

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

AUG - 5 2014

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

S.C. Supreme Court

LOUIS MICHAEL WINKLER, JR.,

Respondent/Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Petitioner/Respondent.

APPENDIX

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1 THE COURT: Now, Mr. White, what I want to tell -- you
2 to tell me, he says you work for the City of Myrtle Beach?

3 MR. WHITE: Yes, sir.

4 THE COURT: And he said you were one of the ones was
5 talking about the case in front of him. Were you, sir?
6 Now, remember now, let's don't get things bigger than they
7 are, please. You're a hard worker. I'm sure you're a fine
8 person, so I don't want to do anything that's going to get
9 you in trouble, but I got to remind you that you are under
10 oath.

11 Now, I'm going to call Mr. Stackhouse back in here and
12 maybe some other people, so could you tell me what action
13 or interaction you had with Mr. Stackhouse Monday and
14 yesterday?

15 MR. WHITE: I believe I asked him which case he was
16 on. He said he wasn't allowed to talk about it, and I said
17 well, why not. And he said I'm not allowed to talk about
18 it. I don't know if I pushed him any more than that.

19 THE COURT: Well, did you discuss the case with him?

20 MR. WHITE: I just talked with him, but he didn't say
21 anything.

22 THE COURT: So, did people, other people talk about it
23 in front of him?

24 MR. WHITE: Just a few people.

25 THE COURT: Okay, and did you tell him anything?

1 MR. WHITE: No.

2 THE COURT: You just stood there while they were
3 talking?

4 MR. WHITE: No. I just started walking away.

5 THE COURT: So, you couldn't have heard what they
6 said.

7 MR. WHITE: No. No.

8 THE COURT: All right, so anything else you want to
9 tell me?

10 MR. WHITE: No.

11 THE COURT: All right, go outside and bring Mr.
12 Stackhouse in. Just outside the door.

13 (MR. WHITE EXITS CHAMBERS.)

14 (MR. STACKHOUSE ENTERS CHAMBERS.)

15 EXAMINATION BY THE COURT:

16 THE COURT: Now, Mr. Stackhouse, remember you're under
17 oath, sir.

18 MR. STACKHOUSE: Yes, sir.

19 THE COURT: Mr. White says all he asked you was what
20 case you were on, and you said you couldn't talk about it.
21 He said he didn't mention anything about the case to you.
22 Is that the truth of that?

23 MR. STACKHOUSE: That's true, sir. We were only
24 talking about the case.

25 THE COURT: He said he didn't talk anything to you

1 about this case. He said he did not. I'm asking about
2 him.

3 MR. STACKHOUSE: Yes, sir.

4 THE COURT: He said he did not say a word to you about
5 this case other than he asked you what case you're on jury
6 duty on, and you said you couldn't talk about it and he
7 didn't talk about it. Is that true or false?

8 MR. STACKHOUSE: He did, he did talk about it, sir.
9 He did. He just, he was talking ---

10 THE COURT: Bring Mr. White back in here then. He may
11 have made -- told me something wrong here.

12 MR. STACKHOUSE: Yeah, he was, he was talking about
13 ---

14 THE COURT: He said he didn't say anything about --
15 I'm talking about him now. Not anybody else. I'm talking
16 about him, Mr. White only.

17 MR. STACKHOUSE: Okay.

18 THE COURT: Okay, hold on one second. Bring him
19 inside.

20 (MR. WHITE ENTERS CHAMBERS.)

21 THE COURT: Now, Mr. White, I said I didn't want to
22 get you in trouble, sir, but if you're going to be telling
23 me things that he's telling me different, I got some
24 concerns.

25 You said that you asked him what case he was on. He

1 told you he couldn't talk about it, and that's all you
2 said. Is that right?

3 MR. WHITE: I think so.

4 THE COURT: He said you talked about the case with
5 him.

6 MR. WHITE: I don't remember.

7 THE COURT: Sir, this was just yesterday, wasn't it?

8 MR. WHITE: Yeah.

9 THE COURT: Well, you don't remember yesterday, sir?

10 MR. WHITE: Not really.

11 THE COURT: Once again, I'm not trying to make
12 something bigger than it is, but if you're not going to
13 tell me the truth, I'm getting concerned.

14 MR. WHITE: I am telling you the truth.

15 THE COURT: Did you talk about this case with him?

16 MR. WHITE: I really don't remember.

17 THE COURT: Why didn't you tell me you didn't remember
18 earlier today when I asked you that just about ten minutes
19 ago? You said you didn't.

20 MR. WHITE: I didn't.

21 THE COURT: You didn't say I don't remember. You said
22 I didn't talk to him about it. We're talking about twenty-
23 four hours ago, sir.

24 What do you do for the city?

25 MR. WHITE: Heavy equipment operator.

1 THE COURT: You got to have a good memory to work on
2 those things, where the levers are and everything else.
3 You could be killing somebody. You can't remember what you
4 did twenty-four hours ago, sir?

5 MR. WHITE: Sometimes no.

6 THE COURT: Do you deny you talked to him about this
7 case?

8 MR. WHITE: I'm sure I did.

9 THE COURT: So, now you're sure you did talk to him?
10 Why would you talk to him when he said he couldn't talk to
11 you about it?

12 MR. WHITE: I don't know.

13 THE COURT: So, he told you I can't talk to you about
14 it, but you talked to him anyway?

15 MR. WHITE: There was a bunch of most people there.

16 THE COURT: I'm talking about you. If he told you I
17 can't talk about it, why did you talk about it, talk about
18 it with him?

19 MR. WHITE: I don't know.

20 THE COURT: And why'd you stand there and listen?

21 MR. STACKHOUSE: I, I walked away, sir. I couldn't
22 talk about it.

23 THE COURT: So, you didn't hear anything they said?

24 MR. STACKHOUSE: I heard that, that they said I could
25 be on the -- that big trial that's ---

1 THE COURT: That's all, but did you hear anything
2 about the case because you were only there a second. How
3 could you hear something about the case?

4 MR. STACKHOUSE: That's when I started walking away
5 and leaving, and I told them I can't ---

6 THE COURT: So, you didn't hear anything?

7 MR. STACKHOUSE: Well, I heard about that they -- they
8 started talking about the big case there was coming in with
9 some kind of murder case.

10 THE COURT: Right.

11 MR. STACKHOUSE: Okay.

12 THE COURT: Well, you knew that already.

13 MR. STACKHOUSE: Yeah.

14 THE COURT: We'd already told you that Monday.

15 MR. STACKHOUSE: Yes, sir.

16 THE COURT: So, what is it that they said that made
17 you form some opinion?

18 MR. STACKHOUSE: Well, just, just, just being around
19 there.

20 THE COURT: Tell me what they said.

21 MR. STACKHOUSE: That's what -- basically about this.

22 THE COURT: What did they say different than what
23 we've already told you on Monday?

24 MR. STACKHOUSE: Not, not, not too much.

25 THE COURT: Any -- tell me anything they said

1 different than what you heard me say on Monday.

2 MR. STACKHOUSE: Not too much was definitely said. I
3 just ---

4 THE COURT: Tell me anything. You said not too much.
5 Tell me an iota, the littlest thing they said that was
6 different than I said on Monday.

7 MR. STACKHOUSE: Just that the -- that it was a big
8 trial, a murder case.

9 THE COURT: I'd already told you that.

10 MR. STACKHOUSE: Okay, I, I -- the only anything I
11 really caught was when the guy had done -- what he'd done
12 to the young lady, and that he ---

13 THE COURT: No. We said -- we called the name of the
14 woman.

15 MR. STACKHOUSE: Okay. I was bringing it to your
16 attention that I did hear something about it.

17 THE COURT: But, sir, I've already told you that. You
18 didn't hear anything different than you heard in the
19 courtroom.

20 MR. STACKHOUSE: Pretty much but I, I didn't hear
21 the ---

22 THE COURT: Not pretty much, sir. You cannot tell me
23 one thing that somebody said that I didn't say in the
24 courtroom or one of the lawyers didn't say in the
25 courtroom, can you?

1 MR. STACKHOUSE: Not, not too much that I -- I mean,
2 the only thing I, I caught was when they said ---

3 THE COURT: When you say too much, tell me anything.

4 MR. STACKHOUSE: It's just that it was a big trial.
5 That's all.

6 THE COURT: All right, you knew that anyway, didn't
7 you? Murder always is a big trial, isn't it?

8 MR. STACKHOUSE: Well, I, I, I didn't hear the big
9 trial part. All I knew is, is what they had said happened
10 to the woman.

11 THE COURT: What did they say?

12 MR. STACKHOUSE: The solicitor?

13 THE COURT: No. What did you hear outside the
14 courtroom about what happened to the woman?

15 MR. STACKHOUSE: Just that it's going to be a big
16 trial going on and, and that I, I probably got the trial of
17 that murder case. And I was, like, oh. Really? I can't
18 talk about it.

19 THE COURT: Right.

20 MR. STACKHOUSE: And I know ---

21 THE COURT: So, you'd already heard all that anyway.
22 Give me any little thing, anything that was said to you
23 that you hadn't already heard in the courtroom. You knew
24 it was a big case; it was a murder case. You knew it was
25 about a person charged with murdering a woman. Now, what

1 else did you hear about it other than it was a big case, a
2 murder case about a man charged with murdering a woman?
3 What else did you hear?

4 MR. STACKHOUSE: That's, that's, that's almost what I
5 heard, sir.

6 THE COURT: Almost? Well, what else is there? Is it
7 -- you mean it's not it? There was something else, or is
8 that it?

9 MR. STACKHOUSE: I brought -- I was bringing that to
10 your attention yesterday.

11 THE COURT: But, sir, you said they said something
12 that you hadn't heard that caused you to form an opinion.

13 MR. STACKHOUSE: That, that wasn't Dave. That was Ms.
14 Dolores.

15 THE COURT: Well, we'd better bring Ms. Dolores in.

16 MR. STACKHOUSE: Well, I ---

17 THE COURT: I was about to put Dave in jail.

18 MR. STACKHOUSE: I was calling -- I called her early
19 this morning. I got her early this morning. She's at work
20 and she said that she can't make it, but she did give me
21 her number to give to you so you can get in contact with
22 her.

23 THE COURT: No, sir. I need her here, sir. I'm going
24 to be here. I'm just going to have you come back tomorrow.
25 You may have to be here a few hours tomorrow.

1 But I'm just concerned, sir, that what you're not
2 telling me is the truth and that basically you were just
3 saying things to get off this trial, sir.

4 MR. STACKHOUSE: No, sir. What Dave said is, is true.
5 But what Ms. Dolores said ---

6 THE COURT: But nothing happened, nothing happened at
7 the city ---

8 MR. STACKHOUSE: Right.

9 THE COURT: --- office that told you anything at all
10 about this case that you hadn't already heard.

11 MR. STACKHOUSE: Right. That's not where I heard it.
12 The second part was what I -- I didn't hear from Dave. I
13 mean, David just said this was a big trial. That's when I
14 said I can't talk with you, so I walked away. Ms. Dolores
15 had said ---

16 THE COURT: Okay, sir, wait a minute. Let's get one
17 at the time. So, nothing was said at the city that you
18 hadn't already heard in the courtroom?

19 MR. STACKHOUSE: Yes, sir, and I knew I couldn't talk
20 about it, so I got away from them. That's when I said ---

21 THE COURT: What I'm asking you, sir ---

22 MR. STACKHOUSE: --- I can't talk about it.

23 THE COURT: --- nothing was said at the city that you
24 heard that was different than what we said or in addition
25 to what we said in the courtroom?

1 MR. STACKHOUSE: In the courtroom.

2 THE COURT: So, nothing was said at the city to cause
3 you to form any opinion?

4 MR. STACKHOUSE: Yes, sir. This is correct.

5 THE COURT: Well, then why did you waste this man's
6 time bringing him up here?

7 MR. STACKHOUSE: Because whatever was said, you wanted
8 to have some ---

9 MR. STACKHOUSE: Right, because you said they said
10 something that caused you to form an opinion.

11 MR. STACKHOUSE: Right, right, but it wasn't, it
12 wasn't David. I was trying to convince Dolores up here
13 also so she could tell you ---

14 THE COURT: Ms. Dolores wasn't at the city, was she?

15 MR. STACKHOUSE: No.

16 THE COURT: Oh.

17 MR. STACKHOUSE: Ms. Dolores is at the Food Lion.

18 THE COURT: So, at the city you said things were said
19 that caused you to form an opinion. So, now you're telling
20 me nothing was said at the city that caused you to form an
21 opinion because you had already heard that in the courtroom
22 when we said these are what the allegations are.

23 MR. STACKHOUSE: Right, not at the city. I said
24 people was talking. Dave was, Dave was one of the people
25 at, at the city.

1 THE COURT: But nothing was said there that affected
2 your opinion.

3 MR. STACKHOUSE: Right.

4 THE COURT: Well, then you wasted a man's time.
5 Hope he didn't bring you off of work there, Mr. White.

6 MR. STACKHOUSE: Yes, I did. I apologize.

7 MR. WHITE: I used a vacation day.

8 THE COURT: Well, this man owes you to pay you for
9 your vacation day. He used you for nothing. Anyway, Mr.
10 White, you can go.

11 (MR. WHITE EXITS CHAMBERS.)

12 THE COURT: Tell you what, Mr. Stackhouse. Mr.
13 Stackhouse, let me just tell you something. You and I both
14 know that you're saying anything you can say. You said
15 yesterday anything you can do to get you off of this case.
16 You know that's what you were doing, and you basically got
17 the lawyers in a fix so that they can't have you stay on
18 the case. But you've done -- you get off this case.

19 When is the next court term?

20 CLERK OF COURT: Next week.

21 THE COURT: So, you're to be here Monday for jury duty
22 next week. I'm going to excuse you on this week, the rest
23 of this week. You get no money for the week you've been
24 here. You're getting no money for jury duty this here
25 week. And you're to be here starting Monday for jury duty,

1 and you'll be here next week for jury duty.

2 MR. STACKHOUSE: And if I could, can I apologize to
3 you, sir?

4 THE COURT: You can apologize, sir, but I don't know
5 if I can accept an apology for someone who's -- really,
6 with all of these citizens who are here and openly and
7 honestly answering questions. Sir, I just be honest with
8 you, Mr. Stackhouse. You said the things you said because
9 you determined what could you do to get off this jury
10 trial.

11 I have no problem with you asking me and telling me
12 sir, I want off this jury trial. Please let me off and
13 that type of thing. That's understandable. But when
14 people start doing what they can to make up to get off jury
15 duty, that's not something I can't forgive, but I'm not
16 going to do anything to punish you any further.

17 I don't want you to unfairly treat people like you
18 just unfairly treated your friends to cause him to lose a
19 day's pay for you, which is sad. And I don't want to call
20 this lady, this Ms. Dolores, because I got a feeling she
21 got up here, she probably also stopped once she heard you
22 couldn't talk about it because she didn't, then she'd be
23 violating the law and I got to do something with her. And
24 so instead of that, I'm just going to have you ---

25 What kind of jury duty do you have next week?

1 CLERK OF COURT: General Sessions.

2 THE COURT: You don't have Common Pleas?

3 CLERK OF COURT: No, sir.

4 THE COURT: When's your Common Pleas?

5 CLERK OF COURT: I don't have my calendar with me.

6 It's on the bench. Do you want me to go look?

7 THE COURT: Well, just go out with him. In a minute
8 we'll go out, and I'm going to end this thing. Just bring
9 him back at Common Pleas. I'm concerned about his concern
10 about General Sessions, if he could be fair -- could not be
11 fair to people.

12 No, I tell you what. You go ahead and -- I think
13 that, let Judge John know about this, and I'll talk with
14 him about it and have him here next week.

15 CLERK OF COURT: I'm almost positive it's Judge John
16 next week.

17 THE COURT: All right, good.

18 CLERK OF COURT: Now, he'll be at the jail on Monday.
19 Since you'll be here in this trial, he'll probably be here
20 Monday to qualify the jury, then go to the jail.

21 THE COURT: Mr. Stackhouse, you may leave at this
22 time.

23 MR. STACKHOUSE: Come back Monday?

24 THE COURT: Monday morning. What time?

25 CLERK OF COURT: 10:00.

1 THE COURT: 10:00 Monday morning right here, sir.
2 Yes, sir, out in the jury assembly room downstairs.

3 (END OF IN-CAMERA CONFERENCE.)

4 THE COURT: Take your time. I'll be ready when
5 everybody else is ready. The man made the guy take off a
6 vacation day, Mr. Wilson.

7 MR. WILSON: Sir?

8 THE COURT: He made the guy take off a vacation day to
9 get here to testify for him, and then the guy couldn't say
10 anything other than he just said. You know, oh, you're on
11 that big case or whatever else.

12 MR. HUMPHRIES: So, Judge John is going to qualify
13 him?

14 CLERK OF COURT: No, no. I'm not going to qualify
15 him. You're not, you're not ---

16 MR. HUMPHRIES: We're not going to need them.

17 CLERK OF COURT: We're not going to need them. I'll
18 bring them in. Judge John will send them home.

19 MR. HUMPHRIES: Unless Judge Lockemy wants to strike
20 the case after this one.

21 THE COURT: Okay, if y'all are ready, I'm ready. This
22 number is juror number 234.

23 MR. HUMPHRIES: Yes, sir.

24 THE COURT: David Johnson. I don't see that number
25 anywhere on my list.

1 MR. HUMPHRIES: I didn't have anything, Judge.

2 MR. WILSON: Judge, before we bring him in, solicitor
3 gave me a list of, of, of criminal record and if -- is that
4 him?

5 MR. HUMPHRIES: That's not him.

6 MR. WILSON: That's not him?

7 MR. HUMPHRIES: It's not him.

8 MR. WILSON: Okay.

9 MR. HUMPHRIES: I'm sorry, I should have -- I just
10 asked Greg to ---

11 THE COURT: I'll be glad to ask him, but I know that's
12 a common name.

13 MR. HUMPHRIES: It is, and actually it's a very close
14 birthday and the social is wrong.

15 THE COURT: So, I'm just going to ask him.

16 MR. HUMPHRIES: It's not. It's not.

17 MR. WILSON: That's fine, then.

18 THE COURT: All right, bring him on in. David
19 Johnson. Born in Glenwood, Minnesota, this one is.

20 MR. HUMPHRIES: Yes, and this guy was born in the --
21 the rap sheet was born in North Carolina.

22 (JUROR #234 ENTERS THE COURTROOM.)

23 EXAMINATION BY THE COURT:

24 Q. David Allen Johnson?

25 A. Yes.

1 Q. How are you doing? It's 9:00, 9:00 right now, isn't
2 it?

3 A. Yes, sir.

4 Q. If you would have a seat and relax, we want to just
5 talk and get to know you a little bit and everything, ask a
6 few questions.

7 I see you -- is that Glenwood, Montana or Glenwood,
8 Minnesota where you were born?

9 A. Minnesota.

10 Q. Glenwood, Minnesota. Now, do your, do your best to
11 speak into the microphone there in front of you so everyone
12 can hear you. So, where is Glenwood, Minnesota? Is that
13 close to St. Paul/Minneapolis?

14 A. West central Minnesota. It's about 125 miles west of
15 St. Paul.

16 Q. All right. What brought you down to the Myrtle Beach
17 area?

18 A. My brother-in-law opened a cabinet shop in, in North
19 Carolina in the Shallotte area and worked out there. And
20 he needed the employees, so I came down.

21 Q. Okay.

22 A. I installed cabinets and counter tops for him.

23 Q. As you can imagine, your name is a common name all
24 over America. There's a bunch of David Johnsons.

25 A. Couple.

1 Q. We found some David Johnsons with criminal records,
2 but that's not you, is it?

3 A. No.

4 Q. Good. Okay. Now, do you know any of the lawyers in
5 this case at all, Mr. Johnson? Mr. Hembree and Mr. ---

6 A. Mr. Hembree I've seen.

7 Q. --- Humphries?

8 A. I've seen him. His boy goes to North Strand Community
9 Church to the youth groups on, on Sundays, Sunday evenings.
10 And my two -- my one daughter goes there. So, I, I've seen
11 him but I don't know if we've officially been introduced.

12 Q. All right. What about any of the other attorneys? I
13 noted your wife works at the -- is the assistant clerk at
14 Municipal Court. So, you haven't seen any of them there,
15 the lawyers around?

16 A. No.

17 Q. Now, do you have any special interest, bias, or
18 prejudice in the case, this case?

19 A. No.

20 Q. Have you formed, expressed an opinion about the guilt
21 or the innocence of the defendant in this case?

22 A. No.

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

25 A. No.

1 Q. All right. Now, if you're on this jury, you have to
2 follow the law, be required to follow the law as I instruct
3 you. The jurors would make decisions on the evidence, and
4 they must follow the law as the judge instructs. Would you
5 under your oath follow the law as the judge instructs?

6 A. Yes.

7 Q. Okay. At the trial of the case, I will tell you that
8 the law is that the defendant is presumed innocent. The
9 state has the burden of proving guilt beyond a reasonable
10 doubt. That the defendant is not required to prove himself
11 innocent. The state is required to prove him guilty.
12 Would you follow that principle?

13 A. Yes.

14 Q. All right, and so if you're on the jury in this case,
15 if after the presentation of evidence if the state has not
16 proven him guilty beyond a reasonable doubt, you could find
17 him not guilty. Is that correct?

18 A. Correct.

19 Q. If, on the other hand, the state did prove him guilty
20 beyond a reasonable doubt, you could find him guilty. Is
21 that correct?

22 A. Correct.

23 Q. Have you discussed this case with anyone?

24 A. No.

25 Q. It has got some media attention, and I notice in your

1 form you said you were aware of some of the media coverage
2 of this case.

3 A. Yes. Actually, I live where the -- Mr. Winkler was
4 picked up, I guess, because is, is -- and
5 and then it's and then where I
6 live is where he was apprehended is the way I understood
7 it.

8 Q. Okay. Were you aware at the time of any arrest about
9 this going on?

10 A. Yeah. My wife actually went home the day that he was
11 arrested because she was afraid about her daughter getting
12 off the bus from school.

13 Q. Okay. Other words, you heard not, not necessarily the
14 defendant's case but that somebody was there the police
15 were looking for?

16 A. Right.

17 Q. And because of that, your wife was concerned?

18 A. Correct.

19 Q. And -- but you do accept the principle that as far as
20 Mr. Winkler, you should begin presuming him innocent?

21 A. Right. I, I didn't know it was him.

22 Q. Okay. Now, have you followed closely in the papers
23 this case at all, TV?

24 A. Well, I've just read the papers, yes.

25 Q. And what is it that you understood from the papers the

1 allegations are?

2 A. That the defendant or Mr. Winkler was -- had been in
3 prison for, for rape and actually was, was home and was
4 accused of murdering ---

5 MR. WILSON: Judge, I can't hear him. I'm sorry.

6 Q. Okay, speak a little bit louder for me.

7 A. I understand that Mr. Winkler was home from prison, a
8 prison sentence earlier from rape, and now was being
9 accused of, of murdering the same gal, Grainger, Ms.
10 Grainger.

11 Q. Okay. Now, if you were on the jury of this case,
12 could you put any and all of that aside and make your
13 decision based on the evidence in the case and not
14 considering anything you may have read or heard about this
15 case?

16 A. Yes.

17 Q. Okay. I gave you a list of witnesses. Did you read
18 over those names?

19 A. Yes.

20 Q. Do you know anybody on there?

21 A. No.

22 Q. Okay, can you hand me that? Okay, you keep that
23 there. I've just checked. There's no names circled there.

24 If you were on this case, if the jury were to
25 determine the state had not proven guilt beyond a

1 reasonable doubt, we would end the jury's participation
2 there. If, however, the jury determined that the state had
3 proven the guilt of the defendant of the crime of murder
4 beyond a reasonable doubt, we would go to the next phase.

5 And at the next phase, the jurors would determine or
6 would bring back a verdict of, of -- an appropriate -- that
7 they feel appropriate of the sentence, either life
8 imprisonment or the death penalty. Now, I'm not suggesting
9 we would ever get to that phase, but I needed to discuss it
10 in case we did.

11 And in that phase, there'd be evidence of mitigation
12 and aggravation presented, and at the conclusion of that
13 and the judge's instruction on the law, and the jurors
14 would come back with a verdict of one of those two things,
15 life imprisonment or the death penalty.

16 I gave you a sheet of paper of three types of jurors.
17 Says juror type one is the one that would always return a
18 death penalty verdict because they feel that's the only
19 appropriate verdict when murder has been proven.

20 Juror number two is the juror that would never bring
21 back a death penalty case even though murder had been
22 proven because they felt that life imprisonment would be
23 the only appropriate verdict.

24 Juror number three is the juror that would have an
25 open mind and would wait and want to hear the evidence in

1 aggravation and mitigation before that juror decides what
2 the appropriate verdict and punishment would be. And they
3 would also want to hear the charge of the judge on the law.
4 And then after hearing the evidence in aggravation and
5 mitigation, that juror could, if they felt it so warranted
6 it after the considering that evidence, that juror direct a
7 verdict of life imprisonment. Or after hearing the
8 evidence they felt it so warranted it, that juror could
9 bring back a verdict of murder.

10 Which those three types of jurors are you, sir?

11 A. Three.

12 Q. So, you have an open mind about it, sir?

13 A. Yes, sir.

14 Q. And even though the defendant was convicted of murder,
15 you would have an open mind about the sentence there? You
16 would listen to evidence of aggravation, mitigation before
17 you would decide to bring back a verdict of life
18 imprisonment or a verdict for the death penalty?

19 A. Yes.

20 Q. And if it were a verdict for the death penalty, sir,
21 you would have to sign the verdict form. You understand
22 that, sir?

23 A. First time I heard that, but yes.

24 Q. Okay, everybody on the jury would have to sign the
25 verdict because it would have to be unanimous. So, you

1 would be willing to sign it?

2 A. Yes. I would sign it.

3 Q. In addition, sir, this jury would be sequestered for a
4 week or so. I know it would be an inconvenience because
5 you would be away the job with that type thing, but could
6 you make arrangements in that regard if we need you to do
7 so?

8 A. Yes.

9 THE COURT: All right, let me let the lawyers if they
10 have any questions to ask a few.

11 MR. HUMPHRIES: Don't have any questions for Mr.
12 Johnson.

13 THE COURT: Mr. Wilson?

14 MR. WILSON: Thank you, Your Honor.

15 EXAMINATION BY MR. WILSON:

16 Q. Let me ask you, sir. As I understand it, you describe
17 yourself now as type three juror. Is that correct?

18 A. Yes.

19 Q. And, and tell us what your understanding of a type
20 three juror is.

21 A. It's, it's -- I hadn't given it a whole lot of
22 thought, but I was -- when I was sitting in the room, I
23 was, I thought it would be kind of based on if the murder
24 was premeditated or if it was accidental or could be like a
25 car accident. Maybe it was accidental or if it was, or

1 actually was suicidal type of thing. I would go with a
2 harsher penalty according to their ---

3 Q. So, if it was an accident or suicidal or something,
4 you would go with a lesser, a less harsh penalty? Is that
5 what you're saying?

6 A. Accidental would be less. If it was premeditated, it
7 would be harsher penalty.

8 Q. Well, let me, let me see if I can help you. Do you
9 understand that in this process that the defendant is
10 presumed to be innocent even as we speak and even as we
11 talk and even as we go through this process?

12 A. Correct.

13 Q. And if His Honor instructs you that the law is that he
14 is innocent, that he is presumed innocent until and unless
15 the state can prove him guilty beyond a reasonable doubt,
16 that he is -- remains innocent?

17 A. Right.

18 Q. And if they fail to prove him guilty beyond a
19 reasonable doubt, could you find him not guilty?

20 A. Yes.

21 Q. You could do that?

22 A. Yes.

23 Q. And if the state prove to your satisfaction beyond a
24 reasonable doubt that, in fact, he was guilty, then you
25 could find him guilty?

1 A. Correct.

2 Q. You understand that it would be only if the state
3 satisfied you and the other members of your panel beyond a
4 reasonable doubt that, in fact, he was guilty of this crime
5 that we could even go to the second phase of this trial?

6 A. Right.

7 Q. That if he's found either not guilty or guilty of a
8 lesser crime, then that would end the trial. That would
9 end the process?

10 A. Right.

11 Q. Having said that, do you understand then that the only
12 way we're going to go to the second phase is if you have
13 already found him guilty of murder beyond a reasonable
14 doubt? That would mean that you found him guilty of the
15 crime of murder for which he had no defense?

16 A. Right.

17 Q. And having then found him guilty of murder for which
18 he has no defense, are you saying then that you would not
19 be able to consider anything beyond that because you've now
20 found him guilty of murder with no defense?

21 A. Well, if we found him guilty, then don't -- is in the
22 next level then we determine his sentencing?

23 Q. Yes, and, and so you're saying that even if you find
24 him guilty in the first phase of murder beyond a reasonable
25 doubt, which means that there was no defense to the crime

1 because if you find him guilty -- the only way you can find
2 him guilty of murder is if there's no defense. You found
3 he had no defense to the crime.

4 A. Right.

5 Q. Go ahead.

6 A. You finish.

7 Q. All right.

8 A. I'm sorry.

9 Q. All right, and having said that, what I'm simply
10 asking you is even after you have made that determination,
11 you and the other members of your panel, collectively the
12 twelve of you have found him guilty of murder beyond a
13 reasonable doubt for which he had no defense, you're still
14 going to be able and willing to listen to any aggravating
15 circumstances that the state might offer, correct?

16 A. Correct.

17 Q. And, those aggravating factors would be things that
18 might make the crime worse or seem worse.

19 A. Right.

20 Q. Any mitigating factors that might be offered by the
21 defense, things which might lessen the moral culpability of
22 the crime or the defendant.

23 A. Right.

24 Q. And you're willing to do both those things?

25 A. Yes.

1 Q. And you would do both those things and listen to His
2 Honor's instructions as to what the law is before you made
3 up your mind?

4 A. I hope so, yes.

5 Q. All right. Well, you said hoped. I mean, will you
6 or, or ---

7 A. Yes, yes.

8 Q. You're one hundred percent certain that you can do
9 that?

10 A. Yes.

11 Q. I noticed some hesitation in your mannerism, and I'm
12 just trying to see if that's really a hesitation or if it's
13 just my imagination.

14 A. Till actually being in that situation, I, you know, I,
15 I would, I would like to do the moral thing to be the -- to
16 the best of my ability keep an open mind the best I can.

17 Q. Okay.

18 A. Yes.

19 Q. But what we're asking you, we're asking you to say if
20 you can that absolutely I'm committed. I will do that. I
21 will keep an open mind.

22 A. Yeah.

23 Q. I will be open minded. I will not ---

24 A. Waver.

25 Q. Right. That I will be open throughout the entire

1 process.

2 A. Yes. Yes.

3 Q. And you're saying to us that, in fact, you can do that
4 and you will do that?

5 A. Yes.

6 Q. All right. Now, do you understand, too, that in this
7 process even if you find him guilty of murder beyond a
8 reasonable doubt and we go to the second phase of this
9 trial, and even if the state offers multiple aggravating
10 factors or circumstances and the defense offers no
11 mitigating factors, even if that happens, that you could
12 still find life and vote for life? Do you understand that
13 you still have that right?

14 A. Yes.

15 Q. As a juror?

16 A. Yes.

17 MR. WILSON: Thank you, sir.

18 THE COURT: If you would, please step out behind that
19 door if you would, please.

20 (THE JUROR EXITS THE COURTROOM.)

21 THE COURT: State?

22 MR. HUMPHRIES: Your Honor, he's qualified. The -- he
23 may have had some misunderstanding initially, but with --
24 Mr. Wilson was kind enough to explain the process of what
25 we required, he said without exception that he could

1 consider both life or death and impose either one depending
2 on the facts and circumstances.

3 MR. WILSON: Judge, I honestly don't think this
4 juror's qualified, and I'll tell you why. My concern is
5 this. Is that in his, in his presentation, what he's
6 saying, and this is what I get from it, is that what he
7 says is that if it's premeditated, which is what murder is
8 because once the jury finds him guilty of murder and that's
9 the whole, that's the definition. It means that there is
10 no defense to it. In that, in that the crime of murder --
11 my concern is that once he finds him guilty of the crime of
12 murder, then, you know, he's going to give him the death
13 penalty because that's kind of what he's saying.

14 THE COURT: Let me ask you something. He mentioned
15 that he understood the defendant had a prior conviction of
16 CSC. Is that factual?

17 MR. WILSON: No.

18 MR. HUMPHRIES: He's talk -- he's talking ---

19 THE COURT: My concern, he says he thinks he had a
20 prior conviction.

21 MR. HUMPHRIES: He doesn't have a prior conviction,
22 and what he's talking about is in the news accounts and
23 there were, there was an incident prior to the murder where
24 the defendant is alleged to have kidnapped and raped his
25 ex-wife, and I'm sure that's what he's confusing. But

1 there is no conviction, nor will the state offer any
2 evidence of a prior conviction of rape should the defendant
3 take the stand, so.

4 THE COURT: Do y'all object if -- I'm still
5 considering qualification, but do y'all object if I tell
6 him, if I let him know that there had been no prior
7 conviction of that? I, I'm just concerned that if, if he
8 were to be qualified and get on this jury, that'd be his
9 thoughts that he had been convicted.

10 MR. HUMPHRIES: I don't, I don't know is the short
11 answer. I don't -- it's -- I don't object to your saying
12 that. Your Honor, I think if you'd asked him initially --
13 you have asked him you heard these things. Can you set
14 them aside. He said yes, he could, but I don't have any
15 objection to you saying that the state will not -- well, I
16 have no problem with you saying that the defendant has not
17 been convicted of rape.

18 MR. WILSON: Judge, obviously ---

19 THE COURT: That's -- oh, I'm sorry.

20 MR. WILSON: Well ---

21 THE COURT: No, I'm sorry, we're going ask ---

22 MR. WILSON: Yes. Obviously I, obviously it's to my
23 benefit, so I don't have any objection to the court
24 instructing the juror that, that the defendant has not, not
25 being convicted of the crime. So, I'm not complaining

1 about that.

2 My concern, though, is, is that he honestly obviously
3 believes that. It's in his, it's in his sheet that he gave
4 to us in his questionnaire, which is one of the concerns I
5 have. Again, and I don't know that, that any of us at this
6 point have actually addressed that with him, whether he can
7 set that aside. And I think that might be a more
8 appropriate question to ask him, and even though he
9 believes it and even though he's wrong, can he now discard
10 that and ---

11 THE COURT: Well, I'm going to ask him can he set it
12 aside.

13 MR. HUMPHRIES: Yes, sir.

14 THE COURT: But, see, my concern is that that's
15 incorrect knowledge detrimental to the defendant, and I'm
16 just -- anyway, go ahead and finish, Mr. Wilson.

17 MR. WILSON: But, but back to my bottom line is I
18 would not think he's qualified. I, I think that he -- this
19 is a type one juror, and I think that once the crime of
20 murder is proven, that this juror is going to -- because, I
21 mean, in his definition when he, when he defined to me what
22 his idea of when the death penalty is applicable is that
23 once you're found guilty of murder where really where
24 there's no defense to it and when it's premeditated in his
25 mind, then that's enough. And that that's when you get the

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STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM HORRY COUNTY

James E. Lockemy, Circuit Court Judge

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RESPONDENT,

V.

LOUIS MICHAEL WINKLER, JR.,

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1 death penalty. And that's -- even though -- I mean, I just
2 don't, I, I cannot fathom that when he -- if he was a part
3 of the jury that finds the defendant guilty of the crime of
4 murder that he's not going to vote for death.

5 THE COURT: I may ask him about it, especially when
6 you say -- see, the problem is we're getting these jurors
7 here who've never done this before. And sometimes I think
8 we almost required them to have knowledge of a criminal
9 procedure, court procedure, more than anyone actually does
10 that hasn't been doing this for a while. But I'm going to
11 comment to him a couple more things, and I'll let you know
12 what I'm going to decide.

13 MR. WILSON: All right.

14 THE COURT: Bring him back out.

15 (THE JUROR ENTERS THE COURTROOM.)

16 FURTHER EXAMINATION BY THE COURT:

17 Q. Mr. Johnson, would you come around here one more time
18 for me, please? One thing, Mr. Johnson.

19 I notice in your questionnaire, as well as in your
20 comments to me, you had some thought that, that the
21 defendant in this case has been previously convicted of the
22 crime of rape. I want to let you know that's not so. Now,
23 there could be allegations here and there about various
24 things. I'm not commenting about that as far as any
25 previous legal convictions in a court of law, that, that

1 has not occurred. So, any concern you have about that, I
2 just want to make sure.

3 I asked you could you put it aside and you said you
4 could. But I just wanted to make sure that if you thought
5 that was a fact, I mean, that's not correct as far as any
6 previous courtroom convictions of the crime of rape.

7 Now, the next thing -- but once again, that doesn't
8 mean anything other than -- I mean, as far as allegations
9 and all that, they'll all come out in the courtroom. But I
10 just want to make sure you would decide this case based on
11 the evidence you heard in the courtroom and the law as I
12 instruct it to you and not about any newspaper accounts or
13 anything else someone told you or you talked with about.
14 That you could put all that aside and make your decision
15 based on the evidence presented in this, in this case.
16 Could you do that, sir?

17 A. Yes.

18 Q. Now, the next thing is the issue of if you got to the
19 penalty phase. Remember you only get to the penalty phase
20 if the, if the defendant is found guilty of the murder.
21 Now, accidental killing is not murder, so self-defense
22 killing is not murder.

23 So, you get into the penalty phase if you found the
24 defendant guilty of murder. And the jurors could
25 conceivably determine that that murder was, was a very

1 deliberate, horrible thing. I'm not saying you would or
2 would not. But one of the definitions of murder is it is
3 the intentional killing of another with malice
4 aforethought, and I will explain those terms to you. But I
5 just want to make sure if you got to the point in the
6 sentencing phase, if you got to the sentencing phase and
7 that you all have already determined that the defendant is
8 guilty of the murder, and if for some reason you determine
9 in your mind that was the same as premeditated murder, if
10 you determine that he was guilty of that crime, could you
11 then in the sentencing phase have an open mind regarding
12 sentence? And even if you in your mind had determined he
13 was guilty of premeditated murder, if -- would you have an
14 open mind and listen to the evidence in aggravation and
15 mitigation? And could you return, depending on your
16 consideration of the evidence, a verdict for life
17 imprisonment? Or, depending on your consideration, could
18 you return a verdict for the death penalty?

19 A. Yes.

20 Q. So, even if you in your mind determine that it's
21 premeditated murder, you still could return a sentence of
22 life imprisonment?

23 A. Yes.

24 Q. All right, there's no doubt in your mind about that?
25 You would first want to listen to the evidence in

1 aggravation, mitigation? Is that right, sir?

2 A. Correct.

3 THE COURT: All right. Thank you, sir. You can step
4 back over there to the door for a minute.

5 (THE JUROR EXITS THE COURTROOM.)

6 THE COURT: Okay, any further comments from either
7 side?

8 MR. HUMPHRIES: Under *State vs. Thompson*, *State vs.*
9 *Franklin*, *State vs. Butler*, and *State vs. Gilbert and*
10 *Gleaton*, if that's -- and those are worst-case scenarios
11 then this gentleman's case. He is a qualified juror.

12 THE COURT: Mr. Wilson?

13 MR. WILSON: Your Honor, I still think that he's not
14 qualified, and I still ask the court to -- based on same
15 grounds that we stated earlier, I just don't think that
16 he's qualified. I think that he's a type one juror based
17 on his answers to questions.

18 Now, I did understand obviously the court brought him
19 back in. I think that he tried to clear up some of the
20 things. I still think he's a type one and ask the court
21 not to qualify him.

22 THE COURT: All right. For the record, I want the
23 record to reflect that I have observed this gentleman both
24 times he was up here, and each time this gentleman seemed
25 to be very sincere and no way was trying to give answers he

1 thought people wanted. In fact, he asked questions of the
2 questioners about this to make sure he understood the
3 questions, and I think he's sincere, and that he is stating
4 thoughts as openly and as sincerely as he can. And I find
5 that he is one who will be open-minded if they got to be
6 sentencing phase and who would make a decision after
7 considering, full consideration to the evidence in
8 aggravation and mitigation.

9 I also find that he would put aside any other matters
10 he had in the case regarding the decision of guilt or
11 innocence. He'd make his decision based on the evidence
12 presented and the law as I instruct it to him. So, I find
13 this juror to be qualified, a qualified juror.

14 Bring him in, please.

15 (THE JUROR ENTERS THE COURTROOM.)

16 THE COURT: Mr. Johnson, I find you to be a qualified
17 juror on this case. That doesn't mean you're going to be
18 on the trial itself. That means, sir, that you'll be in
19 the pool from which the jury is drawn.

20 I need you to come back tomorrow at 11:30. Now, if
21 you are on this jury, you would be sequestered at a hotel
22 starting tomorrow. So, go ahead and get your bags packed
23 just in case. And then tomorrow if you are selected, I'll
24 let you go home and get your bags and come back. You may
25 want to have someone, though, maybe to drive you back so

1 that you won't have to leave your vehicle here at the
2 courthouse a week or so, okay?

3 Now, do not discuss this case of anyone in your
4 family. Do not read any newspapers and do not look get any
5 local newscasts. All right, sir?

6 JUROR: Okay.

7 THE COURT: All right, sir, we'll see then at 11:30
8 a.m. tomorrow morning. Go out this door here. Thank you,
9 sir.

10 There's one more. Has she looked at the sheet yet?

11 MR. HUMPHRIES: This is a he.

12 THE COURT: Kristian is a he?

13 MR. HUMPHRIES: Yes, sir.

14 BAILIFF: Yes, sir, and he's ready to go.

15 THE COURT: He's ready to go? Well, bring him on out.

16 (JUROR #170 ENTERS THE COURTROOM.)

17 EXAMINATION BY THE COURT:

18 Q. Hello, Mr. Gilliland.

19 A. Yes. Yes, sir.

20 Q. Is that right, Gilliland?

21 A. Gilliland. That's right, sir.

22 Q. Did you get a chance to eat any pizza at all yet?

23 A. I had eaten nothing but a peanut bar early this
24 morning.

25 Q. Okay. Did you want -- now, this would take about ten

1 to fifteen minutes. I'd like to go through it, if we
2 could, and then you can have some lunch, or you can go
3 ahead and get lunch now. I'd like to get this done first?

4 A. Sure. If I'm, I'm able to eat afterwards.

5 Q. Okay. Just have a seat then. We'll do this.

6 I've looked through your packet there, and I see like
7 many, you were a liberal arts major in college. I did
8 history and I did English also. Also I see that you're
9 originally from, from Charlotte, Mecklenburg County?

10 A. Right.

11 Q. You had mentioned to me about a job problem we talked
12 on Monday. What was that again?

13 A. Oh, the, the company I work for is a small
14 construction company.

15 Q. Try to speak into that mic for me.

16 A. The company I work for is a small construction
17 company, and it's obviously been rough over the past couple
18 of months. I talked to my boss. You know, I don't know
19 how much time the trial would take, and I asked him -- and
20 I'm actually a senior person in the company, but I said,
21 you know, if this should take whatever time, weeks, am I
22 getting paid for this or am I just out of luck. And his
23 response was I'm not legally obligated to pay you. I
24 didn't take that as a good sign. I've been out of work a
25 little bit over the holidays, which didn't help out anyway.

1 But I -- at the same time even with my home situation,
2 I've got a eight month old. My wife works here in town at
3 First Citizens. I get up in the morning. I'm the one who
4 cleans him and, you know, feeds him before I take him to
5 day care and I pick him up in the afternoon. So, I know it
6 will cause a lot of hardship for her and the family to
7 watch him as well.

8 Q. Okay. Now, let you know that if you were selected on
9 the jury in this case, this case is about a week, maybe a
10 little less, maybe a little more, but that's the time frame
11 were talking about. And included in that would also be
12 this coming weekend. So, it's, it's anticipated being in
13 your hands some time next week. Wednesday, Thursday, maybe
14 Friday or something. So, but we're not talking about to
15 and three and four weeks on that. So, let me just ask you
16 a few questions and we'll, we'll go through this process.

17 Are -- do you know, related by blood or marriage to
18 any of the lawyers in this case?

19 A. No.

20 Q. All right. Do you have any special interest bias, or
21 prejudice in this particular case?

22 A. I, I don't really know much about it. Mainly anything
23 I had seen prior to was about what the solicitor read off
24 when we were first here Monday.

25 Q. All right. So, have you formed or expressed an

1 opinion about the guilt or innocence of the defendant?

2 A. I don't really know much about anybody to, to say that
3 I could truthfully ---

4 Q. So, you have not formed an opinion?

5 A. Not a complete opinion. If I could complete -- and
6 clearly be honest, I can't say I have a complete opinion
7 yet, no.

8 Q. Well, for you ---

9 A. I mean, I could have my own little possible problems
10 in my head, but I don't know enough to sit here and tell
11 you yes, I'd definitely have a problem or an opinion either
12 way.

13 Q. All right. Well, do you know of any reason why you
14 couldn't give a fair trial both to the state and to the
15 defense?

16 A. No. No.

17 Q. Okay. If you were on the jury, I will tell you that
18 you have to follow the law as I instruct it. The jurors
19 will decide the facts that arise from the evidence
20 presented, but they would follow the law as the judge
21 instructs it. And would you follow the law as the judge
22 instructs you?

23 A. Sure.

24 Q. One of the things I would instruct you is that the
25 defendant is presumed innocent. The burden is upon the

1 state to prove guilt beyond a reasonable doubt. The
2 defendant is not required to prove himself innocent. The
3 state is required to prove him guilty. And if the state
4 did not prove him guilty beyond a reasonable doubt, the
5 jury is to find him not guilty. Could you follow that
6 principle of law?

7 A. Yes, sir.

8 Q. Okay. So, therefore, as you're sitting on that jury
9 and if the state does not prove guilt beyond a reasonable
10 doubt, you could return a verdict of not guilty?

11 A. I guess I'm obligated to. Far as I know if they
12 didn't, that's the way I'd have to go.

13 Q. Okay, and if the state did prove beyond a reasonable
14 doubt, you could return a verdict of guilty?

15 A. Yes.

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

17 A. No.

18 Q. Okay. As far as media coverage, could you tell me --
19 well, you've already told me that what you feel you've seen
20 or read would be pretty much what you heard on Monday?

21 A. Yeah. I mean, actually -- there was one little aspect
22 that he read that I didn't even know about myself. I mean,
23 I knew just a general idea, and I think he mentioned
24 something about the fourteen year-old and I didn't even
25 know that, that particular detail.

1 Q. Talking about the allegations of the charge of assault
2 and battery ---

3 A. Right.

4 Q. --- of a high and aggravated nature, but as far as
5 you read, you can't remember that specific anything you've
6 read or heard about it other than what you heard Monday?

7 A. When I first got the questionnaire, I did look on the
8 Internet just to see what might be a, you know what might
9 be on there. And it was just a basic general thing of what
10 he read. So, I didn't really get anything beyond the same
11 thing he gave us Monday.

12 Q. Okay. Well, if you're on that jury, though, would you
13 make your, make your decision on this case based on the
14 evidence presented in the courtroom and the law as I
15 instruct it to you, putting aside anything you may have
16 read or seen outside the courtroom?

17 A. As best as humanly possible, yes.

18 Q. Okay. Well, I mean, can you say that you would put
19 aside what you may have seen on the Internet or whatever
20 else?

21 A. Yes. Well, it wasn't much, so it wouldn't be hard to
22 put too much to the side.

23 Q. All right. I gave you a list of names. You got that
24 list with you? Did you see anybody on that list that you
25 knew?

1 A. There's only one person.

2 Q. Okay. I see that was number 22 -- number 52, Jeff
3 Cauble?

4 A. He is the, he's the husband of a lady who works with
5 my wife.

6 Q. Okay. So ---

7 A. I have met him once.

8 Q. --- your wife works at First Citizens?

9 A. Right.

10 Q. And have you formed any close relationship with him?
11 Do you just know him through your wife's friend?

12 A. I just met him at a Christmas party, the last
13 Christmas party they had. I talked to him that night, but
14 I think that's about the only time I actually met him.

15 Q. Okay. Would that cause you to look upon him any
16 differently than you would look upon any other witness in
17 the case?

18 A. No, no.

19 Q. All right. Now, Mr. Gilliland, if you were on this
20 jury, if the jury determined the state had not proven guilt
21 beyond a reasonable doubt and found the defendant not
22 guilty, well that would end the jurors' participation at
23 that time.

24 If, however, the jury determined that the state had
25 proven guilt beyond a reasonable doubt of the crime of

1 murder, then we would go to another phase, the phase of the
2 punishment phase where the jurors would listen to evidence
3 in aggravation, mitigation presented. And in that
4 punishment phase, the jury would then determine whether or
5 not they would bring back a verdict of life imprisonment or
6 a verdict of the death penalty.

7 Now, I gave you a sheet of paper with three types of
8 jurors.

9 A. Right.

10 Q. Now, if you would gather that in front of you there,
11 if you can. Now, looking at that, sir, you see that juror
12 type one is that juror that if they got to that, that
13 penalty phase and determined that the state had proven the
14 guilt of the murder beyond a reasonable doubt, that juror
15 would say in all cases they would come back with the death
16 penalty. They just feel that's the most appropriate
17 punishment if murder has been proven.

18 Juror type two is the juror that if murder is proven
19 beyond a reasonable doubt, that juror, though, feels they
20 could never return, bring back a verdict of the death
21 penalty no matter what the facts and circumstances in
22 aggravation or mitigation are presented. They would always
23 bring back a verdict of life imprisonment.

24 And the third juror is the juror that would not have
25 made his mind up in advance concerning punishment. That

1 juror after the defendant had been found guilty of murder,
2 that juror still will have an open mind regarding the
3 appropriate punishment. And that juror would want to hear
4 the facts and circumstances in aggravation and mitigation
5 before that juror decided which punishment to bring the
6 verdict in for. And if the facts and circumstances in
7 aggravation, mitigation so warranted it, that juror could
8 come back with a verdict of life imprisonment. Or if the
9 evidence so warranted it, that juror could come back with a
10 verdict of the death penalty.

11 Which of those three jurors are you, sir, best
12 describes you?

13 A. I can't say that either one completely pinpoint who I
14 am. I do believe in the death penalty depending on
15 severity of, of the crime, especially with murder. I don't
16 really understand why anybody would want life in prison and
17 beyond the death penalty. I don't -- accepting an life
18 inside prison bars kind of seems to me is like you are
19 accepting not being a part of regular human society. So, I
20 don't know why you want to live to begin with.

21 But, I mean, I would definitely give the death
22 penalty, but even in the sense of giving life in prison,
23 and I, I think is just a waste. I guess I could, which I
24 would think it was useless. I would think the person would
25 have to feel useless that would want to be in that, that

1 state of life for the rest of their life.

2 Q. But you do realize that in that phase, you would have
3 basically two sides competing: one pursuing aggravation,
4 could try to persuade you to death penalty; and one
5 pursuing a mitigation, trying to persuade you to a life
6 sentence if you got to that phase. Once again, I'm not
7 suggesting we're ever going to get to that phase.

8 But if we got to that phase, though, could you in
9 looking at this listen to the evidence in aggravation and
10 the evidence in mitigation? Could you bring in if, if the
11 evidence so warranted it a life imprisonment sentence if
12 you felt the evidence so warranted it?

13 A. I can tell you if it's, if it's found guilty with
14 murder with even the possibility of, of the life sentence,
15 I, me, I don't have a use for you to begin with if you're,
16 if you're guilty of murdering someone. It would take -- I
17 mean, it would take quite an argument to make me think to,
18 to give life sentence, you know.

19 Q. Are you saying ---

20 A. I don't, I just don't know the purpose of it. I mean,
21 I would rather you just go ahead and, and be taken off the
22 earth and let's move on with life. I -- you really have to
23 argue well for me to think sure, go live in a prison cell
24 and let me help pay for the taxes for you and this, that,
25 you are breathing the air as my child when -- well, would

1 probably just as good to get rid of you.

2 Q. So, you're saying you would start out in favor of the
3 death penalty, and they'd really have to convince you a lot
4 before you come the other way?

5 A. Right.

6 THE COURT: Okay. Any questions from the state?

7 MR. HUMPHRIES: No, sir.

8 THE COURT: Any from the defense?

9 MR. WILSON: No questions.

10 THE COURT: All right. Well, Mr. Gilliland,
11 Gilliland, I -- Gilliland?

12 JUROR: Gilliland.

13 THE COURT: I'm going to find Mr. Gilliland -- and
14 once again, all of us understand how you feel. So, no
15 problem with that. I'm going to go ahead and release you
16 from this jury and, and we'll let you go home now. And you
17 don't need to come back. So, I want to thank you very much
18 for being here.

19 Now, if you want to get a piece of pizza before you
20 leave, you're welcome to get a piece of pizza, all right?

21 JUROR: I think I will eat at home. My wife will be
22 glad to see me.

23 THE COURT: All right, can I shake your hand?

24 JUROR: Yes, sir.

25 THE COURT: Once again, thank you.

1 JUROR: Right, right. If you, if you brought it up, I
2 would have told you Socrates was my favorite for that
3 reason.

4 THE COURT: Even when he decided that he could escape,
5 decided no, I'm going to stay here and be executed because
6 I violated the law. I could have not violate the law. I'm
7 going to choose to stay.

8 JUROR: Well, even in a sense he said -- of course
9 this is through Plato -- but he'd say if I did that, it
10 would look as if I didn't believe in what I've told you.
11 I'm not going to turn against what I believe is the truth.
12 So.

13 THE COURT: There you go.

14 JUROR: That's hard to find these days.

15 THE COURT: Yes, I know. I would love to find a
16 society that could be run by philosopher kings as Plato
17 envisioned, but I'm sure not sure we can do that.

18 JUROR: What do I need to do? Just...

19 THE COURT: You can go out the door over there. Just
20 leave your button with him, and we'll see you later.

21 (QUESTIONNAIRE OF JUROR #170-GILLILAND MARKED INTO
22 EVIDENCE AS COURT'S EXHIBIT NUMBER 9-J.)

23 THE COURT: Any objection of disqualification of this
24 juror?

25 MR. HUMPHRIES: No, Your Honor.

1 MR. WILSON: None from the defense.

2 THE COURT: None from the state or the defense.

3 All right, now y'all want to take a break and have a
4 quick sandwich here and a bite to eat. The jurors are
5 eating pizzas right now anyway. Why don't we take about
6 twenty minutes, and we'll come back at, say, 2:00, come
7 back and start again. We got thirty qualified. So, I'll
8 see y'all.

9 (OFF THE RECORD.)

10 THE COURT: I need someone -- if y'all are ready to go
11 with the next juror, that's juror number 20.

12 MR. HEMBREE: No sir. I mean, we didn't have anything
13 on him.

14 THE COURT: Go ahead, if you would, and bring him
15 around juror number 20, Randy Bell.

16 Now remember, Mr. Wilson or Mr. Humphries, don't
17 introduce anybody to the jurors. Just talk to the jurors.

18 MR. WILSON: Yes, Your Honor.

19 (JUROR #20 ENTERS THE COURTROOM.)

20 EXAMINATION BY THE COURT:

21 Q. Mr. Bell, how you doing? Just come around right over
22 here if you would. Now, Mr. Bell, I see you are -- does
23 that say a grain technician?

24 A. Well, I run the grain tanks.

25 Q. All right, and try to speak in that microphone there.

1 I know I'm the one that's speaking to you.

2 A. Right.

3 Q. But what is, what are the grain tanks? What are, what
4 are they?

5 A. Things you store grain in.

6 Q. Okay, and how -- what is your job running them? What
7 does that mean?

8 A. Transfer grain into the feed mill.

9 Q. Okay.

10 A. Trucks and stuff like that.

11 Q. Oh, I notice you said that you don't read very well,
12 but you read some, do you not, sir?

13 A. Yes, sir.

14 Q. So, you have a twelfth grade certificate. That means
15 an attendance certificate?

16 A. Yes.

17 Q. All right. Sir?

18 A. I got all the -- I missed that test, one part of it.

19 Q. Okay. You have to pass that, that exam or something?

20 A. Yeah. That state exam.

21 Q. And that's the one you couldn't pass all that?

22 A. Yeah. I missed by ten points.

23 Q. Okay. Well, you did pretty well, then.

24 Mr. Bell, do you know any of the lawyers involved in
25 this case?

1 A. No, sir.

2 Q. You do not?

3 A. I do not.

4 Q. Okay. Do you have any special interest or bias or
5 prejudice in this case at all?

6 A. No, sir.

7 Q. Have you formed or expressed an opinion as to the
8 guilt or the innocence of the defendant?

9 A. No, sir.

10 Q. Do you know any reason whatsoever why you couldn't
11 give both the state and the defendant a fair and impartial
12 trial in the this case?

13 A. No. I don't have any reason why I shouldn't.

14 Q. All right, and if you were on that jury, the jurors
15 would be told you must follow the law as the judge
16 instructs them. That's me.

17 A. Yes, sir.

18 Q. Would you follow law as I give it to you?

19 A. Yes, sir.

20 Q. And I would also tell the jury that the burden is on
21 the state to prove the defendant guilty. The defendant is
22 presumed innocent.

23 A. Yes, sir.

24 Q. And the state has the burden of proving guilt beyond a
25 reasonable doubt. The defendant does not have to prove

1 himself innocent. Would you accept that rule of law?

2 A. Yes, sir.

3 Q. Then, therefore, if, if you were in the trial and if
4 the state did not prove guilt beyond a reasonable doubt,
5 would you have any problem with a not guilty verdict if
6 they could not prove it beyond a reasonable doubt?

7 A. No.

8 Q. Excuse me, and also if the state did prove guilt
9 beyond a reasonable doubt, would you have any problem with
10 a guilty verdict?

11 A. No.

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

13 A. No, sir.

14 Q. Do you know anything about it? Have you read anything
15 in the newspaper, seen anything on TV about it?

16 A. No, sir.

17 Q. Okay. So, until you got here on Monday, you knew
18 nothing about this case at all?

19 A. That's all. That's it. I hadn't heard nothing about
20 it or seen nothing about it.

21 Q. All right. I gave you the sheet of paper with names
22 on it. Did you -- were you able to read those names on
23 that sheet of paper?

24 A. Yes, sir.

25 Q. Did you know anybody on that sheet of paper?

1 A. I didn't see nobody's name on there that I knowed.

2 Q. Okay, could I have that back, please, sir? Just those
3 names. Okay, and so no one on there you know.

4 Okay, would you be willing on this trial, if you're on
5 this trial, to make your decision based on the evidence
6 presented in the courtroom and the law as I instruct it to
7 you? Would you be willing to do that?

8 A. Yes, sir.

9 Q. Now, Mr. Bell, in a trial of this nature, what first
10 occurs is a jury must decide whether the state has proven
11 the defendant guilty of murder beyond a reasonable doubt.
12 That's the first thing we do. If the jury determines the
13 state has not proven the defendant guilty of murder beyond
14 a reasonable doubt, then the jury would find him not
15 guilty, and that would end the jury participation.

16 A. Yes, sir.

17 Q. If, however, the jury determines that the state has
18 proven the defendant guilty of murder beyond a reasonable
19 doubt, then we would then go to another phase, another part
20 where the jury then would hear evidence of aggravation and
21 evidence of mitigation.

22 And then in that part, the jury would determine
23 whether the verdict should be life imprisonment or the
24 death penalty. Other words, if the jury has already
25 determined that the defendant is guilty of murder -- and

1 I'm not suggesting that's what the juror would do. Just in
2 case they did. If they determined he was guilty of murder,
3 then the next thing the jury will do would be to determine
4 whether the verdict would be life imprisonment or the death
5 penalty. And, and you would hear evidence in aggravation
6 and mitigation, evidence about the circumstances.

7 A. Yeah.

8 Q. Now, I gave you a sheet of paper that has three types
9 of jurors on it.

10 A. Yeah.

11 Q. Were you able to read that sheet of paper ---

12 A. Yes, sir.

13 Q. --- and understand what those three are?

14 A. Yeah.

15 Q. Well, the first type that you see is that juror that
16 if, if you got to that part of the trial, that juror would,
17 if the defendant is found guilty of murder, that juror
18 would always feel that the death penalty is the most
19 appropriate punishment.

20 The next juror or the juror type two ---

21 A. Yeah.

22 Q. --- is the juror that although the defendant had been
23 proven to be guilty of murder, that juror would say I can't
24 give the death penalty to anybody. I would always give
25 life imprisonment.

1 Now, juror number three is a juror who, once they
2 determine the guilt of the defendant of murder, would then
3 say well, I'm going to listen to all the evidence in
4 aggravation and mitigation before I decide whether my
5 verdict should be life imprisonment or the death penalty.
6 So, that juror would want to first hear that evidence in
7 aggravation and in mitigation before they decide on
8 punishment. And, and then after hearing the evidence, that
9 juror could in some circumstances come back with a verdict
10 of life imprisonment.

11 A. Yeah.

12 Q. Or that juror could, in some circumstances, come back
13 with a verdict of the death penalty. You understand the
14 three types of jurors?

15 A. Yes, sir.

16 Q. Which of those three best describes you?

17 A. First one.

18 Q. The first one?

19 A. Yeah.

20 Q. So, you would always come back with a death penalty?

21 A. On certain cases I would.

22 Q. Well, that's what I mean, though.

23 A. Yeah.

24 Q. What I'm saying is, though, is would you be -- if you
25 found the defendant guilty of murder, though, would you be

1 willing to listen to the evidence in aggravation ---

2 A. Yeah.

3 Q. --- and mitigation and could you sometimes come back
4 with life imprisonment or sometimes come back with the
5 death penalty?

6 A. Both.

7 Q. All right. So, are you saying, though, that you would
8 be open minded and you could come back with either one
9 depending on how you saw it?

10 A. Yes, sir.

11 Q. So, you could come back with the death penalty? Or,
12 if you felt appropriate, you could come back with life
13 imprisonment, right?

14 A. Yes, sir.

15 Q. So, which type of juror do you say you are?

16 A. I could pick both. It -- I could bring either one.

17 Q. Okay. So, which juror number is that on that sheet?

18 A. It'd be three wouldn't it?

19 Q. Okay. Now, if the jurors decided that the death
20 penalty was appropriate, they have to sign the verdict
21 form. Could you sign the verdict form?

22 A. Yes, sir.

23 Q. Okay. Could you be sequestered for a week or so in a
24 hotel away from your family, away from your job for a
25 little over a week? Could you do that?

1 A. Yes, sir.

2 Q. Okay, I'm going to let the attorneys ask you some
3 questions.

4 MR. HEMBREE: Thank you, Judge Lockemy.

5 EXAMINATION BY MR. HEMBREE:

6 Q. Good afternoon, Mr. Bell.

7 A. Good afternoon.

8 Q. Thanks for your patience with us. I want to kind of
9 zero in on one thing. We don't want to try to change your
10 mind about anything. We just want to kind of find out
11 where you are ---

12 A. Yeah.

13 Q. --- on the death penalty, and as Judge Lockemy has
14 explained, we use that sheet of paper to try to lay out
15 three different types of jurors that a -- that most folks
16 fall into one of those categories. That first category
17 being the type of juror that says you know what? If it's a
18 murder, I don't care what the facts and circumstances are.
19 I'm always going to give death. That's kind of the eye for
20 an eye type of person. It doesn't matter.

21 A. Yeah.

22 Q. You know, they don't care about the rest of the
23 circumstances.

24 The second kind of juror is the kind of juror that
25 says, you know, I, I don't -- I'm not in favor of the death

1 penalty. I couldn't impose the death penalty. I know
2 there's been a murder. I found him guilty of murder, but I
3 can't impose it under any circumstances.

4 A. Yes, sir.

5 Q. And so some people are on one extreme. Some people
6 are on the other extreme. We're looking for jurors that
7 are in the middle of that group, jurors that are able to,
8 to keep an open mind but listen to all the facts and
9 circumstances, all the evidence for the defendant, all the
10 evidence against the defendant. And then and only then
11 make a decision about what penalty is appropriate.

12 A. Yeah.

13 Q. You, I think you said and you're, you're that kind of
14 juror. That you could, you would impose the death penalty
15 in some cases.

16 A. Yes, sir.

17 Q. You, you -- is it fair to say that you would impose a
18 life imprisonment in some cases?

19 A. In some cases I would.

20 Q. Okay, and I don't want to know what kind of cases
21 those are. That's not the important question. The
22 question is you could consider and impose those sentences
23 depending on the facts and circumstances?

