

VOLUME ONE OF SEVEN

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM ANDERSON COUNTY

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

APR 02 2012

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

RAYMONDEZ RIVERA,

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County of Anderson

State of South Carolina,

Plaintiff,

February 1 through 18, 2010

-VS-

Raymondeze Rivera,

Transcript of Record

Defendant.

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The Honorable Alexander Macaulay, Judge

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PLAINTIFF: State of South CarolinaATTORNEY: Christina Adams, Jennings
Byford, Rame CampbellDEFENDANT: Raymondeze Lamon
RiveraATTORNEY: John Delgado, Bill McGuireCASE NO: 2007-GS-04-649JUDGE: Alexander MacaulayDATE: 2/1/10COURT REPORTER: Renee H. TollisonDATE ENDED: 2/18/10

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Def.	
190		W	M			X	
104		W	F				X
222		W	F				X
3		W	M			X	
340		W	M			X	
33		W	M				X
125		W	F				X
15		W	M			X	
36		W	M			X	
225		W	M			X	
135		W	F				X
30		W	M			X	
64		H	F		X		
141		W	M				X
352		W	F		X		

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for

Voir Dire (cont.)

Juror	Name	Race	Sex	<u>Strikes</u>			Accept
247		W	M				X
248		W	F				X
209		W	M			X	
266		W	M				X
278		B	F				X
261		W	M			X	
383		B	M		X		
56		W	F				X
307		W	F		X		
158		W	M			X	
29		W	F				X
41		W	F			X	
292		W	M			X	
359		W	F				X
344		W	F			X	
187		W	F			X	
205		W	F				X
364		W	F			X	
386		B	F			X	
389		W	M				X
86		B	F		X		
34		W	M				X

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for

GUILT PHASE WITNESS INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	IN-CAMERA
Nikella Hatten					
Adams	1918				
Delgado		1938			
David Lamarr Rodgers					
Campbell	1942				
Mike Walters					
Campbell	1946				
McGuire		1957, 1962			1960
George Creamer					
Campbell	1968				
James Christopher Wilson					
Campbell	1984				
Christopher Warren Scott					
Campbell	1992				
Jim Bolt					
Campbell	1999				
Melissa Aiken Partain					
Adams	2009				
William Brooks					
Adams	2014				
John Zamberlin					
Adams	2018				2121
McGuire		2073, 2132			2106
Brett Woodard					
Adams	2137				
Brenda Gaile Heath					
Campbell	2153				
Delgado		2162			
William Michael Baskins					
Campbell	2167				
William Kevin Warren					
Campbell	2170				
Janice Bryson					
Campbell	2172				
Delgado		2175			
Robin Taylor					
Adams	2177				
Raymondeze Rivera					
The Court					2199

SENTENCING PHASE WITNESS INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	IN-CAMERA
Nikella Hatten					
Adams	2273				
Joya Joseph					
Adams	2284				
Mike Walters					
Campbell	2290				
Melissa Aiken Partain					
Campbell	2295				
Brett Woodard					
Adams	2297				
Kelli Chapman					
Byford	2301				
Adrienne Riley					
Byford	2303				
Robin Taylor					
Byford	2307				
Phoebe Kenney					
Adams	2315				
Timothy Lowndes					
Campbell	2342			2354	
Delgado		2353			
John Zamberlin					
Adams	2356				
McGuire		2398			
Denise Marie Rivera					
McGuire	2422				
Adams		2427			
Teresa Patricia Rivera					
Delgado	2431				
Adams		2441			
Olivia Cumberlander					
McGuire	2443				
Adams		2447			
Sonja Marie McDowell					
Delgado	2449				
Helen McDowell Allen					
McGuire	2459				
Adams		2465			
Canessa Thomas					
Delgado	2473			2486	
Adams		2484			

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	IN-CAMERA
Arlene Bowers Andrews					
McGuire	2490				
Byford		2556			
Nicholas Cooper-Lewter					
Delgado	2581, 2611				2603
Adams		2623			
Marti Loring (in-camera)					
Delgado					2629
Sarah Geraghty					
McGuire	2640		2650		
Adams		2648			
Marti Loring					
Delgado	2651				
Byford		2689			

EXHIBITS

No	DESCRIPTION	ID	EV
S-1	DVD of Shell Station Surveillance (2 images)	1870	1871
S-2	DVD of Shell Station Surveillance (6 images)	1870	1871
S-3	Waiver of Rights Form from 12/16/06	133	2036
S-4	Waiver of Rights Form from 12/20/06	133	2051
S-5	Redacted Letter of 12/20/06 Adams to Raymondeze Rivera	133	2057
S-5A	Letter of 12/20/06 Adams to Raymondeze Rivera	133	
S-6	Voluntary Statement	133	2362
S-7	Voluntary Statement - redacted for Jackson v. Denno	133	
S-8	Letter of 2/6/08 Rame Campbell to Robert Gamble	133	
S-9	Waiver of Rights Form from 12/21/06	133	2059
S-10	Copy of Georgia Fingerprints	133	2045
S-11	Photograph	1870	1871
S-12	Photograph	1870	1871
S-13	Photograph	1870	1871
S-14	Photograph	1870	1871
S-15	Photograph	1870	1871
S-16	Photograph	1870	1871
S-17	Photograph	1870	1871
S-18	Photograph	1870	1871
S-19	Photograph	1870	1871
S-20	Photograph	1870	1871
S-21	Photograph	1870	1871
S-22	Photograph	1870	1871
S-23	Photograph	1870	1871
S-24	Photograph	1870	1871
S-25	Photograph	1870	1871
S-26	Photograph	1870	1871
S-27	Photograph	1870	1871
S-28	Photograph	1870	1871
S-29	Photograph	1870	1871
S-30	Photograph	1870	1871
S-31	Packet of Computer Screen Shots of Fingerprints (16 pages)	1915	1996

No	DESCRIPTION	ID	EV
S-32A	Brown Paper Bag Containing Red Plate	1985	1986
S-32B	Brown Envelope Containing Cutout Red Plate	1985	1986
S-33	Fingerprint Card of South Carolina Prints	1989	1996
S-34	Photograph	1998	2007
S-35	Photograph	1998	2007
S-36	Photograph	1998	2007
S-37	Photograph	1998	2003
S-38	Photograph	1998	2003
S-39	Photograph	1998	2003
S-40	Photograph	1998	2003
S-41	Video of Belk Surveillance	2014	2015
S-42	Redacted Statement	2016	2064
S-43	Search Warrant Waiver	2016	2028
S-44	Photograph	2016	2184
S-45	Photograph	2016	2031
S-46	Photograph	2016	2031
S-47	Photograph	2016	2031
S-48	Photograph	2016	2031
S-49	Photograph	2016	2031
S-50	Photograph	2016	2031
S-51	Photograph	2016	2031
S-52	Certificate of Title	2016	2032
S-53	Photograph	2129	2144
S-54	Photograph	2129	2144
S-55	Photograph	2129	2144
S-56	Photograph	2129	2144
S-57	Photograph	2129	2144
S-58	Photograph	2129	2144
S-59	Photograph	2129	2144
S-60	Photograph	2129	2144
S-61	Blank Page from Yellow Legal Pad	2158	2159
S-62	Indented Impressions from Yellow Legal Pad	2158	2159
S-63	Enlargement of Indented Impressions from Yellow Legal Pad	2160	2160

No	DESCRIPTION	ID	EV
S-64	Consent to Search	2166	2169
S-65	Framed Photograph of Kwana Burns	2241	2245
S-66	Framed Photograph of Kwana Burns Family	2241	2245
S-67	Copy of Letter of 12/14/09 Rivera to Polly Hatten	2241	2242
S-68	Copy of Letter of 12/29/09 Rivera to Eleanor Caldwell	2241	2242
S-69	Copy of Letter of 12/14/09 Rivera to Eleanor Caldwell	2241	2242
S-70	Photograph	2241	2243
S-71	Photograph	2241	2243
S-72	Photograph	2241	2243
S-73	Photograph	2241	2243
S-74	Photograph	2241	2243
S-75	Photograph	2241	2243
S-76	Photograph	2241	2243
S-77	Photograph	2241	2243
S-78	Photograph	2241	2243
S-79	Photograph	2241	2243
S-80	Photograph	2241	2243
S-81	Photograph	2241	2243
S-82	Photograph	2241	2243
S-83	Previous Conviction from South Carolina	2241	2243
S-84	Previous Convictions from Georgia	2241	2244
S-85	Stipulation	2241	2242
S-86	Statement of Phoebe Kenney	2311	2337
S-87	Subscriber Profile	2340	2345
S-88	Phone Records	2340	2345
S-89	Phone Records Summary	2340	2349
S-90	DVD of 2008 Rivera Testimony	2340	
S-91	Photograph	2376	2377
D-1	Letter of December 14 Rivera to Polly Hatten	1957	
D-2	Letter of December 29 Rivera to Eleanor Caldwell	1957	
D-3	Letter of December 14 Rivera to Eleanor Caldwell	1957	
D-4	Note with Hand Print	2469	2470
D-5	Letter of December 16, 2008	2469	2470
D-6	Enlarged Photograph	2469	2471

No	DESCRIPTION	ID	EV
D-7	Andrews Diagram	2497	2497
D-8	Letter of 4/24/2009	2638	2640
D-9	Ms. cousin's Interview Video 6/18/09	2638	2640
D-9A	Stipulation as to Def. 9	2638	2640
D-10	Justice Video 7/1/09	2638	2640
D-10A	Stipulation as to Def.	2638	2640
D-11	Rivera Family Genogram	2664	2664
D-12	Lee Arrendale State Prison Records (3 pages)	2688	2688
D-13	Trauma Chart	2699	2770
D-14	Trauma Life Cycle Pattern Chart	2699	2770
D-15	Enlarged Photograph	2699	2770
D-16	Enlarged Photograph	2699	2770
D-17	Enlarged Photograph	2699	2770
C-1	Juror 39 Questionnaire	936	
C-2	Envelope Containing Letter from Potential Juror 205's Employers	1029	
C-3	Jury Question	1915	
C-4	Jury Question	1989	
C-5	Jury Question	1989	
C-6	Anderson Police Department Forensics Report on Rivera Phone	1998	
C-7	Anderson Police Department Forensics Report on Victim's Phone	1998	
C-8	Jury Note	2083	
C-9	Provisional Postmortem Report	2129	
C-10	SLED DNA Analysis Report dated 6/24/09	2166	
C-11	9/19/07 DNA Analysis Report	2166	
C-12	9/26/08 DNA Analysis Report	2166	
C-13	Jury Note	2166	
C-14	Jury Note	2471	
C-15	SCDC Medical Summary	2607	
C-16	Jury Note	2699	
C-17	Jury Note	2699	
C-18	Jury Note	2794	

22 THE COURT: All right. Now, as we discussed
23 earlier, I think what we'll do is go ahead and at two
24 o'clock qualify the general -- the panel, full panel, for
25 this case. And then we'll also -- and then we'll --

1 after the panel is qualified, then we'll ask the Clerk to
2 help us divide them up into panels of six. And then
3 we'll start the process in the morning. But after we
4 qualify the panel this afternoon, then have them
5 designated as to whether -- in numbers of six. Then --
6 what is it -- we'll take up any pretrial matters that we
7 need to take up at that time. And then hopefully we'll
8 start -- I would probably -- for the first day probably
9 suggest ten o'clock and then have the two hours. And
10 that should give us the time. And then two panels in the
11 afternoon at two and four. And so we'll try it that way
12 and see what happens.

13 Now, do we know how many jurors we have? How many
14 are still in the pool?

15 MADAM CLERK: We haven't got them all punched
16 in, Your Honor, the ones who were transferred or excused.
17 I think I'm fixing to do that during lunch.

18 THE COURT: All right. But approximately about
19 a hundred and something?

20 MADAM CLERK: Oh, yes, sir.

21 THE COURT: All right. Have we decided on the
22 strikes? I think we have decided we're going with
23 eighteen?

24 MS. BYFORD: Yes, sir.

25 THE COURT: Twelve and six?

1 MS. BYFORD: Yes, sir.

2 THE COURT: Six alternates?

3 MS. BYFORD: Six alternates.

4 THE COURT: All right. Strikes on the first
5 twelve?

6 MS. BYFORD: Are ten and five.

7 MS. ADAMS: Ten and five, Judge.

8 THE COURT: Ten and five. All right.

9 Is that correct, Mr. Delgado?

10 MR. DELGADO: Yes, sir.

11 THE COURT: All right. I'm just putting this
12 on the record so we don't have any question about it
13 later.

14 All right. And as far as the alternates? All
15 right. What are the strikes on the -- you said that --
16 I'm not familiar with that, that there's a difference in
17 the strikes on the alternates.

18 MS. BYFORD: Your Honor, I believe so. And I
19 haven't had a chance with everything to confirm. But I
20 believe it is two and one for every group of two
21 alternates that you draw.

22 THE COURT: Right.

23 MS. BYFORD: So I think it should be six and
24 three.

25 THE COURT: Well, actually, no. I think what

1 we do is you go the -- you take the first three. And if
2 everybody exercises their strikes, then they ---

3 MS. BYFORD: Oh, I see what you're doing.
4 Reset after every two?

5 THE COURT: That's right, yeah.

6 MS. BYFORD: Yes, sir.

7 THE COURT: But then again -- but that's -- I
8 mean, that's how it's done. You don't ---

9 MS. BYFORD: Yes, sir. No. I believe you're
10 right. I was just total strikes ---

11 THE COURT: All right. Okay. Now I feel more
12 comfortable because I've done several of these, and I
13 didn't know about four and six.

14 MS. BYFORD: Yeah.

15 THE COURT: All right. Now, is there anything
16 else? So that's -- all right. Let's see what we have
17 here. We have ten and five on the twelve. Then we have
18 two and one, two for the defense, one for the State, on
19 each of the alternates.

20 MS. BYFORD: Yes, sir.

21 THE COURT: In other words, we go until we get
22 an alternate on the first four. And then -- what is it
23 -- if we get it on the first one, then we take the next
24 three. So we don't do them separately; we do them in
25 order until we get enough alternates.

1 MS. BYFORD: Yes, sir.

2 THE COURT: With two and one on each alternate.

3 All right. Anything else?

4 (No response)

5 THE COURT: All right. We'll see you at two.

6 MADAM CLERK: Your Honor, I'm going to be
7 working on the list.

8 THE COURT: All right. Well, let me just put
9 it on the record.

10 Anything from the State before we recess for lunch?

11 MS. ADAMS: No, sir.

12 THE COURT: Anything from the Defense?

13 MR. DELGADO: Nothing, Your Honor.

14 MR. MCGUIRE: No, sir.

15 THE COURT: All right. Very good.

16 (WHEREUPON, court stood at recess for a lunch
17 break.)

18 THE COURT: I apologize for being a little bit
19 late.

20 THE DEFENDANT: Your Honor, excuse me. I just
21 want ...

22 THE COURT: Just have a seat. I'll talk to you
23 in a bit.

24 THE DEFENDANT: Before you empanel the jury,
25 I'd like to renew my motion to relieve counsel.

1 THE COURT: We're going to take up the motions
2 later.

3 THE DEFENDANT: To relieve counsel?

4 THE COURT: We'll take up the motions later.
5 Just have a seat, please.

6 All right. Is the State ready to proceed?

7 MS. BYFORD: Yes, Your Honor.

8 THE COURT: The Defense ready to proceed?

9 MR. DELGADO: Yes, Your Honor.

10 THE COURT: Very good.

11 Ladies and gentlemen, as I mentioned earlier, this
12 is a term of General Sessions Court, sometimes called
13 criminal court. Its purpose is to resolve questions of
14 alleged criminal conduct arising between the State of
15 South Carolina and the Defendant in a fashion that will
16 ensure that justice under the law is accomplished.

17 The trial of a case begins with the selection of the
18 jury. Both the State and the Defendant are entitled to
19 jurors who approach the case with an open mind. The
20 trial jury must be free as humanly possible from any
21 bias, prejudice or sympathy for either side and free from
22 any preconceived ideas on the facts of the case or on the
23 law of the case. Therefore, certain questions will be
24 asked of you, the petit jury panel. The questions which
25 will be asked are designed to ensure each side a fair and

1 impartial jury.

2 Again, I might note if anybody should -- any person
3 should talk with you or attempt to talk with you about
4 this case or any case for this term of court, it would be
5 your solemn duty to immediately report that matter to the
6 Court so I might take appropriate action.

7 Again, can everyone -- well, it is there anyone who
8 cannot hear me? If so, raise your hand. Or if you need
9 -- all right. Do I need to talk louder, slower or more
10 distinctly or all three?

11 THE JURORS (in unison): All.

12 THE COURT: All right. I'll try to do all.

13 Ladies and gentlemen, some of you perhaps have
14 served on a jury before, but experience tells me that it
15 is something new for the vast majority of you.
16 Experience also tells me that some of you are
17 apprehensive, worried, scared, and yes, even mad about
18 being called. These feelings are natural and normal, so
19 don't let that bother you. By the time you have finished
20 serving, I believe you will feel comfortable and good
21 about what being -- about being called whether or not
22 you're actually selected to serve on the jury.

23 Winston Churchill, the Prime Minister of Great
24 Britain during the second world war, once said that no
25 greater service can a citizen perform in peacetime than

1 that as a juror because the jury system is the basis and
2 foundation of our justice system. If you were involved
3 in a case personally, wouldn't you want a fair and
4 impartial jury to serve on the case? I'm quite sure that
5 each of you would, and I trust that you will be -- would
6 agree and that each of you will be fair and impartial if
7 you are selected to serve on this case.

8 Now, the case we will try at this term of court is
9 not like most cases where someone is charged with a
10 crime. The State in this particular case is seeking the
11 death penalty against the Defendant which in South
12 Carolina is death by electrocution or by lethal
13 injection. The death penalty law allows the lawyers and
14 me to ask you questions, so it may take two or three days
15 before we actually select the jury and start the trial in
16 this case.

17 Now, by asking you these questions, I want to assure
18 you that we are not trying to be personnel with you or
19 invade your privacy. I am sure you understand this is a
20 very serious matter. And it is necessary for us to learn
21 about certain of your beliefs and opinions. The
22 questions mostly will be about your opinion of the death
23 penalty. What do you know about the death penalty in
24 South Carolina? Most people I talk to believe the death
25 penalty applies to all murder cases, but that is not

1 true. It is only in certain limited kinds of murder
2 cases that the death penalty may be sought. It may be
3 sought in what the law refers to as the aggravated murder
4 cases. When you are called in, I will tell you about the
5 alleged aggravating circumstances in this case.

6 What do you know about this case? You may have
7 already read or heard about the case, and there's
8 certainly nothing wrong with that. If you do not know
9 something about this case -- if you do know something
10 about this case, can you set that aside and reach a fair
11 and impartial verdict?

12 This is important because in every criminal case,
13 the defendant always comes into court presumed to be
14 innocent, and the State must prove him guilty beyond a
15 reasonable doubt. A defendant never has to call a
16 witness or even take the stand to testify. Again, the
17 burden of proof is always upon the State to prove guilt
18 beyond a reasonable doubt.

19 The real question then is whether or not you have
20 formed or express an opinion concerning the guilt or
21 innocence of the Defendant. In other words, do you know
22 of any reason why you could not give the Defendant and
23 the State a fair trial?

24 Now, as I have said, the State is seeking the death
25 penalty in this case. A death penalty case is tried in

1 two stages. The first stage of the trial is concerned
2 only with the guilt or innocence of the Defendant. And I
3 might note when I say innocence, I'm not talking about
4 the Defendant establishing his innocence. That means
5 that the guilt beyond a reasonable doubt removes that
6 presumption of innocence. The burden is always upon the
7 State to prove guilt, if any, beyond a reasonable doubt.
8 Otherwise, the Defendant is entitled to be discharged,
9 found not guilty.

10 If the Defendant is found not guilty, the trial ends
11 with the first stage. If the Defendant is found guilty
12 as charged, the trial moves into the second stage. The
13 jury is no longer concerned with guilt or innocence.
14 This second stage is concerned only with what sentence is
15 to be imposed, life imprisonment or death.

16 As I said earlier, you have already -- or you may
17 have already have some knowledge about this case.
18 However, from this point on, do not read in the news
19 accounts or watch or listen to any television or radio
20 broadcast about the case. Do not talk to your fellow
21 prospective jurors or anyone about the case including
22 even members of your own family. If anyone contacts you
23 or tries to contact you about the case, please try to get
24 their name and address and report them to me immediately.

25 Finally, if you are selected to serve as a juror on

1 this case, you, along with the other fellow jurors, will
2 be sequestered -- will not be sequestered during the
3 trial, and you will be able to go home in the afternoons
4 and evenings, but to report back during the trial of the
5 case. In the meantime, if you have any questions, please
6 tell one of the bailiffs, and he or she will pass it on
7 to me so that I can answer those questions.

8 Now, there's going to be much to do. And your
9 movement is going to be restricted to facilitate hearing
10 and understanding. Therefore, if you have any beepers or
11 cellular telephones, please cut them off. I might note
12 that our Supreme Court has ordered that anytime a cell
13 phone or a beeper goes off in the courtroom, that that
14 cell phone or beeper is to be confiscated. And I don't
15 need any more cell phones or beepers.

16 (Laughter)

17 THE COURT: In fact, I don't even need the one
18 I got. I only use it when I want to use it, so it's --
19 but again, we do not want in any way to interfere with
20 the process with any sort of interference.

21 Now, as far as the jury questionnaires, is there any
22 member of the panel who did not receive or did not fill
23 out the jury questionnaire that was asked to be sent in?
24 If so, please stand. Any member of the jury panel who
25 did not receive or fill out the jury questionnaire?

1 All right. If you would, give us your number,
2 please starting over here.

3 THE POTENTIAL JUROR: 33.

4 THE COURT: 33? Did you receive it, or did you
5 just not fill it out?

6 THE POTENTIAL JUROR: I didn't fill it out.

7 THE COURT: All right. And the next one?

8 THE POTENTIAL JUROR: 396.

9 THE COURT: Did you receive the questionnaire
10 or not fill it out?

11 THE POTENTIAL JUROR: Not fill it out.

12 THE COURT: Very good. Thank you.

13 Yes, ma'am?

14 THE POTENTIAL JUROR: 213. I did not fill it
15 out.

16 THE COURT: But you did receive it?

17 THE POTENTIAL JUROR: Yes, sir.

18 THE COURT: Yes, ma'am. All right.

19 And the last one on this side?

20 THE POTENTIAL JUROR: 104.

21 THE COURT: And did you receive it?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: But you didn't fill it out or
24 return it?

25 THE POTENTIAL JUROR: (Nodded head up and down

1 in the affirmative)

2 THE COURT: Very good. Thank you very much.

3 MADAM CLERK: One more, I believe, standing in
4 the back.

5 THE COURT: Oh, yes, sir, your number, please?

6 THE POTENTIAL JUROR: 125.

7 THE COURT: And did you receive the
8 questionnaire?

9 THE POTENTIAL JUROR: I received it and
10 partially filled it out.

11 THE COURT: All right. Thank you very much.

12 Now, those who did receive and return the
13 questionnaire, is there any juror who wishes to add to or
14 modify the information on the jury questionnaire filled
15 out at this time? If so, please stand.

16 (No response)

17 THE COURT: Is all of the information on each
18 of your juror questionnaires, for those who did fill them
19 out and return them, complete and accurate?

20 (No response)

21 THE COURT: All right. As I did before, I'm
22 going to introduce counsel here. Ms. Adams is the Tenth
23 Circuit Solicitor.

24 And again, Ms. Adams, if you would, for the benefit
25 of the jury panel, introduce those solicitors that will

1 be assisting you.

2 MS. ADAMS: Yes, sir, Your Honor.

3 My name is Chrissy Adams. I'm the Solicitor for the
4 Tenth Circuit. This is Jen Byford and Rame Campbell,
5 both assistants in my office.

6 THE COURT: Very good. And Mr. Delgado is
7 representing the Defendant. And he and Mr. McGuire ...

8 If you'd please stand, too, Mr. McGuire.

9 ... and Mr. Day representing the Defendant. Is
10 there anything, gentlemen, that you'd like to say by way
11 of introduction to your ---

12 MR. DELGADO: No, sir.

13 THE COURT: All right. Very good. Thank you.

14 Now, Madame Solicitor, if you would, please, read
15 the indictment.

16 MS. ADAMS: Thank you, Your Honor. May it
17 please the Court. This is indictment 2007-GS-04-649.

18 THE COURT: Now, you need to turn around so
19 they can hear you.

20 MS. ADAMS: Sorry, Judge.

21 2007-GS-04-649, State verses Raymondeze Lamon
22 Rivera. He's indicted for murder.

23 THE COURT: All right. Still they can't hear.
24 I'll tell you what. If you would, please, Madame
25 Solicitor, if you would bring it forward to me.

1 (WHEREUPON, Ms. Adams handed up document to the
2 Court.)

3 MS. ADAMS: Thank you, Your Honor.

4 THE COURT: All right. The Solicitor has
5 called the case of State of South Carolina verses
6 Raymondeze Lamon Rivera, indictment 2007-GS-04-649 which
7 charges in the indictment murder pursuant to section
8 § 3-10-3/16-3-20. In the indictment the Defendant is
9 charged with -- or the Defendant -- that Raymondeze Lamon
10 Rivera did in Anderson County within the city limits of
11 Anderson, South Carolina, on or about December the 14th,
12 2006, feloniously, willfully and with malice aforethought
13 kill one Kwana Burns by means of physical force and that
14 said victim died as a proximate result thereof.

15 Now, ladies and gentlemen of the jury panel, a jury
16 must be capable of listening to the testimony and
17 evidence to be presented and capable of deciding what is
18 the believable testimony and evidence and capable of
19 applying to that testimony and evidence and the law I
20 will instruct you and capable of returning a verdict, a
21 fair verdict, and a recommendation of a sentence, if
22 appropriate. And that is the reason -- and that is the
23 jury that we will be empaneling in the trial of this
24 case.

25 A qualified juror is the one who will

1 conscientiously apply the law and find the facts. A
2 qualified juror is one who is capable of returning a
3 verdict and a recommendation of sentence based only and
4 solely on the evidence and the law heard in this
5 courtroom. A qualified juror is one capable of setting
6 aside his or her opinions in deciding a matter based upon
7 the law and the evidence. A juror is not qualified if
8 the juror's views would prevent or substantially impair
9 the performance of his or her duties as a juror in
10 accordance with the oath of a juror and instruction of
11 the Court.

12 Now, is there any member of the jury panel who is
13 related by blood or marriage or who enjoys any personal
14 or other relationship with the Defendant or with any
15 member of his family, the Defendant being Raymondeze
16 Lamon Rivera? Any member of the jury panel related by
17 blood or marriage, close personal friend or business or
18 social or has any close -- or any other relationship with
19 the Defendant, Raymondeze Lamon Rivera, or with any
20 member of his family? If so, please stand.

21 (No response)

22 THE COURT: Is there any member of the jury
23 panel who is related by blood or marriage, now or
24 formerly, or who enjoyed any personal or other
25 relationship with the alleged victim, Kwana Burns, or

1 with any member of her family? If so, please stand.

2 (No response)

3 THE COURT: Any member of the jury panel who is
4 related by blood or marriage or was related by blood or
5 marriage to or who enjoyed any personal or other
6 relationship with the alleged victim, Ms. Kwana Burns, or
7 with any member of her family, if they would please stand
8 at this time.

9 (No response)

10 THE COURT: Is there any member of the jury
11 panel who is related by blood or marriage or who enjoys
12 any personal or other relationship with any of the
13 attorneys involved or with any members of their immediate
14 families? If so, please stand.

15 (No response)

16 THE COURT: Any member of the jury panel who is
17 related by blood or marriage or who enjoys any personal
18 or other relationship with any of the attorneys involved
19 or with any member of their immediate families?

20 (No response)

21 THE COURT: Now, I'm going to call out some
22 potential witnesses in this case. Now, it's going to
23 take me a while. But you will be furnished with a list
24 of the witnesses at the time we qualify the various
25 panels of jurors. But I do want you to listen to the

1 names carefully. And if they happen to be in the
2 courtroom at this time, if they would please stand when
3 their names are called.

4 Adrienne Riley, Brandon Williams, Adrienne (phonic)
5 -- or Adriana Belton, Amy Stephens, Doris Yarbrough
6 (phonic) -- Yarborough -- excuse me -- Doris Yarborough,
7 Emily Reinhart, Lieutenant Gaile Heath, Janice Bryson,
8 Karl Kenley, Laura Shackie (phonic) -- Shacker, Laurie
9 Shacker, S-H-A-C-K-E-R, Nikki Perry, Robin Taylor, Scott
10 Worsham, Selena Kinard, Sherea (phonic) -- or Sherri
11 Brown -- excuse me -- Sherri Brown, Tim Grambow, Sargent
12 Hankins, Corporal Michelle Latimer, Corporal Santos,
13 Lieutenant Bobby Ham, Corporal Glover, Corey Anderson,
14 James Beaty, Officer Carol, Lieutenant Catherine Failey,
15 David Hurt, David Tartarsky, John Barkly, Dr. Robert
16 Poletman (phonic) -- Poiletman, Patrick Carter, Rita
17 Gilliam, Karen McCullough, Dr. Beverly Wood, Captain
18 Percy Jones, Lieutenant Mike Gollach, Sergeant Henry
19 Adams, Corporal Terry McIntosh, Corporal Neosmith --
20 Neosmith, Eugene Staley, Mike Lloyd, Julian Washington,
21 Officer Goeh, Dr. Robert Poiletman -- I called his name.
22 It's a duplication. Corporal Anderson, Officer J. Hart,
23 Officer Hunter, Sean Clark, Charles Lovett, Andy Heaton,
24 Benjy Partain, Brandon Dunn, Brandon Surratt, Charles
25 Reid, Chris Wilson, Christina -- or Christine Cauthen,

1 David Creamer, Dennis Chapman, Don Hodges, George
2 Creamer, Jim Bolt, John Zamberlin, Ken Ebernickle, Kevin
3 Warren, Layton Creamer, Melissa Partain, Mike Baskin,
4 Mike Waters -- or Walters, Mike Walters, Terry Mitchell,
5 Teresa Rivera, Fredda Heard, Sonja McDowell, Paula
6 Stower, Betty Clayton, Mike Numa, Officer Hammond, Renee
7 Karls, Gary Cousin -- excuse me -- Chris Scott, Todd
8 Camron, Gary Bryant, Andrew Lunz, Vladmir Khomichuk, Jody
9 Clardy, Steve Kelley, Hank Burrow, Don McCowan, Kelli
10 Chapman, Greg Shore, Charlie Boseman, Cameron Taylor,
11 Larry Mitchell, Ernestine Jones, Dee Garrison, Stephon
12 Walton, Omar Howard, Heather Stephens, Stanley Arrington,
13 Katherine Cousin, Elizabeth Rivera, Anita Rivera, Shena
14 Scott, Ken Akins, Cousin Elkenno Williams, Denise Rivera,
15 Nicholas Cooper-Leuter, Juan Antonio Rivera, Eric Chaney,
16 Jeff Allen, Patricia Pardue (phonic), Jeremiah Pardue --
17 or Perdue -- excuse me -- Patricia Perdue or Jeremiah
18 Perdue, Keisha Greenweed -- Greenwade, Keisha Greenwade,
19 Keith Jordan, Larry Hardy, Mark Numa, Trina Numa, Paula
20 Stowers, Phoebe Kennedy, Renee Karls, Lisa Oakley, Teresa
21 -- or Teshara Hooks, Teshara Hooks, Canessa Thomas, Karen
22 Freeman, Tonya Austin, Shawna McDowell, Jennie Jackson,
23 Tony Colonna, Larry Duren, Sheila Stowers, Helen
24 McDowell, Canessa Thomas, Yolanda Davis, James Aiken,
25 Carol Jones, Olivia Cumberlander, Mark Jones, Nina

1 Jordan, Corey Primus, Corporal A. Sullivan, Officer B.
2 McMillan, Nathanale Perdue, Officer Mize, Officer Denton,
3 Officer Reed, Officer Porter, Officer Williams, Officer
4 Boggs, Sergeant Kevin Pingel, Mark Griffith, Dr. Brett
5 Woodard, Dr. Michael Cross, Dr. Donna Schwartz-Watts, Dr.
6 Pamela Crawford, Dr. Mayank Dalal, Betty Clayton, David
7 Rogers, David Jolley, Joya Joseth, Timothy Loundes,
8 Nikella Hatten -- or Hatton, Polly Hatton, William
9 Brooks, Tom Slovenski, Sheriff Hills, C.O. Burgess, C.O.
10 Thomas, Sergeant Moore, Major Sutton, Sergeant Singleton,
11 Sergeant Scott, Dr. Arleen Andrews, Dr. Marty Loring, Dr.
12 Robert Poiletman, Tammy Kerlee, Tony Shilling, Rainey
13 Cinaros (phonic) -- Cisnaros, Rick Chamblee, Vinson
14 McDowell, Janice Leipelt, Arlene Bennett, Jackie
15 McDonald, Nikea (phonic) Robinson, Kaliah Jordan, Tim
16 Watt, James Walker, Tiwanda Jones, Jackie Jones, Eleanor
17 Caldwell, Kenny Caldwell, Kameron B[REDACTED]s, Kamille [REDACTED],
18 Tommy Jackson, Tracy Richardson -- and Tracy Richardson.
19 Is any member of the jury panel related by blood or
20 marriage, now or formerly, or who enjoys any personal
21 relationship with any of the potential witnesses either
22 lay or law enforcement or with any member of their
23 family? If so, please stand. Now, remember these names
24 will be given to you if you -- to qualify you as a panel.
25 Yes, ma'am, your number, please.

1 THE POTENTIAL JUROR: Number 267.

2 THE COURT: Yes, ma'am?

3 THE POTENTIAL JUROR: I work with the city of
4 Anderson, so I know quite a few of the officers.

5 THE COURT: I'm sorry. I'm ---

6 THE POTENTIAL JUROR: My number is 267. And I
7 work at the city of Anderson, and I know some of the
8 officers.

9 THE COURT: Some of the officers? Now, with
10 that in any way interfere with your ability to give both
11 the State and the Defendant a fair and impartial trial?

12 THE POTENTIAL JUROR: No.

13 THE COURT: Very good. Thank you, ma'am.
14 Yes, ma'am?

15 THE POTENTIAL JUROR: I'm acquainted with one
16 of the officers.

17 THE COURT: All right. Would that -- did you
18 recognize which one?

19 THE POTENTIAL JUROR: Yes, sir. Brandon Dunn.

20 THE COURT: All right. Would that in any way
21 interfere with your ability to give both the State and
22 the Defendant a fair and impartial trial?

23 THE POTENTIAL JUROR: No, sir.

24 THE COURT: Very good. Thank you, ma'am.
25 Yes, ma'am?

1 MR. DELGADO: Your Honor, excuse me. Could ---

2 THE COURT: I'm sorry. I missed your number.

3 THE POTENTIAL JUROR: I'm sorry, 352.

4 THE COURT: Very good. Thank you, ma'am.

5 Yes, ma'am?

6 THE POTENTIAL JUROR: 125. David Creamer is my
7 cousin.

8 THE COURT: All right. He is your cousin?

9 THE POTENTIAL JUROR: (Nodded head up and down
10 in the affirmative)

11 THE COURT: Do you know what -- how close a
12 cousin?

13 THE POTENTIAL JUROR: Third.

14 THE COURT: Third cousin? All right. Would
15 that in any way interfere with your ability to give both
16 the State and the Defendant a fair and impartial trial?

17 THE POTENTIAL JUROR: No.

18 THE COURT: It would not?

19 THE POTENTIAL JUROR: (Shook head side to side
20 in the negative.)

21 THE COURT: Very good. Thank you, ma'am.

22 Anyone else?

23 (No response)

24 THE COURT: Now, you're going to see all of
25 these names. These are a lot of names. And of course

1 the pronounciation of them could be different. So just
2 remember to look at the list when you get the
3 opportunity.

4 Is there any member of the jury panel who is
5 represented or has been represented in the past by or who
6 has been the subject of any sort of action brought by any
7 of the attorneys or the Solicitor's office involved in
8 this matter which would be the Solicitor's Office of the
9 Tenth Judicial Circuit? Any member of the jury panel who
10 is represented by or has been represented by or who has
11 in the past been represented by or who has been the
12 subject of any lawsuit brought by any of the attorneys or
13 the Circuit Solicitor's Office for the Tenth Judicial
14 Circuit. If so, please stand.

15 (No response)

16 THE COURT: Is there any member of the jury
17 panel who has expressed or formed an opinion about this
18 case? Any member of the jury panel who has formed or
19 expressed an opinion about this case? If so, please
20 stand.

21 (No response)

22 THE COURT: Is there any member of the jury
23 panel aware of any bias or prejudice in this case either
24 for or against the State or the Defendant? If so, please
25 stand.

1 (No response)

2 THE COURT: All right. Has any member of the
3 jury panel seen, heard or read any account of this
4 matter? If so, please stand. Any member of the jury
5 panel who has seen, heard or read any account of this
6 matter? If so, please stand. And all I'm going to do is
7 just ask for your number at this time. So I'm going to
8 start on this side.

9 Your number, please, ma'am?

10 THE POTENTIAL JUROR: 27.

11 THE COURT: 27?

12 Yes, ma'am?

13 THE POTENTIAL JUROR: 7.

14 THE COURT: 7, all right. I think one at a
15 time on this side.

16 THE POTENTIAL JUROR: 266.

17 THE COURT: 256? Very good.

18 THE POTENTIAL JUROR: 266.

19 MADAM CLERK: 266.

20 THE COURT: 266? Thank you, sir.

21 Yes, ma'am?

22 THE POTENTIAL JUROR: 364.

23 THE COURT: 364? Thank you, ma'am.

24 Yes, sir?

25 THE POTENTIAL JUROR: 185.

1 THE COURT: 185? Thank you, sir.
2 Yes, ma'am?
3 THE POTENTIAL JUROR: 248.
4 THE COURT: 248? Thank you, ma'am.
5 THE POTENTIAL JUROR: 294.
6 THE COURT: 294?
7 THE POTENTIAL JUROR: Yes, sir.
8 THE COURT: Thank you, ma'am.
9 Yes, ma'am?
10 THE POTENTIAL JUROR: 352.
11 THE COURT: 352? Thank you, ma'am.
12 Yes, sir?
13 THE POTENTIAL JUROR: 383.
14 THE COURT: Thank you, sir.
15 Yes, ma'am?
16 THE POTENTIAL JUROR: 347.
17 THE COURT: 347?
18 Yes, ma'am?
19 THE POTENTIAL JUROR: 172.
20 THE COURT: 172? Thank you, ma'am.
21 Yes, ma'am?
22 THE POTENTIAL JUROR: 28.
23 THE COURT: 28? Thank you, ma'am.
24 Yes, sir.
25 THE POTENTIAL JUROR: 360.

1 THE COURT: Thank you, sir.

2 The reason I'm going -- you need to give us your
3 number is that the court reporter copies everything down.
4 So she can't tell who's talking unless we have some way
5 to identify you, and by your number is the way we do
6 that. So even though you answer more than one question
7 or respond to more than one question, just remember to
8 give us your number each time.

9 All right. Yes, ma'am?

10 THE POTENTIAL JUROR: 246.

11 THE COURT: 246?

12 Yes, ma'am?

13 THE POTENTIAL JUROR: 205.

14 THE COURT: 305?

15 THE POTENTIAL JUROR: 2-0-5.

16 THE COURT: 2-0-5, 205? Thank you, ma'am.

17 Yes, ma'am?

18 THE POTENTIAL JUROR: 348.

19 THE COURT: 348?

20 Yes, sir?

21 THE POTENTIAL JUROR: 260.

22 THE COURT: 260?

23 Yes, sir?

24 THE POTENTIAL JUROR: 292.

25 THE COURT: 292? Thank you.

1 Yes, ma'am?

2 THE POTENTIAL JUROR: 297.

3 THE COURT: 297?

4 Yes, ma'am?

5 THE POTENTIAL JUROR: 249.

6 THE COURT: 249?

7 Yes, ma'am?

8 THE POTENTIAL JUROR: 363.

9 THE COURT: 363?

10 Yes, sir?

11 THE POTENTIAL JUROR: 178.

12 THE COURT: 178?

13 Yes, ma'am?

14 THE POTENTIAL JUROR: 64.

15 THE COURT: 64?

16 Yes, ma'am?

17 THE POTENTIAL JUROR: 114.

18 THE COURT: 114?

19 Yes, ma'am?

20 THE POTENTIAL JUROR: 312.

21 THE COURT: One ...

22 THE POTENTIAL JUROR: 312.

23 THE COURT: 312? Thank you, ma'am.

24 Yes, sir, on the end?

25 THE POTENTIAL JUROR: 389..

1 THE COURT: 389? Thank you, sir.

2 Yes, ma'am?

3 THE POTENTIAL JUROR: 267.

4 THE COURT: 267? Thank you, ma'am.

5 Yes, sir?

6 THE POTENTIAL JUROR: 194.

7 THE COURT: 194? Thank you, sir.

8 All right. Based on those accounts, have any of you
9 formed or expressed an opinion about this matter? If so
10 please stand. Based on those accounts, have you formed
11 or expressed any opinion of this matter? If so, please
12 stand.

13 (No response)

14 THE COURT: Now, that's all -- yes, sir?

15 THE POTENTIAL JUROR: I have.

16 THE COURT: All right. And your number,
17 please?

18 THE COURT: 194.

19 THE COURT: Very good. Thank you, sir. You
20 may be seated.

21 Anyone else who may have formed or expressed an
22 opinion about this matter based on what they have either
23 heard or seen? If so, please stand. I just need the
24 number.

25 Yes, ma'am?

1 THE POTENTIAL JUROR: 114.

2 THE COURT: 114. Thank you very much.

3 Anyone else?

4 (No response)

5 THE COURT: Very well.

6 Now, does any member of the jury panel know of any
7 reason whatsoever why they could not give both the State
8 and the Defendant a fair and impartial trial in this
9 case? If so, please stand.

10 (No response)

11 THE COURT: All right. I'm going to ask this
12 question. And I'm going to do the question the same as I
13 did before this morning and ask you if you do feel that
14 you need to respond to the question or if you even have a
15 question about the question itself to stand, and I'll ask
16 you to come forward individually so I might discuss your
17 thoughts privately.

18 Is there any member of the jury panel who has been a
19 -- any member of the jury panel or any member of their
20 immediate families ever been the victim of a crime of
21 violence? If so please stand.

22 All right.

23 (WHEREUPON, the following was held on the record in
24 the presence of the jury panel, but out of the
25 hearing of the jury panel.)

1 THE COURT: Yes, ma'am?

2 THE POTENTIAL JUROR: 83.

3 THE COURT: 83?

4 THE POTENTIAL JUROR: My name is I was the
5 victim of a rape, and my sister was the victim of -- her
6 first husband tried to kill her. And I just cannot deal
7 with this.

8 THE COURT: What did you say?

9 THE POTENTIAL JUROR: I cannot deal with death.

10 THE COURT: I'm going to excuse you in the
11 trial of this case. All right?

12 THE POTENTIAL JUROR: Okay.

13 THE COURT: Thank you, ma'am.

14 THE POTENTIAL JUROR: Thank you.

15 THE COURT: Yes, ma'am?

16 THE POTENTIAL JUROR: 171.

17 THE COURT: Yes, ma'am.

18 THE POTENTIAL JUROR: My brother was shot and
19 killed by the police in Massachusetts thirty-three years
20 ago.

21 THE COURT: Would that in any way interfere
22 with your ability to give the State ---

23 THE POTENTIAL JUROR: None whatsoever, no.

24 THE COURT: Very good. Thank you, ma'am.

25 Your number, please?

1 THE POTENTIAL JUROR: 279.

2 THE COURT: 279?

3 THE POTENTIAL JUROR: I was a rape victim. I
4 don't know if that included -- that's what I put on my
5 application. So if that would be qualified as a victim?

6 THE COURT: It certainly would. But let me ask
7 you this. Would that in any way interfere with your
8 ability to give both the State and the Defendant a fair
9 and impartial trial?

10 THE POTENTIAL JUROR: I have surpassed that.

11 THE COURT: You have surpassed it so you could
12 be fair ...

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: ... to both sides?

15 THE POTENTIAL JUROR: Yes, sir.

16 THE COURT: Very good. Thank you, ma'am.

17 Yes, sir, your number, please?

18 THE POTENTIAL JUROR: Number 30. My older
19 sister was the victim of rape twenty years ago.

20 THE COURT: Would that in any way interfere
21 with your ability to give both the State and Defendant
22 ---

23 THE POTENTIAL JUROR: No, it would not.

24 THE COURT: Thank you, sir.

25 Yes, ma'am?

1 THE POTENTIAL JUROR: Number 349. My great-
2 grandmother was beaten to death.

3 THE COURT: How long ago was that?

4 THE POTENTIAL JUROR: Two years.

5 THE COURT: Would that in any way interfere
6 with your ability to give both the State and the
7 Defendant a fair and impartial trial in this case?

8 THE POTENTIAL JUROR: No, sir, it shouldn't.

9 THE COURT: Thank you, ma'am.

10 Yes, ma'am, your name -- number, please?

11 THE POTENTIAL JUROR: 256.

12 THE COURT: Yes, ma'am?

13 THE POTENTIAL JUROR: In 1987 my grandfather
14 was murdered. The people that did it are still in jail.
15 Every two years we go to the parole hearing.

16 THE COURT: Would that in any way interfere
17 with your ability to give both the State and the
18 Defendant a fair and impartial trial in this case?

19 THE POTENTIAL JUROR: No.

20 THE COURT: Thank you, ma'am.

21 THE POTENTIAL JUROR: Number 61. Am I supposed
22 to give you my name too?

23 THE COURT: No, just your number.

24 THE POTENTIAL JUROR: My son pled guilty to
25 malicious destruction of personal property.

1 THE COURT: Would that in any way interfere
2 with your ability to give both the State and the
3 Defendant a fair and impartial trial in this case?

4 THE POTENTIAL JUROR: No, sir.

5 THE COURT: All right. Very good. Thank you,
6 sir.

7 THE POTENTIAL JUROR: 213. Last year my
8 husband was actually on trial but was going to -- for
9 manslaughter. And he actually just got acquitted on this
10 in the last six months and is on probation. So I think I
11 might be a little bit more biased.

12 THE COURT: You would be biased?

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: All right.

15 THE POTENTIAL JUROR: I thought about it.

16 THE COURT: I'll excuse you from the trial of
17 this case.

18 THE POTENTIAL JUROR: Thank you so much.

19 THE POTENTIAL JUROR: 297.

20 THE COURT: I'm sorry. What was your number?

21 THE POTENTIAL JUROR: 297.

22 THE COURT: 297. Yes, ma'am?

23 THE POTENTIAL JUROR: I had a relative that was
24 killed by gunshot.

25 THE COURT: How long ago was it?

1 THE POTENTIAL JUROR: Probably been ten years.

2 THE COURT: Would that in any way affect your
3 ability to give both the State and the Defendant a fair
4 and impartial trial in this case?

5 THE POTENTIAL JUROR: No.

6 THE COURT: Thank you, ma'am.

7 Yes, sir?

8 THE POTENTIAL JUROR: Would child molestation
9 go under an act of violence?

10 THE COURT: As of victims rights, it is.

11 THE POTENTIAL JUROR: I was the victim, and my
12 brother and three of my sisters were also.

13 THE COURT: And has that matter been resolved?

14 THE POTENTIAL JUROR: It has been resolved,
15 yes.

16 THE COURT: Would that in any way interfere
17 with your ability to give both the State and the
18 Defendant a fair and impartial trial?

19 THE POTENTIAL JUROR: I do not believe so.

20 THE COURT: Very good. Thank you, sir.

21 MADAM CLERK: What number?

22 THE COURT: Oh, I'm sorry.

23 MS. ADAMS: 194.

24 THE POTENTIAL JUROR: 194.

25 THE COURT: What is your number, please, ma'am?

1 THE POTENTIAL JUROR: 133. Sexual assault two
2 years ago. It was not rape, but ...

3 THE COURT: Would that interfere with your
4 ability to give both the State and the Defendant a fair
5 and impartial trial in this case?

6 THE POTENTIAL JUROR: I don't think so.

7 THE COURT: Would you feel comfortable sitting
8 on a jury and making a decision?

9 THE POTENTIAL JUROR: I think I could be
10 objective.

11 THE COURT: Very good. Thank you, ma'am.

12 THE POTENTIAL JUROR: 307. It's really not a
13 big deal now. A long time ago when I was junior in
14 college, a girl attacked me in the dining hall of the
15 college, tore out some hair.

16 THE COURT: Would that in any way interfere
17 with your ability ---

18 THE POTENTIAL JUROR: No.

19 THE COURT: --- both the State and the
20 Defendant?

21 THE POTENTIAL JUROR: Correct.

22 THE COURT: Thank you for coming forward
23 though.

24 Yes, sir?

25 THE POTENTIAL JUROR: Number 54.

1 THE COURT: Yes, sir?

2 THE POTENTIAL JUROR: My oldest daughter was
3 raped.

4 THE COURT: All right. Has that matter been
5 resolved?

6 THE POTENTIAL JUROR: No, it hasn't.

7 THE COURT: All right. I'm going to excuse you
8 from the trial of this case.

9 THE POTENTIAL JUROR: Okay.

10 THE COURT: Thank you.

11 THE POTENTIAL JUROR: I can leave now?

12 THE COURT: Yes, sir.

13 THE POTENTIAL JUROR: Thank you.

14 THE COURT: Thank you, sir.

15 THE POTENTIAL JUROR: Number 19. I had a
16 cousin that was murdered.

17 THE COURT: Has that been resolved? In other
18 words, how long ago was it?

19 THE POTENTIAL JUROR: It's been about ten years
20 ago.

21 THE COURT: Would that in any way interfere
22 with your ability to give both the State and the
23 Defendant a fair and impartial trial in this case?

24 THE POTENTIAL JUROR: No.

25 THE COURT: Very good. Thank you, sir.

1 MS. ADAMS: Was it a cousin, Judge? Did he say
2 cousin?

3 MS. BYFORD: He said cousin.

4 THE POTENTIAL JUROR: 182.

5 THE COURT: 182?

6 THE POTENTIAL JUROR: Yes, sir. I had a niece
7 that was shot and killed.

8 THE COURT: Would that in any -- how long ago
9 was that?

10 THE POTENTIAL JUROR: It's been seven years.

11 THE COURT: Would that in any way interfere
12 with your ability to give both the State and the
13 Defendant a fair and impartial trial in this case?

14 THE POTENTIAL JUROR: No, sir.

15 THE COURT: Thank you.

16 MS. ADAMS: How many years ago?

17 THE COURT: Seven years ago.

18 THE POTENTIAL JUROR: 313. My brother was
19 mugged at gunpoint last week in Greenville County.

20 THE COURT: Would that in any way interfere
21 with your ability to give both the State and the
22 Defendant a fair and impartial trial in this case?

23 THE POTENTIAL JUROR: I don't think so.

24 THE COURT: Would you feel comfortable sitting
25 on a jury that would have to make a decision?

1 THE POTENTIAL JUROR: Yes, sir.

2 THE COURT: Very good. Thank you, ma'am.

3 (WHEREUPON, the following was held on the record in
4 the hearing of the jury panel.)

5 THE COURT: All right. Anyone else?

6 (No response)

7 THE COURT: Thank you.

8 (WHEREUPON, the Court resumed the bench.)

9 THE COURT: Now, the Defendant has pled not
10 guilty to the charge in the indictment against him. That
11 plea requires that the State prove his guilt beyond a
12 reasonable doubt. The Defendant is never required to
13 prove his innocence. The law requires that he be and is
14 considered innocent. The State must prove his guilt
15 beyond any reasonable doubt. Reasonable doubt is the
16 kind of doubt that would cause a reasonable person to
17 hesitate to act.

18 If after hearing and considering the testimony and
19 evidence in this case, you have a reasonable doubt of the
20 Defendant's guilt, you must resolve that doubt in his
21 favor and you must acquit him or find him not guilty. If
22 after hearing and considering the testimony and evidence
23 in this case, you do not have a reasonable doubt of his
24 guilt, you may find him guilty.

25 Now, this is a special sort of proceeding. It is

1 what we call a bifurcated trial. In this case the State
2 is seeking the death penalty against the Defendant.
3 These trials are bifurcated. That is, broken into two
4 parts. The first part is what we refer to as the guilt
5 phase. During this phase of the trial, the jury will
6 decide whether the Defendant is guilty of the crime
7 charged.

8 If the Defendant is found guilty of murder in the
9 guilt phase, then you would move into the second part
10 which is called the penalty phase. In that part of the
11 trial, the jury would decide whether the Defendant should
12 receive a penalty of life imprisonment or a penalty of
13 death by electrocution or by lethal injection.

14 That indicates nothing about the guilty -- the guilt
15 of the Defendant. As I said, the mere fact that I've
16 mentioned a penalty is to have no effect whatsoever
17 because the Defendant is presumed innocent. We simply
18 discuss the penalty now as a convenient means of
19 explaining that process to you.

20 We intend to divide you up into panels of six
21 qualified jurors who will be selected for consideration
22 for the trial of this case. From that panel, eighteen
23 will be sworn to hear the case. And we ask for your
24 patience because it does take a certain period of time to
25 do this.

1 Now, during this time and during the time that you
2 are in this court and subject to consideration, and
3 particularly if you are drawn on the jury, you cannot
4 read any account or view any account or listen to any
5 account of these proceedings. You cannot discuss the
6 matter with anyone including your fellow jurors until I
7 instruct you to do so. And then you may discuss it only
8 during the course of your deliberations in your jury
9 room. And this will be after you've heard all the
10 testimony and evidence and considered all the exhibits
11 and other evidence that has been introduced and have had
12 the charge -- excuse me -- the argument by counsel and
13 then the charge on the law by the Court.

14 If anyone tries to discuss this matter with you,
15 advise that person that you are a prospective juror and
16 that it is improper for you to have any discussion about
17 the case with anyone. You should report that occurrence
18 to a bailiff or other court personnel so that I can take
19 appropriate action.

20 And during this trial while you're in the courthouse
21 and after you leave for the day, do not provide any
22 information to anyone by any means about this case. Thus
23 for example, do not talk face-to-face or use any
24 electronic device or media such as the telephone, any
25 cell or smart phone, Blackberry, P.D.A., computer, the

1 Internet or any Internet service, any text or instant
2 messaging service, any Internet chat room, blog or web
3 site such as a Facebook, MySpace, YouTube or Twitter to
4 communicate to anyone any information about this case
5 until I accept your verdict at the conclusion of the
6 trial.

7 Do not in any way research on the Internet or in
8 libraries or newspapers or in any other way make any
9 investigation about this case on your own. Do not visit
10 or view any place discussed in this case, and do not use
11 Internet maps or Google Earth or any other program or
12 device to search for or to view any place discussed in
13 the testimony.

14 Also, do not research any information about this
15 case, the law, or the people involved including the
16 parties, a witness, the lawyers or even the Court. Do
17 not read any news stories or articles in print or on the
18 Internet or in any blog about this case or about anyone
19 involved with it or listen to any radio or television
20 reports about it or about anything involved with it or
21 let anyone tell you anything about any such news report.

22 Now, as I say, I'm going to need a little time to
23 prepare the panels in order to know when we will strike.
24 And we will start the striking of the panels in the
25 morning. So after the panels are selected, we'll come

1 back into the courtroom and I'll designate the panels and
2 tell you when you will be asked to return.

3 THE POTENTIAL JUROR: Sir?

4 THE COURT: Yes, sir?

5 THE POTENTIAL JUROR: We can't hear you in the
6 back.

7 THE COURT: You cannot? All right. As I say,
8 it's going to take some time to select the panels. In
9 other words, divide them into sixes. So I'm going to ask
10 you to take a short recess until that time.

11 Madame Clerk, do you think we can do it in a half
12 hour?

13 MADAM CLERK: I've got it ready to print out
14 right now, Your Honor. I want you just to look over it.

15 THE COURT: All right. Well, I'll tell you
16 what. Your clerk has -- what is it -- done an excellent
17 job. So she says she's got it for me. I'm going to --
18 let's take about fifteen minutes then and come back and
19 be in this part of the courtroom at three fifteen. It's
20 a little bit more -- it's five to three, so that will
21 give you a little more than twenty minutes. But at that
22 time, we'll designate the panels and tell you when to
23 come in. But you may be excused. You can stand up or
24 stay in the courtroom.

25 I would like to see the attorneys though with the

1 Clerk in the conference room.

2 All right. Very good. Be back in those seats at
3 three fifteen.

4 THE DEFENDANT: Your Honor?

5 THE COURT: Yes, sir?

6 THE DEFENDANT: Your Honor?

7 THE COURT: We'll take up your matters in a
8 moment.

9 (WHEREUPON, court stood at recess for a short
10 break.)

11 THE COURT: All right. May I see one of the
12 attorneys from each party?

13 (WHEREUPON, a bench conference was held off the
14 record.)

15 THE COURT: All right. Ladies and gentlemen of
16 the jury panel, as I mentioned earlier, I have divided
17 the jury panel into panels of six, the entire jury panel
18 into panels of six. And I'm going to ask you to come in
19 at particular times on a particular date so you don't
20 have to be here the whole time or wait or anything like
21 that. So you only have to be here for a couple of hours
22 on each day. And that will be when we'll go through the
23 individual preparation of the jury to ultimately get to
24 that point where we will select a jury. We've ---

25 THE POTENTIAL JUROR: We can't hear you back

1 here. I'm sorry.

2 THE COURT: All right. No. It's my fault. I
3 keep forgetting -- I also forget to turn on the
4 microphone.

5 What I said is we're going to have my panels of six
6 jurors to come in at different times each day until we
7 have enough to qualify a jury which will be twelve and
8 six which is eighteen. But also the parties have strikes
9 that they can exercise. So will draw more than just
10 eighteen. We're going to be having several -- well, I
11 think we finally decided if everything -- it would be a
12 total of some fifty-one if there were no excused or
13 anything like that. So we're going to have more than
14 just what's going to be necessary so we can have a full
15 panel with six alternates.

16 Now, it's important in order for the process to work
17 that when your time comes on the date and the time that
18 you'll be asked to come in -- and we've got -- the ladies
19 here in the aisle have pens. I want you to take that
20 card that you -- that has your number on it and write on
21 the back of the card, panel number one, two, three,
22 whatever it is, and the time that you're supposed to be
23 here. It will be -- I'll use tomorrow for example --
24 Tuesday nine thirty, Tuesday one thirty, Tuesday three
25 thirty. The same thing for Wednesday, it will be panel

1 four -- no it won't be panel -- yes, panel four nine
2 thirty, one thirty, three thirty. And then you only have
3 to be here for that time. And if you can't be here or
4 something comes up, call the Clerk's office and advise
5 her of the situation. But also those -- if your name --
6 if your number is called and you're one of those who did
7 not return the questionnaire, my law clerk will hand you
8 a new questionnaire. So bring it with you at the time
9 you report for the panel.

10 All right. Any questions?

11 (No response)

12 THE COURT: Very good. Madame Clerk, if you
13 would, give us the panels.

14 MADAM CLERK: Thank you, Your Honor.

15 Panel number one will need to report on Tuesday,
16 February 2nd at nine thirty a.m. As I call your name, if
17 you'll please stand. Juror number 3, number 10, number
18 12, number 15, number 16, number 19. These six jurors
19 will need to report -- if you'll write it on the back of
20 your little card -- on Tuesday, February 2nd at nine
21 thirty a.m. And if you'll report back up here to the
22 fourth floor, there will be someone there to direct you
23 where to come.

24 Do you want to let them go, Your Honor?

25 THE COURT: All right. Let's see. Does ---

1 there were none that didn't have the file ---

2 MADAM CLERK: Not in that group.

3 THE COURT: All right. Very good. With that,
4 I do want to thank you for being here. By the way,
5 there's one other little -- now, you've heard enough from
6 me, I think, about talking to anybody. Please understand
7 this is probably the most difficult part of the trial of
8 this case. And that is when you go home this afternoon
9 somebody's going to ask about what you're doing. And of
10 course, you can tell them that you have been summoned for
11 a jury and we're qualifying the jury for the trial of a
12 case. But when they ask you what it's about, you've got
13 to tell them that you don't -- you can't discuss it. And
14 they'll probably say, well, why not? And you'll tell
15 them because the Judge said so.

16 (Laughter)

17 THE COURT: They will probably say, that's
18 ridiculous. But tell them that this -- I don't think you
19 have any question in your mind about this case is
20 important to all parties involved, and it needs to be
21 resolved in the right way. And if they don't understand,
22 I'll be glad to explain it to them at 8:30 tomorrow
23 morning.

24 (Laughter)

25 THE COURT: But just remember no one who

1 doesn't sit in that jury box with the jury that's
2 ultimately selected or is back in that jury room who have
3 to make the determination can help you. They can only
4 interfere with the proper resolution of the case. So as
5 I say, if they don't understand, I'll be glad to explain
6 it to them. But with that, I do want to thank you all.
7 But as you're excused -- you leave today, please come
8 back, this first panel, at nine thirty in the morning.
9 And I'll see you as we go through it. But again, you are
10 excused for the day. And I want to thank you all for
11 your patience.

12 Madame Clerk, see if we can help them.

13 MADAM CLERK: All right.

14 THE COURT: All right. This will be the second
15 panel.

16 MADAM CLERK: This will be panel number two,
17 and you will need to report Tuesday, February 2nd at one
18 thirty p.m. Juror number 28, number 29, 30, 33, 34 and
19 36. These six jurors will need to -- you'll need to
20 report in the morning or tomorrow afternoon at one
21 thirty. February 2nd at one thirty p.m., please. Panel
22 number two.

23 THE COURT: Now, write that number on your
24 card, please.

25 MADAM CLERK: And you're free to go.

1 THE COURT: Very good. Thank you so much.

2 MADAM CLERK: The next is panel number three,
3 and you will need to report on Tuesday, February 2nd at
4 three thirty p.m. Juror number 38, number 41, 49, 56,
5 64, 68. This will be panel number three, and you will
6 need, again to report on February 2nd at three thirty
7 p.m. Thank you very much.

8 Panel number four will need to report on Wednesday,
9 February 3rd at nine thirty a.m. This will consist of
10 juror number 76, number 86, juror number 86, number 104,
11 109, 114, 125. And again, this makes up panel number
12 four, and you need to report on Wednesday, February 3rd
13 at nine thirty a.m., please. Thank you very much.

14 The next is panel number five. If you'll please
15 report on Wednesday, February 3rd at one thirty p.m.
16 That is juror number 127, number 133, number 135, 141,
17 145, 147. This is panel number five. If you'll please
18 report on Wednesday, February 3rd at one thirty p.m.
19 Thank you very much.

20 THE COURT: Now, again, if anybody has any
21 questions, don't hesitate to ask. Or at least raise your
22 hand.

23 MADAM CLERK: The next is panel number six.
24 And you'll need to report on Wednesday, February 3rd at
25 three thirty p.m. That is juror number 153, number 158,

1 159, 160, 171, 178. If you six would please report for
2 panel number six on Wednesday, February 3rd at three
3 thirty p.m. Thank you very much.

4 The next group will make up panel number seven. And
5 you will need to report on Thursday, February 4th at nine
6 thirty a.m. That is juror number 182, number 187, 190,
7 364, 194, 200. If you would please report on Wednesday,
8 February 4th at nine thirty a.m. for panel number seven.

9 THE POTENTIAL JURORS: Thursday.

10 MADAM CLERK: Excuse me. Thursday.

11 (Laughter)

12 MADAM CLERK: Please excuse me. Thursday, yes.
13 Thank you.

14 The next group will be panel number eight. You will
15 need to report on Thursday, February 4th at one thirty
16 p.m. That will be juror number 205, 206, 207, 209, 210
17 and 218. That is Thursday, February 4th at one thirty
18 p.m. for panel number eight. Thank you.

19 That is six, isn't it? One, two, three, four, five
20 -- one, two, three, four, five ---

21 Who was the sixth one? Who was the -- okay. Okay.
22 Good. Thank you.

23 The next is panel number nine. And you'll need to
24 report on Thursday, February 4th at three thirty p.m.,
25 please. That will be juror number 219, 222, 225, 247,

1 248 and 249. That will be panel number nine to report on
2 Thursday, February 4th at three thirty p.m., please.
3 Thank you.

