE COURT: Mr. Barnette.

20 SOLICITOR BARNETTE: May it please the Court, Your
21 Honor.

22 THE COURT: Yes, sir.

23 EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q Good afternoon, Mr. Blackstone.

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1 A Hello.

2 Q My name's Barry Barnette. I'm one of the prosecutors
3 on the case and this is Russell Ghent. He'll be another one
4 of the prosecutors on the case. Just gonna ask you a few
5 questions.

6 A Okay.

7 Q One thing, one thing -- and I apologize cause, like I
8 say, we ask a lot of questions. I'm not gonna ask the
9 probing type question to you. I think you've already been
10 through that. So --.

11 A That's fine.

12 Q One thing I wanted to ask you was you been in
13 Spartanburg for a year?

14 A About 18 months.

15 Q Eighteen months.

16 And you came from Newark, Ohio?

17 A Ohio.

18 Q Ohio.

19 And what -- that's east of Columbus, right?

20 A Yeah.

21 Q Okay. The reason I was asking, I'm familiar with
22 Southeastern Ohio. I use to officiate football, basketball
23 through there, through Athens, all that area down in there.

24 A Yes, sir.

25 Q So, I know probably -- I never got that far up that

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1 area, in that area, but I know where it's at from that
2 standpoint.

3 And if I understand right, you're one -- you're a juror
4 who would listen to both sides before you made a decision
5 like this?

6 A I'd like to think I could, yes.

7 Q Yes, sir.

8 And obviously you'd listen to the judge and follow the
9 law in this case too?

10 A Yes, sir.

11 Q All right. Well, thank you, sir, for talking to me.

12 A Okay. Thank you.

13 Q Appreciate it.

14 Thank you, Your Honor.

15 THE COURT: Anything further from the defense?

16 MR. MCGUIRE: No, sir.

17 THE COURT: Sir, I'm gonna ask you to step back to the
18 jury room for just a moment.

19 THE WITNESS: Okay.

20 THE COURT: Don't discuss our process with anyone back
21 there.

22 THE WITNESS: I won't.

23 THE COURT: Thank you, sir.

24 THE WITNESS: Uh-huh. (Affirmative).

25 (WHEREUPON, the following takes place outside the

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1 presence of the juror.)

2 THE COURT: Defense's position.

3 MR. MCGUIRE: I kind of have to reluctantly agree that
4 he's qualified.

5 THE COURT: And the State?

6 SOLICITOR BARNETTE: I agree, Your Honor.

7 THE COURT: All right. Bring the juror back in please.
8 Thank you.

9 (WHEREUPON, the following takes place within the
10 presence of the juror.)

11 THE COURT: All right, sir. I, I have determined that
12 you are qualified to proceed in our process. So, Mr.
13 Blackstone, we're gonna give you some information, some
14 things you should consider. I told you about the
15 sequestration. Those are some things you need to think
16 about if you were selected on the jury so that you would
17 have appropriate things with you when you come back in order
18 to be prepared to stay with us for a little while.

19 THE WITNESS: Okay.

20 THE COURT: My instructions concerning your behavior
21 continue, and that will be true until I told you you're
22 released from your instructions.

23 Do you understand that?

24 THE WITNESS: Yes, sir.

25 THE COURT: We'll be calling you next as to what you

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1 need to do in the process, and tell you what to do and when
2 to be where and what, what's going on.

3 THE WITNESS: Okay.

4 THE COURT: Now, there is an exception to my no talking
5 about it. If you need to talk to an employer or an employee
6 or your family and let them know that, if you're called back
7 for jury duty, that you could be staying for a few days---

8 THE WITNESS: Yeah, I'll have to let them know.

9 THE COURT: ---before you go missing, go missing. You
10 may need to do that. But do so without discussing what the
11 case is about.

12 THE WITNESS: Okay.

13 THE COURT: And if they ask you about that, the judge
14 told you not to talk about that.

15 THE WITNESS: That's right.

16 THE COURT: That's the answer.

17 THE WITNESS: Okay.

18 THE COURT: Okay. Can you do that for me?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right, sir. At this point in time the
21 bailiffs are gonna check you out. You're gonna be free to
22 go and we'll be in touch with you pretty soon.

23 THE WITNESS: Okay.

24 THE COURT: Thank you very much.

25 THE WITNESS: Thank you, sir.

1 (WHEREUPON, the following takes place outside the
2 presence of the juror.)

3 THE COURT: Okay. I believe we have qualified 35 at
4 this point in time, which would put us in a position to
5 select the jury in the case. What I am going to do is I am
6 going to instruct those who are qualified to be here at nine
7 o'clock in the morning, be prepared to stay. I intend to do
8 a strike in the courtroom with them present.

9 I will order that the, that the remainder of this panel
10 as well as half of the next panel to also be present. At
11 that time I intend to inquire of those who have been
12 previously qualified concerning the two witnesses that have
13 been identified this morning to see if that would have any
14 affect on their qualification.

15 Should any -- and to be sure that they have been able
16 to comply with my instructions during the period of the
17 qualification process. If anyone were eliminated by those
18 questions, I will have people here that we can qualify
19 additional jurors to fill those places.

20 So, I will be going over those things with the -- those
21 jurors at that time. I anticipate completing the strike
22 during the morning hours. We should be in a position to
23 start the trial of the case tomorrow afternoon.

24 Any questions or issues from the defense or the State?
25 Be glad to hear from you.

1 SOLICITOR BARNETTE: Your Honor, we do have that matter
2 about the report and stuff. We're getting some motions
3 together to hand to the Court and the defense here shortly.
4 So --.

5 THE COURT: Okay. Well, I'm not gonna decide it until
6 I hear from somebody.

7 SOLICITOR BARNETTE: Yes, sir, I understand.

8 THE COURT: I have received the report and I've
9 reviewed it. That's where we are.

10 MR. MCGUIRE: Judge, we're ready to strike now.
11 Is it possible we could strike now?

12 THE COURT: My concern is that we have these two
13 additional witnesses that have not been identified. I don't
14 know what affect that would have on the potential jury
15 panel. I'm reluctant to have a clerk, clerk call them and
16 do inquiries of jurors over the telephone.

17 So, I think that would be inviting a mistake and I
18 don't want to invite a mistake. And, of course, I -- this
19 process is taken much longer than it normally takes for the
20 Court. I am concerned that some people who have been
21 qualified may have somehow violated the Court's instructions
22 during the week that we've been about this process. So, I
23 want to be sure that those who have been qualified are still
24 qualified at the time of the strike.

25 So, I intend to have them all here. We will strike

1 them in the courtroom as we would normally do during a
2 trial. That's after I've had a chance to inquire of them
3 concerning those two factors.

4 MR. MCGUIRE: Yes, sir.

5 At nine o'clock?

6 THE COURT: I'm gonna instruct that they be here
7 prepared to stay, nine o'clock in the morning. I'll make it
8 9:30 probably. It will give them time to pack a bag in case
9 they need to.

10 MR. MCGUIRE: would you consider going to 10:00?

11 THE COURT: Well, usually if I say 9:30, we'll start
12 about 10:00.

13 MR. MCGUIRE: It's just that Mr. Young is still taking
14 care of some emergencies at his house. So, he'll be gone
15 and then come back in the morning from Columbia.

16 THE COURT: All right. What we'll do is we'll wait --
17 Mr. Young, make every effort to get here as soon as you can.
18 Okay?

19 MR. YOUNG: I will, yes, sir.

20 THE COURT: But I probably will tell them to be here by
21 9:30.

22 MR. YOUNG: Yes, sir.

23 THE COURT: Okay.

24 SOLICITOR BARNETTE: Your Honor, just a couple clean up
25 things.

1 Our aggravating circumstances, I'm just gonna do a
2 supplemental just saying everything we've given to them
3 since the beginning to the end and I was gonna give that to
4 them today just to cover that just to make sure we got---

5 THE COURT: Whatever you need to do, go ahead.

6 SOLICITOR BARNETTE: And then---

7 THE COURT: But I do intend to try to start the trial
8 by tomorrow afternoon.

9 SOLICITOR BARNETTE: Yes, sir, and then we've got the
10 motion concerning motive. We're gonna do a return on that
11 and hand to the Court, and then, obviously, the report. We
12 got that. I'm gonna hand that up to you shortly as well.

13 THE COURT: All right.

14 SOLICITOR BARNETTE: I don't know when you want to
15 argue that. If you want to argue it tomorrow.

16 THE COURT: We can argue it tomorrow before we start
17 the trial.

18 SOLICITOR BARNETTE: Okay.

19 THE COURT: If you get your information to me, if you
20 got briefs and things. I'll take those.

21 SOLICITOR BARNETTE: Yes, sir, we're gonna have to give
22 that to you.

23 THE COURT: Okay.

24 SOLICITOR BARNETTE: But I just wanted to make sure.

25 THE COURT: Okay. All right.

1 SOLICITOR BARNETTE: We'll give that to the defense
2 obviously.

3 THE COURT: Anything else we need to cover before 9:30
4 in the morning?

5 MR. MCGUIRE: Not from the defense, Your Honor.

6 THE COURT: From the State.

7 SOLICITOR BARNETTE: Nothing from the State, Your
8 Honor.

9 THE COURT: All right. 9:30, in recess.

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11 (WHEREUPON, Court was in recess for the evening.)

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1 Tuesday, March 11th, 2014

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3 THE COURT: All right. Do you have the names of the
4 SLED agents?

5 COURT REPORTER: No, sir.

6 THE COURT: All right. Why don't I get you each to
7 stand individually, state your name so she can put on the
8 record who's here to be sworn.

9 Start in the front row.

10 SLED AGENT: Charles Monroe Coats, Junior.

11 THE COURT: Thank you.

12 Yes, sir.

13 SLED AGENT: John F. Kirkland.

14 THE COURT: Thank you.

15 SLED AGENT: Elizabeth Corley, C-O-R-L-E-Y.

16 THE COURT: Thank you, ma'am.

17 SLED AGENT: Zoe Voulgarelis.

18 THE COURT: Thank you.

19 SLED AGENT: Robert L. Brown.

20 THE COURT: Back in the corner, yes, sir.

21 SLED AGENT: Robin C. Jenkins.

22 THE COURT: Thank you, sir.

23 SLED AGENT: Cletus B. Templeton known as Sandy.

24 THE COURT: Thank you.

25 Yes, sir.

1 SLED AGENT: Joseph E. Means, M-E-A-N-S.

2 THE COURT: Thank you.

3 SLED AGENT: Donald K. Evatt.

4 THE COURT: All right. If you'll please stand, raise
5 your right-hand.

6 (WHEREUPON, all SLED agents were placed under oath at
7 this time.)

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

9 I, I place on the record that the custodians of the
10 jury have now been sworn.

11 Thank you very much.

12 SLED AGENTS: Thank you, sir.

13 THE COURT: We'll be in recess until such time as the
14 jury's assembled.

15 (WHEREUPON, a short recess was taken at this time.)

16 (WHEREUPON, two maps were marked as State's Exhibit
17 Nos. 1 and 2. A photograph was marked as State's Exhibit
18 No. 3. The title history was marked as State's Exhibit No.
19 4. A bullet was marked as State's Exhibit No. 5. A gun was
20 marked as State's Exhibit No. 6. A shell casing was marked
21 as State's Exhibit No. 6-A. A live round was marked as
22 State's Exhibit No. 6-B. Twenty-six photographs were marked
23 as State's Exhibit Nos. 7 through 32. A wallet was marked
24 as State's Exhibit No. 33. An amount of money was marked as
25 State's Exhibit No. 34. Two photographs were marked as

1 State's Exhibit Nos. 35 and 36. A gun case was marked as
2 State's Exhibit No. 37. A diagram was marked as State's
3 Exhibit No. 38. Two more photographs were marked as State's
4 Exhibit Nos. 39 and 40. Two 9-1-1 phone calls were marked
5 as State's Exhibit Nos. 41 and 42. Another photograph was
6 marked as State's Exhibit No. 43. All of the above exhibits
7 were for identification purposes only at this time.)

8 THE COURT: All right. We've got one juror who did not
9 appear at 9:30. We've located that juror and that juror is
10 in route to the courthouse at this time. So, we'll be
11 starting as soon as we can locate that person and have them
12 here.

13 There were some issues, pretrial issues, that were
14 still pending before the Court, and I'll take those up while
15 we're waiting.

16 Does the State have any pretrial matters that you'd
17 like for me to consider?

18 SOLICITOR GHENT: Your Honor, the State does.

19 I've pointed out to counsel, Mr. Allen, that the motion
20 we have made dovetails around his motion to exclude motive.
21 I've asked him if he wants to argue motive first. I've
22 provided to him with additional case law we intend to argue.
23 I'm prepared to hand that up to the Court. However the
24 Court wants to hear things.

25 THE COURT: All right. Well, Mr. Allen.

1 MR. ALLEN: I, I told Mr. Ghent that I didn't matter
2 which of the---

3 THE COURT: Okay. Well, Mr. Ghent, what is your
4 motion?

5 SOLICITOR GHENT: Our motion is that the defense be
6 compelled to produce the report of Doctor Donna
7 Schwartz-Watts.

8 THE COURT: All right, sir. And that, that report is
9 been produced to the Court for my review, and it has been
10 reviewed by the Court.

11 SOLICITOR GHENT: Yes, sir.

12 THE COURT: All right. I would be happy to hear from
13 you.

14 SOLICITOR GHENT: Yes, sir.

15 Your Honor, I'll ask the Court if I may go ahead and,
16 at the same time, address Mr. Allen's motion to exclude
17 evidence of motive because it does dovetail.

18 THE COURT: You can, you can include that in your
19 argument and I'm sure Mr. Allen will be given an opportunity
20 to, to argue his side of that motion.

21 SOLICITOR GHENT: Yes, sir.

22 May it please the Court?

23 THE COURT: Yes, sir.

24 SOLICITOR GHENT: Your Honor, we have provided the
25 Court with I think, and served upon counsel, a fairly

1 extensive motion with case authorities and Constitutional
2 authorities, authorities under the rules, which we feel
3 warrant our receiving the report of Doctor Schwartz-Watts.
4 One of the---

5 THE COURT: And, and before you go any further, let
6 me -- I did not put on the record I have reviewed that
7 report, and I've determined that that report does not
8 contain any information that was relevant to or pertinent to
9 the Atkins case, Atkins hearing.

10 But you may proceed.

11 SOLICITOR GHENT: Yes, sir.

12 Your Honor, the entire premise, at this point, of
13 arguments made by counsel is well, we opted out of
14 discovery, and, therefore, Rule 5, in regard to defendant --
15 it would be 5(1)(b), excuse me, (b)(1)(b) regarding the
16 defendant producing reports of examinations or tests,
17 therefore, doesn't apply to us.

18 I would respectfully submit and have argued that that
19 is a pretextual argument and counsel has more than waived
20 that claim in this case because they have basically pursued
21 discovery, and done it very aggressively, by another name.

22 What is it?

23 I think Shakespeare, a rose by any other name.

24 In this case, Your Honor, they can say what they want
25 to. We opted out of Rule 5. First of all, they did file

1 and serve a Rule 5. They then withdrew it.

2 There are questions I could raise about those
3 circumstances, but let's just stay with the fact they filed
4 and served one and withdrew it. The State is then
5 confronted with a death penalty case. As we always hear, as
6 is always true, where a man's life is at stake.

7 The State is then left with the option of going along
8 with that and giving nothing, and guaranteeing, if not
9 problems on appeal, then for sure problems on
10 post-conviction relief. The State, Solicitor Barnette,
11 unilaterally, made the decision we will provide full
12 discovery under Rule 5, you asked for it.

13 Your Honor, counsel, before that was done and after
14 they claimed to have repeatedly claimed to have opted out of
15 discovery, they served FOIA requests on the State. State
16 versus Noah Ryan Robinson, 1991, is quite clear. You can
17 not use FOIA, Freedom of Information Request, in
18 substitution for discovery. It is still good law. It is
19 still in the book of rules, annotated book of rules, which
20 is provided every year, published every year. They also
21 attempted to do it by subpoena, a subpoena duces tecum.

22 Now, the way the rule regarding subpoenas is written,
23 it is quite clear that what is intended is a proceeding is
24 pending, and that the documents are subpoenaed as part of
25 that proceeding. That then was followed up. There was no

1 proceeding. There was no place designated. There was no
2 time designated. That was then followed up, Your Honor, by
3 a motion and, again, this is cited in our memorandum. It
4 was followed up by a motion, a show cause motion.

5 Now, I'm unaware, Your Honor has already -- Your
6 Honor -- if Your Honor is aware of a circumstance other than
7 a threat of contempt, where one is being required to show
8 cause, I don't know of it. Usually the motion is on the
9 moving party. So, basically, having given or giving those
10 materials to the defense, we were still pursued with that.
11 Then came all the motions and the motions hearings and the
12 run-up to the Atkins hearing, Your Honor.

13 I'd like to point out one thing that I consider
14 significant. The Court does have the right to call
15 witnesses and to question witnesses. An Atkins hearing is
16 out of the presence of a jury. It is purely to a judge.

17 The Supreme Court, years ago, made clear, it was a
18 family case, Family Court case in the matter of I believe it
19 was Davis Lawson, that when you've got a trier of fact who's
20 experienced and knowledgeable about these things, it's not
21 the same as when you've got a jury.

22 So, when Your Honor, after I had done truly extensive
23 preparation for Doctor Calloway, and this is one of the
24 reasons why I'm arguing it so necessary, I'm old, I'm worn
25 out, I ain't that good, and wasn't that good to begin with.

1 This is the kind of preparation that is required of me, for
2 me with respect to a report by an expert. They are coming
3 into our forum with all of their expertise and we are
4 expected to take them on, and, in this case, where a child
5 was brutally murdered, we're expected to take them on
6 without any sign of the report.

7 So, my first argument is the whole position regarding
8 discovery has been a facade. It has been a pretext. Their
9 own motions that they filed sought further discovery even in
10 excess of what is usually allowed.

11 At the Atkins hearing, in spite of all of this
12 preparation, on two occasions, and Your Honor I know will
13 not do this, because Your Honor is carefully protected the
14 record. Your Honor's not gonna do this in front of the
15 jury. Your Honor went back, and if I may say, Your Honor's
16 experience as an attorney for the School Board showed
17 through. Your Honor cut through some issues. I felt like
18 I'd, I'd -- had prepared. Your Honor cut through some
19 issues that I had missed like a knife through hot butter,
20 and that's not flattery. That's the truth. It was
21 extremely effective questioning.

22 So, Your Honor's not gonna be able to do that. It's
23 gonna be totally up to the State to basically be in a
24 position where they turn and shoot in a case where yes, a
25 man's life is at stake. And even if, and I've cited under

1 the rules, those provisions where, when a witness takes the
2 stand, we can get their prior statements, et cetera, Doctor
3 Schwartz-Watts---

4 THE COURT: Let me ask you a question here.

5 Doctor Schwartz-Watts is been involved in the legal
6 system for a number of years in the State. She's, as far as
7 I know, is testified for the State and the defense in many
8 cases.

9 SOLICITOR GHENT: That is correct.

10 THE COURT: Her credentials are well known.

11 SOLICITOR GHENT: Yes, sir.

12 THE COURT: Her -- so, I don't know that that
13 information is information that the State would need to have
14 any access to from the defense. I think that's in the
15 public realm already.

16 SOLICITOR GHENT: And also she's married to a judge.

17 THE COURT: Well, the real question is the, the meat of
18 her opinion.

19 SOLICITOR GHENT: Yes, sir.

20 THE COURT: Actually what it's based on and what it
21 goes towards --

22 SOLICITOR GHENT: Yes, sir.

23 THE COURT: -- is what I think you're interested in.

24 SOLICITOR GHENT: Yes, sir.

25 THE COURT: All right. Well, let me hear from the

1 defense on this and see what they have to say about this.

2 SOLICITOR GHENT: Yes, sir.

3 THE COURT: Mr. Allen, are you gonna take this one?

4 MR. ALLEN: Yes, Your Honor. I'll take this one.

5 THE COURT: Yes, sir.

6 MR. ALLEN: With regard to the request for discovery,
7 as the Court is well aware in the history of this case, that
8 yes, I almost immediately or -- well, yeah, within a few
9 days of my being appointed to this case I did file a motion
10 for discovery.

11 THE COURT: Yes, sir.

12 MR. ALLEN: And almost---

13 THE COURT: Most lawyers do.

14 MR. ALLEN: Yes, sir, and almost immediately, after I
15 got Mr. McGuire involved, we discussed it and we decided
16 that it would be best to withdraw that motion, and we did
17 withdraw that motion relatively quickly. Certainly before
18 the State provided us any information or attempted to
19 respond to the discovery request---

20 THE COURT: Yes, sir.

21 MR. ALLEN: ---in anyway.

22 THE COURT: I'm aware that that occurred.

23 MR. ALLEN: And I believe the Court, in a pretrial
24 hearing, I think it was in November, but I could be wrong
25 about that, you know, granted the State's or granted our

1 motion to withdraw the discovery request.

2 I think the State was well aware that we were not
3 requesting information pursuant to Rule 5. Mr. Ghent
4 explained why they did what they did, but I'll give an
5 instance, for example, that we did not -- and I'm not
6 complaining. I don't want this to be sounding like a
7 complaint. But, for example, they did disclose to us,
8 although we didn't request it, certain SLED reports. You
9 know, these are basically one or two page, sometimes three
10 page, reports without disclosing the full case file, which,
11 if I were pursuing information pursuant to Rule 5, I would
12 certainly have asked for that information as well. For
13 example, GSR, DNA, and that type of stuff, but I didn't.

14 I -- you know, they, they provided to us for the
15 reasons that they stated and I did not follow-up. I did not
16 say hey, there's some things in here that I noticed in here,
17 but I didn't, you know, but I want them because I'm trying
18 not to invoke the request to -- for expert information
19 pursuant to Rule 5(b).

20 Rule 5(b) is a reciprocal -- rule for reciprocal
21 discovery is quite clear that, if we request information,
22 expert information or testing information pursuant to the
23 earlier Rule 5(a), that upon written request from the, from
24 the State, that we're required to give them our expert
25 information. So, I don't think the State has a right, under

1 the rule, to request it at this time.

2 In its -- in their brief, excuse me, what I'm calling a
3 brief, but in their motion that they provided the Court and
4 they provided to us, I believe it was yesterday, but be that
5 as it may, they, they cite the United States Supreme Court
6 case of Kansas versus Cheever as a, as, as one of the basis
7 or as support for their request for this information, but it
8 appears to me that the Supreme Court decision of Kansas
9 versus Cheever is significantly different in that the State
10 was seeking access to the defendant to test him for what,
11 what amounted to, the way I read the case, a mental defense.

12 Apparently, from what I gather from reading the case,
13 that they were alleging that because of a certain condition,
14 mental condition that Mr. Cheever had, that he lacked the
15 mens rea or the necessary intent or the -- or apparently the
16 ability to premeditate, which apparently, the way I read the
17 case, was an element of the offense that -- or of their
18 statute. Of course, that's not so in this case.

19 THE COURT: Yes, sir.

20 MR. ALLEN: They're not seeking access to Mr. Blackwell
21 to have him tested by a psychiatrist. They're simply
22 seeking a report that they are aware would exist because of
23 the disclosure of the name of Doctor Schwartz-Watts.

24 So, Kansas versus Cheever I don't think stands for the
25 proposition that they're trying to use it for. Kansas

1 versus Cheever holding simply is it's not a violation of the
2 Fifth Amendment right of the defendant to be required to
3 engage in a, a psychiatric examination when requested by the
4 State for the purpose of -- for them to look at him and
5 determine if there's any rebuttable information.

6 By the way, as the Court's well aware, that the State
7 has sought and received access to Mr. Blackwell, on two
8 occasions in this case, to have him evaluated by a state or
9 a Court appointed psychologist or psychiatrist. One when
10 they requested the competency evaluation, which Your Honor
11 ordered, and which was complied with, and the second one
12 when they requested a Court examination or Court ordered
13 examination of him for the Atkins claim and that's
14 different. That's not strictly mitigation in this
15 particular case and the way that we were trying to use it
16 because we were trying to establish that he was exempt or
17 not eligible for the death penalty and that's different.
18 That's pretty much like a defense.

19 what Your Honor has and what Doctor Schwartz-Watts will
20 testify to is basically mitigation, and she's not gonna be
21 used in the guilt phase. She's only gonna be used, if at
22 all, in the mitigation phase and I would ask the Court not
23 to require us to disclose that information at this time. I
24 don't think, under the rules, they're entitled to it. I
25 don't think they can cite to a particular rule, and I would

1 ask the Court not to grant---

2 THE COURT: All right.

3 MR. ALLEN: ---or require it.

4 THE COURT: My concern that the -- and the rule does
5 not address the situation where someone uses an alternative
6 means other than the rules to gather their information, if
7 the rule makers could of included that situation. You have
8 apparently filed subpoenas. You filed FOIA requests, things
9 of that nature in an effort to gather information about this
10 case, not from the prosecution, but from police officers,
11 government agencies, things of that nature.

12 The rule doesn't address, when that occurs, as to
13 whether or not that would be tantamount to the use of the
14 rule. I don't see any cases that address that either.

15 MR. ALLEN: No, Your Honor. I, I don't see them either
16 and that would of also been done even if we had pursued
17 discovery under Rule 5 as well simply to make sure that we
18 got complete information and that's why---

19 THE COURT: Yes. well, I understand, but it's the
20 State's argument is that you have de facto engaged in
21 discovery even though you didn't call it Rule 5 motions.

22 That's -- is that not your position?

23 SOLICITOR GHENT: Yes, sir, it is.

24 THE COURT: Okay. And, and that's their position in
25 the case. Again, the rule doesn't address that.

1 The rule does state that, if you don't make the
2 request, you're not required to disclose. That's gonna be
3 my ruling. I'm not gonna require you to disclose it at this
4 point in time. However, in doing that, I will state that I
5 will allow the State's -- I'll be liberal with the State in
6 their preparation of their cross-examination of this
7 witness. If you feel that you need additional time to
8 prepare for cross-examination, I'll make arrangements for
9 you to have that additional time.

10 SOLICITOR GHENT: Thank you, Your Honor.

11 THE COURT: And I will allow you to consider and the
12 Court will consider, rather freely, the use of a rebuttal
13 witness or something of that if you need to prepare someone
14 to be ready to rebut, but -- and we'll make arrangements for
15 you to be able to do that.

16 SOLICITOR GHENT: Thank you, sir.

17 And as I understand it, the defense is clearly and
18 affirmatively representing that Doctor Schwartz-Watts will
19 only be used at sentencing?

20 THE COURT: Well, I'm not, I'm not limiting them as to
21 when they use her. He's just indicated her, her testimony
22 was in mitigation. That's what he said. I -- that's -- Mr.
23 Allen's always been honest with the Court. I assume he
24 meant what he said.

25 SOLICITOR GHENT: I'm not impugning his honesty. I'm

1 just wanting to get clarification.

2 THE COURT: I'm not saying you are, but that's what he
3 said. But I'm not, I'm not gonna hold them to that because
4 that's not the basis of my ruling.

5 So, that's where we are.

6 SOLICITOR GHENT: Yes, sir.

7 THE COURT: Now, any other motions the State would like
8 for me to take up?

9 SOLICITOR GHENT: Your Honor, the only other motion is
10 I believe Mr. Allen's motion to exclude evidence of motive.

11 THE COURT: well -- and there's still pending a motion
12 to change venue, but I don't know if the State -- the
13 defense is still pursuing that or not after our voir dire.

14 SOLICITOR BARNETTE: Your Honor, there is one left, and
15 I think you, you originally heard it, but I think you
16 related -- the issue about bringing out the issues about
17 what happened afterward about house bombings, about
18 motorcycles, things like that. Obviously a motion in
19 limine. That has no relevance in this case whatsoever and
20 shouldn't even be mentioned.

21 THE COURT: All right. That's the only motion---

22 MR. MCGUIRE: I'll take that one up.

23 THE COURT: That's the only motion, other motion they
24 have.

25 MR. MCGUIRE: I think I would take the position that,

1 if I could connect it to nothing, then I would have to
2 agree. I concede that. However, if, if -- the victim in
3 this case was Brooke Center. Her father's Bobby Center.
4 He's a Harley Davidson motorcycle type fellow. The funeral
5 had thousands and thousands of bikers there from multiple
6 groups and gangs, and if I can, if I can connect it to show
7 a motive for a witness to be biased or not give honest
8 testimony, then I think it would be relevant and we'd have
9 to take it up---

10 THE COURT: Well, I'd have to take that up on a
11 case-by-case basis. I -- generally I would agree with the
12 state. I don't see any relevance to the questions that I
13 know that are before the Court. However, when you're
14 cross-examining a witness, if that becomes a question of
15 credibility, then --.

16 SOLICITOR BARNETTE: I, I understand.

17 Nothing will be mentioned in openings or anything like
18 that. Obviously if they connect it, and, of course, we'll
19 take that up at that point?

20 THE COURT: Yes, sir, it should not be mentioned in
21 opening, in opening statements. I'll agree with that. But
22 at this point in time I do not see a connection with the
23 indictments.

24 Now, as to you -- go ahead, Mr. Allen.

25 what else would you like to say?

1 MR. ALLEN: I didn't want to interrupt the Court.

2 THE COURT: You're not gonna interrupt me.

3 MR. ALLEN: Okay. As to the defense motion to exclude
4 evidence of motive, we're simply arguing that, pursuant to a
5 Rule 403 analysis, that this information of this particular
6 case would be so inflammatory that it would basically cause
7 the jury to become inflamed by this evidence and
8 basically -- well, might lead them to convict or sentence if
9 we, you know, depending upon when it's brought up.

10 THE COURT: I understood that that was the legal basis
11 for the motion. I---

12 MR. ALLEN: Yes, sir.

13 THE COURT: I've heard the motive talked about, but I
14 have not heard anyone explain to me exactly what they are
15 talking about as far as the motive evidence.

16 what are we talking about?

17 I don't know what you think they're gonna introduce,
18 and so I don't know how I weigh its inflammatory nature
19 against its probative value unless I know what it is.

20 MR. ALLEN: My understanding, Your Honor, is that the
21 statements that they offer -- they intend to introduce from
22 Mr. Blackwell that he basically did this, you know, shot
23 Brooke to get back at the father, Bobby Center, because of,
24 of his marital break-up and relationship between his wife
25 and Mr. Center.

1 In this particular case, the Court's gonna hear and the
2 jury will hear, of course, evidence, evidence concerning who
3 did the shooting and all that kind of stuff. That stuff is
4 not necessarily going to be in real question in, in this
5 particular case, and, therefore, they don't need to prove a
6 motive in order to establish that Mr. Blackwell committed
7 this particular act, and---

8 THE COURT: All right. Let me hear from the State on
9 that.

10 SOLICITOR GHENT: Your Honor, may I approach?

11 I have three cases that---

12 THE COURT: Yes, sir.

13 SOLICITOR GHENT: ---bear on the matter.

14 THE COURT: Don't hurt yourself.

15 Thank you.

16 SOLICITOR GHENT: I apologize. This neuropathy does
17 create problems.

18 THE COURT: Yes, sir.

19 SOLICITOR GHENT: Your Honor, first of all, as to
20 motive, without the evidence of motive, there is no context
21 whatsoever. You've got essentially a man appearing at a
22 swimming pool and shooting a little girl four, five times,
23 eight year old child, and virtually nothing more.

24 The cases I have handed up are cases that run parallel
25 to Rule 404(b), and the case by our Supreme Court, which set

1 forth clearly, State versus Adams, and I provided that to
2 the Court, at Page 8, quoting from United States versus
3 Masters, one of the accepted basis for the admissibility of
4 evidence of other crimes arises when such evidence furnishes
5 part of the context of the crime or is necessary to a full
6 presentation of the case or is so intimately connected with
7 and explanatory of the crime charged against the defendant,
8 and is so much a part of the setting of the case and its
9 environment that its proof is appropriate in order to
10 complete the story of the crime on trial by proving its
11 immediate context or the res gestae.