24 A. Yes, sir.

25 Q. Now, let me make one point of clarification, and I may

1 just be repeating Judge Lockemy, and I'm sorry if I'm -- I
2 don't mean to be. But the way this thing works, the way
3 this, a death penalty trial works is the first part of the
4 trial is about the guilt of the defendant. That's all it's
5 about. It's, it's a very -- it's just one question for the
6 jury: did the defendant commit the murder or not.

7 A. Yes.

8 Q. And to reach the second part, the penalty, what's
9 called the penalty phase, in that first phase the jury has
10 to decide he's guilty because if they decide he's not
11 guilty, then everybody goes home. But they -- the jury
12 would have decided at the end of that first phase this
13 defendant is guilty of murder. Does that make sense? Is
14 that what you ---

15 A. Yes, sir.

16 Q. That was your understanding from Judge Lockemy?

17 A. Yes, sir.

18 Q. Okay. Once that jury has decided that, then you move
19 into the penalty phase. Two kinds of evidence in the
20 penalty phase. There's evidence of what we call evidence
21 of aggravation. In other words, evidence that makes the
22 defendant -- make the crime of the defendant worse.

23 A. Yeah.

24 Q. Then there's evidence of mitigation. That's evidence
25 that makes the defendant, makes the crime maybe not so bad

1 and minimizes how bad it is. It takes away from the bad.

2 A. Yes, sir.

3 Q. So, you got sort of both sides putting that up. Kind
4 of about the defendant and the crime itself. You already
5 know he's committed the crime at this point. You're just
6 deciding what to do with him.

7 A. Yes, sir.

8 Q. Would you be able to listen to all of that evidence
9 before you made up your mind about penalty?

10 A. Yes, sir.

11 Q. You're sure about that?

12 A. Yes, sir.

13 Q. Fair enough. You'd be fair to the State of South
14 Carolina?

15 A. Yes, sir.

16 Q. Fair to the defendant in this case?

17 A. Yes, sir.

18 Q. Give him a fair trial?

19 A. Yeah.

20 Q. Keep an open mind through the whole thing?

21 A. Yes, sir.

22 MR. HEMBREE: That's all we can ask of you, Mr. Bell.
23 Thank you again for your time. Please answer any questions
24 defense counsel has for you.

25 THE COURT: Mr. Wilson?

1 MR. WILSON: Thank you, Your Honor.

2 EXAMINATION BY MR. WILSON:

3 Q. Mr. Bell, you had indicated earlier when you spoke to
4 the judge that you initially said you were a type one
5 juror. Is it that right?

6 A. Yes, sir.

7 Q. And what's your understanding of a type one juror?

8 A. I just, you know, what I read in the paper.

9 Q. I'm sorry. I didn't understand you.

10 A. I'm just going by what I read in the paper.

11 Q. You're just going by what you read on the paper?

12 A. Yes, sir.

13 Q. All right, and what you read on the paper, that's --
14 you said that, you told the judge before he said anything
15 else to you that you believe that you were type one based
16 on what you read on the paper?

17 A. Yes, sir.

18 Q. Is that right?

19 A. Yes, sir.

20 Q. All right, and when you walked into this courtroom,
21 you believed that you were a type one juror. Is that
22 right?

23 A. Well, kind of. I've never been on a case like this
24 before.

25 Q. Right, you never been on a case like this before?

1 A. No, sir.

2 Q. And, and that's my question. You had that form in
3 the back room with you, did you not, before you came out
4 here ---

5 A. Yes, sir.

6 Q. --- with three different types of jurors?

7 A. Yeah.

8 Q. And you read that form, did you not?

9 A. Yes, part of it.

10 Q. All right, you read part of it?

11 A. Yeah.

12 Q. Didn't read all of it?

13 A. But, I read most of it.

14 Q. I'm sorry?

15 A. Yeah, I finished reading it before I came in here.

16 Q. Okay. So, you read the whole thing, and you'd made up
17 your mind that you would be type one juror when you came in
18 here?

19 A. I was thinking that when I was came in here.

20 Q. All right, you were thinking that ---

21 A. Yeah.

22 Q. --- when you came in here. And now prior to coming in
23 here, had you ever thought about the death penalty before,
24 before today?

25 A. I've heard about stuff like that.

1 Q. I'm sorry?

2 A. I heard about it.

3 Q. You heard about it?

4 A. Yeah.

5 Q. All right, and what, what I'm asking you is have you
6 ever personally thought about how you felt about it?

7 A. Yeah.

8 Q. Well, tell me how it is that you feel about the death
9 penalty.

10 A. I believe in it.

11 Q. Huh?

12 A. I believe they done a crime, they should get what they
13 deserve.

14 Q. I'm sorry, I can't -- if, if -- you believe that they
15 do what now?

16 A. They do a crime, they should get what they deserve.

17 Q. If they do a bad crime, they should get what they
18 deserve?

19 A. Yes, sir.

20 Q. Well, what if they're convicted of murder? What if
21 you're on the jury and you convict somebody of murder,
22 which means that the person intentionally killed somebody,
23 what would that be in your view on the death penalty?

24 A. I'd have to think about that.

25 Q. I'm sorry?

1 A. They, they should take somebody's life for killing
2 somebody.

3 Q. All right. So, in, in your view if they kill somebody
4 and take somebody's life, then, then you're going to impose
5 the death penalty. Is that what you're saying?

6 A. Yes, sir.

7 THE COURT: One second, Mr. Wilson. Have a seat.

8 Sir, if you would, step outside the door for a minute.
9 If you would, step outside with that officer. Hand me that
10 sheet, too, if you would. Mr. Bell?

11 JUROR: Yes, sir.

12 THE COURT: Hand me that sheet if you would, please,
13 sir. Thank you, Mr. Bell. Thank you, sir. Just step
14 outside, if you would.

15 (THE JUROR EXITS THE COURTROOM.)

16 THE COURT: I'll be glad to hear from either side.
17 This is a fine gentleman, but I'm concerned this gentleman
18 is not capable of independent consideration and decisions.
19 So, I think he is seeking in his answers to answer
20 questions that he feels your questions, sort of wants him
21 to answer. I think he wants to answer the way he feels
22 that the questioner desires.

23 And with all due respect to the gentleman, I think
24 he's trying. But I'm just not sure whether at this phase
25 of the penalty -- I'm not really sure he could follow a

1 trial of this nature. I'm concerned about his independent
2 character, and he says he has trouble reading. He doesn't
3 read, and to be honest with you, I'm just concerned about
4 whether he could be fair to both sides in this case.

5 I'll be glad to hear from you, Mr. Hembree, if you
6 want to say something at this time.

7 MR. HEMBREE: Nothing in addition, Your Honor. I
8 agree with the court's concerns, and we'd ask you
9 disqualify him.

10 THE COURT: Okay. Mr. Wilson?

11 MR. WILSON: Your Honor, I, I would join the solicitor
12 in that. I agree.

13 THE COURT: All right, bring in the gentleman back in
14 for me, please.

15 (THE JUROR ENTERS THE COURTROOM.)

16 THE COURT: Mr. Bell.

17 JUROR: Yes, sir.

18 THE COURT: I want to thank you very much for being
19 here today.

20 JUROR: Yes, sir.

21 THE COURT: But I'm going to excuse you on this
22 particular case. Thank you very much, Mr. Bell, and you
23 may leave at this time. Thank you now. You may leave out
24 the door over here.

25 Next one, please, juror 470. Y'all remember anything

1 on 470? I don't recognize the name. I don't -- I see he
2 was one time convicted of gambling.

3 MR. HUMPHRIES: Right.

4 THE COURT: Oh, I remember that now.

5 (JUROR #470 ENTERS THE COURTROOM.)

6 EXAMINATION BY THE COURT:

7 Q. Is it Jeron or Jeron?

8 A. Jeron.

9 Q. Jeron, Jeron Wallingford?

10 A. Yes.

11 Q. How you doing, Mr. Wallingford? Have a seat. Relax
12 there for a minute. Remember yesterday we went over a
13 little bit that little problem you had one time, gambling
14 or whatever.

15 A. Yes.

16 Q. That didn't disqualify you, but I want to talk to you
17 a little bit about you as a potential juror in this case.

18 Now, I see that you're originally from here in Conway?

19 A. Yes.

20 Q. Did you -- you realize you're still under oath. You
21 understand that?

22 A. Right. Yes.

23 Q. Okay. Now, do you know any of the lawyers and
24 involved in this case? Mr. Hembree, Mr. Humphries, Mr.
25 Wilson, Mr. Rathbun?

1 A. Well, I know of them. I don't know them personally.

2 Q. Okay, just know of them?

3 A. Yes.

4 Q. Would that in any way cause you to have any bias or
5 prejudice is all in this case?

6 A. No.

7 Q. So, you do not have any bias or prejudice or special
8 interest in the case at all?

9 A. No.

10 Q. Okay. Have you formed or expressed any opinion
11 regarding the guilt or the innocence of the defendant in
12 this case?

13 A. No.

14 Q. Have you formed an opinion or expressed one?

15 A. No.

16 Q. And try to speak into that microphone for me. I
17 forgot. The court reporter's looking at me.

18 A. All right.

19 Q. You want to bring, bring it down just a little bit.
20 There you, there you go.

21 Now, do you know of any reason whatsoever why you
22 cannot give both the state and the defendant a fair and
23 impartial trial in this case?

24 A. Not at this time, no.

25 Q. All right. If you were on this jury, I would as a

1 judge instruct you on the law, and you would be required
2 under your oath to follow the law as I instruct it to you.
3 Would you do that?

4 A. Yes.

5 Q. Okay. One of those principles of law that I will tell
6 you is that the defendant is presumed innocent, and that
7 the burden is upon the state to prove guilt beyond a
8 reasonable doubt. The defendant is not required to prove
9 himself innocent. The state is required to prove him
10 guilty beyond a reasonable doubt. If they can't do it,
11 then he should be found not guilty. Would you follow that
12 principle of law?

13 A. Yes.

14 Q. All right. So, therefore, you're sitting on the jury
15 and if, if the state does not prove guilt beyond a
16 reasonable doubt, you would have no problem finding the
17 defendant not guilty?

18 A. Not, not, not have a problem.

19 Q. And if they did prove him guilty beyond a reasonable
20 doubt, you'd have no problem finding him guilty?

21 A. Right, yeah.

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

23 A. No.

24 Q. Have you seen anything about it in the newspaper,
25 heard anything on the radio, seen anything on TV?

1 A. No, huh-uh.

2 Q. So, until you got here on Monday, you knew nothing
3 about this case?

4 A. Well, before I got here?

5 Q. Yeah.

6 A. I did, yes.

7 Q. All right. So, before you got here you, what, read
8 something in the paper or what?

9 A. I've just seen shootings of on it on TV before.

10 Q. And you remember exactly what it was you may have seen
11 on TV?

12 A. Not really because I, I really, I glanced up, but I
13 don't really get into it.

14 Q. So, on TV, whatever it was you saw, could you put that
15 aside and make your decision based on the evidence
16 presented here in the courtroom and the law as I instruct
17 it to you?

18 A. Yes.

19 Q. Okay. I gave you a sheet of paper. There were a
20 bunch of names on it. Were you able to look at those
21 names?

22 A. This? Yes, sir.

23 Q. Did you know anybody on that sheet?

24 A. This one guy ---

25 Q. Hold on. If you did, so let me see. Did you circle

1 it?

2 A. Yes.

3 Q. That's the only person you know?

4 A. Yes, that's the only.

5 Q. A Mr. Bellamy?

6 A. Yes.

7 Q. Now, how do you know this is -- how you know number,
8 which is 47, Mr. Bellamy? How do know him?

9 A. Oh, like I say, I knowing people talking about him.
10 knowing people -- him personally, I don't know him.

11 Q. Okay. Do people talk about him good or bad or
12 something else or what?

13 A. No, not nothing of that nature. Hear people call his
14 name.

15 Q. Well, if he were to be a witness in this case, the
16 fact people have talked to you about him, would that cause
17 you to look at him differently than you would some other
18 witness in the case?

19 A. No.

20 Q. Okay. You would still be fair and impartial both to
21 the state and to the defense?

22 A. Yes, I would.

23 Q. Okay. I want to explain about a trial of this nature.
24 I told you that if you're on the jury you'd follow law as
25 the judge instructs you. And that if you found that the

1 defendant was not proven guilty beyond a reasonable doubt,
2 then the jurors would find him not guilty, and that would
3 end your participation at that time.

4 But if the jury determines that the state had proven
5 the defendant guilty of the murder beyond a reasonable
6 doubt, well then we go to another phase where the jury
7 would then render a verdict regarding punishment. And in
8 that phase, you be presented evidence in aggravation and
9 mitigation about this situation, and then they would be
10 asked to come back with a verdict of life imprisonment or
11 the death penalty.

12 Now, I gave you there a sheet talking about three
13 types of jurors, and did you have a chance to go over that?

14 A. Yes, I did.

15 Q. Did you understand those three types?

16 A. Yes.

17 Q. And you see that type one is the one that no matter
18 what was presented, that once the defendant was found
19 guilty of murder, that juror would think the death penalty
20 is always the appropriate sentence and wouldn't need to
21 hear anything about the circumstances. They would always
22 vote for the death penalty.

23 A. Right.

24 Q. The second person, that's the one who would never vote
25 for the death penalty no matter what the facts and

1 circumstances or aggravation in a case are. They would
2 never vote for the death penalty.

3 And the third one, though, is the one who would have
4 an open mind and would be willing to listen to the evidence
5 in aggravation and mitigation before they decided. And
6 they would listen to the charge from the, from the judge on
7 the law. And that person, after listening to the evidence
8 in aggravation and mitigation, that person could come back
9 with a verdict of life imprisonment. Or that person, if
10 they felt it appropriate, would come back with a verdict of
11 the death penalty.

12 Now, of those three jurors, which one are you?

13 A. I, I, I picked the third.

14 Q. Okay. So, you could come back with life imprisonment
15 if you felt the verdict was appropriate, or you could also
16 come back with the death penalty if you felt it was
17 appropriate?

18 A. Yes.

19 Q. All right. Now, if the jury decided the death penalty
20 was appropriate, each juror would have to sign that verdict
21 form. Do you feel you could sign the verdict form if you
22 felt the death penalty was the appropriate punishment?

23 A. Yes.

24 Q. All right. If you're on this jury, you would be
25 sequestered, meaning that we would have you in a hotel room

1 for about a week or so. And I know you would have to be
2 away from your job and away from your family and so,
3 therefore, it's a situation of a little inconvenience. But
4 could you handle that inconvenience?

5 A. Yes.

6 THE COURT: Okay. I'm going to let the lawyers ask
7 you a few questions, and then I may have some more for you.

8 JUROR: Okay.

9 THE COURT: State?

10 MR. HEMBREE: Thank you, Your Honor.

11 Hey, Mr. Wallingford. How are you this afternoon?

12 JUROR: Pretty good.

13 MR. HEMBREE: Judge Lockemy has covered all the
14 questions I might have for you. Thank you for your
15 patience with us. Please answer any questions the defense
16 counsel might have for you.

17 JUROR: Oh, okay.

18 THE COURT: Questions, Mr. Wilson, Mr. Rathbun?

19 EXAMINATION BY MR. RATHBUN:

20 Q. Good afternoon, Mr. Wallingford.

21 A. Good afternoon.

22 Q. My name is Paul Rathbun and, and Ralph Wilson and I
23 represent Mr. Winkler in this matter.

24 A. Yes.

25 Q. Appreciate the answers you gave the court, and

1 basically you're doing what we need to do to, find out
2 where you sit. What I want to know is if you sit on the
3 jury and you and the other eleven jurors determine a guilty
4 verdict is warranted and you vote for guilty verdict, then
5 we go to the next phase. And that's where the state would
6 put up matters of aggravation which would make the homicide
7 perhaps worse than a normal homicide, if there is such a
8 thing. And defense would put up matters of mitigation
9 which would lessen the moral culpability on Mr. Winkler's
10 part. Do you understand all that?

11 A. Not really. If you can ---

12 Q. Okay.

13 A. --- break it down a little bit?

14 Q. You've already hypothetically found him guilty at
15 trial, and you, you found that he committed the murder,
16 intended to commit the murder, that he did commit the
17 murder. There's no defenses to that murder. The state
18 will put up matters of aggravation that would make things
19 look worse on, on Mr. Winkler's part on that particular
20 murder. Defense would put up matters of mitigation which
21 would -- we would try to lessen Mr. Winkler's moral
22 culpability, make it softer. You understand that?

23 A. Mm.

24 Q. Now, you understand also that the state and the judge
25 are satisfied with a life penalty, just as they would be

1 satisfied with the death penalty. And would you be able to
2 make up your own mind about which of these penalties the
3 defendant deserves?

4 A. Yes.

5 Q. And would you respect the other jurors and their
6 decision or what they decide, just like you'd have them
7 respect your decision?

8 A. Yes.

9 Q. And you could be fair to the state, and you could be
10 fair to Mr. Winkler in that decision process?

11 A. Yes.

12 MR. RATHBUN: Thank you.

13 FURTHER EXAMINATION BY THE COURT:

14 Q. One thing, though, I want to make sure, Mr.
15 Wallingford. You understand, as the judge, though, I'm not
16 on either one of the sides. I'm, I'm not involved with the
17 state or the defense.

18 A. Okay.

19 Q. I want to make sure you understand that.

20 THE COURT: I wonder if you could, if you would step
21 on, step outside that door, and I'll bring you back in a
22 minute, okay?

23 JUROR: Okay.

24 THE COURT: Can you give me that sheet of paper?

25 (THE JUROR EXITS THE COURTROOM.)

1 THE COURT: Position of the state?

2 MR. HEMBREE: Juror's qualified, Your Honor.

3 THE COURT: Defense?

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

5 THE COURT: I find him qualified. Bring Mr.
6 Wallingford in.

7 (THE JUROR ENTERS THE COURTROOM.)

8 THE COURT: All right, Mr. Wallingford, then I find
9 you qualified in this case. I'll need you back tomorrow at
10 11:30. Have your shirttail in when you come back tomorrow
11 now, sir, okay?

12 And if you would, you may or may not be in on this
13 jury panel. You'll be in a group from which they select
14 the jury, but you may get on the jury panel, so you might
15 better go ahead and pack some goods, some clothing and all
16 because if you are on the jury, you know, we'll, we'll get
17 you in a hotel tomorrow. You won't be going back home.

18 JUROR: All right.

19 THE COURT: So, to be safe, you might want to go on
20 and get some things packed. And also make arrangements
21 that if you are on the jury, someone can get your car so
22 that you won't have to leave it here at the courthouse all
23 week, okay, sir?

24 JUROR: Okay.

25 THE COURT: And do not discuss this case with anyone.

1 Don't look get any news shows. Don't read any newspapers,
2 and we'll see you tomorrow at 11:30. You can leave out
3 that door over there.

4 JUROR: Okay. Thank you.

5 (QUESTIONNAIRE OF JUROR #470 WALLINGFORD MARKED INTO
6 EVIDENCE AS COURT'S EXHIBIT 10-J.)

7 THE COURT: I going to bring back in for final
8 decision someone we talked here beforehand, Ms. Bosley.
9 She was in panel E. She said she had been convicted of
10 cocaine possession in the state of Maryland in 1994.

11 MR. HEMBREE: Your Honor, it's 1989.

12 THE COURT: 1989.

13 MR. HEMBREE: Yes, sir. She had had other arrests for
14 that in '94 or earlier, cocaine possession as a result of
15 drug court. But the '89 conviction was the one that she
16 testified was a conviction and, and that there was an
17 outright conviction and not related to drug court.

18 MR. HUMPHRIES: And, Your Honor, I have -- I showed
19 this to defense counsel. This is a record from the
20 District Court of Maryland showing the actual conviction
21 and the statute number. It says CDS, which is CDS,
22 unlawful possession not marijuana, and we've inquired with
23 both the district court and the prosecutors there. They
24 tell us that that code section is for cocaine, and it
25 carried zero to four years at the time of conviction. And

1 on its ---

2 THE COURT: All right, I'll be glad to hear from you,
3 Mr. Wilson.

4 You can go ahead and mark that as a court's exhibit.

5 (CRIMINAL RECORD OF JUROR #33-BOSLEY MARKED INTO
6 EVIDENCE AS COURT'S EXHIBIT NUMBER 11-J.)

7 MR. WILSON: Judge, I, I've seen the document from the
8 court. I accept it, so I have no objections beyond that.

9 Now, I know that we put some information on the
10 record. I put my position on the record. I guess it was
11 yesterday or day before yesterday when we initially
12 addressed this matter. You know, I, I still stand by all
13 my arguments from that point.

14 I understand now that there is information from this
15 state that would suggest that she was, in fact, convicted
16 of a crime for which the penalty would have been more than
17 a year. If that is correct, then she would not be
18 qualified.

19 THE COURT: Okay. Well, I -- although this is not
20 evidence, like I said, I did contact a colleague, circuit
21 court in Maryland. He used the same terminology, CDS, and
22 he said what the term meant, but I have forgotten.
23 Criminal use something substance.

24 MR. HEMBREE: Dangerous.

25 THE COURT: Criminally dangerous substance, and said

1 it carried up to four years.

2 MR. WILSON: Yes, sir.

3 THE COURT: I would find her disqualified, so bring
4 her. Where is she now?

5 CLERK OF COURT: She is in the room.

6 THE COURT: Tell you what. You can just go let her
7 know. Thank her very much for her service, but she is
8 disqualified, okay?

9 All right, bring in juror 294. Let's see what I've
10 got on 294.

11 MR. HUMPHRIES: We have nothing from the state, Your
12 Honor.

13 MR. WILSON: We have nothing.

14 (JUROR #294 ENTERS THE COURTROOM.)

15 EXAMINATION BY THE COURT:

16 Q. Good afternoon, Ms. Martin. How are you?

17 A. I'm fantastic. Hope you are.

18 Q. I'm fine, and I see you work at Belk.

19 A. I do.

20 Q. Well, I'm sure I saw you during Christmas.

21 A. You probably did.

22 Q. I was there a lot.

23 A. Did we make you happy?

24 Q. Now, I got more presents wrapped there than probably
25 any other place.

1 A. Good.

2 Q. I go other places, but I was there ---

3 A. I want to have a happy judge.

4 Q. And what I want you to do is just relax, and you don't
5 seem like you're a very nervous person anyway, but I'm
6 going to ask you a few questions, talk with you a little
7 bit, and try your best to speak towards that microphone
8 there and adjust it any way you wish. What is that on your
9 shoulder there?

10 A. Oh, he's my pet tiger.

11 Q. Your pet tiger there? Very good. Is that real gold?

12 A. No. I work for Belk.

13 Q. Oh, you work for Belk.

14 What I first want to ask you is you do realize that
15 Monday I'd put everybody under oath, and you're still under
16 oath?

17 A. Yes, sir.

18 Q. You understand, okay. The lawyers themselves, Mr.
19 Hembree, Mr. Humphries, Mr. Wilson, and Mr. Humphries, Mr.
20 Wilson and Mr. Rathbun, are you related to any of them or
21 know any of them at all?

22 A. Not that I know of.

23 Q. Okay. I see you're originally from Horry County,
24 Myrtle Beach area?

25 A. I've lived here for the past twenty-five years. I'm

1 from up next to Greenville.

2 Q. Oh, okay. I should have -- oh, it says birthplace in
3 Greenwood.

4 A. Yeah. I was born in Greenwood, South Carolina.

5 Q. Okay, and so I know where Greenwood is. How long did
6 you live in Greenwood?

7 A. Probably about three months. It's just where I was
8 born at. I was raised in Clinton, South Carolina.

9 Q. Not Clennon but Clinton?

10 A. Clinton, Presbyterian College.

11 Q. Laurens County?

12 A. Laurens County.

13 Q. The Blue Hose?

14 A. They are.

15 Q. And then you came here about twenty years ago?

16 A. Yes, sir.

17 Q. Twenty something?

18 A. About twenty something years ago, yes, sir.

19 Q. Okay. Now, if you have any special interest, bias, or
20 prejudice in this case at all?

21 A. No, sir.

22 Q. Have you formed or expressed an opinion as to the
23 guilt or the innocence of the defendant in this case?

24 A. No, sir.

25 Q. Do you know the defendant?

1 A. Not at all.

2 Q. Okay. Do you know any reason whatsoever why you could
3 not be fair and impartial to both sides of this case?

4 A. No, sir.

5 Q. Okay. Now, if you were selected as a juror on this
6 case, you'd be direct -- you would have to follow the law
7 as the judge, me, as I instruct you. That you could deal
8 with the evidence and make a decision on the facts and the
9 evidence as a jury, but the jury must follow the law as a
10 judge instructs them. Would you follow the law as I
11 instruct it?

12 A. Absolutely.

13 Q. Part of -- one of those principles of law I will tell
14 you, that the defendant is presumed innocent. That the
15 burden is upon the state to prove guilt beyond a reasonable
16 doubt, and the defendant does not have an obligation to
17 prove himself innocent. But the state is required to prove
18 guilt beyond a reasonable doubt. Would you follow that
19 principle?

20 A. Yes, sir.

21 Q. All right. Therefore, if you're on the jury and if
22 the state does not prove guilt beyond a reasonable doubt,
23 you'd have no problem entering a not guilty verdict?

24 A. Correct.

25 Q. And if the state did prove guilt beyond a reasonable

1 doubt, you'd have no problem entering a guilty verdict?

2 A. Correct.

3 Q. Have you discussed this case with anyone?

4 A. No.

5 Q. It has received some publicity. Do you remember, know
6 of anything you may have seen on TV, read in the papers or
7 read anything?

8 A. The only time that I remember seeing anything was
9 months ago, and it was briefly because I don't have time
10 for television, and I don't read newspapers.

11 Q. All right. Well, do you know, mind summarizing
12 anything, or do you ---

13 A. It was just a brief statement about a murder in Myrtle
14 Beach or Horry County, and that's all I remember about it.

15 Q. So, no more than what we said on Monday when we told
16 you about the allegations?

17 A. No more than that, right.

18 Q. And did that cause you to form any opinion?

19 A. No.

20 Q. And can you put that aside and make your decision
21 based on the evidence presented in this case in the
22 courtroom and the law as I instruct it to you?

23 A. Absolutely.

24 Q. All right. I gave you a list there with a bunch of
25 names on it. Do you know any of those people?

1 A. It was like I told the ladies in the room. I'm, I'm
2 better with faces than I am names, but I don't recognize
3 any of these names on either three, any three sheets.

4 Q. Hand me the sheet back if you would, ma'am. If during
5 the course of the trial if -- and what I'm seeking -- even
6 if you did know them, if your knowledge of them or
7 relationship or whatever, if it would cause you to look
8 upon them differently than you would any other witness,
9 then I'd want to know. But if not, even if you knew
10 somebody, it would make no difference as long as it
11 wouldn't affect your decision in the case, the fact that
12 that's a certain person you have a relationship with.

13 If during the course of the trial, though, you see a
14 face and that connects something to you, just let me know
15 if you would. Then I would ask you if, if, in fact, that
16 would affect your ability to be fair and impartial. But
17 let me go if you see someone you know, okay?

18 A. All right, sir.

19 Q. Now, also I gave you a sheet there with three types of
20 jurors on it. And did you understand the differences in
21 those three types?

22 A. Yes, sir.

23 Q. Okay.

24 A. I kind of feel like I would fall into juror type
25 three.

1 Q. All right. So, let me just go over the three types to
2 make sure you and I are on the same page as to what they
3 are.

4 A. Okay.

5 Q. Juror number one is that, that juror -- I'd better
6 explain something first to you.

7 In a trial of this case, could very well be two parts
8 to the trial. The first part is the jurors' decision of
9 whether or not the state's proven guilt beyond a reasonable
10 doubt. If the jurors determine the state has not proven
11 guilt of murder beyond a reasonable doubt, well that would
12 end the jurors' participation at that time right then.

13 If, however, that jury determined the state had proven
14 guilt of murder beyond a reasonable doubt, we would then go
15 to a next phase where the jurors would consider punishment.
16 Now, the fact I discuss that in no way suggests anything
17 about what your decision would do or should be. It's just
18 I got to discuss that just in case we get to that phase.

19 Now, so if the jurors determine that guilt of murder
20 was proven beyond a reasonable doubt and found the
21 defendant guilty of murder, we go to the next phase where
22 they then would consider sentencing. At that phase, the
23 jurors then would be given evidence and information in
24 aggravation and in mitigation and then after that phase was
25 completed, both sides an opportunity to give evidence

1 there. Then the jurors would be asked to go back and
2 deliberate and come back with a verdict on sentencing.
3 That verdict could be life imprisonment, or that verdict
4 could be the death penalty.

5 Now, on these jurors, it lists three types. Type one
6 juror is that juror that no matter what they heard in
7 aggravation, mitigation, no matter what the circumstances,
8 that juror would always deem that death penalty is the
9 appropriate punishment. They would not need to hear any
10 evidence. They would say no matter what, I'm voting for
11 the death penalty.

12 The next juror, juror type two, is the juror that says
13 no matter what I hear in aggravation and mitigation, I'm
14 always going to vote for life imprisonment. I could not
15 ever impose the death penalty. Those are those two jurors.

16 Then the juror number three is the one who would have
17 an open mind and would want to listen to the evidence in
18 aggravation and mitigation before they could make up their
19 mind and would listen to the instructions from the judge.
20 And after they've heard the evidence in aggravation and
21 mitigation and the instruction from the judge, then that
22 juror if, after consideration of all the evidence, if that
23 juror felt that life imprisonment was the appropriate
24 punishment, that juror would say my verdict is life
25 imprisonment. Or if that juror felt the death penalty was

1 appropriate, that juror could say my verdict is for the
2 death penalty.

3 Now, is that pretty much what you understand?

4 A. Yes, sir.

5 Q. And -- but you didn't know the framework I told you
6 about how this case ---

7 A. Didn't know what the framework was but ---

8 Q. But now that you know, you still then think you're a,
9 think you're a juror type three?

10 A. Oh, absolutely.

11 Q. All right. So, you would keep an open mind and you
12 could bring back a verdict for life imprisonment or the
13 death penalty depending on the aggravation?

14 A. Yes.

15 Q. Knowing that -- aggravation, mitigation -- knowing
16 that at the time you're considering it, you'd already
17 decided as you got to that that the defendant was guilty of
18 murder, you still could in some cases bring back life
19 imprisonment or you could bring back death penalty?

20 A. Yes.

21 Q. Okay. If the juror -- jury were to decide the
22 appropriate sentence, verdict would be the death penalty,
23 the law requires that the jurors sign the verdict form.
24 So, you'd have to sign your name to the verdict form.
25 Could you do that?

1 A. Yes.

2 Q. Okay, and further, this trial will last somewhere in
3 the neighborhood of a week. Could be a little less, a
4 little more. And you would have to be sequestered in a
5 hotel, and we'd get you back and forth. Food and all that
6 would be provided. If that occurred, would that cause such
7 an undue hardship you couldn't do that, ma'am?

8 A. No, sir.

9 Q. All right.

10 THE COURT: All right, I'm going to let the lawyers
11 ask any questions that they have. Please answer their
12 questions.

13 JUROR: All right.

14 THE COURT: Mr. Hembree?

15 MR. HEMBREE: Thank you, Judge Lockemy.

16 Hi, Ms. Martin.

17 JUROR: Hi. How are you?

18 MR. HEMBREE: I'm good. How are you this afternoon?

19 JUROR: Fantastic.

20 MR. HEMBREE: Good. Judge Lockemy has asked all the
21 questions that I would have asked you. I appreciate your
22 time and patience with us. If you will, answer any
23 questions defense counsel might have.

24 JUROR: Thank you.

25 THE COURT: Mr. Rathbun?

1 EXAMINATION BY MR. RATHBUN:

2 Q. Good afternoon, Ms. Martin. I'm Paul Rathbun. Along
3 with Ralph Wilson, we represent Mr. Winkler in this case.
4 I noticed on your questionnaire that you had some question
5 regarding the police officers. You put down: They do a
6 great job with resources they have.

7 A. Yes, sir.

8 Q. Now, out of necessity there's going to be police
9 officers testifying in this case. And do you feel that you
10 would be able to be fair to the defendant and, and, fair to
11 the state and not to give police officers' testimony any
12 more weight than you would any other witness?

13 A. I would certainly think so, yes.

14 Q. And that's all we ask for.

15 A. Yes.

16 Q. And you believe that you can be fair to Mr. Winkler
17 and fair to the State of South Carolina?

18 A. Absolutely.

19 MR. RATHBUN: Thank you, ma'am.

20 THE COURT: Anything from the state or from the
21 defendant?

22 MR. HEMBREE: Juror's qualified.

23 MR. RATHBUN: Juror's qualified.

24 THE COURT: All right. Now, Ms. Martin, what I'm
25 going to do is I'm going to ask you to come back tomorrow

1 at 11:30. And at that time, you'll be in a pool from which
2 the jury is selected.

3 You may be on the jury or you may not. But just in
4 case you are on the jury, go ahead and get some things
5 packed for about a week, okay? And, and if you are
6 selected, you might want to have somebody ready to take
7 control of your car because you won't want to leave it at
8 the courthouse all week, and it will not be permitted at
9 the hotel. We'll have transportation back and forth for
10 you. So, if you make those arrangements, I would
11 appreciate it.

12 In addition, do not discuss this with anybody, family
13 members, friends. Do not read any local news and don't
14 read any papers. You say you don't anyway.

15 JUROR: Don't anyway.

16 THE COURT: Don't start now, okay? If you would, let
17 me hold on to the sheet you have, and I look forward to
18 seeing you tomorrow at 11:30 here at this courtroom, okay?

19 JUROR: All right. Thank you.

20 THE COURT: Go out that door at the back, at the back.

21 JUROR: All right.

22 THE COURT: Thank you, ma'am.

23 JUROR: Thank you.

24 (A PAUSE.)

25 THE COURT: All right, if you would, bring in juror

1 402. Let me make sure I don't have 402 any place here,
2 Mr. Scaggs.

3 MR. HUMPHRIES: It shows a female here.

4 THE COURT: Female.

5 MR. HUMPHRIES: Cheryl D.

6 CLERK OF COURT: She had it in her purse, and I sent
7 someone to make copies of it.

8 THE COURT: Okay. Well, go ahead and bring Ms. Scaggs
9 around, please.

10 (JUROR #402 ENTERS THE COURTROOM.)

11 EXAMINATION BY THE COURT:

12 Q. Ms. Scaggs, how are you doing?

13 A. Good. How are you.

14 Q. I see you -- are you originally from Kentucky?

15 A. I was born there, yes.

16 Q. How long did you stay in Kentucky?

17 A. Couple of years. Lived in Ohio most of my life until
18 I moved here nine years ago.

19 Q. Okay. Have a seat and relax here. You know, I, I was
20 thinking about -- well, Scaggs, is, is that -- you, you are
21 -- you're single. So, are you any kin to the country music
22 star Ricky Skaggs?

23 A. Actually, we spell our names differently but according
24 to my grandfather, we are related.

25 Q. Oh.

1 A. I wouldn't know, though. That's what I hear.

2 Q. He plays that a small guitar. What brought you to
3 Horry County?

4 A. I'd like to say a job, but the boyfriend got his job
5 first, so I came down with him. But then he left and I
6 stayed and that was for the best.

7 Q. And how long -- you been here now nine years?

8 A. Yes. December '98.

9 Q. And says here you're, you work at the Fire Emergency
10 Medical Services.

11 A. Yes.

12 Q. Horry County Fire/Rescue?

13 A. Correct.

14 Q. Appreciate what you do there, getting ready to help
15 people in need and in emergencies.

16 I want to talk with you a little bit about, just about
17 you as a person and about your qualifications to be in the
18 jury pool of this case. Now, you're not on trial and I'm
19 not trying to interrogate you. Just discuss.

20 A. That's fine.

21 Q. First of all, I want to remind you you're still under
22 oath.

23 A. Of course.

24 Q. Remember we put you under oath yesterday. And do you
25 know any of the attorneys involved in this case at all?

1 A. No. I have seen the solicitor on television once or
2 twice over the last few years.

3 Q. Okay, but, but you don't ---

4 A. I don't know them personally.

5 Q. That wouldn't affect your ability in this case ---

6 A. No, sir.

7 Q. Do you have any special interest, bias, or prejudice
8 in this particular case?

9 A. No.

10 Q. Have you expressed or formed an opinion in this
11 particular case?

12 A. No.

13 Q. Have you expressed or formed an opinion about the
14 defendant's guilt or innocence?

15 A. No, I haven't.

16 Q. Do you know of any reason whatsoever why you cannot
17 give both of the state and the defendant a fair and
18 impartial trial in this case?

19 A. Not that I can think of.

20 Q. Okay. If you were on the jury, I would tell you that
21 the jury listens to the evidence and makes its decisions in
22 that regard about the facts. But the jury must follow the
23 law as the judge instructs, and would you on your oath
24 follow the law as I instruct you?

25 A. Of course.

1 Q. One of the principles of law that I would tell you
2 would be that in America, a person charged with a crime is
3 presumed innocent, and the burden is upon the state,
4 prosecution, to prove guilt beyond a reasonable doubt. The
5 defendant does not have to prove himself innocent; the
6 state is required to prove guilt beyond a reasonable doubt.
7 Do you understand that, and would you accept that?

8 A. Yes, sir.

9 Q. Okay, and you'd follow that?

10 A. Sure.

11 Q. All right. If you were on that jury, then, if the
12 state did not prove guilt beyond a reasonable doubt, you
13 could render a verdict of not guilty if they did not prove
14 guilt beyond a reasonable doubt?

15 A. Yes, sir.

16 Q. And if they did prove guilt beyond a reasonable doubt,
17 you could render a verdict of guilty?

18 A. Yes, sir.

19 Q. Have you discussed this case with anyone?

20 A. No, not the case.

21 Q. Okay. Have you seen anything about it in the
22 newspapers, TV, radio?

23 A. I'm assuming at some point when -- at the time of the
24 original incident there may have been news, news coverage.
25 I don't recall specifically, anything specific to this

1 incident. And have not seen anything in recent weeks.

2 Q. Okay, and so first thing about this matter that you
3 can recall was Monday when we called you and read the
4 allegations?

5 A. Well, I got the questionnaire for the jury summons.

6 Q. Right.

7 A. So, I assumed based on the questions that were asked
8 that this was a serious incident.

9 Q. Okay.

10 A. And then we heard the indictment on Monday.

11 Q. Okay. If in the course of the trial you're sitting in
12 the jury and -- on the jury in the jury box, and because of
13 something that's said or any type, the other evidence
14 introduced that jogs your memory, then you remember
15 something that you may have read or seen on TV, would you
16 be willing to put that aside and make your decision based
17 on the evidence presented in the court and the law as I
18 instruct it to you?

19 A. Yes, sir.

20 Q. All right. I gave you a list of names there.

21 A. Yes.

22 Q. On three sheets there. Did you know anybody on that
23 sheet? You probably would with your job.

24 A. The -- I circled the four individuals that are listed
25 with either Fire/Rescue or EMS. Only one name looks

1 vaguely familiar to me. I actually have been with County
2 Fire/Rescue for less than a year now.

3 Q. Okay.

4 A. So, I'm still getting to know a lot of our staff, and
5 I only do medical training. So, I don't see everybody.
6 The only other person on there was a officer Peter Cestare
7 with the police department, who ---

8 Q. Okay, well, you circled Allen Poplin, Horry County
9 EMS; Christine Howard with Horry County Fire, Fire/Rescue;
10 James Kay with Horry County Fire/Rescue; and a Lieutenant
11 Peter Cestare, Horry County Police Department; and Michael
12 Marks Barry of Horry County EMS?

13 A. Yes.

14 Q. Okay. Now, you work with Horry County Fire/Rescue,
15 right?

16 A. Yes.

17 Q. Now, with the two people who you circled who are also
18 witnesses here ---

19 A. There's four. Fire/Rescue, EMS, that's all one
20 department.

21 Q. Okay, do you work with these people every day?

22 A. They are in the field, and some of them may even be
23 volunteers. I don't recognize the names. I just knew
24 that ---

25 Q. So, these are not people you work with closely?

1 A. No. They're not the people I see on a daily basis.

2 Q. So that Allen Poplin, Christine Howard, James Kay, and
3 Michael March Barry, if they were to testify in this case,
4 would the fact that they testified, would the fact that,
5 the fact that they are testifying -- not even getting to
6 what they said -- but the fact they're testifying, would
7 that cause you to look upon them differently than you would
8 some other witness?

9 A. No, sir.

10 Q. All right, and your decision in this case would not be
11 affected by the fact they're listed as witnesses?

12 A. No, sir.

13 Q. Okay, and going down to Cestare.

14 A. Officer Cestare.

15 Q. How do you know Lieutenant Peter -- how do you
16 pronounce it, Cestare?

17 A. Cestare, I believe.

18 Q. Cestare. How do you know Lieutenant Cestare?

19 A. I arranged for him to come teach a one-hour session in
20 five different classes that I taught a couple of months ago
21 on just general crime scene awareness for our personnel.
22 So, I just was the coordinating person that's -- sorry --
23 that arranged to have him brought in. And he presented a
24 program to somewhere between 100 and 110 people, but they
25 were broken down into five different groups.

1 Q. Okay, and that was a onetime thing?

2 A. Yes. It was one particular month. It was a couple of
3 months ago. I don't ---

4 Q. Do you have any special relationship with him ---

5 A. No, sir.

6 Q. --- professional or otherwise?

7 A. No.

8 Q. All right, and if he were listed as a witness, and if
9 -- the fact that he were to testify, would that cause you
10 to look at him differently than you would look at some
11 other witness?

12 A. No, sir.

13 Q. All right. Do you feel that the fact that you're
14 working for Horry County Fire/Rescue Emergency Medical
15 Services, that that position you have causes you to have a
16 feeling of more closeness to people who are in law
17 enforcement than you would otherwise? Would you be able to
18 be, if you are on that jury, would listen and be impartial
19 and look at all witnesses the same?

20 A. We all work closely together, so -- they're not quite
21 co-workers, but they are people that we do run into through
22 our professional duties. But I still believe you have to
23 look at each situation and individually. I don't believe I
24 would assume that one person was more credible than
25 another.

1 Q. So, the fact a person may wear a uniform, whether the
2 fire/rescue or police, does that mean that person you would
3 automatically look upon more favorably than someone who
4 doesn't wear a uniform of that nature?

5 A. No, sir.

6 Q. In this case, could potentially be two parts to this
7 case. If the jurors in the -- after consideration of the
8 evidence and the law, if the jurors determined that the
9 state had not proven the defendant guilty of murder beyond
10 a reasonable doubt, then that would end the jurors'
11 participation at that time.

12 If, however, the jurors did determine that the state
13 had proven the defendant guilty of murder beyond a
14 reasonable doubt, then we then would move to another phase.
15 And the fact I'm saying that doesn't in any way indicate
16 anything. I just have to discuss it in case you do.

17 The other phase would be that the jurors have already
18 determined the defendant was guilty of murder, and had been
19 proven guilty of murder beyond a reasonable doubt. And
20 then we move to another phase where the jurors then would
21 be considering issues of punishment. And they would be
22 presented evidence in aggravation and mitigation and asked
23 to come back with a verdict of either life imprisonment or
24 the death penalty after reviewing that evidence.

25 I gave you a sheet of paper with three types of jurors

1 on that, and were you able to read those three types of
2 jurors and understand the differences?

3 A. Yes, sir.

4 Q. And one, of course, is a juror type one is the juror
5 that no matter what the evidence in aggravation, mitigation
6 was, that juror will always come back with a verdict for
7 the death penalty. Felt that in a murder case, that's
8 always the most appropriate punishment.

9 Juror type number two is the juror type that no matter
10 what the evidence in aggravation, mitigation is, that juror
11 would always come back with a verdict of life imprisonment
12 because they could never impose the death penalty.

13 Juror type three is the juror type that would have not
14 made up her mind in advance concerning punishment, but
15 would listen to the evidence in aggravation, mitigation,
16 the charge from the judge on the law. And after they have
17 listened and considered that, that juror then would make up
18 her mind. And if they, they felt so warranted it, that
19 juror could come back with a verdict of life imprisonment
20 or if the juror felt it so warranted it, could come back
21 with a verdict of the death penalty.

22 Of those three types, which best describes C.D.
23 Scaggs?

24 A. Number three.

25 Q. All right. So, you would listen to the evidence in

1 aggravation and mitigation. And only after you've heard
2 all the evidence and my charge on the law and deliberations
3 with the other jurors could you decide which of the two?

4 A. Yes, sir.

5 Q. But that you could come back, depending on your view
6 of that evidence in aggravation and mitigation, mitigation,
7 come back with either of those two depending on what you
8 heard and saw?

9 A. Yes, sir.

10 Q. Okay. If the juror -- jury were to determine the
11 verdict would be the death penalty, then the law requires
12 the jurors, all jurors to sign the verdict form. Could you
13 sign that verdict form if you did decide the death penalty
14 was your verdict?

15 A. Yes, sir.

16 Q. Okay. If you are selected on this jury, you would,
17 you would be sequestered for somewhere in the neighborhood
18 of a week, little less, little longer, and you would be
19 able to have no contact with friends or, or with work
20 except by supervised contact on the phone. Somebody would
21 be listening on the other side. Could, would that cause
22 such an undue hardship that you could not do that, Ms.
23 Scaggs?

24 A. It's an inconvenience, but not an undue hardship.

25 THE COURT: Okay. I'm going to let the lawyers ask

1 you a few questions if they wish to. Then I might have a
2 few more for you.

3 JUROR: Okay.

4 THE COURT: All right, for the state?

5 EXAMINATION BY MR. HUMPHRIES:

6 Q. Good afternoon, Ms. Scaggs.

7 A. Hello.

8 Q. How you doing?

9 A. Good.

10 Q. I'm Fran Humphries. I'm the Deputy Solicitor.
11 Solicitor Hembree and I, along with Scott Hixson, will be
12 trying the case for the state.

13 A. Okay.

14 Q. I don't have any questions about your position as
15 relates to the type of juror you are. I think you're very
16 clear with the court, and I think we're all satisfied with
17 that.

18 The one thing that's, you know, sort of I guess raises
19 the red flag is that in listing the, the names of
20 individuals that you knew on the potential witness list,
21 you listed four names with -- that had the, they're with
22 Horry County Fire/Rescue or some EMT service.

23 A. Yes.

24 Q. But I wanted to be clear. You told the court that you
25 designated those names just by virtue of where they're

1 employed. You didn't recognize the names?

2 A. There was one name that looks familiar that I feel
3 like I've seen it on course rosters or employment rosters,
4 but I cannot put a name with that face.

5 Q. Okay.

6 A. Or a face with that name I guess.

7 Q. So, I -- it's fair then to say that you don't share a
8 personal relationship with any of these people?

9 A. No, sir.

10 Q. Okay, and then about Peter Cestare, of course he's
11 with Horry County Police Department in the Crime Scene
12 Division. He conducted a course at your request?

13 A. Yes.

14 Q. Did in the, in the process of arranging for that
15 course, did you develop any relationship beyond that of
16 professional to professional ---

17 A. No, sir.

18 Q. --- coordinating that effort?

19 A. No. It consisted of a couple of emails, just
20 arranging dates and times and that type of thing.

21 Q. And did you ever meet personally with him prior to his
22 conducting the course?

23 A. No. First time I met him was the first course
24 session.

25 Q. Okay. Did you sit through all those courses?

1 A. Probably. I may have stepped out briefly to ---.

2 Q. Sure.

3 A. --- arrange some other things, but I was there for the
4 majority of -- I think he missed one session, so he was
5 there for four out of the five.

6 Q. Okay, and what, what really is, is the central issue
7 is this. Given those relationships, however remote or
8 however remote they may be, it's still important for the
9 court and for the parties, for the state and the defendant,
10 to know that even in light of those relationships and the
11 degree to which they are relationships, you can look upon
12 those witnesses if they're called, and there's no guarantee
13 they'll be called. That's a potential witness list. But
14 even if, let's assume that every one of them's going to be
15 called. Can you guarantee to this court to the best of
16 your ability that you will not allow those relationships to
17 impact you in terms of elevating their status as witnesses
18 or believing them more so than you believe any other
19 witness? Can you ---

20 A. I believe I can and do that, yes.

21 Q. Okay.

22 A. Believe people are individuals. They're going to give
23 their recollection of the events. Everyone's possible to
24 make a mistake.

25 Q. Sure.

1 A. So, you have to weigh each one individually.

2 Q. And, and that's really my point. You're going to be
3 asked as a juror and the judge is going to charge you that
4 you are to determine the credibility of each and every
5 witness that takes the stand. And what the court and the
6 parties need to know is that you're not going to assess
7 these particular witnesses, if they testify, some higher
8 level of credibility before you ever start to evaluate the
9 credibility. Can you do that? Can you ---

10 A. I believe so, yes.

11 Q. Okay, and, and finally the really essential issue is
12 this. Can you be fair and impartial both to the State of
13 South Carolina and the defendant in this case?

14 A. Yes, sir.

15 MR. HUMPHRIES: That's all we can ask of you. Thank
16 you, ma'am.

17 THE COURT: Okay, for the defense, Mr. Wilson?

18 MR. WILSON: Thank you, Your Honor.

19 EXAMINATION BY MR. WILSON:

20 Q. Ma'am, our understanding that you believe that it's --
21 well, let's back up. You're, you're actually training
22 officers for fire and rescue?

23 A. Yes, sir.

24 Q. And, which means you're -- you hold that position for
25 the entire county. Is that correct?

1 A. Well, I'm one of several individuals.

2 Q. All right, and, and, and part of the responsibility
3 for your office, then, would be to train all of the EMT
4 fire/rescue personnel in the county?

5 A. That's correct.

6 Q. And you recognize that there may very well be
7 testimony from EMT personnel or fire/rescue people in the
8 trial of this case?

9 A. Yes, sir.

10 Q. And you're saying that in spite of that, even though
11 you're the training officer for those people, that you
12 would still feel comfortable sitting in judgment on this
13 case with this defendant knowing that people you trained
14 are going to testify in the trial of the case? Is that
15 what you're saying?

16 A. I don't believe I've had any training connection with
17 these individuals directly, but yes, I do.

18 Q. But do you know whether or not you've had any training
19 with these individuals?

20 A. I can't say for sure. I would have to go back and
21 pull records.

22 Q. Well, what you're telling us is that it wouldn't
23 matter. That even if you have trained them, and even if
24 they are testifying and their testimony is important in the
25 trial of this case, that you could set all that aside and

1 still make a fair and impartial ruling in this case for
2 this defendant? Is that what you're saying?

3 A. I believe I can, yes.

4 Q. All right. Ma'am, I notice that you said in your
5 questionnaire, I think that's on number 74 you said that:
6 We work closely with police, so I do consider them almost
7 co-workers. Is that a fair statement of what you said?

8 A. Yes. I believe that's what I wrote.

9 Q. All right, and do you believe that? You work with
10 them and you have what you call a close relationship with
11 them, close working relationship?

12 A. As I -- I don't know them individually, but as I --
13 any other person that we run into in the course of our
14 duties.

15 Q. And they are also county personnel, county employees
16 as you are?

17 A. Correct.

18 Q. Is that correct, and do y'all do joint training with
19 the police, with the county police from time and time?

20 A. I have never participated in any. I don't know.
21 There'd be something under emergency operations or
22 something that happens, well, periodically, but I've never
23 been involved in any of those situations.

24 Q. All right. Ma'am, I notice also that you said that
25 you -- and under your -- it was a question about what TV

1 movies you watch. You said you watch *Women's Murder Club*.

2 What is that?

3 A. It's a one-hour drama.

4 Q. Well, what is that about? I've just, I've never heard
5 of it. I don't ---

6 A. There's -- it's, it's only had a few episodes on this
7 past year before the writers' strike, and there's, I think
8 there's four main female characters. One's a reporter. I
9 think one's was a police officer. One's some sort of
10 prosecutor, and I think one was a coroner, medical examiner
11 type person, and it's a one-hour drama built around these
12 characters.

13 Q. Well, is it around murder? Is it ---

14 A. It's, it's like any other crime type drama whether it
15 be *Law and Order* or *CSI* or similar type show.

16 Q. All right, now, let me ask you one other thing. In
17 terms of -- you told the court that you were a type three
18 juror. Is that correct?

19 A. Correct.

20 Q. And what is your understanding of type three juror?

21 A. Well, I believe that you have to look at this
22 individual case and determine what punishment would be
23 appropriate, if any, for that particular case. I believe
24 the death penalty is, is appropriate in some cases but not
25 all. And I have some concern about people that have been

1 on death row and later evidence has been found that --
2 that's exonerated them. So, I don't think it's something
3 you can't take lightly. You have to look at all of the
4 factors involved in that particular case and determine if
5 that's an appropriate ---

6 Q. Are you saying ---

7 A. --- outcome.

8 Q. Are you saying to me, then, that you recognize first
9 of all that as we sit here, defendant's presumed innocent
10 and that ---

11 A. Certainly.

12 Q. --- the court will instruct you that he is innocent as
13 we sit here?

14 A. Yes, sir.

15 Q. All right, and that as we go through this process,
16 unless and until the state can produce evidence beyond a
17 reasonable doubt which satisfies you beyond a reasonable
18 doubt, he will remain innocent?

19 A. Yes, sir.

20 Q. You understand that, and only if you find him guilty
21 beyond a reasonable doubt -- and I say you. You and the
22 other members of your panel. Only then would we even go to
23 the second phase of this particular proceeding. You
24 understand?

25 A. Yes, sir. Yes, sir.

1 Q. Do you understand that even if there are aggravating
2 factors introduced by the state, even a number of
3 aggravating factors, and even if you believe and find the
4 existence of every one of those aggravating factors, that
5 you could still vote for life? Do you understand that?

6 A. It's a possibility depending on all of the elements.

7 Q. My, my, my question is do you understand that you have
8 the right as a juror to do that regardless of the existence
9 of an exacerbating ---

10 A. Yes, sir.

11 Q. --- exacerbating fact or circumstances?

12 A. Yes, sir.

13 Q. All right. Now, one last question and then I'm going
14 to be through. Ma'am, and, in, -- when you came here
15 today, I noticed that in your, in your questionnaire and
16 one of the things you said was was that you had heard on
17 the news or from some source that there was a death I think
18 it's how you put it. That there was a death and that --
19 let's make sure. I don't want to misquote you here.

20 THE COURT: I know there was a death and is believed
21 to be a domestic situation.

22 MR. WILSON: Right.

23 Q. And, and, and that's the only information you had
24 prior to receiving your jury summons. Is that what you
25 said?

1 A. That's correct.

2 Q. All right, and you didn't hear anything else from any
3 other source?

4 A. No, sir.

5 Q. All right, and after getting your notice from, from
6 the court, have you discussed this with anybody else or had
7 any consultation or conversation with anyone else about
8 what may or may not have transpired?

9 A. No, not about this case at all. There's been some
10 casual conversation about jury duty in general and the
11 selection process that you go through, but nothing dealing
12 with the individuals or any details involving this, this
13 specific case.

14 MR. WILSON: Okay, thank you, ma'am.

15 THE COURT: What I'm going to do, Ms. Scaggs, I'm
16 going to ask you to, to go back a minute across the room.
17 See where that exit sign is? And step outside. Before I
18 do, though, since we're sort of in a closed area here, I
19 read your number 68 about previously dating a police
20 officer. Then it said:

21 About unpleasant experiences with law
22 enforcement, does the above-referenced dating
23 experience count?

24 No, it doesn't.

25 That's very interesting.

1 If you would, please step outside the door over there,
2 please.

3 JUROR: It was a long a questionnaire.

4 THE COURT: Just step right outside the door there.

5 (THE JUROR EXITS THE COURTROOM.)

6 (QUESTIONNAIRE OF JUROR 402-SCAGGS MARKED INTO
7 EVIDENCE AS COURT'S EXHIBIT NUMBER 12-K.)

8 THE COURT: Okay, position of the state?

9 MR. HUMPHRIES: She's qualified.

10 THE COURT: Defense?

11 MR. WILSON: Judge, I, I take exception. I do not
12 believe she's qualified, and I tell you what concerns me.
13 And I know she answered the questions the way that they
14 probably should be answered if she wants to serve on this
15 panel.

16 The problem I'm having is this, this juror is or
17 potential juror is clearly involved with the people who may
18 very well testify in this case, and that she don't even
19 know. She says well, I don't know the, the, these
20 individuals but I don't know either that I have not trained
21 these people. So, she could potentially be sitting on a
22 jury where she is a juror and she's sitting in judgment
23 with this defendant when, in fact, she trained the very EMT
24 people who would have testified. And their testimony may
25 very well be critical in the trial of this case.

1 I have a real, real problem believing that she could
2 possibly set that aside, her relationship, and even if she
3 could set it aside, the problem, Judge, is this. Is that
4 suppose there's some technical issue with what they did or
5 didn't do at the scene. She is their training officer, and
6 she is sitting in judgment now of this. That clearly is
7 unfair to this defendant to have to have her sit on that
8 jury and, and participate when that may very well arise.

9 It's going to be too late for us to, to say oh, well,
10 you know. We didn't think it that would come up, or it
11 might not happen. Well, it might not happen but it very
12 well may happen.

13 MR. HUMPHRIES: Let's, but me just say this just, just
14 so we can clarify and we can all argue from the same
15 position. We are not calling any EMT staff in the case in
16 chief in the guilt or the penalty phase, not calling. They
17 are potential witnesses, but they are not going to be
18 called, and Peter Cestare is not going to be called. So,
19 all the people about whom you're concerned about, none of
20 them are scheduled to testify in the case in chief in
21 either -- or the guilt phase.

22 MR. WILSON: Judge, even if the solicitor does not
23 call these people, the problem is this. The problem is ---

24 THE COURT: No, no. She doesn't know these, these are
25 defense witnesses or state.

1 MR. WILSON: But it doesn't matter. That's the
2 problem. It doesn't matter whether I called them as
3 defense witness or he calls them as prosecution witnesses.
4 The problem arises, Judge, because they, they were present
5 on the scene. They treated the victim or attempted to
6 treat the victim. They may or may not have done it
7 correctly. There may be issues in this trial about that,
8 how it was done, and I'll tell you right now there is going
9 to be an issue about what they did at that, at that scene.

10 One of the -- and I'll tell you this right now. One
11 of the things that they did is they turned the body over.
12 That's going to be an issue. If she is their training
13 officer in this state -- if she can sit down and make that
14 decision in the trial of this case, I think it's really
15 unfair and very prejudicial to this defendant.

16 THE COURT: State, that's an interesting point.

17 MR. HUMPHRIES: That they, that they rolled the body
18 over at the scene?

19 THE COURT: No. That he says there's going to be an
20 issue of that.

21 MR. HUMPHRIES: Oh, we don't -- we'll concede that
22 they rolled the body over. I mean, that's going to be
23 elicited in our -- and through the state's witnesses that
24 -- of the crimes scene witness or the crime scene examiner
25 that the body was in one position and was rolled over by

1 the EMT is in order to check the vitals. I'll stipulate to
2 that.

3 I can't understand how, you know, whether that was --
4 and if we're admitting that, you know, without, without
5 conceding there's anything wrong with that, I mean, I'm --
6 that's going to be an admitted fact if they wish is to be.
7 It's going to come out in our testimony anyway. I, I, I
8 still fail to see the issue. There's, there's a lot of
9 them, you know. There's a lot of arguing, but I don't, I
10 don't see the point.

11 And her *voir dire* in its entirety is that she's going
12 to be fair and impartial. It's not going to impact her,
13 even if they were called, and they're not, and that she
14 could give life or death depending on the facts and
15 circumstances. About that, she did not waver.

16 THE COURT: Mr. Wilson, I don't want you to be
17 required to reveal things that may or may not be introduced
18 in your defense, but I'll let you know this. If, if
19 certain things are done such that I feel this juror would
20 then not be able to be fair and impartial with certain
21 issues of the case requiring maybe that she -- looking at
22 things that she was involved in or training that she's
23 involved in, I have alternates. But I'm going to qualify
24 her subject to during the course of the trial I have
25 alternates if you wish to bring something up on that.

1 MR. WILSON: All right, sir.

2 THE COURT: If you will, bring her back in, please.

3 (THE JUROR ENTERS THE COURTROOM.)

4 THE COURT: Ms. Scaggs, I am going to qualify you in
5 the jury pool. That does not mean you're going to be on
6 the jury itself. You'll be in the pool from which the jury
7 is drawn. I need you to come back tomorrow at 11:30 a.m.

8 If you're on the jury pool, then you would end up --
9 you get time to go home, get some bags and come on back.
10 I'd rather you go ahead and pack some bags now so they are
11 packed in case you're on the jury so it won't take long.
12 Also arrange for someone to have your vehicle, maybe give
13 you a ride back so that you can have your car at home or
14 somewhere else instead of here at the courthouse tomorrow,
15 okay, because you could be gone for a week or so. And we
16 don't want to have your car just stay here at the
17 courthouse, okay?

18 JUROR: 11:00 a.m.?

19 THE COURT: 11:30, and do not discuss this case with
20 anyone at all. Don't read any newspapers. It's probably
21 better not to go back and work at all or have any contact
22 with work people. If you would, you can leave out that
23 door there if you would, please.

24 Have y'all had a chance to go over 115's paperwork?
25 Do y'all need a minute to go over that?

1 MR. WILSON: I do, Judge.

2 MR. HUMPHRIES: We're getting her right now.

3 MR. WILSON: I just haven't looked at it.

4 (A PAUSE.)

5 MR. WILSON: May I put one other thing in the record
6 in regards to this? Obviously I take exception to court's
7 ruling. But I also want to point out to the court, Your
8 Honor, that I know the court's saying that if something
9 occurs and she's on the panel, then the court will deal
10 with it at that time.

11 The problem for me is that I'm going to have to use a
12 strike on this particular juror. So, we're going to be
13 prejudiced in that sense in that I'm going to have to take
14 that strike to use -- to get rid -- to take her off the
15 panel before we get to the point where she's actually
16 seated. The only way that she gets to sit is if I had no
17 strikes at that time. So, you know, that's an additional
18 grounds for, for my request.

19 THE COURT: Okay. I'll note that.

20 MR. WILSON: Thank you.

21 THE COURT: Let's take time look now at the
22 information from Ms. Dennison, Dennison-Ellis, now.

23 (A PAUSE.)

24 MR. WILSON: We're ready, Your Honor.

25 THE COURT: Can you approach a minute, please?

1 (OFF-THE-RECORD BENCH CONFERENCE.)

2 THE COURT: Bring out Ms. Ellis, please, Michelle
3 Dennison-Ellis.

4 (JUROR #115 ENTERS THE COURTROOM.)

5 EXAMINATION BY THE COURT:

6 Q. Hello. Is it Ms. Ellis or Dennison-Ellis?

7 A. Dennison-Ellis.

8 Q. So, you prefer Dennison-Ellis?

9 A. Yes.

10 Q. Well, Ms. Dennison-Ellis, if you would, please come
11 and have a seat. Sorry about those Dallas Cowboys. See
12 you're wearing that jacket still. I was pulling for them,
13 too.

14 A. That's right.

15 Q. The Giants really surprised us.

16 A. Yeah.

17 Q. Now, Ms. Dennison-Ellis, I need for you to speak in
18 the microphone there for me. And we have just a few
19 questions, and I want to talk to you a little bit. Now,
20 you're not on trial or anything. I just -- just going to
21 discuss a few things. Want to remind you that you're still
22 under oath, that we put you under oath on Monday. You
23 remember standing up in the group and ---

24 A. Yes.

25 Q. --- and raised your right hand? I'm curious. Why did

1 you not have your paperwork sent back in?

2 A. Because it went to my neighbor's mailbox, and she
3 didn't give it to me until late.

4 Q. Oh, I see. okay. I wonder why that was. Maybe had
5 the wrong number on it or something?

6 A. They always get our mails mixed up sometimes.

7 Q. Okay. Well, it's great that you got here, got here in
8 time.

9 Now, are you related by blood or marriage to any of
10 the attorneys involved in this case?

11 A. No.

12 Q. Okay. I do note that you mentioned that your family
13 knows Mr. Wilson?

14 A. Yes.

15 Q. Tell me about that.

16 A. My mother knows, knows him.

17 Q. Okay. Do you know him?

18 A. I just know of him, his face or whatever.

19 Q. Okay, have your mother and you ever talked about Mr.
20 Wilson?

21 A. No, not really, but just knowing him, his family.

22 Q. Okay. Would that knowledge that your mother has of
23 Mr. Wilson and you knowing Mr. Wilson by name and all that,
24 would that affect your ability to be fair and impartial in
25 this case?