4 The next panel will be panel number ten. And we ask
5 that you report on Friday, February 5th at nine thirty
6 a.m. Juror number 252, 261, 266, 269, 270, 278. 278?

7 THE POTENTIAL JUROR: Yes.

8 MADAM CLERK: 278? All right. And that is
9 juror -- panel number ten. Please report Friday,
10 February 5th at nine thirty a.m. Thank you.

11 The next panel will be panel number eleven that will
12 need to report on Friday, February 5th at one thirty p.m.
13 That will be juror number 284, number 292, 294, 297, 307,
14 313. And this will be panel number eleven, and please
15 report on Friday, February 5th at one thirty p.m. Thank
16 you.

17 The next will be panel number twelve, and we'll ask
18 that you report on Friday, February 5th at three thirty
19 p.m. That will be juror number 320, number 321, 329,
20 333, 340, 342. This is panel number twelve, and we ask
21 that you report back on Friday, February 5th at three
22 thirty p.m. Thank you.

23 The rest of them we are going to give call-in
24 numbers to, Judge.

25 THE COURT: Right. Okay.

1 MADAM CLERK: Would you like me to go ahead and
2 pass these out?

3 THE COURT: Yes, ma'am. All right.

4 Ladies and gentlemen that were not drawn on any of
5 these panels, the Clerk of Court is going to give you a
6 paper with the number, a telephone number on it. And
7 that is an answering machine that she has prepared that
8 will have a message on it. Now, you need to call this
9 number Thursday, February the 4th, I think it is -- but
10 it is Thursday of this week -- February the 4th, after
11 six o'clock. At that time we will be in a better
12 position to tell you as to whether or not or when to come
13 in or how we'll proceed from that time. But we have
14 enough to carry us through Friday. And we'll see at that
15 time how many more, if any, we need.

16 So what we'll ask you to do is to call that number
17 after 6 o'clock on Thursday, February the 4th, 2010. And
18 as I say, it's an answering machine. If you do not get
19 through first -- the first time, then again continue
20 calling the number until you do get through and do
21 whatever the message says. It's absolutely essential
22 that you be here when it's required to be here so that we
23 can continue with the progress of the case. Again -- but
24 you do not have to do anything until that time.

25 However, the same admonition I've given to everybody

1 about not discussing this case at all until you are
2 dismissed if you are dismissed -- or you will be
3 dismissed whenever the case is finished even if you're
4 drawn on the jury. But until you are dismissed, you're
5 not to discuss this case with anybody or permit anybody
6 to discuss it with you because you still are potential
7 jurors in this case. We're just trying to chart it out
8 as equally or fairly as we can.

9 Now, is there anybody that does not have the
10 telephone number? If so, raise your hand.

11 (No response)

12 THE COURT: All right. Does anyone not
13 understand what to do? Call that number Thursday,
14 February the 4th, after six o'clock p.m. and do whatever
15 the message says to do. Again, I want to thank you for
16 your patience with the Court today. But I also want to
17 tell you that I'm looking forward to working with you at
18 this term of General Sessions Court for Anderson County.
19 And I thank you for being here today.

20 Everyone else remain seated while the jury retires
21 from the courtroom.

22 (WHEREUPON, the remaining jury panel members were
23 excused.)

24 THE COURT: All right. Please advise me when
25 the courtroom has cleared.

1 (Off record discussions)

2 THE COURT: All right. Is the jury -- is the
3 courtroom clear of all potential jurors?

4 THE BAILIFF: Yes, sir.

5 THE COURT: Very good. Thank you.

6 All right. Just for the Court's benefit, I need to
7 know what we need to consider this afternoon from the
8 State.

9 MS. ADAMS: Your Honor, I know you had
10 mentioned maybe doing *Jackson v. Denno*. The officer is
11 here if you would like. Or however you would like to
12 proceed, we're ready.

13 THE COURT: All right.. So the one thing from
14 the State would be the *Jackson v. Denno*?

15 MS. ADAMS: Yes, sir.

16 THE COURT: Is that all? Is that all?

17 MS. ADAMS: Yes, sir.

18 THE COURT: All right. From the Defense -- Mr.
19 Delgado, what does the Defense want us to consider?

20 MR. DELGADO: Nothing, Your Honor.

21 THE COURT: All right. Now, I do note that the
22 Defendant has requested to be heard. I will hear him at
23 this time.

24 THE DEFENDANT: Thank you, Your Honor. Your
25 Honor, if I may, I'd like to renew my motion to relieve

1 counsel.

2 THE COURT: All right you're going to have to
3 speak up so we can hear you.

4 Can you push the microphone down there for Mr.
5 Rivera?

6 THE DEFENDANT: Can you hear me now?

7 THE COURT: Yes, sir. I tell you what. Mr.
8 Day, if you could swap with him, we might be able to ...

9 THE DEFENDANT: Your Honor, if I may, I would
10 like to renew my motion again to relieve counsel. Your
11 Honor, to thrust counsel upon me against my specific wish
12 violates the logic of the amendment. I have a right to a
13 freedom of choice under the Constitution. And to force
14 any attorney on me can only lead me to believe that the
15 law is against me. For this reason in order to relieve
16 myself of counsel, I know I must knowingly and
17 intelligently relieve those benefits with an open eye.
18 The right to defend is considered personal ---

19 THE COURT: Can you hear, Renee?

20 MADAM COURT REPORTER: No, sir.

21 THE COURT: Just a moment. Mr. Day, could you
22 either -- could we bring that closer to him?

23 MR. DAY: I don't think -- hold on one second

24 ---

25 THE COURT: Or could you maybe let him move

1 down the table? There we go. I do want to hear, and I
2 want to be sure that it's on the record. That will be
3 good. Just pull it down to you.

4 THE DEFENDANT: Again, Your Honor, I renew ---

5 THE COURT: Well, I've heard you so far, but I
6 just want to be sure that everything that you do say is
7 ---

8 THE DEFENDANT: Again, Your Honor, I'm the
9 Defendant and not my lawyers appointed to me nor the
10 State prepared the consequences with my permission. If
11 I'm the Defendant, therefore, I must be free personally
12 to decide whether or not in a particular case counsel is
13 to my advantage. And although I may conduct my own
14 defense, ultimately to my attorney, my choice must be
15 honored out of respect for the individual whose life was
16 lost.

17 THE COURT: Is that it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Well, Mr. Rivera, I have -- I
20 happen to know the counsel that has been appointed for
21 you, some not as -- perhaps not as well as others. But
22 for example, Mr. Day has been a practitioner in our Bar
23 for some many years, and I'm familiar with him. And I
24 think he was appointed as a personal attorney just to
25 advise you by Judge Nicholson. And that order still is

1 in effect.

2 Now, as far as your attorneys that have been
3 provided by the State, I know them to be exceptionally
4 qualified and that they would -- not only qualified, but
5 they are very dedicated. And they're perhaps -- I'd say
6 this in no other way than just to explain how fortunate
7 you are. You have some of the best attorneys that we
8 have in South Carolina representing you in these two
9 gentlemen. So I'm not sure if the person who feels that
10 he knows how to represent himself is the best person to
11 represent himself. Is there anything else?

12 THE DEFENDANT: Your Honor, they might be the
13 best counsel, but that's on a case basis, Your Honor.

14 THE COURT: What's the basis of your appeal
15 then or your motion?

16 THE DEFENDANT: Your Honor, I have previously
17 asked my attorneys to file certain motions and asked them
18 to get me a copy of the newly discovered evidence the
19 State would present to the Defense. I also asked them to
20 let me see the victim -- excuse me -- the jury package.
21 And I also asked them to let me see the witness --
22 eyewitnesses for the Defense. And they refused to do
23 either of those things. Okay? I filed myself certain
24 motions on my behalf. One was a motion for a change of
25 venue. Another was a motion to dismiss charges under a

1 violation of my Sixth Amendment and Forth Amendment for a
2 speedy trial. Those are my rights personally under South
3 Carolina law. And they refused to do it.

4 THE COURT: Well ---

5 THE DEFENDANT: I think, Your Honor, this has
6 been a conflict of interest from the start.

7 THE COURT: What's the conflict?

8 THE DEFENDANT: Basically what I just explained
9 to you, Your Honor.

10 THE COURT: No, you didn't explain the
11 conflict. You explained what ---

12 THE DEFENDANT: The conflict was ---

13 THE COURT: --- where you're disappointed.

14 THE DEFENDANT: The conflict was them refusing
15 to ---

16 THE COURT: Pardon?

17 THE DEFENDANT: The conflict was them refusing
18 to submit those motions on my behalf, Your Honor.

19 THE COURT: Well, that's not a conflict of
20 interest. That's just not asking them to do something
21 that would waste the Court's time or interfere with the
22 proper disposition of the case.

23 THE DEFENDANT: Well, I don't feel that's a
24 waste of the Court's time, Your Honor.

25 THE COURT: Well, I know that you don't because

1 -- what is it -- you have anything else -- you've got, as
2 I say, not a whole a lot to gain, I guess, in having the
3 case disposed of. I mean, again, if you have something
4 substantial, if you have some -- tell me the prejudice
5 that you've suffered from any of your motions.

6 THE DEFENDANT: From any of my motions?

7 THE COURT: Yes, sir. What's the prejudice?

8 THE DEFENDANT: My motions haven't even been
9 heard yet, Your Honor.

10 THE COURT: Well, tell me the prejudice on the
11 motions you think that you've been -- that haven't been
12 heard.

13 THE DEFENDANT: I can't explain the prejudice
14 when my motions haven't been heard yet.

15 THE COURT: Why not then? Why did you make the
16 motions? You don't know why you made the motions?

17 THE DEFENDANT: Oh, yeah, I know why I made the
18 motions.

19 THE COURT: All right. I understand.

20 THE DEFENDANT: One reason I made the motion
21 for a change of venue because I don't feel like I will
22 get a fair trial based on -- based on the last trial. My
23 second -- my second motion for -- a motion to dismiss the
24 charges is a violation of my Sixth Amendment, it was
25 filed -- the motion was filed back in 2000 ---

1 THE COURT: Now, which motion is that one that
2 you're talking about now?

3 THE DEFENDANT: The motion for -- to dismiss
4 charges under the Sixth Amendment.

5 THE COURT: And what's your grounds for
6 dismissing? Your grounds.

7 THE DEFENDANT: Right.

8 THE COURT: What are your grounds for
9 dismissing?

10 THE DEFENDANT: Right.

11 THE COURT: What are your grounds for
12 dismissing? If you want to represent yourself, I need to
13 know if you're competent to do that.

14 THE DEFENDANT: If you'll give me a chance to
15 explain it, I will.

16 THE COURT: Well, I'll be glad to listen to you
17 if you'll say something.

18 THE DEFENDANT: The motion to dismiss the
19 charge was on the grounds of the Sixth and Fourteenth
20 Amendment, Your Honor. Like I said at the beginning ---

21 THE COURT: Which part of the Fourteenth
22 Amendment? The Fourteenth amendment provides for equal
23 protection.

24 THE DEFENDANT: The Fourth Amendment also
25 provides ---

1 THE COURT: Fourteenth or Fourth?

2 THE DEFENDANT: Fourteenth, Your Honor.

3 THE COURT: Well, all right then. Equal
4 protection and due process. What protection has been
5 violated or process not been afforded?

6 THE DEFENDANT: My Sixth Amendment right, the
7 Fourteenth and Sixth Amendment.

8 THE COURT: But the Sixth Amendment is
9 confrontation. That's what we have.

10 THE DEFENDANT: The Sixth Amendment also
11 guarantees a speedy trial. That's what I thought was
12 most important because I didn't get that.

13 THE COURT: Well, how have you been prejudiced
14 by not -- you've had one trial on one case.

15 THE DEFENDANT: No, Your Honor. This trial.

16 THE COURT: Pardon?

17 THE DEFENDANT: This trial. I haven't had -- a
18 motion was ---

19 THE COURT: Well, I'm sorry. There are other
20 things that the Court has to do. But again, what sort of
21 prejudice have you had?

22 THE DEFENDANT: Again, I asked my attorneys not
23 to file continuance motions because I filed a motion for
24 a speedy trial back in 2008.

25 THE COURT: Well, as I understand it -- I've

1 been only involved in this case for a short period of
2 time. But I can assure you that your attorneys have been
3 very diligent in trying to protect your interests. In
4 fact -- what is it -- to include evaluations and all that
5 have only been completed in the last few days. So if you
6 had a speedy trial, you wouldn't have had the benefit of
7 that. So I don't quite understand. But go ahead. I
8 want to hear your motions.

9 THE DEFENDANT: I mean, that's about it, Your
10 Honor. As long as I knowingly and intelligently waive my
11 rights under the Constitution, that's it.

12 THE COURT: Well, I'm afraid not because the
13 Constitution does provide for representation.

14 THE DEFENDANT: Right. And it also provides
15 for me to go pro se.

16 THE COURT: Only if it doesn't prejudice. And
17 I think that in your particular case, since you don't
18 recognize the advantages you've been afforded, that
19 perhaps it would be an ill considered exercise of what
20 you consider your rights. I would -- I don't find that
21 -- what is it -- you're qualified to represent yourself.

22 THE DEFENDANT: That's fine.

23 THE COURT: All right. Anything else?

24 THE DEFENDANT: No. Just my motion as to a
25 change of venue hasn't been ruled on, and my motion to

1 dismiss charges hasn't been ruled on.

2 THE COURT: And what is your basis for the
3 change of venue?

4 THE DEFENDANT: My change of venue -- basically
5 my change of venue, Your Honor -- again, as I had already
6 stated, because I don't feel like I get a fair trial here
7 in Anderson County due to the publicity in Anderson
8 County, Your Honor.

9 THE COURT: All right. Has that motion been
10 made, Madame Solicitor?

11 THE DEFENDANT: It was filed December 21st. I
12 have a copy right here.

13 THE COURT: Was it made and heard?

14 MS. ADAMS: It has not been heard, no, sir,
15 Your Honor.

16 MR. MCGUIRE: Judge, Judge Nicholson indicated
17 that it was sort of premature because the process in
18 South Carolina is we have to give it a shot in Anderson
19 County to see if we can pick a jury. If we run into
20 difficulty and it appears as though the Defendant cannot
21 ---

22 THE COURT: Well, of course, that is -- that's
23 the basis of any change of venue motion is that you
24 cannot get a fair trial ---

25 MR. MCGUIRE: Sure.

1 THE COURT: --- until -- what is it -- the
2 process has moved forward, we don't know that.

3 MR. MCGUIRE: Right.

4 THE COURT: As of yet -- and again, I'm not in
5 any way suggesting that I know what the ultimate result
6 of the voir dire is going to be. But I find that -- what
7 is it -- the jury panel has been very candid. And I feel
8 that right now that I haven't seen any prejudice. So
9 we'll wait and see.

10 THE DEFENDANT: That's fine.

11 MR. MCGUIRE: And Your Honor, just for the
12 record, part of our decision in not filing that in
13 advance, A, we didn't really have the overwhelming
14 saturation of publicity that would warrant that. But
15 then 2, the alternative to go to another county to pick a
16 jury there, bring them in, it's guaranteed to be
17 sequestered. You know, that was something we didn't
18 want. So we think it's in our client's -- very much in
19 his best interest to give a shot at picking a jury here.

20 THE COURT: Again, if you're talking about
21 sequestration, I can assure you I do have experience with
22 that. I've had to draw two juries recently in two
23 separate counties to be carried to the place of trial.
24 And I'm not -- and one of the reasons that I overruled
25 the State's objection to your motion to not sequester is

1 because I think that that would be the better thing is to
2 let the jury be comfortable in what they're doing. And
3 again, because the State has reminded the Court that the
4 danger of that is just what you're saying. And I'll
5 treat the question accordingly.

6 All right. Thank you very much. Anything else?

7 THE DEFENDANT: Just my motion to dismiss
8 charges on the grounds of the Sixth and Fourteenth
9 Amendment, Your Honor. It was filed September 21st.

10 THE COURT: Yes, sir? I'm sorry.

11 THE DEFENDANT: Oh, no. I was just letting you
12 know ---

13 THE COURT: I just wanted to be sure I was on
14 solid ground because obviously whether or not your motion
15 should be granted to discharge your attorneys is based on
16 an evaluation by this Court as to whether or not you
17 could adequately represent yourself, but more
18 importantly, if the counsel that you have appointed for
19 you are in any way not equipped to go forward. And I can
20 assure you I find that they are very much adept at what
21 they're doing as well as knowledgeable if not perhaps
22 some of the most preeminent counsel in the state on cases
23 such as this. All right. So I'm going to deny your
24 motion to relieve your counsel.

25 THE DEFENDANT: No, you already did that, Your

1 Honor. This is the motion to dismiss charges under the
2 Sixth and Fourteenth Amendment.

3 THE COURT: Well, again, what was the delay in
4 the trial that the State -- you say the State -- would
5 entitle to you -- the delay caused by the State that
6 would entitle you to a quick and speedy? Now, we're
7 getting a speedy trial right now if I ---

8 THE DEFENDANT: No, Your Honor. The motion to
9 filed ---

10 THE COURT: I can assure you it's a speedy one
11 for me. I think I've had it for about a month.

12 THE DEFENDANT: I understand that. You just
13 got the case.

14 THE COURT: Actually I don't know if you
15 understand it or not. I hope you understand that yours
16 is not the only case in our system. And everyone else --
17 there are other people who want their trials too.

18 THE DEFENDANT: I understand.

19 THE COURT: And we have to -- what is it --
20 accord them. I think this is a 2007 indictment.

21 MS. ADAMS: Yes, sir.

22 THE COURT: All right.

23 THE DEFENDANT: My motion was filed in 2008,
24 Your Honor.

25 THE COURT: Well, I'm sorry. They are a lot of

1 things that happened before 2008 and have happened since
2 2008 that affect it. I don't find any violation of your
3 right to a speedy trial. Denied.

4 THE DEFENDANT: That's it for me, Your Honor.

5 THE COURT: Very good. Anything else?

6 THE DEFENDANT: That's it.

7 THE COURT: Very good. Thank you, sir.

8 All right. I guess we'll take up the *Jackson v.*
9 *Denno* now. Very good.

10 MS. ADAMS: Your Honor, can we have a couple of
11 minutes ---

12 THE COURT: Certainly.

13 MS. ADAMS: --- just to be sure we have our
14 Court's Exhibits ready?

15 THE COURT: If you would, please. We'll stand
16 at ease until the State's ready to proceed.

17 MS. ADAMS: Thank you.

18 (WHEREUPON, court stood at ease.)

19 MS. ADAMS: Your Honor, I think we're ready if
20 the Defense is ready.

21 THE COURT: All right. Is the State ready to
22 proceed?

23 MS. ADAMS: Yes, sir, Your Honor.

24 THE COURT: Is the Defense ready to proceed?

25 MR. DELGADO: Yes, Your Honor.

1 THE COURT: You may call your first witness.

2 MS. ADAMS: Thank you, Your Honor. May it
3 please the Court. We call Lieutenant John Zamberlin to
4 the stand.

5 MADAM CLERK: Come around, please, sir, to be
6 sworn.

7 JOHN ZAMBERLIN,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. ADAMS:

11 Q. John, where are you employed?

12 A. I'm employed at the Anderson Police Department.

13 Q. And in what capacity?

14 A. I'm employed as a lieutenant assigned to the
15 criminal investigation division.

16 Q. And how long have you been in law enforcement?

17 A. I've been in law enforcement for approximately
18 twenty-four years.

19 Q. And you are the lead investigator in this case; is
20 that right?

21 A. That's correct.

22 Q. And now, this Defendant has actually been convicted
23 obviously on the murder of Asha Wiley, and we are going
24 forward on the murder of Kwana Burns; is that correct?

25 A. Yes.

1 Q. Okay. And now, what's the proximity when these
2 murders occurred? How many days apart?

3 A. Approximately three or four days.

4 Q. Now, through your investigation of the murder of
5 Kwana, were you able to track this Defendant in
6 Douglasville by use of his cell phone?

7 A. Yes.

8 Q. And that is basically how he was arrested, correct?

9 A. Yes, it is.

10 Q. Okay. Can you tell the Court a little bit about how
11 that happened?

12 A. I had a telephone number that was located in the
13 victim Kwana Burns cell phone associated with an
14 individual by the name of Raymond. The telephone number
15 was a Florida area code. And as a result of receiving
16 that information, I contacted a cellular telephone
17 provider that serviced that particular phone, Metro
18 P.C.S. And as a result of serving a search warrant with
19 that company, I was able to obtain incoming and outgoing
20 calling data for that particular number. And in addition
21 to that, also received cellular telephone to tower
22 communicated locations for a specific period of time.

23 Q. So as a result of that, the Defendant was arrested
24 on Friday, December 15th, 2006, around seven thirty at
25 night; is that right?

1 A. Yes, it is.

2 Q. And as a result of that arrest in Georgia, did you
3 and Lieutenant Mike Walters go to Douglasville?

4 A. Yes, we did.

5 Q. Were you able to speak to the Defendant that night
6 or basically early in the next morning?

7 A. We were able to speak with the Defendant early the
8 next morning.

9 Q. And do you recall about what time that was?

10 A. It was approximately two forty-four or two forty-
11 five a.m.

12 Q. So now we're talking about -- so the morning of
13 December 16?

14 A. Yes.

15 Q. And who was with you again?

16 A. Mike Walters.

17 Q. Okay. Please describe the room you were in when you
18 spoke to the Defendant.

19 A. The room was a room that I believe was predominately
20 designed for interview purposes. It was contained within
21 the detention facility at the Douglas County Detention
22 Center in Georgia.

23 Q. So about how big is that room?

24 A. It's approximately ten by ten, twelve by twelve.

25 Q. What is actually in that room?

1 A. There was a small table that had been placed up
2 against the wall. There were some forms on the table,
3 and there was three chairs at the table.

4 Q. So did the three of you sit at that table meaning
5 you, Mike Walters and the Defendant?

6 A. We all walked into the room together, and we sat
7 down at the table, yes.

8 Q. What did you say to the Defendant at this time when
9 y'all walked in together?

10 A. I told Raymondeze that I was tired. I asked him if
11 he was tired. I sat down at the table and, utilizing a
12 Waiver of Rights form from our department, I asked him to
13 spell his name, also address information, birth date
14 information, while I was filling out the Advice of Rights
15 form. In addition to that, I introduced myself as John
16 Zamberlin. Also, Mike Walters introduced himself to the
17 Defendant as well at that time.

18 Q. So this was an Anderson Police Department form,
19 right?

20 A. Yes.

21 Q. I want to show you ...

22 MS. ADAMS: Judge, I think it's already been
23 marked as a Court's exhibit. Your Honor, this has been
24 previously marked as Court's Exhibit Number 3.

25 Q. Do you recognize that?

1 A. Yes, I do.

2 Q. Is that the form that you used to go over the
3 Defendant's rights with him?

4 A. Yes, it is.

5 Q. And you read him that form?

6 A. Yes, I did.

7 Q. Okay. How do you actually go about reading someone
8 their *Miranda* rights, John? Can you explain, please?

9 A. I read the Defendant his rights directly from the
10 wording that's on this form.

11 Q. Did you read it verbatim?

12 A. Yes.

13 Q. Okay. And how long did it take you to go through
14 that form with him the first time?

15 A. I was -- we were with the Defendant approximately
16 nine minutes.

17 Q. What's the time at the bottom of that?

18 A. Two fifty-three a.m.

19 Q. Okay. And you started at two forty-four?

20 A. Yes.

21 Q. Okay. Now, John, obviously in your experience as a
22 law enforcement officer, you've come across people under
23 the influence of alcohol and drugs; is that right?

24 A. Yes.

25 Q. Did the Defendant appear to be under the influence

1 of any drugs or alcohol the early morning hours of
2 December 16th of '06?

3 A. No. No.

4 Q. Did you tell the Defendant where you were from at
5 this point?

6 A. After the *Miranda* was read, I responded to a
7 question from the Defendant. And as a result of that, I
8 did tell him that we were from Anderson, South Carolina.

9 Q. What was his question?

10 A. He asked -- the Defendant asked where we were from
11 and why we wanted to speak with him. And I divulged at
12 that time that we were investigating two homicides and we
13 were from Anderson, South Carolina.

14 Q. Now, what was his reaction when you said that?

15 A. He looked downward toward the ground and smiled and
16 -- he either said he thought that he needed an attorney
17 or obviously I need an attorney at that point.

18 Q. Okay. And what was his demeanor at this point?

19 A. He was a likable personality. Personable is how I
20 would describe his behavior.

21 Q. Now -- so what happened? Did he sign his waiver
22 form? Did he waive his rights and talk to you at this
23 time?

24 A. No.

25 Q. So did he give a statement?

1 A. No.

2 Q. Okay. And you stated earlier he asked for a lawyer?

3 A. Yes.

4 Q. All right. Once he asked for that lawyer, John,
5 what did you and Mike Walters do?

6 A. After I notated on the form that the subject has
7 asked for a lawyer, I advised Mr. Rivera that we would be
8 in Douglasville for a short time longer. And I provided
9 him with a piece of paper with my name and phone number
10 on it. And then we left the room.

11 Q. And did you have any other conversation with him
12 then?

13 A. No.

14 Q. All right. And what did you actually put on that
15 Miranda form at the bottom where his signature is?

16 A. Subject has asked for a lawyer.

17 Q. All right. So after you left him at this point,
18 John, what did y'all do?

19 A. We were in Douglasville for a time longer, and we
20 were involved in communications from Douglasville back to
21 Anderson. And in addition to that, we collected his
22 belongings from the property area of the detention
23 center.

24 Q. So were you planning on arresting him for the murder
25 of Kwana Burns at this point before he gave his

1 statement?

2 A. Yes.

3 Q. After you collected his belongings, did you come
4 back to Anderson?

5 A. Yes.

6 Q. What is your next step? Since you're getting ready
7 to charge him with murder, what is the next thing that
8 you're going to do?

9 A. The next step in the process was of course to take
10 the facts of the case in front of a -- in our case a
11 municipal judge to establish probable cause for an arrest
12 warrant. And then the next step would be to engage in
13 starting the extradition process.

14 Q. And as part of the extradition process, do you have
15 to get a set of fingerprints from the Defendant?

16 A. Yes, among other things.

17 Q. Okay. Tell us about that process.

18 A. There's a package that I had received from the
19 prosecutor's office which has a directional outline on
20 some of the things that the Attorney General's office
21 would require on an extradition. One of those things is
22 four latent print cards containing the fingerprints of
23 the Defendant.

24 Q. Did you attempt to get those fingerprints from
25 Douglasville?

1 A. No.

2 Q. Okay. Tell the Court what happened, what's that
3 problem -- what happened about the fingerprints.

4 A. I realized that we did not have the four fingerprint
5 cards required according to the packet. And so at that
6 point I contacted a narcotics investigator with our
7 department to go back to the Douglasville County
8 Detention Center and to receive these four print cards
9 that was needed and to bring them back to me.

10 Q. So you actually went to get the sets of fingerprints
11 that Douglasville took? You didn't go back to get your
12 own set at this point?

13 A. No. As a matter of fact, we did not have the four
14 print cards that was needed. And so I sent a -- I didn't
15 have anybody available in my division the particular
16 night that he went back. I believe it was the 18th or
17 the 19th. And so he was available on second shift, so I
18 asked him if he would go on my behalf. And he agreed to
19 do so.

20 Q. And he just picked them up; he didn't see the
21 Defendant or talk to the Defendant or have any contact
22 with the Defendant?

23 A. He just picked the print cards up. They -- someone
24 in the Douglasville County Detention Center had taken
25 prints, but I'm not sure who.

1 Q. Okay. And now, please tell the Court, John, the
2 condition of those fingerprints.

3 A. Well, when I received the print cards back, I
4 noticed that it didn't appear to me that -- there was a
5 name on the print cards, Raymondeze Rivera, but it didn't
6 appear to me that -- I didn't -- you know, the individual
7 that took the prints, their name wasn't on it, the print
8 cards was not dated. And I really had no verification
9 that these prints even belonged to the Defendant without
10 some sort of an analysis being conducted. And I look at
11 the prints themselves. And it was in my opinion that the
12 prints were not really what I thought was suitable to
13 submit for extradition purposes.

14 MS. ADAMS: All right. Your Honor, I'm going
15 to show Lieutenant Zamberlin what's been previously
16 marked as Court's Exhibit 10.

17 Q. Is this the fingerprint card or one of them that you
18 received back from Douglasville?

19 A. Yes, it is.

20 Q. Okay. And now -- so you were speaking of basically
21 there's places for the Defendant to sign, for the officer
22 to sign, for it to be dated. And none of that was even
23 filled out, was it?

24 A. Yes. The blank where it requires a signature from
25 the person fingerprinted was blank. And there was no

1 signature on here that I could use to verify who actually
2 took these fingerprints.

3 Q. Okay. So in other words, was there any identifying
4 features in that card? Basically Social Security number,
5 date of birth. Was anything filled out?

6 A. No.

7 Q. On that card from Douglasville.

8 A. No, other than a printed name Raymondeze Lamon
9 Rivera. But the other areas were not completed or filled
10 out.

11 Q. And then actually the quality of those prints, I
12 can't -- tell the Court about the actual quality of those
13 prints.

14 A. I mean, I'm no fingerprint expert. But based on
15 previous extraditions, I mean, this is not something that
16 I would personally want to send up for processing on an
17 extradition. I'm not saying the prints are not
18 identifiable. I'm just saying that , you know, I'm
19 accustomed to looking at better quality ten-print cards
20 in dealing with extradition purposes.

21 Q. So were those -- in other words, there were smudges
22 on those print cards?

23 A. There's some smudges on the cards. This isn't a
24 block design print that I normally like to see. It's
25 more rounded off indicating more of a straight press than

1 a roll.

2 Q. So as a result of receiving those prints from
3 Douglasville, did you go back to Douglasville to get a
4 set of prints?

5 A. Yes.

6 Q. All right. Tell the Court what happened there.

7 A. I had contacted Mike Baskins who I'm very familiar
8 with his ability in rolling latent prints.

9 Q. Who did Mike work for at the time?

10 A. The Anderson Police Department.

11 Q. And what was his job?

12 A. He was an evidence custodian.

13 Q. Okay. So you contacted Mike Baskins who worked with
14 your department. And what did the two of you do?

15 A. Yes. I contacted Mike Baskins and advised him -- I
16 asked him if he would be able to travel with me to
17 Douglasville County Detention Center for the purposes of
18 rolling a set of ten-print cards on the Defendant,
19 Raymondeze Rivera.

20 Q. And at this point, were you planning on speaking to
21 the Defendant?

22 A. No.

23 Q. Okay. And why not?

24 A. Well, the Defendant had asked for an attorney.

25 Q. Okay. So did you take anything with you this day?

1 And obviously this is December 20th, 2006, the day you
2 went back?

3 A. Right. There was two purposes for that trip. One
4 purpose to -- for Mike Baskins to roll a set of ten-print
5 cards for extradition purposes. The other purpose of
6 that trip was to bring the red automobile that the
7 Defendant was arrested in back to Anderson, South
8 Carolina. So I also enlisted the assistance of our city
9 garage wrecker services. And they followed me down there
10 as well.

11 Q. So you went back to the Douglasville jail on
12 December 20th, 2006?

13 A. Yes.

14 Q. All right. What -- where did you and Mike Baskins
15 go?

16 A. It was in the same room in the Douglasville County
17 Detention Center.

18 Q. Explain to the Court exactly what happened that day.

19 A. Mike Baskins was there for the purpose of rolling
20 these prints. And so he had a temporary fingerprint
21 table with him to complete that task. And he went inside
22 the room, and I stood outside in the hallway.

23 Q. So Douglasville brought Mr. Rivera into the room?

24 A. Yes.

25 Q. Obviously, who told him why you were there?

1 A. That would have been Mike Baskins.

2 Q. Okay. Was he very cooperative?

3 A. Yes.

4 Q. Did you speak to him at all at this point?

5 A. No.

6 Q. So tell the Court what happened while Mike Baskins
7 was taking the fingerprints.

8 A. Well, I was standing outside in the hallway. There
9 were some other corrections officers outside there. And
10 as Mike Baskins was getting ready to leave or finish up
11 -- I had my back turned. And I heard my name called, my
12 first name, John. And I turned around, and it was the
13 Defendant.

14 Q. So did you initiate contact with him in any way?

15 A. No.

16 Q. Had you even said anything to him at this point?

17 A. No.

18 Q. So once he called your name, John, what happened?

19 A. I walked into the room where he was. And he
20 explained that he would cooperate fully, but he had some
21 requests to make. So the first thing I did was search
22 for a *Miranda* form.

23 Q. Had you even brought anything with you?

24 A. I didn't have a *Miranda* form with me, but I did
25 discover that there were some that were used by

1 Douglasville authorities laying there on the table within
2 the room.

3 Q. And did he appear under the influence of any drugs
4 or alcohol at this point?

5 A. No.

6 Q. Did you threaten him or intimidate him or initiate
7 contact with him whatsoever this day?

8 A. No.

9 Q. Okay. And what was his demeanor?

10 A. I found him to be likable and personable and -- as I
11 had before.

12 Q. Was he basically the same ---

13 A. Yes.

14 Q. --- as he was before?

15 A. Yes.

16 Q. Okay. And was Mike Baskins still in the room?

17 A. No. Mike Baskins had packed up his temporary or
18 portable fingerprint table, and he had left the room.

19 Q. So it's just you and the Defendant in the room?

20 A. Yes, yes.

21 Q. All right. And what happened?

22 A. I utilized -- well, first of all, I wasn't familiar
23 with the Douglasville County *Miranda* form.

24 Q. But he had said, I want to talk to you?

25 A. Yes. So I located this *Miranda* form laying on the

1 table. And the first thing I did was I scanned through
2 the form to make sure that it was -- had the same
3 language in it as our *Miranda* forms do. And so I
4 utilized that form to read Mr. Rivera his rights.

5 Q. John, I think that is Court's Exhibit -- I show you
6 what's been marked as Court's Exhibit Number 4. Can you
7 please tell the Court what that is?

8 A. This is the *Miranda* form that was there that I used
9 to read Mr. Rivera his rights from.

10 Q. That's the Georgia form?

11 A. Yes.

12 Q. And what's the date on that?

13 A. The date is 12/20/06.

14 Q. And what time?

15 A. Eleven forty-five a.m.

16 Q. So you did not have your own form with you?

17 A. No.

18 Q. So what happened when you went over this form?

19 A. I read the form verbatim to the Defendant, and he
20 signed it at the bottom, understood his rights. And I
21 read the ...

22 Q. And basically it is the same as our *Miranda* form?

23 A. Yes.

24 Q. And he seemed to understand those rights again at
25 this point?

1 A. Yes.

2 Q. All right. Now, after you read him those rights,
3 what happened?

4 A. He told me that he was willing to cooperate fully,
5 but he had three requests that he wanted to make of the
6 D.A.'s office or the district attorney's office.

7 Q. Okay. So what did you do when he said that?

8 A. I turned the form over on the back of the original
9 form, and I wrote three requests from Raymondeze Rivera
10 to prosecutors. And then he told me what those three
11 requests were, and I wrote those down.

12 Q. Okay. It's on the back of that form, correct?

13 A. Yes. Yes, ma'am.

14 Q. Can you please read that for the Court?

15 A. It says, three requests from Raymondeze Rivera to
16 prosecutors. Number one, asking for prosecutors to seek
17 the death penalty. Number two, in jail alone by self.
18 And number C -- number three, see chaplain when he gets
19 to jail. He's asking these things in writing to be
20 signed by the D.A., then he will cooperate fully.

21 Q. And you actually wrote the requests down?

22 A. Yes.

23 Q. Correct?

24 A. Yes.

25 Q. Okay. And then did you read over them to make sure

1 it was right?

2 A. I did.

3 Q. All right. And then what did he do?

4 A. He drew a line and put an X, and he signed his name
5 on the back of this.

6 Q. All right. And at this point, what did you do,
7 after he made those three requests?

8 A. I advised him that I would check on the matter and
9 would see if I could get back to him. And that was it.

10 Q. Now, did you talk to him at all at this point about
11 what had happened?

12 A. No.

13 Q. Did you try to get him to speak to you about the
14 murders at this point?

15 A. No.

16 Q. All right. So he wrote those three requests down
17 and you came back to Anderson?

18 A. Yes.

19 Q. So how much time do you think you spent with him
20 that morning?

21 A. It was less than five minutes. However long it took
22 to read the form and go over his requests with him and he
23 sign the form.

24 Q. Did you promise him anything that day?

25 A. No.

1 Q. Did you threaten him in any way?

2 A. No.

3 Q. Did you even ask him any questions about those
4 requests?

5 A. No.

6 Q. So when you came back to Anderson, obviously you
7 talked to me?

8 A. Yes.

9 Q. And what happened?

10 A. As a result, there was a letter provided by your
11 office to me, and the next day I traveled back to
12 Douglasville, Georgia.

13 Q. Okay. And I want to show you what's been marked as
14 Court's Exhibit Number 5. Can you please read that for
15 the Court?

16 A. Yes. This is a -- on the Office of the Solicitor
17 10th Circuit Anderson Oconee County letterhead. It's
18 dated December 20, 2006.

19 Dear Mr. Raymondeze Lamon Rivera, it is my
20 understanding per your request that you wish to
21 speak to Investigator John Zamberlin regarding
22 the deaths of Kwana Burns and Asha Wiley as
23 long as the following three conditions are met.
24 Number one, the opportunity to speak with the
25 chaplain. Number two, if and when you are

1 transported to the Anderson County, you have
2 requested a private cell. And number three,
3 assurances from this office that we intend to
4 seek the death penalty against you.

5 Myself along with Anderson City Police
6 Department have made arrangements for you to
7 meet with a chaplain upon your return for you
8 to be held in a private cell pending trial.
9 Furthermore, this office intends to seek the
10 death penalty against you as long as the
11 investigation and evidence supports such a
12 penalty under the South Carolina -- the laws of
13 the State of South Carolina.
14 And it's signed sincerely, Tenth Circuit Solicitor,
15 Chrissy Adams.

16 Q. And John, I gave you that letter this same day,
17 basically December 20th, 2006?

18 A. Yes.

19 Q. And you returned to Douglasville the next day,
20 correct, December 21st, 2006?

21 A. That's correct.

22 Q. Do you recall what time you got back there?

23 A. It was approximately ten forty-five, ten fifty, I
24 believe, a.m.

25 Q. Okay. So basically it's almost twenty-four hours

1 after his request?

2 A. Yes.

3 Q. Okay. What happened -- are you back in the same
4 room in Douglasville?

5 A. Yes.

6 Q. Who was with you this day?

7 A. Lieutenant Layton Creamer.

8 Q. So you're in the same room, same table, same chairs?
9 Is anything different about the room this day?

10 A. No, ma'am.

11 Q. What was his demeanor this day?

12 A. His demeanor was the same as the other time that I
13 had spent with him. He was likable and personable.

14 Q. Was he calm and polite?

15 A. Yes, he was polite.

16 Q. Now, did you read him his *Miranda* again that day?

17 A. Yes.

18 Q. All right. And now, you actually brought your own
19 *Miranda* this day, right?

20 A. Yes.

21 Q. I show you what has been previously marked as
22 court's exhibit number 9. Is that the *Miranda* or a copy
23 of the *Miranda* that you took?

24 A. Yes, it is.

25 Q. And how did you go over it with him?

1 A. I read it verbatim from this form.

2 Q. Okay. So you go line by line?

3 A. Yes.

4 Q. And you said -- what time did you start?

5 A. Ten forty-seven a.m.

6 Q. And how long did it take you to go over the rights
7 this time?

8 A. Approximately three minutes.

9 Q. And did he seem to understand his rights this day as
10 well?

11 A. Yes.

12 Q. All right. So did you give him the letter that I
13 wrote.

14 A. Yes, I did.

15 Q. And what happened when you handed it to him?

16 A. I read this letter to him, and he went over this
17 letter. And his response to that was, are you ready to
18 write?

19 Q. So what happened?

20 A. Well, for the next four hours, I wrote.

21 Q. Okay. So you said four-hour statement?

22 A. Yes.

23 Q. All right. And John, he gave you in these four
24 hours obviously the details and the circumstances
25 surrounding Asha Wiley's death and Kwana Burns?

1 A. Yes, he did.

2 Q. All right. So besides those requests, did you ever
3 promise him anything in exchange for his statement?

4 A. No.

5 Q. And did he seem under the influence of alcohol or
6 drugs on this day?

7 A. No.

8 Q. Did he ever stop at any point in those four hours
9 and ask for a lawyer?

10 A. No.

11 Q. Who did most of the talking?

12 A. He did.

13 Q. Did he ever get upset?

14 A. No.

15 Q. Did his demeanor change at all in those four hours?

16 A. No.

17 Q. Did you ever take any breaks?

18 A. No.

19 Q. Why not?

20 A. I asked the Defendant throughout the process if he
21 wanted to take a break, and he said no.

22 Q. Did you offer him anything to eat or drink during
23 these four hours?

24 A. Yes.

25 Q. Did he want anything?

- 1 A. No, he didn't want anything.
- 2 Q. Now, who wrote the statement?
- 3 A. I wrote the statement.
- 4 Q. And now, why did you write it?
- 5 A. He requested that I write the statement.
- 6 Q. And do you recall exactly how many pages that
- 7 statement is, John?
- 8 A. It was ten pages.
- 9 Q. Okay. Did you even have enough of your *Miranda*
- 10 forms to finish this statement?
- 11 A. We didn't have enough -- I didn't have enough
- 12 statement forms with me, but they had some statement
- 13 forms there that we were able to use to finish the
- 14 statement on the table.
- 15 Q. So you actually used the Douglasville statement
- 16 forms to finish it?
- 17 A. Yes.
- 18 Q. All right. After you wrote this statement out, what
- 19 did you do? Did you go back over it with him?
- 20 A. Yes. And as a matter of fact, during the statement
- 21 he had made multiple corrections, probably for the most
- 22 part my spelling errors. And there was a couple of
- 23 things that he wanted me to utilize another word for
- 24 something, so I made those. But it was at the very end
- 25 of the statement that he went back, and when I went over

1 the statement with him and I actually handed him a pen.
2 And during that time is when he initialed those changes
3 throughout the statement.

4 Q. Now, where in relationship are y'all sitting?

5 A. He is -- well, the table is against the back wall.
6 And he is sitting to the -- if you walked into the door
7 of the room, he is sitting to the left and I'm directly
8 across. And Layton Creamer is, I guess you would call
9 it, the head of the table there in the room.

10 Q. So you and the Defendant are sitting pretty close
11 together?

12 A. It's not a large table. It's relatively a small
13 table, so it's close, yes.

14 Q. So he is watching everything you're writing?

15 A. He watched everything that I wrote, yes.

16 Q. And you testified earlier too, John, I think, he
17 actually made changes along the way?

18 A. Yes.

19 Q. Was he pretty specific about the choice of words he
20 wanted you to put in that statement?

21 A. He was very specific.

22 Q. And his demeanor did not change at all during this
23 four-hour period?

24 A. No.

25 MS. ADAMS: Your Honor, we have -- it's

1 previously been marked Court's Exhibit Number 6 which is
2 the full ten-page statement, and we also have Court's
3 Exhibit Number 7 that's actually a redacted version for
4 this trial that just discusses Kwana Burns for the guilt
5 portion.

6 THE COURT: So you have two exhibits for the
7 State?

8 MS. ADAMS: Yes, sir.

9 THE COURT: Number 6 -- is that a Court
10 exhibit?

11 MS. ADAMS: Yes, sir. Six is the full entire
12 ten-page statement that talks about Asha Wiley and Kwana
13 Burns, and Court's Exhibit Number 7 is the redacted
14 version that takes out all mention of Asha Wiley for the
15 guilt portion.

16 THE COURT: How many pages is it?

17 MS. ADAMS: That is seven, Your Honor.

18 THE COURT: All right. The defense attorneys
19 have seen the proffered exhibits?

20 MS. ADAMS: Yes, sir.

21 MR. MCGUIRE: Yes, sir.

22 Q. And John, he signed that statement, correct?

23 A. Yes.

24 Q. Now, when you were leaving, were there any oral
25 statements made?

1 A. Right after the statement was signed, all the pages
2 were signed by Mr. Rivera, it really occurred to me that
3 he had not explained why, you know, he had committed
4 these crimes. And so I asked him why did he do it, why
5 did he do this.

6 Q. And what did he say?

7 A. He explained that he had been court-ordered out of
8 the State of Georgia and that his family was there, his
9 children was there, and that it was because of the system
10 -- the system that made him do it, and he quoted a Bible
11 verse from Job.

12 Q. Do you recall specifically what that Bible verse is?
13 I know you don't have your ...

14 A. Yeah, I don't specifically remember. It was a Bible
15 verse that had to do with some trials and tribulations
16 that Job had suffered, I guess, at the hands of Satan.
17 And at least the interpretation of it anyway, that he was
18 stripped of all of his valuables and his worldly
19 possessions.

20 MS. ADAMS: And Your Honor, we have marked as
21 well -- it's Court's Exhibit Number 8. It was actually a
22 letter sent as part of discovery to the Defense regarding
23 the oral statements.

24 THE COURT: Very well.

25 MS. ADAMS: So you have that as well.

1 Q. John, did he say anything else specifically when you
2 left after he basically said it was because the system
3 made him do it, he was banned?

4 A. I had asked Mr. Rivera if there was anything that he
5 would want me to relate to the victims' family. And he
6 asked me if I had a daughter. And I told him that I did
7 have a daughter. And he asked me that if he had killed
8 my daughter, if there was anything that he could say to
9 me that would make me feel better about the situation.
10 And I said, no, sir, you know, there wouldn't be. And he
11 said that was all he had to say. As I was leaving, he
12 did ask me if I could bring him the obituaries from the
13 two deceased victims here in Anderson.

14 Q. Now, John, again, during that four-hour period, did
15 he ever ask for a lawyer?

16 A. No.

17 Q. While you were with him?

18 A. No.

19 Q. Did he ever ask to stop talking?

20 A. No.

21 Q. And did he in fact later waive his extradition to
22 South Carolina?

23 A. Yes.

24 Q. And he also consented to give samples for D.N.A.
25 purposes?

1 A. Yes.

2 MS. ADAMS: Your Honor, I think that's all we
3 have for the written statement and the oral statements
4 right after.

5 THE COURT: All right. Voir dire? Cross
6 examine?

7 MR. MCGUIRE: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. MCGUIRE:

10 Q. So Detective Zamberlin, I'm going to ask you a
11 little bit about getting the red car back from Georgia
12 because that's the first time I've heard about that.
13 Tell me what you did on the day to get the car back.

14 A. Prior to traveling back to Douglasville, Georgia, I
15 obtained a search warrant here issued by one of our local
16 judges. Now, that search warrant absolutely has no
17 validity at all in Douglasville, Georgia. But in many
18 cases dealing with other agencies, if they present us
19 with an affidavit, then I can take that affidavit in
20 front of our judge and complete the search warrant.

21 So I wanted to have that affidavit for them and let
22 them describe for me what their legal process was. And
23 so I traveled there with that search warrant for the
24 purposes of seeking out their advice on what they
25 required from us to bring the car back to Anderson, South

1 Carolina.

2 Q. And did you get that done that day?

3 A. Yes.

4 Q. Do you have that affidavit?

5 A. I do have the affidavit, the original search
6 warrant, in my original file, yes.

7 Q. Is that here?

8 A. My original file is in my office. A copy of the
9 file is likely here.

10 MS. ADAMS: You should -- Your Honor, he should
11 have that in discovery.

12 Q. And you met with somebody in person to get that
13 affidavit in Georgia signed that day?

14 A. We talked with a commander there in their C.I.D.
15 division, a lieutenant, and had the conversation about
16 the legalities on bringing the vehicle back. They
17 explained to us that it was of no consequence of theirs,
18 that as far as they were concerned, that we could bring
19 the car back. They didn't have any jurisdiction to keep
20 the car, and it was still sitting in their Salley-port
21 area. And they were in need of getting that moved out of
22 there.

23 Q. And my question was did you actually get it -- I
24 mean, you have a signature dated that day?

25 A. Yes, from our judge here when the search warrant was

1 issued, but the search warrant from here was not taken in
2 front of any judge in Georgia. They felt like that they
3 would just release the car to us without taking that in
4 front of a judge. And so that was their assessment. And
5 so there had already been a consent to search signed on
6 the car, so we went ahead and just brought the car back
7 to Anderson.

8 Q. So there's not actually a piece of paper that
9 verifies that you dealt with the car in Georgia that day?

10 A. Well, there will be a tow sheet where the wrecker
11 driver towed the car back to -- like a vehicle condition
12 report where he actually brought the car back. A tow
13 truck driver by the name of Travis Collier is the one
14 that loaded the car up and brought it back for us that
15 day.

16 Q. Now, I want to talk to you a little bit about your
17 interaction with Mr. Rivera. Your initial meeting with
18 him is approximately nine minutes?

19 A. Yes.

20 Q. About two forty-five a.m.?

21 A. Yes.

22 Q. He seemed to understand everything?

23 A. Yes.

24 Q. Not under the influence of drugs or anything else?

25 A. Yes, sir.

1 Q. Seemed to have control of his mental faculties?

2 A. Yes.

3 Q. And he said he needed a lawyer, wanted a lawyer,
4 right?

5 A. Yeah, his first comment involving a lawyer was
6 either, you know, I think I need a lawyer or something to
7 that effect. And so there was an explanation from me
8 that, you know, that wasn't a decision that I could make
9 for him, that he needed to be very clear about that
10 because I wasn't -- I wasn't clearly convinced that that
11 was an invocation of his rights at that point. And I
12 wanted to make sure. And so there was a conversation
13 about, you know, that that's not a question that I could
14 answer for him.

15 Q. Right. You're not in a position to give him legal
16 advice.

17 A. Yes, sir. And then he was clear after the
18 conversation after he asked me where we were from and
19 what did we want to talk to him about. And he was very
20 clear then when he asked for an attorney in my opinion.

21 Q. Right. And that's what you put on the form?

22 A. Yes.

23 Q. Suspect has asked for a lawyer?

24 A. Yes, sir. Yes.

25 Q. And you go back down to take the better prints, and

1 he initiates contact with you?

2 A. Yes, sir.

3 Q. And he says, I'll be fully cooperative but I have
4 some requests?

5 A. Yes.

6 Q. And you said, well, let's be clear about this.

7 Let's get this in writing. And you took out pen and
8 paper?

9 A. Yes. Well, I mean, I turned the *Miranda* form over
10 on the back.

11 Q. Right. And you've seen that today already, right?

12 A. Yes.

13 Q. And I'm showing you what's been marked Court's
14 Number 4. That's what we're referring to?

15 A. Yes, sir.

16 Q. And if I could get it back from you. It's your
17 handwriting?

18 A. Yes.

19 Q. It indicates three requests from Raymondeze Rivera
20 to prosecutors asking for prosecutors to seek death
21 penalty, in jail alone by self, see chaplain when he gets
22 to jail, asking for these things in writing to be signed
23 by D.A., then will cooperate fully. Then he signed below
24 that, correct?

25 A. Yes.

1 Q. And he didn't -- you didn't say -- he didn't take
2 your word for it? I mean, he didn't let you promise him
3 those things would be done; he wanted that straight from
4 the D.A.?

5 A. Yes, he did.

6 Q. And not just straight from the D.A., he wanted it in
7 writing from the D.A.?

8 A. Yes.

9 Q. And you took that back to Ms. Adams?

10 A. Yes.

11 Q. Without having had any the conversation with Mr.
12 Rivera as to why he wanted those requests?

13 A. Yes.

14 Q. Is it fair to say a pretty odd request?

15 A. In my career I haven't encountered requests like he
16 made.

17 Q. Well, he was requesting to seek -- he was requesting
18 his own death?

19 A. Yes.

20 Q. To have the State seek a capital trial, a death
21 penalty trial?

22 A. Yes.

23 Q. And you hadn't seen that before?

24 A. No.

25 Q. And he didn't cause you enough pause or alarm to

1 talk to him in further detail about that?

2 A. No.

3 Q. Or to have him perhaps evaluated by a psychiatrist?

4 A. Well, I think he has been evaluated by a
5 psychiatrist.

6 Q. Well, that's not my question. And I appreciate
7 that.

8 A. Yes, sir.

9 Q. But it didn't occur to you to have him evaluated by
10 a psychiatrist before giving a statement to you?

11 A. No, I didn't have him evaluated by a psychiatrist.

12 Q. And you didn't -- now, he's being held in the
13 Douglasville County Jail, correct?

14 A. Yes.

15 Q. And presumably it's like most county jails. They
16 have psychologists, counselors, that sort of thing?

17 A. I don't know.

18 Q. You'd be surprised if they didn't?

19 A. I'm not sure. I'm not familiar with Douglasville
20 County. I do know they're a large facility. I don't
21 know if they have psychiatrists on staff or not.

22 Q. Right. It is a large facility ---

23 A. It is.

24 Q. --- because Douglasville, Georgia is basically on
25 the outskirts of Atlanta?

1 A. Yes, sir, it is.

2 Q. In fact, it's considered part of the Atlanta
3 metropolitan area?

4 A. I would agree with that.

5 Q. And you didn't -- well, fair enough. You didn't ask
6 anybody there if they had a psychologist or a counselor
7 or psychiatrist on staff?

8 MS. ADAMS: Your Honor, I'm going to object.
9 It's asked and answered, and he's under no obligation to
10 do that. So I think it's clear he did not ask for anyone
11 to evaluate him.

12 THE COURT: Do you want to ask one more
13 question to see what answer you get?

14 MR. MCGUIRE: Sure. Let me think about it
15 since I've only got one, Judge.

16 Q. You took no steps whatsoever to have anybody inquire
17 into the Defendant's mental health after knowing he
18 wanted to seek his own death through that request?

19 A. No, I didn't.

20 Q. And the in-jail private jail cell, alone by self
21 until trial, now, you didn't ask him about that, did you?

22 A. No.

23 Q. And you have really no idea of how much importance
24 that had to him?

25 A. No.

1 Q. And you didn't do anything, for instance, pulling
2 his county jail records or state jail records in Georgia
3 to determine if he had any particularly unpleasant
4 experiences in jail?

5 A. No.

6 Q. And you didn't ask him directly, did you have any
7 bad or violent experiences in jail?

8 A. No.

9 Q. Or had threats made against him or anything like
10 that?

11 A. No.

12 Q. And again, his desire for a private jail cell
13 awaiting trial, again, you have no idea how important
14 that was to him?

15 A. No.

16 Q. And when you came back to Ms. Adams and presented
17 these requests to her, did she ask you, did you talk to
18 him about these requests? He wants death, to see a man
19 of God, and he wants a jail cell by himself. Did you --
20 do you had any explanation as to why he wants these
21 things?

22 A. No.

23 Q. And Ms. Adams didn't ask you to find out?

24 A. No.

25 Q. She was bargaining with the Defendant in writing

1 completely in the dark ---

2 MS. ADAMS: Your Honor, I object.

3 Q. --- with regard to the value of those items?

4 MS. ADAMS: It's argumentative.

5 THE COURT: Well, it's not argumentative. He's
6 asking what might be in your mind. I'm not sure he can
7 answer that.

8 MR. MCGUIRE: I can rephrase it.

9 THE COURT: All right. Very good.

10 Q. Now, Ms. Adams did write a letter back to the
11 Defendant?

12 A. Yes.

13 Q. And in essence promised that she would deliver those
14 three things?

15 A. I think that my interpretation of that letter was
16 that she promised that two of those requests could be
17 met. The third one would depend upon, I guess, the facts
18 of the case regarding the death penalty.

19 Q. Sure. But aside from the preface, if the evidence
20 and law allows, I will seek the death penalty?

21 A. Yes. Yes.

22 Q. So if it was possible, she would certainly do it?

23 A. Yes.

24 Q. That's how the letter is phrased?

25 A. Yes.

1 Q. So if it's possible, she will seek the death
2 penalty. She didn't promised that. And then she did
3 very much promise the first two?

4 A. Yes.

5 Q. And she promised those things in writing without
6 getting any explanation from you as to why the Defendant
7 wanted those things?

8 A. Yes.

9 Q. Or how valuable those things were to him?

10 A. Yes.

11 Q. And I mean, in essence, it sounds like you have a
12 written contract here?

13 MS. ADAMS: Your Honor?

14 Q. Or you might not know that. Fair enough.

15 THE COURT: I guess the question is withdrawn.

16 MS. ADAMS: I think he moved on.

17 MR. MCGUIRE: I'll withdraw that one, Judge.

18 Thank you.

19 Q. When Ms. Adams asked you, did you promise the
20 Defendant anything, you did or Ms. Adams did by that
21 letter, right?

22 A. Yes, the specific things that he had asked for, yes.

23 Q. Right. And it was those three things -- it was when
24 that letter was delivered in writing, as soon as he saw
25 that letter, as soon as you presented the letter to him

1 and he knew those things were promised, he didn't even
2 have to think. He just said, are you ready to write?

3 A. He did. That's exactly what he did. He said, are
4 you ready to write?

5 Q. Okay. And the only thing that you're aware of that
6 happens between him saying, I need a lawyer, to, are you
7 ready to write, are his demands being met in writing by
8 that letter?

9 A. Yes. That's what he asked for.

10 Q. So you're not aware of any other factor or any other
11 thing that moved him from, I want a lawyer, to, I'm ready
12 to give a statement and be fully cooperative? The only
13 think that you're aware of is that letter?

14 A. I mean, that's what I was aware of at the time was
15 that letter, yes.

16 Q. Is there anything else you can think of?

17 A. I mean, I'm not really sure what all of his
18 motivating factors were, if any.

19 Q. I'm asking you ---

20 A. But that is the request that he made through me to
21 the prosecutor.

22 Q. I'm just making sure ---

23 A. Right.

24 Q. I'm making sure there's nothing off the table here.
25 The only thing that you're aware of ---

1 A. Yes.

2 Q. --- that moves him from, I'm going to remain silent,
3 I want a lawyer, to, are you ready to write, I'm being
4 fully cooperative, is that letter?

5 A. Yes.

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

7 THE COURT: Re-examine?

8 MS. ADAMS: Your Honor, just real quick.

9 REDIRECT EXAMINATION

10 BY MS. ADAM:

11 Q. It's not only that letter, but it's -- there is a
12 significant time frame in between, I want a lawyer to
13 that statement where he has time to think about giving a
14 statement or not?

15 A. There was a time frame, yes, from my first encounter
16 with him on the 16th to that encounter on the 20th. It's
17 a -- I guess a four-day time frame difference, yes.

18 Q. Thank you.

19 MS. ADAMS: No further questions, Your Honor.

20 MR. MCGUIRE: Nothing further, Your Honor.

21 THE COURT: Very good. You may step down.

22 Thank you, sir.

23 MR. DELGADO: Your Honor?

24 THE COURT: Yes, sir?

25 MR. DELGADO: We call the Defendant, Raymondeze

1 Rivera, please.

2 THE COURT: Very well.

3 **RAYMONDEZE LAMON RIVERA,**

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. DELGADO:

7 Q. Mr. Rivera, you were arrested in Douglas County,
8 Georgia on a traffic offense in the middle of December,
9 2006, correct, sir?

10 A. That's correct.

11 Q. Within the next twelve to fifteen or twenty-four
12 hours ---

13 THE COURT: If you would, please, give us your
14 full name for the record.

15 MR. DELGADO: I'm sorry, sir?

16 THE COURT: We need his full name for the
17 record.

18 MR. DELGADO: I'm sorry.

19 THE WITNESS: Raymondeze Lamon Rivera.

20 MR. DELGADO: I apologize, Your Honor. Yes, of
21 course. Thank you.

22 THE COURT: No problem.

23 Q. Mr. Rivera, you were interviewed on the early
24 morning hours of the 16th of December by Lieutenant
25 Zamberlin of the Anderson Police Department; is that

1 correct?

2 A. That's correct.

3 Q. At that time he asked you if you would make a
4 voluntary statement, correct, sir?

5 A. That's correct.

6 Q. Did you make a statement to him, or did you invoke
7 your rights to counsel? That is your right to a lawyer.

8 A. Correct, I invoked my rights to counsel.

9 Q. Some three days later or probably four days later,
10 the 20th of December, did Mr. Zamberlin come back to the
11 Douglas County Detention Center?

12 A. Yes, sir.

13 Q. Did you speak with Mr. Zamberlin then?

14 A. Yes, sir.

15 Q. What did you say to Mr. Zamberlin?

16 A. I explained to Mr. Zamberlin, I don't mind making a
17 statement unless I get three things.

18 Q. Mr. Rivera, this is a copy of Court's Exhibit Number
19 4. And on the reverse side, I want to see if you can
20 recognize that signature.

21 A. Correct, that's my signature.

22 Q. Who did the writing on the reverse side of Court's
23 Exhibit Number 4?

24 A. Lieutenant Zamberlin.

25 Q. Why did he write what he wrote?

1 A. I asked him to.

2 Q. You asked him to write down the things that are on
3 the reverse side?

4 A. That's correct, three things.

5 Q. What were the three things that you wanted from Mr.
6 Zamberlin, or from whom did you want it?

7 A. I wanted it from the D.A., what we call in Georgia.
8 And here they're called Solicitor's office. And the
9 three things was, number one, asking for the prosecutor
10 to seek the death penalty, and number two, in jail alone
11 by self which should have been in cell by self alone, and
12 number three, see chaplain when he gets to jail.

13 Q. Without some recognition of what you requested, what
14 was your position about whether or not you were going to
15 give a statement?

16 A. I guess my position was stuck between a rock and a
17 hard place. Before I could begin to give these
18 statements, I would have to be assured that the D.A. was
19 going to cooperate with me and promise me these three
20 things.

21 Q. What if Mr. Zamberlin told you, I will do this?
22 What would be your position then?

23 A. I would go ahead and make a statement.

24 Q. You will what?

25 A. I will go ahead and make a statement. I'm sorry.

1 Q. Did you need it in writing is what I'm asking?

2 A. Yes, sir.

3 Q. Why weren't you willing to do it based on the word
4 of Mr. Zamberlin alone?

5 A. Because I don't know Mr. Zamberlin, and Mr.
6 Zamberlin doesn't have -- he's only a detective, so it
7 would be more important if the D.A. -- or excuse me --
8 the Solicitor's office did it.

9 Q. Within some twenty-four hours later, did Mr.
10 Zamberlin return to the Douglas County Detention Center?

11 A. Yes, sir.

12 Q. When he came, did he give you a piece of paper, a
13 letter, addressed to you?

14 A. Right.

15 Q. Court's Exhibit Number 5, look at that. And tell us
16 when you first saw that.

17 A. December the 20th, 2006.

18 Q. December the 20th or the 21st? If it's dated the
19 20th, when did you see it first?

20 A. I'm sorry. December the 21st, 2006.

21 Q. That is the letter signed by the Solicitor of this
22 circuit; is that correct?

23 A. That's correct, Chrissy Adams.

24 Q. And in it, did she address the three requests that
25 you had made?

1 A. That's correct.

2 Q. Did that change your position about whether or not
3 you would now make a statement?

4 A. It did.

5 Q. Mr. Rivera, this is Court's Exhibit Number 9. That
6 shows the date of December the 21st, approximately ten
7 forty-five or so in the morning, correct?

8 A. That's correct.

9 Q. Did you sign that statement waiving your rights and
10 making a statement to Mr. Zamberlin?

11 A. Yes, sir.

12 Q. Mr. Zamberlin has said that after you read the
13 statement from -- the letter from Ms. Adams, you said,
14 are you ready to write. Do you recall making that
15 statement?

16 A. Yes.

17 Q. Do you recall making that statement?

18 A. That's correct.

19 Q. Why were you ready to make a statement then and were
20 not ready to make a statement the day before?

21 A. Because these things weren't promised to me the day
22 before. So on the 21st I was ready to go ahead once I
23 received the promises in writing from the Solicitor's
24 office.

25 Q. On the morning of the 21st?

1 A. On the morning of the 21st.

2 Q. Mr. Rivera, you have done time in jail before in
3 prisons in the state of Georgia, correct, sir?

4 A. That's correct.

5 Q. On a scale of one to ten, ten being absolutely
6 imperative that your safety be insured, how important to
7 you was it that you have a written guarantee from the
8 Solicitor acknowledging that you would have a single cell
9 if you returned to Anderson County?

