

VOLUME TWO OF SEVEN

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM ANDERSON COUNTY

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAYMONDEZE RIVERA

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VOLUME TWO
PAGES 501-1000

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
COURT REPORTER'S INDEX.....	2

FEBRUARY 1, 2010

PRE-TRIAL MATTERS	15
JURY <i>VOIR DIRE</i>	16
MOTIONS	66
<i>JACKSON V. DENNO</i> HEARING	81

TESTIMONY

JOHN ZAMBERLIN

Direct Examination by Ms. Adams	81
Cross Examination by Mr. McGuire	109
Redirect Examination by Ms. Adams	121

RAYMONDEZE LAMON RIVERA

Direct Examination by Mr. Delgado	122
Cross Examination by Ms. Adams.....	129
Redirect Examination by Mr. Delgado	130

MOTIONS	131

FEBRUARY 2, 2010JURY *VOIR DIRE*

JUROR #3

Examination by the Court.....	144
Direct Examination by Mr. McGuire	148
Cross Examination by Ms. Adams.....	158

MOTIONS	164

JUROR #3	
Examination by the Court.....	178
Redirect Examination by Mr. McGuire	180
JUROR #10	
Examination by the Court.....	187
Direct Examination by Mr. McGuire	192
Cross-Examination by Ms. Byford.....	197
Reexamination by the Court.....	200
JUROR #12	
Examination by the Court.....	206
Direct Examination by Mr. McGuire	211
Cross Examination by Mr. Campbell.....	213
Reexamination by the Court.....	219
JUROR #15	
Examination by the Court.....	223
Direct Examination by Mr. McGuire	227
Cross Examination by Ms. Adams.....	238
Reexamination by the Court.....	241
JUROR #16	
Examination by the Court.....	246
Direct Examination by Mr. McGuire	251
Cross Examination by Ms. Byford.....	258
Redirect Examination by Mr. McGuire	262
Redirect Examination by the Court.....	264
Redirect Examination by Mr. McGuire	264
Recross Examination by Ms. Byford	266
MOTIONS	272
JUROR #19	
Examination by the Court.....	283
Direct Examination by Mr. McGuire	289
Cross Examination by Mr. Campbell.....	293
Reexamination by the Court.....	295
February 2, 2010	
MOTIONS	301
JUROR #28	
Examination by the Court.....	315

MOTIONS	317
JUROR #29	
Examination by the Court.....	319
Direct Examination by Mr. McGuire	324
Cross Examination by Ms. Adams.....	335
Re-Examination by the Court.....	340
MOTIONS	340
JUROR #29	
Re-Examination by the Court	348
JUROR #30	
Examination by the Court.....	352
Direct Examination by Mr. McGuire	357
Cross Examination by Ms. Adams.....	367
Re-Examination by the Court.....	372
MOTIONS	373
JUROR #33	
Examination by the Court.....	377
Direct Examination by Mr. Campbell	382
Cross Examination by Mr. McGuire	388
Redirect Examination by Mr. Campbell	391
JUROR #34	
Examination by the Court.....	393
Direct Examination by Ms. Adams	398
Cross Examination by Mr. McGuire	402
Redirect Examination by Ms. Adams	405
JUROR #36	
Examination by the Court.....	408
Direct Examination by Mr. McGuire	413
Cross Examination by Ms. Adams.....	422
JUROR #38	
Examination by the Court.....	426
Direct Examination by Mr. McGuire	431
Cross Examination by Ms. Adams.....	443
MOTIONS	449

JUROR #41	
Examination by the Court.....	452
Direct Examination by Mr. McGuire	457
Cross Examination by Ms. Adams.....	468
 JUROR #49	
Examination by the Court.....	474
Direct Examination by Mr. McGuire	479
Cross Examination by Ms. Adams.....	487
 JUROR #56	
Examination by the Court.....	491
Direct Examination by Mr. McGuire	496
 COLLOQUY	501
 JUROR #56	
Direct Examination by Mr. McGuire	509
 COLLOQUY	514
 JUROR #56	
Direct Examination by Mr. McGuire	518
Cross Examination by Ms. Adams.....	523
 COLLOQUY	529
 February 3, 2010	
 MOTIONS	539
 JUROR #76	
Examination by the Court.....	554
Direct Examination by Mr. McGuire	559
 COLLOQUY	563
 JUROR #86	
Examination by the Court.....	657
Direct Examination by Ms. Adams.....	572
Cross Examination by Mr. McGuire	575
 MOTIONS	577

JUROR #104	
Examination by the Court.....	581
Direct Examination by Mr. McGuire	586
Cross Examination by Ms. Adams.....	595
MOTIONS	599
JUROR #109	
Examination by the Court.....	604
Direct Examination by Mr. McGuire	609
COLLOQUY	616
JUROR #114	
Examination by the Court.....	620
JUROR #125	
Examination by the Court.....	628
Direct Examination by Mr. McGuire	633
Cross Examination by Ms. Byford.....	639
JUROR #64	
Examination by the Court.....	645
Direct Examination by Mr. McGuire	650
Cross Examination by Mr. Campbell.....	656
MOTIONS	662
JUROR #68	
Examination by the Court.....	664
Direct Examination by Mr. McGuire	670
Cross Examination by Ms. Adams.....	677
COLLOQUY	685
JUROR #127	
Examination by the Court.....	691
Direct Examination by Mr. McGuire	696
MOTIONS	704
JUROR #133	
Examination by the Court.....	709
Direct Examination by Mr. McGuire	714
Cross Examination by Ms. Byford.....	720

JUROR #135	
Examination by the Court.....	725
Direct Examination by Mr. McGuire	730
Cross Examination by Ms. Adams.....	738
MOTIONS	743
JUROR #141	
Examination by the Court.....	748
Direct Examination by Mr. McGuire	753
Cross Examination by Ms. Adams.....	761
Redirect Examination by Mr. McGuire	763
JUROR #147	
Examination by the Court.....	767
Direct Examination by Mr. McGuire	772
JUROR #153	
Examination by the Court.....	775
JUROR #158	
Examination by the Court.....	778
Direct Examination by Mr. McGuire	784
JUROR #159	
Examination by the Court.....	799
Direct Examination by Mr. McGuire	806
COLLOQUY	816
JUROR #160	
Examination by the Court.....	822
Direct Examination by Mr. McGuire	826
Cross Examination by Ms. Adams.....	835
COLLOQUY	844
JUROR #178	
Examination by the Court.....	845
Direct Examination by Mr. McGuire	851
COLLOQUY	858
February 4, 2010	
COLLOQUY	862

JUROR #182	
Examination by the Court.....	863
Direct Examination by Mr. McGuire	868
COLLOQUY	877
JUROR #187	
Examination by the Court.....	883
Direct Examination by Mr. McGuire	888
Cross Examination by Ms. Adams.....	901
JUROR #190	
Examination by the Court.....	909
Direct Examination by Mr. McGuire	915
Cross Examination by Ms. Adams.....	930
COLLOQUY	933
JUROR #364	
Examination by the Court.....	940
Direct Examination by Mr. McGuire	945
Cross Examination by Ms. Byford.....	962
MOTIONS	964
JUROR #194	
Examination by the Court.....	971
JUROR #200	
Examination by the Court.....	974
Direct Examination by Mr. McGuire	980
Cross Examination by Ms. Adams.....	989
COLLOQUY	992
JUROR #205	
Examination by the Court.....	1003
Direct Examination by Ms. Adams	1008
Cross Examination by Mr. McGuire	1013
JUROR #206	
Examination by the Court.....	1031
Direct Examination by Mr. McGuire	1036
Cross Examination by Ms. Adams.....	1045

JUROR #207	
Examination by the Court.....	1048
JUROR #209	
Examination by the Court.....	1050
Direct Examination by Mr. McGuire	1056
Cross Examination by Ms. Adams.....	1064
MOTIONS	1067
JUROR #218	
Examination by the Court.....	1074
Direct Examination by Mr. McGuire	1080
Cross Examination by Ms. Adams.....	1090
MOTIONS	1094
JUROR #219	
Examination by the Court.....	1103
JUROR #247	
Examination by the Court.....	1105
Direct Examination by Mr. McGuire	1111
Cross Examination by Ms. Adams.....	1121
JUROR #222	
Examination by the Court.....	1129
Direct Examination by Mr. McGuire	1135
Cross Examination by Ms. Adams.....	1141
JUROR #225	
Examination by the Court.....	1148
Direct Examination by Mr. McGuire	1154
Cross Examination by Ms. Adams.....	1165
MOTIONS	1171
JUROR #248	
Examination by the Court.....	1175
Direct Examination by Mr. McGuire	1180
Cross Examination by Ms. Adams.....	1191
JUROR #249	
Examination by the Court.....	1199
Direct Examination by Mr. McGuire	1203
Cross Examination by Ms. Adams.....	1212

MOTIONS	1213
COLLOQUY	1215
JUROR #252	
Examination by the Court.....	1220
Direct Examination by Mr. McGuire	1226
Cross Examination by Ms. Adams.....	1234
JUROR #261	
Examination by the Court.....	1237
Direct Examination by Mr. McGuire	1242
Cross Examination by Ms. Adams.....	1254
COLLOQUY	1257
JUROR #266	
Examination by the Court.....	1261
Direct Examination by Mr. McGuire	1267
Cross Examination by Ms. Adams.....	1278
COLLOQUY	1282
JUROR #269	
Examination by the Court.....	1291
Direct Examination by Mr. McGuire	1296
Cross Examination by Ms. Adams.....	1305
JUROR #270	
Examination by the Court.....	1310
Direct Examination by Ms. Byford	1315
Cross Examination by Mr. McGuire	1318
Redirect Examination by Ms. Byford.....	1326
JUROR #278	
Examination by the Court.....	1332
Direct Examination by Mr. McGuire	1337
Cross Examination by Ms. Adams.....	1343
COLLOQUY	1350
JUROR #284	
Examination by the Court.....	1354
Direct Examination by Mr. McGuire	1360
Cross Examination by Ms. Adams.....	1372

JUROR #292	
Examination by the Court.....	1377
Direct Examination by Ms. Adams	1384
Cross Examination by Mr. McGuire	1388
COLLOQUY	1394
JUROR #294	
Examination by the Court.....	1398
JUROR #297	
Examination by the Court.....	1401
Direct Examination by Mr. McGuire	1407
JUROR #307	
Examination by the Court.....	1413
Direct Examination by Mr. McGuire	1418
Cross Examination by Ms. Byford	1425
JUROR #313	
Examination by the Court.....	1431
Direct Examination by Mr. McGuire	1437
Cross Examination by Ms. Adams.....	1444
JUROR #320	
Examination by the Court.....	1450
Direct Examination by Mr. McGuire	1455
JUROR #321	
Examination by the Court.....	1464
JUROR #329	
Examination by the Court.....	1472
Direct Examination by Mr. McGuire	1477
Cross Examination by Ms. Adams.....	1485
COLLOQUY	1488
JUROR #333	
Examination by the Court.....	1493
Direct Examination by Mr. McGuire	1498
Cross Examination by Ms. Adams.....	1509
JUROR #340	
Examination by the Court.....	1513
Direct Examination by Mr. McGuire	1519

COLLOQUY	1522
JUROR #340	
Direct Examination by Mr. McGuire	1530
Cross Examination by Ms. Adams	1536
JUROR #342	
Examination by the Court	1539
Direct Examination by Mr. McGuire	1544
Cross Examination by Ms. Adams	1552
MOTIONS	1554

February 8, 2010

COLLOQUY	1562
JUROR #344	
Examination by the Court	1564
Direct Examination by Mr. McGuire	1569
Cross Examination by Ms. Adams	1581
MOTIONS	1585
JUROR #346	
Examination by the Court	1589
Direct Examination by Mr. McGuire	1595
Cross Examination by Ms. Adams	1602
JUROR #347	
Examination by the Court	1605
Direct Examination by Mr. McGuire	1611
JUROR #348	
Examination by the Court	1616
JUROR #352	
Examination by the Court	1623
Direct Examination by Mr. McGuire	1630
Cross Examination by Ms. Adams	1639
Redirect Examination by Mr. McGuire	1643
JUROR #349	
Examination by the Court	1646

JUROR #359	
Examination by the Court.....	1651
Direct Examination by Mr. McGuire	1657
Cross Examination by Ms. Adams.....	1672
JUROR #360	
Examination by the Court.....	1677
Direct Examination by Mr. McGuire	1684
JUROR #363	
Examination by the Court.....	1688
Direct Examination by Mr. McGuire	1694
Cross Examination by Ms. Adams.....	1702
JUROR #370	
Examination by the Court.....	1705
Direct Examination by Ms. Adams	1710
Cross Examination by Mr. McGuire	1714
JUROR #372	
Examination by the Court.....	1720
Direct Examination by Mr. McGuire	1725
Cross Examination by Ms. Adams.....	1738
JUROR #379	
Examination by the Court.....	1746
MOTIONS	1749
JUROR #383	
Examination by the Court.....	1753
Direct Examination by Mr. McGuire	1758
Cross Examination by Ms. Adams.....	1764
JUROR #386	
Examination by the Court.....	1771
Direct Examination by Mr. McGuire	1776
Cross Examination by Ms. Adams.....	1783
JUROR #389	
Examination by the Court.....	1789
Direct Examination by Mr. McGuire	1794
Cross Examination by Ms. Adams.....	1800
COLLOQUY	1803

JUROR #396	
Examination by the Court.....	1810
Direct Examination by Mr. McGuire	1816
Cross Examination by Ms. Adams.....	1826
MOTIONS	1830
February 9, 2010	
COLLOQUY	1840
JURY STRIKE	1843
BATSON MOTION	1858
GUILT PHASE	
PRELIMINARY CHARGE	1876
OPENING STATEMENT BY MR. CAMPBELL.....	1887
OPENING STATEMENT BY MR. DELGADO.....	1890
NIKELLA HATTEN	
Direct Examination by Ms. Adams	1918
Cross Examination by Mr. Delgado.....	1938
DAVID ROGERS	
Direct Examination by Mr. Campbell.....	1942
MIKE WALTERS	
Direct Examination by Mr. Campbell.....	1946
Cross Examination by Mr. McGuire.....	1957
<i>In Camera</i> Examination by Mr. McGuire.....	1960
Cross Examination by Mr. McGuire.....	1962
GEORGE CREAMER	
Direct Examination by Mr. Campbell.....	1968
JAMES CHRISTOPHER WILSON	
Direct Examination by Mr. Campbell.....	1984
CHRISTOPHER WARREN SCOTT	
Direct Examination by Mr. Campbell.....	1992
JIM BOLT	
Direct Examination by Mr. Campbell.....	1999

MELISSA AILEN PARTAIN	
Direct Examination by Ms. Adams	2009
WILLIAM BROOKS	
Direct Examination by Ms. Adams	2014
JOHN ZAMBERLIN	
Direct Examination by Ms. Adams	2018
Cross Examination by Mr. McGuire	2073
<i>In Camera</i> Examination by Mr. McGuire	2106
February 12, 2010	
COLLOQUY	2129
JOHN ZAMBERLIN	
Cross Examination by Mr. McGuire	2132
BRETT WOODARD	
Direct Examination by Ms. Adams	2137
BRENDA GAILE HEATH	
Direct Examination by Mr. Campbell	2153
Cross Examination by Mr. Delgado	2162
WILLIAM MICHAEL BASKIN	
Direct Examination by Mr. Campbell	2167
JANICE BRYSON	
Direct Examination by Mr. Campbell	2172
Cross Examination by Mr. Delgado	2175
ROBIN TAYLOR	
Direct Examination by Mr. Campbell	2177
RAYMONDEZE LAMON RIVERA	
<u><i>In Camera</i></u> Examination by the Court	2199
COLLOQUY AND RULING	2201
CLOSING ARGUMENT BY MR. MCGUIRE	2208
CLOSING ARGUMENT BY MS. ADAMS	2210
CHARGE BY THE COURT	2211
VERDICT	2231

MOTIONS	2234

PENALTY PHASE

PRELIMINARY CHARGE BY THE COURT.....	2254

OPENING STATEMENT BY MR. CAMPBELL.....	2257

OPENING STATEMENT BY MR. MCGUIRE.....	2263

NIKELLA HATTEN

Direct Examination by Ms. Adams	2273

JOYA JOSEPH

Direct Examination by Ms. Adams	2284

MIKE WALTERS

Direct Examination by Mr. Campbell	2290

MELISSA AIKEN PARTAIN

Direct Examination by Mr. Campbell	2295

BRETT HOTEN WOODARD

Direct Examination by Ms. Adams	2297

KELLI CHAPMAN

Direct Examination by Ms. Byford	2301

ADRIENNE RILEY

Direct Examination by Ms. Byford	2303

ROBIN TAYLOR

Direct Examination by Ms. Byford	2307

PHOEBE KENNEY

Direct Examination by Ms. Adams	2315

FEBRUARY 16, 2010

COLLOQUY	2340

TIMOTHY LOWNDES

Direct Examination by Mr. Campbell	2342

Cross Examination by Mr. Delgado	2352

Redirect Examination by Mr. Campbell	2354

JOHN ZAMBERLIN	
Direct Examination by Ms. Adams	2356
Cross Examination by Mr. McGuire	2398
RAYMONDEZE RIVERA	
<u>In Camera</u> Examination by the Court	2414
COLLOQUY	2417
DENISE MARIA RIVERA	
Direct Examination by Mr. McGuire	2422
Cross Examination by Ms. Adams	2427
TERESA RIVERA	
Direct Examination by Mr. Delgado	2431
Cross Examination by Ms. Adams	2441
OLIVIA CUMBERLANDER	
Direct Examination by Mr. McGuire	2444
Cross Examination by Ms. Adams	2447
SONJA MARIE MCDOWELL	
Direct Examination by Mr. Delgado	2449
HELEN MCDOWELL ALLEN	
Direct Examination by Mr. McGuire	2459
Cross Examination by Ms. Adams	2465
CANESSA THOMAS	
Direct Examination by Mr. Delgado	2473
Cross Examination by Ms. Adams	2484
Redirect Examination by Mr. Delgado	2486
ARLENE BOWERS ANDREWS	
Direct Examination by Mr. McGuire	2490
February 17, 2010	
COLLOQUY	2554
ARLENE BOWERS ANDREWS	
Cross Examination by Ms. Byford	2556
NICHOLAS COOPER-LEWTER	
Direct Examination by Mr. Delgado	2581
<u>In Camera</u> Examination by Mr. Delgado	2603
Direct Examination by Mr. Delgado	2611

Cross Examination by Ms. Adams.....	2623
Redirect Examination by Mr. Delgado	2624
MARTI LORING	
<i>In Camera</i> Examination by Mr. Delgado.....	2629
SARAH GERAGHTY	
Direct Examination by Mr. McGuire	2640
Cross Examination by Ms. Adams.....	2648
Redirect Examination by Mr. McGuire	2650
MARTI LORING	
Direct Examination by Mr. Delgado	2651
Cross Examination by Ms. Byford.....	2689
CLOSING ARGUMENT BY MS. ADAMS	2715
CLOSING ARGUMENT BY MR. DELGADO	2730
CLOSING ARGUMENT BY RAYMONDEZE RIVERA	2747
MOTIONS	2768
CHARGE BY THE COURT	2771
VERDICT AND SENTENCING.....	2798
PRE-TRIAL HEARING DATED DECEMBER 8, 2008	2816
PRE-TRIAL MOTIONS HEARING DATED MAY 27, 2009	2844
<i>JACKSON V. DENNO</i> HEARING DATED JUNE 4, 2009	2865
JOHN ANTHONY ZAMBERLIN	
Direct Examination by Ms. Adams	2868
Cross Examination by Mr. Delgado	2893
COLLOQUY	2911
PRE-TRIAL MOTIONS HEARING DATED NOVEMBER 10, 2009	2923
PRE-TRIAL HEARING DATED DECEMBER 1&2, 2009	2953
DONNA SCHWARTZ-WATTS	
Direct Examination by Mr. Delgado	2955
Cross Examination by Ms. Adams.....	2958

Examination by the Court.....	2959
RAYMONDEZE LAMON RIVERA	
Direct Examination by Mr. Delgado	2966
Cross Examination by Ms. Adams.....	2976
Redirect Examination by Mr. Delgado	2984
COLLOQUY	2986
MEMORANDUM IN SUPPORT OF ADMISSIBILITY OF DEFENDANT'S CONFESSION, JUNE 3, 2009.....	2995
INDICTMENT	2999
ORDER APPOINTING COUNSEL.....	3001
NOTICE OF INTENT TO SEEK DEATH PENALTY	3003
ORDER RELIEVING JUDGE NICHOLSON AND APPOINTING JUDGE MACCAULAY	3004
BRIEF IN SUPPORT OF MOTION TO SUPPRESS DEFENDANT'S STATEMENT DUE TO THE STATEMENT BEING PROCURED BY A PROMISE FROM THE PROSECUTOR AND THEREFORE INVOLUNTARY	3006
JUROR #29 QUESTIONNAIRE.....	3015
JUROR #33 QUESTIONNAIRE.....	3024
JUROR #64 QUESTIONNAIRE.....	3041
JUROR #86 QUESTIONNAIRE.....	3060
JUROR #104 QUESTIONNAIRE.....	3078
JUROR #222 QUESTIONNAIRE.....	3096
JUROR #247 QUESTIONNAIRE.....	3114
JUROR #248 QUESTIONNAIRE.....	3132
JUROR #278 QUESTIONNAIRE.....	3150
JUROR #307 QUESTIONNAIRE.....	3168
JUROR #383 QUESTIONNAIRE.....	3186

JUROR #386 QUESTIONNAIRE.....	3204
LETTER FROM RIVERA TO ANDERSON COUNTY CLERK OF COURT CATHY PHILLIPS CONCERNING REMOVAL OF COUNSEL, SEPTEMBER 21, 2009.....	3222
DONNA SCHWARTZ-WATTS COURT ORDERED REPORT.....	3231
CERTIFICATE OF COUNSEL.....	3237

1 another county even, and you and eleven other jurors have
2 found a defendant guilty of deliberately taking an
3 innocent person's life and guilty of murder.

4 A. Okay.

5 Q. And the aggravation that the State brought forward
6 is that this was that person's second murder. It's a
7 double murder case. What is your opinion about the death
8 penalty in that situation?

9 THE COURT: Again, you've got to balance
10 because at the same time that evidence is presented, also
11 the instruction on the law will be that she must consider
12 -- or a juror, this juror or any juror, must consider
13 mitigation too.

14 Q. Keeping that in mind, what's your position in that
15 kind of case?

16 MS. ADAMS: Your Honor, he's trying to stake
17 her out. I think it's just could she consider it.

18 THE COURT: Again, she's told me she could be
19 impartial. Does that mean she will not consider
20 mitigation?

21 MR. MCGUIRE: Was that addressed to me?

22 THE COURT: I'm curious. Is that you're
23 question?

24 MR. MCGUIRE: No, Judge. My question is -- to
25 the juror -- that she's indicated the death penalty would

1 be appropriate in an intentional, deliberate killing of
2 an innocent life. And right now I'm adding the fact that
3 it would be a second murder. The aggravation would be a
4 second murder. And I'm asking her to keep in mind all of
5 your instructions with regard to the law and mitigation
6 that she just heard. What is her position about the
7 death penalty in that situation?

8 THE COURT: Well, she hasn't heard any
9 mitigation.

10 MR. MCGUIRE: Sure. Right.

11 THE COURT: All right. Very good.

12 MS. ADAMS: And Your Honor, she hasn't heard
13 the facts and circumstances.

14 THE COURT: Again, please. Thank you. I'm
15 trying to move this along, if we can. All right. Go
16 ahead now.

17 Q. What's your response?

18 THE COURT: If she says that she is -- would
19 automatically give the death penalty under that
20 circumstances without any consideration for mitigation,
21 that will be her answer.

22 MR. MCGUIRE: Judge, can I take up a legal
23 matter?

24 THE COURT: Certainly. All right. You may
25 step out for a moment, please.

1 THE POTENTIAL JUROR: Okay.

2 (WHEREUPON, Potential Juror 56 exited the
3 courtroom.)

4 THE COURT: All right. Very good.

5 MR. MCGUIRE: Thank you, Your Honor. And
6 Judge, I mean, I think I just need to make a record
7 because I think we're going to just -- I'm just going to
8 have to politely disagree with the Court.

9 THE COURT: What part do you disagree with?
10 That you shouldn't have a balanced question or ---

11 MR. MCGUIRE: Yes.

12 THE COURT: --- you think that -- what is it --
13 that it's inappropriate to ask a potential juror who
14 leans towards the death penalty, in a death penalty case
15 would you always or automatically vote for the death
16 penalty even though the law provides that you may impose
17 a sentence of life without parole depending upon the
18 circumstances of a particular case and the
19 characteristics of an individual defendant? Do you think
20 that's an improper question?

21 MR. MCGUIRE: Judge, I ---

22 THE COURT: No. Do you think it's an improper
23 question? Because if it is, I need to know where your
24 objection is coming from.

25 MR. MCGUIRE: Well, Judge, with all due

1 respect, I would say it's an ineffective question. You
2 know, it's sort of like the question, would the nature of
3 this crime that you're going to hear and the
4 circumstances of aggravation are going to be a prior
5 conviction for murder, would anything about the nature of
6 this case prevent you from being a fair juror. Is it
7 technically an accurate question? I'll concede, yes. Is
8 it effective? No. It will not garner any information
9 because every person wants to say they can be fair.

10 THE COURT: Well, obviously, if you haven't
11 heard mitigation and mitigation is going to be a part of
12 your verdict.

13 MR. MCGUIRE: Sure.

14 THE COURT: And otherwise, can you just say
15 under the part of your duties, could you provide or
16 perform only part of your duties.

17 MR. MCGUIRE: Well, I'm not advocating that,
18 no.

19 THE COURT: Well, that's what the question is.

20 MR. MCGUIRE: Well, Your Honor ---

21 THE COURT: In other words, I don't think that
22 you need to put a juror in a box so that they've said,
23 well, now I have said I can only vote for death in a
24 case. I mean, that's not the only option that the juror
25 has.

1 MR. MCGUIRE: I don't disagree with that.

2 THE COURT: Because as you've pointed out,
3 jurors coming into this court don't even understand that
4 death is not always the sentence in a murder case.

5 MR. MCGUIRE: Sure, the citizens off the street
6 ---

7 THE COURT: So let's be fair to the juror.

8 MR. MCGUIRE: And the problem is, Judge, that
9 the only question that I seem to be able to ask with the
10 Court's blessing ---

11 THE COURT: Certainly.

12 MR. MCGUIRE: --- I have to include mitigation.
13 But then I'm not allowed to really to define it or give
14 examples or really make it a real concept.

15 THE COURT: Well, again, mitigation can be for
16 any reason or no reason or even for mercy. Now, I'm not
17 asking you to decide that or to argue that. The only
18 thing is I'm just saying that considering nothing else,
19 would this be your verdict.

20 MR. MCGUIRE: And ---

21 THE COURT: That's the question that you're
22 asking.

23 MR. MCGUIRE: And -- if I could have just one
24 second.

25 (Off record discussions)

1 MR. MCGUIRE: I don't want to get sideways with
2 the Court.

3 THE COURT: You're not going to get sideways.
4 The only thing is we've been beating this thing around
5 for a whole day.

6 MR. MCGUIRE: Right. And Judge ---

7 THE COURT: And again, I had told you, I think
8 earlier in the afternoon, sometime -- I sort of lose
9 track of time -- and I gave you an analogy of a seesaw.
10 And it's just not fair to the jurors because what we're
11 trying to do is to find a juror that can listen to both
12 sides.

13 MR. MCGUIRE: Sure.

14 THE COURT: But they have to have both sides
15 presented.

16 MR. MCGUIRE: Right.

17 THE COURT: And the only thing is -- and I'm
18 not asking you present the case of mitigation -- I mean,
19 of aggravation. But again, I don't think that you should
20 ignore that -- what is it -- they will also have the
21 opportunity -- if nothing else, please -- what is it --
22 let them know that the law in this state is not that if
23 you find a person guilty of murder, even with
24 aggravation, that it's an automatic death sentence.

25 MR. MCGUIRE: Sure. I agree with all of that.

1 THE COURT: Well, thank you.

2 MR. MCGUIRE: And Judge, I think -- and I'm
3 just going to make a brief record here, and I don't know
4 if I'm going to win this or not. But when you look at
5 the *Morgan* case, the United States Supreme Court case, it
6 indicates that the Defense should be able to ask -- or
7 the question should be put to the juror, in essence,
8 would they vote for the death penalty in a murder case.
9 And it doesn't say in a murder case with mitigation
10 evidence presented. There's no balance in *Morgan*.
11 *Morgan* says we're allowed to ask that question ---

12 THE COURT: Well, because that is the full law.

13 MR. MCGUIRE: Sure.

14 THE COURT: In a death penalty case, the law is
15 that you have to be able to enforce the law if you find
16 it's applicable at the time. I think that's what all the
17 cases say. In other words, you don't send in -- well, I
18 don't know. I don't want go even into analogies or
19 metaphors. But the thing is, that's -- the law i, if
20 it's a part of the law, then you have to be able to apply
21 the full law, not just piecemeal or part of the law. Is
22 that not what *Morgan* says?

23 MR. MCGUIRE: Well, what *Morgan* says is the
24 reason the question should be put to the juror is because
25 if they answer in the affirmative that the death penalty

1 is the only appropriate penalty in their view for the
2 elements of murder, for murder, then it necessarily
3 implies that they will reject mitigation evidence. It
4 doesn't say you have to present it all in one question.
5 It's fair to ask, will you -- you know, in essence, will
6 you vote death in a murder case based -- you know, what's
7 your view about the death penalty in a murder case? If
8 they say it's appropriate in every situation that you've
9 described on those elements of murder, then the
10 implication from that is that they're not going to be
11 able to consider mitigating facts.

12 And it doesn't require a balancing or that -- would
13 you vote death in murder knowing that there's going to be
14 a mitigation case presented because it's so vague. And
15 it's just -- I mean, I'm getting objections that I'm
16 using examples ---

17 THE COURT: All right. Well, I'll tell you
18 what. If it'll speed things along, I'll let you go ahead
19 and do it to a degree. But my final question was going
20 to be the one that I gave you a minute ago. So if I -- I
21 am not going to send in a juror who is limited ---

22 MR. MCGUIRE: Sure.

23 THE COURT: --- in their ability to apply the
24 law.

25 MR. MCGUIRE: And again, I don't want to be

1 sideways with you. And Judge, that's great.

2 THE COURT: Well, very good. Let's move on. I
3 think we've heard enough. Let's not waste these jurors'
4 time any longer.

5 MR. MCGUIRE: I agree with that.

6 THE COURT: All right.

7 Please.

8 (WHEREUPON, Potential Juror 56 entered the
9 courtroom.)

10 THE COURT: All right. If you would, please.

11 BY MR. MCGUIRE:

12 Q. Thank you Juror Number ...

13 MR. MCGUIRE: Help me?

14 MS. ADAMS: Fifty-six.

15 MR. MCGUIRE: Thank you. I appreciate that.
16 Thanks a lot.

17 MS. ADAMS: Uh-huh (affirmative).

18 Q. Going back to what we were talking about, you
19 indicated that the death penalty would be appropriate in
20 a deliberate choosing-to-take-an-innocent-life-type
21 situation?

22 A. Uh-huh (affirmative).

23 Q. And tell me if I'm wrong. But if you learned that
24 the person who committed that act had already committed
25 another murder, would that strengthen your resolve in

1 that belief?

2 A. Yes, I think so.

3 Q. And sort of kind of reinforce your opinion?

4 A. Yes, I believe so.

5 Q. Sort of galvanize it, so to speak?

6 A. Uh-huh (affirmative).

7 Q. And it would make it even less likely that a life in

8 prison punishment could be severe enough to punish a

9 double-murder? Would life ever be appropriate then?

10 A. It's a hard question not knowing any of the facts.

11 Q. Sure.

12 A. I'm sorry. What was the question again?

13 Q. Having established that the death penalty is

14 appropriate for a deliberate, intentional killing of an

15 innocent person ...

16 A. Uh-huh (affirmative).

17 Q. ... learning that the person you're judging

18 committed yet another murder, we already agree it would

19 galvanize your conviction that the death penalty is

20 appropriate?

21 A. Right.

22 Q. And the follow-up question was, can the life in

23 prison penalty really be severe enough to punish somebody

24 who has murdered twice?

25 A. Probably not.

1 Q. Okay. And would -- in fixing punishment for that
2 kind of defendant, would it be relevant to you to take
3 into consideration sort of his background, his record,
4 childhood? Would that be relevant in fixing punishment,
5 or would the facts control -- of the murder?

6 MS. ADAMS: Your Honor, I think the standard is
7 would she follow your instructions and consider those as
8 the law required her to do and listen to it all ---

9 THE COURT: All right.

10 MS. ADAMS: --- before making ---

11 THE COURT: Restate your question.

12 Q. Would those factors be relevant in that kind of
13 sentencing decision?

14 A. Possibly.

15 Q. Okay. It's hard to say without knowing the
16 specifics, isn't it?

17 A. Right.

18 Q. And we have to talk abstract. And I'm sorry about
19 that. So what I'm going to do is -- if I asked you the
20 definition of what's a mitigating factor, do you have a
21 definition for that?

22 MS. ADAMS: Your Honor, your going to instruct
23 her on it. I mean ---

24 THE COURT: Well, she can answer the question
25 if she has or not. And that's what we're looking for, is

1 jurors with an open mind who will listen to the law as
2 it's instructed. I've already ask her would she follow
3 the instructions on the law ---

4 MR. MCGUIRE: Sure.

5 THE COURT: --- and -- even though she doesn't
6 agree with it. So I think that -- what is it -- and she
7 said she could. That's what we want.

8 Q. Do I need to repeat the question?

9 A. You're looking for, like, a definition of ---

10 Q. Yeah. You know, we don't have any expectation that
11 any citizen off the street is ---

12 A. Uh-huh (affirmative).

13 Q. --- really going to know these concepts. So I'm
14 just trying to figure out where you're starting from.

15 A. Uh-huh (affirmative).

16 Q. If I was pressed or if you were pressed and I said,
17 could you give me definition of what a mitigating factor
18 is, do you know what that means?

19 A. Something that would make it, I guess, less severe
20 of a crime.

21 Q. Okay. And would you find that in the facts of the
22 case, the facts of the killing? Or is that where you
23 would look for it?

24 A. Yeah, in the facts.

25 Q. Okay. And would characteristics or background

1 factors of a defendant -- childhood, that sort of thing
2 -- would that be relevant in fixing a death sentence as
3 punishment for a murder?

4 A. Possibly.

5 Q. Okay. Okay. Fair enough. What I'm going to do now
6 is talk to you a little bit more in detail about
7 mitigation. It's not a universal concept, and most
8 people don't know anything about it. And this is
9 complex, but I'm going to go through it very quickly.
10 And capital cases are different from all cases in that
11 the jury fashions punishment. And you have obligations
12 that are different with regard to the State and the
13 Defendant. The constitutional law of this country and
14 this state is that the death penalty is a last resort and
15 for the worst of the worst.

16 A. Uh-huh (affirmative).

17 Q. Do you agree with that?

18 A. Yes, I do.

19 Q. And it should only be used as a last resort. Do you
20 agree with that?

21 A. Yes.

22 Q. Okay. Fair enough. Fair enough. I know we're
23 still talking abstract. This is difficult.

24 MS. ADAMS: And Your Honor, that's not the law.

25 THE COURT: Let's ---

1 MS. ADAMS: Last resort.

2 THE COURT: --- do this. In fact, I think I'm
3 going to have to ask that you leave the jury -- I mean
4 courtroom one more time for a few minutes.

5 THE POTENTIAL JUROR: Okay.

6 THE COURT: I need to discuss something with
7 the attorneys.

8 (WHEREUPON, Potential Juror 56 exited the
9 courtroom.)

10 THE COURT: All right. Gentlemen and ladies,
11 we have been relying on *Morgan versus Illinois* or
12 *Illinois versus Morgan*, 504 U.S. 719. And it doesn't say
13 that what the Constitution and due process requires is a
14 one-sided juror. In fact, it says, we reiterate this
15 view today. A juror who will automatically vote for the
16 death penalty in every case will fail in good faith to
17 consider evidence of aggravating and mitigating
18 circumstances as instructions require him to do so.
19 Indeed, because such a juror has already formed an
20 opinion on the merits, the presence or absence of either
21 aggravating or mitigating circumstances is entirely
22 irrelevant to such a juror.

23 Therefore, based on the requirement of impartiality
24 embodied in the due process clause of the Fourteenth
25 Amendment, a capital defendant may challenge for cause

1 any prospective juror who maintains such views which is
2 to automatically vote for the death penalty in every case
3 and will not consider the evidence of aggravation and
4 mitigation circumstances as instructed.

5 And there they also site *Ristano versus Ross*. The
6 Constitution, after all, does not dictate a catechism for
7 voir dire but only that the defendant be afforded an
8 impartial jury. Even so, part of the guarantee of a
9 defendant's right to an impartial jury is adequate voir
10 dire to identify unqualified jurors, those who would
11 automatically vote for the death penalty even though the
12 law provides that you may impose a sentence of life
13 without parole, depending upon the facts.

14 Voir dire plays a critical function in assuring the
15 criminal defendant that his constitutional right to
16 impartiality or impartiality -- or an impartial jury will
17 be honored. Without adequate voir dire, the trial judge's
18 responsibility to remove prospective jurors who will not
19 be able to impartially follow the court's instructions
20 and evaluate the evidence cannot be fulfilled.

21 So that's what's we're looking for is an impartial
22 juror. And the only way you can determine that is by
23 giving the juror the basis of any judgement they must
24 reach. And if you establish that they just would
25 automatically vote the death penalty without

1 consideration of any mitigation, then of course, they
2 would be disqualified.

3 So I agree with *Morgan*. So anytime you ask the
4 question, be sure you ask them if whether or not they can
5 -- would they automatically or would they -- without
6 consideration of the judge's instruction or anything else
7 invoke the death sentence.

8 MR. MCGUIRE: And Judge, with all due respect,
9 you know, when you read *Morgan* a little bit further, it
10 also indicates that citizens, potential jurors, want to
11 appear fair, unbiased and appear to be good citizens.
12 And certainly they want to indicate to the judge they can
13 follow the law. And there's a recognition in *Morgan* that
14 a follow-the-law question -- well, can you follow the law
15 as the judge gives it to you, will you consider
16 mitigation if the judge tells you you must consider it --
17 there's language in *Morgan* that really indicates that
18 those ---

19 THE COURT: I'll read *Morgan* later. Let's go
20 along. I'll note your objection to my following what I
21 cited as being the basis for my ruling, that we will have
22 a complete question rather than a limited question.

23 MR. MCGUIRE: And Judge, I'm going to ask for
24 some help from the Court.

25 THE COURT: Certainly.

1 MR. MCGUIRE: I'm going to ask the Court if you
2 could, could you tell me the question that has your
3 blessing? And I'll ask it.

4 THE COURT: No, sir, I don't give advisory
5 opinions. Again, I really don't -- I don't know. I
6 would think the one question that I've used is one that
7 apparently *Morgan* approves. It is, in a death penalty
8 case, would you always or automatically vote for the
9 death penalty even though the law provides that you may
10 impose a sentence of life without parole depending upon
11 the circumstances of a particular case and the
12 characteristics of an individual defendant? Now, if you
13 want to use it, you can. Then I won't have to ask it.

14 MR. MCGUIRE: I think I'm going to put myself
15 in a position where I'm going to take my lumps again.

16 THE COURT: All right. Well, you're not going
17 -- start your question. And if there's an objection, I'm
18 going to rule on it, and then we're going to move on.

19 MR. MCGUIRE: Sure.

20 THE COURT: Very good. I think we've plowed
21 this field enough.

22 MR. MCGUIRE: Yes, sir.

23 THE COURT: Very good. All right. Anything
24 else from the State?

25 MS. ADAMS: No, sir.

1 THE COURT: From the Defense?

2 MR. MCGUIRE: No, sir.

3 THE COURT: Ask the juror to join us.

4 (WHEREUPON, Potential Juror 56 entered the
5 courtroom.)

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

7 THE POTENTIAL JUROR: Uh-huh (affirmative).

8 THE COURT: All right. You may proceed.

9 MR. MCGUIRE: Thank you, Your Honor.

10 Q. Juror Number ---

11 A. Fifty-six.

12 Q. Thank you so much. It's been a long day. I'm sure
13 for you as well.

14 In a capital case, sentencing is completely
15 different from any other case. And the complexity of the
16 law and its vital importance to fairness in the courtroom
17 allows me to briefly discuss it with you. And that's
18 what I'm gong to do right now.

19 In order -- not all cases -- not all murder cases
20 are even eligible for the death penalty in South
21 Carolina. And it sounds like you knew that or know that.
22 Maybe not.

23 A. I never thought about it, to be quite honest.

24 Q. Okay. Well, let me -- I'm just going to go ahead
25 and fill in the blanks for you.

1 A. Okay.

2 Q. We have what's called malice murder in South
3 Carolina. And that alone does not qualify anybody for
4 the death penalty. They're ineligible for the death
5 penalty if its just malice murder, intentional killing.
6 Okay?

7 A. Okay.

8 Q. There has to be an aggravating circumstance proven
9 beyond a reasonable doubt to all twelve jurors. They all
10 have to agree on aggravation. And the proof is as high
11 as it is, in the legal standard, which is beyond a
12 reasonable doubt.

13 A. Okay.

14 Q. And that's with regard to sort of the State's side
15 or the Prosecution's side of proof and how to weigh it.
16 It's completely different on the mitigation side or the
17 Defense side. And that is there's no burden of proof
18 whatsoever for mitigation evidence. Every juror has the
19 individual right to find and see mitigation evidence
20 wherever it might be. And I think the Judge has already
21 indicated, in some of his comments, that it could be in
22 the facts of the case, it could be in the defendants
23 background, his character. It could be anything.

24 A. Okay.

25 Q. Anything that's a reason to vote not death, but

1 life.

2 A. Uh-huh (affirmative).

3 Q. And there's no standard of proof. It's not maybe
4 it's there, maybe it's not there. It's if a juror finds
5 it, feels it, sees it, they can give it basically the
6 weight of saying, just based on that little thing, I'm
7 not going to vote for the death penalty.

8 A. Okay.

9 Q. And that's the law. And that's what the Judge is
10 going to charge you in a slightly different words. And
11 not only does every individual juror have a right to find
12 whatever mitigation evidence they see and give it
13 whatever weight they find appropriate, there doesn't have
14 to be any agreement between any jurors, not even two,
15 that the same mitigation evidence exists.

16 A. Okay.

17 Q. Somebody sitting in the first chair could find
18 something from a defendant's childhood.

19 A. Uh-huh (affirmative).

20 Q. Somebody in the back, it could be his relationship
21 with a child maybe. Completely different things. And
22 that's okay. There has to be -- there doesn't have to be
23 any agreement that it exists. Just if one juror sees it,
24 finds it, gives it the weight of life, they can do that.

25 A. Okayt.

1 Q. Is that a principle you're comfortable with?

2 A. Yes.

3 Q. And that is the law. Can you follow that law?

4 A. Yes.

5 Q. Okay. And a deliberation process obviously involves
6 the civil, courteous exchanging of opinions, hearing
7 people out. But the State and the Defendant, they're
8 both entitled to fairness not just out here in this
9 courtroom, but also in the jury room.

10 A. Uh-huh (affirmative).

11 Q. If things got hostile, if people started getting
12 bullying, could you pass a note out to the Judge and say
13 things aren't fair in here?

14 A. Yes, I could.

15 Q. And put a stop to that?

16 A. Uh-huh (affirmative).

17 Q. And the reason I ask you that is because the law
18 describes an individual's sentencing decision in a
19 capital case as an individual moral judgment. It's not
20 right; it's not wrong. It's just based on their walk in
21 life. That's their gut feeling, their point of view.

22 A. Uh-huh (affirmative).

23 Q. And it can be based on, like I said, any mitigation
24 evidence they find, wherever they might find it. And the
25 Judge will tell you it can be based on absolutely no

1 reason at all. A juror maybe even can't put into words
2 why they want to vote life, and that's okay.

3 A. Right.

4 Q. Is that something you can respect?

5 A. Yes.

6 Q. And if -- the way the law describes it, if it harms
7 somebody's conscience to give up their individual moral
8 judgement, that's just wrong. And if you saw anybody try
9 to do that, you could put a stop to that?

10 A. Uh-huh (affirmative).

11 Q. You would want everybody to respect your opinion?

12 A. Exactly.

13 Q. And you would respect theirs?

14 A. Right.

15 Q. And in a matter so important involving whether to
16 kill a fellow human being or not, the jury is allowed to
17 end the day agreeing to disagree. Is that something you
18 can respect?

19 A. Yes.

20 Q. For instance, in a sentencing case, in a capital
21 case, the jury is allowed to walk out and say, we agree
22 to disagree. And the Judge will sentence. Okay?

23 A. Uh-huh (affirmative).

24 Q. Is that something you're okay with?

25 A. Yes.

1 Q. That's all I have for you. Thank you.

2 A. Okay.

3 THE COURT: All right. Madam Solicitor?

4 MS. ADAMS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. ADAMS:

7 Q. It is good evening. How are you?

8 A. Hi. How are you?

9 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
10 Circuit. And I know you are probably very hungry.

11 A. Yes, I am.

12 Q. And you and the baby need to eat, so I will try to
13 be brief.

14 A. Okay.

15 Q. The purpose of us questioning you today is, as the
16 Judge said, is just to ensure that you remain open-minded
17 and fair and hear all the evidence before rendering a
18 decision ---

19 A. Uh-huh (affirmative).

20 Q. --- about life or death. We're are kind of right
21 now putting the cart before the horse because we're not
22 assuming that the defendant is guilty at all at this
23 point. But -- well, we are assuming it. But you will
24 still have to hear the guilt portion, and a jury will
25 have to determine beyond a reasonable doubt that he did,

1 in fact, commit murder.

2 A. Uh-huh (affirmative).

3 Q. Okay? And that has to be done before we even get to
4 the second phase which is the sentencing phase.

5 A. Right.

6 Q. Okay. And not every murder, as the Defense told
7 you, is eligible for the death penalty. Okay? But
8 murder in and of itself is an intentional killing of
9 another, whether it's eligible for the death penalty or
10 not.

11 A. Okay.

12 Q. So we, the State, have to prove an aggravating
13 circumstance. And we have to prove that to the jury
14 beyond a reasonable doubt before you can go forward ---

15 A. Uh-huh (affirmative).

16 Q. --- and decide life or death. Okay?

17 A. Uh-huh (affirmative).

18 Q. Now -- so assuming we get to the second phase, y'all
19 have already found the defendant guilty of murder.

20 A. Uh-huh (affirmative).

21 Q. Will you follow the Judge's instructions regarding
22 considering all the evidence in aggravation and
23 mitigation before arriving at your decision?

24 A. Yes.

25 Q. Okay. So you want to hear the whole story ---

- 1 A. Right.
- 2 Q. --- before you make a decision?
- 3 A. Right.
- 4 Q. Okay. So once you hear all that evidence and you've
- 5 considered it, depending on what it is, aggravation
- 6 and/or mitigation, you could return a verdict of life
- 7 without parole if you felt that was appropriate under the
- 8 circumstances?
- 9 A. Yes.
- 10 Q. Okay. And then conversely if you felt that the
- 11 death penalty was warranted, you could return a verdict
- 12 for death as well?
- 13 A. Yes.
- 14 Q. All right. Now, if the jury did decide that the
- 15 death penalty was the appropriate sentence, you would
- 16 actually have to write your name on the sentence sheet
- 17 that would go -- that's what actually allows the State to
- 18 carry out the execution of a defendant. So that's the
- 19 piece of paper that allows us to kill a defendant.
- 20 A. Okay.
- 21 Q. Okay. And you, along with the other eleven jurors,
- 22 would put your name on that document. Would you be okay
- 23 with doing that?
- 24 A. Yes.
- 25 Q. How do you feel about doing that, I should say?

1 A. Well, if it had gotten to the point that we had
2 decided, you know, as a group ---

3 Q. Right.

4 A. --- and everyone has agreed that it was the proper
5 sentencing, then, yes, I would be comfortable with that.

6 Q. Okay. And you understand too that the jury
7 deliberation -- I think what the Defense was trying to
8 say -- is that's it's a give-and-take in the jury room.
9 And you would, as part of the process, listen to your
10 fellow jurors, listen ---

11 A. Uh-huh (affirmative).

12 Q. --- to their opinions and take all of that into
13 considerations before forming an opinion?

14 A. Uh-huh (affirmative).

15 Q. Okay. And you don't know any of the evidence in
16 this case right now?

17 A. Not a bit. Sorry.

18 Q. No, no. That is absolutely fine. So it's fair to
19 say that you have not made up your mind ---

20 A. No.

21 Q. --- whether life should be imposed or death should
22 be imposed?

23 A. Uh-uh (negative).

24 Q. And you will wait and consider all of it before you
25 make that decision?

1 A. Absolutely.

2 Q. Thank you very much.

3 THE COURT: Anything else?

4 MR. MCGUIRE: Nothing further, Your Honor.

5 THE COURT: You may step down, and I'll be
6 right back to you.

7 THE POTENTIAL JUROR: Okay.

8 (WHEREUPON, Potential Juror 56, exited the
9 courtroom.)

10 THE COURT: All right. Anything from the
11 State?

12 MS. ADAMS: No, Your Honor, just that we feel
13 she's qualified.

14 THE COURT: Anything from the Defense?

15 MR. MCGUIRE: No, Your Honor.

16 THE COURT: Very good. Ask the Juror to step
17 back in, please.

18 MADAM CLERK: Bring her back in, please.

19 THE COURT: Bring her back, please.

20 THE BAILIFF: Come on back in.

21 (WHEREUPON, Potential Juror 56 entered the
22 courtroom.)

23 THE COURT: You can stand right there.

24 THE POTENTIAL JUROR: Okay.

25 THE COURT: Considering the entire voir dire, I

1 find that Juror 56 will be fair, unbiased, impartial and
2 able to carry out the law as explained to her.
3 Furthermore, I find that the juror's beliefs or attitudes
4 towards the death penalty would not prevent or
5 substantially impair the performance of her duties as a
6 juror in accordance with the law, the Court's
7 instructions, and the juror's oath.

8 So you will be qualified. Now, the process is going
9 to take some time. It looks like a little bit more time
10 than I expected. But you've given your number, telephone
11 number, to the Clerk?

12 THE POTENTIAL JUROR: Yes, sir.

13 THE COURT: All right. So you can do whatever
14 you need to do and want to do until you get the phone
15 call. But she will eventually call you at that number
16 and tell you to come in. And at that time, we'll have a
17 panel or a pool, you might say, and then from that pool
18 we'll select the jurors that will actually serve.

19 THE POTENTIAL JUROR: Okay.

20 THE COURT: But you'll be -- you're qualified
21 for the panel.

22 THE POTENTIAL JUROR: Okay.

23 THE COURT: Very good. So you are excused, and
24 thank you very much.

25 THE POTENTIAL JUROR: Thank you.

1 (WHEREUPON, Potential Juror 56 exited the
2 courtroom.)

3 THE COURT: All right. Ladies and gentlemen we
4 have two other jurors, and they could take some time. I
5 am going to suggest that we just go ahead and ask them to
6 -- that we're going to let them go since we've got
7 through Friday. And if we still haven't got a panel,
8 then we will call them along with any others that we
9 might need from the panel that haven't been scheduled.

10 MR. MCGUIRE: Well, actually, Judge ---

11 THE COURT: Any objection?

12 MR. MCGUIRE: Oh, I'm sorry. I don't mean to
13 interrupt. I'm sorry. The next two are actually two
14 where I was going to reserve questions, not have any
15 questions to start off with. I think they might be short
16 if you want to just knock them out.

17 MS. ADAMS: Judge, he is much shorter ---

18 THE COURT: Well, again, you know, if we -- and
19 I'm not trying to be critica, because I know you have a
20 purpose in what you do. Except that -- what is it --
21 sometimes, you know, if you don't have a real problem
22 with the juror, and unless you have some other motive in
23 -- what is it -- as I say, trying to box them in or
24 something like that, it's just as well to go ahead and
25 see if they aren't just basically qualified.

1 MR. MCGUIRE: The next two fit that profile for
2 me.

3 THE COURT: Well, how about the State?

4 MS. ADAMS: Your Honor, just so you know, the
5 next juror's son went through P.T.I. in our program. I
6 don't know -- she did not ---

7 MS. BYFORD: Well, we don't ---

8 MS. ADAMS: Well, I don't mean ---

9 MS. BYFORD: She's not in our system, Your
10 Honor, so we don't know.

11 THE COURT: Just one at a time, please.
12 Pardon?

13 MS. BYFORD: We don't know what county. I
14 can't find him in our system, so I don't know for sure
15 that it's Anderson county.

16 THE COURT: Well, P.T.I., you wouldn't find in
17 your system.

18 MS BYFORD: But we just want to make you aware
19 of that.

20 MS. ADAMS: I know.

21 MS. BYFORD: Yeah.

22 MR. MCGUIRE: And Judge, we don't have a
23 problem with that.

24 THE COURT: You mean, excuse her for cause?

25 MR. MCGUIRE: We don't have an objection to

1 that. We wouldn't move that they be excused on that
2 ground.

3 THE COURT: Oh. All right. Well, then, in
4 that case I -- they've been back there since one-thirty.
5 And I don't care how quickly we do it, it's going to be
6 an hour or at least a half hour. I'll ask them though, I
7 mean, you want to go home now, or do you want to stay
8 here and be qualified or subject to qualification.

9 MS. ADAMS: It doesn't matter to us. We'll
10 stay or ...

11 MR. MCGUIRE: Or Judge, we can -- if they want
12 to come back tomorrow morning, we can all be here thirty
13 minutes early.

14 THE COURT: It's going to be taking longer than
15 thirty minutes earlier. I hope we might, over the night
16 -- what is it -- restructure our voir dire. But subject
17 to all of the objections -- and you can renew the
18 objections each time that -- not -- that you're doing
19 this based on my prior rulings. And we'll protect the
20 record on that. But I just -- I don't think that
21 questions that I have been somewhat circumspect are those
22 that don't have a full content or context.

23 All right. What I'm going to do is I'm going to
24 excuse them. And if we need them, we can call them back
25 later. All of these have been done alphabetically

1 anyway, so I don't know if there is any magic in Cs.

2 MS. ADAMS: So you're going to just ask them to
3 come back in the morning, Judge, or at a different time?

4 THE COURT: No. I'm going to let them go.

5 MS. ADAMS: Okay.

6 THE COURT: And then if we need them at the end
7 of the process ---

8 MS. ADAMS: Okay.

9 THE COURT: --- they'll be included with the
10 others.

11 MS. ADAMS: We have no objection, Judge.

12 THE COURT: Yes, sir. Mr. Delgado?

13 MR. DELGADO: Your Honor, these are two jurors
14 that we, the Defense, considers to be very, very high on
15 our priority list. If you put them at the back -- how
16 about this, Your Honor? Could you call one of them in at
17 two thirty tomorrow and one Thursday morning at nine-
18 thirty rather than have to put them off until Friday?
19 You see, Judge, what happens then is we may never get,
20 because of the qualification process, two folks that they
21 may have to strike.

22 THE COURT: Well, I don't doubt that. But I
23 mean, again you either have questions you want to ask
24 that are necessary ---

25 MR. DELGADO: We're not going to ask ---

1 THE COURT: --- and not -- what is it -- re-
2 plow them with each one to the point that -- what is it
3 ---

4 MR. DELGADO: Judge, if you call them in and
5 qualify them tonight, we won't ask any questions of
6 either of them. How about that?

7 MR. MCGUIRE: Sounds fair to me.

8 MR. DELGADO: No questions from the Defense.

9 THE COURT: In other words, you're saying on
10 the general qualification that I use to find out if there
11 are any questions?

12 MR. DELGADO: That is correct.

13 THE COURT: What does the State say?

14 MS. ADAMS: Your Honor, I'm probably going to
15 want to ask them some questions.

16 THE COURT: How many?

17 MS. ADAMS: Not many.

18 THE COURT: Well, what part do you -- again,
19 we're not trying the case here.

20 MS. ADAMS: No, sir.

21 THE COURT: You're not even going to be putting
22 up facts about the case. We've already established that.

23 MS. ADAMS: Right. Judge, Your Honor, I think
24 the proper ---

25 THE COURT: What do I leave out of my

1 qualifying questions?

2 MS. ADAMS: Your Honor, especially if you look
3 at Juror Number 68, which is the second one for tonight,
4 is that he says his friend was beaten to death in prison.
5 He would rather die than spend jail time. I've got to
6 look at his -- and he actually thinks that some lawyers
7 and judges don't care about the truth. So I think that
8 those are the kind of issues that need to be explored.

9 MR. MCGUIRE: I agree with that.

10 THE COURT: All right. I ---

11 MS. ADAMS: You know, he's not quite that easy.
12 That's the only reason that I don't know how many
13 questions I would ask, Judge. I hate to -- and then he
14 -- he circled the number four that says, I can never
15 return a verdict of death. So ...

16 THE COURT: Well, that pretty much -- yeah,
17 well, I think you would have to qualify him. All right.
18 Well, they're coming in at nine-thirty, one-thirty and
19 three-thirty tomorrow with the idea that we can do it
20 from ten to twelve and two to four. I'll tell you what,
21 I'll ask them to come in at twelve.

22 MR. MCGUIRE: Yes, sir.

23 THE COURT: All right.

24 MS. ADAMS: Both of them, Judge? Okay.

25 THE COURT: All right. Let me ask you this.

1 How about 64? Do you have an objection to him?

2 MS. ADAMS: Sir?

3 THE COURT: Sixty-four?

4 MS. ADAMS: She is Catholic, Judge, so I would
5 just want to talk to her about that.

6 THE COURT: Okay. All right. I understand.

7 All right. Ask both jurors to come in.

8 Twelve o'clock.

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: They've been here almost six hours.

11 All right. Just a moment, please.

12 (WHEREUPON, Potential Jurors 64 and 65 entered the
13 courtroom.)

14 THE COURT: Y'all have been here almost six
15 hours, and we haven't gotten to you yet. I'm going to
16 ask you to come back at twelve o'clock in the morning,
17 and we'll see if we can't expedite it. But we'll have
18 you out as soon as possible. We'll take you at twelve.
19 Is there any question about that ...

20 THE POTENTIAL JUROR: No, sir. That's fine.

21 THE COURT: Let's see ... Madam 64?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: And Mr. 68?

24 THE POTENTIAL JUROR: Uh-huh (affirmative).

25 THE COURT: All right. We'll see you at twelve

1 o'clock. Thank you very much.

2 THE POTENTIAL JUROR 64: Thank you.

3 (WHEREUPON, Potential Juror 64 and 68 exited the
4 courtroom.)

5 THE COURT: Again, I'm suggesting that you can
6 count your objection as you want to. I'll rule on it.
7 And if it's generic or -- what is it -- I'll protect you
8 on any -- you could just say this is a question that
9 you've already ruled on, and I would be glad to note that
10 I have ruled on it.

11 MR. MCGUIRE: Yes, sir. We'll do that.

12 THE COURT: I mean, if you can. Now, of
13 course, I mean, I'm not trying in any way limit voir
14 dire. I'm just trying to be sure that what we have as
15 voir dire is proper voir dire as the Court sees it which
16 does require a complete question, not just -- what is it
17 -- what's the old term we used to say? Cherry picking.
18 That part of a process that we want to settle in on
19 without -- with ignoring the other parts that might not
20 be as appetizing.

21 MR. MCGUIRE: Perhaps tomorrow I can convince
22 the Court to let me be the ying and you can be the yang,
23 and that'll be the balance.

24 THE COURT: Well, right now I think the only
25 way that we can do it is that somebody has to make a

1 decision. And right now, I guess I'm stuck with a job
2 that I'm more than happy to accept.

3 All right.

4 MS. ADAMS: And, Your Honor, if I may suggest,
5 it may be faster too -- because I know Mr. McGuire and I
6 talked about this earlier -- if we take turns.

7 THE COURT: The thing is, as I understand it,
8 the Defense does has the option of going first or not.
9 And if you want to waive it, and then we'll do that.

10 MS. ADAMS: Okay.

11 MR. MCGUIRE: And there will be times
12 obviously, like today, where we have no questions and
13 we'll reserve if we find ---

14 THE COURT: All right. I hope sometimes after
15 she's finishes you say, well, she's covered everything,
16 and, you know, we're satisfied with what ...

17 MR. MCGUIRE: We'll see how that goes.

18 THE COURT: Okay. Well, hope springs eternal.

19 MS. ADAMS: Thank you, Judge.

20 THE COURT: All right. Anything else? If not,
21 I'll see you at nine-thirty in the morning.

22 MR. MCGUIRE: Thank you, Judge.

23 MS. ADAMS: Thank you, Judge.

24 MR. CAMPBELL: Thank you, sir.

25 THE COURT: Start early and go quickly.

1 (WHEREUPON, court stood at recess for the day at
2 approximately 7:20 p.m.)

3 *** END OF VOLUME II ***

County of Anderson

State of South Carolina,

Plaintiff,

February 1 through 18, 2010

-VS-

Raymondeze Rivera,

Transcript of Record

Defendant.

Volume III of X

The Honorable Alexander Macaulay, Judge

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Renee H. Tollison
Circuit Court Reporter

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1 if you think these are the critical questions, maybe I'll
2 consider them in that light. But if this is just opening
3 the door and that you're going into more hypothetical
4 concepts or some specifics, then I'm afraid that -- what
5 is it -- I might as well just continue as I am and let
6 the record speak for itself.

7 MR. MCGUIRE: If I could have just a second,
8 Judge.

9 THE COURT: Okay.

10 MR. MCGUIRE: I want to give careful
11 consideration to your suggestion there.

12 (Off record discussions)

13 MR. MCGUIRE: Your Honor, I will limit myself
14 to those questions.

15 THE COURT: Well, that makes it a little bit
16 more difficult for me. All right. Again, of course,
17 that's not done -- that's done with the understanding
18 that if something should develop that it can be explored.
19 And also, I'm not trying to in any way limit the
20 Defendant in having information necessary to exclude any
21 potential or prospective juror who would always for the
22 death penalty whatever the circumstances. So if
23 something should develop, you do have extensive
24 questionnaires that address many of the general issues
25 that go to the qualification for a juror to sit.

1 Now, does the State have anything to say?

2 MS. ADAMS: Your Honor, clearly we object to
3 all of these questions. It is ---

4 THE COURT: All right. Note your objection.
5 Have you got anything to support your objections?

6 MS. ADAMS: Yes, sir, Your Honor. These
7 questions are basically asking each individual juror, are
8 you going to give the death penalty in this case. And I
9 mean, he's talking about specifically the Defendant
10 confessed to six other murders.

11 THE COURT: Well, there are two things in this,
12 one that I would have to modify somewhat. Of course,
13 number three is specific. And that has been -- that sort
14 of question has been -- at least courts have said that
15 it's a proper exercise of discretion to not permit such
16 questions going to specific mitigation. That's *State*
17 *versus Hill*, 331 S.C. 94, 1998. That's as far as number
18 three.

19 In fact, in *Hill*, the defendant wanted to ask jurors
20 whether they would be willing to consider mitigating
21 factors such as appellate's, quote, deprived poor
22 background, quote, emotional, quote, physical abuse,
23 quote, young age, quote, limited intelligence, quote,
24 brain dysfunction. And the court said that undoubtedly
25 -- the undoubted fact that such questions might have been

1 somewhat -- somehow helpful to appellate in exercising
2 peremptory challenges does not suffice to show an abuse
3 of discretion.

4 The court reasoned that the trial judge had
5 sufficiently voir dired the jurors to call out any
6 prospective juror who would always vote for the death
7 penalty whatever the circumstances which is the standard
8 in any death penalty case. It's not -- what is it -- if
9 they could do it in the particular case, but if they come
10 into the court prior to hearing the evidence and the
11 charge on the law, they could apply the law as the
12 General Assembly has provided which has the two extreme
13 -- when you get to the death penalty it only has two
14 penalties that the jury must consider which of course is
15 death or life.

16 So I somewhat join you on that, but not -- as I say,
17 I think on it, let's take it just for the purposes. Now,
18 I do feel that they're entitled to ask the first question
19 because that is what this case is about. I mean, it's
20 not asking about all the other aggravating circumstances,
21 kidnaping or anything else that could be used. It's
22 about this particular -- this is the charge, is it not?

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

24 THE COURT: Death penalty based on the
25 aggravating factor of a prior conviction?

1 MS. ADAMS: That is our aggravating factor,
2 Your Honor, yeah. And we object to that because the case
3 -- well, the case law says that ---

4 THE COURT: Well, give me the case law. I'm
5 giving you the case law, and I have less time and less --
6 what is it ...

