

VOLUME ONE OF EIGHT

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM HORRY COUNTY

James E. Lockemy, Circuit Court Judge

RECEIVED
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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

LOUIS MICHAEL WINKLER, JR.,

APPELLANT

RECORD ON APPEAL

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2006-GS-26-2101

THE STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
VS.)
LOUIS MICHAEL WINKLER, JR.,)
DEFENDANT.)

ORIGINAL

TRANSCRIPT OF RECORD

JANUARY 28, 29, 30, 31, 2008
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CONWAY, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES E. LOCKEMY, JUDGE, AND A JURY

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

J. GREGORY HEMBREE, ESQUIRE, SOLICITOR
FRANCIS A. HUMPHRIES, JR., ESQUIRE, ASSISTANT SOLICITOR
SCOTT R. HIXSON, ESQUIRE, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

RALPH J. WILSON, ESQUIRE
PAUL ELBERT RATHBUN, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

ELIZABETH B. HARRIS, CVR
CIRCUIT COURT REPORTER

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	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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10

1 MONDAY, JANUARY 28, 2008

2 THE COURT: I just wanted to have a short meeting
3 before we get going. As to the one juror -- oh, let's wait
4 for the defendant.

5 (A PAUSE.)

6 THE COURT: All right, let's, what I want to do is
7 let's go over jurors, if we have any questions about the
8 jurors. We had, we had at the last hearing where we all
9 were present, we had 142 I think it was the sheriff was
10 going to try to find. We went over on a conference call
11 and everybody present on Thursday the records of those, and
12 I think we only had how many left, Ms. Huggins?

13 CLERK OF COURT: We had five.

14 THE COURT: We had one person who had the hearing
15 problem. What else?

16 CLERK OF COURT: Right, and then we had six and now we
17 have that one.

18 THE COURT: Tell me about those six.

19 CLERK OF COURT: Okay, the one is the lady that is
20 unable to ---

21 THE COURT: I got the deaf person here.

22 CLERK OF COURT: Number 216, Michael Hernandez has a
23 doctor's excuse that he needs surgery. He went to the
24 doctor on Friday. We spoke to the doctor's office, and
25 they have sent him back for the surgery today.

1 THE COURT: Any objection on 216?

2 MR. WILSON: No. No objection.

3 THE COURT: State?

4 MR. HEMBREE: None from the state, Your Honor.

5 THE COURT: He's excused. Transferred until he's
6 physically able.

7 CLERK OF COURT: And this is a reminder on juror 339
8 that was out of town, would not be in until Tuesday, and
9 you asked that I put him in a pool that does not have to
10 appear until Tuesday, and number 339.

11 THE COURT: Does anyone have an objection? Basically
12 we're going to be qualifying the jury today. I didn't say
13 put him in a pool. What I said is basically put him in the
14 standard jury pool and if he is -- no matter what number
15 he's selected in, basically we'll just have to interview
16 him tomorrow.

17 CLERK OF COURT: Right.

18 THE COURT: And then he'll go in that place. I don't
19 want him in any other type of order. He'll be in the
20 regular order because if he's selected, like, in the first
21 pool, then we'll interview him and he would go in that
22 place and be, be where he was, all right?

23 CLERK OF COURT: Yes, sir.

24 THE COURT: Everyone agree to that? State?

25 MR. WILSON: That was my understanding, Your Honor.

1 MR. HEMBREE: Yes, Your Honor.

2 THE COURT: In other words, he would be just like a
3 regular juror.

4 CLERK OF COURT: Yes, sir.

5 THE COURT: So, don't treat him any different.

6 CLERK OF COURT: Yes, sir. Then 367, Mr. Prince, was
7 notified this morning that his brother had died.

8 THE COURT: All right, and this was 142, or was this
9 one we already had served?

10 CLERK OF COURT: This is one we already had served.

11 THE COURT: All right.

12 CLERK OF COURT: There was five of those.

13 THE COURT: All right. So, juror 367, his brother
14 passed away. He requested a continuance of his jury
15 service, transfer. Any objection from the state?

16 MR. HEMBREE: No objection from the state, Your Honor.

17 THE COURT: Defense?

18 MR. WILSON: No objection.

19 THE COURT: All right, transferred.

20 CLERK OF COURT: Number 483.

21 THE COURT: Oh, I don't have 483.

22 CLERK OF COURT: It's in that stack.

23 THE COURT: I got it. We skipped 476. I've got 476.
24 Sheriff Thompson signed an affidavit. Unable to locate --
25 Lester ---

1 CLERK OF COURT: Oh, I'm sorry. It's out of order.
2 Yes, this was a person that we don't really know how to
3 deal with. The deputy left them a card in their box with
4 the paperwork with a note asking them to sign it. The next
5 day the deputy went back. The paperwork was gone, as well
6 as the card, but we still have not been contacted.

7 THE COURT: The sheriffs made a diligent effort, it
8 sounds to me, to get Mr. Watts and have not been able to
9 get Mr. Watts. Any objection from the state?

10 MR. HEMBREE: None from the state, Your Honor.

11 THE COURT: Defense?

12 MR. WILSON: Well, Judge I mean.

13 THE COURT: Now, Mr. Wilson, we got at some point in
14 time, call him if he -- I know that we want to get the guy,
15 and I don't want the guy running away, if he is. He may or
16 may not be, but we can't hold the entire trial up to try
17 and find the guy. I don't mind bringing him in later on to
18 find out he was hiding, but I don't want to hold trial up.
19 That's my concern.

20 MR. WILSON: I understand, and I'm not trying to hold
21 the trial up, and I understand and I agree with what you're
22 saying except that as far as the defendant's concerned,
23 Judge, he apparently is getting the information or at
24 least ---

25 THE COURT: Or someone.

1 MR. WILSON: --- it appears, right, or it appears that
2 he may be getting it, and for him not to just show up or
3 not to respond in any way, you know, I can't say that I
4 could agree to excuse him.

5 THE COURT: Well, what would you like the court to do,
6 Mr. Wilson?

7 Sheriff, before you leave, Sheriff.

8 MR. WILSON: I understand he's doing everything he can
9 to find him. I just...

10 THE COURT: All right, one second. Sheriff, do you
11 know anything in particular -- Sheriff's in the courtroom.
12 If you would, Sheriff, do you know particularly what's
13 going on with Lester Watts yourself or do you ---

14 SHERIFF: I did not personally, no, but I can find
15 out.

16 THE COURT: All right, if you would find out what's
17 going on and if, in fact, you can have someone to get him
18 up here before actually the jury, y'all make all efforts
19 this morning to get him here. And if he's actually here
20 before I start dividing in panels, we'll put him -- and he
21 qualifies otherwise, I'll put him on. If not, I'm not
22 going to put him on, but see what y'all can do this
23 morning.

24 Mr. Wilson, we'll do all we can this morning to get
25 him here but once the jury is qualified and I start put,

1 start putting them in panels, I really hesitate to bring
2 someone in like that and we don't even know and continue to
3 search for.

4 MR. WILSON: All right, sir.

5 THE COURT: Any objection to that?

6 MR. WILSON: Well, I mean, Judge the only thing I can
7 say is is that, you know, we obviously would like for him
8 to be found and brought here. I understand if the sheriff
9 can't locate him, then he can't locate him. I mean, I...

10 THE COURT: All right, do your best, Sheriff. Just
11 give me a, give me an update on him.

12 All right, now 483.

13 CLERK OF COURT: 483 we have a doctor's excuse that
14 she is a patient in the psychiatric clinic, and this is
15 from the Horry County ---

16 THE COURT: Any objection on 483?

17 MR. HEMBREE: No objection from the state, Your Honor.

18 MR. WILSON: No objections, Your Honor.

19 THE COURT: All right.

20 CLERK OF COURT: I have one more that I do not have
21 any paperwork. It was number 290, James Mark, because he's
22 downstairs in my office completing the paperwork at this
23 moment.

24 THE COURT: So, he's reported?

25 CLERK OF COURT: Yes, sir.

1 THE COURT: All right, so 290 will be here. That
2 leaves the only ones of review would be jurors 211 and
3 juror 476, which we'll look at later on, and then juror
4 339. Now, does 339 know about tomorrow to be here?

5 CLERK OF COURT: Yes, sir.

6 THE COURT: All right.

7 CLERK OF COURT: He has been approved to be here.

8 THE COURT: All right, now anything else from the
9 state before we go and begin the jury qualification?

10 MR. HEMBREE: Nothing from the state, Your Honor.

11 THE COURT: All right.

12 MR. WILSON: Nothing additionally on the
13 qualifications.

14 THE COURT: All right, anything else? Mr. Wilson,
15 anything before we begin? Anything at all from anybody?
16 I'm ready to adjourn to take a break a few minutes to go
17 down and start to call the roll of the jurors.

18 MR. WILSON: I don't have anything in regard to the
19 jury if that's what -- you're asking me that.

20 THE COURT: Anything else, anything?

21 MR. WILSON: Yes, sir, but I, in order to do what I
22 need to do, I can't do it with the prosecution here. So, I
23 ---

24 THE COURT: How about approach the bench and tell me
25 what you got.

1 (OFF-THE-RECORD BENCH CONFERENCE WITH DEFENSE
2 COUNSEL.)

3 THE COURT: Mr. Hembree, Mr. Humphries, Humphries and
4 other members of a prosecutor, prosecutorial team and law
5 enforcement, I will see you down there.

6 (SOLICITOR AND STAFF EXIT THE COURTROOM.)

7 (EX PARTE HEARING.)

8 THE COURT: All right, now officers stand up. Raise
9 your right hand.

10 (WHEREUPON, SHERIFF AND DEPUTY SHERIFFS ARE SWORN TO
11 DIVULGE NO INFORMATION FROM EX PARTE HEARING.)

12 THE COURT: All right, Mr. Wilson, yes, sir.

13 MR. WILSON: Your Honor, please the court? On
14 Thursday when we had the telephone conference with the
15 court, the defendant at that time started to give the court
16 some information about an incident that occurred out at the
17 jail between myself and him, and he also had indicated to
18 me that he wanted both myself and Paul Rathbun relieved
19 from this case as his attorneys. And the court I think
20 made an initial inquiry into it, and he did put some things
21 on the record. The court indicated to him that he would be
22 allowed on Monday to complete whatever information he
23 wanted to put in the record, and I would ask the court to
24 give him the opportunity to do that at this time.

25 THE COURT: All right, Mr. Winkler, stand up for me,

1 sir. I want to commend you, sir. Whoever selected your
2 outfit did a good job. But if you want to go over
3 something that we haven't discussed before, I'll be glad
4 to.

5 Now, we discussed on the record. It's on the record;
6 there's a record of it. As I recall, the court reporter's
7 name is Pam Green as I recall, wasn't it? So, we have it
8 on the record, the things we discussed on Thursday
9 regarding the disagreement you and Mr. Wilson had at the
10 county detention facility, and your concern about you felt
11 that Mr. Wilson said that he -- you said he said he thought
12 you would be found guilty.

13 I discussed that with you, that his expressing an
14 opinion is really a duty he has a lawyer to give you an
15 opinion. I've also seen many cases where that opinion has
16 ended up coming true, and that opinion has ended up not
17 coming true. Who knows once the actual trial begins. So,
18 the fact he may look at the evidence and give an opinion is
19 only his efforts to give you his best opinion as an
20 attorney. I haven't heard anything about what you said Mr.
21 Rathbun said one way or the other, but what are the things
22 you want to address, Mr. Winkler?

23 DEFENDANT: Well, that day you had said any, anything
24 that could be taken care of could be taken care of after
25 the trial.

1 THE COURT: What now?

2 DEFENDANT: You remember? You, you had told me
3 anything that proceed -- anything that has to do with that
4 incident as far as me pressing ---

5 THE COURT: Oh, oh, as far as pressing charges.

6 DEFENDANT: Or anything like that could be taken care
7 of after the trial.

8 THE COURT: I'm not guaranteeing you can press
9 charges. What I'm saying is ---

10 DEFENDANT: No, I meant ---

11 THE COURT: --- your going through with this trial
12 will not prejudice your rights to seek any type of criminal
13 process in the matter later on.

14 DEFENDANT: Okay. Well, direct, direct of that, they
15 put me in maximum lockup because of that. But here I can't
16 press charges, yet they're going to put me in maximum
17 lockup because of that incident. I've been told that by a
18 couple of the jailers there. They said that Captain Grey
19 put me in maximum because of that incident.

20 THE COURT: Well, that's an administrative matter.

21 DEFENDANT: And the incident, the incident, I, I know
22 there's tape. They have tapes of it. And like Mr. Wilson
23 had said, and I surely want Mr. Wilson and I to go through
24 and have a fair trial. But eight months ago I asked to
25 relieve this man and I was turned down and now this

1 happens.

2 He got in my face and put his finger in my face and
3 touched my face, Your Honor. That is a confrontation any
4 way you look at it, and they put me in maximum lockup
5 because of it. And, I mean, and then you're telling me
6 that I can't press charges.

7 THE COURT: No, I didn't tell you can't press charges,
8 sir.

9 DEFENDANT: Well, the charges are pending and so
10 forth. I mean, the whole thing has been -- I mean, they
11 have told me -- the whole thing about it is is I, I gave
12 my, gave my sister's pictures to Mr. Wilson and I said you
13 see the woman in there? It was her husband and four
14 children. They run a church where -- in my hometown. I
15 said that's the woman that you called a liar. I said now
16 call her a liar again, and he stepped forward, put his
17 finger in my face and said she's
18 a f-ing liar, and that is exactly what happened, Your
19 Honor, and ---

20 THE COURT: Well, I mean, I don't particularly know---

21 DEFENDANT: To get a fair trial ---

22 THE COURT: Mr. Winkler, I don't condone that type of
23 language, and I'm sorry that there was an altercation in
24 that regard, but I don't find that significant enough to
25 remove Mr. Wilson and appoint a new attorney. I don't see

1 where that would be in that realm.

2 DEFENDANT: Well, I mean, how can I get a fair trial
3 with guys that are against me? I mean, they've actually---

4 THE COURT: When you say against you, sir, they're
5 against you in what regard, sir? You don't think Mr.
6 Wilson is going to do his best to get you acquitted, sir?

7 DEFENDANT: No, I don't.

8 THE COURT: Mr. Wilson, what is your response to that,
9 sir?

10 MR. WILSON: Judge, I have done everything that I know
11 to do to represent this defendant in the best fashion that
12 I know how to do. There's no question about the fact that
13 this defendant is antagonistic. He has been antagonistic
14 from day one. It is been a real uphill battle to defend
15 him and work with him and in spite of that, in spite of
16 that, we have made every effort to protect every right. We
17 have hired every expert we can think of to hire. We have
18 tried to talk to every witness that we could possibly find.

19 We are more than prepared to go forward with this
20 trial today in spite of his efforts to thwart that from
21 happening. And I would say to this court without any
22 reservation whatsoever I am as prepared and as ready to go
23 with this trial as I've ever been with any trial that I
24 have ever tried.

25 And the fact that his personality is such that it gets

1 on my last nerve does not affect me and my ability to
2 represent him in the fashion that I believe he's entitled
3 to and every defendant is entitled to. And I will do that,
4 and I have given my word to this court that I will do that,
5 and I've done that throughout this process.

6 THE COURT: And, Mr. Rathbun, are you ready, sir?

7 MR. RATHBUN: I'm ready to go forward, yes, Your
8 Honor.

9 THE COURT: Now, Mr. Winkler, is your request that I
10 remove these attorneys and get you new attorneys? Is that
11 your request?

12 DEFENDANT: Well, I don't know. I'd have to talk to
13 my family. There's, there's been other concerns also that
14 I've asked Mr. Wilson to step forward to let you know, Your
15 Honor, according to things pertaining to the courthouse --
16 I mean, the jail house.

17 THE COURT: All right. Well, about the trial, sir,
18 is there some evident -- is there some evidentiary, some
19 issues of your defense that are able to be put forth in
20 a trial that you feel Mr. Wilson has not examined and you
21 want some witness that he's not been able to acquire that
22 you ---

23 DEFENDANT: Yes, there's ---

24 THE COURT: --- want the court to give you assistance?

25 DEFENDANT: There's several. There's one particular

1 witness that we've been able to -- un, un -- to locate.

2 THE COURT: All right, I want all but the sheriff and
3 one deputy. The rest of y'all go outside, please. Clerk,
4 you can stay in. What about these witnesses, Mr. Wilson?
5 Who are they?

6 MR. WILSON: Judge, the witness that I assume ---

7 THE COURT: These two people here.

8 MR. WILSON: Oh, this is my jury expert and this is my
9 paralegal.

10 THE COURT: How about y'all stepping out for a second?
11 I just want one deputy and the sheriff.

12 (NOTED PARTIES EXIT THE COURTROOM.)

13 THE COURT: Officer, there is a deputy right outside
14 the door, right?

15 All right, what witness are we talking?

16 MR. WILSON: I assume he's talking about Jeff Joslin.
17 I'm not certain, but I assume that's who he's talking
18 about. Jeff Joslin, Your Honor, is a witness that actually
19 is a state's witness. I'm not sure why we want him. But
20 this is the witness who says that he gave Mr. Winkler a
21 ride from the playground or this ballpark area to an area
22 near the victim's house on the day of the homicide, and the
23 person is missing. Now, the investigators have made every
24 effort -- whether the state has him or not, I do not know,
25 but we have made an exhaustive effort to find him.

1 We've talked to his family. His family says they
2 haven't seen him in over a year and a half; they don't know
3 where he is. He's not living at the address that he lived
4 at at the time the incident occurred. This man is somewhat
5 of a, I don't want to call him a vagrant, but he is kind of
6 back and forth, and he's just kind of out there. We don't
7 know where he is; we cannot find him and I'm not even sure
8 that if we found him, he would be of any help to us
9 whatsoever. But he has asked us about finding ---

10 THE COURT: Is this a person, Mr. Winkler, you think
11 lives in Horry County?

12 DEFENDANT: He did at the time. He was living with
13 someone, my neighbor, at the time.

14 THE COURT: All right, do you know of any efforts they
15 could do? I'll be glad -- I'm going to have the sheriff
16 now if you want me to ---

17 DEFENDANT: No, sir. I believe that they have. I, I,
18 I, I just answered the question, but he answered it for me
19 that, you know, if there's any point pertaining ---

20 THE COURT: That they have not done their best efforts
21 to find for you, that you feel have been inadequate
22 assistance from your lawyers.

23 DEFENDANT: Well, Your Honor, I don't know. I'm in
24 lockup. I don't know what they're doing on the outside; I
25 have no idea what they're doing.

1 THE COURT: So, that's one ---

2 DEFENDANT: Or if they've exhausted themselves by
3 me.

4 MR. WILSON: Judge, in order to be fair ---

5 DEFENDANT: I don't know; I just don't know that.

6 MR. WILSON: I have, we have met with this defendant
7 repeatedly and spoken to him about this particular witness.
8 I've had the trial phase investigator who made the search
9 and the sentencing ---

10 THE COURT: I know. That witness I can understand,
11 but what I'm going to do is I'm going to give my list -- if
12 you would, give the name to the sheriff, see if they can
13 help you find him. If they can, they can. If they can't,
14 they can't. I'm also going to ask the prosecution if they
15 have that name if you don't mind.

16 MR. WILSON: No, sir.

17 THE COURT: You want me to?

18 MR. WILSON: That's up to him. I don't want the
19 witness. I don't think that this witness will bring
20 anything that's helpful to us to the table. But he has
21 asked me about this witness repeatedly, and if he wants him
22 there, then I'm going to try my best to get him there. But
23 I think it can do more harm than good ---

24 THE COURT: Then I'm not going to ask the prosecution.
25 However, I'm going to ask the sheriff without letting

1 prosecution know to go out and see if they can find this
2 guy.

3 Ms. Huggins, if you would, prepare me a subpoena and
4 let's get it to the sheriff, and let's see if we can get
5 this guy, all right? If we can, we can and y'all can use
6 him if you want to. You don't have to use him, but if they
7 can find him. They may not be able to find him either.

8 All right, anything else, Mr. Winkler, that we haven't
9 discussed already?

10 DEFENDANT: Yes, Your Honor. There -- it's been
11 almost two years now. As far as I know, no one's ever
12 visited the crime scene to measure out the couches, the
13 distances. There's a counter top that's very much in judge
14 -- in the judgment of where what was and this happened and
15 that happened. Nobody has ever been in, inside that unit
16 to investigate that except Horry County investigators.

17 THE COURT: I don't want you to give too much ---

18 DEFENDANT: Looks like ---

19 THE COURT: Mr. Wilson, I don't want you to give me
20 too much about this, but ---

21 MR. WILSON: Judge, the unit, we have been out to the
22 site. We have not been inside the unit because the unit is
23 no longer available to us to go to it. The unit belongs to
24 the daughter of the victim and not to this defendant.

25 THE COURT: Was there something in there you feel

1 would be ---

2 MR. WILSON: No, sir.

3 THE COURT: --- significant?

4 MR. WILSON: Judge, we have pictures. The police have
5 provided us with just dozens and dozens of photographs of
6 the interior of the premises. I don't know that there is
7 anything in there that's going to change anything. We've
8 also, just so you know, hired a crime scene investigator.
9 He has not requested that he be -- that he needs to get in
10 there in order to do what he needs to do.

11 So, no, the answer to the question is no. Do I
12 believe that we need to go inside of the house in order to
13 see the house? No. With the pictures and with the
14 information that we have, I think it's more than
15 sufficient. I've certainly not had any difficulty, and the
16 crime scene investigator that we hired has not have a
17 difficulty.

18 THE COURT: Mr. Winkler, I'll let you know this. At
19 the end of the state's case, if there's something there
20 that if y'all were able to look at it yourself, then I
21 would probably give you, your investigator the opportunity.
22 But I'll wait to see how the state's case develops, see
23 whether that's significant.

24 But any event, I don't want to go point by point with
25 your case, sir, because that's not good for you. It sounds

1 to me that far as all the efforts that can be made are
2 being made, and for that reason if your request is to
3 remove them, then I see no reason that any other lawyer
4 could do any better than they're doing, any other lawyers.
5 They seem to be doing a pretty thorough job in your case.

6 DEFENDANT: Well, getting back to that, then there's
7 only one picture of a major piece of evidence in there, and
8 there's no other angle of it. We don't know the distance
9 of it at all, and they haven't looked into it. I know the
10 crime scene investigator has been hired, but he doesn't
11 know the length of that, that bar either. Well, I mean,
12 it's just -- well, if -- you know, I, I trust your
13 judgment, then, Your Honor, because my ---

14 THE COURT: I'm not giving you my advice, sir. I'm
15 just saying these attorneys seem to have done as good a job
16 as anyone else.

17 Now, issues you bring up may become issues at the end
18 of the state's case, and Mr. Wilson may want to bring to my
19 attention regarding some matters they need to look at, but
20 we'll wait.

21 DEFENDANT: Well, right, Your Honor, but ---

22 THE COURT: We'll get into that at the end of the
23 state's case.

24 DEFENDANT: Right. If he could -- if he says he's
25 been doing the bust up job he can, the best he can and he

1 told me straight out many times, and recently -- and my
2 family will be here tomorrow. He's told them over the
3 phone that, you know, I'm going to be convicted.

4 THE COURT: Well, I mean, once again, sir, you don't
5 want someone -- if that's his opinion, that's his opinion.
6 Whether it is or is not, I don't want to get into, but
7 whether that's -- you want an attorney to give you advice
8 and opinion. That doesn't mean they're not going to
9 represent you and do their best to make sure you don't get
10 convicted. But you can't chastise an attorney for giving
11 you an honest opinion.

12 Any event, we're going to proceed then. There's been
13 no request for you to represent yourself. You're
14 requesting another attorney. Since that's the case, I do
15 not grant your motion. Now, you always have that option to
16 represent yourself, which would be very inadvisable for
17 this stage, but we will continue on with the case. Thank
18 y'all very much.

19 Sheriff, I need to talk with you up here. You can
20 bring the officers back in.

21 (OFF THE RECORD.)

22 THE COURT: Mr. Winkler, also want to let you know
23 that we're about to go down to the room with all the
24 jurors. I do not want and am going to direct the sheriff
25 do everything so that the jurors themselves do not in any

1 way see you in any type of restraints. So, please let's
2 not get in any problems that's going to require me to
3 change that rule, which I can if I need to.

4 In addition, just to let you know, during the jury
5 selection process, I'm not going to let any cameras be
6 operating in the courtroom. However, during a break or
7 something of that nature, if a camera wants to go off, they
8 can go off during the break. But while the jurors are in
9 that courtroom, there will be no cameras going off either
10 during the selection process. Once the trial begins, that
11 will change. Well, unless we're on a break and there are
12 no jurors in the courtroom.

13 All right, thank y'all very much and, Sheriff, I can
14 see you. I'll see y'all down in the other room.

15 (END OF EX PARTE HEARING.)

16 (OFF THE RECORD.)

17 THE COURT: Thank you, everyone. Please be seated.
18 Ladies and gentlemen, I hope we have a -- I am aware there
19 is a major parking problem in Horry County. Some jurors
20 may still be coming in.

21 My name is James Lockemy. I'm a circuit court judge
22 in the State of South Carolina. In South Carolina, we as
23 judges, we travel all over the state to hold court. I am
24 from Dillon County, South Carolina. Straight up 501 until
25 you get to Marion, turn off to 301 and go right down Main

1 Street of Dillon, four lane all the way unless you want
2 through the crossroads and go down through Mullins. You
3 have all these choices, all these roads that lead to that
4 major metropolitan area of Dillon, South Carolina. Some of
5 you are not from Horry County originally, which I'm going
6 to guess are a lot of you, came through Dillon to get here.
7 You may have stopped got a sandwich, and we appreciate the
8 business.

9 We're about to qualify you as a jury. Now, y'all got
10 your notices and all to be here, and I know some of you
11 have questions and all that; we can answer that later on.
12 But right now what we need to do is do some general nature
13 things to get those things done. First of all, we're going
14 to call the roll to see how many of you are here that we
15 thought should be here, to see if we need to go and find
16 somebody who's not here that's supposed to be here.

17 After we call the roll -- and by the way, when they
18 call the roll, all you need to do is give us the number of
19 miles you live from this courthouse. Give us your best
20 estimate. It ain't like you're going to get a dollar a
21 mile, so don't worry about that. If you miss it by two or
22 three miles, do it to your favor. So, give us your best
23 estimate of the miles from the courthouse.

24 After that, I'll then have the clerk put you under
25 oath, and there are some questions I need to ask you

1 generally to make sure you qualify under our constitution
2 and our laws as jurors for the State of South Carolina in
3 the Circuit Court of South Carolina, which is a state
4 court. So, we will now proceed with that.

5 Ms. Huggins, are you ready?

6 CLERK OF COURT: Yes, sir.

7 THE COURT: And if you would, please, when she calls
8 your name out, stand up, stand up and loudly give us those
9 mileage, that mileage information so everyone, everyone can
10 hear, okay?

11 All right, let's go, Ms. Huggins.

12 (ROLL CALL.)

13 THE COURT: Do we have someone from the sheriff's
14 department here? Sir, if you would, that's eight people.
15 On number 492, that person is over the statutory age, but
16 all we're going to do is call that person, see if they wish
17 to serve. If they wish to serve, come on, they need to
18 come on up, okay? That's number 492.

19 The other ones, I need a reason why they were not
20 here. They returned the documents they were going to be
21 here. That's seven I need to know exactly where they are
22 and why they're not here, and we'll get to them as we go.

23 For counselors who are interested, number 211 we'll
24 talk to him individually later on. Is the mother of 211
25 here? How many miles did y'all come?

1 JUROR: About five.

2 CLERK OF COURT: Five.

3 (A PAUSE.)

4 THE COURT: Okay, all counselors have the number of
5 jurors that are checked that were here, the numbers that we
6 are looking for, and 211, 339, please note those. Do not
7 have any concerns right now. The only concerns I have are
8 on those eight jurors I mentioned that we're looking for.
9 So, if you have any other numbers, at the first break y'all
10 need to let me know.

11 Now, if you would, ladies and gentlemen of the jury,
12 of this jury panel here, this petit jury, what I'm going to
13 have you do is the clerk is going to put you under oath or
14 affirmation. It doesn't matter to me if you feel you'll
15 rather -- to affirm, that's fine. I just need to make sure
16 you understand that you have a legal duty to tell the
17 truth, and I have a few questions to ask of you. So, if
18 you would, Madame Clerk, ask them to stand and raise their
19 hand and administer their oath or affirmation.

20 (THE JURY PANEL IS SWORN.)

21 THE COURT: All right, so everyone then knows they
22 have a legal duty at this time to tell the truth. Everyone
23 be seated now.

24 I didn't know if you were standing up there or not,
25 blue man, blue shirt. You all right?

1 All right, here we go. First of all as I told you, I
2 travel around. For you to serve on jury duty, though, you
3 must be a resident of the county for which you are called
4 as a juror. Is anyone out there now not now today living
5 in Horry County? If you don't live in Horry County, please
6 stand up. What is your name, sir? What's your number, sir?

7 JUROR: 300, Your Honor.

8 THE COURT: Hold on one second. All right, you're, is
9 it Mr. Moscow?

10 JUROR: Mascho.

11 THE COURT: Mr. Mascho, you don't live in Horry
12 County, sir?

13 JUROR: I have a house here, but I'm currently working
14 in Georgia.

15 THE COURT: But you actually live here, but you're
16 just doing a job in Georgia?

17 JUROR: I have a house here.

18 THE COURT: Where is your driver's license, sir?

19 JUROR: It's for, for here, Your Honor.

20 THE COURT: Thank you. Anyone else? All right,
21 anyone not a citizen of the United States of America,
22 please stand up.

23 All right, is anyone on the jury panel who is a clerk
24 of court, deputy clerk of court, magistrate, constable, or
25 someone who has the general power of arrest? That means

1 you might be a law enforcement officer or if you're a
2 constable or work within the walls of a courthouse or a
3 magistrate or county council person, please stand up.

4 Yes, ma'am, what is your number, ma'am?

5 JUROR: 277.

6 THE COURT: Let me find that, please. All right,
7 you're Kay Lilly?

8 JUROR: Yes, sir.

9 THE COURT: And, Ms. Lilly, why did you stand up,
10 ma'am?

11 JUROR: I'm an assistant clerk with the Conway
12 Municipal Court.

13 THE COURT: You're the clerk of the Common -- Conway
14 Municipal Court. So, you work in the courthouse there at
15 that court?

16 JUROR: Yes, sir.

17 THE COURT: All right, hold on one second, ma'am.
18 Now, you work in the area of the court where they have
19 tickets and things of that nature for people who have
20 charges and all that?

21 JUROR: Yes, sir.

22 THE COURT: All right, have a seat. I'll deal with
23 you in a little bit. Thank you, ma'am. Anyone else?

24 Okay, is there anyone out there who has been on
25 circuit court jury duty for the three years, circuit court

1 jury duty for the last three years? Not magistrate, not
2 city, not federal, but inside South Carolina have you been
3 on circuit court for in the last three years? If so,
4 please stand up.

5 (NO ONE STANDS.)

6 THE COURT: All right, has anyone been on the grand
7 jury in the last five years? If so, please stand up. I
8 could explain the grand jury to you but if you've been on
9 it, you understand what the grand jury is. Grand jury in
10 the last five years?

11 (NO ONE STANDS.)

12 THE COURT: Okay. The law says you need to have at
13 least one of these three. If you have one of the three,
14 you're fine. Either driver's license, voter registration
15 certificate, or an ID card from the Highway Department, if
16 you don't have at least one of those three, please stand
17 up.

18 What is your name, sir? Give me your number, sir.

19 JUROR: 234.

20 THE COURT: 34?

21 JUROR: 234.

22 THE COURT: Hold on one minute, sir.

23 JUROR: I have a driver's license in my pickup, but I
24 don't have it on me.

25 THE COURT: Oh, I'll trust you. That's fine. About

1 to walk four miles to pickup to get it, but we'll trust
2 you. Anyone else?

3 THE COURT: All right, the law says that if you have
4 children under the age of seven and you are not employed
5 outside the home and these are your children, not the
6 children or someone else in your family, not children
7 you're taking care of for someone else, but they're your
8 children or that you've been ordered by the court to take
9 care of the children, if these children are under seven and
10 you are not working outside the home, then you have an
11 option of being excused or staying here with jury duty.
12 Does that apply to anyone? Children under the age of
13 seven, you're not employed outside the home, and you wish
14 to be excused from jury duty?

15 Okay, first the lady, your number again, ma'am?

16 JUROR: Number 6.

17 THE COURT: Number 6, okay, you are Angela Atwood?

18 JUROR: Yes, sir.

19 THE COURT: Now, Ms. Atwood, you're not employed
20 outside home, ma'am?

21 JUROR: No, sir.

22 THE COURT: And you have children under seven?

23 JUROR: Yes, sir.

24 THE COURT: All right, and we had had that you had
25 already signed a statement in that regard, ma'am. Had you?

1 JUROR: I had called three times, and they told me
2 that I'd still have to come.

3 THE COURT: Okay. All right. All right, Ms. Atwood,
4 how old are your children?

5 JUROR: A four-year-old and a nine-month-old.

6 THE COURT: All right, and you realize you're under
7 oath?

8 JUROR: Yes, sir.

9 THE COURT: All right, be seated for a second, ma'am.
10 Your name again, ma'am?

11 JUROR: Tracy Neal.

12 THE COURT: What's your number? I'm sorry.

13 JUROR: 335.

14 THE COURT: 335, let me find that. Tracy Neal. Now,
15 Ms. Neal, did you send some notification in you had
16 children under seven?

17 JUROR: Yes, sir. They told me I'd still have to
18 come.

19 THE COURT: All right. Now, Ms. Neal, how old are
20 your children?

21 JUROR: She's three.

22 THE COURT: Three years old, and are you working
23 outside the home, ma'am?

24 JUROR: No, sir.

25 THE COURT: You don't work anywhere outside the home?

1 All right, Ms. Neal is 335, and you realize you're under
2 oath?

3 JUROR: Yes, sir.

4 THE COURT: Thank you, ma'am. You may be seated.

5 All right, your name, ma'am? Your number, I'm sorry.

6 JUROR: 382, Ashley Rivera.

7 THE COURT: All right, Ms. Rivera, and how old are
8 your children ma'am?

9 JUROR: Five, seven, eight, and nine, and I can't ---

10 THE COURT: What happened to six?

11 JUROR: I took a year.

12 THE COURT: All right, ma'am, you have one child under
13 seven?

14 JUROR: Yes.

15 THE COURT: Now, ma'am, you don't work outside the
16 home, but you work in the home I'm sure.

17 JUROR: Well, I work in the home. I'm a realtor and I
18 work from home, but my youngest is in school and ---

19 THE COURT: No, ma'am, I know, but you do, you work in
20 the real-estate business?

21 JUROR: Yes, but I'm also a substitute teacher, so I
22 work outside.

23 THE COURT: Well, ma'am, that would still qualify you.
24 We'll talk about it further. Have a seat for right now.

25 Obviously you do great selling homes with a lot of bedrooms

1 in them.

2 Okay, ma'am, what is your, what's your number?

3 JUROR: 141.

4 THE COURT: 141. Okay, I see you're Ms., is it
5 Facenda?

6 JUROR: Correct.

7 THE COURT: Ms. Facenda, and you have children under
8 seven?

9 JUROR: I have a twenty-month old.

10 THE COURT: All right, and you don't work outside the
11 home?

12 JUROR: We run our business from the house, so I, I'm
13 the office manager of our business.

14 THE COURT: But you stay at home?

15 JUROR: Yeah.

16 THE COURT: You don't go anywhere else?

17 JUROR: We have a home office.

18 THE COURT: What type of the business is it?

19 JUROR: Water restoration, carpet cleaning.

20 THE COURT: Thank you, ma'am. Great advertisement.
21 All right, thank you, ma'am. Be seated.

22 Just to do a little thing here, I intend to excuse 6,
23 335, 141, and 277 who works in the court system. Any,
24 anyone wishes to approach the bench with any concerns or
25 objections, please come forward now.

1 MR. HEMBREE: No objections from the state, Your
2 Honor.

3 MR. WILSON: No objections from the defense.

4 THE COURT: All right, number 6, number 335, number
5 141, number 277, y'all can leave at this time. Make sure
6 you turn those little cards or buttons in.

7 Now, the law provides that if you are a certain age,
8 we would love to have you as a juror, but we cannot force
9 you or require to be on jury duty. So, you can be on jury
10 duty; we'd love to have you. Know you'd be a great juror,
11 but the law cites a certain age is a situation where you've
12 already served your community, state, and nation well and
13 we give you that option. That age is sixty-five. Anyone
14 over sixty-five who does not wish to be on jury duty may be
15 excused. That does not require you to be off of jury duty.
16 It means you have that option.

17 Ma'am, why are you standing?

18 JUROR: I'm sixty-six.

19 THE COURT: No, you're not. What is your number,
20 ma'am?

21 JUROR: 127.

22 THE COURT: 127. Started to say we just finished the
23 under seven children thing. Okay, you're Kay Dyer?

24 JUROR: Yes, sir.

25 THE COURT: Okay.

1 JUROR: My husband is also very sick. That's the main
2 reason I ---

3 THE COURT: Well, okay, but I have your birthday in
4 March.

5 JUROR: Of 1941.

6 THE COURT: I didn't say the year, ma'am. I was only
7 saying -- you're saying you're sixty-six.

8 Yes, sir, your number, sir?

9 JUROR: 218, 218.

10 THE COURT: Okay, and you are James R. Hill, sir?

11 JUROR: Yes, sir.

12 THE COURT: Now, both of you now, you both have the
13 option, and we'd love to have you serve on jury duty but as
14 I said, due to age if you wish to be excused, you may do
15 so. You said you had another reason, right, ma'am, so I
16 understand. So, you wish to be excused?

17 JUROR: Yes, sir.

18 THE COURT: And, Mr. Hill, we'd love to have you, sir,
19 if you'd like to stay with us.

20 JUROR: Give me a parking spot and I might.

21 THE COURT: Sir, I'd end up with two hundred and
22 something requests if I did that.

23 JUROR: I guess I'll stay.

24 THE COURT: Thank you, Mr. Hill, thank you very much.

25 Your number, sir?

1 JUROR: 353 -- wait a minute. Wait a minute, 345.

2 THE COURT: 345, all right, Mr. Overby.

3 JUROR: Correct.

4 THE COURT: Mr. Overby, once again, sir, if you wish
5 to stay with us, that would be fine but it would be up to
6 you, sir. Would you like to stay with us, or do you want
7 to be excused?

8 JUROR: Your Honor, if I may go to the restroom, I'll
9 stay.

10 THE COURT: That's a request I can grant.

11 If you would -- then, therefore, on age I've excused
12 127. Any objection on either side?

13 MR. HEMBREE: None from the state, Your Honor.

14 MR. WILSON: None from the defense.

15 THE COURT: Ma'am, you may leave at this time. Sir,
16 if you need to go to the restroom right quick, go ahead,
17 sir.

18 The next question is -- now, I need to make sure I've
19 got all my jurors in here now on this question. I see some
20 have stepped out. You need to have a seat now. I'll give
21 y'all a break in a minute. Just have a...

22 Now, Mr. Bailiff, Mr. Officer, if someone has come in
23 after I ask this question, you need to let me know. All
24 right, I know one gentleman, Mr. Overby, stepped out, but
25 any other jurors I can't -- make sure they haven't missed a

1 question.

2 My next question is school. The law provides if you
3 are a student or if you are employed in school, then you
4 may be transferred to a time when school is not in session.
5 Doesn't mean you're excused. We'll bring you back when
6 school is not in session. If you are employed by a school
7 or you are a student, is anyone out there who is employed
8 by a school or who's a student that wishes to be
9 transferred to another time, if so please stand up.

10 (NO ONE STANDS.)

11 THE COURT: Okay. Now, I'm now going to ask some
12 questions that will be grouped. Now, these questions you
13 don't need to reply to until I ask all of them at one time
14 and they're completed, and then you can come down and talk
15 to me individually.

16 First of all, the law provides to be on jury duty you
17 must have the basic ability to read, write, speak the
18 English language. Doesn't mean you must be able to
19 understand the most complex text but that you must have the
20 basic ability to read, write, and understand the English
21 language. You must have a sixth grade education or its
22 equivalent. You could have gotten that equivalency,
23 equivalency through your own study, your interpersonal
24 relationships, your work experience of that thing. So, in
25 a minute you don't feel you have a basic ability to read,

1 write, or speak the English language, or you don't have a
2 sixth grade education, let me ask you to come down.

3 Number two, there may be someone at your home that you
4 have a moral or legal duty to care of, and your being here
5 could put their health and well-being in serious threat or
6 danger if -- because of some illness they may have or
7 something else. You wish to talk to me about that, I'll be
8 glad to do so in a second.

9 Number three, you may have some serious mental illness
10 or physical illness that would prevent you from serving on
11 jury duty. Now, just because you may have a back problem,
12 diabetes, those things, doesn't necessarily disqualify you
13 because you can bring food if you needed to. If you want
14 to -- self-injection for diabetes or something of that
15 nature, need to stand up every once in a while to stretch
16 out because of a back situation because you can't sit for
17 over an hour or so, we can handle those things. But if you
18 have a serious mental or physical problem for which you
19 feel you couldn't observe or pay attention, listen, and
20 keep observations on the court system, in the court system
21 through witnesses, through the instructions of the court,
22 then come and talk to me about that.

23 Next, you cannot, and I emphasize the word cannot,
24 serve on jury duty if you have been convicted of a crime
25 for which you could have received more than one year in

1 prison. It does not matter what you actually did receive.
2 What matters is what the judge could have imposed upon you.
3 You could have gotten less than one year. You could have
4 gotten, you could have gotten a fine or probation, but if
5 the judge could have imposed more than one year upon you,
6 then you are disqualified from jury service.

7 Now if you are not sure, the best thing is to come
8 talk to me about it, and I can let you know whether or not
9 it is disqualifying or not. And it doesn't matter where it
10 occurred. This conviction could have occurred in some
11 other state or in the federal system. That doesn't matter.
12 You are still disqualified.

13 Also, it does not matter how long ago it was. It
14 could have been this millennium or last millennium, twenty,
15 thirty, forty years ago. If you were convicted of a crime
16 for which you could have received more than one year, then
17 you are disqualified from jury service. Once again, if
18 you're not sure, come up and talk with me about it. I'll
19 let you know right quick whether or not it disqualifies
20 you.

21 Lastly, I know, ladies and gentlemen, that being on
22 jury duty is an inconvenience. I understand you have other
23 things you wish to do, and but also understand that you
24 realize how important your jury services. We cannot
25 operate any type of system without the citizens of a

1 community. The decisions in a court are not made by the
2 judge. They are made by the jurors, the citizens of that
3 community, and it is very important. America is the only
4 country left in the entire world that no matter what the
5 charge is, you are entitled to a jury trial for the
6 citizens to make the decision. You have people who are
7 serving over this world wearing a uniform with an America
8 flag over one shoulder showing that they stand up for that
9 system, showing that they're willing to give it all for
10 that system so that we may be here today in a courtroom
11 with U.S. citizens here with that right to serve on jury
12 duty. So, please understand it is a very important right
13 to be on jury duty and important privilege and an important
14 obligation of citizenship.

15 So, ladies and gentlemen, that is so important, but if
16 for some reason this particular time as opposed to others
17 is very, very difficult for you, then I'll be glad to talk
18 with you. I'm going to ask you another question later on
19 about a particular case we're going to try on, but this is
20 just in a general situation if serving on jury duty is some
21 sort of hardship for you. I know that finances are
22 hardship on everybody, but we have to accept that many
23 times because of our obligations to be jurors.

24 So, let me just reiterate. If you have problems
25 reading, writing, or understanding the English language, or

1 you don't have a sixth grade education or its equivalent,
2 in a minute I need to talk to you. If you have someone at
3 your home you have a legal or moral duty to take care of
4 and their health is in serious threat if you're here, I
5 need to talk to talk to you. If you have some physical or
6 mental problem for which you feel would make it difficult
7 for you to serve as a juror to observe, listen, pay
8 attention, to be in a jury box, then please let me know.
9 Four, if you have a conviction of a crime for which you
10 could have received more than one year in prison, or you're
11 not sure -- no matter when, no matter where -- then you
12 need to come and talk to me about it. And number five, if
13 you have any other concerns about your jury service, now is
14 the time to come talk to me about it.

15 Now, what I'm going to do is this. Those of you wish
16 to come talk to me, I'm going to have you all stand up and
17 go over to each side of the aisles. While they're doing
18 that, if you need to go to a restroom, then I have no
19 problem with the rest of you who want to go individual out
20 to the restrooms. I don't want people going *en masse* out
21 there. Just go about one or two at the time, but do not
22 make noise. Do not speak and all that because you will
23 interrupt us trying to talk with those jurors who need to
24 speak to us.

25 So, anything, those apply to you, please stand up.

1 Come over to the side.

2 Be sure and come back in the courtroom now in the next
3 ten to fifteen minutes.

4 (THE FOLLOWING CONFERENCES ARE HELD AT SIDEBAR.)

5 THE COURT: Okay, what I'd like to do is ask the juror
6 the number. And, Madame Clerk, if you would then look up
7 the name to give us a name. All right, if you would, call
8 out the ---

9 BAILIFF: 309.

10 THE COURT: 309.

11 CLERK OF COURT: 309, Fernando McCray.

12 THE COURT: Okay, sir, Mr. McCray.

13 JUROR: Yes, I'm on, convicted receiving stolen goods
14 for more than a thousand.

15 THE COURT REPORTER: I'm sorry, I can't hear.

16 JUROR: Oh. I received -- receiving stolen goods more
17 than a thousand.

18 THE COURT: Have you gotten a pardon or anything of
19 that nature?

20 JUROR: I'm on probation.

21 THE COURT: You're on probation now?

22 All right, objection from state or defense? Hearing
23 none, you're excused. All right, please step back and hand
24 your badge. Do not talk to anybody about your jury
25 service.

1 Next person, please.

2 BAILIFF: 449.

3 THE COURT: 449, what, what is that name?

4 CLERK OF COURT: Steven Thompkins.

5 THE COURT: All right, Mr. Thompkins.

6 JUROR: Yes, sir. I've been convicted possession of
7 Xanex with intent to distribute, DUI, several other things.

8 THE COURT: Sir, you're on something today, aren't
9 you, sir?

10 JUROR: No, sir. I'm just tired. It's been years
11 ago. Like, the possession of Xanex with intent to
12 distribute was four, four or five years ago.

13 THE COURT: You were in high court for that, sir?

14 JUROR: Yes, sir.

15 THE COURT: That would carry more than a year, would
16 it not, or is that a six month sentence, possession with
17 intent to distribute?

18 MR. WILSON: Intent to distribute would be more than
19 that.

20 MR. HUMPHRIES: Yes, possession is ---

21 THE COURT: Any, any ---

22 MR. WILSON: Possession would be six months.

23 THE COURT: Any objection?

24 MR. HUMPHRIES: No.

25 MR. WILSON: No, sir.

1 THE COURT: All right, leave, sir. Leave, sir.
2 next person.

3 BAILIFF: 266.

4 THE COURT: If you could, be quiet, please.

5 CLERK OF COURT: Candice Lawson.

6 JUROR: Yes.

7 THE COURT: Yes.

8 JUROR: I could lose my job if I do this because my
9 company won't pay for jury duty, and I have no sick time or
10 vacation that I can take.

11 THE COURT: No, you can't lose your job. You're
12 employed ---

13 JUROR: Yes, sir, I can.

14 THE COURT: You give me your name and the phone number
15 of your employer. I will be glad to call your employer,
16 but your employer'll be violating if your employer causes
17 you to lose your job for jury duty. So, if you'll get me
18 the name and phone number of the employer if you get on
19 this trial and I'll be glad to call the employer, okay?
20 Thank you, ma'am. Stay with us.

21 CLERK OF COURT: Judge, when they're excused, will you
22 please say it so we can take out of the pool over here?

23 THE COURT: I just said excused for 309 and 449.

24 CLERK OF COURT: 309 and 449 excused.

25 BAILIFF: 252.

1 THE COURT: 252.

2 CLERK OF COURT: Anthony Kostecki.

3 JUROR: Kostecki.

4 THE COURT: Yes, Mr. Kostecki.

5 JUROR: I have a physical impairment. My kidneys are
6 functioning at thirty percent, and I cannot always wait to
7 go to the bathroom, so I always have to be around a
8 bathroom.

9 THE COURT: All right.

10 JUROR: And I have to drink plenty of water, make sure
11 I don't dehydrate.

12 THE COURT: Are you employed?

13 JUROR: Yes, I am employed.

14 THE COURT: What do you do?

15 JUROR: I'm a contract underwriter for the financial
16 markets, so I do travel. On my -- I have an assignment
17 starting today in Florence, South Carolina, but it's in an
18 office, and I've been to Florence many times, other
19 financial institutions doing these assignments. And I had
20 bathrooms at the gas stations, so I know every single one
21 of them, and I do ---

22 THE COURT: Well, sir, what I'll do is this. If
23 you're on this jury, whenever you need to go to the
24 restroom, you raise your hand.

25 JUROR: It becomes to the point -- it comes to the

1 point, Your Honor, that right now sometimes because I have
2 to go ---

3 THE COURT: What do you do if you're in the car?
4 Don't you pull over?

5 JUROR: I'll have to pull over sometimes.

6 THE COURT: Well, if you raise your hand, I can get
7 you to the bathroom quicker than you can pull over.

8 JUROR: Well, because it becomes to the point where my
9 bladder cannot expand because that's how my kidneys were
10 damaged, and I can have renal failure. I mean, it's a
11 serious condition; I've already had renal failure once with
12 this, and I'm under tremendous medication to reduce the
13 prostate. My creatin level is where it's ---

14 THE COURT: If you would, sir, stand over there.

15 JUROR: Can I use the bathroom before I ---

16 THE COURT: Why don't you use the bathroom and come
17 back?

18 JUROR: Okay. That will be good.

19 THE COURT: Come back and I'll see you.

20 It would only have to be compassion. Do you have any
21 objection to excusing him?

22 MR. HUMPHRIES: Number one, he's going to be a problem
23 with the whole thing.

24 MR. WILSON: He's going to be a problem, but the
25 problem is ---

1 THE COURT: Thank you.

2 All right, next person, please.

3 BAILIFF: 437.

4 CLERK OF COURT: 437.

5 THE COURT: Quiet, please, please.

6 CLERK OF COURT: 437, Marguerite Stephens.

7 THE COURT: Good morning, Ms. Stephens.

8 JUROR: I want to know ---

9 THE COURT: Speak to her.

10 JUROR: I'd like to know if I could be excused for
11 this time only. My dad is in the hospital, still in SICU,
12 and has been for a month, and my mom's eighty-six, and it's
13 me and my other sister taking care of him.

14 THE COURT: All right, ma'am.

15 JUROR: And I would really appreciate it because I
16 don't think I could do right right now.

17 THE COURT: All right, ma'am. If you would, stand
18 over there, please.

19 I just wanted to get any objections.

20 MR. HUMPHRIES: No objection.

21 THE COURT: Any objection?

22 MR. WILSON: No objection.

23 THE COURT: All right, ma'am, we're going to transfer
24 you. If you would, she'll send you a notice.

25 You'll send her a notice at some point in time?

1 CLERK OF COURT: Yes, sir.

2 THE COURT: They'll send you a notice.

3 CLERK OF COURT: 437, transferred.

4 THE COURT: Thank you.

5 Next person.

6 BAILIFF: 38.

7 CLERK OF COURT: 38, Shutoneis Brave.

8 JUROR: Shutoneis.

9 THE COURT: Shutoneis, yes, ma'am.

10 JUROR: I was arrested for a DUI and simple possession
11 back in 2001.

12 THE COURT: Simple possession of what?

13 JUROR: Marijuana.

14 THE COURT: Okay, one DUI and simple possession of
15 marijuana?

16 JUROR: Uh-huh.

17 THE COURT: That doesn't disqualify you. You're fine.

18 JUROR: Yeah. I was just trying to make sure.

19 THE COURT: Thank you very much.

20 BAILIFF: 480.

21 THE COURT: Come around, sir. 480.

22 CLERK OF COURT: Anthony White.

23 THE COURT: Yes, sir, Mr. White.

24 JUROR: I was in jail in '73, '73 for statutory rape,
25 but they took it off my record.

1 THE COURT: Did you get convicted, or did they dismiss
2 it?

3 JUROR: Well, I was convicted but when I got out, they
4 took -- well, we went to court, back to court.

5 THE COURT: How old were you?

6 JUROR: Seventeen.

7 THE COURT: So, you were seventeen?

8 JUROR: Yes, sir.

9 THE COURT: And you were convicted of rape? What
10 state was this?

11 JUROR: Charleston, McDougal. Well, South Carolina.

12 THE COURT: When you said McDougal, did you go to
13 McDougal?

14 JUROR: Yes, sir.

15 THE COURT: Well, then, you mean, did you get a pardon
16 for this or something?

17 JUROR: Yes, sir. Well, they were -- well, I did the
18 year but when I came out and they went, wanted to take it
19 off my record ---

20 THE COURT: How do you know it's off your record, sir?

21 JUROR: Because my momma done went to pay a lawyer to
22 try to get it off, I guess, or something like that.

23 THE COURT: No, that's a pardon is all you can do with
24 that, sir. Do you know if you have a pardon?

25 JUROR: I don't know. Fine with me. Well, I don't

1 know, but I thought it was off, but seems to say ---

2 THE COURT: Does your records check that?

3 Tell you what. You just stay with me. I'll let you
4 know, okay?

5 JUROR: All right.

6 THE COURT: Just have a seat.

7 JUROR: All right.

8 THE COURT: I'll let you know later on. Anything
9 else, sir?

10 JUROR: No, sir.

11 MR. HUMPHRIES: We can -- we've got it right here,
12 Judge.

13 THE COURT: Hold on one second and we'll see.

14 (A PAUSE.)

15 THE COURT: We'll check on it. I'll let you know
16 during the day. Have a seat.

17 Next person, please.

18 BAILIFF: 369.

19 CLERK OF COURT: 369.

20 THE COURT: Okay, yes, sir, speak to her. What's your
21 name, sir?

22 JUROR: William Pryor.

23 CLERK OF COURT: William Prior.

24 THE COURT: Yes, sir.

25 JUROR: Yes, I have a lower back problem. Tore

1 rotator cuff. Sole provider of my grandson once he get out
2 of school.

3 THE COURT: You do what now?

4 JUROR: I'm the sole provider of my grandson once he
5 get out of school. I'm on medication; I'm in a lot of
6 pain.

7 THE COURT: What kind of medication?

8 JUROR: I'm on Neurontin, Tylenol.

9 THE COURT: Are you working?

10 JUROR: No, I'm not. I'm under doctor's care.

11 THE COURT: You're under doctor's care now?

12 JUROR: Yes.

13 THE COURT: Now, does this medication you have, does
14 it somehow affect your ability to hear things, affect your
15 ability to grasp what somebody's saying, slow you down at
16 all?

17 JUROR: Yes.

18 THE COURT: Mentally?

19 JUROR: Yes.

20 THE COURT: It's called Neurotin?

21 JUROR: Uh-huh.

22 JUROR: That's a painkiller?

23 JUROR: It's a nerve, induced nerve.

24 THE COURT: Are you under any type of painkillers
25 other than regular Tylenol?

1 JUROR: Not at this time.

2 THE COURT: Well, then what would you have that the
3 affect your ability to understand and hear what's going on?

4 JUROR: Sir?

5 THE COURT: Now, when you say you're under a doctor's
6 care, would this -- did you get hurt recently?

7 THE COURT: With a car accident.

8 THE COURT: Car accident. How long ago was that?

9 JUROR: Last year, March 6th.

10 THE COURT: You haven't been back to work since last
11 year?

12 JUROR: Correct.

13 THE COURT: Are you on some sort of workers' comp or
14 something?

15 JUROR: Yes.

16 THE COURT: Okay. All right, and who lives in your
17 household?

18 JUROR: My wife and my seventeen-year-old son, my
19 grandson.

20 THE COURT: All right, so they're there, too, for your
21 grandchild.

22 JUROR: They watch him, too.

23 THE COURT: Well, your son's not in school?

24 JUROR: Huh-uh. He's out working at a...

25 THE COURT: How old is your child -- the grandson?

1 JUROR: Five years old.

2 THE COURT: So, he goes to kindergarten?

3 JUROR: He's in kindergarten.

4 THE COURT: Okay, just stand there for a second over
5 there.

6 I know your response, sir. Any objection?

7 MR. WILSON: Yes, sir.

8 THE COURT: I'm going to just keep him for right now.
9 I might use my discretion later on.

10 Sir, I'll talk to later on. Go have a seat.

11 (A PAUSE.)

12 THE COURT: Sir, once again what I will do is if you
13 get on this jury, if you do, and that's still a long way
14 off, then you will control when I -- when you raise your
15 hand, we'll take a break.

16 JUROR: Do you, do you understand, Your Honor, that
17 sometimes, like, it comes so quickly that, that it, it's,
18 it becomes unbearable? I've had difficulty on airlines.
19 That, that my fly in to Reagan, I fly in to Reagan, fly,
20 it's like a half hour beforehand. They come and tell me.
21 It might dictate sometimes, you know, how long I'm in the
22 bathroom. I have had -- I've come within twenty-four hours
23 of death. I take that -- I do not take that lightly. I
24 mean, ---

25 THE COURT: Tell you what.

1 JUROR: Nothing ---.

2 THE COURT: Tell you what, let me think about it
3 further. Just have a seat.

4 JUROR: All right.

5 THE COURT: I'll let you know later on. Just have a
6 seat for there.

7 JUROR: All right.

8 THE COURT: Next person, please.

9 BAILIFF: Number 71.

10 MR. HUMPHRIES: This is number who?

11 CLERK OF COURT: 271.

12 THE COURT: Is it 71 or 271?

13 MR. HEMBREE: 71.

14 THE COURT: 71.

15 MR. HUMPHRIES: 71.

16 CLERK OF COURT: Anthony Causey.

17 THE COURT: Yes, sir, Mr. Causey.

18 JUROR: Yes, I'm, I have two penalties against me.

19 THE COURT: You were convicted of them? What are
20 they?

21 JUROR: Grand larceny and burglary third degree.

22 THE COURT: All right, have you gotten a pardon or
23 anything on those?

24 JUROR: Well, I was on probation. I got off
25 probation.

1 THE COURT: That's it? Okay, you're disqualified.

2 You may leave, sir. Disqualified. He's off.

3 Next person.

4 BAILIFF: Number 33.

5 CLERK OF COURT: Mary Bosley.

6 THE COURT: Okay, Ms. Bosley.

7 JUROR: I've been convicted of possession before.

8 THE COURT: Of what?

9 JUROR: Of marijuana and prescription drugs.

10 THE COURT: Okay, how much marijuana was it?

11 JUROR: It was just, it wasn't much at all.

12 THE COURT: Okay. So, you went to a city or
13 magistrate's court?

14 JUROR: Yeah.

15 THE COURT: Okay, you're not disqualified, ma'am.

16 JUROR: Oh, okay.

17 THE COURT: Thank you, ma'am.

18 JUROR: Can I use the restroom?

19 THE COURT: Yes, ma'am.

20 JUROR: Thank you.

21 THE COURT: Next person.

22 BAILIFF: 170.

23 CLERK OF COURT: Kristian Gilliland.

24 THE COURT: All right, yes, sir.

25 JUROR: Actually, in all seriousness ---

1 THE COURT: Speak to her now.

2 JUROR: In all seriousness, I really have no problem
3 doing this. I actually look forward to doing it, but the
4 only problem I have, I work for a small construction
5 company and I'm not sure that my boss is going to pay for
6 my time off. And if I don't get paid for a certain amount
7 of time, my house is going to go under. I have an eight-
8 month-old son now. I just, I'd like to be here. I just, I
9 don't, I don't see him paying this. He's already saying
10 his company is really hurting, and I keep getting all sorts
11 of stuff. So, I never know what that company is going to
12 do. I'm not concerned that I'd get fired. I don't believe
13 he would pay me for my time off.

14 THE COURT: Well, sir, just stay with us and we'll see
15 how everything goes. Stay with us.

16 He will, he'll stay with us.

17 BAILIFF: Number 214.

18 THE COURT: Your name again, sir? Let us get it.

19 JUROR: Jared Hendrix.

20 CLERK OF COURT: Jared Hendrix.

21 THE COURT: Yes, sir, Mr. Hendrix.

22 JUROR: My objection is I've already served on one
23 capital murder case. Was in 1997 here in Horry County for
24 Titus Huggins, and I really just don't want to do another
25 murder case, the death penalty. The judge told us at the

1 end of that time I'd never had to do another one. I don't
2 mind it being postponed to another court case. I just
3 don't want to do another death penalty case.

4 THE COURT: Well, sir, there is no statutory exclusion
5 involved again, but we'll wait and see if you get in the
6 final group. All right, sir?

7 JUROR: I got it.

8 THE COURT: All right, sir.

9 JUROR: Thank you.

10 CLERK OF COURT: Staying?

11 THE COURT: Yes.

12 All right, next person.

13 BAILIFF: Number 313.

14 CLERK OF COURT: Eric McPherson.

15 THE COURT: 313.

16 JUROR: Yes, sir.

17 THE COURT: Yes, sir, Mr. McPherson.

18 JUROR: How are you doing? I have a child who's under
19 seven. He's six years old, and he has to be picked up at
20 school every day, and also my day job, I'm the only one in
21 charge. I'm a superintendent out there and if I'm not
22 there, there's nobody to conduct business on the building.

23 THE COURT: But someone does it when you go to pick up
24 your child.

25 JUROR: When I'm off work at 4:30.

1 THE COURT: Well, I mean, your child has already gone
2 home by then, hasn't he?

3 JUROR: No, sir.

4 THE COURT: Your child doesn't get out of school until
5 4:30?

6 JUROR: He out of school and then he goes to the child
7 care until 5.

8 THE COURT: Do you have a spouse?

9 JUROR: Yes, sir.

10 THE COURT: And what about your spouse?

11 JUROR: She works till 5:30, and we also have a
12 business that we just opened, a restaurant we're running.

13 THE COURT: Well, sir, you'll just have to try to work
14 out something if you are selected. That's still a long way
15 off. Try to work out something, and we'll give you time to
16 work it out. All right, stay with us.

17 BAILIFF: Number 5.

18 CLERK OF COURT: Paulette Arnette.

19 THE COURT: Hi, Ms. Arnette. What would you like to
20 tell me?

21 JUROR: Hello. I'm supposed to have eye surgery next
22 Tuesday on the back of my eyelid.

23 THE COURT: That's very important surgery.

24 JUROR: Yes, it is. I just saw the doctor and I got
25 my orders.

1 THE COURT: So, it's surgery when, ma'am?

2 JUROR: Next Tuesday.

3 THE COURT: It's says 2/13.

4 JUROR: What's, what's today? Well, then a week from
5 Tuesday.

6 THE COURT: We'll be through by then.

7 JUROR: Oh, you think so?

8 THE COURT: By the 13th of February I'm sure. If not,
9 then we would replace you.

10 JUROR: Okay.

11 THE COURT: But we'll be through by the 13th of
12 February.

13 JUROR: Okay, that's, I thought it was -- yeah, okay.

14 THE COURT: All right, so but in the meantime, your
15 eye, your vision, everything's all right?

16 JUROR: Well, it's not. I mean, I can see, you know.

17 THE COURT: Okay.

18 JUROR: But it should be okay.

19 THE COURT: Okay, you'll be fine.

20 JUROR: All right. Okay.

21 THE COURT: Thank you, ma'am.

22 JUROR: All right.

23 BAILIFF: 493.

24 CLERK OF COURT: 493, Ashley Wood.

25 THE COURT: All right, Mr. Wood.

1 JUROR: I've got a learning disability. When I
2 graduated school, I had approximately in an eighth grade
3 reading level and sixth grade spelling level.

