

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Court of Common Pleas Case No. 2011-CP-26-3907
(Capital PCR Action)
Appellate Case No. 2014-000904

LOUIS MICHAEL WINKLER, JR.,

Respondent/Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Petitioner/Respondent.

APPENDIX

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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

VOLUME TWO OF EIGHT

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM HORRY COUNTY

James E. Lockemy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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1 that if you're on the jury, you can get your car back and
2 somebody can bring you back because we don't you to leave
3 your car here at the courthouse or at the hotel. So, try
4 to make some arrangements there, okay? And we'll see
5 Thursday at 11:30.

6 Between now and then, don't change your habits. In
7 other words, don't start reading the paper. Don't start
8 looking at news media on the TV, all right? Don't listen
9 to news on the radio, and don't discuss this case with
10 anyone at all, not your family or anybody else.

11 And we'll see you then Thursday at 11:30. You can
12 leave out of this door here. See you later.

13 JUROR: All right, sir.

14 THE COURT: All right, we'll take five minutes, ten
15 minutes before we start with panel number D. If you would,
16 make sure the first juror on D has gotten the list, started
17 looking over it, okay? All right, we'll take ten.

18 (OFF THE RECORD.)

19 THE COURT: Is everybody ready?

20 All right, bring in Mr. Stanley Waletkus.

21 (JUROR #467 ENTERS THE COURTROOM.)

22 EXAMINATION BY THE COURT:

23 Q. Mr. Waletkus, come around here if you would, please,
24 sir. Am I pronouncing that correctly?

25 A. Yes, sir. That's good.

1 Q. What is the background of that name? Somewhere in
2 Eastern Europe?

3 A. Lithuania, Lithuanian.

4 Q. Lithuania. Oh, that's up in the Baltics?

5 A. Yes, sir.

6 Q. I am going there in July; I'm going to take a little
7 trip and go. Have you ever been there?

8 A. No, I haven't.

9 Q. I'm to go to Sweden and Lithuania, Estonia, Latvia.

10 A. Sounds exciting.

11 Q. I've never been out there. I'm going to try to see
12 what it is there. Where, where are you from? It says here
13 you're from Springfield, Massachusetts.

14 A. I was born in Springfield, Massachusetts.

15 Q. The western part of Massachusetts?

16 A. Yes, it is.

17 Q. A lot of cranberries out there?

18 A. No. That's the eastern part of the state, Your Honor.
19 We get pretty cold; we get pretty cold out in the western
20 part.

21 Q. Okay.

22 A. We're the snow people.

23 Q. You're right above the Litchfield area of Connecticut?

24 A. Yes.

25 Q. And all that?

1 A. Yes, Your Honor.

2 Q. I just figured that cranberries were all over the
3 state, but not in the western ---

4 A. Not in that area. Too cold for it.

5 Q. What brought you down here?

6 A. I'm separated from my wife, and I felt it was best if
7 I broke contact with her, came down here.

8 Q. Coming for a new life ---

9 A. Yes, yes.

10 Q. --- in the Carolinas?

11 A. The life I remember from -- during my days in the
12 Marine Corps back in the sixties, Your Honor.

13 Q. Oh, were you at Parris Island?

14 A. Camp Lejeune.

15 Q. Camp Lejeune?

16 A. I was also at Parris Island, yes. Yes, Your Honor.

17 Q. How many years you spend in the Marine Corps?

18 A. Four years.

19 Q. Four years? What years were those?

20 A. '64 to '68.

21 Q. They're all the years of Southeast Asia. Did you take
22 a trip over there?

23 A. Yes, I did, Your Honor. First Battalion, 9th Marines.

24 Q. All right. Did you see combat?

25 A. Yes, I did, Your Honor.

1 Q. Marine Corps. No matter what else you do, though,
2 you're going to probably see combat.

3 A. That's why you join the Marine Corps.

4 Q. I finished thirty years in the military. I had three
5 years active at Fort Bragg Airborne Corps, and then I went
6 to the National Guard, and from there I was activated again
7 three years ago now and sent to Kosovo for a year after the
8 Kosovo campaign, and I know what it's like to spend
9 Christmas and the holidays are a little tough in a strange
10 area.

11 A. I still remember that every Christmas.

12 Q. I bet you do. Did you end up with an E-5, E-4?

13 A. I was an E-5, Your Honor; I made it to E-5.

14 Q. E-5. That's a good rank for four years.

15 A. Yes.

16 Q. Most people just make it to E-4, so you did well.
17 Unfortunately, I understand it, in, in Vietnam the biggest
18 targets were sergeant E-5s and first lieutenants. Those
19 are the ones that were the biggest targets over there that
20 had the most time ---

21 A. And the command posts.

22 Q. Yes. Listen, I want to talk to you just a little bit
23 about your service as a juror. And remember you're not
24 under, you're not under any type of interrogation. I'm
25 just really talking with you. And if you remember we put

1 you under oath, though, on Monday?

2 A. Yes, I do, Your Honor.

3 Q. You're still under oath, and just as long as you
4 remember that.

5 Now, do you know of anybody involved in this case as
6 far as the lawyers? Mr. Hembree, Mr. Humphries, Mr. Wilson
7 and Mr. Rathbun?

8 A. No, Your Honor.

9 Q. All right. Do you have any interest, bias, or
10 prejudice in the case?

11 A. No, I don't, Your Honor.

12 Q. All right. Have you formed or expressed an opinion as
13 to the guilt or the innocence of the defendant?

14 A. No, I haven't, Your Honor.

15 Q. All right. You know of any reason whatsoever why you
16 cannot give both the state and the defendant a fair and
17 impartial trial?

18 A. Not at all, Your Honor.

19 Q. All right. If you are on the jury in this case, as a
20 juror you would be presented evidence to consider. And
21 you'd also be instructed by the court as to the law, and
22 you would be required to accept the law as the court
23 instructed.

24 And one part of the law as I would tell you as a judge
25 would be that the defendant under our system of justice in

1 the entire country is presumed innocent, and you should
2 presume the defendant innocent, and that the burden is upon
3 the state to prove guilt beyond a reasonable doubt. It is
4 not upon the defendant to prove himself innocent. Would
5 you follow that rule of law, sir?

6 A. Yes, I would, Your Honor.

7 Q. And all other instructions the court gave you?

8 A. Yes, I would.

9 Q. Okay. As I said, the jury would be presented evidence
10 in the case: testimony, exhibits, things of that nature,
11 and receive instructions of law from the judge. If after
12 hearing all the evidence in the case and my instruction on
13 the law, if you felt the state had not proven guilt beyond
14 a reasonable doubt, would you be able to find the defendant
15 not guilty?

16 A. Yes, Your Honor.

17 Q. If you felt the state had proved guilt beyond a
18 reasonable doubt, could you find the defendant guilty?

19 A. Yes, Your Honor.

20 Q. Okay. Have you discussed this case with anyone?

21 A. No, I haven't.

22 Q. This case is gotten a little bit of publicity in the
23 news media, whether it be TV or newspaper or radio. Have
24 you seen anything in the news media about this case?

25 A. Not that I remember, Your Honor, no.

1 Q. Okay.

2 A. I don't recall.

3 Q. You have to -- do you read the local newspaper, *The*
4 *Sun* ---

5 A. No, I don't.

6 Q. Okay. So, until the matters were read yesterday,
7 you'd heard nothing about this case?

8 A. Right.

9 Q. And you haven't discussed it with anyone at all? No
10 one has mentioned it to you?

11 A. No. They haven't.

12 Q. Okay. I gave you a sheet of paper, papers there, Mr.
13 Waletkus, that has a number of names on it.

14 A. Yes, Your Honor.

15 Q. Do you know any of those names at all?

16 A. None, Your Honor.

17 Q. Okay, can I have that sheet back?

18 A. Sure.

19 Q. Okay. I do see that you did not circle anything. A
20 trial of this nature could and -- result in two phases of
21 the trial. After you've heard all the evidence, if the
22 jury determined that the defendant was not guilty, of
23 course we would end the matter there. Or if they determine
24 that he was not guilty of burglary, we'd end the matter
25 there if they felt the state had not proven guilt beyond a

1 reasonable doubt.

2 If, however, that jury were to determine that the
3 state has proven guilt beyond a reasonable doubt of murder,
4 we then would go into another phase of the case. That
5 phase would be where the jury would be asked to bring back
6 a verdict regarding punishment.

7 I gave you a sheet of paper there that has three types
8 of jurors.

9 A. Yes, sir.

10 Q. Okay, and it says that the first type of juror is a
11 juror that would know that the state is introducing
12 evidence in aggravation, mitigation. But that juror,
13 regardless of the evidence introduced by the state and
14 defense and defense in aggravation, mitigation, that that
15 juror simply feels that the death penalty is the most
16 appropriate punishment no matter what the circumstances of
17 aggravation, mitigation are and would always bring back a
18 verdict the death penalty.

19 The second juror is a juror that after the evidence of
20 aggravation, mitigation presented, that juror under no
21 circumstances could ever give the death penalty. So,
22 regardless of the facts and circumstances in aggravation or
23 mitigation, that juror would always bring back a verdict
24 for life imprisonment and never could impose the death
25 penalty.

1 Then there's a third juror who would not have his mind
2 made up in advance concerning punishment. That juror would
3 need to hear the facts and circumstances in aggravation and
4 in mitigation and would want to listen and follow the law
5 as the judge charges the law before he could make up his
6 mind and bring an appropriate verdict for punishment. And
7 if the facts presented by the state or the defendant so
8 warranted it, that juror could bring back a verdict of life
9 imprisonment. Also, if the facts presented by the state or
10 defendant so warranted it, that juror could, could bring
11 back the verdict for the death penalty.

12 Now, looking at those three types of jurors, which
13 type best describes you?

14 A. I would be type three, Your Honor.

15 Q. Three. Other words, you feel that you would have an
16 open mind and would listen to all the evidence and you
17 could, if the facts and circumstances so warranted it, you
18 could bring back a verdict of life imprisonment?

19 A. Yes, Your Honor.

20 Q. And if they so warranted it, you could bring back a
21 verdict for death, the death penalty?

22 A. Yes, Your Honor.

23 Q. All right. Now, if the jury were to determine that
24 they wanted to bring back a verdict for the death penalty,
25 the jurors will have to sign the verdict form because it

1 requires a unanimous decision. Could you sign that verdict
2 form?

3 A. Yes, I could, Your Honor.

4 Q. If you are selected on this jury, the jury will be
5 sequestered, meaning they would be housed in a hotel, and
6 the jury would be probably housed for about a week, maybe
7 less, little more, who knows in that regard, and it could
8 start around Thursday. If that occurred, would that cause
9 an undue hardship that you couldn't overcome if you'd have
10 to be in a hotel for a week?

11 A. No, it wouldn't, Your Honor.

12 THE COURT: Okay, I'm going to permit the attorneys to
13 ask you some questions now, Mr. Waletkus. And after that,
14 I may have a couple more things for you.

15 JUROR: Thank you, Your Honor.

16 THE COURT: Questions from the state?

17 MR. HEMBREE: Thank you, Your Honor.

18 EXAMINATION BY MR. HEMBREE:

19 Q. Good morning, Mr. Waletkus.

20 A. Good morning.

21 Q. I'm Greg Hembree. I'm the solicitor for the 15th
22 Circuit. I was introduced to you yesterday.

23 A. Yes.

24 Q. And I, along with Fran Humphries and Scott Hixson,
25 will be trying in this case on behalf of the state. I'm

1 going to kind of cut to the chase, and the judge is asking,
2 Judge Lockemy is asking most of the questions in gleaming
3 the information from you that we need to know. He
4 essentially -- we're trying to ask, learn how you feel,
5 what your opinions are about the death penalty.

6 You have indicated to Judge Lockemy that you see
7 yourself as a type three juror. Is that correct?

8 A. Yes, sir.

9 Q. One aspect of a death penalty case that I want to make
10 sure you're aware of and then kind of follow up is that a
11 juror is never required and the law under no circumstances
12 ever requires the juror to find for death, to vote for
13 death. The juror always has the opportunity to vote for
14 either life or death if the case reaches that point.
15 There's never a formula that the judge is going to say
16 okay, one plus two equals, you know, equals three and you
17 have to find three. Is -- are you aware of that?

18 A. Yes, I am.

19 Q. And you understand that you still would be able to
20 both consider and impose the death penalty if you felt that
21 the appropriate facts and circumstances had been proven to
22 you that require -- that, that, that you believe that was
23 the appropriate punishment?

24 A. Yes, sir.

25 Q. I, I, I note from your juror questionnaire, and I'm

1 not going to, I'm not going to pry much. Maybe a little,
2 but I note that you're a very spiritual man.

3 A. Yes, sir.

4 Q. And without me delving into that specifically, is
5 there anything about your, your spiritual beliefs that
6 would give you any hesitation or concern about your ability
7 to impose the death penalty if the evidence warranted it?

8 A. Not at all, sir.

9 Q. And I think that you've already indicated that you,
10 you will listen and give a fair trial for this defendant, a
11 fair trial to the state of South Carolina, a fair trial to
12 the victims in this case?

13 A. Yes, sir.

14 MR. HEMBREE: And that's the most we can ask of you.
15 I thank you for your service today, and I thank you for
16 your service for our country.

17 JUROR: Thank you, sir.

18 THE COURT: Mr. Rathbun.

19 EXAMINATION BY MR. RATHBUN:

20 Q. Good morning, Mr. Waletkus. I'm Paul Rathbun. I,
21 along with Ralph Wilson, will be representing Mr. Winkler.

22 A. Morning, sir.

23 Q. I see that while you were in the, in the Corps, you
24 did a little military police work?

25 A. Yes, sir.

1 Q. Okay, and was over here in the states, was that over
2 in Southeast Asia?

3 A. That was over in Asia, sir.

4 Q. All right, and what kind of work was that?

5 A. That was out in the town on liberty where I was
6 stationed aboard the Iwo Jima.

7 Q. And were you ever in charge of the brig or anything
8 like that?

9 A. No, sir.

10 Q. All right, did you do any investigation, or was it
11 just basically keeping the streets safe for everybody?

12 A. Keeping everybody safe.

13 Q. I've got you. You also indicated that you were, at
14 one time you applied to the Massachusetts State Police?

15 A. Yes, sir.

16 Q. And were you ever a member of that organization?

17 A. No, sir.

18 Q. Okay. The court and Mr. Hembree has given you pretty
19 much everything that we're talking about here.

20 A. Yes, sir.

21 Q. But we have to put the cart before the horse in a case
22 where the offense of murder can carry the death penalty so
23 we can determine whether or not you would be able to either
24 vote for death or for life.

25 A. Yes, sir.

1 Q. All right. You understand that, and Mr. Hembree
2 approached this, that, that you could vote any way your
3 conscience dictates and that the court and the state of
4 South Carolina, if you so felt, would be satisfied with a
5 life sentence?

6 A. Yes, sir.

7 Q. All right, and you understand that your duties as a
8 juror are to listen to the facts and evidence and, after
9 the law is provided by the court, to deliberate with your
10 fellow jurors and then come up with an individual
11 determination of guilt or innocence. And if all twelve of
12 you determine that it's guilt, then we'll go on with the
13 next phase, the sentencing phase.

14 A. Yes, sir.

15 Q. And that that means again all twelve of you are going
16 to have the evidence of aggravation and the evidence of
17 mitigation. And mitigation is something that would just
18 lessen the moral culpability of, of the homicide.

19 A. Yes, sir.

20 Q. And that you can find no reason or any reason to vote
21 the way you want to.

22 A. No, sir.

23 Q. All right. You don't understand the question?

24 A. Well, I didn't ---

25 Q. All right, and you understand that you have the right

1 to your own mind?

2 A. Yes, sir.

3 Q. And you can make up your own decision and then stick
4 to that?

5 A. Yes, sir.

6 Q. And you would respect the other jurors, the -- respect
7 their decision?

8 A. Yes, sir.

9 Q. And you feel that you can either come down on life or
10 come down on death if the facts and evidence sway you
11 either way?

12 A. Yes, sir.

13 MR. RATHBUN: Thank you.

14 JUROR: Do you want this back up there?

15 THE COURT: I can't help but notice, Mr. Waletkus,
16 interesting favorite movies: *Rambo* and *Dumbo*.

17 JUROR: I just saw the new *Rambo* last week.

18 THE COURT: Sylvester Stallone does well for his age.

19 JUROR: He wrote it, he directed it, and starred in
20 it.

21 THE COURT: About every one of his movies. Well, not
22 every one, the *Rocky* movies and *Rambo* movies he did.

23 I wonder if you could do me a favor? Could you step
24 outside the door for a minute, and I'll bring you right
25 back in, that door with the officer?

1 JUROR: Sure.

2 (THE JUROR EXITS THE COURTROOM.)

3 THE COURT: Position of the state?

4 MR. HEMBREE: He's qualified, Your Honor.

5 THE COURT: Defense?

6 MR. RATHBUN: Qualified, Your Honor.

7 THE COURT: Okay, that will be juror number 13. Bring
8 him in, please.

9 (THE JUROR ENTERS THE COURTROOM.)

10 THE COURT: Okay, Mr. Waletkus, we're going to put you
11 in the pool of this jury. That doesn't mean you're going
12 to have to be on the jury. That means you'll be in the
13 group from which the jury is selected.

14 We want you back at 11:30 on Thursday. If you are
15 selected, of course that is when you will be taken over to
16 the hotel sometime that day. So, you might want to go
17 ahead and get some things packed up just in case you are
18 selected. Also if you can, I'd appreciate if you can, or
19 we'll make arrangements some other way. If you can, you
20 can make arrangements such that if you are selected, when I
21 send you home to get your goods, that someone can bring you
22 back so you won't have to leave your car here at the
23 courthouse. So if you can do that, fine. If not, we'll
24 make arrangements for you, okay?

25 JUROR: Yes, sir.

1 THE COURT: Now, in between now and Thursday, do not
2 look at any local news shows on TV or any local radio
3 matters about the local area as far as news. And do not
4 read any local papers, okay?

5 JUROR: Yes, sir.

6 THE COURT: And do not discuss this case with anybody
7 at all. Nobody in your family, no friends or anyone else
8 so when you come back here, you can make your decision
9 based on the evidence presented in the court and the law as
10 I instruct it to you. We'll see you Thursday at 11:30.
11 See them. You go out this door here, sir. Thank you, now.

12 Now, it does seem -- the next one, he did, he did
13 approach. I've forgotten why. It seemed like he did, did
14 he not?

15 MR. HUMPHRIES: I don't believe he did. I don't have
16 it.

17 THE COURT: All right, maybe not, but nothing about
18 him before we get started? Okay, go ahead and bring Mr.
19 Kowalkowski in.

20 (JUROR #253 ENTERS THE COURTROOM.)

21 EXAMINATION BY THE COURT:

22 Q. Hello, Mr. Kowalkowski.

23 A. Hi.

24 Q. If you would, come right around over here. Am I
25 pronouncing your name correctly, Kowalkowski?

1 A. Kowalkowski.

2 Q. Kowalkowski?

3 A. Yes, sir.

4 Q. Coal, not cow?

5 A. Right.

6 Q. Is it Polish derivative or Chek?

7 A. Polish.

8 Q. Polish?

9 A. Yes.

10 Q. Have a seat, sir. Just relax. I'm going to talk to
11 you a little bit about some things and, and, and you're
12 not, you know, you're not on trial or anything.

13 A. Right.

14 Q. We're just talking a little bit. I see your short
15 hair.

16 A. Yes, sir.

17 Q. I've often thought I need to go and shave mine off,
18 the three or four hairs I still have left.

19 Now, I see that you are originally from Philadelphia.

20 A. I was born in Philadelphia, yes. I never really lived
21 there. I was adopted and lived in New Jersey, then
22 Delaware, then Ohio, then Wisconsin, and ended up here.

23 Q. That's a lot of states in the Northeast and Midwest.

24 A. Right.

25 Q. Then the South.

1 A. That's correct.

2 Q. What, what brought you here?

3 A. A job at that time, Wal-Mart.

4 Q. Okay. I see you had three years of college?

5 A. Yes, correct.

6 Q. And where was that?

7 A. University of Wisconsin, Eau Claire.

8 Q. Oh. Are you a Badger fan?

9 A. Oh, yes.

10 Q. You know The Citadel almost beat them this year.

11 Almost.

12 A. Almost doesn't count though.

13 Q. I know, almost. Now, and your wife is a medical
14 receptionist at a physical therapist office?

15 A. That's correct.

16 Q. Okay. Now, you do remember the other day or yesterday
17 we put you under oath, and you're still under oath as we
18 ask these questions?

19 A. Yes, sir.

20 Q. First thing I want to do is see do you know any of the
21 attorneys? Mr. Hembree, Mr. Humphries, Mr. Wilson, Mr.
22 Rathbun?

23 A. No, I do not.

24 Q. Do you know the defendant, Mr. Winkler?

25 A. No, I do not.

1 Q. Do you -- have you formed any opinion about this case
2 or have any interest or bias or prejudice at all in this
3 case?

4 A. No, sir.

5 Q. Okay. If you were selected on the jury, you would sit
6 up there and listen to the evidence presented in the case,
7 and you would be told that you must accept the law as the
8 judge instructs. Now, would you accept the law as I
9 instruct it to you that applied to the case?

10 A. Yes, sir.

11 Q. Part of that law would be I'd tell you that the
12 defendant is, is presumed innocent. And the state has the
13 burden of proving guilt beyond a reasonable doubt to the
14 charges. And the defendant does not have to prove himself
15 innocent. Would you accept that rule of law?

16 A. Yes, sir.

17 Q. All right. After hearing all the evidence and the
18 instructions on the law in the case, the jury then would
19 make a decision about whether the state has proven guilt
20 beyond a reasonable doubt of the charges. If the jury felt
21 the state had not proven guilty beyond a reasonable doubt,
22 then the appropriate verdict would then be not guilty. If,
23 in fact, you feel the state's not proven guilt beyond a
24 reasonable doubt, could you bring in a verdict of not
25 guilty?

1 A. Yes, sir.

2 Q. If the jury feels the state has proven guilt beyond a
3 reasonable doubt, could you then bring in a verdict of
4 guilty?

5 A. Yes, sir.

6 Q. All right. Have you discussed this case with anyone?

7 A. No.

8 Q. Now, this case is gotten some media attention. There
9 have been some things about it in the local paper, TV,
10 radio. Have you read, seen, or heard anything about this
11 case in the media before today?

12 A. Yesterday morning on the way here, I heard on the
13 radio just that jury selection was going to begin in this
14 case, and that was it.

15 Q. Okay, what station was that?

16 A. 100.3.

17 Q. Okay, and so until then, you have not heard anything
18 about this case?

19 A. Not that I recall, no.

20 Q. Okay. If for some reason during the course of the
21 trial -- well, let me ask you about that. Would that cause
22 you to form any opinion at all in this case after hearing
23 that?

24 A. Absolutely not.

25 Q. All right. Did they tell you anything about the

1 allegations in this case?

2 A. Just that it was a murder trial and the jury selection
3 was going to begin today, and they named the defendant.

4 Q. All right. So, nothing more than what you heard
5 yesterday with the reading of the charge?

6 A. No.

7 Q. If for some reason during the course of the trial, you
8 recall that you had heard something about it from someone,
9 from the news or whatever in the past and just popped back
10 up in your mind, could you disregard that and make your
11 decision, as well as what you heard on the radio, and make
12 your decision based on the evidence presented in the case
13 here in the courtroom and the law as I instruct it to you?

14 A. Yes, sir.

15 Q. I gave you several sheets, and one, one was -- sheets
16 of paper with names on it. Do you have that with you?

17 A. Yes, sir.

18 Q. Did you know anybody on that sheet?

19 A. No, sir.

20 Q. Okay, can I have that back, please?

21 A. There you go.

22 Q. I notice you didn't circle any names. If the jury in
23 deciding the case, if the jury determines the state has not
24 proved guilt beyond a reasonable doubt of murder, then the
25 matter would end there with the jury's decision, and the

1 case would end there as far as the jury.

2 If, however, the jury were to find that the state had
3 proved guilt beyond a reasonable doubt of murder, then we
4 go to another phase. And in that second phase, the jury
5 would be asked to determine a verdict regarding punishment.
6 I showed you a sheet of paper, gave you a sheet of paper,
7 has three types of jurors.

8 A. Yes, sir.

9 Q. Did you review that?

10 A. Yes, I did.

11 Q. Now, it says the three types of jurors, and the first
12 juror says that in that phase, all the evidence would be
13 presented and in aggravation and mitigation, that the juror
14 type of one, no matter what the evidence of aggravation and
15 mitigation were, that juror would think that the death
16 penalty is the appropriate punishment in each and every
17 case. And that juror feels that once a murder has been
18 proven, that the death penalty is the most appropriate
19 punishment no matter what the circumstances and evidence in
20 aggravation and mitigation.

21 Juror number two would be a juror who would feel that
22 even though there's been evidence in aggravation,
23 mitigation and no matter what the evidence is, that that
24 juror could never impose the death penalty. And that juror
25 would, would always impose the verdict for life

1 imprisonment regardless of the evidence of aggravation or
2 mitigation.

3 Juror number three is a juror who would not have his
4 mind made up in advance concerning punishment. That juror
5 would need to hear the facts and circumstances in
6 aggravation and in mitigation and would want to hear the
7 instructions of law from the judge prior to making up his
8 mind regarding punishment. And if the facts presented in
9 aggravation and mitigation so warranted it, that juror
10 could come back with a verdict for life imprisonment. Or
11 if the evidence in aggravation and mitigation so warranted
12 it, that juror could come back with a verdict of the death
13 penalty.

14 Now, do you understand those three types of jurors?

15 A. Yes, I do.

16 Q. Of those three, which best represents you?

17 A. Juror three.

18 Q. Three. So, you feel that if you were in the phase
19 where you were deciding punishment, you would listen to
20 evidence in aggravation and mitigation and depending on
21 what that evidence is, that would, that would be what would
22 make you decide whether it would be life imprisonment or
23 death?

24 A. Yes, sir.

25 Q. And if the evidence so warranted it, you could come

1 back with a verdict of life imprisonment?

2 A. Yes, I could.

3 Q. And if the evidence so warranted it, you come back
4 with a verdict of the death penalty?

5 A. Yes, I could.

6 Q. Now, if the jury were to come back with a verdict of
7 the death penalty, each juror will have to sign the verdict
8 form. Do you feel if that were the verdict you felt was
9 warranted, could you sign the verdict form?

10 A. Yes, I could.

11 Q. All right. If you are selected as a juror in this
12 case, you would be sequestered. That means that we would
13 have you in a hotel room for somewhere around a week.
14 Could be a little less, could be a little more. But it
15 would be local and you would have limited access to your
16 family by phone. That would be supervised; somebody would
17 be listening on the other line to you.

18 A. Right.

19 Q. Would that cause such an undue hardship that you
20 couldn't do that, sir?

21 A. It wouldn't be pleasant, but I -- it wouldn't cause an
22 undue hardship, no.

23 Q. It would be inconvenient?

24 A. Yeah. That's a better word for it, yes.

25 THE COURT: Well, I'm going to now let the attorneys

1 ask you any questions they have, and then I'm going to
2 speak to you again.

3 All right, state?

4 MR. HEMBREE: I don't have anything. Thank you, sir.

5 JUROR: Sure.

6 THE COURT: The defense?

7 MR. WILSON: Thank you, Your Honor.

8 THE COURT: Mr. Wilson.

9 EXAMINATION BY MR. WILSON:

10 Q. Mr. Kowalski, I was looking. You've been trained as
11 an EMT?

12 A. Yes.

13 Q. All right, and did you ever hold a job doing that?

14 A. A very short time, yes.

15 Q. All right.

16 A. Can I clarify that? It was on a volunteer basis, so
17 it was a non-paid basis, so...

18 Q. Okay, and law enforcement, it's my understanding that
19 you had applied to be a law enforcement officer at least on
20 one occasion?

21 A. Two occasions actually, yes.

22 Q. Okay, and are you in law enforcement now?

23 A. No.

24 Q. And have you ever actually been a law enforcement
25 officer?

1 A. No.

2 Q. All right. Now, you said to the court that you're a
3 type three juror?

4 A. Yes, sir.

5 Q. Is that right, and, and, and could you explain to me
6 what your understanding of type three juror is?

7 A. One that's willing to listen to all sides, hear the
8 whole case, and make determinations based on the actual
9 evidence at hand and make an informed decision.

10 Q. And do you understand that as we speak, the defendant
11 is presumed to be innocent?

12 A. Absolutely.

13 Q. All right, and, and if His Honor instructs you that
14 that's the law, then you're willing to follow that?

15 A. Yes, sir.

16 Q. All right, and you do -- this trial, if it proceeds to
17 the full length, will be in two phases. The first phase is
18 the guilt or innocence phase of the trial. And during that
19 guilt or innocence phase, you will be called upon as a
20 juror, along with the other members of your panel, to make
21 a determination of guilt or innocence, and that will be
22 based on the evidence that is produced and the exhibits
23 that might be produced through testimony and whatever else
24 for your consideration. And that the state has to prove to
25 your satisfaction beyond a reasonable doubt that, in fact,

1 the defendant is guilty before you can find him guilty.

2 A. Yes, sir.

3 Q. All right, and if they prove it beyond a reasonable,
4 if they prove it beyond a reasonable doubt could you, in
5 fact, find him guilty?

6 A. Yes, sir.

7 Q. By the same token, if the state fails to prove to your
8 satisfaction beyond a reasonable doubt, could you find him
9 not guilty?

10 A. Yes, sir.

11 Q. All right. Now, in the second phase of the proceeding
12 if we got that far, you would be called upon at that point
13 to what we call the sentencing or penalty phase to make a
14 determination of life or death. The state would introduce
15 certain aggravating circumstances, things that they believe
16 would make the murder worse than what it might normally be,
17 and you would be asked to consider those things.

18 A. Okay.

19 Q. And could you do that?

20 A. Yes, sir.

21 Q. If the court instructed you that that was what should
22 happen?

23 A. Yes, sir.

24 Q. Additionally, you would be presented certain
25 mitigating factors, those things which might lessen the

1 moral culpability of the crime or of the defendant's act or
2 participation in the crime. Not a defense but for your
3 consideration. Could you consider that?

4 A. Yes, sir.

5 Q. After having considered both the aggravating and
6 mitigating factors and circumstances, you'd then follow the
7 judge's instruction and then come to a conclusion as to
8 whether or not the appropriate sentence would be life or
9 death?

10 A. Correct, yes.

11 Q. All right, and as you sit here today, do you have any
12 preconceived opinion about what it should be?

13 A. No, sir.

14 Q. So, you would wait until you've heard all of that in
15 order to make up your mind?

16 A. Yes, sir.

17 Q. The fact that you have been an EMT and made several
18 efforts to be involved in law enforcement, would that in
19 any way color your opinion about how, how this process
20 should work?

21 A. No, sir.

22 MR. WILSON: Thank you, sir.

23 EXAMINATION BY THE COURT:

24 Q. All right, you said that you went to University of
25 Wisconsin, Eau Claire?

1 A. That's correct. Yes, sir.

2 Q. I see your wife went to the University of Wisconsin in
3 Whitewater?

4 A. That's correct.

5 Q. They played for the national champions at Appalachian
6 State.

7 A. Yes, that's correct.

8 Q. We won.

9 A. University of Wisconsin, Whitewater won this year.

10 Q. I thought Appalachian State won.

11 A. They lost last year and I think the year before, but
12 this year they did win.

13 Q. Oh, so Appalachian State didn't win the national
14 championships?

15 A. I don't believe so.

16 Q. I thought they did.

17 A. No, not this year.

18 THE COURT: All right, if you would then, step outside
19 the door for me.

20 JUROR: Okay.

21 THE COURT: If you would, Mr. Kowalkowski, and I'll
22 bring you back in just a second.

23 (THE JUROR EXITS THE COURTROOM.)

24 THE COURT: Position of the state?

25 MR. HUMPHRIES: He's qualified.

1 THE COURT: Defense?

2 MR. WILSON: He's qualified, Your Honor.

3 (A PAUSE.)

4 THE COURT: Bring him in.

5 (THE JUROR ENTERS THE COURTROOM.)

6 THE COURT: All right, Mr. Kowalkowski, we're going to
7 put you in the pool from which the jury will be selected.
8 Now, that doesn't mean you're actually going to be on the
9 jury. Means that you will be in that pool from which we
10 will select a jury.

11 We need you back here at Thursday at 11:30.

12 JUROR: Okay.

13 THE COURT: And in between then, do not read any local
14 media at all and -- or see any of the local news shows or,
15 or radio about anything about the case. You best avoid any
16 of that. Do not discuss it with anyone, any family member
17 or anyone else. Don't discuss this case at all. If
18 someone does discuss it with you or you end up hearing or
19 seeing something, let me know about it on Thursday.

20 Now, Thursday would be the day we're right now
21 projecting we will begin the trial. We would -- that'd be
22 the day we will be housing you in, in the hotel. So, you
23 might want to go ahead and pack up some things just in
24 case. In addition, try if you can to make arrangements
25 such that if you are selected on the jury, then I send you

1 home to get your goods and all, you can have someone bring
2 your car back so they can take it away from the courthouse.
3 So, you don't want to leave it.

4 JUROR: Right.

5 THE COURT: Now, if you can't do that, we will give
6 you some assistance. But try to work it out for me, okay?

7 JUROR: I should be able to do that.

8 THE COURT: All right, and I want to check on that
9 national championship. We'll see you Thursday at 11:30
10 right here in the courtroom. You can leave this.

11 JUROR: Thank you.

12 THE COURT: See you then.

13 Anything about the juror? Anything about juror 438
14 before I bring him out, Joseph Stevens?

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

16 THE COURT: Anything, Mr. Wilson?

17 MR. WILSON: No, sir.

18 THE COURT: Bring in Mr. Stevens.

19 I'm going to have the clerk order lunch for those
20 jurors at the 12:20 panel. I'm going to have her order
21 y'all something so we can take a few minutes, and so y'all
22 might want to do that.

23 (JUROR #438 ENTERS THE COURTROOM.)

24 EXAMINATION BY THE COURT:

25 Q. Mr. Stevens, how you doing?

1 A. Hey. Pretty good.

2 Q. Mr. Stevens, I just want to talk to you a little bit,
3 and I see you work at, is it Mt. Vernon Furniture?

4 A. Yes, sir.

5 Q. Where is that?

6 A. Is on Red Bluff road. It's kind of, like, out in the
7 middle of nowhere.

8 Q. Okay. Is that a family or -- the one you're involved
9 with there that you work there or is that somewhere you've
10 worked a long time?

11 A. I've worked there for, like, maybe five months.

12 Q. Well, where did you work before then?

13 A. Movie Gallery.

14 Q. Okay, and you're originally from Conway?

15 A. Loris.

16 Q. Loris, okay. Says here that you're not married and
17 have no children, and you are right now twenty, twenty
18 years old?

19 A. Yes, sir.

20 Q. All right. Now, remember I put you under oath
21 yesterday, and so you're still under oath. You remember
22 that?

23 A. Yes, sir.

24 Q. I will ask you a few things and if you could, lean up
25 so you can speak into that microphone.

1 A. Okay.

2 Q. Everybody's got to hear you here as well as the court
3 reporter. So, so speak into the microphone there. So, be
4 comfortable and there are no right answers, no wrong
5 answers. We just want to discuss with you.

6 First of all, do you know any of the lawyers involved
7 here in this group? Mr. Hembree, Mr. Humphries, Mr.
8 Wilson, Mr. Rathbun? Do you know any of them at all?

9 A. No, sir.

10 Q. Do you know the defendant at all?

11 A. No.

12 Q. All right. Now, have you, have you had any interest
13 or bias, prejudice in this case at all?

14 A. No, sir.

15 Q. Have you formed any opinion, expressed an opinion
16 about the guilt or innocence of the defendant?

17 A. No.

18 Q. Do you know of any reason whatsoever why you could not
19 be fair and impartial both to state and to the defense?

20 A. No.

21 Q. If you are selected on the jury, you will be sitting
22 in the jury box over there to your right, and evidence
23 would be presented in the matter and also the judge, me, I
24 would instruct you, and you would be required to accept the
25 law as the judge instructs you. Would you follow the law

1 as I instructed you?

2 A. Yes, sir.

3 Q. One thing I would tell you would be the defendant is
4 presumed innocent, and the state is required, has the
5 burden of proving guilt beyond a reasonable doubt to the
6 jury. The defendant does not have to prove himself
7 innocent. Would you follow that rule of law?

8 A. Yes, sir.

9 Q. All right. The jury, after hearing the evidence in
10 the case and my instructions on the law, would then have to
11 make a decision. If the jurors felt like that the state
12 had not proven guilt beyond a reasonable doubt, then the
13 jury would find the defendant not guilty. And if you felt,
14 the jurors, that the state had not proven guilt of beyond
15 a reasonable doubt, would you find the defendant not
16 guilty?

17 A. No.

18 Q. What?

19 A. I mean yes, yes.

20 Q. Okay, you didn't hear my question?

21 A. I, I did.

22 Q. The question was if you felt that the state had not
23 proven guilt beyond a reasonable doubt, would you find the
24 defendant not guilty?

25 A. Yes.

1 Q. If you felt the state had proven guilt beyond a
2 reasonable doubt, would you find the defendant guilty?

3 A. Yes.

4 Q. Okay. Have you discussed this case with anyone?

5 A. No.

6 Q. Okay. Have you seen any media, like TV, newspapers,
7 media about the case, read anything in the newspaper or
8 heard anything on the radio about the case?

9 A. No.

10 Q. Nothing at all even the last few days?

11 A. No.

12 Q. Okay. Do you read the local newspaper, *The Sun News*?

13 A. Not really. Just every once in a while.

14 Q. All right. So, until yesterday you knew nothing about
15 this case at all?

16 A. No.

17 Q. Okay. I gave you a sheet with a bunch of names on it.
18 Were you able to look over that sheet?

19 A. Yes, sir.

20 Q. Do you have it with you?

21 A. Yes, sir.

22 Q. Did you know anybody on that sheet?

23 A. No.

24 Q. Nobody at all?

25 THE COURT: Okay, he didn't circle any names at all.

1 BY THE COURT:

2 Q. If you're on this jury, Mr. Stevens, once again the
3 jurors would be asked to determine whether the state has
4 proven guilt beyond a reasonable doubt. If the jury
5 determined that the state had not proven guilt beyond a
6 reasonable doubt to the charge of murder, well, then at
7 that point in time the matter would be over as far as the
8 jury is concerned.

9 But if the jury were to determine the state's proven
10 guilt beyond a reasonable doubt of murder, then we would go
11 to another phase where the jurors would determine --
12 aggravating circumstances would have been proven or not and
13 whether a verdict of life imprisonment or death penalty
14 will be appropriate.

15 I gave you a sheet with three types of jurors on that.

16 A. Yes, sir.

17 Q. It shows that the first type of juror is that juror
18 that would sit in the courtroom during the presentation of
19 evidence in aggravation and mitigation, that that juror
20 feels that no matter what the circumstances in aggravation
21 and mitigation, that the most appropriate sentence would,
22 would be death penalty no matter what the evidence
23 presented was in the case.

24 And juror number two is the juror that no matter what
25 the evidence of aggravation and mitigation evidence was

1 presented, that juror would feel that, that he could never
2 impose the death penalty. And so no matter what the
3 evidence was, that juror would always bring back a verdict
4 of life imprisonment, no matter what the evidence presented
5 was.

6 And you have the third juror who would not have his
7 mind made up at all in advance concerning the punishment.
8 That juror would want to hear the facts and circumstances
9 in aggravation and mitigation, and would want to listen to
10 and follow the law as the judge charged the jury before he
11 can make up his mind regarding appropriate punishment. And
12 if the facts presented in aggravation and mitigation so
13 warranted it, that juror could bring a verdict of life
14 imprisonment. Or if the facts and evidence in aggravation
15 and mitigation so warranted it, that juror could bring in a
16 verdict for the death penalty, all depending on the
17 evidence of aggravation and mitigation. Do you understand
18 those three types of jurors?

19 A. Yes, sir.

20 Q. Of the three types, which best represents you?

21 A. Type three.

22 Q. Type three. So, you would have an open mind and you
23 could, if the facts warranted, you could bring in a verdict
24 for life imprisonment?

25 A. Yes, sir.

1 Q. And if the facts so warranted it, you could bring in a
2 verdict for the death penalty?

3 A. Yes, sir.

4 Q. If the jurors were to bring in a verdict for the death
5 penalty, the jurors would be required to sign the verdict
6 form because it has to be unanimous in that regard. If, in
7 fact, that occurred, could you sign the verdict form?

8 A. Yes, sir.

9 Q. All right. Now, Mr. Stevens, if you were selected as
10 a juror on this case, you would be housed in a hotel for
11 around a week. Could be a little more or less. If that
12 occurred, I know that would be inconvenient for you. You
13 wouldn't be able to be at your job, but any other undue
14 hardships you couldn't overcome in regards to that?

15 A. No. No.

16 Q. Other words, the job, your employer would understand
17 if you had to be away for a little over ---

18 A. Yes.

19 Q. --- a week?

20 A. Yes.

21 THE COURT: All right. I'm going to let the attorneys
22 ask you a few questions, and then after that, I may have a
23 word or two with you.

24 JUROR: Okay.

25 THE COURT: All right, questions from the state?

1 MR. HEMBREE: Mr. Stevens, thanks for your patience.
2 I don't have any questions for you. Please answer any
3 questions defense counsel has.

4 THE COURT: All right, questions from the defense?

5 EXAMINATION BY MR. WILSON:

6 Q. Mr. Stevens, I've just got a couple of questions.
7 You're from the Loris area?

8 A. Yes, sir.

9 Q. And do you know any of the Graingers that live up in
10 that area?

11 A. No.

12 Q. Do you know Cameron Shelley?

13 A. Doesn't sound familiar.

14 Q. Okay.

15 A. I mean, I might have heard the name maybe once, but...

16 Q. But you don't know him?

17 A. No.

18 Q. You don't have any relationship with any of them? Is
19 that what you're saying?

20 A. Yes, sir.

21 Q. Okay, and you understand that the defendant is
22 innocent as he sits here, presumed innocent?

23 A. Yes, sir.

24 Q. All right, and if the court tells you that that's,
25 that's how it is, you accept that?

1 A. Yes, sir.

2 MR. WILSON: I don't have any other questions. Thank
3 you.

4 THE COURT: If you would, Mr. Stevens, step outside
5 the door for a second.

6 JUROR: All right.

7 (THE JUROR EXITS THE COURTROOM.)

8 THE COURT: Okay, position of the state?

9 MR. HEMBREE: Mr. Stevens is qualified, Your Honor.

10 THE COURT: Position of the defense?

11 MR. WILSON: He's qualified, Your Honor.

12 THE COURT: Bring him on back if you would, please. I
13 find he's qualified.

14 (THE JUROR ENTERS THE COURTROOM.)

15 THE COURT: Mr. Stevens, I'm going to -- I find you
16 qualified. I'm going to place you in the pool of jurors
17 from which the jury for this case will be selected. Now,
18 that does not mean you're going to actually be on the jury
19 in this case. It means that you will be in a group from
20 which we will select that jury.

21 I need you back here Thursday at 11:30 in the morning.
22 Now in between then, do not look at any local news shows or
23 any radio news matters. Do not read any papers, the local
24 papers at all, and do not discuss this case with anyone at
25 all, family members, friends, or anyone else. And, you

1 know, for some reason somebody does discuss it with you or
2 you are exposed to anything by the news, let me know when
3 you get back Thursday.

4 Now, when you come back Thursday, if you are selected
5 on the jury, I'm going to let you go and get your clothing
6 and bags and bring them back. So, you might want to go
7 ahead and get your things packed so you're ready to go.

8 Plus, in coming back, I'd like for you to have
9 somebody with you who can take your car back so you won't
10 have to leave here at the courthouse. If you can't arrange
11 that, let me know and I'll get you some means to do that,
12 and I'm hoping you can do that yourself so someone can take
13 your car back, all right?

14 We'll see you at 11:30 a.m. here at the courtroom,
15 here in this courtroom on Thursday morning 11:30. You may
16 leave at this time. Go out this door here, this way.

17 Mr. Wilson, Mr. Rathbun, y'all may have heard me a
18 while ago that the state, what I'm doing is I'm having the
19 clerk order lunch for those other jurors.

20 MR. WILSON: Yes, sir.

21 THE COURT: The jury panel E.

22 MR. WILSON: Yes, sir.

23 THE COURT: And we may do is that you might want to go
24 get lunch also. We need to get lunch for Mr. Winkler, too,
25 somewhere. You might want to take about twenty minutes or

1 so, just have a sandwich at lunch and then get back started
2 back. So, if you need to get someone to order you
3 something as far as bringing it here so we can do that,
4 then we can keep going. So, we don't want to take an hour
5 for lunch, about twenty minutes or so.

6 MR. WILSON: Do we know when we're going to do that,
7 Judge?

8 THE COURT: When we finish these next two.

9 MR. WILSON: All right, sir.

10 THE COURT: Okay?

11 MR. WILSON: Thank you.

12 THE COURT: Unless, unless the lunch order isn't here
13 yet because if it's not here, then we will go on with the
14 next three, but we're going to go at least the next two.

15 All right, anybody have any questions or concerns and
16 comments before I bring in Ms. Badurski?

17 MR. WILSON: No, sir.

18 MR. HEMBREE: None from the state.

19 THE COURT: Bring Ms. Badurski, please.

20 (JUROR #10 ENTERS THE COURTROOM.)

21 EXAMINATION BY THE COURT:

22 Q. Hello, Ms. Badurski. If you would, come have a seat
23 over here. I see that you're originally from Charlotte,
24 North Carolina?

25 A. Uh-huh.

1 Q. And we're going to talk a little bit, and what I need
2 you to do is to come a little closer to the microphone.
3 Now, and understand we're just talking. This is not an
4 interrogation, anything else. We're just going to discuss
5 a few things, and you're not on trial or anything.

6 A. Okay.

7 Q. And no right answers, no wrong answers. Just want
8 to talk with you about you, and I'd just remind you that
9 you are under oath. Remember we put you under oath
10 yesterday?

11 A. Yes, sir.

12 Q. All right. Now, speak into that microphone. She
13 can't hear you. Do you remember that you're under oath?

14 A. Yes, sir.

15 Q. All right, this lady over here, she's got to take down
16 everything you say. That's why we've got to have answers
17 that are words form instead of shaking heads. If you and I
18 were talking at a restaurant or coffee shop, we could do
19 that and I would know what you meant. But here she's got
20 to take it down.

21 A. Yes, sir.

22 Q. Now, do you know any of the attorneys in this case,
23 Mr. Hembree, Mr. Humphries, Mr. Wilson, Mr. Rathbun?

24 A. No.

25 Q. Do you know the defendant, Mr. Winkler?

1 A. No.

2 Q. All right. Do you have any interest or bias or, or
3 prejudice in this case at all?

4 A. As to guilt or?

5 Q. Okay, we'll go to that. Have you formed any opinion
6 as to the guilt or innocence of the defendant?

7 A. Yes.

8 Q. All right, and what is that opinion?

9 A. Guilty.

10 Q. Did you and I talk yesterday?

11 A. No.

12 Q. Okay. Well, how did you form that opinion?

13 A. I hate to say it, but when it actually occurred.

14 Q. News media?

15 A. A while back whenever it occurred.

16 Q. But I thought I'd ask the question yesterday because
17 -- you aren't one of the ones who came in later, are you?

18 A. No.

19 Q. Did -- I asked people to come up and talk to me about
20 the news media accounts they've heard. You didn't come up
21 and talk?

22 A. No. I didn't understand the question obviously,
23 apparently.

24 Q. All right. What news media have you seen in this
25 case?

1 A. All, all of it really. The papers. I've actually
2 talked to a few people about it as well.

3 Q. You've actually thought what now?

4 A. Talked to a few people about it as well before this
5 whole ---

6 Q. To -- who did you talk to about it?

7 A. Well, my sister's an attorney, so I talked with ---

8 Q. Where does she practice law?

9 A. She has her own firm. She's Catherine Cook.

10 Q. Catherine Cook?

11 A. Uh-huh.

12 Q. Is that here in Horry County?

13 A. Uh-huh.

14 Q. All right. So, you and she talked about this?

15 A. Yes.

16 Q. What, what have y'all, what have y'all discussed?
17 What area?

18 A. Her paralegal apparently was -- her son or something
19 was friends with Ms. Winkler's son.

20 Q. Have you talked with the paralegal?

21 A. No.

22 Q. And what has Ms. Cook told you about that? And I'm
23 not saying there's anything wrong with that.

24 A. Yeah.

25 Q. I'm just trying to find out if ---

1 A. Well, we spoke about it. She's my sister, like I
2 said, and I -- we just talked about the case, I mean,
3 before, you know, before I was even summoned as a juror.

4 Q. All right. You feel you could put aside any thoughts
5 or opinions you formed and be fair and impartial both to
6 the state and to the defense?

7 A. I don't believe so, no.

8 Q. You do understand that a person is presumed innocent,
9 and you couldn't accept that presumption of innocence?

10 A. No.

11 Q. And you say the paralegal of your sister is friends
12 with the person who was alleged to be killed here?

13 A. Well, their sons were apparently best friends.

14 Q. So, you couldn't put aside that and listen and make a
15 decision based on the evidence presented in the case in the
16 courtroom?

17 A. No, sir. I've already made an opinion way back when
18 before I -- I didn't really realize that I'd be a juror.
19 So, I -- we've talked about this case several times.

20 Q. Okay. Have you talked about this with any other
21 juror?

22 A. No.

23 THE COURT: Any questions from the state?

24 MR. HEMBREE: Nothing, Your Honor.

25 THE COURT: Any questions from defense?

1 MR. WILSON: None, none, Your Honor.

2 THE COURT: Thank you very much, Ms. Badurski. I
3 really wish you would have talked to me about this Monday
4 when I had other people coming up here.

5 JUROR: Apparently, I didn't hear the question. I
6 apologize.

7 THE COURT: I'm going to find you're not qualified in
8 this particular case.

9 JUROR: Okay.

10 THE COURT: And you may be excused.

11 Any objection from the state and defense?

12 MR. WILSON: None, Your Honor.

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

14 THE COURT: You may leave at this time.

15 JUROR: Thank you.

16 MR. HUMPHRIES: Your Honor, for the record, she did
17 mention that specifically in her questionnaire.

18 THE COURT: Okay. Ms. Badurski, did you -- the papers
19 that you had, did you bring them back? I'm sorry, but I
20 forgot. I keep forgetting to do that.

21 JUROR: Thank you. Have a good day.

22 THE COURT: Thank you.

23 Anything we need discuss on Ms. Kreuger before
24 bringing Ms. Kreuger in? Nothing? Bring her on in,
25 please.

1 (A PAUSE.)

2 BAILIFF: Judge, she's still filling out the
3 questionnaire.

4 THE COURT: She still -- okay, that's fine. Don't
5 hurry her; just bring her on in when she's ready.

6 (JUROR #255 ENTERS THE COURTROOM.)

7 EXAMINATION BY THE COURT:

8 Q. Hello, Ms. Kreuger. If you'd come around, please,
9 ma'am, and did you have enough time to look over? We don't
10 want to hurry you. Did you have enough time to look over
11 the list?

12 A. Yes, I've looked it over.

13 Q. Okay. Have a seat and relax. I see you used to live
14 in the Big Easy, New Orleans?

15 A. Yes, I did.

16 Q. When did y'all live in New Orleans?

17 A. I came here in 1996.

18 Q. '96. I guess you were shocked and surprised and sad
19 about those levees breaking and the beautiful city going
20 under water for a while?

21 A. We always knew it was going to happen.

22 Q. Well, you know, I was ready reading some historical
23 things about New Orleans, and even during the times of the
24 Napoleonic times when Napoleon had decided to sell the
25 city, he said he thought one of these days those levees's

1 going to break and that city's going to be destroyed
2 anyway. But we initially, all America wanted to do was try
3 to buy New Orleans, but Napoleon said I feel bad selling
4 you this land that's going to go under water. I'll sell
5 you all this other land, too, if you'll throw in five more
6 million dollars, and we did.

7 I'm going to ask you a few questions, and I want to
8 remind you, though, you know yesterday we put y'all under
9 oath. So, you need to know you're still under oath, and
10 you're not on trial, and this is just get to know you a
11 little bit, and there are no right answers, no wrong
12 answers. Just want to get to know you, get some of your
13 opinions.

14 Now, you've lived here in Horry County now how long
15 now?

16 A. It will be twelve years in June.

17 Q. Twelve years in June. I see that your husband is
18 deceased?

19 A. He died in '94.

20 Q. '94. So, back before y'all came here?

21 A. Yeah. I came here to take care of my parents.

22 Q. Oh, okay, and where -- are they still living?

23 A. No, they're both deceased.

24 Q. And where, where do you live now?

25 A. I live in Little River.

1 Q. Little River, okay. Do you know any lawyers here, Mr.
2 Hembree, Mr. ---

3 A. I know Mr. Hembree.

4 Q. Okay, you don't know Mr. Humphries, Mr. Wilson?

5 A. No.

6 Q. How do you, how do you know -- Mr. Humphries, you say?

7 A. No, Hembree.

8 Q. Hembree. How do you know Mr. Hembree?

9 A. From church.

10 Q. Okay, that's right. You stood up and said you ---

11 A. Yeah.

12 Q. Same church. Now, I ask you, though, about that to
13 make sure that I knew whether or not that would affect your
14 ability to be fair and impartial to both sides. Would it?
15 I'll ask you again. Would it affect you at all?

16 A. No.

17 Q. If so, you can sit on that jury and the fact he goes
18 to your church, that would make no difference to you
19 whatsoever in your decision?

20 A. Correct.

21 Q. Okay. You have any interest, bias, or prejudice in
22 this case at all?

23 A. I remember when it occurred.

24 Q. Has that caused you to form or express an opinion as
25 to guilt or innocence of the defendant?

1 A. I really don't remember all the details because it was
2 a while ago, but I do remember the event. So, I don't
3 think so.

4 Q. Okay, but you remember the event, the, the, the -- is
5 it such that -- could you sit on that jury and be fair and
6 impartial and make your decision based on the evidence
7 presented in the case and the law as I instruct it to you
8 and disregard anything you may have seen in the media about
9 the event?

10 A. I think so.

11 Q. I need to know. Can you do that?

12 A. Yeah.

13 Q. Can you make your decision based on the evidence
14 presented in the court, courtroom here and the law as I
15 instruct it to you?

16 A. Uh-huh.

17 Q. Okay, and by the way, this lady of the here is the
18 court reporter, and she gets real mad at me if I don't
19 remind people you need to speak in the microphone, and try
20 to do your best to answer instead of uh-huh ---

21 A. Okay.

22 Q. So she can take it down and it will be taped, too.
23 So, you feel you could do that? You could be fair and
24 impartial and make your decision based on the evidence
25 presented in the case and the law as I instruct it to you?

1 A. Yes.

2 Q. All right. If you're on that jury, the jury will be
3 told you must accept the law as a judge, as I instruct you.
4 That will be a requirement that you would impose the law
5 and use the law, follow the law as I instruct you. Could
6 you do that? Would you do that?

7 A. Yes.

8 Q. One of the things I will instruct the jury is that the
9 defendant is presumed innocent. That the burden is upon
10 the state to prove guilt beyond a reasonable doubt. It is
11 not upon the defendant to prove himself innocent. The
12 burden upon the state to prove him guilty beyond a
13 reasonable doubt. Would you follow that rule of law?

14 A. Yes.

15 Q. Okay. If after hearing all the evidence in the case
16 and the law as I instruct it to you, if after hearing all
17 the evidence, if the state had not proven guilt, had not
18 proven guilt beyond a reasonable doubt, would you be able
19 to find the defendant not guilty?

20 A. Well, if they hadn't proved beyond a reasonable doubt,
21 yes.

22 Q. Okay, you find him not guilty?

23 A. Yes.

24 Q. If the state had proved him guilty of beyond a
25 reasonable doubt, would you, would you be able to find him

1 guilty?

2 A. Yes.

3 Q. Okay. Have you discussed this case with anyone other
4 than what you tell me just a minute ago?

5 A. Not prior to coming here.

6 Q. Well, when did you discuss the case?

7 A. When I filled out the original form, the next day in
8 the paper there was a thing saying when the trial would
9 start, and that's when I realized what the case was.

10 Q. And then you discussed it with someone?

11 A. I did discuss it with some friends.

12 Q. Okay.

13 A. Just my feelings about doing this.

14 Q. Well, what did you -- what, what was your discussion
15 about? Tell me all little about what y'all talked about.

16 A. I talked about my thoughts on the death penalty. I
17 had to look at how I would handle that.

18 Q. Okay.

19 MR. WILSON: Your Honor, could you please -- I didn't
20 couldn't hear that.

21 Q. Yeah, that's right. The microphone right there. You
22 talked about what, again, ma'am?

23 A. My concerns about the death penalty and whether I
24 could go with that or not.

25 Q. All right, and -- but the facts of the case, y'all

1 didn't discuss the facts?

2 A. No. No.

3 Q. Now, if you were selected as a juror in this case,
4 there would be several witnesses called and all. Do you
5 have that sheet with the names of people on it? Did you
6 circle anyone that you knew?

7 A. No, but I was not familiar with any of them.

8 Q. Okay. Hand me that sheet back. So, none of these
9 names on here are familiar to you?

10 A. No.

11 Q. If for some reason if you are selected on this jury
12 and during the course of the trial if any name does become
13 familiar to you, please let me know, okay? Or if you see a
14 face that you didn't know the name.

15 A. I'm more likely to see a face than to remember a name.

16 Q. If you do see a face, if you would just let me know
17 who that person was, okay?

18 Now, if you are selected as a juror, if the jury were
19 to determine the state had not proven guilt beyond a
20 reasonable doubt of the crime of murder and the jury found
21 the defendant not guilty, well then that would end the
22 jurors' part, the jury's part in the case at that time.

23 A. Yes.

24 Q. If, however, the jurors felt the state had proven the
25 defendant guilty beyond a reasonable doubt of murder, we

1 would then move to another phase of the trial, and at that
2 phase there would be evidence presented in aggravation and
3 mitigation, and a juror, the jurors would be asked to
4 return a verdict of either life in prison or the death
5 penalty.

6 I gave a sheet there that gives a synopsis of three
7 types of jurors. Did you go over that sheet?

8 A. Yes, I did.

9 Q. And it shows you there the first type of juror is the
10 juror that if, if that juror was in that phase of the
11 trial, that although there would be evidence of aggravation
12 and mitigation presented, that juror would feel that he or
13 she always had to bring in the death penalty no matter what
14 the facts and circumstances are, and they would feel the
15 death penalty was always the most appropriate punishment no
16 matter what the circumstances are.

17 Juror number two is the juror who under no
18 circumstances could ever bring in a verdict of the death
19 penalty. That juror, after hearing facts in aggravation
20 and mitigation, that juror would still feel that life
21 imprisonment is the only appropriate punishment no matter
22 what the circumstances in aggravation or mitigation are.

23 And then the third juror is the juror that would not
24 have made up her mind yet in advance of considering
25 punishment. That juror would hear the facts and

1 circumstances of aggravation and mitigation and listen to
2 the instruction of the law as, as directed by the judge
3 before she could make up her mind regarding punishment, and
4 if the circumstances of aggravation and mitigation so
5 warranted it, that juror could bring in a verdict of life
6 imprisonment. Also, if the evidence in aggravation,
7 mitigation, the circumstances so warranted it, that juror
8 could bring in a verdict for the death penalty.

9 Do you understand those three types of jurors and the
10 differences in the three?

11 A. Yes, I do.

12 Q. Of those three, which best describes you?

13 A. I'd probably say type two.

14 Q. Type two. So, you feel that no matter what the, the
15 evidence, the circumstances are in aggravation, it you
16 would, you don't feel you ever bring in a verdict for the
17 death penalty?

18 A. No, I don't think I could.

19 Q. Okay, no matter what the evidence presented?

20 A. No.

21 Q. You don't feel you could?

22 A. No.

23 Q. Is your feeling regarding that so firm that you don't
24 feel you could change your mind at all depending on the
25 evidence presented?

1 A. I don't think so because that's the soul searching
2 that I've been doing prior to this trial to determine what
3 I could and couldn't do. I've been trained to save lives.
4 I'm a nurse. I don't know that I could take a life.

5 Q. Okay. So, whatever the evidence is, your opposition
6 to capital punishment is such that you don't feel any
7 evidence would change your mind?

8 A. I don't think so.

9 THE COURT: Any questions by the state?

10 MR. HUMPHRIES: Very briefly.

11 EXAMINATION BY MR. HUMPHRIES:

12 Q. Ms. Kreuger, and I know the court's been -- has
13 alluded to this, if in fact, they haven't been clear about
14 it. No one here is trying to change your mind ---

15 A. Okay.

16 Q. --- in regard to your position on the death penalty.
17 What we're simply trying to determine, as you've already
18 told us, is what your position is. Obviously to sit on
19 this jury, a juror would have to be able only to consider
20 both life imprisonment and the death penalty but to impose
21 either the death penalty or life imprisonment based on the
22 facts and circumstances.

23 A. Uh-huh.

24 Q. I believe what you've told the court today is that
25 under no circumstances, regardless of the facts and

1 circumstances, could you return a death penalty verdict.

2 Is that correct?

3 A. That's correct. I don't think I could.

4 MR. HUMPHRIES: Very good. Thank you so much.

5 THE COURT: Mr. Rathbun by Mr. Wilson?

6 MR. WILSON: I want to ask a couple of questions.

7 THE COURT: All right.

8 EXAMINATION BY MR. WILSON:

9 Q. Ma'am, your, your views about the death penalty, and I
10 heard you say earlier that this is something that you've
11 struggled with ---

12 A. Uh-huh.

13 Q. --- and that you were trying to come to terms with.
14 Is that correct?

15 A. That is correct.

16 Q. All right, and before you got your notice to come
17 here, you hadn't really thought about it and thought it
18 through to the point as to whether you could actually do it
19 or not do it?