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

8 THE COURT: Well, I mean ...

9 MS. ADAMS: Your Honor, it's the same -- *State*
10 *v. Powers*, Your Honor, I would think would be the leading
11 case where -- what they are attempting to do is pledge
12 each juror to a specific course of action. And I realize
13 it deals with would you consider mitigating circumstances
14 and specifically dealing with the specific facts of the
15 case, but it's the same line of questioning as yesterday,
16 Judge, where they want to box them ---

17 THE COURT: Again, we are trying to get away
18 from yesterday, and I'm looking for a way to do it
19 without -- what is it -- or I can -- what is it -- if
20 that is the State's position and they just want to let
21 them -- let me take up every question as it comes up,
22 then I'll do that.

23 MS. ADAMS: Your Honor ---

24 MR. MCGUIRE: Judge, I have a suggestion that
25 might help.

1 THE COURT: I wish somebody would.

2 MR. MCGUIRE: Judge ---

3 THE COURT: It's now a quarter till ten.

4 MR. MCGUIRE: Judge ---

5 THE COURT: Go ahead.

6 MR. MCGUIRE: I'd have no objection -- and I
7 think it might be a good idea if we just submit these
8 questions in writing to the panel when they're waiting
9 just see what they said and give me limited follow-up.
10 That might move things along as well. And ---

11 THE COURT: Well, the only thing is there are
12 certain things that we need to clarify. Number four --
13 if that is a consideration. Number four is not correct.
14 It's not in your opinion the death penalty is the
15 appropriate punishment for a murder case where you also
16 receive evidence that the defendant confessed to six
17 murders. The evidence there doesn't go to the conviction
18 here. It goes to an entirely different thing. And you
19 put it in one of the questions that that is character
20 testimony. And I'm just concerned about making anything
21 too specific to a case that hasn't been tried. We don't
22 know if -- what is it -- they'll even put it up. They
23 might decide it's not necessary. And then what do you
24 do? We've got them stuck to a scenario that doesn't
25 develop. It's not even the appropriate.

1 MR. MCGUIRE: We could work that out right now.
2 If they tell me they're not going to put it in, I'll
3 withdraw the question.

4 THE COURT: Well, I'll tell you it's not coming
5 in until I rule it in.

6 MR. MCGUIRE: I understand. I understand.

7 THE COURT: Now, if you want to try to bind me,
8 I would suggest you think about some other maneuver.

9 MS. ADAMS: Your Honor, I would just like to
10 add I agree with you. The problem with getting case
11 specific is that you're asking a juror to commit without
12 all the facts and evidence before that.

13 THE COURT: Well, again, I think this is what
14 it's going to come down to. Obviously it doesn't look
15 like we're going to reach any sort of agreement.

16 First of all, I do feel that number three would be
17 inappropriate under *State versus Hill*. And number four,
18 again, I think it will create a sort of a staking out,
19 making a decision on something that might not be a part
20 of the case, which would also carry four and five
21 together. And maybe six. So apparently that's the
22 thrust of it.

23 So obviously it comes down to me having to rule on
24 these specific questions. And one and two, again, the
25 problem there is not a balance. They're not just

1 concerned with the death penalty; they're also concerned
2 with mitigation. I mean, I'll state again when the
3 mitigation can be for any reason, no reason or even
4 mercy, then -- what is it -- you've got -- they need to
5 know that that's their option too. And those two
6 questions don't address it.

7 So I'm going to deny your motion.

8 MS. ADAMS: Thank you. Your Honor, I have a
9 suggestion about a question.

10 THE COURT: Anything.

11 MS. ADAMS: Okay.

12 THE COURT: Let's don't be bashful right now.
13 It's a little bit late. We've got people sitting back
14 waiting to help us. Go ahead.

15 MS. ADAMS: Judge, maybe a question along the
16 lines of if the Judge were to charge you that the
17 aggravating circumstance in a case were a prior
18 conviction for murder and also charge you that you must
19 consider mitigation, if any, would you already have your
20 mind made up, or would you want to let -- maybe along the
21 lines of would you already have your mind made up, or
22 would you listen to all the evidence before you made up
23 your mind.

24 THE COURT: What do you say about that, Mr.
25 McGuire?

1 MR. MCGUIRE: That if we can't really define
2 mitigation with real-world examples ---

3 THE COURT: Well, let me ask you something. We
4 don't -- the law doesn't require mitigation with real-
5 world examples.

6 MR. MCGUIRE: I understand.

7 THE COURT: I mean, if we wanted to -- again,
8 our law, if you look at it objectively, where it says
9 that you can find life for any reason or no reason or
10 even for mercy, that's almost an invitation to jury
11 nullification. And I know it was good for John Peter
12 Zenger and Andrew Hamilton, but that was against the
13 king, not -- what is it -- the United States where we
14 have a process that says that you can do that in specific
15 cases. So you're not -- I would have to limit -- if you
16 can't use it in a broad sense, you can -- could you do it
17 -- and I think I might have to put it together -- that
18 mitigation which can be anything or nothing and even in
19 the matter of grace after you hear all of the facts and
20 the charge on the law.

21 MR. MCGUIRE: Yes, sir. I mean, that's kind of
22 my -- that's kind of my point in that ---

23 THE COURT: But if you start saying you want to
24 go into specific mitigation, no, because the law doesn't
25 require specific mitigation. It does require specific

1 aggravation. And that's why I'm going to permit you to
2 ask about a case involving because that's what this case
3 involves. It's not as specific to this case, but that's
4 what this case is based on, the same as it's brought
5 under the homicide statute rather than some other
6 statute.

7 MR. MCGUIRE: Yes, sir.

8 THE COURT: All right. So I'm going to do
9 that. But the only thing that I think that the Solicitor
10 is correct that if you ask them in the dark without
11 considering the other opportunities or options that the
12 law provides, then it's not getting a realistic appraisal
13 of whether they could -- they would do it automatically
14 or would consider mitigation. And that's the ultimate
15 question that we have. And I think that's what your
16 cases say too under the United States Supreme Court, that
17 the ultimate issue is whether they would automatically do
18 the death penalty regardless.

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: And you don't have that in here.

21 MR. MCGUIRE: Or be substantially impaired.

22 And I think we're just politely disagreeing ---

23 THE COURT: Well, I would say that if you would
24 do it automatically, then you are impaired.

25 MR. MCGUIRE: Oh, certainly. Certainly. And I

1 appreciate the Court's position. And I think that all
2 I'm asking for is maybe six steps to get to the same
3 place the Court's going. I understand the Court wants me
4 to ask a question that would sort of incorporate the
5 entire universe of evidence that they would have to be
6 able to consider before asking them if they are automatic
7 death or not -- and I just ---

8 THE COURT: No. That's just it. You're still
9 -- somehow we're missing something. You do want a charge
10 that they can -- what is it -- find life is an
11 appropriate sentence for any reason or no reason or
12 either as a matter of grace? You don't want me to say,
13 well, you can only consider these specific elements of
14 mitigation?

15 MR. MCGUIRE: Correct, obviously.

16 THE COURT: Let's understand -- and this is
17 what -- as I understand, death penalty cases
18 unfortunately have certain limitations.

19 MR. MCGUIRE: Sure.

20 THE COURT: And the limitations are established
21 by the General Assembly that put the limits when they
22 decided that you would have death penalty. What you want
23 is jurors who can go -- who can accept the entire law as
24 it is charged to them which includes one end and the
25 other end.

1 MR. MCGUIRE: Yes, sir. I appreciate the
2 Court's position. And ---

3 THE COURT: It's not my position; it's the ---

4 MR. MCGUIRE: Right.

5 THE COURT: Listen, I only wear one black robe.
6 I can assure you what I'm trying to share with you has
7 been adopted by multiple black robes.

8 MR. MCGUIRE: And I agree with all of the
9 Court's comments, and I concede that that's the case law
10 and that's all correct. Just a question such as the one
11 that Ms. Adams proposed, it's my position that it would
12 just be too vague for a juror to really give an educated
13 answer to since we ---

14 THE COURT: Then why -- you don't even mention
15 mitigation in your first two questions.

16 MR. MCGUIRE: But I specifically follow up with
17 mitigation on question ---

18 THE COURT: But you limit it to one, two, well,
19 and an et cetera.

20 MR. MCGUIRE: I did put an et cetera in. And
21 Judge, going back to the *Hill* case, the *Hill* case says
22 that it was not an abuse of discretion ---

23 THE COURT: I don't want to argue *Hill*. I've
24 told you I think -- and let's just -- that's what we got
25 into yesterday. We reargued motions. Just understand I

1 think Rule 43 in the civil side -- and I think it's the
2 same in the criminal, it should be -- that -- what is it
3 -- once a ruling has been made ---

4 MR. MCGUIRE: Oh, yes, sir.

5 THE COURT: --- the argument and the -- so I
6 have overruled your motion. I'm going to see how it does
7 -- I'm going to do this though. Obviously, I've got to
8 make the ultimate decision. And if I feel that the juror
9 has not been fairly apprised of what their duties will
10 be, in other words, and the limitations that they have to
11 operate in which is both the most severe sentence to the
12 least severe sentence -- if they've not been given a fair
13 opportunity, then of course I'll correct it. But if I --
14 and I would suggest the better way would be to give them
15 a fair question rather than a loaded. And I consider the
16 first two loaded on one side. And I can use my same
17 little analogy to the seesaw. If you're going to put all
18 the load on one side, you don't have any activity.

19 MR. MCGUIRE: I understand.

20 THE COURT: And that's -- and again, I think
21 that's what our voir dire in death penalty cases is
22 about. Can you get a balance so that when they come in
23 it's up to the facts, and the presentation and the law
24 determines which side and what direction the parties go.
25 So keep that in mind. If you start loading one side,

1 then obviously you're not giving them an opportunity to
2 have a fair appraisal or assessment.

3 But anyway -- all right, so I'm going to deny your
4 motion. That doesn't mean that you can't ask the
5 questions at your own peril. But please understand if I
6 don't think that it's helping the juror make an advised
7 and informed decision, that they are only giving one
8 aspect, I'm going to perhaps correct it.

9 MR. MCGUIRE: And I don't want to appear
10 disrespectful.

11 THE COURT: You're not.

12 MR. MCGUIRE: It sounds like I'm getting ready
13 to take my lumps, and I'm okay with that.

14 THE COURT: All right.

15 MR. MCGUIRE: Thanks, Judge.

16 THE COURT: All right. Very good. All right.
17 Anything else from the -- now, of course, the State, you
18 can -- if they come in loaded, then you can load your end
19 too. So I mean, I just -- I think that that's just
20 unfair to jurors though. They didn't ask to be here.
21 And I think that, if anything I've always felt -- and I
22 really haven't been disappointed -- is they will try to
23 do what they should do. Not what they want to do, but
24 what they should do.

25 MS. ADAMS: Yes, sir, Your Honor. Thank you.

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

3 And your motion is denied.

4 MR. MCGUIRE: Yes, sir.

5 MS. ADAMS: No, sir.

6 THE COURT: But you can -- it's a denial much
7 like a motion in limine. If you want to take your
8 chances on doing something with it, do so, but understand
9 that I will listen to what you do at the time.

10 MR. MCGUIRE: I'll take some chances, Judge.

11 THE COURT: All right.

12 The first one we have is 76.

13 Oh, by the way, there is a criminal procedure rule,
14 Rule 18, the same as civil procedure.

15 MR. MCGUIRE: Oh, yeah. I've been reminded of
16 it from time to time.

17 THE COURT: Well, listen. Please understand, I
18 take no exception to attorneys doing their job. It's
19 just that once their job is done, I have to do mine.

20 MR. MCGUIRE: Yes, sir.

21 (WHEREUPON, Potential Juror 76 entered the
22 courtroom.)

23 THE COURT: Good morning.

24 THE POTENTIAL JUROR: Good morning.

25 **POTENTIAL JUROR 76,**

2 EXAMINATION

24 Q. Now, the trial of this case will last approximately
25 a week to ten days or maybe even longer. Other than

1 personal inconvenience, would this pose a serious danger
2 to the health or well-being of yourself or anyone who is
3 dependent upon you?

4 A. No, sir.

5 Q. Among other things we'll be talking about is
6 penalty. But the mere fact that we talk about penalty
7 does not indicate anything about this Defendant or any
8 defendant. The defendants are always presumed under the
9 law innocent. Do you understand that?

10 A. Yes, sir.

11 Q. If you were a juror in a criminal case, could you
12 listen to the law, accept and apply that law as I would
13 instruct you as the Judge of the court, and even though
14 you may not agree with the law or think it ought to be
15 some other way, could you accept and apply the law as I
16 would instruct you?

17 A. Yes, sir.

18 Q. Could you decide this case based solely on the
19 evidence presented in this courtroom and disregard
20 anything you may have heard, read or seen on the outside
21 or somewhere else about the case?

22 A. Yes, sir.

23 Q. In a criminal case, the State has the burden of
24 proving guilt. The burden of proof is for the State to
25 prove guilt beyond a reasonable doubt. A defendant has

1 no burden to prove anything whatsoever, innocence or
2 anything else. Do you understand that?

3 A. Yes.

4 Q. Could you, depending on the facts and evidence and
5 the law as I would instruct you in a particular case,
6 find the defendant either guilty or not guilty?

7 A. Yes.

8 Q. Now, if you were a juror in a death penalty case and
9 if the jury had already found the defendant guilty of
10 murder, you would then move to the sentencing phase of
11 the trial. Do you understand this?

12 A. Yes.

13 Q. When you hear us refer to a capital case or a death
14 penalty case, what we mean is that a criminal murder
15 trial where -- it is a criminal murder trial where the
16 prosecutor, in other words, the State, is seeking the
17 death penalty. Do you understand that?

18 A. Yes.

19 Q. A death penalty trial is divided into two parts.
20 Part one is the guilt phase where a jury determines
21 whether the defendant is guilty or not guilty of murder.
22 Part two is the sentencing phase where a jury determines
23 the appropriate punishment. Of course, if the first
24 part, the guilty phase, results in a not-guilty verdict,
25 then that ends the matter. There's no further part -- no

1 other part of the trial. Do you understand that?

2 A. Yes.

3 Q. Therefore, if you were a juror in a trial of a
4 capital case where the jury in phase one of the trial has
5 found the defendant guilty of murder, you would then move
6 to the phase two of the trial which is called the
7 sentencing phase of the trial. Do you understand this?

8 A. Yes.

9 Q. Now, if you were a juror in a sentencing phase --
10 that is phase two of a capital murder trial, again, where
11 a jury has already found the defendant guilty of murder --
12 - do you understand that the jury rather than the judge
13 determines the sentence that the defendant will receive?

14 A. Yes.

15 Q. In a capital sentencing trial, the jury's function
16 is to determine the appropriate punishment based upon
17 circumstances of the crime and the characteristics of the
18 individual defendant. Do you understand that?

19 A. Yes.

20 Q. Now, aggravating circumstances are facts and details
21 that, when they are present in a case, make the crime of
22 murder more serious or worse. Do you understand that?

23 A. Yes.

24 Q. Now, on the other hand, mitigating circumstances are
25 incidents, occurrences or details of a case that would

1 reduce the severity of the crime of murder. In other
2 words, may reduce the degree of responsibility for the
3 crime. Do you understand that?

4 A. Yes.

5 Q. Do you also understand that the jury has two options
6 to consider regarding the sentence for murder? One
7 option is life imprisonment which in South Carolina is
8 life until the death of the defendant without parole. Do
9 you understand that?

10 A. Yes.

11 Q. And the other option is death which in this state is
12 by electrocution or lethal injection. Do you understand?

13 A. Yes.

14 Q. Could you, as a juror in the sentencing phase,
15 depending upon the facts including relevant aggravating
16 and mitigating circumstances and the law as I instruct it
17 to you, render a sentence of life imprisonment?

18 A. Yes.

19 Q. On the other hand, as a juror in the sentencing
20 phase, depending upon the facts including relevant
21 aggravating and mitigating circumstances and the law as I
22 instruct it to you, could you render a sentence of death?

23 A. Yes.

24 Q. All right. If you would, please, answer any
25 questions that Mr. McGuire might have.

1 DIRECT EXAMINATION

2 BY MR. MCGUIRE:

3 Q. Good morning ...

4 A. Good morning.

5 Q. Juror Number 76.

6 A. Yes.

7 Q. It's awkward for me to refer to you as a number.

8 I'm not being not friendly or disrespectful. So if you
9 would, just forgive me for that.

10 A. Okay.

11 Q. Have you heard anything or read anything about this
12 case?

13 A. I have not read anything. Well, actually I take
14 that back. I have read an e-mail that on Monday my
15 neighbor had sent to me explaining what she had done. I
16 told her that I was on jury duty on Monday all day. And
17 she happened to tell me that she had been two years ago,
18 I'll bet you are doing the same case. And I said, I'm
19 not allowed to comment on that. And I haven't spoke to
20 her since. But she didn't offer up too much information.
21 Just names more than anything.

22 Q. And do you know any more details beyond that?

23 A. No.

24 Q. Well, what did you take ---

25 A. I do know the detail of what the outcome was for her

1 case two years ago that she served on.

2 Q. And what was that?

3 A. That the Defendant was found guilty of murder.

4 Q. Okay. Anything else?

5 A. No. She didn't go through details of the case.

6 Q. Okay. And what I'm going to do is -- the Judge gave
7 you a pretty good general framework regarding some of
8 these issues, but I want to talk to you in a little more
9 detail. This is my only opportunity to talk to you about
10 penalty even though we haven't started the trial. It's a
11 little awkward. But I want to go into a little bit more
12 detail and start off first with the definition of murder.

13 Most of the people that I know that are not lawyers,
14 most of their knowledge is from TV crime shows or books,
15 maybe even the newspaper. But my guess is you probably
16 don't know the definition of murder in South Carolina.

17 A. No, I do not.

18 Q. Okay. I'm going to help you with that.

19 A. Sure.

20 Q. The Judge would instruct you that the definition of
21 murder in South Carolina is the unlawful killing of
22 another human being with malice aforethought. And malice
23 aforethought means that before the killing that the
24 killer had developed in his heart -- or a black and
25 malignant heart fatally bent on evil. That he had

1 developed that before engaging in a deliberate and
2 intentional act to kill another person. It's not
3 accident, not self-defense, nothing like that.
4 Intentional choice to take an innocent life. Just
5 knowing that alone, what are your feelings about the
6 death penalty for that kind of killing?

7 A. It depends on the situation. It depends on a lot of
8 things actually. I mean, the length of time that was put
9 into it, et cetera. The death penalty, to me, is very
10 serious. But I feel that it is the right choice in
11 certain situations. Usually when it would be a situation
12 where someone was heavily involved in trying to kill
13 another person or multiple people for a length of -- over
14 a length of time usually. Every situation is different,
15 so I can't tell you exactly what I would choose at this
16 point for certain situations. But it would be taken into
17 consideration, all of the evidence would be, before I
18 could easily decide on that.

19 Q. Some people use the phrase that the death penalty
20 should be used as a last resort. What's your opinion
21 about that?

22 A. Yes. I mean, taking someone's life is obviously
23 very serious, and I don't think it would be my first
24 choice by any means. But -- so I would say if anything,
25 yes, it would be a last resort.

1 Q. Okay. I want to talk to you a little bit about the
2 concept of mercy. Is mercy something that is owned --
3 earned rather or freely given or bestowed?

4 A. I feel mercy should be freely given unless you have,
5 you know, done something that would cause you not to be
6 given mercy. It should be given first until you take it
7 away yourself.

8 Q. Okay.

9 MR. MCGUIRE: Judge, could I have just one
10 second?

11 THE COURT: Certainly.

12 (Off record discussion)

13 MR. MCGUIRE: Judge, if I could have just
14 another second?

15 THE COURT: Certainly.

16 (Off record discussion)

17 Q. No further questions. Thank you.

18 MS. ADAMS: Your Honor, I think we have a small
19 legal matter to address before ...

20 THE COURT: All right. Very good.

21 Do you mind stepping down, please?

22 THE POTENTIAL JUROR: Yes.

23 THE COURT: We'll be right back to you.

24 (WHEREUPON, Potential Juror 76 exited the
25 courtroom.)

1 THE COURT: Yes, ma'am?

2 MR. MCGUIRE: It would be from me actually.

3 THE COURT: Oh, I see.

4 MS. ADAMS: He's going to ---

5 MR. MCGUIRE: I'll do it. They agree. It just
6 occurred to me, Judge, that I should probably check with
7 the Prosecutor before we got too much into it and wasted
8 a little bit of time. Given her answer about her
9 neighbor knowing about the prior conviction, I just asked
10 the prosecutor if they would agree to excuse her, and
11 they agree.

12 MS. ADAMS: We do, Judge.

13 THE COURT: All right.

14 MR. MCGUIRE: Just trying to save some time,
15 Judge.

16 THE COURT: Well, of course, it's not in the
17 questionnaire because apparently the conversation took
18 place.

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: All right. Ask her to join us,
21 please.

22 (WHEREUPON, Potential Juror 76 entered the
23 courtroom.)

24 THE COURT: Juror 76, I want to thank you for
25 your candor. Unfortunately, the reason we had that

1 admonition about not knowing anything about a trial other
2 than what you hear in a courtroom and see in courtroom --
3 in other words, it has to decided solely on that. It's
4 almost like a microcosm in the world. In other words,
5 it's not everything; it's just what is presented here
6 that you must make your decision on. Sometimes
7 information is not made available because, as Judges say,
8 it's either irrelevant or inadmissible. In other words,
9 it doesn't pass the requirements of the rules of evidence
10 and all that.

11 I have to, as I said, give you all the credit in the
12 world for your candor. But this -- when we have a jury,
13 we want to be sure that not only they are impartial, fair
14 and impartial, but there's nothing that might somehow
15 even give the parties some concern, both the State and
16 the Defendant. And that's why when you mentioned that
17 you had heard something -- you didn't ask to hear it.

18 THE POTENTIAL JUROR: No, not at all.

19 THE COURT: That's just it. But you know
20 perhaps more than you need to know going into something
21 because the evidence might be entirely different or
22 something. So in order just to avoid any question, I'm
23 going to have to excuse you.

24 THE POTENTIAL JUROR: Okay, sir.

25 THE COURT: But I do want to thank you for

1 being here and for your candor in answering all these
2 difficult questions because you certainly didn't ask to
3 be here.

4 THE POTENTIAL JUROR: No, sir.

5 THE COURT: And I do want to thank you. But
6 that does conclude your service.

7 THE POTENTIAL JUROR: Thank you.

8 THE COURT: Thank you, ma'am.

9 (WHEREUPON, Potential Juror 76 exited the
10 courtroom.)

11 THE COURT: Yes, ma'am?

12 MS. ADAMS: Judge, on the next juror, in hopes
13 to try to speed things up as well ---

14 THE COURT: Right.

15 MS. ADAMS: I don't know if you've had a chance
16 to review the questionnaire. She did not fill out ---

17 THE COURT: This is Number 86?

18 MS. ADAMS: Yes, sir. She did not fill out her
19 number. And then on page 17, she checked that she does
20 hold religious or moral feelings or philosophical
21 principles that would affect her ability to vote for the
22 death penalty. And she says, I just don't believe in it.
23 So you may be able to just disqualify her, Judge, with
24 your questions.

25 THE COURT: Do you want to ---

1 MR. MCGUIRE: Well, I guess what I would ask is
2 that the Court give her the typical questions like
3 everybody else and see what she says and go from there.

4 THE COURT: All right. Well, I'll tell you
5 what. All right. We'll see. But do understand that
6 with that statement that we'll have some difficulty in
7 qualifying her. But all right. We'll do that. So this
8 is Number 86. That's the only thing you have? She
9 doesn't work for the Solicitor?

10 MS. ADAMS: No, sir. That's all I've got on
11 this one.

12 MR. MCGUIRE: Hasn't been represented by Mr.
13 McGuire or Delgado?

14 MS. ADAMS: No, sir.

15 (Laughter)

16 THE COURT: Very good.

17 Ask the -- Number 86, 86.

18 You know, the sad part about that question when
19 they'd ask it in Oconee when I was practicing law there -
20 - and I thought I had a pretty good practice. But always
21 the attorneys from out of town would ask, is there any
22 member of the jury panel a client of Macaulay. And
23 nobody would stand up. I felt sort of embarrassed.

24 (Laughter)

25 (WHEREUPON, Potential Juror 86 entered the

1 courtroom.)

2 THE COURT: All right. Are you juror 86?

3 THE POTENTIAL JUROR: Uh-huh (affirmative),
4 yes, sir.

5 THE COURT: All right. Thank you, ma'am.

6 **POTENTIAL JUROR 86,**

7 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

8 **EXAMINATION**

9 BY THE COURT:

10 Q. You recall on Monday I put all jurors under oath.

11 Now, do you understand that you're still under oath and
12 this oath continues throughout these proceedings?

13 A. Yes, sir.

14 Q. That's oath or affirmation.

15 A. Yes, sir.

16 Q. But it does continue though. You were given a
17 witness list back in the jury room. Did you look over
18 that witness list?

19 A. Yes, sir.

20 Q. Did you recognize any names?

21 A. No, sir.

22 Q. Do you also recall my instructions from Monday to
23 avoid all forms of media coverage in dealing with this
24 case? Has that caused any problems for you?

25 A. No, sir.

1 Q. All right. Among other things we'll be talking
2 about is penalty today. But the mere fact that we talk
3 about penalty does not indicate anything about this
4 Defendant or any defendant. Defendants are presumed in
5 the law to be innocent. Do you understand that?

6 A. Yes, sir.

7 Q. Now, if you were a juror in a criminal case, could
8 you listen to the law, accept and apply the law as I
9 would instruct you as the Judge of the court, and even
10 though you may not agree with that law or think it ought
11 to be some other way, could you accept and apply the law
12 as I would instruct you?

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 is for the State --
21 the burden of proof for the State is beyond a reasonable
22 doubt. A defendant has no burden to prove anything or to
23 even offer any evidence. Do you understand that?

24 A. Yes, sir.

25 Q. Could you, depending on the facts and evidence and

1 the law as I would instruct it to you in a particular
2 case, find a defendant -- and this is talking about any
3 crime or criminal case -- could you find a defendant
4 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, you
8 would then move to the sentencing phase of the trial. Do
9 you understand?

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 trial is divided into two parts.
18 Part one is the guilt phase where a jury determines
19 whether a defendant is guilty or not guilty of 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. Yes, sir.

25 Q. Therefore, if you were a jury -- excuse me -- if you

1 were a juror in a trial of a capital case where the jury
2 in phase one of the trial has found the defendant guilty
3 of murder, we would move then to phase two of the trial
4 which is called the sentencing phase of the trial. Do
5 you understand that?

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, where
9 a jury has already found a defendant guilty of murder --
10 do you understand that the jury rather than the Judge
11 determines the sentence that the defendant will receive
12 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 based upon the
16 circumstances of the crime and the characteristics of the
17 individual defendant. Do you understand that?

18 A. Yes, sir.

19 Q. Now, aggravating circumstances are facts or details
20 that, when they are present in a case, make the crime of
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. In other words, may reduce the degree
25 of responsibility for the crime.

1 A. Yes, sir.

2 Q. Do you also understand that the jury has two options
3 to consider regarding the sentence of murder? One option
4 is life imprisonment which is life until death ---

5 A. Yes, sir.

6 Q. -- without parole.

7 A. Yes, sir.

8 Q. And the other option is death which in this state is
9 by electrocution or lethal injection. Do you understand
10 that?

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 instructed 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 I
21 instruct it to you, could you render a sentence of death?

22 A. Yes, sir.

23 Q. Now, this case might last a week or ten days or
24 maybe even more ---

25 A. Uh-huh (affirmative).

1 Q. --- once we get into the trial. Other than personal
2 inconvenience, would this pose a serious danger to the
3 health or well being of yourself or anyone who is
4 dependent upon you?

5 A. No, sir.

6 Q. All right. If you would, please, answer any
7 questions that the attorneys might have.

8 MR. MCGUIRE: Your Honor, I would hold my
9 questions in response.

10 THE COURT: All right.

11 Madam Solicitor?

12 DIRECT EXAMINATION

13 BY MS. ADAMS:

14 Q. Good morning. How are you doing?

15 A. Good morning. All right.

16 Q. Good. My name is Chrissy Adams, and I'm the
17 Solicitor for the tenth Circuit. And I know this is an
18 awkward-type situation for everybody to be in. And our
19 goal today is really to just determine whether or not
20 that you cannot only be fair to the defendant, but also
21 to the State as well. Okay?

22 A. Okay.

23 Q. I know it's a difficult topic, and it's a topic that
24 if you and I ran into each other at the grocery store, I
25 would never be asking about your feelings about the death

1 penalty. But unfortunately, we have to do that today.

2 No one here wants to change your opinions or change
3 your views. We just need to know what they are. Okay?

4 A. Okay.

5 Q. There are no right answers; there are no wrong
6 answers. I noticed in your questionnaire that when you
7 filled out about, do you hold any religious, moral
8 feelings or philosophical principles that would affect
9 your ability to vote for the death penalty as a judgment,
10 that you checked, yes. And then you wrote in there, but
11 I just don't believe in it. And that's okay because
12 that's a lot of people's opinion. And what I need to
13 find out today if that still is your opinion, that you
14 just don't believe in it.

15 A. I don't believe in it.

16 Q. You don't believe in it? So would that mean that
17 you couldn't vote for it because you don't believe in it
18 and that nobody could get it?

19 A. I can vote for it, but I just don't believe in it.

20 Q. Well, what do you mean by you don't believe in it
21 then? I know it's difficult. If you don't believe in
22 it, how do you think you could vote for it? Because we
23 don't want to put you in a position where you are
24 uncomfortable obviously.

25 A. Uh-huh (affirmative).

1 Q. So that's why we need to really kind of figure out
2 exactly how you feel about it.

3 A. I guess how I feel about it -- I guess so.

4 Q. You guess what, that you -- you guess what, that you
5 couldn't vote for it?

6 A. Yeah, I could vote for it.

7 Q. You could vote for it?

8 A. Yes.

9 Q. But you just don't believe in it?

10 A. I just don't believe in it.

11 Q. Okay. You also checked that you think that some
12 people are in prison who didn't do a crime, didn't commit
13 it.

14 A. Yes, sir. Yes ma'am.

15 Q. Okay. That's okay. When you have to vote for the
16 death penalty -- because considering the death penalty
17 and actually voting for the death penalty are two
18 different things. Okay?

19 A. Okay.

20 Q. The law requires that when you ---

21 MR. MCGUIRE: I would object, asked and
22 answered.

23 THE COURT: No, she hasn't asked this question.
24 I'm going to overrule your objection.

25 MS. ADAMS: Thank you, Judge.

1 THE COURT: You may ask the question.

2 Q. When you actually vote for the death penalty, the
3 law requires that you sign your name to a sentence sheet
4 that actually allows the State to execute or kill a
5 defendant. You have to put your name -- that's a public
6 record that would go to killing another fellow human
7 being. Can you do that?

8 A. Yes. Yes, ma'am.

9 Q. You think you could sign your name that would allow
10 the State to kill another fellow human being in something
11 that you don't believe?

12 MR. MCGUIRE: Objection, asked and answered.

13 THE COURT: That I do feel that that has been
14 answered.

15 Q. Do you feel comfortable sitting in judgment of
16 someone else?

17 A. I don't think so.

18 Q. So you don't think you can judge someone else?

19 A. No, ma'am.

20 MS. ADAMS: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. MCGUIRE:

23 Q. Good morning, ma'am.

24 A. Good morning.

25 Q. We have to refer to you by number. I don't mean to

1 be unfriendly if I call you by your number, so I hope you
2 forgive me for that.

3 A. That's okay.

4 Q. My mother brought me up better than that. It sounds
5 like, from what I hear you saying, is that you respect
6 the law of the land and you want to follow the law of the
7 land. And if the law of the land is that a citizen
8 sitting on a death penalty case would have to consider
9 death as a punishment, you could follow the law. Is that
10 true?

11 A. Yes, sir.

12 Q. And if the Judge told you -- well, first off, I want
13 to tell you a little bit about capital trials in more
14 detail. First, there's no murder case in South Carolina
15 that ever requires the death penalty. There's no murder
16 case where the death penalty is automatic. Did you know
17 that?

18 A. Yes, sir.

19 Q. And nobody can ever make you vote for the death
20 penalty. Did you know that?

21 A. Yes, sir.

22 Q. Okay. And it sounds like if the Judge told you that
23 the law would require, if you were on the jury, require
24 you to consider aggravation, mitigation and consider the
25 death penalty, you could follow the judge's instructions

1 on the law?

2 A. Yes, sir.

3 Q. And return that verdict, either life or death?

4 A. Yes, sir.

5 Q. Ma'am, that's all I have for you. Thank you very
6 much.

7 A. You're welcome.

8 THE COURT: All right. Anything else from the
9 State?

10 MS. ADAMS: No questions, Your Honor. Just a
11 matter of law.

12 THE COURT: All right. Is there anything from
13 the State?

14 MS. ADAMS: Yes, sir, a matter of law, Your
15 Honor.

16 THE COURT: All right. If you would, please,
17 retire with the bailiff there. I need to take up some
18 matters with the lawyers. And I'll be right back with
19 you. It won't take long.

20 THE POTENTIAL JUROR: Okay.

21 (WHEREUPON, Potential Juror 86 exited the
22 courtroom.)

23 THE COURT: Yes, ma'am?

24 MS. ADAMS: Thank you, Judge. Your Honor we
25 move that this juror be disqualified for cause. In the

1 beginning of your questions, Judge, when you asked her if
2 she could sentence to life without parole, she
3 immediately said yes. When you asked her if she could
4 sentence to death, she actually paused -- I don't know if
5 you recall -- before she said yes.

6 She wrote in her questionnaire that she did not --
7 does not believe in the death penalty. And she also
8 specifically said that she cannot sit in judgment of
9 others. She doesn't feel comfortable with that, and she
10 simply does not want to ---

11 THE COURT: Well, no, that's what she answered
12 -- that was a question that was put to her. Would you
13 feel comfortable judging someone else? And I can assure
14 you no one feels comfortable judging someone else.
15 That's an honest answer.

16 MS. ADAMS: And we feel that she should be
17 disqualified for cause, Your Honor.

18 THE COURT: I see.

19 Anything from the Defendant?

20 MR. MCGUIRE: No, sir..

21 THE COURT: All right. I think that this is
22 probably a good example of what the Court is trying to
23 find. That's why the Court is somewhat persistent on
24 finding jurors who at least satisfy the Court that they
25 can apply the law based on the circumstances and the

1 facts of a particular case and the law as given to them.

2 I find that her responses were very honest. I could
3 vote for it, the death penalty; I just don't believe in
4 it. I don't know that if any of us -- what is it --
5 believe in the death penalty. But of course, we believe
6 that we shouldn't have to put in such a position. That's
7 not our way of doing things. However, as you pointed
8 out, if the law requires it, she said that she could do
9 it.

10 And again, coming back to the question, would you
11 feel comfortable judging someone else, no. I think
12 that's an honest answer too because she said that she
13 could. And I have no reason to doubt her answer. So I'm
14 going to find that she is qualified.

15 Ask the juror to join us, please.

16 (WHEREUPON, Potential Juror 86 entered the
17 courtroom.)

18 THE COURT: All right. Considering the entire
19 voir dire, which means the questions that we've had ---

20 THE POTENTIAL JUROR: Uh-huh (affirmative).

21 THE COURT: --- I find that Juror 86 will be
22 fair, unbiased, impartial and able to carry out the law
23 as I explain it to her. Furthermore, I find that the
24 juror's beliefs or attitudes toward the death penalty
25 would not prevent or substantially impair the performance

1 of her duties as a juror in accordance with the law, the
2 Court's instructions and your oath as a juror.

3 So I do find you qualified. Now, you've given the
4 Clerk of Court your telephone number?

5 THE POTENTIAL JUROR: Uh-huh (affirmative).

6 THE COURT: All right. So this process is
7 going to take several days.

8 THE POTENTIAL JUROR: Uh-huh (affirmative).

9 THE COURT: And then you'll get a call though
10 at the end when we have got a panel. In other words,
11 we're going to have to qualify several, or actually quite
12 a few, in order to select the actual jury that will hear
13 this case.

14 THE POTENTIAL JUROR: Okay.

15 THE COURT: So you'll get a call to come in at
16 some point some several days from now.

17 THE POTENTIAL JUROR: Uh-huh (affirmative).

18 THE COURT: And when you get that call, if you
19 would come back. But until then, you can go about your
20 life as you would.

21 THE POTENTIAL JUROR: So it's -- okay. Thank
22 you. So you'll call me?

23 THE COURT: She will call you. Exactly.

24 THE POTENTIAL JUROR: Okay. Thank you.

25 THE COURT: Thank you, ma'am.

1 (WHEREUPON, Potential Juror 86 exited the
2 courtroom.)

3 THE COURT: All right, 104, I think, is the
4 next one.

5 (WHEREUPON, Potential Juror 104 entered the
6 courtroom.)

7 THE COURT: Good morning

8 THE COURT: Good morning.

9 **POTENTIAL JUROR 104,**

10 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

11 EXAMINATION

12 BY THE COURT:

13 Q. All right. Are you Juror 104?

14 A. Yes, sir.

15 Q. You recall on Monday I put all the jurors under
16 oath. Now, do you understand that you still are under
17 oath and this oath continues throughout this proceeding?

18 A. Yes, sir.

19 Q. All right. You were given a witness list in the
20 jury room. Did you look over that jury list?

21 A. Yes, sir.

22 Q. Did you recognize any names?

23 A. No, sir.

24 Q. Do you also recall my instructions from Monday to
25 avoid any forms of media coverage dealing with this case?

1 A. Yes, sir.

2 Q. Has this caused any problem for you?

3 A. No, sir.

4 Q. The trial of the case will last approximately a week
5 to ten days or maybe even more. Other than personal
6 inconvenience, would this pose a serious danger to the
7 health or well-being of yourself or anyone who is
8 dependent upon you?

9 A. No, sir.

10 Q. Among other things we'll be talking about today is
11 penalty. But the mere fact that we talk about penalty
12 does not indicate anything about this Defendant or any
13 defendant because defendants are always presumed innocent
14 under our law. Do you understand that?

15 A. Yes, sir.

16 Q. Now, if you were a juror in a criminal case, could
17 you listen to the law, accept and apply that law as I
18 would instruct you as the Judge of the court, and then
19 even though you may not agree with the law or think it
20 ought to be -- or that it should be some other way, could
21 you apply the law as I -- accept the law and apply it as
22 I instruct you even if you don't agree with it?

23 A. Accept it the way you applied it, yes.

24 Q. I mean, in other words, accept it and follow the law
25 as I instruct it rather than what you might think it

1 should be.

2 A. Yes.

3 Q. You could do it?

4 A. Yes.

5 Q. Could you decide this case based solely on the
6 evidence presented in this courtroom and disregard
7 anything you might have heard, read or seen about this
8 case on the outside?

9 A. Yes, sir.

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 this?

14 A. Yes.

15 Q. In fact, a defendant doesn't even have to testify or
16 offer evidence. Do you understand that?

17 A. Yes, sir.

18 Q. They're presumed to be innocent.

19 A. Okay.

20 Q. Could you, depending on 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.

24 Q. If you were a juror in a death penalty case, and if
25 the jury has found the defendant guilty of murder, you

1 would then move to the sentencing 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, is seeking the death penalty. Do you understand
8 this?

9 A. Yes, sir.

10 Q. A death penalty trial is divided into two parts.
11 Part one is the guilty phase where a jury determines
12 whether the defendant is guilty or not guilty of murder.
13 Do you understand that?

14 A. Yes, sir.

15 Q. Part two is the sentencing phase when a jury
16 determines the appropriate punishment. Of course, if the
17 defendant is found not guilty, then there is no second
18 phase. Do you understand that?

19 A. Yes, sir.

20 Q. That ends the matter.

21 A. Yes, sir.

22 Q. Therefore, if you were a juror in a trial of a
23 capital case where the jury in phase one of the trial has
24 found the defendant guilty of murder, we would move then
25 to phase two of the trial which is called the sentencing

1 phase of the trial. Do you understand this?

2 A. Yes, sir.

3 Q. Now, if you were a juror in the sentencing phase --
4 that is phase two of a capital murder trial, again, where
5 a jury has already found the defendant guilty of murder -
6 - do you understand that the jury rather than the judge
7 determines the sentence that the defendant will receive
8 for the crime of murder?

9 A. Yes, sir.

10 Q. In a capital sentencing trial, the jury's function
11 is to determine the appropriate punishment based upon the
12 circumstances of the crime and the characteristics of the
13 individual defendant. Do you understand that?

14 A. Yes, sir.

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 that?

22 A. Yes, sir.

23 Q. Do you also understand that the jury has two options
24 to consider regarding the sentence of murder? One option
25 is life imprisonment which in South Carolina is life

1 until death. In other words, without parole.

2 A. Okay.

3 Q. The other option is death which in this state is by
4 electrocution or lethal injection.

5 A. Okay.

6 Q. Could you, as a juror in the sentencing phase,
7 depending upon the facts including relevant aggravating
8 and mitigating circumstances and the law as I instruct it
9 to you, render a sentence of life imprisonment?

10 A. Depending on the facts, yes, sir.

11 Q. On the other hand, as a juror in the sentencing
12 phase, depending upon the facts including the relevant
13 aggravating and mitigating circumstances and the law as I
14 instruct it to you, render a sentence of death?

15 A. Yes, sir.

16 Q. If you would, please, answer any questions that the
17 lawyers may have.

18 DIRECT EXAMINATION

19 BY MR. MCGUIRE:

20 Q. Good morning, Juror Number 104.

21 A. Good morning.

22 Q. It's a little awkward for me to call you a number.
23 I'm not being not polite. I just have to do that.

24 A. How about just Number 1?

25 (Laughter)

1 Q. I'll go with that. Juror Number 1. All right.

2 Fair enough. The Judge gave you some good guidelines. I
3 want to talk to you in a little more detail. No right or
4 wrong answers here. Whatever your views, your opinions,
5 your thoughts are, they're absolutely yours and they're
6 right. Okay?

7 A. Uh-huh (affirmative).

8 Q. Have you read or heard anything about this case?

9 A. No, sir.

10 Q. Okay. You don't have any special knowledge of the
11 criminal justice system, don't know any lawyers, cops,
12 that sort of thing?

13 A. Lawyers just when I used ---

14 Q. I think you used a lawyer before for a civil matter?

15 A. Yes. On my closing on my house. That's it.

16 Q. Got you. You're not like me where half my family is
17 lawyers?

18 A. Oh, yes. No, no, no.

19 Q. All right. What I'm going to do is talk to you in a
20 little bit more detail. If I asked you to give the
21 definition of murder in South Carolina, you'd probably
22 say, you know, I don't know. Is that right?

23 A. Yes.

24 Q. So I want to help you. The definition of murder in
25 South Carolina -- and the Judge would instruct you --

- 1 that it is an unlawful killing of another human being
2 with malice aforethought. And what that means is, and
3 what the Judge will tell you, is that the killer operated
4 with a black and malignant heart fatally bent on evil,
5 deliberately, intentionally killed another person.
- 6 A. Uh-huh (affirmative).
- 7 Q. Without knowing more, what's your thoughts about the
8 death penalty as the appropriate punishment in that kind
9 of killing?
- 10 A. I would think that that's appropriate ---
- 11 Q. Okay.
- 12 A. --- if they did it with a black heart, like you
13 said.
- 14 Q. Right. Not an accident, not like a gun went off
15 accidentally, not self-defense.
- 16 A. Right.
- 17 Q. They knew what they were doing, deliberate,
18 intentionally.
- 19 A. Exactly.
- 20 Q. And in that case, the death penalty is the
21 appropriate punishment?
- 22 A. Yes.
- 23 Q. Okay. And I know you just filled out your
24 questionnaire. But that sounds -- it sounds like you're
25 pretty secure about that, pretty certain about that?

1 A. Yes, sir.

2 Q. And that a life imprisonment punishment is really
3 not severe to punish that kind of intentional, deliberate
4 murder?

5 A. Correct.

6 Q. And what I want to do is talk to you a little bit
7 about taxes. A lot of the jurors have put on their
8 questionnaire that they're offended by putting somebody
9 putting somebody for life in prison ---

10 MS. ADAMS: Your Honor, I object. Arbitrary
11 factor. I don't understand how that makes a difference
12 about taxes and cost. It's not on her questionnaire,
13 Judge.

14 MR. MCGUIRE: Judge, could I be heard just
15 briefly?

16 THE COURT: Certainly.

17 MR. MCGUIRE: Judge, in looking at the
18 questionnaires, about twenty-five percent of the jurors,
19 without solicitation, volunteered that that was an issue
20 on their mind. When one in four of the pool are bringing
21 it up ---

22 THE COURT: All right. Go ahead and ask the
23 question. But let's ...

24 MR. MCGUIRE: Oh, I'm not going to stay on it,
25 Judge.

1 THE COURT: Justice doesn't have a price.

2 MR. MCGUIRE: Oh, I agree. And we are not in
3 the production business. I absolutely agree with you.

4 Q. Do you have an opinion one way or the other about
5 should people go to prison for life without parole on the
6 taxpayer dime?

7 A. No, I don't.

8 Q. Okay. What I want to do a little bit now is tell
9 you ---

10 MR. MCGUIRE: Judge, this is the part where I
11 would ask question number one on my sheet.

12 THE COURT: As long as it's balanced, you may.
13 As long as it's a complete question.

14 MR. MCGUIRE: It's not going to be.

15 THE COURT: Well, then don't.

16 MR. MCGUIRE: Yes, sir.

17 THE COURT: All right. Note the objection to
18 the Court's ruling on question number one of the proposed
19 questions by the Defendant.

20 MR. MCGUIRE: Thank you, Your Honor. And the
21 grounds are based on the written motions.

22 THE COURT: Certainly.

23 MR. MCGUIRE: Thank you, sir.

24 Q. And ma'am, what I want to do now is talk to you a
25 little bit about how capital cases are different from any

1 other case. The sentencing proceeding is completely
2 different and -- because the jury fixes punishment. It's
3 the only time they ever do that.

4 A. Okay.

5 Q. And there's some complex law regarding that, but I'm
6 going to try to boil it down for you and ask you if you
7 can follow the law.

8 A. Okay.

9 Q. With regard to -- well, first off, let me ask you --
10 well, I'll just tell you. In the sentencing phase, the
11 State, to make a murder case eligible for the death
12 penalty, would have to prove an aggravating factor. And
13 they have to prove that to the satisfaction of all jurors
14 beyond a reasonable doubt. Unanimous jury, beyond
15 reasonable doubt. It's the highest standard in the law.

16 A. Okay.

17 Q. Completely different for the mitigation side. Each
18 individual juror has the right to see mitigation
19 evidence. And the Judge would tell you mitigation
20 evidence is really almost any reason to vote for a
21 sentence less than death. It can be something you see in
22 the Defendant, his background, the facts in the case.
23 The Judge would even tell you that it can be mercy alone
24 without any other reason, and it can be for no reason at
25 all. One juror just might say, I just don't do it --

- 1 can't do it. And they don't even have to say why.
- 2 A. Okay.
- 3 Q. Is that okay with you?
- 4 A. Absolutely.
- 5 Q. And each juror has the right to find their own
- 6 separate mitigation. I keep doing that because I'm
- 7 pretending there's a jury over there.
- 8 A. Okay.
- 9 Q. You're not there yet. But that's why I keep looking
- 10 at those chairs. But you know, for instance, one over
- 11 here could find something in the defendant's background.
- 12 Somebody over here could say, you know, he has an
- 13 interaction with his child that I appreciate, so that's
- 14 going to do it for me. And everybody can be completely
- 15 different.
- 16 A. And would we know this during the ---
- 17 Q. At the end of the sentencing. At the end of the
- 18 sentencing, whatever the mitigation is, it will be
- 19 presented to you.
- 20 A. Okay. I mean, would we know about his background or
- 21 any interaction?
- 22 Q. If the defendant put on that kind of evidence, you
- 23 would have all that.
- 24 A. Okay.
- 25 Q. Sure. At that point when you're making up your

1 mind, you have all that.

2 A. Okay.

3 Q. Whatever it's going to be, you have.

4 A. Perfect.

5 Q. Okay? And can you respect the fact that each
6 individual juror can find mitigation evidence
7 individually?

8 A. Yes.

9 Q. And the law says they don't have to agree. The jury
10 doesn't have to agree that it's, you know, say a
11 background factor or whatever.

12 A. Okay.

13 Q. It can be completely different. You could have
14 twelve different jurors find twelve different pieces of
15 mitigation, and they're all different.

16 A. Okay.

17 Q. And nobody even agrees that they're the same. Is
18 that okay with you? Is that a principle that you can
19 follow?

20 A. Yes. Can I ask you a question?

21 Q. Sure.

22 A. If each juror has a different opinion, how do you
23 come to ---

24 Q. That's my next question. That's my next piece of
25 information to you. And that is the only way the State

- 1 can have a death sentence returned is that all twelve
2 would have to agree that that's the appropriate sentence.
3 But in a death penalty case, you can actually agree to
4 disagree, and the judge would take the case and sentence.
5 A. Okay.
6 Q. So the only way for a death sentence is everybody
7 has to agree. But short of that, everybody can have
8 their own individual moral judgment.
9 A. Okay.
10 Q. Is that okay with you?
11 A. Sure.
12 Q. And could you respect everybody's individual moral
13 judgment?
14 A. Yes.
15 Q. Because that's how they refer to a juror's
16 sentencing decision in a capital case, their own
17 individual moral judgment.
18 A. Okay.
19 Q. Is that something you could respect?
20 A. Yes.
21 Q. You'd want yours to be respected?
22 A. Yes, absolutely.
23 Q. And you know, the State and the Defendant both are
24 entitled to fairness, not just out here in the courtroom,
25 but also in the jury room. And the law says if it would

1 harm somebody's conscience to give up their own
2 individual moral judgment, that's wrong.

3 A. Uh-huh (affirmative).

4 Q. And if you saw it getting hostile or some bullying
5 in the jury room, could you pass a note out to the Judge
6 saying, it's not ---

7 A. Oh, absolutely.

8 Q. And you could stop that?

9 A. Yes.

10 Q. That's all I have for you, ma'am. Thank you.

11 A. Yes, thank you.

12 THE COURT: All right. Just a moment.

13 The State?

14 MS. ADAMS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. ADAMS:

17 Q. Good morning, how are you?

18 A. Good morning. Fine, thank you.

19 Q. My name is Chrissy Adams, and I'm the Solicitor for
20 the Tenth Circuit. And what our main goal here today is
21 just to make sure that you can be fair not only to the
22 Defendant, but to the State as well.

23 A. Okay.

24 Q. And do you understand -- because I know you talked
25 about the death penalty, when it's appropriate for you

1 and that you could vote for that once you heard all the
2 evidence and the Judge's instructions. Is that correct?

3 A. Yes.

4 Q. And depending on the evidence that is presented by
5 the State and/or the Defense, you could also vote for
6 life without the possibility of parole as well if you
7 felt that was appropriate?

8 A. Absolutely.

9 Q. Okay. Now, do you understand -- do you know that
10 not all murders are eligible for the death penalty? Did
11 you know that?

12 A. No.

13 Q. Okay. Every murder is an intentional deliberate
14 killing of another with malice or the evil heart.

15 A. Okay.

16 Q. Or the black heart. Every murder is. But there has
17 to be something extra which the law calls an aggravating
18 circumstance that must be established by the jury beyond
19 a reasonable doubt before we get to sentencing. Okay?
20 So you will have to, if you were on that jury -- I keep
21 pointing to the box too. As part of a jury you will have
22 to find that aggravating circumstance before punishment
23 can be decided.

24 A. Okay.

25 Q. Okay. And when a jury deliberates, do you

1 understand -- the process is a give-and-take. In other
2 words, that every jury has a right to their opinions.
3 And do you agree that every jury -- juror should listen
4 to everyone's opinions and take into consideration what
5 that juror has to say?

6 A. Absolutely.

7 Q. Okay. And that in order for a death penalty verdict
8 to be handed down, that the jurors have to be unanimous?

9 A. Yes.

10 Q. Okay. Assuming that the Defendant is guilty of
11 murder in the first part of the trial and we get to the
12 second phase to determine whether life or death is
13 appropriate, will you follow the Judge's instructions on
14 considering not only the evidence in aggravation, but the
15 evidence in mitigation as well ---

16 A. Absolutely.

17 Q. --- before reaching a decision and making a
18 determination?

19 A. Absolutely.

20 Q. So you want to hear everything? The whole picture?

21 A. Correct.

22 Q. Okay. Just a couple more questions. I noticed that
23 you wrote down on your questionnaire that you're
24 Catholic?

25 A. Yes.

1 Q. Would that in any way -- I know that Catholics --
2 it's kind of a hard conversation -- but do not believe in
3 the death penalty. Would that affect your ability in any
4 way?

5 A. No, ma'am.

6 Q. Okay. As part of -- the law requires, if a death
7 verdict is handed down, that you actually sign your name
8 along with the other eleven jurors to a sentence sheet
9 which would allow the State to carry out the execution of
10 a defendant or actually to kill a defendant. And that is
11 public record. Could you sign your name to that sentence
12 sheet?

13 A. Yes. Would that -- the religion side, would that
14 ban me from -- exile me from the church?

15 Q. No, no, no. The fact that you're Catholic doesn't
16 matter at all. No, ma'am.

17 A. Okay.

18 Q. I just want to make sure that your beliefs would not
19 prevent you from giving life or death.

20 A. No.

21 Q. Okay.

22 THE COURT: All right. Anything else from
23 Defense?

24 MR. MCGUIRE: Just a small legal matter.

25 THE COURT: All right. Very good. If you'd

1 step out just for a moment, I need to take a matter with
2 the attorneys, please.

3 THE POTENTIAL JUROR: Okay.

4 (WHEREUPON, Potential Juror 104 exited the
5 courtroom.)

6 THE COURT: All right?

7 MR. MCGUIRE: Just very briefly, Judge. I move
8 to strike for cause based on her initial answers
9 regarding being automatic for death penalty in an
10 intentional deliberate murder -- of course, they all are
11 -- and her indication that a life penalty would never be
12 severe enough to punish that kind of deliberate,
13 intentional murder.

14 THE COURT: I think that was your question. Is
15 life severe enough for that type of murder?

16 MR. MCGUIRE: Correct. And she said no.

17 THE COURT: No. She said no.

18 MR. MCGUIRE: And I would just -- the grounds
19 would be Sixth and Fourteenth Amendments to the United
20 States Constitution and Section 3, 14 and 15 ---

21 THE COURT: Anything from the State?

22 MR. MCGUIRE: --- of the South Carolina
23 Constitution.

24 THE COURT: Anything from the State?

25 MS. ADAMS: Your Honor, when you take her

1 answers in totality ---

2 THE COURT: I understand. But I mean -- so if
3 you don't have anything particularly.

4 MS. ADAMS: Just we feel she's qualified,
5 Judge.

6 THE COURT: I sat there and listened too.

7 MS. ADAMS: Thank you, Judge.

8 THE COURT: All right. As far as the first
9 question, as I say, the question was, death is
10 appropriate if done with black heart. And she said yes.
11 And unfortunately -- the reason that question is not
12 necessarily -- and I would almost go so far as to be
13 inappropriate -- is it's not a complete question because,
14 as the State brought out, she did not know that all
15 murders were [sic] eligible for the death sentence. And
16 so with that understanding then was that, obviously the
17 question would have been different. I mean the answer
18 would probably -- could have been different. I think
19 particularly when she was asked about mitigation
20 evidence. And no reason -- and could she even give a
21 life sentence for no reason at all. And her response was
22 absolutely. And also, she was concerned about if she
23 would have all of the information. I think she said,
24 will we have all of that, meaning can mitigation aspect.
25 And again, as I noted when it was explained to her

1 or that she was not aware -- her first responses were
2 based on a misconception of the law that she did not know
3 that all murders were not eligible for the death
4 sentence. So I do find that she is qualified subject to
5 the objections.

6 Ask her to join us, please.

7 (WHEREUPON, Potential Juror 104 entered the
8 courtroom.)

9 THE COURT: All right. Considering the entire
10 voir dire, which means the questions we've been asking, I
11 find that Juror Number 104 will be fair, unbiased,
12 impartial and able to carry out the law as explained to
13 her. Furthermore, I find that this juror's beliefs or
14 attitudes toward the death penalty would not prevent or
15 substantially impair the performance of her duties as a
16 juror in accordance with the law, the Court's
17 instructions and the juror's oath.

18 So I do find you qualified. Now, you've given the
19 Clerk of Court your telephone number?

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: All right. This process is going
22 to take several days, as you've probably realized.

23 THE POTENTIAL JUROR: Uh-huh (affirmative).

24 THE COURT: And so at the time when we have
25 enough for a pool of jurors, in other words, to select

1 the eighteen who will actually serve, twelve on the jury
2 and six alternates, then we'll call you and ask you to
3 come in to be considered to be a part of that pool.

4 THE POTENTIAL JUROR: Okay.

5 THE COURT: So you can do whatever you need to
6 do, go about your life until you do get that call.

7 THE POTENTIAL JUROR: Okay. So it's okay to go
8 back to work?

9 THE COURT: Yes, ma'am. I'm sorry.

10 THE POTENTIAL JUROR: You're not supposed to
11 say that.

12 (Laughter)

13 THE POTENTIAL JUROR: Thank you. Am I ...

14 THE COURT: Yes, ma'am. You're excused for the
15 day.

16 THE POTENTIAL JUROR: Okay. Thank you, sir.
17 You sure you don't want to reconsider?

18 (Laughter)

19 THE COURT: Wish I could.

20 (WHEREUPON, Potential Juror 104 exited the
21 courtroom.)

22 THE COURT: All right. Let's take a short
23 break. We're about, for the first time, on schedule, I
24 think.

25 (WHEREUPON, court stood at recess for a short

1 break.)

2 THE COURT: All right. Are we ready to
3 proceed?

4 MR. MCGUIRE: Yes, sir.

5 MS. ADAMS: Your Honor, can I mention one thing
6 about the next juror?

7 THE COURT: Certainly.

8 MS. ADAMS: Your Honor, she is cousins with
9 Matthew Fulbright who is currently charged in our office
10 with a double homicide, and he is potentially facing the
11 death penalty and ---

12 THE COURT: She is what?

13 MS. ADAMS: He is her cousin.

14 THE COURT: Oh, a cousin?

15 MS. ADAMS: Yes. He killed two people and ...

16 THE COURT: Allegedly.

17 MS. BYFORD: Allegedly.

18 MS. ADAMS: Allegedly, yes, sir. He is
19 charged, yes, sir. And she does mention that in her
20 questionnaire. And it is a pending case where he
21 potentially as well could face the death penalty.

22 THE COURT: All right. I'm going to excuse
23 her.

24 MR. MCGUIRE: Judge, could I at least voir dire
25 her?

1 THE COURT: Sure.

2 MR. MCGUIRE: Thank you.

3 THE COURT: All right. Anything from the State
4 before we bring her out?

5 MS. ADAMS: No, sir, Your Honor, unless you
6 want to just question her about it.

7 THE COURT: All right. Ask Juror 109 to join
8 us.

9 THE COURT: Do you want me to do the
10 preliminaries?

11 MR. MCGUIRE: If you would, Judge.

12 THE COURT: Glad to.

13 (WHEREUPON, Potential Juror 109 entered the
14 courtroom.)

15 THE COURT: All right. Are you juror 109?

16 THE POTENTIAL JUROR: Yes.

17 **POTENTIAL JUROR 109,**

18 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

19 **EXAMINATION**

20 BY THE COURT:

21 Q. You will recall on Monday I put all jurors under
22 oath. Now, do you understand that you're still under
23 oath and that oath continues throughout these
24 proceedings?

25 A. Yes, sir.

1 Q. Now, you were given a jury -- a witness -- excuse me
2 -- a witness list in the jury room. Did you have an
3 opportunity to look over that list?

4 A. Yes.

5 Q. Now, do you recognize any names ---

6 A. No.

7 Q. --- that you might be related to by blood or
8 marriage or know in any way?

9 A. No.

10 Q. Do you recall my instructions from Monday to avoid
11 all forms of media coverage dealing with this case?

12 A. Yes.

13 Q. Has that caused you any problems for you?

14 A. No.

15 Q. Now, the trial of the case will last approximately
16 ten days to two weeks. Other than personal
17 inconvenience, would this pose a serious danger to the
18 health or well-being of yourself or anyone who is
19 dependent upon you?

20 A. No.

21 Q. Among other things, we will be talking about penalty
22 today. But the mere fact that will be talking about
23 penalty does not indicate anything about this Defendant
24 or any defendant. Defendants are presumed in the law to
25 be innocent. And they have no duty to present any sort

1 of evidence or anything else. Do you understand that?

2 A. Yes.

3 Q. If you were a juror in a criminal case, could you
4 listen to the law, accept and apply that law as I would
5 instruct you as the Judge of the court even though you
6 may not agree with the law or think that it ought to be
7 some other way?

8 A. Yes.

9 Q. Could you decide this case based solely on the
10 evidence presented in the courtroom and disregard
11 anything you may have heard, read or seen about the case?

12 A. Yes.

13 Q. In a criminal case, the State has the burden of
14 proving guilt. The burden of proof is for the State to
15 prove guilt beyond a reasonable doubt. A defendant, as I
16 said, has no burden of proof whatsoever and does not have
17 to prove his innocence or anything like that. Do you
18 understand?

19 A. Yes.

20 Q. Could you, depending upon the facts and the evidence
21 and the law as I would instruct you in a particular case,
22 find a defendant either guilty or not guilty?

23 A. Yes..

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 sentencing phase of the trial. Do
2 you understand?

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 a criminal murder
6 trial -- this is a criminal murder trial where the
7 prosecutor, in other words, the State, is seeking the
8 death penalty. Do you understand?

9 A. Yes.

10 Q. A death penalty trial is divided into two parts.
11 Part one is the guilt phase where a jury determines
12 whether a defendant is guilty or not guilty of murder.
13 Part two is the sentencing phase where a juror -- a jury
14 determines the appropriate punishment. Of course, if
15 there's a not-guilty verdict, then the matter ends right
16 there. Therefore, if you were a juror in a capital --
17 trial of a capital case where the jury in phase one of
18 the trial has found the defendant guilty of murder, you
19 would then move on to a phase two of the trial which is
20 called the sentencing phase of the trial. Do you
21 understand?

22 A. Yes.

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 a jury has already found a defendant guilty of murder --

1 do you understand the jury rather than the judge
2 determines the sentence that the defendant will receive
3 for the crime of murder?

4 A. Yes.

5 Q. Now, aggravating -- or excuse me. In a capital
6 sentencing trial, the jury's function is to determine the
7 appropriate punishment based upon the circumstances of
8 the crime and the characteristics of the individual
9 defendant. Do you understand?

10 A. Yes.

11 Q. Now, aggravating circumstances are facts or details
12 that, when they are present in a case, made the crime of
13 murder more serious or worse. On the other hand,
14 mitigating circumstances are incidents, occurrences or
15 details of the case that would reduce the severity of the
16 crime of murder. In other words, may reduce the degree
17 of responsibility for the murder. Do you understand?

18 A. Yes.

19 Q. Do you also understand that the jury has two options
20 to consider regarding the sentence of murder? One option
21 is life imprisonment which in South Carolina is life
22 until death. In other words, until the defendant dies
23 without parole. Do you understand?

24 A. Yes.

25 Q. Or the other -- and the other option is death which

1 in this state is by electrocution or lethal injection.

2 Do you understand that?

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 I instruct it

7 to you, render a sentence of life imprisonment?

8 A. Yes.

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 I

12 instruct it to you, could you render a sentence of death?

13 A. Yes.

14 THE COURT: All right. If you would, please,

15 answer any questions the attorneys may have.

16 THE POTENTIAL JUROR: Thank you.

17 THE COURT: Thank you.

18 DIRECT EXAMINATION

19 BY MR. MCGUIRE:

20 Q. Good morning, juror 109.

21 A. Good morning.

22 Q. I have to refer to you by number. That's the way we

23 do things. It's a little awkward for me. And I'm not

24 being not polite to you. I hope you understand that.

25 A. Okay.

1 Q. The Judge just gave you a good general framework,
2 and I want to talk to you in a little bit more detail
3 about some of these issues. Okay? Not -- did you know
4 that not every murder case in South Carolina is eligible
5 for the death penalty?

6 A. Yes.

7 Q. The State has to prove what's called aggravation
8 evidence to elevate a regular murder to what's called a
9 capital murder or a death penalty case. And aggravation
10 can be lots of different things. But it basically is
11 something, some fact, that makes the murder even worse
12 than regular murder. And the jury has to find that
13 beyond a reasonable doubt before the case can go into
14 sentencing for life or death. Did you know that, or is
15 that kind of a new concept?

16 A. I knew.

17 Q. Okay. Is that a principle you're okay with?

18 A. Yes.

19 Q. Okay. And it sounds -- what I'm going to do is say
20 a little bit about sentencing and how the law works.

21 Okay? And I'm going to take you beyond the first phase
22 of the trial. Even though we haven't had a trial yet, I
23 want to talk to you about the end like we're going to get
24 there because this is my only time to talk to you.

25 A. Okay.

1 Q. So I want to take you beyond the first part of the
2 trial, and that's the is-he-guilty-not-guilty part. And
3 then you're going to go into the sentencing part, the
4 penalty phase part. And the only two options the jury
5 has at that point is death penalty or life without parole
6 or basically agreeing to disagree. Okay?