1 A. No.

2 Q. You could be fair to both sides?

3 A. Yes.

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

7 A. No.

8 Q. Of course you did write on your statement, you said
9 you thought, just reading from your statement, you said:
10 To me, the truth is he is guilty. Did you fill out this
11 form?

12 A. Yes, I did. I did fill that out, yes. I guess from
13 the situation. I mean, I really don't know the whole
14 thing. So, I don't know.

15 Q. Well, why did you write down: To me, the truth would
16 be he is guilty?

17 A. Because of what was done.

18 Q. Well, my question is then have you formed an opinion
19 of his guilt?

20 A. Yeah. Yeah.

21 Q. And, well, do you feel that that opinion is such that
22 you couldn't put that aside and be open and not consider
23 that and make your decision not based on what you've read
24 or what? Or you think that's so strong that you couldn't
25 put it aside?

1 A. I, why I couldn't answer it. I mean, I just really
2 put down just something. I really couldn't even answer it.

3 Q. I'm not sure what you mean. What, what do you mean by
4 that?

5 A. The question, I couldn't -- I can't really answer the
6 question, I mean, because I don't really know the
7 situation.

8 Q. Well, let me just ask you this. If you're on that
9 jury, you would be required to follow law, the principles
10 of law that I instruct you. Now, could you do that?

11 A. Yes.

12 Q. Well, one of those principles of law would be that the
13 defendant is presumed innocent, and the burden is upon the
14 state to prove guilt. The defendant is not required to
15 prove himself innocent. Now, could you follow that rule,
16 or do you already feel he's guilty, or could you presume
17 him innocent?

18 A. I think I could follow that rule.

19 Q. Well, ma'am, the question is ---

20 A. Yes.

21 Q. --- can you follow the rule?

22 A. Yes. Yes, yes, yes.

23 Q. So, you can, you at this time then would presume him
24 innocent? You know longer think he's guilty? Ma'am,
25 please, there's no right or wrong answers and, and you're

1 not on trial. So, just be open with me. You're not in any
2 trouble for anything. Just want to discuss it with you
3 openly.

4 A. Well, now that I think about it, I mean, he's, I mean
5 -- no, I don't think so, no.

6 Q. No, you don't think so what?

7 A. That he's not guilty right now.

8 Q. Okay, right now you think he is what?

9 A. Guilty.

10 Q. You think he's guilty?

11 A. Yes.

12 Q. So, you haven't changed your mind on that?

13 A. No.

14 Q. Okay. So, you could not presume him innocent to begin
15 with because you feel he's guilty?

16 A. Yes.

17 Q. And that's a firm opinion that you have?

18 A. Yes.

19 Q. So, you couldn't begin this trial with the presumption
20 of innocence? You would begin with the perception that
21 he's guilty?

22 A. Yes.

23 Q. And this comes from a newspaper accounts or
24 discussions with people or what?

25 A. No. I never -- well, I never discussed this. I never

1 knew anything about it until I had came to jury duty. I
2 look at news but not really an everyday thing.

3 Q. Well, why is it that you think he's guilty?

4 A. I guess because of what was done. I don't ---

5 THE COURT: Before going any further, would anyone
6 like to ask questions? State, defense?

7 MR. HUMPHRIES: Nothing. Thank you.

8 THE COURT: Defense?

9 MR. WILSON: Your Honor, I just want to ask for one
10 thing.

11 THE COURT: Yes, sir.

12 EXAMINATION BY MR. WILSON:

13 Q. Ma'am, you, you said in your questionnaire, it asked
14 you do you have any moral or religious or personal beliefs
15 that would prevent you from sitting in judgment of another
16 human being, and you said yes. Is that right?

17 A. What was the question again?

18 Q. The, the question was on this form that you filled
19 out, you said that, the question asked number 36 asked: Do
20 you have any moral, religious, or personal beliefs that
21 would prevent you from sitting in judgment of another
22 person, another human being? And you said you did have.
23 Is that right?

24 A. Yes, I did put that.

25 Q. Well, I'm confused, and you told the court that you

1 think that the defendant is guilty. So, you've -- and
2 you've formed a judgment about him that he is guilty. Is
3 that right?

4 A. No. When I, when I was answering those questions, I
5 was trying to do it fast as I can. So, I'm sorry for
6 whatever's on there. I mean, I might not recognize or
7 remember what I put, but I did do it fast as I can for
8 them. I mean, I did -- that's what I did.

9 Q. Okay, and so, and even though we're here today and the
10 judge has told you that the law is that as he sits there he
11 is presumed to be innocent, not guilty, you're saying you
12 cannot accept that? He is guilty and you don't care what
13 the judge says? Is that what you're saying to us?

14 A. Yes.

15 MR. WILSON: Okay. Fair enough. Thank you.

16 THE COURT: Ma'am, if you would step behind that door
17 for a minute.

18 (THE JUROR EXITS THE COURTROOM.)

19 THE COURT: State?

20 MR. HUMPHRIES: She's disqualified, Judge.

21 MR. WILSON: She's not qualified.

22 THE COURT: Bring her in, please.

23 (THE JUROR ENTERS THE COURTROOM.)

24 THE COURT: All right, Ms. Dennison-Ellis, because of
25 your beliefs, I'm going to find you're not qualified in

1 this case, ma'am. Thank you very much, ma'am. You may
2 leave at this time. Go out that door if you would.

3 All right, bring in if you would juror 398, Sandler.
4 Found one of the jurors that showed up late.

5 MR. HUMPHRIES: That's correct.

6 (JUROR #398 ENTERS THE COURTROOM.)

7 EXAMINATION BY THE COURT:

8 Q. Hello, Ms. Sandler.

9 A. Hello.

10 Q. Come around, have a seat there. American Athletic
11 Club, are you a trainer there?

12 A. Yeah.

13 Q. I've just joined a fitness center in Dillon trying to
14 do the old New Year's resolution because I like the
15 elliptical machine to get my cardio going, my legs strong
16 and all that. Do you work with weights and all? I know a
17 lot of people do that. I've never had too much done with
18 that. I have the strongest knees in the world to have to
19 carry this body.

20 A. Yeah.

21 Q. So, they do a pretty good job. Once I start running,
22 long as I don't have a time limit, I can run for miles and
23 miles long as I don't have the time limit.

24 I forgot. You were late yesterday and we discussed
25 it.

1 A. Right.

2 Q. And I've got notes here. You were late. Sorry for
3 reviewing the record here. What did you tell us why you
4 were late yesterday for?

5 A. I just forgot about it.

6 Q. Just got about it?

7 A. Just, I mean, just late.

8 Q. All right. That's -- you're not the first one that
9 happened to, and I haven't remembered everything in my life
10 either in fact. I have to say, you know, I just forgot.

11 A. It's not a normal thing to be, you know, for me.

12 Q. Right. I do appreciate someone, though, just saying
13 honestly instead of having other reasons and all. And so
14 you're originally from New Hampshire?

15 A. Uh-huh.

16 Q. Do you know where the White Mountains are in New
17 Hampshire?

18 A. Absolutely.

19 Q. I have a son who went to climb those White Mountains
20 there. What brought you to Horry County?

21 A. My husband died eleven years ago, so I came here
22 because my brother's here.

23 Q. Oh, okay. I want to ask you a few questions, but
24 remember when you stood in the front there, I put you and
25 the other people under oath?

1 A. Uh-huh.

2 Q. And you're still under oath.

3 A. Uh-huh.

4 Q. Okay, ma'am, and since we're going to have several
5 things we're going to talk about, do you want to finish
6 that candy, or is that a cough drop or candy? There you
7 go. That way we can talk a little bit better, and try to
8 speak into that microphone, okay? You might want to move a
9 little bit. There you go. There you go.

10 A. Yes, sir.

11 Q. Now, no need to be nervous. You're not on trial or
12 anything. You're not getting in any trouble, and you need
13 to just tell me honestly how you feel. Don't, don't worry
14 about me or any of the lawyers, anything else. Just say
15 honestly how you feel.

16 Are you related by blood or marriage, do you know any
17 of the attorneys involved in this case?

18 A. No.

19 Q. Okay. Do you have any special interest, bias, or
20 prejudice at all in this particular case?

21 A. No.

22 Q. Okay. Have you formed or expressed an opinion as to
23 the guilt or the innocence of the defendant in this case?

24 A. Maybe.

25 Q. Okay.

1 A. I may have.

2 Q. Is it, is it ---

3 A. Because I heard something about it, so I, you know,
4 it's right -- it's what it is because I didn't mean to hear
5 it, but somebody told me ---

6 Q. What is it the you heard?

7 A. I heard that a woman were shot in the back of the head
8 with, with her children being there.

9 Q. Okay, you do understand that a person, and this will
10 be something I would tell you as a judge. You're required
11 to follow the law if you're on that jury.

12 A. Uh-huh.

13 Q. And I will tell you as the judge that a defendant on
14 trial, these are an allegation.

15 A. I understand.

16 Q. The fact that someone said he did it or the state has
17 brought a trial, those are allegations.

18 A. That's right.

19 Q. And a person is presumed innocent, and the state has
20 the burden of proving them guilt -- guilty beyond a
21 reasonable doubt.

22 A. Uh-huh.

23 Q. A defendant does not have to prove himself. So, my
24 question is could you accept that principle of law that he
25 is presumed innocent?

1 A. Yeah, I can.

2 Q. So, you can disregard anything someone told you?

3 A. Yeah.

4 Q. Would that have anything to do with your opinion
5 or ---

6 A. No.

7 Q. --- decision in this case?

8 A. Absolutely not.

9 Q. All right. Then, therefore, if I ask you again have
10 you expressed or formed an opinion in this case about his
11 guilt or innocence, what ---

12 A. It would be no.

13 Q. Okay, and that's, you're telling me that truthfully?

14 A. That's truthful.

15 Q. Honestly how you feel?

16 A. Yes.

17 Q. Okay. Do you know of any reason whatsoever why you
18 cannot give both the state and the defendant a fair and
19 impartial trial in this case?

20 A. No.

21 Q. And that lady's got to take down what you say, so you
22 have to say something, so ---

23 A. No.

24 Q. Okay, there you go.

25 A. Okay.

1 Q. I told you about the law, that I as a judge would have
2 to, would instruct you on the law and if you're on that
3 jury, you would be required to accept the law and apply it
4 as I give it to you. Would you do that?

5 A. Yes.

6 Q. And one of, one of those principles is that the
7 defendant is presumed innocent. The state has the burden
8 of proving guilt beyond a reasonable doubt, and the
9 defendant does not have to prove himself innocent. You say
10 you would accept that?

11 A. I accept that.

12 Q. Okay. So, therefore, if you're on that jury and if
13 the state did not prove guilt beyond a reasonable doubt,
14 then you could bring back a verdict of not guilty?

15 A. That's correct.

16 Q. Conversely, if the state did prove guilt beyond a
17 reasonable doubt, you could bring back a verdict of guilty?

18 A. That's right.

19 Q. Now, you mentioned you heard someone. Have, have you
20 actually discussed this case with anyone?

21 A. Yeah. It was a conversation on the way over here. A
22 friend of mine had called and found out that I was on jury.

23 Q. You mean today?

24 A. Yes, today.

25 Q. Remember I told you not to discuss this?

1 A. I know. I didn't discuss it. He just threw it out
2 like that. He just talks to me about that. I said I can't
3 talk about it.

4 Q. And so you didn't say anything other than I can't talk
5 about it?

6 A. Yes, that's it. That's it.

7 Q. And you hung up on them or what?

8 A. Yeah.

9 Q. Okay.

10 THE COURT: Please, cell phones.

11 Q. Now, other than that person calling you on the phone,
12 has anyone else talked to you about this ---

13 A. No. I hadn't heard, even heard about this case.

14 Q. Have you seen anything in the newspaper about it or
15 anything? So, yesterday ---

16 A. That was the first I heard.

17 Q. First you heard. All right, and can you put aside
18 what, what your friend told you today and you put aside
19 that and make your decision based ---

20 A. Huh-uh.

21 Q. --- on the evidence you hear in this courtroom and law
22 as I instruct it to you?

23 A. That would be correct, yes.

24 THE COURT: Please turn that phone off. Officer, one
25 more time now. You got to have that phone off.

1 DEPUTY SHERIFF: I apologize, Your Honor.

2 THE COURT: All right.

3 Q. So, you can put that aside and make your decision in
4 the case based on the evidence and the law as I instruct it
5 to you?

6 A. Absolutely.

7 Q. I gave you a list of names, three pages of names. Do
8 you know anybody on that list?

9 A. No, I don't.

10 Q. That I have that? There you go. So, you don't know
11 anyone on this ---

12 A. Not a one.

13 Q. All right. This case could very well be three --
14 excuse me, two parts to it. If the jury, after the
15 presentation of the case, determines that the state has not
16 proven the defendant guilty of murder beyond a reasonable
17 doubt, then the jury would find him not guilty and that
18 would end participation of the jury at that time.

19 However, if the jury determined that the state had
20 proven guilt beyond a reasonable doubt of murder, then we
21 would move to the next phase where the issue of sentencing
22 would be considered.

23 A. Okay.

24 Q. Punishment. Now, the fact I'm discussing this doesn't
25 mean that I'm implying one way or the other. It's just I

1 got to discuss the whole process.

2 In that phase where punishment would be considered,
3 the jurors would be presented evidence in aggravation and
4 mitigation, and then after that the judge would charge the
5 jury on the law. Then the jury would be asked to bring
6 back a verdict either life imprisonment or the death
7 penalty after considering the evidence in aggravation and
8 mitigation.

9 I gave you a sheet of paper there explain three types
10 of jurors. Did you understand the differences of those
11 three types?

12 A. Yes, I did.

13 Q. The first type is that juror that after the defendant
14 is guilty of murder, that juror would always bring back a
15 verdict for the death penalty. That juror would not even
16 need to listen to the evidence in aggravation or mitigation
17 because they always would feel that murder will always
18 result in a verdict of the death penalty.

19 A. Yeah.

20 Q. The second juror type would be the one that no matter
21 what evidence is presented in aggravation and mitigation,
22 that juror would always bring back a verdict of life
23 imprisonment because that juror could never bring back a
24 verdict for the death penalty no matter what the
25 circumstances.

1 The third type of juror is the juror that although the
2 defendant's been found guilty of murder, that juror would
3 have an open mind regarding what to bring back in regard to
4 punishment. That juror would want to listen to the
5 evidence in mitigation and aggravation as well as the
6 judge's charge before that juror could decide. And if
7 after hearing the evidence in aggravation, mitigation, if
8 the juror felt that it was appropriate, that juror could
9 come back with a verdict life imprisonment. Or if the
10 evidence of aggravation that juror felt so warranted it,
11 that juror could bring back a verdict of the death penalty,
12 all depending on the evidence in aggravation and mitigation
13 and their view of it.

14 Of the three types, which best describes you, Ms.
15 Sandler?

16 A. Number three.

17 Q. So, you would be willing to have an open mind even if
18 you found the defendant guilty of murder? You still would
19 have an open mind about the issue of punishment?

20 A. Absolutely.

21 Q. You would listen to all the evidence and my charge on
22 the law before you decide that?

23 A. Absolutely.

24 Q. If the jury were to decide that the death penalty was
25 the verdict, each juror -- because it's got to be unanimous

1 -- would have to sign the verdict form. Could you sign the
2 verdict form?

3 A. Yes, I could.

4 Q. All right. The next thing is this case, it's going to
5 take a week or so. We will have you in, in a hotel and I
6 know that that's always a little inconvenient, but would it
7 be such, ma'am, that's, that's -- such an undue hardship
8 that you could not handle that?

9 A. I could handle it just as long as I could watch the
10 Super Bowl.

11 Q. I can handle that. Might even have an exercise room.

12 THE COURT: Okay, I'm going to let lawyers ask you a
13 few questions, and then I may have a few questions, all
14 right?

15 For the state?

16 MR. HEMBREE: Hi, Ms. Sandler.

17 JUROR: Hi.

18 MR. HEMBREE: I'm Greg Hembree. I was introduced to
19 you on Monday. Judge Lockemy covered all the questions
20 that I might have for you. Appreciate your patience with
21 us. Please answer any questions defense counsel might have
22 for you.

23 THE COURT: Mr. Wilson?

24 EXAMINATION BY MR. WILSON:

25 Q. Ma'am, just let me ask you a couple of things. You

1 said that, you describe yourself as a type two juror -- a
2 type three juror. Is that correct?

3 A. That's correct.

4 Q. And, and could you just explain to me what your
5 understanding of a type three juror is?

6 A. Type three juror is listening to all the facts.

7 Q. Okay.

8 A. And then when you come up with a verdict, whether
9 guilty or innocent, that's the -- those are the facts. You
10 listen to all the facts before you make your decision.

11 Q. Okay, and what about once you've made the decision
12 that the person is, in fact -- let's say you get to that
13 point in the trial. When you've heard all of the evidence
14 and all of the testimony in the first phase of the trial,
15 and you and the other members of the jury make a
16 determination that the state has proven guilt beyond a
17 reasonable doubt to the crime of murder -- and murder, that
18 would mean that there was no defense. It was an
19 intentional killing and that there was no defense. Ma'am,
20 are you saying at that point that you would then still be
21 open as to what the sentence could be?

22 A. That's correct.

23 Q. And that even with the fact that you have already made
24 the decision that the state had proven beyond a reasonable
25 doubt the crime of murder, and even if the state proved

1 aggravating circumstance, you'd still be open to whether or
2 not you were going to vote for life or death?

3 A. Yes.

4 Q. Is that what you're saying?

5 A. That's correct.

6 Q. All right, and do you understand, ma'am, that even if
7 the state were to prove to your satisfaction the existence
8 of an aggravating circumstance or multiple aggravating
9 circumstances that you could still, if you wanted to and if
10 your conscience led you to do that, you could still vote
11 for life if that's what you wanted to?

12 A. That's correct.

13 MR. WILSON: Thank you so much.

14 JUROR: Uh-huh.

15 THE COURT: If you would, Ms. Sandler, step outside
16 the door over there for a second, please, and hand me that
17 sheet of paper.

18 JUROR: These two sheets here?

19 THE COURT: Thank you.

20 (THE JUROR EXITS THE COURTROOM.)

21 THE COURT: Okay, position of the state?

22 MR. HEMBREE: Ms. Sandler's qualified, Your Honor.

23 THE COURT: Defense?

24 MR. WILSON: She's qualified, Your Honor.

25 THE COURT: All right. If you would, bring her back

1 in.

2 (THE JUROR ENTERS THE COURTROOM.)

3 THE COURT: Ms. Sandler, I find you qualified to serve
4 on the jury pool in this case. That does not mean that
5 you'll actually be on the jury. That means that you'll be
6 in the group from which the jury is selected.

7 If you would, do not discuss this case with anyone.
8 In fact, if I were you, I would not go around that person
9 who called you today. Don't answer any phone calls from
10 that person. No more calls and no more situations because
11 remember. As I told you, if you get on this jury, your
12 decision is to be based on the evidence you hear in the
13 courtroom and the law as I instruct it to you. Do not read
14 any papers. Do not see any local news at all.

15 And you might want to go ahead and pack some things
16 together just in case you get on the jury because tomorrow
17 we're going to select the jury, and those who are on this
18 jury would be able to go home and get their bags and come
19 right back. You might want to arrange for someone to give
20 you a ride or something back because you don't want to
21 leave your car here at the courthouse all week long, okay,
22 because we'll have transportation back and forth to the
23 hotel.

24 We'll see you tomorrow at 11:30 A M, okay? You can go
25 out this door here, that door right back there. Yes,

1 ma'am.

2 Okay, next I've got is 446. I don't see that one
3 anywhere, 464.

4 MR. HUMPHRIES: It's 464, and I didn't have anything,
5 Judge.

6 THE COURT: 464. Okay, bring in juror 464, Mr. Velez.

7 (JUROR #464 ENTERS THE COURTROOM.)

8 EXAMINATION BY THE COURT:

9 Q. Mr. Velez. Is it Velez?

10 A. Velez, yes, sir.

11 Q. I see you're originally from New York, New York?

12 A. Yes, sir.

13 Q. Manhattan. What brought you from the New York down to
14 Murrells Inlet and Horry County area?

15 A. Before I got here, I came from Greensboro. Work
16 transferred me from Greensboro to...

17 Q. Okay. What kind of work -- it's says project manager,
18 manager. Is that working in commercial projects?

19 A. Yes.

20 Q. Building projects?

21 A. Yes.

22 Q. This says you live in Murrells Inlet.

23 A. Yes.

24 Q. But you do live in Horry County side of Murrells
25 Inlet?

1 A. Correct.

2 Q. You don't live in Georgetown County?

3 A. Do not live in Georgetown County.

4 Q. Okay. Now, Mr. Velez, I want to make sure you
5 understand that you're not on any -- oh yeah, come closer
6 to the microphone. I'm sorry. You're not on trial, so
7 don't be concerned with that. We're just going to talk a
8 little bit and, and no one's going to try and make you say
9 something one way or the other. Just tell us honestly how
10 you feel. And I do want to remind you, though, that you're
11 still under oath from Monday.

12 A. Okay.

13 Q. You remember that?

14 A. Yes.

15 Q. Do you know any of the lawyers involved in this case?
16 Mr. Humphries?

17 A. I, I do not. I work with Stan Roofing, and I think
18 there's two employees that I work with that may be related
19 to Mr. Wilson.

20 Q. What are their names?

21 A. Willie Wilson and Dustin Wilson.

22 Q. And what makes you think they're related to him?

23 A. My boss told me this morning.

24 Q. Okay. Would that in any way affect your ability to be
25 fair and impartial if that is so?

1 A. No, sir.

2 Q. Okay. Have you ever talked with him about Mr. Wilson?

3 A. No.

4 Q. Do you have any interest or bias or prejudice in this
5 particular case?

6 A. I did not.

7 Q. Have you formed or expressed an opinion as to the
8 guilt or innocence of the defendant in this case?

9 A. I have not.

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.

14 Q. If you are on this jury, I'll tell you that you must
15 follow the law as the judge, as I instruct you. That'd be
16 a requirement and under your oath now, would you follow the
17 law as I instruct it to you?

18 A. Yes.

19 Q. One principle of law that I would instruct you, one is
20 that the defendant in a criminal trial is presumed
21 innocent, and the burden is upon the state to prove guilt
22 beyond a reasonable doubt. The defendant is not required
23 to prove himself innocent. The state has the requirement
24 and the burden of proving him guilty beyond a reasonable
25 doubt. Would you accept and follow that principle of law?

1 A. Yes.

2 Q. If you're on the trial of this case then, are you
3 telling me then that if the state did not prove guilt
4 beyond a reasonable doubt, you'd have no problems bringing
5 back a not guilty verdict?

6 A. Correct.

7 Q. And if the state did prove guilt beyond a reasonable
8 doubt, you'd have no problem bringing back a guilty
9 verdict?

10 A. Correct.

11 Q. Have you discussed this case with anyone?

12 A. No.

13 Q. Have you seen anything about it in the newspapers, TV,
14 heard anything on the radio?

15 A. I have on, on the news Sunday night.

16 Q. This past Sunday night?

17 A. This past Sunday night.

18 Q. What is it that you heard on the news?

19 A. That the trial process was, was to begin Monday for --
20 the process was to ---

21 Q. Did they discuss what the allegations were or
22 anything?

23 A. I don't recall. I don't remember.

24 Q. Okay, sir, so you didn't hear it?

25 A. I, I -- no, no. I don't, I don't remember.

1 Q. So, you remember anything other than what was read on
2 Monday? You remember anything from the news media and --
3 other than that trial was starting?

4 A. No.

5 Q. If in the course of the trial you -- and something
6 happens that jogs your memory and you do remember you heard
7 something on TV or saw something in the newspapers or radio
8 or heard something, would you be willing to disregard that,
9 put that aside and have that have no affect upon your
10 ultimate decision in this case?

11 A. Yes.

12 Q. Okay, and you would make your decision based on the
13 evidence presented in this courtroom and the law as I
14 instruct it to you?

15 A. Yes.

16 Q. Okay. I gave you some sheets there with names. Do
17 you know anybody on the sheet?

18 A. I do not.

19 Q. Could I have that back, please?

20 A. Yes, sir.

21 Q. The sheet of names. Okay, so you didn't circle
22 anybody at all?

23 A. No, I did not.

24 Q. Okay. If you were on this jury, could very well be
25 two parts to it. If the jury after the presentation of

1 evidence and my instructions on law, if the jury determined
2 that the state has not proven guilt beyond a reasonable
3 doubt of the crime for murder, then the jury's
4 participation would end at that point in time. If,
5 however, the jury determined that the state had proven the
6 defendant guilty of murder beyond a reasonable doubt and
7 found him guilty of murder, then we go into another phase
8 where the issue of punishment would be considered.

9 In that phase, the jury would be presented evidence in
10 aggravation, mitigation, and I would instruct further on
11 the law, and the jury would be asked to come back with a
12 verdict of either life imprisonment or the death penalty.

13 Now, I gave you a sheet of paper with the three types
14 of jurors on it. Did you review this?

15 A. Yes, I did.

16 Q. And did you understand the three types and the
17 differences in the three types?

18 A. I did.

19 Q. Just to make sure we're on the same page, juror type
20 one is juror that in that phase of considering punishment,
21 once the defendant had been found guilty of murder -- we're
22 in this phase considering punishment -- a juror type one is
23 the juror -- excuse me -- that would always bring back a
24 verdict for the death penalty because that juror feels that
25 if a murder's been committed, then the death penalty is

1 always the most appropriate punishment.

2 Juror type two is the juror that although the
3 defendant's been found guilty of murder, that juror would
4 never bring back the death penalty because that juror would
5 feel that life imprisonment is always the most appropriate
6 punishment in that regard.

7 The juror type number three, though, is the juror that
8 although the defendant's been found guilty of the crime of
9 murder, that juror would not have made up his mind yet
10 concerning punishment. That juror would want to hear the,
11 the facts and circumstances in aggravation and mitigation
12 and the charge by the judge on the law before that juror
13 would make up their mind. Then after hearing all that
14 evidence and the charge on the law and considering it, that
15 juror could come back with the, if he felt it so warranted
16 it, with a decision of -- a verdict of life imprisonment.
17 Or if the juror felt it so warranted it, they come back
18 with a verdict of the death penalty.

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

21 A. Well, type three.

22 Q. So, you would have an open mind and even if the
23 defendant's found guilty of murder, you would still have an
24 open mind as to punishment?

25 A. Correct.

1 Q. And you could bring back a verdict for life
2 imprisonment, or you could bring back a verdict for the
3 death penalty depending on the consideration of the
4 evidence in aggravation and mitigation?

5 A. Yes.

6 Q. If the jury were to bring back a verdict for the death
7 penalty, every juror would have to sign the verdict form
8 because it requires a unanimous decision. If that was what
9 you had decided, could you sign that verdict form?

10 A. Yes.

11 Q. Okay. If you're selected on this jury, you would be
12 sequestered, meaning that you would be housed in a hotel
13 for somewhere around a week, less, little more. And would
14 not have any contact with your family other than by phone,
15 and of course there would also be someone listening while
16 you're talking, but you would be able to have some contact
17 with your family. You would not be at your job obviously.
18 I know that would be an inconvenience to you. It would
19 always cause some hardship, but would it be such an undue
20 hardship that you couldn't bear that in regard to this for
21 about a week?

22 A. No.

23 Q. Okay. I'm going to let -- and it could be longer.
24 I'm just saying I'm not sure, but it's somewhere in that,
25 in that estimate.

1 THE COURT: Now I'm going to let the lawyers ask you
2 any questions, and if I have any more, I'll come back to
3 you in a second.

4 From the state?

5 MR. HEMBREE: Thank you, Your Honor.

6 EXAMINATION BY MR. HEMBREE:

7 Q. Good afternoon, Mr. Velez.

8 A. Hello.

9 Q. I'm Greg Hembree. I was introduced to you on Monday.

10 A. Yes.

11 Q. That seems like a long time ago now. Thank you for
12 your patience with us today. I just got a few questions.
13 You know, fundamentally we're trying to figure out where
14 you stand on the death penalty. That, that's really the
15 main question we're trying to, to understand here. And I
16 think I've -- and I've got to kind of repeat what Judge
17 Lockemy has already asked you. I, I fear that's what I'm
18 about to. So -- but I just want to clarify for my own
19 understanding.

20 A. Okay.

21 Q. The first part is, and I understand that in the guilt
22 -- you understand in the guilt phase that the only question
23 that we'll -- the jury would be dealing with is the
24 question of the defendant's guilt, did he do the crime or
25 not.

1 A. Yes.

2 Q. And then you testified in response to Judge Lockemy's
3 questions that you would be able to enter this case with an
4 open mind about the guilt, listen to all the evidence, and
5 decide guilt. You know, if it's not guilt beyond a
6 reasonable doubt, you would find for the defendant. If
7 there is evidence that he's guilty beyond a reasonable
8 doubt, you would find with state and find him guilty of
9 murder?

10 A. Yes.

11 Q. And, and that's the first part of the case. That's
12 the guilt phase. We would actually take a break in between
13 the two. There's a twenty-four hour break in between the
14 two phases. So, there's a very clear, it's a very clear
15 two-part process. And I also think I understood you to say
16 in talking about the second phase that you would enter that
17 second phase again with an open mind about penalty?

18 A. Yes.

19 Q. So, you know you've already found him guilty of
20 murder. That's resolved. Now you're entering this second
21 phase, and you're able to keep an open mind in that second
22 phase?

23 A. Yes.

24 Q. And able to consider all the evidence in aggravation
25 -- evidence that might make it worse or the defendant

1 worse, crime worse -- evidence in mitigation -- evidence
2 that might make the defendant seemed better, crime not
3 quite so bad -- presented by both sides and vote for life
4 or death depending upon your view, your evaluation of those
5 facts, circumstances, and evidence in that second phase?

6 A. Yes.

7 Q. And keep an open mind throughout the second phase on
8 penalty until you reach that point?

9 A. Yes.

10 MR. HEMBREE: That's all we can ask of you. I
11 appreciate your service throughout this process. Please
12 answer any questions defense counsel may have for you.

13 THE COURT: Mr. Wilson?

14 EXAMINATION BY MR. WILSON:

15 Q. Mr. Velez, just, just so I'm clear. If you would,
16 just help me. What is your understanding of type three
17 juror?

18 A. My understanding is that I would have an open mind as
19 far as after the phase, the trial phase whether it was life
20 in prison or the death penalty.

21 Q. Okay.

22 A. That would not be decided until the second phase.

23 Q. All right, and in going into that second phase, it
24 would mean that you and the panel that you were on, the
25 jurors -- because we wouldn't get there if you find the

1 defendant not guilty in the first part. Then we don't go
2 to the second part.

3 A. Yes.

4 Q. And if you find him guilty of a lesser charge, we
5 don't go to the second part.

6 A. Correct.

7 Q. Only if you find him guilty beyond a reasonable doubt
8 of the crime of murder would we then go to the second part.

9 A. Correct.

10 Q. And you're saying that even if that have occurred in
11 the first part -- that is, that finding of guilt beyond a
12 reasonable doubt of the crime of murder -- you would still
13 have an open mind and you would still be willing to listen
14 to aggravating circumstances and mitigating factors before
15 you made up your mind whether you were going to vote for
16 life or for death?

17 A. Yes, I would be.

18 Q. Do you also understand that regardless of how many
19 aggravating circumstances, if any, the state proved to you,
20 that you could still vote for life regardless?

21 A. Yes, I understand that.

22 Q. If that's what you felt was the right thing to do?

23 A. Yes.

24 MR. WILSON: All right. Thank you so much.

25 THE COURT: I notice this your last book was on Bill

1 Belichick.

2 JUROR: It was.

3 THE COURT: Are you concerned you will get to watch
4 the Super Bowl if you're on this jury?

5 JUROR: I'm a Giants' fan.

6 THE COURT: Oh, you're a Giants' fan?

7 JUROR: I'm a Giants' fan.

8 THE COURT: Well, you still ---

9 JUROR: Well, we can DVR.

10 THE COURT: Anyway, if you're on this jury, we'll make
11 arrangements. I'm sure that's not a problem. But -- and I
12 see your wife went to Appalachian State.

13 JUROR: Correct.

14 THE COURT: Very proud of football there.

15 JUROR: She is.

16 THE COURT: If you would, step aside that door over
17 there for a second, and let me hold the sheet of paper.

18 (THE JUROR EXITS THE COURTROOM.)

19 THE COURT: Position of the state?

20 MR. HEMBREE: Mr. Velez is qualified, Your Honor.

21 THE COURT: Defense?

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

23 THE COURT: Okay, bring him back in, please.

24 (THE JUROR ENTERS THE COURTROOM.)

25 THE COURT: Now, one other question, Mr. Velez. Who's

1 the backup quarterback to Eli Manning?

2 JUROR: I don't know.

3 THE COURT: Wright. South Carolina. If you would,
4 sir, though, I find you qualified to be in the jury pool.
5 Now, that does not mean you're going to be on the jury.
6 That means that you will be in the jury pool, and from that
7 pool the jury would be selected.

8 I'm going to let you go home now. I need you to come
9 back tomorrow at 11:30 a.m. You might want to go ahead and
10 pack some things because if you're on the jury, I'll let
11 you all go home and then come back with your, with your,
12 with your bags. Go on and get them packed just in case.
13 Also, make some arrangements for your vehicle so that
14 someone can take your vehicle back home so you won't have
15 to leave it at the courthouse.

16 And do not discuss this case with anyone. Not your
17 wife, family, friends, job, or anywhere. And do not read
18 any newspapers or watch any local news, okay?

19 JUROR: Okay.

20 THE COURT: I want you to go out that door there. Be
21 back here tomorrow at 11:30.

22 JUROR: Okay.

23 THE COURT: The next one is 466. Look up the name
24 right quick.

25 MR. HUMPHRIES: We have nothing, Judge.

1 MR. WILSON: I have nothing.

2 THE COURT: Bring in Mr. Walden.

3 (JUROR #466 ENTERS THE COURTROOM.)

4 EXAMINATION BY THE COURT:

5 Q. How are you doing? Good to see there, Mr. Walden.

6 A. Yes.

7 Q. And, Mr. Walden, I see here you are originally from
8 Charlotte. Says you were -- birthplace is Charlotte, North
9 Carolina?

10 A. Yes. From California originally.

11 Q. Oh, Cal -- so, were you born in Charlotte?

12 A. Uh-huh.

13 Q. Then you went back home to California?

14 A. Yeah. I'm an Air Force brat.

15 Q. Air Force, all right. What, what Air Force Base in
16 California?

17 A. McCall, McCall.

18 Q. Think I flew in to there. You know, I don't know if
19 you know where Fort Irwin is, but it's desert.

20 A. California?

21 Q. Yes. Had to spend several weeks in the desert there.
22 Call that the National Training Center, but it's actually
23 the waiting center.

24 A. Right.

25 Q. Now, what brought you to this area here?

1 A. My father was stationed here in the military in the
2 late sixties, and my parents moved back in the early
3 nineties, and real estate was struggling in California.
4 So, we did, too. And I came out here on a five-year plan,
5 and I've been here for thirteen.

6 Q. What is your business? What is that? Diamond?

7 A. Diamond Rock. I have a five companies. I have
8 Diamond Rock, which is a ---

9 Q. Try to speak to the microphone.

10 A. I'm sorry. I have Diamond Rock, which is a real
11 estate development company, construction company. I have a
12 Approved Mortgage Lending, mortgage brokerage. I have an
13 automation company. I have a surveying company, and I have
14 Trident Stone, which is a stone quarry.

15 Q. Well, that's a lot. How many employees do you have?

16 A. Roughly sixty.

17 Q. Sixty?

18 A. Uh-huh.

19 Q. Okay.

20 A. Which makes this very difficult.

21 Q. And you said attorneys, you've been involved with many
22 with your real estate company

23 A. In the real estate transactions, business
24 transactions.

25 Q. Business transactions. I want to remind you that,

1 number one, you're still under oath from Monday, okay,
2 sir?

3 A. Yes, sir.

4 Q. And I -- is no wrong answer, right answer, so don't
5 feel you have to answer anything to please anybody one way
6 or the other. We just want to talk with you and, and find
7 out something about you.

8 Do you know any of the attorneys involved in this
9 case?

10 A. No.

11 Q. Okay. Do you have any special interest, bias, or
12 prejudice in this case?

13 A. No, not really.

14 Q. Okay. Have you formed or expressed an opinion as to
15 the guilt or innocence of the defendant in this case?

16 A. Just what I've seen in the media.

17 Q. Oh, I'm asking you about your opinion, though. From
18 what you've seen in the media, have you formed an opinion?

19 A. I'd say somewhat, yes.

20 Q. All right. Do you feel you could give a fair and
21 impartial trial both to the state and the defense?

22 A. Yes, ultimately.

23 Q. Well, let me just let you know this. If you're on the
24 jury, if you're on this jury, you'll have to accept the
25 law. You'd be required under your oath to accept the law

1 as I give it to you. Would you do that?

2 A. Yes.

3 Q. One principle of the law that I will tell you is that
4 the defendant in a court of law, the defendant is presumed
5 innocent and the state is required to prove guilt beyond a
6 reasonable doubt. The defendant does not have to prove
7 himself innocent; the state is required to prove someone
8 guilty beyond a reasonable doubt. Now, the question is
9 could you follow that principle even after what you've seen
10 in the news?

11 A. I -- yes.

12 Q. Okay. So, are you telling me you can disregard
13 anything you've seen in the news, disregard anything you've
14 read and come in here and make your decision in this case
15 based on the evidence presented in the courtroom and the
16 law as I instruct it to you?

17 A. Well, I think it's, ultimately it's going to be a
18 little hard to completely displace that because you, you
19 know, you've seen it through the history of the case. So,
20 I mean, it's hard to get rid of that predisposition.

21 Q. Well, once you start the case, would mean that you
22 would believe some of the things you read are true, and
23 that would be a starting point you would have? Or would
24 you be able to disregard that and begin brand new in the
25 courtroom with the presumption of innocence of the

1 defendant?

2 A. The latter, yes.

3 Q. Okay, now, once again there's no wrong or right
4 answer.

5 A. I understand.

6 Q. Just want to be open and honest with me. So, you're
7 telling me, then, you could forget? You could presume the
8 defendant innocent and require the state to prove guilt
9 beyond a reasonable doubt, and if they didn't prove him
10 guilty beyond a reasonable doubt in the courtroom with the
11 evidence here, you would find him not guilty if they did
12 not prove him guilty beyond a reasonable doubt?

13 A. Yes.

14 Q. And conversely if they did prove him guilty beyond a
15 reasonable doubt, you would then find him guilty?

16 A. Yes.

17 Q. Would your verdict, whether it be not guilty or
18 guilty, would your verdict have any basis from matters you
19 have read in the newspapers or things you may have seen on
20 TV?

21 A. No.

22 Q. It would be totally from your decision in the
23 courtroom?

24 A. Yes, sir.

25 Q. We saw in the courtroom? Now on your oath, so you're

1 telling me you would disregard that as far as the ultimate
2 decision you made in the courtroom?

3 A. Yes, sir.

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

5 A. Yes, sir.

6 Q. Who is that?

7 A. I don't know. I don't know off the top of my head.
8 Something just -- office.

9 Q. Okay. Is that recently or a while back?

10 A. When I was called for jury duty over a week ago.

11 Q. Okay, you just happened to mention to someone that you
12 thought about this was the case you're coming to?

13 A. Yes, and one of my employees is actually coming in
14 later today. They're in the jury pool also.

15 Q. Did you discuss it with that employee?

16 A. Uh-huh. Yes.

17 Q. And what's that employee's name?

18 A. Megan. I can't tell you her last name. She's my --
19 she's newly employed with me. She's only been with me a
20 few weeks.

21 Q. Okay, first name is Megan?

22 A. Megan, yes.

23 Q. Now, don't worry. You're not getting in trouble.

24 Just ---

25 A. No.

1 Q. There's nothing illegal about that once you, you know,
2 discussed it. But the only question here is that to be
3 fair to everybody, and you always want to be fair to
4 everybody.

5 A. I understand.

6 Q. That's important, and I'm sure you wanted to make sure
7 that as a juror you're going to be fair and impartial and
8 don't start on the jury with any preconceived opinions.
9 But be able to be open minded and then be able to make your
10 decision based on the evidence presented in the courtroom
11 and the law. You said -- could you do that?

12 A. The impartiality, sure, yes.

13 Q. No. My question, though, is can you make your
14 decision based on the evidence presented in the courtroom
15 and the law as I instruct it to you and disregard regarding
16 any affect on your decision what you may have read or
17 talked to with someone?

18 A. Yes.

19 Q. All right. So, under your oath whatever decision you
20 make, you will know that it had nothing to do with anything
21 you've read or anything you may have talked to someone
22 about outside the courtroom?

23 A. Yes.

24 Q. Okay. I gave you a list of names there of people.
25 Did you go over that list?

1 A. Yes.

2 Q. Did you see anybody there you have?

3 A. Just one officer.

4 Q. Well, let me see that. Have you circled the named?

5 A. Yes.

6 Q. All right, I see Officer Neil Livingston.

7 A. Yes.

8 Q. How do you know Officer Livingston?

9 A. I just had discussions with him.

10 Q. About what?

11 A. About a prior case.

12 Q. Some criminal activity you allege someone's done or
13 something?

14 A. Yes.

15 Q. How long ago was that?

16 A. Six months.

17 Q. All right. Did he work with the case for you?

18 A. No. It was -- there was nothing to come of it.

19 Q. Okay. Did you talk with him more than once or just
20 once?

21 A. Couple -- two or three times I think.

22 Q. Did y'all developed a relationship?

23 A. No.

24 Q. Okay. If he were to testify, the fact that you may
25 have talked to him in the past six months ago, would that

1 in any way cause you to look upon him differently than you
2 would any other witness in the case?

3 A. No.

4 Q. Okay. So, the fact that Detective Neil Livingston,
5 the fact that name is there and the fact he's going to take
6 the stand, does that mean that you would have a different
7 feel about the case, the fact that he was going to be a
8 witness?

9 A. No.

10 Q. Now, one thing I want to make sure, Mr. Walden, as we
11 said in the beginning I want to know your honest feelings.
12 So, don't feel there's anything you have to say that you
13 think I want you to say because there's no wrong answer
14 here and no right answer. Just your own true feelings.
15 So, please don't feel there's something you have to say
16 because you think maybe I want you to say it one way or the
17 other. Do you understand?

18 A. I understand.

19 Q. So, what you're telling me is your own true feelings?

20 A. Yes.

21 Q. Okay. So, the ultimate decision you make in this case
22 would not -- the fact you know Neil Livingston or anything
23 about the facts?

24 A. No.

25 Q. And, and, you would look upon him like any other

1 witness?

2 A. Yes.

3 Q. Okay. I gave you also a sheet there with three types
4 of jurors.

5 A. Yes.

6 Q. Let me discuss that with you for a minute. In this
7 case, the jurors would, would be presented with evidence in
8 the phase to deciding whether or not the state has proven
9 guilt beyond a reasonable doubt. I'll also give the jury a
10 charge on the law. If the jury felt the state had not
11 proven the defendant guilty of murder beyond a reasonable
12 doubt, we would end it at that point. If, however -- with
13 the jurors' participation. If, however, the jurors decided
14 that the state had proven guilt beyond a reasonable doubt
15 of the crime of murder, then we would move to another phase
16 where the jurors would consider the issues of punishment.

17 Now remember: going to the other phase, I'm not saying
18 that we're automatically going to do that. I'm just saying
19 if we got to that point. So, we discussing it in no way
20 implies that we're going to get to that point. But if we
21 did get to that point, the jurors will have already decided
22 the defendant is guilty of murder. That decision would
23 have been made; they decided beyond a reasonable doubt he's
24 guilty of the crime of murder.

25 So, the next phase the jurors are deciding what is the

1 appropriate verdict for punishment. The jurors can come
2 back with a verdict of life imprisonment, or the jurors
3 could come back with a verdict of the death penalty. In
4 that phase, the jurors would be presented evidence in
5 aggravation and evidence in mitigation and, and I'll give
6 you further instruction on the law.

7 Now, those three types of jurors, that juror number
8 one type is in that phase, that juror would always come
9 back with the death penalty. That juror is one that feels
10 that if somebody's been convicted of murder, the verdict
11 for the death penalty is always the most appropriate
12 verdict.

13 Juror number two is the juror that once we got to that
14 phase, that even though the defense -- the defendant,
15 defendant's been convicted of the crime of murder, that
16 juror would say they could never give the death penalty.
17 That life imprisonment is what they would always give.

18 And juror number three is a juror, although the
19 defendant has been convicted of murder, that juror would
20 say I want to keep my mind open. I'm going to listen to
21 the evidence in aggravation and mitigation and the charge
22 on the law before I decide. And if the evidence so
23 warranted it, I could come back with a verdict of life
24 imprisonment. Or if the evidence so warranted it, I could
25 come back with a verdict of the death penalty.

1 Now, of those three types, which type are you, Mr.

2 Walden?

3 A. Type one.

4 Q. Type what?

5 A. Type one.

6 Q. So, you feel that if someone is found guilty of
7 murder, that you would always bring back a verdict for the
8 death penalty?

9 A. Yes, sir.

10 Q. That's something you feel deeply?

11 A. Eye for an eye, tooth for a tooth.

12 Q. And so you don't feel if the evidence of aggravation,
13 mitigation could change your mind in that regard?

14 A. I don't know the realities of it, so I don't know. I,
15 I just know what my beliefs are.

16 Q. Okay. Well, evidence in aggravation and mitigation
17 are evidence that would try to aggravate the offense or
18 evidence that will try to lessen the offense. But you
19 feel, though, if the defendant's guilty of murder, then the
20 death penalty is the appropriate punishment?

21 A. Yes, sir.

22 THE COURT: Questions from the state?

23 MR. HEMBREE: Your Honor, nothing from the state.

24 THE COURT: Defense?

25 MR. WILSON: No questions.

1 THE COURT: All right. Listen, Mr. Walden, I want to
2 thank you very much for being here today, and I know you
3 need to get back to your work, and I appreciate it. I'm
4 going to excuse you on this case. Could you hand me that
5 sheet of paper you got there?

6 JUROR: Yes, sir.

7 THE COURT: And good luck to you in the future. Thank
8 you very much, sir.

9 JUROR: Thank you.

10 THE COURT: Okay.

11 (QUESTIONNAIRE OF JUROR #466-WALDEN MARKED INTO
12 EVIDENCE AS COURT'S EXHIBIT NUMBER 13-K.)

13 THE COURT: I find that juror disqualified. That gets
14 us through panel K, but now we have thirty-seven.

15 MR. HUMPHRIES: We have thirty-eight, Your Honor.

16 THE COURT: Well, I'm missing something then. Well,
17 I'm sorry, I started off with thirty-six. I should've
18 started off -- I mean, I started off with thirty-five. She
19 started off with thirty-six, thirty-seven, thirty-eight.
20 You're right, thirty-five was juror 294. Thirty-six is
21 juror 402. Thirty-seven is juror 398. Thirty-eight is
22 juror 464.

23 MR. HUMPHRIES: Yes, Your Honor.

24 THE COURT: All right, let's take a few minutes, and
25 we'll get started back.

1 Madame Clerk, that means you now have a total of 3000
2 left, right? You can tell jurors O and P I see no way
3 we're going to get to them tonight, so you can let them
4 know to come back tomorrow morning at 9:00. If we need
5 them, we need them; if we don't, we don't. That's panels O
6 and P.

7 All right, we'll take a few minutes.

8 (OFF THE RECORD.)

9 MR. HUMPHRIES: Before the next juror comes in, I've
10 spoken with Mr. Wilson and I didn't know what the court
11 intended to do in regard to his motion to reconsider that
12 juror. But both he and I would like if, if ---

13 THE COURT: Well, I am very seriously reconsidering
14 it.

15 MR. HUMPHRIES: Yes, sir. We just need -- we like to
16 know prior to close of business today so we can ---

17 THE COURT: You would like to know?

18 MR. HUMPHRIES: I would.

19 THE COURT: I'll let you know, if I let you know.

20 MR. HUMPHRIES: I, I thought that you would.

21 MR. WILSON: Judge, and that's fine with me.

22 MR. HUMPHRIES: Thanks a lot, Ralph.

23 THE COURT: We are now going to start with panel L.
24 Gregory Mascho, why does that name sound familiar?

25 MR. HUMPHRIES: He -- we don't have anything on him,

1 Judge.

2 THE COURT: That name sounds familiar for some reason.
3 Maybe he stood up in the back. That's probably what it was
4 for. Something that didn't require him to come up front.

5 MR. HEMBREE: Your Honor, he said that he worked, and
6 he was one of the ones that when he said he lived in, in
7 Horry County, he said he ---

8 THE COURT: Oh.

9 MR. HEMBREE: --- lived in Virginia, but then he
10 didn't really live in Virginia. He was working in
11 Virginia, but ---

12 MR. HUMPHRIES: Driver's license.

13 MR. HEMBREE: --- he's still, he's still living here,
14 a driver's license here.

15 THE COURT: Okay. All right. Okay, born in Japan.
16 All right, bring Mr. Mascho in, please.

17 (JUROR #300 ENTERS THE COURTROOM.)

18 EXAMINATION BY THE COURT:

19 Q. Hello, Mr. Mascho. How you doing?

20 A. Pretty good, Your Honor.

21 Q. You speak Japanese?

22 A. No, just...

23 Q. How long did you spend there?

24 A. Just, just born. My mother is from Japan.

25 Q. Oh, it was your mother? I thought it might be that

1 your father was in the military.

2 A. He was that, too.

3 Q. Okay, and they met in Japan?

4 A. Yes, sir.

5 Q. Trying to remember the movie with Marlon Brando and
6 someone else, somebody in the army met and got married in
7 Japan, but a lot of soldiers did that.

8 A. Oh, yeah.

9 Q. In Japan. Have you visited over there since you've
10 been an adult?

11 A. No. I dropped in one time on my way to Korea. I was
12 stationed there for a year.

13 Q. Yeah, I see you were in the army.

14 A. Yes, sir.

15 Q. And you are, you spent six years?

16 A. More or less. More than six, but I reenlisted early
17 one time, so...

18 Q. Did you get into the Reserves or anything when you got
19 out?

20 A. No. No, sir.

21 Q. Boy, that was 1989. You would now have enough for
22 retirement.

23 A. Oh, I know. Thing about it is, you got ---

24 Q. If you got in the Reserves, you'd be bringing in that
25 check.

1 MR. RATHBUN: Your Honor, could he move over to the
2 microphone, please?

3 THE COURT: Up, I'm sorry. Yes.

4 Q. Yeah, move up. I'm sorry. They can't hear you that
5 well.

6 THE COURT: We were discussing his military
7 background.

8 Q. Now, Mr. Mascho, I want to just talk with you a little
9 bit. I know I talked to you the other day. You mentioned
10 that you were doing a job out of state now, but you and
11 your family lived in Horry County?

12 A. Yes, sir.

13 Q. And now I want to remind you you're still under oath,
14 that I put you under oath on Monday.

15 A. Yes, sir.

16 Q. And you need to answer with words so she can hear you
17 over there. See, she's taking everything down. She can't
18 necessarily sometimes see you shake your head, so.

19 A. Okay. Yes, sir.

20 Q. So, you do remember you're still under oath?

21 A. Yes, sir.

22 Q. Now, don't be nervous. There's no wrong answers, no
23 right answers. We're just going to go for a few things
24 here, and want to talk to you some. And please just be
25 open and honest, and there's no trouble one way or the

1 other no matter what your answer. Don't answer questions
2 because you think they want you to answer one way or the
3 other. Just answer the way you really feel.

4 Are you related by blood or marriage, or do you know
5 any of these attorneys involved in this case? They all
6 introduced themselves to you yesterday. You don't know any
7 of them?

8 A. No, sir.

9 Q. All right. Do you know of any special interest, bias,
10 or prejudice in this case at all?

11 A. No, sir.

12 Q. Have you formed or expressed an opinion at all about
13 the guilt or the innocence of the defendant in this case?

14 A. No, sir.

15 Q. Did you know of any reason whatsoever why you could
16 not be fair and impartial to both of the defendant and the
17 state?

18 A. No, sir.

19 Q. Okay. If you're on this jury, I will let you know
20 that you as a juror, you all decide the facts from the
21 evidence presented. I'd also tell you, though, that you
22 must follow the law that I instruct it to you. And one of
23 the principles of law that I will tell you is that the
24 defendant is presumed innocent, and the burden's upon the
25 state to prove him guilty beyond a reasonable doubt, and

1 the defendant is not required to prove himself innocent.

2 Would you accept and follow the principle of law?

3 A. Yes, sir.

4 Q. And would you follow the other principles of law of
5 which I instruct you?

6 A. Yes, sir.

7 Q. So, therefore, if you're on that jury and if the jury
8 is, if the jury feels the state has not proven guilt beyond
9 a reasonable doubt, then you could bring back a verdict of
10 not guilty?

11 A. Yes, sir.

12 Q. And if the jury feels the state has proven guilt
13 beyond a reasonable doubt, you could bring back a verdict
14 of guilty?

15 A. Yes, sir.

16 Q. Have you discussed this case with anyone?

17 A. No, sir.

18 Q. It has had some media coverage. Have you read about
19 it, seen anything about it, heard anything about it at all?

20 A. No, sir. I've been out of town.

21 Q. So until you got back here Monday, you didn't know
22 what the case was about?

23 A. Right.

24 Q. And so no one has discussed it with you since Monday?

25 A. No, sir.

1 Q. So, the only thing you know about the case is what we
2 read into the record on Monday?

3 A. Yes, sir.

4 Q. And you did know those are just allegations?

5 A. Right.

6 Q. That's not evidence?

7 A. Right.

8 Q. Okay. Now, I gave you pages there with names on it.
9 You've got that with you?

10 A. Yes, sir.

11 Q. Do you, do you know anybody on those pages?

12 A. Not by name, sir. I mean, no. I don't think I do.

13 Q. So, you don't recognize any of those names?

14 A. No, sir.

15 Q. All right, let me have that back if you would then.

16 Now, I understand that sometimes you'll see someone. You
17 know their face but not their name.

18 A. Right.

19 Q. If for some reason and you see somebody who appears in
20 the trial and you know them, you just didn't recall the
21 name but you know them, please if you're on that jury let
22 me know about it, okay?

23 A. Yes, sir.

24 Q. And -- because I don't want -- the only reason I want
25 to know is I want to know whether or not that person, if

1 that person's a witness, does that make you look upon them
2 differently than you would any other witness. That would
3 be the only inquiry I want to make. So, just let me know
4 if you see someone you know.

5 This trial could very well be in two parts. If after
6 the presentation of evidence and my instructions on the
7 law, if the jury determines that the state has not proven
8 the defendant guilty of murder and, and finds them not
9 guilty, then the jurors' participation would end at that
10 point.

11 If, however, the jury determined that the state has
12 proven the defendant guilty of murder beyond a reasonable
13 doubt and finds him guilty of murder, then we would go to
14 another phase. And in the next phase there'd be issues of
15 punishment to consider. And in that phase the jury would
16 be presented evidence in aggravation and evidence in
17 mitigation. Now, after that has been presented, the judge
18 would give the jury additional instruction on the law. And
19 then the jury would come back and it -- with a verdict of
20 either life imprisonment or the death penalty.

21 Now, that phase -- and the fact I talk about it in no
22 way implies we're going to get to that phase. It just
23 means I got to discuss it because it's possible.

24 A. Yes, sir.

25 Q. Now, and also remember if we get to that phase, that

1 means the jury has already determined that the defendant is
2 guilty of murder, okay? Then we get to that phase where
3 they would consider what the appropriate verdict would be
4 in regard to sentencing.

5 Now, I gave you a sheet of paper that has three types
6 of jurors on it. First type of juror is that juror in that
7 phase who would say that no matter what the evidence in
8 aggravation and mitigation are, I'm always going to vote
9 the verdict of the death penalty. So, that juror would
10 always vote the death penalty. It doesn't matter what the
11 evidence was in mitigation or aggravation.

12 The other juror, number two, is a juror that no matter
13 what the evidence in aggravation, mitigation is, that juror
14 would always come back with a verdict of life imprisonment
15 because that juror could never impose the death penalty no
16 matter what the circumstances.

17 And the third type of juror, number three, is a juror,
18 though -- who, although the defendant's been found guilty
19 of murder, that juror would still have an open mind far as
20 punishment. That juror would want to hear the facts and
21 circumstances surrounding the case, the evidence in
22 aggravation and mitigation, and the judge's instruction on
23 law. Then after considering the evidence in aggravation
24 and mitigation and the judge's instruction on the law, that
25 juror could, if it so warranted it, bring back a verdict

1 for life imprisonment. Or if the evidence so warranted it,
2 that juror could bring back a verdict of the death penalty.

3 Now, looking at those three types, Mr. Mascho, which
4 is the one that describes you?

5 A. Number three.

6 Q. So, you have an open mind and even, even though you
7 found the defendant guilty of murder, you would still have
8 an open mind regarding the punishment?

9 A. Yes, sir.

10 Q. And you could, if the evidence warranted it, bring
11 back a verdict of life imprisonment? Or you could, if the
12 evidence warranted it, bring back a verdict for the death
13 penalty?

14 A. Yes, sir.

15 Q. Now, if the jury were to bring back a verdict of the
16 death penalty, the law requires that each juror sign the
17 verdict form because it must be unanimous. And so could
18 you sign that verdict form?

19 A. Yes, sir.

20 Q. Now, I notice that, you know, you got a business and
21 you're concerned about being away from the business and --
22 in your questionnaire there. If you got on this jury,
23 which start probably tomorrow sometime and it will last
24 about a week here or there, there or so one way or the
25 other, and you would be sequestered. You could have some

1 telephone conversation with your family or with your
2 business, but it would be monitored so that someone would
3 be listening to you or whatever, but you could have some,
4 some conversation. But you would be sequestered for about
5 a week.

6 A. Yes, sir.

7 Q. And I know it would cause you something of a hardship.
8 Could you manage that? We're talking about a week to ten
9 days.

10 A. Yes, sir.

11 THE COURT: Okay, all right. I'm going to let the
12 lawyers ask you some questions, and then after that I may
13 have something else for you.

14 From the state?

15 MR. HUMPHRIES: No questions. Thank you, sir.

16 THE COURT: Okay, from the defense? Mr. Rathbun?

17 EXAMINATION BY MR. RATHBUN:

18 Q. Good evening, Mr. Mascho. I'm Paul Rathbun. Along
19 with Ralph Wilson, we represent Mr. Winkler in this case.

20 I notice on your application you and your wife work
21 for the same company?

22 A. Yes, sir.

23 Q. But you work in two separate states?

24 A. Yes, sir. She's up near Boone. She's working on
25 Interstate 77, and I'm in Augusta working on Interstate 20.

1 Q. So, you got one of those long-term marriages that get
2 together once a while?

3 A. Well, on the next job I'm going with -- same place she
4 goes.

5 Q. Okay. Now, we understand that you're working in
6 Georgia.

7 A. Yes, sir.

8 Q. But your residence is here?

9 A. Yes, sir.

10 Q. Okay, and we understand that's somewhat of a hardship.
11 You -- the judge gave you little bit of an explanation of
12 why we're here.

13 A. Yes, sir.

14 Q. What we want to find out, and that you've told us
15 everything I think we need to know pretty much. I want to
16 make sure that you know if we get to the second phase after
17 you and the eleven other jurors determine the, the, the
18 verdict of guilt. That there's no excuse for the murder.
19 That there's no heat of passion or anything like that.
20 Then we have to go to the second phase, and that's where
21 you and the other jurors, after listening to matters of
22 aggravation and matters of mitigation, have to determine
23 whether or not they would vote for the death penalty or for
24 life. And do you understand that the State of South
25 Carolina and the court are satisfied with whatever verdict

1 you come up with?

2 A. Yes, sir.

3 Q. And that you can vote for life for any reason you want
4 to. If there's a lot of aggravating circumstances and no
5 circumstances in mitigation, if you come down on the side
6 of life, you could vote for life. Do you understand that?

7 A. Yes, sir.

8 MR. RATHBUN: Thank you, sir.

9 THE COURT: All right, if you would -- questions from
10 the state?

11 MR. HUMPHRIES: Nothing. He's qualified, Your Honor.

12 THE COURT: Defense?

13 MR. RATHBUN: Qualified Your Honor.

14 THE COURT: All right. Mr. Mascho, I'm going to ask
15 you now to, to make sure that you come back tomorrow at
16 11:30. Now, once again if you're -- that doesn't mean
17 you're going to be on this jury. It just means you're
18 going to be in the group from which the jury is selected.

19 Now, if you are selected, though, I'll give you time
20 to go home and get your bags and come back, but you might
21 want to go on and pack your bags just in case. You sound
22 like a man is used to packing his bags and you can get that
23 done. And pack your bags for about a week. Now, once
24 again, you may not be selected but if you are, then you
25 just have that ready to go.

1 Also, see if you can arrange that -- if you can't,
2 I'll give you some assistance to get this done. But see if
3 you can arrange for someone to be able to bring you back
4 and take your car back so you won't have to leave your car
5 at the courthouse all week. We'll be giving you
6 transportation back and forth to the hotel, okay?

7 JUROR: Yes, sir.

8 THE COURT: And do not discuss this case with anyone.
9 Don't discuss it with your family; don't discuss it with
10 anybody. Don't look at any of the local news or read any
11 local papers at all. It's very important, Mr. Mascho. I
12 know you've got to tell your family that you're on jury
13 duty and all that, but still don't discuss anything about
14 the case.

15 JUROR: Yes, sir.

16 THE COURT: Tell them you cannot, okay?

17 JUROR: Only watch ESPN.

18 THE COURT: All right. Well, good, good. We'll,
19 we'll see you then tomorrow at 11:30 a.m. this courtroom,
20 okay?

21 JUROR: All right, sir.

22 THE COURT: See you then.

23 JUROR: Okay.

24 THE COURT: Hand over that paper you got there. We'll
25 see you tomorrow.

1 JUROR: Thank you.

2 THE COURT: Okay, juror 434, Ms. Staton. Anything
3 about -- anybody see anything about that?

4 MR. HEMBREE: Nothing, Your Honor.

5 THE COURT: Oh, I'm sorry. Yeah, go ahead. When I
6 say her name go ahead and bring her.

7 (JUROR #434 ENTERS THE COURTROOM.)

8 EXAMINATION BY THE COURT:

9 Q. Ms. Staton, how are you doing?

10 A. How are you?

11 Q. Come on in. Just relax and have a seat there. I see
12 you're from Texas originally. Is that right?

13 A. Right. Yes.

14 Q. Austin, Texas?

15 A. I was born in Austin, yes.

16 Q. That's the capitol. Named after Stephen Austin. And
17 that's in Travis County, Travis named after William Barrett
18 Travis from South Carolina. What brought you to South
19 Carolina? And try to speak in the microphone there for
20 me.

21 A. My husband was in the military. We met when he was
22 stationed at Fort Hood. He was ---

23 Q. Fort Hood is Kaline, Texas.

24 A. We met, and he is from Aynor. So, when he got out of
25 the military, he wanted to move back home. So...

1 Q. A lot of difference between Austin, Texas, and Kaline
2 and Aynor, South Carolina.

3 A. There is.

4 Q. I see you all live in at Gallivant's Ferry?

5 A. That's correct.

6 Q. A lot of political activity there in the spring in the
7 even numbered years. They have that stump meeting there.
8 Have you ever been to that?

9 A. Huh-uh.

10 Q. It's something else.

11 I want to ask you, Ms. Staton, just a few questions
12 and all, and please don't think there's any right answers,
13 wrong answers. You just tell me anything. Don't need to
14 please me or think you answer what I want you to answer.
15 Really just want to get to know you a little bit.

16 I want to remind you that you're still under oath. We
17 put everybody under oath on Monday, so you remember?

18 A. That's correct.

19 Q. And please try that microphone. I've got to make sure

20 ---

21 A. Sorry.

22 Q. --- everyone can hear you, okay?

23 Now, do you know any of the attorneys involved on this
24 case?

25 A. No, I do not.

1 Q. Okay. 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 in this case?

6 A. No, sir.

7 Q. Do you know of any reason whatsoever why you cannot
8 give the state and the defense a fair and impartial trial?

9 A. No.

10 Q. Okay. If you were on the jury in this case, you will
11 have to follow the law as I instruct it to you. Other
12 words, the jurors makes its decision on the evidence, on
13 the facts, on the evidence. But it must follow along as
14 the judge instructs it. And to your oath, would you follow
15 the law as I instruct it to you?