4 THE COURT: What type of work do you do?

5 JUROR: Masonry. I work outside and I really haven't
6 worked since August of last year because everything has
7 gotten real slow, and today actually was the second job
8 I've had since August, and I don't know if I'll get to it
9 today or not. I can read to an extent a little but, but my
10 spelling is just -- I have to look up in the dictionary
11 whenever I write things down for my job. And I didn't know
12 if I could be any help to y'all.

13 THE COURT: No, I think you'll be fine. You'll be
14 fine. Thank you, sir.

15 Next person.

16 BAILIFF: Number 90.

17 CLERK OF COURT: Sheila Conley.

18 THE COURT: Okay, Ms. Conley, yes, ma'am.

19 JUROR: I have longstanding vacation reservations to
20 Hawaii departing on the 14th, and my concern's that this
21 trial will last up to that point is going to interfere with
22 my getting on a plane to Hawaii.

23 THE COURT: I think everyone can agree that if it
24 lasts to that point, that we would use an alternate. You
25 want to have -- did you say the 14th of February?

1 JUROR: February 14th.

2 THE COURT: If it lasts to that point, we would get an
3 alternate.

4 JUROR: Okay.

5 THE COURT: I would assure you of that, okay?

6 JUROR: Okay.

7 THE COURT: Thank you, ma'am.

8 Any objection to that assurance?

9 MR. WILSON: No. None.

10 CLERK OF COURT: Number 90's excused?

11 THE COURT: No, no. That's just ---

12 CLERK OF COURT: Stay.

13 THE COURT: Just if we last until the 14th, I'll get
14 an alternate.

15 BAILIFF: 489.

16 CLERK OF COURT: 489, Robert Wiltshire, Sr.

17 THE COURT: Yes, sir?

18 JUROR: Yes, sir. Had multiple DWI charges in the
19 eighties. Got convicted on three counts.

20 THE COURT: Okay, were you convicted DUI third are you
21 telling me, sir?

22 JUROR: Yes, sir.

23 THE COURT: All right, and ---

24 JUROR: Also had some other charges back in the
25 eighties, too. I was charged with statutory rape.

1 THE COURT: Were you convicted?

2 JUROR: That was ---

3 THE COURT: The question is what you were convicted
4 of.

5 JUROR: --- a plea. Yeah, it was.

6 THE COURT: Convicted of what?

7 JUROR: Convicted of assault.

8 THE COURT: Simple assault?

9 JUROR: Yeah, something.

10 THE COURT: Assault and battery high and aggravated
11 nature?

12 JUROR: Yeah.

13 THE COURT: All right. Well, you've been convicted of
14 third offense DUI.

15 JUROR: Yes, sir. Yes, sir.

16 THE COURT: Any questions from anyone?

17 MR. WILSON: No.

18 THE COURT: All right, you're excused, sir.

19 JUROR: Thank you.

20 CLERK OF COURT: 489 has been excused.

21 THE COURT: Okay, next person, please.

22 BAILIFF: 445.

23 CLERK OF COURT: 445, Todd Temple.

24 THE COURT: Yes, sir?

25 JUROR: A couple things. One, been in trouble a lot

1 in the past: possession of marijuana, drunk driving. I
2 don't know what the....

3 THE COURT: How many drunk drivings?

4 JUROR: Just one.

5 THE COURT: Was it an accident involving someone else,
6 or was ---

7 JUROR: No.

8 THE COURT: Anything else?

9 JUROR: Financial burdens, child support payments.
10 State of Michigan and my ex-wife don't take too kindly to
11 me missing payments. I also have a business. I have
12 employees, customers, the season. Loss of income I guess
13 is, is the reason.

14 THE COURT: What kind of work you in?

15 JUROR: Painting.

16 THE COURT: Seems to me it's better this season to get
17 out of, not be painting in the spring or summer.

18 JUROR: Well, it's the time to make money right now.
19 What's the best way I need to do? I'm not going to get
20 into all my debt right now, but it's....

21 THE COURT: I'll be thinking about you. Stay with us.
22 Next person.

23 BAILIFF: Number 357.

24 THE COURT: Yes, ma'am, what is your name? What is
25 357?

1 JUROR: Dixie Penley.

2 CLERK OF COURT: Dixie Penley.

3 THE COURT: Yes, ma'am, Ms. Penley?

4 JUROR: I have two concerns. I'd have to close my
5 business. If I could be moved till May? That's when I
6 close my business anyway. It's a small operation and no
7 money, no mortgage. But more importantly than that, my
8 business is a small grill frequented by local people, and
9 you know how locals gossip, and I've heard some
10 information.

11 THE COURT: Well, we'll get that later. I just, I
12 don't want to know anything about your case. So, your
13 concern right now as far as general jury duty is your
14 business?

15 JUROR: My business plus information ---

16 THE COURT: No, no, no, I'm not talking about the
17 case. I'm just talking about just the general jury
18 service.

19 JUROR: Okay.

20 THE COURT: All right. Well, then, I tell you what
21 you do. Stand over there just one second.

22 Just trying to save time.

23 MR. RATHBUN: She's going to close in March?

24 THE COURT: No. I'm trying to save time because the
25 woman says she's going-- I got a feeling she's going to

1 tell me she's heard a lot about this case. Now, if y'all
2 object, I'll wait and talk to her later, or I can let her
3 go now.

4 MR. WILSON: Judge, we have to talk to her.

5 THE COURT: Okay, good.

6 Ma'am, stay with us.

7 (A PAUSE.)

8 THE COURT: Next person, please.

9 BAILIFF: Number 249.

10 CLERK OF COURT: 249, 249 is Arlene Kerr.

11 THE COURT: Yes, ma'am.

12 JUROR: I have letter from the doctor, but I also have
13 Parkinson's Disease and I have a hard time sitting and
14 standing for any ---

15 THE COURT: Massachusetts, New Hampshire or?

16 JUROR: Massachusetts.

17 THE COURT: Tremors.

18 MR. HUMPHRIES: I'd let her go.

19 MR. WILSON: I have no objections.

20 CLERK OF COURT: 249 is excused.

21 THE COURT: I haven't ruled on that yet.

22 CLERK OF COURT: Oh, I thought you said -- I'm sorry.
23 My bad.

24 THE COURT: 249 is excused.

25 Next person, please.

1 BAILIFF: Number 62.

2 CLERK OF COURT: 62, Alvacee Calfee.

3 JUROR: Alyce.

4 CLERK OF COURT: Alyce. You told me that already.

5 I'm sorry.

6 JUROR: That is all right.

7 THE COURT: What's the number again?

8 CLERK OF COURT: 62.

9 THE COURT: Okay. Yes, ma'am?

10 JUROR: My husband and I are musicians, and we have a
11 signed contract for Valentine's Day. I want to make sure
12 that I can go.

13 THE COURT: Where at? I might know it.

14 JUROR: Sea Mist.

15 THE COURT: Sea Mist?

16 JUROR: In Columbia.

17 THE COURT: Either you will be there, or I'll do with
18 an alternate or something like that. I mean, we'll just
19 wait and see, but either way you won't, you won't miss
20 that.

21 JUROR: Thank you so much.

22 THE COURT: Thank you now.

23 BAILIFF: 52.

24 CLERK OF COURT: 52. Joseph Busik, Bucksick.

25 JUROR: Buczek.

1 CLERK OF COURT: Buczek.

2 THE COURT: Buczek.

3 CLERK OF COURT: Sorry.

4 THE COURT: Mr. Buczek, yes, sir?

5 JUROR: Sir, I have tinnitus or tinnitus, ringing in
6 my ears, and I'm just afraid I'm not going to be able to
7 hear or understand all the testimony.

8 THE COURT: Do you work anywhere, sir?

9 JUROR: I don't. Well, I'm on -- I build houses, but
10 I can't do it now.

11 THE COURT: So, right now you're retired?

12 JUROR: Yes, sir.

13 THE COURT: And the ringing of the ears causes you to
14 miss people speaking and saying words?

15 JUROR: Yes, sir. Quite a bit. If he -- I mean, you
16 I can understand, but people with higher pitched voice -- I
17 have a high-frequency hearing loss.

18 THE COURT: Do you see any -- getting any medication
19 for this?

20 JUROR: There's nothing they can do for it. They
21 don't even know the cause of it. Hearing aids don't help.
22 I miss a lot of what goes on.

23 THE COURT: All right, stand there for one second.
24 State, defense?

25 MR. HUMPHRIES: No objections.

1 MR. RATHBUN: Your Honor, if tinnitus is a reason to
2 be excused, I'd like to be excused.

3 THE COURT: He has ringing in his ears. Said he
4 misses what people say.

5 MR. RATHBUN: Tinnitus, that's, that's what it is.
6 It's a ringing in ---

7 THE COURT: But he says he misses what people say.
8 Aren't you concerned he's going to miss the testimony of
9 witnesses?

10 MR. WILSON: I mean, at least without a letter saying
11 that he does, in fact, have this. I mean, we don't have
12 anything that's showing he ---

13 THE COURT: He's under oath. That's what I have.

14 MR. WILSON: Without more, I can't consent, but
15 whatever the person ---

16 THE COURT: I'm going to excuse the man. I mean, my
17 goodness, if he's telling me a lie, then we need to....

18 Come up. Sir, you realize, sir, you are under oath
19 when you tell me this, sir?

20 JUROR: Yes, sir.

21 THE COURT: Are you under the active treatment of a
22 doctor now?

23 JUROR: No, but I've been to a number of ---

24 THE COURT: If we could, quiet please.

25 JUROR: I've been to a number of doctors about it, and

1 I continually watch the Internet and see if there have been
2 any new developments for treating it, and there's not.
3 Hearing aids don't help.

4 It just depends on who's speaking. Usually people
5 with higher-pitched voices, particularly like there's
6 background noises. Like in here, the air conditioner
7 running and so. Some of the things you were saying up
8 there I could mostly hear, but there were a few things I
9 couldn't even with your deep voice. So, I'm just ---

10 THE COURT: Thank you, sir.

11 JUROR: I ---

12 THE COURT: I'm going to excuse you, sir. You may
13 leave, sir.

14 JUROR: I'm sorry?

15 THE COURT: I'm going to excuse you for medical
16 reasons. You may leave, sir. Thank you, sir. You may
17 leave.

18 JUROR: Thank you.

19 THE COURT: Let the record reflect he didn't even hear
20 me when he looked at me and didn't know what I was saying.
21 It's obvious he does -- my observation with this witness,
22 juror, it's obvious that he does, did have trouble hearing
23 everything anyone says. I have no idea what the pitch of
24 the voices of the witnesses are. I'd hate to get in the
25 middle of a trial and have someone that he cannot hear, and

1 then could prejudice either side. And in the interest of
2 justice, I'm going to excuse him.

3 Next person, please.

4 BAILIFF: Number 470.

5 THE COURT: Hold on one second.

6 CLERK OF COURT: Jeron Wallingford.

7 THE COURT: 470. You're convicted of what, sir?

8 JUROR: Illegal gambling.

9 THE COURT: What was that?

10 JUROR: In a local nightclub, was about 1991.

11 THE COURT: Was that, you went to pay a fine in local
12 magistrate's court or something like that?

13 JUROR: Yeah. J. Rubin, J. Rubin Long Detention
14 Center, \$50.

15 THE COURT: Okay, anything else?

16 JUROR: No.

17 THE COURT: What was it? Tickets, poker game?

18 JUROR: Just poker game.

19 THE COURT: They take the money, too?

20 JUROR: No. Just, we had it all on the table.

21 THE COURT: Who was winning? You were winning?

22 JUROR: Little bit.

23 THE COURT: You lost some, too, huh? Shouldn't be
24 doing that. Anyway, you're qualified. You can stay with
25 us.

1 JUROR: Okay. Thank you.

2 THE COURT: Thank you, sir. Just don't bring any
3 cards with you.

4 BAILIFF: 246.

5 CLERK OF COURT: 246?

6 BAILIFF: Yes.

7 CLERK OF COURT: Frances Kelly.

8 THE COURT: Yes, Ms. Kelly, come a little closer.

9 JUROR: Yes. I just wanted to state. I stated it on
10 my form I have ulcerated colitis and that, you know, when I
11 eat, I have issues. So, like today I haven't eaten. All
12 I've had is water and I have diarrhea and stuff.

13 THE COURT: Okay. Now, but as long as you'd have
14 enough time to get to the bathroom, you're all right?

15 JUROR: Well, it, the thing of it is, it hits. You
16 know, it's not a case of I can decide. It's immediate, you
17 know.

18 THE COURT: But, I mean, if you gave me notice and
19 raised your hand and I said we'll take a break, could you
20 -- would that be all right?

21 JUROR: Yeah.

22 THE COURT: All right, all right, and you will do that
23 for me if you get on the jury? You'll let me know if you
24 need to go to the restroom and I'll let you go to the
25 restroom?

1 JUROR: Yeah. Yeah.

2 MR. HUMPHRIES: Yes, sir.

3 THE COURT: All right, thank you, ma'am. She'll stay
4 with us. All right.

5 BAILIFF: 433.

6 CLERK OF COURT: 433, Johnny Staples, Sr.

7 JUROR: Yes, sir.

8 THE COURT: Yes, sir, Mr. Staples?

9 JUROR: I got a doctor's excuse for my back. Supposed
10 to have surgery done.

11 THE COURT: When is this, sir?

12 JUROR: On the 7th.

13 THE COURT: Of February?

14 JUROR: February and I have a hard time sitting for
15 any length of time.

16 THE COURT: But you got, you got surgery scheduled on
17 the 7th of February?

18 JUROR: Yes, sir. I mean, I enjoyed the court.

19 THE COURT: Stand over there for me.

20 To me, that is too close of the time.

21 MR. HUMPHRIES: Yes, sir.

22 THE COURT: He would be in surgery. Any objection
23 from the defense?

24 MR. WILSON: No objection, Your Honor.

25 THE COURT: Okay, I'm going to excuse you from this

1 trial, sir. Thank you very much.

2 JUROR: Yes, sir. Thank you.

3 THE COURT: Good luck on your surgery.

4 JUROR: Yes, sir.

5 THE COURT: He's excused.

6 BAILIFF: 431.

7 CLERK OF COURT: Ronnie Stackhouse.

8 THE COURT: I want to do that. You know that. I
9 really want to do that. A little bit of wind, and I'm
10 looking. It's too few hairs.

11 All right, Mr. Stackhouse, right?

12 JUROR: My thing is I'm obligated to the IRS, and I'm
13 making them payments. I make two child support payments at
14 the same time, and keep their health insurance. I'm not a
15 salaried job, so if I'm not there, all that's going to fall
16 through and then they'll come get me on this.

17 THE COURT: What type of job do you have?

18 JUROR: I work with the City of Myrtle Beach.

19 THE COURT: Yes, sir, it's not that we're talking
20 about a month or anything. We're just talking about, you
21 know, week, two weeks, something like that, and we're going
22 to have to see what happens. Just stay with us, all right,
23 sir?

24 JUROR: Okay.

25 THE COURT: All right. Thank you, sir.

1 What number was that?

2 CLERK OF COURT: 431.

3 THE COURT: Any objection on that?

4 MR. WILSON: None, Your Honor.

5 MR. HUMPHRIES: No.

6 THE COURT: All right, next person, please.

7 CLERK OF COURT: He's staying?

8 THE COURT: Yes, staying.

9 BAILIFF: 382.

10 THE COURT: Yes, ma'am.

11 CLERK OF COURT: Ashley Rivera.

12 THE COURT: Ms. Rivera with the four children now.

13 JUROR: I also ---

14 THE COURT: Come closer.

15 JUROR: Two months ago, Wednesday, Thursday and
16 Friday, I'm scheduled to work in North Myrtle Beach Primary
17 School for teachers. I was scheduled way in advance also.
18 And then I'm going to -- don't have anybody for my kids
19 because I get them after school because if I'm not working
20 at the school, I'm home. Then also with this being a
21 Winkler case, my step kids ---

22 THE COURT: No, ma'am.

23 JUROR: --- the two older ---

24 THE COURT: Well.

25 JUROR: As long as it's not Winkler, but my -- Alice

1 Donovan is ---

2 THE COURT: Okay, tell you what you do.

3 JUROR: --- is related and -- okay.

4 THE COURT: Just have a seat.

5 MR. HUMPHRIES: Bad news.

6 THE COURT: Objection?

7 MR. WILSON: I got to be, I guess I need to be
8 consistent. I, I would, I would at least object ---

9 THE COURT: She works at the school. I mean, a sub, I
10 don't usually let subs go because they're really basically
11 contractors. They're not employees; they're contractors.

12 MR. WILSON: Right. So, I, I would object I guess. I
13 guess I'd have to.

14 THE COURT: I got a feeling she ain't going to make it
15 through, but I'm just trying to save time.

16 MR. WILSON: I agree.

17 THE COURT: What number is that?

18 CLERK OF COURT: 382.

19 THE COURT: You're staying in this case.

20 JUROR: Okay.

21 THE COURT: Just have a seat, stay with us.

22 JUROR: What my thing was being fair because ---

23 THE COURT: No, no, ma'am.

24 JUROR: Okay.

25 THE COURT: I'll talk to you later.

1 JUROR: Okay.

2 THE COURT: Don't discuss this case.

3 CLERK OF COURT: Is that a stay?

4 MR. HUMPHRIES: For now.

5 THE COURT: Next person.

6 BAILIFF: 387.

7 CLERK OF COURT: Leah Rogers.

8 THE COURT: Leah Rogers, yes, ma'am?

9 JUROR: I have a hip impairment. Dr. Best wrote me a
10 excuse. It's -- I've been out of work for two years due to
11 this. It just stiffens up. I have a hard time sitting for
12 a long period of time or standing, so I have to ---

13 THE COURT: If you get on this jury, we'll let you
14 stand up and sit down ---

15 JUROR: Okay.

16 THE COURT: --- as you wish. Just make sure if you
17 sit on the jury you sit on the back row so you won't affect
18 the person in front you, okay?

19 JUROR: Okay.

20 THE COURT: And I -- whenever you stand up and sit
21 down, I'll know what it's about, okay?

22 JUROR: Thank you very much.

23 THE COURT: Thank you, ma'am.

24 Next person.

25 BAILIFF: 180.

1 CLERK OF COURT: Megan Grafton.

2 THE COURT: Megan or Megan?

3 JUROR: Megan, and it's actually Grafton-Holmes.

4 CLERK OF COURT: Grafton-Holmes.

5 THE COURT: You've been married since November?

6 JUROR: Yes.

7 THE COURT: Okay, Ms. Grafton-Holmes.

8 JUROR: My husband and I are closing on our first
9 house this week and beginning about six months of
10 renovations. So, I can serve but I at least have to be
11 there for the closing.

12 THE COURT: Yes, ma'am.

13 JUROR: To sign.

14 THE COURT: Do you know when it's going -- schedule to
15 be?

16 JUROR: It's supposed to be today, so hopefully this
17 week. If not, then it'll be next week.

18 THE COURT: Well, is that here in Conway?

19 JUROR: No, Myrtle Beach.

20 THE COURT: Okay, but as long as I can get you there
21 and get that done and get back, you'll be fine?

22 JUROR: Yeah. Absolutely. I just need to be able to
23 sign my name and I'm done.

24 THE COURT: All right. All right, I'm going to leave
25 you on now to see if -- and hopefully you can get the thing

1 closed in the next day or so.

2 JUROR: Thank you.

3 THE COURT: If not, then I have to worry about it.

4 JUROR: Yeah, if you can pull some strings about it.

5 THE COURT: No, I'm not going to pull any strings or
6 anything, but we'll see how it goes towards the end. Just
7 let me know when we start jury selection where we are with
8 that, okay?

9 JUROR: Okay, thank you.

10 THE COURT: Thank you.

11 Next person.

12 BAILIFF: 299.

13 CLERK OF COURT: 299, Susan Martino.

14 JUROR: I have Crohn's Disease. I asked to be excused
15 before. I have unpredictable, uncontrollable bowels. I
16 have to carry a card with me. I went to my doctor again on
17 Friday, and he said if there were any questions ---

18 THE COURT: Let me hold the card.

19 JUROR: Sure.

20 THE COURT: Will you copy that card for me, please?

21 CLERK OF COURT: I'm getting it right now.

22 THE COURT: All right, plus it's my experience with
23 this, as far as I've had friends with it, it becomes very
24 painful.

25 JUROR: Yes, sir. Considering I've been up all night,

1 yes, sir.

2 CLERK OF COURT: Judge.

3 (COURT CONFERS WITH THE CLERK.)

4 THE COURT: Just give that to the court reporter.

5 I'll have you step over and pick that up, ma'am, but
6 one thing. You probably could have worked this out with a
7 statement and all that, but they said you were kind of a
8 little short with somebody on the phone, and that might
9 have caused ---

10 JUROR: Well, well, I sent my letters in ---

11 THE COURT: --- a problem.

12 JUROR: And I was told because I work, I had to serve.

13 THE COURT: Okay. Well, when you work, how do you do
14 it when you're working?

15 JUROR: I have other people and they understand my
16 condition. When I say I have to go, they take over and I
17 just run. And they know it can be five minutes, it can be
18 half an hour I'm in the bathroom, and it can be five or ten
19 times in a row.

20 THE COURT: Stand over there for a minute.

21 JUROR: Yes, sir.

22 THE COURT: Mr. Wilson, Mr. Humphries?

23 MR. HUMPHRIES: I say let her ---

24 MR. WILSON: I have no objections.

25 MR. HUMPHRIES: I say let her go.

1 THE COURT: Madame Clerk, if you'd just give that to
2 her with ---

3 CLERK OF COURT: She's gone to make a copy of it.

4 THE COURT: If you'll wait over there ---

5 JUROR: Yes, sir.

6 THE COURT: --- with the officer, you may be excused.

7 JUROR: Thank you, sir.

8 THE COURT: Next person.

9 BAILIFF: 417.

10 THE COURT: 299 is excused.

11 CLERK OF COURT: 299.

12 THE COURT: Yes, 299 is excused.

13 MR. RATHBUN: What number is this?

14 THE COURT: This is 417.

15 CLERK OF COURT: 417.

16 MR. RATHBUN Thank you.

17 CLERK OF COURT: Deborah Smith.

18 THE COURT: Hello, Ms. Smith.. How are you doing?

19 JUROR: I'm okay.

20 THE COURT: Come a little bit closer so we can hear
21 you. This lady's got to hear you. All right, Ms. Smith,
22 yes, ma'am.

23 JUROR: Single mother of three, \$1600 mortgage. I
24 have no family to watch them. The only one I had was my
25 brother, and he's been here for molesting my daughter. So,

1 I tried that, so -- and I had CDV in January 2005. I don't
2 know if that -- I just paid the fine, pled guilty.

3 THE COURT: That wouldn't, that wouldn't disqualify
4 you. Are you saying the solicitor's office is assisting
5 you in prosecuting your brother?

6 JUROR: Yeah. Since June.

7 THE COURT: Okay, and you're the main witness for the
8 state?

9 JUROR: Yeah, and my seven year-old.

10 THE COURT: Are you working with a particular lawyer
11 involved in that or officer?

12 JUROR: I have a solicitor I haven't really talked to
13 much. He's been in since June, but he has two charges
14 against him, some other charge.

15 THE COURT: Okay, stand right over there a second.

16 JUROR: Okay.

17 MR. WILSON: I don't have any objection.

18 THE COURT: I'm sure you don't, Mr. Wilson.

19 You're excused, ma'am.

20 JUROR: That's it?

21 BAILIFF: Number 22.

22 MR. HUMPHRIES: 22.

23 CLERK OF COURT: 22, Vertis Bellamy.

24 THE COURT: Yes, Mr. Bellamy. Come close, Mr.
25 Bellamy. What do you want to tell me?

1 JUROR: I got hit in the head with a crowbar, and I
2 can't remember much, and I can't read too good.

3 THE COURT: How far did you do in school?

4 JUROR: All the way to twelfth.

5 THE COURT: Can you read and write at all, sir?

6 JUROR: No. I can write. I can't read too good.

7 THE COURT: What type of work do you do?

8 JUROR: Carpenter.

9 THE COURT: Sir?

10 JUROR: Carpenter work.

11 THE COURT: Carpenter work, and you say -- do you get
12 medication or something for your head?

13 JUROR: I take pills.

14 THE COURT: You say you can't remember things very
15 well?

16 JUROR: Yeah.

17 THE COURT: Do you see a doctor?

18 JUROR: Yeah, sir, Sea Coast.

19 THE COURT: Sir?

20 JUROR: Sea Coast Hospital.

21 THE COURT: How often do you go down to see the
22 hospital?

23 JUROR: I go every once in a while.

24 THE COURT: Once every ---

25 JUROR: When my head go to hurting me real bad.

1 Crowbar fell three stores and hit me there.

2 THE COURT: You don't have to remember things at work
3 too much?

4 JUROR: Not too much.

5 THE COURT: Do you work as someone's assistant, or are
6 you have your business or what?

7 JUROR: No. I work for somebody.

8 THE COURT: They just tell you what to do?

9 JUROR: Yeah. Mr. Henderson.

10 THE COURT: What now?

11 JUROR: Bruce Henderson, staining and picture company.

12 THE COURT: I didn't hear what you said.

13 JUROR: I worked with, I were working for Bruce
14 Henderson.

15 THE COURT: You working with him now?

16 JUROR: Yes, sir. I laid off right now.

17 THE COURT: All right, stand over there for a second.
18 State?

19 MR. HUMPHRIES: Excuse.

20 THE COURT: Defense?

21 (DEFENSE COUNSELORS CONFER.)

22 MR. WILSON: Judge, we, we, we would ask that he come
23 and at least us examine him some more in terms of his lick
24 in the head and whether he actually can remember.

25 THE COURT: I'm not sure how we as -- we are not

1 experts in that regard. How are we going to know that one
2 way or the other?

3 JUROR: I, I mean, I know he says he can't remember,
4 but he says that he's able to work and he's able to do
5 carpenter work, and carpentry work certainly requires a
6 great deal of, of knowledge. And you have to be able to
7 measure, and you have to be able to remember what you --
8 where you put stuff in order to add stuff to it or take
9 stuff. I just, I just think it's very interesting.

10 THE COURT: I think with his problem reading and
11 writing and all that.

12 Sir, I'm going to excuse you at this time. Sir, you
13 may go.

14 JUROR: All right.

15 THE COURT: 22 is excused.

16 BAILIFF: Number 211.

17 CLERK OF COURT: Judge, this is the ---

18 MR. HUMPHRIES: This is the deaf mute.

19 (A PAUSE.)

20 CLERK OF COURT: 211 is Amanda Haynes.

21 THE COURT: Well, let's do it now. No, let's go ahead
22 and do it now.

23 Now, if you would come up, please. You are Amanda
24 Haynes?

25 JUROR: Amanda Haynes.

1 THE COURT: Now, Ms. Haynes, the requirements on a
2 jury is can you, you know, pay attention, observe, can you
3 hear what people say. And hearing, it could be either by
4 reading lips or something else. My question is how well
5 are you able to read lips?

6 JUROR: I can read lips, but they can't turn their
7 back. This is the problem. And if anybody, like, turning
8 your back, when I can't see, I can't -- you were saying ---

9 THE COURT: I noticed that when I mentioned over there
10 about number of miles at the back, you knew the number of
11 miles it was. Five miles, as I recall, from courthouse.

12 JUROR: Uh-huh.

13 THE COURT: You could see far to read to lips, huh?

14 JUROR: Yeah.

15 MS. HAYNES: Excuse me, but I told her what you were
16 talking about.

17 JUROR: Yeah.

18 THE COURT: And come around close, ma'am. What is
19 your name, ma'am?

20 MS. HAYNES: Patricia Haynes.

21 THE COURT: Patricia what?

22 MS. HAYNES: Haynes.

23 THE COURT: And you're her mother?

24 MS. HAYNES: Uh-huh.

25 JUROR: Uh-huh.

1 THE COURT: Now, we're going to have quiet again,
2 please.

3 Now, how -- I'm trying to decide if you're on that
4 jury whether or not person doing sign would help out, or
5 whether that would not be of any benefit because maybe you
6 might not know it that well or something like that. How,
7 how is your situation there?

8 JUROR: Well.

9 THE COURT: Speak to this lady right here so she can
10 hear you.

11 JUROR: What do you mean by that? You mean like if --
12 like, give me, you know, like ---

13 THE COURT: Do you communicate with other people who
14 use sign language?

15 JUROR: Uh-huh.

16 THE COURT: And you do that well?

17 JUROR: Yeah.

18 THE COURT: And, Madame Clerk, didn't something --
19 what did you mention to me?

20 CLERK OF COURT: Her mother told me that when she gets
21 excited ---

22 THE COURT: Oh, yeah.

23 CLERK OF COURT: --- she kind of gets confused with
24 the ---

25 JUROR: Uh-huh. Whenever I get really nervous or

1 something, you know, I tend to kind of, like, lose track.
2 And that's why I've got to have an interpreter, you know,
3 to tell me what, what's being said, and I can get it better
4 that way.

5 THE COURT: What do you mean get it?

6 JUROR: I mean, if it -- any time I'm, like, it's a
7 situation or any training I have, I've got to have an
8 interpreter, you know, to tell me to -- you know, just in
9 case I miss something and they can tell me what, what was
10 being said because that happens a lot with me. I can't
11 hear anything in this ear. I have about twenty-five
12 percent in this ear.

13 THE COURT: You have no hearing on your left side and
14 twenty-five percent on your right side?

15 MS. HAYNES: That's with the hearing aid.

16 JUROR: With my hearing aid.

17 THE COURT: With a hearing aid?

18 JUROR: Uh-huh.

19 THE COURT: And you rely on other people to tell you
20 what people said?

21 JUROR: What's that?

22 THE COURT: You rely and have other people tell you
23 what people said if you missed it?

24 JUROR: If I miss it, I ask them, you know, repeat it.
25 And if I should have get it, you know, they....

1 THE COURT: How right. Tell you what, ma'am, if y'all
2 would step over here for a second.

3 Okay, let me just tell y'all my concerns here. She
4 says that she asks other people what people said. She
5 obviously can't hear people even with her reading lips, and
6 they turn away and no one -- you know good and well we're
7 going to have jurors that -- witnesses are going to turn
8 back and forth.

9 Even with sign, when she gets nervous she has trouble
10 understanding what everybody says, and she asks other
11 people what, what's done. She needs an interpreter. My
12 concern is other jurors. She may start relying on them to
13 tell her what was said in the course of the trial. I have
14 a serious concern about that.

15 Any comments from the state?

16 MR. HUMPHRIES: I think she needs to be excused.

17 THE COURT: Defense?

18 MR. WILSON: Of course, Judge, obviously we'd object
19 to her being excused. I think, you know, that -- I mean,
20 if, if she has somebody who's doing sign for her, and I
21 don't know of any particular reason for her to be fearful
22 or be afraid. She's going to be in the jury box, and the
23 signer would be, you know, simply assigned her. So, there
24 won't be anybody else that the signer has any
25 responsibility to or for than her.

1 THE COURT: Yeah, but I can't have a signer in the
2 jury room with her, and she's going to rely on other people
3 to tell her what other people said even in the jury room
4 during the deliberations since she can't read lips over ten
5 feet away she said. And I'm concerned about that in the
6 sense she's maybe going to over rely on the jurors to be
7 giving her information.

8 MR. WILSON: Well, Judge, the only problem is that if,
9 if she doesn't have it, if she goes in the jury room and
10 she doesn't have a signer, you then -- her disability is
11 keeping her from being able to function in that setting.
12 And I, I would submit that, that she has a, that she still
13 has, even with her disability, she still has the right to
14 serve, and if it ---

15 THE COURT: Well, no. You have a right there. I,
16 I'd, I, I would probably send a signer in with
17 instructions. However, my concern, though, is during the
18 course of the trial that if she didn't hear something, she
19 would be asking other people what someone said because she
20 said that even with signers, she relies on people to
21 interpret what people said, and that's my concern there.

22 MR. WILSON: I, I understand your -- Judge, and of
23 course we object, but whatever the court decides is
24 obviously fine with us.

25 THE COURT: Ma'am, could I see you? It's my

1 understanding she wishes to be excused. Is that right?

2 JUROR: Yes, unless if y'all could guarantee me to
3 have an interpreter present if I do get selected.

4 THE COURT: Well, see, an interpreter, someone to talk
5 to you, or you mean have someone there who does sign
6 language ---

7 JUROR: Uh-huh.

8 THE COURT: --- or someone to talk to you?

9 JUROR: Someone that would sign to me, you know,
10 interpret what's being said.

11 THE COURT: All right. So, if someone is doing sign,
12 you can hear pretty well?

13 JUROR: Uh-huh.

14 MS. HAYNES: She doesn't hear it. She read lips.

15 THE COURT: But you can't read lips if somebody turns
16 away.

17 JUROR: I can read lips. I can do sign language,
18 but my problems is if somebody's turning. There's some
19 people ---

20 THE COURT: No, I'm worried about the sign language.
21 If someone does sign, you ---

22 JUROR: Yes.

23 THE COURT: --- can tell pretty well?

24 JUROR: Uh-huh.

25 THE COURT: You have no problems with that?

1 JUROR: No.

2 THE COURT: If they do sign language?

3 MS. HAYNES: Her concern is that if they turn their
4 back. Just like you're talking to her, you turn your back,
5 she had no ---

6 THE COURT: I know that, but with sign language, you
7 have no problems?

8 JUROR: No.

9 THE COURT: So, what about when you get excited? Does
10 that affect your ability to understand sign language?

11 JUROR: Huh-uh.

12 THE COURT: So, you're fine, okay, and I'm going to --
13 and you want to serve? If I have an interpreter, you want
14 to serve?

15 JUROR: Yeah.

16 THE COURT: All right, have a seat back there.

17 JUROR: Okay.

18 MS. HAYNES: Thank you.

19 THE COURT: Okay. Would you stay with her, though,
20 please for right now?

21 MS. HAYNES: Oh, yes. Certainly. And like I say, she
22 has an interpreter.

23 THE COURT: Okay, great.

24 MS. HAYNES: She just....

25 THE COURT: All right. Good. She'll stay with us.

1 Next person, please.

2 BAILIFF: Number 340.

3 CLERK OF COURT: 340.

4 THE COURT: Yes. Yes, sir.

5 JUROR: Yeah, I have, I have a fifth-grade education.

6 CLERK OF COURT: Donald O'Dell, Jr.

7 JUROR: And assault charges and one of audio piracy.

8 THE COURT: Audio what?

9 JUROR: Piracy.

10 THE COURT: Audio piracy?

11 JUROR: State of Maryland.

12 THE COURT: Okay, and what kind of sentence did you
13 get for that?

14 JUROR: Got five years, suspended down to sixty days
15 with a \$100,000 fine.

16 THE COURT: You don't have a pardon for that, do you,
17 from the State of Maryland?

18 JUROR: No.

19 THE COURT: All right, thank you, sir. You're
20 excused.

21 JUROR: Okay.

22 THE COURT: Thank you. You may leave. Turn your
23 button in and you may go.

24 JUROR: Thank you.

25 Any objection from anyone here?

1 MR. WILSON: None, Your Honor.

2 MR. HUMPHRIES: No, sir.

3 BAILIFF: Number 9.

4 CLERK OF COURT: Rebecca Bacot.

5 THE COURT: Rebecca Bacot, yes, ma'am?

6 JUROR: First, as a matter of fact I'm grateful for
7 the opportunity to be here. I have served on juries in the
8 past, but I work for Community Bank, which has a sister
9 bank in Greenville, and we're in the process of merging and
10 consolidating banks, and I play a key role in that merger.

11 THE COURT: And that's going on now?

12 JUROR: Yes, sir, to be hopefully finished, we'll have
13 it finished by June, so we're right in the middle of doing
14 that.

15 THE COURT: Well, tell me what your role in that is,
16 ma'am.

17 JUROR: I'm the ---

18 THE COURT: Come closer.

19 JUROR: Mortgage loan operations manager, and I, I do
20 operations for the whole state now: Greenville, Columbia,
21 and the coast. And we're trying to take -- relocation ---

22 THE COURT: Everyone please, keep it down please.
23 Please.

24 And this situation of course you might not be on the
25 jury until about Wednesday afternoon or Thursday, and don't

1 you feel that we could get a few days and it won't -- this
2 is going to be June. Then you can stay with us and get
3 this done. And if you do get a little behind, you can
4 catch up, can't you?

5 JUROR: I probably could.

6 THE COURT: I'd really appreciate you staying with us.
7 That's a beautiful -- is that called an amulet or what?

8 JUROR: It's, it's a locket; it has photos in it.

9 THE COURT: Very good, but stay with us, ma'am. I
10 appreciate your dedication.

11 JUROR: Thank you.

12 THE COURT: Thank you.

13 BAILIFF: 293.

14 THE COURT: Hello, ma'am. How are you doing?

15 JUROR: Good. How are you?

16 THE COURT: What is, what is 293 now?

17 CLERK OF COURT: 293 is Kitty Martin.

18 THE COURT: Yes, ma'am?

19 JUROR: My only concern is I'm being a single mom, if
20 this would take me away from ---

21 THE COURT: You're what now?

22 JUROR: I'm a single mom, and if this would take me
23 away from her at night. I'm scared I won't have anybody to
24 take her to school.

25 THE COURT: All right, do you ---

1 JUROR: My aunt ---

2 THE COURT: --- have family?

3 JUROR: My aunt could keep her, but she owns a
4 daycare. And I don't know if she could be able to take her
5 to school or not.

6 THE COURT: And how old is your child?

7 JUROR: Seven.

8 THE COURT: How about trying to work that out and just
9 give me an update? Try to work out ---

10 JUROR: Okay.

11 THE COURT: --- getting someone to do it, okay?

12 JUROR: Okay.

13 THE COURT: You go ahead and work on that tonight when
14 you get home tonight and everything else, okay?

15 JUROR: Okay.

16 THE COURT: We'll talk to you later about that.

17 JUROR: All right. Thank you.

18 THE COURT: Okay.

19 BAILIFF: Number 2.

20 CLERK OF COURT: Abdul Akram.

21 THE COURT: Mr. Akram, how you doing, sir?

22 JUROR: Fine. How you doing?

23 THE COURT: Yes, sir, what would you like to tell me,
24 Mr. Akram?

25 JUROR: One, he's my attorney for one. I don't feel

1 I'd be a partial judge -- jury if I was on there. And also
2 I was convicted of larceny when I was in the military in
3 '95.

4 THE COURT: A larceny?

5 JUROR: Yes, larceny and conspiracy.

6 THE COURT: Conspiracy to do what?

7 JUROR: Larceny, commit larceny.

8 THE COURT: And did you get a general court-martial or
9 a special court-martial?

10 JUROR: Special court martial.

11 THE COURT: Special BCD?

12 JUROR: Uh-huh.

13 THE COURT: Well, what, the limitation, was that six
14 months?

15 JUROR: No. I, I was sentenced to eight months
16 actually, but I only served, like, three.

17 THE COURT: Special BCD only gives you six months and
18 a Bad Conduct Discharge.

19 JUROR: Well, I had two charges. I mean, I don't --
20 that's what I was charged.

21 THE COURT: Oh, they gave you one and stacked on the
22 other one.

23 All right, the issue of not being fair I'll judge that
24 later, but you'll stay with us now, okay, sir?

25 By the way, how much did you -- what did they allege

1 you stole?

2 JUROR: It was, it was a camcorder over \$1,000.

3 THE COURT: Over \$1,000?

4 JUROR: Yes, sir.

5 THE COURT: Oh, okay. So, it wasn't under \$1,000.
6 Over \$1,000. Stand over there one second.

7 My understanding of the law is that if you were
8 convicted in this state, you could get over a year. Is
9 that your understanding of the law, sir?

10 MR. HUMPHRIES: That's correct.

11 MR. WILSON: In our state, that's correct.

12 THE COURT: And if it's over a thousand, he can get
13 over a year, can he not, sir?

14 MR. HUMPHRIES: That's correct.

15 MR. WILSON: In our state.

16 MR. HUMPHRIES: He'd get five years.

17 MR. WILSON: Well, but, but my concern, Judge, is that
18 the rule as I understand it is is that the person could
19 have received. And at the time he was convicted in
20 military court, he could not have received a year or more
21 even for both -- for more than a year for both charges.
22 So, if -- even though technically if he had been in a state
23 court, then he would be absolutely right, and the penalty
24 would have been greater than a year. Because he was in
25 military court, penalty was less than a year, and that

1 would be the prevailing ---

2 THE COURT: Well, I know. The question, though, is
3 whether or not it is this state, if it's the same thing in
4 this state would you get over a year.

5 But he also said, Mr. Wilson, that you represent him
6 now.

7 MR. WILSON: I do. He has pending charges in a court.

8 THE COURT: And remember I did -- remember you didn't
9 object to me discharging one earlier who had the solicitor
10 working on charges for her.

11 MR. WILSON: I didn't object.

12 THE COURT: And he says he doesn't think he can be
13 fair.

14 MR. WILSON: But I have to object for the record,
15 Judge. I mean, I, I understand, but I ---

16 THE COURT: Come around, sir. You said that Mr.
17 Wilson represents you now. You don't think you could be
18 fair in the case?

19 JUROR: No, sir.

20 THE COURT: And you had a conviction of stealing more
21 than, something of value more than \$1,000?

22 JUROR: Yes, sir.

23 THE COURT: All right, I'm going to excuse you at this
24 time, sir. You may step outside. You're excused.

25 Next person.

1 BAILIFF: Number 99.

2 CLERK OF COURT: Lula Cox.

3 THE COURT: Hello, Ms. Cox. How are you doing, ma'am?
4 Now, ma'am, you obviously have some physical problems
5 there. Are you under the care of a doctor? Can you not
6 speak?

7 JUROR: Yes. Yes.

8 THE COURT: Okay, and what type of injury do you have
9 there, ma'am?

10 JUROR: I have CO -- COPD and asthma.

11 THE COURT: Okay, questions from either side?

12 MR. WILSON: No.

13 MR. HUMPHRIES: No objection.

14 THE COURT: Okay, no objection. No objection, ma'am.
15 This is number 99 is excused. You have asthma. You are in
16 the treatment of a doctor. You cannot stand and have to
17 have oxygen all the time. You wish me to excuse you?

18 JUROR: Yes.

19 THE COURT: All right, she's excused with objection.
20 You may leave, sir. You may leave.

21 JUROR: Thank you.

22 THE COURT: Next person, please.

23 BAILIFF: 495.

24 THE COURT: 495, yes, sir.

25 JUROR: How you doing?

1 CLERK OF COURT: Richard Woodward.

2 JUROR: That's correct.

3 THE COURT: Richard Woodward. Yes, sir?

4 JUROR: Mine is simple. That I have a -- I have my
5 own retail establishment, sole proprietor. I am only
6 employee there. I got a father that is watching that. He
7 is watching the store for me now, and he is not in ---

8 THE COURT: What type of store is it?

9 JUROR: --- good health. It's a bait and tackle shop
10 here in Conway. We're open seven days a week, and usually
11 daylight to dark. I have a lot of perishables there:
12 crickets, worms. And if we get to where we have to close
13 it, you know, and I'm not moving them, especially this time
14 of year, I'm going to lose a lot of it. So, it's just
15 going to be a financial hardship all the way around.

16 It's not that I wouldn't mind serving on the jury.
17 I'm afraid that if it was to be a sequestered jury where I
18 can't get in there after court ---

19 THE COURT: We'll talk about that.

20 JUROR: --- and take care of it.

21 THE COURT: But I'm going to leave you on for right
22 now. We'll talk about it.

23 JUROR: Okay.

24 THE COURT: Have a seat. Stay here.

25 Next person.

1 BAILIFF: 248.

2 THE COURT: Okay, yes, ma'am. Let me get the name of
3 248.

4 CLERK OF COURT: Brenda Kemp.

5 THE COURT: Is that right? Yes, Ms. Kemp?

6 JUROR: I have a flight going out of town on Friday.

7 THE COURT: This coming Friday?

8 JUROR: Uh-huh.

9 THE COURT: Okay, what is that to, ma'am?

10 JUROR: Florida.

11 THE COURT: Is that a vacation?

12 JUROR: Uh-huh.

13 THE COURT: And you've already got the flight paid
14 for?

15 JUROR: Uh-huh.

16 THE COURT: When did you do this?

17 JUROR: Several months ago.

18 THE COURT: You didn't notify the clerk's office of
19 that?

20 JUROR: No. I, I didn't think about it.

21 THE COURT: And you've got some sort of reservation,
22 something?

23 JUROR: Uh-huh.

24 THE COURT: How long you going to be gone?

25 JUROR: Just the weekend, but I'm leaving at 6:35 in

1 the morning.

2 THE COURT: And you already have paid for the flight?

3 JUROR: Uh-Huh.

4 THE COURT: And do you have some -- could you go ---

5 JUROR: No, I don't have a thing. I just thought
6 about when I was sitting back here. I thought gosh. I've
7 got that.

8 THE COURT: Okay, I tell you what, ma'am. During the
9 lunch, would you go get it and bring it back to me, please,
10 ma'am?

11 JUROR: Uh-huh.

12 THE COURT: Showing the date of purchase, okay?

13 JUROR: Uh-huh.

14 THE COURT: If you bring that back to me, that will be
15 fine.

16 JUROR: Okay.

17 THE COURT: Okay? Flight on Friday. You, you, you
18 may go and just bring it back. You go home and just bring
19 it back, so.

20 JUROR: Okay.

21 THE COURT: In the courtroom.

22 JUROR: I can leave now?

23 THE COURT: Yes, ma'am. Just go get it, bring it
24 back.

25 All right.

1 BAILIFF: 439.

2 THE COURT: 39?

3 BAILIFF: 439

4 CLERK OF COURT: Joann Stewart.

5 THE COURT: Yes, Ms. Stewart?

6 JUROR: I work for the county. I didn't know if
7 that'd make a difference or not.

8 THE COURT: No. What do you do?

9 JUROR: Finance, accounts payable.

10 THE COURT: Boy, y'all are in a lot better shape than
11 Dillon County is.

12 JUROR: I don't know.

13 THE COURT: No, you'll be fine. Thank you, ma'am.

14 JUROR: Okay.

15 THE COURT: You don't work in the courthouse? You
16 work in the office?

17 JUROR: Right. I work in the office.

18 THE COURT: Thank you.

19 JUROR: Finance office.

20 THE COURT: Thank you. You're fine.

21 BAILIFF: 290.

22 CLERK OF COURT: James Martin.

23 THE COURT: Why does that say Brandon?

24 JUROR: That's my third name. This is what my mom and
25 dad called me all my life.

1 THE COURT: Okay. All right.

2 JUROR: I got -- I come to the courthouse this morning
3 to actually fill out the juror questionnaire paperwork
4 because they were sending it to the wrong address. I've
5 been in Pleasantview for going on four months now. I do
6 not have a permanent residence yet. I'm living in a tent
7 on a cleared lot waiting for them to bring my modular out
8 there.

9 THE COURT: And that will be in Horry County?

10 JUROR: Yes, in Horry County. The corrections
11 officer, he works B, B block in J. Rubin Long. All right,
12 my daughter's spending the weekend at his place every
13 weekend, and I associate with him and his wife two to three
14 times a week, so.

15 THE COURT: All right, anything else?

16 Now, you say he hadn't filled out the paperwork yet?

17 CLERK OF COURT: Yes, he ---

18 JUROR: I filled it out this morning.

19 CLERK OF COURT: --- filled it out this morning.

20 THE COURT: You're fine. Thank you, sir.

21 BAILIFF: 218.

22 THE COURT: Yes, sir.

23 MR. HUMPHRIES: It's more than an hour, and I've
24 changed my mind.

25 CLERK OF COURT: 218, James R. Hill.

1 THE COURT: Come on, Mr. Hill, you don't want to
2 change your mind, do you?

3 JUROR: I have two health problems, too. I think
4 between the two of them, I probably should opt out.

5 THE COURT: Ah, you had me excited, Mr. Hill, but if
6 you're over sixty-five and you want to change your mind,
7 that's up to you.

8 JUROR: I'd better.

9 THE COURT: All right, sir, you may be excused.

10 JUROR: God bless you.

11 THE COURT: Thank you, sir.

12 BAILIFF: Number 30.

13 JUROR: Do I leave now or ---

14 THE COURT: Yes, sir.

15 I assume no objections on that, right?

16 MR. WILSON: No objection.

17 CLERK OF COURT: David Blackburn.

18 JUROR: They've been giving me headache things that I
19 used to do ---

20 THE COURT: Let me get that number again.

21 JUROR: 30.

22 CLERK OF COURT: Number 30.

23 THE COURT: David Blackburn, yes, sir?

24 JUROR: I used to do personal business with ---

25 THE COURT: No, we'll get to that later. Anything

1 else?

2 JUROR: Okay, I got law enforcement in my family.

3 THE COURT: Anything else?

4 JUROR: No.

5 THE COURT: Thank you, sir. Have a seat.

6 (A PAUSE.)

7 THE COURT: What is your name again, ma'am?

8 JUROR: Tracie.

9 THE COURT: Tracie?

10 JUROR: Tracie Neal.

11 THE COURT: Now, Ms. Neal, you have how many children?

12 JUROR: I have one.

13 THE COURT: And does that child live with you, ma'am?

14 JUROR: No, sir. You asked, you asked if anybody had
15 a child.

16 THE COURT: Okay, but the child doesn't, doesn't live
17 with you?

18 JUROR: No, sir.

19 THE COURT: All right. Well, then, ma'am, you would
20 be qualified to serve then, ma'am.

21 JUROR: Okay.

22 THE COURT: Now, you have a conviction, ma'am?

23 JUROR: Yes, sir.

24 THE COURT: And what is that conviction of?

25 JUROR: A DUI and simple possession.

1 THE COURT: Simple possession of what?

2 JUROR: Narcotics.

3 THE COURT: Which?

4 JUROR: It was Darvoset.

5 THE COURT: Darvoset?

6 JUROR: Uh-huh.

7 THE COURT: All right. Now, did you come to high
8 court, or did you go to magistrate and pay a fine?

9 JUROR: It was in North Carolina.

10 THE COURT: Okay, but it was a Darvoset for simple
11 possession?

12 JUROR: Yes, sir.

13 THE COURT: And then you have a DUI?

14 JUROR: Yes, sir.

15 THE COURT: Was that DUI involving an accident with
16 someone else involved?

17 JUROR: Huh-uh. Huh-uh.

18 THE COURT: Then you're qualified, ma'am. Have a
19 seat.

20 MR. HEMBREE: She wasn't in here for the other four
21 questions.

22 THE COURT: Was she not?

23 CLERK OF COURT: No. Those were the first questions.
24 She was first.

25 THE COURT: I'm trying to think what other questions

1 it could be. Conviction I know I asked her about. I guess
2 I could have asked her reading and writing and mental
3 problem.

4 Ms. Neal, Ms. Neal, let me see you. I forgot one
5 other thing to ask you. Come back.

6 Let's see what else we got. She's not over sixty-
7 five. She doesn't -- let's see if she works in a school
8 system.

9 335. You work anywhere?

10 JUROR: No, sir, I do not.

11 THE COURT: Are you a student anywhere?

12 JUROR: No, sir, I am not.

13 THE COURT: Do you have any person in your household
14 you're taking care of that has some serious medical
15 problem?

16 JUROR: No, sir.

17 THE COURT: Do you have a serious medical problem at
18 all, ma'am?

19 JUROR: No, sir.

20 THE COURT: And the only convictions were what you
21 told me, right, ma'am?

22 JUROR: Yes sir.

23 THE COURT: And you have -- you can read and write in
24 English?

25 JUROR: Yes, sir.

1 THE COURT: You're a citizen of the United States?

2 JUROR: Yes, sir.

3 THE COURT: And you have a driver's license?

4 JUROR: It's suspended.

5 THE COURT: Suspended?

6 JUROR: Yes.

7 THE COURT: Well, but you do one?

8 JUROR: Yes, yes.

9 THE COURT: They just won't let you have it right now.
10 All right, and you have an ID card from the Highway
11 Department?

12 JUROR: Yes, sir, and voter registration.

13 THE COURT: Voter registration. I'm trying to think
14 of any other question I may have missed I should have asked
15 you. You're not in school. You're not over sixty-five.
16 Do you live in Horry ---

17 JUROR: I live in this county, and I'm a U.S. citizen.

18 THE COURT: All right. Thank you, ma'am. You may
19 have a seat.

20 (A PAUSE.)

21 THE COURT: Now, let's see. Here's what I'd like to
22 do now. What I'd like to do is to find out generally what
23 they -- I'm going to give them a break. We all need a
24 break for a few minutes. And then when I come back in, I'm
25 going to ask them generally about the lawyers and about the

1 particular case, and I'll ask them about membership in
2 SADD, MADD and those type of things

3 MR. HUMPHRIES: Remember we are withdrawing -- we are
4 not advancing the escape charge.

5 THE COURT: Okay.

6 MR. HUMPHRIES: It's a multi-count indictment. I just
7 wanted -- if you got to the point if you were actually
8 reading ---

9 THE COURT: But once you're going to call the case,
10 you're going to read the case -- call the case. I'll read
11 what you hand me.

12 MR. HUMPHRIES: Okay. Well, it's on the -- only
13 change. It's on the indictment. It's a multi-count
14 indictment.

15 THE COURT: All right.

16 MR. HUMPHRIES: One indictment, five counts.

17 THE COURT: All right. This is count one. Anyway, I
18 won't read it.

19 MR. HUMPHRIES: All right. Okay.

20 THE COURT: I won't read that.

21 MR. HUMPHRIES: Okay.

22 THE COURT: All right, and then we'll do that, and
23 then we won't go over the witnesses. We'll do that later,
24 and then see if anybody knows anything about the case.

25 The fact they've, as y'all know, the fact they've

1 heard something on TV or seen TV doesn't necessarily
2 disqualify them if they can put that aside, be open minded
3 about everything. And I'll say that generally and I'll say
4 those who don't think they can, they can come talk to me.

5 Any other matters y'all want me to go over generally?

6 MR. WILSON: Judge, there's just one thing. There is
7 a, there's this other group. It's called, and I'll get the
8 name of it for you, Community Against Violence or
9 something.

10 MR. HUMPHRIES: CAVE.

11 MR. WILSON: No, it's not CAVE.

12 THE COURT: I'll ask if they're involved in any type
13 of organization say that focus on certain crimes, okay?
14 And I can ask them if they've had something in their family
15 where they or somebody's been charged with a violent crime.
16 I'll ask that. Kin to law enforcement. The issues I
17 mentioned about membership in organizations, they know
18 anything about the case and could they put aside that and
19 have any concerns about that. And as far as witnesses,
20 we'll get that later on. Introduce the lawyers. Anything
21 else you want me to ask them generally? If so, let me know
22 after the break, all right?

23 MR. WILSON: All right, sir.

24 MR. HUMPHRIES: Thank you, sir.

25 CLERK OF COURT: Judge, some of the jurors, those

1 seven, have now been located. Some of them are here
2 waiting. One of them's still not been located as of yet.
3 They're still trying to find them, and these are the
4 results.

5 THE COURT: After the break, I'll see it, okay?

6 CLERK OF COURT: Okay.

7 THE COURT: Yes.

8 MR. WILSON: Judge, before you do that, the number of
9 the juror who told you about the sister, she's also a
10 juror?

11 CLERK OF COURT: Which one? I'm sorry.

12 MR. WILSON: The one that we just did, Ms. Neal, her
13 sister.

14 CLERK OF COURT: No, she is not.

15 MR. WILSON: She's not on jury duty?

16 CLERK OF COURT: No.. I don't ---

17 MR. WILSON: Her sister just called in.

18 LAW CLERK: I think she is on the jury.

19 CLERK OF COURT: Is she?

20 LAW CLERK: Yes.

21 CLERK OF COURT: What's her name?

22 LAW CLERK: She's the one back there in the glasses
23 and long hair.

24 MR. WILSON: I don't think both of them should be on
25 the same jury. And I just needed to know her number.

1 LAW CLERK: You want me to go get it?

2 CLERK OF COURT: Please.

3 THE COURT: No, no.

4 CLERK OF COURT: No?

5 THE COURT: Just go ask them.

6 (END OF CONFERENCES AT SIDEBAR.)

7 (A PAUSE.)

8 THE COURT: Now, ladies and gentlemen of the jury, at
9 this time I know some of you all have already been to the
10 restroom. Some of us have not, and so we're going to need
11 to take a few minutes ourselves. What I need for you to
12 do, though, ladies and gentlemen, is this.

13 I need for you to realize that you're basically being
14 qualified as a jury. So please, you got these badges on.
15 While you're on break outside the courtroom, anywhere on
16 these courthouse grounds, do not talk to anyone unless that
17 person has a badge on saying that person is a juror. Also
18 you see the bailiffs. The bailiffs have little name tags
19 saying they're bailiffs. Back in the back we have the
20 officers helping us here. They're not involved in the
21 case.

22 Officers, bailiffs, if y'all would step forward?
23 These three people here -- well, are you with the Conway
24 Police Department, sir?

25 DEPUTY: I'm a Constable.

1 THE COURT: All right. They're not involved in this
2 case. If you need assistance, you may ask them for
3 assistance, and so that's fine. You need to talk to the
4 clerk, come on up here and talk to them. That's fine.
5 Other than that, don't talk to anyone.

6 If you see someone in this building or around this
7 courthouse or in this courtroom that you know, do not talk
8 with them. You may say, well, I'm just going to talk about
9 business, the weather or something else. Well, that
10 doesn't matter. Do not talk with them because if you do,
11 someone may think you were talking something and all of a
12 sudden you end up on a jury, and then that person ends up
13 being involved with the case somehow. And so, therefore,
14 there are thoughts that you were doing something wrong.
15 Then I've got to examine you to see whether you should be
16 held in contempt of court or whatever else. So, the best
17 thing is not to talk with them at all.

18 Now, I know it is 12:30, so we're getting very much
19 close to y'all's lunch hour, but I want to get y'all
20 generally qualified before I let you go to lunch. So,
21 please know it might be late. But I need to get this done
22 as best we can. If you need to get you a pack of crackers
23 now or whatever or soft drink, now's the time to do it.

24 We're going to take fifteen minutes. I need, though,
25 for you -- is someone in the jury assembly room?

1 CLERK OF COURT: I think that, yes, sir, I have
2 another jury in there.

3 THE COURT: Well, I kind of need for you not to be in
4 the courtroom, but I tell you what. Don't worry about it.
5 You just come back to this courtroom at ten minutes to 1,
6 not before ten to 1. You come on back to the courtroom.
7 We'll see you then. You may step outside. Do not talk to
8 anyone.

9 (COPY OF MEDICAL CARD OF JUROR #299-MARTINO MARKED
10 INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 1.)

11 (OFF THE RECORD.)

12 THE COURT: All right, counselors, and the clerk says
13 her office contacted juror number 492. That indicates on
14 the list he's over sixty-five. She states he does not wish
15 to serve. Do y'all wish for me to put the clerk under oath
16 or something else, or is everyone satisfied with that? His
17 birth date is listed on juror number 492.

18 MR. HEMBREE: State's satisfied with that procedure,
19 Your Honor.

20 MR. WILSON: I'm satisfied, Your Honor.

21 THE COURT: All right.

22 MR. WILSON: I'm satisfied.

23 THE COURT: Madame Clerk, you did say the juror did
24 not wish to serve, right?

25 CLERK OF COURT: That is correct.

1 THE COURT: All right, Madame Clerk, Madame Court
2 Reporter, you got that down, right?

3 COURT REPORTER: Yes, sir.

4 THE COURT: What the clerk said. All right. So,
5 therefore, what about the others? I'm going over the eight
6 we do not have a response. 492 is now off, so now we're up
7 to 79, 66, 281, 317, 398, 442, 482. Who is here?

8 CLERK OF COURT: 281, they're still trying to locate.

9 THE COURT: Okay.

10 CLERK OF COURT: 442 is here. 79 is here. 317 is
11 here.

12 THE COURT: And did you say one is going to be here at
13 1:00?

14 CLERK OF COURT: Yes, sir, number 66. He's to be here
15 at 1:00. He is here.

16 THE COURT: Okay, that's four that are here. All
17 right, bring me those in.

18 (THE COURT AND CLERK CONFER.)

19 THE COURT: Mr. Wilson, Mr. Hembree, Mr. Humphries,
20 approach for any information we have on juror 482.

21 MR. WILSON: I'm sorry, Your Honor. What was your...

22 THE COURT: I want y'all to approach if you would,
23 please.

24 (OFF-THE-RECORD BENCH CONFERENCE.)

25 THE COURT: All right, if you would bring me the

1 jurors up. If y'all would come up in front here, please.
2 If y'all would just come up in front of the court reporter
3 here, please.

4 All right, what's the name of juror number 75?

5 JUROR: Patricia Chumas.

6 THE COURT: Timmons?

7 JUROR: Chumas. C-h-u-m-a-s.

8 THE COURT: All right, and 66.

9 CLERK OF COURT: Anthony Carmichael.

10 JUROR: Anthony Carmichael.

11 THE COURT: And 370.

12 JUROR: Troy Metzner.

13 THE COURT: How do you spell that?

14 JUROR: M-e-t-z-n-e-r.

15 THE COURT: 398.

16 JUROR: Christine Sandler.

17 THE COURT: Sandler, and 442.

18 JUROR: Richard Suggs.

19 THE COURT: All right. Now, y'all were not here this
20 morning. Could you tell me why you were not here this
21 morning?

22 JUROR: I just totally forgot, Your Honor. I
23 apologize to the court.

24 THE COURT: All right, and you, Mr. Carmichael?

25 JUROR: I was late. I brought a note because I have,

1 like, a heart condition or something like that. I thought
2 I could get by with it. I have high blood pressure and
3 stress and stuff like that. I'm taking medication. So I
4 just ---

5 THE COURT: All right. I'll talk you in a minute
6 about that. Mr. Metzner?

7 JUROR: My wife is in the Medical University of
8 Charleston, and I got home late last night. Completely
9 forgot and overslept this morning.

10 THE COURT: All right, we'll talk about that then.
11 Ms. Sandler.

12 JUROR: I didn't know I was supposed to be here. I
13 don't recall getting a pink piece of paper. That's why I
14 don't have it. I would have come if I'd known.

15 THE COURT: Are you Christine Sandler?

16 JUROR: Yes. I don't have a pink piece of paper.
17 That's all. Yeah, I see that, but I don't have a paper.
18 It maybe got ---

19 THE COURT: Are you telling me you forgot to sign --
20 telling me you forgot to sign it?

21 JUROR: Yeah.

22 THE COURT: It's signed by your name there.

23 JUROR: Yeah, I know, but I -- no excuse. I probably
24 lost it.

25 THE COURT: Mr. Suggs?

1 JUROR: I was busy this morning, and it slipped my
2 mind.

3 THE COURT: Busy, sir, or it slipped your mind?

4 JUROR: Yeah. I, I did know about it.

5 THE COURT: Yes, sir. I say yes, sir to you. Yes,
6 sir to me.

7 JUROR: Yes, sir.

8 THE COURT: All right, if y'all would, please go down
9 the line. Ms. Thomas, how many miles you live from the
10 courthouse, ma'am?

11 JUROR: Approximately thirty.

12 THE COURT: Mr. Carmichael?

13 JUROR: About thirty-five.

14 THE COURT: Mr. Betzner?

15 JUROR: Metzner, with an M, sir. Five.

16 THE COURT: I'm sorry, Metzner. Five.

17 Ms. Sandler?

18 JUROR: About thirty.

19 THE COURT: And Mr. Suggs?

20 JUROR: About twenty-five.

21 THE COURT: Okay.

22 CLERK OF COURT: I have Carmichael with thirty-five.

23 JUROR: Yes.

24 CLERK OF COURT: I have Chumas with thirty, Metzner
25 with five, Sandler with five.

1 JUROR: Me? Thirty.

2 CLERK OF COURT: Thirty, and Suggs with twenty-five.

3 THE COURT: Ms. Sandler, it says you live in Myrtle
4 Beach?

5 JUROR: I live in Surf Side.

6 THE COURT: Surf Side.

7 JUROR: What address do they have? It might be the
8 wrong address. I live in Surf Side.

9 THE COURT: So, you don't live on Harbor Reef Drive?

10 JUROR: Huh-uh. I live in Glenn's Bay Road.

11 THE COURT: Have you lived before on Harbor Reef
12 Drive?

13 JUROR: Uh-huh. Yeah.

14 THE COURT: All right, put them under oath, please.

15 (THE JURORS ARE SWORN.)