7 A. Uh-huh (affirmative).

8 Q. In sentencing, the burden of proof and the
9 responsibilities for the State and the Defense are
10 actually very different. And we don't paint everybody
11 with the same brush or feed everybody with the same
12 spoon. It's really different. I just -- I want to try
13 to get you to appreciate that. If you have any questions
14 about this, you let me know, okay?

15 A. Okay.

16 Q. And that is in aggravation for the State to get to
17 go from murder to capital murder and ask for the death
18 penalty, again, all twelve jurors have to find that
19 aggravation beyond a reasonable doubt. They all have to
20 agree.

21 And it's completely different for the Defense or the
22 mitigation side. Each individual juror can find
23 mitigation evidence. I keep looking over there because
24 that's where the jury sits. For instance, if somebody
25 was sitting in that first year right there, they could

1 say, you know what, I saw something in his background.
2 And for me, that did it. I'm not going to vote for death
3 because of that. And somebody else in the back might
4 say, well, you know, it was something about his mental
5 health. And that did it for me. And I'm not going to
6 vote for death because of that. And they don't even have
7 to agree with each other that they're seeing the same
8 thing. And there's no unanimity required. The whole
9 jury doesn't have to agree that there's mitigation
10 evidence. Everybody can just find it, see it and give
11 whatever weight to it they want. They don't have to
12 agree that it exists, unanimity, and they don't have to
13 find it beyond a reasonable doubt. They can just say,
14 you know, I see that. And for me, that carries the
15 weight of not voting for death.

16 Is that a principle you're okay with?

17 A. Yes.

18 Q. Okay. And sometimes people have questions about,
19 well, how can it be -- we're talking about juries and
20 verdicts. And people have a little trouble with it's not
21 unanimous part of it. But in a capital case, that's the
22 way it is. And you're okay with that?

23 A. Yes.

24 Q. Okay. And there's never a case in South Carolina,
25 never a murder case, where the death penalty is

1 automatic. It's not like the State proves A, B and C and
2 then it's death. Even if they prove their aggravation
3 beyond a reasonable doubt, the judge will tell the jury
4 they can vote for life for any reason, no reason, mercy.
5 They don't even have to be able to give a reason why they
6 don't want to vote death. Is that a principle you're
7 okay with?

8 A. Yes.

9 Q. Okay. And it sounds like -- well, let me ask you a
10 little bit more. The State is entitled to fairness, you
11 know, not just out here, but also in the jury room. The
12 Defense is too. If you saw people getting hostile or
13 bullying, could you pass a note out to the Judge saying,
14 you know what, things aren't fair in here?

15 A. Yes.

16 Q. And keep things civil? Now, we expect everybody to
17 deliberate. But once a juror comes down to their own
18 moral individual judgment -- and that's what a decision
19 is called in a capital case. When the jury comes back,
20 basically each juror has their own individual moral
21 judgment about the appropriate punishment. And again,
22 there's no requirement that they're unanimous. I mean,
23 you could basically agree to disagree. And the judge
24 would take the case and sentence. But in a case where
25 everybody has their individual moral judgment, can you

1 respect everybody's opinion and judgment?

2 A. Yes.

3 Q. And you'd want yours respected?

4 A. Yes.

5 Q. Okay. It sounds like when the law is explained to
6 you, you definitely want to follow it?

7 A. Right.

8 Q. And you want to follow the Judge's instructions on
9 the law?

10 A. Uh-huh (affirmative).

11 Q. And I'm going to ask you a little bit -- I think you
12 have a cousin that's gotten into some trouble?

13 A. Uh-huh (affirmative).

14 Q. And this trial, this case, is about this Defendant
15 right here. Can you promise the Judge without any doubt
16 in your mind that you can keep your focus on this trial
17 and what happens to this man right here?

18 A. Yes.

19 Q. And that's without any doubt in your mind?

20 A. Yes.

21 Q. And despite the fact that the State can prosecute
22 your cousin to the fullest extent of the law, even a case
23 like today, a capital case, can you promise the Judge
24 without any doubt in your mind, again, your focus will be
25 solely on this case and what happens to this man?

1 A. Yes.

2 Q. And you have no bias against the State whatsoever?

3 A. No.

4 Q. And that would never enter into your mind in
5 deciding this case?

6 A. No.

7 Q. And that's a promise you can make to the Judge
8 beyond any reasonable doubt?

9 A. Yes.

10 Q. One second, ma'am.

11 (Off record discussion)

12 Q. Ma'am, that's all I have for you. Thank you so
13 much.

14 A. Thank you.

15 THE COURT: All right. From the State?

16 MS. ADAMS: Your Honor, I have one matter of
17 law I'd like to take up ---

18 THE COURT: All right. Certainly.

19 MS. ADAMS: --- before I ask this juror any
20 questions, if you don't mind.

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

22 All right. If you would, please, go with the
23 bailiff. And I need to take up a matter of law with the
24 attorneys.

25 THE POTENTIAL JUROR: Okay.

1 THE COURT: We'll be right back with you.

2 (WHEREUPON, Potential Juror 109 exited the
3 courtroom.)

4 THE COURT: All right. Yes, ma'am?

5 MS. ADAMS: Your Honor, I just don't want to go
6 down a line of questioning that I should not. So a
7 little guidance? I don't know if this juror understands
8 that her cousin could be ---

9 THE COURT: Well the thing is ---

10 MS. ADAMS: --- in the same position and that
11 I'm the one that makes that decision. And ---

12 THE COURT: Well ---

13 MS. ADAMS: --- if she finds -- I'm sorry,
14 Judge.

15 THE COURT: The only thing I'm saying is that
16 under the totality of the entire process to include the
17 questionnaire where she relates that she is related to
18 someone who in her statement makes her uncomfortable --
19 and that's -- is it page 6? Is there any criminal case
20 you have followed closely in the media because it touched
21 your family or caught your interest? Yes. Matthew
22 Fulbright, Staton murder case. Matthew's my cousin. And
23 as I understand it, he's subject to maybe a death penalty
24 himself. So I feel that that, under the circumstances,
25 would impair her ability to be objective in this case.

1 MS. ADAMS: Thank you, Your Honor.

2 THE COURT: And over the objection of the
3 Defendant, of course. By the way, I do want to thank you
4 for putting the proper perspective on it, that all murder
5 cases are not subject to.

6 MR. MCGUIRE: I appreciate that, Judge, yeah.
7 And just for the record, you know, my motion would
8 actually -- my motion to keep her or my opposition to
9 excusing her would be based on her complete, without
10 reservation, promise to report without any doubt in her
11 mind that she could focus totally on this case and follow
12 the law. And I mean, it if we're using that as the
13 standard, can she follow the Court's instructions and
14 follow the law, she made an unqualified pledge to do that
15 beyond any doubt. I don't think we've had a more
16 emphatic pledge to follow the law then from this woman.
17 Just note my objection for the record, Your Honor.

18 THE COURT: Well, except for maybe Juror 76,
19 Juror 49. They also were emphatic.

20 MR. MCGUIRE: And qualified.

21 THE COURT: No. They were excused.

22 MR. MCGUIRE: Oh.

23 THE COURT: All right. All right. Ask the ...

24 MS. ADAMS: Your Honor?

25 THE COURT: Yes, ma'am?

1 MS. ADAMS: If I may too, this next juror, she
2 said she has trouble with the English language on her
3 questionnaire.

4 THE COURT: Well, let's take -- let's finish
5 one at a time, please.

6 MS. ADAMS: Okay. She's the next one.

7 MS. BYFORD: We're not finished with this one
8 yet.

9 MS. ADAMS: Oh, sorry. You have to excuse me.
10 I forgot.

11 (WHEREUPON, Potential Juror 109 entered the
12 courtroom.)

13 THE COURT: Juror 109, I've looked through your
14 questionnaire and also listened somewhat to the questions
15 here. In considering the entire voir dire, which are the
16 questions written and the ones today, I feel that you
17 should be excused from serving on the trial of this case.
18 However, I do want to thank you for being here and for
19 your candor.

20 The reason -- I don't know if I mentioned it the
21 other day when I was qualifying the entire jury panel. I
22 said there are two reasons we ask the question to be fair
23 and impartial. That's not only to the parties involved
24 that they have a fair and impartial jury, but you didn't
25 ask to be here. You were summoned to be here as a juror.

1 And it's also my concern that you are comfortable in what
2 you have to do. And as I said, I noticed your reference
3 to a pending case. And that is the type of thing I don't
4 want to put you in a position to have to reconcile or do
5 anything to even be concerned about it. And for that
6 reason, I'm going to excuse you. It has nothing to do
7 with your qualifications. You're eminently qualified.
8 It's just I'm exercising my discretion to avoid having to
9 put you in a situation where you might be uncomfortable.

10 THE POTENTIAL JUROR: Thank you. I understand
11 that.

12 THE COURT: Thank you.

13 THE POTENTIAL JUROR: Thank you.

14 THE COURT: All right. I do want to thank you
15 for being here. And you'll be excused.

16 THE POTENTIAL JUROR: Okay.

17 THE COURT: This completes your service. And
18 at least you won't have to be called for another three
19 years.

20 THE POTENTIAL JUROR: All right. Thank you.

21 THE COURT: Thank you, ma'am.

22 (WHEREUPON, Potential Juror 109 exited the
23 courtroom.)

24 THE COURT: All right. Now, Madam Solicitor?

25 MS. ADAMS: I'm sorry, Your Honor.

1 THE COURT: Not at all.

2 MS. ADAMS: We are going so quickly.

3 Your Honor, the next juror on her questionnaire
4 checked that she did have trouble reading and
5 understanding what some words mean. So she does have
6 trouble with the English language. She was actually one
7 of the jurors as well that has formed an opinion about
8 the case when you asked the media question. And she also
9 states she just doesn't know if I could vote for death or
10 not. She was number four. So Your Honor, based on all
11 that, we feel she should be disqualified.

12 THE COURT: All right. Let's -- I think I'm
13 going to put her under voir dire so we'll find out.

14 MS. ADAMS: Okay.

15 THE COURT: All right.

16 This is Number 114 -- 114. Thank you, sir.

17 (WHEREUPON, Potential Juror 114 entered the
18 courtroom.)

19 THE COURT: All right. Are you Juror 114?

20 THE POTENTIAL JUROR: Yes, sir.

21 **POTENTIAL JUROR 114,**

22 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

23 **EXAMINATION**

24 **BY THE COURT:**

25 Q. You will recall on Monday I put all the jurors under

1 oath. Now, do you understand that you're still under
2 oath and that oath continues throughout these
3 proceedings?

4 A. Yes, sir.

5 Q. Now, you were given a jury -- or there was a list of
6 potential witnesses in the jury room. Did you have an
7 opportunity to look over it?

8 A. I did.

9 Q. Did you recognize any names that you might be
10 related to by blood or marriage, close personal friends
11 or any sort of relationship?

12 A. There was a name on there, Keith Jordan. I work
13 with a guy named Keith Jordan, but I don't think he's the
14 same one because that one said out of state.

15 Q. All right. If he is -- if the Keith Jordan that you
16 know was a potential witness in this case, would that
17 affect your ability to give the both the State and the
18 Defendant a fair and impartial trial?

19 A. No.

20 Q. Now, you also recall my instructions to avoid any
21 forms of media coverage dealing with this case?

22 A. Yes.

23 Q. Has that caused you any problem?

24 A. No.

25 Q. Now, the trial of this case could last approximately

1 a week or ten days or maybe even more. Other than
2 personal inconvenience, would that pose a serious danger
3 to the health and well-being of yourself or anyone else
4 dependent upon you?

5 A. No.

6 Q. Among other things we'll be talking about today is
7 penalty. But the mere fact that we talk about penalty
8 does not indicate anything about this Defendant or any
9 defendant. Defendants are presumed to be innocent under
10 our law. Do you understand?

11 A. Yes.

12 Q. Now, if you were a juror in a criminal case, could
13 you listen to the law, accept and apply that law as I
14 would instruct you as the Judge of the court even though
15 you may not agree with that law or think it ought to be
16 some other way?

17 A. I would do my best. I would try.

18 Q. All right. Could you decide this case based solely
19 on the evidence presented and heard in this courtroom and
20 disregard anything you may have heard, read or seen about
21 the case?

22 A. I would try.

23 Q. In a criminal case, the State has the burden of
24 proving guilt. The burden of proof for the State is
25 beyond a reasonable doubt. A defendant has no burden

1 whatsoever to prove innocence. In other words, a
2 defendant doesn't even have to testify or offer any
3 evidence. The entire burden is upon the State to prove
4 guilt beyond a reasonable doubt. Do you understand that?

5 A. Yes.

6 Q. Could you, depending upon the facts and evidence and
7 the law as I would instruct you in a particular case,
8 find a defendant either guilty or not guilty?

9 A. Yes.

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.

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 that?

20 A. Yes.

21 Q. A death penalty trial is divided into two parts.
22 Part one is called the guilt phase where a jury
23 determines whether the defendant is guilty or not guilty
24 of murder. Do you understand that?

25 A. Yes.

1 Q. Part two is the sentencing phase where a jury
2 determines the appropriate punishment. Of course, if the
3 defendant is found not guilty in the first part, that
4 ends the matter. There's no second phase. Do you
5 understand that?

6 A. Yes.

7 Q. Therefore, if you were a juror in a trial of a
8 capital case where the jury in phase one of the trial has
9 found the defendant guilty of murder, you would then move
10 to phase two of the trial which is called the sentencing
11 phase of this trial. Do you understand?

12 A. Yes.

13 Q. Now, if you were a juror in a sentencing phase --
14 that is, phase two of a capital murder trial, again,
15 where the jury has already found the defendant guilty of
16 murder -- 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.

20 Q. In a capital sentencing trial, the jury's function
21 is to determine the appropriate punishment based upon the
22 facts and circumstances of the crime and the
23 characteristics of the individual defendant? Do you
24 understand?

25 A. Yes.

1 Q. Now, aggravating circumstances are facts or details
2 that, when they are present in the case, make the crime
3 of murder more serious or worse. On the other hand,
4 mitigating circumstances are incidents, occurrences or
5 details of a case that would reduce the severity of the
6 crime of murder. In other words, may reduce the degree
7 of responsibility for the crime. Do you understand that?

8 A. Yes.

9 Q: Do you also understand that the jury has two options
10 to consider regarding the sentence of murder? One option
11 is life imprisonment, and the other option is death which
12 in this state is by electrocution or lethal injection.
13 Now, life imprisonment means until death. In other
14 words, without parole. Do you understand that a life
15 sentence means that?

16 A. Yes.

17 Q. Could you, as a juror in the sentencing phase,
18 depending upon the facts including the relevant
19 aggravating and mitigating circumstances and the law as I
20 have 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 I

1 instruct it to you, could you render a sentence of death?

2 A. No. I don't think I could do that.

3 Q. Very good. Thank you very much.

4 THE COURT: All right. Any questions from the
5 Defendant?

6 MR. MCGUIRE: Your Honor, nothing further.

7 THE COURT: Anything from the State?

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

9 THE COURT: Considering the entire voir dire --
10 and I've read your questionnaire too -- I find that Juror
11 114 should be excused from serving on the trial of this
12 case. However, I do want to thank you for your candor,
13 your honesty and your straightforwardness. One thing
14 that the Court doesn't want to do is to interfere or
15 invade anybody's strongly-held convictions. And I know -
16 - therefore, if you were put in a situation where you'd
17 have to make a decision -- and I'm afraid you'd have to
18 do that. And I certainly don't want to put you in that
19 position.

20 THE POTENTIAL JUROR: I thank you.

21 THE COURT: I thank you for being here today
22 and your patience with the Court.

23 THE POTENTIAL JUROR: Thank you.

24 THE COURT: But you will be excused, and that
25 completes your service.

1 THE POTENTIAL JUROR: Thank you.

2 THE COURT: Thank you, ma'am. Good luck.

3 (WHEREUPON, Potential Juror 114 exited the
4 courtroom.)

5 THE COURT: All right, 125, I think.

6 1-2-5, 125.

7 Anything about 125 from the State?

8 MS. ADAMS: I don't think so, Judge. Let me
9 double-check. I don't believe so. Looks good on paper.

10 THE COURT: Anything from the Defense on 125?

11 MR. MCGUIRE: I'm sorry?

12 THE COURT: Anything from the Defense on 125?

13 MR. MCGUIRE: Not preliminarily.

14 THE COURT: Well, I mean -- in other words --
15 okay. That's good.

16 MR. MCGUIRE: Nothing I see on the paper,
17 Judge.

18 THE COURT: That's -- I was wondering if you
19 ...

20 (WHEREUPON, Potential Juror 125 entered the
21 courtroom.)

22 MR. MCGUIRE: Your Honor?

23 THE COURT: Yes, sir?

24 Excuse me. I'm sorry.

25 (Laughter)

1 THE COURT: I'm sorry. Obviously, my hearing
2 is not what it should be. All right. Let's see. You
3 are Juror 125?

4 THE POTENTIAL JUROR: Yes, sir.

5 **POTENTIAL JUROR 125,**

6 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

7 EXAMINATION

8 BY THE COURT:

9 Q. You will recall on Monday I put all jurors under
10 oath. Now, do you understand that you're still under
11 oath, and that oath continues throughout these
12 proceedings?

13 A. Yes, sir.

14 Q. You were furnished with a list of potential
15 witnesses in this case in the jury room. Have you had an
16 opportunity to look over that list?

17 A. Yes, sir.

18 Q. Did you recognize any names?

19 A. Yes, sir.

20 Q. And what names did you recognize?

21 A. David Creamer and Layton Creamer.

22 Q. All right. And what's your association with Mr.
23 Creamer?

24 A. Well, his mother and my mother are cousins.

25 Q. All right. If he should be a witness in this case,

1 would his appearance as a witness in any way affect your
2 ability to give both the State and the Defendant a fair
3 and impartial trial?

4 A. I don't think so.

5 Q. I mean, does he have that much persuasion with you
6 one way or the other?

7 A. No.

8 Q. All right. So could you be fair and impartial to
9 both the State and the Defendant ---

10 A. Yes.

11 Q. --- if he was a witness?

12 A. Uh-huh (affirmative).

13 Q. Now, do you recall my instructions from Monday to
14 avoid all forms of media coverage dealing with this case?

15 A. Uh-huh (affirmative).

16 Q. Has this caused you any problem?

17 A. No.

18 Q. The trial of this case will last approximately a
19 week, ten days or maybe a little bit more depending on
20 the trial, how it goes. Other than the personal
21 inconvenience, with this pose a serious danger to the
22 health or well-being of yourself or anyone who is
23 dependent upon you?

24 A. No.

25 Q. Now, among other things we'll be talking about

1 penalty today, but the mere fact that we talk about
2 penalty does not indicate anything about this Defendant
3 or any defendant. Defendants are presumed under the law
4 to be innocent of all charges. Do you understand that?

5 A. Yes.

6 Q. If you were a juror in a criminal case, could you
7 listen to the law, accept and apply that law as I would
8 instruct you as the Judge of the court? And even though
9 you may not agree with the law as I instruct it or think
10 it ought to be some other way, could you accept and apply
11 that law?

12 A. Yes.

13 Q. Could you decide the case based solely on the
14 evidence presented in this courtroom and disregard
15 anything you may have heard or read about -- heard, read
16 or seen about this case?

17 A. Yes.

18 Q. Now, in a criminal case, the State has the burden of
19 proving guilt. The burden of proof for the State is to
20 prove guilt beyond a reasonable doubt. The defendant, as
21 I said, has no burden to prove innocence or even to
22 testify or present evidence. Do you understand this?

23 A. Yes.

24 Q. Could you, depending on the facts and evidence and
25 the law as I would instruct to 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 penalty [sic] 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 that?

7 A. Yes.

8 Q. When you hear us refer to a capital case or a death
9 penalty case, what we mean is that it is a criminal
10 murder trial where the prosecutor -- in other words, the
11 State -- is seeking the death penalty. Do you understand
12 this?

13 A. Yes.

14 Q. A death penalty trial is divided into two parts.
15 Part one is the guilt phase where a jury determines
16 whether the 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, then it ends there and there's no
20 sentencing phase. Do you understand that?

21 A. Yes.

22 Q. Therefore, if you were a juror in the trial of a
23 capital case where the jury in phase one of the trial has
24 found the defendant guilty of murder, you would then move
25 to phase two of the trial which is called the sentencing

1 phase of the trial. Do you understand this?

2 A. Yes.

3 Q. Now, if you were a juror in the sentencing phase --
4 that is phase two of a capital murder trial, again, where
5 a jury has already found a defendant guilty of murder, do
6 you understand that the jury rather than the judge
7 determines the sentence the defendant will receive for
8 the crime of murder?

9 A. Yes.

10 Q. In a capital sentencing trial, the jury's function
11 is to determine the appropriate punishment based upon the
12 circumstances of the crime and the characteristics of the
13 individual defendant. Do you understand that?

14 A. Yes.

15 Q. Now, aggravating circumstances are facts or details
16 that when they are present in the case make the crime of
17 murder more serious or worse. Do you understand?

18 A. Yes.

19 Q. On the other hand, mitigating circumstances are
20 incidents, occurrences or details of a case that would
21 reduce the severity of the crime of murder. In other
22 words, reduce the degree of responsibility for the crime.
23 Do you understand?

24 A. Yes.

25 Q. Do you also understand that the jury has two options

1 to consider regarding the sentence for murder? One
2 option is life imprisonment. In South Carolina, life
3 imprisonment means life until death. In other words, the
4 defendant stays in prison until he dies without parole.
5 Do you understand that?

6 A. Uh-huh (affirmative), yes.

7 Q. On the other hand, the other option is death which
8 in this state is by electrocution or lethal injection.
9 Do you understand?

10 A. Yes.

11 Q. Could you, as a juror in the sentencing phase,
12 depending upon the facts including relevant aggravating
13 and mitigating circumstances and the law as I instruct it
14 to you, render a sentence of life imprisonment?

15 A. Yes.

16 Q. On the other hand, as a juror in the sentencing
17 phase, depending upon the facts including relevant
18 aggravating and mitigating circumstances and the law as I
19 instruct it to you, could you render a sentence of death?

20 A. Yes.

21 Q. If you would, please, answer any questions the
22 attorneys might have.

23 THE COURT: Mr. McGuire?

24 DIRECT EXAMINATION

25 BY MR. MCGUIRE:

1 Q. It's still morning. Good morning.

2 A. Good morning.

3 Q. Juror Number 125?

4 A. Yes.

5 Q. I have to call you by number. It's a little awkward
6 for me. I'm not being not polite or not friendly with
7 you. It's just the way we have to do things.

8 A. Okay.

9 Q. Forgive me for that.

10 Regarding publicity, have you heard or read anything
11 at all about this case?

12 A. No.

13 Q. And the Judge gave you a pretty good framework and
14 some general guidelines about what we're going to be here
15 for. And I'm going to go into a little bit more detail,
16 if that's okay with you.

17 A. Okay.

18 Q. The first thing I'm going to do is just talk to you
19 about the definition of murder. Most people when they
20 show up don't know what the exact legal definition of
21 murder is in South Carolina. Do you?

22 A. No.

23 Q. Yeah, most people don't. So what I want to do is
24 help you with that. And that's going to be our starting
25 point. The Judge will instruct you that a murder is

1 defined in South Carolina as the unlawful killing of
2 another human being with malice aforethought. It's
3 called malice murder. And what that means is that the
4 killer had a black and malignant heart fatally bent on
5 evil and deliberately, intentionally took the life of
6 another. Without knowing more, just in that situation
7 alone, what are your feelings about the death penalty as
8 the appropriate punishment?

9 A. I'm not sure.

10 Q. Okay. What more would you need to know?

11 A. I don't know.

12 Q. Okay.

13 MR. MCGUIRE: And Judge, this is where I would
14 ask my series of questions as proposed one through six.

15 THE COURT: Denied.

16 MR. MCGUIRE: Thank you, Judge. And of course,
17 the grounds are in my written motion.

18 THE COURT: Certainly. Without having to
19 restate them.

20 MR. MCGUIRE: Yes, sir. Thank you very much.

21 Q. It sounds like you're a kind of a depends-on-the-
22 case kind of person?

23 A. Yes.

24 Q. Would that depend on the facts of the case?

25 A. Yes.

1 Q. Would things about a defendant's background,
2 history, childhood be relevant in fixing punishment in a
3 murder case?

4 A. Sometimes, I think.

5 Q. Okay. Like who he is, his walk in life?

6 A. Yeah.

7 Q. Okay. And what I want to do is talk to you a little
8 bit about how a capital case is different from any other
9 case in South Carolina. And it is because the jury fixes
10 punishment. And our law is designed so that sort of only
11 the worst of the worst even get to be a capital case.

12 It's called narrowing in a very famous Supreme Court
13 case. And what I mean by that is the State not only has
14 to show that a murder happened, but they have to show
15 what's called aggravation which makes it even worse than
16 a regular murder. And they have to do that by convincing
17 all twelve jurors beyond a reasonable doubt that that
18 aggravation exists. Are you okay with that principle?

19 A. Yes.

20 Q. Okay. And they would bring that evidence to you
21 after the first phase. The first phase is did the fellow
22 do it, is he guilty or not. And in the second phase is
23 when the State would bring that aggravation evidence to
24 you.

25 Now, the Defense might bring what's called

1 mitigation evidence to you as well. And the Judge will
2 instruct you that mitigation evidence is basically
3 anything. Any reason to vote for a sentence less than
4 death. It can be for any reason whatsoever, even no
5 reason. Is that a principle your okay with? If a juror
6 said, you know, I just can't vote for death and they
7 can't even give you a reason, could you respect that?

8 A. Say that again.

9 Q. If -- let's say -- let's say hypo -- just let's say
10 in deliberations one juror just says, you know, I can't
11 vote for death in this case. I've looked at the case.
12 I've heard all of y'all. I've deliberated. I've heard
13 everybody's opinion. You know, I just can't vote for
14 death. And I can't really give you a reason. Would that
15 be something you could respect?

16 A. Yes.

17 Q. Okay. And the Judge will also instruct you that you
18 can vote for life just mercy alone. Somebody could say,
19 you know, I just have mercy. I see it. I feel it in my
20 gut. I have mercy. I'm not going to vote death. Is
21 that something you could respect?

22 A. Yes.

23 Q. For you, is mercy something that's freely given or
24 bestowed, or does it have to be earned?

25 A. I think mercy just comes from the heart.

1 Q. Just freely given?

2 A. (Nodded head up and down in the affirmative)

3 Q. Okay. And going back to how sentencing works, it's
4 called in the law -- you know, like other cases you just
5 have a verdict like guilty, not guilty or the doctor's
6 liable and he has to pay \$10,000, a car wreck and all
7 that stuff. That's kind of a right-or-wrong issue. And
8 there is no right-or-wrong sentence in a capital case.
9 It just comes down to each individual juror's individual
10 moral judgment. And the only way a death sentence can be
11 delivered is if all twelve agree on a death verdict. But
12 it's different for the Defense because the jury can come
13 out and say we just agree to disagree and let the judge
14 sentence. Is that something you're okay with?

15 A. Yes.

16 Q. Because most people they think, well, juries have to
17 agree. They always have to agree. And they don't. And
18 that's a principle you're okay with?

19 A. Uh-huh (affirmative).

20 Q. And the State and the Defense are both entitled to
21 fairness not just out here, but also in the jury room.
22 If you saw somebody comes to their own individual moral
23 judgment and it got hostile and people were maybe
24 bullying, could you pass a note out to the Judge and say,
25 you know, things aren't fair in here?

1 A. Yes.

2 Q. I mean, you'd want -- in deliberations we always
3 expect deliberations to be civil and respectful. And if
4 it got beyond that, could you stop that?

5 A. Yes.

6 Q. Okay. Because it's based on respecting individuals?

7 A. Uh-huh (affirmative).

8 Q. And that something you're okay with?

9 A. Yes.

10 Q. Okay. If you would, answer any questions the State
11 might have for you. Thank you, ma'am.

12 A. Okay. Thank you.

13 THE COURT: Solicitor?

14 MS. BYFORD: Yes, sir, very briefly, Your
15 Honor.

16 CROSS-EXAMINATION

17 BY MS. BYFORD:

18 Q. Number 125, my name is Jen Byford. I'm an Assistant
19 Solicitor here in Anderson, and this is Chrissy Adams.
20 She's the Solicitor in Anderson. And Rame Campbell, he's
21 another assistant solicitor. And we're going to be
22 trying the case.

23 I just want to talk to you very briefly. I know
24 it's hard to sit in that seat. I've actually never done
25 it myself. But if there's anything that I ask you that

1 you don't understand, please ask me to repeat it or
2 rephrase it. They teach us to talk funny in law school,
3 so our questions can be confusing.

4 A. Okay.

5 Q. I just want to ask you a couple follow-up questions.
6 We're trying to pick a jury that's fair to the State and
7 the Defendant, but we also want to make sure that we are
8 not going to put you as a juror in a position that's
9 going to make you feel uncomfortable. So I just want to
10 ask you a couple questions about your position on the
11 death penalty. Okay? There's no right or wrong answers.
12 It's just your answers. I just want to make sure at the
13 end of the day if you get seated on the jury, you're
14 comfortable with everything that you might be asked to
15 do. Okay?

16 A. Okay.

17 Q. You answered Mr. McGuire's questions real well about
18 being able to consider all the evidence. And we
19 certainly appreciate your candor. If at the end of the
20 day, having considered all of that evidence, you and the
21 other eleven jurors unanimously come back with a death
22 verdict, you would have to sign your name to a sentencing
23 sheet that says that you recommend death. Is that
24 something that you would be comfortable with?

25 A. I guess if the facts were, yeah.

1 Q. If that was the decision that you'd come to ---

2 A. Yes, uh-huh (affirmative).

3 Q. --- you think you could sign your name to that
4 paper?

5 A. Yes.

6 Q. And I know it's a hard question, and this is hard
7 stuff. So I'm not trying to put you on the spot or make
8 you uncomfortable, so -- but you do think you could sign
9 your name?

10 A. I think so.

11 Q. Okay. Also, Mr. McGuire talked a little bit about
12 jury deliberation. Do you understand that that's a give-
13 and-take process? And just like you'd tell the judge if
14 somebody was being coercive, would you also tell the
15 judge if somebody wasn't participating?

16 A. Yes.

17 Q. Because that's -- I mean, it's a give-and-take. You
18 know, everybody shares ideas, talks together. You
19 understand that that's part of the process?

20 A. Uh-huh (affirmative).

21 Q. Okay.

22 MS. BYFORD: I think that's it, Judge. Just
23 one minute.

24 (Off record discussion)

25 Q. Again, I just want to make sure you're comfortable

1 with everything, so I just want to ask you one follow-up
2 question about the sentencing sheet that I already talked
3 about, okay, because I noticed you hesitated just a
4 little bit.

5 A. Okay.

6 Q. I just want to make sure that we're all on the same
7 page. Do you understand that your signature on that
8 sheet would allow the State to execute the Defendant?

9 A. Yes.

10 Q. Okay. And you would be okay with having your name
11 on that document that's public record?

12 A. Yes.

13 Q. Okay. Thank you very much. I know this is hard.
14 So thank you.

15 THE COURT: All right. Anything further from
16 the Defense?

17 MR. MCGUIRE: Nothing further. Nothing at all.

18 THE COURT: From the State?

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

20 THE COURT: All right. Anything?

21 MS. ADAMS: No, sir.

22 MR. MCGUIRE: No, sir.

23 THE COURT: Considering the entire voir dire, I
24 find that juror 125 ...

25 THE POTENTIAL JUROR: Uh-huh (affirmative).

1 THE COURT: ... will be fair and unbiased,
2 impartial and able to carry out the law as explained to
3 her. Furthermore, I find that this juror beliefs or
4 attitude towards the death penalty would not prevent or
5 substantially impair the performance of her duties as a
6 juror in accordance with the law, the Court's
7 instructions and the juror's oath.

8 So I do find you qualified. Now, you've given the
9 Clerk of Court your telephone number?

10 THE POTENTIAL JUROR: Yes.

11 THE COURT: All right. This process will take
12 several days, so I'm -- because what we have to do is
13 qualify a pool of qualified jurors from which that pool,
14 then will select the actual jury that will sit in the
15 trial of the case. As I say, that process takes several
16 days. So you'll be getting a call. Up until that time,
17 you can go about your business and all that. But when
18 you do get that call, if you would report as the Clerk
19 requests.

20 THE POTENTIAL JUROR: Okay.

21 THE COURT: Very good. Good luck. Thank you
22 so much ---

23 THE POTENTIAL JUROR: Thank you.

24 THE COURT: --- for being here and your
25 patience with the court.

1 THE POTENTIAL JUROR: Thank you.

2 THE COURT: All right. Thank you, ma'am.

3 (WHEREUPON, Juror Number 125 exited the courtroom.)

4 THE COURT: All right. Let's take a short
5 break. I think we've got two from yesterday.

6 (WHEREUPON, court stood at recess for a short
7 break.)

8 THE COURT: All right. Is there anything from
9 the State before we start with -- this is from panel one
10 or three. Panel three, isn't it?

11 MS. ADAMS: Yes, sir, from yesterday. Nothing,
12 Your Honor.

13 THE COURT: Okay. And the first one would be
14 64. Anything about 64 that we need to know before we
15 bring him out? Or her.

16 MS. ADAMS: No, sir, not from us.

17 THE COURT: All right. Very good. Ask the
18 Number 64. That would be those last two that came in.

19 (WHEREUPON, Potential Juror 64 entered the
20 courtroom.)

21 THE POTENTIAL JUROR: Good morning.

22 THE COURT: Good morning. All right. Are you
23 Number 64?

24 THE POTENTIAL JUROR: I am 64.

25 THE COURT: Very good. Number?

1 THE POTENTIAL JUROR: Number 64.

2 (Laughter)

3 **POTENTIAL JUROR 64,**

4 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

5 EXAMINATION

6 BY THE COURT:

7 Q. You recall on Monday I put all jurors under oath.

8 Now, do you understand that you're still under oath and
9 this oath continues throughout these proceedings?

10 A. Yes, sir.

11 Q. All right. Do you -- you were here yesterday -- and
12 by the way, I do want to thank you for your patience
13 yesterday in waiting as long as you had to. And I do
14 appreciate you coming back promptly today.

15 But you had a witness list in the jury room. Did
16 you have an opportunity to -- this is a potential witness
17 list. In other words, these are witnesses that may be
18 called. They do not have to be called. Did you have an
19 opportunity to look over that list?

20 A. Yes, sir.

21 Q. Did you see any names that might be related to you
22 by blood or marriage, close personal friends, business
23 associate or any sort of association?

24 A. No, sir.

25 Q. Do you also recall my instructions from Monday to

1 avoid all forms of media coverage dealing with this case?

2 Has this caused you any problems?

3 A. No, sir.

4 Q. Now, the trial of this case will last approximately
5 a week to ten days, maybe even a little more. Other than
6 personal inconvenience, would this pose a serious danger
7 to the health or well-being of yourself or anyone who is
8 dependent upon you?

9 A. No, sir.

10 Q. Among other things we'll be talking about is penalty
11 today. But the mere fact that we talk about penalty does
12 not indicate anything about this Defendant or any
13 defendant. Defendants are always presumed under our law
14 innocent, and the burden of proof is upon the State to
15 prove guilt beyond a reasonable doubt. The defendant
16 does not have to prove anything. 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 Court even though you may not agree
21 with that law or think it ought to be some other way? In
22 other words, could you listen, accept and apply the law
23 as I give it to you and not what you think it might be?

24 A. Yes, sir.

25 Q. Could you decide this case based solely on the

1 evidence presented in this courtroom and disregard
2 anything you may have heard, read or seen about this
3 case?

4 A. Yes, sir.

5 Q. In a criminal case, the State has the burden of
6 proving guilt beyond a reasonable doubt. A defendant has
7 no burden of proving innocence or anything else in a
8 case. Do you understand this?

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 case and if
15 the jury had found the defendant guilty of murder, you
16 would then move to the sentencing phase of the trial. Do
17 you understand this?

18 A. Yes, sir.

19 Q. When you hear us refer to a capital case or a death
20 penalty case, what we mean is that it 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. And of course, if a
5 defendant is found not guilty in part one, there wouldn't
6 be a part two. Do you understand?

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 phase two of the trial which is called the
12 sentencing phase of the trial. Do you understand?

13 A. Yes, sir.

14 Q. Now, if you were a juror in a sentencing phase --
15 that is, phase two of a capital murder trial, again,
16 where a juror -- a jury has already found the defendant
17 guilty of murder -- do you understand that the jury
18 rather than the judge determines the sentence that the
19 defendant will 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, made the crime of
3 murder more serious or on the other hand -- more serious
4 or worse. Do you understand that?

5 A. Yes, sir.

6 Q. Now, on the other hand, mitigating circumstances are
7 incidents, occurrences or details of a case that would
8 reduce the severity of the crime of murder. In other
9 words, may reduce the degree of responsibility for the
10 crime. Do you understand that?

11 A. Yes, sir.

12 Q. Do you understand then that the jury has two options
13 to consider regarding the sentence of murder. One option
14 is life imprisonment which in South Carolina means life
15 until death. In other words, the defendant would serve
16 the entire time in jail until his death without parole.
17 Do you understand?

18 A. Yes, sir.

19 Q. And the other option is death which is in this state
20 by electrocution or lethal injection. Do you understand
21 that?

22 A. Yes, sir.

23 Q. Could you, as a juror in the sentencing phase,
24 depending upon the facts including the relevant
25 aggravating and mitigating circumstances and the law as I

1 instruct it to you, render a sentence of life

2 imprisonment?

3 A. Yes, sir.

4 Q. On the other hand, as a juror in the sentencing

5 phase, depending upon the facts including the relevant

6 aggravating and mitigating circumstances and the law as

7 instructed to you, could you render a sentence of death?

8 A. Yes, sir.

9 Q. All right. If you would, please, answer any

10 questions the lawyers may have.

11 THE POTENTIAL JUROR: Okay.

12 THE COURT: Mr. McGuire?

13 DIRECT EXAMINATION

14 BY MR. MCGUIRE:

15 Q. Good afternoon, ma'am.

16 A. Good afternoon.

17 Q. Thank you for your patience. Actually you haven't

18 been waiting too long, I think.

19 A. Since last night.

20 (Laughter)

21 Q. Oh, maybe I should rephrase that. You waited all

22 day yesterday.

23 THE COURT: At least six hours, I think.

24 Q. Let me rephrase that. I hope you weren't waiting

25 too long today. I appreciate -- we all appreciate your

1 patience. Sometimes it's not the most efficient thing,
2 and it's not my fault. It's not the Court's fault. It's
3 not the State's fault. It's just difficult to try a case
4 like this.

5 What I want to do, ma'am, is talk to you a little
6 bit in more detail about why we're here, the kind of case
7 and punishment and that sort of thing. It's the only
8 time I get to talk to you. It's a little funny talking
9 to people about punishment when we haven't even had a
10 trial yet. But I have to do it because this is my only
11 time to talk to you.

12 Let me talk to you a little bit about first off some
13 legal principles and see if you're okay with them and can
14 follow the law. Not every murder case in South Carolina
15 or even the country is eligible for the death penalty.
16 Did you know that?

17 A. Yes.

18 Q. Okay. And the State has to prove what's called an
19 aggravating factor before it can elevate the case to a
20 capital case. Did you know that?

21 A. Yes, I did.

22 Q. Okay. You're coming with more knowledge than the
23 average juror. So I don't mean to insult your
24 intelligence, but a lot of people don't know this. The
25 burden of proof and the evidence the way a sentencing

1 phase works is actually different for both sides. The
2 State, because the law -- the law is designed to narrow
3 the class of people eligible for the death penalty to
4 kind of make it the worst -- reserved for the worst of
5 the worst crimes and defendants. Based on that, the
6 State has a higher burden and kind of a harder job
7 really. They have to bring aggravation evidence to you.
8 And I'm looking over there because that's where the jury
9 sits. So if you were over there, they'd have to bring
10 aggravation evidence to you and prove it to you beyond a
11 reasonable doubt. And all twelve jurors would have to
12 agree that the aggravation evidence existed just like the
13 State asked for. Is that a principle you're comfortable
14 with?

15 A. Yes.

16 Q. Okay. And even if they were to bring that kind of
17 evidence and all twelve agree beyond a reasonable doubt
18 that it existed, the judge would charge the jury that any
19 juror, any individual juror can vote for life, less than
20 death, life without parole, based on any reason, no
21 reason, mercy alone or any other reason you might see.
22 Is that a principle you're comfortable with?

23 A. Yes.

24 Q. And that, in fact, when it comes to different
25 individual jurors, they can all have their own different

1 reason. For instance, somebody might be sitting on the
2 front row of the jury and say, you know, I saw something
3 in his background. And that resonated with me. And
4 based on that alone, I'm going to give that the weight of
5 a life in prison sentence and not vote death. And then
6 somebody in the back of the jury might say, well, you
7 know, I saw something that was redeeming in him based on
8 his relationship with his child. And that resonates with
9 me, and I'm not going to vote death for that. And they
10 can have different reasons. Is that okay with you? Is
11 that a principle you can follow?

12 A. Yes, sir.

13 Q. Okay. And capital cases are different from any
14 other case because the jury does fashion punishment. And
15 it's not a really right or wrong answer. There's really
16 no right or wrong punishment. It's just what every
17 individual juror thinks is the right thing to do. And
18 it's called the individual juror's own moral judgment,
19 their individual moral judgment. And the State and the
20 Defense are both entitled to fairness not just out here
21 in the courtroom, but also in the jury room. And if you
22 saw different people reach their own individual moral
23 judgment, could you respect that?

24 A. Yes.

25 Q. Respect their own -- even if their opinion is

1 different from yours, could you respect that they have
2 their own individual opinion based on their own walk in
3 life?

4 A. Yes.

5 Q. And you'd want your opinion respected?

6 A. Well, sure.

7 Q. And we expect deliberations to be sort of a give-
8 and-take, listen to everybody politely and civilly, but
9 not be hostile or angry. And if you saw things getting
10 not fair or hostile, could you pass a note out to the
11 Court and say, you know what, things aren't fair in here?

12 A. Sure. Yes, sir.

13 Q. Okay. We can count on you to do that?

14 A. Yes.

15 Q. Okay. Also, a lot of people think when they come to
16 Court and they talk about jury verdicts that they have to
17 be unanimous. And in this case, they don't have to be.
18 Again, for the State, they have a harder job. The only
19 way they can get a death sentence is if all twelve agree
20 that that's the appropriate sentence. But the jury can
21 actually agree to disagree. And if they do that, the
22 Judge will take the case and sentence. Is that a
23 principle you're comfortable with?

24 A. Yes.

25 Q. And with regard to -- it sounds like when you follow

1 -- when you know the law, you're very -- you very much
2 want to follow the law and the Judge's instructions?

3 A. Well, sure.

4 Q. And if the Judge instructed you that -- let's assume
5 you voted for death. The judge would -- a requirement in
6 South Carolina is that you actually write down your name
7 on the indictment. It's a document that would be filed
8 in the Courthouse. Is that something you're comfortable
9 with?

10 A. Yes.

11 Q. And you can consider all the evidence, both the
12 aggravation evidence and something called mitigation
13 evidence, before making up your mind with regard to
14 penalty?

15 A. Yes.

16 Q. And you'd be comfortable with a juror saying I'm
17 going to vote for a sentence less than death maybe based
18 on no reason at all?

19 A. Yes.

20 MR. MCGUIRE: If I could have just one second,
21 Judge.

22 Q. Oh, let me ask you one thing. You indicated on your
23 questionnaire that you understood that life imprisonment
24 was actually cheaper than a death penalty. You're like
25 one of the only people I've run into who knows that. How

1 do you know that?

2 A. I know the law. I have -- you know, everyone has
3 rights and so...

4 Q. Okay. I was just curious to if there was any inside
5 information.

6 A. Sure.

7 Q. Okay. Thank you very much, ma'am.

8 A. You're welcome.

9 THE COURT: All right. Mr. Campbell?

10 MR. CAMPBELL: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. CAMPBELL:

13 Q. Juror 64, good afternoon.

14 A. Good afternoon.

15 Q. Just a couple of follow-ups here. I was looking
16 over your questionnaire. You remember filling this out
17 here. And in it you stated that you think the death
18 penalty is used too often. Could you just please
19 elaborate just a little bit on that?

20 A. Well, I just feel like sometimes, you know -- people
21 have to have a fair trial, you know. And that's what the
22 law is about. Sometimes it doesn't happen, but that's
23 why we're all here in court. You know, everyone has to
24 know the law inside and out. So ...

25 Q. So if I'm hearing you right, you as a juror would

1 wait until you heard all the evidence that comes in
2 before you'd make up your decision on whether to give a
3 sentence of life or death?

4 A. Yes, sir.

5 Q. It's not that you don't feel it's used too often;
6 it's just that it needs to be used in the right situation
7 or circumstances? Am I stating that right, or am I
8 misstating that to you?

9 A. No. That's correct. That's correct.

10 Q. Now, you know, if you were picked on a jury, if you
11 were to sit over here as everybody keeps pointing to over
12 here, you sit in judgment of another person. Do you
13 understand?

14 A. Yes.

15 Q. Okay. Do you have a problem with that, any moral,
16 ethical, philosophical, moral makeup reasons why you
17 could not do that or affect your ability to do that?

18 A. No, sir, I do not have a problem.

19 Q. Okay. And -- because I noticed on your sheet -- and
20 I'm not knocking your religion at all. But it said
21 Catholic. And I know part of the Catholic Church is thou
22 shall not kill, don't believe in the death penalty. Does
23 that in any way, shape or form affect your ability to sit
24 in judgment of another person and either decide whether
25 he should receive life or death?

1 A. No, sir.

2 Q. So it wouldn't affect you at all?

3 A. No.

4 Q. Now, a couple of things I saw is apparently your son
5 has had some legal issues in the past. I think you put
6 that on here, I think, for shoplifting, if I understand
7 correctly?

8 A. Right.

9 Q. And he entered into P.T.I., Pretrial Intervention.
10 Was that here in Anderson or Oconee County?

11 A. Here in Anderson.

12 Q. And as a result of that, do you have any hard
13 feelings or resentment against the way he was treated by
14 law enforcement?

15 A. No, sir.

16 Q. Or how about the Solicitor's office?

17 A. No.

18 Q. And do you understand that -- Mr. McGuire was
19 talking about the jury deliberations, that it's a give-
20 and-take situation. You listen to everybody's opinion,
21 you give yours, you listen to theirs. Is that fair to
22 you?

23 A. Yes, sir.

24 Q. And do you feel it's important that you participate
25 as well as everybody else participates in the jury

1 deliberation?

2 A. Yes, sir.

3 Q. And you would respect whatever decision everybody
4 else gives, right?

5 A. Yes, sir.

6 Q. And Mr. McGuire was talking about could you send a
7 note out. If somebody wasn't participating, could you
8 also send a note out and say, hey, we're not getting full
9 participation in here? Because this is a serious matter
10 we're dealing with. Could you do that?

11 A. Yes, sir.

12 Q. And if I understand correctly, you could vote -- if
13 you heard all the aggravating circumstances that the
14 State is going to present and you found that we have
15 presented that and you heard what was given in mitigation
16 -- which you can give all, some, none or nothing, just
17 mercy, and as the Judge will tell you, you can give it
18 for grace. Could you still vote in that type of
19 situation for life?

20 A. Yes.

21 Q. And likewise on the flip side, could you also vote
22 for death in that type of situation?

23 A. Yes.

24 Q. If you felt the facts warranted it?

25 A. Yes, sir.

1 Q. And what -- at the end of it, if all twelve jurors
2 decide that death is appropriate in this case, they will
3 -- you will receive what is called a sentencing sheet.
4 And in it will be a line for every juror to sign. Could
5 you, as a juror, if you impose -- feel that death is
6 appropriate in this case, could you yourself put your
7 name, sign it, on this public document?

8 A. Yes, sir.

9 Q. Is your son still in P.T.I.?

10 A. No. He's finished P.T.I.

11 MR. CAMPBELL: No further questions, Your
12 Honor.

13 MR. MCGUIRE: Nothing further, Your Honor.

14 THE COURT: All right. Anything from the
15 State?

16 MR. CAMPBELL: No, Your Honor.

17 THE COURT: Anything you want to take up?

18 MR. MCGUIRE: No, sir.

19 MR. CAMPBELL: No, Your Honor.

20 THE COURT: Considering the entire voir dire, I
21 find that Juror -- 64 ...

22 THE POTENTIAL JUROR: 64.

23 THE COURT: ... will be fair, unbiased,
24 impartial and able to carry out the law as explained to
25 her. Furthermore, I find that this juror's beliefs or

1 attitudes toward the death penalty would not prevent or
2 substantially impair the performance of her duties as a
3 juror in accordance with the law, the Court's
4 instructions and the jurors oath.

5 I find that you are qualified. And this process, as
6 you found out yesterday, is going to take some time. So
7 it will be several days. But you did give your telephone
8 number to the Clerk of Court?

9 THE POTENTIAL JUROR: Yes, sir.

10 THE COURT: All right. Well, she'll be calling
11 you when we've qualified an entire panel or pool. And
12 from that pool, then we will select the jurors that will
13 serve actually on the trial of the case. So it will be
14 several days. So you can go about your life until you
15 get the call, and then we'll ask you to come in at a
16 particular time. And you will have to report then.
17 Otherwise, you're free to do what ever you like.

18 THE POTENTIAL JUROR: I understand.

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

20 THE POTENTIAL JUROR: Thank you.

21 THE COURT: And again, I do appreciate your
22 patience with the Court, and I apologize for the
23 inconvenience yesterday.

24 THE POTENTIAL JUROR: Thank you.

25 THE COURT: Thank you, ma'am.

1 (WHEREUPON, Potential Juror 64 exited the
2 courtroom.)

3 THE COURT: All right, 68.

4 MR. MCGUIRE: Judge, before we bring in the
5 next juror, I've got a small legal matter to bring up, if
6 I could.

7 THE COURT: Yes, sir.

8 Let's see. Could somebody hold the door?

9 MADAM CLERK: Yes, Your Honor.

10 THE COURT: Just a moment. We need to take up
11 something. Thank you, sir.

12 MR. MCGUIRE: Your Honor, you know, as you
13 know, we are referring to all the jurors by number for
14 their anonymity and that sort of thing. And I would
15 object to any questions to a potential juror about their
16 name being on a public document. I mean, I don't think -
17 - I think they need to feel a little bit more secure in
18 their anonymity.

19 THE COURT: Well, the only thing would --
20 that's not correct. It is a public document, and I think
21 that would be appropriate.

22 MR. MCGUIRE: Sure. Well ...

23 THE COURT: I mean, I can't change that.
24 That's a matter of public record.

25 MR. MCGUIRE: I'd move for it to be sealed.

1 (Laughter)

2 THE COURT: Well, again, that might be
3 appropriate. But the thing is I just -- I think that
4 they need to understand that's a potential. And there
5 are so many things I'd have to consider about -- order
6 sealing any public document.

7 MR. MCGUIRE: Yes, sir.

8 THE COURT: I would suggest you read -- what is
9 it -- in re Greenville News. I don't want to start that
10 at this stage. But that's something obviously I will
11 consider. But as far as the question, I think they need
12 to know that's a possibility.

13 MR. MCGUIRE: Yes, sir. Thank you very much.

14 THE COURT: Yes. Thank you, sir.

15 All right, 68.

16 And that was a case I inherited -- it was given to
17 me after the order was entered to seal the record. I was
18 just supposed to determine if it should be opened.

19 All right.

20 (WHEREUPON, Potential Juror 68 entered the
21 courtroom.)

22 THE COURT: Good morning -- afternoon, sir.
23 Again, I do want to thank you for your patience,
24 particularly yesterday as well as today. I regret any
25 inconveniences it caused.

1 Now, you are Juror Number 68, correct?

2 THE POTENTIAL JUROR: Correct.

3 **POTENTIAL JUROR 68,**

4 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

5 EXAMINATION

6 BY THE COURT:

7 Q. You will recall on Monday I put all jurors under
8 oath. Now, do you still understand -- do you understand
9 that you're still under oath and that oath continues
10 throughout these proceedings?

11 A. I do.

12 Q. You were given a list of potential jurors [sic] in
13 the jury room. Did you have an opportunity to look over
14 that list?

15 A. I did.

16 Q. Did you recognize any names that you might be
17 related to by blood or marriage, close personal friends,
18 business associates or any relationship whatsoever?

19 A. I did not.

20 Q. Do you also recall my instructions from Monday to
21 avoid all forms of media coverage dealing with this case?

22 A. Correct.

23 Q. Has that caused you any problem at all?

24 A. I have not reviewed anything about this case, but I
25 am starting to have some memories of the name and face.

1 Q. All right. But you have followed the instructions?

2 A. Correct.

3 Q. In other words, you haven't listened when it was
4 coming up or anything like that?

5 A. Uh-uh (negative).

6 Q. All right. The trial of this case will last
7 approximately seven to ten days, maybe a little bit
8 longer, depending on how the trial progresses. Other
9 than the personal inconvenience, would this pose a
10 serious danger to the health or well-being of yourself or
11 anyone who is dependent upon you?

12 A. Based on last night -- we were here till 7:30?

13 Q. Yes, sir.

14 A. Is that typical?

15 Q. No, sir. We will not sequester a jury in this case
16 which means that you -- we we'll try it as we do a normal
17 case. In other words, we'll start in the morning usually
18 about 9:00, 9:30 or 10:00. And I usually like to stop
19 about five o'clock. That gives people the opportunity to
20 rest. And also I understand in today's world that we
21 usually have two worlds, one that begins early in the
22 morning and goes till five o'clock and another one that
23 starts at five and goes until whenever. So usually it
24 will be -- it could be a little bit later or could be a
25 little bit earlier. But five o'clock is usually ---

1 A. Because after six o'clock would be a problem.

2 Q. All right. Well, no. I think we will be out -- if
3 you're selected on the jury, that would be one thing I'd
4 want to be reminded of. Anything else about any personal
5 inconveniences?

6 A. Uh-uh (negative).

7 Q. All right. Among other things, we will be talking
8 about penalty today. But the mere fact that we are
9 talking about penalty does not indicate anything about
10 this Defendant or any defendant. Defendants are presumed
11 under our law to be innocent. Do you understand that?

12 A. I do.

13 Q. If you were a juror in a criminal case, could you
14 listen to the law, accept and apply that law as I would
15 instruct you as the Court even though you may not agree
16 with the law or think it ought to be some other way? In
17 other words, could you accept and apply the law as I give
18 to you even though you think it should be something else?

19 A. Yes.

20 Q. Could you decide this case based solely on the
21 evidence presented in this courtroom and disregard
22 anything you may have heard, read or seen about the case?

23 A. Yes, I could.

24 Q. In a criminal case, the State has the burden of
25 proving guilt. The burden of proof for the State is

1 beyond a reasonable doubt. A defendant has no burden to
2 prove innocence at all or even present evidence or
3 testify or anything like that. Do you understand that?

4 A. Yes, I do.

5 Q. Could you, depending on the facts and evidence and
6 the law as I would instruct you in a particular case,
7 find a defendant either guilty or not guilty?

8 A. Yes, I could.

9 Q. If you were a juror in a penalty case, a death
10 penalty case -- excuse me -- and if the jury had found
11 the defendant guilty of murder, you would then move to
12 the sentencing phase of the trial. Do you understand?

13 A. I do.

14 Q. When you hear us refer to a capital case or a death
15 penalty case, what we mean is that it is a criminal
16 murder trial where the prosecution -- in other words, the
17 State -- is seeking the death penalty. Do you understand
18 this?

19 A. I do.

20 Q. A death penalty trial is divided into two parts.
21 Part one is the guilt phase where a jury determines
22 whether the defendant is guilty or not guilty of murder.
23 Part two is the sentencing phase where a jury determines
24 the appropriate punishment. Of course, if the defendant
25 is found not guilty, that ends the matter. Do you

1 understand this?

2 A. I do.

3 Q. Therefore, if you were a juror in a trial of a
4 capital case where the jury in phase one of the trial has
5 found the defendant guilty of murder, you would then move
6 to phase two of the trial which is called the sentencing
7 phase of the trial. Do you understand?

8 A. I do.

9 Q. Now, if you were a juror in the sentencing phase --
10 that is phase two of a capital murder trial, again, where
11 a jury has already found a defendant guilty of murder --
12 do you understand that the jury rather than the judge
13 determines the sentence that the defendant will receive
14 for the crime of murder?

15 A. I do.

16 Q. In a capital sentencing trial, the jury function is
17 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. I do.

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. I do.

4 Q. Do you also understand the jury has two options to
5 consider regarding the sentence of murder. One option is
6 life imprisonment. And in South Carolina, life
7 imprisonment means until death. In other words, the
8 defendant, if convicted, would serve life until death
9 without parole. Do you understand that?

10 A. I do.

11 Q. And the other option is death which in this state is
12 by electrocution or lethal injection. Do you understand?

13 A. I do.

14 Q. Could you, as a juror in the sentencing phase,
15 depending upon the facts including relevant aggravating
16 and mitigating circumstances and the law as I instruct it
17 to you, render a sentence of life imprisonment?

18 A. I could.

19 Q. On the other hand, as a juror in the sentencing
20 phase, depending upon the facts including the relevant
21 aggravating and mitigating circumstances and the law as I
22 instruct it to you, could you render a sentence of death?

23 A. I could.

24 Q. All right. If you would, please, sir, answer any
25 questions the attorneys may have.

1 THE COURT: Mr. McGuire?

2 MR. MCGUIRE: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. MCGUIRE:

5 Q. I made a mistake with our last juror. I indicated
6 that she didn't have to wait that long and she reminded
7 me about yesterday. So I'm really sorry about yesterday.

8 A. That's fine.

9 Q. And I have to refer to you by number. It's not
10 because I'm not being polite. That's just the way we
11 have to do things. It's a little awkward for me.

12 A. Right.

13 Q. Forgive me for that.

14 A. Uh-huh (affirmative).

15 Q. I'm going to talk to you in a little bit more
16 detail. The Judge gave you a pretty good framework.
17 That this is my only opportunity to talk to you about
18 your thoughts about the death penalty even though we
19 haven't had a trial yet. Again, that's a little awkward.
20 But I'm going to start with the definition of murder in
21 South Carolina. Okay?

22 The Judge would instruct you that murder in South
23 Carolina is the intentional unlawful killing of another
24 human being with malice aforethought. Malice
25 aforethought is described in our law as the killer

1 operating with a black and malignant heart fatally bent
2 on evil. A murder case is not self-defense. It's not
3 accident. It's not a car accident. It's not two guys
4 deciding to fight each other. It's the deliberate
5 intentional choice to kill somebody. Just knowing that
6 alone, what are your thoughts about the death penalty as
7 the appropriate punishment?

8 A. In some cases depending on the circumstances.

9 Q. Okay. And did you know that not all murders cases
10 are eligible for the death penalty?

11 A. Uh-huh (affirmative).

12 Q. That they have to be aggravated murders?

13 A. Right.

14 Q. And the State's responsible for bringing that proof
15 of aggravation to you. It can be a number of different
16 things. But right now I want to talk to you about the
17 different responsibilities and the different burdens of
18 proof with regard to the State and the Defense. This is
19 complicated, but -- if you don't understand something,
20 just ask me because ---

21 A. All right.

22 Q. --- I'm apt to ask some pretty bad questions
23 sometimes ---

24 A. Okay.

25 Q. --- because I'm a lawyer, and I just go on and on.

1 But after the guilt phase which is the did-he-do-it-is-
2 he-guilty phase. Then there's a penalty phase -- you
3 know, if there is that conviction for murder, then you
4 get into the penalty phase. And that's when the State
5 brings forward their proof of aggravation. And all
6 twelve jurors have to agree that it exists beyond a
7 reasonable doubt just like a regular verdict.

8 And it's completely different with the Defense side
9 and mitigation evidence. Any individual juror can see a
10 piece of evidence and say, you know what, that one piece
11 of evidence for me is reason for me to vote less than
12 death. In essence, a life in prison sentence. And
13 another juror -- sometimes I look over here because
14 that's where the jury sits. But for instance, one in the
15 front could say, you know, something about his
16 background, his character, his childhood did it for me
17 and resonated with me. And just based on that alone, I'm
18 going to vote for a life sentence. And then another
19 juror in the back could say, well, you know, I found it
20 redeeming that he had a good relationship with his child
21 and still does that ---

22 MS. ADAMS: Your Honor, I'm going to -- he's
23 getting very fact-specific and case-specific and not
24 lumping them together.

25 MR. MCGUIRE: I'm not asking him if he can

1 consider that. I'm just pointing it out as an example of
2 how the jury system works.

3 THE COURT: All right. Go ahead.

4 MR. MCGUIRE: Thanks, Judge.

5 THE COURT: But let's do move on.

6 Q. And a juror in the back could have a different piece
7 of evidence like his relationship with his child and say,
8 that did it for me. That resonated with me, and that's
9 my reason for voting less than death. And the two jurors
10 don't even have to agree on the same evidence. It's
11 basically twelve different juries sitting over there,
12 each individual person. And can you respect that
13 principle of law, that everybody has their individual
14 right?

15 A. Yes.

16 Q. And with regard to burden of proof, there's no
17 burden of proof with regard to mitigation evidence, a
18 reason to vote for life. The Judge will tell you and
19 he'll charge you, if you're on the jury, that a juror can
20 vote for life for any reason, no reason, mercy, grace or
21 any other piece of evidence they see. So basically it's
22 anything. Could you respect a juror saying, I'm going to
23 vote for life, but I really can't give you a reason?

24 Could you respect that?

25 A. Yes, I guess I could.

1 Q. It sort of counterintuitive, but that is the law.
2 If the Judge charged you that that was the law, could you
3 follow that?

4 A. Yes.

5 Q. And with regard to a death sentence, the only way
6 the State is entitled to a death sentence is if all
7 twelve agree that that's the appropriate sentence. A
8 jury can actually agree to disagree at the end of the
9 day, and the Judge would take case and sentence. Is that
10 a principle you're comfortable with?

11 A. Yes.

12 Q. And the way an individual juror's decision in a
13 capital case is described in the law is that it's their
14 own individual moral judgment basically based on their
15 walk in life. That's their conclusion. Could you
16 respect each individual person's judgment?

17 A. Yes, I could.

18 Q. And you'd want yours respected?

19 A. Yes.

20 Q. And the State and both -- the State and the Defense
21 are entitled to fairness not just out here, but also in
22 the jury room. And if you saw that there wasn't respect
23 in the jury room, that maybe people were bullying
24 somebody or it got hostile, could we count on you to pass
25 a note out to the judge maybe saying, you know what, it's

1 not fair in here, you need to stop this?

2 A. Yes, I could.

3 MR. MCGUIRE: And Judge, this is where I would
4 ask my questions number one through six as proposed to
5 the Court.

6 THE COURT: Well, I think -- I'm going to
7 overrule your request or deny your request based on my
8 prior rulings.

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: I think you've covered most of
11 them. All right. Very good.

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

13 Oh, I'm sorry. I neglected to cover one little
14 area. I have some more questions for you.

15 If you and the eleven other jurors did say that
16 death was the appropriate punishment, there's a
17 requirement in the law that you'd actually have to sign
18 your name to a piece of paper, the indictment, saying
19 that this is the verdict. Is that something you could
20 do?

21 A. Who can see that?

22 Q. It would be a public document filed in the
23 courthouse.

24 A. I might be a little concerned about that.

25 Q. Okay. If the Court said it might be sealed, could

1 you sign it then?

2 MS. ADAMS: Your Honor, I object. That's not
3 the law. It's public record. It's a public document.

4 THE COURT: Very well.

5 MS. ADAMS: Everybody would see it.

6 THE COURT: But the thing is I'm going to
7 permit the question because there's always the
8 possibility.

9 MR. MCGUIRE: Sure.

10 Q. So if it was sealed, it would be just for the
11 Court's eyes only, the Judge's eyes only, that something
12 you could certainly sign?

13 A. I imagine.

14 Q. And there's also a possibility it might not be
15 sealed. So without -- but if it was your own moral
16 judgment that death was appropriate and the State
17 convinced you with a sufficient quality and quantity of
18 evidence where you in your heart said, that's the
19 appropriate sentence, could you then sign the document
20 knowing that it might be a public filed document?

21 A. I'd still be apprehensive.

22 Q. But could you do? I understand. We do a lot of
23 things in life with reservations, but could you do it?

24 A. I probably could do it.

25 Q. Thank you.

1 THE COURT: All right.

2 MS. ADAMS: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. ADAMS:

5 Q. Good afternoon. How are you?

6 A. I'm fine.

7 Q. I'm Chrissy Adams, and I'm the Solicitor for the
8 Tenth Circuit. And I do appreciate your patience last
9 night and today.

10 What we're trying to do here and the purpose is to
11 ensure that the Defendant gets a fair trial and the State
12 as well. And I want to go back to your concerns on
13 whether or not you can actually sign your name and make
14 sure you understand exactly what the law is because
15 that's very -- it's very important. And we are talking
16 about a matter of life and death, and we want to make
17 sure that both sides know everything that they can.