20 A. I've never have to.

21 Q. All right, until now?

22 A. Until now.

23 Q. And that forced you to come to this conclusion. Is
24 that what you're saying?

25 A. Yes.

1 Q. And it's my understanding that you're saying it
2 doesn't matter what the facts are and no matter how
3 horrendous they might be, and no matter what the defendant
4 has done, and no matter what the state proves. It wouldn't
5 ever matter who. You're never going to do it. Is that
6 what you're saying?

7 A. I don't think I could. I wouldn't -- don't know if I
8 could live with myself if I had to make that kind of
9 decision.

10 Q. Okay. All right, and I'm not pressing you, I'm just
11 wanting to make sure that you're saying that absolutely you
12 could never do it?

13 A. I don't believe I could. That's, that's the best I
14 can say is that I've really, I just don't think I could
15 condemn a person or take a life.

16 Q. All right. Well, let me back up and ask you this.
17 If, you were on a panel and you heard evidence which
18 convinced you beyond a reasonable doubt the person was, in
19 fact, guilty of a crime, could you find that person guilty
20 of the crime for which that person had been charged?

21 A. Oh, yes.

22 Q. If the state proved it to your satisfaction beyond a
23 reasonable doubt?

24 A. I, I've done that on a jury before.

25 Q. Okay, and if, in fact, you go that far and you and the

1 rest of your panel made that decision, that that person is
2 guilty of that particular charge beyond a reasonable doubt
3 and the charge is murder, because then and only then would
4 you go to the second phase of the trial which would be the
5 penalty or sentencing phase of that trial, and the state
6 would then introduce what called aggravating circumstances.
7 They would try to show you that the -- based on what
8 they've presented as aggravating circumstances that this
9 murder was not, excuse the expression, a normal, regular
10 murder. That it was an aggravated murder. It was worse
11 than what would normally be and that, therefore, the death
12 penalty ought to be considered, and you're saying you could
13 not consider it?

14 A. No.

15 Q. That's the first question I have.

16 A. No.

17 Q. You could not? All right. That's fair enough.

18 MR. WILSON: Thank you ma'am.

19 THE COURT: All right. Any objection to what y'all
20 feel my ruling is going to be? State?

21 MR. HUMPHRIES: No, Your Honor.

22 MR. WILSON: No.

23 THE COURT: All right. Well, Ms. Kreuger, I find that
24 you -- when I say not qualified, all that means is that
25 jurors on this case would have to be willing to be able to

1 consider both. You understand that?

2 JUROR: I do.

3 THE COURT: But I do appreciate your candor and
4 honesty with us, and could you give me that sheet back that
5 you have, and you're excused now from this case.

6 And you say no objection to disqualification from the
7 state?

8 MR. HUMPHRIES: No, Your Honor.

9 MR. WILSON: No, Your Honor.

10 THE COURT: Defense? All right, thank you, Ms.
11 Kreuger. You may leave. You don't need to return. Thank
12 you very much.

13 JUROR: Thank you.

14 THE COURT: Appreciate it. Thank you for all you do
15 to try to save lives. Are you still a nurse?

16 JUROR: No, not, not presently.

17 THE COURT: Well, thank you, ma'am.

18 MR. HEMBREE: Your Honor, she does a ton of work. I
19 know about it. She just doesn't get paid for it.

20 (A PAUSE.)

21 THE COURT: All right, their lunch is on the way. It
22 should be here in a minute. I think we should try to do a
23 few more, and then we'll break for a few minutes for lunch
24 so everyone will be here.

25 So, the next person I see on the list is Deborah

1 Warrington. Anybody got anything on Ms. Warrington,
2 panel E?

3 MR. HUMPHRIES: I have something about Warrington.

4 MR. HEMBREE: What's her number?

5 THE COURT: 474. Wait a second before we bring her
6 in.

7 MR. HUMPHRIES: Sister was kidnapped and there were
8 attempted murder charges as a result of it. I believe, I
9 believe there was in charge, but I know defiantly
10 allegations.

11 MR. WILSON: Served five years in jail.

12 MR. HUMPHRIES: I remember that.

13 THE COURT: That's right. She did come up to the
14 bench to me. Said she couldn't be fair and impartial. All
15 right, I'm going to bring her on in whenever she's ready.
16 Tell her whenever she's ready.

17 (A PAUSE.)

18 THE COURT: Also, officer do me a favor. When that
19 juror is coming in, don't give the other juror the
20 paperwork yet, okay?

21 DEPUTY SHERIFF: Okay.

22 THE COURT: Because we're going to have our lunch in a
23 few minutes, so ask the others to stay in that room.

24 (A PAUSE.)

25 THE COURT: Are you Ms. Schisler?

1 JUROR: Yes.

2 THE COURT: All right, Ms. Schisler, you wanted to
3 talk with me a little bit?

4 JUROR: Yes, sir.

5 THE COURT: Come up here and I'll let everybody else
6 know. Just come talk to me first. What is it?

7 (THE FOLLOWING CONFERENCE IS HELD AT THE BENCH BETWEEN
8 THE COURT AND JUROR #403.)

9 JUROR: My husband just talked to the doctor today and
10 has to have surgery Friday, and so I would like to ---

11 THE COURT: What kind of surgery is it?

12 JUROR: Well, I knew I wouldn't be able to pronounce
13 it, so I just brought the paper from the doctor.

14 THE COURT: Okay, okay, and he will be in the
15 hospital?

16 JUROR: Yes. He had been outpatient at the ---

17 THE COURT: Counsel, y'all approach, please.

18 (COUNSELORS JOIN THE CONFERENCE AT THE BENCH.)

19 JUROR: I would like to make a raincheck for later
20 next time.

21 THE COURT: Ms. Schisler just told me her husband went
22 to the doctor yesterday.

23 JUROR: Today.

24 THE COURT: Oh, today, and the doctor determined that
25 he needed surgery immediately on Friday, a cystoscopy and a

1 possible enteroscopy. It's involving the bladder,
2 involving the kidney?

3 JUROR: Kidney.

4 THE COURT: Kidney, and she obviously wants to be with
5 her husband, but he got diagnosed today and it says that
6 surgery needs to be February 1st, February 1st, and she
7 would like to be transferred. Does anyone have any
8 questions they want to ask of this juror?

9 MR. WILSON: No, sir.

10 MR. HUMPHRIES: No, sir.

11 THE COURT: Stand over there where the officer is for
12 me, please.

13 She's at the 2:00 group this afternoon. Any objection
14 from the state?

15 MR. HEMBREE: No objections.

16 MR. WILSON: None.

17 THE COURT: All right, Ms. Schisler, I sure hope
18 everything works out fine for your husband.

19 JUROR: Thank you.

20 THE COURT: And you say you want to serve on jury
21 duty, so you ---

22 JUROR: I do want to.

23 THE COURT: I'll be glad to give you ---

24 JUROR: I can't do this.

25 THE COURT: I'll be glad to give you another date if

1 you want to.

2 JUROR: Okay.

3 THE COURT: Sometime in another couple of months.

4 JUROR: Yes, yes.

5 (END OF CONFERENCE AT THE BENCH.)

6 THE COURT: She will let you know, and I'm going to
7 find that Ms. Schisler, because of the concern of her
8 husband having surgery on Friday that she just found out
9 today, without an objection from the state or the defense,
10 we'll transfer her to another time.

11 Another juror waiting?

12 BAILIFF: Yes, sir.

13 THE COURT: Bring them on in.

14 (JUROR #474 ENTERS THE COURTROOM.)

15 MR. RATHBUN: Your Honor, before we bring in the
16 person.

17 THE COURT: Oh, wait, and sorry. Ms. Warrington, if
18 you would, step back outside there. One other question.
19 It's my fault.

20 (THE JUROR EXITS THE COURTROOM.)

21 MR. RATHBUN: Oh, this is Ms. Warrington?

22 THE COURT: Yes.

23 MR. RATHBUN: Oh, I'm sorry.

24 THE COURT: Well, who -- well, I'm sorry, this is --
25 yeah, Ms. Warrington. Who did you want to, who did you

1 want to talk about?

2 MR. RATHBUN: Mary Bosley.

3 THE COURT: Oh, that is the next one after her. Bring
4 her on in, Ms. Warrington.

5 (JUROR #474 ENTERS THE COURTROOM.)

6 EXAMINATION BY THE COURT:

7 Q. Ms. Warrington, how are you doing?

8 A. I'm good. How are you?

9 Q. Fine. Have a seat there and talk to you a little bit.
10 I know we talked a little bit yesterday.

11 A. Yes.

12 Q. And, and I want to ask you a few more question about
13 some things. Do want to remind you, though, you are under
14 oath. You remember we put everybody under oath yesterday.
15 And there are no wrong answers, no right answers. Just
16 want to talk to you a little bit.

17 Now, are you related by blood or marriage, do you know
18 any of the attorneys involved here? Mr. Hembree, Mr.
19 Humphries?

20 A. No, sir.

21 Q. Mr. Wilson or Rathbun? Okay, do you know the
22 defendant at all?

23 A. No, sir.

24 Q. Now, what I need for you to do, though, is -- it's my
25 fault -- is to speak a little closer up to that microphone

1 so that the court reporter and everybody can hear you. So,
2 you said you don't know the attorneys or the defendant?

3 A. No, sir.

4 Q. All right. Have you formed or expressed an opinion as
5 to the guilt or innocence of the defendant in this case?

6 A. No, sir.

7 Q. All right. Now, I do remember yesterday we talked.
8 You mentioned something that had happened to someone in
9 your family. Was it your sister?

10 A. It was my sister, my older sister.

11 Q. Tell me again about that.

12 A. She was estranged from her husband, and he came to her
13 apartment and took her back to his house. And during the
14 time that he held her at that house, he tried to strangle
15 her. She was able to get away, and the officers were able
16 to come in and get him out. And consequences were that he
17 eventually spent five years in Maryland state penitentiary
18 for attempted murder. But she is now living away from that
19 situation, and he has since passed away.

20 Q. He passed away? In prison or out of prison?

21 A. Out of prison.

22 Q. Of illness, he received an illness, had an illness?

23 A. Yes, yes.

24 Q. All right. Now, Ms. Warrington, once again there are
25 no right answers, no wrong answers. I want to see how --

1 your thoughts and your feelings.

2 A. Right.

3 Q. The -- a person charged with the crime is presumed
4 innocent, and the state has the burden of proving guilt
5 beyond a reasonable doubt. If I instruct you that is the
6 law -- and I would instruct you that is the law, that a
7 person is not required to prove himself innocent, the state
8 must prove someone guilty beyond a reasonable doubt --
9 would you accept that principle of law and apply that
10 principle law?

11 A. I would.

12 Q. Do you feel that what occurred with your sister,
13 though, would affect your ability to be fair and impartial?

14 A. I don't think so because each case is different.
15 There's extenuating circumstances for everything, and you
16 have to look it that particular case and each case deems
17 its -- your full attention to that case and the case only.

18 Q. All right. If the allegations are, if the state
19 alleges and tries to prove through whatever evidence that
20 there was a relationship involving the defendant as someone
21 that they allege, make allegations that a murder occurred,
22 and if for some reason in your mind if you started to hear
23 allegations that may in some way connect thoughts about
24 what happened in your sister's case, would that affect your
25 ability to be fair and impartial?

1 A. No, sir.

2 Q. You're sure?

3 A. I'm sure.

4 Q. Now, why you so sure?

5 A. Because I would want to give that person my full
6 attention and strictly go by what was in front of me, not
7 what happened in the past or, you know.

8 Q. So, if the allegations are and if the state produces
9 evidence and they intend to try to prove you that, prove to
10 you there were certain circumstances you in your mind
11 realize might be similar to your sister's circumstances,
12 that would not affect your ability to be fair and
13 impartial?

14 A. No, sir.

15 Q. And if sitting on the jury, if you were sitting there,
16 would you -- you would hold the state to the standard of
17 proof beyond a reasonable doubt?

18 A. Yes, sir.

19 Q. And you're telling me under oath you'll presume the
20 defendant innocent going into the trial?

21 A. Yes, sir.

22 Q. And that you would not require the defendant to prove
23 himself innocent, but you require the state to prove guilt
24 beyond a reasonable doubt?

25 A. Right.

1 Q. And what happened to your sister would have no affect
2 as far as your decision in the case at all?

3 A. No.

4 Q. And if the state did not prove guilt beyond a
5 reasonable doubt, you'd find the defendant not guilty?

6 A. Yes, sir.

7 Q. But if the state did prove guilt beyond a reasonable
8 doubt, you would find the defendant guilty?

9 A. Yes, sir.

10 Q. Have you discussed this case with anyone at all?

11 A. No, sir.

12 Q. Okay. Now, this case is gotten some media attention
13 in the newspaper, the TV, radio. Have you read, seen, or
14 heard anything about this case in the news media?

15 A. I've read what has been in the newspaper in the past
16 several years, yes.

17 Q. Okay. Did you read anything recently? Was there
18 something a while back?

19 A. Not the last couple days, no. Not since...

20 Q. Can you relate to me the nature of what you read in
21 the newspaper or other media?

22 A. Just that this trial was coming up and that he was
23 accused of causing murder and several other things. But I
24 don't know any of the background information.

25 Q. And do you accept what was in the newspaper as always

1 being absolutely true?

2 A. Heavens, no.

3 Q. So, have you formed any opinion as to the guilt or
4 innocence of the defendant based on your reading the
5 newspaper or other media?

6 A. I don't think you can. You don't have all the
7 information in front of you.

8 Q. All right, and in making your decision in this case,
9 would you put aside anything you've seen in the media and
10 make your decision based on the evidence presented in the
11 trial and the law as I instruct it to you?

12 A. Yes, sir.

13 Q. All right. I gave you a list of names there of
14 people. Do you know any of those people on those three
15 pages of names?

16 A. No, sir.

17 Q. Okay, can I get this back? Okay. So, you didn't
18 circle anybody's name?

19 A. No.

20 Q. Okay. Now, in a trial of this nature, if the jury
21 were to determine the state had not proven guilty beyond a
22 reasonable doubt of murder, then the jurors' involvement
23 would end at that time if they bring back a verdict of not
24 guilty. If, however, the jury determined that the state
25 had proven guilt beyond a reasonable doubt of murder and

1 brought back a verdict of guilty, then we would move to
2 another phase of the trial where the jurors would be asked
3 to bring back a verdict on punishment.

4 I presented to you three types of jurors. You see
5 that in front of you there?

6 A. Yes, sir.

7 Q. You had enough time to look over those three types?

8 A. Yes, I did.

9 Q. And as you see there, juror number one is a juror
10 that, that in, in that phase of where the jury would be
11 considering punishment, they'd be presented evidence in
12 aggravation and mitigation. In the juror type one, no
13 matter what the evidence is, no matter what the
14 circumstances are, that juror would feel they'd be required
15 to bring back the death penalty in each and every case, and
16 that juror would think the death penalty is the most
17 appropriate punishment no matter what the circumstances
18 are.

19 Juror type two is a juror that would, no matter what
20 the evidence in aggravation and mitigation are, no matter
21 with the circumstances are, that juror could never bring
22 back the death penalty under no circumstances. And that
23 juror would, would without regard to evidence in
24 aggravation and mitigation, that jury would always bring
25 back a verdict of life imprisonment.

1 Juror number three is a juror who would not have made
2 up their mind in advance concerning the punishment. That
3 juror would need to hear the facts and circumstances in
4 aggravation and mitigation and would want to listen to and
5 follow the law the judge charges the jury before she would
6 make her decision regarding, regarding punishment. And if
7 the facts and circumstances so warranted it, that juror
8 could come back with a verdict of life imprisonment. And
9 if the facts and circumstances so warranted it, that juror
10 -- or if the facts and circumstances so warranted it, that
11 juror could bring back a verdict for the death penalty.

12 You understand the differences in the three types of
13 jurors?

14 A. Yes, sir.

15 Q. Which best describes you?

16 A. Type three.

17 Q. Type three. So, you could be open minded and listen
18 to the evidence and if it so warranted it, you could bring
19 back a verdict of life imprisonment?

20 A. Yes, sir.

21 Q. And if the facts and circumstances so warranted it,
22 you could bring back a verdict of the death penalty?

23 A. Yes, sir.

24 Q. Now, if the jury were to decide to bring back a
25 verdict for the death penalty, the jurors would be required

1 to sign the verdict. It's got to be a unanimous, unanimous
2 verdict. Could you sign the verdict form?

3 A. Yes, sir.

4 Q. All right. If you were selected as a juror in this
5 case, the jury would be sequestered. Put everybody in a
6 hotel for about a week, a little more, a little less, and
7 would not be able to have any contact with your family
8 other than by the phone with supervision type thing.
9 Somebody listening on the other line because we have to
10 make sure nobody discusses the case once we got started.
11 Do you feel that you could do that with -- I know it would
12 be inconvenient. It would be somewhat of a hardship, but
13 could you do that and somehow make arrangements?

14 A. It's my duty as a United States citizen; I would do
15 it.

16 Q. All right.

17 THE COURT: All right, I'm going to let the attorneys
18 ask you a few questions now, and then I may have a few
19 things to ask you after that.

20 JUROR: Okay.

21 THE COURT: Questions from the state?

22 MR. HEMBREE: Thank you, Ms. Warrington. Thank you
23 for your patience with us. I don't have any questions. If
24 you would answer any questions defense counsel might have.

25 THE COURT: All right.

1 JUROR: Thank you.

2 THE COURT: Mr. Wilson.

3 EXAMINATION BY MR. WILSON:

4 Q. Ms. Warrington, yesterday when we were here, you, you
5 came up to the court asked the court to be excused because
6 she said that because of your relationship with your
7 sister, this will be very difficult for you and that you
8 didn't think you could be fair and or impartial, did you
9 not?

10 A. I didn't ask to be excused. I just came up to voice
11 the -- the judge asked if anybody had been involved with
12 those type of situations to come up and talk to him. And
13 since I had filled it out in my information, that ten-page
14 information that we had to fill out as a, as a prospective
15 juror, I felt that I needed to bring it up.

16 Q. Yes, ma'am.

17 A. So that no one would have any questions later about
18 it.

19 Q. Well, well, ma'am, speaking of that, you filled out
20 your affidavit and you said in your affidavit:

21 My sister was a victim of spousal abuse. She was
22 almost killed by her husband. I'm not sure that
23 I could be fair about anything involving spousal
24 abuse.

25 Did you not say that?

1 A. I did say that, yes, sir.

2 Q. And that, has that changed now? Is what you're saying
3 now, though, is that you're no longer concerned about
4 somebody charged with spousal abuse, that wouldn't bother
5 you anymore?

6 A. I think that I could put that aside.

7 Q. You think you could or you can?

8 A. I'm sure that I could put that aside and look at, at
9 all the circumstances that, that came up to this.

10 Q. Well, can you explain to me if you can what changed
11 between the time you did this form and today?

12 A. Just thinking about what the whole process is of, of
13 the trial, how important it is for you to look at
14 everything that is brought forth and, and work to the, you
15 know, to the end.

16 Q. All right, and what you're saying is if in this
17 particular case, if this defendant were charged with
18 anything related to any kind of spousal abuse, that you
19 could set that aside and you could base this, you could be
20 completely fair and impartial to this defendant?

21 A. Yes, sir.

22 Q. And not in any way let the fact that your sister, that
23 something similar may have happened to your sister affect
24 your judgment in any way whatsoever?

25 A. I would not let that bother me.

1 Q. Okay, and you also, as I understand it, ma'am, are
2 saying that you, while you initially felt that way, you've
3 now changed your mind and you don't feel that way anymore?

4 A. Right.

5 MR. WILSON: I don't really have any questions. Thank
6 you, ma'am.

7 EXAMINATION BY THE COURT:

8 Q. Was something said yesterday that changed your mind,
9 or was it some more thought after you filled out the form?

10 A. It's more thought after I filled out the form,
11 thinking about the whole process, and sometimes you have,
12 you have to look at what's in front of you, not look behind
13 you.

14 Q. Are you stating, ma'am, on your oath that if you're on
15 this jury, your decision regarding guilt or innocence in
16 these charges will be based on evidence presented in the
17 courtroom and the law as I instruct it to you? Is that
18 your statement, ma'am?

19 A. Yes, sir.

20 Q. Are you stating that what occurred with your sister
21 would have no affect whatsoever on your decision in this
22 matter?

23 A. Yes, sir.

24 Q. And it would have no affect whatsoever if they got to
25 that point but whatever recommendation or whenever burden

1 -- whatever punishment y'all brought back would have no
2 affect on that either?

3 A. Yes, sir. I'm telling you that.

4 THE COURT: Step outside, if you would. Outside the
5 door.

6 (THE JUROR EXITS THE COURTROOM.)

7 THE COURT: Position of the state?

8 MR. HEMBREE: Your Honor, she's qualified.

9 THE COURT: Position of the defense?

10 MR. WILSON: Judge, you know -- this, this is the
11 reason that I have pause when we do death cases, because of
12 jurors who do this very thing. This juror filled out this
13 form basically under penalty of perjury and sent it in
14 saying that -- and the question is clear.

15 Do you believe there may be any reason why it
16 would be difficult or impossible for you to be
17 completely fair and impartial in this case.

18 Answer: unequivocal yes.

19 If so, what reason is there?

20 My sister was a victim of spousal abuse. She was
21 almost killed by her husband. Not sure that I
22 could be fair about anything involving spousal
23 abuse.

24 Then she comes in here yesterday and she comes up to
25 this court when the court asks, makes an inquiry, she comes

1 up to the court and she indicates to the court. Again she
2 says that her sister was kidnaped. That she tells us about
3 how when the, the brother-in-law got five years. That,
4 that she did -- she says I will try to set it aside, but it
5 would be tough because her sister and she were very close.
6 Those are things that she told us standing in front of the
7 court reporter yesterday.

8 She comes in here this morning ---

9 THE COURT: Now, wait a minute. There had to be more
10 than that yesterday or I wouldn't have held her over to
11 this point. So, it didn't end like that or if it ended
12 like that, I wouldn't -- she wouldn't be here today.

13 MR. WILSON: Well, I'm not saying, I'm not -- I don't
14 know what the court said to her and what they -- but I'm
15 saying these -- she said these things. Now, what else
16 transpired I'm not going into. Obviously the record will
17 speak to that. But what I'm saying is she said these
18 things to the court initially. The court did have some
19 dialogue with her. I don't recall exactly what the outcome
20 of that dialogue was. I would have to assume -- I know I
21 made an objection to the court qualifying her yesterday,
22 and I said that she should not be qualified, and I did
23 interpose an objection to that.

24 I now interpose another objection. I just think that,
25 that -- you're talking about the incredulous. It is really

1 difficult to, to believe that this long-held belief that
2 she's had about her sister and how it's affected and the
3 man's now even dead, the guy who did this to her sister is
4 dead and she's writing this affidavit. But all of a sudden
5 today she's here ready to try this defendant, who is
6 basically accused of the same thing -- even more egregious
7 obviously if, if true -- than what happened to her very
8 sister, and now she's okay with that?

9 I really have a difficult time, and I know that she's
10 under oath. I understand that we have to accept, you know,
11 the fact that, that, that when jurors tell us things under
12 oath that, that we expect them to be true. I understand
13 that. I do. But I, I, I -- but my problem is that this
14 form, this questionnaire is essentially under oath. And
15 when she came up yesterday, she was under oath. And now
16 today she's under oath. And the, I mean, so which under
17 oath are we to accept and believe?

18 THE COURT: Well, I'm not sure this form is under
19 oath, is it?

20 MR. WILSON: Well, it says on the front page of the,
21 of the document, of the, of their -- of the other sheet,
22 the questionnaire is attached to this form that the clerk
23 sends out. It said:

24 I have read the conditions for disqualification
25 exemption and none of the conditions listed apply

1 to me.

2 And, and then says:

3 Notes. The furnishing of false or misleading
4 information or the failure to furnish information
5 to the court may subject you to penalties as
6 prescribed by law.

7 THE COURT: I know, but, I mean, I'm sure they're
8 talking about concrete facts here. We're not talking about
9 feelings.

10 But I do recall, Mr. -- I do recall, Mr. Wilson, that
11 yesterday, that in fact I at first marked her excused, and
12 then I remember, seem like I had her to stand over to the
13 side after she said that, and then I asked if y'all want to
14 me to ask her any other questions. And I think the state
15 said yes, it did, to find out whether she could be fair and
16 impartial and she came back over. She came back over and
17 then similarly to what she did today. She convinced me
18 that she could put it aside and could be fair and
19 impartial.

20 I then said all right, she's qualified -- well, you
21 did note an exception to that. I've got that on my notes.
22 I just looked at them.

23 Reply by the state?

24 MR. HEMBREE: Yes, Your Honor. First point is that
25 she has, if she's qualified, she has an absolute right to

1 serve just like any other citizen in Horry County.

2 The second thing, Your Honor, is that yesterday just
3 to, just to I guess review what you've already touched on
4 is that my notes indicate that she, she did express this
5 concern. Yet ultimately she said she could be fair and
6 impartial. That was the last, the last notes that I wrote
7 down here as I was taking notes of that conversation. So,
8 she had struggled. She had, she had weighed this.

9 It's clear to me. I don't, I don't think it's a -- I
10 don't that we're talking about a juror that's incredulous
11 or that is dishonest. I think we're talking about a juror
12 that is a very honest, the juror that is honestly
13 expressing a very traumatic experience that she's had in
14 her life. She's making everyone aware of that.

15 If she was an agenda juror or had some sort of a plan,
16 all she had to do was leave it off the form. She, she
17 expressed that because she -- it was something that was on
18 her mind.

19 What we do with these folks is we, we, we send this,
20 this long, detailed, unusual questionnaire, ask them a
21 bunch of questions, and then as they -- they don't know
22 what they're doing. We're having to instruct them and
23 teach them about this whole process on the way. And as she
24 has come into this process and better understands what's
25 needed, what's involved, what's required, she was given the

1 ability to give that consideration and to think about that
2 and to ponder those things which she has had to do in the
3 last -- yesterday and now today.

4 She has, she is trying to come up with the -- with her
5 most honest answers for this court. And she has reached a
6 conclusion very clearly that she can be fair and impartial,
7 that she can set this experience aside, that she can look
8 forward and not backward.

9 And, you know, I appreciated the fact that that was
10 one of the few witnesses or few jurors that you've done
11 this with. You said the I'm reminding you you're under
12 oath. You understand. Now tell me. Can you be fair and
13 impartial? And she said yes, I can, and she did repeatedly
14 throughout. I felt like that was the most -- and you
15 impressed that upon her, and she was very alert and
16 listening to that, understood that.

17 I think she is a woman who has struggled with it. Has
18 reached, has reached the point where she has found the
19 truth within herself. She's expressed that to this court.
20 She has a right to serve. She's qualified.

21 THE COURT: Mr. Wilson, I'm going to note your motion
22 to reconsider. At this time I would qualify her. I would
23 think about it further. I may do little research, see if I
24 can find any cases similar. But ultimately I think this,
25 this decision, her answers are really at my discretion, but

1 I do have a hard time disqualifying her when she expressed
2 to me very accurately, more than most jurors this desire to
3 make sure that everybody's treated fairly. I will qualify
4 her, but I will note, Mr. Wilson, your motion to
5 reconsider, and I'll let you know that Thursday.

6 MR. WILSON: Thank you, Your Honor.

7 THE COURT: Bring her out here, please.

8 (THE JUROR ENTERS THE COURTROOM.)

9 THE COURT: Ms. Warrington, I'm going to qualify you
10 for the pool. That doesn't mean you're going to be on this
11 jury, but you'll be in the pool. And I need you back at
12 11:30 on Thursday.

13 Now in the meantime, ma'am, you're not to discuss this
14 case with anyone at all. Not with family members, friends,
15 or anyone else. And also do not read any local newspapers
16 and do not see any local news stations at all. And if you
17 do hear anyone or see anything about it in the news, let me
18 know Thursday.

19 If you're on this panel, Thursday would be the day
20 that you all will probably begin sequestration, meaning a
21 hotel. So, it's probably better Wednesday or Thursday
22 morning early to pack some goods just in case. And if you
23 can, if you can make arrangements that if you are selected
24 that someone can go back with you or be waiting for you
25 when you go to your house to pick up your bags so someone

1 could have your car. We don't want to leave your car here
2 during the course of the trial.

3 And we'll see you then at 11:30 on Thursday. Go out
4 this door here and we'll be in this courtroom here, okay?
5 We'll see you then. You may leave at this time. Go out
6 this door over here.

7 All right, let's do this. Let's take about twenty
8 minutes and if you need more let me know, but I'd say at
9 least twenty minutes. Then we'll come back in.

10 MR. RATHBUN: Your Honor, before we leave.

11 THE COURT: Uh-huh.

12 MR. RATHBUN: I've gotten the NCIC report on the next
13 potential juror, juror number 33. That's Mary Bosley. She
14 indicates or the NCIC report indicates that she's got nine
15 months at the Jessup Correctional Institution in Maryland,
16 and she has number of, number of crimes. Could the state
17 determine whether she had one that carries a year or more,
18 I believe?

19 MR. HUMPHRIES: I've looked at it. It's -- it appears
20 that she actually did her time on a violation of probation,
21 but it is at best confusing. It's an out-of-state record.
22 It appears to me that she ---

23 THE COURT: She came up to talk to me, I see here --

24 MR. HUMPHRIES: She's, she's ---

25 THE COURT: And I wrote down she had non-

1 disqualifying convictions.

2 MR. HUMPHRIES: She, what she said, what she told us
3 was possession of marijuana and possession of Xanax, which
4 is reflected. There's also an indication of possession of
5 cocaine. But, quite frankly, I'm looking at the -- what
6 you got is the arrest records from the other state, but you
7 don't, you don't have any dispositions. There is a
8 disposition regarding the violation of probation on
9 possession of controlled substance, and that's the thing
10 that she apparently served her time for. We can do
11 additional research.

12 THE COURT: Well, Mr. Rathbun, are you moving she be
13 disqualified because of your concerns?

14 MR. RATHBUN: I, I just want to find out if she was
15 convicted of anything the carries a year or more.

16 THE COURT: Well, I mean, I asked her up here. She
17 said it was -- she told me was possession of marijuana,
18 possession of Xanax, which doesn't carry more than a year,
19 but...

20 MR. RATHBUN: Well, she's got -- item 59, she's got
21 possession and trafficking charges. Well, she's got
22 trafficking charges.

23 THE COURT: I thought trafficking -- she meant tried.

24 MR. HEMBREE: That's what I thought she meant.

25 THE COURT: Well, we'll find out. Let's take a break

1 and we'll find out after lunch.

2 MR. RATHBUN: Thank you.

3 THE COURT: I'll ask that again if it comes up.

4 (OFF THE RECORD.)

5 THE COURT: Be seated, everyone. The court reporter,
6 by the way, I asked her and she found where Ms. Warrington
7 came up, and so at any time in the break or sometime during
8 the day, if y'all want her to play it for you. I'm going
9 to have her play it for me later tonight or tomorrow when
10 we finish. She'll be happy to play it for you. I told her
11 not to play now. But if y'all want to listen to it, she'll
12 let you.

13 MR. WILSON: Thank you, Your Honor.

14 THE COURT: Next person we have is Ms. Bosney or
15 Bosley, and we want to first find out about her
16 convictions. Have you had an opportunity to look further
17 into that since we -- before we took a little break?

18 MR. HEMBREE: Yes, Your Honor. The only thing that we
19 could find in addition to what we had was that she had
20 charges with our office as well in 2006. And on those
21 charges she has pled guilty to possession of controlled
22 substances, schedule 1 to 5 first offense, and got a fifty-
23 eight days time served.

24 THE COURT: But is scheduled 1 to 5 a six months'
25 sentence?

1 MR. HEMBREE: I believe that's correct, Your Honor.

2 That's what we -- I didn't have the book with me, so I ---

3 THE COURT: Well, hopefully you'll find somebody in
4 the solicitor's office who would know that, Mr. Hembree.

5 MR. HUMPHRIES: It's a long time since ---

6 THE COURT: Let's try this gentleman over here doing a
7 lot of observation.

8 MR. HIXSON: It is six months, Your Honor.

9 THE COURT: Okay, so 1 to 5 is six months?

10 MR. HIXSON: I believe Ms. Steiger told me I was the
11 prosecutor; I apparently prosecuted her for that.

12 THE COURT: Well, my question is this schedule 1 to 5
13 here is the maximum six months?

14 MR. HIXSON: Six months. That's correct.

15 THE COURT: All right.

16 MR. HUMPHRIES: He handled the case, so he's ---

17 THE COURT: All right. So, if she doesn't recognize
18 you, that'll be curious. All right, now, so that's all she
19 pled to in this county?

20 MR. HEMBREE: In this county, Your Honor ---

21 THE COURT: Or in this state.

22 MR. HEMBREE: All I can show from the records from
23 Maryland, which is extensive, is a nine month active
24 sentence. Now, whether that was nine months on a five-year
25 sentence, nine months on a nine-month sentence, there is no

1 way for me to tell based on the information.

2 THE COURT: It does show she's been convicted up in
3 Maryland which resulted in that?

4 MR. HEMBREE: It was violation of probation, and then
5 it says, it looks like possession of controlled substance,
6 and that refers back to a possession of Xanax and
7 possessions of -- possession of Xanax with intent to
8 distribute.

9 THE COURT: Possession of Xanax with intent to
10 distribute carries more than one year.

11 MR. HEMBREE: Right.

12 THE COURT: What's she convicted of?

13 MR. HEMBREE: There's no way for me to tell from this
14 record, Your Honor. It just shows those two charges and
15 shows her going to prison, and it doesn't make a specific
16 reference as to which charge, both charges. I'll be glad
17 to ---

18 THE COURT: Now, the other out-of-state charges, were
19 they before or subsequent to the Horry County charge?

20 MR. HEMBREE: Everything was before. Her criminal
21 record goes back to 1969. It starts with glue sniffing in
22 1969.

23 THE COURT: That was a crime?

24 MR. HEMBREE: '69, possession of -- well ---

25 THE COURT: Well, is there a statute on glue sniffing?

1 I didn't know that.

2 MR. HEMBREE: Yes. Yes, sir.

3 MR. HEMBREE: There's one in South Carolina. It's
4 sort of out of vogue, but it used to be the thing to do
5 away back in '69.

6 THE COURT: Well, if you're putting glue -- you have
7 no choice but to sniff it while you're putting glue on
8 something. So, you're saying you can't use glue?

9 MR. HEMBREE: Perhaps, Judge, that's why we don't see
10 too many of them prosecuted. I don't know. But the --
11 she's got a '69 glue ---

12 THE COURT: So, if the policeman says while you're
13 gluing something, did you smell that? Yes. You're under
14 arrest.

15 MR. HEMBREE: That's about all I can relate to the
16 court about her record in the case.

17 THE COURT: All right.

18 MR. HEMBREE: '69 possession of marijuana, '74
19 receiving stolen goods, '76 assaults by shooting.

20 THE COURT: Assault by shooting?

21 MR. HEMBREE: Yes.

22 THE COURT: Conviction?

23 MR. HEMBREE: Yes.

24 MR. HUMPHRIES: That one is a conviction.

25 MR. HEMBREE: And all it shows here, Your Honor, is

1 \$150 and it says CPD, which I will guess that was
2 community, some kind of community probation, and that ---

3 THE COURT: Shoot somebody and get probation?

4 MR. HEMBREE: Your Honor, I'm not saying ---

5 THE COURT: What state is that in?

6 MR. HEMBREE: This is in Maryland.

7 THE COURT: Not in Texas but Maryland?

8 MR. HEMBREE: Maryland. So, it's assault by shooting
9 and that's, like I said, I can't tell you what the, what
10 the ---

11 MR. HUMPHRIES: She got a fine of some kind.

12 THE COURT: If, if she is put on a jury and she does
13 have a conviction of that nature, then the jury is tainted.
14 And I'm not sure if we have time to find all this out
15 unless we call Maryland or whatever else, but, Mr. Rathbun,
16 you have concern -- I mean, if y'all can consent to dismiss
17 her because of all of these convictions, I have no problem.

18 MR. RATHBUN: Oh, as Mr. Hembree, the solicitor, said
19 before, she has the right to serve if she does not have a
20 conviction of a year or more. All these others don't
21 appear to reach that fervor.

22 THE COURT: Well, how do we know assault shooting,
23 though, and looks like she got a fifty-eight days.

24 MR. RATHBUN: I don't know. That's why I asked ---

25 THE COURT: But in this state, if you actually shot

1 somebody and you were convicted of assaulting or shooting
2 them, that would be something that would carry more than a
3 year. It would be assault and battery with intent to kill.

4 MR. RATHBUN: Fortunately, she had the forethought to
5 shoot somebody in Maryland; she didn't shoot them here.

6 MR. HUMPHRIES: The court will be relieved to know at
7 least at this point she's got a prescription for Xanax and
8 she's taking it for anxiety.

9 THE COURT: She has a prescription for Xanax now?

10 MR. HUMPHRIES: Xanax and Celexa for depression, so we
11 probably won't have those problems out of her.

12 MR. HEMBREE: So goes the glue sniffing.

13 THE COURT: I'll talk to Ms. Bosley again. Bring her
14 on out.

15 MR. WILSON: Judge, before you do that.

16 THE COURT: Hold on.

17 MR. WILSON: The defendant has asked me, ask me to
18 bring something to your attention. He has indicated to me
19 that he can't continue with this process. That he needs
20 medication and that he can't continue with this process.
21 So, I'm letting you know.

22 THE COURT: Well, have you called the doctors or ---

23 MR. WILSON: I've had my staff call the doctor today.
24 He told me last night that he was doing that, so I have my
25 staff trying to reach the doctor, and they're calling now

1 trying to find out what, if anything, the doctor will do in
2 addition.

3 THE COURT: Well ---

4 MR. WILSON: He has medication that he's on which he
5 took. But he -- which he takes in the mornings, but he's
6 saying that he needs additional medication.

7 THE COURT: Well, then in a short while we're going to
8 talk to his physician to see if the physician feels so, but
9 I can't force a physician to give him any additional
10 medication.

11 MR. WILSON: No, I understand.

12 THE COURT: And if a physician has a statement to me
13 that he needs a break in that regard, then I'll listen to
14 the physician in that regard.

15 MR. WILSON: Well, I'm trying to get a hold of him
16 now, and hopefully in the next hour or so.

17 THE COURT: Are you talking about the treating one
18 or ---

19 MR. WILSON: The treating physician.

20 THE COURT: Is he local?

21 MR. WILSON: No, sir. In Charleston, I think. MUSC.

22 THE COURT: Well, if there's any way possible, tell
23 him to please get a prescription over and fast for your
24 client.

25 We will proceed. Bring in Ms. Bosley.

1 (JUROR #33 ENTERS THE COURTROOM.)

2 EXAMINATION BY THE COURT:

3 Q. Hello, Ms. Bosley, how are you feeling?

4 A. Fine.

5 Q. Ms. Bosley, relax and have a seat there. You and I
6 talked a little bit yesterday, and what I need for you to
7 do, and I know it's hard to talk with me, but also try to
8 talk into that microphone if you can so we can hear you.
9 Want to remind you that you're still under oath that you
10 took yesterday.

11 Ms. Bosley, I want to make sure that I got the full
12 information regarding your prior convictions. You
13 mentioned some yesterday. Were you -- you were convicted
14 of possession of controlled substances, prescription drugs?

15 A. And also marijuana and ---

16 Q. How much was -- well, do you remember -- and I may
17 have asked you this yesterday. How much marijuana was it
18 they convicted you of?

19 A. It was never been large amount.

20 Q. Less than an ounce?

21 A. Oh, yeah. I've never been convicted of any ---

22 Q. Okay, you need to speak into the microphone.

23 A. I've never been convicted of any large amount of
24 anything.

25 Q. Okay.

1 A. It's always just personal thing.

2 Q. Well, one time you were charged with possession with
3 intent to distribute prescription drugs. You were charged
4 with that. I just want to know if you were convicted of
5 it.

6 A. No. Not that I, not that I recall. With intent to
7 distribute?

8 Q. Your records indicate that you were charged with that.
9 Now, I can't really tell, discern ---

10 A. What year was that?

11 THE COURT: Do y'all know the year that was? Both of
12 y'all have the ---

13 MR. HEMBREE: Yes, Your Honor. It was 1994.

14 A. '94? I've never been convicted of intent to
15 distribute.

16 Q. You need to speak louder.

17 A. Have never been convicted of intent to distribute.

18 Q. Okay. Also it shows you were convicted of assaulting
19 by shooting at one time in the past.

20 A. Yes.

21 Q. Now, what, what occurred there?

22 A. My ex-husband and his sisters kept coming to the house
23 and tearing my car up. They broke in my house. They
24 physically harmed me, and they kept doing it over and over.
25 So, I had a teargas gun with two things on the end and the

1 next time they came in and tried to hurt me, I released it.

2 Q. Is that the, the -- did it hit one of them?

3 A. No. It just went in the air. It didn't hit anybody,
4 but it was enough to scare them away from me.

5 Q. Oh, okay. So, assault by shooting with teargas, and
6 the possession of the prescription drugs, possession of
7 marijuana. Were you convicted of anything else?

8 A. Driving without -- on a suspended license.

9 Q. Okay, anything else?

10 A. Driving under the influence. I'm not sure. I think I
11 was charged with that.

12 Q. Once, twice, three times?

13 A. Oh, more than once, I believe.

14 Q. More than twice?

15 A. Yes.

16 Q. Have you ever been convicted of it more than twice?

17 A. No.

18 Q. You've not been convicted of driving under the
19 influence more than twice?

20 A. No, not that I can recall. I'm fifty-four now. I'm,
21 I'm thinking way -- you know, over the years.

22 Q. Is it possible you were convicted of it more than
23 twice?

24 A. Under the influence?

25 Q. Yes, ma'am.

1 A. No.

2 Q. Okay. All right, well ---

3 A. Not to my recollection, no.

4 Q. Well, now, is it possible? Are you saying it's
5 possible you were convicted of more than once?

6 A. There's a possibility because there was a time in my
7 life when I was using substance, substances that would have
8 affected my memory. So, there is a possibility at that
9 time that things could have occurred when I was in a
10 confused state that maybe I hadn't -- don't recall
11 everything that happened at that time, but that was years
12 ago, and that was like ---

13 Q. Oh, I understand.

14 A. Yeah.

15 Q. Please, I'm not ---

16 A. And I was just trying to ---

17 Q. All of us, all of us are ---

18 A. I just try clarify the answer.

19 Q. Yes, ma'am. Well, a lot of people have done things in
20 their young life and now they're just glad they, they got
21 through it and everything's fine. So, I'm not ---

22 A. No, I was just trying to clarify.

23 Q. Let me ask you a few other questions here, you as a
24 juror. Now, do you know any of the lawyers involved here?

25 A. No.

1 Q. See the lawyer over with the blue shirt on sitting
2 over there? You know him at all?

3 A. No.

4 Q. Okay. Weren't you prosecuted for one case here in
5 Horry County?

6 A. Yes.

7 Q. What was that?

8 A. It was a possession of prescription drugs and driving
9 on a revoked license.

10 Q. Okay, and that was how many years ago?

11 A. Just last year.

12 Q. Last year?

13 A. Or year before last, year before last.

14 Q. So, year before last you were convicted of possession
15 of prescription drugs?

16 A. 2006. Well, I took a guilt -- I was in jail and I
17 took a guilty plea because I wasn't going to ask anybody to
18 bond me out because it was around Christmas, and I didn't
19 want to put any undue stress on anybody. So, I just took a
20 guilty plea so I could get out of jail in fifty-eight days.

21 Q. You have any concerns or problem with the prosecution
22 office because of any of those things?

23 A. No.

24 Q. Did you have an attorney representing you, a defense
25 attorney?

1 A. Yes.

2 Q. Who was the defense attorney? You remember?

3 A. It was a female. I don't remember her name.

4 Q. Okay. Do you know if she was an African-American, a
5 white person?

6 A. She was a African-American.

7 Q. Was it Orrie West maybe?

8 A. Orrie West?

9 Q. Yes. Thin.

10 A. I don't believe that was her name.

11 Q. Okay, and do you feel any animosity towards that
12 office?

13 A. Oh, no. No.

14 Q. Now, on this particular case, do you have any
15 interest, bias, or prejudice in this case one way or the
16 other?

17 A. No. I don't know anything about it.

18 Q. All right. Have you expressed or formed an opinion
19 about the case or the defendant?

20 A. I don't know anything about it, so I can't.

21 Q. All right. If you're on the jury here, the burden
22 would be on the state to prove guilt beyond a reasonable
23 doubt, and the judge would instruct you. I would instruct
24 you that you presume the defendant innocent, and the burden
25 is on the state to prove guilt beyond a reasonable doubt,

1 not upon the defendant to prove himself innocent. Could
2 you follow that rule?

3 A. Oh, yeah.

4 Q. Further, if the state did not prove guilt beyond a
5 reasonable doubt, then the jury would bring in a verdict
6 of not guilty. If the state did not prove guilt beyond
7 a reasonable doubt, could you bring a verdict of not
8 guilty?

9 A. Of course.

10 Q. If the state did prove guilt beyond a reasonable
11 doubt, could you bring in a verdict of guilty?

12 A. Yes.

13 Q. Okay. Have you discussed this case with anyone at
14 all?

15 A. No. I don't know anything about it.

16 Q. And so you haven't seen anything in the media or TV,
17 news ---

18 A. No.

19 Q. --- anything else? You don't read the local
20 newspaper?

21 A. Only thing I know about it are the charges that you
22 read off yesterday. That's all I know about it.

23 Q. All right. I gave you a list of people's names.

24 A. Yes, you did.

25 Q. Did you look them over?

1 A. Yes, I did.

2 Q. Do you know any of those people?

3 A. No, I don't.

4 Q. Okay, if you hand me the sheet back then and we'll use
5 it again. All right, didn't circle any names there.

6 A. Only been here for four years, and I live with my
7 daughter and grandchildren. So, my circle is very --
8 basically family and grandchildren. So, I really don't
9 know people here.

10 Q. If, if you were on the jury, if the jury decided that
11 the state had not proven guilt beyond a reasonable doubt,
12 then of course the matter would end at that time. If,
13 however, the jury determined that the state had proven
14 guilt beyond a reasonable doubt the crime of murder, then
15 we'd go to another phase. And in the other phase, then the
16 jury would come -- would consider a verdict regarding
17 punishment. And I gave you a sheet with three types of
18 jurors on it, and you reviewed that sheet?

19 A. Yes, I have.

20 Q. Now, the first type of juror is the juror that
21 although in that phase that evidence would be presented in
22 aggravation and mitigation, that juror number one would be
23 a juror that would feel that, that no matter what the
24 evidence is in aggravation and mitigation, that juror would
25 feel that the death penalty is the appropriate sentence to

1 render in all cases no matter what the evidence is in
2 matters aggravation and mitigation.

3 The second type of juror is the juror in that phase
4 that no matter what the evidence in aggravation and
5 mitigation are or is, that that juror would always feel
6 that the -- that life imprisonment is appropriate, and that
7 juror could never give the death penalty for a crime.

8 And the third type of juror is the juror that would
9 not have her mind made up in advance concerning punishment.
10 That juror would want to hear the facts and circumstances
11 in aggravation and in mitigation and would listen to the
12 charges of the law from the judge before she could make her
13 decision regarding punishment. And if after hearing the
14 evidence in aggravation and mitigation and the charge by
15 the judge, if that juror felt it so warranted it, that
16 juror could bring back a verdict of life imprisonment. But
17 if the evidence in aggravation and mitigation so warranted
18 it, that juror could then bring back a verdict of the death
19 penalty.

20 Now, which of those three jurors best describes you?

21 A. Number three.

22 Q. So, if the facts and circumstances so warranted it,
23 you could bring back a sentence of life imprisonment?

24 A. Yes, I could.

25 Q. And if the facts and evidence in mitigation and

1 aggravation so warranted it, bring back a verdict for the
2 death penalty?

3 A. Yes, I could.

4 Q. If the juror, jury were to decide to bring a verdict
5 for the death penalty, each juror would have to sign the
6 sheet. Could you sign that sheet on a verdict for the
7 death penalty if that was the decision of you and the jury?

8 A. Yes, if the facts warranted it.

9 Q. Okay. Now, this case may start Thursday and may last
10 a week or more or less. You will be housed in a hotel and
11 be away from your daughter or family, and the only contact
12 you have would have would basically be supervised by phone,
13 that type of thing. Would that impose an undue hardship on
14 you?

15 A. No.

16 Q. You could do that?

17 A. I don't really have any responsibility right now
18 because I'm unemployed, I'm not married, I live with my
19 daughter and my grandchildren, and my son-in-law is also
20 there and the children are taken care of.

21 THE COURT: Okay. I'm going to let the attorneys ask
22 you a few questions.

23 JUROR: Okay.

24 THE COURT: And then I may have some -- few more for
25 you.

1 Mr. Humphries?

2 EXAMINATION BY MR. HUMPHRIES:

3 Q. Good afternoon, Ms. Bosley.

4 A. Hello.

5 Q. How are you? I am France Humphries, and I'm deputy
6 solicitor. I, along with Solicitor Hembree and Scott
7 Hixson, will be representing the state in this matter.

8 A. Okay.

9 Q. And the judge has, has obviously discussed this with
10 you, but -- and I understand there may be some confusion.
11 Obviously you're not a lawyer, but you have had some
12 substantial contact with the criminal justice system.

13 A. Yes, I have.

14 Q. It's fair to say?

15 A. I have.

16 Q. It is vitally important that in, particularly in this
17 case but in all criminal cases, that each juror who is
18 ultimately seated on the panel is qualified by law.

19 A. Correct.

20 Q. The, the aftermath from, from seating a juror who's
21 not qualified, especially in the case like this, is just
22 almost unthinkable, okay? So, that's why unfortunately we
23 have to dwell on this topic. It's not picking on you. I
24 appreciate your willingness to be here and enduring this,
25 so to speak. I am going to have to ask you a little bit

1 about your prior criminal history just to try and get some
2 specifics, okay?

3 A. Okay. Don't you have a copy of it?

4 Q. Well, I do, but that's the problem. It's from
5 Maryland and unfortunately when we get out-of-state
6 records, often times is not clear and ---

7 A. Okay. I help you in any way I can.

8 Q. I'd appreciate it. Do you know what you could have
9 received when you were found guilty or pled guilty to
10 assault by shooting?

11 A. I know that I could have received more than what
12 happened ---

13 Q. Right.

14 A. --- but I don't really know what I could have
15 received.

16 Q. Do you recall whether it was in high court or ---

17 A. It was circuit court.

18 Q. Circuit, so that's high court there?

19 A. No.

20 Q. Okay.

21 COURT REPORTER: Excuse me, Judge, I need her to pull
22 that mic closer.

23 THE COURT: Sort of get close to that.

24 JUROR: Thank you.

25 THE COURT: Thank you.

1 Q. There are a lot of charges on here which, quite
2 frankly, don't show a disposition, so I want to review
3 those and see if you can help me with them.

4 A. Okay.

5 Q. Okay, and I know some of them go way back.

6 A. Yeah, they do.

7 Q. There is a charge for glue sniffing?

8 A. I was sixteen years old.

9 Q. That's -- we suspected as much. Possession of
10 marijuana, that was in '69. Again, that was when you were
11 very young.

12 A. Yeah. That was.

13 Q. Okay. Receiving stolen goods in '74?

14 A. Yes. That was, that was the guy that I was with.
15 That -- I was with him, so I had a -- I didn't get anything
16 out of that. That's ---

17 Q. It doesn't show disposition.

18 A. Yeah, because they proved that, that he was doing it.

19 Q. I gotcha, and then we got the assault by shooting in
20 '76.

21 A. Yes.

22 Q. And you explained that to ---

23 A. Yes.

24 Q. And that's when your ex-husband and his family would
25 come ---

1 A. They were constantly beating me up and breaking into
2 the property, destroying my car. And after they had done
3 that three times and it seemed like the police couldn't
4 stop them and nobody could help me. I was alone with my
5 daughter. So...

6 Q. You just put the teargas to them?

7 A. Well, I didn't hit them with it.

8 Q. No, I understand.

9 A. But I scared them.

10 Q. Well, I'm with you. There's a failure to appear in
11 '88. Do you know what that was in connection with?

12 A. Yes. That was with connection with a, with drug
13 court.

14 Q. You were in drug court?

15 A. Yes, I was.

16 Q. Okay.

17 A. That's why you're going to see a lot of charges on
18 there.

19 Q. I gotcha.

20 A. Because I had to go to court every two weeks.

21 Q. And we've got one here. It's a great program; it's
22 working really well. This is a possession of cocaine in
23 '89. Were you convicted of that?

24 A. '89 possession of cocaine?

25 Q. Yes. yes, ma'am. Arrest date July 29th of '89 in

1 Baltimore.

2 A. Just the possession of cocaine by itself?

3 Q. Well, let me see. No, no, there's possession of
4 cocaine. You're exactly right. It's a possession of
5 cocaine and a possession of marijuana.

6 A. I was probably guilty of that. I'm sure I was ---

7 Q. Guilty?

8 A. At that time. What was the year?

9 Q. '89.

10 A. I'm sure I was guilty of that in '89.

11 Q. Possession of cocaine.

12 THE COURT: Now, ma'am, were, were you convicted of
13 possession of cocaine and possession of marijuana?

14 JUROR: Was I convicted of it?

15 THE COURT: Yes, ma'am.

16 Q. That's -- were you found guilty? Did you plead
17 guilty?

18 A. I don't think I ever pled guilty in Maryland. It's
19 different up there, the way they do things.

20 Q. Were you -- was there a finding of guilt? Did you
21 receive some sort of sentence as a result, either a fine,
22 probation ---

23 A. In '89?

24 Q. Yes, ma'am.

25 A. I, I, I'm sure I had to be found guilty, but I didn't

1 suffer any ---

2 Q. You didn't go to jail?

3 A. I didn't go to jail.

4 Q. Okay, but you believe you were found guilty?

5 A. I'm sure I was because I'm sure I was doing it at that
6 time.

7 Q. Okay.

8 A. I mean, I'm not going to lie about it.

9 Q. And I really, I, I don't want this to be unpleasant
10 for you, but ---

11 A. Well ---

12 Q. --- you understand why we're ---

13 A. Oh, I do understand. I do understand.

14 Q. There's a theft of auto tags less than \$300. That
15 would have been, like, a municipal level or ---

16 A. Yes. That was traffic, traffic fine.

17 Q. Traffic court? Okay. Again there's a failure to
18 appear. Is it also in connection with the ---

19 A. In drug court.

20 Q. --- drug court with the same time you had possession
21 of marijuana, possession of a Xanax?

22 A. That was drug court.

23 Q. All drug court? There is a '94 possession of cocaine
24 from Baltimore.

25 A. I'm sure it was drug court.

1 Q. Okay. There is a ---

2 THE COURT: I don't mean to interrupt you, but, ma'am,
3 the '94 conviction of cocaine, are you saying you were
4 found guilty and sent to drug court?

5 JUROR: No. I was already in drug court. I had to go
6 every two weeks. I had to go every two weeks ---

7 THE COURT: I know, but ---

8 JUROR: --- to see the judge.

9 THE COURT: If ---

10 Q. Was this, was this a dirty drug test?

11 A. A couple of those are dirty, dirty drug test.

12 Q. Okay.

13 THE COURT: Oh, okay.

14 Q. Okay, but they were able to charge you with possession
15 of cocaine as a result of the ---

16 A. To go in front -- yeah, to take me back in front of
17 the judge.

18 Q. Okay. Then in '94 one month later, possession of
19 Xanax, and they also charge you, at least on this ---

20 A. The possession of Xanax was my prescription, and I
21 wasn't carrying my prescription bottle. So, really it
22 wasn't that I was doing anything illegal. I wasn't
23 carrying around my medicine because I had it stolen a
24 couple of times.

25 Q. I gotcha. At the same time that was possession of

1 Xanax with intent to distribute. So, presumably had your
2 old prescription with you but no ---

3 A. No. I didn't have my old prescription with me.

4 Q. Okay.

5 A. I had half of my prescription with me because, to be
6 honest, a girl had given me some a week before and I had to
7 give her some back to...

8 Q. I gotcha. So ---

9 A. Okay.

10 Q. --- you got some from a friend. You had to pay her
11 back.

12 A. I had to, yeah.

13 Q. There is another failure to appear in '95, drug court?

14 A. That's all drug court.

15 Q. Right, and then we've got to a violation. It says
16 VOP. We think that's a violation of a probation.

17 A. It is.

18 Q. It is, and it says possession of a CDS.

19 A. Oh, well, that's when I went back to the judge and
20 told her that drug court wasn't working for me, and I'd
21 rather just go do my time.

22 Q. Okay, and that's what I wanted to get to because it
23 appears that you were sentenced to nine months as well.

24 A. Yeah. That was the nine months that was left on the
25 probation, and I asked to do the nine months.

1 Q. Okay, and I understand that. Again, that happens
2 here. Some -- drug court is pretty difficult to go
3 through. It's, it has a lot of requirements, and some
4 folks just ---

5 A. Oh, at that time I was on the methadone program.

6 Q. Okay.

7 A. I was on the a methadone program, and they knew it.

8 Q. I gotcha.

9 A. And they just weren't -- she hated every, everything
10 and anything. So, she was...

11 Q. Okay.

12 A. And I wasn't ready.

13 Q. I understand.

14 A. I wasn't ready.

15 Q. It's something that you really have to have commitment
16 to.

17 A. Yeah. It is.

18 Q. Okay. It says that you were sentenced to nine months?

19 A. Correct.

20 Q. Do you know what the potential is that you could have
21 gotten?

22 A. No.

23 Q. When you got the nine months?

24 A. I had already served -- I think I, I'm not sure how
25 much probation I had.

1 Q. Okay.

2 A. But I think I was on it for -- I'm not sure.

3 Q. Well, let me ask you this. Was it in excess of one
4 year that you were potentially exposed to when you got the
5 nine months?

6 A. I imagine it -- I'm not sure. It's not on there?

7 Q. It's really not. It's not. I'm, I'm, -- I'll let you
8 look at it. In fact, I might, might ought to.

9 A. It was a year. I think it was a year's probation, and
10 then I'd gone to these to -- kept going to court and kept
11 going to court and kept going, and I went to court so many
12 times that I, I just said I, you know, I'd rather just go
13 to jail.

14 Q. Okay. That was in '96 is when you got the nine
15 months. It appears that in September of '97 there was an
16 attempt to possess. Doesn't show a disposition.

17 A. Oh, you know -- yeah, but I wasn't attempt -- the
18 police are trying, or selling, like ---

19 Q. They were doing reverses.

20 A. They were doing a thing that I was singing, walking
21 down the street and they got mad because they said that I,
22 I was interfering with their operation.

23 Q. I gotcha.

24 A. So, they pulled me in the van.

25 Q. Okay, and then in September of 2000 -- September is a

1 bad month for you, isn't it?

2 A. Are they all in September?

3 Q. September 20, 2000, there was a, looks like a
4 possession of some kind of perhaps controlled substance
5 times two, and I don't see a disposition on that. Do you
6 have any recollection about that, September of 2000?

7 A. Yeah, I do have an recollection.

8 Q. What is that?

9 A. That, that's prescriptions, my prescriptions that I
10 didn't have with the whole bottle.

11 Q. Were you are found guilty of that?

12 THE COURT: And, ma'am, were you convicted a second
13 offense? Is that what that two means?

14 A. I wasn't -- I took my bottles in for that.

15 Q. Okay, and so they dismissed the charges?

16 A. So, I didn't get any trouble for that.

17 Q. I gotcha.

18 THE COURT: Oh.

19 Q. All right, and then let me take you then to the charge
20 in Horry County where you were charged and ultimately pled
21 guilty to ---

22 A. That was the year before last.

23 Q. Right, possession of controlled substance?

24 A. Right.

25 Q. Did fifty-three days?

1 A. Right.

2 Q. In jail. Kia Wilson I believe was your attorney.

3 Does that ring a bell?

4 A. Female?

5 Q. Yes.

6 A. Afro-American?

7 Q. Yes, okay.

8 A. I only met her right before I went in the courtroom.

9 I never ---

10 Q. I gotcha.

11 A. --- had contact with her.

12 Q. Sure, sure.

13 A. So...

14 Q. Well, let me, let me tell you this. Ms. Wilson is
15 Mr. Ralph Wilson's daughter, who is representing the
16 defendant.

17 A. Oh.

18 Q. And on that occasion, I think what you told the court
19 was that you took a plea for time served because you didn't
20 want to put anybody out for bond money.

21 A. Exactly.

22 Q. Were you guilty of that offense?

23 A. I wasn't guilty of my prescriptions, but I was guilty
24 of driving on a revoked license.

25 Q. But you pled to the drugs?

1 A. Yes, I did. I wanted to get out of jail before
2 Christmas.

3 Q. Right, but you weren't guilty?

4 A. Not to the, not to the prescription.

5 Q. Right.

6 A. I was guilty of driving on a revoked license.

7 Q. Oh, I understand. I understand, but in, in connection
8 with your plea, you would have had to have told the judge
9 under oath that you were guilty of that offense in order to
10 be able to plead to it. Isn't that right?

11 A. I told my, I told my attorney exactly what happened.
12 She went in and based -- and told them. He asked me about
13 the prescription drugs, and I told him exactly what it was.
14 That basically I was really guilty of being poor, couldn't
15 afford a doctor's visits, and they were my prescriptions
16 that I have given someone else, and I had -- was just
17 getting some back to take me till I got to another doctor's
18 visit. So, yeah, I told him that. I don't know exactly
19 what was going on and that I was guilty of driving on a
20 revoked license. I had been down motor vehicles four or
21 five times trying to get my license back.

22 Q. And I understand that's a ---

23 A. So, yes, I told him.

24 Q. But you pled guilty to the possession of controlled
25 substances when, in fact, you believe you are not guilty of

1 that?