16 THE COURT: Put your hands down. Now, if any
17 questions I ask apply to you, put your hand back up. Does
18 anyone not to live in Horry County? Anyone not a citizen
19 of the Unites States? Anyone who has children that live
20 with them under the age of seven? Anyone who is employed
21 in the school system goes to school? Anyone who has been
22 on circuit court jury in the last three years? Anyone
23 who's been on the grand jury the last five years? Anyone
24 who doesn't have either a driver's license, ID card from
25 the highway department, or voter registration? You got one

1 of the three, you're fine; you don't have any of those
2 three, let me know.

3 Okay, I don't wish to embarrass anyone, but there are
4 only five of you. I feel I have to ask it this way.
5 Everyone can't read, write, speak English language? Is
6 that correct? All right, has everyone got at least a sixth
7 grade education? Does anyone have anyone at home who
8 you're taking care of that you being here on jury duty
9 would cause a serious threat to their physical well-being?

10 You have someone in the hospital?

11 JUROR: My wife is in hospital. She has multiple
12 sclerosis, and she'll be coming home this afternoon. She
13 is fairly able to take care of herself if necessary. I'm
14 not required to be there.

15 THE COURT: So, you work outside the home right now,
16 sir?

17 JUROR: Well, I'm a pastor and work within the home.
18 My office is in the house.

19 THE COURT: Your church is outside?

20 JUROR: Yes, sir. It's outside.

21 THE COURT: You still -- and other words, you don't,
22 and you don't want to discuss with me about excusing you
23 off jury duty for that, sir?

24 JUROR: No.

25 THE COURT: All right, does anyone have any physical

1 ailments themselves that they want to talk to me about?

2 If you want, sir, you come around to the side. Wait
3 till we get to the end. We'll do that with you.

4 Does anyone have a physical ailment or would like to
5 talk to me about any prior convictions they've had? Anyone
6 have any prior conviction that could have gotten you more
7 than a year in jail you want to talk to me about? All
8 right, if -- does anyone have any other reason why you feel
9 you cannot serve on jury duty?

10 JUROR: I'm self-employed. I'm the only person I have
11 working for me.

12 THE COURT: Sir, if I asked by raising their hands out
13 there, there would be a lot. Anybody else?

14 All right, sir, let me talk to you up here right
15 quick, if you would.

16 Counsel, y'all approach.

17 (THE FOLLOWING CONFERENCE IS HELD AT SIDEBAR.)

18 JUROR: Anthony Carmichael.

19 THE COURT: Mr. Anthony Carmichael, juror number 66.
20 Now, do you work anywhere, Mr. Carmichael?

21 JUROR: I work at Pizza Hut in North Myrtle Beach.
22 But I just got, like, high blood pressure and get stressed
23 out, stuff like that. So, I mean, my heart, like, go real
24 fast and stuff like that. So, I got a lot of anxiety also.
25 Besides that I'm all right, but I try to take it easy as

1 much as possible. Too much stress on me ---

2 THE COURT: I've been to a crowded Pizza Hut before.
3 You can handle that?

4 JUROR: Yeah. I mean, you got a lot of people working
5 for you.

6 THE COURT: Are you the manager?

7 JUROR: Yeah, I'm one of the managers out there. So,
8 I mean, and I'm trying to get myself ready for the summer.

9 THE COURT: Well, sir, I think if something happens
10 and anxiety takes over, you need to talk to me about it,
11 you let me know. Otherwise, I'll qualify you.

12 JUROR: Okay.

13 THE COURT: All right.

14 JUROR: Thank you.

15 THE COURT: You have a seat in the audience.

16 (END OF CONFERENCE AT SIDEBAR.)

17 THE COURT: All right, y'all are now qualified jurors.
18 Thank you. Welcome to our group. They've all been waiting
19 for you out there. Have a seat if you would.

20 All right, Madame Clerk, you've done a great job.
21 That only one person who's not here.

22 (A PAUSE.)

23 THE COURT: Sir, you want to approach, sir? What is
24 your name, sir?

25 JUROR: Harvey Brooks.

1 THE COURT: Harvey Brooks?

2 JUROR: Yes, sir.

3 THE COURT: What is your juror number?

4 JUROR: I don't have ---

5 THE COURT: Sir, you've been disqualified, sir.

6 All right, now, at this stage juror 476 we talked
7 about earlier could not find. Sheriffs have been trying to
8 find, that they have not been successful at this point, and
9 juror 281 out of five hundred potential people. That's
10 admirable. At this time, if you find them let me know, but
11 I'm going to proceed on. This is our qualified jury panel,
12 and I will have a couple of matters I am still thinking
13 about regarding qualification or not. But we'll deal with
14 those later.

15 All right, if you would, ladies and gentlemen, at this
16 time no one is to enter the room. Are all of the jurors
17 back in the room, officer?

18 SHERIFF DEPUTY: Yes, sir.

19 THE COURT: All right. If you would, Mr. Solicitor,
20 if you're ready, call your case, sir.

21 MR. HEMBREE: Thank you, Your Honor. The State of
22 South Carolina calls the case of *State vs. Louis M.*
23 *Winkler*. This is by way of indictment number as 2006-GS-
24 26-2701. Your Honor, this is an indictment that was
25 presented to the Horry County grand jury and true billed on

1 May 25th of 2006. This is a three count indictment, Your
2 Honor. The first count murder: that Louis M. Winkler did
3 in Horry County on or about March 6, 2006, willfully,
4 feloniously, and intentionally with malice aforethought
5 kill the victim Rebekah Winkler by means of shooting her in
6 the head, and the victim did die as a proximate result
7 thereof in Horry County on or about March 6, 2006.

8 Count two, burglary in the first degree: that Louis
9 Michael Winkler did in Horry County on or about March 6,
10 2006, enter the dwelling of the victim, Rebekah Winkler,
11 without consent and with the intent to commit a crime in
12 the dwelling -- to wit, murder and/or assault and battery.
13 And when any effect -- and when effecting entry or while in
14 the dwelling or in immediate flight, he was armed with a
15 deadly weapon; or caused physical injury to a person who
16 was not a participant in the crime; or used or threatened
17 the use of a dangerous instrument, a semiautomatic handgun;
18 or displayed a pistol or other firearm; or entered the
19 dwelling in the nighttime.

20 And count three, Your Honor, aggravated assault and
21 battery of a high and aggravated nature: that Louis M.
22 Winkler did in Horry County and on or about March 6, 2006,
23 commit an assault and battery upon the victim Jonathan
24 Grainger, constituting an unlawful act of violent injury to
25 the person of said victim accompanying with circumstances

1 of aggravation, including but not limited to the defendant
2 committed the assault and battery upon the victim while in
3 the commission of a burglary, which is a felony; and/or
4 there exists a great disparity in the ages and or physical
5 conditions of the parties in that the defendant was forty-
6 five, a forty-five year-old adult male and the victim was a
7 fourteen year-old male child.

8 Your Honor, let the record reflect that I'm now
9 passing the indictment up to the court.

10 THE COURT: Let the court reporter hold that.

11 MR. HEMBREE: Thank you, Your Honor.

12 THE COURT: Ladies and gentlemen of the jury, you've
13 heard the solicitor read the allegations. And once again,
14 ladies and gentlemen, the fact -- well, not once again, but
15 let me tell you this. The fact that someone is charged
16 with a crime is not evidence the person's committed a crime
17 at all. That is the procedure to bring before a jury for a
18 jury to decide whether guilt's proven beyond a reasonable
19 doubt, and the burden is upon the state to prove guilt
20 beyond a reasonable doubt. So, the fact that Mr. Winkler
21 is charged with these crimes is not evidence that he's
22 committed these crimes.

23 Ladies and gentlemen, with the allegations, it could
24 be that there may or may not have been some media coverage
25 of the allegations, either on TV or newspaper. And you may

1 or may not have seen something on any type of media about
2 these allegations. Oftentimes when those things are on
3 media, though, they tell you pretty much what was just read
4 when someone is charged with a crime. But if anyone out
5 there because of media coverage or because of anything else
6 regarding this issue, regarding these allegations, you've
7 already formed an opinion about this case one way or the
8 other, if so please stand up. And if you would, please
9 come over to the side.

10 (THE FOLLOWING CONFERENCES ARE HELD AT THE BENCH.)

11 BAILIFF: Number 16, Judge.

12 THE COURT: All right. Come around please, ma'am.

13 CLERK OF COURT: Helen Barnett.

14 THE COURT: Yes, Ms. Barnett, what, if anything, do
15 you know about this case? Speak to this lady here.

16 JUROR: I'd have a very difficult time being impartial
17 in this case because it would dredge up the nightmare of
18 physical and sexual abuse on me by my father.

19 THE COURT: Because of what, ma'am?

20 JUROR: Physical and sexual abuse.

21 THE COURT: What's your number again? Now, what do
22 you, what do you want to tell me about that?

23 JUROR: That, that I was subject of physical and ---

24 THE COURT: Okay.

25 JUROR: And I would have a very difficult time being

1 impartial.

2 THE COURT: Okay.

3 JUROR: On this case because it would dredge up the
4 nightmares of physical and sexual abuse that I suffered
5 from my own father in my childhood.

6 THE COURT: Okay, I understand, ma'am, and you
7 followed along the allegations in this case?

8 JUROR: Yes, I have.

9 THE COURT: And you think they involve allegations of
10 that?

11 JUROR: Yes, I do, sir. That was -- it was a
12 different incident, but I'm well aware of it and, and I
13 think I would have a very hard time forgetting that.

14 THE COURT: Okay. Do you feel that if you sat on that
15 jury and listened to the evidence, you could make a
16 decision based on the evidence in the case and put aside
17 what happened to you, or do you feel that would come into
18 play?

19 JUROR: I honestly don't know. I feel it would come
20 into play. That's my honest, true feelings.

21 THE COURT: Stand over here for one second, will you?

22 You wish me to attempt further rehabilitation, or do
23 y'all have objections one way or the other?

24 MR. WILSON: I have no objection, Judge.

25 THE COURT: Please know I'm very sorry about what

1 happened to you. Continue on in life and I hope you enjoy
2 everything at the beach here. There are a lot more people
3 here who have your accent.

4 JUROR: Thank you.

5 THE COURT: Listen, we're going to excuse you on this
6 case, okay? Thank you. Thank you so much.

7 Okay, next person, please

8 BAILIFF: 186, Judge.

9 CLERK OF COURT: Gail Greenway.

10 THE COURT: Okay, Ms. Greenway.

11 JUROR: Well, it's just that I live in Little River,
12 and I was aware when all of this was going on. I don't
13 know that -- the defendant personally. I just know that
14 there was a lot of publicity and stuff in our area, so I
15 knew pretty much what he's charged with. And I knew that,
16 that the wife and son were involved.

17 THE COURT: Okay.

18 JUROR: I just don't know.

19 THE COURT: Well, I know. But, see, once people write
20 things or have things on news items but when you really get
21 down to it, you know somebody, we just read the charges
22 there, too, that the state alleges he did. You do realize
23 that those are allegations?

24 JUROR: Yes, I do.

25 THE COURT: Do you feel, ma'am, that you could sit on

1 the jury and listen to the evidence presented in the case
2 and make your decision based on the evidence presented in
3 the case and the law as I instruct it to you and put aside
4 any media information and make your decision based on what
5 occurs here in the courtroom?

6 JUROR: I don't, I don't, I don't know how I can
7 answer that.

8 THE COURT: Why would you not?

9 JUROR: I just think I have -- know too much about it.

10 THE COURT: Other than the media, what else do you
11 know about it?

12 JUROR: Well, it's just, I don't really know anything
13 personally, so.

14 THE COURT: Has anyone talked to you about the case?

15 JUROR: Well, not -- no. I mean, just my husband
16 and I have talked about it when it was going on. Like I
17 said, it was in our community, so of course I was going
18 to talk about it. But, you know, I'll be glad to try to
19 serve ---

20 THE COURT: No, ma'am. No, ma'am. Have you formed
21 any conclusions or ---

22 JUROR: I have.

23 THE COURT: --- made opinions?

24 JUROR: I have.

25 THE COURT: You have?

1 JUROR: Uh-huh. I have. Do you want me to tell you
2 what I think?

3 THE COURT: Yes, ma'am.

4 JUROR: I think he's guilty.

5 THE COURT: All right, you don't think you could put
6 that aside?

7 JUROR: No, I don't because I think -- he's guilty. I
8 think that's the way it happened. That's why I can't.

9 THE COURT: All right, if you would, please don't
10 discuss this with anyone else would you, please, ma'am?

11 JUROR: I will not.

12 THE COURT: All right. You may step outside.

13 JUROR: Okay. Thank you.

14 THE COURT: Any objection?

15 MR. RATHBUN: None from us.

16 THE COURT: Next person, please.

17 BAILIFF: 357, Judge.

18 CLERK OF COURT: I didn't hear the number.

19 THE COURT: 357.

20 CLERK OF COURT: Dixie Penley.

21 THE COURT: Yes, is it Kenley or Penley?

22 JUROR: Penley, P-e-n-l-e-y.

23 THE COURT: Yes, Ms. Penley.

24 JUROR: Gossip in my restaurant is that when the
25 previous -- after previous hearing there was a threatening

1 note that was left, besides the fact that I'm a victim of
2 spousal abuse. I just think that I can't be fair. I think
3 he's guilty.

4 THE COURT: Okay. Now, ma'am, when you say gossip, we
5 all know about gossip and ---

6 JUROR: And whether it's true or not.

7 THE COURT: --- whether it's true or not. No one
8 knows.

9 JUROR: That's exactly right.

10 THE COURT: And in a court of law what we do is you
11 put up the information. The evidence is there, and then
12 the jury determines whether or not guilt's been proven
13 beyond a reasonable doubt. You don't think you could sit
14 on that jury and listen to the case and make your decision
15 based on the evidence presented in the trial and set aside
16 any gossip or suspicions you may have?

17 JUROR: No, sir.

18 THE COURT: Why not?

19 JUROR: I'm just, I'm very sensitive about this case.

20 THE COURT: Why are you sensitive about this case
21 other ---

22 JUROR: Because of the circumstances that I've had in
23 my life.

24 THE COURT: Okay, and you formed an opinion, already?

25 JUROR: I certainly have.

1 THE COURT: And you don't feel you could put that
2 opinion aside?

3 JUROR: No, sir, I do not. In all fairness, I could
4 not.

5 THE COURT: Okay, step outside.

6 Next person, please

7 BAILIFF: 306, Judge.

8 THE COURT: Yes, ma'am, what's your name?

9 JUROR: Debra McCleary.

10 THE COURT: Yes, ma'am, Ms. McCleary.

11 JUROR: I have a -- I was employed by CASA, Citizens
12 Against Spouse Abuse, and my sister is presently a victim's
13 advocate for CASA.

14 THE COURT: So, you work for CASA?

15 JUROR: I've worked for CASA for three years.

16 THE COURT: And -- but working with CASA, I'm sure you
17 realize that allegations are not always factual.

18 JUROR: Yes.

19 THE COURT: And could you not feel that you could sit
20 on the jury panel and make a decision based on the evidence
21 in the case?

22 JUROR: No.

23 THE COURT: So, just by someone saying someone did
24 something, you believe it happened?

25 JUROR: Well, no, but this one I've also read about,

1 and I have strong feelings about it.

2 THE COURT: Well, you read about something other than
3 in the paper?

4 JUROR: No, Just in the paper.

5 THE COURT: And the paper just wrote, they just report
6 allegations, don't they?

7 JUROR: Yes. I believe what I read, so.

8 THE COURT: So, everything you read in the paper ---

9 JUROR: Not everything.

10 THE COURT: --- you believe?

11 JUROR: This one I tended to.

12 THE COURT: Why is that?

13 JUROR: It was very strong as far as I was concerned.

14 THE COURT: So, other ---

15 JUROR: Plus the fact, you know, plus the fact being
16 an employee of CASA, I take it very personally.

17 THE COURT: Step behind me for a minute.

18 If it were not for her employee status, or her past
19 employee status, I would be doing it. But now I'm
20 concerned about her past employee status, whether that may
21 have ingrained into her anyway. Anybody -- well, I know
22 you want her excused. Anything from the state regarding
23 any further questions y'all may ask her?

24 MR. HEMBREE: No, Your Honor.

25 THE COURT: All right. Come around, please. Okay,

1 ma'am, at this time I'm going to excuse you at this time.
2 Please don't discuss this with anyone else.

3 JUROR: Okay. Thank you.

4 THE COURT: Next person, please

5 BAILIFF: 45.

6 CLERK OF COURT: Dawn Brooks.

7 THE COURT: Ms. Brooks, come a little closer. What do
8 you want to tell me?

9 JUROR: I just know of the case from the *Sun News* and
10 the media, and I live in the Loris area, and I do believe
11 he killed his wife in front of his son or her son.

12 THE COURT: Well, is that only because the paper said
13 that?

14 JUROR: Yes, and talk in the community.

15 THE COURT: You've talked to people about this?

16 JUROR: Whenever it happened.

17 THE COURT: You talked to someone who had information
18 about it other than the media?

19 JUROR: No, just from the media.

20 THE COURT: Well, ma'am, we all realize the media says
21 nothing more what, say, the item read out a while ago.
22 That they're allegations.

23 JUROR: Right.

24 THE COURT: Don't you believe in America we have a
25 right to basically have someone look into the matter and

1 see what evidence there is of the crime and see if the
2 evidence is such that a person is proven guilty beyond a
3 reasonable doubt?

4 JUROR: Yes, but my problem is I do believe he's
5 guilty.

6 THE COURT: I know that, but ---

7 JUROR: And I can't say anything because I don't.

8 THE COURT: But other than, but other than the media
9 what, what makes you believe that?

10 JUROR: I can't say anything else.

11 THE COURT: Okay. So, could you not just put aside
12 the media and listen in court and see what evidence is
13 presented?

14 JUROR: Honestly? No.

15 THE COURT: Why not?

16 JUROR: Because I do believe he's guilty.

17 THE COURT: So, every time you read somebody's
18 committed a crime in the media, you believe they're guilty?

19 JUROR: No, not necessarily.

20 THE COURT: Well, why not?

21 JUROR: But on this case, I do.

22 THE COURT: Why is this different than other ones?

23 JUROR: I can't tell you that. I guess from all the
24 coverage that took place at the time.

25 THE COURT: But any time you have something,

1 allegations like this, you're going to have a lot of
2 coverage. And sometimes people have found they didn't do
3 those things. Would you agree?

4 JUROR: Yeah.

5 THE COURT: So, don't you feel in this thing here you
6 could maybe put aside that, and just sit there and listen
7 to the evidence, see if the evidence that's given could
8 convince you beyond a reasonable doubt his guilt?

9 JUROR: I just have trouble going into it with a
10 preconceived idea of what I do believe already.

11 THE COURT: But once again, you believe that only
12 from ---

13 JUROR: Yes, sir.

14 THE COURT: --- listening to news and reading the
15 paper?

16 JUROR: Yes, sir.

17 THE COURT: You can't just put that aside and just say
18 wait a minute, I'm going to listen on the jury and have an
19 open mind and see what evidence there is?

20 JUROR: I can't guarantee it. I could try, but I
21 cannot guarantee that.

22 THE COURT: So, you feel that in this case, you would
23 not go with an open mind at all?

24 JUROR: No, sir.

25 THE COURT: I don't know. Tell you what. Do not

1 discuss with anyone else. Just have a seat in the
2 audience, okay.

3 JUROR: Okay. Thank you.

4 THE COURT: Honestly, I'm not sure I want to excuse
5 everybody that comes up here right now.

6 BAILIFF: 246, Judge.

7 CLERK OF COURT: Frances Kelly.

8 THE COURT: Hi, Ms. Kelly. Yes, ma'am?

9 JUROR: Hey.

10 THE COURT: What do you want to tell me, Ms. Kelly?

11 JUROR: I've been watching the news and have seen ---

12 THE COURT: Come closer..

13 JUROR: I've the -- Grainger in this case. When I
14 first got the form, I didn't put the name together, but
15 then it started coming out and ---

16 THE COURT: But, I mean, that's no more really than
17 someone reading and says someone's alleged to do that.
18 That's just media reporting. You do realize in this
19 country when somebody says you did something, you're
20 entitled to a trial to determine if the accusations are
21 proven beyond a reasonable doubt?

22 JUROR: That's not the way I was brought up..

23 THE COURT: Where were you brought up?

24 JUROR: Where was I brought up?

25 THE COURT: Yes, ma'am.

1 JUROR: In Massachusetts.

2 THE COURT: In Massachusetts?

3 JUROR: Yes. You did something, you were guilty.

4 THE COURT: But what if he didn't do it?

5 JUROR: I think there's plenty of evidence just by
6 reading.

7 THE COURT: So, if you read it in the paper, you think
8 they're guilty?

9 JUROR: It depends. I read the details.

10 THE COURT: Well, you do know that reporters sometimes
11 report incorrect details?

12 JUROR: I understand that. I ---

13 THE COURT: Now, you don't see you sitting in a jury
14 and say well, let me just see if the state can prove a
15 person did something beyond a reasonable doubt?

16 JUROR: It would have to be pretty strong.

17 THE COURT: The state will have to prove it pretty
18 strong?

19 JUROR: Pretty, very strong.

20 THE COURT: That's what the burden is, you're right.
21 Yes, ma'am. So, you wouldn't find him guilty unless the
22 state proved it pretty strong?

23 JUROR: Unfortunately, my mind has been made up.

24 THE COURT: In the United States of America, your mind
25 is made up because of newspapers?

1 JUROR: By what I read, not just by seeing --
2 newspaper.

3 THE COURT: But by reading the article that somebody
4 who wrote it, didn't know anything about it, just basically
5 got stuff from other people and all that?

6 JUROR: Well, I think there's, there's more, more to
7 it than this.

8 THE COURT: Why do you think that?

9 JUROR: There's just a lot. There's just a lot. I
10 mean, it's not one count, it's not two counts, it's three
11 counts.

12 THE COURT: Of what?

13 JUROR: Of abuse.

14 THE COURT: Really?

15 JUROR: And ---

16 THE COURT: No, ma'am. It's only an allegation, so
17 one count.

18 JUROR: Well, if you want me to be on, fine. That's
19 where I, that's where I am now.

20 THE COURT: Just have a seat. I'll let you know in a
21 minute.

22 JUROR: Okay.

23 THE COURT: All right, next person, please

24 BAILIFF: 490, Judge.

25 THE COURT: Okay, 490.

1 CLERK OF COURT: Bonnie Winstead.

2 THE COURT: Yes, ma'am, Ms. Winstead.

3 JUROR: Because basically of the media coverage and
4 all, and also I'm an acquaintance of the victim's sister --
5 of the defendant's sister.

6 THE COURT: What's her name?

7 JUROR: Ward. That's her last name.

8 THE COURT: Okay?

9 JUROR: Because of the media, I don't feel like I can
10 do this.

11 THE COURT: Well, about everybody in this room has
12 seen something in the media about it, so that doesn't
13 really disqualify you, the fact you may have seen something
14 in the media. The question is, you know, in a court of law
15 in this country, a jury sits and determines if the state
16 has proven guilt beyond a reasonable doubt by evidence in
17 the courtroom because the media may or may not have things
18 correct. So, the question is could you sit there on the
19 jury and listen and determine if the state's proven guilt
20 beyond a reasonable doubt?

21 JUROR: I'm sure that I probably could, but I just
22 don't feel that I really could, personally.

23 THE COURT: Well, why not? I mean, what, other than
24 the fact you read the media? Once again, other people read
25 the media. Why, I mean, why would the fact you've seen

1 things in the media have you concerned?

2 JUROR: I'm an ---

3 COURT REPORTER: I can't hear her, Judge.

4 JUROR: I'm sorry. I'm acquaintance of the
5 defendant's sister, and I've worked with her ---

6 THE COURT: And would that, and what effect would that
7 have on you?

8 JUROR: I kind of feel for him because of, because of
9 her.

10 THE COURT: So, you feel you would end up tending to
11 be leaning towards him, you think?

12 JUROR: Probably so.

13 THE COURT: So, the media had not -- has not convinced
14 you of his guilt?

15 JUROR: Oh, well, I don't know. Maybe so.

16 THE COURT: Okay. So you have feelings both ways?

17 JUROR: I do.

18 THE COURT: So, therefore, you could be open minded.

19 JUROR: No, I ---

20 THE COURT: Well, have you formed any opinion in this
21 matter?

22 JUROR: I definitely feel he's probably guilty.

23 THE COURT: Only because of what you read in the
24 media, which may not be correct?

25 JUROR: True.

1 THE COURT: So, therefore, other than what you read in
2 the media, you formed any opinions?

3 JUROR: No, sir.

4 THE COURT: Oh, well, could you disregard the media?

5 JUROR: Probably so.

6 THE COURT: Will you disregard the media and listen
7 to the case and the court, and this court of law and
8 determine whether the state's proven guilt beyond a
9 reasonable doubt?

10 JUROR: Yes, sir.

11 THE COURT: You will?

12 JUROR: Yes, sir.

13 THE COURT: All right. Have a seat, ma'am. Thank
14 you, ma'am.

15 CLERK OF COURT: Has she been excused?

16 THE COURT: No.

17 BAILIFF: 171, Judge.

18 CLERK OF COURT: Miranda Gilliland, Gilliland.

19 JUROR: Gilliland.

20 THE COURT: 171. Yes, Ms. Gilliland?

21 JUROR: My stepsister is supposed to testify on behalf
22 of the victim. She's best friends with Ms. Winkler's
23 daughter.

24 THE COURT: Have you discussed the case with her?

25 JUROR: Well, she's upset, so she -- I, I don't know.

1 I didn't know some of the details that I just heard. But
2 so far as discussing, just her personal opinion.

3 THE COURT: All right, but your stepsister is supposed
4 to testify in this case you understand?

5 JUROR: Uh-huh.

6 THE COURT: And you and your stepsister grow up
7 together, or was this separate families?

8 JUROR: We haven't lived in the same household. My
9 dad is her stepdad.

10 THE COURT: But the fact that she testified, would
11 that cause you to look upon her differently than you would
12 some other witness that's on the stand?

13 JUROR: No.

14 THE COURT: Could you be fair both to the state and to
15 the defense?

16 JUROR: Yeah, I could be fair.

17 THE COURT: Has she told you anything about the case?

18 JUROR: Little odds and ends, nothing, nothing ---

19 THE COURT: Well, when, when did you and she talk?
20 When do y'all talk?

21 JUROR: Long time ago. Originally she was supposed to
22 -- this was supposed to happen earlier, and that it was put
23 off. I'm not, I'm not -- I don't know a lot of details.
24 I just know she just told me that she was, she was called
25 to ---

1 THE COURT: Hold on one second. Stand over there.

2 Okay, is this someone that's going to be an important
3 witness she's talking about? Let me get the name.

4 Audrey Stevens.

5 MR. HUMPHRIES: Audrey Stevens isn't going to testify
6 in this case.

7 (COUNSELORS CONFER.)

8 THE COURT: Could you sit on that jury and listen to
9 the case and to make a decision based on the evidence in
10 the courtroom?

11 JUROR: Yes, sir.

12 THE COURT: And would you hold the state to the burden
13 of beyond a reasonable doubt?

14 JUROR: Yes, sir.

15 THE COURT: And would you follow the instructions of
16 the court?

17 JUROR: Yes, sir.

18 THE COURT: Have you formed any conclusions or
19 opinions?

20 JUROR: No, sir.

21 THE COURT: Can you be fair to both sides?

22 JUROR: Yes, sir.

23 THE COURT: All right, have a seat in the back.

24 Next person, please.

25 BAILIFF: 5, Judge.

1 CLERK OF COURT: What was the number?

2 THE COURT: Number 5, number 5.

3 CLERK OF COURT: Paulette Arnette.

4 THE COURT: Yes, Ms. Arnette?

5 JUROR: I thought you were going to ask me questions.

6 THE COURT: Yes, ma'am. Tell me what you know
7 about the case.

8 JUROR: Well, I, I'm familiar with it from the
9 beginning because it was, like, right in my backyard
10 basically and, and he was in my friend's backyard hiding
11 actually in the woods behind her house. I've known from
12 the beginning and felt like he's guilty. I mean, there's
13 just no doubt in my mind, and I ---

14 THE COURT: In other words ---

15 JUROR: --- I would not change my mind.

16 THE COURT: Other words, you're saying he was --
17 there's some allegations he was in in the yard in your
18 neighborhood?

19 JUROR: I know he was. Went in the back, in the woods
20 behind her yard. That's where he got caught.

21 THE COURT: How do you know that?

22 JUROR: Because that's where the police found him.
23 My, my stepdad is a retired policeman, and he brings cases
24 over here and he presents cases. And so I know, and I know
25 other people. The policeman lives across the street.

1 THE COURT: Just have a seat back there. Step back
2 there.

3 I'm ready to excuse her. I assume y'all don't have
4 any problems? She seems very much involved in this thing.
5 Her neighbor's house. I'll be glad to *voir dire* further.
6 She said I know he's guilty.

7 MR. HUMPHRIES: A bunch of them said that.

8 THE COURT: Come over here, ma'am. Now, you say you
9 live in the same area, next door?

10 JUROR: No, not next door. No, I did not see him in
11 the backyard.

12 THE COURT: Okay.

13 JUROR: I just know that's where he was found.

14 THE COURT: And that's what people told you?

15 JUROR: And I remember when it happened. When it
16 happened, my friend and her husband, the police were around
17 there and they went out and they told him they were looking
18 for him in the woods just behind the house. And I remember
19 being afraid, too, that morning he was out there. But I, I
20 think he's guilty. I'm not one to change my mind.

21 THE COURT: Is that because he's charged with a crime?

22 JUROR: Well, because the crime, the nature of the
23 crime.

24 THE COURT: Well, how do you know he committed that
25 crime? Just by the fact that he's charged with it?

1 JUROR: Well ---

2 THE COURT: Don't you realize -- I mean, don't you
3 agree it's the burden of the state to prove that he did
4 that crime?

5 JUROR: Yeah, but, I mean, from what I've read it's---

6 THE COURT: From the media?

7 JUROR: Yeah and, and what I've heard over the years.
8 I mean, you know, so I don't know what else to say.

9 THE COURT: Oh, let's go with the media.

10 JUROR: Because I wasn't there.

11 THE COURT: Exactly. You weren't there.

12 JUROR: That's right.

13 THE COURT: But don't you know in this country, no
14 matter what the media says, what the allegations are ---

15 JUROR: Well.

16 THE COURT: --- you should have the presumption of
17 innocence and see if the state can provide evidence to
18 convince a jury beyond a reasonable doubt?

19 JUROR: Yeah, but I think in my case I don't -- I
20 mean, to me he's -- well, that would depend on if the
21 media's lying. I believe ---

22 THE COURT: Well, the media ---

23 JUROR: No, I don't believe everything anyway.

24 THE COURT: Remember, now, the media, the media has
25 never said he did anything.

1 JUROR: I know, allegations, I know.

2 THE COURT: They repeat what other people say.

3 JUROR: Uh-huh.

4 THE COURT: So, they never said anything. They're
5 just repeating other people's allegations.

6 JUROR: Okay.

7 THE COURT: Which is what was read to you a while ago,
8 allegations.

9 JUROR: I understand.

10 THE COURT: Don't you think you could put aside the
11 allegations?

12 JUROR: Well, I could, I could probably sit on the
13 jury and listen and, you know, listen to the defense and
14 see the evidence. But I still -- I mean, I just don't see
15 any other outcome for me as far as I'm concerned. I'm not
16 -- look, I'll stay if you want me to, but I ---

17 THE COURT: No.

18 JUROR: I don't -- he can -- I don't think there's
19 anything that they can show me that will prove he's not
20 guilty.

21 THE COURT: So, you would start out with the
22 assumption he's guilty?

23 JUROR: I think so.

24 THE COURT: All right. Thank you, ma'am. I'll excuse
25 you on this case.

1 JUROR: Thanks, Judge.

2 THE COURT: Next person, please.

3 BAILIFF: No. 488.

4 CLERK OF COURT: Shante Wilson.

5 JUROR: Shante Wilson.

6 CLERK OF COURT: Shante Wilson.

7 THE COURT: Ms. Wilson. Step in little closer, Ms.
8 Wilson. Yes, ma'am?

9 JUROR: This is the one that was on -- is this the
10 person ---

11 THE COURT: I don't know, but just assume for a second
12 it was.

13 JUROR: Okay. I just seen that it was on the news. I
14 did see it on the news.

15 THE COURT: Okay.

16 JUROR: And I heard that he had been in jail before
17 for assault or domestic violence charges or whatever. He
18 had been let out and came and murdered this lady.

19 THE COURT: What you've heard is people that have
20 alleged that.

21 JUROR: Just from whatever was said on the media.

22 THE COURT: Well, the media repeats what other people
23 say.

24 JUROR: Right.

25 THE COURT: Now, you do agree, don't you, in America

1 people are presumed innocent and they have a right to a
2 trial, and the burden's on the state to prove guilt beyond
3 a reasonable doubt?

4 JUROR: Uh-huh.

5 THE COURT: Would you follow that standard here?

6 JUROR: Uh-huh.

7 THE COURT: And would you be able to put aside what
8 the media said and make your decision based on the evidence
9 presented in the courtroom?

10 JUROR: Yeah, I would listen to them.

11 THE COURT: And would you hold the state to the burden
12 of beyond a reasonable doubt?

13 JUROR: Repeat that for me.

14 THE COURT: Would you hold the state to the fact they
15 have the burden of proving beyond a reasonable doubt?

16 JUROR: Uh-huh.

17 THE COURT: You would not require the defendant to
18 prove himself innocent?

19 JUROR: Yeah, I would rather for him to be -- prove
20 himself to be innocent.

21 THE COURT: But you realize the state has the burden
22 of proving guilt, though?

23 JUROR: Okay.

24 THE COURT: If I told you that was a rule, would you
25 follow that rule?

1 JUROR: That's he's already been ---

2 THE COURT: No. That the state has the burden of
3 proving it.

4 JUROR: The state has evidence he's been ---

5 THE COURT: The state has that burden. That's their
6 job, to see if they could prove it.

7 JUROR: Oh, yeah.

8 THE COURT: All right, and would you hold them to that
9 requirement, that they must prove him guilty?

10 JUROR: Yes.

11 THE COURT: Would you be fair to both the state and to
12 defense and approach the case with an open mind?

13 JUROR: Uh-huh.

14 THE COURT: Would you base your decision based on the
15 evidence in the case?

16 JUROR: Uh-huh.

17 THE COURT: And the law as I instruct it to you?

18 JUROR: Uh-huh.

19 THE COURT: All right, stand back over there, please.

20 Any objection from the state?

21 MR. HEMBREE: Nothing from the state, Your Honor.

22 THE COURT: Defense?

23 MR. WILSON: I don't have any objections.

24 THE COURT: I find her qualified. With that, there
25 are no objections from either side, right?

1 MR. WILSON: Sir?

2 THE COURT: So long as I qualified them and they
3 indicate that because I want to be consistent so I don't --
4 there are no objections, right?

5 MR. WILSON: I have no objections.

6 THE COURT: Okay, have a seat. Just don't discuss
7 anything with the jurors. Thank you.

8 Next juror, please.

9 BAILIFF: No. 198, Judge.

10 THE COURT: 198.

11 CLERK OF COURT: David Harden.

12 THE COURT: All right.

13 JUROR: Well, I have read about it in the newspaper,
14 and some of my co-workers were talking about it, and we
15 seem to think he's guilty.

16 THE COURT: That's only because of the allegations
17 that have been made, right?

18 JUROR: Yes.

19 THE COURT: And you do realize that a lot of times
20 what's in the media is just what other people are saying?
21 It may or may not be have been?

22 JUROR: Yes.

23 THE COURT: And you know in a court of law, the jurors
24 sits in the jury box and determines whether the state has
25 proven guilt beyond a reasonable doubt, and they make the

1 decision based on the evidence in the courtroom and put
2 aside any media situation. Can you do that, sir?

3 JUROR: I think I can.

4 THE COURT: And you would be fair both to the state
5 into the defense, be fair to both sides?

6 JUROR: Yes.

7 THE COURT: And you would make your decision based on
8 the evidence presented in the courtroom?

9 JUROR: Yes.

10 THE COURT: And you would follow the law as I instruct
11 it to you?

12 JUROR: Yes.

13 THE COURT: And hold the state to the burden of proof
14 beyond a reasonable doubt?

15 JUROR: Yes.

16 THE COURT: Thank you, sir. Step back. You're
17 qualified, sir. Oh, I'm sorry. One thing, sir. Now, you
18 said that because of your friends and all, you thought that
19 guilt -- but once again, that was only because of the
20 media?

21 JUROR: Yes.

22 THE COURT: You're willing to put that aside, and you
23 would approach that jury with no opinions, no conclusions
24 whatsoever, right, sir?

25 JUROR: Yes.

1 THE COURT: All right. Thank you.

2 Next person, please.

3 BAILIFF: 321, Judge.

4 CLERK OF COURT: Mary Millione.

5 THE COURT: Gillione?

6 JUROR: No. You just always put an E on it and it
7 confuses the hell out of everyone.

8 THE COURT: Oh, Million?

9 JUROR: Yes, and it's not so much what I know about
10 the case as ---

11 THE COURT: Not too loud.

12 JUROR: Okay. As me growing up, my father was
13 extremely abusive to my mother and killed her almost,
14 almost killed her on two occasions. So, I had a
15 preconceived notion and a horrible bias against essentially
16 any male that's going to be accused of anything.

17 THE COURT: Any male who's proven to have done
18 something?

19 JUROR: Well, yes. I mean, from what I've heard, the
20 kidnapping and restraining order, which is essentially what
21 my father had, and the cops used to come to the house and
22 say, you know, unless he actually kills or does something,
23 we can't really enforce it. And I just have a -- I think
24 he's guilty regardless. I don't really care what anybody
25 else says. So, I'm sure the solicitors would love to have

1 me. I doubt the defense is really keen on putting me on.

2 THE COURT: Do you feel that you could put that aside?

3 JUROR: I doubt it. I mean, honestly I felt that way
4 for -- my father was finally arrested when I was eighteen.
5 So, that was fourteen years ago. And that's just ---

6 THE COURT: I think that's -- I want to be fair. I'm
7 going to excuse you on this case. Thank you, ma'am.

8 JUROR: Thank you, sir.

9 THE COURT: Y'all can note objections if you wish.

10 MR. WILSON: I have no objections.

11 BAILIFF: 265, Judge.

12 CLERK OF COURT: Jeffrey Lawrence.

13 THE COURT: Yes, sir, Mr. Lawrence. What would you
14 like to tell me, please?

15 JUROR: Oh, I --

16 THE COURT: And don't be so loud, okay?

17 JUROR: I didn't recognize the name until you had just
18 said it. A year ago, like I said, me and my father read
19 the paper and I remember hearing about that.

20 THE COURT: Okay.

21 JUROR: Like I said, he's guilty, I mean, as far as
22 I'm concerned.

23 THE COURT: That's only from what you saw in the
24 media?

25 JUROR: Yeah.

1 THE COURT: And are you willing to put that aside and
2 sit on the jury and listen openly to the evidence?

3 JUROR: No, sir.

4 THE COURT: Well, what about in the media other than
5 what you generally read and other allegations makes you
6 form an opinion?

7 JUROR: It's my -- just what I believe from what I've
8 read.

9 THE COURT: Okay, but you do realize the media is just
10 repeating what other people said.

11 JUROR: Oh, I understand that. I understand that but,
12 like I said ---

13 THE COURT: And what they may not have said.

14 JUROR: I understand but to me, it's all pretty cut
15 and dry. I think he's guilty.

16 THE COURT: So, any time of the media says -- has
17 reported that, you ---

18 JUROR: Not any time. I take my own personal beliefs
19 from that.

20 THE COURT: What about this one then that's different
21 than other ones?

22 JUROR: Like I said, I feel it's just cut and dried.

23 THE COURT: But what about this that's different than
24 other allegations you hear in the media on other people?

25 JUROR: As far as?

1 THE COURT: Well, I mean, you, you said that sometimes
2 the media may, say, repeat allegations against someone that
3 you may not necessarily form an opinion and believe it.
4 So, what about this one causes you to believe that what
5 people in the media says, says ---

6 JUROR: He was found at the house, correct?

7 THE COURT: I don't know.

8 JUROR: As far as what I know.

9 THE COURT: But what if the evidence doesn't prove
10 that?

11 JUROR: Well, then I guess then I'm -- I'm decided on
12 that. He's guilty.

13 THE COURT: But if the evidence doesn't prove that,
14 would you have an open mind if they don't prove it?

15 JUROR: No, sir.

16 THE COURT: So, even if they don't prove he did
17 anything, you'd still find him guilty?

18 JUROR: Yes, sir.

19 THE COURT: Because of the media?

20 JUROR: Yes, sir.

21 THE COURT: Not because you just want to get off jury
22 duty?

23 JUROR: No, sir.

24 THE COURT: Have a seat back there. Don't talk to
25 this case. You're staying with us right now. Step back to

1 the back.

2 I honestly feel this guy just wants off jury duty, but
3 I don't know how to break it.

4 CLERK OF COURT: Excuse him?

5 THE COURT: No, not yet.

6 Next person, please.

7 BAILIFF: 30, Judge.

8 THE COURT: Yes, ma'am.

9 CLERK OF COURT: Ashley Rivera.

10 THE COURT: Come closer, Ms. Rivera.

11 JUROR: He did the property management at Bay Tree. I
12 have close friend that was -- he actually was a ---

13 THE COURT: You said he was a, he was a what?

14 JUROR: He did the property management at Bay Tree.

15 THE COURT: Who did?

16 JUROR: A close friend that I work with.

17 THE COURT: Who did the property management?

18 JUROR: Winkler.

19 THE COURT: He did?

20 JUROR: Yes.

21 THE COURT: Okay.

22 JUROR: And ---

23 THE COURT: How do you know that?

24 JUROR: A friend that I work with ---

25 THE COURT: How do you know that?

1 JUROR: Because I know a lady that lived there, Helen
2 Singles. I teach with her.

3 THE COURT: But you don't, you didn't know it
4 yourself. Someone told you that?

5 JUROR: She told me that, but she also said he was
6 guilty as sin and he definitely did it. But also my oldest
7 one is eight and nine. There's stuff -- their ---

8 THE COURT: Not so loud.

9 JUROR: Their grandmother was Alice Donovan and I have
10 no sympathy for anybody that would do anything like that
11 because I've seen ---

12 THE COURT: Well, what if ---

13 JUROR: Because I've seen the trauma that we've lived
14 through.

15 THE COURT: Well, but what's, what if it's not proven
16 he did it?

17 JUROR: Wasn't -- it took forever to prove anything
18 about them, that they killed Alice, and they still haven't
19 found her body.

20 THE COURT: I'm not sure ---

21 JUROR: And I had my kids and counseling ---

22 THE COURT: Get closer to her and don't speak so
23 loudly. See, what I'm saying is I -- what you're saying, I
24 don't know anything about. My question is do you believe
25 that the state should have to prove whether somebody did

1 something? Or not and if they didn't prove that they did
2 something, would you then find them not guilty?

3 JUROR: Why would he run?

4 THE COURT: Well, would you --

5 JUROR: He wouldn't have ran and hid if he didn't do
6 it.

7 THE COURT: Ma'am, ma'am, ma'am, ma'am, when you start
8 on a jury trial, you start with you listening and the state
9 must prove any of these things. Running ---

10 JUROR: I've already ---

11 THE COURT: If you put -- would you put aside all
12 you've heard and be able to have an open mind and listen to
13 see what the state's proven?

14 JUROR: I can't because I know what we've gone through
15 with a similar case.

16 THE COURT: But if the state doesn't prove that this
17 is a similar case, couldn't you then say wait a minute,
18 they haven't proven that?

19 JUROR: If it was a completely different case, I would
20 be able to.

21 THE COURT: Well, you don't know what this case is.
22 Nobody's proved a thing yet.

23 JUROR: Well, as long as it's not the Winkler case and
24 it's not about murder or anything to do with murder or ---

25 THE COURT: So, any time someone ---

1 JUROR: --- anybody else then I ---

2 THE COURT: Any time, any time someone is alleged to
3 have committed murder and some people say they formed an
4 opinion, then you would not give them a fair trial?

5 JUROR: Not if they -- no, because they ran.

6 THE COURT: Well, even if they didn't do any of that?

7 JUROR: I don't believe that he didn't.

8 THE COURT: Okay, why do you?

9 JUROR: Because he wouldn't have ran. He wouldn't
10 have hid.

11 THE COURT: Well, I know, but what if it's not proven
12 he ran and he hid?

13 JUROR: Well, they wouldn't have been looking for him.
14 He was right down the road from my house.

15 THE COURT: But that's all what the media says. That
16 doesn't necessarily mean ---

17 JUROR: That's -- what you're saying ---

18 THE COURT: Ma'am, if you would, ma'am stand over
19 here.

20 JUROR: Okay.

21 MR. HUMPHRIES: There ain't no way on this one. She's
22 fully made up her mind. You've done a good job.

23 THE COURT: No objections?

24 MR. WILSON: No objections.

25 THE COURT: Ma'am, do not discuss this with anyone

1 else on the jury. Just go outside and leave, okay?

2 JUROR: Okay.

3 THE COURT: Next person.

4 BAILIFF: 219, Judge.

5 CLERK OF COURT: 219, Deborah Hojos.

6 JUROR: Hojos.

7 THE COURT: Hojos. Yes, Ms. Hojos.

8 JUROR: I've been following this trial for about ---

9 THE COURT: Talk to her.

10 JUROR: The past year through media pretty much, and
11 they are also saying that if he is convicted, and I haven't
12 formed an opinion on that yet, this could be a death
13 penalty trial, and that is something that I cannot do.
14 That's my concern.

15 THE COURT: Okay, as far as this matter, as far as
16 sitting on the jury panel itself, do you feel that you
17 could put aside the media comments and listen to the
18 evidence in the case and law and make your decision based
19 on that?

20 JUROR: Yes, I could.

21 THE COURT: And you'd put aside any media matters?

22 JUROR: I could.

23 THE COURT: Okay. All right. The other matters we
24 will address later on, okay.

25 JUROR: Okay.

1 THE COURT: So, you could be fair both to the state
2 and to the defense? You have to say so she can hear you.

3 JUROR: Yes.

4 THE COURT: And you would make your decision based on
5 the evidence in the case and the law as I instruct it to
6 you?

7 JUROR: Yes.

8 THE COURT: And you could put aside anything you may
9 have read in the media?

10 JUROR: Yes.

11 THE COURT: All right. Thank you, ma'am. Just have a
12 seat back in the audience.

13 BAILIFF: 72, Judge.

14 CLERK OF COURT: Johnny Causey, III.

15 THE COURT: The third?

16 JUROR: Yes, sir.

17 THE COURT: Causeys, fancy people, man.

18 JUROR: Yes, sir.

19 THE COURT: What you got, Mr. Causey?

20 JUROR: I've already ---

21 THE COURT: Not too loud.

22 JUROR: I've, I watched the news. I used to be a
23 Myrtle Beach police officer for several years, I have law-
24 enforcement friends. And I've heard and read the
25 newspapers and seen the news ever since it happened. I've

1 already based my opinion on, on that and ---

2 THE COURT: All right, and many times, as you know
3 from your experience, sometimes the news media gets it
4 wrong.

5 JUROR: Yeah.

6 THE COURT: As far as allegations.

7 JUROR: Right.

8 THE COURT: And sometimes talking to friends, friends
9 say things that really aren't necessarily true.

10 JUROR: Yeah.

11 THE COURT: They think it is, but it doesn't prove out
12 to be the truth.

13 JUROR: Well, I already have an opinion based what I
14 was ---

15 THE COURT: I know, but knowing that, don't you feel
16 you could sit on the jury and determine if the, if the
17 state presents evidence to convince you of guilt?

18 JUROR: No.

19 THE COURT: So, if they don't present any evidence,
20 you would find him guilty anyway?

21 JUROR: I, this is -- I already have my, my beliefs.

22 THE COURT: Well, would you hold the standard, the
23 state to the standard of proving he's guilty?

24 JUROR: I, I would try to, but with law enforcement in
25 my background, I just -- I just ---

1 THE COURT: I mean, law enforcement, that's good.

2 JUROR: Yeah.

3 THE COURT: I mean, that's, we need that in society,
4 but even law enforcement knows that sometimes people are
5 charged with things that they didn't do.

6 JUROR: True. I've, I've been there that I've seen
7 both sides of it, so.

8 THE COURT: Well, since you've seen both sides of it,
9 don't you feel that you could sit on the jury and say I'm
10 going to put aside anything I've ever heard ---

11 JUROR: I don't think I could, no.

12 THE COURT: Why?

13 JUROR: Just for the fact that I've, I've got, I know
14 people and they've -- I've just heard so many things, so
15 it's all been one way. It hasn't been other way. That is
16 pretty much my ---

17 THE COURT: Have you talked to police officers
18 involved in this case?

19 JUROR: Not hands on. Not directly, no.

20 THE COURT: Did you talk to police officers involved
21 in the agency that investigated this?

22 JUROR: With the agent I did, yes, sir.

23 THE COURT: Have a seat. Stand back over here for a
24 second. Stand over here.

25 I'm not sure I can do any more with this one. Do you

1 want to ask any other questions of him?

2 MR. WILSON: Nothing from -- nothing.

3 THE COURT: You're excused from this case, sir.

4 JUROR: Thank you.

5 THE COURT: Next person, please.

6 BAILIFF: Number 30, Judge.

7 THE COURT: Number 30.

8 CLERK OF COURT: David Blackburn.

9 THE COURT: Okay.

10 JUROR: I'm in the life insurance business.

11 THE COURT: Step closer.

12 JUROR: I'm in the life insurance business.

13 THE COURT: Okay.

14 JUROR: And I'm a life insurance agent, and we deal
15 with death every day and we talk about these things and
16 this particular case and other cases. And we do our own
17 scenarios and all about things like this, murder, death and
18 all. And I recall this case, talking about this case, and
19 some of the agents in the office knew or thought they knew
20 things about the case.

21 THE COURT: And that's key, knew or thought they knew,
22 and they may or may not have.

23 JUROR: Well, you know, we have a lot of veterans in
24 the insurance business. You can pretty well tell what is
25 going on most of the time from certain circumstances and

1 situations. And as far as a verdict, I think ---

2 THE COURT: Here's the question. Not the verdict.
3 The question is the beginning, sir. Could you get on the
4 jury and listen with an open mind and make your decision
5 based on the evidence presented in the case?

6 JUROR: My mind ---

7 THE COURT: You'd make your decision on what you heard
8 from people knowing nothing about the case?

9 JUROR: I would make my decision on what I think in my
10 mind, and I couldn't -- I mean, I can't change what's in my
11 mind already and what's been placed in my mind.

12 THE COURT: So, whatever you read in the papers ---

13 JUROR: As far as ---

14 THE COURT: --- and y'all discuss, that always turns
15 out to be true?

16 JUROR: No, but, but like I say, I've been in the
17 insurance business thirty-something years and I, I've seen
18 a lot of things and I know a lot of things, and I don't
19 speculate. And as far as my wife, and she works in an
20 environment where they talk about these same type things.

21 THE COURT: What evidence have you gotten that anybody
22 has or has not done something? Have you got any evidence
23 from somewhere that someone has done something other than
24 just people talking?

25 JUROR: You talking about on this case?

1 THE COURT: Yeah, because all the news is -- is
2 review, basically report to you other people saying things.

3 JUROR: Of course. Of course I'd apply the evidence
4 because I'm not in law enforcement, but...

5 THE COURT: All right. Well, wouldn't you require the
6 evidence be presented to you that person's committed a
7 crime before you ---

8 JUROR: Yes, sir, but I'm so -- my mind, I mean, I
9 can't change was on my mind already, and I would, I
10 wouldn't be a good juror and I, I'm sorry.

11 THE COURT: So, you would not be open, be willing to
12 have an open mind and listen to the evidence?

13 JUROR: My mind would probably be closed if, like I
14 say, because ---

15 THE COURT: You have somebody charged with a crime of
16 murder, your mind is ---

17 JUROR: I've worked in the big cities. I, I grew up
18 in the Charlotte area.

19 THE COURT: What's that got to do with anything?

20 JUROR: I've been in insurance thirty-something years.
21 I've seen ---

22 THE COURT: I'm not questioning that.

23 JUROR: --- the murder and I've seen death and I've
24 seen ---

25 THE COURT: And you've seen people charged with things

1 they didn't do, too, haven't you?

2 JUROR: Definite, but usually law-enforcement officers
3 are ninety-nine percent correct most of the time.

4 THE COURT: So, you've formed an opinion?

5 JUROR: I'm sorry, but yes, sir, I have.

6 THE COURT: And you cannot divorce yourself from that
7 opinion?

8 JUROR: I'm sorry. I wish I could, but I can't.
9 That's the reason I hesitated on standing up. I just
10 can't, I mean, you know, be unfair.

11 THE COURT: Thank you, sir. You may step outside,
12 sir.

13 JUROR: Do I need to return this?

14 THE COURT: Yes.

15 Next person.

16 BAILIFF: Number 229, Judge.

17 JUROR: Eileen Iazetta.

18 THE COURT: Ma'am?

19 JUROR: Eileen Iazetta is my name.

20 THE COURT: Yes.

21 JUROR: I feel as if I'm a very personal to this case.
22 I lived in River Hills, which ---

23 THE COURT: Where is that?

24 JUROR: In Little River.

25 THE COURT: That's in this county, okay.

1 JUROR: Oh, yeah. Uh-huh.

2 THE COURT: I'm not from here.

3 JUROR: And the day that Mr. Winkler was arrested, we
4 were on the golf course, and we were all asked to leave.
5 He was arrested not very far from where I live. I remember
6 being very frightened of -- took about two weeks feeling
7 very uncomfortable and told to stay inside. That he was
8 armed and dangerous, and I followed the case very closely
9 and I really don't think I would be very impartial.

10 THE COURT: Well, now, remember now someone may or may
11 not have committed a crime, but it may or may not have been
12 him.

13 JUROR: I realize that.

14 THE COURT: You wouldn't hold the state to the burden
15 of proving beyond a reasonable doubt that he did it?

16 JUROR: I know people that live in the Bay Tree. I'm
17 very familiar with lots of little details, and I just feel
18 it's just too personal, too close to how, how I feel. I'm
19 married to a New York City retired sergeant. I've been
20 very much involved in the legal system, you know, through
21 all of his dealings. So, I really need to kind of let you
22 know that I feel very strongly about this.

23 THE COURT: Okay. Now you feel strongly, but could
24 you sit on the jury and say what evidence has been
25 presented that he did it and require the state to present

1 evidence of his guilt?

2 JUROR: I could listen.

3 THE COURT: Okay, and would you require the state to
4 prove his guilt beyond a reasonable doubt?

5 JUROR: My, in my mind I, I'm, I'm almost formed an
6 opinion.

7 THE COURT: Almost, but could you divorce yourself
8 from that opinion and see if the state ----

9 JUROR: I don't think so.

10 THE COURT: --- could prove guilt? So, even if the
11 state couldn't prove he did it, you'd still find him
12 guilty?

13 JUROR: In my heart, uh-huh.

14 THE COURT: So, you say although the state didn't
15 prove him guilty, I'll find him guilty?

16 JUROR: As I say, in my heart that's how I would feel.
17 I mean, the evidence could be completely different, but as
18 I say, I, I remember being frightened and uncomfortable
19 with this whole thing, and I don't know that I would go
20 into this whole thing with a clear, open mind.

21 THE COURT: Okay, but let's just talk about our system
22 for a minute. System in America, somebody charged with a
23 crime would ---

24 JUROR: I understand that.

25 THE COURT: --- require other people to sit on the

1 jury and say we're going to put aside anything we may have
2 heard about it. We're going to see if the state can prove
3 guilt beyond a reasonable doubt. Would you be able to do
4 that?

5 JUROR: I don't see how he's going to get a fair trial
6 in Horry County or in the Little River area. I just don't
7 see how it's going to go that. That's my opinion.

8 THE COURT: Okay. Just don't discuss it with anyone
9 else, okay?

10 JUROR: Yes, sir.

11 THE COURT: You may be excused.

12 JUROR: Thank you.

13 THE COURT: Next one.

14 BAILIFF: 182, Judge.

15 THE COURT: Okay, what is your name? What is his
16 name?

17 CLERK OF COURT: William Grainger.

18 THE COURT: Okay, Mr. Grainger.

19 JUROR: I just wanted to say that the daughter of the
20 deceased in this case and her husband are very good friends
21 of my family and me, as well as her husband owns land
22 adjacent to me and he rents some of my land. Also, her
23 father and I are best friends, and I feel like I could
24 not ---

25 THE COURT: Have you talked with him about the case?

1 JUROR: I, I talked with her and her husband and
2 several times about it, but not her father. And I ---

3 THE COURT: Her, meaning the daughter?

4 JUROR: Daughter.

5 THE COURT: And have you formed an opinion because of
6 that?

7 JUROR: Yes, I have. I feel like I could not make an
8 impartial decision on this case.

9 THE COURT: Which would you make a decision on it?

10 JUROR: It would be guilty.

11 THE COURT: Now, you say these people rent property
12 from you?

13 JUROR: Yes, sir, and own the land adjacent to mine.

14 THE COURT: And they still rent to this day?

15 JUROR: Yes, and they, they own a building about a
16 mile from there and we see them frequently. Matter of
17 fact, I ---

18 THE COURT: And they're friends of yours?

19 JUROR: Yes, sir, and we attend the same church.

20 THE COURT: All right, sir. You're excused. Thank
21 you, sir.

22 JUROR: Okay.

23 THE COURT: All right, that leaves me with 265 and 246
24 and 45 I'm going to excuse. So, it's probable at the next
25 break I'm going to call them up. Okay, 45, 246, and 265.

1 Other than those that I'm probably going to excuse,
2 any objection to those I did excuse or didn't excuse,
3 number 316, 186, 357? These are all of them. Anyway, 16 I
4 excused. 186 I excused. 357 I excused. 306 I excused.
5 45 and 246 I am going to excuse. 490, I think it's -- or
6 496.

7 CLERK OF COURT: 490.

8 THE COURT: 490 I qualified. 171 I qualified. 5 I
9 excused. 488 I qualified. 198 I qualified. 32 I excused.
10 265 I'm going to excuse ---

11 CLERK OF COURT: 32, I don't have a 32.

12 THE COURT: 321, I'm sorry, 321. 265 I'm going to
13 excuse. 382 I excused. 219 I qualified for this, although
14 they may not make it to the next phase. We'll wait and
15 see. I qualified -- 72 I excused. 30 I've excused. 229
16 I've excused, and 182 I've excused. Any objection or
17 comments from the state?

18 MR. HUMPHRIES: None, Your Honor.

19 THE COURT: And from the defense?

20 MR. WILSON: None other than what we've already made.

21 THE COURT: Okay, but no other objections. Okay.

22 Thank y'all.

23 (END OF CONFERENCES AT SIDEBAR.)

24 (A PAUSE.)

25 THE COURT: Okay, ladies and gentlemen, almost there.

1 Almost there. Ladies and gentleman, there are
2 organizations that focus on various crimes. You've heard
3 Mothers Against Drunk Driving and Students Against Drunk
4 Driving, Citizens Against Violent Crime and other types of
5 organizations and all that. If you are a member of one of
6 those organizations or contribute within more than \$100 a
7 year to those organizations, just for information purposes
8 any type of organization that focus on certain types of
9 crimes, if you would please stand up. Anyone else?

10 All right, what is your name?

11 JUROR: Rebecca Roupe.

12 THE COURT: Rebecca Roupe?

13 JUROR: Roupe.

14 THE COURT: What's your number?

15 JUROR: 391.

16 THE COURT: And what organization are you a member of,
17 ma'am?

18 JUROR: CASA.

19 THE COURT: C-a-s-a?

20 JUROR: Uh-huh.

21 THE COURT: All right. Thank you, ma'am. You may be
22 seated.

23 Your name, ma'am?

24 JUROR: Judith Lawson.

25 THE COURT: And what is your number, ma'am?

1 JUROR: 266.

2 THE COURT: 266, and what organization are you a
3 member of, ma'am?

4 JUROR: The Task Force.

5 THE COURT: Said The Task Force?

6 JUROR: Yes, sir.

7 THE COURT: All right, and, and that's -- is that a
8 local organization here?

9 JUROR: It's not a local organization. It's a
10 national organization.

11 COURT REPORTER: I can't hear her, Judge.

12 THE COURT: Come up here, ma'am, and let me talk to
13 you up here, please.

14 (THE FOLLOWING CONFERENCE IS HELD AT SIDEBAR.)

15 THE COURT: If you would, stand about right there.
16 What is the organization's name?

17 JUROR: It's called The Task Force?

18 THE COURT: The Task Force?

19 JUROR: Yes, sir.

20 THE COURT: And as an organization for what?

21 JUROR: We work with gays, lesbians, transgenders and
22 bisexuals.

23 THE COURT: All right, and that has focus on crimes
24 against people?

25 JUROR: Hate crimes.

1 THE COURT: Thank you, ma'am.

2 (END OF CONFERENCE AT SIDEBAR.)

3 THE COURT: Now, I've talked with some of you about
4 various events, and if we've already talked about it, we
5 don't need to discuss it again. But if anyone out there
6 who has in your family -- when I say family, I mean someone
7 very, very close to you or your spouse, your parents, your
8 siblings, your children, brothers and sisters -- that
9 either has been the victim of what you would term a violent
10 crime, or has been charged with a violent crime. Violent
11 crime like armed robbery, like murder, assault and battery
12 high and aggravated nature with intent to kill, or
13 burglary, things of that nature. If that is something that
14 occurred to you in the past, was a victim or being charged,
15 or someone in your family -- that means you identify as
16 your family member -- or somebody else very, very close to
17 you, please step up. Tell me about it. If you would, come
18 on up here, please. Be quiet. We're almost, almost there.
19 Everyone else, if you would, just keep order, please.

20 (THE FOLLOWING CONFERENCES ARE HELD AT SIDEBAR.)

21 THE COURT: Yes, sir.

22 BAILIFF: 369.

23 THE COURT: 369. What's your name again, sir?

24 JUROR: William Pryor.

25 THE COURT: Yes, sir.

1 JUROR: My sister, Patricia Borne, convicted, serving
2 eighteen years for armed robbery, crack cocaine.

3 THE COURT: Okay. Thank you, sir. If you would, sir,
4 have a seat over there in the jury box.

5 BAILIFF: 442.

6 THE COURT: Yes, sir. Give me your name.

7 JUROR: Richard Suggs.

8 THE COURT: Yes, sir, Mr. Suggs.

9 JUROR: Years back, I was assault ---

10 THE COURT: No, no. Go ahead.

11 JUROR: I been, I was assaulted and got stabbed nine
12 times, and nothing happened to the gentleman.

13 THE COURT: Okay. Would that affect your ability to
14 be fair and impartial in a trial?

15 JUROR: Probably.

16 THE COURT: Why is that, sir?

17 JUROR: Well, I just, just nothing ever happens. He
18 stabbed me, about killed me. Was in the hospital a week
19 and nothing ever happened to him.

20 THE COURT: Okay, but how would that affect this case?

21 JUROR: I don't know. I mean, because I don't know
22 what this case is.

23 THE COURT: You heard them read the allegation, didn't
24 you, sir?

25 JUROR: I, I maybe did. I can't remember it so good,

1 sir. It's a hard time. I have a hard time keeping up with
2 everything.