18 If you're selected on this jury and the jury decides
19 that the death penalty is appropriate under the facts and
20 circumstances, the law requires that you sign your name
21 to a piece of paper that is a public document because
22 that is the document that the State uses that will
23 actually allow it to kill the defendant. So if -- if
24 that's the verdict, in other words, your friends and your
25 family members, if they know you're on the jury, they're

- 1 going to know that obviously you've signed that.
- 2 A. Uh-huh (affirmative).
- 3 Q. Would that -- would you be able to do it at that
- 4 point?
- 5 A. I'm not going to lie and say it wouldn't concern me
- 6 that my name is out there for the public to know for
- 7 whatever reason.
- 8 Q. Okay. Well, I understand too. And I actually want
- 9 to thank you for your very honest and candid answers on
- 10 your questionnaire. That has helped us a great deal. I
- 11 noticed too -- because your wife is pro-life. And I
- 12 think you put it -- she's a doctor, right?
- 13 A. Right.
- 14 Q. So what kind of doctor is she?
- 15 A. OB/GYN.
- 16 Q. Okay. So is the fact that she is pro-life -- would
- 17 that affect you as well in the sense of if you signed
- 18 your name to a document that allowed the State to kill a
- 19 defendant, would that ---
- 20 A. Possibly.
- 21 Q. So that would affect your ability to do that as
- 22 well?
- 23 A. Possibly.
- 24 Q. Okay. No one is trying to change your opinions or
- 25 say that any opinion is wrong. And there are no right or

1 wrong answers because there are obviously people who feel
2 that they could never give the death penalty. And then
3 again, there are people who feel that they would always
4 give the death penalty in every murder. But you do
5 understand that the death penalty is not for every single
6 murder?

7 A. Uh-huh (affirmative).

8 Q. Okay. You put down on your questionnaire -- and I
9 think it's clear from your answers as well -- that you
10 believe it is appropriate in some forms -- certain murder
11 cases, but that you could never return a verdict of
12 death. And there is absolutely nothing wrong with that
13 feeling. Is that still your feeling today after coming
14 face-to-face with the Defendant and being in the
15 courtroom?

16 A. I guess it would depend on the case. And I'm not
17 saying that I could never come to that conclusion. But
18 just by signing that paper is ---

19 Q. Causes you great ---

20 A. It was my feeling at the time that I would have
21 difficulty ---

22 Q. That you couldn't do it?

23 A. --- possibly, but I'm not saying I could not.

24 Q. Okay.

25 A. It would depend.

1 Q. With that belief lean you towards a life without the
2 possibility of parole verdict?

3 A. It's possible. I would just have to -- I would know
4 what the case would be first.

5 Q. And I understand that facts and circumstances do
6 make a big difference. And following the Judge's
7 instructions -- you also put on here that you couldn't
8 follow the Court's instructions about the Internet. Is
9 that still ...

10 A. The way I read it -- I think I answered that I would
11 follow the directions. And another question was, would I
12 be tempted. Yes, I'd be tempted.

13 Q. We appreciate your honesty.

14 A. But I would follow the rules.

15 Q. Okay. So you would follow the Court's instructions
16 regarding the Internet access?

17 A. Uh-huh (affirmative).

18 Q. Okay. You stated that you feel like you know more
19 about the case now that you've thought about it, looking
20 at the Defendant and knowing his name?

21 A. Yeah, the name and the face rings a bell.

22 Q. Have you formed an opinion about the case regarding
23 that since you're kind of remembering what it's about?

24 A. I remember bits and pieces. And I may be forming an
25 opinion.

- 1 Q. You may be forming an opinion as to guilt or
2 innocence or what ---
- 3 A. Right.
- 4 Q. --- the appropriate ---
- 5 A. Guilt or innocence.
- 6 Q. Okay. You've also been through a great ordeal and
7 have a friend who has been through a great ordeal. Can
8 you tell us about that? Well, actually, how about -- you
9 put down that a friend of yours has been beaten to death
10 in prison?
- 11 A. That's correct, yes.
- 12 Q. That -- how does that affect you?
- 13 A. It wasn't a close friend. It was a distant friend.
14 But it was -- it did affect me.
- 15 Q. Where did that happen?
- 16 A. I believe it was Pennsylvania.
- 17 Q. Okay. And it was in a state prison?
- 18 A. I think it was just a local prison.
- 19 Q. But he was actually beaten to death by another
20 inmate?
- 21 A. He was beaten and he was, I believe, in a coma for a
22 while.
- 23 Q. Would that affect your ability to be fair ---
- 24 A. I don't think so.
- 25 Q. --- in a trial like this?

- 1 A. I don't think so.
- 2 Q. How about the fact that you have been a victim ---
- 3 A. Well, yeah.
- 4 Q. --- of a very serious crime as well?
- 5 A. It wouldn't affect my decision-making at all.
- 6 Q. Would it affect your ability to be fair at all?
- 7 A. No, I don't think so.
- 8 Q. To the Defendant or to the State?
- 9 A. No. I can be fair.
- 10 Q. Hang on one second for me.
- 11 (Off record discussion)
- 12 Q. I just want to make sure that we understand exactly
- 13 what your thoughts are on the death penalty. The fact
- 14 that you're concerned about your name being on a public
- 15 document and your wife being pro-life, is that going to
- 16 affect your decision with life without parole?
- 17 A. No, it would not.
- 18 Q. How about with the death penalty?
- 19 A. No.
- 20 Q. You don't think it would even though you do have
- 21 concerns and reservations about it?
- 22 A. I am concerned. I don't like to have my name posted
- 23 with being involved with that decision.
- 24 Q. But knowing that your name ---
- 25 A. But it wouldn't make me go one way or the other.

1 Q. But knowing that your name will be posted ---

2 A. Uh-huh (affirmative).

3 Q. --- on a public document ---

4 MR. MCGUIRE: Judge, asked and answered.

5 THE COURT: I think he's answered the question.

6 MS. ADAMS: Thank you, Your Honor.

7 THE COURT: Anything from the Defendant?

8 MR. MCGUIRE: Nothing further from the Defense,
9 Your Honor. Thank you.

10 THE COURT: From the State?

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

12 THE COURT: All right. If you could, Juror 68,
13 step out for just a moment. I need to take up some
14 matters with the attorneys.

15 (WHEREUPON, Potential Juror 68 exited the
16 courtroom.)

17 THE COURT: Yes, ma'am?

18 MS. ADAMS: Your Honor, he clearly stated that
19 he has already formed an opinion as to guilt or innocence
20 in this case when I asked him about his prior knowledge
21 and looking at the Defendant. I think that in and of
22 itself disqualifies him along with the fact that he was
23 extremely hesitant and his wife's pro-life stance, his
24 name being signed to a public document ---

25 THE COURT: I understand.

1 MS. ADAMS: --- clearly disqualifies him.

2 THE COURT: Anything from the Defendant?

3 MR. MCGUIRE: I mean, I'm not sure how
4 necessary it is to respond. He clearly indicated he
5 could consider all the evidence, vote life, vote death,
6 follow the Court's instructions. To form an opinion --
7 we don't even know what his opinion is. He just said,
8 you know, I'm starting to recognize the name and faces.
9 I seriously -- besides that would prejudice me, if
10 anybody. And I'm not bringing that up. I think he's a
11 qualified juror. If the opinion thing is an issue, we
12 should have gone into it more. Basically it's not
13 affecting him at all. He said he can look at this case
14 and decide both penalties based on all the evidence.
15 He's given all the appropriate right answers. In fact,
16 his most recent answers with regard to his wife being
17 pro-life. And the other issues he said would not affect
18 his decision-making between life and death at all. But
19 I'll stop talking if you agree with me. You just give me
20 a, you know, whatever sign, turn a cup over or something
21 and I'll quit talking.

22 THE COURT: No, let's don't have extended
23 debate. I know a little bit about that too.

24 MR. MCGUIRE: But I think he's clearly
25 qualified. And with regard to signing his name, you

1 know, he said he had some apprehension reservation about
2 it being a public document, but he said it would not --
3 he could do it. It wouldn't interfere with him being
4 able to do that. And -- which is another reason I would
5 ask to seal it, if we could, for some reasons in this
6 case. Maybe we could visit but later. But yes, sir,
7 Judge, I think his answers indicate he's going to follow
8 the law. I think he's fully qualified.

9 THE COURT: Anything further from the State?

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

11 THE COURT: All right. I think after reading
12 the questionnaire as well as listening to the juror, at
13 least he is somewhat conflicted. And again, you will
14 have to, as the Solicitor said, acknowledge his candor
15 because I think he was very candid. One of the things
16 that concerned me -- not one -- perhaps -- not only did
17 he give the right answers, but sometimes he gave the
18 right answers to the questions that -- anticipated more
19 than the question. For example, the first question, he
20 was defined murder as being the deliberate intentional
21 killing of another with a black heart. He could actually
22 say, it depends on the circumstances. But I think if
23 somebody had asked me that, I've probably say of course,
24 the death penalty would be ... In other words he seemed
25 to -- what is it -- want to please.

1 But the thing that really concerns me was that he
2 would be concerned about signing his name to a piece of
3 paper, a document. Would sign it possibly. It would
4 create some problem. And I noticed that his wife -- or
5 heard that his wife was an obstetrician. And for the
6 most part, it's my understanding that they are very pro-
7 life that -- what is it -- would make life maybe not all
8 that pleasant at home if he was known to take a
9 documented position on the matter.

10 And of course, I'm doing this in light of *State*
11 *versus George*, 323 S.C. 496, 1996, where the Court
12 recognized that concerned about signing the document was
13 sufficient to disqualify a juror. So I am going to
14 disqualify him. And again, it's based on the same thing
15 I've used with the others, that if I feel that a juror's
16 convictions would be compromised in some fashion by
17 reason of what they would have to do, not just -- I'm
18 sure that he feels he could be -- and perhaps in his own
19 mind -- that he could be fair and impartial. But he did
20 seem to try to please both the State and the Defendant
21 with his answers. That it's the Court's opinion that he
22 would be somewhat compromised.

23 All right. For that reason, I'm going to find that
24 he's not qualified to serve.

25 If you would ask the gentleman to return, please.

1 (WHEREUPON, Potential Juror 68 entered the
2 courtroom.)

3 THE COURT: All right. Considering the entire
4 voir dire, I find that Juror 68 should be excused from
5 serving on the trial of this case. However, I do want to
6 thank you for your patience with the Court yesterday --
7 it was six hours -- and today too. And I thank you for
8 your candor in answering the questionnaire as well as
9 your answers today to the very difficult questions.

10 THE POTENTIAL JUROR: Maybe too candid.

11 THE COURT: Well, not really because if you
12 remember, I think -- I hope I said it -- there are two
13 reasons I ask the question if there's some question about
14 the serving, would that interfere with the ability of the
15 individual to be fair and impartial to both the State and
16 the Defendant. I said -- two reasons for that. One of
17 course is that both the parties are entitled to fair and
18 impartial jurors. But just as important to me is that a
19 juror never asks to serve as a juror. You wouldn't want
20 one that wanted to be a juror. And so it's not an easy
21 task in the first place, so I don't want to put them in a
22 situation where they might feel uncomfortable or much
23 less compromised that -- what is it -- they'd have to
24 think about something else other than just the facts,
25 circumstances, evidence and things of that nature.

1 THE POTENTIAL JUROR: Uh-huh (affirmative).

2 THE COURT: And so when I say -- in the end,
3 it's a discretionary act on my part. And when I sense
4 something I feel that -- what is it -- might put the
5 person in not a very comfortable position, then I usually
6 do excuse them. That has no -- please understand that
7 has nothing to do with your ability to be fair and
8 impartial. It's just I feel that under the circumstances
9 of this particular case and your knowledge of what has
10 occurred, that it would perhaps create something -- a
11 situation that you would not be comfortable in.

12 So with that, I'm going to excuse you. By the way,
13 that will excuse you for the whole time and your three
14 years now that you won't be called.

15 THE POTENTIAL JUROR: Okay.

16 THE COURT: But thank you so much. And I do
17 appreciate, as I say, your patience with the Court.
18 Thank you, sir.

19 (WHEREUPON, Potential Juror 68 exited the
20 courtroom.)

21 THE COURT: All right. Ladies and gentlemen,
22 we have thirty-two minutes before the next one is to be
23 here. But I think we can take a little bit longer.
24 Y'all have done very well today. But remember we've got
25 two panels this afternoon ---

1 MS. ADAMS: Yes, sir.

2 THE COURT: --- so we do have to move along. So
3 let's try to get back as close to 1:30 as possible. If
4 you need ---

5 MS. ADAMS: Absolutely.

6 THE COURT: --- a little bit longer, that will
7 be fine.

8 MS. ADAMS: Thank you, Judge.

9 MS. BYFORD: Thank you, Judge.

10 THE COURT: We just don't want to keep them
11 back there.

12 MR. MCGUIRE: Before the court reporter stops,
13 if you would just politely note my objection to the
14 excusal of the last juror.

15 THE COURT: Oh, certainly. Yes, exactly. In
16 fact, I think that we've pretty much -- unless you have
17 new grounds.

18 MR. MCGUIRE: Sixth and Fourteenth Amendments
19 of the United States Constitution.

20 THE COURT: Right. Unless you have new grounds
21 that you wanted to make those, just note a continuing
22 objection for my failure to qualify those who the Defense
23 wants and my qualifying those that the State proposed.

24 MR. MCGUIRE: Yes, sir. It would be on the
25 same constitutional grounds, both state and federal.

1 THE COURT: Right. Very good. Thank you.

2 All right.

3 (WHEREUPON, court stood at recess for a lunch
4 break.)

5 THE COURT: All right. For the record, I have
6 excused Juror 145. I'll have the -- if we need him
7 later, the Clerk will contact him. I understand that you
8 do have his number?

9 MADAM CLERK: I do, Your Honor.

10 THE COURT: All right. Very good. Let's see,
11 the next one is 127. I understand there's some question
12 about a complete questionnaire?

13 MS. ADAMS: Yes, sir. I just pointed out --
14 and I told Mr. McGuire as well -- when I was going
15 through his questionnaire -- you instructed him to fill
16 it out on Monday. He did not. Even though he received
17 it in the mail from the Clerk, Your Honor, he did not
18 fill it out. And he still didn't complete it, so ...

19 THE COURT: Well ---

20 MS. ADAMS: I just wanted you to be aware of
21 that.

22 THE COURT: I've noticed that we've had some
23 others that have not had complete questionnaires. I'm
24 going ahead with Juror 127, and we'll see how it goes.

25 All right, 127.

1 (WHEREUPON, Potential Juror 127 entered the
2 courtroom.)

3 THE COURT: All right. Are you Juror 127?

4 THE POTENTIAL JUROR: I am.

5 **POTENTIAL JUROR 127,**

6 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

7 EXAMINATION

8 BY THE COURT:

9 Q. You will recall on Monday I put all the jurors under
10 oath. Now, do you understand that you're still under
11 oath and the oath continues throughout this process --
12 these proceedings?

13 A. Yes, I do.

14 Q. When you came to the jury room, there should have
15 been a list of potential witnesses in this case. Did you
16 have an opportunity to review that?

17 A. Yes, I did. I don't know anyone.

18 Q. All right. So -- now, you do also recall my
19 instructions from Monday to avoid all forms of media
20 coverage dealing with this case?

21 A. Yes.

22 Q. Has that caused any problem?

23 A. No problem. I did see something brief on TV, but I
24 just left the room.

25 Q. Very good. Now, the trial of this case may last,

1 well from seven days to ten days or maybe even longer
2 depending on the progress we do make. Other than the
3 personal inconvenience, would this pose a serious danger
4 to the health or well-being of yourself or anyone who is
5 dependent upon you?

6 A. No.

7 Q. Among other things that we will be talking about
8 today is penalty. But the mere fact that we talk about
9 penalty does not indicate anything about this Defendant
10 or any defendant. Defendants are presumed under the law
11 to be innocent. Do you understand this?

12 A. Yes.

13 Q. If you were a juror in a criminal case, could you
14 listen to the law and accept that law as I would instruct
15 you as the Judge of this court even though you may not
16 agree with the law or think it ought to be some other
17 way? In other words, could you accept the law as I
18 instruct you even though you might not agree with it?

19 A. I believe so. It's not anything I've ever had
20 experience with.

21 Q. Well, you do understand that laws can be different
22 in different places. In other words, the law in South
23 Carolina might not be the same law or the same
24 proposition in North Carolina or Nevada. All on the same
25 subject might not be the same. Do you understand that?

1 A. Yes, I do. But I think I would -- I think I would
2 make up my mind according to my own inner thoughts and
3 feelings rather than what I'm told.

4 Q. Well, listen, there is -- see, there is no right or
5 wrong answer to these questions. What we do want to know
6 is what you do think and your feelings about things. Do
7 you understand that?

8 A. Uh-huh (affirmative).

9 Q. Could you decide this case based solely on the
10 evidence presented in this courtroom and disregard
11 anything you have heard, read or seen about this case?

12 A. Yes.

13 Q. In a criminal case, the State has the burden of
14 proving guilt. The burden of proof for the State is
15 beyond a reasonable doubt. A defendant has no burden to
16 prove anything whatsoever, his innocence or anything
17 else. In fact, the defendant has a constitutional right
18 not even to testify or to speak at all. Do you
19 understand that?

20 A. Yes.

21 Q. Could you, depending on the facts and evidence and
22 the law as I would instruct you in a particular case,
23 find a defendant either guilty or not 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, then
2 you would move to the sentencing phase of the trial. Do
3 you understand this?

4 A. Yes.

5 Q. And when we -- when you hear us refer to a capital
6 case or a death penalty case, what we mean is that it is
7 a criminal murder trial where the prosecutor -- in other
8 words, the State -- is seeking the death penalty. Do you
9 understand this?

10 A. Yes.

11 Q. A death penalty trial is divided into two parts.
12 Part one is the guilt phase where a jury determines
13 whether the defendant is guilty or not guilty of murder.
14 Part two is the sentencing phase where a jury determines
15 the appropriate punishment. Of course, if the defendant
16 is found not guilty in the first part, then that ends the
17 matter and there is no second part. Do you understand
18 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 onto 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 case, again, where
3 a jury has already found a defendant guilty of murder --
4 do you understand that the jury rather than the judge
5 determines the sentence that defendant will receive for
6 the crime of murder?

7 A. Yes.

8 Q. In a capital sentencing trial, a jury's function is
9 to determine the appropriate punishment based upon the
10 circumstances of the crime and the characteristics of the
11 individual defendant. Now, aggravating circumstances are
12 facts or details that, when they are present in a case,
13 make the crime of murder more serious or worse. On the
14 other hand, mitigating circumstances are incidents,
15 occurrences or details of a case that would reduce the
16 severity of the crime of murder. In other words, may
17 reduce the degree of responsibility for the crime. Do
18 you understand that?

19 A. Yes.

20 Q. Do you understand that the jury has two options to
21 consider regarding the sentence for murder? One option
22 is life imprisonment. In South Carolina that is life
23 until death. In other words, without parole. Do you
24 understand that?

25 A. Yes.

1 Q. And the other option is death which is in this state
2 by electrocution or lethal injection. Do you understand
3 that?

4 A. Yes.

5 Q. Could you as a juror in the sentencing phase,
6 depending upon the facts including relevant aggravating
7 and mitigating circumstances and the law as instructed to
8 you, render a sentence of life imprisonment?

9 A. Yes.

10 Q. On the other hand, as a juror in the sentencing
11 phase, depending upon the facts including relevant
12 aggravating and mitigating circumstances and the law as
13 instructed to you, could you render a sentence of death?

14 A. I don't think so.

15 Q. Again, as I say, there are no right or wrong answers
16 in this case. All right. If you would, please, answer
17 any questions the attorneys may have.

18 MR. MCGUIRE: Thank you, Your Honor.

19 THE COURT: Thank you, sir.

20 DIRECT EXAMINATION

21 BY MR. MCGUIRE:

22 Q. Good afternoon, Juror 127. I hate to call you by
23 number, but that's the way we have to do things. It's a
24 little awkward for me. And I hope you don't think I'm
25 being rude or impolite by doing that.

1 Capital cases are different from any other case
2 because the jury does fix punishment. And I'm going to
3 go over some of that in more detail with you, if I could
4 right now. First off -- and I'm going to go over some
5 legal principles and just ask if you can follow these
6 principles, follow this law. Okay? And the first
7 principle is that there is never, ever any murder case in
8 the country and certainly in South Carolina that
9 automatically requires a death verdict. Did you know
10 that?

11 A. Yes.

12 Q. You know, people bring different amounts of
13 education to court. And I don't know what you know, so I
14 have to kind of start from the basics. Just plain old
15 murder is not even eligible for the death penalty in the
16 entire country. And only thirty-four states have the
17 death penalty now. But to even ask for the death
18 penalty, the prosecution has to come forward with
19 aggravation evidence, something that makes it worse than
20 murder. It could be child victim, police officer in the
21 line of duty, any really substantial bad fact that
22 increases the heinousness of the murder. And it's only
23 after they bring forward that kind of information in the
24 jury, the entire jury, all twelve unanimously agreed that
25 that mitigation evidence exists beyond a reasonable

1 doubt, only then can they keep asking for the death
2 penalty. Is that a principle you're familiar with or
3 okay with?

4 A. I understand it.

5 Q. Okay. And in South Carolina -- and the Judge would
6 instruct everybody on the jury that any individual juror
7 can vote for the life penalty for any reason, mercy, no
8 reason at all. Is that a principle you're comfortable
9 with?

10 A. Yes.

11 Q. And in capital cases, they're not -- like I said,
12 not like other cases because everybody, when they think
13 about juries, they always think about the jury eventually
14 ending up unanimous. In capital cases, they don't have
15 to. The only way the State can get a death verdict is if
16 all twelve agree that that's appropriate. Now, on the
17 mitigation side or the Defense side, if any of the jurors
18 just agree to disagree, whether it's six to six, ten to
19 two, whatever number you have, they can basically -- the
20 whole jury can just say, you know what, we can't agree,
21 come back out here and the judge will sentence. Is that
22 a principle you're comfortable with?

23 A. Yes.

24 Q. And in a capital case, the individual juror's
25 decision is described as an individual moral judgment

1 based on every individual's walk in life, their own walk
2 in life. And in essence we almost have like twelve
3 separate juries. Is that individual. And can you --
4 could you respect the fact that individual jurors can
5 reach their own individual moral judgment?

6 A. Absolutely.

7 Q. And you'd want your on individual moral judgment
8 respected as well?

9 A. Yes.

10 Q. And you know, deliberations are obviously a give-
11 and-take, and people civilly and politely listen to all
12 the evidence and everybody's opinion. But at the end of
13 the day, once everybody reaches their own individual
14 moral judgment, it's pretty much over because the law
15 says if it would do harm to that person's conscience to
16 change their vote, that's wrong. And they have an
17 obligation to deliver their point of view into the
18 courtroom whether it's for death or life. Is that a
19 principle you're comfortable with?

20 A. Yes.

21 Q. And a juror's never required to vote for death and
22 only votes for death when they are convinced beyond a
23 reasonable doubt that, based on the quantity and the
24 quality of the evidence proving an extreme heinous nature
25 or an aggravated nature of the murder -- only then does

1 the individual juror even contemplate voting for death.
2 And knowing all of this, could you follow the Court's
3 instructions if the Judge said you must look at all the
4 mitigation evidence -- which can be anything, anything in
5 the defendant's background -- in fact, I want to back up
6 a little bit and talk to you about that a little bit. It
7 can be anything you find in the facts of the case, the
8 defendant's background, even something you see in court.
9 Maybe, you know, a defendant hangs his head when his
10 mother comes into court or you see something redeeming.
11 Any kind of humanity at all. In that situation ...

12 You know, I talked to you about the aggravation
13 about how that has to be proven beyond a reasonable
14 doubt, all twelve. It's completely different for the
15 Defense in that different jurors have the right to find
16 mitigation evidence where they find it and a right to
17 give it whatever weight they choose. And what I mean by
18 that is -- you know, this is where the jury will
19 eventually sit. Somebody in the front can say, you know
20 what, I saw something in his background, and that did it
21 for me. That resonated with me. And for that reason
22 alone, I'm going to vote life. Somebody in the back
23 could say, you know what, it was something regarding his
24 family, his relationship with his family members or a
25 child. And that resonated with me, and I'm going to vote

1 for life for that. And those two jurors don't even have
2 to agree on what they're voting for. What I mean is one
3 person could look at his background, somebody else the
4 relationship with his family, somebody else could say
5 it's a mental health issue. You could have twelve
6 different reasons, and that's okay. Is that a principle
7 you're comfortable with?

8 A. That sounds good.

9 Q. Okay. And you know, we're a country of laws, not
10 men. And sometimes we all do have duties despite the
11 fact that we have reservations about them. And
12 understanding that, could you listen to the Judge's
13 instructions on the law -- which when you get right down
14 to it, it's really just one question. Can you just look
15 at everything, all the factors in aggravation, all the
16 evidence in mitigation, be fair to the State, be fair to
17 the Defense and reserve your judgment all the way till
18 the end and consider both a life verdict and a death
19 verdict? Can you do that?

20 A. Yes.

21 Q. And you know, the State and the Defense are both
22 entitled to fairness not just out here in the courtroom,
23 but also the jury room. And if things get unfair, if
24 people bully each other, if it gets hostile, we don't
25 want that to happen. And in fact, we would expect you to

1 send out a notice saying, you know what, things aren't
2 fair in here. It's getting beyond just polite civil
3 discourse. Could we count on you to do that?

4 A. Sure.

5 Q. And if in your heart you decided based on the
6 quality and the quantity of the evidence brought forward
7 by the State, and you and eleven other jurors decided
8 that death was the appropriate penalty in this aggravated
9 murder, could you sign your name to the sentencing sheet
10 saying that's my verdict along with eleven other people?

11 A. I suppose the answer is yes, but I'd find that
12 doubtful.

13 Q. I'm sorry?

14 A. Yes, I could consider it, but it seems doubtful to
15 me that I would agree to such a thing.

16 Q. Okay, sure.

17 A. At this point, it just seems doubtful.

18 Q. Yeah, I mean, is it fair to say that -- and it's
19 okay to have predispositions or leanings. And what I'm
20 kind of getting from you is you understand that the law
21 of the land is we do have the death penalty, that you're
22 a potential juror. And if you sat on the case, you would
23 absolutely want to follow in the Judge's instructions
24 that follow the law. And you recognize that we are a
25 country and a government of laws and not individual

1 people. And you want to do your duty, and -- but you're
2 not sort of zealously in favor of the death penalty, to
3 be quite honest?

4 A. That sounds perfectly right.

5 Q. Sure. And in something so important as to whether
6 or not a fellow human being is actually put to death,
7 it's okay to have reservations about that. We would --
8 the Judge has already indicated to other jurors we would
9 expect that. But as long as you can follow the law,
10 consider everything and be fair to both the State and the
11 Defense in deciding between those two available verdicts,
12 life or death, that's all we can ask of you. And you can
13 do that?

14 A. Yes.

15 MR. MCGUIRE: If I could have just one second,
16 Judge.

17 (Off record discussion)

18 MR. MCGUIRE: Juror 127, that's all I have.
19 Thank you, Sir.

20 THE COURT: State?

21 MS. BYFORD: Your Honor, reserving our right to
22 question this juror further, I would like to take up a
23 small legal matter first.

24 THE COURT: Very good.

25 Juror, if you would, please, go with the bailiff.

1 And I'll ask you just to wait for a few minutes, and then
2 we'll come back. All right?

3 THE POTENTIAL JUROR: Okay.

4 THE COURT: Thank you, Sir.

5 (WHEREUPON, Potential Juror 127 exited the
6 courtroom.)

7 THE COURT: Yes, ma'am?

8 MS. BYFORD: Okay. Yes, sir, Your Honor. In
9 the interest of brevity -- and I'll be happy to develop
10 this further with questions if you'd like. I do believe
11 at this time that he is not qualified. He answered that
12 he did not think he could return a verdict of death to
13 you, and he clearly said on the witness stand that he has
14 serious doubts about being able to impose or to vote for
15 death. So at this time, Your Honor, the State would move
16 that he's not qualified.

17 THE COURT: All right.

18 MR. MCGUIRE: Judge, he is clearly qualified.
19 He without -- when he understood in greater detail how
20 the system worked, he understood that he could consider
21 everything, be fair to the State, the Defense, consider
22 the two available punishments which are life and death, I
23 got him to -- he said it several times. He even said he
24 could sign his name to the sentencing document. And he
25 said he was going to follow the Court's instructions and

1 follow the law. I mean, if that is -- if that's the
2 standard we're going to follow which has been applied to
3 other jurors, I mean, I think he's absolutely qualified.

4 THE COURT: Anything else from the State?

5 MS. BYFORD: Not at this time, Your Honor.

6 THE COURT: Well, obviously he told me that he
7 didn't think so when I asked if he could give the death
8 penalty. Again, his questions were responsive -- I mean,
9 his answers were responsive to the questions. When asked
10 if he could give it either death or life sentence, he
11 responded I think something to the effect he would try.
12 But again, he -- when it came down to could you sign your
13 name to the sentencing sheet, he said, yes, but it would
14 be doubtful.

15 I think, again, this is a juror -- and we all
16 understand that this is a difficult position for any
17 person to be placed in. And considering that even not so
18 much that he didn't think that he could give death and
19 also that he had certain independent ideas or concepts as
20 to whether he would follow the charge of the law. Again,
21 that perhaps is the most important thing for both sides
22 or both parties, that the law is followed in a case like
23 this because it has -- the law is such that it has -- if
24 you'll forgive me using the balance -- the term again --
25 a balance. In other words, it's not just to be one way

1 or the other.

2 So I don't find there would be -- I think I'll grant
3 the motion because I do not find that the juror would be
4 qualified.

5 All right. Ask the -- and I'll note your objection
6 to my failure to qualify him.

7 Ask the juror to join us.

8 (WHEREUPON, Potential Juror 127 entered the
9 courtroom.)

10 THE COURT: Juror 127, considering the voir
11 dire, the entire voir dire -- and that means just the
12 questioning including the questionnaire that you were
13 provided -- I find that Juror 127 should be excused from
14 serving on the trial of this case. However, I do want to
15 thank you for being here and your candor in answering all
16 the difficult questions asked today and on the
17 questionnaire.

18 As I mentioned earlier, there are no right or wrong
19 answers. And candor is the one thing that we have to
20 have. Please understand that everybody involved in this
21 case have important obligations and responsibilities.
22 And we want to be sure that they meet those. One of the
23 things I've explained to jurors is that there's two parts
24 or two purposes in the question, can you be fair and
25 impartial. One, of course, is that each party has a fair

1 and impartial juror or jury made up of jurors.

2 But more importantly to me is that you didn't ask to
3 be here. You were summoned to be here. And we're asking
4 you to do something that is not something that you would
5 ask to do or would want to do. And I want to be sure
6 that you do not have any sort of conflict as to whether
7 something should be done or not be done or followed or
8 anything that would in any way not only make your job
9 more difficult as a juror, but also might be compromised
10 in some stance.

11 So I don't want to put a juror in to that position.
12 For that reason, I'm going to excuse you from the trial
13 of this case. Now, that doesn't mean that you would make
14 an excellent juror in a different type of case. But
15 that's why we are so careful in what we're doing in
16 trying to qualify a jury panel. So I want to thank you
17 again for your candor as well as your patience with the
18 Court in this process.

19 THE POTENTIAL JUROR: Thank you very much.

20 THE COURT: And good luck to you. And this
21 will excuse you and complete your service for this week.
22 It will be another three years before they call you.
23 Maybe you won't be called right at three years. But we
24 do want to thank you.

25 THE POTENTIAL JUROR: Thank you.

1 THE COURT: You're welcome. All right.

2 (WHEREUPON, Potential Juror 127 exited the
3 courtroom.)

4 THE COURT: All right. The next one is ---

5 MR. MCGUIRE: Judge -- I'm sorry.

6 THE COURT: I'm sorry.

7 MR. MCGUIRE: I thought I heard you say, but I
8 just want to make sure my objection is noted for the
9 record.

10 THE COURT: Yes, sir, the objection is noted
11 for the record and on the same basis as the other
12 objection.

13 MR. MCGUIRE: Yes, sir. The same
14 constitutional ---

15 THE COURT: Same constitutional questions. All
16 right. Very good.

17 The next one is 133. I should ask, is there
18 anything in particular from either the State or the
19 Defendant before we bring in the juror?

20 MS. BYFORD: No, sir, not from the State.

21 (WHEREUPON, Potential Juror 133 entered the
22 courtroom.)

23 THE COURT: All right. Are you Juror 40?

24 THE POTENTIAL JUROR: No. I'm 133.

25 THE COURT: Oh, excuse me. I've got the wrong

1 number here. But you are Juror 133?

2 THE POTENTIAL JUROR: Correct.

3 THE COURT: Very good. Thank you, ma'am. I'm
4 glad that you are more in touch with what we're doing
5 this than I am this afternoon.

6 **POTENTIAL JUROR 133,**

7 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

8 **EXAMINATION**

9 BY THE COURT:

10 Q. Juror 133, you will recall on Monday I put all of
11 the jurors under oath. Now, do you understand that
12 you're still under oath and that oath continues
13 throughout these proceedings?

14 A. Yes.

15 Q. Now, do you understand -- you were furnished a list
16 of potential witnesses in the jury room. Did you have an
17 opportunity to review that?

18 A. Yes, I did.

19 Q. Did you recognize any names that you might be
20 related to by blood or marriage, close personal friends,
21 business associate or any other association?

22 A. No.

23 Q. Do you recall also my instructions from Monday to
24 avoid all forms of media coverage dealing with this case?

25 A. Yes.

1 Q. Has that caused you any problem?

2 A. No.

3 Q. Has this caused you any problems?

4 A. No.

5 Q. All right. The trial of the case will last
6 approximately ten days, or it could be longer. Other
7 than personal inconvenience, would this pose a serious
8 danger to the health or well-being of yourself or anyone
9 who is dependent upon you?

10 A. No.

11 Q. Among other things, we'll be talking about penalty
12 today. But the mere fact that we talk about penalty does
13 not indicate anything about this Defendant or any
14 defendant. A defendant is always presumed in the law to
15 be innocent. Do you understand?

16 A. Yes.

17 Q. If you were a juror in a criminal case, could you
18 listen to the law, accept and apply that law as I would
19 instruct you as the Judge of the court, and even though
20 you may not agree with that law or think it ought to be
21 some other way, could you accept and apply the law as I
22 instruct you?

23 A. Yes.

24 Q. Could you decide this case based solely on the
25 evidence presented in this courtroom and disregard

1 anything you may have heard, read or seen about this
2 case?

3 A. Yes.

4 Q. In a criminal case, the State has the burden of
5 proving guilt. The burden of proof for the State is
6 beyond a reasonable doubt. A defendant has no burden of
7 proving his innocence in any way. In fact, a defendant
8 has no burden at all. He does not even have to testify
9 or present any evidence. Do you understand that?

10 A. Yes.

11 Q. Could you, depending upon the facts and evidence and
12 the law as I would instruct you in a particular case,
13 find a defendant either guilty or not guilty?

14 A. (no verbal response)

15 Q. All right. Could you, depending upon the facts that
16 exist and evidence ---

17 A. Yes.

18 Q. --- and the law as I would instruct you in a
19 particular case, find a defendant either guilty or not
20 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 this?

1 A. Yes.

2 Q. When you hear us refer to a capital case or a death
3 penalty case, what we mean 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. Yes.

8 Q. A death penalty trial is divided into two parts.
9 Part one is the guilt phase where a jury determines
10 whether the defendant is guilty or not guilty of murder.
11 Part two is the sentencing phase where a jury determines
12 the appropriate punishment. Of course, if the defendant
13 is found not guilty, that ends the matter. Do you
14 understand this?

15 A. Yes.

16 Q. Therefore, if you were a juror in the trial of a
17 capital case where the jury in phase one of the trial has
18 found the defendant guilty of murder, you would then move
19 on to phase two of the trial which is called the
20 sentencing phase of the trial. Do you understand this?

21 A. Yes.

22 Q. Now, if you -- of course, now, if he had been found
23 not guilty in the first phase, then that would end the
24 matter. So there would be no second phase. You do
25 understand that?

1 A. Yes.

2 Q. Now, if you were a juror in a 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 the
6 judge determines the sentence that the defendant will
7 receive for the crime of murder?

8 A. Yes.

9 Q. In a capital sentencing trial, the jury's function
10 is to determine the appropriate punishment based on the
11 circumstances of the crime and the characteristics of the
12 individual defendant. Do you understand that?

13 A. Yes.

14 Q. Now, aggravating circumstances are facts or details
15 that when they are present in a case make the crime of
16 murder more serious or worse. On the other hand,
17 mitigating circumstances are incidents, occurrences or
18 details of a case that would reduce the severity of the
19 crime of murder. In other words, may reduce the degree
20 of responsibility for the crime. Do you understand?

21 A. Yes.

22 Q. Do you also understand that the jury has two options
23 to consider regarding the sentence for murder? One
24 option is life in prison. And under South Carolina law,
25 life in prison means until the death of the defendant.

1 In other words, he's not eligible for parole. Do you
2 understand?

3 A. Yes.

4 Q. And the other option is death which in this state is
5 by electrocution or lethal injection. Do you understand
6 that?

7 A. Yes.

8 Q. Could you, as a juror in the sentencing phase,
9 depending upon the facts including relevant aggravating
10 and mitigating circumstances and the law as I instruct it
11 to you, render a sentence of life in prison?

12 A. Yes.

13 Q. On the other hand, as a juror in the sentencing
14 phase, depending upon the facts including relevant
15 aggravating and mitigating circumstances and the law as I
16 instruct it to you, could you render a sentence of death?

17 A. Yes.

18 Q. All right. If you would, please, answer any
19 questions the attorneys may have.

20 DIRECT EXAMINATION

21 BY MR. MCGUIRE:

22 Q. Good afternoon, ma'am. How are you doing today?

23 A. Fine, thank you.

24 Q. I'm sorry you've had to wait. Court's not the most
25 efficient thing. It's not my fault. It's not the

1 Judge's fault. It's just -- we're just not very fast
2 sometimes.

3 And I have to call you by number. It's just the way
4 we do things. It's a little awkward for me. And I'm not
5 being not polite, but I have to address you as 133. If
6 you will just forgive me that.

7 A. Okay.

8 Q. I'm going to talk to you a little bit. The Judge
9 gave you some general instructions, general framework
10 about murder, penalty, how we sort of -- the general
11 procedure. But I want to talk to you in a little bit
12 more detail, okay?

13 A. Okay.

14 Q. In South Carolina and in fact the whole country, a
15 murder case, just a regular -- that's not a very good
16 term. But a murder case is not eligible for the death
17 penalty. Did you know that?

18 A. No, I didn't know.

19 Q. It has to be what's called aggravated murder or a
20 murder plus an aggravating circumstance. And only until
21 the jury finds an aggravating circumstance can they even
22 consider the death penalty. And the way that works is
23 there's the first part of the trial which is the citizen
24 charged -- is he guilty, not guilty, did he do it -- for
25 a murder case. That's the first part.

1 And then after that part, assuming a conviction for
2 murder, then the State would present evidence of
3 aggravation which would raise the level of the murder,
4 make it more heinous or worse. And they do that by
5 entering what's -- into evidence what's called
6 aggravation evidence.

7 And it can be a lot of different things. It can be
8 like a child victim of the murder, kidnapping, rape,
9 police officer shot. That sort of thing. Something that
10 makes the murder worse. And only if they bring that
11 evidence to the jury and the jury agrees that it's there
12 beyond a reasonable doubt, all twelve agree, only after
13 that point does the jury even consider the death penalty.
14 Now that you know that, is that a principle you're okay
15 with?

16 A. Okay, yes.

17 Q. Do you have any question about that?

18 A. No.

19 Q. And I want to do a little comparison between burdens
20 of proof between the -- I look over there because that's
21 where the jury is going to sit. So if you see me look
22 over there, I'm just thinking about a jury in my mind.
23 But I want to compare a little bit the different duties
24 and burdens that the State has and the Defense has. And
25 as I stated earlier, the Defense, I mean the State has

1 that obligation to prove aggravation to all twelve jurors
2 beyond a reasonable doubt. And it's completely different
3 for the Defense side because any -- the Judge will
4 instruct you if you're on the jury that any individual
5 juror can vote for life for any reason, no reason, mercy
6 or any other reason they find. Is that a principle
7 you're okay with?

8 A. Yes.

9 Q. I'm not doing a very good job. For some reason I
10 seem to have been doing a little bit better earlier. But
11 what I'm doing is I'm transposing the different standards
12 of burdens between the State and the Defense. And rather
13 than try to do that again, I'm just going to keep going
14 and explain this concept to you and ask if you can follow
15 the law and agree with it.

16 And that is, in a sentencing case, a capital case,
17 it's different from all other cases that we have in the
18 country. And that's because the jury fixes punishment.
19 They have two options, the death penalty and the life in
20 prison penalty. And like I said, with the State's side,
21 with the aggravation, all twelve have to unanimously
22 agreed beyond a reasonable doubt that the aggravation's
23 there. And the only time that the State is entitled to
24 ask for a death verdict or have a death verdict returned
25 is, again, if all twelve jurors agree beyond a reasonable

1 doubt that that is the appropriate penalty.

2 Now, on the other side, it's different for the
3 Defense. And that is that each individual juror has the
4 right to make their own individual moral judgment. And
5 they can see mitigation evidence or a reason to vote for
6 life anywhere, just like the Judge said earlier. And
7 what I mean by that is like if we had a jury here,
8 somebody on the front row could say, you know what, when
9 I heard the case, when I heard the whole case, I heard
10 something about the defendant's background or his growing
11 up that resonated with them. And they could say, you
12 know what, for me that's a reason to vote for life. And
13 then somebody in the back could have a completely
14 different reason. They could say, well, you know, I saw
15 something about his relationship with his family or his
16 relationship with a child, and that resonated with me.
17 And that's my reason for voting for life. And the two
18 jurors don't even have to agree that they are basing
19 their decision on the same evidence.

20 It's a little bit different for most juries because
21 when we think of juries, we always think of them agreeing
22 and being unanimous and everybody agreeing on the same
23 thing. But in a capital case, it's okay for each
24 individual juror to come to their own point of view and
25 at the end of the day, agree to disagree as to what the

1 sentence should be. The jury could come into court and
2 just say, we can't agree, we can't all get together. And
3 the judge would take the case, and he would sentence. Is
4 that a principle you're okay with?

5 A. (No verbal response)

6 Q. Are you okay with ---

7 A. I would -- I would prefer consensus, but ---

8 Q. You would prefer a consensus?

9 A. Yes.

10 Q. Okay, sure. But at the same time, you would respect
11 everybody's individual opinion?

12 A. Correct. Yes.

13 Q. You'd want your own individual moral judgment to be
14 respected?

15 A. Yes.

16 Q. And we do expect deliberations, you know, a give-
17 and-take, you know, hearing everybody's views about the
18 case and what should be appropriate. But we don't want
19 it to get hostile and unfair. You know, the State is
20 entitled to fairness not just out here in the courtroom,
21 but also in the jury room. And if things got unfair, if
22 it became bullying or hostile, you could pass a note out
23 to the judge just saying, you know, things aren't fair in
24 here and stop it. Would you be okay doing that?

25 A. I think so.

1 Q. Again, I don't think I'm doing a very good job
2 explaining some of these issues. But I guess what my
3 question is normally when we think about a jury, we do
4 you think about consensus. Would you be okay ending the
5 day agreeing to disagree?

6 A. On something this important, I don't know if -- I
7 don't know.

8 Q. You don't know?

9 A. Yeah.

10 Q. Okay.

11 MR. MCGUIRE: Judge, if I could have just one
12 second.

13 THE COURT: Certainly.

14 MR. MCGUIRE: One second, ma'am.

15 (Off record discussion)

16 MR. MCGUIRE: Judge, at this point this would
17 be the point where I would ask my proposed questions one
18 through six.

19 THE COURT: All right. Very good. Subject to
20 the Court's prior ruling, it will be noted for the
21 record.

22 MR. MCGUIRE: Yes, sir.

23 CROSS-EXAMINATION

24 BY MS. BYFORD:

25 Q. Hey, Number 133. I'm going to be very brief. I

1 know you've been very patient. You've been sitting up
2 there for a while now, and I know it's not easy to sit in
3 that seat.

4 I just want to talk to you about a couple of things,
5 mostly regarding your opinion about the death penalty. I
6 know these are difficult issues to discuss, and I know
7 that these are usually beliefs that people held pretty
8 strongly. There are no right or wrong answers. I just
9 want to make sure that I know where you stand. And if
10 anything that I ask is confusing, please let me know.
11 I'll be happy to reword it or rephrase it.

12 I noticed two things. One, in your question to the
13 Judge when the Judge asked you if you could return a
14 verdict of death, you hesitated for a little bit. And I
15 also noticed that on your questionnaire you put down that
16 you do not support the death penalty. In trying to get a
17 jury that's fair to both the State and the Defendant, we
18 also want to make sure that we're going to have jurors
19 who we are not putting in an uncomfortable position by
20 asking them to make this kind of decision.

21 Do you -- is it still your opinion that you don't
22 support the death penalty? Is that -- from your
23 questionnaire, is that a fair statement?

24 A. I don't personally support it, no.

25 Q. Okay. Do you think it would cause you a hardship to

1 be on a jury where you would have to decide between life
2 and death?

3 A. If -- I would do what I'm supposed to do and apply
4 the laws that I'm supposed to apply.

5 Q. Okay. And so you don't think that would cause you a
6 hardship? You think you'd be able to ---

7 A. I think it would be difficult for me personally, but
8 I could still do what I'm supposed to do.

9 Q. If you felt the facts and circumstances warrant it,
10 you felt like you could still return a verdict of death?

11 A. Yes.

12 Q. Okay. In the state of South Carolina, when the jury
13 comes back unanimous with the death verdict, they have to
14 sign -- the jury has to sign their name to what's called
15 the sentencing sheet. Would you be able to sign your
16 name to that document knowing that that document would
17 allow the State to execute the Defendant?

18 A. Yeah, yes, I could.

19 Q. Okay. I just want to ask you one more question sort
20 of along the lines with what Mr. McGuire was asking you
21 about a consensus. If you were in the jury room and
22 eleven jurors were voting for whichever verdict, either
23 life or death, during the sentencing phase, and you have
24 eleven on one side saying life or death, whichever they
25 were saying, and you disagreed with them, you were on

1 this side over here and you felt the opposite -- again,
2 whatever it was, life or death -- would you stick to your
3 guns or would you go with the majority?

4 A. I would stick to my guns.

5 Q. Okay.

6 MS. BYFORD: Your Honor, just one minute,
7 please.

8 THE COURT: Certainly.

9 (Off record discussion)

10 MS. BYFORD: No, Your Honor, no more questions.

11 THE COURT: All right. Anything further from
12 the Defendant?

13 MR. MCGUIRE: Nothing further, Your Honor.

14 THE COURT: From the State?

15 MS. BYFORD: No, sir.

16 THE COURT: Considering the entire voir dire, I
17 find that Juror 133 will be fair, unbiased, impartial and
18 able to carry out the law as explained to her.
19 Furthermore, I find that the juror's beliefs or attitudes
20 towards the death penalty would not prevent or
21 substantially impair the performance of her duties as a
22 juror in accordance with the law, the Court's
23 instructions and the juror's oath.

24 Madam Juror 133, I find that you are qualified to
25 sit on this jury if you are selected. Now, this process

1 is going to take a few days. So I'm going to excuse you
2 for the balance of the day, and you will go about your
3 life as you would. But the Clerk does have your
4 telephone number?

5 THE POTENTIAL JUROR: Yes.

6 THE COURT: You gave her your telephone number?

7 THE POTENTIAL JUROR: Yes.

8 THE COURT: So when we're ready to draw a jury
9 -- in other words, when we've qualified enough jurors for
10 a panel, then we'll call you. And then you might -- when
11 you get a call, come in at that time and the jury will be
12 selected from the panel. And as I say, this will take us
13 several days. All right. Thank you very much for your
14 patience and particularly with having to wait so long.
15 And I do appreciate it. Thank you very much. We'll be
16 in touch, and I look forward to working with you. Thank
17 you, ma'am.

18 (WHEREUPON, Potential Juror 133 exited the
19 courtroom.)

20 THE COURT: All right. I understand we need to
21 take a break at this time.

22 MS. ADAMS: Okay, Judge.

23 (WHEREUPON, court stood at recess for a short
24 break.)

25 THE COURT: All right. Is the State ready?

1 MS. ADAMS: Yes, sir.

2 THE COURT: Defense ready?

3 MR. MCGUIRE: Yes, sir.

4 THE COURT: All right. Ask Juror -- 135?

5 MADAM CLERK: Yes, Your Honor, 135.

6 THE COURT: 135.

7 (WHEREUPON, Potential Juror 135 entered the
8 courtroom.)

9 THE COURT: All right. Are you Juror 135?

10 THE POTENTIAL JUROR: Yes, sir.

11 **POTENTIAL JUROR 135,**

12 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

13 **EXAMINATION**

14 BY THE COURT:

15 Q. You will recall on Monday I put all the jurors under
16 oath. Now, do you understand that you're still under
17 oath and this oath will continue throughout these
18 proceedings?

19 A. Yes, sir.

20 Q. And you were furnished with a list of potential
21 witnesses in the jury room. Did you have an opportunity
22 to look over that list?

23 A. Yes, sir.

24 Q. Did you recognize any names that you might be
25 related to by blood or marriage, close personal friends,

1 business associates or in any way have a relationship?

2 A. Some -- I don't know. Some names look familiar.

3 Q. All right.

4 A. But I don't have any kind of actual connection.

5 Q. All right. Well, let me just ask you if the names

6 that look familiar -- not that you could identify them,

7 but just how you would identify them, if they happen to

8 be potential witnesses -- in other words, witnesses in

9 this case are called -- would that in any way affect your

10 ability to give both the State and the Defendant a fair

11 and impartial trial?

12 A. No, sir.

13 Q. All right. Now, the trial of this case will last

14 approximately ten days to two weeks. 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 dependent upon you?

18 A. No, sir.

19 Q. Now, among other things, we'll be talking about

20 penalty today. But the mere fact that we talk about

21 penalty does not indicate anything about this Defendant

22 or any defendant. Defendants are presumed under our law

23 to be innocent until they are proven guilty beyond a

24 reasonable doubt. They have no duty to present evidence

25 or even talk. The entire burden is upon the State to

1 prove guilt beyond a reasonable doubt. If they are not
2 proven guilty beyond a reasonable doubt, then as far as
3 the guilt is concerned the sentence would be not guilty.
4 Do you understand that?

5 A. Yes, sir.

6 Q. If you were a juror in this criminal case, could you
7 listen to the law, accept and apply the law as I would
8 instruct you as the Court, even though you do not agree
9 with the law or think it ought to be some other way?

10 A. Yes, sir.

11 Q. Could you decide this case based solely on the
12 evidence presented in this courtroom and disregard
13 anything you may have heard, read or seen about this
14 case?

15 A. Yes, sir.

16 Q. In a criminal case, the State has the burden of
17 proving guilt. The burden of proof for the State is
18 beyond a reasonable doubt. A defendant has no burden to
19 prove innocence. Do you understand that?

20 A. Yes, sir.

21 Q. Could you, depending upon the facts and evidence and
22 the law as I would instruct you in a particular case,
23 find a defendant either guilty or not guilty?

24 A. Yes, sir.

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 this?

4 A. Yes, sir.

5 Q. When you hear us refer to a capital case or a death
6 penalty case, what this means is that it is a criminal
7 murder trial where the prosecutor -- in other words, the
8 State -- is seeking the death penalty. Do you
9 understand?

10 A. Yes, sir.

11 Q. A death penalty trial is divided into two parts.
12 Part one is the guilt phase where a jury determines
13 whether the defendant is guilty or not guilty of murder.
14 Part two is the sentencing phase where a jury determines
15 the appropriate punishment. Of course, if the defendant
16 is found not guilty in the first phase, that ends the
17 matter. There is no second phase. Do you understand
18 that?

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 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 a jury has already found the defendant guilty of
4 murder -- do you understand that the jury rather than the
5 judge determines the sentence that the defendant will
6 receive for the charge -- 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 on 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 the 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 which under our law is life until
24 the death of the defendant. In other words, not eligible
25 for parole -- without parole. Do you understand that?

1 A. Yes, sir.

2 Q. And the other option is death which in this state is
3 by electrocution or lethal injection. Now, could you, as
4 a juror in the sentencing phase depending upon the facts
5 including relevant aggravating and mitigating
6 circumstances and the law as instructed to you, render a
7 sentence of life in prison?

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 I
12 instruct it to you, could you render a sentence of death?

13 A. Yes, sir.

14 Q. All right. If you would, please, ma'am, answer any
15 questions the attorneys might have.

16 DIRECT EXAMINATION

17 BY MR. MCGUIRE:

18 Q. Good afternoon, Juror Number 135. I have to refer
19 to you by number. That's the way we do things. I'm not
20 being not polite or friendly. I just have to do that.
21 So forgive me, if you would.

22 The Judge gave you a good general framework about
23 some principles. I'm going to talk to you in a little
24 more detail if I could. The first thing I'm going to do
25 is start off with the definition of murder in South

1 Carolina. My guess is you don't really have that
2 definition with you, do you?

3 A. No.

4 Q. Right. When most people show up, they really don't
5 know. Most of their crime knowledge comes from
6 newspapers, TV, novels, that sort of thing. Fair enough
7 to put you in that category?

8 A. Yes, sir.

9 Q. Okay. You don't have anybody in your family who's a
10 lawyer or involved with the criminal justice system?

11 A. No, sir.

12 Q. Okay. And the judge would tell you that murder in
13 South Carolina is the unlawful killing of another person
14 with malice aforethought. And what that means is that
15 the killer operated with a black and malignant heart
16 fatally bent on evil and deliberately, intentionally took
17 an innocent life. Not accident, not self-defense, not a
18 car wreck. Nothing like that. Intentional killing of an
19 innocent person. In that kind of case, what's your
20 opinion about the death penalty as the appropriate
21 punishment?

22 A. When it's not intentional? Am I understanding
23 right?

24 Q. When it is intentional. All murders in South
25 Carolina are deliberate and intentional.

1 A. Okay. I'm sorry.

2 Q. In that kind of intentional, deliberate killing,
3 operating within evil heart, malice murder, what are your
4 thoughts about the death penalty being the appropriate
5 penalty?

6 A. I think it's appropriate.

7 Q. Okay. Would a life in prison penalty ever be severe
8 enough to punish that kind of killing?

9 A. I guess it's depending on the circumstances.

10 Q. Okay. And when you say circumstances, are you
11 thinking about the facts of the crime?

12 A. Yes.

13 Q. Okay.

14 MR. MCGUIRE: Judge, at this point, this is
15 when I would ask my questions number one through six.

16 THE COURT: Well, you already asked one, I
17 think. And for the same reason that I've given before,
18 I'm going to note your request, and it will be subject
19 to my ruling.

20 MR. MCGUIRE: Yes, sir. Thank you very much,
21 sir.

22 Q. And what kind -- for you, what kind of circumstances
23 make a case deserving of the death penalty?

24 MS. ADAMS: Your Honor?

25 THE COURT: Yes, ma'am?

1 MS. ADAMS: Calling for a hypothetical.

2 THE COURT: Pardon?

3 MS. ADAMS: He's asking this juror for a
4 hypothetical in what situation do you think. It's open
5 ended.

6 THE COURT: Restate your question, Mr. McGuire.

7 MR. MCGUIRE: Sure. Thank you, Judge.

8 Q. A lot of people say exactly what you said which is,
9 you know, it depends on the circumstances. It depends on
10 the facts. And I'm just curious. In your mind, what
11 makes one murder maybe worse than another?

12 MS. ADAMS: Your Honor, I think he's doing the
13 same thing.

14 THE COURT: No. I'm going to permit the
15 question. If she has any thought in her mind, then she
16 can express it. If she doesn't, she just says I really
17 haven't thought about it.

18 A. I've never been in this situation, so I really
19 haven't given it much thought.

20 Q. And I don't mean to put you on a hot seat. And
21 there are no right or wrong answers. And even if the
22 answer is, you know, I really don't have an opinion about
23 that, that's a fair answer to. If you don't understand
24 any of my questions, just let me know.

25 A. Okay.

1 Q. I really don't want to put you on a hot seat. Would
2 things about the defendant and his background -- would
3 that be relevant in fixing the punishment for murder to
4 you?

5 A. I don't think so.

6 Q. Okay. Because what's relevant is sort of the facts
7 of the case and how bad the killing is, for you?

8 A. That's my understanding.

9 Q. Okay. What I want to do now is talk to you a little
10 bit about publicity. Have you heard or read anything?

11 A. No.

12 Q. Okay. And capital cases -- a capital case, as the
13 Judge said, is different. It's unique in many, many
14 ways. And one of the ways is because it's the only case
15 in South Carolina where the jury has the opportunity to
16 fix punishment. Okay? And I want to talk to you a
17 little bit about that. First off, no -- a murder case
18 just by itself is never eligible for the death penalty.
19 Did you know that?

20 A. No.

21 Q. Okay. Only when the State can prove aggravating
22 evidence, something that makes the case worse than a
23 regular murder. And that can be a number of things like
24 child victim, killing an officer in the line of duty, a
25 rape murder case. That sort of thing. Only when they

1 bring that kind of aggravation forward and the whole
2 jury, all twelve, find that that aggravation exists
3 beyond a reasonable doubt, only then does the jury even
4 start to consider the death penalty. Did you know that?

5 A. No.

6 Q. Okay. If you were at work at the water cooler and
7 somebody said, you know, I think there's some cases which
8 should be pretty much automatic for the death penalty,
9 any category of case come to your mind?

10 A. Serial killings.

11 Q. That would be one?

12 A. I think so.

13 Q. Okay.

14 MR. MCGUIRE: Judge, I would renew my motion to
15 ask one through six based on that answer.

16 THE COURT: Well, inasmuch as -- well, I'm just
17 going to deny your motion based on my prior rulings.

18 MR. MCGUIRE: Yes, sir, I appreciate it.

19 THE COURT: That would include the content of
20 the question. Very good.

21 MR. MCGUIRE: Yes, sir. Thank you very much.

22 Q. And I'm going to go -- I'm going to go backwards.
23 And I want to put you back on a jury. This is the jury
24 box over here. I want to put you on the jury and kind of
25 walk you through these steps. And the first part of the

1 trial is over. And that's the part of the trial, did the
2 person commit murder or not, did he do it, is he guilty
3 or not. And that part of the trial is over, and now
4 you're coming into the sentencing phase with you and
5 eleven other people on the jury.

6 The State brings forward that aggravation evidence,
7 and all twelve, as I said earlier, would have to agree
8 beyond a reasonable doubt that the aggravation evidence
9 existed. And then the decision as to what penalty is
10 appropriate only after finding the aggravation evidence
11 do you begin that journey. And capital cases are
12 different from all other cases and that the State is only
13 entitled to a death verdict if all twelve jurors agree
14 that that's the appropriate verdict.

15 And for a life verdict, it doesn't have to be so.
16 The jury can agree to disagree. They can come back into
17 court and say, you know what, we just couldn't agree.
18 And the judge will take the case away and sentence, will
19 take it away from the jury. Is that a principle you're
20 comfortable with?

21 A. Yes.

22 Q. Okay. It seems like you're pretty unfamiliar with
23 this. And again, if you need to ask me any questions,
24 just go ahead. Okay?

25 A. Okay.

1 Q. But the reason that I bring that up is because a lot
2 of people, when they come to court, they think that when
3 jury's are debating an issue that they have to decide it
4 one way or the other, all twelve agreeing. And that's
5 just not the case. Okay? In fact, the way it's
6 described in the law is that each individual juror's
7 decision is their own individual moral judgment based on
8 their walk in life, their view of the whole case. And
9 they're all entitled to have that individual moral
10 judgment. In fact, the law says if it would do harm to
11 their conscience to change their decision, their moral
12 judgment, that would be wrong. Is that a principle
13 you're comfortable with?

14 A. Yes.

15 Q. And you'd want your opinion respected?

16 A. Yes.

17 Q. And you'd respect everybody else's?

18 A. Yes.

19 Q. And you know, the State and the Defense are entitled
20 to fairness, not just out here in the courtroom, but
21 everybody's entitled to fairness in the jury room too
22 including the jurors. And if things got beyond civil,
23 polite discourse, and things got unfair, could we count
24 on you to send a note out to the judge just saying things
25 aren't fair in here?

1 A. Yes.

2 MR. MCGUIRE: Judge, if I could have just one
3 second.

4 THE COURT: Certainly.

5 (Off record discussion)

6 Q. I'm pretty sure I asked this. But sometimes I
7 forget what I've asked. Did I ask you have you heard or
8 read anything about the case?

9 A. Yeah, you asked me and I said no.

10 Q. I'm going to blame that on my co-counsel's bad ears.
11 Thank you, ma'am.

12 THE COURT: All right. Madam Solicitor?

13 MS. ADAMS: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. ADAMS:

16 Q. Good afternoon. How are you? I'm Chrissy Adams,
17 and I'm the Solicitor for the Tenth Circuit. And I know
18 you've probably never sat in that chair before. And it
19 is quite all right. We understand that you are nervous.
20 I just want to make sure you understand that there are no
21 right answers and there are no wrong answers. What the
22 purpose of us talking to you today is just to ensure that
23 you can follow the Judge's instructions as he gives them
24 which basically means if you can do that, then you can be
25 fair not only to the Defendant, but to the State as well.

1 And can you -- are you able to follow the Judge's
2 instructions as he gives them to you?

3 A. Yes, ma'am.

4 Q. Okay. We talked a little bit about earlier to make
5 sure you understand about murder, what murder is and what
6 the State has to prove for a certain murder to be
7 eligible for the death penalty, because not all are
8 eligible. Okay? And we do have to prove to you beyond a
9 reasonable doubt that there is some sort of aggravation.
10 And once you unanimously, if you were on the jury, find
11 an aggravation, then you'll decide if a sentence of death
12 is appropriate or a sentence of life is appropriate.
13 Okay?

14 Assuming we reach the second phase of that trial --
15 in other words, the jury has found the defendant guilty
16 of murder and we get to sentencing -- will you want to
17 hear all the evidence? And when I say all the evidence,
18 not only aggravation, but the Defense may put up some
19 sort of mitigation evidence. In other words, try to
20 lessen the crime to get a verdict of life without parole.
21 Would you want to listen to all of that evidence before
22 you make a decision as to life or death?

23 A. I don't know.

24 Q. Well, that's okay. That's okay. When you say you
25 don't know, let me ask you this. Do you consider

- 1 yourself to be a fair person?
- 2 A. Yes.
- 3 Q. Okay. Do you like to hear the whole story before
- 4 you make a decision?
- 5 A. Yes.
- 6 Q. Okay. It's kind of the same principle.
- 7 A. Okay.
- 8 Q. In other words, once you find an aggravating
- 9 circumstance, if the jury does find an aggravating
- 10 circumstance that makes it eligible, my basic question
- 11 would be would you automatically vote for life or
- 12 automatically vote for death, or would you wait till you
- 13 hear all of the evidence before you decide?
- 14 A. (No verbal response)
- 15 Q. It's okay. There are no right or wrong answers.
- 16 A. I know. It's -- it just depended on what it was.
- 17 Q. It would depend on the circumstances of the crime
- 18 itself?
- 19 A. Yes. I mean, everything, I guess, you'd hear up to
- 20 that point.
- 21 Q. Right. But the Judge is going to instruct you that
- 22 you have to listen to aggravation and mitigation before
- 23 making, if any ---
- 24 A. Oh, I mean, if that's the instruction, yes.
- 25 Q. --- before making a decision. That's going to be

1 the instruction.

2 A. Yes, I would absolutely listen to everything.

3 Q. Okay.

4 A. I'm sorry.

5 Q. So if the Judge ---

6 A. I thought like we could ask to see that. Okay. So,
7 yes, I would want to hear everything.

8 Q. I'm so sorry. No, no, no. It will be that ---

9 THE COURT: Let her finish her answer.

10 THE POTENTIAL JUROR: Oh, I'm sorry.

11 THE COURT: No, you're doing fine. The
12 attorneys know that we only have one person to take down
13 everything. So you -- once you answer a question, you
14 have an opportunity to explain your answer.

15 THE POTENTIAL JUROR: Okay. Okay.

16 THE COURT: And we'll wait to ask a question.

17 MS. ADAMS: Yes, sir.

18 THE COURT: Thank you.

19 MS. ADAMS: Thank you, Judge.

20 THE POTENTIAL JUROR: Yes, sir.

21 Q. I apologize for not being clear. The Judge will
22 instruct you that you must consider all the aggravation
23 and all that mitigation, if any, before rendering a
24 decision about life or death. Can you do that?