2 A. No, because I -- technically I was.

3 Q. Okay, well, and that's the ---

4 A. Technically I was guilty.

5 Q. All right. Well, unfortunately the law is a technical
6 thing. You are currently -- I know it seems like I'm
7 beating up on you. I'm really trying not to. You are
8 currently under a prescription for various medications to
9 assist with anxiety and mood. Is that correct?

10 A. Yeah, but I don't take them anymore. I'm not -- I put
11 on the paperwork ---

12 Q. Yes, ma'am.

13 A. --- that I was taking those medications, but I don't
14 take them anymore.

15 Q. When, when did you stop taking them?

16 A. About four weeks ago.

17 Q. Okay. So, you no longer take the Hydrocodone?

18 A. Not taking any of it.

19 Q. Or the Xanax or the Celexa?

20 A. Not taking any of it.

21 THE COURT: Ma'am, I should ask you. Did you decide
22 on your own to stop taking, or did the doctor ---

23 JUROR: Yes, sir, because I noticed that I was having
24 cramps in the liver area, and I just decided that my body
25 just -- it was just a better idea to deal with the pain and

1 take an Advil or whatever than to possibly ---

2 THE COURT: And that was for depression?

3 JUROR: Yeah, that's true.

4 THE COURT: And so you've been able to handle it
5 without any medication?

6 JUROR: Yeah. I'm doing fine without it; I'm doing
7 fine without it.

8 Q. I said this before, and the judge has told you. This
9 is -- you're testifying here today under oath.

10 A. Yes, sir.

11 Q. And I understand as relates to potential sentences
12 that you could have received that you're telling us
13 you're ---

14 A. I don't know what I could have received.

15 Q. --- you don't know, and I think that's ---

16 A. That's what I'm telling you.

17 Q. I think that's the point that we need to make because
18 you're not telling the court that they didn't carry greater
19 than a year. You're saying you don't know.

20 A. I'm saying I don't know.

21 Q. Could they have carried more than a year and you're
22 just not aware of it?

23 A. I'm sure there's a possibility because if I don't
24 know, I -- they certainly could have.

25 Q. Right, exactly.

1 MR. HUMPHRIES: Ms. Bosley, I again I'm sorry. Thank
2 you so much.

3 JUROR: Okay.

4 MR. HUMPHRIES: I think there may be some other
5 questions. I'm not sure.

6 THE COURT: Questions?

7 MR. WILSON: Judge, may we have one second, judge? We
8 have no questions.

9 THE COURT: Y'all want to approach.

10 (OFF-THE-RECORD BENCH CONFERENCE.)

11 EXAMINATION BY THE COURT:

12 Q. Two things, okay. I want to focus on two areas, okay?
13 You tell me earlier that you may have been convicted of,
14 it's possible you were convicted of DUI more than two
15 times?

16 A. Yes.

17 Q. Okay, and you need to speak in that microphone. I'm
18 sorry ---

19 A. Yes.

20 Q. I know you got to look over here and that's -- but,
21 so, you could have been convicted of a third offense DUI or
22 more?

23 A. Yes, when I, I -- not more than three times, no.

24 Q. All right, but it could have been three. And a while
25 ago in answer to Mr. Humphries' questions, you said back in

1 '94 that when you were charged with marijuana and cocaine
2 possession that, that you were found guilty of the cocaine
3 possession and the marijuana possession?

4 A. That was through urine positive, from a urine positive
5 through drug court.

6 Q. I know. You had to get on drug court. How did you
7 get to drug court?

8 A. Oh, I was at -- how did I get on drug court?

9 Q. Uh-huh.

10 A. Through all my poss -- when I got arrested for the
11 possession, they ask you if you want to go through drug
12 court.

13 Q. All right, and you didn't make it through the drug
14 court?

15 A. No, I didn't.

16 Q. All right. Then you have to be convicted of some
17 crime to ---

18 A. The original charge.

19 Q. And was the original charge cocaine possession and
20 marijuana possession?

21 A. I'm not sure. You have to look at the paper.

22 Q. Well, the paper says in '94 you had possession of
23 marijuana and possession of ---

24 A. That's ---

25 Q. --- cocaine as charges.

1 A. Uh-huh. Correct.

2 Q. And are you saying you went to drug court as a result
3 of those?

4 A. I'm not saying that because I'm not sure.

5 Q. Well, were you ever convicted of possession of drugs?

6 A. Yes.

7 Q. Were you ever convicted of possession of marijuana?

8 A. Yes.

9 Q. Were you ever convicted of possession of cocaine?

10 A. Yes.

11 Q. Okay, and then you went to drug court, but you weren't
12 convicted with that?

13 A. Yes. As to the years and to exactly when I was in the
14 drug court, I'm not sure.

15 Q. I know, but, but in your memory and at some point in
16 time in your past, you've been convicted of marijuana and
17 cocaine possession?

18 A. Yes.

19 THE COURT: All right, any questions, Mr. Wilson?

20 MR. WILSON: I have no questions, judge. I have no
21 questions.

22 THE COURT: Ma'am, if you would step outside the door
23 for me there, please.

24 (THE JUROR EXITS THE COURTROOM.)

25 THE COURT: Now she just told me she was convicted of

1 cocaine possession.

2 MR. WILSON: Your Honor, if you want to hear from them
3 before I speak?

4 THE COURT: Okay.

5 MR. HUMPHRIES: She's a disaster. She's a disaster.

6 THE COURT: Well, now ---

7 MR. HUMPHRIES: She's a disaster for this trial.

8 THE COURT: Now, that's not fair.

9 MR. HUMPHRIES: I am being fair. She is a disaster, a
10 potential disaster to this trial, its outcome, and its
11 subsequent appeals if there are any. She is a disaster and
12 it's one we can avert. She's unqualified based on her own
13 testimony.

14 MR. WILSON: I, I disagree. I think that she's
15 qualified. I think she has answered all the questions
16 appropriately. And, and, and what concerns me the most is
17 the state spent half an hour cross-examining her about her
18 record. She told you she didn't know. She said repeatedly
19 I don't know what the penalties are. I don't know when I
20 got these convictions. I was in drug court. I was in and
21 out of drug court. My mind wasn't clear. And then the
22 court comes back and the court then asked her, again after
23 thirty minutes of cross-examination by the prosecution ---

24 THE COURT: No, sir, no ---

25 MR. WILSON: --- the court ---

1 THE COURT: Now, Mr. Wilson, Mr. Wilson, be fair. The
2 only thing I asked her about was what she did say in the
3 affirmative to Mr. Humphries, that she had been convicted
4 of possession of cocaine. She told that to Mr. Humphries
5 of the 1994 conviction, and those are the only two things I
6 concentrated on. So, three DUIs she said she felt she been
7 convicted of or possible, and the cocaine. I didn't go
8 over anything else. But she had, I thought said she been
9 convicted of and I brought you up to the bench. Y'all were
10 unclear as to whether she said she had been convicted or
11 not. So, I decided to ask her myself make sure I was
12 correct from my memory of what she said.

13 MR. WILSON: And, and I, I -- Your Honor, obviously
14 I'm not going to disagree with anything you say, you know,
15 but for the record I want to say that what, what I
16 recollect was that when Mr. Humphries was, was examining
17 her, she didn't know. She was saying she didn't know; she
18 wasn't certain. And then when the court came back and
19 asked her about it, then she did, yeah, she did say yeah.
20 This is after thirty minutes of going back and forth about
21 what she remembered, of what she didn't remember and when
22 she did, when she didn't. And she finally said well, yeah,
23 I guess. I think I was. She never admitted she knew what
24 the penalties for any of these things were.

25 And on top of that, on top of that is there is nothing

1 in the NCIC which confirms this. It's on there that she
2 was charged. There's nothing on there showing that she was
3 convicted. And I think it's unfair.

4 I think what we are asking her to do is -- well, we
5 don't know for sure, but you prove to us that you did not
6 do this. Don't prove to us that you didn't, and we're
7 going to say that you're not eligible to serve on this
8 jury. I don't, one, think that's her responsibility. It's
9 the state's responsibility. If they want to keep her off
10 this jury, then they have to show that she was convicted of
11 that offense.

12 THE COURT: Even though she said I'm sure I was?

13 MR. WILSON: Judge, yes, sir, she -- I mean, I agree
14 with you. She did say that when court was asking her this
15 last time. Again, I don't even think that that's enough
16 because the fact that she -- she's already said that she
17 was confused about it or when it happened or what happened.
18 And even if she did plead guilty to it, she said, one time
19 I know she was saying that she did this all through drug
20 court and that these were all dirty drug tests that she had
21 which she was in drug court.

22 But again, the responsibility is not hers. The
23 responsibility is the state's to come in and bring some
24 evidence to show this lady was convicted of this offense.

25 THE COURT: Let me ask you this, Mr. Wilson. If the

1 state does not bring in evidence to show that she was
2 convicted because they can't find it, they tried but they
3 can't find it, and then we go through a trial and your
4 client is convicted, and then through whatever expense or
5 whatever efforts y'all do, you'll find she was convicted,
6 than means the trial basically then is no good. So, I, I'm
7 not sure this, this thing about the burden situation.

8 Seems to me the court has to determine from the best
9 evidence it has was she convicted of a crime for which she
10 could have received more than one year.

11 MR. WILSON: Judge, the other issue is -- let's
12 addressed that because the other issue is we don't know.
13 Nobody has said ---

14 THE COURT: Other than her statement.

15 MR. WILSON: Well, no, sir.

16 THE COURT: Statement.

17 MR. WILSON: Judge, my point, though, is nobody is
18 testifying in this trial or in this hearing that the
19 penalty for possession of marijuana, possession of cocaine
20 in the state of Maryland is a year or more than a year. I
21 haven't heard any testimony to that effect. And to say
22 that she's disqualified simply because South Carolina
23 penalty is more than a year, and to say that she's
24 disqualified simply because South Carolina penalty is more
25 than a year is again unfair. The burden -- again, it's not

1 her responsibility. So, so let's ---

2 THE COURT: All right, well, let's discuss that. I, I
3 understood the rule to be that it's what it would have been
4 had it occurred in this state. Now, possession of cocaine
5 is nothing that is that complex. It's possession of the
6 drug of cocaine. So, is your understanding is not what it
7 would have been in the state. It's what it would have
8 carried in the state she was convicted?

9 MR. WILSON: Yes, sir, my ---

10 THE COURT: Is that the state's view of it, or have we
11 ever had anybody to discern that error, Mr. Hembree?

12 MR. HEMBREE: No, Your Honor. We, we were just
13 talking about it, just whispering back and forth with one
14 another whether or not that's the rule or not. I just, I
15 can't say when certainly that's ---

16 THE COURT: I, in and all my discussions with my
17 colleagues, the rule I've always -- we've always acted upon
18 is would it have been more than a year had it occurred in
19 this state because oftentimes we have people come up that
20 you cannot find a record but someone's under oath says I've
21 been convicted of such and such.

22 And for some reason the NCIC doesn't pick everything
23 up, especially from South Dakota and Arizona and all that.
24 And the person says this is what I was convicted, this is
25 the crime, and then you say well, if it were this state,

1 this would carry that type of sentence. So, you're
2 disqualified from service. That was my understanding of
3 the law.

4 MR. WILSON: And obviously, Your Honor, if, if the
5 court's correct and if, in fact, that's -- that she, in
6 fact -- accept the fact that she has said that she believes
7 that she was convicted of possession of cocaine. Then I
8 would have to concede.

9 I don't accept that because I don't think that that's
10 actually the rule. My understanding has always been that
11 it's where the crime occurred, and you got to look at what
12 she was convicted of because otherwise you could be in, in
13 Tallahassee, New Jersey, come here and have and a simple
14 assault there and then all of a sudden you say oh, yes, but
15 you said that there was teargas, so now that's aggravated.
16 That's an aggravated case.

17 THE COURT: And, see, another problem with that, if
18 that's the rule, somebody convicted in 1988 in Missouri,
19 that might be easy to find out in this state what the crime
20 carried in 1988 in South Carolina. But it would be such a,
21 a very difficult task, almost like a school research
22 project to find out what it carried in Missouri in 1988.

23 MR. WILSON: But then you ---

24 THE COURT: And so, therefore, you would spend your
25 time on juries spending days and days and days in

1 researching things of that nature before you ever seat a
2 jury.

3 MR. WILSON: But if you don't do it that way, then
4 you're going to penalize a person. You may penalize a
5 juror, potential juror who, you know, who in their state
6 committed something that would not have prevented them from
7 serving on jury duty. But because now they're here -- they
8 leave from New Jersey. They come to South Carolina and now
9 you say okay, well, what you did in New Jersey would not
10 have prevented you from serving. But because we interpret
11 the Jersey law very differently than New Jersey does, we're
12 going to now say you're excluded from jury service. I
13 mean, how, how else can ---

14 THE COURT: But in New Jersey they may have a six-
15 month rule about -- they may be excluded in New Jersey or
16 something that carries six months when they got a DUI
17 conviction second in South Carolina they'd be excluded, but
18 in South Carolina they would not. So, I mean, you got all
19 these different rules in the states.

20 MR. WILSON: And I, and I understand what you're
21 saying. But as I said again, my understanding is the rule
22 has always been it's the -- what you were convicted of,
23 whether or not that penalty could have been more than a
24 year and, and, and you can't wait to determine whether it's
25 going to be here or whether it's going to be someplace

1 else. It's always got to be where you come from. I don't
2 understand how it could possibly be any other way. but I,
3 I, I mean, I've said my piece and I don't know what else to
4 say about it.

5 THE COURT: Well, I've got these experienced lawyers,
6 two of which have been solicitors in this state, and no one
7 knows what the law is in that regard. I guess I can try to
8 find it out. I think the lady has stated, though, under
9 oath that she was convicted of cocaine possession. So, the
10 only decision I'm going to be making is it that excludes
11 her although it happened in Maryland. I've had judicial
12 conferences in Maryland. If the Maryland '94 carries more
13 than one year, the issue is moot, but I need to find out.
14 What I'm going to do is I'm going to ask the lady step back
15 tomorrow and I'll try to find out tomorrow.

16 MR. WILSON: I understand. Thank you, sir. Thank
17 you, Your Honor.

18 THE COURT: Ask her to come in.

19 (THE JUROR ENTERS THE COURTROOM.)

20 THE COURT: Ms., Ms. -- what I'm going to do is this.
21 Could you come back tomorrow, please, ma'am?

22 JUROR: Yes.

23 THE COURT: What I like for you to do is to come back
24 and be at that door outside. Don't go in any rooms. Just
25 come back tomorrow at 2:30, okay?

1 JUROR: 2:30.

2 THE COURT: And then I'll let you know about it. We
3 got to look up some legal stuff. Not necessarily with you
4 but just to make sure because I'm sure you want to make
5 sure if you're on the jury you're legally qualified.

6 JUROR: Yes.

7 THE COURT: I just need to look up some things there.
8 If you would step out this way, but just be outside that
9 door about 2:30 tomorrow. And, ma'am, please understand I
10 wish you the best and nobody's criticizing you, but there
11 some legal things that ---

12 JUROR: I understand. I understand.

13 THE COURT: --- I have to look up.

14 JUROR: I understand.

15 THE COURT: Okay? Thank you, ma'am. We'll see you
16 then tomorrow.

17 MR. WILSON: Judge, on another matter, I got a call
18 back from, from the doctor that I told you that we called
19 out at in MUSC, and he either wants to speak to the
20 defendant or he wants to speak to the court.

21 THE COURT: Well, how would that be so different? Why
22 would he want to speak to me?

23 MR. WILSON: Well, he ---

24 THE COURT: You got his phone number?

25 MR. WILSON: Yes.

1 THE COURT: Why don't you and Mr. Winkler with the
2 officer, if y'all would step back over there and use your
3 cell phone and just call?

4 MR. WILSON: All right. Thank you, Your Honor.

5 THE COURT: I'm going to make a call to a friend of
6 mine in Maryland.

7 MR. HUMPHRIES: We're making some calls, too, Judge.

8 (OFF THE RECORD.)

9 (THE JUROR ENTERS THE COURTROOM.)

10 THE COURT: Okay, be seated. I told the group that's
11 here at 3:10, go on come back in an hour. Can't really,
12 can't really let the people go until everybody gets here.
13 I am still researching the issue regarding the issue of Ms.
14 Bosley.

15 MR. HEMBREE: Your Honor, we received some additional
16 information since we left your chambers. I'd be glad to
17 share that with the court at this time.

18 THE COURT: What have you received?

19 MR. HEMBREE: We have received a call. I had someone
20 in Columbia do some research on it. They had two findings.
21 One, in that person's judgment, the way the, the way the
22 rule reads it is over a year in the jurisdiction in which
23 they were convicted, not in South Carolina. They did not
24 have case on point on that. That was just the plain
25 reading of the rule. So, that, assuming that -- this

1 person went on to contact the authorities and in, in
2 Maryland. Well, we had to be working on that actually,
3 Your Honor.

4 They -- that person determined that the statute that
5 was in place for simple possession of cocaine in 1989 in
6 Maryland, it was a misdemeanor that carries from zero to
7 four years in prison.

8 That's the message -- that case, the 1989 case is one
9 that Ms. Bosley refers to as a conviction. She indicated
10 both to Mr. Humphries and to the court that the, the July
11 29, 1989 charge, possession of cocaine, possession of
12 marijuana were convictions in Baltimore, Maryland. And
13 she went on later to talk about other possession,
14 possession charges that grew out of drug court, her
15 participation in drug court. That was in the nineties.
16 This was the '89 conviction that she did admit was a
17 conviction.

18 THE COURT: All right. Thank you. Well, she should
19 be back tomorrow. If she's back tomorrow, we'll make our
20 decision on it then.

21 MR. HEMBREE: Thank you.

22 THE COURT: All right, let's go now to Mr. Brown,
23 then, if you would, juror number 47. Mr. Brown, juror
24 number 47, I don't see where he approached the bench.
25 Anybody know if he approached the bench at all?

1 MR. HUMPHRIES: Not in my records, Your Honor.

2 THE COURT: I don't see a number 47.

3 MR. WILSON: No, sir.

4 MR. HUMPHRIES: No, sir.

5 (JUROR #47 ENTERS THE COURTROOM.)

6 EXAMINATION BY THE COURT:

7 Q. Hello, Mr. Brown. How you doing?

8 A. Just fine, sir.

9 Q. I apologize for you having to wait back there so long.
10 I do believe in estimates and sometimes it doesn't work
11 out.

12 A. I understand.

13 Q. Have a seat and relax there. Now, I want to ask you a
14 few questions. Please understand there's no right answers,
15 no wrong answers. Just some questions to get to know you a
16 little better.

17 A. Okay.

18 Q. And remind you that you're still under oath.

19 A. Okay.

20 Q. I see here you're originally from Ohio.

21 A. Yes, sir.

22 Q. What brought you here to South Carolina?

23 A. Work.

24 Q. And says you're a superintendent of Horry-Georgetown
25 Tech. What's -- you say superintendent.

1 A. Superintendent of buildings and grounds. I run the
2 facilities for all three campuses.

3 Q. Okay. It's very difficult, time-consuming job.

4 A. Yes, sir.

5 Q. Keeps you busy. Well, how long you been doing that?
6 Say twelve, fourteen years?

7 A. Fourteen years.

8 Q. Very good. Do you know any of the lawyers in the
9 case, Mr. Brown? Mr. Hembree, Mr. Humphries ---

10 A. Personally, personally? No.

11 Q. Well, how do you know them if you know them at all?

12 A. Just basically seeing them on TV here and there.

13 Q. All right, and the knowledge you may have of them,
14 does that in any way affect your ability to be fair and
15 impartial in the case?

16 A. No, sir.

17 Q. Have you any bias or prejudice or any other type of
18 special interest in this case at all?

19 A. No, sir.

20 Q. Have you formed or expressed an opinion as to the
21 guilt or innocence of the defendant in this case?

22 A. No, sir.

23 Q. Do you know the defendant?

24 A. No, sir.

25 Q. All right. Do you know of any reason whatsoever why

1 you couldn't be fair and impartial in this case?

2 A. No, sir.

3 Q. All right. Would you follow the law as the judge
4 instructed in this case if you were on that jury?

5 A. Yes, sir.

6 Q. All right, and if you're on that jury, Mr. Brown, the
7 jury will listen and pay attention to the evidence in the
8 case, and the judge would instruct the jury on law. One of
9 the laws that I would instruct you on that you said under
10 your oath you follow is that the defendant is presumed
11 innocent, and the state has the burden of proving guilt
12 beyond a reasonable doubt. And the defendant has no burden
13 of proving, of proving himself innocent. Would you follow
14 that rule of law, sir?

15 A. Oh, yes, sir.

16 Q. And if after hearing the evidence in the case and
17 applying the law as the court instructed you, if you felt
18 the state had not proven guilt beyond a reasonable doubt,
19 would you find the defendant not guilty?

20 A. Yes, sir.

21 Q. If, on the other hand, you determined through the law
22 and the evidence as the court instructed, instructs you
23 that the state had proven guilt beyond a reasonable doubt,
24 would you find the defendant guilty?

25 A. Yes, sir.

1 Q. All right. Have you discussed this case with anyone?

2 A. No, sir.

3 Q. Now, it has had some coverage in the media and TV,
4 radio, newspapers. Have you seen anything in the
5 newspapers or heard anything on the radio, seen anything on
6 the TV about this case?

7 A. No, sir.

8 Q. You know anything about it?

9 A. Basically, just -- I basically remember vaguely from
10 several years ago when it happened.

11 Q. Okay.

12 A. But I don't remember anything about it truthfully, no.

13 Q. Do you remember anything just more than what we read
14 in yesterday ---

15 A. No.

16 Q. --- and the allegations?

17 A. No, sir.

18 Q. You do realize those are allegations?

19 A. Yes, sir.

20 Q. Okay, that the defendant is presumed innocent?

21 A. Yes, sir.

22 Q. So, you've not formed any opinion regarding anything
23 you heard from the media about this case?

24 A. No, sir.

25 Q. If for some reason while you're on that jury something

1 else hits your mind and you remembered from seeing it in
2 the media, would you be able to put all that aside and make
3 your decision based on the evidence presented in the case
4 in this courtroom and the law as I instruct it to you?

5 A. Yes, sir.

6 Q. All right. I gave you a list of names on a sheet of
7 paper there. Have you been able to review that list of
8 names?

9 A. Yes, I have.

10 Q. Did you see anybody you knew?

11 A. No, sir.

12 Q. Can I have the list back, please, sir? Okay, so
13 there's nobody here. You didn't circle anybody's name, and
14 I'm looking and you did not.

15 Now if you're on that jury, Mr. Brown, if, if the jury
16 were to determine the state has not proven guilt beyond a
17 reasonable doubt and found the defendant not guilty, then
18 that of course would end the jurors' involvement there.

19 If, however, the jury determined the state had proven
20 guilt beyond a reasonable doubt of the crime of murder,
21 then we would go to another phase if the jury found the
22 defendant guilty of murder, and that phase would be where
23 the jury would consider the issues of punishment. There
24 would be two possible verdicts for the defendant: one life
25 imprisonment, one death penalty.

1 I gave you a sheet of paper talking about three types
2 of jurors. Have you reviewed that sheet of paper?

3 A. Yes, sir.

4 Q. Now, looking on that sheet of paper, it says juror
5 number one is the juror that's in that phase even what the
6 evidence of aggravation and mitigation had been put forth,
7 that that juror no matter what the evidence is, no matter
8 what the circumstances are, that juror would feel that the
9 death penalty is appropriate in each and every case. And
10 that's what they would determine the verdict should be.

11 The juror type two is a juror that no matter what the
12 evidence of aggravation and mitigation presented and the
13 circumstances in that, that other phase of the trial, then
14 that juror would feel that he could never impose the death
15 penalty. And, in fact, they'd always impose life
16 imprisonment because they feel that would be the
17 appropriate type sentence regardless of the evidence in
18 aggravation and mitigation.

19 And the third type of juror is the juror that would
20 want to wait and, and, and not make their mind up in
21 advance concerning punishment. That juror would want to
22 hear the facts and circumstances of aggravation and
23 mitigation. And that juror want to listen to the judge's
24 charge of the law before deciding what the decision should
25 be in punishment. And, and if the facts in aggravation and

1 mitigation presented so warranted, that juror could bring
2 back a verdict of life imprisonment. But, on the other
3 hand, if the facts in evidence so warranted it, that juror
4 could also bring back a verdict of the death penalty.

5 You understand the differences in those three types of
6 jurors?

7 A. Yes, sir, I do.

8 Q. Which one of those best describes you?

9 A. I believe number three.

10 Q. All right. So, if you're on that jury panel, you
11 would -- and y'all got, if you got to the phase where you
12 were considering punishment, you go in that phase with an
13 open mind?

14 A. Yes, sir.

15 Q. And if after hearing the evidence in aggravation,
16 mitigation if you felt so warranted it, you could come back
17 with a verdict of life imprisonment?

18 A. Yes, sir.

19 Q. And if the evidence so warranted it, you could come
20 back with a verdict of the death penalty?

21 A. Yes, sir.

22 Q. If the jury determines the death penalty is what
23 is warranted, the law requires the jurors, all the jurors
24 to sign the verdict form. Could you sign that verdict
25 form?

1 A. Yes, sir.

2 Q. All right. Now, if you were selected as a juror in
3 this case, you would be sequestered for somewhere around a
4 week and could be a little more, could be a little less.
5 And you would be in a hotel. You could have some telephone
6 communications with your family, but it would be
7 supervised. There would be somebody listening while you
8 talk to family members or business.

9 A. I understand.

10 Q. Do you feel that you -- I know it would be
11 inconvenient for you, but you feel it would impose such a
12 hardship that you could not do that?

13 A. No, sir.

14 Q. So, you'd be willing to do that?

15 A. Yes, sir, I would be.

16 THE COURT: All right, I'm going to let the attorneys
17 ask you a few questions, and then after that I may have
18 some other questions for you.

19 JUROR: Okay.

20 THE COURT: For the state.

21 MR. HEMBREE: Thank you, Your Honor.

22 Mr. Brown, Judge Lockemy is covered all the questions
23 I had. Thanks for your patience with us. Please answer
24 any questions defense counsel has for you.

25 THE COURT: All right, Mr. Rathbun, you have

1 questions, sir, for the defense?

2 MR. RATHBUN: Just a couple, Your Honor.

3 EXAMINATION BY MR. RATHBUN:

4 Q. Good afternoon, Mr. Brown.

5 A. How you do, sir?

6 Q. Paul Rathbun. Mr. Wilson and I represent Mr. Winkler
7 in the case at hand. The court's indicated to you that
8 there's a presumption of innocence for Mr. Winkler at this
9 time. Is that right?

10 A. Yes.

11 Q. And you agree to follow, of course, to follow the
12 court's rule on the law?

13 A. Yes, sir.

14 Q. And the court mentioned that we've got a bifurcated
15 type of trial here. That means that the first phase is
16 what they call the guilt phase. And you and eleven other
17 jurors after due deliberation have to determine unanimously
18 a verdict of guilt to get to the second phase. You
19 understand that?

20 A. Yes, sir, I do.

21 Q. And if we do get to the second phase, what we're
22 trying to find out today, and it's kind of backwards, is
23 whether or not you could follow the rule of law and law and
24 either vote for life or vote for death depending on the
25 circumstances. Do you understand that?

1 A. Yes, sir.

2 Q. You also understand that the State of South Carolina
3 and the court have no interest in either way you vote. You
4 vote for life, they're satisfied with that. Do you
5 understand that?

6 A. Yes.

7 Q. And if you vote death, they're satisfied with that.

8 A. All right.

9 Q. And do you hold any opinions on the death penalty that
10 we need to know about?

11 A. No, sir.

12 Q. And you could be fair and impartial?

13 A. Yes, sir.

14 Q. And you will deliberate and go through the facts, pay
15 attention, make your verdict?

16 A. Yes, sir.

17 Q. And you will respect other jurors and their verdict?

18 A. Oh, yes, sir, of course.

19 Q. And you expect them to respect your decision?

20 A. Yes, sir.

21 Q. And if you were in the minority and you fully believe
22 that the verdict you came down with, you could stick with
23 that in the face of pressure from somebody else?

24 A. Oh, yes, sir.

25 MR. RATHBUN: No further questions.

1 THE COURT: All right, if you would, Mr. Brown, if you
2 would step behind that door over there for just one second
3 for me, sir.

4 (THE JUROR EXITS THE COURTROOM.)

5 THE COURT: Okay, position of the state?

6 MR. HEMBREE: Juror's qualified, Your Honor.

7 THE COURT: Position of the defense?

8 MR. RATHBUN: Qualified, Your Honor.

9 THE COURT: All right, bring the juror back in,
10 please. I find him qualified.

11 (THE JUROR ENTERS THE COURTROOM.)

12 THE COURT: Now, Mr. Brown, I found you qualified to
13 serve on this jury. That doesn't mean you're going to be
14 on the jury. What that means is that you'll be in the pool
15 from which the jury is selected.

16 I'm going to let you go home now, and I need you to
17 return Thursday at 11:30 a.m. Go ahead and have good --
18 your clothing and all packed, though, because if you're on
19 the jury, I'll let you go home and get your stuff and come
20 back. You might want to arrange for someone to come back
21 with you on Thursday so that if you are selected that they
22 can go keep the car for you because I don't want you to
23 have to keep the car at the courthouse. So, try to make
24 some arrangements in that regard, okay?

25 Do not talk with anyone about this case. Do not look

1 at any local newspapers or listen to any local news about
2 it, all right, sir?

3 JUROR: Yes, sir.

4 THE COURT: That means don't talk to family or anyone
5 else. Now, you can leave out the door this way, and we'll
6 see you then at 11:30 on Thursday.

7 JUROR: Okay.

8 THE COURT: See you then. Thank you, Mr. Brown.
9 Anything we need to discuss on 469?

10 MR. HUMPHRIES: Nothing from the state.

11 THE COURT: Defense?

12 MR. WILSON: No, sir.

13 THE COURT: All right, bring in 469. That's Ms.
14 Wallace.

15 (JUROR #469 ENTERS THE COURTROOM.)

16 EXAMINATION BY THE COURT:

17 Q. Come on over here. I know you must be tired of
18 waiting.

19 A. Just a bit. Shows in my eyes, right?

20 Q. Well, I know you're human.

21 A. You think?

22 Q. I know you all are a little tired right now.
23 Sometimes I make estimates, and obviously this takes longer
24 than I thought.

25 Now, I'm going to talk with you a little bit. You and

1 I are going to talk, and as normal we're going to look at
2 each other. However, the problem we have is we need to
3 make sure you can speak in that microphone and even over to
4 the side a little bit.

5 A. I think I can manage that.

6 Q. All right. Thank you very much, Ms. Wallace.

7 Now, Ms. Wallace, I want to remind you that you are
8 under oath and that your responses, you know, your legal
9 duty to tell the truth from what I put you under oath from
10 yesterday. You remember that?

11 A. Yes, sir.

12 Q. Now, do you know any of the attorneys in this case?
13 Mr. Hembree, Mr. Humphries, Mr. Wilson, or, or Mr. Rathbun?

14 A. No, sir. Not that I'm aware of.

15 Q. Now, I noticed on your questionnaire, though, that you
16 said Mr. Wilson's ex-wife at one time had been involved
17 with childcare for you?

18 A. No. That's what I was told.

19 Q. Who told you that?

20 A. She never -- you know how people talk. They say, oh,
21 she watches -- you know, she used to be married to Ralph
22 Wilson.

23 Q. Now, would that in any way affect your ability to be
24 fair and impartial in this case?

25 A. No, sir.

1 Q. All right. Have, do you have any special interest or
2 bias or prejudice at all in this case?

3 A. No, sir.

4 Q. Have you formed or expressed an opinion as to the
5 guilt or the innocence of the defendant?

6 A. No, sir.

7 Q. If you were on the jury, the jury will listen to the
8 evidence, and the jury would also have to follow the law as
9 the judge instructed it. And one of the things I would
10 instruct you would be that, that the defendant is presumed
11 innocent, and the state had -- the state has the burden of
12 proving guilt beyond a reasonable doubt, and the defendant
13 does not have to prove himself innocent. Would you accept
14 that instruction and apply that to this case?

15 A. Yes, sir.

16 Q. All right. Do you know of any reason whatsoever why
17 you cannot be fair and impartial both to the state and to
18 the defense?

19 A. No, sir, I do not.

20 Q. On the jury, once I instructed the jurors regarding
21 the burden of proof on the state to prove guilt beyond a
22 reasonable doubt, the jurors would then take in all the
23 evidence that they've heard, follow the law as I instruct,
24 as I instruct. And if, if the jury after hearing all the
25 evidence and applying the law that I instructed it, if the

1 jury felt that the defendant had not been proven beyond a
2 reasonable doubt to be guilty, the jury should then find
3 the defendant not guilty. If that were the case, if you
4 found the state had not proven guilt beyond a reasonable
5 doubt, would you then find the defendant not guilty?

6 A. Yes, sir.

7 Q. All right. Conversely, if the state proves guilt
8 beyond a reasonable doubt, would you find the defendant
9 guilty?

10 A. Yes, sir.

11 Q. All right. Have you discussed this case with anyone?

12 A. No, sir.

13 Q. All right. It has had some coverage in the media with
14 TV coverage, newspaper, that type of thing. Have you read
15 anything ---

16 A. Whoa, whoa, whoa, whoa.

17 Q. --- seen anything about this?

18 A. Wait a minute. I, I, I did discuss the case with
19 someone on this past weekend when I worked, and I told my
20 co-workers I wouldn't see you next week or whatever, and
21 they said well what, you're on vacation? And I said no. I
22 have jury duty and they told me about the case.

23 Q. What did they tell you?

24 A. They just told me that, that that might be one of the
25 cases that I would be called for.

1 Q. Did they tell you what case they were talking about?

2 A. Yes, sir, they did.

3 Q. What was that?

4 A. This, Mr. Winkler's murder case.

5 Q. All right. Did they tell you anything far as what
6 their understanding of the allegations were or anything
7 like that?

8 A. No, sir.

9 Q. So, did you know about what the allegations were
10 before you came in here?

11 A. I did know about the allegations before I came here.
12 However, on my questionnaire I have said I didn't because
13 at that time it didn't ring a bell. And then over the
14 weekend when they told me what was going on and that one of
15 my co-workers would be -- was going to be a witness, that
16 did jog my memory. And it was after I had completed my
17 paperwork.

18 Q. Have you seen that sheet of paper there, all those
19 names on it?

20 A. Yes, sir, I did.

21 Q. Is that person on that sheet of paper?

22 A. Yes, sir, she is.

23 Q. Could I see the sheet there, you circled that?

24 A. Okay, and there's another one, number, I think 50 ---

25 Q. All right. Number 77 is one and the other is -- you

1 didn't circle but one.

2 A. I only circled one because I didn't know if it was a
3 typographical error or if there's another Dr. Wright.

4 Q. Okay, Dr. Wright.

5 A. I think is number 51.

6 Q. Dr. Jeff F. Wright, Loris Healthcare System. You work
7 there at Loris Healthcare System?

8 A. I work for Loris Healthcare System, yes, I do.

9 Q. Okay. Now, I see you've circled Ms. Lisa Gore.

10 A. She's a nurse, and we work together.

11 Q. Okay. If -- well, what do you do there?

12 A. I'm a respiratory therapist.

13 Q. Okay, and if she were to testify in this case, would
14 it cause you to look upon her differently than you would
15 other witnesses in the case?

16 A. No, sir.

17 Q. What about if Dr. Wright is the doctor who works at --
18 cause you to look upon him differently than you would other
19 witnesses in the case?

20 A. No, sir, would not.

21 Q. So, the fact those two people may be witnesses and may
22 testify would not in any way affect your decision by them
23 being who they are? You would still treat them just like
24 you would any other witness?

25 A. That's correct.

1 Q. All right. I'm going to go ahead and assume that Dr.
2 Wright is who you think he is just for the sake of
3 discussion, so I'm going to circle that name.

4 Now as to media, though, have you heard anything about
5 this in, in -- on the TV or seen anything on the TV or read
6 anything about it in the newspaper?

7 A. No, sir, I have not.

8 Q. Well, before you came here, anyone, someone discuss
9 with you what the allegations were other than the fact they
10 mentioned the word murder?

11 A. I'm not sure I understand your question. What
12 allegations other than murder? But that's what I heard.

13 Q. I know, but did they say anything about what they
14 understood the circumstances would be?

15 A. Oh, no, sir.

16 Q. So all you knew, that it was someone charged with
17 murder?

18 A. Yes, sir.

19 Q. You didn't know any of the people involved as far as
20 the alleged victim or any other family members or anything?

21 A. I don't -- no, no sir. I don't know that.

22 Q. Okay.

23 A. So, I'm not sure if they have not been treated in the
24 ER where I've seen them. But as opposed to knowing them, I
25 do not know them.

1 Q. Okay. Now, if you're on the jury and if the jury were
2 to decide that the defendant's guilt had not been proven
3 beyond a reasonable doubt, then at that time that would end
4 the jurors' involvement in the case.

5 If, however, the jurors decided that the guilt of the
6 defendant had been proven beyond a reasonable doubt of the
7 crime of murder, we would then to a -- move to a another
8 phase of the case called the phase where the issue of
9 punishment would be considered. And there, there would be
10 additional evidence presented in regard to that, evidence
11 we term aggravation and mitigation evidence. There the
12 jurors would listen to that evidence in aggravation and
13 mitigation.

14 I gave you a sheet of paper with three types of jurors
15 on it.

16 A. Yes, sir.

17 Q. And I show you that juror number one, if you look at
18 it there, is the juror that in that -- if they were in that
19 phase of considering punishment, that juror would feel that
20 no matter what the evidence of aggravation and mitigation
21 is, that it would -- that that person will always think the
22 death penalty is the most appropriate punishment to give
23 any case no matter what the evidence presented in
24 aggravation and mitigation is.

25 Juror type number two is that juror and no matter what

1 the evidence in aggravation and mitigation presented in the
2 case are, that that juror would feel the -- that juror
3 could never impose the death penalty, and that punishment
4 that juror always give regardless of the evidence would be
5 life imprisonment.

6 And juror number three is a juror that would not make
7 up her mind until after they had heard the evidence in
8 aggravation and mitigation. That juror would want to hear
9 the facts and circumstances and aggravation and mitigation,
10 and also hear the charge on the law from the judge before
11 she could make up her mind regarding punishment. And if
12 the facts so warranted it, after hearing the evidence in
13 aggravation and mitigation, that juror could come back with
14 a verdict of life imprisonment. Also, though, if evidence
15 so warranted it in aggravation, mitigation, that juror
16 could also if the evidence warranted it come back with a
17 verdict of the death penalty.

18 You understand the difference in those three types of
19 jurors?

20 A. Yes, sir, I do.

21 Q. Of those three types, which best describes you?

22 A. Number three.

23 Q. Number three? So, you could listen to the evidence in
24 aggravation and mitigation and if the evidence in
25 aggravation and mitigation so warranted it, you could bring

1 back a verdict of life imprisonment?

2 A. Yes, sir, I could.

3 Q. And if the evidence in aggravation and mitigation --
4 but it, but if it so warranted it, you could bring back a
5 verdict for the death penalty?

6 A. Yes, sir.

7 Q. All depended depending on the evidence presented to
8 you?

9 A. Depending on the evidence, yes, sir.

10 Q. All right. If the jury were to bring back a verdict
11 of the death penalty, that all jurors will have to sign the
12 verdict form. Could you sign the verdict form on the death
13 penalty?

14 A. Yes, sir.

15 Q. All right. This trial will take a week or a little
16 bit less, little bit longer, somewhere in that area.
17 During that time, you would be sequestered in a hotel. You
18 would be able to have some contact with your business or
19 family, but it would be sort of supervised. Somebody, you
20 know, on the other line while you're talking to them on the
21 phone. And so it would require five, six, seven, eight,
22 nine days sequestered. Do you feel that that would cause
23 an undue hardship for you that you couldn't handle?

24 A. Yes, sir.

25 Q. Why is that?

1 A. I have reservations to fly to Philadelphia February
2 8th, the 8th through the 11th.

3 Q. Okay, and did you not reveal that to the clerk when
4 they set out the information about jury duty?

5 A. No, sir. I did not.

6 Q. When did you make these reservations?

7 A. Some time in December.

8 Q. And what is the purpose of the, of the flight?
9 Vacation?

10 A. Yes, sir. It's vacation.

11 Q. This case could take longer than that; it might not
12 take longer than that. If it took longer than that, would
13 you be willing to postpone your flight, or do you -- I
14 mean, I can't make you really, but would you be willing to
15 do that if, if, if it took longer than that?

16 A. I don't -- at the time I made the reservation, I
17 didn't take out the insurance to get your money back.

18 Q. Well, when yesterday I asked the jurors if they had
19 anything they wish to talk with me to request for their
20 jury service to be transferred or some other problems on
21 jury service, you didn't come up and talk to me about that
22 yesterday. Why not?

23 A. Well, I really felt that I was going to be
24 disqualified because I knew, you know, the nurse that was
25 going to be called as a witness. So, I figured that would

1 be it because I didn't think that, you know.

2 Q. Well, when your name was drawn to be on this panel,
3 you could have approached me then, too. So, you've got a
4 non-refundable flight?

5 A. Yes, sir.

6 Q. That's Thursday, February 8th -- Friday, February 8th?

7 A. This Thursday, February 8th.

8 Q. Thursday, February 8th.

9 MR. HUMPHRIES: Friday.

10 Q. Friday.

11 A. Friday. I need to go get -- well, I know it's
12 Thursday through Monday. I'm not good at dates.

13 Q. February 7th is Thursday.

14 A. Well, maybe it's the seven to the 11th.

15 Q. Do you have your ticket with you at all?

16 A. No, sir. I don't have it with me.

17 (A PAUSE.)

18 A. Yeah, that's it, the 7th through the 11th.

19 Q. Other than that, any other matters?

20 A. No, sir. I do have a fourteen year-old, but I, you
21 know, can make arrangements for her, for my mom to stay
22 with her because she's staying during my, during my time
23 away.

24 THE COURT: Okay, how about if you would step out the
25 door for me, please.

1 THE COURT: Okay.

2 (THE JUROR EXITS THE COURTROOM.)

3 THE COURT: Okay, she's got tickets so, I mean, I
4 guess I can require verification, but who knows whether
5 this case is going to go on to Thursday or not. There's no
6 way I can hold her. I've let other people go who have non-
7 refundable tickets. Position of the state?

8 MR. HEMBREE: Your Honor, we, I think this case will
9 be finished. I think if she were traveling on Friday, I
10 would feel a lot more comfortable that we could accommodate
11 her, but with her leaving Thursday, that's cutting this
12 case close. I just ---

13 THE COURT: Mr. Wilson?

14 MR. WILSON: Judge, I guess my question would be I
15 know she didn't tell us up front, but were the reservations
16 made before she ---

17 THE COURT: Yes, asked her. She said made them in
18 December. I think she said December. Did y'all hear
19 December?

20 MR. WILSON: That's the only concern I have, that she
21 made them after she got her notice.

22 THE COURT: When did they get these notices?

23 MR. HUMPHRIES: They got sent out December -- no, it
24 was earlier than that. When was it sent out? December
25 when they send out a notice?

1 CLERK OF COURT: December 5th.

2 MR. HUMPHRIES: That's what I thought.

3 MR. WILSON: I mean, that's my only concern. I mean,
4 I don't have an opinion. If she could say she had done
5 this before -- she'd gotten her reservations before the
6 notices -- I don't have any trouble whatsoever. I just, it
7 just bothers me that after the death penalty notice, then
8 they go and schedule a vacation knowing that they've got to
9 be here.

10 And I, I -- and, and I've been consistent or least
11 I've tried to be consistent about that. As long as I know
12 they've done it beforehand, I've got no problems. But if
13 they've done it after they got their notices then, you
14 know, my position has been that, you know, that I'm sorry,
15 but ---

16 THE COURT: Of course, they weren't told when they got
17 notice how long the trial would be.

18 MR. WILSON: That's true.

19 THE COURT: How would they know. 28th January, --
20 about ten days later, twelve days later.

21 MR. WILSON: I understand that. I just can't consent
22 because I tried to -- my position on it has been from the
23 beginning that if they have those beforehand, I have no
24 objection and I've tried to stick to that. If they made
25 them after, I know I specifically went on the record on one

1 juror saying they had made reservations after they got
2 their notice, and so I try not to, to back up again. So, I
3 guess for the record I have to say I object, but I'm not
4 going to be unhappy.

5 THE COURT: All right. Bring her back in. I'm going
6 to put on record when she did this because she said she
7 thought she would be disqualified.

8 (THE JUROR ENTERS THE COURTROOM.)

9 THE COURT: Ms. Wallace, come around over here one
10 second for me, and as far as -- do you remember when you
11 got, when you made these reservations, ma'am?

12 JUROR: Sir?

13 THE COURT: Do you know when you made these flight
14 reservations?

15 JUROR: No, sir. I don't know exactly when. I don't
16 know the date, if that's what you mean.

17 THE COURT: Well, let me ask you this. Was it after
18 you got your summons for jury duty?

19 JUROR: Yes, sir. It was after.

20 THE COURT: Why would you go make the reservations
21 after you got a summons for jury duty?

22 JUROR: Well, because I have served on a jury before,
23 and I never gave any thought to -- I looked at the date and
24 I said, well, it's the 28th of January and that's, like,
25 more than a week before my flight out, and I figured it

1 would be safe to make it. But I did have the jury
2 questionnaire and summons at the time.

3 THE COURT: All right, but you thought it would be a
4 one week term of court like what you had in the past?

5 JUROR: Yes, sir. Well, yesterday when I saw that
6 lady going to sit back down, I said there's no sense on
7 going out there. Make you sit back down, too, so that's
8 why I didn't bring, why I didn't bring it. I didn't see
9 her walk out the door. She had -- but, nevertheless, yes,
10 sir, I did have the information that I was going to serve.
11 But I figured my service would be over ---

12 THE COURT: See, but that lady's reservation was,
13 like, the 14th or 15th or 16th as I recall -- sort of
14 situation may or may not be that long but it could very
15 well be.

16 JUROR: I'm sorry. It was an assumption on my part.

17 THE COURT: All right. I'm going to ---

18 MR. WILSON: Your Honor, can I speak to you before you
19 make your ---

20 THE COURT: Yes, sir. You can step back out there one
21 more time. I hate to bother you, but ---

22 JUROR: Yes, sir.

23 (THE JUROR EXITS THE COURTROOM.)

24 (OFF-THE-RECORD BENCH CONFERENCE.)

25 (THE JUROR ENTERS THE COURTROOM.)

1 THE COURT: Ms. Wallace.

2 JUROR: Yes, sir.

3 THE COURT: What I'm going to do at this time, I think
4 in good faith you made those reservations. You had no way
5 of knowing this would be a two or three week long term of
6 court. And so for that reason then I'm going to excuse
7 you. I wish to transfer you to another term of court.

8 We'll send you another notice. You come back for jury
9 duty at another time. All right, you can step back out
10 that way. Have a good time in Philadelphia.

11 JUROR: Thank you.

12 (QUESTIONNAIRE OF JUROR #469-WALLACE MARKED INTO
13 EVIDENCE AS COURT'S EXHIBIT NUMBER 5-E.)

14 THE COURT: All right. Bring Douglas Craig around,
15 please. I don't see him on my list anywhere.

16 MR. HUMPHRIES: No, sir. The state doesn't have
17 anything.

18 (JUROR #101 ENTERS THE COURTROOM.)

19 EXAMINATION BY THE COURT:

20 Q. Mr. Craig, how you doing?

21 A. Doing good.

22 Q. Waiting a while?

23 A. Yes, sir. It's a little more difficult.

24 Q. We've been here all day. Go ahead and have a seat and
25 relax there for a minute. Now, Mr. Craig, I need you to be

1 able to speak loud enough so we all can hear you. I know
2 you, you're going to be speaking to me initially, and that
3 microphone's on your side. So, can you move around a
4 little bit and get a little closer to it?

5 A. Yes, sir.

6 Q. All right. Now, I remind you that you are under oath.
7 Remember we put you under oath yesterday?

8 A. Yes, sir.

9 Q. So, you're still under oath, and you're originally
10 from Horry County here?

11 A. Yes, sir.

12 Q. And you're in heating and air-conditioning?

13 A. Yes, sir.

14 Q. Boy, I bet you keep busy.

15 A. Yes, sir, we sure do.

16 Q. You own your own business or you work for someone?

17 A. My father owns the business, but it's just me and him.

18 Q. Okay, Craig Service ---

19 A. Yes, sir.

20 Q. Now, Mr. -- oh, interesting birthday: [REDACTED]

21 [REDACTED] And I bet you get kidded about that a lot, don't you?

22 A. All the time.

23 Q. Now, Mr. Craig, I want to ask a few questions. Do you
24 know any attorneys here? Mr. Hembree, Mr. Humphries, or
25 Mr. Wilson, or Mr. Rathbun?

1 A. No, sir.

2 Q. All right. Do you have any special interest or bias
3 or prejudice in this case at all?

4 A. No, sir, not particularly.

5 Q. All right, have you formed or expressed any opinion as
6 to the guilt or the innocence of the defendant?

7 A. No, sir, sure haven't really.

8 Q. Do you know any reason whatsoever why you cannot give
9 both the state the defendant a, a fair and impartial trial?

10 A. No, sir.

11 Q. A juror must follow the instructions of law as given
12 by the judge. Would you do that?

13 A. Yes, sir.

14 Q. All right. If you were selected on the jury, the
15 jurors would be presented evidence, witnesses, exhibits,
16 things of that nature, and the judge would instruct the
17 jury the law is that you must presume the defendant
18 innocent, and that the state has the burden of proving
19 guilt beyond a reasonable doubt, and the defendant does not
20 have to prove himself innocent. Would you accept and
21 follow that rule of law?

22 A. Yes, sir.

23 Q. All right. On that jury, the evidence and exhibits
24 and things and the rule of law would be provided to the
25 jury. And after the -- all that is completed, the jury

1 would come back into its deliberations and discuss and
2 determine whether or not the state had proven guilt beyond
3 a reasonable doubt. If in your view, if the state had not
4 proven guilt beyond a reasonable doubt, could you bring in
5 a verdict of not guilty?

6 A. If everything was beyond -- in no -- not what?

7 Q. If the state had not proved guilt beyond a reasonable
8 doubt, could you bring in a verdict of not guilty if the
9 state did not prove it?

10 A. Yeah. Yes, sir.

11 Q. Because you would accept the principle that the state
12 has the burden of proof that the defendant does not have to
13 prove himself innocent, but the state must prove him
14 guilty. You understand that principle, sir?

15 A. Not exactly. So, you're saying that the, the state
16 already has --

17 Q. That in a trial, in a criminal trial, the state brings
18 allegations, and the state has the burden of proving those
19 allegations beyond a reasonable doubt. That's the burden
20 of the state: to prove that the defendant is guilty beyond
21 a reasonable doubt. The defendant is presumed innocent
22 unless the state can prove his guilt beyond a reasonable
23 doubt. The defendant does not have to prove himself
24 innocent. So, now you understand what I'm saying?

25 A. Yes, sir.

1 Q. Now, would you accept that principle?

2 A. No, sir.

3 Q. You would not?

4 A. No, sir.

5 Q. Why not?

6 A. Well, if, if I'm understanding you correctly, you're
7 saying that there's already enough allegations ---

8 Q. No, sir. No, sir.

9 A. Okay, I'm sorry.

10 Q. I'm saying that allegations are brought for a jury,
11 for a jury to determine if the state proves guilt beyond a
12 reasonable doubt. When the case begins, the defendant --
13 since no evidence has been presented in a court of law,
14 then as the case begins, the defendant is presumed
15 innocent.

16 A. Okay.

17 Q. That's how we begin the case.

18 A. Yes, sir.

19 Q. And the perception stays there unless the state proves
20 guilt beyond a reasonable doubt. Other words, if you go
21 into a trial, the defendant doesn't have to prove anything.

22 A. Yes, sir.

23 Q. It's not up to the defendant to prove anything or
24 prove himself innocent. The state must prove he's guilty,
25 and the case begins with the presumption, in fact, that the

1 defendant is innocent. Now do you understand what I'm
2 saying?

3 A. Yes, sir, I understand now. I'm sorry.

4 Q. Now, would you follow that rule of law?

5 A. Yes, sir.

6 Q. All right. So, if after the case has been completed,
7 you've heard all the evidence and you heard my instruction
8 on law, if after hearing all the evidence you feel the
9 state has not proven guilty, proven the defendant guilty
10 beyond a reasonable doubt, if you feel the state has not
11 done that, would you be able to bring back a verdict of not
12 guilty if the state has not proved him guilty?

13 A. Yes, sir.

14 Q. All right. If, on the other hand, you feel the state
15 has proven the defendant guilty beyond a reasonable doubt,
16 could you bring in a verdict of guilty?

17 A. Yes, sir.

18 Q. All right. Have you seen anything about this in the
19 media or TV or heard it on the radio?

20 A. Be honest with you, very little.

21 Q. What is it that you remember you saying or heard or
22 read?

23 A. Just to what had come about in the -- recently in the
24 last month or so where they just said where they just kind
25 of briefly explained that there'd be, like, three trials of

1 murder cases. Nothing real specific on this particular
2 case at all.

3 Q. Well, I mean, did they mention there were several
4 murder cases?

5 A. Yeah, several.

6 Q. And this was one of several cases?

7 A. Yes, sir.

8 Q. All right. Did that cause you to form any opinion at
9 all about the defendant's guilt or innocence?

10 A. No, sir, not really. I don't, I don't know enough
11 about it to, to form any sort of opinion at this point.

12 Q. All right. Okay, and if you're on that jury, could
13 you put aside anything you've seen on the news or read in
14 the newspaper and make your decision based on evidence
15 presented in the trial and the law as I instruct it to you?

16 A. Yes, sir.

17 Q. All right. Now, I gave you a list of names on several
18 sheets of paper. Do you have that with you?

19 A. Yes, sir.

20 Q. Did you know anybody on that sheet?

21 A. No, sir, I sure didn't.

22 Q. Okay. Could you handle that to me, please?

23 A. Yes, sir.

24 Q. I see nothing's been circled. Now, if you were on
25 this jury, if the jury were to determine after the case had

1 been submitted to the jury, after all the evidence has been
2 presented and the jury's deliberation, if the jury
3 determines the state has not proven guilt beyond a
4 reasonable doubt, then they would find the defendant not
5 guilty and that would end the jurors' participation in the
6 case.

7 If, however, the jurors determined, were to determine
8 that the state has proven guilt beyond a reasonable doubt
9 of the crime of murder, then if the jury comes back with a
10 guilty verdict on that charge, then we would go to another
11 phase where the jury would consider the issue of
12 punishment. And in that second phase, the additional
13 evidence in aggravation, mitigation, both sides would be
14 presenting for the jury to decide the issue of punishment.

15 Now, I gave you three types of jurors there on a sheet
16 of paper. Did you read those three types?

17 A. Yes, sir.

18 Q. And you noticed that type one is that type juror that
19 would feel that if, if that juror was on the jury, that if
20 a person had been convicted, convicted of murder that the
21 death penalty is the appropriate sentence in every case
22 regardless of the circumstances. No matter what was
23 presented in evidence in mitigation or aggravation, that
24 juror would consider the death penalty as the most
25 appropriate sentence.

1 The other juror is the juror that no matter what the
2 evidence in aggravation and mitigation are, that juror
3 could, could never impose the death penalty and would
4 always impose a verdict of life imprisonment no matter what
5 the evidence or circumstances were.

6 And the third type of juror is a juror that would not
7 have made up his mind in advance concerning punishment.
8 That juror would first listen to the evidence in
9 aggravation and mitigation as well as instructions from the
10 judge and would want to hear the evidence in aggravation
11 and mitigation before he made his mind regarding
12 punishment. And if after hearing, hearing the evidence in
13 aggravation and mitigation, that juror, if the evidence so
14 warranted it, would come back with a decision, a verdict
15 for life imprisonment. Or if after hearing the evidence in
16 aggravation and mitigation, if that juror felt the evidence
17 so warranted it, that juror could bring back a verdict of
18 the death penalty.

19 Do you understand the difference of the three types of
20 jurors?

21 A. Yes, sir, I sure do.

22 Q. Which one of those best describes you?

23 A. I say type two.

24 Q. Type two?

25 A. Yes, sir.

1 Q. Other words, you feel that regardless of what evidence
2 in aggravation or mitigation submitted, you could never
3 bring back a sentence of the death penalty?

4 A. No, sir. I don't believe so.

5 Q. Is your opposition to the death penalty for murder so
6 fixed and so, so firm that you're so committed to it and
7 could not be changed before the beginning of the trial? I
8 I mean, can, can you -- could you if you felt the evidence
9 in aggravation was so, was so warranted that you could
10 never impose the death penalty?

11 A. I don't think I could, no, sir.

12 Q. Is that because you're opposed to the death penalty in
13 all circumstances?

14 A. No, sir, not, not -- can I explain, sir?

15 Q. Yes.

16 A. I feel that the death penalty myself is, is too easy
17 of a way out for something like that. I think if somebody
18 has to sit in, in jail for the rest of their life, I
19 think's a much harder sentence than to be put to death. I
20 mean, that's, that's just my feelings on it and that's, I
21 mean, that's just the way I've always felt about it
22 personally. It's, you know, it's just too easy way out for
23 someone who's committed the crime of such.

24 Q. So, you feel that way such that, that in the phase if
25 both sides are presenting evidence and discussing their

1 views regarding what the evidence shows as far as their
2 submission, that in no case ever you could impose capital
3 punishment or the death penalty?

4 A. Me, personally, no, sir. I don't think I --

5 Q. Only because you feel that would not be a severe
6 enough sentence?

7 A. Yes, sir. I mean, I feel that I, I'm not saying that
8 the death sentence is, is, is wrong, but for, for me to
9 make that decision, I, I don't feel that, that I can do it
10 personally because it -- because of me believing that or
11 feeling like it's such an easy way out for somebody, where
12 if -- the last thing I want to do would be to sit in a jail
13 cell for the rest of my life.

14 Q. Can you imagine any circumstances submitted to you if
15 you're on that jury that would change your position in that
16 regard?

17 A. No, sir, I...

18 Q. Sir?

19 A. No, sir.

20 THE COURT: All right, I'm going to let the attorneys
21 ask you a few questions if you would if they wish to.

22 State?

23 EXAMINATION BY MR. HUMPHRIES:

24 Q. Mr. Craig, I'm Fran Humphries; I'm the deputy
25 solicitor.

1 A. Yes, sir.

2 Q. Let me get it straight right off the bat. Ain't
3 nobody here going to try and change your mind. That's not
4 what we're here for.

5 A. Yes, sir.

6 Q. We here for exactly what the court's already done with
7 you, and that's to determine where you are in terms of the
8 death penalty. Obviously to sit on this jury, you or any
9 other juror would have to be the kind of juror who could
10 listen to the evidence in aggravation, evidence in
11 mitigation, and then and then only render a verdict either
12 life or death. You'd have to be able to impose either life
13 or death depending on the facts and circumstances, your
14 view of those.

15 Again, nobody's trying to change your mind. As I
16 understand, what you've told the court is that under no
17 circumstances could you personally impose the death
18 penalty, which is something you'd be called upon if that
19 was your view of the evidence to do.

20 A. Yes, sir.

21 Q. Okay. Is that correct that you've told the court that
22 under no circumstances could you personally vote for the
23 death penalty based on the way you feel about the death
24 penalty verses life imprisonment?

25 A. Yes, sir.

1 Q. Under no circumstances?

2 A. Yes, sir.

3 MR. HUMPHRIES: Well, I appreciate it. That's exactly
4 what we need to know and you've done your duty. Thank you,
5 sir.

6 THE COURT: Mr. Wilson?

7 MR. WILSON: I just have a couple of questions.

8 EXAMINATION BY MR. WILSON:

9 Q. Sir, let me ask you just so I'm clear, and I, I heard
10 your responses to the solicitor and, and to the judge. Is
11 it your belief that the death penalty is wrong or unfair
12 and that's why you can't do it? Are you opposed to the
13 death penalty? Is that I'm asking you? I guess that is
14 what I'm asking you.

15 A. No, sir, I'm not opposed to it so to say.

16 Q. All right.

17 A. But I don't personally feel that, that it's, that it
18 should be up to me personally to choose that for somebody.
19 And like I told the judge, that I just feel that it's, it's
20 an easy way out for -- if you are convicted for murder,
21 it's a much simpler way out of life than to be put for life
22 imprisonment.

23 Q. Okay, and -- but you're saying that as far as you're
24 concerned, you could never, no matter what the
25 circumstances and no matter how strong the evidence or no

1 matter how egregious the conduct, you could never impose
2 the -- that you could never vote for it, for the death
3 penalty?

4 A. No.

5 Q. Is that what you're saying?

6 A. Yes, sir. That's what I'm saying.

7 MR. WILSON: I understand. I have no further
8 questions. Thank you.

9 JUROR: Yes, sir.

10 THE COURT: Either side have any comments for the
11 court?

12 MR. HUMPHRIES: No, sir.

13 MR. WILSON: No, sir.

14 THE COURT: All right. Mr. Craig, I appreciate your
15 candor, but as already been indicated to you, the jurors
16 must be jurors that could do one or the other.

17 JUROR: Yes, sir.

18 THE COURT: Depending on the facts and circumstances
19 if we got to that point.

20 JUROR: Yes, sir.

21 THE COURT: So, I do appreciate it, but I'm going to
22 find you're not qualified for this case.

23 JUROR: Yes, sir.

24 THE COURT: Any objection from state or from the
25 defense?

1 MR. HUMPHRIES: No, sir.

2 MR. WILSON: No, sir.

3 THE COURT: Okay. Now, Madame Court reporter, you
4 have both no objections on the record?

5 COURT REPORTER: Yes, sir.

6 THE COURT: Okay. You may leave at this time, sir,
7 and you don't need to come back. I appreciate it, sir
8 appreciate it.