3 THE COURT: What do you do for a living again, sir?

4 JUROR: Window tinting.

5 THE COURT: Okay. The allegations are, sir, that
6 someone committed the crime of murder and other crimes.
7 The question is, sir, could you sit on the jury box and
8 make your decision based on the evidence in this case, in
9 this case and not have what affect -- happened to you in
10 the past have anything to do with decision?

11 JUROR: I, I'm not sure.

12 THE COURT: Well, why would anything in the past have,
13 have an affect?

14 JUROR: I, I, I'm not sure. I don't know, sir.

15 THE COURT: Well, how is it any different than, say,
16 something else in your life? I mean, why would that have an
17 affect?

18 JUROR: I, I mean, I don't, I don't, I don't know the
19 answer to that.

20 THE COURT: All right. Well, could you listen to the
21 evidence?

22 JUROR: Yeah, I can try. Yes, sir.

23 THE COURT: Well, would you make your decision based
24 on the evidence and the law as I instruct it to you?

25 JUROR: I'll do my best.

1 THE COURT: Okay. Well, can you tell me one reason
2 why you wouldn't?

3 JUROR: I don't have a good one, sir.

4 THE COURT: And then, therefore, you would?

5 JUROR: Okay.

6 THE COURT: I'm asking you.

7 JUROR: I, I would do my best to my ability.

8 THE COURT: Well, let me ask you this. If you had
9 instructions -- you said, what type of work you do again?

10 JUROR: Window tinter.

11 THE COURT: If you got instructions on how to do
12 window tinting on certain jobs, but you'd try to do that,
13 would you not?

14 JUROR: Yes, sir.

15 THE COURT: You'd do your best?

16 JUROR: Uh-huh.

17 THE COURT: And that's what you'd do in a case like
18 this, too. You're going to do your best to do what the
19 instructions, your requirements are by the law and the
20 evidence presented to you?

21 JUROR: Yes, sir.

22 THE COURT: And can you be fair to both sides?

23 JUROR: I would try, yes, sir.

24 THE COURT: Okay, can you tell me any reason you
25 couldn't be fair to both sides?

1 JUROR: No, sir, I can't.

2 THE COURT: So, you'd be fair to both sides. All
3 right, take off your sunglasses for me unless those are
4 prescription glasses.

5 JUROR: They're not.

6 THE COURT: Okay. Have a seat in the jury box over
7 there for me. Yes, sir.

8 BAILIFF: 46.

9 CLERK OF COURT: Joseph Brady.

10 THE COURT: 46. Yes, sir, Mr. Brady?

11 JUROR: My sister-in-law was murdered in November of
12 '05.

13 THE COURT: Where? Where was that?

14 JUROR: Kaiser, West Virginia.

15 THE COURT: Was someone arrested for that?

16 JUROR: He took his own life as well.

17 THE COURT: Okay. Was that some sort of relationship
18 they had?

19 JUROR: She was at a friend's house and a ex-boyfriend
20 showed up, broke into the house. Shot her, shot the
21 girlfriend, turned the gun on himself.

22 THE COURT: All right. Now, you've heard the
23 allegations here in this case?

24 JUROR: Yes, sir.

25 THE COURT: Would this affect your ability to be fair

1 and impartial in this case?

2 JUROR: For me, it's hard to say, you know? It was a
3 pretty emotional thing for our whole family. But, I mean,
4 I've had to look at the evidence. I think I could be fair,
5 I guess.

6 THE COURT: Would you make a decision ---

7 Everyone please. Court reporter's having trouble
8 hearing.

9 Would you make your decision based on the evidence in
10 this case and the law as I instruct it to you?

11 JUROR: Yes.

12 THE COURT: And would you put aside what happened to
13 your sister in regards to your decision in this case?

14 JUROR: I believe so.

15 THE COURT: And would you -- would that have anything
16 to do with your decision in this case?

17 JUROR: No.

18 THE COURT: So, you'd make your decision based on the
19 evidence in this case?

20 JUROR: Yes.

21 THE COURT: And hold the state to the burden of guilt
22 beyond a reasonable doubt?

23 JUROR: Correct.

24 THE COURT: All right. Have a seat over here for me,
25 please.

1 Next person, please.

2 BAILIFF: 244.

3 CLERK OF COURT: What number?

4 Bailiff: 244.

5 MR. HUMPHRIES: 244.

6 THE COURT: All right, yes, ma'am?

7 CLERK OF COURT: Catherine Kammerer.

8 THE COURT: Yes, ma'am?

9 JUROR: It's just a minor issue. My home was
10 burglarized about six weeks after my husband passed away.

11 THE COURT: Okay. Would that have any affect on your
12 ability to be fair and impartial in this case?

13 JUROR: No, sir.

14 THE COURT: Would you make your decision based on the
15 evidence in this case and the law as I instruct it to you?

16 JUROR: Yes, sir.

17 THE COURT: Thank you.

18 Next person, please?

19 BAILIFF: 474.

20 THE COURT: 474, and she is?

21 CLERK OF COURT: Debra Warrington.

22 THE COURT: Ms. Warrington?

23 JUROR: My sister was kidnapped and -- by her
24 estranged husband. He tried to murder her, and he spent
25 five years in Maryland state penitentiary for attempted

1 murder.

2 THE COURT: All right, and do you know anything about
3 the allegations in this case?

4 JUROR: Quite a bit, yes.

5 THE COURT: All right, would that affect your ability
6 to be fair and impartial, what happened to your sister, and
7 the allegations and make ---

8 JUROR: It possibly could, yes.

9 THE COURT: Do you feel you could divorce yourself
10 from that, make your decision in this case based on the
11 evidence in this case presented in the courtroom?

12 JUROR: To the best of my ability, I would try.

13 THE COURT: Well, my question is can you?

14 JUROR: It would be tough to put it aside because it,
15 it was very -- she was very close to me.

16 THE COURT: Well, the promise of the law for a fair
17 trial is a juror who can sit in the jury box and listen to
18 the evidence presented and will listen to the instructions
19 made by the judge. The juror would follow the law and
20 instructions given by the judge and determine through the
21 evidence has the state proven guilt beyond a reasonable
22 doubt. They would not let anything outside in her own life
23 affect their decision. Could you do that, yes or no?

24 JUROR: I could follow the judge's orders, yes, sir.

25 THE COURT: What about making your decision on the

1 guilt or innocence based on the evidence in the case ---

2 JUROR: Yes.

3 THE COURT: --- without regard to what happened to
4 your sister?

5 JUROR: Yes, I could look at just the evidence.

6 THE COURT: All right, have a seat.

7 BAILIFF: 378.

8 JUROR: Theresa Raynor.

9 CLERK OF COURT: Theresa Raynor.

10 THE COURT: Theresa Raynor. Yes, Ms. Raynor?

11 JUROR: A few years ago my husband got in with the
12 wrong crowd and drugs and alcohol and I had a restraining
13 order. We were separated for a year and a half, and he
14 stalked me for most of that time, was ---

15 THE COURT: Are y'all back together now?

16 JUROR: --- put in jail for -- oh, yeah. He is fine.
17 It's been four years now, but they were talking about
18 keeping him in there for a while.

19 THE COURT: Oh, so you've dealt with the solicitor on
20 this?

21 JUROR: Well, I talked with him, you know ---

22 THE COURT: Years ago?

23 JUROR: Yeah. This was way back.

24 THE COURT: Now, with the fact that you dealt with the
25 solicitor's office and the fact that your husband was

1 involved as he was with, with the activity, would that
2 affect your ability to be fair and impartial in this case?

3 JUROR: No.

4 THE COURT: Could you make your decision in this case
5 based on the evidence presented in the case and the law as
6 I instruct it to you?

7 JUROR: Right.

8 THE COURT: And do you feel that the fact that you've
9 dealt with the solicitor's office or your husband, would
10 that in any way cause you not to be fair to both sides?

11 JUROR: No.

12 THE COURT: You'd be fair to both sides?

13 JUROR: Both sides.

14 THE COURT: All right, go have a seat in the jury box.

15 BAILIFF: 439.

16 CLERK OF COURT: Joann Stewart.

17 THE COURT: Yes, Ms. Stewart.

18 JUROR: My brother.

19 THE COURT: Yes, ma'am?

20 JUROR: Was shot and killed by his mother-in-law,
21 1979.

22 THE COURT: Was she prosecuted for it?

23 JUROR: No. Accidental.

24 THE COURT: Accident, okay. Would the fact there was
25 an accident there, would that if any way affect your

1 ability to be fair and impartial in this case? Okay, you
2 be fair to both sides? You've got to say so she can hear
3 you.

4 JUROR: Yes.

5 THE COURT: Okay, and you would, you would make your
6 decision based on evidence in the case and the law as I
7 instruct it to you?

8 JUROR: Yes.

9 THE COURT: Okay. Have a seat in the jury box.

10 BAILIFF: 46.

11 CLERK OF COURT: Latavius Stephens.

12 JUROR: Latavius.

13 CLERK OF COURT: Latavius, excuse me.

14 MR. HUMPHRIES: What number?

15 CLERK OF COURT: 436.

16 THE COURT: Yes, Mr. Stephens, Mr. Stephens?

17 JUROR: Yeah, my dad. Murder.

18 THE COURT: Your father was murdered by somebody?

19 JUROR: No. My dad murdered somebody.

20 THE COURT: Murdered someone? All right, did he get
21 prosecuted for it?

22 JUROR: Yes.

23 THE COURT: Is he in jail now?

24 JUROR: Yeah.

25 THE COURT: Okay. Would that affect your ability to

1 be fair and impartial in this case?

2 JUROR: Yeah.

3 THE COURT: Why is that?

4 JUROR: Well, I don't want to go through it again.

5 THE COURT: What you mean go through it again?

6 JUROR: Yeah, I've been, like, murder cases. Been
7 there, every one we went through.

8 THE COURT: What you mean every one?

9 JUROR: The one we went through. The trial we had.

10 THE COURT: Yes, sir?

11 JUROR: And that hurt me. I just don't want to go
12 through it again.

13 THE COURT: I know, but -- well, the facts -- I can
14 understand you may not want to do it.

15 JUROR: Yeah.

16 THE COURT: But I'm saying if you're on that jury,
17 would you make a decision based upon the evidence presented
18 in the case and the law as I instruct it to you?

19 JUROR: On the evidence.

20 THE COURT: On the evidence and you would also follow
21 the law?

22 JUROR: Yeah.

23 THE COURT: You will follow the law as ---

24 JUROR: Yes.

25 THE COURT: --- I tell you? Well, then, you'd be able

1 listen to both sides, then, wouldn't you, sir?

2 JUROR: Yes, sir.

3 THE COURT: It'd just be you wouldn't like to do it,
4 but you could do it and you would base it on the evidence
5 and the law?

6 JUROR: Yes, sir.

7 THE COURT: All right, thank you. Have a seat.

8 BAILIFF: 493.

9 CLERK OF COURT: Ashley Wood.

10 JUROR: My brother-in-law got convicted of breaking
11 and entering and got convicted, two years in prison in
12 Northern Virginia. And that's the only person I know of.

13 THE COURT: Okay. Would that affect your ability to
14 be fair and impartial in this case?

15 JUROR: No.

16 THE COURT: Wouldn't affect you at all in this case,
17 would it?

18 JUROR: No.

19 THE COURT: And you would make your decision based on
20 the evidence in this case and the law as I instruct it to
21 you?

22 JUROR: Uh-huh.

23 THE COURT: Right, sir?

24 JUROR: Yes.

25 THE COURT: Okay, have a seat in the box.

1 Next person, please.

2 BAILIFF: 62.

3 CLERK OF COURT: Alyce Calfee.

4 THE COURT: Yes, Ms. Calfee, yes?

5 JUROR: My mother was a victim of an assault, and Lori
6 Johnson is good friends of mine. They're raising ---

7 THE COURT: Who are they?

8 JUROR: They're raising two children due to the
9 killing of the mother by their, by their father last year,
10 been this year, last year sometime.

11 THE COURT: That's some other case, now. I'm not sure
12 ---

13 JUROR: They're just good friends of ours.

14 THE COURT: Okay, step closer to this lady here so she
15 can hear you better. So, in other words, you're saying
16 some good friends of yours are taking care of children who
17 you think were killed -- the father ---

18 JUROR: Uh-huh.

19 THE COURT: --- what?

20 JUROR: Killed the mother.

21 THE COURT: Okay, and you know that, but would that
22 affect your ability to be fair and impartial in this case?

23 JUROR: I don't think so.

24 THE COURT: Would you make your decision in this case
25 based on the evidence in the case and the law as I instruct

1 it to you?

2 JUROR: I believe I could.

3 THE COURT: Well, would you follow the law as I
4 instruct it to you?

5 JUROR: Yes.

6 THE COURT: All right, and would you make your
7 decision based on the evidence in this case?

8 JUROR: Yes.

9 THE COURT: And would you make it on the evidence in
10 the case and put aside any thoughts you have about what
11 happened in that other case dealing with the people you
12 know?

13 JUROR: To the best of my ability, yes.

14 THE COURT: Well, would that have anything to do with
15 your decision in this case?

16 JUROR: No. I would be conscious about that.

17 THE COURT: Okay, and you would hold the state, in
18 this case, to the burden of proof beyond a reasonable
19 doubt?

20 JUROR: Yes.

21 THE COURT: Okay. Thank you, ma'am. Have a seat over
22 there in the jury box.

23 BAILIFF: 455.

24 CLERK OF COURT: 455, Wanda Truett.

25 THE COURT: 455?

1 JUROR: Uh-huh.

2 THE COURT: Yes, ma'am, Ms. Truett?

3 JUROR: I have a son that has a criminal domestic
4 violence against him. I didn't know if that's applied.
5 You said violent.

6 THE COURT: That's fine. That's fine. Would the fact
7 he does have a charge like that against him, would that
8 affect your ability to be fair and impartial in this case?

9 JUROR: I don't think so.

10 THE COURT: You'd be fair to both sides?

11 JUROR: Yes.

12 THE COURT: You'd make your decision based on the
13 evidence in this case and the law as I instruct it to you?

14 JUROR: Yes, sir.

15 THE COURT: All right. Thank you, ma'am. Have a
16 seat in the jury box.

17 BAILIFF: 431.

18 CLERK OF COURT: Ronnie Stackhouse.

19 JUROR: I had two brothers. One was in gang violence
20 and possibly drug charges. The second one, he was beaten
21 by the police and had stitches, had to get stitches and
22 everything to his head. Cops beat him in his head.

23 THE COURT: All right. Now in this case, would that
24 affect your ability to be fair and impartial?

25 JUROR: Doesn't know how to -- I didn't deal about --

1 I mean, what they done to my brother far as the cops.

2 THE COURT: Well, we do know that good or bad, that
3 happens sometimes. But, but the question in this case,
4 would you make your decision in this case based on the
5 evidence in this case?

6 JUROR: I would try not to make it personal, but it
7 will be tough.

8 THE COURT: Well, how would that interfere with your
9 decision in this case?

10 JUROR: I don't know. But, I mean, what the cops had
11 done at that time. Like I said, I'd try to keep it fair.
12 I would try to, you know, not hold anything over anyone's
13 head.

14 THE COURT: The question is could you make your
15 decision, sit on a jury, and listen to the evidence and
16 make your decision about whether the state's proven guilt
17 beyond a reasonable or not based on the evidence presented
18 in the case?

19 JUROR: I think I can.

20 THE COURT: All right, and would you follow the law as
21 I instruct it to you?

22 JUROR: Sure.

23 THE COURT: And so what happened to your family
24 members would have nothing to do with your decision in this
25 case?

1 JUROR: I'll try not to make it anything.

2 THE COURT: Well, do you think it would, or do you
3 think it wouldn't?

4 JUROR: It probably would, to be honest.

5 THE COURT: It would?

6 JUROR: It probably would.

7 THE COURT: Well, why would it? Why would it in this
8 case?

9 JUROR: I would, I would try and keep it out the case.
10 I mean, ever since that has happened to my brother, it
11 seemed like the justice system has been, to me, hasn't been
12 fair. But I'll try and make it, you know, nothing to do
13 with my brothers.

14 THE COURT: Well, my question to you, and you need to
15 know you're under oath, and you tell me this, and this is
16 the last question I'm going to have. If you're sitting on
17 this jury, would you make your decision based on the
18 evidence presented in this case and nothing about what
19 happened to your brother?

20 JUROR: Yeah.

21 THE COURT: Sir?

22 JUROR: Yeah.

23 THE COURT: And would you follow the law as I ---

24 JUROR: Yeah.

25 THE COURT: --- instruct it to you? All right, sir,

1 have a seat in the jury box.

2 BAILIFF: 266.

3 CLERK OF COURT: Candice Lawson.

4 THE COURT: Ms. Lawson. Yes, ma'am. Come closer, Ms.
5 Lawson. Yes, ma'am, Ms. Lawson?

6 JUROR: As far as abuse and everything like that, I
7 grew up in a very abusive family, my brother and my father.

8 THE COURT: Okay. Would that have any affect upon
9 your decision in this case? If you sat on the jury, would
10 you be able to listen and make your decision based on the
11 evidence in that case?

12 JUROR: It would be real hard.

13 THE COURT: No matter what the charges is?

14 JUROR: If, if it has anything to do with abuse or
15 anything like that, I'm afraid I would probably be biased.
16 I grew up with it all my life.

17 THE COURT: All right. Would you be able to put that
18 aside and make your decision based on the evidence
19 presented in that case?

20 JUROR: I honestly can't say that I could.

21 THE COURT: Have a seat over there.

22 All right. The three I have I have concerns with,
23 369, 42, and that one. 42 said she would try.

24 MR. WILSON: 442, my concern is that ---

25 THE COURT: 42.

1 MR. WILSON: 42?

2 CLERK OF COURT: I have 442.

3 THE COURT: I'm sorry. I messed up. 442, okay.

4 MR. WILSON: He's the one that's got ADD.

5 THE COURT: Yes.

6 MR. WILSON: And he didn't, he doesn't remember the
7 indictment being read.

8 THE COURT: That did cause me some concern. What
9 about 369? Sister was convicted of armed robbery?

10 MR. HUMPHRIES: Sister was in jail. She's in jail for
11 armed robbery.

12 THE COURT: But she's qualified. So, I'm down to 442
13 and 266.

14 MR. RATHBUN: And 474, whose sister was kidnapped by
15 the ex-husband who tried to kill her, that's close.

16 THE COURT: Okay. I know it's close, but she said she
17 could be fair and impartial.

18 MR. HEMBREE: I suggest we keep her for now. She gets
19 into it now, we can go into more detailed *voir dire* when
20 that starts.

21 MR. WILSON: Okay.

22 THE COURT: I'm going to excuse 442 and 266. Any
23 objections?

24 CLERK OF COURT: What number is that? I'm sorry.

25 THE COURT: 442 and 266. Any objections, Mr. Wilson?

1 MR. WILSON: I don't have any objections to those
2 being excused.

3 THE COURT: Other than who was the one that had --
4 with the mother, 436?

5 MR. WILSON: 474.

6 MR. HUMPHRIES: 474.

7 (COUNSELORS CONFER.)

8 THE COURT: Anybody have any objection to qualifying
9 474?

10 MR. WILSON: 474 and 36?

11 THE COURT: You have exception on that?

12 MR. WILSON: Yes, sir.

13 THE COURT: Okay. Well, I'm going to qualify them
14 right now. Okay.

15 (A PAUSE.)

16 THE COURT: If y'all would come up and look at 281.
17 We have a doctor's statement here. Just see it. Mr.
18 Wilson?

19 MR. WILSON: Yes, sir.

20 (OFF-THE-RECORD BENCH CONFERENCE.)

21 THE COURT: Madame Court Reporter, 281 is excused.
22 She's ill at this time with a doctor's statement. No
23 objection from the state or the defense.

24 MR. WILSON: That is correct.

25 (A PAUSE.)

1 THE COURT: The lady out there with the plane tickets
2 that brought me this note, come up, please, ma'am. Come on
3 up here.

4 THE COURT: Ma'am, I'm trying to decide. Were these
5 tickets bought three days ago?

6 JUROR: Yes.

7 THE COURT: All right, so when they were bought, you
8 already knew about jury duty? This is -- if you would,
9 back up so she can hear you. She says they were bought
10 three days ago. She forgot about jury service. Ma'am, I
11 couldn't excuse you for that. I'm sorry, but you still --
12 We will know by Thursday, probably by tomorrow. Well,
13 maybe on Wednesday. We'll need to keep these.

14 JUROR: No, that's my plane ticket.

15 THE COURT: Okay, well, you may not be able to use it.
16 Do you understand?

17 JUROR: Okay, yeah.

18 THE COURT: I'll be glad to sign what you need for the
19 airline to see if they'll give you a rebate.

20 JUROR: Just wait to Tuesday to see if I make it or
21 not?

22 THE COURT: All right. Thank you.
23 She's staying.

24 (END OF CONFERENCES AT SIDEBAR.)

25 THE COURT: All right, now, if you would, Mr. Hembree

1 and Mr. Humphries, introduce yourself to the jury, please.

2 MR. HEMBREE: My name is Greg Hembree. I'm the
3 solicitor of the 15th Judicial Circuit.

4 MR. HUMPHRIES: Fran Humphries. I'm the deputy
5 solicitor of the 15th Judicial Circuit.

6 THE COURT: Is anybody on the jury panel related by
7 blood or marriage to Mr. Hembree or Mr. Humphries, or have
8 any business relation, social relationship with them that
9 you haven't already talked to me about? If so, please
10 stand up.

11 Okay, what is your number, ma'am?

12 JUROR: 255.

13 THE COURT: Okay, and what is your name, ma'am?

14 JUROR: Susan Kreuger.

15 THE COURT: Ms. Kreuger, yes, ma'am?

16 JUROR: I attend church with Greg, I go to Sunday
17 school and serve on session with him.

18 THE COURT: All right. Now, Ms. Kreuger, would the
19 fact that occurs, would that affect your ability to be fair
20 and impartial in the case?

21 JUROR: No, it would not.

22 THE COURT: Would you sit on the jury and make a
23 decision based on the evidence in the case and the law as I
24 instruct it to you?

25 JUROR: Yes.

1 THE COURT: Thank you, Ms. Kreuger.. You may be
2 seated.

3 Go over here. What is your number, sir?

4 JUROR: 152.

5 THE COURT: 152. What is your name, sir?

6 JUROR: Richard Floyd.

7 THE COURT: Mr. Floyd, yes, sir?

8 JUROR: My mother works with him.

9 THE COURT: Your mother is, is that an attorney?

10 JUROR: She works for the solicitor's office.

11 THE COURT: All right, I'm going to excuse you on this
12 case, Mr. Floyd. You may step outside. Thank you, sir.
13 Unless there's an objection from either side?

14 MR. HUMPHRIES: No, Your honor.

15 THE COURT: You have an objection?

16 MR. WILSON: No objection.

17 THE COURT: All right. Just wanted to make sure, 152.

18 And your name, ma'am?

19 JUROR: I'm juror number 90. My name is Sheila
20 Conley, and I --

21 THE COURT: Juror number 90, juror number 90. Sheila
22 Conley.

23 THE COURT: Yes, Ms. Conley.

24 JUROR: I attend the same church with Mr. Hembree.

25 THE COURT: Do you know Ms. Truett?

1 JUROR: I do.

2 THE COURT: All right. Would that affect your ability
3 to be fair and impartial?

4 JUROR: I don't think it would.

5 THE COURT: Well, ma'am, would you be able to sit on
6 the jury and be fair to both sides?

7 JUROR: I think so.

8 THE COURT: You're not sure, or you will be?

9 JUROR: I will.

10 THE COURT: All right, and would you make your
11 decision based on the evidence in the case and the law as I
12 instruct it to you?

13 JUROR: I will.

14 THE COURT: Thank you, ma'am. You may be seated.
15 Your number, please, ma'am?

16 JUROR: 289.

17 THE COURT: 289. Yes, ma'am?

18 JUROR: My mother worked for the solicitor's office.

19 THE COURT: Your mother works there also? What's your
20 mother's name?

21 JUROR: Suzanne Wilson.

22 THE COURT: Suzanne Wilson.

23 JUROR: Yes.

24 THE COURT: All right. All right, ma'am, I will
25 excuse you on this particular case, ma'am. You can step

1 outside. What number are you again, Ms. Wilson?

2 JUROR: 289.

3 THE COURT: 289.

4 All right, if you would now, Mr. Rathbun, Mr. Wilson,
5 if y'all would introduce yourself to the jury, please.

6 MR. RATHBUN: My name is Paul Rathbun. I'm with the
7 Horry County Public Defender's Office.

8 MR. WILSON: My name's Ralph Wilson. I'm an attorney.
9 I practice in Conway with my son, Ralph Wilson, Jr.

10 THE COURT: Okay, any member of the jury panel related
11 by blood or marriage to Mr. Wilson, Mr. Rathbun, have any
12 business, personal, or social relationship with them,
13 including representation by either one of them, you or your
14 family now or in the past or any other type of association?
15 If so, please stand up.

16 Okay, did we talk about this already, sir? I
17 remember. All right, and what relationship is that and who
18 is it with?

19 JUROR: Previous attorney.

20 THE COURT: All right, and your number, number again,
21 sir?

22 JUROR: 369.

23 THE COURT: 369, and your name again?

24 JUROR: William Pryor.

25 THE COURT: All right, William Pryor, and how long ago

1 was that, sir?

2 JUROR: Oh, a couple of years back.

3 THE COURT: Okay. Would that affect your ability to
4 be fair and impartial? You can be fair to both sides?

5 JUROR: Yes.

6 THE COURT: Make decisions based on the evidence
7 indicated in the case and the law as I instruct it to you?

8 JUROR: Yes.

9 THE COURT: Thank you, Mr. Pryor. You may have a
10 seat.

11 Who else? Did I hear someone else stand up? What is
12 your number, ma'am?

13 JUROR: 375.

14 THE COURT: And what is your name?

15 JUROR: Amy Raye.

16 THE COURT: Amy Raye. Okay. Yes, ma'am?

17 JUROR: I don't know the attorneys, and I don't know
18 the man, but I'm an acquaintance with Tammy Hill through
19 the theater group.

20 THE COURT: All right. Now, would that in any way
21 affect your ability to be fair and impartial?

22 JUROR: No, sir.

23 THE COURT: Be fair to both sides?

24 JUROR: Yes, sir.

25 THE COURT: Make decisions based on the evidence in

1 the case and the law as I instruct it to you?

2 JUROR: Yes, sir.

3 THE COURT: Thank you, ma'am. You may be seated.

4 No one else stood up over here? I thought, thought I
5 saw someone stand up a while ago, but I -- okay.

6 All right. Counselors, could y'all approach, please?

7 (OFF-THE-RECORD BENCH CONFERENCE.)

8 THE COURT: I see it's about 12:00. Now, ladies and
9 gentlemen of the jury, let me just tell you what we're
10 going to do. I'm going to let y'all go for an hour and a
11 half. And while y'all are gone for that time, we're going
12 to be selecting various panels. I'll tell you about that
13 when you get back as far as the division.

14 But when you get back, about maybe ten to fifteen of
15 you will be staying with me. The rest of you will be
16 coming back tomorrow. But we don't know who those are
17 going to be yet until we start doing the selection process.

18 So, if you would, I want to see if I can number 252,
19 if he would stay, and 369 for a minute. The -- and 480,
20 480, the three of you stay with me.

21 The rest of you I will see at 4:00. You may leave at
22 this time. Please be back at 4:00. Do not discuss this
23 case with anyone. Do not talk to anyone at all, please,
24 family members or otherwise. Be back at 4:00.

25 (THE JURY PANEL EXITS.)

1 THE COURT: Reverend, come over here. What's your
2 number?

3 JUROR: 317.

4 THE COURT: All right, 317 wishes to talk to me. If
5 y'all want to come forward, please do so. Mr. Wilson.

6 MR. WILSON: Yes?

7 THE COURT: 317 wishes to talk to me.

8 (THE FOLLOWING CONFERENCES ARE HELD AT THE BENCH.)

9 THE COURT: Yes, sir.

10 JUROR: Yes, sir. I was referring to the question
11 about my wife's ability to take care of herself. She is
12 able to take care of herself at home, but she is to be
13 released from the hospital this afternoon. I was supposed
14 to be picking her up at 6:00 p.m. this evening.

15 THE COURT: Where is that, though?

16 JUROR: The Medical University in Charleston.

17 THE COURT: Take care of that. Please, everyone, be
18 quiet.

19 JUROR: And I am the only person that is able to go
20 and get her today. My ---

21 THE COURT: But let's first wait and see. You might
22 be all right.

23 JUROR: Okay.

24 THE COURT: But first wait and see. If not, you may
25 have to go there a little late, but we'll work that out,

1 okay, sir?

2 JUROR: Okay. That's fine.

3 THE COURT: All right.

4 JUROR: I just wanted to check on that. Okay.

5 THE COURT: Okay.

6 MR. HEMBREE: Judge, we can put him on a panel and
7 notify by phone because ---

8 MR. HUMPHRIES: At 4:00, he's going to need two hours
9 to get there.

10 THE COURT: Well, I know, but...

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 THE COURT: Now, sir, number 480.

13 JUROR: Yes, sir.

14 THE COURT: Sir, we do not find a card anywhere on you
15 at all, sir.

16 JUROR: All right. So, I got to go home?

17 THE COURT: So, Mr. Wilson, you want to challenge
18 that? I have no card anywhere.

19 MR. WILSON: I have no challenge.

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

21 JUROR: I can go home?

22 THE COURT: Adios.

23 All right, if you would, the two of y'all approach,
24 please.

25 Juror 252, tell me again regarding your kidney

1 problem, sir.

2 JUROR: Yes, my kidney. I had ---

3 THE COURT: Back up, sir, so she can hear you.

4 JUROR: I've had -- started out with enlarged
5 prostate. I've had three operations. Because the bladder
6 -- because the prostate would not drain the bladder, my
7 bladder backed up and damaged my kidneys. Also caused me
8 hypertension, okay?

9 I take, I take also blood pressure medication, of
10 which right now I am two hours and almost forty-five
11 minutes past that medication because I take it every day
12 like clockwork at 12:00 with my lunch. My blood -- without
13 having food now, my blood, blood sugar level changed
14 dramatically. So, I might a little upset, Judge, okay? I
15 -- the first part of ---

16 THE COURT: And you would have to go to the bathroom a
17 lot?

18 JUROR: I have -- pardon?

19 THE COURT: Have to go to the bathroom a lot?

20 JUROR: I'm unemployable. I can only take jobs where
21 it meets a certain situation. I'm sixty-one years old, and
22 this has happened to me. My insurance company pulled,
23 pulled the plug out of me. And down at MUSC for a kidney
24 transplant, had two treatment donors. I lost both of them.
25 So, now I'm having to find where my insurance company does

1 take it, which is up north.

2 THE COURT: All right, sir.

3 JUROR: Okay.

4 THE COURT: Sir, I'll excuse you on this case.

5 JUROR: Thank you, Judge.

6 THE COURT: I find that you could not properly serve
7 because of the medical condition he's under, and his needs
8 to -- his urge to hurry to go to the bathroom at all times,
9 sometimes without notice. And his mind would be on that
10 and could not focus on this trial. So, sir, you're excused
11 at this time.

12 JUROR: Okay. Good luck, Judge.

13 THE COURT: Good luck. Good luck to you.

14 All right, sir, come around here if you would, sir.
15 You know, I really need you to be ready to serve. I think
16 you want to serve.

17 JUROR: Oh, no.

18 THE COURT: I think you'd be a good juror to serve.

19 JUROR: I don't want to serve. I don't want to
20 convict him. I don't want to be nothing, no part of this
21 right here.

22 THE COURT: Well, I think you'd be a good juror, sir.
23 Can you not get someone to take care of your child?

24 JUROR: No.

25 THE COURT: Tell me about the car accident again.

1 JUROR: It was March 6th of last year. I was going
2 down 501. Someone t-boned me. I'm fighting the insurance
3 company now on that. I got a lot going on on my mind. I'm
4 trying to quit smoking, and then it's just -- this is not
5 going to work. It's your call.

6 THE COURT: I know, sir. I think this is -- it's
7 going to be my call. And I think under the law, sir, I
8 have no choice. I'm going to have to qualify you, sir.

9 JUROR: Okay.

10 THE COURT: Just come on back at 4:00.

11 MR. HEMBREE: What's his number?

12 THE COURT: That was juror 369.

13 JUROR: If I could bring in documentation from my
14 doctor, would that -- it -- get me off?

15 THE COURT: If you can find something to document
16 that, I'll look at it and see. It may or may not depending
17 on what the doctor says.

18 JUROR: Okay.

19 THE COURT: This is to say -- it has to say why you
20 can't serve.

21 JUROR: Okay.

22 THE COURT: Oh, I'm sorry. Over here. What's your
23 name?

24 JUROR: Latavious Stephens.

25 THE COURT: Do you know what your juror number is?

1 JUROR: 236.

2 THE COURT: 436.

3 JUROR: 436.

4 THE COURT: Yes, sir.

5 JUROR: I got to go pick up my son at 3:30 from
6 daycare. I don't have no babysitter. My baby momma, she
7 go to school. She in Georgia. I don't have no babysitter,
8 so there's, there's no possible way to come back out here
9 at 4:00.

10 THE COURT: How old is the child?

11 JUROR: Three. My mom live in Georgetown.

12 THE COURT: Well, why can't the babysitter stay until
13 5?

14 JUROR: No, I don't have no babysitter.

15 THE COURT: Well, who's got the child?

16 JUROR: Daycare.

17 THE COURT: Well, why can't the daycare keep her until
18 5?

19 JUROR: Huh?

20 THE COURT: Until 5?

21 JUROR: Because I'm on a schedule with him.

22 THE COURT: Well, let them know you need the child to
23 stay there until 5. We can probably get you there by 5.

24 JUROR: All right.

25 THE COURT: All right, see you back at 4. And if

1 somebody is staying there later, let me know.

2 JUROR: All right.

3 THE COURT: And you better be working on some family
4 members because you don't -- if you get on the jury, you're
5 going to have to have somebody to take care of your child.

6 What's your number, sir?

7 JUROR: My number's 200, Thomas Hardwick.

8 THE COURT: Mr. Hardwick, Thomas Hardwick, juror 200.
9 Yes, sir, Mr. Hardwick.

10 JUROR: I had -- you asked about crimes a while ago.

11 THE COURT: Yes, sir.

12 JUROR: I have never done one, but I had a sister that
13 got in some trouble probably thirty-some year ago.

14 THE COURT: All right.

15 JUROR: She misplaced some money at the bank.

16 THE COURT: Like investments or stuff like that?

17 JUROR: Yes, sir. They just put her on probation. It
18 wasn't violent.

19 THE COURT: Would that affect your ability to be fair
20 and impartial in this case?

21 JUROR: No, sir.

22 THE COURT: You could be fair to both sides?

23 JUROR: Yes, sir.

24 THE COURT: And make your decision based on the
25 evidence presented in the case and the law as I instruct it

1 to you?

2 JUROR: Yes, sir.

3 THE COURT: Thank you, sir. I'll see you at 4:00.

4 (END OF CONFERENCES AT THE BENCH.)

5 (A PAUSE.)

6 THE COURT: All right, here's what I'm going to do. I
7 instruct the, I instruct the clerk to go ahead and get me
8 twenty panels of five. Once we get that, we'll stop and if
9 anybody's left over, I'm not sure. How many you got left
10 over?

11 CLERK OF COURT: We've got 137.

12 THE COURT: All right. Well, just make it, make it
13 ten, ten panels of five and the rest of them we'll -- that
14 doesn't work. It won't hurt to have twenty panels of five.
15 And I'll, I'll think about how to structure them.

16 We're going to try to do two panels tonight if we can
17 and then we'll come, come back tomorrow. Let y'all know I
18 have a dental consultation in Myrtle Beach at 9 tomorrow
19 about a potential root canal. I just want to talk to the
20 physician, see if my tooth can be saved. If it can't be
21 saved, then he'll probably schedule an extraction, but that
22 won't happen this week. I want to talk to him. So,
23 therefore, we probably won't start until 10 tomorrow.

24 So, we'll try to do two panels. And doing these,
25 we'll go over various questions, and also might be some

1 other matters. Let me know. But when we get back at 4,
2 we'll announce those two. I'll then have them come back
3 about one hour in ten minute integral, integrals --
4 intervals for tomorrow. We'll just go through them and
5 see.

6 I plan to get about four jurors before we think about
7 quitting. But I do plan to try to have four alternates.
8 Maybe we'll need to -- may have to do forty-five. We'll
9 see.

10 Any questions from anyone? State?

11 MR. HEMBREE: No, Your honor.

12 THE COURT: Defense?

13 MR. WILSON: No, Your Honor.

14 THE COURT: All right, you'll enjoy your lunch and
15 we'll see you back here at 4:00.

16 (OFF THE RECORD.)

17 THE COURT: All right, counselors, could I see y'all
18 here just a second before we start here? If y'all would
19 approach the bench?

20 (OFF-THE-RECORD BENCH CONFERENCE.)

21 THE COURT: All right, any other *voir dire* requests of
22 the state, or any other objections regarding this jury as
23 impaneled?

24 MR. HEMBREE: Nothing from the state, Judge Lockemy.

25 THE COURT: Okay, any further *voir dire* requests from

1 the defense, or any other objections on the jury as
2 impaneled at this time?

3 MR. WILSON: None, Your Honor.

4 THE COURT: All right. Now, ladies and gentlemen, I
5 mentioned to you earlier about the indictments. The fact
6 someone's charged with a crime is not evidence that person
7 has committed a crime whatsoever. The burden is upon the
8 state to prove guilt beyond a reasonable doubt. A person
9 is presumed innocent unless guilt has been proved beyond a
10 reasonable doubt.

11 As you heard in this case, three charges in this case.
12 The allegations are charges of murder, burglary, and
13 assault and battery of a high and aggravated nature. The
14 procedure we do in this trial is that I am going to, and
15 this will be a bifurcated trial.

16 What that means is that the first thing that the jury
17 would do would be to listen and to determine whether or not
18 the state has proven the guilt beyond a reasonable doubt.
19 If the jury determines that the state has proven guilt
20 beyond a reasonable doubt and has found that the state has
21 proven guilt not only of murder beyond a reasonable doubt
22 but also of an aggravating circumstance beyond a reasonable
23 doubt, which I'll explain to the jury later in more detail,
24 then we will move to another phase where the jury would
25 then determine what would be the penalty for the crime.

1 So, it's sort of a bifurcated trial, two phases.

2 Now, the way we're going to select a jury is this.
3 We're going to separate you into groups of five. I am
4 going to try to get ten of you done today, ten groups of
5 five. The other groups of five will begin reporting
6 tomorrow at 10.

7 The reason is tomorrow at 10 is that I have a
8 important dental appointment at 9 in Myrtle Beach that is
9 just consultation, hopefully to determine whether I need a
10 tooth extracted or not. And so I'm going to see the
11 dentist hopefully for fifteen minutes at 9 and then be here
12 at 10 just to talk with him and then come back.

13 But then we will then go into groups of five
14 throughout the day, and the fives will be broken up into
15 one hour for each. So, we'll have tonight the first group
16 of five, second group of five, and then groups of five
17 every hour tomorrow and then into Wednesday.

18 Now, during these groups, what will happen during
19 these groups are that we will interview you individually as
20 a juror. And there will be certain things that I will be
21 asking you, and there will also be certain things that the
22 attorneys will be asking you. And so that's what will
23 happen when you are separated into the groups of five.

24 You'll come into the courtroom by yourself, and we'll
25 talk with you about a few things, and that's the process we

1 do until we get a sufficient number of jurors qualified.
2 And then after that, we'll then from those qualified select
3 the jury on this particular case.

4 Now, ladies and gentlemen, we can discuss this
5 individually with you when you come in, but let me just let
6 you know this. That the -- my plans are that somewhere
7 around Wednesday or it could be Thursday, but the jury that
8 we have selected -- and it could very well be Thursday --
9 that that jury then will be impaneled in this particular
10 case. We have lodging available for that jury, and we'll
11 take care of your every need and all that. So, but we'll
12 discuss that further with you, and that will be local
13 lodging and very nice lodging. All your food will be taken
14 care of everything else, and transportation and all that.
15 But as we get to you individually, I'll discuss that more
16 particularly, particularly with you, okay?

17 Now, at this time I'm going to have the clerk begin to
18 randomly through the computer select the groups of five.

19 Any objection from state or from the defense by the
20 selection process of the clerk at this time doing this
21 randomly and selecting into panels of five? Any objection
22 from the state?

23 MR. HEMBREE: No objection from the state, Your Honor.

24 THE COURT: From the defense?

25 MR. WILSON: No objection from the defense.

1 THE COURT: All right.

2 (A PAUSE.)

3 THE COURT: Now, when you get to your room, you first
4 group of five, you'll be going to a jury room. The first
5 person that I'm going to talk with, you're going to come
6 out into an anteroom, and at that point in time we're going
7 to show you a document, some documents for you to review,
8 names of potential witnesses and some other things. You're
9 to look those things over.

10 The list of potential witnesses, I just want you to
11 circle by a number anyone you know or are related or have
12 any association with. So, anybody on the list that you
13 know or have any relationship to, if you would please
14 circle. And then I'll discuss that further when you come
15 out.

16 While you are there in the, in the room, if you are
17 there with other people, do not discuss this case, any
18 allegations about it or anything else. Until you are
19 released as a juror in this case, until you are released
20 and are through with your service in this case, you're not
21 to discuss this case with anyone, including your fellow
22 jurors. You're not to discuss it all: anything about it,
23 anything you may think about it, or anything what somebody
24 else told you, or whatever else. Do not discuss this case
25 at all unless I ask questions and instruct you to discuss

1 it with me. So, please, ladies and gentlemen, do not
2 discuss this case with anyone or anything about it or
3 anything at all except as I instruct you.

4 So, even with your fellow jurors, talk about the
5 weather or anything else but not, not about this case or
6 anything else that has any regard to this case.

7 All right, Ms. Barfield, if you would please, ma'am,
8 I'm going to have you put under oath now, which means that
9 while you're back there with the panels, if anybody does
10 say anything about this case, they relate anything or
11 discuss it with you or anyone else, you are to report it to
12 the court immediately under, under your duty. Do you
13 understand, ma'am?

14 DEPUTY CLERK: Yes, sir.

15 THE COURT: If you would, put your papers down for a
16 second.

17 If you would, Madame Clerk, put this person under
18 oath, just that she will not discuss this case with anyone,
19 permit anyone to discuss it with her. And if this does
20 occur, she will report it to the court forthwith.

21 (WHEREUPON, THE DEPUTY CLERK IS SWORN.)

22 THE COURT: And you know one of those orders are they
23 are not talk about it among themselves either, okay?

24 Okay, if you would, the first panel of five. You have
25 someone that will remove the panel of five for me to the

1 jury room?

2 CLERK OF COURT: Yes. Oliver is going to take care of
3 that.

4 A is 313, Eric McPherson.

5 THE COURT: Come on up. Stand up here, Mr. McPherson,
6 if you would with the officer next to the jury box right
7 here. We only have five.

8 CLERK OF COURT: 242, Shirley Jones; 138, Daniel
9 English, Jr.; 19, Vicki Bell; and 200, Thomas R. Warwick,
10 Sr.

11 THE COURT: Now I'm going to do the other one, the
12 other group also. Do we have another room for them?

13 CLERK OF COURT: Yes, sir. Oliver's taken care of it.

14 THE COURT: All right. Now the second group, y'all
15 end up going to a room, and you just stay there, but I
16 don't need you. Once I read your name out, if you want to
17 report back at 5:00, you can do that. But why don't you
18 first go in the room, and he will show you where it is and
19 they will show you how to get back to it. In fact, 5:15
20 will be fine, but just try to be back in that room at 5:15.

21 This group, y'all can go and go now, and y'all stay in
22 here. We'll let you know something in a little bit.

23 (JURY PANEL A EXITS.)

24 All right, our second group. Okay, if you would read
25 out the names of the second group.

1 CLERK OF COURT: 378, Theresa Raynor; 327, Stephanie
2 Morris; 414, Mary Skipper; 345, Pleasant Overby, Jr.; and
3 374, Philip Randall

4 THE COURT: Philip Randall?

5 Now, if you would, who's going to be going -- all I
6 want you to do with them is to show them the room. And
7 then once you see that room, if y'all want to sit there for
8 a while -- it's going to be a while -- or you can go and
9 come back in forty-five minutes, whatever. It's up to you,
10 but go right to that room. Do not come back in the
11 courtroom, okay?

12 (JURY PANEL B EXITS.)

13 (A PAUSE.)

14 THE COURT: What the clerk is going to do now, ladies
15 and gentlemen, is she is now going to read me another group
16 of five. We're going to do about fifteen or sixteen more
17 groups of five. When your name is called up, you're going
18 to come up here and I'm going to put -- tell you what time
19 to come. The first one will come back tomorrow at 10 a.m.
20 The next will come back tomorrow at 11:15. The next one
21 will come back -- I don't know if she's got lunch scheduled
22 at 12 or 1. There will be a lunch hour there somewhere,
23 but I'll tell you when you come up. So, you got to make
24 sure you know what time you're coming back tomorrow, what
25 time you're coming back tomorrow.

1 And what I'd like for you to do is when you come back
2 tomorrow, until we say otherwise, the clerk may have an
3 instruction when she gets here. She may have some sort of
4 logistics worked out. But it's probable we're going to
5 have somebody waiting outside for you, and they'll have the
6 list and then take you to a jury room right outside the
7 door of this courtroom when you come back in tomorrow
8 morning. And this will go on and will probably go on into
9 Wednesday. Let's wait for the clerk get back and we'll get
10 the next one.

11 As you know, this is taking a while, so we're going to
12 try to let the backlog be done today. So, now you're here
13 late today so we can move tomorrow with this.

14 (A PAUSE.)

15 THE COURT: All right, now for our group C. I'm going
16 to have her give you -- the list to you, to everybody
17 later. She's just reading them out right now.

18 (A PAUSE.)

19 THE COURT: All right, give me group C.

20 CLERK OF COURT: Panel C.

21 THE COURT: If you would, come up front so we know
22 you're here.

23 CLERK OF COURT: Okay, 426, Jackqueline Spivey; number
24 9, Rebecca Bacot; 368, Melinda Prussman; 335, Tracie Neal;
25 and 454, Christopher Trout.

1 THE COURT: Now, you all are group C. I'm going to
2 let you go at this time. If you would, tomorrow morning at
3 10:00 please be outside that door there, okay, and there
4 will be someone there to take you somewhere.

5 Do not discuss this case with anyone at home, friends,
6 family, or anything, all right? Do not watch any media.
7 Do not look at any television news or read any local
8 papers. Everyone clear with that, okay? Do not read any
9 papers, and do not look at local news at all. Everyone
10 clear with that? I'll ask you that again tomorrow.

11 All right, good. We'll see you then tomorrow morning
12 at 10. You can leave at this time. Just be at the door
13 tomorrow morning at 10. All right.

14 (JURY PANEL C EXITS.)

15 CLERK OF COURT: This group is panel D to report at
16 11:10 a.m. 467, Stanley Waletkus; 253, Joseph Kowalkowski;
17 438, Joseph Stevens; 10, Melody Badurski; and 255, Susan
18 Kreuger. This is 11:10 tomorrow.

19 THE COURT: Okay, as Ms. Kreuger comes up, you heard
20 me tell the other people. Do not look at any local media.
21 Do not listen to any local news. Don't look at any local
22 papers at all. And if you would, at 11:10 tomorrow morning
23 be outside this door right here. There will be someone to
24 take you to your room.

25 Please do not discuss with any family members or

1 anyone else or among yourselves. Is that clear with
2 everyone? See you tomorrow at 11:10. You may leave at
3 this time.

4 (JURY PANEL D EXITS.)

5 CLERK OF COURT: This group is for 12:20 tomorrow.
6 474, Debra Warrington; 33, Mary Bosley; 47, Kevin Brown;
7 469, Marthina Wallace; 103, Douglas Craig, II.

8 THE COURT: As Ms. Wallace is coming and as you heard
9 me tell everyone else, don't look at any news. Don't look
10 at any local papers. Don't discuss with anyone at all. Be
11 outside that door at 12:20 tomorrow. Any questions? Okay,
12 we'll see you at 12:20 tomorrow afternoon outside the door.
13 See you then. Thank you.

14 (JURY PANEL E EXITS.)

15 THE COURT: Okay, this next group will be reporting at
16 what time?

17 CLERK OF COURT: 2:00.

18 THE COURT: Now, wait a minute now.

19 (A PAUSE.)

20 CLERK OF COURT: Okay 2:15 tomorrow. 450, Sandra
21 Thompson; 403, Kitty Schisler; 154, Harold Foster, Jr.;
22 496, Lorene Wright; and 28, Keith Benton.

23 THE COURT: Okay, 2:15 tomorrow afternoon. So, please
24 come in tomorrow and report outside the door. Someone will
25 be there to check to make sure you're all here and take you

1 back to your jury room.

2 As I said, no local news, no local TV news or
3 newspapers, and don't discuss this matter with anyone,
4 including members of your family or anyone else. And I'll
5 ask you tomorrow whether someone's discussed it with you.
6 Make sure no one talks with you about this case. See you
7 tomorrow at 2:15. You may leave at this time.

8 (JURY PANEL F EXITS.)

9 CLERK OF COURT: This is panel G.

10 THE COURT: Panel G.

11 CLERK OF COURT: 3:25.

12 THE COURT: 3:25.

13 CLERK OF COURT: 390, Lauren Roughton; 431, Ronnie
14 Stackhouse; 38, Shuntoneis Brave; 108, Julie Daniels; 11,
15 Ricky Ballen. That's at 3:25.

16 THE COURT: Okay, y'all heard me tell everything that
17 I mentioned to everyone else regarding no media. Don't
18 talk about it with your family or your friends or anyone
19 else. Outside the door tomorrow at 3:20. You are group G.
20 I have a list with your name on it, group G. All right,
21 see you tomorrow 3:25. Remember G.

22 (JURY PANEL G EXITS.)

23 CLERK OF COURT: This is 4:35 tomorrow. 363, JohnPaul
24 Plewa; 66, Anthony Carmichael; 84, Glenn Cole; 486, Allen
25 Wilson; 62, Alyce Calfee.

1 THE COURT: What time?

2 CLERK OF COURT: 4:35.

3 THE COURT: That is group H?

4 CLERK OF COURT: That is group H.

5 THE COURT: All right, you're group H, H as in hotel.

6 See you tomorrow afternoon at 4:35. 4:35 be outside the
7 door tomorrow at 4:35 in the afternoon. Everybody clear
8 with that? All right, 4:35. You're group H. All right,
9 see you tomorrow afternoon.

10 Do not discuss this with anybody. Don't read any
11 local media or look at any local TV news or don't talk to
12 anybody, anybody talk to you about. All right.

13 (JURY PANEL H EXITS.)

14 CLERK OF COURT: This for 5:40 tomorrow.

15 THE COURT: 5:40

16 CLERK OF COURT: 225, Earle Hoxie; 68, Steven
17 Carrigan; 79, Patricia Chumas; 244, Catherine Kammerer; and
18 455, Wanda Truett.

19 THE COURT: Okay, you all are on second shift
20 tomorrow, 5:40. 5:40 be outside the door.

21 Now, Ms. Huggins, you'll make sure the courtroom is
22 open so they can get in -- court building is open so they
23 can get in?

24 CLERK OF COURT: Yes, sir. Oliver is going to assist
25 me in that.

1 THE COURT: We need any particular door we need to
2 tell them to come in tomorrow?

3 BAILIFF: No, sir.

4 THE COURT: They can come in the front door?

5 Okay, you can come in the front door tomorrow, but be
6 outside the courtroom there at 4:40 p.m. tomorrow
7 afternoon. You're group I, I as in India, group I. All
8 right, see y'all tomorrow afternoon, 5:40.

9 (JURY PANEL I EXITS.)

10 THE COURT: This will be for 9:00 Wednesday morning,
11 9:00 Wednesday morning in group J.

12 CLERK OF COURT: 234, David Johnson; 170, Kristian
13 Gilleland, Your Honor; 20, Randy Bell; 470, Jeron
14 Wallingford; and 294, Marie Martin.

15 THE COURT: Okay, you are group J as in jugs or James.
16 You are group J. 9:00 Wednesday morning outside the door
17 there. 9:00 Wednesday morning, and we will take you to a
18 room.

19 Okay, please now, that means you got tonight and
20 tomorrow night. Do not discuss this case with anyone at
21 all. Do not look at any local media at all. Do not read
22 any papers from the local at all from the state really, and
23 do not discuss it with family members, anyone else. See
24 you 9:00 Wednesday morning, 9:00 Wednesday morning. See
25 you then.

1 (JURY PANEL J EXITS.)

2 CLERK OF COURT: January 30th Wednesday at 10:10 a.m.
3 402, C.D. Scaggs; 115, Shonta Dennison; 398, Christine
4 Sandler; 464, Eddie Velez; 466, Terry Walden.

5 THE COURT: You are group K as in a key, group K as in
6 key, 10:10 Wednesday, 10:10 on Wednesday morning outside
7 the door. We'll take you then to a room. Someone will
8 have the list there, but make sure once again and no media.
9 Don't talk about it to anyone or among yourselves or with
10 anyone else. If it happens, I will ask you about it. You
11 can tell me on Wednesday. We'll see you Wednesday at
12 10:10. See you then. You may leave at this time.

13 (JURY PANEL K EXITS.)

14 THE COURT: Group L, 11:20.

15 CLERK OF COURT: 300, Gregory Mascho; 434, Helen
16 Staton; 320, Franklin Miller, Jr.; 259, Matthew Lane; and
17 395, Kasi Sain.

18 THE COURT: All right, you're group L. You're going
19 to be here at 11:20 on Wednesday, 11:20. You heard what I
20 told everyone else about the media, don't talk to -- with
21 anyone about this at all, anyone. If anyone does speak to
22 you about it, or you do did end up seeing something on the
23 media, let me know Wednesday when you come in at 11:20
24 outside the door. Remember, you are group L, L, L, okay?
25 See you then.

1 (JURY PANEL L EXITS.)

2 CLERK OF COURT: This is panel M. This is panel M
3 January 30th at 12:30 p.m. 436, Latavius Stephens; 419,
4 Janna Smith; 125, Patsy Dozier; 399, James Santos; 439,
5 Joann Stewart. This is 12:30 on the 30th, panel M.

6 THE COURT: All right, if you would, you report back
7 here on Wednesday at 12:30. No, your group is M as in mop,
8 M and you're here at 12:30 on Wednesday, February 20th
9 outside the door. Anybody got any questions about what I
10 said about not looking at any media, not reading anything
11 about it court, or any newspapers at all or any TV news, or
12 talking about it with anybody in your family or any
13 friends, anything else from any questions? If not, at
14 12:30 on Wednesday outside the door.

15 (JURY PANEL M EXITS.)

16 THE COURT: All right, and this will be the afternoon
17 on Wednesday group N.

18 CLERK OF COURT: 317, Troy Metzner. I need to call
19 him; he's the one I will need to call after 8:00 tonight.

20 THE COURT: That works good and when he's coming back,
21 he'll know to come in at that time on Wednesday.

22 CLERK OF COURT: 217, James Hetherington; 91, Debra
23 Conroy; 293, Kitty Martin; 334, William Naylor.

24 THE COURT: If that's a cell phone, that needs to go.
25 Should not be in this courtroom.

1 Now, there are only four of you. That's because there
2 was one juror who was going out of town and was not going
3 to be back until tonight. So, that person I did not excuse
4 off jury duty. I said will probably not need him until
5 Tuesday anyway. That person's coming in tonight. We'll
6 have him for tomorrow to qualify him and assuming they
7 qualify, they'll be with you on Wednesday afternoon at
8 what? About 2:40?

9 CLERK OF COURT: 2:40.

10 THE COURT: 2:40. So, if you would, be outside the
11 door Wednesday at 2:40. Your group N as in November.
12 We'll see you at that time. Do not read any local papers
13 or seen any news about this matter, or talk about it with
14 anyone at all. We'll see you then at 2:40 on Wednesday.
15 You may leave at this time

16 (JURY PANEL N EXITS.)

17 (A PAUSE.)

18 THE COURT: Next group.

19 CLERK OF COURT: O, which is 3:50 p.m. on the 30th,
20 Wednesday. 134, Ina Eells; 43, Veora Brewer; 391, Rebecca
21 Roupe; 495, Richard Woodward, II; 339, David Noel, and
22 that's one that is reporting another day is 339. 339 is
23 the one that was at of town and would not be able to
24 report.

25 THE COURT: All right. So, that will be, he will be

1 here also Wednesday, Wednesday at 3, what time, 3?

2 CLERK OF COURT: 50.

3 THE COURT: 50. You're group O as in Oscar, so be
4 here Wednesday 3:50 outside the door there. Group O as in
5 Oscar at 3:50, we'll see you then. You may leave at this
6 time. Please don't discuss it with anyone look or at any
7 media, read any newspapers at all.

8 (JURY PANEL O EXITS.)

9 CLERK OF COURT: 5:00 p.m. on Wednesday the 30th: 55,
10 Robert Burke; 248, Brenda Kemp; 13, Arthur Baribault; 180,
11 Megan Grafton; 353, Timothy Parry.

12 THE COURT: All right, you are all 5:00 on Wednesday,
13 5:00 on Wednesday. Once again as I told everyone else,
14 don't look at any local papers. Don't look at any news on
15 TV. Don't discuss with anyone, and you got two days,
16 almost three really before you're back here So, please do
17 not discuss this with anybody. Don't look at any local
18 media. We'll discuss it with you if you have when you get
19 back on Wednesday. Outside the door, outside the door of
20 this courtroom. We'll see you Wednesday at 5:00 Wednesday
21 5:00, and you're group P as in a Paul. See you then.

22 (JURY PANEL P EXITS.)

23 (A PAUSE.)

24 THE COURT: The rest of you, it is probable that we're
25 going to need you, but there's no use going way off down

1 the day. So, what I'm going to have you do is to have you
2 call back on Wednesday night, and it will tell you what
3 time to come in on Thursday. If for some reason you have
4 some confusion, you're not certain, then you'd go ahead and
5 just come on in here Thursday at 9:00 if you have some
6 confusion. Now, y'all were given a pamphlet when y'all
7 came in here. Everyone have that's pamphlet? It has a
8 number on it. Now, hold on one second.

9 (A PAUSE.)

10 THE COURT: But what I'm going to do is this. It's
11 probably we're going to need you, so we have another jury
12 out, too, and I don't want to have any confusion getting a
13 different message conveyed with the same day. So, what I
14 want you to do is you report back into this courtroom
15 Thursday morning at 9:00 a.m., Thursday morning and you
16 just don't worry about calling. You just come back here
17 Thursday morning at 9:00 a.m. Anybody got any questions
18 all about that? Anybody get a question, let me know. Yes,
19 sir?

20 JUROR: I work for a local media company. Am I allow
21 to go to work tomorrow?

22 THE COURT: You can go to work, yes, but cannot
23 discuss this case with anyone at all. Do not look at any
24 local media and, like, don't read any newspapers for at
25 all. Don't let's anybody at work discuss this with you at

1 all, please. You got to make sure you don't have any
2 discussions at all with anyone. If someone says you're on
3 jury duty, I can't talk about that, and do not talk about
4 it among the families or with any friends or anybody. So,
5 the best thing is don't talk about it with your, and with
6 your -- don't look it news. Don't look at the TV news.
7 Don't talk about it with your friends, your family,
8 enemies, the dog, your cats, or your mirror. Just don't
9 talk about it with anyone, and just be back here Thursday
10 morning. All of you back here Thursday morning at 9:00
11 a.m.

12 Before you leave, let me have the attorneys come up.

13 (OFF-THE-RECORD BENCH CONFERENCE.)

14 THE COURT: Come up here, sir. I maybe didn't hear
15 you. You said you worked for Media Co? You work for a
16 media company.

17 (THE FOLLOWING CONFERENCE IS ARE HELD AT THE BENCH.)

18 THE COURT: You said you work for a company. What
19 company you work for, sir?

20 JUROR: The *Weekly Surge*. It's put out by the Sun
21 Company.

22 THE COURT: What is that?

23 JUROR: The *Weekly Surge*.

24 THE COURT: What is it?

25 JUROR: It's put out by the Sun Company.

1 THE COURT: What is it?

2 JUROR: Oh, it's a weekly paper that comes out every
3 Thursday.

4 THE COURT: No, sir, don't go to work.

5 (A PAUSE.)

6 THE COURT: This is juror number 393. All right,
7 thank you for clearing that up with us.

8 (END OF CONFERENCE AT THE BENCH.)

9 THE COURT: Anything else before we let this go jury
10 go? From anyone? Yes, ma'am?

11 JUROR: I deliver the *Sun News* in the morning. I
12 don't ever read it, but I do deliver it.

13 THE COURT: No, ma'am, I would rather you not do that
14 either, ma'am.

15 JUROR: Oh, okay.

16 THE COURT: What is your number?

17 JUROR: My number is 447.

18 THE COURT: 447. No, ma'am, just come back Thursday.
19 They'll just have to get someone else to deliver it until
20 then.

21 JUROR: Okay.

22 THE COURT: You know what? I delivered the *Charlotte*
23 *Observer*. I was in college, and I learned how to use my
24 left hand while in the vehicle, throw the paper, even
25 though I'm right handed. Was amazing. After a while I

1 could hit the porch and once in a while hit the -- no, no,
2 I'd get the porch once in a while. It's amazing. You do
3 it in a car also?

4 JUROR: Yeah.

5 THE COURT: Yeah, it's great, isn't? Do you do it
6 over the roof?

7 JUROR: Three years.

8 THE COURT: Yes, ma'am?

9 JUROR: I just wanted to let you know I work at the
10 wellness center, and there are televisions all over the
11 place.

12 THE COURT: If you -- are you concerned about that?

13 JUROR: Yes.

14 THE COURT: Then don't go to work, ma'am. What's your
15 number?

16 JUROR: 268.

17 THE COURT: 268, very good. All right, any other
18 questions at all? All right, what time you coming back
19 here?

20 JURY PANEL: 9:00.

21 THE COURT: Thursday, January 31st. We'll see you
22 9:00 Thursday morning.

23 (THE REMAINING JURY PANEL EXITS.)

24 THE COURT: Go over with you the procedure I would
25 like to do in this matter. We have Mr. McPherson, or Mr.

1 McPherson is already out in the anteroom now reviewing the
2 three types of jurors. I gave him copies of those things.
3 In addition, I'm going to put my law clerk under oath, and
4 I'm going to ask him certain questions. If you would come
5 forward, Mr. Daniel. Raise your right hand.

6 (WHEREUPON, THE LAW CLERK IS SWORN.)

7 THE COURT: Now, Mr. Daniel, speak real loud. I
8 directed you, did I not, to get the list of witnesses
9 provided by both sides?

10 MR. DANIEL: Yes, sir.

11 THE COURT: And from that, how did you compile a list
12 by basically -- or how did you do once I gave you both
13 lists?

14 MR. DANIEL: I basically put both lists into one word
15 document and alphabetized them A to Z.

16 THE COURT: So, you did it regardless whether it's
17 defense or state witness, you just put it in alphabetical
18 order?

19 MR. DANIEL: Yes, sir.

20 THE COURT: And, in fact, you had -- and so on a -- in
21 alphabetical order?

22 MR. DANIEL: Yes, sir.

23 THE COURT: All right, and that is a list that we have
24 prepared and you gave the clerk to show jurors to see if
25 they know anyone?

1 MR. DANIEL: Yes, sir.

2 THE COURT: In fact, a couple of them are going to be
3 sort of the same names twice, but just to make sure you
4 didn't miss anybody, I instructed you -- because I didn't
5 want you to think there was a double name, it was the same
6 name, a different person -- you kept everything in it just
7 as it was, just as it was given you?