25 A. Yes, absolutely.

- 1 Q. Absolutely? Okay.
- 2 Now, if you determine on the jury, if the jury
- 3 determines that the death penalty is appropriate, each
- 4 and every juror will have to sign their name to a
- 5 sentence form which is basically what the State uses to
- 6 carry out the execution of the defendant. That is what
- 7 allows us to kill the defendant. Okay? And that is
- 8 public record. Would you be able to sign your name along
- 9 with the eleven other jurors on that piece of paper?
- 10 A. Yes.
- 11 Q. You wouldn't have any problem doing that?
- 12 A. Not if that's what the law requires.
- 13 Q. The law would require that. But ---
- 14 A. Oh -- No, I would do what I was ...
- 15 Q. Okay. And do you understand too that deliberation
- 16 is a give-and-take and that once you are back there, if
- 17 you are chosen on the jury, that the process in and of
- 18 itself includes listening to everybody's opinions and
- 19 weighing those opinions in order to come to a decision?
- 20 A. Yes.
- 21 Q. Okay. And the Judge will instruct you that the law
- 22 does require a unanimous verdict for a death verdict to
- 23 be imposed. And you understand that ---
- 24 A. Yes, ma'am.
- 25 Q. --- and you can follow his instructions?

1 A. Yes.

2 Q. Okay. I have no questions. Thank you so much.

3 THE COURT: Anything from the Defendant?

4 MR. MCGUIRE: Just a small legal matter, Judge.

5 THE COURT: Anything from the State?

6 MS. ADAMS: No, sir.

7 THE COURT: All right. Very good.

8 If you'll step out with the bailiff just for a
9 moment. I need to hear some matters from the attorneys.

10 (WHEREUPON, Potential Juror 135 exited the
11 courtroom.)

12 THE COURT: Mr. McGuire?

13 MR. MCGUIRE: Judge, I just move to strike her
14 for cause based on her response to the question regarding
15 any types of cases in your view should be pretty much
16 automatic for the death penalty. The only one -- the
17 only type of case she could come up with would be like a
18 serial type killing. And of course, we have -- this is a
19 murder then murder case plus a statement of six others.
20 So specifically with this juror, I think it would be
21 necessary to go into the fact of could she, in that kind
22 of case, fairly consider mitigation and a life sentence.
23 So based on the fact -- based on those facts ---

24 THE COURT: Then why didn't you ask her?

25 MR. MCGUIRE: --- I would move for cause.

1 Thank you.

2 THE COURT: Why didn't ask that?

3 MR. MCGUIRE: I mean, that would be the -- that
4 would be number one on my list.

5 THE COURT: No, sir. Number one on your list
6 is the number one you asked.

7 MR. MCGUIRE: I'm sorry?

8 THE COURT: Essentially your question -- the
9 first question you asked the lady, the juror, was all
10 murders are intentional, done with malice, black heart.
11 Would death be appropriate? You didn't say anything
12 about mitigation or aggravation or anything else. Later
13 you did go down -- and this is where I have a problem
14 with your six questions. Later you went down and said --
15 and this is after you've gone through the whole thing,
16 would background be relevant for fixing punishment.
17 Didn't mention that there were mitigating circumstances
18 to be considered such as anything else. And it was her
19 response, not -- that is my understanding, because nobody
20 told her that it would be. Her understanding from your
21 questions after that point that if you got murder, then
22 death is to be considered and background is not relevant.
23 However, after you asked that question, then you were
24 kind enough to say, under our law not all murder cases
25 are eligible for the death sentence. Only under certain

1 circumstances.

2 Now, if you had asked the question completely as you
3 did ultimately, then perhaps -- what is it -- you would
4 have. But I don't think that taking a person's lack of
5 understanding as an admission of a particular view is
6 appropriate in this particular -- with this particular
7 juror. In fact -- what is it -- when the State asked --
8 it says, it just depends on everything you hear up until
9 that point. And that's all we ask for a jury. Because
10 obviously they're only going to hear what's relevant and
11 admissible, not anything that won't help them in their
12 judgment.

13 MR. MCGUIRE: I appreciate the Court's
14 position. Thank you.

15 THE COURT: I understand. But I do decline to
16 disqualify her.

17 MR. MCGUIRE: Yes, sir. If I could just be
18 preserved on the record based on my prior ---

19 THE COURT: Exactly.

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: Please understand that as far as
22 the Court's concerned, it is continuing without -- and
23 I'm instructing that the Defendant should -- what is it
24 -- accept that as protecting the record unless they're
25 going to offer something new. All right. Very good.

1 Ask the juror to join us, please.

2 MR. MCGUIRE: Thank you, sir.

3 THE COURT: Do you have anything from the
4 State?

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

6 THE COURT: Very good.

7 (WHEREUPON, Potential Juror 135 entered the
8 courtroom.)

9 THE COURT: All right. In considering the
10 entire voir dire, which are these questions we've been
11 asking as well as your questionnaire, I find that Juror
12 135 will be fair, unbiased, impartial and able to carry
13 out the law as explained to her. Furthermore, I find
14 that the juror's belief or attitudes toward the death
15 penalty would not prevent or substantially impair the
16 performance of her duties as a juror in accordance with
17 the law, the Court's instructions and the juror's oath.

18 So therefore, I find that you are qualified as a
19 juror in this case. However, this process of qualifying
20 -- we'll be qualifying probably sixty or seventy jurors
21 in order to have a pool from which the eighteen will be
22 drawn that will actually sit on the case. It will take
23 some time. So I'm going to -- now, you have given your
24 telephone number to the Clerk?

25 THE POTENTIAL JUROR: Yes, sir.

1 THE COURT: All right. So when the process of
2 qualifying jurors for the panel is complete, then you'll
3 get a call to report again for that time. All right?

4 THE POTENTIAL JUROR: Yes, sir.

5 THE COURT: Very good. Until then you are free
6 to do what ever you'd like to do ---

7 THE POTENTIAL JUROR: Thanks.

8 THE COURT: --- or must do.

9 THE POTENTIAL JUROR: Thank you.

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

11 (WHEREUPON, Potential Juror 135 exited the
12 courtroom.)

13 THE COURT: All right. Is there anything on
14 Juror 141?

15 MS. ADAMS: No, sir, Your Honor, not that we're
16 aware of.

17 THE COURT: Anything from the Defendant?

18 MR. MCGUIRE: Not that I can read on this
19 paper, Judge.

20 THE COURT: All right.

21 Ask the juror to join us.

22 (WHEREUPON, Potential Juror 141 entered the
23 courtroom.)

24 THE COURT: All right. Are you Juror 141?

25 THE POTENTIAL JUROR: 141.

1 **POTENTIAL JUROR 141,**

2 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

3 EXAMINATION

4 BY THE COURT:

5 Q. You will recall on Monday I put all of the jurors
6 under oath. Now, do you understand that you're still
7 under oath and this oath continues throughout this
8 process?

9 A. Yes, I do.

10 Q. You were furnished a witness list or a witness list
11 was there in the jury room. Did you have an opportunity
12 to look over that witness list?

13 A. Yes.

14 Q. Do you understand these are just potential
15 witnesses? They may be called, but they do not have to
16 be called.

17 A. Uh-huh (affirmative).

18 Q. Did you recognize any names on that list that may be
19 related to you by blood or marriage, close personal
20 friends, business associate or any other relationship
21 that you may have with any of the names on the list?

22 A. No. The only one I recognized was Greg Shore who I
23 met at a party one time.

24 Q. All right. I think he's the coroner?

25 A. Coroner, correct.

1 Q. All right. If he should be a witness in this case,
2 would that in any way affect your ability to give both
3 the State and the Defendant a fair and impartial trial?

4 A. No.

5 Q. Very good. Do you also recall my instructions from
6 Monday to avoid all forms of media coverage dealing with
7 this case?

8 A. Yes.

9 Q. Has this caused any problem for you?

10 A. No.

11 Q. Now, the trial of this case will last approximately
12 ten days to two weeks when we finally began the trial.
13 Other than personal inconvenience, would this pose a
14 serious danger to the health or well-being of yourself or
15 anyone who is dependent upon you?

16 A. No. The only thing I have scheduled is babysitting
17 grandchildren. My daughter might not be happy. But no,
18 the answer is no.

19 Q. All right. Thank you, sir. Among other things
20 we'll be talking about penalty today. But the mere fact
21 that we talk about penalty does not indicate anything
22 about this Defendant or any defendant. Defendants are
23 presumed to be innocent under our law. Do you understand
24 that?

25 A. Yes.

1 Q. If you were a juror in a criminal case, could you
2 listen to the law, accept and apply that law as I would
3 instruct you as the Judge of this court, and even though
4 you may not agree with that law or think it ought to be
5 some other way, could you accept and apply the law as I
6 instruct you?

7 A. Yes.

8 Q. Could you decide this case based solely on the
9 evidence presented in this courtroom and disregard
10 anything you may have heard, read or seen about this
11 case?

12 A. Yes, I could.

13 Q. In a criminal case, the State has the burden of
14 proving guilt of the defendant beyond a reasonable doubt.
15 A defendant has no burden to prove innocence at all. In
16 fact, he does not even have to testify or offer evidence
17 in any way. The burden of proof is entirely upon the
18 State. Do you understand that?

19 A. I understand.

20 Q. Could you, depending on the facts and evidence and
21 the law as I would instruct it to you in a particular
22 case, find a defendant either guilty or not guilty?

23 A. Yes.

24 Q. If you were a juror in a death penalty case and the
25 jury had found the defendant guilty of murder, you would

1 then move to the sentencing phase of the trial. Do you
2 understand that?

3 A. Yes, I do.

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 -- is seeking the death penalty. Do you understand
8 this?

9 A. Yes.

10 Q. A death penalty trial is divided into two parts.
11 Part one is the guilt phase where a jury determines
12 whether the defendant is guilty or not guilty of murder.
13 Part two is the sentencing phase where a jury determines
14 the appropriate punishment. Of course, if the defendant
15 is found not guilty in part one, that ends the matter and
16 there would be no part two. Do you understand this?

17 A. Uh-huh (affirmative).

18 Q. Therefore, if you were a juror in the trial of a
19 capital case where the jury in phase one of the trial has
20 found the defendant guilty of murder, you would then move
21 to phase two of the trial which is called the sentencing
22 phase of the trial. Do you understand this?

23 A. Yes, I do.

24 Q. Now, if you were a juror in the sentencing phase --
25 that is phase two of a capital murder trial, again, where

1 a jury has already found a defendant guilty of murder --
2 do you understand that the jury rather than the judge
3 determines the sentence that the defendant will receive
4 for the crime of murder?

5 A. Yes, I do.

6 Q. In a capital sentencing trial, the jury's function
7 is to determine the appropriate punishment based upon the
8 circumstances of the crime and the characteristics of the
9 individual defendant. Do you understand that?

10 A. Uh-huh (affirmative).

11 Q. Now, aggravating circumstances are facts or details
12 that when they are present in a case make the crime of
13 murder more serious or worse. On the other hand,
14 mitigating circumstances are incidents, occurrences or
15 details of a case that would reduce the severity of the
16 crime of murder. In other words, may reduce the degree
17 of responsibility for the crime. Do you understand this?

18 A. Uh-huh (affirmative).

19 Q. Do you also understand that the jury has two options
20 to consider regarding the sentence for murder? Option
21 one is life imprisonment. And under South Carolina law,
22 life imprisonment is life until the death of the
23 defendant without parole. Do you understand?

24 A. Yes.

25 Q. And the other option is death, which in this state

1 is by electrocution or lethal injection. Do you
2 understand that?

3 A. Yes, I do.

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?

8 A. Could I?

9 Q. Yes, sir.

10 A. Yes, I could.

11 Q. On the other hand, as a juror in the sentencing
12 phase, depending upon the facts including the relevant
13 aggravating and mitigating circumstances and the law as I
14 instruct it to you, could you render a sentence of death?

15 A. Yes, I could.

16 Q. All right. If you would, please, sir, answer any
17 questions the attorneys may have.

18 DIRECT EXAMINATION

19 BY MR. MCGUIRE:

20 Q. Good afternoon ---

21 A. How you doing?

22 Q. --- Juror Number 141. I've got to refer to you by
23 number which is a little awkward.

24 A. That's fine.

25 Q. It's a little awkward for me. I'm not being

1 disrespectful or not polite.

2 A. I understand.

3 Q. I see on your questionnaire that you're also
4 Catholic ...

5 A. Correct.

6 Q. ... and attend weekly. Any religious, moral issues
7 with contemplating a life penalty or a death penalty?

8 A. For me, no.

9 Q. Okay. What I want to do now is ask you a little bit
10 about publicity. Hear anything, see anything about the
11 case, read anything?

12 A. No. When I did turn on my computer yesterday, I did
13 see it was an article on there that there was a case in
14 Anderson. That's the only thing I really knew about it.

15 Q. Basically said something like the trial starts or
16 something like that?

17 A. Correct.

18 Q. Okay. You didn't take any information ---

19 A. No, I didn't read it.

20 Q. Okay. The Judge gave you some general principles
21 and kind of a framework. And I want to talk to you in a
22 little bit more detail, if I could, about your feelings
23 about the death penalty punishment for murder. It's a
24 little awkward for me because we haven't had a trial yet,
25 but this is my only opportunity to talk to you about it.

1 A. I understand.

2 Q. Okay. And I'm going to start with the definition of
3 murder in South Carolina. Most folks seem to get their
4 knowledge of crime, the legal system, from TV, books and
5 that sort of thing. Is it fair to put you in that
6 category?

7 A. Uh-huh (affirmative).

8 Q. Okay. You don't happen to know the legal
9 definition of murder in South Carolina?

10 A. No, I don't.

11 Q. Okay. The judge would instruct you that murder in
12 South Carolina is the killing unlawfully of another human
13 being with malice aforethought. It's called malice
14 murder. And it means that the killer operated with a
15 black and malignant heart fatally bent on evil and
16 intentionally, deliberately took an innocent life. Just
17 knowing that, what's your -- what are your feelings about
18 the death penalty as the appropriate punishment for that
19 kind of malice murder?

20 A. Repeat -- say that again for me.

21 Q. Just knowing that definition that I gave you ---

22 A. Uh-huh (affirmative).

23 Q. --- just a case of malice murder, what are your
24 thoughts about the death penalty as the appropriate
25 punishment for that kind of intentional killing?

1 A. I think if it was a violent crime, I could -- I
2 could go -- I could vote -- I could agree with the death
3 penalty, yeah.

4 Q. Okay. Could a life in prison penalty ever be severe
5 enough to punish that kind of intentional killing?

6 A. I think in certain cases it probably could be, yes.

7 Q. Okay. And one thing ---

8 A. Without knowing the facts, it's a hard question to
9 answer.

10 Q. In the abstract, it's a very hard question to
11 answer. I agree with you, sir. And I'm going to do my
12 best to be as specific as we can. With regard to factors
13 about the defendant, maybe his life, his background, his
14 upbringing, would those factors be relevant in fixing
15 punishment in a murder case, or would the facts of the
16 case ---

17 A. I think they would be relevant, yes.

18 Q. Okay. And what I want to do now is talk to you
19 briefly about sentencing and how that works in a capital
20 case. It's completely different from any other case that
21 we have in the legal system because it's the jury that
22 fixes punishment. And not every murder is eligible for
23 the death penalty. It has to be murder plus an
24 aggravating circumstance.

25 A. Uh-huh (affirmative).

1 Q. And that can be all kinds of things. It could be
2 shooting of an officer in the line of duty, a child
3 victim, a rape murder, that sort of thing. Are there any
4 categories of cases that you would find that would
5 automatically deserve the death penalty?

6 MS. ADAMS: Your Honor, he's calling for a
7 hypothetical. He's not giving the whole picture.

8 THE COURT: Again, not all category of cases
9 are subject to the death penalty in South Carolina.

10 MR. MCGUIRE: Sure.

11 THE COURT: So I don't know if that's an
12 appropriate question, so I'm going to ask you to restate
13 it.

14 Q. Are there any types of aggravating murders involving
15 -- or any kind of category of murder that might involve
16 an aggravating circumstance that in your view would be
17 basically an automatic death penalty case?

18 MS. ADAMS: Your Honor, I think it's the same
19 question. He's trying to stake out the juror.

20 THE COURT: Well, again, I understand. Go
21 ahead and ask the question. We need to move on.

22 THE POTENTIAL JUROR: Answer the question?

23 Q. Please

24 THE COURT: Yes, sir, if you can. You didn't
25 come in here prepared to answer these abstract questions.

1 A. The only thing that would immediately come into my
2 mind would be the death of a, you know, law enforcement
3 official.

4 Q. Okay.

5 A. I think it would ---

6 Q. Just off the top of your head, that's the only
7 category ---

8 A. A violent crime would probably ---

9 Q. --- sure ---

10 A. --- be put that in that category, yes.

11 Q. Okay. Fair enough. And again, regarding sentencing
12 -- sentencing in a capital case, it's completely
13 different than other cases. I'm going to kind of walk
14 you through the procedure, and I'm going to ask you if
15 you're okay with some principles of law and if you could
16 follow these principles of law. And first off is, again,
17 not every case is eligible for the death penalty. The
18 State has to -- after the first part of the trial which
19 is guilt or innocence, did the fellow do it, is he
20 guilty. That part's already done. I'm going to kind of
21 put you in the frame of mind of being on the jury now and
22 you're beginning your journey into the sentencing phase
23 of the trial.

24 A. Uh-huh (affirmative).

25 Q. The State first has to bring forward aggravation

1 evidence. Each juror has to find it and agree that it
2 exists beyond a reasonable doubt, and you have to all
3 agree. Beyond a reasonable doubt is the highest standard
4 in law.

5 And it's completely different for the Defense side
6 or the mitigation side. Mitigation evidence is any
7 reason to vote for a sentence less than death. And the
8 Judge will tell you that it can be -- mitigation evidence
9 can be -- or a reason to vote for death can be any
10 reason, no reason, mercy or any piece of evidence you
11 find that warrants a life sentence. And the jury doesn't
12 have to agree on that. They can all be individual in
13 their point of view.

14 So we have sort of a dichotomy where for the State
15 they all have to be unanimous in finding aggravation, but
16 you don't have to be unanimous in deciding what
17 mitigation evidence or what reason would warrant saving
18 somebody's life. Is that a principle you're okay with?

19 A. Uh-huh (affirmative).

20 Q. You can follow that principle?

21 A. Yes.

22 Q. The way it's described in the law is that each
23 individual's decision in a sentencing case, a capital
24 case, is an individual moral judgment. Is that a
25 principle that you can respect?

1 A. Yes.

2 Q. And again, there's no need for unanimity or
3 consensus with regard to mitigation evidence. And again,
4 you're okay with that?

5 A. Uh-huh (affirmative).

6 Q. Okay. The issue of fairness exists in every
7 criminal trial. But in a capital trial, it's even more
8 important. The State's entitled to fairness, and we are
9 entitled to fairness not just out here in the courtroom,
10 but everybody's entitled to fairness in the jury room too
11 including you jurors. And if things got beyond civil
12 polite discourse in deliberations, could we count on you
13 to send a note out to the Judge maybe saying, you know
14 what, things aren't fair in here, it's getting unfair,
15 could we count on you to do that?

16 A. Of course.

17 Q. And you would want your individual moral judgment to
18 be respected?

19 A. No one's going to change my mind.

20 Q. It doesn't seem like it to me either.

21 And with regard to sentencing cases, it's okay for
22 the jury to end the day agreeing to disagree, and the
23 case will end. If the jury can't agree on sentence, life
24 or death, they can come in and say, we just can't agree.
25 The judge will take the case and sentence. Is that a

1 principle you're okay with?

2 A. That's fine.

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

4 A. Okay.

5 THE COURT: Solicitor?

6 MS. ADAMS: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. ADAMS:

9 Q. Good afternoon. How are you?

10 A. Fine.

11 Q. Good. I'm Chrissy Adams. I'm the Solicitor for the
12 Tenth Circuit. I see you looking at that clock. I'm not
13 going to keep you long. How's that?

14 A. That's fine.

15 Q. I just want to ask a few follow-up questions because
16 this is not only very important to the Defense, but it's
17 important to the State as well. And we just want to
18 ensure that all jurors who end up that box can be fair to
19 both the Defendant and to the State.

20 A. I understand.

21 Q. Okay. And in order to do that, I want to make sure
22 that as long as the Judge instructs you that if the --
23 let's -- we've gotten past guilt. We're kind of putting
24 the cart before the horse here. If -- he's presumed
25 innocent. But once the jury has already determined

1 unanimously that he is guilty of murder, we get to the
2 second stage. And I'm sure you probably understand all
3 this.

4 A. I understand.

5 Q. Okay. And then we have to prove an aggravating
6 circumstance beyond a reasonable doubt. When the Judge
7 instructs you that you must consider all the evidence,
8 the aggravation and the mitigation, if any, before coming
9 to a decision, can you do that?

10 A. Yes, I can.

11 Q. Okay. So you will want to listen to the mitigation
12 before you make a decision, if any?

13 A. Of course.

14 Q. Okay. I do have one question about what you
15 answered on your questionnaire about the trials that you
16 followed and that you didn't agree with the verdicts.
17 You put down O.J. Simpson and Susan Smith. Can you tell
18 me about those?

19 A. Well, I think O.J. Simpson -- I think they just --
20 from watching it on television, it looked like he was
21 guilty.

22 Q. How about Susan Smith? What didn't you agree with
23 that?

24 A. She killed two children.

25 Q. So do you feel her punishment was not appropriate or

1 ---

2 A. I don't think her punishment was appropriate.

3 Q. Okay. Now, once or if the jury comes back and
4 determines that a death sentence is appropriate, every
5 juror will be required to write his or her name down on
6 that sentence sheet. And that is what the State uses to
7 go forward and actually execute a defendant, this
8 Defendant. Would you be able to sign your name to that
9 public record?

10 A. Sure.

11 Q. Okay. You'd have no problem with that?

12 A. No.

13 Q. I don't have anything else. Thank you very much.

14 THE COURT: All right. Anything further from
15 the Defendant?

16 MR. MCGUIRE: Just one or two follow-up
17 questions, Judge, if I could.

18 REDIRECT EXAMINATION

19 BY MR. MCGUIRE:

20 Q. Now, you indicated that the punishment in Susan
21 Smith was not appropriate to kill two children. I took
22 from that to mean that the punishment was not as severe
23 as it should have been for killing two children.

24 A. From what I saw on the television.

25 Q. Sure. And it seems like the two factors that you're

1 putting it on is the number two, she killed two people,

2 and ---

3 A. The factor is that she -- it's seemed like she

4 planned that murder -- she planned to kill her children.

5 Q. So it was the substantial planning that ---

6 A. Right.

7 Q. And so in a case where there is substantial

8 planning, would death penalty always be the appropriate

9 punishment?

10 A. No.

11 Q. Okay. The fact that she had -- it was two, does the

12 number two, the multiple ---

13 A. The children had a lot to do with it.

14 Q. Okay. The fact they were children?

15 A. Correct.

16 Q. Is there anything about the fact that she killed two

17 people that makes it appropriate for the death penalty?

18 A. No.

19 Q. Okay. Thank you, sir.

20 THE COURT: All right. Anything more from the

21 Defendant?

22 MR. MCGUIRE: Oh, I'm sorry. No, Your Honor.

23 THE COURT: From the State?

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

25 THE COURT: All right. I find that considering

1 the entire voir dire that Juror 141 will be fair,
2 unbiased, impartial and able to carry out the law as
3 explained to him. Furthermore, I find that the juror's
4 beliefs or attitudes towards the death penalty would not
5 prevent or substantially impair the performance of his
6 duties as a juror in accordance with the law, the Court's
7 instructions and the juror's oath.

8 Therefore, you are qualified as a juror in this
9 case. As you can tell, the jury qualification process is
10 going to take some time, so it's going to be several days
11 before we will actually be able to do that. The Clerk of
12 Court does have your telephone number?

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: All right. So she'll be getting in
15 touch with you. Until that time, you're free to do
16 whatever you can do or want to do or must do. But you
17 will not have to respond until you get a telephone call.
18 Do you understand?

19 THE POTENTIAL JUROR: Will that be some time
20 next week or ---

21 THE COURT: I would -- right, considering how
22 we're going, it might be next week sometime. I'm sorry.
23 I wish I could be more encouraging. But the thing is
24 once we impanel the jury, then we'll start the trial.
25 And then it will go usually from about nine o'clock in

1 the morning or till about five in the afternoon, so
2 you'll have the evenings as well.

3 THE POTENTIAL JUROR: Okay.

4 THE COURT: But it probably will be next week
5 before you get the call. Very good. I'm looking forward
6 to working with you.

7 THE POTENTIAL JUROR: All right.

8 THE COURT: Thank you very much.

9 (WHEREUPON, Potential Juror 141 exited the
10 courtroom.)

11 THE COURT: All right, 147. I think that's the
12 last one of the afternoon -- I mean, the first panel in
13 the afternoon. Anything on 147 from the ---

14 MS. ADAMS: Oh, Your Honor, just so you know,
15 we have pending neglect charges on his son. I wanted to
16 make sure.

17 MR. MCGUIRE: I'd like to voir dire the juror,
18 please.

19 THE COURT: All right. But again, I think with
20 pending charges on a close family member, that could
21 create some problem. But I'll give you the voir dire.
22 Do my voir dire or yours?

23 (Laughter)

24 THE COURT: In other words, do you want to ask
25 questions in addition, or is mine enough to get him on

1 the record? Well, we'll see. We'll see.

2 MR. MCGUIRE: Okay.

3 THE COURT: Okay. Ask 147 to join us, please.

4 (WHEREUPON, Potential Juror 147 entered the
5 courtroom.)

6 THE COURT: All right. Are you Juror 147?

7 THE POTENTIAL JUROR: Yes, sir.

8 **POTENTIAL JUROR 147,**

9 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

10 EXAMINATION

11 BY THE COURT:

12 Q. You will recall on Monday I put all of the jurors
13 under oath. Now, do you understand that you're still
14 under oath and that oath continues throughout these
15 proceedings?

16 A. Yes, sir.

17 Q. All right. I think when you came to the jury room
18 this afternoon, there was a list of potential jurors in
19 this case. Did you have an opportunity to review it?

20 A. Yes, sir.

21 Q. Did you see any names on that list or did you
22 recognize any names that you might be related to by blood
23 or marriage, close personal friends, business associates
24 or have any relationship whatsoever?

25 A. No, sir.

1 Q. Do you also recall my instructions from Monday to
2 avoid all forms of media coverage dealing with this case?

3 A. Yes, sir.

4 Q. Has this caused you any problem?

5 A. No, sir.

6 Q. All right. The trial of the case will last
7 approximately ten days to two weeks once it's underway.
8 Other than the personal inconvenience, would this pose a
9 serious danger to the health or well-being of yourself or
10 anyone who is dependent upon you?

11 A. No, sir.

12 Q. Among other things, we'll be taking -- we'll talking
13 about penalty today. But the mere fact that we talk
14 about the penalty does not indicate anything about the
15 Defendant or -- this Defendant or any defendant.
16 Defendants are presumed under the law to be innocent. Do
17 you understand this?

18 A. Yes, sir.

19 Q. If you were a juror in a criminal case, could you
20 listen to the law, accept and apply that law as I would
21 instruct you as the Judge even though you may not agree
22 with that law or you think it ought to be some other way?

23 A. Yes, sir.

24 Q. Could you decide this case based solely and only the
25 evidence presented in this courtroom and disregard

1 anything you may have heard, read or seen about the case?

2 A. Yes, sir.

3 Q. In a criminal case, the State has the burden of
4 proving the -- excuse me -- in a criminal case, the State
5 has the burden of proving guilt beyond a reasonable
6 doubt. A defendant has no burden to prove innocence
7 whatsoever and does not even have to testify or offer
8 evidence. Do you understand that?

9 A. Yes, sir..

10 Q. Could you, depending upon the facts and evidence and
11 the law as I would instruct you in a particular case,
12 find a defendant either guilty or not guilty?

13 A. I'm not sure I understood that one, sir.

14 Q. Could you, depending upon the facts and the evidence
15 in a particular case and the law as I would instruct you
16 in that particular case, find a defendant either guilty
17 or not guilty?

18 A. Yes, sir.

19 Q. If you were a juror in a death penalty case and if
20 the jury found the defendant guilty of murder, you would
21 then move to the sentencing phase of the trial. Do you
22 understand this?

23 A. Yes, sir.

24 Q. When you hear us refer to a capital case or a death
25 penalty case, what we mean is that it is a criminal

1 murder trial where the prosecutor -- in other words, the
2 State -- is seeking the death penalty. Do you understand
3 this?

4 A. Yes, sir.

5 Q. A death penalty trial is divided into two parts.

6 Part one is the guilt phase where a juror -- a jury
7 determines whether the defendant is guilty or not guilty
8 of murder. Part two is the sentencing phase where a jury
9 determines the appropriate punishment. Of course, if the
10 defendant is found not guilty, that ends the matter.

11 Therefore, if you were a juror in the trial of a capital
12 case where the jury in phase one of the trial has found
13 the defendant guilty of murder, you would then move on to
14 phase two of the trial which is called the sentencing
15 phase of the trial. Do you understand this?

16 A. Yes, sir.

17 Q. Now, if you were a juror in the sentencing phase --
18 that is, phase two of a capital murder trial, again,
19 where a juror -- a jury has already found the defendant
20 guilty of murder -- do you understand that the jury
21 rather than the judge determines the sentence that the
22 defendant will receive for the crime of murder?

23 A. Yes, sir.

24 Q. In a capital sentencing trial, the jury's function
25 is to determine the appropriate punishment based upon the

1 circumstances of the crime and the characteristics of the
2 individual defendant. Do you understand that?

3 A. Yes, sir.

4 Q. Now, aggravating circumstances are facts or details
5 that, when they are present in a case, make the crime of
6 murder more serious or worse. On the other hand,
7 mitigating circumstances are incidents, occurrences or
8 details of a case that would reduce the severity of the
9 crime of murder. In other words, may reduce the degree
10 of responsibility for the crime. Do you understand this?

11 A. Yes, sir.

12 Q. Do you also understand that the jury has two options
13 to consider regarding the sentence for murder? One
14 option is life imprisonment. That is in South Carolina,
15 life imprisonment is life until the death of the
16 defendant without parole. Do you understand that?

17 A. Yes, sir.

18 Q. The other option is death which in this state is by
19 electrocution or lethal injection. Do you understand
20 that?

21 A. Yes, sir.

22 Q. Could you, as a juror in the sentencing phase,
23 depending upon the facts including relevant aggravating
24 and mitigating circumstances and the law as I instruct it
25 to you, render a sentence of life imprisonment?

1 A. Yes, sir.

2 Q. On the other hand, as a juror in the sentencing
3 phase, depending upon the facts including relevant
4 aggravating and mitigating circumstances and the law as
5 instructed to you, could you render a sentence of death?

6 A. No, sir.

7 Q. Very well. Answer any questions the attorneys may
8 -- the -- well, let's see. First of all the Defendant,
9 then the State.

10 MS. ADAMS: I'm sorry, Your Honor. I believe
11 he just said no, sir to your last question.

12 THE COURT: Right.

13 MS. ADAMS: Oh, okay. I just wanted to make
14 sure I heard that correctly. Okay. Just checking.

15 DIRECT EXAMINATION

16 BY MR. MCGUIRE:

17 Q. Good afternoon, Number -- Juror Number 147?

18 A. Yes, sir.

19 Q. I see on your questionnaire you indicated that the
20 death penalty should be reserved for the most extreme
21 cases of murder?

22 A. Yes, sir.

23 Q. And like some people throw out the phrase, the death
24 penalty should only be used as a last resort, do you
25 agree with that?

1 A. Correct.

2 Q. But there are some cases, some murder cases, that
3 are bad enough that would warrant the death penalty?

4 A. I could not -- I could not vote yes on a death
5 penalty, given a choice of life imprisonment or death.

6 Could I explain that, Your Honor?

7 THE COURT: Certainly.

8 Q. Sure.

9 A. As an ordained Baptist minister, my belief is as
10 long as a person has breath they have an option of
11 redemption. And therefore, I could not vote to remove
12 that option from them.

13 Q. I see. So there's no type of murder that could ever
14 be so heinous or so bad where you could consider the
15 punishment of death?

16 A. Given an option between life imprisonment and the
17 death penalty, I would always choose the life
18 imprisonment.

19 Q. Sure. And in reality the life in prison sentence
20 would always be available. So in that situation, it
21 sounds like you would always vote for life?

22 A. That is correct.

23 Q. Mr. 147, that's all I've got for you, sir. Thank
24 you very much.

25 THE COURT: All right. Anything from the

1 State?

2 MS. ADAMS: No, sir, Your Honor. Thank you.

3 THE COURT: Just a moment. Considering the
4 entire voir dire, I find that Juror 147 should be excused
5 from serving on the trial of this case. However, I do
6 want to thank you for being here as well as your candor
7 and just your strong convictions. And again, no -- I
8 don't want to change anybody's convictions. But in a
9 particular case like this, I feel that it would probably
10 compromise you to some degree. And I don't want to make
11 -- you didn't ask to be here. And I want to be sure that
12 you're not in any way felt -- made to feel uncomfortable.
13 So I'm going to excuse you from the trial of this case.

14 THE POTENTIAL JUROR: Thank you.

15 THE COURT: I thank you for being here.

16 THE POTENTIAL JUROR: Thank you, Your Honor.

17 THE COURT: Thank you very much.

18 (WHEREUPON, Potential Juror 147 exited the
19 courtroom.)

20 THE COURT: All right. Let's do take a short
21 break, if you don't mind.

22 (WHEREUPON, court stood at recess for a short
23 break.)

24 THE COURT: All right. Is there anything from
25 the State before we start with Juror 153?

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

2 MR. MCGUIRE: No, sir.

3 THE COURT: All right. Ask Juror 153 to join
4 us.

5 (WHEREUPON, Potential Juror 153 entered the
6 courtroom.)

7 THE COURT: All right. Are you Juror 153?

8 THE POTENTIAL JUROR: Yes.

9 **POTENTIAL JUROR 153,**

10 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

11 EXAMINATION

12 BY THE COURT:

13 Q. You will recall on Monday I put all the jurors under
14 oath. Now, do you understand that you're still under
15 oath and that oath continues throughout these
16 proceedings?

17 A. Yes.

18 Q. You have been provided with a copy of potential --
19 of a potential witness list in the jury room. Have you
20 had an opportunity to review that witness list?

21 A. Yes.

22 Q. Were there any names that you recognized or have any
23 sort of relationship either by blood or marriage, close
24 personal friend, business associates or other
25 relationship?

1 A. No. No.

2 Q. All right. Do you recall my instructions from
3 Monday to avoid all forms of media coverage dealing with
4 this case?

5 A. Yes.

6 Q. Has that caused any problem to you?

7 A. No.

8 Q. The trial of this case may last as much as ten days
9 to two weeks. Other than personal inconvenience, would
10 this pose a serious danger to the health or well-being of
11 yourself or anyone who is dependent upon you?

12 A. I'm sorry. Can you say that again?

13 Q. All right. Once we draw the jury and start the
14 trial of the case, the case will last approximately a
15 week to ten days. Other than personal inconvenience,
16 would this pose a serious danger to the health or well-
17 being of yourself or anyone dependent upon you?

18 A. I just had a seizure, and they're doing tests right
19 now to see if it was triggered by stress or any other
20 things like that. So I'm really not sure.

21 Q. So you're under a doctor's care?

22 A. Yes. And I'm not supposed to drive for six months
23 since I just had a seizure.

24 Q. If you don't mind, I'm going to excuse you. All
25 right?

1 A. I'm sorry, y'all.

2 Q. No, not at all. It's just I'm glad you brought it
3 to our attention because we are going to draw a jury of
4 twelve and then six alternates just for that reason
5 because, you know, if something should develop, you'd
6 have to sit. So we want to be sure I'll eighteen that
7 are drawn don't anticipate any difficulty.

8 A. Okay.

9 Q. But no, if you're under a doctor's care, I'm going
10 to excuse you now.

11 A. Okay.

12 Q. I wish you the best of luck.

13 A. Well, thank you. Do you need any papers or
14 anything?

15 Q. No, ma'am, I don't think so. That will be fine.

16 A. Okay. Thanks, y'all. Sorry.

17 Q. Thank you so much. And the best of luck to you too.

18 A. Thank you.

19 Q. All right.

20 (WHEREUPON, Potential Juror 153 exited the
21 courtroom.)

22 THE COURT: Obviously she's under oath, so I
23 didn't see any reason to require documentation.

24 MS. ADAMS: No, sir.

25 THE COURT: All right.

1 MR. MCGUIRE: No, sir, we have no objection to
2 her being excused.

3 (Laughter)

4 THE COURT: I read her questionnaire too.

5 MR. MCGUIRE: I'll consider that a lucky break.

6 THE COURT: All right. What did you put in her
7 food?

8 The next one is Juror 158. Is there anything from
9 the State before we ask Mr. 158 to join us?

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

11 THE COURT: From the Defense?

12 MR. MCGUIRE: No, Sir.

13 THE COURT: All right, 158, please, sir.

14 Look at ...

15 (WHEREUPON, Potential Juror 158 entered the
16 courtroom.)

17 THE COURT: All right. Are you Juror 158?

18 THE POTENTIAL JUROR: Yes, sir.

19 **POTENTIAL JUROR 158,**

20 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

21 **EXAMINATION**

22 **BY THE COURT:**

23 Q. You will recall on Monday I put all the jurors under
24 oath. Now, do you understand that you're still under
25 oath and this oath continues throughout these

1 proceedings?

2 A. Yes, sir.

3 Q. You have been provided with a copy of potential
4 witnesses -- a list of potential witnesses. Have you had
5 an opportunity to review this witness list?

6 A. Yes, I have.

7 Q. Did you recognize any names to whom you might be
8 related by blood or marriage or with whom you have a
9 close personal relationship or business relationship or
10 in any other relationship?

11 A. I did not.

12 Q. Do you -- do you recall any instructions -- excuse
13 me. Do you also recall my instructions from Monday to
14 avoid all forms of media coverage dealing with this case?

15 A. Yes, Your Honor.

16 Q. Has this caused you any problem?

17 A. No.

18 Q. Now, the trial of this case will last approximately
19 ten days to two weeks. Other than the personal
20 inconvenience, would this pose a serious danger to the
21 health or well-being of yourself or anyone who is
22 dependent upon you?

23 A. No, sir.

24 Q. Among other things, we will be talking about penalty
25 today. But the mere fact that we talk about penalty does

1 not indicate anything about the Defendant or any
2 defendant. Defendants are presumed to be innocent under
3 our law. Do you understand this?

4 A. Yes, sir.

5 Q. If you were a juror in a criminal case, could you
6 listen to the law, accept and apply the law as I would
7 instruct you as the Judge of the court even though you
8 may not agree with that law or think it ought to be
9 something other, could you accept and apply the law as I
10 instruct you?

11 A. Yes, Your Honor.

12 Q. Could you decide this case based solely on the
13 evidence presented in this courtroom and disregard
14 anything you may have heard, read or seen about this
15 case?

16 A. Yes, Your Honor.

17 Q. In a criminal case, the State has the burden of
18 proving guilt. The burden of proof for the State is
19 beyond a reasonable doubt. A defendant has no burden to
20 prove innocence or anything else. In other words, a
21 defendant does not have to testify or offer evidence in
22 any way. Do you understand?

23 A. Yes, sir.

24 Q. The burden is entirely upon the State?

25 A. Yes, Your Honor.

1 Q. Could you, depending on the facts and evidence and
2 the law as I would instruct you in a particular case,
3 find a defendant either guilty or not guilty?

4 A. Yes, Your Honor.

5 Q. If you were a juror in a death penalty case, and if
6 the jury had found the defendant guilty of murder, you
7 would then move to the sentence phase of the trial. Do
8 you understand this?

9 A. Yes, sir.

10 Q. When you hear us refer to a capital case or death
11 penalty case, what we mean is that it is a criminal -- it
12 is a criminal murder trial where the prosecutor -- in
13 other words, the State -- is seeking the death penalty.
14 Do you understand this?

15 A. Yes, Your Honor.

16 Q. A death penalty trial is divided into two parts.
17 Part one is the guilt phase where the jury determines
18 whether the defendant is guilty or not guilty of murder.
19 Part two is the sentencing phase where a jury determines
20 the appropriate punishment. Of course, if the defendant
21 is found not guilty in phase one, that ends the matter
22 and there is no phase two. Do you understand this?

23 A. Yes, Your Honor.

24 Q. Therefore, if you were a juror in a trial of a
25 capital case where the jury in phase one of the trial has

1 found the defendant guilty of murder, you would then move
2 on to phase two of the trial which is called the
3 sentencing phase of the trial. Do you understand this?

4 A. Yes, Your Honor.

5 Q. Now, if you were a juror in the sentencing phase --
6 that is, phase two of a capital murder trial, again,
7 where a jury has already found the defendant guilty of
8 murder -- do you understand that the jury rather -- the
9 jury rather than the judge determines the sentence that
10 the defendant will receive for the crime of murder?

11 A. Yes, Your Honor.

12 Q. In a capital sentencing trial, the jury's function
13 is to determine the appropriate punishment based upon the
14 circumstances of the crime and the characteristics of the
15 individual defendant.

16 A. Yes, sir.

17 Q. In other words, in fashioning a sentence, the jury's
18 function is to determine the appropriate punishment based
19 upon the circumstances of the crime and the
20 characteristics of the individual defendant. Do you
21 understand this?

22 A. Yes, sir.

23 Q. Now, aggravating circumstances are facts or details
24 that, when they are present in a case, make the crime of
25 murder more serious or worse. On the other hand,

1 mitigating circumstances are incidents, occurrences or
2 details of a case that would reduce the severity of the
3 crime. In other words, reduce or may -- in other words,
4 may reduce the degree of responsibility for the crime.

5 Do you understand that?

6 A. Yes, Your Honor.

7 Q. Do you also understand that a jury has two options
8 to consider regarding the sentence of murder or a
9 sentence for murder? One option is life imprisonment
10 which is until the death of the defendant without
11 possibility of parole in South Carolina. Do you
12 understand that?

13 A. Yes, Your Honor.

14 Q. The other option is death which is in this state by
15 electrocution or lethal injection. Do you understand
16 that?

17 A. Yes, Your Honor.

18 Q. Could you, as a juror in the sentencing phase,
19 depending upon the facts including the relevant
20 aggravating and mitigating circumstances and the law as I
21 instruct it to you, render a sentence of life
22 imprisonment?

23 A. Yes, Your Honor.

24 Q. On the other hand, as a juror in the sentencing
25 phase, depending upon the facts including the relevant

1 aggravating and mitigating circumstances and the law as I
2 instruct it to you, could you render a sentence of death?

3 A. Yes, Your Honor.

4 Q. All right. Please answer any questions the Defense
5 may have or Defense counsel or attorneys may have.

6 DIRECT EXAMINATION

7 BY MR. MCGUIRE:

8 Q. Good afternoon, Juror Number 158.

9 A. Good afternoon.

10 Q. I've got to refer to you by number. It's a little
11 awkward for me. And I'm not being not polite with you.
12 It's just I've got to do that. Okay?

13 A. I understand.

14 Q. So forgive me for that.

15 I'm going to ask you a little bit about publicity.
16 You ever hear, see anything, read anything about this
17 case?

18 A. No. No, sir.

19 Q. Okay. And I'm going to ask you some questions about
20 your thoughts about the death penalty, your ability to
21 give the death penalty. That sort of thing. The Judge
22 gave you some pretty general guidelines, and I'm going to
23 just be a little bit more specific. Okay? And the first
24 thing I'm going to do is talk to you about the definition
25 of murder in South Carolina. It's kind of a technical

1 definition. My guess is you don't have that definition?

2 A. No.

3 Q. Okay. Most people show up and most of their
4 knowledge is from TV, newspapers, crime books. Put you
5 in that category?

6 A. Don't watch much news or paper. So I guess just
7 from some TV, I guess I could have an idea of what murder
8 is, but not by definition.

9 Q. Sure. Sure. Well, I'm going to help you out and
10 give you that definition. And the Judge is going to
11 instruct you if you're on the jury that murder in South
12 Carolina is the unlawful killing of another human being
13 with malice aforethought. It's called malice murder.
14 What that means is that the killer was operating with a
15 black and malignant heart fatally bent on evil and
16 intentionally, deliberately took an innocent life. In
17 that kind of situation, what are your thoughts about the
18 death penalty as the appropriate punishment?

19 A. My thoughts on the death penalty is that I believe
20 the death penalty should only be pursued if, by what the
21 Judge said, if it was beyond all reasonable doubt and
22 there was, like you say, aforethought, premeditated and
23 that the murder was committed upon those lines, you know,
24 that it was premeditated, you know, had aforethought, and
25 of course, you know, with the evidence and, you know,

1 testimony and stuff, you know, without a reasonable doubt
2 that it was in that situation.

3 Q. Sure. Well, in that situation you have a front-row
4 seat. And only -- you could only consider this question
5 if you and eleven other people found beyond a reasonable
6 doubt that a person, a killer, acted with a black,
7 malignant, evil heart, intentionally took the life of an
8 innocent person. And what I'm hearing is in that
9 situation, the death penalty is appropriate?

10 THE COURT: Well, no. That would only be if it
11 was under the law. And of course, that's not the law in
12 South Carolina.

13 MR. MCGUIRE: Right. I'm just asking the
14 *Morgan* question.

15 THE COURT: Well, again, it's not a *Morgan*
16 question; it's a question of the South Carolina law.
17 That we know that only it's under aggravating
18 circumstances of that crime.

19 MR. MCGUIRE: Sure, sure. I'm working up to
20 that.

21 THE COURT: That would not be an appropriate
22 question, so restate your question.

23 Q. In that situation where a killer acting with a
24 black, malignant heart, fatally bent on evil with malice
25 aforethought, intentionally took the life of another

1 person -- and there is even something worse, an
2 aggravating circumstance like say the person killed was
3 an officer in the line of duty or a child, something like
4 that. In that situation, it sounds like the death
5 penalty is appropriate for you?

6 A. Yes, I believe so if -- like I said, you know,
7 without hearing -- you know, just being an example, you
8 know, me not seeing actual testimony and accounts and
9 stuff like that, I believe that the death penalty may be
10 a situation -- may be a possible penalty for that murder.
11 But you know, without -- but that wouldn't just be my
12 decision. Of course, that would be the decision of the
13 fellow jurors and stuff like that. But I believe to a
14 certain extent, yeah, the death penalty may be
15 appropriate for that crime.

16 Q. Okay. Well, could life in prison ever be severe
17 enough to punish that kind of case?

18 A. Absolutely. I feel like life imprisonment is to a
19 certain degree -- you take someone's whole life from them
20 and it would be like ---

21 Q. It's almost worse?

22 A. Yeah, I mean, you've got to live with that crime the
23 rest of your life in prison. So yeah, I believe life
24 imprisonment is almost as equally as -- I mean, I guess
25 just looking at my personal, yeah, I think life in prison

1 would be just as bad of a penalty. But you know, of
2 course, you know, if you look at the severity, you know,
3 you're actually putting someone to death, it does -- it
4 seems like it's more of a harsh more penalty. But yeah,
5 life in prison I believe would be -- could actually be a
6 suitable punishment for a crime, you know -- you know,
7 without me hearing testimony and, you know, seeing
8 evidence of the trial, you know, I believe that life
9 imprisonment could possibly be an option for that crime.

10 Q. Okay. When it comes to fixing punishment in a
11 murder case, would things like the background of the
12 defendant like his childhood, his growing up, would those
13 factors be relevant in fixing punishment in a murder
14 case?

15 A. I'd want to say yeah because, you know, I know a lot
16 of times -- just my personal belief, I believe a lot of
17 times someone's background can lead up to the type of
18 person that they are now. But I think that -- but
19 actually looking at someone's background could actually
20 help the case sometimes, you know, help that person, you
21 know, to look and say, hey, this could have just been a
22 -- I say lack of better words, I say this is a freak
23 accident in which the, you know, the crime was a -- you
24 know, from -- you know ---

25 Q. Sort of out of character?

1 A. Yeah.

2 Q. Or aberrant behavior?

3 A. Exactly.

4 Q. Okay. But then also you also seem to have an
5 understanding that there are people -- a person's walk in
6 life, their childhood, can affect kind of who they
7 become?

8 A. Yes, that's -- in other words, that's kind of what
9 I'm saying.

10 Q. Okay. Well, I think we're on the same page here.

11 A. Yeah, exactly.

12 Q. Capital cases are different from any other case that
13 we have. And it's because the jury does fix punishment,
14 delivers punishment. And there are a lot of different
15 rules. A lot of rules that normally apply just go out
16 the window. And sometimes it's a little counterintuitive
17 or a little bit opposite of what you think it might be.
18 And I'm going to ask you about some principles of law and
19 see if you can follow those principles.

20 A. Okay.

21 Q. For one thing, the law kind of stacks the deck
22 against the State because only the worst of the worst --
23 you have to narrow the class of people eligible for the
24 death penalty.

25 A. Right.

1 Q. And what that means is if you were on a jury, the
2 first phase would be behind you. I want to kind of place
3 you in time now. The first phase of the case is over.
4 That's the did the fellow do it, was he guilty. That
5 part's over now. Then you'd come back to court for a
6 whole new trial about a day later, and that's the
7 sentencing trial. And the State would have to prove
8 aggravation evidence, something to make that murder worse
9 than a regular murder. And until they did that to the
10 satisfaction of all twelve jurors beyond a reasonable
11 doubt, you wouldn't even begin the journey of fixing
12 punishment. It would just be life if you didn't find an
13 aggravating circumstance.

14 A. Right.

15 Q. It would just be automatic. Now, the rules are
16 different for the other side when it comes to mitigation
17 evidence. And the judge would tell you that mitigation
18 evidence is any reason to vote for a sentence less than
19 death.

20 A. Right.

21 Q. And that can be any piece of evidence, anything a
22 juror sees in the trial. It can be for no reason at all.
23 It can be for mercy or grace. Could you respect a juror
24 who said, you know, I appreciate hearing about the case
25 and I appreciate everybody's point of view, but I just

1 can't vote for the death penalty, and I really can't give
2 you a reason why? Could you respect that?

3 A. Absolutely. I mean, I feel like, you know, if I was
4 a jury member, you know, I'd be there with fellow jury
5 peers and stuff like that. And of course, you have to
6 respect the opinion of others and you have to get the
7 input of others, you know. Like I said, I wouldn't want
8 to even put myself in a situation to where you'd actually
9 -- I can't say that -- I can't say, you know -- I
10 wouldn't say I would be for the death penalty. I'm just
11 saying I couldn't see myself putting that penalty on
12 someone if I didn't feel like the whole jury was for it,
13 you know. You know, until we came to the -- you know,
14 till we, I guess, deliberated against it like, hey, okay,
15 this is -- you know, if they don't have a reason, you
16 know, that's -- you know some, I guess, you know, some
17 things speak to people different, you know. You can't
18 really -- sometimes people can't express their reason why
19 they have that, but they just feel like it's not right.
20 So yeah, I would respect my fellow juror in that
21 situation because that juror might be me. Well, so --
22 Q. Sure.

23 A. I would want that same respect, you know.

24 Q. I agree with you completely. And it sounded -- from
25 what I hear you saying, it sounds like you really

1 appreciate the gravity of the situation that we are here
2 for. It's whether to kill a fellow human being, another
3 one of God's creatures.

4 A. Absolutely.

5 Q. And you wouldn't do anything to put that burden on
6 somebody to make them feel uncomfortable unless they
7 thought that was right?

8 A. Yeah, I don't feel like pressuring someone to do
9 something because another -- three other people thought
10 it was the right thing. You know, I feel like everybody
11 -- that's why you've got twelve people there, you know.
12 That way -- you know, it's what you're there for is the
13 jury. You're there to, you know, talk about it, to go
14 over it and discuss, you know. And of course, if
15 somebody don't have a reason why they can't do it, then I
16 would be understanding of that. And yeah, I think that's
17 all my thoughts on the subject. Sorry.

18 (Laughter)

19 Q. No, no, no. Well, you know, a lot of people show
20 up, they're nervous and they just say yes and no. But I
21 appreciate all of your answers.

22 A. Well, I appreciate -- well, I guess I get in the
23 situation where, you know, this is an educational-type
24 thing for me, you know. I mean, the judiciary system is,
25 you know, a system, pretty complex system. So you know,

1 I appreciate it and it's educational for me. So of
2 course, I don't want -- I'd hate to see -- you know, I
3 like to see the law done correctly. You know, I'd hate
4 to feel like, you know, someone was pressuring somebody
5 for something that they didn't feel like was right, you
6 know, because I wouldn't want to be the person getting
7 pressured. So ...

8 Q. Sure. Well, I'm going to continue your education
9 about five more minutes or maybe two more minutes, and
10 that's about it.

11 A. All right.

12 Q. Going back to that sentencing issue -- and again,
13 you know, the State would have to prove aggravation to
14 the satisfaction of all twelve unanimously beyond a
15 reasonable doubt. Remember how I said it was different
16 for the other side. Not only is it different, it's
17 completely different. And that is, for instance, if we
18 had a jury over here, the person in the front row here in
19 this first seat could say, you know, when I watched the
20 trial and I looked at all the evidence, I saw something
21 about the person's background or his upbringing, his walk
22 in life, that resonated with me. And just based on that,
23 I'm not going to vote for death. Somebody in the back
24 row, a completely different juror, could say well, you
25 know, I saw something about his relationship with his

1 family and his child, and that did it for me. That
2 resonated with me. That's my reason for voting for life.
3 And they can be different reasons. They don't even have
4 to agree. Is that something you're okay with?

5 A. I would say yeah because, I guess, just knowing
6 people, you know, you're always going to have a
7 difference in opinions in situations because, you know,
8 I'm going to be a different judge of character than
9 another person would be.

10 But like I said, I respect everybody's opinion on a
11 situation. It's just, you know, I just -- I always try
12 to put myself in that situation. If I'm that person who
13 said, okay, I looked at the defendant and said, yeah,
14 there's something in his background which I feel like
15 doesn't -- that, you know, lead him to be the person he
16 is and don't feel like this would be appropriate for the
17 death penalty or say life imprisonment -- you know, I was
18 going the other way -- I would want that respect of my
19 fellow jurors that, hey, you know, this is my true
20 feelings on the situation.

21 I don't -- you know, if I feel pressured, you know,
22 I don't -- I'm going to walk out of the courtroom not
23 feeling good about my decision. You know, I want to be
24 able -- I want to build confidence and respect in my
25 other jurors and say, okay, you know, you have a

1. difference of opinion. Let's talk this out. Let's see
2. where we stand, you know.

3. That's -- I think that's the whole point of being on
4. such a large jury that you have that opportunity to say,
5. okay, this is your opinion, this is my opinion. And --
6. but like I said, I want to be able to make sure that, you
7. know, everybody has their point of views because, I mean,
8. this is -- I mean, not making light of the situation.
9. This is a very serious issue, of course. So you don't
10. want to take it lightly, so you want to make sure you
11. have the opinions of everybody, you know. You want to
12. make sure that everybody, you know -- I mean, I don't
13. want the burden on my shoulder to walk out and say I
14. think I made the wrong choice, you know, because I want
15. to make sure I spoke up and I got what I felt like off my
16. chest honestly.

17. And that way, you know, if the other jurors -- they
18. have my opinion, they have my feelings on the situation.
19. That way I don't walk out the courtroom knowing, you
20. know, I left something on the table and I didn't say it.

21. Q. Sure. Kind of to use a sports analogy, everybody
22. just kind of leaves it on the field?

23. A. Yeah.

24. Q. And this is also, you know, I think, to make you
25. feel pretty good about your education in the judiciary.

1 And that is in a capital case when it comes to
2 sentencing, the only time the jury has to be unanimous is
3 when they're asking a death -- for a death verdict.

4 A. Correct.

5 Q. Because the jury can actually be split and agree to
6 disagree, come back into court and say, you know what, we
7 all got our opinion out, we all respect each other,
8 everybody heard each other and we just can't agree as to
9 what the sentence is. It might even be just eleven to
10 one, and that's okay. The one person's entitled to their
11 individual moral judgment. That's what the law calls it.
12 It's not a right or wrong decision. It's an individual
13 moral judgment. And it's okay to come back in and just
14 tell the Court, you know what, we all heard each other,
15 we were all polite, we were all civil, everybody's point
16 of view got expressed, but we just couldn't come to an
17 agreement. The Judge will take the case and he'll
18 sentence and the case will end. Never be retried, that
19 sort of thing.

20 Is that a principle you're okay with? Agreeing to
21 disagree at the end of the day?

22 A. Absolutely, cause -- and I guess I look at it this
23 way is, you know, I look at both -- neither one of the
24 penalties necessarily is -- well, I know one is, you know
25 -- I guess one, you know, by far is worth than another.

1 Q. They're both very severe.

2 A. But -- yeah, that's what I'm saying. The severity
3 of both is still there. So I mean, if some -- one person
4 feels like there's not a -- that they cannot go -- lean
5 the way towards death penalty and that life imprisonment
6 would be the sentence, I would feel good about that
7 situation. Well, I ain't going to say I feel good about
8 any -- putting a ---

9 Q. Sure.

10 A. Yeah, I guess just morally, I guess -- I mean, I
11 wouldn't want to -- you know, that still -- like I said,
12 that's still a tough situation because you're still
13 dealing with an individual's life. But as far as being
14 able -- being like a -- for an example, an eleven to one
15 jury, life imprisonment, you know, I would -- that would
16 be fine with me from that point of view, you know, that,
17 you know, eleven people wanted it and one person didn't.
18 That one person had their opinion. That one person seen
19 something that they didn't feel was right that they
20 didn't feel deserved that penalty. So of course, I would
21 -- I could rest at night with that situation.

22 Q. Okay. That's all I have for you. Thank you very
23 much, sir.

24 A. Thank you.

25 THE COURT: Madam Solicitor?

1 MS. ADAMS: Your Honor, this juror has been
2 very forthcoming. And I just want to thank him. And
3 obviously we feel that he's very qualified.

4 THE COURT: All right.

5 MR. MCGUIRE: Same here.

6 THE COURT: All right. Considering the entire
7 voir dire, which was very enlightening, in fact, I find
8 that Juror 158 will be fair, unbiased, impartial and able
9 to carry out the law as explained to him. Furthermore, I
10 find that the juror's beliefs or attitudes towards the
11 death penalty would not prevent or substantially impair
12 the performance of his duties as a juror in accordance
13 with the law, the Court's instructions and the juror's
14 oath. I find you qualified to sit on this jury.

15 Now, the processing is going to take some days
16 because we are going to get a pool of perhaps more than
17 sixty people from which the eighteen will be selected.
18 And the Clerk has your telephone number?

19 THE POTENTIAL JUROR: Yes, Your Honor.

20 THE COURT: All right. So she will call you at
21 some time. It will probably be next week.

22 THE POTENTIAL JUROR: Okay.

23 THE COURT: But in the meantime, you can do
24 whatever you need to do. However, when you get that
25 call, you will have to report.

1 THE POTENTIAL JUROR: All right.

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

3 THE POTENTIAL JUROR: Thank you.

4 THE COURT: We look forward to working with
5 you.

6 THE POTENTIAL JUROR: All right. Thank you.

7 THE COURT: Thank you.

8 (WHEREUPON, Potential Juror 158 exited the
9 courtroom.)

10 THE COURT: All right. The next one is Number
11 159. All right. Anything from the State on 159?

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

13 THE COURT: Anything from the Defense?

14 MR. MCGUIRE: Not on paper, Judge.

15 THE COURT: All right. By the way, if ---
16 (WHEREUPON, Potential Juror 159 entered the
17 courtroom.)

18 THE COURT: Good. Thank you.

19 All right. Are you Juror 159?

20 THE POTENTIAL JUROR: I am.

21 **POTENTIAL JUROR 159,**

22 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

23 **EXAMINATION**

24 **BY THE COURT:**

25 Q. You will recall on Monday I put all the jurors under

1 oath. Now, do you understand that you are still under
2 oath and the oath continues throughout these proceedings?

3 A. Yes, sir.

4 Q. You have been provided with a copy of a list of
5 potential witnesses. Have you had an opportunity to
6 review that witness list?

7 A. I have.

8 Q. Did you recognize any names or who might be related
9 to you by blood or marriage, close personal friend or
10 business associates or with whom you have any
11 relationship?

12 A. No, sir.

13 Q. Do you also recall my instructions from Monday to
14 avoid all forms of media coverage dealing with this case?

15 A. Uh-huh (affirmative).

16 Q. Has that caused you any problem?

17 A. No.

18 Q. Now, the trial of this case will last approximately
19 ten days to two weeks. Other than the personal
20 inconvenience this would -- excuse me. Other than the
21 personal inconvenience, would this pose a serious danger
22 to the health or well-being of yourself or anyone who is
23 dependent upon you?

24 A. No.

25 Q. Among other things, we will be talking about penalty

1 today. But the mere fact that we're talking about
2 penalty does not indicate anything about this Defendant
3 or any defendant. Defendants are presumed under our law
4 to be innocent. Do you understand that?

5 A. Yeah.

6 Q. If you were a juror in a criminal case, could you
7 listen to the law, accept and apply the law as I would
8 instruct you as to the Judge -- as the Judge in this
9 court, and even though you may not agree with that law or
10 think it ought to be some other way, could you accept and
11 apply the law as I charged it?

12 A. Yes.

13 Q. Do you have any question about that?

14 A. Well, I ---

15 Q. All right. In other words, a case is tried on the
16 evidence which includes testimony, exhibits and things
17 like that as well as the law. Now, you, as a juror,
18 would be the judge of the evidence or the facts of the
19 case. But as far as the law is concerned, I am the one
20 that will instruct the jury ---

21 A. I see.

22 Q. --- as to the law. And even though you might think
23 the law should be something else or was something else --

24 A. Right.

25 Q. --- until I instruct you, you would have to take the

1 law as I instruct it ---

2 A. I understand.

3 Q. --- to be correct law. Do you understand?

4 A. Yeah.

5 Q. Now if -- again, if you were a juror in a criminal
6 case, could you listen to the law, accept and apply that
7 law as I would instruct it even though you may not agree
8 with the law or think it ought to be some other way?

9 A. Yeah. Yes.

10 Q. Very good. Could you decide this case based solely
11 on the evidence presented in this courtroom and disregard
12 anything you may have heard, read or seen about the case?

13 A. Yes.

14 Q. In a criminal case, the burden has -- excuse me. In
15 a criminal case, the State has the burden of proving
16 guilt beyond a reasonable doubt. A defendant has no
17 burden to prove innocence at all. Do you understand
18 this?

19 A. Yes.

20 Q. The burden's always on the State. Could you,
21 depending on the facts and evidence and the law as I
22 would instruct you in a particular case, find a defendant
23 either guilty or not guilty? Again, maybe -- let me say
24 it a little bit slower. Could you, depending on the
25 facts and evidence and the law as I instruct you in a

1 particular case, could you find a defendant either guilty
2 or not guilty?

3 A. Yes.

4 Q. If you were a juror in a death penalty case and if
5 the jury had found the defendant guilty of murder, you
6 would then move to the sentence phase of the trial. Do
7 you understand?

8 A. Yes.

9 Q. When you hear us refer to a capital case or 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 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 part, then
21 there is no -- that's the end of the matter and there is
22 no second part. Do you understand this?

23 A. Yes, sir.

24 Q. Therefore, if you were a juror in the trial of a
25 capital case where the jury in phase one of the trial has

1 found the defendant guilty of murder, you would then move
2 on to the second phase or phase two of the trial which is
3 called the sentencing phase of the trial. Do you
4 understand that?

5 A. Yes.

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 a defendant guilty of
9 murder -- do you understand that the jury rather than the
10 judge determines the sentence that the defendant will
11 receive for the crime of murder?

12 A. Yes.

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. Do you understand that?

17 A. Yes.

18 Q. Now, aggravating circumstances are facts or details
19 that, when they are present in the case, make the crime
20 of murder more serious or worse. On the other hand,
21 mitigating circumstances are incidents, occurrences or
22 details of a case that would reduce the severity of the
23 crime of murder. In other words, reduce the
24 responsibility or degree of responsibility for the crime.
25 Do you understand that?

1 A. Yes.

2 Q. Do you also understand that the jury has two options
3 to consider regarding the sentencing for murder. One
4 option is life imprisonment which under our law is until
5 the death of the defendant without possibility of parole
6 or other -- without the possibility of parole. Do you
7 understand that?

8 A. Yes.

9 Q. In other words, it can be either life imprisonment
10 which under our law is until the death of the defendant
11 without possibility of parole, or the other option is
12 death which in this state is by electrocution or lethal
13 injection. Do you understand these two options?

14 A. Yes.

15 Q. Could you, as a juror in the sentencing phase
16 depending upon the facts including relevant aggravating
17 and mitigating circumstances and the law as instructed to
18 you, render a sentence of life imprisonment? Could you,
19 as a juror in the sentencing phase depending upon the
20 facts including relevant aggravating and mitigating
21 circumstances and the law as I instruct it to you, render
22 a sentence of life imprisonment?

23 A. Yes.

24 Q. On the other hand, as a juror in the sentencing
25 phase, depending upon the facts including the relevant

1 aggravating and mitigating circumstances and the law as I
2 instruct it to you, could you render a sentence of death?

3 A. Yes.

4 Q. All right. Please answer any questions Counsel may
5 have.

6 DIRECT EXAMINATION

7 BY MR. MCGUIRE:

8 Q. Good afternoon, Juror Number 159. I've got to refer
9 to you by number. It's a little awkward for me, and I
10 don't mean any disrespect. It's just the way we've got
11 to do things.