9 JUROR: Yes, sir

10 (A PAUSE.)

11 THE COURT: Okay, if you would, if that person's had
12 time to look at it, that will be, the person's name will be
13 Sandra Thompson.

14 (JUROR #450 ENTERS THE COURTROOM.)

15 EXAMINATION BY THE COURT:

16 Q. Ms. Thompson, I see that you're originally from
17 Greenville, way up in the upstate. Now, what we're going
18 to do is you and I going to talk, but I need this lady over
19 here who's got a mask on her face?

20 A. Right.

21 Q. I need for her to be able to hear what you're saying.
22 And, say, if you and I were talking outside or a coffee
23 shop, I could do this or that and all that, but in court
24 you got to make a sound like yes or no, and you've got to
25 do it in that microphone right there so everybody can hear

1 you. Can you move a little closer to it for me?

2 A. Yes, sir.

3 Q. There you go. Oh, no, no, that was fine. It was
4 great. Just keep going in that tone, so keep speaking to
5 the microphone.

6 Now, Ms. Thompson, you realize that you're still under
7 oath?

8 A. Yes, I do.

9 Q. Okay, and I want to ask you a few things about you as
10 a juror, as a potential juror.

11 Now, are you related or know any of the attorneys
12 involved in these cases? Mr. Hembree, Mr. Humphries, Mr.
13 Wilson, or Mr. Rathbun?

14 A. No, sir, I don't.

15 Q. Okay. Do you have any special interest, bias, or
16 prejudice in this case?

17 A. No, sir.

18 Q. Have you formed or expressed any opinion as to the
19 guilt or the innocence of the defendant?

20 A. No, sir. I've never even heard of this.

21 Q. Okay. So, you've heard no -- you don't even know the
22 defendant at all?

23 A. No, sir.

24 Q. All right. Would you follow, if you were on a jury,
25 would you follow the law as the judge, me, would instruct

1 you?

2 A. Yes.

3 Q. And do you know any reason whatsoever why you could
4 not give both the state and the defendant a fair trial in
5 this case?

6 A. No, sir, I don't know.

7 Q. All right. If you were to get on the jury, as the
8 judge I would tell you the law is that the jury must follow
9 this law: that in our nation, a person charged with the
10 crime is presumed innocent. Therefore, you should presume
11 the defendant innocent of the charges. That the state has
12 the burden of proving guilt beyond a reasonable doubt. The
13 defendant does not have to prove himself innocent; the
14 state must prove him guilty beyond a reasonable doubt.
15 Would you follow that rule of law?

16 A. Yes, sir.

17 Q. All right. Then if you're on that jury, after all the
18 evidence has been submitted and I've given you my
19 instruction all law, if after all that, if you feel that
20 the state has not proven guilt beyond a reasonable doubt,
21 would you be able to return a verdict of not guilty if the
22 state's not proven the defendant guilty?

23 A. Yes, sir.

24 Q. All right. If, on the other hand, you felt the
25 evidence presented that the state had proven the defendant

1 guilty beyond a reasonable doubt, could you bring back a
2 verdict of guilty?

3 A. Yes, sir.

4 Q. All right. Have you discussed this case with anyone?

5 A. No, sir.

6 Q. This case has had some coverage in the media with
7 newspapers, TV, radio. Have you read, seen, or heard
8 anything about this case in the media?

9 A. No, sir, I have not.

10 Q. You don't read the *Sun News* or watch the local news or
11 anything?

12 A. I'm gone from here maybe four or five months a year,
13 and I don't know anything ---

14 Q. Really? Where do you go for five months a year?

15 A. Kansas.

16 Q. Kansas. Why? Why Kansas?

17 A. My mother-in-law's there.

18 Q. Oh, so y'all go visit out there?

19 A. I don't know anything about this; I've never heard of
20 it.

21 Q. All right. Now, I give you a, a list of names on a
22 sheet of paper there. Do you have that list with you?

23 A. I do.

24 Q. Do you know anybody on that list?

25 A. No, sir. I do not.

1 Q. Could you hand me that list back, please, ma'am?

2 Okay. Now, if the -- if you were on this jury, if you as a
3 juror felt the state had not proven guilt beyond a
4 reasonable doubt and found the defendant not guilty, that
5 would end the jury's, end the jury's service in that
6 matter. If, however, the jury were to determine that the
7 state had proven guilt beyond a reasonable doubt of the
8 crime of murder, we would then go to another phase where
9 the jury then would be considering the issue of punishment.
10 And in considering the issue of punishment, the jurors
11 would be given evidence in aggravation or mitigation
12 regarding the defendant and regarding the issue of
13 punishment.

14 Now, I gave you a sheet of paper with three types of
15 jurors on that.

16 A. Yes, sir.

17 Q. Did you review that piece of paper?

18 A. Yes, sir, I did.

19 Q. And do you understand the difference?

20 A. I do.

21 Q. And you remember that juror type one that you have in
22 front of you there is a juror that, that in that phase of
23 considering the issue of punishment, that that juror type
24 one is one that would have already made their mind up that
25 if the defendant is, is proven guilty of murder, that the

1 most appropriate punishment, no matter what the
2 circumstances, is the death penalty. And that juror would
3 not need to hear evidence in aggravation and mitigation.
4 That juror would have made their mind up that since the
5 defendant was found guilty of murder, it should always be
6 the death penalty.

7 The next juror is a juror that under no circumstances
8 could ever impose the death penalty. That juror, no matter
9 what the evidence of aggravation and mitigation are, that
10 juror would always give a verdict of life imprisonment.
11 They could never impose the death penalty.

12 Juror type three is a juror that would not have made
13 her mind up in advance concerning punishment. That juror
14 would need to hear the facts and circumstances in
15 aggravation and mitigation as well as the charge on the law
16 from the judge before she could make up her mind regarding
17 what the appropriate punishment is. That juror would want
18 to hear the evidence in aggravation and mitigation and
19 after hearing the evidence in aggravation and mitigation
20 and following the instructions on the law by the judge, if
21 that juror felt it was appropriate, that juror could bring
22 back a verdict for life imprisonment. Also, however, if
23 that juror after hearing evidence in aggravation and
24 mitigation and the charge from the judge, if that juror
25 felt it was appropriate, that juror could bring back a

1 verdict for the death penalty.

2 Do you understand the difference in those three types?

3 A. I did, sir.

4 Q. All right. Of those three types, which best describes
5 you?

6 A. Type three.

7 Q. All right. So, you would come into that phase of the
8 trial, if we got to that point, open minded regarding what
9 punishment would be appropriate? You would be open minded?

10 A. Yes, sir.

11 Q. And you would not make your decision until after you
12 read the evidence in aggravation and mitigation and my
13 charge on the law?

14 A. No, sir, I wouldn't make a decision ahead of time.

15 Q. Okay, and the, and if after hearing the evidence, if
16 you felt it was appropriate, you could bring back a verdict
17 for life imprisonment if you felt it was appropriate?

18 A. Yes, I could.

19 Q. And if you felt it was appropriate, you could bring
20 back a verdict for the death penalty?

21 A. Yes, sir.

22 Q. Now, if the jury were to bring back a verdict for the
23 death penalty, the law requires that each juror sign the
24 verdict form. Could you sign the verdict form ---

25 A. Yes, sir.

1 Q. --- if you thought it was appropriate?

2 A. Yes, sir.

3 Q. Okay. Now, Ms. Thompson, if you were selected as a
4 juror in this case, it would require that you be
5 sequestered for somewhere around a week. Could be one week
6 little more, little less, and that means you'd be at a
7 hotel and we'd be bringing you back and forth to court,
8 providing you with food and everything like that. And you
9 be away from your family, but we will let you make phone
10 calls here and there. But it would be supervised.

11 Somebody would be on line with you. Would that cause such
12 an undue burden on you that you could not handle that, or
13 could you do that?

14 A. No, sir, it wouldn't be any burden for me.

15 Q. You could do it?

16 A. Oh, I can do it, yes, sir.

17 THE COURT: All right, I'm going to let the lawyers,
18 if they wish you, ask you some questions and if I had other
19 questions, I'll ask you in a second. So, just make sure
20 you answer in the microphone, okay?

21 JUROR: Yes, sir.

22 THE COURT: All right, any questions from the state?

23 MR. HEMBREE: Thank you, Your Honor. Very briefly.

24 EXAMINATION BY MR. HEMBREE:

25 Q. Hey, Ms. Thompson. Are you tonight?

1 A. Hello.

2 Q. Not quite tonight. This afternoon. I'm Greg Hembree;
3 I was introduced to you yesterday. I'm the solicitor who
4 will be trying this case, along with Deputy Solicitor Fran
5 Humphries and another lawyer in our office, Scott Hixson.
6 He's not in the courtroom right now.

7 I noticed from your jury questionnaire that you worked
8 with the South Carolina Department of Probation, Pardon,
9 and Parole Services?

10 A. Yes, I did.

11 Q. Quite a few years?

12 A. Yes, I did.

13 Q. Was that in the Columbia, was in the Columbia area or?

14 A. It was in Lexington, Aiken and in Horry County.

15 Q. And -- oh, okay, and I was, just was -- I've never met
16 you in that capacity, so ---

17 A. That's a long time ago.

18 Q. I gotcha. Fair enough. I was curious; I just really
19 was just curious. What type of work did you do for
20 Probation, Pardon, and Parole Services?

21 A. My title was parole offender, and that is a -- really
22 that's a social worker. I have a degree in social work.
23 That's a position where you put together a program for
24 people who may be coming up for parole.

25 Q. And in that capacity, you would, you try to transition

1 inmates from the Department of Corrections that were
2 coming, were coming to maybe, maybe parole that would
3 transition them from the Department of Corrections to life
4 on the street?

5 A. That's correct.

6 Q. Life back in the community?

7 A. That they would have a place to live, a job.

8 Q. Gotcha. Was that mostly -- well, let's see, you did
9 that in Columbia?

10 A. Aiken.

11 Q. Aiken?

12 A. I did it in Lexington County.

13 Q. I'm sorry.

14 A. Aiken County and in Horry County.

15 Q. And the same job in all three places?

16 A. Yes.

17 Q. And then you left that line of work at some point.
18 How long ago was it that you left the Probation, Pardon,
19 and Parole Services?

20 A. I've been retired for fifteen years.

21 Q. Okay. It's been a few years ago, and anything in that
22 line of work that would give you concern about serving on
23 the death penalty case or imposing the death penalty if you
24 felt it was appropriate based on the facts?

25 A. No, sir. There's nothing about that that gives

1 concern to me.

2 Q. Very good, and I know that, I know that Judge Lockemy
3 has gone through quite a few questions. I guess I just
4 want to clarify for you that if you determine, that if you
5 and the other jurors were to determine that, based on the
6 evidence, that the appropriate penalty in this case was
7 death, that you would not only consider that, that as a
8 possible sentence, you would be able to impose that as a
9 sentence?

10 A. Yes, sir.

11 Q. You could impose that as a sentence?

12 A. Yes, I would be able to.

13 MR. HEMBREE: Very good. That's all we ask of you. I
14 appreciate your time and your patience with us. Please
15 answer any questions defense counsel might have for you.

16 JUROR: All right.

17 THE COURT: Mr. Rathbun.

18 EXAMINATION BY MR. RATHBUN:

19 Q. Good afternoon, Ms. Thompson.

20 A. Good afternoon.

21 Q. Been a long day.

22 A. For you, I'm sure.

23 Q. I'm Paul Rathbun, and Ralph Wilson and I represent Mr.
24 Winkler in this case at hand. Mr. Hembree brought up the
25 fact that you worked with Probation and Parole for a number

1 of years.

2 A. Yes.

3 Q. During that time frame, did you develop any bias for
4 or any bias against folks who had served time in prison?

5 A. I don't think I have a bias about anybody.

6 Q. You, you took them as they came and did what you could
7 to help them?

8 A. Yes, I did.

9 Q. Okay, and you understand that today Mr. Winkler is
10 presumed innocent until evidence is entered through the
11 witness stand and beyond a reasonable doubt as to his
12 guilt?

13 A. I understand that law, yes, sir.

14 Q. And you understand we're trying to do -- kind of doing
15 things backwards here. We have to determine whether or not
16 you can sit on a death penalty jury. And for that, you
17 have to be able to consider and to implement the death
18 penalty if you in your mind reached that as the appropriate
19 penalty. Can you do that?

20 A. Yes, sir.

21 Q. And if in your mind after due deliberation you can't
22 vote for death, you would vote for the life penalty?

23 A. Yes, I would.

24 Q. This is after Mr. Winkler or whoever is found guilty
25 in the first phase of the trial?

1 A. Yes, sir. I understand how that works.

2 Q. And do you have any long-held view points or views on
3 the death penalty?

4 A. No, sir. I don't believe so.

5 Q. Okay. So, after due deliberation, discussing with the
6 other jurors, if the state proves beyond a reasonable
7 doubt, you could find the defendant guilty?

8 A. Yes.

9 Q. And if they didn't prove beyond a reasonable doubt and
10 after that due deliberation, you would be able to vote for
11 not guilty and let him go?

12 A. Yes.

13 Q. And having found him guilty, that you could follow the
14 judge's law or the state's law as the judge tells you what
15 it is and consider both the life penalty and the death
16 penalty?

17 A. Yes, sir.

18 Q. I, I saw that your husband was with the DOD bomb
19 disposal for, was twenty-five years?

20 A. Twenty-four years.

21 Q. That kind of kept you on your toes, did it?

22 A. I don't think he ---

23 MR. RATHBUN: Okay. Oh, thank you for your time.

24 THE COURT: Okay, if you would, Ms. Thompson, would
25 you walk outside that door for a minute, please, ma'am?

1 (THE JUROR EXITS THE COURTROOM.)

2 THE COURT: Position of the state?

3 MR. HEMBREE: Ms. Thompson is qualified, Your Honor.

4 THE COURT: Position of defense?

5 MR. RATHBUN: She's qualified, Your Honor.

6 THE COURT: Okay, bring her in. I find her qualified.
7 If you would, bring her back in.

8 (THE JUROR ENTERS THE COURTROOM.)

9 THE COURT: Ms. Thompson, I'm going to ask you to come
10 back on Thursday at 11:30. I'm going to put you in the
11 pool from which the jury will be selected in this case.
12 Now, that doesn't mean you're going to be on this jury; it
13 just means be in the group from which they draw the jurors.

14 Now, I hope we're going to start this case on
15 Thursday. If you are on the jury, then I'll let you go
16 home and get your goods, your clothes and all and come
17 back. And we'll get you started in the case and get your
18 luggage to a hotel room. But going ahead and pack things
19 up just in case, okay?

20 Also, if you could arrange to have somebody bring you
21 over here on Thursday and then they can take you back so
22 that someone has your car. You don't want to leave your
23 car here during the course of the trial. So, if you could
24 arrange that, and in the meantime do not discuss this case
25 with anyone, no one in your family or anyone else.

1 Did you give me back that sheet that you had saying --
2 or is it up there? I see it. It's up here.

3 JUROR: I, I gave it to ---

4 THE COURT: I got it here. Don't discuss this case
5 with anyone. Don't look at any local newspapers, and don't
6 listen to any local news, okay?

7 JUROR: All right.

8 THE COURT: All right, we'll see you Thursday at
9 11:30, 11:30 Thursday right in this room. There will be
10 somebody outside to let you know if you come in here or
11 not. Right at that door, okay?

12 JUROR: All right, thank you.

13 THE COURT: You go out this way.

14 JUROR: Go out this way?

15 THE COURT: That door there, yes, ma'am. Thank you,
16 ma'am.

17 Okay, number two was excused because of her husband's
18 surgery. Let's go to juror number 154. Juror 403 was
19 excused because of surgery. That person do not come up.
20 Anybody know anything about that, any comments from anyone?
21 Hearing none?

22 MR. HUMPHRIES: None, Your Honor.

23 (JUROR #496 ENTERS THE COURTROOM.)

24 EXAMINATION BY THE COURT:

25 Q. How you doing, Mr. Foster?

1 A. Hi.

2 Q. Come on around over here, if you would. We're going
3 have a chair for you to sit down and relax. See if I can
4 find your sheet there. Now, you have a seat. I get those
5 from you in a minute.

6 A. Okay.

7 Q. Mr. Foster, you do remember yesterday I put you under
8 oath?

9 A. Yes.

10 Q. So, you know you're still under oath?

11 A. Yes.

12 Q. Okay. Now, Mr. Foster, I'm going to ask you a few
13 questions, and there are no right answers, no wrong
14 answers. We're just going to talk a little bit to get your
15 views to determine if you qualify in a pool from which we
16 will select a jury in this case.

17 A. Yes, sir.

18 Q. I notice that you are originally from Jamestown, N.Y.?

19 A. Correct.

20 Q. Chautauqua County. I remember ---

21 A. Chautauqua County.

22 Q. Chautauqua. I remember that used to be something I
23 always symbolized with a big fair. Do they have big fairs
24 in that county?

25 A. Yeah. They have big fairs.

1 Q. Must be where that originated, that term.

2 Now, one thing we need to do is when we talk, I know
3 it's going to be you and I for a second before I let the
4 attorneys ask you some questions. But we need to make sure
5 you speak in that microphone, so move on up a little closer
6 and -- to make sure we all can hear you.

7 Now, do you know any of the attorneys in this case,
8 Mr. Hembree, Mr. Humphries, Mr. Wilson, Mr. Rathbun?

9 A. No, sir.

10 Q. All right. You have any special interest, bias, or
11 prejudice at all in this case?

12 A. No.

13 Q. And have you formed or expressed an opinion as to the
14 guilt or innocence of the defendant in this case?

15 A. No.

16 Q. Okay. Do you know of any reason whatsoever why you
17 cannot give both the state and the defendant a fair and
18 impartial trial?

19 A. No.

20 Q. Okay. In a trial the jury listens to the evidence,
21 makes a decision on the evidence. But the jury must follow
22 the law as the judge instructs the law. Under your oath,
23 would you follow the law as I instruct it to you?

24 A. Yes, sir.

25 Q. One rule of law I will tell you is that in a trial in

1 criminal matters in the United States of America -- excuse
2 me, a person charged with a crime is presumed innocent.
3 And the state has the burden of proving that person guilty,
4 and that person is not required to prove himself innocent.
5 So, as the case begins a person -- the jury should presume
6 that person innocent, and the state has the burden of
7 proving guilt beyond a reasonable doubt. The person does
8 not have a burden of proving himself innocent. Would you
9 accept that rule of law?

10 A. Yes, sir.

11 Q. Okay, and apply it to this case?

12 A. Yes.

13 Q. All right. If you got on this jury and if after
14 hearing all the evidence presented in the case and hearing
15 my instructions on law, if after hearing those things, if
16 you felt the state had not proven guilt beyond a reasonable
17 doubt, would you have a problem bring back a verdict of not
18 guilty?

19 A. No.

20 Q. Okay. If you felt the state had proven guilt beyond a
21 reasonable doubt, would you have a problem bringing back a
22 verdict of guilty?

23 A. No.

24 Q. Okay. Have you discussed this case with anyone?

25 A. No. No.

1 Q. This has had some coverage in the media, radio, TV,
2 newspapers. Have you seen anything or read anything or
3 heard anything in the media about this case?

4 A. No, I don't know anything about the case.

5 Q. Nothing at all? Now, so, no one's talked you about it
6 and you haven't read anything about it?

7 A. No.

8 Q. All right. I gave you a list there of a bunch of
9 people, three pages. Do you know anybody on that list?

10 A. No. I went over the whole list; I don't know anyone.

11 Q. So, you went over the whole list?

12 A. Yeah.

13 Q. Can I hold that list, please? So, you didn't make any
14 circles anywhere?

15 A. No.

16 Q. And I noticed you did not. All right, now, if you
17 were on the jury in this case, if the jury were to decide
18 that the state had not proven guilt beyond a reasonable
19 doubt and brought back a verdict of not guilty, then that
20 would really end the jury's part in the case. If, however,
21 the jury were to determine that the state had proven guilt
22 beyond a reasonable doubt of the crime of murder, then we'd
23 move to another phase where the issue of punishment would
24 be considered by the jury. There the jury would hear
25 evidence in aggravation and mitigation surrounding the

1 circumstances involved in the case.

2 Now, I gave you a sheet of paper that has on it three
3 juror types. Have you reviewed that sheet of paper?

4 A. Yes, I have.

5 Q. And do you feel you understand the three types ---

6 A. Yes.

7 Q. --- of jurors? You know the first type is a juror
8 that, that's in that phase after hearing evidence of
9 aggravation and in mitigation, no matter what that evidence
10 is one way or the other, the juror type one would always
11 feel that the death penalty is the appropriate punishment
12 in, in all cases no matter what the circumstances are.

13 Juror number two is a juror that no matter what the
14 circumstances are, no matter what the evidence in
15 aggravation and mitigation are, that juror could never
16 impose the death penalty and would always impose life
17 imprisonment.

18 And juror number three is a juror that would not have
19 his mind made up in advance concerning punishment. That
20 juror would want to listen to the evidence in aggravation
21 and mitigation and the circumstances before making up their
22 mind, and would also want to listen to the instructions of
23 the law from the judge. And then if that juror felt it so
24 warranted it, after hearing the evidence in aggravation and
25 mitigation, that juror could bring back a verdict of life

1 imprisonment. In the alternative, if that juror thought
2 the evidence so warranted it, that juror could bring back a
3 verdict of the death penalty.

4 And do you understand the differences?

5 A. Yes.

6 Q. Which best describes you?

7 A. I would say juror number three.

8 Q. Three. So, if you were on that jury and it got to
9 that phase, then you would have an open mind and you would
10 listen to the evidence presented before you would decide
11 what would be the appropriate punishment?

12 A. Yes.

13 Q. And after hearing all the evidence, if you felt the
14 appropriate punishment was life imprisonment, you could
15 bring back a verdict in that regard?

16 A. Yes.

17 Q. And if after hearing all the evidence you felt the
18 proper punishment was the death penalty, you could bring
19 back a verdict in that regard?

20 A. Yes.

21 Q. If the jury were to bring back a verdict of the death
22 penalty, law requires that the jurors, all the jurors sign
23 the verdict form. Could you sign that verdict form?

24 A. Yes.

25 Q. All right. Now, Mr. Foster, I what to tell you that I

1 really applaud you at your age. You're not asking to get
2 off of jury duty. Heard me tell the jurors they had an
3 option, and you chose to stay on the jury when you could
4 have been released from this jury. If you are selected as
5 a juror, the jurors would be sequestered, meaning that they
6 would be in a hotel room for, for somewhere around a week
7 to ten days or a little less. We don't know. We don't
8 know for sure. Somewhere in that area. If you were
9 selected as a juror, you feel being sequestered in a hotel
10 room, being brought back and forth. We supply food and all
11 that. Do you feel that would cause an undue burden or
12 hardship on you, sir?

13 A. No, not really.

14 Q. All right. You feel you could do it?

15 A. Yeah.

16 Q. All right. You look like a gentleman who works out a
17 lot. You work out a lot?

18 A. Quite a bit.

19 Q. Figured you did, and so you don't have any illness or
20 anything else that ---

21 A. No.

22 Q. --- would cause a problem in that regard?

23 A. No.

24 THE COURT: All right. I would let the attorneys, if
25 they wish to, ask you a few questions, and then I might

1 have something.

2 JUROR: Okay.

3 THE COURT: All right, any questions from the state
4 for Mr. Foster?

5 MR. HUMPHRIES: I just wish I look as good as you at
6 eighty when I get there. I don't have any questions for
7 you, sir. Thank you.

8 THE COURT: All right, Mr. Wilson, Mr. Rathbun, any
9 questions?

10 MR. WILSON: Yes, sir. I just have a couple of
11 questions, Judge.

12 EXAMINATION BY MR. WILSON:

13 Q. My understanding is you're eighty?

14 A. Yes, sir.

15 Q. All right, and have you ever served on a jury before?

16 A. Yes.

17 Q. All right, and was it a pleasant experience for you?

18 A. It was okay. It was in Sumter, South Carolina.

19 Q. And you indicated to the court that you're, that you
20 were juror type number three. Is that correct?

21 A. Yes.

22 Q. And to you, what, what does that mean when you say
23 type three? How do you define that or understand that?

24 A. To me, it means you just sit in the jury box and
25 listen to all the evidence, and then you are the type

1 juror, you determine which punishment is dealt, just listen
2 to the arguments and make up your mind.

3 Q. All right. So, you want to listen to both -- any
4 evidence as offered to ---

5 A. The facts.

6 Q. --- in aggravation?

7 A. Yes.

8 Q. And, and, and, and that any evidence that's offered in
9 aggravation would be the things that might be the murder
10 more -- make the murder worse than what it might normally
11 be?

12 A. Yes.

13 Q. And then you also want to listen to any evidence that
14 might be offered in mitigation?

15 A. Right.

16 Q. Things which might lessen the moral culpability of the
17 crime or the defendant in that particular case. Is that
18 what you're saying?

19 A. Yes.

20 Q. And you'd be willing to do that?

21 A. Yes.

22 Q. And you could do that fairly both to the state and to
23 the person who was accused?

24 A. Right.

25 Q. Is that fair?

1 A. Yes.

2 Q. All right, sir, and let me ask you if, if you
3 understand that even if the state proves -- if we get to
4 the second phase of this trial and the state proves an
5 aggravating circumstance beyond a reasonable doubt or three
6 or four aggravating circumstances beyond a reasonable doubt
7 and you're satisfied, and they prove those beyond a
8 reasonable doubt, that you still don't have to vote for the
9 death penalty if you don't want to.

10 A. Yeah, I would understand that.

11 Q. That would be your decision after you have listened to
12 everybody and everything.

13 A. Yes.

14 Q. Do you, do you understand that is what I'm asking? Do
15 you have a question about that?

16 A. Kind of a question.

17 Q. Well ---

18 THE COURT: Mr. Foster, what he's saying is is that on
19 that jury, you listened to all the evidence in aggravation
20 and mitigation, but as long as when you began you have an
21 open mind, whatever decision you make is totally up to you.
22 There's no requirement that you make either one of them.
23 And you make the decision you ---

24 JUROR: Right.

25 THE COURT: --- think is appropriate.

1 JUROR: Right.

2 THE COURT: And, you know, once you hear everything,
3 you make your decision you think is appropriate.

4 JUROR: Right.

5 THE COURT: Mr. Wilson, do you have any other
6 questions?

7 MR. WILSON: Just one other thing.

8 Q. And the, and in doing that, in, in coming to that
9 decision, whatever it be -- life or death, whatever -- you
10 could do that and be fair and not bring in -- and I'm --
11 let me back up. As I understood it, you said you hadn't
12 heard anything about this case anyway?

13 A. No.

14 Q. So, you don't know anything about it?

15 A. I don't know anything about it.

16 Q. And you don't know any of the witnesses involved in
17 it. Is that correct?

18 A. Yes.

19 MR. WILSON: All right, sir. I, I don't think I have
20 anything else. Thank you so much.

21 THE COURT: Okay, thank you very much. If you would,
22 please step outside the door for me. Let me have that
23 sheet of paper. And can you hand me all those sheets down
24 there? Thank you.

25 (THE JUROR EXITS THE COURTROOM.)

1 (OFF THE RECORD.)

2 THE COURT: Position of the state?

3 MR. HUMPHRIES: He's qualified.

4 THE COURT: Position of defense?

5 MR. WILSON: He's qualified.

6 THE COURT: All right, I find he's qualified. Bring
7 him back in, please.

8 (THE JUROR ENTERS THE COURTROOM.)

9 THE COURT: All right, Mr. Foster, I decided you're
10 qualified to be in the jury pool. Now, that doesn't mean
11 you're going to be selected on the case. You're going to
12 be in the jury pool from which the jury will be selected.
13 I'll need you back here at 11:30 on Thursday morning.

14 Now, remember I told you that if you are selected,
15 you'll be sequestered, meaning that you'll need to go ahead
16 and get your clothes packed and all. So, go ahead and get
17 your bags packed and get ready just in case. You can leave
18 them at home, but get them packed so if you are selected,
19 we can get you home and get you back.

20 Now, if you've got someone who can give you a ride
21 back up to the courthouse, that will be good. That way
22 they can keep the car because we don't want you to leave
23 your car here at the courthouse, okay, sir?

24 JUROR: Okay.

25 THE COURT: Just make arrangements in that regard. In

1 the meantime, don't discuss the case with anyone at all.
2 Don't discuss it with your family, with your friends, with
3 anyone, and don't look at any local newspapers or any local
4 newscasts okay, sir?

5 JUROR: Okay.

6 THE COURT: Okay, we'll see you Thursday at 11:30
7 right here at this courtroom. You can leave out that door
8 there, okay?

9 JUROR: Okay.

10 THE COURT: All right, we'll see you Thursday at
11 11:30.

12 JUROR: Thank you.

13 THE COURT: Thank you, sir.

14 All right, 496, I don't remember that number anywhere.

15 MR. HUMPHRIES: No, sir.

16 THE COURT: And hearing nothing from the defense,
17 bring in Ms. Wright.

18 (JUROR # 496 ENTERS THE COURTROOM.)

19 EXAMINATION BY THE COURT:

20 Q. Ms. Wright, you can just come around over here. By
21 the way, sorry you've been here all day.

22 A. That's okay.

23 Q. You get here about 2:00, 2:30 what?

24 A. 2:15.

25 Q. 2:15, all right. We're only three hours late. Just

1 have a seat if you would, please, ma'am. You can hold
2 those papers for right now.

3 Now, Ms. Wright, that microphone, you need to back up
4 a little bit. That thing's going to make all kinds of
5 noise.

6 A. Oops. Okay.

7 Q. And want you to speak into that microphone for me, all
8 right?

9 A. Yes, sir.

10 Q. Let me find this information here. Ms. Wright, you do
11 realize that you are under oath?

12 A. Yes, sir.

13 Q. Remember we put you under oath yesterday, and you're
14 still under oath. You realize that?

15 A. Yes, sir.

16 Q. Now, I want to talk to you about a few things, and
17 there are no right answers, no wrong answers. It's just
18 that I just need to get your views and make sure you're
19 someone who is qualified to serve on this jury. I see
20 you're born in the Maryville, Kansas?

21 A. Yes, sir.

22 Q. Is that close to Topeka, Dodge City, Hutchinson?

23 A. I wouldn't know. I left there as an infant.

24 Q. Oh, so you never ever really lived there?

25 A. No, sir.

1 Q. Did you -- most of your life here in Horry County?

2 A. No, sir. I lived here eleven years.

3 Q. Where was it before that?

4 A. Virginia.

5 Q. What part?

6 A. Newport News, Hampton.

7 Q. Yeah, you do have that Chesapeake, Eastern Seaboard
8 type accent there. Is it called -- what courthouse is that
9 there, little town, Newport News and then you've got the
10 -- forget the little town up around Chesapeake, James
11 River area.

12 A. Yes, sir.

13 Q. In those areas. I want to say Dorchester County
14 courthouse. Not Dorchester courthouse?

15 A. Gloucester.

16 Q. Gloucester Courthouse, that's it, yeah. I been in
17 that area. It's very beautiful.

18 A. Yes, it is.

19 Q. Now, Ms. Wright, do you know any of the attorneys in
20 this case ---

21 A. No.

22 Q. --- at all? You don't know anybody?

23 A. No, sir.

24 Q. Do you know the defendant at all?

25 A. No, sir.

1 Q. Do you have any special interest, bias, or prejudice
2 in this case?

3 A. No, sir.

4 Q. All right, and have you formed or expressed an opinion
5 as to the guilt or the innocence of the defendant?

6 A. No, sir.

7 Q. Do you know of any reason whatsoever why you cannot
8 give both the defense and the state a fair and impartial
9 trial?

10 A. No, sir.

11 Q. All right. Would you under your oath, would you
12 follow the law as the judge, meaning me, would instruct
13 you?

14 A. Yes, sir.

15 Q. If you're on the jury in this case, one of the things
16 I would tell you would be that under our law in this
17 nation, a person charged with a crime is presumed innocent,
18 and the state has the burden of proving guilt beyond a
19 reasonable doubt. A person does not have an obligation to
20 prove himself innocent; the state must prove him guilty
21 beyond a reasonable doubt. And he is presumed innocent
22 unless the state does prove him guilty beyond a reasonable
23 doubt. Would you accept the law and apply it in this case?

24 A. Yes, sir.

25 Q. So, if you're on that jury and after hearing the

1 evidence, which would be testimony, exhibits, things of
2 that nature, if after hearing the evidence in the case and
3 the law as I instruct it to you, if after hearing all the
4 evidence, Ms. Wright, if you felt the state had not proven
5 guilt beyond a reasonable doubt, could you bring back a
6 verdict of not guilty if the state has not proven guilt
7 beyond a reasonable doubt?

8 A. Yes, sir.

9 Q. If you felt the state had proven guilt beyond a
10 reasonable doubt, could you bring back a verdict of guilty?

11 A. Yes, sir.

12 Q. Have you discussed this case with anyone at all?

13 A. No, sir.

14 Q. Have you seen anything about it in the newspapers, TV
15 or, or heard anything on the radio?

16 A. No, sir. I, I think I just remember hearing of it
17 happening a long time ago.

18 Q. Okay. Do you recall anything you may have heard a
19 long time ago about it?

20 A. No, just the death of Rebekah Grainger.

21 Q. Okay. So, do you remember any circumstances that were
22 reported about that?

23 A. No. I don't know any details.

24 Q. All right. If you were on this jury, would you make
25 your decision regarding the guilt or the innocence of the

1 defendant based on evidence presented in the trial in this
2 courtroom and the law as I instruct it to you and disregard
3 anything you may have heard, read, or anything else outside
4 this courtroom?

5 A. Yes, sir.

6 Q. So, what you may have seen on the news or read or
7 whatever would have no affect upon your decision?

8 A. That's correct.

9 Q. All right. I gave you a sheet of paper with a bunch
10 of names on it. Have you had a chance to review that sheet
11 of paper?

12 A. Yes, sir.

13 Q. Do you know anybody on that sheet of paper?

14 A. I marked one name.

15 Q. Okay. Let me just see it. Did you circle it?

16 A. Yes, sir.

17 Q. The item or name is Kathy Wheeling or Whaling?

18 A. Yes, sir.

19 Q. And how you know that name?

20 A. I believe she's the person who works at the Coastal
21 Rescue Mission in Loris, and we assisted her. Our church
22 was involved with helping in with that ministry.

23 Q. Okay, and would the fact you know her, would that in
24 any way affect your ability to be fair and impartial?

25 A. No, sir.

1 Q. Would you look upon her if she were to testify in the
2 case like you would any other witness?

3 A. Yes, sir.

4 Q. And, and so her testimony would not be any different
5 than any other witness in the case as far as her testifying
6 as a person?

7 A. That's correct.

8 Q. You have no special relationship with her?

9 A. No. I don't know her personally.

10 Q. Okay. If you were on this jury, if the jury were to
11 determine that the state had not proven guilt beyond a
12 reasonable doubt, and that would end the jury's involvement
13 at that stage.

14 If, however, the jury felt the state had proven guilt
15 beyond a reasonable doubt in the crime of murder and
16 brought back a verdict of guilty, we would then get into
17 another phase where the issue of punishment would be
18 considered. And in that phase, there would be additional
19 evidence introduced in aggravation and mitigation regarding
20 the circumstances around a murder.

21 Now, I gave you a sheet with three jurors on it, and
22 please understand the fact I say about that additional
23 phase does not imply anything at all. Once again, the
24 burden's upon the state to prove guilt beyond a reasonable
25 doubt. But did you look at the sheet there with three

1 types of jurors on that?

2 A. Yes, sir.

3 Q. Now, did you understand the difference of the three?

4 A. Yes.

5 Q. Let me go over them with you and we'll see.

6 A. Okay.

7 Q. Now, you've got to juror number one is a juror that in
8 that phase where punishment is considered, that juror would
9 feel that no matter what the evidence is in aggravation,
10 mitigation, that that person would feel they're required to
11 give the death penalty in each and every case. That person
12 would think that no matter what the evidence is in
13 aggravation, mitigation, the death penalty is the most
14 appropriate punishment no matter what the circumstances in
15 the case are.

16 Juror number two is a juror that no matter what the
17 evidence in aggravation and mitigation are, that juror
18 could never impose the death penalty. That juror would
19 feel that no matter what the circumstances in aggravation,
20 that juror feels the imposition of life imprisonment as a
21 verdict would always be the most appropriate sentence.

22 Juror number three is a juror, though, that would not
23 have her mind made up in advance concerning punishment.
24 That juror would need to hear the facts and the
25 circumstances in aggravation and in mitigation and would

1 want to listen to and follow the law as the judge charges
2 the jury before she can make the decision regarding
3 punishment. And if after hearing all the facts in
4 aggravation and in mitigation, if that jury -- if that
5 juror felt it so warranted it, that jury -- juror could
6 come back with a verdict of life imprisonment. In the
7 alternative, if that juror felt the evidence in
8 aggravation, mitigation so warranted it, that juror could
9 bring back a verdict of the death penalty.

10 So, are all three types now clear to you as to which
11 is which?

12 A. Yes, sir.

13 Q. Now of the three, which best describes you?

14 A. I think number three.

15 Q. Okay. So, if you are on the jury and if, in fact, we
16 got to that phase where punishment was to be considered,
17 you would have an open mind, and you wouldn't make up your
18 mind about the issue of punishment until you've heard all
19 the evidence in aggravation and mitigation?

20 A. Yes, sir.

21 Q. And after hearing the evidence in aggravation and
22 mitigation, you could, if you felt it appropriate, bring
23 back a verdict for life imprisonment if you felt that was
24 appropriate?

25 A. Yes, if I felt that was right.

1 Q. And if you felt it was appropriate after hearing the
2 evidence in aggravation, mitigation you felt was
3 appropriate, you could also bring back a verdict for the
4 death penalty?

5 A. Yes, sir.

6 Q. All right. Now, if the jury were to bring back the
7 verdict of death penalty, each juror would have to sign the
8 verdict form because that would be a unanimous decision.
9 Could you sign that verdict form?

10 A. Yes, sir.

11 Q. Okay. The next thing. If you were selected on this
12 jury you would be sequestered, meaning you -- we'd have you
13 in a hotel room and you would be there for somewhere around
14 a week. Maybe a little bit more and maybe a little bit
15 less, and of course we'd provide food and all for you. And
16 you could have some telephone contact with your family, but
17 it'd be sort of a supervised thing because we have to make
18 sure no one talks with you about the case. Do you feel you
19 could handle that without too much of a hardship?

20 A. Yes, sir.

21 THE COURT: All right, I would let lawyers see if they
22 need to ask you questions, ask you some questions, and I
23 may speak with you again.

24 All right, Mr. Hembree.

25 MR. HEMBREE: Thank you, Your Honor.

1 EXAMINATION BY MR. HEMBREE:

2 Q. Good afternoon, Ms. Wright.

3 A. Hi.

4 Q. Hi. I'm Greg Hembree. I was introduced to you
5 yesterday.

6 A. Yes, sir.

7 Q. I, along with Deputy Solicitor Fran Humphries and
8 Scott Hixson, another lawyer in our office, will be trying
9 in this case on behalf of the state. Judge Lockemy has
10 covered all the, all the essentials that we really need to
11 find out. Our objective here today is to sort of find out
12 how you feel about the death penalty and whether or not
13 you'd be able to consider and impose that if it was
14 appropriate based on facts and circumstances that were
15 presented in the course of the trial.

16 And as I understand that -- let me just, I just want
17 to kind of cut to the real fundamental question here. As I
18 understand your responses to Judge Lockemy, that you would
19 be -- you are a type three juror?

20 A. Yes, sir.

21 Q. You believe that you would be able to listen to all
22 the facts and circumstances and that you would be able to
23 impose life if that was appropriate?

24 A. Yes, sir.

25 Q. Or death if that was appropriate?

1 A. Yes, sir.

2 Q. Fair enough. You'd be fair to the State of South
3 Carolina and to the defendant and to the victims in this
4 case?

5 A. Yes, sir.

6 Q. Through all, throughout the trial?

7 A. As much as possible.

8 THE COURT: Ms. Wright, do your best to speak into
9 that microphone there, too.

10 A. Yes, sir.

11 Q. And that's, that's the number one thing we're looking
12 for, and that's the most we can ask for you.

13 MR. HEMBREE: Thank you for your patience with us
14 today and yesterday, and please answer any questions that
15 defense counsel may have for you.

16 EXAMINATION BY MR. WILSON:

17 Q. Ms. Wright, I'm Ralph Wilson and that's Mr. Rathbun,
18 Paul Rathbun, and we represent the defendant, Louis
19 Winkler, in this case. And I understood from your
20 questionnaire, ma'am, that you attend First Baptist in
21 Loris?

22 A. Yes, sir.

23 Q. All right, and how long have you been a member there?

24 A. Six years, thereabouts.

25 Q. And, and when you came there, did you know how the

1 church officers were?

2 A. Some of them. Not all.

3 Q. Well, do you know whether the deceased, Rebekah
4 Winkler, was one of the church officers at the time you
5 joined the church?

6 A. Not to my knowledge.

7 Q. You don't, you don't know or you -- you're not -- you
8 don't know?

9 A. If she was an officer?

10 Q. Yes, ma'am, an accountant for the church or church
11 secretary.

12 A. No. I've heard that she was once employed there.

13 Q. Okay. All right, and who did you hear that from?

14 A. Someone in my Sunday school class.

15 Q. Okay, and when did you hear that?

16 A. Several months ago when the incident happened.

17 Q. Okay, all right, so several months ago there was some
18 conversation between you and someone else about the case
19 and about the fact that she died or was killed?

20 A. No. It was just general conversation in the Sunday
21 school class.

22 Q. Well ---

23 A. Someone made the comment: well, I believe she used to
24 work here.

25 Q. Well, tell me what the conversation was. I understand

1 that you're saying that apparently there was a Sunday
2 school class and there was discussion during the Sunday
3 school class about Rebekah Winkler. And what I'm asking
4 you is, if you would do, to please share with us the
5 conversation that went on in the Sunday school class about
6 Rebekah Winkler.

7 A. I, I really don't remember details, but I just
8 remember them saying she used to work there. That's all I
9 know.

10 Q. All right.

11 A. They didn't discuss her. They just said she used to
12 be a secretary at our church.

13 Q. All right. So, when you got your notice, there was a
14 question on there about whether or not you knew Rebekah
15 Winkler, and you said no, you didn't know her.

16 A. I did not.

17 Q. Is that, is that correct?

18 A. That's correct.

19 Q. And, and -- but you had to at least heard of her, and
20 you was aware of who she was?

21 A. The only comment I had heard was that she was employed
22 there at one time.

23 Q. All right.

24 A. Years ago.

25 Q. Do you recall who it was that you had a conversation

1 with in your Sunday school class, or was it just a general
2 topic of discussion in the class itself?

3 A. It was just mentioned in the class. I don't even know
4 who said it.

5 Q. And, and I apologize if I seem like I'm being
6 nitpicking, but I'm just trying to understand what
7 information was available. During a Sunday school class,
8 you're saying this is a class and, and you got several
9 people in this class I assume?

10 A. Yes, sir.

11 Q. Is that fair, and y'all are having some type of
12 discussion. And in this discussion Rebekah Winkler's name
13 comes up, and I'm just trying to find out in what context
14 it comes up so that we have some idea what it was that was
15 being discussed.

16 A. It was just mentioned as an event that happened, her
17 death.

18 Q. All right, all right. Well, once you heard that and
19 once you got your jury notice and you saw Rebekah's name,
20 did that filter back to the Sunday school discussion and
21 you -- then click for you that that's who they were talking
22 about?

23 A. I -- that's all I know of her is that -- that's all I
24 had heard of her was that she was once an employee there.

25 Q. Well, once you got your jury discussion -- once you

1 got your jury notice, did you talk to any of the other
2 members about this lady who had been an officer or employee
3 of your church?

4 A. No.

5 Q. None of them, and you were in the same Sunday school
6 class with them?

7 A. No, I did not discuss that with them.

8 Q. Okay. Did you tell anybody that you were on jury
9 duty?

10 A. I told my family, and I might have mentioned it to a
11 friend that I have jury duty this week.

12 Q. And, and that nobody brought up the fact that it was
13 about the Winkler case?

14 A. No. I did not tell what case it was because I knew I
15 wasn't supposed to talk about it; I didn't want to hear any
16 discussion of it.

17 Q. Did you, did you hold any office at church?

18 A. Do I?

19 Q. Yes, ma'am.

20 A. I just volunteer.

21 Q. In what capacity?

22 A. Assistant school teacher and care ministry director.

23 Q. And the minister who is at your church, has he been
24 there a considerable period?

25 A. No. We've had an interim pastor, and he's presently

1 on -- we will be getting a new minister at the end of
2 February.

3 Q. Okay, and how large is your church?

4 A. I think our membership is seven hundred, something
5 like that.

6 Q. In, back in 2006, you were a member at that time,
7 right?

8 A. Yes, sir.

9 Q. And did you recall hearing or seeing anything on the
10 news or on the radio about the death of Rebekah Winkler
11 back then, 2006?

12 A. No. I didn't read the paper. Usually I will watch
13 the news on TV. I'm just not into that.

14 Q. All right. Now, let me ask you this. Do you
15 understand that as Mr. Winkler sits here today, that
16 according to law he is presumed to be innocent?

17 A. Yes, sir.

18 Q. And if His Honor instructed you that that was the law,
19 could you accept that?

20 A. Yes, sir.

21 Q. All right, and do you understand that even if we get
22 to the second phase of this trial, which would be the
23 sentencing or penalty phase of the trial, that, that you
24 don't have to -- there's no law or no rule that says that
25 you have to impose the death sentence no matter what you

1 find. Even if you find aggravating -- the existence of an
2 aggravating circumstance beyond a reasonable doubt, even if
3 you find multiple aggravating circumstances beyond a
4 reasonable doubt and no mitigating factors at all, that you
5 could still impose a life sentence if that's what your
6 conscience suggested you should do. Do you understand
7 that?

8 A. Say that again.

9 Q. I apologize. I did say a mouthful, didn't I? I will
10 try to rephrase it. What I'm saying to you is do you
11 understand that as a juror, that if we get to the second
12 phase, that will be the penalty phase. And what that will
13 mean is that you and the other members of your jury had
14 unanimously found Mr. Winkler guilty of murder -- because
15 if you find him not guilty or guilty of the lesser crime,
16 we don't get there. You, you understand what I'm saying?

17 A. Right.

18 Q. So, if we get there, the state will then produce
19 what's called aggravating circumstances. That is things
20 which they believe make this worse than what it would --
21 might ordinarily be, if there's such thing as being a worse
22 murder. That is going to make it worse, aggravating
23 circumstances. And then the defense will offer what's
24 called mitigating circumstances, things which we believe
25 will lessen the culpability morally. That is not a

1 defense, but it's a moral culpability kind of thing. And
2 that you could consider both those things, and you could
3 then impose death if you believe that there is an
4 aggravating circumstance and you believe that that's what
5 the appropriate sentence is and that's what you decide to
6 do, you could do that?

7 A. Yes, sir.

8 Q. All right. But I'm also saying is that you could also
9 give life or you could vote for life if that's what you
10 believed was, based on your conscience and your view of the
11 evidence and facts in mitigating and aggravating
12 circumstances, or for no reason at all you could give life?

13 A. Yes, sir.

14 Q. You understand that?

15 A. Yes.

16 Q. Now, one last thing. Then I'm going to be through.
17 Let me ask you. Whatever -- the fact that you're a member
18 of the church that Ms. Rebekah attended or was an officer
19 or employee of, is that -- would that in any way inhibit
20 your ability to be fair and impartial to the defendant or
21 to the State of South Carolina?

22 A. No, sir.

23 Q. So in spite of that, you believe that you could be
24 fair?

25 A. I believe I could be fair.

1 MR. WILSON: Okay, thank you, ma'am.

2 JUROR: Yes, sir.

3 THE COURT: If you would, Ms. Wright, would you step
4 outside the door there for me just one minute?

5 JUROR: Sure.

6 THE COURT: And I'll bring you back in.

7 (THE JUROR EXITS THE COURTROOM.)

8 THE COURT: Okay. Position of the state?

9 MR. HEMBREE: She is qualified, Your Honor.

10 THE COURT: Defense?

11 MR. WILSON: She's qualified, Judge.

12 THE COURT: All right, bring her back in, please, if
13 you would.

14 (THE JUROR ENTERS THE COURTROOM.)

15 THE COURT: Ms. Wright, I find you, I find that you're
16 qualified. I find you are qualified to serve on this jury.
17 That does not mean you will be on the jury. What it means
18 is you're going to be on the pool from which the jury is
19 selected. I need you back here at 11:30 on Thursday.

20 Now in between then, do not discuss this case with
21 anyone at all. Don't discuss it with your family, friends
22 or anyone. Do not look at any local news shows. Do not
23 read any local newspapers, okay, ma'am?

24 JUROR: Yes, sir.

25 THE COURT: If someone does discuss it with you or you

1 see something about it, let me know on Thursday. I'll be
2 asking you that.

3 Moreover, ma'am, if you are selected, like I mentioned
4 to you, you would be going to a hotel that day. So, if you
5 would, go ahead and get things packed just in case you get
6 on the jury. And if you are on the jury, might be better
7 to go on and arrange to have someone bring you here that
8 day so they can go back and keep your car, that type of
9 thing, okay, ma'am?

10 JUROR: Yes, sir.

11 THE COURT: I will see you then at 11:30 on Thursday.
12 You go out this door and come back to this courtroom on
13 Thursday, all right?

14 JUROR: Yes, sir.

15 THE COURT: We'll see you then. Bye-bye.

16 JUROR: Bye.

17 (QUESTIONNAIRE OF JUROR #496-WRIGHT MARKED INTO
18 EVIDENCE AS COURT'S EXHIBIT NUMBER 6-F.)

19 (A PAUSE.)

20 THE COURT: Okay, what I want to do then, can we go
21 through one more and then at that time that's the last one
22 of this group, and I'll let Mr. Winkler see his physician
23 and all that. We'll take a break then.

24 MR. WILSON: Thank you, Your Honor.

25 THE COURT: All right. Let's just go through this one

1 more. Keith Benton. Did he come up here at all? I don't
2 see a 28 on here.

3 MR. HEMBREE: I didn't have anything, Judge.

4 MR. WILSON: I don't ---

5 THE COURT: All right. Bring Mr. Benton in.

6 (JUROR #28 ENTERS THE COURTROOM.)

7 EXAMINATION BY THE COURT:

8 Q. Mr. Benton, how you doing?

9 A. Good evening. Good evening, sir.

10 Q. You're walking like a man that says I've been waiting
11 a long time, and I do apologize for that. It's all
12 necessary.

13 Now, Mr. Benton, I'm going to be asking you a few
14 questions. Before I do, need to make sure you understand
15 that you are still under oath.

16 A. Yes, sir.

17 Q. And also, Mr. Benton, I'm going to need for you to try
18 and speak into that microphone so that this lady over here
19 can hear you. And the responses, make sure you give me a
20 yes or no or something as you're shaking your head or
21 whatever which might be good if you and I were talking,
22 say, outside somewhere. But in a court you got to record
23 everything, so try to give a verbal response, okay, sir?

24 A. Yes, sir.

25 Q. There you go. I see that you're originally from Horry

1 County here in Conway?

2 A. Yes, sir.

3 Q. So, you've all -- have you lived all your life here in
4 Conway?

5 A. Except when I was in the military.

6 Q. What branch of the military were you in?

7 A. Marine Corps.

8 Q. Is a true once a Marine, always a Marine?

9 A. Yes, sir.

10 Q. All right. Where were you stationed, Parris Island,
11 Camp Lejeune?

12 A. Basic Training at Parris Island and Camp Lejeune.

13 Q. When I hold court down in Beaufort, I'm retired Army
14 officer, and I stay down there at the Parris Island. A
15 very nice place. It really is.

16 A. Yes, sir.

17 Q. Always try to find somebody who can tell me where the
18 house is that the Great Santini lived in was. Parris
19 Island is a beautiful place.

20 A. It is.

21 Q. Now, I would ask you some questions about seeing --
22 just to see if you qualify as a juror in the, in this case.
23 Are you related by a blood or marriage to anybody on --
24 know any of the attorneys in this case, Mr. Hembree, Mr.
25 Humphries, Mr. Wilson, or Mr. Rathbun?

1 A. No, sir.

2 Q. All right. Do you know the defendant?

3 A. No, sir.

4 Q. All right. Do you have any special interest or bias
5 or prejudice in this case?

6 A. No, sir.

7 Q. Have you formed or expressed an opinion as to the
8 guilt or the innocence of the defendant in this case?

9 A. No, sir.

10 Q. Do you know of any reason whatsoever why you cannot
11 give both the state and the defendant a fair and impartial
12 trial?

13 A. No, sir.

14 Q. Okay. Would you under your oath, if you're on that
15 jury, would you follow the law as instructed by the court?

16 A. Yes, sir.

17 Q. If you're on that jury, Mr. Benton, I would tell you
18 as part of the law that the defendant is presumed innocent.
19 And that the state has the burden of proving guilt beyond a
20 reasonable doubt. The defendant is not required to prove
21 himself innocent; the state has the burden of proving guilt
22 beyond a reasonable doubt. Would you follow that rule of
23 law, sir?

24 A. Yes, sir.

25 Q. All right. Then if we got to a trial of this case,

1 sir, and if after all the evidence was presented and I
2 charge you on the law and you went back to the jury room to
3 decide your verdict, if you felt that the state had not
4 proven guilt beyond a reasonable doubt, could you then find
5 the defendant not guilty?

6 A. Yes, sir.

7 Q. If, on the other hand, you felt the state had proven
8 guilt beyond a reasonable doubt, could you find the
9 defendant guilty?

10 A. Yes, sir.

11 Q. Have you discussed this case with anyone?

12 A. No, sir.

13 Q. Have you seen any of the news media accounts, read
14 anything in the papers, seen of it on TV, heard anything on
15 the radio about this case?

16 A. No, sir.

17 Q. Nothing at all?

18 A. No, sir.

19 Q. Do you normally read the *Sun News* or any other type of
20 newspapers around here?

21 A. No, sir. I've been too busy.

22 Q. All right, and what type of business -- concrete
23 manager. So, laying concrete?

24 A. Yes, sir.

25 Q. That's a hard job.

1 A. Yes, sir.

2 Q. So, you have heard nothing about this case from
3 anyone?

4 A. No, sir. I mean, I -- the gentleman's face looks
5 familiar. Maybe walking by a newsstand, but that's the,
6 that's the extent of it, sir. I, you know, couldn't tell
7 you his name or anything of that nature.

8 Q. All right. So, and no one has discussed this matter
9 with you, this case with you? Even when you got the jury
10 summons, you -- no one has discussed the type of case you
11 may be coming to hear about?

12 A. No, sir. I got the jury summons. Now, since people
13 knew I have jury duty, they, they assumed, says which one
14 are you on, you know. They will ask me which one, which I
15 did not discuss the case, you know. Of course, people
16 living in Horry County say are you, are you going to the
17 big case, you know, the murder case.

18 Q. All right. So, someone did ask you that?

19 A. Yes, sir.

20 Q. And have they -- did they express any opinion one way
21 or the other?

22 A. No, sir.

23 Q. Did it cause you to form any opinions regarding the
24 guilt or the innocence of the defendant at all?

25 A. No, sir.

1 Q. Would the fact someone may have mentioned that to you,
2 would that have any influence on your decision in this
3 case?

4 A. No, sir.

5 Q. Now, I gave you some sheets of paper with a list of
6 names on it. Do you -- did you circle any of those names?

7 A. No, sir.

8 Q. So, you know no one on that list?

9 A. No, sir.

10 Q. Could I have that back, please, sir?

11 A. Yes, sir.

12 Q. Okay, there are no circles there. If you're on the
13 jury, Mr. Benton, if the jury after the conclusion of the,
14 of the case determine that the state had not proven guilt
15 beyond a reasonable doubt and found the defendant not
16 guilty, well that could conclude jurors' service in the
17 case.

18 If, however, the jury determines that the state has
19 proven the guilt beyond a reasonable doubt the crime of
20 murder and found the defendant guilty of murder, then we've
21 would go into another phase where the consideration would
22 be on the punishment phase of the case. There the jurors
23 would have to choices: life imprisonment or the death
24 penalty. And there'd be evidence, additional evidence
25 introduced regarding the aggravation, mitigation, those

1 type of things. And the jurors will hear that in regard to
2 the type of punishment.

3 I gave you a sheet of paper indicating three types of
4 jurors. Did you understand those three types of jurors?

5 A. Yes, sir.

6 Q. Do you understand that the juror number one is a juror
7 that if he got to that phase of aggravation, mitigation,
8 that juror no matter what that evidence was one way or the
9 other, that juror would feel that the death penalty was
10 required in each and every case. A juror number one would
11 think that the death penalty is the most appropriate
12 punishment for murder no matter what the circumstances are.

13 Juror number two, though, is one that under no
14 circumstances could ever impose the death penalty, and no
15 matter what the evidence of aggravation presented to
16 jurors, that juror would never impose the death penalty.
17 Would always impose life imprisonment.

18 The third juror is a juror that would not have made up
19 his mind up in advance concerning punishment. That juror
20 would want to hear the facts and circumstances in
21 aggravation and mitigation as well as listen to the charge
22 on the law from the judge before making the decision
23 regarding punishment. And if the facts so warranted it in
24 aggravation and mitigation, that juror could impose life
25 imprisonment as a verdict. Conversely, if the juror felt

1 the, the evidence in aggravation and mitigation so
2 warranted it, that juror could also bring back a verdict
3 for the death penalty.

4 Now, you say you understand those three jurors?

5 A. Yes, sir.

6 Q. Which one best describes you?

7 A. Juror number three.

8 Q. So, you'd keep an open mind if you got to that phase
9 and make your decision based on the evidence in aggravation
10 and mitigation?

11 A. Yes, sir.

12 Q. And if you felt it was appropriate, you would bring
13 back a verdict for the life imprisonment?

14 A. Yes, sir.

15 Q. And if you felt it was appropriate, you could bring
16 back a verdict for the death penalty?

17 A. Yes, sir.

18 Q. And you would understand you're not required once you
19 get to that phase to bring back either one? It's up to the
20 way you view it in regard to that. And if you felt
21 appropriate, you could bring back life imprisonment or
22 death penalty. Do you understand that?

23 A. Yes, sir.

24 Q. All right. Now, of course there would be a
25 requirement. You find for death, then you have to find a

1 circumstances of aggravation. But even if you did that,
2 you still could bring back a verdict for the life, for life
3 imprisonment. You understand?

4 A. Yes, sir.

5 Q. All right. Now, if you brought back a verdict for the
6 death penalty, the, the jurors would be required to sign
7 the verdict form. All jurors would be required to sign.
8 You feel you could sign that verdict form?

9 A. Yes, sir.

10 Q. And if you're on this jury, you would do -- you would
11 be sequestered, meaning you'd be in a hotel room. You
12 would be away from your business and family for
13 approximately a week, a little more, a less. You could
14 have some contact by phone, but it would always be a
15 supervised contact. Do you feel that you could handle
16 that? I know it would be inconvenient and it would be a
17 little bit of a hardship, but do you feel you could handle
18 that hardship?

19 A. Yes, sir.

20 Q. All right.

21 THE COURT: All right, I'm going to let the attorneys
22 ask you some questions, and I may have something else to
23 ask you after that.

24 Mr. Hembree?

25 MR. HEMBREE: Thank you, Your Honor.

1 EXAMINATION BY MR. HEMBREE:

2 Q. Good evening, Mr. Benton.

3 A. Evening.

4 Q. I'm Greg Hembree. I was introduced to you yesterday.
5 I, along with Fran Humphries and Scott Hixson, will be
6 trying this case on behalf of the state.

7 I noticed in your juror questionnaire that in response
8 to one of the questions, you indicated that an employee of
9 the solicitor's office was related to you. Felicia
10 Richardson, or a lawyer, a lawyer was related to you, that,
11 that being Felicia Richardson, correct?

12 A. Correct. That's correct.

13 Q. And is she, she's a -- tell me about y'all's family
14 relationship. What is the ---

15 A. She's a first cousin; I see her maybe once a year at
16 Christmas or Thanksgiving.

17 Q. Okay. So, y'all are acquainted but not real, real
18 close. Is that fair to say?

19 A. No, not real close. We don't -- I say we see each
20 other once a year for maybe an hour.

21 Q. I gotcha. You have any idea what type of law she
22 practices?

23 A. No, sir.

24 Q. Okay.

25 A. I knew she works at the courthouse, but I couldn't

1 tell you which department she works for.

2 Q. Fair enough, and there's nothing about that
3 relationship or the fact that she's a lawyer with -- the
4 fact she works at the courthouse that would have any affect
5 on your ability to be fair and impartial in this case,
6 would it?

7 A. No, sir.

8 MR. HEMBREE: Please answer any questions the defense
9 counsel has for you.

10 THE COURT: All right, Mr. Rathbun?

11 EXAMINATION BY MR. RATHBUN:

12 Q. Good evening, Mr. Benton.

13 A. Evening.

14 Q. Been a long day.

15 A. Yes, sir.

16 Q. My name is Paul Rathbun. I and Ralph Wilson represent
17 Mr. Winkler in this, and I see in your questionnaire that
18 you got three little ones at home.

19 A. Yes, sir.

20 Q. And your wife is a housekeeper?

21 A. Yes, sir.

22 Q. And that you work with your dad in, in, in your dad's
23 business?

24 A. That's correct.

25 Q. Okay, and so is your wife if you get chosen for the

1 jury and have to be sequestered for a week or ten days, is
2 she going to have some support for her and the children
3 while you're out of the picture for a while?

4 A. Yes, sir.

5 Q. That's good. Do you understand that as we stand here
6 today, Mr. Winkler is presumed innocent of the charges
7 against him?

8 A. Yes, sir.

9 Q. And if you're chosen as a juror, you and the other
10 eleven jurors will hear evidence, and you'll see evidence,
11 and then you'll have to deliberate, and you're going to
12 have to come up with a unanimous verdict, all twelve of you
13 for -- to be guilty. Do you understand that?