16 A. Yes, sir.

17 Q. One of those principles of law is I would tell you
18 that the defendant is presumed innocent. The burden is
19 upon the state to prove guilt beyond a reasonable doubt.
20 The defendant is not required to prove himself innocent.
21 The state is required to prove guilt beyond a reasonable
22 doubt. Would you follow that principle of law?

23 A. Yes, sir.

24 Q. All right. Now, therefore, if you're on that jury and
25 if the state does not prove guilt beyond a reasonable

1 doubt, you could then bring back a verdict of not guilty.

2 Is that right?

3 A. That's correct.

4 Q. And if the state did prove guilt beyond a reasonable
5 doubt, you could bring back a verdict of guilty?

6 A. Yes, sir.

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

8 A. No, not since Monday. Whenever I receive, first
9 received the pamphlet in the mail, I called my husband when
10 I realized what it was for.

11 Q. And what did y'all talk about?

12 A. I just, I, when I got the questionnaire, I thought
13 that's a lot of questions for jury duty. Something's
14 wrong. So, at the end of it when I saw, you know, the name
15 mentioned, I just, I Googled the, the name to find out what
16 came up, and I saw that 500 jurors were pulled for this
17 case. And basically they said that ---

18 Q. You Googled? Really?

19 A. And the Sun News had ---

20 Q. Oh, you did the news, newspaper?

21 A. Right. I just searched Google and brought up an
22 article by the Sun News. So, I called my husband and I
23 told him, I said well, I found out why there's so many
24 questions.

25 Q. Now, so you read the one or two articles about it from

1 the newspaper?

2 A. There was one article.

3 Q. All right. Now, do you remember that article
4 discussing anything about the allegations or whatever?

5 A. It did. It said that 500 jurors were pulled for the,
6 you know -- this man had shot and killed his wife, and
7 that's basically all it said.

8 Q. All right, and you do realize that those are
9 allegations?

10 A. Right.

11 Q. That, that's ---

12 A. Right.

13 Q. In fact, the paper said -- they're just repeating
14 allegations.

15 A. Correct.

16 Q. And that, that is not evidence he committed any crime
17 whatsoever.

18 A. Right.

19 Q. And what I mentioned about the presumption of
20 innocence.

21 A. Right.

22 Q. And the burden's on the state to prove guilt beyond a
23 reasonable doubt. Now, if you were on this jury, could you
24 put aside what was in the newspaper and make your decision
25 based on the evidence presented in this case and the law as

1 I instruct it to you?

2 A. I could.

3 Q. So, what was in the newspaper article had no affect
4 upon your decision?

5 A. No.

6 Q. Okay. Other than that, any other discussions? And
7 also, did you and your husband have any discussions about
8 it as far as what may or may not have occurred?

9 A. No. That was the end of the conversation.

10 Q. Okay. So, he did not discuss it with you before or
11 didn't discuss it that day other than you told him where
12 you're coming up for jury service?

13 A. Correct.

14 Q. All right. If -- by the way, I gave you a sheet with
15 a list of names on it. Be able to review that sheet?

16 A. I was.

17 Q. Did you see anybody there you know?

18 A. No, I didn't.

19 Q. Okay. Can I see that?

20 A. I circled the first name because I thought that it was
21 someone I knew, but it wasn't. My daughter interned here
22 last year for a little while and there was a deputy named
23 Cooper, and I thought that -- I think it's the third name
24 on there. I thought that was the same Cooper, and it's
25 not.

1 Q. How do you know?

2 A. Because it has, doesn't have Horry County Police
3 Department.

4 Q. Oh. Okay, it says agency DPM.

5 MR. HUMPHRIES: It is. That's it.

6 Q. I'm sorry. May ---

7 A. It is?

8 Q. It may have been, it may have been with the sheriff's
9 department before.

10 MR. HUMPHRIES: It is the same.

11 JUROR: Okay.

12 THE COURT: Okay. So, he was at one time ---

13 JUROR: Well, then I do know ---

14 THE COURT --- with the sheriff's department?

15 MR. HUMPHRIES: Well, he actually was with Horry
16 County at the time, but this case is now with the sheriff's
17 department.

18 THE COURT: Oh. I see. okay. So, therefore, he is
19 now ---

20 Q. Now, the fact that she interned here, did she come up
21 with a relationship at all, a friendship, close friends
22 with Mr. Cooper?

23 A. No, sir.

24 Q. How did you know that he was one of officers that she
25 was involved in interning with?

1 A. She told me.

2 Q. Just told you some names?

3 A. Well ---

4 Q. Did she tell you several names, he was one of them?

5 A. He -- right. She did tell me. I met a few people
6 here through internship.

7 Q. Okay. Did you meet him?

8 A. I did, yes.

9 Q. All right. Would -- if he is a witness in this case,
10 would that in any way cause you to look upon him
11 differently than you would some other witness?

12 A. No, sir.

13 Q. You'd be able to treat him just like you would any
14 other witness in the case?

15 A. I would. I only met him once or twice. I didn't -- I
16 mean, I really don't know him.

17 Q. There's no special relationship?

18 A. No.

19 Q. No special regard you have or anything?

20 A. No.

21 Q. Now, anyone else on the list?

22 A. No, sir.

23 Q. I'm going to go ahead and re-circle that, okay?

24 A. Okay.

25 (QUESTIONNAIRE OF JUROR #434 MARKED INTO EVIDENCE AS

1 COURT'S EXHIBIT NUMBER 14-L.)

2 Q. Now, if -- this type of case if you are selected, and
3 we'll discuss this with you. This case could very well be
4 two parts. First of all, the jurors would listen to the
5 evidence presented and my instructions on the law. And if
6 the jury determines that state had not proven the defendant
7 guilty of murder beyond a reasonable doubt, well then the
8 jury would find that the defendant not guilty and that
9 would end the jurors' participation at that time.

10 A. Right.

11 Q. If, however, the jury determined that the state had
12 proven the defendant guilty of murder beyond a reasonable
13 doubt and the jury found him guilty, then we would proceed
14 to another phase, which is a phase where punishment would
15 be considered.

16 Now, the fact I am discussing this in no way implies
17 anything, you know, imply we would get to that stage or
18 not. I just have to discuss it because it is a potential.
19 So, you do understand I'm not implying anything?

20 A. I do.

21 Q. Okay. Now, at that stage the jurors will already have
22 determined that the defendant is guilty of murder. So,
23 therefore, they're now considering the issues of
24 punishment. Evidence at that stage or phase would be
25 introduced in regard to aggravation and evidence in

1 mitigation, and I would have a further instruction of the
2 law. And the jurors would be asked to come back with a
3 verdict regarding the sentence, verdict either for life
4 imprisonment or a verdict for the death penalty.

5 Now, I gave you a sheet with three types of jurors on
6 it. Did you review that sheet?

7 A. I did.

8 Q. All right. Now, the first type of juror -- go over
9 it, make sure we're on the same page here. The first type
10 of juror is a juror that no matter what the evidence in
11 aggravation and mitigation were, no matter what the
12 evidence is, that juror would always feel the appropriate
13 punishment is the death penalty. So, once the defendant's
14 found guilty of murder, that juror would always vote for
15 the death penalty.

16 Type two juror is the juror that although the
17 defendant's been found guilty of murder, that juror under
18 no circumstances could ever give the death penalty. That
19 juror would always come back with a verdict of life
20 imprisonment because they would never vote the death penalty.

21 The third type of juror is one that although the
22 defendant's been found guilty of murder, that juror,
23 though, would not have made her mind up in advance
24 concerning punishment. That juror would need to hear the
25 facts and circumstances of aggravation and mitigation as

1 well as the charge from the judge before that juror could
2 decide the issue of punishment and want to seriously
3 consider all the evidence in aggravation and in mitigation
4 before they could decide. And after doing that, if that
5 juror felt it was appropriate, that juror could come back
6 with a verdict for life imprisonment. Or if that juror
7 felt it was appropriate, that juror could come back with a
8 verdict for the death penalty.

9 Now, do you understand the differences in the three
10 types?

11 A. I do.

12 Q. Now, knowing those three types then, which one best
13 describes you, Ms. Staton?

14 A. Type three.

15 Q. Type three?

16 A. That's correct.

17 Q. So, you would, you would have an open mind and even
18 though the defendant at that stage, if we got to that
19 stage, would have been convicted of murder, you still would
20 have an open mind regarding punishment?

21 A. I would, yes.

22 Q. And you could come back and if you felt appropriate
23 with a verdict of life imprisonment, or you could come back
24 with a verdict of the death penalty?

25 A. I do. I think I would be less likely to lean toward

1 the death penalty, but I'm only human. I think that, you
2 know, just depending on the circumstances that that is an
3 option.

4 Q. Okay, and so do you feel, though, that if the facts
5 and circumstances in aggravation, mitigation warranted it,
6 though, you could come back with a verdict for the death
7 penalty?

8 A. I think so. I'm not sure. To be honest, I'm not
9 sure. I don't know. I have to listen to the case.

10 Q. Well, that's what I mean.

11 A. Think about it, yeah.

12 Q. So, therefore, if the case in aggravation is such, you
13 feel that it could -- you could then come back with a
14 verdict for the death penalty?

15 A. I think so, yes.

16 Q. Well, if the jury did come back for a verdict for the
17 death penalty, the jurors would be required to sign the
18 verdict form because it has to be unanimous. Could you
19 sign that verdict form if you came back with a verdict for
20 the death penalty?

21 A. If the situation warranted it, yes.

22 Q. If the situation warranted it, then you could? All
23 right. So, you're willing to have an open mind and
24 consider evidence in aggravation, mitigation and if it so
25 warranted it, you could do life imprisonment? Or if it so

1 warranted it, you could do the death penalty?

2 A. Yes, sir.

3 Q. All right. If you were selected as a juror in this
4 case, you would be sequestered for about a week -- a little
5 less, a little more -- in a hotel, and you would not be
6 able to go home. And you would be able to call, though,
7 and make some contact there unless there was an emergency,
8 of course. And once again, too, it would be somewhere in
9 the neighborhood of a week. A little less, a little more.
10 Would that be such an undue hardship that you couldn't
11 handle it?

12 A. No.

13 Q. And I know it would be an inconvenience.

14 A. Right.

15 Q. But you could do that?

16 A. I could, yes.

17 THE COURT: Okay. All right, I'm going to let the
18 attorneys ask you any questions to see if they have any for
19 you.

20 State?

21 EXAMINATION BY MR. HUMPHRIES:

22 Q. Good afternoon.

23 A. Hi.

24 Q. I'm Fran Humphries. I'm the deputy solicitor.

25 Solicitor Hembree and Scott Hixson, who is not present

1 today, will be the attorneys representing the state in the
2 case. And really why we've got you here, there's just one
3 really central issue, and that's your ability to impose the
4 death penalty if you believe that the facts and
5 circumstances warrant it because to sit on a jury in a case
6 like this, a juror must have the ability, a certain ability
7 to not only consider the death penalty but under the right
8 set of facts and circumstances to impose it.

9 Nobody is going to try and change your mind about your
10 position on the death penalty. That really is not our
11 purpose here; we're not try to shoehorn jurors into a
12 particular kind of juror. It's not a case where one type
13 juror is, is better than another type. But it's just a,
14 it's a process by which we've -- you know, we're required
15 to find out to the best of your ability where you are in
16 regard to the death penalty.

17 Have you, have you considered the death penalty in the
18 past?

19 A. No. I never had to in the past.

20 Q. Sure, and I understand that. I imagine since you got
21 your notice and talked about your husband, did -- it
22 probably has actually, has come to your mind on more than
23 one occasion.

24 A. It has.

25 Q. Can you tell me a little bit about what your thought

1 process was in regard to the death penalty?

2 A. I just thought that's -- what a huge decision for
3 someone to have to make.

4 Q. It is.

5 A. I know it would be, it would be something that would
6 definitely have -- I mean, all the facts would have to lean
7 towards that. It's not something that somebody can just,
8 you know -- I mean, if you're taking somebody's life, but
9 somebody's life is ultimately in twelve jurors' hands. And
10 I just think that as long as the evidence and the facts are
11 there, then -- and it warranted it, then it could or should
12 be imposed. But it's not necessarily always ---

13 Q. Right.

14 A. --- the case.

15 Q. And, and I will tell you you're precisely correct
16 about that, that punishment is entirely within the hands of
17 that jury. Whatever the jurors say punishment is to be,
18 this court will enact.

19 Let, let me explain this to you. I know this is a
20 foreign process, and it's really unique in the terms of
21 criminal cases. It's really the only kind of criminal case
22 in South Carolina where we actually talk to the jurors like
23 this. I want you to be sure of this. That there is -- and
24 you may understand this, and I apologize if you do. There
25 is never any circumstance, any set of circumstances

1 presented in a capital case which will require a juror to
2 return a death verdict, okay?

3 And what I mean by that is this, and some folks think
4 there might be some formula or that the court is going to
5 charge you if you find this and this, then you must return
6 a death sentence. Really, nothing could be further from
7 the truth because what the court's going to tell you is
8 that even if you find this and this, whatever -- doesn't
9 matter how horrific the facts are, how bad the aggravation
10 is for the defendant, how poor the mitigation is for the
11 defendant. The judge is going to tell you that you can
12 return a life a verdict for any reason or no reason at all.
13 That is always an option.

14 And I wanted you to know that because again this is
15 something that, you know, it's, it's a foreign concept. I
16 want you to understand that there is never any requirement
17 in the law that you return a death verdict. You can always
18 return a life verdict for any reason or no reason at all.
19 It's called the mercy verdict and is one that the court
20 will tell you about.

21 Knowing that, knowing that under any circumstances you
22 could return a life verdict, do you believe, knowing that
23 option is always there, that you could not only fairly
24 consider the death penalty but impose the death penalty?

25 A. I do.

1 Q. And really that's all, and I know we're talking sort
2 of in a vacuum here and we're taking you, you know,
3 straight through the first phase. Not even talking about
4 that. I'm talking about something that's a little further
5 down the road. I appreciate the difficulty that we've put
6 you in, and I believe that you've been fair to us. Your
7 responses have been truthful.

8 Let me ask you this finally. Do you believe that you
9 can be fair both to the State of South Carolina and the
10 defendant in this case?

11 A. I do.

12 MR. HUMPHRIES: That's all we can ask of you. Thank
13 you, ma'am.

14 THE COURT: Okay. Mr. Wilson?

15 MR. WILSON: Thank you, Your Honor.

16 EXAMINATION BY MR. WILSON:

17 Q. Ms. Staton, I notice you said at the outset that you
18 had gone on the Internet and you've found some information
19 regarding the case on the Internet. And, and there was
20 some conversation I think with your husband about the fact
21 that you were coming to jury service. Prior to receiving
22 that notice for jury service, had you had any -- have you
23 heard anything about this case before that?

24 A. No, sir.

25 Q. Okay. So, the first you heard of it was when you got

1 your notice and then you started to question what the case
2 was about?

3 A. That's correct.

4 Q. Okay, and, and then after you went on the Internet,
5 and can you tell me, and I know you talked with the judge a
6 little bit about it. What, what do you recall as best you
7 can tell me from what you read on the Internet, what -- do
8 you recall what you heard or what you read?

9 A. Just that we, that 500 jurors had been pulled and
10 that's -- for the case, Mr. Winkler. I believe it is to --
11 that he had shot and killed his wife, and that's pretty
12 much it.

13 Q. Okay, all right, and based on that, did you form any
14 opinion about whether or not Mr. Winkler was guilty or not
15 guilty of this crime?

16 A. No.

17 Q. All right, and His Honor has told you today that, that
18 the defendant is presumed to be innocent.

19 A. That's correct.

20 Q. And you can accept that, can't you?

21 A. I can.

22 Q. All right, and, and accepting that would mean that as
23 he sits there today, he is presumed not guilty, innocent of
24 this charge, of all these charges that have been levied
25 against him, and you can accept that?

1 A. I can.

2 Q. And that would mean that you would be willing to hold
3 the State of South Carolina to its burden which is, if it
4 can, come into this court and prove to your satisfaction
5 beyond a reasonable doubt that, in fact, he committed these
6 crimes. And if they fail to do that, that you would then
7 be required to find him not guilty. And you could also do
8 that, could you not?

9 A. I could, yes.

10 Q. Because you understand that the only way we get to the
11 second phase of this trial is if you were to find the
12 defendant guilty of murder in the first phase.

13 A. Right.

14 Q. If he's found not guilty of murder in the first phase,
15 if the state, if the state fails to meet its burden and
16 failed to prove to your satisfaction beyond a reasonable
17 doubt, then you have to find him not guilty. We would not
18 go to the second phase.

19 A. Right.

20 Q. If they find, if you as a member of that panel find
21 him guilty of some lesser charge, we would not then go to
22 the second phase of this particular proceeding. That
23 having been said, if we do get to the second phase of the
24 proceeding, it would mean that you and the other members of
25 the panel had unanimously found the defendant guilty of the

1 crime of murder.

2 A. Right.

3 Q. And having done that, would you then be willing to
4 listen to any aggravating circumstances that the state may
5 present? And, and those aggravating circumstances are
6 going to be things that would tend to make the crime worse
7 or make it seem worse, and they would offer those things in
8 aggravation, and you'd be willing to consider those things,
9 would you not?

10 A. I would.

11 Q. If the court told you that was what you should do as a
12 juror?

13 A. Right.

14 Q. And there would also be certain mitigating factors
15 which may be presented for your consideration, and you
16 would be willing -- and as mitigating factors would be
17 things which might lessen the moral culpability of the
18 defendant or the crime or his participation in the crime,
19 and you would be willing to consider those things also?

20 A. Yes, sir.

21 Q. Now, having said all that, do you also understand that
22 regardless of how many aggravating circumstances the state
23 presents, and even if you find the existence of every one
24 of those aggravating circumstances beyond a reasonable
25 doubt, that you still as a juror would have the right, if

1 that's your conscious conviction, to vote for life in
2 prison? You understand that you have that right?

3 A. I do.

4 Q. As a juror?

5 MR. WILSON: Thank you, ma'am.

6 JUROR: You're welcome.

7 THE COURT: If you would, Ms. Staton, would you step
8 outside the door for me one second, please, ma'am?

9 (THE JUROR EXITS THE COURTROOM.)

10 THE COURT: Position of the state?

11 MR. HUMPHRIES: She's qualified, Judge.

12 MR. WILSON: She's qualified, Your Honor.

13 THE COURT: Okay. Bring her back, please.

14 (THE JUROR ENTERS THE COURTROOM.)

15 THE COURT: Ms. Staton, I'm going to place you in the
16 jury pool for this case. Now, that does not mean actually
17 going to be on the jury. What it means is you'll be in the
18 pool from which the jury is selected. I will need you back
19 tomorrow at 11:30, 11:30 a.m.

20 Now, Ms. Staton, if you are selected, have you go home
21 and get your bags and come back. So, please go ahead and
22 pack some things now so that you'll be ready to come on
23 back.

24 Do not discuss this case with anyone at all. Don't
25 read any local newspapers. Don't talk to anyone about this

1 case. Don't do any Googling or anything else now about
2 this matter, okay? Don't look at any local news or read
3 any papers.

4 Also, try to make some arrangements so that when you
5 do come back and I send you back to get your bags on this
6 jury there will be someone to get your car for you because
7 you don't want to leave your car here all week long at the
8 courthouse, okay?

9 All right, we'll see you. You can leave out that door
10 in the back, and we'll see you at 11:30 tomorrow morning.

11 All right. Do y'all recall this next juror, number
12 320, if he came up and talked with me? I notice he had a
13 letter from his employer.

14 MR. HUMPHRIES: I don't have his coming up.

15 MR. HEMBREE: I think he was going to have to take
16 vacation.

17 THE COURT: She says that she would have to completely
18 close her business down, but I don't see where he came up
19 and talked to me about this. Y'all did see the letter he
20 sent in?

21 MR. HEMBREE: Yes, sir.

22 MR. WILSON: Yes, sir.

23 THE COURT: All right, bring for me, if you would,
24 juror 320, Mr. Miller.

25 (JUROR #320 ENTERS THE COURTROOM.)

1 EXAMINATION BY THE COURT:

2 Q. Come around, Mr. Miller. How you doing, sir?

3 A. Fine, sir.

4 Q. Come around and have a seat over here. On Monday, did
5 you come up and talk to me at all?

6 A. Oh, no, sir.

7 Q. You didn't? Okay. All right, just have a seat there
8 and just relax a little bit, and we're going to ask you a
9 few things. And please understand there's no wrong
10 answers, no right answers. Nobody's trying to, to get you
11 to say something one way or the other. I just need you to
12 be open and honest with me.13 One thing I need for you to do is to move up to that
14 microphone as best you can so we can hear you better.15 Now, on Monday we put you under oath, and you
16 understand you're still under oath?

17 A. Yes, sir.

18 Q. All right. Now, are you related or do you know any of
19 the lawyers involved in this case? You see them sitting
20 around there.

21 A. No, sir.

22 Q. All right. Do you have any special interest, bias, or
23 prejudice in this case?

24 A. No, sir.

25 Q. Have you formed or expressed an opinion as to the

1 guilt or the innocence of the defendant?

2 A. No, sir.

3 Q. Do you know of any reason whatsoever why you cannot
4 give both the state and the defendant a fair and impartial
5 trial in this case?

6 A. No, sir.

7 Q. Now, if you were, Mr. Miller, selected on this jury, I
8 will tell you that you as a jury, y'all decide the facts
9 from the evidence. However, I instruct the law and you're
10 required to follow the law as I give it to you. And would
11 you follow the law as I instruct you?

12 A. Yes, sir.

13 Q. All right. One principle of law that I will tell you
14 about is that when you begin the case as a juror, you
15 presume the defendant innocent of the charge, and the state
16 has the burden of proving guilt beyond a reasonable doubt.
17 The defendant does not have to prove himself innocent. The
18 state has the burden of proving guilt beyond a reasonable
19 doubt. Would you follow that principle of law?

20 A. Yes, sir.

21 Q. Okay. Now, you hesitated. Is that because you didn't
22 understand what I said?

23 A. Yes, I kind of didn't hear you ---

24 Q. Don't worry. I, I'll tell you. I said that the one
25 principle of law that you -- I will direct you to follow

1 and I want you to follow is that the defendant is presumed
2 innocent. Anybody charged with a crime is presumed
3 innocent. The burden is on the state to prove guilt beyond
4 a reasonable doubt. The defendant does not have a
5 requirement to prove himself innocent. The state is
6 required to prove someone guilty beyond a reasonable doubt
7 before a jury can find him guilty. Do you understand that
8 principle?

9 A. Oh, yes, sir.

10 Q. And would you accept and follow that principle?

11 A. Yes, sir.

12 Q. Okay. Now, if you're on the jury, then you're telling
13 me that if after the evidence has been presented and I've
14 instructed you on the law, that if the state does not prove
15 guilt beyond a reasonable doubt, you could then enter a
16 verdict of not guilty?

17 A. Yes, sir.

18 Q. All right, but if the state has proven guilt beyond a
19 reasonable doubt, you could enter a verdict of guilty. Is
20 that so?

21 A. Yes, sir.

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

23 A. No, sir.

24 Q. Have you seen anything about it in the newspaper or on
25 TV or heard anything on the radio about it?

1 A. As of Monday, no, but before I came here Monday, yes,
2 I have.

3 Q. Okay. Well, what was it you heard back before Monday?

4 A. Just on the news about the trial and what was going
5 on.

6 Q. Do you remember what it said?

7 A. Just going to be picking a jury and the name of, you
8 know, the guy, whatever.

9 Q. Okay, and did they say anything about the allegations?

10 A. I think it was murder maybe, murder trial.

11 Q. Okay, anything about what they allege the
12 circumstances to be?

13 A. I, I don't think so.

14 Q. Okay. Did you form any opinions or draw any
15 conclusions from what you read it?

16 A. No, sir.

17 Q. Okay. Just looking over things here. So, if you're
18 on this trial, if you are on the jury, you can make your
19 decision about this case based on the evidence presented
20 here in the courtroom and the law as I instruct it to you?

21 A. Yes, sir.

22 Q. And your decision would not be based at all on
23 anything you read in the paper or anything that you may
24 have seen about this case outside the courtroom?

25 A. No, sir.

1 Q. All right. I gave you a list of names on three sheets
2 of paper there. Did you bring that with you?

3 A. Yes, sir.

4 Q. Did you see anybody there you knew?

5 A. No, sir.

6 Q. Okay, could I have that back from you, please, sir?
7 Thank you very much. Let's see, that's right, you didn't
8 circle any names, so you don't know anyone there.

9 Now, Mr. Miller, if you're on this jury, the jury
10 would be asked to consider the evidence and follow the law
11 as I instruct it, and if the jury determined that the state
12 had not proven guilt of murder beyond a reasonable doubt,
13 then the jurors' participation at that point in time would
14 end in the case.

15 However, if the jury determined that the state had
16 proven the defendant guilty of murder beyond a reasonable
17 doubt and found him guilty of murder, then we would proceed
18 to another phase in the trial where the jury would be asked
19 to consider sentencing.

20 So, by the way, I'm not suggesting we're going to get
21 into that phase. I'm saying that, that I have to tell you
22 everything about the potentials there because I'm
23 discussing it with you, but it doesn't suggest anything.
24 You understand that?

25 A. Yes, sir.

1 Q. Now, if we got to that phase where the defendant had
2 been found guilty of murder and now we're considering the
3 issue of punishment, the jurors would be presented with the
4 evidence in aggravation and mitigation, and I would give
5 them a further instruction on the law. And then after
6 that, the jurors would -- asked to come back with a verdict
7 either of life imprisonment or a verdict of the death
8 penalty.

9 Now, I gave you a sheet of paper with three types of
10 jurors on it. Did you have a chance to look over and
11 review that?

12 A. Yes, sir.

13 Q. Now, as you recall in type one, the juror type one is
14 a juror that once the defendant is found guilty of murder,
15 that juror would think that the appropriate punishment in
16 all cases is the death penalty. That juror would, no
17 matter what the evidence in aggravation or the evidence in
18 mitigation that had been presented to that juror, that
19 juror would always return a verdict for the death penalty.

20 Juror number two is a juror that no matter what the
21 evidence has been presented in aggravation or mitigation,
22 that juror would always return a verdict for life
23 imprisonment because that juror does not believe they could
24 ever return a verdict for the death penalty.

25 Juror number three is a juror, although the

1 defendant's been proven guilty of murder, that juror would
2 still have an open mind regarding punishment. That juror
3 would want to listen first to the judge's instruction on
4 law, would want to listen to the evidence in aggravation
5 and the evidence in mitigation about the circumstances.
6 And that juror would consider all that information before
7 that juror could decide. Then after that consideration, if
8 that juror felt it was appropriate, that juror could return
9 a verdict of life imprisonment. Or if that juror felt it
10 was appropriate, that juror could return a verdict of the
11 death penalty depending on that juror's consideration of
12 the evidence and the law.

13 Now, looking at those three types of jurors, which one
14 best describes you, Mr. Miller?

15 A. I'd say juror type two.

16 Q. Two? Other words, you don't feel you could ever bring
17 back a verdict for the death penalty?

18 A. No, sir. At one time I thought I could, but now I
19 don't think I can.

20 Q. No matter what the evidence in aggravation is, you
21 could not bring back a verdict for the death penalty?

22 A. No, sir.

23 Q. Is your opposition to the death penalty such that
24 you're firmly and totally committed to that and there's
25 nothing that could change your mind?

1 A. No.

2 Q. So, so, even with the evidence presented in
3 aggravation at the trial, you don't feel that would ever
4 change your mind?

5 A. No, sir.

6 THE COURT: Questions from the state?

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

8 THE COURT: Questions from the defense?

9 MR. RATHBUN: Yes, Your Honor.

10 THE COURT: Okay.

11 EXAMINATION BY MR. RATHBUN:

12 Q. Mr. Miller, I'm Paul Rathbun and along with Ralph
13 Wilson, we represent the defendant, Mr. Winkler. You said
14 that you're a type two juror and, and -- but you said
15 before you thought that, you had thought about the death
16 penalty and you thought you could do that. Is it because
17 you're now a potential juror on the death penalty case that
18 you changed your mind?

19 THE COURT: Now, whoa, whoa. Where are you reading,
20 sir? What did you just say? I'm sorry. I didn't hear
21 you.

22 MR. RATHBUN: That he before said he thought he could
23 do the death penalty. And now he's saying the type --
24 he's a type two juror that he can't vote for the death
25 penalty.

1 THE COURT: I missed something. Did he one time say
2 he could?

3 MR. RATHBUN: Yes.

4 JUROR: I did. Yes, sir.

5 THE COURT: Oh, you mean at one time in his life?

6 MR. RATHBUN: Yes.

7 THE COURT: I'm sorry.

8 MR. RATHBUN: Yes.

9 THE COURT: I thought you meant in answer to my
10 question. I remember. You're right. Excuse me, Mr.
11 Rathbun. You're right.

12 Q. And I'm just wondering when you came to that decision.
13 Was it when you became a ---

14 A. Monday.

15 Q. Monday?

16 A. Yes, sir.

17 Q. All right. Now, you understand that as a citizen, we
18 all have a duty to serve on a jury?

19 A. Yes, sir. Yeah.

20 Q. Okay, and it's not a comfortable thing to do a lot of
21 times, and this is a serious case. Now, before Monday, you
22 had an opinion that you probably could vote for the death
23 penalty, but now that you're in the mix, so to speak, you
24 can't do it?

25 A. Yes, sir.

1 Q. Now, I'm not going to try to beat you up and try to
2 change your mind. I just want to put some facts in front
3 of you.

4 If you become a member of the jury panel, you and
5 eleven other people have to determine guilt in the first
6 phase. That means that you have to listen to the state and
7 have them prove beyond a reasonable doubt in your mind that
8 Mr. Winkler is guilty of murder. And, and that murder is
9 -- but no -- there's no excuses for it. There is, there is
10 -- it's, it's murder. If you got to that point with your
11 -- if you were on this jury, then and only then will we go
12 to the second phase, which is what's called the sentencing
13 phase. Can you hear me okay?

14 A. Yeah. I'm ---

15 Q. Okay, and at that point you and the other eleven
16 jurors would come back in and you'd hear matters of
17 aggravation from the state. Those would be matters that
18 would make the crime of murder more heinous than perhaps a
19 regular murder, if there is such a thing. And you'd hear
20 matters of mitigation from Mr. Wilson and myself trying to
21 lessen the moral culpability of Mr. Winkler.

22 At that point, you would have the right to make up
23 your mind one way or the other either for the death penalty
24 or for the life penalty. And the court and the state of
25 South Carolina would always be satisfied with the verdict

1 that you come up with.

2 There is no strict law or rule that you have to come
3 up with the death penalty. What the court wants to know
4 and the state wants to know and we want to know is can you
5 make up your mind, and can you vote for death if that's
6 what you think needs to be done? Or in the alternative,
7 could you vote for life?

8 Now, you've indicated that you can never vote for the
9 death penalty. But that's a, a new thought process for
10 you. Has anything changed?

11 A. No, sir.

12 MR. RATHBUN: Okay. Thank you very much for being
13 here.

14 THE COURT: Okay, step into the room and minutes of
15 for me if you would, please.

16 (THE JUROR EXITS THE COURTROOM.)

17 THE COURT: Okay, position of the state?

18 MR. HEMBREE: Juror's not qualified, Your Honor.

19 THE COURT: Defense?

20 MR. RATHBUN: Your Honor, he can't -- he's not
21 qualified.

22 THE COURT: Bring him out, please.

23 (THE JUROR ENTERS THE COURTROOM.)

24 THE COURT: All right, Mr. Miller, we want to thank
25 you very much for your service, and I'll excuse you at this

1 time. You may leave out that door there. Thank you very
2 much, sir.

3 Now bring the juror 259, Matthew B. Lane. How about
4 juror -- I don't see the name 259 anywhere.

5 MR. HEMBREE: We don't have him in our notes, Your
6 Honor.

7 (JUROR #259 ENTERS THE COURTROOM.)

8 EXAMINATION BY THE COURT:

9 Q. Hello, Mr. Lane.

10 A. Fine. How are you?

11 Q. Come around if you would, please, sir. Have a seat
12 there, Mr. Lane.

13 A. Yes, sir.

14 Q. And you are, well, it says twenty-eight years old?

15 A. Yes, sir.

16 Q. Okay, and are you originally -- you're originally from
17 Rhode Island?

18 A. I was born in Rhode Island, yes, and then lived in
19 Connecticut, also.

20 Q. And then you came down here as a teenager?

21 A. Yes, sir.

22 Q. And you work for Greg Norman's Australian Grill?

23 A. That's right.

24 Q. You work as a server there?

25 A. As a server, yes, sir.

1 Q. I've been there a couple of times. Great view there
2 of the Intracoastal/Intercoastal Waterway.

3 A. It's pretty nice.

4 Q. Now, I'm going to ask you a few questions, but while
5 you have a good voice so everyone can probably hear you,
6 but just make sure you speak towards that microphone for
7 me.

8 A. You got it.

9 Q. Now, Mr. Lane, there are no right answers, no wrong
10 answers, so don't think you need to tell me something you
11 think I want to hear or don't want to hear. Just tell me
12 how you honestly feel. I want to make sure you understand,
13 sir. You are under oath. So, you understand that?

14 A. Yes.

15 Q. Now, Mr. Lane, are you related or know or have any
16 relationship with any of the attorneys involved in this
17 case?

18 A. No, I do not.

19 Q. All right. Do you have any special interest, bias, or
20 prejudice in this case at all?

21 A. No.

22 Q. Have you formed or expressed an opinion concerning the
23 guilt or the innocence of the defendant in this case?

24 A. No.

25 Q. Okay. Could you, or do you, do you have any reason

1 whatsoever why you could not give both the state and the
2 defense a fair and impartial trial in this case?

3 A. No.

4 Q. All right. If you're on the jury, you as a juror --
5 or the jury would decide what facts are there from the
6 evidence. However, as the jury would be, would be required
7 to accept the law, apply the law as I instruct it. Under
8 your oath, would you apply law as I instruct it in the
9 case?

10 A. Yes, sir.

11 Q. One of those principles of law that I will instruct
12 you on and tell you about is that the defendant is presumed
13 innocent. That the burden is upon the state to prove guilt
14 beyond a reasonable doubt. The burden is not upon the
15 defendant to prove himself innocent, but it is upon the
16 state to prove guilt beyond a reasonable doubt. Would you
17 accept and follow that principle?

18 A. Yes, sir.

19 Q. All right. Now, therefore, if you're on that jury
20 and after hearing the evidence and my instructions on the
21 law, if the state has not proven guilt beyond a reasonable
22 doubt, then you could participate in a verdict of not
23 guilty. Is that correct?

24 A. Yes.

25 Q. But if the state had proven guilt beyond a reasonable

1 doubt, you could participate in a verdict of guilty?

2 A. Yes.

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

4 A. No.

5 Q. It has gotten some publicity in the paper, on TV.

6 Have you seen anything about it, heard anything about it,
7 read anything about it?

8 A. I saw something in the paper I think maybe three days
9 ago, but it didn't -- all it said was that it was going to
10 trial. It didn't have any evidence or anything, so it was
11 hard to make an opinion based on what I saw.

12 Q. So, before then you heard nothing about it?

13 A. No, other than the sheriff that came to, to my door to
14 tell me that there was a case. Told my fiancée that it was
15 some sort of murder trial. But other, other than that, I
16 don't have any idea what it's about.

17 Q. Okay, and she gave you the summons, thank goodness,
18 for jury duty then?

19 A. Yeah. Yes, sir.

20 Q. Now, what you've heard, has that caused you to have
21 any conclusion, any opinion, or any thoughts about this
22 case as far as making decisions?

23 A. No.

24 Q. So, your decision in this case would be based solely
25 on the evidence presented in this courtroom and the law as

1 I instruct it to you?

2 A. Yes, sir.

3 Q. All right, and could you put aside anything you may
4 have seen in the paper what someone may have commented on
5 in making your decision?

6 A. Yes.

7 Q. I gave you a sheet of paper with a list of names on
8 it. Were you able to review those sheets of paper?

9 A. Yes, sir, I did.

10 Q. Did you see anybody on there you knew?

11 A. No.

12 Q. Okay, could you hand me that back, please? Nobody's
13 names circled. Okay, now, this case could be in two parts.
14 The jury would sit there and listen to the evidence and the
15 law. And if, if after listening to the evidence and the
16 law, if the jury determined the state had not proven the
17 defendant guilty of murder beyond a reasonable doubt, the
18 jury would then find the defendant not guilty, and that
19 would end the jurors' participation at that time.

20 If, however, the jury felt the state had proven the
21 defendant guilty of murder beyond a reasonable doubt and
22 found the defendant guilty, then we would proceed to
23 another phase which is where the issues of punishment would
24 be considered. And I'm in no way suggesting that would
25 happen. I just need to discuss it because it's all

1 potentially there and the issues of this trial.

2 Now, in that phase the jury would have already
3 determined that the defendant's guilty of murder. The jury
4 then would be considering the issues of punishment. There
5 evidence would be presented in aggravation and evidence in
6 mitigation, and I'd have another charge on the law. After
7 hearing those matters and my charge of law, the jury will
8 deliberate and come back with a verdict either of life
9 imprisonment or a verdict for the death penalty.

10 I gave you a sheet of paper that talks about three
11 types of jurors. Juror number one is a juror that even
12 though evidence in aggravation, mitigation is presented,
13 that juror would always come back with a verdict for the
14 death penalty. That juror would always think that's the
15 most appropriate punishment regardless of the evidence
16 presented in aggravation and mitigation.

17 Juror type two is a juror that would never bring back
18 a verdict for the death penalty. That juror will always
19 bring back a verdict for life imprisonment because that
20 juror, no matter what the evidence was, could not render a
21 verdict for the death penalty.

22 Type three is a juror, though, that although the
23 defendant's been found guilty of murder, that juror would
24 be willing to keep an open mind regarding punishment. That
25 juror would want to hear the evidence in aggravation and

1 mitigation in those circumstances, as well as the charge of
2 the judge on the law. And then after hearing the issues
3 and the evidence in that regard, that juror would want to
4 consider all that before making up his mind. And then if
5 the juror felt it so warranted it, that juror could come
6 back with a verdict for life imprisonment. Or that juror
7 could come back with a verdict for the death penalty.

8 Do you understand the difference of the three?

9 A. Yes, sir.

10 Q. Now, knowing that difference, which juror best
11 describes you?

12 A. I would say juror three.

13 Q. Three. So, you would be willing to listen to the
14 evidence in aggravation and mitigation. And just because a
15 jury had determined the defendant guilty of murder, you
16 still could listen and make a decision regarding life
17 imprisonment or the death penalty, depending on the
18 evidence and your consideration of it and the law?

19 A. Yes, sir.

20 Q. If the jury determines a verdict for the death
21 penalty, the law requires that the jurors sign the verdict
22 form, sign the verdict form because it has to be unanimous.
23 Could you sign that verdict form?

24 A. Yes.

25 Q. Okay. If you are selected as a juror on this case,

1 you will be sequestered and that will be for somewhere in
2 the neighborhood of the week. A little less, a little
3 more, and you would be at a hotel. You could call family
4 or friends with someone monitoring the phone call, but you
5 could make phone calls and, and -- but other than that, you
6 would be sequestered. And I know that you'd be away from
7 your business and your fiancée, but do you feel you could
8 handle that with not too much of a hardship, although it
9 would be a hardship, but not an undue hardship?

10 A. Yes.

11 Q. Okay. I noticed also that said your fiancée's brother
12 or lawyer -- is a lawyer?

13 A. Father is a lawyer.

14 Q. Who, who's her father?

15 A. David Canty.

16 Q. David Canty. So, he's not within the defense bar as
17 far as criminal defense or, or prosecution? Do you know?

18 A. Not that I know of.

19 THE COURT: Okay. All right. I'm going to let the
20 lawyers ask you a few questions now.

21 JUROR: Okay.

22 THE COURT: I'll be right back with you in a minute.
23 State?

24 MR. HEMBREE: Thank you, Your Honor.

25 Good afternoon, Mr. Lane.

1 JUROR: Good afternoon.

2 MR. HEMBREE: Judge Lockemy has covered all my
3 questions. I appreciate you being here. Please answer any
4 questions defense counsel might have for you.

5 JUROR: Yes, sir.

6 THE COURT: Mr. Wilson?

7 MR. WILSON: Yes, sir. I just have a couple of
8 questions.

9 EXAMINATION BY MR. WILSON:

10 Q. Sir, let me ask you. Just let me ask you a couple of
11 things. In, in regards to your view that you're a number
12 three juror, what's your understanding of a number three
13 juror?

14 A. My, my understanding is that if, if the defendant is
15 proven guilty, that we will decide from the facts the type
16 of murder, what, what actions, what specific things
17 happened. Then we would judge him upon, upon that. So,
18 it's -- he's not necessarily -- we wouldn't necessarily
19 kill him, you know, put him to death. But there's a good
20 possibility that the life in prison would be more fitted
21 under his circumstances, so...

22 Q. Okay. So, so, what you're saying, as I understand it,
23 is that if the state proves to your satisfaction beyond a
24 reasonable doubt in the first phase that he is actually
25 guilty of murder, that you would then keep an open mind

1 going into the second phase of the trial?

2 A. Right. It would depend on the circumstances in which

3 ---

4 Q. And then you would want to hear ---

5 A. -- that's ---

6 Q. --- whatever information they had in aggravation.

7 That is, those things which might make the crime worse than
8 what it would normally be?

9 A. Right, on both, both sides, right.

10 Q. And also mitigation?

11 A. Yeah.

12 Q. And after hearing all of that, you would then decide
13 life or death and after His Honor gives you his
14 instructions as to the law?

15 A. Yes, sir.

16 Q. Is that, is that a fair statement?

17 A. Yeah.

18 Q. Now, you also understand that even if we get to the
19 second phase, and even if the state presents aggravating
20 circumstances -- let's say they present several aggravating
21 circumstances and that there are no mitigating factors.
22 That you could still, if it's your conscience and it's what
23 you decide as a juror, that you could still vote for life?
24 You understand that?

25 A. I understand that, yeah.

1 Q. And do you understand that as we're sitting here
2 today, he is presumed innocent as we speak and as we go
3 through this entire process?

4 A. Yeah. I haven't heard any evidence, so...

5 MR. WILSON: Thank you, sir.

6 JUROR: Yes, sir.

7 MR. RATHBUN: Your Honor, may we approach?

8 THE COURT: Yes.

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 FURTHER EXAMINATION BY THE COURT:

11 Q. Let me ask you about Mr. Canty. You don't know
12 anything about what type of law he practices or anything
13 else?

14 A. It's, it's usually workers' compensation from what
15 he's told me. I know he works with the Hispanic community
16 also. He's ---

17 Q. And you never ---

18 A. --- bilingual.

19 Q. --- talked to him about any of the duties he has on
20 any boards or anything else that -- regarding other
21 lawyers, whatever else?

22 A. No.

23 Q. And if you are selected on this jury, then you do
24 realize that I don't want you talking with him or anyone
25 else or reading any newspapers or looking at any local news

1 until this case is over?

2 A. Yes, sir.

3 THE COURT: Okay. If you would, step there in the
4 jury room, back where that officer is.

5 By the way, you were at one time a parasailing
6 assistant?

7 JUROR: Yes.

8 THE COURT: That must be very interesting.

9 JUROR: It was fun.

10 THE COURT: I wouldn't mind trying that some time.

11 JUROR: Well, I would do it.

12 THE COURT: Where did you do it?

13 JUROR: And, at the end of Sea Mountain Highway in
14 Cherry Grove.

15 THE COURT: Do they still have someone there at that
16 area?

17 JUROR: That one's no longer there. There's a couple
18 in North Myrtle Beach though.

19 THE COURT: All right. Thank you. Please step on out
20 behind that door.

21 (THE JUROR EXITS THE COURTROOM.)

22 THE COURT: Position of the state?

23 MR. HEMBREE: Juror's qualified.

24 THE COURT: Defense?

25 MR. WILSON: Qualified, Your Honor.

1 THE COURT: Mr. Rathbun brought this to the attention
2 of the court. Mr. Canty is on the Public Defender Board,
3 who chooses the public -- they choose the public defender.
4 And then doesn't the public defender hire you all?

5 MR. RATHBUN: Your Honor, that's our board for
6 financial and those kinds of decisions, and I'm ninety-five
7 percent sure he's on the board.

8 THE COURT: But this gentleman says he never talked to
9 him about it, and I'll make sure he doesn't talk to him.

10 Okay, bring him on out, please.

11 (THE JUROR ENTERS THE COURTROOM.)

12 THE COURT: All right, now, Mr. Lane, I'm going to let
13 you go home now, but two things. I want you to come back
14 tomorrow at 11:30. I want your shirttail to be in, and go
15 ahead and pack bags tonight because you may or may not be
16 on the jury. We don't know. You'll be in the pool from
17 which the jury is drawn, and so it's better to go ahead and
18 pack for about a week to be ready. So -- because if you
19 are selected on the jury, we'll send you home to get your
20 stuff right quick and come on back.

21 And you might want to have someone also arrange to
22 have your car because you don't want to leave it here all
23 week long because we'll be going off the property to the
24 hotel somewhere at night. So, want to make some
25 arrangements someone can bring you back and take your car

1 back, okay?

2 JUROR: Okay.

3 THE COURT: And please do not discuss this with
4 anyone, no one at all. And, and I will see you then
5 tomorrow morning at 11:30. You can go out this door here.

6 JUROR: Okay. Thank you.

7 THE COURT: Okay, juror 395, look right quick here.

8 MR. HUMPHRIES: Don't have anything.

9 THE COURT: Does not sounds familiar at all. I don't
10 see the number here anywhere.

11 Bring in juror number 395, Ms. Sain.

12 (JUROR #395 ENTERS THE COURTROOM.)

13 EXAMINATION BY THE COURT:

14 Q. Good afternoon, Ms. Sain.

15 A. Hey.

16 Q. I know you've been waiting around ---

17 A. Yes, sir.

18 Q. --- all day long, and please understand we've not been
19 just drinking coffee.

20 A. Okay.

21 Q. We've been working all day.

22 A. That's fine.

23 Q. Now, Ms. Sain, is it pronounced Kasi or Kasi?

24 A. Kasi.

25 Q. Kasi, Kasi Sain?

- 1 A. Yeah.
- 2 Q. See you're originally from Valdese, North Carolina?
- 3 A. Valdese.
- 4 Q. Valdese. Where is that located in North Carolina?
- 5 A. Lenore, North Carolina.
- 6 Q. Lenore, okay. So, is that 321 towards the mountains?
- 7 A. Yep. Yep.
- 8 Q. Hickory, Lenore, then Blowing Rock?
- 9 A. Yep.
- 10 Q. I like to go skiing at Sugar Mountain up there.
- 11 A. Yep.
- 12 Q. Now, Ms. Sain, there is no correct or incorrect
- 13 answers here. I just want to talk with you openly, and I
- 14 reviewed some of your answers on your, your, your
- 15 questionnaire you sent back in.
- 16 A. Okay.
- 17 Q. Do you know any of the lawyers involved in this case?
- 18 A. No, sir.
- 19 Q. Do you have any -- and you need to try to speak into
- 20 the microphone.
- 21 A. I'm sorry.
- 22 Q. So everyone can hear you.
- 23 A. Okay.
- 24 Q. So, let me ask you that again. Do you know any other
- 25 lawyers in this case?

1 A. No, sir.

2 Q. Get a little bit closer.

3 A. No, sir.

4 Q. All right. Do you have any special interest, bias, or
5 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?

9 A. Yes, sir.

10 Q. Okay, and if you would, tell me what that opinion is,
11 please.

12 A. Guilty.

13 Q. Okay, and why is that?

14 A. Just from the media and television. Just how he --
15 Internet, what I've read.

16 Q. All right, and did you do know that that's just
17 newspapers repeating allegations?

18 A. Yes, sir.

19 Q. That is not evidence in a case?

20 A. Yes, sir.

21 Q. That is really, when you think about it, no more than
22 us reading the charge ---

23 A. Right.

24 Q. --- on Monday.

25 A. And that's what you did, everything I've read.

1 Q. Okay. So, what was read Monday is everything you've
2 read?

3 A. Yes, sir.

4 Q. Do you know it's a very strong and important principle
5 of law in America that a person charged with a crime is
6 presumed innocent? And the state has the burden of proving
7 a person guilty beyond a reasonable doubt. The person does
8 not have to prove themselves innocent. Could you not accept
9 that principle of law?

10 A. Yes, sir.

11 Q. Well, then are you telling me you still presume him
12 guilty?

13 A. Well.

14 Q. I mean, just tell me openly.

15 A. Well, I mean, just from what I've read. I mean,
16 that's my opinion.

17 Q. Well, once again you've read, you said you've read
18 nothing than what you heard on Monday, which are
19 allegations.

20 A. Right.

21 Q. So, the question is can you put that aside and presume
22 the defendant innocent and proceed with the trial with the
23 burden upon the state to prove his guilt beyond a
24 reasonable doubt? And once again I'm not forcing you about
25 anything. I'm just asking you.

1 A. Yes, sir.

2 Q. You can?

3 A. Yes.

4 Q. Now, you're telling me that honestly?

5 A. Yes, sir.

6 Q. You mean that?

7 A. Yes.

8 Q. So, you're telling me at this point in time, you
9 presume the defendant innocent of the charge?

10 A. I can keep an open mind.

11 Q. No. My question is do you presume him innocent of the
12 charges at this time?

13 A. Yes, sir.

14 Q. You're telling me that under your oath, and you
15 realize you're still under oath?

16 A. Yes, sir.

17 Q. So, under your oath, you do presume him innocent?

18 A. Yes, sir.

19 Q. So, whatever decision you make, you can put aside what
20 was in the paper, and have you discussed this with anyone,
21 by the way?

22 A. No, sir.

23 Q. Okay. So, you can put aside what you saw in the
24 paper, and you can begin this trial with the presumption of
25 innocence. And if the state does not prove guilt beyond a

1 reasonable doubt, then you would find the defendant not
2 guilty?

3 A. Yes, sir.

4 Q. Of course, if the state did prove guilt beyond a
5 reasonable doubt, you could find the defendant guilty. Is
6 that right?

7 A. Yes, sir.

8 Q. All right. In a court of law, the judge gives the
9 instructions on the law to the jury. Would you accept and
10 follow the law as I instruct it to you?

11 A. Yes, sir.

12 Q. I notice, though, on your questionnaire you mentioned
13 something about that you did know Rebecca Grainger Winkler?

14 A. I did not know her personally, no.

15 Q. Okay.

16 A. But I have heard her name throughout my community.

17 Q. Okay. Is that before or after the event?

18 A. After.

19 Q. So, what did you hear?

20 A. Just that she lived with her first husband within my
21 community, the Green Sea area. She lived about a mile and
22 a half for me, and my family members knew, knew of her.

23 Q. Oh, okay. You said something about ex-husband was
24 umpire at rec department?

25 A. Yes. I, I've heard that he was an umpire for the rec

1 department where my daughter does play baseball.

2 Q. So, all of this is what you've heard?

3 A. Yes, sir.

4 Q. You never saw her or knew her yourself?

5 A. No, sir.

6 Q. And would any of that affect your ability to be fair
7 and impartial?

8 A. No, sir.

9 Q. All right. So, you never knew her when, when or if
10 she did live there, and you never talked with her, and what
11 someone has told you, that she did live there, would that
12 have any affect upon your decision in this case?

13 A. No, sir.

14 Q. Okay. I gave you a sheet of paper with a list of
15 names on it.

16 A. Yes, sir.

17 Q. Do you know anybody on that sheet of paper?

18 A. No, sir.

19 Q. Could you hand me the sheet of paper? Thank you.
20 Okay, you did not circle any names there. Very good.

21 Now, Ms. Sain, if we have this -- if you're on the
22 this jury, this trial, the jury would first, would first be
23 presented with the evidence regarding the allegations of
24 the charge, and I will instruct you on the charge, on the
25 law. If the jury determines the state had not proven guilt

1 beyond a reasonable doubt and found the defendant not
2 guilty, then the matter would end at that stage as far as
3 the jury's concerned.

4 If, however, the jury determined that the state had
5 proven guilt beyond a reasonable doubt the crime of murder
6 and found the defendant guilty of murder, and then we would
7 go to the next phase. And the next phase of the trial, the
8 jury would be presented with evidence in aggravation and
9 mitigation and would be asked to decide on a verdict of
10 life imprisonment or the death penalty.

11 Now, in that phase, the jurors would once again be
12 presented the evidence in aggravation and mitigation. Now,
13 I gave you a sheet of paper with three types jurors on it.

14 A. Yes, sir.

15 Q. And did you understand the difference in the three?

16 A. Yes, sir.

17 Q. Juror one is the juror that once the defendant's found
18 guilty of murder, that juror would think that a verdict for
19 the death penalty is always the appropriate thing to do.
20 That juror would always bring back a verdict for the death
21 penalty if the defendant's found guilty of murder no matter
22 what the evidence in aggravation and mitigation are.

23 Juror number two is the juror that could never bring
24 back the verdict for the death penalty no matter what the
25 evidence, evidence of aggravation and mitigation are. That

1 juror would always bring back a verdict for life
2 imprisonment.

3 Juror number three is a juror that although the
4 defendant's been proven guilty of murder, that juror would
5 still have an open mind regarding the punishment. That
6 juror would want to hear the facts and circumstances in
7 aggravation and mitigation and listen to the charge from
8 the judge on the law. Then after hearing the evidence in
9 aggravation and mitigation and the charge on the law and
10 after having deliberations on those things, that juror, if
11 it so warranted it could, could come back with a verdict of
12 life imprisonment. Or if the facts so warranted it, that
13 juror could come back with a verdict for the death penalty.

14 Now, when looking at those three types of jurors,
15 which type do you feel you are?

16 A. Type two.

17 Q. Type two. In other words, you could never bring back
18 a verdict for the death penalty?

19 A. Yes, sir.

20 Q. You could?

21 A. I could not.

22 Q. You could not?

23 A. No, sir.

24 Q. Is your opposition to the death penalty such that you
25 could not imagine any circumstances that would prevail upon

1 you to bring back a verdict for the death penalty?

2 A. Child molestation would be about the only one. I just
3 -- I don't believe it's my place to make that decision.

4 Q. So, unless it's a child molestation ---

5 A. Yes, sir.

6 Q. --- you feel you could never bring back a verdict for
7 the death penalty?

8 A. No, sir.

9 Q. No matter what the circumstances of aggravation are?

10 A. No, sir.

11 Q. And you feel firmly committed, irrevocably committed
12 to that position?

13 A. Yes, sir.

14 THE COURT: Okay. Questions from the state?

15 MR. HEMBREE: No, Your Honor.

16 THE COURT: Questions from defense?

17 MR. WILSON: None.

18 THE COURT: All right. Listen, thank you, ma'am. I'm
19 going to find you not qualified for this trial, but I do
20 appreciate your candor. Once again, we're just talking and
21 discussing it, okay? Could you hand me that sheet of paper
22 there?

23 JUROR: Yes, sir.

24 THE COURT: Thank you, Kasi Stalk Scane.

25 JUROR: Sain.

1 THE COURT: Kasie Scalk Kane -- Sain?

2 JUROR: Yes, sir.

3 THE COURT: KSS.

4 JUROR: Yes. Thank you.

5 THE COURT: Thank you, now. Appreciate it.

6 All right, now, let's take a couple of minutes and get
7 started. My count right now, that's forty-one. Is that
8 right?

9 MR. WILSON: That's right.

10 MR. HUMPHRIES: Correct, Your Honor.

11 THE COURT: Forty-one. I'll let you know my decision.

12 (OFF THE RECORD.)

13 THE COURT: All right, are y'all ready now for juror
14 436? Let's see if we've got any notes for 436.

15 MR. HUMPHRIES: A plethora. Didn't want to go through
16 it again. Father committed murder, and had to pick up the
17 son at 3:00.

18 THE COURT: For some reason I do not have 430 ---

19 MR. HUMPHRIES: 436.

20 THE COURT: 436.

21 MR. HUMPHRIES: It's 439.

22 THE COURT: 436.

23 MR. WILSON: Which one is the -- which one are y'all

24 ---

25 THE COURT: 436.

1 MR. HUMPHRIES: For -- this is the next one, 436.

2 MR. WILSON: Right.

3 THE COURT: I just don't have 436 on any notes.

4 MR. WILSON: I do.

5 MR. HUMPHRIES: He came up. He said there's -- when
6 you ask him about whether you knew somebody who had
7 committed a violent crime or was a victim of a violent
8 crime, he came up and said his father had committed murder
9 and that he didn't want to go through it again. You talked
10 to him about that and got him to say that he could be fair
11 and impartial.

12 THE COURT: He said his father was the victim or his
13 father was the ---

14 MR. HUMPHRIES: No, sir. His father committed the
15 murder.

16 MR. WILSON: That's correct. That's my understanding.

17 MR. HUMPHRIES: This was -- you did a masterful job,
18 and then you asked about any other reason, and he came up
19 to say that he had difficulty with child care. He had to
20 pick up the son at 3:00. And you asked if he could get
21 somebody else to do it and once again, masterful job. He
22 said he probably could.

23 THE COURT: Oh, I've got it right here. Sorry, I
24 didn't look at my last page. I've got that about the
25 father. In fact, he came up after 439.

1 Okay, bring him in.

2 (JUROR #436 ENTERS THE COURTROOM.)

3 EXAMINATION BY THE COURT:

4 Q. Come around, Mr. Stephens. How you doing?

5 A. How you doing?

6 Q. I know you've been waiting for a long time.

7 A. Yes, sir. Yes, sir.

8 Q. You bring us any good shrimp from Bums Beach Café?

9 A. Not yet. I ain't been to work.

10 Q. You can have that. Just hold that for right now.

11 A. All right.

12 Q. Now, you and I talked briefly when you came up on
13 Monday, and I know you mentioned about the fact your, your
14 father had been charged and was convicted of murder.

15 A. Yes, sir.

16 Q. And you said on your sheet there that you and him were
17 estranged, but that you did actually go to the trial.

18 A. Yeah. Yes, sir.

19 Q. Okay. Did you testify in the trial?

20 A. No, sir.

21 Q. All right. Do you remember what the circumstances
22 were, and speak into that microphone up to me, if you
23 would. Remember what the allegations were about your
24 father as far as the murder and so forth?

25 A. No, sir.

1 Q. Okay. So, you don't remember what they alleged he did
2 as far as the circumstances of the murder?

3 A. He's -- only thing I know, he stabbed somebody.

4 Q. Was it another man?

5 A. It was a lady.

6 Q. A lady. All right, and did he have a trial or did he
7 plead guilty?

8 A. He had a trial. Then he pled guilty at the middle of
9 it.

10 Q. In the middle of the trial he pled guilty?

11 A. Yeah.

12 Q. Okay. Where did that occur? What county?

13 A. Florence.

14 Q. So, in Florence County. Do you know who his lawyer
15 was?

16 A. No, sir. No, sir.

17 Q. All right, and did you go to the trial?

18 A. Yes, sir.

19 Q. All right. Now, you and I talked and you said it
20 would be difficult to go through that because of the fact
21 your father had been charged and was convicted, or he pled
22 to it. And I told you, I asked you could you be fair and
23 impartial in this case, though, and put aside that
24 conviction about your father and have, have that on the
25 side and not let that affect your ability to be fair and

1 impartial. And you told me you could do that. Is that
2 right?

3 A. Yes, sir.

4 Q. All right. So, do you know any of the attorneys in
5 this case?

6 A. No, sir.

7 Q. All right. Do you have any special interest, bias, or
8 prejudice in this case at all?

9 A. No, sir.

10 Q. Have you formed or expressed an opinion as to the
11 guilt or innocence of the defendant in this case?

12 A. No, sir.

13 Q. Do you know of any reason whatsoever why you cannot
14 give both the state and defendant a fair and impartial
15 trial?

16 A. No, sir.

17 Q. Would you, under your oath, follow the law as I
18 instruct you?

19 A. Yes, sir.

20 Q. One thing I can tell you is that the defendant is
21 presumed innocent and the burden's on the state to prove
22 guilt beyond a reasonable doubt. And the defendant does
23 not have to prove himself innocent. Would you follow that
24 rule of law?

25 A. Yes, sir.

1 Q. So, when you're on that jury and if the state doesn't
2 prove guilt beyond a reasonable doubt, you could find the
3 defendant not guilty. Is that correct?

4 A. Yes, sir.

5 Q. But if the state proved guilt beyond a reasonable
6 doubt, you'd find the defendant guilty. Is that correct?

7 A. Yes, sir.

8 Q. Have you discussed this case with anyone?

9 A. No, sir.

10 Q. Have you seen anything about it in the newspapers,
11 TV ---

12 A. No, sir.

13 Q. -- or anything like that? So, you don't know anything
14 about this case whatsoever?

15 A. No, sir.

16 Q. All right. I forgot to tell -- maybe I did and just
17 forgot it. You do realize you're still under oath from
18 Monday?

19 A. Yes, sir.

20 Q. Okay. I gave you a list there of some names. Did you
21 review that list?

22 A. Yes, sir.

23 Q. Did you see anybody on there you knew?

24 A. No, sir.

25 Q. Could you hand me that list back, please?

1 A. Yes, sir.

2 Q. Also if you were on this trial, there would be
3 possibly two phases to it. One phase is jurors would be
4 presented with evidence regarding the allegations of murder
5 and the other charges, burglary and assault and battery of
6 a high and aggravated nature. And I will charge the jury
7 on the law. If the jury felt the state had not proven the
8 defendant guilty of the crime of murder and found the
9 defendant not guilty of the murder, then we would end the
10 case at that point in time as far as the jury's concerned.

11 However, if the jury felt and found the defendant
12 guilty of murder, then we would enter another phase where
13 the jury then would consider the issue of punishment. Now,
14 there the jury would be presented with evidence in
15 aggravation and mitigation and then would come up with a
16 verdict of either life imprisonment or a verdict for the
17 death penalty.

18 I gave you a sheet of paper with three types of jurors
19 on it. Do you remember reviewing that sheet of paper?

20 A. Yes, sir.

21 Q. Do you have it there with you now?

22 A. Yes, sir.

23 Q. Did you understand the difference in the three types?

24 A. Yes, sir.

25 Q. And you know type one is the juror that no matter what

1 the evidence in aggravation, mitigation, that juror would
2 always come back with a verdict for the death penalty.
3 That juror would feel that the death penalty is the most
4 appropriate punishment no matter what the evidence in
5 aggravation and mitigation are.

6 Juror number two is a juror that could never come back
7 with a verdict of the death penalty. That juror would feel
8 that no matter what circumstances in aggravation or
9 mitigation, that that juror could only come back with a
10 verdict of life imprisonment because that verdict -- that
11 juror could never give the death penalty.

12 Type, juror type three is the juror that's although
13 the defendant's been found guilty of murder, that juror
14 would want to hear the evidence in mitigation and
15 aggravation before making up his mind, as well as the
16 charge of the law of the judge. And then after hearing the
17 evidence in aggravation and mitigation and the law, that
18 juror, if the juror deemed it appropriate, could bring back
19 a verdict for life imprisonment. Or that juror, if he had
20 deemed it appropriate, could bring back a verdict for the
21 death penalty.

22 Do you understand the three types?

23 A. Yes, sir.

24 Q. And which one best describes you?

25 A. Two.

1 Q. Two?

2 A. Yes, sir.

3 Q. Other words, you could never bring back a verdict for
4 the death penalty?

5 A. No, sir.

6 Q. No matter what the circumstances, you could never sign
7 death penalty as far as a verdict?

8 A. No, sir.

9 Q. Is that something that you firmly held -- hold and I
10 could -- I couldn't discuss with you anything that would
11 change your mind?

12 A. No, sir.

13 Q. You're convinced of that?

14 A. Yes, sir.

15 Q. So, no matter what evidence is presented about a
16 murder, if a person's convicted of murder, no matter what
17 evidence is presented, you would never come back with a
18 verdict for the death penalty?