10 A. From a scale of one to ten, I would say ten.

11 Q. Why?

12 A. Basically the violence that I've seen in jail and in
13 prison.

14 Q. In truth, you have been incarcerated at a state
15 prison, the Lee Arrendale State Prison in Alto, Georgia,
16 correct, sir?

17 A. That's correct.

18 Q. That prison was notorious for sexual and physical
19 assaults inmate on inmate, correct, sir?

20 A. Not just sexual and physical assaults, killings too.

21 Q. As a matter of fact, you were incarcerated at the
22 Lee Arrendale State Correctional Institution when an
23 individual was killed, correct, sir?

24 A. That's correct. His name was Boatright.

25 Q. Mr. Willie Boatright, I think was the name?

1 A. Yes, sir. Mr. Willie Boatright.

2 Q. During the time that you spent at the Alto
3 Correctional Institution, you asked to go on protective
4 custody, did you not, sir?

5 A. That's correct.

6 Q. Tell the Court why you wanted to go on protective
7 custody.

8 A. I received threats about rape. Basically that was
9 it.

10 Q. You took those rape threats seriously?

11 A. Of course.

12 Q. You asked to be confined and be in a single cell by
13 yourself?

14 A. That's correct.

15 Q. For your own safety?

16 A. That's correct.

17 Q. That continued over until you made the request of
18 law enforcement on December 20th?

19 A. Yes, sir.

20 Q. Confirmed on the morning of the 21st of December,
21 correct, sir?

22 A. Yes, sir.

23 Q. Without that, you would not have made a statement;
24 is that correct?

25 A. Without a shadow of a doubt, I wouldn't.

1 Q. Mr. Rivera, did you ever make a statement to Mr.
2 Zamberlin about, is there anything I can say to make it
3 better?

4 A. Yes, sir.

5 Q. Relating to the victims' family?

6 A. Yes, sir.

7 MR. DELGADO: That's all I have, Your Honor.
8 Thank you.

9 THE COURT: Cross examine?

10 MS. ADAMS: Thank you, Your Honor. May it
11 please the Court.

12 CROSS-EXAMINATION

13 BY MS. ADAMS:

14 Q. Mr. Rivera, just a few questions.

15 Now, on that day back in December of '06, you did
16 initiate contact with Lieutenant Zamberlin, correct?

17 A. Yes, ma'am.

18 Q. So he did not attempt to talk to you while getting
19 those fingerprints, and he did not attempt to get a
20 statement from you at that point; is that right?

21 A. That's correct.

22 Q. All right. Did Lieutenant Zamberlin ever coerce you
23 or force you into giving any statement besides those
24 three requests? I mean, I know those were promised. But
25 did John ever force you or threaten you or coerce you in

1 any way to give a statement?

2 A. Besides the promises, no, ma'am.

3 Q. Did you yourself solicit those promises, ask for
4 those yourself?

5 A. Right, I initiated the conversation.

6 Q. You initiated the contact, and you solicited those
7 requests from John?

8 A. I requested those requests in writing, yes, ma'am.

9 MS. ADAMS: Your Honor, I have nothing further.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MR. DELGADO:

13 Q. Without the promises the Solicitor said were made to
14 you, would you have made any statement consisting of
15 either six or ten pages worth of notes Mr. Zamberlin has
16 introduced into evidence?

17 A. No, sir.

18 Q. Thank you.

19 THE COURT: Any re-cross?

20 MS. ADAMS: No, sir.

21 THE COURT: All right. You may step down.

22 Thank you, sir.

23 All right. You may call your next witness.

24 MR. DELGADO: That's all the Defense has, Your
25 Honor.

1 THE COURT: All right. Anything else from the
2 State in reply?

3 MS. ADAMS: No, sir, Your Honor.

4 THE COURT: Any motion?

5 MS. ADAMS: Sir?

6 THE COURT: Any motion?

7 MS. ADAMS: Your Honor, we're just asking that
8 the statement -- it's freely and voluntarily given and
9 that it be admitted into evidence.

10 THE COURT: What do you want admitted into
11 evidence?

12 MS. ADAMS: Well, Your Honor, for the guilt
13 phase, obviously the redacted version that just deals
14 with Kwana. For penalty the entire ---

15 THE COURT: What do you want? You've got, I
16 think, twenty exhibits, 4, 5, 6, 7, 8, and 9.

17 MS. ADAMS: Your Honor, I think the Court's
18 exhibits have already been moved in.

19 Isn't that right?

20 MR. MCGUIRE: I mean, I think we're kind of --
21 I think we're operating under the understanding that all
22 those exhibits are for your review.

23 THE COURT: Well, that's what I'm asking.

24 MS. ADAMS: Yes, sir. I'm sorry.

25 THE COURT: Those are Court's exhibits, but now

1 you're moving for their admission into evidence under a
2 proper basis or a proper proffer?

3 MS. ADAMS: Yes, sir.

4 THE COURT: What does the Defendant say?

5 MR. MCGUIRE: Well, Judge ---

6 THE COURT: Now, that's all -- 4, 5, 6, 7, 8, 9
7 and 10?

8 MR. MCGUIRE: I believe so.

9 THE COURT: All right.

10 MS. ADAMS: Actually there's three -- yes, sir,
11 all of them moved into evidence.

12 THE COURT: But again, that's 4, 5, 6, 7, 8, 9
13 and 10?

14 MS. ADAMS: There's also Court's Exhibit Number
15 3, Your Honor, is the first waiver where he asked for the
16 lawyer. Do you have that one?

17 THE COURT: Right. I know it was addressed,
18 but I didn't have it down.

19 MS. ADAMS: That was number 3.

20 THE COURT: All right. At least I didn't have
21 it down. All right. Number 3 too, 3, 4, 5, 6, 7, 8, 9
22 and 10 have been previously marked as the Court's
23 Exhibits, but now the State is moving for their
24 admission. So they would be now State's 3, 4, 5, 6, 7,
25 8, 9 and 10 for identification subject to admissibility.

1 All right.

2 (WHEREUPON, State's Exhibits Number 3 through 10
3 were marked for identification only.)

4 MS. ADAMS: Yes, sir.

5 THE COURT: Now what does the Defense say?

6 MR. MCGUIRE: Yes, sir. Your Honor, I'll be
7 very brief. We briefed the issue in a written memorandum
8 that we provided to Judge Nicholson. My understanding is
9 the Court has that. So I'll be extremely brief and say
10 that all the cases that I was able to locate involving a
11 promise that involved the physical safety of the
12 Defendant led to the State not being able to shoulder
13 their burden, preponderance of the evidence, that the
14 statement was in fact voluntary. So -- and that's where
15 we -- that's what we have. We have a fellow who has been
16 in prison, county jails, seen violence, seen killings,
17 rapes, had threats made against him specifically, has
18 testified that on a scale of one to ten, ten being
19 imperative, it was a ten to get that private jail cell
20 for his physical safety. We are right in line with all
21 those cases where any kind of guarantee from the
22 Government to ensure safety in order to get a statement,
23 the statement is not voluntary.

24 THE COURT: Well, you do concede that he wasn't
25 under the influence and he wasn't threatened other than

1 maybe the whatever effect an acquiescence in his request,
2 and he wasn't unduly examined or in any way physically
3 abused or denied?

4 MR. MCGUIRE: Not only would I concede it, I
5 would say it strengthens our position because the only
6 factor you have that moves him from invoking his rights,
7 remaining -- wanting to be silent and have a lawyer and
8 ready to be fully cooperative is the promise of that
9 private jail cell guaranteed in writing.

10 THE COURT: So you would equate that to a
11 promise or hope of reward?

12 MR. MCGUIRE: Yes, sir, a very valuable reward.
13 Maybe the most valuable reward he could get.

14 THE COURT: All right.

15 MS. ADAMS: Your Honor, may it please the
16 Court. As you know, the statement is -- the
17 voluntariness of a statement is determined by the
18 totality of the circumstances. Case law is clear that
19 when the Defendant himself initiates and solicits the
20 deal that he cannot come back and therefore say that he
21 was the victim of some compelling influence. I mean, it
22 is clear here. Those cases that Mr. McGuire cites all
23 deal with the State's involvement in saying if you do
24 this, we'll promise you this.

25 That is not the case here. He initiated contact.

1 He solicited the deal. And there was no coercion. There
2 was no force. There is no obligation whatsoever under
3 the law for the State to figure out why he wants those
4 things. It's clear when he solicits and he initiates,
5 statements have been held voluntary.

6 And Your Honor, we also have our brief that's
7 submitted that I'm sure you have.

8 THE COURT: Well, as far as the waiver and
9 being advised of his rights under the Fifth and Sixth
10 Amendments as to remain silent, apparently the *Miranda*
11 rights form that he was given initially which he
12 exercised and the one that he was given that was done on
13 the Douglas County *Miranda* form -- I think that's exhibit
14 4 -- apparently does note all of these rights to remain
15 silent and that anything he did or could or would be used
16 against him -- did say could be used against him. And of
17 course, the right to an attorney because he exercised
18 that right. And although I would imagine as in -- let's
19 see -- well, you can tell me -- 3 and 4 -- what is it --
20 does advise him that an attorney will be appointed and he
21 would have the right to consult. And if he wanted to
22 begin testifying or to making a statement, that he had
23 the right to interrupt and terminate the interrogation.
24 And the interrogation would cease until he had the
25 opportunity to consult with an attorney prior to further

1 interrogation.

2 I find that not only is it not contested, but
3 apparently it's conceded by the Defendant that those
4 rights were made to him and he waived those rights under
5 the Fifth and Sixth Amendments to the Constitution.

6 Now, as far as the incriminating statement, I guess
7 that goes to not only -- I haven't heard anything about
8 the oral statement other than that he did make an oral
9 statement. Has that been memorialized?

10 MS. ADAMS: Yes, sir, Your Honor. Those were
11 the statements where when Lieutenant Zamberlin asked him
12 why, he talked about being banned from the State of
13 Georgia and then went into the part of the Bible dealing
14 with Job and asked for the obituaries. If you would like
15 to see ---

16 THE COURT: Right. As I say, I haven't seen
17 that.

18 MS. ADAMS: Here's Court's Exhibit Number 8.

19 THE COURT: I do have a note. All right. This
20 is Court's Exhibit 8 ---

21 MS. ADAMS: Yes, sir. That's the letter that
22 was sent in discovery.

23 THE COURT: --- now State's Exhibit 8 for
24 identification. And that was where he was asked if he
25 had anything to say to the family? And he quoted

1 apparently something from the book of Job in the Bible.
2 Again, I don't find -- I find that that statement
3 was voluntary and in response -- although it was in
4 response to a question, it was -- the content was freely
5 and voluntarily given. As far as -- so it all comes down
6 to whether or not there was undue influence of reward or
7 promise or a hope of reward. There was no promise of
8 leniency or threat -- or maybe the threat of injury or
9 caution or inducement of some kind. But it's hard for
10 the Court to say that when a request is initiated by a
11 Defendant, that somehow creates a block of any
12 communication in response to that request. Unless the
13 State knows of some reason that the -- and implies and
14 instills in the Defendant's mind as to something that if
15 you'll do this, I'll do that, it's completely initiated
16 by the Defendant. And there's no way to know what might
17 be in the mind of any person and why they might request
18 it.

19 I don't know if they've got chaplains in Georgia
20 correction facilities or -- certainly, if you request the
21 death penalty, it doesn't matter what else is going to be
22 done to you. And in fact, I would imagine in the Georgia
23 facility, since those are the ones that he was relying
24 on, they probably segregate the death inmates.

25 So I can't see how a response to a request,

1 particularly that request that is initiated and created
2 by the Defendant, somehow moves the element of compulsion
3 and threat to the State. If anything, you would want the
4 State to cooperate with the Defendant. And if he has
5 something that he would request, I think it's only right
6 and correct to accede to those requests, particularly as
7 I understand that the Solicitor said, particularly as to
8 the request for the death penalty, she couldn't do that
9 unless it was justified under the law and the facts of
10 the particular case.

11 I therefore find that the statement obtained from
12 the Defendant was freely and voluntarily given without
13 duress, without coercion, without undue influence,
14 promise of leniency or without threat of injury and
15 without compulsion or inducement of any kind, and
16 considering the totality of the facts of the statement or
17 confession the voluntary product, free and unconstrained
18 will of the Defendant. And although I find all these,
19 I'm only required to find that by a preponderance of the
20 evidence, I do find the foregoing to be beyond a
21 reasonable doubt. And so they will be admitted. And
22 that will be -- and of course upon the proper proffer at
23 the time they are offered. But they will be admitted,
24 and that will be the ruling of the Court unless changed.

25 All right. Anything else from the State?

1 MS. ADAMS: Your Honor, I don't know if you
2 want to do this ---

3 THE COURT: By the way, I'll note your
4 objection to the Court's ruling, of course.

5 All right.

6 MS. ADAMS: We do have, kind of under the same
7 topic, the -- we have a video of his confession during
8 the first trial where he does talk about the murder of
9 Asha ---

10 THE COURT: Well, are you expecting that to
11 come in in the guilt phase?

12 MS. ADAMS: No, sir. I just didn't know if you
13 wanted to wait to do that.

14 THE COURT: Well, let's -- we might -- if
15 you'll forgive me ---

16 MS. ADAMS: No, sir.

17 THE COURT: If we're not going to reach it, I'd
18 just as soon not.

19 MS. ADAMS: That is absolutely fine.

20 THE COURT: All right. It looks like we're
21 going to have time before we actually start the trial of
22 the case. And we might find a better time to do that.
23 I'm looking at the clock on the wall. It's twenty till
24 six now.

25 MS. ADAMS: I know.

1 THE COURT: All right.

2 Yes, sir?

3 All right. I would -- we have done a witness list
4 to be given to the jury panels. I want you to look at it
5 so that we will be ready to go with that in the morning.
6 I'll give it to the State and the Defendant. I would
7 suggest that we only need one. I don't know if we need
8 six. It would be voluminous. But one for each panel,
9 and of course, they can look over them -- the first one
10 will look over it when they're called, and then the ---

11 MR. MCGUIRE: Judge, I'll offer some -- I don't
12 often do this -- but free advice to the Court.

13 THE COURT: I did know other attorneys couldn't
14 give -- what is it -- advisory advice. Only attorneys or
15 -- I mean judges are not supposed to have opinions.

16 MR. MCGUIRE: I was in a situation where they
17 did just pass one witness list to the panel ...

18 THE COURT: Right.

19 MR. MCGUIRE: ... and since nobody knew who was
20 coming out first, sometimes the guy that came out first
21 hadn't seen it. So we started giving it to everybody.

22 THE COURT: All right. Well, we'll take down
23 another tree. All right. Oh, we also -- excuse me. My
24 able attorney or whatever has already prepared, so we
25 will have at least six for each panel so they can look at

1 it. And of course, one of my comments to the panel will
2 be that -- what is it -- don't come out -- I mean, don't
3 come until you've had an opportunity.

4 So tomorrow morning we've asked them to be here at
5 nine thirty, so let's see if we can't be here a little
6 bit before that. And I'll give them some preliminary
7 instructions and see if they won't be ready about ten.

8 MR. MCGUIRE: Yes, sir.

9 THE COURT: Very good. Anything else from the
10 State?

11 MS. ADAMS: No, sir, Your Honor.

12 THE COURT: All right. Anything else from the
13 defense?

14 MR. DELGADO: Nothing, Your Honor. Thank you.

15 MS. ADAMS: Thank you.

16 THE COURT: All right. We'll stand in recess
17 until nine thirty in the morning.

18 (WHEREUPON, court stood at recess for the day at
19 approximately 5:40 p.m.)

20 **FEBRUARY 2, 2010**

21 (WHEREUPON, court convened with all parties present
22 with the exception of the Defendant, and the
23 following proceedings were had commencing at
24 approximately 9:50 a.m.)

25 THE COURT: Everybody take their seats, please.

1 Thank you. Where's the Defendant?

2 MS. ADAMS: I don't know, Judge.

3 Where's the Defendant?

4 MR. MCGUIRE: I understand he's coming.

5 THE COURT: It'd be nice.

6 MR. MCGUIRE: It would.

7 (WHEREUPON, court stood at ease awaiting the arrival
8 of the Defendant.)

9 THE COURT: All right. We're back on the
10 record in the case of the State versus Rivera. Is there
11 anything from the State before we begin?

12 MS. ADAMS: No, sir, Your Honor.

13 THE COURT: From the Defense?

14 MR. MCGUIRE: No, sir.

15 THE COURT: All right. I did give a copy of
16 the witness list to the jurors, the jury panel, so they
17 could be looking at it before they come in. I hope there
18 was no objection to that over the evening.

19 MS. ADAMS: No, sir.

20 THE COURT: Is that correct from the State?

21 MR. MCGUIRE: No objection, Your Honor.

22 THE COURT: All right. Very good.

23 Now, also, it's my understanding that we have put
24 those who would have a problem, or at least stated a
25 problem with a death penalty, at the end of the list. In

1 favor or against, that we put them at the end of the
2 list. So the ones we'll be taking will not have a
3 statement as to not being able to or being able to, or
4 doing it in each and every case. Is that what you
5 understand Madam Solicitor?

6 MS. ADAMS: Yes, sir, Your Honor. Basically,
7 the ones and fives are at the end.

8 THE COURT: Right, right.

9 And Mr. McGuire is that your understanding?

10 MR. MCGUIRE: Yes. Yes, sir, that's my
11 understanding.

12 THE COURT: Very good. All right. Also, when
13 we get to voir dire, the Defense goes first on your voir
14 dire and then the State. Is that correct, Madam
15 Solicitor?

16 MS. ADAMS: Yes, sir, Your Honor.

17 THE COURT: Is that correct, Mr. McGuire?

18 MR. MCGUIRE: Yes, sir.

19 THE COURT: Very good. All right. Is there
20 anything else from the State before we examine the -- by
21 the way I'm going to examine the -- well, let me ask you.
22 Which do you prefer? I usually let them sit in the jury
23 box rather than on the witness stand just so they can get
24 comfortable to the fact of the jury box. Well, let me do
25 this though. That might create a problem because you

1 can't see them. That's been in other cases. We'll just
2 -- we'll ask the individual to sit in the jury box.

3 Okay. Anything else from the State?

4 MS. ADAMS: No, sir, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. MCGUIRE: No, sir..

7 THE COURT: Very Good. All right. Ask Juror
8 Number 1 to join -- no, Juror -- well, it is. It is
9 number 3.

10 (WHEREUPON, Potential Juror 3 entered the
11 courtroom.)

12 THE COURT: If you would, come around, please,
13 sir. All right. You are juror number 3; is that
14 correct?

15 THE POTENTIAL JUROR: That's correct.

16 **POTENTIAL JUROR 3,**

17 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

18 **EXAMINATION**

19 **BY THE COURT:**

20 Q. All right. And you'll recall on Monday I put all
21 the jurors under oath. Now, do you understand that
22 you're still under oath and this oath continues
23 throughout these proceedings?

24 A. Yes, sir.

25 Q. Do you recall my instructions from Monday to avoid

1 all forms of media coverage dealing with this case?

2 A. Yes, sir.

3 Q. Has this caused you any problem ---

4 A. No.

5 Q. -- for you?

6 A. No.

7 Q. Now, you've also completed a questionnaire for the
8 Court. Have there been any changes in your answers on
9 that questionnaire?

10 A. I don't think so.

11 Q. All right.

12 A. It's been awhile since I completed it, but I think
13 I'm okay.

14 Q. All right.

15 Now, the trial of this case will last approximately
16 ten days or can last as much as ten days ---

17 A. Okay.

18 Q. -- or two weeks even.

19 A. That's the first part or both?

20 Q. No, that's for the entire trial. It will be at
21 least ten days. In other words, it will be three or four
22 days we'll use to qualify a jury, and then we'll get into
23 the trial of the case. So that will take some time.

24 Other than personal inconvenience, would this pose a
25 serious danger to the health or well being of yourself or

1 anyone else who is dependant upon you?

2 A. No.

3 Q. Among other things, we'll be talking about penalty
4 today. But the mere fact that we talk about penalty does
5 not indicate anything about this Defendant or any
6 defendant. Defendants are presumed, in the law, to be
7 innocent. Do you understand this?

8 A. Yes, sir.

9 Q. When you hear us refer to a capital case or a death
10 penalty case, what we mean is that it is a criminal
11 murder trial where the prosecutor -- in other words the
12 State -- is seeking the death penalty. Do you understand
13 this?

14 A. Yes.

15 Q. A death penalty trial is divided into two parts.
16 Part one is the guilt phase where a jury determines
17 whether the defendant is guilty or not guilty of murder.
18 Part two is the sentencing phase where a jury determines
19 the appropriate punishment. Of course, if the defendant
20 is found not guilty, that ends the matter.

21 Therefore, if you are a juror in a trial of a
22 capital case where the jury in phase one of the trial has
23 found the defendant guilty of murder, you would then move
24 on to phase two of the trial which is called the
25 sentencing phase of the trial. Do you understand?

1 A. Yes, sir.

2 Q. Now, if you were a juror in the sentencing phase,
3 that is phase two, of a capital murder trial -- again,
4 where a jury has already found the defendant guilty of
5 murder -- do you understand that the jury, rather than
6 the Judge, determines the sentence that the defendant
7 will receive for the crime of murder?

8 A. I do now.

9 Q. In a capital sentencing trial, the jury's function
10 is to determine the appropriate punishment based upon the
11 circumstances of the crime and the characteristics of the
12 individual defendant. Now, aggravating circumstances are
13 fact or details that, when they are present in a case,
14 make the crime of murder more serious or worse. On the
15 other hand, mitigating circumstances are incidents,
16 occurrences or details of a case that would reduce the
17 severity of the crime of murder. In other words, may
18 reduce the degree of responsibility for the crime. Do
19 you understand this?

20 A. Okay. Yes, sir.

21 Q. Do you also understand that the jury has two options
22 to consider regarding the sentence for murder? One
23 option is life imprisonment, and the other option is
24 death which in this state is by electrocution or lethal
25 injection. Could you, as a juror in the sentencing

1 phase, depending upon the facts including relevant
2 aggravating and mitigating circumstances and the law as
3 instructed to you, render a sentence of life imprisonment
4 which in this state is life imprisonment without parole,
5 until death. Do you understand that?

6 A. Yes. I think so, yes.

7 Q. On the other hand, as a juror in the sentencing
8 phase, depending upon the facts including relevant
9 aggravating and mitigating circumstances and the law as
10 instructed to you, could you render a sentence of death?

11 A. I think so.

12 THE COURT: All right. Any questions from the
13 Defendant?

14 MR. MCGUIRE: Yes, sir, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. MCGUIRE:

17 Q. Good morning Juror Number 3.

18 A. Good morning.

19 Q. Just because we refer to you by number, I'm not
20 being not friendly you. It's just the way we do it in a
21 case like this, okay?

22 A. I understand.

23 Q. Okay. What I need to do is talk to you about
24 penalty now even though the trial hasn't started because
25 this is my only chance to talk to you, okay?

1 A. That's fine.

2 Q. And I just want to start off to make sure that we're
3 on the same page. You probably like most of the people
4 in my family that are not lawyers, and most of your
5 knowledge about murder and crime comes from TV; is that
6 about right?

7 A. Probably so, yes.

8 Q. I mean, you don't have anybody in your family who's
9 a lawyer or a police officer or anything like that?

10 A. I do have a brother-in-law who's a lawyer.

11 Q. That's right, a brother-in-law. But you don't have
12 any specific knowledge of criminal law?

13 A. No. No, I don't.

14 Q. And if I was to pressure you and say, can you give
15 me the exact definition of murder in South Carolina ---

16 A. No.

17 Q. -- you'd probably come up short.

18 A. No.

19 Q. And I'm not putting you on the spot.

20 A. No. That's correct.

21 Q. I'm just need to figure out where I need to start.

22 So why don't we start with the definition of murder.

23 Okay? In South Carolina that is acting with a black and

24 malignant heart, fatally bent on evil, unlawfully,

25 deliberately taking an innocent life. Not self-defense,

1 not accident, not kids drinking getting in a car hitting
2 somebody, not two guys meeting in a parking lot to fight
3 and it gets out of hand. This is a deliberate choice to
4 take an innocent life. Are you with me?

5 A. I hear you, yes.

6 Q. Based on that kind of killing, what are your
7 thoughts about the death penalty as the appropriate
8 penalty?

9 A. No. I think that the death penalty would be in
10 heinous situations in my mind.

11 Q. Could you repeat that? I'm having a little trouble
12 hearing you.

13 A. I think that the death penalty, in my way of
14 thinking, is for heinous situations, not ---

15 Q. So something more than that?

16 A. I think so, yes.

17 Q. Okay. And you're like most folks in the country.
18 And most folks kind of have a point where the facts, the
19 act of murder or the killing, is just so bad that it
20 becomes deserving of the death penalty. It sounds like
21 you're in that group?

22 A. I think I am.

23 Q. For instance, for some people it might be if a child
24 was killed or if a police officer in the line of duty or
25 something like that.

1 A. (Nodded head up and down in the affirmative.)

2 Q. Or maybe if somebody murdered and then murdered
3 again.

4 MS. ADAMS: Object, Your Honor.

5 THE COURT: Let's not get fact specific.

6 MR. MCGUIRE: Well, Judge, I would make the
7 argument, if I could briefly, that under *Longworth* and
8 *Davis*, two South Carolina cases, that I would be able to
9 voir dire on a significant fact of aggravation such as
10 that. The *Davis* and *Longworth* cases involve ---

11 THE COURT: I understand. All right. As I
12 say, let's not get too much into any sort of issues that
13 might be involved other than this juror.

14 MR. MCGUIRE: Okay.

15 THE COURT: I'll permit some ---

16 MR. MCGUIRE: Sure.

17 THE COURT: --- but let's just not try the case
18 at this time.

19 MR. MCGUIRE: Okay.

20 Q. I want to give you an open-ended question then. In
21 your mind, tell me what are those kind of cases that
22 become so bad they become deserving of the death penalty?

23 A. I've never honestly never thought about it before
24 this time. So I guess if I had to answer that, I would
25 say some of the ones you stated earlier. I would also --

1 I think the question that you're looking for is where is
2 the gray line. And I don't know if I could put my finger
3 on that. I would have to see all the facts and make that
4 decision. I don't know exactly in my mind where that
5 gray line would be.

6 Q. Sure. But it sounds like when you're trying to find
7 that gray line, it's based on the facts of the killing?

8 A. Yes.

9 Q. Is there anything else you would want to know in a
10 death penalty case before deciding sentence?

11 A. I think the facts, you know.

12 Q. The facts kind of drive the bus?

13 A. I think so. I don't know what you're asking for
14 there, but I ---

15 Q. It's a little vague. Let me help you out. What if
16 I said, you know, somebody might say a defendant who grew
17 up in abject poverty or maybe suffered some abuse. Would
18 those things be relevant in fixing the punishment in a
19 death penalty case, or would they be not relevant?

20 A. No, I don't think so.

21 Q. And it's because the focus is on the facts and how
22 bad the facts are ---

23 A. I think it's based on the facts, correct.

24 Q. --- of the killing? Okay. I'm going to talk to you
25 just a little bit about publicity. Can you tell me what

1 you've heard about this case?

2 A. Nothing.

3 Q. Nothing?

4 A. Nothing.

5 Q. Okay. And I want to talk to you just a little bit
6 now about some of the issues of law because this case --
7 a capital case is different from any other case that we
8 have. And that's because the jury actually gets to
9 fashion the punishment.

10 A. Uh-huh (affirmative).

11 Q. And it's different from say from a civil case where
12 it might be, well, who had the right of way in a car
13 crash case, something like that, because there really is
14 kind of a right or wrong answer. Somebody had the right
15 of way and somebody didn't. But in a capital case, in a
16 sentencing case like this, when the decision is to kill
17 or not kill a human being, it's an individual moral
18 judgement. Are you with me there? It's not a right or
19 wrong answer. Are you okay with that?

20 A. I agree.

21 Q. Okay. And Mr. Rivera is entitled to fairness, not
22 just in the courtroom, but also in the jury room. And if
23 somebody came up with their own moral judgement, their
24 opinion, their vote, could you respect that as their
25 individual position?

1 A. I think so, yeah.

2 Q. I mean, some folks tell me, you know, we'd really
3 want to keep arguing until we got a unanimous verdict.
4 But you don't have to do that in a sentencing case. Is
5 that okay with you?

6 A. That's fine.

7 Q. Okay. In fact, the way the law states it, if it
8 would do harm to somebody's conscience to change their
9 vote or position, that would be wrong. And they would
10 actually have a duty to get their verdict in the court,
11 their decision. Are you okay with that?

12 A. What are you asking me?

13 Q. I guess what I'm asking ---

14 A. If somebody would try to change my opinion, would I
15 stick with my ---

16 Q. That's exactly what I'm asking.

17 A. -- with my morals or would I change my opinion?

18 Q. Sure. I mean, would you stick to your guns?

19 A. I'm pretty good at sticking to my guns.

20 Q. Okay. And would you also want to make sure that
21 everybody else had that luxury, to stick to their
22 position?

23 A. I think that's what this is all about, isn't it?

24 Q. Right. And in fact, if things were unfair in the
25 jury room, you could actually send a note out to the

1 Judge saying, things are really fair in here, people are
2 kind of ganging up on somebody. Could you do that?
3 Could you send a note out?

4 A. If that's what I'm asked to do. If that's what the
5 rules are for ---

6 Q. Well, if you thought that was necessary to keep
7 fairness in there, could you do that?

8 A. Yeah.

9 Q. Okay. If we were just sitting around the water
10 cooler at your work -- I understand you're an engineer;
11 right?

12 A. I am.

13 Q. Okay. Do y'all have a water cooler?

14 A. I guess so.

15 Q. Something like that. If we were just standing
16 around that and somebody said, you know, the death
17 penalty should be pretty much automatic for some kinds of
18 crimes, and they turned to you and said, what kind do you
19 think deserve pretty much an automatic death penalty,
20 could you come up with an example?

21 A. Yeah, I guess serial type situations would be
22 something. Heinous acts things that, you know, people
23 are -- I do believe there are things. I don't know that
24 I've thought about it.

25 Q. You said the serial, like a serial act.

1 A. Yeah, you know ---

2 Q. What do you mean by that?

3 A. Well, I think you said it earlier that most of my
4 experience with the law is on TV, so you've heard of
5 several movies and what not. So I think there are
6 situations that cross the line, yeah.

7 Q. Okay. And apparently you've been exposed to like a
8 serial killer-type stuff on TV?

9 A. Sure. I think everybody has.

10 Q. And if I get you right, that's the ones where it
11 might be automatic death penalty?

12 A. I think that could be, yeah.

13 Q. Is there a number that crosses the line for you with
14 that serial-type situation?

15 A. Well ---

16 MS. ADAMS: Your Honor, I object. I think he's
17 getting fact specific, and I think he has asked and
18 answered the question.

19 THE COURT: Again, I'm going to permit some
20 latitude here, but let's not -- what is it -- invade this
21 juror's privacy. But just the fact that -- what is it --
22 he has to sit to be as an impartial juror. So you can
23 ask him your question but let's ---

24 MR. MCGUIRE: Sure. Sure.

25 THE COURT: --- not pursue it.

1 Q. So I'm going to go ahead and ask you, where's the
2 number --- that gray line we we're looking for, where's
3 the number for you on that?

4 A. I don't know if I have a gray line, but I would have
5 to think very hard at somebody who had killed more than
6 once. And that would definitely be something on my mind
7 where I would have to consider the death penalty in that
8 condition. If somebody has already created such an act
9 and then repeated it, that's pretty serious in my mind.

10 Q. Sure.

11 A. I would definitely at that point consider it, yes.

12 Q. What about three?

13 A. Once I've gone two, you know, what's beyond that,
14 you know.

15 Q. Kind of in for penny, in for a pound; is that right?

16 MS. ADAMS: Your Honor, I object. It's getting
17 specific.

18 THE COURT: Just a moment. Let's -- no, let's
19 -- please. We want information not -- what is it --
20 argument.

21 A. But I would also have to look at what the nature of
22 the killing was. I'd definitely know the facts.

23 Q. Sure.

24 MR. MCGUIRE: I think that might be all I have.
25 If I could have one second, Judge.

1 THE COURT: All right. State.

2 MR. MCGUIRE: Judge, those are all the
3 questions I have for right now, but I would have an issue
4 of law that I would like to take up before we resolve
5 this juror's qualification.

6 THE COURT: Certainly. All right.

7 MR. MCGUIRE: Thank you, Mr. 3.

8 (Laughter)

9 MS. ADAMS: Judge, are you ready?

10 THE COURT: You may proceed.

11 MS. ADAMS: Thank you, Your Honor. May it
12 please the Court.

13 CROSS-EXAMINATION

14 BY MS. ADAMS:

15 Q. Good morning Number 3, how are you?

16 A. Good morning.

17 Q. My name is Chrissy Adams, and I'm the Solicitor for
18 the Tenth Circuit. And this is Jen Byford and Rame
19 Campbell, two of the assistants in my office. And we're
20 going to be trying this case over the next at least ten
21 or so days, as the Judge said. And I just want to make
22 sure that you understand the process first before we kind
23 of get into your thoughts about the death penalty. You
24 understand that it's a two-part?

25 A. Correct.

1 Q. We have -- the first part is ---

2 A. Bifurcated.

3 Q. Right.

4 A. I understand.

5 Q. Okay. It will be determining guilty. And before
6 you determine whether this Defendant is innocent or
7 guilty, is it fair to say that you would want to hear all
8 the evidence before you make that determination?

9 A. Oh, absolutely.

10 Q. Okay. So -- and the same thing applies to the
11 sentencing phase. Now, assuming that he is found guilty,
12 once we get to the sentencing phase, it is just
13 punishment. And there are two choices, as the Judge
14 said, either life without the possibility of parole or
15 the death penalty. And I want to make sure that you
16 understand, too, that there are no right or wrong
17 answers. And what we're trying to do here today is
18 really just get your opinion. Nobody's trying to change
19 that or put words into your mouth at all. Okay? When we
20 talk about punishment, is it fair to say that -- well,
21 first of all let me ask you this. Do you understand that
22 not every murder is eligible for the death penalty?

23 A. No, I didn't know that.

24 Q. Okay. Not every murder is eligible. There has to
25 be some sort of aggravating circumstance present for the

1 State to go forward and seek the death penalty in a case.

2 A. That makes sense.

3 Q. Okay. So -- and you have to make a finding. The
4 jury will make a finding of an aggravation before you can
5 go forward and decide life or death. So you will hear
6 about the aggravation. And you will hear mitigation if
7 the Defense gives mitigation. So there'll be both. So
8 do you understand the difference now between aggravation
9 and mitigation, like the judge said?

10 A. I do.

11 Q. Okay. Now, would you want to hear all the facts in
12 aggravation and mitigation before you make a decision
13 whether or not life imprisonment without parole is
14 appropriate or the death penalty is appropriate?

15 A. Yeah, before any decision I would like that.

16 Q. Okay. So the death penalty would not be automatic
17 in certain types of crimes. You would want to hear all
18 the evidence and you would be fair to the State and to
19 the Defendant?

20 A. Yes, I think so.

21 Q. Okay. Now, the law also requires ---

22 A. Sorry.

23 Q. I know. It's not a very comfortable situation, is
24 it?

25 A. I guess I can't move it.

1 Q. The law also requires that if you do choose the
2 death penalty, if the jury decides on the death penalty,
3 that you have to sign your name to that sentence form.
4 And that is what allows -- each and every juror has to
5 sign his or her name to the jury form saying that you
6 have voted for the death penalty. Because it's not
7 enough to just consider it, you have to be able to vote
8 for it to allow the State to impose the death penalty and
9 basically which would allow the State to execute the
10 Defendant.

11 A. Yes.

12 Q. Okay. Would you be able to sign your name to that
13 sentence form?

14 A. I believe so. I'm not sure I understand what you're
15 saying. If I said that I believed that ---

16 Q. Right.

17 A. --- a person should be executed, then I would sign
18 that?

19 Q. Right. You would sign a sentence form basically
20 saying that you voted to impose the death penalty on this
21 Defendant.

22 A. Now, is that a whole jury or ---

23 Q. Yes, the whole jury.

24 A. --- or is it just my own particular feelings?

25 Q. No, no, no. The whole jury. Each and every

1 individual juror has to sign their name to a sentence
2 form. So it would be twelve.
3 A. Okay. So ---
4 Q. But you would sign your name?
5 A. So if I agreed that he was not to be executed ---
6 Q. Then you wouldn't sign your name.
7 A. Okay. That's all I'm asking.
8 Q. Right. Right. In other words, once you listen to
9 all the evidence ---
10 A. Yes.
11 Q. --- and if you felt that the death penalty was
12 appropriate ---
13 A. Uh-huh (affirmative).
14 Q. --- you actually sign your name to a sentence form
15 and that ---
16 A. That's fine.
17 Q. --- is what allows the State to execute the
18 Defendant.
19 A. That's fine.
20 Q. And you would be able to sign your name?
21 A. Right.
22 Q. Okay.
23 A. I just don't want to sign my name to something I
24 don't believe in.
25 Q. Right. But if you believed that that was

1 appropriate after you heard all the aggravation and all
2 of the mitigation ---

3 A. Right.

4 Q. --- you could sign your name if you felt that that
5 was the appropriate sentence ...

6 A. I think so.

7 Q. Okay -- under the facts and circumstances?

8 MS. ADAMS: Your Honor?

9 Q. Let me ask you this. Once you hear all the evidence
10 and aggravation and mitigation, if you felt that the
11 appropriate sentence was life without parole, could you
12 vote for life without parole?

13 A. Yes.

14 Q. Okay. And if you felt that the death penalty was
15 the appropriate sentence, could you vote for the death
16 penalty?

17 A. Yes.

18 Q. Okay. Thank you very much.

19 A. You're welcome.

20 MR. MCGUIRE: Just my legal issue with the
21 Court. We can take it up maybe outside of Mr. 3's
22 presence. I'd like to talk a little bit more. I don't
23 know if you know ---

24 THE COURT: Very good. All right. Juror, if
25 you would, please -- let's see. Do we have a bailiff?

1 MS. ADAMS: Yes, sir. He's right here.

2 THE COURT: Take the juror to the jury room. I
3 think they're in the Grand Jury room on the main ---

4 MADAM CLERK: That's correct, Your Honor.

5 THE COURT: And I'll ask you come back in just
6 a few minutes.

7 THE POTENTIAL JUROR: Okay.

8 THE COURT: Thank you, sir.

9 THE POTENTIAL JUROR: Uh-huh (affirmative).

10 (WHEREUPON, Potential Juror 3 exited the courtroom.)

11 THE COURT: All right. Mr. McGuire?

12 MR. MCGUIRE: Thank you, Your Honor. Judge, I
13 would like to ask the Court's permission very
14 respectfully to be able to voir dire the potential jurors
15 on the issue of multiple prior murders regarding this
16 Defendant. There are two cases in South Carolina where
17 it was deemed proper for the prosecutor to kind of pick
18 out a fact of mitigation that might have the home run
19 weight with the jury and prevent them from seriously
20 considering death as a possible punishment. And those
21 three factors were mild retardation, the youth of the
22 defendant and the fact that the defendant was the non-
23 trigger man in a co-defendant case.

24 And if the Prosecution in this state is allowed to
25 look over at our table and pick out kind of our biggest

1 piece of mitigation and shop it with the jurors to make
2 sure that's not going to prevent them from getting the
3 verdict that they want, which is death, we should be able
4 to pick a significant aggravating factor on their side,
5 present it to the juror, and make sure it doesn't prevent
6 them from delivering the verdict that we're going to ask
7 for, which is life without parole. I mean, it's just an
8 equal protection argument.

9 We've got cases in South Carolina where it's proper
10 for them to do it. I can't imagine why it's not proper
11 for us to do it. And also the -- you know, with regard
12 to sort of a staking out -- I mean, what's the definition
13 of staking out? Staking out's a really -- it's a
14 detailed summary of the whole case and basically you're
15 asking somebody to cast their vote. You know, staking
16 out is not asking a juror, well, the fact that a
17 defendant is twenty-two years old, would that prevent you
18 from delivering a death verdict, that's not staking out.
19 That's just asking one significant fact. Is that fact
20 going to prevent them from properly considering
21 aggravating factors and mitigating factors, and fairly
22 considering both punishments, which they're required to
23 do by law?

24 You know, it's not staking out to say, well, the
25 fact that the defendant might be proved to be a non-

1 trigger man, would that prevent you from delivering a
2 death verdict. That's not staking out. That's a case we
3 already have in South Carolina. And just asking one
4 significant factor of aggravation is clearly not staking
5 out. When you look at all the aggravation that we're on
6 notice that we have to defend, it's huge. We've got
7 eight murders total that we have to defend. Six by the
8 defendant's on statement. Two at issue in Anderson
9 County. We've got evidence of rape including a survivor
10 rape victim, unrelated rape victim, who will be coming
11 into court. Multiple women that are victims of criminal
12 domestic violence that are going to come in and say the
13 Defendant beat them. I mean, if I was going to stake
14 out, I'd have a pretty long list of factors I'd be
15 running by the jury. But I'm only asking to focus, just
16 like in the *Davis* case and the *Longworth* case ---

17 THE COURT: Just like in the what?

18 MR. MCGUIRE: Just like in the *Davis* case and
19 the *Longworth* cases, I'm asking permission only to focus
20 on what would reasonably be considered to be something so
21 significant that it would interfere with the juror's
22 ability to fairly consider all the factors in aggravation
23 and mitigation and interfere with their ability to fairly
24 consider both punishments as they're required to do by
25 law. I mean, I don't think anybody wants this case

1 reversed. I think if I cannot voir dire on a fact that
2 significant -- I mean, I think if that's the horse I have
3 to run to the Supreme Court on, I think it's a pretty
4 good horse with, you know, all due respect there, Judge.

5 THE COURT: That seems a very popular
6 expression these days. What does the State say?

7 MS. ADAMS: Your Honor, clearly the Defense is
8 trying to stake out these jurors and pledge them to a
9 specific course of action. He wants to ask them
10 specifically about a prior murder. That is our
11 aggravating circumstance in this case. And the case law
12 says that, you know, you simply cannot do that. The
13 staking out and pledging them to a course of action is
14 not allowed. The Court's have ruled consistently ---

15 THE COURT: Would you like to give me a case
16 since it's so consistent?

17 MS. ADAMS: Sir?

18 THE COURT: Would you like to give me a case
19 that I can ---

20 MS. ADAMS: Yes, sir. You have *State v.*
21 *Powers, State v. Hill.*

22 THE COURT: All right. Just a moment. Now,
23 let's don't overwhelm me. Just give me a case. I didn't
24 ask -- give me the best case you've got.

25 MS. ADAMS: Yes, sir. *State v. Powers* is 501

1 S.E.2d 116.

2 THE COURT: All right.

3 MS. ADAMS: That's the leading case, Judge.

4 THE COURT: Very good. Go ahead.

5 MR. MCGUIRE: And Your Honor, if I could just
6 briefly respond.

7 THE COURT: Well, wait a minute. I think --
8 was the Solicitor through?

9 MS. BYFORD: You've got two U.S. Supreme Court
10 Cases.

11 MS. ADAMS: Well, and you've also got ---

12 THE COURT: Well, I mean, is there anything
13 more, in other words, that I -- we don't get into the
14 specific facts of a case as a means of compromising the
15 juror. Now, have you got anything else?

16 MS. ADAMS: Well, Your Honor, I think it -- we
17 all know that the standard is whether or not they
18 consider everything in aggravation and everything in
19 mitigation before they make a decision, and whether or
20 not they can vote to impose either sentence. And this
21 juror clearly stated that if the facts and circumstances
22 warranted life without parole, he could vote for that.
23 And he clearly stated if the facts and circumstances
24 warranted the death penalty, he could vote for that.

25 THE COURT: All right. Mr. McGuire?

1 MR. MCGUIRE: Judge, I was just going to give
2 you two cases on point that were reversed in other
3 jurisdictions, specifically for failure to allow the
4 defense lawyers to voir dire on prior murders. And one
5 is *State versus Biegenwald*. The cite is 594 A.2d, 172.
6 It's a Supreme Court of New Jersey case from 1991. And
7 they specifically reversed a murder conviction based on
8 the failure to allow the defense lawyer to voir dire on a
9 prior murder.

10 And then another case is *The State versus Cash*. The
11 cite is 50 P.3d 332, California Supreme Court, 2003.
12 Again reversed a murder conviction for the trial courts
13 failure to allow voir dire on a prior murder.

14 THE COURT: All right.

15 MR. MCGUIRE: And Judge, not to be long winded,
16 but it's not -- the cases aren't just limited to prior
17 convictions of murder. There's another case I'll provide
18 to the Court where a murder conviction was reversed based
19 on the fact that the Defense was not allowed to voir dire
20 on the fact that one of the murder victims was only three
21 years old. And I'll have to find that case for you,
22 Judge. I'll get it to you as soon as I can.

23 (Off record discussions)

24 THE COURT: All right. Anything further from
25 the Defendant?

1 MR. MCGUIRE: Yes, sir, just briefly. In
2 looking at *Powers* that was cited by the Prosecution, that
3 case focuses on a defense lawyer trying to sort of shop
4 his mitigation evidence to see what was going to try to
5 -- what he could get traction with a juror see, what they
6 were going to bite on, see if the power of his mitigation
7 ---

8 THE COURT: In other words, he was stating
9 facts that he felt that -- what is it -- would be
10 presented as a particular age so that if they -- the
11 juror heard that again, he would be pretty much tied to
12 his opinion or, as they say, staked-out.

13 MR. MCGUIRE: Well, sort of. I mean, he was
14 really sort of shopping the power of what he wanted them
15 to accept. And he was kind of trying to profile and get
16 a favorable juror. Now, the difference between what I'm
17 asking to do is I'm trying to determine if we have a
18 juror who is substantially impaired because the evidence
19 that will necessarily come in in aggravation is so
20 powerful that it will prevent the juror from fairly
21 considering life as possible punishment.

22 THE COURT: Well, then that is staking it out.
23 You just -- if he concedes without hearing all of the
24 facts and other evidence, that this one consideration
25 would be such that he couldn't do anything else, then he

1 would obviously not be qualified.

2 MR. MCGUIRE: Well, let me ---

3 THE COURT: I mean, if that's what you want to
4 do, I don't think that's the proper thing. I think that
5 you are entitled to determine where the general
6 considerations such as multiple. And I think this juror
7 has said that even two is a -- that would be enough for
8 his consideration. And I think that's what you need.

9 But go into the specifics as to something more ---

10 MR. MCGUIRE: Well, let ---

11 THE COURT: --- so -- what is it -- as I say,
12 facts specific to a particular case, I think you're going
13 beyond the purpose of voir dire just to find out what the
14 general -- if they can they be fair. Can they -- what is
15 it -- under circumstances where generally matters are
16 considered, could they do it. But not when it's
17 something specific that out of all the other evidence
18 regarded they would tie the juror to that particular
19 position.

20 MR. MCGUIRE: Let me run with that argument, if
21 I could, for a second, Judge. Let's assume -- and I
22 don't think anybody else would object -- would disagree
23 with this. That there are potential jurors who, if they
24 heard evidence that a person killed and then killed
25 again, for them that might be automatic. That might be

1 game over. That's all they need to hear. They're going
2 to reject mitigation evidence out of hand. And ---

3 THE COURT: Well, that would be the proper
4 question to ask. I mean, if that's ---

5 MR. MCGUIRE: Well, that's kind of the question
6 I was trying to ask.

7 THE COURT: Well, not really.

8 MR. MCGUIRE: Maybe ---

9 THE COURT: You got your answer that you
10 wanted.

11 MR. MCGUIRE: Oh, sure. And I don't have any
12 trouble with this juror.

13 THE COURT: Excuse me, go ahead.

14 MR. MCGUIRE: I'm sorry. With regard to his
15 answers on, you know, multiple murders, I'll concede. I
16 don't have -- I'm not arguing to strike this juror for
17 cause of that specific answer. I do think he should be
18 stricken for cause on another ground. But with regard to
19 -- I mean, if the Court's position is that I can ask a
20 juror something along the lines of, what is your opinion
21 of the death penalty as the appropriate punishment for
22 somebody who kills, murders, and then murders again. Or
23 the follow-up question might be, is a life in prison
24 penalty, in your view, ever severe enough to punish that
25 defendant, that kind of defendant.

1 And I'm not -- I mean, I do want the Court to know
2 that I'm not talking about one fact. I'm basically
3 talking about a category of crimes. You know, I'm not
4 talking about a knife or a wound or blood or this or that
5 or somebody owns a certain street. I mean, this is not
6 fact specific at all. It's basically category. It's the
7 category of a defendant who has committed a prior or
8 multiple prior murders. And in that category, can the
9 juror be fair? Or when they hear evidence of multiple
10 murders, are they just going to go straight for the death
11 penalty.

12 THE COURT: Well, again, I can only come back
13 to what this juror said in response to your argument, and
14 that is he would want to hear all of the evidence.

15 MR. MCGUIRE: Yes, sir. Yes, sir. And again,
16 I'm not ---

17 THE COURT: So if you're trying to tie him into
18 one statement or one -- what is it -- consideration, I
19 think that violates what *Powers* stands for.

20 MR. MCGUIRE: Sure, sure, sure.

21 THE COURT: You can ask him do you-- would you
22 consider these things? But to say something fact
23 specific to this particular case, that could you ever, I
24 think then you you're going beyond voir dire and you are
25 trying to compromise the juror.

1 MR. MCGUIRE: All right. And let me roll with
2 that. Okay. Let's say I'm ---

3 THE COURT: Let's don't roll anywhere. Let's
4 -- I'm trying to be as patient as I can ---

5 MR. MCGUIRE: Sure.

6 THE COURT: --- because we have a long day and
7 a long night to do this. But I just want you to
8 understand -- let me just read to you from *Powers*. But I
9 know you are familiar with it. In our opinion -- and
10 they're saying the Illinois case -- does not require the
11 question concerning specific mitigating facts. It merely
12 recognized that a capital defendant may challenge for
13 cause any prospective juror that indicates he or she will
14 automatically vote for death in every case. The case
15 does not, however, stand for the proposition that a
16 defendant is entitled to open-ended inquiry regarding a
17 perspective juror's sentiment on each and every possible
18 aggravating and mitigating circumstances. It does not
19 require that a defendant be permitted to voir dire all
20 jurors regarding how they would be affected by evidence
21 of mental impairment, age and other mitigating
22 circumstances since such a question would stake out.
23 That's where the term comes, apparently juror and
24 pledging to a future course of action. General questions
25 as to whether a juror would consider mitigating

1 circumstances as charged by the Judge is sufficient.

2 Again ...

3 MR. MCGUIRE: Judge, the only question I would
4 ask the Court right now is, how do we square that
5 language with *Davis* and *Longworth*? Where the court held
6 it was perfectly proper for the prosecutor to ask about
7 age, non-trigger man ---

8 THE COURT: Well, if I remember them both, at
9 least *Longworth* was a disqualification. And they say
10 that the Court probably disqualified because apparently
11 they did get into the specifics.

12 MR. MCGUIRE: Well, it was -- but the Court
13 indicated these questions were proper because the answer
14 to the question could reveal that a juror was impaired
15 and they were not, for instance ---

16 THE COURT: Were substantially impaired, right?

17 MR. MCGUIRE: Exactly, substantially impaired.
18 Because the power of that fact was such that they
19 couldn't fairly consider death as the possible
20 punishment.

21 THE COURT: Well, that's the ultimately
22 question. And that's a little bit more than just asking
23 specifics about what might be considered.

24 MR. MCGUIRE: All right.

25 THE COURT: And so I mean, I think -- and

1 that's how I would distinguish Longworth. I'm not sure
2 about Davis. I'm not that familiar with it.

3 MR. MCGUIRE: And Judge, I'm going to stop
4 arguing with you. I think that would be wise at this
5 point.

6 THE COURT: But I think also the rule requires
7 it, but that's okay. I'm going to permit some, as I say,
8 latitude, earlier because I do want to have it clear that
9 we're going to move on and not have to renew it each
10 case.

11 MR. MCGUIRE: Sure. And Judge, I just want to
12 put on record that I would move to strike Mr. Number 3
13 for cause based on the fact that he is impaired,
14 substantially impaired, with his duty to give meaningful
15 consideration or to give consideration to mitigating
16 factors. One of his responses was that he didn't find
17 background information of the Defendant like abject
18 poverty or severe abuse to be really relevant in fixing
19 punishment in a murder case because it was facts -- it
20 was the facts that he would focus on. And that's my only
21 motion. And I think failure to strike him would violate
22 Mr. Rivera's ---

23 THE COURT: Do you want to do that at this
24 time?

25 MR. MCGUIRE: I'm just going to just ---

1 THE COURT: Right?

2 MS. ADAMS: That's fine, Judge.

3 THE COURT: Again, I would rather hear more

4 from the juror.

5 MR. MCGUIRE: Oh.

6 THE COURT: But I mean, if you -- in as much as

7 you're presuming something that apparently ---

8 MR. MCGUIRE: I mean, I ---

9 THE COURT: --- might not be based on the ---

10 MR. MCGUIRE: I don't think I need to ask any

11 more questions of him.

12 THE COURT: All right. Very good.

13 MR. MCGUIRE: I'm pretty satisfied with what he

14 said.

15 THE COURT: All right. Anything from the

16 State?

17 MS. ADAMS: Your Honor, just that he clearly

18 stated that he could consider all the aggravation and all

19 the mitigation. And he could vote for either life

20 without the possibility of parole or the death penalty

21 depending on what it was that he heard.

22 THE COURT: Well, I'll tell you, I have a

23 series of questions that I usually ask them, and for some

24 reason I didn't ask this time I don't believe. And I'm

25 going to ask those, and I'll permit you then to do any

1 further voir dire that you would like. All right?

2 MS. ADAMS: Yes, sir.

3 THE COURT: From the Defense?

4 MR. MCGUIRE: Yes, sir.

5 THE COURT: All right. Ask the juror to rejoin
6 us.

7 (WHEREUPON, Potential Juror 3 entered the
8 courtroom.)

9 THE COURT: Now, Juror 3, you understand of
10 course you're still under oath?

11 THE POTENTIAL JUROR: I do.

12 THE COURT: All right.

13 EXAMINATION

14 BY THE COURT:

15 Q. If you were a juror in a criminal case -- and this
16 would also apply to a capital case such as this,
17 obviously. But could you listen to the law and accept
18 the law, as I would instruct you as the Judge of the
19 court, and even though you may not agree with that law or
20 think that it ought to be some other way, could you
21 decide this case solely on the evidence presented in this
22 courtroom and disregard anything else you may have
23 thought in the past or before listening to the law and
24 the evidence?

25 A. I believe so.

1 Q. And, of course, you do understand that in a criminal
2 case, the State has the burden of proving guilt as well
3 as any factors dealing with aggravation or mitigation,
4 aggravation making the crime more heinous, Mitigation is
5 reducing the responsibility. Do you understand that?

6 A. I do, yes.

7 Q. In a death penalty case, would you always or
8 automatically vote for the death penalty, even though the
9 law provides that you may impose a sentence of life
10 without parole depending upon the circumstances of a
11 particular case and the characteristics of an individual
12 defendant?

13 A. I believe I would listen to the facts and make my
14 decision. I would not always vote ---

15 Q. Both as to guilt, and if it is guilty, as to
16 sentence? In other words, that you could -- if the
17 second part or the second phase, could you impose a death
18 sentence if the facts and ---

19 A. If it warranted it?

20 Q. --- circumstances of a particular case warranted it
21 or, in your opinion, all the characteristics of the
22 individual could mitigate against it and be life without
23 parole?

24 A. Yes. I think I understand your question.

25 Q. Well, in other words, in the sentencing phase, the

1 decision the jury has to make would be based on the facts
2 and circumstances and the law of the case, impose a
3 sentence of death or, depending on the particular case
4 and the characteristics of the individual defendant, life
5 without parole. Those are the two possible sentences.

6 Could you do either ---

7 A. I believe so.

8 Q. --- depending on the facts and circumstances of the
9 law?

10 A. Yes.

11 Q. Very good.

12 THE COURT: Any further questions from the
13 Defendant?

14 MS. ADAMS: No, sir, Your Honor.

15 THE COURT: The Defendant?

16 MS. ADAMS: Oh, sorry. I thought you were
17 looking at me.

18 THE COURT: Any further questions from the
19 Defendant?

20 MR. MCGUIRE: Just briefly.

21 REDIRECT EXAMINATION

22 BY MR. MCGUIRE:

23 Q. Juror Number 3, you indicated on your questionnaire
24 that you would follow the Judge's instruction about
25 staying off the Internet, not doing any research, but you

1 would do so with reservation. Is that accurate?

2 A. Yeah. I mean, I would do it, but I would -- sure, I
3 would love to look at the Internet and see what's going
4 on in the world about this case, but I would not do it
5 because I was asked not to.

6 Q. But you can look at the Judge and tell him you'll
7 promise to stay off that stuff?

8 A. Yeah.

9 Q. Okay. I just wanted to make sure of that. Thank
10 you, sir.

11 THE COURT: Any further questions from the
12 State?

13 MS. ADAMS: No, sir, Your Honor.

14 THE COURT: All right. Again, I'm going to ask
15 you to retire to the jury room that you were in, your own
16 special jury room for the moment, if you would please.

17 THE POTENTIAL JUROR: With the other five?

18 THE COURT: They are in the other, in the Grand
19 Jury room. You're in the Petit Jury room?

20 THE POTENTIAL JUROR: Okay.

21 THE COURT: Right. I just need to take up some
22 matters with the attorneys.

23 THE POTENTIAL JUROR: You'll show me where to
24 go?

25 (WHEREUPON, Potential Juror 3 exited the courtroom.)

1 THE COURT: All right. Anything from the State
2 as to the qualification of this juror?

3 MS. ADAMS: Your Honor, we think he's
4 qualified.

5 THE COURT: All right. And from the Defense?

6 MR. MCGUIRE: Yes, sir. Judge, I would move
7 for cause to strike Juror Number 3 in that he's
8 substantially impaired with regard to considering
9 mitigation. His initial responses on that topic were
10 that he did not see background issues of the defendant --
11 two examples I gave were abject poverty or substantial
12 physical abuse -- as being relevant to fixing the
13 punishment of death or life without parole in a murder
14 case. I asked him if he thought that was relevant, and
15 he said no. And he confirmed that it's the facts of the
16 case that are going to drive his decision.

17 I believe under *Morgan v. Illinois* and *Whitt* that he
18 would be in fact substantially impaired in that regard.
19 I would move to strike him for cause and just note that
20 the grounds of moving on would be to ensure Mr. Rivera's
21 right to a fair trial pursuant the Sixth and Fourteenth
22 Amendment to the United States Constitution and Article
23 Three, Fourteen, and Fifteen of the South Carolina
24 Constitution.

25 THE COURT: Very Good. Thank you.

1 MR. MCGUIRE: Section -- I'm sorry. Section 3,
2 14, and 15 of Article I of the South Carolina
3 Constitution.

4 THE COURT: Article I? Very good. Thank you,
5 sir.

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: Anything come from the State?

8 MS. ADAMS: Your Honor, just that this
9 defendant [sic] clearly said that he could be fair to
10 both sides. The juror. I'm sorry, Your Honor. He could
11 be fair to both sides. He would listen to all the
12 evidence in aggravation and all the evidence in
13 mitigation before he made a decision, and he could vote
14 for life if that were appropriate and he could vote for
15 death if that was appropriate. And that's the standard,
16 Your Honor, so we feel that he's qualified.

17 THE COURT: Well, there are two things that
18 stand out about this juror -- anything further from the
19 Defense?

20 MR. MCGUIRE: No, sir, Your Honor. Thank you.

21 THE COURT: There are two things that stand out
22 about this juror. As I mentioned earlier, his response
23 was that even though he felt that two homicides would be
24 considered serial, still that he would want to hear all
25 of the evidence. And more importantly, when asked or

1 told as a juror he must sign the sentence form, his
2 response was I don't want to sign something I don't
3 believe in.

4 So I do find that he would be qualified considering
5 the entire voir dire. I find that Juror 3 will be fair,
6 unbiased, impartial and able to carry out the law as
7 explained to him. Furthermore, I find that the juror's
8 beliefs or attitudes towards the death penalty would not
9 prevent or substantially impair the performance of his
10 duties as a juror in accordance with the law, the Court's
11 instructions and the juror's oath. And I'm going to put
12 that on the record so that the juror will know that he
13 has been found, by the Court to be substantially -- to be
14 qualified.

15 Ask the juror to come back in, if you would please.

16 Now, what I will do is ask the Clerk to get all of
17 the telephone numbers of the ones I find qualified so
18 that she can contact them when we come to the point where
19 we strike the jury.

20 MR. MCGUIRE: Judge, can I ask you a question?

21 THE COURT: Yes, sir.

22 MR. MCGUIRE: Different judges do it different.
23 When we eventually get to our fifty, are we going to
24 strike by sheet going down in order? Are we going to
25 shuffle?

1 THE COURT: Well, the thing is with all of the
2 modern conveniences -- we'll go into that.

3 MR. MCGUIRE: Sure.

4 (WHEREUPON, Potential Juror 3 entered the courtroom)

5 THE COURT: Considering the entire process of
6 voir dire, as we call, it I find that Juror 3 will be
7 fair, unbiased, impartial and able to carry out the law
8 as explained to him. Furthermore, I find that this
9 juror's beliefs or attitudes towards the death penalty
10 will not prevent or substantially impair the performance
11 of his duties as a juror in accordance with the law and
12 the Court's instructions and your oath as a juror.

13 I'm going to ask you to again retire to your jury
14 room. And the Clerk's going to get some information from
15 you. And when we do strike the jury, then we will be in
16 touch with you and explain to you what to do by phone.

17 THE POTENTIAL JUROR: Okay. So go over there
18 and go home after that?

19 THE COURT: Yes, sir. You will be excused.

20 THE POTENTIAL JUROR: Until I hear from you.

21 MADAM CLERK: I have his phone number, Your
22 Honor.

23 THE COURT: You do?

24 MADAM CLERK: Yes, sir.

25 THE COURT: All right. All right. Then you

1 gave her the numbers, so those are the numbers you can be
2 reached. It will probably be three or four days at
3 least.

4 THE POTENTIAL JUROR: Okay.

5 THE COURT: And then we'll be in touch.

6 THE POTENTIAL JUROR: All right.

7 THE COURT: Very good.

8 THE POTENTIAL JUROR: Thank you.

9 THE COURT: Thank you very much, sir.

10 THE POTENTIAL JUROR: Thank you.

11 (WHEREUPON, Potential Juror 3 exited the courtroom.)

12 THE COURT: All right. The next one, I think,
13 is Number 10.

14 MADAM CLERK: Do you want me to get Number 10
15 for you, Your Honor?

16 THE COURT: Oh, please. Yes, ma'am.

17 COURT REPORTER: Your Honor, can I get the name
18 of the case you quoted from?

19 THE COURT: Oh, please, yes, ma'am. That was
20 *State versus Powers*.

21 COURT REPORTER: It was *State versus Powers*?

22 THE COURT: Yes, ma'am.

23 COURT REPORTER: Okay. That's the same one Ms.
24 Adams ...

25 THE COURT: 331 SC 37, 501 S.E.2d 116.

1 COURT REPORTER: Thank you.

2 THE COURT: Thank you, ma'am.

3 (WHEREUPON, Potential Juror 10 entered the
4 courtroom.)

5 THE COURT: Very good.

6 THE POTENTIAL JUROR: Good morning.

7 THE COURT: Good morning, sir. You are jUrор
8 10?

9 THE POTENTIAL JUROR: Yes, sir.

10 **POTENTIAL JUROR 10,**

11 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

12 EXAMINATION

13 BY THE COURT:

14 Q. All right. Do you recall on Monday I put all of the
15 jurors under oath? Now -- and do you understand that
16 you're still under oath and the oath continues throughout
17 these proceedings?

18 A. Yes, sir.

19 Q. All right. Do you recall my instructions from
20 Monday to avoid all forms of media coverage dealing with
21 this case. Has this caused any problem to you?

22 A. No, sir.

23 Q. Now, the trial in this case will last approximately
24 ten days, in other words, more than a week. It could go
25 as long as two weeks. Other than the personal

1 inconvenience, would this pose a serious danger to the
2 health or well being of yourself or anyone who is
3 dependant upon you?