14 A. Yes, sir.

15 Q. And if they're not -- you're not all unanimous on
16 that, then the verdict would be not guilty. Do you
17 understand that?

18 A. Yes, sir.

19 THE COURT: Well, Mr. -- as you understand it, if, if
20 -- when you say -- you know there could be the issue of
21 hung jury and those type things.

22 MR. RATHBUN: Right, but it takes a unanimous jury to
23 have a ---

24 THE COURT: Yes, sir. Yes, sir.

25 MR. RATHBUN: --- a guilty verdict.

1 THE COURT: Yes, sir.

2 MR. RATHBUN: But if we get a hung jury ---

3 THE COURT: Oh, we'll discuss all that if you on the
4 jury, sir. You continue on.

5 MR. RATHBUN: Thank you.

6 Q. If after deliberation you and the eleven other jurors
7 determined that the defendant is guilty, then we enter into
8 the sentencing phase. You understand that?

9 A. Yes, sir.

10 Q. And again you and those eleven jurors are going to
11 hear circumstances of aggravation, which the state's going
12 to present those. And it's going to make the murder to
13 maybe appear worse than what you'd think it would be. You
14 understand that?

15 A. Yes, sir. They present evidence.

16 Q. In aggravation which makes it seem worse.

17 A. Yes, sir.

18 Q. And the defense, we're going to put in the matters of
19 mitigation which we're going to hope will lessen the moral
20 culpability of the defendant in, in your mind. Do you
21 understand that?

22 A. Yes, sir.

23 Q. And you understand you have a duty as a juror to make
24 up your mind?

25 A. Yes, sir.

1 Q. Okay, and you would ask the other eleven jurors to
2 respect your decision, just as you would respect their
3 decision?

4 A. Yes, sir.

5 Q. Okay. I notice that you made sergeant in the Marine
6 Corps.

7 A. That's correct.

8 Q. And what was your duties in the Marine Corps?

9 A. I was logistics. That was my MOS.

10 Q. Okay, and was that a buck sergeant or a E-4?

11 A. E-5.

12 Q. E-5 in four years? Very good. Now, you never saw
13 combat? You were never transferred for sea duty or
14 overseas?

15 A. I never saw combat. I, you know, I was always
16 stationed at Camp Lejeune, you know. Went, went to Spain,
17 different things like that, you know, when it was peace
18 time.

19 Q. Okay, great. All right, and the only other thing I
20 have to ask is do you understand that the court and the
21 state are satisfied with the verdict that you reach, be
22 that the death penalty or life? Do you understand that?

23 A. Yes, sir.

24 Q. And you could follow the judge's, the law as the judge
25 gives you and, and come to whatever conclusion you have?

1 And you understand that's the parameters we're dealing
2 with?

3 A. Yes, sir.

4 MR. RATHBUN: Thank you.

5 THE COURT: One thing, Mr. Benton. You said in the
6 Marine Corps you were logistics. Wait a minute. Marine
7 Corps always what first?

8 JUROR: Infantry first.

9 THE COURT: That's right, infantry first, right,
10 because that's everybody's duty, everything. And of course
11 y'all don't use that term buck sergeant, E-5. That was
12 pretty good advancement in four years. Why did you decide
13 to get out?

14 JUROR: Family reasons. Just had family, wife, and
15 kids on the way. Just wanted to be home.

16 THE COURT: All right. If you would, could you step
17 out in the door there past that door, and I'll bring you
18 back in, back in in a minute.

19 JUROR: Yes, sir.

20 THE COURT: Just step back.

21 (THE JUROR EXITS THE COURTROOM.)

22 THE COURT: Okay, position of the state?

23 MR. HEMBREE: This juror is qualified, Your Honor.

24 THE COURT: Defense?

25 MR. RATHBUN: Qualified, Your Honor.

1 THE COURT: Bring him back in.

2 (THE JUROR ENTERS THE COURTROOM.)

3 THE COURT: Now, I'm going to -- I, I, I determined
4 and find that you are qualified to serve in the jury pool
5 on this case. That doesn't mean you're necessarily going
6 to be on the jury. It means that you will be part of the
7 pool, the group from which the jury will be drawn.

8 I'm going to ask you to come back at 11:30 a.m. on
9 Thursday. In the meantime, do not discuss this case anyone
10 at all. Don't let anyone talk with you about it at all,
11 find out the nature of the case, the name of the case, or
12 anything. Leave, walk away; make sure no one talks with
13 you at all. Do not read any local papers, and do not watch
14 any local news media about this. If someone does bring
15 something up to you, let me know about it Thursday.

16 Now, if you are selected, then of course that day,
17 even that evening you'll be taken to the hotel room. So,
18 you might want to go ahead and get some things packed, be
19 ready just in case.

20 In addition, you might want to arrange for someone to
21 be ready to take you home or bring you back up to the
22 courthouse so they can take your car back so you won't be
23 leaving your car at the courthouse, okay, sir? We will
24 have transportation back and forth to the hotel.

25 And also you might not want to accept any invitations

1 to the Super Bowl party right now, all right? Let you go
2 ahead and leave the door over here. I say -- see it says
3 you watch, like watching football. If you would, leave out
4 the door over there, and we'll see you Thursday.

5 Now, what I'd like to do is this. Let's take a break.
6 I'm going to take a look and see our other group have
7 anything specific about them. We're probably going to
8 start tomorrow about 8:30, but I'll make a decision about
9 -- that last group's here. I'm trying to think. We have
10 two or three groups here now?

11 CLERK OF COURT: We had groups one, two, and three.

12 THE COURT: Okay, three. I'm going to send that least
13 one and maybe two of them home.

14 And, Doctor, if you would talk with Mr. -- talk with
15 Mr. Winkler and I'll listen to your opinion about that.
16 But I'd like, if you could, maybe go at least about another
17 hour and stop in an hour if possible. But I don't want to
18 put anybody's health, put anybody's health in jeopardy.
19 So, if you talk to him and then we'll -- I'll be back in my
20 chambers, and y'all let me know when you're ready to get
21 started back. I hope it's going to be in the next fifteen
22 minutes. I'm probably going to let that last panel go and
23 tell them to come back tomorrow morning.

24 Mr. McLeod, let me see you for a few minutes.

25 (OFF THE RECORD.)

1 (THE JUROR ENTERS THE COURTROOM.)

2 THE COURT: Okay, the nurse practitioner told me that
3 she had given Mr. Winkler some medication, and she said
4 another hour would be no problem. I like to see if we
5 could get through this next group. I'm going to let the
6 second group, the one that's here for at 5:40, I'm going to
7 let them go ahead and go and come back tomorrow morning.
8 Let's just try to get through this next group of five.

9 (A PAUSE.)

10 THE COURT: All right, did you have Ms. Roughton? Has
11 she been looking at the list?

12 MR. HEMBREE: I'm sure she has.

13 THE COURT: All right, anything we need to discuss
14 before bring her in? If not, bring her on in.

15 (JUROR #390 ENTERS THE COURTROOM.)

16 EXAMINATION BY THE COURT:

17 Q. Is it Roughton or Roughton?

18 A. It's Roughton.

19 Q. Roughton?

20 A. Yes, sir.

21 Q. Ms. Roughton, you only been back there ten or fifteen
22 minutes, right?

23 A. That's right.

24 Q. Have a seat. I very much apologize for keeping you
25 here so long today. I do these things with best estimates,

1 and obviously I mis-estimated this today, but we're ready
2 now to proceed and talk to you a little bit.

3 Let me first remind you that you are still under oath
4 from yesterday, okay?

5 A. Okay.

6 Q. And I see that you were born in Murrells Inlet. Is
7 that where you -- well, you live in Garden City now, so you
8 still live on the south end?

9 A. I was born in Florence.

10 Q. Oh, it says city, county, state of birth, says
11 Murrells Inlet, Horry, South Carolina. So, it's really
12 Florence?

13 A. Florence.

14 Q. Okay, Florence, South Carolina. All right, and -- but
15 you lived most of your life down here?

16 A. I moved back home about seven years ago.

17 Q. Seven years ago, and what did you do while you lived
18 in Florence, or did you live-- where did you live ---

19 A. I left when I was seventeen. I grew up there and when
20 I was seventeen I ---

21 Q. Then where did you go that you lived?

22 A. I live in Florida and Hawaii.

23 Q. Hawaii?

24 A. Yes.

25 Q. Which island?

1 A. Oahu.

2 Q. Oahu. I've been there a couple times with
3 conferences. You know the beach is a brown sand.

4 A. Yeah, yeah.

5 Q. And it's so soft. There's no beach to run on now;
6 it's downtown Honolulu. Did you ever get to Kauai?

7 A. I went to Kauai. That's the only other island I went
8 to.

9 Q. That's a beautiful island and canyon there.

10 A. Yeah.

11 Q. All right, I'm going to talk with you a little bit
12 about your, your potential jury service here. As far as
13 the attorneys, Mr. Hembree, Mr. Humphries, Mr. Wilson or
14 Mr. Rathbun, do you know any of these attorneys?

15 A. No, sir.

16 Q. Okay. Do you have any interest, or bias, or prejudice
17 in this case at all?

18 A. No, sir.

19 Q. Have you formed or expressed any opinion regarding the
20 guilt or the innocence of the defendant?

21 A. No, sir.

22 Q. And do me a favor. I'm sorry, the court reporter's
23 looking at me with strange, mean eyes saying Judge, again
24 she needs to speak in the microphone.

25 A. Okay.

1 Q. Detected that, too, didn't you? You knew what I was
2 going to tell you?

3 A. Yes.

4 Q. Very good, so make sure to speak there in the
5 microphone. Do you know of any reason whatsoever, Ms.
6 Roughton, why you couldn't give the state and the defendant
7 a fair and impartial trial in this case?

8 A. No, sir, I don't.

9 Q. All right. If you're on this jury, you would be
10 required to follow the law as I instruct you as the judge,
11 and would you do that?

12 A. Yes, sir, I would.

13 Q. One of the things I would tell you on the jury is that
14 in a criminal trial in the United States of America, a
15 person charged with a crime is presumed innocent. And the
16 burden is upon the state to prove guilt beyond a reasonable
17 doubt. It is no burden on the defendant to prove himself
18 innocent; the burden is on the state to prove guilt beyond
19 a reasonable doubt. You understand that?

20 A. Yes, sir, I do.

21 Q. And would you follow that rule?

22 A. Yes, sir.

23 Q. So, at the beginning of the trial you would presume
24 the defendant innocent unless the state proves him guilty
25 beyond a reasonable doubt?

1 A. Yes, sir.

2 Q. On the jury there, Ms. Roughton, if after hearing all
3 the evidence in the case and my instructions on the law --
4 and you're telling me that if you do not feel the state
5 proves guilt beyond a reasonable doubt, if they did not
6 prove it beyond a reasonable doubt, you would find the
7 defendant not guilty?

8 A. Yes, sir.

9 Q. But on the contrary if they did prove guilt beyond a
10 reasonable doubt, you'd find the defendant guilty?

11 A. Yes, sir.

12 Q. Okay. This case has gotten some media coverage in the
13 newspapers, TV, radio. Heard, seen, or read anything about
14 this case at all?

15 A. I, I wasn't even sure what I was coming to when I came
16 yesterday morning.

17 Q. You knew you're coming to jury duty?

18 A. I knew I was coming to jury duty, but I didn't know it
19 was -- it was this.

20 Q. Okay. Well, but have you heard about this case
21 before?

22 A. Nothing in depth.

23 Q. Well, what have you heard not in depth?

24 A. I, I think I remember about, like, reading in the
25 paper a couple years ago when they had back-to-back

1 instances of some things happening.

2 Q. Okay, and you do realize that whatever the paper says
3 or the charges, these are allegations?

4 A. Yes, sir.

5 Q. And has any of what you seen caused you in any way to
6 form an opinion at all ---

7 A. No, sir.

8 Q. --- or conclusion?

9 A. No, sir.

10 Q. You be willing to sit on the jury with that
11 presumption of innocence as I explained to you?

12 A. Yes, sir.

13 Q. And could you put aside anything you've read, heard,
14 or discussed in this matter?

15 A. Yes, sir.

16 Q. Now, has anyone ever mentioned this case to you?

17 A. No, sir.

18 Q. Even when you got your jury summons, did anyone ask
19 you about why you're coming or anything of that nature?

20 A. No. The only thing was my, my mother had, had read in
21 the paper about the date, and she knew that that was the
22 date I was coming here.

23 Q. Okay, and did she discuss that with you?

24 A. No, sir.

25 Q. How did you know she read the date?

1 A. How did I know what?

2 Q. How did you know she read that in the paper?

3 A. She had told me that she read in the paper about a
4 trial starting on the 28th and was that the day that I was
5 supposed to go, and I told her it was.

6 Q. Did she tell you what the case may be about that she
7 knew and was thinking about?

8 A. She asked if I knew what I was going to, and I did
9 not. I told her that I knew that there was some names on
10 the forms that we fill out, but I couldn't remember what
11 they were.

12 Q. And she didn't mention any names or thoughts?

13 A. No, sir.

14 Q. Okay. I gave you a list of names, three sheets of
15 paper. Did you review those?

16 A. I did.

17 Q. And did you find anybody on there that you knew?

18 A. No, sir. I didn't.

19 Q. Could I see the sheet, please? Okay, no, no names
20 were circled.

21 Now, if you were to sit on this jury, if the jury were
22 to determine that guilt had not been proven beyond a
23 reasonable doubt and found the defendant not guilty, that
24 would conclude your service at that time. If, however, the
25 jury were to decide that the defendant's guilt had been

1 proven beyond a reasonable doubt of murder, then we would
2 enter into another phase where the issue of punishment
3 would be considered by the jury. And there you have
4 evidence of aggravation and mitigation that would be
5 presented to the jury.

6 I gave you a sheet that has three types of jurors on
7 it. Do you have that sheet in front of you?

8 A. Yeah, I do.

9 Q. Have you reviewed that?

10 A. I did.

11 Q. And do you understand what the three types are and you
12 understand the difference?

13 A. Yes, sir.

14 Q. I'll go over just briefly with you the first juror.
15 The juror number one is the juror that feels that no matter
16 what the evidence of aggravation and mitigation are, that
17 that juror would feel that the death penalty is the most
18 appropriate punishment in all cases where there's a
19 conviction of murder.

20 Juror number two is the juror that feels that no
21 matter what the evidence in aggravation and mitigation are,
22 that the -- that that juror feels they could never impose
23 the death penalty and would always impose life
24 imprisonment. They feel the death penalty would not be
25 appropriate no matter what the circumstance.

1 Juror number three is a juror that would come in at
2 the phase of the, the phase of considering punishment with
3 an open mind and would not have their mind made up in
4 advance. That juror would want to hear the facts and
5 circumstances in aggravation and mitigation, and will want
6 to listen to and follow the law as the judge charges the
7 jury before she could make the decision regarding
8 punishment. And that juror, if after hearing the evidence
9 in aggravation and mitigation, if that juror felt that the
10 evidence so warranted it, that juror could bring back a
11 verdict of life imprisonment. But also if that juror felt
12 that the evidence of aggravation and mitigation so
13 warranted it, that juror could bring back a verdict for the
14 death penalty.

15 Now, looking at those three jurors, which one best
16 describes you, Ms. Roughton?

17 A. Type three.

18 Q. So, you'd approach that phase with an open mind?

19 A. Yes, sir.

20 Q. All right, and you would listen to the evidence in
21 aggravation and mitigation. If you felt the evidence so
22 warranted it, you could come back with a verdict of life
23 imprisonment?

24 A. Yes, sir.

25 Q. If you felt the evidence in aggravation, mitigation so

1 warranted it, you could come back with a verdict of the
2 death penalty?

3 A. Yes, sir.

4 Q. Either one. Now, if the jury were to bring back a
5 verdict of the death penalty, law requires that each juror
6 sign the verdict form. Could you sign that verdict form,
7 too?

8 A. I could.

9 Q. All right. If you were selected as a juror on -- in
10 this case, you'd be sequestered, meaning that we'd house
11 you in a hotel, and it could be somewhere around a week, a
12 little less or more, and it would begin on Thursday. And I
13 know that would be inconvenient to you in a way that you
14 would be away from your children, your family, and where
15 you work. But would it cause such an undue hardship that
16 you could not do that?

17 A. No, sir.

18 THE COURT: All right, I would let the attorneys now
19 ask a few questions, and I may have something else to say
20 to you.

21 All right, from the state?

22 MR. HEMBREE: We have no questions for this juror.

23 Thank you, ma'am.

24 JUROR: Thank you.

25 THE COURT: All right, for the defense?

1 EXAMINATION BY MR. RATHBUN:

2 Q. Good evening, Ms. Roughton.

3 A. Evening.

4 Q. My name is Paul Rathbun, and Ralph Wilson and I
5 represent Mr. Winkler in this case. It's been a long day.
6 I notice on your questionnaire that you have three
7 children?

8 A. Yes, sir.

9 Q. And two of those have a different surname.

10 A. Yes, sir.

11 Q. All right. Were you married to their father?

12 A. I was, yes.

13 Q. And would you care to explain what happened with that
14 first marriage?

15 A. I was married for ten years and had two children and
16 both grew, grew apart.

17 Q. Okay. So, it's a fairly amenable situation?

18 A. Yes, sir.

19 Q. Do you understand that today, as we are here today,
20 Mr. Winkler is presumed innocent of all the charges that
21 were read out yesterday?

22 A. I do.

23 Q. And it's going to take evidence entered into the jury
24 by the state, and it's going to take deliberation upon the
25 jurors' part, if you're chosen as one of those jurors, to

1 determine his guilt or innocence?

2 A. Yes, sir.

3 Q. And that this is what they call a bifurcated trial.
4 If you can't find him guilty in the first phase, it's over.
5 Or if you find him guilty of a lesser included charge, then
6 we don't get to the second phase.

7 A. Right.

8 Q. But if after due deliberation you the other eleven
9 jurors decide that Mr. Winkler is guilty, then we enter
10 into the sentencing phase, the second phase. What we're
11 trying to find out is whether or not you could follow the
12 law as the court gives it to you and the State of South
13 Carolina, and after due deliberation and consideration you
14 could either come up with the death penalty or the life
15 penalty.

16 Now, you understand that the State of South Carolina
17 and the court are satisfied with either during the second
18 phase of the trial? The state would put up circumstances
19 of aggravation, and it's kind of silly to say this, but
20 those are situations that will make a homicide seem worse
21 than just a regular homicide. And the defense, we're going
22 to put up matters of mitigation, which we hope will lessen
23 in your mind the moral culpability of our client. And what
24 we need to know is whether or not you can consider all the
25 evidence and make up your mind as to the death penalty or

1 the life penalty.

2 A. I believe I can.

3 Q. Okay, and having made up your mind, would you ask the
4 other jurors to respect your opinion as you would respect
5 their opinion?

6 A. Yes, sir, I would.

7 Q. And you could hold to that opinion even if you're in
8 the minority?

9 A. I could.

10 MR. RATHBUN: Thank you.

11 THE COURT: Okay. If you would, please, ma'am, if you
12 could step outside and in that room out there, and we'll
13 bring you back again in just a minute.

14 (THE JUROR EXITS THE COURTROOM.)

15 THE COURT: I find it interesting she said the time
16 she came to the courthouse was to get a wedding license.

17 Position of the state?

18 MR. HEMBREE: Ms. Roughton is qualified.

19 THE COURT: Position of defense?

20 MR. RATHBUN: She's qualified, Your Honor.

21 THE COURT: All right, bring her back in, please. I
22 find she's qualified.

23 (THE JUROR ENTERS THE COURTROOM.)

24 THE COURT: Maybe I can say it correctly. Ms.
25 Roughton?

1 JUROR: Yes, sir.

2 THE COURT: Ms. Roughton, I'm going to qualify you for
3 the pool from which this jury will be selected. That
4 doesn't mean that you will actually be on the jury. What
5 it means is you'll be in a group from which we draw that
6 jury.

7 I need you to be back Thursday at 11:30 in the
8 morning, and we should start the trial sometime that day.
9 Now, in between that please do not read any local
10 newspapers at all. Do not discuss this case with anyone,
11 family members, friends or anyone else. And do not look at
12 any local newscasts.

13 Since you may be on the jury, you may want to pack
14 some things to be ready just in case you get selected. If
15 you do get selected, we'll send you home to get your
16 clothing and come right back quickly. So, you might also
17 want to have someone ready to bring you back so that you
18 won't have to leave your car here at the courthouse. So,
19 just have someone ready to go Thursday just in case you
20 need that assistance, okay?

21 JUROR: Okay.

22 THE COURT: Now, if you would, you can leave out this
23 door here, but we'll see you Thursday at 11:30. Okay, see
24 you then. Thank you, ma'am.

25 JUROR: Thank you.

1 THE COURT: Okay. Next we have 431.

2 MR. HEMBREE: Yes, Your Honor.

3 THE COURT: He has an IRS situation.

4 MR. HEMBREE: Your Honor, he had a variety of issues
5 that he raised with the court, I believe ---

6 THE COURT: I know. It was clear he did not want to
7 serve on jury duty.

8 MR. HEMBREE: He came forth a number of times.
9 Started out with the financial hardship issues. He sent a
10 letter in, I believe, prior to his reporting yesterday
11 about his IRS and child support payments. That he was very
12 concerned if he didn't continue to work, that he would
13 suffer the wrath of the court's, a court, family court and
14 the IRS.

15 He also pointed out something about his brother being
16 involved in drugs. He also pointed out that he is -- that
17 his brother had suffered beating at the hands of police in
18 New York City which have left him with a distrust of the
19 justice system. That's, I mean, those, those, those were
20 in there, Your Honor.

21 One other thing that he didn't -- those were the
22 things that he mentioned yesterday. I just noticed also
23 that he put in his jury questionnaire, he mentions a
24 medical problem with his back. But I think more troubling
25 was question 36. He said: I believe that if you kill

1 someone, the same should come to you. So, there's a lot of
2 issues for Mr. Stackhouse.

3 THE COURT: Can the defense and state agree on the
4 juror?

5 MR. RATHBUN: Your Honor, I agree with the Solicitor
6 Hembree. There are a lot of questions with gentleman, but
7 I believe we should go through the process.

8 THE COURT: All right. So, even though he said on his
9 questionnaire -- I'm trying to look at where. What number
10 was that?

11 MR. RATHBUN: Number 36, Your Honor.

12 THE COURT: All right. Well, anyway, yes, I still
13 want to talk with him.

14 Before I bring him in, though, also let y'all know
15 that I got an e-mail back from a circuit judge in Maryland.
16 He said that since his prosecution days -- he's been on the
17 bench now about sixteen, seventeen years, but he was a
18 prosecutor for years before that. He said the CDS -- well,
19 something dangerous substances -- that the penalty for
20 cocaine possession was four years and a \$25,000 fine. So,
21 so that's about possession of cocaine in the State of
22 Maryland. We will look at it tomorrow, too, so far as may
23 be worrying about it today.

24 Bring Mr. Stackhouse in for me.

25 (JUROR #431 ENTERS THE COURTROOM.)

1 EXAMINATION BY THE COURT:

2 Q. Mr. Stackhouse, how're you doing again?

3 A. Fair.

4 Q. All right. Have a seat over here if you would,
5 please, sir. Now, you recall, Mr. Stackhouse, yesterday we
6 put everybody under oath. You remember that yesterday?

7 A. Yes, sir.

8 Q. Now, what I need for you to do, though, is to make
9 sure you speak into that microphone so everybody can hear
10 you.

11 A. Okay.

12 Q. So, you do remember you're still under oath?

13 A. That's right.

14 Q. Are you related by blood or marriage or know any of
15 the lawyers in this case?

16 A. Not that I know of.

17 Q. Okay. Do you know Mr. Winkler, the defendant?

18 A. Not that I know of.

19 Q. Okay. Do you have any special interest, bias, or
20 prejudice in this case at all?

21 A. Well, now, you said yesterday not to watch television,
22 not to read a newspaper, anything like that.

23 Q. Yes, sir.

24 A. I didn't do that, but I have to be honest. I stopped
25 to pick up packages yesterday. I heard people talking

1 about the case. I went again today to turn in my slip so I
2 can get paid for this, but I work at the ---

3 MR. WILSON: Excuse me, Your Honor, could he speak up
4 a bit?

5 Q. Speak a little bit louder.

6 A. Okay.

7 Q. So, you stopped yesterday to get some packages?

8 A. Yesterday. People were talking about that yesterday.

9 Q. Where did you stop to get packages?

10 A. Yesterday I stopped at the ABC store to get a package.

11 It was being discussed there. I got my package and left.

12 And then today I went to turn my papers in so I can get

13 paid because I work at the city.

14 Q. City of Conway?

15 A. City of Myrtle Beach.

16 Q. City of Myrtle Beach.

17 A. I work there. They were talking about it there. I
18 just looked at them, turned and left and yes, they did call
19 names. They were talking about the particular case.

20 Q. Okay.

21 A. They were talking about events like that. Again this
22 afternoon, I was at my second job before I came here. They
23 was talking about it there, too, again. So, I did hear a
24 lot about it. I did hear things that was supposed to be
25 happening, things that was supposed to be going on.

1 Q. Now, what did you hear?

2 A. Well, I heard about how the young lady was killed, how
3 she was taken about and doing all that stuff, pretty much
4 what happened, saying that ---

5 Q. Back up from the mic, from the microphone just a
6 little bit.

7 A. People saying that, you know, this particular guy's
8 ---

9 THE COURT: Is that better?

10 COURT REPORTER: Yes, sir.

11 A. This particular guy is, is, is guilty of killing this
12 girl, the way he killed her and carried her around.

13 Q. Did you talk with them about it?

14 A. Didn't say a word because you said not to.

15 Q. Did you leave when you heard people talking about it?

16 A. I start walking away. I got away from that, but to be
17 honest, I did kind of develop an opinion about some of the
18 things that I heard, what was going on about the case.

19 Q. What do you mean you developed an opinion?

20 A. I -- well, the way things were said about what he did
21 and what, it kind of made me feel like something like that
22 did happen, you know.

23 Q. Well, are you telling me that these people knew more
24 about it than anyone else?

25 A. I don't know.

1 Q. I mean, how would ---

2 A. I didn't, I didn't say nothing to them. I didn't talk
3 to them. They tried to say well, Ronnie, I know there's a
4 case that's getting ready to be going on, and I looked at
5 them. I started walking away, okay? But wherever I went
6 yesterday, I heard this being talked about. I guess it's
7 all over the news, the newspapers, media, all that kind of
8 stuff.

9 Q. Well, as you know, that as we discussed with you
10 yesterday, that's no different, really, is it, than, than
11 the solicitor reading out the allegations yesterday.

12 A. Yeah. They just went into more detail I guess ---

13 Q. Tell me what more detail.

14 A. Pretty much like how he just drove the young lady
15 around after he had killed her and everything.

16 Q. Okay, but you know that's allegations. People are
17 alleging that occurred.

18 A. Uh-huh. Yeah, I knew that, too, but at the same time,
19 yeah, I did kind of, you know, you hear things. You kind
20 of feel like, you know, some of the stuff could have
21 happened. Some of this stuff could have, could have gone
22 on.

23 Q. Well, what did you hear other people say did go on?

24 A. Well, that's pretty much all I heard. I just heard
25 them calling his name and what went on.

1 Q. And so have you formed an opinion about it?

2 A. I feel like I formed an opinion about it, and actually
3 to be honest I'm a bit nervous about this whole thing. I
4 wouldn't feel comfortable sitting up there knowing that
5 there's people out there waiting for me to make a decision,
6 either to put this guy away or to set him free. That I
7 would be more worried about my family than anything.

8 Q. Why would you be worried about ---

9 A. Well, because no matter what, there's retaliation and
10 everything.

11 Q. Retaliation?

12 A. Well, I mean, you see people sitting waiting for me.
13 Like you said yesterday, you don't make that decision. The
14 jury makes that decision what happens to this guy. So, I'm
15 pretty sure they're the friends, relatives, whatever
16 sitting out there waiting for a decision, and that don't
17 make me feel comfortable.

18 Q. Have you seen ---

19 A. No, I haven't seen nothing.

20 Q. Have you seen that occur as the, the events, that
21 jurors have attacks if they find people guilty, have
22 attacks on their family?

23 A. I have heard that before.

24 Q. Have you ever seen it?

25 A. I've never seen it before but I've heard of it before.

1 Retaliation, that I know retaliation, it do occur. That's
2 something you just can't turn your back to and, I mean,
3 that's nothing I want to ---

4 Q. Well, let's go back to what you may or may not have
5 heard.

6 A. Okay.

7 Q. Once again, what you heard, have you formed an opinion
8 as to the guilt or the innocence of the defendant?

9 A. Pretty much, yes, from what I heard.

10 Q. What did you form your opinion?

11 A. Guilty.

12 Q. And do you feel that you could put that opinion aside
13 and give the defendant the presumption of innocence when we
14 start the case?

15 A. No.

16 Q. No way you could do that?

17 A. No.

18 Q. So when this case started, you would presume that the
19 defendant is guilty?

20 A. Guilty.

21 Q. Not innocent?

22 A. No.

23 Q. You wouldn't follow the law as I instruct it to you?

24 A. Well, I'd be following the law, but I, I've already
25 formed my own opinion and once you formed your own opinion,

1 it's not really like I'm stepping forth and trying to break
2 the law or anything. I'm not trying to break the law. I
3 did exactly what you said yesterday. No television, no
4 newspapers or nothing, but yet you still have people out
5 there talking about ---

6 Q. Up until yesterday, had you heard about this case?

7 A. Nope.

8 Q. So, all of a sudden hadn't heard about this case at
9 all and all of a sudden you hear it from three different
10 people or locations ---

11 A. I heard it from certain different people. It was more
12 than, it was more than three different people. It's ---

13 Q. All that ---

14 A. --- group of people.

15 Q. --- yesterday?

16 A. Yes, a group of people at my first job. First at the
17 store yesterday, then at my first job this morning, and
18 then stop by the second job before I come here, and it was
19 all being talked about there.

20 THE COURT: How about stepping outside the door there
21 for a second.

22 (THE JUROR EXITS THE COURTROOM.)

23 THE COURT: I tried, Mr. Wilson, Mr. Rathbun. Y'all
24 want to ask a question or something to try to rehabilitate
25 him? I tried my best.

1 MR. WILSON: Judge ---

2 THE COURT: But I'm not sure of his credibility, to
3 tell you the truth.

4 MR. WILSON: I, I agree with you, and, and my concern,
5 though, is is that this juror is not willing to serve for
6 whatever his reasons are. And, and I understand that.
7 None of us want to be here. We're here because we have to
8 be here. My concern is is that the court instructed this
9 juror yesterday, as you did every other juror, not to
10 discuss this case with anybody. And that if anybody
11 approached them to discuss it, that they were to come to
12 the court and tell them.

13 Now, he tells us here today that he knew nothing about
14 this case until yesterday, and all of a sudden today now he
15 has got enough information from three or four different
16 sources to form an opinion.

17 Now, what I, what I would want to know is -- one, I
18 don't believe his story because I don't think that he
19 talked to all those people. And, and, and if that's true,
20 then he's not being honest with the court and he needs to
21 be, he needs to face the consequences for that. I don't
22 think that's -- because if you don't do that, that
23 encourages him and other people to go out and just come in
24 and tell the court anything so they won't have to serve.

25 THE COURT: I'm with you, Mr. Wilson, on that. My

1 question, though, about him as juror on this case, I
2 stopped because I said, you know, he is going to say
3 whatever he can say. I don't know whether he's telling the
4 truth. He could or he may not be. But I, I, I guess that
5 he's said he's formed an opinion. How do I -- I'll be glad
6 for y'all to ask him questions to get him around it, see if
7 you can rehabilitate him. Or I can ask him further, but
8 I'm not sure you'll be able to.

9 MR. WILSON: I, I don't want him rehabilitated; I'm
10 not trying to rehabilitate him. I'm simply saying to the
11 court because you gave him specific instructions yesterday.
12 And what he ---

13 THE COURT: I can handle that part of it. My question
14 now is the state had already moved he be disqualified. Do
15 you now agree to disqualify him? I'll handle the other
16 part.

17 MR. RATHBUN: May I have a moment?

18 THE COURT: Yes, sir.

19 (DEFENSE COUNSELORS CONFER.)

20 MR. WILSON: What he was asking me was whether you're
21 reminded him that he was still under oath when he took the
22 stand again today, and I think you did.

23 THE COURT: I'd be glad to remind him again.

24 MR. WILSON: Well, I don't want him. I just don't
25 like the fact that he would take advantage of the system

1 that way and then tried to manipulate it to get away with
2 it.

3 THE COURT: All right.

4 MR. WILSON: Maybe that's the old prosecutor still
5 left in me.

6 (THE JUROR ENTERS THE COURTROOM.)

7 FURTHER EXAMINATION BY THE COURT:

8 Q. Mr. Stackhouse, come have a seat over here. Mr.
9 Stackhouse, you realize that you, that you still are under
10 oath, sir?

11 A. That's right.

12 Q. Now, sir, you said that yesterday at three different
13 places you heard comments about this case?

14 A. That's right.

15 Q. And in all three places, you stayed long enough to
16 hear enough to form an opinion. Sir?

17 A. That's right.

18 Q. So, in each place, you didn't walk away right away?

19 A. At the package store, I got my package and left. At
20 the city, I spoke to my supervisor, gave him that slip you
21 have to turn in at the city.

22 Q. And he talked you about it?

23 A. Nope. He didn't speak to me.

24 Q. Who talked to you about it?

25 A. The guys that came outside.

- 1 Q. Give me somebody's name.
- 2 A. Okay, had a guy named David.
- 3 Q. Dave, Dave what?
- 4 A. White.
- 5 Q. Last name is what?
- 6 A. White.
- 7 Q. W-h-I-t-e?
- 8 A. Right.
- 9 Q. He work for the City of Myrtle Beach?
- 10 A. Yes, he do.
- 11 Q. He come and talked to you about it?
- 12 A. Yeah. There was a bunch of people in a group standing
- 13 there talking.
- 14 Q. And Dave White was one of them?
- 15 A. Dave White was one of them.
- 16 Q. And you didn't talk to him?
- 17 A. No, sir. I said I can't talk about that.
- 18 Q. And he talked about that. Now, who at the package
- 19 store talked to you about it?
- 20 A. I don't know the young lady's name.
- 21 Q. Does she work there?
- 22 A. I'm assuming so. She showed me the package, sir.
- 23 Q. What, you've been to the store before?
- 24 A. Once.
- 25 Q. She ever been there?

- 1 A. No.
- 2 Q. But she was behind the counter?
- 3 A. Behind the counter.
- 4 Q. What's the name of the store?
- 5 A. Is just ABC store.
- 6 Q. No, sir. It's got a name. Where is it?
- 7 A. Right off of 501 -- excuse me, excuse me, 544 next to
- 8 Food Lion.
- 9 Q. 544 and next to the Food Lion?
- 10 A. Yeah.
- 11 Q. That's a little strip shopping center there?
- 12 A. Yep.
- 13 Q. And there's a Sonic place right close by there?
- 14 A. Yep.
- 15 Q. Now, she mentioned something to you about the case?
- 16 A. I heard her talking about -- she didn't mention any
- 17 names or anything like that. She was just basically
- 18 talking about there's a trial coming up.
- 19 Q. Well, what did she say about the case?
- 20 A. She didn't say too much about the case.
- 21 Q. Well, that didn't cause you to form any opinion.
- 22 A. No, not really, what she said.
- 23 Q. Okay, what did Dave White say caused you to form an
- 24 opinion?
- 25 A. Dave White was just talking about the, the, the case

1 that's coming up where, where the guy had killed his wife
2 and then drove around in the car. He was talking about,
3 like, that. I said Dave, I can't talk about that. So, I
4 started walking away from that.

5 Q. Did you tell him you're on jury duty?

6 A. They know I'm on jury duty because I turned that sheet
7 in, and I took Monday off and I filled out a leave request
8 for jury duty. But I had to take it back, so they took
9 that leave request away and put it with the jury duty
10 thing. So, I took care of that, done went and done that.

11 Q. Dave White ---

12 A. They know ---

13 Q. --- knowing you're on jury duty talked to you and told
14 you about the case?

15 A. Well, he just mentioned it and ---

16 Q. What was it about it that made you form an opinion if
17 all he said -- that sounds like allegations that you heard
18 from the case yesterday. It just allegations.

19 A. Well, yes, it's allegations and everything. And I
20 stopped at the second store and ---

21 Q. What kind of store was that?

22 A. That's Food Lion.

23 Q. Went to the Food Lion?

24 A. Food Lion.

25 Q. All right, and did you see anybody here you knew?

1 A. Yes.

2 Q. Sir?

3 A. Yes, people in the deli. I knew then. I, I was just
4 standing there talking to them, and they said where, where
5 you going? What's going on? I said I have jury duty and I
6 have to go to jury duty this afternoon, and that's where it
7 was started. They started talking about the guy that shot
8 his wife. That he -- she was -- he had her still ---

9 Q. And you stayed there while ---

10 A. --- in the car.

11 Q. --- they were talking about it?

12 A. I walked on away from that. I went down ---

13 Q. So, you could only been there a couple of seconds.

14 A. Uh-huh. Wasn't that long. I went on around the ---

15 Q. Would be only a couple of seconds?

16 A. They -- it had to be more than a couple of seconds. I
17 tell them, you know, I ---

18 Q. Did you hear ---

19 A. --- because I can't talk about that.

20 Q. Did you hear more than three words?

21 A. I've heard more than three words.

22 Q. Well, sir, it is just a few seconds. How could you
23 hear very much at all?

24 A. Well, that's what I'm saying. It's more than just
25 three seconds. I mean, I stand there and they were

1 talking. They started ---

2 Q. Why would you stand there?

3 A. Because I didn't know what they was talking about.

4 They have started talking. They started talking about this
5 case that was coming up, and I did like this here. I said
6 I can't talk about that.

7 Q. And you left?

8 A. That's when I went on and left. I didn't leave the
9 building. I went around to the breadroot and sat down
10 because I was waiting to come up here.

11 Q. You work there at the Food Lion?

12 A. Yes.

13 Q. So, they didn't say anything to cause you to form an
14 opinion. You were not there long enough.

15 A. Well, I heard what, what was going on about the case
16 and everything. And I said, well, that must be the case,
17 what it were, the guys, because this is what's happening.

18 Q. But how is that any different than the state charging
19 that he did that? They were just repeating what he was
20 charged with doing.

21 A. Well, the only thing I heard about what you said about
22 state is that he shot her in the head or something like
23 that, you know. That ---

24 Q. So, you're sitting on a jury and the state alleges he
25 shot someone in the head. Right away you believe it no

1 matter what the evidence is?

2 A. Well, pretty much I heard also that he put her in the
3 car and drove around. I was, like, well, I got to get out
4 here because I can't talk about this stuff. I've got to
5 get away.

6 Q. So, you ---

7 A. So, I heard, I heard of ---

8 Q. So, okay, sir, in those couple of seconds you heard
9 about shooting in the head ---

10 A. Right.

11 Q. --- and you heard about, something about allegations
12 of going and put them in a car and driving around in?

13 A. Yes, sir.

14 Q. All that in just a couple of seconds?

15 A. That's all I had, a couple of seconds.

16 Q. And you didn't leave?

17 A. I left and then went around to the breadroot.

18 Q. Well, let me ask you this, sir. If you're sitting on
19 the jury.

20 A. That's right.

21 Q. You would have people alleging that.

22 A. Right.

23 Q. You would have the state introducing evidence to try
24 and prove that.

25 A. Okay.

1 Q. Because they have the burden of proving beyond a
2 reasonable doubt.

3 A. Okay.

4 Q. And as a juror, you can accept that evidence or reject
5 that evidence.

6 A. Okay.

7 Q. So, how is that any different?

8 A. Well, I just took it for what it was worth. What I
9 heard. That was it.

10 Q. Well, why would that cause you to form an opinion?

11 A. Well, I, I did. I mean, I can't help that, but I did
12 form an opinion. But my thing is that this -- I, I really
13 wouldn't want to. My nerves isn't up for this.

14 Q. Well, sir, we're only talking now about whether you
15 formed an opinion.

16 A. Okay. Yeah, I did form an opinion. Yes, I did.

17 Q. Why? How is that any different than you ---

18 A. I don't know. That's just me.

19 Q. Sir, I am concerned that you intentionally tried to
20 find ways to get off this jury, sir.

21 A. No, sir. I'm just telling you and being honest with
22 you, what I heard, and I'm being honest with you and tell
23 you that I'm, I'm nervous about it and unfit about it. It
24 just makes me feel uneasy. Not trying to find any way to
25 to get off of it because the city is paying me for it and

1 everything. I went and found that out yesterday after I
2 spoke to you and let you know that I do have payments with
3 my child support and the IRS.

4 Q. So, you're not going to lose any money by being on
5 jury duty?

6 A. Only on my second job.

7 Q. Which is working at Food Lion?

8 A. Working at Food Lion, but they're not going ---

9 Q. Did you say you have a child that stays with you?

10 A. No. There's not a child. There's a child that I take
11 care I've -- I send -- well, it's aftercare so his mother
12 can go to work. So, I had to take care of ---

13 Q. You had, you told me yesterday that was your child.

14 A. That is my child. It is my child, but he don't stay
15 with me. I take pay for his aftercare. That's what I --
16 instead of paying child support, that's what I pay her so
17 we don't have to go through the litigation and all that.
18 And I pay another child support with another young lady and
19 I take care of his insurance, the six year old, take care
20 of his insurance. And I pay to the IRS.

21 Q. Yes, sir. I do find a concern about whether you would
22 follow the law as the judge instructs it. I'm concerned,
23 sir, and I may holding you for contempt of court. I'm
24 going to have you come back tomorrow, sir, and I'm going to
25 decide what to do with you. You be back here tomorrow at

1 10:30, sir, and I'll then decide what I'm going to do with
2 you. I'm going to have a hearing about the contempt of
3 court.

4 I'll see you tomorrow at 10:30, sir. Come back at
5 that time. Do not discuss this case with anyone. You
6 could very well still be on this case. Who knows.

7 A. Okay.

8 Q. So, you be back here tomorrow at 10:30.

9 A. Can I ask a question?

10 Q. Yes, sir.

11 A. How could I do contempt of court?

12 Q. Well, sir, I'm really concerned, sir, that's -- it
13 just causes concern that for a long time, for over a year
14 or so you hear nothing about this case. Yesterday you do
15 your best to try to get off the jury, and I found you
16 qualified. And then all of a sudden in one day, you hear
17 about it at three the different locations. And I've
18 interviewed about thirty people today, and none of them had
19 heard about it from anyone since yesterday and yet they
20 were here, too. And you have heard about it from three
21 different people. I may be bringing some of these people
22 in.

23 A. Okay.

24 Q. And I may find out from them why they continued to
25 talk with you and you told them not talk to you about it.

1 A. Okay.

2 Q. That does have me concerned also.

3 A. Okay.

4 Q. And the deli at Food Lion, what's that person's name?

5 A. That's, I spoke to Ms. Dolores. That's the older
6 young lady. It's the older woman.

7 Q. She the one that was talking about the case earlier?

8 A. She, she was talking about it and I said I can't speak
9 to anything about it.

10 Q. And she kept talking even when you said that?

11 A. Yeah. That's why I went ahead and walked away.

12 That's Ms. Dolores, and Tish were standing there also.

13 Tish is another young lady that works in the deli. She's
14 kind of heavysset. She was there, too.

15 Q. You said Ms. Dolores. I can't talk about it, and she
16 still talked about it?

17 A. Ms. Dolores, she kept, she was still talk -- she kept
18 -- while she was talking, she, she just kind of stopped and
19 I just walked on away because I said I can't talk about
20 that. She said okay.

21 Q. Sir.

22 A. Yes, sir. Yes, sir.

23 Q. My question is you told her you couldn't talk about
24 it?

25 A. Right.

1 Q. And obviously you'd told her that right away before
2 she could say very much once you realized she was talking
3 about the case?

4 A. Right.

5 Q. So, did she stop at that time?

6 A. I walked away.

7 Q. Well, then, therefore since you told her right away,
8 she couldn't have said very much.

9 A. Well, she did say that -- and that's where I heard
10 that the guy drove round in the car with the young lady in
11 the car.

12 Q. She told you all that before you told her to stop?

13 A. That's when I walked away. I just ---

14 Q. Say, sir, that's what I'm concerned about the contempt
15 of court. I've been concerned about you letting people
16 talk you -- too much to you before you try and stop them.
17 So, do you know what Ms. Dolores's last name is?

18 A. No. I don't know her last name.

19 Q. You might want to have her and Mr. White of the City
20 of Myrtle Beach, you might want to have them come tomorrow
21 because, you know, this could be something that I need to
22 examine further, sir. I'm not going to say anything --
23 other than I want to examine this further. And I may have
24 an opportunity to do it tomorrow. If so, I will. If not,
25 I may have to come back -- have you come back Thursday,

1 too. But I'll see tomorrow at 10:30, sir.

2 A. Okay.

3 THE COURT: You may leave at this time, back to work.
4 By the way, Mr. Stackhouse, have you mentioned this to any
5 other jurors?

6 JUROR: No, not a word. Haven't said a word about it.

7 THE COURT: All right. You may leave now, sir. See
8 you tomorrow.

9 JUROR: Okay.

10 THE COURT: Now as I understand it, the state and the
11 defense have no objection that this juror being excused for
12 serving on this case?

13 MR. WILSON: No objection, sir.

14 MR. HEMBREE: No objection the state, Your Honor.

15 THE COURT: I really don't know how far I want go with
16 this thing with him, but I may, Mr. Hembree -- or maybe see
17 if one of the deputies here, let you see if y'all can find
18 Mr. Dave White with the City of Myrtle Beach. I may just
19 bring him up here Thursday. We'll have to see how things
20 go tomorrow.

21 All right, bring in Ms. Shutoneis Brave, number 38.
22 Did she come up at all? She did. Non-disqualifying
23 conviction. That's all I have on her. Anything else? If
24 not bring her in.

25 (JUROR #38 ENTERS THE COURTROOM.)

1 EXAMINATION BY THE COURT:

2 Q. Ms. Brave, how you doing, ma'am?

3 A. I'm fine.

4 Q. I'm so sorry you had to wait so long but if you would,
5 just come around here and relax and have a seat. Could you
6 hand me those sheets of paper right there? Not the ones
7 you brought but the ones that are already there. Thank
8 you, ma'am.

9 A. Excuse me.

10 Q. Where you go? Oh, there you go.

11 A. I'm sorry. Just give me a minute.

12 Q. That's all right.

13 (A PAUSE.)

14 A. Sorry about that.

15 Q. No, no. You all right? Want a few more minutes?

16 A. No, I'm fine.

17 Q. Okay, do you have asthma?

18 A. Yes, sir.

19 Q. Okay. Now, Shutoneis?

20 A. Shutoneis.

21 Q. Shutoneis Shexena?

22 A. Snenena.

23 Q. Shenena Sennons Brave?

24 A. Yes.

25 Q. How did that B name get in there with all those S

1 names in there?

2 A. That's married name.

3 Q. Now, see you were born in Georgetown?

4 A. Yes, sir.

5 Q. All right, and ---

6 A. Excuse me.

7 Q. That's okay. You do realize that you're still under
8 oath from what we swore you in yesterday. Do you remember
9 that?

10 A. Yes, sir.

11 Q. Do you know any of lawyers in this case at all?

12 A. No, sir.

13 Q. All right, and I ---

14 A. Don't know anybody.

15 Q. --- know that because of your asthma, so it's going to
16 be a little difficult for you. But I -- if you can, do
17 your best to try and speak into that microphone.

18 A. Okay.

19 Q. So I can hear you better, everyone else can hear you
20 better.

21 A. Okay.

22 Q. So, you don't, you don't know any of the lawyers?

23 A. No, sir.

24 Q. All right. Well, do you know the defendant?

25 A. No, sir.

1 Q. All right. Have you any special interest or bias or
2 prejudice in this case at all?

3 A. No, sir.

4 Q. Have you formed or expressed an opinion as to the
5 guilt or the innocence of the defendant?

6 A. No, sir.

7 Q. Do you know any reason whatsoever why you cannot give
8 the state and the defendant a fair and impartial trial in
9 this case?

10 A. There's no reason.

11 Q. All right, speak a little bit louder.

12 A. No, sir.

13 Q. All right, there you go. Now, if you're on a jury,
14 Ms. Brave, I would instruct you on the law and, and you
15 would be required to follow the law as I give it to you.
16 Would you do that?

17 A. Yes, sir.

18 Q. Part of that would be is I would tell you that the
19 defendant is presumed innocent, and the burden is upon the
20 state to prove guilt beyond a reasonable doubt. It's not
21 upon the defendant to prove himself innocent, but the state
22 must prove him guilty beyond a reasonable doubt. Would you
23 follow that rule?

24 A. Yes, sir.

25 Q. Okay. So, if you're on that jury and if after the

1 case been presented with the evidence and I've talked to
2 you and told you what the law is, if you felt that the
3 state had not proven guilt beyond a reasonable doubt,
4 you would then find the defendant not guilty. Is that
5 correct?

6 A. Yes, sir.

7 Q. And if you thought the state had proven guilt beyond a
8 reasonable doubt, you would find the defendant guilty. Is
9 that correct?

10 A. Yes, sir.

11 Q. All right. There's been -- have you discussed this
12 case with anyone?

13 A. No, sir.

14 Q. There's been some publicity with it in the newspapers
15 and TV and all that. Have you read, seen, heard anything
16 about this case?

17 A. No, sir.

18 Q. You haven't seen anything in the newspaper?

19 A. The news this morning, it came about the trial, but
20 then I turned it because I knew you said we didn't -- we
21 couldn't hear anything or whatever.

22 Q. So, as soon ---

23 A. I have no recollection of nothing.

24 Q. You remember what they said or anything?

25 A. They were just saying jury's being selected for the

1 trial and when I heard that on the news, I turned the
2 channel.

3 Q. So, nothing in about the case of the jury's being
4 selected?

5 A. No, sir.

6 Q. Have you, because of any news coverage of this matter,
7 have you formed any opinion about this case of all?

8 A. No, sir.

9 Q. And if you were on this jury, would you make the
10 decision based on the evidence presented in the case in the
11 courtroom here and the law as I instruct you?

12 A. Yes, sir.

13 Q. Okay.

14 A. Excuse me.

15 Q. Now, I gave you a list with a lot of names on it. Do
16 you have that list? Let's see, did you circle any names at
17 all?

18 A. No, sir.

19 Q. So, you don't know anybody there?

20 A. No, sir.

21 Q. There are no names circled.

22 All right, now, in a trial of this nature, the jury
23 would first be asked to decide whether guilt had been
24 proven beyond a reasonable doubt. If the jury determined
25 guilt has not been proven beyond a reasonable doubt and the

1 defendant not guilty, well, that would end the jury's
2 participation at that time.

3 If the jury, though, determined that guilt had been
4 proven beyond a reasonable doubt and determined that the
5 defendant was guilty of murder beyond a reasonable doubt,
6 we'd then go into another phase where the issue of
7 punishment would be considered. In that other phase, there
8 would be evidence in aggravation and mitigation put forth
9 to the jury. And the jury would have a decision of, of, a
10 verdict of life imprisonment or a verdict for the death
11 penalty.

12 Now, I gave you a sheet of paper which talks about
13 three types of jurors.

14 A. Yes, sir.

15 Q. Did you look over that sheet of paper?

16 A. Yes, sir.

17 Q. Now, you understand the differences in the jurors?

18 A. Yes, sir.

19 Q. Let's just go over briefly. The type one juror is the
20 juror that believes that no matter what the evidence is,
21 what the circumstances are, that juror would believe that
22 the death penalty is the most appropriate punishment in
23 every case.

24 The next juror is the juror that no matter what the
25 evidence in mitigation or aggravation or what the evidence

1 or circumstances are, that juror would believe that they
2 could never impose the death penalty. And that juror's
3 verdict in every case would be life imprisonment.

4 And then the third juror is the juror that would not
5 have made her mind up in advance concerning the punishment.
6 That juror would need to hear the facts and circumstances
7 in aggravation and mitigation and want to listen and follow
8 the instructions of the judge before she could make the
9 decision regarding punishment. That juror, after hearing
10 the evidence in mitigation and in aggravation, if that
11 juror felt the evidence made it appropriate, that juror
12 come back with a verdict of life imprisonment. Or if that
13 juror felt the evidence in aggravation, mitigation was
14 appropriate, that juror come back -- could come back with a
15 verdict of the death penalty depending on what evidence in
16 aggravation and mitigation is presented.

17 Now in regard to that, which of those three jurors,
18 Ms. Brave, best describes you?

19 A. Type three.

20 Q. Type three?

21 A. Yes.

22 Q. You could keep an open mind about it and if you felt
23 the evidence so warranted it, you could come back with a
24 verdict of life imprisonment?

25 A. Yes, sir.

1 Q. And in the alternative, if you felt the evidence in
2 mitigation, aggravation so warranted it, you could come
3 back with a verdict of the death penalty?

4 A. Yes, sir.

5 Q. Okay. If the jury were to decide that the death
6 penalty was the, was their sentence after hearing -- was
7 their verdict after hearing the evidence in aggravation,
8 mitigation, each juror would be required to sign the
9 verdict form. Could you sign that verdict form?

10 A. Yes, sir.

11 Q. All right. Now, you told me yesterday that you'd been
12 convicted of a crime, and I forgot what it was. What was
13 it?

14 A. Open container and simple possession.

15 Q. Of marijuana?

16 A. Yes, sir.

17 Q. Okay. Okay, no other convictions at all?

18 A. No, sir.

19 Q. Do you know of any reason why you couldn't be a fair
20 juror both to the state and the defense in this case at
21 all?

22 A. No, sir.

23 Q. Okay, and if you were selected on -- as a juror on
24 this case, you'd be housed in a hotel for the duration of
25 the trial. And you could not go home or have contact with

1 family members other than through a phone that we'd let you
2 call, and there'd be supervision there with people
3 listening on the other end. Could you do that without too
4 much hardship?

5 A. I'm not sure, sir, be honest.

6 Q. Well, tell me what, why you couldn't.

7 A. I got three kids, eleven, seven, and six, and I work
8 during the day while they're at school, and I'm at home
9 with them at night. I mean, if I was to get picked, I
10 would have to make arrangements, but I think I could make
11 arrangements.

12 Q. So, you feel you could make arrangements? It'd be
13 hard, but you could make arrangements?

14 A. It, it'll be hard, but yes, sir.

15 Q. Okay, and you're shift leader at a fast food place.
16 What place is that?

17 A. Hardee's.

18 Q. Hardee's. Love that \$6 burger.

19 A. That's my favorite.

20 Q. It's good.

21 THE COURT: I'm going to let the attorneys ask you any
22 questions now, and I may have a few questions for you
23 again, okay?

24 JUROR: Okay.

25 THE COURT: All right, for the state?

1 MR. HUMPHRIES: I don't have any questions for you,
2 ma'am. Thank you.

3 THE COURT: Okay, defense?

4 MR. WILSON: I don't have any questions.

5 THE COURT: All right, any comments either side wishes
6 to made on this particular juror?

7 MR. HUMPHRIES: No, Your Honor.

8 THE COURT: Mr. Wilson?

9 MR. WILSON: No.

10 THE COURT: All right, Ms. Brave, I find that you are
11 qualified on this jury, and I'm going to have you come back
12 Thursday at 11:30.

13 Now, this only means you're in the jury pool. It
14 doesn't mean you're on the jury. It means you're on the
15 jury pool. And, and if you are selected, though, that will
16 be the day we'll start housing the jurors in the hotel.
17 So, you might want to go on, get some things packed so that
18 if you are housed, you'll be able to go home and get it,
19 come back right quick. Do you live here in Conway?

20 JUROR: Yes, sir.

21 THE COURT: So, you're not very far from the
22 courthouse?

23 JUROR: No, sir.

24 THE COURT: Okay.

25 JUROR: I'm right on here on King Street.

1 THE COURT: All right, and what you may want to do is
2 have someone who can take your car back because you will
3 not want to leave the car at the courthouse here. We'll
4 have transportation to take you to the hotel, but you might
5 not want to leave your car here or whatever else. So, try
6 to get you some transportation to bring you back to the
7 courthouse ---

8 JUROR: So I can get somebody to drop off? That will
9 be better?

10 THE COURT: Well, yes, but you need to wait and see if
11 you're selected on the jury. See, that way you can go back
12 and bring them back.

13 JUROR: Okay, I do understand.

14 THE COURT: And then have them bring you back, okay?

15 JUROR: Yes, sir. Yes, sir.

16 THE COURT: All right. So, in the meantime do not
17 discuss this case with anyone. Just like you've done
18 already, do not listen to any news media or read any
19 newspapers at all, okay, ma'am?

20 JUROR: Yes, sir.

21 THE COURT: And if something happens and you do hear
22 something about it, let me know. Don't discuss it with
23 anyone either.

24 All right, you can go out that door and there, and
25 we'll see you 11:30 on ---

1 JUROR: Thursday.

2 THE COURT: --- Thursday morning.

3 JUROR: Okay.

4 THE COURT: Thank you, ma'am.

5 JUROR: Thank you. Y'all have a nice night.

6 THE COURT: Okay. Sorry we had to hold you so long.

7 JUROR: Thank you.

8 THE COURT: All right, then next is juror 108. That
9 looks clear.

10 MR. HEMBREE: Nothing on my notes, Your Honor.

11 THE COURT: Okay. Bring her in, please.

12 (JUROR #108 ENTERS THE COURTROOM.)

13 EXAMINATION BY THE COURT:

14 Q. Hello there, Ms. Daniels. If you would, come on
15 around here, and you can have a seat. I see you're from
16 Virginia originally.

17 A. Yes, sir.

18 Q. Now, your husband, Lonnie Daniels, you know where he's
19 from?

20 A. Dillon.

21 Q. I thought so. I know a lot of the Daniels over there,
22 Lonnie Daniels. I think his father may have went to school
23 with me.

24 A. His name is Trey?

25 Q. Yeah.

1 A. Trey Daniels.

2 Q. Now, Trey Daniels, Trey Daniels was a younger person?

3 A. That's my husband.

4 Q. Oh, okay. Well, he played baseball during the time I
5 was coaching. He was a catcher for the Giants, as I
6 recall.

7 A. That's right.

8 Q. He was always ---

9 A. That's what he told me.

10 Q. He's already told you. I remember Trey Daniels; in
11 fact, I think he was on the All Star team, too, a really
12 good catcher. And what's he doing now?

13 A. He sells restaurant equipment to dealers in North and
14 South Carolina.

15 Q. All right, and I see you work for the Divine Dining
16 Room. That's a group down in South End, isn't it?

17 A. In Myrtle Beach, yes, sir.

18 Q. Okay, I thought it was down there in Murrells Inlet.

19 A. We have stores all the way to Restaurant Row now.

20 Q. What are some of the ones in restaurant row area?

21 A. We have the Pacific Rail, City Bar. River City Café
22 is up there.

23 Q. Okay, big organization. Now, did you meet your
24 husband in college or?

25 A. I was actually working at Ultimate California Pizza

1 and friends, a mutual friend introduced us.

2 Q. That was down at the beach?

3 A. Uh-huh.

4 Q. Okay. Now, I'm going to ask you a few questions, and
5 please remember you're still under oath. You remember
6 that?

7 A. Yes, sir.

8 Q. And do you know or are related to any attorneys
9 involved in this case?

10 A. No, sir.

11 Q. You don't know any of them? What about the defendant?
12 Do you know the defendant?

13 A. No, sir.

14 Q. All right. Have you any special interest, bias,
15 prejudice in this case at all?

16 A. No, sir.

17 Q. Have you formed or expressed an opinion as to the
18 guilt or the innocence of the defendant at all?

19 A. Not really.

20 Q. Well, what's that mean?

21 A. I've heard about it. I heard about the case
22 originally a couple of years ago, but I don't really have
23 an opinion on whether he's guilty or innocent.

24 Q. Okay. So, do you know of any reason whatsoever why
25 you cannot give both the state and the defendant a fair

1 trial?

2 A. No, sir.

3 Q. Under your oath, then, would you follow the law as I,
4 the judge, instructs you the law is?

5 A. Yes, sir.

6 Q. Part of that is that if you're selected on the jury, I
7 will tell you as a juror that in the United States of
8 America that a person charged with a crime is presumed
9 innocent. And the burden is upon the state to prove guilt
10 beyond a reasonable doubt. It is not upon the defendant to
11 prove himself innocent. Would you follow that standard?

12 A. Yes, sir.

13 Q. So, you would begin with the presumption of innocence
14 and, and if you change that, it would be because the state
15 has proven his guilt beyond a reasonable doubt?

16 A. Yes.

17 Q. And if the state does not prove guilt beyond a
18 reasonable doubt, you would find him not guilty?

19 A. Correct.

20 Q. If the state did, however, prove him guilty beyond a
21 reasonable doubt, you would find him guilty?

22 A. Yes.

23 Q. Okay. Have you discussed this case with anyone?

24 A. No.

25 Q. Now, you said you remember seeing some things in the

1 news about this. Was it newspaper or TV or what?

2 A. I believe it was radio. I think it was on the radio.

3 Q. All right.

4 A. Because I don't remember pictures.

5 Q. All right.

6 A. Or anything.

7 Q. And do you remember what it was you may have heard on
8 the radio?

9 A. That she was found on the Bay Tree Golf course, I
10 believe. That's really all I remember.

11 Q. All right. Do you remember any allegations involved
12 there or anything like that?

13 A. That he had gone into the house, and I don't know if
14 he -- something happens to her there or if she was taken to
15 the golf course. I only remember that she was found on a
16 golf course.

17 Q. Now because of that, do you feel you can divorce
18 yourself from all that you heard and make your decision
19 based on the evidence here in the courtroom and the law as
20 I instruct it to you?