19 A. No, sir.

20 THE COURT: Okay, let me let the attorneys ask you any
21 questions if they have any.

22 JUROR: All right.

23 MR. HEMBREE: I don't have any questions. Thank you,
24 sir.

25 JUROR: All right.

1 THE COURT: Okay, Mr. Wilson?

2 MR. WILSON: I'll be brief, Your Honor.

3 EXAMINATION BY MR. WILSON:

4 Q. Just let me ask you this. Your view about the death
5 penalty, is that a moral or a religious view or?

6 A. It's, it's like I feel like I can't pinpoint that on
7 nobody, you know? That, that's not my right to do.

8 Q. Okay, and that's something you always believed and
9 felt?

10 A. Yes, sir.

11 Q. And you're just not going to give anybody the death
12 penalty no matter what the situation? Is that what you're
13 saying?

14 A. Yes, sir.

15 MR. WILSON: I, I have no other questions.

16 THE COURT: All right. Does anybody have anything to
17 discuss with me further on this issue?

18 MR. HEMBREE: No, Your Honor.

19 MR. WILSON: No, sir.

20 THE COURT: All right, thank you very much, Mr.

21 Stephens. I'm going to let you go. Hand me that sheet of
22 paper you have there, and appreciate it and might be able
23 to get some shrimp from you at Bums one day, all right?

24 JUROR: All right.

25 THE COURT: Thank you. You can go at this time.

1 JUROR: All right. Y'all have a good night.

2 THE COURT: Juror number 4, let's see, 419. That does
3 not ring a bell anywhere.

4 MR. HEMBREE: There's nothing on our notes, Your
5 Honor.

6 THE COURT: No. Bring juror 419 in, please.

7 (JUROR #419 ENTERS THE COURTROOM.)

8 EXAMINATION BY THE COURT:

9 Q. Hello, Ms. Smith.

10 A. How are you?

11 Q. Boy, this has been about as long a day as when you're
12 about to have a tooth pulled. What is the name of the
13 dentistry where you work?

14 A. Comprehensive Dentistry.

15 Q. Socastee?

16 A. Socastee.

17 Q. Socastee?

18 A. Yes, sir.

19 Q. Socastee Braves. Okay, I'm just going to look over
20 this one for a minute.

21 (A PAUSE.)

22 Q. Oh, you like to ride horses?

23 A. Yes, sir.

24 Q. Tennessee Walkers or?

25 A. Quarter horses.

1 Q. Huh?

2 A. Quarter horses.

3 Q. Boy, they're smooth, aren't they, easy to ride?

4 Okay. Now, you are originally from where?

5 A. I was born in Raleigh, North Carolina. I've been here
6 all my life.

7 Q. So, you came here as a child?

8 A. Yes, sir.

9 Q. Okay. Now, what I need to do is make sure you
10 understand that you're still under oath from the other day,
11 and try to speak into that microphone so everyone can hear
12 you.

13 A. Okay.

14 Q. Are you related or to -- or do you know any of the
15 lawyers involved in this case?

16 A. No.

17 Q. I notice you said that you heard the name before.

18 A. Just when they're running for office.

19 Q. Okay, and so that -- you've not formed an any opinion
20 one way or the other about them. Would that affect your
21 ability in this case at all?

22 A. No, sir.

23 Q. All right. Do you have any special interest, bias, or
24 prejudice in this case?

25 A. No.

1 Q. Have you formed or expressed an opinion in this case
2 as to the guilt or the innocence of the defendant?

3 A. No, sir.

4 Q. Do you know of any reason whatsoever why you cannot
5 give both the state and the defendant a fair and impartial
6 trial in this case?

7 A. No, sir.

8 Q. Would you under your oath follow the law as I instruct
9 it to you?

10 A. Yes.

11 Q. If you're on that jury, one principle of law I will
12 tell you is that the defendant is presumed innocent, and
13 the burden's on the state to prove guilt beyond a
14 reasonable doubt, not upon the defendant to prove himself
15 innocent. Would you accept that principle of law?

16 A. Yes, sir.

17 Q. Further, if you're on that jury and if the state could
18 -- and did not prove guilt beyond a reasonable doubt, would
19 you then have any problem returning a verdict of not guilty
20 if they did not prove him guilty beyond a reasonable doubt?

21 A. No, sir.

22 Q. If the state did prove guilt beyond a reasonable
23 doubt, could you bring back a verdict of guilty?

24 A. Yes.

25 Q. Have you discussed this case with anyone?

1 A. No, sir.

2 Q. Do you know anything about it?

3 A. No, sir.

4 Q. It's been in the newspaper, on TV, but you haven't
5 seen anything about it?

6 A. I have not.

7 Q. All right. So, no one's mentioned it to you or
8 anything?

9 A. No, sir.

10 Q. The only thing you know is what we read briefly on
11 Monday?

12 A. Right.

13 Q. Okay. I gave you a list of names there of, of -- do
14 you know any of those people on that list?

15 A. I do not.

16 Q. Okay, can I have the list back from you? Nothing's
17 circled.

18 If you're on this jury, it could very well be in two
19 parts, and let me just discuss that with you. First part
20 is the jurors would be given evidence and my charge on the
21 law regarding allegations. If the jury decided the state
22 had not proven the defendant guilty of murder beyond a
23 reasonable doubt and found the defendant not guilty, then
24 that would end the jurors' participation at that point.

25 If, however, the jurors found the defendant guilty of

1 murder, then we would go to the next phase where the jurors
2 would consider the issue of punishment. And there the
3 jurors would be presented evidence in aggravation and
4 mitigation. And I'd have another charge on the law, and
5 the jurors would actually come back with a verdict of
6 either life imprisonment or the death penalty.

7 Now, that means the jurors would have already decided
8 the defendant guilty of murder. Then the question is what
9 would be the sentence or the verdict that the jury would
10 come in regard to that.

11 I gave you a sheet of paper, says three types of
12 jurors: one, two, and three. First type of juror is a
13 juror that once a defendant's found guilty of murder, that
14 juror would always vote for the death penalty because they
15 think that it is the only appropriate punishment no matter
16 what the circumstances are.

17 Juror number two is a juror that would never vote for
18 the death penalty. They would always vote for a verdict of
19 life imprisonment because they never could impose the death
20 penalty. No matter what the circumstances of aggravation
21 are presented, that juror would never vote for the death
22 penalty.

23 Juror number three is a juror that although the
24 defendant's been determined guilty of murder, that juror
25 would be willing to have an open mind regarding punishment.

1 That juror would want to hear the facts and circumstances
2 in aggravation and mitigation and the charge by the judge
3 on the law. And then after hearing the evidence of
4 aggravation and mitigation and the law, that juror would
5 consider all those things. And that juror then, if the
6 facts and evidence so warranted it, come -- could return
7 with a verdict of life imprisonment. Or if the facts so
8 warranted it come -- could come back with a verdict of the
9 death penalty.

10 Do you understand the difference?

11 A. Yes, sir.

12 Q. Which of those three is -- indicates you?

13 A. Number three.

14 Q. So, you would have an open mind about it, and although
15 the defendant was found guilty of murder -- and once again,
16 by saying this, it's not suggesting that would happen.

17 A. Right.

18 Q. I just got to, got to discuss the whole procedure.
19 But if you were to find the defendant guilty of murder, you
20 would have an open mind regarding punishment and listen to
21 the evidence in mitigation and aggravation and my charge of
22 the law before you could decide punishment?

23 A. Yes, sir.

24 Q. You realize that if the jury were to decide that --
25 come out with a verdict of death penalty, that all jurors

1 have to sign the verdict form because it's got to be
2 unanimous?

3 A. Okay.

4 Q. Could you do that?

5 A. Yes.

6 Q. Now, if you were selected as a juror on this case, you
7 would be sequestered for somewhere in the neighborhood of
8 the week. Little more, little less, whatever. And you
9 could not have any contact with your family except by
10 phone. I see you have one child. How old is your child?

11 A. Seventeen.

12 Q. Seventeen? Mighty young looking to have a child that
13 old but, but you could not have contact with your family or
14 business other than by phone, and you would be about a week
15 or so. Might be a little more or less. I know that would
16 be a hardship and you would be away from your job.
17 Probably more a hardship on the dentist than on you,
18 but ---

19 A. Right.

20 Q. -- but could you, could you do that?

21 A. Yes, sir.

22 THE COURT: Okay. I'm going to let lawyers now ask
23 you a few questions, and then I'll see if I need to ask you
24 a few more.

25 JUROR: Okay.

1 THE COURT: All right, for the state?

2 MR. HEMBREE: Thank you, Your Honor.

3 Ms. Smith, I don't have any further questions for you.
4 Thank you for your patience today. Please answer any
5 questions defense counsel may have for you.

6 THE COURT: Mr. Rathbun?

7 EXAMINATION BY MR. RATHBUN:

8 Q. Good evening, Ms. Smith.

9 A. Hi.

10 Q. I'm Paul Rathbun. Along with Ralph Wilson, we
11 represent Mr. Winkler in this case. A couple of questions.

12 I notice your brother is a prison guard.

13 A. Yes, sir.

14 Q. Is that here in South Carolina?

15 A. No, sir. North Carolina.

16 Q. Okay, and I know these might be a little bit hard to
17 talk about, but your ex-husband is in prison?

18 A. No.

19 Q. Well, on here it says that do you know anybody ---

20 THE COURT: What, what number is that you're ---

21 MR. RATHBUN: Number 59 on page 5.

22 Q. I believe -- was he in, in jail?

23 A. He has just been in jail.

24 Q. Okay. All right, and did that have, have anything to
25 do with you, or was that something...

1 A. No. Driving.

2 Q. And you indicated that you were a type three juror.

3 And what in your mind does that mean?

4 A. To me it would just depend on the, you know, how bad
5 the crime was. If there was a crime committed, how bad it
6 was whether I would do the death penalty or not.

7 Q. Okay. Well, and in this hypothetical, you and eleven
8 other jurors have already heard the state put up their
9 case, and they have proved to you beyond a reasonable doubt
10 that a murder was committed and that it was committed with
11 a wicked heart. So, that's -- now we've convinced -- we
12 finish that phase and we're going to commence a second and
13 that's where the state puts on matters in aggravation,
14 which tend to make it more -- murder or, I don't know, just
15 more aggravated.

16 A. Right.

17 Q. And the, the, the defense will put on matters of
18 mitigation. There may not be any matters of mitigation, or
19 there may be a number of matters of aggravation. Do I
20 understand you to say that if that's the case, that you
21 would vote for the death penalty? Would you have an open
22 mind?

23 A. If it was more aggravated, I would be more inclined to
24 go with the death penalty.

25 Q. Okay. Do you understand that the State of South

1 Carolina and the court is satisfied with whatever verdict
2 you come up with? And that that could be the death
3 penalty and it could be the life penalty and that you don't
4 have to have any reason -- you don't have to articulate any
5 reason to vote for life. You understand that?

6 A. Yes, sir.

7 Q. And that's your right. You can vote for life. So, do
8 you believe that even if there's a lot of aggravating
9 circumstances and there's very little mitigating, you're
10 saying that more than likely you would vote for the death
11 penalty?

12 A. I would say.

13 Q. All right. I'm not here to change your mind. You
14 understand --

15 MR. RATHBUN: Let me consult with Mr. Wilson, if Your
16 Honor please.

17 THE COURT: And you mind if I ask her one more while
18 you're doing that?

19 MR. RATHBUN: Please.

20 FURTHER EXAMINATION BY THE COURT:

21 Q. You realize on the jury, ma'am, that we use these
22 terms aggravating and mitigating. But of course on the
23 jury, you all would be the one to decide what you found one
24 way or the other. Just because one side puts forth and
25 tries to argue or present it that way doesn't mean that you

1 would have to find yourself or make the decision yourself.
2 That those matters would be left up to your decision. Do
3 you understand that?

4 A. Right.

5 Q. Okay, and you also understand that even if, say, the
6 state puts up matters they, they submit or contend are
7 matters of aggravation, and it doesn't mean you have to
8 find them to be matters of aggravation.

9 A. Okay.

10 Q. You know?

11 A. Right.

12 Q. So, therefore, the fact that someone, say, puts it up
13 and doesn't mean you got to find that way.

14 A. Right.

15 Q. And would you still have an open mind even, if the
16 defense put up nothing in regard to that and the state put
17 up aggravating circumstances, would you have an open mind
18 and wait to decide what you decide are there as far as
19 deciding?

20 A. Yes. I would have an open mind.

21 Q. And even if that happened and, say, if the state put
22 up evidence, you still -- and the defense did not in regard
23 to that phase, you still could come back with a verdict for
24 life imprisonment?

25 A. Yes.

1 THE COURT: Okay.

2 MR. RATHBUN: I'm sorry. No further questions.

3 THE COURT: Any other questions from the state?

4 MR. HEMBREE: No, Your Honor.

5 THE COURT: If you would, step outside there, please,
6 ma'am.

7 (THE JUROR EXITS THE COURTROOM.)

8 THE COURT: Okay, state?

9 MR. HEMBREE: Juror's qualified, Your Honor.

10 THE COURT: Defense?

11 MR. RATHBUN: She's qualified, Your Honor.

12 THE COURT: Okay, what's the number, that's forty-two?

13 MR. HUMPHRIES: Forty-two.

14 THE COURT: All right, bring Ms. Smith back in.

15 (THE JUROR ENTERS THE COURTROOM.)

16 THE COURT: Ms. Smith, I want to thank you very much.
17 I will qualify you to go into the panel of jurors. I find
18 you qualified, and that does not mean that you're on the
19 jury itself. What that means is that you will be among the
20 group from which the jury is selected. So, I need you back
21 here tomorrow at 11:30 a.m.

22 And go ahead tonight and go ahead and pack some things
23 and bags because if you are selected on the jury, then I
24 will give you time to be back home and get the bags and
25 come back.

1 If you would, try to call a friend or someone else to
2 see if, if, if they can help you get your car, maybe drive
3 you up if you're selected on the jury back here to the
4 courthouse, then take your car back because you wouldn't
5 want to leave your car here all week.

6 Now if you can't do that, don't worry. I'll get
7 someone in the courthouse here to do it and get you, get
8 you worked out there. But if you can, it makes things run
9 smoother for me.

10 JUROR: Okay.

11 THE COURT: In the meantime, do not discuss this case
12 with anybody. The friend you may call about helping with
13 the car, you cannot discuss the case with him or her and
14 all. And do not read any local newspapers, and don't look
15 at any local news, all right?

16 All right, if you can go out that door there, and
17 we'll see you tomorrow at 11:30 a.m.

18 JUROR: 11:30.

19 THE COURT: Thank you, ma'am

20 If you would now, 125. Wait one second -- well, you
21 can go ahead and bring her to the door and I'll let you
22 know when you can bring her in.

23 MR. HUMPHRIES: We don't have anything.

24 THE COURT: I have nothing on her either. I thought I
25 did.

(JUROR #125 ENTERS THE COURTROOM.)

EXAMINATION BY THE COURT:

Q. Hello, Ms. Dozier.

A. Hello.

Q. And have you had enough time waiting on me? Did we give you enough time?

A. Yeah, I've had plenty of time.

Q. Good, good. If you would, please have a seat, please, ma'am. I see your son is an EMT?

A. Uh-huh.

Q. In what area the county does he work in?

A. Bayboro. Bayboro.

Q. Is that Bayboro?

A. It's outside of Loris.

Q. So, it's in Horry County?

A. Yes.

Q. Is that over on Number 9?

A. It's back behind the hospital. I'm not sure what street ---

Q. Okay. All right. I want to remind you that you're still under oath. You understand that?

A. Yes, sir.

Q. Okay. You like to read fiction. Oh, you played softball?

A. Yes.

1 Q. Second base or outfield?

2 A. Actually first base.

3 Q. First base. I knew you had to be one of them. How
4 long have you been doing that? Are you on a league or
5 anything?

6 A. I'm not -- well, coed.

7 Q. Is that a league y'all have?

8 A. Yeah. It's just for fun.

9 Q. Okay. I used to play at the church softball league.
10 A lot of people needed to sort of get back in the church
11 sometimes after those games, I think.

12 A. Yeah.

13 Q. Now, who is Cameron Dozier?

14 A. My husband.

15 Q. He works at the detention center?

16 A. Yes, sir.

17 Q. Okay. Have you and he discussed this case at all?

18 A. No, we have not.

19 Q. So ---

20 A. He's been on nights the last two nights, so I haven't
21 even seen him.

22 Q. So, he hasn't mentioned this to you at all over the
23 last year or so?

24 A. Huh-uh.

25 Q. And I want to remind you. I need to do this, that

1 you're still under oath from Monday, and try to speak into
2 the microphone so the court reporter can hear you there and
3 everyone else. So, you, you realize you're still under
4 oath?

5 A. Yes, sir.

6 Q. If you were on this jury, would that be a problem,
7 the fact your husband -- what's he do at the detention
8 center?

9 A. He is a detention officer.

10 Q. What does that mean? Do you know what he does?

11 A. Not really. He doesn't discuss -- he discusses his
12 co-workers and so forth, but he won't discuss anything he
13 works on.

14 Q. Okay. Have you visited up there where he works?

15 A. No.

16 Q. Do you have an interest, bias, or prejudice in this
17 case at all?

18 A. No, sir.

19 Q. Do you know any of the lawyers involved in this case?

20 A. No, sir.

21 Q. Have you formed or expressed an opinion as to the
22 guilt or the innocence of the defendant?

23 A. No, sir.

24 Q. Do you know any reason whatsoever why you cannot give
25 both the state and the defendant a fair and impartial

1 trial?

2 A. No, sir.

3 Q. Would you under your oath follow the law as I instruct
4 it to you?

5 A. Yes, sir.

6 Q. And please speak a little bit louder. I think the
7 court reporter's giving me a little eye contact. She needs
8 you to ---

9 A. Okay.

10 Q. --- be a little bit louder. So, you would follow the
11 law as I instruct it to you?

12 A. Yes, sir.

13 Q. One part of that law, one principle would be that the
14 defendant is presumed innocent and that the state is
15 required to prove guilt beyond a reasonable doubt. The
16 defendant does not have to prove himself innocent. So, you
17 would, if you were following the law and you say you're
18 going to follow it, then you presume the defendant innocent
19 and require the state to prove guilt beyond a reasonable
20 doubt because if they don't prove guilt beyond a reasonable
21 doubt -- you do not require the defendant to prove himself
22 innocent, but you find him not guilty if the state didn't
23 prove him guilty?

24 A. Yes, sir.

25 Q. You would follow that principle?

1 A. Yes, sir.

2 Q. And of course if the state did prove him guilty beyond
3 a reasonable doubt, you'd find him guilty?

4 A. Yes, sir.

5 Q. Have you -- you say you've not discussed this case
6 with anyone at all?

7 A. Uh-huh. No, sir.

8 Q. Have you seen anything about it in the newspapers?

9 A. I don't get the local newspaper.

10 Q. Okay, have you seen anything on TV about it?

11 A. No, sir.

12 Q. Have you heard anything on the radio about it?

13 A. No, sir.

14 Q. So until you got here Monday, you knew nothing about
15 this at all?

16 A. Back in 2006, I heard about the case for -- but that
17 -- it was co-workers that were talking about it. I didn't
18 never read anything or see anything on it.

19 Q. Now, you -- what's the name of the company you work at
20 in Gallivant's Ferry?

21 A. Blanton Supplies.

22 Q. Blanton Supplies. Do you remember what else they said
23 to you?

24 A. No. Basically they were just -- I think at the time
25 that it happened, they were talking about, I think there

1 was a situation where he was hiding or something, but as
2 far as what he did, I never heard. I just heard there was
3 someone hiding, and they were looking for someone.

4 Q. Now, now, you do know that, that people saying that
5 doesn't actually mean that's true?

6 A. Right.

7 Q. And would you be willing to put that aside and not
8 consider that whatsoever?

9 A. Yes, sir.

10 Q. Once again, the defendant is presumed innocent. You
11 accept that principle?

12 A. Yes, sir.

13 Q. And no matter what anybody said, once again those are
14 just allegations, even if that is an allegation. I don't
15 even know if it is or is not. But, but the fact someone
16 says something doesn't mean it's so.

17 A. Right.

18 Q. Would you make your decision based on the evidence
19 presented here in the courtroom and the law as I instruct
20 it to you?

21 A. Yes, sir.

22 Q. That list of witnesses or potential witnesses or names
23 I gave you there, do you see anybody there you know?

24 A. I have two names of ---

25 Q. Let me just look at it. Did you circle them?

1 A. Yes, sir.

2 Q. Okay. Melanie Huggins. Let me think. Who is that?

3 Oh, that's the Clerk of Court. So, that name and Tammy

4 Cox.

5 A. Now, that's name I circled because I know a Tammy

6 Cox from Loris, but that's all I've had on there was the

7 name.

8 Q. Do you know what Tammy Cox does for a living?

9 A. She works at Loris Hospital.

10 Q. Okay. Let's just assume that's her. May or may not

11 be. Let's assume it's her. Ms. Huggins, she's the Clerk

12 of Court, but do you have any special relationship such

13 that if she was a witness, you would have -- that it would

14 cause you to look upon her differently than you would any

15 other, any other witness in the case?

16 A. No, sir.

17 Q. What about with this Tammy Cox?

18 A. No, sir.

19 Q. How do you know Tammy Cox?

20 A. Actually, I don't know her a lot personally. Her

21 daughter plays softball with my daughter.

22 Q. Okay.

23 A. So, I know of her.

24 Q. And how do you know Ms. Huggins?

25 A. Her son works with me.

1 Q. Okay, at the Blanton Supplies?

2 A. Right.

3 Q. But you have no special relationship with them such
4 that you would look upon them differently than you would
5 any other witness?

6 A. No, sir.

7 THE COURT: Okay, give this to the court reporter.

8 (QUESTIONNAIRE OF JUROR #125-DOZIER MARKED INTO
9 EVIDENCE AS COURT'S EXHIBIT NUMBER 15-M.)

10 Q. Now, Ms. Dozier, in a trial of this nature because it
11 could -- doesn't mean it will, but it could very well be in
12 two parts. First part is you receive, receive evidence
13 regarding allegations of crimes: burglary, murder, and
14 assault and battery of a high and aggravated nature. And,
15 if the jury were to determine through the evidence and the
16 law as I instruct it to you that the defendant was not
17 proven guilty beyond a reasonable doubt of murder, they
18 found him not guilty of that crime, then the jurors'
19 participation would end at that time.

20 If, however, the jurors found that the state did prove
21 the guilt beyond a reasonable doubt and found the defendant
22 guilty of murder, then we would go to the next phase. And
23 once again that is not saying we are going to do that. I'm
24 just saying that if they did.

25 And then in the next phase, the jurors would consider

1 the issue of punishment. The jurors will hear evidence in
2 that phase of aggravation and the mitigation and further
3 instructions on the law from the judge. And the jury will
4 have already found the defendant guilty of murder, and then
5 they all will be considering the issue of punishment.

6 There the jurors would, after hearing the evidence in
7 aggravation, mitigation, the jurors would have the choice
8 of verdict of life imprisonment or a verdict of the death
9 penalty.

10 I gave you a sheet of paper with three types of
11 jurors. And just to make sure we're on the same page with
12 that, juror number one is a juror that no matter what the
13 evidence in aggravation and mitigation, that juror would
14 feel that if a person's been convicted of murder, then that
15 person should always receive a verdict of the death
16 penalty. That person would always feel that the death
17 penalty is the most appropriate punishment no matter what
18 the evidence in aggravation or mitigation is.

19 Juror type two is the juror that, and that although
20 the defendant's the been convicted of murder, that juror
21 under no circumstances would ever give someone the death
22 penalty. That juror would not even need to hear any facts
23 or circumstances in aggravation and mitigation because that
24 juror would always come back with a verdict for life
25 imprisonment.

1 Then the third type of juror is the juror that
2 although the defendant's been found guilty of murder, that
3 juror would still have an open mind regarding punishment.
4 That juror would want to hear the evidence in aggravation
5 and mitigation as well as the judge's charge to the jury
6 before she could make up her mind and make her decision
7 regarding punishment. And if after hearing that evidence
8 the juror felt it so warranted it, the juror could bring
9 back a verdict of life imprisonment. Or if the juror felt
10 it so warranted, could bring back a verdict for the death
11 penalty.

12 Of those three jurors, which one are you, ma'am?

13 A. Three.

14 Q. So, you could keep an open to mind about this?

15 A. Yes, sir.

16 Q. And you could consider the evidence in aggravation and
17 mitigation, and you could bring back a verdict for life if
18 you felt it was appropriate, or you could bring back a
19 verdict for the death penalty if you felt it was
20 appropriate?

21 A. Yes, sir.

22 Q. If the jury brought back a verdict for the death
23 penalty, then the juror -- every juror has to sign that
24 verdict form because got to be unanimous. Could you sign
25 that verdict form?

1 A. Yes, sir.

2 Q. Okay. If you were selected on this jury, you would be
3 sequestered for around a week or so. Little over a week,
4 little less than a week. Would that cause such an undue
5 hardship that you could not do that?

6 A. No, sir.

7 THE COURT: I'm going to let the attorneys ask you
8 some questions now.

9 State?

10 MR. HEMBREE: I don't have any questions. I
11 appreciate it, Ms. Dozier.

12 JUROR: Thank you.

13 THE COURT: Defense? Mr. Wilson?

14 MR. WILSON: Thank you, Your Honor.

15 EXAMINATION BY MR. WILSON:

16 Q. Ma'am, I, I notice you said that your husband's a
17 detention officer?

18 A. Yes, sir.

19 Q. At J. Ruben Long, and your brother is also a detention
20 officer?

21 A. My brother is a detention officer in North Carolina.

22 Q. He's a detention officer in North Carolina?

23 A. Yeah.

24 Q. Okay, and then your son's a firefighter/EMT, and is
25 that with Horry County?

1 A. Yes, sir.

2 Q. Okay, and now I understand that you attend First
3 Baptist in Loris?

4 A. Yes, sir.

5 Q. All right, and how long have you attended First
6 Baptist?

7 A. About nineteen years.

8 Q. Okay, and during the time that you were there, was Ms.
9 Winkler, the victim in this case, was she the church
10 secretary or accountant for the church for many of those
11 years?

12 A. I'm not sure if she was or not. I don't attend
13 regularly.

14 Q. So, you weren't going to church regularly, so you
15 don't really know ---

16 A. Right, I ---

17 Q. --- that ---

18 A. I don't know who the secretary is now.

19 Q. All right, and now as I understand it, you -- well,
20 you still attend this church, right?

21 A. Yes, sir.

22 Q. All right, and so you don't go regularly any more. Do
23 you go at all?

24 A. Yeah. Maybe -- honestly, two or three times a year.

25 Q. And you said also that you knew Tammy Cox?

1 A. Yes.

2 Q. And you knew Ms. Cox through how?

3 A. Softball.

4 Q. Through softball?

5 A. Yeah.

6 Q. And somebody plays with your ---

7 A. Her daughter ---

8 Q. Her daughter plays with your ---

9 A. --- plays with my daughter.

10 Q. With your daughter? You and she ever have any
11 conversations?

12 A. No.

13 Q. But you know who she is?

14 A. Yes, sir.

15 Q. And she knows who you are. The fact that, that you
16 know Ms. Cox and the fact that you know she's going to be a
17 -- may be a witness in this case, and the fact that your
18 husband is a detention officer, those things collectively,
19 do they cause you any hesitation or concern about whether
20 or not you could still be fair in light of those things?

21 A. No. They don't affect me.

22 Q. They don't affect you?

23 A. Huh-uh.

24 Q. Okay, and, ma'am, being a member of that church, have
25 you heard back in 2006 when all this occurred, did you hear

1 anything, anything at church about what was going on with
2 this? Was there any talk in the church that you overheard
3 or in the community that you overheard?

4 A. I never heard any talk of it at church.

5 Q. And you said that you work at Blanton Supply. Is that
6 correct?

7 A. Yes.

8 Q. And, and that's the kind of community store?

9 A. Yes, sir.

10 Q. And a lot of people from the community come to that
11 store and kind of ---

12 A. Yes, sir.

13 Q. --- drink coffee and talk and just kind of stand
14 around. And, and is it at that place that you heard some
15 of the conversations that you told us about?

16 A. Yes, sir.

17 Q. And, and, and that's not uncommon there, is it, for
18 community talk to occur?

19 A. Right.

20 Q. And, and even in spite of that, you still believe that
21 you could still, you know, put everything that you've heard
22 aside and still be on this jury and be fair to this
23 defendant and to the state?

24 A. Yes, sir. I actually work in the back part of
25 Blanton's. I'm in a cubicle, so I'm not out to see people

1 during the daytime.

2 Q. Right. All right, and just one last thing. Ma'am, in
3 regards to your view about the death penalty, you said that
4 you're a type three juror. And what, what is your
5 understanding of what a type three juror is?

6 A. I assume what a type three juror is is that you have
7 to hear all of the evidence before you make a decision.

8 Q. Okay, and ---

9 A. That it would take more than just saying guilty to
10 make your decision. You would have to have more evidence.

11 Q. Okay. Do you understand that if, if we get to the
12 second phase of the trial that you as a member of this
13 panel would have already made a decision that the defendant
14 was guilty beyond a reasonable doubt of the crime of
15 murder?

16 A. Right.

17 Q. Because if you found him not guilty, we wouldn't go
18 the next step.

19 A. Right.

20 Q. Or if you found him guilty of a lesser charge, we
21 wouldn't go to next step.

22 A. Right.

23 Q. All right, and having, having heard all the things
24 that you have heard, you and -- even at this point can
25 accept what the court has said to you and believe that this

1 defendant is not guilty even as he sits here today?

2 A. To make the decision between life imprisonment and the
3 death penalty, I think it would be a difference in the two.
4 It's depending on, I guess, the guilty verdict and how it
5 came about, what type of evidence was presented to give
6 that guilty verdict.

7 Q. Yes ma'am. What, what I'm asking you right now,
8 though, is His Honor has told you that, that the defendant
9 is presumed innocent. And what I'm asking you is in spite
10 of everything that you've heard and know about anything, in
11 spite of that, can you today say to us that you accept the
12 fact that this defendant is presumed innocent and that he
13 is innocent as he sits here today?

14 A. Yes, sir.

15 MR. WILSON: All right, thank you, ma'am.

16 FURTHER EXAMINATION BY THE COURT:

17 Q. One thing, Ms. Dozier, I may have forgotten. I've
18 been doing this all day. Is it that you heard discussion
19 of this at the store?

20 A. Uh-huh. Yes, sir.

21 Q. What was it you heard at the store?

22 A. Well, I heard at the store was there was someone
23 hiding.

24 Q. I, I remember that, and -- but you do know those are
25 just people talking?

1 A. Right.

2 Q. Doesn't mean that's true or any evidence of that at
3 all.

4 A. Yes, sir.

5 Q. And you are -- you will put that aside and make your
6 decision based on the evidence presented in the courtroom
7 and the law as I instruct it to you?

8 A. Yes, sir.

9 Q. And your decision would not be made at all based on
10 anything you may have heard outside the courtroom?

11 A. Yes, sir.

12 THE COURT: Okay. If you would, step outside and the
13 door right there.

14 (THE JUROR EXITS THE COURTROOM.)

15 THE COURT: State?

16 MR. HEMBREE: Juror's qualified, Your Honor.

17 THE COURT: Defense?

18 MR. WILSON: Judge, you know, I, I would object to her
19 being qualified. I, I recognize that she has said that she
20 could be fair and she could set all these things aside.
21 And I, you know, I just have some difficulty based on, on
22 her contacts with her, her, her husband being a detention
23 officer at the facility where this defendant is housed and
24 the fact that she was a member of the same church that the
25 victim is a member of, or was a member of. The fact that

1 she lives in the same ---

2 THE COURT: See, I don't even know that. Is that
3 coming out? I don't even ---

4 MR. WILSON: That will come out through the course of
5 the trial.

6 THE COURT: Well, she said she only goes twice a year.

7 MR. WILSON: I know she said she doesn't go regularly.

8 THE COURT: No, she said about twice a year is what
9 she said as I recall. Am I right?

10 MR. HUMPHRIES: Yes, sir. Two or three times a year.

11 THE COURT: Two to three times a year, okay.

12 MR. WILSON: And my, my point is is that there's just
13 a lot of things for her to have to set aside in order for
14 her to be fair. And I, I'm just concerned that, you know,
15 if she gets in there in the jury panel and then she
16 realized well, gosh, you know, I didn't realize that all
17 this or that, this happened or that happens, and then she
18 starts -- it all starts coming back to her. Then where are
19 we? And I just, I ---

20 THE COURT: All what starts coming back?

21 MR. WILSON: Oh, I mean, as I said, her husband, and I
22 didn't hear if she said, well, husband hadn't told her
23 anything about this. I'm not saying that he has because I
24 don't know that.

25 But what I understood her to say to the court is that

1 he is certainly at the same jail that this defendant has
2 been incarcerated in for two years or a year and a half or
3 however long he's been there. And he is, you know working
4 there, and so obviously he has access to, to the defendant
5 and to the fact that the defendant is present at the jail
6 and whatever else might have occurred in the jail with this
7 defendant.

8 The, the other thing is is that, is is that, what
9 concerns me is -- I mean, she freely admits that there was
10 conversations at her job. And Blanton's is a, it's a
11 little community hang out. I remember from my days in
12 college is a place you go and kind of drink coffee and talk
13 about politics and talk about what's going on in the world
14 and in the community, which is fine.

15 I don't have anything against that except that what
16 I'm saying is in this particular case, it's important
17 because this is a very small community. This lady lived in
18 Loris. The victim lived in Loris, which is where she
19 lives. There's just all these, these, all these things.
20 The same church. I just think that there's too much here
21 to be comfortable that, that she can set all that aside and
22 still be fair. I, I just, I have a real, I have the real
23 difficulty with that.

24 THE COURT: Mr. Hembree, you want ---

25 MR. HEMBREE: If I may be heard, Your Honor? On all

1 these things Mr. Wilson refers to, all of these things,
2 this is, this is kind of classic making a mountain out of a
3 molehill because things he's talking about is that she was
4 a member of the Loris Baptist Church. Now, that's true.
5 She's on the roll at Loris Baptist Church, but her
6 testimony was I go two to three times a year, and I didn't
7 have any idea about Rebecca Winkler being in any way
8 affiliated with that church. She had no knowledge of that.
9 So, there is -- there's nothing for her to set aside or
10 work through or get over. So, let's push that one out of
11 the way.

12 She -- he talked about, well, they asked a lot of
13 questions about Tammy Cox. She says I don't -- I know that
14 her daughter plays ball. My daughter plays ball, but I
15 don't really know her. I haven't, you know, I haven't had
16 conversations with her. It's not -- there's no strong
17 relationship there. There's no reason for her to be ---

18 THE COURT: All right, I can put that aside.

19 MR. HEMBREE: We'll push that one aside.

20 THE COURT: I'm concerned about the detention center.

21 MR. HEMBREE: Well, Your Honor, her testimony is that
22 she doesn't know anything about the case. She doesn't know
23 anything about the defendant. Her husband doesn't talk to
24 her about, about his job and that, and that, you know, and
25 that it would in no way impact her ability to be fair and

1 impartial.

2 Her responses were consistently clear on that, on that
3 subject. She was asked several different times in several
4 different ways. And, and just, you know, she couldn't have
5 been any more direct in her responses that that would not
6 affect her in any way. So, she just doesn't know anything
7 about the case.

8 What little she heard at the -- I hear about
9 Blanton's. I know. I mean, I agree with Mr. Wilson. It's
10 one of those kind of places, but if she's sitting in the
11 back in the, in the -- she sitting in the back in the
12 cubicle, and she says I heard that he was hiding. She
13 doesn't know anything about the facts of the case. She
14 doesn't know anything about the evidence in the case. All
15 she heard is there's some fellow that's on the loose.
16 Well, you know, that's certainly isn't any great difficulty
17 in her getting through that so she can be fair and
18 impartial.

19 I, I think it looks like he's kind of throwing
20 everything against the wall to see if something will stick.
21 And, and she has addressed every single one of those
22 things, and she's qualified. She's got a right to serve.

23 THE COURT: Any of you officers there work at the
24 detention center?

25 DEPUTY HAYES: Yes, sir.

1 THE COURT: You come on around here first. Come on
2 around here for me, if you would. Do you know Mr. Dozier?

3 DEPUTY HAYES: Yes, sir.

4 THE COURT: All right. If you would, raise your right
5 hand for me.

6 TONY HAYES, BEING DULY SWORN,
7 TESTIFIES AS FOLLOWS:

8 EXAMINATION BY THE COURT:

9 Q. Now, let me ask you this. Where does Mr. Dozier work
10 at the detention center?

11 A. Well, all the squads work in rotation. We work, like,
12 A-1 housing unit, B-3 housing unit, B-1, B-2. The officer
13 has a set place where they work except us. We work in
14 transportation, but we are all inside the detention center.
15 You understand what I'm saying? Like, he could be in one
16 cellblock one day, one cellblock the next day. Like, last
17 night he was that B-4, which is a separate unit.

18 Q. How do you know?

19 A. Because I seen him when I went down the hall.

20 Q. Oh, what's your name? I forgot.

21 A. Tony Hayes.

22 Q. Tony Hayes?

23 A. Hayes.

24 Q. You, you didn't have your phone on. He had his phone
25 on.

1 A. Yes, sir.

2 Q. So, Mr. Hayes, does that mean that at some point in
3 time, Mr. Dozier would have been involved in the cellblock
4 with -- where Mr. Winkler was?

5 A. If you're asking me could he get rotated to B-1?

6 Q. Well, is it likely he was?

7 A. He can be rotated B-1. He wasn't there last night
8 when I returned Mr. Winkler.

9 Q. But he could have. But he ---

10 A. He has the probability to be assigned to work B-1.

11 Q. And what interaction do you have with the prisoners on
12 those cellblocks?

13 A. Well, in -- let's -- you want to just talk about the
14 one Mr. Winkler in?

15 Q. Yeah.

16 A. We usually just go to the door. They stick their
17 hands out. We handcuff them. Let them out. They get
18 their shower. There's not too much interaction in B-1
19 housing unit. We just give them what they need and stuff
20 like that when I used to work down there in the housing
21 unit.

22 Q. And you've been to B-1 before?

23 A. Yes, I have worked B-1 many years before I got into
24 transportation.

25 Q. Oh, you're in transportation?

1 A. Yes, sir.

2 Q. You don't rotate around in transportation. You keep
3 -- you stay there, right?

4 A. Yes, sir.

5 THE COURT: All right, do either one of y'all want to
6 ask him any questions?

7 MR. WILSON: Judge, just, just, just a comment.

8 THE COURT: Do you want to ask him anything?

9 MR. WILSON: No, sir.

10 THE COURT: Okay, Mr. Hayes, you can step to the side
11 there.

12 MR. WILSON: The defendant only been in B-1 for two
13 days, and that was because of something that happened. But
14 he only been in B-1 for two days. Before that, he was in
15 the regular cells. So, he wasn't in B-1 until just a few
16 days ago.

17 THE COURT: Anything else you want to say?

18 MR. WILSON: No, sir.

19 (COUNSELOR CONFERS WITH DEFENDANT.)

20 MR. WILSON: What he's saying to me is that when you
21 are in the regular cells, there is more interaction with
22 the guards than when you are just -- when -- than when you
23 are where he is now, which is B-1. But the contact is
24 severely limited where he is now because that's kind of
25 like max, whereas when he was -- until two or three days

1 ago, he was in the regular pod. There was much more
2 interaction between him and the guards on a daily basis.

3 The other thing, Judge, is that in this particular
4 case, as you know in a lot of death penalty cases officers
5 from the detention center, they will be called to testify
6 in the case about the adaptability of prison. That's a
7 possibility. It happens, and then -- which is the other
8 concern that I have. And if there is something, some
9 disciplinary or something that does not come out or may not
10 come out, but he may very well be aware of, I don't know if
11 he is or isn't, and I just think it's -- we're asking for
12 trouble if we don't -- if we do it this way. I mean, it
13 may all work out fine and nothing ever happened, but I
14 think we're asking for trouble.

15 MR. HUMPHRIES: Judge, let me just say this for the
16 record. The state's -- unless, unless Mr. Winkler does
17 something tonight, we don't have any intention of calling
18 any detention officer to testify about any disciplinary
19 problem while there or his adaptability. Of course that's
20 from now back.

21 THE COURT: Mr. Wilson.

22 MR. WILSON: Yes, sir.

23 THE COURT: The fact that I qualify her doesn't mean
24 in that point in time if she does come up that you cannot
25 also make a motion for cause at that time if you want to.

1 You can do that with any juror. You can ask for a motion
2 to reconsider for cause.

3 But I, I, I think the right of a juror -- and I'd be
4 concerned about this now. She has not talked about this.
5 It's not as egregious like this other juror, the sister who
6 had a crime committed on her that's similar to the
7 allegations here. But I'm going to qualify this person.

8 Bring her on out, please.

9 (THE JUROR ENTERS THE COURTROOM.)

10 THE COURT: Ms. Dozier, I am going to qualify you but,
11 Ms. Dozier, you are instructed not to discuss this with
12 anyone. Not your husband or anyone else. Be back tomorrow
13 at 11:30. You might want to go ahead and pack up some
14 goods far as clothes just in case you're on this jury, all
15 right, ma'am?

16 JUROR: Yes.

17 THE COURT: Do not look get any news. Don't look at
18 any newspapers, so don't talk to anyone about this case.
19 I'm going to ask you about that again tomorrow. You
20 understand?

21 JUROR: Yes.

22 THE COURT: I see you at 11:30 a.m. You may go out
23 this other door, ma'am. I'm sorry.

24 399, got him anywhere in there?

25 MR. HUMPHRIES: I didn't, I didn't have anything.

1 THE COURT: I don't either. Bring 399 in, please,
2 James Santos.

3 (JUROR #399 ENTERS THE COURTROOM.)

4 EXAMINATION BY THE COURT:

5 Q. Hello, Mr. Santos. How are you doing?

6 A. Good, sir.

7 Q. You read your entire magazine since you've been in
8 there?

9 A. I've read a few, yes, sir.

10 Q. You've read a few. All right. Well, you're part of
11 the 12:30 group. Oh, it's 12:30?

12 A. It's very close.

13 Q. Have a seat and let me get your packet out here. See
14 you were in the military at one time, in the army. You
15 spent seven years in there.

16 A. Yes, sir.

17 Q. Goodness. Why would you not stick around and get in
18 the Reserves or something?

19 A. Got old.

20 Q. You got old or the army got old?

21 A. I felt old.

22 Q. Goodness, you were only thirty-six then, so -- I spent
23 some active duty and then I went in the Reserves for a
24 while. So, I got thirty years in, believe it or not.

25 A. Good for you. Congratulations.

1 Q. See you're from Alexandria, Virginia, is where your
2 birthplace is?

3 A. Yes, sir.

4 Q. And did you grow up there?

5 A. Between Virginia and Maryland, both sides of the city,
6 but in that general area, either Northern Virginia or
7 Maryland.

8 Q. Around the beltway?

9 A. Around the beltway.

10 Q. Around the beltway.

11 A. Yes, sir.

12 Q. I used to live up near Avondale, if you know where
13 that is.

14 A. Yes, sir.

15 Q. It says you work for the Hoffman Group?

16 A. Yes, sir.

17 Q. Selling condos?

18 A. Oceanfront condos, yes, sir.

19 Q. Not been as busy the last year or so, have you?

20 A. No. It used to be the best job.

21 Q. Well, you're just as busy. You're just not making as
22 much money.

23 A. That's exactly it.

24 Q. Made a lot of phone calls.

25 A. A lot of calling.

1 Q. Okay. Now, please remember that you're under oath
2 still from -- remember I put you on on Monday?

3 A. Yes, sir.

4 Q. And are you related or know any of the attorneys
5 involved in this case?

6 A. No, sir.

7 Q. Do you have any interest, bias, or prejudice in this
8 case?

9 A. No, sir.

10 Q. Have you formed or expressed an opinion as to the
11 guilt or the innocence of the defendant in this case?

12 A. No, sir.

13 Q. Do you know of any reason whatsoever why you, why you
14 could not be fair both to the defense and to the state in
15 this case?

16 A. No, sir.

17 Q. All right. If you were on this jury, Mr. Santos, I
18 would instruct you that although you all decide the facts
19 and the evidence in the case, I instruct you on the law,
20 and you must accept the law as I give it to you. Would you
21 follow that rule, sir?

22 A. Yes, sir.

23 Q. So, under your oath you would follow the rule and you
24 will follow the law as I instruct you?

25 A. Yes, sir.

1 Q. One principle of law I will tell you is that the
2 defendant is presumed innocent and that the burden is on
3 the state to prove the defendant guilty. The defendant
4 does not have to prove himself innocent. Would you follow
5 that principle?

6 A. Yes, sir.

7 Q. And so, therefore, in the trial of this case, if you
8 found the state did not prove guilt beyond a reasonable
9 doubt, you would have no hesitation in finding the
10 defendant not guilty. Is that correct?

11 A. That's correct.

12 Q. And if you determined, though, that the state had
13 proven guilt beyond a reasonable doubt, you'd have no
14 hesitation finding the defendant guilty?

15 A. That's correct.

16 Q. Have you discussed this case with anyone?

17 A. No, sir. I don't really know anything about this
18 case.

19 Q. Don't know anything about it. Have you seen anything
20 in the newspapers about it or, or TV or radio?

21 A. No.

22 Q. So, until you got here on Monday, you knew nothing
23 about it?

24 A. No. The only thing I've heard is just people talking
25 and -- when we first got here, people said, you know, this

1 is a murder case. I didn't even know what it was.

2 Q. Did they say they know that it was a murder case?

3 A. No, sir.

4 Q. Okay, when you said people, you talking about other
5 jurors or you're talking about ---

6 A. No. The, the bailiff people.

7 Q. The bailiffs?

8 A. I've never had jury duty before. I just asked them.

9 Q. And all they told you, they said it was a murder case?

10 A. Yes, sir.

11 Q. And does that cause you to have any opinion one way or
12 the other about this case?

13 A. No, sir.

14 Q. Would you make your decision in this case based on the
15 evidence -- please speak into the microphone for me there,
16 too. Would you make your decision in this case based on
17 the evidence presented in the courtroom and law as I
18 instruct it to you?

19 A. Yes, sir.

20 Q. I gave you a list of names on three sheets of paper.
21 Did you review that list?

22 A. Yes, I did.

23 Q. Did you see anybody there that you knew?

24 A. No, sir.

25 Q. Can I have that sheet back, please?

1 A. Yes, sir.

2 Q. So, you put no circles on there at all?

3 A. No, sir.

4 Q. You're not kin to anybody or have a relationship to
5 anybody?

6 A. No, sir.

7 Q. Okay. Now, if you're on the jury in this case, the
8 jury would be presented evidence regarding the allegations,
9 and I'll instruct the jury on the law. If the jury were to
10 determine that the state had not proven guilt beyond a
11 reasonable doubt of the crime of murder and found the
12 defendant not guilty, well the jurors' participation at
13 that time would end in the case. However, if the jury
14 determined the state had proven guilt beyond a reasonable
15 doubt of murder and found the defendant guilty, then we go
16 to another phase.

17 In that phase, the jury would have found the defendant
18 guilty of murder but in this phase, the jury would consider
19 punishment issues. In this phase, the state would
20 introduce evidence in aggravation and mitigation, and I
21 will give further instruction on the law. After receiving
22 evidence in mitigation and aggravation and my instructions
23 in the law, the jurors will then return a verdict of either
24 life imprisonment or the death penalty.

25 I gave you a sheet of paper with three types of

1 jurors. Did you review ---

2 A. Yes. Yes, I did.

3 Q. --- those three types? Just to review, type one
4 juror is one that if the defendant is found guilty of
5 murder and they are in that phase -- and by the way.

6 Talking about these phases doesn't mean you're ever going
7 to get to these phases or it's going to happen. It just
8 means that the potential is there, so I've got to talk
9 about all of them. Do you understand that?

10 A. Yes, sir.

11 Q. Okay. Now, juror type one is one that feels that if a
12 person's been convicted of murder, that the appropriate
13 verdict at all, at all times will be a verdict of the death
14 penalty. That juror would feel that no matter what the
15 evidence in aggravation or the evidence in mitigation, that
16 that juror would always come back with a verdict of the
17 death penalty if the defendant had been found guilty of
18 murder.

19 Juror number two is a juror that even though the
20 defendant has been found guilty of murder, that juror would
21 not consider the evidence in aggravation, mitigation
22 because that juror could never render a verdict for the
23 death penalty. That verdict -- that juror would always be
24 life imprisonment.

25 Juror number three is a juror that although the

1 defendant's been found guilty of murder, that juror would
2 still have an open mind as to the punishment. That juror
3 would want to hear the facts and circumstances in
4 aggravation and mitigation and the instructions on the law
5 from the judge before that juror could decide on what he
6 felt was the appropriate verdict on punishment. And the
7 juror would consider all that before making that decision.
8 And if the juror felt it so warranted it, that juror could
9 bring back a verdict of life imprisonment. Or if the juror
10 that it so warranted it, that juror could bring back a
11 verdict for the death penalty.

12 Now, looking at those three types, which type do you
13 feel you are?

14 A. I feel I'm juror type three.

15 Q. Three. Other words, even if the defendant were found
16 guilty of murder, you would still have an open mind as to
17 punishment?

18 A. That's correct.

19 Q. And you would consider the evidence in mitigation and
20 aggravation, and you could come back with a verdict of life
21 imprisonment, or you could come back with a verdict of the
22 death penalty?

23 A. That's correct.

24 Q. If the jurors were to determine the verdict would be
25 the death penalty, each juror would be required to sign the

1 verdict form because it's got to be a unanimous verdict.

2 Would you be able to sign the verdict?

3 A. Yes, sir.

4 Q. Okay. You hesitated because you wondered why we asked
5 that question, or was there any -- some other reason?

6 A. I guess I'm, I'm not sure how the process works.

7 Q. Okay.

8 A. But, in a, I guess it would be how I felt. I wouldn't
9 sign it just because the other jurors were signing. I
10 would have to believe that that was the right decision.

11 Q. Right. So, if the jurors came back with the decision
12 and you're part of a unanimous jury that determined the
13 death penalty, you could sign the verdict form?

14 A. Yes, sir.

15 Q. And if you felt, though, that the verdict should be
16 life imprisonment, you would, you would come back with a
17 verdict of life imprisonment?

18 A. That's correct.

19 Q. Okay. Now, if you're on this jury, it would require
20 that y'all be housed at a hotel, accommodation, a hotel.
21 And it would be about a week, a little less, a little more.
22 And you'd be away from your business and away from your
23 family. I see you don't have a wife and children. You'd
24 be away from friends and all that for about a week or, or
25 more or less. You could have phone contact but only

1 supervised phone contact. I knew that is an inconvenience
2 in your business, but could you handle that, sir?

3 A. I could handle that, sir.

4 THE COURT: Okay, I would to let the attorneys ask you
5 any questions, if they have any.

6 State?

7 MR. HEMBREE: Thank you, Your Honor.

8 Good evening, Mr. Santos.

9 JUROR: Hello. How are you?

10 MR. HEMBREE: I'm okay. I'm fine. How about you?

11 JUROR: I'm, I'm ready to go home.

12 MR. HEMBREE: I understand, but we, we've taken up a
13 lot of your time. Thank you for your patience with us.
14 I'm not going to take any more of your time because I don't
15 have any further questions other than what Judge Lockemy
16 has ask you. Please answer any questions defense counsel
17 might have.

18 JUROR: Thank you, sir.

19 THE COURT: Mr. Rathbun?

20 EXAMINATION BY MR. RATHBUN:

21 Q. Good evening, Mr. Santos.

22 A. Good evening.

23 Q. My name is Paul Rathbun and along with Ralph Wilson, I
24 represent Mr. Winkler.

25 On your questionnaire, you said you spent seven years

1 in the army?

2 A. That's correct.

3 Q. And you said you had various duties?

4 A. That's correct.

5 Q. Could you get an idea -- give us an idea what those
6 duties were?

7 A. I was in a special forces unit. I was psychological
8 operations attached to the Third Special Forces Group. So,
9 our duties were in direct combat action, humanitarian. We
10 did something called for an foreign internal defense. It
11 was a fairly broad range.

12 Q. All right.

13 A. All of my missions were overseas. They were primarily
14 in Sub-Saharan Africa.

15 Q. Very good. I commend you for your service.

16 A. Thank you.

17 Q. It takes a certain type of individual to be in special
18 forces.

19 A. Thank you.

20 Q. Also you indicated that you were impressed with
21 prisons.

22 A. I went on a tour.

23 Q. Okay, and what impressed you?

24 A. What, what was -- I had a, a friend that was a
25 corrections officer in Connecticut, and it was a -- I don't

1 remember the name of the, the prison, but it was called
2 super max. And we got a tour because we were in college.
3 They're going to give us a job to help out in -- during the
4 summer. And it was -- it's pretty incredible when you
5 think about the thought that has gone into the way they're,
6 the way they're built.

7 This had pods and the corrections officer carried a
8 little device that fired something in the air that was --
9 picked up, I think, infrared. And that's how they
10 controlled if there were ever any crowd control issues.
11 Every aspect of the design of the building had a purpose:
12 the way it was set up, the way that the pods were set up,
13 the way that they lie down.

14 I started school to be an engineer. If you start
15 thinking about the planning that goes into that versus an
16 old-style brick, linear building, it's fairly impressive.

17 Q. Yes, sir. Okay and, and did you feel it was a place
18 that you'd like to be put?

19 A. Me personally? No, sir.

20 Q. Okay. The court has explained to you about the two
21 phases of the trial, and should you become a juror, you and
22 eleven other jurors will have to make a determination of
23 guilt after proper deliberation and getting evidence from
24 the state beyond a reasonable doubt. Once that happens, we
25 enter into the second phase, and that's where again you and

1 the jury, the other eleven jurors are going to hear matters
2 of aggravation from the state, matters of mitigation of the
3 defense. And there may be numerous matters of aggravation
4 and just a few or none matters of mitigation. You
5 understand?

6 A. Yes, sir.

7 Q. And that you would have the right to vote for life for
8 any reason at all no matter how much aggravation that is,
9 how little mitigation there is. Do you understand that?

10 A. I understand that.

11 Q. What we are trying to determine here is whether you
12 can vote for life or vote for the death penalty. It's just
13 -- you have that ability?

14 A. I understand.

15 Q. Okay, and do you have -- well, you must have, being in
16 special forces, enough personality that you would make up
17 your own mind and you would be able to stick to your
18 decision?

19 A. Absolutely.

20 Q. And you would want your decision respected as the
21 other jurors would want you to respect theirs?

22 A. Absolutely, and that's was my point to the judge
23 earlier.

24 MR. RATHBUN: Thank you.

25 JUROR: Thank you.

1 THE COURT: I notice that you said you were in Africa.
2 During the Bosnia campaign, did you ever get to go to
3 assist there?

4 JUROR: I did not, but a lot of people I worked with
5 did.

6 THE COURT: I would assume in your area that you, that
7 you would. I mean, I was in Kosovo and we had a lot of
8 people from your area as far as helping us who worked with
9 us, and in civilian clothes and all that. So, you never
10 worked in the, in the campaign over there in Serbia or in
11 the former Yugoslavia?

12 JUROR: No, sir, I did not.

13 THE COURT: Listen, how about if you would step
14 outside the door there for a second.

15 JUROR: Yes, sir.

16 THE COURT: Also noticed, as you walk, you even
17 noticed a typo in one of the questions. You read these
18 questions pretty closely. Question number 44 put "what
19 if," and you changed it to "what is," which is correct.
20 Very good.

21 JUROR: I wasn't being a smart-Alec, Judge.

22 THE COURT: No, I know. I know that.

23 (THE JUROR EXITS THE COURTROOM.)

24 THE COURT: Position of the state?

25 MR. HEMBREE: Mr. Santos is qualified, Your Honor.

1 THE COURT: Defendant?

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

3 THE COURT: Bring him to the door here.

4 (THE JUROR ENTERS THE COURTROOM.)

5 THE COURT: Mr. Santos, I'm going to qualify you for
6 the jury pool in this case. If you would, please report
7 back tomorrow at 11:30. Now, this does not mean you're
8 actually on the jury. It just means you're on the pool
9 from which the jury will be selected.

10 And do not discuss this case with anyone, family
11 members, friends, or anyone else. I notice your parents
12 are now living here in this area, too. Is that right?

13 JUROR: Yes, sir.

14 THE COURT: So, do not discuss it with them at all or
15 look at any news or read any newspapers, whatever else
16 about this matter.

17 If you are on this jury, if you are on the jury, you
18 would be sequestered about a week or so, so go ahead and
19 pack your bags. And then if you get selected, we'll send
20 you home right quick to pick your bags up.

21 If you can arrange for someone to ride with you so
22 they can take your car back, it would, it would be helpful,
23 okay, sir?

24 JUROR: Yes, sir.

25 THE COURT: All right, we'll see you tomorrow at

1 11:30. You can go out this door here.

2 JUROR: Yes, sir.

3 THE COURT: Thank you.

4 Okay, bring in juror number 439. I know that juror
5 came up regarding a crime that happened -- I forgot what
6 crime that juror mentioned. Do y'all remember?

7 MR. HUMPHRIES: Yes, sir. The brother killed his
8 mother-in-law by accident. Likely story, and she asked for
9 excusal -- I'm sorry. It's getting late.

10 She asked for -- well, she came up because she worked
11 for Horry County Finance, and she wondered if that was a
12 reason to be excused.

13 THE COURT: Go ahead.

14 (JUROR #439 ENTERS THE COURTROOM.)

15 EXAMINATION BY THE COURT:

16 Q. Hello, Ms. Stewart. Come around, please, ma'am. I
17 know you're very tired.

18 A. Yes.

19 Q. And we're just going to spend a few minutes with you,
20 and then you'll be complete. Have a seat there and relax
21 and make sure you speak into that microphone for me, and I
22 want to remind you that the other day we put everybody
23 under oath, and you're still under oath. You remember
24 that, don't you, ma'am?

25 A. Uh-huh.

1 Q. Now, speak into that microphone.

2 A. Yes.

3 Q. Okay, there you go. Now, just looking a little bit
4 here about you, you at one time, are you still with Horry
5 County EMS, or one time you worked for Horry County EMS?

6 A. I was. That's been about probably eight years ago.

7 Q. Okay, and you were originally, you were born in
8 Conway, so you've lived here pretty, pretty much all your
9 life?

10 A. No, sir. I was a Air Force brat. My father retired
11 from the Air Force and the year I was -- graduated from
12 high school, I came back.

13 Q. Okay.

14 A. And I've been here ever since.

15 Q. So, your father was at the Myrtle Beach Air Force
16 Base?

17 A. Well, he -- no. He was actually, when he was retired,
18 he was at Smyrna, Tennessee, which is in between
19 Murphysboro and Nashville.

20 Q. Okay. All right. Now, are you related or do you know
21 any of the attorneys involved in this case at all?

22 A. No, I don't.

23 Q. Okay. Do you have any interest, bias, or prejudice in
24 this case at all?

25 A. No.

1 Q. Have you formed or expressed an opinion regarding the
2 guilt or the innocence of the defendant at all?

3 A. No.

4 Q. Okay. Do you know of any reason whatsoever why you
5 could not give both the state and the defendant a fair
6 trial?

7 A. No, sir, I don't.

8 Q. Now if you're on this jury, ma'am, the jury would be
9 instructed that you must follow the law as I, as I instruct
10 it to you. Would you follow the law as I instruct you?

11 A. Yes, sir. I would.

12 Q. One of those principles would be that you presume the
13 defendant innocent, and the state has the burden of proving
14 guilt beyond a reasonable doubt and, and the defendant does
15 not have to prove himself innocent. The state is required
16 to prove guilt beyond a reasonable doubt. Would you follow
17 that principle of law?

18 A. Yes, sir, I would.

19 Q. Okay. So, therefore, if the state does not prove
20 guilt beyond a reasonable doubt, you would have no problem
21 in bringing a verdict of not guilty?

22 A. That's right.

23 Q. If the state does prove guilt beyond a reasonable
24 doubt, in other words, you could bring back a verdict of
25 guilty?

1 A. That's right.

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

3 A. No, sir, I have not.

4 Q. Have you seen anything about it, read anything about
5 it, heard anything on the TV, radio?

6 A. No, sir.

7 Q. So, until you got here Monday, you knew nothing about
8 this case at all?

9 A. Well, I never -- well, I might have heard about it,
10 you know, when it actually -- way back. I don't even know
11 when it took place, but back then I might have heard about
12 it.

13 Q. Do you know anything you may have -- can you remember
14 anything you might have heard?

15 A. Huh-uh.

16 Q. Did it cause you to form any opinion or anything about
17 it?

18 A. No.

19 Q. If you're sitting on the jury and something happens to
20 jog your memory or whatever else, would you still make your
21 decision in this case based on the evidence presented in
22 the case and the law as I instruct it to you?

23 A. Yes, sir, I would.

24 Q. Would you disregard anything you may have heard
25 outside the courtroom about this case?

1 A. Yes, sir.

2 Q. Okay. I gave you a sheet with a list of names on it.
3 Have you gone over that sheet?

4 A. Yes, sir, I have.

5 Q. And see if you -- did you circle any names?

6 A. Yes, I did.

7 Q. How many did you circle?

8 A. One, two, three. I circled six, but one of them's a
9 duplicate.

10 Q. Okay, so five is people you know?

11 A. Yes.

12 Q. Could I see that?

13 A. Yes, sir.

14 Q. Okay, Kenny Graham and Scott Rutherford with the
15 police department and detention center, how do you know
16 those two?

17 A. I pay bills for Horry County. They come and pick up
18 checks that they need, like, you know,.

19 Q. Okay. Is that the same way with Melanie Huggins?

20 A. Yeah. That's the only way I know her.

21 Q. And also Martha Carmichael?

22 A. Correct.

23 Q. And Renee Hardwick?

24 A. Same.

25 Q. Okay. So, the only way you have any contact with them

1 is because they come pick up the checks?

2 A. Right. They have expenses or pick up checks for their
3 department.

4 Q. Okay, and would the fact that these may or may not be
5 witnesses in the case, would it cause you to look upon them
6 differently than you would look at any other witnesses in
7 the case?

8 A. No.

9 Q. Okay. You would treat them just -- you would treat
10 them just like any other witness?

11 A. Yes.

12 Q. The fact that they may be working with Horry County
13 would not affect your decision in the case at all?

14 A. No, sir. I was on the Grievance Committee six years
15 for Horry County.

16 Q. Okay, what does that mean?

17 A. That means, like, if anybody had a grievance ---

18 Q. No, no. Why did you tell me that?

19 A. Because I felt like you needed to know me or
20 something. I don't know.

21 Q. But, I mean, that wouldn't have any affect on your ---

22 A. But I know that I may -- I can stick by ---

23 Q. Oh, I see.

24 A. --- the rules.

25 Q. Okay. So, even though ---

1 A. Is what I'm saying.

2 Q. --- they work for the county, it wouldn't affect you
3 is what you're trying to say?

4 A. Exactly.

5 Q. Hand this to the court reporter here.

6 (QUESTIONNAIRE OF JUROR #439-STEWART MARKED AS COURT'S
7 EXHIBIT NUMBER 16-M.)

8 Q. And so you would treat them just like any other
9 witness?

10 A. Yes, sir.

11 Q. Now on the jury, ma'am, if the jury after hearing the
12 evidence in the case and the allegations and the
13 instruction on the law, if the jury determined the
14 defendant had not been proven guilty of murder and found
15 the defendant not guilty of murder, that would end the
16 jury's participation in the matter, and that would conclude
17 their service.

18 If, however, the jury determined that the defendant
19 was guilty of murder and found the defendant guilty of
20 murder, then we would go another phase in the case. And in
21 that phase, jurors would consider the issues of punishment.
22 There the jurors would hear evidence in aggravation and
23 mitigation and, and further instructions of law and
24 determine whether to bring back a verdict of life
25 imprisonment or a verdict for the death penalty. Now, once

1 again in that phase the jury would have already determined
2 the defendant's guilty of murder. They would now be
3 considering the issue of punishment.

4 Now, I gave you a sheet, and by the way. There's no
5 reason I'm talking about this as far as any connection.
6 I'm just having to discuss this just in case we get to that
7 point, but I'm not suggesting anything. You understand?