8 MR. DANIEL: That is correct.

9 THE COURT: All right, and any questions by the state
10 of Mr. Daniel? Any objections of that process?

11 MR. HEMBREE: None from the state, Your Honor.

12 THE COURT: Mr. Wilson or Mr. Rathbun?

13 MR. WILSON: Nothing, Your Honor.

14 THE COURT: All right. Now -- Mr. Wilson, you may sit
15 down. Now, Ms. Huggins has been instructed that no one is
16 to get a copy of this witness list, neither the state nor
17 the defense. I assume we'll have done your Rule 5 and so,
18 therefore, once a juror comes out, that juror, only one
19 juror is to be given this list at the time, and that juror
20 is to bring this list out with him. If there are circles
21 on it, then I will of course give that to the court
22 reporter to mark. If there are not circles on it, they're
23 all -- the person said they didn't mark anybody, I'll
24 probably reuse that, that list. So, Ms. Huggins, you
25 understand?

1 CLERK OF COURT: Yes, sir.

2 THE COURT: Only one juror at the time gets a list so
3 I can keep up with it, and that juror is to bring that list
4 out with them.

5 CLERK OF COURT: Yes, sir. I instructed Ms. Barfield
6 with those instructions.

7 THE COURT: And she knows not to give them to anybody
8 else?

9 CLERK OF COURT: That's correct.

10 THE COURT: All right. Okay. Any objection to that
11 process from the state?

12 MR. HEMBREE: None from the state, Your Honor.

13 THE COURT: The defense?

14 MR. WILSON: No objections to that, Your Honor.

15 THE COURT: Had nothing to say, Mr. Wilson?

16 MR. WILSON: No, sir.

17 THE COURT: Okay. Now, when the, when the juror comes
18 out, I will remind them that they are still under oath when
19 they were put under oath early today, and then I'll ask
20 them some general questions about the trial procedure.
21 I'll then find out further if there have been any
22 discussions they've had with anyone about the case. Any
23 media manners, I'll ask that again, and then I will see if
24 they reviewed the witness list and see if they know anybody
25 on the witness list. And then I will talk to them about

1 the three types of jurors, ask which type of juror they
2 are, or he or she is, and go into various questions about
3 that.

4 Once I have completed, if the juror makes it through
5 that process, then I'll turn it over to the state for
6 questions permitted by law, and alternate over to the
7 defense for questions permitted by law. Any follow up I
8 need to do, then I'll, then I'll follow up on that issue.

9 We are seeking a juror who is one who can listen and
10 make a decision based on the evidence in the case and the
11 law as I instruct it to them, that's not going to be
12 affected by any media they may or may not have seen, or any
13 things that they have heard from anyone else outside the
14 courtroom. And we're seeking a juror that will be open
15 minded if a decision of guilt were to come about, a juror
16 would be open minded about the potential penalties there
17 and would not have one set decision already made that they
18 would do if a, you know, if verdict of guilty were brought
19 back.

20 I will also remind the jurors in a situation of if we
21 got to the phase of deciding the sentence and if the
22 sentence was a decision of death, they'd also have sign,
23 they would have to sign the verdict. All jurors would
24 have to sign, and would they have in problem in that
25 regard.

1 Any matters the state wishes to bring to the court's
2 attention?

3 MR. HEMBREE: No, Your Honor.

4 THE COURT: Defense?

5 MR. WILSON: Nothing.

6 THE COURT: All right. I need about two minutes, and
7 then come out and we'll start. Take a moment to go to
8 restroom or get a drink of water or whatever, let's do
9 that. And then we'll come out and get started on the first
10 panel.

11 Media, once I bring that jury in, no more media after
12 that, okay? Thank you.

13 (OFF THE RECORD.)

14 THE COURT: Okay. Is the state ready?

15 MR. HEMBREE: State's ready to proceed, Your Honor.

16 THE COURT: Defense ready?

17 MR. WILSON: We're ready, Your Honor.

18 THE COURT: All right. If you would, please bring Mr.
19 McPherson in, please, and then after that, let the next
20 person come out and be sitting in the room looking at a
21 jury, the jury thing.

22 (JUROR #313 ENTERS THE COURTROOM.)

23 EXAMINATION BY THE COURT:

24 Q. Mr. McPherson?

25 A. Yes, sir.

1 Q. It's been a long day, hasn't it?

2 A. Yes, sir.

3 Q. Have a seat if you would please, sir. It says here
4 you are originally from Pittsburgh, Pennsylvania?

5 A. Yes, sir.

6 Q. Happy, happy for those Steelers, what, last year, were
7 you?

8 A. Two years ago I guess.

9 Q. Two years. My nephew, his favorite team is the
10 Steelers. I have been up that way. You know where in New
11 River is in West Virginia?

12 A. Yes, sir.

13 Q. I went white water rafting with the kids on that
14 river.

15 A. Okay.

16 Q. The bridge there says it's the tallest bridge that
17 cars can pass over in America.

18 A. I have been over it quite a few times.

19 Q. Now, what I'm going to do here is ask you just a few
20 questions, and please understand this is a conversation.
21 You're not on trial.

22 A. Okay.

23 Q. This not a part of -- this is just a conversation
24 we're having.

25 Now, I gave you a list of people's names and asked you

1 to circle anybody you knew. Did you circle anybody at all?

2 A. Phyllis Richardson.

3 Q. Well, no, no, I just asked you did you.

4 A. Oh. Yes. I'm sorry.

5 Q. Now, if you would, what number is that?

6 A. 96.

7 Q. 96. Now, how do you know number 96?

8 A. She is the sister-in-law of my wife's ex-stepfather.

9 Q. Sister-in-law of your wife's ex-stepfather?

10 A. Uh-huh.

11 Q. Now, how did you know that? How did you know that,
12 your wife's ex-stepfather's sister-in-law? It's amazing
13 you would know that.

14 A. Because I've been with my wife now for almost thirteen
15 years, and I've actually visited her at her house.

16 Q. With Ms. Richardson?

17 A. Yes.

18 Q. Have you ever discussed this case with her?

19 A. Oh, no. It's been a while.

20 Q. All right, what you mean it's been a while?

21 A. It's been a while since I've seen her.

22 Q. Oh, since you've seen her?

23 A. Yes.

24 Q. When is the last time you saw her?

25 A. Several years ago.

1 Q. Okay. If for some reason she were involved in
2 testifying on whatever level of involvement in this case,
3 would that make you look upon her differently than you
4 would any other witness?

5 A. I don't suppose so, no, sir.

6 Q. Would you look upon her just like you would any other
7 witness testifying in the case?

8 A. Yes.

9 Q. And, and so that would not cause you to believe or
10 disbelieve her more or less because of the fact she has
11 some distant relationship with your current wife's ex-
12 husband you say?

13 A. Current wife's ex-stepfather.

14 Q. Stepfather, ex-stepfather. Oh, I see. He's divorced
15 from her mother?

16 A. From my wife's mother, yes, sir.

17 Q. Okay. The fact that she is somewhat related to him,
18 would that in any way cause you to look at her testimony
19 differently or treated it differently?

20 A. No, sir.

21 Q. All right. Did you know anybody else on this list?

22 A. No, sir.

23 Q. All right, can I have it?

24 THE COURT: Okay, let the record reflect I have
25 reviewed the list, too, and there are no other names

1 circled, and this will be marked for him. No one is to see
2 it, okay?

3 (QUESTIONNAIRE OF JUROR #313-McPHERSON MARKED INTO
4 EVIDENCE AS COURT'S EXHIBIT NUMBER 2-A.)

5 Q. Now, let me ask you another thing. I asked about the
6 attorneys. You don't know any of the attorneys involved in
7 this case?

8 A. Personally? No.

9 Q. Okay. Do you know the defendant at all, Mr. Winkler?

10 A. No.

11 Q. Okay. Have you formed or expressed an opinion at all
12 about the guilt or innocence of the defendant?

13 A. Somewhat, yes, sir.

14 Q. Who did you, who did you -- have you expressed it to
15 someone?

16 A. No, sir.

17 Q. So, you say you've formed an opinion?

18 A. Somewhat, yes, sir.

19 Q. What does that somewhat mean?

20 A. A little bit, it's kind of hard not to, not to, you
21 know, when you hear some of the charges and whatnot against
22 him.

23 Q. And have you heard all, heard that from newspaper
24 accounts or TV or something or some other way?

25 A. Newspaper.

1 Q. And you do realize the newspaper really isn't any kind
2 of -- it's just repeating what other people ---

3 A. Of course.

4 Q. --- have said and could or could not be reliable?

5 A. Yes.

6 Q. You feel that if you're on the jury in this case that
7 you could divorce yourself from what you may have read in
8 the newspaper, divorced yourself about what matters you may
9 have thought you formed opinions about and be fair to both
10 sides, and listen and make decisions based on the evidence
11 presented in the case?

12 A. Yes.

13 Q. Okay. Other words, you could listen and put aside
14 anything you may have read and decide the issues in this
15 case based on the evidence you hear in the courtroom and
16 the law as I instruct it to you?

17 A. Yes.

18 Q. And you do realize that under our system of law, the
19 jurors decide what the facts are based on the evidence and
20 the standard of proof, the state having the burden of
21 proving beyond a reasonable doubt, and they make those
22 decisions? But they must follow the law as the judge
23 instructs them. They must follow the instructions from the
24 judge, and would you do that?

25 A. Yes.

1 Q. Okay. Then could you, depending on the facts and the
2 evidence and the law, could you find the defendant not
3 guilty in this case if, if the evidence, facts, and law
4 warranted it?

5 A. Yes, I -- yes.

6 Q. Could you, if the evidence and facts and the law so
7 warranted it, find him guilty?

8 A. Yes.

9 Q. Okay. Have you discussed this case with anyone?

10 A. No.

11 Q. I gave you a sheet paper of types of jurors back
12 there. Do you remember what I gave you?

13 A. Yes, sir.

14 Q. Do you have it with you, or did you leave it, too?

15 A. No. They kept it back there.

16 THE COURT: Okay, just as soon they bring it out with
17 them.

18 BY THE COURT:

19 Q. But let me give you this one here again, okay?

20 A. Okay.

21 Q. Now, were you able, did you have enough time to go
22 over the three types of jurors?

23 A. Yes, sir.

24 Q. And you saw the three types. Of those three types,
25 Mr. McPherson, which would you consider yourself?

1 A. Probably type one.

2 Q. Type one. Now, type one says that you feel that once
3 a murder is committed, the death penalty is the most
4 appropriate punishment no matter what the circumstances of
5 the case are?

6 A. If he's guilty, yes.

7 Q. All right. So, if say the evidence was there and the
8 jury determines the person is guilty, no matter what
9 circumstances or mitigation or anything else, you would
10 think a person should receive the death penalty and never
11 should receive any other, life imprisonment or any of that?

12 A. Oh, I guess it would depend somewhat on what the
13 circumstances are. I guess which one I would mostly be is
14 I would probably be type one.

15 Q. Okay. Did you read type two and type three?

16 A. Yes, sir. I did.

17 Q. And if you -- could you read them again and maybe go
18 over those with me again?

19 A. Yes.

20 (A PAUSE.)

21 Q. And, I would, I want to make sure you understand.
22 Although they're talking about what sentence or decision on
23 punishment the jury would do, that in no way implies
24 anything here. Just -- this is just, the defendant is
25 presumed innocent. This is just ---

1 A. Right.

2 Q. --- if for some reason with the evidence the jury were
3 to find beyond a reasonable doubt the defendant was guilty,
4 then we would move to another phase where the jury would
5 decide, jurors would decide what the punishment would be.
6 Now as you see, juror number one there is someone that
7 feels that, that they're required to give the death penalty
8 in each and every case. And that they feel once a
9 murderer's been convicted, the death penalty is the most
10 appropriate, appropriate punishment in every case no matter
11 what the circumstances are based on.

12 And juror number two is the defendant who feels that
13 under no circumstances could he ever give the death
14 penalty. They wouldn't hear or listen to any facts or
15 circumstances in aggravation. They would feel that that
16 the penalty should be something other than death no matter
17 what the circumstances..

18 Juror number three is the one who would listen, who
19 would not have their mind made up regarding what the
20 appropriate punishment would be. And that they would need
21 to hear the facts and circumstances in aggravation and in
22 mitigation, and would listen to and follow law the judge
23 charges the jury before the jury could make their decision
24 regarding punishment. And if the facts presented by the
25 state or by the defendant so warranted it, the juror could

1 bring in a verdict or life imprisonment. Also, if the
2 facts presented by the state or by the defendant so
3 warranted it, the juror could bring in a verdict of life
4 imprisonment. Also, if the facts so presented by the state
5 of our defendant so warranted, the juror could also bring
6 in a verdict for the death penalty, depending on what facts
7 and circumstances in aggravation or mitigation were
8 presented.

9 Knowing those three types of jurors now, which one do
10 you feel you are?

11 A. In most cases, type one.

12 Q. Well, you say in most cases. What we're trying to
13 determine is if you're on that jury, would you listen to
14 the facts and evidence in aggravation and mitigation, and
15 if those facts and evidence so warranted, could you bring
16 back a sentence of death if the facts and evidence so moved
17 -- so, so presented warranted that? Could you bring back a
18 sentence of death?

19 A. Yes.

20 Q. Well, if the facts and the circumstances in
21 aggravation and mitigation so warranted it, could you bring
22 back a sentence of life imprisonment?

23 A. Yes. Yes.

24 Q. And would you be open minded and listen to all that
25 before you made in your mind up?

1 A. Yes.

2 Q. Listen to all the facts in aggravation and all the
3 facts in mitigation?

4 A. Yes.

5 Q. All right. Now, you do realize that if the jurors
6 were to decide that the sentence were to be death, that all
7 the jurors would have to sign the verdict form. I'm
8 telling you that. You understand?

9 A. Yes.

10 Q. Okay. That's where the case -- and if the jurors were
11 to decide that after listening to the facts and
12 circumstances in aggravation and mitigation, that be the
13 case, you could sign that verdict form?

14 A. Yes.

15 Q. I'd tell you now that if you were selected on this
16 trial, this case could last about ten days, two weeks. And
17 you would be, we would have a hotel room for you. We will
18 let you make some contact with your family and your
19 business, but it would be kind of supervised with someone
20 on the phone. But you'd have a private room, and there
21 would be also rooms where y'all could enjoy some
22 entertainment, TV, stuff like that. But do you wish to
23 tell me any undue hardships that would provide if that be
24 the case?

25 A. It'd be very difficult for me. Like I said, I would

1 actually -- my day job, he would actually have to shut,
2 shut down his job site because I'm the one that takes care
3 of it. There's no one else out there that can do it. I
4 have a restaurant that I've just opened two months ago.

5 Q. Where is your restaurant?

6 A. Dewars 52, a restaurant.

7 Q. Where is that?

8 A. Right next to where Chestnut Hill is.

9 Q. Yes.

10 A. And I have a child under seven. That would be very
11 difficult.

12 Q. It would be very difficult, but if say you were
13 selected and only the duties would be on jury duty, you be
14 able to work it out? We're talking about that short period
15 of time. After today, you would not -- you'd have a couple
16 of days before you'd have to report back.

17 A. I, I would, I would have to check with the people
18 involved, I mean.

19 Q. Okay, I want you to check on that but, I mean, if you
20 qualified, but we'll discuss that further. At this time,
21 I'm going to let both the attorney for the state and the
22 attorney for the defense ask you a couple of questions.

23 A. Okay.

24 Q. They're not in any way trying to be intrusive, but
25 they'll ask you a few questions also. And if for some

1 reason you feel they are, let me know and I'll be glad to
2 stop the questions and look into it further, okay?

3 A. Okay.

4 THE COURT: All right, for the state, Mr. Humphries.

5 MR. HUMPHRIES: Thank you.

6 EXAMINATION BY MR. HUMPHRIES:

7 Q. Good afternoon, Mr. McPherson.

8 A. Hello, how are you.

9 Q. I'm pretty good. Let me be, but me be clear about one
10 thing in particular. We haven't asked jurors to come into
11 this courtroom and change their minds about the death
12 penalty; that's not our purpose at all. Really what both
13 the state and the defense are trying to do is find out
14 where someone is in regard to the death penalty. No one's
15 trying to change your mind, but we need to know what your
16 mind is.

17 A. Okay.

18 Q. As I understand what you've told the court is that
19 after hearing, and let's assume that there's been the first
20 part of the trial, the defendant's been found guilty.
21 We're in the second phase of the trial, and that's when the
22 question becomes what's the appropriate sentence. What I
23 understand you've told the court is that under the right
24 set of circumstances, given the right amounts of evidence
25 you could return either a life sentence or the death

1 penalty depending on those facts and circumstances?

2 A. Yes.

3 Q. That is your position?

4 A. Yes.

5 Q. Not only could you consider life imprisonment, but you
6 could impose life imprisonment if it's right?

7 A. Yes.

8 Q. Not only could you consider the death penalty, but you
9 could impose the death penalty if that were the right
10 verdict based on the facts and circumstances of the case?

11 A. Yes.

12 Q. And let me ask you this as one final thing. The law
13 requires in this particular kind of case at the time of
14 sentencing that the verdict form be signed. Now, in a
15 regular case, only the foreperson signs indicating the vote
16 of all twelve. But in the death penalty case, if the jury
17 returns a verdict of death, each juror would have to sign
18 his or her name indicating their vote for that particular
19 sentence. Would the fact that you would have to sign your
20 name to a death verdict substantially impair your ability
21 to not only fairly consider but impose the death penalty
22 under the right set of circumstances?

23 A. With the ---

24 Q. Would ---

25 A. Yeah, I understand what you're saying, but my question

1 would be what would my name -- why would it have to go on
2 there? What, what reasoning is for it?

3 Q. The law.

4 THE COURT: I'll let you know. The law is that if the
5 verdict the jurors give, if the decision on the sentence is
6 death, all twelve jurors sign the sentencing sheet. All
7 twelve sign that because the verdict must be unanimous.
8 The only way to know it's unanimous is all twelve sign it.

9 JUROR: Okay.

10 THE COURT: All right? Go ahead, Mr. Humphries.

11 BY MR. HUMPHRIES:

12 Q. Would the fact that you'd have to sign your name to
13 the form, would that substantially impair your ability not
14 only to consider but oppose the death penalty under the
15 right set of circumstances given the right amount of
16 evidence?

17 A. I don't believe so, but I've never been in these
18 shoes.

19 Q. I understand, and you know we've asked you to sort of
20 to come in here in a vacuum and imagine yourself some week
21 or so down the road. I understand that, but that's a fair
22 response and I appreciate it.

23 A. Okay.

24 Q. And finally, can you be a fair and impartial juror
25 both to the state of South Carolina and the defendant in

1 this case?

2 A. Yes.

3 MR. HUMPHRIES: That's all we can ask of you. Thank
4 you, sir.

5 THE COURT: Thank you, Mr. Humphries. Mr. Wilson.

6 MR. WILSON: Thank you, Your Honor.

7 EXAMINATION BY MR. WILSON:

8 Q. Mr. McPherson, let me ask you. In regards to the
9 types of jurors that the court had asked you about.

10 A. Yes, sir.

11 Q. And you initially said that type one would, would
12 mostly fit you. Is that correct?

13 A. Yes.

14 Q. Did you read that while you were back in your jury
15 room before you came out here?

16 A. Yes, sir.

17 Q. All right, did you understand while you had read it?

18 A. Yes, sir.

19 Q. All right, and so when you read it and you understood
20 it, and then you decided that that was what was most like
21 you. Is that correct?

22 A. Yes, sir.

23 Q. All right, and now your feeling about the death
24 penalty and when it's appropriate, is that something that
25 you have just formulated today as a result of coming here?

1 Or have you held that opinion for some time now?

2 A. I held it for some time.

3 Q. Okay.

4 A. But it always depends on the circumstances I guess.

5 Q. All right. Well, let me -- in part, in the type one
6 juror says this juror simply feels that once a murder has
7 been committed, the death penalty is the most appropriate
8 punishment no matter what the circumstances of the case.
9 Is that, was that your reading and understanding of that
10 particular paragraph?

11 A. Yes, but except for the most appropriate. I mean,
12 that, you know, means to me kind of open as well as
13 depending on the circumstances.

14 Q. Okay, so ---

15 A. So, dependent on how, I guess, you evaluate the
16 question.

17 Q. All right. So, then you're saying that type one is
18 not what you are now? You're saying you're not type one.
19 Is that correct?

20 A. No. I mean, I would say that I was still type one,
21 but like I said, it would depend on the circumstances.

22 Q. So, you're still saying you're type one, but it would
23 depend on the circumstances?

24 A. Yes.

25 Q. Type one says that it's the most appropriate

1 punishment no matter what the circumstances. Is that
2 correct? Is that your understanding of type one?

3 THE COURT: You want to review the three types, you
4 can do that at any time.

5 A. No. Like I said, to me the most appropriate is just
6 -- to me, that leaves it kind of open also. So, I mean,
7 maybe in a way yeah, maybe I'm changing. I mean, I don't
8 know.

9 Q. Maybe you're changing what? I'm not ---

10 A. To, I guess, you know, possibly a juror type three
11 because of, I mean, you know, it would depend on the
12 circumstances.

13 Q. Okay, but are you saying to me that prior to coming in
14 here today that you were -- you considered yourself a type
15 one, but then after coming in and talking to the judge and
16 talking to the solicitor, you consider yourself now a type
17 three? Is that your opinion? Is that what you're saying?

18 A. I -- it's a, to me it's difficult because, you know,
19 when you see stuff on TV, you know, in general you're
20 hearing mostly what's happened. So, you say well, you
21 know, you're type one because I would consider the death
22 penalty is very appropriate. But in a case like this, I
23 don't know what's coming. So, yeah, I'm a fan of the death
24 penalty and at the same that time, I mean, it would just
25 depend.

1 I mean, if somebody, you know, somebody ran out in
2 front of a car and it was, you know, they charged him with
3 murder, I mean, it's an accident. So, I mean, would I give
4 him the death penalty? Probably not.

5 Q. So, if it's an accident, then you would not consider
6 it. But if a person could come to this court and the jury,
7 you as a member of that jury panel, find that person guilty
8 of murder, which means that there is no defense to it, that
9 -- that you found as a matter of law that they have no
10 defense to the killing that they did and that they're
11 guilty of that and you're satisfied of that beyond a
12 reasonable doubt, you and the other members of your panel,
13 and you find that person guilty of that murder, which, with
14 no defense to it, then you're saying that you would then
15 give the death penalty in those cases?

16 A. Yes, I could.

17 THE COURT: Now, Mr. Wilson, are you asking the juror
18 would he then consider all the facts and circumstances in
19 mitigation?

20 MR. WILSON: Well, what I'm asking him is would he in
21 every situation where he finds that the person is guilty of
22 murder without a defense, in every situation would he then
23 automatically give the death penalty. That's, that's what
24 I'm asking.

25 THE COURT: Well, I know, but I think we need to make

1 sure the full question would be if you find the person
2 guilty of murder, that he committed murder, which you give
3 the death penalty in every case without regard to
4 considering circumstances in aggravation and mitigation.
5 Would you consider those matters before you would decide
6 what penalty you would give, whether it would be life or
7 the death penalty. Isn't that what you're really asking?

8 MR. WILSON: No, sir. I'm, I'm simply trying to ask
9 him whether or not once he is a member of a panel who finds
10 a defendant guilty of murder without a defense -- that is,
11 with no defense to the crime itself -- that once he makes
12 that determination of guilt on the issue of murder, whether
13 or not -- that he doesn't care what the facts are beyond
14 that. But he's going to vote for the death penalty if
15 they're found guilty of that murder.

16 THE COURT: Well, you can ask the question. I may
17 follow up with it, but you can ask that question.

18 BY MR. WILSON:

19 Q. Do you understand my question?

20 A. I believe so, yes, sir. No.

21 Q. Your answer then is that you would not then give the
22 person, automatically give them the death penalty once you
23 found them guilty of murder?

24 A. Right.

25 Q. Right. You would then be willing to be open minded

1 and then consider the other facts and circumstances
2 surround the -- surrounding the killing and the particular
3 facts and circumstances of the particular defendant
4 involved?

5 A. Yes.

6 Q. Before you would then decide on whether you're going
7 to vote for life or death?

8 A. Yes.

9 Q. All right, and are you saying to me that you could, in
10 fact, vote for life even if you have found a person guilty
11 of murder? That you could then still vote for life if you
12 felt that that was what the appropriate thing to do was?

13 A. Yes.

14 Q. Is that what you're saying?

15 A. Uh-huh.

16 Q. Now, I noticed that when the court asked you have you
17 formed an opinion about this case, you said that you had,
18 in fact, formed some type of an opinion or at least
19 partially formed an opinion about this case. Is that a
20 fair statement?

21 A. Yes.

22 Q. All right, and would you tell us what that opinion
23 was? What was your opinion? What opinion have you formed
24 prior to coming in here today?

25 A. Guilty.

1 Q. You have formed the opinion that he was guilty. And
2 that opinion that you formed was based on what?

3 A. Some of the readings in the newspaper.

4 Q. Okay, and that was sufficient for you to form your
5 opinion? Is that correct?

6 A. Yes.

7 Q. And based on the opinions that you -- well, let me
8 ask. Let me rephrase and ask you this way. Would it
9 require some effort on the part of the defendant to
10 convince you otherwise?

11 MR. HUMPHRIES: Your Honor, I believe that's a matter
12 of law.

13 THE COURT: It would have to -- would you follow law
14 as I instruct it to you?

15 JUROR: Would I follow the law? Yes, sir.

16 BY MR. WILSON:

17 Q. Court also asked you whether or not you could set
18 aside that, what you've heard, and base your opinion or
19 your verdict on the evidence and testimony and exhibits
20 that you might receive in this court and you hesitated.
21 Then you indicated that you could?

22 A. Yes.

23 Q. Is that fair?

24 A. Yes.

25 Q. And was your hesitation based on the fact that you've

1 had a preconceived notion as to the innocence or guilt of
2 the defendant?

3 A. No. My hesitation is the fact that I've never done
4 this before. So, I mean, I don't know how I would react to
5 it. You know, I guess that's kind of like with children.
6 They do something wrong. You assume they did wrong until
7 you find something else out and then maybe, you know,
8 things change. So, never being in that these shoes, I
9 couldn't tell you.

10 Q. I also notice that you hesitated when asked could you
11 find the defendant not guilty if the facts and evidence
12 warranted it. Was there any particular reason for that?

13 A. For what?

14 Q. For your hesitation in saying yes.

15 A. Just thinking through the question.

16 Q. It had nothing to do with the fact that you had a
17 preconceived notion that he was guilty?

18 A. No. I don't believe so.

19 Q. Okay.

20 MR. WILSON: I don't, I don't think I have any other
21 questions.

22 THE COURT: Let me just ask you once again.

23 MR. WILSON: Judge, I'm, I'm sorry, Your Honor. Could
24 I ask one other thing of the juror?

25 THE COURT: Yes, sir. Yes, sir.

1 MR. WILSON: I apologize for interrupting you. And I
2 would say to the court, Your Honor, that that being the
3 case, that he is not qualified and that his views and his
4 opinions have not changed even though when he asked -- he
5 said some of the magic words in order to make that.

6 But the underlying premise is that he still, even when
7 you ask him now when, you know, when I asked him whether or
8 not it would require some effort on the part of the
9 defendant in order to have him find the defendant not
10 guilty, while he never really said that that's what would
11 happen, the inference was certainly that that's what it
12 would require.

13 I just believe that with all these things taken into
14 account, the other concern that I have is that the court,
15 the court's -- you know, in the court's dialogue with him,
16 one of the things the court asked him was whether or not
17 the -- whether or not it was required that he give the
18 death penalty, and in, in this particular case on type one.
19 And then didn't -- and really what it says is that that is
20 the most -- that juror believes that that is the most
21 appropriate sentence after having found a person guilty of
22 murder. And so I'm saying all those things combined
23 together, I would suggest that this particular juror is not
24 qualified and should not be qualified to serve.

25 THE COURT: It appears to me, though, that sometimes

1 we require jurors who know nothing about the law to act as
2 if they've been involved in many court cases before and
3 understand various burdens of proof and those things. The
4 juror says that the juror will follow the law as instructed
5 by the judge, including my requirement that the state has
6 the burden of law, requires that the state has the burden
7 of proof beyond a reasonable doubt. And I think he
8 explained very well.

9 You know, he looked at these things. He didn't
10 consider the ramifications of all three and look at them
11 now. Hey, he's a number three type juror and, and he gave
12 a good illustration to you. That's sometimes somebody does
13 something and you think they'd do it. Then you find out
14 differently, and then if they apply law or the burden there
15 -- I, I think that this juror seemed to be someone just
16 from my discussion with him would be someone that would
17 follow the law, both for the state and for the defense.
18 And we're obviously -- don't have someone who's just saying
19 things because they want to be on the jury.

20 This person obviously does not want to be on jury
21 because of their requirements to the job. So, I think this
22 person is being very sincere, and I think this juror is a
23 type three juror, and I'm going to qualify, I find this
24 juror qualified to serve on this case.

25 I'm going to have the jurors report back, those I find

1 qualified, at 10:00 on Thursday, and then we'll see where
2 we are at that time. I'm trying to think if I should do it
3 at 10:00 on Thursday, maybe do it 1:00 on Thursday just to
4 be safe. Maybe it should say 1:00 on Thursday to give
5 everybody time to be qualified, get some time for rest and
6 relaxation. So, anybody got any problem with just say come
7 back at 1:00 on Thursday?

8 MR. HUMPHRIES: Your Honor, and this is just a
9 suggestion, but it seems to me if we could have them come
10 back just before the lunch hour for the striking of the
11 jury, then we can use an elongated lunch hour in order
12 to have the jurors settled and come back and we get started
13 ---

14 THE COURT: Well, my concern is we've got about
15 seventy-five jurors we've selected, groups in five. We did
16 fifteen or sixteen, and I need, I'm going to need about
17 thirty-eight or forty.

18 MR. HUMPHRIES: Yes, sir.

19 THE COURT: I'm just wondering if we get to thirty-
20 eight or forty having seventy-five and, therefore, might
21 need in that morning. We'll do 11:30.

22 All right, bring him in. Guess we'll see what
23 happens.

24 (THE JUROR ENTERS THE COURTROOM.)

25 THE COURT: Mr. McPherson, I'm going to find you

1 qualified. That does not mean you're going to be on this
2 jury panel, you know. There's still a lot of little things
3 to go. What I'd like for you to do is to report back here
4 outside the courtroom, and they'll let you know if you can
5 come on in or not. But at 11:30 on Thursday morning, 11:30
6 on Thursday.

7 JUROR: Okay.

8 THE COURT: Now in the meantime, like I said earlier,
9 do not discuss this case with anyone. Don't, don't in any
10 way read any local newspapers at all. Don't look at any
11 local news accounts. So, that's very important, sir. If
12 someone attempts to talk to you about it, you can't talk
13 about it at all, and, and we'll see you at 11:30.

14 If say you are selected, if you are selected -- and
15 once again, it's a long way before that -- if you are
16 selected, I'll they give you the opportunity to go and get
17 goods that you needed at home or wherever else that
18 afternoon, and come back, okay?

19 JUROR: I guess that sounds fine.

20 THE COURT: All right, I'll see you 11:30 on Thursday.

21 BAILIFF: Bring the next one, Judge?

22 THE COURT: Yes, sir.

23 MR. RATHBUN: Judge, could I ask you to use the
24 microphone and the witness use the microphone? I'm having
25 a hard time picking up everything you're saying.

1 THE COURT: I am so sorry. That's the first time
2 anyone's ever said that to me.

3 (JUROR #242 ENTERS THE COURTROOM.)

4 EXAMINATION BY THE COURT:

5 Q. Ms. Jones, come on around and have a seat and relax
6 here.

7 A. I'm trying to warm up.

8 Q. Is it cold back there?

9 A. Uh-huh.

10 Q. Well, it's warm in here. Now, what we're trying to
11 do, I'm going to be talking with you, but you need to try
12 and speak into that microphone, okay? I want to remind
13 you. You remember we put you under oath earlier, so you
14 understand you're still under oath?

15 A. Yeah.

16 Q. And one thing also -- what was that? That microphone
17 fell.

18 MR. HUMPHRIES: I'll fix it.

19 Q. That will be \$150. We'll get it fixed. Here you go.

20 (A PAUSE.)

21 Q. I see you like to read Stephen King. Is that right?

22 A. Yeah.

23 Q. And your least favorite reading comic books, funny
24 books. You know, a lot of people read comic books.

25 A. I read them sometimes.

1 Q. I used to read them all the time, too, and reading is
2 one of your hobbies, so you really enjoy reading. I
3 noticed you have five children. Okay, very good, and you
4 work at the Dorchester Human Development Board. So, you
5 live -- that's a long drive, isn't it? No, you're -- well,
6 in fact, that was a former employer?

7 A. Yeah, that's ---

8 Q. You worked there twenty-five years, all right, and
9 your husband worked -- worked on a farm?

10 A. Yeah.

11 Q. Right. Now, you're not far from where I'm from.
12 You're from Fair Bluff?

13 A. Yeah. I'm from the other side of Fair Bluff.

14 Q. You know ---

15 A. The -- coming back, it's on this side of Fair Bluff.

16 Q. You know where Lake View is?

17 A. Yeah. Between Nichols and Mullins.

18 Q. Yeah, that area. Lake View's part of Dillon County
19 where I'm from.

20 Now, what I'm going ask you, Ms. Jones, is just a few
21 questions here. And remember you're not on trial or
22 anything. I'm just going to ask you a few things. I did,
23 I asked you before and ask you again. Do you know any of
24 the attorneys here at all?

25 A. Huh-uh.

1 Q. Do you know Mr. Winkler at all? You got to say
2 something, yes or no.

3 A. No, I don't.

4 Q. There you go. Now, I gave you a list back there. Had
5 them show you a list with a bunch of names on it. On that
6 list, is anyone on the list that you know?

7 A. No, sir.

8 Q. Could I see it, please? Don't worry about that.
9 That's fine. Too loud is okay. Can I see it, and I'm
10 going to give you this back, okay? You didn't circle
11 anybody because you don't know anybody on this list at all?

12 A. No, sir.

13 Q. All right.

14 A. No, sir.

15 Q. Now, do you know of any reason why you couldn't be
16 fair both to the state into the defense in this trial? If
17 you were sitting as a juror, could you be fair to both
18 sides?

19 A. Yes.

20 Q. Have you formed an, an opinion of guilt or innocence
21 of the defendant one way or the other?

22 A. Huh-uh.

23 Q. All right. The judge instructs the jury on the law,
24 under law must -- the jury must accept the law as the judge
25 instructs it. Would you follow the law as I gave it to

1 you?

2 A. Yes, sir.

3 Q. Okay, and so the jurors will decide what evidence,
4 will decide what facts occurred from the evidence, but the
5 burden would be on the state to prove guilt beyond a
6 reasonable doubt, and law would come from the judge. Once
7 you heard all the evidence and you've made a decision on
8 that and you've heard my -- the law as I give it to you,
9 under that situation, if you felt it so warranted after you
10 heard all the evidence and law, if you felt it so
11 warranted, could you find the defendant not guilty based on
12 the evidence and law if you felt that was the right thing
13 to do?

14 A. No, sir.

15 Q. Ma'am?

16 A. No. All the evidence that we went over, it pointed
17 directly to the defendant?

18 Q. What evidence?

19 A. Is that what, what is you're saying?

20 Q. No, ma'am. If after you heard all the evidence in the
21 case --

22 A. Uh-huh.

23 Q. --- and I gave you the law, if you felt that after
24 hearing all the evidence, if you felt the defendant was not
25 guilty, could you find him not guilty?

1 A. Yes, sir.

2 Q. All right. If after hearing all the evidence in the
3 case and my giving you the law, if you felt the defendant
4 was guilty, could you find him guilty?

5 A. No, sir.

6 Q. No, if you felt the defendant was guilty after hearing
7 all the evidence and, and law as I instruct it to you,
8 could you find the defendant guilty if you felt he was
9 guilty?

10 A. Yes, sir.

11 Q. Okay. Now, have you discussed this case with anyone?

12 A. No, sir.

13 Q. Have you seen anything in the media about it, in the
14 newspapers or TV or anything?

15 A. No, sir.

16 Q. Now ---

17 A. Once a guy came to my house after the trial was over.

18 Q. What trial?

19 A. No, this, this been way back in 2002 I think.

20 MR. HUMPHRIES: Judge, she's talking about a trial
21 that she previously served in a jury on.

22 Q. Oh, I'm talking about in this case.

23 A. No. No, no, no, no, no. No.

24 Q. Okay. So, you haven't seen anything in the newspapers
25 about ---

1 A. No, no.

2 Q. --- this case?

3 A. No, sir.

4 Q. And so you haven't formed any opinion one way or the
5 other on this case?

6 A. Huh-uh.

7 Q. Okay. Now, I've showed you and gave you back -- you
8 still have this sheet of paper?

9 A. Yes, sir.

10 Q. You got these three types of jurors on it that says
11 really the first juror that had been -- and by the way, by
12 talking about this, I'm not suggesting what the jury may
13 find in this case as far as guilt or innocence. But just
14 for the sake of discussion, we need to say if the evidence,
15 the jury found the evidence so warranted it and applied the
16 law as I gave it to them, and if the jury found the
17 defendant guilty, well then the next thing the jury would
18 have to do is decide what the sentence would be, and the
19 jurors will have one or two possible sentences, either
20 death or life imprisonment.

21 Now, what this says is that there's three types of
22 jurors in that situation. The first juror, if the decision
23 was guilt, that they would feel they were required to give
24 the death penalty in each and every case. And they feel
25 that once a murder's been committed, the death penalty is

1 the most appropriate punishment no matter what the
2 circumstances are. That's one juror.

3 Another juror could be a juror who says that, although
4 the guilt of the defendant's been determined, under no
5 circumstances could they ever give the death penalty. This
6 jurors would not -- juror would not need to hear what the
7 facts and circumstances in aggravation or mitigation are in
8 this particular case because they would have made their
9 mind up that matter what they hear, that life imprisonment
10 would be the appropriate punishment, and they could never
11 give the death penalty.

12 The third type of juror, juror is one that, that if
13 they determine that the defendant's guilt is proven, they
14 would not have her mind -- they would, they would -- this
15 juror would not have her mind made up in advance concerning
16 the punishment. This juror would need to hear the facts
17 and circumstances in aggravation and in mitigation and
18 would want to listen to and follow the law as the judge
19 charges the law before she could make up her mind regarding
20 punishment. And if the facts presented by the state or the
21 defendant so warranted it, this juror could bring in a
22 verdict of life imprisonment. Also, if the facts presented
23 by the state or by the defendant so warranted it, this
24 juror could bring in a verdict for the death penalty.

25 Now, you reviewed these three types of jurors, did you

1 not?

2 A. Yes, sir.

3 Q. Which one of these three types do you feel you are?

4 A. Two.

5 Q. Two. Does that mean that you don't feel you could
6 ever bring in the death penalty?

7 A. No, sir.

8 Q. Now, understand that once -- if the jury were to
9 determine that the defendant is guilty, then at that point
10 in time both sides would present evidence they feel in
11 aggravation and the -- I mean, one side present evidence of
12 aggravation. We'd also maybe hear evidence in mitigation,
13 and do you feel you could have an open mind? And after
14 hearing this information, do you feel that you could have
15 an open mind and bring back a verdict of death or bring
16 back a verdict of life depending on what the evidence was
17 as far as punishment? Or do you feel you'd always bring
18 back life?

19 A. Well, life. Life.

20 Q. Can you, could you consider the death penalty, and
21 could you in some circumstances bring back a sentence of
22 death?

23 A. The death penalty.

24 Q. Ma'am?

25 A. I would consider the death penalty.

1 Q. Could you ever bring back a verdict in that regard?

2 A. Yes.

3 Q. You could?

4 A. Well, no.

5 Q. Well, I really don't know just whether you could or
6 could not.

7 A. No, sir, I couldn't.

8 Q. No matter what the evidence is, ma'am? Remember now
9 you're not on trial. I do want to know how you really
10 feel, ma'am.

11 A. Well.

12 Q. Just tell me how you really feel.

13 A. Well, to me, I have to hear, you know, all of the
14 evidence and then, you know, I could come to a decision
15 whether it's as to death or life, whatever that person's
16 done.

17 Q. Well, do you ---

18 A. I just out and say the death penalty regardless of
19 what they did? I just can't say.

20 Q. I know, but, but that's what I'm saying. Would you be
21 open minded and if the evidence that was presented was
22 sufficient, would you be open minded and ---

23 A. Yes, sir.

24 Q. --- would you consider the death penalty?

25 A. Yes, sir.

1 Q. And you would consider life imprisonment? You could
2 be open minded. You could do one or the other?

3 A. Life in prison.

4 Q. Well, ma'am, would there be any situation where you
5 would bring back the death penalty?

6 A. Yes, sir.

7 Q. So, you could bring back the death penalty if the
8 facts and circumstances so warranted it?

9 A. Yes, sir.

10 Q. You could sign it, and in doing so, the jury would
11 have to sign their name on the verdict if the death penalty
12 was given. Could you sign your name on the verdict for
13 death penalty?

14 A. Yes, sir.

15 Q. Okay, and so you would be open minded, and you would
16 consider both sides and you would, you could bring back a
17 sentence of death or you could bring back a sentence of
18 life, depending on what the facts were?

19 A. Yes, sir.

20 Q. In aggravation and mitigation, okay.

21 This case, if you are selected, would be one that
22 would require you all to be put up in a hotel room for a
23 week or so. And you would be able to have some contact
24 with your family, but you would be in a hotel room for a
25 week or so. Would that cause an undue hardship for you,

1 ma'am?

2 A. Yes, sir. I have someone to take care of my children.

3 Is that what you're saying?

4 Q. No. Could you do that?

5 A. Yes, sir.

6 Q. Okay, you then have someone take care of your

7 children. How old are your children?

8 A. I have one ten, eight, and six.

9 Q. Are these your children or your...

10 A. Yes. My husband would take, put them on the bus.

11 Q. But these are your children, ma'am?

12 A. Yeah.

13 Q. Okay. All right.

14 THE COURT: Any questions by the state?

15 MR. HEMBREE: Yes, Your Honor.

16 THE COURT: Answer any questions they have for you if
17 you would please, ma'am.

18 JUROR: I'll do my best.

19 THE COURT: All right, thank you, ma'am.

20 EXAMINATION BY MR. HEMBREE:

21 Q. Hi, Ms. Jones. I'm Greg Hembree. I was introduced to
22 you a little while ago. And I, along with Fran Humphries
23 and Scott Hixson who was here a little while ago, will also
24 would be trying this case on behalf of the state.

25 And let me start by saying there is not, there is no

1 right or wrong answers. We're not trying to guide you or
2 get you to say something that that's -- you know, there's
3 no right answer. We're not looking for a right answer.
4 We're looking just for a truthful answer, and it's a tough
5 spot to put you in because we're asking you sort of in this
6 hypothetical situation can you impose and consider the
7 death penalty or life sentence. And that's very difficult
8 because you don't know anything about the case, and we
9 can't tell you about that. We just ---

10 A. I understand.

11 Q. We just have to ask you about your general feelings
12 about the death penalty. That's, that's what we're, that's
13 ultimately what we're looking for here today. With that in
14 mind, tell me just, you tell me in your own words what you
15 think about the death penalty.

16 A. Okay, if it's come to the point of children, if a
17 grownup would do something to a child, if it even was
18 someone in my family, I'll say when they go to court they
19 have to take it, you know. They did wrong or they did
20 wrong they pay the time for it, you know. I can't say no,
21 the death penalty wouldn't be right or whatever because I
22 don't know.

23 Q. And I think you told Judge Lockemy this, but you said,
24 you said at one point. You're pretty clear that life, that
25 a life sentence, you kind of repeated that again and again

1 that that was the sentence that you would impose?

2 A. Uh-huh.

3 THE COURT: Now, you've got answer yes or no. See,
4 this lady has got to take down what you're saying. So,
5 you've got to say yes or no.

6 JUROR: Well, I know.

7 THE COURT: So, what was your answer to his question?

8 BY MR. HEMBREE:

9 A. I'll say...

10 Q. I'll repeat my question. My question was that, that's
11 in answering Judge Lockemy and these questions, you
12 repeated again and again that a life sentence, that life in
13 prison would be the sentence that you would impose. You
14 kind of repeated that on a number of different occasions.

15 A. But if I don't know the, the case, I can't really make
16 a decision whether death, or life in prison.

17 Q. Fair enough. Now, let me make something really clear
18 because I don't want to -- I want you to fully understand
19 what, what's, what's happening in this case. It is a death
20 penalty case. And assuming the defendant is found guilty,
21 you, you will be called upon if you're on this jury, you'll
22 be called upon with the other jurors to make the decision
23 whether this defendant receives the death sentence or life
24 in prison without the possibility of parole. That's the
25 question that you'll have before you in the second phase.

1 That will be your decision. Now, the judge asked you about
2 considering the death penalty.

3 A. I understand.

4 Q. And you understand that and you answered that. I
5 guess my question, understanding that it will be your
6 decision, along with the other jurors, could you not only
7 consider the death penalty, but could you personally impose
8 the death penalty on this defendant given the appropriate
9 facts and circumstances?

10 A. Well, not just out and say you give the death penalty
11 is best for you. No, just like I told the judge. I have
12 to hear, try to hear everything, you know, hear all the,
13 all the evidence, and then I probably could make a decision
14 then. I just can't out and say.

15 Q. And I understand I'm not giving you the facts. I'm
16 saying if there's sufficient facts in evidence are
17 presented to you ---

18 A. I understand.

19 Q. --- could you impose the death penalty on this
20 defendant?

21 A. Well, yes, I -- then just say, you know, if I had to
22 read the verdict I would come up and say guilty or whatever
23 the jury decided?

24 Q. Yes, ma'am, and maybe I just didn't understand your
25 answer. You seem to say when I asked if you could impose

1 the death penalty on this defendant, even if you were
2 given, assuming you're given sufficient facts and
3 circumstances, enough evidence, could you impose the death
4 penalty, and you said no?

5 A. Oh, no. No, sir.

6 Q. You could not impose the death penalty on this
7 defendant?

8 A. Huh-uh.

9 Q. Even if you had sufficient facts and circumstances?

10 A. Yes, sir.

11 MR. HEMBREE: Please answer any questions the defense
12 has.

13 THE COURT: Mr. Wilson. We're going to let Mr. Wilson
14 ask you some questions. Did you want to say something
15 else?

16 JUROR: No, sir.

17 THE COURT: All right. Mr. Wilson.

18 EXAMINATION BY MR. WILSON:

19 Q. Ms. Jones, let me ask you. You understand as we stand
20 here today that the defendant is presumed to be not guilty.
21 You, you understand that?

22 A. Yes, sir.

23 Q. And can you accept that as a matter of law if the
24 judge tells you that?

25 A. Yes, sir.

1 Q. Okay, and can you follow any instructions that the
2 court might give you regarding this case?

3 A. Can you repeat that question?

4 Q. If the judge gives you some directions, some
5 instructions and tells you that you have to follow those,
6 will you listen to him and will you follow those
7 instructions that he gives you?

8 A. Yes, sir. I would do so, right.

9 Q. And let me ask you. Judge asked you whether or not
10 you could listen to all the evidence and then make up your
11 mind as to whether to give life or death. Can you do that?
12 Can you listen to all the evidence and then make up your
13 mind as to whether or not it should be life or whether it
14 should be death?

15 A. Yes, sir.

16 Q. Okay, and would you always vote for life or always
17 vote for death, or will you listen to the evidence and then
18 make up your mind?

19 A. I have to listen to the evidence before I make a
20 decision.

21 Q. Okay, and at this point, you have no opinion one way
22 or the other as to life or death in this particular case.
23 Is that correct?

24 A. Correct.

25 Q. All right, and because you have not yet heard any of

1 the facts or circumstances?

2 A. Correct.

3 Q. Is that correct? All right, you have to say yes or
4 no. I'm sorry because she's taking down everything. She
5 can't ---

6 A. All right.

7 Q. When you nod your head, she can't hear.

8 A. I'm sorry.

9 Q. You have a hearing loss?

10 A. Yes.

11 Q. In which ear?

12 A. My right, right here.

13 Q. How much of a loss, hearing loss do you ---

14 A. I can hear you talk, you know.

15 Q. Loud like I'm doing?

16 A. If you like "um," I can't understand it. You know,
17 some people have a tendency to talk low.

18 Q. Okay, all right, and so -- all right, but back to my
19 question, you can, depending on the evidence and facts,
20 find the defendant guilty or not guilty if you believe the
21 evidence one way or the other. Can you do that?

22 A. Yes, sir.

23 Q. All right, and can you give him life or death
24 depending on the facts and circumstances as you see them,
25 depending on how you feel about it?

1 A. Yes, sir.

2 Q. After you've heard all those things, all right, and
3 you have to say yes or no.

4 A. Yes.

5 Q. All right, and can you consider any aggravating
6 circumstances that the state -- and aggravating
7 circumstances mean things that make it, make the killing
8 worse than what they might otherwise be. Can you consider
9 those things if the judge tells you that's what you're
10 supposed to do?

11 A. Could you repeat that, please?

12 Q. During the, during the trial of this case, as we get
13 into the sentencing phase the state will introduce what's
14 called aggravating circumstances. And aggravating
15 circumstances are simply things that make a killing worse
16 than what it might otherwise be.

17 A. No, I couldn't make a decision right off like that.

18 Q. I understand, and you would want to wait and hear
19 those aggravating circumstances, would you not?

20 A. Yes, sir.

21 Q. All right, and likewise would you also be willing to
22 wait and hear any mitigating circumstances or mitigating
23 factors that might be offered by the defense? Would you
24 also want to hear that, too?

25 A. Uh-huh.

1 Q. And then after you hear all of that and getting His
2 Honor's instructions as to the law, then you would make
3 your decision on the life or death?

4 A. Sure.

5 Q. Okay, and you're willing to do that, are you?

6 A. Yes, sir.

7 MR. WILSON: All right. Thank you, ma'am.

8 THE COURT: Ms. Jones, if you would, step outside the
9 door there. The gentleman will show you -- the gentleman
10 will show you where to stand right outside the door,
11 please.

12 (THE JUROR EXITS THE COURTROOM.)

13 THE COURT: State?

14 MR. HEMBREE: She's not qualified, Your Honor. She's
15 the definition of a vacillating juror. She went from a two
16 to sort of a three, then back to the two, and I wrote down
17 I know no less than five, six times did she say that she
18 could only impose life. I mean, that's why I kept going
19 back over it with her to try to glean from her where she
20 was. And, of course, Mr. Wilson came back to her and kind
21 of led her the other way and she said, you know, she would
22 follow instructions and listen to everything. But at the
23 same time she was very clear. The clearest answer she gave
24 was that she was -- she would not impose the death penalty.

25 And number two, I think the thing, I guess when you

1 read a record you don't have the benefit of it. But when
2 she considered that, as she began pondering those
3 questions, you could tell the difficulty that she was
4 having just by her body language, the way that she hung her
5 head. And when she looked at it, it was not -- it was a
6 very uncomfortable place when she was having to say that
7 she, or she was considering whether she could impose the
8 death penalty. I believe that was just as convincing as
9 the words itself, saying that she could not.

10 THE COURT: Defense?

11 MR. WILSON: Judge, you know I'm amazed because when
12 we did juror 313, that was my very argument: that that
13 juror was vacillating, that he was going back and forth.
14 He first said he could and then he said he couldn't, and
15 then he said he was number one. Then he said he was number
16 three, and then he really didn't know what he was. But the
17 fact that this particular juror ---

18 THE COURT: That's your representation.

19 MR. WILSON: That's my recollection, Judge. But let
20 me in this regard, let me saying that in regards to this
21 particular juror, she had no problem telling this court
22 that she could follow this court's directions, that she
23 could find this defendant guilty if the evidence warranted
24 it, that she could find him not guilty if the evidence
25 warranted it. She also had no problems at all saying to

1 this court that she could listen to all the evidence and
2 make up her mind as to whether or not it was going to be
3 life or death. When I got up and I asked her those
4 questions after the solicitor did, she reiterated that a
5 second time.

6 The only time that she was confused was when the
7 solicitor was asking her some questions. And I don't know
8 if she didn't quite understand his question, but she was
9 very clear and very definite both when I asked her those
10 questions and when the court asked her those questions, and
11 I think that she's qualified.

12 MR. HEMBREE: Your Honor, actually, for me the time
13 that she was most I guess you could say clear and -- was
14 when she was for life was when the court was asking her
15 questions. So, that's my recollection. And the fact that
16 she could -- I'm not having any concern for her being a
17 fair juror in the guilt phase. I completely -- you know,
18 she answered all those questions, and she was very
19 consistent in that, as she could be very fair and impartial
20 in determining the guilt. She didn't vacillate on those
21 areas, so I think she has an understanding that she could
22 be fair and impartial in determining the guilt of the
23 defendant.

24 What she has difficulty with is the death penalty.
25 That's where she vacillated, and she continuously

1 vacillated, you know, depending on who was asking the
2 question.

3 THE COURT: After reviewing the juror's responses,
4 considering the responses, I find this juror qualified.
5 Bring her in, please.

6 (THE JUROR ENTERS THE COURTROOM.)

7 THE COURT: Ms. Jones, Ms. Jones, what I need for you
8 to do now, ma'am, is this. I'm going to let you go home,
9 but I want you to come back to the courthouse Thursday at
10 11:30, okay? Thursday at 11:30. At that point in time,
11 they'll then be selecting the jury.

12 If you are selected on the jury, I'll then provide
13 means for you to get home and get your stuff together, and
14 then you'll be coming back and we will start the trial that
15 day and you'll be housed in a hotel for the next week
16 maybe, okay? Now, do not discuss this case with anyone.
17 Do not read, read any local newspapers at all or watch any
18 news, all right?

19 JUROR: All right.

20 THE COURT: All right, we'll see you at 11:30 on
21 Thursday, this Thursday at 11:30, okay, ma'am?

22 JUROR: Oh, okay.

23 THE COURT: We'll see you then. All right, you can go
24 out this way. All right.

25 Bring in Daniel English, 138.

(JUROR #138 ENTERS THE COURTROOM.)

EXAMINATION BY THE COURT:

Q. Hello there, Mr. English.

A. How are you, sir?

Q. Did you bring in the mail with you?

A. No, sir.

Q. Have do you like -- how you like dogs?

A. Dogs?

Q. Dogs are always mail carriers' worst. So, how long have you worked for the mail, U.S. Postal Service, fourteen years?

A. Yes, sir.

Q. I notice that a friend of mine, and they have two types of employees. Some are part-time who work varying hours.

A. Yes.

Q. And some are full-time, and many times the part-timers work as many hours. They're just not full-time employees. Now, are you full-time?

A. Full-time.

Q. Full-time. Is that, is the difference between that benefits you get if you're part-time, full-time, or what?

A. No benefits for part-time.

Q. Oh, that's the big difference. The work you do all those many hours and get no benefits. It says here you're

1 originally from Sumter?

2 A. Yes.

3 Q. Okay. Now, please understand that you're still under
4 oath. You remember we put you under oath earlier today?

5 A. Yes, sir.

6 Q. And I'm going to need for you when you can to speak
7 into that mic so this lady here can hear you and all the
8 people involved in the room can hear you at those two
9 tables there.

10 A. Okay.

11 Q. And you're not on trial here and what I'm going to ask
12 you, there's no right, wrong answer, no right answer, no
13 wrong answers. Just want to just talk with you for a
14 little while.

15 Now the attorneys, do you know any of the attorneys
16 involved in this case? They identified themselves to a
17 year earlier. Do you know any of them?

18 A. Only by name.

19 Q. Only by name. So, does that cause you to have any
20 interest or bias one way or the other involving cases that
21 they're involved in?

22 A. No, sir.

23 Q. All right. Have, have you formed or expressed any
24 type of opinion in this case far as the guilt or the
25 innocence of the defendant, Mr. Winkler?

1 A. No, sir.

2 Q. Okay. Do you know of any reason why you couldn't give
3 the state and the defense a fair and impartial trial in
4 this case?

5 A. No, sir.

6 Q. And would you follow the law as I instruct it to you
7 in this case?

8 A. To the letter.

9 Q. All right. Now, obviously the jury will have two
10 choices: either guilty or not guilty, not guilty or guilty.
11 No preference in the way I say that. If you sat on that
12 jury and if hearing, after hearing all the evidence in the
13 case and law as I give it to you, if you felt that the
14 defendant was guilty, could you find the defendant guilty
15 if you felt after hearing all the evidence and the law?

16 A. Yes, I could.

17 Q. Well, after hearing all the evidence and the law, if
18 you felt the defendant was not guilty, could you find the
19 defendant not guilty?

20 A. Yes, I could.

21 Q. All right. Have you discussed this case with anyone?

22 A. No, I haven't.

23 Q. Okay. Have you seen any news accounts of this matter
24 or whatever?

25 A. Well, briefly in the newspaper I did see something to

1 that nature about the trial, about when it was coming and
2 possibility of the trial probably starts on Thursday. Saw
3 that in the newspaper just the other day.

4 Q. The fact that it's been in the news or whatever, has
5 that caused you to form any opinions at all one way or the
6 other on this case?

7 A. No, sir.

8 Q. All right. I gave you a list of potential witnesses.
9 Did they give you that sheet of paper, three sheets?

10 A. Yes. I have it right here.

11 Q. Did, did you know anybody on that list?

12 A. Not any one.

13 Q. Could I see that, please?

14 THE COURT: And let the record reflect that I have
15 looked this over and there are no circles on it.

16 Q. So, you know no one on this sheet at all?

17 A. No, I don't.

18 Q. All right. Now, I gave you another sheet of paper I
19 wanted you to look at and had three types of jurors on it.
20 You got that with you?

21 A. Have it right here.

22 Q. Have you had a chance to read that over?

23 A. I read it over two or three times.

24 Q. All right. Do you understand it?

25 A. I understand it.

1 Q. Now, looking at those three types of jurors, the juror
2 one would be the one who would feel that if -- now, this in
3 any, no way, by the way, Mr. English, this in no way
4 implies that defendant will be found guilty or whatever.
5 This is just if the jury were to make a decision the
6 defendant was guilty, we'd move to another phase. Well,
7 then the jury would decide what the punishment would be.

8 Now, this thing talks about three types of jurors.
9 One type is a juror that once the guilt has been found,
10 that that juror would feel that the death penalty is the
11 most appropriate punishment to give no matter what the
12 circumstances are.

13 The second juror is the one that, once they made the
14 decision that the defendant is guilty, would not need to
15 hear facts or circumstances in aggravation and mitigation
16 because they feel that, that the sentence should in all
17 cases be life imprisonment and never should be the death
18 penalty.

19 And then the third type of juror is the one who,
20 although the guilt of the defendant has been determined,
21 that juror would have an open mind and not have their mind
22 made up concerning what punishment would be. And that
23 juror would hear the facts and circumstances in aggravation
24 and mitigation and would want to listen to and follow the
25 law as the judge tells that juror where they could make a

1 decision. And if the facts in aggravation and mitigation
2 so warrants it, that juror could come back with the death
3 penalty. Or if the facts in evidence so warranted it, that
4 juror could come back with the sentence of life
5 imprisonment, all depending on the facts and circumstances.
6 Which of those three jurors describes you?

7 A. I went over this carefully, and I'm more leaning to
8 being a juror type two. I don't believe I could honestly
9 come up with a death penalty sentence; I don't think I
10 could live with that.

11 Q. Okay, and once again, sir, we're not trying in any way
12 to change you in any way. I'm just trying to determine,
13 you know ---

14 A. Yes.

15 Q. --- what you are and there's no ---

16 A. I'm just trying to be honest.

17 Q. Well, you're not on trial, too, you know.

18 A. I'm just as honest as I can.

19 Q. And you can be who you are. There's no problem there.
20 Do you feel, though, if you heard facts and circumstances
21 in aggravation, that could change your mind and you could
22 impose the death penalty?

23 A. I don't think I could do that. I don't believe in the
24 death penalty.

25 Q. Okay, that's a firm belief you have?

1 A. Yes.

2 Q. And you don't feel anything could change your mind in
3 that belief?

4 A. No. I do not believe in the death penalty.

5 Q. Okay, and once again it's your choice there.

6 THE COURT: Questions by the state?

7 MR. HUMPHRIES: None from the state, Your Honor.

8 THE COURT: By the defense?

9 MR. WILSON: I'd just had a couple of questions.

10 Thank you, Your Honor.

11 EXAMINATION BY MR. WILSON:

12 Q. Mr. English, is your view about the death penalty, is
13 that something that you've given some thought to, or is it,
14 or is it a religious belief or combination of religious and
15 moral beliefs?

16 A. It's morally moral. I don't believe I can actually
17 sentence anybody to death. That's my...

18 Q. Okay, and ---

19 A. I don't feel it's right.

20 Q. Okay, and have you thought about this before today,
21 the issue of the death penalty and what your opinion about
22 it is? Is that something you had considered before today,
23 or is this something that you just kind of thought about
24 after you got your jury notice and you knew that you're
25 coming to a capital case?

1 A. Well, I've always felt that way.

2 Q. All right, all right. So, this is a long held opinion
3 that you've had, and you are against the death penalty?

4 A. I'm against the death penalty.

5 Q. All right, and there are no set of circumstances or
6 facts no matter what they were and no matter how atrocious
7 they were that you couldn't possibly consider that. Is
8 that what you're saying?

9 A. That's what I'm saying.

10 THE COURT: Thank you, sir. If you would, step
11 outside the door then for a minute for me. And that sheet.
12 Thank you very much.

13 (THE JUROR EXITS THE COURTROOM.)

14 THE COURT: Position of the state?

15 MR. HUMPHRIES: He's disqualified.

16 THE COURT: Position of defense?

17 MR. WILSON: I would like to have him. He is
18 disqualified, Your Honor.

19 THE COURT: Very good person, though; he'd be a good
20 juror on some other some other type of case. Bring him
21 back in, please.

22 (THE JUROR ENTERS THE COURTROOM.)

23 THE COURT: Mr. English.

24 JUROR: Yes, sir.

25 THE COURT: Thank you very much, sir. Could I have

1 the pleasure and honor of shaking your hand, sir? Thank
2 you for coming, sir, and honestly like I said. You're not
3 on trial. We just wanted to find out your views, and so
4 with that we're going to excuse you for jury duty here for
5 the rest of the week, and so you don't need to come back,
6 okay, sir?

7 JUROR: Okay.

8 THE COURT: And thank you very much for coming today.

9 JUROR: Thank you.

10 THE COURT: Give him that badge on the way out, and
11 we'll see you later.

12 Okay, bring the next person in, please. Again, on the
13 record, I find that person disqualified.

14 (JUROR #19 ENTERS THE COURTROOM.)

15 EXAMINATION BY THE COURT:

16 Q. Ms. Bell?

17 A. Hello.

18 Q. Just have a seat there in the witness chair. Now,
19 although you're on the witness chair, now you're not a
20 witness. This is just a place where we can converse simply
21 while you're there. I see you're originally from
22 Greenville?

23 A. Yes, sir.

24 Q. A long way from here.

25 A. Well, four hours. Not so bad.

1 Q. Well, as far as for the state, there's only about one
2 or two places further away, I think, in South Carolina.

3 What brought y'all to Horry County?

4 A. My husband was transferred here; he was in the
5 construction business.

6 Q. All right. I want you to be very comfortable. I'll
7 remind you that you're still under oath, and this is not
8 anything other than discussions between us, and I would let
9 the attorneys ask you a few questions in a little bit. But
10 you're not on trial for anything so don't, you know -- we
11 just want to honestly know how you feel and to get to know
12 you a little bit, and that's the only purpose of this. And
13 so feel free to tell me how you feel and not necessarily
14 what you think anybody will think one way or the other.
15 One thing I do ask for you to do, though, is to try to
16 speak into that microphone.