12 Your Honor, as he held this child in a headlock, he did
13 not shoot his estranged wife. He shot a symbol using
14 another symbol, a gift from her, repeatedly as this child
15 struggled to get away from him. This was not a random
16 target. He shouted to her words that made clear this was
17 revenge. Shot her with a final kill shot through the head.
18 An eight year old girl was chosen by him.

19 That goes towards res gestae, motive, and it also goes
20 towards where they're going because, while I have addressed
21 Doctor Schwartz-Watts, it must not be forgotten they have
22 two other experts waiting in the wings. One is Doctor
23 McKee, who, at a hearing, counsel said well, I haven't spoke
24 to him, but I'm familiar enough with him, I know what he's
25 gonna say. He's still waiting in the wings for us. And

1 we've got Doctor Corvin, who I've gotten on-line, and it's
2 case after case where he is used to establish mental
3 illness, insanity, any number of things testifying for the
4 State.

5 So---

6 THE COURT: Testifying for the State or for the
7 defense?

8 SOLICITOR GHENT: Excuse me. For the defense. I
9 apologize, Your Honor.

10 THE COURT: That's all right. Just want to be sure I
11 got that right.

12 SOLICITOR GHENT: Yes, sir, I didn't.

13 So, the, the point is that this -- these are words that
14 reflect planning, revenge, premeditation. Afterwards he
15 fled the scene. That -- also there is case law I would
16 respectfully submit, flight is evidence of guilty intent and
17 knowledge. He then flees the scene into the woods, and
18 apparently he had not calculated on how quickly Sheriff's
19 wright's officers could respond to something like this even
20 in the country. They were there almost immediately in
21 response to a 9-1-1 call.

22 The defendant then came out of the woods. He shot
23 himself, but he didn't shoot himself in the head. He shot
24 himself in the stomach in what has been called an attempted
25 suicide and it may well have been. That also is evidence of

1 guilty knowledge and intent. There is case law on point.

2 So, Your Honor, to take out the proof of motive is
3 essentially to raise the question why are we even here
4 because if we can not explain the context of a woman being
5 married to the defendant, leaving her home, her children,
6 married for years, to have an affair with her boss, and then
7 the woman brings his child to the scene, and there will be
8 other evidence I would submit is on point, I, I just don't
9 understand how that could possibly, in a case of this import
10 with a murder of a small child. Otherwise, like I say,
11 you've got a child just being struck by lightning. There is
12 no context.

13 Thank you, Your Honor.

14 THE COURT: Anything further, Mr. Allen?

15 MR. ALLEN: No, Your Honor.

16 THE COURT: All right. I'll deny the State's motion.
17 It's my finding that the information would be probative on a
18 number of fronts.

19 One is as to the intent or a showing of malice, which
20 has to be shown as an element of the crime. That has been
21 denied by the defense at this point in time. As well as to
22 for -- furnish a full presentation of what occurred at the
23 crime, explaining the actions of the parties or persons
24 involved.

25 So, I find that the probative value exceeds any

1 prejudicial effect and I'll allow it.

2 All right. Other defense motions?

3 I deny the defense motion.

4 SOLICITOR BARNETTE: Yes, sir.

5 THE COURT: All right. Now, the -- there was a
6 question concerning change of venue.

7 Is that still a motion, a motion by the defense?

8 MR. MCGUIRE: Not at this point.

9 THE COURT: All right. Any other defense motions that
10 I need to address pretrial?

11 MR. ALLEN: I can't think of any.

12 THE COURT: I can't think of any, but if you have
13 something I'll be glad to hear it.

14 All right. State have any other thing else you'd like
15 me to address pretrial?

16 (No response.)

17 THE COURT: All right. I did receive, I believe, some
18 additional names of witnesses from the, from the defense
19 concerning potential witnesses. I'll need to go over that
20 with the jury panel before we declare them as fully
21 qualified in the matter.

22 Let me check.

23 Have we heard for our wayward juror?

24 THE CLERK: No, sir, she has not arrived.

25 THE COURT: Okay. All right. We'll be in recess

1 briefly until we have everyone present for jury selection.

2 Thank you very much.

3 (WHEREUPON, a short recess was taken at this time.)

4 THE COURT: All right. I have had identified to me
5 three possible new witnesses by the defense, Norm -- is it
6 Uber or Uber?

7 I can't tell if that's an R.

8 Is it U-B-E---

9 MR. ALLEN: R.

10 MR. MCGUIRE: R.

11 THE COURT: Okay. Uber, Brittany Fowler, and Margaret
12 Musick.

13 MR. ALLEN: Musick.

14 THE COURT: Okay.

15 MR. ALLEN: M-U-S-I-C-K.

16 SOLICITOR BARNETTE: Could you repeat those names
17 again, Your Honor?

18 I'm sorry.

19 THE COURT: Yes, Norm Uber, Brittany Fowler, and
20 Margaret Musick, Musick.

21 And the additional witnesses for the State that have
22 not been identified by all jurors are Amy Nunnary and Reggie
23 Frye.

24 SOLICITOR BARNETTE: Your Honor, just one other thing.
25 The 9-1-1 person we were planning -- of course, I put

1 their personnel person. The person we expected to call is
2 sick. So, it's gonna be Scott Frances. It won't be that
3 one actually testify on---

4 THE COURT: You want to write that down on another
5 piece of paper?

6 SOLICITOR BARNETTE: I apologize.

7 THE COURT: This witness list is forever swelling. We
8 need to start the trial.

9 Did you get that name?

10 Somebody write that down on a piece of paper so I can
11 have that made an exhibit.

12 SOLICITOR BARNETTE: Yes, sir.

13 THE COURT: And then there was a list that was given to
14 us after the first day of qualification, which is been
15 marked as an Exhibit Number.

16 What is that Exhibit Number?

17 COURT REPORTER: Exhibit 5-A.

18 THE COURT: Exhibit 5?

19 COURT REPORTER: A.

20 THE COURT: A.

21 Pass that up please cause I'll need to inquire of
22 everyone again concerning those names.

23 All right. Before we bring the jury around, we have
24 made a list of, a strike list. I think -- do you have that
25 down there?

1 THE CLERK: Yes, sir.

2 THE COURT: If the attorneys will approach and check to
3 be sure that's the proper list from which we're going to
4 strike.

5 (Pause.)

6 THE COURT: All right. Look over that. See if you
7 have any problems with it. That's the list that we intend
8 to strike from.

9 (Pause.)

10 THE COURT: State have any problems with that list?
11 Is that okay?

12 SOLICITOR BARNETTE: It appears to be correct, Your
13 Honor.

14 THE COURT: All right. Defense.

15 MR. MCGUIRE: Not yet, Your Honor. No, sir.

16 THE COURT: All right.

17 (Pause.)

18 SOLICITOR BARNETTE: Hold up one second, Your Honor.
19 There may be one missing at the end of it. Looks like Keith
20 Sanders should be in-between Trejo and Grabarkiewicz, which
21 is two---

22 MR. YOUNG: 24.

23 SOLICITOR BULSA: 24.

24 THE COURT: Tonya, you want to fix that for us.

25 THE CLERK: Yes, sir.

1 THE COURT: The computer program given by the State
2 won't print this back out in the fashion we're doing it.
3 So, we're having to straight type them.

4 (Pause.)

5 THE COURT: See this is not a computer generated list
6 and they won't generate it the way we have agreed to do it.

7 I'll put on the record that what, what counsel has
8 agreed is to strike the jurors in the order in which they
9 were qualified.

10 Is that correct from the State?

11 SOLICITOR BARNETTE: Yes, sir, it is.

12 THE COURT: Is that correct from the defense?

13 MR. YOUNG: Yes, Your Honor.

14 THE COURT: Okay. So, by agreement, that's the way
15 we're doing it. It's just that the program doesn't allow us
16 to print it out in that fashion. We're having to make our
17 own list.

18 MR. MCGUIRE: Judge, if I could take this lull to just
19 put something on the record.

20 I don't think it's necessary, but we would just renew
21 all of our motions for cause with regard to the jurors and
22 renew our motions with regard to the ones that were excused
23 over our objection.

24 THE COURT: All right. I'm sorry. I didn't hear the
25 last of that.

1 MR. MCGUIRE: We would also renew our objections to the
2 couple of jurors that were excused over our objections.

3 THE COURT: I understand. Noted. The Court would make
4 the same rulings.

5 MR. MCGUIRE: Yes, sir.

6 THE COURT: All right. I'll ask the bailiffs to bring
7 the jury panel around to the courtroom.

8 THE BAILIFF: Yes, Your Honor.

9 THE COURT: Anyone who is seated in the gallery, except
10 for any security personnel, if you would, please move to the
11 back of the gallery please.

12 MR. MCGUIRE: Judge, can we request that any news
13 personnel be admonished not to film the jurors?

14 THE COURT: I asked the bailiffs to do that, but news
15 personnel are admonished not to film anyone involved in the
16 jury.

17 MR. MCGUIRE: Thank you, judge.

18 THE COURT: Thank you. We had already given that
19 admonition informally.

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: All right. Thank you.

22 (WHEREUPON, the following takes place within the
23 presence of the qualified jurors.)

24 THE COURT: All right. Thank you.

25 Good morning, ladies and gentlemen.

1 We're going to go over some matters with you at this
2 point in time. I will remind you that you all remain under
3 oath concerning your responses to the Court at this time.

4 Though our process there were some names that came up
5 as potential witnesses. Some of you have already reviewed
6 some of these names. Some of you didn't because they came
7 up after we already qualified some of the jurors. So, I'm
8 going to read over all names that were added after the
9 original three pages that were put in the jury room. If
10 you'll listen carefully to these names, and then I'll have
11 some questions about those individuals.

12 First of all, Norm Uber.

13 Brittany Fowler.

14 Margaret Musick.

15 Amy Nunnary.

16 Reggie Frye.

17 Scott Frances.

18 Christopher Cartee.

19 Brian Nodine.

20 Eric Westrup.

21 J.L. Hall.

22 Jacob Bishop.

23 Kevin Kirby.

24 Now, as to the people that I just identified to you, if
25 there's any member of the jury panel who's ever been related

1 by marriage or you're related by blood or if you've ever had
2 a close social or personal, personal business relationship
3 with any of the people whose names I just called, please
4 stand.

5 (Juror responds.)

6 THE COURT: Yes, ma'am, your name and number?

7 THE JUROR: Stephanie Partridge, 188.

8 THE COURT: Yes, ma'am.

9 THE JUROR: Amy Nunnary. She is the nurse at Reidville
10 Elementary School where my children attend.

11 THE COURT: I'm sorry. I couldn't hear you. Someone
12 coughed.

13 THE JUROR: She is the school nurse at the school that
14 my children attend.

15 THE COURT: All right. Would the fact if she, she
16 appeared as a witness, would that affect your ability to be
17 fair and impartial in the case?

18 THE JUROR: No, sir.

19 THE COURT: All right. Thank you, ma'am.

20 Anyone else?

21 (No response.)

22 THE COURT: Now, I gave each of you instructions
23 concerning your absence from the courthouse when you came in
24 for qualification.

25 If there's any juror who either failed or was unable to

1 comply with my instructions, I'd ask that you now please
2 stand.

3 (No response.)

4 THE COURT: It appears that all jurors have been able
5 to comply with my instructions thus far.

6 Now, we're going to begin a process whereby we are
7 striking the jury. We're going to call names. When your
8 name is called, I'll ask that you step out, come down the
9 center aisle. The clerk is right here in the center. If
10 you'll come to where her station is, turn and face the
11 back-door of the courthouse. Bring with you, if you have a
12 pocketbook or other things you brought into the courtroom,
13 bring those items with you.

14 If you are selected to serve on the jury, you'll be
15 having a seat in the jury box over here to my left. So,
16 you'll be going over there if you're selected. If you're
17 not selected you'll be going back to have a seat in the
18 gallery.

19 Madam Clerk, you can begin the jury selection process.

20 (WHEREUPON, a jury panel was selected at this time.)

21 THE COURT: We're now selecting the first alternate.

22 State has one strike. Defense has two.

23 (WHEREUPON, the first alternate juror was selected at
24 this time.)

25 THE COURT: Now picking the second alternate.

1 (WHEREUPON, the second alternate juror was selected at
2 this time.)

3 THE CLERK: Number 19, David---

4 THE COURT: We've completed the jury selection. Thank
5 you.

6 Any objections from the State to the jury selection?

7 SOLICITOR BARNETTE: None from the State, Your Honor.

8 THE COURT: Any from the defense?

9 MR. YOUNG: Yes, sir.

10 THE COURT: All right. I'm gonna ask, if you would, to
11 take these, these folks back into the jury room at this
12 time.

13 Ma'am, if you'll take the remaining jurors back to the
14 jury assembly room.

15 (WHEREUPON, the following takes place outside the
16 presence of all jurors.)

17 THE COURT: Mr. Young.

18 MR. YOUNG: Yes, Your Honor.

19 The defense would challenge the State's use of its
20 strikes. State used four strikes. Half of -- over half or
21 half of them -- they only used four of their five, but half
22 of which they used to exclude women. The defense would
23 challenge their strikes on that basis.

24 SOLICITOR BARNETTE: So, it's the two women he's
25 challenging, Your Honor?

1 THE COURT: Yeah, he's challenging those. If you can
2 give me a reason why they may of been stricken.

3 SOLICITOR BARNETTE: Well, 160, Ms. Marcotte, basically
4 she said she was in Michigan DOC. She said she---

5 THE COURT: I'm sorry.

6 She did what?

7 SOLICITOR BARNETTE: She was in Michigan Department of
8 Corrections. The thing we were worried about, obviously she
9 thought life without parole was a very serious thing. She
10 said she'd give it to the pedophiles, but she treated
11 murderers differently. So, we felt like that that was a
12 very good reason to strike her.

13 THE COURT: All right. And as to the -- were there any
14 other reasons for her?

15 SOLICITOR BARNETTE: And then on -- I'm trying to
16 remember who it was.

17 THE COURT: Laura Matherly, Number 88.

18 SOLICITOR BARNETTE: Your Honor, she was the one, if
19 you remember right, she said she could do it if it was her
20 child or in her family give, give the death penalty. She
21 didn't think she could give it to anybody else from that
22 standpoint. She said that several times. Matter of fact,
23 we had a big argument over her. It was really the only one I
24 objected to I think the whole time during our qualification.

25 THE COURT: All right.

1 MR. YOUNG: Your Honor, with regard to the first reason
2 given for Juror Number 160, Ms. Marcotte, there were two
3 male jurors who the State did not strike who were both
4 involved in corrections. One of them's wife was involved in
5 corrections at Tyger River and the other one---

6 THE COURT: Well, now, that was not that juror that was
7 involved in corrections.

8 MR. YOUNG: No, it was his wife.

9 THE COURT: It was his wife?

10 MR. YOUNG: Yes, sir.

11 THE COURT: Okay. Go ahead.

12 MR. YOUNG: And I believe it was Mr. Estes who had
13 served as a correctional officer at Perry who was not struck
14 by the State.

15 SOLICITOR BARNETTE: Well, very easy, Your Honor. She
16 was in the Department of Corrections for 12 years in
17 Michigan, which has never had the death penalty. She
18 believes that pedophiles is the only thing she can put to
19 death. She treated murderers totally different from that
20 standpoint, and obviously we felt like that she would argue
21 that life without parole would be a more severe penalty than
22 death. So, that's the reason we argued the way we did. I
23 mean I think their basis, there's no basis for it.

24 THE COURT: Yes, sir.

25 MR. YOUNG: Your Honor, as the Court is aware, each

1 reason given with -- by the State has to stand or fail on
2 its own. The State said that they struck Ms. Marcotte
3 because of her experience in corrections.

4 THE COURT: Well now he gave other reasons than that.

5 SOLICITOR BARNETTE: I gave other reasons too. That's
6 exactly right.

7 MR. YOUNG: He did give other reasons.

8 THE COURT: Yes, sir.

9 MR. YOUNG: But each reason given has to be race---

10 THE COURT: Yeah, well, I'm not---

11 MR. YOUNG: ---and gender neutral. There was a white
12 male who served in a prison here in South Carolina that the
13 state did not strike. So, on the basis of their proffered
14 reason being her correctional experience I don't think would
15 be considered gender neutral since---

16 THE COURT: Do you wish to offer evidence?

17 MR. YOUNG: Offer evidence that Mr. Estes -- no, I
18 think the record is clear that's Mr. Estes was a
19 correctional officer at Perry.

20 THE COURT: I understand, but my understanding -- now,
21 correct me if I'm wrong, Mr. Barnette, didn't you say that,
22 that you were concerned about the fact that Michigan did not
23 have the death penalty?

24 SOLICITOR BARNETTE: Michigan is never had the death
25 penalty in their state history ever, and when I questioned

1 her, I went through, and I think you'll remember, I went
2 through several questions with her because I wanted to make
3 sure -- and she treated murderers different from pedophiles,
4 and my biggest fear is that she thinks a life without parole
5 sentence is more severe than that death penalty. The only
6 time she could give the death penalty is, is if the person
7 was a pedophile and she treated those different than the
8 murderers.

9 THE COURT: All right. As to his other reasons, do you
10 have an argument concerning those?

11 MR. YOUNG: No, Your Honor.

12 THE COURT: All right. I find that the reasons given
13 by the State are not pretextual, and I'll allow that to --
14 strike to stand.

15 Do you wish to talk about the Matherly case?

16 MR. YOUNG: No, Your Honor.

17 THE COURT: All right. And your reasoning on Ms.
18 Matherly was?

19 SOLICITOR BARNETTE: Your Honor, she's the one --
20 remember I was -- the only thing I think I objected to their
21 qualification. That's the one we went back and forth quite
22 a bit. She's the one that said she could give it to a
23 member of her family, but she couldn't give it to anybody
24 else, and I believe the Court went ahead and qualified her,
25 and I objected and saying she wasn't qualified cause she

1 could really -- the only time she could give was anybody in
2 her family --

3 THE COURT: All right.

4 SOLICITOR BARNETTE: -- from that standpoint. She
5 didn't think she could sign it from that standpoint.

6 THE COURT: All right. I'm gonna take a short recess
7 and then I'll come back with a ruling.

8 Do you have any argument about that, about that reason?

9 MR. YOUNG: No, Your Honor.

10 THE COURT: Okay. Take a short recess. I'll come back
11 and announce a ruling.

12 (WHEREUPON, a short recess was taken at this time.)

13 MR. YOUNG: Your Honor, may---

14 THE COURT: Just one second.

15 MR. YOUNG: Sure.

16 (Pause.)

17 THE COURT: Yes, sir.

18 MR. YOUNG: Your Honor, I apologize to the Court and to
19 the solicitor.

20 Upon further review of the State's strikes, it appears
21 they used six strikes in total if you include alternate
22 strikes. Three of those strikes were to exclude
23 African-Americans from the jury. The defense would
24 challenge those strikes as well. Those strikes being Juror
25 Number 45, Mr. Cheeks, Juror Number 79, Mr. Fullenwinder,

1 and Juror Number 147, Mr. Lindsey.

2 THE COURT: I'll ask the State to state their---

3 SOLICITOR BARNETTE: Let me get my notes back out, Your
4 Honor.

5 THE COURT: ---reasoning for those strike.

6 SOLICITOR BARNETTE: Which ones is he challenging, Your
7 Honor, again if I could ask?

8 MR. YOUNG: Number 45, Mr. Cheeks, Number 79,
9 Mr. Fullenwinder, Number 147, Mr. Lindsey.

10 SOLICITOR BARNETTE: Okay.

11 MR. YOUNG: Those are Jurors Numbers 25, 27, and 32.

12 SOLICITOR BARNETTE: Number 45, Mr. Cheeks, he said a
13 doubt, a doubt in my mind I would not sign it period from
14 there. Seemed very pro-life juror from that standpoint. He
15 also had a previous CDV conviction along with that, Your
16 Honor.

17 THE COURT: Just one second. Let me write these down.

18 Previous CDV conviction, and he indicated that he would
19 have difficulty in signing the death sentence?

20 SOLICITOR BARNETTE: Right, no doubt in my mind I would
21 not sign it. I believe the Court was asking that question.
22 I think I followed up with it too from that standpoint.

23 Your Honor, going to Mr. Stacy Fullenwinder, also has a
24 criminal record, Your Honor. He said you have a lot on you
25 when asked about the law and talking to him about the death

1 penalty. He just gave the impression that he would not sign
2 the death warrant in that situation. We felt like he'd be a
3 pro-life juror from that standpoint, Your Honor.

4 And then Mr. Lindsey, Your Honor, he was the one
5 that -- oh, a couple reasons. One, pro-life juror.
6 Basically indicated he did not want to sign it from that
7 standpoint. Plus he also---

8 THE COURT: Which one are we on now?

9 I'm trying to take notes and I'm having a hard time
10 keeping up.

11 SOLICITOR BARNETTE: 147. I apologize, Your Honor,
12 147, which is John Lindsey. He was one of the alternates.

13 THE COURT: Just one second.

14 147, I've got him now. Thank you.

15 SOLICITOR BARNETTE: He indicated that he had a hard
16 time signing the document and so forth. And another thing,
17 he was the one that was afraid for his family. He was
18 scared to death that something would happen to his family,
19 one way or the other, since it's a death penalty case. Just
20 gives the impression that he was a pro-life juror, and
21 that's the reason we struck him from that standpoint, Your
22 Honor.

23 THE COURT: All right.

24 MR. YOUNG: Your Honor, with regard to the, the CDV
25 conviction on Mr. Cheeks, my records reflect that Mr. Estes

1 has a CDV conviction, which the State did not strike. He's
2 a white male. Mr. Lowe has a---

3 THE COURT: If you'll take a second I'll make notes.

4 MR. YOUNG: Oh, I apologize.

5 THE COURT: I'm trying to keep up with you guys, but,
6 you know, y'all are a little ahead of me on this.

7 which one did you say had a CDV conviction, Estes?

8 MR. YOUNG: Juror Number 70, Mr. Estes.

9 THE COURT: He was -- okay.

10 All right. Who else?

11 MR. YOUNG: Juror Number 154, Mr. Lowe, had a CDVHAN
12 charge -- and kidnapping charges that were dismissed.

13 THE COURT: Those were charges dismissed?

14 MR. YOUNG: Yes, sir.

15 THE COURT: All right.

16 MR. YOUNG: Juror Number 199, Ms. Partridge, has a
17 pending breach of trust charge.

18 THE COURT: A pending charge?

19 MR. YOUNG: Yes, sir.

20 THE COURT: All right.

21 MR. YOUNG: Juror Number 215 has a breach of peace
22 conviction.

23 THE COURT: Give me that name.

24 MR. YOUNG: Mr. Richardson.

25 THE COURT: Okay. He has a breach of peace?

1 MR. YOUNG: Yes, sir.

2 THE COURT: I didn't think we had that in South
3 Carolina.

4 Is that another jurisdiction?

5 MR. YOUNG: No, sir.

6 THE COURT: Must be a local charge. I don't know of a
7 breach of peace charge in South Carolina. That's
8 interesting.

9 Go ahead.

10 MR. YOUNG: And -- well, Your Honor, I think that those
11 jurors are similarly situated to the reasons given for
12 Jurors Number 45, Mr. Cheeks, and Number 79,
13 Mr. Fullenwinder, a criminal record, and, therefore, I think
14 that those reasons are pretextual. Those are similarly
15 situated jurors that were not struck by the State.

16 THE COURT: All right. Hear from the State.

17 SOLICITOR BARNETTE: Your Honor, first thing, I think I
18 gave my race neutral reasons from that standpoint.

19 Mr. Estes is a pro-death (sic) juror, if you just look
20 from the facts of the situation, and interviewing him from
21 that standpoint. It was -- he worked at the DOC for a short
22 period of time. I think it was six months, if I remember
23 right, through the testimony, and answering questions about
24 Mr. Marcotte, you know, that's being -- she was there for 12
25 years at least if I remember right from that standpoint.

1 The -- Mr. Estes, from that standpoint, it doesn't
2 match up what he's saying because our reasons is cause
3 they're pro-life jurors on top of that. It's just not
4 merely -- they do have the convictions as a factor in this
5 situation, but also---

6 THE COURT: You took from their answers then---

7 SOLICITOR BARNETTE: Took from the answers.

8 THE COURT: ---that you felt they were being more
9 pro-life than not?

10 SOLICITOR BARNETTE: And if you look at him, and you
11 look through my questioning or Mr. Bulsa's questioning, I
12 can't remember who, who did which one, it was based off our
13 questioning of those individuals from that standpoint.

14 THE COURT: Anything further from the challenge?

15 MR. YOUNG: No, Your Honor.

16 THE COURT: All right.

17 (Pause.)

18 THE COURT: All right. In reviewing the, the reasoning
19 given by the State for those strikes, I find that it is not
20 pretextual, and I do not find that it indicates a pattern of
21 discrimination, and I will deny the motion.

22 MR. YOUNG: Your Honor, I don't have them printed out,
23 but I would like to offer just Court records concerning the
24 jurors that I argued were similarly situated, just their
25 local Court records.

1 THE COURT: You're saying for the record?

2 MR. YOUNG: For the record.

3 SOLICITOR BARNETTE: And, Your Honor, one other thing
4 too, the questionnaires that was on these jurors, we'll be
5 glad to submit those as part of the -- to cause I think on
6 some of the questionnaires too they talked about the
7 different things that they've done that we do not like
8 concerning this situation.

9 MR. YOUNG: I'd join in that request.

10 THE COURT: All right. So, you want all of the
11 questionnaires made an exhibit?

12 MR. YOUNG: Just the 35.

13 THE COURT: Just the 35?

14 SOLICITOR BARNETTE: And, Your Honor, I don't have an
15 objection from that. Like I said, we based a lot of our
16 things off the questionnaire also, Your Honor.

17 THE COURT: All right. Of the qualified jurors, the 35
18 questionnaires will be made a Court's Exhibit.

19 MR. YOUNG: Thank you, Your Honor.

20 THE COURT: Anything else?

21 MR. YOUNG: No, sir.

22 THE COURT: All right. Anything else from the State---

23 SOLICITOR BARNETTE: No.

24 THE COURT: ---concerning jury selection?

25 SOLICITOR BARNETTE: No, sir.

1 THE COURT: All right. I'll ask the bailiffs to bring
2 around those jurors who were not selected to the courtroom.

3 (Pause.)

4 THE COURT: I do want to put on the record that my
5 ruling in both Batson motions would be that there was no
6 showing of any purposeful pattern of discrimination in
7 either case. That's my finding.

8 MR. MCGUIRE: And, judge, if we could just supplant,
9 supplant the record just briefly.

10 In our view Mr.---

11 THE COURT: You've already argued your motion.
12 Are you making a new motion?

13 MR. MCGUIRE: I would renew it and add some
14 information.

15 THE COURT: Well, it's already on the record.

16 MR. MCGUIRE: Yes, sir, and what I add is that---

17 THE COURT: It's already on the record. If you're
18 making a new motion, I'll hear it.

19 MR. MCGUIRE: I'm making a new motion.

20 THE COURT: Okay. Then I'm gonna have to stop the jury
21 from coming around.

22 Stop the jury from coming around.

23 THE BAILIFF: They're already here.

24 THE COURT: Hold them outside please.

25 Yes, sir.

1 MR. MCGUIRE: I apologize, judge, I just don't want
2 to---

3 THE COURT: Well, there was a time for making the
4 motion, and I allowed you to make another one after I'd gone
5 out to consider the first one. Now we're making a third
6 one, and I, I know you like to get everything on the record
7 that you'd like to get on, but it needs to be done in a
8 timely fashion.

9 MR. MCGUIRE: And I apologize, judge.

10 THE COURT: Thank you.

11 MR. MCGUIRE: Yes, sir.

12 Challenge the same jurors challenged by Mr. Boyd, Boyd
13 Young in the last motion, and the only thing I would add is
14 that Juror Number 266, Mr. Van Der Plaat, also gave
15 similarly life leaning or pro-life comments in his voir
16 dire, and he's a white male similarly situated to the ones
17 challenged by -- in our last motion.

18 SOLICITOR BARNETTE: No, Your Honor. I mean we can
19 keep dissecting every juror if they want to. I mean---

20 THE COURT: We would.

21 SOLICITOR BARNETTE: This is crazy, but I mean this is,
22 this is just unreal because, like I said, he was an
23 engineer. He has a daughter that's four years old. He said
24 that he would weigh and balance the things going through
25 that. He could sign it in the situations he felt like it

1 was warranted from that situation, and I totally disagree
2 with their findings with Mr. Van Der Plaat cause he said he
3 could definitely do it as far as---

4 THE COURT: Well, I think we're getting into
5 subjective, your subjective weighing of their statements as
6 well as the State's subjective weighing of their statements.
7 Those, obviously, are, are, I guess to a certain degree,
8 those are all in the eye of the attorney, can be taken
9 different ways.

10 Again, I don't find those to, to exhibit any purposeful
11 racial discrimination. It seems to me that you're weighing
12 the factors concerning their positions on the death penalty.
13 I find that to be race neutral.

14 MR. MCGUIRE: Yes, sir.

15 THE COURT: Okay. Same ruling.

16 Now we can bring in the jury panel. Thank you.

17 Thank you, Ben.

18 (WHEREUPON, the jurors not chosen in the case were
19 excused at this time.)

20 THE COURT: Could you step out and ask them to bring in
21 the jury panel for me?

22 THE BAILIFF: Yes, sir.

23 THE COURT: Thank you, sir.

24 MR. MCGUIRE: Judge, do you --?

25 THE COURT: Yes, sir.

1 MR. MCGUIRE: I was just gonna see if you---

2 THE COURT: Just one second please. Thank you.

3 Close the door please.

4 MR. MCGUIRE: I'm sorry. I'm was just gonna ask if you
5 want us to stand when you swear the jury.

6 THE COURT: No, sir.

7 MR. MCGUIRE: Okay.

8 THE COURT: I do not. I don't intend to swear the jury
9 at this moment. What I intend to do is the -- their cars
10 are in the parking garage at the city. They have to be
11 moved to the hotel. So, I'm direct -- I'm gonna direct them
12 to take their cars to the hotel, give them instructions on
13 their behavior. They will check in and be taken into
14 custody by SLED at that location, and then be brought here
15 to be sworn.

16 MR. MCGUIRE: Yes, sir.

17 THE COURT: They'll be sworn after they've checked into
18 the hotel.

19 MR. MCGUIRE: Yes, sir. Thank you.

20 THE COURT: I don't have anyway to control them going
21 to get their cars cause they may be in different locations.

22 MR. MCGUIRE: Yes, sir.

23 THE COURT: Okay. Any objection to that?

24 MR. MCGUIRE: Oh, no, none at all.

25 THE COURT: All right. Now let's bring the jury in.

1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: All right. All right. Ladies and
4 gentlemen, you have been chosen as jurors in this case, and
5 what we're going to do at this point in time, I realize that
6 your automobiles are probably over at the city garage. I'm
7 going to ask that you go there, retrieve your automobile,
8 and move those to the Marriott parking garage under the
9 Marriott. And when you go in the Marriott, you will see --
10 these gentlemen here are from, from my group that's going to
11 be handling the jury.

12 They will assist you, if you have any questions in
13 getting your car there or where you need to go. When you
14 get there, there will be people there with SLED who will
15 assist you again and form you into a group. You will be
16 brought back to the courthouse. I expect you to arrive
17 around 1:30, somewhere in that neighborhood.

18 We will have lunch for you at that time here at the
19 courthouse. Shortly thereafter we will be starting the
20 trial, and I will tell you, at that time, you will be taken
21 an -- taking an oath to decide this case based upon the law
22 and the evidence presented in this courtroom during the
23 trial.