8 A. Yes.

9 Q. Now, when you saw that sheet with the three types of
10 jurors.

11 A. Yes.

12 Q. Were you able to understand the differences in the
13 jurors?

14 A. Yes.

15 Q. That juror number one was a juror that in that phase,
16 the defendant had already been convicted of murder. That
17 juror number one would feel that, that she would always
18 have to bring back a verdict of the death penalty, and --
19 because she would feel that would be the most appropriate
20 punishment even -- regardless of what evidence was, was put
21 forth in mitigation or aggravation or whatever. That juror
22 would always come back with the death penalty.

23 Juror type number two is the juror that would, no
24 matter what the evidence in mitigation, aggravation are,
25 that juror would always come back with a verdict of life

1 imprisonment because that juror could never bring back a
2 verdict of the death penalty.

3 Juror number three is a juror that although the
4 defendant's been proven guilty of murder, that juror would
5 still have an open mind regarding punishment. That juror
6 would need to consider evidence in aggravation and
7 mitigation and the instructions by the court on the law.
8 And depending on what that juror felt it warranted, that
9 juror could come back with a verdict of life imprisonment,
10 or that juror could come back with a verdict for the death
11 penalty.

12 Do you understand the three differences?

13 A. Yes, sir, I do.

14 Q. Which one best describes you, ma'am?

15 A. Three.

16 Q. So, you would be open minded about that?

17 A. Yes, sir.

18 Q. You could come back with a verdict of life
19 imprisonment, or you come back with a verdict of the death
20 penalty?

21 A. Yes, sir.

22 Q. All right. If you were selected on this jury, ma'am,
23 you would be sequestered. That means that you would be in
24 a hotel room, and you could not be at home with your family
25 or friends or whatever. And although I would let you, you

1 know, make phone calls here and there, check on things,
2 they'd be monitored, the calls. And the case will be about
3 a week. A little less, a little more. Would that impose
4 such a hardship upon you that you could not do that?

5 A. No.

6 Q. Okay. One other thing I forgot to mention. If the
7 jurors come back with a verdict of the death penalty, each
8 juror has to sign the verdict form. Could you sign that
9 verdict form if the jury came back with a verdict for the
10 death penalty?

11 A. Yes.

12 THE COURT: All right, I'm going to let the attorneys
13 ask you any questions if they wish to.

14 The state?

15 MR. HEMBREE: I don't have any questions for Ms.
16 Stewart. Thank you, ma'am.

17 THE COURT: Defense?

18 MR. WILSON: Thank you, Your Honor.

19 EXAMINATION BY MR. WILSON:

20 Q. Ms. Stewart, as, as I understand it, back in 2006 when
21 this happened, did you, did I understand that you did hear
22 some things about the case?

23 A. I just heard that someone had killed their wife.

24 Q. All right, and ---

25 A. But that's, you know, I didn't know no names or

1 anything. I mean, I don't remember any names or anything,
2 you know.

3 Q. And you heard on the news or did you hear it from some
4 other county employees, or do you recall?

5 A. I, I heard it on the news.

6 Q. Okay. Well, working for the county, did you ever have
7 any conversations with anybody from the county police or
8 from EMS or from any other, other agencies about what you'd
9 heard or just in general conversation at lunch talk about
10 it?

11 A. No.

12 Q. Never, and so you didn't hear anything then until you
13 got ready for your jury summons?

14 A. Right.

15 Q. Now, once you got your summons to come to court, did
16 you have any discussions with anybody after that about it?

17 A. No. The only one I talked to was the, the deputy that
18 came.

19 Q. Who brought you the summons?

20 A. Yeah.

21 Q. Ma'am, I understood you to say that you consider
22 yourself a type three juror?

23 A. Yes, I do.

24 Q. And what is your understanding of a type three juror?

25 A. That they don't make up their mind or either way until

1 they hear all the facts.

2 Q. Okay, and when you say all the facts, you, you
3 understand that this is a, this may possibly be a, a, a
4 two-phase process. And that is right now as we are sitting
5 here and as we're speaking, you understand that the
6 defendant is presumed to be innocent?

7 A. Yes.

8 Q. You understand that and you can accept that? His
9 Honor has told you that and you can accept that?

10 A. Yes.

11 Q. Can't you? All right, and that would mean, then, that
12 unless and until the State of South Carolina can bring you
13 evidence to satisfy you and the other eleven members of
14 your jury panel beyond a reasonable doubt that, in fact, he
15 committed this offense, he would still be presumed
16 innocent. And you would be required to find him not guilty
17 if they did not present sufficient evidence.

18 A. That's correct.

19 Q. And you could do that, could you not?

20 A. Yes, sir.

21 Q. And, ma'am, if they did present sufficient evidence to
22 convince you beyond a reasonable doubt that he was guilty
23 and you found, you and the other members of the panel
24 unanimously found this defendant guilty of the crime of
25 murder, we would then and only then go to the second phase

1 of the trial, which is the sentencing or penalty phase of
2 the trial.

3 A. Right.

4 Q. Now, do you understand that even at that point, you
5 would be required to have an open mind, and could you
6 accept that and not be prejudged simply by the fact that
7 he'd already been found guilty of the crime of murder?
8 Could you do that?

9 A. Yes.

10 Q. All right, and you also understand that if we get into
11 the second phase of the trial, that the state would offer
12 what's called aggravating circumstances. That is things
13 that they believe makes it worse, makes the crime worse,
14 makes it more serious than what it might normally be. And
15 even after they offer that, would you still be willing to
16 wait and not make up your mind until you've heard any
17 mitigating factors that may be offered?

18 A. Yes.

19 Q. Could you do that?

20 A. Yes.

21 Q. And even if no mitigating offers -- if, even if no
22 mitigating information is offered and several aggravating
23 factors were submitted to you, could you still consider
24 both life and death?

25 A. Yes.

1 Q. Or would you just automatically vote for death?

2 A. Life as -- if -- life or death.

3 Q. Now, do you also understand, ma'am, as a juror even if
4 aggravating circumstances are offered and even if you find
5 the existence of those aggravating factors beyond a
6 reasonable doubt and no mitigating factors are offered,
7 that you could still vote for life in prison if that's what
8 your conscience led you to do as a juror who is seeking the
9 truth?

10 A. Yes.

11 Q. And you could do that if that's what you believed was
12 the right and fair thing to do?

13 A. Yes.

14 MR. WILSON: Thank you, ma'am.

15 THE COURT: If you would, Ms. Stewart, step the
16 outside the door over there for a second, please, ma'am.
17 How about that sheet of paper. You still have that sheet
18 of paper?

19 JUROR: No. I gave it...

20 THE COURT: I've got it? Thank you, ma'am.

21 (THE JUROR EXITS THE COURTROOM.)

22 THE COURT: Position of the state?

23 MR. HEMBREE: Juror's qualified, Your Honor.

24 THE COURT: Defense?

25 MR. WILSON: She's qualified, Your Honor.

1 THE COURT: All right, bring her back out, please.

2 (THE JUROR ENTERS THE COURTROOM.)

3 THE COURT: Okay, Ms. Stewart, I'm qualifying you as a
4 juror in the pool of this case. That does not mean you
5 will actually be on the case. What it means is that you'll
6 be in the group from which the jurors will be selected.

7 I will need you back here tomorrow morning at 11:30.
8 Please do not discuss this case with anyone; don't talk
9 about it with anyone whatsoever. And don't read any
10 newspapers and don't listen to any local TV news, okay?

11 Now, if you're on this jury, you need to go ahead and
12 get your goods, your, your clothing packed just in case so
13 that when I send you home tomorrow if you get on this jury,
14 you can go home and come back right quick.

15 You might want to have somebody help you bring you
16 back so that they can take the car since you won't be able
17 -- you won't want to leave your car for a week.

18 Now, how about if you would, leave out the back door
19 there, okay?

20 JUROR: Okay.

21 THE COURT: Thank you, Ms. Stewart. Thank you very
22 much.

23 I know y'all are excited to hear we're going to do one
24 more and that will be it. Bring in 317. I guess that
25 juror was late.

1 MR. HUMPHRIES: 317?

2 THE COURT: Isn't is that the next juror?

3 MR. HUMPHRIES: I don't know.

4 THE COURT: Yeah, Tony Metzner, group M. I'm sorry, I
5 thought ---

6 MR. HUMPHRIES: We're going to do the whole, we're
7 going to do the whole group?

8 THE COURT: No, no, no. That will give us forty-six.
9 Do y'all see any need to go further than that at this
10 stage?

11 MR. HUMPHRIES: Sir, I don't see the need to go any
12 further.

13 THE COURT: I know.

14 MR. WILSON: Your Honor.

15 THE COURT: But let's just go right here. We don't
16 know what may happen. Remind me to ask Mr. Hembree on one
17 of these questions.

18 (JUROR #317 ENTERS THE COURTROOM.)

19 EXAMINATION BY THE COURT:

20 Q. Mr. Metzner, how you doing, sir?

21 A. I'm all right. How are you?

22 Q. Fine, fine. Now, you're my pastor, are you not?

23 A. Yes, sir.

24 Q. How did it go at the Medical University and all?

25 A. I got my wife out and got her home, and she's at home

1 right now.

2 Q. That's good. Have a seat, sir, if you would.

3 A. Okay. Do you need these?

4 Q. Just hold them there for a minute.

5 Now, Mr. Metzner, I'm just going to ask you a few
6 questions. I'm going to remind you, though, I put you
7 under oath over earlier. You remember that, sir?

8 A. Yes, sir.

9 Q. And so please know that your questions are under oath.

10 Do you know any of the lawyers in this case?

11 A. Only by name, not personally.

12 Q. Okay. Would that affect your ability to be fair and
13 impartial in this case?

14 A. No, sir.

15 Q. Do you have any interest, bias, or prejudice in this
16 case at all?

17 A. I don't believe so, no, sir.

18 Q. Okay. Have you formed or expressed an opinion or, or
19 -- as to the guilt or the innocence of the defendant at
20 all?

21 A. No, sir.

22 Q. Do you feel that you could be fair and impartial to
23 both sides?

24 A. Yes, sir.

25 Q. Would you under your oath follow the law as I instruct

1 it to you?

2 A. Yes, sir.

3 Q. And part of that law would be that you presume the
4 defendant innocent and the burden is upon the state to
5 prove guilt beyond a reasonable doubt, not upon the
6 defendant to prove himself innocent. You'd follow that
7 principle?

8 A. Yes, sir.

9 Q. All right. So, therefore -- oh, I'm sorry. Speak
10 into the microphone there. I apologize.

11 So, you would follow that principle. Is that right?

12 A. Yes, sir.

13 Q. All right. Now, therefore, if the state did not prove
14 guilt beyond a reasonable doubt, you'd come back with a
15 verdict of not guilty. Is that correct, sir?

16 A. Correct, yes.

17 Q. But if the state did prove guilt beyond a reasonable
18 doubt, you'd come back with a verdict of guilty?

19 A. Yes, sir.

20 Q. Have you discussed this case with anyone?

21 A. No, sir.

22 Q. Have you reviewed those names on that list?

23 A. Yes, sir.

24 Q. Did you see anybody you knew?

25 A. There was one.

1 Q. Okay, let me see it. Did you circle it?

2 A. Yes, sir.

3 Q. The Clerk of Court?

4 A. Yes, sir.

5 Q. How do you know Ms. Melanie Huggins?

6 A. I know her by name and the fact that the previous
7 Clerk of Court is a member of my church.

8 Q. Who's that?

9 A. Jenny Roberts.

10 Q. Oh, that's right. Okay, and would that make any
11 difference in your view as a juror on this case?

12 A. No, sir.

13 Q. Have you discussed anything with Ms. Roberts about
14 jury duty here in this case?

15 A. No, sir.

16 Q. Okay, and would you make your decision in this case
17 based on evidence in the courtroom and the law as I
18 instruct it to you?

19 A. Yes, sir.

20 Q. Now, Mr. Metzner, if you're on this jury, the jurors
21 would first determine whether the state had proven the
22 defendant guilty of murder beyond a reasonable doubt. If
23 the jury determined the state had not proven the defendant
24 guilty of murder beyond a reasonable doubt, the jury would
25 find him not guilty. At that point in time, the juror's

1 participation, participation would end.

2 However, if the jury determined the state had proven
3 guilt beyond a reasonable doubt of murder, then we would go
4 to another phase. And in that second phase, the jurors
5 would consider the issue of punishment. There the state
6 would introduce and the defense and -- in other words, you
7 would receive evidence of aggravation and mitigation, and
8 you would then be asked to consider whether you wanted to
9 bring a verdict back of life imprisonment or the death
10 penalty.

11 By me mentioning does not in any suggest we're going
12 to get to that phase, but if I do, I need to discuss it
13 with you about -- discuss, discuss you -- discuss about --
14 discuss it with you.

15 Now, I gave you a sheet of paper with three types of
16 jurors. Did you review those types?

17 A. Yes, I did.

18 Q. Now, a juror type one is a juror that if, if the
19 defendant is found guilty of murder, type one is a juror
20 that always comes back with a verdict of life imprisonment.

21 Type two is a juror that could never impose the death.
22 And that juror, if the defendant were found guilty of
23 murder, would always come back with a verdict of life
24 imprisonment.

25 Juror number three is the juror that would have an

1 open mind about possible punishment. That juror would want
2 to listen to the evidence in aggravation and mitigation
3 before he could make up his mind, and also listen to the
4 charge of the judge on the law before that juror could
5 decide. And that juror could, if he felt it so warranted
6 it, come back with a verdict of life imprisonment. Or that
7 juror could, if he felt it so warranted, come back with a
8 verdict for the death penalty.

9 Which of those three are you, sir?

10 A. Juror number two.

11 Q. So, you could never impose the death penalty?

12 A. No, sir.

13 Q. No matter what the circumstances?

14 A. No, sir.

15 Q. No matter what the aggravation evidence or anything
16 else?

17 A. No, sir.

18 Q. You'd always do life imprisonment?

19 A. Yes, sir.

20 Q. That's a firm thing you've always held?

21 A. Yes, sir.

22 THE COURT: All right, any questions?

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

24 MR. WILSON: No questions.

25 THE COURT: All right, sir, thank you very much. I

1 will find you not qualified on this particular case. But I
2 do appreciate your service, and hand me the sheets and you
3 can go home. Thank you very much. Thank you, Reverend,
4 and good luck to your mother -- to your wife.

5 JUROR: Yes, sir.

6 (QUESTIONNAIRE OF JUROR #317-METZNER MARKED INTO
7 EVIDENCE AS COURT'S EXHIBIT NUMBER 17-N.)

8 THE COURT: All right, bring around juror number 217.
9 I don't remember that name.

10 MR. HEMBREE: Nothing on our list, Your Honor.

11 (JUROR #217 ENTERS THE COURTROOM.)

12 EXAMINATION BY THE COURT:

13 Q. Hello, Mr. Hetherington.

14 A. Good evening.

15 Q. Did I pronounce that correct?

16 A. Yes, sir, you did.

17 Q. All right. Mr. Hetherington, let me get your -- just
18 have a seat there. Let me get your information.

19 (A PAUSE.)

20 Q. Number, you're 317.

21 A. 2, 217.

22 Q. 217. Okay, Mr. Hetherington, I see you are out of
23 Pennsylvania?

24 A. Yes, sir.

25 Q. Wilksboro, Pennsylvania?

1 A. No, right out of a little town called Irwin right
2 outside of Pittsburgh.

3 Q. Okay. That's a long way from here.

4 A. Yes, sir. A long time ago, too.

5 Q. Yes, sir, and you've been here in Horry County how
6 many years now?

7 A. Since 1989.

8 Q. Long time, '89.

9 Now, Mr. Hethering, Mr. -- is it Hetherington? Mr.
10 Hetherington, I've just got a few questions for you. And
11 please relax and don't be nervous. It won't take but a few
12 minutes.

13 Do you know you're still under oath?

14 A. Yes, sir.

15 Q. If you would, try to speak into that microphone for me
16 also.

17 Mr. Hetherington, do you have any interest, bias, or
18 prejudice in this case at all?

19 A. No, sir.

20 Q. Do you know anything about it?

21 A. Just what I remember vaguely from two years ago. And
22 I think it was, like, Friday night or Saturday night heard
23 that they were picking the jury, and I figured, well,
24 that's, that's the one I'm going to.

25 Q. All right. Do you remember what it is you heard two

1 years ago or something about it?

2 A. No, not really.

3 Q. Well, could you put aside anything you heard and make
4 your decision based on the evidence presented in this case
5 and the law as I instruct it to you?

6 A. I believe I could, yes, sir.

7 Q. So, that's not caused you to reach any conclusion one
8 way or the other?

9 A. No.

10 Q. You don't have any conclusions or formed any opinions
11 regarding the guilt or the innocence of the defendant?

12 A. No, sir.

13 Q. You know any of the lawyers in the case?

14 A. I know of Mr. Wilson's son, I believe, and I think
15 I've met Greg Hembree. Not met him but was at a function
16 one time where he was.

17 Q. Now, why do you say Mr. Wilson's son?

18 A. I was at, I think it's -- or unless he used to be the
19 solicitor.

20 Q. Okay. Mr. Wilson ---

21 A. He used to be the solicitor, okay.

22 Q. All right. So, you know that, both of them?

23 A. Yes.

24 Q. Now, would the fact you know them, would that have any
25 affect upon your ability to be fair and impartial?

1 A. No.

2 Q. Could you follow the law as I instruct it to you?
3 Would you?

4 A. Yes, sir.

5 Q. And would you understand that one principle of law is
6 that the defendant is presumed innocent and the burden is
7 upon the state to prove guilt beyond a reasonable doubt?

8 A. Yes, sir.

9 Q. The defendant does not have to prove himself innocent.
10 You understand that?

11 A. I understand.

12 Q. And you'd follow that?

13 A. Yes, sir.

14 Q. So, therefore, on the jury if you, if you felt the
15 state had not proven guilt beyond a reasonable doubt, you'd
16 find the defendant not guilty. Is that correct?

17 A. Yes, sir.

18 Q. If, however, you felt the state had proven guilt
19 beyond a reasonable doubt, you'd find the defendant guilty?

20 A. Yes, sir.

21 Q. I gave you -- now, you say other than what you've told
22 me, have you read anything else about it, discussed it with
23 anyone or anything?

24 A. No, sir.

25 Q. And when you saw they were bringing in a jury, you

1 didn't hear anything about the case. You just knew a jury
2 was coming in?

3 A. I knew they were going to be selecting a jury, and my
4 wife even said that -- is that the one you're going to? I
5 said I suppose so. That's where I'm going.

6 Q. But that's not caused you to reach an opinion? You'd
7 put that aside?

8 A. No, sir.

9 Q. You can't put it aside?

10 A. I -- it didn't bother me one bit.

11 Q. Okay. Now, I gave you a list of names on those
12 sheets. See anybody you know?

13 A. No, sir, other than Jeff Gordon, but I don't think
14 it's the same one.

15 Q. Okay, you're talking number 24 Jeff Gordon?

16 A. Yes, sir.

17 Q. NASCAR. Let's assume he's not. Now, I see no circles
18 on there.

19 If you're on the jury and the jury would first be
20 deciding guilt, the issue of guilt or innocence, and if the
21 jury were to decide, decide the state had not proven the
22 defendant guilty of murder beyond a reasonable doubt, the
23 jury would find the defendant not guilty. That would end
24 jurors' participation.

25 If, however, the jury determined the defendant was

1 guilty of murder and found the defendant guilty of murder
2 beyond a reasonable doubt, then we would go to another
3 phase. And in that phase, the jury would be asked to
4 determine the issue of sentencing. In that phase, evidence
5 of aggravation would be presented, and the jurors would be
6 asked to make a decision.

7 Now, by me even discussing doesn't mean we are going
8 into that phase. It just means I need to discuss all
9 potentials here with you.

10 Now, I gave you a sheet of paper which indicates three
11 types of jurors. Did you go over that sheet?

12 A. Yes, sir.

13 Q. And you understand those three types?

14 A. Yes, sir.

15 Q. And type one would be the juror that in all cases
16 would bring back a verdict of the death penalty if murder's
17 been proven. And if the person was convicted of murder,
18 juror number one would always bring back the death penalty
19 regardless of the circumstances, regardless of the facts
20 and the aggravation or the mitigation.

21 Type two is a juror that could never bring back the
22 death. Juror number two is a juror that would always bring
23 back life imprisonment no matter what the evidence of
24 aggravation or mitigation are.

25 Juror number three is a juror that although the

1 defendant has been convicted of the crime of murder, that
2 juror would keep an open mind and would need to hear facts
3 and circumstances in mitigation and aggravation before that
4 juror could decide, and also listen to the judge's
5 instructions on the law. Then after hearing that, if juror
6 felt it so warranted it, that juror could come back with a
7 verdict of life imprisonment. Or if the juror determined
8 it so warranted it, he could come back, could come back
9 with a verdict for the death penalty.

10 Which of those three jurors are you?

11 A. I would believe I'm number three.

12 Q. So, you would have an open mind?

13 A. Yes, sir.

14 Q. And even though you would be in the area where the
15 defendant had been convicted of murder, you would still
16 have an open mind about punishment and would want to hear
17 the evidence in mitigation and aggravation before you would
18 decide between life imprisonment and mitigation in evidence
19 or death penalty?

20 A. Yes, sir.

21 Q. If the jurors were to decide the verdict of death
22 penalty, all the jurors would have to sign the verdict
23 form. Could you do that?

24 A. Yes, sir.

25 Q. Also, sir, if you were on this jury, you would be

1 sequestered for somewhere in the neighborhood of a week,
2 plus or minus. And the jurors would be housed in a hotel
3 and could not go home, but you could have some telephonic
4 conversations with your family or with your business but it
5 would be monitored. Do you feel that would cause you an
6 undue hardship, sir? Undue hardship?

7 A. Un, un -- well, hard -- no, no, not in that respect,
8 no.

9 Q. All right.

10 THE COURT: Okay, sir, I'm going to let the attorneys
11 ask you any questions if they have any.

12 Questions from the state?

13 MR. HEMBREE: No, Your Honor. Thank you, Mr.
14 Hetherington, and please answer any questions that defense
15 counsel might have.

16 THE COURT: Okay,

17 MR. WILSON: I have no questions for him.

18 THE COURT: All right. If you would, Mr.
19 Hetherington, any comments from the state or defense
20 regarding my qualification of this juror?

21 MR. HEMBREE: Mr. Hetherington is qualified, Your
22 Honor.

23 MR. WILSON: He's qualified.

24 THE COURT: All right, I want you to go home now and
25 relax and rest and come back tomorrow morning at 11:30.

1 You will be in the pool from which the jury is selected.
2 Doesn't necessarily mean you're going to be on the jury.
3 Just means you're going to be in the pool.

4 And, and you might want to go ahead and pack some
5 goods just in case. And also, sir, if you would arrange
6 with someone that if you are selected, I will send you home
7 to get your bags, but have someone who can drive your car
8 back so they can take it on back home, all right?

9 Do not discuss this case with anyone. Don't discuss
10 it with any family members. Don't look at any newscasts.
11 Don't look at any newspapers. Hand me that sheet there
12 with you.

13 All right, we'll see you then tomorrow morning at
14 11:30 in this courtroom, and you can go out the back door
15 toward the back.

16 Okay, now, let's go over briefly before we dismiss
17 those other three jurors. As I understand it, at this time
18 we've qualified forty-six jurors and have a motion for
19 reconsideration on one juror, and that juror is juror
20 number 474 who was qualified as juror number 16.

21 And, Mr. Wilson, do you have your notes as to the
22 other matters? I don't think the state objected to
23 qualifications, but the ones that you objected to me
24 qualifying or disqualifying, do you have your numbers as to
25 which ones those were?

1 MR. WILSON: Yes, sir. I can go back through them
2 with you.

3 (A PAUSE.)

4 MR. WILSON: Judge, my records, number 313, which was
5 first juror. The next one that I'm showing is number 474.

6 THE COURT: Okay, 313 you objected to qualification,
7 and then the next one was 374, Philip Randall.

8 MR. WILSON: Your Honor, 474.

9 THE COURT: Oh, 474, I'm sorry.

10 MR. WILSON: 474.

11 THE COURT: Okay, 474 is -- or that was the Warrington
12 juror. I thought about that, Mr. Wilson. In all fairness
13 to everyone, the crime this lady says that her sister
14 endured is so close to the crimes the state alleges the
15 defendant did. I appreciate the juror's candor in stating
16 she could be fair and impartial, but I just think
17 qualifying her with, with, with what she said her sister
18 went through, she would do her best, I'm sure. But I
19 cannot see how she could humanly possible get that out of
20 her mind. And I am going to grant your motion to
21 reconsider, and I am going to find her because of -- on
22 cause disqualify her.

23 MR. WILSON: Thank you, Your Honor. The other one I
24 think was ---

25 THE COURT: That would mean juror number -- everybody,

1 that means juror number 47 or juror number 3 under E would
2 be 16 and renumber from there. That means we've got forty-
3 five qualified.

4 All right, what's the other one?

5 MR. WILSON: The other one was number 66, which was in
6 panel H which is Anthony Carmichael.

7 THE COURT: Oh, I remember that was pretty clear with
8 his vacillation back and forth and those things. Okay, I
9 noted that. Next. Okay.

10 MR. WILSON: And number 234, David Johnson.

11 THE COURT: What was the argument on that one? I
12 forgot. That's all right, you objected to being qualified.
13 Okay.

14 MR. WILSON: And, let's see, I think number 402,
15 C.D. Scaggs, which was the training officer from county.

16 THE COURT: Okay.

17 MR. WILSON: And number 125, that's Ms. Dozier.

18 THE COURT: Okay.

19 MR. WILSON: I think that's the last one.

20 THE COURT: Okay. Now, do y'all have any matters we
21 need to bring up before we actually get into jury selection
22 tomorrow? State?

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

24 THE COURT: Defense?

25 MR. WILSON: No, sir. Judge, I think obviously we

1 have some motions that we'll need to renew, I guess, but we
2 don't need to do that really until I guess after we come
3 back tomorrow and we do the striking. And then we have a
4 motion for change of venue that we need to have reheard.
5 It's been pending all this time, but it hadn't actually
6 been heard.

7 THE COURT: I've not heard your motion for change of
8 venue ---

9 MR. WILSON: No, sir.

10 THE COURT: --- because you wanted to wait to qualify
11 to see if we could qualify a jury.

12 MR. WILSON: That is correct, yes, sir.

13 THE COURT: And you wish to make that motion -- I
14 mean, you wish to argue the motion tomorrow?

15 MR. WILSON: Yes, sir. That's correct.

16 THE COURT: All right, anything else before the jury
17 is selected?

18 MR. WILSON: Give me one second, please.

19 (DEFENSE COUNSELORS CONFER.)

20 MR. WILSON: That, that's all.

21 THE COURT: Okay. If you would, could you bring those
22 other jurors around here, please? I'm going to have to
23 them come back at 11:30 because we don't know what's going
24 to happen with these forty-five just to make sure we've got
25 enough jurors, and the other ones are coming back at 11:30

1 anyway.

2 (A PAUSE.)

3 THE COURT: Let's just get here tomorrow at 10:00, all
4 right, and I'll make sure that -- Ms. Huggins, make sure no
5 jurors come in until after we finish our discussions, and
6 then that will give us a little bit of time to take a break
7 hopefully before we start the jury selection.

8 Now, what I'm going to do is I'm going to talk to the
9 jurors that didn't get selected tonight and tell them to
10 call in. I'm going to have -- the jury panel comes in
11 tomorrow at 9. I'm going to let them go. They're going to
12 call back between 1 and 3 just in case something happens.
13 I don't want anything to delay this going forth. So,
14 they'll call back between 1 and 3 tomorrow in case we need
15 them and if not, then of course they'll be excused for the
16 rest of the week. So, go ahead and bring the other ones in
17 the court here.

18 So, y'all can, y'all can, y'all, y'all are through.
19 We're in recess, so y'all do as you wish. I want to say
20 goodbye to these jurors who have been waiting here all day.
21 They deserve someone to say goodbye to them properly.

22 (WHEREUPON, THE CASE IS AT EASE.)

23 THURSDAY, JANUARY 31, 2008

24 (COURT RESUMES AT 10:45 A.M.)

25 THE COURT: Sheriff, as you said, you'll make sure no,

1 no one comes in is -- no jurors come in the courtroom.
2 It's an open courtroom, so I don't want to prevent people
3 who want to come in. Just make sure they're not jurors.

4 Mr. Solicitor, on count four, is that a charge that
5 you're just going to remain pending or you're proceeding
6 with? What is the status of your consideration count four?

7 MR. HEMBREE: We're not calling that and not
8 proceeding with it at this time, Your Honor. We have a
9 redacted indictment also that will reflect the three
10 charges for ---

11 THE COURT: It's not being, it's not being null
12 proessed or dismissed?

13 MR. HEMBREE: Not at this stage, no, Your Honor.

14 THE COURT: We have forty, forty-six jurors coming and
15 of course one I have granted the defense motion in
16 reconsideration to excuse her for cause, but it should be
17 forty-six jurors here in about forty-five minutes. Does
18 the state have anything that they wish to discuss before we
19 proceed to striking the jurors? I know that one issue that
20 you all came back to chambers. We'll discuss them in a
21 minute.

22 MR. HEMBREE: That's the only issue we have, Your
23 Honor.

24 THE COURT: Does defense have any motions or issues
25 regarding this case before we begin on the juror issues?

1 MR. WILSON: Yes, Judge. If you recall back at one of
2 our meetings in Dillon, I made a motion for a change of
3 venue. At that time the court indicated that that motion
4 would be taken under advisement and continued until and --
5 until we could see whether or not we could impanel a jury
6 in Horry County. And we ---

7 THE COURT: Which reminds me. By the way.

8 (A PAUSE.)

9 THE COURT: All right. Yes, sir.

10 MR. WILSON: And, and we've obviously gone through
11 that process of the last three days and now we're on the
12 fourth day, and I understand that we have, that we have
13 qualified forty-six jurors out of the panel that we have.
14 My concern in terms of a change of venue, Your Honor, is is
15 that a lot of those jurors -- in fact, I'd venture to say
16 the vast majority of them, obviously the record speaks for
17 itself because they were all under oath and all testifying.
18 That the vast majority of those jurors indicated that they
19 had heard a substantial amount of information, or least
20 some information about this case, and that many of them had
21 even formed opinions about this case. Now, many of them
22 also indicated that they could set aside those opinions and
23 still try and be fair to this defendant.

24 I think we had one juror who testified that she
25 didn't, or least I think up at one of the meetings that we

1 had with the court that she didn't know if the defendant
2 could get a fair trial in Horry County. And I just think
3 that when you consider the totality of all those
4 circumstances and facts, that, that it, it is -- and when
5 you consider the amount of publicity that this case has
6 generated for whatever reasons and all, it is going to be
7 almost impossible for this defendant to get a fair and
8 impartial trial in Horry County.

9 And I think to ask, to ask these jurors to set aside
10 everything that they've heard, that they've read and, and,
11 and still be fair to this defendant I think is, is an awful
12 task for them. And I'm not sure, you know, that, that they
13 can do it.

14 I honestly believe that a lot of them believe that
15 they can. I, I do. I think that they're being sincere
16 when they say oh, yeah, I will do that, and I think that
17 they honestly believe that. But, but unfortunately if, if,
18 if when they're in that jury room and in that jury panel
19 and something comes up that they heard and, and it doesn't
20 come out in the testimony -- for instance, I know in this
21 case there was some jurors indicated they heard the
22 defendant was on the run, that he was on the run. That he
23 hid in the woods for two weeks or he hid in the woods for a
24 period of time. Well, those kinds of things may or may not
25 come up in this trial. I'm not real sure, and ---

1 THE COURT: But whoever -- I don't recall but a couple
2 of them said that. But each one who said that, I made a
3 point of saying you do realize those are allegations.

4 MR. WILSON: You did, yes, sir.

5 THE COURT: Just like the allegations that were read
6 from the state. These are allegations.

7 MR. WILSON: Yes, sir.

8 THE COURT: And I, I'm trying to think. Did I qualify
9 a juror who said I've made up my mind?

10 MR. WILSON: No, sir. I, I think what they said ---

11 THE COURT: I, I feel he's guilty?

12 MR. WILSON: No, sir. You qualified jurors, some
13 jurors who said that yeah, they, that they could set that
14 aside. That they had formed an opinion or partially formed
15 an opinion, but that they could set aside those opinions
16 and that they could be fair to the defendant and to, to the
17 state.

18 And, and -- but it's not limited just -- my, my
19 concern is not limited just to those people. My concern is
20 limited to those people who also said, well, yeah, I've
21 heard a lot but I haven't formed any opinion, but I have, I
22 have information about this case. And I'm saying to you
23 that if this is a collective thing, not an individual thing
24 where it's just -- where I have just some juror who says,
25 well, I heard something and I can set it aside. It's not

1 just that. It is the fact that you have a number of jurors
2 who've heard a lot about the case. You have a number
3 jurors who -- you even have jurors who, one juror in
4 particular who works for the emergency EMT people who are,
5 you know, who are the training officer for, for, for the
6 EMTs for the entire county who has close association with
7 law enforcement. We have -- I'm saying in all, there is
8 just a lot of circumstances ---

9 THE COURT: That's another issue. That's not a issue
10 of ---

11 MR. WILSON: Well, but, but it goes -- what I'm saying
12 is those things collectively go to whether or not this
13 defendant can get a fair trial in Horry County. And, and
14 if we, if we have to, you know, you know in having these
15 kind of jurors participate in the process, I think makes it
16 less likely that he can get a fair trial. You know, you
17 got a juror who is, who is a county employee. You have
18 another juror who is a county employee who works for the
19 finance department. I, I just think that it's -- and, and
20 this is a county police case that was made by the county
21 police department.

22 I think when you consider all those things, it is a
23 lot to expect that he's going to have a fair trial with
24 these people participating in the process. And I think
25 that a change of venue would solve that problem. Even if

1 we don't move the case out of Horry County, I think if we
2 got a jury from another county and at least impaneled that
3 jury and brought them here, people who have no idea about
4 this case, who have no idea about who Louis Winkler is or
5 who Rebekah Winkler is or about the county police or any
6 other law enforcement agency in this county, I think that
7 he would have a much better chance of getting a fair trial.
8 And I would ask the court to consider granting us that
9 change of venue.

10 Now, I understand, having said all that that, yeah,
11 would that be an expensive proposition and would that be a
12 time-consuming proposition? Yes. But I think when you
13 weigh that against the fact that he's not going to get a
14 fair trial, or at least in my belief and my opinion he is
15 likely to get a fair and impartial trial without having
16 done that, then I think that that should, you know, weigh
17 more heavily. And, and that we should opt on the side of
18 caution to make sure that he gets a fair and impartial
19 trial.

20 THE COURT: State?

21 MR. HUMPHRIES: Let me refer to -- first of all, in
22 terms of this jury, I think the record is clear that there
23 is no jury -- or juror who has been qualified who has not
24 told the court unequivocally that any opinion that they may
25 have formed, partial or otherwise, they could set aside and

1 decide this case based solely on the evidence presented in
2 court.

3 *State vs. Patterson-Three* was a case in which I
4 assisted in 19 -- this actually was heard in 1996, decided
5 in 1997. In that case, Raymond Patterson was being tried
6 the third time for the death penalty. The previous two
7 times of course he had been tried, convicted, and sentenced
8 to the death penalty in Lexington county. And in that
9 case, during the *voir dire*, knowledge of not only the facts
10 in the case but the fact that he had been tried and
11 convicted was pretty widespread in the jury panel. In
12 fact, on that jury seven of the twelve jurors qualified and
13 seated on the main panel had heard that or knew something
14 about the facts of the case. Three of those seated on that
15 panel knew that he had been sentenced and convicted to the
16 death penalty twice.

17 There was a motion for change of venue in that case.
18 The trial judge found that while they had this information
19 and perhaps had formed an opinion, they could set those
20 opinions aside and decide the case based solely on the
21 evidence presented at trial. The Supreme Court found there
22 was no error in the denial of that change of venue.

23 Another case with which I assisted was *State vs.*
24 *Kelsey*. This was not a capital case, but this was a case
25 in McCormick County where Judge Westbrook was the trial

1 judge. And it was a, it was a case which involved three
2 young men involved in the death of a young girl where they,
3 they killed her either by strangulation or by pipe bomb in
4 the mouth. Ultimately they placed a pipe bomb in the mouth
5 and exploded it, and it was -- of course that was all the
6 news in McCormick.

7 And, in fact, in the panel that was called in,
8 seventy-nine of the ninety jurors had information regarding
9 that crime. Nine of the twelve jurors seated in that case
10 had knowledge of that crime. But all of those jurors
11 indicated that while they had that information, they would
12 be able to set it aside, be fair and impartial, and render
13 a verdict based solely on the evidence presented at trial.
14 The Supreme Court in the case said that there was no error
15 in the denial of the change of venue.

16 *State vs. Shepherd* or *Shepherd vs. State*, there was a
17 -- the issue again was change of venue. And in that case,
18 it was the death of a police officer where eighty-two of
19 the eighty-seven jurors who came into the courtroom
20 ultimately to be qualified knew of the facts of that case.
21 Eleven of the jurors seated in that case had information
22 regarding the death of that police officer at the hands of
23 Shepherd. All of them said that while they had that
24 information, they could set it aside and decide the
25 evidence based solely on the evidence presented at trial.

1 That change of venue was properly denied, according to the
2 Supreme Court, by that trial judge.

3 We don't have anything approaching that set of facts
4 in any of those cases in our present case, and I believe
5 that a change of venue, a denial of a change of venue is
6 appropriate in this case, Your Honor.

7 THE COURT: Any reply, Mr. Wilson, if you have any?

8 MR. WILSON: No, sir, and the only thing I can say in
9 reply is, Judge, is that again, and I've already said this,
10 so there's no point in belaboring it and, and keep
11 repeating it.

12 I think it's a little bit different here in that not
13 only do we have jurors who have information about the case
14 and who've heard things about the case and who have formed
15 either partial or full opinions about the case and say they
16 can set aside. I am additionally concerned that we have a
17 number of people who, who, one, who are county employees
18 who have contact, who have close contact with law
19 enforcement, who have close contacts with the detention
20 center. I just think that there are a number of things
21 which are in addition to those things. And, and, and the
22 combination of all those things together is what I am
23 saying will deny him a fair trial. It's not one of those
24 things singly but a collective -- but the collection of
25 those things together which is going to be the problem for

1 us.

2 THE COURT: I'm very concerned to make sure that
3 anyone in a court of law whether what side, whether it be
4 the state or whether be the defense -- or in civil cases
5 where it would be the plaintiff and defendant -- that they
6 get a fair trial, that they get a jury that can make the
7 decision based on the evidence presented in the courtroom
8 and the law as instructed by the judge. To me, if you
9 don't have that, you don't have justice.

10 I maybe took longer than some of you thought I should
11 take with each juror because I wanted to make sure that --
12 there was one of the forty-six that I qualified that I had
13 some concern about. And even encouraged the defense to
14 make a motion to reconsider on that juror, and I later
15 decided to remove that juror. There's still one that if
16 that person gets on the jury and if it becomes an issue, I
17 would probably remove and place an alternate on.

18 But I just happened to just pick up the first -- for
19 some reason I can't find the first juror's little thing we
20 qualified. But I tried on juror 242, juror 19, juror 200,
21 and juror 378 and 327. That's the first six jurors I
22 qualified. Now, once again on the first juror, I can't
23 seem to find the folder on him, but that leaves five. And
24 of those five, four of them said they know nothing about
25 the case and said they knew nothing about the case. Only

1 one of those five said they'd known anything or heard
2 anything. And, and that person said she could, in fact,
3 put the various things she had read and understand they
4 were allegations, can put those things aside and make a
5 decision based the evidence in the courtroom.

6 One thing is this. I think that every juror I
7 qualified, I was impressed that they seemed to me in their
8 demeanor, in their responses to indicate that what they had
9 read were no more than what the solicitor read in the
10 courtroom on Monday. That other than the issue of the
11 hiding thing with a couple of them, who agree those are
12 just allegations. And I point blank -- you know, we have
13 these boilerplates to go over and I, and I did not just go
14 over boilerplate questions. I personally and I looked at
15 those jurors and discussed with them their ability to
16 presume the defendant innocent and to require the state to
17 prove guilt beyond a reasonable doubt. And if that guilt
18 had not been proven, to find him not guilty.

19 And I was -- to be honest with you, I thought there'd
20 be more people in the pool that didn't come up who would,
21 who would be disqualified because of matters they couldn't
22 put aside. We did disqualify a great number of people who
23 said that, percentage wise of the group of jurors, that is.
24 And I disqualified those, but since we had so many jurors
25 and the clerk and the sheriff did such a great job of

1 getting everybody here, we had a lot of jurors. And --
2 well, I said a lot of people. One, two, three, four, five,
3 six, really about seven is all that I disqualified because
4 of knowledge. So, I was really kind of amazed how many
5 people knew very little about this case. I guess the time
6 frame of when it was. And in addition, sadly this area of
7 the state, because of the influx of people and everything
8 else, is reporting about crime a lot in the paper.

9 So, I, I don't find that this jury in any way would
10 not give the defendant a fair and impartial trial. This
11 jury would give the state a fair and impartial trial that
12 we have selected out there. So, I would respectfully deny
13 the motion. I don't -- I think that we have a jury that
14 would be as, would be as impartial and as fair as any jury
15 you could find anywhere in the nation. And so I am
16 prepared to go forward. Motion respectfully denied.

17 Now, any other motions, Mr. Wilson?

18 MR. WILSON: Just, just one second, Your Honor.

19 (DEFENSE COUNSELORS CONFER.)

20 MR. WILSON: No, sir. That's, that's it.

21 THE COURT: All right. Now, once again there are no
22 jurors in here. Y'all brought to my attention that one of
23 my qualified jurors, Ms. Staton who was qualified as juror
24 number 39 I think. Let's see, jurors -- no, I got her
25 qualified as number 40. Well, I guess we ---

1 MR. HUMPHRIES: We then went back, yes, sir.

2 THE COURT: 39. 434, that Mr. -- if you would, Mr.
3 Humphries, go ahead and repeat what you told me in Mr.
4 Wilson's presence.

5 MR. HUMPHRIES: Last night as is our custom after we
6 have a qualified panel before the strike, the solicitor and
7 I, along with members of our staff and certain members of
8 local law enforcement, gathered just to talk about those
9 who had been qualified in order to determine what strikes
10 the state would employ. Obviously, we do no background
11 inquiries regarding these jurors but simply the word of
12 mouth of those who know of their -- either where they live
13 or maybe know people around them or relatives, just asking
14 them general impressions about those jurors.

15 It was approximately 10:00 in the evening when we got
16 to juror 434, qualified number 39, Ms. Helen L. Staton,
17 who's a white female. And in her questionnaire she
18 indicated the church that she attended. I believe it was
19 my assistant, Ms. Snowden, who indicated to me that one of
20 my senior assistant solicitors, Jimbo Richardson, attended
21 that church.

22 I called Mr. Richardson on his cell phone; he did not
23 answer. I asked him if he knew Ms. Staton and would he
24 give me a call on my cell phone. I didn't receive a return
25 call from him last night. This morning after I dropped the

1 kids off a school about 7:30, I received a call from Mr.
2 Richardson, who indicated that he did know her. That he
3 had been in attendance at church last night for the
4 Wednesday night services. He's a deacon there, I believe,
5 and he indicated that Ms. Staton approached him.

6 I asked him what she said specifically, and he
7 indicated that she approached him. He was with his young
8 child, his young son who he indicates was sort of pulling
9 on him to try and get him out of the church. And she said
10 that she -- he said that she told him she had been
11 qualified in the trial but that she still had some concerns
12 about her ability to impose the death penalty.

13 Mr. Richardson was careful not to discuss the case at
14 all and indicates he did not. He said the name was not
15 even mentioned, nor were any of the fact, but he did say
16 that capital cases are difficult for everybody involved.
17 They are difficult for the court. They are difficult for
18 the lawyers. He said he told her that Mr. Hembree, Mr.
19 Humphries, and Mr. Wilson were either the prosecutors or
20 former prosecutors and it's difficult for them as well, and
21 that it would be difficult for the other forty or so people
22 in the panel.

23 He says that she then told him, well, the judge told
24 me I needed to pack bags. Apparently her husband, who
25 attends church as well there, was standing beside her and

1 he remarked that any time they go out of town, he packs one
2 bag and she packs six, to which Mr. Richardson responded,
3 well, pack light. And he said that that ended the
4 conversation. That it lasted certainly no more than five
5 minutes, probably closer to two. And that is the sum total
6 of those conversations.

7 Of course when Mr. Richardson got to the office today,
8 I spoke with him again about the matter, first to make sure
9 that he had not talked with her after receiving my
10 telephone message. He did not. And to under -- to try and
11 determine what the context and specifics of the
12 conversation were. They are as I've told you.

13 I've told Mr. Richardson that we would certainly
14 advise the court and defense counsel, which we did in
15 chambers prior to this hearing, and that the court may
16 require him to provide on the record that information that
17 he has previously provided me. Obviously that's at the
18 court's discretion, and that is the sum total of the
19 disclosure I believe, Your Honor.

20 THE COURT: Mr. Wilson, you were there when Mr.
21 Humphries came back and told me this. You want me to bring
22 Mr. Richardson here? Of course we can put him under oath
23 or take him as an officer of the court what was said. I
24 will do now what you wish in that regard to Mr. Richardson.
25 I will talk to the state later, but what would you like to

1 do in that regard?

2 MR. WILSON: Well, I guess just for the record we
3 probably should have him come up and be on the record. I
4 know Mr. Richardson and if he says that's what happened, I
5 would have no real doubt about it in my mind, but I still
6 think as far as the case is concerned that we probably have
7 to put it in the record so that -- to have him at least get
8 on the stand and say that.

9 THE COURT: All right. Assuming it turns out that's
10 what was said, do you plan to move to have this juror
11 disqualified at this time, or do you want to wait and hear
12 what the ---

13 MR. WILSON: No, sir. I would like to hear from the
14 juror, too. I don't, I don't have any concern about the
15 text of the conversation. The only concern I have is the
16 fact that the court gave her some instructions, and she
17 kind of disregarded the instructions that you gave her.
18 That's more of a concern than the text of the, of the
19 conversation.

20 THE COURT: I have a concern about that, too. I have
21 a feeling her response is I didn't know I was talking about
22 that case. I just said I was picked for jury duty. But I
23 am somewhat concerned Mr. Richardson as an attorney who
24 would know immediately I've got to walk away, can't talk.
25 I'm a little -- honestly, it would depend on what the state

1 says, my concern there. Very much concerned.

2 MR. HUMPHRIES: Let me, let me say this. Just I'm, I
3 will concede that -- well, I will readily concede that that
4 is exactly what Mr. Richardson should have done: I cannot
5 talk to you at all.

6 I will say that Mr. Richardson has not been in the
7 courtroom, was not aware of the court's instructions, and
8 believed in talking with her in general and not
9 specifically about the case that he had not done anything
10 improper. I believe if he had thought it was improper, he
11 wouldn't have done it at all. I think Mr. Wilson agrees
12 with that. And that was the, that was the line that he was
13 prepared not to cross and in his mind did not cross it.

14 He obviously did not know the court had told all of
15 the jurors, not just Ms. Staton, but all of the jurors that
16 they are not to discuss anything with anybody until their
17 return.

18 THE COURT: Let's see, was it this year or last year
19 Mr. Richardson passed the bar? It don't matter -- it
20 doesn't matter whether it's a case of this nature or some
21 other type of case. I would think you would, when a jury
22 ---

23 MR. HUMPHRIES: Well, I, I'm not sure ---

24 (MR. RICHARDSON ENTERS THE COURTROOM.)

25 THE COURT: Mr. Richardson, how are you doing?

1 MR. RICHARDSON: Fine, Judge. Thank you.

2 THE COURT: Come on around over here for me. Now,
3 you're an officer of the court.

4 MR. RICHARDSON: Yes, sir.

5 THE COURT: So, I'm going to go ahead and let you tell
6 me, sir, what you wish to tell me about your contact with
7 Ms. Station last night, sir.

8 MR. RICHARDSON: All right. We go to the same church.
9 It's a small church, about a hundred head. There must have
10 been -- well, there's a sick lady in the church. There was
11 only about twenty of us there last night. She came up. I
12 knew she was on the panel. She came up with her husband
13 and said that she had made it to the thirty-eight or forty,
14 whatever was left.

15 THE COURT: And how would she know that, thirty-eight
16 or forty? Did she mention thirty-eight or forty?

17 MR. RICHARDSON: She told me that she had made it to a
18 small panel, and I think she did say forty or thirty-eight
19 or something along those lines. And then she said that she
20 had -- she didn't particularly want to get picked on the
21 jury. That she had some problems. That she had really
22 thought about the death penalty since she had been in this
23 process. She didn't know that she could come to the -- she
24 really felt a lot of burden about having to basically vote
25 and then someone go to the, you know, gas chamber or

1 whatever term she used along that line. But that she
2 thought that she could keep an open mind about it. And it
3 was just weighing heavy on her, having to come up with such
4 a decision.

5 And for my part, I said look. I've worked for Mr.
6 Wilson. I work for Mr. Humphries and Mr. Hembree. They
7 all feel the same burdens you're feeling. Nobody likes a
8 trial like that. There's forty or fifty other jury members
9 who are in the same boat you're in. Nobody is going to be
10 jumping up and up and down like a blood sport. But it's a
11 heavy burden and, you know, if you're selected -- which
12 you've got a one in four or five chance -- if you're
13 selected, just bring your clothes and you'll do what's
14 right. And that was -- the total of the conversation may
15 have taken -- I know it was less than five minutes because
16 I was standing ---

17 THE COURT: Been two and a half so far.

18 MR. RICHARDSON: Something like that.

19 THE COURT: No, that was so far with you just
20 relating, summarizing it.

21 MR. RICHARDSON: Well, that was -- I've told you
22 everything that was said, and I had a ---

23 THE COURT: I thought the husband said something about
24 he packs one bag, she packs six. He wasn't there?

25 MR. RICHARDSON: Yes, sir. He was standing right

1 there with her.

2 THE COURT: You haven't told me what he said.

3 MR. RICHARDSON: That's the extent of what he said.

4 THE COURT: I know, but I'm saying that we have to add
5 that in.

6 MR. RICHARDSON: Yeah.

7 THE COURT: But, Mr. Richardson, what I'm concerned
8 with, the minute -- I mean, I know you're not on this case,
9 but you've been on several cases I've done that are trials.
10 And you know that no matter if it's a traffic ticket or
11 whether it's a murder case, once a juror has the potential
12 of being on the case, they are not supposed to discuss it
13 at all, no facets of it at all. I'm just amazed you didn't
14 say wait a minute. I can't talk about this, and I'm sure
15 the judge told you not to talk to anyone. I mean, you know
16 why you even need to be there ten seconds?

17 MR. RICHARDSON: Well, I'll tell you, Judge, and you
18 -- we, we have worked together and -- on a bunch of stuff.
19 The name of the case never came up, none of the facts of
20 the case. Her questions to me ---

21 THE COURT: But you knew because you know who the
22 lawyers were.

23 MR. RICHARDSON: I know, but I never said anything to
24 her about it.

25 THE COURT: Not what I'm saying. I'm just amazed that

1 knowing it was a trial, no matter what the, no matter what
2 the issues in the trial were, that knowing it was a trial,
3 I'm just amazed you didn't walk away right away, I mean.

4 MR. RICHARDSON: I probably should have, Judge, but I,
5 I ---

6 THE COURT: I wish you would remove that word
7 probably.

8 MR. RICHARDSON: Yes, sir. I -- we, we never talked
9 about anything other than the -- her being sequestered and
10 all of the stuff about her feelings about the death
11 penalty, the overall issues, nothing to do with ---

12 THE COURT: I mean, those are the same concerns she
13 expressed when we qualified her.

14 MR. RICHARDSON: Yeah.

15 THE COURT: But I'm just concerned about -- I mean,
16 obviously there were no discussion of the issues of the
17 case from what you tell me. But let me just see if the
18 state or the defendant wish to ask you any questions or put
19 you under oath.

20 The state or defense wish me to put him under oath,
21 I'd be glad to, or I can just take his comments as an
22 officer of the court.

23 MR. WILSON: Judge, he's an officer of the court and
24 an attorney. I have no reason to put him under oath.

25 THE COURT: Do you want to ask him any questions?

1 MR. WILSON: No, sir, I don't. No, sir.

2 THE COURT: Mr. Humphries, you want to ask him any
3 questions?

4 MR. HUMPHRIES: No, sir.

5 THE COURT: Did you notice her talking with anyone
6 else that you thought was about this case?

7 MR. RICHARDSON: Well, my wife was standing there, but
8 she didn't say anything, and I had my four-year-old
9 standing there with me.

10 THE COURT: I know, but other than ---

11 MR. RICHARDSON: No, sir.

12 THE COURT: --- talking with you all, did you see her
13 talking to anybody else as if she were discussing the case?

14 MR. RICHARDSON: No, sir.

15 THE COURT: And she discussed nothing about the facts
16 or about the allegations or anything else?

17 MR. RICHARDSON: She told me a week or so ago that she
18 was on jury duty, and that's how I come to know that she
19 was on it. And at that time she did tell me that once she
20 found out that she was on jury duty, she went on the
21 Internet and looked to see what kind of case it was. Now,
22 that ---

23 THE COURT: Is she the one who testified she saw five
24 hundred jurors were going to be called and went online? I
25 think she testified ---

1 MR. WILSON: I remember she said she went on the
2 Internet.

3 MR. HUMPHRIES: Oh, there's no question about that.
4 She was that ---

5 MR. WILSON: She said she went on the Internet.

6 MR. RICHARDSON: But now that one last night, that was
7 a while back.

8 THE COURT: Yeah, read an article about five hundred
9 jurors pulled and allegations. Said she could put aside
10 media reports. She told us that.

11 MR. RICHARDSON: Okay.

12 THE COURT: But last night she didn't discuss anything
13 about the case?

14 MR. RICHARDSON: No, sir.

15 THE COURT: All she discussed was that she was pulled
16 and that I'd told her pack some bags and that she was still
17 concerned about the issue of capital punishment?

18 MR. RICHARDSON: Yes, sir.

19 THE COURT: All right. All right, you might want to
20 be available when they get here because I'm going to have
21 to talk with her individually.

22 MR. RICHARDSON: Okay.

23 THE COURT: So, just in case there's something that
24 we're unclear about. So, they will be here about -- well,
25 there's probably most of them here already. They'll be

1 here in about ten or fifteen minutes. Just have a seat out
2 in the audience.

3 MR. RICHARDSON: All right, sir.

4 THE COURT: But I would, Mr. Richardson, honestly, and
5 you know, especially since you're a part of the solicitor's
6 office, so you knew that it was your office that's involved
7 in the case. I really advise you in future if somebody
8 mentions something involving a criminal case, if it's a
9 criminal and there are jurors being drawn, I would back off
10 right away because you never know what may happen,
11 especially -- I'm sure this lady is -- everything will be
12 fine. But you and I and all of us in this room have had
13 experiences where people say things that are not what we
14 remember. They somehow remember it differently. So, those
15 are rather dangerous. Just have a seat there. We have
16 some other issues. I'll take with Ms. Staton when she gets
17 here.

18 Now, let me ask y'all this. The state, does the state
19 intend to introduce any statements of the defendant such
20 that we need a *Jackson vs. Denno* hearing?

21 MR. HUMPHRIES: Your Honor, Solicitor Hembree and I
22 were discussing that this morning. We do not intend to
23 present as evidence in our case in chief his statement. Of
24 course, you know, we've begun to talk. I'm -- given some
25 of the comments and positions taken by defense counsel

1 during the qualification that there may come a time when we
2 have to use it for cross-examination purposes. And, quite
3 frankly, under the rules I'm not certain that that, the
4 *Jackson vs. Denno* is absolutely required for cross-
5 examination.

6 THE COURT: However, certain or not ---

7 MR. HUMPHRIES: I ---

8 THE COURT: --- if you plan to do it, let me before
9 you do it.

10 MR. HUMPHRIES: Well, and here's what -- and what we
11 discussed was this. That was the position we were going to
12 take. Even though it may not be required, we were, we were
13 going to ask the court to hold that hearing, and we can do
14 that in between the state's case and the defense case if it
15 looks as if that's something we need to. Or if the defense
16 does not wish to disclose until he testifies, just prior to
17 calling him, we can take a break then and have the *Denno*.
18 It involves one primary witness who's available to us.

19 THE COURT: Well, I'm just letting you know now. If,
20 if you feel you can do a redirect of one of your witnesses
21 because of the cross, if you feel that any statement made
22 by the defendant is an issue that you wish to approach in
23 any way, you are to let me know before you do it.

24 MR. HUMPHRIES: Absolutely.

25 THE COURT: So, if there's a redirect you need to

1 bring up about it or whatever else, or if someone -- I
2 mean, your next witness because of what was a problem with
3 the previous witness, we'll take a break and you'll tell me
4 about it before we do it.

5 MR. HUMPHRIES: Yes, sir.

6 THE COURT: No surprises.

7 MR. HUMPHRIES: No question.

8 THE COURT: All right, are there any Fourth Amendment
9 issues, Mr. Wilson, we need to get to?

10 MR. WILSON: Well, my concern is this is, is that in
11 the -- with the *Jackson Denno* hearing. I think we probably
12 need to do it regardless, and I'll tell you why.

13 My concern is is that when, when officers are
14 testifying in the trial of this case and I'm on cross-
15 examination with them, and I may very well ask them a
16 question, and in their minds -- which may lead them believe
17 that they need to respond by saying something that occurred
18 on the video.

19 Now, if, if, if counsel is indicating to the court
20 that he's instructing his witnesses not to do that, not to
21 go there, then I'm okay with that. But if, if, if, if they
22 are saying -- if, if their position is that, well, we're
23 not going to offer it in our case in chief, but if Mr.
24 Wilson in his cross-examination somehow elicits that
25 information, then the witness is authorized to go ahead

1 and, and talk about it. Well, then the answer is no. I
2 want to do the *Jackson Denno* hearing because I think that
3 there is specifically parts of that tape that cannot and
4 should not come out in the trial phase of this case.

5 MR. HUMPHRIES: Let me say this. Number one, we will
6 and have cautioned -- well, actually it's only one witness
7 and his name is Toby Boyd. He will be testifying, but he
8 will not be testifying about -- he'll be testifying about
9 the capture primarily. He will not testify about the
10 statement at all.

11 Furthermore, if the defense attempts to offer any
12 portion of the defendant's statement without calling the
13 defendant first, we would object as it, as it's violative
14 of the rules of evidence.

15 THE COURT: I don't know I agree there, but what I
16 think I hear Mr. Wilson saying is that he may ask him a
17 question about something that this has nothing to do with
18 the statement, and one of the officers may say but he said
19 such and such in the statement.

20 MR. HUMPHRIES: Doesn't -- the officer ---

21 THE COURT: You're making sure your witness will not
22 do that, the witness.

23 MR. HUMPHRIES: No question. There's the only one
24 involved. He's been cautioned, and he's a seasoned
25 officer; I don't anticipate any problems whatsoever in that

1 regard.

2 THE COURT: Well, I'm just guessing, Mr. Humphries.
3 You probably got three or four people involved in the
4 taping.

5 MR. HUMPHRIES: There were two. Only one is actually
6 one the witness list. Well, maybe there might be two, but
7 the other one is, is a chain witness basically. But ---

8 THE COURT: Well, you do it at your own peril. That's
9 fine, but we'll see, all right?

10 MR. HUMPHRIES: Yes, sir.

11 THE COURT: Mr. Wilson, anything else, sir?

12 MR. WILSON: No, sir.

13 THE COURT: I mean, are there any Fourth Amendment
14 issues that you're concerned they're going to try to
15 introduce something that you feel was obtained by an
16 unreasonable search or seizure?

17 MR. WILSON: No, sir.

18 THE COURT: Any other constitutional or evidentiary
19 issues that you wish to bring up?

20 MR. WILSON: No, sir, not at this time.

21 THE COURT: All right. Do y'all have any exhibits
22 that y'all could premark or have premarked?

23 MR. HUMPHRIES: I discussed that with the court
24 reporter. What we can do -- well, I anticipate we'll have
25 a significant break after the ---

1 THE COURT: Jury.

2 MR. HUMPHRIES: --- jury selection, and I don't want
3 to...

4 THE COURT: But I kind of hoped today we'd have more
5 than a twenty minute lunch, but ---

6 MR. HUMPHRIES: Well, I think you probably will under
7 the circumstances. What I'm prepared to do ---

8 THE COURT: This lady down here has worked very hard.

9 MR. HUMPHRIES: There's no question.

10 THE COURT: She has worked very hard, and she deserves
11 more than twenty minutes.

12 MR. HUMPHRIES: No question, but at some junction at
13 the court's pleasure and the court reporter's pleasure and
14 if Mr. Wilson and Mr. Rathbun are both, are available, we
15 have our exhibits in the order in which they will be
16 presented which we can provide to the court reporter.
17 Defense counsel can look at those at this time. And at
18 that time if there are any of those to which they can
19 stipulate, we can go ahead and mark them as evidence.
20 Otherwise, we'll mark them all for identification purposes.

21 THE COURT: Well, my experience is in cases of this
22 nature, there's usually, usually there's a great deal of
23 argument about photographs.

24 MR. HUMPHRIES: Well, let me be clear about that.
25 There's only one photograph I anticipate, and of course

1 this is -- and of course I've done a bunch of these cases.
2 But we are very careful in the guilt phases of these cases
3 not to put in the types of photographs which typically come
4 in in the penalty phase.

5 THE COURT: But at some point in time, I wish you
6 would at the early part share the ones you plan to put or
7 the ones you plan to put in with Mr. Wilson so if we're
8 going to have a discussion, we can have a discussion.

9 MR. HUMPHRIES: Well, that's why, that's -- I intend
10 to do that at the break at the court's pleasure.

11 THE COURT: All right.

12 MR. HUMPHRIES: We have them in order so that there
13 shouldn't be any difficulty in numbering them in the order
14 in which they will be presented, and Mr. Wilson and Mr.
15 Rathbun are welcome to view them at that time.

16 THE COURT: Now, let's talk about procedure. As you
17 all know, we have our jurors numbered 1 through 45. I will
18 -- because you all are here facing this way. Do y'all want
19 to turn around and have the jurors stand up where they are,
20 or do y'all want the jurors to come up front?

21 MR. HEMBREE: I'd prefer they come up front, Your
22 Honor.

23 MR. WILSON: I agree.

24 THE COURT: We'll do that. We'll do that.

25 Now, the strikes are five and ten, and I am trying to

1 decide if I want to get four alternates or get three
2 alternates. We have been enough for four if we needed it,
3 but I'm thinking logistics. How many seats? Two, four,
4 six, eight, ten, twelve, fourteen.

5 MR. HUMPHRIES: Yes, sir, fourteen.

6 THE COURT: Well, she added two there, sixteen.

7 MR. HUMPHRIES: Sixteen.

8 THE COURT: Sixteen. That one at the back over there,
9 can a person see from there?

10 MR. HEMBREE: Yes, Your Honor. We've checked that
11 out, and you can see. It's not the best. Obviously it's
12 the worst seat in the box, but you can see the witness from
13 there.

14 (A PAUSE.)

15 THE COURT: Okay. Mr. Wilson, do you wish to look at
16 it? I can see him pretty well. Can't see the law clerk,
17 but I can see the witness. Y'all are welcome to try it,
18 you and Mr. Rathbun.

19 Now the juror rooms, Ms. Huggins, are adequate for
20 fourteen, for sixteen people?

21 CLERK OF COURT: Yes, sir.

22 THE COURT: Oh, yes, another point, too, this matter
23 of -- Mr. Wilson, you had mentioned a juror -- I mean, a
24 witness and we were trying our best to find Jeffrey Joslin.
25 And the sheriff has entered an affidavit that they've done

1 all they can do, and they could not find him.

2 MR. HUMPHRIES: And let me say for the benefit of Mr.
3 Wilson. We have employed significant assets and a
4 significant amount of time to find that very same witness
5 and have met with no success whatsoever.

6 THE COURT: I see where they've gone several places.

7 Sheriff, also, juror 476, did we ever find juror 476?

8 MR. HUMPHRIES: The last information we've had about
9 Mr. Joslin, his parents are from the Northeast, but the
10 last location or general location we had was that he was in
11 Texas somewhere working in a, sort of a shade tree
12 mechanics.

13 THE COURT: All right. Sheriff, if you would, come
14 around and raise your right, if you would. Right there
15 next to the court reporter will be fine.