17 A. Okay.

18 Q. And that when I ask you questions, although when you
19 and I are conversing said at a coffee shop, you could do
20 uh-huh or shake your head and I would understand what you
21 meant. But this lady's got to take down your responses,
22 so they pretty much always need to be in word form, all
23 right?

24 A. Okay.

25 Q. Now, are you related by blood or marriage, or do you

1 know any of the attorneys involved in this case?

2 A. No, sir.

3 Q. And do you know the defendant at all, Mr. Winkler?

4 A. No, sir.

5 Q. Okay. So, you don't have any interest or bias or
6 prejudice in this case one way or the other?

7 A. No, sir.

8 Q. Do you understand in this case the jurors would be
9 impaneled and, and they would hear evidence in this case,
10 and the burden would be on the state to prove guilt beyond
11 a reasonable doubt, the defendant proved innocent -- I
12 mean, presumed innocent. So, juror -- the burden again --
13 make sure I state that correctly. The burden on the state
14 to prove guilt beyond a reasonable doubt. The presumption
15 of innocence is with the defendant. And the jurors will
16 then hear instructions from the judge and will be required
17 to follow the law as the judge gave the jurors. Could you
18 follow the law, and would you follow the law I instructed
19 you?

20 A. Yes, sir.

21 Q. All right. Then after they've heard the evidence and
22 the law, then the jurors are going to have one of two
23 possible verdicts: either guilty or not guilty. Now, do
24 you feel that sitting on that jury if after hearing all the
25 evidence and the law the judge gave you, that if you felt

1 that the correct thing to do based on the evidence and the
2 law, could you find the defendant not guilty if that was
3 the decision you all made based on the evidence and the law
4 as instructed to you?

5 A. Yes, sir.

6 Q. And if you felt based on the evidence presented, the
7 law as I instruct it to you that the defendant should be
8 found guilty, could you find him guilty?

9 A. Yes, sir.

10 Q. All right. Now, have you formed any opinion one way
11 or the other as to the guilt or the innocence of the
12 defendant at this time?

13 A. No, sir.

14 Q. All right. Have you discussed this case with anyone?

15 A. No, sir.

16 Q. Okay. Now, it's not uncommon in the case of this
17 nature that you have media reports out there and, whether
18 it be newspaper, TV, stuff of that nature. Have you seen
19 any newspaper accounts or heard anything on the TV about
20 this case?

21 A. Not that I recall. Only this morning on the way into
22 work I heard something on the radio, but that was all.

23 Q. And would that cause you to form any opinions or
24 whatever?

25 A. No, sir.

1 Q. Would you make your decision on the jury based on
2 evidence presented in this case and law as I instruct it to
3 you?

4 A. Yes, sir.

5 Q. And would you put aside anything you may have heard in
6 the media?

7 A. Yes, sir.

8 Q. Okay. Now, I put, put a list in the room I wanted you
9 to look over, a group of names. Did you have a chance to
10 look over all those names?

11 A. Yes, sir..

12 Q. Do you know anybody on that list?

13 A. No, sir.

14 Q. Okay. Hand that to me, up to me, please. Okay, and
15 did you did not circle any names at all. I notice that.

16 A. No, sir.

17 Q. You know no one on this list, okay?

18 A. No, sir.

19 Q. Now, I also gave you a sheet that described three
20 types of jurors, and in juror number one is a juror that --
21 and this gets into an area. I'm not trying to suggest one
22 thing the jury may or may not do. This is saying if the
23 jurors were to determine the evidence warranted it and
24 following the law that the judge instructed, if the jury
25 were to find the defendant guilty, we would then move into

1 another phase where the jurors would decide what the
2 penalty would be. And the jurors will have the choice of
3 either life imprisonment or the death penalty.

4 Now, there are three types of jurors. This one type
5 of juror that, after hearing in that phase evidence in
6 aggravation and mitigation, that juror would feel that once
7 a murder's been committed, regardless what evidence there
8 is in aggravation and mitigation, the sentence would always
9 be death. That that's always the most appropriate
10 punishment.

11 There's another type of juror that, once the guilt has
12 decided, that that juror feels no matter what the facts,
13 circumstances, evidence in aggravation or in mitigation
14 are, that juror feels that the penalty should always be
15 life and could never impose the death penalty no matter
16 what the circumstances in aggravation and mitigation are.

17 Then there's the third type of juror that, once the
18 decision of guilt had been made, that that juror would not
19 have her mind made up in advance concerning punishment.
20 That juror would want to hear the facts and circumstances
21 in aggravation and in mitigation and would want to listen
22 and follow the law from the judge before they could make
23 their decision regarding the punishment. And after hearing
24 all the facts in aggravation and mitigation if it so
25 warranted it, that juror could bring back a decision of

1 life imprisonment. Or if the facts in evidence so
2 warranted it in aggravation and mitigation, that juror
3 could bring back a verdict for the death penalty. Do you
4 understand those three types of jurors?

5 A. Yes, sir.

6 Q. Now, which type are you?

7 A. I'm type three.

8 Q. All right, so you would be open minded and if the jury
9 were to decide the defendant guilty, you would listen to
10 all the facts and circumstances in aggravation and in
11 mitigation before making up your mind as to what punishment
12 would be appropriate?

13 A. Yes, sir.

14 Q. All right. This trial may be a week, ten days, who
15 knows, and we will have the jurors sequestered. That
16 means, that's a term meaning you have a hotel room and we
17 will provide food and lodging for you of course, and there
18 would be some opportunity for you to have some contact with
19 your family by phone or business people, but it would be
20 supervised. Would that cause any undue hardship that you
21 couldn't overcome?

22 A. No, sir.

23 Q. All right, thank you.

24 THE COURT: Any questions from the state?

25 MR. HEMBREE: No questions from the state, Your Honor.

1 THE COURT: From the defense?

2 MR. WILSON: I'd just have a few questions, Your
3 Honor.

4 THE COURT: Okay.

5 EXAMINATION BY MR. WILSON:

6 Q. Ms. Bell, let me ask you, ma'am. You understand that
7 as the defendant is here today, that he is presumed to be
8 not guilty?

9 A. Yes, sir.

10 Q. Innocent.

11 A. Yes, sir.

12 Q. Do you understand that?

13 A. Innocent, yes, sir.

14 Q. And you can accept that from the court, if the court
15 tells you -- if the court tells you that he is presumed to
16 be innocent, you could accept that?

17 A. Yes, sir.

18 Q. All right and, ma'am, let me ask you. In terms of, in
19 terms of the sentencing phase of the trial, you understand
20 that we only get to that second part of the trial if the
21 jury does not acquit the defendant?

22 A. Yes, sir.

23 Q. And that if he is acquitted, then obviously we don't
24 go to that second phase in the trial?

25 A. Correct.

1 Q. And if he is convicted of murder, and then we would go
2 to the second phase of that, of the trial?

3 A. Yes, sir.

4 Q. Called the sentencing phase and in that sentencing
5 phase, certain aggravating circumstances might be offered
6 by the state and that you would then be willing to consider
7 those aggravating circumstances before making your
8 decision?

9 A. Yes, sir.

10 Q. All right, and do you also understand that there may
11 be some mitigating facts or circumstances, mitigating facts
12 or circumstances, things which may lessen the moral
13 culpability of the person accused of the crime or having
14 been convicted of the crime?

15 A. Yes, sir.

16 Q. All right, and you, are you willing to consider that
17 if the court tells you that you could consider that?

18 A. Yes, sir.

19 Q. All right, and after having considered both the
20 aggravating and the mitigating circumstances, then you
21 would be willing to make your decision about what is the
22 most appropriate sentence, be that life or death?

23 A. Yes, sir.

24 Q. All right, and, and you're not a juror number two,
25 which would either always vote for life in prison. Is that

1 correct?

2 A. No, sir.

3 Q. And not under number one, which would always vote for
4 the death penalty?

5 A. No, sir.

6 Q. And so you would want to know about the facts and
7 circumstances so that you could decide what's the most
8 appropriate verdict. Is that correct?

9 A. Yes, sir.

10 Q. Have you ever served on a jury before?

11 A. About four or five years ago I was called here, but
12 then the case was dropped. So, I didn't really serve.

13 Q. And you don't know any of the parties involved?

14 A. No, sir.

15 Q. Now as I understand it, you said that on the way to
16 work this morning, you heard something on the news or on
17 the radio about this particular case?

18 A. Yes, sir.

19 Q. What was it that you heard this morning?

20 A. I heard that jury selection would be started today.

21 Q. Okay. Did you hear anything about the facts and
22 circumstances of the case?

23 A. No.

24 Q. Have you heard anything about the facts and
25 circumstances of the case prior to this morning?

1 A. No, sir.

2 Q. All right. So, you know nothing about the case and
3 you've heard nothing about it?

4 A. No, sir.

5 Q. All right, and let me ask you, ma'am. In terms of
6 your decision to vote for the death penalty or vote for
7 life in prison, are you -- once you make up your mind and
8 -- are you committed to hold your verdict regardless of
9 what other people do?

10 A. Yes, sir.

11 THE COURT: Now, I will instruct them that as jurors
12 they talk among themselves before they make up their mind
13 and deliberate. I don't want to be any misunderstanding
14 there.

15 MR. WILSON: No, sir. What I'm asking, and in case my
16 question's not clear, Judge, my question to her is once she
17 decides what her opinion is ---

18 THE COURT: After talking it up with everyone else,
19 once she makes up her mind in ---

20 MR. WILSON: Yes, sir, and I'm ---

21 THE COURT: But you're not asking would she not listen
22 to other people, are you?

23 MR. WILSON: No, sir. No, sir. I'm asking that, and
24 I'll rephrase it to make it clearer.

25 BY MR. WILSON:

1 Q. What I'm asking you, ma'am, is that after you and your
2 jury deliberate, and you reach a decision and you've
3 reached your decision, as well as the other members of the
4 panel reaching their decision, and whatever that firm
5 conviction is that you have, whether it be life or death,
6 are you willing to stick with that in the process?

7 A. Yes, sir.

8 Q. Once that's your decision?

9 MR. WILSON: That's all I have. Thank you.

10 THE COURT: Any other questions?

11 MR. HEMBREE: Your Honor, just one thing I should have
12 asked earlier. I apologize.

13 EXAMINATION BY MR. HEMBREE:

14 Q. Hey, Ms. Bell.

15 A. Hello.

16 Q. I'll be very brief. It's sort of a technical
17 question. If the defendant is found guilty, if the state
18 proved sufficient aggravating circumstances and in
19 accordance with law and there's sufficient evidence the
20 jury determines that the appropriate sentence is death,
21 there's a procedure that our state law requires in that
22 circumstance. And procedure requires each member of the
23 jury to sign that this is their verdict and death is the
24 appropriate punishment. So, there's an actual document
25 that you must sign. Typically only the foreman signs that

1 document. Because it's the death penalty case, every juror
2 signs that document. Is there anything about signing your
3 name to that document that would give you hesitation in
4 your ability to impose the punishment that you believe,
5 based on the evidence and the law, was appropriate?

6 A. No, sir.

7 Q. Okay.

8 MR. HEMBREE: That's the only question I have, Your
9 Honor.

10 EXAMINATION BY THE COURT:

11 Q. One thing I want to make sure, Ms. Bell. When you're
12 in that jury room, you will consider the opinions and
13 discussions and the deliberations of all the jurors in the
14 jury room?

15 A. Right.

16 Q. All right. So, making your decision, you will
17 consider everyone else's thoughts also?

18 A. Yes, sir.

19 THE COURT: If you would, ma'am, step outside the
20 door.

21 (THE JUROR EXITS THE COURTROOM.)

22 THE COURT: Position of the state?

23 MR. HEMBREE: Juror's qualified.

24 THE COURT: Defense?

25 MR. WILSON: She's qualified.

1 THE COURT: All right, thank you very much. Bring her
2 back in.

3 (THE JUROR ENTERS THE COURTROOM.)

4 THE COURT: Now, Ms. Bell, what I need for you to do
5 is do not listen to any local media stations, radio or TV.
6 Do not read any local papers at all, and do not discuss
7 this case with anyone at all, family members, friends,
8 associates or anyone at all. And then I need for you to
9 come back at 11:30 on Thursday. Come back at 11:30 on
10 Thursday, and there will be somebody outside the courtroom
11 there to let you know where to go, okay? Come back at
12 11:30 on Thursday, all right? And so we'll see you then.

13 And by the way, when you come back, doesn't mean
14 you're going to be on this jury. There will be a selection
15 process, all those that are qualified and if you are
16 selected, though, then we'll give you means to get home and
17 get some clothes and everything else to be ready to go back
18 for the jury. They want to get things preliminary ready
19 just in case but, but we will know that Thursday, okay?
20 So, we'll see you at 11:30 on Thursday here in this
21 courtroom.

22 JUROR: All right, sir.

23 THE COURT: Thank you, ma'am. See you later, and if
24 you would hand me that sheet of paper if you would. Thank
25 you.

1 All right, bring in Mr. Hardwick.

2 (JUROR #200 ENTERS THE COURTROOM.)

3 EXAMINATION BY THE COURT:

4 Q. Come right over here, Mr. Raynor. It's been a long
5 day, hasn't?

6 A. Yes, sir.

7 Q. And, Mr. Raynor, I want to remind you again that
8 you're under oath and that we're going to talk a little bit
9 now. There are no right answers, no wrong answers. Just
10 honestly want to know how you feel.

11 CLERK OF COURT: This is Mr. Hardwick.

12 THE COURT: I know, Hardwick, not Mr. Raynor. Mr.
13 Raynor is after you. I'm sorry.

14 BY THE COURT:

15 Q. You're Mr. Thomas Hardwick?

16 A. Yes, sir.

17 Q. Mr. Hardwick, there are no wrong answers, no right
18 answers, and this is juror number 200, and I just want to
19 talk with you a bit, see how you feel and everything about
20 certain things. So, you do remember you're still under
21 oath right, sir?

22 A. Yes, sir.

23 Q. We did that this morning. Shows you're from Mullins.
24 Is that right?

25 A. No, sir. I'm out in the country about fifteen mile

1 out of Conway.

2 Q. Well, I wonder why it's says city, county, state of
3 birth you've got Mullins in Marion, South Carolina.

4 A. That's where I was born, in Mullins.

5 Q. Right. Now, how long had you lived there in Mullins?

6 A. Never have. I was just born in the hospital over
7 there.

8 Q. Oh, really? My brother was born there, too, in the
9 Mullins hospital. It's no longer there.

10 A. Right.

11 Q. But they got one between here and there, and he was
12 born over there. So, your home has always been here in
13 Horry County?

14 A. Yes, sir.

15 Q. Did you ever work in tobacco at any time?

16 A. All my life.

17 Q. Yeah, me, too.

18 A. Until the last six, seven years.

19 Q. So, if I say the word sand lug, you know what a sand
20 lug is, don't you?

21 A. Yes, sir.

22 Q. And you remember the barns they had for curing, the
23 bulk barns. They tell me now they've gone beyond bulk
24 barns. They've got something even better than that now,
25 but I remember when bulk barns came in. In fact, people

1 weren't sure how to use them. A lot of people lost their
2 shirts those first years because they either make it too
3 hot or too cold for that tobacco. But I cropped tobacco
4 many a day.

5 Now, Mr. Hardwick, are you related by blood or
6 marriage, or do you know any of the attorneys in this case?
7 They've already introduced themselves to you, but I just
8 want to make sure again. Do you know any of them?

9 A. No, sir.

10 Q. All right. Do you know Mr. Winkler, the defendant in
11 this case?

12 A. No, sir.

13 Q. All right. The jury in this case, once that jury is
14 selected, the jury sits over there. They listen to the
15 evidence presented in the case, and the judge would give
16 the jury the law. The jury must accept the law has the
17 judge gives it to them. Now, you will accept the law
18 as I instruct you, would you not, sir?

19 A. Yes, sir.

20 Q. Now, a person charged with a crime is presumed
21 innocent, and the burden's upon the state to prove guilt
22 beyond a reasonable doubt. Do you understand that?

23 A. Yes, sir.

24 Q. And you accept that as a principle of law?

25 A. Yes, sir.

1 Q. And you would follow that as a juror?

2 A. Yes, sir.

3 Q. All right. Now, have you formed, expressed any
4 opinion in this case one way or the other?

5 A. No, sir.

6 Q. Do you have any interest or bias or prejudice in this
7 case in any way at all?

8 A. No, sir.

9 Q. Do you know of any reason why you could not be fair to
10 both the state and to the defendant in this case?

11 A. No, sir.

12 Q. Have you expressed any opinion or formed an opinion of
13 guilt or innocence at all?

14 A. No, sir.

15 Q. Are right, and you would follow the law as I
16 instructed you?

17 A. Yes, sir.

18 Q. And if you sat on that jury, if after hearing all the
19 evidence and my instructions on the law, if you felt after
20 hearing all the evidence and my instructions and law you
21 felt the defendant was not guilty, could you make a
22 decision and find a verdict of not guilty?

23 A. Yes, sir.

24 Q. And if after hearing all the evidence and my
25 instructions on the law you felt the defendant was guilty,

1 could you come back with a verdict of guilty of the crime?

2 A. Yes, sir.

3 Q. All right. Now, I may have asked you this already.

4 I'll do it again. Have you discussed this case with
5 anyone?

6 A. No, sir.

7 Q. Have you, and it's not, it's not uncommon in cases
8 with allegations of this nature you might have some media
9 coverage. Have you seen any media coverage or anything in
10 the newspaper, TV, or radio about this case?

11 A. Not that I can recall. If I had, it would have been
12 some time back, and I'd even forgot the case.

13 Q. Okay. So, you don't remember at any time seen
14 anything in the media about it?

15 A. No, sir.

16 Q. Okay. If for some reason some time during the course
17 of the trial and you're on the jury you remembered
18 something you read in the newspaper or saw on TV and heard
19 on the radio, would you be able to put that aside and not
20 consider that in your decision and make your decision based
21 on the evidence presented in the case and the law as I
22 instruct it to you?

23 A. Yes, sir.

24 Q. Okay. Now, I gave you three sheets of paper, stapled
25 three sheets of paper with names of people on there. Did

1 you get that sheet?

2 A. Yes, sir.

3 Q. Have you looked over that sheet? Do you know anybody
4 here you know you're related to or have any relationship
5 with?

6 A. Yes, sir.

7 Q. Okay, and I'm not saying the name. Just tell me the
8 number. Did you circle the number?

9 A. Yes, sir.

10 Q. What number?

11 A. Number 41, I'm not sure. I knew a doctor by that
12 name, but I'm not sure if that's the one or not.

13 Q. All right, Dr. Edward L. Proctor?

14 A. Yes, sir.

15 Q. And how did you know that doctor?

16 A. Some time back in years past, I think he might have, I
17 might have went to him.

18 Q. Okay, and if in fact that is that the doctor -- it may
19 or may not be -- would that cause you to look upon him
20 differently than you would any other witness?

21 A. No, sir.

22 Q. Would you consider him just like anybody else?

23 A. Yes, sir.

24 Q. All right, anyone else on the list?

25 A. Yes, sir.

1 Q. All right, what number?

2 A. Number 96.

3 Q. Okay, Phyllis Richardson. How would you know a
4 Phyllis Richardson?

5 A. She goes to my church; we go to the same church.

6 Q. Now, if she were a witness in this case, the fact
7 y'all go to church, would that make you look upon her
8 differently than you would any other witnesses in the case?

9 A. No, sir.

10 Q. You will consider her just like anybody else?

11 A. Yes, sir.

12 Q. You have any close relationship with her at all?

13 A. No, sir.

14 Q. Okay, you just know she goes to your church. What
15 church is that?

16 A. Berea Baptist.

17 Q. Berea Baptist. All right, anyone else?

18 A. Number 99.

19 Q. Person with Horry County 911, Renee Hardwick?

20 A. Yes, sir. I know a Renee Hardwick. I'm not sure if
21 that's her or not.

22 Q. How would you know that person? What relationship do
23 you have?

24 A. She works with the county.

25 Q. All right, but how do you know her?

1 A. We're distant kin.

2 Q. Would you say that's more than third cousin, beyond a
3 third cousin?

4 A. Probably third or beyond.

5 Q. Okay, and would that cause you to look upon her
6 differently than you would any other witness?

7 A. No, sir.

8 Q. And would you, even though you might have knowledge of
9 these people, if they testified, would that in any way
10 affect your ability to be fair and impartial?

11 A. No, sir.

12 Q. All right, anybody else?

13 A. Number 110.

14 Q. Okay, Tammy Cox?

15 A. I'm not sure. I know a Tammy Cox. I'm -- there's
16 just a name on the sheet that I had.

17 Q. Well, how do you know Tammy Cox?

18 A. She used to live in our community.

19 Q. Okay. If -- you're right. That's a name a lot of
20 people have. If that turns out to be that person, would
21 that any way cause you to look upon her differently than
22 you would any other witness?

23 A. No, sir.

24 Q. Would it cause, in any way affect your ability to be
25 fair and impartial?

1 A. No, sir.

2 Q. Okay. What age group is that Tammy Cox or the one you
3 know?

4 A. Tammy Cox that I know used to be a Richardson. She
5 married a Cox and I'm not -- that's why I'm saying I'm not
6 sure that's...

7 Q. And about what age would she be? Thirties, twenties,
8 forties, fifties?

9 A. I'd say probably early thirties.

10 Q. Okay, what's color hair? Do you know what color hair
11 she has?

12 A. No, sir, I sure don't.

13 Q. Okay, so you don't know her well at all. Okay, anyone
14 else?

15 A. No, sir.

16 Q. Okay, let me hold your sheet there.

17 THE COURT: Madame Court Reporter, I should ask you.
18 Also put down the name of the juror on this.

19 (QUESTIONNAIRE OF JUROR #200-HARDWICK MARKED INTO
20 EVIDENCE AS COURT'S EXHIBIT NUMBER 3-A.)

21 BY THE COURT:

22 Q. But that's one, two, three, four people to hand to
23 her. Okay. Now, also I gave you a sheet of paper there
24 that talks about types of jurors. You remember that sheet
25 of paper?

1 A. Yes, sir.

2 Q. Now, it goes over the types of jurors. It says like a
3 juror -- and by the way, let me tell you this. Suppose,
4 say, and this is in no way implying it will do so. Just
5 mentioning it. That if the juror, jury after hearing all
6 the evidence in the case and the law as I instruct it, that
7 if the jury decided the defendant was not guilty, then we
8 would end the case at that point in time. If, however, the
9 jury after hearing the evidence in the case and the law as
10 I instruct it to it, to the jury, if the jury determines
11 the defendant was guilty of, of the crime and the
12 circumstances of aggravation, we would then go into another
13 phase where the jury then would decide what punishment to
14 give. The jury would decide one of two punishments: either
15 life imprisonment or the death penalty.

16 Now, I told you, showed you three types of jurors.
17 Juror number one is was the juror that even though they
18 found the defendant guilty, that juror simply feels that
19 once a murder's been committed, the death penalty is the
20 most appropriate punishment, and they would feel they would
21 be required to give the death penalty in each and every
22 case if murder was proven regardless of the circumstances
23 in aggravation or mitigation.

24 The juror number two is the one that would not, would
25 not -- it wouldn't matter what the evidence was in

1 aggravation or in mitigation. That juror would feel that
2 life imprisonment is the only appropriate punishment if
3 guilt was found, and that they could never impose the death
4 penalty. And they would have their mind made up and would
5 not need to hear anything about mitigation or aggravation.

6 And juror number three, though, is the type of juror
7 that if guilt were proven and they determine the defendant
8 was guilty, that that juror would want to hear the facts
9 and circumstances of aggravation and mitigation because
10 that juror had not made his mind up yet in advance
11 concerning what the punishment would be. They want to hear
12 the evidence first in aggravation and mitigation and want
13 to listen to, follow the law as the judge charges the jury
14 before he could make a decision regarding punishment.

15 And after hearing all the facts in aggravation and
16 mitigation, if after hearing all of that, if that juror
17 felt that the facts in aggravation and mitigation so
18 warranted it, that juror could come back with a verdict of
19 life imprisonment. Or after hearing all the facts in
20 aggravation and mitigation presented, if that juror felt it
21 was appropriate, that juror could bring back a verdict for
22 the death penalty. It would all depend on the, the
23 decision the juror made after hearing evidence in
24 aggravation and mitigation. Do you understand those three
25 types of jurors?

1 A. Yes, sir.

2 Q. Which of those three types of jurors are you?

3 A. The third one.

4 Q. All right. So, you would not automatically feel one,
5 either life imprisonment or death penalty, was appropriate?

6 You want to first hear the facts and circumstances? Then
7 you could decide which one was appropriate in your view?

8 A. Yes, sir.

9 Q. All right. Let me also mention this to you. That
10 this case would start we think around Thursday, and it
11 might last a week or so. And you will be housed in a
12 hotel, and we would let you have some contact with family
13 by phone call and that type of thing. And of course we
14 would feed you and everything else, too. Would this cause
15 any undue burden that you couldn't sort of handle for about
16 a week?

17 A. No, sir. The only thing, I'm taking some medication.
18 Kidney transplants patient. As long as I could have my
19 medicine, I, I could be okay.

20 Q. Okay. So, as long as you got your medicine, you'll be
21 fine?

22 A. Yes, sir.

23 Q. Does that medicine in any way affect your ability to
24 listen and pay attention and observe?

25 A. No, sir.

1 Q. Okay. One other thing, too, I forgot. That if a jury
2 were to decide that the death penalty were appropriate,
3 each juror has to sign the verdict form. Would that cause
4 you any problem at all if that's what you all decided was
5 the appropriate punishment?

6 A. No, sir. If I decided that, I'd be happy to sign it.

7 Q. Okay, and also if you decided that life was
8 appropriate, you'd be happy if you were asked to sign that,
9 too?

10 A. Yes, sir.

11 Q. Okay. All right.

12 THE COURT: Any questions by the state?

13 MR. HUMPHRIES: No, Your Honor.

14 THE COURT: Okay, by the defense?

15 MR. WILSON: Yes, sir, Your Honor.

16 EXAMINATION BY MR. WILSON:

17 Q. Mr. Hardwick, you understand that as we speak, the
18 defendant is presumed to be innocent?

19 A. Yes, sir.

20 Q. All right and, and if His Honor instructs you that's
21 the law, and you could accept that, could you not?

22 A. Yes, sir.

23 Q. All right, and you would abide by that?

24 A. Yes, sir.

25 Q. And, and you understand that we only get to the

1 sentencing phase of the trial if and when the jury were to
2 find the defendant guilty of the crime of murder?

3 A. Yes, sir.

4 Q. And if the jury were to find him guilty of a lesser
5 crime or not guilty, then we would never get to that second
6 phase. So, there will never be a sentencing.

7 A. Yes, sir.

8 Q. At least by the jury, and do you also understand that
9 if we get to that second part, if the jury were to find the
10 defendant guilty of the murder in this particular case, and
11 then we would go to the sentencing phase of that trial.

12 And at that time, the state would then produce aggravating
13 circumstances, or at least what they believe to be
14 aggravating circumstances for your consideration. And
15 you'd be willing to wait and hear what those aggravating
16 circumstances were, would you not?

17 A. Yes, sir.

18 Q. All right, and the defense would present whatever
19 mitigating facts or circumstances that we believe are
20 appropriate, and you would be willing to listen to those
21 and consider them also, would you not?

22 A. Yes, sir.

23 Q. All right, and you'd be able to, you be able and
24 willing to do both those things before you make up your
25 mind as to whether or not the appropriate sentence would be

1 life or death?

2 A. Yes, sir..

3 Q. All right. Now, let me ask you. Have you ever served
4 on the jury before?

5 A. Just in city court.

6 Q. Okay, and let me ask you about your views on the death
7 penalty. Now, you have said that you're a type three
8 juror. Is that correct?

9 A. Yes, sir.

10 Q. All right, and when, or do you know when it was that
11 you determined that you're a type three juror?

12 A. I guess if I listened to all the evidence, I'd, I'd
13 base it on the evidence that was presented.

14 Q. What I'm asking you is that some time in your past, in
15 your history, or in your life you decided that you were a
16 type three juror, and do you know when that was when you
17 made up, when you decided that you were the kind of juror
18 who are in favor of the death penalty and in some
19 circumstances in favor of life but you wanted to hear the
20 facts and circumstances? How did you come to that
21 determination is what I'm asking you. Do you know?

22 A. No, not really.

23 Q. Okay.

24 A. I, I don't have an explanation for it.

25 Q. All right. Do you know when you decided it?

1 A. No, sir.

2 Q. All right. Now, is it a long-held belief, or is it
3 something that you had never thought about until now?

4 A. Repeat your question.

5 Q. Well, what I'm asking you is in being a type three
6 juror, is this something that you have always believed
7 growing up as a child or as a young adult or as a man? Or
8 is it just something that you just really never thought
9 about until you got drug over here to do this with the
10 subpoena to comes court?

11 A. No, I guess I thought of it in the past.

12 Q. All right, and ---

13 A. And now a time frame, I couldn't really give you a
14 time frame.

15 Q. Would you, would you say that it's been a considerable
16 period of time?

17 A. Yes, sir.

18 Q. But not something recent?

19 A. No, no, it's not recent, no.

20 Q. Okay. All right.

21 MR. WILSON: I don't think I have any other questions.
22 Thank you.

23 THE COURT: If you would, Mr. Hardwick, step outside
24 there if you would. Let you know something soon. Right
25 outside that door. Thank you very much.

1 (THE JUROR EXITS THE COURTROOM.)

2 THE COURT: Position of the state?

3 MR. HUMPHRIES: He's qualified.

4 THE COURT: Defense?

5 MR. WILSON: Judge, I, I think he's qualified but, but
6 let me, let me add something to that just so that it's in
7 the record anyway. While I think he's qualified, Judge,
8 there are -- he named several witnesses, several people
9 that he said he knew. And obviously I'd understand that
10 that in and of itself does not disqualify him as a, as a
11 juror. But I will say to the court for the record that
12 several of these people are friends of the deceased.

13 THE COURT: Well, I didn't hear him say anyone who he
14 really knew that well.

15 MR. WILSON: Well, he said he knew Phyllis Richardson,
16 Renee Hardwick, and Tammy, Tammy Cox Richardson.

17 THE COURT: He said she used to live in the
18 neighborhood. He didn't know what color hair she had.
19 Well, I mean, the statement. Is there anything else you
20 want to say about it?

21 MR. WILSON: No, sir. That's, that's all I need to
22 put in.

23 THE COURT: Okay. All right, I find this juror is
24 qualified. Also this juror has formed no opinion in the
25 case, and this juror will be a fair and impartial juror to

1 both sides.

2 Bring the juror in, please.

3 (THE JUROR ENTERS THE COURTROOM.)

4 THE COURT: Okay, Mr. Hardwick, I'm going to let you
5 go home now. I need for you to come back Thursday at 11:30
6 in here. There will probably, probably be somebody outside
7 the door to let y'all come in here or go somewhere else,
8 but be back here Thursday at 11:30.

9 Now, this doesn't mean you're on the jury. What this
10 means is you'll get a pool of people from which the jury
11 will be selected. But if you are selected on the jury,
12 then I'll give you time to go home and get to your goods
13 and come on back. But just to be safe, you might want to
14 go ahead and pack a few things just to be ready okay, sir,
15 and, and, and we'll let you know.

16 But do not discuss this case with anyone. Do not
17 listen to any media. Don't, don't listen to any local
18 news. Don't read any local newspapers, and don't discuss
19 this case with anyone else okay, sir?

20 JUROR: Okay.

21 THE COURT: All right. We'll see you Thursday at
22 11:30.

23 JUROR: Do you keep this pin or ---

24 THE COURT: Yes, you, if you bring it back, that'll be
25 fine. Bring it back with you, okay? Please go out that

1 way there.

2 Y'all want to go to the next one, or do you need a
3 break? She needs a break. All right, we'll take a minute.

4 THE COURT: Okay, bring in juror 378, Theresa Raynor.

5 (JUROR #378 ENTERS THE COURTROOM.)

6 EXAMINATION BY THE COURT:

7 Q. Hello, Ms. Raynor.

8 A. Hello, sir.

9 Q. If you would, come on around and have a seat right
10 there. We've already talked briefly. I think you came up
11 one time and talked a little bit?

12 A. Yes.

13 Q. I see like, you like crossword puzzles?

14 A. Yeah. In fact, we've been doing them out there. I
15 did have a book today while I was here.

16 Q. Looking at some of the books you read, too.

17 A. That was just the last one.

18 Q. Now, you do understand -- of course, it's getting
19 late.

20 A. Oh, yeah.

21 Q. Do you understand that you're still under oath?

22 A. Yes.

23 Q. Now, what we're going to do, Ms. Raynor, is I'm just
24 going to talk and ask you a few questions, and you're not
25 on trial. This is not an interrogation. This is just

1 discussion, and please know that just answer to the best of
2 your ability. There's no wrong answers, no right answers
3 at all.

4 A. Gotcha.

5 Q. And so the first thing I, I want to do is this. Let
6 me ask you. Do you know -- I know I've asked you already.
7 Let me ask you again. Do you know any of the attorneys
8 involved in this case?

9 A. Just briefly from, you know, years ago I had a problem
10 when my husband...

11 Q. That's right. You mention that ---

12 A. Yes.

13 Q. --- up here that you had a problem with ---

14 A. And that was ---

15 Q. --- and, in fact, he was stalking you?

16 A. You know, just in the hallway conversation. It wasn't
17 at length, you know.

18 Q. Now, that situation with your husband, did it cause
19 you in any way to form any type of feeling of the
20 solicitor's office that you feel you have a bond or
21 anything ---

22 A. No.

23 Q. --- any relationship with them?

24 A. Huh-uh.

25 Q. And also one thing also. This lady over here, she has

1 to record what you say.

2 A. Okay. Yes.

3 Q. And when you -- sometimes it's hard to understand that
4 on the tape. And so please answer with words if you can,
5 ma'am.

6 A. Yes, sir.

7 Q. And I think this situation with your husband now is
8 all worked out ---

9 A. All better now.

10 Q. Getting along?

11 A. Getting through.

12 Q. And I had another sheet and can't find it. Now, the
13 next thing is this. Jurors if, when the jury is selected
14 in this case, the jury will hear the evidence in the case,
15 and the judge will instruct the law. The jurors are
16 required to accept the law as the judge instructs it, and
17 one of those laws, rules are that the defendant is presumed
18 innocent. And the state has the burden of proving guilt
19 beyond a reasonable doubt. Do you feel you could accept
20 and follow that rule of law?

21 A. Yes, sir.

22 Q. All right. Further, that in looking at the evidence,
23 the jurors would make the decision of guilty or innocence
24 based on the evidence presented with the law as far as the
25 burden on the state. Now, do you feel that if you're

1 sitting on that jury and after hearing all the evidence in
2 the case and the law from the judge, if you felt the
3 defendant was not guilty, could you vote for not guilty?

4 A. Yes.

5 Q. If after hearing all the evidence in the case and the
6 law from the judge, if you felt the defendant was guilty,
7 could you vote guilty?

8 A. Yes.

9 Q. Okay. How do you -- do you feel you could be fair and
10 impartial to both sides in this case?

11 A. Well, I've had teenagers so yeah, I can be pretty fair
12 and impartial when I have to be.

13 Q. Okay. Now, have you discussed this case with anyone?

14 A. No.

15 Q. Have you formed an opinion one way or the other about
16 the guilt or innocence of the defendant?

17 A. No.

18 Q. Do you have any interest, bias, or prejudice at all in
19 this case?

20 A. No.

21 Q. Okay. Now, understanding the allegations as they are,
22 the media may have some coverage by TV or newspapers or
23 radio. Have you seen anything in the newspapers or TV or
24 anything, heard anything on the radio?

25 A. And long time ago on the news, but.

1 Q. Okay. Have you ---

2 A. There are so many changes from five minutes to the
3 next, you don't really know what's going on anyway.

4 Q. Okay. Do you remember at all what was it you may have
5 seen in the newspaper or read?

6 A. Just that they were hunting for him in North Myrtle
7 Beach. That was at a, that's the only thing I can
8 remember. I don't remember where it happened or anything.

9 Q. That didn't cause you to form an opinion one way or
10 the other?

11 A. Oh, no.

12 Q. Is that correct?

13 A. That's correct. I've not.

14 Q. You do understand that no matter what the media says,
15 the burden is on the state to prove ---

16 A. Yes.

17 Q. --- guilt beyond a reasonable doubt and the person is
18 presumed innocent?

19 A. Yes.

20 Q. And you'd follow that?

21 A. Uh-huh.

22 Q. And you would be able to disregard what it was even if
23 you remember the other things you may have seen? You be
24 able to disregard anything you may have seen in the papers
25 or media?

1 A. Yes.

2 Q. And make your decision based on the evidence in the
3 case and the law as I instruct it to you?

4 A. Yes.

5 Q. Okay. I gave you a stapled list with a group of names
6 on it. Did you look over that list?

7 A. Every one.

8 Q. Do you know anybody on there?

9 A. Nothing rings a bell at all.

10 Q. Okay, let me see. Okay, you didn't circle any names
11 and I note you did not circle any names. No names are
12 circled. So, you do not know anyone on this list at all?

13 A. Huh-uh.

14 Q. If for some reason during the course of the trial
15 someone testifies and you associate a face, you'd let me
16 know?

17 A. Right, yes.

18 Q. Okay. Also after all the evidence is presented and
19 the judge instructs on the law, after that, then the jurors
20 are asked to make a decision on the charges. It'll be
21 either guilty or not guilty. If the jury were to find the
22 defendant -- and this is not to suggest anything ---

23 A. Right.

24 Q. --- while we're sitting here. If the jury were to
25 find the defendant guilty of murder and aggravated

1 circumstance, then the jury would go into another phase
2 where they decide what punishment to impose, whether life
3 imprisonment or death, and that would be the jurors'
4 decision. Have you had an opportunity to look at the sheet
5 I gave you about the types of jurors?

6 A. Uh-huh.

7 Q. Now as you recall, it had three types. One is a juror
8 that once they determine the guilt of the defendant, that
9 juror then would feel they are required to give the death
10 penalty in each and every case, either by personal
11 commitment or otherwise, and they feel that would be the
12 most appropriate punishment regardless of what the
13 circumstances or facts given in the phase for punishment
14 because in that punishment phase, both -- you'll be able to
15 hear the evidence in aggravation and mitigation, but juror
16 number one would say no matter what that evidence is, I
17 feel the death penalty is appropriate.

18 Number two would say no matter what that evidence is
19 in aggravation and mitigation, I feel life imprisonment is
20 always the appropriate punishment, and I would never give
21 the death penalty.

22 Juror number three is a juror who said well, I haven't
23 made my mind up yet concerning punishment. I've got to
24 listen and hear the facts and circumstances in aggravation
25 and mitigation, and I want to listen and follow the law as

1 the judge charges the jury before I make up my mind. And
2 if the facts presented in aggravation and mitigation, if it
3 so warrants it, I could come back with life imprisonment as
4 appropriate punishment. Or if the facts and evidence in
5 mitigation and aggravation so warranted it, I could come
6 back with a verdict for the death penalty.

7 Do you understand those three types?

8 A. Yes, I do.

9 Q. Which one best describes you?

10 A. That would be three. I have to hear everything and
11 then make the decision.

12 Q. Okay, and so after hearing everything, if you felt it
13 was appropriate, you could bring back a sentence of life
14 imprisonment if you felt it was appropriate?

15 A. Uh-huh. Yes, sir.

16 Q. And after hearing everything, you could bring back a
17 verdict of the death penalty if you felt it was
18 appropriate?

19 A. Yes, sir.

20 Q. All right. Also, if the jury were to decide the
21 sentence was death, each juror has to sign the verdict
22 form.

23 A. Right.

24 Q. Because it requires a unanimous decision. Could you
25 sign that verdict form?

1 A. Yes, I could.

2 Q. Okay. This case may last a week or so, who knows.
3 Once you get going, you just go as long as you need to, and
4 the jurors will be housed in a hotel. They can have some
5 contact with their family by phone, whatever, but we would
6 make sure you were adequately fed with food.

7 A. I'm on a diet, so I don't eat much.

8 Q. That's all right. We'll have salads for you, but
9 would that cause you such an undue hardship you couldn't
10 overcome that?

11 A. No. I only got one child left, and she's seventeen,
12 at the house, and she can take care of Daddy.

13 THE COURT: Okay, thank you very much. What I'd like
14 to do now is have -- let each attorney ask you ---

15 JUROR: Okay.

16 THE COURT: --- questions if they wish to.

17 JUROR: Okay.

18 THE COURT: And for the state, Mr. Hembree?

19 MR. HEMBREE: No questions for Ms. Raynor, thank you.

20 THE COURT: All right. Mr. Wilson?

21 MR. WILSON: Yes, sir.

22 JUROR: Okay.

23 EXAMINATION BY MR. WILSON:

24 Q. Ms. Raynor, I notice that you indicated on your jury
25 questionnaire that you had been the victim of, of domestic

1 abuse at some point?

2 A. My husband got into a couple of bad friends and got
3 some drugs and alcohol, and I got a little tired of it and
4 told him to leave, and he wasn't ready to leave. He wanted
5 to keep following me, and that's when it got to be a
6 problem. And I couldn't -- I mean, if I went to my
7 girlfriend's house, he would try to find out which
8 girlfriend it was, and I had to get a restraining order.

9 Q. Okay.

10 A. Things have since improved greatly.

11 Q. In getting that restraining order, I also noticed that
12 you said that you had some contact with the solicitor's
13 office in regards to your husband and/or your son?

14 A. It was a conversation because he was -- he was
15 basically violating the restraining order.

16 Q. Okay.

17 A. And I wanted to see if there was -- if we could add
18 stalking to it. I mean, at this point I was, you know, out
19 of my head.

20 Q. When ---

21 A. And it was just in a conversation in the hallway.

22 Q. How long ago would this have been that all of this was
23 going on?

24 A. Four, five years.

25 Q. Okay, and was that all pretty upsetting to you?

1 A. At the time it was.

2 Q. Okay, and upsetting enough that you came down to the
3 solicitor's office to try to get the charges upped?

4 A. Yeah. Well, this was after the second or third
5 violation, yeah.

6 Q. Okay.

7 A. But it was just...

8 Q. So, he repeatedly violated the restraining order?

9 A. Right.

10 Q. And it caused you to have to contact the solicitor's
11 office ---

12 A. Well, I went to talk to him one time. That was
13 because I happened to be at the CASA office, and he walked
14 by and I said is there any way we could -- you know, it's
15 a stalking thing and stuff and -- because I had seen him
16 on TV, and I just noticed there's a lawyer walking by.
17 That was the only reason. I didn't know who he was at the
18 time.

19 Q. And you had said you had also gone to CASA about
20 this ---

21 A. Yes. That's where it started.

22 Q. Okay. Did you actually have to stay there for any
23 length of ---

24 A. No. I stayed at the house with my kids.

25 Q. Okay. Now, and having gone through all of that and

1 you realize that -- or are you aware that -- you said that
2 you have heard something about the facts in this case. Is
3 that right?

4 A. I remember at -- all I remember is I was working in
5 North Myrtle Beach and they -- there was a manhunt and that
6 was -- I didn't realize, pay attention to who it was or if
7 it, you know.

8 Q. Well, would it bother you to sit on a case where the
9 facts are ---

10 MR. HEMBREE: Your Honor, I would object to staking
11 out the witness.

12 THE COURT: Let me do this. Let me ask you a few
13 questions.

14 JUROR: Okay.

15 EXAMINATION BY THE COURT RESUMES:

16 Q. If allegations are that the defendant was involved in
17 -- the allegations were that the defendant was involved in
18 abuse, if there's evidence presented in allegations -- once
19 again, the burden's on the state to prove guilt beyond a
20 reasonable doubt.

21 A. Right.

22 Q. If those allegations are there, in fact, somebody
23 introduces some evidence, would that any way affect your
24 ability to be fair and impartial?

25 A. No, because I believe there's -- you got to hear all

1 the facts and situations before you make any decisions.

2 That's what I have been through.

3 Q. And what happened in your life, would that affect your
4 ability to be fair and impartial?

5 A. No.

6 Q. Would you be able ---

7 A. Because I know things ---

8 Q. --- to put that aside?

9 A. Yes.

10 Q. Would you be able to make your decision based on the
11 evidence in this case?

12 A. Yes.

13 Q. And the law as I instruct it to you?

14 A. Uh-huh.

15 Q. What occurred to you, no matter what evidence or
16 allegations are in this case ---

17 A. Right.

18 Q. --- would what occurred to you have any affect on your
19 decision whatsoever?

20 A. No.

21 THE COURT: All right and limited, Mr. Wilson, if you
22 want to ask something else.

23 MR. WILSON: Well, I don't know that I have any other
24 questions. I have some matters I'd like to put on the
25 record, but I don't know that I have any other questions.

1 THE COURT: All right. What about your qualifications
2 on the sentencing part? Have you forgot about that?

3 MR. WILSON: Well, I think -- let me be heard and then
4 we can ---

5 THE COURT: Okay.

6 MR. WILSON: --- move to the next step.

7 THE COURT: Okay.

8 MR. WILSON: But I need to be heard, but I don't know
9 that ---

10 THE COURT: Okay, all right.

11 If you would, Ms. Raynor, could you step outside the
12 doorway for a minute?

13 JUROR: Sure. Do you want this?

14 THE COURT: Thank you, ma'am.

15 (THE JUROR EXITS THE COURTROOM.)

16 MR. WILSON: Judge, my concern is that I was asking
17 this witness questions about her abuse and her and her
18 relationship with the solicitor's office and contact she
19 had with them. And before I get an answer, before my
20 question would have allowed to elicit the answer, the court
21 intervened obviously at the insistence of the state,
22 intervenes before I can ask the question ---

23 THE COURT: Well, I was about to myself. The only --
24 in doing the questions in this type of case, I thought the
25 main questions were to determine if this person could be

1 fair in regard to the sentence and somewhat also into when
2 they formed an opinion on the case. And when you started
3 asking those things, I then realized this lady, who had
4 come up before, and I did feel maybe I should ask her some
5 questions, too, by the court, sort of set a foundation.

6 And then I permit -- I was going to permit you then --
7 and you're right. Mr. Hembree did stand up and say
8 something, and I guess him saying something also, I was
9 ready to say something. Then he said, he was saying what I
10 simultaneous thought. But I don't make any inference or
11 any kind of meaning by that. But I was then going to
12 permit you to ask other questions to see if the lady is
13 unbiased and not prejudiced.

14 MR. WILSON: Well, Your Honor, the problem with it is
15 is that once the, once I am asking questions and I'm trying
16 to get to a particular point, if the court interjects at
17 that point and cuts me off so I can't finish my thoughts
18 and can't finish the questioning process and the court
19 intervenes, then I can't get to where I need to get with
20 that particular juror. And that's what I'm objecting to is
21 is that it does not allow me as defense counsel to fully
22 explore with this juror.

23 And this, and this is very germane because this
24 witness has testified, this juror has testified that she
25 had contacted the solicitor's office. That she was abused.

1 There was a restraining order. She had multiple violations
2 of the restraining order, all which are facts which are in
3 this particular case, and that does cause me concern and it
4 may affect her being biased or not biased. And I'm
5 entitled to seek that out.

6 But I am prevented from doing that if, if the
7 solicitor objected and the court intervenes and stops me
8 before I can finish my thoughts and before I can finish my
9 cross-examination, and that's my point that I need to make
10 for the record.

11 THE COURT: All right. Mr. Hembree?

12 MR. HEMBREE: Your Honor, my objection was that, it
13 was my -- I was concerned that Mr. Wilson was about to go
14 into the specific facts of this case. And staking out a
15 juror in such a manner has long been prohibited by our
16 appellate courts. The most -- a more recent case, *State*
17 *vs. Tucker*, prohibited that.

18 THE COURT: I know, but I think I as a judge can pass
19 on the qualifying of jurors in all cases -- you mentioned
20 that the allegations are. There's no way that you can
21 determine the juror's reaction, given the fact that juror
22 has been involved in similar things that the allegations
23 are in trial, unless you sort of let the jury know there
24 may be allegations of this to see if that would affect the
25 juror's ---

1 MR. HEMBREE: And, Judge Lockemy, when you, when you
2 sort of took, took, took the questioning over at that point
3 or began questioning and stated there may be allegations of
4 this nature in this case would that bother you, I certainly
5 don't object to that type of question. That's more broad;
6 that's more generic. I think it is certainly relevant to,
7 to Mr. Wilson's effort in trying to figure out where this
8 jury -- juror is.

9 What I'm more concerned about and what my objection is
10 to the specific facts of anything more direct than that. I
11 don't believe that's necessary. I don't ---

12 THE COURT: Well, Mr. Wilson said and this gentleman
13 on this night, this may have occurred or that ---

14 MR. WILSON: Your Honor, simply what I was going to
15 ask her was whether or not it would cause her concern if
16 she was involved in a case where these similar kinds of
17 facts existed.

18 THE COURT: Well, sir, when you say fact, you mean
19 allegations.

20 MR. WILSON: Allegation, allegations, but she -- I
21 mean, and clearly ---

22 THE COURT: What if these aren't similar? I don't
23 know if they are or not.

24 MR. WILSON: And they're similar in the great, in the
25 great degree -- in a great degree because there was a

1 restraining order allegedly. There was obviously
2 purportedly violations of that restraining order, which is
3 what she's saying happened to her. And there was in fact a
4 court hearing in, you know, with, with this case. Well,
5 actually it was the 2005 case that led to the restraining
6 order. So, yeah, there are a multitude of similarities in
7 what she has described.

8 And I think it's almost unfair to the juror to let her
9 go through this whole process, never raise that issue to
10 her. Then she says I didn't know that this was the kind of
11 case that I was on. If I had, I would've not ---

12 THE COURT: I agree with you. Mr. Wilson, I agree
13 with you one hundred percent on that. I just don't want to
14 go step by step by step.

15 MR. WILSON: No, sir.

16 THE COURT: And that's why I feel in these cases that
17 it's more appropriate, and that was my shortcoming for not
18 approaching her first because I remember now when the juror
19 came up, I asked her a few things but not a lot, saying I'd
20 ask for more when we got to the qualification area. And I
21 should have done that. I'd rather -- I do those type of
22 things here because I get concerned a little bit that if
23 you do get into it, you get too much into comparing such
24 that you may ---

25 Well, anyhow, I want the jury to hear there is an

1 allegation in a general sense, not in a specific sense.
2 So, you want ask her any question about that? I'll be glad
3 to let you do so as long as you don't get too much into
4 specifics.

5 MR. WILSON: Well, I don't know what else -- I will
6 ask her some additional questions about the sentencing. I
7 don't know that it's obviously going to do me any good at
8 this point to go back and rehash with her what the court
9 has already talked with her about. I just ---

10 THE COURT: Well, I didn't make anything suggestive in
11 my questions to her I didn't think.

12 MR. WILSON: Well, you know, I ---

13 THE COURT: If I did, let me know. Let me know what
14 you think I said was suggestive one way or the other.

15 MR. WILSON: No. I mean, I just, I just feel like --
16 and that this is really difficult. I, I think that we were
17 -- my questioning with her was at a very delicate point as
18 far as I'm concerned, and I think when the court intercedes
19 at that point in the midst of my questioning her, and then,
20 then the impression is either, one, that I'm asking her
21 something improper or two, that's, that's, that what --
22 that her answers are not what they need to be or whatever.

23 And that's -- the other concern I have is that
24 whenever I'm trying, if I'm cross-examining -- I apologize.
25 I'm not using the term cross-examining her, but if I am

1 questioning the juror, I just, it just puts me in real
2 awkward situation and so I ---

3 THE COURT: I don't want to put you in an awkward
4 situation. I think we may do is before we bring another
5 juror, we may see if there are some things we have concern
6 about the juror before the juror comes in that y'all want
7 me to ask, and then I'll permit you all to follow through
8 with that. But I do not want us to get to the point that
9 we're discussing too many things specifically about the
10 case at hand.

11 MR. WILSON: No, sir. Judge, this was a very limited,
12 specific things because the juror specifically said ---

13 THE COURT: You say that word so well. I do not say
14 specific very well. My law clerk mentions I leave off the
15 "S" too much. I try to say pacific, but you said it very
16 well. I want the record to reflect that.

17 MR. WILSON: Thank you, Your Honor.

18 MR. HEMBREE: We'll stipulate to that, Your Honor.

19 MR. WILSON: But I, I was just concerned and about,
20 about the fact that she had expressed some concern about
21 having been abused, and about the fact that her husband had
22 been, you know, restrained from, from harassing her and
23 that type of thing and because there are similarities. But
24 that, that's my concern.

25 THE COURT: Well, I'm going to bring her back in, and

1 I may her let know that I should have asked her those
2 questions first and that me asking later on, it was really
3 because I had forgotten to ask her as I mentioned I would
4 when she came down here initially earlier today. Then I'll
5 let you ask her the other questions.

6 MR. WILSON: All right, sir.

7 THE COURT: About the sentencing part, also.

8 MR. WILSON: Thank you.

9 THE COURT: Bring her back in, please.

10 (THE JUROR ENTERS THE COURTROOM.)

11 THE COURT: Come on around here please, ma'am. Ms.
12 Raynor, a while ago you know when you came up here earlier
13 today and I mentioned to you I thought that I would ask you
14 more about that, whether ---

15 JUROR: Right. You did, sir.

16 THE COURT: And it was my shortcoming that I forgot to
17 ask you those things. And when Mr. Wilson asked them, that
18 made me realize I was supposed to have been the one to ask
19 you about it. So, that was my fault.

20 JUROR: Okay.

21 THE COURT: And I forgot to ask you those questions,
22 and if Mr. Wilson or Mr. Hembree need to ask you a couple
23 more questions about that, we'll go into that and then
24 we'll go into the things about the jury.

25 JUROR: Okay.

1 THE COURT: Mr. Wilson, you may continue on.

2 MR. WILSON: Thank you, Your Honor.

3 EXAMINATION BY MR. WILSON RESUMES:

4 Q. Ms. Raynor, let me ask you. In regards to the
5 sentencing phase of this case, you understand that as we
6 speak now, the defendant's presumed to be innocent?

7 A. Yes, sir.

8 Q. All right, and His Honor instructed you that's the
9 law, and you will follow that, won't you?

10 A. Yes.

11 Q. All right, and in regards to getting to the sentencing
12 phase you, do you understand that if he is found not guilty
13 in the trial phase, then we won't go to a sentencing phase?

14 A. You won't need it, yes.

15 Q. Or if he's found guilty of a lesser crime.

16 A. Right.

17 Q. Then we will go -- than murder.

18 A. Yes, sir.

19 Q. Then we will go to the sentencing phase. Okay, but
20 even if we do go to a sentencing phase and -- which would
21 mean that the jury, you and the members of your panel, had
22 unanimously found him guilty of the crime of murder, you
23 understand at that point that the state would then present
24 to you some aggravating circumstances or what might be
25 considered aggravating circumstances?

1 A. Yes, sir.

2 Q. All right, and those aggravating circumstances would
3 be things which make the murder or the crime worse than
4 what it might normally be considered to be?

5 A. Yes, sir.

6 Q. Okay, and -- but even with that, even if they prove an
7 aggravating circumstance, you understand that you're not
8 obligated to give the death penalty?

9 A. Yes.

10 Q. Even after that?

11 A. Yes.

12 Q. All right, and do you understand that the defense
13 could also present mitigating circumstances or factors,
14 which are things which might lessen the moral culpability
15 of the person? Not a defense, but which lessen the
16 severity or moral culpability of the crime itself?

17 A. Yes. I understand that, too.

18 Q. All right, and that you could consider that?

19 A. Yes, sir.

20 Q. And would you be willing to also consider that?

21 A. Yes, sir.

22 Q. And you could do that?

23 A. Yes, I can.

24 Q. And based on what your belief is, after hearing all
25 the aggravating and mitigating factors, you would then

1 decide, based on what His Honor's instructions to you on
2 law, whether or not it's life or death?

3 A. Yes.

4 Q. And you're comfortable with doing that?

5 A. I can, I can do that.

6 MR. WILSON: Thank you, ma'am.

7 THE COURT: Okay, if you would, step outside one more
8 time.

9 JUROR: Take another walk, huh?

10 THE COURT: It's part of the exercise program.

11 JUROR: I told you I'm on a diet. It's good for me.

12 (THE JUROR EXITS THE COURTROOM.)

13 THE COURT: State's position?

14 MR. HEMBREE: Juror's qualified, Your Honor.

15 THE COURT: Defense?

16 MR. WILSON: Judge, she's qualified. I mean, again I
17 made my objection for the record on the, on the statements
18 I made earlier... I mean, I think based on everything that
19 transpired, she is qualified.

20 THE COURT: Okay. I wish we all had as good a
21 demeanor at this time as long as she has, she seems to be.

22 Bring her in, please.

23 (THE JUROR ENTERS THE COURTROOM.)

24 THE COURT: Okay, Ms. Raynor, I'm going to let you go
25 at this time you can come back Thursday at 11:30 in the

1 courtroom here. Now, this does not necessarily mean that
2 you're on the jury.

3 JUROR: Okay.

4 THE COURT: But there will be somebody outside to let
5 you know whether you can come in or have you stay outside.
6 This does not mean you're on the jury; this means that
7 you'll be in the pool from which the jury is selected.

8 And it's very important that you not discuss this case
9 with anyone at all. Not with family members or with anyone
10 else. Don't look at any local media or like newspapers or
11 the news on TV, radio news, and come on back Thursday.

12 Now if you are selected, then we'll give you time to
13 get home and you get some things together and come back,
14 but the best thing is to go ahead and get some things
15 packed just in case so you won't have to be too long, all
16 right? You can go out this way, but we'll see you Thursday
17 at 11:30.

18 JUROR: Okay.

19 THE COURT: Thursday at 11:30.

20 JUROR: Okay. Thank you.

21 (A PAUSE.)

22 THE COURT: All right, bring in juror number 327.
23 Would y'all ask the lady that just stepped out to step back
24 in? If not, I need to ask her something Thursday.

25 (JUROR #327 ENTERS THE COURTROOM.)

1 THE COURT: Is it Morris or Morris-Vaught?

2 JUROR: Morris-Vaught.

3 THE COURT: Okay, have you been, have you been married
4 since you sent your registration card?

5 JUROR: Uh-huh.

6 THE COURT: Have a seat if you would, Ms. Morris-
7 Vaught.

8 (JUROR #378 REENTERS THE COURTROOM.)

9 THE COURT: What I need ask you, Ms. Raynor, your
10 sheet says, initially checked you are not a citizen of this
11 country.

12 JUROR: I made a mistake on that. I had my daughter
13 talking in one ear about her school project that we were
14 working on and I initialed it, but --

15 THE COURT: Okay, so you are a citizen of the United
16 States and a citizen of Horry County? Thank you, ma'am.
17 Thank you.

18 (THE JUROR EXITS THE COURTROOM.)

19 EXAMINATION BY THE COURT:

20 Q. Now, Ms. Morris-Vaught, I want to talk with you just a
21 little bit. Please understand that you're not on trial or
22 anything of that nature. Do remember you are still under
23 oath from the oath we did earlier today. And what I'm
24 going to need you also to do is to speak into the
25 microphone and give word answers to my questions because

1 she's got to take everything and repeat everything and you
2 say.

3 The first thing is is you're one of those people that
4 grew up that your first birthday is kind of bad because
5 Christmas is so soon, you don't know whether you're going
6 to have a party or people are going to do Christmas, or is
7 double good or dismissing your birthday because it's so
8 close to Christmas?

9 A. I was lucky and I had family that celebrated both.

10 Q. So, you had a birthday on the 22nd of December, and
11 then you have Christmas on the ---

12 A. Yes.

13 Q. Do you usually get for Christmas what you didn't get
14 for your birthday since you already had a list?

15 A. Sometimes, yeah.

16 Q. And you were born in Mecklenburg County. That's
17 where, Charlotte area?

18 A. Yes.

19 Q. Did you grow up there in that area?

20 A. I was born there and moved to Shelby, North Carolina,
21 when I was two.

22 Q. And what brought you here?

23 A. My mother.

24 Q. Okay, and how long have you been married?

25 A. Seven years.

1 Q. Seven years, okay. Now, I want to ask you just a few
2 things. One is, I asked you before but I'm going to ask
3 you again, though. Do you know any of the attorneys
4 involved in this case? You know Mr. ---

5 A. No, sir.

6 Q. --- Hembree, Mr. Humphries, Mr. Wilson, Mr. Rathbun?

7 A. No, sir.

8 Q. You don't know any of them? This case, if we select a
9 jury in the case, we want a jury that would make their
10 decision based on the evidence presented in the case and
11 law as I instruct it as a judge. Now, the law that I would
12 instruct the jury is that the burden is upon the state to
13 prove guilt beyond a reasonable doubt and that the
14 defendant is presumed innocent. So, the burden's on the
15 state to prove guilt, not on the defendant to prove himself
16 innocent. Do you feel you could follow that instruction
17 from the court?

18 A. Yes, sir.

19 Q. All right. Further, the jury would listen and -- to
20 the evidence and the law, and we want a jury that had not
21 already formed any opinion regarding the guilt or the
22 innocence of the defendant in the beginning. Now, have you
23 formed any opinion one way or the other?

24 A. No, sir.

25 Q. Okay, would you give both the state and defense a fair

1 and impartial trial in this case?

2 A. Yes, sir.

3 Q. If after you heard all the evidence in the case and my
4 instruction on law, after hearing all the evidence in the
5 case and my instruction on the law, if you felt the
6 defendant was not proven guilty, could you find him not
7 guilty if he was not proven guilty?

8 A. Yes, sir.

9 Q. All right. If you felt after hearing all the evidence
10 in the case that the defendant was proven guilty beyond a
11 reasonable doubt, do you feel that you could find him
12 guilty?

13 A. Yes, sir.

14 Q. All right. Have you discussed this case with anyone?

15 A. No. No, sir.

16 Q. All right.

17 A. Not...

18 Q. Have you?

19 A. Prior to today?

20 Q. Yes.

21 A. No.

22 Q. What about today?

23 A. No. I mean, I've discussed it in the newspaper when
24 it first happened, when it came out.

25 Q. When you say you discussed it, you mean you saw the

1 newspaper and talked to someone about it?

2 A. Yeah. Just then absent talking.

3 Q. All right. Do you remember what it was you saw in the
4 newspaper?

5 A. Not specifically. No, I don't remember the article.

6 Q. Has it caused you to form any opinions at all about
7 this matter?

8 A. No, sir. I don't even remember the specifics.

9 Q. All right. If say you're on the trial, on this trial
10 and you suddenly remembered some of the things, could you
11 put all those aside and make your decision based on the
12 evidence presented in the case and the law as I instruct it
13 to you?

14 A. Yes, sir. I'm a fair person.

15 Q. Okay, and once again I wasn't sure about what you
16 meant when you said up until today. I mean, have you
17 discussed this with anyone today?

18 A. No, sir.

19 Q. Okay, all right. I gave you a list back there with a
20 lot of names on it.

21 A. Uh-huh.

22 Q. Do you know anyone on that list?

23 A. No, sir.

24 Q. Could I see the list?

25 A. Yes, sir.

1 Q. So, you didn't circle anyone's name at all?

2 A. I don't know anybody on there, on the list.

3 Q. Okay, no names are circled. So, you don't know anyone
4 at all on this list?

5 A. No, I don't.

6 Q. Once the jury is impaneled, they will hear evidence in
7 the case and the law from the court. And if the jurors
8 were to decide that the defendant had not been proven
9 guilty beyond a reasonable doubt, the jury would find him
10 not guilty and that would end the matter there. However,
11 if the jury felt that the defendant had been proven guilty
12 beyond a reasonable doubt of the crime of murder plus of an
13 aggravated circumstance, then we get to another phase with
14 the jury would, would decide what sentence would be imposed
15 on the defendant. And there's one or two possible
16 decisions. The jury would either find that life, life
17 imprisonment was more appropriate sentence, or they would
18 determine that the death penalty was the more appropriate
19 sentence, one or the other. I gave you a sheet of paper
20 there listing what three types of jurors. Did you review
21 that sheet of paper?