24 So, my instructions concerning your behavior for this
25 brief period will continue while you retrieve your car, get

1 that over to the hotel, and then check in with the folks
2 from SLED there, and then they will give you your
3 instructions from that point forward.

4 So, again, my instructions are, every time you've left
5 the courthouse, not to discuss the case with anyone, not
6 allow anyone to discuss it with you. Don't listen to,
7 watch, or read media reports concerning the case, and if
8 anybody were to contact you about your service on the jury
9 panel, please report that when you're back in front of me.

10 So, again, these gentleman will take you out. If you
11 need any assistance in getting your automobile and getting
12 it to the Marriott, they'll be glad to help you in that
13 regard, and then you'll be checking in with the SLED agents
14 there, and they will give you directions from that point in
15 time.

16 Thank you very much for your patience and cooperation
17 this morning. At this time I'll ask you to step out with
18 the agents and they will assist you.

19 Thank you very much.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. I anticipate the jury arriving
23 here around 1:30. We'll allow them time to eat their lunch.
24 So, shortly after 2:00, whenever they're ready, you should
25 be ready at two o'clock. We should be in a position to have

1 them sworn at that point in time.

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: All right. We're in recess until that
4 time. Thank you.

5 MR. YOUNG: Your Honor, I had given to the State---

6 THE COURT: Just one second.

7 Yes, sir.

8 MR. YOUNG: ---just two exhibits to make a part of the
9 record concerning jurors, Mr. Richardson and Mr. Lowe. I
10 understand that, according to the State, mine may be
11 incorrect in the Court records on Mr. Lowe.

12 SOLICITOR BULSA: That's correct. That was the wrong
13 date of birth. It might of been his father, but not the
14 correct date of birth with Mr. Lowe we have, and also the
15 Mr. Lowe we had there's no record showing on his rap sheet.
16 No arrest or anything.

17 MR. YOUNG: Okay. And there was something with regard
18 to Mr. Fullenwinder.

19 SOLICITOR BARNETTE: Your Honor, Mr. Fullenwinder, we
20 went back and checked and whatever from that standpoint, but
21 he was -- and I remember this came up when he was being
22 qualified in the main qualification that Monday morning last
23 week. I think the Court looked at me and everything and he
24 had mentioned a pistol conviction he had, and we checked and
25 verified there was a pistol -- obviously it carries one year

1 from that standpoint.

2 THE COURT: Yeah, it's not, not over a year.

3 SOLICITOR BARNETTE: Right. He's been convicted of
4 carrying a pistol as well as shoplifting, Your Honor. The
5 shoplifting appears to be a bench trial from
6 September 27th 2005. Carrying a pistol, he was convicted
7 of July 17th, 2007, Your Honor. And he also has
8 numerous -- he had a conviction for possession of marijuana
9 and also been charged from different drug charges than
10 marijuana, Your Honor. So, just put that on the record
11 since I---

12 THE COURT: Any objection -- I don't know what y'all
13 are wanting to put in. It wasn't handed to me during the
14 hearings. So --.

15 SOLICITOR BARNETTE: Your Honor, I'd like to verify
16 those documents before---

17 THE COURT: It's interesting.

18 SOLICITOR BARNETTE: ---before those are handed in as
19 Court Exhibits. I'd like to verify that information on the
20 documents. Like I said, we---

21 THE COURT: Again, they were not made exhibits during
22 the hearing. I'll take a look at them once you've had a
23 chance to review them.

24 MR. YOUNG: Based on the State's assertions, and as
25 Your Honor know, we were denied access to the rap sheets. I

1 just ask that the rap sheets for the 35 qualified jurors be
2 made a part of the record as well. I don't know if they're
3 other similarly situated jurors that they didn't strike
4 based on the record because we didn't have their rap sheets.

5 SOLICITOR BARNETTE: Your Honor, let me just put on the
6 record here, they keep talking about these records and
7 everything. We made basic -- our decisions on their
8 questioning in this courtroom the past week or so, and from
9 that standpoint, the same way they -- I could ask for them
10 to state every strike they did. They did it basically for
11 that and they struck similar patterns from their standpoint.

12 THE COURT: Well, you didn't, you didn't make the
13 motion.

14 SOLICITOR BARNETTE: And I, I agree. I don't -- you
15 know, I'm not into all that.

16 THE COURT: He has made the motion. Now the question
17 is whether or not the rap sheets for all 35 qualified jurors
18 should be put in.

19 SOLICITOR BARNETTE: I'll leave it up to the Court's
20 discretion. We obviously have them available to us. So --.

21 THE COURT: I will then have those made a part of the
22 record.

23 SOLICITOR BARNETTE: Yes, sir, I'll have my---

24 THE COURT: I'll point out they were not argued to me
25 during the Batson hearing.

1 Thank you very much.

2 Court's adjourned.

3 SOLICITOR BARNETTE: Thank you, Your Honor.

4 (WHEREUPON, Court was in recess for the lunch hour.)

5 THE COURT: All right. Is the State ready to proceed
6 at this time?

7 SOLICITOR BARNETTE: State's ready, Your Honor.

8 THE COURT: Defense ready?

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: All right. Let's bring the jury in.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: All right. Do we have the alternates
14 seated?

15 THE BAILIFF: We're waiting for the alternate.

16 THE COURT: We need to find an alternate, the other
17 alternate.

18 Ma'am, you have to sit down here on this end.

19 (Juror complies.)

20 THE COURT: Thank you.

21 All right. Good afternoon, ladies and gentlemen. I
22 hope we've taken care of you well thus far.

23 At this point in time I'm going to ask the clerk to
24 administer an oath. I know you've been sworn before. That
25 was regarding your responses to the Court's inquiries. At

1 this point in time I'm going to have you sworn concerning
2 your duties and responsibilities in the trial of this case.

3 So, Madam Clerk, please swear, swear the jury panel for
4 me.

5 (WHEREUPON, the jury panel was placed under oath at
6 this time.)

7 THE COURT: Now, if there was any juror who either
8 failed or refused to take the oath just administered by the
9 clerk, I'd ask that you now please stand.

10 (No response.)

11 THE COURT: And it appears that all jurors have been
12 sworn concerning your responsibilities in this matter.

13 Now, before we begin this trial I want to go over some
14 things with you. What I'm going to tell you now is not
15 intended to be a charge concerning the law that you will
16 apply in this case. I do want to go over some things to
17 kind of orient you as to the courtroom and who's involved,
18 what our roles and responsibilities are in the trial of the
19 case.

20 I'm, I'm doing that primarily because, for most of you,
21 I would think this is your first experience in, in actually
22 trying a case on a jury. Some of you I think may of had
23 prior experience, but most of you haven't. So, I want to go
24 over with you some things so that we have a good
25 understanding of what we're doing here and what this, this

1 trial is about and what your responsibilities are.

2 I would expect, for those of you who have never been in
3 this position before, most of what you might know about the
4 trial of the case you would of learned from television shows
5 you've watched or movies that you've seen. Perhaps you've
6 viewed a trial on television. They use to have those on
7 start to finish. They don't do that much anymore. But at
8 any rate, those -- the television shows and movies seem to
9 be a, a primary source of information for a lot of people
10 who serve on juries.

11 I want to point out to you that, while those are
12 interesting, they always have interesting plots and
13 rivetting action and things of that nature, those sources of
14 information are intended primarily for your entertainment.
15 They're, they're meant to keep your attention. I point out
16 to juries quite often it's an -- interesting to see that an
17 event can occur and a trial is held and it's all ended in
18 the space of an hour and they still have time to stop for
19 television, I mean commercials on television four or five
20 times. So, obviously you know from what you -- your
21 experience already with this Court, they take what's called
22 literary license with the, with the scripts in those cases.
23 So, those things are intended to entertain you, and I can
24 assure you what you're engaged in now is intended for
25 anything but your entertainment.

1 What you're engaged in is a search for the truth, an
2 effort to see that justice is done for the parties that are
3 before the Court. You're engaged in a fundamental part of
4 our democracy. I hope that if -- you realize that if you
5 were to go to other countries around the world and look at
6 the judicial systems of those countries, you would learn
7 fairly quickly that most of those judicial systems do not
8 allow direct participation by citizens in the decision
9 making processes that go on in the Courts of those
10 countries.

11 Our system is different. We take citizens, citizens
12 from their ordinary walks of life, bring them into the
13 courtroom, and, as jurors, put you in an important decision
14 making process in our Court system. I want to thank you
15 very much for your willingness to accept that responsibility
16 in our Court today.

17 Now, searching for the truth and trying to do justice
18 between parties I will tell you will be a slow, it will be a
19 deliberate process. But you know, if I had stopped you
20 outside the courtroom and asked you what you would expect a
21 search for the truth to be like, I would expect you would of
22 told me that it ought to be a slow process. It ought to be
23 deliberate, deliberate. Sometimes it ought to be repetitive
24 so that we're sure we get it right, and that's, that's what
25 this is. It's a search for the truth and sometimes it will

1 be slow. Sometimes it will be repetitive. But I hope you
2 understand why we do that, and why we hold the, the hearings
3 in this fashion.

4 I want to tell you that this courtroom is a place of
5 honor. It's dedicated to the preservation of citizen's
6 rights through the Constitution both of this state and of
7 the United States.

8 Now, the attorneys who are appearing in this case are
9 here to represent their client's interest. I'm sure they'll
10 do an excellent job in presenting those cases before you
11 during this trial. But first and foremost, these lawyers
12 are also officers of this Court. At some point in time
13 they've appeared before this Court or another Court in this
14 state. They've taken an oath and that oath is prescribed
15 under the rules of our Court system. Part of that oath is
16 that they are sworn to assist you in your search for the
17 truth during this trial. So, you can expect that the
18 attorneys will act in a reasonable, a professional, and an
19 ethical manner in the presentation of their client's cases
20 before this Court.

21 I'll, I'll remind you that you've now come in this
22 Court and you've taken an oath to decide this case based
23 upon the law and the evidence presented during the trial.
24 You too are now expected to act in a reasonable, a
25 professional, and an ethical manner in the discharge of your

1 duties as jurors in this case. And, again, I want to thank
2 you for your willingness to accept that responsibility in
3 this matter.

4 Now, I began this case earlier last week by going over
5 with you the indictments in this case, and I will tell you
6 again about those indictments. I'm not going to read them
7 to you at this point in time. We'll get to that later in
8 the trial when, when I charge you concerning the law on
9 these matters. But I've explained to you earlier that the
10 indictments are the documents that bring this case before
11 this Court. They represent the documents that inform the
12 defendant of the charges that have been lodged against the
13 defendant, and they inform this Court of the charges that
14 are to be tried.

15 There are two indictments in this case. The first, the
16 first one I'll mention is Case Number 2009-GS-42-3610. That
17 indictment is for the offense of murder. The second
18 indictment that we have in this case is Case Number
19 09-GS-42-3609. That indictment is for the offense of
20 kidnapping.

21 To those indictments the defendant has pled not guilty.
22 That plea, under our law and our Constitution, places the
23 burden of proof upon the State. That burden of proof is to
24 prove the allegations that are contained in the indictments
25 by proof beyond a reasonable doubt.

1 Now, the indictment, again, is simply the charge that
2 brings this case into the Court, into the Court. These
3 documents do not constitute evidence in this case, and can
4 not be used by a jury in any manner in determining the guilt
5 or the innocence of the defendant based on any type of
6 evidentiary status. Again, they are simply the documents
7 that notify us of the charges that are to be tried and
8 notify the defendant of the charges against him.

9 Now, in this case, it will be your duty, ladies and
10 gentlemen, at the close of this trial, to determine whether
11 or not the State has met its burden of proof in this case as
12 to those indictments. So, your purpose in this trial is to
13 find and determine the facts. I will tell you that you are
14 the sole judges of the facts in this case. I will serve as
15 the presiding officer during the trial. It will be my
16 responsibility to, to rule on questions of evidence or
17 questions concerning the appropriateness of questions that
18 are being asked, things of that nature, to see that the
19 proper procedure is followed, followed.

20 I will tell you that you should not take from anything
21 that I might say or do during the discharge of my duties as
22 the presiding officer in this trial to, in anyway, indicate
23 that I have an opinion one way or the other as to how you
24 determine the facts in this case. I will tell you now that
25 the law does not allow me an opinion on that subject. I do

1 not have an opinion as to how you should determine the facts
2 in this case. I remind you that you are the sole judges of
3 the facts in this case.

4 You are to determine those facts from the testimony you
5 hear and the other evidence that's introduced into the
6 record of this Court. It's up to you to determine the
7 inferences which you may feel might be properly drawn from
8 the evidence that's placed into the record in this case. I
9 will tell you it's especially important that you perform
10 your duties of determining the facts in this case diligently
11 and conscientiously because, ordinarily, there's no way to
12 correct an erroneous determination of facts made by a jury.

13 Now, on the other hand and with equal emphasis, and I
14 will tell you that the same law that makes you the sole
15 judges of the facts makes me the sole judge of the law in
16 this case. You must accept and follow the law as I give it
17 to you even though you may disagree with that law. I can
18 not tell you what the facts are. You can not disagree with
19 me concerning what the law should be or is. Your job is to
20 take the law as I give it to you, then apply that law to the
21 facts as you determine those facts from the testimony of the
22 witnesses and the other evidence introduced during the
23 trial. After that you should be in a position to render a
24 just, a true, and a fair verdict under the oath that you
25 have taken as jurors in this case.

1 Now, I will caution you, until I direct you to begin
2 your deliberations in this case, to begin your discussions
3 among yourselves, you should not discuss the case with
4 anyone including your fellow jurors and, and -- or anyone
5 else who's involved in this case. This includes any type of
6 discussion whatsoever concerning any of the matters that
7 might be involved in this case.

8 I hope you realize that we've gone to a great deal of
9 trouble to pick a juror, jury with an open mind concerning
10 the questions that might be before this Court. I hope you
11 realize that if you begin to discuss any of the people
12 involved, the, the personalities that might be involved, the
13 issues that might be involved during the case based on
14 partial information that you've received at this time, you
15 may begin to make up your mind concerning the questions that
16 are involved in this case based on partial information.

17 I want you to wait until you've heard all the evidence
18 to begin discussions. I want you to wait until you've heard
19 the arguments by the attorneys, and I want you to wait until
20 you've heard the law charged to you by me, the judge. Only
21 then will you have all of the information that you need to
22 begin discussions or begin the process of making up your
23 mind.

24 So, again, I'll caution you, you'll get tired of
25 hearing me say this, because every time you step outside of

1 the courtroom I'll remind you not to begin any discussions
2 about this case even among yourselves until I've asked you
3 to begin your deliberations in this case.

4 Now, once the case has been submitted to you for your
5 deliberations, you must discuss this case only in the jury
6 room and only among your fellow jurors. Again, it's
7 important that you keep an open mind and not decide any
8 issue in this case until all of the information has been
9 presented to you. At the close of this trial it will be
10 your solemn responsibility to determine the guilt or the
11 innocence of the defendant, and your verdict must be based
12 solely upon the evidence as presented to you during the
13 trial and on the law as I instruct you at the close of the
14 trial.

15 Now, in just a few minutes I will give the attorneys
16 the opportunity to begin the trial with their opening
17 statements. Attorneys are allowed to directly address the
18 jury on two occasions during this, this trial, and that will
19 be during opening statements and during closing statements.

20 Now, I will caution you or just make you aware, I don't
21 guess I'm cautioning you, but I'll make you aware that
22 statements made by lawyers during the trial do not
23 constitute evidence in a case. The only evidence that you
24 will hear in this case will be the testimony of witnesses
25 who've been sworn to tell the truth. They'll testify from

1 this witness stand and then the other items of evidence will
2 be documents or other information that will come into the
3 record either through the testimony of those witnesses or,
4 of course, evidence can come into the record by agreement of
5 the attorneys.

6 But, again, statements made by lawyers, both at the
7 beginning of the trial and at the close of trial, while they
8 serve to explain what the trial is about perhaps at the
9 beginning of the trial and sum up the evidence that you've
10 heard from their client's prospective at the close of the
11 trial, those statements themselves do not constitute
12 evidence in the case, and can not be used by a jury as
13 evidence in the case in deciding the ultimate verdict in
14 this matter.

15 Now, from time to time during the trial there may be an
16 issue that's been raised by one of the attorneys or they may
17 raise an objection concerning a matter or an attorney may be
18 attempting to introduce some type of evidence that's
19 objected to. If it's my belief that the discussion of those
20 issues may lead to a discussion of some matter that may be
21 inadmissible under the rules of evidence that govern the
22 admission of evidence in our Court system, if I believe the
23 discussion is moving in that direction, I may ask you to
24 step outside the jury room while I discuss that with the
25 lawyers and reach a decision on that matter.

1 Please don't take from the fact that I've asked you to
2 leave the courtroom during those discussions somehow to
3 indicate to you that I have some opinion as to how you
4 should determine the facts in this case. I hope you realize
5 that it's just me doing my job, and my job is to see that
6 you decide the case based on properly admitted evidence
7 under the rules that govern the admission of evidence in our
8 Court system.

9 So, I'll complete those discussions with the lawyers.
10 I will bring you back into the courtroom once that's been
11 completed. I will announce whatever ruling I may have made
12 during that break, and then we'll proceed with the trial.
13 But it is not an effort by me somehow to indicate to you, in
14 any manner, how you should determine the facts in this case.
15 I'll explain to you, again, you're the sole judges of the
16 facts in this case. I have no opinion concerning those
17 matters.

18 Now, in determining what the facts are in any case, it
19 will be necessary for the jury to decide whether or not the
20 testimony that you hear during the case is believable.
21 While it's my responsibility to rule as a matter of law, of
22 law as to the admissibility of evidence, it's your, it's
23 your responsibility to determine the credibility or the
24 believability of the testimony that you hear during the
25 trial. In deciding whether to believe a witness, you have

1 the right to consider your own good common sense in doing
2 so. Everyday you use your common sense as -- to determine
3 what you choose to believe and what you choose not to
4 believe, and this trial will be no different. Do not leave
5 your common sense outside of the courtroom during this, this
6 trial.

7 You have the right to consider anything that's in the
8 record that will help you evaluate the testimony of the
9 witnesses who testify. You have the right, as the sole
10 judges of the facts, to believe all of, part of, or none of
11 what a witness may tell you. You have the right to believe
12 one witness against all the others. You have the right to
13 believe all the others against one. You're the sole judges
14 of the facts. So, you're the sole judges of the weight, the
15 credibility, and the believability of the testimony that you
16 hear during the trial.

17 You have the right to consider such factors as whether
18 or not you believe a witness may have a stake in the outcome
19 of the trial, whether or not a witness exhibits some bias or
20 prejudice one way or the other, whether or not a witness
21 actually had the ability to know, see, or appreciate, or
22 relate the facts under which that witnesses, about which
23 that witness is testifying, and perhaps some people think
24 it's most important of all, that will be up to you, the
25 witness stand is always right in front of the jury box, and

1 the reason for that is that allows you to view the witnesses
2 as they testify, as they speak, the way they speak.

3 You have the right to consider, again, anything that's
4 in the record in making a determination as to the
5 credibility or the believability of the testimony that you
6 might hear.

7 Now, Mr. Van Der Plaat?

8 THE JUROR: Yes.

9 THE COURT: I'm going to appoint you as the foreperson
10 of the jury. The reason I am doing that -- I usually do
11 this at the close of the trial. However, I'm, I'm gonna
12 appoint you as the foreperson of the jury because the jury
13 may be constituted for some time. You're sequestered.

14 So, if the jury has some question or issue that you'd
15 like to bring up with -- to the Court, please inform Mr. Van
16 Der Plaat. He will be communicating with the Court on your
17 behalf if that's necessary. At the close of the trial
18 you'll have some additional responsibilities. I'll explain
19 those to you during my final charge concerning the law, but,
20 at this time, I am going to appoint you as the foreperson of
21 the jury.

22 From now on, as you come back into the courtroom, you
23 will have this seat where this gentleman is seated right
24 here in the, in the future.

25 The alternates always sit against the wall over here.

1 So, you'll always be in that location.

2 The rest of you, just fill in wherever you want to.

3 There's no assigned seating in the jury box other than
4 those three seats. So, you can sit anywhere you'd like
5 other than either in this chair or the two chairs against
6 the wall.

7 Now, I want to be sure that I have not violated
8 anyone's rights in my opening comments to you.

9 Does the State have an objection, objection to my
10 opening comments?

11 SOLICITOR BARNETTE: No, sir.

12 THE COURT: Any objection from the defense?

13 MR. MCGUIRE: No, sir.

14 THE COURT: All right. Now, ladies and gentlemen, I've
15 explained to you that the State has the burden of proof in
16 this case. That means we will allow the State to go first
17 in its opening argument followed by the defense. Then the
18 State will go first in the presentation of evidence in the
19 case followed by any evidence the defense chooses to
20 present.

21 Once all the evidence is presented, we'll have closing
22 arguments. After the closing arguments I'll charge you
23 concerning the law to be applied, and then this case would
24 be turned over to you for your deliberations once that has
25 occurred. So, that's the, the steps that we will go through

1 in presenting the case to you.

2 So, at this time, the State can begin with its opening
3 comments.

4 Mr. Bulsa.

5 SOLICITOR BULSA: Thank you, Your Honor.

6 THE COURT: You may proceed.

7 SOLICITOR BULSA: Please the Court, Your Honor.

8 Good afternoon, ladies and gentlemen.

9 On July 8th, 2009, eight year old Heather Brooke
10 Center was seized from the car she was riding in. The car
11 had arrived at 244 Ridings Road. It was parked, she was
12 seized, drug towards the side of the trailer at that
13 location, and shot brutally four times. The fatal blow was
14 a wound to the head through and through with a .357 magnum.
15 She was shot and killed by the defendant, Ricky Blackwell.
16 You will hear the story of horror of that day, her last day
17 on Earth.

18 Now, y'all've been through this process for about a
19 week now. You've been introduced to the attorneys. We've
20 talked to you. We've actually got to know you a little bit.
21 But you never met the parents of Heather Brooke Center.
22 This is Kelly and Bobby seated there in the chair where I
23 just got up from. Right there in that chair. They lost
24 their young daughter that day to a tragedy, something that
25 needlessly did not have to happen.

1 You're gonna hear how Heather Brooke Center came to be
2 at that location. The defendant was separated from his
3 wife, Angela. The defendant use to live at the trailer next
4 to 244. He lived at 248. When they separated, he and
5 Angela, he moved away from that location to a residence on
6 Martin Camp Road.

7 So, I submit to you he wasn't even to be there that
8 day. Angela had been dating Bobby Center. Bobby and Kelly
9 have been divorced. Angela had begun dating Bobby. Bobby
10 had let Angela take Brooke to spend the day with her.
11 Angela was going to 244 Ridings Road where her grandchildren
12 were living. She was going to visit her grandchildren, but
13 Brooke spent some time with them.

14 So, she drove up into the yard. When she drove up into
15 the yard she got out of the car to get a little dog. She
16 didn't want Brooke to get bit. So, she went out to get a
17 little -- the dog. At that time the defendant, was going to
18 the passenger side, seizing Brooke, put her in a chokehold,
19 dragged her to the side of the house at gunpoint while
20 taunting Angela with words to the effect of what will Bobby
21 think of this.

22 Angela's grandchildren were inside. They heard grandma
23 drive up. I think they called her Nanny. They heard Nanny
24 drive up. They ran out so see her. Angela's son-in-law,
25 Mark, Mary Bryant, heard the car, went out behind his

1 children. He saw how the defendant had Brooke, saw the gun,
2 tried to get his boys back in the house, afraid for them.
3 All the while the defendant was dragging poor Brooke away
4 and then shot her four times.

5 Angela fled inside the house, grabbed the youngest
6 grandchild, fled out the back-door, running to get away.
7 The defendant fled around the back of the house arguably
8 chasing Angela.

9 The police were called, the police arrived, and began
10 their search. After first checking on Brooke, who was left
11 lying prone in the driveway with those multiple gunshot
12 wounds, the police began searching for the defendant.

13 After a few minutes they actually saw him come from
14 some -- a treeline out back from behind the house he use to
15 live at with the murder weapon. A short stand-off ensued.
16 He essentially laid on the ground refusing to give the gun
17 up and he fired one more time. Shot himself. Didn't shoot
18 himself in the head. Shot himself in the abdomen, a through
19 and through wound to the abdomen. He was seized, taken to
20 the hospital for treatment, and here we are today for this
21 trial.

22 The facts, ladies and gentlemen, are relatively simple.
23 The proof is clear. The charges are murder and kidnapping
24 as the judge told you. Murder was defined to most of you
25 during the jury qualification process as an unlawful killing

1 of another person with malice aforethought. That malice
2 aforethought being express or implied.

3 We can't have much more of an innocent victim than
4 this. Clearly there was malice aforethought in the killing
5 of Heather Brooke Center.

6 Now, the State's also charged kidnapping. I want to
7 talk to you a little bit about that charge. That's not like
8 what you might think of or see on TV where somebody's
9 actually grabbed and taken away and held for ransom. This
10 is one of those points of the law where the judge will
11 charging you in your jury qualifications will you be able to
12 take the law as he gives it and not what you think it is.

13 The statute in South Carolina uses actually a series of
14 verbs to define what kidnapping can be, and if any one of
15 these exist, you can find, from the evidence, that the
16 defendant is guilty of kidnapping, and I submit to you he
17 is. Those verbs being seize, confine, inveigle, decoy, then
18 the actual word kidnap, abduct, or carry away. That's
19 unlawfully doing any one of those things. Not all of them.
20 Any one of those things. If he deprives the person of their
21 freedom.

22 The kidnapping began at the time he seized Brooke. He
23 carried her away and drug her towards the side of the
24 trailer as she was struggling to get away, and you'll hear
25 from the pathologist about the wounds that were inflicted

1 and the location and positions on the body.

2 I submit to you the evidence is clear, and, at the
3 close of this case, that you will do your duty and find the
4 defendant guilty of kidnapping Heather Brooke Center and
5 murdering her.

6 Thank you.

7 THE COURT: Mr. McGuire, for the defense.

8 MR. MCGUIRE: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. MCGUIRE: Good afternoon.

11 I'm sorry you-all have to be here, and I tell you that
12 because no one here's a volunteer, and I'm not the same man
13 I am when I started this case four and a half years ago, and
14 you're not gonna be the same after either.

15 And you have to be wondering why are we in a trial to
16 determine guilt or not guilt in such a relatively obvious
17 set of facts. And I'll tell you the only reason is because
18 the only way that Mr. Blackwell can have a sentencing
19 hearing, hearing with a jury is to go through this process.

20 And if you're sitting there thinking well, it, it
21 sounds like I'm giving up and I'm conceding to the facts,
22 I'm admitting that Mr. Blackwell did, in fact, kill Brooke
23 Center, you're very right. He did. He did.

24 But this case, this case started with me four and a
25 half years ago. But it started with Ricky about 30 years

1 ago when he married Angie, Angie Blackwell, his wife of
2 about 25 years, and she became the sun in his universe, the
3 air that he breathed. They had kids.

4 You'll hear that Ricky was a very hard worker. He's
5 not the smartest guy in the whole world, but he always
6 worked very very hard. He worked factory jobs. He drove a
7 truck, big trucks, 18 wheelers despite that he's -- he has a
8 learning problem and, and an IQ in the sixties. He's been
9 tested several times for IQ. The most recent one put him in
10 the sixties, and those with any sophistication with regard
11 to that knows that puts him in the mental retardation range.

12 He married Angie when he was very young, just out of
13 high school. He didn't finish high school. He was there
14 when he was 18, but he didn't finish. He was in special ed
15 classes and he couldn't do well in those. And when they
16 tested him---

17 SOLICITOR BULSA: Your Honor, we object to this. This
18 is not matters for this part of the trial. He's going into
19 a sentencing argument.

20 THE COURT: This is the guilt phase of the trial.

21 MR. MCGUIRE: Yes, sir.

22 THE COURT: And I'll ask you to speak toward -- to
23 those issues. They'll be a time perhaps for other issues to
24 come up.

25 MR. MCGUIRE: I tell you these things because you have

1 to understand the moment when this incident happened. You
2 have to understand what brought these people here in this
3 spot at that time.

4 Like I said, Angela was -- Angie, Ricky's wife, was the
5 air that he breathed, the sun in his universe, but she
6 didn't stay there. She left him and she took up an
7 adulterous affair with Bobby Center.

8 SOLICITOR BULSA: Objection, Your Honor. That's not --
9 he's arguing facts -- he's actually, he's actually arguing,
10 Your Honor.

11 MR. MCGUIRE: This is---

12 SOLICITOR BULSA: It's not an opening statement. He's
13 actually arguing.

14 THE COURT: Overruled.

15 Again, though, I'll mention that this is the guilt
16 phase of the trial --

17 MR. MCGUIRE: Yes, sir.

18 THE COURT: -- and I'd like for your discussion to be
19 toward those issues.

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: Thank you.

22 MR. MCGUIRE: And the evidence will bear out that the
23 affair was adulterous. Ricky and Angie were still married,
24 and she left him and began her relationship with Bobby, and
25 that took, the evidence will show, Ricky to his knees, and

1 you're gonna hear about his emotional state leading up to
2 this very moment.

3 You'll understand that he was basically sobbing on a
4 regular basis. He'd visit people and sob. He'd see a
5 pastor and he'd cry and he'd cry and he'd cry, and you'll
6 hear that the breakup was about November. And, in December,
7 Ricky saw Angie. I think he talked to her, and he asked
8 her -- it was a very difficult question. He asked her had
9 she been intimate with Bobby. She said yeah, and then she
10 made a comment about and, by the way, we have enough life
11 insurance on you that if you die we can live in luxury for
12 the rest of our lives.

13 SOLICITOR BULSA: Objection, Your Honor. I believe
14 he's -- can we approach?

15 THE COURT: Please do.

16 (Whereupon, a bench conference was held out of the
17 hearing of the jury at this time.)

18 THE COURT: You may proceed.

19 MR. MCGUIRE: Thank you, Your Honor.

20 The, the breakup, when Angie left Ricky, was around
21 Thanksgiving. It was around -- it was in November and Ricky
22 saw Angie in December, and that was when he got the courage
23 to ask her had she been intimate with Bobby. She said yes,
24 and then she made a very mean comment about him dying and
25 her having insurance on him, and Ricky took the bottle of

1 pills in his pocket, his prescription medicine, medicine and
2 he tried to die right there.

3 That's the effect, that's how important Angie is to
4 Ricky. She can move him.

5 SOLICITOR BULSA: Your Honor, I need to object. I
6 don't know how any of this is relevant to the guilt of this
7 man for murder or kidnapping of an eight year old child.
8 He's putting this case as Ricky versus Angie. This case is
9 about the death of an eight year old child. This has
10 nothing to go to guilt of that.

11 THE COURT: Overruled.

12 MR. MCGUIRE: Thank you, judge.

13 You have to see that to know what happened that day,
14 and you'll hear that people in Ricky's family, especially
15 his daughter, told Angie you need not come around right now.
16 It's hard on Ricky, but she came around, and she took all
17 the furniture in his trailer and he let her do it. Like I
18 said, she was his sun in his universe and she was the air
19 that he breathed. When she wanted the furniture from their
20 home, he said take it. Despite she was running around with
21 another man, she'd come back for money and he would give it.
22 And if she gave himself -- herself back to him, he would
23 have taken her back in a heartbeat.

24 And they all said please don't come around right now,
25 it's really hard on Ricky, and please don't bring Brooke

1 around. And you'll hear -- people heard Angie say that she
2 was saying Brooke's my new daughter. Brooke's my angel.
3 Brooke is my perfect daughter, my new perfect daughter. And
4 you have to understand what those words mean, just not in
5 their literal sense, but the way they could affect a man who
6 you'll hear has grandkids that are all profoundly special
7 needs, and Ricky loved them, and he played with them.