12 A. That's fine.

13 Q. So if you would forgive me that?

14 A. Yeah.

15 Q. What I'm going to do is -- the Judge gave you --
16 well, I want to ask you first, have you heard or read
17 anything about the case?

18 A. No.

19 Q. TV, newspaper, nothing?

20 A. No.

21 Q. Okay. What I'm going to do is go into a little more
22 detail than the Judge, give you some good general
23 guidelines. I want to talk to you about murder, your
24 ability to give the death penalty and that sort of thing.
25 Okay?

1 And what I want to do first is define murder for you
2 and the way we define murder in South Carolina. Lots of
3 states are different. You probably don't have that
4 definition handy with you as you sit there, and I want to
5 help you with that.

6 A. Okay.

7 Q. The Judge is going to instruct you if you were on
8 this jury that murder is the unlawful killing of another
9 human being with malice aforethought. And malice
10 aforethought is described in our law as the killer
11 operating with a black and malignant heart fatally bent
12 on evil, intentionally and deliberately taking an
13 innocent life. And I noticed on your questionnaire
14 regarding, do you have any religious or moral feelings,
15 philosophical principles that would affect your ability
16 to vote for the death penalty, you indicated yes, and you
17 were an-eye-for-an-eye-type person. And in that
18 deliberate intentional killing with an evil heart that I
19 just described to you, does that eye-for-an-eye apply to
20 that kind of killing?

21 A. Yeah.

22 Q. Okay.

23 A. I think the gray areas are when it doesn't.

24 Q. When it -- when the killing is maybe an accident or
25 self-defense ---

1 A. Right.

2 Q. --- or something like that?

3 A. Right.

4 Q. Okay. But for an intentional, deliberate malice
5 murder, eye-for-an-eye?

6 A. That's how I feel, yeah.

7 Q. Okay. And there are no right or wrong answers. The
8 only right answers are your true thoughts.

9 A. Okay.

10 Q. So if you would, just be perfectly candid with us.
11 And my understanding is a life in prison sentence for
12 that kind of intentional deliberate murder would not be
13 sufficient?

14 A. Not in my opinion, no.

15 Q. Okay. Okay. And what I want to do now is talk to
16 you a little bit about how sentencing cases or capital
17 cases are different than any other case. And first off,
18 not all murders cases are eligible for the death penalty.
19 It has to be murder plus an aggravator which is something
20 that makes the murder worse, even worse than that
21 deliberate intentional killing. It can be like killing a
22 police officer in the line of duty, killing multiple
23 people, child, that sort of thing.

24 The State would bring forward that kind of evidence
25 in addition to the fact that it was a deliberate,

1 intentional killing of an innocent person. And what I'm
2 hearing you say is that a life sentence certainly
3 wouldn't be severe enough for that aggravated murder?

4 A. I would have to know the ---

5 Q. The facts of the murder?

6 A. --- details of the case and the facts. But yeah, my
7 initial feeling is -- on an eye-for-an-eye is the way
8 that you described it initially.

9 Q. Okay. Deliberate, intentional taking of a life ...

10 A. Exactly.

11 Q. ... eye-for-an-eye? Okay.

12 Well, I want to get back now and talk to you a
13 little bit more about sentencing and how it's different
14 because the jury actually fixes punishment in just
15 capital cases. The judge always sentences in every other
16 case.

17 A. Uh-huh (affirmative).

18 Q. And the rules are little bit different for both
19 sides and-- oh, wait. Before I leave that, the your eye-
20 for-an-eye, that's a religious view or a moral view?

21 A. Yes, I mean ---

22 THE COURT: Excuse me. That's lex talons.
23 That's Hammurabi.

24 THE POTENTIAL JUROR: I'm sorry?

25 THE COURT: Eye-for-an-eye is Hammurabi.

1 MR. MCGUIRE: Oh, I'm sorry.

2 THE COURT: That's not a religious. He was a
3 lawgiver in Syria.

4 MR. MCGUIRE: See, I'm getting my education
5 today too. Thank you.

6 THE COURT: Well, I mean -- this is what we
7 want, the question to be in context.

8 MR. MCGUIRE: Oh, sure.

9 Q. I'm just asking is that sort of who you are as a
10 person or is it religious?

11 A. Yeah, I would have associated it with religion per
12 se. Just myself, the way I feel.

13 Q. Okay. You're kind of ---

14 A. You can call it a moral.

15 Q. What's right and wrong, your value system?

16 A. Right.

17 Q. And going back to how sentencing works ---

18 MR. MCGUIRE: Oh, and Judge, at this point is
19 where I would request to ask my questions one through six
20 from my previous motion.

21 THE COURT: Well, based on *Morgan versus*
22 *Illinois*, I continue to rule that the questions are only
23 relevant if they are made in the context of the law.

24 Very good.

25 MR. MCGUIRE: Thank you, sir.

1 Q. And again, going back to sentencing, what I'm going
2 to do is kind of fix you in a place and time where you're
3 actually on a jury, and the guilt phase is over. You and
4 eleven people have already convicted somebody of murder.
5 And you come back to court after about a twenty-four hour
6 break to begin the second part of the trial, the penalty
7 phase. The State -- and the rules are different for the
8 Prosecution versus the Defense. And I'm going to explain
9 that dichotomy of rules with you, and I'm going to ask
10 you if you can agree with that. And that is the State
11 has the burden to prove that aggravation evidence beyond
12 a reasonable doubt.. All twelve jurors would have to
13 agree beyond a reasonable doubt that that aggravation
14 evidence existed. They'd all have to agree on it.

15 But for the other side, the Defense side, the
16 mitigation side, there doesn't have to be any agreement.
17 And in fact, a juror that sitting in the front can say,
18 you know, for me after hearing all the evidence, all the
19 evidence about the defendant, the facts of the case,
20 everything, I learned something about his background, his
21 walk in life, that resonated with me. And that was my
22 reason for voting for a sentence less than death.

23 A juror in the back, a completely different juror,
24 could say, well, you know, I saw something in his
25 relationship with his family, maybe his child, and that

1 resonated with me. That's my reason for voting for a
2 sentence less than death. And the rest of the jurors can
3 each have their own specific piece of evidence they're
4 going to put some weight to, and they don't have to
5 agree. Is that a principle you can agree with or follow?

6 A. Personally probably not ---

7 Q. Because you want consensus?

8 A. --- because we are talking about murder, and the
9 deceased has no opportunity for any -- you know, I think
10 I wrote that in my thing. Once the guilty or the guilt
11 has been decided ---

12 Q. Established?

13 A. --- I don't think that anything like you described,
14 any particular feeling about the defendant's -- I just --
15 I wouldn't feel that way, I don't think.

16 Q. Okay.

17 A. I think one is the guilt has been established and it
18 is like I said, under the eye-for-an-eye, I don't know
19 that I would back off that because of something I might
20 have seen in the courtroom.

21 Q. Okay. Just to make sure we're on the same page,
22 those kind of factors that I threw out there, those would
23 not be relevant in your fixing punishment? Is that true?

24 MS. ADAMS: Your Honor, I think the proper
25 question is he -- will he consider all the evidence as

1 instructed by you before rendering a decision.

2 MR. MCGUIRE: Well, that's exactly what I'm
3 asking.

4 THE COURT: Well then, let's restate your
5 question.

6 MR. MCGUIRE: Sure.

7 THE COURT: Maybe I didn't understand it.

8 Q. Those types of factors, mitigation evidence, you
9 know, reasons to vote for life, things about maybe the
10 defendant's background, his walk in life, that sort of
11 thing --we were just talking about those. My
12 understanding is in fixing punishment for murder after
13 guilt has been established, those factors would not be
14 relevant to you?

15 A. I don't think so, no.

16 Q. Okay.

17 MR. MCGUIRE: Judge, just one second.

18 (Off record discussion)

19 Q. And with regard to ...

20 MR. MCGUIRE: Judge, if I could have just one
21 second.

22 (Off record discussion)

23 Q. I'm looking for my legal pad here. Not much of a
24 lawyer without my legal pad.

25 Those are all the questions that I have for you,

1 sir. Thank you very much.

2 A. Thank you.

3 THE COURT: All right. From the State?

4 MS. ADAMS: No, sir, Your Honor. Just a legal
5 matter.

6 THE COURT: Well, let me ask you this, sir. If
7 you were instructed that the law in South Carolina is
8 that a person who is convicted of murder could receive
9 either a sentence of life imprisonment or death,
10 depending upon the circumstances, could you impose either
11 a sentence of life imprisonment or death?

12 THE POTENTIAL JUROR: Yes. I think the -- I
13 took his question as if it had already been decided that
14 there was that eye-for-an-eye that we spoke of initially.
15 That was my answer, that we had already seen that that
16 was there. That in my opinion it did account for eye-
17 for-an-eye. Therefore, I don't think I would consider
18 the things that he mentioned.

19 THE COURT: Well, now, you do understand that
20 in a murder case, you would not even be considering the
21 sentence until there has been a guilty verdict as to
22 murder?

23 THE POTENTIAL JUROR: Right.

24 THE COURT: And as the attorney said, not all
25 murder cases are death penalty qualified.

1 THE POTENTIAL JUROR: Right.

2 THE COURT: So you would have to also find an
3 aggravating circumstance. And even that does not mean --
4 that's what I instructed -- you would be instructed that
5 the law in South Carolina is a person who is convicted of
6 murder could receive, even with aggravation, a sentence
7 of life imprisonment or death depending upon the
8 circumstances. The circumstances mean not only the
9 offense, but also the character of the defendant. In
10 other words, anything that might affect the defendant's
11 character.

12 THE POTENTIAL JUROR: Honestly, I'd have a hard
13 time with after -- after the process of determining guilt
14 and knowing that the -- there had been a murder, that
15 there was a person who was here no more. Once finding
16 that person of guilt, I don't think that I would be
17 considering ---

18 THE COURT: All right. Well, let me just ask
19 in you in this way. In a death penalty case, which is
20 one where you'd have to find the aggravation
21 circumstances first -- in a death penalty case, would you
22 always or automatically vote for the death penalty?

23 THE POTENTIAL JUROR: No.

24 THE COURT: Even though the law provides that
25 you may impose a sentence of life without parole

1 depending upon the circumstances of a particular case and
2 the characteristics of an individual defendant? In a
3 death penalty case, would you always or automatically
4 vote for the death penalty even though the law provides
5 that you may impose a sentence of life without parole.

6 THE POTENTIAL JUROR: No. Without knowing the
7 facts, I wouldn't go into it just saying that it was
8 always the death penalty, no.

9 THE COURT: Very good.

10 THE COURT: If you would, go with the bailiff.
11 I need to talk to the attorneys.

12 (WHEREUPON, Potential Juror 159 exited the
13 courtroom.)

14 THE COURT: All right. Anything from the
15 State?

16 MR. MCGUIRE: Judge, I think we -- both sides
17 are somewhat in agreement that no one has any heartbreak
18 letting this fellow go. My motion would be for cause,
19 but I don't think it's vigorously opposed.

20 MS. ADAMS: Despite the threat I just received,
21 Judge, that is correct.

22 (Laughter)

23 THE COURT: Well, again, I think this -- well,
24 I'll go ahead and -- I'll be fair with you. I don't feel
25 that he is disqualified. But that's all right. I'll do

1 -- both the State and the Defendant -- but I need to let
2 you know where this is coming from.

3 Ask the juror to come back.

4 (WHEREUPON, Potential Juror 159 entered the
5 courtroom.)

6 THE COURT: All right. Considering the entire
7 voir dire -- that means all the questions and the
8 questionnaire -- I find that Juror 159 should be excused
9 from serving on the trial of this case. However, I do
10 want to thank you for being here and for your candor in
11 answering all the difficult questions we've asked today.
12 If you will remember, when I qualified the jury panel, I
13 said, well, you know, there's a reason for me asking
14 whether a juror can be fair and impartial in a particular
15 case. That had two parts. One, the parties are entitled
16 to a fair and impartial jury.

17 But also, you didn't ask to be here, and you've
18 been, you know -- you have been good to come and be --
19 and participate. And I received a certain conscientious
20 concern about certain issues. And I don't want to put
21 any juror in a position where they might have to
22 compromise or something their strongly held convictions.
23 I just felt it may be uncomfortable for you, and I don't
24 want to do that. So I've exercised my own discretion.

25 But I do want to thank you for being here. I do

1 thank you for your candor and being so straightforward
2 and honest with us.

3 THE POTENTIAL JUROR: Thank you.

4 THE COURT: Thank you, sir. But you are
5 excused and you won't have to serve. In fact, that will
6 be for three years. All right. Thank you very much.

7 THE POTENTIAL JUROR: Thank you.

8 (WHEREUPON, Potential Juror 159 exited the
9 courtroom.)

10 THE COURT: All right. Ladies and gentlemen, I
11 finally have had a chance to look at *Morgan versus*
12 *Illinois*. It seems that the extremes that must be
13 eliminated are those who blank -- and I'll fill in the
14 blank later -- those who automatically vote to convict or
15 impose the death penalty or automatically vote to acquit
16 or impose a death sentence -- a life sentence -- excuse
17 me.

18 In other words, the two extremes should be
19 eliminated. But that's not what it says. What it says
20 is those who in spite of the evidence would automatically
21 vote to convict or impose the death sentence or
22 automatically vote to acquit or impose a life sentence.
23 In other words, without any consideration of what the
24 evidence and the law is, those are the extremes. But to
25 take people in like this gentleman says, my opinion eye-

1 for-an-eye, I don't know what, you know, the law is,
2 that's not giving us what the extremes are. That's
3 taking a person who is unlearned in the law. And not
4 everybody knows that an eye-for-an-eye is lex talons.

5 MR. MCGUIRE: I certainly didn't.

6 THE COURT: Hammurabi rather than -- what is it
7 -- although it is in Exodus, I think, too. Or maybe it's
8 Leviticus. But it was there before the then. So anyway,
9 all right. Let's do -- please understand that's why my
10 ruling on your six questions because I knew that it had
11 to be something more than just that they would not have
12 to make a decision in the dark.

13 MR. MCGUIRE: I understand the Court's
14 position.

15 THE COURT: All right. Very good. All right.
16 So we'll go with the next one. Who is the next one?

17 MADAM CLERK: Number 160, Your Honor.

18 THE COURT: Oh, by the -- wait just a moment.
19 By the way, I might note that the Court, in sustaining
20 its decision, quoted from the voir dire by the court -- I
21 mean by the trial court. The court, will you follow the
22 law that I give you? Answer, I could not. The court,
23 what I am concerned about is that you indicated that you
24 have a state of mind that might make you unable to follow
25 the law of this state. Answer, I could not bring back a

1 death penalty. The court, step down. And that's the
2 type of question I'm trying to avoid, whether one can --
3 what is it -- follow the law of this state and not just
4 their instincts regardless either for or against or for
5 life imprisonment or for -- what is it -- the death
6 penalty automatically.

7 Very good.

8 MS. ADAMS: And, Your Honor, if I may, I think
9 we've been very patient today, and a lot of things are
10 going a little faster today. But I'm having a little
11 concern with Mr. McGuire's language on when he does talk
12 about the law, he'll state, are you okay with that
13 principle. It's just ---

14 THE COURT: Well, that's why I'm saying ---

15 MS. ADAMS: It's his terminology.

16 THE COURT: Again, I don't think that we're
17 going to be asking a question that says the unlawful
18 killing and premeditation -- unlawful killing of another
19 with malice aforethought, do you think you ought to have
20 the death penalty for that? That's not the law of the
21 state. And that's just like asking do you want, as I
22 said earlier, some irrelevant thought. Do you like apple
23 pie?

24 MR. MCGUIRE: Yes, sir.

25 THE COURT: Well, now, if it was one handed to

1 you by lady from Disney World that had a white face and
2 black attire or whatever that would indicate she's the
3 wicked witch from somewhere, would you like apple pie?
4 It depends how the apple pie is presented.

5 All right. Anything else?

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

7 THE COURT: All right. Thank you. All right.
8 Let's -- so I will -- let's -- because your questions are
9 good when you finally get to them when you put the whole
10 part in there if you acknowledge -- what is it -- not all
11 murder cases are subject to the death penalty. And then
12 you can say -- and then tell them what the law is. That
13 it is only if you find aggravation, and you also consider
14 mitigation. That's what we're trying to find is to
15 eliminate the two extremes. All right. Very good.

16 Now, 160?

17 (WHEREUPON, Potential Juror 160 entered the
18 courtroom.)

19 THE COURT: All right. Are you Juror 160?

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: Thank you, ma'am.

22 **POTENTIAL JUROR 160,**

23 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

24 **EXAMINATION**

25 **BY THE COURT:**

1 Q. You recall on Monday I put all jurors under oath.

2 Now, do you understand that you're still under oath and
3 the oath continues throughout these proceedings?

4 A. Yes, sir.

5 Q. Thank you, ma'am. You have been provided with a
6 copy of a list of potential witnesses. Have you had an
7 opportunity to review that witness list?

8 A. Yes, sir.

9 Q. Did you recognize any names with whom you might be
10 related by blood or marriage or with whom you have some
11 business or social or personal relationship?

12 A. No, sir.

13 Q. Do you also recall my instructions from Monday to
14 avoid all forms of media coverage dealing with this case?

15 A. Yes, sir.

16 Q. Has this caused any problem for you?

17 A. I just haven't watched the news.

18 Q. All right. The trial of this case will last
19 approximately a week to ten days or maybe even a little
20 longer. Other than the personal inconvenience this would
21 pose -- would this -- other than personal inconvenience,
22 would this pose a serious danger to the health or well-
23 being of yourself or anyone dependent upon you?

24 A. No, sir.

25 Q. Among other things we'll 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 under the law to be
4 innocent. Do you understand that?

5 A. Yes, sir.

6 Q. If you were a juror in a criminal case, could you
7 listen to the law, accept and apply that law as I would
8 instruct you as the Judge even though you may not agree
9 with that law or think it ought to be some other way?

10 A. Sure, yes, sir.

11 Q. Could you decide this case based solely on the
12 evidence presented in the courtroom and disregard
13 anything you may have heard, read or seen about the case?

14 A. Yes, sir.

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 that?

19 A. Yes.

20 Q. Could you, depending on 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.

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 this?

3 A. Yes, sir.

4 Q. When you hear us refer to a capital case or 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 -- is seeking the death penalty. Do you understand

8 this?

9 A. Yes.

10 Q. A death penalty trial is divided into two parts.

11 Part one is the guilt phase where a jury determines

12 whether the defendant is guilty or not guilty of murder.

13 A. Yes, sir.

14 Q. Part two is the sentencing phase where a jury

15 determines the appropriate punishment. Of course, if the

16 defendant is found not guilty in part one, there is no --

17 that's the end of the proceedings, and it doesn't go any

18 further. Do you understand that?

19 A. Correct.

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?

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 a jury has already found a defendant guilty of
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.

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, they may reduce the
19 degree of responsibility for the crime. Do you
20 understand that?

21 A. Yes, sir.

22 Q. Do you also understand that the jury has two options
23 to consider regarding the sentencing for murder? One
24 option is life imprisonment which under our law is until
25 the death of the defendant without possibility of parole.

1 The other option is death which is in this state by
2 electrocution or lethal injection. Do you understand the
3 two options?

4 A. Yes.

5 Q. Could you, as a juror in the sentencing phase,
6 depending upon the facts including the relevant
7 aggravating and mitigating circumstances and the law as
8 instructed to you, render a sentence of life in prison?

9 A. Yes.

10 Q. On the other hand, as a juror in this sentencing
11 phase, depending upon the facts including the relevant
12 aggravating and mitigating circumstances and the law as I
13 instruct it to you, could you render a sentence of death?

14 A. Yes.

15 Q. All right. If you would, please, answer any
16 questions that Counsel may have.

17 THE COURT: Mr. McGuire?

18 MR. MCGUIRE: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. MCGUIRE:

21 Q. Juror Number 160, good evening. I have to refer to
22 you by number. It's a little awkward for me. It's not
23 because I'm not friendly or polite. It's just that's the
24 way we have to do things, and I hope you forgive me for
25 that.

1 A. That's fine.

2 Q. I want to ask you a little bit about publicity. You
3 hear anything, read anything, see anything about this
4 case?

5 A. Monday evening something came -- flashed on the
6 television screen. I turned my head and I said to my
7 husband, please turn the television off.

8 Q. Oh, good for you.

9 A. And he did.

10 Q. Well, good for you. And I can tell you my guess was
11 it was something kind of benign about the trial about to
12 start or something like that.

13 A. Right. Right.

14 Q. What I'm going to do now is -- the Judge gave you
15 some good general guidelines and framework. And I'm
16 going to speak in more detail about the death penalty,
17 your feelings about the death penalty, your ability to
18 give the death penalty for murder. That sort of thing.
19 And I'm going to start with the legal definition of
20 murder in South Carolina. My guess is you don't have
21 that definition handy with you as you come here?

22 A. No.

23 Q. I see you watch C.S.I. And the people in my family
24 who are not lawyers get most of their knowledge about the
25 law from shows exactly like that. Can I put you in that

1 category?

2 A. Sure.

3 Q. And you don't happen to have any inside knowledge
4 about the criminal justice system? You don't have a
5 lawyer in your family or anything like that?

6 A. No, I do not.

7 Q. Okay. You never studied criminal justice or
8 anything?

9 A. No.

10 Q. The Judge would tell you -- and our starting point
11 in this journey that I'm going to take you through here
12 is going to be the definition of murder, as I said. And
13 the Judge would instruct you that murder in South
14 Carolina is the unlawful killing of another human being
15 with malice aforethought. And malice aforethought means
16 that the killer was acting with a black and malignant
17 heart fatally bent on evil. So it's a deliberate,
18 intentional, evil choice to take an innocent life. Are
19 you with me?

20 A. Yes.

21 Q. And then -- because not all murders are eligible for
22 the death penalty. The State would bring even more
23 evidence on top of that intentional, deliberate killing.
24 And in this case, it would be a prior conviction for
25 murder.

1 MS. ADAMS: Your Honor, case specific.

2 THE COURT: Well, no. That is the indictment,
3 and that's the one that we're going to be concerned
4 about.

5 All right. You can go ahead.

6 MR. MCGUIRE: Thank you.

7 Q. So not only do you have an intentional, deliberate
8 killing, you have -- when you're sentencing, when you're
9 fixing judgment, you'd be fixing judgment for somebody
10 who deliberately killed twice. Could a life sentence
11 ever be severe enough to punish that kind of case?

12 MS. ADAMS: Your Honor, that's not the proper
13 standard.

14 THE COURT: No. I'm going to permit the
15 question. Overruled. Restate the question.

16 A. Could you repeat it again?

17 Q. Sure. Sure. It was kind of long-winded. What I'm
18 doing is I'm kind of fixing you in a place and time,
19 basically putting you on the jury.

20 A. Yes, sir.

21 Q. The guilt phase is over. And that's the did-he-do-
22 it-is-he-guilty phase. Okay? And you and eleven other
23 people have convicted a defendant of that intentional
24 deliberate killing, murder.

25 A. Yes, sir.

1 Q. And then you go home, you take a break. In about
2 twenty-four hours you'd come back. In the first piece of
3 evidence you hear is what's called aggravation evidence.
4 And that would be that the person you are judging had
5 deliberately killed a person before and was convicted of
6 it. And you'd be fixing punishment for somebody twice
7 convicted for murder. Could a life in prison penalty
8 ever be severe enough to punish that kind of murder?

9 THE COURT: I'll note your objection.
10 Overruled.

11 You can answer the question.

12 A. Yes.

13 Q. Okay. And what else would you want to know or need
14 to know to fix your decision?

15 A. (No verbal response)

16 Q. That's a pretty broad open-ended question, so I want
17 to be a little bit more specific and move things along a
18 little bit and help you with that.

19 THE COURT: Not so specific. Just tell her
20 what the law is as far as what she has to base mitigation
21 on.

22 MR. MCGUIRE: Sure.

23 Q. When you're in that position and you can fix
24 punishment ---

25 A. Right.

1 Q. --- you'd have also not just the aggravation
2 evidence, but you'd also have mitigation evidence. That
3 can be anything in the defendant's background, his walk-
4 in life, character. That sort of thing. Would those
5 factors be relevant to you in fixing your decision with
6 regard to punishment?

7 A. Yes.

8 Q. Okay. And what I'm going to do now is take you and
9 walk you through that sentencing procedure in a little
10 bit more detail. And I'm going to tell you basically
11 what the law is and ask you if you can follow it and
12 agree with it.

13 A. Okay.

14 Q. And when you come back after that first phase and
15 take that twenty-four hour break and you come back and
16 rejoin your fellow jurors, that's when you begin the
17 journey of fixing punishment. And again, the first piece
18 of aggravation or the first piece of evidence rather you
19 would hear would be the aggravation evidence from the
20 State.

21 And what I'm going to do is explain how the rules
22 are different for the State and the Defense. And it's
23 going to be a little counterintuitive were kind of a
24 little bit opposite from which you might have expected in
25 a jury trial. And it's complicated, so I'm just going to

1 walk through slowly. If I go too fast or if I'm too
2 wordy, you just let me know.

3 A. Okay.

4 Q. Again, the State would have to show that aggravation
5 evidence. And what they have to do is they have to
6 present that to the whole jury. And the whole jury would
7 have to find beyond a reasonable doubt that that
8 aggravation evidence existed. And everybody would have
9 to agree. But the rules are different for the Defense
10 because when it comes to mitigation evidence -- and the
11 Judge would explain to you that mitigation evidence --
12 that's just kind of a fancy word for any reason to vote
13 for a sentence less than death.

14 A. Okay.

15 Q. And it can be something you saw in the case. It can
16 be evidence that the Defense presented. It can be
17 something you saw in the courtroom. It can be anything.
18 And the judge would say not only can it be anything, it
19 can be just mercy alone, and it could be even no reason,
20 that a juror's entitled to say, you know what, I just
21 can't -- it just doesn't seem appropriate for me. I
22 can't vote for death. And I have no reason for it. And
23 that's okay. That's the law. Is that a law you can
24 follow?

25 A. Yes.

1 Q. Could you respect a juror who said, I'm not going to
2 vote for the death penalty and I don't have a reason for
3 you?

4 A. Yes.

5 Q. You could respect them?

6 A. Uh-huh (affirmative).

7 Q. And the way the law describes a sentencing decision
8 is that it's an individual's own moral judgment based on
9 their walk-in life, based on their experiences. And the
10 law says if it would do harm to somebody's conscience to
11 change or give up their moral judgment, their decision,
12 that that would be wrong.

13 And in most cases, the jury has to be unanimous, but
14 not in a capital case. The only time the jury has to be
15 unanimous with regard to sentence is if they all vote for
16 a death sentence. The only way the State's entitled to
17 receive a death sentence is if all jurors agreed that
18 it's the appropriate sentence beyond a reasonable doubt.

19 A. Okay.

20 Q. On the other side is the mitigation part of -- the
21 Defense part of it or the life sentence part.

22 A. Uh-huh (affirmative).

23 Q. And all twelve could -- all twelve could agree with
24 life and come back and say, you know what, we all decided
25 life. But it's also okay for the jury to agree to

1 disagree and come back into court and say, we've talk to
2 each other and we've heard everybody's point of view.
3 We've talked about the case. We've been polite. We've
4 had discourse. But different people have come to their
5 own individual moral judgment, and we all respect that.
6 And what would happen is the judge would take the case
7 and sentence.

8 MS. ADAMS: Your Honor?

9 THE COURT: Yes?

10 MS. ADAMS: I just have a matter of law to take
11 up on this line of questioning. He's attempting to pit
12 jurors against ---

13 THE COURT: Overruled. Go ahead. Let's bring
14 your question to a close.

15 MR. MCGUIRE: Sure, yes, sir.

16 THE COURT: Let's reach the question.

17 MR. MCGUIRE: Sure.

18 Q. And the way that's based in the law is that each
19 individual juror has a right to look for mitigation
20 evidence where they find it. What I mean by that is one
21 juror who's sitting in the front here in this front seat
22 could say, I saw something in the defendant's background,
23 and that resonated with me. That was my reason for
24 voting for life. A different juror, maybe one sitting in
25 the back, could say, well, I saw something different, and

1 that was my reason. They don't have to agree. That's
2 the legal principle on or a legal -- or that's the law
3 that I'm trying to explain to you. Is that -- can you
4 follow that law?

5 A. Yes.

6 Q. Allowing everybody to find mitigation -- a reason
7 for life separately and individually?

8 A. Okay.

9 Q. And the State and the Defense and even the jurors
10 are entitled to fairness not just out here, but also the
11 jury room. And if it got beyond civil discourse, if it
12 got hostile where people were bullying each other, could
13 we count on you to pass a note to the Judge and say,
14 things aren't fair in here and stop that?

15 A. Yes.

16 Q. Because you'd want your opinion to be respected?

17 A. Certainly.

18 Q. And you'd respect everybody else's?

19 A. Yes, sir.

20 Q. That's all I have for you. Thank you, ma'am.

21 THE COURT: All right. Anything from the
22 State?

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

24 CROSS-EXAMINATION

25 BY MS. ADAMS:

1 Q. How are you this afternoon?

2 A. Fine, thank you.

3 Q. Good. My name is Chrissy Adams. I'm the Solicitor
4 for the Tenth Circuit. We certainly do appreciate your
5 being here and appreciate your patience.

6 The reason that we are asking questions that we are
7 today is to ensure not only that the Defense gets a fair
8 trial, but the State does as well. And that once the
9 Judge does instruct you on the law that he is going to
10 say -- once we've already determined guilt, that the
11 defendant is guilty of murder, okay, before we get to the
12 second phase -- do you -- do you understand -- you
13 understand that process?

14 A. Two phases, yes.

15 Q. And before you can even consider life or death, that
16 you must find unanimously, all twelve, that there's some
17 sort of aggravation that is present. Okay?

18 A. Yes.

19 Q. And that's laid out by the law.

20 A. Right.

21 Q. That's statutory aggravating circumstances. That
22 the law -- that's what allows the State to seek the death
23 penalty. And the jury must find that beyond a reasonable
24 doubt.

25 A. Yes, ma'am.

1 Q. Okay. Then the Judge is going to instruct you that
2 before you render a decision on life or death that you
3 must consider not only the aggravation, but any
4 mitigation, if any.

5 A. Yes.

6 Q. Okay. Now, are you able to consider all the
7 evidence before you make a decision?

8 A. I would.

9 Q. Okay. And you would follow the Judge's instructions
10 on that?

11 A. Yes, ma'am.

12 Q. Okay. And you understand just the natural process
13 of being part of a jury is a give-and-take situation.
14 Does that make sense? In other words, all the jurors are
15 entitled to their opinions, right?

16 A. Opinions, yes.

17 Q. But every juror, as part of the deliberation, needs
18 to listen and respect the other jurors' opinions as well?

19 A. Yes, ma'am.

20 Q. Okay. In order for the process -- so a unanimous
21 decision of death, if appropriate, could be made.

22 A. Yes.

23 Q. Okay. If death is the appropriate -- if the jury
24 finds that death is appropriate in this case, the law
25 requires that each and every juror sign their name to the

1 sentence sheet which -- and that piece of paper, that
2 signature, your signature, would allow the State to
3 actually execute the Defendant. And that is public
4 document.

5 A. Yes, ma'am.

6 Q. Could you sign your name to a piece of paper that
7 would allow the State to actually kill another human
8 being?

9 A. Yes, ma'am.

10 Q. Okay. Thank you so much. I appreciate it.

11 THE COURT: All right. Just a moment.
12 Anything further from the State?

13 MR. CAMPBELL: No, Your Honor.

14 MS. ADAMS: Sorry, Your Honor, no.

15 THE COURT: Anything from the Defendant?

16 MR. MCGUIRE: Nothing at all, Your Honor.

17 THE COURT: Very good. Considering the entire
18 voir dire, which has been this questioning process
19 including the -- your questionnaire that I've had a
20 chance to look at, I find that Juror 160 will be fair,
21 unbiased, impartial and able to carry out the law as
22 explained to her. Furthermore, I find that this juror's
23 beliefs or attitudes towards the death penalty would not
24 prevent or substantially impair the performance of her
25 duties as a juror in accordance with the law, the Court's

1 instructions and the juror's oath.

2 With this, I find that you are qualified for this
3 trial. Now, the only thing is, as you've seen, it's
4 taking some time to qualify each juror.

5 THE POTENTIAL JUROR: Right.

6 THE COURT: We need to qualify at least sixty
7 jurors, so this will take a certain length of time for
8 the process. It will probably be into next week. But
9 until that time, you're free to do whatever you'd like to
10 do. Now, the Clerk does have your telephone number?

11 THE POTENTIAL JUROR: Yes, sir.

12 THE COURT: All right. She's down there.

13 MADAM CLERK: Yes, sir.

14 THE COURT: So you can do whatever you'd like
15 until you get a telephone call.

16 THE POTENTIAL JUROR: Okay.

17 THE COURT: But I do want to thank you for
18 being here, and I appreciate your patience with this
19 Court.

20 THE POTENTIAL JUROR: Thank you.

21 THE COURT: Thank you very much. But you may
22 -- you're excused until you hear -- get the telephone
23 call.

24 THE POTENTIAL JUROR: Thank you.

25 (WHEREUPON, Potential Juror 160 exited the

1 courtroom.)

2 THE COURT: All right. The next one is 171.

3 171? All right. Anything from the Defendant on 171

4 before we bring the juror out?

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

6 MR. MCGUIRE: There might be an issue of her

7 son having burglary charges and then those charges

8 dropped. I don't know if they were prosecuted by Ms.

9 Adams' office.

10 MS. ADAMS: Your Honor, I don't have her son's

11 name. I could check, but I have no idea unless ...

12 Is the son named underneath? Is that the son's

13 name?

14 THE COURT: Well, do you want to just go ahead

15 and rather than voir dire her -- if that is the case, I

16 feel that that would perhaps create some question about

17 being comfortable with serving as a juror. They've had

18 that background, experience and relationship with the

19 Solicitor's office.

20 MS. ADAMS: Your Honor, I agree. I just have

21 no idea when that happened or -- oh, January of '09 to

22 March of '09.

23 THE COURT: You see it somewhere?

24 MS. BYFORD: I can go check again.

25 THE COURT: It's last year. Well, I -- unless

1 I hear otherwise, I'm going to excuse her on the trial of
2 this case.

3 MS. BYFORD: Yes, sir.

4 THE COURT: Anything from the State?

5 MS. ADAMS: No, sir.

6 THE COURT: From the Defense?

7 MR. MCGUIRE: No, sir.

8 THE COURT: All right. Ask Juror 171 to ...

9 (WHEREUPON, Potential Juror 171 entered the
10 courtroom.)

11 **POTENTIAL JUROR 171,**

12 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

13 THE COURT: You are Juror Number 171?

14 THE POTENTIAL JUROR: I am.

15 THE COURT: All right. I've had an opportunity
16 to go over your questionnaire. And there are certain
17 things in the questionnaire that gives the Court a little
18 bit of concern, not for your qualification as a juror as
19 much as, as I mentioned the other day, that, you know, I
20 asked the question about can the juror be fair and
21 impartial for two reasons. One of course, is the parties
22 are entitled to a fair and impartial juror. But the
23 other is that the juror themselves can be impartial in
24 the sense that if they do not have any sort of contact or
25 connection or any association, you know, with any of the

1 parties or something of that nature.

2 And reviewing your questionnaire, I saw some, what
3 is it, things that might suggest that would be not a
4 conflict, but just something that might be compromising.
5 And I just didn't want to subject you to that sort of
6 thing. So I would find you qualified on any other case.
7 But considering the nature of this case and who's
8 involved, I think that it'd be better that I excuse you
9 from serving on the trial of this case. I hate you
10 having to wait this late, but -- you're 171. We've been
11 trying to let it go through them. And it's just only now
12 that I've ---

13 THE POTENTIAL JUROR: I understand.

14 THE COURT: But I do thank you for being
15 patient with the Court and cooperating as you have. I'm
16 confident to say you'd make an excellent juror in perhaps
17 another case, but this one I feel that it would be
18 probably in the best interest of yourself as well as in
19 mine in the sense that I don't want to put a juror in any
20 sort of uncomfortable position.

21 THE POTENTIAL JUROR: Well ...

22 THE COURT: So you're going to be excused. But
23 listen, I do want to thank you for being here.

24 THE POTENTIAL JUROR: Thank you, Your Honor.

25 THE COURT: And have the best -- and also this

1 excuses you from the balance of the week. The only thing
2 I can offer you is that at least you won't be called for
3 another three years.

4 THE POTENTIAL JUROR: Well, I'm glad I was
5 called and had the opportunity.

6 THE COURT: Well, I do thank you. And your
7 willingness to serve is so important, and I do thank you.

8 THE POTENTIAL JUROR: Thank you, sir.

9 THE COURT: Thank you, ma'am.

10 (WHEREUPON, Potential Juror 171 exited the
11 courtroom.)

12 THE COURT: All right. The next one is Number
13 178. Anything from the Defendant on 178?

14 MS. ADAMS: Your Honor, he did have a brother
15 who was accused of aggravated assault and entered a plea
16 and received probation. Doesn't state when.

17 THE COURT: How long ago?

18 MS. ADAMS: I don't know, Your Honor. He
19 didn't ...

20 THE COURT: Nothing pending? By the way, we
21 were able to check on that last one. The burglary case
22 was nolle prossed in November just this past year. I
23 think that's ---

24 MR. CAMPBELL: Your Honor, if I may, I know
25 all about it. It was my case, so I can actually fill the

1 Court in on it. I know all about the case.

2 THE COURT: All right. Did you recognize the
3 lady?

4 MR. CAMPBELL: No. It was her son. And his
5 co-defendant went to prison. He was charged with the
6 same thing. And then as things happen, the victim in the
7 case got arrested. It was all over drug issues. He was
8 involved in the drug scene. That's basically what that
9 was about.

10 THE COURT: Very well. All right. I think
11 that was the proper thing.

12 MS. ADAMS: He does say something about
13 Anderson County roughly two years ago. And he does also
14 state in his questionnaire, Judge, that he can never be
15 responsible for another person's death for any reason.
16 So ...

17 THE COURT: All right. Is this the last one on
18 this panel?

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

20 MR. MCGUIRE: Yes, Your Honor. I'd like to ask
21 him some questions.

22 THE COURT: Well, that's just it. I'm going to
23 give you -- now, you did so well on that last bringing in
24 what -- those who would impose the death penalty or
25 automatically vote to acquit and impose a life sentence.

1 If you do -- what is it -- stick with the full question
2 as -- in *Morgan*, they say in spite of the evidence.
3 That's where automatic comes in.

4 MR. MCGUIRE: Yes, sir.

5 THE COURT: All right. All right. I am. I'm
6 going to go ahead and voir dire them and we'll see what
7 happens. All right?

8 MS. ADAMS: Yes, sir.

9 THE COURT: Okay. Ask 178 to join us, please.
10 (WHEREUPON, Potential Juror 178 entered the
11 courtroom.)

12 THE COURT: All right. You're Juror Number
13 178?

14 THE POTENTIAL JUROR: Yes, sir.

15 THE COURT: All right. Thank you.

16 **POTENTIAL JUROR 178,**

17 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

18 EXAMINATION

19 BY THE COURT:

20 Q. You recall on Monday I put all jurors under oath or
21 affirmation. Now, do you understand that you're still
22 under oath and this oath continues throughout the
23 proceedings? You understand that?

24 A. Yes, sir.

25 Q. She's taking down everything we say.

1 A. Okay.

2 Q. Very good. Have you been provided with a copy of
3 the list of potential witnesses in the jury room?

4 A. Yes, sir.

5 Q. All right. Have you had an opportunity to review
6 that list?

7 A. Yes, sir.

8 Q. Did you recognize any names on that list to which
9 you might be related by blood or marriage, close personal
10 friends, business associate or any relationship?

11 A. No, sir.

12 Q. Very good. Are you -- do you also recall my
13 instructions from Monday to avoid all forms of media
14 coverage dealing with this case?

15 A. Yes, sir.

16 Q. Has that caused you any problem at all?

17 A. No, sir.

18 Q. Very good. Thank you.

19 Now, the trial of this case will last approximately
20 a week to ten days, maybe even longer. Other than the
21 personal inconvenience, with this pose a serious danger
22 to the health or well-being of yourself or anyone else
23 who is dependent upon you?

24 A. No, sir.

25 Q. Among other things, we will be talking about penalty.

1 today. But the mere fact that we talk about penalty does
2 not indicate anything about this Defendant or any
3 defendant. Defendants are presumed under our law to be
4 innocent. Do you understand?

5 A. Yes, sir.

6 Q. If you were a juror in a criminal case, could you
7 listen to the law and accept and apply that law as I
8 would instruct you as the Judge even though you may not
9 agree with the law or think it ought to be something
10 else?

11 A. Yes, sir.

12 Q. Could you decide this case based solely on the
13 evidence presented in this courtroom and disregard
14 anything you may have heard, read or seen about this
15 case?

16 A. Yes, sir.

17 Q. In a criminal case, the State has the burden of
18 proving guilt. The burden of proof has -- for the State
19 is beyond a reasonable doubt. A defendant has no burden
20 to prove anything, innocence or anything else. Don't
21 even have to take the stand or offer any evidence or
22 testimony. Do you understand that?

23 A. Yes, sir.

24 Q. The burden is always on the State to prove guilt.
25 Do you understand?

- 1 A. Yes, sir.
- 2 Q. Could you, depending upon the facts and evidence as
3 I would instruct you in a particular case, find a
4 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, you
8 would then move to the sentence phase of the trial. Do
9 you understand this?
- 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 trial is divided into two parts.
18 Part one is the guilt phase where the jury determines
19 whether the defendant is guilty or not guilty of murder.
20 Part two is the sentencing phase where the jury
21 determines the appropriate punishment for someone found
22 guilty of murder. If the defendant is found not guilty,
23 that ends the matter.
- 24 A. Yes, sir.
- 25 Q. And there wouldn't be any second phase. Therefore,

1 if you were a juror in the trial of a capital case where
2 in phase one of the trial, the defendant [sic] has found
3 the 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 jury has already found a defendant guilty of
10 murder -- do you understand that the jury rather than the
11 judge determines the sentence that the defendant will
12 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 based upon the
16 circumstances of the crime and the characteristics of the
17 individual defendant. Do you understand?

18 A. Yes, sir.

19 Q. Now, aggravating circumstances are facts or details
20 that, when they are present in the case, make the crime
21 of murder more serious or worse.

22 A. I understand.

23 Q. On the other hand, mitigating circumstances are
24 incidents, occurrences or details of a case that would
25 reduce the severity of the crime of murder. In other

1 words, may reduce the degree of responsibility for the
2 crime. Do you understand that?

3 A. Yes, sir.

4 Q. All right. Thank you, sir. Do you also understand
5 that the jury has two options to consider regarding the
6 sentencing for murder? One option is imprisonment life
7 -- excuse me. One option is life imprisonment which
8 under our law is until the death of the defendant without
9 possibility of parole. And the other option is death
10 which is in our state by electrocution or lethal
11 injection. Do you understand that?

12 A. Yes, sir.

13 Q. Could you, as a juror in the sentencing phase
14 depending upon the facts including all relevant
15 aggravating and mitigating circumstances and the law as
16 instructed to you, render a sentence of life
17 imprisonment?

18 A. Yes, sir.

19 Q. On the other hand, as a juror in the sentencing
20 phase depending upon the facts including relevant
21 aggravating and mitigating circumstances and the law as I
22 instruct it to you, could you render a sentence of death?

23 A. I'm not sure about that.

24 Q. Again, there's no right or wrong answers. We want
25 to find out what you think about these things. Now,

1 please answer any questions the attorneys may have for
2 you.

3 DIRECT EXAMINATION

4 BY MR. MCGUIRE:

5 Q. Juror Number 178?

6 A. Yes, sir.

7 Q. I have to refer to you by number which is a little
8 awkward and difficult for me. It's not because I'm not
9 being friendly or polite to you; it's just that I have to
10 do that. So I hope you forgive me for that.

11 A. Yes, sir.

12 Q. It just seems kind of cold and impersonal to me.

13 I'm going to ask you first about -- do you have any
14 inside knowledge of the criminal justice system? Ever go
15 to school for criminal justice? Study it? Have any
16 relatives that are police officers, lawyers, anything
17 like that?

18 A. No, sir.

19 Q. Okay. My guess is you don't have the technical
20 legal definition of murder with you for South Carolina?

21 A. No, sir.

22 Q. Okay. Most people don't. I'm not putting you on a
23 hot seat.

24 A. Okay.

25 Q. Most people show up and they have most of their

1 knowledge from TV and detective novels and stuff like
2 that. And you know, murder in South Carolina is a person
3 acting with a black and malignant heart fatally bent on
4 evil deliberately killing somebody, an innocent person.
5 And -- and that's murder. It's called malice murder,
6 malice aforethought murder.

7 And that murder is not eligible for the death
8 penalty all by itself. It has to be accompanied by an
9 aggravating circumstance. And that can be anything that
10 makes it even worse like killing an officer, killing two
11 people, killing a child. Something like that. Okay?

12 And what I want to do is walk you through how this works
13 in a little bit more detail. And I'm going to share with
14 you some aspects of the law and ask you if you can agree
15 and follow those aspects of the law.

16 And I'm going to put you kind of in a place in time
17 right now. I'm going to put you over here in this jury
18 box. And the first phase of the trial, the guilt phase,
19 whether the fellow was guilty or not of murder, that's
20 over. And you've come back. You took a break and you
21 came back with your fellow jurors, eleven other people,
22 and now you're starting the journey to fix punishment.
23 It's going to be life or death. Okay? Those are the two
24 options available to the jury. Life without parole
25 actually.

1 And the State has to go first and show that
2 aggravation evidence. And all twelve jurors have to find
3 it beyond a reasonable doubt. They all have to agree.
4 And normally when people think of juries, they think of
5 the whole jury agreeing on whatever their result is. And
6 that's true with regard to the State. The State's
7 entitled to receive a death verdict if all twelve jurors
8 agree that that's the appropriate sentence.

9 But, as the Judge will tell you, there's never a
10 murder case, not in this country, not in this state, that
11 ever requires the death penalty. It's never automatic.
12 What that means is even if the State proves murder, even
13 if the State proves an aggravating circumstance, the
14 Judge would tell you that the jury or individual jurors
15 in fact could vote for life for any reason, no reason,
16 mercy alone or any piece of evidence they've seen in the
17 case.

18 Some people, when they show up, they think that
19 there are some cases so bad that death is automatic or
20 the death penalty is automatic. And what I'm telling you
21 is that's not the case. Is that a -- is that an aspect
22 of the law that you can agree with?

23 A. Yes..

24 Q. Okay. Did you know that before coming here?

25 A. Yes.

1 Q. Okay. A lot of people show up with more knowledge
2 than others, but I have to have a starting point. And I
3 hope -- if have plowed over some ground you already knew,
4 I apologize.

5 And then going into that sentencing phase, again,
6 the rules are different for the Prosecution and the
7 Defense. Like I told you, that aggravation evidence have
8 to be proven to all twelve jurors. They all had to
9 agree. When it comes to mitigation evidence, there
10 doesn't have to be agreement or unanimity in the jury.

11 Somebody sitting here in the first seat could say,
12 you know, I saw something in the defendant's background,
13 his up -- his walk in life. And that resonated with me,
14 and I'm going to vote for a sentence less than death
15 based on that.

16 Completely different juror, maybe someone sitting in
17 the back, can say something completely different like, I
18 saw something in his relationship with his family or his
19 child. And that resonated with me, and I'm not going to
20 vote for death because of that. And again, it doesn't
21 even have to be a reason. It can be no reason, as the
22 Judge would instruct everybody. And all twelve jurors
23 can have their own individual opinion about that. They
24 could all find a different piece of evidence that
25 warranted a sentence less than death. It can all be

1 different. Nobody has to agree. Is that an aspect of
2 the law that you can agree with?

3 A. Yes.

4 Q. Okay. For instance, if a juror was to say -- if you
5 were to sit on the jury and a juror said, well, you know,
6 this is my position, this is what I saw. I'm going to
7 vote for death, and I don't even have a reason to give
8 you, could you respect that?

9 A. No.

10 Q. You'd want them to give you a reason?

11 A. Yes.

12 Q. The law doesn't require them to give you a reason.
13 Can you respect that aspect of the law?

14 A. Yes.

15 Q. Maybe with some reservation or hesitation. But if
16 that was the law, you could follow that?

17 A. Yes.

18 Q. Okay. Because a lot of people want consensus and
19 they want agreement. But it's not necessary. In fact,
20 the jury could come back in and say, we've heard each
21 other, we've deliberated, but we can't reach a unanimous
22 decision. And that's okay because the judge would take
23 the case and sentence. Is that an aspect of the law you
24 can agree with?

25 A. Yes.

1 Q. Okay. In South Carolina if all twelve jurors agree
2 on the death penalty -- and I'm going to put you in a
3 position, a hypothetical situation, where the State has
4 brought to you the sufficient quality and quantity of
5 evidence that, for you, made this case deserving of the
6 death penalty. And you and eleven other jurors decided
7 that that was in fact the appropriate punishment. You'd
8 be asked to sign a document, a sentencing sheet, with
9 your name on it saying that my verdict is for the death
10 penalty. Could you do that?

11 A. No.

12 Q. Could you vote for the death penalty in the jury
13 room?

14 A. I'm not sure.

15 Q. Okay. Again, what I'm -- to go backwards a little
16 bit, you heard evidence presented by the State of South
17 Carolina. And it has convinced you that the appropriate
18 punishment should be the death penalty. In that
19 situation, could you vote for it?

20 A. I'm still not sure.

21 Q. Okay. Can you -- in your mind and in your heart,
22 based on your walk in life, are there some cases in your
23 view that are deserving of the death penalty?

24 A. Yes.

25 Q. And if one of those cases were brought to you and

1 you thought it very much deserved the death penalty and
2 eleven other people said, we agree with you, could you
3 say, I agree with you, and vote for the death penalty?

4 A. I'm still not sure.

5 Q. Okay. If I could have just a second.

6 (Off record discussion)

7 Q. Juror Number 178, those are all the questions that
8 I've got for you today. I appreciate your patience.
9 You've been waiting a long time. Court's not the most
10 efficient thing. But your willingness to do this is very
11 much appreciated by the Court, me and the State. Thank
12 you.

13 A. Thank you.

14 THE COURT: Anything from the State?

15 MS. ADAMS: Your Honor, no, not right this
16 second. Just a legal matter, I think, that we have to
17 take up. No questions.

18 THE COURT: All right. If you would, please,
19 sir, step out for a moment. I need to take up these
20 legal matters.

21 MS. ADAMS: We just agreed, Judge.

22 MR. MCGUIRE: Judge, I'll concede with the
23 State's position.

24 THE COURT: Well, that's just -- well, wait a
25 minute. I think ---

1 MS. ADAMS: We'll save him some time, Judge.

2 THE COURT: --- it won't be necessary. Come
3 back in, if you would, please, sir. Considering the
4 entire voir dire -- that means all this questioning
5 process to include your questionnaire as well as ---

6 THE POTENTIAL JUROR: Yes, sir.

7 THE COURT: --- the questions this afternoon --
8 I find that Juror 178 should be excused from serving on
9 the trial of this case. However, I do want to thank you
10 for your candor as well as your patience in answering all
11 these difficult questions and particularly for
12 participating and being here today.

13 Now, the reason I have excused you, if you remember
14 on Monday I asked the jurors or say it -- mentioned to
15 the jurors that there are two reasons I go into asking
16 the questions like, could you be fair and impartial to
17 both the State and the Defendant. Not only do the
18 parties, are they entitled to an impartial jury, but you
19 didn't ask to be here. You're here because you were
20 summoned and you answered your call.

21 And therefore, I want to be sure that you can do
22 your duty as a juror in a particular case without any
23 reservations or concerns, in particular, your
24 consideration of our concern about your strongly-held
25 convictions because I never -- I do not want to or ever

1 will change those strongly-held convictions.

2 So although you would be a well-qualified juror in
3 any other case, just under the particular circumstances
4 of this case I think it would be best that you not have
5 to serve where you might have to work out the problems
6 that you might have with your strongly-held convictions
7 and anything that you might have to do as a juror. So
8 that's why I'm going -- I'm excusing you. It has nothing
9 to do with your qualifications except this particular
10 case.

11 THE POTENTIAL JUROR: Okay.

12 THE COURT: But I do want to thank you for
13 being here.

14 THE POTENTIAL JUROR: Thank you.

15 THE COURT: And good luck, sir. Thank you very
16 much.

17 THE POTENTIAL JUROR: Thank you.

18 (WHEREUPON, Potential Juror 178 exited the
19 courtroom)

20 THE COURT: All right. We are only five
21 minutes off.

22 MS. ADAMS: That's impressive, Judge.

23 THE COURT: I'm not going to breathe lightly.
24 It's early. By the way, have many have we gotten? Does
25 -- has anybody kept up with them?

1 MS. BYFORD: We have -- how many have we
2 qualified?
3 MR. CAMPBELL: Twenty-two.
4 MADAM CLERK: We have twenty-one, Your Honor.
5 MS. BYFORD: Well, I have twenty-one.
6 MR. MCGUIRE: We qualified an extra.
7 (Laughter)
8 THE COURT: Well, all right. Okay.
9 MR. MCGUIRE: We've got our ringer.
10 (Laughter)
11 MR. DELGADO: How many do you have?
12 MADAM CLERK: We have twenty-one.
13 MR. DELGADO: Twenty-one?
14 THE COURT: All right. Well, I'm just thinking
15 that we still need, what, sixty or sixty-six, I think we
16 said. All right. This has only been two days though,
17 and we've got two days left. And depending on how -- and
18 we -- we might be able to get -- probably need a few more
19 panels next week. And -- I think we can probably do a
20 jury by next week, taking the weekend off.
21 MR. MCGUIRE: Yes, sir.
22 THE COURT: All right. Very good. Let's do
23 plan to see if we can move along.
24 MADAM CLERK: Yes, sir.
25 THE COURT: About to work out the system. All

1 right. Very good. All right. Y'all have -- anything
2 from the State?

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

4 THE COURT: Anything from the Defense?

5 MR. MCGUIRE: No, sir, Your Honor.

6 THE COURT: All right. See you in the morning
7 at, what, 9:30?

8 MR. MCGUIRE: Thank you, sir.

9 MS. ADAMS: Yes, sir.

10 (WHEREUPON, court stood at recess for the day at
11 approximately 6:04 p.m.)

12 *** END OF VOLUME III ***

State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina,

2007-GS-04-649

Plaintiff,

February 1 through 18, 2010

-vs-

Raymondeze Rivera,

Transcript of Record

Defendant.

Volume IV of X

B E F O R E:

The Honorable Alexander Macaulay, Judge

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

Christina Adams, Esquire
Solicitor for the Tenth Judicial Circuit

Jennings Byford, Esquire
Rame Campbell, Esquire
Assistant Solicitors for the Tenth Judicial Circuit

Attorneys for the State

Bill McGuire, Esquire
John Delgado, Esquire
Attorneys for the Defendant

R. Daniel Day, Esquire
Guardian ad Litem for the Defendant

Renee H. Tollison
Circuit Court Reporter

1 FEBRUARY 4, 2010

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 9:48 a.m.)

5 THE COURT: All right. Is there anything from
6 the State before we begin?

7 MS. ADAMS: No, sir, Your Honor. Just
8 regarding the first juror.

9 THE COURT: Right. I understand. But anything
10 before we start with the jury voir dire? Anything from
11 the Defense?

12 MR. MCGUIRE: No, sir.

13 THE COURT: All right. Very good.

14 Madam Solicitor, I understand you do have a concern
15 about Juror 182?

16 MS. ADAMS: Yes, sir, Your Honor. We actually
17 prosecuted her son for lewd act on a minor. He did go to
18 prison. And I believe she actually mentioned me by name
19 to Ms. Phillips this morning. I think she said she
20 didn't quite hear you because she was sitting in the
21 back, which is why she didn't say something during
22 general qualification ---

23 THE COURT: All right.

24 MS. ADAMS: --- to Cathy.

25 THE COURT: Very good. What's the -- does the

1 Defense have anything to offer? Obviously, I find that
2 she should be excused for cause.

3 MR. MCGUIRE: I understand the Court's
4 position, but we'd like an opportunity to voir dire the
5 juror.

6 THE COURT: Very well.

7 All right. Ask 182 to come forward, please.

8 (WHEREUPON, Potential Juror 182 entered the
9 courtroom.)

10 THE COURT: Good morning.

11 THE POTENTIAL JUROR: Good morning.

12 THE COURT: You are Juror 182?

13 THE POTENTIAL JUROR: That's correct.

14 **POTENTIAL JUROR 182,**

15 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

16 **EXAMINATION**

17 BY THE COURT:

18 Q. You will recall on Monday I put all of the jurors
19 under oath. Now, do you understand that you're still
20 under oath and this oath continues throughout these
21 proceedings?

22 A. I do.

23 Q. And you've been provided with a copy of a list of
24 potential witnesses. Have you had an opportunity to
25 review the witness list?

1 A. I have.

2 Q. Are you related by blood or marriage or close
3 personal friend or business associate of any of the other
4 -- or any other -- have any other association with any of
5 the potential witnesses?

6 A. I do not.

7 Q. Do you also recall my instructions from Monday to
8 avoid all forms of media coverage dealing with this case?

9 A. Correct.

10 Q. Has that caused you any problem?

11 A. No problem.

12 Q. Very good. Now, the trial of this case may last as
13 long as ten days to two weeks. Other than personal
14 inconvenience, would this pose a serious danger to the
15 health or well-being of yourself or anyone who is
16 dependent upon you?

17 A. It will be a financial burden on me.

18 Q. But as far as ---

19 A. Otherwise, no.

20 Q. --- physical well-being?

21 A. No, sir.

22 Q. Among other things, we will be talking about penalty
23 today. The mere fact that we talk about a penalty does
24 not indicate anything about this Defendant or any
25 defendant. Defendants are presumed in the law to be

1 innocent. Do you understand?

2 A. Yes.

3 Q. If you were a juror in a criminal case, could you
4 listen to the law, accept and apply that law as I would
5 instruct you, even though you may not agree with that law
6 or think it ought to be some other way?

7 A. Yes.

8 Q. Could you decide this case based solely on the
9 evidence presented in the courtroom and disregard
10 anything you may have heard, read, or seen about this
11 case?

12 A. Yes.

13 Q. In a criminal case, the State has the burden of
14 proving guilt. The burden of proof for the State is
15 beyond a reasonable doubt. A defendant has no burden to
16 prove innocence. Do you understand?

17 A. Yes.

18 Q. Could you, depending upon the facts and the evidence
19 and the law as I would instruct you in a particular case,
20 find a defendant either guilty or 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 sentence phase of the trial. Do
25 you understand?

1 A. Yes.

2 Q. When you hear us refer to a capital case or a death
3 penalty case, what we mean 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. Yes.

8 Q. A death penalty trial is divided into two parts.
9 Part one is the guilt phase where a jury determines
10 whether the defendant is guilty or not guilty of murder.
11 Part two is the sentencing phase where a jury determines
12 the appropriate punishment. Of course, if the defendant
13 is found not guilty in the first part, that ends the
14 matter and we have no second part. Do you understand?

15 A. Yes.

16 Q. Therefore, if you were a juror in a trial of a
17 capital case where the jury in phase one of the trial has
18 found the defendant guilty of murder, you would then move
19 to phase two of the trial which is called the sentencing
20 phase of the trial.

21 A. Yes.

22 Q. Now, if you were a juror in the sentencing phase --
23 that is, phase two of the capital murder trial, again,
24 where a jury has already found the defendant guilty of
25 murder -- do you understand that the jury rather than the

1 judge, determines the sentence -- excuse me -- determines
2 the sentence that the defendant will receive for the
3 crime of murder?

4 A. Yes.

5 Q. In a capital sentencing trial, the juror -- the
6 jury's function is to determine the appropriate
7 punishment based upon the circumstances of the crime and
8 the characteristics of the individual defendant. Do you
9 understand that?

10 A. Yes.

11 Q. Now, aggravating circumstances are facts or details
12 that, when they are present in a case, make the crime of
13 murder more serious or worse. On the other hand,
14 mitigating circumstances are incidents, occurrences, or
15 details of a case that would reduce the severity of the
16 crime of murder. In other words, may reduce the degree
17 of responsibility for the crime. Do you understand that?

18 A. Yes.

19 Q. Do you also understand that the jury has two options
20 to consider regarding the sentencing for murder? One
21 option is life imprisonment which is, under our law --
22 which under our law is the death of the defendant -- is
23 until the death of the defendant. In other words,
24 without possibility of parole. The other option is death
25 which is in this state by electrocution or lethal

1 injection. Do you understand this?

2 A. Yes.

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 the relevant
10 aggravating and mitigating circumstances and the law as
11 I've instructed to you, could you render a sentence of
12 death?

13 A. No.

14 Q. All right. If you would, please, answer any
15 questions the Defense may have.

16 DIRECT EXAMINATION

17 BY MR. MCGUIRE:

18 Q. Good morning, Juror Number 182. I have to refer to
19 you by number. It's a little awkward for me. Not
20 because -- you know, I'm not being not friendly with you
21 or not polite. It's just the way we have to do things.

22 A. Uh-huh (affirmative).

23 Q. If you would, just forgive that for me.

24 What I want to ask you a little bit right now is
25 have you heard or read anything about this case?

- 1 A. I have heard things, yes.
- 2 Q. Okay. But you don't really know the facts of the
3 case, not intimately?
- 4 A. I do not.
- 5 Q. Okay. Just kind of hear little bits and pieces here
6 and there?
- 7 A. Yes.
- 8 Q. Okay. But you don't know the details of the
9 indictment, the arrest warrant, anything like that?
- 10 A. No.
- 11 Q. Okay. What I want to do is start off talking to you
12 in a little bit more detail about these issues of
13 punishment and murder. I'm going to start off with the
14 definition of murder in South Carolina. Most people I
15 talk to, their knowledge of crime or the law comes from
16 TV and detective books. That sort of thing. Can I put
17 you in that category?
- 18 A. Yeah, you can.
- 19 Q. Okay. And my guess is you don't have the legal
20 definition of murder in South Carolina with you as you
21 sit there?
- 22 A. No.
- 23 Q. Okay. I'm going to help you with that. Murder in
24 South Carolina is the unlawful killing of another human
25 being with malice aforethought. What that means is that

1 the killer was operating with a black and malignant
2 heart, fatally bent on evil and intentionally,
3 deliberately took an innocent life. Not an accident, not
4 self-defense, nothing like that. That's murder. And
5 that, as bad as it sounds, is not even eligible for the
6 death penalty. It has to be something more. The
7 Prosecutor has to come with what's called aggravation
8 evidence to prove to a jury that it's an aggravated
9 murder. And what I'm going to do is talk to you about
10 some kind of extreme or some aggravating examples. And
11 I'm going to ask your opinion about that.

12 For instance, I want to put you in -- kind of in a
13 place and time. I'm going to put you on a jury over
14 here. And you just convicted a person deliberately,
15 intentionally killing another person with malice
16 aforethought. And the State came and offered aggravation
17 evidence. And in this example, the aggravation evidence
18 is going to be the person that you're judging had already
19 been convicted of murder before. In that kind of
20 example, that kind of case, could you consider the death
21 penalty as an appropriate punishment?

22 A. I'm opposed to the death penalty though.

23 Q. Okay.

24 A. So I'm not sure what you're asking here now.

25 Q. Well, the only way you can be a fair and qualified

1 juror is if you can fairly consider the death penalty as
2 one of the options. Can you do that?

3 A. Yes.

4 Q. Okay. And you can follow the Judge's instructions
5 with regard to the evidence and the law?

6 A. Yes.

7 Q. And if the Prosecutor brought a case to you with
8 that aggravation evidence and the Judge instructed you
9 that you had to look at that aggravation evidence as well
10 as any kind of mitigation evidence, if the case was
11 heinous enough, severe enough, and the Prosecutor
12 delivered the quantity and the quality of evidence that
13 convinced you in your heart, along with eleven other
14 people, that the death penalty was in fact appropriate,
15 could you vote with those eleven other people for the
16 death penalty?

17 A. Yes.

18 Q. And in South Carolina there's a formality. You'd
19 have to actually sign your name with the other eleven
20 people. Could you put your name at the bottom of a list
21 of eleven other people voting for the death penalty?

22 A. Yes.

23 Q. Okay. And I want to talk to you a little bit about
24 sentencing. And the Judge will tell you, and I've
25 already told you, that not all murders are eligible for

1 the death penalty. And sort of a go-along with that is,
2 there's never a case in South Carolina or even the
3 country that requires the death penalty. There's never
4 an automatic death penalty case. What I mean by that is,
5 there's no level of proof where the prosecutor proves,
6 say, A, B, and C and that means the death penalty. Every
7 juror has a right to vote for the life penalty for any
8 reason, no reason at all, mercy or on any piece of
9 evidence they see. Is that a principle of -- is that an
10 aspect of the law that you can agree with?