4 A. No, sir.

5 Q. Among other things, we'll be talking about penalty
6 today. But the mere fact that we talk about penalty does
7 not indicate anything about this Defendant or any
8 defendant. Defendants are presumed in law to be
9 innocent. Do you understand that?

10 A. Yes, sir.

11 Q. When you hear us refer to a capital case or a death
12 penalty case, what we mean is that it is a criminal
13 murder trial where the prosecutor -- in other words the
14 State -- is seeking the death penalty. Do you understand
15 this?

16 A. Yes, sir.

17 Q. A death penalty is divided into two parts. Part one
18 is the guilt phase where a jury determines whether the
19 defendant is guilty or not guilty of murder. Part two is
20 the sentencing phase where a jury determines the
21 appropriate punishment. Of course, if the defendant is
22 found not guilty, that ends the matter. Do you
23 understand?

24 A. Yes, sir.

25 Q. Therefore, if you were a jury -- a juror -- excuse

1 me. If you were a juror in a trial of a capital case
2 where the jury in phase one of the trial has found the
3 defendant guilty of murder, you would then move on to
4 phase two of the trial which is called the sentencing
5 phase of the trial. Do you understand?

6 A. Yes, sir.

7 Q. Now, if you were a juror in the sentencing phase --
8 that is phase two of a capital murder trial -- again,
9 where a juror [sic] has already found the defendant
10 guilty of murder, do you understand that the jury, rather
11 than the judge, determines the sentence that the
12 defendant will receive for the crime of murder?

13 A. Yes, sir.

14 Q. In a capital sentencing trial, the jury's function
15 is to determine the appropriate punishment upon the
16 circumstances of the crime and the characteristics of the
17 individual defendant. Do you understand this?

18 A. Yes, sir.

19 Q. Now, aggravating circumstances are facts or details
20 that, when there are present in a case, make the crime or
21 murder more serious or worse. On the other hand,
22 mitigating circumstances are incidents, occurrences or
23 details of a case that would reduce the severity of the
24 crime of murder and, in other words, may reduce the
25 degree of responsibility for the crime. Do you

1 understand this?

2 A. Yes, sir.

3 Q. Do you understand that the jury has two options to
4 consider regarding the sentence of murder or for murder.
5 One option is life imprisonment without parole. In other
6 words, until death. And the other is death which in the
7 state -- in this state is by electrocution or lethal
8 injection. Do you understand that?

9 A. Yes, sir.

10 Q. Could you, as a juror in the sentencing phase,
11 depending upon the facts including relevant aggravating
12 and mitigating circumstances and the law as instructed to
13 you, render a sentence of life imprisonment?

14 A. Yes, sir.

15 Q. On the other hand, as a juror in the sentencing
16 phase, depending upon the facts including relevant
17 aggravating and mitigating circumstances and the law as
18 instructed to you, could you render a sentence of death?

19 A. Yes, sir.

20 Q. If you were a juror in a criminal case, could you
21 listen to the law, accept and apply that law as I
22 instruct you, as the Judge of the Court, even though you
23 may not agree with that law or think that it should be
24 some other way?

25 A. I believe so.

1 Q. Could you decide this case based solely on the
2 evidence presented in this courtroom and disregard
3 anything you may have heard, read or seen about this
4 case?

5 A. Yes, sir.

6 Q. In a criminal case, the State has a burden of
7 proving guilt. The burden of proof for the State is
8 beyond a reasonable doubt. A defendant has no burden to
9 prove innocence. Do you understand this?

10 A. Yes, sir.

11 Q. Could you, depending on the facts and circumstances
12 and evidence and the law as I would instruct you in a
13 particular case, find a defendant either guilty or not
14 guilty?

15 A. Yes, sir.

16 Q. If you were a juror in a death penalty case and if
17 the jury had found the defendant guilty of murder, would
18 you -- we would then move to the sentencing phase of the
19 trial. Do you understand this?

20 A. Yes, sir.

21 THE COURT: All right. I'm going to ask the
22 Defendant if they have any questions.

23 MR. MCGUIRE: Yes, sir, Your Honor. Thank you
24 very much.

25 DIRECT EXAMINATION

1 BY MR. MCGUIRE:

2 Q. Juror Number 10, just because I refer to you by
3 number, I'm not trying to not be friendly ---

4 A. I understand.

5 Q. --- with you. It's just the way we do it, okay?

6 A. Sure.

7 Q. It's just a little awkward for me. And I appreciate
8 you understanding that.

9 I looked at your questionnaire. And it strikes me
10 that you don't really have any connection to law
11 enforcement or have any special knowledge of the criminal
12 justice system?

13 A. No, sir, I do not.

14 Q. Most of it comes from TV like most people?

15 A. Pretty much.

16 Q. Yeah, that's what most people ---

17 A. I don't do a lot of TV.

18 Q. Okay. Fair enough. If I asked you to come up with
19 the exact definition of murder or a capital murder in
20 South Carolina, my guess is you would kind of come up
21 short?

22 A. Yeah, definitely.

23 Q. All right. Let me help you out so that we're on the
24 same page here because I have to talk to you about
25 penalty. And the penalty that we're going to talk about

1 is for a killing, and for murder specifically. So why
2 don't we get on the same page with the definition of
3 murder. And that is in South Carolina an unlawful
4 killing of another person, and the person who's doing the
5 killing is acting with a black and malignant heart,
6 fatally bent on evil. A deliberate act. A choice to
7 take an innocent life.

8 A. Okay.

9 Q. Are you with me?

10 A. Yes, sir.

11 Q. Not accident, not self-defense.

12 A. Right.

13 Q. The person knew what they were doing, not crazy,
14 that sort of thing. In that kind of situation, that kind
15 of killing, a deliberate choice to take an innocent life,
16 what are your thoughts about the death penalty as the
17 appropriate punishment?

18 A. Well, I agree with that.

19 Q. Okay. Would a life in prison penalty ever be severe
20 enough to punish that kind of deliberate killing?

21 A. I mean, not deliberate, no.

22 Q. Okay.

23 A. I don't think so.

24 Q. So if it's an intentional act and the person knows
25 what they're doing ---

1 A. Yes, sir.

2 Q. -- death penalty?

3 A. I think so.

4 Q. Okay. And life would not be severe enough to punish
5 that kind of deliberate intentional killing?

6 A. No, sir.

7 Q. Okay. And I want to talk to you a little bit about
8 publicity. Have you heard anything or read anything
9 about this case?

10 A. No, sir, I can't say that I have. I travel a lot.
11 I'm not at home a lot. I haven't heard anything. I
12 didn't know anything about it. Still don't.

13 Q. Sure. And it sounds like you're not much of a TV
14 guy?

15 A. No, sir.

16 Q. Okay. And you know, nowadays everything seems to be
17 on the Internet including the news. Can you stay away
18 from it?

19 A. I don't do anymore on the computer than I absolutely
20 have to. I do my part at work and we don't do Internet.
21 It's just all in-company.

22 Q. I got you. Well, I don't do more on the computer
23 than I have to either. You and I are exactly alike.

24 I want to talk to you just a tiny little bit about
25 the law, because a capital case is different from any

1 other case that we really have. That's because the jury
2 is involved in fixing punishment. It's not like a
3 typical case like in civil court where it might be like a
4 car crash case and they're suing over money, who had the
5 right of way.

6 A. Right.

7 Q. And the reason -- one reason is because, first off,
8 they're only talking about money. And the second thing
9 is, well, you know, somebody did have the right of way
10 and somebody didn't, kind of an either or. You know, a
11 sentencing decision in a capital case is different from
12 that. The law calls it an individual moral judgement.
13 Are you okay with that principle?

14 A. Yes, sir.

15 Q. Would you -- you know, Mr. Rivera is entitled to
16 fairness not just in the courtroom, but also in the jury
17 room.

18 A. Sure.

19 Q. If you saw somebody else have their own individual
20 moral judgement, and it didn't look fair, like maybe
21 somebody was trying to get them to change their mind,
22 kind of bullying them, could you maybe send a note out to
23 the Court saying things aren't fair in here?

24 A. Yeah, I believe so.

25 Q. Okay. And you'd want everybody's individual moral

1 judgement to be respected?

2 A. Sure.

3 Q. And in a case so serious as to whether or not to
4 kill a human being, a fellow human being, you could agree
5 basically to end the day disagreeing?

6 A. Yes, sir.

7 Q. Okay. When jurors fix -- when they're looking at
8 the crime of killing, some jurors might say, well, I need
9 to -- I want to hear a little bit more before I can make
10 up my mind. And they're usually talking about the facts.
11 Are you that kind of person, you'd want to hear all of
12 the facts of the killing?

13 A. Well, to make that kind of decision, you'd hope that
14 that was, you know -- and that's obviously what we're
15 basing our decision on.

16 Q. Sure. The facts of how bad the killing was?

17 A. Right.

18 Q. And would you take the position that, say,
19 background issues of the defendant, say like if he grew
20 up in abject poverty or maybe was abused by his father or
21 something like that, would you agree that that's not
22 relevant in fixing punishment?

23 A. I agree a hundred percent.

24 Q. Okay. That's all I've got for you, sir. Thank you.

25 THE COURT: Madam Solicitor?

1 MS. BYFORD: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. BYFORD:

4 Q. Hey, Number 10.

5 A. Hi.

6 Q. How are you?

7 A. Good.

8 Q. Sir, my name is Jenn Byford. I'm an Assistant
9 Solicitor here in Anderson.

10 A. Yes, ma'am.

11 Q. And I just want to ask you a couple of follow-up
12 questions based on what the Defense attorneys asked you.
13 Are you doing okay up there?

14 A. Yeah, I'm doing just fine.

15 Q. It's kind of nerve racking to be in that seat, isn't
16 it

17 Just to start out, they are no right or wrong
18 answers. These are just your answers, and I'm just
19 trying to make sure that we understand how you feel about
20 the death penalty.

21 A. Okay.

22 Q. Okay. I think when you were talking to the Defense
23 attorney, you told him that you're going to be open-
24 minded about this case?

25 A. Yes, ma'am.

1 Q. Is that fair to say?

2 A. Yes, ma'am.

3 Q. And you want to hear all of the evidence before you
4 make your decision about guilt?

5 A. Absolutely.

6 Q. Would that be fair to say?

7 A. Yes, ma'am.

8 Q. Okay. And when we get to the penalty phase, you're
9 going to want to hear all about the facts of the case
10 again; isn't that correct?

11 A. Yes, ma'am.

12 Q. Anything that the State proves to you as far as
13 aggravation -- because that's our burden -- you're going
14 to want to hear all about that?

15 A. Sure.

16 Q. And the Defense may put on a case about mitigation.
17 And you'd want to hear all of that information, too?

18 A. Yes, ma'am.

19 Q. Because you want to be fair to both sides?

20 A. That's correct.

21 Q. Okay. And you would take all of that into
22 consideration, wouldn't you?

23 A. Absolutely.

24 Q. In making this very serious decision?

25 A. Yes, ma'am.

1 Q. The Defense attorney went over the definition of
2 murder with you.

3 A. Yes, ma'am.

4 Q. I want to talk about the definition of capital
5 murder.

6 A. Okay.

7 Q. Did you know that all murders in South Carolina are
8 not eligible for the death penalty?

9 A. No, I didn't.

10 Q. Okay. In South Carolina, in order to make a murder
11 case eligible for the death penalty, the burden is on the
12 State to prove there is an aggravating circumstance.

13 A. Okay.

14 Q. Did you know that?

15 A. I did not.

16 Q. Okay. And that's when we're talking about, you
17 know, factors in aggravation in the penalty phase that we
18 would want you to consider.

19 A. Sure.

20 Q. And you would be open-minded until we got to that
21 phase?

22 A. Yes, ma'am.

23 Q. Okay. Once you've heard the entire case and you've
24 heard the whole story, if you found that it was
25 appropriate that the Defendant be sentenced to death,

1 could you vote to impose the death penalty?

2 A. I believe so. Yes, ma'am.

3 Q. Okay. And in South Carolina, if all twelve members
4 of a jury decide that death is the appropriate sentence,
5 they sign their name to a document. Could you sign your
6 name to that document, sir?

7 A. Yes, ma'am.

8 Q. Okay. If after hearing both sides, all of the
9 evidence in both the guilt and the penalty phase, if you
10 felt that life without parole was the appropriate
11 punishment, could you vote for that?

12 A. Yes, ma'am.

13 Q. Okay. And you would give fair consideration to both
14 the State's case and the Defense's case?

15 A. Yes, ma'am.

16 Q. Okay. Thank you. I have no further questions.

17 THE COURT: Anything further from the
18 Defendant?

19 MR. MCGUIRE: No, sir, Your Honor. Thank you.

20 RE-EXAMINATION

21 BY THE COURT:

22 Q. In a death penalty case, would you always or
23 automatically vote for the death penalty even though the
24 law provides that you may impose a sentence of life
25 without parole depending upon the circumstances of a

1 particular case and the characteristics of an individual
2 defendant?

3 A. Yes, it would depend on the case.

4 THE COURT: All right. I'm going to ask you to
5 go with the bailiff. He's going to let you wait in a
6 jury room while I discuss some matters with the
7 attorneys.

8 THE POTENTIAL JUROR: Okay.

9 THE COURT: And I'll call you right back.

10 THE POTENTIAL JUROR: Okay.

11 (WHEREUPON, Potential Juror 10 exited the
12 courtroom.)

13 THE COURT: All right. Anything from the
14 State?

15 MS. BYFORD: No, sir.

16 THE COURT: From the Defense?

17 MR. MCGUIRE: Yes, sir, Your Honor. I'd move
18 that Juror Number -- I think it's ---

19 THE COURT: 10.

20 MR. MCGUIRE: --- 10 be excused for cause.

21 I'll stop talking now if you agree with me, or I can keep
22 talking. But he's -- he indicated that, you know, if it
23 was a deliberate act, if he found that it was a
24 deliberate killing -- all murders in South Carolina
25 obviously are deliberate -- that the death penalty was

1 the only appropriate penalty, that life was not a severe
2 enough punishment to prove a deliberate killing. And
3 then he also used the phrase one hundred percent in
4 saying his position was that background issues of the
5 defendant would not be relevant to fixing punishment. I
6 believe he's impaired on the first issue of can he
7 consider both available punishments for murder pursuant
8 to the *Morgan*, United States Supreme Court Case of
9 *Morgan*. And I believe he's also substantially impaired
10 with regard to his ability to consider mitigation
11 evidence. And failure to strike him would violate Mr.
12 Rivera's right to a fair trial pursuant to the Sixth and
13 Fourteenth Amendment to the United States Constitution
14 and Sections 3, 14 and 15 of Article I of the South
15 Carolina Constitution.

16 THE COURT: All right. Madam Solicitor?

17 MS. BYFORD: Yes, sir, Your Honor. I believe
18 that once the juror was educated as to what he could
19 consider and what the law was regarding capital murder, I
20 think he answered appropriately, Your Honor. He said
21 he'd give fair weight to both the State's case and the
22 Defense's case, that he'd consider both sides and vote
23 for life or death if it was appropriate. I'd also like
24 to direct the Court's attention to *State versus Cain*.
25 It's 297 SC 497. It's a 1998 case where it says the

1 trial judge did not error in qualifying a juror who
2 stated that mitigating circumstances of age and
3 background would make no difference to him when all other
4 pertinent questions were answered correctly. And we'd
5 submit that this juror is qualified.

6 THE COURT: Anything further from the
7 Defendant?

8 MR. MCGUIRE: No, sir.

9 THE COURT: Looking at the questionnaire, I am
10 somewhat concerned. I notice that although he did not
11 state, one, that death penalty in all cases, murder
12 cases, he did make comments about the death penalty and
13 also life without parole, possibility of parole. But
14 yeah, he -- even with that -- and I'll have to say his
15 preconception of what murder and the punishment for
16 murder was in South Carolina and the applicability of
17 mitigation. He answered two, which of course not only
18 could he give the death sentence depending on the
19 evidence, the law and what -- the evidence and the law,
20 but it also says what I learned about the defendant. And
21 then he said it was warranted in a particular case
22 depending on what the evidence, the law and what he
23 learned about the defendant. And of course -- what is it
24 -- he candidly admitted he didn't know that all murders
25 were not eligible for the death penalty.

1 Considering the entire voir dire, I find that juror
2 3 -- excuse me -- 10 will be fair, unbiased, impartial
3 and able to carry out the law as explained to him.
4 Furthermore, I find that the juror's beliefs or attitudes
5 toward the death penalty would not prevent or
6 substantially impair the performance of his duties as a
7 juror in accordance with the law, the Court's instruction
8 and the juror's oath. I do find that he will be
9 qualified.

10 All right. Ask the juror to return.

11 (WHEREUPON, Potential Juror 10 entered the
12 courtroom.)

13 THE COURT: All right. Juror 10, I find that
14 you will be fair and unbiased, impartial and able to
15 carry out the law as explained to you. Furthermore, I
16 find that your beliefs or attitudes towards the death
17 penalty would not prevent or substantially impair the
18 performance of your duties as a juror in accordance with
19 the law, the Court's instructions and your juror's oath.
20 So I am going to ask you to -- let's see, you've given
21 the Clerk of Court your telephone numbers?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: All right. This process will
24 probably take three or four days. So when we have a
25 panel ready to select a jury from, then someone will

1 summon you.

2 THE POTENTIAL JUROR: Okay.

3 THE COURT: Do you have any questions?

4 THE POTENTIAL JUROR: I travel to the Atlanta
5 area. So I mean, if -- I would get a call with adequate
6 time?

7 THE COURT: Does it have an answering machine
8 or -- does she have ---

9 THE POTENTIAL JUROR: She's got my cell phone.

10 THE COURT: Cell phone.

11 THE POTENTIAL JUROR: Yes, sir.

12 THE COURT: Okay. That would be good.

13 THE POTENTIAL JUROR: Okay.

14 THE COURT: Very good. Thank you very much. I
15 look forward to working with you.

16 THE POTENTIAL JUROR: Thank you.

17 (WHEREUPON, Potential Juror 10 exited the
18 courtroom.)

19 THE COURT: All right. Next?

20 (WHEREUPON, Potential Juror 12 entered the
21 courtroom.)

22 THE COURT: All right. You're Juror 12?

23 THE POTENTIAL JUROR: Yes.

24 **POTENTIAL JUROR 12,**

25 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

1 EXAMINATION

2 BY THE COURT:

3 Q. You will recall yesterday I put all the jurors under
4 oath. Now, do you understand that you are still under
5 oath, and this oath continues throughout these
6 proceedings?

7 A. Yes, sir.

8 Q. Do you recall my instructions from Monday to avoid
9 all forms of media coverage dealing with this case?

10 A. Yes.

11 Q. Has this caused you any problems?

12 A. No, sir.

13 Q. The trial of this case will last approximately a
14 week to ten days, or it could be two weeks. Other than
15 personal inconvenience, would this pose a serious danger
16 to the health or well being of yourself or anyone who is
17 dependent upon you?

18 A. I hope not.

19 Q. Pardon?

20 A. I hope not.

21 Q. Well, I mean, do you -- in other words, by being
22 away during the day for this time, would that cause any
23 serious danger to the health of yourself or anyone
24 dependent upon you?

25 A. No, sir.

1 Q. Among other things, we will be talking about penalty
2 today. But the mere fact that we talk about penalty does
3 not indicate anything about this Defendant or any
4 defendant. Defendants are presumed in the law to be
5 innocent. Do you understand that?

6 A. Yes, sir.

7 Q. And when you hear us refer to a capital case or a
8 death penalty case, what we mean is that it is a criminal
9 murder trial where the prosecutor -- in other words the
10 State -- is seeking the death penalty. Do you understand
11 this?

12 A. Yes, sir.

13 Q. A death penalty trial is divided into two parts.
14 Part one is the guilt phase where a jury determines
15 whether the defendant is guilty or not guilty of murder.
16 Do you understand that?

17 A. Yes, sir.

18 Q. Now, part two is the sentencing phase where a jury
19 determines the appropriate punishment. Of course, if the
20 defendant is found not guilty in the first phase, that
21 ends the matter. Do you understand that?

22 A. Yes.

23 Q. Therefore, if you were a juror in a trial of a
24 capital case where the jury in phase one of the trial has
25 found the defendant guilty of murder, you would then move

1 on to phase two of the trial which is called the
2 sentencing phase of the trial. Do you understand this?

3 A. Yes.

4 Q. Now, if you were a juror in the sentencing phase --
5 that is phase two of a capital murder trial -- again when
6 a jury has already found the defendant guilty of murder,
7 do you understand that the jury, rather than the Judge,
8 determines the sentence that the Defendant will receive
9 for the crime of murder?

10 A. Yes, sir.

11 Q. In a capital sentencing trial, the jury's function
12 is to determine the appropriate punishment based on the
13 circumstances of the crime and the characteristics of the
14 individual defendant. Do you understand that?

15 A. Yes, sir.

16 Q. Now, aggravating circumstances are facts or details
17 that, when they are present in a case, make the crime of
18 murder more serious or worse. On the other hand,
19 mitigating circumstances are incidents, occurrences or
20 details of a case that would reduce the severity of the
21 crime of murder. In other words, it may reduce the
22 degree of responsibility for the crime. Do you
23 understand that?

24 A. Yes, sir.

25 Q. Do you want me to go over it again?

- 1 A. No, sir.
- 2 Q. Could you -- excuse me. Do you understand that the
3 jury has two options to consider regarding the sentence
4 for murder. One option is life imprisonment, and the
5 other option is death which in this state is by
6 electrocution or lethal injection. Do you understand
7 that?
- 8 A. Yes, sir.
- 9 Q. Could you, as a juror in the sentencing phase --
10 this is the second phase -- depending upon the facts
11 including relevant aggravating and mitigating
12 circumstances and the law as instructed to you, render a
13 sentence of life imprisonment which in South Carolina is
14 life in prison without parole? In other words, until
15 death.
- 16 A. Yes, sir.
- 17 Q. On the other hand, as a juror in the sentencing
18 phase, depending upon the facts including relevant
19 aggravating and mitigating circumstances and the law as
20 instructed to you, could you render a sentence of death?
- 21 A. I don't know, sir.
- 22 Q. Pardon?
- 23 A. I don't know if I could.
- 24 Q. All right. If you were a juror in a criminal case,
25 could you listen to the law, accept and apply the law as

1 I would instruct you as the Judge of the court, and even
2 though you may not agree with that law or think it ought
3 to be some other way, could you do that? Could you
4 listen to the law as I give it to you, as the Judge
5 instructs you, accept and apply that law as I would
6 instruct you as the Judge of the court, and even though
7 you may not agree with that law and think it ought to be
8 some other way, could you follow the law?

9 A. Yes, sir.

10 Q. Could you decide this case based solely on the
11 evidence presented in this courtroom and disregard
12 anything you may have heard, read or seen about the case?

13 A. Yes, sir.

14 Q. In a criminal case, the State has a burden of
15 proving guilt. The burden of proof for the State is
16 beyond a reasonable doubt. The defendant has no burden
17 to prove innocence. Do you understand this?

18 A. Yes.

19 Q. Could you, depending on the facts and evidence and
20 the law in this case as I would instruct you in a
21 particular case, find a defendant either guilty or not
22 guilty?

23 A. Say that again.

24 Q. Could you, depending upon the facts and the evidence
25 and the law as I would instruct you in a particular case,

1 find a defendant either guilty or not guilty?

2 A. Yes.

3 Q. If you were a juror in a death penalty case and if
4 the jury had found the defendant guilty of murder, you
5 would then move to the sentencing phase of the trial. Do
6 you understand?

7 A. Yes, sir.

8 THE COURT: All right. Any questions from the
9 Defendant?

10 MR. MCGUIRE: Yes, sir. Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. MCGUIRE:

13 Q. Good morning, Juror Number 12. Just because I refer
14 to you by number, I'm not meaning to be disrespectful or
15 not being friendly with you. That's just the way we've
16 got to do it, okay?

17 A. Oh, okay.

18 Q. That's just a little awkward for me.

19 You're married to Juror Number 13?

20 A. Yes.

21 Q. And how did she get out of jury service and you're
22 still here?

23 A. I guess she's smarter than I am.

24 Q. She left you the half of the marriage to come do
25 your duty, I guess.

1 In answering the Judge's questions -- and correct me
2 if I'm wrong -- but did you indicate as to whether or not
3 you could deliver a death verdict, you said you weren't
4 sure if you could do that?

5 A. That's correct.

6 Q. What's that based on?

7 A. Proximate conscience.

8 Q. Okay. Is that a moral issue? I mean, whether or
9 not to kill one of God's creatures is a pretty awesome
10 responsibility.

11 A. Yeah.

12 Q. Okay. If the Prosecutor brought evidence to you of
13 such a quantity and quality where you were convinced that
14 the crime that you were deliberating on was the worst of
15 the worst, so to speak, and convinced you that the death
16 penalty was appropriate, could you deliver it?

17 A. Perhaps I could, yes.

18 Q. Well, could you consider that as a penalty option?

19 A. Yes.

20 Q. And that -- in South Carolina requires that you
21 actually write your name on the indictment to say, this
22 is my verdict. Could you do that?

23 A. Yes.

24 Q. If that was in fact what you thought was
25 appropriate?

1 A. Yes.

2 Q. I'm going to ask you a little bit about publicity.

3 Have you read anything, heard anything about this case?

4 A. No, sir.

5 Q. Okay. Haven't formed any opinions about it?

6 A. No, sir. We've only lived here about two years.

7 Q. And where did you come from?

8 A. New Jersey.

9 Q. Okay. Sorry about the Jets.

10 A. I didn't like the Jets anyway.

11 Q. I was born in the great city of New Orleans, so I've
12 still got some hope. I think those are my only questions
13 for you, sir. Thank you.

14 THE COURT: All right. Anything from the
15 State?

16 MR. CAMPBELL: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. CAMPBELL:

19 Q. Good morning, 12..

20 A. Good morning.

21 Q. I hate to have to call you that, but that's like Mr.
22 McGuire said, it's how we kind of do it in this
23 situation. I just want to touch up some situations, some
24 of your responses you gave to the Court and Mr. McGuire.
25 And you understand there's no right or wrong answers

1 here? And what we're here to do, both the Defense and
2 myself, is just try to find out can you be a fair and
3 impartial juror to both the State and both to the
4 Defense. Do you understand that?

5 A. Yes, sir.

6 Q. Now, I want to talk to you a little bit about, of
7 course, your wife and a little bit of your home life. I
8 don't mean to pry too much, but we kind of have to know a
9 little bit about this. As Mr. McGuire already brought
10 out that your wife was excused or let off the jury
11 yesterday.

12 A. Yes.

13 Q. And since then you've had twenty-four hours to think
14 about what took place yesterday and today?

15 A. Yes.

16 Q. And in my understanding, your wife -- y'all are
17 different religious affiliations; is that correct?

18 A. Yes.

19 Q. And she was taken off basically for moral or
20 religious reasons; is that right?

21 A. I'm not sure.

22 Q. Well, do you attend her church at all?

23 A. No, sir.

24 Q. Okay. Do y'all talk religion a lot at home when you
25 go home?

1 A. No, sir.

2 Q. Now, would her views -- would she be able to enforce
3 her views upon you? If you were chosen for this jury,
4 would you have a problem of her forcing her views upon
5 your decision-making process?

6 A. Possible.

7 Q. So you would probably talk to her about it if you
8 went home, about what was going on and what was taking
9 place in the courtroom?

10 A. I would try not to.

11 Q. But it's kind of hard not to when she's living in
12 the same household. Would that be a fair statement to
13 say?

14 A. Yes, sir.

15 Q. And would her views kind of impact or at least
16 somewhat put something in the back of your mind regarding
17 your decision-making process. Would it affect you?

18 A. It's possible.

19 Q. And when you're saying, it's possible, is that --
20 would you have trouble -- hearing everything you'll hear
21 from both our side and both from the Defense side, would
22 that affect your ability to impose a death sentence in
23 this case?

24 A. No.

25 Q. Because not only do you have to consider, as Mr.

1 McGuire was talking about, could you consider, could you
2 do this, you have to impose a death sentence. Could you
3 impose a death sentence in this case?

4 A. I don't know. I really don't know.

5 Q. Would you have to first listen to all the facts and
6 evidence and at that point determine whether or not the
7 circumstances met the crime?

8 A. Yes.

9 Q. Now, do you know in the State of South Carolina not
10 all murders qualify for the death penalty?

11 A. Yes.

12 Q. And there's certain circumstances that allow the
13 State -- what the Judge referred to aggravating
14 circumstances that he referred -- that qualify or make
15 this the worst of the worst in which we seek this; you
16 understand that?

17 A. I suppose, yes.

18 Q. Now, in South Carolina after you've heard the
19 aggravation and the mitigation circumstances, at that
20 point when you go back to the jury room and you
21 deliberate and the jury comes back with a verdict, no
22 matter which way it is, if it is to -- in this case if it
23 is a death sentence, you are given a piece of paper where
24 everybody has a line to sign. Could you put your name on
25 the line to put -- to say that the State of South

1 Carolina can kill Mr. Rivera in this case?

2 A. I'd have to see what ---

3 MR. MCGUIRE: Your Honor, I'd ---

4 THE COURT: All right.

5 MR. MCGUIRE: I'm sorry. Just very briefly, I

6 would object. I don't believe the standard is this case.

7 THE COURT: Yeah. If you would, restate your

8 question because this is voir dire.

9 MR. CAMPBELL: Yes, sir.

10 THE COURT: We're talking about general

11 qualifications.

12 Q. Mr. Number 12, could you put your name on a verdict

13 form? Could you sign your name on a piece of paper

14 imposing a death sentence?

15 MR. MCGUIRE: Judge, it's been asked and

16 answered.

17 THE COURT: Well, I don't think he's answered

18 yet.

19 MR. CAMPBELL: He never answered it.

20 THE COURT: Well, let ---

21 MR. CAMPBELL: Sorry, Your Honor.

22 THE COURT: Go ahead.

23 Do you need him to restate the question?

24 THE POTENTIAL JUROR: Yes.

25 THE COURT: All right. Please restate the

1 question, and then he'll answer it.

2 Q. Do you understand at the end of the sentencing phase
3 you have an opportunity, as a juror, to decide whether or
4 not you can give a life sentence or a death sentence? Do
5 you understand?

6 A. Yes.

7 Q. If you decide that death -- after hearing all the
8 facts, evidence and circumstances surrounding this case,
9 if death is appropriate, can you sign your name to a
10 piece of paper allowing the State to impose a death
11 sentence?

12 A. And this is assuming I voted for the death sentence?

13 Q. Yes, sir. This is assuming you voted for it. At
14 that point, can you put your name on a piece of paper
15 stating that?

16 A. Yes, sir.

17 Q. Okay. And likewise, if you felt that life was
18 appropriate in this case, could you also give a life
19 sentence?

20 A. Yes, sir.

21 MR. CAMPBELL: Court's indulgence?

22 Q. Just a couple of questions. Now, stating what you
23 have stated and based upon your home life, would that
24 affect your ability to make a decision?

25 A. Probably not.

1 THE COURT: Anything from the Defendant?

2 MR. MCGUIRE: No further questions, Your Honor.

3 Thank you.

4 RE-EXAMINATION

5 BY THE COURT:

6 Q. Juror 12, if you were instructed that the law in
7 South Carolina is that a person who is convicted of
8 murder could, depending upon the circumstances, receive a
9 sentence of either life imprisonment without parole or
10 death, could you render either a life sentence or a death
11 sentence? Again, if you were instructed that the law in
12 South Carolina is that a person who is convicted of
13 murder could either be sentenced to life imprisonment
14 without parole or death, depending upon the
15 circumstances?

16 A. Yes.

17 THE COURT: All right. Anything further from
18 the State?

19 MR. CAMPBELL: No, Your Honor.

20 THE COURT: From the Defense?

21 MR. MCGUIRE: No, Your Honor. Thank you.

22 THE COURT: Considering the entire voir dire, I
23 find that Juror 12 will be fair, unbiased, impartial and
24 able to carry out the law as I explained it to him.
25 Furthermore, I find this juror's beliefs or the attitudes

1 towards the death penalty would not substantially impair
2 the performance of his duties as a juror in accordance
3 with the law, the Court's instructions and the juror's
4 oath.

5 Now, you've given the -- and I find the juror
6 qualified. All right. You've given the Clerk of Court
7 your telephone numbers you can be reached?

8 THE POTENTIAL JUROR: Yes, sir.

9 THE COURT: This process is going to take
10 several days, three or four days, and so it will be some
11 time before we actually call. And at that time, we'll
12 ask you to come back, and we'll have a panel from which
13 the actual jury will be selected. Do you understand?

14 THE POTENTIAL JUROR: Yes.

15 THE COURT: All right. Thank you very much.
16 And I appreciate you being with us today. All right.
17 You're excused for the balance of the days until you
18 receive a phone call.

19 THE POTENTIAL JUROR: Thank you.

20 THE COURT: Thank you, sir.

21 (WHEREUPON, Potential Juror 12 exited the
22 courtroom.)

23 THE COURT: Just for the benefit of the
24 attorneys, that if I don't find something -- I mean, I'll
25 ask you if there is anything, and just note that you have

1 something to take up, and then I'll send the juror out.
2 But if you don't have anything, for the sake the moving
3 along, I'll make my own decision based on what I hear
4 unless you note that you want to be heard.

5 MR. MCGUIRE: Yes, sir.

6 THE COURT: All right. Do you understand,
7 Madam Solicitor?

8 MS. BYFORD: Yes, sir.

9 MS. ADAMS: Yes, sir.

10 THE COURT: All right. You understand,
11 Defendant?

12 MR. MCGUIRE: Yes, sir. Yes, sir.

13 THE COURT: All right. Thank you.

14 I'll tell you what, let's take a short break and
15 we'll come back.

16 (WHEREUPON, court stood at recess for a short
17 break.)

18 THE COURT: All right. Anything from the
19 State?

20 MS. ADAMS: No, sir, Your Honor.

21 THE COURT: From the Defense?

22 MR. MCGUIRE: No, sir.

23 THE COURT: Ask Juror 15, 15.

24 MR. MCGUIRE: Judge?

25 THE COURT: Yes, sir.

1 MR. MCGUIRE: While we're waiting on Number 15,
2 how are we going to do that strike? Could you answer my
3 question about the strikes?

4 THE COURT: Oh, yeah. I forgot it, didn't I?
5 I think it was the same sort of thing, that they coming
6 in the door.

7 MR. MCGUIRE: Yeah.

8 THE COURT: We will do it randomly by the
9 computer. But the only thing is, only the Court has the
10 list.

11 MR. MCGUIRE: Oh, so they'll come up and walk
12 in front of us just so ---

13 THE COURT: Right.

14 MR. MCGUIRE: Okay.

15 THE COURT: We'll call them up for the ---

16 MR. MCGUIRE: Just needed know if we needed to
17 keep casual track of who we're qualifying and all that
18 stuff.

19 THE COURT: Right.

20 (WHEREUPON, Potential Juror 15 entered the
21 courtroom.)

22 THE COURT: All right. You're Juror 15?

23 THE POTENTIAL JUROR: Yes.

24 **POTENTIAL JUROR 15,**

25 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

1

EXAMINATION

2 BY THE COURT:

3 Q. You'll recall on Monday I put all the jurors under
4 oath. Now, do you understand that you are still under
5 oath and this oath continues throughout these
6 proceedings?

7 A. Yes, sir.

8 Q. Do you recall my instruction from Monday to avoid
9 all forms of media coverage dealing with this case?

10 A. Yes, sir.

11 Q. Has that created any problem for you?

12 A. No, sir.

13 Q. The trial of this case will last approximately ten
14 days, either seven to two weeks. In other words, it's
15 not the normal case. Other than personal inconvenience,
16 would this pose a serious danger to the health or well
17 being of yourself or anyone who is dependant upon you?

18 A. No, sir.

19 Q. Among other things we'll be talking about is penalty
20 today. But the mere fact that we talk about penalty does
21 not indicate anything about this Defendant or any
22 defendant. Defendants are presumed to be innocent under
23 the law. Do you understand this?

24 A. Yes, sir.

25 Q. Now, if you were a juror in this criminal case,

1 could you listen to the law, accept and apply the law as
2 I instruct it to you as the Court, and even though you
3 may not agree with the law or think it should be some
4 other way, could you accept the law as I instruct it to
5 you?

6 A. Yes.

7 Q. Could you decide this case based solely on the
8 evidence presented in this courtroom and disregard
9 anything you may have heard, read or seen on the outside
10 ---

11 A. Yes, sir.

12 Q. --- about this case, of course?

13 A. Uh-huh (affirmative).

14 Q. In a criminal case the State has the burden of
15 proving guilt. The defendant -- the burden of proof for
16 the State is beyond a reasonable doubt. The defendant
17 has no burden to prove innocence. Do you understand
18 this?

19 A. Yes, sir.

20 Q. Could you, depending upon the facts and evidence and
21 the law as I would instruct you in a particular case,
22 find a defendant either guilty or not guilty?

23 A. Yes, sir.

24 Q. If you were a juror in a death penalty case and if
25 the jury had found the defendant guilty of murder, you

1 would then move to the sentence phase of the trial. Do
2 you understand that?

3 A. Yes.

4 Q. When you hear us refer to a capital case or a death
5 penalty case, what we mean is that it is a criminal
6 murder trial where the prosecutor -- in other words the
7 State -- the State is seeking the death penalty. Do you
8 understand this?

9 A. Yes, sir.

10 Q. A death penalty trial is divided into two parts.
11 One part or the first part is the guilt phase where a
12 jury determines whether the defendant guilty or not
13 guilty of murder. Do you understand that?

14 A. Yes, sir.

15 Q. Now, the second part or part two is the sentencing
16 phase where a jury determines the appropriate punishment.
17 Of course, if the defendant is found not guilty or
18 acquitted, that ends the matter. Do you understand that?

19 A. Yes, sir.

20 Q. Therefore, if you were a juror in the trial of a
21 capital case where the jury in phase one of the trial has
22 found the defendant guilty of murder, you would then move
23 on to phase two of the trial which is called the
24 sentencing phase of the trial. Do you understand this?

25 A. Yes, sir.

1 Q. Now, if you were a juror in the sentencing phase --
2 that is phase two of a capital murder trial -- again,
3 where the jury has already found the defendant guilty
4 murder, do you understand that the jury, rather than the
5 Judge, determines the sentence that the defendant will
6 receive for the crime of murder?

7 A. Yes, sir.

8 Q. In a capital sentencing trial, the jury's function
9 is to determine the appropriate punishment based upon the
10 circumstances of the crime and the characteristics of the
11 individual defendant. Do you understand that?

12 A. Yes, sir.

13 Q. Now, aggravating circumstances are facts or details
14 that, when they are present in a case, make the crime of
15 murder more serious or worse. On the other hand,
16 mitigating circumstances are incidents, occurrences or
17 details of a case that would reduce the severity of the
18 crime of murder. In other words, may reduce the degree
19 of responsibility for the crime. Do you understand that?

20 A. Yes, sir.

21 Q. Do you understand that the jury has two options to
22 consider regarding the sentence for murder? One option
23 is life imprisonment. And in South Carolina it's life in
24 imprisonment without parole, and it's a life sentence
25 until death. And the other option though is death which

1 in this state is by electrocution or lethal injection.

2 Do you understand this?

3 A. Yes, sir.

4 Q. Could you, as a juror in the sentencing phase,
5 depending upon the facts including relevant aggravating
6 and mitigating circumstances and the law as I instruct it
7 to you, render a sentence of life imprisonment?

8 A. Yes, sir.

9 Q. On the other hand, as a juror in the sentencing
10 phase, depending upon the facts including the relevant
11 aggravating and mitigating circumstances and the law as I
12 instruct it to you, could you render a sentence of death?

13 A. Yes, sir.

14 THE COURT: All right. I recognize Mr. McGuire
15 for his ...

16 MR. MCGUIRE: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. MCGUIRE:

19 Q. Good afternoon, I guess.

20 A. Yeah.

21 Q. We're right up on it, aren't we?

22 A. Yeah.

23 Q. You've been waiting a long time. I apologize for
24 that.

25 A. I know.

1 Q. Court's not sometimes the most efficient system
2 we've got going. It's not the Judge's fault; it's not
3 mine. It's just the way it works sometimes. But I thank
4 you for your patience.

5 A. You're welcome.

6 Q. And I'm going to refer to you by number. That's
7 just the way we do things. I'm not being not friendly
8 with you or disrespectful. I hope you understand that.

9 A. That's quite all right.

10 Q. It's a little awkward for me, though.

11 I understand that, just looking at your
12 questionnaire, you don't seem to have any close friends
13 or relatives that are lawyers, police officers,
14 detectives. They're real folks that aren't involved with
15 the criminal justice system?

16 A. No, sir.

17 Q. Most folks I talk to like this say most of their
18 knowledge comes from TV about crime. Can I put you in
19 that category?

20 A. Oh, yeah.

21 Q. Okay. But I'm required at this point to ask you
22 questions about the death penalty and your ability to
23 give the death penalty and that sort of thing. And we
24 have to have a starting point, so I'm going to give you
25 the definition of murder in South Carolina. Okay?

1 A. Okay.

2 Q. The Court will define it to you later, but I'll give
3 you a brief synopsis now. And that is the unlawful
4 killing of an innocent person with the killer acting with
5 a black and malignant heart, fatally bent on evil. To
6 paraphrase it, a deliberate act, choosing to kill an
7 innocent person.

8 A. Uh-huh (affirmative).

9 Q. And I'm just going to ask you now what are your
10 feelings about the death penalty as the appropriate
11 penalty for that kind of killing?

12 A. If circumstances warrant, yeah.

13 Q. When you say circumstances, tell me what that word
14 means to you?

15 A. Particulars in the case.

16 Q. Uh-huh (affirmative).

17 A. Whether it was malice or accidental. You know,
18 things like that.

19 Q. It's interesting you use the word malice. Because
20 in South Carolina, that's exactly how we refer to the
21 kind of killing that brings you here. It's called malice
22 aforethought murder. That's that black malignant heart
23 definition. That's sort of our definition of malice. So
24 in South Carolina the kind of case that you might be
25 called to consider or will be called to consider is a

1 malice aforethought, deliberate killing of an innocent
2 person.

3 A. Uh-huh (affirmative).

4 Q. Now, since I filled in the malice part that I
5 accidentally left out, how about -- how do you fall out on
6 the death penalty being the appropriate punishment for
7 that kind of killing.

8 A. I believe in it, like I say, if the crime fits the
9 bill.

10 Q. Okay. And a lot of folks may say, you know, that
11 the circumstances, the particulars, they're talking about
12 sort of the facts of the murder, the facts of the
13 killing, how bad it was. Is that what you're talking
14 about?

15 A. Yeah.

16 Q. And I'm not going to talk to you about any facts of
17 this case, okay? I'm just going to talk to you in
18 generalities, kind of like categories of crimes. For
19 instance, some people might say, I could not consider
20 anything but the death penalty for somebody who kills a
21 child. That's a category of crime. Or somebody who
22 would kill an officer in the line of duty. That's a
23 category where somebody could say, for me the death
24 penalty is the only appropriate punishment in that kind
25 of case because it's so bad. The category is so bad.

1 Somebody might say, if somebody kills and then kills
2 again, that category of crime is so bad where the death
3 penalty is really the only appropriate penalty.

4 MS. ADAMS: Your Honor, I hate to object. But
5 I think just the line of questioning about categories. I
6 mean, there -- you know, every murder does not qualify
7 for the death penalty. And obviously I think he can ---

8 THE COURT: Well, you can ---

9 MS. ADAMS: It's not a category. These are
10 aggravating circumstances, so to speak. I think -- I
11 want to just make sure that this juror understands.

12 THE COURT: I understand. I'm going to permit
13 the question. Go ahead.

14 Q. And those types, those types of killings, various
15 factors and aggravating factors of like child, police
16 officer, multiple murders, any of those ring -- have
17 resonance with you where the death penalty would really
18 be the only appropriate punishment?

19 A. No. I don't generalize. I would have to hear the
20 particulars of the case.

21 Q. Okay. And again, that's the facts, right?

22 A. Yeah.

23 Q. Let me ask you this. Without me putting words in
24 your mouth, just a wide open question to you. What case
25 for you is death penalty only if there is any category or

1 type or any kind of heinous crime that resonates with
2 you?

3 MS. ADAMS: Your Honor, I think he's asking for
4 a hypothetical. It's more so ---

5 THE COURT: I think so too.

6 MS. ADAMS: --- can he be fair and impartial.

7 THE COURT: Let's restate your question.

8 Q. What are the factors that would take a case for you
9 from considering -- being able to consider both
10 punishments to really just deserves the death penalty?

11 A. Multiple murders. Multiple murders.

12 Q. That would be one?

13 A. Yeah, that could be one. Where somebody plans
14 multiple murders. Is that a ...

15 Q. Substantial premeditation?

16 A. Yeah.

17 Q. To kill more than once?

18 A. Yeah.

19 MS. ADAMS: Your Honor, he's misstating the
20 law. That's not ---

21 THE COURT: All right.

22 MS. ADAMS: It's malice aforethought. I think
23 we're getting too fact specific.

24 THE COURT: Thank you.

25 THE POTENTIAL JUROR: I mean ---

1 THE COURT: Of course, he's going to be
2 instructed on the law.

3 MR. MCGUIRE: Sure.

4 THE COURT: And so let's keep it rather
5 generally.

6 Q. All right. And let me ask you this. You've had
7 some interaction with law enforcement. And I don't mean
8 to pry into your personal business. I'll tell you I've
9 been arrested.

10 A. Uh-huh (affirmative)

11 Q. I could go on a long time about it too because I
12 don't think I was treated fairly. How do you feel about
13 your interaction with law enforcement?

14 A. I got what I deserved.

15 Q. No hard feelings to the police or the prosecutor?

16 A. No. They're just doing their job.

17 Q. Okay. I'm going to talk to you a little bit about
18 what should come into play in fixing punishment for you.
19 I just want to ask your views about this. Let's assume
20 that at the end of the first phase of a case, you hear
21 about murder and aggravating circumstances and all of
22 that. And just for the purpose of this argument you say,
23 you know what, that's sounds like death penalty to me.
24 And that's where you kind of start your game piece in
25 this puzzle. Is there anything that could change your

1 mind or bring you off of that? Or what would you look
2 for to change your mind?

3 MS. ADAMS: Your Honor, I hate to -- he's
4 asking for hypotheticals. I think it's can he consider
5 mitigation.

6 THE COURT: Very good. Thank you. Again,
7 let's stay within the law that will be instructed. We're
8 not dealing with every possible case.

9 MR. MCGUIRE: Sure. Sure.

10 Q. I'll fill in the blank a little bit for you. And
11 that is when you're looking at the facts to fix
12 punishment, would you take the position that stuff in the
13 defendant's background, his childhood, would that have
14 any relevance on fixing the punishment for murder?

15 A. No.

16 Q. And that's because it's the facts, the badness, the
17 wrongness of murder that drives the focus?

18 A. Uh-huh (affirmative).

19 Q. Okay. And it sounds like you've given careful
20 thought to your answers here. Is that true?

21 A. Yeah, I have.

22 Q. And that these answers come from kind of who you are
23 as a person, what's right and wrong and what's moral; is
24 that right?

25 A. Exactly.

1 Q. And if I asked you to change your position, I
2 couldn't get you to change it?

3 A. Uh-uh (negative).

4 Q. The Judge couldn't get you to change it?

5 A. No.

6 Q. These answers that you just gave me come from your
7 core values as a person?

8 A. Yes, sir.

9 Q. I want to talk to you a little bit about -- very
10 briefly about some legal issues because this case is
11 different from any other case that we have because the
12 jury gets to fix punishment.

13 A. Uh-huh (affirmative).

14 Q. And there's not a right or wrong in fixing
15 punishment. The way the law describes it is it's a moral
16 -- it's an individual moral judgement. Are you okay with
17 that principle?

18 A. Yeah.

19 Q. Kind of like every individual juror comes to their
20 own decision based on their walk in life. Is that a
21 principle that you're okay with?

22 A. Yes.

23 Q. And you know, Mr. Rivera is entitled to fairness not
24 just in the courtroom, but also in the jury room. And if
25 somebody came to their own moral individual judgement and

1 it got hostile or unfair in the jury room, like if

2 somebody was being bullied, could you stop that?

3 A. Yes, sir.

4 Q. Could you maybe write a note to the Judge and say,

5 it's not fair in here?

6 A. Yeah.

7 Q. Okay. And you know, one thing that's a little bit

8 different from a regular case is the way we look at

9 evidence in a capital case. And that is the State has

10 the burden beyond a reasonable doubt to prove an

11 aggravating factor. And all twelve have to agree

12 unanimously that it exists. But when it comes to

13 evidence that might be used for the defendant, there's no

14 requirement for unanimity. Somebody over here might say,

15 well, you know, I looked at this little piece of his

16 life, and that did it for me. And somebody on the other

17 side of the jury might say, well, something different did

18 it for me. So you don't have to be unanimous. Is that a

19 principle you're okay with?

20 A. As far as my fellow jurors?

21 Q. Yes, sir.

22 A. Yes, I would think everybody would have to be

23 unanimous.

24 Q. So if somebody, just one person said, well, I'm

25 looking at this one piece of evidence, and that's going

1 to make me vote this way, you would insist that everybody
2 would be unanimous? You know, the law doesn't require
3 that.

4 A. No. I mean, they're entitled to their opinion.

5 Q. Okay. Okay. And you would respect everybody's
6 opinion?

7 A. Most definitely.

8 Q. And if it wasn't respected, again, you'd get the
9 Court involved and stop ---

10 A. Yeah.

11 Q. --- any kind of bullying?

12 A. Uh-huh (affirmative).

13 Q. About twenty-five percent of the people who answered
14 the questionnaire indicated that the cost of putting
15 somebody in prison for life without parole was something
16 they'd consider. Is that something you've thought of or
17 ---

18 A. I haven't really thought about it.

19 Q. Okay.

20 MR. MCGUIRE: Judge, if I could have just one
21 second.

22 THE COURT: Certainly.

23 Q. Oh, Juror Number 15, have you read or heard anything
24 about this case?

25 A. Just the day before it started that it was starting.

1 Q. Okay. Just based on everything you've heard, do you
2 have any opinion?

3 A. No, uh-uh (negative).

4 Q. Juror 15, that's all I have for you. Thank you,
5 sir.

6 THE COURT: Very good. The State?

7 MS. ADAMS: Good afternoon.

8 THE POTENTIAL JUROR: Good afternoon.

9 MS. ADAMS: Thank you, Your Honor. May it
10 please the Court.

11 CROSS-EXAMINATION

12 Q. My name is Chrissy Adams, and I'm the Solicitor for
13 the Tenth Circuit.

14 A. Uh-huh (affirmative).

15 Q. And it is afternoon and I know you've been here all
16 morning.

17 A. That's quite all right.

18 Q. And we certainly do appreciate it because this is
19 very important not only to the Defendant, but to the
20 State as well. And we're here to just ask you a few
21 questions just to make sure that you can be fair to the
22 State and the Defense.

23 Now, assuming that we do reach the second phase
24 because the second phase, as you understand, there's a
25 decision to make. The jury will have to decide whether

1 this Defendant should receive a sentence of life without
2 the possibility of parole or the death penalty, okay?

3 And I guess I should start off by saying you consider
4 yourself a fair person; correct?

5 A. Yes.

6 Q. And you would want to hear the entire story before
7 you make a decision on what sentence should be imposed?

8 A. Definitely.

9 Q. Is that fair? Okay. So you would take into
10 consideration all the aggravating circumstances that the
11 State would present and all the mitigating, if any,
12 circumstances that the Defense presents before you make
13 up your mind as to life or death?

14 A. Yes.

15 Q. Okay. Now, do you understand that not every murder
16 qualifies for the death penalty?

17 A. Uh-huh (affirmative).

18 Q. Okay. So you have to have -- the jury will have to
19 find an aggravating circumstance before you even get to
20 the decision.

21 A. Uh-huh (affirmative).

22 Q. Okay. And obviously, as you sit here today, you
23 haven't heard anything. You haven't heard anything
24 regarding guilt or innocence, and you haven't heard
25 anything regarding aggravation or mitigation, if any?

1 A. No. I just heard on the news that it was starting.

2 Q. Okay. And would you be able to follow the Judge's
3 instructions as he gives them and abide by those
4 instructions?

5 A. Yes, ma'am.

6 Q. Okay. Once you heard all the evidence in
7 aggravation and mitigation, if any, depending on what
8 that evidence is, do you feel that you could vote for a
9 sentence of life without the possibility of parole if the
10 evidence warranted that?

11 A. Sure.

12 Q. Okay. And if the evidence warranted, in your
13 opinion, a death sentence, could you impose that as well?

14 A. Yes.

15 Q. Okay. And if the jury does decide that the death
16 penalty is appropriate, that means that each juror has to
17 actually write their name down on the sentence sheet.
18 And that is what actually allows the State to carry out
19 the execution of a defendant. And could you be able --
20 would you be able to write your name down with the other
21 jurors on that sheet?

22 A. Yes.

23 Q. Okay. Thank you so much.

24 A. You're welcome.

25 THE COURT: Anything else?

1 MR. MCGUIRE: Just a small legal matter.

2 THE COURT: All right. I'm going to ask you --
3 well, let me -- before I do that, there's one other
4 little question I might want to ask.

5 RE-EXAMINATION

6 BY THE COURT:

7 Q. If you were instructed that the law in South
8 Carolina is that a person who is convicted of murder
9 could, depending upon the circumstances, receive a
10 sentence of either life imprisonment or death, could you
11 follow that instruction?

12 A. Yes, sir.

13 Q. And give a life sentence without parole if that's
14 warranted under the facts and circumstances as well as
15 death if that's warranted under the facts and
16 circumstances?

17 A. Yes, sir.

18 Q. Very Good. Thank you very much. If you would
19 please go with the bailiff. I need to take up some
20 matters with the attorneys.

21 A. Okay.

22 Q. Thank you, sir.

23 (WHEREUPON, Potential Juror 15 exited the
24 courtroom.)

25 THE COURT: All right. Anything from the

1 State?

2 MS. ADAMS: No, sir.

3 THE COURT: From the Defense?

4 MR. MCGUIRE: Just very briefly, Your Honor. I
5 move to strike Juror Number, I believe it's, 15 for cause
6 based on the fact that his answers in voir dire indicate
7 he is impaired with regard to mitigation and that he gave
8 the statement that multiple murders could be one where he
9 would automatically vote for the death penalty. So I
10 would renew my objection on not being allowed to flush
11 out those who are basically automatic death if the State
12 proves aggravation of a prior murder. So I'll renew my
13 objection to not being able to ask that question. And I
14 would also move for cause based on the little information
15 I was able to get from him indicated he was going towards
16 being automatic death for a multiple murder case and also
17 could not consider mitigation evidence.

18 THE COURT: All right. Anything from the
19 State?

20 MS. ADAMS: Your Honor, this juror did state,
21 however, that he doesn't generalize. He wants to hear
22 all the evidence in aggravation and mitigation before he
23 makes a decision.

24 And again, Your Honor, *State v. Payne* about specific
25 mitigating circumstances. I can't recall if you actually

1 used that one or not. But that also would apply in this
2 case as well, Your Honor. And he clearly stated that he
3 could give life without parole if he felt that was
4 appropriate and the death penalty if he felt that was
5 appropriate under the circumstances.

6 THE COURT: All right. Anything further from
7 ---

8 MR. MCGUIRE: That ---

9 THE COURT: --- the Defendant?

10 MR. MCGUIRE: I'm sorry. Just to make the
11 record, the grounds for my motion for cause is that
12 failure to strike this juror for cause would violate Mr.
13 Rivera's right to a fair and impartial jury pursuant to
14 the Sixth and Fourteenth Amendment of the United States
15 Constitution, Section 1 -- Section 3, 14 and 15 of
16 Article I of the South Carolina Constitution.

17 THE COURT: All right. Considering the entire
18 voir dire and his questions [sic] to the questionnaire, I
19 find that the defendant -- excuse me, the defendant --
20 that Juror 15 is -- will be fair and unbiased, impartial
21 and able to carry out the law as I explained it to him.
22 Furthermore, I find that the defendant's -- excuse me --
23 the juror's beliefs or attitudes towards the death
24 penalty would not prevent or substantially impair the
25 performance of his duties as a juror in accordance with

1 the law, the Court's instructions and the juror's oath.
2 And I say this based on his responses, as I say, in the
3 questionnaire regarding the death penalty where he says,
4 do you think that life imprisonment without possibility
5 of parole is severe punishment, he does say so, if the
6 case warrants. Also, do you believe life without the
7 possibility of parole is a more severe form of punishment
8 than a death sentence? And he says, no, less severe
9 because death you die which is obviously the ultimate.
10 Moreover, his answers were very candied, and he said that
11 he could -- he was sure that he could vote for life
12 without parole in a proper case as well as he could vote
13 for death. I think his answer was sure.

14 All right. So I do find that he's qualified.

15 Ask the juror to join us, please?

16 (WHEREUPON, Potential Juror 15 entered the
17 courtroom.)

18 THE COURT: Juror 15, I find that you are
19 qualified, and I appreciate your candor responding to the
20 answers to -- my questions as well as the attorneys. So
21 that means that we'll probably be getting in touch -- not
22 probably -- but we will be getting in touch with you.
23 But this process takes about three or four days, so it
24 won't be immediately. But you did give the correct
25 telephone number to the ---

1 THE POTENTIAL JUROR: Yes, sir.

2 THE COURT: --- Clerk of Court. And so if she
3 needs to get in touch with you ---

4 THE POTENTIAL JUROR: I'm supposed to start the
5 second shift Friday ---

6 THE COURT: Right.

7 THE POTENTIAL JUROR: --- unless something
8 happens with this. So if at all possible, if she could
9 call me Friday morning before three o'clock in the
10 afternoon.

11 THE COURT: Before three I might would be able
12 to. I'm not sure about before Friday morning.

13 THE POTENTIAL JUROR: Oh, yeah. That would be
14 fine. I just wanted her to know that I wouldn't -- if
15 something happened that I was called before three, that I
16 would have to go in.

17 THE COURT: Okay. That would be very -- it
18 wouldn't be that day. So I mean, it would for a -- do
19 you have an answering machine?

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: All right. So we can at least
22 leave a ...

23 THE POTENTIAL JUROR: Oh, yeah.

24 THE COURT: It'll be a day or two before, in
25 other words, once we find out how many because that's

1 when we'll make a selection.

2 THE POTENTIAL JUROR: That'll be good.

3 THE COURT: Again, I want to thank you for your
4 patience with the Court today, and I look forward to
5 working with you.

6 THE POTENTIAL JUROR: Thank you, sir.

7 THE COURT: Thank you.

8 (WHEREUPON, Potential Juror 15 exited the courtroom
9 after which Potential Juror 16 entered the
10 courtroom.)

11 THE COURT: Good afternoon.

12 THE POTENTIAL JUROR: Good afternoon.

13 THE COURT: You are Juror 16?

14 THE POTENTIAL JUROR: Yes, sir.

15 **POTENTIAL JUROR 16,**

16 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

17 EXAMINATION

18 BY THE COURT:

19 Q. You'll recall on Monday I put all the jurors under
20 oath. Ad do you understand that you are still under oath
21 and that oath continues throughout these proceedings?

22 A. Yes, sir.

23 Q. Thank you, ma'am. Do you also recall my instruction
24 from Monday to avoid all forms of media coverage in
25 dealing with this case?

- 1 A. Yes, sir.
- 2 Q. Has this caused you any problems?
- 3 A. No, sir.
- 4 Q. Very good. The trial of this case will last
- 5 approximately a week to ten days, or even it could last
- 6 longer. But other than the personal inconvenience, would
- 7 this pose a serious danger to the health or well-being of
- 8 yourself or anyone who is dependant upon you?
- 9 A. No, sir.
- 10 Q. Among other things that we'll be talking about is
- 11 penalty. But the mere fact that we talk about penalty
- 12 does not indicate anything about this Defendant or any
- 13 defendant. Defendants are presumed in the law to be
- 14 innocent. Do you understand this?
- 15 A. Yes, sir.
- 16 Q. If you were a juror in a criminal case, could you
- 17 listen to the law, accept and apply the law as I would
- 18 instruct it to you even though you may not agree with
- 19 that law or think that the law to be some other way?
- 20 A. Yes, sir.
- 21 Q. Could you decide this case based solely on the
- 22 evidence presented in this courtroom and disregard
- 23 anything you may have heard, read or seen about this
- 24 case?
- 25 A. Yes, sir.

1 Q. In a criminal case, the State has the burden of
2 proving guilt. The burden of proof for the State is
3 beyond a reasonable doubt. A defendant has no burden to
4 prove innocence. Do you understand?

5 A. Yes, sir.

6 Q. Could you, depending on the facts and the evidence
7 and the law as I would instruct you in a particular case,
8 find a defendant either guilty or not guilty?

9 A. Yes, sir.

10 Q. If you were a juror in a death penalty case and if
11 the jury had found the defendant guilty of murder, you
12 would then move to the sentencing phase of the trial. Do
13 you understand this?

14 A. Yes, sir.

15 Q. When you hear us refer to a capital case or a death
16 penalty case, what we mean is that it is a criminal
17 murder trial where the prosecutor -- in other words the
18 State -- is seeking the death penalty. Do you understand
19 this?

20 A. Yes, sir.

21 Q. A death penalty trial is divided into two parts.
22 Part one is the guilt phase where a jury determines
23 whether the Defendant is guilty or not guilty of murder.
24 Part two is the sentencing phase where the jury
25 determines the appropriate punishment. Of course, if the

1 defendant is found not guilty or acquitted, that ends the
2 matter. Do you understand that?

3 A. Yes, sir.

4 Q. Therefore, if you were on a jury in a trial of a
5 capital case where the jury in phase one of the trial has
6 found the defendant guilty of murder, you would then move
7 on to the phase two of the trial which is called the
8 sentencing phase of the trial. Do you understand?

9 A. Yes, sir.

10 Q. Now, if you were a juror in the sentencing phase --
11 that is phase two of a capital murder trial -- again,
12 where a jury has already found the defendant guilty of
13 murder, do you understand that the jury, rather than the
14 Judge, determines the sentence that the defendant will
15 receive for the crime of the murder?

16 A. Yes, sir.

17 Q. In a capital sentencing trial, the jury's function
18 is to determine the appropriate punishment based upon the
19 circumstances of the crime and the characteristics of the
20 individual defendant. Do you understand that?

21 A. Yes, sir.

22 Q. Now, aggravating circumstances are facts or details
23 that, when they are present in a case, make the crime of
24 murder more serious or worse. On the other hand,
25 mitigating circumstances are incidents, occurrences or

1 details of a case that would reduce the severity of the
2 crime of murder. In other words, reduce the degree of
3 responsibility for the crime. Do you understand that?

4 A. Yes, sir.

5 Q. Do you understand that the jury has two options to
6 consider regarding the sentence for murder? One option
7 is life imprisonment which in South Carolina is without
8 parole. In other words, until death. And the other
9 option is death which in this state is by electrocution
10 or lethal injection.

11 A. Yes, sir.

12 Q. Could you, as a juror in the sentencing phase,
13 depending upon the facts including the relevant
14 aggravating and mitigating circumstances and the law as I
15 instruct it to you, render a sentence of life
16 imprisonment?

17 A. Yes, sir.

18 Q. On the other hand, as a juror in the sentencing
19 phase, depending upon the facts including relevant
20 aggravating, and mitigating circumstances and the law as
21 I instruct it to you, could you render a sentence of
22 death?

23 A. Yes, sir.

24 Q. All right. If you would, please, answer any
25 questions the Defense may have.

1 DIRECT EXAMINATION

2 BY MR. MCGUIRE:

3 Q. Good afternoon ---

4 A. Hey.

5 Q. --- Juror Number 16.

6 A. Hey.

7 Q. Just because I refer to you by number, I'm not being
8 not friendly or disrespectful. It's a little awkward for
9 me, but that's just the way we have to do it.

10 A. Yes, sir.

11 Q. I hope you forgive me that. I notice that you have
12 a brother-in-law who is a state trooper?

13 A. Yes, sir.

14 Q. Despite that, do you have any knowledge of the
15 criminal justice system, anything like that?

16 A. I don't. He doesn't really talk to us about that.
17 So I'm just, you know, being honest that he is one.

18 Q. Sure.

19 A. Otherwise, we don't have any.

20 Q. Most folks I talk to get most of their knowledge
21 from TV.

22 A. Yeah.

23 Q. Can I put you in that category?

24 A. Well, I really don't watch much TV. I'm more of a
25 -- I stay at home with my children and do activities with

1 them. So ...