16 PHILLIP THOMPSON, BEING DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 EXAMINATION BY THE COURT:

19 THE COURT: Now, you directed your department and
20 people within your department to try to find Mr. Jeffrey
21 Joslin?

22 SHERIFF THOMPSON: Yes, sir, I did.

23 THE COURT: I see you signed an affidavit, as well as
24 Christopher Farmer, that y'all could not locate Mr. Joslin.

25 SHERIFF THOMPSON: That's correct, Your Honor.

1 THE COURT: And it says here you think he may have
2 moved not -- I mean, you can discuss things like Northeast,
3 but this is a great country of ours and you look at the
4 history of it, New England is very protective of its name.
5 You say he may have gone to Vermont?

6 SHERIFF THOMPSON: The information that the deputy got
7 from the residence, from the person that was living there
8 said that he possibly had moved to Vermont. The
9 information that they had, that he no longer lived there.
10 I believe that was a Bellamy person, was Mr. or Ms. Bellamy
11 that he was speaking with.

12 THE COURT: All right. So, y'all have done all
13 efforts you can to find Mr. Joslin?

14 SHERIFF THOMPSON: Yes, sir, we have.

15 THE COURT: All right, do you have any questions of
16 him, Mr. Wilson?

17 MR. WILSON: No, sir, Judge.

18 THE COURT: Thank you very much, Sheriff. I
19 appreciate it.

20 I am concerned, though. We had one juror here, 476.
21 Do y'all have -- that I have tried to find juror 476.

22 CLERK OF COURT: That was the one that the sheriff had
23 left the card and the paperwork in the box who -- no one
24 lived but there was a box there, and they went back the
25 next day. The paperwork and the card was gone, and they

1 still haven't been able to locate the person at this time.

2 THE COURT: Do y'all have an affidavit on 476? I need
3 an affidavit 476 that somehow that y'all tried.

4 CLERK OF COURT: I do have an affidavit. That's what
5 the affidavit stated.

6 THE COURT: Mr. Wilson, do you have any other
7 questions, concerns about juror number 476?

8 MR. WILSON: I have no other concerns if we have an
9 affidavit.

10 THE COURT: All right, you make sure they have an
11 affidavit.

12 CLERK OF COURT: Yes, sir, we have an affidavit. They
13 have a copy of it as well.

14 THE COURT: All right. So, that accounts for every
15 juror then.

16 All right. Now, Madame Clerk and Sheriff.

17 SHERIFF THOMPSON: Yes, sir.

18 THE COURT: Our, our jurors, you make sure your people
19 do not let anyone talk to these jurors, and I'm going to
20 have one sit in the middle there so we've going to have
21 people on each side, but do your efforts. If you see
22 anyone -- I don't care who it is --- trying to say hello to
23 the jurors, unless it's your people, then you let me know.

24 Now, Mr. Wilson, Mr. Hembree.

25 MR. WILSON: Yes, sir.

1 THE COURT: As we all know, the sheriff's department
2 in this county, one of its major emphasis is the assistance
3 of court, and sometimes he gets involved in investigations
4 but they do -- very much assists us throughout, throughout
5 this trial. You know, they're going to be getting security
6 to the courtroom and things of that nature. Does anyone
7 have any objection to the sheriff deputies who have had no
8 contact with this case all having contact with the jurors?

9 MR. WILSON: I have no objections.

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

11 THE COURT: All right. So, Sheriff, I assume you have
12 nobody in your, in your office that's involved in this case
13 as far as witnesses? The one that used to be or is now?

14 MR. HUMPHRIES: No, he is. It's Andrew Cooper. He is
15 now employed by the sheriff's department. I've talked with
16 Deputy Cooper about that. The sheriff has instructed him.
17 He's not been upstairs. He's been downstairs doing other
18 things. He's had no contact with either the jurors or
19 anything in this case.

20 THE COURT: By the way, is his name Cooper or Coopers?
21 There's an S on name of a witness.

22 SHERIFF THOMPSON: Cooper.

23 MR. HUMPHRIES: Cooper.

24 MR. HEMBREE: No S.

25 MR. HUMPHRIES: Cooper.

1 THE COURT: All right, no S. So, he is to have no
2 contact up here at all. The rest of you deputy sheriffs
3 will be fine. Now, also at some point in time I need to
4 make sure that I have the ones who are going to be, be
5 involved with this particular jury, that we get them under
6 oath. I know I saw one of them in civilian clothes today
7 and all that. But we need to make sure we get them all up
8 here at some point. In fact, we probably need all of them
9 here by about 1:30 or so, all right?

10 MR. RATHBUN: If I may, Your Honor, I would like to
11 remind the court my wife is a deputy sheriff with Phillip
12 Thompson, and she will not be present at all throughout the
13 hearing.

14 THE COURT: All right, what's your wife's first name?

15 MR. RATHBUN: Paulette.

16 THE COURT: Paulette. Paul and Paulette?

17 MR. RATHBUN: Yes, sir.

18 MR. HUMPHRIES: Didn't have to change the monogram.

19 (A PAUSE.)

20 THE COURT: All right, that will be fine.

21 Are y'all ready for the jurors to come in?

22 MR. HEMBREE: State's ready, Your Honor.

23 MR. WILSON: We're ready Your Honor.

24 THE COURT: All right, let the jurors come in. I'm
25 going to have her, when they call the jurors, we're just

1 going to call the name. Y'all got them down as qualified.
2 You don't need to call the juror number. Just call their
3 name or you can do it -- just do the number. Have them
4 walk up the front.

5 Bring them all in.

6 MR. HEMBREE: Your Honor, may we approach briefly?

7 THE COURT: Yes. Hold on one second.

8 (OFF-THE-RECORD BENCH CONFERENCE.)

9 THE COURT: If you would, have everyone else stay
10 outside. Bring Ms. Staton, Ms. Staton. I need to see Ms.
11 Staton.

12 (JUROR #434 ENTERS THE COURTROOM.)

13 THE COURT: Ms. Staton, would you come on up front,
14 please, ma'am? Ms. Staton, if you would, come before me in
15 from of that microphone there. Good morning to you.

16 JUROR: Good morning.

17 THE COURT: Pull it up. Bend the microphone up a
18 little bit there.

19 Now, Ms. Station, it's come to my attention that at
20 church last night, you happened to mention you were on this
21 jury. Could you tell me what the circumstances were last
22 night that you talked to someone?

23 JUROR: He asked how it was going.

24 THE COURT: And also I need, I just need you -- this
25 is a technicality, letting you know. You are still under

1 oath, ma'am. You understand?

2 JUROR: I do.

3 THE COURT: All right. Now tell me.

4 JUROR: He asked how it was going here, and I said it
5 was going well, and he said, well, that he hoped that, you
6 know, I didn't get put on it, on the case or on the jury.
7 And that was pretty much....

8 THE COURT: Who was that?

9 JUROR: Jimmy Richardson.

10 THE COURT: Okay, and so -- wait a minute. He asked
11 you?

12 JUROR: How it was going.

13 THE COURT: Okay, and did you talk about the case at
14 all?

15 JUROR: No, sir.

16 THE COURT: Did you discuss packing bags?

17 JUROR: Yes.

18 THE COURT: What did you say?

19 JUROR: I said that we were told that we needed to
20 bring our -- pack our bags before came this morning.

21 THE COURT: Okay, and did you say anything else? Did
22 you discuss maybe your concerns about being on the jury?

23 JUROR: No, I didn't. No, I, I -- actually, I did say
24 that I thought it would be interesting, but that I hoped,
25 you know, I prayed that if I was on it that God would lead

1 me to make the right decision, and that's all that was
2 said.

3 THE COURT: Would the state like me to ask her any
4 additional questions?

5 MR. HUMPHRIES: No, sir.

6 THE COURT: Defense?

7 MR. WILSON: I don't have any additional questions.

8 THE COURT: All right, if you would, Ms. Staton, if
9 you would -- so, you did not discuss any issues in this
10 case at all?

11 JUROR: No, I didn't.

12 THE COURT: Has that changed any answers you gave me
13 last night or anything else?

14 JUROR: No, it has not.

15 THE COURT: All right, if you would please step back
16 outside. Please don't discuss this with the other jurors,
17 please.

18 JUROR: Okay.

19 (THE JUROR EXITS THE COURTROOM.)

20 THE COURT: State or defense have any motions
21 regarding this juror?

22 MR. HEMBREE: Your Honor, my -- I don't know that I
23 place this in the form of a motion so much as a real
24 concern. The concern that we had when we brought it to the
25 court's attention is the same concern I have now that, that

1 she, she -- the court gave her very clear, very direct,
2 very specific personal instructions not to discuss the case
3 with anybody. And I guess maybe I'm expanding the
4 definition of case to the way I understand it versus case
5 the way that the jury may understand it.

6 She certainly didn't discuss the facts of the case.
7 But any process or involvement in the case is how I see
8 that, and yet she did have some conversation about it. She
9 violated the court's order. You know, certainly there's
10 responsibility on the part of a member of my office, no
11 question about that. We've addressed, at to this point.
12 The court's addressed that with Mr. Richardson.

13 However, my concern is with this juror. If the juror
14 doesn't follow that instruction, is there, is there a
15 reason to believe that she might not follow, follow other
16 instructions? That's something the court will have to
17 divine. I don't know that I -- it's a concern I have. So,
18 but I can't say I have a motion to disqualify her other
19 than, you know, just a general concern.

20 THE COURT: Defense?

21 MR. WILSON: Judge, after considering it, I don't see
22 that there was any harm done in terms of her contact with
23 Mr. Richardson. And so I don't have a concern about that,
24 and I think that Mr. Richardson was very forthright and
25 candid with this court, and I believe that the juror has

1 been forthright with this court.

2 I do agree, though, with the solicitor that obviously
3 the juror disobeyed this court's directive, and that places
4 me in a dilemma because at the same time I believe that I
5 would certainly like to have this juror stay on this panel.
6 So, I am certainly not making a motion that this juror be
7 relieved from the panel.

8 THE COURT: I'll let -- make sure the record reflects
9 you discussed this with your client, and let me know.

10 MR. WILSON: I -- the record should reflect that I
11 have already discussed this with him, and he agrees with me
12 that we're not asking the court to remove this juror.

13 THE COURT: So, you all want this juror to stay on the
14 panel?

15 MR. WILSON: I do.

16 THE COURT: All right, based on your conversation with
17 your client and your request, although the state's
18 concerned, it's almost like the state has concern but the
19 state sort of made a lob there. So, I'm going leave this
20 juror on since the defense requests that the juror stay on.
21 All right, the juror's going to stay on.

22 MR. WILSON: Thank you, Your Honor.

23 THE COURT: All right then, everybody, y'all are ready
24 now for the jury to come in?

25 MR. HEMBREE: Yes, Your Honor, we're ready.

1 THE COURT: All right, let's do -- don't do the first
2 row. Start with the second, okay? Do from there. Bring
3 them on in, please.

4 (A PAUSE.)

5 THE COURT: I'm ready when y'all are. Go on and get
6 them in.

7 (THE JURY PANEL ENTERS THE COURTROOM.)

8 THE COURT: Ms. Warrington, are you in here yet?
9 Could I see you, please, ma'am? Any objection to me
10 discussing?

11 MR. HUMPHRIES: No, Your Honor.

12 MR. WILSON: No.

13 (OFF-THE-RECORD BENCH CONFERENCE WITH JUROR #474.)

14 THE COURT: Well, good morning, class.

15 JURY PANEL: Good morning.

16 THE COURT: I think we're ready now. What we're going
17 to do right now is the clerk is going to call the roll to
18 make sure everyone is here who is supposed to be here. So,
19 when your name is called, please stand up and remain
20 standing. That way, I'll know we got everybody. If
21 somebody is still seated, then we know there's a -- no, I
22 tell you. No, don't do that. You just stand up and sit
23 back down. That way I'll know you were here but if
24 everybody stand up, I'm won't be able to see you after a
25 while. So, stand up and then you can be seated after we

1 call your name. So, we will proceed now.

2 And the way your name is going to be called, by the
3 way, is the name you -- the way you came up over the last
4 two days. For example, Mr. McPherson will be the first one
5 since he was the first one who was on that list. So, we'll
6 proceed with that.

7 Madame Clerk, if you would call the roll.

8 (ROLL CALL.)

9 CLERK OF COURT: Is there anyone in this audience I
10 did not call?

11 (NO ONE RESPONDS.)

12 CLERK OF COURT: Thank you.

13 THE COURT: Ladies and gentlemen of the jury, we're
14 now ready to begin the process of selection of the jury on
15 this case. When your name is called ---

16 Officer, if you would do me a favor? If you would
17 come and stand up here so they'll know where to stand?
18 What I'd like for you to do is come -- and move over to the
19 side a little bit there. Right there will be good.

20 Come and stand to the left this officer. Come and
21 stand to the left of the officer.

22 Madame Court Reporter, will that be fine with you?

23 COURT REPORTER: Fine. Thank you.

24 THE COURT: So come, if you would, and stand to the
25 left of the officer.

1 Now, what will happen is the clerk will then say
2 something to the effect of what saith the state. The state
3 will then say present the witness or swear the witness or
4 whatever. Then after that the clerk will ask the defense,
5 and the defense will say swear the witness or witness
6 acceptable or whatever, something of that effect. And then
7 if both of them say that, then you will have a seat in the
8 jury box starting to the top. Fill all the way to the end
9 for right now, just for right now. Come down to the end.
10 And we'll, we'll follow that process.

11 If during the course of the process either side says
12 something to the effect of excuse the juror in this case,
13 then you go back and have a seat back in the audience, if
14 you would. If you want to, I've got ---

15 Is that row empty back where you are?

16 BAILIFF: Yes, sir.

17 THE COURT: It might be just as well to go back to the
18 back row. That way you don't have to worry about walking
19 in the middle and all that and anything else. So, we're
20 going to go in that process. And so you'll know, since she
21 called roll, you know how it's done is your name is going
22 to be called as you appear here on the roll. So, the best
23 thing to do, I find, is when you come up here is just stay
24 here until the clerk, she'll either say have a seat in the
25 jury box, or she'll say you may return to the audience or

1 return to your seat. So, if you stay until she says that,
2 you won't move too soon or not move or whatever. So, just
3 do it that way.

4 I know it's sort of an uncomfortable process to come
5 and stand in front everybody while, while people are
6 looking and talking and thinking. So, the best thing is
7 just once you get up here, just wait on Ms. Huggins, and
8 she'll say to have a seat in the jury box or return to your
9 seat, one or the other.

10 All right, state ready to proceed?

11 MR. HEMBREE: State's ready, Your Honor.

12 THE COURT: Defense ready to proceed?

13 MR. WILSON: Defense is ready, Your Honor.

14 THE COURT: Five and ten are the strikes. We'll now
15 proceed.

16 CLERK OF COURT: Eric McPherson, what says the state?

17 MR. HEMBREE: Please present Mr. McPherson.

18 CLERK OF COURT: The defense?

19 MR. WILSON: Please excuse Mr. McPherson from the
20 trial of this particular case.

21 CLERK OF COURT: You're excused on this case.

22 THE COURT: That's the same as said have a seat in the
23 audience.

24 JUROR: Thank you.

25 CLERK OF COURT: Shirley Jones, what says the state?

1 MR. HEMBREE: Please excuse Ms. Jones from the trial
2 of this case.

3 CLERK OF COURT: Please have a seat back in the
4 audience. You're excused on this case.

5 Vicki Belk, what says the state?

6 MR. HEMBREE: Please present Ms. Belk.

7 CLERK OF COURT: The defense?

8 MR. WILSON: Seat Ms. Belk.

9 CLERK OF COURT: Please have a seat in the jury box.
10 Thomas G. Hardwick, Sr., what says the state?

11 MR. HEMBREE: Please present Mr. Hardwick.

12 CLERK OF COURT: The defense?

13 MR. WILSON: Seat Mr. Hardwick.

14 CLERK OF COURT: Please have a seat in the jury box.
15 Theresa Raynor, what says the state?

16 MR. HEMBREE: Please present Ms. Raynor.

17 CLERK OF COURT: The defense?

18 MR. WILSON: The defense would excuse Ms. Raynor for
19 the trial of this particular case.

20 CLERK OF COURT: Please have a seat. You're excused
21 on this case.

22 Stephanie Morris, what says the state?

23 MR. HEMBREE: Please present Ms. Morris.

24 CLERK OF COURT: The defense?

25 MR. WILSON: Seat Ms. Morris.

1 CLERK OF COURT: Please have a seat in the jury box.

2 Mary Skipper, what says the state?

3 MR. HEMBREE: Please present Ms. Skipper.

4 CLERK OF COURT: The defense?

5 MR. WILSON: The defense would excuse Ms. Skipper from
6 the trial of this particular case.

7 CLERK OF COURT: You're excused on this case; please
8 have a seat in the audience.

9 Philip Randall, what says the state?

10 MR. HEMBREE: The state would present Mr. Randall.

11 CLERK OF COURT: The defense?

12 MR. WILSON: Seat Mr. Randall.

13 CLERK OF COURT: Please have seat in the jury box.

14 Jacqueline Spivey, what says the state?

15 MR. HEMBREE: Please present Ms. Spivey.

16 CLERK OF COURT: The defense?

17 MR. WILSON: We would excuse Ms. Spivey from the trial
18 of this particular case.

19 CLERK OF COURT: You're excused on this case.

20 Rebecca Bacot, what says the state?

21 MR. HEMBREE: Please excuse Ms. Bacot.

22 CLERK OF COURT: You're excused on this case.

23 Melinda Prussman, what says the state?

24 MR. HEMBREE: Please present Ms. Prussman.

25 CLERK OF COURT: The defense?

1 MR. WILSON: Please excuse the juror from the trial of
2 this particular case.

3 CLERK OF COURT: You're excused on this case.
4 Christopher Trout, what says the state?

5 MR. HEMBREE: Please present Mr. Trout.

6 CLERK OF COURT: The defense?

7 MR. WILSON: Seat Mr. Trout.

8 CLERK OF COURT: Please have a seat in the jury box.
9 Stanley Waletkus, what says the state?

10 MR. HEMBREE: Please excuse Mr. Waletkus from this
11 trial.

12 CLERK OF COURT: You're excused on this case.
13 Joseph Kowalkowski, what says the state?

14 MR. HEMBREE: Please present Mr. Kowalkowski.

15 CLERK OF COURT: The defense?

16 MR. WILSON: Please excuse Mr. Kowalkowski from the
17 trial of this particular case.

18 CLERK OF COURT: You're excused on this case.
19 Joseph Stephens.

20 THE COURT: Mr. Stephens, come up here and talk to me.
21 You mentioned something that -- told the clerk about travel
22 plans. Madame Court Reporter, if you would?

23 (THE FOLLOWING CONFERENCE WITH JUROR #438 IS HELD AT
24 THE BENCH.)

25 THE COURT: What was this issue about traveling, sir?

1 You didn't say anything about this yesterday.

2 JUROR: Yeah, like I really didn't think I'd get
3 picked.

4 THE COURT: Well, I know, sir, but you have to change
5 your plans, all right?

6 JUROR: That's fine.

7 THE COURT: Okay. All right.

8 (END OF CONFERENCE AT THE BENCH.)

9 THE COURT: Only thing with Mr. Stevens, he had said
10 -- he didn't say anything until this morning. Told Ms.
11 Huggins that he was planning on going out of state on
12 Saturday, but he nothing about it yesterday, and I told him
13 he's, he would be with us. He said he's fine. Stay with
14 the jury.

15 CLERK OF COURT: What says the state?

16 MR. HEMBREE: Please present Mr. Stevens.

17 CLERK OF COURT: The defense.

18 MR. WILSON: We excuse the juror from the trial of
19 this particular case.

20 CLERK OF COURT: You're excused on this case.

21 Kevin Brown, what says the state?

22 MR. HEMBREE: The state would present Mr. Brown.

23 CLERK OF COURT: The defense?

24 MR. WILSON: Please seat Mr. Brown.

25 CLERK OF COURT: Please have a seat in the jury box.

1 Sandra Thompson, what says the state?

2 MR. HEMBREE: Please present Ms. Thompson.

3 CLERK OF COURT: The defense?

4 MR. WILSON: Seat Ms. Thompson.

5 CLERK OF COURT: Please have a seat in the jury box.

6 Harold Foster, what says the state?

7 MR. HEMBREE: Please present Mr. Foster.

8 CLERK OF COURT: The defense?

9 MR. WILSON: Please excuse the juror from the trial of
10 this particular case.

11 CLERK OF COURT: You're excused on this case.

12 Lorene Wright, what says the state?

13 MR. HEMBREE: Please present Ms. Wright.

14 CLERK OF COURT: The defense?

15 MR. WILSON: Seat Ms. Wright.

16 CLERK OF COURT: Please have a seat in the jury box.

17 Keith Benton, what says the state?

18 MR. HEMBREE: Please present Mr. Benton.

19 CLERK OF COURT: The defense?

20 MR. WILSON: We excuse Mr. Benton from the trial on
21 this particular case.

22 CLERK OF COURT: You're excused on this case.

23 THE COURT: My count at this time is three and nine.
24 Is that your count, Madame Clerk?

25 CLERK OF COURT: Yes, sir.

1 THE COURT: Is that your count, Mr. Solicitor?

2 MR. HEMBREE: Yes, Your Honor.

3 THE COURT: Your count, Mr. Wilson?

4 MR. WILSON: It is, Your Honor.

5 THE COURT: All right.

6 CLERK OF COURT: Lauren Roughton, what says the state?

7 MR. HEMBREE: Please present Ms. Roughton.

8 CLERK OF COURT: Defense?

9 MR. WILSON: Please seat the juror.

10 CLERK OF COURT: Please have a seat in the jury box.

11 THE COURT: If y'all would, please approach.

12 (OFF-THE-RECORD BENCH CONFERENCE.)

13 CLERK OF COURT: Shutoneis Brave, what says the state?

14 MR. HEMBREE: Please present Ms. Brave.

15 CLERK OF COURT: The defense?

16 MR. WILSON: Seat Ms. Brave.

17 CLERK OF COURT: Please have a seat in the jury box.

18 Ricky Ballen, what says the state?

19 MR. HEMBREE: Please excuse Mr. Ballen on this trial.

20 CLERK OF COURT: You're excused on this case.

21 JohnPaul Plewa, what says the state?

22 MR. HEMBREE: Please present Mr. Plewa.

23 CLERK OF COURT: The defense?

24 MR. WILSON: Seat Mr. Plewa.

25 CLERK OF COURT: Please have a seat in the jury box.

1 Glenn Cole, what says the state?

2 MR. HEMBREE: Please present Mr. Cole.

3 CLERK OF COURT: The defense?

4 MR. WILSON: Seat Mr. Cole.

5 CLERK OF COURT: Please have a seat in the jury box.

6 THE COURT: Twelve. Okay, that will be our twelve
7 primary jurors, and now we'll get our alternates. One
8 strike for the state, two for the defense. First
9 alternate, please.

10 CLERK OF COURT: Allen Wilson, what says the state?

11 MR. HEMBREE: Please excuse Mr. Wilson from this
12 trial..

13 CLERK OF COURT: You're excused on this case.

14 Earle Hoxie, what says the state?

15 MR. HEMBREE: Please present Mr. Hoxie.

16 CLERK OF COURT: The defense?

17 MR. WILSON: Defense would excuse Mr. Hoxie from the
18 trial of this particular case.

19 CLERK OF COURT: You're excused on this case.

20 THE COURT: Have a seat in the audience, Mr. Hoxie.

21 CLERK OF COURT: Steven Carrigan, what says the state?

22 MR. HEMBREE: Please present Mr. Carrigan.

23 CLERK OF COURT: The defense?

24 MR. WILSON: Excuse the juror from the trial of this
25 particular case.

1 CLERK OF COURT: You're excused on this case.

2 Patricia Chumas.

3 THE COURT: One has been used by the state, two by the
4 defense on alternates.

5 MR. WILSON: Judge, may I? Judge, may I make an
6 inquiry? Is it two and one for each, or is it ---

7 THE COURT: For each.

8 MR. WILSON: Two and one for each?

9 THE COURT: Yes. Did you...

10 MR. WILSON: I've only used one.

11 MR. HUMPHRIES: You've used two.

12 CLERK OF COURT: I have two.

13 THE COURT: You used ---

14 CLERK OF COURT: I have two.

15 THE COURT: 225 and 268.

16 MR. WILSON: All right. Okay.

17 THE COURT: Y'all need to approach to discuss
18 anything?

19 MR. WILSON: Yes, sir. Let me so I ---

20 THE COURT: If you would, Ms. Chumas, step back if you
21 would.

22 (OFF-THE-RECORD BENCH CONFERENCE.)

23 THE COURT: Come on back up, Ms. Chumas.

24 CLERK OF COURT: What says the state?

25 MR. HEMBREE: Please present Ms. Chumas.

1 CLERK OF COURT: Defense?

2 MR. WILSON: Seat Ms. Chumas.

3 CLERK OF COURT: Please have a seat in the jury box.

4 THE COURT: All right, we'll need a second alternate.

5 One strike by the state, two by the defense.

6 CLERK OF COURT: Catherine Kammerer, what says the
7 state?

8 MR. HEMBREE: Please present the juror.

9 CLERK OF COURT: The defense?

10 MR. WILSON: Please excuse the juror from the trial of
11 this particular case.

12 CLERK OF COURT: You're excused on this case.

13 Wanda Truett, what says the state?

14 MR. HEMBREE: Please excuse Ms. Truett from the trial
15 of this case.

16 CLERK OF COURT: You're excused on this case.

17 David Johnson, what says the state?

18 MR. HEMBREE: Please present Mr. Johnson.

19 CLERK OF COURT: The defense?

20 MR. WILSON: Excuse Mr. Johnson from the trial of this
21 particular case.

22 CLERK OF COURT: You're excused on this case.

23 THE COURT: That's one and two on strike for this
24 particular round. The next name, please.

25 CLERK OF COURT: Jeron Wallingford, what says the

1 state?

2 MR. HEMBREE: Please present Mr. Wallingford.

3 CLERK OF COURT: The defense?

4 MR. WILSON: Seat the juror.

5 CLERK OF COURT: Please have a seat in the jury box.

6 THE COURT: We'll get a third alternate, please. One
7 strike by the state, two by the defense.

8 CLERK OF COURT: Marie Martin, what says the state?

9 MR. HEMBREE: Please present Ms. Martin.

10 CLERK OF COURT: The defense?

11 MR. WILSON: Please excuse the juror from the trial of
12 this particular case.

13 CLERK OF COURT: You're excused on this case.

14 C.D. Scaggs, what says the state?

15 MR. HEMBREE: Please present Ms. Scaggs.

16 CLERK OF COURT: The defense?

17 MR. WILSON: Excuse the juror from the trial of this
18 particular case.

19 CLERK OF COURT: You're excused on this case.

20 Christine Sandler, what says the state?

21 MR. HEMBREE: Please excuse Ms. Sandler from the trial
22 of this case.

23 CLERK OF COURT: You're excused on this case.

24 THE COURT: That's one and two on strikes in this
25 round.

1 CLERK OF COURT: Eddie Velez, what says the state?

2 MR. HEMBREE: Please present Mr. Velez.

3 CLERK OF COURT: The defense?

4 MR. WILSON: Seat Mr. Velez.

5 CLERK OF COURT: Please have a seat in the jury box.

6 THE COURT: And we'll get a forth alternate. One
7 strike by the state, two by the defense.

8 CLERK OF COURT: Gregory Mascho, what says the state?

9 MR. HEMBREE: Please excuse Mr. Mascho from this
10 trial.

11 CLERK OF COURT: You're excused on this case.

12 Helen Staton, what says the state?

13 MR. HEMBREE: Please present Ms. Staton.

14 CLERK OF COURT: The defense?

15 MR. WILSON: Seat the juror.

16 CLERK OF COURT: Please have a seat in the jury box.

17 THE COURT: Okay. Now, ladies and gentlemen of this
18 jury, I'm going to have you step back to the jury room.

19 You listen to me carefully. When you go back to that jury
20 room, you do not discuss anything about this case
21 whatsoever. Just get to know each other for a little bit.
22 Don't discuss anything about the allegations, about any
23 questions I asked you yesterday or anything else. Just get
24 to know each other, nothing else.

25 Please take them to the jury room.

1 (THE JURY EXITS AT 12:19 P.M.)

2 THE COURT: Does the -- well, I tell you what. Ladies
3 and gentlemen of the remaining jury panel, what I need you
4 to do is just step out of the courtroom for a minute.
5 Jurors only step out of the courtroom, jurors only.

6 Ms. Warrington, I need for you to stay with us.

7 (THE JURY PANEL EXITS.)

8 THE COURT: Any motions from the state regarding jury
9 selection?

10 MR. HEMBREE: No motions from the state, Your Honor.

11 THE COURT: Any motions from the defense regarding
12 jury selection, qualification, these sixteen jurors?

13 MR. WILSON: Judge, I don't have any motions in
14 regards to the qualification of the panel. I, I, what I
15 would like to do, though, is to renew my motions that I
16 made in the qualification of some of the jurors. I know I
17 made some motions at that time for the court not to qualify
18 some of those jurors.

19 And my reasoning for that was, was that at some point
20 in time I would have to use a strike for those particular
21 jurors, and I might not want to use it and, in fact, I had
22 to that. You know, particularly with the lady from the EMS
23 who was on the panel. And because of that, there were
24 other people that I could not strike that I wanted to
25 strike because I had to save that strike for her. And I

1 would ask the court to set aside the process because of
2 that.

3 THE COURT: Ms., Ms. Scaggs you were -- not Ms.
4 Scaggs.

5 MR. WILSON: Ms. Scaggs.

6 THE COURT: Okay, that's one of your alternates.

7 MR. WILSON: Yes. Not, not Ms. Scaggs, Your Honor.
8 I'm sorry, the -- yeah, I'm sorry, that's correct. Her
9 name is Scaggs.

10 THE COURT: In any event, I've already made rulings on
11 those motions before, but as far as the jury selection
12 today, you have no motions regarding the strikes or
13 anything of that nature?

14 MR. WILSON: I have no Batson motions, Your Honor.

15 THE COURT: Or any other motions regarding the
16 strikes?

17 MR. WILSON: No, sir.

18 THE COURT: Other than the motions you've already
19 made?

20 MR. WILSON: That is correct, yes, sir.

21 THE COURT: All right. Some of these jurors already
22 have their bags, believe it or not, here. Some of them,
23 but let me go ahead and I want to dismiss the rest of the
24 jurors.

25 Bring the rest of them in, please. What I plan to do

1 is when they're dismissed, we'll take an hour for lunch, an
2 hour and a half, rather, to get these -- so these jurors
3 can go home, go home. But I'm going to make sure I talk
4 with them strongly. I'm not going to swear them until I
5 get them back.

6 MR. HUMPHRIES: Judge, are we, are we going to send
7 them to their hotel rooms first?

8 THE COURT: No. I'm going to bring them on back here.

9 (THE JURY PANEL IS DISMISSED OFF THE RECORD.)

10 THE COURT: Go ahead and be seated. Everyone take
11 your place. Tell you what. This won't take but a minute.
12 I'm going to go ahead and get the people that are going to
13 be charged with the jurors outside of the courthouse, go
14 ahead and get them sworn, and then we're going to do --
15 proceed with the jury.

16 I also need, Ms. Thompson -- I mean, Ms. Huggins, I
17 need when they get in here, I need also those bailiffs who
18 are going to be involved with them here in the courthouse,
19 too, okay? So, when they bring the jurors in, have them
20 come and we're going to swear them separately.

21 Sheriff, since you're going to have different
22 deputies, there's no use me swearing anybody now unless you
23 know the ones that are going to be here.

24 SHERIFF THOMPSON: The, the, the only ones are the
25 ones we just talked about, Judge.

1 THE COURT: No, I mean as far as those that going to
2 be here in the courthouse.

3 SHERIFF THOMPSON: Okay.

4 THE COURT: They going to be different ones?

5 SHERIFF THOMPSON: No, sir. You got the same assigned
6 the entire time.

7 THE COURT: All right. I want to put -- once the jury
8 gets in here, have them bring -- tell them to come in in
9 here, too.

10 SHERIFF THOMPSON: Okay.

11 THE COURT: Okay? If you would, bring in jury,
12 please. And by the way. Hold on. You all have been
13 around, and you all know that in some places, people stand
14 when there are jurors, and people don't stand. I used to
15 say stand, I used to say don't stand, and some stand, some
16 do not. I don't want you all to do different things. So,
17 let's decide now. Are y'all going to stay seated when the
18 jurors come in, or are y'all standing? Which is it?

19 MR. HEMBREE: Stand, Your Honor.

20 THE COURT: All right. So, Mr. Wilson, it'll probably
21 be better if y'all stand.

22 MR. WILSON: Judge, I, and I have a concern about it
23 because I think it's, it provides the wrong message. And I
24 understand that we are all supposed to show respect to the
25 jury, and I appreciate that, and I've been a prosecutor,

1 too.

2 But I think also, especially in light of the fact that
3 the state's table is closest to the jury panel, the jury
4 panel is coming in and they're standing. There are people,
5 people in the audience who may not be standing.

6 THE COURT: No, no, no, no, no. The only ones who are
7 going to stand are the people at tables here.

8 MR. WILSON: Well, and that's my concern and that's
9 what I'm saying. I think -- my whole point to the court is
10 that it sends the wrong message. If the jury's coming in,
11 there are people in the audience who are not standing. We
12 all stand when you come in, and -- but that's not what's
13 happening when they come. So, the only people who are
14 standing is the prosecution. If you let ---

15 THE COURT: Well, Mr. Wilson, I'll let you know this.
16 I am not going to prevent the solicitor from standing. I
17 find that something that is difficult to do -- two things.
18 One is if someone want to stand, you know, in these areas,
19 it's their right to do so. Even if I wanted to stop it,
20 there's going to be times I'm going to be writing
21 something. I won't see it. One of them may forget it, and
22 they may stand. So, if you wish to stand, you may do so.

23 I just wanted to make sure we have on the record,
24 though, that -- what's going to happen so that if you want
25 to stand, you and Mr. Rathbun and Mr. Winkler, y'all want

1 to stand, that will be fine. But that's up to you all.

2 But no one in the audience stand. Everyone in the
3 audience, please be seated, but if those at the tables, if
4 they're going to stand, I'm not going to stop them from
5 standing. Now, if you want to stand, that's fine.

6 MR. WILSON: All right, sir. Then, then just, just
7 for the record, Judge, you know, I object to it and I think
8 that, I think that it interjects a whole aspect to this
9 case that ought not to ever be there, which is the fact
10 that they represent the state. And that this jury is
11 somehow appearing to get more respect from the state than
12 they're getting from the general public. And I think
13 that's unfair, and that gives a statement. That is a
14 statement to this jury, and I would object to them doing
15 it. I understand if the court permits it. I -- obviously
16 I will go along with it. I take exception to it.

17 THE COURT: And, Mr. Wilson, let me put on the record
18 that you state from the general public. Mr. Wilson, the
19 state and you and your client, you all are the ones here
20 putting a matter before this jury, not the general public.
21 It's you all doing that. This juror -- jury that you all
22 selected, the general public didn't select them. You all
23 selected them. This jury is the one that you all have
24 selected to hear this matter. You all are going to
25 address, and I'm sure both of you are going to talk about

1 the faith you have in their judgment and their decision.

2 So, it's a little different than just the general
3 public. And so anyway, I just wanted to put it on the
4 record in that regard. But if you don't wish to, and maybe
5 no one will notice it one way or the other. I just wanted
6 to make sure, though, that nobody was surprised when what
7 happens because I've seen it go back and forth.

8 You were going to say something, Mr. Hembree?

9 MR. HEMBREE: Well, very briefly, Your Honor. First,
10 in my view, in my -- I would offer this for the record.
11 That the jury is the judge of the facts. They are, in my
12 view, a judge like Your Honor and that's a different -- in
13 a different role but in just as real a sense. And I firmly
14 believe and have held this belief since I've been a
15 prosecutor that it is our -- that we have a responsibility
16 to show that jury the same amount of respect, and maybe in
17 a way more respect because they are guests in our house.
18 So, and I encourage the defense to stand if they so choose.

19 I don't want to appear unfair that somehow the state
20 is standing and they're and, therefore, we build a greater
21 bond. I think giving them the option to stand will
22 alleviate any problem with unfairness that Mr. Wilson has
23 concerns about. I say that for the record. I appreciate
24 the court's ruling on it.

25 MR. WILSON: Well, you know, my concern with that is

1 is that the defense, the defendant is not required to do
2 that. If the court orders him to do it, then that's fine.
3 My point simply is that the solicitor's office represents
4 the state and the authority of state. This juror is here
5 to be impartial and when one side or the other is showing
6 some kind of favor towards that panel, that's unfair and
7 that interjects an element that's not necessary and proper
8 in this case. And if the court says it's fine, then it's
9 fine. I abide by it. I just say that for the record I
10 want to be on the record saying that that's my position and
11 I take exception to it.

12 THE COURT: Okay. Thank you. Everyone knows what's
13 going to happen.

14 All right, now, if you would, once again there's no
15 problem with where the jurors sit, so -- right now. So,
16 you can have them come in, and I'll tell them how the
17 alternates sit on -- I'm going to have all the alternates
18 sit on the, on the back four over there. Probably sit,
19 probably want them two, two on the back first four or
20 whether I want them to sit two and two.

21 Ms. Huggins, has the practice been the alternates sit
22 over here on this end, or do they usually have them sit
23 down there? Usually we don't have more than two.

24 CLERK OF COURT: They usually sit at this end.

25 THE COURT: Yeah. I'll do that. Let's go ahead, but

1 I'm going to do it this way. Let's, let's let it be the
2 back two and the front two, all right, that way. I'd
3 rather do it that way.

4 CLERK OF COURT: All right.

5 THE COURT: And doesn't matter what order they do it
6 in, but I'll tell them that once they get in.

7 All right, bring the jury in, please.

8 (THE JURY ENTERS AT 12:49 P.M.)

9 THE COURT: Okay, now, ladies and gentlemen, I'm just
10 curious. How many of you brought your bags with you?
11 Keep your hands up. Ten, eleven. So, eleven out of
12 sixteen, wow. Just so I make sure I got it right, those of
13 you who did not bring your bags with you, raise your hand.

14 (JURORS COMPLY.)

15 THE COURT: Now, don't worry. I didn't tell you to
16 bring your bags. If some of you went and ahead and did it,
17 that's fine. Those of you who brought your bags with you,
18 you got your cars set? Anybody, anybody who brought their
19 bag with them that has a some problem with their vehicle
20 far as you need some way to get vehicle back home? All
21 right. So, one wonders why you brought your bag if you
22 also brought your vehicle. But whatever. I'll tell you
23 about that.

24 Okay, now in a second I'm going to release you all to
25 the people that have the actual custody of you during the

1 course of the trial. They're going to take you down to
2 where they're going to meet you. Those of you who already
3 have your bags and have your cars set, then they're going
4 to go ahead and take you to the hotel and get your a
5 sandwich. Those of you need to get your car back or go get
6 your bags, then I want you to go get your bags. Who, who
7 on this jury that it would take you more than one hour to
8 go home and come back? If so -- it's a big county. If
9 it'd take you more than one hour to go home and come back,
10 raise your hands.

11 (JURORS COMPLY.)

12 THE COURT: All right. So, what I'm going to do is
13 we're going to have y'all back here at 3:00, 3:00, okay?
14 Now, do your best effort. If you're not, I'll wait until
15 you get here. Don't speed. Just take your time. We'll
16 try to shoot for 3:00 to get started.

17 Now, I'm going to put these officers, these bailiffs,
18 these people who have you in their custody, I'm putting
19 them under oath at this time because they're going to be
20 under oath to tell me if you speak to them about this case,
21 if they hear you speaking about this case, or if they see
22 anyone speak to you about this case. Remember as I told
23 you as we qualified you, your decision in this case should
24 be based on the evidence you hear in the courtroom and the
25 law as I instruct it to you. You're not to discuss this

1 case before you get it in your hands for deliberations.
2 So, you shouldn't be discussing this case at all
3 whatsoever. So, do not discuss it among yourselves.

4 When you go home, do not discuss it either. You're
5 under your oath when you go home, like I told you
6 yesterday, do not discuss this case.

7 Go home, get your bags, come on back, let someone take
8 your car, and meet you where -- and meet where the sheriff
9 says you're to meet. Just meet at that point and be there,
10 and the sheriff will tell you what time to get there. I'll
11 going leave it up to him and Mr. McLeod as to the time and
12 all just so they can get you back somewhere around 3:00.
13 That's what I want it to be, okay?

14 Now, does anybody on the jury panel have any
15 questions? All right, yes, sir.

16 JUROR: Cell phones?

17 THE COURT: Cell phones, you might as well leave them
18 at home. If you bring them, what Mr. McLeod -- where's Mr.
19 McLeod? What do you do, just take them up when you get to
20 the hotel?

21 MR. MCLEOD: Yes, sir.

22 THE COURT: What he'll do is take them up and hold
23 them for you there at the hotel, but you're not to have
24 them in your room because you're not to make any phone call
25 conversation with anyone unless I've got somebody with his

1 people listening in also. That way, it doesn't make people
2 accuse you of doing things. I've got someone there who's
3 going to be listening when you're on the phone with
4 someone. So, therefore, I don't want you to have your cell
5 phones in the room.

6 If someone calls and you want to let Mr. McLeod
7 answer, that would be great but would be kind of odd, but
8 there will be phones that we're going to have there set
9 aside for you. Mr. McLeod and the sheriff, they're going
10 to go over all that with you there. They're going to go
11 over all that, but you're not to have any communication
12 without someone listening in with you. I told you that
13 yesterday and day before yesterday. So, please understand,
14 understand that.

15 Also, I'll let you know that we're going to have two
16 rooms in the hotel. The two rooms are going to have
17 televisions in them. They're going to make sure that you
18 don't watch news shows or anything, but they're going to
19 have various places for you to watch television. On Sunday
20 one of those rooms is going to have a certain football game
21 on on Sunday.

22 Now I'm going to let you know this also. We're going
23 to be in court today until around 6, 6:30, and then they'll
24 take you to get your dinner and all that. We're going to
25 be in court tomorrow. We're going to be about the same

1 time. Saturday we're going to be in court also that period
2 of time. Sunday, I'll talk to you about that on Saturday
3 about what we're going to do about Sunday. Let's wait and
4 get those three days going, then we'll, we'll discuss the
5 Sunday situation Saturday as far as whether you all wish to
6 have court or not, but you won't be able to go to your meet
7 -- those of you who go to churches, you won't be able to go
8 to those churches. But those of you who wish to gather or
9 whatever, that will be fine with me, but you won't be going
10 out. But if you want to start in the afternoon, we may do
11 that or we may wait and start Monday. But we'll wait till
12 Saturday to decide that issue, okay?

13 Now, it is very important that from this point on you
14 don't talk to anybody about anything, anything with concern
15 to this case. Get there, get back. In fact, if I were
16 you, I wouldn't even turn on the radio in the car unless
17 you've got some off-music station, which will be fine.
18 Anybody got any other questions?

19 All right, bring your people around, Sheriff. I just
20 want the ones that are going to be taking them outside the
21 courthouse right now.

22 (WHEREUPON, THE FOLLOWING DEPUTIES AND SLED AGENTS ARE
23 SWORN.)

24 THE COURT: Now, if you would read in the record the
25 names of the people you just swore. All right, just state

1 your names you go by, please.

2 SHERIFF THOMPSON: Sheriff Phillip Thompson.

3 MR. COCKRILL: Buck Cockrill.

4 MS. AMICK: Loraine Amick.

5 MR. McLEOD: Rick McLeod.

6 MS. STALLWORTH: Fayette Stallworth.

7 MR. JENKINS: Bobby Jenkins.

8 MR. PETTY: Wade Petty.

9 THE COURT: All right, if you would, ladies and
10 gentlemen, go on back to the jury room. Well, tell you
11 what. You step aside. Bailiffs, y'all come around. These
12 are the people going to have your charge while you're here
13 in the courthouse. Give me the officers who are going to
14 be there, too, with the sheriff's department. If you
15 would, just I'm going to go from my right to left. Say
16 your name for me loud, please.

17 MR. BREEN: Mike Breen.

18 MS. BELL: Loranne Bell.

19 MS. SARVIS: Deanna Sarvis.

20 MR. HYMAN: Douglas Hyman.

21 MR. JAMES: Brooks D. James.

22 MR. DEAS: Cesear Deas.

23 MR. HAYES: Tony Hayes.

24 MR. PARMELEY: Oliver Parmeley.

25 THE COURT: One more. Are you going to have any

1 contact with the jury?

2 CLERK OF COURT: She will be in at times, which I
3 swore her in Monday under this same oath.

4 THE COURT: Was I here when you did that?

5 CLERK OF COURT: It was here --

6 THE COURT: That's right. We did Monday.

7 MR. BUTLER: Paul Butler.

8 THE COURT: All right. If you would, these are the --
9 any contact you have with any jurors while they're in the
10 courtroom, we're going to get you sworn also.

11 Go ahead.

12 (WHEREUPON, THE ABOVE-MENTIONED OFFICERS AND BAILIFFS
13 ARE SWORN.)

14 THE COURT: All right, all right, at this time then
15 jurors, if you would, Mr. McLeod, once they get -- you're
16 in charge to take care of them. And just try your best,
17 Sheriff, to have them back around 3:00. If it's a little
18 bit later, we'll understand. If y'all would, please follow
19 Mr. McLeod there and the bailiffs.

20 (THE JURY EXITS AT 12:58 P.M.)

21 THE COURT: Okay, now, let's go and have some lunch
22 and those type of things, and we will -- I'll be in the
23 office. I'm not going, so I'll be there when we are ready
24 to get started no earlier than 3:00. They may be a little
25 bit later than that.

1 As far as any other matters, I don't recall you got
2 anything else to discuss, and we should be ready with
3 opening statements them somewhere between 3 and 3:30. All
4 right, see y'all later.

5 Sheriff, and if you're gone, Mr. Wilson, you remember
6 you talked to me about the -- do you have someone appointed
7 that's going to help him out there?

8 SHERIFF THOMPSON: As far as? I'm sorry.

9 MR. WILSON: His doctor is here.

10 THE COURT: If y'all need me in regard, just let me
11 know. I'm going to step on back.

12 (OFF THE RECORD.)

13 (911 TAPE MARKED AS STATE'S EXHIBIT NUMBER 1 FOR
14 IDENTIFICATION.)

15 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
16 2, 3, 4, 5, 6, 7, 8, 9, 10 FOR IDENTIFICATION.)

17 (DIAGRAM MARKED AS STATE'S EXHIBIT NUMBER 11 FOR
18 IDENTIFICATION.)

19 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
20 12, 13 FOR IDENTIFICATION.)

21 (HAT MARKED AS STATE'S EXHIBIT NUMBER 14 FOR
22 IDENTIFICATION.)

23 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
24 15, 16 FOR IDENTIFICATION.)

25 (DOOR JAM/FACEPLATE MARKED AS STATE'S EXHIBIT NUMBER

1 17 FOR IDENTIFICATION.)

2 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
3 18, 19, 20 FOR IDENTIFICATION.)

4 DNA SWAB (DNA SWAB MARKED AS STATE'S EXHIBIT NUMBER
5 21 FOR IDENTIFICATION.)

6 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
7 22, 23, 24 FOR IDENTIFICATION.)

8 (BROKEN TELEPHONE MARKED AS STATE'S EXHIBIT NUMBER 25
9 FOR IDENTIFICATION.)

10 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
11 26, 27 FOR IDENTIFICATION.)

12 (CAN OF MACE MARKED AS STATE'S EXHIBIT NUMBER 28 FOR
13 IDENTIFICATION.)

14 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
15 29, 30, 31, 32, 33 FOR IDENTIFICATION.)

16 (PROJECTILE MARKED AS STATE'S EXHIBIT NUMBER 34 FOR
17 IDENTIFICATION.)

18 (TRANSCRIPT OF 911 CALL MARKED AS STATE'S EXHIBIT
19 NUMBER 35 FOR IDENTIFICATION.)

20 (PISTOL WITH CLIP MARKED AS STATE'S EXHIBIT NUMBER 36
21 FOR IDENTIFICATION.)

22 (FIVE CARTRIDGES MARKED AS STATE'S EXHIBIT NUMBER 36-A
23 FOR IDENTIFICATION.)

24 (EX PARTE IN-CHAMBERS HEARING.)

25 THE COURT: Now, officers, what I want to do is this.

1 I'm going to have a, I'm going to have a short hearing and
2 if you hear any -- me make a noise, whatever, just come on
3 in. If not, I need you all to step outside for a minute,
4 and we're fine here. If you would, just step outside there
5 at the desk.

6 (OFFICERS EXIT CHAMBERS.)

7 THE COURT: Mr. Winkler, have a seat. Have a seat.
8 No, you have a seat over there. Mr. Wilson, you have a
9 seat over here. Well, Mr. Winkler, you'd better come over
10 here.

11 MR. WILSON: Thank you, sir.

12 THE COURT: Now, the purpose of this hearing is that
13 Mr. Wilson came in and said that, that he was about to make
14 the opening statement. And he was concerned that if he
15 made the opening statement the way that he had discussed
16 and his client's desired him to, that he would be binding
17 himself to calling his client as, as a witness in, in the
18 trial, during the trial. And I want to make sure that Mr.
19 Winkler was aware of that. And that if he still wanted Mr.
20 Wilson to do it, that Mr. Winkler was aware that, according
21 to what Mr. Wilson tells me, that it could be detrimental
22 to his case unless -- according to what Mr. Wilson said --
23 he testifies and that, therefore, he now has concerns to do
24 it.

25 So, in a sort of summary, Mr. Wilson, tell me what it

1 is, sir.

2 MR. WILSON: Judge, essentially what it is, we have a
3 disagreement. He wants me to put into this, into, in my
4 opening statement, he wants me to ---

5 THE COURT: One second, Mr. Wilson.

6 Let the record reflect that in this room at this time
7 is Elizabeth Harris, the court reporter; Mr. Rathbun, his
8 counsel; Mr. Wilson, his counsel; Mr. Winkler; my law
9 clerk, Shipp Daniel; and myself and no one else. Officers
10 are outside the room, so no one else is here. But under
11 penalty of contempt of court, I'm letting Ms. Harris and
12 Mr. Daniel know they're not to discuss anything, anything
13 that goes on outside this room. The attorneys, two
14 attorneys I don't have to bond them -- bind them.

15 All right. Yes, sir, Mr. Wilson, sir.

16 MR. WILSON: Judge, the, we've been discussing this
17 now for some time, but what he wants me to do is in my
18 opening statement to make reference to the fact that
19 another individual actually committed this crime, and that
20 individual is named Roger Grainger, who is an ex-husband of
21 the victim. And that he wants me to tell the jury that in
22 my opening statement and that we will present evidence of
23 that. And that evidence obviously would come from him and,
24 and from no other source that I'm aware of at this time.
25 So, I have some concerns about doing it. Ethically I have

1 some concerns about it, and I personally am reluctant to do
2 it.

3 In addition to the ethical concerns I have is I think
4 that strategically it's, it's a nightmare and a disaster
5 for us if we do it. But having said that, you know, I now
6 am saying that if he tells me that he wants to take the
7 stand or that he's going to take the stand or he's going to
8 testify to these things, then I will ---

9 THE COURT: Well, aren't you really saying that you
10 just wanting to make sure that the record reflects that Mr.
11 Winkler's aware that if you mention that you -- that
12 evidence, you plan to introduce evidence that would tend to
13 show this individual did the crime, that you're concerned
14 that it would almost -- it would -- that you're concerned
15 if Mr. Winkler doesn't take the stand, you will have no
16 evidence in that regard?

17 MR. WILSON: That is correct.

18 THE COURT: And, and so you're concerned with that,
19 and you don't want him to later on be concerned that now
20 he's got to testify and you, you feel that may require it.
21 Now, I'm not saying it will or will not. I don't know
22 anything about the case.

23 And, Mr. Winkler, I want to let you know, sir, that,
24 that if you do understand that and if that's what you
25 wanted him to do, then that doesn't mean you -- that the

1 law is going to require you to testify. You're never
2 required to testify, and I will go over your rights for
3 that later on. It's just his thoughts, what Mr. Wilson I
4 assume is saying is his thoughts is that if you -- if he
5 does say it in opening statement, then he feels that it's
6 going to require some evidence to be introduced in that
7 regard. And right now he's saying that that would probably
8 be you. So, I don't know. I'm not making a judgment on
9 that. I have no idea what the evidence is. But I'll leave
10 it ---

11 All you want, Mr. Wilson, is on the record ---

12 MR. WILSON: Yes, sir.

13 THE COURT: --- that he wants you to say that in
14 opening statement?

15 MR. WILSON: Yes, sir.

16 THE COURT: Realizing that it may, it may end up with
17 your advice to him take the stand, which it's still his
18 choice.

19 MR. WILSON: Yes, sir. I mean, that is true. And,
20 and in addition to that, I'm saying my ---

21 THE COURT: And I don't want to discuss those issues,
22 Mr. Winkler. I really don't want to discuss ---

23 DEFENDANT: I don't, I don't ---

24 THE COURT: --- whether that's good or bad to bring
25 that up. It's just, I just want to make sure it's

1 acknowledged that that's your ---

2 DEFENDANT: Right.

3 THE COURT: Decision.

4 DEFENDANT: I'm not going to discuss the issue. All
5 I'm saying is he just told me that if he brings it up in
6 opening statement, then I have to take the stand.

7 THE COURT: Well, sir, when he says things like
8 that, I assume he means that in his view, that in his view
9 that ---

10 I assume that's what you mean, your view.

11 MR. WILSON: Judge.

12 THE COURT: There's no law, and I think he's told you
13 no law require that.

14 MR. WILSON: Judge, the, the, thing is that ---

15 DEFENDANT: I didn't say that there's no law.

16 MR. WILSON: Let me, let me clear it up. What I -- my
17 concern is this. There is no other source that this
18 information is going to come in in. If I say it in my
19 opening statement, the only time it will be said if this
20 defendant does not testify is my saying it. I think it's
21 -- I have a problem going on record saying something and
22 interjecting it into the trial of this case when I know ---

23 THE COURT: Well, remember whatever you say is not
24 evidence. You're giving an opening statement.

25 MR. WILSON: Yes, sir.

1 THE COURT: And I don't want to get involved in
2 y'all's decisions there. I'm just providing the means for
3 y'all to have it on the record that we know that Mr.
4 Winkler has made the choice that you bring that issue up
5 during your opening statement, and that's all.

6 And you've told him that, and what you're telling me,
7 Mr. Wilson is you've told him that if you do bring it up,
8 you feel that will, that will, in your view, be that he
9 should take the stand.

10 And you understand, as he does, there's no law ever
11 requiring anybody to take the stand.

12 MR. WILSON: Absolutely not.

13 DEFENDANT: Okay, so there's no defense. I've asked
14 him. He, he said that they're going to -- he said we're
15 going to punch holes in everything.

16 THE COURT: No, sir. Sir, that's all I want to hear.

17 DEFENDANT: But ---

18 THE COURT: I don't want to hear anything else.
19 You've made that. It's on the record.

20 And, Mr. Wilson, if you wish to ---

21 DEFENDANT: Okay, so if I could, can I make the
22 opening statement then?

23 THE COURT: No, sir. Mr. Wilson is making your
24 opening, your lawyer. Sir, if you wish to have another
25 hearing about representing yourself, then we can discuss

1 that, doing those things. But y'all go further, discuss
2 it. But it's on the record that, that Mr. Wilson is
3 concerned about that, but if that's what you want him to
4 say, it's what you want him to say. Now, whether he says
5 it or not, y'all talk about that further. Thank y'all very
6 much.

7 (END OF EX PARTE IN-CHAMBERS HEARING.)

8 THE COURT: Be seated everyone. Everyone ready to
9 proceed?

10 MR. HEMBREE: State's ready, Your Honor.

11 MR. WILSON: Defense is ready Your Honor.

12 THE COURT: Now, ladies and gentlemen of the media
13 back there, as I said earlier, no one is to move around.
14 The gentleman there with the still photography, let me see
15 if I can hear the clicking too much because I don't want to
16 hear clicking. You said I would not hear it from there.
17 Well, you can hear it. If it gets to be such that I notice
18 the jurors -- don't move from where you are -- but if I get
19 such that here the jurors noticing, looking around, then at
20 that point in time if I do that to you, that means no more
21 until I say again.

22 State to have any minors testifying?

23 MR. HEMBREE: Yes, Your Honor.

24 THE COURT: No photographs of the minors. Do you
25 understand? No images at all of minors. My foreperson is

1 going to be Christopher Trout.

2 We will stay in session -- I'm not sure. I'm not
3 going to limit your opening statements obviously. You all
4 have a right to give opening statements to the extent you
5 wish in a case of this nature, so I'm not going to limit
6 you. However, I am not going to keep the jury more than
7 about an hour and fifteen or twenty minutes. So, if you
8 are making an opening statement and you look at that clock,
9 it's getting close to 5:20, you either need to get to a
10 breaking point and may take a break, and then we'll come
11 back and finish it up or see if you want to wind up. It's
12 up to you. I'm not forcing anybody in any way in that
13 regard. So about 5:20 is when we're going to break again,
14 5:25.

15 MR. HEMBREE: Your Honor.

16 THE COURT: Yes.

17 MR. HEMBREE: Just for purposes of scheduling, we're
18 going to break at 5:20. Will we be reconvening again
19 today?

20 THE COURT: Yes, we'll come back about an hour after
21 that.

22 MR. HEMBREE: Very good. Thank you.

23 THE COURT: All right, bring the jurors in, please.

24 Everyone in the courtroom and the audience here,
25 remain seated while the jury is coming in. I don't want

1 there to be any misunderstanding about that. Cut it off.
2 Check, better go ahead and check it now. No cell phones.
3 Everyone has checked the phones are off?

4 (THE JURY ENTERS AT 4:09 P.M.)

5 THE COURT: If you would, Ms. Staton, Mr. Velez, Mr.
6 Wallingford and Ms. Chumas, if y'all would be the last ones
7 to come in. Chumas, Staton, Velez and Wallingford, and Mr.
8 Stout.

9 JUROR: Trout.

10 THE COURT: Trout, rather. Ma'am, if you would move
11 down one. Just move down one. Move down one. Mr. Trout
12 come on down here, if you would. Way down here. It's
13 Trout. You sit in front, Mr. Trout, sorry. Mr. Trout you
14 sit on the back. You get to sit on the back there. All
15 right, those sitting on those back two seats, I've got Mr.
16 Wallingford and Ms. Chumas, right. And the front two
17 seats, there I've got Mr. Velez and Ms. Staton. All right.
18 I've got you, Mr. Trout right there. All right. Now, the
19 four of you, please always sit in those seats. Now, can
20 you see okay where you are, sir?

21 JUROR: Yes, sir.

22 THE COURT: Now if you can't, you let me know and I'll
23 adjust it, but let me know, say, when witnesses come up.
24 The four of you remain seated there whenever you come out.
25 Mr. Trout, you are always sitting there. So, you come on

1 in and sit there. The four of you should let everyone else
2 be seated before y'all come in, okay? All right, the rest
3 of you can switch around any way you wish during the course
4 of the trial.

5 Now, we're about ready to begin. The first thing I'm
6 going to do, ladies and gentlemen, is to swear you as a
7 jury. I've already sworn you as a general jury. I'm about
8 to swear you now as a jury in this particular case. Before
9 I start to do that, though, if anyone, anyone that we
10 haven't talked about already, discussed this case with
11 anyone at all during lunch, today at all? Did anyone that
12 I haven't already talked to discuss this case after you
13 left the courtroom last night and before you came here
14 today?

15 (THERE IS NO RESPONSE BY THE JURY.)

16 THE COURT: All right. If you would, ladies and
17 gentlemen, what we're going to do now is swear you in as a
18 jury, and I'm going to give you a bit of instructions.

19 All right, if you would, Madame Clerk.

20 CLERK OF COURT: Would you please stand and raise your
21 right hands?

22 (WHEREUPON, THE JURY IS SWORN.)

23 THE COURT: Now, ladies and gentlemen, some of the
24 things I'm going to be telling you, I discussed this with
25 you as you came up individually over the last three days as

1 jurors. But let me go over them again with you.

2 First of all, the fact that the defendant, Mr. Louis
3 Winkler, is charged with three crimes that were read to you
4 on Monday -- murder, burglary in the first degree, and
5 assault and battery of a high and aggravated nature; I read
6 to you some of the details of the allegations -- the fact
7 that he is charged with these crimes is not evidence at all
8 that he's committed any crime whatsoever. As I told you
9 earlier, the burden's upon the state to prove guilt beyond
10 any reasonable doubt. The burden is not upon the defendant
11 to prove himself innocent. The defendant is presumed
12 innocent and that presumption of innocence stays with the
13 person throughout the proceeding, throughout the trial.
14 The burden is upon the state to prove guilt beyond a
15 reasonable doubt.

16 I told you all that this would be maybe a two-part
17 trial. In law we use the term bifurcated, meaning it could
18 be a two-part trial. By me saying that doesn't mean that
19 it will be a two-part trial, but it has the potential, as I
20 talked with each of you individually.

21 First, we have a trial today in front of the jury
22 during the next day or so or few days to determine whether
23 the state has proven guilt beyond a reasonable doubt of the
24 charges. That phase of the trial is about to begin
25 shortly. At the conclusion of that trial, should you the

1 jury determine the state's proven guilt beyond a reasonable
2 doubt and find the defendant guilty of the crime of murder
3 -- and I am not suggesting or recommending or saying
4 anything about that. I just have to mention it to you to
5 give you the full picture of the potential. Then there
6 will be a second proceeding.

7 The second proceeding, as I told each of you, is a
8 sentencing proceeding at which extenuating, aggravating,
9 and mitigating circumstances may be introduced into
10 evidence and considered by you the jury. Should such a
11 proceeding be necessary, I will discuss that with you at a
12 later time as far as my instructions on the law of that
13 proceeding.

14 Please derive no inference from what I just told you
15 as to what your verdict should be at all. The purpose of
16 my telling you this is to emphasize to you that during the
17 proceeding we're about to begin, you should not consider
18 punishment at all. Your only matter to be considered at
19 this time in the course of this proceeding is whether the
20 state has proven guilt beyond a reasonable doubt.

21 Now, ladies and gentlemen, as I said in this case, in
22 this proceeding, the defendant is presumed innocent. The
23 defendant's pled not guilty to these charges, and these
24 charges are brought forth to you on a piece of paper called
25 an indictment. And you as jurors, your job is to determine

1 the facts, determine the facts that are proven beyond a
2 reasonable doubt.

3 Under our system of criminal justice in South
4 Carolina, and really in the entire nation, you the jury,
5 you are the sole judges of the facts. I have no authority
6 to get involved with that. It's especially important that
7 you perform your duty in this regard diligently and
8 conscientiously because ordinarily there are no means of
9 correcting an erroneous determination of facts by a jury.

10 I also emphasize to you, ladies and gentlemen, that I
11 am the instructor of the law. You must accept the law as I
12 give it to you. I've given you preliminary matters at this
13 time but, however, I will be giving you at a later time
14 more instructions on the law, and you are required to
15 follow that. As I mentioned to you when you were qualified
16 individually, I asked each of you would you follow the law
17 as I instruct because you're bound to follow the law as I
18 instruct.

19 Now, as far as your determination of the facts, there
20 will be witnesses coming to this stand, taking an oath and
21 answering questions for the attorneys that becomes evidence
22 you can consider. There may be exhibits, items, objects,
23 photographs, documents, things of that nature that may come
24 into play. If so, you may consider that.

25 When you make decisions in your everyday life, you

1 gather information together. Then you make a decision.

2 Well, in a court of law, we don't use that word
3 information. We use the word evidence but it really means
4 the same basically. It's information given to you to make
5 a decision, but you won't have to gather it. It's going to
6 be presented to you. Your job is to pay attention, to
7 observe, to listen so that when you go back into the jury
8 room and you make your decision regarding guilt or
9 innocence, you would have done it by being informed and
10 observing and paying attention to the trial.

11 This is a very important case to the State of South
12 Carolina. This is a very important case to the defendant.
13 So, ladies and gentlemen, under your duty, under your oath
14 listen, pay attention, and observe. Until this case is
15 submitted to you, do not discuss it among yourselves at
16 all. And when I say submitted to you, I mean by me after
17 the conclusion of all the evidence in the trial and my
18 instruction on the law. Then I will let you know you may
19 go back and deliberate and discuss it, but until then do
20 not discuss it among yourselves at all.