8 And you'll hear that he told Angie you need to go see
9 them, they need to see you. But when she would compare
10 Brooke, the perfect daughter, the new daughter, the angel,
11 the perfect angel, my new family, my new daughter, I want
12 you to understand the effect that could have on a man like
13 Ricky Blackwell, and what they said happened happened.

14 She brought Brooke, Brooke over again, and Ricky wanted
15 to talk to Angie. You'll hear he wanted to talk to her and
16 she didn't want to talk to him. You'll hear she said some
17 mean things. We saw how the last time she used mean words
18 how it moved him to try to kill himself, and she said some
19 more mean things that day.

20 I want to come back to you eventually and ask you --
21 you're not gonna pause long on is he guilty. I'm not here
22 for that.

23 Those six seconds, do they represent him as a man?

24 They don't.

25 Is he -- do they represent him as a evil person?

1 They don't.

2 Is he a good man most of his life, almost his entire
3 life?

4 Yes.

5 Do you have to kill Ricky Blackwell?

6 The answer is no.

7 SOLICITOR BULSA: Your Honor, objection. Once again,
8 he's going into the sentencing phase.

9 MR. MCGUIRE: That's all I have.

10 THE COURT: I'll sustain that objection.

11 State may call its first witness.

12 SOLICITOR BARNETTE: Your Honor, like to Deputy Bill
13 Meyer to the stand please.

14 THE COURT: Come forward to be sworn, sir, to my left.

15 BILL MEYER, having been first duly
16 sworn, testified as follows:

17 THE COURT: Sir, have a seat in the witness stand.
18 Once you're seated, state your name for the record.

19 THE WITNESS: My name is William Meyer. They call me
20 Bill.

21 THE COURT: Thank you.

22 Mr. Barnette, your witness.

23 SOLICITOR BARNETTE: Okay. Thank you, sir.

24 DIRECT EXAMINATION

25 BY SOLICITOR BARNETTE:

Bill Meyer - Direct examination
By Solicitor Barnette

1 Q How long have you been with the Spartanburg County
2 Sheriff's Department, sir?

3 A About a month shy of eight years with Spartanburg
4 County Sheriff's Office.

5 Q Was you in law enforcement prior to that, sir?

6 A Yes, sir, I'm a few days away from 37 years in law
7 enforcement.

8 Q And where was you prior to the Spartanburg County
9 Sheriff's Department, sir?

10 A I was a military policeman at Fort Jackson back in the
11 70's. I worked for Columbia Police Department from '79 to
12 2006 and been employed with the Sheriff's Office since 2006.

13 Q When you worked in Columbia, what positions did you
14 hold?

15 A I was a patrolman, a corporal, an investigator, and a
16 sergeant.

17 Q Okay. And here, what is your present position here at
18 the Sheriff's Department?

19 A I'm a master deputy with the Spartanburg County
20 Sheriff's Office.

21 Q Let me take you back to July 8th, 2009.

22 Was you working that day, sir?

23 A Yes, sir, I was.

24 Q And was you on patrol?

25 A I was.

Bill Meyer - Direct examination
By Solicitor Barnette

1 Q If you would, tell the jury about a call that you got
2 concerning 244 Ridings Road---

3 A Yes, sir.

4 Q ---in Chesnee, South Carolina?

5 A On July 8th, about three o'clock in the afternoon, I
6 received a radio dispatch call about a child shot at 244
7 Ridings Road in Chesnee here in Spartanburg County in the
8 Cooley Springs area of the county. I responded to that
9 location.

10 As I arrived on Ridings Road I slowed down looking for
11 the address. So I was coming down Ridings Road off of
12 Martin Camp. I observed a woman pointing up the street
13 frantically just going like this up the street. I proceeded
14 on up the street, located the address of 244 Ridings Road.
15 I patrolled -- pulled my patrol car in the driveway, got
16 out, and observed a small child lying face down on the
17 ground.

18 I yelled at the child trying to get some response from
19 the child. As I went up to check the vital signs of the
20 child I noticed there was a red spot in the center of her
21 back. There was also a gaping wound I saw on her left leg.
22 So, I reached down to check her pulse. I realized there was
23 blood pouring out of the ear.

24 I got on the radio, started calling for assistance,
25 started giving out what information I could at the time. I

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By Solicitor Barnette

1 then met with Mr. Bryant, the homeowner there, who was
2 extremely excited, extremely scared about what had happened.
3 He gave me some information, and I broadcast it out over the
4 radio.

5 About that time units started coming in from
6 everywhere. I didn't think we had that many deputies
7 working that day, but they came.

8 I put out the information that he was fleeing back
9 towards Martin Camp Road and Burnetts Road, and I started
10 back to my patrol car, after getting that information out,
11 went to the trunk, grabbed the crime scene tape, and started
12 taping off the crime scene the best I could, and more units
13 came pouring in.

14 Q When you talked to the fellow there at the trailer, you
15 said he was very excited?

16 A Verily excited, scared.

17 Q Scared.

18 A I mean he was just shaking and, and everything else.

19 He---

20 Q And who did he tell you did this?

21 A He said Ricky Blackwell.

22 MR. ALLEN: Objection, Your Honor. It's hearsay.

23 THE COURT: Sustained.

24 SOLICITOR BARNETTE: Your Honor, it's an excited
25 utterance under that situation.

Bill Meyer - Direct examination
By Solicitor Barnette

1 THE COURT: You wish to argue that, Mr. Allen?

2 He's offering it as an excited utterance, part of the
3 res gestae.

4 MR. ALLEN: Yes.

5 SOLICITOR BARNETTE: Or, or present sense impression.

6 MR. ALLEN: Yes, Your Honor. I do.

7 THE COURT: All right. I'll ask the jury to step back
8 to the jury room. Don't begin any discussions until I ask
9 you to do so.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Mr. Allen, my understanding is your
13 objection is on the basis of hearsay, is that right?

14 MR. ALLEN: That's correct, Your Honor.

15 THE COURT: Do you wish to tell me anything else about
16 the objection before I hear from Mr. Barnette?

17 MR. ALLEN: We haven't heard yet under what
18 circumstances the comment was made. If it was simply given
19 by this individual whose, whose name the officer has given
20 or if it came as a result of an inquiry or anything like
21 that. Furthermore, I think some of the exceptions to the
22 hearsay rule have their limits. In other words, the, the --
23 it's, it's kind of like akin to the line of cases dealing
24 with the exception like statements given in the course of a
25 medical diagnosis or something of that effect when they were

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1 given primarily in the child CSC type cases where they were
2 going to the identity of the individual that did it.

3 You know, often times the State will argue that came as
4 a result of -- that it came in, the identity of the
5 individual came as a exception to the medical statements
6 given for the purpose of a medical diagnosis or examination.
7 Identity was not necessary necessarily -- was not necessary
8 in order to make that diagnosis.

9 So, I don't know if the identity of the individual
10 would come in automatically as res gestae especially since
11 they have the witness present, and I don't know if they
12 intend to call him or not. But if they intend to call---

13 SOLICITOR BARNETTE: We do. We intend to call that
14 witness. So, also---

15 THE COURT: Well, statements though of res gestae are
16 not dependent upon the availability of the declarant, are
17 they?

18 MR. ALLEN: No, Your Honor, not, not normally. But we
19 still don't know under what circumstances the officer asked
20 the question in order to---

21 THE COURT: Well, maybe Mr. Barnette can tell me.

22 Do you understand the circumstances under which the
23 statement was apparently made?

24 SOLICITOR BARNETTE: Yes, sir, basically he was very
25 excited. He went to the front door and this individual told

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By Solicitor Barnette

1 him who did it basically and then he told him from that
2 standpoint.

3 THE COURT: So, this is at the scene as he walked up to
4 the trailer?

5 SOLICITOR BARNETTE: Yeah, at the trailer, sir, at the
6 door or whatever.

7 THE COURT: All right.

8 SOLICITOR BARNETTE: And that was -- and that
9 individual will testify. I know it doesn't matter, but I
10 mean he will testify.

11 THE COURT: He indicated that the individual was
12 shaking and it appeared to, from what it was described to
13 me, it would be very close to the event actually occurring.
14 I'm gonna overrule the objection. I'll allow the statement.

15 SOLICITOR BARNETTE: Your Honor, if you -- what I want
16 to do, judge, I'm gonna enter some exhibits. Let me just
17 show them to the defense and make sure we don't have
18 objections to them before we---

19 THE COURT: What is that?

20 I don't know.

21 SOLICITOR BARNETTE: It's pictures and a map. I've
22 shared this with the defense before, but I just want to make
23 sure, while the jury is out, any objection at this point to
24 avoid asking the jury to step out again.

25 THE COURT: I understand.

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1 MR. ALLEN: Can I share them with the---

2 THE COURT: Sure. Sure. Please do.

3 (Pause.)

4 MR. ALLEN: Assuming that this officer can lay the
5 foundation for some of those -- I mean, for example, there's
6 a map and it's a bird's eye view, which I don't think the
7 officer took or had, but---

8 THE COURT: I understand.

9 MR. ALLEN: Assuming he can lay the foundation.

10 SOLICITOR BARNETTE: I can take out the bird's eye view
11 map.

12 THE COURT: Assuming he can lay the foundation, you
13 have no objections to those documents?

14 Is that what you're telling me?

15 MR. ALLEN: That's what I'm telling you, Your Honor.

16 THE COURT: Okay.

17 MR. ALLEN: Yes, sir.

18 One second.

19 (Pause.)

20 SOLICITOR BARNETTE: Your Honor, we're ready.

21 THE COURT: All right.

22 SOLICITOR BARNETTE: I just wanted to check with them
23 before we started back.

24 THE COURT: Very good.

25 Let's bring the jury back in please, sir. Thank you.

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1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: All right. I have overruled the defense
4 objection.

5 Mr. Barnette, you may proceed.

6 SOLICITOR BARNETTE: Thank you, Your Honor.

7 CONTINUED DIRECT EXAMINATION

8 BY SOLICITOR BARNETTE:

9 Q Deputy Meyer, like you said, the individual was very
10 excited there at the trailer you saw and who did they say
11 did this?

12 A Ricky Blackwell.

13 Q Okay. And you said you had actually put crime scene
14 tape around the area?

15 A I strung a line of crime scene tape out there that day.

16 Q And then, obviously, several officers came to that
17 scene?

18 A There was a lot of officers that came up to the scene.

19 Q But you stayed---

20 A And they started fanning out and to set up a perimeter
21 cause I was given the direction of travel that I had heard
22 was the rear of the residence to the back, going back up
23 towards Martin Camp and Burnetts Road area.

24 Q Okay. And you stayed with Brooke at that crime scene?

25 A I stayed there at the front there and started roping

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1 off the -- well, streaming off the crime scene with the
2 tape.

3 Q And, of course, other officers went and investigated
4 other areas rather than you?

5 A That is correct. I stayed there and tried to lock
6 everything down.

7 Q Let me show you what's been marked as State's Exhibits
8 1 and 2.

9 Are you familiar with this area up in there, sir?

10 A I am.

11 Q Are these maps of that area?

12 If you would, take a look at that.

13 A Yes, sir.

14 Q Okay. From there.

15 A Yes, sir.

16 Q Okay. And let me show you what's been marked State's
17 Exhibits 3 and 7 as well as 8.

18 I know you didn't take those pictures or anything, but
19 do those fairly represent those areas afterwards?

20 A Yes, sir, I mean the -- this is looking from the
21 backside up towards Ridings Road on this State's Exhibit No.
22 3.

23 Q Thank you.

24 A And State Exhibit No. 7 is like looking straight down
25 and State Exhibit 8 also. Eight. Excuse me.

Bill Meyer - Direct examination
By Solicitor Barnette

1 Q And I believe those pictures was taken after the fact?

2 I believe the pool was taken out after the pool---

3 A Yes, sir, there was a pool there at the time.

4 Q Okay. And then State Exhibits 9 through 17 or 18, I'm
5 gonna let you have a chance to look at those pictures, sir,
6 before I publish them to the jury.

7 A Thank you.

8 No. 9 is the picture of the front of the trailer where
9 I found the young girl.

10 Q And what, what you may want to do is review them and
11 then we'll put them up there so the jury can see and then
12 you can describe them to them.

13 A Oh, okay.

14 Q I just wanted to see if those pictures fairly represent
15 what you saw that day.

16 A Yes, sir.

17 SOLICITOR BARNETTE: Your Honor, I'd like to move these
18 exhibits into evidence at this time. I've shared them with
19 the defense prior to --.

20 THE COURT: Any objections at this time?

21 MR. ALLEN: And we're talking about 1, 2, 3, 7, 8, 9,
22 and 18 as I understand?

23 SOLICITOR BARNETTE: Well, no, it's actually 9 through
24 18.

25 MR. ALLEN: Oh, I misheard.

Bill Meyer - Direct examination
By Solicitor Barnette

1 SOLICITOR BARNETTE: Yeah, it's actually 1, 2, 3, 7, 8,
2 and then it goes from 9 to 18.

3 THE COURT: Any objections to those exhibits?

4 MR. ALLEN: No, Your Honor.

5 THE COURT: All right. Without objection, they'll be
6 admitted as they've been marked.

7 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 7, 8, and 9
8 through 18 were received into evidence at this time.)

9 THE COURT: Do you wish to publish those to the jury?

10 SOLICITOR BARNETTE: Yes, sir, with the Court's
11 permission.

12 THE COURT: All right. Ladies and gentlemen, when we
13 refer to publishing matters to the jury, you'll hear that
14 throughout the trial, that means we're going to show them to
15 you or let you hold them and look at them yourselves.

16 Mr. Barnette, you may proceed.

17 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

18 Q While we're waiting for this to adjust, Deputy Meyer,
19 where did -- is -- this occurred in Spartanburg County, sir?

20 A Yes, sir.

21 Q Okay. Focus this map in.

22 I believe this is the City of Chesnee, is that right?

23 A Yes, sir.

24 Q And over here is the location we're talking, Ridings
25 Road?

Bill Meyer - Direct examination
By Solicitor Barnette

1 A 244 Ridings Road.

2 Q About how far is it from the City of Chesnee to over to
3 there?

4 A Driving there, maybe two miles, two, three miles.

5 Q Okay. And what time did you receive the call on this
6 case, sir?

7 A It's approximately 3:00PM in the afternoon.

8 Q What time did you arrive there at the scene, sir?

9 A Within a couple of minutes after getting dispatched on
10 the call. I, I flew down Buck Creek Road to get out there
11 to this location.

12 Q Let me publish State Exhibit No. 2.

13 Just showing this, this is just another map in this
14 area just showing some generalities in there showing
15 Chesnee.

16 Is that right?

17 A Yes, sir.

18 Q And this is Fingerville area over here?

19 A Going back up to the west, yes. Going west.

20 Q And this is 221 over in this area?

21 A Yes, sir.

22 Q Show you a little bit, another part here.

23 Can you, can you tell us what this map describes, sir?

24 This is also part of State Exhibit 2.

25 A Yeah, that's, that's an aerial shot of the, the area of

Bill Meyer - Direct examination
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1 Ridings Road, Martin Camp, Burnetts Road in the Chesnee area
2 or Cooley Springs. It's kind of right there on the border.
3 It's a Chesnee mailing address, but sometimes referred to as
4 the Cooley Springs area from Spartanburg County.

5 Q Okay. And that area we're talking approximately is in
6 this area right in here where all this occurred?

7 A Yes, sir.

8 Q Let me publish State Exhibit No. 3, sir.
9 Back this up a little bit.

10 If you would, tell the jury here -- and let me give you
11 a pointer so you can actually show them, describe some
12 things for them, sir.

13 A I don't know how to work this thing.

14 Q And if want to step out here you can. There should be
15 a---

16 THE COURT: You can step down if you'd like, sir.

17 Q It's the button right on the top there.

18 A Oh, okay. Never had one of these before.

19 (Witness comes down from the stand.)

20 Q Come on over here, sir, so the jury can see.

21 If you would, just describe to us what we're looking
22 at, sir.

23 A All right. This would be 244 Ridings Road here. This
24 will be 248 and this is coming back around the curve here.
25 Going back out this way here would be going back up towards

Bill Meyer - Direct examination
By Solicitor Barnette

1 Burnetts Road towards the Martin Camp area of Spartanburg
2 County.

3 Q Let me show you State Exhibit No. 7.

4 If you would, tell us what we see here, sir.

5 A That'd be 244 and then 248 going back up towards
6 Burnetts Road, and then back down this way would be towards
7 Martin Camp Road.

8 Q Let me show you, they're gonna see in some of the other
9 pictures, was there a pool right here, sir?

10 A Yes, there was.

11 Q Okay. And obviously these pictures was taken shortly
12 after that, but there's not a pool there now?

13 A I don't know when those pictures were taken.

14 Q I understand from there.

15 Just showing you State Exhibit No. 8, and what's this a
16 picture of, sir?

17 A It's a picture -- it's an aerial shot looking down at
18 244 Ridings Road where the pool use to be, the head of the
19 driveway, and the area where I found her.

20 Q Okay. Let me show you State Exhibit No. 9, and I
21 believe this is a picture from that day, sir?

22 A Yes, sir.

23 Q Can you describe what this picture shows?

24 A This is the front of the house where -- on the left
25 side looking towards the right, and Ridings Road would be

Bill Meyer - Direct examination
By Solicitor Barnette

1 towards behind the vehicle there coming back up, and there's
2 the pool and the side of the trailer.

3 Q Okay. And was this found to be Angie Blackwell's
4 vehicle she was driving --

5 A I believe it was.

6 Q -- that day?

7 A I remember it was there in the parking -- in the
8 driveway.

9 Q Okay. Showing you State Exhibit No. 10, publishing
10 that to the jury, and these are gonna be different angles
11 around there that was taken.

12 Can you tell us what we see there, sir?

13 A The front of the house at 248, the front of the trailer
14 at 244 Ridings Road.

15 Q Okay. And who was right there?

16 A That's where the girl was found.

17 Q And was she covered with a blanket afterwards?

18 A She was cause when I got there she was not.

19 Q Okay. You were the first officer on the scene?

20 A I was.

21 Q And you found her in what position, sir?

22 A Lying face down.

23 Q Showing you State Exhibit---

24 MR. ALLEN: Your Honor, please the Court, may we
25 approach the bench please?

Bill Meyer - Direct examination
By Solicitor Barnette

1 THE COURT: You may approach.

2 (WHEREUPON, a bench conference was held out of the
3 hearing of the jury at this time.)

4 THE COURT: Yes, sir, Mr. Barnette, you may proceed.

5 SOLICITOR BARNETTE: Okay. Thank you, sir.

6 Is this just another angle of the front of the trailer?

7 A Yes, it is.

8 Q Showing you State Exhibit No. 12.

9 What is this a picture of, sir?

10 A It's a picture of the front of the trailer, the head of
11 the driveway, the pool, the basketball court, and where I
12 found the child.

13 Q Showing you State Exhibit 13.

14 I think this is just another angle of what we've seen?

15 A That is correct. It's another angle.

16 Q And, like I say, this is the car Angie Blackwell was
17 driving.

18 This is the trailer actually where the man was that you
19 talked to?

20 A Yes, sir.

21 Q And then the pool?

22 A Right.

23 Q And obviously Brooke Center was there, and then the
24 basketball court you said in the back?

25 A Yes, sir.

Bill Meyer - Direct examination
By Solicitor Barnette

1 Q And you covered it with crime -- I see---

2 A You can see some of the crime scene tape that I, I ran
3 out and put up.

4 Q Okay. State Exhibit No. 14 obviously is just -- and
5 these are gonna be from different angles just showing
6 different things?

7 A Right.

8 Q This is the pool?

9 A That is correct.

10 Q And matter of fact, 248 is right over there, is that
11 correct?

12 A That is correct.

13 Q Showing you State Exhibit 15.

14 Is this just another angle, sir?

15 A This is another angle. You can see the crime scene
16 tape that I put out.

17 Q Okay. And this is just another angle showing where
18 Brooke Center's body was found with the cover?

19 Obviously it didn't have the cover when you got there?

20 A That is correct.

21 Q And that's the trail we've been talking about?

22 A Yes, sir.

23 Q Okay. Showing you State Exhibit No. 16.

24 Is this angled from the backyard towards the front yard
25 where the car was?

Bill Meyer - Direct examination
By Solicitor Barnette

1 A It is. You can see her car and I think you can see
2 part of my patrol car behind hers.

3 Q Okay. So, you parked in behind?

4 You pulled in behind her car?

5 A I did.

6 Q State Exhibit 17, what is that, sir?

7 A That is the backside of the trailer.

8 Q Matter of fact, you put the crime scene tape here?

9 A I did.

10 Q Okay. And showing you State Exhibit 18.

11 Is that another angle from the backyard?

12 A This is another angle from the backyard. This is back
13 over towards 248 --

14 Q Okay. Yeah.

15 A -- up back towards Ridings Road---

16 Q So, 248's---

17 A ---would be off to the right of the picture there.

18 Q Right. We saw earlier that in the pictures --

19 A Right.

20 Q -- from there.

21 If you would, please have a seat, sir.

22 A Thank you.

23 (Witness returns to the stand.)

24 Q But you wasn't involved in the apprehension of Mr.
25 Blackwell?

Bill Meyer - Direct examination
By Solicitor Barnette

1 A No, sir, I was not.

2 Q And you stayed at the scene with Brooke and made sure
3 the crime scene was secure?

4 A I did. I put out the crime scene tape, and, you know,
5 got EMS up there and I came and checked her for vitals
6 signs, but they didn't find any, and I didn't see any signs
7 of life when I got there when I yelled and did not see her
8 moving at all. I just saw that, that big red blood spot in
9 the middle of her back and the wound on her leg.

10 Q And how long did it take you to get there again, sir?

11 A A couple of minutes. Maybe five at the most.

12 Q Yes, sir.

13 One moment, Your Honor, please.

14 THE COURT: Yes, sir.

15 (Pause.)

16 Q If you would, sir, please answer any questions the
17 defense may have for you. Thank you.

18 THE COURT: Defense may cross-examine.

19 Mr. Allen, your witness.

20 MR. ALLEN: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. ALLEN:

24 Q Okay. Did you approach this scene from the -- which
25 direction, Martin -- did you come off Martin Camp Road onto

Bill Meyer - Cross-examination
By Mr. Allen

1 Ridings Road?

2 A I came off Martin Camp Road and made the right turn
3 onto Ridings and followed the road down on around to the
4 location.

5 Q And as you were coming down Martin Camp Road onto
6 Ridings, you turned -- and you make this turn --.

7 A I turn right.

8 Q -- to the right and basically you come first to 248, a
9 white trailer, correct?

10 was it---

11 A Well, there's a couple of them. There's like a road
12 that runs off to a subdivision, and then following on
13 around, I started looking for the address, and I saw a woman
14 standing on the outside of a house kind of pointing up the
15 road. So, I kept going.

16 Q Okay.

17 A Cause they were, they were like frantic pointing up the
18 road, and that's when I came around and located, located 248
19 and 244.

20 Q Okay. I didn't mean to insinuate the first scene you
21 see is 248.

22 But as you go down the road, between these two
23 trailers, the first one that you come to is 248 I believe, a
24 white trailer, correct?

25 A Yeah, it's 248 that's off -- when you come around the

Bill Meyer - Cross-examination
By Mr. Allen

1 curve, 248 and then 244.

2 Q All right. It's off to your left, right?

3 A Yeah, I think the numbers, the numbers will be going
4 lower as you go back towards Burnetts I believe.

5 Q Right.

6 And then the next one over was 244, this blue one?

7 A The blue one's 244, yeah.

8 Q Right.

9 A 248's a doublewide.

10 Q Okay. And you went up to 244, correct?

11 A Yes, sir.

12 Q And you saw the Kia in the driveway already, correct?

13 A That was parked in the driveway and the child was
14 laying in front of the vehicle up---

15 Q Right.

16 A ---up always face down.

17 Q And, and other officers arrived shortly thereafter,
18 correct?

19 A They started coming.

20 Q They started coming.

21 They're the ones that actually did the search in the---

22 A Yes, sir.

23 Q ---area, correct?

24 A I stayed there at 244 trying to get everything taped
25 off and that took some time to tape. You know, just---

Bill Meyer - Cross-examination
By Mr. Allen

1 Q Sure.

2 A I was running as fast as I could trying, trying to
3 secure down the crime scene.

4 Q And, of course, the purpose of that is to make sure
5 that no one else gets into that scene to---

6 A That's the---

7 Q ---bother or tamper with---

8 A That's the intent, to keep people outside that
9 perimeter.

10 Q Sure.

11 One second please, Your Honor.

12 THE COURT: Yes, sir.

13 (Pause.)

14 MR. ALLEN: Nothing further, Your Honor. Thank you.

15 THE COURT: Redirect?

16 SOLICITOR BARNETTE: No, sir, no further questions.

17 We'd ask the witness be excused, Your Honor.

18 THE COURT: Any objection to him being excused?

19 MR. ALLEN: No, Your Honor.

20 THE COURT: Sir, you may step down. You're free to go
21 if you'd like. Thank you very much.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: You may call your next witness.

24 SOLICITOR BARNETTE: Like to Angela Davis to the stand
25 please.

Angela Davis - Direct examination
By Solicitor Barnette

1 THE COURT: Come forward to be sworn please. Over here
2 to my left please, ma'am.

3 ANGELA DAVIS, having been first duly
4 sworn, testified as follows:

5 THE COURT: Ma'am, have a seat please. Once seated,
6 please state your name.

7 THE WITNESS: Angela Diane Davis.

8 THE COURT: All right. Ms. Davis, I -- you're soft
9 spoken at the moment. I'll caution you to speak up so that
10 we can hear you in the courtroom please.

11 Mr. Barnette, your witness.

12 SOLICITOR BARNETTE: Thank you.

13 DIRECT EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q Ms. Davis, I know this is extremely hard, and I know
16 you're soft spoken, but I need you to talk loud enough so
17 they can hear you in the back row.

18 Okay?

19 A (Witness nods affirmatively.)

20 Q Ms. Davis, where do you live now, ma'am?

21 A I live with my mother.

22 Q Okay. And where is that at, ma'am?

23 A 116 Lya'll Road, Chesnee.

24 Q Okay. And was you married to the defendant in this
25 case, ma'am?

Angela Davis - Direct examination
By Solicitor Barnette

- 1 A Yes.
- 2 Q And how long was y'all married?
- 3 A I think approximately 26, 27 years.
- 4 Q And where did y'all live at, ma'am?
- 5 A 248 Ridings Road, Chesnee.
- 6 Q Okay. And who lived beside you-all?
- 7 A My daughter, Heather.
- 8 Q And did they live at 244 Ridings Road?
- 9 A Yes.
- 10 Q Prior to that, where did you work at, ma'am?
- 11 A Firestone.
- 12 Q And what did you do there, ma'am?
- 13 A Pretty much a little bit of everything really. Just
- 14 machine -- help with running machines and helped in the lab
- 15 and audit. I had two or three different things that I did.
- 16 Q Let me take you back to July 8th, 2009.
- 17 How long had you been separated from Ricky Blackwell?
- 18 A About a year and nine months or maybe a little longer.
- 19 Q And, that day, did you go to your mom and dad's house?
- 20 A Yes.
- 21 Q And who was with you that day?
- 22 A Brooke.
- 23 Q Okay. So, you hadn't went up in the Ridings Road
- 24 area -- this is a ways from there?
- 25 A Right.

Angela Davis - Direct examination
By Solicitor Barnette

1 Q And at -- while, while you were there, did the
2 defendant come over to the house?

3 A Yes, he did.

4 Q And when he came over to the house, if you would, tell
5 the jury what he asked you about.

6 A I was taking a personal layoff from Firestone for three
7 months. So, beings that our divorce was not final, I had to
8 still carry medical and life insurance and stuff through my
9 job on him. So, beings laid off, the insurance that I was
10 gonna be allowed to have then we had to pay for. The
11 company wouldn't pay for it.

12 So, when he came in, he asked me did I find out about
13 the insurance and I told him yes. The lady in the office
14 told me that he would have to pay a hundred and I would have
15 to pay a hundred, and he says well, I don't know if I can
16 always come up with a hundred. And I just said don't worry
17 about it, Ricky, it will be taken care of somehow, and then
18 he goes you come to Chesnee all the time, and you don't
19 never go over there to get those boys. You don't never go
20 see your boys. Go over there and see those boys today, and
21 Brooke spoke up because she was, she was just so full of
22 happiness and life. She said we're gonna go down there and
23 go swimming today.

24 Q So, she mentioned that y'all -- that she was gonna go
25 swimming over there that day?

Angela Davis - Direct examination
By Solicitor Barnette

1 A And so he looked back at me and he said you make sure
2 and you go over there and get them boys. And my daddy asked
3 him, said Ricky, he said why don't you stay here and play
4 some cards with me. And Ricky told him, he said, I got to
5 go pay some bills and do some shopping. But as soon as I
6 get my bills and my shopping done, I'll come back and play
7 cards.

8 Q Okay. So, did he leave, ma'am?

9 A And he left.

10 Q And, later on, did you go over to your daughter's
11 house?

12 A Yes, sir.

13 Q Take your time, ma'am.

14 A I went with the joy of -- her joy and my joy of knowing
15 that we were gonna get the kids and take them back to her
16 home. Everybody has it mixed up thinking we were going
17 there to go swimming. We weren't. We were going back to
18 her home.

19 Q whose home was you going back to, ma'am?

20 A Brooke's home, Bobby's, and we were all gonna swim and
21 just have a good day.

22 Q So, you were gonna pick up your grandkids and take them
23 with you and Brooke?

24 A (Witness nods affirmatively.)

25 THE COURT: Ma'am, you have to answer verbally. I know

Angela Davis - Direct examination
By Solicitor Barnette

1 it's difficult.

2 THE WITNESS: Yes, sir.

3 THE COURT: But please answer verbally.

4 THE WITNESS: Yes.

5 THE COURT: Thank you, ma'am.

6 Q And so later on did you go to 244 Ridings Road where
7 your daughter and grandkids were?

8 A I had started in cause I came the back way. And when I
9 came in the back way I seen that my daughter's car was not
10 in the driveway.

11 Q Okay. When you're talking about the back way, are you
12 talking from this direction?

13 A I'm talking about coming off of Bryant Road onto
14 Ridings Road.

15 Q So coming down this direction?

16 A Yes, I'm coming in the opposite direction of where I
17 use to live.

18 Q Okay. That was State Exhibit 2 that I showed you.

19 Let me show you State Exhibit 3.

20 If I understood right, you're coming from this
21 direction?

22 A Yes.

23 Q Okay. If you would, tell the jury from that point,
24 ma'am.

25 A When I came that way, I seen that my daughter's car was

Angela Davis - Direct examination
By Solicitor Barnette

1 not in the driveway. So, I kept going. And as I kept
2 going, when I got right there at the curve, Ricky jumped out
3 and flagged me down, and he said I thought you was picking
4 up the boys and I said I was, but Heather's car's not there.
5 She's gone. He said she's gone to the store. She'll be
6 back in a few minutes. Mark's got the boys ready and
7 they're waiting on you.

8 Q Okay. And who is Mark?

9 A My son-in-law.

10 Q Okay. Go ahead, ma'am.

11 A And so I put the car in reverse and I turnt and I
12 backed the car all the way up past Heather's driveway to
13 where I could turn back in facing the front of the trailer.

14 Q Okay. What happened after that, ma'am, and take your
15 time.

16 I understand.

17 A When we first pulled up I noticed a little dog that we
18 had always had around there and he was old and I knew he
19 would bite her. So, I turned around and looked at her and I
20 said Brooke, honey, don't get out of this car until I get
21 this dog cause I don't want you to get dog bit. She said
22 okay. So, I got out of the car and I reached down and got
23 the dog, but when I turned back around he had her.