11 A. Yes.

12 Q. And the rules are a little bit different for the
13 Prosecution and the Defense. And I want to go ahead
14 again and put you on that jury over there in your mind.
15 And I want to put you in time where you've already done
16 the first part of the trial. And the first part of the
17 trial is, did the person do it or not, is he guilty or
18 not of murder. Okay? And that's already done. And you
19 take a break, about twenty-four hours, and you come back
20 with your eleven other jurors and you come back in the
21 box. And that's when your journey to fix punishment
22 would begin.

23 Now, the State has a higher burden. They have to
24 prove that aggravation evidence, beyond a reasonable
25 doubt, to all twelve jurors before they can even be

1 asking for a death sentence or entitled to it. But the
2 rules are completely different for the mitigation side or
3 the Defense side. When I used the word mitigation,
4 that's kind of a fancy word for any reason to vote for
5 life. Okay? And the rules on that side is that each
6 individual juror has a right to vote for life for any
7 reason that's right for them. And it doesn't -- they
8 don't have to agree with any other juror. And what I
9 mean by that, or by way of example, a juror in the first
10 seat here could see something in the defendant's
11 background, his childhood, his walk in life and say, you
12 know, that resonated with me. That's my reason for
13 voting for life. Somebody in the back could say, well,
14 you know, I saw something in his relationship with his
15 child or his family. And that, for me, that's reason for
16 me to vote for life. And somebody on the other side
17 could say, you know what, I don't want to vote for death.
18 I want to vote for life based on no reason. Just no
19 reason at all. And they don't have to agree. Is that an
20 aspect of the law that you can respect?

21 A. Yes.

22 Q. And you would respect everybody's individual
23 decision?

24 A. Correct.

25 Q. And their point of view?

1 A. Yes.

2 Q. And another rule that's different in capital cases
3 is that the only time a death verdict can ever be
4 returned is if all twelve jurors agree that that's the
5 appropriate sentence. All twelve would have to agree on
6 that. It's not the same for the life side or the
7 mitigation side. And what I mean by that is the jury can
8 agree to disagree and just call it a day saying, we can't
9 be unanimous. We can't all agree that life or death is
10 appropriate. And they can come back in court and tell
11 the judge that. And the judge would take the case and he
12 would sentence the case, and the case would end. Is that
13 an aspect of the law you can be comfortable with?

14 A. Yes.

15 Q. Okay. And the State and the Defense and jurors
16 themselves are entitled to fairness not just out here in
17 the courtroom, but also in the jury room. Now, we expect
18 civil, polite discourse in deliberations. But if it got
19 beyond that, if it got unfair or hostile, could we count
20 on you to pass a note out to the Judge saying things
21 aren't fair in here?

22 A. Yes.

23 Q. Okay. Do you have any questions for me?

24 A. No.

25 Q. Thank you very much, ma'am.

1 MS. ADAMS: Your honor, I'd like to reserve the
2 right to question. I have a matter of law that I'd like
3 to take up first.

4 THE COURT: All right. Very well.

5 If you would, please, go with the bailiff. I need
6 to take up a matter of law with the attorneys.

7 MR. MCGUIRE: Judge, I'm sorry. Could I pose a
8 couple more questions? I'm sorry. I sat down too soon.
9 I apologize.

10 THE COURT: Very well.

11 DIRECT EXAMINATION

12 CONTINUED BY MR. MCGUIRE:

13 Q. I hate when I do that. I have an understanding that
14 your son got in some trouble before?

15 A. That's correct.

16 Q. And was prosecuted by the Tenth Circuit Solicitor's
17 Office?

18 A. That's correct.

19 Q. Okay. Now, you understand this trial is about this
20 man sitting over here?

21 A. Yes.

22 Q. And it's a life-and-death situation. It's the
23 decision to kill or not kill a fellow human being. Would
24 your feelings about your son, his prior troubles, his
25 relationship with the Prosecutor's office interfere at

1 all with fixing his punishment at life or death?

2 A. Not at all.

3 Q. Could you promise this Judge without any doubt, any
4 hesitation whatsoever, that you can focus just on the
5 evidence and the law, as he gives it to you, and focus
6 just on this case?

7 MS. ADAMS: Your Honor?

8 THE COURT: Again, let's not -- what is it --
9 put anybody in a position of a moral obligation.

10 MR. MCGUIRE: Sure. I'll rephrase the
11 question.

12 THE COURT: Or a legal obligation as a promise.

13 MR. MCGUIRE: Sure.

14 Q. I'm going to not use the word promise. But can you
15 assure this Court without any hesitation or any doubt
16 that in this trial your focus would be solely on the
17 evidence and the law of this case to determine this man's
18 fate?

19 A. Yes.

20 Q. And that the prior difficulties with regard to your
21 son would not enter into your deliberations or opinions
22 at all?

23 A. They would not.

24 Q. And you could be perfectly fair to both sides?

25 A. Yes, I can.

1 Q. The Defense and the State?

2 A. Yes, I can.

3 Q. And take the law as the Judge gives it to you and
4 follow that?

5 A. Yes.

6 Q. Without any doubt?

7 A. Yes.

8 Q. Thank you, ma'am.

9 THE COURT: Anything from the State?

10 MS. ADAMS: Your Honor, I'd like to reserve the
11 right to ask her a few questions, but I'd still like to
12 take up that matter.

13 THE COURT: All right. Very good.

14 Okay. If you would, please, go with the bailiff.

15 Thank you, ma'am.

16 (WHEREUPON, Potential Juror 182 exited the
17 courtroom.)

18 THE COURT: Yes, ma'am?

19 MS. ADAMS: Thank you, Your Honor. May it
20 please the Court. When you questioned this juror at the
21 very beginning, she clearly said no on whether or not she
22 could sentence a defendant to death. She told Mr.
23 McGuire that she was opposed to the death penalty during
24 his questioning. It was extremely one-sided. Again, he
25 was asking the questions. I did not object, Judge. But

1 it was very one-sided, did not give her a clear picture
2 of exactly what the law was. And when you asked the
3 question in the very beginning, she said no.

4 And in her questionnaire, she clearly states, too,
5 that she does have -- that her son's case has affected
6 her views. I'm trying to find the question, Judge. It
7 says -- yeah. Where the -- have you had any experiences
8 with crime and or police and the media ---

9 THE COURT: What page?

10 MS. ADAMS: Page 14, Judge.

11 ... that have affected your view of the criminal
12 justice system? And she says yes. And the part, Judge
13 -- I'm sorry, Your Honor. There are so many pages of the
14 questionnaire. The first one was on page 14, and the
15 second is on -- that I think is noteworthy, on page 6,
16 Judge. She says, is there any criminal case you have
17 followed closely in the media because it touched your
18 family or caught your interest? Yes. Is there any trial
19 that you followed where you disagreed with the verdict?
20 Yes. Personal. And Your Honor -- which is obviously her
21 son's case that we prosecuted that she stated earlier.
22 And the fact that she said she is against the death
23 penalty. She is opposed to it. Those were her words.
24 And she answered your question no, she could not give a
25 death verdict. We think she should be excused for cause.

1 THE COURT: All right. Mr. McGuire?

2 MR. MCGUIRE: Thank you, Your Honor. Well,
3 again, the starting point is she came to Court and she
4 didn't even know what the definition of murder was. Once
5 she learned that and once she learned what aggravation
6 was, that it had to be a murder -- not just any murder,
7 and not just a deliberate killing, but an aggravated
8 murder -- once she understood that, she never, never once
9 hesitated saying she could deliver a death penalty vote.
10 She said she could vote for it. She says she could ---

11 THE COURT: It's interesting enough though, but
12 you never mentioned mitigation until after you elicited
13 those responses.

14 MR. MCGUIRE: Sure. And -- but I mean,
15 clearly, if you can vote -- if you can vote for the death
16 penalty based on an aggravated murder ---

17 THE COURT: Well, again, you have to put it in
18 context. If you think that the only consideration you
19 have is the circumstances and the aggravation of the
20 murder without considering the mitigation, and that's how
21 you posed the question to the lady. That's all right. I
22 mean, I'm just -- I have to consider the totality of the
23 voir dire, not just -- what is it -- two answers, the
24 answers that I elicited with giving her both sides and
25 the answer that you elicited with maybe not complete

1 sides.

2 MR. MCGUIRE: And Judge, I'm just ---

3 THE COURT: Again, this is no criticism. It's
4 just an observation.

5 MR. MCGUIRE: Sure.

6 THE COURT: And I might even say that if she
7 had mentioned that at the time I was qualifying the
8 panel, I would more than likely exercise my discretion at
9 that time and excuse her for cause. If I had known that
10 she actually had an experience with -- and as I
11 understand it, this Solicitor was the one that prosecuted
12 the case?

13 MS. ADAMS: Your Honor, she mentioned me by
14 name. I don't know what her son's name is.

15 THE COURT: Well, anyway -- but the thing is,
16 she apparently has mentioned the Solicitor personally.
17 And I'm afraid that that would be something that would
18 conflict.

19 MR. MCGUIRE: I understand the Court's
20 position. If I could just note my objection.

21 THE COURT: I'll note your objection.

22 MR. MCGUIRE: Based on the grounds stated
23 previously.

24 THE COURT: And the same constitutional grounds
25 and on the basis that was ruled prior.

1 MR. MCGUIRE: Yes, sir.

2 THE COURT: A similar objection.

3 MR. MCGUIRE: Right.

4 THE COURT: Ask the juror to return, please.

5 (WHEREUPON, Potential Juror 182 entered the
6 courtroom.)

7 THE COURT: Juror 182, I have a certain
8 responsibility in this Court, of course. And if you
9 remember, I said on Monday when I was qualifying the jury
10 panel or the entire jury -- petit jury panel that there
11 are two reasons I asked the question, could you be fair
12 and impartial in a particular case. Because first, the
13 parties, the State and the Defendant, are entitled to a
14 fair and impartial jury and jurors on that jury. But I
15 also mentioned I had a second reason for asking that
16 question, because you didn't ask to be here. You
17 responded to a summons that -- what is it -- to do your
18 civic duty. And yet, I know that by life experiences and
19 things like that, that many times we have those
20 experiences that do affect the way that we approach
21 something. And the last thing I want to do is to put
22 somebody in a difficult situation to either compensate or
23 they let something else -- in other words, just a
24 personal, not -- what is it -- a general thing, but just
25 if you have personal considerations that might -- what is

1 it -- affect your service. And rather than put you in
2 that spot, I exercised my discretion. It's not either
3 the State or the Defendant, but I exercised my discretion
4 to determine who should serve. And in this case, I do
5 feel that it might be some conflict or compromise in
6 things that you would have to consider that maybe another
7 juror would not have to.

8 THE POTENTIAL JUROR: Correct.

9 THE COURT: So I -- and in considering that --
10 and also I want to thank you for your candor because you
11 said very strongly that you have a -- that you are
12 opposed to the death penalty. And that's obviously a
13 strongly-held conviction. I wouldn't want anybody to
14 have to compromise those convictions. That's the last
15 thing. I might note also that I would think you would
16 make an excellent juror if it was another case.

17 THE POTENTIAL JUROR: Thank you.

18 THE COURT: So I do want to thank you. But
19 considering the entire voir dire, I find that Juror 182
20 should not -- should be excused from serving on the trial
21 of this case. As I say, I do want to thank you for being
22 here and your patience with the Court.

23 THE POTENTIAL JUROR: Okay.

24 THE COURT: You will be excused.

25 THE POTENTIAL JUROR: Thank you.

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

2 (WHEREUPON, Potential Juror 182 exited the
3 courtroom.)

4 THE COURT: All right. The next one is 187.
5 Anything from the State on number 187?

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

7 THE COURT: Anything from Defense?

8 MR. MCGUIRE: No, sir.

9 THE COURT: All right. Ask -- when he gets
10 back, 187.

11 (WHEREUPON, Potential Juror 187 entered the
12 courtroom.)

13 THE COURT: Are you Juror 187?

14 THE POTENTIAL JUROR: I am.

15 THE COURT: Very good.

16 **POTENTIAL JUROR 187,**

17 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

18 **EXAMINATION**

19 BY THE COURT:

20 Q. You will recall on Monday I put all jurors under
21 oath.

22 A. Okay.

23 Q. Now, do you understand that you are still under
24 oath, and this oath continues throughout these
25 proceedings?

1 A. Yes, sir.

2 Q. Very good. Thank you, ma'am. You have been
3 provided with a copy of a list of potential jurors [sic].
4 Have you had an opportunity to review that witness list?

5 A. I did.

6 Q. Are you related by blood or marriage or close
7 personal friend or business associate or have any other
8 association with any potential witnesses in this case?

9 A. Not a single one.

10 Q. Very good. Well, you do understand those were
11 potential witnesses?

12 A. Correct.

13 Q. They might be called, but they do not necessarily
14 have to be called. Now, do you also recall my
15 instructions from Monday to avoid all forms of media
16 coverage dealing with the case?

17 A. Yes, I do.

18 Q. Has this caused any problems for you?

19 A. No, because I don't watch the news anyway.

20 Q. All right. All right. The trial of a case will --
21 the trial of this case could last as much as ten days to
22 two weeks. Other than personal inconvenience, would this
23 pose a serious danger to the health or well-being of
24 yourself or anyone who is dependent upon you?

25 A. No, sir.

1 Q. Now, among other things, we will be talking about
2 penalty today. But the mere fact that we talk about
3 penalty does not indicate anything about this Defendant
4 or any defendant. Defendants are presumed, under the
5 law, to be innocent. Do you understand that?

6 A. Yes, sir.

7 Q. If you were a juror in a criminal case, could you
8 listen to the law, accept and apply that law as I would
9 instruct you even though you may not agree with that law
10 or think it ought to be some other way?

11 A. Absolutely.

12 Q. Could you decide this case based solely on the
13 evidence presented in this courtroom and disregard
14 anything you may have heard, read or seen about the case?

15 A. Yes, sir.

16 Q. In a criminal case, the State has the burden of
17 proving guilt. The burden of proof for the State is
18 beyond a reasonable doubt. A defendant has no burden to
19 prove innocence. Do you understand this?

20 A. Yes, sir.

21 Q. Could you, depending upon the facts and evidence and
22 the law as I would instruct you in a particular case,
23 find a defendant either guilty or not guilty?

24 A. Yes, sir.

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 sentence phase of the trial. Do
3 you understand this?

4 A. Yes, sir.

5 Q. When you hear us refer to a capital case or a death
6 penalty case, what we mean is that it is a criminal
7 murder trial where the prosecutor -- in other words, the
8 State -- is seeking the death penalty. Do you understand
9 that?

10 A. Yes, sir.

11 Q. A death penalty trial is divided into two parts.
12 Part one is the guilt phase where a jury determines
13 whether the defendant is guilty or not guilty of murder.
14 Phase two is the sentencing phase where a jury determines
15 the appropriate punishment. Now, of course, if the
16 defendant is found not guilty in the guilt phase, in part
17 one, that ends the matter and there is no other
18 proceeding. 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 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 a jury has already found a defendant guilty of
4 murder -- do you understand that the jury rather than the
5 Judge determines the sentence that a defendant will
6 receive for the crime of murder?

7 A. Yes, I do.

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?

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 also understand the jury has two options to
22 consider regarding the sentencing for murder? One option
23 is life imprisonment, which under our law is until the
24 death of the defendant without possibility of parole.
25 The other option is death which in this state is by

1 electrocution or lethal injection. Do you understand
2 that?

3 A. Yes, sir.

4 Q. Could you, as a juror in the sentencing phase
5 depending upon the facts including the relevant
6 aggravating and mitigating circumstances and the law as
7 instructed to you, render a sentence of life
8 imprisonment?

9 A. Yes, I could.

10 Q. On the other hand, as a juror in the sentencing
11 phase depending upon the facts including the relevant
12 aggravating and mitigating circumstances and the law as I
13 instruct it to you, could you render a sentence of death?

14 A. Yes, I could.

15 Q. All right. Please, answer any questions that
16 Counsel may have.

17 A. Sure.

18 DIRECT EXAMINATION

19 BY MR. MCGUIRE:

20 A. Hi.

21 Q. Hi. Good morning, Juror Number 187. I have to
22 refer to you by number.

23 A. That's fine.

24 Q. That's a little awkward for me. Please forgive me
25 that.

1 The Judge just gave you a good general framework
2 about some of these issues that we're here for. But I'm
3 going to talk to you in a little bit more detail to make
4 sure we're on the same page. Okay?

5 A. Okay.

6 Q. My guess is -- I notice you've got some people that
7 are in law enforcement that you know, friends, family,
8 uncle, I think?

9 A. Oh, yeah.

10 Q. Oh, the State Patrol?

11 A. He was down -- based in Charleston.

12 Q. Sure. But despite having some exposure to some law
13 enforcement officers, my guess is you probably don't have
14 the legal definition of murder in South Carolina as you
15 sit there?

16 A. Okay. Feel free.

17 Q. Do you? Some people show up with more information
18 than others.

19 A. No, no.

20 Q. Some people actually have some more insight than
21 others, and I just don't know where to start.

22 A. You can start at the beginning.

23 Q. Okay. That will be the definition of murder in
24 South Carolina. And the Judge would tell you that it is
25 the unlawful killing of another human being with malice

1 aforethought. And malice aforethought is defined as the
2 killer operating with a black and malignant heart,
3 fatally bent on evil, deliberately, intentionally taking
4 an innocent life. And what are your -- what's your
5 position about the death penalty for that kind of murder?

6 A. If it was aforethought, not self-defense, none of
7 that other stuff, I have no problem with the death
8 penalty.

9 Q. Okay. All murders are intentional and deliberate
10 with an evil heart. They're never self-defense,
11 accident, two guys deciding to fight, none of that. It's
12 a deliberate act to take a life. In that situation, the
13 death penalty, it sounds like, is appropriate for you?

14 A. Sure.

15 Q. And in a capital case, the State would even add
16 something more to that to make it an aggravated murder
17 because aggravated murders are the ones where they can
18 ask for the death penalty. So I'm just going to give you
19 an example. Like, for instance, you're on a murder case.
20 And you and eleven other people found beyond a reasonable
21 doubt that the person did intentionally, deliberately
22 kill with an evil heart, and then you find out that it's
23 the second murder he's committed. He would be a double
24 murderer. Is a life penalty ever appropriate enough or
25 severe enough in that situation?

1 THE COURT: Now, let's not be so specific and
2 ask as to what the feeling of the juror at this time
3 unless you're going to give the whole law on the case
4 because she has other things to consider before she ---

5 MR. MCGUIRE: And Judge, this is where I would
6 move to ask my questions one through six.

7 THE COURT: And I'll decline it because your
8 questions are not couched in a complete fashion. We
9 don't want to, as I say, stake out the juror as to her
10 particular -- as to a particular scenario without the
11 full facts.

12 MR. MCGUIRE: I understand.

13 THE COURT: And law.

14 MR. MCGUIRE: Sure. And if I could just ---

15 THE COURT: You may proceed. I note your
16 objection and my ruling.

17 MR. MCGUIRE: Thank you, Judge.

18 Q. In a case like that, would things about the
19 defendant, like his walk in life, his childhood, be
20 relevant in fixing punishment to you?

21 A. No.

22 Q. Okay. I want to talk to you a little bit about one
23 of your comments on your questionnaire. You indicated
24 that the death penalty is used too seldom. Tell me what
25 your thought process is with that.

1 A. My thought process on that is basically that if
2 they're found guilty, they've gone through their appeals,
3 why do they have to sit through twenty years of appeals?

4 Q. Okay. And that brings me to another one of your
5 comments, that putting somebody on -- in prison for the
6 rest of their life when they're convicted of murder is a
7 burden on the taxpayers.

8 A. Yes.

9 Q. And that sounds to be something you feel pretty
10 certain about?

11 A. Pretty certain.

12 Q. Okay. I mean, when you filled out your
13 questionnaire ---

14 A. If you could educate me to the dollar amount it's
15 going to cost to keep somebody in prison for life versus
16 the death penalty. I'm an educated person. I can ...

17 Q. Sure. If I just told you that it's actually not ---

18 MS. ADAMS: Your Honor, I just don't think this
19 is appropriate on what to qualify her ---

20 THE COURT: Her decision is not going to have
21 any effect on the budget, so let's move on. You've got
22 the answer you were looking for. Let's get to something
23 that's relevant.

24 MR. MCGUIRE: Judge, if I could have just one
25 second.

1 THE COURT: Certainly.

2 (Off record discussion)

3 MR. MCGUIRE: Judge, if I could, I have a small
4 legal matter I'd like to take up with the Court. If I
5 could ask ---

6 THE COURT: If you would, please, go with the
7 bailiff. I need to take up some matters with the
8 attorneys.

9 (WHEREUPON, Potential Juror 187 exited the
10 courtroom.)

11 THE COURT: Yes, sir?

12 MR. MCGUIRE: Thank you, Judge.

13 Judge, with regard to Juror Number 187, she
14 indicated on her questionnaire that -- and she affirmed
15 under oath on the stand that she did believe that life
16 without parole -- I'm just waiting for the door --
17 necessarily involved a waste of taxpayers' money. And I
18 understand the Court's position that you don't want that
19 to be part of her decision. But when she filled out this
20 questionnaire, her actual words regarding ---

21 THE COURT: Where in the answers in the
22 questionnaire did she say life without parole is a waste
23 of money?

24 MR. MCGUIRE: Yes, sir. Correct. And Judge,
25 you know, the questionnaire is actually rather brief. If

1 you look at ---

2 THE COURT: Well, I mean, where does she say
3 that?

4 MR. MCGUIRE: I'm sorry?

5 THE COURT: Does she ---

6 MS. ADAMS: Page 16, Your Honor.

7 THE COURT: Pardon?

8 MS. ADAMS: Page 16.

9 MR. MCGUIRE: Oh, I'm sorry. Page 16.

10 THE COURT: All right. Thank you.

11 MR. MCGUIRE: I mean, when you take into
12 account that her totality of words, when she actually
13 puts down her views, include maybe about thirty words,
14 her sentence that she believes that the death penalty is
15 -- I mean, the life without parole penalty is a burden on
16 the taxpayers, has to be considered to be significant.
17 She indicated it was a significant view in her personal
18 opinion. And our law does not -- both the Eighth
19 Amendment, and our Statute § 16-3-25(C)(1) forbids any
20 sentence of death being delivered under the influence of
21 passion, bias, prejudice or any other arbitrary factor.
22 And this is what is obviously an arbitrary factor. It's
23 an improper basis for deciding life and death. And if
24 this is a factor that would enter into ---

25 THE COURT: That goes to a sentence. That's

1 after all of the facts and the law is given to the jury
2 that is sitting. Admittedly -- what is it -- if we just
3 went out on the street and just asked somebody, as they
4 had to do with this questionnaire -- that's why we have
5 to look at the totality, which, of course, includes the
6 voir dire done here in the Court. But maybe if asked in
7 the dark, what do you think about it? Now, of course,
8 now, I think you would probably even -- if you were going
9 to be fair with the juror, you would also say, well, you
10 know, that's a misconception.

11 MR. MCGUIRE: Judge, that was actually ---

12 THE COURT: Because the actual cost, do you
13 want to give her that question, too?

14 MR. MCGUIRE: That was ---

15 THE COURT: That the actual cost of capital
16 trials are greater than -- what is it -- the cost of life
17 imprisonment?

18 MR. MCGUIRE: Judge, that was actually what I
19 was saying when the objection came.

20 THE COURT: Well, you did ---

21 MR. MCGUIRE: My words were, if I was to tell
22 you ---

23 THE COURT: You should have been as pronounced
24 and vocal then as you are now. Again, I do not like to
25 see -- what is it -- innocent people who have not asked

1 to be brought into this process sort of -- not blind-
2 sided, but -- what is it -- take something that they're
3 unlearned about. And so -- and you're right. An
4 arbitrary, capricious verdict is wrong. But it's also
5 not based on the facts and circumstances, evidence and
6 law of the particular case.

7 MR. MCGUIRE: And that's exactly why it's an
8 improper ---

9 THE COURT: So I mean, don't hold somebody's
10 unlearned opinion before they have the benefit of the law
11 and the evidence, as being controlling on their ability
12 to, once they do know the full facts and circumstances
13 and the law of the case, render a proper decision.

14 MR. MCGUIRE: I understand the Court.

15 THE COURT: Very good.

16 MR. MCGUIRE: Thank you.

17 THE COURT: All right. Note your objection and
18 same grounds. Very good.

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: All right. Anything else?

21 MS. ADAMS: No, sir.

22 THE COURT: All right. Ask the juror to join
23 us.

24 (WHEREUPON, Potential Juror 187 entered the
25 courtroom.)

1 THE COURT: If you would, please. Thank you.

2 THE POTENTIAL JUROR: Yes, sir.

3 THE COURT: All right. You may proceed.

4 DIRECT EXAMINATION

5 CONTINUED BY MR. MCGUIRE:

6 Q. Thank you, Juror 187. As I was saying when we left
7 off regarding the cost of the death penalty versus life
8 without parole, if I was to tell you that in twenty-five
9 years of research, there's not one study that indicates
10 the death penalty is cheaper than life without parole,
11 would you believe me?

12 A. I have no reason not to believe you.

13 Q. It's a pretty common myth. Everybody kind of thinks
14 that life without parole is more expensive because the
15 person would live for a long time in prison obviously.
16 But every state that's looked at it, including a couple
17 of states that have actually gotten rid of the death
18 penalty, one of the reasons is because the state saves
19 money.

20 A. Okay.

21 Q. Did you know that?

22 A. I did not.

23 Q. And lawyers are just a lot more expensive than
24 prison guards, I'll tell you.

25 A. I'm sure they are.

1 Q. That's one of the reasons.

2 But I want to talk to you a little bit now about
3 sentencing and how it works in a capital case. Capital
4 cases are different from any other case, and it's because
5 the jury actually fixes punishment. And we don't do that
6 in any other case.

7 And as I told you earlier, the State would have to
8 prove aggravation evidence to make a murder even more
9 aggravated than just regular murder. Regular is a bad
10 word to use. But they would have to come forward with
11 that kind of evidence to prove an aggravated murder to
12 the jury. And each and every juror, all twelve, would
13 have to agree that that evidence existed beyond a
14 reasonable doubt, the highest standard in law.

15 And it's different for the other side, for the
16 defendant, for the life penalty. And what I mean by that
17 is each individual juror is allowed to vote for life for
18 whatever reason they find. The jury doesn't have to
19 agree on any reason for a life verdict. The Judge would
20 tell you that each individual juror could vote for the
21 life penalty based on any reason, no reason, mercy or any
22 piece of evidence they see in the whole case.

23 A. Okay.

24 Q. And jurors don't have to agree. For instance,
25 somebody who might be on the jury in the first row in the

1 first seat might say, I saw something in his background,
2 his walk in life, the defendant's walk in life, that
3 resonated with me. And for me, that's my reason for
4 voting for life. And another jury, juror member, may be
5 sitting on the back could say, you know, I saw something
6 in his relationship with his family, maybe his
7 grandmother. And that resonated with me, and I'm not
8 going to vote for death because of that. Another juror
9 might say, I just don't want to vote for death. I want
10 to vote for life. I don't have a reason for you. Is
11 that an aspect of the law you could respect?

12 A. Oh, absolutely. That's why there's twelve
13 individuals up there.

14 Q. Sure. And most people show up to court with the
15 idea that, when you talk about a jury and the result that
16 a jury's going to reach, everybody kind of intuitively
17 thinks it's always going to be unanimous. Now, the only
18 time it has to be unanimous in a capital case is to
19 return a sentence of death, all twelve would have to
20 agree.

21 A. Okay.

22 Q. It's not the same for life without parole. The jury
23 can actually agree to disagree, come back into court and
24 tell the judge, we're not unanimous. We couldn't
25 unanimously decide for life. All twelve couldn't vote

1 for life; all twelve couldn't vote for death. And the
2 judge would take the case, and he would sentence.

3 A. Okay.

4 Q. And the case would end. Is that a principle -- is
5 that an aspect of the law that you can agree with?

6 A. Absolutely.

7 Q. Okay. And the way the law describes an individual
8 juror's decision in a capital case is it's that juror's
9 individual moral judgement. And the law is if it would
10 harm that person's conscience to change their individual
11 moral judgment, that would be wrong.

12 And the State and the Defense and even the jurors
13 are entitled to fairness not just out here, but also in
14 the jury room. And you know, we obviously expect polite
15 and civil discourse in deliberations. But if it got
16 hostile or unfair or somebody was bullying somebody,
17 could we count on you to pass a note out to the Judge
18 saying, it's not fair in here?

19 A. Of course.

20 Q. And you would want your ---

21 A. I don't do not fair.

22 Q. It sounds like you'd want your opinion respected and
23 you would also respect ---

24 A. And I would respect everybody else's opinion.

25 Q. And you'd be comfortable agreeing -- ending the day

1 agreeing to disagree if it came to that?

2 A. Yes.

3 Q. Okay. Is the -- I want to ask you a little bit

4 about the concept of mercy. Is mercy freely given or

5 bestowed, or is it earned?

6 A. It could be both.

7 Q. Okay. That's all I have for you. Thank you, ma'am.

8 A. Thank you.

9 THE COURT: All right. Madam Solicitor?

10 MS. ADAMS: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. ADAMS:

13 Q. Good morning. How are you?

14 A. Good.

15 Q. I'm Chrissy Adams, and I'm the Solicitor for the
16 Tenth Circuit. And I just have a few follow-up questions
17 for you.

18 A. Fantastic.

19 Q. Basically, what we're here to do today is just to
20 make sure that you feel comfortable and that you are able
21 to follow the Judge's instructions when he tells you --
22 assuming we have a guilty verdict in the first phase of
23 the trial, and we're in the second phase, and the only
24 decision is life or death for this defendant, will you
25 follow his instructions and listen to everything,

1 aggravation and mitigation, before you make a decision?

2 A. Yes, ma'am.

3 Q. So you will keep an open mind throughout ---

4 A. Open mind.

5 Q. --- the entire process?

6 A. Open mind.

7 Q. Okay. And right now you don't really know what that
8 decision would be, do you?

9 A. I have no idea.

10 Q. Okay. So you don't know whether it should be life
11 without parole or death?

12 A. I have no idea.

13 Q. Because you're going to wait to hear ---

14 A. Because I'm going to wait to hear to be told what
15 I'm supposed to evaluate, yes.

16 Q. And you're going to follow the Judge's ---

17 A. Follow the Judge's instructions.

18 Q. --- instructions. The Defense made some questions
19 regarding taxpayer dollars. Do you understand that what
20 you will consider in this case is just what is presented
21 in this courtroom?

22 A. Yes, yes.

23 Q. And actually, justice doesn't ---

24 A. That's just a broad general concern of mine.

25 Q. Okay. Okay. Thank you.

1 THE COURT: All right. Anything else from the
2 Defendant?

3 MS. ADAMS: One more follow-up. I'm sorry,
4 Judge.

5 Q. That's not going to affect your decision?

6 A. No. That was just ---

7 Q. You can set that aside?

8 A. That was a long questionnaire, and I was ...

9 Q. Thank you.

10 A. Uh-huh (affirmative).

11 THE COURT: All right. Anything further from
12 the Defense?

13 MR. MCGUIRE: Not with regard to questions.
14 Just a small legal matter.

15 THE COURT: All right. If you would, go again
16 with the bailiff. I need to take up some matters with
17 the attorneys.

18 THE POTENTIAL JUROR: Oh, okay.

19 THE COURT: We'll be right back with you.

20 (WHEREUPON, Potential Juror 187 exited the
21 courtroom.)

22 THE COURT: Yes, sir?

23 MR. MCGUIRE: Judge, I would move to ---

24 THE COURT: Excuse me. I'm sorry.

25 MR. MCGUIRE: I move to strike for cause based

1 on Juror Number 187 being substantially impaired with her
2 death penalty views, being predisposed to give the death
3 penalty for murder in South Carolina, and that she's
4 mitigation impaired in that when I specifically asked
5 her, at the Court's urging, about would she consider
6 background things about the defendant as being relevant
7 in fixing punishment in a murder case ---

8 THE COURT: But she didn't know she could.

9 MR. MCGUIRE: And she absolutely -- when she
10 did know she could, she said no. When I asked her would
11 you consider that in fixing punishment, she said no.

12 THE COURT: But that was not -- that was -- she
13 wasn't instructed that that was under the law that she
14 would have to. And the way ---

15 MR. MCGUIRE: Well ---

16 THE COURT: Again, I'm sorry. You just -- if
17 you take something -- and I thought your response to the
18 note that she had on page 16 as to the attitudes
19 regarding the death penalty was probably an expression of
20 what it really was. It was a long questionnaire. It was
21 -- she wasn't really thinking about it. It was just a
22 broad determination. Now, if she knew that -- in fact,
23 you hadn't asked the question about mitigation to the
24 point where you said that it could be for any reason or
25 no reason and even mercy.

1 MR. MCGUIRE: Sure.

2 THE COURT: So I mean, I'm sorry. Well, I --
3 okay, I'll note your objection.

4 MR. MCGUIRE: Sure. I just -- and with all due
5 respect, I think if I have to -- I think if I ask -- if
6 I'm -- if I ask the question, would background factors of
7 a defendant like his childhood, his walk in life be
8 relevant in fixing punishment ---

9 THE COURT: Well, she's not a judge.

10 MR. MCGUIRE: I understand.

11 THE COURT: She's not even a lawyer.

12 MR. MCGUIRE: I understand.

13 THE COURT: And you'd have to know under the
14 law you do have to consider those things.

15 MR. MCGUIRE: Sure. But what I was trying to
16 get at is ---

17 THE COURT: You didn't tell her that, though.

18 MR. MCGUIRE: Sure. And what I'm trying to do
19 is get her real feelings without being educated in the
20 law. If I have to ask the question, now, I want to ask
21 you a question, but before I do, I have to tell you that
22 the Judge is going to require you, by law, to consider
23 mitigating factors, including elements of the defendant's
24 background. Now, knowing that, are things about his
25 background relevant in fixing punishment in a murder

1 case? And she's going to obviously say yes.

2 THE COURT: Well, if you don't tell her that,
3 she's obviously going to say it just like this. I have
4 an opinion, but it's a broad opinion. Now, I don't know
5 -- it's just the long process, and I just responded, you
6 know, without full consideration.

7 MR. MCGUIRE: I understand the Court's
8 position.

9 THE COURT: I understand. I do. But let's
10 just -- let's -- as I say, these jurors or potential
11 jurors, they have a hard enough job. And we don't need
12 to -- what is it -- not give them the complete scenario
13 that we're asking the question for.

14 MR. MCGUIRE: My objection should be noted for
15 the record.

16 THE COURT: I understand. Your objection is
17 noted.

18 MR. MCGUIRE: Thank you.

19 THE COURT: And for the record, it will be the
20 same basis for the objection as well as my ruling.

21 THE COURT: All right. Anything from the
22 State?

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

24 THE COURT: All right. Ask the juror to come
25 back.

1 (WHEREUPON, Potential Juror 187 entered the
2 courtroom.)

3 THE COURT: All right. I have one question for
4 you.

5 THE POTENTIAL JUROR: Yes, sir.

6 THE COURT: In a death penalty case, would you
7 always or automatically vote for the death penalty, even
8 though the law provides that you may impose a sentence of
9 life without parole depending upon the circumstances of a
10 particular case and the characteristics of an individual
11 defendant?

12 THE POTENTIAL JUROR: Would I always?

13 THE COURT: Yes, ma'am.

14 THE POTENTIAL JUROR: No.

15 THE COURT: Very good.

16 Considering the entire voir dire, I find that Juror
17 187 will be fair, unbiased, impartial and able to carry
18 out the law as explained to her. Furthermore, I find
19 that the juror's beliefs or attitudes toward the death
20 penalty would not prevent or substantially impair the
21 performance of her duties as a juror in accordance with
22 the law, the Court's instructions and the juror's oath.

23 You're found qualified. Now, as you can see, this
24 process is going to take some time because I have to
25 qualify a panel from which the ultimate jury will be

1 drawn. So this is going to take several days. Now,
2 you've given the Clerk of Court your telephone number?

3 THE POTENTIAL JUROR: I have.

4 THE COURT: All right. You will probably --
5 you will be receiving a telephone call sometime. It
6 might be next week.

7 THE POTENTIAL JUROR: Okay.

8 THE COURT: And it will ask you to come in the
9 next day or something of that nature.

10 THE POTENTIAL JUROR: Okay.

11 THE COURT: At that time, if you would, report.
12 And then we'll select the jury at that time.

13 THE POTENTIAL JUROR: All right.

14 THE COURT: All right. Thank you very much. I
15 do appreciate your patience with the Court.

16 THE POTENTIAL JUROR: Thank you. Y'all have a
17 nice day.

18 THE COURT: Thank you, ma'am.

19 (WHEREUPON, Potential Juror 187 exited the
20 courtroom.)

21 THE COURT: Okay. All right. The next juror,
22 I think, is 190? Solicitor?

23 MS. ADAMS: Oh, no, sir.

24 THE COURT: the next juror, 190?

25 MS. ADAMS: No, sir.

1 THE COURT: Anything from the Defendant on
2 Juror 190?

3 MR. MCGUIRE: No, sir.

4 THE COURT: All right.

5 THE BAILIFF: 190?

6 THE COURT: Yes, sir. I'm sorry.

7 (WHEREUPON, Potential Juror 190 entered the
8 courtroom.)

9 THE COURT: All right. Are you Juror 190?

10 THE POTENTIAL JUROR: Yes, sir.

11 **POTENTIAL JUROR 190,**

12 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

13 **EXAMINATION**

14 **BY THE COURT:**

15 Q. You will recall on Monday I put all the jurors under
16 oath. Now, do you understand that you're still under
17 oath and that oath continues throughout this process?

18 A. Yes, sir.

19 Q. You have been provided with a copy of the list of
20 potential witnesses in the jury room. Have you had an
21 opportunity to review that witness list?

22 A. Yes, sir.

23 Q. Did you recognize any names on it, or are you
24 related by blood or marriage or a close personal friend
25 or business associates or have any other association with

1 any of the potential witnesses?

2 A. I might know two or three of them.

3 Q. Do you remember the names?

4 A. The coroners.

5 Q. The coroner?

6 A. Yes, sir.

7 Q. All right. Mr. Shore?

8 A. Yes, sir.

9 Q. Greg Shore; is that right?

10 A. Greg Shore.

11 Q. Right. And anybody else?

12 A. Boseman.

13 Q. Boseman?

14 A. Yes, sir.

15 Q. All right. If either of those or anyone else that
16 you might have recognized on that potential witness list
17 should testify, would that in any way affect your ability
18 to give both the State and the Defendant a fair and
19 impartial trial?

20 A. No, sir.

21 Q. Very good. Do you recall my instructions from
22 Monday to avoid all forms of media coverage dealing with
23 this case?

24 A. Yes, sir.

25 Q. All right. Has this caused you any problem?

1 A. No, sir.

2 Q. Very good. Now, the trial of this case may last as
3 long as ten days or even longer, depending on how it
4 proceeds. But I'm asking because it's longer than a
5 normal case. Other than personal inconvenience, would
6 this pose a serious danger to the health or well-being of
7 yourself or anyone who may be dependent upon you?

8 A. My parents depend on me a little bit. We have a
9 farm.

10 Q. Well, now, you're not -- you won't be sequestered.
11 In other words, we'll start in the morning at
12 approximately nine o'clock, then go to approximately five
13 o'clock in the afternoon.

14 A. Well, that's fine.

15 Q. So you would be able to ---

16 A. Yes, sir.

17 Q. All right. Among other things, we'll be talking
18 about penalty today. But the mere fact that we talk
19 about penalty does not indicate anything about this
20 Defendant or any defendant. Defendants, under our law,
21 are always presumed innocent. Do you understand that?

22 A. Yes, sir.

23 Q. If you were a juror in a criminal case, could you
24 listen to the law, accept and apply that law as I would
25 instruct you, even though you may not agree with that law

1 or think it ought to be some other way?

2 A. Yes, sir.

3 Q. Could you decide the case based solely on the
4 evidence presented in the courtroom and disregard
5 anything you may have heard, read, or seen about the
6 case?

7 A. Yes, sir.

8 Q. In a criminal case, the State has the burden of
9 proving guilt. The burden of proof for the State is
10 beyond a reasonable doubt. A defendant has no burden, as
11 I say, to prove anything. In other words, he doesn't
12 even have to testify or offer evidence. The entire
13 burden is upon the State to prove guilt beyond a
14 reasonable doubt. Do you understand that?

15 A. Yes, sir.

16 Q. Could you, depending on the facts and evidence and
17 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 has found the defendant guilty of murder, you
22 would then move to the sentence 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 Part one is the guilt phase where a jury determines
8 whether the defendant is guilty or not guilty of murder.
9 Part two is the sentencing phase where a jury determines
10 the appropriate punishment. Of course, if the defendant
11 is found not guilty, that ends the matter. Do you
12 understand there's no second phase ---

13 A. Yes, sir.

14 Q. --- if the jury finds the defendant not guilty?
15 Therefore, if you were a juror in a trial of a capital
16 case, where the jury in phase one has found the defendant
17 guilty of murder, you would then move to phase two of the
18 trial, which is called the sentencing phase of the trial.
19 Do you understand this?

20 A. Yes, sir.

21 Q. Now, if you were a juror in the sentencing phase --
22 that is, phase two of a capital murder trial, again,
23 where a jury has already found the defendant guilty of
24 murder -- do you understand that the jury rather than the
25 Judge determines the sentence that a defendant will

1 receive for the crime of murder?

2 A. Yes, sir.

3 Q. In a capital sentencing trial, the jury's function
4 is to determine the appropriate punishment based upon the
5 circumstances of the crime and the characteristics of the
6 individual defendant. Do you understand that?

7 A. Yes, sir.

8 Q. Now, aggravating circumstances are facts or details
9 that, when they are present in a case, make the crime of
10 murder more serious or worse. On the other hand,
11 mitigating circumstances are incidents, occurrences or
12 details of a case that would reduce the severity of the
13 crime of murder. In other words, may reduce the degree
14 of responsibility for the crime. Do you understand that?

15 A. Yes, sir.

16 Q. Do you also understand that the jury has two options
17 to consider regarding the sentencing for murder? One
18 option is life imprisonment which in our State means life
19 until the death of the defendant without parole. Do you
20 understand that?

21 A. Yes, sir.

22 Q. And the other option -- the other option is death,
23 which in our State is by electrocution or lethal
24 injection. Do you understand that?

25 A. Yes, sir.

1 Q. Could you, as a juror in the sentencing phase
2 depending upon the facts including relevant aggravating
3 and mitigating circumstances and the law as I instruct it
4 to you, render a sentence of life imprisonment?

5 A. Yes, sir.

6 Q. On the other hand, as a juror in the sentencing
7 phase depending upon the facts including the relevant
8 aggravating and mitigating circumstances and the law as I
9 instruct it to you, could you render a sentence of death?

10 A. Yes, sir.

11 Q. All right. Please, answer any questions that the
12 attorneys may have.

13 DIRECT EXAMINATION

14 BY MR. MCGUIRE:

15 Q. Good morning, Juror Number 190.

16 A. Good morning.

17 Q. I've got to refer to you by number. It's a little
18 awkward for me. I'm not being not friendly with you.

19 A. It's awkward for me too.

20 Q. It's just the way we've got to do things.. So if you
21 would, just forgive that for me.

22 A. Okay.

23 Q. I'm going to ask you some questions, a little bit
24 more detailed than the Judge, concerning your ability to
25 give the death penalty in this case. And I'm going to

1 start with the definition of murder in South Carolina.
2 And that is when one person unlawfully kills another
3 person with malice aforethought. And malice aforethought
4 is described in the law as the killer operating with a
5 black and malignant heart, fatally bent on evil,
6 deliberately, intentionally choosing to kill an innocent
7 person. Just knowing that, what are your feelings about
8 the death penalty for that kind of killing?

9 A. If he killed somebody on purpose, I still think he
10 should get the same.

11 Q. Okay. A phrase we use a lot is eye-for-an-eye.
12 Does that resonate with you? Does that sound fair?

13 A. Yes.

14 Q. And is that a principle you believe in?

15 A. It's the way I was brought up.

16 Q. Okay. And in fact, I think on your questionnaire
17 you indicated that if somebody killed somebody, they
18 should actually die the same way. Kind of get what's
19 coming to them?

20 A. By law.

21 Q. Okay.

22 A. Yeah, by law.

23 Q. Okay. And some people use the phrase that a person
24 who commits murder, a killer, should receive the same
25 mercy he showed the person he killed. Is that a fair

1 statement?

2 A. Well, if they killed a person, they should get
3 whatever the law allows for them to get.

4 Q. Okay. And for you, would that be the death penalty?

5 MS. ADAMS: Your Honor?

6 A. If that's the case, yes.

7 MS. ADAMS: Your Honor, that's not a proper
8 question.

9 THE COURT: He said under the law.

10 MR. MCGUIRE: Sure.

11 THE COURT: And that's not the law.

12 MR. MCGUIRE: Sure. I understand.

13 THE COURT: I mean, it's just not one
14 consideration.

15 MR. MCGUIRE: Right.

16 THE COURT: Very good.

17 Q. Not all murders are death penalty cases in South
18 Carolina or the country. And the Prosecutor, before they
19 could ask for the death penalty ---

20 A. Uh-huh (affirmative).

21 Q. --- from the jury would have to show what's called
22 aggravation evidence. And it would have to be not just
23 that deliberate killing, it would have to be even worse
24 than that. I'm going to give you an example.

25 A. A forceful killing?

1 Q. A worse than that killing.

2 A. Forceful?

3 Q. Force. Oh, no, no, no, it wouldn't -- the type of
4 killing we're not going to talk about right now. We're
5 just going to talk in terms of murder is the deliberate
6 killing of another person with a black and evil heart.
7 And then the State would add on that what's called
8 aggravation evidence. And I'm going to give you some
9 examples. And we're going to talk about your views about
10 that. Okay? I'm going to give you an example of the
11 aggravation evidence being somebody -- you considering a
12 case of somebody who murdered more than once. Could the
13 life in prison penalty ever be severe enough for that
14 kind of case?

15 MS. ADAMS: Your Honor?

16 THE COURT: Again, that's not the complete law.
17 Oh, you just want him to answer one half of the question?

18 MR. MCGUIRE: Yes, sir.

19 THE COURT: Okay.

20 MR. MCGUIRE: Thank you, Judge.

21 THE COURT: Go ahead.

22 Q. What are your feelings about the death penalty in
23 that double-murder situation?

24 A. If he caused the crime, he should pay the
25 consequences.

1 Q. Okay. And when you say, pay the consequences ---

2 A. Whatever the law allows him to take.

3 Q. Okay. Well, the law would actually give you a
4 choice between sending somebody to prison to live for the
5 rest of their life or the death penalty. In that double-
6 murder situation, is the life penalty really severe
7 enough to punish that kind of murder?

8 MS. ADAMS: Your Honor, again, half the
9 question. It's not how he's going to be instructed.

10 MR. MCGUIRE: I think I got the full round on
11 that one, Judge.

12 THE COURT: Not quite because you -- as far as
13 the mitigation, it can be for any reason, no reason or
14 grace.

15 MR. MCGUIRE: Oh, sure.

16 THE COURT: I mean, that's -- why limit it?

17 MR. MCGUIRE: Sure.

18 THE COURT: Give him the full question. Or if
19 you want me to, I can ask him.

20 MR. MCGUIRE: Well, Judge, what I'd like to do
21 is either be able to ask that question or not.

22 THE COURT: Well, I'll permit you to ask a
23 question that's appropriate that -- what is it -- gives
24 the juror or potential juror an opportunity to answer the
25 ---

1 MR. MCGUIRE: Okay.

2 THE COURT: --- a full question, not just part
3 of a question.

4 MR. MCGUIRE: Sure.

5 Q. I'm going to go backwards a little bit. And I want
6 to put you on a jury kind of in your mind right now.
7 This is where they're going to sit. I want to put you on
8 this jury right here. And you and eleven other people
9 are going to have a murder case. You and eleven other
10 people decide that the killer, guilty beyond a reasonable
11 doubt, and you're convinced he deliberately,
12 intentionally killed an innocent person acting with an
13 evil heart. Just knowing that much, what are your views
14 about the death penalty as the appropriate punishment in
15 that case?

16 THE COURT: Again, that's not the law. The
17 death penalty is not available to someone guilty of
18 murder.

19 MR. MCGUIRE: I understand.

20 THE COURT: It's limited to the specific
21 statutory circumstances.

22 MR. MCGUIRE: I mean, Judge -- I mean, if your
23 ruling is I can't ask the question ---

24 THE COURT: Well, let me -- you want me to ask
25 the question?

1 MR. MCGUIRE: No, sir. I'd like to ask that
2 question.

3 THE COURT: Well, I know you would, but that
4 wouldn't be fair to the juror because that's not the law.
5 And he said on more than one occasion he wants to be
6 governed by the law.

7 MR. MCGUIRE: Sure.

8 THE COURT: Should get what under the law is
9 providing.

10 MR. MCGUIRE: Okay.

11 THE COURT: That's why we -- we don't have
12 arbitrary, capricious judgements made.

13 MR. MCGUIRE: Sure.

14 THE COURT: They have to be supported by the
15 evidence and the law.

16 MR. MCGUIRE: And my understanding is, just to
17 clear the record, Judge, is that I cannot ask that exact
18 question that I just asked.

19 THE COURT: You could ask that question if you
20 want to make it a complete question. In other words, the
21 question that you asked is not the law.

22 (Off record discussion)

23 THE COURT: Yes, sir?

24 MR. MCGUIRE: Judge, just to make the record
25 clear, obviously my -- I would object to not being able

1 to ask that exact question pursuant to *Morgan*.

2 THE COURT: All right. Your objection is
3 noted. The ruling is based on it was not a complete
4 question. It was a misstatement of the law.

5 MR. MCGUIRE: Thank you.

6 Q. And I want to take you back a little bit when you
7 were talking to the Judge about some of these legal
8 principles, the framework the Judge gave you. And part
9 of what the Judge gave you was something called
10 mitigation evidence. And -- or reasons to vote for life.
11 That's kind of -- mitigation, that's kind of a word for
12 any kind of evidence or any kind of thing that would
13 allow somebody to vote for a sentence less than death.
14 And the Judge will tell you that somebody can say -- they
15 can vote for life for any reason or no reason at all.

16 And what I'm going to do now is put you back on that
17 jury over there where you and eleven other people
18 convicted a killer beyond a reasonable doubt,
19 deliberately, intentional, taking an innocent life. And
20 then the State came and proved that this wasn't his first
21 time being convicted of murder. He'd been convicted of
22 murder before. And then you are going to fix punishment
23 in that type of case. And you can even take into account
24 that mitigation evidence like things about the background
25 of the defendant, his walk in life, his childhood, that

1 sort of thing. What are your feelings about the death
2 penalty in that murder and then murder again type
3 situation?

4 A. Did he murder somebody? If he murdered somebody
5 forcefully, then he should be punished whatever the law
6 allows.

7 Q. Okay. Well, the law allows you to determine the
8 punishment. And I can't decide that for you, and the
9 Judge can't decide that for you. You'd have to fix
10 punishment. So I'm asking you how would you fix
11 punishment knowing all that information that we just
12 talked about in that intentional, deliberate killing of
13 two people?

14 A. I'd have to see all the evidence.

15 Q. Okay. And when you say, see all the evidence, you
16 mean the facts of the murders?

17 A. Yes.

18 Q. And would the things about the background of the
19 defendant, his childhood, his kind of -- how he came up,
20 would that be relevant?

21 MS. ADAMS: Your Honor, he's staking him out.

22 THE COURT: Well, now, the law provides that is
23 relevant.

24 MR. MCGUIRE: And I'm just asking if he's going
25 to ---

1 THE COURT: Well, ask him if he's going to
2 follow the law then. If it's -- he said he was.

3 Q. Would those kind of factors be relevant in fixing
4 punishment in a murder case to you? Your own personal
5 view.

6 A. As of what? As of what? Personal view as of what?

7 Q. I'm sorry. I couldn't hear you.

8 A. Personal view as of what?

9 Q. Okay. If I could have just a second.

10 (Off record discussion)

11 Q. Okay. Like if somebody had an abusive father twenty
12 years ago or if they were addicted to drugs.

13 MS. ADAMS: I mean, Your Honor, he's clearly
14 trying to get ---

15 THE COURT: I understand.

16 MS. ADAMS: --- this juror down a specific
17 course.

18 THE COURT: Well, go ahead and ask the
19 question. But remember the Court is going to consider
20 the question in the context.

21 MR. MCGUIRE: Sure.

22 THE COURT: And the answer in the context of
23 the question.

24 Q. Things like that. Like if somebody was addicted to
25 drugs or if their father was abusive to them, say, twenty

1 years ago, would that be relevant in fixing punishment
2 for a double murder case?

3 A. Not really.

4 Q. Okay. Those wouldn't be relevant to you,
5 personally?

6 A. Uh-uh (negative).

7 Q. Is that a no?

8 A. No.

9 Q. Okay. What I'm going to do now is talk to you a
10 little bit about -- did you indicate on your
11 questionnaire -- oh, yeah, you did. A lot of people --
12 you mentioned putting somebody in prison for the rest of
13 their life and that that could be like a burden on the
14 taxpayers. Is that something you agree with?

15 A. It can be, I guess.

16 Q. Sure. And that's a pretty common myth. A lot of
17 people think the death penalty, killing somebody, is
18 actually cheaper than putting them in prison for the rest
19 of their life. But actually the opposite is true. It's
20 more expensive to have the death penalty verdict than it
21 is to put somebody in prison for the rest of their life.
22 Did you know that?

23 A. Yes, I've heard that.

24 Q. Okay. And in fact, you may have heard in the news
25 that states like New York, Maryland, Colorado, New

1 Mexico, Florida and Maryland have all issued reports on
2 their state's death penalty. And each and every time,
3 it's always cheaper to put somebody in prison for the
4 rest of their life. Did you know that?

5 A. I've heard it before.

6 Q. Okay. And I want to talk to you now a little bit
7 about how capital cases are different than any other case
8 in South Carolina Criminal Court. And that's because the
9 jury does fix punishment, this thing we've been talking
10 about that the jury actually decides punishment in the
11 case. In no other case does the jury do that. The judge
12 always decided punishment.

13 Now, what I want to do is I want to ask you about
14 some aspects of the law and ask you if you can follow the
15 law and agree with that. Okay?

16 A. Okay.

17 Q. With regard to sentencing, after the first trial is
18 over -- the first part of the trial is did the fellow do
19 it, is he guilty of murder. And the second part of the
20 trial is what is the right penalty, or what's the
21 appropriate penalty. And that's up to every individual
22 juror. And the rules are different for the Prosecutor
23 and the Defense. And that's what I'm going to explain to
24 you now and see if you can agree with that and respect
25 that. Okay?

1 A. Okay.

2 Q. The rules for the Prosecutor are before they can ask
3 for a death sentence, before they're entitled to even ask
4 for a death sentence, they have to prove aggravation
5 evidence beyond a reasonable doubt to each and every
6 juror. All twelve have to agree that that aggravation
7 evidence exists beyond a reasonable doubt.

8 And the rules are different for the Defense side,
9 for the life in prison side. And that is every
10 individual juror individually can have a different reason
11 to vote for life. Don't have to agree. All twelve don't
12 have to agree on the same reason. Is that an aspect of
13 the law you can follow?

14 A. I'd have to hear all the evidence before I could
15 decide that, I guess.

16 Q. Sure. And the Judge, as he's already told you
17 briefly, a reason to vote for life can be any reason or
18 even no reason at all. And if you were on a jury, eleven
19 other people, and one juror said, you know, I've heard
20 all the evidence, and I'm not going to vote for death,
21 and I can't give you a reason. I'm going to vote for
22 life with no -- for no reason whatsoever. Is that an
23 aspect of the law that you can respect?

24 A. Probably.

25 Q. I mean, would you want the whole jury to come back

1 unanimous no matter what, or could you respect that each
2 individual juror can have their own opinion?

3 MS. ADAMS: Your Honor, I think this has been
4 asked and answered.

5 A. Everybody has their own opinion.

6 Q. I'm sorry, sir?

7 A. Everybody has their own opinion.

8 Q. Sure. And they should have that opinion respected?

9 A. Yes.

10 Q. You'd want your opinion respected?

11 A. Yes.

12 Q. You'd respect other people's opinions?

13 A. Yes, I do.

14 Q. Okay. And at the end of a capital case, the law
15 describes each individual's decision, each individual
16 juror's decision, as an individual moral judgement. And
17 the law says if it would harm their conscience to change
18 that, that would be wrong. Is that an aspect of the law
19 you can respect?

20 A. Harm whose conscience?

21 Q. Right.

22 A. Whose conscience?

23 Q. Oh, the juror's conscience. What I'm saying is if
24 you came to your decision, your own individual moral
25 judgment, it would be wrong -- if it would harm your

1 conscience, it would be wrong for you to change that. Is
2 that an aspect of the law you can follow and respect?

3 A. I respect the law.

4 Q. Okay. It sounds like it. And the State and the
5 Defense and even the jurors are entitled to fairness not
6 just out here, but also in the jury room. And we expect
7 civil discourse in deliberations, a give-and-take. But
8 once somebody reaches their own individual moral
9 judgment, and if things got hostile or you saw some
10 bullying back there, could you pass a note out to the
11 judge saying, you know, things aren't fair in here, it's
12 a little hostile? Could we count on you to do that?

13 A. You know, what's right is right and what's wrong is
14 wrong.

15 Q. Sure. And you'd respect that?

16 A. Yes.

17 Q. And -- okay. And my last point to you is that in a
18 capital case the jury doesn't actually have to come out
19 completely unanimous. They can end the day agreeing to
20 disagree and the Judge would take the case and sentence.
21 Is that an aspect of the law you could respect?

22 A. If it happens that way.

23 Q. Well, that's the law. And it sounds like you're the
24 kind of fellow who respects and does follow the law. You
25 can respect that part of the law?

1 A. Yes.

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

3 THE COURT: All right. The State?

4 CROSS-EXAMINATION

5 BY MS. ADAMS:

6 Q. Good morning. How are you?

7 A. Pretty good.

8 Q. Good. I'm Chrissy Adams, and I'm the Solicitor for
9 the Tenth Circuit. And I appreciate your being here this
10 morning. And I just want to ask you a couple of follow-
11 up questions, okay?

12 A. Okay.

13 Q. The law obviously is very important, and it seems by
14 your answers that it's very important to you as well?

15 A. Yes.

16 Q. Okay. And the Judge is going to instruct the law in
17 this particular case, okay?

18 A. Yes.

19 Q. And if he instructs you once -- let's assume we're
20 into the second phase of the trial. The Defendant's
21 already been found guilty of murder. We're in the second
22 phase of the trial which is -- there's one decision, life
23 without parole or the death penalty. Okay? And the
24 Judge is going to instruct the jurors that they must
25 consider all the evidence in aggravation and all the

1 evidence in mitigation before reaching a decision. Will
2 you be able to follow ---

3 A. Yes.

4 Q. --- the Judge's instructions and consider
5 everything?

6 A. Yes.

7 Q. So you will remain open-minded ---

8 A. Yes, I do.

9 Q. --- until you hear everything? And right now you
10 don't know what that sentence should be, do you, because
11 you haven't ---

12 A. No. Right.

13 Q. So you don't know if life without parole is
14 appropriate or death is appropriate?

15 A. I'm just hearing what you tell me right now.

16 Q. Because you don't know the facts of the case, right?

17 A. Yes.

18 Q. And you could vote for life without parole if you
19 thought that was appropriate?

20 A. Yes.

21 Q. And could you vote for the death penalty if you
22 thought that was appropriate based on the Judge's
23 instructions?

24 A. Yes.

25 Q. And you understand too that justice really has no

1 price, and that's not an appropriate consideration. It's
2 what happens in this courtroom to determine whether life
3 and death is appropriate?

4 A. Yes, I understand that.

5 Q. Thank you so much.

6 A. Thank you.

7 THE COURT: All right. Anything else from the
8 Defense?

9 MR. MCGUIRE: Just a small legal matter, Judge.

10 THE COURT: All right. If you would, please,
11 go with the bailiff. I need to take up some matters with
12 the lawyers. You may have your water though.

13 THE POTENTIAL JUROR: Okay.

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

15 (WHEREUPON, Potential Juror 190 exited the
16 courtroom.)

17 THE COURT: All right.

18 MR. MCGUIRE: Thank you, Judge. Move to strike
19 Juror Number 187.

20 THE COURT: 190?

21 MR. MCGUIRE: 190, I'm sorry. I'm a little bit
22 behind on my numbers there. Sorry about that, Judge.
23 Move to strike Number 190 for cause. In his answers he's
24 substantially impaired based on the fact that he's
25 predisposed to vote for the death penalty and that even

1 when I incorporated the mitigation definition and even
2 gave him examples about the defendant's background and
3 asked him personal to you, are those factors relevant?
4 And he said no. Even with the education, knowing all the
5 law, he said ---

6 THE COURT: Well, not all the law. I don't
7 know all the law.

8 MR. MCGUIRE: Well, all the law regarding ---

9 THE COURT: In fact -- what is it -- I
10 practiced law for twenty years. I never got proficient.
11 I still have questions about the law. And even today, I
12 don't know all the law. But go ahead.

13 MR. MCGUIRE: Sure, sure. And I guess I would
14 preface that with knowing the relevant law regarding
15 murder, aggravation and mitigation, he still indicated
16 his personal view was that the mitigation factors were
17 not relevant. And that would make him mitigation
18 impaired, substantially impaired. And we'd move for
19 cause on those grounds and the objections that I made
20 during the course of my examination.

21 THE COURT: Very good. Anything from the
22 State?

23 MS. ADAMS: Your Honor, just briefly if I need
24 to.

25 THE COURT: Well, I mean, you can do whatever

1 you want to.

2 MS. ADAMS: Okay. Well, Judge, we feel that he
3 is perfectly qualified. He repeatedly said he was going
4 to follow the law. And when instructed that he must
5 consider mitigation, he will consider mitigation. Mr.
6 McGuire's questions are clearly staking him out, getting
7 him down a course of action and not telling him that the
8 Judge will instruct him he must consider it. And when he
9 is asked that question, he clearly states he's going to
10 follow the law and consider -- and consider what you tell
11 him to consider, Judge. It's still not a complete
12 question from the Defense.

13 THE COURT: All right. Anything else from the
14 Defense?

15 MR. MCGUIRE: Just responding briefly. I mean,
16 I think we may -- I don't know -- not ask any questions
17 if we have to ask them, if the Judge told you you would
18 have to consider these things called mitigation factors
19 or mitigation evidence and factors in aggravation, are
20 mitigation factors relevant to you in fixing punishment
21 in an aggravated murder case, we're just -- we're never
22 going to get any useful information. We're not going to
23 get their real personal views. And for the Prosecutor to
24 insist that's the proper question is really disingenuous
25 because we're just not going to get honest views.

1 THE COURT: Well, I think it's disingenuous to
2 ask someone if certain drug abuse, abuse twenty years ago
3 would be relevant. Under our rules, you wouldn't even
4 have it in court unless it was relevant. And then it
5 would be admissible. It has to be admissible even though
6 relevant. So I mean, to ask a juror a legal term -- and
7 I don't know the educational level of this juror -- if
8 something is relevant, he -- that's almost a term that is
9 applicable to the Bench and Bar rather than -- I think
10 he's a master builder and the family lives on a farm.

11 You might want to do it in some other fashion. But
12 I cannot help -- but listening to his responses, he
13 constantly came back to, everyone has an opinion. I
14 would respect others. I would have to hear all of the
15 facts, the evidence. He seems to be the person that
16 would -- what is it -- give consideration to others as
17 well as the facts that are presented.

18 So I don't know. I can't find that he would
19 automatically, you know -- and I'll ask him though if you
20 want me to, if he would automatically, in every case,
21 render the death sentence. I mean, that's the relevant
22 question. You want me to do that? In fact, I'll start
23 doing that each time. And then -- what is it -- maybe it
24 will help us if we're going to ask legal opinions of lay
25 jurors.

1 MR. MCGUIRE: I'm not requesting that.

2 THE COURT: Okay. Well, I do find that he is
3 -- considering the totality -- and even his
4 questionnaire, when he was asked the possibility of -- in
5 your opinion, regarding the sentence of life without
6 possibility of parole, I believe in sentence of life
7 without possibility of parole depending upon the
8 particular case and evidence. So I find that that pretty
9 much sums up what he thinks about it. Now, certain
10 aspects of the case, would that be controlling, I think
11 that's too -- if he -- would not be necessarily a fair
12 question without hearing what it was. It might be the
13 same as aggravating circumstances or not in and of itself
14 the allegation and not -- what is -- control the finding
15 of aggravation. You have to have the facts and evidence
16 to base that on for the jury. So again, I think in the
17 dark, that's not quite an illuminating question.

18 MR. MCGUIRE: And Your Honor, I'm not sure what
19 the Court's normal practice is. Some Judges put all the
20 questionnaires in the court record as exhibits as a
21 matter of course. But I'd like to offer up ---

22 (WHEREUPON, Court's Exhibit Number 1 was marked for
23 identification only.)

24 THE COURT: I think that's what we're going to
25 do. That's what -- my understanding.

1 MR. MCGUIRE: If I could just -- I mean, I
2 don't know if I need -- is this just extra if I give the
3 questionnaire of 190 -- so all the questionnaires are
4 Court's Exhibits?