21 A. Yes.

22 Q. So, what you may have heard on the radio, would that
23 affect your decision in this case in any way whatsoever?

24 A. I don't think so.

25 Q. All right. So, you would follow the ---

1 A. I, I ---

2 A. --- the law?

3 A. Yes.

4 Q. And you'd make your decision based on the evidence
5 presented in the courtroom?

6 A. Yes, sir.

7 Q. And the law as I instruct it to you?

8 A. Uh-huh.

9 Q. You got to answer because she's got to hear you.

10 A. Oh, yes, sir. Sorry.

11 Q. And so what you read in the newspaper, once again, or
12 heard on the radio or saw on TV, would that in any way
13 affect your decision in this case?

14 A. No, sir.

15 Q. All right. So, you could put that aside?

16 A. Uh-huh. Yes, sir.

17 Q. All right. I gave you a sheet with three pages of
18 names. Did you know any of the names on that sheet?

19 A. No, sir.

20 Q. Would you hand it to me, please? I see you didn't
21 circle any names here. You know no one at all?

22 A. No.

23 Q. Okay. Now, if you're on the jury in this case, if the
24 jury were to decide the state had not proven guilt beyond a
25 reasonable doubt, then they would find the defendant not

1 guilty and the jury's participation would end at that point
2 in time.

3 However, if the jury were to determine that the state
4 has proven the defendant guilty of murder beyond a
5 reasonable doubt, we would then go to another phase where
6 the jury would be presented matters in aggravation and
7 mitigation, and the jurors would at that time consider the
8 issue of punishment. The issue of either a -- the issue of
9 life imprisonment as a verdict or the verdict of the death
10 penalty.

11 Now, I gave you a sheet with three types of jurors on
12 it. Did you have time to review that sheet?

13 A. Yes, sir.

14 Q. Said the first type -- we'll go over it briefly -- is
15 the juror that would, no matter what the evidence in
16 aggravation and mitigation are, that that juror would feel
17 the death penalty is always the appropriate punishment in,
18 in a case and will always, always return a verdict for the
19 death penalty no matter what the evidence.

20 The second type juror would be one that would never
21 impose the death penalty no matter what the evidence in
22 aggravation, mitigation were. And that juror would never
23 impose the death penalty and would always come back with
24 the verdict of life imprisonment.

25 Then the third juror is the one who would not have

1 made up her mind in advance concerning the punishment.
2 That juror would need to hear the facts and circumstances
3 in aggravation and mitigation, would want to hear the
4 judge's charge on the law before she could make the
5 decision regarding punishment. And if after hearing the
6 evidence in aggravation and mitigation, if that juror felt
7 that it was so warranted, that juror could return a verdict
8 for life imprisonment. Or if that juror felt the evidence
9 in aggravation and mitigation so warranted it, that juror
10 could return a verdict for the death penalty.

11 Did you understand the difference of those three types
12 jurors?

13 A. Yes, sir.

14 Q. Which one best describes you, Ms. Daniels?

15 A. I would lean more to type one.

16 Q. Type one? When you say you would lean more to type
17 one, are you saying that your view in regard to this is
18 such that you could not be a type three?

19 A. I could be a type three. I guess it depends on the
20 case. Then I'd be a type three.

21 Q. Is that not like -- so, are you saying then that, that
22 you would listen to the evidence in aggravation and
23 mitigation and depending on that evidence in aggravation
24 and mitigation, then you make up your mind?

25 A. Yes, sir, but ---

1 Q. Go ahead.

2 A. I, I ---

3 Q. Remember. There's no right or wrong answers here.

4 A. Yeah.

5 Q. I want you to be open with me.

6 A. Well, I do believe in the death penalty. I do believe
7 that if you take somebody's life, your life should be
8 taken. I believe we spend too much sending people to
9 prison for the rest of their life.

10 Q. All right. What about, would you consider evidence in
11 mitigation and aggravation, evidence of mitigation, or do
12 you feel in, in some cases life imprisonment may be
13 warranted in some cases, depending on what the evidence
14 is?

15 A. Depending on the evidence, yes.

16 Q. All right. So, if the evidence was presented in
17 mitigation, you could vote for life imprisonment?

18 A. Yes, sir.

19 Q. All right. Now, if, the jury were to determine that
20 the death penalty should be the verdict, all jurors have to
21 sign the verdict form. Could you sign the verdict form?

22 A. Yes, sir.

23 Q. If you were selected as a juror in this case, you'd be
24 sequestered for about a week or so, maybe a little less,
25 maybe a little more, who knows. And you would not be able

1 to have any contact with your family other than a phone
2 call, and you would probably have that supervised and all.
3 Do you feel that could be done without -- I know it would
4 be somewhat of a hardship, but without too much of a
5 hardship?

6 A. Well, I, I honestly would have a problem with that
7 because my husband travels out of town three to four days a
8 week. So, and we have a four year-old son. So, that would
9 be a problem.

10 Q. You have ---

11 A. It would probably -- he's in town this week because I
12 have jury duty. But, I don't know if it would, it would
13 interfere with his work also.

14 Q. Okay, and he has family within fifty miles or so of
15 here.

16 A. Yes, sir.

17 Q. Could that be worked out with his family assisting in
18 a way? You don't have any family here, do you?

19 A. No, sir.

20 Q. But he has family. There are dozens of Daniels.

21 A. Yes, sir.

22 Q. Could they not assist you?

23 A. I honestly don't know, to be honest.

24 Q. But you could try and work that out?

25 A. I could, we could try.

1 Q. All right.

2 THE COURT: I'm going to let the attorneys ask you
3 some questions now, and I may have a few more for you.

4 JUROR: Okay.

5 THE COURT: For the state?

6 EXAMINATION BY MR. HUMPHRIES:

7 Q. Good evening.

8 A. Hi.

9 Q. I'm Fran Humphries. I'm the deputy solicitor.
10 Solicitor Hembree and Scott Hixson and I will be
11 representing the state in this case. You've done thus far
12 exactly what the court asked you to do, and that is to come
13 in and to be very honest about your feelings about the
14 death penalty.

15 A. Uh-huh.

16 Q. We don't have the option after the guilt phase ---

17 A. Right.

18 Q. --- to come back to all the jurors and say, you know,
19 by the way, how do feel about the death penalty because we
20 have the same jurors. We couldn't seat a second juror --
21 jury at that time.

22 A. Right.

23 Q. So, we're sort of jumping a big step to get to this,
24 to this place we're at today. And I don't know if you're a
25 little nervous. It's not unusual to be, but I can tell you

1 all, all of us here are just interested in what your
2 feelings are.

3 A. Okay.

4 Q. What I understand you told the court is that you are a
5 proponent of the death penalty?

6 A. Correct.

7 THE COURT: Speak a bit louder for me.

8 JUROR: Sorry.

9 THE COURT: Into that microphone. Remember
10 everybody's got to hear you. So, I know it's difficult.
11 We all got to hear you.

12 Q. And let me tell you this. There is no one in the
13 courtroom, including the court, who is going to try to
14 change your opinion. We've not brought you into this
15 process to try and sort of shoehorn you into a particular
16 kind of juror.

17 A. Uh-huh.

18 Q. That's not our purpose. Our purpose is to find out
19 what kind of juror you are. Everyone is entitled to their
20 opinion on the death penalty. And again, no one's trying
21 to change that, but what we have to determine today is
22 could you as a juror listen to the evidence in aggravation
23 the state presents, evidence in mitigation the defense
24 would present, and then and only then make up your mind as
25 to whether the defendant should receive life or the death

1 penalty. That's what we have to determine because that
2 really is the only kind of juror that can sit in this case.

3 Again, that there is -- everyone has some kind of
4 opinion about the death penalty, and we're sort of asking
5 it in a vacuum right now. But knowing that you were a
6 proponent or believe in the death penalty, could you,
7 knowing that, still enter that second phase, the sentencing
8 phase with an open mind and decide the penalty only after
9 hearing all the evidence, all the facts and circumstances
10 presented in that second phase? Could you do that?

11 A. Yes, sir.

12 Q. The, the question about sequestration, I think, I
13 don't recall if the court indicated how long. I think
14 we've been basically saying a week, more or less. Of
15 course that would be over the weekend, too. So, some of
16 those days would obviously be on the weekend.

17 I know as, as a mother of a child -- well, for
18 goodness sakes, I feel the same way. What, what I guess I
19 need to, to be sure of as well is I know that you knew this
20 is a very, very important case. It's a very important
21 decision to be made. My question is if arrangements can be
22 made with family or otherwise for your child, could you --
23 you can't set aside thoughts about your child. But can you
24 devote your attention to this case and not let that impact
25 you in the way you evaluate the evidence, receive the

1 evidence, and ultimately make your decision?

2 A. I would if I had to. I do have a very demanding job
3 also.

4 Q. Sure.

5 A. So, if my mind -- as I sat here all day yesterday, I
6 was thinking about the number of phone calls that are
7 waiting for me on my phone in the car.

8 Q. I'm scared to take vacation.

9 A. Yeah.

10 Q. For fear of what's going to be on my desk when I get
11 back.

12 A. Exactly.

13 Q. And, you know, we've not -- in this country we have --
14 we take folks from all walks because every defendant's
15 entitled to a jury of his peers. And obviously every juror
16 brings into the jury service the cares and concerns of
17 their life, whether it's professional, whether it's family
18 or otherwise. But we need to know is understanding the
19 importance and seriousness of this case in particular, can
20 you let those concerns take a backseat to your primary
21 concern and determine -- in determining the guilt or
22 innocence of this defendant and, if we get to the second
23 phase, the punishment of life or death?

24 A. Yes, sir.

25 Q. Again, I know we're, we're sort of in a vacuum. We

1 ask you to assume a lot of things, and no, no one here can
2 see into the future. But we do need to know is that you're
3 going to make your very, very best efforts to do all the
4 things you've already said you would do or would try to do
5 because the state's entitled to a fair trial, and the
6 defendant's entitled to a fair trial.

7 A. I agree.

8 MR. HUMPHRIES: If you do all that, that is absolutely
9 all we can ask of you. Thank you.

10 JUROR: Thank you.

11 THE COURT: Okay, defense? Mr. Wilson?

12 MR. WILSON: Thank you, Your Honor.

13 EXAMINATION BY MR. WILSON:

14 Q. Ms. Daniels, you said that -- well, let me back up. I
15 think you said, or on your questionnaire you said that when
16 you were asked whether you knew anything about the case,
17 you said: No, but I will research on the Internet the *Sun*
18 *News*.

19 A. Well, I didn't recognize the names at first, and then
20 once I looked on the Internet, I did realize that I
21 recalled Bay Tree. I recalled different things after,
22 after looking.

23 Q. Okay. So, you actually have heard some information
24 about it? You just didn't recall that. And then when you
25 went on the Internet and you've looked it up and then you

1 -- all that started to come back to you?

2 A. Yes, sir. I didn't recognize the names, but I ---

3 Q. And, and ---

4 A. -- the incident.

5 Q. And, and what did you find on the Internet about the
6 case?

7 A. Just the, that he had been charged -- the charges that
8 he was charged with.

9 Q. Meaning Mr. Winkler?

10 A. Yes, sir.

11 Q. Okay.

12 A. The charges the defendant was charged with and where
13 the body was found and that -- and her name.

14 Q. Where was the body found?

15 A. I believe on Bay Tree.

16 Q. Bay Tree Golf Course?

17 A. Yes, sir.

18 Q. On the grounds of Bay Tree Golf Course?

19 A. Yes, sir.

20 Q. Is that what you heard or ---

21 A. Yes, sir.

22 Q. --- or read on the Internet? What else did you read?

23 A. That's really all that. It just a little blurb; it
24 wasn't very much.

25 Q. Okay, so you just saw one article?

1 A. Yes, sir.

2 Q. And based on what you recall from having some
3 information about the case before seeing the Internet site
4 and including the Internet site, did you have any opinion
5 about what happened?

6 A. No, sir.

7 Q. So, you didn't form any opinion about whether he was
8 guilty or not guilty of the charges that you've read about,
9 heard about, ma'am?

10 A. Well, reading the article you tend to, to believe that
11 he did it. But I'm a political science -- I graduated with
12 a political science degree, so I understand the process of
13 the law. And I can -- I would assume him innocent until
14 proven guilty.

15 Q. Okay.

16 A. I think the media tends to construe things.

17 Q. I also read your last where you said:

18 Do you believe that there may be any reasons why
19 it would be difficult or impossible for you to be
20 completely fair and impartial in this case?

21 And you say no. Then you on to say: If so, what? The
22 reason is there -- what reason is there? And then you
23 answer: But if found guilty, I am partial to the death
24 penalty. What, what does that mean?

25 A. That means that I do believe in the death penalty, but

1 I say that life in prison is always an option. I believe,
2 depending on the circumstances, I do believe in the death
3 penalty because I don't believe that anybody should be
4 released and given the chance to commit the crime again if
5 proven guilty.

6 Q. Okay. So if, if a person is convicted of murder, if
7 you're on the jury panel and you find the person guilty of
8 murder and there's no defense to it -- they're guilty of
9 murder; you voted for it, guilty of murder -- you and the
10 other eleven members of your panel finding him unanimously
11 guilty of murder, that in your mind ---

12 A. That's ---

13 Q. --- he gets the death penalty?

14 A. It would apply, yes, sir.

15 Q. And that's what you would do? You give him the death
16 penalty if, if you felt ---

17 A. If it was cut and dry, yes. Yes, sir.

18 Q. What do you mean when it was cut and dry?

19 A. If there was absolutely no, like, proven beyond a
20 reasonable doubt. If there was absolutely no chance that
21 the crime was not committed and in an aggravated manner.

22 Q. So, and that's my question to you. Once the, once
23 he's proven guilty, once you vote for guilty of murder and
24 you're satisfied beyond a reasonable doubt that he
25 committed a murder, your verdict would be for guilty of

1 murder. And then in the sentencing phase, you're going to
2 vote for death every time once he's found guilty of that
3 murder. Is that true?

4 A. If it's unanimous, yes.

5 Q. If what's unanimous?

6 A. If the verdict is.

7 Q. If the verdict for murder is unanimous ---

8 A. Yes.

9 Q. --- you're going to vote for the death penalty every
10 time?

11 A. Yes, sir.

12 MR. WILSON: Thank you.

13 FURTHER EXAMINATION BY THE COURT:

14 Q. Ms. Daniels, I need to make sure I understand what you
15 said. I, I thought you told me earlier that you could
16 consider both ways. Remember the jury in this type of
17 trial will not be involved in deciding of punishment unless
18 they at first decided unanimously that a person was guilty
19 of murder.

20 So, if we take the assumption that a jury were to
21 decide someone was guilty of murder unanimously, the
22 question is in the next phase, ma'am, would you be open
23 minded and listen to the evidence in aggravation and
24 mitigation surrounding the circumstances, murder,
25 individual, and that type of thing. And would you then be

1 open, depending on the evidence presented after you all had
2 decided murder unanimously, would you be open to consider
3 either life imprisonment or the death penalty, or would you
4 always impose the death penalty?

5 A. Well, again, it would depend on the circumstances of
6 the case. If it was somebody defending themselves and
7 murdered somebody, then that might be ---

8 Q. No, no, no ma'am. If, if, if the jury determines that
9 a person was guilty of murder -- murder meaning the
10 unlawful killing of another with malice aforethought
11 without self-defense -- if the jury determines that there
12 was murder, and then you would next -- in the next phase.
13 And then in the next phase the jury would determine one of
14 two punishment as far as verdict: a verdict of life
15 imprisonment or a verdict of death penalty. If the
16 determination was that murder had been committed, do you
17 feel that you ever could impose life imprisonment, or would
18 you always vote -- return a verdict for the death penalty?

19 A. I would say death, death penalty because that is --
20 would be the way that I would go. I believe if you murder
21 someone, and you should be ---

22 Q. So, if a person is proven guilty of murder, you would
23 not have an open mind about the punishment? You would feel
24 they should be given the death penalty?

25 A. Yes, sir.

1 THE COURT: All right. Any questions from anyone
2 else?

3 MR. HUMPHRIES: No, Your Honor.

4 THE COURT: Listen, I need for you to -- obviously on
5 this we've got to have a juror -- jury that would be able
6 to be open minded once the decision of murder -- if the
7 jury finds the person guilty of murder, the jury has to be
8 open minded to determine whether it should be life
9 imprisonment or the death penalty. So, therefore, since
10 you would say you would always go for the death penalty,
11 you would, you would not be qualified in this case.

12 Do tell Trey I said hello.

13 JUROR: I will.

14 THE COURT: Tell him I remember those games that we
15 lost because he caught the ball at the plate and tagged my
16 runners out. I also enjoyed the year I had him on the All
17 Star team when I was there working with them. He's a real
18 good guy and I wish him well. I wish you well, too.

19 JUROR: Thank you.

20 THE COURT: See you later.

21 JUROR: Thank you. Bye.

22 THE COURT: I assume no objection in regard to my
23 decision on that juror?

24 MR. HUMPHRIES: No, Your Honor.

25 MR. WILSON: No objection.

1 THE COURT: All right, the last one in here then for
2 the night, Ricky Ballen, juror number 11, Ballen or Ballen
3 on my list anywhere. Bring him in.

4 (JUROR #11 ENTERS THE COURTROOM.)

5 EXAMINATION BY THE COURT:

6 Q. Is it Ballen or Ballen?

7 A. Ballen.

8 Q. Ballen. You are the last one of the day. How are you
9 doing?

10 A. I'm kind of tired, but I'm okay. I'm doing great.

11 Q. Tired of waiting. Tired of waiting. You keep that
12 for one second.

13 I'm going ask you a few things and talk with you. I
14 want to remind you first you're still under oath. You
15 remember that?

16 A. Yes, sir.

17 Q. And now it says here you're originally from Conway?

18 A. Yes, sir.

19 Q. And it says you do detail work. Is that on vehicles
20 or boats?

21 A. Both.

22 Q. Both of them? All right. Tell you what, to me, all
23 the detail work, the most important is the inside of the
24 car. That's the most important to me, getting things done.
25 You been doing that very long?

1 A. Yes, sir.

2 Q. Okay. Now, do me a favor and try to speak into that
3 microphone so everybody can hear you. And I already asked
4 you to remember you're still under oath.

5 A. Correct.

6 Q. All right. Now, do you know any of the attorneys in
7 this case, Mr. Ballen?

8 A. Yes, sir.

9 Q. And who do you know?

10 A. I know Mr. Wilson.

11 Q. How do you know Mr. Wilson?

12 A. Well, he and my brother went to school together.

13 Q. All right. Well, did you ever have any social
14 occasion with Mr. Wilson or any other time that you met him
15 and talked with him?

16 A. Well, we talked. Yeah, we talked.

17 Q. When was the last time you and him talked about
18 anything?

19 A. Probably seven, eight, nine years ago.

20 Q. All right, so it's seven, eight, nine years. The fact
21 that you, your brother went to school with him and you've
22 talked with them before, would that in any way affect your
23 ability to be fair and impartial in this case?

24 A. No, sir.

25 Q. All right. Have you formed any opinion or expressed

1 any opinion as to the guilt or the innocence of the
2 defendant?

3 A. No, sir.

4 Q. You have any special interest or bias or prejudice in
5 the case?

6 A. No, sir.

7 Q. Do you know of any reason whatsoever why you cannot
8 give both the state, the defendant a fair and impartial
9 trial?

10 A. No, sir.

11 Q. Would you on your oath follow the law as I instruct it
12 to you?

13 A. Yes, sir.

14 Q. Part of that law is I will tell you that defendant is
15 presumed innocent, and the burden is upon the state to
16 prove guilt beyond a reasonable doubt. It's not the burden
17 of the defendant to prove himself innocent. Would you
18 follow that rule of law?

19 A. Yes, sir.

20 Q. Sir?

21 A. Yes, sir. Yes, sir.

22 Q. All right. If you sat on that jury after hearing
23 evidence and my instructions on the law, if you felt the
24 state had not proven guilt beyond a reasonable doubt, would
25 you be able to find the defendant not guilty?

1 A. Yes, sir.

2 Q. If you felt the state had proven guilt beyond a
3 reasonable doubt, would you be able to find the defendant
4 guilty?

5 A. Yes, sir.

6 Q. There's been some media coverage in this case. Have
7 you read or seen or heard anything about this case?

8 A. No, sir.

9 Q. Excuse me, nothing at all?

10 A. I, I don't remember anything about it really, honest.

11 Q. And no one's talked you about it?

12 A. No, sir.

13 Q. No one at all? You haven't talked to anybody about
14 this at all?

15 A. No, sir.

16 Q. When you came here yesterday, did you know what kind
17 of case you're coming on?

18 A. No, sir.

19 Q. Answering all these questions that we sent to you, did
20 that make you think ---

21 A. Yeah.

22 Q. --- about the case?

23 A. Yes, sir. Oh, I mean, after I read what was on it, on
24 the, on the questionnaire.

25 Q. Well, what made you think about it, the questionnaire,

1 about the case?

2 A. The names that were on it.

3 Q. All right. Did that make you remember something you
4 may have seen in the newspapers or something?

5 A. No, sir.

6 Q. Did you know anything about what, what the allegations
7 were?

8 A. No, sir. I didn't.

9 Q. And I gave you a list of witnesses, a sheet there with
10 some names on it. Do you know anybody on that sheet?

11 A. Yes, sir.

12 Q. Let me see it, if you would. Did you circle the
13 names?

14 A. Yes, sir.

15 Q. You know Captain Kenny Graham at the detention center.
16 How do you know Captain Graham?

17 A. We use to play together a long time ago.

18 Q. Okay, and what about Corporal Aaron Wilkes?

19 A. Well, I met him, I met him through some mutual
20 friends.

21 Q. All right. When is the last time you talked with him?

22 A. It's been a while. I hadn't talked with him.

23 Q. All right, and what about Corporal Andrew Cooper?

24 A. Been about seven years. He was with the county
25 police.

1 Q. All right. Oh, and -- but you haven't talked with him
2 for years either?

3 A. Yeah.

4 Q. Knowing these people, would that cause you to look
5 upon them differently than you would look upon any other
6 witness in the case?

7 A. No, sir.

8 Q. Would the fact of them testifying, the fact that they,
9 the fact that they're going to be a witness, would that
10 cause you to form an opinion one way or the other about the
11 guilt or innocence of the defendant?

12 A. No, sir.

13 Q. Would that affect your verdict, just the fact they
14 were witnesses in any way?

15 A. No, sir.

16 Q. All right. I gave you a sheet there that talks --
17 that discussed ---

18 THE COURT: Here, Madame Court Reporter.

19 (QUESTIONNAIRE OF JUROR #11-BALLEN MARKED INTO
20 EVIDENCE AS COURT'S EXHIBIT NUMBER 7-G.)

21 Q. I gave you a sheet talking about three types of
22 jurors. Did you go over that sheet?

23 A. Yes, sir.

24 Q. Did you understand the three types?

25 A. Yes, sir.

1 Q. First type would be one that, no matter what the
2 evidence is presented, would be one that would always vote
3 for the death penalty. The other is the juror that, no
4 matter what the evidence of aggravation and mitigation was,
5 and that juror would always vote against the death penalty,
6 never impose the death penalty. Always vote for life
7 imprisonment.

8 Then the third one is the juror that would have an
9 open mind and would wait and make up their mind after
10 they've heard and the evidence in aggravation and
11 mitigation, and want to listen to that evidence and law
12 from the judge before they decided the case. That juror,
13 after hearing all the evidence in aggravation and
14 mitigation, that juror could make a decision to bring a
15 verdict of life in prison depending on the evidence
16 presented. Or they could bring back a verdict of the death
17 penalty depending on the evidence in aggravation and
18 mitigation.

19 Of those three types of jurors, which one best
20 describes you?

21 A. Three.

22 Q. Third one. You'd be open minded?

23 A. Yes, sir.

24 Q. You would make your decision based on evidence
25 presented in aggravation and mitigation?

1 A. Yes, sir.

2 Q. Now, I'm going to let you know that in a case of this
3 nature, the jurors would first be asked to determine
4 whether guilt's been proven beyond a reasonable doubt. If
5 the jurors determine guilt was not proven beyond a
6 reasonable doubt, that will end the case at that point.

7 But if the jurors determine that the state had proven
8 the defendant guilty of murder beyond a reasonable doubt,
9 we will then go to a phase where the issue of punishment
10 will be considered. At that point in time, there would be
11 evidence of aggravation and mitigation put forth to the
12 jury for them to consider in regard to their decision on
13 the verdict regarding punishment. So, that point we will
14 deal with those three types of jurors.

15 So, you feel that if you were in that, if you were in
16 that phase, that you would be an open minded about it, and
17 your decision would be after hearing all the evidence in
18 aggravation and mitigation and depending upon that, it
19 could be life or it could be the death penalty?

20 A. Yes, sir.

21 Q. All right. Now, if the jury were to vote for the
22 death penalty or determine the verdict to be the death
23 penalty, then the jurors will have to sign a verdict form.
24 All of them would have to sign the verdict form. Could you
25 sign that verdict?

1 A. Yes, sir.

2 Q. Also, the jury that's selected will be sequestered,
3 meaning, meaning they would be in a hotel for about a week,
4 a little more, a little less. Be away from the job, away
5 from the family. Could you handle that without undue
6 hardship?

7 A. Yes, sir.

8 Q. All right. Do you know the Clerk of Court in this
9 county, Ms. Huggins?

10 A. Yes, sir.

11 Q. Now, how, how do you know Ms. Melanie Huggins?

12 A. My wife works in her office.

13 Q. So, your wife works in the clerk's office?

14 A. Yes, sir.

15 Q. Has your wife discussed this case with you?

16 A. No, sir.

17 Q. She's not talked about this at all?

18 A. No, sir.

19 Q. Okay, would that in any way affect your ability to be
20 fair and impartial one way or the other?

21 A. No, sir.

22 THE COURT: Okay, I'm going to let the lawyers ask
23 some questions now.

24 State?

25 MR. HEMBREE: Hey, Mr. Ballen. Thank you for your

1 patience with us. I don't have any more questions -- or
2 have any questions for you. Please answer any questions
3 defense counsel might.

4 MR. WILSON: I don't have any questions, Your Honor.

5 THE COURT: All right, if you would, Mr. Ballen, step
6 to the other room a minute, behind that door.

7 (THE JUROR EXITS THE COURTROOM.)

8 THE COURT: Okay, position of the state?

9 MR. HEMBREE: He's qualified, Your Honor.

10 THE COURT: Position of defense?

11 MR. WILSON: He's qualified.

12 THE COURT: All right, I find that Mr. Ballen's
13 qualified. Bring him back out, please.

14 (THE JUROR ENTERS THE COURTROOM.)

15 THE COURT: Now, Mr. Ballen, I'm going to -- I find
16 you qualified to be in the jury pool in this case. That
17 doesn't mean you're going to be on the jury. It just means
18 that you would be in the pool from which the jury is drawn.

19 I need you back here at 11:30 a.m. on Thursday. Now,
20 sir, do not discuss this case with anyone. Not with your
21 wife, not with anyone else in your family or any friends,
22 anybody else. Don't talk about this case at all. If
23 someone talks to you about it, you need to let me know
24 Thursday. Do not look at any local news or read any local
25 papers, all right, sir?

1 JUROR: Yes, sir.

2 THE COURT: Now, if you are selected on the jury,
3 we'll probably put the jury in the hotel that day some
4 time. So, you might want to get your goods packed
5 Wednesday night or Thursday morning so that if you are
6 selected, you go home and get your goods and come back and
7 be ready to go.

8 Now, you might want to arrange somebody also drive
9 your car since you don't want to leave your car up here at
10 the courthouse, although you say your wife works here. You
11 might want to make some arrangements there, okay?

12 JUROR: Yes, sir.

13 THE COURT: We'll see you outside this courtroom at
14 11:30 on Thursday. See you then.

15 JUROR: Yes, sir.

16 THE COURT: Thank you, sir.

17 JUROR: Thank you.

18 THE COURT: Okay. Anything else before we break
19 tonight? We're going to start tomorrow at 8:30 so we can
20 get Group H and I, and we'll just see how far we go.

21 I have now the count at twenty-four jurors that are
22 qualified. I know the defense has moved for
23 reconsideration of one, but I've qualified twenty-four
24 including that juror, the juror Ms. Calfee or -- we'll
25 bring back tomorrow juror Bosley, those. I'll be glad to

1 hear from y'all tomorrow, but it's likely I will disqualify
2 her based on that statement. But I'm glad to hear more
3 from y'all tomorrow.

4 MR. HUMPHRIES: Your Honor, we actually have the case.
5 We got the two cases where she was actually convicted and
6 carried greater than one year.

7 THE COURT: You got the statute numbers, you say?

8 MR. HIXSON: I talked to the Clerk of Court in the, in
9 the district court in Baltimore on the telephone, and they
10 gave me the case number and said she was sentenced to one
11 year, was suspended on one-year probation, two guilty pleas
12 in September of '90 -- '89 and the case was terminated in
13 September of 1990.

14 MR. HUMPHRIES: And it carried up to four years on
15 both -- on one.

16 THE COURT: The cocaine carried up to four years?

17 MR. HUMPHRIES: Yes.

18 MR. HIXSON: Yes. She was sentenced to one year. She
19 was pled under the cocaine substance ---

20 THE COURT: Now, far as the assault by shooting or
21 whatever, they didn't tell you how much that carried?

22 MR. HIXSON: No. I just got that one and came back.

23 THE COURT: All right, Mr. Wilson, I'm glad to let you
24 talk with me further, but I've got an e-mail back from the
25 judge in Maryland. They called the lawyer. But she's got

1 this thing here. It sounds to me that she was
2 disqualified. So, I'll give you my final decision tomorrow
3 morning.

4 Y'all have a good night. See y'all tomorrow.

5 MR. HUMPHRIES: Thank you, Judge.

6 MR. WILSON: Thank you.

7 (WHEREUPON, THE CASE IS AT EASE.)

8 WEDNESDAY, JANUARY 30, 2008

9 (COURT RESUMES AT 8:43 A.M.)

10 THE COURT: Anything we need to discuss before we get
11 started?

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

13 MR. HEMBREE: Nothing from the state.

14 THE COURT: Nothing? All right. The next person then
15 is juror 363, JohnPaul Plewa. You know him by JohnPaul.

16 (JUROR #363 ENTERS THE COURTROOM.)

17 EXAMINATION BY THE COURT:

18 Q. Have a seat, please. Get comfortable. Mr. -- is it
19 Plewa?

20 A. The W is like a B. Plewa.

21 Q. Plewa. All right. Is -- that's from Eastern Europe?

22 A. Yes. Polish.

23 Q. Polish. Mr. Plewa, good morning to you. Relax. I am
24 sorry we had to postpone from yesterday to today, but we'd
25 have kept you back, you would have been back there until

1 late last night. So, we decided to let you go home and get
2 you back this morning.

3 A. No problem.

4 Q. And get right to you. I'm going to ask you a few
5 questions, and please understand you're still under oath
6 from Monday morning ---

7 A. Yes, sir.

8 Q. --- when we put everybody under oath. And you're not
9 on trial or anything, and you're not being interrogated.
10 We're just asking you questions. If for some reason you
11 don't understand my questions or something from any of the
12 attorneys, just let us know, okay?

13 A. Okay.

14 Q. First of all, the attorneys involved in this case, Mr.
15 Hembree, Mr. Humphries, Mr. Wilson, Mr. Rathbun, do you
16 know any of those people?

17 A. No, sir.

18 Q. Okay, and what about the defendant? Do you know the
19 defendant?

20 A. No, I do not.

21 Q. Okay. Do you have any special interest, bias, or
22 prejudice involving this case?

23 A. No, sir.

24 Q. Have you formed or expressed an opinion about the
25 guilt or innocence of the defendant in this case?

1 A. No, I've not.

2 Q. Do you know any reason whatsoever why, why you cannot
3 give both the state and the defendant a fair and impartial
4 trial?

5 A. No, no reason.

6 Q. Okay. Now, if you are selected on the jury, you, you
7 would have to follow the law as I instruct it to you.
8 That's a requirement of a juror under oath. The juror
9 takes an oath to follow the law as the judge instructs,
10 instructs him. Would you follow the law as I instruct you?

11 A. Yes, sir.

12 Q. All right. Now, the jurors are finders of facts, but
13 I would instruct on the law. Now, one of that -- one of
14 the things I would instruct you would be that, that the
15 defendant is presumed innocent. The burden is upon the
16 state to prove guilt beyond a reasonable doubt, and the
17 defendant is not required to prove himself innocent.
18 Excuse me, clear my throat. Would you follow that
19 principle of the law?

20 A. Yes, sir.

21 Q. Okay, and so sitting on the jury there, if after the
22 evidence has been presented and I have given you
23 instructions on the law, if you are not convinced beyond a
24 reasonable doubt that the defendant is -- if you're not
25 convinced beyond a reasonable doubt the defendant's guilty,

1 would you then, under the instructions, find him not
2 guilty?

3 A. Yes.

4 Q. If, on the other hand, you are convinced beyond a
5 reasonable doubt of the defendant's guilt, would you find
6 him guilty?

7 A. Yes.

8 Q. All right. Have you discussed this case with anyone?

9 A. No, I haven't.

10 Q. This case has gotten some media coverage: radio, TV,
11 and, and newspaper. Have you read anything, seen anything,
12 or heard anything about this?

13 A. No, I have not.

14 Q. Not at all?

15 A. No.

16 Q. All right. So, you've not in any way read any news
17 accounts of this at all?

18 A. No.

19 Q. Seen anything on TV?

20 A. No, sir.

21 Q. Monday the first time you'd heard about this case?

22 A. Yes.

23 Q. Okay. The -- I gave you three sheets of paper with
24 names on it.

25 A. Yes.

1 Q. Do you know any of those people on those sheets of
2 paper?

3 A. Not that I'm aware of. No, sir.

4 Q. Would you hand them back to me? Now, some -- not
5 that, just that. Okay, sometimes, of course, you see
6 people, you see their face you know, but you didn't know
7 their name.

8 A. Sure.

9 Q. If you are on this jury and someone does come forth as
10 a witness and their face makes you realize you do know
11 them, would you let me know?

12 A. Of course.

13 Q. Okay. I did check, and there's no names circled
14 there.

15 I gave you a sheet of paper there, talking about the
16 three types of jurors, and, and I want to go over that with
17 you. A case of this nature, remember I told you, you sat
18 on the jury and, and I would give you instructions on the
19 law, and if the jury were to determine guilty or not, proof
20 beyond a reasonable doubt, and the jury finds the defendant
21 not guilty, that would end the jury's participation.

22 If however, the jury found that the state had proven
23 the defendant guilty of murder beyond a reasonable doubt
24 and found the defendant guilty, well then we would move to
25 another phase where the issue of punishment, that is to be

1 considered by the jury.

2 Now, in the issue of punishment, there would be
3 evidence submitted to the jury regarding aggravation and
4 mitigation in regard to the events.. And the jurors would
5 be asked to bring back a verdict of either life in prison
6 or the death penalty.

7 Now, given those three types of jurors. You've got
8 juror number one who's a juror that regardless of the
9 evidence that's presented, that juror will always bring
10 back a verdict for the death penalty. That juror would
11 feel that the death penalty is most appropriate at any
12 time, without regard to whatever -- to any evidence in, in
13 mitigation or aggravation.

14 The second juror, juror number two, that juror -- that
15 no matter what is submitted in aggravation and mitigation,
16 that juror will always bring back a verdict for life in
17 prison. These two jurors, in essence, would have already
18 decided, no matter what, they're going to bring back a
19 verdict -- number one juror would be -- always bring back a
20 verdict for the death penalty. Number two juror would
21 always bring back a verdict for life in prison.

22 The third juror is a juror that would not have made
23 their mind up before they heard the evidence in aggravation
24 and mitigation. And only after they'd heard the evidence
25 in aggravation and mitigation would they be able to

1 consider and decide the issue of punishment. That juror
2 would want to hear the evidence submitted as well as the
3 charge on the law from the judge. And if after hearing
4 that evidence in aggravation and mitigation and the law, if
5 that juror felt it so warranted, that juror could bring
6 back a verdict of life in prison. On the other hand, after
7 hearing the evidence of aggravation and mitigation and the
8 law, if that juror felt it so warranted, that juror could
9 bring back a verdict for the death penalty.

10 Which of those three types of jurors best describes
11 you?

12 A. Best describe me would be a type three.

13 Q. Three?

14 A. Yes, sir.

15 Q. All right. So, in other words, if you were on the
16 jury, and, and once again, talking about a sentencing does
17 not imply anything. It's just if we would get to that
18 point.

19 A. Right.

20 Q. So if we got to that point, you would want to listen
21 to evidence in aggravation and mitigation before you could
22 decide what would be the most appropriate verdict as to
23 sentencing?

24 A. I would like to hear the evidence. Yes, sir.

25 Q. Okay. Now, if the jury -- in that phase where they

1 consider punishment, if the jury were to come back with a
2 verdict for the death penalty, each of the jurors would
3 have to sign that verdict form. Could you sign the verdict
4 form?

5 A. Yes, sir.

6 Q. All right. This trial is going to last a week, little
7 less, little more. We don't know when these things start
8 when we're gonna get finished. But it would require you to
9 be sequestered in a hotel. You would be, obviously,
10 provided transportation back and forth and food and things
11 of that nature. But you would be away from your family
12 and, and business. You could communicate some by phone,
13 but that would be supervised. Could you handle that
14 without too much of a hardship? I know it would be some.

15 A. Yes, sir.

16 THE COURT: All right. I'm going to let the attorneys
17 ask you a few questions, and then I may have something else
18 to talk to you about.

19 JUROR: Okay.

20 THE COURT: All right. For the state, Mr. Hembree.

21 MR. HEMBREE: Thank you, Your Honor.

22 MR. HEMBREE: Is it Mr. Plewa?

23 JUROR: Plewa.

24 THE COURT: Plewa.

25 MR. HEMBREE: Plewa. Thank you very much. Sorry to

1 have to ask.

2 JUROR: No problem.

3 MR. HEMBREE: Judge Lockemy has covered all the
4 questions I might have for you. Thank you for your
5 patience with us. Please answer any questions defense
6 counsel might have for you. Thank you.

7 JUROR: Thank you.

8 THE COURT: Mr. Rathbun.

9 MR. RATHBUN: Thank you, Your Honor.

10 EXAMINATION BY MR. RATHBUN:

11 Q. Mr. Plewa, I'm Paul Rathbun, and along with Ralph
12 Wilson, we represent Louis Winkler in this matter. You've
13 indicated to the court that you'd be able to follow the law
14 as the court gives it to you. And you'd be able to either,
15 if you got to the second phase, either vote for the death
16 penalty or vote for life. Is that correct?

17 A. Yes, sir.

18 Q. You understand that the State of South Carolina
19 and the court are satisfied with either verdict. They are
20 satisfied with death, or they are satisfied with life.
21 Have you ever -- and you may have -- I mean, have any
22 preconceived notions as to the death penalty?

23 A. No. I don't have any preconceived notions.

24 THE COURT: Speak into that microphone for me, Mr.
25 Plewa. The lady over here's a court reporter, got to hear

1 you a little bit.

2 JUROR: Okay.

3 THE COURT: I'm sorry, I ---

4 JUROR: I'm sorry.

5 MR. RATHBUN: I appreciate your answers. Thank you.

6 JUROR: Okay. Thank you.

7 THE COURT: If you would, Mr. Plewa, step outside that
8 door over there where that officer is, and I'm going to
9 bring you back in in a minute. Step right outside that
10 door.

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. RATHBUN: Qualified, Your Honor.

16 THE COURT: All right. Have him step back in, please.

17 (THE JUROR ENTERS THE COURTROOM.)

18 THE COURT: Mr. Plewa, I'm going to qualify you to
19 serve on the jury pool from which this jury will be
20 selected. Now, that doesn't mean you're necessarily going
21 to be on the jury. It just means you'll be in the group
22 from which the jury's selected.

23 I need you back tomorrow at 11:30 a.m. If you are
24 selected on this jury panel, then of course you'll need to
25 have your clothes packed and ready to go. So, go ahead and

1 get things ready to go for at least a week and, and if you
2 are selected, I'll give you time to go get your stuff and
3 come back. You may need someone to operate your vehicle so
4 you won't leave your vehicle here while you're gone.
5 You're going to be having a bus taking you back and forth,
6 okay?

7 So, you can go out this door now. In the meantime, do
8 not look at any local news shows, do not read any local
9 paper, and do not discuss this case with anyone at all,
10 okay, sir?

11 JUROR: All right.

12 THE COURT: You may leave out that door there. Thank
13 you, sir.

14 JUROR: Thank you.

15 THE COURT: Okay. Anthony Carmichael, juror 66.
16 Seems like that the number had something to do with 66.
17 Tomorrow, I had a -- oh, wait a minute. That's the juror
18 we hadn't qualified yet.

19 MR. HEMBREE: No. He's qualified, Your Honor. He
20 came in late.

21 THE COURT: That's the reverend, isn't it?

22 MR. HUMPHRIES: No. Carmichael's not the reverend.

23 CLERK OF COURT: Number 339 is the one ---

24 THE COURT: Oh, that's the one. I'm sorry.

25 MR. HUMPHRIES: Carmichael's was -- came in ---

1 CLERK OF COURT: He was in ---

2 MR. HEMBREE: He was in the group that came in late.

3 MR. HUMPHRIES: The group of five that came in late.

4 THE COURT: I got it. Very good.

5 (JURY #66 ENTERS THE COURTROOM.)

6 EXAMINATION BY THE COURT:

7 Q. All right, come around over here.

8 A. Where? Right here?

9 Q. Yes, sir. Have a seat. Relax there. Did you bring
10 us any pizza this morning?

11 A. No. I didn't open this morning.

12 Q. Sorry we didn't get to you yesterday, but I figured it
13 was best to go ahead and let you go home and come back
14 today so you wouldn't have to wait so much. I know you
15 waited a while before we let you go yesterday.

16 A. Yes, sir.

17 Q. Since Monday, have you gone back to the pizza place to
18 work at all?

19 A. No. I'm on vacation this week.

20 Q. Oh, okay.

21 A. Yeah, so I don't have to go back until Wednesday.

22 Q. All right. If you would, lean up and speak in that
23 microphone for me a little bit.

24 A. Okay.

25 Q. Now, you and I have already talked some but, Mr.

1 Carmichael, I need to ask you a few questions, see if
2 you're qualified to be in the jury pool in this thing.

3 A. Okay.

4 Q. Now, there aren't any right answers, no wrong answers.
5 We're just going to talk for a little bit, and you're not
6 on trial or anything. So, we're just going, going to talk,
7 so don't be too nervous.

8 A. This the first time I've been behind this right here.

9 Q. Well, you're all right.

10 A. Okay.

11 Q. That's the, that's the witness place, so you're fine.

12 A. Okay.

13 Q. I may have asked you this before, but do you know any
14 of the attorneys involved in this case?

15 A. No, sir.

16 Q. All right. Do you have any special interest, bias, or
17 prejudice in this case at all?

18 A. No. I don't think so.

19 Q. All right. Have you formed or expressed any opinion
20 about the guilt or the innocence of the defendant?

21 A. I mean, not right now, no.

22 Q. You have an open mind?

23 A. I mean, my momma kept records, of, you know, of what's
24 been going on about this case and stuff.

25 Q. Now, lean up and tell me about that. What do you mean

1 she kept records?

2 A. No. You know, what I'm saying? Like, when first,
3 first started she keep, like, I guess she keep -- like, in
4 a local papers you cut out certain things about the past
5 and stuff so you can keep a record of it. So, I mean, the
6 past, I mean, I, I should already know about it. You know
7 what I'm saying? But she keeping, like, a photo, photo
8 book and stuff. I ain't look at it, but I guess when it
9 first started, I mean, if I go back there and look at it, I
10 could see what was going on about the crime.

11 Q. Do you live with your mother?

12 A. Yes. Of course.

13 Q. You say, yes, of course.

14 A. Yes, of course. I don't mind. Yeah.

15 Q. But you haven't looked at the book yourself?

16 A. No, I didn't pay it no mind. I didn't ---

17 Q. Does she do that to a lot of matters out of the paper,
18 or was it just this matter?

19 A. No. With everything. Like, I guess she done, like, a
20 hobby for her. She been doing it for, like, a couple
21 years. So, I can look, different history of certain things
22 I can look in the books and look it up far as she keep
23 records of them, died or what, what kind of crime have been
24 in Horry County or in the nation, stuff like that. So, she
25 got record of it, you know what I'm saying, to keep.

1 Q. Is it just crimes, or did she have records of other
2 things, too?

3 A. I mean, mostly crimes because she's fascinated by, by,
4 by that, you know what I'm saying? We got Court TV and
5 everything like that. So, I mean, she keep -- if, if it's
6 big or something, she keep, she keep records of it and put
7 it in her books. She keeps locals papers like the *Sun News*
8 and stuff like that and cut it out and put it in her book.

9 Q. Okay, but you said you had not reviewed that book
10 regarding this particular case?

11 A. No, not yet. I mean, I was too busy working or doing
12 something else. So, I didn't have time to go, go back and
13 check it out.

14 Q. All right. Well, because of that, though, has that
15 caused you to form any opinion one way or the other about
16 this case?

17 A. Maybe. I mean, sort of. I mean.

18 Q. Well, what, what sort of? Tell me about sort of.
19 Maybe sort of what?

20 A. I mean, I might feel like he, he might be, be guilty,
21 you know what I'm saying? Because if he in this position
22 by now, you know, going to court and everything. So, I
23 might have that, that, that -- term, okay, prove you guilty
24 you're innocent, you know? I might feel that way, you
25 know.

1 Q. All right.

2 A. Until ---

3 Q. Well, I've got to let you know this. You know, in
4 America a person arrested on a charge should be and
5 required to be presumed innocent.

6 A. Yeah.

7 Q. And, and then the state prosecution, they have the
8 burden of proving a person guilty. And if they don't prove
9 them guilty beyond a reasonable doubt, then the, the jury
10 should acquit or find the person not guilty unless the
11 state proves guilt beyond a reasonable doubt.

12 A. Yes.

13 Q. Do you think you could follow that rule and presume
14 the defendant innocent and require the state to prove guilt
15 beyond a reasonable doubt?

16 A. Yeah, I, I could probably do that, stuff like that,
17 but it depends on, I mean, if I, if I -- it depends on
18 about what kind of evidence, stuff like that, you know?
19 For what, what happened or, you know, if something happened
20 that I might be quick to judge like that, you know. Quick
21 to judge.

22 Q. Well, one thing I need to make sure you can accept,
23 that you all except that the defendant does not have to
24 prove him to self innocent. The state's got to prove him
25 guilty.

1 A. Yeah.

2 Q. I mean, now that's important. If you, if you can't
3 follow that, you got to let me know. Could you follow that
4 requirement?

5 A. Yes, sir.

6 Q. All right, so under -- and you realize you're still
7 under oath because I put you under oath on Monday. You
8 remember that when you stood right there with the other
9 five people?

10 A. Oh, I'm still under oath?

11 Q. Yes, sir. You're still under oath now. If you, if
12 you're not sure about this, you need to let me know.

13 A. I mean, I have my own, own opinion about this, you
14 know, about that. You know, I mean, I can't give no
15 definition but, you know, I mean, that's how I feel. I
16 mean, I can't explain about the situation but, you know,
17 like, my conscience might be a certain way, you know?

18 Q. Well, then, are you telling me that even if I tell you
19 that's the law, you're not sure you could follow it?

20 A. It's the law, but I might change my mind. Like, if I
21 look today or, you know what I'm saying, my opinion might
22 change all of a sudden, you know, about this situation.
23 That's how I feel.

24 Q. So, you'd apply your own opinion about it?

25 A. I probably would to be on the, be on the safe side if

1 I'm under oath.

2 THE COURT: I'm going to stop at this point and let
3 the attorneys ask any questions up to this level if they
4 wish to. Anything from the state?

5 MR. HUMPHRIES: Nothing from the state, Your Honor.

6 THE COURT: From the defense?

7 EXAMINATION BY MR. WILSON:

8 Q. Just let me ask you a few questions, sir; let me ask
9 you just a few things. You understand that whenever a
10 defendant comes into any court, he is presumed to be
11 innocent? Do you understand that?

12 A. Yes, sir.

13 Q. All right, and if His Honor instructs you that that
14 is the law in this state, in every state, can you accept
15 that?

16 A. Yes.

17 Q. And His Honor's going to give you instructions as to
18 what you should do in this case and how you are to perform
19 your duties as a juror in this case. Can you listen to him
20 and accept what he tells you, or are you going to just
21 reject what he tells you and do what, and do what you want
22 to do anyway?

23 A. I mean, long as I'm in the courts and I go by the
24 rules and make sure everything's straightened out.

25 Q. Okay, and the rules are whatever he tells you those

1 rules are, and you are saying that you are willing to
2 follow the rules as he gives them to you. Is that what
3 you're saying?

4 A. Yeah.

5 Q. Okay, and let me ask you. In terms of whether or not
6 you have -- you've obviously heard some things about this
7 case, have you not?

8 A. I'm probably too busy working and stuff like that but,
9 I mean, in the news and the radio and from Mom tearing --
10 you know what I'm saying? People talk, you know?

11 Q. And, and that there's nothing wrong with having heard
12 something in about the case.

13 A. Right. Right.

14 Q. You understand that? There is nothing wrong with the
15 fact that ---

16 A. Right.

17 Q. --- you've heard something about this case or read
18 something about it.

19 A. Yeah.

20 Q. All right, and there's nothing wrong with the fact
21 that you talk with your mom about it.

22 A. Right.

23 Q. The question now is can you set that aside? Can you
24 forget what you did talk with your mom about and what you
25 heard on the radio or what you heard on the news and be

1 fair? Can you set that aside and be fair to both the state
2 of South Carolina and to this defendant? Can you set aside
3 what you heard and read and be fair to both sides?

4 A. That's a tough decision. I don't, I don't know about
5 that.

6 Q. You don't know if you can be fair?

7 A. Oh, I mean, I'm, I'm a fair person, so I can be fair
8 about this situation, you know?

9 Q. Well, that's what we're asking you. That's what we're
10 asking you. Can you be fair?

11 A. Yeah.

12 Q. All right, and in being fair, you would require the
13 State of South Carolina to come into this court through the
14 prosecution's office and present evidence which convinces
15 you, if they can, beyond a reasonable doubt that this
16 defendant committed this crime? Could you give --the judge
17 told you that was what the law requires. Could you do
18 that?

19 A. Repeat that one more time, sir.

20 Q. If the judge told you that it's the burden
21 requirement, responsibility of these people here, the
22 state ---

23 A. All right.

24 Q. --- to prove that this defendant committed this crime
25 and if they don't prove, it then you're to find him not

1 guilty. They don't prove it to your satisfaction as a
2 juror beyond a reasonable doubt that he did it, then you're
3 required to find him not guilty. Could you do that?

4 A. Yeah. No evidence. Yeah, I could do that.

5 Q. And, on the other hand, if they come in here and they
6 bring you evidence and they satisfy you beyond a reasonable
7 doubt that, in fact, he did do it, could you then find him
8 guilty?

9 A. Of course. I -- it's, it's right there in front of
10 me.

11 Q. Okay. Now, in regards to ---

12 MR. WILSON: And, Judge, I know you haven't done it --

13 THE COURT: No, I want to ask him further. You can
14 stop right there.

15 MR. WILSON: All right, sir.

16 THE COURT: So, we'll stop right there.

17 FURTHER EXAMINATION BY THE COURT:

18 Q. Now, I want to remind you once again you mentioned
19 about, you know, under your oath. So, you know you are
20 under oath. You mentioned that a few times a while ago.
21 So, number one, you're under oath.

22 Knowing you're under oath, if you sat on that jury, I
23 will, I will tell you the law is that you are to presume
24 from the beginning that the defendant is innocent and the
25 burden is on the state to prove guilt beyond a reasonable

1 doubt. And the defendant does not have to prove himself
2 innocent. The state has to prove him guilty beyond a
3 reasonable doubt. Under your oath, will you follow that
4 principle?

5 A. In my mind, I mean, I go to church. I don't like to,
6 I don't like to judge nobody. Let God do the judging. You
7 know what I'm saying? I mean, under my oath, I mean, it's
8 -- I would be fair because I'm, I'm here. I mean, I'm here
9 for a reason. To do this and everything. But, see, I
10 mean, I don't want to break my oath, you know?

11 Q. All right. Well, then, you're telling me you're not
12 sure you can do it, or you can do it far as follow the rule
13 that you must presume the defendant innocent and that the
14 state has the burden of proving him guilty beyond a
15 reasonable doubt, and he does not have to prove himself
16 innocent? That would be my instruction to you on the jury.

17 Now, once again remember now you're not on trial or
18 anything. I'm just saying if you sat on that jury, you're
19 on that jury, you must accept that principle. Now, if you
20 can't accept that principle, it's not like you're breaking
21 the law. It's just I need to know that before I can decide
22 whether you would be part of our jury pool. Can you accept
23 that principle and follow the principle under your oath?

24 A. Yeah, I can do that. I can, I can listen to the
25 evidence and stuff like that and just have a clear mind

1 about it and then process.

2 Q. And you would start off presuming the defendant
3 innocent?

4 A. Yeah, like a clean slate until something happens.

5 Q. Now, about the discussion, Mr. Wilson has asked you
6 about could you put aside what you heard in past. I mean,
7 you say your mother keeps these journals or, or albums.

8 A. Yeah.

9 Q. Have you actually seen in the album that she has
10 things from the newspaper about this case? Have you seen
11 that part with things about this case?

12 A. I didn't see it. I mean, I seen pictures of it, but I
13 didn't see. I mean, I seen it before she cut it out. I
14 seen the papers of it, stuff. I ain't read it, but she
15 probably already got it, you know, in the photo album and
16 stuff like that already.

17 Q. Would what has been in the paper, with your mother's
18 activities, would that affect your decision in this case?
19 That have something to do with what decision you make, what
20 your mother has done with the newspapers, what has been in
21 the newspapers? Would that from -- would you consider that
22 when you make your decision in this case, or can you put
23 that aside?

24 A. That might be an opinion or something. That's all. I
25 probably would set it aside because, I mean ---

1 Q. Now, I need to make sure you tell me that you can set
2 it aside or you're not sure or you won't. Which is it?

3 You can, you're not sure, or you, or you will not?

4 A. I'm not sure right now.

5 Q. Tell me what you mean by that when you say you're not
6 sure. I mean, does that mean it might come into play when
7 you make your decision in this case?

8 A. It, it probably would but I'm, I'm a listen to the
9 case and stuff like that. But she probably wouldn't know
10 nothing about this, but I, I mean, I listened to her and
11 stuff like that. But news, going to talk and she probably
12 talking to her, her -- my brothers and stuff like that
13 about you listening. This is something, like, I guess I
14 hear or something like that, my conscience, I face
15 something like that. If -- it's a hard decision right now
16 because, you know, I mean, it is very -- I mean, it's not
17 hard but it's, like -- would be open about it. That's all.

18 Q. Let me ask you something, Mr. Carmichael. The sheet
19 we sent out, did -- you remember with all the questions and
20 all on it? Did you fill this out or somebody fill that out
21 for you?

22 A. Somebody filled out for me.

23 Q. Says here you're a slow learner. What does that mean?

24 A. Slow. I mean, I guess I'll try to -- I tried to get
25 out, get out situations, so he put, my brother put a slow

1 learner even though I'm not a -- I mean, I got me a diploma
2 and everything. I graduated from high school. I went to
3 college for, like, half a semester. But, I mean, he must
4 just put that up there just to try to get me out, out this
5 case.

6 Q. You have a half semester. Where did you go to
7 college?

8 A. Denmark Tech up in South Carolina.

9 Q. Now, you do know that -- have you heard anybody in
10 your family talking about this case?

11 A. No. I mean, like, but I went home the other day, I
12 mean, it was on the news. I went in the other room because
13 you said don't listen to it. I closed up ears so I didn't
14 hear nothing. But no, not right now. I mean, some time my
15 brother, my older brother might say if he was on the -- in
16 the position I am, he probably said something different,
17 you know?

18 Q. Well, then, what would he say?

19 A. I mean, he probably would say man probably be guilty
20 straight up like that, you know, because if you, if you did
21 them things, you know what I'm saying, you probably do the
22 time, you know? Certain things like that.

23 Q. And can you put that out of your mind and sort of look
24 outside and not consider that in this case? Or would you
25 feel that that would in affect your decision, what your

1 brother said and other people said?

2 A. No. I mean, I, I, I can put myself in the game, you
3 know, put myself in and in ---

4 Q. This is what?

5 A. The game. Like, like ---

6 Q. The game?

7 A. The game. Like, like a sport, like, like a -- if this
8 is, this is like a, a certain kind of game. Like, you
9 know, like, okay, you got to be clear about it, be open
10 about it, understand? You got to solve the puzzle at the
11 end, end of this game. If, if he did it, he did it. But
12 he didn't, he didn't. Prove it -- till you prove it, but
13 innocent. You know what I'm saying?

14 Q. Until he's proven innocent?

15 A. Yeah. I mean, he already, he already is until they
16 prove he guilty.

17 Q. Okay.

18 A. Yeah, like that. So, I mean, I can do that, you know.
19 Just focus and see what's gone on with the situation.

20 Q. All right.

21 A. Until they found he was guilty.

22 Q. Let me ask you this. Did you know anybody on this --
23 names I gave you?

24 A. No, sir. I mean, I don't know -- because a lot of
25 people got these names. I don't know. I probably don't

1 know them. I might know them by face but not by name. I
2 don't know. I might know the name.

3 Q. All right, but if you see, if you actually get on the
4 jury and you saw somebody you know, you'd tell me about
5 it?

6 A. Yeah, or, or somebody, somebody I think my family
7 know.

8 Q. You'd let me know?

9 A. I'll let you know.

10 Q. Let me hold that sheet back. If you're on that jury,
11 and you said you would accept the principle that you
12 presume the defendant innocent, the state has the burden of
13 proving guilty beyond a reasonable doubt. He doesn't have
14 to prove himself innocent. You're on that jury. After
15 hearing all the evidence, if you feel that the state has
16 not proven the defendant guilty beyond a reasonable doubt,
17 would you find him not guilty if you feel the state has not
18 proven his guilt beyond a reasonable doubt?

19 A. Yeah. Yeah. I can do that.

20 Q. If you feel the state has proven him guilty beyond a
21 reasonable doubt, could you find him guilty?

22 A. Yes.

23 Q. Speak louder now.

24 A. Yes, sir.

25 Q. I've told you there are three types of jurors. See

1 that sheet of paper I gave you right there? You understand
2 those three types of jurors? Want me to go over that with
3 you?

4 A. Can you go over? Yes, sir, go over.

5 Q. The first of juror is the type that, that if the
6 defendant's proven guilty of the murder, and that juror --
7 and by the way. Let me just tell you this before we go
8 over it.

9 If the jury were to find the defendant guilty of
10 murder, if they were to find the state had proven guilt
11 beyond a reasonable doubt, we'd go into another phase where
12 then the jury would bring back also a verdict at that time
13 of what -- of the punishment. So, if the jury finds the
14 defendant guilty of murder, we get to another phase where
15 the jury is the one that brings back a verdict for the
16 punishment.

17 A. So, you got three types of ---

18 Q. What I'm saying is why -- I'm not saying that each
19 jury has these three types. I'm saying these are just
20 three types of people and trying to see which type of
21 person you are.

22 A. Oh, okay.

23 Q. Okay? The first person is that person that if they
24 were on the jury and a person was found guilty murder, the
25 person in this, in this phase, the second phase that we may

1 go to, you then have the evidence submitted in aggravation,
2 evidence in mitigation. Well, in that phase the jury has
3 to come back with a verdict of whether they're going to
4 give life imprisonment or the death penalty. They give
5 life imprisonment or the death penalty, one of those two
6 things.

7 Well, some people are such that, like juror number
8 one, it doesn't matter what that evidence in aggravation
9 and mitigation, whatever that evidence is presented. That
10 juror would always say I'm a verdict for the death penalty.
11 That's juror number one.

12 A. Oh.

13 Q. Juror number two there, that person number two, that
14 person says it doesn't matter what evidence is in
15 aggravation and mitigation. I'm always going to give life
16 imprisonment because I could never give the death penalty.
17 Juror number two is a person who says I could never give
18 the death penalty to someone. Only to give life
19 imprisonment.

20 And juror number three is the one who says well, I
21 could give life imprisonment or the death penalty. I got
22 to wait and hear what the evidence is and after hearing the
23 evidence in aggravation and mitigation, I could come back
24 and say well, I think life imprisonment is appropriate. Or
25 if I feel after hearing the evidence in aggravation I could

1 come back and say no, the death penalty is appropriate.

2 Now, of these three types of people, one would always
3 give the death penalty, one who would always give the life
4 imprisonment, or the one who would listen and to either
5 other -- either of the two depending on the evidence, which
6 best describes you?

7 A. Probably number, number two, life, number two.

8 Q. So, you don't believe you'd ever give the death
9 penalty to someone?

10 A. I mean, it depends on, it depends on -- I probably do
11 three because on this case, it might be different. Another
12 case might be something different. I, if I get asked this
13 question every, every time or something or?

14 Q. No, sir. I'm saying if you're on this particular
15 case.

16 A. Okay.

17 Q. And if, and I'm not suggesting the jury would, but if
18 the jury were to find the defendant guilty of murder, we
19 would then go to another phase. And in that phase, there'd
20 be evidence of aggravation and mitigation. And in that the
21 phase, the juror will be asked to bring back a verdict of
22 life imprisonment or the death penalty. And each side
23 would give the information what they feel you should
24 consider in making your decision.

25 My question is would you, if you're on this jury and

1 you get to that next phase, are you the type of person to
2 always bring back the death penalty, or the type of person
3 would always bring back life imprisonment, or the person
4 who would listen to the evidence and you could sometimes
5 bring back life and you could, you could bring back life or
6 you could bring back death depending on the evidence?
7 Could you bring back a death penalty verdict if the
8 evidence was sufficient? Or could have -- or if the
9 evidence was sufficient, could you bring back life
10 imprisonment?