2 Q. Got you. I've got two twin boys that keeps us
3 pretty busy too.

4 A. Yes, sir.

5 Q. Mine are two and a half.

6 I'm going to -- I have to ask you questions now
7 about the penalty for murder.

8 A. Uh-huh (affirmative).

9 Q. And we have to have a starting point. And if I
10 asked you to give me the definition of murder in South
11 Carolina you'd probably come up short; is that right? I
12 mean, you don't know the definition of murder in South
13 Carolina, do you?

14 A. No, sir.

15 Q. Okay. I want to help you and give it to you ---

16 A. Okay.

17 Q. --- and we'll have a starting point, okay?

18 A. Okay.

19 Q. And I'm going to always help you on legal stuff.

20 You just ask me if you need some help on a legal issue,
21 okay?

22 A. Uh-huh (affirmative).

23 Q. The definition of murder in South Carolina that
24 brings you here and brings us to a capital trial,
25 obviously, is what's called malice murder.

1 A. Uh-huh (affirmative).

2 Q. Malice aforethought murder. The definition is that
3 the person doing the killing unlawfully killed an
4 innocent person, and the person doing the killing had a
5 black and malignant heart, fatally bent on evil.

6 A. Uh-huh (affirmative).

7 Q. So we're talking about a deliberate act, choosing to
8 take an innocent life. In that kind of situation or in
9 that definition, what are your thoughts about the death
10 penalty as the appropriate penalty for that kind of
11 killing?

12 A. Well, I -- if it's -- the person, you know ---

13 Q. Beyond a reasonable doubt.

14 A. --- killed an innocent person, I mean, that, I
15 think, does deserve a punishment.

16 MS. BYFORD: Your Honor, I'm going to object to
17 this line of questioning. That's not really the law in
18 South Carolina.

19 THE COURT: All right. Restate your question,
20 if you would, please.

21 MR. MCGUIRE: I'm not sure I understand the
22 objection.

23 THE COURT: She said -- just state the proper
24 law that would be applicable to a case of this nature.

25 MR. MCGUIRE: All right. Anybody feel free to

1 correct me if I'm wrong.

2 Q. Malice murder in South Carolina is intentionally,
3 with malice aforethought, by a deliberate act, killing an
4 innocent person.

5 A. Uh-huh (affirmative).

6 Q. In that situation, what are your thoughts about the
7 death penalty as the appropriate punishment?

8 A. I think that they do deserve it.

9 Q. And a phrase that we use in the South a lot is an
10 eye for an eye. Does that resonate with you?

11 A. I'd say so, yes.

12 Q. Okay. So in the case of a deliberate murder ---

13 A. Uh-huh (affirmative).

14 Q. --- life imprisonment, that wouldn't be severe
15 enough to punish that kind of deliberate killing?

16 A. Not if they killed somebody that was innocent.

17 Q. Okay. And I'm going to talk to you a little bit
18 about publicity. Have you heard or read anything about
19 this case?

20 A. No, sir.

21 Q. Okay. Would you -- in fixing the punishment for a
22 killing, for a murder in South Carolina ---

23 A. Uh-huh (affirmative).

24 Q. --- would things about the defendant in his
25 background, like if he was a drug addict, would that be

1 relevant in fixing punishment as long as he knew what he
2 was doing and deliberately killed?

3 A. I think it would still be the same.

4 Q. Okay.

5 A. I mean, drugs involved or not, if they killed
6 somebody who was innocent.

7 Q. Okay. And it seems like you've given pretty careful
8 thought to your answers?

9 A. Uh-huh (affirmative).

10 Q. And they seem to be -- I mean, you tell me. They're
11 coming from who you are morally as a person?

12 A. Yes, sir.

13 Q. You're views of right and wrong?

14 A. Uh-huh (affirmative).

15 Q. Your core values?

16 A. Uh-huh (affirmative).

17 Q. If I asked you to change your position, I couldn't
18 do it with just words, could I?

19 A. No, sir.

20 Q. Okay. Nobody could?

21 A. No.

22 Q. In a death penalty case or a capital case, it's
23 different from any other case we have because the

24 punishment phase or the penalty phase, there's not a

25 right or wrong answer. It's called an individual moral

1 judgement. Just like you could come to your own
2 individual moral judgement based on your view of the
3 case.

4 A. Uh-huh (affirmative).

5 Q. And if you reached your own individual moral
6 judgement, you'd want that to be respected?

7 A. Yes.

8 Q. And you would respect others?

9 A. Uh-huh (affirmative).

10 Q. Nobody has the perfect common sense, so to speak?

11 A. Uh-huh (affirmative).

12 Q. And in a civil case or a different case where like
13 who had the right-of-way and people were suing over money
14 in a car crash, there kind of is a right answer.

15 Somebody had the right-of-way and someone didn't.

16 A. Uh-huh (affirmative).

17 Q. But sentencing in whether a human being dies or not
18 -- again, that's not a right or wrong answer -- could you
19 respect calling -- at the end of the day just agreeing to
20 disagreeing with your fellow jurors?

21 A. Yes.

22 Q. If things got unfair and it got hostile in the jury
23 room, could you pass a note out to the Judge saying
24 things aren't fair in here?

25 A. Yes, if it's something I didn't agree upon.

1 Q. If somebody was bullying somebody else, that sort of
2 thing?

3 A. Yes, sir.

4 Q. About a quarter of the folks that filled out the
5 questionnaire mentioned that they're opposed to life
6 without parole because they don't want their tax dollars
7 going to keep somebody alive when they should get the
8 death penalty.

9 A. Uh-huh (affirmative).

10 Q. Do you agree with that?

11 A. I think it would determine the options in the case.

12 Q. It would be a factor?

13 A. Yes.

14 Q. Okay.

15 MR. MCGUIRE: Just one second, Judge.

16 Q. We've already talked about your views about the
17 death penalty for that deliberate killing of an innocent
18 person.

19 A. Yes, sir.

20 Q. And the State not only -- to seek the death penalty,
21 not only would they prove that ---

22 A. Uh-huh (affirmative).

23 Q. --- they would also have to come and prove an
24 aggravating circumstance making it even worse than that.

25 A. Uh-huh (affirmative).

1 Q. And it might be rape murder, killing of a child,
2 killing of a police officer in the line of duty, killing
3 and then killing again. All of those categories, if the
4 victim's an innocent person, again, death penalty is the
5 appropriate punishment?

6 A. Yes, sir.

7 Q. Juror Number 16, that's all I have for you. Thank
8 you very much.

9 A. Uh-huh (affirmative).

10 THE COURT: All right. You may proceed.

11 MS. BYFORD: Thank you, Your Honor. May it
12 please the Court.

13 CROSS-EXAMINATION

14 BY MS. BYFORD:

15 Q. Thank you for your patience. I know you've been
16 sitting back there a long time. I just have a few
17 questions to sort of follow up on some of the things Mr.
18 McGuire asked you.

19 The first thing I want to talk to you about -- I
20 know he went over the definition of murder with you. I
21 want to talk to you a little bit about capital murder.
22 Did you know that not all murders in South Carolina are
23 eligible for the death penalty?

24 A. No, I didn't.

25 Q. Okay. In order -- not only would you have to find

1 that the defendant was guilty of murder, which you'll do
2 in the guilt phase, if you find that the evidence proves
3 beyond a reasonable doubt that he's guilty of murder,
4 then we move to the penalty phase. And in order to
5 impose the death penalty, you would have to find in the
6 penalty phase that there was an aggravating circumstance.
7 And you'd have to find that beyond a reasonable doubt.

8 A. Yes, ma'am.

9 Q. Do you understand that?

10 A. Uh-huh (affirmative).

11 Q. Okay. And then, only then, could you consider
12 imposing the death penalty. And you -- I believe you
13 said you haven't heard anything about his case yet.

14 A. No, ma'am.

15 Q. Have you formed any opinions about this case at all?

16 A. I don't want to form an opinion until I know further
17 about the case.

18 Q. Okay. So you want to hear all the evidence in the
19 guilt phase, and if we were to move -- if there was a
20 guilty verdict and we move to the penalty phase, you
21 would want to hear all the evidence that the State has?

22 A. Yes, ma'am.

23 Q. The whole story? And then you would also want to
24 hear -- because you want to hear all the facts in the
25 case, you'd want to hear anything in mitigation that the

1 Defense has?

2 A. Yes, ma'am.

3 Q. And you would be able to consider the Defense's case
4 as well as the State's case. Is that fair to say?

5 A. Yes, ma'am.

6 Q. Okay. And only after hearing everything would you
7 make a decision. Is that fair ---

8 A. Yes, ma'am.

9 Q. --- to say that? Okay. If after hearing both the
10 evidence in aggravation and if there's any evidence in
11 mitigation, would you be able to vote for life without
12 parole?

13 A. Yes, ma'am.

14 Q. Okay. Even if you'd found an aggravating
15 circumstance, if there was some mitigation that you could
16 consider, you could vote for life without parole?

17 A. Yes, ma'am.

18 Q. Okay. And conversely, if you heard both the
19 aggravation and mitigation and found that death was the
20 appropriate option, could you vote for the death penalty?

21 A. Yes, ma'am.

22 Q. Okay. When we're in the courtroom, you're going to
23 hear evidence from that chair that you're sitting in
24 right now. Do you understand that the only thing that
25 you would be able to consider in making your decision are

1 things that you heard either from that witness stand or
2 from the exhibits?

3 A. Yes, ma'am.

4 Q. Okay. Would you only consider what you heard in
5 this courtroom?

6 A. Yes, ma'am.

7 Q. Okay. And you wouldn't take anything else into
8 consideration except for the facts and the circumstances
9 that were presented to you?

10 A. Yes, ma'am.

11 Q. Okay.

12 MS. BYFORD: Give me just one second, Your
13 Honor.

14 Q. Going back, just one subject to what we talked about
15 before. If at the end of both -- if you came back with a
16 guilty verdict, you heard the aggravating circumstances
17 if there are any and we can prove them to you ---

18 A. Yes, ma'am.

19 Q. --- if you decide, along with your twelve jurors --
20 other eleven jurors, to vote for the death penalty, you
21 would, along with the other eleven jurors, have to sign
22 your name to the sentencing sheet. Is that something you
23 could do?

24 A. Yes, ma'am.

25 Q. Okay.

1 THE COURT: All right. Anything else?

2 MS. BYFORD: No, sir, not from the State.

3 MR. MCGUIRE: Just a couple of questions, if I
4 could, Judge.

5 THE COURT: Certainly.

6 REDIRECT EXAMINATION

7 BY MR. MCGUIRE:

8 Q. Juror Number 16.

9 A. Yes, sir.

10 Q. When the Judge talks about mitigating factors or Ms.
11 Byford talked about mitigating factors ---

12 A. Uh-huh (affirmative).

13 Q. --- and the Judge earlier used the phrase, I think,
14 they're factors that can reduce the Defendant's
15 responsibility for the crime. Did you hear you all of
16 that?

17 A. Yes, sir.

18 Q. Okay. Would you look to like the facts of the
19 murder to find those mitigating circumstances and the
20 facts?

21 A. Yes, sir.

22 Q. And a lot of times when I talk to people, they throw
23 out phrases to me like, well, you know, if it was an
24 accident or maybe self-defense was involved ---

25 A. Uh-huh (affirmative).

1 Q. --- is that sort of in line with your understanding
2 of mitigation factors?

3 A. That's something that would be considered and looked
4 at with, you know, what's going on in the trial.

5 Q. Right. And again, there's no right or wrong
6 answers.

7 A. Uh-huh (affirmative).

8 Q. A lot of people don't bring a lot of knowledge to
9 court with them. If I was to ask you to give an example
10 of mitigating circumstance outside the facts of the
11 killing, what ---

12 A. Uh-huh (affirmative).

13 Q. --- would that be to you?

14 MS. BYFORD: Your Honor, I'd object. That
15 calls for a hypothetical.

16 MR. MCGUIRE: I really don't understand that
17 objection, Your Honor.

18 THE COURT: Yeah, it is because you're asking
19 her to give you something based on what she knows, not --
20 what is it -- something based on -- that might be
21 involved in this case.

22 MR. MCGUIRE: I respectfully disagree.

23 THE COURT: I understand. Just restate your
24 question.

25 Q. Is there anything in your imagination that you can

1 think of that would be a mitigating factor, other than
2 something that would come from the facts of the killing?
3 A. Not knowing the trial and what's going on with the
4 killing, I couldn't answer the question.

5 Q. Sure. That's all I've got. Thank you.

6 RE-EXAMINATION

7 BY THE COURT:

8 Q. All right. Let me ask you one other question. In a
9 death penalty case, would you always or automatically
10 vote for the death penalty even though the law provides
11 that you may impose the sentence of life without parole,
12 depending upon the circumstances in a particular case and
13 the characteristics of an individual defendant?

14 A. Depending on, like you said, yes.

15 THE COURT: I will permit any other questions.

16 MS. BYFORD: Your Honor, could I just clarify

17 ---

18 THE COURT: Let me go back to the Defendant
19 first.

20 MS. BYFORD: Oh.

21 THE COURT: I'm sorry.

22 MS. BYFORD: Oh, no. That's okay, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. MCGUIRE:

25 Q. Very briefly. And again, no right or wrong answers

1 here. It sounds like when we were talking earlier that
2 at the end of the first part of the trial when the State
3 proves that somebody deliberately killed an innocent
4 person that your starting point would death penalty?

5 A. Yes, sir.

6 Q. And basically you'd be looking at me to get you out
7 of that position? And if you didn't hear anything else
8 and your game piece kind of starts there and ends there,
9 so would you be looking to me to talk you backwards, I
10 guess?

11 A. No.

12 Q. Your vote would be secure?

13 A. Yes, sir.

14 Q. Okay. I couldn't talk you out of it or present
15 anything to talk you out of it?

16 A. I don't know until I ---

17 Q. Sure.

18 A. --- deal with what's in the first phase, I guess, to
19 answer that question.

20 MR. MCGUIRE: If I could just have one second.

21 Q. I don't think my last questions were that good, to
22 criticize myself. And I'm just going to stop right
23 there. Thank you, ma'am.

24 A. Okay.

25 THE COURT: All right. Anything from the ---

1 MR. MCGUIRE: I appreciate your patience with
2 me.

3 THE COURT: Anything from the State?

4 MS. BYFORD: Your Honor, just very, very
5 briefly.

6 RECROSS-EXAMINATION

7 BY MS. BYFORD:

8 Q. I just want to ask you one question because I
9 didn't quite -- I couldn't quite hear when the Judge was
10 asking you if you would automatically vote for death. I
11 just wanted to kind of -- I couldn't quite hear your
12 answers. So I just sort of wanted to clarify that. And
13 I want to be -- we're not trying to trick you or put
14 words in your mouth or anything. We just -- when
15 presented with the evidence, are you going to consider
16 everything before you make a decision?

17 A. Yes, ma'am.

18 Q. Okay. Is it fair to say that you would not
19 automatically vote one way or the other?

20 A. Yes, ma'am.

21 Q. Okay. So you would wait to hear everything before
22 making a decision?

23 A. Yes, ma'am.

24 Q. Okay.

25 MS. BYFORD: That's all I have, Your Honor.

1 THE COURT: All right. Anything from the
2 State?

3 MS. BYFORD: No, sir.

4 THE COURT: Anything from the Defense?

5 MR. MCGUIRE: Just a small legal matter, Judge.

6 THE COURT: All right. Again, if you would,
7 step out for a few moments. I need to take up some
8 matters with the attorneys. I'll be right back to you.

9 THE POTENTIAL JUROR: Yes, sir.

10 THE COURT: Thank you, ma'am. Just go with the
11 bailiff. Thank you.

12 (WHEREUPON, Potential Juror 16 exited the
13 courtroom.)

14 THE COURT: All right. Mr. McGuire?

15 MR. MCGUIRE: Thank you, Your Honor. I move to
16 strike Juror Number 16 for cause based on the fact that
17 if the evidence is that a defendant kills an innocent
18 person, her vote is for the death penalty. She was
19 consistent on that. And her understanding of mitigation
20 seems to be limited to sort of the facts of the murder
21 and doesn't really understand in abstract -- for us to
22 say that she can consider mitigation by asking her, can
23 you consider mitigation is really ineffective. And I
24 don't think it's strong enough to overcome the fact that
25 she is mitigation impaired based on her answers in voir

1 dire. But it's also primarily based on the fact that she
2 is automatic death penalty for somebody who kills an
3 innocent person that we challenge for cause pursuant to
4 the Sixth and Fourteenth Amendment and Sections 3, 14 and
5 15 of Article I of the South Carolina Constitution.

6 THE COURT: All right. What does the State
7 say?

8 MS. BYFORD: Your Honor, I would sort of
9 reiterate all of our other arguments. I think she was
10 very clear that she could and would consider both the
11 State's case and the Defense case before making a
12 decision.

13 I'd also just very briefly, in general, Your Honor
14 -- not just in regards to this juror. But I think Mr.
15 McGuire's sort of opening gambit, would you automatically
16 vote death if a defendant killed an innocent victim, is a
17 little bit misleading on what the law is in South
18 Carolina. And that was just to sort of clarify my
19 objection during his questioning because I'm not sure
20 that was clear.

21 I'm not upset with his definition of murder. I
22 think that his questioning leads jurors to believe that
23 all murders are eligible for the death penalty. And so
24 they sort of get in this trap of being committed to that
25 without really being instructed on what the law is. So I

1 think that once the Court gave her some more instruction
2 and once she sort of got some more questions and she
3 understood sort of what it is she's supposed to consider
4 under the law, I think she's able to answer appropriately
5 in a manner that qualifies her for jury service.

6 THE COURT: Anything in reply?

7 MR. MCGUIRE: No, sir.

8 THE COURT: Again, there are a few little
9 observations about when we try to instruct a lay person
10 as to what the law is in South Carolina. First of all,
11 self-defense is not murder. Accident is not murder. So
12 that's not relevant to a murder trial. And of course,
13 the black heart, malicious is perhaps a more accurate
14 description of what does concern a homicide killing with
15 malice aforethought. I have to -- when I weigh the
16 jurors' answers, I have to put it into that context.
17 Also, when -- and again, I think the -- the way I
18 understood the objection about hypothetical and general
19 questions, well, in mitigation, we're not asking for
20 specifics. We're asking if they could follow the charge
21 on mitigation. And the mitigation can occur -- and can
22 have many factors to be considered. But as I understand,
23 it's not appropriate to start listing those factors if
24 they might not be appropriate to the particular case.
25 My point here is I have to take into consideration

1 not only the responses of the juror, but also the
2 questions to the juror. If the juror was passing -- or
3 taking a law exam, did she answer the question correctly?
4 Well -- but how the question is posed and the content of
5 the question sometimes determines that.

6 I think that in this particular case she said
7 certain things that did give some pause to the Court.
8 For example, when she was asked about mitigation, she
9 said, drug addiction or not is not enough to mitigate the
10 killing of another. And if you kill someone else, life
11 without parole is not severe enough. Again, as I say,
12 those were in response to general questions that were
13 particularly not the law when taken in context of whether
14 or not self-defense or accident would even be a murder
15 case -- or would not be murder case.

16 Yet I do have some concern as to whether or not she
17 -- her concept of mitigation is not substantially
18 impaired. And perhaps it's just a little difficult for
19 someone to understand that. But again, that goes to the
20 core of our whole concern. And she did answer the
21 question that was put to her, no one could change your
22 core values. And I'm going to, considering the entire
23 voir dire, find that Juror 16 should be excused from
24 serving on the trial of this case.

25 All right. Ask the juror to join us, please.

1 (WHEREUPON, Potential Juror 16 entered the
2 courtroom.)

3 THE COURT: Madam Juror 16.

4 THE POTENTIAL JUROR: Yes, sir?

5 THE COURT: Considering the entire voir dire --
6 and that's these, you know, questions that have been
7 asked -- I feel that you should be excused from serving
8 on the trial of this case. However, I do want to thank
9 you for not only your patience with the Court this
10 morning, but for being here in itself and in answering
11 with all candor the very difficult questions. I know you
12 -- as the parties have said, you weren't prepared for
13 this and you shouldn't be. And I do want to thank you
14 for the candor.

15 As I say, the Court has to be sure that people are
16 comfortable with what they might do. And one thing I
17 will never -- what is it -- try to do, and that is to
18 change strongly held convictions. And I want to thank
19 you for your strength in that regard.

20 And again, you'll be excused. And by the way, if
21 anything you've gained from all of this, you won't be
22 subject to a jury call for another three years.

23 THE POTENTIAL JUROR: Thank you.

24 THE COURT: But I do want to thank you for
25 being here and for participating.

1 THE POTENTIAL JUROR: Yes, sir.

2 THE COURT: Thank you very much, and you will
3 be excused.

4 THE POTENTIAL JUROR: Thank you.

5 THE COURT: Did you leave anything in the jury
6 room?

7 THE POTENTIAL JUROR: No, sir.

8 THE COURT: Very good. Thank you.

9 (WHEREUPON, Potential Juror 16 exited the
10 courtroom.)

11 THE COURT: All right. Let's see the last one
12 which ---

13 MS. ADAMS: Your Honor?

14 THE COURT: --- is ---

15 MS. ADAMS: I'm sorry. Can I just address one
16 issue real quick before we call out the next juror?

17 THE COURT: Certainly.

18 MS. ADAMS: I think the problem may be that
19 when Mr. McGuire is going over the definition of murder,
20 it's not really the malice aforethought, it's the fact
21 that he's harping on the -- it's the killing of an
22 innocent person. We're -- I mean, the definition is the
23 killing of another with malice aforethought. And they've
24 already determined in guilt that there's no self-defense.
25 There's nothing to justify that killing whatsoever. They

1 are guilty of murder of killing another. Not this, you
2 know, innocent person which I think is the problem that
3 some of these jurors are trying to grasp, you know. They
4 need to be questioned on can they follow your
5 instructions. You're giving them the law. And can they
6 be fair to both sides? And I think he's just
7 consistently trying to stake them out on specific issues,
8 and they're getting confused.

9 THE COURT: Well, I'm not exactly sure of the
10 objection there because the only thing he has to do is
11 establish that they're innocent. Then they would not be
12 subject to -- the victim's innocence?

13 MS. ADAMS: The victim, yes, sir.

14 THE COURT: If the victim was ---

15 MS. ADAMS: Not the Defendant.

16 THE COURT: --- innocent, then they wouldn't be
17 subject to ---

18 MS. ADAMS: Right.

19 THE COURT: --- a murder ---

20 MS. ADAMS: Right.

21 THE COURT: --- conviction.

22 MS. ADAMS: Right. The Defendant can be
23 innocent, absolutely. But it's the unlawful killing of
24 another, not ---

25 THE COURT: I was just thinking that not all

1 victims are innocent like not all people are innocent.

2 MS. ADAMS: That's right.

3 THE COURT: And it really doesn't matter if
4 it's the nature of the victim because if the nature of
5 the victim comes into question, it would be murder. In
6 other words, if it's self-defense because either the
7 victim was doing ---

8 MS. ADAMS: Right.

9 THE COURT: --- something that was threatening
10 or if it were an accident that -- what is it -- they were
11 struggling over a weapon or something like that, then
12 obviously it's a -- so what I -- again, if you insist on
13 giving a definition of homicide or murder -- let's say
14 that, let's say murder -- let's be complete. Or I'll
15 have to instruct that -- what is it -- accident is not
16 murder and that self-defense is not murder. All right?

17 MS. ADAMS: Thank you, Your Honor.

18 THE COURT: Anything from the Defense that you
19 would like?

20 MR. MCGUIRE: In what respect, Judge?

21 THE COURT: I mean, if you want to -- what is
22 it -- improve the State's questioning or whatever?

23 MR. MCGUIRE: I mean, if you're asking me to
24 critique the State, I could go on for a long time.

25 THE COURT: Well, I'm just saying if you had

1 anything that you thought was so oppressive or offensive
2 that you wanted to see if they would ---

3 MR. MCGUIRE: Judge, I guess I'll respond
4 briefly in saying that using the term innocent person or
5 innocent victim is a shortcut to cut out mutual combat.
6 It's not manslaughter, it's not catching your wife in bed
7 with another fellow. It's not vehicular homicide.
8 Because if you start off without getting past that, we're
9 going to start hearing, well, I wouldn't give the death
10 penalty in a self-defense case. I wouldn't give the
11 death penalty in an accident case. It's just a really
12 quick way for me to just cut all of that out and go
13 straight to it's an intentional malice aforethought act.
14 It's going to take a lot longer if ---

15 THE COURT: Well, I thought you started out
16 better when you were talking about a black heart and
17 things of that nature. In other words, you did have to
18 look at ---

19 MR. MCGUIRE: And maybe I can rephrase it.

20 THE COURT: --- and interject self-defense and
21 accident or whatever. That is not -- what is it --
22 murder. That's not -- that would not -- it wouldn't even
23 go to the jury if it was.

24 MR. MCGUIRE: Sure. Sure. I mean, I can just
25 tell you just antidotally that's what I've experienced if

1 you don't clear it up. You have people just sort of
2 volunteer situations where they don't think the death
3 penalty is appropriate. And even though it is, the
4 person would be innocent, that's what they throw out.

5 THE COURT: Well, my problem is that I don't
6 want the juror who is ultimately going to have to listen
7 to the law as charged, not what they would think it is or
8 ought to be or what it is on TV or anything of that
9 nature. And I just don't want to have them confused.

10 MR. MCGUIRE: Sure.

11 THE COURT: But ---

12 MR. MCGUIRE: And -- I didn't mean to interrupt
13 you.

14 THE COURT: No. That's all right.

15 MR. MCGUIRE: If I do that, just yell at me and
16 I'll take my lumps. I don't mean to do that. With
17 regard to asking about aggravation evidence or a prior --
18 or more than one murder, is it the Court's ruling that I
19 can do it in terms of a category, but not fact-specific
20 to this case? If I just kind of throw it out as a
21 category of type of aggravation, would that prevent them
22 from considering a life sentence?

23 THE COURT: Well, you're not talking -- when
24 you talk about aggravation, you're not talking about a
25 life sentence. If you're talking about mitigation,

1 you're talking about a life sentence. In other words, we
2 don't even get to the, you know, death sentence unless
3 they do find aggravation.

4 MR. MCGUIRE: Sure. I just want to present it
5 in a context, though, is that the kind of category -- is
6 that the kind of case that would prevent you from
7 considering a life sentence.

8 THE COURT: Now I'm asking perhaps a
9 hypothetical before you box me in.

10 MR. MCGUIRE: Well, I mean, I'm hoping to do it
11 on the fly. I'll ask the question and we'll go from
12 there.

13 THE COURT: Or stake me out as they say. What
14 will you say, a category? Tell me your category.

15 MR. MCGUIRE: For instance, a category would be
16 child porn or rape murder or multiple murders. This is
17 sort of a category or type. Without mentioning one fact
18 of this case, just this type of aggravation evidence, is
19 that the type of case that would prevent you from fairly
20 considering a life sentence. That's sort of what I want
21 to get at.

22 THE COURT: Well, again, that's not the law
23 because the law requires aggravation -- consideration of
24 both aggravation and mitigation.

25 MR. MCGUIRE: Well, I ---

1 THE COURT: And again, I think that you can ask
2 the juror if -- do they understand that there has to be
3 some sort of aggravation in order to even consider the
4 death sentence.

5 MR. MCGUIRE: My fear is that -- and I think
6 it's a reasonable fear -- is that there are some cases,
7 the nature of the case, the category of the case, that
8 would cause a citizen, a potential juror, to say, you
9 know, that case strikes with me such a chord that I
10 cannot consider a life penalty for that person. I think
11 that's a realistic problem that we have here. And I
12 think it's a little unfair for the State to try to hide
13 the fact that they're going to -- one of the first things
14 they're going to do in aggravation is they're going to
15 prove a prior conviction for murder. And kind of to hide
16 that behind their back and bring it out like a baseball
17 bat when we begin the penalty phase is a little unfair
18 because I think we can all realistically agree if I don't
19 ask these questions, there's a substantial likelihood
20 that somebody could end up on that jury who, if we
21 interview them later, would say, as soon as I heard he
22 had a prior conviction for murder, it was game over. I
23 could never consider a life sentence for somebody like
24 that. And I just want to cure that danger. And I think
25 if we don't cure it that we're going to have -- the

1 process that we're going through might not withstand
2 scrutiny on appeal.

3 THE COURT: All right.

4 THE COURT: What do you say, Madam Solicitor?

5 MS. ADAMS: Your Honor, I think he's clearly --
6 that he's trying to stake out the jurors because our
7 aggravating circumstance is, you know, a prior murder.
8 And he keeps talking about categories when category is
9 really not the law. They have to find an aggravating
10 circumstance. They have to determine that he did, in
11 fact, commit a prior murder before they can even go into
12 considering the penalty, whether it should be life or
13 death. I mean, he's strictly concentrating on the
14 aggravation instead of getting from them whether or not
15 they can consider mitigation once they've considered the
16 aggravation and consider is it life without parole or the
17 death penalty. And these categories he's asking one at a
18 time. I think the case law says they need to be together
19 just like the mitigation.

20 THE COURT: Well, again, as I say, I think that
21 -- and that's apparently what Powers says, that it's --
22 that what you ask a potential juror has to be something
23 that comes within the law which means it has to be
24 something that would be charged by the court. Jurors
25 could be asked if they would consider aggravating and

1 mitigating circumstances as charged by the trial court.
2 And in *Powers* they were specifically asked about the
3 mitigation circumstances of age if charged by the court.
4 So I don't know if we need to get something beyond what
5 might be charged in a case.

6 Now, you can -- I think I can -- I'll see what the
7 Defendant does. But I think if you ask if there was a
8 charge of multiple death, would that make it -- that the
9 Court charged that a multiple death was an aggravating
10 circumstance, how that would affect the juror's decision
11 where there were also mitigating circumstances charged.
12 So in other words, it's not just saying if you find one
13 aggravation circumstances, does that mean you -- and
14 that's what staking out is, that you are permitted to do
15 that and you couldn't -- but in the light of both
16 aggravating and mitigating circumstances charged by the
17 Judge. Again, because what we want to find are fair and
18 impartial jurors, not ones that perhaps have not been
19 fairly treated with in our voir dire.

20 All right. And the aggravating circumstances in
21 this case would be multiple deaths?

22 MS. ADAMS: I'm sorry, Judge. What was that?

23 MR. MCGUIRE: Prior conviction for murder.

24 THE COURT: Prior conviction.

25 MS. ADAMS: The prior conviction for murder is

1 the aggravation, yes, sir, which is case specific,
2 obviously.

3 THE COURT: Pardon?

4 MS. ADAMS: Obviously, because that's our only
5 -- we have one aggravating circumstance, Judge, that
6 we've alleged, and that's the prior murder.

7 THE COURT: But the balance has to be also as
8 far as any mitigating circumstances charged. So it can't
9 be in the abstract. There's only one -- the only charges
10 you're going to get are on aggravation. So they're going
11 to have more to consider than just aggravation, if I'm
12 still charging the jury.

13 All right. That's about as an advisory opinion as I
14 can give you or will give you. All right. Anything
15 further from the State?

16 MS. ADAMS: So Judge, he can't go into -- I'm
17 sorry.

18 THE COURT: He can if he balances the question.
19 I'm not going let the load ---

20 MS. ADAMS: Okay.

21 THE COURT: --- be on one end.

22 MS. ADAMS: Okay. I just wanted to make sure I
23 understood. Thank you.

24 THE COURT: You can't -- and this is what we're
25 trying to find the jury or juror and a jury collectively,

1 is someone who can balance. In other words, in order to
2 find out -- if it works, you're going to have to have a
3 fair load. If you put all the load on one end, then it's
4 not going to function. So that's the one thing I'm going
5 to try to do. I want to be sure that the juror is given
6 a fair opportunity, that he knows what the full question
7 is going to be. But I am going to permit him to use the
8 aggravation if that -- one aggravation like in the age
9 question in mitigation in *Powers*, I'm going to let him do
10 that. But he has to, at the same time, put in the fact
11 that -- what is it -- the charge as to mitigation too.
12 And you don't -- and mitigation is not limited to any
13 statutory mitigation, so he has to understand that.

14 MS. ADAMS: So basically, he just needs to ask
15 the full question in more than one aggravation as well,
16 not just the ---

17 THE COURT: Aggravation and mitigation.

18 MS. ADAMS: Okay. So not specifically then the
19 prior murder since that's case specific? I just don't
20 want to object when I shouldn't.

21 THE COURT: Well, you're not going to object
22 because I'm going to rule now. He can go ahead and
23 mention a prior conviction as an aggravating
24 circumstance, but at the same time taken in the context
25 of any mitigation that might be charged.

1 MS. ADAMS: Okay. So he has to balance it?

2 THE COURT: A balance. Very good.

3 All right. Let's see if we can go ahead and finish
4 with 19 because we're behind already.

5 All right. Anything from the State, further from
6 the State?

7 MS. ADAMS: No, sir.

8 THE COURT: From the Defense?

9 MR. MCGUIRE: No, sir.

10 THE COURT: Very good. Ask the juror to join
11 us.

12 (WHEREUPON, Potential Juror 19 entered the
13 courtroom.)

14 THE COURT: All right. Are you Juror 19?

15 THE POTENTIAL Juror: Yes, sir.

16 **POTENTIAL JUROR 19,**

17 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

18 **EXAMINATION**

19 **BY THE COURT:**

20 Q. You recall yesterday I put all jurors under oath.

21 Now, do you understand that you're still under oath and
22 that oath continues throughout these proceedings?

23 A. Yes, sir.

24 Q. I also have forgotten to ask before, but I'm going
25 to ask you. You were furnished a witness list in the

1 jury room. Did you look over that list?

2 A. Yes, sir.

3 Q. Did you see any names that you are related to by
4 blood or marriage or a close personal associate or
5 business associate?

6 A. No, sir.

7 Q. Now, you do recall my instructions from yesterday to
8 avoid all forms of media coverage dealing with this case?

9 A. Yes, sir.

10 Q. Has that caused you any problem?

11 A. No, sir.

12 Q. All right. The trial of this case may last more
13 than a week. It could be seven days to ten days once
14 it's started. It could end earlier. But, again, I want
15 to be sure that you understand this is a lengthy trial.
16 Other than the personal inconvenience, would this pose a
17 serious danger to the health or well-being of yourself or
18 anyone dependent upon you?

19 A. No, sir.

20 Q. Among other things we'll be talking about today are
21 penalty. The mere fact that we talk about penalty does
22 not indicate anything about this Defendant or any
23 defendant. Defendant's are presumed under our law to be
24 innocent. Do you understand this?

25 A. Yes, sir.

1 Q. If you were a juror in a criminal case, could you
2 listen to the law, accept and apply the law as I would
3 instruct you as the Judge of the court, and even though
4 you may not agree with that law or think it should be
5 some other way, could you accept the law as I charge it?

6 A. Read that one more time.

7 Q. All right. If you were selected as a juror in this
8 case or any criminal case, could you listen to the law,
9 accept and apply that law as I would instruct you as the
10 Judge of this court, and even though you may not agree
11 with the law as I charge it or think it ought to be some
12 other way, could you accept the law as I charge it?

13 A. Yes, sir.

14 Q. Could you decide this case based solely on the
15 evidence presented in this courtroom and disregard
16 anything you may have heard, read or seen about this
17 case?

18 A. Yes, sir.

19 Q. In a criminal case the State has the burden of
20 proving guilt. The burden of proof for the State is
21 beyond a reasonable doubt. The Defendant has no burden
22 to prove innocence. Do you understand this?

23 A. Yes, sir.

24 Q. Could you, depending upon the facts and the evidence
25 and the law as I would instruct you in a particular case,

1 find a defendant either guilty or not guilty?

2 A. Yes, sir.

3 Q. If you were a juror in a death penalty case, and if
4 the jury had found the defendant guilty of murder, would
5 you then -- you would then move to the sentencing phase
6 of the case -- of the trial. Do you understand?

7 A. Yes, sir.

8 Q. In other words, it's two parts. When you hear us
9 refer to a capital case or a death penalty case, what we
10 mean is that it is a criminal murder trial where the
11 prosecutor -- in other words the State -- is seeking the
12 death penalty. Do you understand this?

13 A. Yes, sir.

14 Q. A death penalty trial is divided into two parts.
15 Part one is the guilt phase where a jury determines
16 whether a defendant is guilty or not guilty of murder.
17 Part two is the sentencing phase where a jury determines
18 the appropriate punishment. Of course, if the defendant
19 is found not guilty in the first part, that ends the
20 matter. Do you understand this?

21 A. Yes.

22 Q. Therefore, if you were a juror in a trial of a
23 capital case murder, where the jury in phase one of the
24 trial has found the defendant guilty of murder, you would
25 then move on to phase two of the trial which is called

1 the sentencing phase of the trial. Do you understand
2 this?

3 A. Yes, sir.

4 Q. Now, if you were a juror in the sentencing phase --
5 that is, phase two of a capital murder trial -- again,
6 where the jury has already found the defendant guilty of
7 murder, do you understand that the jury rather than the
8 Judge determines the sentence the defendant will receive
9 for the crime of murder?

10 A. Yes, sir.

11 Q. In other words, it's the jury ---

12 A. Uh-huh (affirmative).

13 Q. --- that determines the sentence, not the Judge. Do
14 you understand that?

15 A. Yes, sir.

16 Q. In a capital sentencing trial, the jury's function
17 is to determine the appropriate punishment based upon the
18 circumstances of the crime and the characteristics of the
19 individual defendant. Do you understand that?

20 A. Yes, sir.

21 Q. Now, aggravating circumstances are facts or details
22 that, when they are present in a case, make the crime of
23 murder more serious or worse. On the other hand,
24 mitigating circumstances are incidents, occurrences or
25 details of a case that would reduce the severity of the

1 crime of murder. In other words, may reduce the degree
2 of responsibility for the crime. Do you understand that?

3 A. Yes, sir.

4 Q. Do you also understand that the jury has two options
5 to consider regarding the sentence for murder? One
6 option is life -- and in South Carolina, it's life
7 without parole. In other words, it's until you die. And
8 the other option is death which in this state is by
9 electrocution or lethal injection. Do you understand
10 this?

11 A. Yes, sir.

12 Q. Could you, as a juror in the sentencing phase,
13 depending upon the facts including relevant aggravating
14 and mitigating circumstances and the law as instructed to
15 you, render a sentence of life imprisonment?

16 A. Yes, sir.

17 Q. On the other hand, as a juror in the sentencing
18 phase, depending upon the facts including relevant
19 aggravating and mitigating circumstances and the law as
20 instructed to, could you render a sentence of death?

21 A. Yes, sir.

22 Q. All right. If you would, please, answer any
23 questions the Defendant might have.

24 A. Okay.

25

DIRECT EXAMINATION

1 BY MR. MCGUIRE:

2 Q. Hey. Good afternoon ---

3 A. Hey, how's it going?

4 Q. --- Juror Number 19. You've been waiting a long
5 time, and I appreciate your patience. It's got to be
6 frustrating waiting back there. But I'm going to ask a
7 little bit more of you. And that's just be completely
8 candid with your answers.

9 A. Okay.

10 Q. I'm just going to ask you some questions about the
11 death penalty, murder, that sort of thing, okay?

12 A. Okay.

13 Q. Just to have a starting point, because I have to ask
14 you about the penalty, it's the penalty for murder. So
15 we can start off with, well, what is murder. Okay? And
16 I'm going to give you the definition. In South Carolina,
17 the Judge would tell you that it's malice murder, malice
18 aforethought murder, meaning the person doing the killing
19 had a black malignant heart, fatally bent on evil and
20 they've unlawful killed another person. Are you with me?

21 A. Yes.

22 Q. And the other person didn't do anything to rise to
23 legal provocation. In essence, in the eyes of the law,
24 they're innocent. Do you understand that?

25 A. Uh-huh (affirmative).

1 Q. What is your opinion about the death penalty as the
2 appropriate punishment for somebody who deliberately
3 chooses to take a life?

4 A. I think it should be punishable by death.

5 Q. Okay. And would the life in prison penalty ever be
6 severe enough to punish that kind of deliberate
7 intentional murder?

8 A. No.

9 Q. Okay. And I read your questionnaire. And it seems
10 like you've given some careful thought to these ideas and
11 these answers.

12 A. Yes.

13 Q. And obviously, you realize you're under oath, sworn
14 to tell the truth?

15 A. Yes.

16 Q. And your answers come from your views of moral right
17 and wrong; is that right?

18 A. That is.

19 Q. Kind of your core beliefs of what's right and wrong?

20 A. Yes, sir.

21 Q. Okay. And I couldn't change your views with words,
22 could I?

23 A. No.

24 Q. Okay. You seem kind of a stick-to-your-guns kind of
25 fellow?

1 A. Yes.

2 Q. Okay. With regard to murders or killings in South
3 Carolina that bring you here for this capital case, not
4 every murder in South Carolina is eligible for the death
5 penalty. The State would have to prove an aggravating
6 circumstance. And of course, the Defense might prove
7 what's called mitigating circumstances. Mitigation
8 circumstances could be anything to lesson the crime like
9 the defendant's background. He could be mentally ill or
10 something like that. But I'm going to ask you this now
11 understanding that balance there. If you -- or what's
12 your opinion about the death penalty for a defendant, any
13 defendant, who not only committed a deliberate,
14 intentional killing, but did it twice? Could a life
15 sentence ever be appropriate in that case?

16 A. No.

17 Q. I'm going to ask you a little bit about publicity.
18 Have you heard anything about this case?

19 A. No.

20 Q. And a lot of people wrote in on their questionnaire
21 that if somebody was found guilty beyond a reasonable
22 doubt of deliberately killing somebody and they got in a
23 position where the jury would have to punish, that it
24 would be sort of unfair on the taxpayers to put somebody
25 in prison for the rest of their life. Does that resonate

1 with you too?

2 A. Repeat that one more time.

3 Q. A lot of the people that wrote in said they're
4 bothered by their tax dollars putting somebody in prison
5 for life without parole for an intentional killing.

6 A. Yes.

7 Q. Are you also bothered by that?

8 A. I mean, I -- I just -- repeat it one more time so I
9 -- I'm sorry.

10 Q. Okay.

11 A. I'm sorry. In front of all these people, it's got
12 me a little ---

13 Q. Sure. Sure. And this might be something that you
14 haven't given much thought of. But a lot of the people
15 that wrote in on their questionnaire, said that they
16 didn't like their tax dollars going to put a murderer in
17 prison for the rest of their life when the death penalty
18 was available.

19 A. Yeah, keeping somebody up ---

20 Q. Right.

21 A. --- in prison for the rest of their life?

22 Q. Sure. How do you fall out on that?

23 A. I agree with it. If they commit a murder, they
24 deserve to die.

25 Q. Okay. Is it fair to say you probably haven't given

1 a lot of consideration to that question before I asked
2 you?

3 A. I was just trying to ---

4 Q. Sure. Be honest.

5 A. --- feel you out.

6 Q. Right. With regard to your thoughts on the death
7 penalty on your questionnaire, for somebody who was
8 guilty of killing somebody, you indicated that putting
9 them to sleep or lethal injection wasn't adequate, that
10 they should sort of feel the punishment and should get
11 the chair instead?

12 A. Yes.

13 Q. That seems to be a pretty strong belief of yours?

14 A. Yes.

15 Q. That's all I have for you. Thank you..

16 THE COURT: All right. The State?

17 MR. CAMPBELL: The Court's indulgence.

18 CROSS-EXAMINATION

19 BY MR. CAMPBELL:

20 Q. I've just got to ask a couple of questions.

21 A. Okay.

22 Q. Do you recall filling out this questionnaire form?

23 A. Yes, sir, I do.

24 Q. And do you recall where it states, with reference to
25 the death penalty, which of the following statements

1 would best represent your opinion?

2 A. Yes, sir.

3 Q. Do you recall you circled number four, number four
4 in that one?

5 A. Let me look at it.

6 MR. CAMPBELL: Your Honor, may I approach?

7 THE COURT: Certainly.

8 Q. Right here.

9 A. Oh, okay. Yeah.

10 Q. Do you recall doing that?

11 A. Yes, sir, I do.

12 Q. And in that it states, I believe that the death
13 penalty is the appropriate form of punishment in some
14 murder cases, but I could never return a verdict of
15 death?

16 A. Yes, sir.

17 Q. Is that correct?

18 A. As far as -- I thought that was me just standing up
19 in front of somebody and sentencing them to die. That's
20 what I was thinking that was referring to. As far as
21 giving that, you know, behind closed doors for somebody
22 else to say, you know, that's what I was meaning.

23 Q. You do understand in South Carolina that if you
24 decide, as a juror ---

25 A. Uh-huh (affirmative).

1 Q. If we get to the penalty phase and you decide for
2 death in this case, that you have to sign your name to a
3 document stating that. Do you understand that?

4 A. Yes, sir.

5 Q. Okay. And could you do that?

6 A. Yes, sir.

7 Q. Because you may have to come out in court and stand
8 up and say, yes, I impose the death penalty in this case.
9 Could you do that in open court, stand up and say that?

10 A. That's what I thought you were referring, in open
11 courtroom.

12 Q. Could you do that?

13 A. No, sir. I wouldn't stand up and do that.

14 MR. CAMPBELL: Your Honor, I have no further
15 questions.

16 THE COURT: All right.

17 RE-EXAMINATION

18 BY THE COURT:

19 Q. Let me ask you one question.

20 A. Yes, sir.

21 Q. In a death penalty case, would you always or
22 automatically vote for the death penalty even though the
23 law provides that you may impose a sentence of life
24 without parole, depending upon the circumstances of a
25 particular case and the characteristics of the individual

1 defendant?

2 A. Is this after hearing all the information from each
3 one?

4 Q. Right.

5 A. Okay.

6 Q. In a death penalty case, would you always or
7 automatically vote for the death penalty even though the
8 law provides that you may impose a sentence of life
9 without parole, depending upon the circumstances of a
10 particular case and the individual characteristics -- or
11 the characteristics of an individual defendant?

12 A. Yes, sir.

13 Q. You would always or automatically vote for the death
14 penalty?

15 A. I guess after I heard, you know, the information and
16 everything else given on it.

17 Q. You would?

18 A. I would.

19 Q. Very good.

20 A. Yes, sir.

21 THE COURT: All right. Is there anything from
22 the State?

23 MR. CAMPBELL: No, Your Honor.

24 THE COURT: Anything from the Defendant?

25 MR. MCGUIRE: Just a small legal matter.

1 THE COURT: All right. If you would, please,
2 excuse us for a few minutes.

3 THE POTENTIAL JUROR: Okay.

4 THE COURT: Go with the bailiff.

5 THE POTENTIAL JUROR: Yes, sir.

6 (WHEREUPON, Potential Juror 19 exited the
7 courtroom.)

8 THE COURT: All right.

9 MR. MCGUIRE: Move for cause. Do I need to say
10 more than that?

11 MS. ADAMS: Nope.

12 MR. CAMPBELL: No objection.

13 THE COURT: No objection. I didn't think so.
14 I was curious.

15 All right. Ask the gentlemen to come back, if you
16 would, please.

17 (WHEREUPON, Potential Juror 19 entered the
18 courtroom.)

19 THE COURT: All right. Considering the entire
20 voir dire, I find that Juror 19 should be excused from
21 serving on the trial of this case. However, I want to
22 thank you for being here and for your patience with the
23 Court and for your candor in answering all of the
24 difficult questions that were asked today. But again, I
25 wanted to thank you, as I say, for your patience but also

1 for being forthright with the Court.

2 Now, as I mentioned the other day there are two
3 things that I want be sure is that, obviously, the
4 parties have a fair and impartial jury. But just as
5 important is that the juror feels comfortable in what
6 they have to do under the law. And I want to thank you
7 for being as honest and straightforward as you have. And
8 I definitely do not want to try to change strong
9 convictions. And so ---

10 THE POTENTIAL JUROR: Yes, sir.

11 THE COURT: --- and I respect you for it.
12 Thank you. But you will be excused.

13 THE POTENTIAL JUROR: Okay.

14 THE COURT: And you'll have another three years
15 before they can summon you.

16 THE POTENTIAL JUROR: Okay. All right. Thank
17 you, sir.

18 THE COURT: All right. Very good. Thank you,
19 sir.

20 (WHEREUPON, Potential Juror 19 exited the
21 courtroom.)

22 THE COURT: All right. We are an hour and a
23 half behind. Actually two hours behind because we gave a
24 half of hour on the front end. And I guess the jury is
25 coming together now.

1 All right. How much time do we need?

2 MS. ADAMS: For us, Your Honor?

3 THE COURT: I mean ---

4 MS. ADAMS: It depends on how hungry ---

5 THE COURT: --- the whole staff and everybody,
6 I mean. And I don't want to keep the jury waiting any
7 longer than we have to. What would you think would be
8 reasonable?

9 MR. MCGUIRE: Yes, sir. We're just going to
10 walk down the street to the first place we see, so
11 however long that takes.

12 THE COURT: What do you ---

13 MS. ADAMS: Do you want to say two-thirty,
14 Judge? Maybe tell the jurors they can ---

15 THE COURT: Let's do two-fifteen at the most.

16 MS. ADAMS: Okay. That's fine.

17 THE COURT: I think we can do it in forty-five
18 minutes I think. All right. And just tell them that we
19 will not -- do we have all the jurors?

20 THE BAILIFF: Yes, sir.

21 THE COURT: Tell them just to bear with us.
22 They can come back at two fifteen. But we'll start at
23 two-fifteen.

24 THE BAILIFF: All right, sir.

25 THE COURT: That we had a little late start

1 this morning.

2 (WHEREUPON, court stood at recess for a lunch
3 break.)

4 *** END OF VOLUME I ***

County of Anderson

State of South Carolina,

Plaintiff,

February 1 through 18, 2010

-VS-

Raymondeze Rivera,

Transcript of Record

Defendant.

Volume II of X

The Honorable Alexander Macaulay, Judge

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Renee H. Tollison
Circuit Court Reporter

1 **FEBRUARY 2, 2010 P.M.**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 2:21 p.m.)

5 THE COURT: All right. Have you had an
6 opportunity to consider the motion?

7 MS. ADAMS: Oh, this motion? Yes, sir. We've
8 reviewed it.

9 THE COURT: Are you ready to proceed?

10 MS. ADAMS: Yes, sir, Your Honor.

11 THE COURT: Is the Defense ready to proceed?

12 MR. MCGUIRE: Yes, sir.

13 THE COURT: The Court has been handed -- and I
14 don't know if it's been filed or not -- a motion for
15 constitutionally inadequate voir dire on behalf of the
16 Defendant.

17 Mr. McGuire?

18 MR. MCGUIRE: Thank you, Judge. Again, it sort
19 of reinforces some of the principles that I've been
20 relying on. And at this point, I think I'm pretty
21 comfortably in a box within which I can operate. And I
22 don't want you to think you've given me an inch and I'm
23 going for a mile. But the fact is that the State has
24 taken a position in one of their pleadings that they are
25 able to introduce into evidence a statement made by the

1 Defendant where he claims six other murders. And the
2 statement, I'll just tell the Court -- and I don't think
3 I'll be corrected is -- I mean, the statement is these
4 are no doubt murders. It's not accidents. It's nothing
5 -- I mean, it's clear. I decided to kill these people
6 and killed them and buried them. And if we're not
7 allowed to voir dire on what will eventually be a total
8 of eight murders -- the one that we're on trial for now,
9 the one that's already -- one's already a conviction in
10 Anderson County, plus the six from the statement -- I
11 think what we're going to have is we're going to have --
12 we're going to have jurors get on the jury, and as soon
13 as they hear eight murders, they're going to vote for
14 death and they're not going to be able consider anything.
15 And I think we're really -- it's so easy to cure that
16 danger by just simply letting us -- let us ask the
17 question, for somebody where there's evidence they've
18 killed eight times, could you seriously consider a life
19 in prison penalty for that person. If we don't ask that
20 -- well, first off, if we ask it and we get an answer,
21 they say, you know what, no, if there's evidence that a
22 person killed eight times, there's no way I could
23 consider life, I think we'd all agree, that's an impaired
24 juror. And if they were to end up on the jury, we would
25 certainly not have an indifferent and impartial jury and

1 Mr. Rivera's rights would be violated. So it's so easy
2 to cure, just asking one question. And if we're not
3 allowed to ask the question, we're really shooting in the
4 dark. And people are going to go from that stand,
5 possibly to that jury box, and when they hear that
6 evidence, they won't really fairly consider a life
7 sentence for Mr. Rivera which is what they're required to
8 by law. So I think if we don't ask the question, we're
9 playing in the dark. I think we have a real danger of
10 putting an impaired juror in the box. So not only -- not
11 only will the jury likely be biased, but the process that
12 we're operating in will probably not withhold scrutiny.

13 THE COURT: All right. What does the State
14 say?

15 MS. ADAMS: Your Honor, I think he's confusing
16 the issues. We have one aggravating circumstance, and
17 that is one prior conviction. He's referring to Mr.
18 Rivera's statement post-trial of the first trial, the
19 Asha Wiley -- I'll just call it the Asha Wiley murder --
20 where he gave a statement claiming he killed six other
21 people. That's -- yes, we feel -- our position is that
22 that's clearly admissible, but it's admissible as to his
23 character.

24 We're not claiming, we're not alleging, we're not
25 asking for a charge based on the fact that he murdered.

1 We don't have a conviction for six other murders. We
2 have one aggravating circumstance. It's a prior murder.
3 They're clearly trying to stake these jurors out and put
4 them down a road where they are committed, and that's not
5 how you're going to instruct them, Judge.

6 And I agree, there needs to be a balance. And I
7 think when they want to try to get to that balance of
8 asking about a prior murder, I think the question could
9 be somewhere tailored to the effect that, if the Judge
10 were to charge you that an aggravating circumstance was a
11 prior conviction for murder and that he would also charge
12 you that you must consider any mitigation, if any, if you
13 found it, would you already have your mind made up, or
14 would you want to listen to all of the evidence before
15 you made your mind up. Because, Your Honor, that's --
16 South Carolina case law clearly states that that is the
17 standard to qualify a juror in a death penalty case, I
18 think. I mean, they want to hone in and stake them out
19 on this prior conviction for murder.

20 THE COURT: All right. Mr. McGuire?

21 MR. MCGUIRE: Nothing further.

22 MR. DELGADO: Just for your edification ---

23 THE COURT: All right. I'm going to relax the
24 rule that only one attorney ---

25 MR. MCGUIRE: Thank you, Judge.

1 THE COURT: --- addresses an issue.

2 MR. DELGADO: I'm sorry, Your Honor. You are
3 correct. Mr. McGuire can answer for himself. I don't
4 have to answer that. That's fine.

5 THE COURT: Well, I'm not ---

6 MR. DELGADO: No, sir, it's fine.

7 THE COURT: Okay. I'm not enforcing the rule.
8 That's your decision.

9 MR. DELGADO: I understand.

10 MR. MCGUIRE: Well -- and Judge, I mean, I
11 think if we can get past some of the arguing back and
12 forth about what's a good question and what's not a good
13 question and just get to it, I think we can make up some
14 ground here. I mean, I usually keep track of my time.
15 And you know, generally I've been -- it's just either
16 over ten or just under ten minutes. I mean, we can be
17 pretty quick about this. But the argument about how to
18 phrase a question ---

19 THE COURT: Well, why don't you pose a question
20 for me. I'm not entirely comfortable with buying a pig
21 in a poke. You're saying that you want to ask a question
22 that satisfies the Constitution. Well, I assure you, I
23 want you to answer [sic] questions that do satisfies the
24 Constitution and not fishing trips or anything like a
25 Fourth Circuit Court of Appeals that, you know, they said

1 that undoubtedly the fact that such detailed questions
2 might have been somehow helpful to appellant, in
3 exercising peremptory challenges does not suffice to show
4 abuse of discretion by declining to let them ask specific
5 questions.

6 MR. MCGUIRE: Sure.

7 THE COURT: So again, I hope you understand
8 that we're all in that constitutional boat. All right?

9 MR. MCGUIRE: Oh, absolutely. Absolutely. Of
10 course.

11 THE COURT: By the way, that's from *State*
12 *versus Hill*, 331 SC 94.

13 MR. MCGUIRE: Sure. Okay. The question would
14 be, Mr. Juror, understanding that mitigation evidence can
15 be anything that would sort of lessen the degree of the
16 seriousness of the crime, and it could be anything in the
17 Defendant's background or anything you see in the facts
18 of the case, and aggravation being a factor that the
19 State brings to you to make the murder a capital murder,
20 in the situation where that evidence of aggravation is a
21 prior conviction for murder, could you consider the life
22 in prison penalty for a defendant who's murdered and then
23 murdered again? I mean, that's pretty balanced, I think.

24 THE COURT: No. I think you stop at consider
25 mitigation testimony for a conviction with aggravation as

1 only a prior conviction, because we don't have any proof
2 of murder and murder again. We have proof of a statement
3 to that effect, but that would be misleading the juror
4 that -- what is it -- he's going to have to expect to
5 find absolute proof of prior murders. I mean, of -- not
6 -- yeah, prior murders, not just prior convictions. Now,
7 I don't know if we want to mislead jurors or not because,
8 obviously, they're going to be waiting for proof of
9 convictions of prior murders ---

10 MR. MCGUIRE: And ---

11 THE COURT: --- rather than -- what is it --
12 what somebody says. Now, again, in the sentencing phase
13 -- and I understand the character of the defendant has
14 been put in issue here, been noticed?

15 MS. ADAMS: Yes, sir.

16 THE COURT: That -- what is it -- of course,
17 you can -- what is it -- bring out statements that are
18 made. It's not proof of the crime or even -- what is it
19 -- the conviction in this case. It's just -- it's
20 merely that the individual made a statement that he
21 killed somebody. And that goes to his, I guess -- what
22 is it -- ability to adapt to prison life, and he's not a
23 threat to somebody else because he has this -- he harbors
24 this even miss-founded or untrue thought. And again, the
25 aggravation is not something that's not proven. They

1 have to prove the aggravation beyond a reasonable doubt.

2 So if you want to say if a person gets up and states
3 without conviction that he's done bad things ...

4 MR. MCGUIRE: Sure. And Judge, I mean, I'll
5 address those ---

6 THE COURT: I mean, that's the danger that
7 we're getting into. We're beginning to try cases that
8 have never been brought. And the only thing that's been
9 -- as I understand from the State, the only thing they
10 want to do is to admit something that the individual said
11 that was not necessarily in his interest.

12 MR. MCGUIRE: Sure. I don't think the State,
13 when they do introduce that statement or give a speech
14 about how unreliable the evidence is -- I think they're
15 going to stand by it. But I can address the Court's
16 concern. Instead of saying somebody who has killed eight
17 times as though it's been ---

18 THE COURT: But he hasn't killed eight times
19 that we know about. And he's presumed to be innocent of
20 anything he wants to state that has been done because as
21 far as I know -- what is it -- a confession aliunde is
22 not enough to support a conviction.

23 MR. MCGUIRE: Well, actually in the *Howard*
24 case, there actually arose the issue of corpus delecti,
25 and they said that his own statement by itself is

1 sufficient proof of aggravation.

2 THE COURT: Well, I'll have to look at the
3 Howard case because I'm not familiar with anything that
4 says a person can walk into a courtroom and confess to
5 the most heinous crime in the world and be convicted.

6 MR. MCGUIRE: Right. And they drew the line
7 that because the prosecution was seeking his death and
8 not his conviction, they didn't have to adhere to the
9 corpus delecti principles. But I can certainly satisfy
10 the Court's concern---

11 THE COURT: All right. Go ahead.

12 MR. MCGUIRE: --- and just say someone who's
13 been convicted of murder once who would then be convicted
14 a second time or some paraphrasing of that, and then just
15 call it exactly what it is, and has confessed to killing
16 six other times, which is what it is. It's exactly what
17 it is. I'm not calling it anything different. I'm not
18 giving it more proof that it's entitled to or more
19 weight. Just say, and he's confessed to doing it six
20 other times.

21 THE COURT: What do you say about that, Madam
22 Solicitor?

23 MS. ADAMS: Your Honor, clearly those are the
24 specific facts of our case. And he's just not -- he is
25 staking out the jurors to get them to commit. And also,

1 I think, Judge, that the whole purpose and function of
2 voir dire is to -- just as *State v. Smart* says, is to see
3 if there's any real bias or specific bias in -- it's not
4 to just develop personality profiles or to get them to
5 committed to voting one way or the other. The standard
6 is can they follow your instructions in listening to all
7 the evidence presented for aggravation, and that they
8 must listen to mitigation, and will you do that before
9 you make a decision. I mean, Judge, he's just clearly
10 not allowed to do that under the case law. I mean, those
11 are all case-specific facts.

12 THE COURT: Well, *Howard* speaks to the same
13 thing that I was addressing. It has nothing do with the
14 conviction. It goes only to the character of the
15 defendant. Do you want me to read it? *Howard* further
16 complains, these confessions should not have been
17 admitted because the State failed to prove the corpus
18 delecti of the crime with corroborating evidence aside
19 from the confessions themselves. We disagree. The
20 confessions were not admitted to obtain *Howard's*
21 conviction, but were introduced in the penalty phase as
22 evidence of the other crimes relevant to the defendant's
23 character.

24 MR. MCGUIRE: And I agree with that. And
25 another way to say it is they were introduced not to

1 secure his conviction for those murders, but his death
2 which is -- because it's not statutory aggravating
3 evidence. They don't throw it in there for fun. They
4 throw it in there because it furthers their mission to
5 secure a death verdict. But I mean, I agree. There's no
6 evidentiary bar ---

7 THE COURT: Well, it's not -- again, what I'm
8 saying is that what you're doing is confusing the matter
9 as far as the penalty in this case because otherwise
10 anytime that -- and again, I use a hypothetical.

11 MR. MCGUIRE: Sure.

12 THE COURT: But a defendant could just come in
13 and say, well, you know, I shot Lincoln. I -- what is it
14 -- bombed the world towers. I've done all of these
15 heinous things. So can I ask on voir dire if somebody
16 claims to have watched -- I mean, if somebody had bombed
17 the world towers and assassinated Lincoln, do you think
18 they could have a fair trial or mitigating circumstances
19 would lesson the offense or penalty? And I mean, that's
20 just it. I see no difference here. They're not putting
21 it in for the proof of something that was actually done.
22 They're putting it in for the character of the individual
23 who says he takes credit for that.

24 MR. MCGUIRE: I mean, I think ---

25 THE COURT: So why don't we just keep it down.

1 What we're trying to determine is whether or not a juror
2 in -- when given the facts as charged -- I mean, as
3 developed by the case and the charge on the law by the
4 Court, can be fair both in finding death if they find an
5 aggravating circumstance. But even if they find
6 aggravated circumstance, can they still consider
7 mitigating circumstances as charged by the Court? Now,
8 that's what it's all about. It's not the strength of the
9 case. It's talking about whether, even with finding an
10 aggravating circumstance, first, after having found him
11 guilty and even if they find an aggravating circumstance,
12 as charged by the Court, is what is I hope you're going
13 to imply.

14 MR. MCGUIRE: Sure.

15 THE COURT: Can they then, even then, consider
16 mitigating circumstances that would warrant a life
17 sentence?

18 MR. MCGUIRE: That's pretty much exactly, I
19 think, what I want to ask.

20 THE COURT: Well, if you'll ask that, that's
21 fine. But when we get into all of these other things
22 about what somebody -- what is it -- accepts blame for or
23 credit, I think that's an entirely different thing.
24 Because really where it comes into, as I say, is that --
25 as I understand it, is the character testimony is going

1 to be, you know, as far as being able to adapt to
2 imprisonment and not be a threat to anyone.

3 MR. MCGUIRE: And just very politely, I just
4 have to preserve the record.

5 THE COURT: I understand. I understand. But
6 I'll do this though. All right. Having considered the
7 motion of the Defendant for constitutionally adequate
8 voir dire, I grant the Defendant's motion to allow
9 attorneys for the State and the Defense to engage in
10 adequate voir dire.

