

VOLUME THREE 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 THREE
PAGES 1001-1500

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1 just think that that was inappropriate, Your Honor.

2 And for the Court to admonish me, it wasn't just me,
3 Your Honor. It was my attorneys, too. Okay? I mean, I
4 said -- they know how to -- they been doing this longer
5 than me, and so they know how to act in front of the
6 Court, Your Honor. Okay?

7 That's all I have to say, Your Honor. Under
8 *Strickland* versus -- excuse me -- under *Feretta* versus
9 *California* and *State* versus *Brewer*, it's my right to
10 relieve counsel and for this court not to force counsel
11 upon me. That's all I have to say for the record.

12 Thank you.

13 THE COURT: All right. I've heard the motion
14 and the renewed motion. And if there's anything I can
15 assure Mr. Rivera is that his attorneys are very
16 persistent, very dedicated, very learned and competent,
17 eminently competent, to represent anyone in a trial,
18 particularly a trial such as this. So rather than
19 finding you prejudiced in any way, I find that you have
20 benefitted from the experience and ability that has been
21 afforded you as far as representation.

22 Now, if I'm wrong, of course, that's something that
23 somebody else can look at. But I'm basing it on what I
24 have seen in the courtroom and my own experiences having
25 tried cases including capital cases. I mean, not as a

1 judge ---

2 THE DEFENDANT: I understand.

3 THE COURT: --- but as an attorney.

4 THE DEFENDANT: I understand that, Judge. My
5 issue is just having Mr. McGuire approach the bench to
6 tell me to shut the fuck up. That was my issue, Your
7 Honor.

8 THE COURT: I understand.

9 THE DEFENDANT: Thank you.

10 THE COURT: All right.. Very good. Let the
11 record reflect I did not hear that. But obviously, I've
12 permitted you to put it on the record. And it seems that
13 the only one that was heard using that expression was
14 yourself.

15 THE DEFENDANT: No, Your Honor, not just me,
16 but Juror number 364.

17 THE COURT: But she heard it from you.

18 THE DEFENDANT: No, Your Honor, she didn't say
19 she heard it from me.

20 THE COURT: Okay. The record will speak for
21 itself.

22 THE DEFENDANT: Thank you.

23 THE COURT: Thank you.

24 All right, 205.

25 Oh, and for the record to be clear, the Court has

1 heard and declines to grant the motion to relieve
2 counsel.

3 205, anything from the State on this juror?

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

5 THE COURT: Anything from the Defense?

6 MR. MCGUIRE: No, sir, Your Honor.

7 THE COURT: All right. Ask 205 to join us.

8 (WHEREUPON, Potential Juror 205 entered the
9 courtroom.)

10 THE COURT: Are you Juror 205?

11 THE POTENTIAL JUROR: Yes, sir.

12 **POTENTIAL JUROR 205,**

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

14 **EXAMINATION**

15 BY THE COURT:

16 Q. You will recall on Monday I put all of the jurors
17 under oath. Now, do you understand that you're still
18 under oath and this oath continues throughout these
19 proceedings?

20 A. Yes, sir.

21 Q. You've been provided with a copy of a list of
22 potential witnesses. Have you had an opportunity to
23 review that witness list?

24 A. Yes, sir.

25 Q. Are you related by blood or marriage or a close

1 personal friend or business associate or have any other
2 association with any of the potential witnesses?

3 A. No, sir.

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

6 A. Yes, sir.

7 Q. Has this caused any problems for you?

8 A. No, sir.

9 Q. The trial of the case will last approximately ten
10 days, maybe even longer. Other than the personal
11 inconvenience, would this pose a serious danger to the
12 health or well-being of yourself or anyone else who might
13 be dependent upon you?

14 A. Their well-being?

15 Q. Their well-being. In other words, by reason of
16 health.

17 A. No, sir.

18 Q. Among other things we will be talking about today is
19 penalty. But the mere fact that we talk about penalty
20 does not indicate anything about this Defendant or any
21 defendant because, under our law, defendants are always
22 presumed innocent. Do you understand that?

23 A. Yes, sir.

24 Q. If you were a juror in a criminal case, could you
25 listen to the law, accept and apply the law as I would

1 instruct you as the court, and even though you may not
2 agree with that law or think it ought to be some other
3 way, could you listen to and accept the law as I charge
4 it?

5 A. Yes, sir.

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

10 A. Yes, sir.

11 Q. In a criminal case, the State has the burden of
12 proving guilt. The burden of proof for the State is
13 beyond a reasonable doubt. A defendant has no burden to
14 prove innocence. In fact, a defendant has no burden of
15 proof whatsoever. In other words, a defendant doesn't
16 even -- does not even have to take the stand and testify
17 or offer any evidence. And the fact that he exercises
18 that right cannot be held against him. Do you understand
19 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 any particular case,
23 find a defendant either guilty or not guilty?

24 A. Yes, sir.

25 Q. When you hear -- excuse me. If you were a judge

1 [sic] in a death penalty case, and if the jury had found
2 the defendant guilty of murder, you would then move to
3 the sentence phase of the trial. Do you understand that?

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 this?

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 And part two is the sentencing phase where a jury
15 determines the appropriate punishment. Of course, if the
16 defendant is acquitted and found not guilty in the first
17 part of the trial, then that ends the matter altogether.
18 Do you understand?

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?

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 a defendant will
6 receive for the crime of murder?

7 A. Yes, sir.

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

12 A. Yes, sir.

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

16 A. Yes, sir.

17 Q. On the other hand, mitigating circumstances are
18 those incidents, occurrences or details of a case that
19 would reduce the severity of the crime of murder. In
20 other words, may reduce the degree of responsibility for
21 the crime. Aggravation make it more serious; mitigation
22 reduces the severity. Do you understand this?

23 A. Yes, sir.

24 Q. Do you also understand that the jury has two options
25 to consider regarding the sentencing for murder? One

1 option is life imprisonment which under our law means
2 until death without possibility of parole. The other
3 option is death which in this state is by electrocution
4 or lethal injection. Could you, as a juror in the
5 sentencing phase, depending upon the facts including all
6 relevant aggravating, and mitigating circumstances and
7 the law as instructed to you, render a sentence of life
8 imprisonment?

9 A. I could.

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 could.

15 Q. Thank you very much. Please answer any questions
16 Counsel may have.

17 THE COURT: Mr. McGuire?

18 MR. MCGUIRE: Your Honor, I'm going to hold my
19 questions in response. I have no questions at this time.

20 THE COURT: Madam Solicitor?

21 MS. ADAMS: Thank you, your honor.

22 DIRECT EXAMINATION

23 BY MS. ADAMS:

24 Q. Good afternoon. How are you?

25 A. Good afternoon. Good.

1 Q. My name is Chrissy Adams, and I'm the Solicitor for
2 the Tenth Circuit. And we certainly do appreciate you
3 being here and appreciate your patience.

4 A. Thank you.

5 Q. What I want to do this afternoon is briefly kind of
6 go over the process and what our goals are today when
7 we're talking to you. The Judge is going to instruct you
8 on the law. And what we want to do today is just make
9 sure that you can be fair not only to the Defendant, but
10 to the State as well.

11 A. Okay.

12 Q. Okay? Now, do you understand that not all murder
13 cases are eligible for the death penalty?

14 A. Right.

15 Q. Okay. And you understand that murder is the killing
16 of another with malice aforethought?

17 A. Yes.

18 Q. So we're kind of jumping the gun here.

19 A. Okay.

20 Q. And we're going into the penalty sentencing phase.
21 And we're just assuming that the jury, if you're on it,
22 has already found the Defendant guilty, even though right
23 now he is assumed innocent. Okay?

24 A. Okay.

25 Q. So we're at the penalty phase. Would you consider

1 yourself a fair person obviously?

2 A. I would.

3 Q. Okay. And what we want to make sure that you are
4 able to do during the penalty phase is consider all the
5 aggravating circumstances that the State would prove and
6 also consider all the mitigation, if any, that the
7 Defense may show and base your decision of life or death
8 on the entire story.

9 A. Okay.

10 Q. Will you be able to do that?

11 A. I think so.

12 Q. Okay. Now, do you understand what aggravating
13 circumstances are?

14 A. I think I do.

15 Q. Okay. And that's okay if you don't, because a lot
16 of people don't. Basically, aggravation for a death
17 penalty case is set out in the law.

18 A. Okay.

19 Q. Okay? And the state has to prove an aggravating
20 circumstance beyond a reasonable doubt, which means
21 twelve jurors have to unanimously find that there's some
22 sort of aggravation. In other words, it bumps it up to
23 make it death penalty eligible since all murders aren't
24 eligible. Okay?

25 A. Right.

1 Q. That's basically what aggravation is. And you would
2 have to find that before you go on to the second stage.

3 A. Okay.

4 Q. Okay? So assuming you find that, you would consider
5 that before coming to a decision?

6 A. Uh-huh (affirmative).

7 Q. And the Judge is going to instruct you that you must
8 consider any mitigation evidence as well, which would be
9 a whole number of things.

10 A. Okay.

11 Q. I mean, it could be anything about the Defendant
12 that the Defense presents to you.

13 A. Uh-huh (affirmative).

14 Q. Okay?

15 A. Okay.

16 Q. Would you be able to listen and consider everything
17 before you decide?

18 A. I could.

19 Q. Okay. And the Judge is also going to instruct you
20 that you can find no reason at all, if you wanted to, to
21 opt for life without parole. Would you be able to follow
22 the Judge's instructions on that concept as well?

23 A. I could.

24 Q. Okay. After you consider all the evidence and keep
25 an open mind until you hear State and the Defense, if

1 any, would you be able to vote for a sentence of life
2 without parole if you felt the evidence warranted that?

3 A. Yes.

4 Q. Okay. And on the other hand, after considering all
5 the aggravation and/or all the mitigation, would you be
6 able to vote for a sentence of death?

7 A. Yes.

8 Q. Okay. If the jury, if all twelve of you, were to
9 decide that the death penalty was appropriate, the law
10 requires that each and every juror actually sign their
11 name to a sentence sheet. Okay? And that's -- basically
12 what that is, is that's the paperwork that allows the
13 State to carry out the execution of a defendant and to
14 actually kill a defendant. And it would be public
15 record. Would you be able to sign your name, along with
16 the other eleven jurors, to do that?

17 A. I could.

18 Q. Okay. Hang on one second.

19 (Off record discussion)

20 Q. Thank you so much. Please answer anything the
21 Defense has.

22 A. Yes, ma'am.

23 THE COURT: Mr. McGuire?

24 MR. MCGUIRE: Thank you, your honor.

25 CROSS-EXAMINATION

1 BY MR. MCGUIRE:

2 Q. Good afternoon, juror 205. I have to refer to you
3 by number. It's a little awkward for me. I'm not being
4 not friendly or polite, but I hope you just forgive me
5 that.

6 A. That's okay.

7 Q. What I want to do is talk to you just in a little
8 bit more detail and follow up a little bit on Ms. Adams'
9 questions. What I want to do is get us on the same page
10 with a starting point with a little bit more detailed
11 definition of the kind of case that brings us here today.

12 A. Okay.

13 Q. And that is a murder case in South Carolina. And
14 murder, as Ms. Adams stated, is the unlawful killing of
15 another person with malice aforethought. And malice
16 aforethought is defined as the killer operating with a
17 black and malignant heart, fatally bent on evil,
18 deliberately and intentionally taking the life of
19 another.

20 A. Okay.

21 Q. And then what I want to do is add onto that an
22 example of aggravation because the state would have to
23 bring aggravation evidence to elevate it to a capital
24 case before you could even consider the death penalty.
25 And I'm going to use an example of you sitting on a jury.

1 You and eleven other people have convicted a killer of
2 murder, deliberately taking an innocent life. And then
3 the piece of aggravation evidence in this -- in the case
4 that you might sit on, hypothetically, some other county,
5 some other place, is aggravation of, let's say, two
6 murders, that the person you're going to judge committed
7 two murders.

8 A. Okay.

9 Q. Is a life in prison penalty ever severe enough to
10 punish that kind of case?

11 MS. ADAMS: Your Honor, it's not the whole --
12 it's considering everything.

13 THE COURT: Go ahead. I'm going to permit the
14 question.

15 A. I think I need you to say it again.

16 Q. Sure. Assuming you sit on a jury ---

17 A. Okay.

18 Q. --- that hears a murder case.

19 A. Uh-huh (affirmative)..

20 Q. And you and eleven others find beyond a reasonable
21 doubt that that person is guilty ---

22 A. Okay.

23 Q. --- of murder, deliberately taking the life of
24 another. Not accident, not self-defense, that sort of
25 thing.

- 1 A. Okay.
- 2 Q. You deliver a verdict of guilty.
- 3 A. Okay.
- 4 Q. And then you take a break, about twenty-four hours.
- 5 You come back with your eleven other jurors, and you
- 6 start the penalty phase. You start the journey to fix
- 7 punishment. And you learn that the aggravation evidence
- 8 in that case, for example, is evidence of a prior
- 9 conviction for murder. So you'd be judging somebody,
- 10 fixing the punishment for somebody, who's killed
- 11 deliberately twice. Could the life in prison penalty
- 12 ever be severe enough for that kind of case?
- 13 A. I -- can I go? Okay. I think it depends on what I
- 14 might know or not know about the first one. It was on
- 15 purpose?
- 16 Q. Yes, deliberate intentional.
- 17 A. I don't think so. Not life, no.
- 18 Q. Okay.
- 19 A. Not life in prison. Twice ---
- 20 Q. Okay.
- 21 A. --- on purpose, no.
- 22 Q. Sure. And in that kind of situation -- I want to
- 23 keep you in that situation.
- 24 A. Sure.
- 25 Q. You and eleven other jurors judging someone who's

1 murder twice. Would things about, say, the killer like
2 his background or his childhood, would that be relevant
3 in fixing punishment for somebody who's killed
4 deliberately twice?

5 A. Possibly.

6 Q. When you say possibly, what do you mean by that?

7 A. I mean, yes, those things should be considered.

8 Q. Okay. Okay. Could any of those things warrant a
9 life sentence?

10 A. They could.

11 Q. Okay.

12 A. Would I have already heard that?

13 Q. Yes.

14 A. Okay. Well, can I go back to question one?

15 Q. Sure, sure.

16 A. Yes. Okay.

17 Q. Okay.

18 A. Sorry.

19 Q. Yeah, you'd hear everything.

20 A. Okay.

21 Q. When you're in a position to fix punishment, that's
22 at the end of the road. You will have heard everything.

23 A. Okay.

24 Q. And you'd whatever those background factors are, and
25 you'd also have the aggravation evidence.

1 A. Okay.

2 Q. Sort of in that argumentative or hypothetical case,
3 so to speak, knowing all of that, would the death penalty
4 always be appropriate for that double-murder type case?

5 A. No.

6 Q. Okay. And sometimes life could be the appropriate
7 punishment?

8 A. It could, depending.

9 Q. And a lot of people say I need to hear more, I need
10 to hear a little bit more about the case. Would that be
11 about the facts of the murders themselves, or would it be
12 facts about the defendant or both?

13 A. Both.

14 Q. Okay. And you'd want to hear all of that?

15 A. I would.

16 Q. Okay. And what I want to do now is talk to you just
17 briefly about how a capital case is different from any
18 other case in South Carolina. That's because the jury
19 fixes punishment. All other cases, the jury just take
20 care of the is-he-guilty-or-not aspect, and then the
21 judge sentences. In a capital case, the jury actually
22 has the opportunity to fix punishment. And the only two
23 options would be death and life without parole.

24 A. Uh-huh (affirmative).

25 Q. And the rules are different for both sides. And

1 it's going to be a little, maybe counterintuitive, but
2 I'll explain it to you. And I'm going to ask you if you
3 can't agree with these aspects of the law.

4 A. Okay.

5 Q. First, as Ms. Adams stated, to even ask for a death
6 verdict, to even be entitled to ask for it, they'd have
7 to prove aggravation evidence beyond a reasonable doubt
8 to all twelve jurors.

9 A. Uh-huh (affirmative).

10 Q. And that sounds pretty consistent with, you know,
11 what we think about juries being all together ---

12 A. Correct.

13 Q. --- and having the standard of proof. Now, it's
14 completely different for the other side, for the life in
15 prison penalty.

16 A. Okay.

17 Q. And the way it plays out is this. The judge would
18 instruct the jury that any individual juror could vote
19 for life based on any reason, no reason, mercy, anything
20 they saw in the case. Is that an aspect of the law you
21 can follow and respect?

22 A. Yes.

23 Q. Okay. And what I mean by that is -- and the way it
24 plays out practically is that a juror in the first row -
25 - and I do this because that's where the jury is going to

1 sit. No one is there now. I hope I don't distract you.
2 But let's assume you were over there with the jury. And
3 somebody in the front row after the end of the case
4 during deliberations could say, you know, I saw something
5 in the defendant's background that resonated with me.
6 And for me, that's why I'm going to vote for life. And
7 then a juror in the back could say, well, you know, I saw
8 something about his relationship with his grandmother or
9 his child, and I found that redeeming. And for me,
10 that's going to be my vote for life. Another juror could
11 say, I'm going to follow the judge's instructions, and
12 I'm going to vote for life, but I can't even give you a
13 reason. It might be for no reason I can state. And you
14 can see how everybody could vote for that, but on
15 different reasons.
16 A. Uh-huh (affirmative).
17 Q. They don't have to agree. Is that an aspect of the
18 law you can respect and follow?
19 A. Yes.
20 Q. And, you know, we normally think that when we talk
21 about juries that we always talk about the jury being
22 unanimous, in agreement, with whatever result they
23 deliver. And the only time that's required in a capital
24 case is when a sentence of death is delivered. All
25 twelve would have to agree unanimously that that's the

1 appropriate verdict.

2 A. Uh-huh (affirmative).

3 Q. But it's not so with the life penalty.

4 A. Uh-huh (affirmative).

5 Q. The jury could actually agree to disagree, come to
6 court, inform the court of that, and the judge would take
7 the case and sentence. So the jury could actually end
8 the day agreeing to disagree. Is that an aspect of the
9 law you can respect and follow?

10 A. I could.

11 Q. Okay. And the State, the Defense, and even the
12 jurors are entitled to fairness not just out here in the
13 courtroom, but also in the jury room. And the way the
14 law describes a juror's ultimate decision in a capital
15 case is that it's their own individual moral judgment
16 based on their walk in life. And the law also says if it
17 would do harm to their conscience to change or give up
18 that individual moral position that they've taken, that
19 would be wrong.

20 A. Uh-huh (affirmative).

21 Q. And if you saw things getting hostile in the jury
22 room where people were bullying somebody, could you pass
23 a note out to the Judge and say, you know, things aren't
24 fair in here. We need to stop this.

25 A. I could.

1 Q. We could count on you to do that?

2 A. Right.

3 Q. Okay. And let me ask you this. The concept of
4 mercy, is mercy freely given and bestowed, or is it
5 earned?

6 A. Mercy? Can it be both?

7 Q. It can be whatever your view is.

8 A. Okay.

9 Q. The only right or wrong -- there are no right or
10 wrong answers..

11 A. Okay. I think you would have to freely give it.
12 You'd have to have your own reason ---

13 Q. Okay.

14 A. --- to find mercy for someone.

15 Q. Sure.

16 A. Yeah.

17 Q. Okay.

18 MR. MCGUIRE: If I could have just one second,
19 Judge.

20 (Off record discussion)

21 Q. Ma'am, that's all I have for you. Thank you so much
22 for being so patient.

23 MR. MCGUIRE: No further questions and no
24 issues with the Defense, Judge.

25 MS. ADAMS: Nothing from the State, Your Honor.

1 We feel she's qualified as well.

2 THE COURT: Considering the entire voir dire, I
3 find that Juror 205 will be fair, unbiased, impartial and
4 able to carry out the law as explained to her.
5 Furthermore, I find that this juror's belief or attitudes
6 toward the death penalty would not prevent or
7 substantially impair the performance of her duties as a
8 juror in accordance with the law and the Court's
9 instructions and the juror's oath.

10 So you are qualified to sit on the jury then. Now,
11 as you can tell, this process takes a bit of time. And
12 so it will probably be next week before we actually put
13 together a panel from which the actual jury will be
14 drawn.

15 THE POTENTIAL JUROR: Okay.

16 THE COURT: You've given the Clerk your
17 telephone number?

18 THE POTENTIAL JUROR: I have.

19 THE COURT: All right. You're free to do
20 whatever you want to do until the day or the evening that
21 you get that telephone call. And then you'll have to
22 report probably the next day in order to have the jury
23 selection at that time. So as I say, just be unavailable
24 at some point during the day so that she can reach you.

25 THE POTENTIAL JUROR: Okay.

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

2 And I appreciate your patience with the Court. I look
3 forward to working with you.

4 THE POTENTIAL JUROR: Thank you.

5 THE COURT: Thank you, ma'am.

6 (WHEREUPON, Potential Juror 205 exited the
7 courtroom.)

8 THE COURT: All right. If I may, when we have
9 a juror like that, I appreciate your moving through the
10 program or the policy or the procedure because obviously
11 we don't want to in any way not waste time, but take too
12 much -- more time than is necessary. Moreover, voir dire
13 is not a time to chat the juror, potential jurors, up.
14 So let's just ask pertinent questions. And when we get
15 the answer that is appropriate, either for or against,
16 whatever the question is, let's move on. We can, as I
17 say, endear ourselves to jurors after they're empaneled.

18 All right. Anything else from the State before we
19 bring out Juror Number 206?

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

21 THE COURT: Number -- anything from the
22 Defense?

23 MR. MCGUIRE: No, sir.

24 THE COURT: All right. Ask the juror to join
25 us, please, 206.

25 THE COURT: They gave it to the bailiff.

1 THE BAILIFF: I gave it to the Clerk.

2 MS. ADAMS: She did?

3 THE BAILIFF: I gave it to the Clerk.

4 MS. ADAMS: Oh, okay. But she brought this
5 here today?

6 THE BAILIFF: Yes, ma'am.

7 MR. MCGUIRE: I've got no objection, Judge.

8 MS. ADAMS: I will leave it up to you, Judge.

9 I mean, if she didn't mention it to you, I don't ---

10 THE COURT: Well, the question, you know, by
11 this time -- because at that time I -- in the general
12 qualification I asked if there's anyone whose business
13 is, you know, affected by their absence, in the general
14 qualification. Then today the question is well-being
15 rather than -- and I say even -- not withstanding your
16 personal inconvenience, would your service in any way
17 affect your personal well-being or anyone dependent upon
18 you. And so there could be some misinterpretation there.
19 I'm just asking you ---

20 MS. ADAMS: If I may, Judge?

21 THE COURT: Please. That's what -- thank you.

22 MS. ADAMS: And it may be -- I don't know if
23 you would want to ask her about that letter directly. I
24 think one of my concerns, too, is making sure we get to
25 the number that we need to qualify too with the pool. So

1 if we let a qualified one go ---

2 THE COURT: All right. I'm sure that -- what
3 is it -- that's also the -- thought of the Defense too.

4 MR. MCGUIRE: Well, Judge, the only thing I was
5 going to say is that, you know, I have no objection. I'm
6 kind of like the Court. If somebody really doesn't want
7 to be here, they're not going to be a good juror. And I
8 would just ask the Court to recognize I didn't challenge
9 her for cause. I agreed she was qualified. But now I
10 want her excused if she's going to have this kind of
11 employment problem. I mean, I think we're very credible
12 when we say that that's what ---

13 THE COURT: Well, that was just it. I had
14 lauded both of you for being such a reasonable ---

15 MS. ADAMS: It never lasts long, does it,
16 Judge?

17 THE COURT: --- inquirer. I guess not.

18 All right. Ask the juror, Juror 205 -- that's the
19 former juror. Is she still here?

20 THE BAILIFF: Yes, sir.

21 THE COURT: Ask her to come back in.

22 (WHEREUPON, Potential Juror 205 entered the
23 courtroom.)

24 THE COURT: All right. Juror 205, I've been
25 handed a letter apparently from your employer?

1 THE POTENTIAL JUROR: Yes, sir.

2 THE COURT: Now, this service, as I say,
3 probably will not be for some time.

4 THE POTENTIAL JUROR: Okay.

5 THE COURT: Now, is this something that you
6 think it might be worked out in your office? I noticed
7 it was a short-term disability.

8 THE POTENTIAL JUROR: And that has been since I
9 came on Monday.

10 THE COURT: Right.

11 THE POTENTIAL JUROR: So if I am still called,
12 there's obviously other offices that they'll have to have
13 to make do.

14 THE COURT: Well, the reason I ask would this
15 in any way interfere with your ability to give the case
16 your attention?

17 THE POTENTIAL JUROR: Possibly.

18 THE COURT: Okay. In other words, you would
19 feel less comfortable sitting as a juror knowing it might
20 create -- or it has -- it might have an effect on your
21 employment?

22 THE POTENTIAL JUROR: Well, it wouldn't affect
23 my employment, but I think I may be less patient.

24 (Laughter)

25 THE POTENTIAL JUROR: I'm sorry.

1 THE COURT: No, it's not your -- listen, you -
2 - the thing here is there is no proper answer to that
3 question.

4 THE POTENTIAL JUROR: Okay.

5 THE COURT: What you gave was an honest answer.
6 No, that's perfect. I tell you what. I am going ahead
7 and -- again, I find you qualified. And let's wait until
8 the call comes.

9 THE POTENTIAL JUROR: Yes, sir.

10 THE COURT: And at that time, if there's a
11 problem, I'll take it up, if you understand.

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

13 THE COURT: Because there's always going to be
14 some changes in circumstances.

15 THE POTENTIAL JUROR: That's right.

16 THE COURT: But inasmuch as I do find you
17 qualified, I would hate to lose your services here. Now,
18 but you can tell your employer that we don't know how
19 long it will be or even how long the trial will be.

20 THE POTENTIAL JUROR: Okay.

21 THE COURT: I did want to let you know it was
22 not just a day or two.

23 THE POTENTIAL JUROR: Okay.

24 THE COURT: All right. Very good.

25 THE POTENTIAL JUROR: Thank you.

1 THE COURT: Thank you very much. I'll keep
2 this. And do not forget if something changes -- in other
3 words, if there is a direct conflict with something at
4 the time that you report when we do the final selection
5 of the jury, let the Clerk know or one of the bailiff's
6 know ---

7 THE POTENTIAL JUROR: Okay.

8 THE COURT: --- and I'll take care of it.

9 THE POTENTIAL JUROR: Okay.

10 THE COURT: All right? Very good. Thank you
11 very much.

12 THE POTENTIAL JUROR: Thank you.

13 (WHEREUPON, Potential Juror 205 exited the
14 courtroom.)

15 THE COURT: All right. I'm going to have this
16 marked as Court's Exhibit. I'm going to put on the
17 outside -- it's blank at this point. I'm going to put
18 number 205.

19 (WHEREUPON, Court's Exhibit Number 2 was marked for
20 identification only.)

21 MS. ADAMS: Okay. Thank you, Judge.

22 THE COURT: All right. Anything from the
23 State?

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

25 THE COURT: Anything from Defense?

1 MR. MCGUIRE: Not beyond what's been previously
2 stated.

3 THE COURT: Well, I'm noting your motion. And
4 if it's anything else, it's going to be taken under
5 consideration.

6 MR. MCGUIRE: Thank you, Judge.

7 THE COURT: I haven't ruled finally because, as
8 I say, as I told the juror, if there is no problem, then
9 she will be qualified. If there is a problem or possible
10 difficulty, then I'll consider it.

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: All right. Very good.

13 Ask 206.

14 And as I said, anything from the State on 206?

15 MS. ADAMS: No, sir.

16 THE COURT: From the Defense?

17 MR. MCGUIRE: No, sir.

18 THE COURT: All right. We already had him
19 coming in, didn't we?

20 (WHEREUPON, Potential Juror 206 entered the
21 courtroom.)

22 THE COURT: All right.. Thank you, sir. You
23 are Juror 206?

24 THE POTENTIAL JUROR: That's correct.

25 **POTENTIAL JUROR 206,**

1 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

2 EXAMINATION

3 BY THE COURT:

4 Q. You will recall on Monday I put all jurors under
5 oath. Now, do you understand that you still are under
6 oath, and that oath continues throughout these
7 proceedings?

8 A. Yes.

9 Q. All right. You were provided with a copy of a list
10 of potential witnesses in the jury room. Have you had an
11 opportunity to review that witness list?

12 A. Yes, sir.

13 Q. All right. Did you recognize any names?

14 A. No, sir.

15 Q. Do you also recall my instructions from Monday to
16 avoid all forms of media coverage dealing with this case?
17 You do recall that?

18 A. Yes, sir.

19 Q. Has that caused you any problem?

20 A. No, sir.

21 Q. The trial of this case will last approximately a
22 week to ten days, or it could be longer. The main thing
23 I want you to understand is it's not the usual just one-
24 or two- or three-day case. Other than personal
25 inconvenience, would this pose a serious danger to the

1 health or well-being of yourself or anyone who is
2 dependent upon you?

3 A. No, sir.

4 Q. Among other things we will be talking about today
5 will be penalty. But the mere fact that we talk about
6 penalty does not indicate anything about this Defendant
7 or any defendant. Defendants are presumed in the law to
8 be innocent. Do you understand that?

9 A. Yes, sir.

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

15 A. Absolutely.

16 Q. Could you decide this case based solely and only on
17 the evidence presented in this courtroom and disregard
18 anything you may have heard, read or seen on the outside?

19 A. Yes, sir.

20 Q. In a criminal case, the State has the burden of
21 proving guilt. The burden of proof for the State is to
22 prove guilt beyond a reasonable doubt. A defendant has
23 no burden whatsoever to prove innocence. Do you
24 understand that the defendant is presumed to be innocent
25 and the State has the entire burden of proof in this

1 case?

2 A. Yes, sir.

3 Q. And it must be beyond a reasonable doubt. Do you
4 understand?

5 A. Yes, sir.

6 Q. Could you, depending on 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, sir.

10 Q. If you were a juror in a death penalty case, and if
11 the jury had found the defendant guilty of murder, you
12 would then move to the sentence phase of the trial. Do
13 you understand this?

14 A. Yes, sir.

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

20 A. Yes, sir.

21 Q. A death penalty trial is divided into two parts.

22 Part one is the guilt phase where a jury determines
23 whether the defendant is guilty or not guilty of murder.

24 Part two is the sentence phase where a jury determines
25 the appropriate punishment. Of course, if the defendant

1 is found not guilty, that ends the matter. Do you
2 understand?

3 A. Yes, sir.

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

9 A. Yes, sir.

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

16 A. Yes, sir.

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

21 A. Yes, sir.

22 Q. Now -- in other words, in a capital sentencing
23 trial, the jury's function is to determine the punishment
24 based, one, on the circumstances of the crime as well as
25 -- and on the other hand, the characteristics of the

1 individual defendant. You have to consider both. Do you
2 understand?

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. Do you understand that?

7 A. Yes, sir.

8 Q. On the other hand, mitigating circumstances are
9 incidents, occurrences or details of a case that would
10 reduce the severity of the crime of murder. In other
11 words, may reduce the degree of responsibility for the
12 crime. Do you understand that?

13 A. Yes, sir.

14 Q. Do you also understand that the jury has two options
15 to consider regarding the sentence for murder? One
16 option is life imprisonment which is until death without
17 parole. Do you understand that?

18 A. Yes, sir.

19 Q. The other option is death which in South Carolina is
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 relevant aggravating
25 and mitigating circumstances and the law as I instruct it

1 to you, render a sentence of life imprisonment?

2 A. Yes, sir.

3 Q. On the other hand, as a juror in the sentencing

4 phase depending upon the facts including relevant

5 aggravating and mitigating circumstances and the law as I

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

7 A. Yes, sir.

8 Q. Very good, sir. If you would, please, answer any

9 questions Counsel may have.

10 DIRECT EXAMINATION

11 BY MR. MCGUIRE:

12 Q. Juror Number 206?

13 A. Yes, sir.

14 Q. I've got to refer to you by number. It's not

15 because I'm being not polite. It's a little awkward for

16 me. I hope you forgive that for me.

17 A. I understand.

18 Q. I want to ask you a little bit about publicity.

19 See, hear, read anything about this case?

20 A. No, sir, not that I can remember. I have not.

21 Q. Okay. Okay. And have you lived in South Carolina

22 your whole life?

23 A. Yes, sir.

24 Q. Okay. And specifically Anderson County your whole

25 life?

1 A. Yes, sir.

2 Q. Okay. What I want to do now is talk to you a little
3 bit more in detail some of the issues that we're here
4 for. The Judge gave you a very good general framework,
5 and I'm going to elaborate on that a little bit. Okay?

6 A. Okay.

7 Q. The first thing I'm going to do is get us sort of on
8 the same page. And that is since we have to talk about a
9 penalty, and a penalty for murder, we need to start with,
10 well, what is murder. My guess is you're like most
11 people and you probably get most of your information
12 about the legal system through TV, newspapers, that sort
13 of thing. Is that fair to say?

14 A. Yes, sir.

15 Q. I mean, you don't have any special knowledge of the
16 criminal justice system, never went to -- took a class in
17 it or not in law enforcement, that sort of thing?

18 A. No, sir.

19 Q. Okay. I'm going to go ahead and start then with
20 giving you the definition of murder, and we'll go from
21 there. Okay?

22 A. Okay.

23 Q. In South Carolina murder is defined as the unlawful
24 killing of another human being with malice aforethought.
25 And malice aforethought is described as the killer acting

1 with a black and malignant heart, fatally bent on evil
2 who intentionally and deliberately takes the life of
3 another. Are you with me?

4 A. Yes, sir.

5 Q. Okay. What are your views about the death penalty
6 in that kind of deliberate killing?

7 A. I feel -- which I thought about it a lot the last
8 few days ---

9 Q. Yes, sir.

10 A. --- especially coming in here. I am for or -- not
11 either way on the death penalty. I believe I would have
12 to hear the evidence of the case. I feel I could do that
13 if I had to.

14 Q. Okay.

15 A. But you know, that's really a hard to say a yes or
16 no answer for that.

17 Q. Sure. Okay. And what I want to do is build on this
18 a little bit more. Because the State, to ask for a death
19 sentence, to be entitled to even ask for it, they have to
20 prove what's called aggravation evidence. Evidence that
21 would make a murder even worse.

22 A. Yes, sir.

23 Q. Aggravated murder. And what I'm going to do is kind
24 of fix you in a place and time so we can talk about this
25 with -- in a little bit less abstract way. So I'm going

1 to put you on this jury over here where all these empty
2 seats are. You and eleven other people have convicted
3 somebody of murder beyond a reasonable doubt. And then
4 you get to go home for about twenty-four hours, and then
5 you come back. And that's when we would start the
6 penalty phase. It's kind of like a new trial after the
7 first one.

8 A. Yes, sir.

9 Q. And what I'm going to do is give you some sort of
10 examples of the aggravation term, what that means, and
11 I'm going to ask you your thoughts about that. So in
12 this jury that I've put you on, you come back for the
13 penalty phase. And the aggravation evidence you would
14 hear is, let's say, evidence of another murder. That the
15 person you're judging had killed before, and would have
16 now two murder convictions. Would the life penalty, life
17 in prison penalty, be enough to punish that kind of case?

18 MS. ADAMS: Your Honor?

19 THE COURT: Again, that's not the only thing he
20 would consider.

21 MR. MCGUIRE: Oh, sure, you consider all the
22 mitigation ---

23 THE COURT: It's not done in an abstract, and
24 it's not done one at a time. A case will be given to him
25 as a total, and he must consider both aggravation as well

1 as mitigation:

2 MR. MCGUIRE: Sure.

3 THE COURT: So let's be sure he understands
4 that. Otherwise, it's not a fair question.

5 MR. MCGUIRE: Sure.

6 Q. Like the Judge said, when he gave you use
7 introductory comments, he talked about aggravation
8 evidence and mitigation evidence. Mitigation evidence
9 would be some kind of fact. For instance, it could be
10 something in the defendant's background, childhood, that
11 sort of thing. So considering all of that -- I'm going
12 to put you back on that jury. You and the eleven folks
13 convict a person of murder. You come back for the
14 penalty phase. And the first piece of evidence you hear
15 would be aggravation, say, of a second murder. Knowing
16 all of that, what would be your view about the death
17 penalty as the appropriate punishment?

18 A. Again, I would have to hear the evidence of both, if
19 that would be possible. In my heart, I would have to
20 actually hear all the details before I would make that
21 decision.

22 Q. Okay. And regarding that mitigation-type evidence
23 that the Judge talked to you about -- and it can include
24 things about a defendant's basically background
25 character, his walk in life. Would things about a

1 defendant, like, say, if he was -- if he grew up in
2 poverty or was abused by his father as a child, would
3 those things be relevant to you in fixing punishment in
4 that kind of double-murder case?

5 A. Possibly.

6 Q. Okay. All right. Well, what I want to do now is
7 talk to you briefly about how a capital case is different
8 from any other case in South Carolina.

9 Actually I don't want to go too fast. You said
10 possibly.

11 A. Well, again, you know, it's hard to say yes or no
12 without actually hearing the facts of the case.

13 Q. Sure.

14 A. I mean, that would be practically impossible for me
15 to say yes.

16 Q. Right.

17 A. You know, you would have ---

18 Q. It's very ---

19 A. --- to actually look -- you know, somebody's view of
20 the poverty versus someone else. You know, you would
21 actually have to hear all the facts.

22 Q. Okay. That's fair enough. It's difficult to talk
23 in the abstract like we are. But some of the rules are
24 difficult, and we'll just do the best we can. Okay?

25 A. Yes, sir.

1 Q. And if you don't understand something or if I asked
2 a bad question, which I'm apt to do from time to time,
3 you just let me know. Okay?

4 A. Okay.

5 Q. What I'm going to do is put you back on that jury,
6 kind of fix you in that place and time where you come
7 back for the penalty phase. And I'm going to tell you
8 how it's different, how the law treats it different. And
9 I'm going to ask you if you can go along and follow this
10 law. Okay? And one is that, again, the State, before
11 they could ask for the death penalty, would have to prove
12 aggravation to all twelve jurors beyond a reasonable
13 doubt. And that sounds kind of consistent with most of
14 our views about a jury. Everybody has to agree, and
15 there's some level of proof.

16 But the rules are different when it comes to the
17 life penalty, the life without parole penalty. And the
18 way that works out practically is that the judge would
19 charge the jury that each individual juror could vote for
20 life for any reason, no reason or just mercy or grace or
21 any kind of fact that saw in the case. And each juror
22 could do it for a different reason. There wouldn't have
23 to be any agreement with that. Is that an aspect of the
24 law you can respect and follow?

25 A. Yes, sir.

1 Q. And the way it plays out is, for instance, a juror
2 on the front row could say, you know, I saw something
3 about the defendant's background that was redeeming to me
4 or he had a bad background. And that's my reason for
5 voting life. Somebody on the back row could say, you
6 know, I saw something about his relationship with his
7 family, and that did it for me. That's my reason.
8 Another juror could say, you know, I heard what the Judge
9 said about I could vote for life for no reason at all.
10 And that's my verdict, but I don't even have a reason to
11 state. Could you respect all their individual positions?
12 A. Yes, sir.
13 Q. Okay. Even if they were different from yours?
14 A. Yes, sir.
15 Q. Sure. And the way the law describes a juror's
16 decision in a capital case is that it's their individual
17 moral judgment and that if it would do harm to their
18 conscience to change it, that that would be wrong.
19 They're supposed to stick to it. Is that an aspect of
20 the law that you can respect and follow?
21 A. Yes, sir.
22 Q. Okay. And you know, the State and the Defendant,
23 and all the jurors like yourself are entitled to fairness
24 not just out here, but also to in the jury room. And
25 after polite discourse and deliberations, if things got

1 heated or hostile or angry, could you send a note out to
2 the Judge saying, you know, it's not fair in here?

3 A. Yes.

4 Q. And stop that?

5 A. Well, you know, again, it would depend on what it --
6 -- you know, what actually happened.

7 Q. Sure.

8 A. You know?

9 Q. Sure.

10 A. But I could, yes, sir.

11 Q. Okay. Regarding the concept of mercy, is mercy
12 something that's freely given and bestowed, or is it
13 earned?

14 A. I would say earned.

15 Q. Okay. And how would somebody go about earning
16 mercy?

17 A. You're asking a direct question that don't have a
18 direct answer.

19 Q. It's a tough one, I know.

20 A. It very well is. You have to look at every
21 situation. I mean, that's the way I feel.

22 Q. Okay. That's fair enough.

23 MR. MCGUIRE: If I could just have one second,
24 Judge.

25 (Off record discussion)

1 MR. MCGUIRE: Sir, that's all I have for you.

2 Thank you very much.

3 THE COURT: Any questions from the State?

4 MS. ADAMS: Your Honor, I just have one brief
5 question. He's been very forthcoming, and we appreciate
6 it.

7 CROSS-EXAMINATION

8 BY MS. ADAMS:

9 Q. I'm Chrissy Adams, and I'm the Solicitor for the
10 Tenth Circuit. One quick thing. The law actually
11 requires if a jury does find that the death penalty is
12 appropriate that each and every juror sign his or her
13 name to a sentence sheet. And that's what we use to
14 actually carry out -- or the State uses to actually
15 execute the defendant.

16 A. Yes, ma'am.

17 Q. Would you be able to sign your name to that piece of
18 paper?

19 A. Yes, ma'am.

20 Q. Thank you very much.

21 THE COURT: All right. Anything else?

22 MR. MCGUIRE: No, sir.

23 THE COURT: All right. Considering the entire
24 voir dire, I find that Juror Number 206 will be fair,
25 unbiased, impartial and able to carry out the law as

1 explained to him. Furthermore, I find that this juror's
2 beliefs or attitudes towards the death penalty would not
3 prevent or substantially impair the performance of his
4 duties as a juror in accordance with the law, the Court's
5 instructions, and the juror's oath.

6 Juror 206, I find that you are qualified for service
7 on this jury. Now, the only thing is, this process we
8 are doing is qualifying a group of jurors.

9 THE POTENTIAL JUROR: Yes, sir.

10 THE COURT: And from that group will be
11 selected the eighteen. In other words, the twelve jurors
12 and six alternates that will actually serve. You have
13 given the Clerk your telephone number?

14 THE POTENTIAL JUROR: Yes, sir.

15 THE COURT: All right. So you'll be receiving
16 a call. And you see how this has gone so far. It's
17 probably going to be into next week before we actually
18 call you.

19 THE POTENTIAL JUROR: Yes, sir.

20 THE COURT: But when you get that call, if you
21 would report as requested. Then we'll select the jury at
22 that time. Again, I look forward to working with you.
23 Thank you very much for your patience with the Court.

24 THE POTENTIAL JUROR: Thank you.

25 THE COURT: Thank you, sir.

1 (WHEREUPON, Potential Juror 206 exited the
2 courtroom.)

3 THE COURT: All right. I understand we need to
4 take a break at this time. Anything from the State?

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

6 THE COURT: Anything from the Defense?

7 MR. MCGUIRE: No, sir, Your Honor.

8 THE COURT: Very good. All right. We'll take
9 a short break. When you're ready, let me know.

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

12 THE COURT: All right. Are we ready to
13 proceed? The next one, I think, is 207. Is there
14 anything from the Defendant on 207?

15 MS. ADAMS: Bill?

16 MR. MCGUIRE: Oh, no, sir. I'm sorry.

17 THE COURT: From the State?

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

19 THE COURT: All right. Ask 207 -- 207, please.

20 (WHEREUPON, Potential Juror 207 entered the
21 courtroom.)

22 THE COURT: All right. Are you Juror 207?

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

24 THE COURT: Now, you're going to need to speak
25 up. This lady is taking down everything we say, so we

1 need to speak rather than nod or ---

2 THE POTENTIAL JUROR: Okay.

3 **POTENTIAL JUROR 207,**

4 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

5 EXAMINATION

6 BY THE COURT:

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

11 A. Yes, I do.

12 Q. Thank you. You've been provided with a copy of a
13 list of potential witnesses. Have you had an opportunity
14 to review that witness list?

15 A. Yes.

16 Q. Did you recognize any names on that list?

17 A. No, I didn't.

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

20 A. Yes.

21 Q. Has this caused any problem to you?

22 A. No.

23 Q. Now, the trial of the case will last longer than the
24 normal case, and it could last as much as a week or ten
25 days or even longer. Other than the personal

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

4 A. I am pregnant, so I do have to go to the doctor.

5 Q. Whoa. Do you have to -- are they regular
6 appointments?

7 A. Every two weeks.

8 Q. And when is the next appointment?

9 A. This upcoming Thursday.

10 MR. MCGUIRE: We've got no objection.

11 THE COURT: All right. I think we're going to
12 excuse you. But thank you for bringing that to my
13 attention. And congratulations. Also, it looks like --
14 you remember I also said that if you have children under
15 seven, you wouldn't have to serve. So you've got about
16 eight years maybe.

17 (Laughter)

18 THE COURT: Again, I do want to than you for
19 being here and your patience with the Court.

20 THE POTENTIAL JUROR: Thank you.

21 THE COURT: Thank you, ma'am.

22 (WHEREUPON, Potential Juror 207 exited the
23 courtroom.)

24 THE COURT: All right. The next one is 209.
25 Wait a minute. I'm sorry. Oh, I'm sorry.

1 Yes, sir, 209.

2 (WHEREUPON, Potential Juror 209 entered the
3 courtroom.)

4 THE COURT: All right. Are you Juror 209?

5 THE POTENTIAL JUROR: Yes, sir.

6 **POTENTIAL JUROR 209,**

7 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

8 EXAMINATION

9 BY THE COURT:

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

14 A. Yes, sir.

15 Q. You had a -- you've been provided with a copy of a
16 list of potential witnesses. Have you had an opportunity
17 to review that witness list?

18 A. Yes.

19 Q. Did you recognize any names?

20 A. I work with Charlie Boseman's son.

21 Q. All right. Is that the only one that you
22 recognized?

23 A. Yes.

24 Q. All right. Because I was going to ask you if you're
25 related by blood or marriage to any -- or close personal

1 friend or business associate or have any other
2 association with any of the potential witnesses. Mr.
3 Boseman's son is the only one that you would have an
4 identification?

5 A. Yes.

6 Q. All right. If he were -- and those were a list of
7 potential witnesses. In other words, they do not have to
8 be called, but they may be called. If he, the son, was -
9 - or Mr. Boseman was a witness in this case, would that
10 in any way affect your ability to give both the State and
11 the Defendant a fair and impartial trial?

12 A. Not at all.

13 Q. Very good. Do you also recall my instructions from
14 Monday to avoid all forms of media coverage dealing with
15 this case?

16 A. Yes.

17 Q. Has that caused any problem for you?

18 A. No.

19 Q. Now, the trial of this case will last longer than
20 the usual case. It could be as much as seven to ten days
21 or maybe more. Other than personal inconvenience, would
22 this pose a serious danger to the health or well-being of
23 yourself or anyone else who is dependent upon you?

24 A. No.

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 always under our law presumed
4 to be innocent. Do you understand?

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 even though you may not agree
9 with that law or think it ought to be some other way?

10 A. Yes.

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.

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 or anything else in a case. In other
20 words, they're presumed to be innocent. They do not even
21 have to testify or offer evidence of any sort or any
22 nature. And the entire burden of proof is upon the
23 State. Do you understand that?

24 A. Yes.

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

1 the law as I would instruct you in a particular case,
2 find a defendant either guilty 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 a death
10 penalty case, what we mean is that it is a criminal
11 murder trial where the prosecutor -- in other words, the
12 State -- is seeking the death penalty. Do you understand
13 this?

14 A. Yes.

15 Q. A death penalty trial is divided into two parts.
16 Part one is the guilt phase where a jury determines
17 whether the defendant is guilty or not guilty of murder.
18 Part two is the sentencing phase where a jury determines
19 the appropriate punishment. Of course, if the defendant
20 is found not guilty in part one, that ends the matter and
21 there are no further proceedings. Do you understand
22 that?

23 A. Yes.

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 phase two of the trial which is sometimes called
3 the sentencing phase of the trial. Do you understand?

4 A. Yes.

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 than the
9 Judge determines the sentence that the defendant will
10 receive for the crime of murder?

11 A. Yes.

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. Do you understand that?

16 A. Yes.

17 Q. Now, aggravating circumstances are facts or details
18 that, when they are present in a case, make the crime of
19 murder more serious or worse. On the other hand,
20 mitigating circumstances are incidents, occurrences or
21 details of a case that would reduce the severity of the
22 crime of murder. In other words, they may reduce the
23 degree of responsibility for the crime. Do you
24 understand?

25 A. Yes.

1 Q. There are two sides -- two types of evidence that
2 can be received. One is aggravating circumstances that
3 can make the crime of murder more serious or worse. And
4 then the other side is mitigating circumstances which is
5 something that affects the defendant or you would
6 consider in reducing the degree or the degree of severity
7 of the crime.

8 All right. Do you understand that the jury has two
9 options to consider regarding the sentencing for murder?
10 One option is life imprisonment under the law. That is
11 until the death of the defendant without possibility of
12 parole. The other option is death which in this state is
13 electrocution or lethal injection.

14 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
22 instructed to you, could you render a sentence of death?

23 A. Yes.

24 Q. All right. Very good. Answer any questions the
25 attorneys might have.

1 DIRECT EXAMINATION

2 BY MR. MCGUIRE:

3 Q. Good afternoon, Juror 209.

4 A. Good afternoon.

5 Q. I've got to refer to you by number. It's a little
6 awkward for me. I don't mean to be impolite. Just
7 forgive that if you would. I'm just going to ask you
8 some questions and verify some things and talk to you in
9 a little bit more detail than the Judge did.

10 On your questionnaire you indicate regarding your
11 opinion for the death penalty, I'm for the death penalty.
12 If someone is convicted of a crime and receives the death
13 penalty, they should receive it if there is one hundred
14 percent certainty they did the crime.

15 A. Yes.

16 Q. Still your view?

17 A. Yes.

18 Q. Okay. And I am for life without the possibility of
19 parole. Some offenders should never be returned to
20 society. Are those for offenders that commit crimes less
21 than murder like, say, robbery, rape, that sort of thing?

22 A. I would say repeat offenders.

23 Q. For repeat offenders? Okay. People that commit a
24 crime and get out and do it again?

25 A. Yeah.

1 Q. Okay. But life in prison would be reserved for
2 those people who commit crimes short of murder? Is that
3 what I hear you saying? Should someone who commits
4 murder also get a life in prison sentence?

5 A. Should be, yes.

6 THE COURT: Well, that's the law. It's not he
7 should, but the law is that that's a consideration.

8 MR. MCGUIRE: Sure.

9 THE COURT: Well, let's be sure that you put
10 his question into context so his answer will be
11 reflective.

12 MR. MCGUIRE: Sure. All right. I don't mean
13 to be ---

14 THE COURT: In the abstract of that -- what is
15 it -- what type of murder, because all murder cases are
16 not subject to the death penalty.

17 MR. MCGUIRE: Sure. And I'm trying to think
18 how to phrase this. I am actually more interested in his
19 personal opinion than the law.

20 THE COURT: Well, it's not relevant.

21 MR. MCGUIRE: All right. Well, let me keep
22 going.

23 Q. With regard to your first statement that they should
24 get the death penalty if there's a hundred percent
25 certainty they did the crime, if you were a juror and sat

1 on a jury, you'd have a front-row seat, so to speak. And
2 you could make sure that, in your view, it was a hundred
3 percent or beyond a reasonable doubt is what the law
4 says. In that -- since you would be controlling the
5 burden of proof, do you believe that if somebody is
6 convicted of murder and you're satisfied that the proof
7 is there, then they should get the death penalty?

8 A. Yes.

9 Q. Okay. And the Judge might instruct you -- in fact,
10 I expect him to -- that you can consider things like the
11 background of a defendant like his childhood, that sort
12 of thing. Would those things be relevant in fixing
13 punishment for a murder case for you?

14 A. You mean like feel sorry for him because of how they
15 were brought up or something?

16 Q. Well, would those kind of factors be relevant in
17 your decision-making determinant punishment?

18 A. No.

19 Q. Okay. And what I'm going to do now is ask you some
20 questions about -- do you have any special inside
21 knowledge about the legal system? Did you ever go to
22 school for it, take a class, work as an officer or
23 anything like that?

24 A. No.

25 Q. Okay. Do you know what the definition of murder is

1 in South Carolina?

2 A. (Shook head side to side in the negative)

3 Q. Okay. I want to give it to you. And it's the
4 unlawful killing of another person deliberately with
5 malice aforethought, acting with a black, malignant
6 heart. Is that a definition you've ever heard before?

7 A. (Shook head side to side in the negative)

8 Q. Okay. What I want to do now is briefly talk to you
9 about how a death penalty case or a capital case is
10 different from all other criminal cases in South
11 Carolina. And the reason it's different, one reason, is
12 because the jury actually does fix punishment. They
13 decide punishment. All other cases, they just figure out
14 did the fellow do it or not, and then the Judge
15 sentences. So the way we start off, you and your eleven
16 other jurors would first be charged with the
17 guilt/innocence of the person. Did they do it? Did they
18 not do it? Then you'd get a break, get to go home for
19 about a day, come back, and then you'd start what's
20 called the penalty phase of the trial.

21 Now, the penalty phase would have to start off with
22 the State offering aggravation evidence which would make
23 the murder even worse than regular murder. Okay?

24 A. Right.

25 Q. What I'm going to do is I'm going to give you an

1 example and just ask your thoughts about it. You and
2 your eleven jurors come back. You're about to begin that
3 penalty phase. And the aggravation evidence that you
4 hear is that, for example, the defendant you're judging
5 had committed murder before. Okay? Are you with me?

6 A. (Nodded head up and down in the affirmative)

7 Q. Is a life in prison sentence severe enough to punish
8 that kind of double-murder case?

9 MS. ADAMS: Your Honor, he's not going to be
10 instructed that way. He's going to be instructed he has
11 to consider the entire case. It's not a fair question.

12 THE COURT: I understand. Okay. Restate your
13 question.

14 MR. MCGUIRE: I assume you're sustaining the
15 objection.

16 THE COURT: Yes.

17 MR. MCGUIRE: Note my objection, if you would,
18 please, Judge.

19 THE COURT: Certainly.

20 Q. Keeping in mind all the comments that you got about
21 mitigation evidence, you know, the defendant's
22 background, that sort of thing, considering all that,
23 that the Judge talked to you about, could a life in
24 sentence -- life in prison sentence be sufficient or
25 severe enough to punish that double-murder case?

1 A. Would it be sufficient?

2 Q. Right. Would it?

3 A. To be sentenced for life? Yes.

4 THE COURT: Yes.

5 Q. Yes?

6 A. Yes.

7 Q. Okay. And I want to pick up from there. That would
8 be an example of aggravation evidence. And the rules are
9 different for the State and different for the life
10 penalty side of the case. And the way that works out is
11 this. The State has to prove things beyond a reasonable
12 doubt to all twelve jurors. For instance, everybody
13 would have to agree that aggravation existed and it
14 existed beyond a reasonable doubt. Everybody would have
15 to agree.

16 The rules are completely different when it comes to
17 voting for the life in prison penalty. The judge would
18 instruct the jury that each individual juror could vote
19 for life in prison for any reason, no reason, mercy,
20 anything they see in the case at all. And they don't
21 have to agree. Is that an aspect of the law that you can
22 respect and follow?

23 A. Yes.

24 Q. Okay. And the way it plays out, to give you an
25 example, if we had jury over here and you were on it,

1 somebody in the front row could say, well, you know, I
2 saw something about that fellow's background, his life,
3 childhood, that resonated with me. And that's my reason
4 for voting life. Somebody in the back could say, you
5 know, I saw something about his relationship with his
6 family, maybe his grandmother, for instance. And for me,
7 that's going to do it. Somebody else might say, I'm
8 going to vote for life based on what the judge said, that
9 I could do it for no reason at all. I can't even give a
10 reason. Could you respect all those different people's
11 opinions?

12 A. Yes.

13 Q. And respect the fact that they don't have to agree?

14 A. Yes.

15 Q. Okay. And capital cases are, again, different
16 because most times when we think about juries and the
17 result they deliver, we think about the jury always
18 agreeing. It's not so in capital cases. The jury could
19 come in and say, we've respectfully listened to each
20 other. We've had good discourse, good deliberations.
21 But all twelve can't agree on life, and all twelve can't
22 agree on death. And we've just agreed to disagree. If
23 that happened, the judge would take the case and he'd
24 sentence, and end the case right there. Is that an
25 aspect of the law that you can respect and follow?

1 A. Yes.

2 Q. And you'd want your own individual opinion to be
3 respected?

4 A. Yes.

5 Q. And you'd respect everybody else's?

6 A. Yes.

7 Q. And you know, the State, the Defense and even you,
8 as a juror, are entitled to fairness not just out here in
9 the courtroom, but in the jury room. If you found things
10 hostile or belligerent or angry in the jury room, could
11 you send a note out to the Judge and say, you know, it's
12 not fair in here, we need to end this?

13 A. We need to end what?

14 Q. The hostility or the bullying. Could you send a
15 note out and say, you know, things need to be -- go back
16 to fair in here?

17 A. Yes.

18 Q. Okay. I mean, if you saw something where, in your
19 view, it was wrong, it was like bullying, we could count
20 on you to stop that?

21 A. Yes.

22 Q. Okay. Is mercy something that's freely given and
23 bestowed, or is it earned?

24 A. (No verbal response)

25 Q. That's kind of a tough question.

1 A. Yeah.

2 Q. Have you ever thought about that?

3 A. (Shook head side to side in the negative)

4 Q. Do you have an opinion now as you sit there?

5 A. Restate the question.

6 Q. Is mercy something that's freely given, kind of
7 bestowed upon somebody, or is it earned?

8 A. I'm not sure how to answer that.

9 Q. Okay. That's fair enough. The only right answers
10 are yours. And if you don't have an opinion about that,
11 that's the right answer.

12 MR. MCGUIRE: Judge, if I could have one
13 second.

14 THE COURT: Certainly.

15 (Off record discussion)

16 MR. MCGUIRE: Sir, that's all the questions
17 I've got for you. The Prosecution might have a question
18 or two. Thank you, sir.

19 THE COURT: From the State?

20 MS. ADAMS: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. ADAMS:

23 Q. Good afternoon. How are you?

24 A. Good.

25 Q. I'm Chrissy Adams, and I'm the Solicitor for the

1 Tenth Circuit. Thank you for being patient. And I do
2 just have a few questions to follow up.

3 A. Okay.

4 Q. What our goal is today is to make sure that you can
5 be fair not only to the Defendant, but to the State as
6 well, in making your decision on whether or not life is
7 appropriate or death is appropriate. I know it's kind of
8 hard to be sitting where you're sitting. So ...

9 You don't know right now what the facts and
10 circumstances of this case are, do you?

11 A. No.

12 Q. Okay. So as you sit there right now, if you were
13 picked on this jury, do you know if that sentence should
14 be life or death?