24 Q When you mean he, who are you talking about, ma'am?

25 A Ricky. How he even got there I don't know, but he got

Angela Davis - Direct examination
By Solicitor Barnette

1 her, and, and I kept telling him Ricky, please let that baby
2 go.

3 Q If you would, could you show the jury how he had her
4 held on me?

5 Do you feel comfortable doing that, ma'am?

6 THE COURT: Solicitor, I'm gonna take a short break and
7 let the witness compose herself.

8 I'll ask the jury to step back to the jury room. Do
9 not begin any discussions until I've asked you to do so
10 about this case.

11 You may retire to the jury room.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Court will be in recess for about ten
15 minutes.

16 I'll instruct the witness though not to discuss the
17 subject or the testimony that you're about to give with
18 anyone.

19 Thank you, ma'am.

20 Court's in recess.

21 (WHEREUPON, a short recess was taken at this time.)

22 THE COURT: Ma'am, come forward again. Resume the
23 stand please.

24 (Witness complies.)

25 THE COURT: Thank you.

Angela Davis - Direct examination
By Solicitor Barnette

1 All right, ma'am. Are you ready to go forward again?

2 THE WITNESS: Yes.

3 THE COURT: All right. Bring the jury in.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: Thank you, Mr. Ruth.

7 Your witness, Mr. Barnette.

8 SOLICITOR BARNETTE: May it please the Court, Your
9 Honor.

10 THE COURT: Yes, sir.

11 CONTINUED DIRECT EXAMINATION

12 BY SOLICITOR BARNETTE:

13 Q Ma'am, I think we were to the point where the defendant
14 had grabbed Brooke.

15 If you would, could you show the jury how he grabbed
16 her on me?

17 A Yes.

18 Q If you would -- I'll get down on my knees. If you
19 would, come down.

20 A (Witness comes down from the stand.)

21 Like this.

22 Q You got to talk louder. She's got to be able to hear
23 you.

24 A It's like this.

25 Q Okay. If you would, ma'am, please have a seat.

Angela Davis - Direct examination
By Solicitor Barnette

1 A (Witness returns to the stand.)

2 Q And what was you saying to him, ma'am, when he grabbed
3 a hold of Brooke?

4 A Please let her go. Please.

5 Q And what did, what did he have his hand to her head?

6 A The gun.

7 Q And did he say anything to you while you was talking to
8 him?

9 A Yes, he was walking around the car and I was screaming
10 let her go, Ricky, please, it's me you want, take me, and
11 let Heather take her home, and he said no and he took the
12 gun and pointed it toward -- on the car, and he said you've
13 pushed this too far. You did this. You tell me what Bobby
14 thinks of this, and then the gun went off, and then it went
15 off again.

16 Q What happened next, ma'am?

17 A And then when I seen him start to lay her on the
18 ground, all I know to do to get somebody in there was to run
19 and get, get a phone, call help, somebody.

20 Q And where did you run to, ma'am?

21 A I ran into my daughter's house and I dialed 9-1-1, but
22 my handicapped granddaughter was screaming so loud that I
23 couldn't make ways of hearing them good or them hearing me
24 good. So, I got frustrated and dropped the phone, and I ran
25 out the back-door of my daughter's trailer still with my

Angela Davis - Direct examination
By Solicitor Barnette

1 grandbaby in my arms, and I ran across and I ran in behind
2 the trailer where we use to live in-between the pool --

3 Q Right there?

4 A -- around into that carport. And when I got into that
5 carport, he shot again. And after that shot went off, I
6 stepped out to that big oak tree and looked out to see where
7 he was at. And when I saw where he was at, I just took off
8 running, and when I did he come out chasing me still with my
9 grandbaby in my arms until I got to the neighbors where she
10 told me to call 9-1-1 in her home. And when I did that,
11 that's when they told me to lock the doors and the windows
12 and to not let him in.

13 Q So, you called 9-1-1, ma'am?

14 A (Witness nods affirmatively.)

15 I made two 9-1-1 calls.

16 Q You made one I guess from your daughter's house the
17 first time?

18 A (Witness nods affirmatively.)

19 Q And you really didn't talk -- I mean you didn't really
20 get a chance to talk, did you?

21 A Not much. All I could do was holler and ask them for
22 help, try to get it through to them that I needed somebody.
23 But when I couldn't get through to them, that I knew that if
24 she just left that phone hanging, she -- they would send
25 somebody. Whether anybody got another call through or not,

Angela Davis - Direct examination
By Solicitor Barnette

1 even if he gunned me down, I knew that 9-1-1 call had been
2 made and somebody would come. That was the only thoughts I
3 could keep in my head. Somebody would come.

4 Q Now, ma'am, you made the second 9-1-1- call from your
5 neighbor's house?

6 A (Witness nods affirmatively.)

7 Q And did you talk to a 9-1-1 operator on that phone
8 call?

9 A Yes.

10 Q And did the police come later, ma'am?

11 A Yes.

12 Q And did you talk to them too?

13 A Yes.

14 Q Who told you to come over that day?

15 A Actually Ricky's the one who told us to go over there.

16 Q And let me show you one thing if I could one moment.

17 Your Honor, it's been marked for ID at this point,
18 State Exhibit 33.

19 THE COURT: All right.

20 SOLICITOR BARNETTE: Take an item from -- it's the
21 defendant's wallet.

22 THE COURT: Yes, sir.

23 SOLICITOR BARNETTE: Your Honor, I'd like to mark these
24 as 33-A, they're two cards from the wallet.

25 THE COURT: Show those to the defense please.

Angela Davis - Direct examination
By Solicitor Barnette

1 (Solicitor Barnette complies.)

2 THE COURT: Have them marked as A and B exhibits?

3 SOLICITOR BARNETTE: We can do A and B, Your Honor.

4 THE COURT: A and B exhibits for that number.

5 SOLICITOR BARNETTE: Yes, sir.

6 THE COURT: They can be marked for ID purposes as such.

7 Is there any objection, Mr. McGuire, to their
8 introduction?

9 MR. MCGUIRE: No, sir.

10 THE COURT: All right.

11 SOLICITOR BARNETTE: We'd like to move them---

12 THE COURT: Would you like to introduce them?

13 SOLICITOR BARNETTE: Yes, sir, I'd like to move them
14 into evidence.

15 THE COURT: All right. Then let's have them marked as
16 Exhibits A and B for that Exhibit Number.

17 (WHEREUPON, the two cards from State's Exhibit No. 33,
18 a wallet, were marked as State's Exhibit Nos. 33-A and 33-B
19 and received into evidence at this time.)

20 SOLICITOR BARNETTE: May I approach the witness, Your
21 Honor.

22 THE COURT: You may.

23 Q Ma'am, let me show you what's been entered into
24 evidence as 33-A and 33-B.

25 what are those, ma'am?

Angela Davis - Direct examination
By Solicitor Barnette

1 A This is our health cards for the insurance where I had
2 worked.

3 SOLICITOR BARNETTE: Your Honor, I'd like to publish
4 these to the jury at this time.

5 THE COURT: You may.

6 Q And, ma'am, if I can ask you, these are the insurance
7 cards they got from your work, is that right?

8 A Yes.

9 Q So, Ricky was on your insurance?

10 A Yes.

11 Q And matter of fact, these are cards that was given to
12 him?

13 A Yes, but when the layoff came it was gonna be a little
14 different when I got laid off. That's why he was having to
15 ask me about the difference in the insurance because of the
16 pay and stuff, the way it was gonna be.

17 Q And that's what -- one of the things he talked to you
18 about that day?

19 A Yes.

20 Q Okay. And then the other thing he talked about, you
21 need to go see your, your grandson?

22 A Yes.

23 Q And what jobs had Ricky done in the past, ma'am?

24 A He's done trucking jobs. He's done -- he worked for
25 Springs.

Angela Davis - Direct examination
By Solicitor Barnette

1 Q Uh-huh. (Affirmative).

2 A And then this last job that he did he worked in a
3 warehouse and he was laid off from it. So --.

4 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to
5 mark the driver's license, coming from State Exhibit 33,
6 again the driver's license of Mr. Blackwell.

7 THE COURT: For ID purposes, it will be 33---

8 SOLICITOR BARNETTE: 33.

9 THE COURT: ---C.

10 MR. MCGUIRE: He can mark them as an exhibits. There's
11 no objection.

12 THE COURT: No objection.

13 All right. Be marked as an exhibit, 33-C, without
14 objection.

15 (WHEREUPON, the driver's license was marked as State's
16 Exhibit No. 33-C and received into evidence at this time.)

17 Q Let me show this to you, ma'am.

18 Is that Ricky Lee Blackwell's license?

19 A Yes, is it.

20 SOLICITOR BARNETTE: Your Honor, I'd like to enter this
21 into evidence and publish it at this time.

22 THE COURT: It's been admitted. You may publish.

23 SOLICITOR BARNETTE: Yes, sir.

24 Q Ma'am, is this the license of Ricky Lee Blackwell?

25 A Yes, it is.

Angela Davis - Direct examination
By Solicitor Barnette

1 Q What kind of license is that?

2 A CDL driver's license.

3 Q Is that what we call a commercial driver's license,
4 ma'am?

5 A Yes.

6 Q And he drove trucks and so forth?

7 A Yes.

8 Q Let me ask you this, ma'am.

9 Can you identify the person that killed Heather Brooke
10 Center that day?

11 A Yes, sir, I can.

12 Q Can you identify -- indicate where he's in the
13 courtroom and what he's wearing, ma'am?

14 A He's right there with the blue shirt on.

15 SOLICITOR BARNETTE: Your Honor, I would like the
16 record to reflect that he's -- she's identified the
17 defendant.

18 THE COURT: It will so reflect.

19 You may proceed.

20 SOLICITOR BARNETTE: One moment, Your Honor, please.

21 THE COURT: Yes, sir.

22 (Pause.)

23 Q Ma'am, so, the defendant knew that Brooke was with you
24 that day?

25 A Yes.

Angela Davis - Direct examination
By Solicitor Barnette

1 Q He saw her -- matter of fact, she spoke to him?

2 A Yes.

3 Q And when he grabbed a hold of her, was she struggling
4 or was he pulling her?

5 A Actually she struggled none at all.

6 Q Was he holding on to her as tight as he -- I mean she
7 couldn't move or get away from him?

8 A I don't know if the -- if she just didn't move or fight
9 or struggle because he was just too tight or if she had just
10 went like in shock or what it was. But she never moved at
11 all cause I kept trying to get her to look at me to where I
12 could talk to her during all this too, but she never did
13 anything. She just looked straight forward. It was like
14 she was just looking at the Heavens. She never, she never
15 moved her eyes. She just stared straight forward.

16 SOLICITOR BARNETTE: One moment, Your Honor, please.

17 (Pause.)

18 SOLICITOR BARNETTE: Your Honor, I'd like to move --
19 well, let me show it -- like to show -- marked as State's
20 Exhibit 6 has been entered for ID purposes. I'd like to
21 introduce it through this witness.

22 Ma'am, let me show you State Exhibit No. 6.

23 A Oh, God.

24 Q I know. I'm sorry.

25 Is this the gun he used that day, ma'am?

Angela Davis - Direct examination
By Solicitor Barnette

1 A Yes.

2 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to
3 move State Exhibit No. 6 into evidence at this time.

4 THE COURT: Any, any objections?

5 MR. MCGUIRE: No objection.

6 THE COURT: Without objections it will be admitted as
7 marked, State's No. 6.

8 (WHEREUPON, State's Exhibit No. 6 was received into
9 evidence at this time.)

10 Q Okay. And, ma'am, how do know about that gun?

11 A Because years ago, earlier in our marriage, I purchased
12 that gun in my name as a gift for Ricky.

13 Q And this is the gun he used to kill Brooke Center?

14 A Yes.

15 SOLICITOR BARNETTE: One moment, Your Honor, please.

16 THE COURT: Yes, sir.

17 (Pause.)

18 Q If you would, ma'am, please answer any questions the
19 defense may have for you. I'm sorry.

20 THE COURT: Mr. McGuire.

21 MR. MCGUIRE: Thank you, Your Honor.

22 THE COURT: Your witness.

23 CROSS-EXAMINATION

24 BY MR. MCGUIRE:

25 Q Angie, how long were you and Ricky married?

Angela Davis - Cross-examination
By Mr. McGuire

- 1 A Around 27 years.
- 2 Q Okay. How old were you when y'all were married?
- 3 A Seventeen.
- 4 Q And Ricky was in his early twenties?
- 5 A He was 23.
- 6 Q Okay. Y'all had kids?
- 7 A Yes, a girl and boy.
- 8 Q That's Ricky, Junior and Heather?
- 9 A Yes.
- 10 Q Okay. And they, and they had kids?
- 11 A Yes.
- 12 Q And you and Ricky lived right next door to Heather?
- 13 A Yes.
- 14 Q And her kids are special needs kids?
- 15 A Yes.
- 16 Q And McKenzie, the youngest, the girl, she's suffers
- 17 from Magenis Smith disorder?
- 18 A Yes.
- 19 Q And the two boys are learning disabled?
- 20 A Yes.
- 21 Q Now, Ricky was a good worker?
- 22 He worked hard?
- 23 A Yes, when he had a job.
- 24 Q Okay. Well, Ricky pretty much always had a job except
- 25 for that period where he had the cancer?

Angela Davis - Cross-examination
By Mr. McGuire

1 Do you remember that?

2 A No, Ricky didn't pretty almost have a job except -- he
3 was in and out of jobs.

4 Q Okay.

5 A He wasn't holding jobs. His, his dad even purchased
6 two trucks for him -- for them to keep him a job and that
7 didn't go through. Ricky had problems with holding his
8 jobs, but, finally, after he got his cancer, he got his job
9 at Springs and he did, he held a job for seven years. He
10 done very well there. He done very well at Springs.

11 Q Okay. And Ricky was out of work for about ten years
12 fighting cancer?

13 A Yes.

14 Q And you were fighting that with him?
15 You'd go to his doctor's appointments?

16 A Yes.

17 Q And you'd help him manage his medication?

18 A Yes.

19 Q And Ricky got sick?

20 A Yes.

21 Q But he, but he beat it?

22 A Yes, within six months he was in remission.

23 Q Eventually you left Ricky?

24 A Yes, I did.

25 Q And you took up with Bobby Center?

Angela Davis - Cross-examination
By Mr. McGuire

1 A Yes, I did.

2 Q And do you remember talking to Ricky about Bobby around
3 Christmastime?

4 A Well, there's probably no telling of what I, what I've
5 talked about with Ricky because trying to keep Ricky away
6 from me and trying to get him to leave me alone for me not
7 to talk to him at all is kind of hard at that time. You
8 pretty much had to speak to Ricky whenever Ricky was there
9 cause Ricky just made hisself be there.

10 Q With you?

11 A Tried to.

12 Q Okay. And that was when you were carrying on your
13 affair with Bobby?

14 A I wasn't living with Ricky. I never had an affair with
15 Bobby while I lived with Ricky. I was out and on my own
16 when I had my affair with Bobby.

17 Q I understand.

18 You were still married to Ricky when you had your---

19 A I was still living -- I was still married to Ricky,
20 yes.

21 Q Okay. And this hit Ricky hard?

22 A He said it did.

23 Q And he wanted you back?

24 A I didn't want him.

25 Q I understand that.

Angela Davis - Cross-examination
By Mr. McGuire

1 He wanted you back?

2 A But I did not want him. I tried and tried and tried to
3 make that plain and clear to everything and everybody. I
4 even went before our family doctor and my family doctor
5 talked with me about us taking marriage counseling. I sat
6 there in tears and I cried and I told my family doctor, in
7 front of Ricky, I do not want to work this out, I want a
8 divorce, I want out, but --.

9 Q Do you remember telling Doctor Jackson that you knew
10 that you should be a Christian woman, but there's some
11 things you wanted to do first?

12 A No.

13 Q You don't remember telling him that?

14 How about---

15 A I may have, but I don't remember telling him that.

16 Q Okay. Do you remember when Ricky tried to kill himself
17 by taking pills?

18 A Yeah, he took a few pills and ran out there in the yard
19 that day and showed Heather and us the bottle and stuff and
20 Heather took chasing after him trying to get the pills out
21 of his hand. He, he did that to let us know what he had
22 done. To me it was a show.

23 Q He was involuntarily committed to a mental hospital.

24 Do you remember that?

25 A Yeah, and I also remember what was told when I first

Angela Davis - Cross-examination
By Mr. McGuire

1 walked into the emergency room with him cause I took Heather
2 to the emergency room. As we walked back there, the doctor
3 stood back there and Ricky was screaming and hollering don't
4 let her leave me, don't let her leave me. I looked over at
5 the doctor, I told the doctor that I had left him. I was
6 wanting a divorce. I wanted out.

7 She looked at me and she said Mrs. Blackwell, she said
8 from here -- standing right here I can tell you have serious
9 problems and I wouldn't dare tell you to go back to him, and
10 I said well, do you have him. She said we got him and I
11 left. I did not stay. I left.

12 Q And when Ricky took all the pills, that was right after
13 you admitted to him that you'd been intimate with Bobby?

14 A I had admitted to him I was intimate with Bobby way
15 before that. Way before he took the pills.

16 Q And then you also told him that you and Bobby had
17 enough insurance on Ricky that if he died y'all could live
18 and retire comfortably?

19 A I ain't never told him that. The only thing that come
20 up about life insurance on that was that me and Ricky
21 together had a life insurance policy with Liberty Life. It
22 was 35,000 on me and 50,000 on Ricky, and I took and I
23 signed that policy over and give it to his daddy so his
24 daddy could keep the \$50,000 policy on him. That's the only
25 insurance on Ricky Blackwell I ever cared about giving to

Angela Davis - Cross-examination
By Mr. McGuire

1 anybody. I ain't want nothing off of Ricky.

2 Q Before this happened, you'll agree that Heather and
3 other people told you not to come around?

4 A Oh, when it first happened -- when I first separated
5 from Ricky, yeah, me and Heather had it out. We had it out
6 big time. And she told me she'd never accept Bobby, she'd
7 never accept nobody, and she told me not to never bring so
8 and so around. So, we stayed apart. We didn't have a lot
9 of communication, nothing to do with each other.

10 Q well, she told you not to bring Bobby around
11 specifically and she---

12 A well, that's where -- that's what I'm trying to tell
13 you. Eventually Heather starts coming to Bobby's. She even
14 brings the grandkids to Bobby's, and then the next thing you
15 know, she's even calling us and telling us about a program
16 at the school. She invited me and Bobby to go to a program
17 even at the school for the kids. Bobby even gave the
18 grandkids money after the program. Cletus was even at that
19 program.

20 Q Oh, I agree. Heather had a lot of charity in her
21 heart. I don't know where she found it, but she did.

22 Now, I'm asking you this question.

23 Heather told you please don't bring Bobby and Brooke
24 around when this happened, before this happened, isn't that
25 right?

Angela Davis - Cross-examination
By Mr. McGuire

1 A No, Heather had told me then, after she had gotten over
2 her mad spell at me, that that was her house, that it was
3 Nanny and Papa who didn't want them around. But that was
4 her house and she paid rent and she could have who she wants
5 to and that's the same way her house is today that she lives
6 in today that. There for a long time I couldn't -- I didn't
7 go about because it was said that Cletus told my two
8 children that if they had anything to do with me he was
9 going to cut them out of their will.

10 So, for almost two years I went without seeing my
11 grandchildren or knowing anything about my grandchildren,
12 and then until finally they broke down and Heather made the
13 agreement with him again that that's my mama, and I'm gonna
14 see my mama.

15 Now, whether it happens again I do not know. But
16 that's the way it happened and that's the way it is now.
17 She even calls me now to come on her premises.

18 Q Well, I agree. Heather does have a lot of charity in
19 her heart. I agree with that. But listen to my question.

20 In the months leading up to this incident, Heather told
21 you don't come around without calling, don't bring Brooke,
22 don't bring Bobby cause it's hard on Ricky?

23 Didn't she tell you that?

24 A No.

25 Q Okay. Do you remember telling a different version of

Angela Davis - Cross-examination
By Mr. McGuire

1 this to a Ms. Margaret Musick?

2 A No.

3 Q You don't remember that?

4 You don't remember telling Margaret Musick that you
5 suffered a lot of guilt because there were other options you
6 could of used and you felt responsible for Brooke's death?

7 A I have always said I felt responsible in a way that if,
8 if I had of just stayed there and stayed in my torment that
9 I was already in and never had left, if I had never left
10 Ricky and just stayed there, then maybe that child would be
11 here. I don't know that. Nobody knows that.

12 Q well---

13 A But I do -- I have said that to myself. I have
14 wondered. There's always wonders and if's and what, what if
15 I had done this or what if I had done that. Those things go
16 over in my head all the time because I loved that little
17 girl. I loved her dearly and I still love her memory.

18 Q Okay. I'm gonna ask you---

19 A And I---

20 Q ---ma'am, if you remember some specific statements that
21 you made previously.

22 A With you, I ain't made no statements with you.

23 Q I understand. You wouldn't talk to me.

24 A Nope.

25 Q we'll come back to that later, but I need to ask you

Angela Davis - Cross-examination
By Mr. McGuire

1 specifically -- and I'm trying to be kind to you, ma'am, to
2 provide---

3 A I'm being kind to you.

4 Q Now, you do remember Margaret Musick?

5 A Yes, she was my counselor.

6 Q Okay. Do you remember telling her that the day this
7 happened that you actually saw Ricky earlier in the day, not
8 at your mama's house, but at Heather's?

9 A I never been to Heather's house. So, I couldn't of
10 told Margaret that.

11 Q Okay. Do you also---

12 A Only place I been was to my mother's house.

13 Q I didn't---

14 A So, I know that's a crock.

15 Q Okay. I know that's what you're saying now.

16 I'm asking you did you make that statement to Margaret
17 Musick?

18 A No, I didn't.

19 Q Okay. Did you also tell Margaret Musick that, when you
20 saw Ricky at Heather's that day, that he winked at you and
21 smiled at you and said come on back later, the boys are at
22 ball practice now, but come back later and I won't be here?

23 Do you deny making that statement?

24 A I deny that too because Ricky Blackwell ain't never
25 winked at me but one time and I'll tell you when he smiled

Angela Davis - Cross-examination
By Mr. McGuire

1 and winked, and that's when he walked out that door that day
2 he was over there at my mama's and he told us to come over
3 there to get the boys and I had Brooke with me, and I always
4 wondered what that smile was, but I knew what it was about
5 when he put that gun up to her head.

6 Q Okay. And do you remember telling Margaret Musick
7 that, because you saw Ricky there earlier and because he
8 said come back later, that that's how you knew it was
9 premeditated and he was lying in wait?

10 Do you remember telling that to her, to Ms. Musick?

11 A Restate that to me again.

12 Q Do you remember telling Ms. Musick that you believed
13 that this must be premeditated because you saw Ricky, not at
14 your mother's house, but at Heather's house earlier and that
15 you had a conversation with Ricky, you learned that the boys
16 were at ball practice, and Ricky said come on back later and
17 I won't be here when you get back?

18 A Those boys didn't even play ball. They don't play
19 ball.

20 Q I'm aware of that.

21 A I never said no such a thing.

22 Q Okay. Now, you did tell Ms. Musick that you were
23 afraid of Bobby's association with the Hells Angels?

24 SOLICITOR BARNETTE: Objection, Your Honor.

25 A No, I did not.

Angela Davis - Cross-examination
By Mr. McGuire

1 THE COURT: Just one second.

2 Ma'am, don't answer that question. I have an
3 objection.

4 SOLICITOR BARNETTE: Objection, Your Honor. The
5 relevance. We got a matter of law we need to take up at
6 this point in time, Your Honor.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, I'll ask you to step back in the jury room. Don't
9 begin any discussions until such time as I've asked you to
10 do so about the case.

11 You may retire.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Mr. Barnette.

15 SOLICITOR BARNETTE: Yes, sir.

16 We made a motion in limine ahead of this time, Your
17 Honor, about any reference to any motorcycle gangs, anything
18 like that. Defense knew it. He took a shot.

19 That is prejudicial, not relevant, has nothing to do
20 with this case. Bobby Center was not even there. I mean
21 Mr. McGuire decides he wants to play by the -- he's not
22 playing by the rules. He's intentionally trying to inflame
23 this jury against a little girl's dad. The dad wasn't even
24 there.

25 I mean this is, I mean this is incredible to do this.

Angela Davis - Cross-examination
By Mr. McGuire

1 I understand his opening. I disagree with it. I could
2 maybe understand that. I do not understand this. This is a
3 purposefully thing trying to taint a little girl through her
4 dad that has nothing to do with this and that's the reason I
5 made a motion in limine ahead of time, and I hope that notes
6 in that doctor's records.

7 THE COURT: Mr. McGuire.

8 MR. MCGUIRE: Judge, this is classic impeachment
9 evidence. It's classic bias. Obviously I have a very good
10 faith basis for asking all these questions. I have records.
11 I can prove that Ms. I guess Davis now, Angie Davis, has
12 been untruthful with this Court and this jury. I intend to
13 prove that.

14 And also I can prove bias because in her sessions with
15 her counselor, she indicated she didn't want to come to
16 Court. She was very much afraid of the Hells Angels, that
17 Bobby's, Bobby's father was involved with them, and that she
18 feared that the motorcycle gangs would not leave her alone.

19 THE COURT: Has she made a statement about that in
20 Court today?

21 MR. MCGUIRE: No, sir.

22 SOLICITOR BARNETTE: Your Honor, there's another point
23 too. I don't mean to interrupt, how did he get the medical
24 records?

25 How did he get them without her permission?

Angela Davis - Cross-examination
By Mr. McGuire

1 THE COURT: I'm, I'm not into that at this point in
2 time, but I am -- this is not an inconsistent statement that
3 she made today, is it?

4 MR. MCGUIRE: They are in -- her, yes. Her statement
5 with regard to---

6 THE COURT: Now, she hadn't -- when she testified, I
7 heard no testimony about those subjects---

8 MR. MCGUIRE: Are you---

9 THE COURT: ---thus far.

10 MR. MCGUIRE: Are you talking about motorcycles,
11 motorcycle gangs?

12 THE COURT: Yes, sir.

13 MR. MCGUIRE: Oh.

14 THE COURT: That's what I'm talking about.

15 MR. MCGUIRE: She's not, she's not testified about
16 those. I agree with you.

17 THE COURT: So, what are you impeaching?

18 MR. MCGUIRE: I believe that I'm allowed to ask her
19 about her prior statements to Ms. Musick where---

20 THE COURT: That are, that are not relevant to this
21 case.

22 MR. MCGUIRE: They're extremely relevant to this case.

23 THE COURT: How?

24 MR. MCGUIRE: Because she -- because I need to be able
25 to develop a record from which to argue that her fear, and

Angela Davis - Cross-examination
By Mr. McGuire

1 she's clearly indicated a real fear of motorcycle gangs and
2 the Hells Angels to Ms. Musick, and that her fear is that
3 the motorcycle gangs will not leave her alone. She
4 indicated she was threatened by them. They will not leave
5 her alone.

6 THE COURT: Not in this courtroom today. You didn't
7 ask -- that's not the question you asked.

8 MR. MCGUIRE: No, no, I agree. I agree. This is bias.
9 I can prove bias independently. I don't need -- it's not
10 contradicting her -- it's not a prior inconsistent
11 statement.

12 I can lay a record where she's got serious fear that
13 these motorcycle gang people hold her responsible for
14 Brooke's death because she took Brooke over there knowing
15 that everybody told her not to come around, don't bring
16 Brooke, she did it anyway, and that she, she harbored a lot
17 of responsibility, and---

18 THE COURT: You, you apparently can supposedly produce
19 a statement she made to a counselor?

20 MR. MCGUIRE: Yes, sir.

21 SOLICITOR BARNETTE: Your Honor, that brings up another
22 element. I think he's violated the law.

23 How did he get those records?

24 Cause he has to have a hearing with this lady under
25 HIPAA. I like to know how he got them.

Angela Davis - Cross-examination
By Mr. McGuire

1 THE COURT: Mr. McGuire.

2 MR. MCGUIRE: Well, I mean I'll respond to the -- if
3 you're asking me I'll respond.

4 THE COURT: I did.

5 MR. MCGUIRE: I can tell you we sent a, we sent a
6 subpoena to the, the entity that keeps the records with a
7 fax cover sheet saying please alert our office and we gave
8 them the name and number of a person to contact with regard
9 to the requirement of a Court order or release, and the
10 records came without any further intervention on our part.

11 SOLICITOR BARNETTE: Your Honor, at this time I make a
12 motion to strike all the relevant testimony about the mental
13 health records. He's obtained those records illegally under
14 HIPAA, under State Law. He can not get them unless she has
15 a proper hearing about this subject. He never gave notice
16 to the defendant -- to the State about it. Never gave
17 notice to the Court.

18 MR. MCGUIRE: Well, Your Honor, my understanding, and
19 the way we all practice law is, the subpoena is the first
20 request, and then the entity generally moves to quash, quash
21 the subpoena and then we get a Court order, if necessary,
22 and we would of -- that's the process we thought we were
23 gonna have to go through. But, for whatever reason, the
24 entity gave us the records.

25 THE COURT: I understand that, but let's, let's get

Angela Davis - Cross-examination
By Mr. McGuire

1 back to the question at hand.

2 You're, you're trying to -- are you trying to impeach
3 her on an out of Court statement that she has not -- she
4 didn't make a statement about it here in Court other than
5 you asking her about it?

6 MR. MCGUIRE: No, sir, I'm, I'm independently asking
7 her, with regard to her fear of motorcycle gangs, that she
8 harbored a lot of guilt and response -- felt a lot of
9 responsibility with regard to, to Miss Brooke Center's
10 death.

11 THE COURT: Well, the proper question I believe would
12 of been to ask her if she was testifying today out of fear,
13 and then she could either admit it or deny it.

14 MR. MCGUIRE: Well, that's where I was until you---

15 THE COURT: I don't think you were going there with the
16 question you asked.

17 MR. MCGUIRE: Oh, well, I think it's---

18 THE COURT: I think you were trying to put the
19 motorcycle gang in front of the jury before you got there.
20 That's what I think you were trying to do.

21 MR. MCGUIRE: Well---

22 THE COURT: And so I'm going to rule that that
23 question -- I'm gonna rule it out of order. I'm gonna
24 strike it from the record. I'll instruct the jury that I
25 have done so.

Angela Davis - Cross-examination
By Mr. McGuire

1 MR. MCGUIRE: I have a whole line of questioning, Your
2 Honor. I mean I don't know what the Court's rule is
3 concerning---

4 THE COURT: Well, I didn't say that I ruled every
5 line -- all your questions in your line of questioning out
6 of order cause you hadn't asked them yet.

7 MR. MCGUIRE: Very well.

8 THE COURT: But I, I -- that one I am going to rule out
9 of order and I will strike it from the record and instruct
10 the jury that I've done so and they're to disregard anything
11 that I have stricken from the record.

12 MR. MCGUIRE: Yes, sir.

13 SOLICITOR BARNETTE: Your Honor, like I said, I'm gonna
14 continue my motion on the motion to strike because he's
15 obtained records illegally. Under HIPAA, Federal law, you
16 have to have a judge's order in order to get -- I know the
17 Court's aware of this. I'm just building a record on it.

18 THE COURT: Well, I think she is the one that has that
19 right. She's the one who can assert that in -- that, that,
20 that claim.

21 SOLICITOR BARNETTE: Well, I understand, but I think
22 he's obtained -- if we did that, we know what would happen.

23 THE COURT: Well, again, I---

24 SOLICITOR BARNETTE: I know, but I understand.

25 THE COURT: That's not the issue before me today.

Angela Davis - Cross-examination
By Mr. McGuire

1 SOLICITOR BARNETTE: Yes, sir.

2 THE COURT: It may be in front of somebody some other
3 time.

4 SOLICITOR BARNETTE: Yes, sir.

5 THE COURT: Not in front of me yet.

6 All right.

7 SOLICITOR BARNETTE: But, but, Your Honor, I would make
8 a motion to strike all, just for the record, make a motion
9 to strike anything involving the mental health records.
10 He's obtained those illegally. I mean I'll get the State
11 law. I don't have it in front of me cause I didn't plan to
12 deal with this issue.