11 MR. MCGUIRE: Okay. I appreciate that, Judge.

12 THE COURT: All right. Anything else?

13 MS. ADAMS: Your Honor, not on this issue. But
14 I may -- if you don't mind, if Mr. McGuire doesn't have
15 anything else, I don't have -- do you have the jury
16 questionnaires, Judge? I don't know ---

17 THE COURT: Yes, ma'am.

18 MS. ADAMS: I don't know if you've had a chance
19 to look at Number 28 who is our first juror.

20 THE COURT: Uh-huh (affirmative).

21 MS. ADAMS: Because she stated that -- in the
22 back -- is there anything else we need to know? She
23 says, I am too nervous, can't concentrate and could not
24 serve as a juror for a major crime. I have to work and
25 help take care of elderly in-laws. She may qualify --

1 and I didn't know if you just wanted to kind of question
2 her and speed things up, if that was ---

3 MR. MCGUIRE: I've got no objection.

4 MS. ADAMS: She just looked like she's probably
5 qualified, but she was probably too nervous to come
6 forward earlier.

7 THE COURT: I haven't even -- as I say, I
8 haven't looked at this particular ---

9 MS. ADAMS: And that's fine.

10 THE COURT: --- questionnaire as yet. I've got
11 it.

12 MR. MCGUIRE: I've got it.

13 THE COURT: And so I don't know what her --
14 obviously it wasn't the one of five questions -- first to
15 fifth answer on page 16.

16 MS. ADAMS: She didn't even fill that out,
17 Judge.

18 THE COURT: She didn't even do that.

19 MS. ADAMS: Yeah.

20 THE COURT: What does the Defendant say?

21 MR. MCGUIRE: Well, I have no objection to
22 whatever you want to do, Judge.

23 THE COURT: Well -- because I do think that,
24 considering the response, that that fits into the
25 question that I will be asking, if there was some undue

1 hardship to her, and is someone depending upon her. And
2 she sets that out.

3 MS. ADAMS: Part eight. She probably is.

4 THE COURT: So what we're going to do, Madam
5 Clerk -- and she's the first one?

6 MADAM CLERK: Yes, Your Honor.

7 MS. ADAMS: Yes, sir.

8 THE COURT: So why don't we invite her out, and
9 I'll just thank her for being here. All right.

10 THE BAILIFF: 28?

11 MADAM CLERK: 28.

12 THE COURT: All right. Any objection from the
13 State?

14 MS. ADAMS: No, sir, Your Honor.

15 THE COURT: And from the Defense?

16 MR. MCGUIRE: No, sir.

17 THE COURT: All right.

18 (WHEREUPON, Potential Juror 28 entered the
19 courtroom.)

20 THE COURT: Let's see, you're Juror 28?

21 THE POTENTIAL JUROR: Yes, sir.

22 **POTENTIAL JUROR 28,**

23 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

24 **EXAMINATION**

25 **BY THE COURT:**

1 Q. All right. I've gone over your questionnaire, and I
2 noticed that you have some personal considerations or
3 concerns about being -- care for your elderly in-laws and
4 work.

5 A. At times I have to see about them.

6 Q. Well, this trial will last approximately ten days or
7 maybe even two weeks.

8 A. Uh-huh (affirmative).

9 Q. And based on -- and this is your concern?

10 A. It was at the time, but now my brother-in-law is
11 living with them. So I'm not -- I don't have to do as
12 much as I was.

13 Q. Well, let me just ask you this because, as I say,
14 one of the things I want to be sure is you're comfortable
15 in having to do what you do, that you're not distracted
16 and having to think about other things. So listen to
17 this question. The trial of this case will last
18 approximately ten days to two weeks. Other than personal
19 inconvenience, would this pose a serious danger to the
20 health or well being of yourself or anyone who is
21 dependent upon you?

22 A. I feel like it could with me.

23 Q. All right. Well, that's fine. You know, that's the
24 reason I asked the question. And for that reason and
25 that alone, I'm going to excuse you on the trial of this

1 case.

2 A. Okay. Thank you.

3 Q. I do want to thank you for your candor and being
4 patient with the Court, and also your presence here
5 yesterday and today. But you will be excused, and I
6 thank you for your service.

7 A. Thank you.

8 Q. Thank you, ma'am.

9 (WHEREUPON, Potential Juror 28 exited the
10 courtroom.)

11 THE COURT: I almost had her rehabilitated.

12 All right. I guess -- let's do something else just
13 sort of to clear the record-- because y'all had me to
14 look at certain things -- so we'll just know where we
15 are. For example, I think I've already quoted from *State*
16 *v. Hill*. But a hypothetical question concerning the
17 death penalty would be considered improper since the voir
18 dire -- purpose of voir dire is to ensure each juror can
19 make a decision based on the evidence presented rather
20 than hypothetical evidence. So let's do avoid strictly
21 hypothetical. As I say, if you've got something that is
22 going to be supported by the evidence and the charge, and
23 the evidence meaning -- what is it -- aggravation and
24 mitigation then -- what is it -- that would be obviously
25 relevant. And let's see, what was I ...

1 Well, all right. As I say, it's based on the
2 evidence that's presented. That's *State v. South*, 285
3 S.C. 529, certiorari denied, 474 U.S. 888. Clearly the
4 question would have been improper since the purpose of
5 voir dire is to ensure each juror can make a decision
6 based on the evidence presented rather than hypothetical
7 evidence. Very well.

8 All right. So let's proceed now. Anything from the
9 State?

10 MS. ADAMS: No, sir, Your Honor.

11 THE COURT: All right. From the Defense?
12 Subject to your motions, objections and the Court's
13 ruling? Exceptions.

14 MR. MCGUIRE: Since you granted my motion,
15 Judge, it's kind of hard for me to object. But if I
16 could just put it on the record that I object for not
17 being able to go into the six other issues that we talked
18 about, the six other murders.

19 THE COURT: All right.

20 MR. MCGUIRE: And my objection is based on the
21 Fourteenth and Sixth Amendment guarantee to select a fair
22 and impartial jury.

23 THE COURT: I understand. And it will be noted
24 for the record.

25 MR. MCGUIRE: Thank you, Judge.

1 THE COURT: And it doesn't have to be renewed
2 if you don't want ---

3 MR. MCGUIRE: Excellent. I'll take that as a
4 final ruling.

5 THE COURT: All right. I think Number 29 is
6 our next one.

7 (WHEREUPON, Potential Juror 29 entered the
8 courtroom.)

9 THE COURT: All right. Are you Juror 29?

10 THE POTENTIAL JUROR: Yes.

11 THE COURT: Thank you, ma'am.

12 **POTENTIAL JUROR 29,**

13 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

14 **EXAMINATION**

15 **BY THE COURT:**

16 Q. Do you recall yesterday I put all the jurors under
17 oath? Now, do you understand that you're still under
18 oath and this oath continues throughout these
19 proceedings?

20 A. Yes, sir.

21 Q. Thank you, ma'am. Now, you were giving a witness
22 list in the jury room. Have you had an opportunity to
23 look over it?

24 A. Yes.

25 Q. Do you know or are you related by blood or marriage

1 or close personal friend, business associate or other
2 acquaintance of any of the potential witnesses in this
3 case?

4 A. No.

5 Q. All right. Thank you, ma'am. Now, do you also
6 recall my instruction from Monday to avoid all forms of
7 media coverage dealing with this case?

8 A. Yes.

9 Q. Has this caused you any problem?

10 A. No.

11 Q. Thank you. Now, the trial of this case will last
12 approximately ten days to two weeks or may last that
13 long. Of course, it could -- what is it -- last less
14 than that. But I want to be sure that you understand
15 it's not the normal case. It will be a longer case than
16 normally. Other than the personal inconvenience, would
17 this pose a serious danger to the health or well-being of
18 yourself or anyone who is dependent upon you?

19 A. No.

20 Q. Among other things, we will be talking about penalty
21 today. But the mere fact that we talk about penalty does
22 not indicate anything about this Defendant or any
23 defendant. Defendants are presumed in law to be
24 innocent. Do you understand this?

25 A. Yes.

1 Q. Now, if you were on a jury in a criminal case, could
2 you listen to the law, accept and apply that law as I
3 would instruct you as the Judge, and even though you may
4 not agree with that law or think it ought to be some
5 other way, could you follow the law as the Court
6 instructs it you to?

7 A. Yes.

8 Q. And when I say, apply the law, I mean follow and
9 apply the law?

10 A. Yes.

11 Q. Could you decide this case based on solely on the
12 evidence presented in this courtroom and disregard
13 anything you may have heard, read or seen about the case?

14 A. Yes.

15 Q. In a criminal case the State has the burden of
16 proving guilt. The burden of proof for the State is
17 beyond a reasonable doubt. A defendant has no burden to
18 prove innocence. Do you understand this?

19 A. Yes.

20 Q. Could you, depending upon the facts of the case and
21 the evidence and the law as I would instruct you in a
22 particular case, find a defendant either guilty or not
23 guilty?

24 A. Yes.

25 Q. If you were a juror in a death penalty case, and if

1 the jury had found the defendant guilty of murder, you
2 would then move to the sentencing phase of the trial. Do
3 you understand that?

4 A. Yes.

5 Q. In other words, it's two phases. When you hear us
6 refer to a capital case or a death penalty case, what we
7 mean is that a criminal murder trial -- that it is a
8 criminal murder trial where the prosecutor -- in other
9 words the State -- is seeking the death penalty. Do you
10 understand this?

11 A. Yes.

12 Q. A death penalty trial is divided into two parts.
13 Part one is the guilt phase where a jury determines
14 whether the defendant is guilty or not guilty of murder.
15 Part two is the sentencing phase where a jury determines
16 the appropriate punishment. Of course, if the defendant
17 is found not guilty, that ends the matter. Do you
18 understand that?

19 A. Yes.

20 Q. Therefore, if you were a juror in a trial of a
21 capital case where the jury in phase one of the trial has
22 found the defendant guilty of murder, you would then move
23 on to phase two of the trial which is called the
24 sentencing phase of the trial. Do you understand this?

25 A. Yes.

1 Q. Now, if you were a juror in the sentencing phase,
2 that is phase two of a capital murder trial -- again,
3 where the jury has already found the defendant guilty of
4 murder -- do you understand that the jury, rather than
5 the judge, determines the sentence that the defendant
6 will receive for the crime of murder?

7 A. Yes.

8 Q. In a capital sentencing trial, the jury's function
9 is to determine the appropriate punishment based upon the
10 circumstances of the crime and the characteristics of an
11 individual defendant. Do you understand that?

12 A. Yes.

13 Q. Now, aggravating circumstances are fact or details
14 that, when they are present in a case, make the crime of
15 murder more serious or worse. On the other hand,
16 mitigating circumstances are incidents, occurrences or
17 details of a case that would reduce the severity of the
18 crime of murder. In other words, may reduce the degree
19 of responsibility for the crime. Do you understand that?

20 A. Yes.

21 Q. Do you understand that the jury has two options to
22 consider regarding the sentence for murder? One option
23 is life imprisonment, and the other option is death which
24 in this state is by electrocution or lethal injection.
25 Do you understand that?

1 A. Yes.

2 Q. Could you, as a juror in the sentencing phase,
3 depending upon the facts including relevant aggravating
4 and mitigating circumstances and the law as instructed to
5 you, render a sentence of life imprisonment which is life
6 without parole until death -- do you understand that?

7 A. Yes.

8 Q. Could you under the -- as a juror in the sentencing
9 phase, depending upon the facts including relevant
10 aggravating and mitigating circumstances and the law as I
11 instruct it to you, render a sentence of life
12 imprisonment without parole?

13 A. Yes.

14 Q. Second, on the other hand, as a juror in the
15 sentencing phase, depending upon the facts including
16 relevant aggravating and mitigating circumstances and the
17 law as instructed to you, could you render a sentence of
18 death?

19 A. Yes.

20 Q. All right. If you would, please answer any
21 questions that the Defense attorney might have. Thank
22 you.

23 DIRECT EXAMINATION

24 BY MR. MCGUIRE:

25 Q. Good afternoon Juror ---

1 A. Good afternoon.

2 Q. --- Number 29. Just because I refer to you by
3 number, I'm not being not friendly with you or
4 disrespectful. It's just how we have to do it.

5 A. Okay.

6 Q. It's a little awkward for me actually. I appreciate
7 your patience in waiting. I'm just going to ask you a
8 little bit more of you, and that is just to be completely
9 candid in your responses. There are no right or wrong
10 answers.

11 A. Okay.

12 Q. I'm just going to talk to you and give you a little
13 bit more detail about what we're here for and that's
14 murder and penalty. Okay?

15 A. All right.

16 Q. First off, what I'm going to do is, since I have to
17 ask you questions about the penalty for murder in South
18 Carolina, I'm going to define murder for you. Most
19 people that I know who are not lawyers, most of their
20 crime information comes from TV. Can I put you in that
21 category?

22 A. Right.

23 Q. Is that fair?

24 A. Yeah.

25 Q. I mean, my wife is in that category.

1 A. Uh-huh (affirmative).

2 Q. So to get started, the definition of murder in South
3 Carolina is that a person kills another unlawfully with
4 malice aforethought. And the way the law explains it,
5 and the Court will charge you on it, is that the killer
6 was operating with black and malignant heart, fatally
7 bent on evil and intentionally, willfully, deliberately
8 took another person's life. In that situation what's
9 your feeling about the death penalty as the appropriate
10 penalty?

11 A. I believe in it in that situation.

12 Q. Okay. On your questionnaire you indicated that you
13 thought the death penalty was appropriate if the person
14 basically meant to take an innocent life?

15 A. Right.

16 Q. And you still feel that way?

17 A. Planned ahead.

18 Q. Okay. Now, I don't want to get lost in the
19 definition of what premeditation is. In South Carolina
20 premeditation doesn't have to exist. A lot of planning,
21 a long planning doesn't have to exist. But the kind of
22 killing that brings you here today, what we're talking
23 about, is an intentional, deliberate choice to take a
24 life. Is that still consistent with your definition,
25 that if a person meant to do it, took an ---

1 A. Yes.

2 Q. ---innocent life, they should receive the death
3 penalty?

4 A. Yes.

5 Q. And that's still your view?

6 A. Yes.

7 Q. And you -- I assume you took great care in putting
8 your answers down on the questionnaire?

9 A. Right.

10 Q. They weren't frivolously given?

11 A. No.

12 Q. You really thought about it?

13 A. Yes.

14 Q. Not only did you say no, that was kind of an
15 emphatic no there.

16 I'm going to talk to you a little bit about right
17 now what's called the aggravating circumstance or a
18 mitigating circumstance. Like the Judge briefly told
19 you, mitigation can be anything that sort of lessens the
20 seriousness of the crime or the degree of culpability,
21 that sort of thing. And aggravation is something the
22 State has to bring forward to show you that it's
23 particularly deserving of the death penalty. So I'm
24 going to put you in a situation where not only do we have
25 that deliberate, intentional, malice aforethought taking

1 of a life, but that the person had already murdered
2 before. And you would be in judgement of somebody who's
3 committed two murders. Could a life sentence ever be
4 severe enough to punish that kind of case?

5 MS. ADAMS: Your Honor, I object. He's not
6 doing the balance. He's misleading this juror on exactly
7 ---

8 MR. MCGUIRE: That's absolutely ---

9 MS. ADAMS: --- and staking out.

10 MR. MCGUIRE: That's absolutely false, Judge.

11 THE COURT: All right. I'm not talking about
12 it. Let's do the balance. The way we do a balance, of
13 course, is to have the same proposition on either side,
14 not as if they were separate. All right. Go ahead,
15 restate your question.

16 MR. MCGUIRE: Thank you.

17 Q. Again, that balancing is that you have, in these
18 types of cases, what's called mitigation. And like the
19 Judge already talked to you about briefly, any reason to
20 lessen the seriousness. Aggravation, the State brings
21 forward. And I'm going to put you in a scenario -- not
22 this case, just any case -- where you're looking at a
23 case where you have not only a deliberate, intentional
24 killing that's in front of you, but then the aggravation
25 that the State brings is that that person had committed a

1 murder before. In that situation, could the life penalty
2 ever be severe enough?

3 MS. ADAMS: Judge -- Your Honor, I think the
4 problem is the instructions that you give ---

5 THE COURT: Well, no, I think ---

6 MS. ADAMS: --- and how they consider it.

7 THE COURT: Well, again -- what is it --
8 obviously, he wouldn't -- the case presented to the jury
9 would include only those established in Court and
10 pursuant to the Judge's charge, the Court's charge on the
11 law.

12 Again, go ahead. State your question one more time
13 I overrule your objection, though.

14 All right. Go ahead and state your question one
15 more time.

16 Q. Are you still with me?

17 A. I may have a question.

18 Q. And you can always ask me any questions about
19 anything.

20 THE COURT: If you don't understand the
21 question, yes, ma'am, you can.

22 Q. You just --- if I'm doing a bad job ---

23 A. So you're saying if the person has murdered somebody
24 before?

25 Q. Yes, ma'am.

1 A. And you know that for sure?

2 Q. Yes, ma'am. It's a prior conviction for murder.

3 A. It's a prior conviction for murder?

4 Q. Yes, ma'am.

5 MS. ADAMS: Your Honor, he's clearly -- we're
6 staking out the juror here. I've got to object.

7 THE COURT: Well, I understand. But I'm sure
8 he's going to follow up. If he doesn't, you will follow
9 up, that that's not all that she is to consider. That --
10 what is it -- she also has to consider if there are any
11 basis for mitigation. And if the basis for mitigation is
12 established, the same as any other -- as aggravation,
13 then she's to consider whether or not -- and I think your
14 question is likely to be possible.

15 MR. MCGUIRE: Thank you, Your Honor.

16 Q. In that situation?

17 A. The only way I know how to answer that is that if
18 the person's been convicted of murder before and this is
19 a totally separate case, you're not supposed to look at
20 the past conviction, you look at this conviction. Right?

21 Q. Well, actually the Judge ---

22 A. So ---

23 Q. And the Judge might want to jump in here. But
24 actually the Judge would say you're specifically required
25 to look at the prior conviction for murder.

1 THE COURT: Well, the only thing is she
2 specifically is required to look at a lot of things.
3 She's also required to look at mitigation ---

4 MR. MCGUIRE: Right.

5 THE COURT: --- that might be considered in
6 deciding whether or not -- as I instructed you earlier,
7 whether or not it reduces the severity and the
8 responsibility for the alleged crime.

9 A. I don't think in that case that I would let that one
10 have any effect on the next one.

11 Q. Okay. Now, the Judge would instruct you that you
12 specifically have to consider all of the aggravating
13 circumstances brought forward by the State. And in this
14 sort of situation I'm talking about, that would be a
15 prior conviction for murder. Now, the Judge would also
16 instruct you that you had to consider anything that might
17 be called mitigation which could be something in the
18 defendant's background, something you see in the facts of
19 the case, that sort of thing. Now, knowing all of that,
20 sitting on a murder case where a defendant -- and you're
21 satisfied and the eleven other jurors are satisfied
22 beyond a reasonable doubt a defendant deliberately,
23 intentionally took the life of another and had murdered
24 before. In that situation is the life penalty severe
25 enough to punish that kind of case?

1 A. No.

2 Q. Okay. Because we would be talking about two
3 deliberate murders?

4 A. Two separate, deliberate murders.

5 Q. Okay.

6 MS. ADAMS: Your Honor ---

7 THE COURT: Again, I know you're not quite ---

8 MR. MCGUIRE: Judge, if you'll let me ask my
9 next question, I think I'll cure what you're about to
10 say.

11 THE COURT: Well, I hope you do.

12 Q. And in fixing punishment for a defendant -- I'm not
13 talking about this case, just any case -- who had
14 deliberately taken a life and then deliberately taken
15 another life, would things like the defendant's
16 background, if he grew up poor, would these things be
17 relevant to you in making your decision?

18 A. No.

19 Q. Okay. Have you read any publicity about this case?

20 A. No.

21 Q. You indicated on your questionnaire that life in
22 prison might be appropriate for a murder if it was
23 temporarily insane.

24 A. Right.

25 Q. That would be like the person didn't know what they

1 were doing?

2 A. Right.

3 Q. Okay. Does that mean to you that they didn't know
4 right from wrong?

5 A. Maybe that ---

6 MS. ADAMS: I'm sorry, Your Honor. I hate to
7 interrupt her but he's asking about specific mitigation
8 now. He's clearly ---

9 THE COURT: I'm going ---

10 MS. ADAMS: --- out ---

11 THE COURT: --- to permit the question. But
12 let's move on because really you just need to find out if
13 the juror can be fair and impartial given all the facts
14 and evidence in aggravation and mitigation and follow the
15 law as instructed by the Court.

16 MR. MCGUIRE: I think I can clear that up in
17 just a sentence.

18 Q. Temporarily insane -- a lot of people when they talk
19 to me about that, they're like, you know, they shoot
20 somebody, but they thought they were shooting somebody
21 like a robber or something like that. They didn't really
22 appreciate they were doing a bad act.

23 THE COURT: Well, again, please understand that
24 temporary insanity is a defense, so it wouldn't be
25 murder.

1 MR. MCGUIRE: Sure. Sure.

2 Q. I was just wondering if you -- is that kind of in
3 line with what you ---

4 A. No.

5 Q. Okay. Well, then I'm going to move on, okay, if
6 that's okay with everybody.

7 I'm just going to talk to you briefly about the law.
8 The complexity of a capital case and the importance that
9 the law is applied fairly allows us to talk to you about
10 the law a little bit. Now, this case is completely
11 different from like a civil case where maybe two cars
12 collided and they're just suing about money. Because in
13 that case somebody had the right-of-way and somebody
14 didn't, and it's sort of a right or wrong answer. But in
15 a capital case, since the jury fixes punishment, it's
16 described as an individual moral judgement. Is that a
17 principle you're okay with?

18 A. Yes.

19 Q. And that with regard to the law, the whole jury, all
20 twelve, would have to find an aggravating circumstance.
21 But when it comes to a reason to vote for life, there's
22 no requirement for unanimity. One person could say,
23 well, I saw this in his life, so I'm not going to vote
24 death. And somebody could say something completely
25 opposite and say, well, you know, I saw the way he

1 interacted with his child, so that did it for me. There
2 doesn't have to be any agreement there. Is that okay
3 with you?

4 A. Yes.

5 Q. And Mr. Rivera is entitled to fairness not just in
6 the courtroom, but also in the jury room. If things got
7 unfair and somebody was being asked to give up their
8 individual moral judgement, kind of like bullying, could
9 you put a stop to that and maybe send out a note to the
10 judge and say it's not fair ---

11 A. Yes.

12 Q. Thank you, ma'am. That's all I have for you.

13 MS. ADAMS: Thank you, Your Honor.

14 THE COURT: Madam Solicitor?

15 MS. ADAMS: May it please the Court.

16 CROSS-EXAMINATION

17 BY MS. ADAMS:

18 Q. Good Afternoon.

19 A. Hey.

20 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
21 Circuit. And I just want to ask you a few followup
22 questions. And I want you to understand that no one is
23 trying to put words in your mouth. And there are no
24 wrong answers and there are no right answers. What we're
25 trying to do here is just -- as the Judge told you, is

1 just figure out if you can be fair to the State and fair
2 to the Defense and that when the Judge instructs you on
3 the law and what needs to be considered in a case ---
4 A. Uh-huh (affirmative).
5 Q. --- if you will be able to do that.
6 A. Okay.
7 Q. Okay? Now, I want to make sure you understand too,
8 first off, that, you know, not every murder qualifies for
9 the death penalty. Did you know that?
10 A. Right.
11 Q. Okay. And every murder is basically with malice
12 aforethought and is an intentional killing of another
13 human being. But not every murder qualifies. There has
14 to be a finding by the jury of an aggravating
15 circumstance.
16 A. Right.
17 Q. Okay. So you can't -- we can't even get to
18 punishment until the jury finds an aggravating
19 circumstance. Okay? And the Judge is going to instruct
20 you -- and I'm, you know, sure that you consider yourself
21 a fair person -- that when he instructs you as that you
22 must consider -- once you find the aggravating
23 circumstances, consider those, and that you must consider
24 mitigating circumstances as well no matter what those
25 are. Would you be able to follow those instructions?

1 A. Yes.

2 Q. Okay. And, in fact, the Judge is going to tell you
3 that you can give life without parole for no reason at
4 all. He will instruct you on that. So whether or not
5 you even find mitigation, if you feel that a defendant
6 deserves life without parole, you can find for life
7 without parole.

8 A. Okay.

9 Q. And you would be able to follow those instructions
10 as the Judge gives them?

11 A. (Nodded head up and down in the affirmative)

12 Q. Would that ---

13 A. Yes.

14 Q. Okay.

15 A. Yes.

16 Q. I got you just nodding. I'm sorry.

17 A. I didn't know if you were asking me or telling me.

18 Q. Well, I want to make sure you agree.

19 A. Yes.

20 Q. Please, if you do not agree with me in anything I
21 say that's, why we're ---

22 A. Uh-huh (affirmative).

23 Q. --- talking ---

24 A. Okay.

25 Q. --- and I want you to stop me.

1 A. Okay.

2 Q. If you are selected to be on this jury, do you
3 understand that a jury process -- there's a deliberation.
4 And the deliberation is a give-and-take, and each person
5 needs to listen to the opinion of the other jurors, take
6 those into consideration and weigh your thoughts and
7 feelings as well as others, but that jury deliberation is
8 a give-and-take?

9 A. Yes.

10 Q. That's how the process works?

11 A. Yes.

12 Q. Okay. Once you have heard all the evidence in
13 aggravation and all the evidence in mitigation, do you
14 feel that you would wait until you hear all of it before
15 making a decision of whether life without parole is
16 appropriate or if the death penalty is appropriate?

17 A. Yes.

18 Q. So under the circumstances, do you think that you
19 could vote for life without parole if the evidence
20 warranted life without parole?

21 A. Yes.

22 Q. And actually even for no reason at all, you could
23 give life without parole.

24 A. Yes.

25 Q. Okay. But if the evidence warranted the death

1 penalty, could you also give the death penalty as well?

2 A. Yes.

3 Q. Okay. But you would like to consider and hear all
4 of it and follow the Judge's instructions before making
5 that decision?

6 A. Yes, definitely.

7 Q. Okay. And also, if the jury does bring back a
8 sentence of death, each juror is required to sign the
9 sentence sheet and put your name on it, which makes it
10 public record, that it allows the State to carry out the
11 execution of a defendant, as the Judge said, either by
12 the electric chair or lethal injection. Would you be
13 okay with putting your name on that piece of paper?

14 A. Yes.

15 Q. So again, no matter what the aggravating
16 circumstances that you find, you would follow the Judge's
17 instruction and listen to the mitigation before making a
18 decision?

19 A. Yes.

20 MS. ADAMS: One moment, Your Honor.

21 Q. I know sometimes we feel like we're using semantics
22 and words. But not only would you listen to the evidence
23 in aggravation or mitigation, you would consider both the
24 aggravation and consider both mitigation?

25 A. Yes.

1 Q. And you would be able to actually vote for life if
2 that was appropriate and vote for death if you felt that
3 was appropriate after you considered all the evidence?

4 A. Yes.

5 MS. ADAMS: Thank you, Your Honor.

6 Q. Thank you.

7 THE COURT: All right. Anything else?

8 MR. MCGUIRE: Just a small legal matter, Judge.

9 RE-EXAMINATION

10 BY THE COURT:

11 Q. If you were instructed that the law in South
12 Carolina is that a person who is convicted of murder --
13 could you, depending upon the circumstances, impose a
14 sentence of either life imprisonment or death?

15 A. Yes.

16 Q. Thank you very much. If you would, please, go with
17 the bailiff. He'll show you a jury room that we're going
18 to ask you to wait. I need to take up some matters with
19 the lawyers.

20 (WHEREUPON, Potential Juror 29 exited the
21 courtroom.)

22 THE COURT: All right. Anything from the -- or
23 the Defendant had a matter to take up.

24 MR. MCGUIRE: Yes, sir, Your Honor. I move to
25 strike Juror Number 29 for cause based on the fact that

1 when she understood the definition of murder being a
2 deliberate act to kill another person, she said death
3 penalty was appropriate, she was automatic death penalty.
4 When she also understood the principle that she would
5 have to take into consideration aggravation in addition
6 to mitigation and it was a prior murder conviction being
7 introduced in aggravation, she stated very plainly that a
8 life sentence could never -- or in response to my
9 question, could a life sentence ever be severe enough to
10 punish that kind of defendant, she said no very candidly.
11 But because I was interrupted like three times, I defined
12 mitigation about three times. And knowing all of that,
13 she said that things about the defendant, his background,
14 mitigation, would not affect her decision regarding her
15 desire to vote for death in a murder case.

16 I would also -- when she said she was sticking to
17 her opinions and her answers, she was very emphatic. She
18 said she gave careful thought to filling out the
19 questionnaire, which I want to move into evidence, if I
20 could. It's the questionnaire of Juror Number 29. I'll
21 leave it on Cathy's chair. If she would introduce it as
22 a Court's exhibit for the purposes of voir dire. Where
23 she said basically death penalty was her vote for
24 anything that was premeditated or involved the death of a
25 child. When she understood that all murders in South

1 Carolina were intentional and deliberate, that squared
2 with her understanding that she put down on her
3 questionnaire. She's declared herself to be automatic
4 death penalty, I would imagine several times. And I
5 would ask the Court very respectfully to not give much
6 weight to questions that are along the lines of, well, if
7 the Judge told you you must consider this, could you do
8 it? The value of the answer from that question is almost
9 nil. Every citizen that walks in here is going to want
10 to do what the Judge tells them they must do. If you
11 told some would say ---

12 THE COURT: Would you have it any other way?

13 MR. MCGUIRE: I'm kind of known not to do ---

14 THE COURT: Do you think they ought to come in
15 prejudiced, you know, without listening to what the Judge
16 instructs them as to the law ...

17 MR. MCGUIRE: Well ---

18 THE COURT: ... and what the -- the evidence
19 that is presented in the courtroom?

20 MR. MCGUIRE: Sure. But Judge, a number of
21 courts -- and I've cited them in my motion to the Court
22 -- a number of courts starting with *Morgan*, United States
23 Supreme Court in the *Morgan* case, they recognized the
24 desire of a citizen to want to appear to be a good
25 citizen. They want to please the court, and there's

1 recognition now that jurors will respond perhaps more
2 candidly to less imposing questions placed by lawyers. I
3 mean, I think almost any juror, when they're confronted
4 with the question, if the judge said you must do this,
5 can you do it, I think you're going to get a yes about
6 ninety-nine point nine nine percent of the time. So the
7 value of that information is really suspect. And I would
8 just ask you to give it very little weight. I mean, if
9 that's the entire rehabilitation of this juror, which it
10 pretty much was, then you have her candid answers to me
11 where she was automatic death several times, mitigation
12 impaired, was very emphatic about these were her answers,
13 she gave careful thought to them, and if the
14 rehabilitation is basically can you do -- if the judge
15 said you had to do this, could you do it, I just don't
16 think that is sufficient rehabilitation nor should it be
17 allowed, quite frankly. And it will probably draw
18 objections in the future if we use that kind of if-the-
19 Judge-told-you-you-must-do-this language. So I mean, I
20 think she's impaired. She's substantially impaired based
21 on her death views just for murder, based on death murder
22 plus this aggravator, and she's mitigation impaired.
23 Thank you. And failure to strike would violate Mr.
24 Rivera's rights pursuant to the Sixth and Fourteenth
25 Amendments of the United States Constitution and Sections

1 ---

2 THE COURT: Article I.

3 MR. MCGUIRE: --- 3, 14 and 15 of Article I of
4 the South Carolina Constitution.

5 THE COURT: Very Good. Anything from the
6 State?

7 MS. ADAMS: Thank you, Your Honor. I mean,
8 briefly Judge, that's the standard. *Wainwright v. Witt*
9 says the proper standard is whether the juror's views on
10 capital punishment would prevent or substantially impair
11 the performance of his duties as a juror in accordance
12 with his instructions and his oath.

13 And again, Your Honor, he is not balancing like you
14 have asked. He is clearly trying to stake out each of
15 these jurors. I mean, clearly there's no other answer
16 but to give what these jurors are giving if you say, oh,
17 if someone committed, you know, another prior murder, an
18 intentional killing, and the death penalty is in front of
19 you, what are you going to give? But that's not the
20 standard. That's not the proper standard.

21 The proper standard is, can you listen to the
22 judge's instructions, can you consider it, can you
23 consider life, and can you consider death after you've
24 listened to all the evidence. And she clearly stated
25 that she would follow your instructions. She could vote

1 for life for no reason at all or she could vote for
2 death. But she's not going to know that until she hears
3 all the evidence.

4 So Your Honor, we move that she's qualified.

5 THE COURT: All right. Anything else?

6 MR. MCGUIRE: Yes, sir. I feel somewhat
7 compelled to respond. First off, the stake-out objection
8 is sort of a cliched objection. And we need to get a
9 fundamental understanding of what that is. Staking out
10 is a pretty detailed summary of the case, then asking
11 somebody to cast their vote. We are one hundred percent
12 not doing that. We're asking about murder, which the
13 *Morgan* case requires us to ask regarding their death
14 views on murder. And we're asking specifically the
15 aggravator, which -- obviously, because it would reveal
16 impairment if they were to say, yeah, based on that
17 aggravator, I'm automatic death.

18 Now, with regard with the balancing, I mean, I think
19 I'm actually meeting the Court more than halfway, or
20 meeting the Prosecutor's demands more than halfway,
21 because really in *Morgan*, *Morgan* doesn't say you're
22 supposed to just ask them can they consider everything
23 before you ask the question. But in *Morgan* it does say
24 you're allowed to ask, in essence, would you vote for
25 death for *Morgan*. And that's exactly what we're doing.

1 We're asking their death views on murder. And the Court
2 clearly says because if they answer in the affirmative,
3 it necessarily means that they're not going to consider
4 mitigation evidence like they should.

5 That case doesn't say you have to combine this
6 question or balance it, not in reality. You know, we
7 should get a candid answer based on their death views on
8 murder and murder plus aggravator before we really even
9 have to ask about mitigation. They can certainly go
10 there if they want. And I think I -- I mean, I think
11 really, especially with this last juror where I defined
12 mitigation for her about three times and I referenced the
13 Court's reference to mitigation about three times due to
14 the objection. When they understand it that much and
15 they're still saying they're automatic death, I think
16 you've got a real problem. But I don't think *Morgan* can
17 be read that you have to have any balancing in asking the
18 question. I think *Morgan* is pretty clear. You get to
19 ask what are your death views on murder alone? And then
20 that reveals their impairment regarding mitigation, not
21 of -- it doesn't place an obligation on me to ask them
22 about it. I think it just reveals their impairment.

23 THE COURT: Well, I'm reading *Morgan* or at
24 least as it's cited in *Powers* where there are such
25 questions would stake out the juror and pledge him to a

1 future course of action. And it's asking about this one
2 aspect of the case. General questions as to whether the
3 juror can consider mitigating circumstances as charged by
4 the judge is sufficient. And that was the only thing
5 that the Court was trying to do is -- as much as balance
6 does not seem -- is not necessarily the controlling
7 thing, it is the one thing that -- what is it -- affects
8 the ability of the juror to act.

9 I'm going to bring the juror out, and I'm going to
10 ask her one more question. And based on the answer to
11 that question -- because I do -- I've looked at her
12 questionnaire. And she has information in there, I
13 think, that is interesting. Of course, she doesn't
14 understand what the death penalty is for because it says
15 it's not the case -- it's only for cases of premeditated
16 murder and murder of children. Well, that's not the only
17 thing that the death penalty is for because there are
18 other aggravation circumstances. And sometimes
19 premeditated murder is not the death penalty. So she
20 needed to understand that. But more importantly on page
21 15, when asked about counselors, therapists,
22 psychologists, and psychiatrists, she says they can be
23 very helpful if they know their job and have a natural
24 compassion for and a real desire to help people. And
25 when she's asked about religious, moral, and

1 philosophical principles that would affect her ability to
2 vote the death penalty as a judgment in the case, she
3 says she has none and explains, I would be able to vote
4 for it if I felt it was necessary and fair, depending on
5 all information available. And that's -- again, that is
6 what a juror would -- hopefully would do.

7 But I'm going to bring her back and ask her one
8 question. Depending upon her response to that, I'll make
9 a decision as to her qualification.

10 (WHEREUPON, Potential Juror 29 entered the
11 courtroom.)

12 RE-EXAMINATION

13 BY THE COURT:

14 Q. Juror 29, I have one more question, and it will be
15 the final question. In a death penalty case, would you
16 always or automatically vote for the death penalty, even
17 though the law provides that you may impose a sentence of
18 life without parole depending upon the circumstances of a
19 particular case and the characteristics of an individual
20 defendant or for no reason at all?

21 A Would I always vote ---

22 Q. Would you always or automatically vote for the death
23 penalty even though the law provides that you may impose
24 a sentence of life without parole depending upon the
25 circumstances of a particular case and the

1 characteristics of an individual defendant?

2 A. No.

3 Q. Thank you very much.

4 A. Is that all?

5 Q. All right. No. Thank you. Considering the entire
6 voir dire, I find that Juror 29 will be fair, unbiased,
7 impartial and able to carry out the law as explained to
8 her. Furthermore, I find that the juror's beliefs or
9 attitudes toward the death penalty would not prevent or
10 substantially impair the performance of her duties as a
11 juror in accordance with the law, the Court's
12 instructions and the juror's oath.

13 So you're qualified. Now, that means that the
14 telephone number that you gave to the Clerk is still the
15 one that we would call?

16 THE POTENTIAL JUROR: (No verbal response)

17 THE COURT: All right. This process will take
18 three or four days, so sometime late in the week you'll
19 be getting a telephone call that will ask you to come in
20 at a certain time when all the jurors who have been
21 qualified will report, and then we'll select a jury from
22 that group.

23 A. Okay.

24 Q. Very Good.

25 A. Thank you.

1 Q. Thank you very much for your patience and
2 understanding today.

3 (WHEREUPON, Potential Juror 29 exited the
4 courtroom.)

5 THE COURT: All right. Anything from the State
6 from Juror Number 29?

7 MS. ADAMS: No, sir, Your Honor.

8 THE COURT: Anything from the Defense?

9 MR. MCGUIRE: Not -- my ---

10 THE COURT: Renew your objections?

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: The Court accepts all of the
13 objections previously stated, and -- accepts them, but
14 overrules them.

15 All right. Ready to go to the next one?

16 MR. MCGUIRE: Yes, sir.

17 MS. ADAMS: Yes, sir.

18 MADAM CLERK: Here's the one that filled his
19 out and brought it to us.

20 THE COURT: All right. Now, is this a new one?

21 MADAM CLERK: This is one that brought ---

22 THE COURT: Right.

23 MADAM CLERK: Yes, Your Honor.

24 THE COURT: Y'all would need a moment or two to
25 look at it?

1 MR. MCGUIRE: If we could just get maybe a
2 couple of seconds.

3 THE COURT: Certainly. Or longer if you need
4 it.

5 MS. ADAMS: He's not the next juror, Judge, I
6 don't believe.

7 MADAM CLERK: He's not the next one.

8 THE COURT: Oh.

9 MADAM CLERK: He's in this group.

10 MR. MCGUIRE: Then I'm ready.

11 MS. ADAMS: We have Number 30 and then 32.
12 Just a thought.

13 MR. MCGUIRE: I'm ready. I'm ready.

14 THE COURT: We'll y'all be able to have
15 somebody else look at these?

16 MS. ADAMS: Yes, sir.

17 THE COURT: All right. Very good. Is the
18 State ready to proceed? State ready to proceed?

19 MR. MCGUIRE: State?

20 MS. ADAMS: Oh, yes, sir. I'm sorry, Your
21 Honor.

22 THE COURT: Is the Defense ready?

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: Ask Juror 30 to join us, please.

25 (WHEREUPON, Potential Juror 30 entered the

1 courtroom.)

2 THE COURT: All right. Are you Juror 30?

3 THE POTENTIAL JUROR: Yes.

4 **POTENTIAL JUROR 30,**

5 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

6 EXAMINATION

7 BY THE COURT:

8 Q. All right. Do you recall yesterday I put all of the
9 jurors under oath? Now, do you understand that you're
10 still under oath and the oath continues throughout these
11 proceedings?

12 A. Yes, sir.

13 Q. All right. You've been furnished with a lengthy
14 list of potential witnesses in this case. I think it was
15 in the jury room for you?

16 A. Yes, sir.

17 Q. Did you look over that list?

18 A. Yes, sir.

19 Q. Did you see any names with whom you are either
20 related by blood or marriage, now or formerly, or a close
21 personal friend or business associate?

22 A. No, sir.

23 Q. Or have any relation?

24 A. No, sir.

25 Q. All right. Do you recall my instructions from

1 Monday to avoid all forms of media coverage dealing with
2 this case?

3 A. Yes, sir.

4 Q. Has this caused you any problem?

5 A. My wife asked, and I followed your directions.

6 Q. Congratulations. All right. The trial of this case
7 will last approximately ten days or maybe as long as two
8 weeks. Other than the personal inconvenience, would this
9 pose a serious danger to your health or well-being to
10 yourself or anyone who is dependant upon you?

11 A. No, sir.

12 Q. Now, among other things, we will be talking about
13 penalty today. But the mere fact that we talk about
14 penalty does not indicate anything about this Defendant
15 or any defendant. Defendants are presumed in the law to
16 be innocent. Do you understand this?

17 A. Yes, sir.

18 Q. If you were a juror in a criminal case, could you
19 listen to the law, accept and apply that law as I would
20 instruct you as the trial judge, and even though you may
21 not agree with the law or think it ought to be some other
22 way, could you follow the law as I give it to you?

23 A. Yes, sir.

24 Q. Could you decide this case based solely on the
25 evidence presented in the courtroom and disregard

1 anything you've heard, read or seen about this case?

2 A. Yes, sir.

3 Q. In a criminal case, the State has the burden of
4 proving guilt. The burden of proof for the State is
5 beyond a reasonable doubt. The Defendant has no burden
6 to prove innocence. Do you understand this?

7 A. Yes, sir.

8 Q. Or to prove his innocence. Do you understand that?

9 A. Yes, sir.

10 Q. Could you, depending upon the facts and the evidence
11 and the law as I would instruct you in a particular case,
12 find a defendant either guilty or not guilty?

13 A. Yes, sir.

14 Q. If you were a juror in a death penalty and if the
15 jury had found the defendant guilty of murder, we would
16 then move to the sentencing phase of the trial. Do you
17 understand this?

18 A. Yes.

19 Q. Now, when you hear us refer to a capital case or a
20 death penalty case, what we mean is that is a criminal
21 murder trial where the prosecutor -- in other words, the
22 State -- is seeking the death penalty. Do you understand
23 this?

24 A. Yes, sir.

25 Q. A death penalty trial is divided into two parts.

1 Part one is the guilt phase where a jury determines
2 whether the defendant is guilty or not guilty of murder.
3 Part two is the sentencing phase where a jury determines
4 the appropriate punishment. Of course, if the defendant
5 is found not guilty in the first part, that ends the
6 matter. Do you understand that?

7 A. Yes, sir.

8 Q. Therefore, if you were a juror in a trial of a
9 capital case where the jury in phase one of the trial has
10 found the defendant guilty of murder, you would then move
11 on to the phase two of the trial, which is called the
12 sentencing phase of the trial. Do you understand this?

13 A. Yes, sir.

14 Q. Now, if you were a juror in the sentencing phase --
15 that is phase two of a capital murder trial -- again,
16 where the jury has already found a defendant guilty of
17 murder, do you understand that the jury, rather than the
18 Judge, determines the sentence that the defendant will
19 receive for the crime of murder?

20 A. Yes, sir.

21 Q. In a capital sentencing trial, the jury's function
22 is to determine the appropriate punishment based upon the
23 circumstances of the crime and the characteristics of the
24 individual defendant. Do you understand that?

25 A. Yes, sir.

1 Q. Now, aggravating circumstances are facts or details
2 that, when they are present in a case, make the crime of
3 murder more serious or worse. Do you understand that?

4 A. Yes, sir.

5 Q. On the other hand, mitigating circumstances are
6 incidents, occurrences or details of a case which would
7 reduce the severity of the crime of murder. In other
8 words, may reduce the degree of responsibility for the
9 crime. Do you understand that?

10 A. Yes, sir.

11 Q. Do you also understand that the jury has two options
12 to consider regarding the sentence for murder. One
13 option is life imprisonment. And under our law in South
14 Carolina, that means until the death of the defendant
15 without the possibility of parole. And the other option
16 is death which in this state is by electrocution or
17 lethal injection. Could you, as a juror in the
18 sentencing phase, depending upon the facts including
19 relevant aggravating and mitigating circumstances and the
20 law as instructed to you, render a sentence of life
21 imprisonment?

22 A. Yes.

23 Q. On the other hand, as a juror in the sentencing
24 phase, depending upon the facts including relevant
25 aggravating and mitigating circumstances and the law as

1 instructed to you, could you render a sentence of death?

2 A. Yes.

3 Q. All right. Answer any questions the Defendant might
4 have.

5 MR. MCGUIRE: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. MCGUIRE:

8 Q. Good afternoon ---

9 A. Good afternoon.

10 Q. --- Juror 30. Because I call you by number, I'm not
11 being unfriendly or disrespectful. It's just the way we
12 have to do it.

13 A. Yeah.

14 Q. It's a little awkward for me. I hope you can
15 forgive that.

16 A. Yeah.

17 Q. Okay. I'm going to talk to you in a little bit more
18 detail about death penalty cases, capital cases, murder
19 and punishment, okay? And the Court has given you some
20 general framework and guidance. But what I'm going to do
21 is talk to you about the kind of killing, and combined
22 with aggravation, that gets you here for a capital case,
23 okay?

24 A. Okay.

25 Q. And what I'm talking about is -- first, I'm going to

1 start with murder, the definition of murder. And in
2 South Carolina murder is where a killer kills another
3 human being unlawfully with malice aforethought. What
4 that means is the killer is operating with a black and
5 malignant heart, fatally bent on evil, and deliberately
6 and intentionally takes an innocent life. In that
7 situation, what are your feelings about the death penalty
8 as the appropriate punishment?

9 A. They intended to do it? They did the crime?

10 Q Yeah. I noticed on your questionnaire you use the
11 phrase that we hear a lot in the South, and that's eye
12 for an eye.

13 A. Yes.

14 Q. And that's a phrase that resonates with you?

15 A. Yes.

16 Q. And don't let me put words in your mouth. If I say
17 something and you need to correct me, you just do that.

18 But from what I'm hearing is, if the kind of murder that
19 you're judging involves an intentional, deliberate choice
20 to kill, that it is deserving of the death penalty?

21 A. Yes.

22 Q. And would you take the position that a life in
23 prison penalty is not really severe enough to punish that
24 kind of intentional ---

25 A. To me, in a way, life in prison is ...

1 Q. Worse?

2 A. ... worse.

3 Q. I read that on your questionnaire.

4 A. I couldn't handle being in prison. If it was me ---

5 Q. Sure.

6 A. --- and I was found guilty of that kind of crime,

7 and had the choice between the two, I wouldn't want to

8 spend my days in prison.

9 Q. Okay. That presents a sort of an interesting

10 dichotomy there. Would you sentence life without parole

11 to somebody that you thought -- let's say you really

12 wanted to punish them. Would you sentence them to life

13 in prison so that they could really experience the full

14 brunt of punishment?

15 A. Nothing is really going to punish someone who kills.

16 Q. Okay.

17 A. Nothing I can do can punish them.

18 Q. There's not enough really punishment on earth

19 available for them?

20 A. No. They're not going to care what sentence you

21 pass. They're beyond that.

22 Q. Okay. Let me ask you about this. I'm going to ask

23 you to put yourself back in that situation where you're

24 judging a defendant on that deliberate, intentional

25 malice aforethought ---

1 A. Yeah.

2 Q. --- murder. And the evidence in aggravation that
3 the State would bring forward would be that the person
4 had already been convicted of another murder, and you
5 would be sitting on their second murder trial. Is life
6 in prison ever severe enough to punish that situation?

7 MS. ADAMS: Your Honor, again, he's getting
8 case specific. He's not balancing about your
9 instructions and considering aggravation ---

10 THE COURT: Restate your question, please.

11 MS. ADAMS: --- and mitigation.

12 A. What's the question?

13 Q. All right. Well, you heard the Judge talk about
14 things in mitigation that maybe make a crime less severe
15 or less bad. And then you have things that are called
16 aggravation.

17 A. Yeah.

18 Q. What I want you to put yourself in the spot where
19 the State brings forward what's called aggravation. And
20 that piece of evidence is a piece of paper that proves
21 the person you're judging had been convicted of murder
22 before.

23 A. If I didn't know the circumstances or the facts -- I
24 mean, were they the same day, same situation or was the
25 other one -- I don't know the details.

1 Q. Okay.

2 A. And I don't know the details of the other one. I
3 can't really -- yeah ---

4 Q. Well, how about ---

5 A. --- it affects your decision, but ---

6 Q. Sure.

7 A. --- hey, I don't know the details. I can't say for
8 sure one way or the other.

9 Q. Well ---

10 A. I mean ---.

11 Q. --- to give you some kind of clarification, let's
12 just assume that it's not two killings at one time, like
13 throwing a bomb in a building.

14 A. Okay.

15 MS. ADAMS: Your Honor, the juror -- asked and
16 answered.

17 THE COURT: Again, let's stay away from
18 hypotheticals. Just ask if -- as far as aggravation if
19 he found that there was something that the Court charged
20 was aggravation, and at the same time there were --
21 mitigation was established, then ask your question.

22 MR. MCGUIRE: Sure.

23 Q. Going back to that situation, it sounds like --
24 going backwards a little bit -- that your statement on
25 your questionnaire an eye for eye is that ---

1 A. Uh-huh (affirmative).

2 Q. And correct me if I'm wrong. But the way people
3 usually phrase this to me is, if you intentionally take a
4 life, you should forfeit yours.

5 A. Pretty much. I mean, if you thought it out, planned
6 it out, had time to think, that's pretty severe.

7 Q. Okay. And the Judge will tell you all murders in
8 South Carolina require that the jury find that they be
9 intentional and deliberate where the person was acting
10 with malice aforethought, and that's fatally bent on
11 evil. Is that -- in that situation, does an eye for an
12 eye seem appropriate?

13 A. Yeah, it does.

14 Q. Okay. And remembering all the stuff about what the
15 Judge said about mitigation -- and I've talked a little
16 bit about it -- is there any mitigating circumstance that
17 you could consider that would move you from the eye-for-
18 an-eye position?

19 A. Well, I don't know if you would be charged with a
20 capital crime. But if it was self-defense, defending
21 your family, that's different.

22 Q. Sure.

23 A. Or even if it was just a little old lady and you saw
24 somebody beating her and you went to her aid.

25 Q. And killed that person?

1 A. And I mean, if you throw a punch, you'd better know
2 a fraction of an inch one way or the other and you hit
3 somebody in the temple, you might kill them. And you
4 meant to go and defend that little old lady.

5 Q. Sure.

6 A. Is it murder?

7 Q. Of course, in those situations -- and the Court
8 might instruct you on that. But those situations would
9 actually be defense of yourself or defense of others.

10 A. Yeah.

11 Q. And that would be justified. That would not be
12 murder. That would actually be a not guilty verdict
13 because ---

14 A. Yeah.

15 Q. --- the person was acting justifiably. Now, we're
16 talking about unlawfully killing deliberately.

17 A. That's wrong.

18 Q. Right. And going back to my question was, is there
19 any mitigating factor or circumstance that you can think
20 of or ---

21 A. If somebody is mentally unstable or if they're on
22 drugs, alcohol. I mean, those are not excuses for the
23 act, but they will affect somebody, the way they act.

24 Q. Now, assuming something like that, but the person
25 still knew right from wrong, knew what they were doing,

1 are they still relevant, those factors?

2 MS. ADAMS: Your Honor, asked and answered, I
3 think. He's trying to stake this juror out ---

4 THE COURT: Let's not ---

5 MS. ADAMS: --- and commit him down a
6 particular road.

7 THE COURT: Let's not go farther than is
8 necessary. Let's move on to something else.

9 Q. In that deliberate, intentional killing of an
10 innocent person, are these factors relevant to you?

11 A. Yeah, they are.

12 Q. Okay. And I want to talk to you a little bit about
13 how the law works in the sentencing phase of a capital
14 case. Because of the complexity and the uniqueness of
15 it, we're entitled to talk you briefly if you can follow
16 the law basically. And that is, in a regular case like a
17 civil case, like two cars coming together and crash and
18 people are suing over money. They might be arguing over
19 the right-of-way. And it's kind of a right or wrong
20 answer. Somebody had the right-of- way; somebody didn't.
21 The law in a sentencing case, the way a person decides
22 for themselves what's appropriate -- and it's not right
23 or wrong -- is described as their own moral individual
24 judgement. Is that a principle you're comfortable with?

25 A. I'm not sure I follow you.

1 Q. What I'm leading up to is that in that car wreck
2 case, there's a requirement that everybody be unanimous
3 and see the same thing, agree on the same fact and agree
4 that there's a right or wrong answer. It's not like that
5 in a capital case because with regard to, say, mitigation
6 evidence, some of those factors you talked about, one
7 juror over here might say, well, you know, just to use
8 your examples, drugs might be something that made a
9 difference to this person, and maybe a mental illness
10 issue over here. Somebody else said though for me, I'm
11 not going to vote for death because of that.

12 MS. ADAMS: Your Honor ---

13 Q. Those people don't even have to agree that the same
14 evidence exists. That's the law.

15 MS. ADAMS: Your Honor, he's ---

16 THE COURT: I'm not sure if that is the law ---

17 MS. ADAMS: I'm don't think it is either.

18 THE COURT: --- because you're completely off
19 from what we're concerned about here. We're talking
20 about a murder trial ---

21 MR. MCGUIRE: Sure.

22 THE COURT: --- not a hypothetical automobile
23 collision.

24 MR. MCGUIRE: I understand. I'm just using it
25 as an example. I'll move on.

1 THE COURT: Well, I believe that's what you
2 call a hypothetical. So let's just ---

3 MR. MCGUIRE: I agree with that. I agree with
4 that, Judge.

5 THE COURT: Thank you.

6 Q. And what I'm getting at is in something so important
7 as to take another human beings's life, the law does
8 allow for different jurors to find mitigation evidence
9 where they see it. They don't have to be unanimous with
10 that. Is that a principle you're okay with?

11 A. You're dealing with humans on a jury. There's going
12 to be differences of opinions.

13 Q. Right. And can you respect that?

14 A. Yeah.

15 Q. And the way the law describes it, if it would do
16 harm to one's conscience to give up their own moral
17 individual judgement, that would be wrong. If you saw
18 something unfair like bullying in the jury room, could
19 you put a stop to that and maybe send a note out to the
20 Judge saying it's not fair?

21 A. Yeah.

22 Q. That's all I have for you. Thank you.

23 THE COURT: All right.

24 MS. ADAMS: Thank you, Your Honor. May it
25 please the Court.

1 CROSS-EXAMINATION

2 BY MS. ADAMS:

3 Q. How are you?

4 A. Good.

5 Q. My name is Chrissy Adams and I'm the Solicitor for
6 the Tenth Circuit. And I want to ask you a few
7 questions. What we're trying to do here today is not put
8 words into your mouth. We're trying to figure out if you
9 can be fair to the State and to the Defendant ---

10 A. Right.

11 Q. --- in this case and just see what your views are
12 about the death penalty. And there are no right answers,
13 and there are no wrong answers.

14 A. Okay.

15 Q. Okay? Every murder in South Carolina is not
16 eligible for the death penalty. Did you know that?

17 A. No, I didn't know that.

18 Q. A lot of people don't. It's okay. Every murder is
19 not. And every murder -- murder in and of itself is an
20 intentional, deliberate killing with malice aforethought
21 of another.

22 A. Yeah.

23 Q. Okay. So there -- when we seek the death penalty,
24 we, as in the State, have to prove an aggravating
25 circumstance to you before you can even decide between

1 life or death. So we are going to present some sort of
2 aggravating circumstance, and you will have to find that
3 we have done that beyond a reasonable doubt before you
4 can decide, okay? Does that make sense? If it doesn't,
5 tell me.

6 A. The -- that there's two parts. The aggravating part
7 ---

8 Q. Right.

9 A. --- will come in the second part?

10 Q. Right.

11 A. Okay.

12 Q. There's two parts.

13 A. Okay.

14 Q. There's basically guilt or innocence ---

15 A. Okay.

16 Q. --- whether the defendant committed the murder in
17 question or not.

18 A. Okay.

19 Q. Okay. Just guilt or innocence. And then the second
20 part is strictly punishment.

21 A. Okay.

22 Q. And we must prove to you an aggravating circumstance
23 in that for you to decide whether life or death is
24 appropriate.

25 A. Okay.

1 Q. And the Judge is going to instruct you that you must
2 consider all the evidence in aggravation and all the
3 evidence in mitigation before you make a determination if
4 life is appropriate or if death is appropriate. Can you
5 do that?

6 A. Yeah.

7 Q. Okay. So you would want to consider all of it?

8 A. Yeah.

9 Q. Okay. And after you consider aggravation -- so it's
10 going to be an aggravated murder -- and you consider
11 mitigation, if any, could you impose a sentence of life
12 without parole if you felt that was appropriate?

13 A. Yeah, I could.

14 Q. Okay. And could you impose a sentence of death if
15 you felt that that was appropriate?

16 A. Yes, I could.

17 Q. Okay. And now, not only consider it, but you would
18 actually have to vote for the death penalty. Could you
19 vote for the death penalty if you felt it was
20 appropriate?

21 A. Yes.

22 Q. Okay. And that actually means that you would write
23 your name on a sentence sheet that would be public record
24 that would allow the State to execute a defendant.

25 A. Yes.

1 Q. Okay. And you would have no problem signing your
2 name with the other eleven jurors?

3 A. No.

4 Q. All right. Now, I want -- and the Judge is also
5 going to instruct you too that you could find life
6 without parole is appropriate for no reason at all.
7 Would you follow that as well? In other words, if you
8 felt, after hearing all the State's evidence and the
9 Defense, if any, mitigation, you could find for life
10 because you just felt life was appropriate. Could you
11 follow that instruction?

12 A. If we decided guilty?

13 Q. Guilt is not an issue. He committed a murder.
14 You've already -- we're kind of jumping the gun.

15 A. Okay.

16 Q. We're getting to the second phase, kind of -- we're
17 putting the cart before the horse, so to speak.

18 A. Oh, okay.

19 Q. And the reason we do that is just to make sure that
20 you can be fair and impartial in rendering a verdict to
21 the State and to the Defendant.

22 A. You're asking could I say life without parole?

23 Q. Right. Correct. Yes..

24 A. I could.

25 Q. Okay. On your questionnaire -- I just want to ask

1 you a couple of questions about that. When you put down
2 what is your opinion regarding the sentence of life
3 without parole and why do you feel that way? You said
4 waste of a life. And I just wanted -- if you could
5 explain that to us?

6 A. I mean, I couldn't face it myself.

7 Q. You couldn't face life without parole?

8 A. Yeah.

9 Q. Okay. But is that a personal decision?

10 A. That's personal.

11 Q. Okay.

12 A. That's my opinion. That's me.

13 Q. For you.

14 A. For me.

15 Q. Like if you were facing life without parole or the
16 death penalty?

17 A. Yeah.

18 Q. Well, let me ask you this. Is that feeling so
19 strong that it would substantially impair your ability to
20 sentence the Defendant to the death penalty?

21 A. No.

22 Q. Okay. So you would look at the circumstances in
23 aggravation and mitigation, and if it was appropriate
24 under the circumstances you hear in this courtroom, you
25 could do either one?

1 A. The trial is not about me.

2 Q. Right. Okay. Exactly. Okay.

3 So even though you feel that life at some point --
4 so life is more severe for you personally?

5 A. Yes.

6 Q. Okay. Okay. But you could consider all aggravation
7 and mitigation and vote for life or death, whatever you
8 felt was appropriate?

9 A. Whatever the facts showed me.

10 Q. And you would follow the Judge's instructions?

11 A. Yes.

12 Q. Thank you very much.

13 THE COURT: Anything else?

14 MR. MCGUIRE: Just a small legal matter, Judge.

15 THE COURT: I have one more question.

16 RE-EXAMINATION

17 BY THE COURT:

18 Q. In a death penalty case, would you always or
19 automatically vote for the death penalty even though the
20 law provides that you may impose a sentence of life
21 without parole depending upon the circumstances of a
22 particular case and the characteristics of an individual
23 defendant?

24 A. I would not automatically vote for the death
25 penalty.

1 THE COURT: Very good. If you would, retire --
2 I need to take a little bit -- or go with bailiff. I
3 need to take up a certain matter with the attorneys.

4 (WHEREUPON, Potential Juror 30 exited the
5 courtroom.)

6 THE COURT: All right. Anything from the
7 Defendant? I recognize the Defendant.

8 MR. MCGUIRE: Yes, sir, Judge, just very
9 briefly. Move to strike for cause for the reasons I've
10 stated, the legal reasons I've stated, on other jurors.
11 Specifically and factually with regard to this juror, his
12 eye-for-an-eye views of, you know, basically if it's an
13 intentional ---

14 THE COURT: What have we got?

15 MR. MCGUIRE: The door opened.

16 THE COURT: Oh, let's close the door.

17 THE BAILIFF: Are you ready to bring him in?

18 THE COURT: No, sir. I've got to take up these
19 matters with the -- no. Just take him in the ---

20 THE BAILIFF: I've got him over in this room.
21 The juror had to go to the restroom and I was watching
22 out here and ...

23 THE COURT: Oh, all right. Well, thank you.
24 Just close the door. Nobody needs to hear what's going
25 on in here. Thank you, sir.

1 All right.

2 MR. MCGUIRE: Your Honor, I was pretty much
3 finished. It's just his eye-for-an-eye views where he
4 indicated agreement if it was an intentional deliberate
5 act, eye-for-an-eye resonated with him. He didn't seem
6 particular impaired with regard to mitigation. It seemed
7 like he would consider some factors that he volunteered
8 up himself. So I don't have an argument with regard to
9 can he consider mitigation, just his eye-for-an-eye view
10 which he stated in the earlier part of the voir dire.

11 THE COURT: Anything from the State?

12 MS. ADAMS: Your Honor, just the same argument.
13 I think he clearly stated that he could consider and vote
14 for either and follow your instructions. And that some
15 of his answers in here, they were personal to him, but he
16 could set those personal beliefs aside and follow the
17 instructions of the Court and determine the appropriate
18 sentence based on what he hears in this courtroom.

19 THE COURT: One of his answers was rather
20 telling to me. When he was asked something about if
21 somebody committed murder how would you punish them or
22 something like that, or of that nature, he said, there's
23 nothing I can do to punish them. In other words, he
24 takes it more of a -- at least my impression was that he
25 takes it more of a responsibility rather than a personal

1 attitude.

2 Moreover, as you pointed out, when asked about
3 mitigation, he was asked something of the -- well, first
4 of all, he says he didn't know the details of this case,
5 so he wasn't going to make a decision. But when asked
6 about -- I think it was even the automobile accident
7 scenario -- that mental stability or drug or alcohol,
8 they don't excuse the act, they just affect the act. And
9 he said that was relevant to him.

10 I find that he's imminently qualified. All right.
11 So I overrule your exception. All right. For your
12 motion.

13 All right. Ask the juror to join us, please.

14 MR. MCGUIRE: Your Honor?

15 THE COURT: Yes, sir.

16 MR. MCGUIRE: He's not here yet. I was just
17 going to say, after you tell him he's qualified, can we
18 take a short break?

19 THE COURT: Sure. All right. And, also,
20 during the break, I'd like you to look at 33.

21 MS. ADAMS: Yes, sir.

22 THE COURT: I've just gone over his
23 questionnaire, and I think it will shorten things too.

24 MR. MCGUIRE: I've already looked at it.

25 THE COURT: Now we need the juror.

1 (WHEREUPON, Potential Juror 30 entered the
2 courtroom.)

3 THE COURT: All right. Juror 30, considering
4 the entire voir dire, I find that you will be fair,
5 unbiased, impartial and able to carry out the law as
6 explained to you. Furthermore, I find that your beliefs
7 or attitudes towards the death penalty would not prevent
8 or substantially impair the performance of your duties as
9 a juror in accordance with the law, the Court's
10 instructions and your oath as a juror.