15 A. No, not till I hear everything.

16 Q. So is it fair to say that you want to wait and hear
17 all the aggravation that the Defense was talking about
18 and all the mitigation that the Judge will instruct you
19 that you must consider, all of it? Will you remain open-
20 minded until you hear all of that evidence?

21 A. Yes.

22 Q. Okay. And then you'll make a decision?

23 A. Yes.

24 Q. So once you do that, if the facts and circumstances
25 warrant to you, could you vote for life without the

1 possibility of parole?

2 A. Yes.

3 Q. And then on the other hand, once you hear the entire
4 case, could you vote for the death penalty as well?

5 A. Yes.

6 Q. Okay. Now, the law does require if the jury does
7 come back with a death verdict that each and every juror
8 has to sign their name to the sentence sheet. And that
9 is actually what the State uses to execute the defendant.
10 And that's public record. Would you have a problem
11 signing your name along with all the other eleven jurors?

12 A. No.

13 Q. Thank you so much. I appreciate it.

14 A. You're welcome.

15 THE COURT: All right. Anything from the
16 Defendant?

17 MR. MCGUIRE: Just a small legal matter, Judge.

18 THE COURT: All right. Let me -- inasmuch as
19 you were asked questions that didn't perhaps ask all the
20 information that you have -- warranted, I want to be
21 certain of this. In a death penalty case, would you
22 always or automatically vote for the death penalty even
23 though the law provides that you may impose a sentence of
24 life without parole, depending upon the circumstances of
25 a particular case and the characteristics of an

1 individual defendant?

2 THE POTENTIAL JUROR: You mean would I just
3 choose that only?

4 THE COURT: Yes, sir.

5 THE POTENTIAL JUROR: No.

6 THE COURT: Very good. Thank you. All right.
7 If you would, please, go with the bailiff, and I'll be
8 right back to you.

9 THE POTENTIAL JUROR: Okay.

10 (WHEREUPON, Potential Juror 209 exited the
11 courtroom.)

12 THE COURT: All right. Anything from Defense?

13 MR. MCGUIRE: Move to strike for cause for the
14 reasons previously stated on the most recent juror.

15 THE COURT: All right. Anything from the
16 State?

17 MS. ADAMS: No, sir, Your Honor. We feel he's
18 qualified.

19 THE COURT: All right. Again, I don't like the
20 idea of using his questionnaire to determine the ultimate
21 qualifications of a juror. They always are very
22 pertinent to what a juror starts out with before he finds
23 out anything about a death penalty case. Not any
24 specific case, but one case and what is involved in it.
25 Obviously, all murder cases are not subject to the death

1 penalty.

2 And the Supreme Court, the United States Supreme
3 Court, and the General Assembly of South Carolina have
4 devised a very strict procedure to follow as far as what
5 a death penalty will apply to and how it will be imposed
6 or determined. All of those are relevant. It would be
7 just as irrelevant to ask a juror before -- I think it
8 was the State -- *Georgia versus* -- whatever the case was
9 that struck down all the murder statutes at the time.

10 As I say, I tried a capital case, and that capital
11 case was under the old law when a death sentence
12 automatically -- automatic only -- automatic unless the
13 jury recommended mercy. And that is not the law now,
14 fortunately. So I think that -- what is it -- it's
15 almost like asking somebody to determine something that
16 is no longer the law -- under something that is no longer
17 the law. So ...

18 But having listened to the potential juror, he said
19 -- background would be relevant first to sentencing, no,
20 because he didn't know that it was relevant. He didn't
21 know what was to be considered. But then when he did
22 understand that it would be considered, he said life
23 would be a sufficient -- life without parole would be a
24 sufficient punishment for a murder, and he would respect
25 others' opinions. And more importantly, the juror said

1 he could consider -- that he would consider the entire
2 case in order to determine whether life without parole or
3 death penalty.

4 This is not 1972; this is 2010. And I think that
5 that's how we qualify jurors now. I find the juror
6 qualified.

7 All right. Anything further from the Defendant?

8 MR. MCGUIRE: No, sir.

9 THE COURT: All right. Subject to your
10 objection?

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: All right. Anything from the
13 State?

14 MS. BYFORD: No, sir.

15 MS. ADAMS: No, sir.

16 THE COURT: All right. Ask the -- which one is
17 this, 209?

18 MS. BYFORD: 209, Your Honor.

19 THE COURT: All right.

20 (WHEREUPON, Potential Juror 209 entered the
21 courtroom.)

22 THE COURT: All right. Considering the entire
23 voir dire, I find that Juror 209 will be fair, unbiased,
24 impartial, and able to carry out the law as explained to
25 him. 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 his duties as a
3 juror in accordance with the law, the Court's
4 instructions and the juror's oath.

5 Mr. Juror, that means that you are qualified to sit
6 on the jury. The only thing is this process is going to
7 take some time. What we'll do is have so many qualified
8 who could be selected as jurors. And from that pool,
9 then we'll select the actual jurors that will sit on the
10 trial of the case.

11 Now, as I say, this will take us some time. But
12 you've given your number, telephone number, to the Clerk?

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: All right. You will receive a call
15 then. And the way it's going now, I would suggest it
16 will probably be sometime next week.

17 THE POTENTIAL JUROR: Okay.

18 THE COURT: So you're free to do whatever you
19 want to do until you get the call. And when you get the
20 call, if you'll come in.

21 THE POTENTIAL JUROR: Okay.

22 THE COURT: Very good. Thank you very much.
23 And I look forward to working with you.

24 THE POTENTIAL JUROR: Okay. Thank you.

25 THE COURT: Thank you, sir.

1 (WHEREUPON, Potential Juror 209 exited the
2 courtroom.)

3 THE COURT: All right. The next one is 210.
4 And I note on page 2 to question 6, are you the primary
5 wage earner, yes, right now I am due to -- I am due to my
6 husband being unemployed. And on page 3, number 4,
7 ability to serve as juror, hardships, limitations. I'm
8 the only one working at the present time.

9 Is there anything from the Defendant as far as --
10 that might reflect on these responses?

11 MR. MCGUIRE: Judge, we would have no objection
12 to excusing the juror. I share the Court's sentiment
13 that if somebody really is in a tight spot to be here,
14 doesn't want to be here, they should go.

15 MS. ADAMS: Your Honor, I agree as well.

16 THE COURT: All right.

17 MS. ADAMS: If you would just question her.

18 THE COURT: So what -- if you would -- I will
19 excuse the juror based on hardship. All right. Ask the
20 juror to join us, please.

21 THE BAILIFF: 210?

22 THE COURT: Yes, sir, 210.

23 And Madam Clerk, I'm not going to transfer her. I'm
24 going to go ahead and excuse her.

25 (WHEREUPON, Potential Juror 210 entered the

1 courtroom.)

2 THE COURT: Juror 210, I have looked over your
3 questionnaire and the answers. And it's my understanding
4 that service on a jury that would last longer than a
5 week, maybe as much as ten days, would cause a hardship
6 to you and your family?

7 THE POTENTIAL JUROR: Yes, sir.

8 THE COURT: And that would interfere with your
9 ability to concentrate on what's happening at the time?

10 THE POTENTIAL JUROR: It could.

11 THE COURT: Well, again, because -- the reason
12 I -- when I asked if a juror could be fair and impartial
13 in a case to both the State and the Defendant, it's not
14 only that the parties are entitled to a fair and
15 impartial juror -- jury, but the jurors who, like
16 yourself, have not asked to be here and are summoned to
17 be here have considerations too. Now, I don't want them
18 to be in a position where they could not fully
19 concentrate and pay attention. It might be something
20 distracting them if they had something that, you know, at
21 the time somewhat -- not somewhat, it is important.

22 THE POTENTIAL JUROR: Right.

23 BY THE COURT: So for that reason, I don't want
24 to put you in any situation -- or any juror in a
25 situation that they might not be able to give their full

1 attention to the whole case and to all parts of the case.

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

3 THE COURT: Not through any distraction other
4 than what life hands us and places us at a particular
5 time. So under the circumstances at this time, I'm going
6 to excuse you from serving on the trial of this case.
7 However, I do want to thank you for being here and your
8 patience with the Court yesterday -- or Monday, not
9 yesterday -- Monday and today and particularly answering
10 the difficult questions that have been asked of you on
11 the questionnaire. I want to thank you and wish you the
12 best of luck. All right?

13 THE POTENTIAL JUROR: Thank you.

14 THE COURT: All right. Very good. Thank you,
15 ma'am. And by the way, this will serve as your service
16 on the jury, so you won't be called for at least three
17 years.

18 THE POTENTIAL JUROR: Okay. Thank you.

19 THE COURT: Thank you, ma'am.

20 (WHEREUPON, Potential Juror 210 exited the
21 courtroom.)

22 THE COURT: All right, 218.

23 All right. Anything from the Defendant on 218?

24 MR. MCGUIRE: No, sir, Your Honor.

25 THE COURT: Anything from the State?

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

2 THE COURT: Ask 218 to join us, sir.

3 THE DEPUTY: Your Honor?

4 THE COURT: Yes, sir.

5 THE DEPUTY: Request permission to approach the
6 bench.

7 THE COURT: Certainly.

8 (Off record discussion)

9 (WHEREUPON, Potential Juror 218 entered the
10 courtroom.)

11 THE COURT: All right. Are you Juror 218?

12 THE POTENTIAL JUROR: Yes, sir.

13 **POTENTIAL JUROR 218,**

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

15 **EXAMINATION**

16 BY THE COURT:

17 Q. You will recall on Monday I put all the jurors under
18 oath. Now, do you understand that you're still under
19 oath and this oath continues throughout these
20 proceedings?

21 A. Yes, sir.

22 Q. You have been provided with a copy of a list of
23 potential witnesses. Have you had an opportunity to
24 review that witness list?

25 A. Yes, sir.

1 Q. Did you see any names that you recognized?

2 A. Just Greg Shore.

3 Q. All right. Now, he's the coroner?

4 A. Yes, sir.

5 Q. Are you related by blood or marriage, or are you a
6 close personal friend or business associate of any other
7 -- or have any other association with any of the
8 potential witnesses other than Mr. Shore?

9 A. No, sir.

10 Q. And if Mr. Shore was a witness -- and these are a
11 list of potential witnesses. In other words, they may be
12 called, but they do not have to be called. Would that in
13 any way interfere with your ability to give both the
14 State and the Defendant a fair and impartial trial?

15 A. No, sir.

16 Q. Very good. Thank you, ma'am. Now, you recall my
17 instructions from Monday to avoid all forms of media
18 coverage dealing with the case?

19 A. I remember that, uh-huh (affirmative).

20 Q. Has this caused you any problem?

21 A. No. I've just had to walk away from the television.

22 Q. All right. Now, the trial of this case may last --
23 well, may last longer than a normal trial. In other
24 words, it could be for a week or even more. Now, you --
25 we won't be here overnight, and you won't be sequestered.

1 But that means we will probably start at nine in the
2 morning and go till about five or so in the afternoon.
3 It's longer than the normal trial. Other than personal
4 inconvenience, would this pose a serious danger to the
5 health or well-being of yourself or anyone who is
6 dependent upon you?

7 A. No, sir.

8 Q. Now, among other things we'll be talking about today
9 will be penalty. The mere fact that we talk about
10 penalty does not indicate anything about this Defendant
11 or any defendant. Defendants are presumed in the law to
12 be innocent. Do you understand this?

13 A. Yes, sir.

14 Q. If you were a juror in a criminal case, could you
15 listen to the law, accept and apply that law as I would
16 instruct you as the Judge of this Court, and even though
17 you may not agree with that law or think it ought to be -
18 - think it'd be some other way, would you be able to
19 accept and apply that law as I instruct you?

20 A. Yes, sir, I'd try.

21 Q. All right. Again, there's no right or wrong
22 answers. But we just want to know what you think. All
23 right? Could you decide this case based solely upon the
24 evidence presented in this courtroom and disregard
25 anything you may have heard, read, or seen about the

1 case?

2 A. Yes, sir.

3 Q. In a criminal case, the State has the burden of
4 proving guilt. The burden of proof for the State is
5 beyond a reasonable doubt. A defendant has no burden to
6 prove anything at all, his innocence or anything else.

7 He does not even have to testify or offer evidence. And
8 that matter could not even be discussed, the fact that he
9 exercised his rights. Do you understand that?

10 A. Uh-huh (affirmative).

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

14 A. Yes, sir.

15 Q. If you were a juror in a death penalty case, and if
16 the jury had found the defendant guilty of murder, you
17 would then move to the sentence phase of the trial. Do
18 you understand that?

19 A. Yes, sir.

20 Q. When you hear us refer to a capital case or a death
21 penalty case, what we mean is that it is a criminal
22 murder trial where a prosecutor -- in other words, the
23 State -- is seeking the death penalty. Do you understand
24 that?

25 A. Yes, sir.

1 Q. A death penalty trial is divided into two parts.
2 Part one is the guilt phase where a jury determines
3 whether the defendant is guilty or not guilty of murder.
4 Part two is the sentencing phase where a jury determines
5 the appropriate punishment. Of course, if the defendant
6 is found not guilty in the first part, then that ends the
7 matter and there's no further proceedings. Do you
8 understand that?

9 A. Yes, sir.

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

15 A. Yes, sir.

16 Q. Now, if you were a juror in the sentencing phase --
17 that is, phase two of a capital murder trial, again,
18 where a jury has already found the defendant guilty of
19 murder -- do you understand that the jury rather than the
20 Judge determines the sentence that a defendant will
21 receive for the crime of murder?

22 A. Yes, sir.

23 Q. In a capital sentencing trial, the jury's function
24 is to determine the appropriate punishment based upon the
25 circumstances of the crime and the characteristics of the

1 individual defendant. Do you understand that?

2 A. Uh-huh (affirmative).

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

10 A. Yes, sir.

11 Q. Do you also understand the jury has two options to
12 consider regarding the sentencing for murder? One option
13 is life imprisonment which under our law means until you
14 die. In other words, there is no parole. It's life
15 without parole. Do you understand that?

16 A. Uh-huh (affirmative).

17 Q. Now, the other option is death which in South
18 Carolina is by electrocution or lethal injection. Do you
19 understand that?

20 A. Uh-huh (affirmative).

21 Q. Therefore, could you, as a juror in the sentencing
22 phase depending upon the facts including relevant
23 aggravating and mitigating circumstances and the law as
24 instructed to you, render a sentence of life
25 imprisonment?

1 A. Yes, sir.

2 Q. On the other hand, as a juror in the sentencing
3 phase, depending upon the facts including the relevant
4 aggravating and mitigating circumstances and the law as
5 instructed to you, could you render a sentence of death?

6 A. Yes, sir.

7 Q. All right. Please answer any questions Counsel
8 might have.

9 DIRECT EXAMINATION

10 BY MR. MCGUIRE:

11 Q. Good afternoon, Juror 218. I have to refer to you
12 by number. That's just the way we do things. I'm not
13 being rude or impolite. Just forgive me that if you
14 would.

15 A. Okay.

16 Q. I want to talk to you a little bit about your
17 questionnaire. Regarding your opinion regarding life
18 without the possibility of parole, you indicated life
19 without parole is the appropriate punishment for some
20 cases, but it is a waste of taxpayers' money when that
21 person killed someone and the evidence has been proven,
22 then death penalty. Is that still your view?

23 A. Yes, sir.

24 Q. Okay. And what I'm going to do is ask you a little
25 bit more detailed questions. But I want to start with

1 the exact definition of murder in South Carolina.

2 A. Okay.

3 Q. And I'm losing my voice a little bit. I've been

4 talking a lot though. The Judge would instruct the jury

5 that murder in South Carolina is the unlawful killing of

6 another person with malice aforethought. And what that

7 means is that the killer was operating with a black and

8 malignant heart, fatally bent on evil and intentionally,

9 deliberately, killed an innocent person. And from what

10 I'm reading on your questionnaire and that definition of

11 murder, if the proof is there, then that's a death

12 penalty case?

13 A. (Nodded head up and down in the affirmative)

14 Q. You need to say yes.

15 A. Yes. I'm sorry. Yes.

16 Q. Because she can't take down ---

17 A. Nodding, okay.

18 Q. Yes, ma'am. And what I need to do is talk to you a

19 little bit about the taxpayer thing.

20 A. Uh-huh (affirmative).

21 Q. It's a pretty common misconception that the death

22 penalty is actually cheaper than life without parole,

23 because you'd have -- obviously, if somebody goes to

24 prison for a long time, the rest of their life, you have

25 to feed, cloth them and all that. But every time a

1 state's looked at it or issued a report on it, they find
2 that if they got rid of the death penalty, they'd
3 actually save millions of dollars. Did you know that?

4 A. No, sir.

5 Q. Okay. I just wanted to clear that up. I don't want
6 you operating on any misconceptions.

7 A. Okay.

8 Q. But with regarding the life penalty, the life in
9 prison penalty, could that ever be an appropriate
10 punishment for somebody who deliberately and
11 intentionally killed?

12 MS. ADAMS: Your Honor, he's misstating the law
13 to her and what she would be instructed to do.

14 THE COURT: Well, are you going to explain to
15 the ---

16 MR. MCGUIRE: Yes, sir, I will.

17 THE COURT: --- juror that of course -- what is
18 it -- the death penalty is not the appropriate sentence
19 in all murder cases ---

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: --- even when it is murder? And
22 you are going to explain to her that not only will she be
23 instructed that it's -- death penalty is saved for only
24 aggravated cases, that a jury would be instructed to
25 consider mitigating aspects?

1 MR. MCGUIRE: Yes, sir, I'm going to get to all
2 that.

3 Q. But with regard to our -- it's complicated, isn't
4 it?

5 A. Yes, sir.

6 THE COURT: That's just it. It is complicated
7 and -- but the thing is, the law is complicated.
8 Therefore, not knowing the full question or the -- or if
9 you need to think about it, if you don't know the answer,
10 then you can tell the attorney that.

11 Q. So regarding my previous question, when I said could
12 that life in prison penalty ever be severe enough to
13 punish a deliberate, intentional killing, you were
14 nodding no before we got interrupted; is that right?

15 A. Say it again, now.

16 THE COURT: It wasn't an interruption as much
17 as a hope to have you -- your question posed in the
18 proper fashion.

19 MR. MCGUIRE: Oh, I understand. Sure. Sure.

20 Q. When we left off, my question was could the life in
21 prison penalty ever be severe enough or appropriate for
22 that kind of deliberate, intentional, black, malignant,
23 evil heart killing?

24 A. No, sir.

25 Q. Okay.

1 THE COURT: Well, that's not the law.

2 MR. MCGUIRE: And that's what I'm going to --
3 that's my next question, Judge.

4 THE COURT: All right.

5 Q. And in that deliberate, intentional ---

6 THE COURT: Well, why would you ask for an
7 improper answer if that's not the law?

8 MR. MCGUIRE: Well, actually I politely
9 disagree with the Court regarding ---

10 THE COURT: Well, again, is life without parole
11 not a proper sentence on other cases that are not
12 aggravated?

13 MR. MCGUIRE: Well, I'm actually interested in
14 the juror's personal opinion, Judge.

15 THE COURT: Well, I'm interested in a juror
16 being able to follow the law.

17 MR. MCGUIRE: Me too.

18 THE COURT: All right.

19 Q. Regarding that deliberate intentional killing --
20 black, malignant heart, evil intent -- would things about
21 a defendant's background like his childhood, stuff like
22 that, be relevant in fixing punishment for that
23 intentional murder?

24 A. No.

25 Q. Okay. What I'm going to do now is talk to you a

1 little bit about how a capital case is completely
2 different from other cases. Because normally a jury just
3 decides, well, did the fellow do it or not, guilty, not
4 guilty, and then the judge would sentence.

5 But in a capital case, it's different. And the
6 rules that apply to the prosecutor and the defense are
7 different. And I'm going to go through these aspects of
8 law and just ask you if you can follow the law. Okay?

9 A. I'll try.

10 Q. Okay. And if I ask a bad question or lose my voice,
11 you can't hear me, if I'm -- if I say something you don't
12 understand, you just let me know.

13 A. I will.

14 Q. Okay. I'm counting on you.

15 A. All right.

16 Q. First off, in a capital case, the first part of the
17 trial -- I want to get you past the first part of the
18 trial. I want you to pretend that you and the eleven
19 other jurors have already figured out that the fellow did
20 it, committed murder.

21 And then the Judge would give you a break and you'd
22 go home about a day, about twenty-four hours. And then
23 you'd come back with the eleven other jurors. And that's
24 when you'd begin the journey to fix punishment. Okay?
25 And the first thing that would happen is that the State

1 would have to bring aggravation evidence to ask for a
2 death sentence. It has to be an aggravated murder. And
3 that's the first thing they would do.

4 The State, the prosecutor, would bring in
5 aggravation evidence. And all twelve jurors would have
6 to agree, beyond a reasonable doubt, that that
7 aggravation evidence existed. Okay? And that's kind of
8 in line with the way we think about juries, you know, all
9 agreeing.

10 A. Uh-huh (affirmative).

11 Q. That sort of thing. And it's completely different
12 for voting for the life in prison punishment. The judge
13 would instruct the jury that each individual juror could
14 vote for life for any reason, no reason, mercy, anything
15 they see in the case. Is that an aspect of the law that
16 you can respect and follow?

17 A. Yes, sir.

18 Q. Okay. You would respect the other people's
19 opinions?

20 A. You mean the other jurors?

21 Q. Sure. Yes, ma'am.

22 A. Yes, sir.

23 Q. And you'd want your opinion respected?

24 A. Yes, sir.

25 Q. And it's okay for everybody to agree to disagree?

1 A. Yes, sir.

2 Q. Okay. And what I want to do is, I want to tell you
3 kind of how it plays out in fact, or how it could play
4 out in fact. If you were on a jury -- and I keep looking
5 over there because that's where the jury sits.

6 A. Uh-huh (affirmative).

7 Q. If you were over there with eleven other people in
8 the penalty phase, at the end of the case when you've
9 heard everything, one juror might say, you know, I
10 listened to the judge. And I'm going to vote for life
11 for no reason at all. I can't even really state a reason
12 why. Somebody else might say, you know, I saw something
13 in the facts of the case somewhere, some little piece of
14 evidence. And that did it for me. That resonated with
15 me. And I'm going to vote for life for that reason. A
16 completely different juror could say, I just saw
17 something about his relationship with maybe his
18 grandmother that I found redeeming. And that's going to
19 do it for me, and I'm going to vote for life for that
20 reason. And what I'm getting at is that all the jurors
21 could have a different reason for voting for life, and
22 they don't even have to agree.

23 A. Uh-huh (affirmative).

24 Q. Is that an aspect of the law you can respect and
25 follow?

1 A. Yes, sir.

2 Q. Okay. And the State, the Defendant and even you,
3 yourself as a juror, are entitled to fairness not just
4 out here in the courtroom, but also in the jury room.

5 And if you found things to be hostile or angry or people
6 kind of bullying, trying to bully somebody, could you
7 maybe pass a note to the judge saying, you know what,
8 things are getting angry in here, and we need to get
9 things going back to being fair again? Could you do
10 that?

11 A. I don't know if I could do that or not.

12 Q. Well, now, tell me why.

13 A. That's just not my nature. I usually -- I'll just
14 sit back ---

15 Q. Okay.

16 A. --- you know, and just let somebody else take care
17 of that.

18 Q. Okay. But you would want somebody to make ---

19 A. Oh, I would want somebody, yes, but I doubt if it
20 would be myself.

21 Q. Okay. Like maybe -- maybe you could give the
22 foreman a nudge in the ribs and say, maybe you can take
23 care of this for us?

24 A. I don't know if I'd do that either. No, sir.

25 Q. Okay.

1 MS. ADAMS: Your Honor?

2 MR. MCGUIRE: Judge, I'm moving on.

3 THE COURT: Let's move on.

4 MS. ADAMS: I think she's not understanding the
5 deliberation process.

6 Q. And ma'am, the way, the way that the law describes a
7 juror's individual vote or position on a capital case is
8 their own individual moral judgement.

9 A. Uh-huh (affirmative).

10 Q. And it's not really a right or wrong answer. It's
11 just kind of their position based on their walk in life.
12 And in a capital case, again, it's different from any
13 other case because the jury doesn't have to end the day
14 agreeing. Like all twelve don't have to vote for life,
15 and all twelve don't have to vote for death.

16 A. Uh-huh (affirmative).

17 Q. The jury could come in and just say very
18 respectfully, we've listened to each other, we've been
19 respectful, we've heard everybody's opinion, but we don't
20 agree one way or the other. And if that happened, the
21 judge would take the case and sentence and end the case.
22 Is that an aspect of the law you can respect and follow?

23 A. Yes, sir.

24 Q. Ma'am, I appreciate it. Thank you very ---

25 MR. MCGUIRE: Oh, and Judge, this is where I

1 would ask my questions one through six in my prior
2 motion.

3 THE COURT: Again, based on the fact that
4 they're not based on the law and of course ---

5 MR. MCGUIRE: Yes, sir. Thank you very much,
6 Judge.

7 THE COURT: Thank you.

8 CROSS-EXAMINATION

9 BY MS. ADAMS:

10 Q. How are you this afternoon?

11 A. I'm nervous.

12 Q. A little nervous? And that is quite all right.

13 A. Yes, ma'am.

14 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
15 Circuit. And I want you to know there are no right
16 answers and there are no wrong answers. And it is
17 perfectly okay to be nervous.

18 A. Okay.

19 Q. Okay. What we're trying to do here today is just
20 make sure for the Court that you can be fair to the
21 Defendant and to the State in this case, and to see your
22 views on the death penalty. I know it's hard to talk
23 about a subject that -- with a bunch of strangers, that
24 you would not normally talk about.

25 A. Yes, ma'am.

1 Q. And this part of the trial that we're dealing with,
2 we're kind of jumping the gun because we're assuming that
3 the Defendant has already been found guilty by the jury
4 of the actual murder that he's charged with. Now, do you
5 understand that not every murder in South Carolina is
6 eligible for the death penalty? Did you know that?

7 A. No, ma'am.

8 Q. Okay. They're not. The law requires that there be
9 some sort of aggravation, something that kind of bumps it
10 up to an aggravated murder, so to speak. It makes it
11 worse than just a normal murder. And that's laid out in
12 the law. And the State has to prove an aggravating
13 factor beyond a reasonable doubt. So in other words, the
14 twelve jurors are going to have to unanimously find that
15 there is an aggravating circumstance before you even get
16 to the decision of life or death. Okay?

17 A. Yes, ma'am.

18 Q. It is confusing.

19 A. Yes, ma'am.

20 Q. Now, once that's determined by the jury, the Judge
21 will instruct you that during this penalty phase that you
22 are to consider all the evidence in front of you. In
23 other words, all the aggravation and all the mitigation,
24 if any. And mitigation, like the Judge told you, kind of
25 lessens the severity of the crime. Okay?

1 A. Uh-huh (affirmative).

2 Q. Now, would you remain open-minded throughout the
3 entire process before you decided if death was
4 appropriate or life was appropriate? In other words,
5 would you listen to all the evidence before you made a
6 decision?

7 A. Yes, ma'am.

8 Q. Okay. So just because you find the Defendant guilty
9 of a murder or an aggravation, you would not
10 automatically assume that death was appropriate until you
11 heard the entire case; is that correct?

12 A. Yes, ma'am.

13 Q. Okay. So you would follow the Judge's law and
14 instructions as he gives them regarding aggravation and
15 mitigation?

16 A. I will try my level best, yes, ma'am.

17 Q. And if you felt that based on everything you heard
18 that life without parole was appropriate, could you
19 return that verdict?

20 A. Yes, ma'am.

21 Q. Okay. And if you felt that the death penalty was
22 appropriate, could you return that verdict?

23 A. Yes, ma'am.

24 Q. Okay. Now, deliberation is a give-and-take process.
25 And do you agree that you should respect the other

1 jurors' views in a deliberation process?

2 A. Yes, ma'am.

3 Q. Okay. But it's a discussion back and forth. So in
4 the same sense, if someone is not respecting someone's
5 opinion, the Judge should know. If someone is not
6 participating in a discussion, do you feel that the Judge
7 should know that as well since it's a give-and-take
8 between all twelve jurors?

9 A. I guess so.

10 Q. Okay. I know you had mentioned -- and the Defense
11 talked to you a little bit about taxpayer money and cost,
12 life or death. Would you be willing to follow the
13 Judge's instructions and only consider what is presented
14 in this courtroom?

15 A. Yes, ma'am.

16 Q. Okay. In other words, cost is not an issue and
17 basically justice has no price. Is that a fair
18 statement?

19 A. Yes, ma'am.

20 Q. Okay. One more thing. The law requires -- if the
21 jury finds that death is the appropriate sentence, the
22 law requires that each and every juror actually sign
23 their name to the sentence sheet.

24 A. Yes, ma'am.

25 Q. And that's what the law uses to carry out the actual

1 execution of a defendant.

2 A. Yes, ma'am.

3 Q. Okay. Could you sign your name to that sheet along
4 with the eleven other jurors?

5 A. Yes, ma'am.

6 Q. Thank you so much.

7 THE COURT: All right. Anything else from the
8 Defendant?

9 MR. MCGUIRE: Just a small legal matter.

10 THE COURT: All right. If you would, please,
11 go with the bailiff. I'll be right back to you.

12 THE POTENTIAL JUROR: Okay.

13 THE COURT: Thank you, ma'am.

14 (WHEREUPON, Potential Juror 218 exited the
15 courtroom.)

16 MR. MCGUIRE: Oh, I'm sorry, Judge. I move to
17 strike for cause based on federal and state constitution
18 grounds stated on previous jurors and ---

19 THE COURT: Very good. I understand. And they
20 are renewed and overruled and rejected. All right.
21 Anything from the Defendant? I mean, from the State?
22 I'm sorry.

23 MS. ADAMS: No, sir, Your Honor. Just we feel
24 she's qualified.

25 THE COURT: All right. Well, again, I do have

1 problems when the law is not stated as such because we're
2 not asking a person to sentence someone based on a law
3 that is not in effect in South Carolina. At one time it
4 was, as I mentioned earlier, because prior to the -- what
5 is it -- *Furman v. Georgia* decision in 1972 -- and I
6 tried one of those cases, prosecuted one of those cases
7 and returned a death sentence, five people. Because the
8 law was unless the jury recommended mercy, it was an
9 automatic death sentence.

10 That was the law at one time. It's not the law now.
11 And I think if you're going to pose a proper question,
12 that it should contain the law. Otherwise, you fall into
13 the problem of like they said in *Illinois versus* --
14 *Morgan versus Illinois* that it's an ipso facto, just the
15 mere fact of guilty of murder is a death sentence. And
16 that's not the law in South Carolina, and would be --
17 jurors are so instructed.

18 Therefore, listening to the juror when they finally
19 -- when she was told that all murders are not subject to
20 the capital punishment, then -- what is it -- she said
21 that she would not absolutely impose the death sentence
22 in all cases. And she would respect the other jurors'
23 opinions if the law provides they could recommend life
24 without parole for no reason at all, could follow the
25 instructions of the Court.

1 That is what the Court should be concerned about,
2 not whether a person will apply the law -- or rather
3 whether the person will apply the law or if they have
4 some misconception about a law that would not be
5 applicable.

6 All right. So I find that the juror is qualified.

7 Ask the juror to join us, please.

8 (WHEREUPON, Potential Juror 218 entered the
9 courtroom.)

10 THE COURT: All right. Considering the entire
11 voir dire, I find that Juror Number 218 will be fair,
12 unbiased, impartial and able to carry out the law as
13 explained to her. Furthermore, I find that the juror's
14 beliefs or attitudes toward the death penalty would not
15 prevent or substantially impair the performance of her
16 duties as a juror in accordance with the law, the Court's
17 instructions, and the juror's oath. So you are qualified
18 for this jury.

19 Now, it's going to take some time though before we
20 have qualified an entire panel. In other words, what
21 we'll do is qualify a pool of jurors, and then from that
22 pool we'll select the actual jurors that will be serving
23 on the jury. And so this will take -- as you can see,
24 it's a long process. So it will take several days,
25 obviously into next week. You can do anything you need

1 to do in the meantime. However, you have given your
2 telephone number to the Clerk?

3 THE POTENTIAL JUROR: (Nodded head up and down
4 in the affirmative)

5 THE COURT: All right. As I say, once you get
6 the call, the Clerk will ask you or request that you come
7 in at a certain time, and that's when we'll draw the
8 actual jury. All right.

9 THE POTENTIAL JUROR: Okay.

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

11 THE POTENTIAL JUROR: All right.

12 THE COURT: And I appreciate your patience and
13 candor with the Court. Thank you, ma'am.

14 THE POTENTIAL JUROR: Okay. Thank you.

15 (WHEREUPON, Potential Juror 218 exited the
16 courtroom.)

17 THE COURT: Yes, sir?

18 MR. DAY: Excuse me, Your Honor. Before you
19 start, the Defendant wishes to address the Court one more
20 time.

21 THE COURT: All right. Very good.

22 THE DEFENDANT: Your Honor, if Mr. McGuire --
23 if he's not going to bring up issues -- because I have a
24 problem with two jurors that you qualified. If he's
25 going to continue to say, under the Constitution, and not

1 bring up the issues and facts of why we don't want to
2 qualify the jurors, then I'm going to have to say
3 something because ---

4 THE COURT: If you say something, then I'm
5 going to have you removed from the courtroom. Do you
6 understand?

7 THE DEFENDANT: I'm going to ask ---

8 THE COURT: You can say it to your lawyer, to
9 your guardian ad litem, but I am not going to have you
10 disrupt these proceedings.

11 THE DEFENDANT: No, I'm not going to disrupt
12 the proceedings, Your Honor. I'm going to ask can I
13 speak. But I already asked my attorneys to state certain
14 issues like, for instance, Juror 209 clearly says that
15 she couldn't give a life sentence for someone who
16 murdered twice. I mean, I asked them to bring up certain
17 issues. I mean, this is my right. Okay? And they're
18 not doing it. And I'd like to note that on the record.

19 THE COURT: It's on the record.

20 THE DEFENDANT: Okay. But like I said again,
21 I'm not going to disrupt the court.

22 THE COURT: I know you're not.

23 THE DEFENDANT: But I'm going to ask can I
24 speak. But I mean, if they're clearly not going to bring
25 up certain issues, I have a problem with that.

1 THE COURT: I understand you have a problem. I
2 have a problem too, but I'm going to have this problem
3 resolved. And I'm going to continue through it. That's
4 why we do it on the record. If I make an error, it will
5 be corrected.

6 THE DEFENDANT: No, no, I'm not saying if you
7 make an error.

8 THE COURT: So let's not worry about it. No -
9 - okay, go ahead.

10 THE DEFENDANT: I'm saying if my attorneys is
11 not going to bring up certain issues or facts that the
12 juror clearly states on the stand and they say, under the
13 Constitution, and not clearly state the facts why, then I
14 have a problem with that.

15 THE COURT: I understand you have a problem.

16 THE DEFENDANT: Again ---

17 THE COURT: That's noted on the record. You
18 have a problem. You want to have everything that the
19 witness says -- or rather the juror says recorded, and it
20 is recorded, and it will be reviewed.

21 MR. MCGUIRE: And Judge, just in an effort to
22 make a little peace, I guess I'll add to my objection
23 that the juror was substantially impaired, predisposed to
24 vote for death and mitigation impaired based on my
25 examination. I'll just add that to my objection.

1 THE COURT: All right. But it will not be
2 necessary. I understand what your objections are. And
3 rather than having to restate them each time -- or you
4 can just note as we've been doing.

5 MR. MCGUIRE: Yes, sir.

6 THE COURT: All right. Any problem now? Are
7 you ready to go forward?

8 THE DEFENDANT: I mean ---

9 THE COURT: Just tell me if you're not. If you
10 want to continually interrupt the proceedings, we'll be
11 glad to remove you and put you somewhere where you can
12 talk to yourself all day and still see what's going on.

13 THE DEFENDANT: Your Honor, I never asked to
14 interrupt these proceedings, Your Honor.

15 THE COURT: Well, I'm asking you now. But are
16 you through?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. Very good.

19 All right. Anything from the Defense before I bring
20 in the next juror? This is the next panel?

21 MS. BYFORD: Yes, sir, I believe we are
22 starting the next panel. And I do have something
23 regarding Juror 219.

24 THE COURT: 219 is the next juror?

25 MS. BYFORD: Yes, sir.

1 THE COURT: All right.

2 MS. BYFORD: Your Honor, if you'll look at page
3 6 of her questionnaire, her husband's cousin was
4 convicted of murder. We tried that case and convicted
5 her cousin. And if you read her questionnaire, she
6 clearly disagrees with that verdict. Additionally, they
7 now visit this cousin in prison and, I think, have a
8 pretty close relationship with her. If you look at --
9 and that's on 16 - I'm sorry, 6, page 12 and page 14 of
10 her questionnaire is where she talks about it. So the
11 State would obviously have some concerns.

12 I would also point out that she is in favor of the
13 death penalty. So it's not -- we're not objecting
14 because she's a bad juror on that ground for us, Your
15 Honor. But we are concerned that she might be a little
16 compromised due to her relationship with someone we've
17 tried before.

18 MR. MCGUIRE: And Judge, just to -- we agree to
19 get rid of her.

20 (Laughter)

21 THE COURT: All right. Well, that's not
22 exactly what we're talking about. All right. Very good.

23 Ask Juror 219 to ---

24 MADAM CLERK: I'm sorry, Your Honor, to
25 interrupt.

1 THE COURT: Okay.

2 MADAM CLERK: When I went in to get the phone
3 numbers, Juror Number 247 in this group has his wife's
4 car and needs to get it back to her before too long.

5 THE COURT: All right. Go ahead and ---

6 MADAM CLERK: And she has graciously agreed to
7 let him come before her if the Court doesn't mind. 219
8 said she would let number 247 have her spot.

9 THE COURT: Well, we're going to excuse 219.

10 MADAM CLERK: Okay.

11 THE COURT: So it will just take a few minutes.

12 MADAM CLERK: All right, sir.

13 THE COURT: Would that be all right, do you
14 think?

15 MADAM CLERK: Oh, yes, Your Honor.

16 THE COURT: All right. I mean, does the ---

17 MADAM CLERK: Oh, yes, sir, that's quite all
18 right.

19 THE COURT: Okay. Ask 219 to come in, if you
20 would, please.

21 (WHEREUPON, Potential Juror 219 entered the
22 courtroom.)

23 THE POTENTIAL JUROR: Right here?

24 THE COURT: Yes, ma'am. All right. Are you
25 Juror Number 219?

1 **POTENTIAL JUROR 219,**

2 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

3 THE POTENTIAL JUROR: Yes, sir.

4 THE COURT: I've had an opportunity to go over
5 your questionnaire with the attorneys. And it looks like
6 that you -- you or your family actually have had some
7 contact with the Solicitor's office; is that correct?

8 THE POTENTIAL JUROR: Yes, sir.

9 THE COURT: If you remember on Monday when I
10 asked the various questions, I asked, of course, if the
11 jurors could be fair and impartial to both the State and
12 the Defendant. That was meant for two purposes. One, of
13 course, was whether or not they could be fair and
14 impartial. The parties are entitled to a fair and
15 impartial jury. But the other one is that you didn't ask
16 to be here, you were subpoenaed to come in. And I know
17 all jurors, you know, have a difficult time with a
18 particular case. So I have to look to be sure that if
19 I'm satisfied that they could be comfortable and they
20 would not feel like there would be some sort of -- not a
21 conflict as much as just considerations they might have
22 to deal with in a trial. And I would find that you're
23 eminently qualified for any other case, but I think just
24 by reason of the experiences that you've had that I'm
25 going to have to disqualify you on -- actually not

1 disqualify you -- excuse you on this trial.

2 Now, you'd be -- as I say, I'd find that you would
3 be an excellent juror on any other case. But on this
4 one, I'm going to excuse you. But I want to thank you
5 for your patience with the Court and for being here and
6 also the candor that you gave us on your questionnaire.

7 THE POTENTIAL JUROR: Okay.

8 THE COURT: Thank you so much. Good luck to
9 you, ma'am.

10 THE POTENTIAL JUROR: Thank you.

11 THE COURT: And that does conclude your
12 service.

13 THE POTENTIAL JUROR: Thank you, sir.

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

15 (WHEREUPON, Potential Juror 219 exited the
16 courtroom.)

17 THE COURT: And now 247. All right. Before we
18 bring 247, is there anything from the Defendant?

19 MR. MCGUIRE: No, sir.

20 THE COURT: All right. From the State?

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

22 THE COURT: There isn't? There's nothing from
23 the State?

24 MS. ADAMS: No, sir.

25 THE COURT: Okay. 247.

1 (WHEREUPON, Potential Juror 247 entered the
2 courtroom.)

3 THE POTENTIAL JUROR: Oh, this way?

4 THE COURT: How are you doing, sir?

5 THE POTENTIAL JUROR: Fine. How are you, sir?

6 THE COURT: Very well. Are you Juror 247?

7 THE POTENTIAL JUROR: Yes, sir.

8 **POTENTIAL JUROR 247,**

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 that oath continues throughout these
15 proceedings?

16 A. Yes, sir.

17 Q. You have been provided a list of potential
18 witnesses. Have you had an opportunity to review that
19 witness list?

20 A. Yes, sir.

21 Q. Are you related by blood or marriage or a close
22 personal friend or business associate, or have any other
23 association with any of the potential witnesses on this
24 list?

25 A. Ken Ebernickle, we go to church together.

1 Q. All right. If he should be a witness -- now, these
2 do not have to be witnesses, but they may be called as a
3 witness. But if he should be called as a witness, would
4 that affect your ability to give both the State and the
5 Defendant a fair and impartial trial?

6 A. (Shook head side to side in the negative)

7 Q. Very good.

8 A. And Mike Walters' wife and my wife -- well, anyway,
9 they're brother and sister-in-laws, so I'm around them a
10 good bit.

11 Q. All right. Would that interfere your ability to
12 give both the State and the Defendant a fair and
13 impartial trial if that individual should testify?

14 A. No, sir.

15 Q. All right. Do you also recall my instructions from
16 Monday to avoid all forms of media coverage dealing with
17 this case? Do you remember that?

18 A. Yes, sir.

19 Q. All right. Has this caused any problem to you?

20 A. No, sir.

21 Q. The trial of this case will last approximately a
22 week or maybe even longer. Other than personal
23 inconvenience, would this pose a serious danger to the
24 health or well-being of yourself or anyone who is
25 dependent upon you?

1 A. Well, I've got a pacemaker, and I have to sometimes
2 be monitored at night and all.

3 Q. Now, we'll be -- the case will be tried during the
4 day ---

5 A. Yes, sir.

6 Q. --- from nine o'clock to five o'clock.

7 A. I don't see -- I don't see where it would.

8 Q. All right. Among other things, we'll be talking
9 today about penalty. But the mere fact that we talk
10 about penalty does not indicate anything about this
11 Defendant or any other defendant. Defendants are always
12 presumed in law to be innocent. Do you understand?

13 A. Yes, sir.

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

19 A. Yes, sir, I could.

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 this
23 case?

24 A. Yes, sir.

25 Q. In a criminal case, the State has the burden of

1 proving guilt. The burden of proof for the State is
2 beyond a reasonable doubt. A defendant has no burden to
3 prove innocence or anything else. In other words, the
4 defendant does not even have to testify or present
5 evidence. And the fact that he exercises his rights does
6 not -- cannot even be discussed. Do you understand?

7 A. Yes, sir.

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

11 A. Yes, sir.

12 Q. If you were a juror in a death penalty case, and if
13 the jury has found the defendant guilty of murder, you
14 would then move to the sentence phase of the trial. Do
15 you understand?

16 A. Yes, sir.

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

22 A. Yes, sir.

23 Q. A death penalty trial is divided into two parts.
24 Part one is the guilt phase where a jury determines
25 whether the defendant is guilty or not guilty of murder.

1 Part two is the sentencing phase where a jury determines
2 the appropriate punishment. Of course, if the defendant
3 is found not guilty, that ends the matter and there's no
4 further proceedings. Do you understand that?

5 A. Yes, sir.

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

12 A. Yes, sir.

13 Q. And if you were a juror in the sentencing phase --
14 that is, phase two of a capital murder trial, again,
15 where a jury has already found a defendant guilty of
16 murder -- do you understand that the jury rather than the
17 Judge determines the sentence that a defendant will
18 receive for the crime of murder?

19 A. Yes, sir.

20 Q. In a capital sentencing trial, the jury's function
21 is to determine the appropriate punishment based on the
22 circumstances of the crime and the characteristics of the
23 individual defendant. Now, aggravating circumstances are
24 the facts or details that, when they are present in a
25 case, make the crime of murder more serious or worse. Do

1 you understand that?

2 A. Yes, sir.

3 Q. On the other hand, mitigating circumstances are
4 incidents, occurrences or details of a case that would
5 reduce the severity of the crime of murder. In other
6 words, may reduce the degree of responsibility for the
7 crime. Do you understand that?

8 A. Yes, sir.

9 Q. Do you also understand the jury has two options to
10 consider regarding the sentencing for murder? One option
11 is life in prison which, under our law, means until death
12 without parole. The other option is death which, in this
13 case -- or in this state -- excuse me -- in this state is
14 by electrocution or lethal injection. Do you understand
15 that?

16 A. Yes, sir.

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
20 instructed to you, render a sentence of life
21 imprisonment?

22 A. Yes, sir.

23 Q. On the other hand, as a juror in the sentencing
24 phase depending upon the facts including the relevant
25 aggravating and mitigating circumstances and the law as

1 instructed to you, could you render a sentence of death?

2 A. Yes, sir.

3 Q. Very well. If you would, please, sir, answer any
4 questions the attorneys may have.

5 A. All right.

6 DIRECT EXAMINATION

7 BY MR. MCGUIRE:

8 Q. Good afternoon, sir. How are you doing?

9 A. Fine, how are you?

10 Q. I'm good, sir. I'm going to just talk to you in a
11 little bit more detail. The Judge gave you a good
12 framework. I'm going to follow up on that. Okay?

13 A. All right, sir.

14 Q. And I'm going to start with the definition of murder
15 in South Carolina, then I'm going to ask you your views
16 about that. The Judge would tell you that murder in
17 South Carolina is the unlawful killing of another person,
18 with malice aforethought. Malice murder is how it's
19 referred to. And malice aforethought is defined as the
20 killer operating with a black and malignant heart,
21 fatally bent on evil, deliberately and intentionally
22 taking the life of another person. Are you with me?

23 A. Yes, sir.

24 Q. What are your views about the death penalty for just
25 that kind of killing?

1 A. Well, this is the way I look at it. If a person
2 kills somebody just out of just care -- not carelessness,
3 but he just wants to kill somebody, if he does it just
4 out of pleasure, I would say, then I have no problem with
5 sending him to it. I think that's where he needs to go.

6 Q. Okay.

7 A. If you kill somebody just because you want to or -
8 --

9 Q. Sure.

10 A. --- you know, if you have to -- I've seen people get
11 mad -- I've been mad enough I could have killed somebody,
12 too.

13 Q. Sure.

14 A. But that's a different thing.

15 Q. Right. We're not talking about cases of self-
16 defense or accident or two fellows agreeing to fight each
17 other and it getting out of hand. The case that you're
18 talking about, could a life in prison penalty ever be
19 severe enough to punish that kind of case, the one that
20 you just told me about?

21 A. The ---

22 Q. The person who killed to kill.

23 A. I tell you what. If somebody goes out and kills
24 somebody just for the fun of it, I don't have a whole lot
25 of mercy for them. I'm being honest with you.

1 Q. Sure.

2 A. I think that's an eye-for-an-eye. I'm a Christian.
3 An eye-for-an-eye, a tooth-for-a-tooth is what I look at.

4 Q. Okay, fair enough. And again, just to clarify,
5 would a life in prison sentence be appropriate for that
6 person ---

7 MS. ADAMS: Your Honor?

8 Q. --- that you just described?

9 MS. ADAMS: He's just misstating the law. I'm
10 sorry.

11 THE COURT: Let's not prolong this. Let's give
12 the -- put the question in a proper context of what the
13 existing law is in South Carolina.

14 Q. Based on everything that you told me ---

15 THE COURT: That's not the existing law because
16 it would never be considered a death penalty case, just
17 murder.

18 MR. MCGUIRE: I understand. But I'm just
19 interested in this juror's just honest opinion regarding
20 that kind of case -- and he's been pretty candid -- if I
21 could get his personal opinion to see if he's going to
22 fall within the requirements.

23 THE COURT: Oh, I am too. But you're talking
24 about something that is not the law in South Carolina.
25 And again, what he was talking about, he's just described

1 involuntary manslaughter.

2 Q. All right. Let me change things on you a little
3 bit.

4 THE COURT: So let's don't ---

5 MR. MCGUIRE: All right.

6 THE COURT: Well, let me do this just so
7 there's no question about it. The law provides for
8 capital cases, as you see, a very strict procedure, and
9 that it has to be followed. In other words, capital
10 punishment is not -- every murder case is not eligible
11 for capital punishment. There is a certain statutory
12 procedure we have to follow. And I think that's what the
13 attorney wants to find out, if you could follow the law
14 and apply it as the statutes provide.

15 THE POTENTIAL JUROR: Yes, sir. I could, yes.

16 THE COURT: Not just what your opinion would be
17 as to -- or you described where you could be mad enough
18 to kill someone.

19 THE POTENTIAL JUROR: Well, you know, I've been
20 in that ---

21 THE COURT: Well, the thing is, I think we all
22 have. But you know what? That's not murder. So I'm
23 sure he would have corrected you on that, but he just
24 didn't get around to it.

25 Q. So what I want to do is I want to let you use the

1 example that you used which would be killing somebody
2 deliberate with no legal justification. Not self-
3 defense, not accident, not being so mad because you
4 caught somebody messing with your wife or anything like
5 that. We're talking about malice aforethought,
6 deliberate, intentional killing of another person.

7 A. Uh-huh (affirmative).

8 Q. And the Judge is right. Not all cases are death
9 penalty eligible. They have to be aggravated murders.
10 And what I want to do is get you to place yourself on
11 this jury box over here just in your mind. You're on the
12 jury box with eleven other people. And you've been
13 through the first part of the trial. The first part of
14 the trial was, well, was the fellow guilty or not of
15 murder. Okay?

16 A. Got you.

17 Q. And that's behind you. And you get about a twenty-
18 four hour break, and you get to come back. And then
19 that's when you would start the penalty phase of the
20 case. And you'd hear about aggravation evidence and the
21 mitigation evidence the Judge told you about.

22 Now, as you're sitting there with the eleven other
23 jurors, you learn that the reason that your case that
24 you're sitting on is aggravated because the person had
25 killed before, murdered before. Could a life in prison

1 sentence be appropriate for somebody who's killed twice?

2 MS. ADAMS: Your Honor, I'm sorry. But that is
3 not how he's going to be instructed.

4 THE COURT: Again, that's not the law. The law
5 is that not only do you consider the aggravation, but you
6 also consider anything that might mitigate the aggravated
7 circumstance. And that could be any reason, no reason --
8 or any reason or no reason at all or even mercy.

9 Q. Keeping in mind everything the Judge just said,
10 could a life in prison sentence be appropriate for a
11 defendant who's murdered then murdered again?

12 A. All right. Now, on this are you talking about
13 somebody that just murdered for the fun of it? He didn't
14 have to kill them. But he just killed them just to be
15 killing them. Are you talking about that?

16 A. Well ---

17 THE COURT: It depends on the facts of the
18 case.

19 THE POTENTIAL JUROR: Yeah, that's ---

20 THE COURT: But you'll hear -- you haven't
21 heard the facts as yet. What he wants to know, would you
22 absolutely impose the death sentence on any murder case
23 that he's described?

24 MR. MCGUIRE: The double case murder.

25 THE POTENTIAL JUROR: Not necessarily. Like I

1 say, it would have to be according to what I found out
2 about it on the jury.

3 Q. Okay. It sounds like motive, kind of the why of the
4 killing, seems to be important to you?

5 A. It is. It is.

6 Q. Okay. Now, we're not talking about like -- we're
7 not talking about any kind of defense that would rise to
8 a legal defense, meaning didn't have to kill somebody to
9 save your own life or protect anybody else. That would
10 be self-defense.

11 A. Uh-huh (affirmative).

12 Q. It's not an accident. It's not being so mad because
13 somebody did you wrong that you can't control yourself.
14 This is the deliberate, intentional choice to take an
15 innocent life.

16 A. Then I would think he would get the death penalty.
17 Or she, whichever.

18 Q. Okay.

19 A. I mean, that's the way I feel.

20 Q. Okay. What I want to do is -- if I could have just
21 one second.

22 THE COURT: Here you go.

23 Q. Would -- in that situation we just discussed where
24 you said it seems like he or she would get the death
25 penalty from you, would background factors of a defendant

1 be relevant in fixing punishment for somebody who
2 murdered twice?

3 A. What do you mean background? Like what?

4 Q. Like their walk in life, their childhood, how they
5 grew up.

6 A. Talking about they had it really rough, was in a bad
7 environment?

8 Q. Sure, something like that. Could that be relevant
9 in punishing somebody?

10 A. Well, I still say if you kill somebody, and you just
11 -- and you didn't have to, you just do it for the fun of
12 it -- I mean, that's what it looks like -- I wouldn't
13 have -- no, I wouldn't consider that.

14 Q. Okay. What I'm going to do now is talk to you a
15 little bit about how capital cases are different than
16 other cases. Because most cases the jury just takes care
17 of did the fellow do it or not, is he guilty or not, then
18 the Judge sentences. But as we've been discussing,
19 juries in capital cases actually fix punishment. They
20 decide what the punishment -- or they have an opportunity
21 to decide what the punishment could be. And the rules
22 are a little bit different in that case than any other
23 case. And the rules are different for both sides. And
24 I'm going to explain these aspects of the law to you
25 briefly and ask if you can just follow them. Okay?

1 A. Yes, sir.

2 Q. First off, again, the State would have to prove that
3 aggravation evidence beyond a reasonable doubt to all
4 twelve jurors.

5 A. I understand that.

6 Q. And for -- but voting for the life side, the life
7 penalty, is different because the Judge would instruct
8 each individual juror of the jury that any juror could
9 vote for life for any reason or no reason at all or mercy
10 or just anything they see in the case. Basically any
11 reason. And the way it plays out -- well, is that an
12 aspect of the law that you can respect and follow?

13 A. I can understand that, yes, sir.

14 Q. You could respect other people if they were not ---

15 A. Yes.

16 Q. Okay. And if -- the way it plays out kind of in
17 fact is somebody on the first seat, the front row of the
18 jury, could say, well, you know, I saw something in his
19 relationship with his grandma. That was redeeming to me,
20 and I'm going to vote for life for that. Somebody could
21 say, well, you know, I saw that -- I think he's got a
22 mental health problem, and I'm going to vote for life
23 because of that. Somebody else could say, you know what,
24 I heard what the judge said. And I don't think I can
25 vote for death, and I'm going to vote for life for no

1 reason at all. I don't even have a reason to give to
2 you. And you could see how those three people just can -
3 - they can have a different reason for voting for life.
4 Is that an aspect of the law that you can respect and
5 follow?

6 A. I can understand that, yes, sir.

7 Q. And you'd respect their views?

8 A. I sure would.

9 Q. Okay. They might not necessarily be yours, but you
10 could respect them?

11 A. Right, I can.

12 Q. Okay. And the way that the law describes a decision
13 in a capital case is that it's the juror's individual
14 moral judgement and that if it would harm their
15 conscience to change that, then that would be wrong. And
16 the jury is allowed to come out in a capital case and
17 basically just agree to disagree. Normally when we think
18 about juries, we think about the jury coming back and
19 being in complete agreement, unanimous, in what their
20 result is. But in a capital case, the jury can come back
21 in and say, we've respectfully listened to everybody in
22 deliberations, and we've -- all twelve weren't for death
23 and all twelve weren't for life. And we just agree to
24 disagree. If that happens, the judge would take the case
25 and the judge would sentence, and the case would end. Is

1 that an aspect of the law that you can respect and
2 follow?

3 A. I can respect that, yes, sir.

4 Q. Okay. And the State, the Defense and even yourself,
5 as a juror, would be entitled to fairness not just out
6 here, but also in the jury room. And if things got
7 unfair or hostile, or people were belligerent or bullying
8 somebody in the jury room, could we count on you to maybe
9 send a note out to the Judge saying things aren't fair in
10 here?

11 A. I could do that.

12 Q. And you'd insist that everybody's point of view be
13 respected?

14 A. That's right.

15 Q. Even as the Judge said, they might not even be able
16 to give a reason for it?

17 A. No.

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

19 THE COURT: Madam Solicitor?

20 MS. ADAMS: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. ADAMS:

23 Q. Good afternoon.

24 A. Hi.

25 Q. How are you?

1 A. Fine.

2 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
3 Circuit. And I just have a few follow-up questions for
4 you.

5 A. Okay.

6 Q. What we want to do here today is just make sure that
7 you can be fair not only to the Defendant, but to the
8 State as well and follow the Judge's instructions as he's
9 going to give them in this case.

10 A. Okay.

11 Q. Okay? And we're kind of putting, you know, the cart
12 before the horse here because we're talking about
13 penalty. So we're just assuming that the Defendant has
14 already been found guilty of murder by the jury if you're
15 picked on the jury. Okay? So as the Judge told you as
16 well, you understand now that not every murder is
17 eligible for the death penalty?

18 A. I understand that, yes.

19 Q. Okay. So it has to be aggravated. And the State
20 has to prove to you on the jury, all twelve people, that
21 we have proven an aggravating circumstance beyond a
22 reasonable doubt.

23 A. I understand.

24 Q. Okay? So once the jury finds that there is an
25 aggravating circumstance, the Judge will instruct you

1 that you have to consider the entire evidence that's been
2 presented to you, that you must consider the aggravation
3 and you must consider the mitigation before rendering a
4 decision. Is -- can you follow the Judge's instructions
5 for that?

6 A. I can do that.

7 Q. Okay. Because right now -- do you know anything
8 about this Defendant at this point? Anything about the
9 facts and circumstances of this case?

10 A. Not really. I saw the newspaper this morning. I
11 didn't read it.

12 Q. Is it fair to say that at this point right now,
13 since you haven't heard any of the testimony or the
14 evidence, that you don't know whether life without parole
15 is appropriate or if death is appropriate?

16 A. I have no idea until I've heard the case.

17 Q. So you would have to hear everything?

18 A. I would have to hear the case before I could tell
19 you anything like that.

20 Q. And after you heard everything, if you felt that
21 life without parole was appropriate, could you vote for
22 life without parole?

23 A. Yes, yes.

24 Q. And if you felt death was appropriate, could you
25 also vote for death?

1 A. That's right.

2 Q. Now, the law also requires if the jury does find
3 that death is appropriate that each and every juror sign
4 their name to the sentence sheet. And that's what allows
5 the State to actually execute a defendant. Would you be
6 able to sign your name to that sheet?

7 A. Yes.

8 Q. Okay. Thank you so much. I appreciate it.

9 THE COURT: All right. Any further questions
10 from the Defense?

11 MR. MCGUIRE: Judge, this is where I would ask
12 my questions one through six. And I appreciate the
13 Court's ruling.

14 THE COURT: I overrule the request to ask those
15 questions based on the same rulings prior in the case.

16 MR. MCGUIRE: And Judge, we would just have a
17 small legal matter. Thank you.

18 THE COURT: Well, I've got a question I'm going
19 to ask the juror.

20 In a death penalty case, would you always or
21 automatically vote for the death penalty even though the
22 law provides that you may impose a sentence of life
23 without parole depending upon the circumstances of a
24 particular case and the characteristics of an individual
25 defendant?

1 A. I would listen to everything, and then I would go -
2 - if I thought he got life in prison or if it's the death
3 penalty, like I said, you know, I would have to listen to
4 the case before I could really tell you how, you know,
5 what I would do. But I would be open to listening to it.
6 And, I mean, I haven't got my mind made up that this
7 guy's going to do this or this guy's going do that or the
8 ladies or whatever.

9 THE COURT: All right. If you would, please,
10 go with the bailiff.

11 THE POTENTIAL JUROR: All right.

12 THE COURT: I need to talk to the attorneys for
13 a moment. Thank you very much.

14 THE POTENTIAL JUROR: Yes, sir.

15 (WHEREUPON, Potential Juror 247 exited the
16 courtroom.)

17 MR. MCGUIRE: Thank you very much, Your Honor.

18 THE COURT: Yes, sir.

19 MR. MCGUIRE: Judge, move to strike this juror
20 for cause based on his responses to what would he do in
21 response if somebody was proven guilty of murder. And
22 basically if you don't have to kill somebody, if you're
23 not acting in self-defense or accident, that sort of
24 thing, if you kill ---

25 THE COURT: Well, that wouldn't be murder.

1 MR. MCGUIRE: Sure.

2 THE COURT: Self-defense is an absolute defense
3 to murder.

4 MR. MCGUIRE: Exactly. And unless ---

5 THE COURT: So I mean, he misconstrued the law.

6 MR. MCGUIRE: In his view, if you kill and you
7 didn't have to, it's not justified. He was pretty darn
8 consistent that he was an eye-for-an-eye kind of guy, he
9 or she would get the death penalty. He used the phrase
10 an eye-for-an-eye. He was consistent he'd always -- that
11 would always be his position. And he indicated that
12 background characteristics of the defendant would not be
13 relevant to him fixing punishment. His exact words were
14 he would not consider that. He was the one that threw
15 out sort of an example of mitigation, about having a
16 really rough childhood. And for all those reasons and
17 the reasons I've stated with prior jurors, I would move
18 for cause to strike this juror based on those state and
19 federal grounds.

20 THE COURT: All right. Anything from the
21 State?

22 MS. ADAMS: No, sir, Your Honor. We feel he's
23 qualified.

24 THE COURT: As I say, I have to consider the
25 totality of the voir dire which includes not only the

1 testimony here today, but also the questionnaire. And as
2 much as I dislike saying it, I don't want to see jurors -
3 - I mean, I don't dislike saying it. I just dislike
4 having to say it. I don't want to see jurors abused.
5 Obviously, they come in, like we've said, with honestly
6 held opinions. However, those opinions upon being
7 addressed as to the foundational basis for them, then --
8 what is it -- you find out the true value of it.

9 Inasmuch as it doesn't appear that he would
10 automatically or always give the death sentence, that he
11 would listen to all of the evidence -- and that seemed to
12 be his final analysis -- that is what the law is, and
13 that is what he'd be instructed. So I find that he would
14 be qualified.

15 Ask the juror to join us, please.

16 (WHEREUPON, Potential Juror 247 entered the
17 courtroom.)

18 THE COURT: Thank you, sir. Considering the
19 entire voir dire, I find that Juror 247 will be fair,
20 unbiased, impartial and able to carry out the law as
21 explained to him. Furthermore, I find that the juror's
22 beliefs or attitudes toward the death penalty would not
23 prevent, or substantially impair the performance of his
24 duties as a juror in accordance with the law, the Court's
25 instructions and the juror's oath.

1 So I'm going to find you're qualified as a juror in
2 this case. Now, I think you see that this process takes
3 some time. The process is that we are qualifying
4 individual jurors for a panel of jurors from whom we'll
5 select the actual jury. So this will take some time. It
6 could be next -- I think it will be next week. But
7 you've given your telephone number to the Clerk?

8 THE POTENTIAL JUROR: Yes, sir.

9 THE COURT: All right. She will call you
10 sometime, probably next week, and tell you when to report
11 for the jury selection.

12 THE POTENTIAL JUROR: All right. Thank you.

13 THE COURT: With that, again, the instructions
14 about avoiding any attention to any media or anything
15 else about this continues. All right?

16 THE POTENTIAL JUROR: Thank you.

17 THE COURT: Very good. I look forward to
18 working with you. Thank you, sir.

19 (WHEREUPON, Potential Juror 247 exited the
20 courtroom.)

21 THE COURT: All right. What's the next one,
22 222?

23 MS. ADAMS: Yes, sir.

24 THE COURT: All right. Is there anything about
25 222?

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

2 MR. MCGUIRE: No, sir.

3 THE COURT: All right. Let's ask the juror to
4 join us, please.

5 222.

6 (WHEREUPON, Potential Juror 222 entered the
7 courtroom.)

8 THE COURT: All right. Are you juror 222?

9 THE POTENTIAL JUROR: Yes, sir.

10 **POTENTIAL JUROR 222,**

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

12 **EXAMINATION**

13 BY THE COURT:

14 Q. You will recall on Monday I put all of the jurors
15 under oath. Now, do you understand that you're still
16 under oath and that oath continues throughout these
17 proceedings?

18 A. Yes, sir.

19 Q. You have been provided with a copy of a list of
20 potential witnesses. Have you had an opportunity to
21 review that witness list?

22 A. Yes, sir.

23 Q. Did you recognize any names on the list?

24 A. Yes, sir.

25 Q. And which ones did you recognize?

1 A. Terry Mitchell and -- I'm not sure -- one of the
2 Creamers. Lieutenant Creamer.

3 Q. All right. And Terry Mitchell, who -- how do you
4 know that person?

5 A. I did a job shadowing thing when I was in high
6 school with the both of them.

7 Q. Oh, with both? And that's where ---

8 A. But I haven't spoken to them since.

9 Q. All right. Would that -- if either one or both were
10 witnesses in this case, would that affect your ability to
11 give both the State and the Defendant a fair and
12 impartial trial?

13 A. No, sir.

14 Q. All right. And you're not related by blood or
15 marriage or a close personal friend or business associate
16 or have any other association with any of the other
17 potential witnesses?

18 A. No, sir.

19 Q. All right. Do you also recall my instructions from
20 Monday to avoid all forms of media coverage dealing with
21 this case?

22 A. Yes, sir.

23 Q. Has this caused any problem for you?

24 A. No, sir.

25 Q. All right. Now, the trial of this case will last

1 longer than most cases. It could go from seven to ten
2 days. Other than personal inconvenience, would this pose
3 a serious danger to the health or well-being of yourself
4 or anyone who is dependent upon you?

5 A. No, sir.

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

12 A. Yes, sir.

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 Judge even though you may not agree
16 with that law or think it ought to be some other way?

17 A. Yes, sir.

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

22 A. Yes, sir.

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 to

1 prove innocence or anything else. The defendant doesn't
2 even have to take the stand or offer evidence. And the
3 fact that he might exercise that right cannot even be
4 discussed by the jury. Do you understand that?

5 A. Yes, sir.

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 the defendant guilty or -- either guilty or not
9 guilty?

10 A. Yes, sir.

11 Q. If you were a juror in a death penalty case and if
12 the jury had found the defendant guilty of murder, you
13 would then move to the sentence phase of the trial. Do
14 you understand this?

15 A. Yes, sir.

16 Q. When you hear us refer to a capital case or a death
17 penalty case, what that means is that it is a criminal
18 murder trial where the prosecutor -- in other words, the
19 State -- is seeking the death penalty. Do you understand
20 this?

21 A. Yes, sir.

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

1 A. Yes, sir.

2 Q. Part two, is the sentencing phase where a jury
3 determines the appropriate punishment. Of course, if the
4 defendant is found not guilty, that ends the matter. Do
5 you understand?

6 A. Yes, sir.

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 on to phase two of the trial which is called the
11 sentencing phase of the trial. Do you understand?

12 A. Yes, sir.

13 Q. Now, if you were a juror in the sentencing phase --
14 that is, phase two of a capital murder trial, again,
15 where a jury has already found a defendant guilty of
16 murder -- do you understand that the jury, rather than
17 the Judge, determines the sentence that a jury will --
18 excuse me -- determines the sentence that a defendant
19 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.

25 A. Yes, sir.

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

9 A. Yes, sir.

10 Q. Do you also understand that the jury has two options
11 to consider regarding the sentencing for murder? One
12 option is life in prison which is, under our law -- or
13 which under our law is until death of the defendant
14 without possibility of parole. Do you understand that?

15 A. Yes, sir.

16 Q. The other option is death which in this state is by
17 electrocution or lethal injection. Do you understand
18 that?

19 A. Yes, sir.

20 Q. Therefore, could you, as a juror in the sentencing
21 phase, depending upon the facts including the relevant
22 aggravating and mitigating circumstances and the law as
23 instructed to you, render a sentence of life in prison?

24 A. Uh-huh (affirmative).

25 Q. On the other hand, as a juror in the sentencing

1 phase depending upon the facts including the relevant
2 aggravating and mitigating circumstances and the law as
3 instructed to you, could you render a sentence of death?

4 A. Yes, sir.

5 Q. Very good. Thank you, ma'am. Answer any questions
6 the attorneys might have for you.

7 DIRECT EXAMINATION

8 BY MR. MCGUIRE:

9 Q. Good afternoon ---

10 A. Good afternoon.

11 Q. --- Ms. Juror Number 222. I have to refer to you by
12 number. I'm not being rude.

13 A. That's fine.

14 Q. That's just how I have to do that. I just want to
15 cover one thing kind of quickly. I think you indicated
16 in qualification you have a six-year-old daughter?

17 A. Uh-huh (affirmative).

18 Q. Is it any kind of hardship financially or otherwise
19 for you to serve as a juror?

20 A. No, sir.

21 Q. Okay. Because we're going to be here about ten days
22 or so.

23 A. That -- it wouldn't be a problem.

24 Q. Okay. What I'm going to do is start following up a
25 little bit in more detail. The Judge gave you a good

1 general framework, and I want to talk to you in a little
2 bit more detail.

3 First, I want to talk to you about the kind of case
4 that gets you here on a capital trial, and I'm going to
5 define that case for you. And it's what's called malice
6 murder in South Carolina. That's the unlawful killing of
7 another human being with malice aforethought. Malice
8 aforethought is defined as the killer operating with a
9 black and malignant heart, fatally bent on evil,
10 deliberately, intentionally taking an innocent life.
11 Just based on knowing that, what are you thoughts about
12 the death penalty for that kind of case?

13 A. I think -- honestly, I don't think it's used enough.

14 Q. The death penalty?

15 A. Uh-huh (affirmative).

16 Q. In that kind of case, would the death penalty be
17 your position?

18 A. Yes, sir.

19 Q. Would a life in prison sentence be severe enough for
20 that intentional deliberate kind of killing?

21 A. To me, it would depend on the evidence, or it would
22 depend on the case.

23 Q. Okay. And not all murder cases are death penalty
24 eligible. There has to be an aggravating circumstance
25 added to it to make it even worse. And what I'm going to

1 do is put you kind of on this jury over here, sort of
2 pretend. You and eleven other people have just gone
3 through the first part of a capital trial. And that is,
4 did the fellow do it or not? Is he guilty or not of
5 murder.

6 A. Uh-huh (affirmative).

7 Q. You find him guilty beyond a reasonable doubt of
8 murder. Then the Judge gives you a break. You get to go
9 home. Then you come back in about a day, about twenty-
10 four hours. And then you'd begin to hear why the case is
11 aggravated.

12 And I'm going to ask you -- I'm going to give you
13 some examples of aggravation evidence and then ask your
14 opinion about the death penalty. And as an example, I'm
15 going to give you the situation of the person that you
16 just judged, sat through on the first part, you found him
17 guilty of murder. And then what makes this case worse is
18 that it was actually the second murder that person
19 committed. Could a life in prison sentence ever be
20 appropriate for a double-murder case?

21 MS. ADAMS: Your Honor, that's not the law.
22 He's misstating it.

23 THE COURT: Are you going to tell her that she
24 doesn't have to? That there are other things she's
25 supposed to consider.

1 Q. Well, there would be other evidence, of course.

2 There would be evidence in mitigation. For instance,

3 like background factors of a defendant like his

4 childhood, stuff like that. You'd be able to consider

5 all of that. Knowing that, could a life sentence

6 punishment be appropriate or severe enough for somebody

7 who, for example, murdered twice?

8 A. No.

9 Q. Okay. And what I'm going to do now is talk to you a

10 little bit about publicity. You read, hear anything

11 about the case?

12 A. I heard it on the news the morning I was coming in,

13 but I didn't know that was what I was coming for ---

14 Q. Okay. But you don't know the details?

15 A. --- until I left the other day.

16 Q. Okay. So you don't really have an opinion?

17 A. No.

18 Q. Okay. Capital cases are different from all other

19 cases in that the jury fixes punishment. Most cases that

20 we think of, you know, the jury just handles the did-he-

21 do-it-or-not part, then the judge sentences. So what I'm

22 going to do is walk you through that procedure, walk you

23 through the law, and I'm just going to ask you if you can

24 respect and follow that law. Okay?

25 And as I stated earlier, for the State to even be

1 entitled to ask for the death penalty, they have to prove
2 that aggravation evidence, and they have to prove it to
3 all twelve jurors beyond a reasonable doubt. Everybody
4 has to agree. And that's kind of in line with the way we
5 normally think of juries. Like juries, whatever result
6 they end up delivering, they're all together, all
7 unanimous.

8 And in capital cases, it's actually very different.
9 And the rules are different for both sides. It's a
10 little counterintuitive. And like, the State would have
11 to prove their aggravation evidence beyond a reasonable
12 doubt to all twelve.

13 It's different for the mitigation side or the life
14 in penalty [sic] side because the judge would instruct
15 all the jurors that they could vote for life for any
16 reason, no reason, mercy anything they see in the case.
17 Is that an aspect of the law you can respect and follow?

18 A. Yes.

19 Q. Okay. You could respect other people's -- it might
20 not be your opinion, but you could respect it?

21 A. Uh-huh (affirmative).

22 Q. Okay. And the way it kind of plays out, to give you
23 an example, is that, you know, if this was the jury here,
24 somebody on the first row could say, you know what, I saw
25 something in the case about mental health issues. And

1 that did it for me, and I'm going to vote for life
2 because of that. Somebody else might say, well, you
3 know, I listened to the judge. And I don't think I can
4 vote for death, and I don't even have a reason to give.
5 And somebody else might say, well, you know, I saw
6 something about his relationship with his family that was
7 redeeming. I saw some humanity in that, and that's my
8 reason to vote for life. What I'm getting at is they can
9 all be different.

10 Is that an aspect of the law that you can respect?

11 A. Yes, sir.

12 Q. If other people had those points of view?

13 A. Uh-huh (affirmative).

14 Q. Okay. And again, most times we think of juries, we
15 think of them coming back all unanimous. And in a
16 capital case, it doesn't have to be so. The only time
17 the jury has to be unanimous is for a death sentence.

18 All twelve would have to agree. But of course, there's
19 certain times where not all twelve agree with death, not
20 all twelve agree with life. And it's actually okay for
21 the jury to come in and say, we agree to disagree. And
22 if that happens and they can't go back and really reach a
23 decision, the judge would take the case eventually and
24 sentence. Is that an aspect of the law that you can
25 respect?

1 A. Yes, sir.

2 Q. And the way the law describes an individual juror's
3 decision in a capital case is that it's their own
4 individual moral judgement. And the law says if it would
5 harm their conscience to change that position, that would
6 be wrong. And the State, the Defense and even the jurors
7 themselves are entitled to fairness not just out here,
8 but also the jury room. And if you saw somebody bullying
9 somebody, or if it go hostile or angry and people were
10 trying to change somebody's individual moral judgement,
11 could you pass a note out to the Judge maybe saying, you
12 know what, things aren't fair in here?

13 A. Yes, sir.

14 Q. Okay. We can count on you to do that?

15 A. Yes, sir.

16 Q. All right. Ma'am, that's all I have for you. Thank
17 you very much.

18 A. Thank you.

19 THE COURT: The State?

20 MS. ADAMS: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. ADAMS:

23 Q. Good afternoon. How are you?

24 A. Good, how are you?

25 Q. Good. I'm Chrissy Adams. I'm the Solicitor for the

1 Tenth Circuit.

2 A. Nice to meet you.

3 Q. Nice to meet you. I just want to ask you a few
4 follow up questions because I know it's hard to be where
5 you're sitting and especially talking about a topic such
6 as life or death. It's very serious. And our goal today
7 is just to make sure that you can be a fair and impartial
8 juror for the Defendant as well as for the State. Okay?

9 A. (No verbal response)

10 Q. Assuming that we've already gotten through the first
11 phase -- you understand it's a two-part, right?

12 A. Uh-huh (affirmative).

13 Q. And every murder is not eligible for the death
14 penalty.

15 A. Uh-huh (affirmative).

16 Q. Okay? Once the jury has convicted the Defendant,
17 and we get to the second stage, the State has to prove
18 that aggravating circumstance, the factor that bumps it
19 up to make it eligible for the death penalty beyond a
20 reasonable doubt for twelve jurors. And the Judge is
21 going to instruct you on that.

22 A. Uh-huh (affirmative).

23 Q. And will you be able to follow those instructions?

24 A. Yes, ma'am.

25 Q. Okay. The Judge is also going to instruct you that

1 you have to consider not only the aggravating
2 circumstances, but the mitigating circumstances, if any,
3 that the Defense will present. Will you be able to
4 remain open-minded throughout the whole process and
5 consider everything before you decide if life or death is
6 appropriate?

7 A. Yes, ma'am.

8 Q. Okay. So once you've heard all the aggravation and
9 all the mitigation, if you thought that life was
10 appropriate, would you vote for life?

11 A. Yes, ma'am.

12 Q. Okay. And if -- on the other side, if you thought
13 death was appropriate, would you vote for death?

14 A. Yes, ma'am.

15 Q. Okay. So a death verdict would not be automatic for
16 you; basically you would have to wait and hear all the
17 facts and circumstances?

18 A. Yes, ma'am.

19 Q. Okay. And in this case, you haven't heard the facts
20 and circumstances, have you?

21 A. No.

22 Q. So is it fair to say that even if the Defendant is
23 found guilty of murder, that you don't know right now
24 whether the defendant should receive life or death?

25 A. Uh-uh (negative).

1 Q. You don't know?

2 A. No, ma'am.

3 Q. Because you'd want to wait and hear everything?

4 A. Yes, ma'am.

5 Q. The law also requires that if the jury does decide
6 that death is appropriate, that each and every juror has
7 to sign a sentence sheet.

8 A. Uh-huh (affirmative).

9 Q. And that is actually what the State uses to carry
10 out the execution. And it's a public document. Every
11 juror signs their name. Would you have a problem signing
12 that form?

13 A. No, ma'am.

14 Q. Okay. Thank you so much. I appreciate it.

15 THE COURT: All right. Any further questions
16 from the Defendant?

17 MR. MCGUIRE: No, sir. Just a small legal
18 matter.

19 THE COURT: All right. I'm going to ask you to
20 step out for just a few minutes with the bailiff, please.

21 THE POTENTIAL JUROR: Okay.

22 THE COURT: Thank you, ma'am.

23 (WHEREUPON, Potential Juror 222 exited the
24 courtroom.)

25 THE COURT: All right.

1 MR. MCGUIRE: Thank you, Judge. Move to strike
2 this juror for cause based on the fact that her answers
3 indicated she was pretty much automatic death penalty
4 just on murder. And then in the case of aggravation,
5 double murder, even knowing the kinds of mitigation in
6 the question, she also indicated life would never be
7 appropriate or severe enough for that kind of case. So
8 obviously mitigation evidence is not relevant to her.
9 She's mitigation impaired. She's substantially impaired
10 as a juror. And I'd move to strike her for cause based
11 on the Sixth and Fourteenth Amendment to the United
12 States Constitution and the corresponding state grounds.
13 I just feel if I don't say it, I'm not preserved.

14 THE COURT: All right. What does the State
15 say?

16 MS. ADAMS: Your Honor, obviously we feel that
17 she is qualified. When she was explained that she must
18 consider, she wants to hear the whole entire story before
19 she makes a decision. And I guess, Your Honor, I think
20 the problem is it's the same question every time that
21 elicits these answers. And it's just the way the Defense
22 keeps asking it, and it's an improper question. And we
23 keep going down the same road.

24 THE COURT: Very well. Again, I must take the
25 totality of the voir dire. And in this case, when she

1 was advised that she could consider other matters other
2 than just the fact of a double murder or two murders,
3 that she said that, yes, life without parole could be
4 appropriate as well for murder. The fact does remain
5 that we're looking to eliminate anyone who would ipso
6 facto, absolutely without any question, either vote for
7 death or could never vote for death. And so with that, I
8 find that she is qualified because she does meet that
9 definition.

10 All right. If you'd ask the juror to join us,
11 please.

12 (WHEREUPON, Potential Juror 222 entered the
13 courtroom.)

14 THE COURT: All right. Considering the entire
15 voir dire, I find that Juror Number 222 will be fair,
16 unbiased, impartial and able to carry out the law as
17 explained to her. Furthermore, I find that this juror's
18 beliefs or attitudes toward the death penalty would not
19 prevent or substantially impair the performance of her
20 duties as a juror in accordance with the law and the
21 Court's instructions and the juror's oath.

22 So Madam Juror, I find that you are qualified for
23 this case. Now, as you can see, this process takes some
24 time. And what we're doing is qualifying a pool of
25 jurors from whom the actual jury will later be drawn. So

1 you've given your number to the Clerk of Court?

2 THE POTENTIAL JUROR: Yes, sir.

3 THE COURT: So you can do whatever you want to
4 because this process is going to take some time. And
5 then we'll give you a call.

6 THE POTENTIAL JUROR: Okay.

7 THE COURT: And once you get that call, we'll
8 ask you to come in, and then we'll select the jury at
9 that time. But you -- there's no obligation or anything
10 until that time, until you get the call.

11 THE POTENTIAL JUROR: Okay.

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

13 THE POTENTIAL JUROR: Thank you.

14 THE COURT: I look forward to working with you.

15 THE POTENTIAL JUROR: Thank you.

16 (WHEREUPON, Potential Juror 222 exited the
17 courtroom.)

18 THE COURT: All right. Let's take a short
19 break. By the way, the next one, I think, is 225?

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

21 (WHEREUPON, court stood at recess for a short
22 break.)

23 THE COURT: Are we ready to proceed from the
24 Defendant?

25 MR. MCGUIRE: Yes, sir.

1 THE COURT: From the State?

2 MS. ADAMS: Yes, sir, we're ready.

3 THE COURT: All right, 225. Is there anything
4 from the Defense before we ask the juror to join us?

5 MS. ADAMS: Nothing, sir. Nothing from the
6 State.

7 THE COURT: Nothing from the State?
8 How about from the Defense?

9 MR. MCGUIRE: Judge, the only thing I see on
10 paper is that he's indicated some hearing problems.
11 That's about it.

12 THE COURT: Yeah, it looks like high level or
13 high pitch hearing.

14 MR. MCGUIRE: Yeah.

15 THE COURT: All right. We'll see.
16 All right. Ask the juror to join us, please.

17 (WHEREUPON, Potential Juror 225 entered the
18 courtroom.)

19 THE COURT: All right. Are you Juror Number
20 225?

21 THE POTENTIAL JUROR: Yes, sir.

22 **POTENTIAL JUROR 225,**

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

24 **EXAMINATION**

25 **BY THE COURT:**

1 Q. You will recall on Monday I put all jurors under
2 oath. Now, do you understand that you're still under
3 oath and that oath continues through these proceedings?

4 A. Yes, sir.

5 Q. You have been provided with a copy of a list of
6 potential witnesses. Have you had an opportunity to
7 review that witness list?

8 A. Yes, sir.

9 Q. Did you recognize any names?

10 A. No, sir.

11 Q. All right. Do you also recall my instructions from
12 Monday to avoid all forms of media coverage dealing with
13 this case?

14 A. I have.

15 Q. Has that caused you any problems?

16 A. No.

17 Q. All right. The trial of this case could last more
18 than a week, or it could be as much as ten days. Other
19 than the personal inconvenience this would pose -- other
20 than personal inconvenience this would this pose, would -
21 - other than personal inconvenience, would this pose a
22 serious danger to the health or well-being of yourself or
23 anyone who is dependent upon you?

24 A. No, sir.

25 Q. Among other things we'll be talking about today is

1 penalty. The mere fact that we talk about penalty does
2 not indicate anything about this Defendant or any
3 defendant. Defendants are presumed in law to be
4 innocent. Do you understand this?

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 of this court, and even though
9 you may not agree with that law as I instruct it or think
10 it ought to be some -- or do think it should be some
11 other way, could you listen to, accept, and apply the law
12 as I instruct you?

13 A. Yes, sir.

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

17 A. Yes, sir.

18 Q. In a criminal case, the State has the burden of
19 proving the defendant -- having the -- excuse me. It's
20 been a long day. In a criminal case, the State has the
21 burden of proving guilt. The burden of proof for the
22 State is beyond a reasonable doubt. The defendant has no
23 burden to prove innocence or anything else. In fact, the
24 defendant has no duty to speak or talk or to offer
25 evidence. And that can't even be held against the

1 defendant. Do you understand that?

2 A. Yes, sir.

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

6 A. I could.

7 Q. If you were a juror in a death penalty case and if
8 the jury has found the defendant guilty of murder, you
9 then move to the sentence phase of the trial. Do you
10 understand this?

11 A. I do.

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

17 A. I do.

18 Q. A death penalty trial is divided into two parts.
19 Part one is the guilt phase where a jury determines
20 whether the defendant is guilty or not guilty of murder.
21 Part two is the sentencing phase where a jury determines
22 the appropriate punishment. Of course, if the defendant
23 is found not guilty, that ends the matter. Do you
24 understand that?

25 A. I do.

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

6 A. I do.

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 the jury rather than the
11 judge, determines the sentence that the defendant will
12 receive for the crime of murder?

13 A. I do.

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. Now, aggravating circumstances are
18 facts or details that, when they are present in a case,
19 make the crime of murder more serious or worse. On the
20 other hand, mitigating circumstances are incidents,
21 occurrences, or details of a case that would reduce the
22 severity of the crime of murder. In other words, may
23 reduce the degree of responsibility for the crime. Do
24 you understand these two principles?

25 A. Yes, I do.

1 Q. Aggravating circumstances make it worse; mitigating
2 circumstances make -- reduce the responsibility for it.

3 A. Okay.

4 Q. Do you also understand the jury has two options to
5 consider regarding the sentencing for murder? One option
6 is life in prison which under our law is until the death
7 of the defendant without possibility of parole. The
8 other option is death which in this state is the
9 electrocution or -- or is death by -- which is in this
10 state is by electrocution or lethal injection. Do you
11 understand that?

12 A. I do.

13 Q. Could you, as a juror in the sentencing phase,
14 depending upon the facts including the relevant
15 aggravating and mitigating circumstances and the law as
16 instructed to you, render a sentence of life without --
17 of life in prison?

18 A. Yes, I could.

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
22 instructed to you, could you render a sentence of death?

23 A. Yes, I could.

24 Q. Very good. Answer any questions the attorneys may
25 have.

1 DIRECT EXAMINATION

2 BY MR. MCGUIRE:

3 Q. Good afternoon.

4 A. How are you?

5 Q. I'm good, sir. How are you doing today?

6 A. Fine.

7 Q. I appreciate your patience. I know this is kind of
8 a frustrating ordeal.

9 A. That's fine.

10 Q. I've got to refer to you by number. I'm not being
11 rude or not polite. It's just the way we have to do
12 things.

13 A. All right.

14 Q. I hope you forgive that. What I'm going to do is
15 follow up a little bit more on what the Judge said. He
16 gave you a good framework and some good generalities.
17 But I'm going to go into some more detail right now if
18 that's okay with you.

19 A. That's fine.

20 Q. All right. What I'm going to do is start with the
21 definition of murder. Most people show up to court and
22 they don't actually know the legal definition of murder.
23 You don't happen to know it, do you?

24 A. No. You can explain it to me. I got an idea. I
25 mean ---

1 Q. Okay.

2 A. --- when you take someone's life.

3 Q. Sure. And the exact definition of murder in South
4 Carolina is unlawfully killing another human being with
5 malice aforethought. It's malice murder is the way it's
6 referred to. And malice is described as the killer
7 operating with a black and malignant heart, fatally bent
8 on evil. And it's a deliberate, intentional choice to
9 kill an innocent life.

10 Now, there's also stuff called aggravation evidence
11 which makes that murder, that malice murder, even worse.
12 And what I'm going to do is I'm going to put you on a
13 jury over here kind of in our minds. And you've already
14 gone through the first part of the case. You and eleven
15 other jurors watched a murder trial. At the end of it,
16 you and eleven other jurors convicted the killer of
17 murder. Okay? That deliberate, intentional killing.

18 Then you get to go home, and you come back in about
19 twenty-four hours, about a day break. And that's when
20 you would hear what's called mitigation evidence and
21 aggravation evidence. And I'm going to give you some
22 examples to kind of make those concepts come to light.
23 Okay?

24 A. Okay.

25 Q. And the aggravation evidence in the case, the

1 hypothetical case, the situation that I'm putting you in,
2 involves aggravation evidence of the person that you're
3 judging, say, that was his second murder. And the
4 aggravation would be that he had killed before. Just the
5 same kind of killing. Deliberate, intentional taking of
6 an innocent life.

7 Q. And then you'd hear what's called mitigation
8 evidence. And that's very often -- examples that are
9 very often used would be, for instance, if a defendant
10 was like a drug addict or had a rough childhood. Stuff
11 like that.

12 Now, knowing everything I just told you, what's your
13 view of the death penalty as the appropriate punishment
14 for that kind of aggravated case? Two deliberate
15 intentional killings.

16 MS. ADAMS: Your Honor, he's trying to commit
17 him down the road. It's will he consider all the
18 evidence as instructed by you. He's getting his --
19 trying to get his ---

20 THE COURT: Restate your question.

21 THE POTENTIAL JUROR: I can't hear good either.
22 So ...

23 MS. ADAMS: Oh, I'm sorry.

24 THE POTENTIAL JUROR: I really can't.

25 MR. MCGUIRE: Well, I need to repeat it anyway.

1 THE POTENTIAL JUROR: I heard you, but I didn't
2 hear her.

3 (Laughter)

4 THE POTENTIAL JUROR: Too many guns I've fired.

5 MS. ADAMS: That's okay.

6 THE COURT: All right. Let's -- restate your
7 question because obviously he needs to know more.

8 MR. MCGUIRE: Sure.

9 Q. In that situation, you and eleven other people on
10 the jury convicted a killer of murder. Then you come
11 back and you hear that it's a double murder. It's a
12 second killing. And then you hear, you know, other
13 factors about the defendant like his background and
14 childhood. That sort of thing. Could a life sentence, a
15 life in prison sentence, ever be appropriate or severe
16 enough in that kind of case?

17 A. For the second murder?

18 Q. Yes.

19 A. No.

20 Q. Okay. And you seem pretty sure about that?

21 A. I'm positive.

22 Q. Okay. And these answers are coming from who you are
23 as a person, your idea of what's right and wrong?

24 A. Right.

25 Q. And you seem pretty solid about that?

1 A. I do.

2 Q. Okay. I can't talk you out of that?

3 A. No, not today.

4 Q. Not tomorrow?

5 A. Not tomorrow.

6 Q. Fair enough. What I want to do now is -- well, what
7 about those -- what about those background things about a
8 fellow who's a killer, convicted twice? Would things
9 about his background like if he was a drug addict matter
10 to you? Well, would that be relevant in fixing
11 punishment?

12 MS. ADAMS: Your Honor, he's clearly staking
13 the juror out. He's not explaining the law to him.

14 MR. MCGUIRE: Well ---

15 THE COURT: That's right.

16 MR. MCGUIRE: Okay. I'll just withdraw that.

17 THE COURT: In other words, aggravation -- they
18 don't have to be statutory, they can be anything. I
19 mean, excuse me. Mitigation doesn't have to be
20 statutory, they can be anything.

21 MR. MCGUIRE: Sure.

22 THE COURT: Or nothing.

23 MR. MCGUIRE: Right.

24 THE COURT: It could just be his impression and
25 also an idea of mercy.

1 MR. MCGUIRE: Judge, if I could have just one
2 second.

3 THE COURT: Certainly.

4 (Off record discussion)

5 THE COURT: Do you need some more water? Have
6 you got some down there?

7 THE POTENTIAL JUROR: Yes, sir, I'll take some
8 water.

9 THE COURT: We're all having to have a little
10 water.

11 MR. MCGUIRE: It's been a long day.

12 THE COURT: It has.

13 Q. And sir, I appreciate your candor. There are no
14 right or wrong answers today. Whatever your answers are,
15 they're absolutely yours. And that means they're right.
16 Okay?

17 A. Right.

18 Q. If I ask a bad question or a confusing question or I
19 just don't speak up -- sometimes my voice trails off --
20 you just let me know. Okay?

21 A. All right.

22 Q. All right. Regarding the issues we were talking
23 about before, again, you didn't seem to be kind of wishy-
24 washy about it. You were very certain about your
25 answers.

1 A. Well, I feel like if a man's committed murder -- or
2 a woman -- once they know what they're doing when they do
3 it again -- well, I mean -- and they've been sentenced
4 already, and they commit the same crime -- well, I mean,
5 it shouldn't be any doubt for them, I mean ---

6 Q. I appreciate that.

7 A. --- on what they're doing, I mean ---

8 Q. Sure, sure.

9 A. Right?

10 Q. I appreciate that. And what I'm going to do now is
11 explain how capital cases are different from other cases
12 in South Carolina and see if you can just respect and
13 follow the law in this respect. Okay?

14 A. Okay.

15 Q. And that is, again, as I stated, the only time the
16 State's ever entitled to even ask for the death penalty
17 is when they prove that aggravation evidence beyond a
18 reasonable doubt. All twelve jurors have to agree that
19 it's there. And that's kind of normally how we think
20 about juries. They have to agree, and whatever result
21 they reach, they're all together.

22 A. And the evidence. The evidence ---

23 Q. Right. Sure, they all kind of decide ---

24 A. I agree with that. I mean, I think the evidence
25 should be there.

1 Q. Sure. But it's different with regard to jurors that
2 want to vote for life, if they want to. And what I mean
3 by that is the judge would charge the jury that any
4 individual juror could vote for the life penalty for any
5 reason, no reason, mercy, grace or just anything they saw
6 in the case. A juror could say, you know what, I heard
7 it, I heard about two murders. But I want to vote for
8 life, and I don't even have a reason to give you.

9 Is that an aspect of the law that you can follow and
10 respect?

11 A. Well, I feel like that's probably their belief,
12 that's maybe religious or whatever. You know what I
13 mean?

14 Q. Sure.

15 A. Could I respect it? Yeah, they got a right to their
16 own opinion.

17 Q. Okay.

18 A. But I got a right to mine also.

19 Q. Sure. It's kind of mutual respect?

20 A. Right.

21 Q. Okay. And that's exactly what the law provides for.
22 The law provides that whatever a juror's individual
23 decision is -- it's called their own individual moral
24 judgement based on their walk in life.

25 A. Right.

1 Q. And on a capital case, it's okay to have twelve
2 independent different points of view on the capital case.
3 They don't have to come back all together. For instance,
4 the jury could come back and say -- the foreman could
5 say, you know, Judge, we couldn't all twelve agree on
6 death. We all twelve couldn't agree on life. We've
7 agreed to disagree. And if that happens, that's okay,
8 because the Judge would sentence. He would take the case
9 and sentence, and it would end. I mean, he might say, do
10 it a little bit longer and see if you can reach a verdict
11 together. But if you can't, it's okay to end the day
12 disagreeing.

13 Is that a principle you can follow and respect?

14 A. If that's the way it -- yeah. Yes, I can.

15 Q. I mean, the Judge would tell you that is the law.

16 A. I mean, yeah.

17 Q. Okay.

18 A. Everybody's got a right -- I mean, yeah.

19 Q. Okay.

20 A. If all the evidence is heard and -- yeah, I mean,
21 you'd have to live with it. I mean, I could.

22 Q. Okay. You could live with everybody being -- having
23 their own point of view and agreeing to disagree?

24 A. At a certain point after -- yeah.

25 Q. After deliberations?

1 A. Yeah.

2 Q. Some polite civil political discourse on the case
3 and the evidence?

4 A. Yeah.

5 Q. Now, the State, the Defense and even you as a juror
6 are entitled to fairness not just out here in the
7 courtroom, but also in the jury room. What I mean is the
8 law says that if an individual -- once they reach their
9 individual moral judgement, that it's actually -- if it
10 would harm their conscience to give that up, that that
11 would be wrong.

12 And if things got hostile or angry or belligerent,
13 and people were bullying somebody who had reached their
14 decision and asking them to change it, that would be
15 wrong. Could you pass a note out to the Judge saying,
16 you know, things aren't fair in here, and we need to get
17 things back to being fair? Could you do that?

18 A. Would it be my responsibility to do that?

19 Q. Well, you could poke the foreman in the ribs and
20 say, hey, could you pass a note out to the Judge saying
21 things ---

22 A. I could probably poke him in the ribs if that was
23 his job, you know.

24 Q. If somebody wasn't being fair, you'd poke them in
25 the ribs?

1 A. Oh, yeah.

2 Q. Fair enough. I appreciate that. With regard to the
3 issue of mercy, is mercy something that's freely given
4 and bestowed, or does somebody have to earn that?

5 A. I'd say it's probably given to a certain extent, but
6 you also got to earn it too. I mean, it depends on the
7 circumstance.

8 Q. Okay. Fair enough.

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

11 A. If that's a answer, that's what -- I mean, you know,
12 that's how -- you got to earn it.

13 Q. Oh, I agree.

14 A. You know ---

15 MR. MCGUIRE: And Judge, this is where I would
16 ask my questions one through six pursuant to my motion.
17 And I understand that ---

18 THE COURT: I've already ruled on those
19 motions. The motions have been renewed and overruled.

20 MR. MCGUIRE: And the grounds are within the
21 written motions.

22 THE COURT: The grounds being the same. All
23 right. Anything else?

24 MS. ADAMS: Yes, sir, Your Honor. May I ask
25 him a few questions?

1 THE COURT: Yes, ma'am.

2 CROSS-EXAMINATION

3 BY MS. ADAMS:

4 Q. Good afternoon. How are you?

5 A. Fine.

6 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
7 Circuit. And if I don't speak loudly enough, please let
8 me know. Okay?

9 A. Okay.

10 Q. And we certainly do appreciate your patience.

11 A. You're welcome.

12 Q. What I want to talk to you about is just to make
13 sure that you are able -- if you are chosen to be on this
14 jury, that you could be fair to the Defense as well as
15 the State. Okay?

16 A. I feel like I could.

17 Q. Okay. And when you say you feel like you could, is
18 it because that -- I mean, this is a serious matter,
19 obviously.

20 A. Right.

21 Q. I mean, we are asking you for the death penalty.
22 The Defense would obviously be asking you for life
23 without parole. And it's a serious matter. Would you
24 agree?

25 A. Right, it certainly is. There's a life taken. It's

1 serious.

2 Q. It's very -- right. And the Judge is going to
3 instruct you. If we get to that point, which -- and this
4 is -- because we're kind of putting the cart before the
5 horse here with the second phase of the trial. We are
6 assuming that the Defendant has already been found guilty
7 of murder. Okay? And now, do you understand that not
8 every murder is eligible for the death penalty? Did you
9 know that?

10 A. Well, the first murder or the second murder?

11 Q. Well, not every murder, just in general, is
12 eligible.

13 A. Okay.

14 Q. That was just a situation that ---

15 A. Okay, yeah, I understand that.

16 Q. Okay. In other words, basically what the law says
17 is that there has to be some sort of aggravation to kind
18 of bump it up to make it eligible for the death penalty.
19 Okay. Because every murder, every murder in general, is
20 a deliberate killing of another with malice aforethought.

21 A. Right.

22 Q. Okay? But not all of them ...

23 A. Are aggravated?

24 Q. Right.

25 A. Right.

1 Q. Exactly. And what the law requires the State to do
2 is to prove that aggravation beyond a reasonable doubt.
3 And if you were on the jury, the jurors would unanimously
4 have to find that an aggravation exists. And then you
5 would move on to determine life or death, whichever was
6 appropriate.

7 A. I understand.

8 Q. Okay. And the Judge is going to instruct you that
9 you must consider in that -- in deciding between life and
10 death not only the aggravation, but the mitigation as
11 well. And mitigation, if presented, would be anything
12 that would tend to make you feel that the death penalty
13 wasn't appropriate. In other words, that life would be
14 appropriate. Okay? That's what mitigation is. Do you
15 understand?

16 A. Say it again one more time.

17 Q. Mitigation evidence is basically evidence that would
18 lessen the severity. In other words, that would make
19 you, make the jury, feel that life was appropriate versus
20 death.

21 A. Yeah, okay.

22 Q. Okay. It's not saying that the murder didn't occur,
23 but just that it would make you tend to vote for life
24 over death. That's basically what mitigation is.

25 A. Okay.

1 Q. Now, would you want to hear -- because the Judge
2 would instruct you that you need to hear all of the
3 evidence, which is the aggravation and the mitigation,
4 before rendering a decision?

5 A. Sure, yeah.

6 Q. Okay. So you would want to hear all the evidence?

7 A. Yeah, yes.

8 Q. Okay. So -- and right now, you don't know the facts
9 of this case, do you?

10 A. No.

11 Q. Okay. So sitting there right now, do you know
12 whether life would be appropriate or death would be
13 appropriate in this case?

14 A. I don't know because I don't know the evidence. I
15 mean, I heard very little, you know.

16 Q. And if you heard all the evidence, all the
17 aggravation and mitigation, if you felt that life without
18 parole was appropriate, could you vote for life? If you
19 felt it was appropriate in the circumstances?

20 A. Yeah, if it was appropriate, sure.

21 Q. Because ---

22 A. I mean, yeah, I have to hear it all.

23 Q. Right. And if you felt that death was appropriate,
24 could you vote for death?

25 A. Yes, I could.

1 Q. Okay. Basically what I want to ensure is that you
2 would consider all the evidence in aggravation and
3 mitigation, and even if the jury convicts of murder, that
4 you would not automatically impose the death penalty. In
5 other words, you would want to remain open-minded and
6 hear all the evidence before you make a decision between
7 life and death.

8 A. I can do that.

9 Q. Is that a fair statement?

10 A. I could do that.

11 Q. Okay. You would follow the Judge's instructions and
12 do that?

13 A. Yes, I could.

14 Q. Okay. Thank you very much. I appreciate it.

15 THE COURT: All right. Any further questions
16 from the Defense?

17 MR. MCGUIRE: This is where I would ask my
18 questions one through -- I think I've already said that.

19 THE COURT: You've already said that. Yeah,
20 we've done that.

21 MR. MCGUIRE: I appreciate that, Judge. Thank
22 you, sir.

23 THE COURT: All right.

24 MR. MCGUIRE: No further questions, but I just
25 have a small legal matter.

1 THE COURT: Very good. I've got one question.
2 In a death penalty case, would you always or
3 automatically vote for the death penalty even though the
4 law provides that you may impose a sentence of life
5 without parole, depending upon the circumstances of a
6 particular case and the characteristics of an individual
7 defendant?

8 THE POTENTIAL JUROR: Would I always, depending
9 on the circumstances?

10 THE COURT: Yes, sir.

11 THE POTENTIAL JUROR: I'd have to hear the
12 circumstances, I mean, and know what it was about. No, I
13 wouldn't always. I mean ---

14 THE COURT: I mean, that's the ultimate
15 question.

16 THE POTENTIAL JUROR: Yeah.

17 THE COURT: We want to know if a juror can be
18 fair and impartial.

19 THE POTENTIAL JUROR: I'd have to know the
20 evidence and hear it all.

21 THE COURT: Very good. If you would, go with
22 the bailiff. And I need to take up some matters with the
23 attorneys.

24 (WHEREUPON, Potential Juror 225 exited the
25 courtroom.)

1 THE COURT: All right.

2 MR. MCGUIRE: Thank you, Judge. We would move
3 to excuse this juror for cause based on his responses to
4 the death penalty is the only appropriate punishment for
5 a double-murder case. I think he'd be referred to as
6 what we call specific automatic death penalty. This is
7 the case. This is the case where a prior conviction for
8 murder is going to be the first piece of aggravation
9 evidence, I assume, since it's in the notice, the
10 document seeking death. And he said very adamantly that
11 in that case, no life sentence, that he was death penalty
12 automatic.

13 And based on my inability to ask the questions one
14 through six to uncover his sensitivity towards
15 mitigation, I'd have to say he's been left ---

16 THE COURT: Well, none of your questions deal
17 with mitigation except, I think, the third one might,
18 after you've already fixed his mind on murder cases which
19 are not subject to even the capital punishment. All
20 right. I'm not arguing with you. I'm just trying to say
21 that I have a -- I think I do understand what your
22 position is.

23 MR. MCGUIRE: Yes, sir. And if I -- and that
24 would be based on the, you know, the Sixth and Fourteenth
25 Amendment to the United States Constitution ---

1 THE COURT: All right. Very good. Anything
2 from the State?

3 MS. ADAMS: Judge, we just feel he's qualified
4 based on his answers.

5 THE COURT: All right. Again, I was very
6 careful to ask the witness -- or I say the witness, he's
7 a witness in the fact that he's under voir dire here --
8 that it would have to be a death penalty case. In other
9 words, one that would have one of those aggravating
10 circumstances to include the aggravating circumstances
11 alleged in this case which he was addressed before being
12 told that he had also to consider something else, which
13 is somewhat unfair. But again, that's the way things are
14 done sometimes.

15 But I ask, in a death penalty case, would you always
16 or automatically vote for the death penalty. And he
17 caught me right there, and he didn't say come back
18 automatically, always. Not every -- I don't know. I
19 haven't heard all the evidence. I'd have to hear all the
20 evidence. Now, that is what we're talking about is a
21 fair and impartial -- I gave him that it was a death
22 penalty case, and he didn't -- and he said that he --
23 depending upon the circumstances of a particular case,
24 and the characteristics of the individual, not always.
25 He would have to consider.

1 So with that, I find that he -- again, concerning
2 the totality of the voir dire to include the
3 questionnaire and questions of the juror, I find that he
4 would be qualified. Motion to disqualify denied.

5 All right. Ask the juror to join us.

6 (WHEREUPON, Potential Juror 225 entered the
7 courtroom.)

8 THE COURT: All right. Considering the entire
9 voir dire -- that means all these questions you've been
10 asked -- I find that Juror Number 225 will be fair,
11 unbiased, impartial and able to carry out the law as
12 explained to him. Furthermore, I find that this juror's
13 beliefs or attitudes toward the death penalty would not
14 prevent or substantially impair the performance of his
15 duties as a juror in accordance with the law, the Court's
16 instructions and the juror's oath.

17 Therefore, I find you're qualified. Now, you can
18 see this process takes a little time. But this will be
19 the last time you'll have to subject yourself to these
20 questions or any questions. But we've got to go through,
21 and we're going to qualify a pool of jurors. And then
22 once we get a pool, we'll have to come -- all of you come
23 in, and then we'll select the jury, the actual jury, from
24 that pool. Now, that's going to take us some time.

25 So you've given the Clerk your phone number?

1 THE POTENTIAL JUROR: Yes, sir.

2 THE COURT: All right. So she will call you
3 sometime. It will probably be next week. And then we'll
4 ask you to come in, and if you're selected -- or then
5 we'll begin the trial after the jury is selected.

6 THE POTENTIAL JUROR: Okay, sir.

7 THE COURT: Very good.

8 THE POTENTIAL JUROR: My pager number will be
9 best during work hours.

10 THE COURT: All right. Has she got that?

11 THE POTENTIAL JUROR: It's wrote down.

12 THE COURT: It's written down?

13 THE POTENTIAL JUROR: Yes, sir.

14 THE COURT: All right. Good enough. Thank you
15 very much, sir. And I look forward to working with you.

16 THE POTENTIAL JUROR: Thank you.

17 THE COURT: Thank you, sir.

18 (WHEREUPON, Potential Juror 225 exited the
19 courtroom.)

20 THE COURT: All right. The next is 248.

21 Anything from the Defendant on Juror 248?

22 MR. MCGUIRE: No, sir.

23 THE COURT: Anything from the State?

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

25 THE COURT: All right. Ask 248 to join us,

1 please.

2 (WHEREUPON, Potential Juror 248 entered the
3 courtroom.)

4 THE COURT: Hello.

5 THE POTENTIAL JUROR: Hi, how are you?

6 THE COURT: Are you Juror 248?

7 THE POTENTIAL JUROR: I am.

8 THE COURT: Very good.

9 **POTENTIAL JUROR 248,**

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

11 **EXAMINATION**

12 BY THE COURT:

13 Q. You will recall on Monday I put all of the jurors
14 under oath. Now, do you understand that you're still
15 under oath and this oath continues throughout these
16 proceedings?

17 A. Yes, sir, I do.

18 Q. You have been provided with a copy of a list of
19 potential witnesses. Have you had an opportunity to
20 review that witness list?

21 A. Yes, sir, I have.

22 Q. Did you recognize any names?

23 A. No, sir, I did not.

24 Q. All right. Do you also recall my instructions from
25 Monday to avoid all forms of media coverage dealing with

1 this case? You do remember that instruction?

2 A. Yes, sir, I do.

3 Q. Now, has that caused you any problem?

4 A. No, sir, it has not.

5 Q. Very good. The trial of this case will last more
6 than a normal trial, so it could be as much as a week or
7 ten days. Other than personal inconvenience, would this
8 pose a serious danger to the health or well-being of
9 yourself or anyone who is dependent upon you?

10 A. No, sir, it would not.

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

16 A. Yes, sir, I do.

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, and even though you may not
20 agree with that law or think it ought to be some other
21 way, as I say, accept and apply that law?

22 A. Yes, sir, I could.

23 Q. As instructed?

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 the case?

3 A. Yes, sir, I believe I could.

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 to
7 prove innocence. In fact, a defendant has nothing to
8 prove at all. He is presumed to be innocent. Do you
9 understand that?

10 A. Yes, sir, I do.

11 Q. Could you, depending on the facts and evidence and
12 the law as I would instruct you in a particular case,
13 find the defendant guilty or not guilty?

14 A. Yes, sir, I could.

15 Q. If you were a juror in a death penalty case and if
16 the jury has found the defendant guilty of murder, you
17 would then move to the sentence phase of the trial. Do
18 you understand this?

19 A. Yes, sir.

20 Q. When you hear us refer to a capital case or a death
21 penalty case, what we mean is that it is a criminal
22 murder trial where the prosecutor -- in other words, the
23 State -- is seeking the death penalty. Do you understand
24 this?

25 A. Yes, sir.

1 Q. Now, a death penalty trial is divided into two
2 parts. Part one is the guilt phase where a jury
3 determines whether the defendant is guilty or not guilty
4 of murder. Part two is the sentencing phase where the
5 jury determines the appropriate punishment. Now, of
6 course, if the defendant is found not guilty, that ends
7 the matter, and there's no further consideration. Do you
8 understand?

9 A. Yes, sir.

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

15 A. Yes, sir.

16 Q. Now, if you were a juror in the sentencing phase --
17 that is, phase two of a capital murder trial, again,
18 where a jury has already found a defendant guilty of
19 murder -- do you understand that the jury, rather than
20 the judge, determines the sentence that a defendant will
21 receive for the crime of murder?

22 A. Yes, sir.

23 Q. In a capital sentencing trial, the jury's function
24 is to determine the appropriate punishment based upon the
25 circumstances of the crime and the characteristics of the

1 individual defendant. Do you understand that?

2 A. Yes.

3 Q. Now, aggravating circumstances are facts or details
4 that, when they are present in a case, make the crime of
5 murder more serious or worse. On the other hand,
6 mitigating circumstances are incidents, occurrences or
7 details of a case that would reduce the severity of the
8 crime of murder. In other words, may reduce the degree
9 of responsibility for the crime. In other words, on one
10 side you have aggravating circumstances which make the
11 crime of murder worse, and on the other side, you have
12 mitigating circumstances which would lessen the
13 responsibility for that murder. Do you understand that?

14 A. Yes, sir.

15 Q. Do you also understand the jury has two options to
16 consider regarding the sentencing for murder? One option
17 is life in prison which, in South Carolina, is life until
18 death without parole. Do you understand that?

19 A. Yes, sir.

20 Q. The other option is death which in this state is by
21 electrocution or lethal injection. Do you understand
22 that?

23 A. Yes, sir.

24 Q. Therefore, could you, as a juror in the sentencing
25 phase, depending upon the facts including all relevant

1 aggravating and mitigating circumstances and the law as
2 instructed to you, render a sentence of life in prison?

3 A. Yes, sir.

4 Q. On the other hand, as a juror in the sentencing
5 phase, depending upon the facts including 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. Please answer any questions that the
10 attorneys might have for you.

11 DIRECT EXAMINATION

12 BY MR. MCGUIRE:

13 Q. Good evening, I guess I should say.

14 A. Good evening.

15 Q. You've been waiting a while, haven't you?

16 A. That's okay.

17 Q. Okay. I apologize. Sometimes Court is not the
18 fastest thing. It's not my fault, not the Judge's fault,
19 not the State's fault. It's just the way things go
20 sometimes.

21 A. That's quite all right.

22 Q. And I have to refer to you by Number 248. I'm not
23 being rude. Just the way I have to do it, so if you
24 could forgive me that too. What I'm going to do, ma'am,
25 is talk to you in a little bit more detail for the things

1 that we're here for. The Judge gave you some very good
2 guidelines and some very good general principles, but I'm
3 going to build upon that a little bit.

4 A. Uh-huh (affirmative).

5 Q. What I'm going to do is I'm going to start with
6 defining murder as it exists in South Carolina. You
7 don't happen to know the legal definition of murder in
8 South Carolina, do you?

9 A. I do not.

10 Q. Okay. Most people don't. In fact, almost everybody
11 does not unless you're a lawyer. It's actually called
12 malice murder. That's our definition of murder. It's
13 the unlawful killing of another human being without -- no
14 legal justification. And malice aforethought is
15 described as the killer acting with a black and malignant
16 heart, fatally bent on evil and intentionally,
17 deliberately choosing to take an innocent life. Are you
18 with me?

19 A. Yes.

20 Q. Okay. And then because that kind of murder just by
21 itself is not eligible for the death penalty, it has to
22 be what's called an aggravated murder, even worse than
23 that. And what I'm going to do is to help walk us
24 through and talk about these principles. I'm going to
25 get you in your mind just to put yourself in this jury

1 box over here where you and eleven other people have
2 heard a murder case. A deliberate, intentional killing.
3 And you and eleven other jurors found that killer guilty
4 of murder.

5 And then you went home. You get about a twenty-
6 four-hour break. Then you come back and rejoin your
7 eleven other jurors in the box. And then you would start
8 to hear evidence about the penalty, death or life in
9 prison. And the first evidence you would start to hear
10 would be what's called aggravation evidence, the stuff
11 that would make the murder even worse.

12 And to give you an example, the aggravation
13 evidence, let's say it would be the person you're judging
14 had killed before. So basic -- now you're sitting in
15 judgement of somebody who's murdered twice. And then
16 you'd hear what's called mitigation evidence. And that
17 would be stuff about the person, the killer's background
18 like his childhood, whether he's a drug addict. Stuff
19 like that.

20 Now, based on everything I've told you, what is your
21 opinion about the death penalty, as the appropriate
22 punishment for that double murder case?

23 A. The other case?

24 MS. ADAMS: Your Honor, I'm sorry. Your Honor,
25 he's asking -- he's not instructing her on the law.

1 THE COURT: I understand. I'm sure he's going
2 to fully inform the witness -- the juror what he's asking
3 sometime.

4 MR. MCGUIRE: Absolutely.

5 THE COURT: In other words, even in a capital
6 case, that's not normally a decision she has to make, the
7 only choice she has to make.

8 MR. MCGUIRE: Sure. Well, let me ask it
9 another way.

10 THE COURT: You want to tell her that?

11 MR. MCGUIRE: I'll just ask it another way.
12 Sometimes it's the simpler way.

13 THE COURT: Okay. Maybe that will be better.

14 Q. That case that we talked about, two intentional
15 deliberate murders, the aggravation evidence and the
16 other background evidence of the killer I talked about,
17 would a life in prison penalty ever be severe enough or
18 appropriate for that kind of double-murder case?

19 MS. ADAMS: Your Honor?

20 THE COURT: Again, that's not the question. Is
21 it -- could she only give death for that offense?
22 Absolutely would she only give death? Is that what
23 you're asking?

24 MR. MCGUIRE: I mean, I'm assuming you're --
25 I'm assuming there's an objection and you're sustaining

1 it.

2 THE COURT: I'm trying to get us off of, quote
3 unquote, fishing expeditions and things of that nature
4 and just get it down to asking this question. Or ask the
5 question if she can follow the law. And of course, the
6 law has to be -- what is it -- what the law is, not what
7 she might think it is or anything else because that's how
8 she's going to have to try the case.

9 MR. MCGUIRE: Sure.

10 Q. And ma'am, what I'm after is your personal opinion,
11 your views as just a person who's not a lawyer. And I
12 want to put you back in that situation that we're talking
13 about where you and the eleven other jurors convicted a
14 killer of murder. And then you learned that that's his
15 second murder. So we're talking about that double-murder
16 situation. And you've heard that background evidence
17 that I also talked about that the Judge referred to as
18 mitigation evidence. And could a life in prison penalty
19 be severe enough or appropriate in that kind of case?

20 MS. ADAMS: And Your Honor, again, he's trying
21 to commit her.

22 THE COURT: That's right. I'm going to let him
23 ask his question. Go ahead. Overruled.

24 A. The other case has already been tried and he's
25 served time for that case?

1 Q. Yes.

2 A. Then I'm not responsible for that first case. I'm
3 responsible for the case I'm on if I'm in the jury box.
4 I didn't serve on that other case. So this one would be
5 the one -- or the second one you're talking about would
6 be the one that I should be focused on and making a
7 decision on.

8 Q. Sure. And -- but of course, you'd be instructed by
9 the Judge, and the law would require you, to take into
10 account that first murder in fixing punishment for the
11 second murder..

12 A. Okay. I guess I wasn't clear on what you were
13 saying about that.

14 THE COURT: Well, the law also requires that
15 she consider something else too.

16 MR. MCGUIRE: Sure.

17 THE COURT: It's not just -- what is it -- the
18 first murder. That's the only reason it becomes a
19 capital case is if there has been a first murder in the
20 scenario that you presented. So that's not -- she
21 doesn't end there, unless that's what her opinion is that
22 she ends there.

23 MR. MCGUIRE: Well, let's find out.

24 THE COURT: All right.

25 A. Okay. If the Judge is saying this is the action,

1 this is what you are to consider as to whether this is
2 capital or not, then, yes, this is capital. And I
3 believe that the death penalty would not be sufficient
4 for that. That's my opinion.

5 Q. The death penalty would not be sufficient for the
6 second murder?

7 A. Not to go back just to stay in jail for that. I'm
8 sorry, but that's my opinion.

9 Q. You would want them to stay in jail forever?

10 A. I believe so. I believe that would be the proper
11 remedy given unless my jurors that I'm on -- if I'm the
12 only one left to decide death forever or death by lethal
13 injection, I have to decide based upon what the jury
14 discusses.

15 Q. Sure.

16 A. And make my mind up based on everything that we --
17 the evidence, all of it. That's my opinion.

18 Q. Okay.

19 A. And I don't know if I've answered it ---

20 Q. No, you're doing a great job. The only right
21 answers are yours.

22 A. --- like you wanted to. Some of that wasn't clear.

23 THE COURT: That's just it. The thing is, just
24 as the gentleman says, the answers are your answers. And
25 there are no right or wrong answers.

1 THE POTENTIAL JUROR: Okay. Thank you.

2 THE COURT: We just want to be sure that you
3 have all of the information you need to make a decision.

4 THE POTENTIAL JUROR: Yes, sir.

5 THE COURT: All right.

6 Q. Right. If it's your opinion, then it's the right
7 answer.

8 A. Okay. That's right. Because I kind of feel like I
9 was going in circles with this for a couple of minutes.

10 Q. It's a hard concept for everybody here. What I'm
11 going to do now is just walk you briefly through how a
12 sentencing procedure works, talk to you about the law and
13 just ask you if you can respect and follow the law.

14 Okay? I mean, that's kind of what we're all here for.

15 And capital cases are different from any other
16 criminal case because normally the jury just takes care
17 of that did-he-do-it-or-did-he-not, is-he-guilty-or-not,
18 then the judge sentences. In a capital case the jury has
19 the opportunity to fix punishment themselves. And all
20 jurors have different opinions. For instance, you know,
21 your views about the life penalty being appropriate are
22 perfectly legitimate. They're yours. They're valid.
23 And other jurors might have a different opinion or lean a
24 certain different way. And that's okay.

25 And what I'm going to do is tell you how the rules

1 work and how they're a little bit different. For
2 instance, as I stated before, the only way the State can
3 even be entitled to ask for a death sentence is if they
4 prove aggravation evidence beyond a reasonable doubt to
5 all twelve jurors. Okay?

6 And then on the life in prison side, it's completely
7 different. The Judge would charge each individual juror
8 that they could vote for life in prison for any reason,
9 no reason, grace, mercy or anything they saw in the case.
10 Is that a principle of the law that you could respect and
11 follow?

12 A. Yes, sir.

13 Q. And the way it plays out or could play out by way of
14 example is you could have a juror in the front row say,
15 you know -- you know, I saw something in the case about
16 the defendant's mental health. And that resonated with
17 me, and that's my reason for voting life. Another juror
18 maybe on the back row could say, you know, I saw
19 something about him and his relationship with his child
20 or his grandma. And that resonated with me. I saw
21 something redeeming in that, so I'm going to vote for
22 life because of that. Another juror might say, you know,
23 I listened to the judge. And he said I didn't even have
24 to have a reason to vote for life. I'm going to vote for
25 life, and I can't even give you a reason.

1 Could you respect those people's different views?

2 A. Yes, I could.

3 Q. And do you see what I'm getting at is that when it
4 comes to voting for the life penalty, the jury doesn't
5 have to agree on the same reason. They could all have
6 their own individual reason. That's what the law
7 provides. Is that an aspect of the law that you could
8 follow if other people had those views?

9 A. Yes, sir.

10 Q. Okay. And if they were your views, you'd want them
11 to be respected?

12 A. Exactly.

13 Q. And what the law allows for or what the law calls a
14 juror's decision in the sentencing case is that it's not
15 a right or wrong decision. It's just that individual's
16 moral judgement based on their walk in life. And the law
17 says that if it would harm their conscience to give up
18 their individual moral judgement, that would be wrong.
19 And the State, the Defense and you as a juror are
20 entitled to fairness not just out here in the jury room,
21 but also -- I mean, out here in the courtroom, but you're
22 also entitled to fairness in the jury room. Everybody
23 is.

24 And if you saw a juror reach their on individual
25 moral judgement and things got unfair or people started

1 to gang up on somebody, could we count on you, just say
2 maybe pass a note to the Judge, send a note out with the
3 foreman, saying, you know, things aren't fair in here,
4 and we got to stop this?

5 A. I'm certain I could.

6 Q. Okay. And another way a capital case is different
7 from other cases is that it's okay for the jury to come
8 back and agree to disagree. Normally we think about the
9 jury coming back and being unanimous in whatever the
10 result is, but it's not so in capital cases. The jury
11 could come back and say, you know what, all twelve
12 couldn't vote for death, all twelve couldn't vote for
13 life. We're stuck. And the Judge would eventually take
14 the case away and sentence and end the case. Is that an
15 aspect of the law you could respect?

16 A. Yes, sir.

17 Q. Okay. The last question I have for you is, is mercy
18 -- the concept of mercy, is mercy freely given, or is it
19 earned?

20 A. It's earned.

21 Q. Okay. Thank you very much, ma'am.

22 THE COURT: All right. Questions from the
23 State?

24 MS. ADAMS: Yes, sir.

25 CROSS-EXAMINATION

- 1 BY MS. ADAMS:
- 2 Q. Good evening. How are you?
- 3 A. I'm fine, how are you?
- 4 Q. Good. I'm Chrissy Adams, and I'm the Solicitor for
- 5 the Tenth Circuit. And we do appreciate your patience.
- 6 A. Oh, that's okay.
- 7 Q. I just want to make sure that I'm not confused from
- 8 all the questions from Mr. McGuire. Okay?
- 9 A. Uh-huh (affirmative).
- 10 Q. And what we want to just ensure is that you can be
- 11 fair to the Defense and to the State. And that's why
- 12 we're asking you about your feelings on the death
- 13 penalty. Because we're kind of right now putting the
- 14 cart before the horse here. We are assuming that if you
- 15 were seated at that box that you've already found the
- 16 defendant guilty of murder. Okay? Now, do you
- 17 understand that not every murder in South Carolina is
- 18 eligible for the death penalty?
- 19 A. Yes, I do.
- 20 Q. Okay. And that the State has to prove some sort or
- 21 aggravating circumstance. And the jury would have to
- 22 find that beyond a reasonable doubt that there was an
- 23 aggravation. Kind of like the prior murder that Mr.
- 24 McGuire was talking about. We would have to prove to you
- 25 that a defendant committed a prior murder. You would

1 have to find that unanimously before you could go to life
2 or death.

3 A. Yes, I do.

4 Q. Okay. So the Judge is also going to instruct you
5 that you need to consider all the evidence which means
6 not only the aggravation but the mitigation. Now, do you
7 understand what mitigation evidence is?

8 A. Yes.

9 Q. Okay. In that situation, would you automatically
10 vote for life?

11 A. For mitigating?

12 Q. For -- if you have a prior murder and you've heard
13 all the evidence in aggravation so you have determined
14 that a defendant has committed a prior murder. That's
15 the aggravating circumstance.

16 A. And I've heard all the evidence?

17 Q. You've heard all the -- yes, all the evidence in
18 aggravation and all the mitigation. Would you consider
19 it all?

20 A. Yes, I would.

21 Q. Okay. Would you -- once you've considered it all,
22 no matter what it is, would you automatically vote for
23 life?

24 A. I guess I'm a little confused. And I don't mean to
25 go in circles here again. But mitigating, the way I

- 1 understood it, it's different from aggravating.
- 2 Q. Yes.
- 3 A. Aggravating is more serious. So you're asking me
- 4 would I automatically vote for life without parole?
- 5 Q. Yes, that's what -- life in this state is life
- 6 without parole.
- 7 A. Life without parole.
- 8 Q. Die in prison.
- 9 A. Yes.
- 10 Q. You would -- so you think that life without parole
- 11 is worse than the death penalty?
- 12 A. Oh, no, no, no.
- 13 Q. Oh, okay.
- 14 A. No, I'm sorry. That's what I'm saying. I'm just a
- 15 little overwhelmed by the way some of this is being put
- 16 to me. But I'm sorry.
- 17 Q. No, please don't be sorry. That's why we're asking
- 18 you these questions. And I think I'm being confusing.
- 19 So hang on one second. Let me try this. Mitigation --
- 20 mitigating evidence is evidence that tends to lessen the
- 21 severity of the crime, so to speak ---
- 22 A. Okay.
- 23 Q. --- that would make you tend to think that life
- 24 without parole was more appropriate than death.
- 25 A. Yes, exactly. I understand that.

1 Q. And what the law states is that before you consider
2 life or death -- you know, before you determine if a
3 defendant should get life or death -- that you look at
4 the whole picture. In other words, once you find a
5 defendant guilty of murder, you don't automatically do
6 one or the other.

7 A. Right.

8 Q. Okay.

9 A. I would not automatically do one or the other.

10 Q. Okay.

11 A. You're going to have to consider everything you're
12 hearing based on all of the evidence and testimony.

13 Q. So -- and right now you don't know anything about
14 this specific case. I know we gave you that
15 hypothetical, but you don't know anything about this
16 case?

17 A. No.

18 Q. All right. So you don't know whether life is
19 appropriate or death is appropriate?

20 A. No, I do not.

21 Q. But you could follow the Judge's instructions and
22 listen to aggravation and mitigation and vote for life if
23 you -- if you felt that was appropriate, you could vote
24 for life ---

25 A. Yes.

1 Q. --- after you heard it?

2 A. Yes.

3 Q. And then if you felt death was appropriate, you
4 could vote for death as well?

5 A. Yes.

6 Q. Okay. The law also requires if you're picked on the
7 jury, that if the jury determines that life is
8 appropriate, that each and every juror sign his or her
9 name to the sentence sheet which is what allows the State
10 to actually execute a defendant. And that's a public
11 document. So your name would be listed along with the
12 eleven other jurors. Could you sign that piece of paper?

13 A. Yes, I could.

14 Q. Okay. Thank you. And I apologize for being
15 confusing.

16 A. That's okay. You weren't. I'm just ---

17 Q. No. It's a scary place to be.

18 A. Sometimes it's hard to follow everything that's
19 being asked of you. But I understand fully what we're
20 talking about now.

21 Q. Thank you very much.

22 A. Thank you.

23 THE COURT: All right. Anything from the ---

24 MR. MCGUIRE: Nothing at all, Judge.

25 THE COURT: From the State?

1 MS. ADAMS: No, sir.

2 THE COURT: All right. Considering the entire
3 voir dire, I find that Juror Number 248 will be fair,
4 unbiased, impartial and able to carry out the law as
5 explained to her. Furthermore, I find that the juror's
6 beliefs or attitudes toward the death penalty would not
7 prevent or substantially impair the performance of her
8 duties as a juror in accordance with the law and the
9 Court's instructions and the juror's oath.

10 Therefore, I find you're qualified. And you've
11 given the Clerk your telephone number?

12 THE POTENTIAL JUROR: I've given her three.

13 THE COURT: Three telephone numbers? All
14 right. That's great. The thing is obviously this
15 process takes some time, so it will probably next week
16 before you receive a call. When you do receive that
17 call, it will be to come in probably the next day.
18 Because what we're doing is we're creating a pool of
19 qualified jurors. And from that pool of jurors, we're
20 going to select the ones that will actually sit in on the
21 trial of this case.

22 So until you get the call, you're free to do
23 whatever you would do. But once you get the call, do
24 come in. And at that time, we'll consider -- and then
25 we'll select the jury.

1 THE POTENTIAL JUROR: Okay.

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

4 THE POTENTIAL JUROR: Thank you, Solicitor.

5 MS. ADAMS: Thank you.

6 MR. MCGUIRE: Thank you, ma'am.

7 (WHEREUPON, Potential Juror 248 exited the
8 courtroom.)

9 THE COURT: All right. This is the last one
10 for the day, 249. Anything -- excuse me. I'm sorry.

11 MS. ADAMS: I don't think so, Your Honor. I do
12 think, Your Honor, just for the record, the way Mr.
13 McGuire is asking the questions is clearly confusing
14 these jurors and trying to box them into a corner. I
15 mean, I can't decide if I did the right thing on this one
16 anyway because she said she would automatically vote for
17 life. And I think she was just confused. And it's the
18 way the questions are being asked. And they're not
19 giving the whole entire picture. And we keep going
20 through this over and over with each juror.

21 THE COURT: I understand, but he insists on
22 doing it. So we'll deal with it each time it comes up.
23 But again, I do -- and I'll say it one more time, that I
24 feel that the -- what we're trying to find is a juror who
25 is not automatically or so wedded to one position or the

1 other, but particularly to the death sentence. I don't
2 want -- I think that's what the Court has said, that it's
3 someone that is unalterably in favor of or opposed to the
4 death penalty in every case by definition and who cannot
5 perform their duties. And those are the extremes that,
6 in spite of the evidence, would automatically vote to
7 convict or impose the death penalty or automatically vote
8 to acquit or impose a life sentence.

9 So anyway, we'll try to do the best we can.

10 MS. ADAMS: Okay. Thank you, Judge.

11 THE COURT: All right. Anything about 249?

12 MR. MCGUIRE: No, sir.

13 THE COURT: All right. Ask 249 to join us.
14 From the State? Anything from the State?

15 MS. ADAMS: Nothing, Your Honor.

16 THE COURT: All right. Ask 249 to join us.

17 (WHEREUPON, Potential Juror 249 entered the
18 courtroom.)

19 THE COURT: Hello. All right. Are you Juror
20 249?

21 THE POTENTIAL JUROR: Yes, sir.

22 THE COURT: Very good.

23 **POTENTIAL JUROR 249,**

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

25 **EXAMINATION**

1 BY THE COURT:

2 Q. You will recall on Monday I put all jurors under
3 oath. Now, do you understand that you're still under
4 oath and this oath continues throughout these
5 proceedings?

6 A. Yes, sir.

7 Q. You have been provided with a copy of a list of
8 potential witnesses. Have you had an opportunity to
9 review that witness list?

10 A. Yes, sir.

11 Q. All right. Do you recognize any names?

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. No, sir.

18 Q. The trial of this case will last longer than the
19 usual case. It could be a week or maybe even as much as
20 ten days. Other than personal inconvenience, would this
21 pose a serious danger to the health or well-being of you
22 or anyone who is dependent upon you?

23 A. No, sir.

24 Q. Among other things -- ma'am?

25 A. No, sir.

1 Q. All right. Among other things we will be talking
2 about today will be penalty. The mere fact that we talk
3 about penalty does not indicate anything about this
4 Defendant or any defendant. Defendants are presumed
5 under our law to be innocent of all charges. Do you
6 understand that?

7 A. Yes, sir.

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

12 A. Yes, sir.

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

17 A. Yes, sir.

18 Q. In a criminal case, the State has the burden of
19 proving guilt. The burden of proof on the State is
20 beyond a reasonable doubt. A defendant has no burden to
21 prove innocence. Do you understand that?

22 A. Yes, sir.

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

1 A. Yes.

2 Q. If you were a juror in a death penalty case, and if
3 the jury had 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 that?

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 and there's no
19 further proceedings. Do you understand?

20 A. Right.

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

1 A. Yes, sir.

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

8 A. Yes, sir.

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

13 A. Yes, sir.

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. Do you understand?

17 A. Yes, sir.

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

23 A. Yes, sir.

24 Q. Do you also understand that the jury has two options
25 to consider regarding sentencing for murder? One option

1 is life in prison which under our law is until death of
2 the defendant without possibility of parole. The other
3 option is death which in this state is by electrocution
4 or lethal injection. Do you understand that?

5 A. Yes, sir.

6 Q. Could you -- now, therefore, could you, as a juror
7 in the sentencing phase depending upon the facts
8 including the relevant aggravating and mitigating
9 circumstances and the law as instructed to you, render a
10 sentence of life in prison?

11 A. I don't know about that. I can certainly do the
12 death penalty, but I don't know about life in prison.

13 Q. That's -- no, there's no right answer or wrong
14 answer. No, we want to know what your answer is.

15 A. Okay.

16 Q. All right. On the other hand, as a juror in the
17 sentencing case depending upon the facts including the
18 relevant aggravating and mitigating circumstances and the
19 law as instructed to you, could you render a sentence of
20 death?

21 A. Yes.

22 Q. Please answer any questions the attorneys may have.

23 DIRECT EXAMINATION

24 BY MR. MCGUIRE:

25 Q. Ma'am, despite of having a boyish face, my ears are

1 not as good as they used to be.

2 A. Oh, I'm sorry.

3 Q. And I didn't hear one of your last responses to the
4 Judge. Could you repeat it for me?

5 A. I said I wasn't sure about a life sentence, but I
6 could do a death sentence.

7 Q. Okay. Okay. I thought you said something along
8 those lines. But I'm just, like I said, not as young as
9 I used to be. What I want to do is talk to you a little
10 bit more in detail about these principles of murder and
11 punishment. Okay? And I appreciate your candor about
12 saying you're not sure if you could ever vote for a life
13 sentence for a murder case. And there are only -- the
14 only right answers -- your answers, whatever they are,
15 are right answers. There's no wrong answer. Whatever
16 your personal opinion or view is, that is your correct
17 personal view. Okay?

18 A. Okay.

19 Q. And I'm going to start with -- so we can talk about
20 punishment for murder, what I'm going to do is give you
21 the legal definition of murder in South Carolina so we're
22 on the -- sort of starting from the same page.

23 A. Okay.

24 Q. And the Judge would tell you that murder in South
25 Carolina is the unlawful killing of a human being

1 unlawfully and with malice aforethought. It's referred
2 to as malice murder. And malice is defined as the killer
3 operating with a black and malignant heart, fatally bent
4 on evil, deliberately and intentionally taking an
5 innocent life. It's not accident, not self-defense. The
6 person knew what they were doing. Not insane. That sort
7 of thing. A deliberate killing. Are you with me?

8 A. Yeah.

9 Q. Okay. And the State would then bring you evidence,
10 if you were to sit on this jury, of what's called
11 aggravation evidence. And that is -- aggravation
12 evidence or aggravating factors are anything that would
13 make the murder an aggravated murder. It's kind of
14 circular reasoning there with my definition. But I'm
15 going to give you an example to kind of bring it to life
16 for you. Let's say that you and eleven other jurors sat
17 on a murder case and you found the defendant, the killer,
18 guilty of malice murder.

19 And then you'd get to go home for about a day
20 because they give you a little break in a capital case.
21 And you'd come back and you'd start to decide, to fix the
22 punishment for the person, the killer. And you would be
23 presented evidence called aggravation evidence and what's
24 called mitigation evidence.

25 And mitigation evidence is stuff about like the

1 killer's background like if he was a drug addict, rough
2 childhood. Something like that. And let's say
3 hypothetically when you come back -- and you are with
4 those eleven jurors. You've already found the fellow
5 guilty beyond a reasonable doubt of murder. You're back
6 for the penalty. And the aggravation evidence you hear
7 in that case is, for example, the person had killed
8 before. And that's the aggravation evidence because the
9 second murder would be worse for somebody who had killed
10 before. So you'd be judging somebody who had murdered
11 twice.

12 And you'd also be able to hear the evidence that I
13 talked about called mitigation evidence which would be
14 the drug addict or the childhood evidence that we just
15 discussed. Would a life in prison sentence ever be
16 appropriate or severe enough to punish that double-murder
17 case?

18 A. No.

19 Q. Okay.

20 THE COURT: Pardon me? I'm sorry.

21 THE POTENTIAL JUROR: No.

22 Q. And I read your questionnaire. And it sounds like
23 you put some pretty careful thought into your answers?

24 A. I tried.

25 Q. And you're under oath today, and you appreciate the

1 gravity of the matter?

2 A. Yes.

3 Q. And your answers are not off-the-cuff or flippant?

4 You've giving some serious thought to these answers, is
5 my take?

6 A. I tried to, yes, sir.

7 Q. Okay. And your answers are based on your value
8 system as a person?

9 A. Yes.

10 Q. What's right and wrong, your moral opinions?

11 A. Yes.

12 Q. And I can't change those?

13 A. I don't think so.

14 Q. Hard as I might try, I don't think I want to change
15 your moral opinion, ma'am. And I appreciate that. Like
16 I said, no wrong answers.

17 MR. MCGUIRE: If I could have just one second,
18 Judge.

19 (Off record discussion)

20 Q. I'm just going to review your answers on your
21 questionnaire and just maybe ask you a little bit about
22 them. You indicated regarding the death penalty, I
23 believe in the death penalty. Someone who deliberately
24 takes the life of another deserves the same treatment.
25 Is that still your view?

1 A. Yes, sir.

2 Q. Okay. And with regard to a life in prison sentence,
3 you indicated that it might not be ---

4 MR. MCGUIRE: Well, I want to withdraw that
5 question, Judge.

6 Q. A lot of people put on their questionnaire that they
7 had a concern about a life sentence would allow somebody
8 to live a long time in prison and the taxpayers would
9 have to feed them, clothe them, have guards watch them.
10 That sort of thing. Is that something that you think
11 about? Well, you've obviously thought about it because
12 you put it on your questionnaire. Is that something that
13 you've held, sort of that knowledge, for a long time, or
14 do you know where you learned that?

15 A. Yeah, I guess I've had it for a while. I just -- it
16 just seems like a life is wasted just sitting there, and
17 it is a burden on society to support that person when
18 they've killed someone.

19 Q. Okay. What I'm going to do now is to briefly just
20 walk you through the sentencing rules or the law of a
21 capital proceeding and just ask if you can respect that
22 ---

23 A. Okay.

24 Q. --- and follow these rules. When the State presents
25 evidence, they have a higher burden than the Defendant.

1 And they have to prove their evidence of aggravation
2 beyond a reasonable doubt to all twelve jurors.

3 And it's completely different for the other side,
4 the Defendant's side or the life side, the life in prison
5 side. The Judge would charge each individual juror that
6 they could vote for life for any reason, no reason,
7 mercy, grace. Whatever they see in the case, whatever
8 piece of evidence or fact they see in the case. If a
9 juror took that position, a fellow juror took that
10 position of, say, voting for life for maybe even no
11 reason at all, could you respect their position?

12 A. Respect it? Yes, I can respect their position. I
13 wouldn't change mine probably.

14 Q. Ma'am?

15 A. I wouldn't change my position.

16 Q. And that's what I'm getting at. Because there's
17 some special rules with regard to the capital sentencing
18 procedure. And it actually allows a jury to disagree at
19 the end of the day.

20 A. Okay.

21 Q. Most cases, when we think about juries and the
22 result they deliver, we always think that they all agreed
23 and it was a unanimous decision. It's not so in capital
24 cases. The Judge would tell the jury that each
25 individual juror could find a piece of evidence to vote

1 for life on, and they can all be different. In fact, you
2 could have eight, ten, twelve different versions of why
3 somebody should receive a life sentence. No jurors would
4 have to agree on the same reason. Is that a principle of
5 law you could respect and follow if somebody had that
6 view?

7 A. Yes.

8 Q. Okay. And again, the jury wouldn't have to
9 necessarily agree except in one situation. For the State
10 to be entitled to a death verdict, they would have to
11 convince each and every juror, a unanimous jury, that a
12 death sentence was appropriate. All twelve don't have to
13 agree on life. In fact, the jury could come in and say,
14 Judge, we couldn't all twelve vote life, we couldn't all
15 twelve vote death. We're somewhere in the middle. And
16 the Judge could eventually take the case away from the
17 jury and sentence and end the case right there.

18 Is that an aspect of the law you could respect?

19 A. Yes.

20 Q. Okay. And the State, the Defendant and you, as a
21 juror, are entitled to fairness not just out here in the
22 courtroom, but also the jury room, the deliberation room.
23 And if things progressed beyond polite, civil discussion,
24 if it looked like somebody was going to be belligerent or
25 hostile, could you send a note out to the Judge saying,

1 you know what, things aren't fair in here?

2 A. Yes.

3 Q. And the reason I ask you that is because the law
4 describes an individual's decision in a capital case as
5 them coming to their own moral judgement based on their
6 walk in life. And the law says that if it would do harm
7 to their conscience to change that position, that that
8 would be wrong. And if you saw people trying to do that,
9 again, you could pass a note out to the Judge?

10 A. Yes.

11 Q. Okay. With regard to mercy, is mercy freely given
12 and bestowed, or is it earned?

13 A. It's freely given.

14 Q. Okay.

15 MR. MCGUIRE: If I could have just one second,
16 Judge. Oh, and Judge, this is where I'd ask my questions
17 one through six that I presented grounds ---

18 THE COURT: All right. Overruled for the same
19 reasons.

20 MR. MCGUIRE: Sure. And if I could just have
21 one second.

22 (Off record discussion)

23 MR. MCGUIRE: Ma'am, that's all I have for you.
24 Thank you so very much.

25 THE COURT: All right. Any questions from the

1 State?

2 MS. ADAMS: Your Honor, just a couple.

3 THE COURT: Yes, ma'am.

4 MS. ADAMS: If that's okay.

5 CROSS-EXAMINATION

6 BY MS. ADAMS:

7 Q. Good evening. I'm going to be real brief. I'm
8 Chrissy Adams. I'm the Solicitor for the Tenth Circuit.
9 I appreciate your honesty. And I want you to know there
10 are no right and wrong answers. And we really -- we just
11 want your opinion no matter what that is.

12 A. Okay.

13 Q. Okay? If you're sitting on that jury and that jury
14 determines that the Defendant is guilty of murder, okay,
15 beyond a reasonable doubt and we reach the second phase,
16 which is penalty, and the jury, same jury, finds that the
17 aggravating circumstance that bumps it up to make it
18 death penalty eligible is a prior murder. Despite the
19 mitigation that you've heard, because you'll hear the
20 entire case, would you automatically vote for death?

21 A. Yes.

22 Q. Thank you very much. I appreciate it. Thank you.

23 THE COURT: All right. Anything from the
24 Defendant?

25 MR. MCGUIRE: We would just have a small legal

1 matter, Judge.

2 THE COURT: All right. If you would, please,
3 ma'am, go with the bailiff. It will be just a few
4 minutes.

5 THE POTENTIAL JUROR: All right.

6 THE COURT: Thank you, ma'am.

7 THE POTENTIAL JUROR: Yes, sir.

8 (WHEREUPON, Potential Juror 249 exited the
9 courtroom.)

10 MS. ADAMS: We do not object, Your Honor.

11 THE COURT: Pardon?

12 MS. ADAMS: We don't object to his motion.

13 THE COURT: All right. I think so. I think
14 that's appropriate. Because again -- and forgive me --
15 this is one of those cases ---

16 Is it closed?

17 MS. BYFORD: Yes, sir.

18 THE COURT: This is one of the cases where I do
19 feel that given everything that -- what is it -- she
20 would have difficulty, as she said, changing her
21 position. And she would have to do that in order to
22 follow the charge on the law. So it works both ways, so
23 I'm going to disqualify her ---

24 MR. MCGUIRE: Yes, sir.

25 THE COURT: --- or find her not qualified.

1 MR. MCGUIRE: Yes, sir, Your Honor.

2 THE COURT: All right. Ask the juror to join
3 us, please.

4 (WHEREUPON, Potential Juror 249 entered the
5 courtroom.)

6 THE COURT: All right. Juror Number 249.
7 Considering the entire voir dire, I find that Juror
8 Number 249 should be excused from serving on the trial of
9 this case. Now, that is because I think, as I mentioned
10 on the first day, there are two reasons I ask the
11 question can you be fair and impartial jurors. One is to
12 be sure that the parties, both the State and the
13 Defendant, have impartial jurors or fair jurors.

14 But more importantly to me or as importantly to me
15 is that you did not ask to be here. You were summoned to
16 be here. And I don't want to create any problem for you.
17 Because if you are sitting on a jury and something comes
18 up that might create some conflict or consternation in
19 your consideration that would make you uncomfortable, and
20 you really couldn't be a good juror in the sense of being
21 able to focus on something without any sort of
22 complication. And particularly when you have strongly
23 held moral convictions, no one should compromise. And I
24 certainly don't want to even suggest that is necessary.

25 In this case, I want to thank you for being here and

1 patient with the Court and also for your candor in
2 answering those questions. And they were very difficult
3 questions. You saw that even I had a little problem with
4 some of them. But the thing is you were absolutely
5 candid and open. And that is exactly what I needed to
6 hear. But I also heard that you have very good strong
7 convictions. And perhaps that's the type of thing that
8 we do need, and I certainly don't want to tamper with
9 those. All right.

10 THE POTENTIAL JUROR: Right.

11 THE COURT: Now, on another case, you know,
12 some other type of case, you would be an excellent juror.
13 It's just that this one I think you might have a little
14 problem. So I'm going to excuse you.

15 THE POTENTIAL JUROR: Thank you.

16 THE COURT: Thank you so much, and I do
17 appreciate, as I say, your patience with the Court.

18 THE POTENTIAL JUROR: Thank you.

19 THE COURT: Thank you, ma'am.

20 (WHEREUPON, Potential Juror 249 exited the
21 courtroom.)

22 THE COURT: All right. I understand we've got
23 thirty-two qualified?

24 MS. ADAMS: Yes, sir.

25 MS. BYFORD: Yes, sir.

1 THE COURT: We've got three panels tomorrow.

2 We have three panels we can call for Monday. And then we
3 have half a panel or at least, I think, five. Is that
4 right?

5 MADAM CLERK: We have five.

6 THE COURT: All right. We have five without
7 getting any of those that we have put at the end. We
8 also have a weather situation now, and that's what I've
9 been discussing with the Clerk. Our thought before we
10 ran into the weather was that they put the message on.
11 And I think we did. Did we do that, Madam Clerk?

12 MADAM CLERK: We did, Your Honor.

13 THE COURT: The message on the machine after
14 six o'clock was that the panels that were -- no.
15 Everyone was to come in Monday. In other words, the ones
16 that come in tomorrow will come in anyway. But everyone
17 is going to come in Monday, and we'll reconstitute the
18 panels or just announce the ones. Then as I say, there
19 are only enough for three -- does that complete three?
20 In other words, six on each one?

21 MADAM CLERK: (No verbal response)

22 THE COURT: All right. And then we have five
23 left over. So what we would do is draw those nine Monday
24 if we don't have any problem. And then hear -- I mean,
25 not nine, eighteen -- and then hear those on Monday and

1 then figure out what we're going to do with the balance.
2 But since we've got three coming in anyway, I've also
3 instructed the Clerk that if they have to close the
4 courthouse tomorrow for travel that she is to instruct
5 the media that those panels will report Monday with the
6 other. But that will only be a media message. It won't
7 be the message that the balance of the jurors who are not
8 on tomorrow's panel.

9 MADAM CLERK: Yes, Your Honor.

10 THE COURT: All right. Is there any problem
11 with that, Solicitor?

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

13 THE COURT: Any problem with that?

14 MR. MCGUIRE: No, sir.

15 THE COURT: In other words, y'all, too, listen
16 to the news to find out.

17 MR. MCGUIRE: We'll be watching it closely.

18 THE COURT: But if the courthouse is closed
19 tomorrow, then we'll excuse the jurors until Monday.

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: And that will be everybody will
22 come back Monday.

23 MS. ADAMS: Your Honor, what if they're not
24 listening to the news because they were told not to? I
25 just had that thought.

1 THE COURT: Well, no. We're talking about the
2 news about taking children to school and things like
3 that.

4 MS. ADAMS: Okay, okay.

5 THE COURT: Not about the case.

6 MS. ADAMS: Okay.

7 THE COURT: That's why I'm saying, that's what
8 we're, you know, depending on, that they realize that
9 they're not to report.

10 MS. ADAMS: Okay.

11 THE COURT: Just in other words, I think we're
12 the only jury this week.

13 Isn't that right, Madam Clerk?

14 MADAM CLERK: Yes, Your Honor, that's correct.

15 THE COURT: So the message will be all jurors
16 just do not -- or will report Monday.

17 MS. ADAMS: Got you. Okay.

18 THE COURT: All right. Anything else from the
19 State?

20 MS. ADAMS: No, sir.

21 THE COURT: All right. From the Defense?

22 MR. MCGUIRE: No, sir.

23 THE COURT: I either look forward to seeing you
24 in the morning, or I look forward not to seeing you.

25 (Laughter)

1 MR. MCGUIRE: Yes, sir.

2 (WHEREUPON, court stood at recess for the day at
3 approximately 6:55 p.m.)

4 *** END OF VOLUME IV ***

5

County of Anderson

State of South Carolina,

Plaintiff,

February 1 through 18, 2010

-VS-

Raymondeze Rivera,

Transcript of Record

Defendant.

Volume V of X

The Honorable Alexander Macaulay, Judge

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 5, 2010

2

(WHEREUPON, court convened with all parties present

3

and the following proceedings were had commencing at

4

approximately 9:41 a.m.)

5

THE COURT: All right. We're starting panel

6

ten?

7

MS. BYFORD: Yes, sir.

8

THE COURT: And the first is number 252.

9

MS. ADAMS: Yes, sir.

10

THE COURT: Anything from the State before we

11

bring the juror in?

12

MS. ADAMS: No, sir, Your Honor.

13

THE COURT: Anything from the Defense?

14

MR. MCGUIRE: No, sir.

15

THE COURT: Very good. Ask number 252.

16

(WHEREUPON, Potential Juror 252 entered the

17

courtroom.)

18

THE COURT: All right. Are you Juror Number

19

252?

20

THE POTENTIAL JUROR: Yes, sir.

21

POTENTIAL JUROR 252,

22

BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

23

EXAMINATION

24

BY THE COURT:

25

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

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

4 A. I sure do.

5 Q. You have been provided with a list of potential
6 witnesses in this case. Have you had an opportunity to
7 review that witness list?

8 A. I have.

9 Q. Did you recognize any names?

10 A. No, sir.

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

13 A. I have.

14 Q. Has this caused you any problem?

15 A. No, sir.

16 Q. Very good. Thank you. The trial of this case will
17 last approximately a week to ten days or maybe even
18 longer. In other words, it's longer than a normal case.
19 Other than personal inconvenience, would this pose a
20 serious danger to the health or well-being of yourself or
21 anyone dependent upon you?

22 A. No, sir.

23 Q. Among other things we'll be talking about today is
24 penalty. But the mere fact that we talk about penalty
25 does not indicate anything about this Defendant or any

1 defendant. Defendants are presumed in law to be
2 innocent. Do you understand?

3 A. Yes, sir.

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

10 A. I sure could.

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. I could.

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
19 whatsoever to prove innocence or anything else. The
20 defendant doesn't even have to take the stand. He is
21 presumed to be innocent. Do you understand?

22 A. I understand.

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

1 A. I could.

2 Q. If you were a juror in a death penalty case and if
3 the jury had found the defendant guilty of murder, you
4 would then move to the sentence phase of the trial. Do
5 you understand?

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 in the first part, that ends the
19 matter and there's no second part. Do you understand
20 that?

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, 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, 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 a defendant guilty of
6 murder -- do you understand that the jury rather than the
7 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. Do you understand that?

14 A. Yes, sir.

15 Q. Now, you determine whatever the appropriate sentence
16 is based on the circumstances of the crime and any of the
17 characteristics of the individual defendant.

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 of the defendant or the

1 degree of the defendant's responsibility for the crime.

2 Do you understand that?

3 A. Yes, sir.

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

5 to consider regarding the sentencing for murder? One

6 option is life in prison which under our law is until

7 death of the defendant without possibility of parole.

8 The other option is death which in this state is by

9 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 instruct it to you, render a sentence of life

16 imprisonment?

17 A. I could.

18 Q. On the other hand, as a juror in the sentencing

19 phase, depending upon the facts including the 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. I could.

23 Q. Very good. If you would, please, sir, answer any

24 questions the attorneys may have.

25

DIRECT EXAMINATION

1 BY MR. MCGUIRE:

2 Q. Good morning, Juror Number 252. How are you doing
3 this morning?

4 A. I'm fine. How about you?

5 Q. I'm good, sir. I have to refer to you by number.
6 That's just the way we do things. I'm not being rude or
7 impolite.

8 A. That's good.

9 Q. If you would just forgive me that.

10 A. All right.

11 Q. I noticed on your questionnaire that you were
12 drafted into the Army in '55?

13 A. Yes, sir.

14 Q. Korea was before my time. If I'm not mistaken, that
15 would be Korea, correct?

16 A. No, sir, I didn't serve in Korea.

17 Q. Okay. It was right on the heels of Korea, I guess?

18 A. It was right before then.

19 Q. Okay. Fair enough. My history is not that great.
20 But you lived it.

21 Let me ask you a little bit about publicity. Have
22 you read, heard, seen anything about this case?

23 A. Heard a little, but I didn't pay it no attention.

24 Q. Okay. You don't really know the details, facts or
25 have an opinion?

1 A. No, sir.

2 Q. Okay. Thank you, sir. What I'm going to do is go
3 into a little bit more detail than the Judge gave. He
4 gave you some very good guidelines and some framework,
5 but I'm going to go into a little bit more detail, talk
6 to you about murder and punishment. Is that okay with
7 you.

8 A. That's fine.

9 Q. Okay. And I'm going to start with the legal
10 definition of murder in South Carolina. The judge would
11 tell the jury that murder is defined as the unlawful
12 killing of another human being with malice aforethought.
13 It's defined as malice murder in South Carolina. And
14 malice is described in the law as the killer operated
15 with a black and malignant heart, fatally bent on evil,
16 deliberately, intentionally taking an innocent life. Are
17 you with me?

18 A. Yes, sir.

19 Q. Okay. And what I want to do -- I'm going to put you
20 in a situation in time and place. And that is I'm going
21 to put you in this jury box over here as if you were
22 selected on the jury. Okay?

23 A. Okay.

24 Q. And you and your eleven other jurors are sitting on
25 a murder case, some other place, some other time. And

1 you are judging a defendant for murder. Okay?

2 A. Yes, sir.

3 Q. And then at the -- it's a capital case. And then
4 you and your eleven jurors would have found the person
5 guilty of murder. That's the first part of the trial.

6 Okay? Are you with me?

7 A. Yes, sir.

8 Q. And then you'd get a break. You'd get to go home
9 for about a day, then you'd come back. And that's when
10 you and the eleven other jurors would start to fix
11 punishment. That would be your journey to decide what
12 the right punishment is. And you'd be able to hear
13 what's called aggravation evidence and mitigation
14 evidence. And the judge would instruct you that you
15 could consider these things in deciding punishment.

16 And I want to talk to you a little bit about
17 examples of what aggravation and what mitigation, okay,
18 so you can have a full balance opinion of what we have
19 here. And mitigation evidence can be things about like a
20 defendant's background, like did they have a rough
21 childhood where they grew up poor, where they were a drug
22 addict. Something like that. Okay? And aggravation
23 evidence is something -- some kind of fact that the
24 prosecutor brings forward to make the murder even more
25 heinous or worse than that malice murder that we were

1 talking about. Okay?

2 A. Yes, sir.

3 Q. And I'm going to give you an example where you and
4 your eleven other jurors hear that background kind of
5 evidence about a defendant, and you'll also hear some
6 aggravation evidence. And in the situation I'm going to
7 ask you about, I'm going to give you an example. And the
8 example would be that the aggravation evidence would be
9 that the person you were judging, the person you've
10 already convicted of murder, had committed a murder
11 before. And you'd be charged with fixing punishment for
12 somebody who had killed deliberately twice. And my
13 question to you, sir, is a life in prison punishment
14 severe enough to punish that kind of murder, that double
15 murder?

16 A. I wouldn't consider the case before that. I
17 consider the case before me at the present time. And I
18 would weigh the evidence, and I would base my opinion on
19 that.

20 Q. Okay. So just the fact that a case involved, say,
21 an aggravating factor of two murders, you don't
22 necessarily have your mind made up as to the appropriate
23 penalty?

24 A. No, sir.

25 Q. Okay. You could fairly consider both life ---

1 A. I'd consider the case before me now, and I'd weigh
2 the evidence.

3 Q. Okay. Fair enough. And would things about the
4 defendant's background like his childhood, whether he's a
5 drug addict, would those things be relevant in fixing
6 punishment for a murder case?

7 A. I'd consider it.

8 Q. Okay. When you say consider, would it be a factor
9 ---

10 A. I believe a person that's brought up in a drug or
11 poor surroundings, I think that should be weighed with
12 the evidence.

13 Q. I noticed on your questionnaire that you're involved
14 in some charities with regard to boys homes; is that
15 right?

16 A. I support them.

17 Q. Okay. And those boys homes generally, I would
18 imagine, involve disadvantaged boys and boys that have
19 kind of ---

20 A. That's true.

21 Q. Okay. What I'm going to do now, sir ---

22 MR. MCGUIRE: Oh, judge, this is where I would
23 ask my six questions. And I understand the Court's
24 ruling.

25 THE COURT: Exactly, for the same reasons that

1 took place on the record and I declined to permit you to
2 ask the six questions.

3 MR. MCGUIRE: Thank you very much, Judge.

4 Q. And what I want to ask now is I'm going to ask you
5 if you can respect and follows some aspects of the law
6 that the Judge will tell you about if you're selected on
7 the jury. Okay?

8 A. Okay.

9 Q. And a capital case where the State is asking for the
10 death penalty is different from all cases in South
11 Carolina. And that's because the jury gets to fix
12 punishment. Normally a jury just concerns themselves
13 with did the fellow do it, is he guilty or not. And if
14 there's a guilty verdict, the judge sentences. That's
15 the normal way. But in a capital case, the jury actually
16 has the opportunity to fashion punishment. And the two
17 choices would be a death penalty or a life in prison
18 penalty.

19 Now, the rules are different for both sides in that
20 kind of sentencing hearing. Remember how we talked about
21 you'd hear the first part of the case, you'd get a break,
22 then you'd come back with the eleven other jurors. When
23 that part of the case starts, the rules are actually a
24 little bit different for both sides. The State has to
25 prove aggravation evidence beyond a reasonable doubt to

1 all twelve jurors. They all have to agree that it's
2 there, that it's there beyond a reasonable doubt. And
3 it's completely different for the life and penalty [sic]
4 side or the Defense side. The judge would charge every
5 juror that any juror could vote for life based on any
6 reason, no reason, mercy, grace or anything they see in
7 the case. And the jurors don't have to agree. Is that
8 an aspect of the law you can follow?

9 A. I could follow that.

10 Q. Okay. And the way that plays out is, for instance,
11 if you were on this jury in this jury box over here with
12 eleven other people, somebody in the first row could say,
13 I saw something about the defendant's upbringing. He had
14 a real tough row of it growing up. And that did it for
15 me, so I'm going to vote for life for that. Somebody
16 else might say, you know, I saw something about the
17 defendant's mental health. And that resonated with me,
18 and that would be my vote for life. That's why I would
19 vote for life. And somebody else could say, you know, I
20 listened to the judge, and he said I could vote for life
21 for no reason at all. That's where I am. I just can't
22 vote for death. I'm going to vote for life, and I can't
23 even give you a reason. Is that an aspect of the law
24 that you could follow?

25 A. I could follow that.

1 Q. Okay. And the law describes when a juror in a
2 capital case makes up their mind, when they come to their
3 decision, it's called their own individual moral judgment
4 based on their walk in life. And the law says if it
5 would do violence to or harm their conscience to change
6 that, that would be wrong. Could you respect the
7 individual moral judgment of all the other jurors?

8 A. I could.

9 Q. And the State and the Defense and even jurors are
10 entitled to fairness not just out here in the courtroom,
11 but also in the deliberation room. And of course, we
12 expect polite, civil discourse in deliberations. But if
13 things got hostile, if things -- if people started
14 ganging up or building somebody and it wasn't there,
15 could you send a note out to the Judge and say it's not
16 fair in here?

17 A. I could.

18 Q. Okay. You'd want your opinion to be respected?

19 A. I would want to be respected.

20 Q. Okay. I'm going to ask you about the concept of
21 mercy. Is mercy freely given and bestowed, or is it
22 earned?

23 A. Well, I would give mercy to a person.

24 Q. Okay. I thank you, sir. That's all I have for you.

25 A. Thank you.

1 Q. Yes, sir.

2 THE COURT: Any questions?

3 MS. ADAMS: Just a few follow-up, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. ADAMS:

6 Q. Good morning. How are you?

7 A. Good morning.

8 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
9 Circuit. And thank you so much for your honest answers
10 that you've given this morning. I just had a couple of
11 follow-ups. Basically as you sit here today, you do not
12 know the facts and circumstances of this case, correct?

13 A. Yes, ma'am.

14 Q. Okay. So you don't know whether or not this
15 Defendant, until you hear all the evidence, aggravation
16 and mitigation, should receive life or death?

17 A. I would weigh the evidence. And based on that
18 evidence, I would decide what should be done.

19 Q. Okay. Now, the law requires that if you are
20 selected on the jury that each and every juror has to --
21 if the jury decides that death is the appropriate
22 punishment, each and every juror has to sign his or her
23 name to the sentence sheet. And that is what the State
24 actually uses in order to carry out the execution. Would
25 you be able to sign your name to that public document to

1 allow the State to kill a defendant?

2 A. Based on the evidence, I have to decide whether I
3 would do that or not. But I could.

4 Q. Okay. So if you felt that the death penalty was
5 appropriate, you could sign your name to the document?

6 A. I could.

7 Q. Okay. Thank you so much.

8 A. You're welcome.

9 THE COURT: All right. Anything else from the
10 Defendant?

11 MR. MCGUIRE: No, sir, Your Honor.

12 THE COURT: Anything from the State?

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

14 THE COURT: All right. Considering the entire
15 voir dire -- that's the questions we've been asking as
16 well as your questionnaire -- I find that Juror 252,
17 Number 252, will be fair, unbiased, impartial and able to
18 carry out the law as explained to him. Furthermore, I
19 find that the juror's beliefs or attitudes toward the
20 death penalty would not prevent or substantially impair
21 the performance of his duties as a juror in accordance
22 with the law, the Court's instructions and the juror's
23 oath.

24 So you are qualified to sit on the jury. As you can
25 see, this process takes some time.

1 THE POTENTIAL JUROR: Yes, sir.

2 THE COURT: Now, we're going to qualify a pool
3 of jurors from whom the actual jury will be selected at a
4 later time. In order to do that, I'm going to run into
5 next week to qualify the jurors. So you are free to do
6 whatever you want to do or go about your business. Now,
7 you have given the Clerk your telephone number?

8 THE POTENTIAL JUROR: Yes, sir.

9 THE COURT: All right. You will receive a
10 call, once we've qualified a significant number of
11 potential jurors, to report in. Then if you would, come
12 in.

13 THE POTENTIAL JUROR: Yes, sir.

14 THE COURT: I noticed that you were in mountain
15 climbing in the Army.

16 THE POTENTIAL JUROR: Yes, sir.

17 THE COURT: Were you in the Tenth ---

18 THE POTENTIAL JUROR: Tenth Mountain Division.

19 THE COURT: --- Division? All right. Very
20 good. They are still around, aren't they?

21 THE POTENTIAL JUROR: There's still a lot of
22 them down in Afghanistan.

23 THE COURT: I noticed that.

24 THE POTENTIAL JUROR: And Iraq.

25 THE COURT: Yes, sir. All right. Very good.

1 And I thank you very much.

2 THE POTENTIAL JUROR: Yes, sir.

3 THE COURT: You'll be hearing from us.

4 THE POTENTIAL JUROR: Yes, sir.

5 THE COURT: Thank you.

6 THE POTENTIAL JUROR: Thank you.

7 (WHEREUPON, Potential Juror 252 exited the
8 courtroom.)

9 THE COURT: All right. The next one is Number
10 261. Is there anything from the Defendant about Juror
11 261?

12 MR. MCGUIRE: No, sir.

13 THE COURT: From the Defense?

14 MS. ADAMS: Not from the State.

15 THE COURT: Very good.

16 Ask Juror 261, please.

17 (WHEREUPON, Potential Juror 261 entered the
18 courtroom.)

19 THE COURT: All right. Are you Juror Number
20 261?

21 THE POTENTIAL JUROR: I am.

22 POTENTIAL JUROR 261,

23 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

24 EXAMINATION

25 BY THE COURT:

1 Q. You will recall on Monday I put all jurors under
2 oath. Now, do you understand that you're still under
3 oath and that oath continues throughout these
4 proceedings?

5 A. I do.

6 Q. You have been provided with a copy of a list of
7 potential witnesses. Have you had an opportunity to
8 review that witness list?

9 A. I have.

10 Q. Did you recognize any names on that list?

11 A. No, sir.

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

14 A. Yes, sir.

15 Q. Has this caused you any problem?

16 A. No, sir.

17 Q. Very good. Thank you. Now, the trial of this case
18 could last more than the normal case. So it could last
19 as much as a week to ten days or maybe even more. Other
20 than personal inconvenience, would this pose a serious
21 danger to the health or well-being of yourself or anyone
22 who is dependent upon you?

23 A. No, sir.

24 Q. Among other things today we'll be talking about
25 penalty. But the mere fact that we talk about penalty

1 does not indicate anything about this Defendant or any
2 defendant. All defendants under our law are presumed
3 innocent. Do you understand?

4 A. Yes, sir.

5 Q. If you were a juror in a criminal case, could you
6 listen to the law and accept and apply that law as I
7 would instruct you as the Judge of the court even though
8 you may not agree with that law or think it ought to be
9 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 or anything whatsoever. The defendant
20 does not even have to testify or offer evidence. He
21 would still be presumed innocent. Do you understand?

22 A. Yes, sir.

23 Q. Could you, depending on the facts and evidence and
24 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 had found the defendant guilty of murder, you
4 would then move to the sentence phase of the trial. Do
5 you understand?

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 in the first part, that ends the
19 matter and there's no further proceedings. Do you
20 understand that?

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, you would then move
25 on to phase two of the trial which is called the

1 sentencing 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,

5 where a jury has already found a defendant guilty of

6 murder, do you understand that the jury rather than the

7 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. Do you understand that?

14 A. Yes, sir.

15 Q. Now, aggravating circumstances are the facts or

16 details that, when they are present in a case, make the

17 crime of murder more serious or worse. On the other

18 hand, mitigating circumstances are incidents, occurrences

19 or details of a case that would reduce the severity of

20 the crime of murder. In other words, may reduce the

21 degree of responsibility of the defendant for the crime.

22 Do you understand that?

23 A. Yes, sir.

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

25 to consider regarding the sentencing for murder? One

1 option is life in prison which under our law means until
2 death without possibility of parole. The other option is
3 death which is in this state -- which in this state is by
4 electrocution or lethal injection. Do you understand
5 that?

6 A. Yes, sir.

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

12 A. Yes, sir.

13 Q. On the other hand, as a juror in the sentencing
14 phase, depending upon the facts including the 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, sir.

18 Q. Very good. If you would, please, sir, answer any
19 questions the attorneys may have.

20 DIRECT EXAMINATION

21 BY MR. MCGUIRE:

22 Q. Good morning, Juror Number 261.

23 A. Good morning.

24 Q. It's a little awkward for me to refer to you by
25 number. If you would forgive me that.

1 A. Yeah, that's fine.

2 Q. I'm not being rude. I'm going to ask you a little
3 bit about publicity. See, hear, read anything about this
4 case?

5 A. No.

6 Q. Okay. And are you from Georgia?

7 A. I am.

8 Q. Okay. And you've got a brother and a brother-in-law
9 in law enforcement?

10 A. That's correct.

11 Q. Okay. And you have two brothers with DUIs. Are
12 these the same brothers or different?

13 A. No, they're different.

14 Q. Okay. And with regard to the DUIs and their
15 prosecution, do you hold any bias or grudges against law
16 enforcement or the police or the State?

17 A. No.

18 Q. Okay. I want to talk to you in a little bit more
19 detail about murder and your views about punishment for
20 murder. The Judge gave you a really good framework, some
21 general guidelines there. And we're going to start with
22 the basics, and that's the legal definition of murder in
23 South Carolina. Okay?

24 A. Okay.

25 Q. Murder in South Carolina -- we have common-law

1 murder or what's called malice murder. Malice
2 aforethought murder. And what that is, that's the
3 unlawful killing of another human being with malice
4 aforethought. And malice is described as the killer
5 operating with a black and malignant heart, fatally bent
6 on evil, deliberately, intentionally taking an innocent
7 life. Not self-defense, not accident. Deliberate choice
8 to kill. Okay? And because this is a capital case, it's
9 different. The State would bring evidence to make that
10 murder even worse, worse than malice murder. Aggravated
11 murder. Some factor to make it more aggravated than just
12 malice murder. Okay? And you would also hear about
13 maybe mitigation evidence. And that would be things
14 about the defendant's background, maybe grew up poor,
15 poverty, drug addict. That sort of thing. Okay? I'm
16 going to fix you in a place in time over here in this
17 jury box.

18 A. Okay.

19 Q. I want you to put yourself in a hypothetical
20 situation of having sat through the murder trial of a
21 defendant with eleven other jurors. You and your eleven
22 other jurors convict that person of murder. And because
23 it's a capital case, you get to go home for about a day,
24 take a break. Then you'd come back and you'd begin the
25 penalty phase of the trial. And that's when you begin

1 the journey to fix punishment. And that's when you would
2 hear that evidence about the background of a defendant,
3 like if he grew up poor or a drug addict. And that's
4 when you would hear aggravation evidence. Okay? And I'm
5 going to give you some examples and ask you about your
6 thoughts.

7 The case I'm going to ask you about, let's say --
8 let's say that the aggravation evidence that you hear is
9 a double murder. That the person you've judged guilty of
10 murder had also killed before. And what makes this
11 murder aggravated is because he's killed again. Based on
12 everything I've told you about the evidence, all the
13 evidence that you can consider, would a life in prison
14 penalty be severe enough to punish that kind of murder?

15 A. I think I would have to know more about it than just
16 it was a second time. I mean, depending on what the first
17 murder was and the second murder, I think -- I mean, life
18 in prison is pretty strong.

19 Q. Okay.

20 A. It would depend on the facts of the case, I guess.

21 Q. Okay. Fair enough. That's exactly what I was
22 trying to get at.

23 You indicated on your questionnaire that you had
24 some concern about life without parole, somebody being in
25 prison for a long time on the taxpayer dime, so to speak.

1 That's a common misconception. And you know, the states
2 of New York, New Jersey and New Mexico have all recently
3 abolished the death penalty in their states. One common
4 theme in all three of those states, they're saving
5 millions of dollars. And that was part of their
6 reasoning. Did you know that?

7 A. Well, I think the question was somebody that's
8 sentenced to death could spend thirty years in prison.
9 That I think was more the question. And if I didn't
10 state it right -- but when somebody's sentenced to death
11 and it takes thirty years to ...

12 Q. Sure.

13 A. ... that's a burden on the taxpayers.

14 Q. Okay. And I'll agree with you. You actually honed
15 in on exactly one of the reasons why it's actually
16 cheaper to have just a life without parole system.
17 Because all the costs that goes into the death penalty,
18 you have all that huge cost. And then you also have
19 basically them in prison for life without parole. So
20 you're paying for life without parole and all the costs
21 of the death penalty on top of that. That's kind of a
22 general theme in the law. That's just the way it is.
23 Lawyers are more expensive than prison guards is what it
24 comes down to.

25 But you know, also, the Judge might even tell you

1 that, you know, doing the right thing and following your
2 oath as a juror, cost should not be a concern. Is that
3 an aspect of the law you can follow?

4 A. Absolutely. I mean, I've never been put in that
5 situation, but I certainly could.

6 Q. Sure. And in South Carolina if you were to return a
7 verdict of death, you'd have to sign your name on a
8 public document filed in the courthouse. And that
9 document would be used basically to execute a fellow
10 human being. We're not talking about ten or twenty years
11 later. I mean, as soon as you put your name on that
12 document, that person is eligible for execution. Okay?
13 Are you comfortable with that?

14 A. Yes, sir.

15 Q. Okay. You also indicated you had some reservations
16 about life without parole because of your concerns for
17 victims.

18 A. As far as no closure or ...

19 Q. Let me go ahead and read it to you. Someone can
20 still lead a full life, have friends, read, watch TV,
21 exercise in prison while the family ---

22 A. Okay, I see what you're saying. You know, prison
23 can almost be a better life than what they're currently
24 facing. They have meals every day and a network of
25 friendships and they get outdoor activities. So I think

1 for some people it could be a better life than what they
2 had before. So I think that would be hard for the
3 victim's family to see that.

4 Q. Okay. You -- I take it you don't have any close
5 knowledge of the prison system or you don't know anybody
6 who's worked in it?

7 A. Well, no. And certainly there are prisons that are
8 tough. But I mean, there are situations, you know, in
9 our city that are tough as well. The conditions are
10 tough. You know, I'm not saying it's true for every
11 inmate, but you know, it certainly could be a better life
12 for some.

13 Q. What I'm going to do now is ask you -- I'm going to
14 take you back to that double-murder-type situation. I'm
15 going to talk to you a little bit about background
16 factors of a defendant like if he grew up poor or a drug
17 addict, that sort of thing. Are those things relevant in
18 fixing punishment for a double murder?

19 A. I don't think so. I mean, you'd have to separate
20 that from -- it would depend on if it was part of the
21 case, you know, what their history was with that person
22 that they committed the crime against.

23 Q. Sure. But if those factors were sort of isolated
24 and didn't lead to or didn't have a nexus with the crime
25 ---

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

2 THE COURT: Again, no, that's not the law.

3 MR. MCGUIRE: Sure.

4 THE COURT: Let's do. Let's stay with the law.
5 He will be instructed about mitigation.

6 MR. MCGUIRE: Okay. And I'm assuming that's an
7 objection and you're sustaining it, just for the record.

8 THE COURT: But I'm also trying to help us get
9 along with the process and stay within the law rather
10 than what someone might think the law is.

11 MR. MCGUIRE: Sure. If I could just note my
12 objection pursuant to *Morgan*.

13 THE COURT: Certainly.

14 MR. MCGUIRE: Thank you very much, Judge.

15 THE COURT: You understand my ruling?

16 MR. MCGUIRE: I do. Thank you very much.

17 Q. Again, if those factors just didn't have any nexus
18 to the crime, would they be relevant to you?

19 MS. ADAMS: Your Honor?

20 THE COURT: Again, that's not the law.

21 MR. MCGUIRE: I'm interested in his personal
22 opinion, not the law.

23 THE COURT: Well, personal opinion is not
24 considered. He said that he could follow the law.

25 MR. MCGUIRE: I understand the Court's ruling.

1 I'll move on.

2 THE COURT: You want to ask him if he's -- that
3 is correct or not?

4 MR. MCGUIRE: Sure. Again, I'm assuming that
5 was an objection and you're sustaining just for the
6 record?

7 THE COURT: That was an objection I sustained.
8 But again, I'm asking you to be fair to the juror ---

9 MR. MCGUIRE: Oh, I understand.

10 THE COURT: --- so he will know what he has to
11 deal with.

12 MR. MCGUIRE: Sure, sure, sure.

13 THE COURT: This is not -- as I say, this is
14 not something that is to be done without rules of
15 evidence.

16 MR. MCGUIRE: Sure. And if I could just note
17 my objection pursuant to *Morgan* and the principles.

18 THE COURT: It's noted and my instructions
19 also.

20 MR. MCGUIRE: Thank you, sir.

21 Q. What I'm going to do now, sir, is take you through
22 how a capital case is different. And we're going to talk
23 about the law, and I'm going to ask you if you can
24 respect and follow certain aspects of the law. I mean,
25 that's what we're here for. If you have a personal

1 opinion that's so strong and you would have difficulty
2 following the law, we just need to know that. Okay?

3 A. Okay.

4 Q. And ...

5 MR. MCGUIRE: Judge, this is where I would ask
6 my six questions pursuant to my motion.

7 THE COURT: The same reasons that I have
8 declined permission to ask them continues.

9 MR. MCGUIRE: Thank you, sir.

10 Q. And a sentencing case -- in a capital case, the
11 sentencing phase is different from any other case in
12 South Carolina. Normally -- and you probably know this
13 -- juries are concerned about did the fellow do it or
14 not, guilty, not guilty, and then a judge sentences.
15 That's typical.

16 A. Uh-huh (affirmative).

17 Q. A capital case is the only case in South Carolina
18 where the jury has the opportunity to fashion punishment.
19 And the rules are a little counterintuitive, and they're
20 different for both the State and the Defense. The State
21 would have to prove aggravation evidence beyond a
22 reasonable doubt to all twelve jurors. A high standard
23 in law, beyond a reasonable doubt. And all twelve would
24 have to agree. And that's kind of in line with our
25 normal thinking about juries. Everybody has to agree

1 with the result.

2 But it's completely different for voting for the
3 life penalty. The judge would instruct all the jurors
4 that they could vote for life for any reason, no reason,
5 mercy, grace or anything that individual sees in the
6 case. And they don't have to agree. You don't have to
7 have twelve people say, we're going to vote for life
8 because he was abused as a boy or something like that.
9 For instance, a juror in the front row could say, you
10 know, I saw something in his life growing up in his walk
11 in life. And that resonated with me. That's my vote for
12 life. Somebody else can say, you know, I listened to the
13 judge. He said I can vote for life for no reason at all.
14 And I just feel that that's the right thing, and I don't
15 even have a reason to give to you. Another juror in the
16 back might say, I saw something about maybe his mental
17 health. And that resonated with me. That's my reason.
18 And all three can have different reasons.

19 All twelve can have different reasons. Is that a
20 principle of law you could respect if other people have
21 those views?

22 A. Certainly.

23 Q. Okay. A lot of people when they think about juries,
24 they think, well, if people disagree they have to keep
25 talking until they're all unanimous. And it's just not

1 so.

2 A. Everybody is entitled to their own opinion.

3 Q. Right. In fact, the law describes it because it's
4 such -- the situation has such gravity to it, whether to
5 kill another human. The law says that a juror's
6 position, their decision, in a sentencing case, whether
7 they vote for life or death, is their own individual
8 moral judgement and that if it would do harm or violence
9 to their conscience to change that decision, that would
10 be wrong. Can you respect that principle?

11 A. Yes, sir.

12 Q. Okay. And the State and the Defendant and you as a
13 juror are entitled to fairness not just out here in the
14 courtroom, but also in the jury room. And if you saw
15 somebody reach their individual moral judgement and say
16 other people were ganging up on them trying to get them
17 to change it and it was unfair, maybe hostile or
18 belligerent, could you send a note out to the Judge and
19 say, you know, things aren't fair in here?

20 A. Sure.

21 Q. Okay. Let me ask you about the concept of mercy.
22 Is mercy something freely bestowed and given or is it
23 earned?

24 A. I don't know. As far as day-to-day life or in the
25 court system or ...

1 Q. In your view. The only right answer is what you
2 think.

3 A. Is mercy -- read the question again.

4 Q. Is mercy -- the concept of mercy, is mercy something
5 that's freely given and bestowed, or is it earned?

6 A. I think earned is a wrong term. But freely
7 bestowed, I think that's going to depend on the
8 circumstance.

9 Q. Sure. That's fair. That's fair enough.

10 MR. MCGUIRE: Judge, if I could have just one
11 second.

12 (Off record discussion)

13 MR. MCGUIRE: Sir, that's all I have for you.
14 Thank you very much.

15 THE COURT: Any questions from the State?

16 MS. ADAMS: Just a few follow-up, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. ADAMS:

19 Q. Good morning, how are you? I'm Chrissy Adams. I'm
20 the Solicitor for the Tenth Circuit. And I just want to
21 ask you a few questions.

22 I know the Defense talked a little bit about the
23 deliberation process and if you are picked on the jury,
24 you know, what's going to happen back in the jury room.
25 You do understand that deliberation is juror sharing

1 their ideas and opinions?

2 A. Yes.

3 Q. Okay. And where everyone obviously would respect
4 everyone's opinion, but it's a give-and-take?

5 A. Correct.

6 Q. To try to come to a decision?

7 A. Absolutely.

8 Q. Okay. As you sit there today in this case if you're
9 selected on this jury, you don't know what the facts and
10 circumstances are; is that right?

11 A. That's correct.

12 Q. Okay. So when the Judge instructs you that you must
13 consider all the evidence in aggravation that the State
14 has, all the evidence, if any, in mitigation that the
15 Defense has, will you remain open-minded and hear all of
16 it before you make a decision?

17 A. Absolutely.

18 Q. And if you feel that after hearing everything life
19 without parole is appropriate, could you vote for life?

20 A. Sure.

21 Q. Okay. And if you felt the death penalty was
22 appropriate, you could vote for death?

23 A. Yes, ma'am.

24 Q. Okay. Thank you so much.

25 MR. MCGUIRE: Nothing further, Your Honor.

1 Thank you.

2 THE COURT: Anything further from the State?

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

4 THE COURT: Considering the entire voir dire, I
5 find that Juror Number 261 would be fair, unbiased,
6 impartial and able to carry out the law as explained to
7 him. Furthermore, I find that this juror's beliefs or
8 attitudes toward the death penalty would not prevent or
9 substantially impair the performance of his duties as a
10 juror in accordance with the law, the Court's
11 instructions and the juror's oath. So you will be
12 qualified to be a juror in this case.

13 Now, I think you understand now how long this
14 process will probably take. What we're doing is
15 qualifying a panel or pool of jurors from whom the actual
16 jury will be drawn, and it's going to take some time.
17 Did you give your telephone number to the Clerk?

18 THE POTENTIAL JUROR: I did.

19 THE COURT: All right. You can go about your
20 business or whatever you like and your life until you get
21 the phone call. It will probably be to report the next
22 day or something like that. And we don't know when it
23 will be because, as I say, it will take some time to do
24 that. But at that time, then you would report. And from
25 the pool of qualified jurors, then we will select the

1 jury.

2 Very good. Thank you so much for being here, and I
3 appreciate your patience with the Court.

4 THE POTENTIAL JUROR: Thank you, sir.

5 THE COURT: Thank you, sir.

6 (WHEREUPON, Potential Juror 261 exited the
7 courtroom.)

8 THE COURT: All right. Next is -- excuse me.

9 MR. MCGUIRE: Judge, we're just discussing the
10 fact that this man's son has pending charges for having
11 implements to build a bomb, I think. But we don't know
12 if it's being prosecuted in Anderson or someplace else.

13 MS. BYFORD: We don't think so.

14 MS. ADAMS: His son is 20. And it says he's a
15 student, so he may be in school somewhere.

16 THE COURT: You say his son is the one that is
17 ---

18 MS. ADAMS: Yes, sir. But I don't think it's
19 Anderson.

20 THE COURT: You don't have any ...

21 MS. ADAMS: We don't have anything in our
22 system.

23 THE COURT: Well, you want to just ...

24 MR. MCGUIRE: Just ask him, I guess.

25 MS. ADAMS: You just want to ask him, Judge?

1 THE COURT: I mean, ask him pointedly or --
2 what is it -- just voir dire him?

3 MR. MCGUIRE: Yeah.

4 MS. ADAMS: You may just want to ask him ---

5 THE COURT: Well, now, the son lives at home.

6 MR. MCGUIRE: Right.

7 MS. ADAMS: But it says he's a student, so he
8 may be in college somewhere.

9 THE COURT: Well, I think there's a -- all
10 right. Let me ask you just to be sure I understand it.
11 You want me to bring him out and just direct his
12 attention to that one answer?

13 MR. MCGUIRE: And I think just ask him in what
14 jurisdiction the charges are pending regarding his son.

15 THE COURT: All right.

16 MS. ADAMS: And maybe, yeah, if there's any
17 bias toward law enforcement or prosecution.

18 THE COURT: You want me to ask that.

19 MS. ADAMS: Might as well.

20 MR. MCGUIRE: I don't have any objection.

21 THE COURT: Well, I mean, I just ...

22 MS. ADAMS: Well, if it's pending here, then we
23 don't have a problem.

24 THE COURT: Is that correct?

25 MR. MCGUIRE: I think I'd agree to excuse him

1 if he's got ---

2 THE COURT: If the charges are pending here in
3 the Tenth Circuit or Anderson?

4 MR. MCGUIRE: Yes, sir.

5 THE COURT: Or I say the Tenth Circuit. Of
6 course, it also could be the Thirteenth if it's Clemson.

7 MS. ADAMS: And Your Honor, if I may, one
8 issue. We've been very patient with the line of
9 questioning regarding jury deliberation that Mr. McGuire
10 is doing. He goes overboard, I think, in just trying to
11 pit these witnesses. I mean, I know that's a bad word.
12 But just ---

13 THE COURT: It's called got you.

14 MS. ADAMS: And Judge, not really how you're
15 going to instruct them.

16 THE COURT: I understand. And I think the
17 jurors are handling it fairly well. But of course, Mr.
18 McGuire and Mr. Delgado do understand that I am going to
19 be sure that the juror is not unfairly -- what is it --
20 put in a position or something that might not be relevant
21 to the actual services of a juror.

22 MS. ADAMS: Thank you. And the mercy question
23 too seems to be confusing them.

24 THE COURT: Well, I'm interested in that
25 because I think there was a difference between the

1 Protestant and the Catholic perception of mercy, if it's
2 earned or by grace. And I'm not sure how many
3 theologians we're going to have on this panel. If Martin
4 Luther and Pope Leo couldn't agree, then I don't know how
5 we can ask a controlling question here. But we'll be
6 willing to listen.

7 MS. ADAMS: Okay. Thank you, Judge.

8 THE COURT: All right. Anything else from the
9 State? So I'm going to bring Juror 266, I'm going to ask
10 two questions, I guess, just initially just sort of an
11 introduction is that I noticed that -- where is the bit
12 about the son's charges? What page?

13 MS. ADAMS: I believe it's ...

14 MR. MCGUIRE: Page 12, Judge.

15 THE COURT: Twelve? And then also I'll ask if
16 that would interfere with his ability to -- or what would
17 be the question? If they're all pending in this circuit
18 or -- I'm going to ask him where they're pending. So I
19 mean, we can make up -- because as I say, if he's at
20 Clemson, then that's Pickens County, the Thirteenth
21 Circuit. It would still be relevant to the actual
22 charge. So he would -- would it affect his opinion of
23 law enforcement?

24 MS. ADAMS: Yes, sir.

25 THE COURT: Any exception to that, Mr. McGuire?

1 MR. MCGUIRE: No, sir, Your Honor.

2 THE COURT: Ms. Adams?

3 MS. ADAMS: No, sir.

4 THE COURT: Ask number 266.

5 (WHEREUPON, Potential Juror 266 entered the
6 courtroom.)

7 THE COURT: All right. Are you Juror Number
8 266?

9 THE POTENTIAL JUROR: I am.

10 **POTENTIAL JUROR 266,**

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

12 **EXAMINATION**

13 BY THE COURT:

14 Q. You will recall on Monday I put all jurors under
15 oath. Now, do you understand that you're still under
16 oath and that oath continues throughout these
17 proceedings?

18 A. I do.

19 Q. In looking at your questionnaire, I noticed you
20 mentioned that your son may have some pending charges; is
21 that correct?

22 A. Those have been resolved.

23 Q. They have been resolved?

24 A. Yes.

25 Q. Where was that?

1 A. Greenwood County.

2 Q. Greenwood County? All right. Would that in any way
3 affect your opinion toward law enforcement?

4 A. No.

5 Q. You will also recall my instructions from Monday to
6 avoid all forms of media coverage dealing with this case.
7 Has this caused any problem to you?

8 A. No.

9 Q. You have been provided with a copy of a list of
10 potential witnesses. Have you had an opportunity to
11 review that witness list?

12 A. I have.

13 Q. Did you recognize any names?

14 A. No, sir.

15 Q. There were none on that list that you were related
16 to by blood or marriage or a close personal friend,
17 business associate or have any other association with any
18 of the names on that list that you recognized?

19 A. No, sir.

20 Q. Now, the trial of this case could last -- will last
21 more than the normal case. In other words, it could last
22 a week or ten days or even more perhaps. Other than
23 personal inconvenience, would this pose a serious danger
24 to the health or well-being of yourself or anyone who is
25 dependent upon you?

1 A. No, sir.

2 Q. Among other things today, we'll be talking about
3 penalty. But the mere fact that we talk about penalty
4 does not indicate anything about this Defendant or any
5 defendant. Defendants under our law are presumed
6 innocent of all charges. Do you understand that?

7 A. I do.

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

16 A. Yes, sir.

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

21 A. Yes, sir.

22 Q. In a criminal case, the State has the burden of
23 proving guilt. The burden of proof for the State is
24 beyond a reasonable doubt. A defendant has no burden to
25 prove innocence or anything else. In other words, the

1 defendant doesn't even have to testify or offer evidence.

2 He is presumed to be innocent. Do you understand?

3 A. I do.

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

7 A. Yes, sir.

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

12 A. I do.

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

18 A. I do.

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 defendant
24 is found not guilty in phase one, that ends the matter.
25 Do you understand that?

1 A. I do.

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

7 A. I do.

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

14 A. I do.

15 Q. In a capital sentencing trial, the jury's function
16 is to determine the appropriate punishment based upon the
17 circumstances of the crime and the characteristics of the
18 individual defendant. Let me read that to you again. In
19 a capital sentencing trial, the jury's function is to
20 determine the appropriate punishment. And they'll do
21 this based upon the circumstances of the crime and the
22 characteristics of the individual defendant. Do you
23 understand that?

24 A. I do.

25 Q. Now, aggravating circumstances are facts or details

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

8 A. Yes, sir.

9 Q. Do you also understand that the jury has two options
10 to consider regarding the sentencing for murder? One
11 option is life in prison. Under our law that means until
12 death without possibility of parole. The other option is
13 death which in this state is by electrocution or lethal
14 injection. Do you understand that?

15 A. I do.

16 Q. Could you, as a juror in the -- again, this is what
17 we come down to. Could you, as a juror in the sentencing
18 phase, depending upon the facts including relevant
19 aggravating and mitigating circumstances and the law as I
20 instruct it 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. Yes.

3 Q. All right. If you would, please, answer any
4 questions the attorneys may have.

5 MR. MCGUIRE: Thank you, Judge.

6 DIRECT EXAMINATION

7 BY MR. MCGUIRE:

8 Q. Good morning, Juror Number 266. How are you doing?

9 A. Good morning. Well, thank you.

10 Q. Good, sir. I have to refer to you by number. It's
11 a little awkward for me. If you would just forgive that
12 of me.

13 I think, if I remember correctly, you indicated in
14 the general qualification that you had heard some
15 publicity?

16 A. I had.

17 Q. Could you just tell me what that is?

18 A. Just news accounts, local news accounts on TV.

19 Q. What do you think this case is about based on what
20 you've seen?

21 A. Obviously a murder.

22 MS. ADAMS: Objection, Your Honor.

23 THE COURT: Just a moment.

24 Pardon?

25 MS. ADAMS: Objection, Your Honor.

1 THE COURT: I'm going to overrule your
2 objection.

3 You may proceed.

4 MR. MCGUIRE: Thank you, Your Honor.

5 Q. If you could, just tell us what you've seen and what
6 you think this case is about.

7 A. Just the murder. Really I do not even remember who,
8 to be honest with you.

9 Q. Okay. All right. Kind of just a little snippet
10 here and there?

11 A. Yes, sir.

12 Q. You basically know it's a murder case?

13 A. Yes, sir.

14 Q. Okay. Fair enough. Thank you.

15 What I'm going to do is go into a little bit more
16 detail about these issues of murder and punishment. The
17 Judge gave you some very good guidelines and frameworks.
18 He told you about what aggravation evidence is,
19 mitigation evidence. That sort of thing. And I'm going
20 to start with you, if I could, with just the definition
21 of murder in South Carolina as a starting point.

22 Murder -- the Judge would tell the jury that murder
23 is defined in South Carolina as the unlawful killing of
24 another human being with malice aforethought. And malice
25 aforethought is described as somebody, the killer, acting

1 with a black and malignant heart, fatally bent on evil,
2 intentionally, deliberately choosing to take an innocent
3 life. Okay? That's what we refer to as malice murder.
4 But that's not eligible for the death penalty just by
5 itself. The State would have to come and prove
6 aggravation evidence to make it an aggravated malice
7 murder before they could ask for the death penalty. And
8 what I'm going to do is I'm going to fix you kind of in a
9 place and time so we can talk about this in a
10 hypothetical situation. And that is I'm going to ask you
11 to sort of imagine yourself over here in this jury box
12 with eleven other jurors. And you and the other eleven,
13 you're sitting on a murder case some other place, some
14 other time, some other defendant. And you've heard all
15 the evidence in the first part of the trial. And that's
16 did the fellow do it or not, is he guilty or not. And
17 y'all have heard all that. Beyond a reasonable doubt
18 you've convicted the killer of murder. Okay?

19 And because it's a capital case, you'd be able to go
20 home for about a day, twenty-four hours. You'd come
21 back, rejoin the eleven. And that's when you would begin
22 the journey to fix punishment. Are you with me?

23 A. Uh-huh (affirmative).

24 Q. Okay. And in that journey to fix punishment you
25 would hear aggravation and what is called the mitigation

1 evidence. Mitigation would be or could be background
2 things about a defendant, like if he grew up poor or was
3 a drug addict or something like that. Okay? Aggravation
4 evidence is a fact that would make the malice murder
5 aggravated and eligible for the death penalty. Okay?

6 Now, knowing all that, I want to give you an example
7 and ask you your thoughts about it. That when you come
8 back to fix punishment, the aggravation evidence that you
9 hear is that the killer, let's say, had killed before.
10 And you'd be fixing punishment for somebody who's killed
11 deliberately two separate times. Now, knowing all that
12 and that you can consider background stuff like poverty,
13 childhood, that sort of thing, could a life sentence in
14 prison ever be appropriate or severe enough to punish
15 that kind of double murder?

16 A. I believe I'd have to have more evidence, more --
17 hear more about the case than just what you stated before
18 I'd be able to make that determination.

19 Q. Okay. What would you be looking for?

20 A. Well, I'd want to see ---

21 MS. ADAMS: Your Honor, I object to that. It
22 calls for a hypothetical. He's asking what he would be
23 looking for. That's not how he will be instructed under
24 the law.

25 THE COURT: Restate your question, if you

1 would, please. Something that would be not just purely
2 speculation.

3 MR. MCGUIRE: Yes, sir. I assume you're
4 sustaining the objection, just for the record.

5 THE COURT: No. I'm just asking you to restate
6 your question. I mean, if you stick with your question,
7 I'll sustain the objection.

8 MR. MCGUIRE: Well, that's what we got a
9 challenge, Judge.

10 THE COURT: If you want to get an answer that
11 will be helpful to us, then -- what is it -- you'll
12 restate your question. If you insist on your question,
13 I'll sustain the objection and we'll move on.

14 MR. MCGUIRE: Sure. If I could just put on the
15 record that I don't think that word hypothetical means
16 what the Prosecutor thinks it means and ---

17 THE COURT: Well, what I think it does -- I'm
18 asking about speculative.

19 MR. MCGUIRE: Okay.

20 THE COURT: You're asking something in the
21 abstract. And abstract -- what is it -- can be something
22 that does not relate to actual circumstances and
23 situations. So that's what I'm asking.

24 MR. MCGUIRE: Sure.

25 Q. What would you want to -- what more would you want

1 to hear?

2 MS. ADAMS: Your Honor, that's the same
3 question again.

4 THE COURT: Again, I'm going to sustain the
5 objection. So let's move on.

6 MR. MCGUIRE: Okay.

7 THE COURT: Unless you want to restate it. You
8 can restate it so you're not asking in the abstract.

9 MR. MCGUIRE: Sure.

10 Q. If you were -- if my -- I'll move on. If you were
11 hanging out at the water cooler at work and some folks
12 were saying -- somebody might say, you know, some crimes
13 are just -- some categories of crimes are bad enough
14 where the death penalty should be pretty much automatic.
15 Are there any kind of categories that would come to mind
16 to you?

17 MS. ADAMS: Your Honor, I object. That's not
18 what the law is. He's trying to stake him out.

19 THE COURT: All right. Sustained. The case is
20 not going to be tried at the water cooler. That's the
21 whole problem that I have with this line of questioning.

22 MR. MCGUIRE: Sure.

23 THE COURT: We want to find out if the juror
24 can follow the law as instructed to him. And that law
25 will provide both for aggravation and mitigation.

1 MR. MCGUIRE: I understand, Judge. It's just
2 the water cooler is where his personal opinion might be
3 and might be expressed.

4 THE COURT: If you're going to decide it at the
5 water cooler, it's going to ...

6 MR. MCGUIRE: Sure. I'm taking it that you
7 sustained the objection.

8 THE COURT: Unless you want to restate the
9 question.

10 MR. MCGUIRE: Sure.

11 Q. I want to take you back to that double murder
12 situation. You and eleven other jurors beyond a
13 reasonable doubt convict a killer of murder. Then you
14 learn he's killed before, so you're fixing punishment for
15 a double murderer. Would those background things like
16 childhood or poverty be relevant in fixing punishment in
17 that case?

18 A. It could be.

19 Q. Okay. And when you say could be, how could they be?

20 MS. ADAMS: Your Honor, again, he's ---

21 THE COURT: I'm going to permit the question.
22 We'll see.

23 Q. How could they be relevant?

24 THE COURT: I mean, if you understand the
25 question, you can answer it. But if you don't understand

1 it, ask him to restate it.

2 A. Well, obviously I've never taken this line of
3 thought and really put a lot of thought into it. Quite
4 honestly, it's not something I do every day. I would
5 have to hear the mitigating circumstances ...

6 Q. Okay.

7 A. ... to make a decision.

8 Q. So is it fair to say that a person's walk in life,
9 sort of their how they came to be who they are, could be
10 relevant in fixing punishment in a murder case?

11 A. In a murder case, it could be.

12 Q. Okay.

13 MR. MCGUIRE: And Judge, this is where I would
14 ask my questions one through six pursuant to my written
15 motion.

16 THE COURT: And I'll note it for the record.

17 MR. MCGUIRE: Thank you, sir.

18 Q. What I'm going to do now is talk to you briefly
19 about how a capital case is different from a regular
20 criminal case, how the law is different because what
21 we're here for is to see if you can follow certain
22 aspects of the law because it is so different from a
23 regular case. And again, as we've already established,
24 the State would have to prove aggravation evidence to all
25 twelve jurors beyond a reasonable doubt before they're

1 even entitled to ask for a death sentence. And that's
2 kind of in line with how we think juries work. They all
3 agree together, and they come out with one voice so to
4 speak.

5 And it's different for the life penalty, the life in
6 prison penalty, or the mitigation side of the case. The
7 Judge would instruct all the jury members, the whole
8 jury, that any individual juror could vote for life based
9 on any reason, no reason, mercy, grace, anything they see
10 in the case at all.

11 And the way that plays out in fact or by way of
12 example is that say you're on that jury and somebody in
13 the front row could say, you know, I saw something about
14 his childhood, his walk in life, that resonated with me.
15 That's my vote for life. That's why I'm going to do it.
16 Somebody else could have a completely different reason
17 and say, you know, I saw something about his mental
18 health. And that was a concern for me, so I'm not going
19 to vote for death just based on that. And somebody else
20 can say, you know, I listened to the judge. And he
21 actually said I could vote for life for no reason. I
22 just feel it's right, but I don't even have a reason to
23 give. Could you respect that that's the way it works on
24 the mitigation side or the life side of the equation?
25 A. I could respect that.

1 Q. Okay. You'd be okay with each and every juror being
2 able to have their own individual reason for voting life?

3 A. Sure.

4 Q. You wouldn't insist on agreement, for instance,
5 meaning that you wouldn't insist that the whole jury
6 fashion a reason ---

7 MS. ADAMS: Your Honor, I object. He's --
8 that's not the law.

9 THE COURT: I think -- go ahead, answer the
10 question, if you would. But let's do move on. He's
11 answered the question one time without the further
12 answer. Go ahead.

13 A. Restate your question.

14 Q. Sure. Remember how I was giving you the example how
15 the law says that each individual juror can have whatever
16 reason they want to to vote for the life penalty, even no
17 reason at all. If you were on a jury and people,
18 different people, had different reasons to vote for life,
19 could you respect that and let them have that opinion?

20 A. I guess I would have to.

21 Q. Well, yeah, that's ---

22 A. You can't make somebody think something they don't
23 think. I mean, they can't agree with me just because I'm
24 me.

25 Q. Right. Nobody has the perfect common sense, in

1 other words?

2 A. Right.

3 Q. And the State, the Defense and even jurors have a
4 right to fairness not just out here in the courtroom, but
5 also the jury room. And what I'm getting at is the law
6 says that a juror's decision in a capital case is their
7 own individual moral judgement. And if it would do
8 violence or harm to their conscience to change that, that
9 would be wrong. So if you saw things getting unfair in
10 the jury room, belligerent or bullying, could we count on
11 you to maybe pass a note out to the Judge and say, you
12 know, things aren't fair in here, we've got to get back
13 to fairness?

14 A. Absolutely.

15 Q. Is mercy -- the concept of mercy, is mercy something
16 that's freely given, bestowed, or is it earned? The only
17 right answer is your view.

18 A. Well, I think as human beings mercy -- mercy is
19 freely bestowed by God. As human beings, we're not God
20 and we're not perfect. So I think that facts and all
21 this would probably end any mercy that might be given as
22 human beings. Myself, I have not heard the case.

23 Q. Sure.

24 A. I can't tell you, I guess, what you want to hear.

25 Q. Oh, I don't want to hear anything.

1 A. Okay.

2 Q. No. The only right answer is what you think.

3 That's the only right answer. I don't want to hear
4 anything in particular.

5 I've read a lot of questionnaires, so I may have
6 confused this. But did you indicate in your
7 questionnaire that without regard to whatever penalty
8 might be fixed in a capital case, either death or life,
9 that God was the ultimate judge. Was that on your
10 questionnaire, or am I getting you confused?

11 A. I do not remember without looking at that
12 questionnaire. I could not tell you for sure.

13 Q. That's all right. It's a minor point. I've got the
14 questionnaire. So I appreciate your patience.

15 A. Okay.

16 Q. Thank you.

17 THE COURT: All right. Anything from the
18 State?

19 MS. ADAMS: Just a few questions.

20 CROSS-EXAMINATION

21 BY MS. ADAMS:

22 Q. Good morning. How are you?

23 A. I'm good.

24 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
25 Circuit. And we certainly appreciate your being here. I

1 know it's kind of hard to be in that seat to talk about a
2 topic that you probably don't really talk about that
3 much.

4 I noticed on your questionnaire you said you really
5 didn't have an opinion about the death penalty. Did this
6 make you kind of think about it?

7 A. Well, obviously you start thinking, you know, about
8 the death penalty. I think when I answered that
9 question, if that's what it says, that I just don't sit
10 around thinking about the death penalty all the time.

11 Q. No.

12 A. Because I'm open.

13 Q. Okay. So you feel you could follow the Judge's
14 instructions and -- I guess what -- you've sat on a
15 murder trial before. You stated that in here. So you
16 know what deliberation is and you know what that part is
17 like?

18 A. Uh-huh (affirmative).

19 Q. As Mr. McGuire said, death penalty is different.
20 It's a totally different phase. And all the jury needs
21 to decide is whether life is appropriate or death is
22 appropriate. And the Judge is going to instruct you that
23 you must consider all the aggravation, which we have to
24 prove beyond a reasonable doubt, and all the mitigation,
25 if any, before you make a decision. And you can remain

1 open-minded throughout that process before you make up
2 your mind?

3 A. Yes.

4 Q. Okay. And after you heard all of that evidence, if
5 you felt that life without parole was appropriate, could
6 you vote for life?

7 A. If at the time I felt it was appropriate, yes.

8 Q. Okay. And if you felt that the death penalty was
9 appropriate, you could vote for death?

10 A. With the same answer.

11 Q. Okay. The law requires if the jury does decide that
12 death is appropriate that every juror writes his or her
13 name down on the sentence sheet which is what the State
14 actually uses to carry out the execution of the
15 defendant. And that's a public document. Would you have
16 any problem signing your name to that document?

17 A. If that's the verdict we reach, no.

18 Q. Okay. Thank you very much. I appreciate it.

19 THE COURT: Any other questions?

20 MR. MCGUIRE: No, sir.

21 MS. ADAMS: Your Honor, I do have one.

22 Q. You mentioned media. Can you set aside anything
23 you've heard about this case and render your verdict
24 based on what you hear in this courtroom?

25 A. Yes.

1 MS. ADAMS: Thank you, Judge.

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

4 MS. ADAMS: No, sir.

5 THE COURT: From the Defense?

6 MR. MCGUIRE: No, sir.

7 THE COURT: Considering the entire voir dire --
8 that's all the questions you've been asked to include the
9 questionnaire -- I find that Juror Number 266 will be
10 fair, unbiased, impartial and able to carry out the law
11 as explained to him. Furthermore, I find that the
12 juror's beliefs or attitudes toward the death penalty
13 would not prevent or substantially impair the performance
14 of his duties as a juror in accordance with the law, the
15 Court's instructions and the juror's oath. Therefore, I
16 do find that Juror 266 qualified.

17 Now, what that means is that we're creating a pool
18 of qualified jurors from which the actual jury will be
19 selected. And as you can see, the process takes some
20 time. So you've given your telephone number to the
21 Clerk?

22 THE POTENTIAL JUROR: I did.

23 THE COURT: You can go about your business or
24 do whatever is necessary until you get that call. It
25 will probably be into next week. It will definitely be

1 into next week. But I don't know how late. Again, just
2 carry on with your normal life and what you would do
3 until you get the call, and then we'll ask you to report
4 back for that selection. And then at that time we'll
5 select the jury.

6 Very good. I do want to thank you not only for your
7 patience, but for your candor. Thank you, sir.

8 THE POTENTIAL JUROR: Thank you.

9 (WHEREUPON, Potential Juror 266 exited the
10 courtroom.)

11 THE COURT: All right. Let's take a short
12 break.

13 (WHEREUPON, court stood at recess for a short
14 break.)

15 THE COURT: All right.

16 MR. DELGADO: Your Honor, there is one
17 ancillary matter we'd like to be able to bring to the
18 Court's attention. I think I probably need to have Mr.
19 Day in here. I'm sorry to say he's not in the courtroom.

20 THE COURT: He'll be with us in a minute. I
21 will wait.

22 MR. DELGADO: Thank you, sir.

23 (WHEREUPON, court stood at ease after which Mr. Day
24 entered the courtroom.)

25 MR. DELGADO: Your Honor, there's a matter

1 that's come up with Mr. Rivera relating to his
2 medication.

3 THE COURT: Yes, sir?

4 MR. DELGADO: There was an incident at the
5 Anderson County Detention Center on Wednesday where the
6 correctional officers there noted some sort of what they
7 considered to be suspicious activity between Mr. Rivera
8 and somebody else. And a pill for the Seraquel that Mr.
9 Rivera was to have been taking was found outside the
10 floor between his door and -- or his cell and the next-
11 door neighbor's cell. They suspected that Mr. Rivera may
12 have attempted to pass that or whatever.

13 As a result, Dr. Donna Watts, who is the treating
14 physician, said to the Anderson County authorities that
15 for them to crush the pill so that it can't be used in an
16 inappropriate manner. Well, Mr. Rivera is saying to Ms.
17 Schwitzer (phonic), our mitigation specialist and our
18 contact with Mr. Rivera, that he is going to be refusing
19 to take that medicine.

20 I just wanted the Court to understand -- I'm not
21 saying anything will happen. But Mr. Rivera needs that
22 medicine. And if he does not take that, I wanted to
23 alert the Court of the consequences that might come from
24 that in the way of his relating to the Court, to the jury
25 and to this process.

1 THE COURT: Mr. Day, are you aware of that?

2 MR. DAY: I was aware of the incident at the
3 jail, and Mr. Rivera has told me that he has not taken
4 it. I think he would just like to address the Court as
5 to that issue.

6 THE COURT: Very well. Mr. Rivera, you can
7 sit, but bring the mike closer to you.

8 THE DEFENDANT: Can you hear me, Your Honor?

9 THE COURT: Yes, sir.

10 THE DEFENDANT: Your Honor, I'm refusing to
11 take it as crushed. I'm not refusing to take it in the
12 presence of officers. That's what they started doing
13 yesterday, having me take it in the presence of officers.
14 But I'm refusing to it being crushed. I'll still take
15 the pills.

16 THE COURT: Why do you decline to take it
17 crushed?

18 THE DEFENDANT: Because they put their hands on
19 it to crush it. But once again ---

20 THE COURT: How about if it's done in a mortar
21 and a pestle where you crush it, do it like you crush a
22 pill in the pharmacy? I mean, in other words, a helpful
23 example, those of us who have had heart conditions are
24 told to, if we feel angina coming on, to take an aspirin.
25 And we crush it so it will work quicker than -- what is

1 it -- if we just swallow it.

2 THE DEFENDANT: Well, I'm --

3 THE COURT: It's not unusual. I can
4 understand. I don't want somebody to tamper -- not
5 tamper, but to -- what is it -- use their bare hands or
6 something like that. But I mean, if it's crushed in a
7 medically acceptable way such as, as I say, with a mortar
8 and pestle, in other words, which is what pharmacies do
9 when they provide preparations.

10 The thing is I want you to participate because
11 obviously it's important that you understand and
12 appreciate what is going on. But if your medication,
13 failure to take your medication, interferes with that,
14 I'm certainly not going to be able to permit, as I said
15 earlier, disruptions.

16 Now, what I'm asking -- how would the medication be
17 prepared? Do you know?

18 THE DEPUTY: Usually the medications are put in
19 a little paper bag. The nurse would shake it out in his
20 hand. He would take it with water. If they -- if you
21 have to crush them, I'm sure they can buy you a pill
22 crusher where it would cut the tablet in half. I'm sure
23 they have them there at the jail because some of the
24 medications you don't take but half a pill. They can cut
25 it in half that way and put it in the bag.

1 THE COURT: Well, the thing is, Mr. Rivera, it
2 comes down to this. If the medication is important to be
3 sure that you do not have an episode or whatever, then
4 you'll have to take it.

5 THE DEFENDANT: Your Honor, the Seraquel is
6 just -- actually, Your Honor, I asked to be put on the
7 Seraquel. Okay? That was me personally. And like
8 Lieutenant Crawford said -- but anyway, I've been taking
9 it in the presence of the officer to verify. And that's
10 what I'd like to continue to do.

11 THE COURT: Well, let me ask you ---

12 THE DEFENDANT: And I forgot to tell you, Your
13 Honor, the Seraquel is only provided because I was having
14 sleeping problems at Broad River. And I asked the doctor
15 to prescribe me, put me on Seraquel.

16 THE COURT: Well, the thing is we don't want --
17 you're supposed to be taking the Seraquel and not -- what
18 is it ---

19 THE DEFENDANT: It's only to help me sleep.

20 THE COURT: Well, we don't want ---

21 THE DEFENDANT: As far as ---

22 THE COURT: Excuse me. We don't want to help
23 anybody else sleep. Let them get their own Seraquel.

24 THE DEFENDANT: Well, Your Honor, what Mr.
25 Delgado said was incorrect.

1 THE COURT: All right.

2 THE DEFENDANT: They didn't find Seraquel next
3 to my cell; they found the Seraquel three cells down.
4 And the nurse will verify she saw me take the Seraquel
5 and the Neurontin. Okay? That's what they do. The
6 officer was standing there present and the nurse. Just
7 like when I take it here at three o'clock, the officer is
8 present and they watch me take it.

9 THE COURT: All right.

10 THE DEFENDANT: And so like I said again last
11 night, what they do is when they come inside the jail,
12 the officer is standing there right there watching me
13 take it. I have no problem taking the Seraquel. I just
14 don't want to take it crushed. I want to continue taking
15 it whole.

16 THE COURT: All right. Well, I'll tell you
17 what we're going to do. I hope -- well, you will have to
18 understand that if for any reason the failure to take the
19 Seraquel or for any other reason there is an outburst or
20 anything this Court feels that is disruptive and
21 interferes with the proper procedure that we need to have
22 in order that no prejudice is suffered by you, that you
23 will waive your right to be present.

24 THE DEFENDANT: Your Honor?

25 THE COURT: So I mean, I'm leaving it up to

1 you. Your doctor said take it crushed. You're saying
2 you can take it whole. But if you fail to do that and
3 there's some sort of reaction or lack therefrom effect of
4 the medication ---

5 THE DEFENDANT: Your Honor, Seraquel doesn't
6 give me a reaction. It helps me sleep. Again, like I
7 said, I asked to be put on the Seraquel, Your Honor. It
8 wasn't -- a doctor didn't ---

9 THE COURT: Please understand I'm not a
10 pharmacist, I'm not a physician.

11 THE DEFENDANT: I'm not saying that.

12 THE COURT: I have no idea. You say that you
13 prescribed it or requested it. I don't know about the
14 effectiveness of it. The only thing I'm saying is your
15 failure to take it as you're supposed to, if it should
16 result in -- or if anything else should result in
17 something that disturbs these proceedings, then you will
18 waive your right to be present. So I mean, you can --
19 I'm not going to require you unless the doctor insists.
20 I think it's more of a -- not security, but just an
21 accounting method so they be sure that you do have the
22 benefit of what you're supposed to have.

23 THE DEFENDANT: I understand that, Your Honor.
24 And I don't think my attorneys really gave the full
25 information. The Neurontin helps me to stay calm, and

1 that's what I haven't refused.

2 THE COURT: I don't care what it does and
3 doesn't. I wouldn't understand. I have no idea what the
4 medications I take ---

5 THE DEFENDANT: Well, that's what I'm saying.

6 THE COURT: --- do or what they're for. But
7 it's prescribed to me, and I have confidence that the
8 person that prescribed it knows better what it does. So
9 I'm not concerned what you're taking, not taking or
10 anything. I'm just telling you if anything lends itself
11 or creates a situation where you become, let's say,
12 agitated and it interferes, I'm going to remove you.

13 THE DEFENDANT: That's fine, Your Honor. But
14 if I ---

15 THE COURT: Well, then we'll just leave it at
16 that. Now, if Dr. Schwartz-Watts comes in and says that
17 this is absolutely essential that you take it in a powder
18 form, then -- what is it -- I'll have to consider that.
19 But right now I'm thinking it really is done more for
20 security or accounting to be sure that -- what is it --
21 you get what is prescribed.

22 THE DEFENDANT: That's fine, Your Honor.

23 THE COURT: I'm going to let you do it as it's
24 being done unless the officers say they have some
25 question about it. In other words, continue to give it

1 in the form that it has been given.

2 THE DEFENDANT: That's fine, Your Honor. And I
3 have to reason to be disruptive again. If I have a
4 problem or an issue, I will address it to my guardian ad
5 litem.

6 THE COURT: Very good. Thank you so much. And
7 I'm serious about this. This is not an easy task, but
8 it's one that has to be done.

9 THE DEFENDANT: It has to be done.

10 THE COURT: And it has to be done right.

11 THE DEFENDANT: And I believe it's my right to
12 have a fair trial, so I'll say it again. If I felt like
13 my attorneys are not raising certain issues, I will
14 address my guardian ad litem. If I need to speak, I'll
15 address it to my guardian ad litem.

16 THE COURT: Well, let's ---

17 THE DEFENDANT: I just want to put that on the
18 record.

19 THE COURT: Yes, sir.

20 THE DEFENDANT: Thank you.

21 THE COURT: All right. Anything else?

22 MR. MCGUIRE: No, sir, Your Honor.

23 THE COURT: All right. Let's see about 269,
24 the next one. All right. Is there anything from the
25 Defendant on 269?

1 MS. ADAMS: Nothing from the State, Your Honor.

2 THE COURT: Anything from the -- nothing from
3 the State. Anything from the Defendant?

4 MR. MCGUIRE: (No response)

5 THE COURT: Anything from the Defendant?

6 MR. MCGUIRE: Oh, no, sir, Your Honor.

7 THE COURT: All right. Ask 269 to join us.

8 (WHEREUPON, Potential Juror 269 entered the
9 courtroom.)

10 THE COURT: All right. Are you Juror 269?

11 THE POTENTIAL JUROR: Yes, sir.

12 THE DEFENDANT: Great, thank you.

13 POTENTIAL JUROR 269,

14 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

15 EXAMINATION

16 BY THE COURT:

17 Q. You will recall on Monday I put all jurors under
18 oath. Now, do you understand that you're still under
19 oath and that oath continues throughout these
20 proceedings?

21 A. Yes, sir.

22 Q. You have been provided with a copy of a list of
23 potential witnesses. Have you had an opportunity to
24 review that witness list?

25 A. Yes, sir.

1 Q. Did you recognize any names on that?

2 A. The only possible one is Mr. Carrington who is a
3 police officer.

4 Q. All right. If he should be a witness -- no, as I
5 say, these are potential witnesses. They do not have to
6 be called, but they may be called. If he should be
7 called as a witness to testify, would that in any way
8 interfere with your ability to give both the State and
9 the defendant a fair and impartial trial?

10 A. No, sir, it wouldn't.

11 Q. Very good. Now, you also recall my instructions
12 from Monday to avoid all forms of media coverage dealing
13 with this case. Do you understand that?

14 A. Yes, sir.

15 Q. Has this caused you any problem?

16 A. No, sir.

17 Q. The trial of this case will last approximately ten
18 days or a week to ten days. The reason, this is a little
19 different than the normal case. Other than the personal
20 inconvenience, would this pose a serious danger to the
21 health or well-being of yourself or anyone else dependent
22 upon you?

23 A. No, sir.

24 Q. Among other things today we will be talking about
25 penalty. But the mere fact that we talk about penalty

1 does not indicate anything about this Defendant or any
2 defendant. Defendants are presumed in the law to be
3 innocent. 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 and accept and apply that law as I
7 would instruct you as the Judge of the court, and even
8 though you may not agree with that law or think it ought
9 to be some other way, you could listen and accept and
10 apply that law as I instruct it to you?

11 A. Yes.

12 Q. You could?

13 A. Yes, sir.

14 Q. You need to speak up. That lady takes everything
15 down that we're saying.

16 A. All right.

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

21 A. Yes, sir.

22 Q. In a criminal case, the State has the burden of
23 proving guilt. The burden of proof for the State is
24 beyond a reasonable doubt. A defendant has no burden to
25 prove innocence. Do you understand that?

1 A. Yes.

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

5 A. Yes, sir.

6 Q. If you were a juror in a death penalty case and if
7 the jury had found the defendant guilty of murder, you
8 would then move to the sentence 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 that?

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 the 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 in the first part, that ends the
23 matter. Do you understand that?

24 A. Yes, sir.

25 Q. Therefore, if you were a juror in a trial of a

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

5 A. Yes, sir.

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 a defendant will
11 receive for the crime of murder?

12 A. Yes, sir.

13 Q. In a capital sentencing trial, the jury's function
14 is to determine the appropriate punishment based on the
15 circumstances of the crime and the characteristics of the
16 individual defendant. Now, aggravating circumstances are
17 facts or details that, when they are present in a case,
18 make the crime of murder more serious or worse. On the
19 other hand, mitigating circumstances are incidents,
20 occurrences or details of a case that would reduce the
21 severity of the crime of murder. In other words, may
22 reduce the degree of responsibility of the defendant for
23 the crime. Do you understand that?

24 A. Yes, sir.

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

1 to consider regarding the sentencing for murder? One
2 option is life in prison which under our law is until
3 death without parole. Do you understand that?

4 A. Yes, sir.

5 Q. Now, the other option is death which in this state
6 is by electrocution or lethal injection. Do you
7 understand that?

8 A. Yes, sir.

9 Q. Could you, as a juror in the sentencing phase,
10 depending upon the facts including relevant aggravating
11 and mitigating circumstances and the law as instructed to
12 you, render a sentence of life imprisonment?

13 A. Yes, sir.

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

18 A. Yes, sir.

19 Q. All right. If you would, please, sir, answer any
20 questions the attorneys may have.

21 MR. MCGUIRE: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. MCGUIRE:

24 Q. Good, morning, sir.

25 A. Good morning.

1 Q. I have to refer to you by number. It's a little
2 awkward for me. I'm not being not polite; it's just the
3 way we've got to do things.

4 A. Okay.

5 Q. So if you'd forgive that for me.

6 What I'm going to do is just ask you a little bit
7 about murder, punishment, these legal principles that we
8 have to talk about. The Judge gave you a very good
9 framework, some very good general guidelines. And I'm
10 going to go into more detail if that's okay with you.

11 A. Okay.

12 Q. And what we're going to do is let's just start from
13 the basics. And that's the legal definition of murder in
14 South Carolina. In South Carolina we have what's called
15 malice murder, malice aforethought murder. And the Judge
16 would instruct the jury that murder is the unlawful
17 killing of another with malice aforethought done
18 unlawfully. And the malice part is described as the
19 killer acting with a black and malignant heart fatally
20 bent on evil, deliberately, intentionally choosing to
21 take the life of an innocent person. Are you with me?

22 A. Yes.

23 Q. Okay. And in a capital case, the State would bring
24 more evidence called aggravation evidence to make it
25 what's called an aggravated murder because only

1 aggravated murders are eligible for the death penalty.

2 As bad as that malice aforethought definition
3 sounds, by itself, that kind of murder is not eligible
4 for the death penalty. It's only when the State brings
5 aggravation evidence to the satisfaction of all twelve
6 jurors beyond a reasonable doubt can they ask for the
7 death penalty. Okay?

8 A. Okay.

9 Q. And the Judge also instructed you about mitigation
10 evidence. And basically that could be stuff like from a
11 defendant's background like his childhood, if he grew up
12 poor or was a drug addict. Stuff like that. Okay? Are
13 you with me?

14 A. Yeah.

15 Q. What I'm going to do is fix you in a place and time
16 so we can talk about this in a little bit more detail and
17 a little bit less abstract. Okay? I'm going to get you,
18 if you would in your mind, just put yourself in the jury
19 box over here to my left sitting in one of those chairs
20 with eleven other people. And you hear the first part of
21 the trial, and that's did the fellow do it or not, is he
22 guilty or not of murder. And you and eleven other jurors
23 find beyond a reasonable doubt that it is murder. A
24 deliberate intentional killing of an innocent person.
25 And you get to go home after you deliver that verdict for

1 about a day. You get a break.

2 Then the judge would bring you back. You'd rejoin
3 the eleven other jurors, and you'd begin your journey to
4 fix punishment. And keeping in mind what I said about,
5 you know, background factors of a defendant, that sort of
6 thing, I'm going to give you an example and ask your
7 point of view about this.

8 Let's say in the case that -- not this case, but any
9 other case in some other place, some other time. The
10 case that you were in judgement of was, for example, two
11 murders. That the aggravation evidence would be that the
12 defendant had killed before and then killed again.
13 Knowing everything that we've talked about, all the
14 evidence that you could look at, is a life in prison
15 penalty ever severe enough to punish that double-murder-
16 type situation?

17 A. I don't think so.

18 Q. Okay. And I looked at your questionnaire, and you
19 indicated that based on -- or your view about the death
20 penalty would be that if a person committed the crime,
21 then it warranted the death penalty and he should be put
22 to death. Okay? And that double-murder situation fits
23 with your view?

24 A. Yeah.

25 Q. Okay. And that person should be put to death?

1 A. Yeah.

2 Q. Okay. And what I'm going to do now is talk to you
3 about how a sentencing case, a capital case, is different
4 from any other case in South Carolina because normally
5 the jury is just focused with the is he guilty or not,
6 did the fellow do it or not. In a capital case, the jury
7 has the opportunity to fix punishment, decide punishment.
8 And as I said earlier, the State would have to bring
9 aggravation in and convince all twelve jurors that it
10 existed before they could even ask for the death penalty.

11 And the rules are different for both sides in the
12 penalty phase. Like I said, the State has to prove their
13 evidence beyond a reasonable doubt to all twelve jurors.
14 It's different for the Defense side or the life penalty
15 side. Are you okay with that?

16 A. Yeah.

17 Q. Okay. And the judge would instruct all jurors that
18 they could vote for life for any reason, no reason,
19 mercy, grace or anything they see in the case. Is that a
20 principle you're okay with?

21 A. Yeah.

22 Q. Well, let me rephrase it. If another juror voted
23 for life and that was their position and they said, you
24 know, I listened to the judge, and he said I didn't have
25 to give a reason, could you just respect their position?

1 A. I -- to me, if he was found guilty and it was me
2 doing the voting, I'd say, you know, yes, he was guilty
3 of doing it and he should be put to death. That's my
4 position on that even though another person might say,
5 no, let's put him in life.

6 Q. Right.

7 A. You know ...

8 Q. If I could get you to hold on one second.

9 MR. MCGUIRE: If I could have a second, Judge?

10 MS. ADAMS: Your Honor, I think the problem is
11 he's not being told he has to consider the law. It's the
12 line of questioning that's staking him out, boxing him in
13 a corner. And that's not the law. That's my problem
14 with the line of questioning. The juror's not getting
15 ---

16 THE COURT: I understand. I'm going to
17 overrule your objection.

18 Go ahead and answer the question. I think you
19 understood the question?

20 Let's do ---

21 Q. I'll repeat it for you.

22 THE COURT: The thing is I think you're asking
23 him if he could accept somebody else's ---

24 MR. MCGUIRE: Yes, sir.

25 Q. What I'm going to do is explain this aspect of the

1 law and ask you if you could respect it. I know that you
2 have your view, your own personal view. And you seem
3 very adamant in that and very secure in that. Am I
4 right?

5 A. Yeah.

6 Q. Okay. And you've given careful thought to your
7 answers obviously?

8 A. Yeah.

9 Q. And while I understand your point of view would be
10 death penalty, if the judge did instruct the jury that
11 they could vote for life for any reason, no reason, mercy
12 and somebody came to that decision, could you respect
13 that that's their decision and let them have it?

14 A. Yeah. If it was theirs, yeah.

15 Q. Right. And what I'm getting ---

16 A. I'm not going to change mine, but that was their
17 opinion.

18 Q. Sure. I'm not asking you to change your opinion. I
19 don't think I could do that, could I?

20 A. No.

21 MS. ADAMS: Your Honor, again, that's not fair.

22 THE COURT: I understand. Okay. Let's move
23 on.

24 MR. MCGUIRE: Thank you.

25 Q. And what I'm getting at is the law allows the jury

1 to actually end the day agreeing to disagree. You could
2 have your point of view. And I understand you're very
3 secure in that. But another juror could have a different
4 point of view, and the law allows for that. And most
5 times when we think about juries and delivering their
6 result, we usually think the jury speaks with one voice
7 and all twelve agree. But in capital cases, it actually
8 can be different.

9 The only time it has to be completely unanimous is
10 if the sentence was for death. All twelve would have to
11 agree. But it's okay for the jury to come into court and
12 announce to the judge that all twelve couldn't vote for
13 death, all twelve couldn't vote for live. And the judge,
14 while he might ask you to give it another throw and
15 another shot at trying to work it out unanimous, if the
16 jury eventually came back in and just said we can't
17 agree, all twelve, the judge would take the case and he'd
18 sentence and end the case right there.

19 Is that a principle of law you could respect and
20 follow?

21 A. Yes.

22 Q. Okay.

23 MR. MCGUIRE: And Judge, this is where I would
24 ask my questions one through six pursuant to the ---

25 THE COURT: I've already ruled, so let's

1 proceed subject to my ruling and your objection.

2 MR. MCGUIRE: Yes, sir.

3 Q. And the State and the Defense and even you as a
4 potential juror are entitled to fairness not just out
5 here in this courtroom, but also in that jury room. And
6 the law -- once a juror comes to their decision in a
7 matter so important as to whether to kill a human being
8 or not, it's described as their individual moral
9 judgement. And the judge would maybe instruct or the law
10 says that if it would do harm or violence to their
11 conscience to change their individual moral judgement,
12 that would be wrong. And if you saw things get hostile
13 or belligerent or some bullying in the jury room, could
14 you pass a note out here to the Judge saying, you know,
15 we need to make things fair in here again?

16 A. Yeah.

17 Q. Okay. We can count on you to do that?

18 A. Yeah.

19 Q. Okay. I'm going to ask you about mercy, the concept
20 of mercy. Is mercy something that's freely given and
21 bestowed, or is it earned?

22 A. I'd say it's earned.

23 Q. Okay. How would somebody go about earning mercy?

24 A. I think you'd have to talk to the person to find out
25 what he was having to say.

1 Q. Okay.

2 A. I'd look at it that way. I'd just have to see what
3 he had to say about it.

4 Q. Okay. Fair enough. I appreciate your patience.
5 Thank you so very much, sir.

6 A. Okay.

7 THE COURT: Madam Solicitor?

8 MS. ADAMS: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. ADAMS:

11 Q. It's still morning. Good morning. How are you?

12 I'm Chrissy Adams and I'm the Solicitor for the Tenth

13 Circuit. And what we're trying out figure out is -- by

14 asking you your feelings on the death penalty is

15 basically if you can be fair to the Defendant as well as

16 to the State in coming to a decision. Okay? We're kind

17 of putting the cart before the horse here in talking

18 about penalty, so we're assuming that twelve jurors, if

19 you're sitting in that box, have already found the

20 Defendant guilty of murder. Okay? During the penalty or

21 sentencing phase which is a totally different trial, got

22 to decide between life or death. That's it. Okay?

23 Now, the State has to prove an aggravating

24 circumstance which kind of bumps the murder up that makes

25 it eligible for the death penalty. Did you know --

1 because not all murders are eligible for the death
2 penalty. Did you know that?

3 A. Yes.

4 Q. Okay. Not all of them are. So we have to prove an
5 aggravating circumstance, whether it's a prior murder or,
6 you know, whether you killed a police officer. There are
7 lots of different aggravating circumstances that the law
8 lays out. And the State would have to prove just one to
9 you beyond a reasonable doubt before you even get to the
10 next stage. Can you follow the Judge's instructions on
11 that?

12 A. Yeah.

13 Q. Okay. Now, the Judge is going to instruct you that
14 part of the penalty phase is not only listening to the
15 aggravating circumstance, but listening to mitigation, if
16 any, that the Defense may present to you. Okay? Will
17 you listen to all of that evidence before you come to a
18 decision on whether life or death would be appropriate?

19 A. Yes.

20 Q. Okay. So even if the aggravating circumstance was a
21 prior murder, would you automatically vote for the death
22 penalty, or would you want to remain open-minded and hear
23 all the mitigation and aggravation before you decide it?

24 A. Yeah, I'd like to hear it all before I make a
25 decision.

1 Q. Okay. So in other words, you would wait, even if
2 it's a prior aggravating murder, to hear everything in
3 mitigation -- and do you understand what mitigation is?
4 I want to make sure ---

5 A. Tell me.

6 Q. Mitigation is evidence that would tend to make you
7 feel that life was more appropriate than death despite
8 the aggravation. Is that a concept you can follow?

9 A. Yes.

10 Q. And that you would listen to the Judge's
11 instructions on that?

12 A. Yeah.

13 Q. Okay. Once you listen to all the aggravation and
14 all the mitigation despite the -- let's say -- let's just
15 say that the aggravation is a prior murder. Could you
16 vote for life if you felt that was appropriate listening
17 to the entire case?

18 A. No.

19 Q. Okay. Thank you very much. I appreciate it.

20 THE COURT: Any further questions from the
21 Defendant?

22 MR. MCGUIRE: No further questions. Just a
23 small legal matter, Judge.

24 THE COURT: In a death penalty case, would you
25 always or automatically vote for the death penalty even

1 though the law provides that you may impose a sentence of
2 life without parole depending upon the circumstances of a
3 particular case and the characteristics of an individual
4 defendant?

5 THE POTENTIAL JUROR: Yeah.

6 THE COURT: Very good.

7 Do you need any further discussion?

8 MS. ADAMS: No, sir.

9 THE COURT: Juror, I understand that you didn't
10 ask to be here. I'm sure you've got other places you'd
11 rather go. One of the reason I asked the question if you
12 could be fair and impartial, of course, is so the parties
13 would have a fair and impartial jury. But the second
14 reason is just as important if not more important
15 because, as I say, you didn't ask to be here. No juror
16 asks to be here. You have strongly-held convictions, and
17 I don't want in any way to interfere with a person's
18 convictions. In other words, that is what they believe
19 and they're entitled to believe in. However, there are
20 certain things that, you know, if cases come up that the
21 law requires and other things that might compromise those
22 convictions.

23 So I don't want to put anybody in any sort of
24 uncomfortable or a questionable sort of situation. So on
25 this particular case, I'm going to excuse you from

1 serving on this case. Now, you'd be a perfect juror in
2 any other case. But I think under the circumstances --
3 and I want to thank you for your candor too. And that's
4 the type thing I needed to hear. I want to thank you for
5 being with us, but I'm going to excuse you. But I do
6 want to thank you for being here and I appreciate your
7 honesty and candor and your patience with the Court too
8 because it's been a while.

9 THE POTENTIAL JUROR: Okay. Thank you.

10 THE COURT: Okay. Good luck to you, sir.

11 THE POTENTIAL JUROR: All right.

12 (WHEREUPON, Potential Juror 269 exited the
13 courtroom.)

14 THE COURT: All right. What's the next one,
15 270? Anything about 270 from the Defense?

16 MR. MCGUIRE: No, sir.

17 THE COURT: All right. Anything from the State
18 before we bring out Juror 270?

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

20 THE COURT: All right. From the Defense?

21 MR. MCGUIRE: No, sir.

22 THE COURT: All right. Ask Juror 270.

23 (WHEREUPON, Potential Juror 270 entered the
24 courtroom.)

25 THE COURT: All right. Are you Juror 270?

1 THE POTENTIAL JUROR: Yes, sir.

2 THE COURT: Very good. Thank you.

3 POTENTIAL JUROR 270,

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 understand that you're still under
9 oath and this oath continues throughout these
10 proceedings?

11 A. Yes, sir.

12 Q. You have been provided with a copy of a list of
13 potential witnesses. Have you had an opportunity to
14 review that witness list?

15 A. I have.

16 Q. Did you recognize any names?

17 A. No, sir.

18 Q. Do you also recall my instructions from Monday to
19 avoid all forms of media coverage dealing with this case?
20 Has that caused you a problem in any way?

21 A. No, sir.

22 Q. The trial of the case will last as much as a week to
23 ten days. Other than personal inconvenience, would this
24 pose a serious danger to the health or well-being of
25 yourself or anyone who is dependent upon you?

1 A. No, sir, I don't think so.

2 Q. Among other things, today we'll be talking about
3 penalty. But the mere fact that we talk about penalty
4 does not indicate anything about the Defendant or any
5 defendant. Defendants under our law are always presumed
6 to be innocent. Do you understand?

7 A. Yes, sir.

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

14 A. Yes, sir.

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

18 A. Yes, sir.

19 Q. In a criminal case, the State has the burden of
20 proving guilt. The burden of proof for the State is
21 beyond a reasonable doubt. A defendant has no burden to
22 prove innocence whatsoever. In other words, a defendant
23 does not even have to testify or present evidence. And
24 the fact that he exercises his rights cannot even be
25 discussed. The defendant is presumed to be innocent of

1 all charges. Do you understand this?

2 A. Yes, sir.

3 Q. Could you, depending upon the facts and evidence of
4 the case as I would instruct you in a particular case --
5 this is in any particular case. But based on the facts
6 and evidence and the law as I would instruct you, could
7 you either find the defendant guilty or not guilty?

8 A. Yes, sir.

9 Q. All right. If you were a juror in a death penalty
10 case and if the jury has found the defendant guilty of
11 murder, you would then move to the sentence phase of the
12 trial. Do you understand that?

13 A. Yes, sir.

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 prosecutor -- in other words, the
17 State -- is seeking the death penalty. Do you understand
18 this?

19 A. Yes, sir.

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 guilty -- excuse me -- is found not guilty in

1 the first phase, that ends the matter and there's no
2 further proceedings. Do you understand that?

3 A. Yes, sir.

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

9 A. Yes, sir.

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

16 A. Yes, sir.

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

21 A. Yes, sir.

22 Q. Now, aggravating circumstances are facts or details
23 that, when they are present in a case, make the crime of
24 murder more serious or worse. On the other hand,
25 mitigating circumstances are incidents, occurrences or

1 details of a case that would reduce the severity of the
2 crime of murder. In other words, may reduce the degree
3 of responsibility of the defendant for the crime. Do you
4 understand that?

5 A. Yes, sir.

6 Q. Do you also understand that the jury has two options
7 to consider regarding the sentencing for murder? One
8 option is life in prison which under our law is until
9 death without parole. The other option is death which in
10 this state is by electrocution or lethal injection. Do
11 you understand that?

12 A. Yes, sir.

13 Q. Could you -- considering all these things, could
14 you, as a juror in the sentencing phase, depending upon
15 the facts including relevant aggravating and mitigating
16 circumstances and the law as instructed to you, render a
17 sentence of life in prison?

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
22 instructed to you, could you render a sentence of death?

23 A. Yes, sir.

24 Q. Very good. If you would, please, sir, answer any
25 questions the attorneys may have.

1 MR. MCGUIRE: Judge, I'm going to hold my
2 questions at this time and hold them in response.

3 THE COURT: All right. Madam Solicitor?

4 MS. BYFORD: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. BYFORD:

7 Q. Good morning, Number 270. Thank you for being
8 patient this morning.

9 I just have a few questions for you. Did you
10 understand everything that the Judge sort of explained to
11 you?

12 A. Yes, I did.

13 Q. Okay. In South Carolina not all murder cases are
14 eligible for the death penalty. In order -- and what
15 we're going to assume for the purposes of all my
16 questions is that we've already moved past what's called
17 the guilt phase of this trial and that the jury has
18 returned a verdict of guilt, so we're jumping right to
19 the penalty phase. Okay? In South Carolina in order to
20 prove to the jury that something is eligible for the
21 death penalty, the State has to establish what's called
22 an aggravating circumstance. And we have to prove that
23 to the jury beyond a reasonable doubt before they can
24 even begin to discuss sentencing. Does that make sense?

25 A. Yes.

- 1 Q. Okay. So we're already -- let's jump ahead one step
2 further and assume that we've already done that. We've
3 proved to the jury that there's an aggravating
4 circumstance regarding this murder, and now we're going
5 to move to the discussion between life and death. Okay?
6 The Judge is going to instruct you that you have to
7 consider the evidence, the complete evidence, in this
8 case. That includes everything that's given to you in
9 aggravation -- and while the Defense never has to present
10 a case -- anything that they present in mitigation. You
11 would have to consider the totality of the evidence. Is
12 that something that you'd be able to do?
- 13 A. I believe so.
- 14 Q. You would want to be fair to the Defendant. Is that
15 a fair statement?
- 16 A. That's right.
- 17 Q. So you would want to consider what case he presents,
18 if any?
- 19 A. I'd like to hear it, yes.
- 20 Q. Okay. And the Judge is going to instruct you too
21 that you can find -- in fixing punishment you can find
22 for life for any reason at all that you see in
23 mitigation, no reason at all. Is that something you're
24 okay with?
- 25 A. Yes:

1 Q. Okay. At the end of the day, after looking at
2 everything that the State has presented and everything
3 that the Defense has presented, in considering all of it,
4 if the facts and circumstances warranted it could you
5 find for life without parole?

6 A. Yes, I believe I could.

7 Q. Okay. And just on the other hand, could you also
8 find for the death penalty if you believed the facts and
9 circumstances warranted?

10 A. Yes.

11 Q. Okay. I noticed on your questionnaire that you put
12 your girlfriend, I believe, is opposed to the death
13 penalty. Is that a fair statement?

14 A. Yes.

15 Q. Okay. Would that cause you any problems at all
16 serving on the jury?

17 A. No.

18 Q. Okay. If at the end of the day you and the eleven
19 other jurors found that a death sentence was warranted --
20 because you'd have to be unanimous. You would be not
21 required -- well, not required. But the procedure is
22 that in South Carolina if a death verdict is returned,
23 the jurors have to all sign the sentencing sheet. And
24 that -- your name would go on that public document. Is
25 that something you would be okay with?

1 A. Sure.

2 Q. Okay. Have you -- I'm sorry. I don't think I've
3 asked you this yet. Have you seen or heard anything
4 about this case on the news?

5 A. No, not -- I've heard the name on the news, but I
6 don't know anything about it.

7 Q. Okay. If you were to remember anything later, could
8 you set that aside and make your decision based just on
9 what you heard in the courtroom today?

10 A. I could.

11 Q. Okay. That's all I have.

12 THE COURT: Very good.

13 Anything from the Defense?

14 MR. MCGUIRE: Yes, sir, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MCGUIRE:

17 Q. Good afternoon, Juror Number 270. We've got to
18 refer to you by number. It's a little hard for us. I
19 hope you just forgive us that. What I'm going to do is
20 just ask you if you were -- you know, if you were just
21 hanging out with a couple of friends maybe after work and
22 just kind of discussing anything, just news, current
23 events, and somebody said, you know, I think some cases
24 should be almost automatic death penalty or some cases
25 are just so -- categories of cases are so serious I would

1 lean toward the death penalty without knowing much about
2 it -- when I say category, I'm talking about any kind of
3 case like rape murder, killing of a child, killing of a
4 police officer. You know, different categories of cases.
5 Any type of case resonate with you where you would just
6 automatically be leaning toward the death penalty?

7 A. Well, you're talking about before, prior to being on
8 the jury or whatever?

9 Q. Sure.

10 A. In the past?

11 Q. Yeah.

12 A. I'm sure, yes, I've thought so.

13 Q. Okay. And what kind of categories or types kind of
14 ---

15 A. You know, like a murder case or whatever, just
16 casual talking.

17 Q. Okay. The Judge would instruct the jury that the
18 type of killing that we'd start with would be what's
19 called malice murder. It's the deliberate, intentional
20 killing of another human being with malice aforethought.
21 And malice is defined in the law as the killer operating
22 with a black and malignant heart fatally bent on evil,
23 intentionally choosing to take the life of an innocent
24 person. And then the State would have to come and add an
25 aggravation factor to that to make malice murder

1 aggravated murder. And then they could ask for the death
2 penalty.

3 What I'm going to do is get you to place yourself in
4 your mind on a jury over here. That's where they'd sit.
5 And you and eleven other people are sitting on a capital
6 case. And after the first part's done -- that's the did
7 the fellow commit murder or not.

8 After that's over, you get to go home for about a
9 day. Then you come back, rejoin your eleven other
10 jurors. And that's when you'd begin the journey to fix
11 punishment, and that's when you would hear evidence from
12 both sides. You'd hear aggravation facts from the State
13 and other factors about, say, maybe the defendant's like
14 his background like if grew up poor or maybe he was a
15 drug addict. Something like that.

16 What I'm going to do is just give you an example and
17 just ask for your thoughts about it. Okay? And that is
18 -- the example I'm going to give you is the aggravation
19 type case is -- let's say for example the person you're
20 judging had killed before, and you'd be fixing punishment
21 for somebody who had deliberately killed twice. That's
22 what makes this murder aggravated. And keeping in mind
23 the stuff I said about Defense evidence and background
24 like childhood and maybe a drug addict sort of thing,
25 could the life in prison penalty ever be severe enough to

1 punish that double-murder type situation?

2 A. I don't think so.

3 Q. Okay. Okay. And it seems like you've given pretty
4 careful thought to you answers today. They're not
5 flippant. They seem to come from who you are as a
6 person. Is that right?

7 A. Pretty much.

8 Q. Kind of your moral value system?

9 A. Uh-huh (affirmative).

10 Q. And everybody -- there's no right or wrong answer
11 here today. If it's your opinion, it's a right answer.
12 And what I'm hearing is that in a double-murder
13 situation, the life penalty wouldn't be severe enough.
14 It would be the death penalty for you?

15 A. It depends on the severeness of the crime, yeah.

16 Q. Okay. But without knowing severeness or facts or
17 anything, just the fact double murder sounds -- and
18 correct me if I'm wrong -- that the life penalty would
19 not be appropriate for that?

20 A. I would just -- no.

21 Q. Okay. What I want to do now is talk to you a little
22 bit about -- follow up a little bit on Ms. Byford's
23 comments about the sentencing process. And I'm just
24 going to ask you if you can just agree and follow these
25 aspects of the law. And I'm going to start with -- the

1 rules are a little bit different in capital cases. One
2 rule is that the jury actually has the opportunity to fix
3 punishment. It's different from any other case. Most
4 cases the jury just does guilt, innocence, and the judge
5 sentences. You know, they figure out if the fellow is
6 guilty or not, and if guilty, the case goes to the judge,
7 and he always sentences.

8 But the jury in a capital case has the opportunity
9 to fix punishment. And the State, when they have to
10 prove their evidence, the rules that apply to the State
11 are they have to prove aggravation beyond a reasonable
12 doubt to all twelve jurors. And that's kind of like we
13 think about juries. When juries agree on something, they
14 speak with one voice. But the rules are different with
15 the life penalty or the mitigation or the Defense side of
16 the case. The Judge would instruct the entire jury that
17 any individual juror could vote for the life penalty for
18 any reason, no reason, mercy, grace or anything they see
19 in the case. Is that a principle of law you can follow?

20 A. Yes.

21 Q. Okay. It might not be your point of view, but if
22 somebody else voted for life and they didn't have a
23 reason, you could respect that?

24 A. Uh-huh (affirmative).

25 Q. Okay. Because the way the law describes a juror's

1 decision in a capital case is that it's their individual
2 moral judgement. And that if it would do harm to their
3 conscience or do violence to their conscience to change
4 their individual moral judgement, that would be wrong.
5 And the way this plays out in fact or by example would be
6 let's say you're on that jury. One juror that sat in the
7 front row might say, you know, I saw something about a
8 defendant's background, his walk in life, childhood
9 maybe. And that's a reason for me to give life. A juror
10 on the back might say, there was something about his
11 mental health that resonated with me. That's my reason
12 for voting life. And somebody could say, well, you know,
13 I listened to the judge. And I just feel like I should
14 vote for life, and I don't even really have a reason.
15 And what I'm getting at is you see how they could all
16 vote for life but have a different reason. And the jury
17 doesn't necessarily speak with one voice in that type
18 situation. Is that a principle you're okay with, you
19 could follow and respect other people's points of view?
20 A. Sure.
21 Q. Okay. It might not be yours, but you could respect
22 others?
23 A. That's right.
24 Q. And the Defense, the State and even you as a juror
25 are entitled to fairness not just out here in the

1 courtroom, but also in the jury room. And if you saw a
2 juror or a couple of jurors or some jurors reach their
3 own individual moral judgement and it got hostile back
4 there, it got beyond civil discourse and civil
5 deliberations and it got to where you thought it was
6 unfair, could we count on you to pass a note out to the
7 Court saying, you know, it's not fair in here, we need to
8 get back to fairness?

9 A. I think so.

10 Q. Okay. I'm going to ask you about the concept of
11 mercy. Is mercy something that's freely given or
12 bestowed, or is it earned?

13 A. I don't know what to say on that.

14 Q. Okay. If you don't even have an opinion, that's
15 okay.

16 A. Okay. I don't have an opinion.

17 Q. All right. Fair enough. Your wife's views about
18 the death penalty and her opposition to it ---

19 A. I'm not married.

20 Q. I'm sorry. That's right. You put very carefully on
21 there that you had a girlfriend.

22 A. We live together. I think that was the question I
23 was asked. I was just trying to be honest.

24 Q. It sure did. And I misstated that, and I appreciate
25 your correcting me. Your girlfriend's opposition to the

1 death penalty, is that based on religious or moral? Just
2 kind of who she is?

3 A. Just kind of who she is.

4 Q. Okay. Fair enough. One thing, one last thing I
5 want to talk to you about is you indicated that the life
6 in prison penalty costs too much because we're going to
7 have to put somebody in jail and have to feed them and
8 clothe them. That sort of thing. And that's a common
9 misconception.

10 And the Court's asked me to correct this in the past
11 with other jurors. And I'll just tell you every state
12 that's looked at the death penalty and life without
13 parole, if they got rid of the death penalty, they saved
14 millions and millions of dollars. New York, New Jersey
15 and New Mexico just got rid of the death penalty. All
16 three states found that one of the reasons they were
17 doing that was to save millions of dollars. Did you know
18 that?

19 A. No, not really. I didn't know that.

20 Q. Okay. North Carolina is another city [sic] that
21 just recently did a report. And if they ended the death
22 penalty, they'd save ten million dollars a year. Did you
23 know that?

24 A. I didn't know that.

25 Q. Okay. Thank you, sir.

1 THE COURT: Any further questions?

2 MS. BYFORD: Just two, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. BYFORD:

5 Q. Just real quick in response to the questions about
6 the financial thing. Do you understand that that would
7 not be an appropriate consideration in fixing punishment
8 for a defendant, is the cost of it?

9 A. Yes, I do.

10 Q. Okay. And would you be able to just make your
11 decision based on the facts and the evidence in the
12 courtroom and not about how much something is going to
13 cost?

14 A. Sure would.

15 Q. Okay. And I also -- I'm sorry. It's kind of hard
16 to hear on occasion sitting back there. I heard Mr.
17 McGuire ask you a couple of questions about when the
18 aggravating factor is murder. If after considering all
19 the evidence, I thought I heard you say one time that
20 life without parole may never be an appropriate
21 punishment, but then I thought I heard you say later that
22 it depends on the circumstances. And I just want to make
23 sure I understand. I couldn't quite hear everything that
24 was going on.

25 A. You know, it depends on what the case and what

1 happened during the murder or whatever before I'd give
2 them the death penalty.

3 Q. Before you -- you'd have to hear everything ---

4 A. I'd have to hear everything.

5 Q. --- before you could make a decision about that.

6 And until you had heard everything, would you keep an
7 open mind?

8 A. Sure.

9 Q. Okay. Would you automatically vote one way or the
10 other based on the State's case, or would you wait to
11 hear the Defendant's case first?

12 A. I'd need to hear it all.

13 Q. Okay. That's all I have. Thank you.

14 THE COURT: Anything further from the Defense?

15 MR. MCGUIRE: No further questions, Judge.
16 Just a small legal matter.

17 THE COURT: I understand.

18 I've got a question like some of the questions we've
19 been talking about. But I just want to be sure that I
20 understand your position. In a death penalty case, would
21 you always or automatically vote for the death penalty
22 even though the law provides that you may impose a
23 sentence of life without parole depending on the
24 circumstances of a particular case and the
25 characteristics of an individual defendant?

1 THE POTENTIAL JUROR: I wouldn't always, no.

2 THE COURT: Thank you. If you'd go with the

3 ...

4 Any further questions?

5 MR. MCGUIRE: No further question, Judge.

6 THE COURT: Anything further?

7 MS. BYFORD: No, sir.

8 THE COURT: If you'd go with the bailiff. I

9 need to take up some matters with the attorneys.

10 (WHEREUPON, Potential Juror 270 exited the
11 courtroom.)

12 THE COURT: All right. Mr. McGuire?

13 MR. MCGUIRE: Thank you, Judge. I deliberately
14 withheld my questions to give the State an opportunity to
15 educate him fully about mitigation. He heard the Court's
16 comments, he heard the State's comments and got a pretty
17 good education. I even explained what they were to him
18 and even gave him background examples that he could use.
19 And when he heard the specific aggravation of double
20 murder, he said basically the death penalty was for him.
21 That was his view.

22 So I mean, it was definitely balanced, and he was
23 fully informed with regard to mitigation. And despite
24 all that, I think that's when we got his really honest
25 and candid view. When he heard double murder, he was

1 going to vote for the death penalty. And I'd move for
2 cause based on the Sixth and Fourteenth Amendments and
3 Sections 14 and 15, and Article I of the South Carolina
4 Constitution.

5 THE COURT: All right. Madam Solicitor?

6 MS. BYFORD: Your Honor, the only thing that I
7 would point out about this juror in regards to Mr.
8 McGuire's argument is that I believe right before all
9 that questioning started there was talking about just
10 casual water cooler talk and that that -- and the
11 question that he's referring to in his argument followed
12 right after that. But later when Mr. McGuire was
13 questioning and he was talking about, you know, an actual
14 case, not just talking around the water cooler, he said
15 that it would depend on the circumstances. And I think
16 that most of his questions that Mr. McGuire was referring
17 to in his argument were among that general just casual
18 conversation. So I don't know that that -- I don't know
19 if he's disqualified under that particular context.

20 THE COURT: Anything else from the Defense?

21 MR. MCGUIRE: No, sir.

22 THE COURT: Anything else from the State?

23 MS. BYFORD: No, sir.

24 THE COURT: The one thing that creates concern
25 -- I don't think this is truly the type of juror that you

1 automatically disqualify. However, I do feel -- and this
2 is one of those things where the convictions of the
3 individual perhaps would impact on any decision. He
4 seems to be more circumstance, more fact-related or
5 concerned. In other words, when he does say it depends
6 on the seriousness of the crime even though he could
7 accept any reason, no reason for life without parole, he
8 said sure. But each time he would come back to it
9 depends on the crime. He was going to have an open mind.
10 But if he -- it's going to be really how serious it is.
11 And of course, he does have a feeling about life is over
12 anyway, so life without parole is probably just as bad.
13 So then he talks about the cost.

14 I think this is a close case, but I don't feel that
15 he'd be qualified.

16 All right. Ask the juror to join us.

17 (WHEREUPON, Potential Juror 270 entered the
18 courtroom.)

19 THE COURT: All right. Considering the entire
20 voir dire -- that means all the question, your
21 questionnaire, the questions you heard from the attorneys
22 as well as the Court, I find that Juror 270 should be
23 excused from serving on the trial of this case. I'll
24 tell you, the reason for that is if you remember when I
25 was qualifying the entire panel on Monday, I asked the

1 question if there were some sort of response that after
2 hearing if could you be fair and impartial to -- or would
3 this affect your ability to be fair and impartial to both
4 the State and the Defendant. The reason for that was
5 first of all the parties, the State and the Defendant,
6 are entitled to a fair and impartial jury. But more
7 importantly you didn't ask to be here. You know, you
8 were summoned and you came.

9 And I want to thank you for your patience and your
10 candor particularly because there's one thing I don't
11 want to do is to in any way interfere or compromise an
12 individual's strongly-held convictions. In other words,
13 that is the thing that makes us who we are. I don't want
14 to start putting a person in a position where they have
15 to qualify or justify or anything else their convictions.
16 Because it would create not only a problem for the case,
17 but also for the individual. I don't want you to have to
18 walk away later and have to explain what you've done or
19 anything like that. And that's why I asked that question
20 if you could be fair and impartial even to yourself.

21 In this case I do find that you have very strong
22 convictions and well-found convictions. As I say, your
23 candor -- but I just think that it might be a little
24 difficult for you to sit on a case of this particular
25 nature.

1 Having said that, you'd be an excellent juror on any
2 other case. But just for this particular case, I'm going
3 to excuse you. But I do want to thank you for your
4 patience with the Court and also for your candor in
5 answering these difficult questions.

6 THE POTENTIAL JUROR: Thank you, sir.

7 THE COURT: Good luck to you.

8 THE JUROR: Thank you.

9 (WHEREUPON, Potential Juror 270 exited the
10 courtroom.)

11 THE COURT: All right, 278. Is there anything
12 about Juror 278?

13 MR. MCGUIRE: No, sir.

14 THE COURT: From the State?

15 MS. ADAMS: Sir? Nothing.

16 THE COURT: All right.

17 Number 278, please.

18 (WHEREUPON, Potential Juror 278 entered the
19 courtroom.)

20 THE COURT: All right. Are you Juror 278?

21 THE POTENTIAL JUROR: Yes.

22 THE COURT: Thank you, ma'am.

23 **POTENTIAL JUROR 278,**

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

25 **EXAMINATION**

1 BY THE COURT:

2 Q. You will recall on Monday I put all the jurors under
3 oath or affirmation. Now, do you understand that you're
4 still under oath and that oath continues throughout these
5 proceedings?

6 A. Yes.

7 Q. Thank you, ma'am. You have been provided with a
8 copy of a list of potential witnesses. Have you had an
9 opportunity to review that witness list?

10 A. Yes.

11 Q. Did you recognize any names?

12 A. No.

13 Q. Do you also recall my instructions from Monday also
14 to avoid all forms of media coverage dealing with this
15 case?

16 A. Yes.

17 Q. Has this caused any problem to you?

18 A. No.

19 Q. Now, this trial could last longer than most trials.
20 In other words, it could last a week or ten days or even
21 longer. Other than personal inconvenience, would this
22 pose a serious danger to the health or well-being of
23 yourself or anyone who is dependent upon you?

24 A. No.

25 Q. Among other things today we'll be talking about

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 always presumed under our law
4 to be innocent. Do you understand?

5 A. Yes.

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 of this court even though
9 you may not agree with that law or think it ought to be
10 some other way?

11 A. Yes.

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

16 A. Yes.

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. He does not have the burden of proof
21 whatsoever. In other words, he does not have to testify
22 or offer any evidence because he is presumed to be
23 innocent. Do you understand?

24 A. Yes.

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

1 the law as I would instruct you in any particular case or
2 a particular case, find a defendant either guilty or not
3 guilty?

4 A. Yes.

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?

9 A. Yes.

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

14 A. Yes.

15 Q. A death penalty trial is divided into two parts.
16 Part one is the guilt phase where a jury determines
17 whether the defendant is guilty or not guilty of murder.
18 Part two is the sentencing phase where a jury determines
19 the appropriate punishment. Of course, if the sentence
20 is -- excuse me. If the verdict is not guilty in part
21 one, that ends the matter and that's all -- it doesn't go
22 any further. Do you understand that?

23 A. Yes.

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 to phase two of the trial which is called the sentencing
3 phase of the trial. Do you understand this?

4 A. Yes.

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 a defendant guilty of
8 murder -- do you understand that the jury rather than the
9 judge determines the sentence that a defendant will
10 receive for the crime of murder?

11 A. Yes.

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. Now, aggravating circumstances are
16 the facts or details that, when they are present in a
17 case, make the crime of murder more serious or worse. On
18 the other hand, mitigating circumstances are incidents,
19 occurrences or details of a case that would reduce the
20 severity of the crime of murder. In other words, may
21 reduce the degree of responsibility of the defendant for
22 the crime.

23 A. Yes.

24 Q. Do you also understand that the jury has two options
25 to consider regarding the sentencing for murder? One

1 option is life in prison which in this state means until
2 death without possibility of parole. Do you understand
3 that?

4 A. Yes.

5 Q. The other option is death which in this state is by
6 electrocution or lethal injection. Do you understand
7 that?

8 A. Yes.

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

14 A. Yes.

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

19 A. Yes.

20 Q. Very well. If you would, please, sir, answer any
21 questions the attorneys may have.

22 DIRECT EXAMINATION

23 BY MR. MCGUIRE:

24 Q. Good afternoon, ma'am. I have to refer to you by
25 number, 278. It's not because I'm being rude. It's just

1 the way we have to do things. I hope you just forgive me
2 that.

3 A. Yes, I can.

4 Q. Okay. What we're here today for is basically just
5 to see if you can follow the law and put aside any
6 personal views or opinions you might have and follow the
7 Judge's instructions, be fair to the State, be fair to
8 the Defense, follow his law and deliver a fair verdict
9 for both sides. Can you do that?

10 A. Yes.

11 Q. Okay. And what I'm going to do is tell you a little
12 bit about the sentencing phase and how a capital case is
13 different from other cases and just ask if you can follow
14 theses aspects of the law. Okay?

15 A. All right.

16 Q. And first off, I'm going to give you the definition
17 of murder in South Carolina. Murder is defined as the
18 unlawful killing of another person with malice
19 aforethought. It's called malice murder. And malice is
20 defined as the killer operating with a black and
21 malignant heart fatally bent on evil, intentionally and
22 deliberating killing an innocent person. Okay?

23 A. Okay.

24 Q. That's malice murder. And for the State to seek or
25 request a death sentence, they have to prove one more

1 thing. And that would be an aggravating factor that
2 would make the crime go from malice murder to aggravated
3 murder, and then it becomes capital eligible or death
4 penalty eligible. Are you with me?

5 A. Yes.

6 Q. Okay. And the aggravating fact could be a series of
7 things or one thing. It could be killing a police
8 officer in the line of duty, killing a child, killing
9 more than one person, et cetera. But whatever it is, the
10 State would bring it to the jury and prove it beyond a
11 reasonable doubt to the satisfaction of all jurors, and
12 then they would begin the journey to ask for the death
13 penalty. Does that make sense?

14 A. Yes.

15 Q. Okay. I guess it's a long way of saying not all
16 murder cases are death eligible.

17 A. Right.

18 Q. Okay. And would you hold the State to their burden
19 and make them prove the aggravation beyond a reasonable
20 doubt?

21 A. Yes.

22 Q. And if you believed that the aggravation was there
23 beyond a reasonable doubt and eleven other jurors agreed
24 with you and all twelve jurors believed that the death
25 penalty was appropriate, could you vote for the death

1 penalty?

2 A. Yes.

3 Q. And the law requires that if you vote for the death
4 penalty that you sign your name to a sentencing sheet for
5 the judge. Could you do that?

6 A. Yes.

7 Q. The flip side of this coin is that the death penalty
8 is never required, not in the country, not in South
9 Carolina. There's no case where the death penalty is
10 automatic. Did you know that?

11 A. Yes.

12 Q. Okay. That, for instance, if the State proves A, B
13 and C, it's not like there's a blank and you check it and
14 it's an automatic death case. Every juror, each
15 individual juror always has the right to vote for the
16 life penalty. Did you know that?

17 A. Yes.

18 Q. Okay. And the rules are different in a sentencing
19 case in that when the State proves something, they have
20 to do it beyond a reasonable doubt to the satisfaction of
21 all jurors. But it's different on the life side or the
22 penalty side or the Defense side of the case. For
23 instance, the only time the jury has to be unanimous
24 about sentence is if they deliver the death sentence.
25 All twelve would have to agree that that's the

1 appropriate punishment. But it's not so for the life
2 penalty. The Judge would instruct the whole jury that
3 any one juror could vote for life based on any reason, no
4 reason, grace, mercy or anything they see in the case.
5 Is that a principle you could respect and follow?

6 A. Yes.

7 Q. And what I'm getting at is usually when we think
8 about juries, we think about them speaking with one voice
9 and being unanimous. But in terms of delivering a life
10 verdict, they can all actually disagree. For instance,
11 one juror could say, you know, I saw something in the
12 defendant's background, and that was the reason for me to
13 vote for life. And then a juror in another seat could
14 say, you know, I saw something about his relationship
15 with his grandmother, and that resonated with me. And
16 that's my reason to vote for life. And another juror
17 could say, you know, I listened to the Judge, and the
18 Judge said I could vote for life for even no reason. So
19 I'm going to vote for life because I think that's right,
20 but I don't even have a reason for it. Could you respect
21 the fact that each individual juror could have a
22 different reason for voting for life?

23 A. Yes.

24 Q. The way the law describes a juror's decision in a
25 capital case, a sentencing case, whether to vote for life

1 or death is it's that juror's individual moral judgement
2 based on their walk in life and that if it would do harm
3 to their conscience or violence to their conscience to
4 change their individual moral judgement, that that would
5 be wrong. Is that a principle of law you could respect?

6 A. Yes.

7 Q. And the State, the Defense and you as a juror are
8 entitled to fairness not just out here in the courtroom,
9 but also in the jury room. And if you saw things get
10 hostile or belligerent or bullying because one juror
11 wanted to stick to their individual moral judgement -- or
12 two jurors. But if it got hostile or unfair, could we
13 count on you to pass a note out to the Judge and say, you
14 know, things aren't fair in here, we need to get back to
15 fairness?

16 A. Yes.

17 Q. Is mercy something that's freely given or bestowed,
18 or do you have to earn it?

19 A. I think it's freely given.

20 Q. Okay. And all of your answers seem to be very
21 thoughtful in your thinking about them, it appears to me.
22 These answers that you've given, they kind of come from
23 your value system as a person?

24 A. Yes.

25 Q. And what's right and wrong and what's moral?

1 A. Right.

2 Q. And I can't talk you out of your opinion, can I?

3 A. No.

4 Q. You seem pretty sure about that?

5 A. Yes.

6 Q. Okay. And you wouldn't -- okay. That's -- I think
7 that might be all that I have.

8 MR. MCGUIRE: Judge, if I could have one
9 second.

10 (Off record discussion)

11 MR. MCGUIRE: Ma'am, that's all I have for you.
12 Thank you so very much.

13 THE COURT: Madam Solicitor?

14 MS. ADAMS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. ADAMS:

17 Q. Good afternoon. How are you?

18 A. Fine.

19 Q. I'm Chrissy Adams, and I'm the Solicitor for the
20 Tenth Circuit. I know you've been here for a while. So
21 we appreciate your patience.

22 What I want to do is talk to you about your feelings
23 about the death penalty. Okay? I know Mr. McGuire asked
24 a lot of questions, and it seemed to be a lot of yes or
25 no. But we need to know how you feel about the death

1 penalty. Okay? This is a very important matter, as you
2 know, because if you're selected to be on this jury,
3 you're going to be asked to decide another fellow human
4 being -- whether he lives or dies. And that is a very
5 serious matter, and we just want to make sure that you're
6 comfortable doing that. Okay?

7 A. Uh-huh (affirmative).

8 Q. And there are no right or wrong answers. This is
9 how you feel.. And the Court needs to know that as well
10 as both sides need to know that. Okay?

11 I noticed in your questionnaire you said that you
12 were against the death penalty. Can you explain that?

13 A. I think the way I feel is that I feel everybody
14 needs a second chance, and I think people can be
15 rehabilitated. So I think it just depends on the
16 situation of the case.

17 Q. But you feel that most people can be rehabilitated?

18 A. Yes.

19 Q. Okay. Do you think -- is that a very strong feeling
20 that you have -- it seems like it would be -- that most
21 people could be rehabilitated?

22 A. I think they could.

23 Q. Okay. And that's fine because that's very true.

24 Most -- a lot of people can be rehabilitated. You don't
25 believe in the death penalty, do you?

1 MR. MCGUIRE: Objection, asked and answered.

2 THE COURT: Sustained.

3 Q. You are against the death penalty though?

4 MR. MCGUIRE: Objection, same objection.

5 MS. ADAMS: I haven't even finished the
6 question, Judge.

7 THE COURT: Well, it started off you are
8 against. Go ahead. Let's just -- I think she stated
9 that -- she had given her reason.

10 Q. It seems based on your questionnaire and the fact
11 that you are against the death penalty that you would
12 lean towards a life sentence.

13 MR. MCGUIRE: Objection, the question is if she
14 can follow the law.

15 THE COURT: It's a fair question.

16 MS. ADAMS: Thank you, Your Honor.

17 Q. Like I said, it seems based on your questionnaire
18 and the fact that you've stated that you are against the
19 death penalty that you would lean towards more of a life
20 sentence based on the fact that you feel that people can
21 be rehabilitated. Is that fair?

22 A. It depends on what the -- I think it depends on what
23 the defendant had done ---

24 Q. Okay.

25 A. --- and in my heart of heart think that he rally

1 could be a threat to society.

2 Q. Okay. So your belief then is -- goes to your heart
3 of hearts?

4 A. Right.

5 Q. And so you think that you would listen to the entire
6 case in your heart of hearts?

7 A. Oh, yes.

8 Q. Okay. After filling out this questionnaire and
9 coming face to face with the defendant, do you still feel
10 the same way, that you could actually be responsible for
11 sentencing another human being to life or to death?

12 A. It depends on the -- I guess it really just depends
13 on what he had done and the severity of it.

14 Q. Okay. So you would listen to all of it before you
15 decided?

16 A. Yes.

17 Q. Okay. Now, you realize that you do have to -- every
18 juror -- if you decide that death is appropriate, every
19 juror has to sign their name to a sentence sheet. And
20 that document is what allows ---

21 MR. MCGUIRE: Objection, asked and answered.

22 THE COURT: No, it hasn't. Overruled.

23 Q. That document, the signing of your name on a public
24 document is what allows the State to execute a fellow
25 human being. And that's public record. Would you be

1 able to sign your name to that paper that actually allows
2 the State to kill another person?

3 A. It would have to be without a shadow of a doubt that
4 I felt that way. I think I could.

5 Q. You think you could sign your name? Do you have --
6 would you have hesitation about signing your name?

7 MR. MCGUIRE: Objection, asked and answered.

8 THE COURT: Overruled.

9 Q. Would you have hesitation about signing your name?

10 A. No, because I'm going to listen to what's going on
11 with the person that's being on trial. I think so.

12 Q. Okay. Now, the Judge is going to instruct you about
13 aggravation and mitigation. Do you understand the
14 process of a death penalty case and the two parts? I
15 want to make sure that you understand it.

16 A. I do.

17 Q. Okay. So there would be the guilt phase where he's
18 found guilty of murder. And then we would have to prove
19 to you an aggravation beyond a reasonable doubt ---

20 A. Yes.

21 Q. --- before you can even determine life or death?

22 A. Right.

23 Q. If that aggravation in a case were that the
24 defendant committed a prior murder, and you listened to
25 all the mitigation and considered that, if it was a prior

1 murder that the defendant did, would you automatically
2 vote for life?

3 A. I can't say yes or no.

4 Q. Okay. So you would listen to all the evidence, you
5 would listen to the aggravation and listen to the
6 mitigation?

7 A. Yes.

8 Q. Okay. Thank you very much.

9 THE COURT: Questions?

10 MR. MCGUIRE: No more questions, Your Honor.

11 MS. ADAMS: Nothing from the ---

12 THE COURT: Anything from the State?

13 MS. ADAMS: We feel she's very qualified.

14 MR. MCGUIRE: She's qualified, Judge.

15 THE COURT: Pardon?

16 MR. MCGUIRE: We agree she's qualified.

17 THE COURT: All right. It's not often that I
18 can get all the attorneys and the Judge to agree.

19 Considering the entire voir dire, I find that Juror
20 Number 278 will be fair, unbiased, impartial and able to
21 carry out the law as explained to her. Furthermore, I
22 find that the juror's belief or attitudes toward the
23 death penalty would not prevent or substantially impair
24 the performance of her duties as a juror in accordance
25 with the law, the Court's instructions and the juror's

1 oath.

2 So all of that means that I do find you qualified to
3 sit on this jury if selected. I think you understand
4 what we're doing is we're qualifying a pool of jurors
5 from which the ultimate jury will be drawn.

6 THE POTENTIAL JUROR: Yes, sir..

7 THE COURT: And unfortunately, as you found out
8 this morning or this morning and afternoon, it takes some
9 time to do that. So you've given your telephone number
10 to the Clerk?

11 THE POTENTIAL JUROR: Yes.

12 THE COURT: All right. You're going to be able
13 to go about your business because, as I say, it's going
14 to take some time to qualify enough jurors that we can
15 draw a jury from. And so obviously it's going to be next
16 week or even later in the week or so. So you can go
17 ahead and do whatever you do, as I say, go about your
18 life. If you would, when you get the phone call, they'll
19 probably say report in the morning. This pool of jurors
20 is going to be more than enough so that they will be able
21 to select a panel of jurors.

22 THE POTENTIAL JUROR: All right.

23 THE COURT: Very good. And I do want -- two
24 things. Thank you for your patience. But I particularly
25 want to thank you for your candor and your

1 straightforwardness.

2 THE POTENTIAL JUROR: Thank you.

3 THE COURT: Thank you, ma'am. All right. You
4 have a wonderful weekend.

5 THE POTENTIAL JUROR: All right. Thank you.

6 THE COURT: Thank you, ma'am.

7 (WHEREUPON, Potential Juror 278 exited the
8 courtroom.)

9 THE COURT: All right. That's the morning
10 panel, I think.

11 MS. ADAMS: Your Honor, could I just put one
12 thing on the record?

13 THE COURT: Yes, ma'am, please.

14 MS. ADAMS: I think it is very telling when the
15 Defense keeps a juror that they feel is pro death and go
16 real specifically into that aggravating factor to box
17 them into a corner and doesn't with other jurors which is
18 exactly why that question should not be allowed because
19 they're giving him -- they're giving the jurors one fact
20 without the entire case. And it is so case specific.
21 And the same rules that apply to mitigation should apply
22 to aggravation, and the question should not be allowed,
23 Judge.

24 THE COURT: Well, the only thing is the Court
25 obviously wants to be able to determine if there is

1 something that is so fixed that there would not be
2 ability to listen to the Court's instructions. So I'm
3 going to permit certain leeway. But again, as I say, I
4 don't want the jurors to be put in a position. They
5 answered their questionnaire with candid unadulterated
6 answers. And to try to change that in any way or to
7 impress it upon a juror that it would be accepted what
8 they thought around the water cooler or café table,
9 you've got that in the questionnaire. You can ask if
10 that's still their thoughts or something, but I do
11 believe that we need to be fair to the jurors and say,
12 well, this is an entirely different situation that you're
13 going to have. It's going to be governed by the law and
14 the evidence as it develops. And be a little bit more
15 fair towards -- I really do -- I feel for anybody that's
16 brought into a courtroom cold and asked about everything
17 from theology to constitutionality.

18 MS. ADAMS: And Your Honor, if I may -- because
19 I think that's absolutely right. And the spirit of the
20 case law ---

21 THE COURT: Well, I don't necessarily need you
22 to agree with me. But go ahead and put it on the record.

23 MS. ADAMS: Well, I just think that any juror
24 that comes in here and feels that if you have been
25 convicted of murder that you should automatically receive

1 the death penalty, those are the ones that are not
2 qualified. If you start going, oh, what if it's a prior
3 murder -- and that's what's in this case -- they're
4 trying to get them to vote before they hear ---

5 THE COURT: I understand. I hope that by now
6 you do understand that I realize or at least I appreciate
7 what the law is. I'm not sure that I have fully grasped
8 every little nuance.

9 MS. ADAMS: Neither have I.

10 THE COURT: But no, that is -- again, I think
11 we all agree that we want to be fair. And in this
12 particular process where we are at this time, we want to
13 be fair to somebody that's not -- what is it -- been
14 prepared in any fashion in accordance to be sure that
15 what they have to decide is in context and not just --
16 what is it -- abstract.

17 MS. ADAMS: So Judge, I would actually ask that
18 he not be allowed to specifically state ---

19 THE COURT: Well, the thing is I don't -- I
20 can't -- what is it -- do that. We'll follow the rules.
21 It says that if you feel that any of the questions are
22 not proper, you can object and I'll make my ruling. But
23 again, I think you know by now that I have a certain --
24 there are certain things that I will not approve, and
25 there are certain things I will give leeway on. Let's

1 just follow the rules with each juror.

2 All right. Now you've taken about five minutes.

3 MS. ADAMS: Sorry, Judge.

4 THE COURT: Let's try to be back about one
5 thirty or so, a little bit later. But they'll be
6 reporting in at one thirty, and I'd like to move as
7 quickly as we can.

8 (WHEREUPON, court stood at recess for the lunch
9 break.)

10 THE COURT: Thank you very much. I apologize
11 about the lateness. All right. We're on the -- is it
12 the eleventh panel? The first one is 284. Anything from
13 the Defendant?

14 MR. MCGUIRE: No, sir, Your Honor.

15 THE COURT: Anything from the State?

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

17 THE COURT: Let's see, 284, please.

18 MADAM CLERK: Number 284.

19 (WHEREUPON, Potential Juror 284 entered the
20 courtroom.)

21 THE POTENTIAL JUROR: Hi.

22 THE COURT: Are you Juror 284?

23 THE POTENTIAL JUROR: Yes, sir.

24 **POTENTIAL JUROR 284,**

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

EXAMINATION

1
2 BY THE COURT:

3 Q. All right. You will recall on Monday I put all
4 jurors under oath. Do you understand that you're still
5 under oath and that oath continues through these
6 proceedings?

7 A. Yes, sir.

8 Q. You have been provided with a copy of a list of
9 potential witnesses. Have you had an opportunity to
10 review that list of witnesses?

11 A. Yes, sir, I did. And I accidentally grabbed it as I
12 came out. I'm sorry.

13 Q. Are there several in the room?

14 A. Yes, sir, there was more.

15 Q. All right. Well, I might ask you when you get ready
16 to go, we'll just send it back there.

17 A. Okay.

18 Q. Did you recognize any names?

19 A. The only name that I maybe -- and I don't know --
20 was Mark Jones which is a popular name, so ...

21 Q. Well, let me ask you if your Mark Jones was a
22 witness -- and this is a list of only potential
23 witnesses. They might testify, but they do not have to
24 testify.

25 A. Yes, sir.

1 Q. They can testify though. If your Mark Jones was a
2 witness and testified, would that in any way interfere
3 with your ability to give both the State and the
4 Defendant a fair and impartial trial?

5 A. No, sir.

6 Q. All right. You do recall my instructions from
7 Monday also to avoid all forms of media coverage dealing
8 with this case. Has that caused you any problem in any
9 way?

10 A. Well, it has kind of changed things that, you know,
11 not watching the news or anything, but --

12 Q. But you haven't had --

13 A. I haven't. No, sir.

14 Q. -- a real problem?

15 A. No, sir.

16 Q. Okay. Now, the trial of this case will last longer
17 than the normal case. It could be more -- it will
18 probably be more than a week. It could be ten days or
19 even longer. Other than personal inconvenience this
20 would cause -- or this would -- excuse me. Other than
21 the personal inconvenience, would this pose a serious
22 danger to the health or well-being of yourself or anyone
23 who is dependent upon you?

24 A. No, sir.

25 Q. Among other things today, we'll be talking about

1 penalty. But the mere fact that we talk about penalty
2 does not indicate anything about this defendant or any
3 defendant. Defendants under our law are presumed 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 of this court, and even
9 though you may not agree with that law or think it ought
10 to be something else, could you listen to that law,
11 accept and apply that law?

12 A. Yes, sir.

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

16 A. Yes, sir.

17 Q. Now, 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
20 whatsoever to prove anything, innocence or anything else.
21 In fact, as I said, a defendant, all defendants, are
22 presumed to be innocent, and they do not even have to
23 testify or present 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 you in a particular case,
2 find a defendant either guilty or not guilty?

3 A. Yes, sir.

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 this?

8 A. Yes, sir.

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

14 A. Yes, sir.

15 Q. Now, a death penalty trial is divided into two
16 parts. Part one is the guilt phase where a jury
17 determines whether the defendant is guilty or not guilty
18 of murder. Part two is the sentencing phase where a jury
19 determines the appropriate punishment. Of course, if the
20 defendant is found not guilty, that ends the matter. Do
21 you understand?

22 A. Yes, sir.

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

1 on to phase two of the trial which, as I say, is called
2 the sentencing phase of the trial. Do you understand
3 this?

4 A. Yes, sir.

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

11 A. Yes, sir.

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

17 A. Yes, sir.

18 Q. Now, aggravating circumstances are facts or details
19 that when they are present in a case make the crime of
20 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, may reduce the degree
24 of responsibility of the defendant for the crime. Do you
25 understand that?

1 A. Yes, sir.

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 in prison which in this state is life
5 until death of the defendant without possibility of
6 parole.

7 A. Uh-huh (affirmative).

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

11 A. Yes, sir.

12 Q. All right. Understanding all of that, could you, as
13 a juror in the sentencing phase, depending upon the facts
14 and circumstances including the relevant aggravating and
15 mitigating circumstances and the law as instructed to
16 you, render a sentence of life imprisonment?

17 A. I think I could, yes, sir.

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

22 A. Yes, sir, I think I could.

23 Q. Very good. Answer any questions the attorneys may
24 have. Thank you, ma'am.

25

DIRECT EXAMINATION

1 BY MR. MCGUIRE:

2 Q. Good afternoon, Juror Number 284. How you doing
3 today?

4 A. Fine, you?

5 Q. I'm good. I have to call you by number. It's a
6 little awkward for me. If you can just forgive me that.

7 A. That's fine.

8 Q. Okay. What I'm going to do is talk to you in a
9 little bit more detail about these issues of murder and
10 punishment in the kind of case that brings us here today
11 which is a capital case, a death penalty case. Okay?

12 A. Okay.

13 Q. The first thing I'm going to do is start with the
14 legal definition of murder in South Carolina that brings
15 us where we are today. Okay?

16 A. Uh-huh (affirmative).

17 Q. And that is murder is the unlawful killing of
18 another human being with malice aforethought. It's
19 referred to as malice murder. And what that means is
20 that the killer was operating with a black and malignant
21 heart fatally bent on evil and intentionally,
22 deliberately killed an innocent person.

23 A. Uh-huh (affirmative).

24 Q. Are you with me?

25 A. Yes, sir.

1 Q. Okay. And to elevate that case to what's called a
2 capital case, the State would bring forward evidence in
3 aggravation. It could be any fact that would make that
4 kind of malice murder case even worse. Killing a child,
5 killing more than one person, killing a police officer.
6 That sort of thing. Okay?

7 A. Okay.

8 Q. And as the Judge instructed, you could consider some
9 things about a defendant like his background, if he was a
10 drug addict or something like that. Now, what I want to
11 do is give you an example and ask you your point of view
12 about punishment. And that is you're sitting on a jury
13 with eleven other people, and you find the person guilty
14 of murder. Deliberately, intentionally killing an
15 innocent person. And the State then brings that
16 aggravation evidence to you. And I'm just going to give
17 you some examples. I already gave you a couple, and I'm
18 going to give you another one. Let's say it's one of
19 those cases where a person has deliberately killed twice.
20 So they've already been convicted of murder once, and
21 they've deliberately killed another innocent person. And
22 I noticed on your questionnaire you say that you agree
23 with the death penalty, an eye-for-an-eye, tooth for
24 tooth, believe in the Bible. In that double murder
25 situation, intentionally killing two innocent people,

1 does that square with your eye-for-an-eye view in that
2 situation?

3 A. Especially if it was a deliberate, yes, sir.

4 Q. Okay. So if you found that it was deliberate,
5 intentional, especially twice, it would in fact be eye-
6 for-an-eye, tooth-for-a-tooth?

7 A. Yes, sir.

8 Q. And that would be the death penalty?

9 A. Yes, sir.

10 Q. For you?

11 MS. ADAMS: Your Honor, that's not the
12 standard. That's not the law.

13 THE COURT: I'm going to permit that since he
14 was asking from the questionnaire.

15 MR. MCGUIRE: Okay.

16 Q. And in that situation, an intentional, deliberate
17 killing not once, but twice, a life penalty in prison
18 would not be severe enough to punish that kind of double
19 murder?

20 MS. ADAMS: Objection, Your Honor. She does
21 not know the entire case facts to make that decision.
22 It's not the law. |

23 THE COURT: Well, he's really asking if she
24 would automatically without any exception do it.

25 Is that not correct?

1 MR. MCGUIRE: Well, eventually, yes, sir.

2 Sure.

3 THE COURT: Okay.

4 MR. MCGUIRE: I'll just rephrase that.

5 Q. In that intentional double murder situation, being
6 able to consider all the evidence that we've talked
7 about, a life in prison sentence or punishment would not
8 be with your biblical view, severe enough to punish that
9 kind of double murder?

10 MS. ADAMS: Objection, Your Honor. She's going
11 to be instructed she has to consider mitigation. We
12 haven't gotten there.

13 THE COURT: I understand.

14 MS. ADAMS: It's not a fair question for her.

15 THE COURT: Well, let's go ahead. If she can
16 answer the question with what she has at this point, then
17 I'm going to permit it.

18 And of course, if you can't answer the question, if
19 you need to know more, say so.

20 A. I'm not really exactly sure how to answer that. I
21 can -- I will say that being put in this position where I
22 may be a juror and have to decide has really put me into
23 a lot of thought process. You know, it's easier just to
24 fill out a piece of paper and, you know, that be the end
25 of it. But when you're sitting there and you're actually

1 thinking about that you're sending someone's soul into
2 eternity, you know, it would definitely be something that
3 is -- you would not just do it just at a snap of a
4 finger. You would definitely put a lot of thought and
5 prayer into it. So I don't know if that answers your
6 question, but --

7 Q. Well, it's certainly -- you know, there are no right
8 or wrong answers, ma'am. Whatever your views are or
9 opinions are, those are the right answers because that's
10 all we're interested in, your just personal candid
11 heartfelt views.

12 With regard to the -- what I'm going to do is I'm
13 going to fix you in a place in time -- a place and time.
14 I'm going to kind of put you over here and pretend like
15 you're on a jury, okay, you and eleven other people. And
16 you've -- you've gone through the first phase of the
17 trial, found a person guilty of murder, intentionally
18 killing somebody. And you're in that penalty phase, and
19 the State has already brought forward or brought forward
20 to you the evidence of a prior conviction for murder.
21 And now you're sitting to fix punishment for somebody
22 who's deliberately killed twice. Would things about
23 their background like if they were a drug addict or
24 something like that, would that be relevant in fixing
25 punishment in that kind of case?

1 A. I'm not really sure. In a way I would think so
2 because being on drugs you don't think clearly, and it
3 makes you more prone to do things that you normally
4 wouldn't. But a lot of it for me would just take prayer
5 and thought as to, you know, what I would do.

6 Q. Okay. Well, let me ask you this. The life -- in a
7 capital case, the life without parole sentence is always
8 available. And sometimes -- in fact, this Court has even
9 referred to it as basically death in prison where it
10 would always be available to a juror. A juror could
11 always vote to send somebody to prison for the very rest
12 of their life and just let God take them whenever God
13 wanted them. If the life sentence was always available
14 and you could turn it over to God on God's timetable,
15 would you always vote for life?

16 A. I can't say that I would always vote for life, no,
17 sir.

18 Q. Okay. Would -- you apparently have deep religious
19 convictions. And I'm not judging you at all obviously.
20 I just point it out. I'm just trying to figure out how
21 that might work into your sentencing decision. It sounds
22 like you might have reservations about sentencing
23 somebody to death based on like you say, sending their
24 soul into eternity. Is that a serious reservation that
25 you have?

1 A. Well, I definitely -- I believe that, you know, we
2 all have a soul. And it's either going to heaven or
3 hell. And if we've accepted Jesus as our Savior, we're
4 going to go to heaven. If not, you're potentially
5 sending a soul that is going to go to hell because they
6 never accepted Christ. So that is a -- is something
7 that's deep in my thought. But that wouldn't keep me --
8 if I thought that would be the best thing for the
9 situation would be death, then I would vote that way.

10 Q. And would you -- could you vote that way knowing
11 that the person had accepted Christ and that you'd
12 actually be dispatching their soul to heaven?

13 MS. ADAMS: Your Honor, objection, arbitrary
14 factor. I mean, we're getting way beyond -- it's not
15 fair to this lady.

16 THE COURT: Let's stay within the parameters of
17 the case that we're trying. Not the particular case, but
18 the type of case that we're trying.

19 Q. So I guess what I'm saying is if you knew that the
20 person had God in their life, could you vote for death
21 knowing that you'd be sending that person to heaven?

22 MS. ADAMS: What? Your Honor?

23 THE COURT: All right. I'm going to permit the
24 answer, if she can. Now, of course, if she's not
25 prepared to answer the question at this time, she can say

1 that.

2 A. Well, now, if someone was going to heaven, it would
3 be easier to vote for the death penalty than if they were
4 going to hell. I mean --

5 Q. That's an interesting way of looking at it.

6 A. But you know, when you've never been in this
7 circumstance before, it's hard to sit here and say, you
8 know, I would definitely do one thing or the other
9 because you've never been there before, you know.

10 Q. Sure. And what we're looking for is just, you know,
11 jurors that can be fair and follow the law, that sort of
12 thing. And the only way we can find out is to ask you
13 questions. And I very much appreciate your patience and
14 your candor. And again, there are no right or wrong
15 answers.

16 You indicated on your questionnaire that anyone that
17 would molest a child would not deserve to sit in jail.

18 A. Uh-huh (affirmative).

19 Q. Would that be a death penalty case for you?

20 MS. ADAMS: Your Honor, objection. I'm sorry.
21 That's not the law.

22 THE COURT: I'm going to -- she -- I'm going to
23 permit her to explain her answer if she can. Of course,
24 this answer was given in a -- without the close
25 questioning she's getting now, so perhaps she might not

1 be ready to answer.

2 A. Well, I would think so. I mean, I don't know for
3 sure, but I would think so because to me someone that --
4 that deliberately hurts a child is just -- you know, it's
5 awful. There's no excuse for it.

6 Q. What I want to do ---

7 MR. MCGUIRE: Judge, this is where I would ask
8 my six questions pursuant to my written motion.

9 THE COURT: And I would decline to have the
10 questions asked on the same grounds as stated before.

11 MR. MCGUIRE: Thank you very much, Judge.

12 Q. Ma'am, the concept of mercy, is mercy freely given,
13 bestowed, or is it earned?

14 A. Mercy is freely given.

15 Q. Okay. In all situations?

16 A. It's supposed to be, yes.

17 Q. Okay. And what I want to do now is just talk to you
18 briefly about how a capital case is different, how
19 sentencing is different in a capital case than any other
20 case in South Carolina. And what I mean by that is the
21 rules are just completely different. For instance, most
22 times, most cases involve just, well, is the person
23 guilty or not. If the jury finds him guilty, then the
24 judge sentences.

25 And in a capital case, the jury has the opportunity

1 to fix punishment, death or life without parole, and the
2 rules are different for both sides. And I'm going to ask
3 you some aspects of law and see if you can agree or
4 respect these aspects of law okay.

5 As I stated earlier, the State would have to bring
6 forward aggravation evidence and prove it to the jury
7 beyond a reasonable doubt us. All twelve jurors would
8 have to agree that the aggravation evidence existed
9 before the State could even ask for death penalty. Okay?

10 A. Yes, sir.

11 Q. And that's kind of normal. That's kind of in line
12 with what we normally think. We think about a jury
13 speaking with one voice being unanimous, right?

14 A. Right.

15 Q. Well, it's not always so in a capital case. The
16 only time that the jury has to be unanimous is if they do
17 vote for death. They can vote for life unanimous too.
18 But it's okay for the jury to come into court and say,
19 you know, we all twelve couldn't vote for death and all
20 twelve couldn't vote for life and call it a day agreeing
21 to disagree in a matter so important.

22 A. Right.

23 Q. And the judge would take the case eventually and
24 sentence and end the case. Is that an aspect of the law
25 that you can respect?

1 A. Yes, sir.

2 Q. And the way this kind of works out in fact or by way
3 of example is the judge would tell the jury that any
4 individual juror could vote for life for any reason, no
5 reason, mercy, grace or anything they see in the case.
6 And that they don't have to agree, and the jury wouldn't
7 have to agree on the same reason. A juror in the front
8 right could say, you know, I saw something about that
9 man's walk in life, his background. And that resonated
10 with me, and that was my reason to vote for life. A
11 juror in the back could say, well, I saw something about
12 maybe his relationship with his child. And that was
13 redeeming, and I saw humanity in that. That's my vote
14 for life. Another juror could say, you know, I listened
15 to the judge. And he told me I could vote for life for
16 no reason. I just feel that's right, and I don't even
17 have a reason to give. Can you respect that system where
18 everybody can have their own reason for voting for life?

19 A. Yes, sir.

20 Q. It might not be your position, but you could respect
21 the other jurors?

22 A. Yes, sir.

23 Q. And the way it -- the way a juror's decision is
24 described in a capital case is that it's their vote for
25 life or death, it's their own individual moral judgment

1 and that if it would do violence to their conscience or
2 harm their conscience for them to change that decision,
3 that would be wrong. Is that an aspect of the law you
4 can agree with?

5 A. Yes, sir.

6 Q. And the State, the Defense and you as a juror are
7 entitled to fairness not just out here in the courtroom,
8 but also the deliberation room. And while we expect
9 polite, civil discourse in deliberations, if it got
10 unfair and people were trying to get somebody to change
11 their individual moral judgment and it got hostile or it
12 got unfair, could we count on you to send a note to the
13 Judge saying, you know, we need to get back to fairness
14 in here?

15 A. Yes, sir.

16 Q. I think that's all I have for you, ma'am. Let me
17 check with my co-counsel.

18 MR. MCGUIRE: If I could have one second,
19 Judge.

20 (Off record discussion)

21 MR. MCGUIRE: Ma'am, that's all I have for you.
22 Thank you so much for being patient with us.

23 THE POTENTIAL JUROR: Thank you.

24 CROSS-EXAMINATION.

25 BY MS. ADAMS:

1 Q. Hi, how are you?

2 A. Fine, you?

3 Q. I'm good. I'm Chrissy Adams. I'm the Solicitor for
4 the Tenth Circuit. And thank you so much for your honest
5 and open answers. What we want to do here today is
6 ensure that you can be fair not only to the State, but to
7 the Defendant as well.

8 A. Yes, ma'am.

9 Q. Okay? And once we get past that first phase, the
10 Defendant is guilty of murder and we go into the second
11 phase, the only choice or decision that the jury will
12 make is whether life is appropriate or death is
13 appropriate.

14 A. Yes, ma'am.

15 Q. Okay? Now, the State has to prove that aggravating
16 circumstance. And do you understand what that is? That
17 kind of is what bumps it up to let us seek the death
18 penalty.

19 A. Yes, ma'am.

20 Q. Okay? Because not every murder is eligible for the
21 death penalty.

22 A. Right.

23 Q. Did you know that -- okay. So once the jury has
24 found an aggravating circumstance, would you keep an open
25 mind, and-as the Judge instructs you, would you listen to

1 all the mitigation, if any, that the Defense presents
2 before deciding between life or death?

3 A. Yes, ma'am.

4 Q. And if you heard all that evidence, aggravation and
5 mitigation, and you felt that life was appropriate, could
6 you vote for life?

7 A. Yes, ma'am.

8 Q. Okay. And if you felt that death was appropriate,
9 could you vote for death as well?

10 A. I believe I could, yes, ma'am.

11 Q. Okay. So you would keep an open mind?

12 A. Yes.

13 Q. Okay. The law requires also if the jury does decide
14 that death is the appropriate sentence, that each and
15 every juror sign his or her name to the sentence sheet.
16 And that's the document that allows the State to actually
17 execute another human being.

18 A. Yes, ma'am.

19 Q. Would you be able to sign your name to that document
20 knowing that that is what allowing the State to kill
21 another person?

22 A. Yes, ma'am, I think I could.

23 Q. If you felt the circumstances warranted it?

24 A. Yes, ma'am.

25 Q. Thank you so much for your time.

1 A. You're welcome.

2 THE COURT: Anything further from the
3 defendant?

4 MR. MCGUIRE: No further questions, Judge.
5 Just a small legal matter.

6 THE COURT: All right. I'm going to ask you to
7 go with the bailiff for just a minute. I need to take up
8 some matters with the attorneys.

9 (WHEREUPON, Potential Juror 284 exited the
10 courtroom.)

11 THE COURT: Yes, sir?

12 MR. MCGUIRE: Judge, move to strike this juror
13 for cause. Her initial views which I believe were the
14 most candid were she believes an eye-for-an-eye, tooth-
15 for-a-tooth. Therefore, I believe that she would be
16 substantially impaired. And I move for cause based on
17 the constitutional grounds I've stated previously, both
18 federal and state.

19 MS. ADAMS: Your Honor, we just feel she's
20 clearly qualified. I mean, you heard her testimony. She
21 said she'll consider everything. She can decide.

22 THE COURT: Well, it's one thing to be candid,
23 and it's also important to be advised. All right.
24 Sometimes candor can lead into less than defensible
25 positions in the sense that -- what is it -- did not know

1 the context or not know what they had to do. Considering
2 the totality of her answers both on the questionnaire and
3 to the Court as well as to the attorneys, I find that she
4 would consider mitigation. And for example it says,
5 being on drugs you don't think clearly. That was a
6 specific element to be considered. Can't say I would
7 always vote for life. Not having been here before, it's
8 hard to say I would do one thing or the other. Someone
9 who deliberately hurts a child, of course, is treated
10 differently. And also, she says mercy is freely given
11 which doesn't have a price on it. And of course in the
12 final analogy, she did say she could vote for death or
13 life depending on the circumstances.

14 I find that the juror would be qualified. All
15 right. Deny your motion to excuse.

16 All right. Anything else before I bring the juror
17 back?

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

19 THE COURT: All right. Ask the juror to join
20 us, please.

21 (WHEREUPON, Potential Juror 284 entered the
22 courtroom.)

23 THE COURT: All right. Considering the entire
24 voir dire -- that means all of the questions, the written
25 questions as well as the questions you've given to the

1 court as well as each at the attorneys -- I find that
2 Juror 284 will be fair, unbiased, impartial and able to
3 carry out the law as explained to her. Furthermore, I
4 find that the juror's beliefs or attitudes towards the
5 death penalty would not prevent or substantially impair
6 the performance of her duties as a juror in accordance
7 with the law, the Court's instructions and the juror's
8 oath. So I do find you qualified to sit on this jury.

9 Now, I think you understand and now appreciate that
10 this process is going to take some time. What we're
11 doing is qualifying a panel for a pool of jurors from
12 which the actual jury will be selected.

13 THE POTENTIAL JUROR: Yes, sir.

14 THE COURT: So -- and this process is going to
15 take some time. Now, you've given the Clerk your
16 telephone number?

17 THE POTENTIAL JUROR: Yes, sir.

18 THE COURT: All right. You can go about your
19 life as you will until you get the phone call. So don't
20 worry about this. And just go ahead, and when you get
21 the phone call, it will probably be to report the next
22 day. And at that time, we'll draw the jury.

23 THE POTENTIAL JUROR: Okay.

24 THE COURT: All right. Very good. And I want
25 to thank you for your patience with the Court, and as one

1 of the attorneys said, with your candor and
2 straightforward answers. I do appreciate it.

3 THE POTENTIAL JUROR: Thank you.

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

5 (WHEREUPON, Potential Juror 284 exited the
6 courtroom.)

7 THE COURT: All right. The next one is 292.

8 Is there anything from the Defendant before we ask Juror
9 292 to join us?

10 MR. MCGUIRE: No, sir.

11 MS. ADAMS: No, sir.

12 THE COURT: From the Defense -- I mean the
13 State?

14 MS. ADAMS: No, sir.

15 THE COURT: All right. Very good.

16 Ask the juror to join us -- 292.

17 (WHEREUPON, Potential Juror 292 entered the
18 courtroom.)

19 THE COURT: Are you Juror Number 292?

20 THE POTENTIAL JUROR: Yes.

21 **POTENTIAL JUROR 292,**

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

23 **EXAMINATION**

24 **BY THE COURT:**

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

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

4 A. Yes, sir.

5 Q. You have been provided with a copy of a list of
6 potential witnesses. Have you had an opportunity to
7 review that witness list?

8 A. Yes.

9 Q. Did you recognize any names?

10 A. I knew one that was on there, but I don't know if
11 it's the same one I knew.

12 Q. All right. And who was that?

13 A. Layton Creamer.

14 Q. All right. If he, the Layton Creamer that you know,
15 would be one of the witnesses in this case -- now, those
16 were potential witnesses. They do not have to be called.
17 But if they should be called and he was one, would that
18 in any way affect your ability to give both the State and
19 the Defendant a fair and impartial trial?

20 A. No.

21 Q. Very good. Now, you do also recall my instructions
22 from Monday to avoid all forms of media coverage dealing
23 with this case? Do you understand -- you do recall my
24 instructions from Monday to avoid all forms of media
25 coverage dealing with the case?

1 A. Yes.

2 Q. Has this caused you any problem?

3 A. No.

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

9 A. I don't think so. I've had -- I had a heart attack
10 back in April, but I don't know if that's ...

11 Q. How are you doing?

12 A. I'm doing pretty good.

13 Q. Do you have any ---

14 A. I don't have no problems.

15 Q. All right. Among other things today, we will be
16 talking about penalty. But the mere fact that we're
17 talking about penalty does not indicate anything about
18 this Defendant or any other defendant. Defendants are
19 presumed under our law to be innocent. Do you understand
20 that?

21 A. Uh-huh (affirmative).

22 Q. If you were a juror in a criminal case, could you
23 listen to the law, accept and apply that law as I would
24 instruct you as the judge even though you may not agree
25 with that law or think it ought to be some other way? In

1 other words, could you take the law as I charge -- in
2 other words, instruct you -- and accept and apply it as I
3 instruct you even though you might not agree with the law
4 or you think it ought to be some other way?

5 A. Yes.

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

9 A. Yes, 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 or anything else in the case. Do you
14 understand that? In other words, as I said earlier, a
15 defendant is presumed to be innocent of all charges, and
16 it's up to the State to prove guilt beyond a reasonable
17 doubt. Do you understand that?

18 A. Yes.

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

22 A. Yes.

23 Q. If you were a juror in a death penalty case and if
24 the jury had found the defendant guilty of murder, you
25 would then move to the sentence phase of the trial. Do

1 you understand?

2 A. Yes, sir.

3 Q. When you hear us refer to a capital case or a death
4 penalty case, what we mean is that it is a criminal
5 murder trial where the prosecutor -- in other words, the
6 State -- is seeking the death penalty. Do you understand
7 that?

8 A. Yes.

9 Q. A death penalty trial is divided into two parts.
10 Part one is the guilt phase where a jury determines
11 whether the defendant is guilty or not guilty of murder.
12 Part two is the sentencing phase where a jury determines
13 the appropriate punishment. Of course, if the defendant
14 is found not guilty in the first part, that ends the
15 matter and you go no further. Do you understand that?

16 A. I've been on a trial about ten years ago that was
17 that way.

18 Q. On a jury?

19 A. Yeah.

20 Q. All right. Well, remember this could be a little
21 bit different.

22 A. Yeah.

23 Q. I don't know about that. But you're right. Once
24 he's found not guilty, then that's the end of it.

25 Therefore, if you were a juror in a trial of a capital

1 case where the jury in phase one of the trial has found
2 the defendant guilty of murder, you would then move to
3 phase two of the trial which is called the sentencing
4 phase of the trial. Do you 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 the defendant guilty of
9 murder -- do you understand that the jury rather than the
10 judge determines the sentence that a defendant will
11 receive for the crime of murder?

12 A. Yes.

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

18 A. Uh-huh (affirmative).

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 of the defendant for the crime. Do you

1 understand that?

2 A. Yes, sir.

3 Q. Do you also understand that the jury has two options
4 to consider regarding the sentencing for murder? One
5 option is life in prison which under our law is until the
6 death of the defendant without possibility of parole.
7 The other option is death which in this state is by
8 electrocution or lethal injection. Now, therefore, could
9 you, as a juror in the sentencing phase, depending upon
10 the facts including the relevant aggravating and
11 mitigating circumstances and the law as instructed to
12 you, render a sentence of life in prison?

13 A. Yes.

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

18 A. Yes.

19 Q. Very good. Thank you, sir. Answer any questions
20 the jury [sic] might have.

21 MR. MCGUIRE: Judge, I'm going to hold my
22 questions in response. Thank you.

23 THE COURT: All right. Very well.

24 Madam Solicitor?

25 MS. ADAMS: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MS. ADAMS:

3 Q. Good afternoon. How are you?

4 A. Fine, thank you.

5 Q. I'm Chrissy Adams, and I'm the Solicitor for the
6 Tenth Circuit. We certainly appreciate your patience in
7 willing to be here. Actually, you know, we kind of made
8 you be here, didn't we?

9 A. Yes.

10 (Laughter)

11 Q. What I want to go over with -- and I know you
12 probably understand the process a little because if I
13 heard correctly, you put in here you've served on a
14 murder jury before, right?

15 A. Right.

16 Q. Now, death penalty, you understand, is two parts.

17 A. Right.

18 Q. Okay? And what allows the State to go and seek the
19 death penalty is an aggravating circumstance. So not
20 every murder is eligible for the death penalty. You know
21 that?

22 A. Yes.

23 Q. Okay. So we must prove to all twelve jurors -- and
24 they must all agree, unanimous verdict -- that we have
25 proven beyond a reasonable doubt that some sort of

1 aggravating factor exists. And once you determine that,
2 that's when we go into the sentence, whether life is
3 appropriate or death is appropriate for a particular set
4 of facts and circumstances. Okay?

5 Now, the Judge is going to instruct you that you
6 must consider all the evidence before making a decision.
7 Is that something that you can follow?

8 A. Yes.

9 Q. Okay. Do you understand what mitigation evidence
10 is?

11 A. No.

12 Q. Okay. Mitigation evidence -- well, let me start by
13 saying this. The aggravation is what the State's going
14 to prove that bumps it up. Okay? Mitigation evidence,
15 if presented, is any evidence from the Defense that tends
16 to lessen the severity of the crime. In other words, to
17 make you tend towards a life sentence versus a death
18 sentence. That's what mitigation evidence is.

19 A. Okay.

20 Q. Okay. Now, the Judge is going to tell you that you
21 have to consider the entire case. You have to listen to
22 the State's aggravation and listen to the Defense's
23 mitigation, anything that's going to make you vote for
24 life ---

25 A. Yeah.

1 Q. --- before you make a decision. Can you do that?

2 Can you follow the Judge's instructions and wait until
3 you hear the entire case?

4 A. Yes.

5 Q. Okay. Now, after you hear mitigation -- mitigation
6 could be all sorts of things, family background, it could
7 be drugs, it could be any part of the defendant's life
8 taken into consideration. Okay? But the Judge is also
9 going to instruct you that you could vote for life for no
10 reason at all if you wanted to. Can you follow the Judge
11 with that and if you felt that life was appropriate for
12 no reason at all, could you vote for life in that
13 situation?

14 A. If I thought life was ---

15 Q. If you thought life was appropriate -- because the
16 Judge will instruct you you can consider mitigation,
17 aggravation. And he's also going to instruct you that
18 you could vote for life for no reason at all. Could you
19 follow that principle?

20 A. Yeah.

21 Q. Okay. And follow the Judge's instructions on the
22 law?

23 A. Yeah.

24 Q. Okay. Now, if you determined -- if the jury
25 determines -- because the jury must unanimously agree

1 that death is the appropriate sentence, okay -- you would
2 have to sign your name to a sentence sheet. And that
3 document is what the State uses to actually execute a
4 defendant. Would you be able to sign your name to a
5 document that allows the State to kill another human
6 being?

7 A. If it was severe enough, I think so.

8 Q. So you would listen to the entire case and remain
9 open-minded until you made a decision?

10 A. Yeah.

11 Q. And obviously follow the Judge's instructions
12 whether you agree with those instructions or not?

13 A. (Nodded head up and down in the affirmative)

14 Q. Okay. Let's talk about jury deliberations for a
15 little bit. Do you understand that that's a give-and-
16 take process?

17 A. Yes.

18 Q. In order to come back with a death verdict,
19 obviously it has to be unanimous. And every juror has a
20 right to their opinions. Do you agree to that?

21 A. Yes, I do.

22 Q. And that while you should respect everyone's
23 decision, that there should be a dialogue, there should
24 be discussion. And everyone should consider everyone
25 else's views as well in hopes to come to a decision?

1 A. Right.

2 Q. Okay. And you can accept that and follow that?

3 A. Yes.

4 Q. Okay. And if someone's not participating in that,
5 would you be able to tell the Judge that and let him know
6 that someone's not even participating in the discussion
7 to make sure that it's an open discussion ---

8 A. Yes.

9 Q. --- about whether life or death is appropriate?
10 Okay. Thank you so much. I appreciate it.

11 THE COURT: Mr. McGuire?

12 You've got one more.

13 THE POTENTIAL JUROR: Okay.

14 CROSS-EXAMINATION

15 BY MR. MCGUIRE:

16 Q. You didn't think you would be able to get that
17 quick, did you?

18 A. I thought I was.

19 (Laughter)

20 Q. I'm afraid I've still got you on the hot seat for a
21 little bit longer, sir. I appreciate your patience. And
22 I'm going to be brief and just follow up on a couple of
23 issues in a little bit more detail than Ms. Adams.

24 You indicated on your questionnaire that some cases
25 were so severe they deserved the death penalty?

1 A. Yes.

2 Q. And you put mass murder on there. I'm just going to
3 ask you a little bit about that. You know, the State has
4 to bring up what's called aggravation evidence to a jury
5 to ask for the death penalty. The definition of murder
6 in South Carolina is the unlawful killing of another
7 human being with malice aforethought. This might sound
8 familiar to you since you were already on that kind of
9 jury. But malice is defined as the killer operating with
10 a black and malignant heart, fatally bent on evil,
11 deliberately, intentionally taking the life of another.

12 A. Yes.

13 Q. And that might sound familiar to you based on your
14 past experience. But the State would then bring more
15 evidence to make it what's called an aggravated murder.
16 Because only an aggravated murder is eligible for the
17 death penalty. The jury you sat on wouldn't even be
18 eligible for the death penalty. And what I'm going to do
19 is just give you some examples. Aggravation can be like
20 if a child was killed, a police officer was killed in the
21 line of duty or killing more than one person.

22 A. Uh-huh (affirmative).

23 Q. If a person did kill more than one person, would a
24 life penalty ever be severe enough for that?

25 MS. ADAMS: Objection. He doesn't know the

1 entire facts to make that decision, Judge. He's going to
2 be instructed to consider everything.

3 THE COURT: I understand. Overruled. Go
4 ahead. If he can answer that question, he will.

5 A. What was it again, now?

6 Q. You're sitting on a jury. You find -- just
7 hypothetically, another case, another place, another
8 defendant sort of thing. You and eleven other people on
9 that jury, that place, that time, find the killer guilty
10 of murder, deliberately, intentionally killing an
11 innocent person. And then the State brings the
12 aggravation evidence to you. And the aggravation
13 evidence is that that person had killed before, prior
14 conviction for murder. And what makes the second murder
15 so bad is that he's killed a second time. In that
16 situation, life in prison penalty, is that severe enough
17 to punish that kind of murder?

18 A. It depends on how he murdered in my opinion. You
19 know if it was -- if he'd just -- like if he just shot
20 somebody or something, I don't know. I'd have to think
21 about it. Like if he stabbed somebody a hundred times or
22 something, you know. It would depend on how it was done
23 ---

24 Q. Okay.

25 A. --- in my mind the way I would see it.

1 Q. Okay. And it sounds like what you're saying is you
2 want to know sort of the facts of how the murder
3 happened, how violent?

4 A. Yeah.

5 Q. That sort of thing?

6 A. Yeah.

7 Q. Okay. But you would automatically vote for death
8 simply because somebody had a murder conviction?

9 A. No.

10 Q. Okay. In fact, the Judge would instruct you that
11 you could not vote for death automatically just because
12 of that. Is that a principle you can accept?

13 A. Uh-huh (affirmative).

14 MR. MCGUIRE: And Judge, this is where I would
15 ask my six questions pursuant to ---

16 THE COURT: Very well. The ruling is the same.
17 You may proceed.

18 MR. MCGUIRE: Thank you very much, sir.

19 Q. What I want to do is talk to you in a little bit
20 more detail about the sentencing case and how it's
21 different. Ms. Adams touched on parts of it. I'll maybe
22 skip past them or maybe refresh your memory about some of
23 those parts, then I want to ask you about some different
24 things.

25 And I'm going to put you on that jury again. You've

1 already tried the first part of the case, is the fellow
2 guilty of murder or not, and you found him guilty. The
3 judge is going to give you a break.

4 You go home. You go home for about twenty-four
5 hours. Then you come back and you begin the journey to
6 fix punishment with your eleven other jurors. Okay? And
7 the State, as we stated, would have to prove aggravation
8 evidence beyond a reasonable doubt to all twelve jurors.

9 A. Right.

10 Q. But it's different for the life penalty or the
11 mitigation side of the case or the life side of the case.
12 And what I mean by that is the judge would tell every
13 juror that they can vote for life for any reason, no
14 reason, mercy, grace or anything they see in the case.
15 And is that a principle you're okay with?

16 A. Yeah.

17 Q. And each individual juror has the right to find
18 their reason to vote for life wherever they see it.
19 Somebody on the front row could say, it's something about
20 the fellow's background. Somebody on the back row could
21 say, you know, it's his relationship with his grandma or
22 his child. Somebody in the middle of the pack could say,
23 you know, I listened to the judge. And he said I could
24 vote for life for no reason at all. And I just feel
25 that's right, but I don't even have a reason to give you.

1 A. Right.

2 Q. Is that an aspect of the law you can respect and
3 follow?

4 A. Yeah.

5 Q. And a sentencing decision in a case like this is
6 called an individual moral judgment. That's what the
7 jurors' decision is called. And the judge or the law
8 says that if it would harm one's conscience or do
9 violence to one's conscience to change their individual
10 moral judgment, that would be wrong. And while we expect
11 civil discourse and polite deliberations, the fact is the
12 State, you as a juror and the Defense are entitled to
13 fairness not just out here in the courtroom, but also the
14 deliberation room. And if things got unfair and hostile
15 and maybe somebody was trying to change somebody's
16 individual moral judgment, could we count on you to send
17 a note out here and say, you know, it's not fair in here,
18 we've got to go back to fairness?

19 A. Right, yeah.

20 Q. Okay. That's a principle you'd want enforced?

21 A. Yeah, because if I was on there, I wouldn't want
22 nobody influencing me.

23 Q. I agree with you. And let me ask you a question
24 about the concept of mercy. Is mercy freely given and
25 bestowed upon somebody, or is it earned?

1 A. It depends on the circumstance, you know.

2 Q. Okay.

3 A. I mean, I'm willing to give people mercy, but it
4 depends on the -- it depends on what I hear, you know. I
5 don't know.

6 Q. Okay. That's a very fair answer. I think that's
7 all I've got for you. If I could just check with my co-
8 counsel.

9 (Off record discussion)

10 MR. MCGUIRE: That's all I have for you, sir.

11 Thank you so much.

12 THE COURT: All right. Anything else from the
13 State?

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

15 THE COURT: All right. Anything else from the
16 Defense?

17 MR. MCGUIRE: No, sir.

18 THE COURT: Considering the entire voir dire, I
19 find that Juror Number 292 will be fair, unbiased,
20 impartial and be able to carry out the law as explained
21 to him. Furthermore, I find that the Juror's beliefs or
22 attitudes toward the death penalty would not prevent or
23 substantially impair the performance of his duties as a
24 juror in accordance with the law, the Court's
25 instructions and the juror's oath. So I do find that you

1 are qualified.

2 Now, I think you see that this process is going to
3 take some time. What we're doing is creating a pool of
4 potential jurors from whom the jury can be drawn for the
5 trial of this case. And that's probably going to --
6 obviously going into next week. But it might take
7 several days or longer. So you have given the Clerk your
8 telephone number?

9 THE POTENTIAL JUROR: Yes.

10 THE COURT: All right. So go about your
11 business and your life until you get a phone call. And
12 it will probably tell you to report the next day for that
13 -- and then that will be the time we draw the jury.

14 All right. Very good. Thank you very much.

15 THE POTENTIAL JUROR: Thank you.

16 THE COURT: And I do appreciate your patience and
17 your candor today. Thank you, sir.

18 THE POTENTIAL JUROR: All right. Thank you.

19 (WHEREUPON, Potential Juror 292 exited the
20 courtroom.)

21 THE COURT: Let me -- three o'clock is the
22 time. Mr. Rivera, would this be a good time, or would
23 you want to go through another one?

24 MR. MCGUIRE: Why don't you go ahead and take a
25 break.

1 THE DEFENDANT: Yeah, we can take a break.

2 THE COURT: Okay. We'll take a short break.

3 And when you're ready to proceed, let me know.

4 THE DEFENDANT: Thank you.

5 MR. MCGUIRE: Thank you, Judge.

6 (WHEREUPON, court stood at recess for a short
7 break.)

8 THE COURT: Are we ready? Ready, Mr. Rivera?

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

11 THE COURT: All right. All right. The next
12 one is 294. Is there anything from the Defense on 294?

13 MR. MCGUIRE: My understanding is that she
14 might be a victim in one of the Prosecutors's cases
15 regarding indecent exposure in a Bi-Lo parking lot.

16 MS. ADAMS: Judge, we're not sure because she
17 wasn't clear on it. And I didn't know if you just wanted
18 to ask her about it. I don't know if it was -- it could
19 possibly ---

20 THE COURT: Is she a victim in a case now in
21 the -- that's the person?

22 MS. ADAMS: We don't know who the person is.

23 MS. BYFORD: She didn't give us the defendant's
24 name.

25 MS. ADAMS: Yeah, and she ---

1 THE COURT: What page am I looking at?

2 MS. ADAMS: Page 12. And we do not find her
3 name in our system. But then again, she got married four
4 years ago, so it could be under a different name.

5 THE COURT: I'm reading -- I don't know which
6 number question. The one in the middle, is that where
7 you're talking about?

8 MS. ADAMS: Yes, sir. Because she said she was
9 twenty at the time which was four years ago. So none of
10 this may have even happened in Anderson.

11 THE COURT: And arrested in 2009?

12 MS. ADAMS: That's what I don't understand
13 because she says that that's what -- she says he was
14 sentenced. She wasn't notified. But then she says, were
15 there any court proceedings, yes. Did you attend, no.
16 If you just ask her, Judge, I think ...

17 THE COURT: Well, let me ask you. If I find
18 that out, are we going to further qualify her?

19 MS. ADAMS: If she's our victim, present
20 victim, Judge, we don't have a ---

21 MR. MCGUIRE: I think we -- I think if ---

22 MS. ADAMS: We've done that before.

23 MR. MCGUIRE: Sure. I think if she's -- if she
24 is or has been a victim in a case ---

25 THE COURT: Well, I mean, that's -- in other

1 words, that would determine it, so I wouldn't have to ask
2 any more.

3 MR. MCGUIRE: Sure. Correct. Yes, sir.

4 THE COURT: All right. Well, let's ask 294 if
5 she would join us.

6 (WHEREUPON, Potential Juror 294 entered the
7 courtroom.)

8 THE COURT: All right. You're Juror 294?

9 THE POTENTIAL JUROR: Yes, sir.

10 POTENTIAL JUROR 294,

11 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

12 EXAMINATION

13 BY THE COURT:

14 Q. You will remember on Monday I put all jurors under
15 oath. Now, do you understand that you're still under
16 oath and this oath continues throughout these
17 proceedings?

18 A. Yes, sir.

19 Q. All right. Very good. I have gone over your
20 questionnaire and the answers to it. I noticed that you
21 were a victim in a particular crime. Is that correct?

22 A. Yes. Yes.

23 Q. All right. Was that here in Anderson County?

24 A. It was at the Bi-Lo in Powdersville.

25 Q. In Powdersville?

1 A. (Nodded head up and down in the affirmative)

2 Q. You know, when I qualified to the whole panel, I
3 would ask people if they knew a witness or something like
4 that, or potential witness, whether they could be fair
5 and impartial ---

6 A. Yes.

7 Q. --- to both the State and the Defendant. Well, the
8 reason for that is that, of course, the parties are
9 entitled to a fair and impartial jury. But also more
10 importantly to me, you didn't ask to be here. And I
11 would want to be sure that you wouldn't be in any way
12 compromised or feel uncomfortable about participating in
13 a trial. And inasmuch as your case was apparently
14 handled by the Solicitor's office ---

15 A. Uh-huh (affirmative).

16 Q. Is that correct?

17 A. Yes, sir.

18 Q. --- where you were a victim, that may create a bit
19 of a problem. You don't even understand -- you wouldn't
20 think about it. But I, doing what I do, I do know how
21 other experiences sort of interplay with it. And I
22 wouldn't want you to be in a position that you might have
23 to second guess anything like that because of your own
24 experience.

25 A. No. No, sir, I wouldn't associate that case.

1 Q. Well, the thing is I would just -- I would want to
2 be careful about it. I think I'm going to have to excuse
3 you from the trial of this case.

4 A. Okay.

5 Q. But I do appreciate your patience with the Court and
6 also being as candid and straightforward as you were.
7 And I apologize about having to wait, but you see it's
8 taking some time to get all these things done. But you
9 will be excused. And also, I want to thank you for your
10 service. Good luck to you.

11 A. Thank you.

12 Q. Have a good weekend.

13 A. Thank you. You too.

14 Q. Thank you, ma'am.

15 (WHEREUPON, Potential Juror 294 exited the
16 courtroom.)

17 THE COURT: All right. Anything else ...

18 All right. Number 297, is there anything from the
19 Defendant on 297?

20 MR. MCGUIRE: No, sir, Your Honor.

21 THE COURT: Anything from the State?

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

23 THE COURT: All right. Ask 297 to join us,
24 please.

25 (WHEREUPON, Potential Juror 297 entered the

1 courtroom.)

2 THE COURT: All right. Are you juror 297?

3 THE POTENTIAL JUROR: Correct.

4 POTENTIAL JUROR 297,

5 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

6 EXAMINATION.

7 BY THE COURT:

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

12 A. Yes.

13 Q. You have been provided with a copy of a list of
14 potential witnesses. Have you had an opportunity to
15 review that witness list?

16 A. Yes.

17 Q. Did you recognize any names on there that you might
18 be related to by blood or marriage, close personal
19 friend, business associate or have any other association
20 with?

21 A. No.

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

24 A. Yes.

25 Q. Has that caused you any problem?

1 A. I had to leave the room.

2 Q. All right. But you are doing that?

3 A. Yes, sir.

4 Q. All right. Very good. The trial of this case will
5 last longer than most cases. So it could be a week or
6 more. Other than the personal inconvenience, would this
7 pose a serious danger to the health or well-being of
8 yourself or anyone who is dependent upon you?

9 A. I do have back trouble and cannot sit for long
10 periods of time. Monday was a long day, and Tuesday I
11 was not able to walk.

12 Q. Oh, my goodness.

13 A. So that would be the only thing is sitting for long
14 periods.

15 Q. Well, we -- during a trial we usually break about an
16 hour, hour and a half. And if you do have a problem
17 where you do need to take a break, just raise your hand.
18 If you're drawn on a jury. We don't know if you'll be
19 drawn or not ---

20 A. Okay.

21 Q. --- because what we're doing is creating a pool of
22 jurors from whom the jury will be drawn.

23 A. Okay.

24 Q. But do you think you would be able to serve under
25 those circumstances?

1 A. Yes.

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

8 A. I believe I can, yes.

9 Q. All right. Among other things today, we will be
10 talking about penalty. But the mere fact that we're
11 talking about penalty does not indicate anything about
12 this Defendant or any other defendant. Under our law a
13 defendant is always presumed to be innocent. Do you
14 understand that?

15 A. Yes.

16 Q. Could you try this case based solely on the evidence
17 presented in the courtroom and disregard anything you may
18 have heard or read or seen about the case?

19 A. Yes.

20 Q. In a criminal case, the State has the burden of
21 proving guilt. The burden of proof for the State is
22 beyond a reasonable doubt. The Defendant has no burden
23 whatsoever. A defendant is, as I say, presumed to be
24 innocence, and he does not have to testify or even
25 present evidence. And it cannot even be discussed if he

1 should exercise his rights. Do you understand that?

2 A. Yes.

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

6 A. I think I could, yes.

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

11 A. Yes.

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

17 A. Yes.

18 Q. A death penalty trial is divided into two parts.
19 Part one is the guilt phase where a jury determines
20 whether the defendant is guilty or not guilty of murder.
21 Part two is the sentencing phase where the jury
22 determines the appropriate punishment. Of course, if the
23 defendant is found not guilty in the first phase, then
24 that ends the matter and it goes no further. Do you
25 understand that?

1 A. Yes.

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

7 A. Yes.

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

14 A. Yes.

15 Q. In a capital sentencing trial, the jury's function
16 is to determine the appropriate punishment based on the
17 circumstances of the crime and the characteristics of the
18 individual defendant. In other words, you consider two
19 things, aggravating circumstances to the circumstances of
20 the crime and mitigation circumstances which can affect
21 the character or characteristics of the individual
22 defendant.

23 A. Okay.

24 Q. Now, aggravating circumstances are facts or details
25 that, when they are present in a case, make the crime of

1 murder more serious or worse. On the other hand,
2 mitigating circumstances are incidents, occurrences or
3 details of a case that would reduce the severity of the
4 crime of murder. In other words, may reduce the degree
5 of responsibility of the defendant for the crime. Do you
6 understand that?

7 A. Yes.

8 Q. Do you also understand that the jury has two options
9 to consider regarding the sentencing for murder? One
10 option is life in prison which under our law is until the
11 death without a possibility of parole. The other option
12 is death which in this state is by electrocution or
13 lethal injection. Do you understand?

14 A. Yes.

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

20 A. Yes.

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

25 A. No.

1 Q. All right. Thank you very much. Answer any
2 questions the jury -- excuse me, you're the juror -- that
3 the attorneys might have.

4 A. Okay.

5 Q. Thank you, ma'am.

6 DIRECT EXAMINATION

7 BY MR. MCGUIRE:

8 Q. Good afternoon, Juror Number 297. I have to refer
9 to you by number. It's a little awkward for me. If you
10 can forgive me that.

11 A. Okay.

12 Q. What I want to do is talk to you in a little bit
13 more detail about the issue of murder and your opinions.
14 There are no right or wrong answers.

15 A. Okay.

16 Q. If they're -- whatever your viewpoint, your opinion
17 is, that is the right answer. That's the only thing that
18 we're asking for.

19 A. Okay.

20 Q. Okay? So feel just free to just say whatever is in
21 your heart or own your mind. If you need me to repeat
22 anything or if I don't make sense, you just let me know.

23 A. Okay.

24 Q. Okay? What I'm going to do is start off with the
25 definition of murder in South Carolina so we can start

1 off on the same page.

2 A. Okay.

3 Q. Murder is defined as the unlawful killing of another
4 human being with malice aforethought. Malice is defined
5 as the killer operating with a black and malignant heart
6 fatally bent on evil, deliberately, intentionally taking
7 a human life.

8 A. Okay.

9 Q. And it's referred to as malice murder. And in a
10 capital case, the prosecutor would then bring what's
11 called aggravation evidence to make it even worse than
12 just an intentional deliberate killing. It can be
13 killing a child, police officer in the line of duty,
14 killing multiple people. Something like that.

15 And in a capital case, you would also be able to
16 consider, you know, background things about the parties,
17 the defendant, whether he was on drugs, was a drug
18 addict, grew up poor. Stuff like that. Now, I see in
19 your questionnaire you indicated that, I feel that if
20 someone is guilty of premeditated murder and the evidence
21 proves them guilty without any doubt, then the death
22 penalty should be the punishment.

23 A. Uh-huh (affirmative).

24 Q. Is that still your view?

25 A. I've thought a lot about it since I filled out the

1 questionnaire. And I guess I never really thought about
2 it before I got that questionnaire in the mail. No, I
3 don't think that's my view anymore.

4 Q. What is your view?

5 A. I think that -- I'm not sure how to put it into
6 words -- that there's a final judge in life, and that
7 final judge is God. And I feel like that I don't have
8 the right to decide on someone else's life.

9 Q. Okay.

10 A. Whether they live or die.

11 Q. Okay. That God should take them in God's time?

12 A. Exactly.

13 Q. Okay.

14 A. That we all will face that judge one day.

15 Q. Okay. And you wouldn't want to be responsible for
16 that decision?

17 A. That's correct. Like I said, you know, I've done a
18 lot of thinking about it since I filled out that
19 questionnaire, and I've done a lot of praying about it.
20 And that's what I ---

21 Q. Sure. And it's a difficult situation.

22 A. It is.

23 Q. And nobody here would say that the situation we're
24 here for is not very serious.

25 A. Right.

1 Q. And we all recognize the gravity of it. And
2 everybody has some, of course, natural emotions and
3 reservations about weighing a human being's life in the
4 balance.

5 Give me just a second.

6 MR. MCGUIRE: Judge, if I could have just a
7 second.

8 THE COURT: Certainly.

9 (Off record discussion)

10 MR. MCGUIRE: Ma'am, those are all the
11 questions that I have for you.

12 THE POTENTIAL JUROR: Okay.

13 MR. MCGUIRE: Thank you very much for your
14 patience.

15 THE COURT: Any questions?

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

17 Thank you for being here.

18 THE POTENTIAL JUROR: Thank you.

19 THE COURT: Just a moment.

20 (Laughter)

21 THE POTENTIAL JUROR: I'm ready to go.

22 THE COURT: All right. But I think you
23 understand considering the entire voir dire -- and I do
24 want to thank you for your candor, particularly as to how
25 much thought you have given the questions in the

1 questionnaire and what you're going to have to do if you
2 should serve -- I find that Juror Number 297 should be
3 excused from serving in the trial of this case. However,
4 I do want to thank you, as I said, for being here and
5 your patience with the Court and your candor in answering
6 all the difficult questions you've been asked.

7 I might note that there are two reasons that I ask
8 the question can you be fair and impartial. One of
9 course is that the parties are entitled to a fair and
10 impartial jury. But the second thing is you didn't ask
11 to be here.

12 THE POTENTIAL JUROR: That's right.

13 THE COURT: And so -- what is it -- I don't
14 want you to feel, you know, compromised in any way as far
15 as your strongly-held convictions. So that's one reason
16 I also -- I mean, that is the reason I excused you.

17 THE POTENTIAL JUROR: Okay.

18 THE COURT: We need more people with strong
19 convictions. And you might be a perfect juror on some
20 other case. But considering this ---

21 THE POTENTIAL JUROR: I hope someday I get to
22 do that.

23 THE COURT: All right. Very good. I do want
24 to thank you for being here and your patience with the
25 Court.

1 THE POTENTIAL JUROR: Okay. Thank you.

2 THE COURT: Thank you, ma'am.

3 (WHEREUPON, Potential Juror 297 exited the
4 courtroom.)

5 THE COURT: All right. I think I'm going to
6 take a short break now. All right. We've got what three
7 more on today? I mean on this panel. No. It's two more
8 on this panel.

9 MS. ADAMS: Yes, sir, just two.

10 THE COURT: On this panel. All right. Let's
11 take a short break.

12 (WHEREUPON, court stood at recess for a short
13 break.)

14 THE COURT: Is the State ready?

15 MS. ADAMS: Yes, sir.

16 THE COURT: Is the Defense ready?

17 MR. MCGUIRE: Ready, sir.

18 THE COURT: Anything about Juror Number 307?

19 MR. MCGUIRE: No, sir.

20 MS. BYFORD: Nothing from the State, sir.

21 THE COURT: All right. Very good. Ask the
22 Juror 307 to join us, please.

23 (WHEREUPON, Potential Juror 307 entered the
24 courtroom.)

25 THE COURT: All right. Are you juror 307?

1 THE POTENTIAL JUROR: Yes, I am.

2 THE COURT: Very well.

3 POTENTIAL JUROR 307,

4 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

5 EXAMINATION

6 BY THE COURT:

7 Q. All right. You will recall on Monday I put all the
8 jurors under oath. Now, do you understand that you're
9 still under oath and this oath continues throughout these
10 proceedings?

11 A. Yes, sir.

12 Q. You have been provided with a copy of a list of
13 potential witnesses. Have you had an opportunity to
14 review that witness list?

15 A. Yes, I have.

16 Q. Did you recognize any names?

17 A. None.

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

20 A. Yes.

21 Q. Has that caused any problem for you?

22 A. None.

23 Q. All right. The trial of this case will last
24 approximately a week to ten days or maybe even longer.

25 Other than the personal inconvenience, would this pose a

1 serious danger to the health or well-being of yourself or
2 anyone dependent upon you?

3 A. No.

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

9 A. Yes, sir.

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

15 A. Yes, sir.

16 Q. Could you decide this case based solely and only on
17 the evidence presented in this courtroom and disregard
18 anything you may have heard or read or seen about this
19 case?

20 A. Yes, sir.

21 Q. In a criminal case, the State has the burden of
22 proving guilt. The burden of proof for the State is
23 beyond a reasonable doubt. A defendant has no burden to
24 prove innocence. Do you understand that?

25 A. Yes, sir.

1 Q. In other words, a defendant is always presumed to be
2 innocent, and it's up to the State to prove guilt beyond
3 a reasonable doubt.

4 A. I understand that.

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

9 A. Yes, sir.

10 Q. If you were a juror in a death penalty case and if
11 the jury had found the defendant guilty of murder, you
12 would then move to the sentence phase of the trial. Do
13 you understand this?

14 A. Yes, sir.

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

20 A. Yes, sir.

21 Q. A death penalty trial is divided into two parts.
22 Part one is the guilt phase where a jury determines
23 whether the defendant is guilty or not guilty of murder.
24 Part two is the sentencing phase where a jury determines
25 the appropriate punishment. Of course, if the defendant

1 is found not guilty, that ends the matter. Do you
2 understand that?

3 A. Yes, sir.

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

9 A. Yes, sir.

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

16 A. Yes.

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

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 details, incidents or
2 occurrences of a case that would reduce the severity of
3 the crime of murder. In other words, may reduce the
4 degree of responsibility of the defendant for the crime.

5 Do you understand that?

6 A. Yes, sir.

7 Q. Do you also understand that the jury has two options
8 to consider regarding the sentencing for murder? One
9 option is life in prison which under our law is death --
10 until the death of the defendant without possibility of
11 parole. The other option is death which in this state is
12 by lethal injection or electrocution. Do you understand?

13 A. Yes, sir.

14 Q. Could you -- all right -- with that understanding,
15 could you, as a juror in the sentencing phase, depending
16 upon the facts including the relevant aggravating and
17 mitigating circumstances and the law as instructed to
18 you, render a sentence of life in prison?

19 A. Yes, sir.

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

24 A. Yes.

25 Q. All right. If you would, please, ma'am, answer any

1 questions the attorneys may have.

2 DIRECT EXAMINATION

3 BY MR. MCGUIRE:

4 Q. Good afternoon, Juror 307. How are you doing?

5 A. Nervous.

6 Q. Well, me too. But there's no reason for you to be
7 nervous because all of your answers are right. I'm not
8 in that same category unfortunately. Some of my
9 questions are even wrong. But whatever you say is
10 absolutely right because it's your view and your opinion.
11 And that's what we're here for.

12 A. Okay.

13 Q. And I noticed on your questionnaire you indicated, I
14 do not like the death penalty. But as a jurist, my role
15 would be to carry out the laws that exist on the books.

16 A. And that's how I feel.

17 Q. Okay. And that's exactly what the judge is looking
18 for, people that can be fair and follow the law. And
19 that's what -- I'm just going to ask you some questions
20 to make sure you can do that. Okay?

21 First off, a death penalty case in South Carolina
22 starts off obviously with a murder. And I'll define
23 murder for you and we'll start there. Murder -- you
24 don't have the definition of murder, do you?

25 A. No. Just what I know popularly.

1 Q. TV, newspapers, novels, that sort of thing?

2 A. Yeah.

3 Q. Sure. Unless you're in a family with a criminal
4 defense lawyer, you probably don't have that definition.

5 So the definition of murder in South Carolina, what the
6 judge would charge the jury is that it's the unlawful
7 killing of another human being with malice aforethought.

8 Not accident, not self-defense. The person knew what
9 they were doing, and they were acting with malice. And
10 malice is defined as operating with a black and malignant
11 heart fatally bent on evil, intentionally, deliberately
12 taking the life of another. It's called malice murder.

13 And as bad as that is and sounds, that alone is not
14 eligible for the death penalty. It has to be aggravated
15 murder. The State would have to prove to the jury that
16 there is an aggravating factor -- multiple aggravating
17 facts that make it even worse. It could be killing
18 multiple people, killing a police officer, killing a
19 child. There are a number of them. And only if the
20 aggravation was proved to the jury beyond a reasonable
21 doubt, all twelve agree it was there and saw it, only
22 then is the State entitled to ask for the death penalty.
23 Is that in line with your thinking?

24 A. With my understanding, yes.

25 Q. Okay. And also, there's no case, no murder case,

1 not even an aggravated murder case, in the country or the
2 state that's automatically a death penalty case. Most
3 people know that, but not everybody. Is that -- did you
4 know that?

5 A. No. But clarification's good.

6 Q. Okay. Good. And what I mean is, you know, it's not
7 as if the State could ever prove A, B, C and then it
8 would be automatic death. And to illustrate that where
9 proof of that is that the judge would charge the entire
10 jury that any one individual juror could vote for life
11 for any reason, no reason, mercy, grace or anything they
12 see in the case. Each individual juror has the right to
13 do that. Is that an aspect of the law that you could
14 respect and follow?

15 A. Absolutely.

16 Q. Okay. And you know, the way that plays out sort of
17 in fact or by example would be -- I'm going to put you
18 hypothetically on a jury, you and eleven other people.
19 You hear the first part of the case. And that's did the
20 fellow commit murder or not. And then you get a break.
21 You get to go home for about twenty-four hours, about a
22 day. The judge would ask you to come back, rejoin the
23 other eleven jurors. And that's when your journey to fix
24 punishment would start. And the two options would be
25 death or life.

1 And the rules are different for both sides. Again,
2 the State, as I stated earlier, would have to prove their
3 aggravation evidence beyond a reasonable doubt to all
4 twelve jurors. But it's different on the life side or
5 the Defense side or what might be called the mitigation
6 side. Each individual juror has a right to find their
7 own individual reason for life. And they can all be
8 different. They don't have to be unanimous.

9 Usually when we think about juries, we think about
10 them speaking with one voice, being unanimous. It
11 doesn't have to be so in a capital case. And what -- by
12 example, a juror in the front could say, I saw something
13 in his background, his childhood, his upbringing that
14 resonated with me. And for me, that's my reason to vote
15 for life. A juror on the back row could say, I saw
16 something redeeming about his relationship with his
17 grandmother or his child. For me, that did it. That's
18 my reason. Another juror might say, you know, I listened
19 to the judge. And the judge said I didn't have to have a
20 reason. I'm going to vote for life because I think it's
21 right, and I don't even have a reason to give you. And
22 they can all be different. Is that an aspect of the law
23 you're comfortable with?

24 A. Yes.

25 Q. Okay. The ---

1 A. Now that you've explained it.

2 Q. Okay. It's a lot to ---

3 A. Take in.

4 Q. --- bite off in a couple of minutes. And the way
5 the law describes a juror's decision in a capital case is
6 that it's their own individual moral judgment based on
7 their walk in life. And that if it would do harm to
8 their conscience or do violence to their conscience to
9 change that moral judgment, that would be wrong.

10 And the State, the Defense, and you as a juror are
11 entitled to fairness not just out here in the courtroom,
12 but also the jury room. And if you saw things get
13 hostile in the jury room or people decided to maybe gang
14 up or be unfair trying to get somebody to change their
15 moral judgment, could we count on you to pass a note out
16 to the Judge and say, we need to get back to fairness in
17 here?

18 A. Yes, sir.

19 Q. Based on your -- I read your questionnaire. Based
20 on your incident in Douglas College in the cafeteria
21 line, I think we can definitely count on you to stand up
22 for yourself, right?

23 A. (Nodded head up and down in the affirmative)

24 Q. Is mercy something that's freely given and bestowed
25 upon somebody, or is it earned?

1 A. Freely given.

2 Q. Okay, okay. Now, in South Carolina, again, the only
3 time the jury would have to be unanimous would be to
4 return a death sentence. The jury can agree to disagree,
5 come back in to court and say, you know, all twelve
6 couldn't vote for life, all twelve couldn't vote for
7 death. We've disagreed. The judge might say, well, give
8 it another throw, give it another try. But at the end of
9 the day, the judge would take the case away and sentence.
10 Take it away from the jury and sentence. Is that an
11 aspect of the law you're comfortable with?

12 A. It makes sense.

13 Q. Okay. And again, if you were -- you with eleven
14 other people, all twelve of you agreed that the death
15 penalty was the appropriate punishment, that the State
16 brought forward that aggravation evidence, a child
17 killing, cop killing, multiple killing, whatever it was,
18 it was heinous enough, aggravated enough for you where
19 you and eleven other people thought it was the
20 appropriate punishment, could you vote for death?

21 A. Yes.

22 Q. And -- and the law would require that you sign the
23 sentencing sheet for the Judge with your name on it along
24 with eleven other people, you could do that?

25 A. Yes.

1 Q. Okay. I mean, it's fair to have reservations. But
2 as long as you could follow the law ...

3 A. I'd follow the law, yeah.

4 Q. Okay. That's what we're here for. That is the law.
5 And if the Judge charged you that if you and eleven other
6 people found that it was the appropriate punishment, you
7 could deliver a death verdict?

8 A. (Nodded head up and down in the affirmative)

9 Q. Okay. You would never automatically vote for life
10 despite the evidence or the facts of the case?

11 A. No, sir.

12 Q. You would want to consider everything?

13 A. Yes, sir.

14 Q. Aggravation, mitigation, all the facts, the
15 Defendant's life, his background, all of it?

16 A. That's what I understand I would be called to do, so
17 that's what I would try to do.

18 Q. Okay. And you would always wait and listen to
19 everything before making a decision?

20 A. Yes.

21 Q. You would never just hear the facts and say, I'm
22 automatically going to vote life. I don't care what is
23 coming next?

24 A. No, sir.

25 Q. You would hear everything, weigh everything,

1 mitigation, aggravation, fairly consider both death and
2 life. And only then would you make up your mind?

3 A. Correct, yes.

4 Q. And you can be perfectly fair to both the Defense
5 and the State?

6 A. Yes.

7 Q. And follow the Judge's law without a doubt?

8 A. I would hope so, yes.

9 MR. MCGUIRE: If I could have just a second,
10 Judge.

11 (Off record discussion)

12 MR. MCGUIRE: And Judge, this is where I would
13 ask my six questions pursuant to my written motion. I
14 know you're going to deny it, but I've got to say it.

15 THE COURT: All right. For the record, it's
16 been denied previously. The ruling remains the same.

17 MR. MCGUIRE: And with that, that ends my
18 questions. Thank you, ma'am, for being patient with me.

19 THE POTENTIAL JUROR: Thank you.

20 THE COURT: All right. From the State?

21 MS. BYFORD: Yes, sir.

22 CROSS-EXAMINATION

23 BY MS. BYFORD:

24 Q. Hey, how are you? Almost done.

25 A. Still nervous.

1 Q. I know. No need to be. I'm nervous too. I know
2 it's hard to sit where you're sitting. I want to thank
3 you so much for your candid answers so far this morning.
4 I'm just going to ask you a few follow-up questions about
5 some things that were on your questionnaire.

6 I noticed that you stay up on current events, you
7 listen to a lot of news. Have you heard anything about
8 Mr. Rivera's case?

9 A. Absolutely nothing because I almost -- I only listen
10 to basically M.P.R. So I get no local news on the radio.
11 I do not watch television. A little bit of P.B.S. once
12 in a while.

13 Q. So not a problem for you at all?

14 A. None of this has come across my radar screen at all.

15 Q. Okay. Good to know. Just want to make sure we had
16 that clear on the record.

17 The next question I want to ask you -- I see that
18 you have some affiliation with the A.C.L.U. and you've
19 written sort of in support of some legislation that they
20 are proposing on occasion. Is that right?

21 A. On occasion they send e-mails. And you know, if I'm
22 inclined in agreement, I might send -- you know, push the
23 button send something off to your legislator.

24 Q. Right. Anything to do with the death penalty ever?

25 A. I don't believe so, but I don't -- I don't think so.

1 Q. Okay. And basically just the main reason for these
2 questions in addition to finding jurors, you know, who
3 can consider all the evidence, we also want to make sure
4 that we are not putting you in a position where we might
5 compromise your beliefs or who you are as a person. So I
6 just want to make sure that you're comfortable with any
7 decisions you might have to make or, you know, consider
8 any decisions you might consider when you're sitting
9 there. And you know, it's one thing to discuss this very
10 academically; it's another when you're ---

11 A. Absolutely.

12 Q. --- actually making a decision.

13 A. And -- may I say I have struggled with that
14 somewhat. When the questionnaire brought up some of this
15 stuff -- because there has been a time in my life when I
16 was opposed definitely to the death penalty. And I have
17 changed my opinion on that. I think there are
18 circumstances where it is appropriate because, as you
19 say, the crime is so heinous that it is appropriate. I
20 made a note in there, I think, that the death penalty as
21 a deterrent is a waste of time. And -- but I think I do
22 believe now that there are cases.

23 Q. So it's actually the facts and circumstances of the
24 case that you would be considering and not whether it's a
25 deterrent or anything like that?

1 A. Exactly.

2 Q. That's good because that's what you're supposed to
3 consider.

4 A. Right.

5 Q. I just have one more question. You said -- we
6 talked about the enforcement of the death penalty. I
7 think he said sometimes he felt it was enforced unevenly
8 for the political reasons of district attorneys. I just
9 want to ask you just one question about that. The
10 Solicitor, Chrissy Adams, she is the person who decides
11 what cases we go forward with. When you're over there
12 considering the facts, is that -- are her motivations
13 going to be something that enters into your decision, or
14 do you think ...

15 A. No. I am concerned -- a lot of stuff that came out
16 through the Innocence Project, I followed some of that.
17 That's my concern about misplacement of the death
18 penalty.

19 Q. But if the State were able to present a solid case
20 to you ...

21 A. I would not have a problem with it now.

22 Q. Okay. Excellent. Thank you so much.

23 MR. MCGUIRE: Nothing further, Judge.

24 THE COURT: Anything from the State?

25 MS. BYFORD: No, sir. We feel she's qualified.

1 THE COURT: Considering the entire voir dire, I
2 find that Juror Number 307 will be fair, unbiased,
3 impartial and able to carry out the law as explained to
4 her. Furthermore, I find that the juror's beliefs or
5 attitudes towards the death penalty will not prevent or
6 substantially impair the performance of her duties as a
7 juror in accordance with the law, the Court's
8 instructions and the juror's oath. I do find you
9 qualified.

10 Now, you can see this proceeding is going to take
11 some time just to qualify a jury pool from which the jury
12 will actually be selected. And that will be sometime
13 next week. And you did give the Clerk of Court your
14 telephone number?

15 THE POTENTIAL JUROR: Yes.

16 THE COURT: All right. So you can go about
17 your life until you get that phone call. It will
18 probably be sometime next week. And it will ask you to
19 come in at a particular time, and that's the time we will
20 actually draw the jury. It will be drawn from this pool,
21 so we're just qualifying all the jurors that will be
22 eligible.

23 Thank you very much, and I appreciate your patience
24 with the court. And like one of the other -- like one of
25 the attorneys said, appreciate your candor with these

1 rather difficult questions. Thank you very much.

2 THE POTENTIAL JUROR: Thank you.

3 (WHEREUPON, Potential Juror 307 exited the
4 courtroom.)

5 THE COURT: All right. Juror 313. Anything
6 from the Defendant?

7 MR. MCGUIRE: No -- she was the victim of purse
8 snatching.

9 Was that your office?

10 MS. ADAMS: I don't ---

11 MR. MCGUIRE: And their home was burglarized.
12 I don't know if that's pending.

13 MS. ADAMS: I don't -- not that we're aware.

14 MS. BYFORD: I thought she said no one got
15 caught. Is that -- did I misread that?

16 MR. MCGUIRE: Yeah, on the burglary, nobody was
17 ever caught.

18 MS. ADAMS: What page are you on, Bill?

19 MR. MCGUIRE: I'm trying to find it actually.

20 MS. BYFORD: I thought the purse snatching went
21 with the -- yeah, she says the defendant was unknown. So
22 I don't think anybody was ever caught in that situation.

23 MS. ADAMS: So she's fine, Judge.

24 MR. MCGUIRE: Well, we'll see.

25 MS. ADAMS: Well, for these reasons.

1 (Off record discussion)

2 THE COURT: All right. There's nothing on 313?
3 Have you resolved it?

4 MS. ADAMS: There are no issues, Judge.

5 THE COURT: All right. Very good.
6 Ask 313 to join us, please.

7 (WHEREUPON, Potential Juror 313 entered the
8 courtroom.)

9 THE COURT: All right. Are you Juror Number
10 313?

11 THE POTENTIAL JUROR: Yes, sir.

12 POTENTIAL JUROR 313,

13 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

14 EXAMINATION

15 BY THE COURT:

16 Q. You will recall on Monday I put all jurors under
17 oath. Now, do you understand that you're still under
18 oath and this oath continues throughout these
19 proceedings?

20 A. Yes, sir.

21 Q. You have been provided with a copy of a list of
22 potential witnesses. Have you had an opportunity to
23 review the witness list?

24 A. I have.

25 Q. Did you recognize any names?

1 A. I recognized several names, but I'm not personally
2 acquainted with any of them.

3 Q. Well, let me ask you if any of those names with whom
4 you are acquainted in some fashion or another happened to
5 testify -- now, those were potential witnesses. They are
6 witnesses who may be called, but they do not have to be
7 called. But if any of those that you think you recognize
8 were witnesses in the case, would that in any way affect
9 your ability to give both the State and the Defendant a
10 fair and impartial trial?

11 A. I don't believe so.

12 Q. Do you also recall my instructions from Monday to
13 avoid all forms of media coverage during this case?

14 A. Yes, sir.

15 Q. And coverage dealing with this case of course. Has
16 this caused any problem to you?

17 A. I have not watched the news or read the paper, but
18 I've had several people call me and tell me that they
19 think they know what case I'm being assigned to. And
20 I've told them that I'm not allowed to discuss it. But
21 you know, I've had several calls saying ---

22 Q. That's exactly right. And of course, if anybody
23 should insist on trying to talk with you, tell them that
24 you can't because the Court has told you to do so. If
25 they think that needs to be explained to them, tell them

1 that I'll be glad to do that.

2 A. Okay.

3 Q. Very good. Thank you, ma'am.

4 Now, the trial of this case will last approximately
5 a week or even ten days or 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 today we'll be talking about
11 penalty. But the mere fact that we talk about penalty
12 does not indicate anything about this Defendant or any
13 defendant. Defendants are always presumed in law to be
14 innocent. Do you understand this?

15 A. Yes, sir.

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

21 A. Yes, sir.

22 Q. Could you decide this case based solely on the
23 evidence presented in this courtroom and disregard
24 anything you may have read, heard or seen about this
25 case?

1 A. I believe so, yes, sir.

2 Q. In a criminal case, the State has the burden of
3 proving guilt beyond a reasonable doubt. A defendant has
4 no burden to prove innocence or to prove anything
5 whatsoever. A defendant is presumed to be innocent of
6 all charges. Do you understand that?

7 A. Yes, sir.

8 Q. Could you, depending on the facts and evidence and
9 the law of the case as I would instruct you in a
10 particular case, find a defendant either guilty or not
11 guilty?

12 A. Yes, sir.

13 Q. If you were a juror in a death penalty case and if
14 the jury had found the defendant guilty of murder, you
15 would then move to the sentence phase of the trial. Do
16 you understand this?

17 A. Yes, sir.

18 Q. When you hear us refer to a capital case or a death
19 penalty case, what we mean is that it is a criminal
20 murder trial where the prosecutor -- in other words, the
21 State -- is seeking the death penalty. Do you understand
22 this?

23 A. Yes, sir.

24 Q. A death penalty trial is divided into two parts.
25 Part one is the guilt phase where a jury determines

1 whether the defendant is guilty or not guilty of murder.
2 Phase two is the sentencing phase where a jury determines
3 the appropriate punishment. Of course, if the defendant
4 is found not guilty, that ends the matter and there's no
5 further proceedings. Do you understand that?

6 A. Yes, sir.

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 on to phase two of the trial which is called the
11 sentencing phase of the trial. Do you understand this?

12 A. Yes, sir.

13 Q. Now, if you were a juror in the sentencing phase --
14 that is phase two of a capital murder trial, again, where
15 a juror -- a jury has already found a defendant guilty of
16 murder -- do you understand that the jury rather than the
17 judge determines the sentence that a defendant will
18 receive for the crime of murder?

19 A. Yes, sir.

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

24 A. Yes, sir.

25 Q. Now, aggravating circumstances are the facts or

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

7 Do you understand that?

8 A. Yes, sir.

9 Q. Do you also understand that the jury has two options
10 to consider regarding sentencing for murder? One option
11 is life in prison which under our law means until the
12 death without a possibility of parole. The other option
13 is death which in this state is by electrocution or
14 lethal injection. Could you, as a juror in the
15 sentencing phase, depending upon the facts including
16 relevant aggravating and mitigating circumstances and the
17 law as I instruct it to you, render a sentence of life
18 imprisonment?

19 A. I believe so.

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

24 A. I believe so.

25 Q. Very well. If you would, please, answer any

1 questions the attorneys may have.

2 A. Okay.

3 Q. Thank you, ma'am.

4 DIRECT EXAMINATION

5 BY MR. MCGUIRE:

6 Q. Good afternoon, ma'am. If I do refer to you -- have
7 to refer to you by Juror Number 313 and not your name, I
8 apologize. I'm not being rude. It's just what we have
9 to do.

10 A. That's fine.

11 Q. When you were answering the Judge's questions and he
12 asked you if you could return a sentence of death, you
13 seemed a little squishy about that.

14 A. I've been thinking about that a little more this
15 week than I normally would. I've always had a clear-cut
16 opinion of what that is. But when it comes to me being
17 the person responsible for that decision, it's a little
18 bit trickier for me.

19 Q. Sure. For instance, in the abstract you can favor
20 the death penalty ---

21 A. Right.

22 Q. --- perhaps believe in it politically or it serves a
23 purpose.

24 A. Right.

25 Q. But that you would not want to be responsible for

1 ever having that decision on your conscience?

2 A. I've never thought I would have a decision -- a hard
3 time with that decision. But you know, when you're
4 actually faced with it, it makes it a little bit more
5 difficult.

6 Q. Sure.

7 A. But I think I can make the decision. Not knowing
8 the case yet, I'm not sure.

9 Q. Right. All right. That's fair enough.

10 MR. MCGUIRE: If I could just have one second,
11 Judge.

12 (Off record discussion)

13 Q. The only right answers are -- let me rephrase that.

14 A. Are yes or no?

15 Q. I can't even get the question right.

16 (Laughter)

17 Q. I can't even get the question right. But what I
18 mean to say is whatever your views are, whatever your
19 opinions are, they're always the right answer. Okay?

20 A. Okay.

21 Q. That's why I had to go check with him to make sure I
22 was even asking the right questions.

23 A. Uh-huh (affirmative).

24 Q. In South Carolina, if the jury does vote for a death
25 sentence, it would have to be unanimous.

1 A. Right.

2 Q. And the law would require that you actually sign
3 your name to a document that would be filed in the
4 courthouse. It would be a public document. You'd have
5 to put your name down saying that it was your vote for
6 death. And that document would be used to kill another
7 human being. Is that something you can do?

8 A. I think if I came to that decision -- if I heard the
9 evidence and if I decided that was what I felt was the
10 right decision that was warranted, I wouldn't have a
11 problem signing my name to it.

12 Q. It's the whole thing about your decision?

13 A. Right.

14 Q. Okay. If it was your decision, you could sign it?

15 A. It's hard to make that decision right now.

16 Q. Absolutely. It's extremely difficult talking about
17 this in the abstract.

18 A. Right.

19 Q. And in these terms. But obviously, you know, in a
20 situation so grave as to debate one's life, whether a
21 fellow human being would live or die, we expect to have
22 people show up with a lot of reservations about that.

23 A. Right.

24 Q. But it sounds like you could follow the law?

25 A. Yes.

1 Q. And I want to tell you a little bit about the law
2 and just ask you if you can follow it. That's what we're
3 here for, to see if we can get some fair people to follow
4 the law.

5 A. Okay.

6 Q. And capital cases are different from any other case,
7 criminal case. And that's because the jury has the
8 opportunity to fix punishment. Most times most criminal
9 cases, the jury would just address the did the fellow do
10 it or not, if he guilty or not, find somebody guilty or
11 not guilty. But if it was guilty, then the judge would
12 sentence. And you're probably aware of that.

13 A. Right.

14 Q. Okay. This is in South Carolina the only time that
15 the jury would be able to have an opportunity to fix
16 punishment. So the rules are different. And I'm going
17 to explain the rules to you, the law to you and see if
18 this is something you can respect and follow.

19 A. Okay.

20 Q. I'll state it again. To even be entitled to ask for
21 a death sentence, the State would have to prove
22 aggravation evidence beyond a reasonable doubt to all
23 twelve jurors. And on the other side of the coin, the
24 life in prison penalty, the mitigation side, the Defense
25 side, basically the not death side, is different. The

1 judge would charge the entire jury that each individual
2 juror would have the absolute right to vote for life, not
3 death, but vote for life for any reason, no reason,
4 grace, mercy or anything they see in the case.

5 And you know, normally when we think about juries,
6 we think about them coming into court and speaking with
7 one voice and being unanimous. But it doesn't have to be
8 so in a capital case. The jury could come in and say all
9 twelve couldn't agree on death, all twelve couldn't agree
10 on life. We agree to disagree. The judge might send you
11 back into the jury room and try to have you give it
12 another throw and see if you could end up unanimous. But
13 at the end of the day if you couldn't, you could come out
14 and the jury say, we just agree to disagree. The judge
15 would take the case away from the jury, and he would
16 sentence and end the case right there.

17 Is that a principle that you can respect and follow
18 it?

19 A. Yes.

20 Q. The way the law describes a juror's decision in a
21 capital case is that it's their individual moral judgment
22 and that if it would harm someone's conscience or do
23 violence to their conscience to change their individual
24 moral judgment, that would be wrong. And we expect civil
25 discourse in deliberations, polite civil discourse. But

1 if it got hostile or belligerent in a jury room --
2 because the State -- the State, the Defense and you as a
3 juror are entitled to fairness not just out here, but
4 also in the jury room. And if things got unfair in the
5 jury room, could we count on you to pass a note out and
6 say, you know, things aren't fair in here, we need to go
7 back to being fair?

8 A. Yes.

9 Q. We could count on you to do that?

10 A. Yes.

11 Q. And you know, the way this works out or can work out
12 practically is that different jurors can have a different
13 reason for voting life. The jury, again, does not have
14 to agree on the mitigation side. Even if all twelve
15 agree that life is the appropriate punishment, they could
16 have twelve different reasons to get there. Is that a
17 concept you're okay with?

18 A. Yes.

19 Q. You know, one juror could say, I saw something in
20 the guy's background. That did it for me. Somebody
21 could say, I saw something about his relationship with
22 his child. I'm not going to make a child fatherless.
23 Somebody could say, you know what, I listened to the
24 judge. And I just don't feel like I can do it. And I
25 don't have a reason necessarily to give. And all of that

1 would be okay.

2 Is that a principle you're okay with?

3 A. Yes.

4 Q. Is mercy freely given and bestowed, or is it earned?

5 A. Earned.

6 Q. Earned? How would somebody go about earning mercy?

7 MS. ADAMS: Objection, Your Honor.

8 THE COURT: Pardon? She can answer if she can.

9 Now, of course, you're asking how a person does. Why
10 don't you ask how she would.

11 Q. If you were in a situation where you were hoping for
12 mercy, how could you earn it?

13 A. Explain my reasoning or my rationale for what I had
14 done and hope that somebody could understand my point of
15 view.

16 Q. Okay. Would you want that person to also judge your
17 walk in life, how you came to be who you are?

18 A. I don't want anybody else to judge my walk in life,
19 but that's the way it happens.

20 Q. All right.

21 A. If that's what happens.

22 Q. Well, fair enough.

23 MR. MCGUIRE: I think that's all I've got,
24 Judge. If I could have just one second.

25 (Off record discussion)

1 MR. MCGUIRE: Ma'am, that's all I have. Thank
2 you so very much.

3 THE COURT: All right. Any questions?

4 MS. ADAMS: Yes, Your Honor, just a few.

5 CROSS-EXAMINATION

6 BY MS. ADAMS:

7 Q. Stepping over my stuff. How are you?

8 A. Good, how are you?

9 Q. I'm Chrissy Adams, and I'm the Solicitor for the
10 Tenth Circuit.

11 A. And we really do appreciate your candor and honesty
12 because it is a lot different to sit right there and
13 actually realize that if you're chosen to sit in that
14 jury box, you would have to determine someone else's
15 fate, whether life is appropriate or death is
16 appropriate.

17 Q. Yes.

18 A. And do you think just coming into this courtroom and
19 actually coming face to face with the Defendant, has that
20 changed your mind or your views regarding the death
21 penalty?

22 Q. No, it hasn't changed my views, and it hasn't
23 changed my mind. But like I said, it's one thing to sit
24 at home and hear that, well, this is the case and this is
25 the punishment that was dealt and to agree or disagree.

1 It's a whole different ball game to be the person that
2 helps decide that. My viewpoint hasn't changed. I still
3 believe -- I still have my beliefs. But like I said,
4 actually being the person that says yes or no, that's a
5 little harder.

6 Q. Okay. But if the Judge instructs you to consider
7 all the evidence, the aggravation and the mitigation, do
8 you think you could -- would you always vote for life
9 once you've considered everything?

10 A. No.

11 Q. Okay.

12 A. Like I said, it hasn't changed my belief on that. I
13 think it would just put the burden of proof a little bit
14 harder. You know what I mean? Like it would make it --
15 it wouldn't be as easily judged for me.

16 Q. But you could follow the Judge's instructions ---

17 A. Yes.

18 Q. --- and listen to the aggravation and mitigation ---

19 A. Yes, right.

20 Q. --- and make a decision?

21 A. Yes. Like I said, it's hard to know -- because I
22 don't know anything. I really honestly don't know
23 anything about the case.

24 Q. Okay.

25 A. And I'm not a news watcher. Evidently my entire

1 family and neighborhood are. Just as soon as they heard
2 I was going for jury duty this week, they all decided to
3 call me and say, oh, I know exactly what case, you know.
4 And I said, no, no, no, I don't want --- I don't want to
5 hear --

6 Q. Well, good. Got to follow the Judge's instructions?
7 Excellent.

8 A. Right. But because like I said, I don't watch the
9 news, but evidently everybody else does. And knowing
10 that everybody else knows what I'm going through or what
11 case I'm going for, whatever decision is made, it makes
12 it -- they know I would be part of that no matter what.
13 And like I said, I have my beliefs and I haven't changed
14 my beliefs. But actually being one of the people that
15 make the decision makes you question.

16 Q. Absolutely. And I think that's a normal feeling.

17 A. Right.

18 Q. And there's nothing right or wrong about that. Do
19 you think though that the pressures from your family and
20 friends would ---

21 A. No.

22 Q. --- make a difference for you?

23 A. No, because like I said, as soon as I said that,
24 they all said, oh, I know you're not allowed to talk
25 about it, you know. They all understood that. And so

1 nobody has said anything else. Nobody's talked to me
2 about it. I don't know. It's hard to explain.

3 Q. That's okay.

4 A. Like I said, I've always had a certain set of
5 beliefs. And you know, when I heard the outcome of a
6 case, either I would disagree or agree and think, yeah,
7 that was probably just or not. But when you're the
8 person who actually gets to make the decision, it's a
9 little bit more difficult.

10 Q. It's a big difference. But you really think you can
11 follow the Judge's instructions and do it?

12 A. Yeah.

13 Q. Okay. Let me ask you this real quick which is
14 totally -- in your questionnaire you said you used to be
15 a sales clerk at Belk?

16 A. Uh-huh (affirmative).

17 Q. Was that here in Anderson?

18 A. It was.

19 Q. What year was that?

20 A. Oh, gosh.

21 Q. A long time ago?

22 A. Oh, a long time ago. Maybe -- I was in high school
23 -- '85 to '89.

24 Q. Okay.

25 A. Maybe. '86 to '89, something like that.

1 Q. Just making sure. I have no further questions.

2 Thank you so much for your honesty.

3 A. Thank you.

4 THE COURT: All right. Anything from the ...

5 MR. MCGUIRE: Nothing further, Your Honor.

6 THE COURT: All right. Anything from the
7 State?

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

9 THE COURT: All right. Considering the entire
10 voir dire, I find that Juror Number 313 will be fair,
11 unbiased, impartial and able to carry out the law as
12 explained to her. Furthermore, I find that this juror's
13 beliefs or attitudes towards the death penalty would not
14 prevent or substantially impair the performance of her
15 duties as a juror in accordance with the law, the Court's
16 instructions and the juror's oath. So I do find you
17 qualified to serve as a juror in this case. However,
18 what we are doing is qualifying a pool of jurors. In
19 other words, from those -- that pool will be the ones --
20 will be selected from actual jurors. So this process, as
21 you can see, takes a little time.

22 THE POTENTIAL JUROR: Yeah.

23 THE COURT: So it's going to be probably next
24 week, maybe even later in the week before we're prepared
25 to do that. So until that time, you're free to do

1 whatever you want to. However, you did give the Clerk
2 your telephone number?

3 THE POTENTIAL JUROR: Yes.

4 THE COURT: So you'll receive a telephone call
5 that will just say to report in the next day probably.
6 And at that time we'll select the jury.

7 THE POTENTIAL JUROR: Okay.

8 THE COURT: I do want to thank you, as the
9 other attorneys have or as the attorneys did say, for
10 your candor in dealing with and answering these difficult
11 questions. I do appreciate it. And also your patience
12 with the Court. I look forward to working with you.

13 THE POTENTIAL JUROR: Thank you.

14 THE COURT: Thank you, ma'am. You have a good
15 weekend.

16 (WHEREUPON, Potential Juror 313 exited the
17 courtroom.)

18 THE COURT: All right. I think that brings us
19 to forty?

20 MR. MCGUIRE: Yes, sir.

21 MS. BYFORD: I think so.

22 MS. ADAMS: Yes, sir. Moving along.

23 THE COURT: All right. I'll tell you, do you
24 want to take a short break before we start with the final
25 panel?

1 MS. ADAMS: We can.

2 THE COURT: Let's do that.

3 (WHEREUPON, court stood at recess for a short
4 break.)

5 THE COURT: All right. This is panel twelve?

6 MS. ADAMS: Yes, sir.

7 THE COURT: All right. This is panel twelve.

8 The first one is 320. Anything about 320?

9 MS. ADAMS: Not from the State, Your Honor.

10 THE COURT: From the Defense?

11 MR. MCGUIRE: No, sir, Your Honor.

12 THE COURT: All right. Ask 320 to join us,
13 please.

14 (WHEREUPON, Potential Juror 320 entered the
15 courtroom.)

16 THE COURT: All right. Are you Juror 320?

17 THE POTENTIAL JUROR: 320, yes, sir.

18 THE COURT: Yes, ma'am.

19 **POTENTIAL JUROR 320,**

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

21 **EXAMINATION**

22 **BY THE COURT:**

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

1 proceedings?

2 A. Yes, sir.

3 Q. Thank you, ma'am. You have been provided with a
4 copy of a list of potential witnesses. Have you had an
5 opportunity to review that witness list?

6 A. I did, yes, sir.

7 Q. Did you recognize any of the names on that list?

8 A. No, sir.

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

12 A. Yes, sir.

13 Q. Has this caused you any problem?

14 A. No, sir.

15 Q. The trial of this case will last more than the
16 normal case. It could be a week or more. Other than
17 personal inconvenience, would this pose a serious danger
18 to the health or well-being of yourself or anyone who is
19 dependent upon you?

20 A. No, sir.

21 Q. Among other things today, we will be talking about
22 penalty. But the mere fact that we're talking about
23 penalty does not indicate anything about this Defendant
24 or any defendant. Defendants are always presumed in law
25 to be innocent. Do you understand that?

1 A. Yes, sir.

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

7 A. Yes, sir.

8 Q. As I instruct you to?

9 A. Yes, sir.

10 Q. Could you decide this case based solely and only on
11 the evidence presented in the courtroom and disregard
12 anything you may have heard, read or seen about this
13 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 anything at all, innocence or anything else. In
19 fact, the defendant does not even have to take the stand,
20 testify or offer any evidence. A defendant is presumed
21 innocent under our law. Do you understand that?

22 A. Yes, sir.

23 Q. Could you, depending on the facts and evidence and
24 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 had found the defendant guilty of murder, you
4 would then move to the sentence phase of the case. Do
5 you understand that?

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 that?

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 in the first part, that ends the
19 matter. Do you understand that?

20 A. Yes, sir.

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

1 A. Yes, sir.

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

8 A. Yes, sir.

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, sir.

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 of the defendant for the crime. Do you
21 understand that?

22 A. Yes, sir.

23 Q. Do you also understand that the jury has two options
24 to consider regarding the sentencing for murder? One
25 option is life in prison which is under our law until

1 death without possibility of parole. The other option is
2 death which in this state is by electrocution or lethal
3 injection. Do you understand?

4 A. Yes, sir.

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 I would
8 instruct you, render a sentence of life in prison?

9 A. Yeah.

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. Yes, sir.

15 Q. Very good. Thank you, ma'am. All right. Answer
16 any questions the attorneys may have.

17 DIRECT EXAMINATION

18 BY MR. MCGUIRE:

19 Q. Good afternoon, Juror 320. How are you doing today?

20 A. Good.

21 Q. I have to refer to you by number. It's not because
22 I'm being rude or impolite. I've just got to do that.
23 Forgive that if you would.

24 On your questionnaire you indicated that you're in
25 favor of the death penalty because it's biblically

1 correct. Is that still your view?

2 A. Yes, sir.

3 Q. Okay. And what I want to do is talk to you about
4 the kind of killing that can bring us in court for a
5 capital case. It's called malice murder. It's the
6 unlawful killing of another human being with malice
7 aforethought. And malice is defined as the killer
8 operating with a black and malignant heart, fatally bent
9 on evil deliberately and intentionally killing an
10 innocent person. And as bad as that is, that is not a
11 capital case.

12 The State would come behind that and introduce even
13 more evidence to make it what's called aggravated murder
14 or a murder worse than malice murder. Aggravation can be
15 any kind of fact according to the law that would make it
16 aggravated. It's a little circular reasoning. But to
17 give you some examples, it could be killing an officer in
18 the line of duty, killing a child, killing more than one
19 person. That sort of thing.

20 Now, what I want to do is sort of get you to
21 hypothetically put yourself in a situation where you and
22 eleven other jurors are going to hear a case, a capital
23 case. You're going to hear the whole case, evidence
24 about guilt, intent. There might be crime scene
25 photographs, that sort of thing. You'd hear aggravation

1 evidence to make it even worse. You'd hear maybe about
2 the victims and the defendant, maybe his background,
3 character. That sort of thing.

4 Now, based on everything we've talked about, keeping
5 all that in mind, seeing the whole case, I'm going to
6 give you an example and just ask you your opinion. The
7 example I'm going to give you is that the case,
8 deliberate murder, intentional killing of an innocent
9 person. And I'm going to give you an example of
10 aggravation. The example I'm going to start with is that
11 the person you're judging had killed before. So you'd be
12 fixing punishment for somebody for their second murder,
13 their second deliberate killing.

14 Now, knowing everything we've talked about what
15 we've talked about and the evidence, evidence of the
16 victim's and defendant's background, that sort of thing,
17 what's your opinion about the death penalty as the
18 appropriate punishment in a double-murder case?

19 MS. ADAMS: Objection, Judge. She doesn't know
20 the entire facts to know if life is ...

21 THE COURT: All right. You're just asking in
22 the blind if she knew nothing else about the case?

23 MR. MCGUIRE: Well, I mean, I just gave her a
24 pretty, I think, very well-rounded ---

25 THE COURT: I said nothing else other than what

1 you've given her.

2 MR. MCGUIRE: No, sir, that's not actually my
3 question. I actually asked her knowing everything that
4 we talked about, all the evidence that you would see
5 regarding guilt in the first phase, maybe even evidence
6 of the victim, evidence of the defendant, his background,
7 character, that sort of thing. What is your view about
8 the death penalty as the appropriate punishment in a
9 double-murder case?

10 THE COURT: Well, that doesn't tell you what
11 all that evidence is.

12 MR. MCGUIRE: Well, do I have permission to say
13 it?

14 THE COURT: Well, if you want to go ahead and
15 give her the facts of the -- not the facts of the case,
16 but what that she would be considering, what sort of
17 mitigation. And the fact is that -- what is it -- she
18 could even consider any of it in mitigation, any reason,
19 no reason at all. And even the law is that she could
20 exercise mercy.

21 Q. All right. What I'm going to do is take you back a
22 little bit.

23 THE COURT: Again, let's give her -- put it
24 into context, not in the abstract.

25 MR. MCGUIRE: Sure.

1 THE COURT: You're giving her one thing, a
2 heinous crime, so to speak, and asking her what she would
3 do as far as that crime is concerned after receiving that
4 information which has not -- what is it -- been
5 identified.

6 MR. MCGUIRE: Sure. And Judge, this is where I
7 would ---

8 THE COURT: I know. And I understand your
9 motion to have your other questions ---

10 MR. MCGUIRE: One through six.

11 THE COURT: --- asked, it's been renewed, and I
12 have rejected them before and I'll do it again because,
13 again, I think the questions have to be in context, not
14 in the abstract.

15 MR. MCGUIRE: Sure. If I could just have one
16 second, sir.

17 THE COURT: Certainly.

18 (Off record discussion)

19 Q. What I'm going to do is back up a little bit. I
20 want to put you maybe at the water cooler at work or
21 maybe on the corner in town talking just to your
22 acquaintances or your friends. And one of your friends
23 says, you know, there are some crimes that are so bad
24 that they should be pretty much automatic death penalty.
25 And when I say category of crimes or kinds of crimes, I'm

1 thinking about like rape murder, child murder, police
2 officer murder, killing more than one person. That sort
3 of thing. Any of those are particularly bad where you
4 would be predisposed for the death penalty?

5 A. Would I still be for the death penalty? Is that
6 what you're asking?

7 Q. Well, are any of those so particularly bad to you
8 just as a person that you'd be predisposed to vote for
9 the death penalty in any category of murder?

10 MS. ADAMS: Objection, Judge.

11 THE COURT: I'm going to let her answer the
12 question, if she can.

13 A. What you're asking me is are they bad enough, all of
14 them or just one? I'm not following what you're asking.

15 Q. Sure. And maybe it's because I'm asking a bad
16 question. What I'm just asking is just personally, are
17 there any types of murders that are just so particularly
18 bad that they should pretty much get the death penalty
19 automatically? Some people might say a child murder.
20 Somebody say if you kill more than one person. That sort
21 of thing. Any of those ring out to you where it should
22 be pretty much the death penalty?

23 A. Yes.

24 Q. And which ones are we talking about?

25 A. Okay. A police officer, a child, more than one

1 murder.

2 Q. Okay. All of those would be death penalty cases for
3 you?

4 A. Yes, sir.

5 Q. Okay. And a life penalty or a life in prison
6 penalty wouldn't be severe enough to punish those kinds
7 of cases?

8 MS. ADAMS: Objection. That's not the law.
9 She doesn't know the entire facts. That's not fair.

10 THE COURT: That isn't the law. The law
11 provides that you can either have death or life
12 imprisonment for the same -- under the same facts.
13 That's just it. The law does provide an alternative.

14 MR. MCGUIRE: Sure. If I could -- I'm assuming
15 that's an objection and you're sustaining the objection.

16 THE COURT: No. I'm just -- I'm explaining it.
17 I thought you needed guidance there.

18 MR. MCGUIRE: Oh, I don't need any guidance
19 there, Judge.

20 THE COURT: That's what I was afraid of.

21 (Laughter)

22 THE COURT: Go ahead. Ask your question.

23 MR. MCGUIRE: So is that an objection and
24 sustaining it, Judge, just for the record?

25 THE COURT: The record is I'm going to permit

1 you to restate your question. If you want to restate
2 your question, you may.

3 MR. MCGUIRE: Sure.

4 Q. Would a life in prison sentence be severe enough to
5 punish those particular categories of murders?

6 MS. ADAMS: Objection. She doesn't know the
7 facts. It's just not fair to her, Judge.

8 THE COURT: All right. Let me ask the
9 question, and then you can decide how you want to answer
10 it. In a death penalty case -- now, those are the -- you
11 should know that not all murder cases are death penalty
12 cases. They are reserved for certain limited aggravated
13 murder cases. But in a death penalty case, would you
14 always or automatically vote for the death penalty even
15 though the law provides that you may impose a sentence of
16 life without parole depending upon the circumstances of a
17 particular case and the characteristics of an individual
18 defendant? Would you always or automatically vote for
19 the death penalty even though the law provides that you
20 may impose a sentence of life without parole depending on
21 the circumstances of a particular case and the
22 characteristics of an individual defendant?

23 THE POTENTIAL JUROR: I would do the death
24 penalty.

25 THE COURT: Always?

1 THE POTENTIAL JUROR: (Nodded head up and down
2 in the affirmative)

3 THE COURT: Very good. Thank you, ma'am.
4 All right. Anything else?

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

6 MR. MCGUIRE: No, sir.

7 THE COURT: Very good. Considering the entire
8 voir dire, I find it -- and that's including looking at
9 your questionnaire and the questions today -- I find that
10 Juror Number 320 should be excused from serving on the
11 trial of this case. However, I want to thank you for
12 your patience with the Court and also for your candor in
13 answering these very difficult questions. I know you
14 didn't ask to be here, so I do want to thank you for your
15 participation. And this will end your service in this
16 court. All right?

17 THE POTENTIAL JUROR: Thank you.

18 THE COURT: Thank you, ma'am. You have a
19 wonderful weekend.

20 THE POTENTIAL JUROR: You too. Thanks.

21 (WHEREUPON, Potential Juror 320 exited the
22 courtroom.)

23 THE COURT: Now, that is exactly what we're
24 trying to find out. And I find that jurors are going to
25 be fair. No use trying to botch them in -- I mean, put

1 them in a corner there. And that's what we're trying to
2 find out. And she said very appropriately that was her
3 belief. So she would be disqualified. And it didn't
4 take an hour to do it.

5 All right. Is there any -- next is 321. Anything
6 from the Defendant?

7 MR. MCGUIRE: No, sir.

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

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

11 THE COURT: All right. Ask 321, please.

12 (WHEREUPON, Potential Juror 321 entered the
13 courtroom.)

14 THE COURT: All right. Are you juror number
15 321?

16 THE POTENTIAL JUROR: Yes, sir.

17 **POTENTIAL JUROR 321,**

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

19 **EXAMINATION**

20 BY THE COURT:

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

25 A. Yes, sir.

1 Q. You have been provided also with a copy of a list of
2 potential witnesses. Those are witnesses who may be
3 called, but they do not have to be called in this case.
4 Have you had an opportunity to review that witness list?

5 A. Yes, sir.

6 Q. Did you recognize any names?

7 A. Not a one.

8 Q. Very good. Do you also recall my instructions from
9 Monday to avoid all forms of media coverage dealing with
10 this case?

11 A. Yes, sir.

12 Q. Has this caused any problem for you?

13 A. No.

14 Q. The trial of this case will last approximately a
15 week or ten days. In other words, it's longer than a
16 usual trial. Other than the personal inconvenience,
17 would this pose a serious danger to the health or well-
18 being of yourself or anyone dependent upon you?

19 A. Health, no. I have a convention scheduled the
20 sixteenth, seventeenth and eighteenth if it lasts that
21 long.

22 Q. It should be through by that time, I would think.

23 A. That wouldn't be a problem then.

24 Q. But I'll tell you what we will be doing if we --
25 when we qualify the jury, we'll have alternates.

1 A. Okay. That's no problem.

2 Q. I'll tell you what. Let's go ahead through the
3 questioning here, and we'll reserve that for a later time
4 if it becomes necessary.

5 A. Okay.

6 Q. If that will be all right.

7 A. That will be fine.

8 Q. Among other things today we will be talking about
9 penalty. But the mere fact that we talk about penalty
10 does not indicate anything about the Defendant or any
11 defendant. Defendants are always presumed in law to be
12 innocent of all charges. Do you understand that? Or any
13 charge.

14 A. Yes, sir.

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

20 A. Yes, sir.

21 Q. Could you decide this case based solely on the
22 evidence presented in the courtroom and disregard
23 anything you may have heard, read or seen about this
24 case?

25 A. Yes, sir.

1 Q. In a criminal case, the State has the burden of
2 proving guilt. The burden of proof for the State is
3 beyond a reasonable doubt. A defendant has no burden to
4 prove innocence. Do you understand that?

5 A. Yes, sir.

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

9 A. Yeah.

10 Q. If you were a juror in a death penalty case and if
11 the jury has found the defendant guilty of murder, you
12 would then move to the sentence phase of the trial. Do
13 you understand?

14 A. Yeah.

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

20 A. Yes, sir.

21 Q. A death penalty trial is divided into two parts.
22 Part one is the guilt phase where a jury determines
23 whether the defendant is guilty or not guilty of murder.
24 Part two is the sentencing phase where a jury determines
25 the appropriate punishment. Of course, if the defendant

1 is found not guilty, then that ends the matter and
2 there's no further proceedings. Do you understand that?

3 A. Yes, sir.

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

9 A. Yes, sir.

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

16 A. Yes, sir.

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

21 A. Yes, sir.

22 Q. Now, aggravating circumstances are the facts or
23 details that, when they are present in a case, make the
24 crime of murder more serious or worse. On the other
25 hand, mitigating circumstances are incidents, occurrences

1 or details of a case that would reduce the severity of
2 the crime of murder. In other words, reduce the degree
3 of responsibility of the defendant for the crime. Do you
4 understand that?

5 A. Yes, sir.

6 Q. Do you also understand that the jury has two options
7 to consider regarding the sentencing for murder? One
8 option is life in prison which under our law is until
9 death without possibility of parole. The other option is
10 death which in this state is by electrocution or lethal
11 injection. Do you understand that?

12 A. Yes, sir.

13 Q. All right. Understanding all of this, could you, as
14 a juror in the sentencing phase, depending upon the facts
15 including relevant aggravating and mitigating
16 circumstances and the law as instructed to you, render a
17 sentence of life imprisonment?

18 A. Could I? Yes, sir.

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
22 instructed to you, could you render a sentence of death?

23 A. Yes, sir.

24 Q. Very well. If you would, please, sir, answer any
25 questions the attorneys may have.

1 MR. MCGUIRE: Judge, I think the Solicitor has
2 got a scheduling issue she wants to ...

3 MS. ADAMS: Well, Your Honor, we don't think
4 that we will be done by the sixteenth.

5 THE COURT: That's right. The sixteenth,
6 that's just one week. I'm sorry.

7 MS. ADAMS: If it does affect him ...

8 THE COURT: All right. So if both of y'all
9 agree, we will excuse you because of your scheduling
10 problem.

11 MS. ADAMS: Unless he can -- unless he can miss
12 his convention.

13 THE COURT: No, I don't think ---

14 THE POTENTIAL JUROR: If I were attending, but
15 I'm a speaker at the convention.

16 MS. ADAMS: Yes, I'm sure they would be upset
17 with you then, yes.

18 THE COURT: All right. Very good. Thank you.
19 I missed it. I missed it by week. I thought we were two
20 weeks out. All right. No. But I am going to have to
21 excuse you because I don't want you to have to be
22 thinking about something else such as what your
23 obligations are if you should be drawn on the jury. But
24 I want to thank you for being here.

25 THE POTENTIAL JUROR: Thank you.

1 THE COURT: All right. You will be excused.

2 And this does conclude your service.

3 THE POTENTIAL JUROR: Thank you.

4 THE COURT: Thank you very much.

5 All right. Thank you. I'm sorry I missed that.

6 (WHEREUPON, Potential Juror 321 exited the
7 courtroom.)

8 MS. ADAMS: We're losing track of the days too,
9 Judge.

10 THE COURT: Ma'am?

11 MS. ADAMS: We had to look it up on the
12 computer.

13 THE COURT: All right. Number 329.

14 Anything from the Defense on number 329?

15 MR. MCGUIRE: No, sir, Judge.

16 THE COURT: Anything from the State?

17 MS. ADAMS: No, sir.

18 THE COURT: All right.

19 (WHEREUPON, Potential Juror 329 entered the
20 courtroom.)

21 THE COURT: Are you juror 329?

22 THE POTENTIAL JUROR: I am, yes, sir.

23 THE COURT: Very good.

24 **POTENTIAL JUROR 329,**

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

1 EXAMINATION

2 BY THE COURT:

3 Q. You will recall on Monday I put all jurors under
4 oath. Now, do you understand that you're still under
5 oath and that oath continues throughout these
6 proceedings?

7 A. Yes, sir.

8 Q. You have been provided with a copy of a list of
9 potential witnesses. Have you had an opportunity to
10 review that witness list?

11 A. I did, yes, sir.

12 Q. Did you recognize any names at all?

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 this caused you any problem at all?

18 A. No, sir.

19 Q. Very good. Thank you. The trial of this case will
20 last approximately ten days to two weeks. Other than
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, sir.

25 Q. Among other things today, we'll be talking about

1 penalty. But the mere fact that we talk about a penalty
2 does not indicate anything about this Defendant or any
3 defendant. Defendants are presumed in law to be
4 innocent. Do you understand this?

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 that law or think it should be something else?

10 A. I think I can, 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 at all or anything else. In other words,
20 the defendant is presumed to be innocent and does not
21 even have to testify or put up any evidence or anything
22 at all. Do you understand?

23 A. Yes, sir.

24 Q. The burden remains on the state entirely throughout
25 the trial.

1 A. Yes, sir.

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

5 A. I think I can, yes, sir.

6 Q. And if you were a juror in a death penalty case and
7 if 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?

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. All right. A death penalty trial is divided into
18 two parts. Part one is the guilt phase where a jury
19 determines whether the defendant is guilty or not guilty
20 of murder. Part two is the sentencing phase where a jury
21 determines the appropriate punishment. Of course, if the
22 defendant is found not guilty, that ends the matter. Do
23 you understand that?

24 A. Yes, sir.

25 Q. Therefore, if you were a juror in a trial of a

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

5 A. Yes, sir.

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 a defendant will
11 receive for the crime of murder?

12 A. I didn't realize it, but okay.

13 Q. Well, that's what the second sentencing phase is.
14 The jury will determine what the sentence should be.

15 A. Okay.

16 Q. Not the judge. Do you understand?

17 A. Yes, sir.

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

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 of murder. In other words, may reduce the degree
4 of responsibility of the defendant for the crime. Do you
5 understand that?

6 A. Yes, sir.

7 Q. Do you also understand that the jury has two options
8 to consider regarding sentencing for murder? One option
9 is life in prison which under our law is until death
10 without possibility of parole. The other option is death
11 which in this state is by electrocution or lethal
12 injection. Do you understand that?

13 A. Yes, sir.

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 in prison?

18 A. I could, 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
22 instructed to you, could you render a sentence of death?

23 A. Yes, sir.

24 Q. Very good. If you would, please, answer any
25 questions the attorneys may have.

1 DIRECT EXAMINATION

2 BY MR. MCGUIRE:

3 Q. Good afternoon, sir. How are you doing?

4 A. Good, you?

5 Q. Well, tired. A little nervous.

6 (Laughter)

7 Q. But I'm fine. Thank you, sir.

8 I want to ask you some questions regarding your
9 views about the death penalty. Obviously that's what
10 we're here for. And it is a very grave matter. And I
11 know that you've taken some time to fill out a
12 questionnaire regarding that, but I'm going to just talk
13 to you in a little bit more detail if that's okay.

14 The definition of murder in South Carolina, which is
15 kind of our starting point, is that the person -- the
16 Judge would tell you that a person is guilty of murder if
17 they unlawfully kill another human being with malice
18 aforethought. And malice is described as the killer
19 operating with a black and malignant heart fatally bent
20 on evil, deliberately, intentionally choosing to take an
21 innocent life. Are you with me?

22 A. Yes, sir.

23 Q. And as bad as that is, that's not actually death
24 eligible murder. It has to be what's called aggravated
25 murder meaning the State would have to come and show

1 aggravation evidence. And that would make it even worse.

2 A. Could you please explain aggravation?

3 Q. Sure. What we have in South Carolina is a statue.

4 And it lists certain things that can make a malice murder

5 even worse. And that allows them or entitles the state

6 to at least seek the death penalty. For instance it

7 could be the age of the victim, for instance a child, or

8 a police officer in the line of duty or if it was a rape

9 murder or if it was killing more than one person. That

10 sort of thing.

11 A. Okay.

12 Q. It would be a type of factor or category like that.

13 Are you with me? Did I clear up your question?

14 A. I believe so, yes.

15 Q. Okay. And then there's also a thing that the Judge

16 touched on briefly. And that's called mitigation

17 evidence. Mitigation evidence would be a reason to vote

18 for the life penalty. And generally that's going to

19 involve things about the defendant, his background, his

20 walk in life. That sort of thing. And you'd be able to

21 hear all of this evidence.

22 What I'm going to do is I'm going to ask you your

23 opinion about maybe an example or two of that aggravated

24 type murder. Okay?

25 A. Okay.

1 Q. If you're on a jury and you and your eleven other
2 jurors find a person guilty of murder. Deliberately,
3 intentionally taking an innocent life. And then the
4 State brings forward aggravation. And let's say in this
5 case just for example the aggravation would be that it's
6 the fellow's second time that he's killed. So what makes
7 it worse is that it's a second deliberate killing. And
8 you'd be judging and fixing punishment for somebody who's
9 committed two murders. Now, knowing -- I'm sorry. Were
10 you going to say something?

11 A. Go ahead.

12 Q. Well, you go ahead.

13 A. I was just following what you are saying.

14 Q. You are following?

15 A. Yes.

16 Q. Okay. You were just going to say I'm with you?

17 A. Right.

18 Q. All right. And you'd be able to take all the
19 evidence, all the evidence of the case, the facts, the
20 aggravation evidence. You'd even be able to consider
21 things about the defendant's background like maybe his
22 childhood, that sort of thing. What's your view about
23 the death penalty as the appropriate punishment in that
24 double-murder type case?

25 A. Well, I would say if they already committed one and

1 then they turn around -- right around and commit a second
2 one, it seems to me that it would be applicable.

3 Q. Would the life in prison penalty be severe enough to
4 punish that kind of case?

5 MS. ADAMS: Objection, judge. He doesn't know
6 the facts to make that determination. That's not the
7 law. He'll have to hear ...

8 THE COURT: Why don't you just ask him what he
9 knows at this time, would life in prison ---

10 MR. MCGUIRE: Sure.

11 Q. Just based on what we've talked about so far, just
12 based on what you know so far, would life in prison ever
13 be severe enough to punish that double-murder type case?

14 A. I think when somebody, you know, like a second one
15 -- like one, okay, I could see a life sentence. But a
16 second one or multiple murders, I would have to go with
17 the death penalty.

18 Q. Okay. And you'd be consistent in that?

19 A. I would.

20 Q. Okay. What I'm going to do now is talk to you a
21 little bit about sentencing and how a capital case is
22 different from any other criminal case in South Carolina.
23 And that's because the jury has the opportunity to fix
24 punishment. Normally a jury is just concerned about did
25 the fellow do it, is he guilty or not. If he's not

1 guilty, he goes home. But if he's guilty, then the judge
2 would sentence. But a jury can actually have the
3 opportunity to fix punishment in a capital case in South
4 Carolina. That's what makes it different. And as a
5 result, there are a lot of rules that are different, a
6 lot of laws that are different. I'm going to talk to you
7 a little bit about the law and see if you can follow the
8 law. Okay?

9 A. Okay.

10 MR. MCGUIRE: And if I could just have a
11 second.

12 Q. One thing that's different is that when the State
13 proves something or goes to prove something, they've got
14 to do it by beyond a reasonable doubt, by proof beyond a
15 reasonable doubt. And they also have to convince the
16 whole jury of what they're asking them to find. For
17 instant, aggravation evidence or a death sentence.
18 Whereas on the other side of the coin, the life side,
19 it's different, completely different. In fact, the Judge
20 would charge the whole jury that any one juror could vote
21 for life for any reason, no reason, mercy, grace,
22 anything they see in the case. Is that an aspect of the
23 law that you can agree with?

24 A. Well, if that's the law, I guess I could work with
25 that, yes.

1 Q. I mean, you could respect somebody else's view. It
2 might not be your own. But if they said, you know, I
3 vote for life and I don't even have a reason, you could
4 respect it even if it's not your own view?

5 A. I could respect it, yes.

6 Q. Maybe not be crazy about it, but respect it. Is
7 that fair enough to say?

8 A. Yes.

9 Q. Okay. And the way that plays out sort of by way of
10 example is that one juror on the front row could say, you
11 know, I saw something about a fellow's childhood or his
12 walk in life, and I saw something that resonated with me.
13 That's my reason for voted for life. Somebody in the
14 back row could say, you know, I saw something about his
15 relationship with his family. And that was redeeming to
16 me, and that's why I'm going to vote for life. Somebody
17 else could say, you know, I listen to the judge. And he
18 said I could vote for life for no reason. I just feel
19 that's the right thing to do, and I don't even have a
20 reason to give. Could you respect the fact that all
21 jurors could have a different reason for voting for life
22 and nobody would have to agree?

23 A. I could respect their opinions, yes.

24 Q. Okay. But it sounds like you would be in favor of
25 the jury speaking with one voice and reaching consensus?

1 A. Well, frankly I thought that's what they were
2 supposed to do.

3 Q. Well, that's why we're talking now. That's another
4 rule, that's another law about capital cases that makes
5 them different because the only time the jury has to be
6 unanimous is in delivering a death verdict. That's the
7 only time. All twelve have to agree for the State to
8 receive a death verdict.

9 Now, all twelve can obviously agree that life is the
10 appropriate punishment. Sounds like if you're on the
11 jury, it wouldn't be twelve. But all twelve could. Now,
12 there's some middle ground there. And it's actually okay
13 for the jury to come into court and say, we've listened
14 to each other, we've respected each other, we've had the
15 deliberations and could political -- or polite rather
16 discourse. But all twelve can vote for life and all
17 twelve can vote for death. And what would happen is the
18 judge would take the case away from the jury and sentence
19 and end the case right there. Is that an aspect of the
20 law that you're comfortable with?

21 A. I can work with that.

22 Q. Okay. Knowing that that's the law and that it would
23 be okay to end the day disagreeing. You'd be okay with
24 that?

25 A. I could, yes.

1 Q. Okay. And the way the law describes a juror's
2 individual moral judgment or their decision in a capital
3 case rather is actually described as their individual
4 moral judgment. I kind of got that backwards. I'm going
5 to say it one more time because that kind of stepped over
6 my own words. The law describes a juror's decision in a
7 sentencing case as being their individual moral judgment
8 and that if it would do violence to their conscience or
9 harmed their conscience to change that, that would be
10 wrong. And the State, the Defense and you as a juror
11 would be entitled to fairness not just out here in the
12 courtroom, but in the jury room. And if you saw people
13 trying to maybe unfairly or belligerently trying to
14 change somebody's moral judgment, could we count on you
15 to maybe send a note out to the Judge and say it's not
16 fair in here and we've got to get back to fairness?

17 A. If such a thing were to occur, yes.

18 Q. Sure. Okay. Is mercy something that's freely given
19 and bestowed, or is it earned?

20 A. I'd have to go with earned.

21 Q. Okay. How would somebody go about earning mercy?

22 A. Well, I guess that would depend on, say, a past
23 record or what they had done.

24 Q. Okay. Kind of like their life's open to review?

25 A. Right. Uh-huh (affirmative).

1 Q. Okay.

2 MR. MCGUIRE: Judge, if I could have just one
3 second.

4 THE COURT: Certainly.

5 (Off record discussion)

6 MR. MCGUIRE: Sir, that's all I have for you.
7 Thank you very much.

8 THE COURT: All right. The State?

9 MS. ADAMS: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. ADAMS:

12 Q. Good afternoon. I'm Chrissy Adams. I'm the
13 Solicitor for the Tenth Circuit. I just want to --
14 you're here today to ensure that you can be fair to the
15 Defense and to the State if you are chosen to serve as a
16 juror in a death penalty case.

17 A. Yes, ma'am.

18 Q. Okay? What are your thoughts about the death
19 penalty as a form of punishment?

20 A. I would say if the -- what I would refer to as if
21 the crime is of such degree that that would be the
22 appropriate conclusion, then that would be the conclusion
23 to reach.

24 Q. But as you sit there right now, do you know anything
25 about the facts and circumstances of this case?

1 A. Not really.

2 Q. Okay. So do you know whether life is appropriate or
3 death is appropriate right now?

4 A. Not right now, no.

5 Q. Because I know Mr. McGuire asked you a question --
6 and I hope I got it right -- that based on what you know
7 right now when he gave you the scenario about an
8 aggravating circumstance being a prior murder. Based on
9 what you know right now, would you automatically give the
10 death penalty, or would you want to wait to hear the
11 entire case and remain open-minded before you determine
12 what was appropriate?

13 A. I would rather hear what there is to be heard. I
14 guess you say, the entire case.

15 Q. So do you understand what the word -- what the term
16 mitigation evidence is? What do you think mitigation
17 evidence is?

18 A. I would say that that would be, you know, extra
19 facts surrounding whatever took place.

20 Q. All right. And that's right. Mitigation would be
21 anything that the Defense would bring forward that would
22 tend to make you think life was the appropriate sentence.

23 A. Okay.

24 Q. Do you understand that? I mean, is that -- does
25 that make sense? I want to make sure that we understand

1 how you feel about this to ensure that you can be fair.

2 I don't want to put words in your mouth even though I

3 know I am.

4 A. I probably don't have that great a grasp of what

5 mitigating circumstances, I guess you call it.

6 Q. It is -- mitigation are things like a person's

7 background, drug use, child abuse, family upbringing. It

8 could be anything that is evidence in a trial that would

9 tend to make you think that even though this is an

10 aggravated murder, because of anything in a person's

11 background or how they grew up, life would be appropriate

12 because of the entire circumstances surrounding the case.

13 Does that help out?

14 A. Yes, it helps some. But if the party committed say

15 such and such an act, they still committed it.

16 Q. Right.

17 A. Irregardless of their raising.

18 Q. So you wouldn't consider mitigation at all then if

19 it was a certain type of crime, and you would

20 automatically go with death?

21 A. Well, I guess I'd consider it. But I'd still -- if

22 they committed say X act, they did it.

23 Q. And you would always vote for death?

24 A. Probably.

25 Q. Okay.

1 MS. ADAMS: Thank you, Judge.

2 Thank you so much for your honesty.

3 THE POTENTIAL JUROR: Thank you, ma'am.

4 THE COURT: Anything from the Defense?

5 MR. MCGUIRE: No further questions except that
6 I would -- this is where I might even go a little further
7 with my one through six, Judge, in my written motion.

8 THE COURT: I decline to charge your one
9 through six as I've always done.

10 All right. Considering the entire voir dire -- that
11 includes your questionnaire, the questions here and the
12 questions I asked myself -- I feel that Juror Number 329
13 should be excused from serving on the trial of this case.
14 The reason I do that is that if you remember I mentioned
15 when I first qualified the entire jury panel that one of
16 the questions was when something came up after they -- I
17 tried to answer the question -- I said, well even
18 considering that, could you be fair and impartial to both
19 the State and the Defendant. Well, the thing is that
20 question has two parts. One part of course is that the
21 parties are entitled to a fair and impartial jury. But
22 the second part is the juror -- because you didn't ask to
23 be here. You were summoned. You were required to be
24 here. And it's not an easy thing to sit in judgment of
25 other people in anything, but particularly when it would

1 perhaps this compromise strongly-held convictions. Now,
2 the one thing is I don't want to in any way interfere
3 with someone's strong convictions because that is the
4 course of their life.

5 Now, in this particular case, I think that sometimes
6 you might be -- not compromised -- but conflicted because
7 of the nature of the case and your strongly -- held
8 convictions that you've been so candid and honest about
9 today. So for that reason -- I think you'd be an
10 excellent juror in any other case. And I see that you
11 have served on a jury before.

12 THE POTENTIAL JUROR: Yes, sir.

13 THE COURT: You'd be an excellent juror maybe
14 in any other case, but not perhaps this type. Not
15 because of anything you're doing wrong, it would just
16 make an unfair burden to you that you would have to
17 consider other things that might affect your convictions.
18 So I'm going to excuse you for that. But I do want to
19 thank you, as I think some of the attorneys have said,
20 for your candor and your straightforwardness with the
21 Court. Also your patience with the court too. Thank
22 you. You have a wonderful weekend.

23 THE POTENTIAL JUROR: Thank you, sir.

24 THE COURT: Enjoy the Super Bowl. I'm not
25 going to ask who you're for.

1 THE POTENTIAL JUROR: I'm for New Orleans.

2 THE COURT: Oh, all right.

3 THE POTENTIAL JUROR: Thank you, sir.

4 THE COURT: Thank you, sir.

5 (WHEREUPON, Potential Juror 329 exited the
6 courtroom.)

7 THE COURT: All right. Next 333.

8 Do y'all want me to ask my question and just see
9 where it goes?

10 MS. ADAMS: Sure. I would love that, Judge.

11 THE COURT: No, I mean, again, if I find that
12 it is a close question, I think you realize now I am
13 going to ask that question. I think we've also seen the
14 results of it that it has been -- it's gone both ways.
15 So I mean, anyway I'm just thinking.

16 MR. MCGUIRE: And Judge, with Number 333, I
17 think that we would just ask you to revisit the hardship
18 issue. She's got three young children at home, one, five
19 and eight years old. And she indicates it would be a
20 financial hardship to miss her waitress job.

21 THE COURT: All right. Any problem with that
22 with the State?

23 MS. BYFORD: No, sir.

24 THE COURT: All right. Ask -- great, you
25 haven't gone yet.

1 THE BAILIFF: The man?

2 THE COURT: No, the man can go. Yes, sir.

3 But I mean, not the next witness -- juror. Just a
4 second. Thank you. We'll be right back to you.

5 MS. ADAMS: Judge, I think she'd probably
6 answer your question that you normally ask because she
7 didn't come forward in general qualification.

8 THE COURT: In other words, you don't feel that
9 she should be disqualified for cause?

10 MS. ADAMS: Not automatically until you ask
11 her, Judge, since she was already asked once.

12 THE COURT: Well, let me tell you a story. I
13 tried a capital case. I have forgotten where it was. It
14 might have been Greenville. I asked the same questions
15 on jury qualification. And anybody -- in fact, I said
16 anyone who has a child under seven for whom they have
17 legal custody and duty of care would be automatically
18 exempt. Nobody stood up. Got into qualifying the panels
19 and got to that one question about is anybody dependent
20 upon you and all of that. And the juror said, well, yes,
21 I have a two-year-old child.

22 Now, you have to understand that was a case where
23 the jury was to be sequestered. And she said, the father
24 could take care of the child. That meant she was going
25 to be in a motel for a week or ten days, somebody

1 cleaning up, feeding her. No -- what is it -- couldn't
2 even have any contact.

3 MS. ADAMS: It's a vacation.

4 THE COURT: No phone calls or anything else.
5 So I'm not sure. But if you insist on it, I'll do that.
6 But that has been my experience. If I get to that
7 question and she says that she does have a problem --
8 because let's do understand, we want a jury that sits in
9 that box capable of concentrating on what's being done in
10 the courtroom, listening to the attorneys, the testimony,
11 considering the exhibits, and hopefully maybe even what
12 the Court says the law is.

13 MS. ADAMS: And Judge, I think she's not the
14 primary wage earner in her family. Her husband does work
15 as well. So that's why it may be she can do it.

16 THE COURT: Well, in my case too, the lady
17 wasn't the primary wage earner. But if she finds out in
18 this case it's not going to be sequestered, it might make
19 a difference. I don't know.

20 All right. Anything else? When I get to that
21 question, I'll revisit whether or not it would create a
22 difficulty with her service.

23 All right. Juror 333.

24 (WHEREUPON, Potential Juror 333 entered the
25 courtroom.)

1 THE COURT: All right. Are you Juror Number
2 333?

3 THE POTENTIAL JUROR: Yes, sir.

4 POTENTIAL JUROR 333,

5 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

6 EXAMINATION

7 BY THE COURT:

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

12 A. Yes, sir.

13 Q. You have been provided with a copy of a list of
14 potential witnesses. Have you had an opportunity to
15 review that witness list?

16 A. Yes, sir.

17 Q. Did you recognize any names?

18 A. No, sir.

19 Q. Do you also recall my instructions from Monday to
20 avoid all forms of media coverage dealing with this case?
21 Has this caused any problem for you?

22 A. No, sir.

23 Q. The trial of this case will last approximately ten
24 days, two weeks or it could be longer. Other than
25 personal inconvenience to you, would this pose a serious

1 danger to the health or well-being of yourself or anyone
2 who is dependent upon you?

3 A. No, sir.

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

9 A. Yes, sir.

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

14 A. Yes, sir.

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

18 A. Yes, sir.

19 Q. In a criminal case, the State has the burden of
20 proving guilt. The burden of proof for the State is
21 beyond a reasonable doubt. A defendant has no burden to
22 prove anything at all, his innocence or anything else.
23 In other words, it's entirely upon the State to prove the
24 guilt beyond a reasonable doubt. Do you understand?

25 A. Yes, sir.

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, sir.

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 case. Do
8 you understand?

9 A. Yes, sir.

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

15 A. Yes, sir.

16 Q. A death penalty trial is divided into two parts.
17 Part one is the guilt phase where a 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, that ends the matter and there's no
22 further proceedings. Do you understand?

23 A. Yes, sir.

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 to phase two of the trial which is called the sentencing
3 phase of the trial. Do you understand this?

4 A. Yes, sir.

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 a defendant guilty of
8 murder -- do you understand that the jury rather than the
9 judge determines what the sentence for the defendant will
10 -- or what the -- determines the sentence that a
11 defendant will receive for the crime of murder?

12 A. Yes, sir.

13 Q. In a capital sentencing trial, the court's function
14 is to -- excuse me. In a capital sentencing trial, the
15 jury's function is to determine the appropriate
16 punishment based upon the circumstances of the crime and
17 the characteristics of the individual defendant. Now,
18 aggravating circumstances are facts or details that, when
19 they are present in a case, make the crime of murder more
20 serious or worse. On the other hand, mitigating
21 circumstances are incidents, occurrences or details of a
22 case that would reduce the severity of the crime of
23 murder. In other words, may reduce the degree of
24 responsibility of the defendant for the crime. Do you
25 understand that?

1 A. Yes, sir.

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 in prison which under our law means until
5 death without possibility of parole. The other option is
6 death which in this state is by electrocution or lethal
7 injection. Do you understand that?

8 A. Yes, sir.

9 Q. Could you, as a juror in a sentencing phase,
10 depending upon the facts including the relevant
11 aggravating and mitigating circumstances and the law as
12 instructed to you, render a sentence of life in prison?

13 A. Yes, sir.

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

18 A. Yes, sir.

19 Q. Very well. If you would, please, ma'am, answer any
20 questions the attorneys have.

21 MR. MCGUIRE: Judge, do you want me to go into
22 more detail about the possible hardship, or did the Court
23 want ...

24 THE COURT: Either way.

25 DIRECT EXAMINATION

1 BY MR. MCGUIRE:

2 Q. Ma'am, we just want to make sure that everybody
3 who's going to be called to jury service can focus on the
4 case and not be distracted. On your questionnaire you
5 indicated that it would be a financial hardship if you
6 are missing your waitress job. Is that true?

7 A. Yes. Well, right now I'm not working anyway, so it
8 doesn't matter.

9 Q. Oh, okay. So that's a nonissue?

10 A. Since that, no.

11 Q. Fair enough.

12 MR. MCGUIRE: It might be the sequestered hotel
13 situation, Judge.

14 Q. What I'm going to do, ma'am, is you indicated that
15 your opinion regarding the death penalty was that it
16 depended on the crime, but you're not against the death
17 penalty?

18 A. Uh-huh (affirmative).

19 Q. Are you necessarily for it as well?

20 A. No, I'm not for it. Just depending on the facts, I
21 guess you would say.

22 Q. Okay. Well, what I want to do is start off with
23 murder, the definition of murder, because we have to have
24 a starting point. The Judge would tell you that the law
25 is that murder is defined as the unlawful killing of

1 another person with malice aforethought. And malice
2 aforethought is described in the law as the killer acting
3 with a black and malignant heart fatally bent on evil,
4 deliberately and intentionally killing another person.

5 Are you with me?

6 A. I'm with you.

7 Q. Okay.

8 MR. MCGUIRE: Judge, this is where I would move
9 to ask one through six in my written motion.

10 THE COURT: All right. My ruling will be the
11 same. Noted for the record.

12 MR. MCGUIRE: Thank you very much, Judge.

13 Q. That's what's called malice murder in South
14 Carolina. And to make it a capital case, the State would
15 have to come forward with what's called aggravation
16 evidence. And that would make it even worse. Aggravated
17 murder. And it can be a number of things. It can be
18 killing a child, killing a police officer in the line of
19 duty, killing more than one person, murdering and then
20 murdering again. That sort of thing.

21 A. Uh-huh (affirmative).

22 Q. Now, the Judge would also tell you that you could
23 consider other evidence. It's called mitigation
24 evidence. It could be about the defendant, the person
25 who is on trial. It could be about his background, his

1 childhood, that sort of thing. Now, knowing these
2 principles and knowing that you can consider all of this,
3 what's your opinion about the death penalty as the
4 appropriate punishment for an aggravated murder case?
5 And I'm going to give you an example so we can have some
6 teeth on this. Somebody who kills, murders, is convicted
7 of it, kills again.

8 MS. ADAMS: Objection, Judge. That's not fair
9 to her. She doesn't know the facts and circumstances
10 surrounding the entire case.

11 THE COURT: I'm going to permit the question.
12 Go ahead. Overruled.

13 Q. Again, the question is knowing all that evidence
14 that we talked about, what is your view about the death
15 penalty as the appropriate punishment in a case where
16 somebody murders, deliberately kills an innocent person,
17 and does it again?

18 THE COURT: Wait a minute. No, that isn't the
19 law. The law is ---

20 MR. MCGUIRE: Well, that's just ---

21 THE COURT: --- that she has two options and
22 under the facts that she has, not what ---

23 MR. MCGUIRE: Sure. Let me, if I could, Judge,
24 restate my original question which actually had all that
25 in there. Since we got interrupted, I gave her the tail