13 THE COURT: Well, you -- I guess we'll have to adjourn
14 the trial and take all that up.

15 Is that what you want me to do?

16 SOLICITOR BARNETTE: Well, Your Honor, I understand
17 your ruling. But what I mean, I think it's -- I mean he's
18 violated State law and federal law I mean by getting these
19 records.

20 THE COURT: Are you wanting to take that up with the
21 Court in the form of a motion to strike?

22 SOLICITOR BARNETTE: Yes, sir.

23 THE COURT: All right. Then I'm gonna adjourn the
24 trial at this point in time. We'll start back in the
25 morning.

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1 SOLICITOR BARNETTE: Yes, sir.

2 THE COURT: I'll give you an opportunity to present
3 that information to me.

4 Bring the jury in.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, I have ruled the last question out of order. I have
9 ordered it stricken from the record of the case. I will
10 advise you that when any matter has been stricken from the
11 record of the case, that matter should be disregarded by the
12 jury in full. When I charge you concerning the law I will
13 explain that further, but at this point in time I have
14 stricken the last question that was asked of this witness
15 from the record in the case.

16 Now, some other matters have come up during my
17 discussions with the attorneys that are gonna require some
18 review by the Court. Rather than have you sit back in the
19 jury room, and I think this is probably gonna take longer
20 than 30 minutes, that will take us past five o'clock, I'm
21 going to adjourn the trial for the afternoon.

22 We will resume in the morning at 9:30. So, at this
23 point in time I'll ask you to step back to the jury room,
24 but before you do that, during your absence, as you know, my
25 instructions are always that you should not discuss any

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1 aspect of this case with anyone including among --
2 discussing these cases among yourselves. Those discussions
3 should not take place until I advise you to begin your
4 deliberations.

5 I hope you have a good evening. You may retire to the
6 jury room. Thank you very much.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 THE COURT: I will caution the witness that she should
10 not discuss her testimony, either past, present, or future
11 testimony, with anyone during the overnight break.

12 I'll resume the trial at nine o'clock with counsel to
13 discuss the issues that have been raised. In the mean time,
14 any authority that the attorneys wish for me to consider
15 should be forwarded to my office electronically.

16 Thank you very much.

17 Court's in recess until nine o'clock.

18
19 (WHEREUPON, Court was in recess for the evening.)
20
21
22
23
24
25

1 Wednesday, March 12th, 2014

2

3 (WHEREUPON, the Code of Laws was marked as Court's
4 Exhibit No. 6. The HIPAA information was marked as Court's
5 Exhibit No. 7. Both were for identification purposes only
6 at this time.)

7 THE COURT: State ready to proceed?

8 SOLICITOR BARNETTE: State's ready, Your Honor, on the
9 motions that we -- I handed up on yesterday.

10 THE COURT: Yes, sir.

11 Okay. Defense ready?

12 MR. MCGUIRE: Yes, sir.

13 THE COURT: Yesterday afternoon, when I took our break,
14 I asked both sides to submit to me any authority that they
15 wish for me to consider by electronic means. I have
16 received authority from the State. I did not receive any
17 authority from the defense.

18 Did I miss something?

19 MR. MCGUIRE: Judge, we're just gonna stand on the, the
20 law that was mentioned by the State, HIPAA. There's some
21 statutes in South Carolina. We don't have anything
22 additional.

23 THE COURT: So, the answer is --?

24 MR. MCGUIRE: No.

25 THE COURT: Thank you.

1 Okay. Now, I do want to clarify my ruling in regards
2 to striking the question that was asked yesterday and maybe
3 expand on that ruling before we take up the question that
4 the State has raised.

5 Yesterday, a question was asked in which the question
6 referred to the Hells Angels biker, biker gang. We had had
7 discussions in form -- in the form of a motion in limine
8 previously as well as other discussions concerning the
9 possibility that information concerning biker gangs might be
10 introduced, but never the use of that particular word or a
11 reference to that particular biker gang, and the way that it
12 was used, it would be my ruling as well that the
13 probative -- the prejudicial effect of that reference would
14 outweigh its probative value in the way -- in that respect
15 because I believe the issue involved was the credibility of
16 the witness. The identity of the biker gang, I'm not sure,
17 has anything to do with whether or not the witness may of
18 talked about a biker gang or any particular biker gang.

19 So, my ruling would include the fact that a reference
20 to that particular biker gang, since it had never been
21 mentioned in Court before that time, would be that the, the
22 prejudicial effect of that reference would outweigh any
23 probative value as to the credibility of the witness who was
24 testifying. So, that would be an additional basis for my
25 ruling.

1 I will inform the defense that, in the future, if you
2 wish -- and this is an additional ruling in connection with
3 the State's motion in limine. In the future, if the defense
4 wishes to refer to a biker gang and/or the Hells Angels or
5 any other particular biker gang in its questioning, I'm
6 going to require that the defense inform the Court that the
7 questioning will go in that direction and I will allow a
8 proffer before that is placed before the jury so that we can
9 determine whether or not the context in which it's being
10 used is appropriate or not.

11 Do you understand my ruling, Mr. McGuire?

12 MR. MCGUIRE: Yes, sir.

13 THE COURT: Mr. Allen, do you understand that ruling?

14 MR. ALLEN: I do, Your Honor.

15 THE COURT: Thank you, sir.

16 Now, the State, when we broke yesterday, had made a
17 motion to exclude certain references to information that may
18 have come from -- is it Margaret Musick?

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: Okay. Who -- I'm not sure exactly who
21 Margaret Musick is. She was identified yesterday morning,
22 right before we completed qualification of the jury, as a
23 potential witness in the case. She had not been identified
24 prior to that time in spite of the fact that the Court had
25 asked for potential witnesses to be identified as early as

1 last December.

2 So, I'm trying to determine exactly who she is and so
3 I'll have some context in which to receive the argument this
4 morning since she's never been identified before and I don't
5 know her connection with the case.

6 Mr. McGuire, can you tell me who Margaret Musick is?

7 MR. MCGUIRE: She's a counselor, Spartan Area Regional
8 Mental Health.

9 THE COURT: Okay. Do you know her professional
10 designation?

11 Does she have a license of any kind?

12 MR. MCGUIRE: I don't know her specific -- I don't know
13 if she's a clinical social worker or a Master's in
14 Education, but I know that she was fulfilling the role of a
15 counselor.

16 THE COURT: Okay. Slash therapist?

17 MR. MCGUIRE: Yes.

18 THE COURT: Okay.

19 MR. MCGUIRE: Yes.

20 THE COURT: You would agree with that as a possible
21 designation for her?

22 MR. MCGUIRE: Yes.

23 THE COURT: When you're addressing the Court, you have
24 to stand, Mr. McGuire.

25 MR. MCGUIRE: Yes.

1 THE COURT: Thank you, sir.

2 Okay. Now, just a couple of questions to follow up on
3 Ms. Musick.

4 It was indicated in Court yesterday that she had
5 responded to a subpoena issued by the defense.

6 Can you tell me when that subpoena was issued?

7 MR. MCGUIRE: She actually -- the only subpoena that we
8 had regarding Ms. Musick was her presence for potential
9 testimony.

10 THE COURT: Okay.

11 MR. MCGUIRE: We didn't secure any records from Ms.
12 Musick directly. We got them from Spartan Area Mental
13 Health.

14 THE COURT: Was a subpoena directed to Spartanburg Area
15 Mental Health?

16 MR. MCGUIRE: Yes.

17 THE COURT: When was that issued?

18 MR. MCGUIRE: January 14th.

19 THE COURT: And when did this---

20 MR. MCGUIRE: No, I'm sorry. January 21.

21 THE COURT: And when was it responded to?

22 MR. MCGUIRE: We received a letter from the State of
23 South Carolina Department of Mental Health, Spartan Area
24 Mental Health Center branch, January 22nd.

25 THE COURT: And would that have included those records?

1 MR. MCGUIRE: No, sir.

2 THE COURT: When were the records received?

3 MR. MCGUIRE: When were the records were received --
4 fairly recently.

5 THE COURT: Well, give me some idea what that means.

6 MR. MCGUIRE: I believe it was -- gosh, end of January.

7 THE COURT: End of January?

8 MR. MCGUIRE: That's my guess.

9 THE COURT: Okay. Now, just to be sure, because this
10 could cut this thing short, I don't know, did the defense
11 notify the State of the fact that they had possession of
12 those records?

13 MR. MCGUIRE: No, sir.

14 THE COURT: Did the defense notify Ms. Davis that the
15 defense had possession of those records?

16 MR. MCGUIRE: No, sir.

17 THE COURT: Did the defense obtain any waiver of any
18 privilege that Ms. Davis may have in those records before
19 using them in Court?

20 MR. MCGUIRE: No, sir.

21 THE COURT: Okay. Now I'll hear from the State then.
22 That won't cut it short.

23 MR. MCGUIRE: In all fairness to the Court and the
24 State, we did get a Court order from Your Honor once we
25 contacted Spartan Area Regional Mental Health. We send

1 them, as a matter of course, we always send them a letter or
2 a cover sheet with our communication asking them please tell
3 us what you want from us in order to get these records, and
4 they indicated a Court order, and we did approach Your Honor
5 and we do have a Court order.

6 THE COURT: Okay. You didn't notify the State of that
7 yesterday, but then again -- did you?

8 MR. MCGUIRE: No, no, no, and---

9 THE COURT: Okay. All right. Now, the next thing --
10 but, again, my question is did you inform Ms. Davis that you
11 had the records and intended to use them in a case and
12 obtain a waiver of any privilege she may have?

13 MR. MCGUIRE: No, sir.

14 THE COURT: Okay. You may proceed, Mr. Barnette.

15 SOLICITOR BARNETTE: Thank you, Your Honor.

16 I made two Court's Exhibit, Your Honor, is the State
17 Law concerning this on Court Exhibit No. 6 and then Court
18 Exhibit No. 7 is the federal statutes concerning this, Your
19 Honor. I believe I've given a copy to the defense as well
20 as the Court on this. I apologize. I couldn't do it last
21 night, but I e-mailed the cites to, to both parties, Your
22 Honor.

23 Court Exhibit 6, Your Honor, Statutes 44-22-90 and
24 44-22-100, basically says that -- I know the Court's
25 familiar with this because we've had hearings -- I think in

1 the State versus Marion Stewart. We've had HIPAA hearings
2 before involving witnesses where they have a right to
3 protest to these records being produced.

4 One of the requirements is that notice has to be given
5 to Ms. Davis that the records are being used. Obviously
6 that was not done, and I appreciate the Court asking
7 questions concerning that, Your Honor, from there. And I
8 handed up several cases under our State Law, Your Honor.

9 Probably the most pertinent one on that, Your Honor,
10 is -- was State versus Parker, Your Honor. It was a murder
11 case in Charleston, Your Honor. It's 294 S.C. Reporter 465,
12 366 S.E.2d 10, Your Honor. It is a 1988 case, Your Honor.

13 In there, Your Honor, the defense tried to get the
14 medical records of -- the person that found the victim in
15 that case trying to blame him for the murder in this case.
16 They found out that they did not fall under the exceptions
17 in that situation. They weren't entitled to approach third
18 party guilt and that didn't allow it either. So, they kept
19 the records out so they could not be used and the Supreme
20 Court backed them up on that, Your Honor.

21 The statute that was used at that time, Your Honor, was
22 actually amended to the present statute. That's the reason
23 why I added the Carolina Assembly, the House of
24 Representative notes, Your Honor, showing where the statute
25 went because the statute, at that time, make sure I'm

1 telling you right, is 44-23-1090, which is been basically
2 adopted into our present rules that I just read to the
3 Court. I did include the General Assembly's notes on that
4 to show that, Your Honor.

5 State versus Terry was one that was mentioned, Your
6 Honor. Basically, in that case, the State moved to get
7 psychiatric records in that case. They gave notice to all
8 parties. They went through the proper procedures of doing
9 that, Your Honor. The Supreme Court upheld that on it and
10 the cite on that is State versus Terry, 339 S.C. 352 and
11 then 529 S.E.2d 274, Your Honor, it's a 2000 case, and it's
12 actually a death penalty case heard in Lexington, Your
13 Honor, where the Supreme Court upheld what the State did in
14 order to get those records when they followed the proper
15 procedures and they were relevant in that case, Your Honor.

16 And then, Your Honor, I've also included a Family Court
17 case that was heard by the Court of Appeals, Carpenter
18 versus Burr, Your Honor. It is South Carolina -- 381 S.C.
19 494, and 673 S.E.2d 818, Your Honor. It's a 2009 case, Your
20 Honor. In that case they tried to enter the records, Your
21 Honor, concerning psychiatric treatment in that case. The
22 Court didn't find it appropriate and was upheld by the Court
23 of Appeals in that case, Your Honor.

24 I think state law, state law alone, Your Honor, they're
25 not entitled to this whatsoever. But then we move to the

1 Federal HIPAA statute, Your Honor, which is fairly strict.

2 What I did, Your Honor, I did a summary of the HIPAA
3 privacy rule. Obviously the thing is huge. So, I tried to
4 do a summary of that, Your Honor, handing up and it talks
5 about the exceptions, where they can get that, Your Honor.
6 I would submit -- and I did include the -- there was a reg
7 from the HIPAA that talked specifically about judicial
8 proceedings, Your Honor, how those records can be obtained,
9 Your Honor. The defense did not follow those regs, Your
10 Honor, and basically violated that by doing it the way they
11 did it from that standpoint because basically they have to
12 get the permission of Ms. Davis in order to get those.

13 And what's even more disturbing to the State, Your
14 Honor, obviously they did it this way to divulge -- to let
15 us have notice that they were doing that. Obviously they
16 didn't file a Rule 5, and what's bad is, even in Atkins
17 hearing, he violated the Court's order, did not provide
18 everything to the State or to Doctor Brown in those
19 hearings, and I think the Court did the appropriate remedy
20 in that case to not let him go any farther in any other
21 materials.

22 And what I'd ask the Court to do here is, obviously,
23 grant our motion in limine, not let him talk anymore about
24 the mental health records that they did not obtain properly
25 as well as striking anything mentioned about the mental

1 health records in earlier testimony, Your Honor.

2 THE COURT: Mr. McGuire.

3 MR. MCGUIRE: First, Your Honor, I need to clarify some
4 of my comments. In trying to give you a timeline, when we
5 got the records, despite having some correspondents at the
6 end of January, it looks like we didn't get the Court order
7 until the end of February, and we got the records in early
8 March. Just wanted to let the Court know that.

9 Now, judge, every statute in every provision of HIPAA
10 contains a, an exception, which is, of course, a Court
11 order. In preparing for a capital case---

12 THE COURT: Yes, sir, but the Court order here allowed
13 you to get the records.

14 My question is was there a waiver of privilege by Ms.
15 Davis?

16 MR. MCGUIRE: No.

17 THE COURT: Was she informed that she had that right?

18 MR. MCGUIRE: Not from me.

19 THE COURT: Okay. Do you acknowledge that she has that
20 right?

21 MR. MCGUIRE: No, sir.

22 THE COURT: Okay. Tell me why.

23 MR. MCGUIRE: I believe that the defendant's
24 Constitutional right to confront witnesses in a capital case
25 with regard to statements that she's made in the past, which

1 are obviously untrue, would -- his right under the
2 Constitution would trump the privacy interest of Ms. Davis.

3 THE COURT: There's a statute---

4 MR. MCGUIRE: I understand.

5 THE COURT: ---that says she has a privilege.
6 You acknowledge that?

7 MR. MCGUIRE: Oh, I do. Of course.

8 THE COURT: Okay.

9 MR. MCGUIRE: I was just saying the Constitutional
10 right of the defendant trumps---

11 THE COURT: Do you, do you have a case where that --
12 let's say any, defeats any privilege?

13 MR. MCGUIRE: Alaska v. Davis.

14 THE COURT: Alaska v. Davis?

15 MR. MCGUIRE: Yes, sir, United States Supreme Court---

16 THE COURT: Do you have a copy of that?

17 MR. MCGUIRE: I usually -- yes, sir.

18 THE COURT: Why was that -- why was this not sent to me
19 last night?

20 MR. MCGUIRE: Well, I pulled it, I pulled it very late
21 and---

22 THE COURT: Well, I was reading late last night.

23 MR. MCGUIRE: And also I didn't know -- I didn't think
24 it went directly to the issue of the, the records. More in
25 light of the ability to cross-examine Ms. Davis.

1 THE COURT: Tell me -- you know, I asked for this last
2 night.

3 MR. MCGUIRE: Sure.

4 THE COURT: In fact, I directed it last night.

5 MR. MCGUIRE: I -- my understanding, Your Honor, is
6 that it's -- that, that case is actually on a separate
7 issue, which is the latitude of cross-examination of Ms.
8 Davis, and I thought we were just limited to the issue of---

9 THE COURT: Well, the question is privilege right now,
10 and I don't know if Ms. Davis is gonna assert her privilege.
11 I'm gonna ask that question in just a few minutes --

12 MR. MCGUIRE: Yes, sir.

13 THE COURT: -- once it's been explained to her that
14 there is a statute that gives her a privilege. Before her,
15 her mental health records can be used against her in a
16 proceeding, she has a right to be aware of the privilege and
17 has a right then to waive it or not waive it, and that's the
18 reason for my questions.

19 Was she ever given that opportunity by you?

20 MR. MCGUIRE: No.

21 THE COURT: Okay. Does this case address the waiver of
22 the privilege?

23 MR. MCGUIRE: That case addresses the privacy of
24 juvenile adjudications and a witness in a criminal case was
25 a juvenile who was on juvenile probation. The defense

1 sought to cross-examine the juvenile with regard to the fact
2 that he was under supervision by the State.

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MCGUIRE: The case was being prosecuted by the
5 State. They wanted to create a record from which to argue
6 potential bias of the witness. The defense was not allowed
7 to go into the juvenile adjudication or juvenile probation.
8 It was appealed to the United States Supreme Court, which
9 found---

10 THE COURT: Was that a, was that a privilege that
11 belonged to the juvenile?

12 Did the juvenile have a privilege in that case?

13 MR. MCGUIRE: I'm not sure they addressed it whether it
14 was a personal privilege or not, but it was certainly a
15 privacy interest that was --.

16 THE COURT: Well, this is privilege. Privilege is a
17 whole different ballgame then simply privacy. You know, we
18 talk about the attorney/client privilege.

19 MR. MCGUIRE: Sure.

20 THE COURT: Privilege, privilege is a whole different
21 area of the law.

22 Does this case address privilege?

23 MR. MCGUIRE: I don't believe it addresses it per se.

24 THE COURT: I'm gonna, I'm gonna go read it, but I want
25 to know if it addresses privilege or not.

1 MR. MCGUIRE: It addresses the -- I don't know. I
2 don't know if they address it in those terms or not, but I
3 know that it's addressed as a State's important interest in
4 the privacy of juvenile records.

5 THE COURT: All right. Well, I'm gonna ask Ms. Davis
6 to resume the stand please.

7 Come up, ma'am.

8 (Witness returns to the stand.)

9 THE COURT: Good morning.

10 THE WITNESS: Good morning.

11 THE COURT: Ms. Davis, you were in the courtroom and
12 listened to my discussion with defense counsel.

13 Did you understand what we were talking about?

14 THE WITNESS: What I'm thinking is that he used my
15 medical records without my consent or yours and---

16 THE COURT: Well, the Court issued an order allowing
17 them to obtain those records, but did not issue an order
18 saying that you had waived any privilege in those records.

19 THE WITNESS: Okay.

20 THE COURT: Do you understand that?

21 THE WITNESS: Yes.

22 THE COURT: Okay. And you agree that that's the case?

23 MR. MCGUIRE: That I -- I'm sorry.

24 THE COURT: You agree that the order that I issued
25 allowed you to obtain the records, but did not address her

1 privilege in those records?

2 MR. MCGUIRE: I agree with that.

3 THE COURT: Okay. Ma'am, under the law, there's
4 certain situations where people are given privileges under
5 the law such as an attorney/client privilege. In other
6 words, if I have a lawyer and I discuss things with my
7 attorney, neither I nor my attorney can be forced to reveal
8 any of those communications. In fact, the law does not
9 require a person to reveal those communications. Those are
10 protected when a word -- the word privilege is used.

11 In this particular case -- Mr. Barnette, help me. The
12 statute that indicates that there is a privilege in this
13 matter?

14 SOLICITOR BARNETTE: Yes, sir, that would be -- I
15 think---

16 THE COURT: I believe it's 44-22-90?

17 SOLICITOR BARNETTE: Yes, sir.

18 THE COURT: Okay. Let me read to you the appropriate
19 portion of that statute.

20 That statute says communications between patients and
21 mental health professionals, including general physicians,
22 psychiatrist, psychologist, psychotherapist, nurses, social
23 workers, or other staff members employed in a
24 patient/therapist capacity or employees under the
25 supervision of them are considered privileged. That statute

1 then would grant those, those communications that someone
2 has with any type of mental health professional to be
3 privileged. In other words, neither you or the professional
4 can be required to discuss them, divulge the contents of
5 those communications in a Court of law.

6 Do you understand what that means?

7 THE WITNESS: (Witness nods affirmatively.)

8 THE COURT: You have to answer me verbally, ma'am,
9 because she's taking this down.

10 THE WITNESS: Yes.

11 THE COURT: You shook your head yes, but you didn't,
12 didn't say the word yes.

13 So, do you understand that you have a right to claim
14 that privilege, which would prevent those matters from being
15 discussed in this Court?

16 Do you understand that?

17 THE WITNESS: Yes.

18 THE COURT: Do you wish to claim that privilege?

19 THE WITNESS: Yes.

20 THE COURT: Okay. Thank you, ma'am. You can have a
21 seat.

22 (Witness complies.)

23 THE COURT: Anything further from the State at this
24 time?

25 SOLICITOR BARNETTE: No, sir, I've looked at the case

1 that he passed up though -- I know the Court hadn't had a
2 chance to review that.

3 THE COURT: I have not had -- I'm gonna step down and
4 take a look at it just to be sure. I didn't hear it
5 addresses privilege. I'll take -- get your take on it and
6 then I'll read it.

7 SOLICITOR BARNETTE: It don't address privilege
8 whatsoever. It talks about juvenile records, Your Honor.
9 It does talk about cross-examination, weighing that balance
10 from there. But, Your Honor, my point is I sent mine out
11 9:35PM yesterday to the Court and to the defense. So, I was
12 working quite late hours trying to---

13 THE COURT: Well, and I read it after that. So, like I
14 said, I was reading late last night.

15 SOLICITOR BARNETTE: I'm sure you was. But, like I
16 said, I'd like to have more time to examine this and then
17 maybe address it when you come back, Your Honor, from there.

18 THE COURT: All right. Anything further from the
19 defense before I go back and consider the question?

20 MR. MCGUIRE: Not at this time.

21 THE COURT: Well now is the time.

22 Is there anything further from the defense that you
23 want me to consider before I go back and consider this
24 issue?

25 MR. MCGUIRE: No, sir.

1 THE COURT: Thank you.

2 All right. Court will be in recess while I take a look
3 at this.

4 (WHEREUPON, a short recess was taken at this time.)

5 THE COURT: All right. I have reviewed the only
6 authority given to me by the defense in this matter, and
7 that is Davis versus Alaska.

8 Davis versus Alaska involved a situation where the
9 State law provided that juvenile records were sealed, were
10 not disclosable. The defendant wished to use a witness in
11 the case of juvenile records, and the fact the juvenile was
12 incarcerated, in cross-examination, in an effort to show
13 that the individual was somehow compromised in his honesty,
14 the State, in an effort to seek some type of favor from the
15 State, and, in Davis, the Court did a balancing test
16 balancing the defendant's right to full and free
17 cross-examination against the witness' right to have his
18 juvenile record sealed, and the Court, in that case, found
19 that the defendant's right of -- to full and free
20 cross-examination outweighed the State's interest in keeping
21 that particular information confidential.

22 I have located the case of Jaffee versus Redmond, 1996
23 case -- by the way, Davis was decided in 1974.

24 In Jaffee versus Redmond, that is the case in which the
25 U.S. Supreme Court established the federal privilege against

1 disclosure of information given to mental health
2 professionals, and, in that case, that Court specifically
3 stated we reject the balancing component of the privilege
4 implemented by, they were talking about the Lower Court, in
5 a small number of states. They indicated that the making,
6 the promise of confidential, confidentiality contingent upon
7 a Trial Judge's later evaluation of the relative importance
8 of patient's interest and privacy and the evidentiary need
9 for disclosure would eviscerate the effectiveness of a
10 privilege.

11 So, the U.S. Supreme Court, in Redmond, rejected the
12 balancing test when dealing with the privilege involving the
13 exact type of communications we have in this case. I did
14 not find any, any authority which has strayed from that
15 position given by the U.S. Supreme Court in 1996.

16 Therefore, I do find that Ms. Davis has the right to
17 assert the privilege. I've heard no challenge to the
18 privilege to the effect that she, in anyway, waived it or
19 that any of the exceptions that are enumerated under the
20 statute, which is Statute Number 44-22-90, and there are
21 seven circumstances under which the privilege would not
22 apply, I've heard no argument that any of those exceptions
23 apply in this case either.

24 Anything further from the State in this matter?

25 SOLICITOR BARNETTE: Nothing further from the State,

1 Your Honor.

2 THE COURT: Anything further from the defense?

3 MR. MCGUIRE: Just to put on the record that, that we
4 do believe that the Constitutional right to confront a
5 witness with regard to bias would trump any issue of
6 privilege, and that the theory bias would be that Ms. -- in
7 the, in the records, it's clear that Ms. Davis is both
8 fearful of motorcycle gangs blaming, blaming her for the
9 death of Brooke Center, and also that her daughter blames
10 her for the death of Brooke Center in the prosecution of her
11 father, and we would use the records to make a, make a
12 record from which to argue that she's biased in her -- to
13 change her testimony to make up details that the event was
14 substantially premeditated or that she was tricked into
15 coming there by Mr. Blackwell, and that it wasn't just a
16 chance encounter.

17 THE COURT: I understand your position, but do you have
18 any authority that would run contrary to Jaffee versus
19 Redmond?

20 MR. MCGUIRE: Just Alaska v. Davis.

21 THE COURT: Which was decided before --

22 MR. MCGUIRE: Yes, sir.

23 THE COURT: -- Jaffee versus Redmond.

24 All right. Then my ruling would be that that
25 information is privileged. I will instruct the jury that I

1 am striking any reference to questions involving the
2 witness' discussions with Margaret Musick, and that they are
3 to disregard those matters in their entirety.

4 Anything further from the State before we proceed?

5 SOLICITOR BARNETTE: And, Your Honor, if my
6 understanding is right, no motorcycle gangs or anything like
7 it, there's no relevance at this point. There's no -- I
8 would ask for a motion in limine.

9 THE COURT: Well, I have not ruled that it's
10 irrelevant. What I instructed the defense to do was that
11 they are to inform the Court, before they ask any questions
12 that refer to those matters, that they intend to go there.

13 SOLICITOR BARNETTE: Yes, sir.

14 THE COURT: That would allow the Court, out of the
15 presence of the jury, to take a proffer concerning those
16 issues and make a determination on a case-by-case basis as
17 to whether or not that information is admissible and whether
18 or not the prejudicial value of that evidence would outweigh
19 its probative value.

20 SOLICITOR BARNETTE: Yes, sir. Thank you, Your Honor.

21 THE COURT: You understand my ruling at this point in
22 time?

23 MR. MCGUIRE: I, I do, Your Honor.

24 THE COURT: So, I haven't issued a blanket prohibition,
25 but I am gonna require that we at least discuss those

1 matters before those things are placed in front of the jury.

2 MR. MCGUIRE: Yes, sir, and I'll certainly comply with
3 that. I will have a proffer for this witness at the end of
4 her testimony before the jury is given -- I'll give the
5 Court a heads up.

6 THE COURT: As to?

7 MR. MCGUIRE: Motor -- fear of motorcycle gangs.

8 THE COURT: Well, sir, if it involves any information
9 from the records that have been -- that you have seen, she
10 has claimed a privilege in that matter.

11 MR. MCGUIRE: I wouldn't be asking her about statements
12 this she's made in the course of those records. Obviously
13 there were two homes that were firebombed. The graffiti on
14 the one home was this is for the girl. There was a
15 threatening telephone call to Mr. Blackwell's parents saying
16 two down, one to go, which was an indication that, to them,
17 that their house was next. I mean there is some real
18 evidence of some violence.

19 THE COURT: And I have not prevented you from
20 proffering that information, have I?

21 MR. MCGUIRE: No, no, and that's what I'm---

22 THE COURT: Okay.

23 MR. MCGUIRE: That's what I would ask her about.

24 THE COURT: Well, we'll get into that -- let me know
25 when you'd like to do the profferer and we'll be glad to do

1 that.

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: All right. Now, Ms. Davis, you need to
4 resume the stand. You're still testifying.

5 MR. MCGUIRE: I'm sorry, Your Honor.

6 THE COURT: Yes, sir.

7 MR. MCGUIRE: Could I proffer the records that I have
8 under seal?

9 THE COURT: Under seal?

10 MR. MCGUIRE: Yes, sir.

11 SOLICITOR BARNETTE: No, sir, that's not the way we're
12 gonna play it. Matter of fact, I'd like to see those
13 records. I'll be glad to get Ms. Davis to sign a release
14 concerning that if she wants to. But the problem---

15 THE COURT: We'll take that up later.

16 SOLICITOR BARNETTE: Okay.

17 THE COURT: Now is the State ready to proceed?

18 SOLICITOR BARNETTE: State's ready, Your Honor.

19 THE COURT: Defense ready to proceed?

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: All right. Let's bring the jury in.

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE COURT: All right. The record will reflect that
25 the jury has returned to the courtroom.

1 I want to apologize for my inability to estimate the
2 length of time that I'm going to need to handle some things.
3 I have completed going over the matters that were raised
4 yesterday.

5 I have made a ruling in this case, and that ruling is
6 that I am striking from the record any questions that were
7 asked of this witness concerning communications that she may
8 have had with a Margaret Musick, and those matters should be
9 disregarded by the jury in their entirety in making a
10 decision in this matter, and I'll give you additional
11 instructions concerning matters that I have stricken from
12 the record when I give you my charge on the law, but that's
13 my ruling at this point in time.

14 Now, when we took our break yesterday the defense was
15 in the process of cross-examining this witness, and, at this
16 time, the defense may continue.

17 Yes, sir, Mr. McGuire.

18 MR. MCGUIRE: Thank you, Your Honor.

19 THE COURT: Subject to my rulings.

20 MR. MCGUIRE: Yes, sir.

21 Madam Court Reporter, if I could have this marked?

22 (WHEREUPON, a statement was marked as Defendant's
23 Exhibit No. 1 for identification purposes only at this
24 time.)