22 A. Yes, sir.

23 Q. And did you understand the three types?

24 A. Yes, sir.

25 Q. The first type being -- and by the way, in that, that

1 second phase determining sentence, and by discussing that,
2 this is by no way implying in one way or the other because
3 once again, the jury has to decide that.

4 A. Uh-huh.

5 Q. But in that second phase, the jurors will hear
6 evidence in aggravation, evidence in mitigation and after
7 hearing the evidence there and the judge would instruct
8 them, then the jury would decide what would be the
9 appropriate punishment.

10 One type of juror would be one that no matter what was
11 presented to that juror in aggravation and mitigation, that
12 juror would, would feel that the death penalty is the
13 appropriate punishment in each and every case no matter
14 what evidence was presented in aggravation or mitigation.

15 That second type of juror would be one that would feel
16 that no matter what the evidence presented in aggravation
17 and mitigation, they could never impose the death penalty
18 and that the only sentence they could ever impose would be
19 life imprisonment no matter what evidence was presented to
20 them.

21 And the third type of juror would be the juror that
22 would have her mind not made up in advance concerning
23 punishment. That juror would want to hear the facts and
24 circumstances in aggravation and mitigation. They want to
25 listen and follow the law as given by the judge before she

1 makes the decision regarding punishment. And if the facts
2 presented by the state or the defense so warranted it, that
3 juror could bring in a verdict for life imprisonment. Or
4 if the facts presented by the state or by the defense so
5 warranted it, that juror could bring in a verdict for the
6 death penalty.

7 You say you understand those three types?

8 A. Yes, sir.

9 Q. Which one best describes you?

10 A. Number three.

11 Q. Okay. So, say that if you all decided that the state
12 would prove his guilt beyond a reasonable doubt of murder
13 and that of the aggravating circumstance, that you could
14 then have an open mind as to what the appropriate
15 punishment that you recommend?

16 A. Yes, sir.

17 Q. And you wouldn't make up your mind until after you've
18 heard all the evidence in that phase of the trial?

19 A. Yes, sir.

20 Q. Now, Ms. -- do you prefer Morris-Vaught or what?

21 A. Vaught, please.

22 Q. Ms. Vaught. Ms. Vaught, if the jury -- once again not
23 suggesting anything at all as what the jury would decide --
24 but if the jury were to decide that death was the
25 appropriate punishment to recommend, that, that all the

1 jurors will have to sign that sheet as a verdict. It's a
2 unanimous requirement. Do you feel you could also sign the
3 verdict form?

4 A. Yes, sir.

5 Q. Okay. Now, if you are selected as a juror on this
6 case, it would be one that the jurors would be put up in a
7 hotel room for a few days. It could be as much as a week
8 to ten days. Now, do you feel that if -- that's required.
9 We would let you have some limited access to your family,
10 phone calls, but at all times it would be supervised.

11 A. Uh-huh.

12 Q. And could you do that without too much undue hardship?

13 A. Yes, sir.

14 THE COURT: I'm going to now let both sides ask you a
15 few questions and if you'll answer their questions.

16 JUROR: Yes, sir.

17 THE COURT: And I'll keep that sheet.

18 JUROR: Okay.

19 THE COURT: Any questions from the state?

20 MR. HEMBREE: We have no questions for Ms. Vaught.

21 Thanks very much.

22 THE COURT: Mr. Wilson?

23 MR. WILSON: Yes. Thank you very much.

24 EXAMINATION BY MR. WILSON:

25 Q. Ms. Vaught, you understand that defendant is presumed

1 to be innocent as we speak?

2 A. Yes, sir.

3 Q. All right, and you're willing to accept that if Your
4 Honor tells you that that's the law and that you're to
5 accept that? You're willing to do that, are you not?

6 A. Yes, sir.

7 Q. All right, ma'am, you understand that if the defendant
8 is found not guilty, then we won't have a second part of
9 the trial?

10 A. I understand.

11 Q. All right, and you indicated to the court that if the
12 facts and circumstances warranted it, you will be willing
13 to vote for not guilty if that's what you believe based on
14 the evidence that is produced during the course of the
15 trial. Is that correct?

16 A. Yes, sir.

17 Q. And likewise, if you think that the evidence is of
18 guilt, then you're willing to vote for that, too?

19 A. Yes, sir.

20 Q. And if we get to the sentencing phase of the trial,
21 you are -- also understand that at that point in time that
22 the state will offer what's called aggravating
23 circumstances or things which tend to make the murder or
24 the crime worse than what it might normally be considered
25 to have been?

1 A. Uh-huh.

2 Q. All right, and you're willing to consider those
3 things?

4 A. Yes, sir.

5 Q. All right, and if the defense offers mitigating
6 circumstances, not a defense but things which, which lessen
7 the moral culpability of the accused, of the person who's
8 been convicted, you're willing to also consider those
9 things?

10 A. Yes, sir.

11 Q. And then once you hear all of those things and once
12 His Honor gives you the law, you will follow that and come
13 back with a verdict that you believe is fair and just under
14 the circumstances and facts. Is that correct?

15 A. Yes, sir.

16 Q. All right, and that could be life or death depending
17 on your view of the facts and circumstances?

18 A. Yes, sir.

19 Q. Is that fair?

20 MR. WILSON: Okay, thank you.

21 JUROR: You're welcome.

22 FURTHER EXAMINATION BY THE COURT:

23 Q. Okay, ma'am, I did notice that here that that you had
24 someone who's, childhood friend that was convicted of
25 murder?

1 A. Uh-huh.

2 Q. Would that in any way affect your ability to be fair
3 and impartial in this case?

4 A. No, sir.

5 Q. Have you known that person after they became adults or
6 just knew them in childhood?

7 A. Just as a child.

8 Q. Okay. I notice also it says a some of your favorite
9 hobbies, you have riding. It also has a motorcycle. Is
10 that motorcycle riding or horseback riding?

11 A. Motorcycle.

12 Q. Why, my brother-in-law and sister, they have
13 motorcycles and actually went out to South Dakota this
14 year.

15 A. Oh, really?

16 Q. That place, Sturgis?

17 A. Sturgis.

18 THE COURT: If you would, could you step outside?

19 JUROR: Yes, sir.

20 THE COURT: And let me talk to them for a minute?

21 I'll bring you back. Stand right outside that door.

22 (THE JUROR EXITS THE COURTROOM.)

23 THE COURT: Okay, position of the state?

24 MR. HEMBREE: Ms. Vaught is qualified, Your Honor.

25 THE COURT: Defense?

1 MR. WILSON: Qualified, Your Honor.

2 THE COURT: Okay, bring her back in, please.

3 (THE JUROR ENTERS THE COURTROOM.)

4 THE COURT: Ms. Vaught, I would let you go now, but I
5 need for you to return Thursday at 11:30. There'll be
6 somebody out there to let you know whether to come in this
7 courtroom or go to another room somewhere.

8 Now when you return, at that point in time you'll be
9 in a pool from which the jury will be selected. Doesn't
10 mean that you'll be on the jury, but you'll be in that
11 pool. If you are selected, then of course we'll have
12 someone they'll either give you a ride back to your home or
13 we will let you go back and we'll get you, bring you back
14 with your luggage and all that to go to the hotel. So, the
15 best thing is probably go and pack things up and be ready
16 just in case, okay?

17 JUROR: Yes, sir.

18 THE COURT: All right, please do not look at any local
19 media news in the evening; do not read any local
20 newspapers. Do not discuss this case with anyone at all,
21 okay, and we'll see you Thursday at 11:30. You go out this
22 way. Thank you, ma'am.

23 You can get them, but don't bring them in yet. Just
24 go ahead and get them on the way. You walk in first, okay.

25 MR. HUMPHRIES: The form, I think she's still got your

1 form.

2 THE COURT: Oh, ma'am, you still have that form, too.
3 If you would, bring me that up here. I forgot that; I
4 meant to get that. Thank you.

5 I meant to do this before the last one, but any
6 particular things that we have concerning with the next
7 juror you'd like to bring to my attention before bringing
8 them in?

9 MR. HUMPHRIES: Your Honor, this was the juror that
10 told on her sister.

11 THE COURT: Oh, it is?

12 MR. HUMPHRIES: Yes, sir. I don't, I don't know how
13 you want to deal with that. Is the sister, did she make
14 the main panel?

15 THE COURT: She made one of the panels. I forget
16 which one; I know she made one of them.

17 MR. HUMPHRIES: Just letting you know.

18 THE COURT: Okay, that she tells the truth on her
19 sister or sister-in-law.

20 MR. HUMPHRIES: I'm liking her.

21 THE COURT: Believe it or not, the sister's in the
22 next panel. Mr. Wilson, any special thoughts you have have
23 on that one?

24 MR. WILSON: No, sir. I mean, I think that this one,
25 I -- she told on her sister, so she can't be all bad.

1 THE COURT: But y'all both expressed the concern about
2 having both of them on the jury.

3 MR. WILSON: Yes, sir.

4 MR. HUMPHRIES: I don't want to jump Mr. Wilson, but
5 really when -- of course probably, I should probably should
6 have said something when she came up and yes, she might
7 have been technically correct. But I think in my opinion
8 she was clearly attempting to mislead the court. I
9 wouldn't have any problem in excusing her for cause based
10 on her, her representations to the court.

11 MR. WILSON: It's not this one.

12 MR. HUMPHRIES: No, that's the liar, not this one.
13 That way ---

14 MR. WILSON: If you're going to go that far, I ---

15 THE COURT: Wait one second.

16 MR. WILSON: I agree, Judge, that we probably have a
17 problem if we had them both on the same jury panel.

18 THE COURT: Well, who knows if we're going to qualify
19 this one or not.

20 MR. WILSON: Right, and that's what -- we may not get
21 that far. I mean, we may decide that without having to, to
22 do anything.

23 THE COURT: But Mr. Humphries' position is that 335,
24 that she said that I only asked if she had children, and I
25 said children that are yours or in your custody. I said

1 that are in your custody, at least ---

2 MR. HUMPHRIES: For whom you have care, custody and
3 control and don't have anybody else to ---

4 THE COURT: Well, no, I didn't say all that. I just
5 said in your custody, but, I mean, I think I made it pretty
6 clear. The question is what's your position on that
7 person.

8 MR. WILSON: Well, I thought that the question was
9 sufficiently clear, and I thought you said it in a way that
10 was clear. I mean, a lot of times I'm doing other things
11 and I'm not always listening, but I thought that you were
12 very clear about what you asked because you asked it to
13 several other prospective jurors. And my initial feeling
14 was that she misled the court, but I'm going to leave that
15 to you ---

16 THE COURT: Well, Mr. Humphries feels she should be
17 disqualified for cause because she misled the court.

18 MR. WILSON: Well ---

19 THE COURT: Intentionally.

20 MR. WILSON: Well, again, I'm not going to take a step
21 on that. I'll leave that to the court.

22 THE COURT: I'll let you know by the end of the day.
23 Bring her in, please. This is not her, by the way.

24 (JUROR #414 ENTERS THE COURTROOM.)

25 EXAMINATION BY THE COURT:

1 Q. Ms. Mary Skipper. Is that right, ma'am?

2 A. Yes.

3 Q. And a seat, please. A lot of Skippers in the Lake
4 View area and Horry County, but I see you're from Selma,
5 Alabama?

6 A. Yes.

7 Q. And you, if you can, speak in that microphone for me,
8 okay?

9 A. Okay.

10 Q. Now, you're from Selma, Alabama. How long have you
11 been here in Horry County?

12 A. Since I was about twelve. My father was in the Air
13 Force; we moved a lot.

14 Q. Oh, okay. Now, Ms. Skipper, I want to remind you
15 you're still under oath. You understand?

16 A. Yes, sir.

17 Q. And I do remember also that you're the one that let me
18 know that one of the jurors may not have been totally
19 candid with me about child care. How are you related to
20 that person?

21 A. She is my sister.

22 Q. She is your blood sister, okay.

23 A. Yes.

24 Q. I didn't know if she was your sister-in-law, but she
25 is your sister?

1 A. Yes.

2 Q. All right, and so that concerns you that what she said
3 wasn't accurate?

4 A. Correct. I know that she was lying.

5 Q. I want to thank you very much for letting me know
6 about that. Now, once again, I said you're still under
7 oath and please understand you're not being interrogated
8 here.

9 A. I understand.

10 Q. You're not being questioned or anything. You're just,
11 just like all the other jurors, we're just trying to
12 determine certain things on jurors and see if they
13 qualified for a case of this type. The lawyers themselves,
14 Mr. Hembree, Mr. Humphries, Mr. Rathbun, Mr. Wilson, do you
15 know any of them at all?

16 A. Not personally, no.

17 Q. You just know that they're lawyers and ---

18 A. I know of Mr. Ralph Wilson from the Crystal Todd case.
19 I graduated in '92 with actually his daughter, who I know
20 her name but don't know her personally, and I had a class
21 with his son. But other than that, I don't know him at
22 all.

23 Q. So, you had classes with his daughter?

24 A. No, I had -- I didn't have any classes with his
25 daughter. We just graduated the same year.

1 Q. Okay, and then you ---

2 A. In '92.

3 Q. And a class with his son?

4 A. And have a -- yes, a singing class with his son.

5 Q. Oh, a singing class?

6 A. Yeah.

7 Q. Okay, you sing?

8 A. Yeah. Long time ago.

9 Q. Now, the fact that -- what is this Todd, tell me about
10 that.

11 A. Crystal, the Crystal Faith Todd case that he was the
12 solicitor on.

13 Q. Okay, you remember that case. Now, would any of those
14 things, would that cause you to form any opinions about
15 Mr. Wilson that may affect your decision in this case at
16 all?

17 A. No.

18 Q. All right, that wouldn't affect your decision in this
19 case one way or at all?

20 A. No.

21 Q. Now, have you, do you have any interest or bias or
22 prejudice in this case at all?

23 A. No. I actually am clueless about this case.

24 Q. All right. So, you've not formed any opinion or
25 expressed any opinion about the guilt or the innocence of

1 Mr. Winkler, the defendant in this case?

2 A. No.

3 Q. All right.

4 A. I'm assuming that's him. I don't know his name or who
5 he is.

6 Q. All right. Do you know of any reason why you couldn't
7 give the state and defendant a fair trial in this case?

8 A. No.

9 Q. Now, the jury would sit in the box over there and
10 listen to the evidence in the case and then follow the
11 instructions of the judge, my instructions to jury, and
12 they would have to be required under their oath to follow
13 my instructions. And if not, you need to let me know
14 before you go on the jury.

15 One instruction would be that the defendant is
16 presumed innocent of any and all charges, and guilt is the
17 burden of the state to prove beyond a reasonable doubt.
18 The defendant does not have to prove himself innocent; the
19 state has to prove him guilty. Would you follow that
20 instruction?

21 A. Yes.

22 Q. Now, sitting on the jury and after hearing all the
23 evidence in the case and my instructions on the law, if you
24 felt the defendant had not been proven guilty beyond a
25 reasonable doubt, would you find the defendant not guilty

1 if he wasn't proven guilty?

2 A. If not by reasonable doubt, no. I mean, reasonable
3 doubt, if they didn't prove it with solid evidence with me,
4 if I had any kind of doubt, I could not prove guilty, no.

5 Q. So, once again the standard is the state has the
6 burden of proving guilt beyond a reasonable doubt. If you
7 felt that ---

8 A. If they didn't, to me, if they didn't prove it, then
9 no, I would not say guilty.

10 Q. All right. What if they did prove guilt in your view
11 beyond a reasonable doubt? Could you find the defendant
12 guilty?

13 A. Yes, I could.

14 Q. All right. Have you discussed this case with anyone
15 at all?

16 A. No.

17 Q. And you say you haven't seen any media about this, any
18 news?

19 A. I very rarely read the paper or watch TV and if I do,
20 I have two small children. So, it's Scooby-Doo or Animal
21 Planet, or my daughter dances four times a week, so I'm not
22 at home much.

23 Q. All right. I gave you a list there with a lot of
24 names on it. Were you able to review that list?

25 A. Yes, I was.

1 Q. Did you know anybody on that list?

2 A. No, I do not.

3 Q. Okay, can I see the list?

4 A. Uh-huh.

5 Q. And looking at it, you did not circle any names, so
6 you know no one on this list at all?

7 A. No. I do know members of the police department that
8 are not on that list if that helps.

9 Q. Okay. Now, the fact that you know members of the
10 police department, does that in any way cause you to feel
11 like people who are testifying, if they're members of the
12 police department, would look upon them differently than
13 you would someone else who is not?

14 A. No, because there's -- the person I know is a city
15 person, so I don't think they're involved in this, but I
16 wouldn't.

17 Q. I know, but my question is that would you look upon
18 people in uniform the same way you look at people not in
19 uniform?

20 A. Yes.

21 Q. Also, I gave you a sheet of paper there that are the
22 type of jurors. In a case of this nature, Ms. Skipper, the
23 jurors will hear the evidence involved in the case and law
24 as the judge instructs it, instructs the jury. If after
25 hearing the evidence and the law, if the jury were to find

1 the defendant not guilty, then the case would end there, or
2 if the jury found the defendant guilty but not guilty of
3 such, of something that would cause it to go to the next
4 phase. But if the jury were to find beyond a reasonable
5 doubt the defendant had been proven guilty of murder as
6 well as aggravating circumstances, then we get to the next
7 phase where the sentence would be determined. And then you
8 would have evidence presented on both sides in aggravation
9 and evidence in mitigation, and the jurors should listen to
10 both sides.

11 And there are three types of jurors. The first type
12 would be one that even though both sides had put up
13 evidence in aggravation and mitigation, that juror would
14 feel they're always required to give the death penalty in
15 each and every case regardless of the evidence in
16 aggravation and mitigation. And would feel that once the
17 defendant had been proven guilty of murder, the death
18 penalty is the most appropriate punishment no matter the
19 circumstances.

20 Juror number two would feel that no matter what the
21 circumstances, what the evidence in aggravation and
22 mitigation are, that that juror would always feel life
23 imprisonment is appropriate and could never impose the
24 death penalty. And they would have their mind made up and
25 would not listen, would not consider evidence in

1 aggravation, mitigation in deciding what the punishment is
2 because they felt it should always be life imprisonment.

3 The third juror is the juror that would not have made
4 her mind up in advance concerning punishment. That juror
5 would want to hear the facts and circumstances in
6 aggravation and mitigation. Would want to listen to and
7 follow the law as the judge charges the jury before she can
8 make her decision regarding punishment. And after hearing
9 the evidence in aggravation and mitigation, if that juror
10 felt that it so warranted it, that juror would feel again
11 that a verdict of life imprisonment would be appropriate.
12 Then that juror could bring back a verdict of the life
13 imprisonment if they felt it was appropriate after the
14 evidence. Also if after the evidence was presented, if
15 that juror feels or felt that a verdict of the death
16 penalty was the appropriate one, that juror would bring
17 back the verdict for the death penalty.

18 Do you understand the three types of jurors?

19 A. Yes, sir.

20 Q. And which of the three best describes you?

21 A. I'm the third.

22 Q. You are third?

23 A. Yes.

24 Q. So, you feel that you would listen to evidence in
25 aggravation and mitigation and depending on all that and

1 depending on your view of all that and your deliberation
2 and consideration, you could bring back a verdict of life
3 imprisonment if you felt it's appropriate?

4 A. Yes.

5 Q. And if after considering everything, you could bring
6 back a verdict of the death penalty if you felt it was
7 appropriate?

8 A. Correct. Yes.

9 Q. Now, if the jurors were to decide that the death
10 penalty was the appropriate verdict, all jurors will have
11 to sign. All twelve must agree. Do you feel you could
12 sign the verdict form?

13 A. Yes.

14 Q. If you are selected as a juror in this case, then you
15 would be put up in a hotel room for a week to ten days, and
16 listen to all the evidence while we're going through the
17 case, the evidence and everything else, and you would have
18 very limited contact with your family. If there was
19 contact, it would probably be on a phone and there would be
20 somebody supervising. You feel you could do that?

21 A. I can. My husband would just have to take my daughter
22 to dance would be the only thing.

23 Q. Okay, but you could make arrangements for that?

24 A. Yes, I can make arrangements.

25 Q. It wouldn't be that, it wouldn't be that convenient,

1 but you could do it?

2 A. Yes. I mean, I could make arrangements to have her
3 taken to dance and things, yes.

4 THE COURT: I'm going to let the attorneys ask you a
5 few questions now. If you would, please answer the
6 questions.

7 JUROR: Okay.

8 THE COURT: Questions from the state?

9 MR. HUMPHRIES: None from the state.

10 THE COURT: Questions from the defense?

11 MR. WILSON: Thank you, Your Honor.

12 EXAMINATION BY MR. WILSON:

13 Q. Ms. Skipper, you understand that as the defendant sits
14 here today, he is presumed to be innocent.

15 THE COURT: Excuse me just one second. Who is this
16 gentleman? Oh, you're with maintenance? Oh, good. Thank
17 you. Thank you. I'm sorry, Mr. Wilson.

18 MR. WILSON: That's all right, Your Honor. Thank you.

19 BY MR. WILSON:

20 Q. Do you understand that the defendant is presumed to be
21 innocent as we speak?

22 A. Until proven guilty, yes.

23 Q. And if His Honor instructs you that's the law, you're
24 willing to accept that, are you not?

25 A. Yes.

1 Q. All right, do you understand, ma'am, in the -- we'll
2 have two phases or two parts to this trial. The first part
3 will be the, what we call the guilt phase where you'll have
4 to decide whether or not you and the other members of your
5 panel, whether or not the defendant is guilty or not guilty
6 of the charges. And that is the burden of the state to
7 prove him guilty beyond a reasonable doubt before you can
8 find him guilty.

9 A. Yes.

10 Q. And they have to satisfy you as to that.

11 A. Yes.

12 Q. And, and if His Honor instructs you that's the law,
13 you're willing to accept that as to law ---

14 A. Yes.

15 Q. --- correct? Now, okay, ma'am, if, even if you and
16 members of your jury find him guilty of the crime of
17 murder, that there will be then a second phase of this
18 trial which is the sentencing or penalty phase of the
19 trial. You understand that?

20 A. Yes.

21 Q. And during that sentencing or penalty phase, the state
22 would offer what's called aggravating circumstances or
23 factors into the trial of the case, and those are things
24 which might make the crime of murder worse than what it
25 might normally be. And you would be willing to consider

1 those things?

2 A. Yes.

3 Q. And if defense offered what are called mitigating
4 factors or circumstances, things which might lessen the
5 moral culpability of the crime itself or of the defendant,
6 would you be willing to consider those things?

7 A. Yes.

8 Q. And only after hearing both the aggravating and the
9 mitigating, would you then make up your mind as to whether
10 or not you're going to vote for life or for death?

11 A. Yes. I always have to hear everything before I make a
12 decision.

13 Q. All right, and do you believe that your decision is
14 your decision?

15 A. Yes.

16 Q. All right. Do you make your own decisions?

17 A. Yes.

18 Q. After hearing all the other jurors and listening to
19 everybody else's opinion make up your own mind?

20 A. Yes.

21 MR. WILSON: All right, thank you.

22 THE COURT: Okay, if you would, please stand outside
23 for me just for a second.

24 (THE JUROR EXITS THE COURTROOM.)

25 THE COURT: Position of this state?

1 MR. HUMPHRIES: She's qualified.

2 THE COURT: Defense?

3 MR. WILSON: She's qualified, Your Honor.

4 THE COURT: Bring her back in, please.

5 (THE JUROR ENTERS THE COURTROOM.)

6 THE COURT: Okay, Ms. Skipper, we ask you to come back
7 on Thursday at 11:30. This does not mean you're on the
8 jury. What this means is you're going to be in the pool
9 from which the jury will be selected.

10 JUROR: Thursday?

11 THE COURT: Ma'am?

12 JUROR: Thursday at 11:30?

13 THE COURT: Thursday at 11:30 a.m. come back. There
14 will be somebody outside. They're either let you come in
15 this courtroom, or we'll have you someplace else to go and
16 wait for us. In the meantime, do not discuss this case at
17 all with anyone. And also continue your process of not
18 looking at any news or reading any papers, all right,
19 ma'am?

20 JUROR: Yes.

21 THE COURT: And if someone does discuss this case with
22 you, you let me know. Don't talk about it at all.
23 Obviously you can say you're on jury duty. Just say
24 anything about the case.

25 JUROR: Okay.

1 THE COURT: All right, ma'am?

2 JUROR: Sure.

3 THE COURT: All right, we'll see you at 11:30
4 Thursday. By the way, it would probably be better to make
5 sure because if you are selected, you'll have to go home
6 and get your bags and come back and get to the hotel in not
7 much time. So, you might want to go ahead and pack a
8 little bit just to be safe.

9 JUROR: Okay.

10 THE COURT: All right, we'll see you Thursday.

11 JUROR: Okay.

12 THE COURT: 11:30. All right, the next juror, I know
13 this is the eighty years or eighty-five years old, almost
14 eighty-five. Eighty-five, born in 1922. Okay, any, any
15 concerns before I bring him in?

16 MR. HUMPHRIES: I don't -- I didn't record any during
17 voir dire.

18 THE COURT: All right, bring the juror in.

19 (JUROR #345 ENTERS THE COURTROOM.)

20 EXAMINATION BY THE COURT:

21 Q. Mr. Overby, how are you doing?

22 A. Fine, fine, fine.

23 Q. It's been a long wait back there, hasn't it? You
24 still, you feeling okay?

25 A. Sir?

1 Q. You feeling all right?

2 A. Not really. After all, I'm eighty-five. I was going
3 to ask to be excused.

4 Q. Well, and you get that option if you want to, sir.

5 A. Well, I would certainly like it.

6 Q. Okay, sure, if that's what you want. You want to be
7 excused?

8 A. Yes, sir.

9 Q. All right.

10 A. I've been here since 9:00 this morning.

11 Q. I know, but I -- you, at one time you thought you
12 wanted to ---

13 A. Right, right, but I would like -- if I can exercise
14 that option, I would like to be excused.

15 THE COURT: Okay, any objection from the state or from
16 the defense?

17 MR. HEMBREE: No, Your Honor.

18 MR. WILSON: None, Your Honor.

19 THE COURT: Thank you, sir. Your -- just leave those
20 with him. Thank you very much, Mr. Overby. You're excused
21 at this time. Thank you, sir.

22 JUROR: Thank you, sir.

23 (THE JUROR EXITS THE COURTROOM.)

24 THE COURT: Okay, any matters y'all wish to bring up
25 regarding juror number 374?

1 MR. HEMBREE: Nothing from the state, Your Honor.

2 MR. RATHBUN: Nothing from defense, Your Honor.

3 THE COURT: All right, bring in Mr. Randall, please.

4 I just wonder, though, first ask him if he's had enough
5 time to look at the list and the types of jurors. Tell him
6 he can come on in once he's ready to come in. If you'll
7 just stand there with him and just when he comes in --
8 ready to come in, bring him on in.

9 (A PAUSE.)

10 THE COURT: I think we wore Mr. Overby out. By the
11 way, my understanding is now since we have qualified Ms.
12 Skipper, that doesn't mean she's going to be on the jury,
13 and she will be on that panel. I do have the situation of
14 this other juror, 335, I do feel was misleading. Y'all
15 wish for me to excuse her at this time without qualifying
16 her tomorrow? She is on the first panel. State's
17 position?

18 MR. HUMPHRIES: Yes.

19 THE COURT: Defense?

20 MR. WILSON: Judge, I don't have a position.

21 THE COURT: You don't object to my ruling if I excuse
22 her because of being misleading to the court?

23 MR. WILSON: No, sir.

24 THE COURT: As well as her situation with her sister?

25 MR. WILSON: I don't object; I don't object.

1 THE COURT: All right, then when she gets in tomorrow,
2 I'll go ahead and excuse her when she gets in here.

3 (JUROR #374 ENTERS THE COURTROOM.)

4 EXAMINATION BY THE COURT:

5 Q. Okay. Come around, Mr. Randall.

6 A. Yes.

7 Q. Been a long day, hasn't it?

8 A. For some of us. Where do you want me?

9 Q. Just come have a seat right there if you would, sir.
10 Let's see, go ahead and have a seat and relax. See you're
11 from Atlanta, Georgia.

12 A. Yes, sir. I was born outside of Atlanta.

13 Q. And you worked with Marriott Corporation?

14 A. Yes, sir.

15 Q. Hotel?

16 A. Actually, I was in the food and services division of
17 Marriott.

18 Q. Is that for the hotel?

19 A. Yes.

20 Q. Do you get pretty good rates at the hotel, stay there
21 a lot?

22 A. Yes, sir. Free.

23 Q. Oh, that's a good rate.

24 A. That's a good rate.

25 Q. I travel. Like I told you this morning, I travel and

1 stay in a, stay at Marriott every once in a while if we can
2 get the rate down low enough that we can afford it. They
3 have a nice one up there in Spartanburg right close to the
4 courthouse.

5 A. That one in Spartanburg, that's excellent.

6 Q. It's right downtown. It's got all the amenities,
7 restaurants and everything else. Almost walking distance
8 from the courthouse.

9 A. I did twenty-five years with them.

10 Q. Okay. You didn't work at the one in Spartanburg, did
11 you?

12 A. No, sir.

13 Q. And I see that your wife was at Caravele Resort, so
14 she did hotel work, too?

15 A. She's still at the Caravele.

16 Q. Caravele?

17 A. Yes. Yes, sir.

18 Q. That one down at the south end of Myrtle Beach?

19 A. Actually it's 72nd north side of Myrtle Beach.

20 Q. 72nd, okay.

21 A. The Marriott and the Caravel and all those are up that
22 way.

23 Q. I have a hard time keeping all them straight, there's
24 so many of them. They keep building them.

25 A. Well, that's a big one. They're about 700 rooms

1 there.

2 Q. You remember that I put you under oath earlier today
3 and you're still under oath?

4 A. Okay.

5 Q. And I want to ask you just a few things, and this is
6 just for discussion, so nobody's interrogating you. We
7 just talking.

8 A. Good.

9 Q. And I didn't want to hurry you back there. Did you
10 have enough time to look over the list and then those juror
11 things and all?

12 A. Yes, sir, I sure did.

13 Q. And I'm going to ask you about that in a minute. I
14 just wanted to make sure you had enough time.

15 A. Sure. I had plenty of time.

16 Q. As far as the attorneys themselves, you know any of
17 these attorneys, Mr. Hembree, Mr. Humphries, Mr. Wilson,
18 Mr. Rathbun?

19 A. I think I've met Mr. Humphries.

20 Q. Okay, and which one? You say Mr. Humphries, but...

21 A. Greg.

22 Q. Okay, that's Mr. Hembree.

23 A. Hembree.

24 Q. The one in the red tie?

25 A. The one with the red tie.

1 Q. Okay. Now, how do you know him?

2 A. I think it was recently after he was elected, I had a
3 little situation where I, I ran a nightclub here in Myrtle
4 Beach, and I ---

5 Q. What was that nightclub?

6 A. 2001.

7 Q. Yeah, that's one that's been here for a long time.

8 A. April of 1980. I was a very small owner and was the
9 general manager there.

10 Q. Okay.

11 A. And we had a little problem with an employee that
12 followed me around for a little while. We actually had a
13 stalking situation.

14 Q. Someone that you had discharged?

15 A. Yes, sir. Yes, sir.

16 Q. Problem, and is that ---

17 A. There was a problem of him taking money.

18 Q. Oh, okay.

19 A. So that it became my fault for some reason.

20 Q. Okay. Now, the fact that -- how long ago was that?

21 A. It's been ten years at least, ten or twelve years.

22 Q. Well then, therefore, when you saw Mr. Hembree, he was
23 not the chief prosecutor at the time. He was a lawyer?

24 A. I believe that Mr. Wilson had just got out of the
25 office, and he had just come in.

1 Q. Okay, well that's probably more like six or seven or
2 eight years, something like that. Doesn't matter at any
3 rate.

4 A. Okay.

5 Q. But would the fact that all occurred and you talked
6 with the fellow at the solicitor's office, would that in
7 any way cause you to form an opinion such that you could
8 not be fair and impartial in a trial in which the solicitor
9 was prosecuting and other attorneys defending?

10 A. No, sir, it wouldn't be a problem.

11 Q. It wouldn't affect your decision whatsoever?

12 A. No, sir.

13 Q. All right. You didn't form any friendships with Mr.
14 Hembree at all, did you?

15 A. No, sir.

16 Q. Now, what about Mr. Winkler? Do you know Mr. Winkler
17 at all?

18 A. No, sir.

19 Q. Do you have any interest, bias, or prejudice in this
20 case?

21 A. No, sir.

22 Q. Now, the procedure in a court of law is once a jury is
23 impaneled, that jury would hear evidence in the case and
24 would follow the law as the judge instructed the law. And
25 the jury would be required under oath to follow the law.

1 The judge would instruct the jury that the defendant,
2 although charged with this crime, these charges are not
3 evidence he's committed any crime whatsoever, and the
4 defendant is presumed innocent.

5 The presumption of innocence is there such that the
6 state has the burden of proving guilt beyond a reasonable
7 doubt. The defendant does not have to prove himself
8 innocent. Defendant does not -- yeah, does not have to
9 prove himself innocent. Would you follow that rule of law,
10 sir?

11 A. Yes, sir.

12 Q. Further, sir, if after all the evidence in the case is
13 presented, and if you felt that the state had not proven
14 guilt beyond a reasonable doubt, and after the judge had
15 instructed you on the law, and if you felt the state had
16 not proving guilt beyond a reasonable doubt, could you
17 enter a verdict of not guilty if you felt that was the
18 appropriate thing to do?

19 A. Yes, sir.

20 Q. If after hearing all the evidence in the case and
21 instruction of the law from the judge, if you felt the
22 defendant was guilty, could you, having been proven guilty
23 beyond a reasonable doubt, could you enter a verdict of
24 guilty?

25 A. Yes, sir.

1 Q. Have you formed any bias or prejudice or expressed an
2 opinion in this case at all?

3 A. No, sir.

4 Q. Have you discussed this case with anyone?

5 A. When I received that questionnaire, I went online to
6 see who -- I did find the name of the person that was
7 involved, but I've been out of the country for the last
8 couple of weeks. So, no, I haven't spoken with anyone.

9 Q. And what did you find online?

10 A. What the case was. The same thing that I read in the
11 paper yesterday.

12 Q. And, I mean, did you spend hours online?

13 A. No, no, just curiosity.

14 Q. All right. Did looking at the matters online or
15 anything in the paper, you don't recall reading anything in
16 the paper a while back? Just recently is all you recall?

17 A. Yesterday. I've been, I've been out of the country
18 for two and a half weeks. The first thing I saw is I got
19 -- I came back because I was required to be here today.
20 Happened to see yesterday's paper.

21 Q. Where were you out of the country?

22 A. Costa Rica.

23 Q. Warm down there?

24 A. 85.

25 Q. Really?

1 A. The water was 85.

2 Q. I haven't been there before, but I guess that's a nice
3 place I'm sure. Thank you for coming back, and now what
4 you've read in the Internet or media, has that caused you
5 to form an opinion as to the guilt or innocence of the
6 defendant one way or the other?

7 A. Absolutely not.

8 Q. In sitting on this jury, could you disregard and put
9 aside anything you've read and make your decision based on
10 the evidence presented in the case in the courtroom and the
11 law as I instruct it to you?

12 A. Yes, sir.

13 Q. I gave you a list as you -- that you looked over of
14 names. Did you know anybody on that list?

15 A. The only one that I am familiar with is Detective Neil
16 Livingston. It was the detective who I was involved with.

17 Q. Let's look at that number. What number is ---

18 A. Number 29.

19 Q. 29. Now, how do you know Mr. Livingston?

20 A. Same situation I was involved with.

21 Q. He was who was involved in that case?

22 A. He was the officer who arrested the person.

23 Q. Now, the fact that he was involved with that case a
24 few years ago, would that cause you not to be fair and
25 impartial in this case if he turned out to be a witness in

1 the case?

2 A. No, sir.

3 Q. Would that cause you to look upon him differently than
4 you would any other witness in the case?

5 A. No, sir.

6 Q. Anyone else?

7 A. That's the only one I recognize.

8 Q. All right, let me look at that. If during the course
9 of the trial, if you saw a face and something else came to
10 mind, let the court know about if something else should ---

11 A. I'm sorry. Would you say again?

12 Q. If during the course of the trial because you saw
13 someone that you may not know their name but you might know
14 their face or you saw them or something else came to mind,
15 you'd let me know about it, would you not?

16 A. Yes, sir.

17 THE COURT: All right, let me give this to the court
18 reporter.

19 (QUESTIONNAIRE OF JUROR #374-RANDALL MARKED IN
20 EVIDENCE AS COURT'S EXHIBIT NUMBER 4-B.)

21 BY THE COURT:

22 Q. I also gave you a list of types of jurors. Let me
23 just explain this to you, Mr. Randall. In a trial of this
24 nature, the jurors first would be presented the evidence to
25 consider in deciding whether or not the defendant has been

1 proven guilty beyond a reasonable doubt, and the judge
2 would instruct the jury on the law. As I said, the jury
3 would accept the law as the judge instructs. And then they
4 themselves would make a decision of whether or not the
5 state has proven guilt beyond a reasonable doubt.

6 If the jury felt the state had not proven guilt beyond
7 a reasonable doubt, then the jury would enter a verdict of
8 not guilty and it would end there. Or if the jury felt the
9 defendant was not guilty of murder and aggravated
10 circumstance, it would end there.

11 If, however, the jury felt the state had proven guilt
12 beyond a reasonable doubt of murder and the aggravating
13 circumstance, we then would go into another phase where the
14 jury then would consider the appropriate punishment based
15 on that finding. And in that phase, the jury would be
16 presented evidence in aggravation and evidence in
17 mitigation. And after they had been presented all of that
18 evidence and the judge gave them a further instruction on
19 the law, the jury then would come back with either a
20 verdict for life imprisonment or a verdict for the death
21 penalty.

22 Now, I gave you a list of three types of jurors, and
23 the first type is a juror that in that phase, that juror
24 would feel that they're required -- or feel that they
25 should give the death penalty in each and every case. They

1 feel that once a murder's been committed, the death penalty
2 is the most appropriate punishment no matter what the
3 evidence in aggravation or mitigation had been presented,
4 no matter what the circumstances are.

5 The next juror is the juror that feels that in that
6 phase that he, after hearing all the evidence in
7 aggravation and mitigation, they would always come back
8 with a verdict of life imprisonment because they do not
9 feel the death penalty is ever appropriate as a punishment
10 in a case, no matter what the circumstances are in evidence
11 in aggravation and mitigation are.

12 The third juror is the juror that would have to wait
13 and listen to the evidence in aggravation and mitigation
14 before they could make up their mind concerning punishment.
15 That juror would want to hear the facts and circumstances
16 in aggravation and mitigation as well as listen to the
17 instruction of law by the, by the judge. And if after
18 hearing the evidence in aggravation and mitigation and
19 instruction by the judge, if the juror felt that that
20 evidence so warranted it, that juror could bring back a
21 verdict of life imprisonment. Or if the juror felt the
22 evidence so warranted it, that juror could bring in a
23 verdict of the death penalty. Do you understand those
24 three types of jurors, Mr. Randall?

25 A. Yes, sir.

1 Q. Which of those three types best describes you?

2 A. I would say juror type number three.

3 Q. All right. So, you would listen to evidence in
4 aggravation and mitigation before making up your mind about
5 what the proper punishment is?

6 A. Yes, sir.

7 Q. You also realize that you'd never even get to that
8 phase, though. That's -- unless you decided the state had
9 prove guilt beyond a reasonable doubt?

10 A. Yes, sir.

11 Q. And if state did not prove guilt beyond a reasonable
12 doubt, you bring back a verdict of not guilty. Is that
13 right, sir?

14 A. Yes, sir.

15 Q. Now, if you were to determine as a juror that, that
16 death as a sentence was the appropriate verdict, all jurors
17 would have to sign the verdict form. That would be the
18 verdict of, of -- if they determined that was the
19 appropriate verdict. Could you sign that verdict form,
20 sir?

21 A. Yes, sir.

22 Q. Now, if you are selected on this case, this would be
23 one that would require the jurors to stay in a hotel for
24 several days. Could be a week, could be longer, could be
25 less, somewhere around that time, and you have some contact

1 with family and business, but it would be supervised by
2 telephone. And you feel that would be a hardship you could
3 not overcome, sir?

4 A: No, sir.

5 Q. Okay, all right, and what if it's not a Marriott?
6 Would that be all right with you?

7 A. I stayed in enough Marriotts.

8 Q. All right. Well, it may be the Marriott, who knows.
9 I don't know one way or the other.

10 A. No, sir. I understand but no, sir, I've stayed in
11 those for twenty-five years.

12 THE COURT: I'm going to let the attorneys ask you a
13 few questions.

14 Any questions from the state?

15 MR. HEMBREE: No, Your Honor. Thank you for your
16 patience, Mr. Randall.

17 THE COURT: Any questions from defense?

18 MR. RATHBUN: Yes, Your Honor.

19 THE COURT: Yes, Mr. Rathbun.

20 EXAMINATION BY MR. RATHBUN:

21 Q. Good evening, Mr. Randall.

22 A. Good evening, sir.

23 Q. You indicated you had a part of the 2001 nightclub?

24 A. Yes, sir.

25 Q. And as a result of that, you were stalked by an

1 employee?

2 A. I don't know as a result of having a nightclub, but it
3 was a, it was as a result of terminating that employee.

4 Q. Okay, and you had some interaction with the
5 solicitor's office and Mr. Hembree?

6 A. Yes, sir.

7 Q. And that was, that outcome was satisfactory to you?

8 A. Yes, sir. It was fine.

9 Q. And Detective Livingston helped you with that?

10 A. It was, there were two detectives involved, as I
11 recall. I think the other one was Andy Christiansen. I
12 didn't see his name on that list.

13 Q. Right.

14 A. But I think they were the two who actually picked up
15 the employee.

16 Q. But you had a good outcome and you have good feelings
17 about the solicitor's office?

18 A. It was fine. I mean, the man pled guilty and that was
19 it.

20 Q. Okay. You understand that as we stand here tonight,
21 Mr. Winkler is presumed innocent of these, of these
22 allegations?

23 A. Yes, sir.

24 Q. Okay, and you also understand that should you and the
25 other jurors, after proper deliberation, determine in the

1 guilt phase that he's found guilty, we're going to go on to
2 the other phase, which is the sentencing phase?

3 A. Yes, sir.

4 Q. And in the sentencing phase, there could be more than
5 two verdicts, either life without parole or the death
6 penalty?

7 A. I understand.

8 Q. And in the guilt phase, it's possible that he could be
9 found guilty of a lesser included charge, and we wouldn't
10 get into the second phase with the jury. Do you understand
11 that?

12 A. Yes, sir.

13 Q. Do you understand that in the second phase, the state
14 is going to put up matters of aggravation that's going to
15 exacerbate, exacerbate the guilt and complicity of the
16 defendant ---

17 THE COURT: I'm sorry, you mean the state is going to
18 put in evidence they submit ---

19 MR. RATHBUN: That's correct. I, misstated.

20 BY MR. RATHBUN:

21 Q. And the defense will be putting up matters of
22 mitigation to put a more favorable light on the defendant.

23 A. Is that a question?

24 Q. Do you understand that that's what's going on?

25 A. Yes.

1 Q. And it's your testimony that you can make up your
2 decisions, and it would be your decision only?

3 A. Yes, sir.

4 Q. And you'd do that after deliberating with the other
5 jurors, that you would be able to make up your decision and
6 would be able to sign your name if you had to for whatever
7 that was?

8 A. Yes, sir.

9 MR. RATHBUN: No further questions. Thank you.

10 THE COURT: If you would, Mr. Randall, just step
11 outside the door for a second.

12 (THE JUROR EXITS THE COURTROOM.)

13 THE COURT: Okay, position of the state?

14 MR. HEMBREE: Mr. Randall is qualified.

15 THE COURT: Defense?

16 MR. RATHBUN: He's qualified, Your Honor.

17 THE COURT: All right, bring him back in, please.

18 (THE JUROR ENTERS THE COURTROOM.)

19 THE COURT: Okay, Mr. Randall, what I'm going to do
20 then, we're going to let you go home now. It's quarter to
21 9, and want you to come back Thursday at 11:30, Thursday at
22 11:30.

23 And sir, when you come back at that time, you'll be in
24 a pool from which the jurors will be selected. If you are
25 selected, I will let you go home and get your, your, your

1 bag and all and come back. It might be good to go ahead
2 and pack some things so it won't take longer to get there
3 and get back, okay?

4 JUROR: Yes, sir.

5 THE COURT: All right, we'll see you Thursday at
6 11:30. In the meantime, do not look at any local media
7 about this case. Don't look at any news. Don't read any
8 local papers, and don't discuss case with anyone at all,
9 okay, sir?

10 JUROR: All right.

11 THE COURT: Thursday at 11:30.

12 JUROR: Here?

13 THE COURT: Yes, sir. Wait outside the door there.
14 Come on in. There'll be somebody outside to let you know
15 to come in or not, okay? See you then.

16 JUROR: Thank you.

17 THE COURT: Yes, sir.

18 (A PAUSE.)

19 THE COURT: We ended up getting eight out of the first
20 ten. That's a pretty good record. We keep going in that
21 regard, we might have enough jurors by Wednesday morning
22 with no problem. Wednesday morning we will wait and see.

23 Anything before we adjourn from anyone? Anything from
24 the state?

25 MR. HEMBREE: Nothing from the state, Your Honor.

1 THE COURT: Anything from the defense before we
2 adjourn?

3 MR. WILSON: Nothing, Your Honor.

4 THE COURT: All right, we'll then see y'all tomorrow
5 at 10:00, 10:00 a.m.

6 (WHEREUPON, THE CASE IS AT EASE.)

7 TUESDAY, JANUARY 29, 2008

8 (COURT RESUMES AT 10:30 A.M.)

9 THE COURT: All right, any matters that we need to
10 discuss before, before we get started with our first juror
11 on panel C?

12 MR. HUMPHRIES: No matters from the state, Judge
13 Lockemy.

14 THE COURT: Defense?

15 MR. HEMBREE: Nothing from defense.

16 (A PAUSE.)

17 THE COURT: All right, if you would, see if Ms. Spivey
18 is ready, if you would.

19 (JUROR #426 ENTERS THE COURTROOM.)

20 EXAMINATION BY THE COURT:

21 Q. Now, this is not an interrogation or anything else.
22 All this is just you and me, and I'll let lawyers talk with
23 you a little bit, too, just to learn a little bit about
24 you. And I see here that you were born in Georgetown
25 County.

1 A. Yes.

2 Q. And you work there for clerk eye. What is that?

3 A. It's operational clerk. It's clerk one at Blue Cross
4 Blue Shield.

5 Q. Oh, yeah, Blue Cross Blue Shield. That's one of the
6 biggest employers in the state, isn't it?

7 A. Yes, sir.

8 Q. I just had to go to a dentist this morning, so I got
9 in a little later. They wanted my insurance information,
10 and I never can find that card. It's Blue Cross Blue
11 Shield.

12 Now, what I want to do a little bit is to remind you
13 first you're still under oath. You remember yesterday the
14 clerk put you under oath?

15 A. Yes, sir.

16 Q. And first of all, I asked you about the attorneys,
17 they've already introduced themselves to you, but just to
18 ask you again. Do you know Mr. Humphries or Mr. Hembree or
19 Mr. Wilson or Mr. Rathbun? Do you know any of them at all
20 or have any relationship with them at all?

21 A. No, sir.

22 Q. All right, and Mr. Winkler, do you know him, the
23 defendant?

24 A. No, sir.

25 Q. All right. Now if you can, see the microphone there?

1 I'm not sure if they can hear you as well as I can, so you
2 might want to get just a little closer.

3 Do you have any interest or bias or prejudice at all
4 in this particular case?

5 A. No, sir.

6 Q. All right. Have -- let me just explain to you a
7 trial, the procedures of a trial. The jury is selected and
8 is sitting in that box over there, and they're presented
9 evidence through witnesses, exhibits and things of that
10 nature. And the judge instructs them on the law. And one
11 thing the judge will tell the jury is that in courts of law
12 in this state, and really in this nation, a person charged
13 with a crime is presumed innocent of the crime, and the
14 burden is upon the state to prove guilt beyond a reasonable
15 doubt and not upon the defendant to prove himself innocent.
16 Now, could you follow that rule of law?

17 A. Yes, sir.

18 Q. All right. Now, have you formed or expressed any
19 opinion in this case about the guilt or the innocent --
20 innocence of the defendant?

21 A. No, sir.

22 Q. All right. Do you know of any reason why you couldn't
23 be fair and impartial to both sides?

24 A. No, sir.

25 Q. If after hearing all the evidence of the case and my

1 instruction on the law, after hearing all the evidence, if
2 you felt the state has proven guilt beyond a reasonable
3 doubt, could you find the defendant guilty of the charges?

4 A. Yes, sir.

5 Q. Okay. If after hearing all the evidence in the case
6 and my law as I instruct it to you, if you felt the
7 defendant was not guilty in the case, could you return a
8 verdict of not guilty?

9 A. Yes, sir.

10 Q. All right. Have you discussed this case with anyone?

11 A. No, sir.

12 Q. Now this case, like several cases with the allegations
13 in a case like this, has had some coverage by TV stations,
14 newspapers, radio, things of that nature. Have you seen
15 anything in the newspapers or radio or TV about this case?
16 Heard anything on the radio, seen anything on the TV, read
17 anything in the papers?

18 A. Just heard on the radio where they're going to start
19 the trial.

20 Q. All right, before that, had you heard anything about
21 it or read anything about it?

22 A. No, sir.

23 Q. Okay, and do you remember, did you, did you remember
24 hearing anything other about it other than that they were
25 going to start the trial?

1 A. No, sir, because I don't look at that.

2 Q. Okay.

3 A. That much.

4 Q. And has that caused you to form any opinion or
5 anything about the case?

6 A. No, sir.

7 Q. Now, I gave you back there enough time, I hope, to
8 look over a list of witnesses. Where you able to look over
9 that list of names?

10 A. Yes, sir.

11 Q. Did you see anybody there you knew?

12 A. No, sir.

13 Q. Could I have that list, please?

14 THE COURT: Madame Court Reporter, am I not speaking
15 loud enough? I noticed you're looking at me.

16 COURT REPORTER: If you could speak a bit louder.

17 THE COURT: Okay. You notice I stepped up my voice a
18 little when you did that.

19 Q. And so you didn't circle anything whatsoever?

20 A. No, sir.

21 Q. All right, okay. Now, I told you about when the case
22 starts with the jurors listening to evidence and the law
23 from the judge, and the jurors making the decision about
24 whether guilt's been proved beyond a reasonable doubt.

25 Well, if the jury were to decide that the defendant

1 were guilty of the allegations of murder and then also
2 found the defendant guilty of aggravated circumstance, then
3 we would go to another phase where that jury then would
4 listen to evidence in aggravation and mitigation and would
5 decide what verdict they would give regarding punishment.
6 It would be two possible verdicts: either the death penalty
7 or life imprisonment. And there's no preference in regard
8 to me discussing that.

9 And I told you or showed you three types of jurors
10 back there. The first you see is that juror that, although
11 evidence would be presented in aggravation and mitigation,
12 that juror would feel that no matter what they heard, they
13 would be required to give the death penalty in every case.
14 And that in all cases, that'd be the most appropriate
15 punishment no matter what the circumstances are and what
16 the evidence is in aggravation and mitigation.

17 The second type of juror would be the juror that, no
18 matter what the evidence was in aggravation, mitigation,
19 that person would feel they never could give the death
20 penalty. And whether they heard or didn't hear the
21 evidence in aggravation, mitigation, that person would have
22 his mind made up about punishment and, and would never
23 impose the death penalty.

24 And the third juror is the juror that they would
25 listen to the evidence in aggravation and mitigation, and

1 she would not have made up her mind in advance concerning
2 punishment, and they'd want to listen to and follow law as
3 the judge instructed them. And that juror would listen to
4 all the evidence presented. And if after hearing all the
5 evidence and the law, if that juror felt it so warranted
6 it, that that juror could come back and say that their
7 verdict was for life imprisonment. Further, if that juror
8 felt the evidence so warranted it, that juror could come
9 back and say their verdict was for the death penalty.

10 Now, of those three types, which best describes you?

11 A. Three.

12 Q. Okay. You had to read them over again before you
13 looked at this. Would you agree that that's the type of
14 person you've been is a three? That you'd listen to
15 everything and you could give life imprisonment or you
16 could give the death penalty?

17 A. Yes, sir.

18 Q. On the -- depending on the circumstances?

19 A. Yes, sir.

20 Q. So, if you hear circumstances that so warranted, you
21 could say life imprisonment? And if you heard
22 circumstances that so warranted it, you could say the death
23 penalty?

24 A. Yes, sir.

25 Q. Okay. If the jury were to decide that the death

1 penalty was the appropriate verdict, each juror would have
2 to sign the verdict form for the death penalty. Would you
3 have -- could you sign that verdict form and if that was
4 the decision, would you sign that verdict form?

5 A. Yes, sir.

6 Q. Okay. Now this case, if -- I'm looking to get
7 started, it's going to be a week, a week long, maybe a
8 little more, maybe a little less, who knows. But during
9 that period of time, you would be housed in a hotel not too
10 far away. But we'd get you transportation back and forth
11 and provide your food. You could have limited contact with
12 your family on the phone. And that normally somebody would
13 be supervising you when you talked to see what you're
14 talking -- make sure you don't talk about the case. Do you
15 feel you could do that? I know it would be inconvenient,
16 but could you do that for us?

17 A. Yes, sir.

18 THE COURT: All right, what I'm going to do now is I'm
19 going to let the attorneys ask you any questions, if they
20 have any questions. And then after that, I'll speak to you
21 again.

22 All right, any questions from the state?

23 MR. HEMBREE: Yes, Your Honor, thank you.

24 EXAMINATION BY MR. HEMBREE:

25 Q. The morning, Ms. Spivey.

1 A. Good morning.

2 Q. I'm Greg Hembree. I was introduced to you yesterday
3 and together with Fran Humphries and Scott Hicks, who's
4 sort of all the way to the right there, the three of us
5 will be trying this case on behalf of the state.

6 Couple of, a few questions. Just most of it's going
7 to sound -- you've been asked this in a different form
8 already by Judge Lockemy, but I just want to make sure I
9 have a clear understanding of how you feel about the death
10 penalty because that's really what we're trying to sort out
11 here in this process here, in this conversation.

12 First off, you understand, and I think you've already
13 said this, but you understand here that, that Louis Winkler
14 as he sits here today is, is presumed innocent?

15 A. Yes, sir.

16 Q. And that the way this, excuse me, the way this process
17 would work, that we would have, excuse me, we would have a
18 the guilt phase where the jury's question to decide is did
19 Mr. Winkler commit the crimes charged or not. And only
20 after he had been found guilty of murder, at least murder,
21 would he -- would the jury move on to the second part of
22 the trial where there's a penalty phase. Did that -- the
23 judge explained that to you. Is that -- it's kind of
24 unusual. Does that make sense?

25 A. Yes, sir.

1 Q. Great. So, for purposes of my questions, we've got to
2 assume, you know, kind of in this hypothetical that Mr.
3 Winkler has been found guilty of murder.

4 You indicated that you felt like you were a type three
5 juror. Is that correct?

6 A. Yes, sir.

7 Q. And as Judge Lockemy described, that's a juror that
8 can, can listen to all the facts and circumstances, can
9 keep an open mind about punishment and consider both sides,
10 both the aggravating circumstances that might be presented
11 by the state. Some of them may be things that make the
12 crime worse, or mitigating circumstances offered by the
13 defense that might lessen the culpability and
14 responsibility, or at least the view of the defendant on
15 the defense side. You can listen to both of those?

16 A. Yes, sir.

17 Q. Fairly consider those?

18 A. Yes, sir.

19 Q. And that only then would you make up your mind about
20 penalty?

21 A. Yes, sir.

22 Q. The one thing that it's important for you to
23 understand is that it will be the jury's decision, and the
24 jury never has to decide. There is -- the law does not say
25 that you have to decide death under any circumstance.

1 You're never going to be made to do that. Do you
2 understand that?

3 A. Yes, sir.

4 Q. So, and you as a juror when you make that decision to,
5 to, or -- it's one thing to consider the death penalty.
6 It's maybe another to impose it. Do you believe that if
7 you were given sufficient facts and circumstances that you
8 would be able to not only consider the death penalty but to
9 impose the death penalty upon this defendant given the
10 appropriate facts, sufficient facts and circumstances?

11 A. Yes, sir.

12 Q. Of course the fundamental thing we want to achieve
13 here is a fair trial for everybody. Fair for the victims,
14 fair for the defendant, fair for the State of South
15 Carolina, and I know you've testified that you can be fair
16 to all three of those.

17 A. Yes, sir.

18 Q. And that's the most we can ask of you, and we
19 appreciate your time, and I appreciate your patience with
20 me.

21 MR. HEMBREE: Please answer any questions defense
22 counsel might have for you.

23 THE COURT: Mr. Wilson?

24 MR. WILSON: Thank you, Your Honor.

25 EXAMINATION BY MR. WILSON:

1 Q. Ms. Spivey, my understanding is you have two children
2 or three?

3 A. Two.

4 Q. Two?

5 A. Well, I have three children.

6 Q. You have three children?

7 A. Yes.

8 Q. And two of your children are in law enforcement?

9 A. Yes, sir..

10 Q. All right, and one of your children work for the Horry
11 County Police Department?

12 A. Yes, sir.

13 Q. How long has that child worked there?

14 A. Five years.

15 Q. Okay, and Horry County Police Department, let me ask
16 you. Did you hear anything from your -- is that your son
17 and your daughter?

18 A. A daughter.

19 Q. Right, and did she discuss this case with you at all?

20 A. No, sir.

21 Q. She never mentioned the fact that this was going on
22 and that the Horry County Police Department was -- had
23 arrested for this young man, charged, that he was ---

24 A. No, sir.

25 Q. --- charged with offenses?

1 A. No, sir.

2 Q. And even after you were selected to come to court as a
3 potential juror, she never brought it up to you that this
4 was a case that was going to be coming up?

5 A. No, sir. Actually, when I got my papers and I was
6 reading over it, she couldn't even remember, you know, the
7 name. So, no, sir.

8 Q. So, you did ask her about it?

9 A. Yes, sir.

10 Q. All right, and she couldn't remember who it was that
11 was coming up for trial? Is that what you're saying?

12 A. Right.

13 Q. All right, and my understanding is that you also have
14 a son that works for, what, Myrtle Beach Police Department?

15 A. Myrtle Beach.

16 Q. All right, and how long has that son been in law
17 enforcement?

18 A. It's been a long time; I want to say ten years or
19 more.

20 Q. And has he been with Myrtle Beach the whole ten years?

21 A. Yes, sir.

22 Q. All right, and did you discuss any of this with that
23 particular son about this particular case?

24 A. No, sir.

25 Q. All right, and so you have two children both in law

1 enforcement, one working for the agency which charged that
2 this defendant and -- but there was never any discussion by
3 you or them about this particular case, and you had no
4 information about it before coming in here today is what
5 you're saying?

6 A. No, sir. My children don't discuss their job with me.

7 Q. All right, and how often do you see your children?

8 A. I see my daughter maybe three or four times a week
9 when she picks up her daughter from me.

10 Q. Okay.

11 A. I see my son maybe once a week.

12 Q. Okay, and so your daughter keeps your child -- keep,
13 you keep your daughter's child?

14 A. I picks her up from the babysitter.

15 Q. Okay, so you see her on a fairly, fairly recent --
16 sorry, fairly regular basis. Is that correct?

17 A. Yes, sir. Mostly late at night when she picks the
18 baby up.

19 Q. Okay. All right. Now, and let, let me ask you this,
20 ma'am. Having two children in law enforcement and one
21 working for the agency, the arresting agency in this case,
22 do you know any other county, other county police officers?

23 A. No, sir.

24 Q. You don't know any county police officers other than
25 your, your daughter?

1 A. No, sir, I don't. I've seen them but I don't know,
2 you know, I don't know them. Like, I can walk up to
3 someone and say their name. I don't know them.

4 Q. Okay, all right, and now the fact that your daughter
5 works for the Horry County Police Department and the fact
6 that your son's in law enforcement also with Myrtle Beach,
7 does that any way make you in any way biased towards law
8 enforcement in any way whatsoever?

9 A. No, sir.

10 Q. And does it cause you any hesitation about whether or
11 not you can be fair to the defendant as opposed to being
12 fair to the state in this particular case?

13 A. Yes, sir.

14 THE COURT: Now, wait a minute. You mean fair to
15 both, sir.

16 MR. WILSON: Well, what I'm asking, Your Honor, is
17 whether or not because of her, because of her family's
18 background with law enforcement whether or not that was --
19 in some way prejudice her in favor of the state as opposed
20 to the defendant.

21 THE COURT: Okay.

22 A. No, sir.

23 Q. And, ma'am, just one last thing. Let me ask you this.
24 In terms of your views about the death penalty, this is
25 something that you have believed for a substantial period

1 of time?

2 A. Yes, sir.

3 Q. All right, and can you tell me in any way what your,
4 what your feeling about the death penalty is, or do you
5 have a particular feeling about it?

6 A. No, sir.

7 Q. You don't?

8 A. Just hear the facts and go from there.

9 MR. WILSON: All right, I, I don't have any other
10 questions. Thank you.

11 THE COURT: Okay, thank you, ma'am. If you would,
12 just step out the door for me, and hand me that sheet, if
13 you would. See where the officers is? I'm going to let
14 you step out that door for one second, and I'll bring you
15 back in.

16 (THE JUROR EXITS THE COURTROOM.)

17 THE COURT: Position of the state?

18 MR. HEMBREE: Ms. Spivey is qualified, Your Honor.

19 THE COURT: Defense?

20 MR. WILSON: Judge, I would object to her
21 qualifications. I think that I know that, that just the
22 fact a person's daughter works for the Horry County Police
23 Department is not an automatic disqualification. But this
24 is a death penalty case. This is a case where her daughter
25 has been a member of the arresting agency for five years.

1 She says that she never discussed this case, which I
2 find incredulous to believe that. Her daughter has worked
3 with the arresting agency five years. She gets her notice
4 for jury service. She has a son who's been in law
5 enforcement for ten years with the Myrtle Beach Police
6 Department. And so to have this juror sit in judgment on
7 this case with her daughter being a member of the arresting
8 agency I think is really highly prejudicial and unfair for
9 this particular defendant in this circumstance.

10 And again, I agree with -- or I, I don't have any
11 problem recognizing that generally the fact that somebody
12 is in law enforcement is not a bar to them serving. That's
13 not the case. It's one step beyond that. This is a case
14 where she is actually -- her daughter actually works for
15 this agency and to say that -- that's like having one of
16 the solicitor employees be on this jury. What is -- I, I
17 can't see the difference between the two, saying that a
18 member of the solicitor's staff can serve.

19 But a person whose mother -- and she is the mother
20 which is the, which is the other thing. That concerns me
21 even more. The fact she is the mother of this daughter who
22 works for this agency, I have a real problem with that.
23 And I understand that she just said that she can be fair
24 and she can do all these things. I honestly have a hard
25 time accepting that even though she has said it. And I

1 would ask the court to not qualify her.

2 THE COURT: The state?

3 MR. HEMBREE: Your Honor, the juror in her responses
4 was clear. She was direct. She was very alert. She paid
5 very close attention to, to all three of us when we -- she
6 -- we asked her questions. Listened carefully, and she,
7 she was very direct in her responses. To somehow suggest
8 that she just an outright liar, it, it -- her, her, the way
9 she responded, the method she responded, it is totally --
10 it's totally inconsistent with the way she answered the
11 questions. I don't ---

12 THE COURT: What about Mr. Wilson's point that we
13 excluded two jurors whose spouses -- were they spouses or
14 children? Children. No one had an objection there to
15 that. But there some difference in the fact that her
16 daughter works for -- is it -- and I assume Horry County is
17 the chief agency here?

18 MR. HEMBREE: Well, we would have been -- actually, we
19 would have, we, we would have been glad to keep Richard
20 Floyd and the other young lady who was here. I didn't, I
21 didn't, didn't, I didn't object to that. I deferred to the
22 court on that and kind of gave that one away. Quite
23 frankly, if the court would give -- if the court wants to
24 hear arguments on that, I agree with you. I think there's
25 no reason in the world they can't serve. We can, we can

1 bring them in and ask them questions and if they're
2 qualified, I think they should be allowed to qualify.

3 Under *State vs. Elmore*, this very question was dealt
4 with where the court held that the assistant solicitor that
5 was trying the case was the juror's daughter's best friend.
6 This juror knew the assistant solicitor well. As I said,
7 the court found that that juror was qualified to serve, and
8 that was affirmed on appeal. So, there is a case that's
9 directly on point on this particular issue.

10 Your Honor, this, this lady doesn't know anything
11 about the case. She's testified clearly that the fact that
12 her children work in law enforcement wouldn't affect her on
13 the case. And the Horry County, when you talk with the
14 Horry County Police, we're not talking about four or five
15 officers. We're talking about three hundred people who
16 work in that department. It's a huge department, so it's
17 not, it's not so crazy or unusual that her daughter works
18 there, yet she doesn't know, you know, about this
19 particular case because this was a case handled by the
20 detectives and she's, Your Honor, she is, she's clearly ---

21 THE COURT: Well, one of the differences I see is that
22 this case, the management of the case is, through our
23 Constitution, through the solicitor's office. The
24 decisions are made through the solicitor's office. Once an
25 arrest has been made, the police agency basically then is

1 used by the solicitor to present the case the solicitor
2 thinks should be presented. Or if the solicitor wishes to,
3 he or she can dismiss the case. And it's sort of a
4 management then, and they're the ones presenting these
5 matters to the court and through witnesses. And the
6 witnesses may be through the police agency that made the
7 arrest. It may be also through other agencies and other
8 witnesses in the, in the community.

9 And I can see a little difference there between the
10 mother of someone on a police agency of a large, large,
11 large police force. Probably one of the top five in the
12 state and, and she doesn't even know anybody else who works
13 there apparently. And her daughter didn't discuss the case
14 with her. She hasn't discussed it with her daughter, and
15 she says that the only thing she knows about this case is
16 she heard on the radio that it was coming to trial. The
17 juror also has a right to be there.

18 The other thing, the child or someone worked with the
19 solicitor's office who is pursuing the case, that juror
20 knows the solicitor who is pursuing this case. That
21 solicitor has the exclusive right of hiring and firing
22 anybody right then and is the one with the chief job of
23 prosecuting the case.

24 I see a little difference there, Mr. Wilson, I do.
25 I'm going to qualify the juror. I find that she's

1 qualified. That will be juror number 9.

2 Bring her back in if you would, please.

3 (THE JUROR ENTERS THE COURTROOM.)

4 THE COURT: Ms. Spivey, I'm going to ask you to come
5 back Thursday at 11:30. Now, if you would, that -- this
6 doesn't mean that you're actually going to be on the trial
7 of this case. It means that you'll be in the pool from
8 which the jury is selected. And as I said, y'all will be
9 housed beginning Thursday. So, make arrangements in that
10 regard because Thursday you will probably from that time on
11 be housed until this trial is over.

12 Do not discuss this case with anyone, no one in your
13 family. Do not discuss it at all. Don't discuss it with
14 any of your friends or anyone else. Do not listen to any
15 local news media or read any local papers about the case,
16 all right, ma'am?

17 And you might want to go ahead and pack up just in
18 case you are drawn so that when we do, if you are drawn,
19 I'll probably let you go back and hopefully somebody can
20 bring you back and drop you off at the courthouse, so you
21 might want to try to make arrangements with some of your
22 family. But I would prefer it not be with your daughter or
23 your son, so someone else. And do not discuss the case at
24 all, okay?

25 JUROR: All right.

1 THE COURT: All right, we'll see you Thursday at
2 11:30.

3 JUROR: Thank you.

4 THE COURT: Okay, you go out the other way.

5 We need to confirm the candidate you have back there,
6 juror number 335. I'm going to let her go if everyone
7 agrees that she should be excused from this trial. As I
8 understand, the state makes that motion. The defense does
9 not object ---

10 MR. HEMBREE: That's correct.

11 MR. WILSON: That's correct.

12 THE COURT: --- to the motion.

13 MR. WILSON: I have no objection.

14 THE COURT: Let's go ahead and have 335 then. You
15 can tell 335 -- why don't you go ahead and bring her out
16 and then the next juror, number 9. Okay, bring Ms. Neal
17 with her.

18 MR. HUMPHRIES: Judge, you asked if there were any
19 special considerations, and we ---

20 THE COURT: Oh, I'm sorry. Yeah, stop if you would.
21 Tell them to wait a second on Ms. Bacot.

22 MR. HUMPHRIES: She requested an excusal based on her
23 job. She had a bank merger. I just -- that was the reason
24 she came forward. I think you dealt with that, and -- but
25 just so you know.

1 THE COURT: The way I dealt with it, I told her that
2 if she is selected for the trial, she's -- this thing is
3 going on until June.

4 MR. HUMPHRIES: Correct.

5 THE COURT: And I cannot imagine ten or two weeks
6 would make a big difference in a six-month merger.

7 You can have them come to the door. I just wanted
8 them not to come in the door.

9 Anything else you'd like to say about Ms. Bacot, Mr.
10 Wilson?

11 MR. WILSON: No, sir.

12 THE COURT: She's the one that said the bank merger's
13 going on.

14 You can bring her on out, bring them on out.

15 (JUROR #9 ENTERS THE COURTROOM.)

16 EXAMINATION BY THE COURT:

17 Q. Ms. Bacot, how you doing?

18 A. I'm doing good. How are you today?

19 Q. How's the banking business doing? According to the
20 economy, the last couple of weeks, there's been all kind of
21 news about financial stuff. I guess you watch that all the
22 time, don't you?

23 A. I do.

24 Q. Have a seat and relax.

25 A. Except for yesterday.

1 Q. Except for yesterday. Last week was an interesting
2 week.

3 A. Yes. 75 point drop in ---

4 Q. Yeah, I wonder how often -- I think I heard in the
5 news that's happened maybe twice in recent memory where
6 somehow they actually reduce it without having a meeting.

7 A. That's right.

8 Q. It's just, it's reduced.

9 A. Yeah.

10 Q. And you know Ben Bernanke's from Dillon?

11 A. I do know that, yes, sir.

12 Q. And now ---

13 A. Do you know him?

14 Q. I know him. I know his family.

15 A. Oh, you do?

16 Q. Know his family very well, too. In fact, his brother
17 Sanford's a lawyer up in North Carolina. Worked with me
18 when he was in law school. Came with me with intern work.
19 His father run the drug -- ran the drug store. In a small
20 town, you called the druggist doctors.

21 A. That's right.

22 Q. I just called him Dr. Bernanke all my life. Gave me
23 suggestions about this and that, something else.

24 Looking at your chart here, I see you're originally
25 from Marion.

1 A. Yes, sir.

2 Q. All right, and what brought you here? The bank or
3 what?

4 A. Yes, sir, the bank.

5 Q. Have you worked in the bank over there in Marion?

6 A. I worked for a savings and loan in Marion.

7 Q. The one there with the statute in front of it with the
8 trees and all that sitting back off the road?

9 A. That's Pee Dee Federal. No, I've worked for -- I
10 think there's a orthodontist office that's the old post
11 office.

12 Q. Oh, yeah.

13 A. It's Palmetto.

14 Q. Yeah, it's right where the old post office and the
15 bank there, too, yes. That's something interesting. I've
16 never seen a dentist's office look so...

17 A. I know.

18 Q. I mean, a lot of people go over there to make a
19 deposit and he'll say I'll take it out. You know.

20 A. That's right.

21 Q. Your tooth because it looks like a bank.

22 Now, I know that, you know, we talked yesterday
23 regarding the bank merger going on and everything else. I
24 let you know that, you know, I just feel that it's going
25 to gone on until June. I really feel that if-- now, once

1 again this -- even if you are put in the pool, doesn't mean
2 you're going to be selected as a juror. But, you know, we
3 really need you as a juror.

4 Your spouse was an Army Ranger?

5 A. Yes, sir.

6 Q. All right, and he's a lawyer?

7 A. Yes, sir.

8 Q. Okay. Does he practice down here, John Bacot?

9 A. Yes, sir.

10 Q. Is his sister also a lawyer?

11 A. Yes, sir.

12 Q. Okay, I know Mr. Bacot.

13 And you're Presbyterian?

14 A. Yes, sir.

15 Q. Did you go to the Presbyterian church there in North
16 Marion when you were there?

17 A. No. I was a Methodist, Southern Methodist. I now go
18 to a church out in the Spring Branch community.

19 Q. Oh, okay. All right. Now, you do remember yesterday
20 we put you under oath. Remember that?

21 A. Yes, sir.

22 Q. And I just want to ask you just a few questions just
23 to get to know you a little better.

24 A. Okay.

25 Q. Do you know Mr. Humphries, Mr. Hembree, Mr. Wilson,

1 Mr. Rathbun, these lawyers involved in this case?

2 A. Well, I know Mr. Wilson and his wife.

3 Q. Okay, and how do you know them? Socially or what?

4 A. His -- I actually know his wife through the gym. Many
5 years ago, we went to the gym together and ---

6 Q. And you don't go to the gym now?

7 A. No. Can you tell?

8 Q. No. I started going to one this year, a New Year's
9 resolution.

10 A. Good for you, yeah.

11 Q. Dillon has a fitness center, a very nice one, but so
12 you knew her through that, so not really the fact that your
13 husband's an attorney with the, say, lawyer organizations?

14 A. Well, that's kind of how I know Ralph, just from
15 what's -- you know, I met Mary John, and that community is
16 Christmas parties and, you know, things like that.

17 Q. Okay. Do you feel that knowing him has caused you to
18 be such that you couldn't be fair and impartial in this
19 case to both sides?

20 A. No. I, I could be.

21 Q. All right. Do you have any interest or bias or
22 prejudice in regard to this case at all?

23 A. No, sir.

24 Q. All right. You know that if you are selected on the
25 jury, the jury would be sitting in that jury box there,

1 and, and they would be the one required -- that would be
2 listening to the evidence, the testimony, exhibits, and
3 things of that nature and also to the instructions given by
4 the judge. The jurors would have to follow the law as
5 instructed by the judge. Did you feel that you could
6 follow the law as I instructed you?

7 A. Yes, sir.

8 Q. One thing I would tell the jury is that it is a
9 principle of law, a very important principle of law in our
10 nation is that a person charged with a crime is presumed
11 innocent. And the state has the burden of guilt, of
12 proving a person guilty beyond a reasonable doubt. A
13 person does not have to prove himself innocent. Would you
14 follow that rule of law?

15 A. Yes, sir.

16 Q. Okay. Have you formed or expressed an opinion in this
17 case about the guilt or innocence of the defendant?

18 A. No, sir.

19 Q. And do you know the defendant or ---

20 A. No, sir.

21 Q. Have you discussed this case with anyone?

22 A. Yes, sir.

23 Q. Okay, who is that?

24 A. My husband.

25 Q. All right, and when was this?

1 A. Right before all this. Obviously when it happened we
2 discussed it. And, quite frankly, we discussed it before
3 yesterday.

4 Q. Okay, and could you tell me in general what y'all
5 talked about?

6 A. Just the procedures as to how a jury would be selected
7 and, you know, what could happen and that kind of thing.

8 Q. All right.

9 A. Just courtroom general things. Not, not about the
10 trial part itself.

11 Q. Well, in your discussions with him, though, did that
12 cause you in any way to feel one way or the other about the
13 guilt or innocence of the defendant? Or one way or the
14 other about potential penalty?

15 A. No, sir.

16 Q. Not at all?

17 A. No, sir.

18 Q. You're open minded?

19 A. I am.

20 Q. All right. Now, the fact that you discussed it leads
21 one to believe that you have read something in the media or
22 seen something on TV or heard something on the radio. Is
23 that right?

24 A. That is correct.

25 Q. And was this recently or back awhile back or what?

1 A. Well, recently there have been things in the paper.
2 I think it was something in the paper as recently as
3 Sunday.

4 Q. Okay, and what about before that? Have you seen
5 something in the papers, say, even a year ago or whatever
6 or more?

7 A. I'm sure I did, yeah, because I do read the paper.

8 Q. Do you recall the substance of what you've seen in the
9 media about this case? Summarize what you think you felt
10 you've seen in the media about it.

11 A. As far as what happened or what, what the case is
12 about?

13 Q. Well, what -- was it about what happened? Did it
14 cause you to form some opinion about what did happen or, or
15 not?

16 A. Well, if, you know, what was in the paper was true, I,
17 you know, I guess yes, I did form an opinion of some sorts.
18 I mean, but I don't have all the facts. I've never been in
19 a situation before. So, not quite certain what answer
20 you're looking for.

21 Q. Just a real answer. So, what you've read in the paper
22 are basically the allegations of what -- people's, the
23 allegations about the events?

24 A. Right.

25 Q. But has that caused you to form opinion such that you

1 feel you have formed opinion as to what did occur?

2 A. No, sir.

3 Q. All right. If you're on that jury, whatever you read
4 or talked about with your husband, could you put all that
5 aside and listen to the evidence and make your decision
6 based on the evidence in the court presented in the
7 courtroom and the law as I instruct it to you without
8 regard to any discussions with your husband or with
9 anything you've seen in the news?

10 A. Yes, sir. I could.

11 Q. All right. Now, I gave you a list there of names,
12 about three pages of names.

13 A. Yes, sir.

14 Q. Did you know anybody on that list?

15 A. I did not know anyone on that list.

16 Q. So, you didn't know anyone at all on that list?

17 A. No, sir.

18 Q. Can I have the list back, please? No circles on there
19 of anyone at all?

20 A. No, sir.

21 Q. All right. Now, on a trial of this nature, as I said
22 the jury would be impaneled and evidence would be
23 presented, and the judge would instruct on the law. If the
24 jury were to determine the state had not proven guilt
25 beyond a reasonable doubt, would you be able to find a

1 verdict of not guilty if you felt the state had not proven
2 guilt beyond a reasonable doubt?

3 A. Yes, sir.

4 Q. And if you felt the state had proven guilt beyond a
5 reasonable doubt, would you be able to bring back a verdict
6 for guilty?

7 A. Yes, sir.

8 Q. Now, if the jury were to determine guilt was not
9 proven beyond a reasonable doubt and they brought back a
10 verdict of not guilty, or if the jury found guilty of
11 something less than murder without aggravating
12 circumstances, well that would end the case.

13 However, if the jury determined beyond a reasonable
14 doubt that guilt had been proven of murder and an
15 aggravating circumstance, we would then move to another
16 phase. And in that phase, you would hear evidence in
17 aggravation and mitigation, and then the jury would bring
18 back a verdict in that phase of, of either a verdict of
19 life imprisonment or the death penalty.

20 Now, I gave you a sheet there with three types of
21 jurors, and you see that the juror number one there is the
22 juror that, although the evidence in aggravation,
23 mitigation had been presented, that juror would be one who
24 would feel they should always bring back a verdict of the
25 death penalty. They would feel that would be the

1 appropriate thing to do in all cases regardless of the
2 evidence in mitigation and aggravation. That's one, juror
3 one.

4 Juror type two is a juror that, although evidence was
5 presented in aggravation and mitigation, that juror would
6 feel that regardless of that evidence that the appropriate
7 penalty would always be life imprisonment, and they could
8 never bring back a verdict of the death penalty.

9 Juror number three is a juror that would want to
10 listen to the evidence in aggravation, mitigation before
11 they made up their mind. And after listening to the
12 evidence in aggravation, mitigation and the law as the
13 judge instructed them, that juror, if the evidence so
14 warranted it, could bring back a verdict for life
15 imprisonment. Or if the evidence in aggravation and
16 mitigation so warranted it, that juror could bring back a
17 verdict of the death penalty.

18 Now, of those three juror types, which one best
19 describes you?

20 A. Probably juror number three.

21 Q. Three. So, you would have an open mind and you would
22 listen to the evidence in aggravation and mitigation, and
23 make a decision whether to bring back a verdict of life
24 imprisonment or the death penalty depending on the evidence
25 that was presented and the law as I instruct it to you and

1 your deliberations with the other jurors?

2 A. Yes, sir.

3 Q. One thing also the law requires. That if the jury
4 feels the evidence does warrant it, brings back the verdict
5 for the death penalty, each juror has to sign the verdict
6 form because it requires a unanimous decision. Could you
7 sign the verdict form?

8 A. Yes, sir.

9 Q. Okay. This trial, as I mentioned to you, could last a
10 week to ten days, maybe less, maybe more. You've already
11 mentioned to me about the bank situation, and this would
12 mean that if you are selected that you would be in, housed
13 in a hotel. And you would have limited access to your
14 business and to the -- your family, but it would be sort of
15 a supervised thing. That someone would be listening on the
16 other line.

17 A. Right.

18 Q. That type. But other than what we've discussed
19 regarding the banking thing, would there be any other undue
20 hardship that you would experience if we did this for about
21 a week?

22 A. No, sir.

23 THE COURT: All right. Thank you very much. What I'm
24 going to do now is I'm going to permit the lawyers to ask
25 you a few questions if they wish to.

1 JUROR: Okay.

2 THE COURT: Mr. Humphries?

3 EXAMINATION BY MR. HUMPHRIES:

4 Q. Good morning, Ms. Bacot. What we're really trying to
5 do here, and it's really sort of in a vacuum. It's not
6 sort of in a vacuum. It is in a vacuum. What we're doing
7 is we're taking potential jurors and pretending that we've
8 moved through a guilt phase, reached a guilty verdict, and
9 then moved into the penalty phase because what we have to
10 do is try and attempt to sort of glean your position or
11 your ideas about capital punishment.

12 And as the judge has instructed you, a juror that sits
13 in this case must be a juror who can in that penalty phase
14 consider both the aggravating circumstances -- those are
15 things that worsen the crime or put the defendant in a
16 worse light -- mitigating circumstances which may tend to
17 reduce the culpability of the defendant or somehow lessen
18 the severity of the crime. And then and only then after
19 hearing both the evidence in aggravation and mitigation
20 decide to impose either a life or death verdict, depending
21 on those facts and circumstances.

22 The juror that sits in this case must be able to not
23 only fairly consider both options, but under the right set
24 of circumstances impose the death penalty. So, that's why
25 we have to talk to you at the beginning about a penalty

1 phase when we haven't even had the guilty phase yet.

2 A. I understand.

3 Q. I don't want to take anything away from the way you
4 responded when the judge asked you about what category or
5 type juror you were. But I believe you told the court that
6 you said you were probably a three.

7 A. Uh-huh.

8 Q. One thing that, that I want you to be certain of is
9 that we've not called jurors, and particularly you, here
10 today to try and convince you to be or to believe something
11 other than what you believe because really what we're
12 trying to find is where you are.

13 Capital punishment, have you given substantial thought
14 to capital punishment in the past and where you sort of
15 fall in terms of support of or opposition to capital
16 punishment?

17 A. Well, I have given it thought.

18 Q. Where, and where did those thoughts lead you to in
19 terms of conclusion? Had you reached a conclusion until
20 you arrived here today about how you felt about capital
21 punishment?

22 A. Probably not. I'm a, I'm a -- if I could ---

23 Q. Absolutely.

24 A. --- describe myself?

25 Q. Certainly.

1 A. Can this be conversation?

2 Q. Yes, and that's what we're having.

3 A. Okay. I'm a rules and procedures kind of person.

4 Q. I've got a son like that, yeah.

5 A. So, until I know the rules and I'm put in the
6 situation, I find it difficult to ---

7 Q. Sure.

8 A. --- respond.

9 Q. And, and ---

10 A. So, I can't say one way or the other.

11 Q. That is the ---

12 A. I need aggravation and I need, well, the other thing.

13 Q. And that ---

14 A. The mitigating.

15 Q. Mitigation and that's an excellent point and that's
16 something that -- and I'm not saying that you're confused
17 about this. But there are jurors who believe when they
18 come into a courtroom, and particularly -- well, in a
19 capital case that there may be some circumstances under
20 which the court will put them in a position where they --
21 say, for instance, the state proves certain aggravating
22 circumstances and then the juror must return a death
23 penalty verdict.

24 What I need to tell you today is there is never any
25 circumstance under which a juror will have to return a

1 death verdict. The juror always has the option, and let's
2 just say just for the sake of argument that there is
3 nothing in -- and this is certainly not the case here I'm
4 sure. But let's say that in this case there is nothing
5 mitigating about this case, nothing that lessens the
6 culpability of the defendant. And let's say that the
7 aggravating circumstances are horrific. Even in that case,
8 under the law in South Carolina a juror is entitled to
9 return a death verdict, often called a mercy verdict, life
10 for no reason at all.

11 So, I want you to understand that -- and I appreciate
12 that you're a rules and protocol person. Like I said, I've
13 got a son exactly like that except when they, they don't
14 apply to him but everybody else. There are never any sets
15 of rules or a protocol which will require twelve jurors to
16 return a death verdict. They will always have the option
17 to return a life verdict.

18 Now, and, and I don't know if you had a clear
19 understanding about that, but I want to make sure you did
20 now for the purposes of our discussion. Knowing that there
21 is never any circumstance, any set of rules or protocol
22 which will require a juror to return a death verdict, could
23 you not only fairly consider the death penalty but impose
24 the death penalty under the right set of circumstances
25 given the right amount of evidence?

1 A. It's a double-edged sword.

2 Q. It really is.

3 A. You know, as much as I would like to say no, I
4 couldn't. I can't answer the question.

5 Q. And that's all we're trying to get at.

6 A. I, I think I could.

7 Q. Okay.

8 A. If the circumstances were right, say, one or over the
9 other, given two choices. I, I don't know how else to...

10 Q. You have answered it.

11 A. Okay.

12 Q. You have answered it. Thank you very much. And
13 again, really the one central thing that both the defense
14 and the state require of you in the trial of the case is
15 that you can be fair and impartial to both the state and
16 the defendant and render a fair and true verdict based on
17 your, your observations and your gleaning of the facts and
18 your position regarding what the penalty should be. Can
19 you do that?

20 A. I could do that.

21 MR. HUMPHRIES: That's all we can ask. Thank you,
22 ma'am.

23 JUROR: Thank you.

24 THE COURT: Mr. Wilson?

25 MR. WILSON: Thank you, Your Honor.

1 EXAMINATION BY MR. WILSON:

2 Q. Ms. Bacot, let me ask you. You, as you sit here
3 today, and after His Honor has given you some preliminary
4 instructions, and you see the defendant sitting there, and
5 the court tells you that he is presumed to be innocent,
6 even as he sit here, even as he's charged, and even as we
7 begin this trial and the court tells you that, can you
8 accept that?

9 A. Yes, sir.

10 Q. And can you then, once accepting that, require the
11 State of South Carolina, if they can, to prove to you
12 beyond a reasonable doubt that something else is true?
13 That he is, in fact, guilty as opposed to just assuming
14 that he's guilty based of something you've read or you've
15 heard? And you're willing to follow those instructions if
16 it, if the court gives you those instructions?

17 A. Yes, sir.

18 Q. Now, you understand that in this process that the
19 defendant has no burden of proof? He doesn't have to prove
20 anything to you in this trial. That is the responsibility
21 of the State of South Carolina to prove to you beyond a
22 reasonable doubt, if they can, that he committed the crime
23 and that he's guilty as charged?

24 A. Yes, sir. I understand that.

25 Q. Do you also understand that if they fail to do that --

1 well, let me rephrase that and ask you. If they failed to
2 live up to that responsibility -- that is, if the state
3 fails to prove to your satisfaction beyond a reasonable
4 doubt -- can you find this defendant not guilty?

5 A. Yes, sir.

6 Q. If and only if the defendant is found guilty of murder
7 in the first phase of this trial do we then go to the
8 second phase of the trial, which would be the penalty or
9 sentencing phase of the trial. In that phase of the trial,
10 you will have two choices: life or death. And as, as the
11 solicitor has indicated to you already, you could vote for
12 life for no reason at all. Simply because it's just what
13 you want to do. But you also have to be willing and able
14 to consider death.

15 MR. HUMPHRIES: Your Honor, I, it's a -- I have to
16 object to the form of the question, Your Honor. She can't
17 just consider. She has to be able to impose death. That's
18 the complete question.

19 MR. WILSON: Well, if, if ---

20 THE COURT: Just re -- just restate it.

21 MR. WILSON: All right, sir. All right.

22 Q. Let me rephrase and ask you this way. During the
23 course of the, of this trial, if His Honor instructed you
24 that there were going to be -- and let me get back. If His
25 Honor instructed you there are going to be aggravating

1 circumstances during the -- offered by the State of South
2 Carolina in this case, could you consider those aggravating
3 circumstances?

4 A. Yes, sir.

5 Q. All right, and if His Honor also instructed you that
6 there'd be mitigating circumstances offered by the defense,
7 could you then consider those mitigating circumstances?

8 A. Yes, sir.

9 Q. And after having considered both the aggravating and
10 mitigating circumstances and His Honor instructs you as to
11 the law, could you then make a decision as to whether or
12 not life is appropriate or death is appropriate?

13 A. Yeah, I, I think I could.

14 Q. Okay, and you say yeah, you could. Are you certain of
15 that, that you could ---

16 A. I am certain. I think I am certain of that.

17 Q. All right.

18 A. I think I would know the difference. I think I could.

19 Q. All right, and in your beliefs about the death
20 penalty, this is not something new. This is something that
21 you have felt for a while, that you are a type three juror
22 as the court has described?

23 A. Yes, sir.

24 Q. All right, that is a juror who can in certain
25 circumstances impose the death penalty if you believe it's

1 appropriate?

2 A. Yes, sir.

3 Q. And after you've heard all of the evidence in
4 aggravation and in mitigation?

5 A. Yes, sir.

6 MR. WILSON: I have no other questions.

7 THE COURT: Okay, if you would, Ms. Bacot, would you
8 step outside the door, ma'am?

9 JUROR: Okay.

10 THE COURT: And hand me that sheet of names.

11 (THE JUROR EXITS THE COURTROOM.)

12 (JUROR #335 ENTERS THE COURTROOM.)

13 THE COURT: Ms. Neal, would you come around, please?
14 Stand right over here in front of me. Right over here,
15 right in front of the court reporter there.

16 Ms. Neal, be honest with you, I had some concern,
17 ma'am, regarding your answers that you gave yesterday. You
18 had told me that I didn't ask did they live with you, but I
19 did ask. And I've checked to see that, you know, that you
20 had custody of the children that were in your custody. And
21 I'm concerned about that. Plus, we have your sister on the
22 jury pool in this other group. I'm going to discharge you
23 from this case, ma'am, and so you'll be discharged from
24 this case.

25 Did not discuss anything about this case or anything

1 else with your sister or anything else with your family,
2 all right, ma'am?

3 JUROR: Yes, sir. My sister and I don't get along
4 anyway.

5 THE COURT: I sort of guessed that. If you would,
6 please, you may step out the door.

7 Okay, position of the state on Ms. Bacot?

8 MR. HUMPHRIES: She's qualified.

9 THE COURT: Position of the defense?

10 MR. WILSON: She's qualified, Judge.

11 THE COURT: Bring her back in, please.

12 (THE JUROR ENTERS THE COURTROOM.)

13 THE COURT: Ms. Bacot, you're qualified to be in the
14 jury pool that we're going to have here on Thursday. Now,
15 that doesn't mean you're going to be actually on the jury.
16 You'll be among the group from which the jury will be
17 pulled.

18 I need you back here Thursday at 11:30. About how far
19 do you live from the courthouse here? You live in Conway?

20 JUROR: No, sir. I live in Surf Side.

21 THE COURT: Surf Side. If you would, go ahead and
22 pack some things up just in case you actually get on the
23 jury. And what I'll do is, and I hope you can have
24 someone, you can go back home and have someone bring you
25 back to the courthouse if you're on the jury, you know, so

1 we can get you there and get you back so you won't have to
2 have your car standing at the courthouse. So, sort of make
3 some arrangements there and sort of pack some things. You
4 don't need to bring your goods packed with you, though.
5 Just get them packed and almost be ready to go.

6 All right, now do not discuss this case with anyone.
7 Don't discuss it with John, your husband, and don't discuss
8 it with anyone else at the bank or anything else. And
9 don't look at any local media, news, radio, or whatever, or
10 TV about this. And we'll see at 11:30 on Thursday in the
11 courtroom here, 11:30 on Thursday. You go out this way.

12 All right, let's bring in Ms. Prussman. Anything on
13 Ms. Prussman? I don't think we talked to her before.

14 MR. HUMPHRIES: I didn't, I didn't get anything.

15 THE COURT: Anything about, any review of her record,
16 anything else y'all want to bring up before we bring her
17 in?

18 MR. WILSON: No, sir.

19 THE COURT: Okay, bring her on in.

20 (A PAUSE.)

21 (JUROR #368 ENTERS THE COURTROOM.)

22 EXAMINATION BY THE COURT:

23 Q. Come around here if you would now, Ms. Prussman.

24 A. Thank you.

25 Q. If you would, have a seat and get comfortable there.

1 Talk to you a little bit.

2 A. Thank you.

3 Q. I was trying to read here where it says you're
4 originally from.

5 A. It's ---

6 Q. It says Forest City. Is that North Carolina? It
7 looks like it says Missouri.

8 A. It is Missouri, uh-huh, a little town of Forest City
9 is where I was born and, and grew up there and then ---

10 Q. But it says something after. Holt or Hart?

11 A. It's Holt County.

12 Q. Holt County?

13 A. H.o.l.t. County

14 Q. Ah, city, county, state.

15 A. Uh-huh.

16 Q. That's Forest City in Holt County, Missouri?

17 A. Uh-huh. Uh-huh.

18 Q. What brought you here to South Carolina, Horry county?

19 A. Well, we -- my husband's mother originally was from
20 around Greenville, and she had big, large family. And when
21 his father was in the Air Force, he met his mother and they
22 got married. And then they moved to Florida for seven
23 years and then they -- he took his bride back home to
24 Oregon, Missouri where he grew up and his family was, and
25 that's where she raised her family.

1 So, we used to -- after we got married, we used to
2 vacation out here every summer. One week we spent with
3 all his aunts and uncles and cousins, and then the next
4 week we had rented either a condo or a beach house or
5 something with his cousins in Pelzer, and then their family
6 and we ---

7 Q. Pelzer?

8 A. Uh-huh, yeah.

9 Q. Ah. You know what the older town is next to Pelzer?

10 THE COURT: Anybody know what the older town is next
11 Pelzer?

12 A. West Pelzer.

13 Q. West Pelzer.

14 A. That's actually where his mother grew up was -- but a
15 lot of people don't know where Pelzer's at.

16 Q. Well, I know. Right off there when you cut off there
17 off of 32 -- 385.

18 A. 385.

19 Q. And cut across towards Anderson.

20 A. Right, uh-huh.

21 Q. Go through Pelzer.

22 A. Uh-huh.

23 Q. And then all of a sudden you're -- it's a small little
24 place.

25 A. Oh, yeah.

1 Q. And the next thing, now you're in West Pelzer.

2 A. The Saluda River and, and she showed me the -- a
3 couple -- before she, she passed away, we were out there a
4 few years ago. They came to see us after we moved here,
5 and she showed me the house where -- she's a twin -- where
6 she was born, and it was, uh-huh, it was interesting.

7 Q. So, y'all decided to come back here?

8 A. Uh-huh.

9 Q. And I see he works at Bi-lo, is the manager of Bi-lo?
10 Is that in ---

11 A. No, he's, he's here at the one at Surf Side Beach.

12 Q. Manager of the Bi-lo at Surf Side?

13 A. Yes.

14 Q. Is that -- is he the meat manager?

15 A. Yes. He, he's called a market manager, but that --
16 actually he's the manager, supervisor of the meat
17 department. That's his department but they, they label
18 it ---

19 Q. So, y'all eat good steaks.

20 A. Well, he works on them.

21 Q. Now, if you remember the other day, yesterday the
22 clerk put y'all under oath. You remember that?

23 A. Yes, sir.

24 Q. And you're still under oath as I talk to you, and
25 there's no right, wrong answers. I just want to get to

1 know you a little bit. I'm going to let the attorneys also
2 ask you some things.

3 A. Okay.

4 Q. Just to get to know you. Now, y'all lived here now
5 about how long?

6 A. Well, in -- we moved here in July of 2000.

7 Q. 2000?

8 A. Uh-huh.

9 Q. Do you know any of the attorneys involved in this
10 case?

11 A. No, I do not.

12 Q. And do you know the defendant at all?

13 A. No, I do not.

14 Q. Do you have any interest or bias or prejudice in this
15 particular case at all?

16 A. No.

17 Q. Okay. Have you formed or expressed an opinion about
18 the guilt or innocence of the defendant?

19 A. Well, I, as I noted on my questionnaire, I can
20 remember reading about it in the newspaper. And then I
21 really couldn't -- I didn't put that together until
22 actually in this -- you know, we were here and then I
23 thought, yeah, that's the person I remembered reading
24 about. But it's been, you know, a couple of years ago.
25 So, you read about so much in the paper, every day about

1 something like that. But that's all I know is what I...

2 Q. Okay.

3 A. Because I usually read my paper every morning. That's
4 just part of my routine with my coffee. So, you know, I
5 just ---

6 Q. So, you read the paper Monday morning before you came
7 here yesterday and ---

8 A. I read the paper, yes, and Sunday morning.

9 Q. And did it have anything about this ---

10 A. It did Sunday.

11 Q. I noticed the question that says: Do you ever go to
12 the courthouse. And you said: Yes, to pay my taxes.

13 A. Well, we had to in Holt County. That's where you paid
14 your taxes. And I was called to jury duty once and when we
15 lived back there. But we were on our way out here for a
16 vacation that summer and had planned for it for months and,
17 and I had bronchitis and the doctor wrote the me a release
18 and they said no. And the morning we were ready to take
19 off, my family, they called and canceled it. So, I've
20 never, I've never done -- I've never served on it.

21 Q. Okay. Now, if you were on this jury, the, the jury
22 would listen and pay attention to all the evidence
23 introduced in the case, testimony, exhibits, things of that
24 nature. And also the jury would have to follow the
25 instructions of the judge.

1 And one of the instructions I will give you is that
2 the defendant is presumed innocent. The state has the
3 burden of proving guilt beyond a reasonable doubt, and the
4 defendant does not have to prove himself innocent. Could
5 you follow that instruction if you're on the jury?

6 A. Yes.

7 Q. All right, and if after hearing all the evidence
8 presented in the case and my instructions on the law, if
9 after hearing all the evidence in the case and my
10 instruction on the law, if you felt the state had not
11 proven guilt beyond a reasonable doubt, could you find the
12 defendant not guilty?

13 A. Yes, I think I -- yes, I could.

14 Q. All right, and please make sure you speak loud enough
15 in that ---

16 A. Okay. Okay.

17 Q. --- microphone.

18 A. Okay.

19 Q. And if you felt the state had proven guilt beyond a
20 reasonable doubt, could you find the defendant guilty?

21 A. Yes.

22 Q. Okay. Now, have you discussed this case with anyone
23 at all?

24 A. No.

25 Q. All right. Now, you had mentioned to me that you had

1 seen some things in paper about it Sunday, as well as a
2 couple of years ago. Do you remember what it was, was that
3 you saw or read in the paper about this?

4 A. I, I don't exactly remember two years ago, no, because
5 there, I think there was another incident at the same time
6 and it, and it -- but I can't remember the case because I
7 had that confused.

8 But in Sunday's, it was just going over that it was
9 going to start. Monday it was going to be -- they were
10 going to start trying to, you know, do the jury pool and...

11 Q. And so you don't remember a lot of the things in the
12 paper about the allegations or the details?

13 A. I remember that it said the solicitor was going after
14 murder, for murder.

15 Q. Now whatever you saw in the paper, would that be such
16 that you could not be a fair and impartial juror and listen
17 to the evidence in the case and make your decision based on
18 the evidence in the case and not ---

19 A. No.

20 Q. --- upon what was in the newspaper?

21 A. No, I wouldn't. I wouldn't use the newspaper, no, no.

22 Q. So, your decision in this case would be based on the
23 evidence presented in the courtroom and the law as I
24 instruct it to you?

25 A. Correct. Yes.

1 Q. You would not base your decision at all on what was in
2 the newspaper?

3 A. No.

4 Q. All right. I gave you a list of names on a sheet of
5 paper there. Did you look over that list?

6 A. Yes.

7 Q. Did you see anybody you knew?

8 A. No, no one.

9 Q. Nobody, so you didn't circle anybody's name?

10 A. I circled no one. Huh-uh, no, I didn't. I thought
11 there might be somebody.

12 Q. Okay, no names are circled.

13 All right, a case of this nature is one that could
14 potentially be in two parts. If, say, from all evidence
15 presented and the jury hears the instruction of the judge
16 on the law, if the jury feels like the state has not proven
17 guilt beyond a reasonable doubt, then as I said the jury
18 would find the defendant not guilty.

19 If, however, the jury feels that the guilt of the
20 defendant has been proven beyond a reasonable doubt and in
21 addition finds an aggravating circumstance, then we, we
22 would go to another phase. And in that phase the jurors
23 would be asked to bring back a verdict regarding the
24 penalty.

25 And I gave you a sheet of paper of three types of

1 jurors that would be considered on qualifying the jury.

2 Now, the first type of juror would be one who, although the
3 evidence was presented in aggravation and mitigation, that
4 juror would feel that the death penalty is appropriate in
5 each and every case no matter what the circumstances are,
6 no matter what the evidence in aggravation and mitigation
7 are.

8 Juror number two is a juror that, although evidence
9 would be presented in aggravation and mitigation, that
10 juror would feel under no circumstances could she ever
11 impose the death penalty. And that juror, even though
12 hearing all the evidence, would always come back with a
13 verdict of life imprisonment because they could never
14 impose the death penalty.

15 Then there's a third juror who would have not made her
16 mind up in advance concerning punishment. That juror would
17 want to hear the facts and circumstances in aggravation and
18 mitigation and would want to listen and follow the law as
19 instructed by the judge before she could make her decision
20 regarding punishment. And if the facts so warranted it,
21 after hearing the evidence in aggravation, mitigation, that
22 juror could bring back a verdict of life imprisonment. And
23 also, though, if the facts so warranted it, that juror
24 could bring back a verdict of the death penalty. It all
25 depends on the view that that juror has of the evidence in

1 aggravation, mitigation. But the juror would not have made
2 her mind up until after that has all been presented and the
3 judge has instructed the jurors on the law and they have
4 done with deliberation with other jurors.

5 Which of those three jurors best describes you?

6 A. Three.

7 Q. Three. So, you would go through -- if you were to go
8 into that next phase, you would go in that next phase with
9 an open mind?

10 A. Yes.

11 Q. And if the facts warranted it, you could impose life
12 imprisonment?

13 A. Yes.

14 Q. If the facts warranted it, you could bring back a
15 verdict for the death penalty?

16 A. Yes.

17 Q. All right. This case may last a week or longer or
18 less. We don't know, but it's -- we're right now
19 projecting that we'll start on Thursday. Once it begins,
20 the jury that is selected will be housed in a hotel. And
21 you can have limited access to your family through the
22 phone and -- but it would be supervised. Someone would be
23 listening and all that because you won't be permitted to
24 talk about the case, and we want to make sure that that
25 could always be verified.

1 Do you feel you could do that without too much
2 hardship? I know it would be an inconvenience and
3 hardship, but do you, could you do that?

4 A. Yes.

5 Q. One other thing, too, I forgot to mention is that,
6 that if the jury were to determine after hearing the
7 aggravation and mitigation evidence, if the jury were to
8 determine that they would bring back a verdict of the death
9 penalty, each juror must sign the verdict. It would have
10 to be unanimous, all twelve. If you felt it so warranted
11 it, could you sign the verdict form?

12 A. Yes.

13 THE COURT: All right, I'm now going to let the
14 attorneys ask you a few questions.

15 JUROR: Okay.

16 THE COURT: And then we'll proceed from there.

17 JUROR: Okay. Thank you.

18 THE COURT: Mr. Hembree?

19 MR. HEMBREE: Thank you, Your Honor.

20 Ms. Prussman, thank you for your patience with us. I
21 don't have any questions for you. Appreciate it.

22 JUROR: Thank you.

23 THE COURT: Mr. Wilson?

24 MR. WILSON: Thank you, Your Honor.

25 EXAMINATION BY MR. WILSON:

1 Q. Ms. Prussman, I just have a couple of questions.

2 Ma'am, your views about the death penalty, I mean, have you
3 held them for a long time, or is this something that you'd
4 never really thought about before today, or can you help me
5 with that at all?

6 A. I've thought about it more since it's presented in
7 this way. You know, I have had that -- what do I want to
8 say? Block. Sometimes when you think something's so wrong
9 that that's what should be. But that as it's presented and
10 I look into it more, I would be willing to -- I mean, I
11 would want to, I would want to be able to know everything,
12 to weigh it back and forth. That's the only way that I
13 think it could be done.

14 Q. Okay.

15 A. Properly.

16 Q. And, and, ma'am, in terms of this, of this, of this
17 process, is it your -- do you understand that the defendant
18 is at this point presumed to be innocent?

19 A. Yes, sir.

20 Q. All right, and that only if the State of South
21 Carolina can present sufficient evidence to you and the
22 other members of the panel, the jury panel, to convince you
23 beyond a reasonable doubt that he is, in fact, guilty of
24 the crime for which he is charged will we then go to the
25 second phase.

1 A. Yes.

2 Q. Of this trial, which is the sentencing or penalty
3 phase of the trial.

4 A. Correct. Yes.

5 Q. All right, and during that sentencing or penalty
6 phase, the state would offer what's called a aggravating
7 circumstances, those things which make the homicide, the
8 murder worse than what might normally be. Do you
9 understand that?

10 A. Yes, sir.

11 Q. All right, and that there would be mitigating factors
12 also offered in that phase of the, of the trial. And then
13 you would consider both the aggravating and mitigating
14 factors, and you'd be willing to do that?

15 A. Yes, sir.

16 Q. All right, and is it -- do you understand that
17 regardless of the aggravating circumstances, no matter how
18 overwhelming you might find them to be, that you still have
19 the right as a juror to invoke a life sentence? Do you
20 understand?

21 A. Yes, I do.

22 Q. Okay, and you also understand that you must be able
23 to vote for the death penalty if you think it's
24 appropriate?

25 A. Yes.

1 Q. After having heard all of the evidence and all of the
2 facts and circumstances surrounding the case, both
3 mitigating and aggravating?

4 A. Yes, I understand.

5 Q. All right, and you believe that you could follow the
6 instructions that His Honor will give you?

7 A. Yes.

8 Q. All right, you're willing to do that?

9 A. Yes.

10 Q. And do you believe that you can be fair and impartial
11 both to the State of South Carolina and to this defendant?

12 A. Yes.

13 MR. WILSON: Thank you, ma'am.

14 JUROR: You're welcome. Thank you.

15 FURTHER EXAMINATION BY THE COURT:

16 Q. You mentioned in this thing also, ma'am, that you've
17 been taking some injections for your spine, your back, and
18 leg pain?

19 A. Yes, uh-huh.

20 Q. You still doing that?

21 A. No. I completed that. I was with Dr. Rosenberg,
22 and ---

23 Q. Successful?

24 A. Well, it's -- I'm, I'm getting better, yes. It, it
25 takes time.

1 Q. Well, please know if you do get on the jury, if you
2 need to stand up or whatever, just don't worry about it.
3 Stand up, you know. It will be fine because we don't want
4 you to be in any discomfort or anything.

5 A. Thank you.

6 THE COURT: All right, if you would, would you step
7 outside just a minute, back outside that door?

8 JUROR: Do you like this back?

9 THE COURT: Yes, please.

10 JUROR: Thank you, sir.

11 (THE JUROR EXITS THE COURTROOM.)

12 THE COURT: Position of the state?

13 MR. HEMBREE: Juror's qualified, Your Honor.

14 THE COURT: Defense?

15 MR. WILSON: Qualified, Your Honor.

16 THE COURT: All right, bring her back in, please.

17 (THE JUROR ENTERS THE COURTROOM.)

18 THE COURT: Ms. Prussman, we're going to put you on
19 the jury pool from which the jury will be selected. And I
20 need you back here Thursday at 11:30.

21 Now, go ahead and pack some things just in case you
22 actually get on the jury panel, and you may not, but just
23 in case you do. And if you would, it might be good if
24 Thursday if someone maybe would come with you who could
25 then take your car back and bring you back or something,

1 okay? Or someone at home will be there you could get to
2 bring you back, all right?

3 JUROR: Thank, thank you.

4 THE COURT: All right, you can go out this way. Do
5 not discuss this case. By the way, we mentioned how you
6 read the newspaper. Don't read any more newspapers at all
7 until after you're released from this case, all right?

8 JUROR: I understand that.

9 THE COURT: And don't look any local news either. All
10 right, and don't discuss the case with anyone in your
11 family, friends, or anybody else. We'll see you at 11:30
12 on Thursday. You can go out this door.

13 Now bring in ---

14 MR. HUMPHRIES: Judge, I have one quick ---

15 THE COURT: All right.

16 MR. HUMPHRIES: I hesitate to even mention it. I
17 thought the first time when I, when I heard you say it. In
18 any event, the court has said on, on at least three
19 occasions when you're talking about going from the guilt
20 phase to the penalty phase that if the state proves the
21 defendant guilty beyond a reasonable doubt and if the jury
22 finds aggravating circumstances, then we'll go to the
23 penalty phase. Obviously the jury doesn't, the jury
24 doesn't deliberate or hear about the aggravating
25 circumstances until the penalty phase. And I just didn't

1 want there to be some jurors ---

2 THE COURT: You're right, you're right.

3 MR. HUMPHRIES: I don't want them to hear one thing
4 and then hear another from the court and be confused about
5 that, so...

6 THE COURT: Well, you're right. Okay.

7 Anything on Mr. Trout?

8 MR. HUMPHRIES: No. I didn't have anything.

9 MR. WILSON: No, sir. Nothing.

10 THE COURT: Seemed like he came up. Did he or did he
11 not? Try to remember.

12 MR. HUMPHRIES: I don't, I don't show him as having
13 come up.

14 MR. WILSON: I, I don't, Judge.

15 THE COURT: All right. All right, if you would, bring
16 in Mr. Trout, please.

17 (JUROR #454 ENTERS THE COURTROOM.)

18 EXAMINATION BY THE COURT:

19 Q. Hi, how you doing?

20 A. Fine, sir. Yourself?

21 Q. If you would, please have a seat there and we'll talk
22 a little bit.

23 A. Okay.

24 Q. Now, you do remember you're still under, under oath?

25 A. Yes, sir.

1 Q. From the other day?

2 A. Yes, sir.

3 Q. Talk with you over here about your background here.

4 I'm trying -- you're from Pennsylvania?

5 A. Originally, yes, sir.

6 Q. Where is it, Landscape?

7 A. Landsdown.

8 Q. Where is that?

9 A. It's probably closest to Philadelphia and Lancaster,
10 that area.

11 Q. Lancaster?

12 A. Uh-huh.

13 Q. You know who the most famous person from Lancaster is?
14 He went on to be president of the United States?

15 A. No, sir, I don't.

16 Q. James P. Buchanan.

17 A. I'll be darned.

18 Q. What brought you down here?

19 A. My father, my, my father worked with Sonoco Products
20 Company, which is based out of Hartsville.

21 Q. Yeah, Hartsville, Darlington County.

22 A. Yes, sir, and we've moved around quite a bit, and
23 they're ---

24 Q. A big employer over there.

25 A. Yes, sir. That's their world headquarters there in

1 Hartsville.

2 Q. And you work at National Amusement?

3 A. National Amusement Rides. It's the Sunshine Ride on
4 Ocean Boulevard, the colorful towers that, that's -- throws
5 the chair way high in the air.

6 Q. Where is it located?

7 A. 12th Avenue North on Ocean Boulevard.

8 Q. 12th Avenue North, so it's about three blocks from the
9 Pavilion?

10 A. Where the Pavilion used to be, yes, sir, just a few
11 blocks north of that location, yes, sir.

12 Q. All right. All right, now, what I want to do is ask
13 you a few things here. First of all is do you know any of
14 the attorneys involved, the solicitor Mr. Hembree, or Mr.
15 Humphries or Mr. Wilson?

16 A. I'm embarrassed to say I can't remember this
17 gentleman's name, but I certainly do recognize him,
18 but ---

19 Q. Why you -- do you remember why you recognize him?

20 A. No, sir. That's what -- we looked at each other
21 yesterday and I, and I remember the acquaintance, but I
22 can't put it, put it together. Sorry about that.

23 THE COURT: Do you know what the acquaintance is?

24 MR. HIXSON: Yeah, I can -- a while back, back in the
25 -- before my beach service days, he worked with Charlie

1 Glicery outdoors.

2 JUROR: That, that's exactly right.

3 THE COURT: Who was that name?

4 MR. HIXSON: With, with Charlie Glicery, the, the
5 Seagrams Ski Connection down in Myrtle Beach, and Mr.
6 Charlie had an outdoors, a little ---

7 JUROR: That's right.

8 MR. HIXSON: --- business in there. Sleeping bags,
9 tents, outdoor type things.

10 Q. But that was from that, but you don't remember -- you
11 remember you recognize him ---

12 A. I recognized him, yes, sir. Now it's all coming back
13 to me.

14 Q. What about Mr. Wilson, Mr. Rathbun?

15 A. I know Mr. Wilson's name. I, I don't have any
16 acquaintances with him and I, I recognize them.

17 Q. Now, would the knowledge of counsel ---

18 THE COURT: Counsel, the name again?

19 MR. HIXSON: Scott Hixson.

20 Q. Hixson, Mr. Hixson and Mr. Wilson or anyone else,
21 would your knowledge of them, would that in any way affect
22 your ability to be fair and impartial in this case?

23 A. No, sir.

24 Q. You can be fair on this case without regard to your
25 knowledge of these lawyers?

1 A. Yes, sir.

2 Q. Okay. Do you know the defendant, Mr. Winkler?

3 A. No, sir. I do not.

4 Q. Have you any interest or bias or prejudice in this
5 case at all?

6 A. No. None whatsoever.

7 Q. Do you know of any reason why you could not be fair
8 and impartial to the state and to the defense?

9 A. No, sir.

10 Q. Okay. If you were selected as a juror on this case,
11 the jury would listen to the evidence presented in the case
12 and be required to follow the law as given by the judge.
13 And part of the law that I would instruct the jury would be
14 that the defendant is presumed innocent, and the burden of
15 proving guilt beyond a reasonable doubt is upon the state.
16 It's not on the defendant to prove himself innocent,
17 innocent, but on the state to prove guilt beyond a
18 reasonable doubt. Would you follow that instruction?

19 A. Yes, sir.

20 Q. Okay. The jurors, after hearing all the evidence and
21 instructions from the judge, the jurors would then have to
22 make the decision about guilt or innocence on the charges.
23 If after hearing all the evidence and the law as I instruct
24 it to you, if you felt the state had not proven guilt
25 beyond a reasonable doubt to the charges and felt that it

1 was not guilty, could you bring back a verdict of not
2 guilty?

3 A. Yes, sir.

4 Q. If you felt the state had proven guilt beyond a
5 reasonable doubt, could you bring back a verdict of guilt?

6 A. Yes, sir.

7 Q. Okay. Have you discussed this case with anyone?

8 A. No, sir.

9 Q. Okay. Now, this case has gotten some coverage in the
10 news media, whether it be TV or newspaper, that type of
11 thing. Have you read anything in the newspapers or seen
12 anything on TV about this case?

13 A. No, sir. I don't read the newspaper and I don't watch
14 much TV either.

15 Q. So, you knew nothing about this case at all until the
16 matters were read yesterday to you?

17 A. That's correct.

18 Q. All right. So, you haven't formed any opinions or
19 anything else about this case?

20 A. No, sir.

21 Q. I gave you a sheet of paper with a list of the
22 witnesses on it.

23 A. Yes, sir.

24 Q. Did you know anyone anybody on that sheet?

25 A. No, sir, I do not.

1 Q. Don't know anybody at all?

2 A. Huh-uh.

3 Q. Can I see it, please?

4 A. Yes, sir.

5 Q. That sheet. Okay, so you didn't circle any names at
6 all?

7 A. No, sir, I didn't circle any names. No, sir. I do
8 know -- I probably recognize various county officers and
9 whatnot, but none of the names looked familiar.

10 Q. You mean you don't recognize any of the names ---

11 A. I don't recognize any of the names.

12 Q. But there are certain county officers you might
13 recognize and know ---

14 A. Recognize as being an officer.

15 Q. --- but you might not know their ---

16 A. No, sir.

17 Q. You might not know their names, so ---

18 A. That's correct.

19 Q. --- they could or could not be here?

20 A. That's correct.

21 Q. If, in fact, you're on the jury and you see someone
22 that you know now by seeing their face, will you let me
23 know?

24 A. Yes, sir, I could. Yes, sir.

25 Q. Now, is there anyone who is working with county law

1 enforcement or with any other county agency that, if they
2 are involved in the case, would affect your ability to be
3 fair and impartial?

4 A. No, sir. Wouldn't affect anything at all.

5 Q. All right. Now, if you're on this jury, then once
6 again the first decision the jurors would make would be
7 whether or not the state's proven guilt beyond a reasonable
8 doubt of the charges. If the jurors felt that the state
9 had not proven guilt beyond a reasonable doubt of murder,
10 then we would -- they'd find the defendant not guilty and
11 the case would be over then.

12 If, however, the jury did determine that the guilt has
13 been proven beyond a reasonable doubt, murder, then we'd
14 move into another phase of the trial where the jury would
15 be asked to bring back a verdict of life imprisonment or
16 the death penalty.

17 I gave you a sheet there with the three types of
18 jurors on it.

19 A. Yes, sir.

20 Q. Now, on those three types of jurors, I, I mention that
21 there's a juror type one.

22 A. Yes, sir.

23 Q. That's a juror that in that phase, the state and
24 defense, they'd produce evidence in aggravation and
25 mitigation that, that in that phase, although that juror

1 would be presented with evidence in mitigation and
2 aggravation, that juror would feel that the death penalty
3 is the most appropriate punishment in every case no matter
4 what the circumstances are, no matter what the evidence of
5 aggravation and mitigation are.

6 And then there's a juror type two that, although the
7 evidence of aggravation and mitigation are presented, that
8 juror would feel that they could never impose the death
9 penalty. So, no matter what that evidence was in
10 aggravation and mitigation, that juror would always bring
11 back a verdict of life imprisonment.

12 Then there's a third juror that would not have his
13 mind made up in advance concerning punishment. That juror
14 would need to listen to the facts and circumstances of
15 aggravation and mitigation and would want to listen to
16 follow the law as the judge charges the jury before he
17 could make up his mind regarding the verdict of the
18 sentence. And if the facts in evidence and aggravation and
19 mitigation so warranted it, that juror could bring back a
20 verdict of life imprisonment. Also if the facts and
21 evidence and circumstances in aggravation and mitigation,
22 if they so warranted it, that juror could bring back a
23 verdict of the death penalty, all depending upon the
24 deliberations and the evidence in aggravation, mitigation
25 to the jury.

1 Which of those three types best describes you?

2 A. The third one, type three.

3 Q. Third one?

4 A. Yes, sir.

5 Q. So, you would have an open mind regarding that. And
6 depending on the evidence in aggravation, mitigation, you
7 could bring back a verdict of either life imprisonment, or
8 you could bring back a verdict of the death penalty?

9 A. Yes, sir.

10 Q. All right. Now, if the jurors bring back the verdict
11 of the death penalty, every juror is required to sign the
12 verdict form because it's got to be a unanimous decision.
13 Do you feel, if you felt that was the appropriate verdict,
14 could you sign that verdict form?

15 A. Yes, sir.

16 Q. All right. Now, Mr. Trout, do you have any undue
17 hardship that result from us having you housed in a hotel
18 for, for about a week or so you would be there? You would
19 have limited contact with your family but with some type
20 contact with family or business, but normally it would be
21 someone listening on the other line, too, because there has
22 to be verification you didn't talk about the case. Are
23 there any undue hardships you would like to discuss with me
24 about that if that occurred?

25 A. I wouldn't like it, of course, but unfortunately

1 there's nothing keeping me from not being able to do that
2 at this time. I mean, I do have a wife and a small child,
3 but...

4 Q. This is sort of the off-season, is it not, for you?

5 A. Yes, sir.

6 Q. So, are you doing any other type of work now that it's
7 off-season?

8 A. Not in January or February.

9 Q. Sort of the best time in the world for you to serve on
10 jury duty, isn't it?

11 A. I guess so. Looking at it like that, yes, sir.

12 THE COURT: All right, I'm going to let the attorneys
13 ask you a few questions.

14 JUROR: Okay.

15 THE COURT: And then after that, I may speak to you
16 again.

17 JUROR: That's fine.

18 THE COURT: All right, from the state, Mr. Humphries?

19 EXAMINATION BY MR. HUMPHRIES:

20 Q. Good morning, Mr. Trout.

21 A. Good morning.

22 Q. I'm Fran Humphries. I'm the deputy solicitor.

23 Solicitor Hembree and I, along with Scott Hixson, we're

24 trying this case for the state. I want to ask you a little
25 bit about Scott.

1 A. Okay.

2 Q. Can you tell me the last time you had any meaningful
3 contact with Mr. Hixson?

4 A. No, sir, and like I said, I, I merely recognized his
5 face, and I couldn't put it together as to where I'd seen
6 him before, and honestly don't even remember any
7 conversations. So, no, sir, I...

8 Q. So, you couldn't tell me the last time you even saw
9 him?

10 A. No, sir.

11 Q. Before this court?

12 A. I imagine it would have been back when I was running
13 my store, which has been closed now for six or seven years
14 now.

15 Q. Six or seven years?

16 A. Yes, sir.

17 Q. Okay, and when you were running your store and you did
18 know Scott, did you have any kind of relationship with him
19 other ---

20 A. No, sir.

21 Q. --- very casual? So then needless to say, the fact
22 that you remembered his face from some six and seven years
23 ago ---

24 A. Right.

25 Q. --- that wouldn't impact you in any way in terms of

1 your fairness and impartiality to the defendant?

2 A. No, sir. Like I said, I merely recognized his face
3 and it was embarrassing, the fact I couldn't even put a
4 name to it or know where I recognized him from. I just
5 mainly recognized his face.

6 Q. There's a long line of folks in that line.

7 A. I'm sure, yes, sir.

8 MR. HUMPHRIES: Thank you.

9 JUROR: Yes, sir.

10 THE COURT: Mr. Wilson?

11 EXAMINATION BY MR. WILSON:

12 Q. Mr. Trout?

13 A. Yes, sir.

14 Q. Let, let me ask you in regards to your view about
15 death penalty.

16 A. Yes, sir.

17 Q. Is this something that, that you've given good
18 thought, a lot of thought to over a period of time, or is
19 this kind of thrust upon you once you got your notice to
20 come here?

21 A. I've certainly thought about it more in the last week
22 or so than I have in the last several years. It's not
23 something I think about nor discuss often.

24 Q. All right, and have you changed your mind about where
25 you are over the last -- since you got your notice ---

1 A. No, sir.

2 Q. --- and started thinking about it?

3 A. No, sir.

4 Q. And did you change your mind about from where you were
5 to where you are now, or are ---

6 A. No.

7 Q. --- are you in the same place?

8 A. Well, I think I've always sort of felt the same. That
9 there are times where, where it is necessary.

10 Q. Okay, and let me ask you. You understand that as we
11 sit here that the defendant is presumed innocent and if His
12 Honor instructed you to that, would you ---

13 A. Yes, sir.

14 Q. --- agree to that?

15 A. Yes, sir.

16 Q. If the court instructs you ---

17 A. Yeah.

18 Q. --- that that was true?

19 A. Yes, sir. I do understand that?

20 Q. And if the court instructed you also that, as a juror,
21 that during the trial of the case, that after hearing all
22 of the evidence that the state presented that, that you
23 could find the defendant guilty or not guilty based on your
24 view of that evidence provided the state has not proven to
25 your satisfaction beyond a reasonable doubt?

1 A. Yes, sir.

2 Q. And let me rephrase that because that was kind of
3 jumbled. Let me rephrase it for you. What I'm saying to
4 you is is this. Do you understand that the state has the
5 burden of proving the defendant guilty?

6 A. Yes, sir, I do understand that.

7 Q. In the trial.

8 A. Yes, sir.

9 Q. And that if they fail to do that to your satisfaction
10 beyond a reasonable doubt, that you would be able to find
11 him not guilty, and could you do that?

12 A. Yes, sir.

13 Q. And let me ask you. In the sentencing phase --
14 because only, we only go to the sentencing phase or the
15 penalty phase of this trial if the state proves to your
16 satisfaction -- and I say you. I mean the members of your
17 panel.

18 A. Yes, sir.

19 Q. Prove to your satisfaction beyond a reasonable doubt
20 that, in fact, the defendant is guilty of the crime of
21 murder. If you find him guilty of some lesser crime, then
22 we don't ever go to the second phase. Or if you find him
23 not guilty, we don't go to the second phase.

24 If we do go to the second phase, the state will then
25 present what's called aggravating circumstances. That is

1 things which they believe make it worse, make the homicide
2 or the murder worse than what it would normally be, okay?

3 And you -- all right, and this, the defense would then
4 present what's called mitigating factors. Even though
5 there is no burden on the defense to do anything, the
6 defense would present mitigating factors or circumstances
7 for your consideration. And you'd be able to consider both
8 the aggravating from the state and the mitigating from the
9 defense and then make your mind up about what's most
10 appropriate in your mind.

11 A. Yes, sir.

12 Q. Whether it be life or death.

13 A. Uh-huh.

14 Q. Understanding that you could vote for life for any
15 reason or no reason?

16 A. Right.

17 Q. You understand those things?

18 A. Yes, sir. I do. Yes, sir.

19 MR. WILSON: Thank you, sir.

20 JUROR: You're welcome.

21 THE COURT: All right, if you would, Mr. Trout -- by
22 the way, there was a CBS news reporter named Bob Trout who
23 was from Pennsylvania back in the sixties. You're not kin
24 to him?

25 JUROR: Not that I know of, no, sir.

1 THE COURT: All right, if you would step outside the
2 door there for a minute.

3 JUROR: Okay.

4 THE COURT: I'll bring you back at in a minute.

5 JUROR: You want me to take this with me?

6 THE COURT: Oh, I'm sorry. Hand me that. I
7 apologize.

8 JUROR: No problem.

9 (THE JUROR EXITS THE COURTROOM.)

10 THE COURT: Position of the state?

11 MR. HUMPHRIES: He's qualified.

12 THE COURT: Defense?

13 MR. WILSON: Qualified.

14 THE COURT: All right, that would be juror number 12.
15 Bring him back out, please.

16 (THE JUROR ENTERS THE COURTROOM.)

17 THE COURT: If you would, Mr. Trout, I'm going to let
18 you go home now, but I need you back here Thursday at
19 11:30. Now, you may or may not be on the jury. You'll be
20 among the pool from which the jury is selected.

21 But just in case you're on the jury, Thursday will be
22 the day that you'll start going to the hotel. So, go ahead
23 Wednesday night and get some things packed up or Thursday
24 morning because you don't need to be here until 11:30.

25 And also try and make arrangements if you could so