11 A. I probably just do life, life in prison. I can't -- I
12 don't see myself doing death, death penalty.

13 MR. HUMPHRIES: I can't hear him, Your Honor.

14 Q. Speak into the microphone.

15 A. I probably do life, life in prison instead of the
16 death penalty. I just don't see myself doing death, you
17 know? It's, it's not me. I'd rather it should be the life
18 in prison thinking about it and understand what, what your
19 life is about. I don't see the death. That's not me.

20 Q. Is your opposition -- so, you're opposed, you're
21 opposed to the death penalty?

22 A. Yeah.

23 Q. Is your opposition to the death penalty for murder, is
24 that so firm that you're committed to that right now today
25 before this trial begins? You're committed, that you're

1 opposed to the death penalty? Is that right?

2 A. Yes, sir.

3 Q. In other words, in a trial you would vote for life
4 imprisonment?

5 A. Yes, sir.

6 Q. And the evidence presented at trial wouldn't change
7 your opinion about that?

8 A. Huh?

9 Q. If you got to the second phase of trial, evidence
10 would not change your opinion regarding you feel life
11 imprisonment is the most appropriate punishment? Your
12 opinion wouldn't change in that regard?

13 A. Only time I think it would change, if, if, I guess if
14 all the jury put death on somebody, I would go along what
15 they put because I think you got to go to the whole thing.

16 Q. But each person, sir, decides.

17 A. Yeah.

18 Q. On their own.

19 A. Oh.

20 Q. It would have to be unanimous; all twelve would have
21 to agree if it went to the death penalty.

22 A. Yes. I'm, I'm, I'm -- I mean, if, if, if I'm the only
23 person that put life and everybody say death, I'd put death
24 with them. I mean, I, I, I can't ---

25 Q. Even though you don't agree?

1 A. Even though I, even though I don't agree with it
2 because everybody, everybody, if eleven people say death,
3 then something must be there to say death. But if eleven
4 people say life, I'm going with life.

5 Q. Would you sign your name on that verdict saying death
6 penalty?

7 A. I don't mind.

8 THE COURT: All right, questions from the state?

9 EXAMINATION BY MR. HUMPHRIES:

10 Q. Good morning, Mr. Carmichael.

11 A. Good morning.

12 Q. I would take a minute or two. I'm Fran Humphries.
13 I'm the deputy solicitor. I, along with Solicitor Hembree
14 and Scott Hixson, will be prosecuting this case.

15 I need you to understand this. Nobody's trying to
16 change your mind, okay? We didn't bring you in here to try
17 to make you into some other kind of juror, okay?

18 A. Okay.

19 Q. Really, all we need to know is where you are, and I
20 think you, you, you've sort of struggled with and you try
21 to tell us as best you can exactly where you are as a
22 juror.

23 What I need you to understand is this. That's there
24 is never any set of circumstances, there is never any rule,
25 the court is never going to tell you once we get to that

1 penalty phase that if the state proves this or the
2 defendant fails to establish and this -- the defendant has
3 no burden in this case whatsoever. This is never a
4 situation where the law is going to require you to give the
5 death penalty. In fact, what he'll tell you in the penalty
6 phase and he's charging the jury, giving them the
7 instructions at the end, is that the jurors can give life
8 for any reason or no reason at all. You can always give
9 life, okay? Never have to give death. Can give death if
10 the state proves aggravating circumstances but never has
11 to, okay?

12 Now, I've heard you also tell the judge that you're
13 life, you're life. That's going to be your position, but
14 if the other eleven jurors say death, you will go along
15 with the majority even if that's not what you believe?

16 A. Yeah. Just -- I mean, if they, if they all agree with
17 -- I mean, like, my mind is all going to be open about
18 that, you know because, like, I'm just one person, but I'm
19 not one to change eleven people decision about that, that
20 choice. That if eleven people say, you know, if they all
21 agree with them, I'm going to follow that and vote that.

22 Q. Okay, I looked at, I noticed in your questionnaire,
23 and again you said somebody else filled that out for you?

24 A. Yeah. I was feeling bad.

25 Q. I gotcha. I gotcha, but in it you talked about

1 anxiety attacks, poor focus, and bad judgment in people and
2 that you didn't believe you should be in judgment of
3 people.

4 A. Something like that, yeah.

5 Q. Does that have to do with your religious background,
6 your church beliefs?

7 A. Maybe, yes, sir.

8 Q. Okay. Well, let me ask you this. If what you believe
9 -- let's say the court instructs you about a certain area
10 of law in this case, and that law conflicts or doesn't
11 agree with what you believe from your church.

12 A. Okay.

13 Q. Okay, could you follow the law as the court gives it
14 to you, or would you, would you follow instead your church
15 or religious beliefs?

16 A. I'd put God first, I guess, yes.

17 MR. HUMPHRIES: That's all we can ask of you. I
18 appreciate it, Mr. Carmichael.

19 JUROR: No problem.

20 MR. HUMPHRIES: Thank you, sir.

21 THE COURT: Anything, Mr. Wilson?

22 EXAMINATION BY MR. WILSON:

23 Q. Let me ask you, and I apologize. I know all this is
24 probably very confusing for you, and when solicitor asked
25 you just a second ago about how you -- if the judge gave

1 you some instructions and, and if you have conflict in your
2 mind about whether or not, you know, some religious belief
3 you might have verses something that the judge had told
4 you, are you saying that -- and you're saying you put God
5 first in your life, and that's just how you are. You
6 believe in God and you trust in God and that's your faith.
7 Is that a fair statement?

8 A. Right.

9 Q. All right. Are you saying, though, that if this court
10 gives you instructions, that you're going to refuse to
11 follow the court's instructions if you think that's -- that
12 those instructions are wrong based on your religious
13 beliefs?

14 A. Say one more time.

15 Q. Well, what he was essentially asking you is this. Is
16 if the judge gives you some orders, some directions from
17 this court, he tells you this is what the law is, and you
18 understand that if this judge tells you what the law is,
19 you're supposed to follow that law?

20 A. Right.

21 Q. In this court. Is that correct? Do you understand
22 that?

23 A. Yes, sir.

24 Q. All right, and you said earlier that you could follow
25 his instructions, and you would do what he told you to do

1 in this court?

2 A. Right.

3 Q. Is that correct, and solicitor has asked you what if
4 it comes to a situation where the judge gives you some
5 directive, some order, some direction and then you believe
6 in your own mind that somehow that's -- conflicts with your
7 religious beliefs. Can you still follow the judge's
8 orders?

9 A. I would do it up to a certain point, to a certain
10 extent.

11 Q. And what does that mean?

12 A. I mean, it depend. I could listen to the case and,
13 and, and listen to the evidence, look at the evidence,
14 stuff like that. But when it comes to the point of the
15 choosing or judging somebody, I can't probably, probably
16 can't do that.

17 Q. Okay. So, are you saying then that you don't want to
18 -- you don't want to sit in judgment of anybody. Is that
19 what you're saying?

20 A. Really, yes, sir.

21 Q. All right, all right, and, and, and -- well, even
22 though you don't want to do it, you are under oath here
23 today. Is that correct?

24 A. Yes, sir.

25 Q. All right, and you can do it even though you don't

1 want to do it. Is that what is?

2 A. Yeah. I'm here, yeah.

3 Q. All right, and, and, and so and you would do it. You
4 just don't like doing it. Is that what you're saying?

5 A. Yes, sir.

6 Q. All right, and in terms of the death penalty, as I
7 understand it what you're saying is this. There are times
8 when you could vote for the death penalty?

9 A. Yeah.

10 Q. Don't want to.

11 A. A choice, yeah.

12 Q. But you can do that?

13 A. Yes.

14 Q. All right, and if you believe in your heart and in
15 your mind that the facts were so bad that you think that
16 that person ought to be put to death, you could then vote
17 for that if that's what you believe, could you not?

18 A. Yes, sir.

19 Q. Okay. It'd be difficult for you, but you could do it
20 if that's what you thought and what you believed in your
21 heart?

22 A. That's a tough decision. I mean, I'm not ---

23 Q. I'm not asking you to vote for it. I'm not asking you
24 to vote for anything. I'm, I'm saying ---

25 A. I mean, best of my heart.

1 Q. Listen. What I'm asking you is this. If you believe
2 in ---

3 A. Yeah.

4 Q. --- your heart after hearing all the evidence and all
5 the testimony both from the state and from the defense and
6 after His Honor instructs you as to what the law is, and if
7 you believe in your heart that the right thing to do was to
8 vote for the death penalty, could you do that?

9 A. I probably could, yes, sir.

10 Q. Well, I don't need probably. I need to know could
11 you. If you believed it was the right thing to do, could
12 you do it? I'm not asking you to do it. I'm asking you
13 could you do it if you believe it was the right thing to
14 do?

15 A. I, I would believe it the right thing to do, but I
16 don't want to give the death penalty. I, I, I give him
17 life in jail, in prison. I wouldn't do the death penalty.

18 Q. All right.

19 A. But if eleven jurors down there says death penalty,
20 I'm going to go with them and say death penalty.

21 Q. All right. So, that's my question. So, you can sign
22 for the death penalty?

23 A. Yeah. I can sign my signature.

24 Q. And you can vote for the death penalty?

25 A. I would, I would vote for it but not in, not in my

1 heart.

2 Q. You could vote for it, but not in your heart?

3 A. Yeah. I mean, I can sign something, but it's not
4 going to be in my heart.

5 Q. Right. So, what you're saying is in your heart and in
6 your mind, you would rather not give somebody the death
7 penalty. That's what you're saying, right?

8 A. Right.

9 Q. But came down to it, could you do it and answer's yes?

10 A. Yeah. Most times, I can.

11 MR. WILSON: I have any other questions.

12 FURTHER EXAMINATION BY THE COURT:

13 Q. Is that only if eleven others vote that way?

14 A. Yes, sir.

15 THE COURT: All right, step outside for me, please,
16 sir.

17 JUROR: All right.

18 (THE JUROR EXITS THE COURTROOM.)

19 THE COURT: State?

20 MR. HUMPHRIES: Judge, he is absolutely on all four
21 corners a *State vs. Hill* juror. The only time he's going
22 to vote for the death penalty against his wishes is when
23 the other eleven vote for death. He said it. He never
24 said anything different. And in a, in the case of *State*
25 *vs. Hill*, they reversed the appellant's death sentence

1 because the trial court improperly qualified and seated a
2 juror who answered that he would go with the majority over
3 his own determination. That's exactly on point with this
4 juror.

5 THE COURT: Well, I was looking at the one, *State vs.*
6 *Bennett*.

7 MR. HUMPHRIES: Well, *State vs. Bennett* is a, and I
8 tried that case. That was, that was a bit different from
9 this. That was a case where they wanted to ask that
10 question. The defense wanted to ask that question. The
11 court didn't allow it, and that's, that's was not error.
12 But if the question is allowed or it comes up in *voir dire*,
13 and quite frankly that question was not.

14 He, he gave us that information. We didn't start with
15 the question. We asked him could you, could you sentence
16 someone to death. I, I -- no. But now if eleven people
17 said death, I put death. I'd always be life. I'm always
18 life. Life in prison, but I'd do death if eleven people
19 did it. I go along with death because I can't change them,
20 so I'll go with death.

21 That's a *Hill* juror. And, and *Hill* decided, Judge.
22 That was the premise or the proposition under which the
23 defense intended to ask that question. The judge didn't
24 allow it. And they said it-- the judge was not improper in
25 not allowing the question in *Bennett*, but in *Hill*, but it

1 came from *Hill* basically.

2 THE COURT: Mr. Wilson?

3 MR. WILSON: Of course I disagree and I have, and I,
4 and I think that that's very different from *Hill* or
5 *Bennett*, and I think the reason it's different is that this
6 juror, Judge, he has testified he can. Yes, it's difficult
7 for him. Yes, he does not want to do that. But he can do
8 it. Not only can he do it, he says he can sign for it.
9 And, and I think that that qualifies him.

10 Now, does that obviously mean that he is, is a person
11 who would prefer to give life? Yeah, I have no doubt about
12 that whatsoever. But he has said -- if there are such
13 things as magical words, he has said every single one of
14 them from that witness stand, and he is qualified.

15 THE COURT: Mr. Wilson, he said he would only vote for
16 it if eleven others are for that, and he would go with the
17 eleven. I'm looking also about *State vs. Gaston* here, a
18 case that -- I am concerned initially about his ability to
19 follow the instructions of the court.

20 He was very, very -- vacillated back and forth on
21 that, and uncertain about that. And the only time he said
22 he -- well, as far as for the defendant's benefit about his
23 decisions about guilt, I'm very concerned that he initially
24 indicated to the court that his brother had talked about he
25 was probably guilty. His mother keeps an album, and he is

1 aware of that. And he says he probably could put it aside.
2 Then he wasn't sure if he could follow the instructions,
3 the presumption of innocence, kept going back and forth on
4 that. Then we got by that one.

5 I'm still not certain I was going to consider at the
6 end of the interview, but at least we got to the point
7 where I was going to go ahead and ask other questions, and
8 then we get to the issue of punishment. I'm just wondering
9 if he really grasped the instructions of the judge, whether
10 he -- from your questions also I'm wondering if he would
11 follow the instructions of the judge.

12 I think the young man is being as honest and open as
13 he can. And on the guilt or innocence phase, I think to
14 the benefit to the defendant he's not qualified. On the
15 penalty phase, he got to the penalty phase, sounds to me
16 this is a juror says I'll just go along with the other
17 eleven no matter what they decide. That concerns me also.
18 Would he go along with the other eleven in the guilt phase,
19 too? He seems to be someone who's going to go along as
20 opposed to someone who's going to independently review the
21 evidence and, and make a decision himself as to what the
22 evidence is and what the law requires.

23 With all respect, Mr. Wilson, I don't see how I can
24 qualify this person either, on either phase. So, I'm going
25 to find him disqualified.

1 Bring him in, please.

2 (THE JUROR ENTERS THE COURTROOM.)

3 THE COURT: Mr. Carmichael, I really appreciate your
4 answers, and please know that all we want is someone to be
5 honest and open with us, and you were. And I appreciate
6 you coming. You won't have to come back. You're excused
7 from this trial.

8 JUROR: Okay.

9 THE COURT: Thank you very much, Mr. Carmichael. You
10 can go out this way here.

11 THE COURT: Okay.

12 Could y'all bring Mr. Cole in?

13 MR. WILSON: Judge, before you do that, I just need a
14 one minute break.

15 THE COURT: Wait one second. Just get him to the
16 door, if you would.

17 MR. WILSON: Judge, I, I apologize. I just need to --
18 I don't know if I said the words, but I do need to say that
19 I, I object to findings of not qualifying him, and I don't
20 know if I said it or not.

21 THE COURT: No, but it's appropriate that you said it
22 now. Okay. That's on the record.

23 MR. HUMPHRIES: And by way of additional sustaining
24 grounds, he was also a vacillating juror, which is
25 unqualified. And state's position is he could be unable to

1 follow the law, which would also render him unqualified.

2 THE COURT: I think I stated those things, but it's on
3 the record.

4 Bring Mr. Cole in here when he's ready.

5 (JUROR #84 ENTERS THE COURTROOM.)

6 EXAMINATION BY THE COURT:

7 Q. Good morning, Mr. Cole.

8 A. Good morning.

9 Q. I would have said good evening last night. We let you
10 go home because it was getting so late. Come on around
11 here and have a seat. You keep those papers for right now.
12 Just relax, have a seat. Hold on one second.

13 (A PAUSE.)

14 Q. Mr. Cole, I want to remind you that you're still under
15 oath from, from Monday. You know we put everybody under
16 oath. I've just got a few questions here. We just trying
17 to see if you're qualified to be on this panel, which we
18 will draw a jury in this case. And just a few questions I
19 am going to ask you. One is do you know any of the
20 attorneys in this case, Mr. Hembree, Mr. Humphries, Mr.
21 Wilson, or Mr. Rathbun?

22 A. I seen them on -- in the news before but, you know, on
23 TV. Is it Hembree, Humbree?

24 Q. Hembree.

25 A. I, I, I don't know him.

1 Q. I see you said in your questionnaire yes, TV and
2 newspapers.

3 A. Right.

4 Q. Mr. Hembree you say, but you never yourself have any
5 conversations with him, never had any interaction with him
6 or anyone else here?

7 A. I think everybody in Horry County has seen him on TV
8 from one time or another.

9 Q. Okay. You feel that by seeing him on TV, would that
10 affect your ability to be fair and impartial in a trial?

11 A. No.

12 Q. And if you would, I know what I'm talking to you ---

13 A. Okay.

14 Q. It's sort of unusual here. We've got to make sure
15 this lady here, make sure she can hear us and everyone in
16 the courtroom can hear. But try to respond with real words
17 or so. If you would, do it in that microphone, okay?

18 A. All right.

19 Q. All right, and make sure you get to the microphone.
20 You're a little too far back.

21 A. Okay.

22 Q. Okay, let me ask you again. Your knowledge of Mr.
23 Hembree being on TV, you've seen him on TV, would that in
24 any way affect your ability to be fair and impartial?

25 A. Not at all.

1 Q. All right, and do you have any special interest, bias,
2 or prejudice in this case at all?

3 A. No.

4 Q. All right. Have you formed or expressed an opinion as
5 to the guilt or the innocence of the defendant?

6 A. No. I don't know anything about him.

7 Q. Okay. Do you know any reason whatsoever why you
8 cannot give both the state and the defendant a fair and
9 impartial trial?

10 A. No reason why I can't.

11 Q. Okay. If you're selected on the jury, I will tell the
12 jury that the jury listens to the evidence. The jury must
13 follow the law as the judge instructs. And under your
14 oath, would you follow the law as I instruct you?

15 A. Yes.

16 Q. All right. One of those principles of law that I
17 would tell the jury that, that the defendant is presumed
18 innocent as the case begins, and the state has the burden
19 of proof beyond a reasonable doubt. The defendant does not
20 have to prove himself innocent. The state is required to
21 prove guilt beyond a reasonable doubt, and the defendant is
22 presumed innocent. Could you and would you follow that
23 principle of law?

24 A. Yes, sir.

25 Q. All right. So, in the case you have evidence

1 presented and the jurors hears the evidence or hear the
2 evidence and, and determines what facts have been proven
3 beyond a reasonable doubt. And they follow the law as the
4 judge instructs. If after hearing the evidence in the case
5 and hearing my instructions on the law, if you felt the
6 state had not proven guilt beyond a reasonable doubt, would
7 you then under the law and under the instructions you were
8 told to follow, would you then find the defendant not
9 guilty?

10 A. Of course.

11 Q. Okay. If, on the other hand, if you felt the state
12 had proven guilt beyond a reasonable doubt and you follow
13 the law the judge instructed, would you then find the
14 defendant guilty?

15 A. Yes.

16 Q. All right. Have you discussed this case with anyone?

17 A. No, because I don't know anything about the case. I,
18 I live here in Conway, but I don't pay that much attention
19 to what -- things that go on in the world that -- I, I'm a
20 church person, and there's too much good. I don't pay a
21 whole lot attention to the bad. So, I don't know anything
22 about what this is about.

23 Q. All right. So, you don't recall reading anything in
24 the newspapers about it, or seeing anything in on the TV,
25 or ---

1 A. If I did, I've forgotten that. But the one I did pay
2 attention to was a couple of years ago, that Stanko. I
3 forget his name, but that's the only one I could tell you
4 anything about.

5 Q. All right. Now, if during the course of this trial if
6 you're on the jury and also you were to remember something
7 you may have read in the paper or seen on the news, would
8 you be able to put that aside and make your decision in
9 this case based on the evidence presented in the courtroom
10 and the law as I instruct it to you?

11 A. Yes.

12 Q. All right. I gave you three sheets with some names on
13 it. Did you review those names?

14 A. Yes.

15 Q. Do you see anybody you know?

16 A. I realize looking at this list I don't know very many
17 people. I don't know any of these.

18 Q. All right, could I have that back then, please? All
19 right, I do not see any circles anywhere.

20 Now, the trial of this nature is such that you sit on
21 the jury there and then as I told you, I'd give you
22 instruction on law. You'd hear the evidence in the case.
23 And if after hearing the evidence and following my
24 instructions on the law, if the jury felt the state had not
25 proven guilt beyond a reasonable doubt, as we've already

1 said, the jury would find the defendant not guilty. And
2 that would end the jurors' participation at that time.

3 If, however, the jury felt the state had proven guilt
4 beyond a reasonable doubt and found the defendant guilty,
5 then we would go into another phase where the issue of
6 punishment will be considered. And the jurors would then
7 listen to evidence in aggravation and mitigation and
8 instructions of the judge, and the jurors would then come
9 back with a verdict regarding punishment.

10 Now, I'm not suggesting we'd get to that phase but
11 just if we did get to that phase, I need to ask you a few
12 questions here.

13 You see that I gave you a sheet of three types of
14 jurors. Juror number one is that juror that would get to
15 that phase. No matter what the evidence in aggravation and
16 mitigation has been presented, whatever has been presented
17 in that regard, that juror simply feels that once a
18 murder's been committed, the death penalty is always the
19 appropriate punishment and would not consider the
20 circumstances of the case or the evidence in aggravation
21 and mitigation.

22 That juror number two is the juror, though, who would
23 feel that no matter what the circumstances, no matter what
24 the evidence of aggravation, that juror could never give
25 the death penalty and that juror would always come back

1 with a verdict of death penalty.

2 Juror number three is a juror that, that although the
3 defendant's been found guilty, found guilty beyond a
4 reasonable doubt of murder, that juror still will have to
5 listen and want to listen to the evidence in aggravation
6 and mitigation before that juror would decide what the
7 verdict on punishment would be. That juror would want to
8 hear the facts in evidence and aggravation and in
9 mitigation, as well as listen to the instructions of the
10 judge before that juror can make up his mind regarding
11 punishment. And if after hearing that evidence in
12 aggravation and mitigation and law, if that juror felt it
13 so warranted, that juror could come back with a verdict of
14 life imprisonment.

15 Similarly, however, if that juror felt that so
16 warranted it, that juror could come back with a verdict for
17 the death penalty, all depending on the view of the
18 evidence in aggravation and mitigation and following
19 instructions of the judge.

20 Which of those three do you feel you are most
21 identified with?

22 A. Number three definitely.

23 Q. So, you feel you could listen to the evidence in
24 aggravation, mitigation and depending upon your
25 consideration of that and instruction on the law, you could

1 come back with either a verdict of life imprisonment or the
2 death penalty?

3 A. I'm a person that believes in motives and, and I want
4 to hear -- before I would whip my children, discipline
5 them, I want to know both sides of the story. And I think
6 that has to do with juror number three.

7 Q. All right.

8 A. I, I want to know why the person did what they did.

9 Q. Okay.

10 A. And, and I am very much against mandated in -- I don't
11 know if that's a federal law or what, but two people do the
12 same thing but for different reasons. I think you need to
13 look at each one separate.

14 Q. Okay. Now, Mr. Cole, if, if the jury, which would
15 have to be unanimous, if the jury determined that after
16 hearing everything that the death penalty would be the
17 appropriate verdict, each juror must sign that verdict
18 form. Could you sign that verdict form?

19 A. If it was appropriate, sure.

20 Q. Okay, and if you were selected on the jury in this
21 case, the jury would be sequestered, meaning you'd be in a
22 hotel for a week or so. A little more or less, but could
23 you handle that without too much undue hardship?

24 A. Yeah. My only question is a little silly. What do
25 you do about clean -- how do you -- how many changes of

1 clothes? I don't believe I've got enough underclothes to
2 last for a week or two because my wife does my laundry.

3 Q. Well ---

4 A. It's just one of those things I was thinking about.

5 Q. You'll have a washing machine available when you want
6 to go do that.

7 A. I was just curious.

8 Q. And I might provide, if you wish, to have a pickup for
9 your laundry and then have them bring them back there if
10 your wife doesn't mind. But I think that logistic, we can
11 handle that. But other than that, other than that, then
12 you could handle it?

13 THE COURT: Okay. All right, I'm going to let the
14 attorneys ask you a few questions and after that, I might
15 have something else for you.

16 Questions from the state?

17 MR. HEMBREE: Thank you, Your Honor.

18 Good morning, Mr. Cole.

19 JUROR: Good morning.

20 THE COURT: Judge Lockemy has covered all the
21 questions I have. Thank you for your patience with us.
22 Please answer any questions defense counsel might have.

23 JUROR: Okay.

24 THE COURT: Mr. Wilson?

25 EXAMINATION BY MR. WILSON:

1 Q. Mr. Cole, in regards to the death penalty, is this, is
2 this something you have given a great deal of thought to
3 over the years, or is this something that you kind of got
4 thrust upon you once you got your summons and your notice
5 to come here?

6 A. I thought about it over the years, and sometimes I
7 think it's warranted. Sometimes it, it may not be. So,
8 I'm not for or against.

9 Q. All right, and you can accept the premise from the
10 court that, that every defendant is innocent until the
11 state proves him guilty?

12 A. Just like I wouldn't whip my kids until I heard both
13 sides.

14 Q. Very good and, and the fact that the burden's upon
15 them to prove that first before we even get to the
16 sentencing phase of this trial, they must first prove
17 beyond a reasonable doubt that, in fact, the defendant
18 committed the crime of murder because if they don't prove
19 that to your satisfaction beyond a reasonable doubt, we
20 wouldn't even get to this second part of the trial.

21 A. Right.

22 Q. And do you can hold them to that burden?

23 A. Yes.

24 Q. All right, and let me ask you. Do you understand that
25 -- as a juror, you indicated that you would want to know

1 the motive for the crime or for what happened.

2 A. Right.

3 Q. Is that what you said?

4 A. I, I believe in life there is a reason for everything.

5 That's one of the truths I hold to. And the other one is

6 that there's a reason why something was happening. And I

7 teach a Sunday school class and I, and I -- young adults

8 that have children, and I ask them probably several times a

9 month why did you come this morning. And we all do things

10 for different reasons, and so I'm big on motives.

11 Q. All right, all right, and the motive would influence

12 your decision?

13 A. Yeah.

14 MR. WILSON: Thank you, sir. I appreciate that.

15 THE COURT: Okay, if you would step out for me,

16 please, sir. Step outside that door.

17 (THE JUROR EXITS THE COURTROOM.)

18 THE COURT: Position of the state?

19 MR. HEMBREE: Juror's qualified, Your Honor.

20 THE COURT: Defense?

21 MR. WILSON: He's qualified, Judge.

22 THE COURT: Bring him back in.

23 (THE JUROR ENTERS THE COURTROOM.)

24 THE COURT: Mr. Cole, I find you qualified to serve on

25 the jury pool in this case. That doesn't mean you're going

1 to be on the trial. That means you'll be in the pool from
2 which we draw the jury.

3 If you would, I need you to come back tomorrow 11:30
4 and be outside that door. Someone will let you know when
5 you can come in or not. Go ahead and get that underwear
6 packed just in case, and you may need to buy some more.
7 You could do that. Be ready just in case.

8 Now, if you are selected on the jury, I will give you
9 time to go home and get your bags and come back. But you,
10 you, you probably are going to need someone ready to go to
11 get your vehicle because you don't want to leave your
12 vehicle at the courthouse for a week or so. So, have
13 someone ready to get you back up here if you can. If not,
14 I'll provide someone to do it for you, but have that ready
15 for someone to come and take you back, okay?

16 JUROR: All right.

17 THE COURT: All right, you could go out this door over
18 here. Do not discuss this case with anyone. Don't look
19 any local media about it, and we'll see Thursday at 11:30.

20 All right, bring in juror number 486, Wilson.

21 (JUROR #486 ENTERS THE COURTROOM.)

22 EXAMINATION BY THE COURT:

23 Q. Come around, Mr. Wilson. How you doing?

24 A. All right, sir. You?

25 Q. Fine. Just keep those with you there, and I'll get

1 them from you in a minute. Want to just talk with you a
2 little bit and remind you that you're still under oath from
3 when we put you under oath on Monday, okay, sir?

4 A. Yes, sir.

5 Q. And just looking to see. Of all the people that came,
6 you never came up. This is our first time you and I are
7 talking, is it?

8 A. Yes, sir.

9 Q. And looks like, says you're a disabled vet. What
10 service?

11 A. Army.

12 Q. Army. How many years were you there?

13 A. Six.

14 Q. Six years?

15 A. Yes, sir.

16 Q. Was it disability, Vietnam, or something else or what?

17 A. A motorcycle.

18 Q. And motorcycle accident. Line of duty or not line of
19 duty?

20 A. Not line of duty.

21 Q. Not line of duty, all right. I was a JAG officer, so
22 I, I did a lot of those line-of-duty investigations
23 determining all that, but you got hurt?

24 A. Yes, sir.

25 Q. And do you get any type of check from the military?

1 A. Yes, sir.

2 Q. So, at least it wasn't due to misconduct.

3 A. No, sir.

4 Q. You were doing something lawful. You just didn't
5 happen to be doing military duty at the time.

6 I notice that your name is Wilson and one of the
7 lawyer's names is Wilson, and I thought you might be kin,
8 but I see you're not kin.

9 A. No, sir.

10 Q. But you were in high school together?

11 A. Yes, sir. Played football with him.

12 Q. Played football with him. Now, do you know anyone
13 else like Mr. Hembree, Mr. Humphries, or Mr. Rathbun?

14 A. I seen them, yes, sir.

15 Q. Seen them, but have you talked with them at all?

16 A. No, sir.

17 Q. All right. Now, are you and Mr. Wilson still
18 associated at all, or ---

19 A. I've seen him in passing.

20 Q. So, what position did you play in football?

21 A. Fullback, linebacker, all over the field just like
22 him.

23 Q. Look like you might be a good linebacker.

24 Now, the fact that you went to high school with Mr.
25 Wilson, would that in any way affect your ability to be

1 fair and impartial in this case?

2 A. No, sir.

3 Q. All right, you'll be fair to both sides?

4 A. Both sides.

5 Q. Your decision would not be based on any of that at
6 all?

7 A. No, sir.

8 Q. All right, and you have a good voice. It speaks loud,
9 but still make sure you get into that microphone.

10 A. Yes, sir.

11 Q. Have you any special interest, bias, or prejudice in
12 this case?

13 A. No, sir.

14 Q. Have you formed or expressed an opinion as to the
15 guilt or innocence of the defendant?

16 A. No, sir.

17 Q. You know of any reason whatsoever why you cannot give
18 both the state and defense a fair and impartial trial?

19 A. No, sir.

20 Q. Would you under your oath follow the law of the case
21 as I instruct the law to you?

22 A. Yes, sir.

23 Q. Because jurors, you know, they'll listen to the
24 evidence and make their decision on the evidence. But they
25 must follow the law the judge instructs to them, and you

1 would follow it?

2 A. Yes, sir.

3 Q. Part -- one of those principles of law that I will
4 instruct you is that the defendant is presumed innocent,
5 and the state has the burden of proving guilt beyond a
6 reasonable doubt. The defendant does not have to prove
7 himself innocent. Would you accept that principle of law?

8 A. Yes, sir.

9 Q. All right. Have you discussed this case with anyone?

10 A. No, sir.

11 Q. And by the way, back to that principle of law. So,
12 therefore, if after all the evidence is presented, if you
13 felt the state had not proven guilt beyond a reasonable
14 doubt, you could find the defendant not guilty?

15 A. Yes, sir.

16 Q. But if you felt the state had proven guilt beyond a
17 reasonable doubt, you could find the defendant guilty?

18 A. Yes, sir.

19 Q. All right. This thing has gotten coverage in the
20 media far as TV and newspapers, things of that nature.
21 Have you read or seen anything about this case?

22 A. Only thing I know about it, we were here Monday when
23 you read the, the paper.

24 Q. The charges?

25 A. Yes, sir.

1 Q. And you understand those are allegations?

2 A. Allegations.

3 Q. Not evidence.

4 A. I wasn't there, so I don't know.

5 Q. Okay, but you don't recall reading anything in the
6 newspapers about it?

7 A. No, sir.

8 Q. All right, and if you did -- say during the course of
9 the trial something hits your mind. Oh my goodness, I did
10 read something about that. Could you put that aside and
11 make your decision in this case based on the evidence
12 presented and the law as I instruct it to you?

13 A. Yes, sir.

14 Q. All right. I gave you three sheets of paper with
15 names on them. Did you review that?

16 A. Yes, sir.

17 Q. You know anybody on there?

18 A. Yes, sir.

19 Q. Let me -- did you circle it?

20 A. Yes, sir.

21 Q. Let me see it if you would, please. One, two, two
22 names?

23 A. Yes, sir.

24 Q. Okay. All right. Captain Kenny Graham, how do you
25 know Captain Graham?

1 A. Been to school, too.

2 Q. All right, what about Corporal Wilkes?

3 A. I go to church with him.

4 Q. What church is that?

5 A. Bethlehem Baptist Church.

6 Q. All right. Now, if either of these two people
7 testified, the fact that you knew Kenny Graham in school,
8 Aaron Wilkes goes to church, would that make it such that
9 you would look upon them differently than you would any
10 other witness?

11 A. No, sir.

12 Q. All right. So, you would treat them just like any
13 other witness?

14 A. Just like anybody else.

15 THE COURT: All right, give this to court reporter.

16 (QUESTIONNAIRE OF JUROR #486-WILSON MARKED AS COURT'S
17 EXHIBIT NUMBER 8-H INTO EVIDENCE.)

18 Q. In this case, as I said, if the jurors, after
19 listening to the evidence and the charge on the law, the
20 jurors determine the state's not proven guilt beyond a
21 reasonable doubt, the jurors would find the defendant not
22 guilty, and that would end the jurors' participation at the
23 time. However, if the jurors felt the state had proven
24 guilt beyond a reasonable doubt and, and, and found the
25 defendant guilty of murder, then we would move to another

1 phase.

2 And I'm not -- in discussing this other phase, I'm not
3 suggesting one way or the other you should do it. I'm just
4 saying if it got to this phase, there'd be another phase.
5 And that phase will be where the jurors would consider
6 punishment. And in that phase, there'd be evidence
7 presented in aggravation, mitigation. And then the jurors
8 will determine whether the verdict of punishment should be
9 life imprisonment or the death penalty.

10 I gave you a sheet of paper with three types of
11 jurors. Did you review that?

12 A. Yes, sir.

13 Q. You saw the juror number one is the person that's in
14 that phase would always vote for the death penalty. Would
15 the matter -- would not -- no matter what the circumstances
16 are, that juror would say the death penalty is the most
17 appropriate punishment in a, in a case where someone was
18 found murdered -- guilty of murder no matter what the
19 circumstances are.

20 Juror number two is the juror that said no matter
21 defendant's found guilty of murder, no matter what the
22 circumstances are, that juror would always say life
23 imprisonment because that juror feels they can never give
24 the death penalty no matter what the circumstances.

25 Juror number three, though, is the juror that although

1 the guilt of the defendant's been determined, that juror,
2 though, would not have made his or her mind up yet
3 concerning what the appropriate punishment is. That juror
4 would want to hear the facts and circumstances in
5 aggravation and in mitigation and would want to listen to
6 and follow the charge of the law by the judge. And after
7 listening to the aggravation and mitigation evidence and
8 the charge on the law, that juror could, if the evidence so
9 warranted it, that juror could come back with a verdict of
10 life imprisonment. Or, if the evidence so warranted it,
11 that juror could come back with a verdict of the death
12 penalty, all depending on what evidence had been presented
13 in that penalty phase, that phase where you consider
14 punishment.

15 Of those three types of jurors, which one best
16 describes you, Mr. Wilson?

17 A. The third one. I like to hear all -- everything
18 before I make my mind up.

19 Q. So, so, in that -- as a third juror, if we got to the
20 phase where you consider punishment, although the defendant
21 would have been found guilty of murder, you still would
22 listen to the evidence of aggravation, mitigation presented
23 in that phase before you would decide whether to do a
24 verdict of life imprisonment or the death penalty?

25 A. Yes, sir.

1 Q. But you could do either one depending on ---

2 A. Either one. Depends on.

3 Q. All right. If you, if you, if the jurors decided that
4 the verdict of the death penalty, every juror would have to
5 sign that verdict form. Could you sign the verdict form?

6 A. Yes, sir.

7 Q. All right. If you're selected as a juror in this
8 case, you would be sequestered. That means you would be
9 put in a hotel room and, and have limited access to your
10 family. Could you do that without too much hardship?

11 A. Yes, sir.

12 THE COURT: All right, I would let the attorneys ask
13 you any questions they may have.

14 From the state?

15 MR. HUMPHRIES: Good morning.

16 JUROR: Good morning, sir.

17 MR. HUMPHRIES: I don't have any questions for you,
18 Mr. Allen. Appreciate it.

19 JUROR: Okay. Yes, sir.

20 THE COURT: Mr. Wilson?

21 MR. WILSON: I have no questions.

22 THE COURT: All right. Oh, yeah, one other thing,
23 too. That means you cannot go to a big Super Bowl party
24 either. You know that?

25 JUROR: Yes, sir.

1 THE COURT: But I have a TV for y'all.

2 JUROR: Okay.

3 THE COURT: All right. If you would, sir -- any
4 objections from anyone?

5 MR. HUMPHRIES: No, Your Honor.

6 MR. WILSON: None, Your Honor.

7 THE COURT: Find Mr. Wilson, I find you qualified, and
8 what I need for you to do is to come back here tomorrow at
9 11:30.

10 JUROR: Okay, 11:30.

11 THE COURT: And you might want to go ahead and get to
12 your goods packed. It doesn't mean you're going to be on
13 this jury. What it means is that you will be in the pool
14 from which the jury will be selected.

15 JUROR: Okay.

16 THE COURT: So, have those bags packed, bags packed
17 and ready to go. And if you are on the jury, I'll let you
18 go get them and come back, but you probably need someone to
19 give you some transportation.

20 JUROR: Yes, sir.

21 THE COURT: Because you don't leave your car here all
22 week.

23 JUROR: Okay.

24 THE COURT: All right?

25 JUROR: Yes, sir.

1 THE COURT: Don't talk about this case with anyone at
2 all, and don't look at any local media, news, or read any
3 of the local papers, all right?

4 JUROR: Yes, sir.

5 THE COURT: All right, we'll see you then tomorrow at
6 11:30.

7 JUROR: Yes, sir. Thank you, sir.

8 THE COURT: Number 62, Alyce Calfee. If y'all would
9 please look at number 83 on her questionnaire.

10 MR. HUMPHRIES: What panel is that?

11 THE COURT: Number 80 -- number 62, juror 62.

12 MR. HUMPHRIES: Oh, it's number 62?

13 THE COURT: Yeah, 62. I'm sorry. Panel H. I'm
14 sorry.

15 MR. HUMPHRIES: Yes, sir. It's the next one.

16 (A PAUSE.)

17 (JUROR #62 ENTERS THE COURTROOM.)

18 EXAMINATION BY THE COURT:

19 Q. How are you doing? Is it Calfee?

20 A. That's right.

21 Q. Come around and have a seat, please ma'am. Did you
22 and I briefly talk --

23 A. Yes, sir.

24 Q. And I understand you're a musician?

25 A. Yes, sir.

1 Q. You play an instrument or sing?

2 A. Keyboard player.

3 Q. Keyboard. Have a seat if you would, please, ma'am.
4 Remember I want to remind you that you're still under oath.

5 A. Yes, sir.

6 Q. And try your best to answer in the microphone there,
7 okay?

8 A. Yes, sir.

9 Q. Now, you mentioned briefly when we talked about your
10 contracts.

11 A. Right.

12 Q. And that your -- when did -- what kind of contract do
13 you have and how long have you had the contract?

14 A. I've had it since December. It's for Valentine's
15 Night at the Sea Mist Hotel.

16 Q. All right. So, that's what you're -- Valentine's,
17 Valentine's, February 14th?

18 A. Exactly.

19 Q. All right. So, until then you don't have a contract
20 problem?

21 A. No. I have some other jobs, but they're not
22 contracts.

23 Q. All right. Now, I'm just going, I'm just going to ask
24 you a few questions, and please don't be nervous. It's
25 just something to get to know a little more about you.

1 Do you know any of the attorneys involved here? Mr.
2 Hembree, Mr. Humphries, Mr. Wilson, Mr. Rathbun?

3 A. Not personally.

4 Q. You know of them?

5 A. Uh-huh.

6 Q. Does any -- does that cause you to have any interest,
7 bias, or prejudice in this particular case?

8 A. No.

9 Q. And have you formed or expressed an opinion as to the
10 guilt or innocence of the defendant in this case?

11 A. Not really.

12 Q. What does that mean, not really?

13 A. No.

14 Q. Okay. Can you give both the state in the defendant a
15 fair and impartial trial in this case?

16 A. Yes, sir.

17 Q. Okay. Would you under your oath, Ms. Calfee, if you
18 were on the jury, would you follow the law as I instruct it
19 to you because jurors are required to follow the law as the
20 judge instructs it. Would you do that?

21 A. Yes, sir.

22 Q. Now, if you're on the trial of this case, the, the
23 jurors will listen to the evidence and follow the law from
24 the judge. And one of those principles of law would be
25 that the defendant is presumed innocent. The burden's upon

1 the state to prove guilt beyond a reasonable doubt. The
2 defendant must -- does not have to prove himself innocent.
3 Would you follow that principle?

4 A. Yes, sir.

5 Q. And after hearing all the evidence in the case and my
6 instructions on the law, if the state has not proven guilt
7 beyond a reasonable doubt, would you have any problem
8 finding the defendant not guilty if the state has not
9 proven guilt beyond a reasonable doubt?

10 A. No, sir.

11 Q. On the other hand, the state has proven guilt beyond a
12 reasonable doubt, could you find the defendant guilty?

13 A. Yes, sir.

14 Q. All right. Now, Ms. Calfee, have you, have you
15 discussed this case with anyone?

16 A. No, sir.

17 Q. There's been some media coverage with it, TV, news and
18 things of that nature. Have you read or seen or heard
19 anything about this case?

20 A. Yes.

21 Q. All right, and did we discuss that the other day, or
22 this is the first time we're discussing it?

23 A. This is the first time.

24 Q. What have you heard about it?

25 A. I'm just a newspaper reader, and I watch the news.

1 So, I didn't pay particular attention to the case probably,
2 but I'm aware of it.

3 Q. All right. Has being aware of it, has it caused you
4 to form an opinion as to the guilt or the innocence of the
5 defendant?

6 A. No.

7 Q. And if you're on that jury, can you put aside anything
8 you've read and make your decision based on the evidence in
9 the case and the law as I instruct it to you?

10 A. Yes, sir.

11 Q. All right. I gave you some paper there with names on
12 it. Do you know any of those people?

13 A. Well, the ---

14 Q. Did you circle anybody you might think you know?

15 A. No. There's a lot of people from my area, North
16 Myrtle Beach, but I know faces better than names, but
17 there's nobody I know in particular.

18 Q. So, no names there you know in particular. Can I have
19 that back, please? Is there anybody on there, any face on
20 -- name on this sheet here that you may or may not -- that
21 you may think you might have some acquaintance with that
22 would cause you to look upon them different than you would
23 any other witness?

24 A. Not to my knowledge, no.

25 Q. Okay. If that does occur, would you let me know ---

1 A. Absolutely.

2 Q. --- during the course of the trial?

3 Okay, I gave you there a sheet of paper that tells
4 about three types of jurors. In this case, if the jury
5 determines that the state has not proven guilt beyond a
6 reasonable doubt and finds the defendant not guilty, well,
7 the jurors' participation ends at that time.

8 If, however, the jury determines that the state has
9 proven guilt beyond a reasonable doubt and finds the
10 defendant guilty of murder, we then move to another phase.
11 In that phase, the jury actually comes back with a verdict
12 on the sentence. And there in that phase evidence is
13 presented in aggravation and mitigation, and the jurors are
14 asked to come back with a verdict of life imprisonment or
15 the death penalty depending on what -- the jurors' view of
16 the evidence in aggravation and mitigation that has been
17 presented and the charge on the law from the judge.

18 Now, I gave you three types there of jurors. One is
19 that juror that no matter what the evidence in aggravation,
20 mitigation are, that juror would always bring back the
21 death penalty because that juror feels the death penalty is
22 the most appropriate punishment no matter what the
23 circumstances.

24 Juror type number two is the juror that no matter what
25 the evidence in aggravation and mitigation are, that juror

1 under no circumstances could ever give the death penalty to
2 someone. That juror would not need to hear what the facts
3 and circumstances and aggravation are because that juror
4 would have their mind made up concerning punishment and
5 would always be life imprisonment, and never could be death
6 penalty.

7 Juror number three is the juror that, although the
8 guilt of the defendant's been determined, that that juror
9 wants to listen to the evidence in aggravation and
10 mitigation before making up her mind and, and would also
11 want to listen to the judge's instruction. And after
12 listening to the evidence in aggravation and mitigation, if
13 that juror felt it so warranted it, that juror could bring
14 back a verdict of life imprisonment. However, if the juror
15 felt the evidence in aggravation and mitigation so
16 warranted it, that juror could come back with a verdict of
17 the death penalty, all depending on that juror's view of
18 the evidence in aggravation and mitigation in the case.

19 Which of those jurors best describes you?

20 A. Juror type two.

21 Q. Are you saying, ma'am, that under no circumstances you
22 could ever bring back the death penalty?

23 A. Yes, sir.

24 Q. So, doesn't matter what the circumstances are, the
25 evidence in aggravation, mitigation? You would never bring

1 back a verdict for the death penalty?

2 A. Yes, sir.

3 THE COURT: All right, questions from the ---

4 Q. Is that so strong that it doesn't matter what evidence
5 there is, you don't -- that's your position?

6 A. Yes, sir.

7 THE COURT: All right, state?

8 MR. HEMBREE: No questions, Your Honor.

9 THE COURT: Defense?

10 MR. WILSON: I, I just have a, I just have a couple of
11 questions.

12 EXAMINATION BY MR. WILSON:

13 Q. Your views about the death penalty, are those based on
14 religion or just moral objection or just ---

15 A. Yes, sir, both.

16 Q. Both, and is this something that you've kind of held
17 for a substantial period of time?

18 A. Yes, sir, about seventeen years.

19 Q. All right, and we're not going to change how you feel
20 about that ---

21 A. No, sir.

22 Q. --- today, are we?

23 A. No, sir.

24 MR. WILSON: Thank you, ma'am.

25 JUROR: I'll be glad to serve on any jury, but I do

1 not believe in the death penalty.

2 THE COURT: All right. Thank you, ma'am. Listen, I
3 appreciate your service. Obviously, in this case we've got
4 to have someone -- and it's not against you. It's just
5 that in this case, we have to have somebody who can
6 consider both the situations in making the decision. So,
7 I'll disqualify you in this particular case. Listen, thank
8 you. Can I have that sheet back?

9 JUROR: Yes, sir.

10 THE COURT: And good luck on Valentine's Day. Where
11 are you, Sea Mist?

12 JUROR: Sea Mist.

13 THE COURT: Sea Mist on Valentine's Day. Who knows
14 who may be there. Sea Mist Valentine's Day.

15 JUROR: Thanks.

16 THE COURT: Court reporter needs a couple of minutes,
17 and we'll go ahead. So, that is my count, twenty-seven
18 with one motion for reconsideration. The next panel is
19 panel I.

20 (OFF THE RECORD.)

21 THE COURT: All right, now, the next juror I see is
22 225. I don't think I spoke to 225.

23 MR. HEMBREE: No, sir. We don't have that number.

24 THE COURT: All right, bring out 225, please.

25 (JUROR #225 ENTERS THE COURTROOM.)

1 EXAMINATION BY THE COURT:

2 Q. Mr. Hoxie, how are you doing this morning. I'm sorry
3 you had to wait. I know last night it was a while and I
4 let you go home, and today you still had to wait another
5 hour or so. I apologize for that.

6 A. It's not your fault I'm sure.

7 Q. Yeah, it is. Watch, watch that microphone there.

8 A. Okay.

9 Q. Now, you need to turn it around so you can speak into
10 that microphone.

11 A. Do you want me to speak into the microphone?

12 Q. Yes, sir. Can you move it around a little bit?

13 A. Okay.

14 Q. Yes, sir. Now, Mr. Hoxie, I do note that you are over
15 sixty-five, and you still wish to serve with us. Is that
16 right, sir?

17 A. Yes.

18 Q. Okay. Very good. Now, you do remember Monday we put
19 everybody under oath? You remember that?

20 A. Yes, I recall that.

21 Q. And you're still under oath. Are you, do you know any
22 of the lawyers involved here? Mr. Hembree, Mr. Humphries,
23 Mr. Wilson, Mr. Rathbun?

24 A. I'm not acquainted with them, no.

25 Q. All right. Have you any interest, special interest,

1 bias, or prejudice in this case at all?

2 A. No. I don't believe so.

3 Q. All right. Have you formed, expressed an opinion at
4 all about the guilt or the innocence of the defendant?

5 A. No, definitely not.

6 Q. Okay, and do you know any reason whatsoever why you
7 could not give both the state and the defense a fair trial
8 in this case?

9 A. No. I'm not aware of anything like that. I felt it
10 was the duty of citizens to, to serve on juries, and so
11 forth. So ---

12 Q. Well, that's good.

13 A. --- that's the reason I'm here.

14 Q. Well, thank you, sir, and it is a pleasure to meet
15 someone like you who has an option of not serving but feels
16 they have a duty, and I do appreciate that, sir.

17 Mr. Hoxie, if you are on the jury in this case -- Mr.
18 Hoxie, am I pronouncing that correct?

19 A. Yes.

20 Q. Mr. Hoxie?

21 A. That's correct.

22 Q. If you're on the jury in this case, the jurors will
23 listen to the evidence, but to the jurors would be required
24 to follow the law as the judge instructed, instructs them
25 on a law. Now, would you follow the law as I instruct you?

1 A. Certainly.

2 Q. All right, and one of those principles of law is that
3 I would tell you that the defendant under the law is
4 presumed innocent unless his guilt is proven beyond a
5 reasonable doubt. And the defendant does not have to prove
6 himself innocent. The state must prove him guilty. Would
7 you follow the principle of law?

8 A. Yes.

9 Q. All right.

10 A. I'm aware of it, and I would.

11 Q. Okay, and if you were on the jury, and once again the
12 jury will listen to the evidence, and if, if after
13 listening to all the evidence in the case and my
14 instruction on law, if the state had not proven guilt
15 beyond a reasonable doubt, then you'd find the defendant
16 not guilty. You agree with that?

17 A. Not guilty as far as premeditated murder though.

18 Q. No, sir. Sir, I'm saying if the state does not prove
19 the defendant guilty of a crime beyond a reasonable doubt,
20 you would find him not guilty, would you not, sir?

21 A. That's correct.

22 Q. Okay. Now, and if the state were to prove him guilty
23 of a crime beyond a reasonable doubt, you would then find
24 him guilty. Is that right, sir?

25 A. Yes. That, that would be correct.

1 Q. All right. Now, have you discussed this case with
2 anyone?

3 A. No, I have not. My wife reads the newspaper, and if
4 she's -- several -- seen several articles, and I keep
5 telling her don't talk to me about those, but that's,
6 that's the extent of it.

7 Q. Has she talked with you about it?

8 A. She -- yes. She, she says oh, you're going to be on
9 this particular case if you are on that jury. But she has
10 not read to me with the -- what the paper says. And I have
11 said no, I don't want to read it and so forth because of
12 your admonitions with regard to that.

13 Q. Well, have you read anything in the papers about this
14 case?

15 A. Headline when I looked at the -- I always open, get
16 the newspaper, look at the headlines, and I have seen
17 headlines with regard to this case. But that meant that I
18 don't read the, the article.

19 Q. Because then you know it's about this case and you
20 wanted to not read anything about it?

21 A. That's right.

22 Q. Now, could you summarize what you feel that you've
23 seen, if anything, that you can remember about this?

24 A. It's -- that -- you are at this time trying to get a
25 jury together, and that's one thing that was -- a piece in

1 the newspaper. I think it was on Sunday that my wife read,
2 and she blurts out oh, this is your -- you'll probably be
3 working on this case. It's a murder case and I told her
4 stop, stop. Don't. If I'm chosen, I'm not supposed to
5 know about it.

6 Q. All right. Have you formed any opinion about this
7 case as the result of anything you may have seen in the
8 newspaper headline and otherwise or wife's conversation?

9 A. No. I'd, I'd have to say no. I'm open minded with
10 regard to what might take place and what the state can
11 prove and what the defense can refute.

12 Q. Okay, but as you know, now, the defendant does not
13 have to refute or prove anything. The state has to prove
14 guilt beyond a reasonable doubt. You understand that?

15 A. Right.

16 Q. Okay. Now, if -- so, you can make a decision in this
17 case and put aside anything you may have heard or read
18 about this case? Your decision would be based on the
19 evidence presented in the court and the law as I instruct
20 it to you. Is that right, sir?

21 A. That's right.

22 Q. Okay. I gave you a list of names. There are three
23 sheets. Did you know anybody on those sheets?

24 A. No, I don't. I don't know anyone and I'm wondering --
25 here I've lived in this county all this time. Do you want

1 to see that?

2 Q. Yes, sir. You didn't circle any names down?

3 A. I, I don't know those people.

4 Q. Okay. All right. No names circled.

5 In a trial of this nature, Mr. Hoxie, what happens is
6 the jurors listen to the evidence and the charge on the law
7 regarding the allegations that the defendant committed the
8 crime of murder. If the jurors find the state has not
9 proven guilt beyond a reasonable doubt and find the
10 defendant not guilty, well that would end the jurors'
11 participation, participation at that time.

12 However, if the jury determined the state had proven
13 guilt beyond a reasonable doubt and found the defendant
14 guilty, then we would move to another phase where the jury
15 then would decide what verdict to give regarding
16 punishment. They could give a verdict of punishment of
17 life imprisonment, or they give a verdict of punishment of
18 the death penalty.

19 Now in that other phase, and I'm not suggesting we'll
20 ever get to that phase. We just need to talk about it now.
21 But in that phase, the jurors would be presented evidence
22 in aggravation and evidence in mitigation, and the judge
23 would further instruct the jury on the law.

24 Now, I need to determine of those three types of
25 jurors you have there in front of you, I'm going to want to

1 try and determine which type best describes you. That
2 juror type -- did you read over those three types?

3 A. I read those over, and I said I'm juror number three.

4 Q. Okay. So, therefore, you're telling me that if you're
5 on the jury, you would not automatically think the death
6 penalty is appropriate in every case. You would want to
7 listen to the evidence. And you're also not a juror who
8 automatically thinks the verdict of life imprisonment is
9 appropriate, and you'd want to listen to the evidence.

10 And you're telling me then after listening to the
11 evidence in aggravation and mitigation, if you felt it was
12 appropriate, you could come back with a verdict of life
13 imprisonment. Or after listening to the evidence, you
14 could come back with a verdict of death penalty, depending
15 on with the evidence is.

16 A. That's correct.

17 Q. Okay, sir. Now, if the jury were to determine a
18 verdict of the death penalty was the appropriate verdict,
19 each juror would have to sign the verdict form. You could
20 -- could you sign that verdict form if that was your
21 verdict?

22 A. Now, would you repeat that? I'm, I'm -- what are you
23 asking? Would you repeat it?

24 A. Sure. If the jury, only if, if the jury were to
25 determine that the verdict to give in the, in the phase

1 concerning punishment, if the juror -- jury felt the
2 punishment should be the death penalty, then the law
3 requires that on the verdict form where they say our
4 verdict is death penalty, that each juror sign that form.
5 Could you sign that form?

6 A. Yes, if we determined that that was the course of
7 action that should be taken.

8 Q. All right. Now, Mr. Hoxie, if you were selected on
9 the jury in this case, you'd be separated from your wife
10 and you would be housed in a hotel for about a week, maybe
11 little more, maybe able less. We would obviously provide
12 food and all for you. If you had any medication, you could
13 take those with you also. But do you feel you could handle
14 that, sir?

15 A. I could handle it, but I wouldn't be real happy about
16 having to do it. I mean, I'll do it as a, as a duty.

17 Q. All right.

18 THE COURT: Okay, I'm going to let the attorneys ask
19 you some questions, and then I may have something else for
20 you.

21 JUROR: All right.

22 THE COURT: Any questions from the state?

23 MR. HEMBREE: No, Your Honor. Thank you, Mr. Hoxie.
24 We appreciate your time. Please answer any questions
25 defense counsel might have for you.

1 THE COURT: All right, Mr. Wilson, Mr. Rathbun?

2 MR. WILSON: I, I don't think I have any questions.

3 THE COURT: All right, either side wish to discuss
4 this matter with me?

5 MR. HEMBREE: No, Your Honor.

6 MR. WILSON: No, sir.

7 THE COURT: All right, Mr. Hoxie, I'm going to find
8 you qualified to serve on this jury panel. Now, that does
9 not mean you're going to be on the jury panel hearing the
10 case. It means you'll be in the big jury panel called the
11 jury pool from which we'll select the jury.

12 I'm going to need you to come back tomorrow at 11:30
13 a.m., come back to that door there in this courtroom, and
14 we'll probably be letting people in then. And you need to
15 go ahead and pack up some things just in case you are
16 selected on the jury. You may not be, but you might be, so
17 you go ahead and get some things packed because if you are
18 selected, I'll then -- if you need to, I'll let you drive
19 home and get your bags, or I can get someone to give you a
20 ride home and get your bags. But you also need someone to
21 be ready to take control of your car because you don't
22 leave it here all week, okay?

23 JUROR: Yes.

24 THE COURT: Okay, and please do not discuss this case
25 with anybody. Tell your wife to don't be mentioning it to

1 you, and don't watch any TV news or anything else about
2 this case, okay?

3 JUROR: All right.

4 THE COURT: And I'll see you tomorrow morning at
5 11:30. All right, you may step outside that door there.

6 JUROR: All right.

7 THE COURT: And I'll see tomorrow morning at 11:30.
8 All right, you may step outside that door there.

9 JUROR: All right.

10 THE COURT: Thank you, Mr. Hoxie.

11 JUROR: Thank you.

12 THE COURT: Give me that sheet there.

13 JUROR: I got it. Oh, you want that back?

14 THE COURT: Yes, sir. We'll see you tomorrow.

15 JUROR: You're an Indian giver.

16 THE COURT: In fact, I am.

17 JUROR: It's nice to have a judge with a sense of
18 humor.

19 THE COURT: Well, I try to have. Thank you, sir. Go
20 out this door there.

21 As I said, I find Mr. Hoxie qualified.

22 Counselors, I just got a message on something
23 important. Just stay where you are.

24 (OFF THE RECORD.)

25 THE COURT: Okay, I don't see 68 anywhere.

1 MR. HEMBREE: No, Your Honor. We don't have anything
2 about 68.

3 THE COURT: All right, bring in Carrigan, please,
4 juror 68.

5 (JUROR #68 ENTERS THE COURTROOM.)

6 EXAMINATION BY THE COURT:

7 Q. Mr. Carrigan.

8 A. Yes. Good morning, Your Honor.

9 Q. Good morning to you, and I would have said good
10 evening to you last night had I got to you. We were here
11 until about 8:30 or so, but we figured that it would really
12 be unfair to have y'all wait long without me getting to
13 you.

14 All right, Mr. Carrigan, just want to remind you a
15 couple of things. That you're still under oath from
16 Monday. We put you under oath, okay?

17 A. Right.

18 Q. And there are just a few questions I'm going to ask of
19 you, and one thing is I need you to speak into the
20 microphone there so this lady over here can hear you and
21 everyone else can.

22 A. Okay.

23 Q. And I see that you're originally from Rome, Georgia?

24 A. Correct.

25 Q. Did you stay there a long time?

- 1 A. Until about ninth grade.
- 2 Q. Ninth grade. I know that at one time I was looking
3 for a private school and there was a school called to
4 Darlington School there.
- 5 A. There is.
- 6 Q. And I see you're a musician and a singer?
- 7 A. I am.
- 8 Q. Do you sing locally here?
- 9 A. Yes, I do.
- 10 Q. Where are some of the places you perform?
- 11 A. Well, I have formed on the Diamond Girl II casino boat
12 in Little River. Here in Conway a couple of times I've
13 been at Cooper's Restaurant and have been at Wayne's
14 Restaurant, which I have just noticed is closed.
- 15 Q. Over here in Conway?
- 16 A. Yeah, which I've just noticed is closed, and of course
17 restaurants and American Legion, Elks, things like that.
- 18 Q. So, you're basically a contract performer?
- 19 A. Yes, yes.
- 20 Q. People contract you to perform?
- 21 A. Right.
- 22 Q. And I see one time you were a radio announcer?
- 23 A. Yes.
- 24 Q. Okay. Do you know any of the lawyers in this case?
- 25 Mr. Hembree, Mr. Humphries, Mr. Wilson, Mr. Rathbun?

1 A. I do not.

2 Q. Do you know the defendant?

3 A. I do not.

4 Q. Okay. Do you have any special interest or bias or
5 prejudice in this particular case at all?

6 A. I'm -- not that I'm aware of.

7 Q. Okay, and have you formed or expressed an opinion as
8 to the guilt or the innocence of the defendant in the case?

9 A. No, I have not.

10 Q. You know any reason whatsoever why you cannot give
11 both the state and the defense a fair and impartial trial?

12 A. No, I do not.

13 Q. If you're on a jury, I will tell the jury that, and
14 they would be put under -- they will be put under oath
15 again, and they would be required to follow the law as I,
16 the judge, instructs them. Would you be able to follow the
17 law as I instruct you?

18 A. Yes, sir.

19 Q. I said I instructs. I instruct you. Get those plural
20 nouns, plural verbs mixed up sometimes.

21 Now, if you're on the jury, I will tell you one
22 principle of law is that the defendant is presumed
23 innocent, and the burden is upon the state to prove guilt
24 beyond a reasonable doubt. And the defendant does not have
25 to prove himself innocent. The state is required to prove

1 guilt beyond a reasonable doubt. Would you accept and
2 follow that principle law?