25 MR. MCGUIRE: Thank you, ma'am.

Angela Davis - Cross-examination
By Mr. McGuire

1 Judge, may I approach the witness?

2 THE COURT: You may.

3 CONTINUED CROSS-EXAMINATION

4 BY MR. MCGUIRE:

5 Q Ms. Davis, I show you what's been marked for ID as
6 Defense No. 1.

7 Do you recognize that?

8 A No, sir, not really.

9 Q Why don't you take a look at it?

10 A I actually need my glasses. I can't see.

11 Q Do you have your glasses with you today?

12 A No.

13 Q You can't read anything today?

14 A Not unless somebody's got some bifocals for me to read.

15 SOLICITOR BARNETTE: Your Honor, what strength is her
16 eyes?

17 THE COURT: Beg your pardon?

18 SOLICITOR BARNETTE: I'll let her use my glasses.

19 THE WITNESS: I just need some reading glasses.

20 SOLICITOR BARNETTE: I don't know if they're strong. I
21 don't know what her strength is.

22 THE COURT: All right.

23 SOLICITOR BARNETTE: Ms. Davis, see if you can use
24 those, ma'am.

25 A Yes, this right here is my statement where I made --

Angela Davis - Cross-examination
By Mr. McGuire

1 where me and Brooke went to the---

2 Q Is it in your handwriting?

3 A Yes.

4 Q And you signed it?

5 A No, that's not my handwriting.

6 Q That's not?

7 That's not your signature?

8 A That's not my signature.

9 Q Do you remember what officer took this statement from
10 you?

11 A I don't know. But it was, to me, from where I -- the
12 way I write, I feel like I write differently than that.

13 Q Okay. Do you agree with me that---

14 A But that is the statement that I stated. We went there
15 to see if she -- the boys could go and play, but --.

16 Q Well, here. Let's focus right here where you say this
17 is not your signature.

18 Underneath that line, do you agree that it says
19 signature of person giving voluntary statement?

20 A Yes, sir.

21 Q Okay. That's what it says in writing, but you're
22 saying this is not your signature?

23 A I don't remember. I really don't---

24 Q Okay.

25 A ---write like that. I mean I'll be glad to write my

Angela Davis - Cross-examination
By Mr. McGuire

1 name down for you.

2 Q That's fine, ma'am.

3 Ms. Davis, the -- did you mention anything in your
4 statement about seeing Ricky earlier in the day?

5 A No, I did not.

6 Q Did you say anything about your statement about any
7 effort on his part to get you to come over to Heather's that
8 day?

9 A No, I did not.

10 Q Did you write anything about Ricky stopping or flagging
11 you down in the street in your statement?

12 A Not in this one.

13 Q Did you say anything in your statement about Ricky
14 winking or smiling at you or anything like that?

15 A No.

16 Q Because what's really true, Ms. Davis, is that this was
17 a chance encounter, you didn't see Ricky that day, isn't
18 that true?

19 A Yes, I did see Ricky that day at my mother's.

20 Q And when you showed up at Heather's, you showed up
21 unannounced, without calling, and it was a surprise, isn't
22 that true?

23 A When I went to Heather's, Ricky stood out at the road
24 and flagged me down cause I was gonna bypass Heather's, and
25 he told me that Mark had the two boys ready for me to get

Angela Davis - Cross-examination
By Mr. McGuire

1 them to take them to Brooke's to go swimming, and so I
2 backed back up in the yard to pick the boys up for us to go
3 swimming. Otherwise we would not have been there.

4 Q Okay. Now I know you say that today.

5 In your statement, is that, is that anywhere in there?

6 A No, that's not all written down.

7 Q Okay.

8 A But that is what happened.

9 Q Okay. Now, do you know who signed this if you didn't
10 sign it?

11 A It just don't look like my handwriting.

12 Q Okay.

13 A So, I don't know.

14 Q Do you remember the officer or officers that were with
15 you when you were giving your statement?

16 Maybe they can tell us who signed it.

17 A It was all kinds of officers around me.

18 Q All right.

19 A I don't know. Then, again, maybe being nervous, maybe
20 it is my handwriting. I don't know. I was hysterical that
21 day, but for me to look at my handwriting the way I, I see
22 my handwriting, it looks different from my handwriting.

23 Q Sure.

24 And what happened that day, Ricky came to the truck and
25 he said he wanted to talk to you?

Angela Davis - Cross-examination
By Mr. McGuire

1 That's what he said, isn't that true?

2 A (Witness nods negatively.)

3 Q You have to say yes or no, ma'am.

4 A No.

5 Q He said please, Angie, talk to me, just talk to me?

6 A No.

7 Q Isn't that what happened?

8 A No.

9 Q And you were making like you were gonna drive away, and
10 that's when he grabbed Brooke.

11 Isn't that what happened?

12 A No.

13 Q Just so you could stay and talk to him?

14 A No.

15 Q And then you told him that he was half a man?

16 A No.

17 Q And that Bobby was a full man?

18 A No.

19 Q And that was based on the cancer and the chemo making
20 him perform bad in bed?

21 A No.

22 Q And you said I wished you were dead?

23 A No.

24 Q And that's when he ran, shot Brooke, and then shot
25 himself?

Angela Davis - Cross-examination
By Mr. McGuire

1 A No.

2 Q Okay. I got no further questions for you, ma'am.

3 THE COURT: Mr. Barnette.

4 SOLICITOR BARNETTE: Just a couple on redirect, Your
5 Honor.

6 THE COURT: Yes, sir.

7 THE BAILIFF: Your Honor, I'd like to enter Defense
8 Exhibit No. 1 into evidence.

9 THE COURT: Any objection?

10 MR. MCGUIRE: To her statement?

11 THE COURT: He wanted to introduce the statement into
12 the, into the record.

13 MR. MCGUIRE: If he wants to introduce it he can.

14 SOLICITOR BARNETTE: Okay. I guess I'll go and remark
15 it as a State's Exhibit I guess is what---

16 THE COURT: It'd have to be a State's Exhibit. It's
17 marked for ID as a Defense Exhibit.

18 Okay. Without objection, it will be admitted.

19 (WHEREUPON, the statement was now marked as State's
20 Exhibit No. 44 and received into evidence at this time.)

21 SOLICITOR BARNETTE: May I publish it to the jury, Your
22 Honor?

23 THE COURT: You may.

24 SOLICITOR BARNETTE: Thank you.

25 REDIRECT EXAMINATION

Angela Davis - Redirect examination
By Solicitor Barnette

1 BY SOLICITOR BARNETTE:

2 Q Ma'am, if I could ask, you said you was hysterical that
3 day?

4 A Yes, sir.

5 Q That's right.

6 And, obviously, what you had seen and what you had been
7 through, obviously -- you was talking about your signature,
8 this doesn't look like your signature, did it?

9 A Hu huh. (Negative).

10 Q Do you mind writing your signature for me?

11 A Oh sure.

12 Q Can you go ahead and write the signature on there if
13 you would, ma'am?

14 A May I say something too?

15 Q You can't.

16 Yes, ma'am, you need glasses, do you?

17 A When, when I remember writing my statement down to the
18 police officers, I remembered writing my police statement on
19 yellow padding.

20 Q Uh-huh. (Affirmative).

21 But you didn't---

22 A It wasn't that white padding, that white paper.

23 Q So --.

24 A Oh, I need to do it like this.

25 SOLICITOR BARNETTE: Your Honor, I like to enter this

Angela Davis - Redirect examination
By Solicitor Barnette

1 into---

2 THE COURT: Show it to the defense please.

3 SOLICITOR BARNETTE: I will.

4 MR. MCGUIRE: No objection.

5 THE COURT: Without objection, it will be received and
6 marked into evidence as a State's Exhibit.

7 (WHEREUPON, the signature was marked as State's Exhibit
8 No. 45 and received into evidence at this time.)

9 SOLICITOR BARNETTE: Permission to publish both
10 exhibits to the jury, Your Honor?

11 THE COURT: You may.

12 Q Showing you State Exhibit 45, is that normally your
13 signature, Ms. Blackwell --

14 A Yes, sir.

15 Q -- or Ms. Davis?

16 A It was.

17 Q And that's what's on the statement on State Exhibit 44.

18 That don't appear to be your signature, but like you
19 said, you were so hysterical that day?

20 A Right.

21 Q You need to answer verbally so she can pick it up,
22 ma'am.

23 A Okay.

24 Q Is that the statement -- that was what Mr. McGuire
25 showed you?

Angela Davis - Redirect examination
By Solicitor Barnette

1 A Yes.

2 Q And you did talk to the Sheriff's Department that day?

3 A Yes, I did.

4 Q And, obviously, in talking to you, they may not have
5 got all the facts that day, is that right, what happened
6 that day?

7 A True.

8 Q And is this a situation where obviously they're dealing
9 with the murder that happened right there at the scene?

10 A Right.

11 Q And that's basically what you told them about, is that
12 right?

13 A Right.

14 Q Okay. Thank you, ma'am. Please answer any questions
15 the defense may have for you.

16 THE COURT: Mr. McGuire, you may recross.

17 RECROSS EXAMINATION

18 BY MR. MCGUIRE:

19 Q Ms. Davis, now you indicated your statement was written
20 on yellow paper?

21 A I remember yellow paper.

22 Q Okay.

23 A But it could of just been me. But I just remember
24 yellow paper.

25 Q Do you remember Officer Bryant?

Angela Davis - Recross examination
By Mr. McGuire

1 Do you remember talking to a man named Bryant, Officer
2 Bryant?

3 A I talked to a lot of officers that day. I could not
4 tell you really them -- personally who, who it was.

5 Q Do you remember talking to Pastor Rice that day?

6 A I remember asking Preacher Rice to stand back from me,
7 that I loved him, and I had ultimate respect for him, and I
8 did not wish for him to approach me because if he approached
9 me he would probably hear me say things that would be
10 disrespectful in front of him and I did not want that.

11 Q Did you tell Pastor Rice that you hoped Ricky would
12 burn in hell?

13 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
14 this point. I don't know -- this is outside of---

15 THE COURT: Well, you got into what she may have said
16 that day in, in redirect. I'll let him ask about what she
17 may of said to other people that day.

18 A I did not tell it to Preacher Rice. I said it out in
19 the open where everybody was. I said that I hoped he burns
20 in hell.

21 Q Okay. Fair enough. That's all I have for you, ma'am.

22 THE COURT: Anything further?

23 SOLICITOR BARNETTE: Yes, sir, just one thing.

24 THE COURT: Yes, sir.

25 SOLICITOR BARNETTE: I think I can clear up the yellow

Angela Davis - Redirect examination
By Solicitor Barnette

1 sheet of paper.

2 THE COURT: Yes, sir.

3 REDIRECT EXAMINATION

4 BY SOLICITOR BARNETTE:

5 Q When the Sheriff's Department does statements, there's
6 a yellow copy that's under it. They do a carbon copy.

7 Was that the yellow sheet of paper you're talking
8 about?

9 A It may have been. I just -- I know, in my mind, I seen
10 yellow. I just, I just remember yellow.

11 Q What somebody -- but basically you realize that they,
12 they have copies and they tear them off---

13 A Right.

14 Q ---from there?

15 And those copies are usually yellow and pink also?

16 A Okay.

17 Q Thank you, ma'am.

18 THE COURT: Anything further, Mr. McGuire?

19 MR. MCGUIRE: Just a proffer.

20 THE COURT: All right. Ladies and gentlemen of the
21 jury, at this point in time I have to take up another matter
22 outside of your presence, and every time you leave the
23 courtroom you're aware I'm going to ask you not to discuss
24 anything about this case, even among yourselves, until I ask
25 you to begin your deliberations.

Angela Davis - Redirect examination
By Solicitor Barnette

1 You may retire to the jury room.

2 Thank you very much.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 THE COURT: Mr. McGuire.

6 MR. MCGUIRE: Thank you, Your Honor.

7 PROFFERED TESTIMONY

8 BY MR. MCGUIRE:

9 Q Ms. Davis, Bobby Center's in a motorcycle gang?

10 A No, he's not. Bobby Center owns a motorcycle and he
11 rides with his local friends.

12 Q Okay. And do you ride with him?

13 A I did when I was with him.

14 Q Okay.

15 A But it -- just on occasional times because we worked.
16 A lot of times we worked different shifts. There's very
17 little riding, but I enjoyed riding with.

18 Q Okay. Are any family members of his in motorcycle
19 gangs?

20 A I think -- his father rode a motorcycle, and his father
21 that passed, and that the rumors were around that he might,
22 at one time, rode with a motorcycle gang, but this was
23 years -- many many years ago.

24 Q And what was the name of the motorcycle gang?

25 A Hell's Angel.

Angela Davis - Proffered testimony
By Mr. McGuire

1 Q The Hells Angels?

2 A (Witness nods affirmatively.)

3 Q And are you aware of the fire bombings of
4 Mr. Blackwell's relative, their houses?

5 A I came---

6 SOLICITOR BARNETTE: And, Your Honor, I'm gonna object
7 to this whole line of questioning. I know it's a proffer,
8 but just on the record of the case.

9 THE COURT: well, we're doing this because of your
10 objections.

11 SOLICITOR BARNETTE: Yes, sir.

12 THE COURT: Your objection's are noted.

13 SOLICITOR BARNETTE: Thank you, Your Honor.

14 THE COURT: But he has a right to make a proffer.
15 You may proceed.

16 MR. MCGUIRE: Thank you, Your Honor.

17 A I became aware of it by watching the news. I seen it
18 on the news.

19 Q Okay. And do you know Mark Bryant?

20 A Yes, I know Mark Brant.

21 Q Okay. Father of your grandkids?

22 A My grandchildren.

23 Q And you're aware that his trailer was firebombed and
24 burned?

25 A Yes, I am.

Angela Davis - Proffered testimony
By Mr. McGuire

1 Q It was a total loss?

2 A Right.

3 Q And are you aware of the graffiti that was on the
4 trailer?

5 A I heard about the graffiti. I never saw it.

6 Q Okay. And based on what you heard, what is your
7 understanding of what the graffiti said?

8 SOLICITOR BARNETTE: Objection, Your Honor. Now we're
9 getting into hearsay.

10 THE COURT: Further objection is noted as to the
11 hearsay nature of this testimony. Because it's a proffer I
12 will allow him to ask the question.

13 MR. MCGUIRE: Sure.

14 THE COURT: Subject to your objection.

15 SOLICITOR BARNETTE: Thank you.

16 MR. MCGUIRE: And, Your Honor, just -- it would also be
17 on the effect of the hearer. Not for the truth of the
18 matter.

19 THE COURT: Well, we haven't ruled on that.

20 MR. MCGUIRE: I know.

21 THE COURT: That's the purpose of the proffer, Mr.
22 McGuire.

23 MR. MCGUIRE: Thank you, Your Honor.

24 THE COURT: I'll accept argument later on. Let's make
25 a proffer.

Angela Davis - Proffered testimony
By Mr. McGuire

1 MR. MCGUIRE: Sure.

2 THE COURT: Thank you.

3 Q Your understand of what the graffiti was, ma'am?

4 A I think they said it said this is for the girl.

5 Q Okay. And that was -- you never saw the -- a picture
6 of the graffiti or rode by there?

7 A No.

8 Q Okay.

9 A Not until way after they had done started cleaning when
10 I went by there.

11 Q And was the wall, the wall that the graffiti on -- was
12 on, that was down by the time you went?

13 A Yes.

14 Q Okay. But your understanding is that it said this is
15 for the girl?

16 A Right.

17 Q And that it was the blue trailer that Miss Brooke was
18 shot in front of?

19 A Right.

20 Q In fact, she would of been just mere feet from the
21 trailer?

22 A Right.

23 Q That's the one that got firebombed?

24 That's one of two that got firebombed?

25 A Right.

Angela Davis - Proffered testimony
By Mr. McGuire

1 Q And then you're also aware that, right next door,
2 Mr. Scott Blackwell's house was also firebombed?

3 A Right.

4 Q And that he and his son were in that house?

5 A Right.

6 Q And that they escaped with their lives?

7 A That's what I heard.

8 Q Okay. And luckily Mark was not at the trailer when it
9 was firebombed?

10 You understand that or did you know that?

11 A I -- they told me they weren't at home.

12 Q Right. They weren't there.

13 But you are aware that Scott Blackwell and his son were
14 home when their house was firebombed?

15 A Right.

16 Q And just so the judge knows, Scott's house and the
17 trailer are very close together?

18 A They're, they're a good piece apart. They're a good
19 lot apart.

20 Q There's a small little house in-between them?

21 A In-between that got burnt too.

22 Q Actually that one is still standing.

23 A I thought that it got burnt too.

24 Q No, no.

25 But the houses are about 40 yards apart you say?

Angela Davis - Proffered testimony
By Mr. McGuire

1 A That -- you know what, to me, if it'd been a motorcycle
2 gang, they wouldn't have, they wouldn't of made a mistake by
3 getting Scott Blackwell's house.

4 Q Well, that's you just speculating, right?

5 A Well, it might be, but they're just -- you, you're
6 wanting me to sit up here and say that I believe the
7 motorcycle gang went out there and, and did that mess. I do
8 not believe, with no point intended at all, that there was a
9 motorcycle gang involved in that.

10 Q Okay.

11 A There's other reasons why I believe that was done.

12 Q Okay. Were you ever afraid of Heather's trailer being
13 firebombed?

14 A Was I afraid of her being firebombed?

15 Q Yes.

16 A No, cause I never knew -- had no idea it was gonna be
17 firebombed.

18 Q Okay. And were you afraid that McKenzie, your
19 grandchild, would be killed in a firebombing of Heather's
20 trailer?

21 A No, I had no reason to be.

22 Q Or that McKenzie might be a target of a motorcycle
23 gang?

24 A No, I had no reason to be.

25 Q Okay. And are you aware that Cletus and Mildred

Angela Davis - Proffered testimony
By Mr. McGuire

1 Blackwell received a threatening phone call after the
2 firebombings indicating that two were down, there's one to
3 go?

4 A They had told me that that -- that's what had happened.
5 But, again, that's just hearsay. That's what I was told.

6 Q Okay. Coming up one of the anniversaries of this
7 shooting, did you tell Heather that it---

8 THE COURT: Mr. Barnette, is your hearsay objection
9 continuing?

10 SOLICITOR BARNETTE: Yes, sir, I mean I don't want to
11 keep objecting the whole time, but I mean if it continues---

12 THE COURT: Don't jump up all the time, but --.

13 SOLICITOR BARNETTE: Yes, sir.

14 THE COURT: -- perhaps you ought to let me know when it
15 is continuing so we're clear.

16 SOLICITOR BARNETTE: I will, Your Honor. I mean
17 obviously it's hearsay.

18 THE COURT: Okay.

19 SOLICITOR BARNETTE: It's a -- I mean I don't want to
20 keep jumping up every time, yes, sir.

21 THE COURT: I understand.

22 SOLICITOR BARNETTE: I apologize.

23 THE COURT: All right. Objection is noted.

24 You may proceed.

25 Q On one of the anniversaries of the shooting, did you

Angela Davis - Proffered testimony
By Mr. McGuire

1 tell Heather that it would be wise for her not to be at her
2 trailer because of danger from a motorcycle gang?

3 A No, I did not. Heather was already hysterical. She
4 had seen a motorcycle go up the road. She was very
5 hysterical. Mildred, she gets really nervous and
6 hysterical. She wasn't really sure or understood her --
7 what was going on and if a motorcycle gang had really done
8 anything.

9 So, me and my friend, to ease them, to stop them from
10 worrying, took Heather, Mark, and the kids, we took them
11 fishing, and when we got to the fishing lake, we called
12 Mildred and told her they was with us and she had nothing to
13 worry about. Then after we all got through fishing, they
14 went back home safely to their homes. There was -- if, if
15 I'd of thought that a motorcycle gang was gonna come by
16 there and bomb, I never would of let my daughter went back
17 home.

18 Q And your testimony today is that you never indicated to
19 Heather or anybody else that there could be danger coming
20 from a motorcycle gang around the anniversary of the
21 shooting?

22 A No.

23 Q Okay. And aren't you also afraid that if Ricky gets a
24 life sentence and goes to prison that the Hells Angels will
25 kill him?

Angela Davis - Proffered testimony
By Mr. McGuire

1 SOLICITOR BARNETTE: Objection, Your Honor. I mean
2 we're talking irrelevant speculation. I mean I know it's a
3 proffer, but I---

4 THE COURT: It's a proffer. I'm gonna let him ask the
5 questions, but it has nothing to do with whether he will be
6 able to use that or it would be admissible later at trial.

7 A Ask me that question again.

8 Q Isn't it true that you are afraid and have expressed
9 fear in the past that if Ricky Blackwell received a life
10 sentence and he went to prison that he'd be murdered by the
11 Hells Angels?

12 A I'm not afraid that he would be murdered by what you
13 call the Hells Angels.

14 Q And what do you mean by that, ma'am?

15 A I'm just afraid that, from what you see and hear of
16 other murder cases and you see on TV, that someone would
17 probably get him in there. That has been a thought or a
18 theory in my mind.

19 Q And you -- is it your testimony that you've not
20 expressed fear that Heather would blame you for Ricky's
21 death in prison based on the Hells Angels relationship with
22 Bobby Center?

23 A Heather is going to blame me for her farther's death
24 regardless. It's got nothing to do with anything except for
25 the fact that she feels I took her father.

Angela Davis - Proffered testimony
By Mr. McGuire

1 Q You've expressed fear regarding motorcycle gangs based
2 on what you saw on the Internet, isn't that true?

3 SOLICITOR BARNETTE: Note my continuous objection, Your
4 Honor, there.

5 THE COURT: Let's, let's kind of get an idea of where
6 this is going, Mr. McGuire, if you can help me.

7 The relevance of any of this is?

8 MR. MCGUIRE: That, that is I can establish that she
9 has a fear of these motorcycle gangs, it would make -- cause
10 her to be biased and change her testimony.

11 THE COURT: Well, maybe we ought to get to that point.

12 A If it would stop you from wondering about me being so
13 fearful of them, I am not in fear. If -- Lord help me, if
14 half of them, if half -- bikers around here today would pull
15 up out there and say hey, let's all go to a bike rally or
16 go, go to Kings Mountain or Cherokee, I'd be one of the
17 first ones to hop on and say let's go.

18 Q Okay.

19 A I love Harley Davidsons, I love the bikers, and I love
20 the work that the bikers did during Brooke's funeral, and I
21 love the work that the bikers have done for many other
22 occasions.

23 Q Okay. I've only got about three more questions for
24 you.

25 You've indicated that, in the past, that motorcycle

Angela Davis - Proffered testimony
By Mr. McGuire

1 gangs were scaring you based on what you saw on the
2 Internet.

3 Is that true or not true?

4 A I don't even look at the Internet.

5 Q okay.

6 THE COURT: The source of that question is?

7 MR. MCGUIRE: Statements she's made in the past.

8 THE COURT: Well to, to who is my question?

9 THE WITNESS: What little bit I've ever seen---

10 THE COURT: Ma'am?

11 THE WITNESS: ---on the Internet---

12 THE COURT: Ma'am, ma'am, let me talk for a second.

13 Let me talk for a second. Thank you.

14 Said to who?

15 MR. MCGUIRE: Well, Ms. Musick.

16 THE COURT: Beg your pardon?

17 MR. MCGUIRE: Ms. Musick.

18 THE COURT: I've already made a ruling on that.

19 MR. MCGUIRE: And I'm not asking her about the
20 relationship.

21 THE COURT: I've made a ruling that she has a right to
22 claim a privilege in those things which she has claimed, and
23 I'll direct you not to use that information in and fashion,
24 even in a proffer. She has a privilege and I have ruled
25 that she has. You offered me no evidence to indicate that

Angela Davis - Proffered testimony
By Mr. McGuire

1 she didn't.

2 MR. MCGUIRE: I---

3 THE COURT: You understand my ruling?

4 MR. MCGUIRE: Yes, sir.

5 THE COURT: Good. Let's move on.

6 MR. MCGUIRE: Based on that, I've got nothing further
7 for you, ma'am.

8 THE COURT: Do you wish to follow-up with any
9 questions, Mr. Barnette?

10 SOLICITOR BARNETTE: No, sir. Thank you.

11 THE COURT: All right. Mr. McGuire, you've made a
12 proffer.

13 what information, from the proffer, do you wish to use?

14 MR. MCGUIRE: I would -- now these statements become
15 inconsistent with statements made before to Ms. Musick. So,
16 I would just renew my motion to be able to use the records
17 from Spartanburg Area Mental Health---

18 THE COURT: And I've made my ruling.

19 MR. MCGUIRE: Sure. But that's for the record, I'm
20 just --.

21 THE COURT: I've made my ruling.

22 MR. MCGUIRE: I understand and---

23 THE COURT: I don't think I can be any clearer, Mr.
24 McGuire, that I've made a ruling on those matters. She has
25 claimed a privilege. The statute grants her a privilege.

Angela Davis - Proffered testimony
By Mr. McGuire

1 The Redmond case says you do not do a balancing case -- test
2 in that case. I have made my ruling --

3 MR. MCGUIRE: I understand.

4 THE COURT: -- on those issues.

5 MR. MCGUIRE: Yes, sir.

6 THE COURT: Now, did you -- I think you asked her some
7 other information during that proffer besides what came from
8 Ms. Musick. You asked her about statements she may of made
9 to Heather, to other people. If you wish to use any of that
10 information, I don't know if you intend to or not, you made
11 a proffer, but I don't know what you intend to offer from
12 the proffer. So, I'm asking that question now.

13 MR. MCGUIRE: Sure. And what I would do, Your Honor,
14 is if it -- if I have another witness that I could call who
15 would go into these areas, I would alert the Court that it
16 would deal with motorcycle gangs and fear --

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MCGUIRE: -- before we put that up.

19 THE COURT: well, sir, again, my concern, at this point
20 in time, is whether or not this is an effort to, somehow
21 impeach a witness on a collateral matter, and so you need to
22 be able to show me that that's not what's occurring here.

23 MR. MCGUIRE: Sure. I would -- my position would be
24 that it would be bias, and not---

25 THE COURT: well, I, I -- the question is whether

Angela Davis - Proffered testimony
By Mr. McGuire

1 you're trying to impeach her on a collateral matter. That's
2 the point -- one of the issues I'd like for you to be able
3 to address when we get there.

4 MR. MCGUIRE: Yes, sir.

5 THE COURT: Thank you.

6 SOLICITOR BARNETTE: Your Honor, just for the record---

7 THE COURT: Yes, Mr. Barnette.

8 SOLICITOR BARNETTE: ---we filed a motion in limine
9 back on July 13th, 2012, on this issue. The first thing,
10 I don't think it's relevant whatsoever, and if it is
11 relevant, then it's highly prejudicial -- more prejudicial
12 than probative. I think that's what the Court ruled. Like
13 I said, obviously we'd have to---

14 THE COURT: Well, as to the reference to the Hells
15 Angels specific biker gang, I've ruled that that can not be
16 used unless there's a proffer been made. He's made a
17 proffer.

18 But at this point in time, my understanding is you do
19 not wish to introduce any of that evidence through this
20 witness other than the statements she may of made to Ms.
21 Musick, and I've made a previous ruling as to those?

22 Is that my understanding of where we are?

23 MR. MCGUIRE: Yeah, your previous ruling would cover
24 everything that I would of intended to do.

25 THE COURT: Okay.

Angela Davis - Proffered testimony
By Mr. McGuire

1 All right. Ma'am, you may step down.

2 Do you wish to have this witness excused if she cares
3 to go?

4 SOLICITOR BARNETTE: Yes, sir.

5 THE COURT: Any objections?

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: All right, ma'am. You'll need to stay if
8 you are under subpoena.

9 Are you under subpoena?

10 MR. MCGUIRE: Not mine.

11 THE COURT: Okay. Is she under subpoena?

12 SOLICITOR BARNETTE: She is, Your Honor. But could she
13 leave and then come back if the defense -- I'm assuming---

14 THE COURT: Well, she'll be subject to call of the
15 Court.

16 So, the subpoena still applies, ma'am.

17 Do you understand that?

18 THE WITNESS: Yes.

19 THE COURT: So, if you leave, you can be required to
20 return to Court.

21 Do you understand that?

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you, ma'am.

24 MR. MCGUIRE: If she can be admonished from talking to
25 another party about her testimony.

1 THE COURT: I have not entered a sequestration order in
2 this case.

3 Are you requesting one?

4 MR. MCGUIRE: No, sir.

5 THE COURT: Okay. Bring the jury in.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE COURT: There's no reserved seats. If you would,
9 please fill in as you come in. That way everybody won't
10 have to climb over you. Thank you. I appreciate your
11 cooperation.

12 All right. Again, I thank you for your patience in
13 this matter. I've been able to complete some information
14 that I've had to go over with the attorneys.

15 At this time the State may call its next witness.

16 SOLICITOR BARNETTE: Thank you, Your Honor.

17 May it please the Court.

18 Like to call Scott Frances to the stand please.

19 THE COURT: Sir, come forward to my left and be sworn.
20 Thank you.

21 SCOTT FRANCES, having been first duly
22 sworn, testified as follows:

23 THE COURT: Have a seat please, sir. Once you're
24 seated, state your name.

25 THE WITNESS: My name is Scott Frances.

Scott Frances - Direct examination
By Solicitor Barnette

1 THE COURT: Thank you.

2 Your witness, Mr. Barnette.

3 SOLICITOR BARNETTE: Thank you.

4 DIRECT EXAMINATION

5 BY SOLICITOR BARNETTE:

6 Q Where do you work at, sir?

7 A I work for Spartanburg County 9-1-1 communications.

8 Q And how long have you been there, sir?

9 A I've worked there for 16 years.

10 Q Okay. And as part of you -- what is your position
11 presently?

12 A My present position is IT.

13 Q And---

14 A My previous would be ten years as a supervisor.

15 Q Okay. Was part of your duties to maintain the records
16 of 9-1-1 calls?

17 A We are custodian of the records.

18 Q Yes, sir.

19 Let me show you what's been marked as -- and these have
20 been marked as State's Exhibit 41 and 42 for ID purposes,
21 sir.

22 Are those 9-1-1 calls that was -- records with 9-1-1 in
23 y'all's records, sir?

24 A Is---

25 Q Are -- did you -- did we contact you about phone calls

Scott Frances - Direct examination
By Solicitor Barnette

1 to -- concerning this case?

2 A You did.

3 Q And those phone calls, were they recorded by 9-1-1 and
4 provided to us?

5 A Every conversation that comes in by telephone or radio
6 is recorded in the 9-1-1 center.

7 Q And these two exhibits, one of them, State Exhibit 41,
8 is that 261 Ridings Road here in Chesnee on July 8th, 2009?

9 A To the best of my knowledge it is.

10 Q And you listened to those recordings?

11 A I did listen to these recordings.

12 Q Yes, sir.

13 And then at 244 Ridings Road, was there a 9-1-1 call
14 made there too?

15 A Right, I listened to a second call.

16 Q And was those records -- are these accurate
17 representations of those phone calls, sir?

18 A They were.

19 SOLICITOR BARNETTE: Your Honor, I'd like to enter
20 State's Exhibit 41 and 42 into evidence at this time.

21 THE COURT: Any objection?

22 Objections?

23 MR. ALLEN: No. No, Your Honor.

24 THE COURT: All right. They'll be admitted as marked.

25 (WHEREUPON, State's Exhibit Nos. 41 and 42 were

Scott Frances - Direct examination
By Solicitor Barnette

1 received into evidence at this time.)

2 THE COURT: Do you wish to publish?

3 SOLICITOR BARNETTE: Yes, sir like to publish State
4 Exhibit 41 first, Your Honor.

5 THE COURT: Okay, sir. You may do so in any --
6 whatever order you prefer.

7 SOLICITOR BARNETTE: Thank you, Your Honor.

8 MR. ALLEN: Your Honor, before he plays that, may we
9 approach?

10 THE COURT: Yes.

11 (WHEREUPON, a bench conference was held out of the
12 hearing of the jury at this time.)

13 THE COURT: All right. Mr. Barnette, you may proceed.

14 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 SOLICITOR BARNETTE: And, Your Honor, we're actually
17 gonna play State Exhibit 41. I apologize. That's the one
18 of 261 Ridings Road.

19 THE COURT: All right. As I said, whatever order you
20 prefer.

21 (WHEREUPON, State's Exhibit No. 41 was played for the
22 jury at this time.)