11 So I'm going to excuse you for the balance of the
12 day. And you did give the telephone number that you can
13 be reached to the Clerk?

14 THE POTENTIAL JUROR: Yes, sir.

15 THE COURT: All right. She'll be in touch with
16 you. It'll probably be three or four days before we are
17 finally ready there.

18 THE POTENTIAL JUROR: Okay.

19 THE COURT: All right. So -- but then we'll
20 call you back to come in with the rest of the those who
21 are qualified.

22 THE POTENTIAL JUROR: Okay.

23 THE COURT: Very Good. Thank you very much.

24 THE POTENTIAL JUROR: Thank you, sir.

25 THE COURT: I appreciate your attendance today

1 and your patience with the Court. Thank you.

2 (WHEREUPON, Potential Juror 30 exited the
3 courtroom.)

4 THE COURT: All right. Let's take a short
5 break. But now you realize -- I didn't, at least I
6 didn't -- that we still have half a panel to go before we
7 even get to the last panel.

8 MS BYFORD: Yes, sir.

9 THE COURT: All right. So let's take as short
10 as we can. Oh, but do look at 33.

11 MS. ADAMS: We have, Judge. Thank you.

12 MR. DELGADO: Yes, sir, we have.

13 (WHEREUPON, court stood at recess for a short
14 break.)

15 THE COURT: Is someone getting 33?

16 (WHEREUPON, Potential Juror 33 entered the
17 courtroom.)

18 THE COURT: All right. Are you Juror 33?

19 THE POTENTIAL JUROR: Yes, sir.

20 **POTENTIAL JUROR 33,**

21 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

22 EXAMINATION

23 BY THE COURT:

24 Q. You will recall yesterday I put all jurors under
25 oath. Now, do you understand that you're still under

1 oath and the oath continues throughout these proceedings?

2 A. Yes, sir.

3 Q. Now, you were given a witness list back in the jury
4 room. Have you had a chance to look at it?

5 A. Yes, sir.

6 Q. Or these are potential witnesses. They may not be
7 called, but they could be called. All right. Are you
8 related by blood or marriage or close personal friend,
9 business associate or any -- have any relationship with
10 any of the potential witnesses in this case?

11 A. No, sir.

12 Q. Do you also recall my instructions from Monday to
13 avoid all forms of media coverage during this case? Has
14 that caused any problem to you?

15 A. No, sir.

16 Q. All right. Now, the trial of this case will last
17 approximately seven to ten days. Other than the personal
18 inconvenience, would this pose any serious danger to the
19 health or well-being of yourself or anyone dependent upon
20 you?

21 A. No, sir.

22 Q. Among other things we'll be talking about this
23 afternoon will be penalty. But the mere fact that we
24 talk about penalty does not indicate anything about this
25 Defendant or any defendant. Defendants are presumed in

1 the law to be innocent. Do you understand this?

2 A. Yes, sir.

3 Q. If you were a juror in a criminal case, could you
4 listen to the law, accept and apply the law as I would
5 instruct you as the Court, even though you do not agree
6 with that law or think it ought to be some other way?
7 Could you accept and apply the law as I give it to you?

8 A. Yes, sir.

9 Q. Could you decide this case based solely on the
10 evidence presented in this courtroom and disregard
11 anything you may have heard, read or seen about this
12 case?

13 A. Yes, sir.

14 Q. In a criminal case, the State has the burden of
15 proving guilt. The burden of proof for the State is
16 beyond a reasonable doubt. The defendant has no burden
17 to prove innocence. Do you understand this?

18 A. Yes, sir.

19 Q. Could you, depending on the facts and evidence and
20 the law as I would instruct you in a particular case,
21 find a defendant either guilty or not guilty?

22 A. Yes, sir.

23 Q. If you were a juror in a death penalty case, and if
24 the jury had found the defendant guilty of murder, you
25 would then move to the sentencing phase of the trial. Do

1 you understand this?

2 A. Yes, sir.

3 Q. When you hear us refer to a capital case or a death
4 penalty case, what we mean is that it is a criminal
5 murder trial where the prosecutor -- in other words, the
6 State -- is seeking the death penalty. Do you understand
7 this?

8 A. Yes, sir.

9 Q. A death penalty trial is divided into two parts.
10 Part one is the guilt phase where a jury determines
11 whether the defendant is guilty or not guilty of murder.
12 Part two is the sentencing phase where the jury
13 determines the appropriate punishment. Of course, if the
14 defendant is found not guilty that ends the matter. Do
15 you understand that?

16 A. Yes, sir.

17 Q. Therefore, if you were a juror in a trial of a
18 capital case, where the jury in phase one of the trial
19 has found the defendant guilty of murder, you would then
20 move on to the phase two of the trial which is called the
21 sentencing phase of the trial. Do you understand this?

22 A. Yes, sir.

23 Q. Now, if you were a juror in the sentencing phase --
24 that is phase two of a capital murder trial -- again,
25 where a jury has already found the defendant guilty of

1 murder, do you understand that the jury, rather than the
2 Judge, determines the sentence that the defendant will
3 receive for the crime of murder?

4 A. Yes, sir.

5 Q. In a capital sentencing trial, the jury's function
6 is to determine the appropriate punishment based upon the
7 circumstances of the crime and the characteristics of the
8 individual defendant. Do you understand that?

9 A. Yes, sir.

10 Q. Now, aggravating circumstances are facts or details
11 that, when they are present in a case, make the crime of
12 murder more serious or worse. On the other hand,
13 mitigating circumstances are incidents, occurrences or
14 details of the case that would reduce the severity of the
15 crime of murder. In other words, may reduce the degree
16 of responsibility for the crime. Do you understand this?

17 A. Yes, sir.

18 Q. Do you also understand that the trial -- the jury
19 has two options to consider regarding the sentence for
20 murder. One option is life imprisonment. And the other
21 option is death, which in this state is by electrocution
22 or lethal injection. Do you understand that?

23 A. Yes, sir.

24 Q. Could you, as a juror in the sentencing phase,
25 depending upon the facts including relevant aggravating

1 and mitigating circumstances and the law as I instruct it
2 to you, render a sentence of life imprisonment, which in
3 this state means until the death of the Defendant without
4 that the possibility of parole? Could you, under the
5 proper circumstances as a juror, depending upon the facts
6 including relevant and aggravating and mitigating
7 circumstances and the law as I instruct it to you render
8 a sentence of life imprisonment?

9 A. Yes, sir.

10 Q. On the other hand, as a juror in the sentencing
11 phase, depending upon the facts including relevant
12 aggravating and mitigating circumstance and the law as I
13 would instruct it to you, could you render a sentence of
14 death?

15 A. Yes, sir.

16 Q. If you would, please, answer any questions the
17 Defense attorneys may have.

18 MR. MCGUIRE: Your Honor, I have no questions
19 at this time. I want to hold my questions in response.

20 THE COURT: All right. Any questions from the
21 State?

22 MS. ADAMS: Yes, Your Honor, we do.

23 DIRECT EXAMINATION

24 BY MR. CAMPBELL:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. I have to call you Number 33 ---

3 A. Yes, sir.

4 Q. --- because, you know, in this situation -- I think
5 you heard yesterday -- we can't call you by your name in
6 this situation. I'm Rame Campbell. I'm the Assistant
7 Solicitor, one of the people that's trying this case
8 along with Solicitor Chrissy Adams and Assistant
9 Solicitor Jen Byford. And what we're here -- we're just
10 trying to find out your views and where you stand, okay?
11 It's no right or wrong answers. We're just trying to get
12 some feedback to help us, both sides, us and the Defense,
13 decide whether or not you can be a fair and impartial
14 juror to both us, the State, and the Defense. You
15 understand that?

16 A. Yes, sir.

17 Q. Okay. And normally this stuff we don't talk about.
18 If I ran into you in the grocery store, I'm not going to
19 stop and talk to you about, hey, tell me about what your
20 views of the death penalty are. You know, we're going to
21 talk football or something like that. And so this is
22 kind of out of the ordinary. So if I say anything that
23 you don't understand, just kind of let me know, okay?

24 A. Yes, sir.

25 Q. I think you stated to the Judge you know nothing

- 1 about the case?
- 2 A. No, sir.
- 3 Q. Never heard about it through any media outlets?
- 4 A. No, sir.
- 5 Q. Okay. And you did fill out this jury information
- 6 form. I believe you did that last night?
- 7 A. Yes, sir.
- 8 Q. And that's basically the first time you sat down and
- 9 even looked at it?
- 10 A. Yes, sir.
- 11 Q. Nothing -- I believe you mentioned you never even
- 12 thought about the death penalty; is that correct?
- 13 A. Pretty much so. I do drag racing. That's my deal.
- 14 Q. Drag racing?
- 15 A. Yes, sir.
- 16 Q. Okay.
- 17 A. I don't pay any attention to the news. I don't
- 18 watch it.
- 19 Q. Well, of course, you know, the trial of this case
- 20 isn't exactly a drag race.
- 21 A. Yes, sir. I understand that.
- 22 Q. Not eight point oh two seconds here. It's going to
- 23 take a long time, ten to fourteen days. And since you've
- 24 had an opportunity to look at this, have you reflected
- 25 upon what you've filled out or anything? Has it changed

1 your perception of why you're here today?

2 A. No, sir.

3 Q. And I believe you put down here -- you circled

4 you're a number three on this list. I don't know if you

5 recall what that means.

6 A. No.

7 Q. I can tell you.

8 A. Yeah. I don't know right offhand.

9 Q. You've put down, I don't believe in the death
10 penalty. Is that still your position?

11 A. Under certain circumstances. It all depends on the
12 circumstances.

13 Q. And when you're talking about the circumstances, is
14 there like a certain amount, a typical -- is there --
15 what, in your opinion, in your mind, would change it from
16 life to death?

17 A. The action that was taken to take someone's life.

18 Q. And do you know in South Carolina all cases are
19 death penalty qualified under a murder case. Do you
20 understand that?

21 A. Yeah, I understand.

22 Q. And we, as the State, as the Judge was telling you,
23 have to prove the aggravating circumstance. In this case
24 it was a prior conviction for murder. And you've got to
25 take that into consideration along with any other

1 mitigation that is given in order to base your decision
2 when you're back in the jury room. You understand that?

3 A. Yes, sir.

4 Q. Okay. Now, based upon your views, do you think you
5 could fairly -- or let me rephrase that. Could you
6 listen to the evidence that is presented on the stand and
7 render a verdict, either one, for life -- could you do
8 that if the facts and circumstances warranted what you
9 heard through the evidence?

10 A. Yes, sir.

11 Q. And how about if you heard evidence and facts, could
12 you give a death sentence?

13 A. I believe so. Yes, sir.

14 Q. Now, when you say you believe, could you do it?

15 A. Yes, sir. I think I could.

16 Q. And I think you stated earlier, a while ago, that if
17 the facts warranted it, you could vote for death?

18 A. Yes, sir.

19 Q. Do you understand -- and I don't know if you even
20 know this. But in South Carolina if you decide on a
21 verdict of death, you have to sign your name to a verdict
22 form.

23 A. I didn't realize that. No, sir.

24 Q. Okay. And that form, which is a public document --
25 will be down in the courthouse records downstairs for

1 anybody to look at -- will state that, I, Juror Number
2 33, hereby vote for death in this case. Could you --
3 knowing that, could you sign that verdict form after you
4 have heard all the evidence in the case?

5 A. Yes, sir.

6 Q. Okay. And would you wait until you heard all the
7 evidence to determine whether or not you voted for life
8 or death?

9 A. Yes, sir.

10 Q. And could you follow the Judges instructions
11 regarding how you apply what you heard to the law?

12 A. Yes, sir.

13 MR. CAMPBELL: Court's indulgence, please.

14 Q. Now, one thing. When you're looking at -- when you
15 circled this number -- you're number 3 in this case --
16 when you circled it, it said, although I do not believe
17 in the death penalty ever ought to be imposed, in that
18 type of -- when you signed that or circled this, does
19 that opinion -- does that substantially impair your
20 ability to follow the Court's instructions ---

21 A. No, sir.

22 Q. --- and render a verdict?

23 A. No, sir.

24 Q. So based on the proper circumstances, facts and
25 evidence, you could render a verdict of death?

1 A. Yes, sir.

2 Q. As well as a verdict for life?

3 A. Right.. Yes, sir.

4 Q. Because you understand in South -- I don't know if
5 you know. But in South Carolina you don't have to give a
6 reason. you could vote for death if you wanted to for no
7 reason at all. Do you understand that?

8 A. Okay. I didn't realize that. Yes, sir.

9 Q. The law doesn't impose you that you have to do --
10 you can go either or. Do you understand that?

11 A. Yes, sir.

12 Q. Okay. No further questions.

13 THE COURT: All right. Defense?

14 MR. MCGUIRE: Thank you, Judge. Very briefly.

15 CROSS-EXAMINATION

16 BY MR. MCGUIRE:

17 Q. Juror Number 33, it's awkward for us to refer to
18 guys by numbers.

19 A. Yes, sir.

20 Q. But bare with us if you would. I'm just going to
21 talk to you briefly about the law as well, just like the
22 Prosecutor. And did you know that in South Carolina
23 there's never a case that automatically requires a death
24 verdict. Did you know that?

25 A. No, I didn't realize that, sir.

1 Q. Okay. I mean, because a lot of people show up and
2 they think, well, if the State proves A, B, C, it kind of
3 leads you down the road where death is the verdict. But
4 in South Carolina that's absolutely not the case. In
5 fact, the deck is stacked the opposite way. There's a
6 first phase. And that is, did the person commit murder
7 or not. Then there's what's called a penalty phase. A
8 whole separate trial basically. And the State would have
9 to prove aggravation to you. And the Defense could or
10 could not present mitigation evidence. And at the end of
11 that phase, the Judge would tell you the whole jury would
12 have to agree that the aggravation existed, a unanimous
13 jury.

14 With regard to mitigation, it's not unanimous. A
15 big famous case called *Maryland Mills*, and it says each
16 individual juror has the right to find and see and give
17 effect to mitigation evidence wherever they find it,
18 either in the facts or in the defendant's background or
19 character. Is that a principle you're okay with?

20 A. Yes, sir.

21 Q. Did you know that before coming here?

22 A. No, sir.

23 Q. You heard it for the first time from me?

24 A. Yes, sir.

25 Q. Okay. But you're okay with that principle?

1 A. Yes, sir.

2 Q. So not only are you never required to vote death
3 ever, each individual juror basically comes up with their
4 own verdict. Is that a principle you're okay with?

5 A. Yes, sir.

6 Q. And in something so important as to kill another
7 human being, would you be okay ending the day agreeing to
8 disagree?

9 A. Could you repeat that?

10 Q. Could you, and your fellow jurors, could y'all agree
11 to disagree about what the verdict should be regarding
12 death or life. Just call it a day. You know what, we
13 just disagree about that. And could you be okay with
14 that?

15 A. Yes, sir.

16 Q. Okay.

17 A. Through discussion, yes.

18 Q. Did you know the law allows for that?

19 A. No, sir.

20 Q. Okay. Just learned it right now?

21 A. Yes, sir.

22 Q. Okay.

23 MR. MCGUIRE: That's all I have.

24 MR. CAMPBELL: Your Honor, I object.

25 THE COURT: On?

1 MR. CAMPBELL: I've got some follow-ups.

2 THE COURT: No problem. Oh, you've got a
3 question?

4 REDIRECT EXAMINATION

5 BY MR. CAMPBELL:

6 Q. Mr. 33, just a couple of little follow-ups here. As
7 Mr. McGuire was talking about jury deliberations, have
8 you ever been involved in a jury panel before?

9 A. No, sir.

10 Q. Okay. And you understand when a jury -- there's
11 going to be twelve people back there talking about this
12 case. And it's a give-and-take. You would agree with
13 that?

14 A. Yes, sir.

15 Q. You give your opinion and someone else gives their
16 opinion. And you could fairly listen to everybody's
17 opinion and go with what they decide in the case; is that
18 right?

19 A. If you agreed with them, yes.

20 Q. What if you disagreed with them?

21 A. I'd enforce my opinion.

22 Q. And would you change it for any shape, way, or form?

23 A. No, sir.

24 Q. And you would stick to whatever your opinion is?

25 A. Yes, sir.

1 Q. And could you fairly listen to everybody else and
2 their opinions, and if they disagreed with you, could you
3 go along with that?

4 A. Yes, sir.

5 MR. MCGUIRE: Nothing further. Thank you.

6 THE COURT: All right. Anything from the
7 Defense?

8 MR. MCGUIRE: No, sir.

9 THE COURT: Anything from the State?

10 MS. ADAMS: No, sir, Your Honor.

11 THE COURT: Considering the entire voir dire, I
12 find that Juror 33 will be fair, unbiased, impartial and
13 able to carry out the law as explained to him.
14 Furthermore, I find that the juror's beliefs or attitudes
15 towards the death penalty would not prevent or
16 substantially impair the performance of his duties as a
17 juror in accordance with the law, the Court's
18 instructions and the juror's oath. So I do find Juror 33
19 qualified.

20 Now, I believe you've given the Clerk a telephone
21 number where you can be reached?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: All right. It will be three or
24 four days, maybe even longer, before we'll finally have
25 enough people qualified for the panel. And at that time,

1 we'll call you and everyone will come in. And from that
2 panel, we will select the jury for that will serve in
3 this case.

4 So I thank you very much not only for the patience,
5 but -- what is it -- being here today. Thank you so
6 much, sir.

7 THE POTENTIAL JUROR: Thank you.

8 THE COURT: And I look forward to working with
9 you.

10 (WHEREUPON, Potential Juror 33 exited the
11 courtroom.)

12 THE COURT: All right. Anything on the next
13 one? All right. Is there anything about the next one,
14 34? I mean, we're going to go ahead and do it.

15 MS. ADAMS: Right. No, sir.

16 MR. MCGUIRE: We're ready.

17 THE COURT: All right. Ask Number 34 to come
18 in, please.

19 (WHEREUPON, Potential Juror 34 entered the
20 courtroom.)

21 THE COURT: I believe you are Juror Number 34?

22 THE POTENTIAL JUROR: Yes, I am.

23 **POTENTIAL JUROR 34,**

24 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

25 **EXAMINATION**

1 BY THE COURT:

2 Q. You will recall yesterday I put all the jurors under
3 oath. Now, do you understand that you are still under
4 oath and this oath continues throughout these
5 proceedings?

6 A. Yes, I do.

7 Q. All right. Also, you were -- a jury list -- or a
8 list of potential witnesses were given to the jurors in
9 the jury room. Did you see that list?

10 A. Yes, I did.

11 Q. Did you recognize or did you know or do you know any
12 on that list that may be related to you by blood or
13 marriage, close personal friend, business associate or
14 any sort of relationship that you would have with them?

15 A. No, I don't.

16 Q. Do you also recall my instructions from Monday to
17 avoid all forms of media coverage dealing with this case.
18 Do you recall that?

19 A. Yes, I do.

20 Q. Has that caused you any problem?

21 A. No, it hasn't.

22 Q. The trial of this case will last approximately ten
23 days. Other than the personal inconvenience, would this
24 pose a serious danger to the health or well-being of
25 yourself or anyone who is dependant upon you?

1 A. No, it wouldn't.

2 Q. Among other things, we'll be talking about penalty
3 today. But the mere fact that we talk about penalty does
4 not indicate anything about the Defendant or any
5 defendants. Defendants are presumed to be innocent under
6 our law. Do you understand this?

7 A. Yes, I do.

8 Q. If you were a juror in a criminal case, could you
9 listen to the law, accept and apply that law as I would
10 instruct it to you, even though you may not agree with
11 the law or think it ought to be some other way?

12 A. Yes, I could.

13 Q. Could you decide this case based solely on the
14 evidence presented in this courtroom and disregard
15 anything that you may have heard, read or seen about the
16 case?

17 A. Yes, I could.

18 Q. In a criminal case, the State has the burden of
19 proving guilt. The burden of proof for the State is
20 beyond a reasonable doubt. The defendant has no burden
21 to prove innocence. Do you understand this?

22 A. Yes, I do.

23 Q. Could you, depending on the facts and the evidence
24 and the law as -- excuse me -- depending on the facts and
25 evidence and the law as I would instruct you in a

1 particular case, find the defendant either guilty or not
2 guilty?

3 A. Yes, I could.

4 Q. If you were a juror in a death penalty case, and if
5 the jury had found the guilty of murder, we would then
6 move to the sentencing phase of the trial. Do you
7 understand this?

8 A. Yes, I do.

9 Q. When you hear us refer to a capital case or a death
10 penalty case, what we mean is it is a criminal murder
11 trial where the prosecutor -- in other words the State --
12 is seeking the death penalty. Do you understand this?

13 A. Yes, I do.

14 Q. A death penalty is divided into -- a death penalty
15 trial is divided into two parts. One is the guilt phase
16 where a jury determines whether the defendant is guilty
17 or not guilty of the crime of murder. Part two is the
18 sentencing phase where the jury determines the
19 appropriate punishment. Of course, if the defendant is
20 found not guilty, that ends the matter. Therefore, if
21 you were a juror in the trial of a capital case where the
22 jury in phase one of the trial has found the defendant
23 guilty of murder, you would then move on to phase two of
24 the trial which is called the sentencing phase of the
25 trial. Do you understand this?

1 A. Yes, I do.

2 Q. Now, if you were a juror in the sentencing phase,
3 that is phase two of the capital murder trial -- again
4 where a juror has already found the defendant guilty of
5 murder -- do you understand that the jury, rather than
6 the Judge, determines the sentence that the defendant
7 will receive for the crime of murder?

8 A. I do.

9 Q. In a capital sentencing trial, the jury's function
10 is to determine the appropriate punishment based upon the
11 facts and the circumstances of the crime and the
12 characteristics of the individual defendant. Do you
13 understand that?

14 A. Yes, I do.

15 Q. Now, aggravating circumstances are facts or details
16 that, when they are present in a case, make the crime of
17 murder more serious or worse. On the other hand,
18 mitigating circumstances are incidents, occurrences or
19 details of a case that would reduce the severity of the
20 crime of murder. In other words, may reduce the degree
21 of responsibility for the crime. Do you understand this?

22 A. Yes, I do.

23 Q. Do you also understand the jury has two options to
24 consider regarding the sentence for murder. One option
25 is life imprisonment, and then the other option is death,

1 which in this state is by electrocution or lethal
2 injection. Do you understand?

3 A. Yes.

4 Q. Could you, as a juror in the sentencing phase,
5 depending upon the facts including relevant aggravating
6 and mitigating circumstances and the law as instructed to
7 you, render a sentence of life imprisonment, which means
8 until the death of the defendant and without possibility
9 of parole?

10 A. Yes.

11 Q. On the other hand, as a juror in the sentencing
12 phase, depending upon the facts including relevant
13 aggravating and mitigating circumstances and the law as
14 instructed to you, could you render a sentence of death?

15 A. Yes.

16 Q. All right. Answer any questions that the Defense
17 attorney might have.

18 MR. MCGUIRE: Thank you, Your Honor. I have no
19 questions at this time. I'll reserve my questions in
20 response.

21 THE COURT: Very well.

22 Madam Solicitor?

23 MS. ADAMS: Thank you.

24 DIRECT EXAMINATION

25 BY MS. ADAMS:

1 Q. All right. Good afternoon. How are you?

2 A. I'm fine.

3 Q. Good. Thank you for being patient. I know you've
4 been here for a while, and we do appreciate it. My name
5 is Chrissy Adams and I'm the Solicitor for the Tenth
6 Circuit. And with me is Jenn Byford and Rame Campbell.
7 And the purpose of why you're here and why we have the
8 opportunity to talk to you is to determine whether or not
9 you can be fair and impartial to both the State and the
10 Defense. And as the Judge told you earlier, this is a
11 two-part ---

12 A. Right.

13 Q. --- two-phase trial. And we're kind of putting the
14 cart before the horse here and, you know, assuming that
15 the Defendant is found guilty of murder. We're kind of
16 jumping the gun and going into the penalty phase where
17 we're just going to decide between if life is appropriate
18 or death is appropriate. Okay.

19 Did you know that not every murder in South Carolina
20 qualifies for the death penalty?

21 A. Yes.

22 Q. Okay. So is your understanding of the law that the
23 State has to prove beyond a reasonable doubt that there
24 is some sort of aggravation before we can get to the
25 death penalty?

1 A. Yes.

2 Q. Okay. And there's several different factors that
3 the law lays out that allows us to seek the death
4 penalty.

5 A. Uh-huh (affirmative).

6 Q. Okay. So assuming that the jury unanimously finds
7 -- it's been a long day -- that there is an aggravation,
8 then based on the circumstances, which is aggravation and
9 mitigation, would you be able to consider, after hearing
10 aggravation and mitigation, a sentence of life without
11 the possibility of parole?

12 A. Yes.

13 Q. Okay. Now, would you, on the alternative, after
14 hearing the aggravation and mitigation, would you be able
15 to consider a sentence of death for the Defendant?

16 A. Yes.

17 Q. Okay. Now, I noticed on your questionnaire that you
18 stated that your religious affiliation is Catholic?

19 A. Yes.

20 Q. Would that in any way substantially impair your
21 ability to give a death sentence? And I know these are
22 hard questions because I know this is not something that
23 we wouldn't be normally talking about, so I know it's
24 difficult. But we just need to make sure that you can
25 set aside any of those personal or religious beliefs and

1 give fair consideration to both sides.

2 A. Sure. No, it wouldn't interfere.

3 Q. Okay. So -- I guess -- you've always been Catholic?

4 A. Yes.

5 Q. Okay. So the fact that the Church is against the
6 death penalty would not affect you in this case?

7 A. No.

8 Q. Okay. You stated though that you believe that life
9 without the possibility of parole is just as severe as
10 the death penalty. Can you kind of explain that to us
11 and give us an idea of what you mean by that?

12 A. I was just thinking just about different cases. I
13 would have to hear the facts of a case.

14 Q. Okay. So it would depend on the circumstances in a
15 particular case whether or not death was appropriate or
16 life was appropriate?

17 A. Yes.

18 Q. Okay. And you could consider all the mitigation?

19 A. Yes.

20 Q. And all the aggravation. And you would want to hear
21 everything before you made that decision?

22 A. Yes, I would.

23 Q. Okay. So even though you'd consider it, you don't
24 feel that you would always vote for life?

25 A. Right.

1 Q. Okay. And you would not always vote for death?

2 A. True.

3 Q. Okay. If the jury unanimously comes back for a
4 sentence of death, the law states that each individual
5 juror is required to actually sign his name on a document
6 that becomes public record, and that is what allows the
7 State to actually carry out the execution and have the
8 Defendant put to death either by electric chair or lethal
9 injection. Would you have a problem actually signing
10 your name to a public document stating that a defendant
11 deserves the death penalty and deserves to die? Would
12 that -- would anything substantially impair your ability
13 to sign your name to that document?

14 A. No, it wouldn't.

15 Q. Thank you. I have no further questions.

16 MR. MCGUIRE: Just very briefly, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. MCGUIRE:

19 Q. I want to take just a couple of minutes to speak to
20 you, as the Prosecutor did, about the law.

21 A. Sure.

22 Q. And did you know that in South Carolina that there's
23 not ever a case that requires a death verdict?

24 A. Yes.

25 Q. That it's never automatic?

1 A. Right.

2 Q. Okay. Even if an aggravating factor is proven
3 beyond a reasonable doubt to all twelve jurors, death is
4 still not automatic. You understand that?

5 A. Right. Uh-huh (affirmative).

6 Q. And that in sentencing -- in sentencing,
7 deliberations are, as the Prosecutor said -- stated
8 earlier, a give-and-take, you know, sharing of views.
9 But in capital cases, the way a person's decision is made
10 is actually described as an individual moral judgement.
11 Is that a principle you're okay with?

12 A. Yes.

13 Q. And the law's a little bit different in sentencing
14 in a capital case than any other case because, for
15 instance, the requirement that aggravation be found
16 requires twelve jurors, unanimity.

17 A. Uh-huh (affirmative).

18 Q. Whereas mitigation evidence, each individual juror
19 has an absolute right under our law to find and give
20 effect to mitigation evidence they see, and it can be
21 different. All twelve don't have to say, you know, this
22 is what the mitigation in this case is.

23 A. Sure.

24 Q. You or any other juror could say, you know, there
25 was something about his background or his upbringing,

1 childhood and say, you know, that did it for me. I'm not
2 going to vote death because of that. Somebody else can
3 say something completely different, and that's okay.

4 A. Right.

5 Q. And in something so important, as a decision to kill
6 another human being, would you be okay ending the day
7 agreeing to disagree, everybody having their own
8 individual moral judgement?

9 A. Yes, I would.

10 Q. Okay. And the way the law describes it, if it would
11 cause harm to someone's conscience to change their own
12 moral, individual decision, that's wrong. And Mr.
13 Rivera's entitled to fairness not just in the courtroom
14 but in the jury room. If you saw bullying or hostile
15 behavior, could you put an end to that?

16 A. Yes, I could.

17 Q. Maybe send a note out to the Judge saying, things
18 aren't fair in here, people's individual positions are
19 not being respected?

20 A. Right. Uh-huh (affirmative).

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

22 A. All right.

23 MS. ADAMS: Your Honor, just a few follow-ups,
24 if that's okay?

25 THE COURT: Certainly.

1 REDIRECT EXAMINATION

2 BY MS. ADAMS:

3 Q. I just want to make sure we're on the same page with
4 the deliberation and that you understand that a
5 deliberation in a jury is a give-and-take and that you
6 would respect everybody else's opinion, obviously, and
7 listen to it and consider it before making a decision.

8 Is that fair to say?

9 A. Absolutely.

10 Q. Okay. And you understand that the decision needs to
11 be unanimous. So there's a give-and-take in the jury
12 room with listening to everyone?

13 A. Absolutely.

14 Q. And ---

15 MR. MCGUIRE: Judge, I would just -- I would
16 object, Judge. That is a misstatement of the law. The
17 verdict with regard to life or death, there does not have
18 to be a unanimous verdict. Your Honor, will sentence if
19 the jury agrees to disagree.

20 THE COURT: Of course -- what is it -- he will
21 be listening to what the Court charges is the law.

22 Restate your question, if you would.

23 MS. ADAMS: Absolutely.

24 Q. And the law definitely comes from the Judge. I want
25 to make sure that we understand that deliberation is a

1 give-and-take and that everyone would listen to everyone
2 else's opinion because, as Mr. McGuire stated, you know,
3 if someone is bullying someone, to report it to the
4 Judge.

5 A. Right.

6 Q. But in the alternative, if someone is not
7 participating, would you also be okay with reporting that
8 to the Judge as well?

9 A. Yes.

10 Q. Okay. And that it is a give-and-take?

11 A. Uh-huh (affirmative).

12 Q. Okay.

13 THE COURT: All right.

14 MR. MCGUIRE: Nothing further, Judge.

15 THE COURT: Very good.

16 Anything else from the State?

17 MS. ADAMS: No, sir, Your Honor.

18 THE COURT: Anything from the Defense?

19 MR. MCGUIRE: No, sir.

20 THE COURT: Anything from the State?

21 MS. ADAMS: I'm sorry, Judge.

22 THE COURT: Anything from the State?

23 MS. ADAMS: Oh, no, sir.

24 THE COURT: All right. Considering the entire

25 voir dire, I find that Juror 34 will be fair, unbiased,

1 impartial and able to carry out the law as explained to
2 him. Furthermore, I find that this juror's belief and
3 attitudes toward the death penalty would not prevent or
4 substantially impair the performance of his duties as a
5 juror in accordance with the law, the Court's
6 instructions, and the jurors oath.

7 So you have been found qualified to serve on the
8 jury. That means that in about three or four -- maybe a
9 few days longer, the way we've been moving -- you'll
10 receive a call from the Clerk telling you when to report.
11 And then at that time, we'll select a jury.

12 You do -- she does -- the Clerk does have your phone
13 number?

14 THE POTENTIAL JUROR: Information, yes.

15 THE COURT: Very good. Thank you so much. And
16 thank you for being here, and I do appreciate your
17 patience with the Court.

18 (WHEREUPON, Potential Juror 34 exited the
19 courtroom.)

20 THE COURT: All right, 36 is the next one.

21 MADAM CLERK: Number 36.

22 THE COURT: 36, the last one of the two
23 o'clock.

24 MADAM CLERK: Yes, Your Honor.

25 (WHEREUPON, Potential Juror 36 entered the

1 courtroom.)

2 THE COURT: Very Good. And you are Juror 36?

3 THE POTENTIAL JUROR: Yes.

4 **POTENTIAL JUROR 36,**

5 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

6 EXAMINATION

7 BY THE COURT:

8 Q. All right. You recall on Monday I put all the
9 jurors under oath. Now, do you understand that you're
10 still under oath and that oath continues throughout these
11 proceedings?

12 A. Yes, sir.

13 Q. All right. You had a list of potential witnesses in
14 the jury room when you got there today, a little bit
15 earlier -- and I apologize.

16 A. Uh-huh (affirmative).

17 Q. But did you have an opportunity to look over that
18 list?

19 A. Yes, sir, I did.

20 Q. Did you recognize any names to whom you might be
21 related by blood or marriage, close personal friends or
22 business associates of?

23 A. I did recognize one name. I'm not related to them
24 by blood or anything. But Bobby Ham.

25 Q. All right. What's your relationship? What is he, a

1 friend or a neighbor?

2 A. A friend.

3 Q. Friend? If he was a potential witness in this case
4 or if he was a witness in this case, would that in any
5 way interfere with your ability to give both the State
6 and the Defendant a fair and impartial trial?

7 A. No, sir.

8 Q. Very good. Now, you do recall my instructions from
9 Monday to avoid all forms of media coverage during this
10 case?

11 A. Yes, sir.

12 Q. Has this caused you any problems?

13 A. No, sir.

14 Q. Now, the trial of this case will last -- it will be
15 seven to ten days after we select a jury. Other than the
16 personal inconvenience, would this pose a serious danger
17 to the health or well-being of yourself or anyone
18 dependent upon you?

19 A. No, sir.

20 Q. Among other things, we will be talking about penalty
21 today. But the mere fact that we talk about penalty does
22 not indicate anything about this Defendant or any
23 defendant. Defendants are presumed in law to be
24 innocent. Do you understand this?

25 A. Yes, sir.

1 Q. All right. If you were a juror in a criminal case,
2 could you listen to the law, accept and apply that law as
3 I would instruct you as the law even though you may not
4 agree with that law or think that it ought to be some
5 other way?

6 A. Yes, sir.

7 Q. Could you decide the case based solely on the
8 evidence presented in this courtroom and disregard
9 anything you may have heard, read or seen about the case?

10 A. Yes, sir.

11 Q. In a criminal case the State has a burden of proving
12 guilt. The burden of proof for the State is beyond a
13 reasonable doubt. The defendant has no burden to prove
14 innocence. Do you understand this?

15 A. Yes, sir.

16 Q. Could you, depending on the facts and the evidence
17 and the law as I would instruct you in a particular case,
18 find a defendant either guilty or not guilty?

19 A. Yes, sir.

20 Q. If you were a juror in a death penalty case, and if
21 the jury had found the defendant guilty of murder, then
22 you would move to the sentencing phase of the trial. Do
23 you understand that?

24 A. Yes, sir.

25 Q. When you hear us refer to a capital case or a death

1 penalty case, what we mean is that it is a criminal
2 murder trial where the prosecutor -- in other words the
3 State -- is seeking the death penalty. Do you understand
4 this?

5 A. Yes, sir.

6 Q. A death penalty trial is divided into two parts.
7 One part -- or the first part, or part one, is the guilt
8 phase where a jury determines whether the defendant is
9 guilty or not guilty of murder. Now, part two is the
10 sentencing phase where a jury determines the appropriate
11 punishment. Of course, if the defendant is found not
12 guilty, that ends the matter. There is no second phase.

13 Therefore, if you were a juror in a trial of a
14 capital case where the jury in phase one of the jury
15 [sic] has found the defendant guilty of murder, you would
16 then move on to phase two of the trial which is called
17 the sentencing phase of the trial. Do you understand?

18 A. Yes, sir.

19 Q. Now, if you were a juror in the sentencing phase --
20 that is, phase two of a capital murder trial, again, when
21 a jury has already found the defendant guilty of murder
22 -- do you understand the jury, rather than the Judge,
23 determines the sentence that the defendant will receive
24 for the crime of murder?

25 A. Yes, sir.

1 Q. In a capital sentencing trial the jury's function is
2 to determine the appropriate punishment based upon the
3 circumstances of the crime and the characteristics of the
4 individual defendant. Do you understand?

5 A. Yes, sir.

6 Q. Now, aggravating circumstances are facts or details
7 that, when they are present in a case, make the crime of
8 murder more serious or worse. And do you understand
9 that?

10 A. Yes.

11 Q. On the other hand, mitigating circumstances are
12 incidents, occurrences or details of a case that would
13 reduce the severity of the crime of murder. In other
14 words, may reduce the degree of responsibility for the
15 crime. Do you understand that?

16 A. Yes, sir.

17 Q. Do you also understand that the jury has two options
18 to consider regarding the sentence for murder. One
19 option is life imprisonment. In South Carolina that is
20 life until the death of the defendant without the
21 possibility of parole. Do you understand?

22 A. Yes, sir.

23 Q. And the other option is death which in this state is
24 by electrocution or lethal injection. Do you understand
25 that?

1 A. Yes, sir.

2 Q. Could you, as a juror in the sentencing phase,
3 depending upon the facts, including relevant aggravating
4 and mitigating circumstances and the law as instructed to
5 you, render a sentence of life imprisonment?

6 A. Yes, sir.

7 Q. On the other hand, as a juror in the sentencing
8 phase, depending upon the facts, including relevant
9 aggravating and mitigating circumstances and the law as
10 instructed to you, could you render a sentence of death?

11 A. Yes, sir.

12 Q. All right. If you would, please, answer any
13 questions that the Defense might have.

14 DIRECT EXAMINATION

15 BY MR. MCGUIRE:

16 Q. Good afternoon, Juror Number 36.

17 A. Good afternoon.

18 Q. Forgive me if I have to refer to you by 36. I'm not
19 being not friendly. It's a little awkward for me. I
20 hope you just forgive that.

21 With regard to this case, have you heard anything,
22 seen anything on T.V., any publicity?

23 A. No, sir.

24 Q. And do you have any special knowledge about the
25 legal system, ever go to school, take a class anything

1 like that?

2 A. No. I've been to school, but I don't know a whole
3 lot ---

4 Q. Yeah. I didn't mean to imply you didn't go to
5 school. That's my fault. That was a bad question on my
6 part. I meant did you go to school for criminal justice?

7 A. No, sir.

8 Q. Okay. And a lot of people that I talk to or a lot
9 of people that are jurors ---

10 A. Uh-huh (affirmative).

11 Q. --- and sit there where you are, a lot of them say,
12 you know, most of what I know is from kind of T.V. ---

13 A. Uh-huh (affirmative).

14 Q. --- stuff like that, or crime novels. Are you in
15 that category?

16 A. Yes, sir.

17 Q. If I ask you to give the legal definition of murder
18 in South Carolina, you might come up short?

19 A. More than likely.

20 Q. Okay. How about if I help you out and I'll provide
21 that definition for you, and that'll be our starting
22 point?

23 A. Yes, sir.

24 Q. And then we'll start talking about penalty and
25 aggravation, mitigation, that sort of thing.

1 A. Okay.

2 Q. It's complicated stuff. There's no right answer, no
3 wrong answer. If I ask a bad answer, which I'm apt to do
4 sometimes ---

5 A. Uh-huh (affirmative)

6 Q. --- you just let me know, okay?

7 A. Yes, sir.

8 Q. All right. The definition of murder in South
9 Carolina is when a killer, a person, kills unlawfully,
10 with malice aforethought, another human being. And it's
11 defined further in the law as the killer operating with a
12 black and malignant heart fatally bent on evil,
13 deliberately taking another life. In that situation,
14 just knowing that, what's your opinion about the death
15 penalty as the appropriate punishment in that kind of
16 case?

17 A. I can see the death penalty in that kind of case.

18 Q. Would the life in prison punishment ever be severe
19 enough to punish that kind of case?

20 A. Could be just depending on the circumstances.

21 Q. Okay. And when you say circumstances, a lot of
22 people mean the facts of the case.

23 A. Uh-huh (affirmative).

24 Q. Kind of how bad the killing was or what's the
25 aggravation type evidence. Is that ---

1 A. And it depends on what the law says.

2 Q. On what the law says?

3 A. Uh-huh (affirmative).

4 Q. Okay. And what the law says is that in addition to
5 that deliberate, intentional killing of another, you'd
6 have to consider what's called aggravation evidence.

7 A. Uh-huh (affirmative).

8 Q. And I want to put you in a situation where you're
9 judging a defendant -- any defendant, some other
10 courtroom even -- and you find him guilty beyond a
11 reasonable doubt of deliberately, intentionally taking
12 the life of another.

13 A. Uh-huh (affirmative).

14 Q. And the piece of aggravation evidence is that he's
15 murdered before, and this is his second murder.

16 A. Uh-huh (affirmative).

17 Q. Is the life penalty ever severe enough in that case?

18 MS. ADAMS: Your Honor, I object. There's no
19 balance. You've instructed him that -- how to ask that
20 question. And he's repeatedly ---

21 THE COURT: All right.

22 MS. ADAMS: --- not asking the question right.

23 THE COURT: Obviously, the death sentence would
24 only be in aggravating circumstances ---

25 MR. MCGUIRE: Sure.

1 THE COURT: And a life sentence would be
2 consideration of a mitigating circumstances. So let's
3 put where -- a complete question.

4 MR. MCGUIRE: Sure. Thank you, Judge.

5 Q. In that situation, what's your feeling about the
6 death penalty as the appropriate punishment in that kind
7 of situation?

8 A. Meaning?

9 Q. The prior murder, murder.

10 MS. ADAMS: Your Honor?

11 THE COURT: Where there are mitigating
12 circumstances to be considered.

13 MR. MCGUIRE: Well, Judge, I don't necessarily
14 have to put up mitigating evidence. I've got no burden.

15 THE COURT: Now, I'm not asking about I. But
16 you're asking the witness.

17 MR. MCGUIRE: Right.

18 THE COURT: In other words, the law doesn't
19 provide that he's not to consider mitigating
20 circumstances. He can consider anything.

21 MR. MCGUIRE: Sure.

22 THE COURT: There's no statutory requirements
23 in mitigation.

24 MR. MCGUIRE: Correct. I agree.

25 THE COURT: Or nothing.

1 MR. MCGUIRE: Right. All right.

2 THE COURT: Well, let's just make a complete
3 question.

4 MR. MCGUIRE: Sure.

5 Q. The Judge talked to you briefly about mitigation.

6 A. Uh-huh (affirmative).

7 Q. That can be anything that lessens the seriousness or
8 the badness or the wrongness of the murder ---

9 A. Uh-huh (affirmative).

10 Q. --- the killing. It could be anything. Aggravation
11 is stuff -- evidence the Prosecutor needs to bring to
12 show that this particular murder is deserving of the
13 death penalty.

14 A. Uh-huh (affirmative).

15 Q. Now, knowing that you can find mitigation evidence
16 wherever you seek to find it, wherever it might be, and
17 the aggravation evidence being ---

18 A. Uh-huh (affirmative).

19 Q. --- that the person you're judging is on trial for
20 his second murder. Now, what's your opinion about the
21 death penalty as the appropriate punishment?

22 MS. ADAMS: Your Honor ---

23 THE COURT: I'm going to let him answer the
24 question if he can.

25 A. It depends on the whole case and the law.

1 Q. Okay. Okay.

2 A. You know, there's obviously a burden of proof.

3 Q. Sure. And I'm going to run with that since you
4 brought it up.

5 A. Uh-huh (affirmative)

6 Q. Capital cases are different from any other case,
7 because the burden of proof -- not only does the
8 Prosecutor have to prove a murder.

9 A. Uh-huh (affirmative).

10 Q. They have to prove that aggravation evidence beyond
11 a reasonable doubt, and all twelve jurors have to agree
12 that that aggravation evidence exists beyond a reasonable
13 doubt.

14 A. Uh-huh (affirmative).

15 Q. And it's completely different from mitigation
16 evidence, the mitigation evidence the Judge talked to you
17 about. Like he said in our conversation, it can be
18 really anything ---

19 A. Uh-huh (affirmative).

20 Q. --- wherever you find it. In the facts of the case,
21 in the defendant's background. And you know, one juror
22 over here can say, you know, I see something in his
23 background, and that's going to influence me. And
24 somebody else over here could say, well, you know, I saw
25 something like his relationship with his child, and

1 that's going to do it for me. That's going to influence
2 me. And there's no degree of proof with regard to that.

3 A. Uh-huh (affirmative)

4 Q. If you see it, you can give it whatever weight you
5 want.

6 A. Uh-huh (affirmative).

7 Q. And you can let the other jurors give whatever
8 weight they want to that mitigation evidence. Are you
9 okay with that?

10 A. Yes.

11 Q. And did you know that there's never a situation in
12 South Carolina that requires the death penalty?

13 A. Yes, sir.

14 Q. No matter what kind of proof the Prosecutor comes up
15 with, even if all jurors agree that aggravation exist
16 beyond a reasonable doubt, the death penalty is never
17 required. Did you know that?

18 A. Yes.

19 Q. Okay. And in the law -- you know, obviously jurors
20 deliberate. And deliberation, depending on how you
21 define it, it's sort of a give-and-take. Everybody
22 listens respectfully to everybody, that sort of thing.

23 A. Uh-huh (affirmative)

24 Q. And they share their views, their opinions, their
25 take on the evidence in the case. But when somebody

1 decides or reaches their decision, the law describes it
2 as their individual moral judgement. Are you okay with
3 that principle?

4 A. Yes, sir.

5 Q. And in capital cases there's no requirement that the
6 jury end the day unanimous.

7 A. Uh-huh (affirmative).

8 Q. They can agree to disagree at the end of the day.
9 Are you okay with that?

10 A. Yes, sir.

11 Q. And you can respect everybody's individual moral
12 judgement?

13 A. Yes, sir.

14 Q. Just like you would want your's respected?

15 A. Uh-huh (affirmative). Yes, sir.

16 Q. And if you saw something unfair -- because Mr.
17 Rivera is entitled to fairness ---

18 A. Uh-huh (affirmative).

19 Q. --- not just out here but in the jury room. If you
20 saw something unfair or not civil like someone bullying
21 somebody, could you stop that, maybe send a note out to
22 the Judge saying, it's not fair in here?

23 A. Yes, sir, definitely.

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

25 THE COURT: State?

1 MS. ADAMS: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. ADAMS:

4 Q. Good afternoon, how are you?

5 A. Good afternoon.

6 Q. Good. I'm Chrissy Adams. I'm the Solicitor for the
7 Tenth Circuit. I appreciate your patience. I know it's
8 been long afternoon.

9 A. That's fine.

10 Q. I will try to be brief. The purpose of us
11 questioning you today is obviously to ensure that you can
12 be fair to the State and to the Defense and that you can
13 consider all the evidence in aggravation and mitigation
14 before a decision is made as to life and death. Do you
15 feel that you would remain open-minded?

16 A. Yes, ma'am.

17 Q. And hear all the evidence before making a
18 determination?

19 A. Yes, ma'am.

20 Q. Okay. And do you understand that every murder in
21 South Carolina is not eligible for the death penalty?

22 A. Yes, ma'am.

23 Q. Okay. So there has to be a finding, a unanimous
24 finding by the jury, of an aggravating circumstance that
25 the Judge will instruct you on.

1 A. Yes, ma'am.

2 Q. And then y'all would get to determining whether life
3 was appropriate or death was appropriate.

4 A. Yes, ma'am.

5 Q. Okay. And I think when Mr. McGuire is talking about
6 deliberation and the give-and-take, what he really means
7 is a death verdict has to be unanimous. Do you
8 understand that? And that's what the Judge will instruct
9 you on.

10 A. Yes, ma'am.

11 Q. Okay. And that everybody's opinion needs to be
12 respected, but obviously there's a give-and-take, and we
13 should listen to and respect everybody else's opinion.

14 A. Right.

15 Q. Okay. Now, assuming -- as we said it's a bifurcated
16 trial, so there's two phases. Now, assuming that the
17 jury, if you're on it, finds the Defendant guilty and we
18 go to the second phase, will you follow the Judge's
19 instructions and listen to all the aggravating
20 circumstance and consider all the aggravation and all the
21 mitigation before you make a decision?

22 A. Yes.

23 Q. Okay. And as we sit here today, obviously, you
24 don't know what the aggravation or the mitigation is
25 going to be; is that right?

1 A. Correct.

2 Q. So right now you don't know if the sentence should
3 be life or death because you haven't heard all the
4 evidence?

5 A. Right.

6 Q. So you would remain open-minded and follow the
7 Judge's instructions?

8 A. Yes, ma'am.

9 Q. Now, if the jury decided that the death penalty was
10 appropriate, each and every juror has to sign their name
11 to the sentence sheet which is what the State uses in
12 order to carry out the execution of a defendant.

13 A. Uh-huh (affirmative).

14 Q. Okay? And that form is public record. So everybody
15 would see your name signed on a form, along with the
16 other eleven jurors, to carry out the execution of the
17 defendant. Is that okay? Do you have ---

18 A. Yes, ma'am.

19 Q. I don't have any other questions. Thank you so
20 much.

21 THE COURT: All right.

22 MR. MCGUIRE: Nothing further, Your Honor.
23 Thank you.

24 THE COURT: Very good.

25 MR. MCGUIRE: Nothing at all.

1 THE COURT: From the State?

2 MS. ADAMS: No, sir, Your Honor. Thank you.

3 THE COURT: Just a second.

4 THE POTENTIAL JUROR: Oh, okay. I'm sorry

5 THE COURT: All right. Considering the entire
6 voir dire, I find that Juror 36 will be fair, unbiased,
7 impartial and able carry out the law as I explain it to
8 him. Furthermore, I find that the juror's beliefs and
9 attitudes towards the death penalty will not prevent or
10 substantially impair his performance and duties as a
11 juror in accordance with the law or the Court's
12 instructions and the juror's oath.

13 So you will be qualified for consideration on this
14 panel. Have you given the clerk your telephone number?

15 THE POTENTIAL JUROR: Yes, sir.

16 THE COURT: All right. So it will probably be
17 three or four days before we'll be in touch with you, but
18 later in the week we'll probably be in touch with you and
19 tell you to come on a certain day. And that's when we'll
20 select the jury that would actually try the case.

21 Very good. Thank you very much for your patience
22 and obviously for being here today. Thank you, sir.

23 (WHEREUPON, Potential Juror 36 exited the
24 courtroom.)

25 THE COURT: All right. We got the last panel?

1 MR. MCGUIRE: Yes, sir.

2 THE COURT: Okay. Might as well go ahead and
3 see if we can't get through it.

4 38.

5 (WHEREUPON, Potential Juror 38 entered the
6 courtroom.)

7 THE COURT: All right. Are you Juror Number
8 38?

9 THE POTENTIAL JUROR: Yes, sir.

10 THE COURT: Very good. Thank you, sir.

11 **POTENTIAL JUROR 38,**

12 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

13 EXAMINATION

14 BY THE COURT:

15 Q. You'll recall on Monday I put all the jurors under
16 oath. Now, do you understand that you are still under
17 oath and that oath continues throughout these
18 proceedings?

19 A. Yes, sir.

20 Q. All right. You were given a witness list in the
21 jury room. Have you had an opportunity to look over
22 that?

23 A. Yes, sir.

24 Q. Now, those are potential witnesses. Not all of them
25 are going to be called, but they could be called. And do

1 you recognize any of the names on that list to which you
2 are either related by blood or marriage, now or formerly,
3 or close friends or business associate or have any other
4 relationships?

5 A. No, sir.

6 Q. All right. You do recall my instructions from
7 Monday to avoid all forms of media coverage dealing with
8 this case? You do recall it?

9 A. Yes, sir.

10 Q. Has this caused you any problem?

11 A. No, sir.

12 Q. Now, the trial of this case could last approximately
13 a week to ten days. Other than personal inconvenience,
14 would this pose a serious danger to the health or well-
15 being of yourself or anyone else who might be dependant
16 upon you?

17 A. No, sir.

18 Q. Among other things, we will be talking about penalty
19 today. But the mere fact that we talk about penalty does
20 not indicate anything about this Defendant or any
21 defendant. Defendants are presumed in law to be
22 innocent. Do you understand?

23 A. Yes, sir.

24 Q. If you were a juror in a criminal case, could you
25 listen to the law, accept and apply the law as I would

1 instruct it to you even though you may not agree with
2 that law or think it ought to be some other way?

3 A. Yes, sir.

4 Q. Could you decide this case based solely on the
5 evidence presented in this courtroom and disregard
6 anything you may have heard, read or seen on the outside?

7 A. Yes, sir.

8 Q. In a criminal case the State has the burden of
9 proving guilt. The burden for the State is beyond a
10 reasonable doubt. A defendant has no burden to prove
11 innocence. Do you understand?

12 A. Yes, sir.

13 Q. Could you, depending on the facts and circumstance
14 and evidence and the law as I would instruct it to you in
15 a particular case, find the defendant either guilty or
16 not guilty?

17 A. Yes, sir.

18 Q. If you were a juror in a death penalty case, and if
19 the jury had found the defendant guilty of murder, you
20 would then move to the sentencing phase of the trial. Do
21 you understand that?

22 A. Yes, sir.

23 Q. When you hear us refer to a capital case or a death
24 penalty case, what we mean is that that is a criminal
25 murder trial where the prosecutor -- in other words the

1 State -- is seeking the death penalty. Do you understand
2 that?

3 A. Yes, sir.

4 Q. A death penalty trial is divided into two parts.
5 Part one is the guilt phase where a jury determines
6 whether the defendant is guilty or not guilty of the
7 murder. Part two is the sentencing phase where a jury
8 determines the appropriate punishment. Now, of course,
9 if the defendant is found not guilty in first phase, then
10 that ends the matter and it goes no further. Do you
11 understand that?

12 A. Yes, sir.

13 Q. Now, if you were a juror in the sentencing phase --
14 that is phase two of a capital murder trial, again, where
15 the jury has already found the defendant guilty of murder
16 -- do you understand that the jury, rather than the
17 Judge, determines the sentence that the defendant will
18 receive for the crime of murder?

19 A. Yes, sir.

20 Q. In a capital sentencing trial the jury's function is
21 to determine the appropriate punishment based on the
22 circumstances of the crime and the characteristics of the
23 individual defendant. Do you understand that?

24 A. Yes, sir.

25 Q. Now, aggravating circumstances are facts or details

1 that, when they are present in a case, make the crime of
2 murder more serious or worse. Do you understand?

3 A. Yes, sir.

4 Q. On the other hand, mitigating circumstances are
5 incidents, occurrences or details of the case that would
6 reduce the severity of the crime of murder. In others
7 words, may reduce the degree of responsibility for the
8 crime.

9 A. Yes, sir.

10 Q. Do you also understand that the jury has two options
11 to consider regarding the sentence for murder? One
12 option is life imprisonment, and the other is death which
13 in this state is electrocution or lethal injection.

14 Could you, as a juror in the sentencing phase, depending
15 upon the facts including relevant aggravating and
16 mitigating circumstances and the law as instructed to
17 you, render a sentence of life imprisonment which in this
18 state means until the death of the defendant without
19 parole?

20 A. Yes, sir.

21 Q. On the other hand, as a juror in the sentencing
22 phase, depending upon the facts including relevant
23 aggravating and mitigating circumstances and the law as
24 instructed to you, could you render a sentence of death?

25 A. Yes, sir.

1 Q. All right. Please answer any questions the Defense
2 may have.

3 DIRECT EXAMINATION

4 BY MR. MCGUIRE:

5 Q. Good afternoon, Juror Number 38. The fact that I
6 refer to you by number, I'm not being not friendly with
7 you.

8 A. Yeah.

9 Q. It's just the way we've got to do things. To be
10 quite honest with you, it's a little awkward for me. So
11 if you would, forgive me and bear with me.

12 A. Not a problem.

13 Q. All right. The Judge just gave you some general
14 guidelines regarding what aggravation is, what murder
15 kind of is, the penalty. And I want to be a little bit
16 more specific with you, okay? And The first thing I'm
17 going to do is start talking to you about mitigation
18 evidence and how the law works with regard to that.
19 Capital cases are different from any other cases because
20 the jury gets to fix the punishment. And there's never a
21 case in South Carolina that requires the death penalty.
22 It's never automatic. Did you know that?

23 A. No, sir.

24 Q. A lot of people show up and they think, well, if the
25 State proves a certain thing, then the death penalty is

1 sort of automatically the punishment. You kind of
2 thought that?

3 A. Uh-huh (affirmative).

4 Q. Well, I'm going to tell you, and the Judge would
5 tell you, that it's absolutely not the case. In fact,
6 the deck is stacked the opposite way. The State not only
7 has to prove that a murder occurred and existed, you got
8 to find somebody guilty of that. And then they have to
9 prove beyond a reasonable doubt to all twelve jurors that
10 aggravation evidence existed. And the jury has to be
11 completely unanimous, and they can't disagree about that.

12 Now, the opposite is true for the defendant in
13 mitigation evidence. And that's because our law is
14 designed where the death penalty is reserved for the
15 worst of the worst basically. And the way the law fits
16 that in in South Carolina is that mitigation evidence can
17 be found by any juror, different jurors. For instance,
18 one juror over here on the end might say, you know, I saw
19 something in the defendant's background, and that
20 resonates with me, and I'm not going to vote for death
21 just because of that. Somebody on the other side might
22 say, well, you know, something about drugs. I read your
23 questionnaire, and I know that you've testified on behalf
24 of somebody regarding a drug issue. And some juror might
25 say, you know, if drugs were involved, that did it for me

1 and I'm not going to vote death just because of that.

2 And there's no level of proof. It's not beyond a
3 reasonable doubt. There's absolutely no level of proof
4 whatsoever. The juror who sees it can give it whatever
5 weight they want. Can you respect that?

6 A. Yes, sir.

7 Q. The way different jurors can find mitigating
8 evidence?

9 A. Uh-huh (affirmative).

10 Q. And give it different weight?

11 A. Yes, sir.

12 Q. And the way the decision process or the deliberation
13 process is sometimes described in the law is that --
14 obviously, deliberation is a give-and-take and everybody
15 shares their view, their take on the evidence of the
16 case. The Prosecutors talk to other jurors about that.
17 But then when somebody, based on their on individual walk
18 in life, comes to their own individual moral judgement --
19 and that's what the law calls it, their own individual
20 moral judgement. When somebody comes to that, it's their
21 own individual decision and it doesn't have to be
22 unanimous. I'm being a little bad here with my question.
23 But the law in capital cases is the jury can actually end
24 the day agreeing to disagree.

25 A. Uh-huh (affirmative).

- 1 Q. The Judge will take the case away and sentence. Is
2 that a principle you're okay with?
- 3 A. Yes, sir.
- 4 Q. Does that make sense ---
- 5 A. Uh-huh (affirmative).
- 6 Q. --- that it should it be like that?
- 7 A. Yeah. I mean, if there's a difference of opinion,
8 then -- if everybody's reached a decision ---
- 9 Q. Right.
- 10 A. --- if they can't, then so be it.
- 11 Q. Sure. Because there's not necessarily -- and the
12 reason that is is in the law. The law says there's not
13 really a right or wrong answer regarding punishment.
14 It's just every individual juror's point of view.
- 15 A. Uh-huh (affirmative).
- 16 Q. And you would respect everybody else's point of
17 view?
- 18 A. Yes, sir.
- 19 Q. And want your point of view respected?
- 20 A. Yes, sir.
- 21 Q. And you know, defendants are entitled to fairness,
22 not just out here but also in a jury room. If you saw
23 bullying or hostile activity in the jury room trying to
24 get somebody to give up their decision, could you maybe
25 pass a note out to the Judge saying, things aren't really

1 fair in here?

2 A. Yes, sir.

3 Q. You'd want things to be fair?

4 A. Absolutely.

5 Q. Now, taking into account everything that I've talked
6 to you about, I'm going to put you in a situation where
7 -- not this case but just any case -- you and eleven
8 other jurors have convicted a defendant of murder in
9 South Carolina. In South Carolina murder is defined as
10 the killer operating with a black and malignant heart,
11 fatally bent on evil, deliberately taking the life of an
12 innocent person. In that situation, what are your
13 thoughts about the death penalty as the appropriate
14 punishment?

15 A. On that situation, depending on the evidence review
16 or whatever, it would be -- for what you just gave me, it
17 would be death. It would be death if it was based on the
18 evidence and with your definition there.

19 Q. Okay. Well, my definition -- it's really not my
20 definition. That's South Carolina's definition. And
21 that is a person killing another unlawfully with malice
22 aforethought, which mean acting with that black
23 malignant, evil heart.

24 A. Uh-huh (affirmative)

25 Q. In that situation the death penalty is appropriate?

1 A. Yes, sir.

2 Q. Okay. And the life penalty in prison, would you say
3 that it's not severe enough to punish that kind of
4 situation?

5 A. In that situation with the life, I would basically
6 say -- I mean, regardless if that person is off the
7 streets and not hurting anybody else, as long as, you
8 know -- I mean, if it has to come down to a decision with
9 that and nobody, I guess, is going for death or not
10 reaching that death sentence, then, yes, I could go with
11 the life route as well based on the evidence.

12 Q. Well, I guess what I'm asking is, in that situation
13 where you, beyond any reasonable doubt, decide that a
14 person deliberately, with malice aforethought, took the
15 life of another, is there anything -- that mitigation
16 evidence I talked to you about, is there anything like
17 that that could move you from your death penalty view?

18 A. Yes, sir. Absolutely.

19 Q. And what would that be?

20 A. I mean, just depending on the background, family,
21 history, anything like that.

22 Q. Okay. And I want to ask you pretty much just one
23 more question. And that is, I'm going to put you on a
24 jury, some other courtroom, some other place. You and
25 eleven other people have convicted a defendant of murder.

1 And the aggravation evidence that comes forward is that
2 the person had murdered before and that you decided
3 beyond a reasonable doubt this person had committed two
4 separate murders. can the life penalty be severe enough
5 in that case?

6 MS. ADAMS: Your Honor, I object. He's not
7 balancing. Your instructions will be can you consider
8 the aggravating circumstances and mitigation before
9 making a decision. It's not simply just the aggravation.
10 And I think we're asking the juror to ---

11 THE COURT: We understand now. We've been at
12 this a while.

13 Restate your question.

14 MR. MCGUIRE: Thank you.

15 Q. Remember, you and I just had a very long discussion
16 about mitigation evidence, and I think you've got a
17 pretty good understand of what that is. So what I'm
18 asking you is the aggravating evidence that the State
19 brings forward is two murders. Knowing everything that
20 we've already talked about mitigation, it can be
21 basically anything. Is there anything that would make a
22 life sentence appropriate in a double-murder case?

23 MS. ADAMS: Your Honor, I think it's can you
24 consider it.

25 THE COURT: Again, the instruction obviously is

1 going to be that he can give a life sentence for any
2 reason ...

3 MR. MCGUIRE: Right. I agree with that, Judge.

4 THE COURT: ... or no reason at all.

5 MR. MCGUIRE: Sure. I agree.

6 THE COURT: So I mean, the question has to be
7 balanced in that fashion.

8 MR. MCGUIRE: Okay.

9 Q. And taking the Judge's comments into account there,
10 what's your view about the death penalty as the
11 appropriate punishment in that double-murder situation?

12 A. Based on, I guess, what he just said, you know, that
13 would be appropriate.

14 Q. Okay. And is there anything that could take you off
15 that?

16 A. Just depends on the, I guess, the evidence.

17 MS. ADAMS: Your Honor, he's -- Your Honor,
18 he's burden shifting. I mean, he's ---

19 THE COURT: The burden is always on the State.

20 MS. ADAMS: He's staking -- well, no, sir.
21 He's suggesting that -- in other words ---

22 THE COURT: I understand what you're -- go
23 ahead.

24 MS. ADAMS: I'm sorry, Judge. He's suggesting,
25 in other words, can I do anything to prevent you from not

1 automatically voting death. I think the proper question
2 is, can you consider.

3 THE COURT: Well, you'll have an opportunity to
4 examine the witness or -- excuse me -- the juror. But
5 again, it's not that anyone has to persuade the jury to
6 find mitigation in a life sentence.