5 THE COURT: Yes, sir.

6 MR. MCGUIRE: Okay. So I would just refer to
7 that part of the questionnaire where he said if somebody
8 killed somebody, he thinks they should be killed the same
9 way.

10 THE COURT: Which is not a correct statement of
11 the law.

12 MR. MCGUIRE: Well, I agree with that.

13 THE COURT: Well, I mean, that's just it.
14 That's what you're basing your opinion on is a lay
15 opinion. And I can understand how you would have
16 concern. All right. I'll tell you what. Let's take a
17 short break. We're a little bit behind.

18 MADAM CLERK: You haven't ---

19 THE COURT: Oh, I'm sorry. We haven't brought
20 him out yet.

21 All right. Ask the juror to join us, 190.

22 Thank you.

23 But to answer your question, that's what we're
24 planning to do.

25 MR. MCGUIRE: Okay.

1 (WHEREUPON, Potential Juror 190 entered the
2 courtroom.)

3 THE COURT: All right. Considering the entire
4 voir dire, I find that Juror 190 will be fair, unbiased,
5 impartial and able to carry out the law as explained to
6 him. Furthermore, I find this juror's beliefs or
7 attitudes towards the death penalty would not prevent or
8 substantially impair the performance of his duties as a
9 juror in accordance with the law, the Court's
10 instructions and the juror's oath. So I do find Juror
11 190 qualified.

12 Now, you can tell that this process is taking a
13 little time. But we need to qualify a pool of jurors
14 from whom the actual jurors will be selected. So you're
15 free now to go and to do whatever you need to do. But
16 you have given your telephone number to the Clerk?

17 THE POTENTIAL JUROR: Yes.

18 THE COURT: All right. So she'll call you
19 probably sometime next week.

20 THE POTENTIAL JUROR: My cell phone number.

21 THE COURT: Well, that's ---

22 THE POTENTIAL JUROR: That's all I got.

23 THE COURT: Well, that's the one that you can
24 be reached at?

25 THE POTENTIAL JUROR: And my wife's.

1 THE COURT: All right. So -- but you'll -- it
2 will probably be next week before you get a call.

3 THE POTENTIAL JUROR: Okay.

4 THE COURT: So you're free to do whatever you
5 need to at that time. But once you get the call, they'll
6 ask you to come in so that we'll select the jury panel.

7 THE POTENTIAL JUROR: Okay.

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

9 THE POTENTIAL JUROR: Thank you.

10 THE COURT: Look forward to working with you.

11 (WHEREUPON, Potential Juror 190 exited the
12 courtroom.)

13 THE COURT: All right. Let's do take a break.

14 (WHEREUPON, court stood at recess for a short
15 break.)

16 THE COURT: All right. Is the State ready?

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

18 THE COURT: Is the Defense ready?

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: All right. This is juror 364. Is
21 there anything from the State before we ask the juror to
22 join us?

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

24 THE COURT: From the Defense?

25 MR. MCGUIRE: No, sir.

1 THE COURT: All right. Ask the juror to join
2 us, please, 364." I'm sorry, 364.

3 (WHEREUPON, Potential Juror 364 entered the
4 courtroom.)

5 THE COURT: All right. Are you juror 364?

6 THE POTENTIAL JUROR: Yes, sir.

7 **POTENTIAL JUROR 364,**

8 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

9 EXAMINATION

10 BY THE COURT:

11 Q. You will recall on Monday I put all of the jurors
12 under oath. Now, do you understand that you're still
13 under oath and this oath continues throughout these
14 proceedings?

15 A. Yes, sir.

16 Q. Very good. Thank you, ma'am. You have been
17 provided with a copy of a list of potential witnesses.
18 Have you had an opportunity to review that witness list?

19 A. Yes, sir.

20 Q. Did you recognize any names on it?

21 A. One.

22 Q. And what was that name?

23 A. Mike Walters.

24 Q. All right. If he should be -- and what's your
25 relationship or how do you know -- recognize it?

1 A. Well, I actually -- my dad knows him, but I know his
2 daughter because she's the school nurse at my children's
3 school.

4 Q. I understand.

5 A. So I don't personally know him.

6 Q. Well, if he should be a witness in this case, would
7 that in any way affect your ability to give both the
8 State and the Defense a fair and impartial trial?

9 A. No, sir.

10 Q. And you're not related by blood or marriage or close
11 personal friend or business associate or have any other
12 association with anyone on the list that you recognized?

13 A. No, sir.

14 Q. Do you also recall my instructions from Monday to
15 avoid all forms of media coverage dealing with this case?

16 A. Yes, sir.

17 Q. Has that caused you any problems?

18 A. No, sir.

19 Q. All right. Thank you. Now, the trial of this case
20 will last approximately ten days, maybe even longer. But
21 the main thing is it will last longer than a normal case.
22 Other than personal inconvenience, would this pose a
23 serious danger to the health or well-being of yourself or
24 anyone who is dependent upon you?

25 A. No, sir.

1 Q. Among other things we'll be talking about today is
2 penalty. But the mere fact that we talk about a penalty
3 does not indicate anything about this Defendant or any
4 defendant. Defendants are always presumed to be
5 innocent. Do you understand that?

6 A. Yes, sir.

7 Q. If you were a juror in a criminal case, could you
8 listen to the law, accept and apply that law as I would
9 instruct you even though you may not agree with that law
10 or think it ought to be some other way?

11 A. Yes, sir.

12 Q. Could you decide this case based solely on the
13 evidence presented in this courtroom and disregard
14 anything you may have heard or read or seen about this
15 case?

16 A. Yes, sir.

17 Q. In a criminal case, The State has the burden of
18 proving guilt. The burden of proof for the State is
19 beyond a reasonable doubt. A defendant has no burden to
20 prove innocence or even to testify or provide evidence.
21 Do you understand that?

22 A. Yes, sir.

23 Q. Could you, depending on the facts and the evidence
24 and the law as I would instruct you in a particular case,
25 find a defendant either guilty or not guilty?

1 A. Yes, sir.

2 Q. If you were a juror in a death penalty case and if
3 the jury has found the defendant guilty of murder, you
4 would then move to the sentence phase of the trial. Do
5 you understand this?

6 A. Yes, sir.

7 Q. When you hear us refer to a capital case or a death
8 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 Part two is the sentencing phase where a jury determines
17 the appropriate punishment. Of course, if the defendant
18 is found not guilty, that ends the matter. Do you
19 understand that?

20 A. Yes, sir.

21 Q. Therefore, if you were a juror in the 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 the phase two of the trial which is sometimes
25 called the sentencing phase of the trial. Do you

1 understand this?

2 A. Yes, sir.

3 Q. Now, if you were a juror in the sentencing phase --
4 that is, phase two of a capital murder trial, again,
5 where a jury has already found the defendant guilty of
6 murder -- do you understand that the jury, rather than
7 the judge, determines the sentence that a defendant will
8 receive for the crime of murder?

9 A. Yes, sir.

10 Q. In a capital sentencing trial, the jury's function
11 is to determine the appropriate punishment based upon the
12 circumstances of the crime and the characteristics of the
13 individual defendant. Now, aggravating circumstances are
14 facts or details that, when they are present in a case,
15 make the crime of murder more serious or worse. On the
16 other hand, mitigating circumstances are incidents,
17 occurrences or details of a case that would reduce the
18 severity of the crime of murder. In other words, may
19 reduce the degree of responsibility for the crime. Do
20 you understand this?

21 A. Yes, sir.

22 Q. Do you also understand that the jury has two options
23 to consider regarding the sentencing for murder? One
24 option is life imprisonment which under our law, is until
25 the death of the defendant without possibility of parole.

1 The other option is death which in this state is by
2 electrocution or lethal injection. Could you, as a juror
3 in the sentencing phase, depending upon the facts
4 including relevant aggravating and mitigating
5 circumstances and the law as instructed to you, render a
6 sentence of life imprisonment?

7 A. Yes, sir.

8 Q. On the other hand, as a juror in the sentencing
9 phase, depending upon the facts including the relevant
10 aggravating and mitigating circumstances and the law as
11 instructed to you, could you render a sentence of death?

12 A. Yes, sir.

13 Q. Very good. Answer any questions the attorneys may
14 have for you.

15 DIRECT EXAMINATION

16 BY MR. MCGUIRE:

17 Q. Good morning, ma'am.

18 A. Good morning.

19 Q. It's still morning. How are you today?

20 A. Good.

21 Q. I have to refer to you as Juror Number 364. It's
22 not because I'm not being polite or friendly. It's just
23 the way we've got to do things. I hope you forgive me
24 for that. I want to just ask you a little bit about your
25 questionnaire. With regard to your opinion regarding the

1 death penalty, you indicated, I agree with it if the
2 evidence is there to convict them. Is that still your
3 view?

4 A. Yes.

5 Q. Okay. And regarding life without the possibility of
6 parole, you indicated that your opinion was if they get
7 the sentence, why not give the death penalty. They spend
8 their life in jail forever while the taxpayers keep them
9 there. Is that still your view?

10 A. (Nodded head up and down in the affirmative.)

11 Q. Okay. And these -- when you filled out this
12 questionnaire, you knew this was a serious matter and
13 took it seriously?

14 A. Uh-huh (affirmative).

15 Q. And these answers that you gave come from who you
16 are as a person, your value system?

17 A. Yes, sir.

18 Q. Kind of your core values, what's right and wrong,
19 what's appropriate?

20 A. Uh-huh (affirmative).

21 Q. Okay. And I'm going to talk to you a little bit in
22 more detail about what brings us here in this kind of
23 case. And I'm going to start with the definition of
24 murder in South Carolina. My guess is you're like most
25 people and don't have that definition with you right now;

1 is that right?

2 A. Yeah.

3 Q. Okay. Murder in South Carolina is the unlawful
4 killing of another human being with malice aforethought.
5 And what that means is that the killer was acting with a
6 black and malignant heart fatally bent on evil and
7 intentionally, deliberately took an innocent life. And
8 if I read your questionnaire correctly, as long as you
9 were sitting on a jury, had a front row seat, and the
10 evidence was there to convict beyond a reasonable doubt,
11 the death penalty would be appropriate in that case?

12 A. Yes, sir.

13 Q. Okay. And if the prosecutor came with aggravation
14 evidence -- and that would be something that made it even
15 worse than that murder I just described -- for example
16 two murders, your opinion would still be the death
17 penalty is the appropriate punishment?

18 A. Say that again. I didn't understand what you were
19 saying.

20 Q. Okay. Well, what I'm doing is I'm kind of taking
21 you from your first position which is ---

22 A. Uh-huh (affirmative).

23 Q. --- if I heard you right, the death penalty would be
24 appropriate for the intentional killing if there's
25 evidence there ---

1 A. Yeah.

2 Q. --- beyond a reasonable doubt?

3 A. Uh-huh (affirmative).

4 Q. And what I want to do now is add something more to
5 that because the prosecutor would have to come forward
6 with aggravation evidence to ask for the death penalty.

7 And I want to give you an example. And the example is
8 that the person you're judging, the killer, had murdered
9 twice. Are you with me?

10 A. Yes.

11 Q. Okay. In that double-murder situation, could the
12 life in prison penalty ever be severe enough to punish
13 that kind of case?

14 MS. BYFORD: Your Honor, I'm getting three
15 questions to get to the mitigation part, and we're not
16 there yet.

17 THE COURT: I'm sorry. I didn't quite hear
18 you.

19 MS. BYFORD: I tried to give him three
20 questions to get to the mitigation balancing, and we
21 haven't gotten there yet. So I felt -- I feel like I
22 gave him a fair shot. But I have to object at this
23 point.

24 THE COURT: All right. Restate your question.

25 MR. MCGUIRE: Judge, first off, I don't

1 understand the nature of the objection.

2 THE COURT: It's the same one that we've been
3 dealing with. In order to be fair to the juror, we need
4 to give them a question that is based on the law that
5 will be used ---

6 MR. MCGUIRE: Sure.

7 THE COURT: --- not -- what is it -- just
8 opinions off the street or something like that.

9 Q. Let me ask you this. In that double-murder
10 situation where you and eleven other jurors were
11 convinced beyond any reasonable doubt that the person had
12 killed twice, deliberately, intentionally took the life
13 of an innocent person, would things called mitigation
14 factors about the defendant like his background, his
15 growing up, would that be relevant in fixing punishment
16 for that kind of double murder?

17 A. No.

18 Q. Okay. What I want to do now is take you through --
19 oh, let me ask you this. You indicated you had the
20 concern about the taxpayer -- taxpayers putting somebody
21 in life in prison.

22 A. That's if they are -- I mean, if they are found
23 guilty and ---

24 Q. Sure, sure.

25 A. --- they're going to be there forever anyway.

1 Q. Right. And what I just want to do is clear up a
2 common misconception or myth. And that is a lot of
3 people think that life without parole, putting somebody
4 in prison the rest of their life, is actually more
5 expensive than having the death penalty because obviously
6 you have to care for them, feed them, clothe them. That
7 sort of thing. But in twenty-five years of studies,
8 there's not any indication ever that the death penalty is
9 cheaper than life without parole. Did you know that?

10 A. Uh-uh (negative).

11 Q. It's a very common misunderstanding. In fact, you
12 may have seen in the news recently that states like New
13 York, Albuquerque [sic], Maryland, Colorado and Florida
14 and North Carolina, all their governments have studied
15 the cost savings. Life without parole is always cheaper.
16 Did you know that?

17 A. Uh-uh (negative).

18 Q. Okay. With regard to publicity, have you heard,
19 read anything, seen anything about the case?

20 A. I did, but I just -- I actually heard it on the news
21 when it first happened, but I haven't seen anything since
22 then.

23 Q. Do you have any opinion based on what you've -- I
24 mean ---

25 A. No.

- 1 Q. --- do you have any idea what happened?
- 2 A. I didn't. Uh-uh (negative), I don't.
- 3 Q. I want to take you through right now a little bit
- 4 about how capital cases are different than any other case
- 5 in South Carolina. And that's because the jury fashions
- 6 punishment. Any other case, the judge would sentence.
- 7 The jury would just be responsible for was the fellow
- 8 guilty or not, and then the judge would sentence. But
- 9 it's not like that in a capital case. It's different,
- 10 and the rules are different for both sides. And it's
- 11 going to be a little counterintuitive to most people, so
- 12 I'm going to walk you through that. I'm going to tell
- 13 you what the law is, some aspects of the law, and I'm
- 14 just going to ask you if you can agree with these aspects
- 15 of the law. Okay?
- 16 A. Uh-huh (affirmative).
- 17 Q. First, one rule is that the State, before they're
- 18 even entitled to ask for a death penalty sentence, they
- 19 have to bring aggravation evidence to the jury. All
- 20 twelve jurors would have to agree that that aggravation
- 21 evidence existed beyond a reasonable doubt. And that's
- 22 kind of like the way normally -- the way things normally
- 23 work. Everybody has to agree. It's got to be beyond a
- 24 reasonable doubt. These are very familiar concepts.
- 25 But on the other hand, it's different for the life

1 penalty. And the Judge would tell every juror that any
2 juror, any one juror, can vote for life for no reason,
3 any reason, even just mercy. Is that a principle -- or
4 is that an aspect of the law that you can respect and
5 follow?

6 A. Yes.

7 Q. Okay. And the way it works in practical terms is
8 that, for instance, you've got a -- we put a jury in the
9 box over here, and you're in this group over here. One
10 of the jurors on the front row might say, well, you know,
11 when I watched this case, I saw something in the
12 defendant's background that resonated with me, and that
13 was -- that's my reason why I'm going to vote for life.
14 And another juror in the back could say, well, you know,
15 I saw something in his relationship with his grandmother
16 or his son that was redeeming to me, and I'm going to
17 vote for life because of that. And another juror could
18 say, you know, I'm going to vote for life, and I don't
19 have a reason. And they can all disagree for their
20 reasons. Is that a principle or is that an aspect of the
21 law that you can agree with and follow?

22 A. Yes.

23 Q. Okay. And the law describes a juror's ultimate
24 decision in a capital case as their individual moral
25 judgment and that if it would harm their conscience to

1 change that, that would be wrong. Is that an aspect of
2 the law you can respect and follow?

3 A. Yes.

4 Q. And again, in capital cases -- in most cases -- in
5 most cases, everybody thinks the jury always has to come
6 back unanimous for whatever decision they return. In a
7 capital case, it's not so. The jury can actually come
8 into the courtroom and say, we agree to disagree. And
9 the judge will take the case and sentence, and the case
10 will end. Is that an aspect of the law you can respect
11 and follow?

12 A. Yes, sir.

13 Q. Okay. And the State and the Defense and you and the
14 rest of the jurors are entitled to fairness not just out
15 here, but also in the jury room. And while we expect
16 civil discourse and polite deliberations, if it got
17 unfair in the jury room, could you send a note out to the
18 Judge and say, you know, things aren't fair in here?

19 A. Yeah.

20 Q. Put a stop to that. And I want to ask you one more
21 question, I think. Your concept of mercy. Is mercy
22 freely given and bestowed, or is it earned?

23 A. I think it's earned.

24 Q. Okay. And how would somebody go about earning
25 mercy?

1 A. I guess just on how, you know, how they act, what
2 they do and how they, you know, portray themselves as a
3 person.

4 Q. It sounds like you're talking about the concept
5 maybe about remorse, being sorry for something they've
6 done and showing that?

7 A. Well, not really. I mean, not really remorse, I
8 mean, because anybody can do something and then show
9 remorse later.

10 Q. Sure.

11 A. But it's not going to change what they did.

12 Q. Right.

13 A. I think it would depend on facts.

14 Q. Okay. Okay.

15 MR. MCGUIRE: If I could have just one second,
16 Judge.

17 THE COURT: Certainly.

18 Q. Oh, do you recognize Mr. Walters?

19 A. Do I recognize him?

20 Q. Yes.

21 A. I recognized his name, but I do think, yeah.

22 Q. The fellow over there?

23 A. Yeah.

24 Q. Would you be uncomfortable serving on a case where
25 he was so intimately involved in the investigation?

1 A. No, uh-uh (negative). I just saw him here. I mean,
2 I don't know what his involvement is at all. I just know
3 his daughter.

4 Q. Okay. And I understand that your father ministers
5 at the jail?

6 A. Ministers? I don't know. He ministers at that
7 jail?

8 Q. Does he?

9 A. He has. He is a minister.

10 Q. Okay. And does he go to the Anderson County Jail
11 now?

12 A. I don't know.

13 Q. Okay. Do you know if he's ministered to Mr. Rivera?

14 A. I have no idea.

15 Q. Okay. Would you be comfortable serving on a case
16 where you might have to fix the punishment for somebody
17 that your father ministered to?

18 A. Yeah. I mean, I don't talk to my father about that,
19 so I wouldn't even know if he did or not.

20 Q. So you would be comfortable?

21 A. Yes.

22 Q. Okay. And if I could have just one more second.

23 (Off record discussion)

24 Q. Ma'am, that's all -- those are all the questions I
25 have for you. Thank you very much for your patience.

1 A. Thank you.

2 THE COURT: All right.

3 MS. BYFORD: Yes, sir.

4 THE DEFENDANT: That was him telling me to shut
5 the fuck up.

6 THE COURT: Have a seat.

7 THE DEFENDANT: You need to tell him to shut
8 the fuck ---

9 MR. MCGUIRE: Your Honor, if we could have a
10 moment with the Court?

11 THE COURT: Yes. If you would, please, go with
12 the bailiff.

13 THE DEFENDANT: He don't need to tell me to
14 shut the fuck up again.

15 THE COURT: I need to take up a matter.

16 (WHEREUPON, Potential Juror 364 exited the
17 courtroom.)

18 THE COURT: Yes, sir?

19 MR. MCGUIRE: You know, I'd renew my earlier
20 motion that I made regarding the Defendant's presence in
21 court. And I'd also move to excuse this juror because of
22 that unfortunate outburst. I'm sorry.

23 THE DEFENDANT: Your Honor, I'd like to renew
24 my motion to relieve Counsel.

25 THE COURT: All right. Mr. Rivera, you know,

1 you have the constitutional right to be present in the
2 courtroom during all critical stages of the proceeding.
3 However, you can waive that right to be present. Do you
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you waive it when you start
7 showing contempt for this Court. And I can remove you
8 and put you in a place that -- I think we have a place
9 where you can watch it on the screen. If you insist on
10 disrupting this Court, you will waive your right to be
11 present, physically present, in the courtroom. Do you
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Am I going to have any other
15 problems with you?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. What do you say about
18 the outburst and the effect upon this potential juror?

19 MS. BYFORD: If it would be okay, may I
20 respectfully suggest that you ask her some questions
21 about it and just see if it affects her at all, and then
22 I would let you make the decision, Your Honor, about what
23 to do.

24 THE COURT: All right.

25 MS. BYFORD: That would be my recommendation.

1 THE COURT: Is that fair?

2 MR. MCGUIRE: And Judge, I would just ask you
3 to remove her without asking her any questions. There's
4 no way we can unring that bell. I mean, we're here for a
5 murder trial with allegations of violence. His past
6 record of character is going to become an issue.

7 THE COURT: Well, the only thing is he created
8 his own dilemma. And obviously if I start that, then --
9 what is it -- we might as well strike the whole panel
10 because -- I'm trusting at this time that he is not going
11 to do that again. I don't want to give a precedent
12 unless it is necessary. Now, if she has been prejudiced
13 in any fashion, I'll exercise that discretion to excuse
14 her. But let me find out what -- to be honest with you,
15 I didn't even hear it except I did hear a term that I
16 don't particularly care for. But anyway ...

17 Ask the juror to join us.

18 MR. MCGUIRE: And Judge, I would just add
19 before the juror comes in that not only do I think she
20 may have -- well, we can ask her. But not only may she
21 have -- she may have heard more than just the outburst
22 because I could hear comments when I was up there
23 questioning the juror. And I'm only four feet away from
24 her. I don't know if she heard everything. I just don't
25 know. I mean, in an abundance of caution, I would just

1 ask ---

2 THE COURT: I understand.

3 (WHEREUPON, Potential Juror 364 entered the
4 courtroom.)

5 THE COURT: Thank you very much. Juror 364,
6 you -- there was an exchange earlier before you were
7 excused. Did you hear any of that?

8 THE POTENTIAL JUROR: Yes, sir.

9 THE COURT: Without using any sort of
10 particular language, just what was your impression of
11 what you heard?

12 THE POTENTIAL JUROR: I just heard the 'F'
13 word. That's all I remember.

14 THE COURT: All right. Could you still be fair
15 to both the State and the Defendant if you were selected
16 on the jury ...

17 THE POTENTIAL JUROR: Oh, yes, sir. I mean --
18 -

19 THE COURT: ... after hearing that expression?

20 THE POTENTIAL JUROR: Oh, yeah. Yeah, I mean,
21 I don't know what it was about or anything. So ...

22 THE COURT: All right. I'm going to -- you may
23 proceed. Do you want any questions with the juror?

24 MR. MCGUIRE: Yes, sir.

25 DIRECT EXAMINATION

1 CONTINUED BY MR. MCGUIRE:

2 Q. Specifically, without -- sometimes -- and I think
3 you've already done it, referred to that word as the 'F'
4 word. Beyond that, what did you hear?

5 A. Shut the 'F' up, is all I heard.

6 Q. Okay. And do you know who said it?

7 A. Yeah, I know who said it.

8 Q. Who's that?

9 A. The ...

10 Q. The defendant, Mr. Rivera?

11 A. Uh-huh (affirmative).

12 Q. And how would you characterize his tone? Was it
13 polite, cordial or rather hostile?

14 A. I think he was upset about something. But ...

15 Q. Would you find his behavior to be very disrespectful
16 to the Court?

17 A. I mean, yeah, it was disrespectful, but ...

18 Q. Sure. It's kind of hard to unring a bell. If we
19 told you just to put this ---

20 MS. ADAMS: Your Honor?

21 Q. --- out of your mind and forget about it ---

22 MS. ADAMS: Your Honor, she's clearly stated
23 she can set it aside.

24 THE COURT: Let's both sit down. Go ahead.
25 You can -- no. You can ask your question. Go ahead..

1 MR. MCGUIRE: Thank you.

2 Q. You know, sometimes in the law lawyers use the
3 phrase unring the bell because sometimes something
4 happens in Court, and we just can't undo it. And if I
5 told you to just pretend like it never happened, forget
6 about it ---

7 A. I mean, it's obvious he was upset about something.
8 Everybody gets upset. So I mean ...

9 Q. Sure.

10 A. It's no big deal.

11 Q. Okay. I think the Judge would tell you this later,
12 but I'm going to just ask you about it now. If you were
13 selected and seated on the jury, could you refrain from
14 discussing that matter with all the other jurors?

15 A. Sure.

16 Q. And definitely, definitely not let that slip?

17 A. Sure.

18 Q. Okay.

19 MR. MCGUIRE: Judge, if I could just have a
20 second.

21 THE COURT: Certainly.

22 (Off record discussion)

23 MR. MCGUIRE: Ma'am, that's all I have. I
24 thank you very much. I'm sorry you had to hear that.

25 THE COURT: All right. Anything from the

1 State?

2 MS. BYFORD: Just a few questions, Your Honor,
3 on the original.

4 CROSS-EXAMINATION

5 BY MS. BYFORD:

6 Q. I just have a few questions to follow up with what
7 Mr. McGuire was asking you earlier, before all of that.
8 He had asked you a couple of questions about life without
9 parole and the death penalty and how much each of them
10 costs. The Court is going to instruct you that the only
11 evidence you can consider in this case is stuff that's
12 presented from the seat that you're sitting in right now
13 or just evidence that comes in. Could you only consider
14 that evidence?

15 A. Yes.

16 Q. And you wouldn't consider anything inappropriate
17 like how much either sentence would cost, would you?

18 A. No.

19 Q. Okay. Mr. McGuire also asked you a bunch of
20 questions about what you would consider as far as things
21 about the Defendant in making your decision. Do you know
22 that, under the law, the Judge is going to instruct you
23 that you would have to consider mitigation evidence? Did
24 you know that?

25 A. No.

1 Q. Okay. The Judge is going to instruct you that you
2 have to consider both sides of the case. And before I
3 ask this next question, I want to make it very clear the
4 burden is always on the State. The Defendant never has
5 to present any case, any evidence to y'all whatsoever.
6 But were the Defendant to present a case in mitigation,
7 would you be fair to him and listen to his side of
8 things?

9 A. Yes.

10 Q. Okay. And in making your decision, your ultimate
11 life-or-death sentencing decision, could you take into
12 consideration what they presented, if any?

13 A. Yes.

14 Q. Okay. Having considered everything presented by the
15 State and any mitigation evidence presented by the
16 Defense, would you always vote for the death penalty?

17 A. No.

18 Q. Okay. So you could consider a life without parole
19 sentence if you felt that was appropriate?

20 A. Yes.

21 Q. And could you vote for life without parole if you
22 felt that was appropriate?

23 A. If I felt it was appropriate, yes.

24 Q. Okay. And in making that decision, again, you would
25 take into consideration both sides of the story; is that

1 correct?

2 A. Yes.

3 Q. Okay. Thank you very much.

4 THE COURT: Anything further from the Defense?

5 MR. MCGUIRE: Just a small legal matter, Judge.

6 THE COURT: All right.

7 All right. If you'll go with the bailiff one more
8 time.

9 THE POTENTIAL JUROR: Okay.

10 THE COURT: We appreciate it. Thank you.

11 (WHEREUPON, Potential Juror 364 exited the
12 courtroom.)

13 THE DEFENDANT: Your Honor, I'd like to note on
14 the record that Mr. McGuire came over to me and told me
15 to shut the fuck up. That's why you had the outburst.
16 I'm sorry. I apologize.

17 THE COURT: All right. Noted for the record.

18 All right. Mr. McGuire?

19 MR. MCGUIRE: Judge, we'd would move to excuse
20 the previous juror for cause based on the fact that she's
21 substantially impaired with her predisposition to vote
22 for the death penalty. When she understood the
23 definition of murder, indicated that -- when I gave her
24 an example of mitigation, it was not relevant to her in
25 fixing punishment.

1 THE COURT: Well, the thing is under the law,
2 it is relevant. And you didn't tell her that.

3 MR. MCGUIRE: Sure. I'm more concerned about
4 her personal views before we tell her that she's going to
5 break the law if she doesn't ---

6 THE COURT: No, sir. No, sir. That's --
7 again, this isn't a coliseum. We don't thumb up, thumb
8 down. We have laws and we have rules of evidence, and we
9 have guidelines to determine how we make a decision. But
10 just to ask somebody off the street what do you think in
11 an abstract, no, that's not -- particularly when you use
12 the question relevant. Those are issues that a court has
13 to consider every time on a piece of evidence. Is it
14 relevant first, then is it admissible? Then if it is
15 relevant and admissible, does the prejudicial value
16 outweigh any probative value? All of those things are in
17 that term of relevant. And of course, the witness wasn't
18 advised that it was relevant.

19 MR. MCGUIRE: I understand the Court's
20 position.

21 THE COURT: Okay. If she had been told, well,
22 it's relevant, would you consider it, now, that the
23 Court would be concerned about.

24 MR. MCGUIRE: I understand.

25 THE COURT: And because ---

1 MR. MCGUIRE: I understand the Court's
2 position. And Judge, I understand -- I think where we're
3 disagreeing is -- first of all, I totally agree with the
4 Court that the standard is a fair juror is a juror who's
5 going to be indifferent, impartial, consider all the
6 aggravation evidence, all the abuse evidence and deliver
7 -- fairly consider both penalties. But I don't think
8 that's the question.

9 THE COURT: As I read *Morgan, Illinois v.*
10 *Morgan* or *Morgan v. Illinois*, whichever it was, it says
11 that what you want to do is to cull the extremes, those
12 who would automatically vote the death penalty and those
13 who would automatically not consider the death penalty
14 sentence. And as far as in between that -- those, that
15 does not necessarily disqualify them if they are willing
16 to listen to the facts and the law as instructed.

17 MR. MCGUIRE: Yes, sir, understood.

18 THE COURT: So I mean, again, we might differ
19 with that. You read *Morgan* in a different way. I don't
20 think that that's what it says. I think it says -- and
21 this is what I find in this particular case -- I have to
22 consider the totality. And this way she even said mercy
23 depends upon the facts. Didn't get into a discussion of
24 whether it's -- mercy is a non work concept or not.

25 MR. MCGUIRE: Yes, sir.

1 THE COURT: All right.

2 MR. MCGUIRE: If I could just note my objection
3 for the record.

4 THE COURT: Your objections are. And again,
5 please -- it's the intent of the Court to preserve the
6 objections, but I do need to move on.

7 MR. MCGUIRE: Thank you, sir.

8 THE COURT: All right. Thank you.
9 Anything from the State?

10 MS. BYFORD: No, sir.

11 THE COURT: All right. Ask the juror to join
12 us, please.

13 (WHEREUPON, Potential Juror 364 entered the
14 courtroom.)

15 THE POTENTIAL JUROR: I'm back.

16 THE COURT: Very good. Glad to have you back.
17 In fact, considering the entire voir dire, I find that
18 Juror 364 will be fair, unbiased, impartial and able to
19 carry out the law as explained to her. Furthermore, I
20 find that the juror's beliefs or attitudes toward the
21 death penalty would not prevent or substantially impair
22 the performance of her duties as a juror in accordance
23 with the law, the Court's instruction and the juror's
24 oath. I do find you're qualified.

25 Now, I do want to note something to be sure that you

1 understand. Anything that does not happen before all of
2 the jurors in this courtroom cannot be discussed in any
3 way in the jury room, even mentioned or brought up in any
4 fashion because you have to make your decision based on
5 what all the evidence is and the evidence that each
6 individual hears. You can't bring in anything heard
7 outside of the courtroom meaning where all the other
8 jurors would be if you're selected on the jury. Do you
9 understand that?

10 THE POTENTIAL JUROR: Yes, sir.

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

12 Now, you've given the Clerk your telephone number?

13 THE POTENTIAL JUROR: Uh-huh (affirmative).

14 THE COURT: All right. As you can see, this
15 process is going to take a little while. So it will
16 probably be next week that you will get a phone call
17 asking you to come it. At that time, we'll hopefully
18 have -- well, we will have qualified a panel from which
19 will be selected the actual jurors. But you're free to
20 do whatever you need to do until you get that phone call.

21 THE POTENTIAL JUROR: Okay.

22 THE COURT: Very good. Thank you very much,
23 ma'am.

24 (WHEREUPON, Potential Juror 364 exited the
25 courtroom.)

1 THE COURT: All right. Juror number 194.

2 MR. DAY: Your Honor, I apologize. I'm going
3 to ask if the Court would indulge me a few minutes and
4 allow me to consult with Defense counsel. I'm hoping
5 that that will save us some more time in the future if I
6 can have a few minutes.

7 THE COURT: Certainly. All right. We'll take
8 a short break. Just tell me when y'all are ready.

9 All right. We'll stand at ease.

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

12 MR. DAY: Okay. Your Honor, thank you very
13 much. I appreciate it. We've accomplished what we need
14 to, and we're ready to proceed.

15 THE COURT: All right. Very good.

16 THE DEFENDANT: Again, Your Honor, I'd like to
17 apologize for the outburst. But there's clearly a
18 conflict of interest with me and my attorneys. It was
19 inappropriate for my attorney to tell me to shut the fuck
20 up. And that's why the outburst happened. I'd just like
21 to put on the record that it's clearly a conflict of
22 interest between me and my attorneys, and it's obvious.

23 Thank you, Your Honor.

24 THE COURT: All right. I note your observation
25 and the renewal of your motion to relieve your counsel,

1 and I deny your motion.

2 All right. So we're back to Juror Number 194. Is
3 there anything from the State on Juror 194?

4 MR. CAMPBELL: Yes, sir, Your Honor, just
5 briefly. In the general voir dire when the Court was
6 talking about it on Monday, this juror did stand up and
7 said he's already formed an opinion of the case.

8 MS. ADAMS: Just so you know.

9 MR. MCGUIRE: Just for the ---

10 THE COURT: Obviously, I didn't hear that.

11 MR. CAMPBELL: He was one of the two.

12 MS. BYFORD: There are only two that stood up.

13 THE COURT: Do we know what that opinion is?

14 MR. CAMPBELL: No, sir.

15 THE COURT: Would that be a fair question, just
16 for the sake of discussion, to bring the juror out and
17 just see if that's not his statement and it's still his
18 statement?

19 MR. MCGUIRE: Judge, if I could just have one
20 second to talk to these folks.

21 THE COURT: Certainly.

22 (Off record discussion)

23 MR. MCGUIRE: We both agree, Judge, that it
24 might be appropriate to excuse Juror 194 for various
25 reasons.

1 THE COURT: I just opened the questionnaire to
2 page 17. And when he said, do you think life in prison
3 without possibility of parole is a severe punishment, no.

4 MS. ADAMS: Judge, we can't read it.

5 THE COURT: So I think -- I do -- I believe
6 we'll excuse him.

7 MS. BYFORD: Thank you, Your Honor.

8 MS. ADAMS: And Judge, too, for the record too
9 -- I don't know if you noticed -- he clearly stated he
10 would not follow your instructions either. He checked no
11 on all those questions.

12 THE COURT: Well, ask Juror 194 if he would
13 come out.

14 (WHEREUPON, Potential Juror 194 entered the
15 courtroom.)

16 THE COURT: All right. Are you Juror Number
17 194?

18 THE POTENTIAL JUROR: Yes, I am.

19 **POTENTIAL JUROR 194,**

20 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

21 **EXAMINATION**

22 **BY THE COURT:**

23 Q. All right. You remember the other day I put all --
24 I think it was Monday I put all the jurors under oath.
25 Now, do you understand that you're still under oath and

1 the oath continues throughout these proceedings?

2 A. I do.

3 Q. When I asked the question on Monday if any member of
4 the jury panel had formed or expressed an opinion about
5 this case, I think you responded?

6 A. I did, yes.

7 Q. And what was your ---

8 A. That I had possibly formed an opinion.

9 Q. Is that still your opinion?

10 A. Not really. I've had a chance to kind of think it
11 over, and I'm not -- I do not believe ---

12 Q. You're just not sure?

13 A. I'm not sure.

14 Q. I also understand you said you might have some
15 difficulty in following the instruction of the law if you
16 didn't agree with it?

17 A. Yes.

18 Q. Okay. All right. I think you understand, of course
19 -- and this is no reflection because obviously those are
20 your convictions. And I don't want to in any way
21 interfere with strongly-held convictions because we must
22 have our own comforts in doing things. But in a case
23 like this there are certain things that I must require,
24 and I wouldn't want to put you in a conflicting
25 situation. So I'm going to excuse you on the trial of

1 this case. But I do want to thank you for coming forward
2 and also being candid with the Court. So I'm going to
3 have to excuse you, all right?

4 A. Thank you.

5 Q. Good luck, and I do appreciate it. Thank you, sir.

6 THE COURT: Juror 194 will be excused.

7 (WHEREUPON, Potential Juror 194 exited the
8 courtroom.)

9 THE COURT: All right. Is 200 the other one?

10 MS. ADAMS: Yes, sir, Your Honor. And just so
11 -- I don't know if you want to look at her questionnaire,
12 Judge. But she seems that she suffers from panic attacks
13 and is very stressed. And she wrote it several times, so
14 I just wanted you to be aware. Like on two pages she
15 talks about it and how she cannot do this. The last two
16 pages are 17 and 18.

17 (Off record discussion)

18 THE COURT: All right. What does the Defense
19 say?

20 MR. MCGUIRE: Well, Judge, if I could, I'd like
21 to ask her some questions and examine her.

22 THE COURT: All right.

23 Juror 200, please.

24 (WHEREUPON, Potential Juror 200 entered the
25 courtroom.)

1 THE POTENTIAL JUROR: Good morning.

2 THE COURT: It's afternoon, ma'am. I do
3 apologize.

4 THE POTENTIAL JUROR: Oh, it sure is. Well,
5 great.

6 THE COURT: All right. Are you Juror 200?

7 THE POTENTIAL JUROR: Yes, sir.

8 **POTENTIAL JUROR 200,**

9 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

10 EXAMINATION

11 BY THE COURT:

12 Q. You will recall on Monday I put all jurors under
13 oath. Now, do you understand that you're still under
14 oath and the oath continues throughout these proceedings?

15 A. Yes, sir.

16 Q. You have been provided with a copy of a list of
17 potential witnesses. Have you had the opportunity to
18 review that witness list?

19 A. Yes, sir.

20 Q. Are you related by blood or marriage or a close
21 personal friend or business associate or have any other
22 association with any of the potential witnesses?

23 A. I know one of the witnesses.

24 Q. All right. Which one is that?

25 A. Betty Clayton.

1 Q. All right. What's the relationship?

2 A. The only reason I know her is school bus driver.

3 Q. Would that in any way interfere with your ability to
4 give both the State and the Defendant a fair and
5 impartial trial if she should be a witness?

6 A. I'm not sure.

7 Q. What do you mean?

8 A. Well, I mean, she drove the school bus for my
9 children, my children, at one time.

10 Q. All right. I mean, would ---

11 A. But I don't have any other connections with her.

12 Q. Yeah, but I mean, would that -- the fact that she
13 does appear in the court and give testimony, would that
14 in any way influence your ability to give both the State
15 and the Defendant a fair and impartial trial?

16 A. No.

17 Q. You do recall my instructions from Monday to avoid
18 all forms of media coverage dealing with this case?

19 A. Yes, sir.

20 Q. Has that caused you any problem?

21 A. No, sir.

22 Q. The trial of this case will last approximately ten
23 days or maybe more. Other than the personal
24 inconvenience, would this pose a serious danger to the
25 health or well-being of yourself or anyone who is

1 dependent upon you?

2 A. I have to pick up my children from school. My
3 husband is no longer working, and we only have one
4 vehicle. And actually, I mean, that's the only way I can
5 pick up my children from school, with my car.

6 Q. Well, could he pick up -- pick the children up if he
7 had the car?

8 A. He can.

9 Q. I mean, I was going to say that if you are -- and we
10 don't know if you will be selected on the jury because
11 what we're doing now is qualifying a pool of jurors from
12 which the actual jurors will be selected.

13 A. Uh-huh (affirmative).

14 Q. But we could provide you with transportation each
15 day if you are selected. Is there anything else?

16 A. That's it.

17 Q. Among other things we'll be talking about today is
18 penalty. The mere fact that we talk about penalty does
19 not indicate anything about this Defendant or any
20 defendant. Defendants under our law are always presumed
21 to be innocent. Do you understand that?

22 A. Yes, sir.

23 Q. If you were a juror in a criminal case, could you
24 listen to the law and accept and apply that law as I
25 would tell you it is even though you may not agree with

1 that law or even if you think it ought to be some other
2 way?

3 A. Yes, sir.

4 Q. Could you decide this case based solely on the
5 evidence presented in the courtroom and disregard
6 anything you may have heard, read or seen about the case?

7 A. Yes, sir.

8 Q. In a criminal case, the State has the burden of
9 proving guilt. The burden of proof for the State is
10 beyond a reasonable doubt. A defendant has no burden to
11 prove innocence or anything at all. In fact, a defendant
12 doesn't even -- does not even have to testify, and that
13 cannot be held against him in any way. Do you understand
14 that?

15 A. Yes, sir.

16 Q. Could you, depending on the facts and evidence and
17 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, you
22 would then move to the sentence 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 where the prosecutor -- in other words, the State
3 -- is seeking the death penalty. Do you understand this?

4 A. Yes, sir.

5 Q. A death penalty trial is divided into two parts.

6 Part one is the guilt phase whether a jury determines
7 whether the defendant is guilty or not guilty of murder.

8 Part two is the sentencing phase where a jury determines
9 the appropriate punishment. Of course, if the defendant
10 is found not guilty, that ends the matter. Do you
11 understand?

12 A. Uh-huh (affirmative).

13 Q. Therefore, if you were a juror in a trial of a
14 capital case where the jury in phase one of the trial has
15 found the defendant guilty of murder, you would then move
16 on to the phase two of the trial which is called the
17 sentencing phase of the trial. Do you understand this?

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,
21 where a jury has already found the defendant guilty of
22 murder -- do you understand that the jury, rather than
23 the judge, determines the sentence that a defendant will
24 receive for the crime of murder?

25 A. Yes, sir.

1 Q. In a capital sentencing trial, the jury's function
2 is to determine the appropriate punishment based upon the
3 circumstances of the crime and the characteristics of the
4 individual defendant. Do you understand that?

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. Do you understand that?

9 A. Yes, sir.

10 Q. On the other hand, mitigating circumstances are
11 incidents, occurrences or details of a case that would
12 reduce the severity of the crime of murder. In other
13 words, may reduce the degree of responsibility for the
14 crime. Do you understand that?

15 A. Yes, sir.

16 Q. Do you also understand that the jury has two options
17 to consider regarding the sentencing for murder? One
18 option is life imprisonment which is, under our law, is
19 until the death of the defendant without possibility of
20 parole. The other option is death which in this state is
21 by electrocution or lethal injection. Do you understand
22 that?

23 A. Yes, sir.

24 Q. Could you depending -- could you, as a juror in the
25 sentencing phase depending upon the facts including

1 relevant aggravating and mitigating circumstances and the
2 law as instructed to you, render a sentence of life
3 imprisonment?

4 A. Yes, sir.

5 Q. On the other hand, as a juror in the sentencing
6 phase depending upon the facts including relevant
7 aggravating and mitigating circumstances and the law as I
8 instruct it to you, could you render a sentence of death?

9 A. Yes.

10 Q. All right. If you would, please, answer any
11 questions the attorneys may have.

12 MR. MCGUIRE: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. MCGUIRE:

15 Q. Good afternoon ...

16 A. Good afternoon.

17 Q. ... Juror 200. I've got to refer to you by number.
18 It's a little awkward for me. I'm not being not polite.
19 I just have to do that. So if you would, just forgive me
20 that.

21 A. I understand.

22 Q. What I'm going to do is talk to you a little bit
23 more in detail regarding these issues of murder and
24 punishment and stuff like that. The Judge gave you a
25 good kind of general framework. But I'm going to go into

1 more detail and talk to you a little bit about some
2 aspects of the law and if you can respect and follow the
3 law basically.

4 And the first thing is there is no murder case in
5 the country, and certainly South Carolina, that ever
6 demands or is automatic for the death penalty. And what
7 I mean by that is it's not like if the prosecutor proves
8 A, B and C, then there's a blank on the form and it says,
9 well, we have to check out the death penalty. It's never
10 automatic. Do you understand that?

11 A. Uh-huh (affirmative).

12 Q. Okay. The only way the State's entitled to even ask
13 for a death penalty verdict is they have to prove that
14 somebody committed murder first. And that's defined in
15 South Carolina as the unlawful killing of another human
16 being with malice aforethought. And that means that the
17 killer was acting with a black and malignant heart,
18 fatally bent on evil, deliberately, intentionally took
19 the life of another person. That's sort of the starting
20 point this. That's what murder is.

21 And then the state would have to come forward with
22 aggravation evidence. And that would be some kind of
23 fact that would make the murder even worse than just
24 murder. And all twelve jurors would have to agree beyond
25 a reasonable doubt that that aggravation evidence existed

1 before they could even start to decide whether a death
2 penalty might be appropriate. Is that an aspect of the
3 law you can agree with?

4 A. Sure.

5 Q. Okay. And the Judge will tell you that each
6 individual juror can vote for a life sentence based on
7 any reason, mercy, any piece of evidence they see that
8 warrants it for them or even no reason at all. Is that
9 an aspect of the law you can agree with and respect?

10 A. Yes.

11 Q. Okay. And the way that plays out in practical terms
12 is that -- as I said, with aggravation evidence, it has
13 to be all twelve jurors agreeing beyond a reasonable
14 doubt. But it's different for the life sentence side of
15 the equation. And to give you an example of how that
16 plays out, if we had a jury sitting in the box over here,
17 and the first part of the trial was already over --
18 that's did the fellow do it or not, is he guilty or not
19 of, you know, of murder.

20 You'd go home, take a little break. Then you'd come
21 back with your eleven other jurors, and then you'd begin
22 to decide punishment. And a juror in the front here
23 could say -- I have sort of a habit of just referencing
24 the jury because that's kind of where they're going to
25 sit even though there's nobody there now. But a juror in

1 the front row could say, you know, I saw something in the
2 defendant's life or background that resonated with me.
3 And that's my reason for voting life. And then a
4 different juror, say, sitting in the back row could say,
5 well, you know, I saw something about his relationship
6 with his family, maybe his grandmother. And that was
7 redeeming to me, and that's my reason for voting life.
8 And then another juror could say, I'm going to vote for
9 life, but I can't even give you a reason. That's just
10 kind of how I feel. And there's that -- every juror has
11 the right to pick whatever reason, any reason they might
12 have, and they don't have to agree. Is that an aspect of
13 the law you can respect and follow?

14 A. Sure.

15 Q. And most folks show up to court thinking that when
16 you talk about a jury and the result that a jury
17 delivers, that it's always unanimous. And in a case like
18 this, it doesn't have to be. The only time that a
19 verdict has to be unanimous in this kind of case is if
20 all -- the only way the State's entitled to a death
21 verdict is all twelve jurors would have to agree that
22 that's the appropriate punishment.

23 And then on the other side is that the jury can
24 actually agree to disagree, come back into court and say,
25 you know, we heard everybody's opinion, and we talked

1 about the case and we deliberated. But we can't all go
2 twelve for death. We all can't -- twelve can't go for
3 life. We just have a disagreement. And that's okay.
4 Because if the jury came back in and said that, the Judge
5 would take the case and he would sentence and end the
6 case. Is that a principle -- is that an aspect of the
7 law that you can agree with and respect?

8 A. Sure.

9 Q. And follow? And a juror's decision in a capital
10 case is defined in the law as their individual moral
11 judgment. And every juror's individual moral judgment
12 has the right to be respected. Everybody has a right to
13 have their own point of view respected. And the way it's
14 described in the law is that once somebody reaches their
15 individual moral judgment after, you know, proper
16 deliberations, if it would harm their conscience to
17 change their individual moral judgment, that would be
18 wrong.

19 And the Defendant, the State and even the jurors are
20 entitled to fairness not just out here, but also in the
21 jury room. And if you saw things getting unfair like
22 bullying or hostile behavior, something beyond nice
23 polite civil discourse, could you pass a note out to the
24 Judge saying, you know, things aren't fair in here and
25 end that?

1 A. Yes.

2 Q. Okay. We can count on you to do that?

3 A. Yes.

4 Q. Now, again, the only time a death verdict is ever
5 required -- or actually it's never required. I've
6 impeached myself. The only time a death verdict could
7 ever be delivered, again, is if all twelve agree that it
8 was appropriate. That would be you and eleven other
9 people. And in South Carolina law, to deliver that
10 verdict into Court, we do it through a piece of paper by
11 signing the indictment. If you -- if the State delivered
12 to you the sufficient quantity and quality of evidence
13 where it convinced you that the appropriate sentence was
14 the death penalty, could you, along with the eleven other
15 jurors, sign your name on that piece of paper?

16 A. Yes.

17 Q. Okay. I mean, if you came to the conclusion that
18 that was, in fact, the appropriate thing to do, you could
19 do that?

20 A. Uh-huh (affirmative).

21 Q. Okay. And I read your questionnaire. And it sounds
22 like you do have some reservations about the gravity of
23 the situation that we're here. And I think you'd agree
24 with me in a matter as serious as whether a human being
25 lives or dies, I mean, that's to be expected.

1 A. Yeah. And I mean, I don't want it to be in my
2 hands, you know, because, I mean, of my decision, I mean,
3 because, see, I would have to live with that.

4 Q. Sure.

5 A. I mean, you know, I know everybody has a conscience.
6 But you know, I mean, I don't want it to have to be in my
7 hands because, I mean, -- I mean, you know, I'm a
8 Christian, you know -- I mean, whether somebody is guilty
9 or not, I mean, you know, I just don't want it to be in
10 my hands, that it's my decision because they're either --
11 they're in prison or they're either sentenced to death.

12 Q. And I appreciate that. And you know, obviously the
13 Judge and the State, nobody here would say that it would
14 be appropriate to have a jury made up of people who feel
15 comfortable killing somebody.

16 A. Yeah.

17 Q. That would be just wrong.

18 A. That's not me.

19 Q. No. And we fully expect people, citizens, to come
20 and do their duty as jury service even though they have
21 some reservations about the gravity of the case. Is that
22 the kind of juror that you are, that you could do your
23 duty as a juror even with some reservations?

24 A. Uh-huh (affirmative).

25 Q. Okay. And despite wanting -- not wanting -- well,

1 despite not wanting to have that sort of thing on your
2 conscience and worry about it, you could still do your
3 service as a juror?

4 A. Uh-huh (affirmative).

5 Q. Okay. Based on everything that we've talked about.
6 And all your answers to me have been completely truthful
7 and honest, obviously?

8 A. Yes, sir.

9 Q. And it looks like you've given great thought to your
10 answers and you're not being flippant?

11 A. I have been praying.

12 Q. And -- well, good. I think you've gotten some good
13 help there.

14 MR. MCGUIRE: If I could have just one second
15 with my co-counsel, Judge.

16 Q. If you would just give me one break, Ms. 200?

17 A. Sure.

18 THE COURT: Certainly.

19 (Off record discussion)

20 Q. I just want to make sure I've covered everything.
21 If you're a juror on a case, you have the opportunity to
22 hear the law as it comes down from the Judge. The Judge
23 actually charges the law orally to the jury. And he
24 would explain what the law is. And in a capital case,
25 sort of the basic law and kind of the bottom line of what

1 were trying to get that is, if the Judge told you that
2 you must consider the circumstances in aggravation,
3 circumstances in mitigation, the whole case, that you're
4 required to do that, you could do that?

5 A. If I understood what some of those meant.

6 Q. Okay.

7 A. I mean, I've never ---

8 Q. That's my fault.

9 A. I've never done any of this, so I have no clue what
10 a lot of that means.

11 Q. Sure. And hardly anybody does when they show up, to
12 tell you the truth. What I'm going to do is help you
13 with those definitions. Circumstances of aggravation
14 would be evidence that the State would bring forward
15 showing the jury that the murder was particularly
16 heinous, that it was bad, that it was an aggravated
17 murder. And that would be their position why the death
18 penalty would be appropriate. And the Judge would charge
19 you that you'd be required to consider those factors in
20 your deliberations. And you could see them, you could
21 recognize them for what they are, and you could take them
22 into account in fixing your eventual verdict. Could you
23 do that?

24 A. Sure.

25 Q. Okay. And mitigation factors or mitigating factors,

1 that's just another phrase for basically any reason to
2 vote for life. Okay? And that can be, as the Judge
3 stated earlier, that could be any reason, that could be
4 no reason, it could be mercy, it could be, as I kind of
5 instructed you earlier, anything you see in the case, the
6 Defendant, the background, the evidence. And the Judge
7 would instruct you that you would be required by law to
8 consider those factors before reaching your decision.
9 Could you do that?

10 A. Sure.

11 Q. Regarding all of these aspects of law that I've
12 talked to you about, do you have -- it sounds like you
13 could follow all of them. Is that accurate?

14 A. Sure.

15 Q. Okay.

16 MR. MCGUIRE: And if I could have just one
17 second, Judge.

18 (Off record discussion)

19 MR. MCGUIRE: Juror number 200, that's all I
20 have for you. Thank you very much.

21 THE POTENTIAL JUROR: Thank you.

22 CROSS-EXAMINATION

23 BY MS. ADAMS:

24 Q. How are you this afternoon?

25 A. I'm good.

1 Q. I'm Chrissy Adams, and I'm the Solicitor for the
2 Tenth Circuit. And we certainly do appreciate you being
3 here.

4 A. Thank you.

5 Q. And I know you are probably very nervous?

6 A. Yes, I am.

7 Q. And that's okay. Most people are when they come in
8 here, and especially when a bunch of strangers like us
9 are asking you ---

10 A. And staring.

11 Q. --- about a serious topic.

12 A. Yes, ma'am.

13 Q. And it is very serious because it is about a fellow
14 human being's life or death.

15 A. Yes, ma'am.

16 Q. And we are asking you if you can make that decision.
17 And you stated earlier -- because I'm just concerned
18 about your questionnaire. We don't want to make you
19 uncomfortable.

20 A. Yeah.

21 Q. And I know everybody feels like they want to be fair
22 and that they can follow instructions. But you know,
23 sometimes in your heart of hearts, you know you just
24 can't do something no matter what somebody tells you. Is
25 that fair?

1 A. Yes, ma'am.

2 Q. Okay. And it seems like in your heart of hearts
3 that you can't sentence a fellow human being really to
4 anything?

5 A. Uh-uh (negative).

6 Q. That you couldn't vote for life without parole?

7 A. Uh-uh (negative).

8 Q. No?

9 A. No.

10 Q. And you couldn't vote for death either way?

11 A. No.

12 Q. Okay. No matter what the Judge told you you had to
13 do?

14 A. No, ma'am.

15 Q. Okay. Thank you so much.

16 A. Thank you.

17 THE COURT: Okay.

18 MR. MCGUIRE: Nothing -- no further questions.

19 THE COURT: Anything else from the State?

20 MS. ADAMS: Oh, no, sir, Your Honor. Just a
21 matter of law.

22 MR. MCGUIRE: I believe she's qualified, Judge.

23 THE COURT: All right. If you would, please,
24 step out just for a moment. I need to take up a matter
25 of law with the attorneys. Just go with the bailiff.

1 Thank you, sir. Thank you, ma'am. Excuse me. It's been
2 a long day.

3 (WHEREUPON, Potential Juror 200 exited the
4 courtroom.)

5 THE COURT: Your motion is to find the juror
6 qualified?

7 MR. MCGUIRE: (No verbal response)

8 THE COURT: Anything from the State?

9 MS. ADAMS: Your Honor, just she's clearly
10 inconsistent. I think it's obvious she wants to follow
11 the law, but she clearly has stated she does not want to
12 be responsible for someone else's life. She doesn't want
13 to sentence someone to life in prison or to death. And
14 Your Honor, under *State v. Wood*, a juror stating they
15 cannot give the death penalty, and then decided they
16 could, if you're inconsistent, you're not qualified to
17 serve. And she -- and her questionnaire -- she actually
18 states that she could never sentence someone to death as
19 well. And she clearly stated that on the stand.

20 THE COURT: All right. Mr. McGuire?

21 MR. MCGUIRE: Thank you, Your Honor. Well, I
22 mean, I would note that probably half our jurors are
23 inconsistent in their answers. And if that's the
24 standard, we need to go back and start striking
25 backwards. But if we're going to apply the same standard

1 to this juror who has reservations about serving as we do
2 with the people that are fairly readily answering that
3 death is the appropriate punishment for murder, that
4 they're not going to consider mitigation evidence, then
5 she is qualified if we use the same standard. So we'd
6 move to keep her.

7 THE COURT: Do you have the cite on *State v.*
8 *Woods*?

9 MS. ADAMS: Yes, sir, Your Honor. My co-
10 counsel put it up, Judge. One second.

11 MS. BYFORD: I apologize, Your Honor.

12 MS. ADAMS: Your Honor, it is 362 S.C. 135, and
13 that particular cite is 140, page 140.

14 (Off record discussion)

15 THE COURT: Would you give us that cite again?

16 MS. ADAMS: Your Honor, in the book I have,
17 it's 362 S.C. 135.

18 THE COURT: Well, that's a little bit
19 different.

20 MS. ADAMS: Is that right?

21 THE COURT: Or 153?

22 MS. ADAMS: We're going to look it up too,
23 Judge, to double check. I apologize.

24 (Off record discussion)

25 MS. ADAMS: Your Honor, if I may I'll give you

1 the S.E.2d cite.

2 THE COURT: I've got it.

3 MS. ADAMS: You've got it? Oh, okay.

4 (Off record discussion)

5 MS. ADAMS: Your Honor, if I may?

6 THE COURT: Please.

7 MS. ADAMS: I think this juror actually even
8 goes a step beyond because not only did she say she
9 couldn't vote for the death penalty, she couldn't vote
10 for life either. She doesn't want to stand in judgment.
11 As she even said to Mr. McGuire, I don't want it in my
12 hands that they are in prison or sentenced to death. She
13 simply can't do it. And I think it's clear by her
14 questionnaire and clear by her answers that she can't do
15 it either way. She doesn't want to sit in judgment at
16 all. Because she said, again, something to the effect
17 of, it's just not me.

18 THE COURT: All right. Anything further from
19 the State?

20 MS. ADAMS: No, sir.

21 THE COURT: Anything from the Defense?

22 MR. MCGUIRE: No, sir.

23 THE COURT: Having listened to both the Defense
24 and the State's questioning of the potential juror, it
25 appears to the Court that I'm afraid I will have to find

1 that this is a nice person who really is rather compliant
2 in the sense that she wants to please because she almost
3 took two different positions as to what she could do
4 under the law and what -- when asked if she could do
5 either way under the law, she said she could. But she
6 also admitted that she didn't know what the law was or
7 what those terms meant. I think that she would be
8 substantially impaired in both giving either a life
9 sentence or a death sentence inasmuch as I must consider
10 the totality of the voir dire, which would include the
11 questionnaire.

12 She states that as a result of filling out this
13 questionnaire, have you formed any opinions about this
14 case, and she said yes, that I am not the person to be
15 chosen as a juror for death penalties or life without
16 parole. It's too much stress. I cannot handle stress at
17 all. If I get stressed, I may have to be put on
18 prescribed medication by family doctor. If stress gets
19 too bad, I have a panic attack -- I have had a panic
20 attack before.

21 I do find that her candid expressions that did not
22 deal with particular legal requirements which she said
23 she did not understand when they were phrased to her in
24 the form of a question, but when she was considering what
25 her duty would have to be ultimately -- because she

1 obviously when asked -- from filling out the
2 questionnaire, did she understand what this case was
3 about, she clearly said that it was going to be a
4 question of penalty ultimately. I'm going to have to
5 find that she is disqualified as being substantially
6 impaired.

7 All right. Ask the juror to join us, please.

8 (WHEREUPON, Potential Juror 200 entered the
9 courtroom.)

10 THE COURT: All right. Juror 200, I know you
11 didn't ask to be here, and you were summoned. And if you
12 remember on Monday when I qualified the entire panel, I
13 asked about if they could be fair and impartial to both
14 sides, both the State and the Defendant. That question
15 has two sides to it. And that is, one, the parties are
16 entitled to a fair and impartial juror. But just as
17 important to me is the fact that, as I say, you didn't
18 ask to be here. And I don't want to put somebody in a
19 position where they might feel somewhat compromised in
20 the sense that it might conflict with their own
21 principles or convictions. In other words, I don't want
22 to make a person feel uncomfortable being on a jury. And
23 considering the entire record -- that includes your
24 candid responses today, but also in the questionnaire --
25 I think that you should be excused from serving on the

1 trial of this case.

2 I do want to thank you though for being here and
3 your patience with the Court. But more importantly, I
4 want to thank you for your candor in telling us -- in
5 answering rather difficult questions. And you've got
6 some strong convictions, and I do not want in any way to
7 disturb those convictions.

8 THE POTENTIAL JUROR: Thank you.

9 THE COURT: All right. So I'm going to excuse
10 you. All right?

11 THE POTENTIAL JUROR: Thank you very much.

12 THE COURT: This will end your service.

13 THE POTENTIAL JUROR: Thank you.

14 THE COURT: You're quite welcome.

15 THE POTENTIAL JUROR: Thank you.

16 (WHEREUPON, Potential Juror 200 exited the
17 courtroom.)

18 THE COURT: All right. That's the morning
19 panel. The afternoon will be in at 1:30. Let's try to
20 be back as soon as we can to 1:30 even though we might be
21 a little bit late. All right?

22 MS. ADAMS: Yes, sir.

23 MS. BYFORD: Yes, sir.

24 MS. ADAMS: Thank you, Judge

25 MR. MCGUIRE: And Judge ---

1 THE COURT: Oh, I note your objection to my --

2 -

3 MR. MCGUIRE: Sure. If I could just add for
4 the record that it's not just based on the fact that her
5 answers indicate that she was, in fact, qualified, but
6 that the standard being applied -- or urged by the
7 Prosecutor and applied by the Court -- is inconsistent
8 with jurors who are leaning towards -- or favorable to
9 the Defense in any way versus those who seem to be
10 favorable for the Prosecution. The standard seems to be
11 inconsistent. And I would add that to my motion for the
12 record.

13 THE COURT: That's a very good point except I
14 don't agree with you. If I did, I certainly would grant
15 your motion.

16 MR. MCGUIRE: I understand.

17 THE COURT: But I will read that -- from
18 *Morgan*, the extremes must be eliminated, i.e. those who
19 in spite of the evidence would automatically vote to
20 convict or impose the death penalty or automatically vote
21 to acquit or impose a life sentence.

22 The Court also has to be concerned with the well-
23 being of the juror. And in this particular case,
24 particularly when her response to my excusing her
25 obviously would have made her -- would have impaired her

1 ability to fully perform as a juror in my humble opinion.

2 Thank you very much. So that's, again, what I -- it's
3 not just the fact that both has to be qualified both as
4 to both extremes or the extremes.

5 All right. Very good. Thank you. We'll see you
6 soon after 1:30.

7 MR. MCGUIRE: Thank you, Judge.

8 (WHEREUPON, court stood at recess for the lunch
9 break.)

10 THE COURT: All right. Is the State ready?

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

12 THE COURT: The Defense ready?

13 MR. MCGUIRE: Sure.

14 MR. DELGADO: Yes, sir.

15 THE COURT: I think the Defendant had something
16 to say. Do you want to speak to your attorney first ---

17 THE DEFENDANT: No, no.

18 THE COURT: --- for advice?

19 THE DEFENDANT: No, no. I have some quick
20 legal issues.

21 THE COURT: Well, please understand whatever
22 you do can be held against you. So I'd suggest that you
23 talk to your advisor at least to find out what you should
24 -- if it would be appropriate.

25 Mr. Day?

1 THE DEFENDANT: No, I'm good. I'm all right.
2 I just have a couple of legal issues I want to address to
3 the Court. And I would ask that you just hear me out
4 right quick.

5 Your Honor, I couldn't give you a better example of
6 a conflict of interest with my attorney than what
7 transpired recently. Clearly, it was inappropriate for
8 Mr. Bill Maguire to approach me and say -- and tell me to
9 shut the fuck up. The witness -- excuse me. The juror,
10 potential juror, Juror Number 364, stated obviously on
11 the record that she heard it and that I was upset by it.

12 I feel like this is not the counsel that's
13 guaranteed by me under *Strickland versus Washington* and
14 the Sixth and Fourteenth Amendment. I've pleaded with
15 the Court on various occasions and asked you to relieve
16 me of counsel. I think it's in my constitutional rights
17 under *Feretta versus California* and *State versus Brewer*.
18 But the Court insists to force attorneys upon me. And
19 clearly it's a conflict of interest.

20 I'm not going through the same thing that I did with
21 the previous trial, speaking just through my guardian ad
22 litem. I have to interact with my attorney. This is my
23 trial, Your Honor. And for a potential juror to hear
24 this and see what's going on, it could affect me because
25 she's deciding my fate. Okay? And I think it's -- I