23 SOLICITOR BARNETTE: Thank you, sir. Please answer any
24 questions the defense may have for you.

25 THE COURT: Mr. Allen, do you wish to ask questions?

Scott Frances - Direct examination
By Solicitor Barnette

1 MR. ALLEN: Not of this witness.

2 THE COURT: All right, sir. You may step down.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you very much.

5 You witness to excuse the witness?

6 SOLICITOR BARNETTE: Yes, sir, since we have---

7 THE COURT: Any objection to his being excused?

8 MR. ALLEN: No, Your Honor.

9 THE COURT: All right, sir. You're free to go.

10 Thank you very much.

11 THE WITNESS: Thank you.

12 SOLICITOR BULSA: State calls Mark Bryant.

13 THE COURT: Come forward, sir. Come around over here
14 to my left, sir, to be sworn.

15 MARK BRYANT, having been first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat, sir. Once you're seated,
18 state your name.

19 THE WITNESS: Mark Bryant.

20 THE COURT: Thank you.

21 Mr. Bulsa, your witness.

22 DIRECT EXAMINATION

23 BY SOLICITOR BULSA:

24 Q Morning, Mr. Bryant.

25 A Good morning.

Mark Bryant - Direct examination
By Solicitor Bulsa

1 Q Are you the son-in-law to the defendant?

2 A Yeah, Ricky -- to Ricky.

3 Q Ricky.

4 And when did you marry his daughter?

5 A I don't remember the date.

6 Q About how long have y'all been married?

7 A We been married almost 15 years.

8 Q Okay. And how many children do you have?

9 A We got three. Two boys and a girl.

10 Q Okay. And do you recall the date this incident
11 happened?

12 A Yeah, July 8th or the 9th. I'm not for sure the
13 actual date.

14 Q Were you at 244 Ridings Road when it happened?

15 A Yeah, my residence. That's where I lived.

16 Q Were you there with your children?

17 A Yes, all three of my kids.

18 Q Okay. Had you seen your father-in-law that day?

19 A Earlier that morning.

20 Q Okay. And had he come by your house?

21 A He walked out to the house to get a cell phone and see
22 if his parents picked up his medication.

23 Q Okay. Was he actually living next to you at that time?

24 A No, sir.

25 Q Where was he living at this time?

Mark Bryant - Direct examination
By Solicitor Bulsa

1 A I think he was living with his mama and daddy.

2 Q And where do they live?

3 A At 450 -- 454 or 455 Martin Camp Road.

4 Q Okay. So, they lived on Martin Camp Road, and we saw
5 that aerial map yesterday.

6 Martin Camp is kind of a main road and Ridings Road is
7 off of Martin Camp?

8 A Yes, sir.

9 Q Okay. So, he was not staying at 248, but you were
10 staying at 244?

11 A 244.

12 Q Some time earlier that morning he came by 244 to speak
13 with you?

14 A Yes.

15 Q About how long did he stay there?

16 A Just a few seconds.

17 Q Okay. And do you know where he left and went to?

18 A Do not have, have no idea.

19 Q What kind of vehicle did he drive?

20 A He, he had a white Nissan Frontier, little small pickup
21 truck.

22 SOLICITOR BULSA: Okay. May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 Q Mr. Bryant, let me show you what's been marked State's

Mark Bryant - Direct examination
By Solicitor Bulsa

1 Exhibit No. 43 for identification.

2 Do you recognize that vehicle?

3 A Yes, sir, that's, that's Mr. Blackwell's vehicle.

4 Q And is it parked in the carport there at 248?

5 A Yeah, that's his car garage.

6 SOLICITOR BULSA: Okay. Your Honor, the State would
7 offer this into evidence.

8 MR. MCGUIRE: No objection.

9 THE COURT: Without objection.

10 It's marked as what number?

11 SOLICITOR BULSA: 43, Your Honor.

12 THE COURT: 43 will be admitted without objection.

13 (WHEREUPON, State's Exhibit No. 43 was received into
14 evidence at this time.)

15 THE COURT: You may proceed.

16 Q Did you see him driving that truck that day?

17 A No, sir.

18 Q You just knew that's the kind of vehicle he drove?

19 A Yeah.

20 Q All right. Now, later that afternoon, around three
21 o'clock, did your mother-in-law stop by?

22 A I guess, I guess that's when it happened, right?

23 Q I'm asking you.

24 Do you remember her coming by that afternoon?

25 A Yes, she come by my house.

Mark Bryant - Direct examination
By Solicitor Bulsa

1 Q And you don't remember the time, but you remember it
2 was in the afternoon?

3 A Yeah, it was during the afternoon.

4 Q Okay. And what kind of vehicle did she drive?

5 A A gray Kia Sorento or something. Sorento or something.

6 Q Let me show you what's been entered into evidence
7 State's photo -- State's Exhibit No. 9, a photograph.

8 Is that the residence at 244 Ridings Road?

9 A Yes, sir, that's my residence.

10 Q Okay. And State's Exhibit 13, would that be the
11 vehicle that she drove up in?

12 A That's the gray Kia.

13 Q Okay. And what happened when she arrived?

14 A I was in the house feeding my daughter, and I heard a
15 vehicle pull up, and I looked out my blind and my, my two
16 boys was downstairs watching cartons -- their videos and
17 stuff, and I told -- I looked out the blind and I told my
18 two kids, I said there's your Nanny Angie. Well, they just
19 jumped up and run out the door, and I was putting my
20 daughters's food back up and putting her down in the kitchen
21 floor, and tried to get out the door.

22 Time I got out the door, that's when I looked and
23 that's when I seen Mr. Blackwell had the little girl like up
24 here, and they was talking backwards, and---

25 Q All right. Just let me pause.

Mark Bryant - Direct examination
By Solicitor Bulsa

1 Let the record reflect the witness showed the
2 defendant having his arm up near the child's neck.

3 A It's close about right here --

4 Q Okay.

5 A -- you know.

6 THE COURT: All right. The record will show -- so
7 reflect.

8 Q And what was his other arm doing?

9 A His other arm was like down.

10 Q Down by his side?

11 A Down by his side.

12 Q Could you tell whether he had anything in that hand?

13 A Not till I -- either the little girl frenched (sic) or
14 he frenched (sic) and that's when I actually seen the very
15 end of the barrel of the gun.

16 Q Okay. So, you saw him -- did you know the girl that he
17 had?

18 A I met her one time and ever since, you know, Angie and
19 Bobby got together, I met Bobby one time and I met Brooke
20 and his son one time.

21 Q Did you know her name that day?

22 A I just knew her -- that they called her Brooke.

23 Q Okay. So, Mr. Blackwell had Brooke in that position
24 you just described?

25 A Yes, sir.

Mark Bryant - Direct examination
By Solicitor Bulsa

1 Q And what was he doing?

2 A He was walking backwards.

3 Q Backwards from where to where?

4 A From in front of Angie -- the end of Angie's, the front
5 of her Kia, back towards the trailer, the side of the
6 kitchen windows.

7 Q Okay. Back toward then the side end of the trailer?

8 A Yeah.

9 Q Okay. And where were you when you witnessed this?

10 A I was standing on the front porch.

11 Q All right. Now, he was pulling her backwards?

12 A Yeah, walking backwards.

13 Q walking backwards.

14 Okay. And then what happened?

15 A And then all of a sudden I seen the barrel -- the end
16 of the barrel of the gun, and that's when I tried to get all
17 my kids, my oldest two kids, back into the house, and we
18 went in the house. That's when I heard two shots.

19 Q Do you recall hearing either Angie or Mr. Blackwell
20 saying anything?

21 A No, it's, like I say, whatever happened before I got
22 outside to my oldest kids and my youngest boys, I don't know
23 what was said or what happened before I got out there time I
24 put my little girl in the kitchen floor.

25 Q Okay. And about how long were you -- would you have

Mark Bryant - Direct examination
By Solicitor Bulsa

1 been outside?

2 A Probably about a couple seconds.

3 Q Okay. And you saw the gun and that's when you went to
4 get your boys back inside?

5 A Back in the house.

6 Q Okay. So, you didn't actually see the shooting?

7 You heard it?

8 A I heard two shots.

9 Q And what did you do then?

10 A I got my kids and we went back in the house. That's
11 when Mrs. Blackwell went in the house and shut the door and
12 picked up the phone and she dialed 9-1-1. And when I walked
13 back in the house, my little girl was gone, and I was
14 hysterical wondering where she went, and I run through my
15 house, went through my bedroom, my back bedroom. When I was
16 back down the hallway, that's when I seen the back-door was
17 bent open, and I knew then that Angela, Angie took my
18 daughter out of my home.

19 Q Okay. All right. Mark, let me make sure we
20 understand.

21 You actually went into the trailer before Mrs.
22 Blackwell did, is that right?

23 A No, she went in before, before I did. I was right
24 behind her trying to get my kids in.

25 Q Okay.

Mark Bryant - Direct examination
By Solicitor Bulsa

1 A She went in first---

2 Q Okay.

3 A ---and picked up the phone.

4 Q When did you realize Brooke had been shot?

5 A After I went in and the lady on the dispatch told me to
6 go out and -- there and see if the little girl was moving or
7 anything.

8 Q Okay. When you heard the shots, did you believe that
9 he had shot the girl?

10 A Yes.

11 Q Okay. Did you see where he went to?

12 A The only thing I know he was running either behind my
13 house or in front of my house cause, like I say, I went back
14 in the house. I knew he was running across the backyard,
15 and I figured, you know, he was after Angie.

16 Q Okay. Now, did you know he owned a gun?

17 A Yes, I seen the gun twice, when I first met my wife,
18 and the day of the incident.

19 Q Okay. And do you know where he kept that gun?

20 A I sure don't.

21 Q And so you were inside and the -- your mother-in-law
22 had called 9-1-1 and then you actually picked up the phone
23 to talk to them?

24 A Yes, sir.

25 Q Okay. And you've actually listened to that phone call,

Mark Bryant - Direct examination
By Solicitor Bulsa

1 have you not?

2 A Yes, sir, I have. I heard it yesterday.

3 SOLICITOR BULSA: And I'd like to publish State's 42 I
4 believe.

5 THE COURT: You may do so.

6 Q While he's setting that up, did you go back out and
7 look at Brooke?

8 A After the lady told me to go back out there.

9 Q And what did you see?

10 A She was just laying there.

11 Q How was she laying?

12 A On her belly with her head facing my neighbor, Scott
13 Blackwell's, residence.

14 Q Did she appear to be moving?

15 A No, no movement.

16 Q Did you touch her at all?

17 A No, sir, I never touched her.

18 Q what did you do -- what did you do with your children?

19 A My children?

20 Q Yes, sir.

21 A I sent my two boys up to Scott Blackwell's house.

22 Q That was the house up above the street?

23 A The one that got caught on fire.

24 Q And if we're standing looking at the front of your
25 trailer, would 248 Ridings be over to the left?

Mark Bryant - Direct examination
By Solicitor Bulsa

1 A If you're standing---

2 Q In the road.

3 (WHEREUPON, the tape began to play at this time, but
4 was turned off by Solicitor Barnette.)

5 SOLICITOR BARNETTE: I apologize.

6 Q If you're standing in the road looking at your trailer,
7 248 would be to the left, is that right?

8 A It would be on the right-hand side. The left would be
9 Ricky's trailer, the white doublewide.

10 Q Right. Right.

11 To the left, that would of been 248, and then Mr. Scott
12 Blackwell would of been up to the, to the other side?

13 A Yeah, to the other side.

14 Q Okay. So, you sent your boys away from the direction
15 he ran?

16 A Yeah.

17 Q Okay. And what did you do after you looked at Brooke?

18 A I just -- the officer was there then on the scene, and
19 he told me to go back into my house.

20 Q And did you tell him what you saw?

21 A I told him that, that the little girl's been shot.

22 Q And did you tell him who did?

23 A Yeah, I told him Ricky Blackwell.

24 Q Did you describe Mr. Blackwell to them?

25 A Yes, sir, I did.

Mark Bryant - Direct examination
By Solicitor Bulsa

1 Q Tell them what he was wearing.

2 A He had blue jeans and a, I think, a black shirt with a
3 hat with glasses on, on top.

4 Q Okay. Let's listen to the tape now.

5 (WHEREUPON, State's Exhibit No. 42 was played for the
6 jury at this time.)

7 Q Mr. Bryant, when we listened to this earlier in my
8 office, you don't actually come back on the line, do you?

9 A No, sir.

10 Q Okay.

11 A On account of the officers was there.

12 Q Okay. So, while you were out there checking, the
13 police came up?

14 A Yeah, he was checking the pulse, I guess, on the little
15 girl, Brooke.

16 Q On Brooke.

17 Okay. All right. Thank you, Mr. Bryant. That's all I
18 have. Answer any questions the defense has.

19 THE COURT: Mr. McGuire, you may cross-examine.

20 MR. MCGUIRE: Thank you very much, judge.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. MCGUIRE:

24 Q Hey, Mark.

25 A Hey.

Mark Bryant - Cross-examination
By Mr. McGuire

1 Q Just to be clear, you're, you're married to Heather?

2 A Yeah.

3 Q Heather is Ricky's daughter?

4 A Yes, sir.

5 Q And you and Heather have kids?

6 A Yes, sir.

7 Q And the trailer that you were staying at and -- with
8 the kids, that's right next door to where Ricky lives?

9 A Yes, sir.

10 Q His trailer is the doublewide white trailer?

11 A White trailer.

12 Q Yours is the little blue trailer?

13 A Little blue trailer.

14 Q And they were in right next to each other?

15 A Right next to each other.

16 Q Okay. And you saw Ricky earlier and you said something
17 about a cell phone and some medication?

18 A Cell phone and his medication.

19 Q Okay. And -- okay. And was he -- did Heather go get
20 him some medication?

21 A No, sir, his parents, I believe his grandma, went and
22 got the medication for him.

23 Q Okay. And your only conversation with him was about
24 medication and cell phone?

25 A Medication and the cell phone deal.

Mark Bryant - Cross-examination
By Mr. McGuire

1 Q Okay. Now, there was some confusion on the 9-1-1 tape
2 about what little girl we were talking about.

3 Now, you have a daughter named McKenzie?

4 A I got a daughter named McKenzie.

5 Q Now, McKenzie -- is McKenzie seven or six now?

6 A She's seven.

7 Q Okay. And she was about three at the time?

8 A She's about going on three years old.

9 Q Okay. Now, after the shooting, the shooting, after the
10 shots, Angie runs inside your trailer?

11 A Yes, sir.

12 Q And you're standing there and she runs right by you --

13 A Yes, sir.

14 Q -- to get in the trailer?

15 A Yes, sir.

16 Q And Ricky runs -- doesn't run in the trailer?

17 A No, sir.

18 Q He doesn't run by you?

19 A No, sir.

20 Q He doesn't run after Angie?

21 A I think he did run after Angie.

22 Q Okay. After, after the---

23 A After the shooting.

24 Q When he's in like the backyard part?

25 A Yeah.

Mark Bryant - Cross-examination
By Mr. McGuire

1 Q Okay. But he doesn't run after Angie to get into the,
2 the trailer?

3 A No.

4 Q Okay. He never made any effort to go in your trailer?

5 A No, sir.

6 Q Okay. And your other two boys --

7 A Alan and Caleb.

8 Q When Alan -- and they're -- the last time I saw them
9 they were, you know, both about right about yea high.

10 They, they just took off and went over to Scott's?

11 A I sent them to Scott Blackwell's.

12 Q Okay. And they were safe there?

13 A Yes, sir.

14 Q McKenzie was safe in your house?

15 A Yes, sir.

16 Q You were safe in your house?

17 A Yes, sir.

18 Q Did Angie ever tell you why she grabbed McKenzie and
19 ran away?

20 SOLICITOR BULSA: Objection, Your Honor. That's
21 hearsay.

22 THE COURT: I'll -- he asked did she ever say -- he
23 didn't ask what she said. So, I'll allow him to ask the
24 question.

25 Excuse me.

Mark Bryant - Cross-examination
By Mr. McGuire

1 I'll allow you to ask the question if she said
2 anything, but I'm not -- I'm gonna instruct you do not quote
3 what she said.

4 Q Do you know why she grabbed McKenzie?

5 A I guess for a shield.

6 SOLICITOR BULSA: Your Honor, we object to that. It
7 would be speculation.

8 THE COURT: I'll sustain that objection. The witness
9 is not allowed to speculate, and, however, the witness can
10 testify based on his observations and his beliefs.

11 Q Okay. I'm gonna go back now, Mark, and, and talk to
12 you a little bit about when Angie left Ricky.

13 Angie did leave Ricky?

14 A Yes, she did.

15 Q And they were, they were still married at the time?

16 A Yes, sir.

17 Q And she started dating Bobby Center?

18 A Yes, sir.

19 SOLICITOR BULSA: Objection, Your Honor, as to
20 relevancy.

21 THE COURT: I'm gonna overrule the objection at this
22 point in time.

23 Q She started dating Bobby Center --

24 A Yes, sir.

25 Q -- while she and Ricky were still married?

Mark Bryant - Cross-examination
By Mr. McGuire

1 A Yes, sir.

2 Q And after she left, and when she was dating Bobby
3 Center, she would come back from time to time to see Ricky?

4 A Yes, sir.

5 Q She'd ask for money?

6 A Yes, sir.

7 Q That happened quite a few times?

8 A Quite a few times.

9 Q And one time she came back and she took all the
10 furniture?

11 SOLICITOR BULSA: Objection as to relevancy, Your
12 Honor.

13 THE COURT: I'm gonna overrule the objection at this
14 time. I think he has a right to go into those -- those have
15 already been discussed in Court already.

16 Q Angie came and took all the furniture?

17 A Yes, sir.

18 Q From the, the marital home?

19 A Yeah.

20 Q And she came back quite a few times to talk to Ricky
21 and get money from him?

22 A Yeah.

23 Q Okay. And we've already established Ricky lived just
24 right next door to you?

25 A To me.

Mark Bryant - Cross-examination
By Mr. McGuire

1 Q And he, he, he spent a lot of time with your kids?

2 A Yes, sir.

3 Q Loved your kids?

4 A Loved my kids.

5 Q Played with your kids?

6 A Loved to play basketball.

7 Q Bought a bouncy house for them?

8 A Yes, sir.

9 Q And he would love to play with them?

10 A Yes, sir.

11 Q And he treated Angie well?

12 He spoiled her?

13 A Yes, sir, he did.

14 Q Whatever she wanted she got?

15 A Yes, sir.

16 Q That's all I got for your, Mark. Thank you.

17 THE COURT: Redirect.

18 REDIRECT EXAMINATION

19 BY SOLICITOR BULSA:

20 Q Was Ricky playing with Brooke?

21 A Playing with Brooke?

22 Q That, that day.

23 A I don't have no idea.

24 Q Okay. He grabbed her by the neck, right?

25 A It wasn't actually by the neck. It was like up here

Mark Bryant - Redirect examination
By Solicitor Bulsa

1 near the neck.

2 Q Okay.

3 A Around the chest part.

4 Q Okay. He wasn't playing with her in a bouncy house,
5 was he?

6 A No, sir.

7 Q Okay. All that stuff about what happened with Angie,
8 that had nothing to do with Brooke dying, did it?

9 A No, sir.

10 Q Thank you.

11 THE COURT: Recross.

12 MR. MCGUIRE: Nothing further.

13 THE COURT: You may step down.

14 Do you wish to excuse this witness?

15 SOLICITOR BULSA: Yes, sir, he actually has a small
16 child he needs to go attend to.

17 THE COURT: Any objection to his being excused at this
18 time?

19 MR. MCGUIRE: Just subject to recall.

20 THE WITNESS: Okay.

21 THE COURT: Okay. Subject to recall of the Court. If
22 we call you, you still have to come back, sir.

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. You're free to go at this time.

25 THE WITNESS: Thank you, sir.

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, we're gonna take a short break. Be about ten minutes.
3 This will allow you to stretch your legs and move about, and
4 you know I'm gonna tell you, every time you leave the
5 courtroom, not to discuss anything about this case even
6 among yourselves.

7 Everyone remain seated till the jury retires please.
8 You may take them back, Mr. Ruth.

9 THE BAILIFF: Yes, sir.

10 THE COURT: Yes, sir.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right. I'm gonna have marked as
14 Court's Exhibits. There's been three yellow page sheets
15 that was supplied to me by counsel yesterday for jury
16 qualification that had additional witnesses on it. I'll
17 have those marked as Court's Exhibits for that process.

18 (WHEREUPON, the witness list was marked as Court's
19 Exhibit No. 8 and received into evidence at this time.)

20 THE COURT: We'll be in recess for about ten minutes.

21 (WHEREUPON, a short recess was taken at this time.)

22 THE COURT: State ready to proceed?

23 SOLICITOR BARNETTE: State's ready, Your Honor.

24 THE COURT: Defense ready.

25 MR. MCGUIRE: Yes, sir, I just wanted to, wanted to --

1 still do need something by way of the record. I understand
2 the Court's ruled Ms. Davis has a privilege.

3 THE COURT: I've ruled them, ruled them privileged and
4 they will not come in.

5 MR. MCGUIRE: Yes, sir, just need to mark them as a
6 Court's Exhibit.

7 THE COURT: No, sir, not for any use in this Court.
8 They're privileged.

9 MR. MCGUIRE: Can we mark them part of the record under
10 seal?

11 THE COURT: I don't intend to, no, sir.

12 MR. MCGUIRE: So, the---

13 THE COURT: If you can give me some authority
14 indicating that's what I should do, give it to me. So, you
15 can -- I'll, I'll be glad to look at it.

16 MR. MCGUIRE: Look at the authority?

17 THE COURT: Yes, sir.

18 MR. MCGUIRE: Not the records?

19 THE COURT: I'm not letting it in right now.

20 MR. MCGUIRE: I understand.

21 THE COURT: Anything you don't understand about that
22 ruling?

23 MR. MCGUIRE: Nothing.

24 THE COURT: Okay. Then I'll be happy, I'll be happy --
25 if you have some authority that indicates that I should do

1 otherwise, I'll be happy to look at it. It's a novel
2 question.

3 MR. MCGUIRE: Yes, sir.

4 THE COURT: But my understanding is that privileged
5 information is privileged. It can not be used for any
6 purpose.

7 MR. MCGUIRE: Understand the Court's ruling.

8 THE COURT: And I've ruled it's privileged.

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: Now are we ready?

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: Thank you.

13 Bring the jury in.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: All right. The record will reflect the
17 jury has returned to the courtroom.

18 At this time the State may call its next witness.

19 SOLICITOR BULSA: State calls John Smoak.

20 THE COURT: Come forward, sir, to my left to be sworn.

21 JOHN SMOAK, having been first duly
22 sworn, testified as follows:

23 THE COURT: Have a seat in the witness stand, sir, and
24 once seated, state your name.

25 THE WITNESS: John Smoak.

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By Solicitor Bulsa

1 THE COURT: Thank you.

2 Mr. Bulsa, your witness.

3 SOLICITOR BULSA: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY SOLICITOR BULSA:

6 Q Mr. Smoak, who are you employed with?

7 A The Spartanburg County Sheriff's Office.

8 Q In what capacity?

9 A At this time I'm a school resource officer.

10 Q And what were your duties back in 2009?

11 A The same. School resource officer but for a different
12 district.

13 Q Okay. And did you also run patrol?

14 A Yes, during the off times we, we did run patrol.

15 Q Okay. So, this occurred in July. So, school wouldn't
16 have been in session.

17 So, were you on patrol at that time?

18 A That's correct.

19 Q How long have you been an officer?

20 A Since 1995.

21 Q How long you been with Spartanburg County?

22 A Since '97. I've been here 14 years.

23 Q Okay.

24 A Seventeen years.

25 Q Now, on July the 8th of 2009, did you get a call to go

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1 to Ridings Road?

2 A Actually I overheard the call come over the radio---

3 Q Okay.

4 A ---while with another officer and told him I would
5 follow him there for security purposes.

6 Q Okay. Were you in a car with another officer or by
7 yourself?

8 A No, there were several of us meeting for paperwork, and
9 Officer Jason Watson was dispatched as backup to Deputy
10 Meyer, and I told Officer Watson that I would go with him.

11 Q Okay. All right. And what was the nature of the call?

12 A It was referenced to a shooting.

13 Q So, tell us what happened when you arrived.

14 A When I arrived on scene Deputy Meyer had already
15 arrived on scene, exited his vehicle. And when I approached
16 the trailer he was already stringing the crime scene tape
17 all the way around the property to secure the perimeter.

18 Q What did you see when you arrived?

19 A When I arrived I pulled in front of the trailer
20 parallel to the road off of the shoulder, and when I rounded
21 the end of the trailer where Deputy Meyer was I saw the
22 victim lying face down at the end of the trailer.

23 Q Did you go check on her?

24 A Yes, I did check for any kind of respiration. There
25 was none. I picked up the child's arm and checked for a

John Smoak - Direct examination
By Solicitor Bulsa

1 pulse and could not find any kind of pulse at all. So, I
2 laid her arm back down.

3 Q what did you do at that point?

4 A At that point I made sure that I had the correct
5 description of the suspect and started searching for him.

6 Q what was that description you had?

7 A That was an older male with a salt and pepper grayish
8 hair, a beard, a black t-shirt, and cutoff blue jean shorts.

9 Q were you aware of whether he had a weapon?

10 A Yes, he was armed -- by dispatch from -- with the
11 information we gathered that he had a -- that he did have a
12 handgun.

13 Q Okay. And where did you search for this man?

14 A The first place we searched was the nearest residence
15 which was right where the victim was at 244 Ridings Road,
16 the blue trailer. We searched that, that trailer first room
17 by room.

18 Q Okay. And then what did do you after you looked in
19 that trailer?

20 A After we left there we received information that he
21 could possibly inside -- be inside the doublewide trailer
22 next door at 248 Ridings Road. So, we, we went to that
23 residence.

24 Q Did you have any contact with Mary Bryant, the
25 gentleman that just testified?

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1 A Yes, when we in -- he was, he was very upset. It was
2 very hard for him to talk. The same situation that it was
3 on the 9-1-1 tape.

4 Q Okay. And you kept him out of his trailer and checked
5 that---

6 A Yes.

7 Q ---first?

8 Okay. Why did you check that trailer?

9 A Just because it was the closest residence that, that
10 the suspect could of been hiding in.

11 Q Okay.

12 A The process of elimination, move from the victim
13 outward.

14 Q Okay. I'm gonna put State's Exhibit No. 7 on the
15 overhead.

16 Can you see that from where you're seated?

17 A Yes, sir.

18 Q I think the jury has an understanding from yesterday,
19 but, if you would, just point out where you pulled in and
20 where everything was that you describe.

21 A This is, this is where I parked my vehicle. Deputy
22 Meyer's car was already in the driveway behind Ms. Davis'
23 vehicle. Officer Watson pulled in to here and I pulled in
24 behind him approximately in this area is where I stopped my
25 car.

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1 Q And where was Brooke?

2 A Brooke was right here.

3 Q Okay. And how was she positioned?

4 A She was laying face down.

5 Q Okay.

6 A And her head was this direction. Her feet here.

7 Q All right. And the first trailer you searched was the
8 trailer right where she was located?

9 A This trailer. We entered through the front door here.

10 Q Okay. And then the next trailer you proceeded to was
11 where?

12 A The next trailer was here, 248 Ridings Road.

13 Q Mr. -- Officer Meyer -- I mean -- excuse me.

14 Deputy Smoak, let me show you some photographs marked
15 State's Exhibit 19 through 23 for identification.

16 would you look over those?

17 A (Witness complies.)

18 Q Do you recognize though photos?

19 A Yes, all of these photos are of 248 and 244 Ridings
20 Road.

21 Q Do those accurately depict the scene at that time back
22 on July 8th, 2009?

23 A Yes, they do.

24 SOLICITOR BULSA: And, Your Honor, the State would move
25 these into evidence.

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1 THE COURT: Any objection?

2 MR. ALLEN: No, Your Honor. No objection, Your Honor.

3 THE COURT: without objection, they'll be admitted as
4 marked.

5 (WHEREUPON, State's Exhibit Nos. 19 through 23 were
6 received into evidence at this time.)

7 THE COURT: You may publish if you'd like.

8 SOLICITOR BULSA: Thank you, Your Honor.

9 Q State's 19, is that the front of 248 Ridings Road?

10 A Yes.

11 Q These are basically a series of photos kind of going
12 around the trailer to -- State's 20, different view.

13 State's 21 is for stand-off view of both trailers.

14 State's 22, the backside.

15 Then State's 23, another view with the carport.

16 Now, deputy, did you actually go into that trailer to
17 search it?

18 A 248, no, we did not enter 248 at all.

19 Q Why not?

20 A Because the information we had, with him being armed
21 with a handgun, we were at a disadvantage to enter the
22 residence without proper equipment. So, we staged on the
23 residence, formed a perimeter, and then we were waiting on
24 another officer to come with a ballistic shield so that we
25 could enter the residence safely and then search it.

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1 Q About how many officers arrived?

2 A There were approximately ten to twelve officers at that
3 time on the scene.

4 Q And when you say you developed a perimeter, does that
5 mean you kind of surrounded the trailer?

6 A Yes, all the way around the trailer to prevent anyone
7 from coming in and anyone that was inside the trailer from
8 coming out.

9 Q What was your position?

10 A My position was on -- if -- Exhibit 22, I was at this
11 corner of the trailer right here on the---

12 Q Okay.

13 A ---on the opposite side from which you can see. That
14 was my position there.

15 Q Did anything occur before this shield got to the
16 location?

17 A Before the, the shield arrived, the officer that was
18 stationed there with me, Deputy Tate, said he observed the
19 suspect coming out from the wood line.

20 Q Okay.

21 A From the opposite direction of this.

22 Q All right. And did you look when he made that comment?

23 A Yes, when he said there he is, I drew my weapon and
24 turned around the corner to see which way he was coming
25 from.

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1 Q Okay. And let me now reference State's Exhibit 7.

2 Show us -- oops. Let me back it out.

3 Show us, if, if you would, where you observed Mr.
4 Blackwell.

5 A My position to Deputy Tate were here. When he pointed,
6 he pointed in this direction and said he's coming from here.
7 That's when I drew my weapon and turned around, and we moved
8 to the pool to use the pool as cover. And I saw the suspect
9 coming from this area still holding the handgun in his
10 right-hand.

11 Q Let me show you what's been marked for identification
12 State's Exhibit 24.

13 Does that show the view you would of seen of the wood
14 line?

15 A Yes, that's the, that's the area from which the suspect
16 approached.

17 Q And that's what you would of been viewing from your
18 position?

19 A Yes, from this -- from here.

20 SOLICITOR BULSA: Okay. And the State would offer 24
21 into evidence.

22 THE COURT: Any objection?

23 MR. ALLEN: No objection.

24 THE COURT: Be -- may be admitted. It's -- be admitted
25 as marked.

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By Solicitor Bulsa

1 (WHEREUPON, State's Exhibit No. 24 was received into
2 evidence at this time.)

3 Q Now publishing that, where did you see him come out?

4 A He came out from this area.

5 Q Okay. And you said he was holding, still holding the
6 handgun?

7 A Yes, he still had the handgun in his happened.

8 Q And what took place at that time?

9 A From that position he came up and got behind the
10 sliding board of this swing set, which obstructed our view.
11 We were giving him verbal commands to drop the gun and come
12 out where we could see him, and at no time did we get any
13 response from the suspect either verbally or otherwise. We
14 told him multiple times to drop the gun. Still got to
15 response, and then the suspect laid down behind this sliding
16 board and we couldn't really see what he was doing or what
17 was happening behind the sliding board cause this was an
18 obstruction.

19 Q So, what did you do?

20 A We moved around the swimming pool. I asked Deputy Tate
21 if he had me covered and he said he did. I moved from this
22 location in-between this deck and this porch and we began to
23 approach the suspect giving him verbal commands to drop the
24 gun.

25 Q Okay. Let the record reflect he's showing this on