7 MS. ADAMS: Exactly.

8 THE COURT: There is no burden anywhere other
9 than the State has a burden of aggravation. And just
10 explain that to him.

11 MR. MCGUIRE: I was about to -- I'm going to
12 take you up on that, Judge.

13 THE COURT: No reason to talk to him about
14 mitigation and then not mention it to him in the
15 hypothetical.

16 MR. MCGUIRE: Sure.

17 THE COURT: Excuse me. The question.

18 Q. I'm going to take the Judge up on his suggestion and
19 tell you, if I haven't already, that any juror can vote
20 for life for any reason or no reason at all. Are you
21 okay with that?

22 A. No.

23 Q. You're not okay with that?

24 A. Not for no reason at all, uh-uh (negative).

25 Q. Okay. You wouldn't be able to abide by the

1 principle?

2 A. If there's no reason for the life sentence to be
3 carried out, then it shouldn't be.

4 Q. Okay. That's fair enough. And you say that with
5 some strong conviction there. It sounds like you take
6 that to heart. And I can't talk you out of that just
7 using words, can I?

8 A. Uh-uh (negative).

9 Q. It kind of comes from where you are as what's right
10 or wrong and what make sense, what doesn't make sense?

11 A. Yes, sir.

12 Q. And you firmly believe that?

13 A. Yes, sir.

14 Q. And let me ask you this with regard to the concept
15 of mercy. Is mercy something that's earned, or is it
16 freely given or bestowed?

17 A. It depends on the ---

18 MS. ADAMS: Your Honor, what ---

19 THE COURT: All right.

20 MS. ADAMS: I don't understand the purpose.
21 It's going beyond the scope.

22 THE COURT: I'm going to permit the question.
23 Overruled. Go ahead.

24 MR. MCGUIRE: Thank you, sir.

25 Q. Is mercy -- because the Judge will instruct on the

1 concept of mercy, and this is our opportunity to talk to
2 you about these legal issues, my only opportunity. The
3 concept of mercy, in your view, is it something that's
4 freely given, bestowed, or is it earned?

5 A. It's depends on the situation.

6 Q. Okay.

7 A. If it's a family member, you know, that does -- done
8 something wrong, yeah, I could see giving mercy. If it's
9 somebody that you don't know at all done something to
10 you, you know, a car accident or whatever, no, I don't
11 see it. I mean, it just depends on the situation.

12 Q. Okay. Fair enough. And you've been involved in a
13 situation where you showed mercy?

14 A. Uh-huh (affirmative).

15 Q. And if I'm not mistaken, there was a family member.
16 And it involved some violence and a drug issue?

17 A. Yes, sir.

18 Q. And what I took from that -- and you tell me if I'm
19 wrong -- is that sometimes good people do bad things?

20 A. Yes, sir.

21 Q. Sometimes people are influenced by factors, their
22 upbringing, their education, their walk in life, that
23 sort of thing?

24 A. I wouldn't base it on their walk in life or anything
25 like that. It's just, you know, stuff that can change

1 you or whatever, whether it be alcohol, drugs, depression
2 whatever.

3 Q. Sure. In deciding to fix punishment in a death
4 penalty case for murder, would it be relevant to you, you
5 know, if somebody was abused twenty years ago?

6 MS. ADAMS: Your Honor, staking the juror out.
7 He's being case-specific. Totally fact-specific. He
8 can group them, and ask if he would consider mitigating
9 circumstances. But he is clearly ---

10 MR. MCGUIRE: I'll do that.

11 THE COURT: All right. Let's do that. I think
12 that'll be nice.

13 Q. I'm going to go ahead and group a couple of things
14 like growing up in abject poverty, maybe family abuse,
15 that sort of thing, that kind of category. Are those
16 things relevant to a murder that happened maybe twenty
17 years later?

18 A. There's no way I can put myself in those shoes to
19 answer that.

20 Q. Okay. Okay. Fair enough.

21 MR. MCGUIRE: Judge, if I could have just one
22 second.

23 THE COURT: Certainly.

24 Q. Just very briefly, Juror Number 38. Have you read,
25 seen, heard anything about the case?

1 A. No, sir.

2 Q. That's all I've got for you. Thank you, sir.

3 THE COURT: All right. The State?

4 MS. ADAMS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. ADAMS:

7 Q. Good afternoon. I'm Chrissy Adams. I'm the
8 Solicitor for the Tenth Circuit. And we certainly
9 appreciate your patience. I know it's been a long
10 afternoon, so I will try to be as brief as I can.

11 From your answers to your questions and from your
12 answers to your questions from the Defense, I feel like
13 you understand that this is a two-part trial; is that
14 right?

15 A. (Nodding affirmatively).

16 Q. Okay. And every murder in South Carolina is not
17 eligible for the death penalty. Are you aware of that?

18 A. Uh-huh (affirmative).

19 Q. Okay. So the State has to prove an aggravating
20 circumstance that's listed out in the law. We have to
21 prove one aggravating circumstance to the jury beyond a
22 reasonable doubt.

23 A. Uh-huh (affirmative).

24 Q. You understand that before you can even get to
25 considering life or death?

1 A. Yes.

2 Q. So this is an aggravated murder, so to speak.

3 A. Okay.

4 Q. All right. So once the jury finds him guilty of the
5 murder, assuming so -- because we've got to get through
6 phase first. We're kind of putting the cart before the
7 horse here. And we want to make sure that you can be
8 fair to the State and to the Defense and consider all the
9 evidence before making a decision. Okay? Do you feel
10 like you consider yourself a fair person?

11 A. Yes, ma'am.

12 Q. Okay. And before making a decision, do you like to
13 hear the entire story?

14 A. Every bit of it.

15 Q. Every bit of it. Okay. I don't know if you have
16 kids. But sometimes that's good to know with the whole
17 story to decide what kind type of punishment is
18 appropriate.

19 A. Yes, ma'am.

20 Q. Whether it should be more severe or less severe?

21 A. Yes, ma'am.

22 Q. Kind of like in these types of situations, it
23 depends on the circumstances surrounding the crime. The
24 aggravation and mitigation, if any, if it should be life
25 or death?

1 A. Yes, ma'am.

2 Q. Okay. So do you feel that once you have heard the
3 entire case, all the aggravation and all the mitigation,
4 could you consider life without the possibility parole?

5 A. Yeah.

6 Q. Okay. So you could vote for life without parole if
7 the facts and circumstances warranted that?

8 A. Yes, ma'am.

9 Q. Okay. And if the facts and circumstances warranted
10 the death penalty, could you vote for the death penalty?

11 A. Yes, ma'am.

12 Q. Okay. Because the law says it's not, you know,
13 enough to just consider it, you would have to vote for
14 it.

15 A. (Nodded head up and down in the affirmative)

16 Q. Okay. And that actually means ---

17 MR. MCGUIRE: I'd object to that, Judge. The
18 law never says you have to vote for the death penalty.

19 Q. --- that if you voted for the death penalty ---

20 THE COURT: I beg your pardon?

21 MR. MCGUIRE: The law never says you have to
22 actually vote for the death penalty.

23 MS. ADAMS: You have to be able to ---

24 THE COURT: You have to sign the sheet ---

25 MR. MCGUIRE: Sure.

1 THE COURT: --- and I think that ---

2 MS. ADAMS: --- to be qualified. You have to
3 be able to, Judge, is my understanding, is what I meant
4 through the questioning.

5 THE COURT: Proceed.

6 MS. ADAMS: Thank you, Your Honor.

7 Q. If the jury does decide to impose the death penalty,
8 do you understand that you would have to actually write
9 your name on the sentence sheet that would allow the
10 State to carry out the execution of a defendant?

11 A. Yes, ma'am.

12 Q. Okay. And you would be okay with signing your name
13 on that public document?

14 A. Yes, ma'am.

15 Q. You stated that -- the Judge is going to instruct
16 you as part of the instructions, not only considering
17 aggravation and mitigation, that a jury could determine
18 -- he's going to instruct you that the law says you could
19 give life without the possibility of parole for no reason
20 at all. That's part of the instructions. You stated
21 that you didn't think you could do it for no reason at
22 all. But could you set those feelings aside and follow
23 the Judge's instructions as he gives them?

24 A. Yeah. I mean, if it's an instruction given, you
25 know, from a higher authority, yes, ma'am.

1 Q. Okay. So you would follow those instruction as the
2 Judge gave them to you?

3 A. Yes, ma'am.

4 Q. Okay.

5 A. I mean, yeah.

6 Q. And a deliberation is a give-and-take in the jury
7 room. Do you understand that process?

8 A. Uh-huh (affirmative).

9 Q. It's a give-and-take. And you know, jurors
10 inevitably, they will disagree. You respect your jurors
11 decisions or opinions, take those into consideration and
12 listen to what everybody has to say. And you would be
13 able to do that?

14 A. Yes, ma'am.

15 Q. Thank you very much.

16 MS. ADAMS: Your Honor, I have no further
17 questions.

18 THE COURT: Anything from the Defendant?

19 MR. MCGUIRE: We've got nothing, Judge.
20 Nothing further.

21 THE COURT: All right. Very good. Anything
22 else from the State?

23 MS. ADAMS: No, sir, Your Honor. Thank you.

24 MR. MCGUIRE: Nothing from the Defense, Your
25 Honor.

1 THE COURT: All right. Considering the entire
2 voir dire, I find that Juror 38 will be fair, unbiased,
3 impartial and able to carry out the law as explained to
4 him. Furthermore, I find that this juror's feelings and
5 beliefs or attitudes toward the death penalty would not
6 prevent or substantially impair his performance as a
7 juror in accordance with the law, the Court's
8 instructions and the juror's oath.

9 Therefore, you will be found and are found qualified
10 to sit on this jury. Now, that means we still have to
11 qualify a panel from which the jury will actually be
12 selected. And you've given the Clerk your telephone
13 number?

14 THE POTENTIAL JUROR: Yes, sir.

15 THE COURT: In a few days you will receive a
16 phone call telling you when to come in, but you do not
17 have to come in until you receive that phone call. Do
18 you understand?

19 THE POTENTIAL JUROR: Yes, sir..

20 THE COURT: Very good. Thank you for being
21 here, and I appreciate your patience with the court.

22 (WHEREUPON, Potential Juror 38 exited the
23 courtroom.)

24 THE COURT: All right, 41. What have you got?

25 MS. ADAMS: Your Honor, if I may, I think we

1 keep going back to the same objections. I don't want to
2 object. But the manner of questioning, you keep telling
3 ---

4 THE COURT: Well, the thing is I sustained your
5 objection ---

6 MS. ADAMS: I know.

7 THE COURT: --- and then you argued with me.

8 MS. ADAMS: Well -- and I ---

9 THE COURT: And I thought that was a little bit
10 unnecessary. Let's just remember when we've got a juror
11 on the stand, it really doesn't help him to find -- what
12 is it -- arguing by the attorneys. And the rules provide
13 that once I've ruled, then -- what is it -- there is no
14 further argument. But again, Mr. McGuire, I think you do
15 understand that -- what is it -- the jury can consider
16 mitigation for no reason at all. I mean, and it doesn't
17 require a burden of proof or anything else. It's just
18 that -- and you can have twelve different -- and you
19 pointed out on some occasions -- different reasons for
20 the mitigation or no reason.

21 MR. MCGUIRE: Sure. And Judge, I would just
22 ask that ---

23 THE COURT: The whole problem --and this is the
24 whole thing. I am looking for a fair and impartial
25 balanced jury. That means that they can do both, but

1 neither -- are they committed to either.

2 MR. MCGUIRE: And Judge, that's what I'm
3 actually trying to find too.

4 THE COURT: Okay.

5 MR. MCGUIRE: And Judge, I would just ask the
6 court to just to take recognition of the fact that with
7 the last juror, I gave him about the best education you
8 could get on mitigation evidence.

9 THE COURT: And then forgot to include it in
10 the question.

11 MR. MCGUIRE: And I don't -- and quite frankly,
12 Judge, there's no case law that says I'm required to
13 include that in my questioning

14 THE COURT: Well, if you want to ask it in this
15 Court, there is.

16 MR. MCGUIRE: Well, Judge ---

17 THE COURT: Of course, I -- again, I'll come
18 back to -- general questions as to whether a juror will
19 consider mitigating circumstances charged by the Judge is
20 sufficient. In other words, what we want is to have a
21 jury that is balanced. And again, that's what the Court
22 is trying to do. Now, as I say, there's no rule that you
23 do -- well, I mean, there's nothing that says that you
24 are going to do it except I find that -- what is it -- an
25 unbalanced question is not perhaps helpful to the juror

1 or to the Court making the determination whether the
2 juror can be fair.

3 MR. MCGUIRE: And Judge, if we're on a search
4 for candid information, I do believe we're going to get
5 better information as to how they really feel if I'm able
6 to ask a question based on the -- you know, what's your
7 opinion on the death penalty regarding just plain old
8 murder, add to that the aggravator and then talk --
9 follow-up with mitigation separately. I mean, to say
10 that we have to present the whole picture to them without
11 even being able to define mitigation and be specific
12 about it, is sort of giving them -- it's an unclear
13 question.

14 THE COURT: Well, I agree. It's unclear to ask
15 a question that is not -- doesn't contain the entire
16 premise. Now, again, we all know that -- and you've
17 established on almost each of the jurors -- that they are
18 not learned in the law. And so you start off and you box
19 them into a little point that says, well, if you are not
20 in favor of life for any murder, then -- what is it --
21 where are they going from there. And it doesn't help the
22 juror.

23 Why don't you just go ahead and find out, are you in
24 favor of -- and I'll ask that, does he automatically give
25 the death sentence in any case without consideration for

1 the law. And that's what we're talking about.

2 MR. MCGUIRE: Sure.

3 THE COURT: All right. Anything else?

4 MS. ADAMS: No, sir. Thank you.

5 THE COURT: But please, we've gone a full day
6 now and then some, if you want to know the truth. And I
7 think I know what your objections are. And if I need to
8 hear further argument, that will be fine. All right?
9 And that goes for both of you.

10 Very good.

11 MS. ADAMS: Thank you, Judge.

12 (WHEREUPON, Potential Juror 41 entered the
13 courtroom.)

14 THE COURT: All right. You are Juror 41?

15 THE POTENTIAL JUROR: Yes, sir.

16 **POTENTIAL JUROR 41,**

17 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

18 **EXAMINATION**

19 BY THE COURT:

20 Q. All right. Now, you recall yesterday I put all the
21 jurors under oath. Now, do you understand that you are
22 still under oath and this oath continues throughout these
23 proceedings?

24 A. Yes, sir.

25 Q. All right. A list of potential witnesses was

1 furnished in the jury room. Did you have an opportunity
2 to look over list?

3 A. Uh-huh (affirmative).

4 Q. Were there any potential witnesses in this case to
5 which to which you are related by blood or marriage,
6 close personal friend, business associate or have any
7 relationship at all?

8 A. I think I know -- I'm familiar with a few of them.

9 Q. All right. Well, let me ask you. Do you remember
10 any names in particular?

11 A. Maybe Officer Lee.

12 Q. All right. If that officer or any of the other
13 witnesses that you think you might have identified, if
14 they were witnesses in a trial of this case -- the trial
15 -- in the trial of this case, would that affect your
16 ability to give both the State and the Defendant a fair
17 and impartial trial?

18 A. No.

19 Q. Very good. Do you also recall instructions from
20 Monday to avoid all forms of media coverage in dealing
21 with this case?

22 A. Yes, sir.

23 Q. All right. Has that caused you any problem at all?

24 A. No.

25 Q. Now, the trial of this case will last approximately

1 a week to ten days, or could last that long. Other than
2 personal inconvenience, would this pose a serious danger
3 to the health or well-being of yourself or anyone
4 dependant upon you?

5 A. No.

6 Q. Among other things, we will be talking about is
7 penalty. But the mere fact that we talk about penalty
8 today does not indicate anything about this Defendant or
9 any defendant. Defendants are presumed in law to be
10 innocent. Do you understand this?

11 A. Yes.

12 Q. If you were a juror in a criminal case, could you
13 listen to the law, accept and apply that law as I would
14 instruct it to you as the Court even though you may not
15 agree with that law or think it ought to be some other
16 way?

17 A. Yes.

18 Q. Could you decide this case based solely and on the
19 evidence presented in this courtroom and disregard
20 anything you have heard, read or seen about this case?

21 A. Yes.

22 Q. In a criminal case the State has the burden of
23 proving guilt. The burden of proof for the State is
24 beyond a reasonable doubt. The defendant has no burden
25 to prove innocence. Do you understand this?

1 A. Yes, sir.

2 Q. Could you, depending on the facts and circumstance
3 and the law as I would instruct you in a particular case,
4 find a defendant either guilty or not guilty?

5 A. Yes, sir.

6 Q. If you were a juror in a death penalty case, and if
7 the jury had found the defendant guilty of murder, then
8 we would move to the sentencing phase of the trial. Do
9 you understand this?

10 A. Uh-huh (affirmative).

11 Q. Now, when you hear us refer to a capital case or a
12 death penalty case, what we mean is that it is a criminal
13 murder trial where the prosecutor -- in other words, the
14 State -- is seeking the death penalty. Do you understand
15 this?

16 A. Uh-huh (affirmative).

17 Q. A death penalty trial is divided into two parts.
18 Part one is the guilty phase where a jury determines
19 whether the defendant is guilty or not guilty murder.
20 Part two is the sentencing phase where a jury determines
21 the appropriate punishment. Of course, if the defendant
22 is found not guilty, that ends the matter. Do you
23 understand?

24 A. Uh-huh (affirmative).

25 Q. Therefore, if you were a juror in a trial of a

1 capital case where the jury in the phase one of the trial
2 has found the defendant guilty of murder, you would then
3 move on to the phase two of the trial which is called the
4 sentencing phase of the trial. Do you understand?

5 A. Uh-huh (affirmative).

6 Q. Now, if you were a juror in the sentencing phase --
7 that is, phase two of a capital murder trial, again,
8 where a jury has already found the defendant guilty of
9 murder -- do you understand that the jury, rather than
10 the Judge, determines the sentence that the defendant
11 will receive for the crime of murder?

12 A. Yes, sir.

13 Q. In a capital sentencing trial, the jury's function
14 is to determine the appropriate punishment based upon the
15 circumstances of the crime and the characteristics of the
16 individual defendant.

17 Now, aggravating circumstances are facts or details
18 that, when they are present in a case, make the crime of
19 murder more serious or worse. On the other hand,
20 mitigating circumstances are incidents, occurrences or
21 details of a case that would reduce the severity of the
22 crime of murder. In others words, it may reduce the
23 degree of responsibility of the crime. Do you understand
24 this?

25 A. Uh-huh (affirmative).

1 Q. Do you also understand that the jury has two options
2 to consider regarding the sentence for murder. One
3 option is life imprisonment. And under South Carolina,
4 life imprisonment means until the death of the defendant
5 without parole. And the other option is death which in
6 this state is by electrocution or lethal injection. Do
7 you understand this?

8 A. Uh-huh (affirmative).

9 Q. So could you, as a juror in the sentencing phase,
10 depending upon the facts including relevant aggravating
11 and mitigating circumstances and the law as I instruct it
12 to you, render a sentence of life imprisonment?

13 A. Yes.

14 Q. On the other hand, as a juror in the sentencing
15 phase, depending upon the facts including relevant
16 aggravating and mitigating circumstances and the law as
17 instructed to you, could you render a sentence of death?

18 A. Yes.

19 Q. All right. If you would, please, answer any
20 questions the Defense may have.

21 DIRECT EXAMINATION

22 BY MR. MCGUIRE:

23 Q. Good evening, Juror Number 41. I really appreciate
24 your patience, and I know it's tough waiting. And court
25 is not the most efficient thing. It's no one's fault.

1 Not mine, not the Judge. It's just sometimes the way
2 things go.

3 You indicated on your questionnaire that your mother
4 was very much opposed to the death penalty. Where does
5 that come from?

6 A. I'm not sure. That's her beliefs.

7 Q. You just know that that's her position?

8 A. Yeah.

9 Q. And it's interesting because a lot of times families
10 don't really discuss that kind of topic. How did you
11 come to know that?

12 A. She just always expressed that.

13 Q. Okay. And you're not really sure of the basis for
14 that?

15 A. I think she taught in a jail system for a couple of
16 years, so -- she was a teacher there, so I think she
17 started opposing it then, I guess.

18 Q. Okay. And I noticed your husband is a correctional
19 officer?

20 A. Was.

21 Q. Was? For nine years?

22 A. Not that long.

23 Q. Not that long? I may have misread that. I just got
24 your questionnaire. It's sort of a testament to how fast
25 I can read, because I went through it -- four years.

1 A. Four years.

2 Q. Okay. I misread it. So four years. What is his
3 opinion?

4 A. I think he's for it.

5 Q. Okay. Every case or ...

6 A. It just depends.

7 Q. Okay. And your position?

8 A. It would depend.

9 Q. Okay. Now, what I'm going to do is -- the Judge
10 gave you some pretty basic guidelines and some framework
11 to operate in, but I'm going to be a little bit more
12 detailed. This is my only time to talk to you about
13 this, so I'm going to be a little bit more detailed. I
14 want to talk to you about some legal issues, murder,
15 penalty, burdens of proof, that sort of thing, okay?

16 What I'm going to start off with is the kind of case
17 that kind of brings us here. And it's what's called
18 malice murder. Murder is defined in South Carolina as
19 the unlawful killing of another person with malice
20 aforethought. Malice is defined as the killer operating
21 with a black and malignant heart, fatally bent on evil.
22 It's a deliberate choice to take an innocent life. In
23 that situation, what's your feeling about the death
24 penalty as the appropriate punishment?

25 A. I would have to know all the facts.

1 Q. And when you say, all of the facts, are you talking
2 about the facts about the killing?

3 A. Yeah. Yeah.

4 Q. Okay. And maybe the sort of the aggravation-type
5 evidence?

6 A. The nature, the chemical substances involved. I
7 mean, everything.

8 Q. Okay. And when you say chemical substances, who are
9 you talking about?

10 A. I mean, were they drinking? Were they on drugs or,
11 you know? I don't even know.

12 Q. Kind of how those people came to be together, what
13 happened. All the details?

14 A. Yeah.

15 Q. Okay. Well, it sounds like you're the type of
16 person who wants to hear everything?

17 A. Yes.

18 Q. And part of a capital case is what's called
19 aggravation evidence. So the State would not only have
20 to prove that deliberate, intentional taking of an
21 innocent life, but also something beyond that. And I
22 want to put you in a situation where the case you're
23 asked to decide is actually a murder case where someone
24 had murdered before, and that's the aggravation evidence.
25 Basically, someone who's killed twice, murdered twice.

1 And keeping in mind the Judge's comments about, you know,
2 mitigation, aggravation, all of that, what's your view
3 about the death penalty as the appropriate punishment in
4 that kind of case?

5 MS. ADAMS: Your Honor, he's not asking her if
6 she would consider mitigation before making a decision.

7 THE COURT: Again, the aggravation would be
8 presented at the same time as mitigation, so it's not
9 just one-sided.

10 MR. MCGUIRE: Right. And I think my exact
11 words, considering all the Judge's comments regarding
12 mitigation, everything he talked to you about ---

13 THE COURT: I haven't talked about mitigation.
14 I just told her that -- what is it -- there would be two
15 sides.

16 MR. MCGUIRE: Sure.

17 THE COURT: So I think the question that you
18 should present to her is just not a one-sided question.
19 And I knew you -- I know you didn't mean that.

20 MR. MCGUIRE: Sure.

21 THE COURT: So ask her about if -- and there
22 were mitigation evidence or for any reason at all, could
23 she not give the death sentence.

24 Q. And since the Prosecutor apparently wants me to talk
25 to you about this ---

1 THE COURT: No. I do. I'm the one who's
2 asking that you give the question the balance.

3 MR. MCGUIRE: Sure.

4 THE COURT: So that -- what is it -- she's not
5 having to ask [sic] one side of a question.

6 MR. MCGUIRE: Right. Appreciate that, Judge.

7 THE COURT: Yes, sir. Thank you.

8 Q. As the Judge said, any juror can decide to vote for
9 life in prison for any reason or no reason at all. Is
10 that a principle that you're comfortable with?

11 A. Another person besides me or ...

12 Q. No, no. What I'm saying is if you were -- if you're
13 on a jury with eleven other people, after the guilt phase
14 -- and I know this is complicated. But you know, after
15 the penalty phase, when the jury's weighing the two
16 punishments of life and death, the Judge just indicated
17 that any juror can say, I'm going to vote for life. And
18 they can do it for any reason or no reason at all. They
19 don't even have to be able to come up with a reason. Is
20 that a principle you're comfortable with?

21 MS. ADAMS: Your Honor, it's can she follow
22 your instructions.

23 THE COURT: Now, let's go ahead -- now, I'm
24 going to let him ask the question, and then we'll see.

25 A. Would I personally do that? Or am I going to be

1 offended if another juror decides to go different than

2 I'm saying I want to go?

3 THE COURT: All right. Explain your question.

4 MR. MCGUIRE: Sure. Thank you.

5 Q. Is that something you could respect with regards to

6 another juror?

7 A. To another juror? I guess I have to if that's their

8 decision.

9 Q. And the Judge would instruct you it's actually the

10 law.

11 A. Oh, okay.

12 Q. So you wouldn't obviously require more from a juror

13 than the law would requires.

14 A. Okay.

15 Q. Does that make sense?

16 A. I guess.

17 Q. And I know this is very complicated. But I'm going

18 to talk to you a little bit about mitigation. And

19 mitigation evidence is any reason to vote for life. You

20 can find it in the facts the case. You can find it in

21 the defendant's background. You can -- he might hang his

22 head during certain testimony and be remorseful. You can

23 find it wherever it seems to be. And the deck is really

24 sort of stacked against the State for getting a death

25 penalty. And what I mean by that is -- and the law makes

1 it so -- that the death penalty is never automatic. Did

2 you know that?

3 A. Yes.

4 Q. Okay. Well, a lot of people show up and think,

5 well, if the State proves A, B, and C, the appropriate

6 penalty or the only possible penalty is death. And

7 that's never the case. Are you okay with that?

8 A. Yes.

9 Q. Okay. And the law is very different in a sentencing
10 proceeding with regard to aggravation evidence and

11 mitigation evidence. And I'm going to explain that

12 difference to you. Aggravation evidence is something the

13 State has to bring forward to convince or try to convince

14 the jurors that the death penalty might be appropriate.

15 All twelve jurors have to agree that it exists, and they

16 have to find that it exists beyond a reasonable doubt.

17 It's the highest burden we have in the law.

18 Now, the opposite of that is what's called

19 mitigation evidence. And again, that's any reason to

20 vote for life whatsoever. Any reason. Even something

21 you can't even put into words. It can just be a feeling.

22 And no twelve have to agree on it. Somebody on this side

23 of the jury might say, well, it was something in his

24 childhood that's going to prevent me from voting death.

25 And that's okay. Somebody on the other side, complete

1 other side could say, you know, it was his relationship
2 with his child that I find redeeming, and I see humanity
3 in him. And I'm not going to vote death based on that.

4 MS. ADAMS: Your Honor, he's getting case-
5 specific. It's can she consider mitigation in general.
6 He's going fact-by-fact.

7 THE COURT: Please. Thank you. I was waiting
8 for the question.

9 MR. MCGUIRE: Sure. I'm just explaining how
10 one juror could find mitigation and it'd be different
11 than some others. I was just using examples. I'm not
12 asking her if she could consider it at all.

13 THE COURT: Very well.

14 MR. MCGUIRE: Thank you, Judge.

15 Q. And you don't have to -- there's no burden of proof.
16 A person in the front sitting in the front in that chair
17 right there can just say, I see it, and it just has the
18 weight with me that's going to prevent me from voting
19 death. And that's exactly what the Judge will charge you
20 the law is. And like I told you before, another juror on
21 the other side could see something completely different.
22 And there's no burden of proof. It's not beyond a
23 reasonable doubt. It's not beyond any doubt. It's just,
24 you know what, I see it, and I want to give that
25 mitigation evidence the weight of life. And that's

1 perfectly acceptable. That's exactly what the Judge will
2 charge you. Is that a principle you're okay with?
3 A. If that's acceptable.
4 Q. Not only is it acceptable, it's the law.
5 A. Okay.
6 Q. And is that something you can follow?
7 A. Yes.
8 Q. Okay. And what I'm leading up to is that capital
9 sentencing is different from any other case that we have
10 because the jury does fashion the punishment. And
11 there's no requirement that the jury is unanimous at the
12 end of the day. The law describes your decision as your
13 own individual moral judgement, kind of like your
14 individual point of view. And the law says if it would
15 harm your conscience to give that up, that that's wrong.
16 And are you okay if you're on the jury, agreeing to
17 disagree at the end of the day and just let the Judge
18 sentence?
19 A. (No response).
20 Q. A lot of people, when they hear about being on a
21 jury, and they hear that two people disagree or five
22 against seven or six against six, they feel kind of like
23 they have to get unanimous. There's no requirement of
24 that in a capital case. You can actually just sort of
25 respect each other's individual opinions and say, you

1 know what, we couldn't be unanimous, we're going to let
2 the Judge sentence. Are you okay with that?

3 A. Oh, yeah.

4 Q. Okay. Thank you. That's all I have for you ma'am.

5 MR. DELGADO: Your Honor, excuse me. May I
6 just confer with him?

7 MR. MCGUIRE: Your Honor, if I could just have
8 a second, Judge.

9 Q. I read this pretty fast because it was handed to me
10 just before you got here. Now, your spouse, your
11 husband, worked at the Anderson County Detention Center
12 in '07 and '08 -- '07 to '08?

13 A. Uh-huh (affirmative).

14 Q. Okay. Has he ever mentioned Mr. Rivera to you?

15 A. He didn't mention a whole lot about his work.

16 Q. He doesn't talk much about it?

17 A. Uh-uh (negative).

18 Q. Okay. So if he had a relationship with Mr. Rivera
19 or knew him, you wouldn't know that?

20 A. Uh-uh (negative).

21 Q. And if you were on the jury, could you refrain from
22 talking to him about the fact that you're on the case and
23 ---

24 A. We don't live in the same house, so ...

25 Q. Oh. Well, that certainly resolves that issue. I

1 apologize if I've pried too much. Thank you very much.

2 THE COURT: All right. The State?

3 CROSS-EXAMINATION

4 BY MS. ADAMS:

5 Q. Good evening, how are you?

6 A. I'm good.

7 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
8 Circuit. And we certainly do appreciate you being here.
9 I know it's been a long afternoon.

10 I just want to make sure that we understand exactly
11 what your feelings are regarding the death penalty and to
12 make sure that you understand there are no right answers,
13 there are no wrong answers. And what this process is
14 about is just ensuring that you can be not only fair to
15 the State, but to the Defendant as well. Okay? So
16 whatever your opinion is, no one wants to put words in
17 your mouth at all. Okay?

18 I noticed on your questionnaire that your brother
19 had been convicted of felony D.U.I.?

20 A. Uh-huh (affirmative)

21 Q. That was recently; is that correct? He's in prison
22 right now; is that right?

23 A. Right.

24 Q. Would that affect your feelings or does that make
25 you harbor any resentment whatsoever towards the State or

1 law enforcement at all?

2 A. No.

3 Q. Okay. Okay. And the Defense had asked you a little
4 bit, too, about your mom, and that she says no way for
5 the death penalty. You seem to indicate that you thought
6 it's because she was -- she taught in the jail at some
7 point?

8 A. Right. And she also taught, like, remedial classes
9 in school. So I don't know.

10 Q. Are you close to your mom, so to speak?

11 A. Yeah.

12 Q. And the reason I'm asking is the law actually
13 requires -- if you are on a jury, the law requires that
14 you sign your name to the sentence sheet which is what
15 allows the State to execute a defendant. Okay? So your
16 signature would allow the State to go forward and kill a
17 defendant if that is -- so your signature would be there,
18 along with the eleven other jurors, if you felt that the
19 circumstances warranted a death sentence. Would your
20 mother's feelings whatsoever -- would that substantially
21 impair your ability in any way to sign your name to that
22 sentence sheet ---

23 A. No.

24 Q. --- because it would be a public document that she
25 would see?

1 A. No.

2 Q. Okay. So you could do that despite your mother's
3 feelings.

4 A. Uh-huh (affirmative)

5 Q. Okay. Now, you understand that the death penalty is
6 not -- every murder is not eligible for the death
7 penalty. Did you know that?

8 A. No.

9 Q. Okay. It has to be an aggravated murder. And
10 there's a certain list of aggravating factors that the
11 Judge will instruct you on that makes certain murders
12 eligible for the death penalty. Okay? So every murder
13 is an intentional killing of another with malice
14 aforethought. But there are only certain murders that
15 are eligible for the death penalty under the law. Do you
16 understand that?

17 A. Uh-huh (affirmative).

18 Q. Okay. And what we want to ensure today is that you
19 can listen to the Judge's instructions, and that once you
20 consider all the aggravation and all the mitigation,
21 could you vote to impose a sentence of life without
22 parole if you felt the facts and circumstances warranted
23 that?

24 A. Yes.

25 Q. You seem like you're not sure. Is it -- if it's

1 confusing, just let us know. We don't -- I don't want to
2 confuse you. I want to make sure that, you know ---

3 A. But I'm not having to yes or no without knowing
4 anything, right? I mean ---

5 Q. No. Right now you don't know anything about the
6 facts or circumstances of this case; is that right?

7 A. Okay. Just could I if I -- could -- would I do it
8 if I ---

9 Q. Right. In other words, if you heard all the
10 aggravation and all the mitigation and you felt life
11 without parole was appropriate, could you sentence a
12 defendant to life? After ---

13 A. Yes, ma'am.

14 Q. Okay. Could you also sentence a defendant to death?

15 A. Yes.

16 Q. Do you understand that in a jury room -- if you are
17 selected for deliberation -- that a deliberation is a
18 give-and-take. And obviously every juror is going to
19 have opinions -- sometimes those opinions will differ --
20 and that everyone should respect everybody's opinions and
21 listen to those opinions. Is that fair?

22 A. Uh-huh (affirmative).

23 Q. Okay. And you would be able to do that?

24 A. Yes.

25 Q. Okay. And I think part of what the Defense was

1 trying to say is that you understand that a death verdict
2 has to be unanimous. Do you understand that?

3 A. Meaning everybody ---

4 Q. Everybody has to agree to sentence a defendant to
5 death, yes. Is that something that you can follow and
6 abide by the Judge's instruction on that?

7 A. Yeah, I mean, when he was explaining earlier that if
8 they can't come to a decision, he gets to decide. Does
9 that come into play?

10 Q. Basically -- for a death sentence to be imposed all
11 twelve jurors have to be unanimous, yes.

12 A. Okay.

13 Q. But there's a give-and-take in the jury room, and
14 everybody has to listen to everybody's opinions.

15 A. Right. Okay.

16 Q. Okay. So you feel that you could give a sentence of
17 life or death depending on the circumstances?

18 A. Yes.

19 Q. Okay.

20 MS. ADAMS: Just one second, Your Honor.

21 Nothing else, Your Honor.

22 THE COURT: Anything else?

23 MR. MCGUIRE: Nothing further, Your Honor.

24 THE COURT: All right. Anything from the
25 State?

1 MS. ADAMS: No, sir.

2 THE COURT: Anything from the Defense?

3 MR. MCGUIRE: No, sir.

4 THE COURT: Considering the entire voir dire, I
5 find that Juror Number 41 will be fair, unbiased and
6 impartial and able to carry out the law as explained to
7 her. Furthermore, I find that this juror's beliefs or
8 attitudes towards the death penalty will not prevent or
9 substantially impair the performance of her duties as a
10 juror in accordance with the law, the Court's
11 instructions and the juror's oath.

12 So you'll be qualified for the panel. Now, it'll
13 take a few days before we complete -- what we'll do is
14 going to have a panel of qualified jurors, and from those
15 -- that panel, then we'll select the eighteen that will
16 serve on the jury as jurors and alternates. So you've
17 given your telephone number the Clerk of Court?

18 THE POTENTIAL JUROR: Yes.

19 THE COURT: All right. She'll be contacting
20 you in a few days. But until that time, you can do
21 whatever you want to. You're not under any obligation
22 until you get the call. But once you get the call, then
23 you'll have to do what is requested of you.

24 THE POTENTIAL JUROR: Okay.

25 THE COURT: All right. Any questions?

1 THE POTENTIAL JUROR: No.

2 THE COURT: Very good. Thank you very much for
3 being here and your patience with the Court. And I do
4 appreciate it. Thank you, ma'am.

5 THE POTENTIAL JUROR: Thanks.

6 (WHEREUPON, Potential Juror 41 exited the
7 courtroom.)

8 THE COURT: All right, 49, I think.

9 MR. MCGUIRE: Yes, sir.

10 MS. ADAMS: Yes, sir.

11 WHEREUPON, Potential Juror 49 entered the
12 courtroom.)

13 THE COURT: All right. You are Juror Number
14 49?

15 THE POTENTIAL JUROR: Yes, sir.

16 **POTENTIAL JUROR 49,**

17 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

18 EXAMINATION

19 BY THE COURT:

20 Q. You recall on Monday I put all the jurors under
21 oath. Now, do you understand that you are still under
22 oath and this oath continues throughout this process?

23 A. Yes, sir.

24 Q. All right. When you came to the jury room today,
25 there was a list of potential witnesses. Did you have a

1 chance to review it?

2 A. The only one that I recognized was William Brooks.

3 Q. Yes, sir.

4 A. From the -- he's my neighbor.

5 Q. All right. If he was a witness in the trial in this
6 case, would that in any way affect your ability to give
7 both the State and the Defendant a fair and impartial
8 trial?

9 A. No, sir.

10 Q. Very good. Now, you also recall my instructions
11 from Monday to avoid all forms of media coverage dealing
12 with this case?

13 A. Yes, sir.

14 Q. Has this caused you -- any problem with you?

15 A. No, sir.

16 Q. Has this caused any problem for you?

17 A. No, sir.

18 Q. Now, the trial in this case will last perhaps a week
19 to ten days. Other than the personal inconvenience this
20 would pose -- excuse me. Other than the personal
21 inconvenience, would this pose a serious danger to the
22 health or well-being of yourself or anyone dependant upon
23 you?

24 A. No, sir.

25 Q. Among other things we will be talking about today is

1 penalty. But the mere fact that we talk about penalty
2 does not indicate anything about this Defendant or any
3 defendant. Defendants are presumed in the law to be
4 innocent. Do you understand that?

5 A. Yes, sir.

6 Q. If you were selected as a juror in a criminal case,
7 could you listen to the law, accept and apply the law as
8 I would instruct you as the Judge of the Court, and even
9 though you may not agree with that law or think it ought
10 to be some other way, could you accept and apply the law
11 as I would instruct you?

12 A. Yes, sir.

13 Q. Could you decide this case based solely on the
14 evidence presented in this courtroom and disregard
15 anything you may have heard, read or seen about the case?

16 A. Yes, sir.

17 Q. In a criminal case, the State has the burden of
18 proving guilt. The burden of proof is that the State
19 must prove guilt beyond a reasonable doubt. A defendant
20 has no burden to prove innocence. Do you understand?

21 A. Yes, sir.

22 Q. Could you, depending upon the facts and the evidence
23 and the law as I would instruct you in a particular case,
24 find the defendant either guilty or not guilty?

25 A. Yes, sir.

1 Q. If you were a juror in a death penalty case, and if
2 the jury had found the defendant guilty of murder, you
3 would then move to the sentencing phase of the trial. Do
4 you understand?

5 A. Yes, sir.

6 Q. When you hear us refer to a capital case or a death
7 penalty case, what we mean is that it is a criminal
8 murder trial where the prosecutor -- in other words the
9 State -- is seeking the death penalty. Do you understand
10 this?

11 A. Yes, sir.

12 Q. A death penalty trial is divided into two parts.
13 Part one is the guilt phase where a jury determines
14 whether the defendant is guilty or not guilty murder.
15 Part two is the sentencing phase where a jury determines
16 the appropriate punishment. Of course, if the defendant
17 is found not guilty in first phase, that ends the matter.
18 Do you understand this?

19 A. Yes, sir.

20 Q. Therefore, if you were a juror in a trial of a
21 capital case where the jury in phase one of the trial has
22 found the defendant guilty of murder, you would then move
23 to phase two of the trial, which is called the sentencing
24 phase of a trial. Do you understand that?

25 A. Yes, sir.

1 Q. Now, if you were a juror in the sentencing phase --
2 that is, phase two of a capital murder trial, again,
3 where a jury has already found the defendant guilty of
4 murder -- do you understand that the jury, rather than
5 the Judge, determines the sentence that the defendant
6 will receive for the crime of murder?

7 A. Yes, sir.

8 Q. In a capital sentencing trial the jury's function is
9 to determine the appropriate punishment based on the
10 circumstances of the crime and the characteristics of the
11 individual defendant. Do you understand?

12 A. Yes, sir.

13 Q. Now, aggravating circumstances are facts or details
14 that, when they are present in a case, make the crime of
15 murder more serious or worse. On the other hand,
16 mitigating circumstances are incidents, occurrences or
17 details in a case that would reduce the severity of the
18 crime of murder. In others words, may reduce the degree
19 of responsibility for the crime. Do you understand that?

20 A. Yes, sir.

21 Q. Do you also understand that the jury has two options
22 to consider regarding the sentence of murder? One option
23 is life imprisonment, and in South Carolina that's life
24 imprisonment until death without possibility of parole.
25 Do you understand that?

1 A. Yes, sir.

2 Q. The other option is death which in this state is by
3 electrocution or lethal injection. Could you, as a juror
4 in a sentencing phase, depending upon the facts including
5 relevant aggravating and mitigating circumstances and the
6 law as instructed to you, render a sentence of life
7 imprisonment?

8 A. Yes, sir.

9 Q. On the other hand, as a juror in the sentencing
10 phase, depending upon the facts including relevant
11 aggravating and mitigating circumstances and the law as
12 instructed to you, could you render a sentence of death?

13 A. Yes, sir.

14 Q. Very well. If you would, please, answer any
15 questions the Defense might have.

16 DIRECT EXAMINATION

17 BY MR. MCGUIRE:

18 Q. Good evening Juror Number 49. I have to refer to
19 you by number.

20 A. That's fine.

21 Q. I'm not being not friendly or disrespectful. It's a
22 little awkward for me. If you'll bear with me, okay?

23 A. Fair enough.

24 Q. The Judge has given you some basic guidelines and
25 definitions. I'm going to talk to you a little bit more

1 in detail. But one thing that stuck out on your
2 questionnaire to me -- before we start talking about
3 punishment and murder, that sort of thing -- is your
4 brother did eighteen months on a gun charge? That's
5 sounds kind of steep to me. Do you think he -- was that
6 an unusual charge?

7 A. I didn't know much about it. I mean, that was --
8 there was more things involved than just that. That was
9 just the best thing that he could be charged with, my
10 understanding.

11 Q. Okay.

12 A. I wasn't present for any of the -- whenever he went
13 before a judge. I was just given the specifics as far as
14 he's been doing eighteen months for a gun charge. It was
15 mainly because he was under eighteen, and the gun was
16 stolen.

17 Q. Okay.

18 A. And he pawned it. So that was kind of how he got in
19 trouble. He spent eighteen months in Livesay in
20 Spartanburg, and that was really the most of it.

21 Q. Okay. Do you harbor any bad feelings towards law
22 enforcement or the Prosecution, the State?

23 A. No. No.

24 Q. Okay. I'm going to talk to you a little bit now
25 about the death penalty, punishment for murder and that

1 sort of thing. Now, the Judge gave you some general
2 framework and some guidelines. I want to talk to you in
3 a little bit more detail about how -- the kind of case
4 that gets you here, okay?

5 A. Correct.

6 Q. And we're going to start off with the definition of
7 murder. If I asked you to give me the definition of
8 murder in South Carolina, you'd probably come up short.

9 A. I mean, I think it's ...

10 Q. I'll tell you this. You're the only person brave
11 enough to try so far.

12 A. Well, I mean, I don't think it's -- I don't think
13 it's -- besides the judicial system, I mean, I don't
14 think it's proper for anybody else to try to go take
15 somebody else's life.

16 Q. Sure. And the way the Court will explain it to you
17 and charge you is that murder is the unlawful killing of
18 another person with malice aforethought.

19 A. Right.

20 Q. Malice aforethought means that the killer was
21 operating with a black and malignant heart, fatally bent
22 on evil, deliberately took an innocent life. What are
23 your feelings about the death penalty in that kind of
24 situation?

25 A. I mean, honestly -- I mean, I'm just -- I mean, I

1 was raised with fairness. And I think if you took
2 somebody from somebody else's family, then -- I mean, it
3 all depends on the situation. But I'm definitely for it,
4 just for the fact of -- for the reason of if -- I mean,
5 if you can do it to them and that's best for the crime,
6 then I think it's fair.

7 Q. It's sounded like you were about to say something
8 like eye-for-an-eye or something similar to that.

9 A. Well, that's kind of the way I feel, to be honest
10 with you. It's been a long day, man.

11 Q. Okay. For me too. But ---

12 A. Yeah, that's -- I mean, an eye-for-an-eye, a tooth-
13 for-a-tooth is kind of the way I feel about it.

14 Q. Sure. If you intentionally take an innocent life,
15 you deserve to forfeit yours basically?

16 A. If you take my child, I'm just going to want to --
17 I'm going to want your head. I mean, just to be honest
18 with you, I mean, that's just the way I feel.

19 Q. The only right answers are truthful answers.

20 A. Yeah.

21 Q. If that's the way you feel, that's the right answer.

22 A. Yeah.

23 Q. So it sounds like in an intentional meant-to-do-it
24 murder case, the death penalty is the appropriate
25 punishment?

1 A. I agree.

2 Q. Okay. And would you -- well, okay. And it sounds
3 like that's a pretty firm belief?

4 A. Yeah.

5 Q. And you've given that careful thought. It kind of
6 comes from who you are, right or wrong, your moral
7 judgement?

8 A. That's correct.

9 Q. And would -- in fixing punishment, you said it would
10 kind of depend upon the circumstances. I just want to
11 make sure we're on the same page because a lot of people
12 sort of have some misconceptions about -- they might tell
13 me when I'm doing this that, well, you know, if it was
14 self-defense, accident, if it was kids getting drunk in a
15 car hitting somebody, I wouldn't give the death penalty
16 for that. That's not what we're talking about. We're
17 talking about intentionally taking a life.

18 A. Yeah. I mean, if it was a traffic accident or
19 something like that, I could understand.

20 Q. Right.

21 A. I wouldn't say that. But considering intentionally
22 take somebody else's life, then, yes, I would say so.

23 Q. Okay. When you say ---

24 A. I would say death penalty.

25 Q. Okay.

1 A. I mean, you know what I'm saying. I would agree
2 with death penalty in the fact of if I intentionally,
3 with malice, like we said, took somebody's life.

4 Q. Sure.

5 A. If it was a accident, traffic accident, something
6 like that, then I would not. It would be a totally
7 different situation. Like D.U.I., for example, I would
8 mainly be -- let somebody sit in jail instead of ---

9 Q. Because they didn't intentionally ---

10 A. Correct.

11 Q. --- with an evil heart ---

12 A. Correct.

13 Q. --- do something bad?

14 A. Correct.

15 MS. ADAMS: Your Honor, we're here because it's
16 ---

17 THE COURT: I think you've made a point.

18 MR. MCGUIRE: Well, I agree. Thank you. We're
19 moving on from that, Judge.

20 Q. Would things about, say, a person's, a defendant's,
21 background be relevant in fixing punishment, or is it
22 really the facts of the case that should be the focus?

23 A. Explain that.

24 Q. Well, would you want to take into account someone's
25 upbringing, childhood, that sort of thing, or would your

1 focus be on the facts of the case?

2 A. The facts of the case.

3 Q. Okay. Would you take the position that, you know,
4 someone's childhood, stuff like that, is really not
5 relevant to fixing punishment, it's really how bad the
6 killing is?

7 A. Childhood -- I mean, if you grew up in a violent
8 home, I mean, you're -- no. I would agree with the facts
9 of the matter. I mean, you made the conscious choice to
10 do the action, whatever you did.

11 Q. Right. As long as we aren't talking about somebody
12 who's not mentally insane ...

13 A. Correct.

14 Q. ... they knew right from wrong ...

15 A. Correct.

16 Q. ... they knew what they were doing ...

17 A. Correct.

18 Q. ... with evil, taking an innocent life ...

19 A. Right.

20 Q. ... death penalty?

21 A. Correct.

22 Q. Okay. I'm just going to talk to you a little bit
23 about the proceeding and fairness. In court, Defendant's
24 aren't entitled to fairness just out here. The State's
25 entitled to fairness not just out here, but also in the

- 1 jury room. And capital cases are different from other
2 cases because the jury does fix punishment. And if you
3 saw things being unfair or hostile in the jury room, you
4 could sent out a note to the Judge say, hey, things are
5 fair in here and people are bullying. You could end that
6 sort of thing, couldn't you?
- 7 A. Yes.
- 8 Q. You would insist on fairness?
- 9 A. Yes.
- 10 Q. And individual opinions being respected?
- 11 A. I would want the same thing if it were me.
- 12 Q. Sure. Kind of do unto others?
- 13 A. Yeah. Right.
- 14 Q. Right. And the Judge will tell you -- and the law
15 describes -- a decision in a capital case, a sentencing
16 decision, as an individual moral judgement. It's the
17 person's individual point of view based on their walk in
18 life, and it's not a right or wrong answer. And the law
19 allows for the jury to end the day agreeing to disagree.
20 Is that something you could be okay with?
- 21 A. Yes, sir.
- 22 Q. And you'd respect everybody's individual moral
23 judgement?
- 24 A. I would.
- 25 Q. That's all I have for you. Thank you, sir.

1 A. Thanks.

2 THE COURT: All right. The State?

3 CROSS-EXAMINATION

4 BY MS. ADAMS:

5 Q. I know it's a bit late, and I apologize. I'm
6 Chrissy Adams, and I'm the Solicitor for the Tenth
7 Circuit. And I realize too on your questionnaire, you're
8 also a present victim in our office, are you not?

9 A. I am.

10 Q. Okay. Because the crime actually occurred on ---

11 A. With Chris Maddox.

12 Q. Okay. The officer?

13 A. No. The guy whose heat pumps were stolen.

14 Q. Right. Okay. Right, the defendant?

15 A. Correct.

16 Q. The defendant?

17 A. Sorry.

18 Q. Okay. But Mr. Maddox presently has charges pending.

19 So in other words, his case hasn't been taken care of?

20 A. Yeah, yeah, correct.

21 Q. So you're still dealing with our office as a victim?

22 A. Correct.

23 Q. Okay.

24 MS. ADAMS: Your Honor, I have no further
25 questions.

1 THE COURT: Juror 49, I'm going to ask you to
2 step out for just a moment so I might take up a matter of
3 law with the attorneys.

4 THE POTENTIAL JUROR: Okay.

5 THE COURT: Thank you, sir.

6 (WHEREUPON, Potential Juror 49 exited the
7 courtroom.)

8 MS. ADAMS: Your Honor, I was looking at this.
9 That's what we were talking about, that he is a victim in
10 our office.

11 THE COURT: Which page is that?

12 MS. ADAMS: It happened December 7th, Your
13 Honor.

14 THE COURT: What page is it?

15 MS. ADAMS: It is page twelve.

16 THE COURT: There you go. Thank you.

17 MS. ADAMS: And he says his court date is
18 February 18th, even though it's not. It probably was
19 February 18th. But we don't have court right now, so I'm
20 not sure when it's been rescheduled. And, Your Honor, in
21 an abundance of caution, due to his answers, we do not
22 oppose him being ..

23 MR. MCGUIRE: I'd have been a little briefer.

24 THE COURT: I was wondering ---

25 MS. ADAMS: I'm sorry. I apologize, Your

1 Honor.

2 THE COURT: Excuse me. I was wondering why you
3 were so reluctant to suggest that there was another
4 consideration under our law in this state other than just
5 the heinousness of the crime as far sentencing. But you
6 were very -- I appreciate your reticence. I am going to
7 -- without any -- unless there's some objection, I am
8 going to excuse him for cause because, obviously, he has
9 a case pending, and that might distract him.

10 MR. MCGUIRE: Are there any more like that?

11 MS. ADAMS: No, no. Not today. We'll double-
12 check tomorrow. I apologize, Judge. It's been a long
13 day.

14 THE COURT: It's been long because we didn't --
15 I'm sorry. It's nobody's fault. I think we're all kind
16 of -- but let's do get more than one person working on
17 the questionnaires.

18 (WHEREUPON, Potential Juror 49 entered the
19 courtroom.)

20 THE COURT: All right. Juror 49, I'll have to
21 apologize. I had not looked at your questionnaire. And
22 obviously there's something -- and again, you remember
23 the other day when I tried to qualify -- when I did
24 qualify the panel, I said there were two reasons for the
25 question of fair and impartial. One was that --

1 obviously, the point is to have jurors who are fair and
2 impartial. But the second part is that the juror himself
3 or herself feel comfortable sitting as a juror. In other
4 words, you're not going to be distracted or anything or
5 have any particular association or something like that.
6 And with your pending case -- in other words, I think
7 you're the victim, so you've got to work closely with the
8 Solicitor. And it would be somewhat embarrassing if they
9 had to contact you during the trial.

10 THE POTENTIAL JUROR: That's fine.

11 THE COURT: So I'm going to have to excuse you
12 on the trial of this case.

13 THE POTENTIAL JUROR: Okay.

14 THE COURT: But because you've gone through it
15 so far, you get the credit for being here, so you won't
16 have to serve for at least three more years.

17 THE POTENTIAL JUROR: Thanks.

18 THE COURT: Good luck to you, sir. And thank
19 you so much for your candor. I do appreciate it.

20 THE POTENTIAL JUROR: I appreciate it.

21 THE COURT: Yes, sir. Thank you.

22 THE POTENTIAL JUROR: Y'all have a goodnight.

23 THE COURT: Thank you.

24 MS. ADAMS: Thank you.

25 MR. MCGUIRE: We'll see you.

1 THE COURT: All right. What's next?

2 MS. ADAMS: No more current victims, Judge.

3 THE COURT: 56, I think. Has everybody looked
4 through 56?

5 MS. ADAMS: Yes, sir.

6 (WHEREUPON, Potential Juror 56 entered the
7 courtroom.)

8 THE COURT: All right. You are Juror 56?

9 THE POTENTIAL JUROR: Yes.

10 **POTENTIAL JUROR 56,**

11 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

12 **EXAMINATION**

13 BY THE COURT:

14 Q. You'll recall on Monday I put all the jurors under
15 oath. Do you understand that you are still under oath
16 and that oath continues throughout these proceedings?

17 A. Yes, sir.

18 Q. All right. When you got to the jury room this
19 afternoon, which has been some few hours ago, do you
20 remember there was a list of potential witnesses in this
21 case?

22 A. Uh-huh (affirmative).

23 Q. And did you look over that list?

24 A. Yes.

25 Q. Were there any names that you recognized as either

1 being related to by blood or marriage, close personal
2 friends, business associates or have any familiarity at
3 all?

4 A. No.

5 Q. And do you also recall my instructions from Monday
6 to avoid all forms of media coverage dealing with this
7 case?

8 A. Yes.

9 Q. Has that caused you any problem at all?

10 A. No.

11 Q. Now, listen carefully to this question. The trial
12 of this case will last approximately a week or even maybe
13 ten days after we start it. Other than personal
14 inconvenience, would -- excuse me. Other than the
15 personal inconvenience, would this pose a serious danger
16 to the health or well-being of yourself or anyone who is
17 dependant upon you?

18 A. No, sir.

19 Q. All right. Among other things, we will be talking
20 about penalty today. But the mere fact that we talk
21 about penalty does not indicate anything about this
22 Defendant or any defendant. Defendants are presumed to
23 be innocent under the law. Do you understand that?

24 A. Yes, sir.

25 Q. If you were a juror in a criminal case, could you

1 listen to the law, accept and apply that law as I would
2 instruct it to you as the Judge, even though you may not
3 agree with that law or think it ought to be some other
4 way?

5 A. Yes.

6 Q. Could you decide this case based solely on the
7 evidence presented in this courtroom and disregard
8 anything you may have heard, read or seen about the case?

9 A. Yes.

10 Q. In a criminal case the State has the burden of
11 proving guilt. The burden of proof for the State is
12 beyond a reasonable doubt. A defendant has no burden to
13 prove innocence. Do you understand?

14 A. Uh-huh (affirmative).

15 Q. Could you, depending upon the facts and the evidence
16 and the law as I would instruct you in a particular case,
17 find a defendant guilty or not guilty?

18 A. Yes.

19 Q. In other words, you could find a defendant either
20 guilty or you could find him not guilty.

21 A. Yes.

22 Q. If you were a juror in a death penalty case, and if
23 the jury had found the defendant guilty of murder, you
24 would then move to the sentencing phase of the trial. Do
25 you understand that?

1 A. Uh-huh (affirmative).

2 Q. When you hear us refer to a capital case or a death
3 penalty case, what this means is that it is a criminal
4 murder trial where the prosecutor -- in other words the
5 State -- is seeking the death penalty. Do you understand
6 this?

7 A. Uh-huh (affirmative).

8 Q. Now, a death penalty trial is divided into two
9 parts. Part one is the guilt phase of the trial where a
10 jury determines whether a defendant is guilty or not
11 guilty of murder. Do you understand?

12 A. Uh-huh (affirmative).

13 Q. Now, part two is the sentencing phase, where a jury
14 determines the appropriate punishment. Of course, if the
15 defendant is found not guilty, that ends the matter.

16 A. Right.

17 Q. Therefore, if you were a juror in the trial of a
18 capital case where the jury in phase one of the trial has
19 found the defendant guilty of murder, you would then move
20 on to phase two of the trial which is called the
21 sentencing phase of the trial. Do you understand that?

22 A. Uh-huh (affirmative).

23 Q. Now, if you were a juror in the sentencing phase --
24 that is phase two of a capital murder trial, again, where
25 the jury has already found the defendant guilty of murder

1 -- do you understand that the jury, rather than the
2 Judge, determines the sentence that the defendant will
3 receive for the crime of murder? Do you understand?

4 A. Yes.

5 Q. In a capital sentencing trial, the jury's function
6 is to determine the appropriate punishment based upon the
7 circumstances of the crime and the characteristics of the
8 individual defendant. Do you understand that?

9 A. Uh-huh (affirmative).

10 Q. Now, aggravating circumstances are facts or details
11 that, when they are present in a case, make the crime of
12 murder more serious or worse. On the other hand,
13 mitigating circumstances are incidents, occurrences or
14 details of a case that would reduce the severity of the
15 crime of murder. In others words, may reduce the degree
16 of responsibility for the crime? Do you understand this?

17 A. Yes.

18 Q. Do you also understand that the jury has two options
19 to consider regarding the sentence for murder. One
20 option is life imprisonment which under our law in South
21 Carolina is life -- or is life until the death of the
22 defendant without parole.

23 A. Okay.

24 Q. And the other is the death -- the other option is
25 death which in this state is by electrocution or lethal

1 injection. Do you understand that?

2 A. Uh-huh (affirmative).

3 Q. Could you, as a juror in the sentencing phase,
4 depending upon the facts including relevant aggravating
5 and mitigating circumstances and the law as instructed to
6 you, render a sentence of life imprisonment?

7 A. Yes.

8 Q. On the other hand, as a juror in the sentencing
9 phase, depending upon the facts including relevant
10 aggravating and mitigating circumstances and the law as
11 instructed to you, render a sentence of death?

12 A. Yes, I believe so.

13 Q. Now, if you would, please, answer any questions that
14 the Defense has and then the State.

15 MR. MCGUIRE: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. MCGUIRE:

18 Q. Good evening Juror Number 56. I have to refer to
19 you by number. It's a little awkward for me. And I'm
20 not being not friendly when I do that or disrespectful,
21 so forgive me for that.

22 A. Okay.

23 Q. I can't but help notice your pregnancy. We're about
24 to start a ten- to fourteen-day trial. Are we going to
25 lose you during that brief stay?

1 A. No, I shouldn't think so.

2 Q. Okay. And you're certain this is not going to cause
3 any stress or anything regarding your pregnancy?

4 A. No. No.

5 Q. Because when the Judge says, can you be fair and
6 impartial and all of that stuff, it's not just for us,
7 the State, but it's also for you ---

8 A. Right.

9 Q. --- to make sure that you're not uncomfortable
10 sitting on a jury.

11 A. Right. No, I'll be fine. Thank you.

12 Q. Okay. I just want to make sure. I have twin boys.
13 They're two and a half. And when my wife was pregnant
14 with two of those guys, it was kind of tough. So I'm
15 very sympathetic.

16 I want to talk to you briefly, but in more detail,
17 about issues of murder, burden of proof, aggravation,
18 mitigation, that sort of thing. The Judge gave you some
19 very good, but somewhat basic, guidelines and framework.
20 And I'm going to be a little bit more specific. This is
21 my only opportunity to talk to you about these issues,
22 okay?

23 A. Okay.

24 Q. If you don't understand something, if I ask a bad
25 question, let me know. I've got a pretty thick skin. I

1 just want to make sure we're on the same page.

2 A. Okay.

3 Q. And the best way to start on the same page is to
4 start with, well, what is murder. What's the definition
5 of murder in South Carolina? My guess is if I asked you
6 that you'd probably say, well, I don't know.

7 A. I wouldn't know exact terminology, no.

8 Q. Sure. Most people don't. So I'm going to help you.
9 The Judge will define murder in South Carolina as a
10 person, a killer, unlawfully killing another human being
11 with malice aforethought. It's called malice murder.

12 A. Okay.

13 Q. And that means the killer is acting with a black
14 malignant heart, fatally bent on evil, deliberately,
15 intentionally taking an innocent life.

16 A. Okay.

17 Q. Are you with me?

18 A. Uh-huh (affirmative).

19 Q. What are your feelings about the death penalty in
20 that situation?

21 A. I think that if it was, I guess, premeditated and
22 they really went after them for that purpose, I'd say it
23 could be appropriate in certain cases.

24 Q. Sure. And what I'm going to do is -- a lot of
25 folks, when we ask them questions, they'll say, well, you

1 know, I wouldn't give the death penalty if it was an
2 accident or if the gun went off accidentally or if self-
3 defense was involved, that sort of thing. And what I
4 just want to make sure is that we're on the same starting
5 point here. Not accident, not self defense.

6 A. Right.

7 Q. The person knew what they were doing. Not insane.
8 Not so drunk or on drugs they didn't know what they were
9 doing. Not self-defense. Not heat of passion, that sort
10 of thing.

11 A. Right.

12 Q. A clear, intentional decision, deliberate act to
13 take an innocent life. And all murders have malice
14 aforethought, which is evil, before they do it. So
15 knowing that, having that cleared up, what are your
16 feelings about the death penalty for that kind of
17 killing?

18 A. I would say it would be appropriate.

19 Q. Okay. And would a life in prison penalty ever be
20 severe enough to punish that kind of killing?

21 A. Probably not.

22 Q. Okay. And in terms of relevance, factors about the
23 background of the defendant, if he was on drugs, that
24 sort of thing, are those relevant in fixing punishment in
25 a murder case, or is it looking at the facts of the

1 murder that should control?

2 MS. ADAMS: Your Honor, I think mitigation kind
3 of needs to be explained. She just seems confused.

4 THE COURT: I think so. Actually, mitigation
5 is -- it doesn't have statutory, but it can deal with
6 various things, diminished capacity, things of that
7 nature. But it can be nothing at all. In other words,
8 how a juror perceives, as I've charge you or instructed
9 you, the character of the individual. So I think you
10 need to balance your question.

11 MR. MCGUIRE: Sure.

12 THE COURT: Obviously, that was not -- first of
13 all, in order to have a death sentence, you have to find
14 an aggravation unanimously. But you can find mitigation
15 on anything or nothing at all, even as an act of mercy.

16 MR. MCGUIRE: So you mean ---

17 THE COURT: So let's put it into context
18 because the verdict is going to have to be based on the
19 full charge of the law, not just part of it.

20 MR. MCGUIRE: Sure. Sure.

21 Q. And I'm just trying to get kind of a starting point
22 with you. The Judge is right. And I want you to keep in
23 mind everything he just said about mitigation, kind of
24 what it is, the concept of that. And I'm going to put
25 you in a situation in another courtroom, another time,