21 It's important you keep an open mind from this entire
22 process. Draw no conclusions and make no conclusions until
23 you've heard everything, including my instructions on the
24 law.

25 During the course of the trial, attorneys will be very

1 much involved. They'll be asking the questions of the
2 witnesses. They will be introducing exhibits, but please,
3 what the attorneys say is not evidence. They are permitted
4 to ask the questions and they're permitted to obviously
5 from those questions discern the answers, so you must
6 necessarily consider the question with hearing the answer.
7 But what the attorneys say is, is not evidence.

8 Also, they don't tell you the law. They may give you
9 their impression of what the law is, but I'm the instructor
10 of the law. I'm the instructor of the law. So, they may
11 discuss the law with you, but if I say something different
12 later on, please accept the law as I give it to you.

13 Mr. Trout, I've asked you to be foreperson and that
14 does not give you any more authority than any other juror.
15 You're there as an administrative spokesperson for the
16 jury. There may be times when you all are in the jury room
17 and you need to write out something like, Judge, can we go
18 outside for a little while because y'all are keeping us
19 back here for a long time. Something like that. You can
20 write a little note out. There might be other times that
21 you need to communicate to me. You write me a little note
22 and if you would, please write it down, though, and you'll
23 be the person to do that.

24 In addition, once the case is submitted to you for
25 deliberation, for the jury, you will be the one to begin

1 the deliberations. And in this phase of the matter, you
2 will be the one to sign verdict form. So if you would,
3 please pay attention, please listen, and you always sit
4 there.

5 My alternates, you are there just in case we need you.
6 We could very well lose a juror during the course of the
7 trial. Who knows? It happens often, so I selected four
8 alternates. Please listen; please pay attention. You
9 could very well be on this trial. If you're not needed,
10 then at some point in time I may dismiss you, but please
11 pay attention and be ready because you may very well be a
12 part of this trial.

13 If exhibits are passed around, everyone pass it
14 around, including the alternates, to look at the exhibits.

15 There are some media in this courtroom. That should
16 not in any way distract you. It has nothing to do with
17 this trial or your consideration of this trial at all.
18 Please, if something happens, don't let it distract you.
19 Pay attention to the witnesses. Pay attention to the
20 evidence. I'll do my best to keep distractions down. Keep
21 them down. Please understand you are not on any type of
22 media situation, no photographs of you or anything else, so
23 you don't have to be concerned with that.

24 So, we're ready now to begin, and -- so, please, I
25 think everybody's looking like they want to pay attention.

1 That's good. I think we're ready to begin.

2 Any comments or objections to the opening statement to
3 the jury from the state?

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

5 THE COURT: From the defense?

6 MR. WILSON: None from defense, Your Honor.

7 THE COURT: All right. At this time what we'll have
8 is we will have opening statements from each side where
9 they're going to tell you an overview of what they feel the
10 case is going to show. Then we'll have the presentation of
11 evidence. After the presentation of evidence, we'll then
12 have closing statements from both sides, and then you will
13 have my instructions on the law. We'll begin now with the
14 first part.

15 Opening statement, Mr. Hembree, state.

16 MR. HEMBREE: Thank you, Your Honor. May it please
17 the court?

18 THE COURT: Yes, sir.

19 MR. HEMBREE: Defense counsel. It's ironic that the
20 beginning of this case really springs out of hope and a
21 promise. Hope for change and promise for the future. This
22 hope, this promise was held by someone who is not in this
23 courtroom today, Becky Winkler.

24 This case really begins in September of 2005 when
25 Becky Winkler, as the evidence will show, decided it was

1 time to end her marriage of less than two years with the
2 defendant, Louis Winkler. She and her fourteen year old
3 son, J [REDACTED] G [REDACTED], left Mr. Winkler's home, moved out,
4 moved in with her older daughter, Haley, only a few miles
5 away. Haley lived in an apartment in Bay Tree. Her mom
6 was in a bad spot, and she was more than glad to take her
7 mom and her younger brother in.

8 Time passes. The process begins. Hope for a change.
9 Promise for the future until March 6, 2006, about 5:30,
10 5:45 in the evening, Louis Winkler crushed that hope. He
11 cut short that promise.

12 Ladies and gentlemen, you will hear in the state's
13 case that on March 6, 2006, sometime around 5:30, 5:45,
14 Louis Winkler armed himself with a .380 semiautomatic
15 handgun, chrome, chrome Bryco .380 semiautomatic. He
16 traveled to Haley Grainger, Becky Winkler, and J [REDACTED]
17 G [REDACTED]'s home at Bay Tree apartments. He arrived there
18 and made a forced entry, slamming into the door that was
19 locked at least twice, splintering the door frame and
20 leaving the hardware from the door on the floor.

21 Mick went straight to J [REDACTED]. J [REDACTED] G [REDACTED] was
22 sitting at a bar that was in the kitchen eating his dinner
23 on a bar stool, talking on the phone to his friend. Louis
24 Winkler went straight over to him. Said a few things.
25 Seemed out of control. He struck fourteen year old

1 J [REDACTED] G [REDACTED] in the face, knocking him to the floor.

2 He then traversed a very few feet where Becky Grainger
3 -- excuse me, Becky Winkler was seated on a couch watching
4 television. As she stood up, no words were exchanged.
5 Louis Winkler took that Bryco semiautomatic handgun, held
6 it a short distance from the left cheek of Becky Winkler
7 and fired once, killing her instantly, crushing her hopes.
8 Cutting short her promise of the future.

9 He then traversed back a few feet. Fourteen year old
10 J [REDACTED] G [REDACTED], who is still on the floor where Louis
11 Winkler had knocked him, the telephone broken. As he lay
12 on the floor literally begging for his life, you'll hear
13 from the witness stand that Louis Winkler pointed the gun
14 at fourteen year old J [REDACTED] G [REDACTED]. He begged for his
15 life. Thought about it. And for whatever reason, ladies
16 and gentlemen, he walked out the door. He fled the scene.

17 J [REDACTED] G [REDACTED] immediately located his cell phone.
18 He called the police. You will hear from the crime scene
19 specialist, the officers that responded, the evidence that
20 they found at the scene.

21 Now, Louis Winkler, he eluded police. Bay Tree is
22 close to a couple of golf courses and a wooded area.
23 Another golf course called Eagle's Nest was close by, right
24 next door, and Louis Winkler was able to elude police,
25 putting them on a widespread, long term, really huge

1 manhunt for the next two weeks. However, a citizen at one
2 of the golf courses spotted a suspicious man. You'll hear
3 from folks at the golf course. They knew that there was a
4 manhunt going on. There had been a lot of interest in
5 particular in that area by law enforcement, and law
6 enforcement was contacted.

7 Louis Winkler was arrested in the woods near Eagle's
8 Nest Golf Course where he appeared to have been for two
9 weeks. Recovered from his person, you will learn, was a
10 chrome semiautomatic .380 Bryco handgun, still in his
11 pocket fully loaded. Also in his pocket were eighteen
12 additional rounds of ammunition.

13 Ladies and gentlemen, the crime Scene folks did a nice
14 job in this case. They recovered the fatal bullet. It
15 passed through Becky Winkler's face and killed her
16 instantly and lodged in the wall in the apartment. Crime
17 Scene recovered that fired projectile. You will hear from
18 an expert at SLED, a firearms expert that compared test
19 firings from the gun recovered from Louis Winkler's pocket
20 two weeks later against the bullet that killed Becky
21 Winkler. He will testify that the bullet was fired from
22 that gun. The bullet had crushed her hope for change. The
23 bullet had cut short the promise of the future.

24 Let me talk with you a little bit about what this case
25 is not about, at least this part of the case. The

1 presentation that you will hear over the next few days, the
2 question before you is not about penalty. It's not
3 appropriate for you to consider penalty at this stage of
4 proceedings.

5 This, as you know, as Judge Lockemy has explained as
6 you were questioned during the *voir dire* process, this is
7 the guilt phase of the case. It is -- the sole question
8 before you in this phase of the case: is Louis Winkler
9 responsible for the murder, burglary, assault and battery
10 of a high and aggravated nature? The murder of Becky
11 Winkler, the burglary of Becky Winkler's home, the assault
12 and battery of a high and aggravated nature of J [REDACTED]
13 G [REDACTED], her fourteen year old son, those are the three
14 charges that are before you. The only question that you
15 need to answer in those three charges: is Louis Winkler
16 responsible? Is he guilty beyond a reasonable doubt of
17 those charges?

18 So, I ask you to, at this stage, focus on that. Do
19 not be concerned about the penalty. That may or may not
20 come at a different stage. It's very important that you
21 focus only on the guilt at this time.

22 Along those lines the criminal, criminal charges are
23 much like -- you almost think of it like a checklist, that
24 they have elements. Every criminal charge, every statute
25 has certain elements and the state has to prove each

1 element beyond a reasonable doubt. And as you hear the
2 evidence, as you listen to it, see it, maybe just touch it
3 in some cases, as you consider that evidence, you'll
4 basically consider it against those statutes, almost like a
5 checklist.

6 Murder, the unlawful killing of another with malice
7 aforethought. Those are the elements. There are basically
8 three. The unlawful killing of another. As the evidence
9 is presented, you can kind of go through these and sort of
10 check them off. The unlawful killing of another with
11 malice, malice being ill will, hatred, a wicked heart. A
12 lot of ways to describe it, but malice aforethought.

13 Aforethought implies some premeditation. I'm going to
14 talk to you very quickly about that although it will be for
15 you determine what level of premeditation may have existed
16 based on the evidence, but the law says that criminal
17 intent or malice can be formed the instant before the fatal
18 shot is fired. I say that to you only because some people,
19 when they hear some sort of aforethought or premeditation,
20 think that's some sort of plot and plan in the weeks or
21 days in the making sort of a thing. That's not required by
22 the murder statute. That aforethought, that malice, that
23 aforethought can be that quick. That evil intent can be
24 formed, as I say, the instant before the fatal blow is
25 struck.

1 The second crime before you is burglary in the first
2 degree. That's the unlawful entering of a dwelling,
3 entering of a dwelling without the consent of the owner,
4 unlawful entry of a dwelling without the consent of the
5 owner and it -- with additional circumstance, it makes it
6 somewhat aggravated. If you entered a dwelling, and I
7 brought a copy of the indictment with me because we alleged
8 several different aggravating circumstances in the burglary
9 statute. Don't confuse these with aggravating
10 circumstances in the penalty phase.

11 This would be entering a dwelling without consent with
12 the intent to commit a crime within that dwelling while
13 armed with a deadly weapon; or physical injury to a person
14 occurred; or the use of a dangerous instrumentality; or
15 display a handgun. Any one of those, if any one of those
16 is proven, that aggravating circumstance has been proved.
17 We would have met the elements for burglary in the first
18 degree. So, again, entry into dwelling without consent,
19 intent to commit a crime, with one of these aggravating
20 factors present.

21 And third, assault and battery of a high and
22 aggravated nature. Assault and battery is a violent
23 touching with some circumstance of aggravation. There are
24 many, many, circumstances of aggravation that are
25 recognized in the law in South Carolina. We allege two in

1 this case. One, that the assault and battery occurred
2 during the commission of a felony, that being a burglary.
3 The other aggravating circumstance that we alleged is that
4 the assault and battery occurred with great disparity in
5 size and age between the defendant and victim. In this
6 case, Louis Winkler being a forty-five year old grown man
7 striking a fourteen year old teenage boy.

8 Those are the crimes that you will be considering.
9 Those are the elements of the crime that you will be
10 considering. So if I ask you, as you go through this
11 process, just try to keep those in your mind. Judge
12 Lockemy will charge you on those elements again at the
13 conclusion of the guilt phase, so you will have another
14 opportunity to hear those at the conclusion of the case.

15 And finally, in truth, everything I have said to you
16 so far is sort of -- and I'm starting to sound like
17 legalese, kind of got blended in with it. I want you to
18 listen carefully to these three things because if I can
19 communicate these clearly to you, I will have been
20 successful up here today, and this is what I want from you.
21 This is what I want from you throughout this trial and
22 through this phase and it will be in the second phase, too,
23 if we reach that.

24 First and foremost, listen carefully to all the
25 evidence that's presented. Not just the evidence for the

1 state. If the defense chooses to present evidence, they
2 don't have to, but if they choose to, listen carefully at
3 everything. Most of the evidence in this case will be
4 testimonial evidence. It'll come out of the mouths of
5 witnesses and you may only get to hear it one time. There
6 may be essentially an important fact that comes out only
7 once, and I urge you to listen very carefully.

8 The second thing I ask you to do, and maybe it is the
9 most important thing I will ask you to do, is to be fair
10 and keep an open mind throughout this process. It is --
11 our first goal is to achieve a fair trial because if we
12 fail to do that, then anything else we do doesn't matter.
13 It is essential that we have a fair trial and to do that,
14 you have to keep an open mind.

15 And, quite frankly, I get to go first. The state gets
16 to present its evidence first, and I am going to urge you
17 to resist the temptation to listen to our side of the story
18 and adopt it. Don't do that. Listen to our side. Listen
19 to our side of this case; listen carefully, but keep an
20 open mind. Be fair until all evidence is in and the judge
21 has charged you on the law, and then and only then can you
22 begin to really make up your mind, firmly make up your mind
23 about this case.

24 The last thing I ask you to do is really to use your
25 good judgment, use your common sense in this process. You

1 know, you've been going through this jury selection process
2 with us now for several days, and it's a very strange
3 experience for you, no doubt. You know, you don't get an
4 owner's manual when you start on a jury. You didn't get a
5 book when you came in that says, okay, do this this way,
6 then everything's going to be fine. It doesn't work that
7 way. We don't want just one kind of juror. We're looking
8 for a good cross-section of the community. Looking for all
9 kinds of folks to come in here that have life experience,
10 that have good judgment. That's what we're looking for:
11 folks that care about their community, that have good
12 judgment, that have good common sense, that can listen to
13 evidence, that can consider the facts, and render a verdict
14 that speaks the truth, render a verdict that speaks
15 justice. If you will do those three things in the course
16 of this trial, no matter what happens, we will all have
17 been successful.

18 Thank you for your kind attention. I look forward to
19 continuing to work with you throughout the course of the
20 week.

21 THE COURT: Thank you, Mr. Hembree.

22 And now at this time we will have the opening
23 statement from the defense. Mr. Wilson.

24 MR. WILSON: Mr. Foreman, ladies and gentlemen. First
25 let me take this opportunity to thank you for your being

1 here and for your service. I know you're here at great
2 inconvenience to yourselves and to your families, but we
3 appreciate it. But beyond that, this process would not
4 work without you and without your willingness to
5 participate. It is vital to our system of government and
6 our system of laws as we know it.

7 I know that there are other types of systems of
8 judicial process in the world, but in my mind this probably
9 the best that there is, the jury system. And the reason
10 that the jury system works so well is because it embodies
11 the hearts and minds of the people of the community.
12 People that we live with, the people that we work with, the
13 people that we share our lives with, and you have the
14 opportunity to sit and determine whether or not a fellow
15 citizen is guilty or not guilty. What fairer way, what
16 fairer process could there possibly be?

17 And that is all that we are asking of you this day is
18 that you bring that civic mindedness with you to this
19 service so that you can listen to the evidence, to the
20 testimony, and to the witnesses who are going to take this
21 witness stand and are going to testify in the trial of this
22 case. Nobody, not the State of South Carolina, not this
23 defendant has any right to ask any more of you than that.

24 Having said that, one of the things I want to raise
25 with you right away. At the very outset of this process

1 and those of you who went through this process, juror by
2 juror and took the stand, His Honor said to you that this
3 defendant is presumed innocent. That he is not guilty as
4 he sits here in this court on this day, and that you accept
5 that as a matter of law as we sit here because if you
6 cannot and if you do not, then the whole process fails.

7 I tell you now that we will produce evidence in this
8 case. We will produce testimony in this case which will
9 contradict things that the state alleges. We have no
10 burden. This defendant, as he sits here, has no burden of
11 proof. He does not have to testify; he does not have to
12 offer witnesses. That is not his responsibility, but I
13 tell you now that we will because he is not guilty.

14 What I want you to do, what I ask you to do, what I
15 implore you to do, what I urge you to do as we go through
16 this process is listen to these witnesses who are going to
17 testify. In the law we call it credibility. Just a big
18 word for believability. What you're going to believe and
19 who you're going to believe. What reason would a witness
20 have to lie? What reason would that witness have to not
21 tell the truth? Ask yourself that when that witness is
22 testifying. What motivation would that witness have? Is
23 there some reason that the witness might be less than
24 candid with you or honest with you, because sometimes what
25 a witness doesn't say is just as important as what he does

1 say.

2 The other thing that I caution you or remind you about
3 is that the burden of proof in this case is not on the
4 defendant. It is not on the defendant. When the State of
5 South Carolina elects to charge a defendant, any defendant,
6 let alone in a capital murder case, when they make that
7 election, they accept the responsibility to bring to you
8 evidence. Not just any evidence, but evidence beyond a
9 reasonable doubt which can convince you of the guilt of
10 that person. Not some other person in conjunction with
11 this person, but that person on that day committed that
12 crime.

13 There will be testimony in this case that there was
14 another individual present at the house on the day that
15 Rebekah Grainger died. Somebody other than her son.
16 Somebody other than Louis Michael Winkler. There will be
17 testimony. There will be testimony that the person had a
18 weapon. There will be testimony that there was a fight and
19 a struggle, and there will be testimony that as a result of
20 that fight and struggle which ensued between these
21 individuals this victim was shot and died. And that's the
22 rest of the story.

23 So often when we read the newspapers and we hear bits
24 and pieces on the Internet we say, oh, that must be how it
25 happened. Well, folks, this is Louis Michael Winkler's day

1 in court. This is the only time he has to tell his story
2 to this court. This is his day. He is entitled to come
3 and tell his version of what happened on that day.

4 Heretofore, it's been law enforcement's. Today they get to
5 choose who they're going to charge, when they're going to
6 charge him, how they're going to charge him. They get to
7 decide if you stay in jail, or when you're going to get
8 out, or if you're going to get out, or if you're going to
9 have bail. This is the first opportunity where the
10 defendant has the right to tell his version, his story of
11 what happened on that day. I ask you, I implore you, I
12 urge you: keep an open mind through this process.

13 One other thing I want you to do is listen when they
14 talk about the crime scene. I want you to pay very close
15 attention to the things that happen and that didn't happen
16 at the crime scene.

17 I want you to listen very closely to the 911 tape
18 because I think you'll find that very interesting. The
19 state is going to introduce a 911 tape, I submit to you,
20 and I want you to listen to it because I tell you that it's
21 unusual. But I want you to hear it, and I want you to hear
22 the tenor of it. There is a lot more to the story than
23 what you have been told.

24 Only thing that we ask of you at this time is that you
25 listen, that you keep an open mind, and that you hear all

1 of the testimony, all of the evidence before you make up
2 your mind. And once you have done that, and once His Honor
3 has charged you as to the law, and you render a verdict
4 that speaks the truth, nobody, not the State of South
5 Carolina and not this defendant, can have any reason to
6 complain about your verdict. Thank you.

7 THE COURT: Thank you, Mr. Wilson.

8 First witness for the state.

9 MR. HEMBREE: Thank you Your Honor. State calls Renee
10 Hardwick to the witness stand.

11 THE COURT: Come around, Ms. Hardwick, please.

12 SHARON RENEE HARDWICK, BEING DULY
13 SWORN, TESTIFIES AS FOLLOWS:

14 CLERK OF COURT: Please have a seat. Please state
15 your name and spell your last for the record.

16 WITNESS: Sharon Renee Hardwick, H-a-r-d-w-i-c-k.

17 THE COURT: Okay. Please, ma'am, if you would, make
18 sure you continue to speak in the microphone and that way
19 we can hear you, okay, ma'am?

20 WITNESS: Yes, sir.

21 THE COURT: You may have a seat.

22 MR. HEMBREE: Thank you, Your Honor.

23 DIRECT EXAMINATION BY MR. HEMBREE:

24 Q. Ms. Hardwick, who do you work for?

25 A. Horry County government, 911.

1 Q. 911, and what is that? What is the job
2 responsibilities for Horry County 911?

3 A. I'm deputy director over day-to-day operations. I'm
4 responsible for the record of the department and seeing
5 that equipment is in use and up-to-date and those things.

6 Q. And I think most folks know what 911 does, but just in
7 case, explain to the jury exactly what your daily
8 responsibilities are.

9 A. We're responsible for answering emergency calls on 911
10 from citizens, and we're also responsible for dispatching
11 police officers and ambulances and fire trucks to citizens
12 who are in need of emergency services for the county.

13 Q. Now, Ms. Hardwick, are you from time to time requested
14 by law enforcement to maintain certain 911 recordings?

15 A. Yes, sir.

16 Q. And were you called upon by law enforcement to do just
17 that in this case, *State vs. Louis Winkler*?

18 A. Yes, sir.

19 Q. Let me show you what's been marked as State's Exhibit
20 1 just for identification purposes and ask if you can
21 identify that for us.

22 A. It's a copy of the original tape of the 911 call that
23 we received on March 6th at [REDACTED] [REDACTED] on Bay Tree.

24 Q. Okay, and this was the telephone call from J [REDACTED]

25 G. [REDACTED]?

1 A. That's correct.

2 Q. And also, let me ask you to identify, if you will,
3 State's Exhibit Number 35 for identification, if you are
4 familiar with that?

5 A. Yes, this is the transcript of the call itself that
6 just put's it on paper in words what was said on the tape.

7 Q. Now, have you had a chance, an opportunity to review
8 this tape?

9 A. I have.

10 Q. And does it accurately reflect the 911 conversation
11 that took place back on March 6, 2006?

12 A. It does.

13 Q. Have you had a chance to review it against that
14 written transcript?

15 A. I have.

16 Q. And does that written transcript accurately reflect
17 the conversation that took place between J [REDACTED] Gr [REDACTED]
18 and the 911 operator on March, 6, 2006?

19 A. Yes.

20 MR. HEMBREE: Your Honor, we would now offer both
21 State's 1 and State's 35 into evidence. I understand ---

22 THE COURT: Mr. Wilson, any objection?

23 MR. HEMBREE: Your Honor, this is true -- Mr. Wilson
24 reminded me of this. We would offer State's 1 as an
25 exhibit, I believe without objection?

1 MR. WILSON: That's correct.

2 MR. HEMBREE: And we would offer State's 35 for
3 identification as a court's exhibit. I would propose that
4 -- I've got copies of the 911 call that I can provide to
5 the jury so they can ---

6 THE COURT: Is State's 35 the transcript? What is
7 State's 35?

8 MR. HEMBREE: The transcript, yes, Your Honor.

9 THE COURT: All right. So, you just want the
10 transcript to be used during the course of the open trial
11 here and not to take back to the jury as an exhibit?

12 MR. HEMBREE: Correct, Your Honor.

13 THE COURT: All right. No objection, Mr. Wilson?

14 MR. WILSON: No objection, sir.

15 THE COURT: All right. That will be Court's Exhibit
16 for use during the trial.

17 (911 TAPE MARKED INTO EVIDENCE AS STATE'S EXHIBIT
18 NUMBER 1.)

19 (911 TRANSCRIPT MARKED INTO EVIDENCE AS COURT'S
20 EXHIBIT NUMBER 18.)

21 Ladies and gentlemen, let me let you know this.
22 Anything I introduce as evidence, it'll go back in the jury
23 room with you. Court's exhibits, though, will be just out
24 here for use during the course of the trial in the
25 courtroom. But exhibits themselves I introduce as evidence

1 as State's Exhibit 1 there will go back to the jury room if
2 you need it.

3 MR. HEMBREE: Thank you, Your Honor.

4 Your Honor, at this time I would like to publish the
5 911 tape.

6 THE COURT: Do you have means to do that so that
7 everyone can hear it, sir?

8 MR. HEMBREE: Yes, Your Honor. And I'm going to call
9 on Investigator Steve Brown to assist me in that. As he
10 cues that up, I'm going to pass out copies of this 911
11 transcript.

12 THE COURT: Remember now, Mr. Wilson, do you want to
13 see what he's passing out first or have you -- is it a copy
14 of what you've got?

15 MR. WILSON: I've seen it.

16 THE COURT: All right. Ladies and gentlemen, once
17 again, this will not be in the jury with you. It is for
18 use right here in the courtroom.

19 How about make sure the court reporter has one if she
20 doesn't already have one, and one for the court, too,
21 please.

22 MR. HEMBREE: Go ahead and play the tape.

23 (911 TAPE IS PLAYED FOR THE COURT.)

24 MR. HEMBREE: Thank you, Ms. Hardwick. Please answer
25 any questions defense counsel might have for you.

1 MR. WILSON: I just have a couple of questions.

2 CROSS-EXAMINATION BY MR. WILSON:

3 Q. Ms. Hardwick, did you take this call yourself?

4 A. No, sir.

5 Q Okay.

6 A. A telecommunicator that worked for me did.

7 Q. What time was this call received?

8 A. I think it was around 5:40 in the afternoon.

9 Q. Can you tell me better than around? Can you tell me
10 exactly?

11 A. Well, I would have to look at the document.

12 Q. Well, can you look at it and tell me the time that
13 this call was received?

14 A. I don't have the document with me, no, sir.

15 Q. Well, can you get it and tell us ---

16 A. Yes, sir.

17 Q. --- what time it was received?

18 A. Yes, sir.

19 Q. All right. Well, do that.

20 THE COURT: You mean does she have it in the courtroom
21 with her, or do you want her to get ---

22 MR. WILSON: Yes, sir.

23 THE COURT: Do you have it in the courtroom with you?

24 MS. HARDWICK: Well, I can get a copy of the CAD
25 report, which is the computer aided dispatch or the office

1 -- I don't have that with me, no, I do not.

2 BY MR. WILSON:

3 Q. Okay, I need to know the time.

4 A. I can get it.

5 MR. HEMBREE: Your Honor, actually it might work out
6 for the best. We've got ---

7 THE COURT: All right, that's a good idea.

8 If you would, ladies and gentlemen of the jury, if you
9 would, please step to the jury room just for a few minutes,
10 and we'll bring you back out. If you would, leave those
11 documents here on the chair. Nobody take the documents
12 with them. Leave them on the chair. We'll pick them up.
13 Please do not discuss the case at all.

14 (THE JURY EXITS AT 5:07 P.M.)

15 THE COURT: Mr. Hembree, you don't have the documents
16 with you of when the call came in? You don't have that?

17 MR. HEMBREE: We probably have it downstairs, Your
18 Honor. We don't have it in the courtroom. I didn't intend
19 to introduce it for any purpose, so ---

20 THE COURT: Well, Mr. Wilson has the right to see the
21 document of when the call came in. He has the right.

22 Ma'am, I'm going to let you step down for the purposes
23 of working with them to get the document, but you're not to
24 discuss your testimony with anybody. Don't discuss what
25 you're said, testified to, don't discuss what's on the

1 tape. The only purpose is to find whatever document is
2 that would show what time that call came in. Okay, ma'am?

3 MS. HARDWICK: Yes, sir.

4 THE COURT: All right, we'll take a few minutes at
5 this time and come back in ten to fifteen minutes.

6 MR. HEMBREE: Thank you.

7 THE COURT: All right. Everyone, please, everyone,
8 let me start this right now. Please, everyone stay seated.
9 Stay in your place. I'd appreciate if you'd do that until
10 I leave.

11 The reason is this. I am human. Therefore, I may
12 start to leave and remember I need to say something. Then
13 I'll turn around and there will be so many people moving
14 around, the court reporter can't hear me. So for only that
15 reason, if you would, until I get out the door, please
16 everyone sort of stay in your place. That way if I did
17 forget something, you know, I can turn around and say, wait
18 a minute, I'm going to need this while we're on the break.
19 So, it's only for that purpose that I'd appreciate that you
20 do that. Thank you. Now, we'll leave.

21 (OFF THE RECORD.)

22 THE COURT: All right, did y'all find the sheet?

23 MR. HEMBREE: Yes, Your Honor.

24 THE COURT: Mr. Wilson, you ready?

25 MR. WILSON: Yes, I'm ready.

1 THE COURT: All right, bring the jury in, please.

2 (THE JURY ENTERS AT 5:43 P.M.)

3 THE COURT: Okay, Ms. Hardwick, as I understand it,
4 you now have obtained a sheet?

5 WITNESS: Yes, sir.

6 THE COURT: All right. Mr. Wilson, you may proceed.

7 MR. WILSON: Thank you, Your Honor.

8 BY MR. WILSON:

9 Q. Ma'am, now what time again, then, was this call from
10 911 received?

11 A. 1737.

12 Q. And that would be 5:37 p.m.?

13 A. Yes, sir.

14 Q. All right, and what was the duration of the call?

15 A. We stayed on the phone with him until 1755.

16 Q. Okay, and now as I understand it, once the, once the
17 call is received by 911, then what you do is you contact,
18 you contact the police department?

19 A. Correct.

20 Q. And that would then dispatch an officer to the scene?

21 A. Correct.

22 Q. All right, and how long did take you from the time the
23 call came in to 911 to actually dispatch somebody?

24 A. The officers were recommended at -- or the -- at 1744,
25 5:44 p.m., and went en route at 1744, 5:44 p.m.

1 Q. Well, is that the time that they arrived, at 1744, or
2 is the time that you actually contacted them to, to go
3 there?

4 A. You asked me for the time they were dispatched I
5 thought. Isn't that ---

6 Q. Yes.

7 A. Isn't that when they went en route?

8 Q. Yes, ma'am.

9 A. Yes, sir.

10 Q. All right. So, help me understand. You're saying
11 that the call originated to you at 1737?

12 A. Yes, sir.

13 Q. And at 1744, what happened?

14 A. We dispatched the officers.

15 Q. Well, what happened in the seven minutes in the
16 interim?

17 A. We were taking down information and trying to get the
18 address and so forth in and because he called from a cell
19 phone. So, we were gathering information..

20 Q. Okay. So, for seven minutes he's on the phone with
21 you, and there is nobody sending the police? Is that what
22 you're saying?

23 A. Yes, sir.

24 MR. WILSON: I don't have any other questions.

25 THE COURT: Any redirect?

1 REDIRECT EXAMINATION BY MR. HEMBREE:

2 Q. Ms. Hardwick, let me, and I'm just curious as to what
3 this means on the front page of your report, of this
4 computer-generated. This area here that says comments,
5 6306 1738 EU Unit, what does that, what does that indicate?

6 A. That that's when we initiated the call and started
7 putting data in from the call itself.

8 Q. Gotcha. So, if you got the call at 1730, you -- this
9 clock is all done computerized, correct?

10 A. Correct. We have no control over it.

11 Q. So, it triggers at 1737, and then y'all start put --
12 when y'all start putting stuff in ---

13 A. Right.

14 Q. --- at 1738?

15 A. Uh-huh, and it was actually generated as a fire call
16 first because it's obviously a medical call. It's a
17 fire/rescue call.

18 Q. Gotcha. So that as an injury, it's my understanding
19 that an injury, you dispatch the EMTs first, which are part
20 of fire, which are part of the fire department?

21 A. Correct.

22 Q. Part of that, of that umbrella, and thereafter, law
23 enforcement is dispatched?

24 A. Correct.

25 Q. Gotcha.

1 MR. HEMBREE: Thanks very much, Ms. Hardwick.

2 MR. WILSON: No additional questions, Your Honor.

3 THE COURT: All right, you may step down, ma'am.

4 Any objection to her being excused from further
5 service in the trial?

6 MR. HEMBREE: No, Your Honor.

7 MR. WILSON: None, Your Honor.

8 THE COURT: Okay, you may be excused. Thank you very
9 much.

10 WITNESS: Thank you.

11 (THE WITNESS EXITS THE STAND.)

12 THE COURT: Next witness, please.

13 MR. HEMBREE: The state calls J [REDACTED] G [REDACTED] to the
14 stand.

15 THE COURT: Mr. G [REDACTED], if you would come on around.

16 [REDACTED] G [REDACTED], BEING DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Thank you, and please be seated.

19 Would you state your name for the record, and spell your
20 last.

21 WITNESS: J [REDACTED] K [REDACTED] G [REDACTED], G [REDACTED].

22 THE COURT: Now, Mr. G [REDACTED], young man, if you would
23 adjust that microphone and let's try that. Move up a
24 little closer to it. Now, give us your name again.

25 WITNESS: J [REDACTED] K [REDACTED] G [REDACTED], G [REDACTED].

1 THE COURT: Your witness, please.

2 MR. HEMBREE: Thank you, Your Honor.

3 DIRECT EXAMINATION BY MR. HEMBREE:

4 Q. Good afternoon, J [REDACTED]

5 A. Hello.

6 Q. Let me, first that I want to do is I know this is an
7 uncommon experience for you, but you're going to have to
8 speak pretty loud and into that microphone. The acoustics
9 are not good in here. So, get as comfortable with that as
10 you possibly can. J [REDACTED], tell this jury. How are you?

11 A. Sixteen. Sixteen.

12 Q. And where do you go to school?

13 A. Green Sea Floyds High School.

14 Q. And what year are you in school?

15 A. Eleventh grade.

16 Q. How long you been at Green Sea Floyds?

17 A. For about two years now.

18 Q. And where did -- what high school did you attend
19 before you began attending Green Sea Floyds?

20 A. North Myrtle Beach High School and then Green Sea
21 before that.

22 Q. Now, J [REDACTED], tell me. Do you have any brothers or
23 sisters?

24 A. I have two sisters.

25 Q. And what are their names?

1 A. Jill and Haley.

2 Q. Are they older or younger?

3 A. Older.

4 Q. They in the courtroom today?

5 A. Yes.

6 Q. Seated where?

7 A. Right over there, back over there.

8 Q. Now, I don't mean to trip you up with this, but I'm
9 going to ask you. Can you tell me how old your sisters
10 are?

11 A. Twenty-three and twenty-five. How old?

12 Q. Good. Nicely done. I'm not going to ask you their
13 birthday. We won't go that -- I won't do that to you.

14 Now, tell me. Who is your father?

15 A. Roger Grainger.

16 Q. He's in the courtroom also?

17 A. Yes, sir.

18 Q. And he was married to your mother?

19 A. Yes.

20 Q. Tell this jury. Who was your mother?

21 A. Rebekah Grainger.

22 Q. Okay, and did she ultimately change her name?

23 A. Yes.

24 Q. And what prompted her to change your name?

25 A. I don't know.

1 Q. What was her name when she passed away?

2 A. Rebekah Winkler.

3 Q. Now, let me take you back to -- well, take you back to
4 2003. Do you know Louis Winkler?

5 A. Yes.

6 Q. And How do you know him?

7 A. He used to be my stepdad.

8 Q. When did you first become acquainted with him?

9 A. I -- it was a while ago. I don't know

10 Q. Several years ago?

11 A. Yeah.

12 Q. And what were the circumstances? What led you to
13 become acquainted with the defendant, Louis Winkler?

14 A. He was seeing my mother.

15 Q. They were dating?

16 A. Yes.

17 Q. And ultimately did their relationship become more
18 serious?

19 A. Yes.

20 Q. What did they, how did they -- how their relationship,
21 what did it grow into?

22 A. They got married.

23 Q. Do you recall, J. G. [REDACTED], about when they got married?

24 A. 2003.

25 Q. Okay. Were you there at the service?

1 A. Yes.

2 Q. Where did they get married?

3 A. They got married in North Myrtle Beach at -- I don't
4 know the name of the place, someplace. There's a library
5 there.

6 Q. The county building there at Highway 57?

7 A. Uh-huh.

8 Q. Kind of what they call Stevens Crossroads?

9 A. Yes.

10 Q. Gotcha. So, it was a civil service?

11 A. yes.

12 Q. Do you remember who performed the service?

13 A. No.

14 Q. Lady or a man?

15 A. Lady.

16 Q. Now, how old were you when they got married? Do you
17 recall?

18 A. Probably about thirteen, fourteen.

19 Q. Where did y'all -- now after they got married, did you
20 change residences?

21 A. Yes.

22 Q. Where did you begin living?

23 A. At Stones Edges.

24 Q. Now at Stones Edge, is that a neighborhood or a?

25 A. Yeah.

1 Q. Who lived there with you?

2 A. Me and my mom and Mick.

3 Q. And now, wait a minute. You said you and your mom and
4 Mick. Now who is Mick?

5 A. Louis.

6 Q. All right, Louis Michael Winkler is also known to you
7 as Mick, very good.

8 THE COURT: Young man, if you would, try your best
9 when you respond to say something. See this lady over
10 here? She's got to take down what's said, so when you
11 shake your head, she can't really take that down. So, we
12 need you to make some verbal response, okay?

13 WITNESS: Yes, sir.

14 BY MR. HEMBREE:

15 Q. So, y'all were living -- where we left it, y'all were
16 living at Stones Edge, in the neighborhood there at Stones
17 Edge?

18 A. Yes.

19 Q. And where is it located in relation to -- well, what
20 part of the county is it in, if you can say?

21 A. North Myrtle Beach, Little River.

22 Q. Little River. Is there a highway that's off on that
23 highway? Do you know the name of that?

24 A. No, sir.

25 Q. Fair enough. Now, the -- do you recall the address of

1 the house that you lived in at Stones Edge?

2 A. [REDACTED]

3 Q. [REDACTED]

4 A. Uh-huh.

5 Q. Whose house was that?

6 A. Mick's. Louis.

7 Q. Mr. Winkler's, Louis Winkler's. How long did you live
8 there with your mom and Louis Winkler?

9 A. Probably about a year.

10 Q. And ultimately you left there?

11 A. Yes.

12 Q. Tell us about that.

13 A. My mom wanted to get a divorce, and she moved out and
14 moved in with my sister.

15 Q. Now, do you remember about when that was?

16 A. Sometime in 2005.

17 Q. In the fall?

18 A. Maybe.

19 Q. And you moved in with whom?

20 A. My sister Haley.

21 Q. Where was Haley living at that time in fall of 2005?

22 A. At [REDACTED].

23 Q. Just tell us a little bit about her house at Golf

24 Colony at Bay Tree. Bay Tree is there where the golf

25 course is kind of at Highway 9 and 17 where it all kind of

1 comes in there in Little River?

2 A. Yes.

3 Q. Got a great big golf ball for a water tower?

4 A. Yes.

5 Q. Now, tell me a little bit about, tell this jury a
6 little bit about Haley's apartment. How many bedrooms, you
7 know, sort of the layout of it.

8 A. It had two bedrooms, one straight to your left when
9 you walked in, and a bathroom in front here. Then you go
10 to the right, and the kitchen is on the left, and the
11 living room is straight ahead of you, and the staircase
12 that goes upstairs to another bedroom and a bath.

13 Q. So, it had an upstairs bathroom, downstairs bedroom?

14 A. Yes.

15 Q. Bathroom upstairs?

16 A. Yes.

17 Q. Bathroom downstairs?

18 A. Yes.

19 Q. A kitchen?

20 A. Yes.

21 Q. A living area?

22 A. Yes.

23 Q. Does that sort of run together a little bit?

24 A. Uh-huh. Yes.

25 Q. Now, on the 911 tape I heard you say something about

1 you were on the balcony. Is there a balcony to this
2 location?

3 A. Yes, there is.

4 Q. And is on the, is it on the ground floor, second
5 floor, third floor?

6 A. It was the second floor.

7 Q. Now, where did you typically sleep when you were
8 living there at the [REDACTED]?

9 A. Either on the couch or upstairs.

10 Q. And how about your mom?

11 A. She usually slept in the back room on the ground
12 floor.

13 Q. Ground floor. What about Haley?

14 A. If she was there, she slept upstairs.

15 Q. And sometimes she wasn't there?

16 A. Right.

17 Q. Gotcha. Now, you're there in the fall of 2005. The
18 March 6th of 2006, in that time frame did, did Louis
19 Winkler visit often while you were living at the Golf
20 Colony apartment?

21 A. No.

22 Q. And would you tell this jury. How many times did he
23 visit prior to March the 6th of 2006?

24 A. Just once.

25 Q. And could you tell the jury about that?

1 A. It was probably about 11 or 12 at night, and he was
2 knocking on the door and everybody else was asleep, and I
3 went and opened it and saw it was him and closed it and
4 went back to bed.

5 Q. No problem?

6 A. No.

7 Q. He didn't keep banging on the door or something?
8 Just left?

9 A. Yes.

10 Q. But you never saw him in that house at Haley's
11 apartment from the time you moved there until March the 6th
12 of 2006 other than that one time, and he never came in?

13 A. Yes.

14 Q. Would you like a little glass of water? Okay, wanted
15 to make sure you weren't getting -- maybe it's just me.

16 I want to talk with you about March the 6th of 2006,
17 J. [REDACTED]. Tell this jury just generally about that day.
18 That was a Monday, I believe.

19 A. Uh-huh.

20 Q. I'm sorry, you have to speak up.

21 A. Yes.

22 Q. And what did you do that day?

23 A. I went to school.

24 Q. And where were you attending school at the time?

25 A. North Myrtle Beach High School.

1 Q. You were fourteen years at the time?

2 A. Yes.

3 Q. A freshman?

4 A. Yes.

5 Q. How did you get home that day?

6 A. I walked how home.

7 Q. How far was the school from your home?

8 A. Across the highway, and you go behind Sea Coast across
9 another highway, and it's right there.

10 Q. So, pretty close?

11 A. Yeah.

12 Q. When you got home, do you remember what you did?

13 A. Probably got on the computer.

14 Q. Was that pretty normal for you?

15 A. yes.

16 Q. And at some point that evening, were you alerted to an
17 unusual sound at the door?

18 A. Yes.

19 Q. Tell this jury, J. [REDACTED]. About what time was that
20 roughly?

21 A. Like 5:30.

22 Q. And what were you doing, what were you doing when you
23 heard -- well, describe what sound you heard.

24 A. It was like a loud bam on the door or somewhere. It
25 didn't sound like the door. It didn't sound like it was on

1 the door. You just heard, like, a loud boom.

2 Q. A boom, and when you first heard that sound, where
3 were you located in the house?

4 A. I was sitting at the bar.

5 Q. All right, describe the bar to us. Tell us, tell this
6 jury a little bit about that.

7 A. When you're, when you're walking down, the kitchen's
8 on your left. The bar's right there. There's a
9 refrigerator, the floor, then the bar. So, and it's got
10 two seats, and it's right beside the computer in between
11 that and the couch and the table.

12 Q. Now, the -- was it customary for you to sit at the bar
13 and eat your meals at the bar?

14 A. No. I just did it.

15 Q. Just did it? That's what you were doing at that
16 point. And these bar stools, were they a little higher,
17 typical bar stools a little higher than normal chairs?

18 A. Yes.

19 Q. Other than eating supper, what were your plans that
20 night? What were you going to do that night?

21 A. I was supposed to go to a battle of the bands concert.

22 Q. A battle of the band's concert. Where was that
23 supposed -- where was that going to be held?

24 A. Myrtle Beach High School.

25 Q. And how were you going to get there?

1 A. We hadn't figured that out yet, or I didn't. I hadn't
2 figured it out yet.

3 Q. So, you're trying to work out a ride?

4 A. Yes.

5 Q. And eating supper. What else were you doing as you
6 were eating?

7 A. Talking on the phone.

8 Q. Who were you talking to?

9 A. L [REDACTED].

10 Q. L [REDACTED] who?

11 A. C [REDACTED].

12 Q. Now, tell us who L [REDACTED] C [REDACTED] is.

13 A. My friend since I was a kid.

14 Q. Gotcha. Now, does she go to North Myrtle Beach High
15 School?

16 A. Yes.

17 Q. Was she a freshman also?

18 A. No.

19 Q. How old is L [REDACTED]?

20 A. She's a year younger than that I am.

21 Q. Gotcha. So, she would have been eighth grade?

22 A. Yes.

23 Q. Now, you were talking to her on the phone. Did you
24 have a cell phone?

25 A. Yes.

1 Q. Were you using your cell phone or the house cell?

2 A. The house phone.

3 Q. The -- you, you've testified that you heard a bam,
4 some sort of a loud noise.

5 A. Yes.

6 Q. What did -- did you do anything in response to that?

7 A. No.

8 Q. What was the next thing you heard?

9 A. Another bam.

10 Q. And how much time elapsed between the two?

11 A. Probably about ten seconds maybe, five seconds.

12 Q. Bam. Bam. Like that?

13 A. Yeah.

14 Q. What happened then?

15 A. The door flew open.

16 Q. Now, this is the door?

17 A. To the house.

18 Q. One door in?

19 A. Yes.

20 Q. Other than the sliding to the balcony?

21 A. Yes.

22 Q. But the one door that comes into a hallway?

23 A. Yes.

24 Q. Did you typically keep that door locked?

25 A. Yes.

1 Q. The door came flying open?

2 A. Yes.

3 Q. What did you see?

4 A. Mick.

5 Q. Mick?

6 A. Louis.

7 Q. And what was he wearing?

8 A. I want to say it was like a sweater kind of. I don't
9 know if it was a hoodie. It didn't have a hood, but it was
10 like a sweater.

11 Q. Okay. What did he do?

12 A. He was yelling and he came in and he hit me and
13 knocked me over.

14 Q. What was he yelling? If you recall, what did you hear
15 him say?

16 A. I'm back and you thought I was going to prison,
17 something like that.

18 Q. Was he using profanity?

19 A. Yeah.

20 Q. What kind of profanity?

21 A. The F word.

22 Q. Who was he directing this profanity toward?

23 A. Anybody that was in that house. Just yelling at --
24 very loud.

25 Q. Now, what -- did he come -- when he approached, who

1 did he go to first, you or your mom?

2 A. Me.

3 Q. And how much, how many feet did he have to go to get
4 from the door to you?

5 A. Probably about 6 or 7 feet.

6 Q. It's close, and what did he do when he reached you?

7 A. He punched me.

8 Q. And where did he hit you?

9 A. On my right eye.

10 Q. J. [REDACTED] I want to show you two photographs that have
11 been marked for identification only as State's Exhibits 2
12 and 3 and ask if you can identify these photographs for us.
13 First number 2.

14 A. Yes.

15 Q. What's that a photograph of?

16 A. Me.

17 Q. Taken when?

18 A. The night this happened.

19 THE COURT: Don't cover the mic.

20 BY MR. HEMBREE:

21 Q. That was the night it happened?

22 A. Yes.

23 Q. And what does it show?

24 A. Shows a red mark under my right eye.

25 Q. And if you'll take a look at number, State's Exhibit 3

1 for identification also. What is that?

2 A. Another picture of me.

3 Q. That's just a close up of that same area?

4 A. Yes.

5 Q. Does that accurately reflect the condition that you
6 were in when you went to the police department and had
7 those photographs made that night?

8 A. Yes.

9 MR. WILSON: I have no objection, Your Honor.

10 THE COURT: What numbers are those, please?

11 MR. HEMBREE: Those are State's Exhibits 2 and 3. We
12 would offer them into evidence at this time.

13 THE COURT: Without objection.

14 MR. HEMBREE: Thank you, Your Honor.

15 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
16 STATE'S EXHIBITS 2, 3.)

17 BY MR. HEMBREE:

18 Q. J. [REDACTED], when Louis Winkler struck you on your right
19 cheek, what happened to you?

20 A. I fell over.

21 Q. All right, off the bar stool?

22 A. yes.

23 Q. Did the bar stools fall over or a ---

24 A. Yeah.

25 Q. Okay. What about the telephone?

1 A. It smashed and broke.

2 Q. It hit the ground also?

3 A. Yeah.

4 Q. And the position of your body was where in relation to
5 the bar itself?

6 A. Like right beside it in between that and the couch and
7 right next to the computer.

8 Q. Next to the computer kind of down between the bar the
9 computer area?

10 A. Yes.

11 Q. Gotcha. Were you actually on the phone with your
12 friend, L. [REDACTED], when this assault took place?

13 A. Yes.

14 Q. Let me show you State's Exhibit 25 for identification
15 purposes and ask you, J. [REDACTED], if you can identify that
16 item.

17 A. Yes.

18 Q. What is that?

19 A. My old house phone.

20 Q. And is that the condition -- I notice that the battery
21 is not attached to the wire. Is the condition it was in
22 when it hit the ground?

23 A. Yes.

24 MR. WILSON: No objection, Your Honor.

25 MR. HEMBREE: We'd offer this as State's Exhibit

1 Number 25 in evidence without objection, Your Honor.

2 THE COURT: 25 in evidence.

3 (BROKEN CELL PHONE MARKED INTO EVIDENCE AS STATE'S
4 EXHIBIT NUMBER 25.)

5 Q. J. [REDACTED]

6 THE COURT: Ladies and gentlemen of the jury, I'm sure
7 you'll know. Any exhibits that will be introduced, I
8 remind you again they will be in the jury room with you.

9 Go ahead.

10 MR. HEMBREE: Thank you, Your Honor.

11 BY MR. HEMBREE:

12 Q. J. [REDACTED], you, as you hit the ground, where did Mr.
13 Winkler go?

14 A. He walked over to her, towards my mother.

15 Q. Now, what, what had your mother been doing prior to
16 the door being busted in?

17 A. Sitting on the couch watching TV.

18 Q. Just sitting on the couch watching television?

19 A. Yes.

20 Q. Was she on the phone with anybody?

21 A. No.

22 Q. Just 5:30 at night watching TV?

23 A. Yes.

24 Q. Anybody else in the house?

25 A. No.

1 Q. No friends are there?

2 A. No.

3 Q. No other family members are there?

4 A. No.

5 Q. And how far was it from where you were where Mr. --
6 where Louis Winkler struck you to the area where your
7 mother was sitting?

8 A. Probably about 8 feet.

9 Q. All right, maybe as far as from you to me?

10 THE COURT: Answer, please, yes or no.

11 BY MR. HEMBREE:

12 A. Yes.

13 Q. Now, as he approached her, did you hear him say
14 anything to her?

15 A. No.

16 Q. What did he do?

17 A. He just walked up to her and shot her.

18 Q. How close was he when shot her? To her, to her.

19 A. Not very far away. Like point blank.

20 Q. A foot away or even closer?

21 A. Probably closer.

22 Q. All right. How many shots did he fire?

23 A. Just one.

24 Q. And what, what did your mom do?

25 A. She fell to the ground.

1 Q. And as she fell, what position did her body take?

2 A. Like face down.

3 Q. What did Mr. Winkler then do?

4 A. He walked back over to me.

5 Q. Where were you when he came back over to you?

6 A. Still lying on the floor.

7 Q. This was seconds after he had shot your mom?

8 A. Yes.

9 Q. Did he say anything to you?

10 A. No.

11 Q. Did you say anything to him?

12 A. I told him not to do anything stupid.

13 Q. Why did you say that to him?

14 A. Because he was pointing a gun at me.

15 Q. And in what direction? What part of your body was he
16 pointing the gun at?

17 A. My face.

18 Q. How close was the gun to your face?

19 A. Not very far. He was standing up. I mean, I was
20 about 4 feet away.

21 Q. 3 or 4 feet. Did, J. [REDACTED], when he first came in the
22 house, did he -- did you see the gun at that point?

23 A. No.

24 Q. When did you first see the gun?

25 A. He pulled it out of his waistband.

1 Q. At what point?

2 A. After -- like, right after he walked in the house.

3 Q. Did he strike you with the gun?

4 A. No.

5 Q. Did he have the gun in his hand when he struck you?

6 A. No.

7 Q. Was it after he struck you that he retrieved the gun
8 from his waistband?

9 A. Yes. Yes.

10 Q. And as he stood over -- how long did he stand over you
11 with the gun?

12 A. Five to ten seconds. Not very long.

13 Q. Did he just stand there, or what did he do?

14 A. He was pacing back and forth.

15 Q. I mean, how far away? Like right over you?

16 A. Yeah.

17 Q. You said back and forth?

18 A. Yes.

19 Q. Did he hold the gun on you the entire time?

20 A. No.

21 Q. Did he ever say anything at all to you at that point?

22 A. No.

23 Q. Let me show you, J. [REDACTED], what's was been marked as
24 State's Exhibit for identification 36 and 36-A, ask you if
25 you can identify item 36.

1 A. Yes.

2 Q. What is that?

3 A. His gun.

4 Q. Now, let's talk about this gun just a second. Let's
5 talk about his gun for just a minute. Was that the gun he
6 had, that he retrieved from his waistband at your home?

7 A. Yes.

8 Q. And had you seen gun before?

9 A. Yes.

10 Q. On how many occasions?

11 A. I don't know. A couple.

12 Q. And had he showed it to you? Tell us the
13 circumstances of how you ---

14 A. Yes.

15 Q. --- came to see gun.

16 A. He showed it to me.

17 Q. Where, where were you living when he showed it to you?

18 A. At [REDACTED].

19 Q. Ever go out shooting it with him or anything like
20 that?

21 A. No.

22 Q. Just kind of showed it to you. Did you ever kind of
23 break it down and unload it, things like that?

24 A. No.

25 Q. He, after he paced back and forth five or ten seconds,

1 tell us, tell this jury what Louis Winkler did.

2 A. He walked back out the door.

3 Q. And?

4 A. That was it.

5 Q. What did you do?

6 A. I went and got my cell phone and closed the door and
7 made sure he wasn't coming back in, and looked out the
8 window and got my shoes, and then went and sat on the
9 balcony and called the police.

10 Q. And you were able to get in touch with the police and
11 ultimately they responded to your home?

12 A. Yes.

13 Q. I'm going to show you one more item, State's Exhibit
14 14 for identification and ask if you can identify that
15 item.

16 A. That is his hat.

17 Q. That's whose hat?

18 A. Louis's hat.

19 Q. And you've seen it on him before?

20 A. Yes.

21 Q. You know where this hat was retrieved from?

22 A. The hallway.

23 Q. The hall?

24 A. Outside the door.

25 Q. Of your apartment?

1 A. Yes.

2 Q. [REDACTED], do you recall when the police arrived?

3 A. Yes, sir.

4 Q. Tell the jury a little bit about how that unfolded.

5 A. I don't know.

6 Q. Well, where were you when they got there?

7 A. I was sitting on the balcony.

8 Q. And did you -- that was when you saw them drive up?

9 A. Yes.

10 Q. When did -- well, who, who was the -- do you know who
11 the first officer was that you saw?

12 A. No.

13 Q. Do you remember kind of what he looked like?

14 A. Kind of.

15 Q. All right. How many officers responded initially?

16 A. Just one.

17 Q. And when he got there, where did you go?

18 A. I went to the door and opened it.

19 Q. And had you closed it previously?

20 A. Yes.

21 Q. Would it close?

22 A. Yes.

23 Q. Even though it was broken?

24 A. Yes.

25 Q. Okay, and where was the officer when you went to the

1 hallway?

2 A. He was coming up the steps.

3 Q. Gotcha. Now, when he got in the house, do you recall
4 what he did?

5 A. I think he asked if we had any weapons in the house.

6 Q. Okay, and he asked if you had any weapons in the
7 house?

8 A. Yes.

9 Q. And did you?

10 A. Yes.

11 Q. Now, who had a weapon in the house?

12 A. My mom.

13 Q. All right, and what did she have it there for?

14 A. Protection.

15 Q. All right. Where did she typically keep it?

16 A. Under the pillow in her room.

17 Q. You knew where it was?

18 A. Yes.

19 Q. Had she given you any instructions about this gun?

20 A. No.

21 Q. Were you supposed to stay away from it?

22 A. yes.

23 Q. The -- do you recall which pillow it was under on the
24 bed?

25 A. The left pillow.

1 Q. If you're looking at the bed, this side?

2 A. Yes.

3 Q. Did you tell the officer about that?

4 A. Yes.

5 Q. And what did the officer do with you thereafter, or he
6 and other officers thereafter?

7 A. Took me downstairs and put me in the back of the car.

8 Q. All right, and you were there for some period of time?

9 A. Yes.

10 Q. Thereafter, they took you to the police station?

11 A. Yes.

12 Q. Now, did you have any telephone conversations with
13 others after the police arrived?

14 A. Yes.

15 Q. Who did you contact?

16 A. L. [REDACTED].

17 Q. Did she -- did you call her or did she call you?

18 A. I think she called me.

19 Q. And where were you when she called?

20 A. In the back of the car.

21 Q. How about other phone calls? Did you make other phone
22 calls?

23 A. I called my sister Jill, and I think I called Haley.

24 Q. The house there at [REDACTED] is in Horry County.

25 Isn't that right?

1 A. Yes.

2 Q. And I think you testified you were fourteen at the
3 time?

4 A. Yes.

5 Q. Do you know how old Mr. Winkler was at the time?

6 A. No.

7 Q. But you can say his, state his approximate age?

8 A. Forty.

9 Q. And were you a bit smaller than you are now at the
10 time?

11 A. Yes.

12 Q. The last thing I want you to do for purposes of the
13 record, J. [REDACTED], and for purposes of this jury is to
14 identify the person, if they are present in the courtroom
15 today, identify the person who broke into your home and
16 struck you on the face and that shot your mom in the head.

17 A. He's sitting right there beside that guy right there.
18 In the blue shirt.

19 Q. The defendant?

20 A. Yes.

21 Q. His name is Louis Winkler?

22 A. Yes.

23 MR. HEMBREE: Thank you, J. [REDACTED]. Please answer any
24 questions defense counsel might have for you.

25 THE COURT: Any objection to the fact that he was

1 pointing to the defendant?

2 MR. WILSON: I have no objections.

3 THE COURT: Okay. Let the record so reflect.

4 CROSS-EXAMINATION BY MR. WILSON:

5 Q. J [REDACTED], at the time all this happened, you were
6 thirteen or had you already turned fourteen?

7 A. I might have been thirteen.

8 Q. All right, and now solicitor went through this whole
9 thing with you and asked you what happened and had you kind
10 of explain. And what you say is what you recall. Is that
11 fair?

12 A. Yes.

13 Q. All right. Now, let's go back then to this particular
14 day. You said that when you came home from school that
15 your mom was already home, right?

16 A. Yes.

17 Q. And she was sitting on the couch, right?

18 A. Yes.

19 Q. And that would have been around 3:30 or so?

20 A. Yes.

21 Q. All right. Now, who is your father?

22 A. Roger Grainger.

23 Q. Roger Grainger, and Roger Grainger is your mom's
24 ex-husband?

25 A. Yes.

1 Q. All right, and now had your mom been seeing Roger
2 during this time after she and Mick separated?

3 A. Yes, she had.

4 Q. Okay, and he'd been coming over spending the night
5 from time to time, right?

6 A. A couple of times, yes.

7 Q. All right and, in fact, he was supposed to come over
8 this particular night, right?

9 A. Yes.

10 Q. All right, and then you, you talked to him that
11 evening, did you not?

12 A. I don't recall.

13 Q. You don't recall? Well, do you recall being in the
14 back of the police car?

15 A. Yes.

16 Q. And you recall making a call on your cell phone in the
17 back of the police car calling him?

18 A. Yes.

19 Q. Okay. So, you told the solicitor that you'd called
20 Haley and that you called your other sister, but you forgot
21 that you'd called your dad?

22 A. Yes.

23 Q. All right, and when -- do you recall, too, J. [REDACTED],
24 that when -- you talked with the police officers about this
25 that night, did you not?

1 A. Yes.

2 Q. And do you recall telling the officer, the first
3 officer who arrived on the scene who asked you about it
4 that it was your dad who had done the shooting? Do you
5 recall telling the officer that?

6 A. No. I said stepdad.

7 Q. You said stepdad? All right, so you didn't tell them
8 it was your dad?

9 A. No.

10 Q. Okay, and now your dad was coming that night to be at
11 the house with you, was he not?

12 A. Yes.

13 Q. And, and what time did your dad, was your dad supposed
14 to get to the house that night?

15 A. Around 6.

16 Q. And were you expecting Mick to come over to the house
17 that night?

18 A. No.

19 Q. So, your dad was coming over to spent the night, but
20 you didn't know Mick was coming over?

21 A. Right.

22 Q. And now when, when Mick arrived at the house, what
23 time do you say that was?

24 A. Around 5:30.

25 Q. All right, around 5:30 p.m., and did I understand you

1 to say you were on the telephone with someone?

2 A. Yes.

3 Q. And who were you on the telephone with?

4 A. L. [REDACTED] C. [REDACTED].

5 Q. L. [REDACTED] C. [REDACTED], and there was -- let me back up now.

6 When you're on the phone with L. [REDACTED] C. [REDACTED], what time is
7 it?

8 A. Approximately 5:30.

9 Q. Okay, and is this the time that Mick actually comes to
10 the house, when you're on the phone with L. [REDACTED] C. [REDACTED]?

11 A. Yes.

12 Q. You say, you told the solicitor that you heard two
13 knocks or two bumps or two bams or whatever it was on the
14 door.

15 A. Yes.

16 Q. And then the door came open or flew open, and he came
17 in?

18 A. Yes.

19 Q. Now, you were seated where at the house?

20 A. At the bar next to the kitchen.

21 Q. You were seated at the bar in the kitchen. Now, and
22 there's a plate of food on the counter, right?

23 A. Yes.

24 Q. Now, you have been home since 3:30, right?

25 A. Yes.

1 Q. And there is only one plate of food on the table,
2 right?

3 A. Yes.

4 Q. And there's no question about that, that whole plate
5 of food that's on the table has not be eaten, has it?

6 A. No.

7 Q. There is also a pair of shades next to the food on the
8 counter, right?

9 A. I don't know.

10 Q. You don't know?

11 A. No.

12 Q. Well, do you have a pair of dark, black shades?

13 A. I might have.

14 Q. Well, I mean, did, did you or didn't you? If you
15 don't, that fine. I'm just asking.

16 A. I don't know.

17 Q. I'm sorry?

18 A. I don't know.

19 Q. You don't know? Okay.

20 At some point in time, though, you say that when the
21 door flew open that Mick came into the room, right?

22 A. Yes.

23 Q. And when he came in, did you see a gun at that point?

24 A. No.

25 Q. There was no gun?

1 A. No.

2 Q. All right, and what did he -- when he comes through
3 the door, what does he say to you?

4 A. I'm back.

5 Q. All right. Now, you heard two bumps to the door.
6 Your mom's on the couch seated, according to your story,
7 right?

8 A. Yes.

9 Q. And somebody's kicking your door and you don't go to
10 the door, you don't call the police, you don't do anything?
11 You just sit there until they kick it in the second time
12 and come in, right?

13 A. It went very fast, yes.

14 Q. And your mom sits there on the couch, right?

15 A. Yes.

16 Q. And she doesn't do anything when the first knock to
17 the door comes, somebody's kicking it in, and then somebody
18 kicks a second time five seconds later, according to the
19 solicitor, and you still don't get up and you still don't
20 go to the door. And somebody is kicking in your door, and
21 it's nighttime because it's 5:30 in the evening, right?

22 A. Yes.

23 Q. That's right, and when Mick, you say, comes in the
24 door, your mom you say don't even get up off the couch?

25 A. Right.

1 Q. Right?

2 A. Right.

3 Q. So, now here is Mick and they are separated according
4 to you, right?

5 A. Right.

6 Q. And he kicks in the door, he comes inside the door,
7 you stay on the counter eating your dinner and talking on
8 the phone, and your mom still just sits on the couch?

9 A. Right.

10 Q. Right?

11 A. Right.

12 Q. How long does -- from the time he walks in this door,
13 according to you, until the time he gets over to you, how
14 long would you say that took?

15 A. Probably about two seconds.

16 Q. All right. So, he walks over. Are you still on the
17 phone?

18 A. Yeah.

19 Q. And then you say when he walks over to you, you're
20 still seated at the counter. He walks over to you and then
21 he knocks the phone out of your hand?

22 A. Right.

23 Q. All right. Now, when he knocks the phone out of her
24 hand, is he using his right hand or his left hand?

25 A. I'm not sure.

1 Q. You don't know? Well, does he have the gun at this
2 point?

3 A. No.

4 Q. So, when he comes in the door and he walks over to
5 you, there is no gun, there is no -- there's nothing except
6 him walking over, and he just walks over to you. Does he
7 say anything to you?

8 A. No.

9 Q. Doesn't say one word, just walks over to you. You're
10 still seated, you're still on the phone, and then he knocks
11 you off the stool and knocked the phone out your hand?

12 A. Right.

13 Q. And without a word?

14 A. Right.

15 Q. You fall on the floor?

16 A. Right.

17 Q. Right?

18 A. Right.

19 Q. All right, and now you're on the floor. Now, there's
20 furniture in the room. Is that right?

21 A. Right.

22 Q. And there is, in fact, a couch?

23 A. Right.

24 Q. Right, and so when you fall off of the stool,
25 according to you, and you're laying on the floor, right?