3 A. Yes, I would.

4 Q. All right. Then, therefore, if you were on the jury,
5 and after the evidence was presented and I charged you on
6 the law, and if you were not convinced or not -- if the
7 state had not proven guilt beyond a reasonable doubt, then
8 would you be able to return a verdict of not guilty?

9 A. Yes, I would.

10 Q. Conversely, if the state had proven guilt beyond a
11 reasonable doubt, would you be able to return a verdict of
12 guilty?

13 A. Yes, I would.

14 Q. All right. Have you discussed this case with anyone?

15 A. No, I have not.

16 Q. There's been some publicity to it. Have you seen
17 anything on the TV or read anything in the newspaper about
18 this case?

19 A. The only familiarity I have with it is the information
20 which you presented to us yesterday.

21 Q. All right. So, until then you'd heard nothing about
22 the case?

23 A. No, I have not.

24 Q. Is there anything you heard yesterday or anything else
25 that caused you to form any opinion?

1 A. I have no opinion at this time.

2 Q. You realize yesterday I was just reading allegations?

3 A. Right.

4 Q. Not evidence, just allegations?

5 A. Right.

6 Q. If during the course of the trial something came back
7 to remind you that you may have read or heard before you
8 came in this court, would you be able to put that aside and
9 make your decision based on the evidence in the case and
10 the law as I instruct it to you?

11 A. I'm not sure I understand the question.

12 Q. Okay. Say if you're sitting on that jury and during
13 the course of the evidence presentation suddenly you say,
14 oh, yes, I remember reading something about that, you know,
15 a while back. The question is could you put what you read
16 aside and make your decision in this case based on the
17 evidence presented in the courtroom and the law as I
18 instruct it to you?

19 A. I believe I could.

20 Q. Okay. I gave you some sheets of paper there with a
21 list of names on it.

22 A. Yes.

23 Q. Do you know anybody on that sheet?

24 A. No, I do not.

25 Q. Could I see the sheet?

1 A. Yes.

2 Q. Okay, I see that no names have been circled.

3 And if you're on this jury, this case could have two
4 parts to it. If the jury decides that the state has not
5 proven guilt beyond a reasonable doubt of murder, then the
6 jurors' participation then ends in the case. If, however,
7 the jurors decide the state has proven guilt beyond a
8 reasonable doubt of murder, then we go to another phase
9 where the jurors would consider punishment. Now, this is
10 not to suggest one way or the other that you would or
11 wouldn't find the defendant guilty or not guilty. It's
12 just that if you do, I need to discuss that other phase.

13 In that phase, the jurors would, would decide on a
14 verdict of life imprisonment or a verdict of the death
15 penalty. Now, I gave you a sheet of paper that describes
16 three types of jurors. The one type, type one juror is the
17 juror that no matter what evidence is presented, and in
18 that second phase there would be evidence presented in
19 aggravation, mitigation regarding the matter. And the type
20 one juror would say no matter what evidence is presented in
21 aggravation and mitigation, I am always going to return a
22 verdict for the death penalty. I feel that's the most
23 appropriate punishment no matter what the circumstances
24 are. If a person's convicted of murder, I'm always going
25 to return a death penalty verdict.

1 The type two juror is the type who would say no matter
2 what the evidence is submitted in aggravation and
3 mitigation, I'm always going to return a verdict for life
4 imprisonment because I never could return a verdict of the
5 death penalty.

6 The type three juror is the juror that although the
7 defendant is convicted of murder, that juror would still
8 have a mind open, have an open mind regarding what
9 punishment should -- a verdict give. And that juror would
10 want to hear the facts and circumstances and the charge of
11 the law from the judge before that juror could decide what
12 verdict to render regarding punishment.

13 If after hearing the evidence in mitigation and
14 aggravation, that juror could, if it so warranted it,
15 return a verdict of life imprisonment. Or if the evidence
16 so warranted it, that juror could return a verdict of the
17 death penalty.

18 Do you understand the three types of jurors?

19 A. I do.

20 Q. Which of the three best describes you?

21 A. Type three.

22 Q. So, you would have an open mind and you would -- you
23 could return life imprisonment or you could return death
24 penalty, depending on the evidence you consider in
25 aggravation and mitigation?

1 A. Yes.

2 Q. Okay. If the jury were to return a death penalty
3 verdict -- once again not suggesting, just to let you know.
4 If the jurors were to return a, a sentence, a verdict of
5 the death penalty, then each juror must sign the verdict
6 form. Could you sign the verdict form?

7 A. I could.

8 Q. If you were selected as a juror on this case, you
9 would be sequestered, and you would be away from your
10 family as well as your business for about a week. Maybe a
11 little less, maybe a little more. Could you handle that?

12 A. From this week, yes. If it, if it's a couple of weeks
13 from now, it would present some problems because I have
14 some, some night engagements, but ---

15 Q. Okay, and when is that night engagement?

16 A. Weekend, Friday and Saturday. I think the 8th.

17 Q. Okay, that is a Friday, but if it went on and you miss
18 that engagement -- I mean, I'm not saying it will or it
19 won't but, you know, that's something you could handle?

20 A. I, I just let them know in advance I think.

21 Q. Long as you let them know in advance?

22 A. Right.

23 THE COURT: Okay. All right. I'm going to let the
24 attorneys ask you any questions that they have and then
25 we'll go from there.

1 State?

2 MR. HEMBREE: Good morning, Mr. Carrington. I'm Greg
3 Hembree. Judge Lockemy covered all the questions that I
4 might have for you. Appreciate your being here. Thanks
5 for your patience. Please answer any questions that
6 defense counsel might have for you.

7 THE COURT: Mr. Rathbun.

8 EXAMINATION BY MR. RATHBUN:

9 Q. Good morning, Mr. Carrigan.

10 A. Good morning.

11 Q. I'm Paul Rathbun. Ralph Wilson and I represent Mr.
12 Winkler in this matter. Your response to Judge Lockemy's
13 question about if you recall while you were sitting in the
14 jury that you did remember reading something about that,
15 you thought, you believed you could put that out of your
16 mind. Is that, is that a fair ---

17 A. My unsureness originally was I didn't understand if
18 that meant that I should disqualify myself at that point if
19 I remembered that I had read or heard something. And
20 that's why I hesitated answering that.

21 Q. What we're trying to determine is whether you will
22 listen to the law as Judge Lockemy gives it to you and the
23 evidence that comes in and make your decision from that.

24 A. Sure. That is ---

25 Q. And you would be able to ---

1 A. Yes.

2 Q. --- put aside any other information?

3 A. Yes.

4 MR. RATHBUN: Thank you very much.

5 THE COURT: Thank you. Any comments?

6 MR. HEMBREE: He's qualified.

7 THE COURT: Defense?

8 MR. RATHBUN: Qualified, Your Honor.

9 THE COURT: All right. Mr. Carrigan, I find you
10 qualified as a juror in this case, and I'll need for you to
11 return, return tomorrow at 11:30. Now, it doesn't mean
12 you're actually going to be on the jury in this case. It
13 means you'll be in the pool from which we will pull this
14 jury on this case.

15 Just in case you are selected, go ahead and get some
16 things packed up and ready to go. If you play keyboard,
17 guitar or what?

18 JUROR: Keyboard.

19 THE COURT: Well, get the keyboard ready, too. But --
20 and, and have things ready so that if you are selected, we
21 will then send you home to get what you need, come back.
22 And if you have someone who can assist you, I'd appreciate
23 they could bring you back and be able to take your car back
24 home because we don't want to leave it up here all week
25 long, all right? So, if you can't, I can have an officer

1 to help you do that tomorrow if you're selected on the
2 jury. But try to make that arrangement. If you can't,
3 we'll have -- we'll help you get it done, okay?

4 JUROR: All right.

5 THE COURT: All right, do not discuss this case with
6 anyone, and don't look at any local news or read any local
7 papers, all right?

8 JUROR: All right.

9 THE COURT: All right, hand me that sheet if you
10 would, and we'll see you tomorrow at 11:30 in this
11 courtroom. You can leave in the door in the back.

12 JUROR: Okay.

13 THE COURT: See you in the courtroom at 11:30.

14 All right, ready for the next one. I know this next
15 one was one of the jurors that we didn't have initially,
16 and then she came up, Ms. Chumas. That's the only thing I
17 think ---

18 MR. HEMBREE: That's the only thing in my notes, Your
19 Honor. She can -- she was a no show and then came in that
20 late group.

21 THE COURT: She was one of those that forgot.

22 MR. HUMPHRIES: That's what she said, that she forgot.

23 THE COURT: All right, bring her on in, please, Ms.
24 Chumas.

25 (JUROR #79 ENTERS THE COURTROOM.)

1 EXAMINATION BY THE COURT:

2 Q. Come around, Ms. Chumas, if you would. Now, am I
3 pronouncing that correctly, Chumas?

4 A. Chumas, yes, sir.

5 Q. Chumas?

6 A. Chumas.

7 Q. Chumas, Chumas. Were you nervous yesterday when I had
8 you stand in front of all these other people?

9 A. Oh, my, yes.

10 Q. See, I'd already qualified everyone else. When you
11 said -- you say you simply forgot or what was it?

12 A. Yes, sir. I don't have an excuse. Just totally
13 forgot.

14 Q. Well, that's all right. We had a late yesterday -- we
15 -- late Monday, so that's fine.

16 Now, what I want to do now, but you do remember we put
17 you under oath with everybody else?

18 A. Yes, sir.

19 Q. So, you know you're still on under oath when
20 responding to questions today, too, okay?

21 A. Yes, sir.

22 Q. Now, one thing is first I want you to relax, and
23 you're not on trial. I'm not here to do anything but just
24 talking to you a little bit, okay?

25 A. Yes, sir.

1 Q. And try to speak as best you can into that microphone
2 so that the court reporter and everybody can hear you.
3 Head and, and get adjust it any way you wish to.

4 A. Okay.

5 Q. All right. Now, do you know any of the lawyers in
6 this case?

7 A. No, sir.

8 Q. Do you know the defendant?

9 A. No, sir.

10 Q. Have you formed or expressed an opinion as to the
11 guilt or the innocence of the defendant one way or the
12 other?

13 A. No, sir.

14 Q. Do you have any special interest or bias or prejudice
15 in this case?

16 A. No, sir.

17 Q. Do you know any reason whatsoever why you cannot give
18 both the state and the defendant a fair and impartial
19 trial?

20 A. No, sir.

21 Q. If you were selected on the jury, I would tell the
22 jury that you must follow the law as I, the judge, instruct
23 you. The jurors would decide the facts from the evidence
24 presented, but the jurors must follow the law that the
25 judge instructs. Would you do that?

1 A. Yes, sir.

2 Q. One of the principles of law that I would instruct you
3 on is that, that the defendant is presumed innocent, and
4 the state has the burden of proof of proving the defendant
5 guilty beyond a reasonable doubt. And the defendant does
6 not have to prove himself innocent. The state will have
7 the burden of proving him guilty. Would you accept and
8 follow the principles of law?

9 A. Yes, sir.

10 Q. All right. Then, therefore, if you're sitting on that
11 jury and if the state did not prove guilt beyond a
12 reasonable doubt, would you have any problem of bringing
13 back a verdict of not guilty?

14 A. Not at all.

15 Q. On the other hand, if the state did prove guilt beyond
16 a reasonable doubt, would you then bring back a verdict of
17 guilty?

18 A. Yes, sir.

19 Q. Have you discussed this case with anyone?

20 A. No, sir.

21 Q. Have you seen anything in the newspapers or read
22 anything about it or seen anything on TV about it?

23 A. No, sir.

24 Q. Or radio anything?

25 A. No, sir.

1 Q. So, you knew nothing about this case until you got
2 here on Monday?

3 A. Right.

4 Q. You knew nothing at all?

5 A. Right.

6 Q. If through the course of the trial you hear something
7 in the presentation of evidence that jogs your memory --
8 say I do remember reading that -- if it does, could you put
9 whatever you read aside and, and make your decision based
10 on the evidence presented in this case and the law as I
11 instruct it to you?

12 A. Yes, sir.

13 Q. All right. I gave you a list of names, three pages of
14 names.

15 A. Right.

16 Q. Did you know anybody on that list?

17 A. No, sir, nobody.

18 Q. Could I have that? Oh, you want it. A lot of people
19 say that. You live in the county 121 days you don't know
20 anybody?

21 A. Not anybody.

22 Q. No, nobody's circled.

23 If you're on the jury in this case, this case could
24 have two phases to it. If the jury determines the state
25 has not proven the defendant guilty of murder beyond a

1 reasonable doubt and finds the defendant not guilty, then
2 that would end the jurors' participation at that time.

3 If, however, the jurors were to decide the state has
4 proven guilt of the defendant of the crime of murder guilty
5 beyond a reasonable doubt and find him guilty, then we
6 would move to another phase where the jurors would consider
7 punishment. I'm not suggesting that that would happened.
8 But I'm saying that if it did, I need to discuss this with
9 you, okay?

10 A. Okay.

11 Q. Now, in that second phase, the jurors would be
12 presented evidence in aggravation and mitigation. The
13 defendant would -- if that happens, the defendant at that
14 time would have been convicted of murder. But that each --
15 you would be presented evidence of aggravation and
16 mitigation, and the jurors would have a choice of bringing
17 back a verdict of life imprisonment or a verdict of the
18 death penalty. And I want to determine of these three
19 types of jurors which one you are.

20 You see the three types you have there?

21 A. Yes, sir.

22 Q. First type being the juror that no matter what that
23 evidence is, is presented, that juror would always bring
24 back the death penalty because that person feels that's the
25 most appropriate punishment no matter what the

1 circumstances are. If a person's convicted of murder, that
2 juror always bring back the death penalty.

3 The second type juror is the juror that no matter what
4 the evidence of aggravation and mitigation is, that juror
5 would always bring back a verdict of life imprisonment
6 because that juror could never bring back a verdict for the
7 death penalty.

8 Third type juror is the type juror that would not have
9 made their mind up before they went into that phase. That
10 juror would want to first listen to the evidence in
11 aggravation, mitigation, listen to the charge of the judge
12 on law and, and, and then base their decision based on
13 their consideration of the evidence and of the law. If
14 that juror felt so warranted it, that juror could bring
15 back the a verdict of life imprisonment. Or if the juror
16 felt it so warranted, that juror could bring back a verdict
17 of the death penalty.

18 Which of those three types best describes you, Ms.
19 Chumas?

20 A. I believe number three.

21 Q. Okay. So, you feel that if the evidence so warranted
22 it, you could bring back a verdict of life imprisonment?

23 A. Yes, sir.

24 Q. Also, though, if the evidence so of warranted, you
25 could bring back a verdict of the death penalty?

1 A. Yes, sir.

2 Q. Now, if the jurors were to bring back a verdict of the
3 death penalty, the law requires that each juror sign the
4 verdict form. Could you sign the verdict form?

5 A. Yes, sir.

6 Q. If you are selected as a juror in this case, it would
7 mean that you be sequestered for about a week. Maybe a
8 little more, maybe a little less. And you'd be in a hotel,
9 but you will be away from your family. You could make some
10 contact by phone, but it would be supervised. Somebody
11 will be listening on the other line. Now, do you feel you
12 could handle that, ma'am?

13 A. Yes, sir.

14 THE COURT: Okay, I'm going to let the lawyers ask you
15 a few questions if they wish, and then I'll come back to
16 you.

17 JUROR: Okay.

18 THE COURT: State?

19 MR. HEMBREE: Thank you, Your Honor.

20 EXAMINATION BY MR. HEMBREE:

21 Q. Ms. Chumas.

22 A. Hi.

23 Q. Am I saying that properly, Chumas?

24 A. Chumas, yes, sir.

25 Q. I'm Greg Hembree. I was introduced to you on Monday.

1 A. Yes, sir.

2 Q. I, along with Fran Humphries and Scott Hixson, will be
3 trying this case on behalf of the state. I noted that what
4 -- let me say this, a couple things. Sort of rules of the,
5 rules of the road.

6 A. Okay.

7 Q. First off, there's nobody here, not me, not the court,
8 not defense counsel, no one here's trying to change your
9 opinions or push you in one direction or another about your
10 feelings on the death penalty. What we're -- our purpose,
11 or one of our purposes here, one of our primary purposes is
12 to glean from you, to try to learn from you exactly what
13 your feelings about the death penalty are to make sure that
14 you can, you can be a qualified juror in a death penalty
15 case. Fair enough?

16 A. Yes, sir.

17 Q. First off, let me ask you. Just generally what are
18 your feelings about -- have you considered, thought about
19 the death penalty before?

20 A. I have, and I feel that as the judge said earlier, if
21 the evidence warrants that and it -- you can prove that to
22 me, that I would not have a, a problem with that. And we
23 can determine that the defendant has actually committed
24 this crime, then I wouldn't have -- you know, it would not
25 bother me to choose that.

1 Q. So, you could not only consider it, you could impose
2 it given the appropriate facts, circumstances, evidence and
3 charge by the judge?

4 A. Yes, sir.

5 Q. Now likewise, is it, is it -- my understanding from
6 what you've told the court that you could also keep an open
7 mind about the possibility of life without parole?

8 A. Yes.

9 Q. As a, as a possible penalty?

10 A. Yes.

11 Q. And once again, depending upon the evidence,
12 circumstances, a charge on the law, all, everything, the
13 entire case, you would be able to impose a life sentence if
14 you believe that was appropriate?

15 A. Yes, sir.

16 Q. And you would be able to hold your convictions
17 whatever those might be?

18 A. Yes, sir.

19 Q. Fair enough. Give the, give the State of South
20 Carolina and the defendant a fair trial in this matter
21 throughout?

22 A. Absolutely.

23 MR. HEMBREE: That is fundamentally what we seek and
24 what we ask of you, and we appreciate it. Thank you for
25 your patience with us. Please answer any questions the

1 defense counsel might have for you.

2 JUROR: Thank you.

3 EXAMINATION BY MR. RATHBUN:

4 Q. Good morning. I'm Paul Rathbun, and with Ralph
5 Wilson, we represent Mr. Winkler in this case. I noticed
6 on your application that you were a dispatcher for a number
7 of years down in Florida?

8 A. Yes, sir.

9 Q. Was that a uniform job or was that a civilian job?

10 A. Uniform.

11 Q. Okay, and, like, fourteen years ago?

12 A. Probably, yes, sir.

13 Q. All right and, and during that fourteen years, did you
14 develop a sense of, of us and them, legal, the law against
15 the criminals, or did you just do your job?

16 A. I just did my job. I worked basic -- basically for
17 the chief. I did dispatch and filled in on when nobody
18 else was there to dispatch. But my basic job was for the
19 chief and did specific things for him, keeping payroll,
20 files, you know, administrative type work.

21 Q. Well ---

22 A. I ---

23 Q. Okay. Now, also is a mention of domestic violence in
24 there. Was that the charge your husband had?

25 A. Yes, sir.

1 Q. And were you the victim?

2 A. No, sir. It was his son.

3 Q. All right. Now, have you -- the court and Mr. Hembree
4 asked you about your, your views on the death penalty, and
5 those are long-held views?

6 A. Yes, sir. Basically, I think that even when I was
7 working for the police department back then that, you know,
8 you still got to prove them guilty. I think that, and I
9 think that whatever the penalty is, that's what it should
10 be.

11 Q. Okay, and in the first phase of the trial, should you
12 be one of the twelve jurors and the jury comes back with a
13 guilty verdict on, on the murder charge, is it -- are you
14 saying that automatically in your, in your mind leads to
15 the death penalty?

16 A. Oh, no. I didn't say that.

17 Q. Okay. So, you'd be open minded and listen to matters
18 of aggravation and matters of mitigation?

19 A. Yes, sir.

20 MR. RATHBUN: Thank you very much.

21 JUROR: Yes, sir.

22 THE COURT: And, if you would, just step out the door
23 there for me, and I'll bring you back out in a second.

24 Just go where that officer is.

25 JUROR: Okay.

1 THE COURT: Don't forget your coat.

2 JUROR: Oh, take my coat with me?

3 (THE JUROR EXITS THE COURTROOM.)

4 THE COURT: Okay, position of the state?

5 MR. HEMBREE: This juror is qualified.

6 THE COURT: Defense?

7 MR. RATHBUN: She's qualified, Your Honor.

8 THE COURT: Okay, bring her back in.

9 (THE JUROR ENTERS THE COURTROOM.)

10 THE COURT: Ms. Chumas, I'm going to find that you are
11 qualified to be in the jury pool with this jury to be
12 selected. Now, it doesn't mean that you'll actually be on
13 the jury. It means you'll be in the group from which we
14 will select the jury.

15 I need you back here tomorrow at 11:30 a.m. Please do
16 not discuss this case with anyone. Don't read any
17 newspapers and all, and don't watch any local newscasts.

18 If you are selected on the jury, tomorrow will be the
19 day you'll be taken to the hotel at some point in time
20 tomorrow. So, you might want to go ahead and get your
21 goods packed tonight so you'll be ready to go when and if
22 you are selected, and we'll let you go home and get your,
23 your, your bags. But you might need someone to bring you
24 back so someone will have your car for a week because I'm
25 not going to permit the cars at the hotel, and I don't want

1 to leave them here at the court -- your car here at the
2 courthouse. So, make some arrangements there, okay?

3 JUROR: Okay.

4 THE COURT: See you tomorrow 11:30. Go out this door
5 here.

6 JUROR: I won't be late.

7 THE COURT: You go out this door, this way.

8 JUROR: Okay.

9 THE COURT: Okay, the next juror did come up to speak
10 to me. I found her qualified. I can't remember exactly
11 what it is.

12 MR. HEMBREE: Well, she said she had a house burglary,
13 Your Honor, that her house had been burglarized but she
14 felt that she could be fair.

15 THE COURT: All right, bring Ms. Kammerer in, please.

16 (JUROR #244 ENTERS THE COURTROOM.)

17 EXAMINATION BY THE COURT:

18 Q. Hello, Ms. Kammerer.

19 A. Hello.

20 Q. If you would, have a seat here. Kammerer is the
21 correct pronunciation, isn't it?

22 A. Kammerer, yes.

23 Q. Not Kammera but Kammerer. Relax and have a seat there
24 and we'll talk a little bit. And you're not on trial or
25 anything. You know, nobody's trying to embarrass you. Or

1 there are no right answers, wrong answers. Just be open
2 and honest about your responses to certain questions I'm
3 going to ask you.

4 Now, one thing. I mean, make sure you speak into the
5 microphone there so everyone can hear you.

6 A. Okay.

7 Q. And you remember I put you under oath on Monday?

8 A. Yes, sir.

9 Q. And you're still under oath. You remember that?

10 A. Yes, sir.

11 Q. Okay. Now, are you related or do you know any of the
12 attorneys involved in this case?

13 A. No, sir.

14 Q. All right. Have you any special interest, bias, or
15 prejudice at all in this case?

16 A. No, sir.

17 Q. Have you formed or expressed an opinion as to the
18 guilt or the innocence of the defendant in this case?

19 A. No, sir.

20 Q. Do you know of any reason whatsoever why you cannot
21 give the state and the defendant a fair and impartial
22 trial?

23 A. No, sir.

24 Q. All right. If you're on this jury, you would be
25 required to follow the law as I instruct you as a judge.

1 Now, the jurors would listen and decide the facts from the
2 evidence. But they must follow the law as the judge
3 instructs you. Would you follow the law pursuant to my
4 instructions?

5 A. Yes, sir.

6 Q. Further, ma'am, one of those principles of law that I
7 would instruct you on is that the defendant is presumed
8 innocent, and the burden's upon the state to prove guilt
9 beyond a reasonable doubt, not upon the defendant to prove
10 himself innocent. State must prove him guilty beyond a
11 reasonable doubt. Would you accept and follow that
12 principle?

13 A. Yes, sir.

14 Q. So, therefore, if you're on that jury and if the state
15 did not prove guilt beyond a reasonable doubt the crime of
16 murder, you could bring back a verdict of not guilty?

17 A. Yes, sir.

18 Q. And if the state did prove guilt beyond a reasonable
19 doubt of murder, you could bring back a verdict of guilty?

20 A. Yes, sir.

21 Q. Okay, have you discussed this case with anyone?

22 A. No, sir.

23 Q. Now, this has got some coverage in the news, radio,
24 TV, newspapers. Have you heard, seen anything, or read
25 anything about this case before you came in here on Monday?

1 A. I think way back when it was first out in the
2 newspapers I may have read the article, but I don't
3 remember the facts of the case at all.

4 Q. Okay. So, you don't remember anything about the
5 allegations at all from the news?

6 A. No.

7 Q. And you didn't see anything this past weekend about it
8 or anything of that nature?

9 A. No.

10 Q. If you, if you're sitting on that jury panel and
11 during the course of the trial, because something may have
12 been said or something else jogs your memory to something
13 you may have read or heard, would you be able to put
14 whatever you remember, put that aside and make your
15 decision in this case based on the evidence presented in
16 the courtroom and the law as I instructed it to you?

17 A. Yes, sir.

18 Q. Okay. I gave you a list of names on three sheets of
19 paper. Did you review that list?

20 A. Yes, I did.

21 Q. Is there anyone on that list that you know or related
22 to or have any association with?

23 A. Not that I -- to the best of my ability, not that I
24 know of.

25 Q. Okay. Could I have the sheet? If for some reason

1 during the course of the trial, because you see a face that
2 you know but you didn't know the name, and would you please
3 let me know, okay that, during the course if you're on the
4 jury?

5 A. Yes, sir.

6 Q. You see someone you know, just let me know. It won't
7 make any difference as long as that juror is someone that
8 wouldn't make you look upon that person differently than
9 you would someone else, but I do need to know if you do see
10 someone you know, okay?

11 A. Yes.

12 Q. Now, also, ma'am, if the jury determines the state has
13 not proven guilt beyond a reasonable doubt of murder, then
14 that would end the jurors' participation in the case at
15 that time.

16 However, if the jury determines the state has proven
17 the defendant guilty of, of murder beyond a reasonable
18 doubt and returns a verdict of guilty, then we would move
19 into another phase where the jurors would consider
20 punishment. Now, I'm not suggesting that that's going to
21 happen, or that we're going to move into that phase. I'm
22 just saying we've got to discuss it just in case we do.

23 In that phase, evidence of aggravation and mitigation
24 would be presented, and the jurors would be asked to return
25 a verdict of life imprisonment or the death penalty. Once

1 again remember. We're only in that phase if the jurors
2 have already determined that the state's proven guilt of
3 murder beyond a reasonable doubt. In that phase, we would
4 then determine from the evidence of aggravation, mitigation
5 whether the verdict was life imprisonment or death penalty.

6 I gave you a sheet with three types of jurors on it.

7 A. Yes, sir.

8 Q. And I -- you see juror type one is that juror that no
9 matter what the evidence in aggravation and mitigation are,
10 that juror will always return a verdict for the death
11 penalty because that person feels no matter what the
12 circumstances, the death penalty is the most appropriate
13 punishment.

14 Juror type number two is that juror, though, who would
15 never return a verdict for the death penalty. That juror
16 is one that no matter what the circumstances are or what
17 the evidence in aggravation is, that juror would always
18 return a life imprisonment because he or she could never
19 return the death penalty.

20 Juror number three, however, is that juror that will
21 have their mind open and not made up and, and would want to
22 hear the facts and circumstances in aggravation and
23 mitigation and listen to the law charged by the judge
24 before she could make up her mind regarding the verdict on
25 the sentence. And if, after hearing the evidence in

1 aggravation and mitigation, that juror could come back with
2 a verdict of life imprisonment. Or, after hearing the
3 evidence in aggravation and mitigation, that juror could
4 come back with a verdict for the death penalty. Which of
5 those three jurors best describes you?

6 A. Number three.

7 Q. So, if you're on the jury and if the defendant were
8 found guilty of murder, you would be able to have an open
9 mind as to punishment, and you would listen to the evidence
10 in aggravation and mitigation. And if the evidence so
11 warranted it, you could bring back life imprisonment? Or
12 if the evidence so warranted it, you could bring back the
13 death penalty?

14 A. Yes, sir.

15 Q. Now, if the jurors were to bring back the death
16 penalty, the law requires that each juror sign the verdict
17 form. Could you sign the verdict form?

18 A. Yes, sir.

19 Q. All right. If you are selected as a juror on this
20 case, Ms. Kammerer, you would be sequestered. We would put
21 you in a hotel room, and we'd provide transportation back
22 and forth and food and everything else. And it could be
23 somewhere around a week, maybe a little more, maybe a
24 little less. And you would be away from your job and your
25 family, but could you handle that? I know it would be an

1 inconvenience and somewhat of a hardship, but could you
2 make arrangements to do that for us?

3 A. The only concern I have is my fiance is blind, and he
4 has medical conditions. He's an insulin diabetic, so
5 there's certain things I do as far as preparing his insulin
6 at night. And also he has reactions sometimes during the
7 night. My concern if I were to be away would -- was --
8 would be that there would be nobody in the home. That
9 would be my only concern if I was sequestered.

10 Q. Okay. Well, do you have anyone else you could assist
11 -- that could assist you? Say you're on the jury. If
12 something happens in an emergency situation, we would have
13 alternates to help out, but assume there was nothing in an
14 emergency situation. Do you have someone that could assist
15 if you were not there?

16 A. All I have is friends that I might work with. I don't
17 have any family down here right now. His parents own a
18 house down here. They're leaving on, on -- this coming
19 Sunday to go back to Jersey. So, I just have friends in
20 the area.

21 Q. Well, do you feel you could use today if you're
22 qualified to on this case, could you use today to find
23 people just in case you're on the jury and then let me know
24 tomorrow?

25 A. Yes.

1 Q. But you would try to do that?

2 A. Yes, sir.

3 Q. All right, and if you had someone -- is there
4 something that someone could do if he showed them how to do
5 it and you only would have to be there if there was an
6 emergency?

7 A. Yes, sir.

8 THE COURT: And, okay, let the attorneys ask you some
9 questions, and then I'll be back with you.

10 From the state?

11 MR. HEMBREE: Thank you, Your Honor. Good morning,
12 Ms. Kammerer.

13 JUROR: Good morning.

14 MR. HEMBREE: I'm Greg Hembree. Judge Lockemy has
15 covered all the questions that I might have for you. I
16 appreciate your presence here today and your patience with
17 us. Please answer any questions defense counsel might have
18 for you.

19 JUROR: Okay.

20 THE COURT: Mr. Wilson?

21 EXAMINATION BY MR. WILSON:

22 Q. Ma'am, my name's Ralph Wilson and Mr. Paul Rathbun,
23 and we represent Mr. Winkler in this trial. And, ma'am,
24 let me ask you. I know the court's just asked you about
25 your concerns about your fiancé, and you were explaining

1 your concerns. And in, in regards to his health, you don't
2 know when these episodes occur?

3 A. No, sir.

4 Q. You have no warning?

5 A. No, sir.

6 Q. All right, and so if you were on this jury and
7 something occurred and you weren't there, would that cause
8 you some concern, and would your mind and heart then be
9 where he is as opposed to where we are?

10 A. Actually, his -- when you have a low blood sugar in
11 the middle of the night, it's a pretty standard thing
12 giving the person beverage with some sugar in it, orange
13 juice or soda. I'm a nurse, so ---

14 Q. Right.

15 A. --- I handle this on a routine basis. Or in, in
16 severe cases it would be a matter of someone giving him an
17 injection, but that has happened so frequently that -- I
18 don't want to say it's second nature to me, but if -- I
19 have it -- because I'm a nurse, and I have it in the
20 patients that I take care of. So, you know, it doesn't
21 faze me like I guess it would a layperson.

22 Q. Right, and it can be deadly if you don't get that
23 medication and if you don't get that injection?

24 A. It can be.

25 Q. Yes, and it can lead to coma and other things?

1 A. Correct.

2 Q. And, and, and I say that. I'm a diabetic, so I know
3 that that's true.

4 And let me ask you also, ma'am, in regards to not
5 being there, and that's my question to you is if you're on
6 this jury and something did occur, if you leave him with
7 someone else that you don't know or that he tried to make
8 arrangements for it and something does occur, is that going
9 to cause you so much concern that you're not going to be
10 able to focus on where we are here?

11 A. I don't think so because he also has traveled in his
12 previous job. He was a presidential appointee in
13 Washington, and so he's had to travel with assistance
14 before that I had to -- they, they were just lay people
15 that he hired to do the job of assisting him. And I had to
16 train them on how to handle these emergencies. And they
17 have happened while he's been in another state and I had to
18 be here to work. And as a nurse, I have to concentrate on
19 what I'm doing. I can't let some things in my personal
20 life decrease my focus, especially when I'm at work. So,
21 I've done it in the past, and I feel like I've handled it
22 well and it hasn't distracted me.

23 Q. So, he's been away from you? He -- so, you're not
24 with him all the time. Is that you're saying?

25 A. No, sir.

1 Q. All right. It's just that y'all are here now and --
2 but you've been separated for nights before from him?

3 A. Yes, sir.

4 Q. Okay. Fine. Let me ask you now in regards to your
5 opinion about the death penalty. You had described herself
6 as a type three juror. Is that fair?

7 A. Yes, sir.

8 Q. All right, and what's your understanding of the type
9 three juror?

10 A. Someone who doesn't have any preconceived judgments
11 made before they hear the evidence in the case and the way
12 that the judge will tell me how to interpret the law.

13 Q. Okay, and let me ask you this, ma'am. You know, you
14 realize we only get -- there are two phases to this
15 particular trial or may be two phases depending on what we
16 do in the first part of the trial. We have what's called
17 the guilt phase where you and the other members of the
18 panel will decide whether or not the defendant is guilty or
19 not guilty. And that is if you believe that the state has
20 provided to you sufficient evidence beyond a reasonable
21 doubt to convince you of his guilt of the crime of murder
22 because only then would we go to a second part of the
23 trial.

24 A. Right.

25 Q. In fact, if they do not convince you beyond a

1 reasonable doubt that he is guilty of the crime of murder,
2 then we don't go to the second phase of the trial. Do you
3 understand that?

4 A. Yes, sir.

5 Q. Having -- if you were a member of the panel which
6 found this defendant guilty of murder, the state proved it
7 to your satisfaction beyond a reasonable doubt ---

8 A. Yes.

9 Q. --- that he was guilty of the crime of murder, would
10 you then have any -- would you then still be able to
11 consider any aggravating and/or mitigating factors before
12 you decided whether or not he should get death?

13 A. Yes, sir.

14 Q. All right, and you'd still have an open mind even
15 after you had made your decision that he was guilty of the
16 crime of murder?

17 A. Yes, sir.

18 Q. All right, and you would understand that having been
19 found guilty of the crime of murder, that that would mean
20 that there was no defense, that you found was no defense to
21 the killing?

22 A. Yes.

23 Q. And in spite of that, you'd be able to do that?

24 A. Yes.

25 Q. Is that what you're saying? And, ma'am, let me ask

1 you. Do you also understand that as a juror, you're going
2 to hear in the second phase of this trial, if we got there,
3 you would hear aggravating circumstances from the state,
4 which are things that they're going to offer to try to show
5 that the murder was worse than what it may have been, the
6 killing, okay? You'll also hear mitigating and factors,
7 which are things which lessen or -- the moral culpability
8 of the defendant or, or the crime that may have been
9 committed. Not a defense but, but somewhat lessens the
10 moral culpability. Do you ---

11 A. Yes.

12 Q. All right. Now, let me ask you in terms of that. Do
13 you understand that even if you find the existence of an
14 aggravating circumstance or several aggravating factors or
15 circumstances and no mitigating factors, that you could
16 still vote for life? Do you understand that?

17 A. Yes.

18 Q. If that's what you decided to do based on your
19 conscience and your judgment as a juror?

20 A. Yes, sir.

21 MR. WILSON: All right, no other questions. Thank
22 you, ma'am.

23 THE COURT: Any follow ups? No follow ups?

24 MR. HEMBREE: No, Your Honor.

25 THE COURT: Any, anyone wish to make any comment to

1 the court? State?

2 MR. WILSON: None, Your Honor.

3 MR. HEMBREE: Juror's qualified, Your Honor.

4 THE COURT: Okay.

5 MR. WILSON: She's qualified.

6 THE COURT: Okay. State and defense find the juror
7 qualified. Ms. Kammerer, I find you qualified. What I
8 need for you to do is go and see if you can make
9 arrangements now.

10 I'm going to find you qualified to be on the jury
11 pool. That does not mean you're going to be on the actual
12 jury. It means you'll be in the group from which we select
13 the jury. And -- but I do want you see tonight if you can
14 find someone that would be there for your husband if, if
15 you are on the jury.

16 No, if you're on the jury, then tomorrow I'll let you
17 go home and get your bags and come back, but you might want
18 to go ahead and pack them now so you will be ready to go.
19 And also if you're on the jury, I'll let you make a phone
20 call every once in a while, and there will be someone
21 listening in, though.

22 JUROR: Okay.

23 THE COURT: But, but you can make phone calls. And
24 like I said if, if you are on the jury and an emergency
25 occurs, obviously with anyone in an emergency I would have

1 an alternate, but, but, I do want to see, though, if you
2 can find someone that, unless there's an emergency, things
3 could be handled. Just let me know tomorrow, okay?

4 JUROR: Okay.

5 THE COURT: Listen, thank you very much, Ms. Kammerer,
6 and I'll look forward to seeing you tomorrow 11:30.

7 Do not read any newspapers. Do not discuss this case
8 with anyone at all. Don't listen to any newscasts on the
9 radio or on TV, all right?

10 JUROR: Yes, sir.

11 THE COURT: See you tomorrow at 11:30. Go out this
12 door in the back there.

13 JUROR: Thank you.

14 THE COURT: Juror 455 I don't see on list anywhere,
15 but it says something on the sheet about repair vehicle,
16 Mr. Wilson. What does that mean? Do you know? It says,
17 knows you because of repaired vehicle. What is -- number
18 33.

19 MR. HUMPHRIES: 77.

20 THE COURT: 77, whatever.

21 MR. HUMPHRIES: 77, the number of the question.

22 THE COURT: Repaired a vehicle.

23 MR. HUMPHRIES: Repaired Mr. Wilson's vehicle.

24 THE COURT: Oh, that's what it is, okay. But this guy
25 says their job is secretary.

1 MR. HUMPHRIES: Well, the husband owns Truett's.

2 THE COURT: Oh, I see, Truett's Auto. Okay. I see.
3 All right.

4 MR. WILSON: That's true. That's true, judge. That,
5 that's was a fender bender I had about five years ago, and
6 I took my truck over to have it repaired.

7 THE COURT: Okay. Very good. All right, bring in Ms.
8 Truett, please. I just want to make sure you didn't repair
9 her vehicle.

10 MR. WILSON: It wouldn't be in good shape if I
11 repaired it, I promise you.

12 (JUROR #455 ENTERS THE COURTROOM.)

13 EXAMINATION BY THE COURT:

14 Q. Hello, Ms. Truett. How are you doing?

15 A. Good, thank you.

16 Q. If you would, come and relax and just have a seat
17 here.

18 A. I've relaxed all I can relax so far.

19 Q. Last night and today?

20 A. Yes.

21 Q. Did you get to finish that whole book?

22 A. No. I've read the book before. I'm on my second
23 reading.

24 Q. You know, I didn't know -- you and I had talked
25 before. We have talked. Did you come up and talk to me

1 yesterday?

2 A. Yes, sir.

3 Q. What was that about? I forgot.

4 A. My son has a CDV. I think it, I know he was charged,
5 and I think it's actually a conviction.

6 Q. Okay. Move up a little closer to the microphone
7 there. So, your son you feel has been convicted of CDV.
8 That's why you came up here?

9 A. Yeah.

10 Q. Okay.

11 A. It was on the violent crimes.

12 Q. Okay, yes. Now, you're not on trial or anything, and
13 all I'm going to do is talk to you a little bit.

14 A. Okay.

15 Q. Don't need to be nervous, and I know you've had a lot
16 of time to relax, so ---

17 A. A lot of time to think about it.

18 Q. Yes, and we're just going to talk for a few minutes.

19 A. Okay.

20 Q. So we can get -- see what type -- get to know you a
21 little bit better and determine if you're in the jury pool.

22 Now, once I -- one thing I'm going to let you know is
23 that you are under oath. You understand that?

24 A. Yes, sir.

25 Q. And, and do you know any of the attorneys in this

1 case?

2 A. I just know of the attorneys. I think Mr. Wilson, I
3 think we may have fixed his car at our shop. I don't ---

4 Q. Well, you mentioned that in your report there ---

5 A. --- think I personally met him, but I was, you know,
6 I have seen him.

7 Q. You work with your husband in the shop that you're the
8 bookkeeper for?

9 A. Yes, sir.

10 Q. Okay. Now, the fact that his vehicle may have been
11 repaired and in your shop, would that have any affect upon
12 you as far as being a fair and impartial juror?

13 A. No, sir.

14 Q. Have you formed any opinion or expressed any opinion
15 regarding the guilt or the innocence of the defendant in
16 this case?

17 A. No, sir.

18 Q. You don't know him, do you?

19 A. No, sir.

20 Q. And you don't have any interest or bias or prejudice
21 in the case, do you?

22 A. No, sir.

23 Q. Do you know any reason whatsoever why you could not
24 give both the defense and the state a fair trial on this
25 case?

1 A. No, sir.

2 Q. Okay. The judge instructs on the law and the jury
3 must follow the law as the judge instructs.

4 A. Yes, sir.

5 Q. Would you under your oath follow the law as I instruct
6 you?

7 A. Yes, sir.

8 Q. One of those principles of law that I would instruct
9 you on is that the defendant is presumed innocent, and the
10 burden is on the state to prove guilt beyond a reasonable
11 doubt.

12 A. Yes.

13 Q. The defendant does not have to prove himself innocent.

14 A. Right.

15 Q. The state must prove him guilty beyond a reasonable
16 doubt. Could you follow that principle of law?

17 A. Yes, sir.

18 Q. Have you discussed -- and, therefore, ma'am, if after
19 hearing all the evidence, if, if you are not -- if the
20 state has not proven the defendant guilty beyond a
21 reasonable doubt, you could then bring back a verdict of
22 not guilty?

23 A. Yes, sir.

24 Q. What if the state has proven guilty beyond a
25 reasonable doubt? You could bring back a verdict of

1 guilty?

2 A. Yes, sir.

3 Q. Have you discussed this case with anyone?

4 A. No, sir.

5 Q. It has gotten some media in the radio, TV, that type
6 of thing, newspapers. Have you see anything ---

7 A. No.

8 Q. --- about it?

9 A. No. I am so ignorant. It's just pitiful. I don't
10 read the paper and very seldom and I -- Monday when I come
11 home, I know it must have been on the news because a lot of
12 my family was, like, it was on the news all day. And I'm,
13 like, don't say anything. I don't want to know anything.
14 So, no, I have not.

15 Q. Okay, and then they didn't discuss it with you?

16 A. No, sir.

17 Q. Would anything, has anything your family said or
18 anyone else, would that affect your ability to be fair and
19 impartial?

20 A. No, sir.

21 Q. You could put all that aside?

22 A. Yes, sir.

23 Q. I gave you some names on three sheets of paper there.

24 A. Yes, sir.

25 Q. Did you look those over?

1 A. Yeah. Yeah, I didn't know any of them.

2 Q. Hand me that sheet back, if you would. So, you don't
3 know anyone on that sheet?

4 A. I didn't recognize any of the names.

5 Q. Okay. If for some reason -- because in your business,
6 a lot of people come in and out. You might know their face
7 and not their name.

8 A. Right.

9 Q. If during the course of the trial, if you see someone
10 that you do now recognize, would you let me know about it?

11 A. Yes, sir.

12 Q. Now, it doesn't mean it'll make any difference as a
13 juror as long as that person wouldn't make you look upon
14 them differently than you would any other witness.

15 A. Right.

16 Q. But, but if you do see someone you know, please let me
17 know about it if you're on the jury.

18 A. Yes, sir.

19 Q. This case could be in two parts. If the jurors were
20 to decide the state has not proven guilt beyond a
21 reasonable doubt the crime of murder, then the jurors'
22 participation would be ended at that point. However, if
23 the jury decides that the state has proven guilt beyond a
24 reasonable doubt of the crime of murder, then we would move
25 into a phase called -- where the issue of punishment would

1 be considered by the jury. And, and I'm not suggesting we
2 are going to get to that point. But say if we did, we need
3 to discuss it.

4 Now, in that phase there would be evidence in
5 aggravation and mitigation presented, and the jurors would
6 be asked to come back with a verdict on punishment, either
7 a verdict of life imprisonment or a verdict of the death
8 penalty.

9 A. Right.

10 Q. And I gave you a sheet of paper showing you three
11 types of jurors. Did you read that?

12 A. Yes, sir, right here.

13 Q. And you see that juror number one is the person that,
14 that if a person were found guilty of murder, that person
15 in that, in that phase on the punishment would always bring
16 back the death penalty.

17 A. Right.

18 Q. That person would feel that the death penalty is the
19 most appropriate punishment without regard to what the
20 circumstances are and, and without regard to what the
21 evidence of aggravation or evidence of mitigation ---

22 A. Right.

23 Q. --- are. That person would always bring back the
24 death penalty.

25 The second juror, juror number two, is the person that

1 without regard to what the evidence or circumstances are,
2 that juror would never bring back the death penalty. That
3 juror would always bring back life imprisonment regardless
4 of the evidence in aggravation.

5 The third juror, though, is the juror who although the
6 defendant's been proven guilty of murder, that juror would
7 not have her mind made up in advance concerning punishment.
8 That juror would want to hear the facts and circumstances
9 in aggravation and in mitigation and would want to listen
10 and follow the law as the judge charges the jury before she
11 can make up her mind regarding the punishment. And if
12 after hearing the evidence in aggravation and mitigation,
13 if that juror felt it so warranted it, that juror could
14 come back with a verdict of life imprisonment. Or if that
15 juror felt the evidence so warranted it, that juror could
16 come back with a verdict of the death penalty.

17 Now, of those three types of jurors, which one best
18 describes you?

19 A. Juror number three.

20 Q. So, if, say, the defendant were found guilty of
21 murder, you would have your mind open regarding punishment?

22 A. Yes, sir.

23 Q. And you would listen to the evidence in aggravation,
24 mitigation, and you could bring back a verdict of life
25 imprisonment if the evidence warranted it? Or you could

1 bring back a verdict of the death penalty?

2 A. Yes, sir.

3 Q. Now, if the jurors were to bring back a verdict of the
4 death penalty, each juror will have to sign the verdict
5 form because it requires unanimous decision. Could you
6 sign the verdict form in that regard?

7 A. I could.

8 Q. Okay. Now, you might have guessed already that if you
9 are selected as a juror in this case, you'd be sequestered
10 and we have you in a hotel for somewhere around a week. A
11 little more, a little less. If that occurred, and I know
12 that you'd be away from the business and away from your
13 four children, but could you handle that?

14 A. Well, I would handle it, yes. Business, I, I do the
15 deposits, the daily deposits, the payroll. A week is not
16 really bad. When you push into two weeks, it kind of gets
17 me really behind there, and it's hard to pay the ---

18 Q. Of course that week also includes the weekend; that
19 will be part of that week. So, y'all aren't open on the
20 weekend.

21 A. Right, we're not, yeah. The business would probably
22 be a doable thing. The only thing is all my kids are gone
23 but one. I have one seven-year-old that has asthma, and
24 the only -- you know, I'm his mom, so nobody can take care
25 of him like I can. A week, you know, is okay. I mean, his

1 dad, you know, will take care of him. I, I'd rather not
2 be away from him but, you know, he, he goes -- the asthma
3 does not limit his daily, you know, his daily duties. So,
4 he ---

5 Q. Goes to school?

6 A. --- goes to school. He does everything he has to do
7 but, you know, if his asthma flares up and if he, you know,
8 gets sick, he can go two or three days on nebulizer, you
9 know, at home. And that would probably be my only concern
10 is that.

11 Q. Well, of course if something of an emergency happens
12 to any juror's family, we would have alternates for that.

13 A. Okay.

14 Q. But if there wasn't an emergency, I would let you
15 phone and talk on the phone ---

16 A. Right.

17 Q. --- every so often and, and, and -- but there would
18 be someone the listening on the phone.

19 A. Uh-huh.

20 Q. You'd be able to do that. But unless there were some
21 emergency, though, you feel you could handle it and your
22 husband could handle it for you? Once again, it could be
23 five, six, seven, eight, nine, ten days, something like
24 that.

25 A. I have two sons the work at our shop, too.

1 Q. Oh, so you've got ---

2 A. It's, it's all family. It's just mainly the
3 bookkeeping parts that I do, you know, and the payroll and
4 that can go for a week or two, you know. It's -- I mean,
5 they wouldn't want it to, but it, could, I mean.

6 Q. And you'll be able to keep your mind focused on the
7 trial for that period of time?

8 A. Yes, sir. My son would be my only concern.

9 Q. Okay, but, but unless an emergency happens, you could
10 keep your mind focused on the trial?

11 A. Yes, sir.

12 THE COURT: All right, I'm going to let the lawyers
13 ask you any questions they have, okay?

14 JUROR: All right.

15 EXAMINATION BY MR. HUMPHRIES:

16 Q. We're afternoon already.

17 A. I know.

18 Q. Good afternoon. I'm Fran Humphries. I'm the Deputy
19 Solicitor. Solicitor Hembree, Scott Hixson and I, we
20 represent the state in the case.

21 A. Okay.

22 Q. What we, as you've probably already gathered, what we
23 really are trying to accomplish here today is to take folks
24 who have had no -- we're just sort of dragging them in by
25 subpoena, sort of throw you in this mess and then try and

1 figure out. You know, we ask you just assume you've
2 already been through a guilt phase and found him guilty of
3 murder. We move you into the penalty phase and try and
4 decide, we're trying to find out what your opinions are
5 about the death penalty.

6 I imagine it's a fairly foreign concept for you, this
7 process that we go through. It really is unique in
8 criminal cases. This is the only time in a criminal case
9 where there are two phases. And in this kind of case, it
10 is the jury who will actually determine what the penalty
11 is. What you tell the court is what the court will do,
12 okay?

13 A. Uh-huh.

14 Q. Okay. The other thing I need to tell you is nobody
15 here wants to try and change your mind about how you feel
16 about the death penalty.

17 A. All right.

18 Q. I know when you read that form about the three types
19 of jurors, and you've got the first one which says we
20 always give the death penalty, and the second one which
21 says I'll always give life, but the third one could give
22 life or death depending on the facts and circumstances.

23 A lot of jurors, when they read that form they go,
24 well, I probably should be the third one because that
25 sounds like a fair one.

1 A. Uh-huh.

2 Q. But what I'm here to tell you is what's fair is what's
3 you really are.

4 A. Yes, sir.

5 Q. That's what's fair to both the state and the defense.
6 Doesn't mean -- there are people -- people are absolutely
7 entitled to their opinions about the death penalty. Again,
8 we're not trying to change them. We just need to know what
9 they are because truly a juror that sits in this case must
10 be able, must, must be certain that under the right set of
11 facts, given the right circumstances they can return either
12 a life or a death penalty sentence. And that's something
13 that we need to know, and it is absolutely unfair to ask
14 you that on the front end before you've heard anything.
15 But unfortunately this is the only time we can do it.

16 A. Oh, I've thought about it.

17 Q. Yeah, I bet you have, and that's what I was going to
18 ask you about.

19 A. Oh, yeah.

20 Q. Because I read in your questionnaire, and it's not
21 unlike other questionnaires, where I believe you said I'm
22 not sure about the death penalty vote. I think that's
23 pretty much what you said.

24 A. Yes.

25 Q. Tell me what you mean about that.

1 A. Well, when the officer told me what the charges were
2 and it would involve a death penalty sentence, he could get
3 death, well, right off the -- you know, I think well, I
4 have always agreed with the death penalty, you know? Then
5 to have to sign your name on the paper, you know, to put
6 somebody to death was very new to me.

7 Q. Sure.

8 A. And so I, yeah, I had to say that there were doubts,
9 you know. And I believe in the death penalty. I believe
10 that there are cases that the death penalty are -- you
11 know, it would be, it would be justified, the death
12 penalty. I believe in those cases I could sign my name to
13 the death penalty and, you know, I had thought about this
14 since then, you know, since the day the officer came, and I
15 had never thought about it that way before he actually put
16 the paper in front of me ---

17 Q. Right.

18 A. --- and said why -- you know, you will be involved in
19 this, you know. And I'm, like, you know, I would have to
20 be one hundred percent sure and then I could sign my name
21 to the death penalty.

22 Q. Let me tell you this one other thing, too. And again
23 this is a foreign process, and I understand that. But
24 there is, there is never a situation in this case or in any
25 other capital case, or death penalty case, where the jurors

1 will have to return a death verdict, okay? There's never
2 -- and some people think that, some people think that if
3 you've got -- you know, if the state proves this and the
4 defendant fails to prove this, and in this case the
5 defendant has no burden whatsoever to prove anything. But
6 if they believe that, you know, the state proves this, the
7 defendant doesn't prove this, then the only option is the
8 death penalty. That situation never occurs.

9 A. Okay.

10 Q. Okay? In fact, the court will tell you in his final
11 charge when they're talking -- when he is talking to you
12 about the sentence, he'll tell you and every other juror
13 that you can impose the death penalty if the state proved
14 aggravating circumstances. You can give a life sentence.
15 In fact, he will tell you that you and the other jurors can
16 give a life sentence for any reason, for no reason at all.
17 It's called a mercy verdict. So, I want you to be a --
18 understand this is -- is not a formula where ---

19 A. It's not ---

20 Q. --- A plus B equals C.

21 A. -- if you're guilty you get this.

22 Q. No.

23 A. Right.

24 Q. You will always have the option of giving a life
25 sentence regardless of how horrific the facts are, how

1 little the mitigation is. You always have that option, and
2 so I wanted to explain that to you so you could sort of
3 figure that into where you are ---

4 A. Right.

5 Q. --- in terms of your position.

6 A. Right.

7 Q. Knowing that you could always give life regardless of
8 the facts and circumstances, knowing if you have that
9 option at all times, do you still believe you could not
10 only fairly consider the death penalty and actually sign
11 your name to the verdict form sentencing Mr. Winkler to
12 death?

13 A. I'd have to say yes, I think I could.

14 Q. And that's really all we ---

15 THE COURT: What did you say there before, ma'am?

16 A. I have to say yes, I think I could.

17 Q. All right, and that's all we're trying to get at. I
18 know ---

19 A. And you did explain it a little different.

20 Q. Well, and again, this is a very unusual concept. It's
21 not like any other criminal case in the State of South
22 Carolina, so it's unusual. And I felt like it would be
23 fair to let you know all little bit ---

24 A. Yeah.

25 Q. --- about the process.

1 A. Exactly.

2 Q. I appreciate your responses. It tells us really
3 everything we need to know about you in terms of your
4 participation in this case.

5 I'll ask you one final thing. Can you be fair and
6 impartial in making your decision, fair both to the state
7 of South Carolina and the defendant in this case?

8 A. Yes, sir.

9 MR. HUMPHRIES: That is absolutely all we can ask of
10 you. Thank you.

11 THE COURT: Mr. Wilson?

12 MR. WILSON: Thank you, judge.

13 EXAMINATION BY MR. WILSON:

14 Q. Ms. Truett, and, in regards to solicitor went into a
15 little bit of detail with you about your views about the
16 death penalty.

17 A. Yes, sir.

18 Q. And, and as I understand it from what you were saying
19 to the court earlier, you actually have always held that
20 view that you believe in the death penalty. You think it
21 is appropriate in some cases?

22 A. Yes.

23 Q. But is not appropriate in all cases in your mind?

24 A. Right.

25 Q. All right, and that you would want to hear all of the

1 facts and circumstances surrounding the case, both things
2 that the state might offer in aggravation, things which
3 make the crime worse, and then hear those things that are
4 in mitigation which might make it less. And then you would
5 then decide based on what you feel in your heart and based
6 on your conviction about whatever is that happens?

7 A. Yes, sir.

8 Q. Is that kind of what you're saying?

9 A. Yes, sir.

10 Q. All right, and at this point you don't have any
11 preconceived notion or idea of, of whether you're going to
12 have a life sentence in this case or a death sentence in
13 this case?

14 A. No, sir.

15 Q. Because you don't know any of the facts and
16 circumstances ---

17 A. Right.

18 Q. --- at this point. Now, His Honor is going to
19 instruct you that every defendant is presumed innocent from
20 the very outset.

21 A. Right.

22 Q. And can you accept that?

23 A. Yes, sir.

24 Q. And, and believe that he is innocent of all these
25 charges until and unless the state can bring you evidence

1 that satisfies you beyond a reasonable doubt that, in fact,
2 he committed the murder?

3 A. Yes, sir. He walked in an innocent man today.

4 Q. That's right. Thank you.

5 A. Yes, sir.

6 Q. And, ma'am, when, when, when you're in the final phase
7 -- that is, if we get to the sentencing phase of this case
8 -- it will mean that you and the other jurors have voted to
9 find the defendant guilty of the crime of murder.

10 A. Yes, sir.

11 Q. Because that's the only way we'll get there because if
12 you find him not guilty or guilty of some lesser charge,
13 then we never get to the second part.

14 A. Right.

15 Q. And having found a -- if he had been found guilty of
16 murder, that would mean that there would be no defense to
17 the crime. That is, that you found that he committed this
18 crime. That there was no defense to that crime.

19 A. Right.

20 Q. Do you understand?

21 A. Uh-huh.

22 Q. And even after having made that determination, you
23 would still have an open mind?

24 A. Yes, sir.

25 Q. And you would still be willing to listen and hear all

1 the evidence both in aggravation and in mitigation before
2 you made up your mind?

3 A. Yes, sir.

4 Q. And do you also understand, ma'am, that for any reason
5 or no reason at all you could impose a life sentence if
6 that's what you felt was the right thing to do as a juror
7 on this case?

8 A. Yes, sir.

9 MR. WILSON: Thank you so much.

10 JUROR: All right.

11 THE COURT: Any comments, state?

12 MR. HUMPHRIES: I believe she's qualified.

13 THE COURT: Any comments from the defense?

14 MR. WILSON: She's qualified..

15 THE COURT: All right. Ms. Truett, I find you
16 qualified to serve on the jury pool in this case. That
17 doesn't mean you're going to be on the jury panel. It
18 means you'll be in the group from which we will select the
19 jury.

20 JUROR: Yes, sir.

21 THE COURT: And we're going to do that tomorrow around
22 11:30. So, I need you to be back here tomorrow at 11:30
23 a.m.

24 Tonight you want to start making arrangements if you
25 can just in case you are on the jury because if you are on

1 the jury, tomorrow will be when we start the sequestration
2 process where you'd be at a hotel and all that. So, start
3 making arrangements and all with your son, with your, with
4 your other children and your husband. And, and also you
5 might want to get your bags packed just in case.

6 Once again, doesn't mean you're going to be on the
7 jury. Just means you could very well be one of the jurors.
8 So, get your bags packed and tomorrow come here at 11:30.

9 If you are selected, I will let you go back home when
10 get your bags and come back, but you might want to have
11 somebody ready to give you a ride back because you don't
12 want to leave your car here all week at the courthouse.

13 JUROR: Yes, sir.

14 THE COURT: You will not be able to have it at the
15 hotel, okay?

16 JUROR: Yes.

17 THE COURT: All right, we'll -- and do not discuss
18 this case with anyone at all. Don't read any newspapers
19 and don't look get any, look at any local news, all right?

20 JUROR: Now, when you say pack, am I packing for a
21 long time?

22 THE COURT: For about a week.

23 JUROR: A week, okay.

24 THE COURT: So, if we have to, we can get you some
25 more stuff. About a week, okay?

1 JUROR: Okay.

2 THE COURT: You got the sheets of paper with you?

3 JUROR: I gave you the other.

4 THE COURT: The other one.

5 JUROR: Okay.

6 THE COURT: Thank you, ma'am. Thank you.

7 JUROR: Okay.

8 THE COURT: We'll see you tomorrow at 11:30 in the
9 courtroom. You can go out this door over here, okay?

10 JUROR: Okay. Thank you.

11 THE COURT: Okay, what I'm going to do -- Madame Court
12 Reporter I need for you to stay here for a minute. I think
13 I'm going to talk with Mr. Stackhouse.

14 All right, we're going to take a break. If you wish
15 -- I'm going to discuss with Mr. Stackhouse and the
16 witnesses he brought with him in chambers back there about
17 this issue about his discussions with other people. Y'all
18 are welcome to come back if you want to. I didn't want to
19 interfere with y'all if y'all agree to disqualify him. If
20 you wish to come back, it's open to you. So, we will take
21 a break. We'll be back to start on jury panel J with Mr.
22 David Johnson. I'll try to be back in about ten minutes.

23 (IN-CAMERA CONFERENCE CONDUCTED IN THE PRESENCE
24 OF THE CLERK OF COURT.)

25 THE COURT: Madame Clerk, if you would -- and your

1 name is David?

2 MR. WHITE: White.

3 THE COURT: White, W-h-I-t-e?

4 MR. WHITE: Yes, sir.

5 THE COURT: All right, I need both of y'all to get
6 under oath, please. Put them both under oath. Raise your
7 right hand, please.

8 RONNIE STACKHOUSE, JUROR #431, AND
9 DAVID WHITE, BEING DULY SWORN, TESTIFY AS FOLLOWS:

10 THE COURT: All right now, Mr. White, Mr. Stackhouse
11 related to me yesterday that somehow for -- in one day's
12 time he's had people talking to him about this case,
13 although he didn't want them to talk with him about the
14 case, and that he left and all kind of stuff, and that he
15 formed opinions about this case because of that. And I'm a
16 little concerned that up until Monday, he hadn't heard
17 anything about the case. And all of a sudden in one day's
18 time, people were pushing it on him. And you're one of the
19 ones he was saying doing that.

20 So, Stackhouse, what I want you to do is you go
21 outside, Mr. Stackhouse.

22 And if you would, officer, just go out the door with
23 him out there, if you would.

24 (MR. STACKHOUSE EXITS CHAMBERS.)

25 EXAMINATION BY THE COURT: