

VOLUME FOUR 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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1 end.

2 Q. I'm going to go back up a little bit with you. We
3 talked about having the whole case, all the evidence,
4 evidence of intent to kill, a deliberate murder. You
5 might hear evidence about the victims, the defendant, his
6 background, that sort of thing. Having all that
7 evidence, being able to consider all that, I'm just going
8 to ask you what your view is of the death penalty as the
9 appropriate punishment in a murder-murder case.

10 THE COURT: Do you also know that you could
11 find life imprisonment because of any reason, no reason
12 or mercy depending on the facts?

13 THE POTENTIAL JUROR: Yes. And I think without
14 knowing all the facts of a particular case, I can't say
15 definite. But I think I would not, the death penalty,
16 no.

17 Q. Would not vote for the death penalty just not
18 knowing all the facts?

19 A. Just not knowing all the facts, that's an answer
20 that I can give you. Not knowing all the facts of this
21 particular case.

22 Q. Okay. Fair enough. It sounds like -- and you
23 correct me if I'm wrong because I can be wrong plenty.
24 Anything you say is right.

25 A. Okay.

1 Q. It's the one place you get to come to and everything
2 you say is right. It sounds like it depends on the crime
3 for you, the facts of the crime. Is that right?

4 A. Yes.

5 Q. And that some murders could warrant the death
6 penalty and some not. Is that fair to say?

7 A. Yes. And more so not, I guess.

8 Q. Okay. Fair enough.

9 A. For me.

10 Q. Sure. But now, if the State brought evidence to you
11 that was of a sufficient quality, quantity and proved to
12 you in your heart that the death penalty was appropriate,
13 you could vote for it?

14 THE COURT: Well, what do you do about whether
15 or not she wants to just exercise no reason or any reason
16 or even mercy not to impose the death penalty and
17 sentence to life in prison without parole?

18 MR. MCGUIRE: Sure.

19 Q. Well, the Judge ---

20 THE COURT: That's also an option.

21 MR. MCGUIRE: Sure.

22 Q. Well, the Judge ---

23 A. I think that ---

24 THE COURT: Under the same facts that he's
25 talking about ---

1 A. What I think the questions -- that would probably be
2 what I would do.

3 Q. Okay. And what the Judge is saying is that he wants
4 you to know that the life penalty would always be an
5 option for you.

6 A. Yes, and I think that's what I would go with ---

7 Q. Okay.

8 A. --- rather than the death penalty.

9 Q. Okay. But you can't say for sure right now because
10 you really don't know the facts?

11 A. No, not like I don't guarantee you that, no.

12 Q. Okay. And I'm not asking you to promise me our
13 guarantee me anything. We just need to make sure you've
14 got an open mind ---

15 A. Yeah.

16 Q. --- and you're fair and can follow the law. And it
17 sounds like when you know that the life penalty is
18 available that you might lean toward that?

19 A. Yeah, depending on the facts of the case.

20 Q. But we really can't call that for sure right now
21 because we don't know the facts of the case?

22 A. Sure.

23 Q. And there are certainly cases where they would be
24 bad enough for you where they could warrant the death
25 penalty?

1 A. Yes.

2 Q. And if that was the case, the Judge would tell you
3 that the law would require that a sheet of paper be
4 signed called an indictment or a sentencing sheet. And
5 you'd have to sign it recognizing your vote. Could you
6 do that?

7 A. Yes, if I felt in my heart that that's what should
8 be done.

9 Q. Right. If you felt in your heart that that was the
10 appropriate thing to do and that was your vote, you could
11 record it by signing a piece of paper?

12 A. Yes.

13 Q. Okay. And that would be for the Court, and it would
14 be filed in the courthouse?

15 A. Yes.

16 Q. And you'd be okay with that?

17 A. Yes.

18 Q. Okay. Sometimes things are not what they seem, and
19 sometimes you guess wrong on people. What I'm going to
20 do is ask you a couple of questions about the sentencing
21 and how it's different in a capital case ...

22 A. Okay.

23 Q. ... and just ask if you can follow these principles
24 of the law.

25 A. Okay.

1 Q. And as the Judge said, there's no automatic death
2 penalty case ever -- not in the country, not in the state
3 of South Carolina -- because any one juror could just
4 say, I'm going to vote for life and that's it. Is that a
5 principle you're comfortable with?

6 A. I don't understand the question. I'm sorry.

7 Q. Okay. Normally when we think about juries and them
8 delivering a result, we always think that they are
9 speaking with one voice and they're all in agreement
10 about their verdict. They speak with one voice. And
11 it's not so in a capital case. The only time the jury
12 would have to be unanimous would be to return a sentence
13 of death where you and eleven other jurors voted for that
14 and put your names on the piece of paper.

15 A. Okay.

16 Q. And it's not so for the other side, the life in
17 penalty [sic] side. The Judge would instruct the jury
18 that any one juror can vote for the life penalty for any
19 reason, no reason, mercy, grace or anything they see in
20 the case. Is that a principle you're okay with?

21 A. Yes.

22 Q. Okay. And the way it works out sort of by example
23 would be -- say you're on a jury with eleven other
24 people. I do this because that's where they sit. I
25 don't mean to distract you.

1 A. Okay.

2 Q. But if you were sitting over there, you know, one of
3 your fellow jurors in the front row might say, you know,
4 I saw something in this case about the Defendant's walk
5 in life, his childhood, that I found redeeming and
6 resonated with me. And I'm going to vote for life
7 because of that. A juror maybe sitting behind you on the
8 back row might say, you know, I saw something in his
9 relationship with his family, maybe his grandma or his
10 child. And for me, that was -- I saw some humanity in
11 that. And I'm going to vote for life because of that.
12 Another juror might say, you know, I listened to the
13 judge. And he said I could vote for life for no reason.
14 I don't even have a reason to give. So the jurors could
15 all vote for life and they all have a completely
16 different reason. So they're really not in agreement.
17 Is that something you could respect?

18 A. Yes.

19 Q. Okay. And respect everybody's individual point of
20 view?

21 A. Yes, sir.

22 Q. And the juror's decision in a capital case is
23 described in the law as their individual moral judgment.

24 A. Uh-huh (affirmative).

25 Q. And the law says that if it would harm their

1 conscience or do violence to their conscience to change
2 their moral judgment, that that would be wrong. And if
3 actually okay for the jury to come out and say, we all
4 can't agree. We all twelve couldn't vote for death; all
5 twelve couldn't vote for life. And eventually the judge
6 would just take the case from the jury, sentence and end
7 the case there. Is that -- can you follow that law?

8 A. Yes.

9 Q. Okay. And you'd want your opinion to be respected?

10 A. Yes, sir.

11 Q. You'd respect everybody else's?

12 A. Yes.

13 Q. And the State, the Defense and the Defendant,
14 they're all entitled to -- and you as a juror -- are
15 entitled to fairness not just out here in the courtroom,
16 but in the jury room. And if you saw things getting
17 hostile or belligerent or beyond polite civil
18 deliberations, could you send a note out to the Judge
19 saying, you know, it's not fair in here, we need to go
20 back to being fair?

21 A. Yes.

22 Q. Okay. We can count on you to do that?

23 A. Yes, sir.

24 MR. MCGUIRE: If I could have just a second,
25 Judge.

1 THE COURT: Certainly.

2 (Off record discussion)

3 Q. And again, I just want to make sure that you're
4 going to be fair, open-minded and follow the law.

5 A. Yes.

6 Q. And what that would -- again, what that would
7 require is you being able to listen to all the evidence
8 from the State, from the Defense, both sides, aggravation
9 evidence, mitigation evidence and be able to fairly
10 consider both life and death as a possible punishment.
11 Can you do that?

12 A. Yes.

13 Q. And if death was in fact your vote, you could write
14 your name on that piece of paper saying that's your vote?

15 A. Yes. I think it would be hard for me. But if
16 that's what I felt, that's what I could do.

17 Q. Well, sure. And your feelings are to be expected
18 and normal. The situation that we're here for is
19 serious. And the gravity of it is appreciated by all of
20 us. It would be wrong to think we would have a jury of
21 people who were just kind of flippant about this or
22 didn't have reservations about a matter so serious.

23 A. Yes.

24 Q. So I appreciate that very much. I appreciate your
25 patience with me. Thank you.

1 A. Thank you.

2 THE COURT: Questions from the State?

3 MS. ADAMS: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. ADAMS:

6 Q. How are you this afternoon?

7 A. fine. How are you doing?

8 Q. I'm Chrissy Adams and I'm the Solicitor for the
9 Tenth Circuit. And I appreciate your patience. You've
10 been here for a little while.

11 What we want to do today is make sure that we all
12 understand your feelings on the death penalty and if you
13 could follow the Judge's instructions as he gives them
14 and once you consider everything, vote for death or vote
15 for life, whatever is appropriate.

16 A: Okay.

17 Q. It got a little confusing. It seems from some of
18 your answers and your hesitation about signing your name
19 that you may be leaning towards life. Is that fair?

20 A. Not leaning toward without hearing the case, but in
21 -- I just ---

22 Q. That's okay. Take your time. There are no right or
23 wrong answers. We just want to know how you feel.

24 A. I guess -- it would have to be very brutal, I guess,
25 if that's an appropriate word, for me to choose the death

1 penalty. More than likely, yes, I would choose life
2 imprisonment.

3 Q. More than likely?

4 A. More than likely.

5 Q. Okay. With that feeling right now then, do you feel
6 that it would really prevent you from considering the
7 death penalty since you feel that it has to be so brutal?

8 A. No, I don't think it would. I just think with the
9 evidence, I guess. But me just to sit here now and say
10 yes some for the death penalty, and I'm really for it,
11 I'm not like that.

12 Q. Well, that's what we want to find out. We want to
13 find out if you could go either way depending on the
14 facts and circumstances.

15 A. Yes, uh-huh (affirmative).

16 Q. Okay. And you would listen to the entire case?

17 A. With an open mind, yes, ma'am.

18 Q. Okay. Because you understand not every murder is
19 eligible for the death penalty?

20 A. Uh-huh (affirmative).

21 Q. Okay. And we have to prove an aggravation which
22 kind of bumps it up. It's an aggravated murder, so to
23 speak, before we even get to the decision of life or
24 death.

25 A. Yes.

1 Q. Okay. So your hesitation, you would not be leaning
2 more towards life to automatically vote for life?

3 A. No.

4 Q. Okay. Thank you very much for your honesty. We
5 appreciate it.

6 A. Thank you.

7 THE COURT: All right. Anything further from
8 the Defense?

9 MR. MCGUIRE: Oh, no, sir. Thank you.

10 THE COURT: Anything from the state?

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

12 THE COURT: Considering the entire voir dire, I
13 find that Juror 333 will be fair, unbiased, impartial and
14 able to carry out the law as explained to her.
15 Furthermore, I find that this juror's belief or attitudes
16 toward the death penalty would not prevent or
17 substantially impair the performance of her duties as a
18 juror in accordance with the law, the Court's
19 instructions and the juror's oath. And I do find you
20 qualified to serve as a juror in this case.

21 THE POTENTIAL JUROR: Thank you.

22 THE COURT: Now, you do understand that this is
23 a process that's going to take a little time. So I'm not
24 sure when, but eventually you'll get a phone call. By
25 the way, you did give your telephone number to the Clerk?

1 THE POTENTIAL JUROR: Yes, sir.

2 THE COURT: All right. Eventually you'll get a
3 phone call. It will probably be the night before or
4 something and ask you to be in the next day. And what
5 will happen is we'll have a pool of jurors. In other
6 words, several -- well, we really don't know how many
7 right now. But it will be enough and more to draw the
8 jury from. And -- what is it -- they will be the ones
9 that were actually serve. But you'll be in that pool
10 that will be considered.

11 And I want to thank you for your candor and your
12 patience with the Court today.

13 THE POTENTIAL JUROR: Thank you.

14 THE COURT: Good luck and have a wonderful
15 weekend..

16 THE POTENTIAL JUROR: Thank you.

17 THE COURT: Thank you, ma'am.

18 (WHEREUPON, Potential Juror 333 exited the
19 courtroom.)

20 THE COURT: Now, I'm not sure. But both
21 Defense and the State just had to suffer what the Court
22 has been suffering from, sometimes these unnecessary
23 questions. You know, she obviously had already pretty
24 well satisfied the question that Mr. McGuire had, can you
25 be fair, open-minded and follow the law, and also your

1 question, not leaning toward life without parole without
2 hearing all of the issues. So you know, let's kind of
3 let go sometimes.

4 MS. ADAMS: Yes, sir.

5 THE COURT: All right. By the way, I
6 appreciate your -- because she was -- I would have
7 followed that she wouldn't have had a problem there. But
8 she sounds like she's going to be an excellent juror if
9 she's selected.

10 All right. Let's go with the next one which is 340.
11 Anything about 340 from the Defense?

12 MR. MCGUIRE: No, sir, Judge.

13 THE COURT: Anything from the State?

14 MS. BYFORD: No, sir.

15 THE COURT: All right. Ask 340 to join us.

16 (WHEREUPON, Potential Juror 340 entered the
17 courtroom.)

18 THE COURT: All right. Are you juror 340?

19 THE POTENTIAL JUROR: Yes, sir.

20 POTENTIAL JUROR 340,

21 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

22 EXAMINATION

23 BY THE COURT:

24 Q. You will recall on Monday I put all the jurors under
25 oath. Now, do you understand that you're still under

1 oath and that oath continues throughout these
2 proceedings?

3 A. Yes, sir.

4 Q. You have been provided with a copy of a list of
5 potential witnesses. Have you had an opportunity to
6 review that witness list?

7 A. Yes, sir.

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

9 A. A couple seemed familiar like maybe I went to high
10 school with, but nobody that ---

11 Q. Well, let's say this. If you -- any of those names
12 that look familiar, if they should be the people you're
13 thinking about and they were witnesses -- now, you
14 understand those were potential witnesses. They do not
15 have to be called, but they may be called. But let's
16 just say for the sake of this question that they are
17 exactly the people you were thinking about. Now, if they
18 should testify in this case, would their testimony in any
19 way affect your ability to give both the State and the
20 Defendant a fair and impartial trial merely because of
21 who they are?

22 A. No, sir.

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

1 A. Yes, sir.

2 Q. Has that caused you any problems?

3 A. No, sir.

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

9 A. No, sir.

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

16 A. Yes, sir.

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

22 A. Yes, sir.

23 Q. In other words, you'd have to take the law as I give
24 it to you rather than what you think it might be or
25 should be.

1 A. Yes, sir.

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

5 A. Yes, sir.

6 Q. In a criminal case, the State has the burden of
7 proving guilt. The burden of proof for the State is
8 beyond a reasonable doubt. A defendant has no burden to
9 prove innocence. Do you understand this?

10 A. Yes, sir.

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

17 A. Yes, sir.

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

22 A. Yes, sir.

23 Q. When you hear us refer to a capital case or a death
24 penalty case, what we mean is that it is a criminal
25 murder trial where the prosecutor -- in other words, the

1 State -- is seeking the death penalty. Do you understand
2 this?

3 A. Yes, sir.

4 Q. A death penalty trial is divided into two parts.
5 Part one is the guilt phase where a jury determines
6 whether the defendant is guilty or not guilty of murder.
7 Part two is the sentencing phase where a jury determines
8 the appropriate punishment. Of course, if the defendant
9 is found not guilty, that ends the matter and you don't
10 go any further. Do you understand that?

11 A. Yes, sir.

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

17 A. Yes, sir.

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

24 A. Yes, sir.

25 Q. In a capital sentencing trial, the jury's function

1 is to determine the appropriate punishment based upon the
2 circumstances of the crime and the characteristics of the
3 individual defendant. Do you understand that?

4 A. Yes, sir.

5 Q. Now, aggravating circumstances are the facts or
6 details that, when they are present in a case, make the
7 crime of murder more serious or worse. On the other
8 hand, mitigating circumstances are incidents, occurrences
9 or details of a case that would reduce the severity of
10 the crime of murder. In other words, may reduce the
11 degree of responsibility of the defendant for the crime.
12 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 sentencing for murder? One
16 option is life in prison which under our law means until
17 death without parole. The other option is death which in
18 this state is by electrocution or lethal injection. Do
19 you understand that?

20 A. Yes, sir.

21 Q. Could you, as a juror in the sentencing phase,
22 depending upon the facts including the 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. If there were no doubt.

7 Q. All right. Very good. Thank you very much, sir.
8 Now, if you would, please, sir, answer any questions the
9 attorneys may have.

10 DIRECT EXAMINATION

11 BY MR. MCGUIRE:

12 Q. Good afternoon, sir. My ears aren't what they used
13 to be. I couldn't hear your last answer.

14 A. If there was no doubt.

15 Q. If there was no doubt? Okay.

16 A. In my mind.

17 Q. Sure. And what I'm going to do is ask you -- you
18 know, you'd have a front row seat to the case you'd be
19 sitting on. And if it was proved to you by reasonable --
20 beyond a reasonable doubt and the definition of murder
21 was the intentional killing of another person with malice
22 aforethought, malice being described as a black and
23 malignant heart fatally bent on evil and the person
24 intentionally, deliberately killed another person and you
25 had a front row seat and judge that person guilty beyond

1 a reasonable doubt, what are your views about the death
2 penalty in that case?

3 A. I agree with it.

4 Q. Okay. Would the life penalty ever be severe enough?

5 MS. ADAMS: Your honor, that's not the law.

6 That's not fair to him.

7 THE COURT: I think he needs to understand that
8 a death sentence is not appropriate in all murder cases
9 and that even in capital murder cases, a life without
10 parole is always an option.

11 MR. MCGUIRE: Sure.

12 Q. Knowing that, the life penalty, is it ever severe
13 enough in that kind of intentional beyond a reasonable
14 doubt killing?

15 A. Yes, if it's without parole.

16 Q. Okay. And the crime that I just described to you,
17 murder, malice murder, that sort of our starting point.
18 And the State in a capital case would have to come
19 forward with aggravation evidence, evidence to make it
20 even worse than regular malice murder. Now, in this kind
21 of trial, you'd be able to hear aggravation evidence and
22 evidence that they call mitigation evidence. And that's
23 generally stuff about the defendant, his life, his
24 background. That sort of thing.

25 Knowing all of that, if you're sitting on a jury and

1 you find somebody guilty of a deliberate, intentional
2 killing, and the aggravation evidence that the State
3 brings in is that it's a person's second murder, that
4 they've murdered before and they're convicted of it, what
5 are your views about the death penalty in that kind of
6 case?

7 A. Well, I have not heard the first case. I don't
8 think I could render any decision based on that. I would
9 have to render my decision based on what I heard.

10 Q. Okay. So -- but just the basic fact that the person
11 you'd be judging had murdered twice, that wouldn't
12 necessarily warrant the death penalty automatically?

13 MS. ADAMS: Your honor, that's not the law.
14 He's trying to box him in to an answer.

15 THE COURT: I understand.

16 But even given only half of the question, what would
17 be your answer? If you want to give your answer. But if
18 you say that you do need to know more about the case than
19 just one half of it.

20 Q. I probably need to restate the question for you?

21 A. Yeah. Basically I wouldn't be able to render a
22 decision based on the case that I heard if I was not
23 hearing both cases.

24 Q. Sure. Maybe I need to clear this up. You know, an
25 aggravating factor would be any piece of evidence the

1 State came forward with to show that the murder was
2 worse. It could be the age of the victim, for instance
3 killing a child, killing a police officer in the line of
4 duty or killing more than one person. And I'm just going
5 to talk to you about examples so we can have some teeth
6 on this. Knowing that you can consider mitigation
7 evidence and things about the defendant's background, I'm
8 going to ask you what your view is about the death
9 penalty as the only appropriate punishment for a double
10 murderer.

11 MS. ADAMS: Your Honor, that's still not fair
12 to him because that's not the law. He doesn't know the
13 facts.

14 THE COURT: Again, I think you need to tell --
15 the juror needs to understand that these decisions are
16 not going to be made in a vacuum ---

17 MR. MCGUIRE: Sure.

18 THE COURT: --- with only one part of the
19 proposition that he needs to know.

20 And what we really want to know, Mr. Juror, is
21 whether or not you can -- you will -- well, first of all,
22 that you will not give either sentence, death or life
23 without parole, automatically, that you would be willing
24 to listen to all the evidence, the testimony, exhibits
25 and my charge on the law before you'd make up your mind,

1 but that you would just not automatically -- if you've
2 got a heinous case, you'd automatically give death or if
3 there was something that you would automatically give
4 life, that you would consider all of the facts, evidence
5 and the law given to you in the particular case.

6 THE POTENTIAL JUROR: Well, I would think my
7 decision would be based on what direction you were giving
8 us as we go on and as far as the decisions that we are
9 supposed to be making. But ---

10 THE COURT: Well, let me ask you -- I think --
11 listen to this question and see what you think. In a
12 death penalty case, would you always or automatically
13 vote for the death penalty?

14 THE POTENTIAL JUROR: No, sir.

15 THE COURT: Even though the law provides that
16 you may impose life without parole depending on the
17 circumstances of a particular case and the
18 characteristics of an individual defendant, would you
19 automatically and always vote for the death penalty?

20 THE POTENTIAL JUROR: No, sir.

21 THE COURT: Thank you.

22 You may proceed.

23 MR. MCGUIRE: Thank you, your honor. If I
24 could just politely note my objection to the record -- of
25 ---

1 THE COURT: Very good. And also note your six
2 questions and my rulings on that too.

3 MR. MCGUIRE: Appreciate it. And Judge,
4 specifically my objection would be to the sort of the
5 judicial rehabilitation based on the grounds in *Morgan*.

6 THE COURT: Well, in the *Morgan* says, if I'm
7 not mistaken, what you're looking for is a juror who
8 would not automatically vote for the death penalty and
9 unalterably in every case without -- or in spite of the
10 evidence.

11 MR. MCGUIRE: Sure.

12 THE COURT: And I would want the juror to know
13 that he would need to listen to the evidence before he
14 makes a decision.

15 MR. MCGUIRE: Yes, sir. Actually ---

16 THE COURT: *Morgan versus -- Illinois -- Morgan*
17 *versus Illinois*.

18 MR. MCGUIRE: Yes, sir. Just, I actually have
19 a legal matter. Could I take it up with the Court?

20 THE COURT: Certainly.

21 All right. If you would, please go with the
22 bailiff, and we'll be right back to you.

23 (WHEREUPON, Potential Juror 340 exited the
24 courtroom.)

25 THE COURT: You used the term rehabilitate.

1 Rehabilitate is not what I'm doing. What I am doing is
2 trying to be fair to the potential juror that they not be
3 given an unfair question. To ask someone whether under a
4 heinous part of the capital statute which has for
5 multiple homicides and given anything else you might
6 hear, would you always give the death penalty. That's
7 not the law and that's not a fair question. Now, if you
8 take exception to my question, that's fine. But you also
9 have to take exception to the authority for that question
10 which is *Morgan versus -- or Illinois -- Morgan versus*
11 *Illinois.*

12 MR. MCGUIRE: Sure.

13 THE COURT: Go ahead, tell me what you have.

14 MR. MCGUIRE: Sure. And I don't mean to draw
15 the Court's ire. And I apologize

16 THE COURT: That's not ire. It's just -- what
17 is it -- we need to be fair to jurors as well as to each
18 other.

19 MR. MCGUIRE: Sure. And Judge, just very
20 politely and respectfully, my -- the point I need to make
21 is if you -- from the position of the bench and the robe
22 and the authority that you have and that every citizen is
23 going to want to respect ---

24 THE COURT: Well, before you go too far,
25 remember -- and I congratulated the both of you, both the

1 state and the defense -- that each of you have found the
2 ability to ask that same question in essence that I
3 asked. And when you have, you've gotten good results.
4 And you haven't had to badger the juror, and you haven't
5 had to ask an improper question. An improper question in
6 South Carolina is one that does not contain all of the
7 facts or does not contain all -- contains something that
8 is not a fact.

9 MR. MCGUIRE: And I very much appreciate the
10 Court's position.

11 THE COURT: Thank you.

12 MR. MCGUIRE: It's just that if the juror is
13 going to be instructed, again, from the bench by a judge
14 who wears the robe, and every citizen is going to want to
15 please and have the respect of, and you tell them that
16 the law requires that you not vote automatically for the
17 death penalty or the life penalty and that you be
18 required to take into account aggravation and mitigation
19 and not vote automatically for either penalty, then I'm
20 in a position of asking them, well, would you vote
21 automatically for the death penalty. I mean, I'm never
22 going to get an answer. I'm never going to get ---

23 THE COURT: Oh, yes you are. You're going to
24 get an answer if you put the question in the proper
25 context. And the question in the proper context under

1 our capital law, as I mentioned to you -- it's not what
2 the law was in 1972. It's something that the United
3 States Supreme Court and the South Carolina General
4 Assembly have adopted that has both sides. It has a much
5 more different aspect. In 1972 the law in South Carolina
6 was three verdicts, not guilty, guilty, guilty with a
7 recommendation of mercy. And the guilty sentence carried
8 death automatically. We don't want to go back to those
9 days.

10 MR. MCGUIRE: And I'm not advocating that.

11 THE COURT: Well, that's what I'm saying.
12 State the law under -- state the law as it exists under
13 the law that we're going to be trying this case, not some
14 law that might have existed somewhere else. And again,
15 if you want to read it, I have *Morgan versus Illinois* to
16 say what they do not find acceptable. And each time they
17 say it includes -- it's limited to those who would
18 automatically vote to convict and impose the death
19 penalty or vote to acquit or impose a life sentence in
20 spite of the evidence.

21 MR. MCGUIRE: And Judge, I agree with that.

22 But ---

23 THE COURT: Well, then ask the juror that.

24 MR. MCGUIRE: Well, Judge, I mean, if I'm in a
25 position where I have to ask them, could you as a juror

1 -- would you as a juror automatically vote for death
2 despite the fact that the life penalty would always be
3 available and that the Judge would require you to look at
4 mitigation evidence ---

5 THE COURT: No, you don't understand. You
6 don't understand. It's not always -- it's in spite of
7 the evidence.

8 MR. MCGUIRE: Sure. And so ---

9 THE COURT: And what you're asking for, would
10 you automatically do it without regard -- or regardless
11 of the evidence.

12 MR. MCGUIRE: And Judge, I think that's sort of
13 necessarily implied in the question. If you're asking
14 them in essence would you automatically vote for death in
15 a double murder situation, the implication is just
16 knowing two murders, would you vote for death
17 automatically. The implication is that the rest of the
18 evidence wouldn't matter. I mean, that's how you get
19 their honest opinion.

20 THE COURT: Very well. Note your objection to
21 my ruling.

22 MR. MCGUIRE: And Judge, I would respectfully
23 request -- or I would move that we strike this juror just
24 at this point because I don't believe I will be able to
25 get any candid or personal views from him.

1 THE COURT: Well, then that's noted for the
2 record, and that's your position.

3 MR. MCGUIRE: Yes, sir.

4 THE COURT: All right. Anything else?

5 MR. MCGUIRE: No, sir.

6 THE COURT: In fact, as far as the juror is
7 concerned, unless you have something pertinent rather
8 than just a rehashing of these half questions, I find
9 that he is qualified from what I've heard. Could render
10 the death sentence if there was no doubt and life without
11 parole. Could do both. And that's all we're asking.
12 Not anything automatic or without being unalterably in
13 favor of or opposed to the death sentence or life
14 sentence.

15 MR. MCGUIRE: Yes, sir, I accept that.

16 THE COURT: Anything else?

17 MR. MCGUIRE: I mean, if you're not going to
18 excuse him, I'd still like to continue ---

19 THE COURT: Excuse me?

20 MR. MCGUIRE: If the Court's position is that
21 you're not going to excuse him ---

22 THE COURT: Unless I hear something that says
23 that he cannot listen to all the evidence and consider
24 all the evidence, consider all the options available
25 under that evidence and the charge on the law -- unless I

1 hear something that says he can't, why would I change my
2 opinion?

3 MR. MCGUIRE: You didn't let me finish. I said
4 if the Court's position is that we're going to bring him
5 back in, I'd just like to continue asking him some
6 questions. I have some questions for him.

7 THE COURT: Very good. Are they the six
8 questions that you had presented in your motion?

9 MR. MCGUIRE: I have already moved to ask them.

10 THE COURT: Oh, okay. I don't want to ---

11 MR. MCGUIRE: You've already politely ---

12 THE COURT: I think we've been there before.

13 MR. MCGUIRE: Yes, sir. You've already
14 politely declined that request.

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

17 MS. ADAMS: No, sir.

18 THE COURT: All right. Ask a juror to join us.

19 (WHEREUPON, Potential Juror 340 entered the
20 courtroom.)

21 THE COURT: All right. You may proceed.

22 MR. MCGUIRE: Thank you, Judge.

23 DIRECT EXAMINATION

24 CONTINUED BY MR. MCGUIRE:

25 Q. Juror number 340 -- again, I've got to refer to you

1 by number -- in that type of murder case we're talking
2 about, in an aggravated murder case -- an example I gave
3 you was a double murder, somebody who killed twice --
4 would factors about a defendant's background like his
5 childhood or something like that -- would those factors
6 be relevant in fixing punishment for that type of double
7 murder case?

8 A. I would think character would have something to do
9 with the decision.

10 Q. It would?

11 A. Yes.

12 Q. Okay. What do you mean by that exactly?

13 A. Well, I think it would help you determine as to what
14 type of person they were and whether they were a
15 malicious person that they are being accused of being or
16 whether they're not.

17 Q. Okay. So sort of who they are matters, how they've
18 come to be who they are as a person matters to you?

19 A. Sure.

20 Q. And it sounds like you can consider sort of negative
21 things about their character like say if they were a
22 criminal throughout their life. But could you also
23 consider other things that maybe they've suffered in
24 their walk in life?

25 A. Absolutely.

1 Q. It sort of cuts both sides?

2 A. Right.

3 Q. And you can -- you would indicate that you could
4 consider those factors as weighing in your decision-
5 making process between death and life?

6 A. Yes.

7 Q. Okay. What I want to do now is just explain a
8 little bit about the sentencing process and how a capital
9 case is different from any other criminal case in South
10 Carolina. In regular criminal cases, the jury, they're
11 concerned with guilt or not guilty. And they take care
12 of that. If it's not guilty, the person goes home. If
13 it's guilty, the judge sentences.

14 A. Uh-huh (affirmative).

15 Q. And in a capital case, the jury has the opportunity
16 to fix punishment. That's how it's different. And there
17 are a lot of different rules and laws that apply because
18 it's so different. I want to just talk to you briefly
19 about this laws and just ask if you can follow them.

20 The State would have to prove its evidence beyond a
21 reasonable doubt to all twelve jurors. And that's kind
22 of in line with the way we think about juries normally.
23 They're all unanimous, they speak with one voice and they
24 all agree on what they're talking about.

25 A. Right.

1 Q. But for the other side, the life side, the
2 mitigation side, the Defense side, it's opposite. The
3 Judge would instruct the jury -- in fact he's already
4 indicated to you -- that any individual juror could vote
5 for life for any reason, no reason, mercy, grace or
6 anything they see in the case. And according to our law,
7 each individual juror has a right to find their reason
8 for life where ever they find it. And they can all be
9 different reasons. The whole jury could come in and say
10 we're unanimous for life, all twelve, and each individual
11 juror would have a separate and individual reason how
12 they came to that life decision. Is that an aspect of
13 the law that you can agree with?

14 A. Yes.

15 Q. And the way the law describes an individual juror's
16 decision in a capital case, a sentencing case, is that
17 it's their individual moral judgment ...

18 A. Uh-huh (affirmative)..

19 Q. ... based on their walk in life. And that if it
20 would do violence to their conscience or harm their
21 conscience to change their individual moral judgment,
22 that would be wrong. Is that an aspect of the law that
23 you can agree with?

24 A. Can you repeat that one more time?

25 Q. Sure.

1 A. You lost me right at the end.

2 Q. Sure. Our case law from the United States Supreme
3 Court says that when a juror -- because there's not a
4 right or wrong answer. A sentencing case is never right
5 or wrong. Death is never right or wrong. Life is never
6 right or wrong. It's just based on each individual's
7 point of view, kind of what they feel is right.

8 A. Right.

9 Q. So we've kind of come to decide -- or call it an
10 individual's moral judgement. And each individual juror
11 would have -- whatever their decision be, whatever
12 direction they go in, that would be their individual
13 moral judgement based on their walk in life.

14 A. Uh-huh (affirmative).

15 Q. And is that a principle you're okay with?

16 A. Uh-huh (affirmative).

17 Q. And the law indicates that if it would harm their
18 conscience or do violence to their conscience to change
19 that moral judgement once they've arrived at it, that
20 would be wrong. Is that a aspect of the law you could
21 respect and follow?

22 A. Yes.

23 Q. And basically what I'm asking is could you respect
24 the law and let everybody have their own individual
25 opinion?

1 A. Absolutely.

2 Q. And the law actually agrees in a capital case that
3 the jury, when they call it a day, they don't all have to
4 come back twelve for life or twelve for death. It's okay
5 for the jury to come in and say, you know, all twelve
6 couldn't vote for death, and all twelve couldn't vote for
7 life. And eventually -- and the Judge might say, you
8 know, give it another try, talk about it some more and
9 see. But eventually the Judge would take the case from
10 the jury and sentence. And the jury could agree to
11 disagree. Is that a aspect of the law you could follow
12 and respect?

13 A. Absolutely, because I feel like it's an individual
14 decision. I don't feel like anybody should be pressured
15 ---

16 Q. Sure.

17 A. --- to make anything different.

18 Q. Sure. In a matter so grave as to whether a human
19 being lives or dies, it would be wrong to force that on
20 someone?

21 A. I agree one hundred percent.

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

24 A. (No verbal response)

25 Q. It's an interesting question, isn't it?

1 A. It is. I think it's freely given based upon the
2 circumstances.

3 Q. Okay. I thank you very much for your patience.
4 Sir, that's all I've got for you.

5 A. Thank you.

6 THE COURT: All right. Anything from the
7 State?

8 MS. ADAMS: Just one quick question.

9 CROSS-EXAMINATION

10 BY MS. ADAMS:

11 Q. I'm Chrissy Adams. I'm the Solicitor. I just have
12 one quick question for you.

13 The law requires -- once you do consider all the
14 evidence, if the jury does decide that death is the
15 appropriate punishment -- that each and every juror has
16 to sign his or her name to that sentence sheet. And that
17 is actually what -- that document is what allows the
18 State to actually execute a defendant. It's a public
19 document. Would you be able and willing to vote for
20 death and sign your name to that sentence sheet?

21 A. If that was my decision.

22 Q. Okay. Thank you so much for your patience.

23 A. Thank you, ma'am.

24 THE COURT: Anything else?

25 MR. MCGUIRE: No, sir.

1 THE COURT: All right. Considering the entire
2 voir dire, I find that Juror Number 340 will be fair,
3 unbiased, impartial and able to carry out the law as
4 explained to him. Furthermore, I find that this juror's
5 beliefs or attitudes toward the death penalty would not
6 prevent or substantially impair the performance of his
7 duties as a juror in accordance with the law, the Court's
8 instructions and the juror's oath.

9 I find you qualified to sit on this jury. Now,
10 unfortunately, as you've seen, this process takes a
11 little time. So you've given your number to the Clerk?

12 THE POTENTIAL JUROR: (Nodded head up and down
13 in the affirmative)

14 THE COURT: All right. What we'll be doing is
15 qualifying a pool of jurors from which the actual trial
16 jury will be selected. So you can -- you're free to do
17 whatever you need to do between now and the time you get
18 the call. Now, the call will probably be the night
19 before or something like that, or maybe the day before,
20 asking you to come in the next day. And at that time,
21 we'll have all the jurors who are qualified together, and
22 then the selection of the actual jury will be made.

23 THE POTENTIAL JUROR: Okay.

24 THE COURT: All right. And I do appreciate --
25 I thank you for your patience with the Court, and also I

1 thank you for your candor and straightforward answers.

2 Thank you very much, sir.

3 THE POTENTIAL JUROR: Thank you, sir.

4 THE COURT: Good luck to you and hope you enjoy
5 the Superbowl.

6 THE POTENTIAL JUROR: Thank you.

7 THE COURT: I'm not going to ask because I
8 asked the last time.

9 THE POTENTIAL JUROR: I'm sure it will be fun.

10 THE COURT: All right.

11 (WHEREUPON, Potential Juror 340 exited the
12 courtroom.)

13 THE COURT: Okay, 342. Anything on 342 from
14 the Defense?

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

16 THE COURT: Anything from the State?

17 MS. ADAMS: No, sir.

18 THE COURT: All right. Let's ask 342 to join
19 us.

20 (WHEREUPON, Potential Juror 342 entered the
21 courtroom.)

22 THE COURT: All right. Are you Juror Number
23 342?

24 THE POTENTIAL JUROR: Yes, sir.

25 POTENTIAL JUROR 342,

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're still under
6 oath and that oath continues throughout these
7 proceedings?

8 A. Yes, sir.

9 Q. You have been provided with a list of potential
10 witnesses. Have you had an opportunity to review that
11 witness list?

12 A. Yes, sir.

13 Q. 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 A. Yes, sir.

18 Q. Has this caused you any problem?

19 A. Well, I had to walk out of the room a couple of
20 times.

21 Q. All right. But in other words, you are being able
22 to manage it all right?

23 A. Right.

24 Q. All right. Very good.

25 The trial of this case could last a week or ten days

1 or longer. Other than -- it's not the usual trial. I
2 think you understand that. Other than the personal
3 inconvenience, would this pose a serious danger to the
4 health or well-being of yourself or anyone else who is
5 dependent upon you?

6 A. No, sir.

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

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 this 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 anything at all, innocence or anything else. In
2 fact, the defendant is presumed innocent, as I said, and
3 does not even have to testify or present any sort of
4 evidence. 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 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 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. 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's the end of it and there's no
2 second phase. Do you 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 to phase two of the trial which is called the sentencing
8 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 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 sentence for murder? One
8 option is life imprisonment which under our law is until
9 the death of the defendant without possibility parole.
10 The other option is death which in this state is by
11 electrocution or lethal injection. Do you understand
12 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 instructed to
17 you, render a sentencing -- excuse me -- render a
18 sentence of life imprisonment?

19 A. Yes, sir.

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

24 A. Yes, sir.

25 Q. All right. If you would, please, sir, answer any

1 questions the attorneys might have.

2 DIRECT EXAMINATION

3 BY MR. MCGUIRE:

4 Q. Good evening, Juror 342. How are you doing?

5 A. Fine, how are you?

6 Q. I'm good, sir. I have to refer to you by number.

7 It's a little awkward for me. I hope you forgive that.

8 A. Okay.

9 Q. I'm just going to ask you, you know, your just
10 personal opinions about the death penalty for murder.

11 And if you and I were just sitting on your porch and I

12 brought up the idea, you know, some kinds of cases are

13 just so bad the death penalty should be pretty much

14 automatic for them. You know, somebody might say a rape

15 murder or a child murder or a multiple murder or a kidnap

16 and murder. Are there any kind of -- or killing a police

17 officer or something like that. Are there any kinds of

18 categories or kinds that kind of ring out with you in

19 that line?

20 A. I guess you could say ---

21 MS. ADAMS: Objection, Judge. That's not the
22 law.

23 THE COURT: I'm going to permit. I want to see
24 where we go with all this.

25 Go ahead.

1 MR. MCGUIRE: Thank you, Sir.

2 A. Just circumstances of the situation, I would think,
3 sir.

4 Q. Okay. But are there any particular ones that kind
5 of ring out with you as being particularly worse than
6 others where they are so bad they might almost
7 automatically deserve the death penalty?

8 A. Probably. I don't know exactly which ones it would
9 be because I haven't had this situation before.

10 Q. Sure. Okay. Well, fair enough. Murder is defined
11 -- that's how -- you know, I want to start off with just
12 the definition of murder so we're on the same page.

13 Okay? The Judge would instruct you that murder in South
14 Carolina is the unlawful killing of another human being
15 with malice aforethought. And malice is defined in the
16 law as the killer operating with a black and malignant
17 heart fatally bent on evil who intentionally and
18 deliberately kills a person.

19 A. Yes, sir.

20 Q. And then the State would have to bring aggravation
21 evidence to make it an aggravated murder. And in that
22 kind of trial -- that would make it a capital case or
23 eligible to be a capital case making it an aggravated
24 murder. And you'd be able to hear stuff about the
25 defendant if you wanted to, like his background,

1 childhood, that sort of thing. And I'm just going to
2 give you an example and ask your opinion about it. If
3 the aggravation evidence in that kind of case, being able
4 to consider all the evidence -- would say a double
5 murder, somebody who had killed and then killed again,
6 what are your views about the death penalty in that kind
7 of case?

8 MS. ADAMS: Objection, Judge. He's not giving
9 -- he doesn't give facts ---

10 THE COURT: I'm going to let him go.

11 MS. ADAMS: --- to make that decision.

12 THE COURT: I understand.

13 A. Probably so.

14 Q. The death penalty?

15 A. Yes, sir.

16 Q. And it's because it involved the two murders?

17 A. Right.

18 Q. Okay. And would background ---

19 A. If he was proven guilty beyond a shadow of a doubt,
20 yes.

21 Q. Both of them proof beyond a reasonable doubt, yes,
22 sir.

23 THE COURT: Now, sir, what would you say if
24 that wasn't the law, that you didn't have to give the
25 death sentence, and in fact you were supposed to consider

1 other things before you give the death sentence? Would
2 you do it without listening to all the evidence, the
3 facts and the charge on the law?

4 THE POTENTIAL JUROR: No, sir.

5 THE COURT: Wouldn't you have to have those
6 things too?

7 THE POTENTIAL JUROR: Yes, sir.

8 THE COURT: All right. Just curious. I didn't
9 want you to ---

10 THE POTENTIAL JUROR: I was thinking that was
11 beyond a shadow of a doubt and all that.

12 THE COURT: But the law is that there's other
13 things even in a capital case that you have to consider
14 too. Other evidence and facts and, as I say, aspects of
15 the law. Very good.

16 Q. Would things in that double-murder type situation
17 where you said it would be the death penalty for you,
18 would things about a defendant's background like his
19 childhood or -- would that be relevant in fixing
20 punishment in a double-murder case?

21 A. I do not think so.

22 Q. Okay.

23 THE COURT: Do you know that it is under our
24 law?

25 THE POTENTIAL JUROR: Yes, sir.

1 THE COURT: You did know that you consider
2 other factors ---

3 THE POTENTIAL JUROR: Yes, sir.

4 THE COURT: --- other than just the crime?

5 THE POTENTIAL JUROR: Yes, sir.

6 THE COURT: Okay. Good enough.

7 (Off record discussion)

8 Q. So again, sir, just to make sure I'm on the same
9 page with you.

10 A. Okay.

11 Q. Those background factors of a defendant like his
12 childhood, in fixing punishment for a murder-and-then-
13 another-murder type case where someone has killed twice,
14 and again, as you brought up the concern, they were both
15 -- both murders were proven guilty beyond any reasonable
16 doubt -- those -- like a childhood or a background factor
17 of a defendant, again, that wouldn't be relevant in
18 fixing punishment for that double murder case?

19 A. Not if the person was sane.

20 Q. Right, knew what they were doing?

21 A. Yeah.

22 Q. Right. Okay. What I want to do now is talk to you
23 a little bit about how a capital case is different from
24 any other case in South Carolina. And that is the jury
25 has the ability or the opportunity to fix punishment.

1 Normally a jury just satisfies the did-he-do-it or is-
2 the-guy-guilty-or-not-guilty, and then the case gets
3 turned over for the judge and the judge will sentence.

4 But in a capital case, the jury has the opportunity
5 to fix punishment. And the rules are different because a
6 human life is involved. The State has to prove their
7 evidence beyond a reasonable doubt to the satisfaction of
8 all twelve jurors. And it's different for the mitigation
9 side or the life side or the defendant's side. The judge
10 would tell the jury any individual juror can vote for
11 life for any reason, no reason, mercy, grace or anything
12 they see in the case. And while that might not be your
13 view, could you respect it if other jurors that is for
14 life for any reason or no reason?

15 A. Yes, sir, I'd hear their reason for it. If I could
16 ask you this?

17 Q. Yes, sir.

18 A. If he was -- if the jury found him guilty ---

19 Q. Yes, sir.

20 A. --- and then you go to assigning punishment ---

21 Q. Yes, sir.

22 A. --- what if you can't agree?

23 Q. That's an excellent question. The only time the
24 jury has to agree is if they return a death verdict.

25 That's the only time the State is entitled to a death

1 verdict. All twelve jurors would have to agree. And to
2 answer your question, what if the jury can't agree, it's
3 okay for the jury to come out and say, all twelve
4 couldn't vote for life, all twelve couldn't vote for
5 death. We're kind of stuck in the middle there. And
6 while the judge might say, you know, give it another
7 throw, give it another chance, see if you can get
8 unanimous, eventually if the jury came out and said, you
9 know, we just can't get past that, we're just going to
10 have to agree to disagree, the judge would take the case
11 and sentence. And the case would end right there. Is
12 that an aspect of the law you can agree with?

13 A. Okay, yes.

14 Q. Okay. Because each individual juror's decision in a
15 capital case is defined in the law as their individual
16 moral judgment. And the law says if it would harm their
17 conscience or do violence to their conscience to change
18 their individual moral judgment, that would be wrong. Is
19 that an aspect of the law that you can agree with?

20 A. Yes, sir.

21 Q. And you could respect somebody -- it might not be
22 your point of view.

23 A. Right.

24 Q. But if somebody had a different point of view, you
25 could respect that?

1 A. Yes.

2 Q. And the Defendant, the State and you as a juror are
3 all entitled to fairness not just out here in the
4 courtroom, but also in the jury room. And if you saw
5 things being unfair, maybe hostile or belligerent, and
6 folks were trying to get somebody to give up their
7 individual moral judgment, could we count on you to pass
8 a note out to the Judge and say, you know, it's not fair
9 in here, we need to get back to fairness?

10 A. Yes, sir, I think so. I think I could do that, yes,
11 sir.

12 Q. Sure. And is mercy -- I want to ask you about the
13 concept of mercy because, as the Judge already indicated,
14 any individual juror could vote for life for any reason,
15 no reason or even mercy, grace.

16 A. Uh-huh (affirmative).

17 Q. Is mercy something that's freely given or bestowed,
18 or is it earned?

19 A. For me?

20 Q. Yes, sir.

21 A. I'd say it was earned.

22 Q. Then how does a person go about earning mercy in
23 your view?

24 A. I guess -- well, if he was guilty, I guess it
25 wouldn't be any mercy for him if I knew he was guilty and

1 he killed two people. But if he came up and said he did
2 it, you know, and owned up and didn't try to deny it ...

3 Q. Maybe that's how he could get mercy from another
4 juror?

5 A. Right, yeah.

6 Q. I appreciate that. Thank you.

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

9 CROSS-EXAMINATION

10 BY MS. ADAMS:

11 Q. Good afternoon. How are you?

12 A. Fine.

13 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
14 Circuit. I want to make sure we are on the same page
15 because I'm kind of confused on where you stand on the
16 death penalty versus life without parole. Would it ever
17 be automatic for you? And let me back up here. You're
18 sitting on a jury, and you have found the defendant
19 guilty of murder.

20 A. Okay.

21 Q. Okay? Do you realize that not every murder is
22 eligible for the death penalty?

23 A. Right.

24 Q. Say you get to the second stage. Once you have that
25 conviction of murder, would you automatically go with the

1 death penalty or would you want to hear all the evidence?

2 A. Well, I've always said under the situation we're
3 under now if a person is guilty of murder or whatever, if
4 he was made to work and earn and give something back to
5 the community for the rest of his life, then I would say
6 you wouldn't have to put him to death. But that's not
7 the way it works.

8 Q. Okay. So you would definitely give the death
9 penalty?

10 A. Yes.

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

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

14 MR. MCGUIRE: No, sir.

15 THE COURT: Anything from the ---

16 MR. MCGUIRE: Just a small matter of law.

17 MS. ADAMS: No, sir.

18 THE COURT: Let me ask you again just to be
19 sure I understand. In a death penalty case would you
20 always or automatically vote for the death penalty even
21 though the law provides that you may impose a sentence of
22 life without parole ---

23 THE POTENTIAL JUROR: No, sir.

24 THE COURT: --- depending on the circumstances
25 of a particular case and the characteristics of an

1 individual defendant?

2 THE POTENTIAL JUROR: No, sir.

3 THE COURT: All right, sir. Very good. Thank
4 you very much. If you would, go with the bailiff. And I
5 need to take up some matters with the attorneys.

6 (WHEREUPON, Potential Juror 342 exited the
7 courtroom.)

8 THE COURT: All right. Anything from the --
9 excuse me. You had something to bring up.

10 MR. MCGUIRE: Yes, sir. I would respectfully
11 move to strike this juror for cause based on his
12 substantial impairment regarding the death penalty. He's
13 indicated, I think, pretty consistently that in a two-
14 murder case he's always going to vote for the death
15 penalty. And that was despite a lot of help from the
16 Court telling him that there's always the option of life
17 and ---

18 THE COURT: I had to do that -- what is it --
19 actually in fairness because no one else told him that.

20 MR. MCGUIRE: I understand the Court's
21 position.

22 THE COURT: It's not my position. Did you tell
23 him the other side of it? Did you tell him that under
24 our law that -- what is it -- he did not automatically
25 have to give the death penalty, that he could and should

1 -- what is it -- consider other matters and that a life
2 without parole even in a capital case was an appropriate
3 sentence?

4 MR. MCGUIRE: I certainly didn't tell him that
5 the death penalty was automatic, no, sir.

6 THE COURT: But did you tell him even -- did
7 you mentioned life without parole, or did you talk about
8 just sitting on your porch? I don't think you mentioned
9 a courtroom and law or evidence and other matters that
10 obviously a juror is supposed to listen to and should
11 listen to.

12 MR. MCGUIRE: Sure. I appreciate the Court's
13 -- I appreciate that, Judge.

14 THE COURT: That's why it was not -- what is it
15 -- anything else but trying to be fair to the juror.

16 MR. MCGUIRE: I understand.

17 THE COURT: Good.

18 MR. MCGUIRE: And Judge, I just moved for cause
19 based on the Sixth and Fourteenth Amendments to the
20 United States Constitution and Sections 14 and 15 of the
21 South Carolina Constitution.

22 THE COURT: Very good. All right. Thank you.
23 Anything from the State?

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

25 THE COURT: I'll tell you. I really do have a

1 problem with it because the gentleman was -- to quote
2 from *Collins*, South Carolina evidence as to proper
3 questions or other improper forms of questions, that
4 questions that are ambiguous, confusing and vague, too
5 generally over broad, asking for impressions and
6 speculation are all improper. This is section 4.10,
7 other improper forms of questions.

8 Our rules of dealing with witnesses -- and in this
9 case the jurors, potential jurors -- are meant to be fair
10 and not to take advantage of the jurors. And so that's
11 why -- and again, I think that's entirely in context with
12 *Morgan versus Illinois* because we are asking somebody in
13 spite of the evidence if they would automatically do
14 that. Each time he was asked if he would do it, if he
15 would automatically do it even though he knew that he
16 could provide a sentence of life without parole depending
17 on the circumstances of a particular case to include the
18 characteristics of the individual, he said no, he would
19 not automatically do it.

20 All right. I think ...

21 Yes, ma'am?

22 MS. ADAMS: I think he said yes to me.

23 THE COURT: Oh, he did.

24 MS. ADAMS: I do agree that he's confused, but
25 that he did say, yes, he would automatically vote for

1 death.

2 THE COURT: He did?

3 MS. ADAMS: Okay.

4 THE COURT: So you want him disqualified?

5 MS. ADAMS: I think we should.

6 THE COURT: Very good. That takes care of
7 that.

8 All right. Ask the juror to come back, if you
9 would, please.

10 (WHEREUPON, Potential Juror 342 entered the
11 courtroom.)

12 THE COURT: All right. Considering the entire
13 voir dire, I find that Juror Number 342 should be excused
14 from serving on the trial of this case. And the reason
15 for that is you have very strong convictions. And the
16 last thing that the Court wants to do is to put somebody
17 in a position where their personal convictions are
18 challenged or questioned. And if they were, that puts a
19 certain inconvenience if not -- what is it -- unfairness
20 to you.

21 In other words, I think that you'd be an excellent
22 juror in any other case. I just think that this is the
23 type of case that would probably in some fashion
24 challenge some of those strong convictions. And I'll be
25 the last one who will ever want to change somebody's

1 strong convictions because that's what we need in order
2 to find our way through life is to know what we consider
3 right and wrong.

4 But in this particular case, I'm going to excuse
5 you. However, I do want to thank you for being here
6 obviously and your patience with the Court. And
7 particularly, I want to thank you for your honesty and
8 straightforward candor with the Court.

9 THE POTENTIAL JUROR: Thank you.

10 THE COURT: Butt you will be excused. I do
11 thank you for ---

12 THE POTENTIAL JUROR: No problem.

13 THE COURT: --- participating and attending to
14 us. Now, that will also be -- that completes your
15 service for this week.

16 THE POTENTIAL JUROR: Okay. Thank you, sir.

17 THE COURT: Appreciate it. Thank you, Sir.

18 (WHEREUPON, Potential Juror 342 exited the
19 courtroom.)

20 THE COURT: All right. When are we going to be
21 back? Monday ...

22 What time did you tell the jurors to come in?

23 MADAM CLERK: Nine thirty.

24 THE COURT: Nine thirty. So we've got, what,
25 forty-one?

1 MS. BYFORD: Forty-two, sir.

2 THE COURT: Forty-two?

3 MS. ADAMS: I think so.

4 THE COURT: Good. Oh, yeah, while we're here,
5 let's see, Juror 387 is a -- this is on the list for
6 Monday, the ones that will be coming back Monday.

7 MR. MCGUIRE: Oh, okay.

8 THE COURT: And I've got -- we've got a
9 problem. One I understand is a surgeon who for some
10 reason thought -- because he didn't thought any better --
11 thought that he was going to be here this week. And so
12 he canceled all of his surgeries.

13 MR. MCGUIRE: Oh, jeez. Judge, we've got no
14 objection to letting a surgeon go back to work.

15 THE COURT: All right. That's what -- I would
16 do this though, Madam Clerk. I would call him and tell
17 him that will transfer him to another term and find out
18 what a less -- and we'll put him down for a term that
19 will have anything but a capital case.

20 MADAM CLERK: Yes, sir. I'll be happy to.

21 THE COURT: But he -- apparently he's paid a
22 price.

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: All right. So without objection,
25 then we will transfer number 347. So that takes us down

1 to -- is it four left over?

2 MADAM CLERK: Yes, sir.

3 THE COURT: Do you want -- we called -- well,
4 the ones that are at the back of the pile are coming in
5 tpo though, aren't they?

6 MADAM CLERK: Yes, sir, they are.

7 THE COURT: All right. So we'll have the
8 whole pool here to draw from.

9 MS. ADAMS: Oh, okay.

10 THE COURT: All right.

11 MS. ADAMS: So how many jurors are left total?

12 THE COURT: Well, we've got -- we've gotten --
13 we can do eighteen from the three panels we've got left
14 over right now. And then I think we have -- on the list
15 that we had, we had four. And then we've got the balance
16 of the ones that have not been numbered or drawn.

17 MS. BYFORD: How many ones ---

18 THE COURT: So anyway, there's a chance that we
19 could -- there is a chance that we could even do it with
20 eighteen that we have now. All right?

21 MS. ADAMS: Thank you, Judge.

22 THE COURT: Let's all -- what is it -- pray and
23 hope for good fortune.

24 MR. MCGUIRE: Thank you, Your Honor.

25 THE COURT: And may your team win.

1 MR. MCGUIRE: Thank you, Judge.

2 THE COURT: All right.

3 (WHEREUPON, court stood at recess for the weekend.)

4 *** END OF VOLUME V ***

County of Anderson

State of South Carolina,

Plaintiff,

-VS-

Raymondeze Rivera,

Transcript of Record

Defendant.

Volume VI of X

The Honorable Alexander Macaulay, Judge

Christina Adams, Esquire
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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

23 THE COURT: Now, she's also the juror that has
24 children, one, eight and five. Three children, two of
25 those being, of course, under seven years of age. What

1 does the State say, either that the Court exercise in the
2 discretion -- well, I tell you what. Y'all were going to
3 discuss this, I think. Have you had an opportunity to
4 discuss it from the State?

5 MS. ADAMS: Your Honor, we have no objection.

6 THE COURT: All right. The Defense has not had
7 an opportunity -- because what I would have to do if I
8 don't excuse her, is to call her to come in and then
9 question her unless we use the statutory exemption. So
10 just keep that in mind, and before we have the lunch
11 break, we'll make a decision.

12 All right. Anything on -- and I also understand
13 that one of the jurors on this panel has not reported.
14 So we'll probably have to follow-up with that, too.

15 All right. Anything from the State?

16 MS. ADAMS: No, sir.

17 THE COURT: Anything from Defense?

18 MR. MCGUIRE: No, sir.

19 THE COURT: Very good. All right. Ask -- and
20 the first one is what, 344?

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

22 THE COURT: All right. Ask 344 to join us.

23 (WHEREUPON, Potential Juror 344 entered the
24 courtroom.)

25 THE COURT: Now, you're Juror 344?

1 THE POTENTIAL JUROR: Yes, sir.

2 POTENTIAL JUROR 344,

3 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

4 EXAMINATION

5 BY THE COURT:

6 Q. You will recall last Monday I put all jurors under
7 oath. Do you understand that you're still under oath,
8 and this oath continues throughout these proceedings?

9 A. Yes, sir.

10 Q. Now, you've been provided with a copy of a list of
11 potential witnesses. Now, these are witnesses that may
12 be called, but they do not have to be called. Have you
13 had an opportunity to review that witness list?

14 A. I have.

15 Q. Did you recognize any names on there?

16 A. I did not.

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

19 A. Yes, sir.

20 Q. Has that caused you any problems?

21 A. No. No, sir.

22 Q. The trial of this case will last probably more than
23 a week. It could be ten days or two weeks. Other than
24 personal inconvenience, would this pose a serious danger
25 to the health or well-being of yourself or anyone who is

1 dependent upon you?

2 A. No.

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

8 A. Yes.

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

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 that you may have heard, read or seen about this
17 case?

18 A. Yes, sir.

19 Q. In a criminal case, the State has the burden of
20 proving guilt. The burden of proof for the State is
21 beyond a reasonable doubt. A defendant has no burden to
22 prove anything at all. Does not have to prove innocence.
23 Does not even have to testify or offer evidence. And as
24 I say, the defendant is always presumed to be innocent,
25 and the State has to prove guilt beyond a reasonable

1 doubt. Do you understand this?

2 A. Yes.

3 Q. Could you, depending upon 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. Yes, sir.

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. Uh-huh (affirmative). 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, sir.

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. Yes, sir.

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. Yes, sir.

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

13 A. Yes, sir.

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

18 A. Yes, sir.

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

1 understand?

2 A. Yes, sir.

3 Q. Do you also understand that the jury has two options
4 to consider regarding the sentence for murder? One
5 option is life imprisonment which under our law in South
6 Carolina means until you die. In other words, it's life
7 without parole. Do you understand that?

8 A. Uh-huh (affirmative). Yes.

9 Q. The second possibility or option is death which is,
10 in our State, is electrocution -- by way of electrocution
11 or lethal injection. Do you understand that?

12 A. Yes, sir.

13 Q. Now, understanding this, could you, as a juror in
14 the sentencing phase depending upon the facts including
15 the relevant aggravating and mitigating circumstances and
16 the law as instructed to you, render a sentence of life
17 imprisonment?

18 A. Yes, sir.

19 Q. On the other hand, as a juror in the sentencing
20 phase depending upon the facts including 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. If you would, please, answer any questions the
25 attorneys may have.

1 THE COURT: Mr. McGuire?

2 DIRECT EXAMINATION

3 BY MR. MCGUIRE:

4 Q. Good morning, Juror 344.

5 A. Good morning.

6 Q. How are you doing today?

7 A. Very good.

8 Q. I have to refer to you by number. It's a little

9 awkward for me. I'm not being rude, but it's just how I

10 have to do things. If you could forgive me that. And

11 again, this is one of the only places you get to come and

12 you're always a hundred percent right. Whatever your

13 views are, whatever your answers are, they're always

14 right. No right or wrong answers, whatever your views

15 are. So if you'll just be candid with us. That's really

16 all we're asking.

17 A. Okay.

18 Q. I'm going to ask you a little bit about publicity.

19 Hear, read, see anything about the case?

20 A. No.

21 Q. Okay. Don't really know why you're here?

22 A. Well, obviously, I know that there's a, you know, a

23 case ---

24 Q. A trial.

25 A. --- of a trial.

1 Q. Okay.

2 A. I don't -- I've not heard anything about it. I
3 moved to Anderson in early '06, and I just didn't really
4 hear anything.

5 Q. Okay. Where did you move from?

6 A. Naples, Florida.

7 Q. Okay. And you had some coworkers, I think, murdered
8 back in Florida. Is that right?

9 A. I did.

10 Q. Would that interfere or affect your judgment if I
11 told you this was a murder case?

12 A. I don't think so.

13 Q. Okay. Were they caught and put on trial?

14 A. They were.

15 Q. And convicted?

16 A. Yes, they were.

17 Q. And what was the sentence, if you remember?

18 A. Both of them life imprisonment.

19 Q. Okay. What I'm going to do now is talk to you in a
20 little bit more detail about the death penalty because
21 the State in this case is actually seeking the death
22 penalty. And I'm going to talk to you, also, about the
23 kind of case, the kind of murder case we have in South
24 Carolina so we're on the same page, okay? My guess is
25 you don't have the definition of murder in South Carolina

1 with you.

2 A. Nope.

3 Q. Most people don't. Murder in South Carolina is the
4 unlawful killing of another human being with malice
5 aforethought. It's called malice murder. Malice is
6 defined as the killer acting with a black and malignant
7 heart, fatally bent on evil and deliberately,
8 intentionally killing an innocent person.

9 And what I'm going to do is -- oh, and also to make
10 it a capital case, the State would have to come forward,
11 like the Judge said, and bring what's called aggravated
12 evidence or some kind of factor that would elevate it to
13 what's called an aggravated murder. And they're kind of
14 like categories, sort of like police officer killing
15 would be one, a child killing, killing more than one
16 person, a rape murder. Those types of crimes are
17 aggravated murders. They have to bring something like
18 that to you before they could ask for the death penalty,
19 okay? So not only is it a malice murder, but it's a
20 malice murder plus the aggravation evidence.

21 And I noticed on your questionnaire you indicate,
22 with regard to the death penalty, I believe in the death
23 penalty as opposed to life without parole if they
24 committed violent or multiple violent crimes and can't be
25 rehabilitated. The taxpayers shouldn't feed them and pay

1 for their health care. Is that still your view?

2 A. Yes.

3 Q. Okay. And the aggravated murder that I've talked to
4 you about, does that square with that view of yours?

5 A. It would depend on the circumstances, individual
6 circumstances, I think.

7 Q. Okay. With regard to life without the possibility
8 of parole, you indicated, what is the point. They will
9 never be a viable contributor to society. They've been
10 convicted of violence towards others. Why feed and pay
11 for their health care? Is that still your view?

12 A. Yes, it is.

13 Q. Okay. Now ---

14 BY MR. MCGUIRE: And Judge, this is where I
15 would ask questions one through six pursuant to my two
16 written voir dire motions.

17 THE COURT: All right. In other words the same
18 questions? The same questions that you previously
19 submitted?

20 MR. MCGUIRE: In writing, yes, sir.

21 THE COURT: All right. The Court's ruling is
22 that I decline to let you ask those questions ...

23 MR. MCGUIRE: Yes, sir. Thank you very much.

24 THE COURT: ... for the same reasons.

25 Q. Just a little legal detail we had to take care of

1 there, ma'am.

2 What I want to do now is talk to you by way of
3 example about your feelings about the death penalty for
4 certain kinds of crimes. And you know how I previously
5 sort of threw out some examples of aggravated murder?
6 Now, not only in a death penalty case would you hear
7 aggravation evidence, but you'd also hear what's called
8 mitigation evidence. The Judge talked to you a little
9 bit about that. And generally, that's stuff like about
10 the Defendant's background. Like, did he grow up poor,
11 poverty, was he a drug addict, that sort of thing. Okay?

12 A. (No verbal response)

13 Q. Now, with regard to the aggravation evidence, the
14 example I'm going to give you is that the killer that
15 you're sitting in judgment of had killed, been convicted
16 of it, and you're judging a person for their second
17 murder. So the murder trial you would sit on would
18 actually involve a person who had already been convicted
19 of a separate killing. And knowing that you could take
20 any ---

21 BY MS. ADAMS: Your Honor, I object. Under
22 *State v. Powers* he's staking this juror out, getting her
23 down a course of action and not giving her the entire
24 story when he's specifically referring to just one
25 aggravation. She'll be instructed she has to consider

1 everything, and can she follow your instructions.

2 THE COURT: Thank you very much, but I'm going
3 to overrule the objection.

4 Go ahead.

5 MR. MCGUIRE: Thank you, sir.

6 Q. What is your view about the death penalty for that
7 kind of killing, for somebody who had killed, and then
8 killed again?

9 A. And they were convicted twice?

10 Q. Yes.

11 A. If they couldn't be rehabilitated and become a
12 viable member of society, then I wouldn't have a problem
13 with determining that.

14 Q. Okay. Now, the only two options that the jury would
15 have would be life without parole, leave prison in a pine
16 box so to speak, or death. So just only knowing you had
17 those two options, what would your view be regarding the
18 death penalty as the appropriate punishment for the
19 twice-convicted killer?

20 A. Well, it's kind of hard to say not knowing all the
21 facts. But again, if they couldn't be a viable member of
22 society ---

23 Q. They couldn't ever get out.

24 A. --- what is the point?

25 THE COURT: Let her finish her answer.

1 MR. MCGUIRE: Sure.

2 THE COURT: Please.

3 THE POTENTIAL JUROR: Pardon me?

4 THE COURT: Yes, ma'am. I want you to finish
5 your answer without interruption.

6 A. I just don't believe what the point is of letting
7 them hang out prison.

8 Q. Sure. I mean, especially in this economy and we
9 have to pay for it, right?

10 A. Exactly. There are other things that the money
11 could go for, and they've already taken two lives. And
12 they're not going to do any good anywhere for anyone.

13 Q. Right. And would background things about the
14 Defendant like, say, if he grew up poor or was a drug
15 addict, would that be relevant in fixing punishment for
16 somebody ---

17 A. (Shaking head back and forth in the negative)

18 Q. No? I mean, you're shaking your head. You have to
19 say yes or no.

20 A. Oh, I'm sorry. No. Yeah, no. I think that you can
21 be a good person or a bad person regardless of how you
22 grew up, the way you grew up.

23 Q. Okay. So the background wouldn't be relevant to
24 fixing punishment?

25 A. I don't think so, no.

1 Q. Okay.

2 MR. MCGUIRE: If I could have just one second,
3 Judge.

4 (Off record discussion)

5 Q. I want to ask you just a little bit, if you don't
6 mind, about the thing in Florida. And if I'm being too
7 personal -- if you're uncomfortable with that, you just
8 tell me, okay, and I'll back off, so to speak.

9 A. Okay.

10 Q. Did you attend the trial at all?

11 A. No.

12 Q. Or go to the funerals?

13 A. Yes.

14 Q. Okay.

15 A. All three of them.

16 Q. Okay... And did you agree with the verdict?

17 A. (No verbal response)

18 Q. Or did you think it should be something different?

19 A. I didn't agree or disagree at the time. It was just
20 too close.

21 Q. Okay.

22 A. And they were taken care of. They were out of
23 society, and I was happy with that. It was a pretty
24 brutal crime. But they haven't proven that they couldn't
25 be rehabilitated.

1 Q. Okay. It sounds like you're giving careful thought
2 to your answers. You're not being flippant at all with
3 me. Is that fair to say?

4 A. Yes.

5 Q. And that these come from -- the views just kind of
6 come from your value structure, what's right and wrong?

7 A. Absolutely.

8 Q. And what's morally right and wrong.

9 A. Absolutely.

10 Q. And I'm not going to be able to change your opinion
11 just with my words, am I?

12 A. (No verbal response)

13 Q. I want to talk to you a little bit now about how a
14 sentencing capital case is different from all other cases
15 in South Carolina. And that is because the jury has the
16 opportunity to fix punishment. Normally, as you probably
17 are aware, most juries just concern themselves with
18 guilt, not guilty, and then the Judge takes over.

19 A. Right.

20 Q. But some states do things a little bit different,
21 but in South Carolina that's the way it is. But now, the
22 Judge would instruct the jury regarding the law and the
23 rules of a sentencing phase. I'm going to go over that
24 law with you now and just ask you if you can respect it.
25 Okay?

1 A. Okay.

2 Q. The rules are a little bit different for both sides
3 in that the Prosecutor has a higher burden that the
4 Defendant. For instance, when I was talking about that
5 aggravation evidence, the State would have to prove that
6 beyond a reasonable doubt to all twelve jurors. And that
7 rule doesn't apply to the Defendant or the life penalty
8 or the mitigation side of the case. And what I mean by
9 that is that the Judge would charge the whole jury that
10 any juror could vote for life for any reason, no reason,
11 mercy, grace or anything they see in they see in the
12 case. And it doesn't have to be beyond a reasonable
13 doubt. In fact, there's no level of proof whatsoever.
14 One juror could just say, you know, I saw something in
15 the case, and that did it for me. And I'm going to vote
16 for life because of that. And all jurors wouldn't have
17 to agree to vote for life on the same reason. Is that an
18 aspect of the law you could respect?

19 A. Absolutely.

20 Q. Okay. And the way it kind of works out by example
21 is if you were on a jury, somebody in the front could
22 say, you know, I saw something in the defendant's
23 relationship with his grandmother. I found that
24 redeeming. So I'm going to spare his life for that. And
25 somebody -- now, I'm not saying it would be your view.

1 A. (Laughter)

2 Q. You kind of gave me a look there. And my guess is
3 that's something that would not enter your decision ---

4 A. That wouldn't, yeah. It wouldn't make a difference
5 ---

6 Q. Right.

7 A. --- in something like that.

8 Q. Sure. But if somebody else, for instance, was to
9 say that and then somebody in the back would say, well,
10 you know, I saw something about his background that was
11 relevant to them -- and, again, I'm not saying this would
12 be your view. But just, you know, I saw something in his
13 background, and I want to vote for life because of that.
14 And somebody else could say, you know, I listened to the
15 Judge, and he said I could vote for life for no reason.
16 And I'm going to do that. I can't even give a reason.
17 If you were on that jury, could you respect the jurors'
18 coming to those individual judgments based on different
19 reasons?

20 A. I would respect other people's opinions.

21 Q. Okay. And you know, when we think about juries and
22 we think about the result they deliver, we usually think
23 about the jury speaking with one voice, being unanimous,
24 but it's not so in a capital case. The only time the
25 jury has to be all twelve all agreeing is if they deliver

1 a death sentence. Beyond that, they don't have to agree.
2 And it would be okay for the jury to come in and say, you
3 know, all twelve can't agree on death, all twelve can't
4 agree on life. We just agree to disagree. And while the
5 Judge might send the jury back out and say, you know,
6 give it another try, we'd like you to try to be
7 unanimous, eventually he would just take the case from
8 the jury and sentence and end it. Would that be an
9 aspect of the law you could respect?

10 A. Yes.

11 Q. And you know, the law describes a juror's decision
12 in a capital case as their own individual moral judgment.
13 And the law says that if it would do violence to their
14 conscience or harm their conscience to change their
15 individual moral judgment, that would be wrong. Is that
16 an aspect of the law you could agree with?

17 A. Yes.

18 Q. Okay. And the State, the Defendant and you, as a
19 juror, are entitled to fairness not just out here in the
20 courtroom, but also in the jury room. If you saw people
21 trying to be hostile or if it got beyond polite civil
22 deliberations -- which we expect some give-and-take -- we
23 expect everybody to participate, and at least, you know,
24 deliberate. But if it got beyond being fair and polite
25 and civil, and it got unfair, could we count on you to

1 send a note out to the Judge saying, you know, things
2 aren't fair in here. We've got to get back to fairness.

3 A. Yes.

4 Q. All right. Because you'd want your individual moral
5 judgment respected.

6 A. Absolutely.

7 Q. And you'd respect somebody else's individual moral
8 judgment?

9 A. Uh-huh (affirmative).

10 Q. I want to ask you about the concept of mercy. Is
11 mercy something that is freely given and bestowed upon
12 somebody, or is it earned?

13 A. It's freely given.

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

15 THE COURT: All right. Answer any questions
16 the Solicitor may have.

17 MS. ADAMS: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. ADAMS:

20 Q. Good morning.

21 A. Good morning.

22 Q. How are you?

23 A. I'm fine.

24 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
25 Circuit and I certainly do appreciate your honesty and

1 all your answers on your questionnaire. I know it was
2 rather lengthy.

3 A. It was.

4 Q. So we appreciate it. What I want to talk a little
5 bit about now is the law as the Judge is going to
6 instruct it and make sure that we're all on the same
7 page. You realize that not every murder in South
8 Carolina qualifies for the death penalty?

9 A. Yes.

10 Q. Okay. So the State has to prove beyond a reasonable
11 doubt some sort of aggravation that bumps it. Okay.

12 A. I see.

13 Q. The first part of the trial is a regular murder
14 trial. Guilt or innocence of the defendant is what the
15 jury determines. Okay? Now, during that phase, is it
16 fair to say that you want to hear all the evidence before
17 you make a determination regarding guilt or innocence of
18 the defendant?

19 A. Absolutely.

20 Q. Okay. So -- because I know you kept saying that
21 it's hard to answer questions sometimes until you know
22 the facts.

23 A. Definitely have to know the facts.

24 Q. Okay. All right. So you would listen to everything
25 that was presented from the State and/or Defendant before

1 you determined guilt in the first phase?

2 A. Yes.

3 Q. Okay. Now, would that same principle apply for you
4 in the penalty phase? So -- in other words, what the
5 Judge is going to instruct you is that you must consider
6 not only the evidence that the State brings forward in
7 aggravation that bumps it up, but any mitigating evidence
8 that the Defense may bring. And mitigation is something
9 that may tend to make you think that life is more
10 appropriate. Would you want to hear all of that evidence
11 before you make up your mind?

12 A. Yes.

13 Q. Okay. And mitigation could be anything. And you
14 would want to hear everything before you make a decision?

15 A. Everything.

16 Q. Okay. And you understand deliberation, when a jury
17 deliberates, it's a give-and-take. And while everyone
18 has their own opinions and everybody's opinion should be
19 respected, everyone should listen and deliberate
20 basically and try to come to a decision together.

21 A. Right.

22 Q. Okay. And you can do that in deliberation?

23 A. Yes.

24 Q. So just as if somebody was preventing someone's
25 opinion from being heard, if a juror wasn't

1 participating, would you let the Judge know that as well?

2 A. Yes.

3 Q. Okay. Assuming we get to the second phase and the
4 Defendant is found guilty of murder, is it fair to say
5 that you would remain open-minded about life or death
6 until you heard all the evidence?

7 A. Absolutely.

8 Q. And as you sit here right now, do you know anything
9 about this case?

10 A. Nothing.

11 Q. Okay. So do you know whether this sentence should
12 be life or death right now?

13 A. No clue.

14 Q. All right. The law also requires if a jury finds
15 that death is appropriate that each and every juror signs
16 his or her name to the sentence sheet, and that document
17 is what allows the State to actually execute a defendant.
18 Could you sign your name to that document if you felt
19 that death was appropriate?

20 A. Yes.

21 Q. Well, just to be clear, so once you hear all the
22 evidence if you felt that life was appropriate, would you
23 vote for life?

24 A. Yes.

25 Q. Okay. And if you felt that death was appropriate,

1 you would vote for death?

2 A. Yes.

3 Q. So just based on a guilt murder conviction, you
4 would not automatically vote one way or the other?

5 A. No.

6 Q. Thank you.

7 THE COURT: All right. Anything further from
8 ...

9 MR. MCGUIRE: No further questions, just a
10 small matter.

11 THE COURT: All right. If you would, please,
12 excuse us for a moment. I need to take up some matters
13 of law with the attorneys.

14 (WHEREUPON, Potential Juror 344 exited the
15 courtroom.)

16 THE COURT: All right.

17 MR. MCGUIRE: Yes, sir, Judge. I'd move to
18 strike this juror for cause based on Sixth and Fourteenth
19 Amendment if the United States Constitution, Sections 14
20 and 15 of Article I of our own South Carolina
21 Constitution. In her -- based on her responses as being
22 predisposed to vote for death. Given the fact that life
23 without parole is a penalty that she disfavors -- she was
24 very, very adamant about disfavoring the life without
25 parole penalty and having to pay for people in prison,

1 that sort of thing. And also, she was very candid about
2 mitigation evidence not being relevant in fixing
3 punishment for a person convicted of murder.

4 Thank you.

5 THE COURT: Anything from the State?

6 MS. ADAMS: If I need to, Judge, we feel that
7 she's qualified. She repeatedly said that she would have
8 to hear all the facts before she could make up her mind.
9 She would consider mitigation; she would consider the
10 aggravation. She talked about rehabilitation. She
11 respects others' opinions and she is qualified.

12 THE COURT: Well, the reason the Court has
13 declined to approve the questions that were submitted is
14 pretty much the same reason that I'm having to look at
15 this juror's qualification because she was, again, given
16 only half of the law in South Carolina. And when she was
17 asked if it was multiple crimes or murders, then would
18 she always give the death penalty and never consider the
19 life penalty. Well, that's not the law in South
20 Carolina. And did not in any way accept the evidence.
21 Now, of course, an allusion was made to background
22 without any sort of help with the background as a
23 specific concern on the crimes of murder. And yet --
24 what is it -- in spite of not being given anything about
25 background when she was asked if that was relevant, she

1 did go on to say it couldn't be rehabilitated, can't say
2 without knowing all the facts. And that is the type of
3 juror that you would want, that they would consider all
4 the evidence and the facts.

5 And it's interesting that her prior experience
6 apparently in Florida had to do with multiple killings.
7 And she said it was a brutal, sort of, affair and -- but
8 she was -- felt that that was a good sentence or at least
9 she could live with that sentence. And again, she said
10 mercy is freely given. So obviously if instructed that
11 she could -- that the evidence could be anything, nothing
12 or mercy to be considered.

13 I find that under our Constitution that it's only
14 those who would automatically vote to convict or impose
15 the death penalty or automatically vote to acquit or
16 impose a life sentence in spite of the evidence are the
17 extremes that should be excluded. Such jurors would be
18 unalterably in favor of or opposed to the death sentence
19 in every case by definitions are the ones who cannot
20 perform their duties.

21 I find that this juror, when given the evidence,
22 would, as she said, whether could give life imprisonment
23 or death would depend on all the circumstances. I find
24 she's qualified. All right. Note your objection.

25 MR. MCGUIRE: Thank you, Judge.

1 THE COURT: All right. Ask the juror to join
2 us, please.

3 (WHEREUPON, Potential Juror 344 entered the
4 courtroom.)

5 THE COURT: All right. Considering the entire
6 voir dire, I find that Juror Number 344 will be fair,
7 unbiased, impartial and able to carry out the law as
8 explained to her. Furthermore, I find that this juror's
9 beliefs or attitudes towards the death penalty would not
10 prevent or substantially impair the performance of her
11 duties as a juror in accordance with the law, the Court's
12 instructions and the juror's oath.

13 So Juror 344, you will be qualified. Now, what
14 we're doing is we're qualifying a pool of jurors from
15 whom will be selected the jury that will actually sit in
16 the trial of this case. And that process, as you can
17 tell, takes some time. So I'm going to ask you to go
18 with the Clerk and she'll get your telephone number where
19 you can be reached when we do get to that point that we
20 have the number that's necessary for the pool. She'll
21 call you and ask if you'll report at a certain time.

22 THE POTENTIAL JUROR: Okay.

23 THE COURT: Very good. And I do appreciate
24 your patience with the Court and your candid answers too.
25 Thank you very much, ma'am. So you just go with the

1 Clerk. Or I think you'll meet the Clerk out in the hall.

2 THE POTENTIAL JUROR: Okay.

3 THE COURT: Very good. Good thank you, ma'am.

4 (WHEREUPON, Potential Juror 344 exited the
5 courtroom.)

6 THE COURT: All right. Anything before we
7 bring in Juror 346?

8 MS. ADAMS: Not from the State, Your Honor.

9 MR. MCGUIRE: Nothing from the Defense, Your
10 Honor.

11 THE COURT: Pardon?

12 MR. MCGUIRE: Nothing from the Defense.

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

14 (WHEREUPON, Potential Juror 346 entered the
15 courtroom.)

16 THE COURT: Very good, sir. You are Juror
17 Number 346.

18 THE POTENTIAL JUROR: Yes, sir.

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

20 **POTENTIAL JUROR 346,**

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

22 **EXAMINATION**

23 **BY THE COURT:**

24 Q. Now, you will recall on last Monday I put all jurors
25 under oath or their affirmation. Now, do you understand

1 that you're still under oath and this oath continues
2 throughout these proceedings?

3 A. Yes, sir.

4 Q. You have been provided with a copy of a list of
5 potential witnesses. Now, potential witnesses are
6 witnesses who may be called but not necessarily -- they
7 don't have to be called. Have you had an opportunity to
8 review that witness list?

9 A. Yes, I have.

10 Q. Do you recognize any of the names?

11 A. Yes, sir. I know Officer Mize.

12 Q. All right. If he should happen to be a witness in
13 this case, would that in any way affect your ability to
14 give both the State and the Defendant a fair and
15 impartial trial?

16 A. No, sir, it wouldn't affect me.

17 Q. Anyone else?

18 A. No, sir. That's -- I know some more of those guys
19 out there at the jail, but not by name. I've just met
20 them on several occasions.

21 Q. All right. Well, again, the question that's
22 ultimately would -- if you knew them or recognized them
23 and they testified, would that -- the fact that they
24 testified and you had know them or had some sort of an
25 association with them, would that affect your ability to

1 give both the State and the Defendant a fair and
2 impartial trial?

3 A. No.

4 Q. Very good. Thank you, sir.

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

8 A. Yes, sir.

9 Q. Has this caused any problem for you?

10 A. No, sir.

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

16 A. No, sir, I don't think so.

17 Q. Among other things, today we will be talking about
18 penalty. But the mere fact that we talk about penalty,
19 does not indicate anything about this Defendant or any
20 defendant. Defendants in South Carolina are always
21 presumed, under our law, to be innocent of all charges.
22 Do you understand?

23 A. Yes, sir.

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

1 instruct you as the Judge even though you may not agree
2 with that law or think it ought to be some other way?

3 A. Yes, sir.

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

8 A. Yes, sir.

9 Q. In a criminal case, the State has the burden of
10 proving guilt. The burden of proof for the State is
11 beyond a reasonable doubt. A defendant has no burden
12 whatsoever to prove anything. As I said earlier, the
13 defendant in South Carolina is presumed to be innocent.
14 has no responsibility to bring any evidence, testify or
15 present any case whatsoever. He's presumed to be
16 innocent under our law, and that presumption could carry
17 the burden of proof unless you were satisfied beyond a
18 reasonable doubt of his guilt. Do you understand this?

19 A. Yes, sir.

20 Q. Do you understand that?

21 A. Yes, sir.

22 Q. Could you, depending on the facts and the evidence
23 -- excuse me. Could you, depending on the facts and
24 evidence and the law as I would instruct you in a
25 particular case find a defendant either guilty or not

1 guilty?

2 A. Yes, sir.

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

7 A. Yes, sir.

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

13 A. Yes, sir.

14 Q. A death penalty trial is divided into two parts.
15 Part one is the guilt phase where a jury determines
16 whether the defendant is guilty or not guilty of murder.
17 Part two is the sentencing phase where a jury determines
18 the appropriate punishment. Of course, if the defendant
19 is acquitted and found not guilty, that ends the matter.
20 Do you understand?

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.

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

22 A. Yes.

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 imprisonment which under our law is until

1 the death without possibility of parole. Do you
2 understand that?

3 A. Yes, sir.

4 Q. Now, the other option is death which is in this
5 state is by electrocution or lethal injection. Do you
6 understand that?

7 A. Yes, sir.

8 Q. Could you, as a juror in the sentencing phase
9 depending upon the facts including all relevant
10 aggravating and mitigating circumstances and the law as
11 instructed to you, render a sentence of life
12 imprisonment?

13 A. Yes, sir.

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

18 A. Yes, sir.

19 Q. All right. If you would, please, answer any
20 questions the attorneys may have.

21 DIRECT EXAMINATION

22 BY MR. MCGUIRE:

23 Q. Good morning, sir. How are you doing?

24 A. Fine, thank you.

25 Q. I've got to refer to you as Juror Number 346. It's

1 not because I'm not being polite or ---

2 A. I understand.

3 Q. -- anything like that. If you will just forgive me
4 that. I'm going to ask you a little bit about publicity.

5 You seen, read, hear anything about this case?

6 A. Not until we were in here last Monday.

7 Q. Okay. Okay. Fair enough. What I'm going to do --
8 and I know you're an associate pastor?

9 A. Yes, sir.

10 Q. All right. If you and a couple of -- I'm Catholic.
11 We call them parishioners -- I don't know. Is that a
12 fair -- Parishioner?

13 A. Well, we call them members, so ...

14 Q. Members, okay. If a couple of members and you and
15 maybe some friends were just kind of hanging out and
16 somebody said, I think the death penalty should be pretty
17 much automatic for some kind of bad killings, like maybe
18 a police officer killing, child killing, and they looked
19 over at you and said, what do you think about that? What
20 would you say?

21 MS. ADAMS: Objection, Judge. That's not the
22 law. It's an unfair question.

23 THE COURT: Again, I'm going to permit the
24 question. Go ahead.

25 A. Please re-ask the question.

1 Q. Sure. Sure. If you were spending some time just
2 chatting with some folks and the topic of the death
3 penalty just kind of somehow came up, and a fellow said,
4 you know, I think some crimes are so bad they should be
5 pretty much automatic for the death penalty, like if
6 somebody shot a police officer or a child or maybe killed
7 more than one person. And they said, sir, what do you
8 think about that? How would you fall out on that
9 discussion?

10 A. Well, I would consider the facts. I would not make
11 up my mind without knowing what the facts are in those
12 situations. I could not just directly say that a guy
13 needed the death penalty without knowing the facts of it.
14 I personally believe in the death penalty. I think -- I
15 also believe in life. I think that it's a gift from God
16 that he gives to us, and I believe that we need to be
17 sure all the situation at hand, the circumstances and
18 all, and make a decision at that point.

19 Q. Okay. And I noticed that you've got some social
20 work course work in your past.

21 A. Uh-huh (affirmative).

22 Q. And you've ministered to people at the jail?

23 A. Yes.

24 Q. When you minister to people at the jail, is it one-
25 on-one, or is it like teaching?

1 A. It varies. Sometimes I have taught classes there,
2 but basically mine is one-on-one.

3 Q. Okay. Do you believe that a -- tell me what your
4 opinion is, your personal opinion is, on whether a
5 person's background, their walk in life, their
6 characteristics -- are those things relevant in fixing
7 punishment in a murder case?

8 A. I think there's circumstances in life that would
9 cause a person to do some things, not necessarily a
10 murder case, but other things that would cause them to be
11 -- to do a crime, you know. I wouldn't put it that way.
12 I would be very willing to consider all the facts and
13 everything involved.

14 Q. Okay. And that would include the person on trial
15 and his life?

16 A. Yes.

17 Q. Okay. What I want to do now very briefly is just --
18 oh, let me ask you this. Have you ever ministered to Mr.
19 Rivera. Does he look familiar to you?

20 A. No.

21 Q. He's just -- he has been at the Anderson County
22 Jail. I just didn't know if y'all had run into each
23 other.

24 A. No, sir.

25 Q. And you don't know anything about him specifically?

1 A. No, I don't. Nothing whatsoever ---

2 Q. Sure..

3 A. --- other than what the Judge told us the other day.

4 Q. Okay. Fair enough. With regard to life being
5 precious and it's a gift from God, would you have
6 reservations about sitting on a jury that would actually
7 decide whether to kill one of God's creatures.

8 A. No, I don't think so.

9 Q. Okay.

10 A. No reservations.

11 Q. You could consider both a death penalty and a life
12 penalty?

13 A. Yes.

14 Q. Capital cases are different than any other case in
15 South Carolina, as the Judge told you, because the jury
16 has the opportunity to fix punishment. The rules are a
17 little bit different from both sides. For instance, the
18 State would have to prove aggravation evidence before
19 they could even ask for the death penalty. And
20 aggravation evidence would have to be proven to each
21 individual juror beyond a reasonable doubt and all twelve
22 would have to agree.

23 A. Uh-huh (affirmative).

24 Q. And that's kind of in line with how we think about
25 juries agreeing on the same thing, speaking with one

1 voice, but it's not so in capital cases, or it doesn't
2 have to be so. And what I mean by that is, the Judge
3 would charge the whole jury. If you were on the jury,
4 you would hear that you could vote for life for any
5 reason, no reason, mercy, grace, anything any juror saw
6 in the case. Is that an aspect of the law you could
7 respect?

8 A. Yes.

9 Q. And what I mean by that is everybody could be
10 different in their reason for voting for life. Now,
11 everybody would have to agree beyond a reasonable doubt
12 on aggravation evidence.

13 A. I understand.

14 Q. But you know, somebody in the front could say, you
15 know, I saw something about the way he grew up and his
16 lot in life, and that resonated me. And I'm going to
17 vote for life because of that. Somebody on the back row
18 could say, you know, I saw something about his continued
19 relationship with his grandmother or maybe his child, and
20 that -- that's my reason for voting for life.

21 A. Uh-huh (affirmative).

22 Q. Somebody in the middle or maybe sitting right next
23 to you could say, you know, I listened to the Judge and
24 he said I could vote for life for no reason. And I just
25 feel that's right, but I don't have a reason to give you.

1 Is that an aspect of the law you could respect?

2 A. Yes.

3 Q. And the law describes a juror's decision in a
4 capital case, a sentencing case, as their individual
5 moral judgment. And the law says that if it would
6 violence to their conscience or harm their conscience by
7 changing their individual moral judgment, that would be
8 wrong. Is that an aspect of the law you could respect
9 and follow?

10 A. I could respect that, yes.

11 Q. And the State, Defendant, and you as a juror are
12 entitled to not -- to fairness not just out here in a
13 courtroom, but also the jury room. And if things got
14 beyond fairness, you know, polite, civil deliberations,
15 if it looked like it was getting unfair, maybe somebody
16 was trying to get someone to change their individual
17 moral judgment, could we count on you to send a note out
18 to the Judge and say, you know, things aren't fair in
19 here. We need to get back to fairness?

20 A. I would think so, yes, sir.

21 Q. Okay. And the only time the jury has to be twelve
22 united jurors is if they return a sentence of death.

23 A. Uh-huh (affirmative).

24 Q. And it's actually okay for the jury to come back
25 into court and say, you know, all twelve couldn't vote

1 for death, all twelve couldn't vote for life. We're
2 split. And while the Judge might say, you know, give it
3 another try, see if you can get together, eventually he
4 could just take the case away from the jury and sentence
5 and end the case right there. Is that an aspect of the
6 law you could respect and follow?

7 A. Yes, sir, uh-huh (affirmative).

8 Q. And my last -- I think my last question to you is
9 the concept of mercy. Is mercy freely given and bestowed
10 or is it earned?

11 A. Yes, I would think so. It would be certainly -- in
12 the profession that I'm in, it is at least.

13 Q. You're kind of in the business of dispensing mercy
14 sometimes.

15 A. Yeah, that's exactly right.

16 Q. Okay. Fair enough.

17 Mr. McGuire: I think that's all I've got,
18 Judge.

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

21 MS. ADAMS: Your Honor, just one quick
22 question.

23 CROSS-EXAMINATION

24 BY MS. ADAMS:

25 Q. Good morning. I'm Chrissy Adams. I'm the Solicitor

1 for the Tenth Circuit, and we certainly do appreciate
2 your honest answers. I just have one question. If we
3 get to the penalty phase and the decision is between life
4 or death, you stated that you would consider everything,
5 and if you felt life was appropriate, you would vote for
6 life, and if you thought death was appropriate, you could
7 vote for death?

8 A. Yes, ma'am.

9 Q. If the jury does determine that life -- that death
10 is appropriate, each and every juror has to sign his or
11 her name to the sentence sheet which is what allows the
12 State to actually execute the Defendant. Would you be
13 able to sign it?

14 A. I wouldn't have no trouble with that.

15 Q. Great. Thank you so much. I appreciate it.

16 A. Thank you.

17 THE COURT: All right.

18 MR. MCGUIRE: Nothing further. Nothing at all,
19 Judge.

20 THE COURT: Anything from the State?

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

22 THE COURT: All right. Considering the entire
23 voir dire -- that's all these questions we asked plus
24 your questionnaire -- I find that Juror Number 346 will
25 be fair, unbiased, impartial and able to carry out the

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

6 And so I do find you qualified to sit on this trial.
7 And the only thing is that -- you can see this -- what
8 we're trying to do is qualify a pool of jurors from whom
9 the actual jury will be selected. And the process is
10 taking a little bit of time. So I'm going to ask you to
11 give the Clerk your telephone -- have you done that?

12 THE POTENTIAL JUROR: Yes, I have.

13 THE COURT: All right. So you can go about
14 your business, do anything you need to do or want to do
15 until you get that phone call. The phone call will
16 probably be to come in, you know, at this particular --
17 will be to come in at a particular time, and you will
18 have to do it at that time. Once we come in, then we'll
19 select the jury to be drawn. And I do appreciate your
20 patience with the Court and also your candor in the
21 questions. Those are rather difficult questions that we
22 don't always think about. And I thank you for answering
23 the way you did. And I look forward to working with you.

24 THE POTENTIAL JUROR: Thank you, sir.

25 THE COURT: Thank you, sir.

1 (WHEREUPON, Potential Juror 346 exited the
2 courtroom.)

3 THE COURT: All right. Let's see. The next is
4 ...

5 Has everybody shown up, or are we still missing one?

6 MADAM CLERK: We're still missing 349.

7 THE COURT: All right. The next is 347. Does
8 anybody want to take a short break?

9 MS. ADAMS: It's up to the Court, Judge. I'm
10 good.

11 THE COURT: Let's go ahead the if everybody's
12 all right. The next one is 347. Anything about 347
13 before we bring the juror in? From the State?

14 MS. ADAMS: No, sir.

15 THE COURT: From the Defense?

16 Mr. MCGUIRE: All right. Ask the juror to join
17 us.

18 (WHEREUPON, Potential Juror 347 entered the
19 courtroom.)

20 THE COURT: Are you juror 347?

21 THE POTENTIAL JUROR: Yes, sir.

22 **POTENTIAL JUROR 347,**

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

24 **EXAMINATION**

25 **BY THE COURT:**

1 Q. You'll recall on last Monday I put all the jurors
2 under oath. Now, do you understand that you're still
3 under oath and that oath continues throughout these
4 proceedings?

5 A. Yes, sir.

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 did.

10 Q. And these are potential witnesses that may be called
11 but do not have to be called. Did you recognize any
12 names on that list?

13 A. I believe I did. I think it was number 126. The
14 paper actually read Nikki, but I think Monday you said,
15 Nikea (phonic) Robinson.

16 Q. Could be. I might have mispronounced it.

17 A. I do know a Nikea Robinson.

18 Q. All right. If that individual should be a witness
19 in this trial, would that affect your ability to give
20 both the State and the Defendant a fair and impartial
21 trial?

22 A. No, I don't believe so. I don't know her very well.
23 She's a customer of mine where I work.

24 Q. But the question is -- it's not that you know her as
25 much as if she should testify, would that in any way

1 affect your ability ---

2 A. That shouldn't affect me, no.

3 Q. All right. Very good. Thank you, ma'am. Do you
4 also recall my instructions from last Monday to avoid all
5 forms of media coverage dealing with this case?

6 A. Yes, sir.

7 Q. Has that caused any problem?

8 A. No, sir.

9 Q. Very good. Thank you. The trial of this case will
10 last approximately a week to ten days. Other than
11 personal inconvenience, would this pose a serious danger
12 to the health or well-being of yourself or anyone
13 dependent upon you?

14 A. No, sir.

15 Q. Among other things, today we'll be talking about
16 penalty. But the mere fact that we talk about penalty
17 does not indicate anything about this Defendant or any
18 defendant. Defendants under our law are presumed to be
19 innocent of all charges. Do you understand that?

20 A. Yes, sir.

21 Q. If you were a juror in a criminal case, could you
22 listen to the law and accept and apply that law as I
23 would instruct you as the Judge, even though you may not
24 agree with that law or think that it should something
25 else?

1 A. Yes, sir.

2 Q. Could you decide this case based solely on the
3 evidence presented in this courtroom and disregard
4 anything you may have heard, read or seen about this
5 case?

6 A. Honestly, I'm not sure. I have knowledge of this
7 beforehand.

8 Q. Yes, ma'am.

9 A. Back when it first started. Honestly, I have an
10 opinion, and I don't know.

11 Q. All right. Well, now that's a -- by the way, there
12 are no right or wrong answers. All we are looking for is
13 information, and that's the type of information that we
14 need. Thank you very much.

15 In a criminal case, the State does 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 in a trial. Do you understand that?

19 A. Yes, sir.

20 Q. Doesn't have to prove innocence or even take the
21 stand or offer evidence because the burden is entirely
22 upon the State to prove guilty beyond a reasonable doubt.
23 Do you understand that?

24 A. Yes, sir.

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

1 law as I would instruct you in a particular case, find a
2 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 that jury has 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 that is 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, sir.

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

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 is called the
2 sentencing phase of the trial. Do you understand this?

3 A. Yes, sir.

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

10 A. Yes, sir.

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

15 A. Yes, sir.

16 Q. Now, aggravating circumstances are facts or details
17 that, when they are present in a case, make a crime or
18 make the crime of murder more serious or worse. On the
19 other hand, mitigating circumstances are incidents or
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 imprisonment which in South Carolina is
3 until death. In other words, life without parole. Do
4 you understand that?

5 A. Yes, sir.

6 Q. The other option is death which in our State is by
7 electrocution or lethal injection. Do you understand
8 that?

9 A. Yes, sir.

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

15 A. Yes, sir.

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

20 A. Yes, sir.

21 Q. All right. Please answer any questions the lawyers
22 have for you.

23 DIRECT EXAMINATION

24 BY MR. MCGUIRE:

25 Q. Good morning, ma'am.

1 A. Good morning.

2 Q. I've got to refer to you as Juror Number 347.

3 A. Okay.

4 Q. That's a little awkward for me. I'm not being rude.

5 It's just the way we have to do things. If you could

6 just forgive me that.

7 A. No problem.

8 Q. I'm going to ask you a little bit about the

9 publicity and your opinion. You said that you -- well,

10 just tell me what you know.

11 A. Actually, I just remember back a couple of years ago

12 when all of this started and when the Defendant was

13 arrested and just some of the comments that he made or

14 was supposed to have made by, you know, what was on the

15 news and everything.

16 Q. And what were those comments?

17 A. Just that he was a hired hit man. I also heard that

18 he had said that -- there was a child at one of the

19 scenes where he had committed murder on one of the

20 ladies, and said that he had thought about killing the

21 baby as well, but he didn't because he had a child of his

22 own.

23 Q. What else?

24 A. That's about all I can remember.

25 Q. Okay. Do you remember any of the court proceedings

1 or trials or anything like that?

2 A. No, sir.

3 Q. Okay.

4 MR. MCGUIRE: Judge, if I could just have a
5 second.

6 THE COURT: Certainly.

7 (Off record discussion)

8 Q. You indicated that you actually had an opinion.

9 What is your opinion about this whole thing?

10 A. Well, just from hearing what she said, I would -- my
11 opinion is he would be guilty ---

12 Q. Okay.

13 A. --- of committing the crimes just from what I've
14 heard.

15 Q. Sure. And if I just told you and use my words to
16 say, pretend that never happened, it would be kind of
17 hard to put that out of your mind?

18 A. Kind of. I have kids of my own ---

19 Q. Sure.

20 A. --- so it kind of would be.

21 Q. It kind of struck a cord with you?

22 A. Yeah. Just the fact that I did remember reading
23 that when the lady was found, her baby was on her chest.

24 Q. Right.

25 A. Her child was on her chest and ---

1 Q. And that's -- that was a particularly ---

2 A. Hard for a mother.

3 Q. Sure. Sure. Sure. And I couldn't just with words
4 get you to put that out of your mind?

5 A. It would be very hard.

6 Q. Okay. That's all we have for you. Thank you,
7 ma'am. Oh, you might have to talk to the Judge a little
8 bit more, but I'm not.

9 THE COURT: I am going to ask just one
10 question. You've been very candid before, and I just
11 want to be sure. Could you lay aside any outside
12 knowledge of any information received prior to trial from
13 any source whatsoever and, setting aside such knowledge
14 and information, render a fair and impartial verdict
15 based solely on the law and evidence presented and
16 received during the trial of this case?

17 THE POTENTIAL JUROR: I would want to say, yes,
18 but I cannot be a hundred percent sure.

19 THE COURT: That's a perfect answer. And I
20 hope you understand this. Now, considering the entire
21 voir dire -- voir dire is nothing -- well, it's a French
22 term for questions. Considering all of the questions, in
23 other words, that have been asked and answered, both on
24 your questionnaire and this morning, I find that Juror
25 347 should be excused from serving on the trial of this

1 case. However, I do want to thank you for being here,
2 your patience with the Court, and particularly your
3 candor and your straightforward, honest statement.
4 There's one thing that this Court does not want to
5 interfere with, and those are strongly-held moral
6 convictions.

7 THE POTENTIAL JUROR: I understand.

8 THE COURT: And I don't want to put you in any
9 position to have to even think about what you're doing.
10 So I am going to excuse you. But I do want, again, thank
11 you for being here, and the best of luck to you. Thank
12 you, ma'am.

13 THE POTENTIAL JUROR: Thank you.

14 THE COURT: All right. 347 will be excused.

15 (WHEREUPON, Potential Juror #347 exited the
16 courtroom.)

17 THE COURT: All right. Let's do take a short
18 break, and we'll be at 348.

19 (WHEREUPON, court stood at recess for a short
20 break.)

21 THE COURT: All right. The next one is 348.
22 Is there anything the Court needs take up before we ask
23 Juror 348 to join us? From the Defense?

24 MR. MCGUIRE: No, sir.

25 THE COURT: From the State?

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

2 THE COURT: All right. Ask Number 348 to join
3 us, please.

4 (WHEREUPON, Potential Juror 348 entered the
5 courtroom.)

6 THE COURT: All right. Are you number, Juror
7 Number 348?

8 THE POTENTIAL JUROR: Yes, sir.

9 **POTENTIAL JUROR 348,**

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

11 **EXAMINATION**

12 BY THE COURT:

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

17 A. Yes, sir.

18 Q. You have been provided with a copy of a list of
19 potential witnesses. Now, these witnesses may be called,
20 but do not have to be called. Have you had an
21 opportunity to review that witness list?

22 A. Yes, sir.

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

24 A. There were three of the names, Chris Wilson, David
25 Creamer and Layton Creamer.

1 Q. If those witnesses should testify -- in other words,
2 I said they don't have to. But if they should testify,
3 would that in any way affect your ability to give both
4 the State and the Defendant a fair and impartial trial?

5 A. No, sir.

6 Q. Do you also recall my instructions from last Monday
7 to avoid all forms of media coverage dealing with this
8 case?

9 A. Yes, sir.

10 Q. Has this caused you any problem?

11 A. Not at all. I have been -- to my best ability, I
12 have not done that. I just ---

13 Q. Very good. Now, the trial of this case will last
14 longer than usual. It might be more than a week or ten
15 days. Other than the personal inconvenience, would this
16 pose a serious danger to the health or well-being of
17 yourself or anyone dependent upon you?

18 A. No, sir.

19 Q. Among other things, today we'll be talking about
20 penalty. But the mere fact that we talk about penalty
21 does not indicate anything about this Defendant or any
22 defendant. Defendants under our law in South Carolina
23 are presumed to be innocent of all charges, and it's up
24 to the State to prove guilt beyond a reasonable doubt.
25 The Defendant does not have to prove anything at all. Do

1 you understand that?

2 A. Yes, sir.

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

7 A. Repeat that, please, sir?

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

13 A. Yes, sir.

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

17 A. Well, I -- may I say something at this time?

18 Q. Certainly. Yes, ma'am.

19 A. Okay. At the time this crime was committed, my
20 daughter lived at home. And she does not live at home
21 now. But at that time, she was working with Ms. Burns'
22 father. And I'm having mixed emotions on this. She's
23 not at home now nor does she work with Ms. Burns' father
24 at this time. But during that time -- and I just wanted
25 to make that known, that I am having -- you know, I want

1 to be fair and just, and I have questions if I could be

2 fair and just. And I'm being honest, so ---

3 Q. Well, you are. And that's -- by the way, there are
4 no right or wrong answers here.

5 A. Right, right.

6 Q. Because what we're trying to do is to find out what
7 would be the best thing to do.

8 A. Right. And that's why I wanted to make that known
9 to both sides, that at that time my daughter did live
10 there.

11 Q. Well, let me ask you something. You say you have
12 doubts or questions about it. Would that, do you think,
13 affect your ability to be fair and impartial to both the
14 State and the Defendant?

15 A. (No verbal response)

16 Q. I mean you got -- I mean, it's your thought. I mean
17 ---

18 A. Right. Well, as I say, I have -- I want to be
19 because a person deserves a fair and just and open mind.
20 But in my mind, I have a little bit of question as to
21 whether I could or not, so ...

22 Q. All right.

23 A. And I'm being honest because ---

24 Q. Well, no, you ---

25 A. --- I have thought this through for the past week.

1 And I wanted to make it known at this tim.

2 Q. Well, you're exactly right. I tell you what I'm
3 going to ask you to do. I'm going to ask you to go with
4 the bailiff. I need to take up some matters with the
5 attorneys.

6 A. Okay.

7 Q. And we'll find out after I do that ---

8 A. Okay.

9 Q. --- if we're going to proceed or not.

10 A. All right. I didn't do anything to hinder the
11 trial.

12 Q. No, ma'am. And not only that, we don't want to put
13 you in any sort of position either.

14 A. Okay.

15 Q. All right.

16 A. Thank you, sir.

17 (WHEREUPON, Potential Juror 348 exited the
18 courtroom.)

19 THE COURT: My impression ---

20 MR. MCGUIRE: We'd move to excuse.

21 THE COURT: Any ---

22 MS. ADAMS: Your Honor, I'll leave it in your
23 judgment. She has some serious hesitations.

24 THE COURT: Well, again, you know what my
25 feeling is about jurors.

1 MS. ADAMS: Yeah.

2 THE COURT: I don't want to put them in any
3 sort a case where they might feel compromised. So I am
4 going to ..

5 Ask the juror to join us.

6 (WHEREUPON, Potential Juror 348 entered the
7 courtroom.)

8 THE COURT: Considering the entire voir dire --
9 voir dire is just a French term for questions. That's
10 how lawyers talk. We talk in a foreign languages. But I
11 do find that Juror 348 should be excused from serving on
12 the trial of this case. And the reason for that is -- I
13 don't know if I mentioned when I first qualified the
14 general panel last Monday, but, of course, the ultimate
15 question is can you be fair and impartial to both the
16 State and the Defendant. Well, that question has two
17 purposes. One, of course, is to be sure that the State
18 and the Defendant, the parties, have a fair and impartial
19 juror or jury. But the second purpose is more important
20 to me. And that is nobody asks to be a juror. In other
21 words, you were summoned here. You weren't here because
22 you wanted to be, but because you were told to be. And
23 when somebody's asked to do something, you know, that
24 they didn't volunteer for, you want to be sure that
25 they're comfortable in doing that.

1 THE POTENTIAL JUROR: Yes, sir.

2 Q. And sometimes by reason of the way our world is
3 today that we do have information or something that we
4 just can't put out of our minds.

5 THE POTENTIAL JUROR: Yes, sir.

6 THE COURT: And that -- and the last thing the
7 Court would want to do would be to compromise a juror in
8 any way making them do something that is not comfortable
9 which is, obviously, ignore what they do know which is
10 not even proper. But in other words, it just would make
11 it difficult. For that reason, I am going to excuse you
12 from this case. I might note that your candor and your
13 honesty and straightforwardness would recommend you on
14 any other jury. I'd love to have you on any jury else
15 that I would have. But you just seem to have certain
16 reservations, and those reservations are well taken. And
17 I thank you for it.

18 THE POTENTIAL JUROR: Well, thank you, sir. I
19 appreciate it.

20 THE COURT: I also appreciate your patience
21 with the Court, too. Thank you for being here

22 THE POTENTIAL JUROR: And I appreciate the
23 justice system.

24 THE COURT: Well, thank you. And that's
25 exactly what we want it to be.

1 THE POTENTIAL JUROR: Okay. Thank you.

2 THE COURT: And you've helped. Thank you.

3 THE POTENTIAL JUROR: Thank you.

4 (WHEREUPON, Potential Juror 348 exited the
5 courtroom.)

6 THE COURT: All right. Let's see. I think the
7 next one actually is not here, is on her way. And so
8 that would be 552, will be the next one. Is that right,
9 Madam Clerk?

10 THE CLERK: It's 352.

11 THE COURT: Oh, 352?

12 THE CLERK: Yes, Your Honor.

13 THE COURT: I'm getting way ahead of myself.

14 THE CLERK: That's okay.

15 THE BAILIFF: 352?

16 THE COURT: 352. Yes, sir. Not 552.

17 (WHEREUPON, Potential Juror 352 entered the
18 courtroom.)

19 THE COURT: All right. Are you Juror Number
20 352?

21 THE POTENTIAL JUROR: Yes, sir.

22 **POTENTIAL JUROR 352,**

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

24 **EXAMINATION**

25 **BY THE COURT:**

1 Q. You will recall on Monday of last week I put all
2 jurors under oath. Now, do you understand that you're
3 still under oath, and that -- and this oath continues
4 throughout these proceedings?

5 A. Yes, sir.

6 Q. You've been provided with a copy of a list of
7 potential witnesses. These are witnesses who may be
8 called, but they do not have to be called during the
9 trial of the case. Have you had an opportunity to review
10 that witness list?

11 A. Yes, sir, I have.

12 Q. Did you recognize any names?

13 A. Yes, sir, I did.

14 Q. And do you remember what the names were?

15 A. Yes, sir.

16 Q. All right. Now, who were they? Who were they?

17 A. One was Brandon Dunn. I'm acquainted with him.
18 He's a friend of my family. He's a police officer with
19 the City of Anderson.

20 Q. All right. If he should be a witness in this case
21 -- and, as I say, they might not be, but they could be.
22 If he should be a witness in this case, would he -- his
23 testifying in any way affect your ability to give both
24 the State and the Defendant a fair and impartial trial?

25 A. No, sir, it wouldn't.

1 Q. All right. Anybody else?

2 A. One other name. That would be Andy Heaton. I'm not
3 personally acquainted with him, but I have had some
4 dealings with him on a matter he was called out to our
5 office on. But other than that, nothing.

6 Q. All right. Would that in any way interfere with
7 your ability to give both the Plaintiff and Defendant a
8 fair and impartial trial?

9 A. No, sir.

10 Q. You do also recall my instructions from Monday, last
11 Monday, to avoid all forms of media coverage dealing with
12 this case?

13 A. Yes, sir.

14 Q. Has this caused you any problem?

15 A. No, sir, not a bit.

16 Q. Now, the trial of this case is going to be longer
17 than most. It could be as long as a week or ten days.
18 Other than the personal inconvenience, would this pose a
19 serious danger to the health or well-being of yourself or
20 anyone dependent upon you?

21 A. No, sir.

22 Q. Now, among other things, today we will be talking
23 about penalty. But the mere fact that we talk about
24 penalty does not indicate anything about this Defendant
25 or any defendant. All defendants in South Carolina are

1 presumed to be innocent under the law. In other words,
2 they have nothing prove or anything else. The burden of
3 proof is entirely upon the State to prove guilt beyond a
4 reasonable doubt. Do you understand that?

5 A. Yes, sir.

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

10 A. Yes, sir.

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

15 A. Yes, sir.

16 Q. In a criminal case, the State, as I say, has the
17 burden of proving guilt. The burden of proof for the
18 State is beyond a reasonable doubt. A defendant has no
19 burden to prove innocence. Do you understand that?

20 A. Yes, sir, I do.

21 Q. They don't have to testify. They don't have to
22 offer or anything else. They are presumed to be
23 innocent. Do you understand?

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. I'm sorry. Will you repeat that?

4 Q. All right. Could you, depending upon the facts and
5 evidence and the law as I would instruct you in a
6 particular case -- not this case, but just any, in a
7 particular case -- could you find the defendant either
8 guilty or not guilty based on the facts and the evidence
9 and the law?

10 A. Yes, sir.

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

15 A. Yes, sir.

16 Q. When you hear us refer to a capital case or a death
17 penalty case, what we mean 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
20 understand?

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 Part two is the sentencing phase where a jury determines

1 the appropriate punishment. Of course, if the defendant
2 is found not guilty, then, of course, that ends the
3 matter and there's no second phase.

4 A. Yes, sir.

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

10 A. Yes, sir.

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

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, an aggravating circumstance -- now, aggravating
24 circumstances are facts or details that, when they are
25 present in a case, make the crime of murder more serious

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

6 A. Yes, sir.

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

14 A. Yes, sir.

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

20 A. Yes, sir.

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

25

1 A. I believe I could.

2 Q. There's no right or wrong answers. Now, we want
3 your answer.

4 A. Yes, sir.

5 Q. All right. Please answer any questions now that the
6 attorneys might have.

7 A. Okay.

8 Q. Thank you.

9 THE COURT: Mr. McGuire?

10 MR. MCGUIRE: Thank you, sir.

11 DIRECT EXAMINATION

12 BY MR. MCGUIRE:

13 Q. Good morning, ma'am.

14 A. Good morning.

15 Q. I've got to refer to you as Juror Number 352 in our
16 conversation. I'm not being rude or not polite. It's
17 just the way we have to do things. If you could forgive
18 me that. I noticed on your questionnaire you indicated
19 regarding your views about the death penalty, on the last
20 page, it would be extremely difficult for me to vote in
21 favor of a death sentence; however, I am very respectful
22 of the laws which govern our State and of the people who
23 have formed these laws. I would be able to abide by them
24 as my duty as a citizen. Is that still your view?

25 A. Yes, it is.

1 Q. Okay. So fair to say you're not like a zealous
2 proponent of the death penalty, but you realize it's part
3 of the law that we have, and your duty as a juror would
4 be to fairly consider that as an option.

5 A. Yes.

6 Q. Okay. You're not crazy about it, but you can
7 consider it?

8 A. That's correct.

9 Q. Okay. And if the State -- you know, well -- I think
10 you're a -- are you a paralegal?

11 A. Yes, sir.

12 Q. Okay. So you might have some knowledge of the law
13 beyond most people. And I think your husband's also in
14 law enforcement or at least was.

15 A. Was.

16 Q. Was. You know, all murders in South Carolina are
17 not eligible for the death penalty. Just regular malice
18 murder, malice aforethought murder. And that's defined
19 as the killer killing somebody intentionally,
20 deliberately with malice aforethought. And malice is a
21 black, evil, malignant heart, fatally bent on evil. And
22 as bad as that is and sounds, that's not even eligible
23 for the death penalty. It would have to be aggravated
24 murder. The State would have to bring the jury some
25 aggravation evidence to even ask for a death sentence.

1 A. Correct.

2 Q. We have a list of twenty-one factors in South
3 Carolina. It could be killing a police officer, killing
4 a child, a rape murder, torture, killing more than one
5 person, et cetera. But a significant fact that makes it
6 more than just malice murder.

7 A. Okay.

8 Q. Are you with me?

9 A. Yes.

10 Q. And if the Prosecutor brought you evidence of that
11 aggravation to make it an aggravated murder and the
12 evidence was of the quantity and the quality that
13 convinced you in your heart that the death penalty was in
14 fact the appropriate punishment, you could vote for it?

15 A. I believe I could.

16 Q. Okay. And the law would require that you sign your
17 name to the sentencing sheet saying that's your vote.
18 You could do that?

19 A. Yes.

20 Q. Okay. Again, nobody expects people to show up here
21 saying, hey, I'm really just fine about killing people in
22 a death penalty case. And your reservations are to be
23 expected. I mean, it would be unfair to have a jury
24 composed of people that were so zealous about the death
25 penalty that it was really unfair. You respect that?

1 A. I do.

2 Q. Okay. And that's -- in order to get a fair trial,
3 the Defendant's entitled to have people ---

4 MS. ADAMS: Objection, Judge. That's not how
5 she's going to be instructed. It's about following the
6 law.

7 THE COURT: Restate your question.

8 MR. MCGUIRE: Sure.

9 MS. ADAMS: Totally ---

10 MR. MCGUIRE: Sure.

11 Q. Obviously, you would respect the law that requires
12 the defendant have an impartial and indifferent jury and
13 not a jury made up of people that would be predisposed or
14 prone to sentence to death?

15 A. You're asking me how I would respond as far as how
16 the question was posed?

17 Q. Sure. Is that just an aspect of the law that sounds
18 fair to you?

19 A. Yes.

20 Q. Okay. And again, you don't know any of the evidence
21 in the case as you sit there, do you?

22 A. No.

23 Q. Or the facts?

24 A. I've heard some news media reports, but I don't put
25 together with necessarily the facts.

1 Q. Sure. And if the Judge instructed you as a juror
2 that the law was that you would have to consider the
3 factors in aggravation and the factors in mitigation
4 before deciding what the verdict is, you could do that?

5 A. Yes, sir.

6 Q. Okay. And the factors in aggravation we've already
7 discussed briefly. And mitigation is any reason to vote
8 for life basically. And I want to talk to you a little
9 bit in detail about that now. There's no murder in the
10 country, and certainly South Carolina, that is
11 automatically a death penalty case. Did you know that?

12 A. Yes.

13 Q. Okay. A lot of people ---

14 A. If I understood your question, yes.

15 Q. Okay. Some people actually think that -- when I
16 talk to them doing this -- that if the State proves sort
17 of A, B, or C that they'd have to vote for the death
18 penalty.

19 A. Oh, oh.

20 Q. You know that's not the case.

21 A. That's right. I do know that.

22 Q. Okay. You never have to vote for the death penalty.

23 A. Yes.

24 Q. And the Judge would actually instruct the jury that
25 any juror or multiple jurors could vote for the life

1 penalty for any reason, no reason, mercy, grace or
2 anything they see in the case.

3 A. Uh-huh (affirmative).

4 Q. Is that a principle of the law that you could
5 respect and follow?

6 A. Yes, it is.

7 Q. Okay. And the way that works out is the rules are
8 different in a sentencing case because the jury does have
9 the opportunity to fix punishment. And the deck's a
10 little stacked against the prosecutor -- in my view
11 fairly. But they have to prove their evidence,
12 aggravation evidence, beyond a reasonable doubt to all
13 twelve jurors. They all have to agree.

14 But on the life side or the mitigation side, it's
15 not so. Any individual juror by themselves could have
16 their own reason for voting for life, and they have the
17 right to do that. And other jurors could vote for life
18 for a completely different reason, and nobody would have
19 to agree. The jury could actually come out all twelve
20 for life with twelve different reasons.

21 A. Uh-huh (affirmative).

22 Q. Is that an aspect of the law you can respect and
23 follow?

24 A. Yes.

25 Q. And the only time the jury would have to be

1 unanimous is if a death sentence was returned. All
2 twelve would have to agree that that was the appropriate
3 sentence. But it's okay for the jury to come out and
4 say, you know, all twelve couldn't vote for life, all
5 twelve couldn't vote for death, and tell the Judge that.
6 And while the Judge might say, go give it another try,
7 see if you can get unanimous, he could take the case away
8 from the jury and sentence and end the case right there.
9 Is that an aspect of the law you're comfortable with and
10 can follow?

11 A. Yes.

12 Q. Okay. The law describes a juror's decision in a
13 sentencing case, a capital case, as their individual
14 moral judgment based on their walk in life what they
15 think is appropriate. It's not a right answer; it's not
16 a wrong answer. It's just their decision based on who
17 they are as a person. And the law says that it would be
18 -- if it would do violence to their conscience or harm
19 their conscience to change their individual moral
20 judgment, that that would be wrong. Is that a principle
21 you can respect and follow?

22 A. Could you repeat the question?

23 Q. Sure.

24 A. I didn't follow you exactly. I'm sorry.

25 Q. In a capital case everybody's decision, sort of

1 their vote or their end position, in the case is
2 described as their individual moral judgment. The law
3 also says it would be wrong to change that if it would
4 hurt their conscience or harm their conscience or do
5 violence to their conscience. Is that an aspect of the
6 law you could respect and follow?

7 A. Yes, it is.

8 Q. You'd want your opinion respected?

9 A. I'm sorry?

10 Q. You'd want your opinion ---

11 A. Yes.

12 Q. --- your individual moral judgment respected?

13 A. Yes.

14 Q. And you'd respect others?

15 A. Correct.

16 Q. And you, as a juror, would be entitled to fairness
17 not just out here in the courtroom -- you know, the
18 State's entitled to fairness, the Court, the Defendant,
19 and you, as a juror, we're all entitled to fairness. And
20 while we would expect some civil deliberation, some civil
21 discourse, if it got unfair in the jury room, if it was
22 belligerent or hostile and people were trying to change
23 somebody's individual moral judgment, could we count on
24 you to send a note out here saying, you know, it's not --
25 to the Judge saying, you know, it's not fair in here, we

1 need to get back to fairness?

2 A. Yes.

3 Q. Okay. That would be a process you would insist on?

4 A. Yes, it would.

5 Q. Okay. And regarding that mitigation evidence, I
6 gave you a pretty vague, huge definition of it which is
7 any reason to vote for life. It can be anything about
8 the defendant, his walk in life, his childhood, his
9 upbringing, his current relationship with his family
10 members, his mental health issues. It could be anything.
11 And you don't -- obviously, you don't know what the
12 evidence is, so you really can't judge that sort of
13 evidence right now. But if the Judge instructed you that
14 basically what it comes down to, it is -- your duty is to
15 weigh the aggravation, consider the mitigation evidence,
16 the whole case, and fairly consider a life verdict and a
17 death verdict, you could do that?

18 A. Yes.

19 Q. And if the law required you to sign the sentencing
20 sheet saying that your vote was in fact for a death
21 verdict along with eleven other people, you could do
22 that?

23 A. Yes.

24 Q. Okay. Thank you. That's all I have for you. Thank
25 you.

1 CROSS-EXAMINATION

2 BY MS. ADAMS:

3 Q. Good morning.

4 A. Good morning.

5 Q. I'm Chrissy Adams, and I'm the Solicitor for the
6 Tenth Circuit. And first I want to thank you for your
7 honest answers on your questionnaire. And what we're
8 trying to do here is find out your personal views
9 regarding the death penalty, and there are no right or
10 wrong answers. Okay?

11 A. Okay.

12 Q. And I don't want to put words into your mouth. And
13 we just need to know how you feel about not only the
14 death penalty, but actually sitting in judgment of
15 someone else and being responsible potentially for
16 someone else's death. Tell me how you feel. I know
17 that's a loaded question.

18 A. Well, it is. I think it's a huge responsibility.
19 And I would have to be convinced beyond anything that it
20 would be appropriate before I could vote for it. It's
21 just -- you know, it's just a huge responsibility in my
22 view. It would be a very difficult decision to make. It
23 would difficult for me to do that if it came to that.
24 But I believe I could, but it would still be very, very
25 difficult for me.

1 Q. Okay. Because I know even probably filling out this
2 questionnaire was difficult ---

3 A. Yes, it was.

4 Q. --- because it really made you think about it?

5 A. Uh-huh (affirmative).

6 Q. And now you're actually in the courtroom, and it's a
7 possibility.

8 A. Uh-huh (affirmative).

9 Q. Do you think that your hesitation and you leaning
10 more towards life would tend to make you always vote for
11 life?

12 A. No, not necessarily. Like I said, if it would -- I
13 would have to be convinced that the death penalty would
14 be appropriate, would be the appropriate way to go, you
15 know. Do you understand what I'm saying?

16 Q. I think so. Well, I know a lot of people come in
17 and they feel that the death penalty is appropriate, and
18 it has it's purpose in society, but they can never
19 actually do it themselves and be responsible.

20 A. Uh-huh (affirmative)

21 Q. And I'm just trying to figure out if your hesitation
22 is making you lean towards, I just don't think I can do
23 it, even though it could be appropriate and, yes, I would
24 think it's appropriate, but I couldn't actually do it.

25 A. You're asking me to put myself in that.

1 Q. I want you to put yourself in that jury box as a
2 potential juror and actually having to sign your name to
3 a public document that allows the State to kill another
4 human being, to kill this Defendant, as you come face to
5 face with it in this courtroom. Could you do that?

6 A. I really don't know. I can't tell you yes or no. I
7 don't if I'd be able to do that.

8 Q. You don't think -- you think your tendency towards
9 life would be too much and you just couldn't do it?

10 A. Uh-huh (affirmative).

11 Q. And that's okay. There's nothing wrong with that.
12 That's what we're trying to figure out.

13 A. And it's like you said, you know, when you're
14 filling out the questionnaire, it does make you think
15 about it. But sitting here in this chair, it's even more
16 weighty to think about that way.

17 Q. Because I need you to actually take yourself a step
18 further and put yourself in that box as actually being
19 responsible. I mean, the law requires you sign your
20 name. And we will actually -- the State will kill
21 another human being based on your signature along with
22 the jurors.

23 A. Uh-huh (affirmative).

24 Q. And you know, I know everybody wants to feel that
25 they're fair, and I feel, you know -- and I'm sure you

1 want to be fair. But despite instructions and law, it's
2 a personal feeling. And some people just can't do it.

3 A. Uh-huh (affirmative).

4 Q. And we need to know, you know. We don't want to put
5 you in a position where you can't do something.

6 A. And I need to tell you yes or no?

7 Q. We need to know. The Court needs to know. The
8 State needs to be able to have a fair trial just as well
9 as the Defendant.

10 A. (No verbal response)

11 Q. And it's okay. There are no right or wrong answers.

12 A. (No verbal response)

13 Q. I guess the ultimate question is do you --
14 considering the death penalty is one thing, but voting to
15 kill another human being is another. I feel you could
16 consider it. I think from your answers it's clear you
17 can consider it. But could you actually vote and sign
18 your name to a public document that will let the
19 State kill another person?

20 A. You know, when you put it that way, it's even more
21 to consider. I think if I had considered the facts and
22 had come to the decision and voted for it, I would, at
23 that time be able to sign my name if I, in fact, had
24 voted for it.

25 Q. Do you think you could vote for it though?

1 A. Do I think I could vote for it? I think that I
2 could if I were convinced of it.

3 Q. Okay. And I appreciate your honesty. I know it's
4 very difficult and that's why ---

5 A. It's very difficult.

6 MR. MCGUIRE: Just one follow-up question.

7 REDIRECT EXAMINATION

8 BY MR. MCGUIRE:

9 Q. It seems like when we kind of come right down to it,
10 if the facts were such and the aggravation evidence was
11 such that the crime was heinous enough where in your
12 heart the death penalty was appropriate, you could, in
13 fact, vote for it and sign the sentencing sheet?

14 A. Yes.

15 MR. MCGUIRE: That's all I have.

16 THE COURT: Anything else from the State?

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

18 THE COURT: Anything from the Defense?

19 MR. MCGUIRE: No, sir.

20 THE COURT: Considering the entire voir dire, I
21 find that Juror Number 352 will be fair, unbiased,
22 impartial and able to carry out the law as explained to
23 her. Furthermore, I find that this juror's beliefs or
24 attitudes towards the death penalty would not prevent or
25 substantially impair the performance of her duties as a

1 juror in accordance with the law, the Court's
2 instructions and the juror's oath. I find that Juror 352
3 is qualified.

4 Now, did you give the Clerk your telephone number?

5 THE POTENTIAL JUROR: Yes, sir.

6 THE COURT: All right. What we're going to do
7 is qualify a pool of jurors who could be selected to sit
8 on the actual trial. And we want -- we need to -- that's
9 taking some time. So you can go about your business and
10 whatever you need to do until you get a telephone call
11 one probably afternoon or evening asking you to be in the
12 next day. And that's the time we'll select the jury, and
13 they will be selected from that pool. But we are
14 creating the pool at this time, and you are qualified.

15 And I do want to thank you not only for your
16 patience with the Court in being here, but also your
17 candor and your straightforward answers. That's what we
18 needed to hear. Thank you, ma'am. You have a good day.

19 THE POTENTIAL JUROR: Thank you.

20 (WHEREUPON, Potential Juror 352 exited the
21 courtroom.)

22 THE COURT: What's left -- oh, well, you've
23 still got a little more this morning. All right. I
24 think the next one is one who is on her way. Is that
25 right?

1 THE CLERK: She is present, Your Honor. She
2 has arrived.

3 THE COURT: Oh, she has?

4 THE CLERK: Yes, sir.

5 THE COURT: All right. Do y'all want to go on
6 to the -- Juror Number 349?

7 MR. MCGUIRE: Yes, sir.

8 THE COURT: Anything from 349?

9 MR. MCGUIRE: No, sir.

10 MS. ADAMS: Yes, sir, Your Honor. She was a
11 victim of a criminal domestic violence in our office just
12 recently. It was in '08.

13 THE COURT: Is it still pending?

14 MS. ADAMS: No, sir. It is not still pending.
15 This is 349, right? Is that the number we're on?

16 THE COURT: Yes, ma'am. Anything from the
17 State [sic] on that?

18 MR. MCGUIRE: We'll defer to the Court. We'll
19 pass the buck to you, so to speak.

20 THE COURT: That's an honor I could just as
21 soon do without.

22 MS. ADAMS: Your Honor, she does have a medical
23 condition too where she says -- she says, I have I.B.S.
24 so bathroom breaks are a must. And my husband says I
25 have short-term memory loss though I'm not diagnosed.

1 MR. MCGUIRE: My wife tells me that all the
2 time.

3 THE COURT: Particularly after she's asked you
4 to do something. I know what you mean.

5 (Laughter)

6 MS. ADAMS: I know. And she also stated that
7 she does not want to determine someone else's fate or be
8 a deciding factor for ---

9 THE COURT: Well, I think that the main thing
10 is that she has been an alleged victim of domestic
11 violence. And obviously, that's an issue that would
12 probably -- is involved in allegations here, and I
13 believe that -- or lend themselves to the issues here.
14 I'm going to excuse her.

15 Now ask the juror to join us. This is 349.

16 (WHEREUPON, Potential Juror 349 entered the
17 courtroom.)

18 THE COURT: All right. Are you juror 349?

19 THE POTENTIAL JUROR: I am.

20 **POTENTIAL JUROR 349,**

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

22 **EXAMINATION**

23 **BY THE COURT:**

24 Q. You will remember last Monday I put all jurors under
25 oath. You do understand that that oath continues.

1 You're still under oath and that oath continues

2 throughout these proceedings?

3 A. Yes, sir.

4 Q. Now, we needed you to come in this morning because

5 we have looked over your answers to your questionnaire.

6 And are those answers still your answers, and do you have

7 any changes to make in the answers to the questionnaire?

8 A. No, sir.

9 Q. It seems that you've been a victim yourself; is that
10 correct?

11 A. From my exhusband years ago, yes, sir.

12 Q. And it was prosecuted by this Solicitor's office?

13 A. I think it was ---

14 Q. It was here in Anderson?

15 A. Yeah. I mean, it was thrown out a couple of times.

16 Q. Plus I think you've got some medical problems that
17 you're a little concerned about?

18 A. Me?

19 Q. Yes, ma'am. Something about ...

20 A. No.

21 Q. Maybe I misread something.

22 A. Not that I know of.

23 Q. Well, I guess I was being a little bit too much -- I
24 was reading something else, and I've gone through so many
25 of these. But I do understand that you have things that

1 would require you to -- not sitting for long periods of
2 time?

3 A. Yes.

4 Q. All right. But that's a little different.

5 A. It's not bad as it seems.

6 Q. All right. Well, no -- and having done that and
7 having looked at it and your questions and, as I say,
8 because of your candor on those questions and also your
9 feelings about what you would have to do as a juror, I --
10 but the main thing is because of your unfortunate
11 experiences, I am going to excuse you from the trial of
12 this case. I regret that you had to come in.

13 A. That's fine.

14 Q. But I needed to talk to you and be sure that those
15 were your answers and still are your answers. All right.
16 And I do thank you for your patience with the Court. I
17 thank you for being here, and I also thank you for your
18 straightforward and candid answers.

19 A. Thank you.

20 Q. So you will be excused. All right. That concludes
21 your services as a juror, all right?

22 THE POTENTIAL JUROR: Yes, sir.

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

24 (WHEREUPON, Potential Juror 349 exited the
25 courtroom.)

1 THE COURT: All right. I think that's the
2 morning, isn't it?

3 MS. ADAMS: Yes, sir.

4 MR. MCGUIRE: Yes, sir.

5 THE COURT: We didn't do too well. I think we
6 got, what, two?

7 MS. ADAMS: Three. Three out of three.

8 THE COURT: Three out of three.

9 MS. BYFORD: Three out of six. Half. Fifty
10 percent.

11 THE COURT: Ma'am?

12 MS. ADAMS: Fifty percent.

13 THE COURT: Yeah, we need to do better than
14 that, I guess. So we are back and talking about the --
15 have you given me you've got five more minutes before you
16 give me your answer on the -- what do you have ...

17 MR. MCGUIRE: Judge, we'll just let it go.

18 THE COURT: All right. I think that would
19 probably be best. Okay. And that's what, 333. Any
20 objection to that from the State?

21 MS. ADAMS: No, sir.

22 THE COURT: All right. Madam Clerk, if you
23 would notify 333 that we will excuse her. Thank her for
24 her service of course.

25 THE CLERK: Thank you, Your Honor.

1 THE COURT: All right. Now, that's -- we've
2 got forty-four? That puts us down to forty-four, and
3 we'll have to wait and see. We might have to go into
4 tomorrow, but I would like not to. What I like is not
5 what controls. All right.

6 Anything further from the State before we take a
7 lunch break?

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

9 THE COURT: Anything from the Defense?

10 MR. MCGUIRE: No, sir.

11 THE COURT: All right. I might -- since we're
12 a little bit ahead this morning, why don't we try to be
13 back by one-thirty. So as soon as the panel gathers,
14 then we can start at that time. We may get a little bit
15 ahead in the afternoon.

16 MR. MCGUIRE: Yes, sir.

17 THE COURT: All right. See y'all at one-
18 thirty.

19 MS. ADAMS: Thank you, Judge.

20 (WHEREUPON, court stood at recess for the lunch
21 break.)

22 THE COURT: All right. Are we ready to proceed
23 from the State?

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

25 THE COURT: From the Defense?

1 MR. MCGUIRE: Yes, sir, Your Honor.

2 THE COURT: I understand that we have some
3 jurors already here. Is 359 one of them?

4 THE CLERK: They are all present, Your Honor.

5 THE COURT: All right. Then let's ask the
6 Juror -- wait a minute. Is there anything from the State
7 on Juror 359?

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

9 THE COURT: From the Defense?

10 MR. MCGUIRE: No, sir.

11 THE COURT: All right. Very good.

12 Ask 359.

13 (WHEREUPON, Potential Juror 359 entered the
14 courtroom.)

15 THE COURT: All right. Are you Juror 359?

16 THE POTENTIAL JUROR: Yes.

17 **POTENTIAL JUROR 359,**

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

19 **EXAMINATION**

20 **BY THE COURT:**

21 Q. You will recall on Monday of last week I put all the
22 jurors under oath. And do you understand that you're
23 still under oath and this oath continues throughout these
24 proceedings?

25 A. Yes.

1 Q. You have been provided with a list of potential
2 witnesses. These are witnesses that may be called. They
3 do not have to be called. Have you had an opportunity to
4 review that witness list?

5 A. I did.

6 Q. Did you recognize any names?

7 A. Well, I just know a name. I really don't know them.
8 If this is the same person, I only knew him when he was
9 very young. I don't even -- I think he's a police
10 officer, but the guy I know isn't a police officer, so
11 ...

12 Q. Would that -- if it was the person that you knew or
13 anyone else on there that you might know, would that in
14 any way affect your ability to give both the State and
15 the Defendant a fair and impartial trial if they should
16 testify?

17 A. No. Like I said, if I even knew him, it was so long
18 ago, I don't really know nothing about them.

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

22 A. Yes.

23 Q. Has this caused you any problem?

24 A. No.

25 Q. The trial of this case will last for some time,

1 approximately a week or ten days. Other than the
2 personal inconvenience this would pose to you -- or
3 excuse me. Other than the personal inconvenience, would
4 this pose a serious danger to the health or well-being of
5 yourself or anyone else who is dependent upon you?

6 A. (Shook head back and forth in the negative)

7 Q. She ---

8 A. Oh, I'm sorry. No. I'm sorry.

9 Q. All right. I'm sorry. She -- the court reporter
10 keeps a record of everything that's said in the
11 courtroom, so we need to speak.

12 Among other things, today we'll be talking about
13 penalty. But the mere fact that we talk about penalty
14 does not indicate anything about this Defendant or any
15 defendant. Defendants under our law are presumed to be
16 innocent. Do you understand that?

17 A. Yes.

18 Q. If you were a juror in a criminal case, could you
19 listen to the law, accept and apply that law as I would
20 instruct you as the Judge even though you may not agree
21 with that law or think it ought to be something else?

22 A. Yes, I think so.

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

1 A. Yes.

2 Q. In a criminal case, the State has the burden of
3 proving guilt. The burden of proof for the State is
4 beyond a reasonable doubt. A defendant has no burden
5 whatsoever to prove anything to include his innocence or
6 anything else. In other words, he doesn't even have to
7 testify or offer evidence. Do you understand that?

8 A. Yes.

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

12 A. Yes, I'd hope so.

13 Q. All right. Well, meaning, if in one particular
14 case, if the facts and evidence and the law were such,
15 that you could find them guilty in that case. And in
16 another particular case where the facts and evidence and
17 law were such, that you could find them not guilty?

18 A. Yes.

19 Q. All right. If you were a juror in a death penalty
20 case and if the jury had found the defendant guilty of
21 murder, you would then move to the sentence phase of the
22 trial. Do you understand that?

23 A. Yes.

24 Q. When you hear us refer to a capital case or a death
25 penalty case, what we mean is that it is a criminal

1 murder trial where the prosecutor -- in other words, the
2 State -- is seeking the death penalty. Do you understand
3 this?

4 A. Yes.

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

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

8 Part two is the sentencing phase where a jury determines
9 the appropriate punishment. Of course, if the defendant
10 is found not guilty in the first phase, then that ends
11 the matter and there's no further considerations. Do you
12 understand?

13 A. Yes.

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

19 A. Yes.

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

1 A. Yes.

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

6 A. Yes.

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

15 A. Uh-huh (affirmative)

16 Q. Do you also understand that the jury has two options
17 to consider regarding the sentence for murder? One
18 option is life imprisonment which under our law is until
19 death of the defendant. That is, without possibility of
20 parole. Do you understand?

21 A. Yes.

22 Q. The other option is death which in this state is by
23 electrocution or lethal injection. Do you understand
24 that?

25 A. Yes.

1 Q. Could you, as a juror in the sentencing phase
2 depending upon the facts including all relevant
3 aggravating and mitigating circumstances and the law as
4 instructed to you, render a sentence of life
5 imprisonment?

6 A. Yes.

7 Q. On the other hand, as a juror in the sentencing
8 phase depending upon the facts including all relevant
9 aggravating and mitigating circumstances and the law as
10 instructed to you, could you render a sentence of death?

11 A. Yes.

12 Q. Very good. Thank you, ma'am. Answer any questions
13 that the attorneys may have.

14 THE COURT: Mr. McGuire?

15 DIRECT EXAMINATION

16 BY MR. MCGUIRE:

17 Q. Good afternoon, Juror 359.

18 A. Yes.

19 Q. I have to refer to you by number. I'm not being
20 rude.

21 A. That's okay.

22 Q. It's just -- if you would forgive me that. It's a
23 little awkward for me.

24 You indicated that you prefer life without parole
25 over the death penalty, to paraphrase your answer. Is

- 1 that a fair statement?
- 2 A. Well, I guess it would be according to, I guess, the
3 facts.
- 4 Q. Okay.
- 5 A. You know, without knowing facts, I guess I would be.
- 6 Q. Yeah. We're kind of talking ---
- 7 A. I mean, it has a lot to do with, you know, the case
8 and the facts and the things that I'd hear.
- 9 Q. Okay. But to just go over some ground that the
10 Judge went over, you can consider both a death sentence
11 and a life sentence depending on the facts?
- 12 A. Right.
- 13 Q. But would it -- would this statement seem to
14 describe you? You're not a zealous proponent of the
15 death penalty.
- 16 A. I mean, I never really even thought about it ---
- 17 Q. Okay.
- 18 A. --- until this. And then I got to thinking about it
19 the last few days.
- 20 Q. Okay.
- 21 A. Like I said, it would have to do with what was going
22 in the trial, what I hear and how I interpret it and, you
23 know, like that has to be the verdict, whatever. If I
24 have to do that, I would. I could.
- 25 Q. Okay. Well, let's talk about that a little bit.

1 A. Okay.

2 Q. You would never have to return death verdict. Did
3 you know that?

4 A. No.

5 Q. Some people show up and -- you know, most of us,
6 let's face it -- if we're not a lawyer, we get most of
7 our knowledge ---

8 A. Uh-huh (affirmative).

9 Q. --- of the criminal justice system from TV, the
10 newspaper, magazines, or such. There's no case, not in
11 the country, not in South Carolina, that is automatic
12 death penalty meaning that if -- there's no situation
13 where if the State proves A, B, and C, that it's an
14 automatic death penalty case ever.

15 A. Okay.

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

17 A. Yeah.

18 Q. A lot of people think, you know, if -- well, if the
19 State proved, for instance, that it was a -- the killing
20 involved an officer in the line of duty, then maybe it
21 might be automatic death penalty. But there's no such
22 case. Does that make you feel a little bit better about
23 sitting as a juror?

24 A. Yes, I think so.

25 Q. Okay. The Judge would instruct the whole jury that

1 any juror could vote for the life penalty, the life in
2 prison penalty, for any reason, no reason, grace, mercy
3 or anything they see in the case. Is that a principle
4 that you're okay with?

5 A. See, that's hard to say. I haven't really sat
6 through anything like that, so ...

7 Q. Sure. It's kind of hard to talk in the abstract.

8 A. Yeah.

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

11 (Off record discussion)

12 MR. MCGUIRE: Thank you.

13 Q. What I'm going to do is start with the definition of
14 murder in South Carolina ---

15 A. Uh-huh (affirmative).

16 Q. --- so we have a starting point to talk about.

17 Okay?

18 A. Uh-huh (affirmative).

19 Q. The Judge would define murder to the jury as the
20 unlawful killing of another human being with malice
21 aforethought. It's called malice murder.

22 A. Uh-huh (affirmative).

23 Q. And malice is defined as the killer operating with a
24 black and malignant heart, fatally bent on evil ---

25 A. Uh-huh (affirmative).

1 Q. --- intentionally, deliberately taking an innocent
2 life. Not self-defense, not accident, that sort of
3 thing. Okay? Are you with me?

4 A. Yes.

5 Q. Okay. And then as bad as that is and sounds, that
6 case is not eligible for the death penalty unless the
7 State brings forth aggravation evidence or aggravating
8 evidence.

9 A. Uh-huh (affirmative).

10 Q. And then, of course, the Defense can also bring
11 forth mitigating evidence like the Judge talked to you
12 about. And generally, that's background information
13 about the Defendant, childhood, did he grow up poor,
14 maybe he's a drug addict, that sort of thing.

15 A. Uh-huh (affirmative).

16 Q. Now, what I'm going to do is give you an example so
17 we can talk a little bit less abstract and a little bit
18 more by way of example.

19 A. Okay.

20 Q. And I'm going to put you on the jury, maybe right
21 over here. And you and eleven other people are sitting
22 on a murder case. Not this one, but some other place,
23 some other time. And it's a capital case. And you and
24 eleven other jurors find the killer guilty beyond any
25 reasonable doubt that he's guilty of murder, intentional,

1 deliberate killing of an innocent person.

2 A. Uh-huh (affirmative).

3 Q. Then you get to go home for a day and take a break.

4 And then you come back, rejoin your other eleven other

5 jurors, and you begin the journey to fix punishment. And

6 of course, like I said, the Defense could introduce

7 background of the defendant stuff. But the example that

8 I'm going to give you in the aggravation part of the case

9 to make it an aggravated murder would be, for example, if

10 the person had been convicted of murder before. And

11 you'd be fixing punishment for somebody for their second

12 conviction of murder. In that kind of case, is the life

13 in prison punishment severe to punish that kind of case?

14 A. At least, I would say so.

15 Q. So you ---

16 A. You said you'd bring on other stuff, so I guess I

17 ...

18 Q. Well, what if ---

19 A. Yeah, at least life imprisonment. I would think so.

20 Q. Okay. And what kind of other stuff would you want

21 to hear?

22 BY MS. ADAMS: Objection, Your Honor. That's

23 not the law. It calls for a hypothetical. He's -- he

24 just asked her what she would ---

25 THE COURT: Again ---

1 MS. ADAMS: --- consider in mitigation.

2 THE COURT: Thank you.

3 Well, let's do keep it within the law because it's
4 not just abstract concept. It's very definite defined
5 principles under our law.

6 MR. MCGUIRE: Sure. I'm just trying to get her
7 personal opinion, Judge.

8 THE COURT: Well, it's not a personal opinion
9 about something that's not relevant.

10 MR. MCGUIRE: I ---

11 THE COURT: You can ask her about certain
12 things that could be considered in a death penalty trial
13 and ask her if those things would be of any importance to
14 her.

15 MR. MCGUIRE: Okay.

16 Q. Would the defendant's walk in life be important to
17 you? Sort of his upbringing, how he became who he is.
18 Is that something you'd want to -- is that relevant in
19 fixing punishment for somebody who may have killed twice,
20 using our example?

21 MS. ADAMS: Objection, Judge. You're going to
22 instruct, the law is can she consider it as instructed,
23 not as specifics ---

24 THE COURT: No. I'm going to permit that he's
25 going to ask -- he can go ahead and ask if that's

1 something that she would consider.

2 A. Well, if it's part of a trial, I would have to --
3 feel like I would have to at least think about it.

4 Q. Okay.

5 A. But if I didn't know any of that, I guess -- are you
6 saying would I choose life imprisonment over death?

7 Q. No, I'm not asking how you'd vote. I'm just saying
8 is -- would that be relevant in just the decision
9 process? I'm not asking you to prejudge anything. Would
10 that just be a factor that would be relevant in the mix,
11 so to speak?

12 A. Well, it's just hard to say.

13 THE COURT: Well, the law determines what's
14 relevant, and that is relevant. It's how -- you want to
15 ask her would she follow the law.

16 Would you follow the law?

17 THE POTENTIAL JUROR: Yes.

18 Q. Okay. If you were ---

19 THE COURT: Well, you didn't ask her if that
20 was the law, would she follow it. I mean, would be
21 relevant to her even though -- when the law says that she
22 can consider it?

23 MR. MCGUIRE: Sure. I'll come back to that if
24 I could, Judge. Thank you.

25 Q. If you were just spending time with friends and --

1 on a street corner or t the water cooler at work or a
2 break room, whatever it might be, and somebody said, you
3 know, there's some crimes that are just so bad, some kind
4 of categories of crimes, like if a child was killed or if
5 a police officer was killed in the line of duty or maybe
6 a rape murder, those crimes should be pretty much
7 automatic death penalty. And they looked at you and
8 said, what do you think about that? What would your
9 response be?

10 MS. ADAMS: Objection, Judge. That's not the
11 law. It's not how she's going to be instructed.

12 THE COURT: That is not the law. We're not
13 going to try this case at the water cooler or on the
14 street corner. We're going to try it in the courtroom
15 under the rules of evidence and the law. And of course,
16 what law requires is that she would be willing to follow
17 the evidence.

18 MR. MCGUIRE: I'm taking that as sustaining the
19 objection?

20 THE COURT: No. That's instruction as far as
21 the question is concerned.

22 MR. MCGUIRE: Judge, I think I need to ask you
23 for a ruling just so I can have a record.

24 THE COURT: All right. We are trying to
25 eliminate the extremes, those who, in spite of the

1 evidence, would automatically vote to convict or impose
2 the death penalty or automatically vote to acquit or
3 impose a life sentence. Either one of those, we're going
4 to eliminate. That's the relevancy of the question. If
5 your question is not relevant to that, then, of course,
6 it won't be permitted.

7 MR. MCGUIRE: Sure. So you're sustaining the
8 objection?

9 THE COURT: No. I'm giving you instruction on
10 what the proper is. I don't agree with her objection
11 either.

12 MR. MCGUIRE: Oh, fair enough. Thank you. I'm
13 sorry. I was ---

14 THE COURT: You're welcome.

15 MR. MCGUIRE: I was confused.

16 THE COURT: Let's move on.

17 MR. MCGUIRE: Sorry.

18 THE COURT: You're not confused. You're doing
19 a good job.

20 MR. MCGUIRE: Thank you, sir.

21 THE COURT: You're welcome.

22 Q. You indicated on one of your questions that you had
23 some religious or moral belief that might play a factor
24 in your decision and might impact it. I don't want to be
25 vague about that. Let me just go straight to it. To the

1 question, do you hold any religious or moral feelings or
2 philosophical principles that would affect your ability
3 to vote for the death penalty as a judgment in this case,
4 you indicated, yes. And you said, it may affect my vote.

5 Can you just tell us all what you were thinking about
6 then or what that means?

7 A. Gosh, it was sort of late when I filled that out, so
8 I'm trying to think. No, I'd just take anything like
9 that into consideration, everything into consideration.
10 I don't take anything lightly when it comes to somebody's
11 life.

12 Q. Okay.

13 A. But as a citizen, I would -- being -- I think I
14 would just take everything in and just pray that, you
15 know, God would give me the right thing to say, the right
16 answer and ...

17 Q. Okay.

18 A. A human life is a human life regardless. And I
19 would want to do the best thing, you know. If it means
20 the death penalty, then death penalty. But maybe life.
21 I don't know. I've never been in a position like that.

22 Q. Sure.

23 A. And I just don't want to take anything lightly like,
24 oh, this is it. So you know, nothing to me is automatic.
25 I'd have to listen to everything. You know, I mean, a

1 death penalty is a pretty serious thing.

2 Q. Sure.

3 A. I just wouldn't say, oh, yes, I would do this or
4 that or not do it.

5 Q. Okay. It sounds like you're being very careful with
6 your thoughts and your answers.

7 A. Yeah.

8 Q. I appreciate that.

9 A. Yeah.

10 Q. And again, there are no wrong answers. Everything
11 you say is actually right. It's your opinion.

12 A. I'm a thinker. I'm more of a serious person. I'm
13 sort of quiet, but I think a lot. So I guess that's why
14 that comes across.

15 Q. Okay. Okay. What I'm going to do just briefly is
16 explain how a sentencing aspect of the case is different
17 from any other criminal case and just ask if you can
18 basically follow the law.

19 A. Okay.

20 Q. And that is the rules are a little bit different in
21 the sentencing phase for both sides. You know, like we
22 talked earlier about aggravation evidence, the State
23 would have to prove that beyond a reasonable doubt to all
24 twelve jurors before they could even ask for the death
25 penalty. And that's kind of in line with what we think

1 of when we think about juries all agreeing on the same
2 reason, speaking with one voice.

3 A. Uh-huh (affirmative).

4 Q. But the rules are different for the life penalty
5 side, the Defense side or the mitigation side. The Judge
6 would instruct the jury that any juror, any one juror,
7 could vote for life for any reason, no reason, mercy,
8 grace or anything they see in the case. Is that an
9 aspect of the law you could follow?

10 A. Yes.

11 Q. Okay. And what I mean by that is if you were on the
12 jury, a juror in the front row could say, you know, I saw
13 something in the defendant's background. And for me,
14 that resonated for me, and I'm going to vote for life
15 because of that. A juror on the back row might say, I
16 saw something about his mental health. And that did it
17 for me, and I'm going to vote for life for that reason.
18 Maybe the juror sitting right next to you says, you know,
19 I listened to the judge, and he said I could vote for
20 life for no reason. And I just feel that's right. I
21 can't even give you a reason. Is that an aspect of the
22 law you could follow?

23 A. (No verbal response)

24 Q. Basically respect everybody to have their own
25 individual reason for voting for life.

1 A. Yes. I think they'd have their reason and I'd have
2 to have mine.

3 Q. Okay. And the decision that a juror reaches in a
4 sentencing case, because it involves a human life,
5 there's not a right or wrong answer to that. It's not a
6 right or wrong penalty. It's just whatever that juror
7 comes to individually, their vote or their decision.
8 It's described in the law as their individual moral
9 judgment. And the law says if it would do violence to
10 their conscience or harm their conscience in changing
11 their individual moral judgment, that would be wrong. Is
12 that an aspect of the law you could respect and follow?

13 A. Yes.

14 Q. And in a capital case, the only time the jury has to
15 be all together, all twelve, is to deliver a sentence of
16 death. It's okay for the jury to come back and say, all
17 twelve couldn't vote for death, all twelve couldn't vote
18 for life. We're split. And you know, people can have
19 different reasons for why they're voting the way they
20 are. And the Judge might say, well, give it another try.
21 See if you can get unanimous. But if you can't, it's
22 okay to come out and say, we just can't agree. The judge
23 would take the case and he'd sentence and end the case
24 right there. Is that an aspect of the law you could
25 follow?

1 A. Yes.

2 Q. And you're entitled, just like the State's entitled,
3 and the Defendant, all entitled to fairness not just in
4 the courtroom out here, but also in the jury room. If
5 you saw things get unfair or if it reached a point beyond
6 civil, you know, deliberations, polite ,civil
7 deliberations, if it got hostile, belligerent or unfair,
8 and somebody was trying to change somebody's individual
9 moral judgment, could we count on you to send a note out
10 to the Judge and say, you know, it's not fair in here, we
11 need to get back to fairness?

12 A. Yes, I would think so.

13 Q. Okay. Because you'd want your opinion respected?

14 A. Uh-huh (affirmative). Yes.

15 Q. And you'd want to respect everybody else's?

16 A. Yes.

17 Q. With regard to the concept of mercy, is mercy
18 something that's freely given and bestowed, or is it
19 earned?

20 A. It's freely given.

21 Q. That's all I have for you, ma'am. Thank you so
22 much.

23 THE COURT: Next?

24 MS. ADAMS: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. ADAMS:

2 Q. Good afternoon. How are you?

3 A. Good afternoon.

4 Q. I'm Chrissy Adams, and I'm the Solicitor for the
5 Tenth Circuit. What I want to do is just ask you a few
6 follow-up questions just to make sure that you can be
7 fair not only to the State, but to the Defense as well
8 during this trial.

9 Now, you know, we're kind of jumping the gun
10 obviously here in assuming that the Defendant is guilty
11 and we're going into the second phase which is the
12 penalty phase.

13 A. Okay.

14 Q. Okay. Now, did you know that not every murder in
15 South Carolina qualifies for the death penalty?

16 A. Yes.

17 Q. Okay. So once -- the jury has to find unanimously
18 that we have proven, the State has proven, an aggravating
19 factor that kind of bumps it up. Okay?

20 A. Uh-huh (affirmative).

21 Q. Now, once you listen to all the aggravation and all
22 the mitigation evidence, it seems like you're going to
23 remain open-minded before you make a decision for
24 yourself?

25 A. That's right.

1 Q. Okay. You want to hear all the facts?

2 A. Yes.

3 Q. Okay. Once you hear the entire case, if you feel
4 that life without parole is appropriate, could you vote
5 for life?

6 A. Yes.

7 Q. Okay. Now, if you feel that the death penalty is
8 appropriate, could you vote for death?

9 A. Yes.

10 Q. Okay. It seems like when you were filling out your
11 questionnaire you really stopped to think about that,
12 about whether or not you could sentence someone to death.
13 Is that fair?

14 A. Yeah. I tried to think about it.

15 Q. Well, no, and that's good. No, that's good.
16 Because it is a very serious -- it's very serious. If
17 you are a potential juror in this case, I want you to
18 kind of move yourself like you're sitting over in that
19 jury box.

20 A. Uh-huh (affirmative).

21 Q. And we're going to ask you to sentence a fellow
22 human being to death. Would you be able to do that?

23 A. Yes, I think so.

24 Q. Okay. The law requires that each and every juror
25 sign his or her name to the sentence sheet if they do

1 vote for death. Okay?

2 A. Uh-huh (affirmative)

3 Q. So if you hear all the facts and circumstances and
4 the jury unanimously says the death penalty should be
5 imposed, every juror has to sign their name to the
6 sentence sheet. And that's the document which actually
7 allows the State to execute another person, and it's a
8 public record. Would you be able to sign your name to
9 that document?

10 A. If I made that decision, yes, I think I could.

11 Q. And you understand during a deliberation,
12 deliberation, in essence, is a give-and-take?

13 A. Uh-huh (affirmative).

14 Q. And while we obviously respect everybody else's
15 opinions, that deliberation process demands that
16 everybody listen to everybody else. And the goal is to
17 come to a consensus no matter what it is. Do you
18 understand that?

19 A. Yes.

20 Q. Okay. And just as though if someone was being
21 unruly, if someone were not participating in the
22 deliberation process, would you be able to let the Judge
23 know that as well?

24 A. Yes.

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

1 A. Thank you.

2 THE COURT: Anything further?

3 MR. MCGUIRE: No, nothing further, Your Honor.

4 THE COURT: At all?

5 MR. MCGUIRE: At all.

6 THE COURT: Anything from the State?

7 MS. ADAMS: Nothing, Judge.

8 THE COURT: All right. Considering the entire
9 voir dire -- and that includes the questionnaire as well
10 the questions that's been asked of you today -- I find
11 that Juror Number 359 will be fair, unbiased, impartial
12 and able to carry out the law as explained to her.
13 Furthermore, I find that the juror's beliefs or attitudes
14 toward the death penalty would not prevent or
15 substantially impair the performance of her duties as a
16 juror in accordance with the law, the Court's
17 instructions and the juror's oath.

18 So you are qualified to sit on the jury. Now, I
19 think you understand what we're trying to do is create a
20 jury pool, in other words, of those people who are
21 qualified to serve as jurors. And from that pool, will
22 be selected the actual jurors. And obviously, this is
23 taking a little bit of time.

24 So you have given your telephone number to the Clerk
25 of Court?

1 THE POTENTIAL JUROR: Yes, I have.

2 THE COURT: All right. You can go about your
3 business and do whatever you'd like until you receive the
4 phone call. It'll probably one evening or something like
5 that.

6 THE POTENTIAL JUROR: Okay.

7 THE COURT: You'll receive a call saying report
8 in the next day or something of that nature.

9 THE POTENTIAL JUROR: Okay.

10 THE COURT: Again, I do thank you for your
11 patience with the Court and your candor. Thank you very
12 much.

13 THE POTENTIAL JUROR: Thank you.

14 (WHEREUPON, Potential Juror 359 exited the
15 courtroom.)

16 THE COURT: All right. Next is Number 360.
17 Anything from the Defendant on Juror Number 360?

18 MR. MCGUIRE: No, sir.

19 THE COURT: Anything from the State?

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

21 THE COURT: All right. Ask 360.

22 (WHEREUPON, Potential Juror 360 entered the
23 courtroom.)

24 THE COURT: One more seat, sir.

25 THE POTENTIAL JUROR: One more chair.

1 THE COURT: Yes, sir.

2 All right. Are you Juror Number 360?

3 THE POTENTIAL JUROR: Yes, sir, I am.

4 POTENTIAL JUROR 360,

5 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

6 EXAMINATION

7 BY THE COURT:

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

12 A. Yes, sir, I do.

13 Q. You have been provided with a copy of a list of
14 potential witnesses. Now, these are witnesses who may be
15 called, but do not have to be called. Have you had an
16 opportunity to review that witness list?

17 A. Yes, sir, I did.

18 Q. Did you recognize any names?

19 A. No, sir.

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

23 A. Yes, sir.

24 Q. Has this caused you any problems?

25 A. Well, I guess I did read some of it.

- 1 Q. All right. What did you read?
- 2 A. Just what was in the paper.
- 3 Q. All right. Well, what day was that? Do you
- 4 remember?
- 5 A. Probably Tuesday, I believe. It was in the paper.
- 6 Q. That was after you appeared in court?
- 7 A. Yes, sir. I read the paper fromfront to the back,
- 8 so I don't skip none.
- 9 Q. Well, have you been doing that each day?
- 10 A. It wasn't in there. I don't think there's anything
- 11 else in there about it. If they did, I didn't pay any
- 12 attention to it.
- 13 Q. Okay. Well, let me ask you, from what you read, can
- 14 you lay aside any outside knowledge or any information
- 15 received prior to this trial and since the qualification
- 16 on last Monday from any source whatsoever and, setting
- 17 aside such knowledge or information, render a fair and
- 18 impartial verdict based solely on the law and evidence
- 19 presented and received during the trial of this case?
- 20 A. I'm not sure I can.
- 21 Q. All right. Let me ask you a few other questions,
- 22 and we'll go on from there. The trial of this case might
- 23 last more than a week or ten days. Other than personal
- 24 inconvenience, would this pose a serious danger to the
- 25 health or well-being of yourself or to anyone who is

1 dependent upon you?

2 A. Not as far as health, no, sir.

3 Q. Well, well-being. In other words, is somebody
4 dependent upon you would have to have you there during
5 the day?

6 A. No, sir.

7 Q. Among other things today, we will be talking about
8 penalty. But the mere fact that we talk about penalty
9 does not indicate anything about this Defendant or any
10 defendant. In South Carolina, all defendants are
11 presumed under our law to be innocent. Do you understand
12 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 the law as I would
16 instruct you as the Judge, and even though you may not
17 agree with that law or think it ought to be some other
18 way, still accept and apply it as I instruct you?

19 A. I suppose, yes, sir.

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

24 A. I'm not sure, sir.

25 Q. All right. Now, that's talking about once the case

1 ---

2 A. Once it starts?

3 Q. Yes, sir.

4 A. Yes, sir.

5 Q. Let me ask you that again.

6 A. All right.

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

11 A. Yes, sir.

12 Q. In a criminal case, the State has the burden of
13 proving guilt. The burden of proof for the State is
14 beyond a reasonable doubt. A defendant has no burden to
15 prove anything, not his innocence or anything else. In
16 fact, he does not have to testify or offer evidence. Do
17 you understand that?

18 A. Yes, sir.

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

22 A. Yes, sir.

23 Q. If you were a juror in a death penalty case and if
24 the jury has found a defendant guilty of murder, you
25 would then move to the sentence phase of the trial. Do

1 you understand this?

2 A. Yes, sir.

3 Q. When you hear us refer to a capital case or a death
4 penalty case, what we mean is that it is a criminal
5 murder trial where the prosecutor -- in other words, the
6 State -- is seeking the death penalty. Do you understand
7 this?

8 A. Yes, sir.

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

13 A. Yes, sir.

14 Q. Part two is the sentencing phase where a jury
15 determines the appropriate punishment. Of course, if the
16 defendant has been found not guilty of murder, then he
17 would not -- that ends the proceedings. There's no
18 further proceedings. 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.

25 A. Yes, sir.

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

7 A. Yes, sir.

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

12 A. Yes, sir.

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

21 A. (No verbal response)

22 Q. Let me read that back to you.

23 A. Read that.

24 Q. All right. Aggravating circumstances are facts or
25 details that, when they are present in a case, make the

1 crime of murder more serious or worse. On the other
2 hand, mitigating circumstances are incidents, occurrences
3 or details of a case that would reduce the severity of
4 the rime of murder. In other words, may reduce the
5 degree of responsibility of the defendant for the crime.

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 imprisonment which under our law is until
10 death. In other words, life without parole. The other
11 option is death which is in this state is by
12 electrocution or lethal injection. Do you understand
13 that?

14 A. Yes, sir.

15 Q. Understanding then, could you, as a juror in the
16 sentencing phase depending upon the facts including
17 relevant aggravating and mitigating circumstances and the
18 law as instructed to you, render a sentence of life
19 imprisonment?

20 A. Yes, sir.

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

25 A. Yes, sir.

1 Q. All right. Please answer any questions that the
2 attorneys may have.

3 THE COURT: Mr. McGuire?

4 DIRECT EXAMINATION

5 BY MR. MCGUIRE:

6 Q. Good afternoon, Juror 360. How are you doing today?

7 A. Fine.

8 Q. I've got to refer to you by number. It's not
9 because I'm being rude or anything. Just got to do that.
10 If you would forgive me that.

11 You indicated to the Judge that you had read some
12 information in the paper on, I think, Tuesday.

13 A. Yes, sir.

14 Q. And do you remember what you read?

15 A. Oh, yeah.

16 Q. And tell me what you read?

17 A. That he'd already been convicted of a previous
18 crime.

19 Q. Uh-huh (affirmative). And ...

20 MR. MCGUIRE: Judge, if I could have just a
21 second.

22 (Off record discussion)

23 Q. If I just wanted to use my words as a lawyer and
24 say, how about you pretend you didn't know that, can I
25 make that happen?

1 A. Probably not.

2 Q. You -- okay.

3 THE COURT: Yes, ma'am?

4 MR. MCGUIRE: Judge, if I could have just one
5 second.

6 THE COURT: Certainly.

7 (Off record discussion)

8 Q. If -- sir, if you were sitting in judgment of this
9 man for a trial, the fact that you know he's been
10 convicted before, fair enough to say that that would play
11 a part in your decision?

12 A. Yes, sir, probably so.

13 Q. Okay. I think that's all I've got for you. Thank
14 you so much, sir.

15 A. Thank you.

16 THE COURT: Any questions of the juror?

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

18 THE COURT: All right. If you would, please,
19 sir, step down. I need to take up some matters with the
20 attorneys.

21 (WHEREUPON, Potential Juror 360 exited the
22 courtroom.)

23 THE COURT: All right. Anything from the
24 Defendant?

25 MR. MCGUIRE: Judge, move for cause. I think

1 we're in agreement that he probably knows a little too
2 much here.

3 MS. ADAMS: And clearly, too, he knew he wasn't
4 supposed to read the article in the paper.

5 THE COURT: I think that that is the telling
6 point because, again, notwithstanding you want to find
7 out if the fact that a defendant had been convicted of
8 another crime would have any effect on the decision. It
9 seems to be all right if it's done at the water cooler,
10 but not in a court of law. My problems with the water
11 cooler venue is that apparently reading the paper is like
12 trying to decide this case at the water cooler. He
13 didn't follow the advice of the -- or admonition of the
14 Court. So I'm going to excuse him.

15 All right. Ask the juror to join us, please.

16 (WHEREUPON, Potential Juror 360 entered the
17 courtroom.)

18 THE COURT: All right. Juror 360?

19 THE POTENTIAL JUROR: Yes, sir.

20 THE COURT: Considering the entire voir dire --
21 that means not only your questionnaire but the questions
22 and answers here today -- I find that you should be
23 excused from serving on the jury in the trial of this
24 case. However, I do want to thank you for your candor.
25 And I think you ought to read newspapers. It's just this

1 wasn't the time to read them.

2 THE POTENTIAL JUROR: Yes, sir.

3 THE COURT: But that's all right. And which
4 you were very honest about it, and that's all that I
5 could ever ask. And I can assure you if you're on
6 another trial and had not gotten that admonition or
7 whatever, you would make a great juror. So I do want to
8 thank you for being here. I appreciate your patience
9 with the Court.

10 THE POTENTIAL JUROR: Thank you, sir.

11 THE COURT: Thank you.

12 (WHEREUPON, Potential Juror 360 exited the
13 courtroom.)

14 THE COURT: All right, 363 is the next one.
15 Anything from the State?

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

17 THE COURT: Anything from the Defendant?

18 MR. MCGUIRE: No, sir.

19 THE COURT: All right, 363.

20 (WHEREUPON, Potential Juror 363 entered the
21 courtroom.)

22 THE COURT: All right. Are you Juror Number
23 363?

24 THE POTENTIAL JUROR: Yes, sir.

25 POTENTIAL JUROR 363,

1 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

2 EXAMINATION

3 BY THE COURT:

4 Q. You will recall on Monday of last week, I put all
5 jurors under oath or their affirmation. Now, do you
6 understand that you're still under oath and that oath
7 continues throughout these proceedings?

8 A. Yes, sir.

9 Q. Thank you, ma'am. You have been provided with a
10 copy of a list of potential witnesses. Have you had an
11 opportunity to review that witness list?

12 A. Yes, sir.

13 Q. Did you recognize any names?

14 A. The name I did recognize was Kameron [REDACTED]

15 Q. All right. The name that you recognized was ...

16 A. The Burns lady's son?

17 Q. The son?

18 A. The son.

19 Q. The son. All right. Would that in any way affect
20 your ability to give both -- do you know the son?

21 A. I know him when I used to work with his mom.

22 Q. You did work with his mother?

23 A. No, in school.

24 Q. All right. Would that in any way affect your
25 ability to give both the State and the Defendant a fair

1 and impartial trial?

2 A. No.

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

5 A. Yes, sir.

6 Q. Has that caused you any problem?

7 A. No, sir.

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

13 A. No, sir.

14 Q. Thank you, ma'am. Among other things, today we will
15 be talking about penalty. But the mere fact that we talk
16 about penalty does not indicate anything about this
17 Defendant or any defendant. Defendants are presumed
18 under our law to be innocent of all charges. Do you
19 understand?

20 A. Yes, sir.

21 Q. Now, if you were a juror in a criminal case, could
22 you listen to the law, accept and apply that law as I
23 would instruct you as the Judge even though you may not
24 agree with that law or think it ought to be some other
25 way?

1 A. Yes, sir.

2 Q. Thank you, ma'am. Could you decide this case based
3 solely and on the evidence presented in this courtroom
4 and disregard anything you may have heard, read or seen
5 about this case?

6 A. Yes, sir.

7 Q. In a criminal case, the State has the burden of
8 proving guilt. The burden of proof for the State is
9 beyond a reasonable doubt. A defendant has no burden to
10 prove innocence or anything else in a case. In fact, a
11 defendant does not even have to testify or offer
12 evidence. Do you understand that?

13 A. Yes, sir.

14 Q. Thank you. Could you, depending on the facts and
15 evidence and the law as I would instruct you in a
16 particular case, find a defendant either guilty or not
17 guilty? Based on the facts and evidence and the law as I
18 would instruct you in one case, find a defendant guilty
19 or it was different in the other case, find him not
20 guilty. Could you find either verdict based on the
21 facts, circumstances and evidence?

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 this?

2 A. Yes, sir.

3 Q. When you hear us refer to a capital case or a death
4 penalty case, what we mean is that it is a criminal
5 murder trial where the prosecutor -- in other words, the
6 State -- is seeking the death penalty. Do you
7 understand?

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 a 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, that ends the whole matter. Do you
15 understand?

16 A. Yes, sir.

17 Q. Therefore, if you were a juror in a trial of a
18 capital case where the jury in phase one of the trial has
19 found the defendant guilty of murder, you would then move
20 on to phase two of the trial which is called the
21 sentencing phase of the trial. Do you understand?

22 A. Yes, sir.

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

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

4 A. Yes, sir.

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

10 A. Yes, sir.

11 Q. Now, aggravating circumstances are facts or details
12 that, when they are present in a case, make the crime of
13 murder more serious or worse than it otherwise would be.
14 Do you understand that?

15 A. Yes.

16 Q. On the other hand, mitigating circumstances are
17 incidents, occurrences or details of a case that would
18 reduce the severity of the crime of murder. In other
19 words, it may reduce the degree of responsibility of the
20 defendant for that crime. Do you understand?

21 A. Yes.

22 Q. And do you also understand the jury has two options
23 to consider regarding the sentencing for murder? One
24 option is life. And in South Carolina it's until death
25 of the defendant. That is life without parole, the

1 possibility of parole. Do you understand?

2 A. Yes, sir.

3 Q. The other option is death which is in this state by
4 electrocution or lethal injection. Do you understand
5 that?

6 A. Yes.

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. (No verbal response)

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 I
16 instruct you, render a sentence of life imprisonment?

17 A. Yes, sir.

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

22 A. Yes.

23 Q. Very good. If you would, please answer any
24 questions the lawyers might have. Thank you, ma'am.

25 THE POTENTIAL JUROR: Am I done?

1 THE COURT: No, no. You need to answer their
2 questions.

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

4 THE COURT: They're going to ask you some
5 questions too.

6 THE POTENTIAL JUROR: Oh.

7 DIRECT EXAMINATION

8 BY MR. MCGUIRE:

9 Q. You're not going to get off that easy.

10 A. I'm sorry.

11 Q. Good afternoon ---

12 A. Good afternoon.

13 Q. --- Juror Number 363. I have to call you by number.
14 It's a little awkward for me.

15 A. Oh, no, no, no.

16 Q. But if you'd just forgive me that. We're here and
17 we're here just for one thing only, ma'am, and that is to
18 get jurors that can be fair to both sides and follow the
19 law. And that's all I'm going to ask you about. Okay?

20 A. Uh-huh (affirmative).

21 Q. And you're in a really special spot today because
22 everything you say is right because we only want your
23 personal thoughts. And whatever they are, they're the
24 right answers. So don't be nervous about anything.

25 Okay? We're just going to ask you for your candid views.

1 I'm going to explain a little bit about how a
2 capital murder trial progresses and just ask you if you
3 can agree with the law. The Judge would tell the jury
4 that murder is the unlawful killing of another human
5 being with malice aforethought. And malice is defined as
6 the killer operating with a black, malignant heart
7 fatally bent on evil, deliberately and intentionally
8 killing somebody else.

9 And as bad as that is and as bad as that sounds,
10 that case is not eligible for the death penalty. The
11 only cases that are eligible for the death penalty are
12 aggravated murder cases. And what that means is that the
13 State would have to come forward with some piece of
14 evidence that would make the malice murder, the
15 intentional killing of an innocent person, even worse.
16 And examples would be killing a police officer, killing a
17 child, killing more than one person, a rape murder, that
18 sort of thing. And the Judge would instruct you that the
19 law would require you to look at that aggravating
20 evidence to see if it could warrant a death sentence.

21 Okay?

22 Is that something you can do, to focus on that
23 aggravation evidence in deciding whether to vote for a
24 life or a death sentence?

25 A. (No verbal response)

1 Q. Actually, I tell you what. I'm doing a pretty bad
2 job of this right now. I'm going to go backwards and
3 fill in the blanks with a little bit more detail.

4 A lot of people, when they show up, they think the
5 death penalty is automatic. Like if the State proves A,
6 B, and C, and then you have to vote death. That's
7 actually not the case. That murder case I was talking
8 about, the malice murder case, a deliberate killing of a
9 person, and then the State would have to make it
10 aggravated, even worse by adding an aggravating factor to
11 it. Even if the jury found unanimously that the person
12 committed murder and they found unanimously that it was
13 an aggravated murder, each and every juror could still
14 vote for life for any reason, no reason, mercy, grace or
15 anything they see in the case. Did you know that?

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

17 Q. Okay. The Judge, as I said, would instruct the
18 whole jury that they could vote for life for any reason.
19 And they wouldn't even have to be the same reason. The
20 only time the jury has to be all twelve unanimous is if
21 they were to return a death sentence. The Judge would
22 tell each individual juror that the jurors can find
23 whatever reason is out there for them to vote for life,
24 and they don't have to agree.

25 You know, normally we think about juries, you know,

1 speaking with one voice and agreeing on everything, but
2 it's not so in a capital case. The jury would have to be
3 unanimous for a death verdict, but each juror could find
4 a different reason to vote for life. Is that an aspect
5 of the law that you can follow?

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

7 Q. Okay. And the way it kind of plays out or by way of
8 example is somebody on the front row can say, you know, I
9 saw something about the Defendant's background, and that
10 did it for me. And that's my reason for voting for life.
11 Somebody on the back row could say, I saw something about
12 his relationship with his grandmother, and that did it
13 for me. I'm going to vote life because of that. And
14 somebody maybe sitting right next to you could say, you
15 know, I listened to the Judge, and he said I could vote
16 for life for no reason. Could you respect the fact that
17 all these people could have their own individual reasons
18 for voting for life?

19 A. Uh-huh (affirmative).

20 Q. In a capital case, one reason that it's different
21 from all other cases is because the jury does have the
22 opportunity to fix punishment. But again, only a death
23 sentence can be returned if all twelve agree. Or all
24 twelve have to agree only if they return the death
25 sentence.

1 It's okay for the jury to come into court and say,
2 you know, all twelve couldn't vote for death, all twelve
3 couldn't vote for life. And we had our individual
4 reasons for voting the way we did. And that's okay. And
5 the Judge might say, well, give it another try. See if
6 you can try to get unanimous. But if you couldn't, it'd
7 be okay to tell the Judge that, and the Judge would
8 actually take the case away from the jury and sentence
9 and end the case right there. Is that an aspect of the
10 law you could respect and follow?

11 A. Yes.

12 Q. And the State, the Defense and you as a juror are
13 entitled to fairness not just out here in the courtroom,
14 but also in the jury room. The way the law describes a
15 juror's decision in a capital case is that it's that
16 juror's individual moral judgment. And the law says if
17 it would do violence to their conscience or harm their
18 conscience to change their individual moral judgment,
19 that that would be wrong.

20 So if you saw things in the jury room getting
21 unfair, you know, kind of beyond polite, civil
22 deliberations, if it got unfair and people were kind of
23 ganging up on somebody, could you send a note out to the
24 Judge and say, you know, it's not fair in here, we need
25 to get back to fairness?

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

2 Q. I'm sorry. She has to take down what you say.

3 A. Oh, I'm sorry. Yes.

4 Q. She can't take down a nod of the head.

5 A. I'm sorry.

6 Q. I know exactly what ---

7 A. I'm sorry.

8 Q. That's okay. Just in the future -- I know exactly
9 what you're saying, but you've got to say yes or no.

10 A. I'm sorry.

11 Q. No, no, you're fine. You're fine. Again,
12 everything you do is right today.

13 The concept of mercy, is mercy freely given and
14 bestowed, or is it earned?

15 A. Explain that again.

16 Q. Well, the Judge would instruct the whole jury that
17 they could give a life in prison sentence just based on
18 mercy alone. So the concept of mercy for you, is that
19 something that's freely given to somebody, or is it
20 earned by somebody?

21 A. I don't know.

22 Q. Okay. Fair enough. Fair enough. In South Carolina
23 if you were -- if you and your eleven other jurors
24 decided that the death penalty was the right -- the
25 appropriate punishment and all twelve agreed and you were

1 one of the twelve, the law would require that you sign
2 your name to a piece of paper so the Judge could see
3 everybody's vote. Could you -- if you voted -- if you
4 thought the death penalty was appropriate and you voted
5 for it, could you sign that piece of paper?

6 A. (No verbal response)

7 Q. Maybe I was a little too wordy there. If the State
8 brought to you the kind of evidence that made the murder
9 aggravated murder, it was a bad murder, and you in your
10 heart thought that the death penalty was the right
11 punishment along with the eleven other jurors, all twelve
12 of you agree that the death penalty is the right
13 punishment, could you vote for it?

14 A. Yes.

15 Q. And the law would require that you sign a piece of
16 paper saying that's my vote. Could you sign that, ma'am?

17 A. Yes.

18 Q. Okay. You're fine. On your questionnaire you
19 expressed some reservations about the death penalty. And
20 you didn't want to be in the position of having to make
21 that choice. But you also seemed to indicate that it was
22 sort of the law of the land, and you could follow the
23 law. Is that fair to say?

24 A. Yes.

25 Q. Okay. If the Judge instructed you before deciding

1 the case that he wants you to look at all the evidence
2 that the State brought in and all the evidence that the
3 Defense brought in before deciding between a life verdict
4 and a death verdict, could you do that? Could you listen
5 to the whole case, all of the case?

6 A. Sure.

7 Q. And that would include the aggravation evidence from
8 the State, the stuff that makes the murder worse, and it
9 would include the mitigation from the Defense which would
10 be, as the Judge will tell you, any reason to vote for
11 life at all. You'd consider -- you'd be fair to the
12 State and consider all their evidence and be fair to the
13 Defense and consider all their evidence?

14 A. (No verbal response)

15 Q. You'd want to consider both sides before making up
16 your mind?

17 A. Uh-huh (affirmative).

18 Q. Right?

19 A. Yeah.

20 Q. Okay. That's all I've got for you, ma'am. Thank
21 you.

22 THE COURT: Madam Solicitor?

23 MS. ADAMS: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. ADAMS:

1 Q. Good afternoon. How are you?

2 A. Good afternoon.

3 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
4 Circuit. I know when the Judge asked you if you knew
5 anybody on that witness list, did you ---

6 A. Uh-huh (affirmative).

7 Q. I thought I heard you say you knew Kameron [REDACTED]?

8 A. Uh-huh (affirmative).

9 Q. Tell me how you know Kameron?

10 A. Well, I used to work with his mama.

11 Q. So you used to work with Kwana?

12 A. Yes. We went to school together.

13 Q. Oh. And you went to -- so you and Kwana were
14 friends?

15 A. Yes, ma'am.

16 Q. Okay. And do you still see Kameron?

17 A. If I go to his grandmother's house, I see him.

18 Q. So you still see him on a regular basis?

19 A. Yes, ma'am.

20 Q. Okay.

21 MS. ADAMS: Your Honor, I have a matter of law
22 I think I'd like ---

23 THE COURT: I understand.

24 MS. ADAMS: --- to take up before we talk some
25 more, if you don't mind.

1 THE COURT: If you would, please, go with the
2 bailiff. I need to talk to the attorneys.

3 THE POTENTIAL JUROR: Okay.

4 MS. ADAMS: We'll get you right back in.

5 (WHEREUPON, Potential Juror 363 exited the
6 courtroom.)

7 THE COURT: Yes, ma'am?

8 MS. ADAMS: Your Honor, Kameron B [REDACTED] is the
9 victim's son. And she claims that she -- she said she
10 worked with Kwana, she and Kwana were friends, she still
11 sees Kameron. We'd move to have her disqualified on that
12 basis.

13 MR. MCGUIRE: And we don't oppose that, Judge.

14 THE COURT: All right. Very good.
15 Ask the juror to join us, please.

16 (WHEREUPON, Potential Juror 363 entered the
17 courtroom.)

18 THE COURT: You know, you didn't ask to be
19 here. It's a -- I am very -- and I say that because this
20 is a very important case to everybody involved. And we
21 want to be sure that the person, the people, who are
22 sitting on the jury don't have any problem with it. Now,
23 based on your very candid and honest -- you know, you
24 told us that you knew the family.

25 THE POTENTIAL JUROR: Yeah.

1 THE COURT: And you still see the family. And
2 I wouldn't want to put you in a position where you would
3 have to explain to anybody anything like that. So
4 considering the entire questioning and all that and your
5 very honest answers, I think you should be excused from
6 having to serve on this trial.

7 THE POTENTIAL JUROR: Thank you.

8 THE COURT: You are quite welcome.

9 THE POTENTIAL JUROR: All right.

10 THE COURT: And I want to thank you. And if it
11 was any other case, you'd make an excellent juror.

12 THE POTENTIAL JUROR: Thank you.

13 THE COURT: You're welcome, ma'am. Thank you
14 for your patience with the Court.

15 THE POTENTIAL JUROR: All right. Bye-bye.

16 THE COURT: Bye-bye.

17 (WHEREUPON, Potential Juror 363 exited the
18 courtroom.)

19 THE COURT: The next one is 370.

20 THE CLERK: Yes, Your Honor.

21 THE COURT: 370, 370.

22 (WHEREUPON, Potential Juror 370 entered the
23 courtroom.)

24 THE COURT: All right. Are you Juror 370?

25 THE POTENTIAL JUROR: Yes, sir.

1 **POTENTIAL JUROR 370,**

2 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

3 EXAMINATION

4 BY THE COURT:

5 Q. Now, do you remember on Monday of last week I put
6 all jurors under oath. Now, do you understand that
7 you're still under oath, and this oath continues
8 throughout these proceedings?

9 A. Yes, sir.

10 Q. Now, you've been provided with a copy of a list of
11 potential witnesses. Have you had an opportunity to
12 review that witness list?

13 A. Yes.

14 Q. Did you recognize any names?

15 A. No. No, I didn't.

16 Q. Do you also recall my instructions from Monday to
17 avoid all forms of media coverage dealing -- excuse me --
18 to avoid all forms of media coverage dealing with this
19 case? Do you remember me instructing you as to that? In
20 other words, do you recall from my instructions on Monday
21 a week ago to avoid all forms of media coverage dealing
22 with this case?

23 A. Yes, sir.

24 Q. Has this caused you any problems?

25 A. No.

1 Q. Now, the trial of this case could last as much as a
2 week or ten days or even longer. Now, other than
3 personal inconvenience that this would cause, would this
4 cause -- would this pose a serious danger to the health
5 or well-being of yourself or anyone else who may be
6 dependent upon you?

7 A. No.

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

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, and even though you may not
18 agree with that law or think it ought to be something
19 else, as I say, listen and accept and apply that law as I
20 instruct you?

21 A. Yes, sir.

22 Q. Could you decide this case based solely and only on
23 the evidence presented in this courtroom, and disregard
24 anything you may have heard, read or seen about this
25 case?

1 A. Yes, sir.

2 Q. In a criminal case, the State has the burden of
3 proving guilt. The burden of proof for the State is
4 beyond a reasonable doubt. And as I've said earlier, the
5 defendant has no burden to prove anything, innocence or
6 anything else. In fact, the defendant does not even have
7 to testify or offer evidence. The entire burden is upon
8 the State to prove guilt beyond a reasonable doubt. Do
9 you understand that?

10 A. Yes, 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 a defendant either guilty or not guilty?

14 A. Yes.

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.

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.

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

2 Part one is the guilty 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. Now, of course, if the
6 defendant is found not guilty, that ends the matter. Do
7 you understand?

8 A. Yes, sir.

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

14 A. Yes, sir.

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

21 A. Yes, sir.

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

1 A. Yes, sir.

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

10 A. Yes, sir.

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

16 A. Yes.

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

20 A. Yes, sir.

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

1 A. Yes.

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

6 A. Yes, sir.

7 Q. Thank you, sir. All right. If you would, please,
8 sir, answer any questions the attorneys may have.

9 MR. MCGUIRE: Judge, I'm going to hold my
10 questions in response.

11 THE COURT: All right. Madam Solicitor?

12 MS. ADAMS: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. ADAMS:

15 Q. How are you?

16 A. All right.

17 Q. I'm Chrissy Adams, and I'm the Solicitor for the
18 Tenth Circuit. And what we want to do right now is make
19 sure that you can be fair not only to the Defendant, but
20 to the State in determining the appropriate punishment in
21 this case. Okay?

22 A. Yes.

23 Q. Now, do you understand -- I want to talk a little
24 bit about the law first. I see that you've sat on a jury
25 trial before, so you've kind of been through it. So you

1 know all about the first phase ---

2 A. Yes.

3 Q. --- which is just deciding whether you're [sic]
4 guilty or not. And so we're going to fast forward and
5 just assume that you're sitting on this jury and there's
6 already been a guilty verdict of murder and we're moving
7 on to the second phase.

8 Now, since not every murder in South Carolina
9 qualifies for the death penalty, the State has to prove
10 beyond a reasonable doubt, unanimously, some sort of
11 aggravation. So you know that?

12 A. Yes.

13 Q. Okay. And once the jury finds that there is an
14 aggravating circumstance, that's when you move on to
15 deciding life or death.

16 A. Right.

17 Q. Okay. Now, I noticed on your questionnaire that you
18 didn't put anything down about how you felt about the
19 death penalty. I know it's kind of -- and I know it's
20 hard because really we're asking you to talk about
21 something that not many people do. And there are no
22 right or wrong answers. We just want to see your opinion
23 and see how you feel.

24 A. Well, really it's hard to explain. I mean, when you
25 haven't dealt with that circumstance, to me, I don't know

1 how to just totally answer that.

2 Q. And that's okay. That's okay.

3 A. That's my honest opinion.

4 Q. All right. Well, do you believe the death penalty
5 should exist? I mean, do you believe in the death
6 penalty?

7 A. Yes. Yes, I do. I mean, and the reason being is
8 because -- I feel that, you know, if it's through
9 aggravation of a certain degree and that's what it
10 requires, then that's what your sentencing should be.

11 Q. So would you base it just on the aggravation that
12 the State goes forward on, or what would you -- would you
13 follow the Judge's instructions and listen to the entire
14 case?

15 A. Yes, totally.

16 Q. Okay. So you want to hear everything before you
17 make up your mind?

18 A. Yes. Yes, totally.

19 Q. Okay. And if the jury does decide that death is
20 appropriate once you hear all the facts and
21 circumstances, the law requires that each and every juror
22 has to sign his or her name to a public document or the
23 sentence sheet that actually says that everyone voted for
24 death. And that's a public record. And that is what the
25 State uses -- that's the document that is put forward

1 that allows the State to kill another human being. Could
2 you sign your name to that document?

3 A. Yes.

4 Q. Okay. It just seems like you're hesitant, so I want
5 to make sure that your hesitancy wouldn't cause you to go
6 towards life versus death.

7 A. No. I hesitated because I wanted to make sure of my
8 answer.

9 Q. Okay. And it's a very serious matter.

10 A. Right.

11 Q. Because if you are seated on that jury -- and I know
12 it's a lot different to actually think about it in the
13 abstract and then be placed in the situation where you
14 are going to potentially sit in that box and decide the
15 fate of the Defendant. And now that you've come face-to-
16 face with him, do you feel that you can do that?

17 A. Yes, I do.

18 Q. And that if you felt that death was appropriate
19 under the circumstances you could not just consider it,
20 but actually vote for it, which would allow the State to
21 actually kill someone else?

22 A. If everything from the Judge and all the
23 requirements of the jury lined up to that, yes.

24 Q. Okay.

25 MS. ADAMS: One second, Your Honor.

1 (Off record discussion)

2 MS. ADAMS: Thank you so much for your honesty.

3 Thank you, Judge.

4 THE COURT: Mr. McGuire?

5 CROSS-EXAMINATION

6 BY MR. MCGUIRE:

7 Q. Good afternoon, Juror Number 370. I've got to refer
8 to you by number. I'm not being rude.

9 A. Right.

10 Q. I just have to do like that. If you could just
11 forgive me that.

12 A. Right.

13 Q. Ms. Adams talked to you a little bit about a capital
14 case and how it works. And she mentioned aggravation and
15 mitigation and the different verdicts, but I'm just going
16 to just talk to you very briefly about the sentencing
17 aspect of a capital case and the rules and the law and
18 just ask if you can follow them because that's what we're
19 here for.

20 A. Right.

21 Q. I believe she indicated to you that, you know, all
22 murders are not eligible for the death penalty. They
23 have to be aggravated.

24 A. Right.

25 Q. The State would have to bring aggravating evidence

1 to the jury. All twelve would have to agree that the
2 aggravating evidence is there beyond a reasonable doubt.
3 And that's kind of in line with how we think about
4 juries. They all -- the jury speaks with one voice, they
5 all agree on the same reason, everybody's unanimous.

6 But for the Defense side of the case or the life in
7 prison side of the case or the mitigation side of the
8 case, different rules apply.

9 A. Right.

10 Q. And they only apply in the special capital
11 situation, a sentencing situation. And the Judge would
12 tell the jury that each individual juror could vote for
13 the life penalty for any reason, no reason, mercy, grace,
14 or anything they see in the case. And they can all be
15 different. Is that a principle of the law you could
16 follow?

17 A. Yes.

18 Q. Okay. And the way it plays out is remember that
19 aggravation would have to exist to all twelve jurors,
20 they'd all have to agree that that existed and agree on
21 it. But on the mitigation evidence, each individual
22 juror can have their own individual reason for voting for
23 life. The way it works out, somebody on the front row
24 could say, you know, I saw something in his background,
25 and that did it for me. I'm going to vote life because

1 of that. Somebody on the back row might say, you know, I
2 saw something about he still has a continuing
3 relationship with a child, and that did it for me.
4 Somebody maybe right next to you could say, you know, I
5 listened to the Judge, and he said I could vote for life,
6 and I don't have to have a reason. And that's what I'm
7 going to do. I just feel that that's appropriate, and I
8 don't even have a reason to give. Could you respect the
9 fact that the law lets everybody have their own
10 individual reason?

11 A. Yes.

12 Q. Okay. And the individual juror's decision in a
13 capital case is called their individual moral judgment
14 based on their walk in life, whatever they think is
15 right. And their ultimate decision is their individual
16 moral judgment. And the law says that if it would hurt
17 their conscience or do violence to their conscience to
18 change that individual moral judgment, that would be
19 wrong. Is that a principle of the law you could follow?

20 A. Oh, yes.

21 Q. You'd want your opinion respected?

22 A. (No verbal response)

23 Q. You'd want your opinion respected?

24 A. Yes.

25 Q. And you'd respect the other jurors' opinions?

1 A. Oh, yeah.

2 Q. Okay. And you know, you as a juror, the State, the
3 Defense, everybody's entitled to fairness in court, and
4 not just out here in the courtroom, but also in the jury
5 room. And if things got beyond civil, polite
6 deliberations and they got hostile or people were trying
7 to get somebody to give up their individual moral
8 judgment, could we count on you to send a note out to the
9 Judge saying, you know, it's not fair in here, we've got
10 to get back to fairness?

11 A. Right

12 Q. Okay. We could count on you to do that?

13 A. Yes.

14 Q. Okay. And let me ask you about the concept of
15 mercy. You know, since the Judge is going to charge the
16 whole jury that they could vote life just based on mercy,
17 is mercy something that's freely given and bestowed or is
18 it earned?

19 A. Say the question again.

20 Q. Okay. Mercy, is mercy something that we just freely
21 give to somebody else, or do they have to earn it to get
22 it?

23 A. Mercy to me is freely given.

24 Q. Okay. That's all I have for you, sir. Thank you
25 very much. You might have to talk to the Judge a little

1 bit longer.

2 MR. MCGUIRE: I've got nothing, Judge.

3 THE COURT: All right. Anything further from

4 ---

5 MS. ADAMS: No, sir, Your Honor. We feel he's
6 very qualified.

7 MR. MCGUIRE: Nothing at all, Judge.

8 THE COURT: All right. Very good. Considering
9 the entire voir dire -- now, that's just the questions
10 that you answered on your questionnaire and as well as
11 all the questions we've asked you today -- I find that
12 Juror 370 will be fair, unbiased, impartial and able to
13 carry out the law as explained to him. Furthermore, I
14 find that this juror's beliefs or attitudes toward the
15 death penalty would not prevent or substantially impair
16 the performance of his duties as a juror in accordance
17 with the law, the Court's instructions and the juror's
18 oath. Therefore, I do find that Juror 370 is qualified
19 to sit or be considered to sit on the jury.

20 The reason I say that, Mr. Juror, that what we're
21 doing here is qualifying a pool of jurors. And from that
22 pool, the alternate and twelve -- and it looks like it
23 might be six alternates -- will be selected to actually
24 sit on the jury. But right now, as you can see, it's
25 going to take us a bit of time, and we -- until we do

1 have all the ones that we need qualified, you can do
2 whatever you need to do or want to do. You did give the
3 Clerk your telephone number?

4 THE POTENTIAL JUROR: Yes, sir.

5 THE COURT: All right. So when the time comes
6 that we have all the pool that we need, then we'll give
7 you a call and then you'll come in probably the next day.
8 And from that pool, we'll select the jury that will
9 actually sit.

10 Very good. Thank you very much for your patience
11 with the Court today and last week too and also for your
12 candor and your honesty and your straightforward answers.

13 THE POTENTIAL JUROR: Thank you.

14 THE COURT: Thank you, sir.

15 (WHEREUPON, Potential Juror 370 exited the
16 courtroom.)

17 MR. DELGADO: Your Honor, it's right at three
18 o'clock. Time for his medication.

19 THE COURT: Okay. Well, I think it's about
20 time for a break, too. All right. So we'll take a short
21 break. And when the Defendant is ready to proceed, let
22 us know.

23 (WHEREUPON, court stood at recess for a short
24 break.)

25 THE COURT: The next one is 372. Anything from

1 the Defense on 372?

2 MR. MCGUIRE: No, sir.

3 THE COURT: Anything from the State?

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

5 THE COURT: Could Counsel approach?

6 MS. ADAMS: Yes, sir.

7 (WHEREUPON, a bench conference was held off the
8 record.)

9 THE COURT: All right. 372, please.

10 (WHEREUPON, Potential Juror 372 entered the
11 courtroom.)

12 THE COURT: Now, are you Juror Number 372?

13 THE POTENTIAL JUROR: Yes, I am.

14 **POTENTIAL JUROR 372,**

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

16 **EXAMINATION**

17 BY THE COURT:

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

22 A. Yes, I do.

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

1 review that witness list?

2 A. Yes, I have.

3 Q. And you know these are potential witnesses. These
4 are witnesses that may be called, but they do not have to
5 be called. Did you recognize any names on the list?

6 A. Not a one, no.

7 Q. You do understand and recall my instructions from
8 Monday to avoid all forms of media coverage dealing with
9 this case, and that was Monday of last week?

10 A. Yes, I do.

11 Q. Has this caused you any problem at all?

12 A. Not at all.

13 Q. The trial in this case will last approximately a
14 week or maybe ten days or maybe even longer. Other than
15 the personal inconvenience, would this pose a serious
16 danger to the health or well-being of yourself or anyone
17 who dependent upon you?

18 A. No, it would not.

19 Q. Now, among other things today, we'll be talking
20 about penalty. But the mere fact that we talk about
21 penalty does not indicate anything about this Defendant
22 or any defendant. Defendants are presumed under our law
23 to be innocent of all charges. Do you understand?

24 A. Yes, I do.

25 Q. If you were a juror in a criminal case, could you

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

4 A. Yes, I could.

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

9 A. Yes, I could.

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 of
13 proof whatsoever. In other words, as I said earlier,
14 he's presumed to be innocent. He doesn't even have to
15 testify or offer any evidence. The State has the sole
16 burden to prove guilt beyond a reasonable doubt. Do you
17 understand that?

18 A. Yes, sir.

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

22 A. Yes.

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 this?

2 A. Yes, I do.

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 a state prosecutor -- in other words
6 -- or the prosecutor -- in other words, the State -- is
7 seeking the death penalty. Do you understand this?

8 A. Yes, I do.

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, that ends the matter and it doesn't
15 go -- there's nothing else to do. Do you understand?

16 A. Yes, sir.

17 Q. Therefore, if you were a juror in a trial of a
18 capital case where the jury in phase one of the trial has
19 found the defendant guilty of murder, you would then move
20 to phase two of the trial which is called the sentencing
21 phase of the trial. Do you understand this?

22 A. Yes, I do.

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

1 murder -- do you understand the jury, rather than the
2 Judge, determines the sentence that a defendant would
3 receive for the crime of murder?

4 A. Yes, I do.

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

9 A. Yes.

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

18 A. Yes, I do.

19 Q. Do you also understand the jury has two options to
20 consider regarding the sentencing for murder? One option
21 is life imprisonment which under our law is until death
22 of the defendant. That is without possibility of parole.
23 Do you understand that?

24 A. Yes.

25 Q. The other option is death which in this state is by

1 electrocution or lethal injection. Do you understand
2 that?

3 A. Yes.

4 Q. Understanding all of this, could you, as a juror in
5 the sentencing phase, depending upon the facts including
6 relevant aggravating and mitigating circumstances and the
7 law as instructed to you, render a sentence of life
8 imprisonment?

9 A. I could, yes.

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

14 A. Yes.

15 Q. Very good. Answer any questions that the lawyers
16 might have.

17 A. Okay.

18 DIRECT EXAMINATION

19 BY MR. MCGUIRE:

20 Q. Hi.

21 A. Hi.

22 Q. Good afternoon, Juror 372.

23 A. Uh-huh (affirmative).

24 Q. I have to refer to you by number. It's a little
25 awkward for me. I'm not being rude. Please forgive me

1 that. I'm just going to go into a little bit more
2 detail. The Judge just gave you some very good
3 guidelines, some general framework. And I'm just going
4 to go into a little bit more detail. And I'm going to
5 start with the definition of murder in South Carolina.
6 The Judge would charge the jury that the definition of
7 murder in South Carolina is the unlawful killing of
8 another human being with malice aforethought. And malice
9 aforethought is described as a black, malignant heart,
10 fatally bent on evil, and the killer deliberately,
11 intentionally kills somebody. It's not self-defense, not
12 an accident, that sort of thing. Are you with me?

13 A. I am.

14 Q. Okay. And then the State -- to make it a capital
15 case, the State would have to come and prove aggravation
16 evidence.

17 A. Uh-huh (affirmative).

18 Q. And the Defense would have the opportunity to
19 present what's called mitigation evidence. That's
20 generally background information of the defendant like
21 his childhood and stuff like that.

22 A. Okay.

23 Q. And what I'm going to do is get you to put yourself
24 in a hypothetical situation. You and eleven other people
25 are on a jury.

1 A. Okay.

2 Q. It's a murder case. And you convict the person of
3 murder, deliberately, intentionally killing somebody with
4 malice aforethought.

5 A. Okay.

6 Q. The Judge would give you a break. You'd get to go
7 home for about a day.

8 A. Uh-huh (affirmative)

9 Q. Then you'd come back.

10 A. Uh-huh (affirmative)

11 Q. And that's when you would start to fix punishment.
12 And the State would bring that aggravation evidence to
13 you because malice murder by itself is not death
14 eligible.

15 A. Okay.

16 Q. It has to worse than that. And we have in South
17 Carolina twenty-one aggravators that can -- it's a fact.
18 And if that fact is present, it makes it aggravated
19 murder. And that's what makes it capital eligible or
20 death penalty eligible.

21 A. Okay.

22 Q. It could be killing a police officer in the line of
23 duty, killing a child, a rape murder, killing more than
24 one person, having a prior conviction for murder, those
25 sorts of things. And what I'm going to do is just -- so

1 we can talk a little bit less in the abstract and with
2 maybe a more example type case -- I'm going to give you
3 the example that the State brings forward aggravation
4 evidence of the person that you found guilty of murder

5 ---

6 A. Uh-huh (affirmative).

7 Q. --- also had a prior conviction for murder.

8 A. Okay.

9 Q. So you would be asked to deliver the death penalty
10 because the person had killed before.

11 A. Okay.

12 Q. What's your opinion about the death penalty as the
13 appropriate punishment in that kind of case?

14 MS. ADAMS: Objection, Judge. That's not the
15 law. She doesn't know the facts. He's staking her out.

16 THE COURT: Again, let's put the question in
17 the context of the law, what she would have to be
18 considering. She's not to be considered just the crime
19 alleged.

20 MR. MCGUIRE: Sure.

21 THE COURT: She's going to also have to
22 consider mitigation.

23 MR. MCGUIRE: Right.

24 Q. Remember when we were talking earlier, I said the
25 Defense could present what's called mitigation evidence?

1 A. Uh-huh (affirmative).

2 Q. It's generally background information of the
3 defendant. Obviously you have the State's evidence, a
4 deliberate killing. And then on top of that the
5 aggravation evidence which would be a prior conviction
6 for murder.

7 A. Okay.

8 Q. And then you'd also have the opportunity to look at
9 the background of the defendant. Based on all of that,
10 what is your opinion about the death penalty as the
11 appropriate punishment for the murder case of somebody
12 who's murdered before?

13 A. Well ---

14 MS. ADAMS: Objection.

15 I'm so sorry.

16 That's just not the law, Judge. She'll be ---

17 THE COURT: I understand. All right. Please
18 -- thank you very much. I'm going to overrule the
19 objection.

20 Go ahead and answer the question, please, ma'am.

21 State your question.

22 A. Okay. Thank you.

23 THE COURT: No, let him state the question so
24 you know what he's talking about.

25 THE POTENTIAL JUROR: Okay.

1 Q. In that situation, the aggravation being the person
2 you're judging, you've just judged them guilty of murder.

3 A. Right.

4 Q. And you found out they had a prior conviction for
5 murder.

6 A. Okay.

7 Q. And you also had the opportunity to look at the
8 defendant's background. What would be your opinion, just
9 sort of in general terms, of the death penalty being
10 appropriate in that kind of case?

11 A. I just think it would depend on the circumstances
12 that were presented in that. So if it -- if it was
13 malice aforethought where, you know, these were brutal --
14 well, they're not all brutal ---

15 Q. Sure.

16 A. --- I could come up -- I could agree with the death
17 penalty. But I just think that there's so much there
18 that would have to consider. It's a decision that would
19 have to weigh very heavy. I think there's a lot of -- I
20 just have a hard time answering that black and white not
21 knowing all of the details. Just to say yes, I would
22 definitely be for it or no, I won't. I don't think it's
23 a given just because they did it before.

24 Q. Okay.

25 A. Is that the ---

1 Q. That's fair enough. That's fair enough. And would
2 the background of the defendant or his characteristics,
3 would that be important in deciding punishment for the
4 murder case?

5 A. No, I don't think so. I think it would really be
6 dependent upon the facts of the case ---

7 Q. Okay.

8 A. --- and what happened. I mean, I might be
9 interested to know what had happened in the previous
10 case, of course, you know. But ---

11 Q. Sure.

12 A. --- not the person's background in and of itself,
13 no.

14 Q. No. And your husband's a military police officer or
15 he was?

16 A. He was, yeah, a few moons ago ago.

17 Q. Okay. Based on that experience, do you have any ---

18 A. He was combat.

19 Q. Okay.

20 A. He was Forth Service Support Group, so he was in
21 Afghanistan and had the detention facility for detainees.
22 And then he was in Iraq and provided, you know, security
23 for convoys. And he was attached to an infantry unit, so
24 he wasn't like an investigator.

25 Q. Got you. Okay. Well, that's exactly where I was

1 going. Thank you for cutting me off at that path.

2 You indicate that a life without parole sentence
3 seems okay, but it's a taxpayer -- a drain on the
4 taxpayers.

5 A. I mean, I was -- you know, that's really my only
6 thought on that is that it, you know, does become. But I
7 also know that, you know, the death penalty isn't without
8 those ramifications, too. So that's my really my only
9 thought with life imprisonment without parole. But I
10 don't have a -- I don't have an issue with it
11 necessarily.

12 Q. Okay. Did you know that the states that have
13 recently abolished the death penalty, all of them did so
14 in part because it's more expensive to have the death
15 penalty than life without parole?

16 A. I did not. I'm not well-versed on that kind of
17 thing. Like I said, I did not ---

18 Q. Yeah. That's one of those things that only lawyers
19 know.

20 A. Okay.

21 Q. But North Carolina was one of the most recent ones,
22 and they could save ten million dollars a year if they
23 ended the death penalty. In Florida, fifty million. Did
24 you know that?

25 A. No, I did not.

1 Q. Okay.

2 A. I do now.

3 Q. It comes down to lawyers are more expensive than
4 guards.

5 A. Okay. Got you.

6 Q. Sort of.

7 A. Sure.

8 Q. Which does make sense.

9 A. Uh-huh (affirmative).

10 Q. What I'm going to do now is just talk to you briefly
11 about how a sentencing case is different from any other
12 criminal case in South Carolina. You know, generally,
13 the jury's concerned with did the person do it or not.
14 Is he guilty or not? Not guilty, he goes home. Guilty,
15 then the judge would sentence.

16 But a capital case, the jury actually has the
17 opportunity to decide punishment. And as the Judge
18 indicated, it would be between a death sentence and a
19 life without parole sentence. Those are the only two
20 options.

21 A. Right.

22 Q. And the rules are different for both sides. For
23 instance, as we were talking about aggravation evidence,
24 the State would have to bring that to all twelve jurors,
25 convince all twelve jurors beyond a reasonable doubt that

1 the aggravation evidence existed. And that you'd all
2 have to agree on the same reason.

3 A. Okay.

4 Q. But it's not so for the Defense side or the
5 mitigation side or the life in prison side.

6 A. Okay.

7 Q. The judge would instruct the jury that any
8 individual juror could vote for life based on any reason,
9 no reason, mercy, grace or anything they see in the case.
10 Is that a principle you could respect?

11 A. Sure.

12 Q. Okay.

13 A. Yeah.

14 Q. And the way it works out is sort of like this. If
15 you are on the jury ---

16 A. Right.

17 Q. --- a juror on the front row could say, you know, I
18 did see something in the guy's, in the fellow's,
19 background, his lot in life, his road that he had to plow
20 when he was growing up. And I'm going to vote for life
21 because of that. It might not be your position.

22 A. Right.

23 Q. But it could be someone else's.

24 A. They all have to agree on death; but only one has to
25 agree for life imprisonment?

1 Q. Well, that's actually a yes. And that's where I was
2 heading. You kind of cut me off at the pass again.

3 A. I'm sorry. I didn't mean to. I was trying to be
4 clear.

5 Q. No. You're very ---

6 A. I'm sorry.

7 Q. You're very perceptive. And that's exactly where I
8 was going. That yes, for a death sentence to be
9 returned, all twelve have to agree.

10 A. Okay.

11 Q. But each individual juror could vote for life for
12 different reasons.

13 A. Okay.

14 Q. And there's no burden of proof which is how the
15 rules are different.

16 A. Okay.

17 Q. It has to be -- aggravation has to be proved beyond
18 a reasonable doubt to all jurors. They all have to
19 agree. But somebody on the front row could say, you
20 know, I'm voting for life because of this reason.

21 Somebody on the back row could say, I'm going to do it
22 for, you know, a different reason. Somebody sitting next
23 to you could say, I'm going to do it for no reason. I
24 just kind of feel that's the right thing to do, but I
25 can't even give you a reason. Could you respect that

1 part of the law that allows everybody to have their
2 individual reason for voting?

3 A. Oh, absolutely, yes.

4 Q. Okay. You'd want your opinion respected?

5 A. Right. Yeah, sure.

6 Q. And you'd respect everybody else?

7 A. Absolutely.

8 Q. And the -- you know, a sentencing decision is not
9 right, and it's not right wrong. It's just whatever that
10 individual juror decides based on their walk in life is
11 the appropriate thing.

12 A. Uh-huh (affirmative).

13 Q. And it's described in the law as that juror's
14 individual moral judgment. And the law says that if it
15 would hurt that person's conscience or do violence to
16 their conscience to change their individual moral
17 judgment, that that would be wrong.

18 A. Uh-huh (affirmative).

19 Q. So you know, you as a juror, the State, the Defense,
20 everybody's entitled to fairness not just out here, but
21 also in the jury room. And while we expect civil, polite
22 deliberations, if it got -- if you were on the jury and
23 it got hostile or belligerent and people were kind of
24 ganging up on somebody, getting them to change their
25 individual moral judgment, could we count on you to pass

1 a note out and say, you know, it's not fair in here right
2 now, judge, we need to get back to fairness?

3 A. Yes, absolutely.

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

5 A. Yes.

6 Q. And you know, it's okay, as we kind of discussed
7 earlier, for the jury to not be unanimous. It's okay for
8 the jury to come out and say, you know, all twelve
9 couldn't vote for death; all twelve couldn't vote for
10 life. And everybody has their own reason. And while the
11 judge might say, well, go give it another try, see if you
12 can get unanimous ...

13 A. Uh-huh (affirmative).

14 Q. ... he might eventually just take the case from the
15 jury and sentence. In fact, he would eventually do that.
16 Is that an aspect of the law you could follow?

17 A. Yes.

18 Q. And just agree to, in a matter so important, end the
19 day agreeing to disagree?

20 A. Yes.

21 Q. Okay. The concept of mercy -- you know, the judge
22 does instruct the jury that they could vote for life just
23 based on mercy alone. Is mercy something that's freely
24 given and bestowed upon somebody, or is it earned?

25 A. That's deep for this afternoon.

1 Q. Sort of a deep question? Deep before four o'clock.

2 (Laughter)

3 A. I know. My goodness. I think everybody has the
4 right to somebody's mercy. Once again, that's kind of a
5 black and white, and I think you're going to learn a lot
6 about someone that, through what you learn, is going to
7 help you decide whether or not you feel that they are
8 deserving of that mercy. But, yes, I do believe that at
9 the outset people should, you know, be given that.

10 Q. Okay. I think that's all I've got for you.

11 MR. MCGUIRE: Judge, if I could have a second,
12 please?

13 (Off record discussion)

14 Q. Ma'am, I forgot. Publicity -- you read, see, hear
15 anything about this case?

16 A. No.

17 Q. Okay.

18 A. Actually, it's not even familiar to me at all.

19 Q. Okay. Fair enough. Thank you so much.

20 A. Uh-huh (affirmative).

21 THE COURT: Anything from the State?

22 MS. ADAMS: Yes, Your Honor, just a few
23 questions.

24 CROSS-EXAMINATION

25 BY MS. ADAMS:

1 Q. Good afternoon.

2 A. Hi. How are you?

3 Q. How are you?

4 A. Good.

5 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
6 Circuit. And we certainly do appreciate your honest
7 answers, and I just have a few follow-up questions.

8 A. Sure.

9 Q. Okay? Once we get to the second phase of the trial
10 and after the Defendant is found guilty, if that is what
11 you feel should happen in the first phase -- you know,
12 we're kind of fast forwarding to this phase -- is it fair
13 to say that you want to remain open-minded and hear all
14 the evidence before you make a decision?

15 A. Definitely.

16 Q. Okay.

17 A. I don't have any -- in fact, one thing on my
18 questionnaire is I don't really have an overly strong
19 opinion one way or the other because I just think there's
20 too many specific circumstances to say, yes, I'm for it
21 or no, I'm against. Yes.

22 Q. So it would depend on what you hear in this
23 courtroom?

24 A. Absolutely.

25 Q. Okay. And do you understand mitigation evidence, if

1 presented by the Defense, is evidence that would tend to
2 make you feel that life is more appropriate than death?

3 A. Yes. Uh-huh (affirmative).

4 Q. Okay. And you would want to hear all that
5 mitigation before you made a decision?

6 A. Oh, sure. I think I'd want to hear all facts before
7 I ...

8 Q. Okay. And so as you sit here today, since you said
9 you've really heard nothing, you don't know ---

10 A. I have no idea, no. And it took a lot of willpower
11 not to get on the Internet and do it.

12 Q. Well, we're glad you didn't.

13 A. So no. I -- no, it's not -- I don't even know if
14 I've heard a news story about it.

15 Q. Okay.

16 A. But if it's not E.S.P.N., then I generally don't see
17 it, so ...

18 Q. All right. Well, good. Good. We hope we don't
19 make E.S.P.N.

20 Mr. McGuire was talking to you a little bit about
21 the deliberation process.

22 A. Uh-huh (affirmative).

23 Q. And I'm sure you understand deliberation is a give-
24 and-take.

25 A. Uh-huh (affirmative)

1 Q. It is the sharing of ideas and respecting other
2 people's opinions ---

3 A. Absolutely.

4 Q. --- in order to come to a decision together as a
5 group.

6 A. Uh-huh (affirmative).

7 Q. Okay. And that basically cost of life without
8 parole versus the death penalty is an arbitrary factor
9 ---

10 A. Sure.

11 Q. --- that you would not consider?

12 A. Right. No, no. I was just was filling out a
13 questionnaire. I didn't really know what else was ...

14 Q. Excellent. Excellent. All right. So I guess in a
15 nutshell basically based on the aggravation and
16 mitigation, you would vote for life if you felt that was
17 appropriate, and you would vote for death if you felt
18 that was appropriate?

19 A. Right.

20 Q. The law does require that each and every juror, if
21 you -- if they voted that death was appropriate ---

22 A. Uh-huh (affirmative).

23 Q. --- that each and every juror has to sign his or her
24 name to the sentence sheet which is the document that
25 allows the State to actually execute a defendant.

1 A. Uh-huh (affirmative).

2 Q. If you voted for death, would you be able to put
3 your name on that public document?

4 A. If I voted for something, I would sign my name to
5 it.

6 Q. Okay. Thank you so much.

7 A. Thank you.

8 THE COURT: Anything else from the Defense?

9 MR. MCGUIRE: No questions. Just one small
10 matter, Judge.

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

13 MS. ADAMS: No, sir.

14 THE COURT: All right. Considering the entire
15 voir dire, I find that Juror Number 372 will be fair,
16 unbiased, impartial and able to carry out the law as
17 explained to her. And furthermore, I find that this
18 juror's beliefs or attitudes towards the death penalty
19 would not prevent or substantially impair the performance
20 of her duties as a juror in accordance with the law, the
21 Court's instructions and the juror's oath. So I do find
22 Juror 372 qualified.

23 Now, Madam juror, you've given your telephone number
24 to the Clerk?

25 THE POTENTIAL JUROR: Yes, sir.

1 THE COURT: All right. What we're doing here
2 is qualifying a pool of jurors who -- from whom the
3 ultimate jury will be drawn.

4 THE POTENTIAL JUROR: Okay.

5 THE COURT: So you will go about your business,
6 whatever you need to do, until you do get the phone call.

7 THE POTENTIAL JUROR: Okay.

8 THE COURT: And when you get the phone call,
9 they'll ask you to report back. And at that time, we'll
10 draw the jury.

11 THE POTENTIAL JUROR: Okay.

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

13 THE POTENTIAL JUROR: So I don't have to be
14 back at a certain time?

15 THE COURT: No, ma'am, not until you get the
16 phone.

17 THE POTENTIAL JUROR: Okay.

18 THE COURT: All right. Great.

19 THE POTENTIAL JUROR: So I'm all set?

20 THE COURT: Yes, ma'am. That's it. Thank you
21 so much for your candor.

22 (WHEREUPON, Potential Juror 372 exited the
23 courtroom.)

24 THE COURT: No, I didn't.

25 MR. MCGUIRE: I can do it on the record now,

1 Judge.

2 THE COURT: All right. Well, let's go ahead
3 and do that, please. I didn't hear that.

4 MR. MCGUIRE: Well, I can do it in absence.
5 It's no trouble.

6 THE COURT: Go ahead.

7 MR. MCGUIRE: I just move for cause based on
8 her initial answers on mitigation evidence, background
9 characteristics of the defendant. She indicated that
10 they would not be relevant to her in fixing punishment.
11 And just based on that, we would move to excuse her for
12 cause based on the Sixth and Fourteenth U.S. Constitution
13 Amendments, and 14 and 15 of the South Carolina
14 Constitution -- Sections and Article I.

15 THE COURT: Anything from the State?

16 MS. ADAMS: Your Honor, just when I explained
17 to her exactly what mitigation evidence was, that it was
18 evidence that tended to make her vote for life over
19 death, and would she want to hear all of that, she
20 unequivocally said, yes, she would. It's been a long
21 afternoon. And Mr. McGuire's question was very
22 misleading, so it did not give the entire law. And we
23 feel that she is qualified because she said that she
24 would want to hear everything.

25 THE COURT: Well, there are many things in it

1 that indicated that the juror could abide by the evidence
2 as well as the jury's -- the Court's instructions. When
3 asked if just background would be enough, well, of
4 course, just background is not the only consideration
5 that the juror would have. In fact, as explained to her,
6 she could -- another juror could have no reason or any
7 reason or mercy itself. And I think the definition of
8 mercy was that it would not require -- it's on an
9 individual basis or something of that nature which was
10 not the theological beta between grace and acts. But
11 more importantly, I do feel that on the total -- totality
12 of the questions when put in context, that she would not
13 automatically or always vote for the death penalty and
14 even though the law provides that. Of course, the law
15 does provide that she may impose a sentence of life
16 without parole. She said she could do that depending on
17 the circumstances of a particular case and the
18 characteristics of an individual defendant. So I find
19 that she's qualified. Note your objection and motion and
20 denied.

21 MR. MCGUIRE: Thank you, sir.

22 THE COURT: All right. Thank you.

23 All right. What's the next one, 379? Anything from
24 the Defendant on 379?

25 MR. MCGUIRE: No, Your Honor.

1 THE COURT: Anything from the State?

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

3 THE COURT: All right. Ask 379.

4 (WHEREUPON, Potential Juror 379 entered the
5 courtroom.)

6 THE COURT: All right. Are you Juror Number
7 379?

8 THE POTENTIAL JUROR: That's correct.

9 POTENTIAL JUROR 379,

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.

18 Q. All right. You have been provided with a copy of a
19 list of potential witnesses. Have you had an opportunity
20 to review those, the witness list?

21 A. Yes.

22 Q. Now, these are potential witnesses. These are
23 witnesses who may be called, but do not have to be
24 called. But did you recognize any names on the jury
25 [sic] list?

1 A. No, sir.

2 Q. I mean, excuse me, witness list.

3 A. Yeah. I have no personal interest in any of the
4 witnesses.

5 Q. Well, did you recognize any of the names?

6 A. No.

7 Q. The reason I ask for that you might recognize
8 somebody that you might not know personally, but you have
9 some business association or some association with,
10 something like that. The question, of course, was going
11 to be if you did have an association or recognition of a
12 particular witness and if the witness testified, would
13 that in any way interfere with your ability to give both
14 the State and the Defendant a fair and impartial trial?

15 A. No.

16 Q. You also recall my instructions from Monday of last
17 week to avoid all forms of media coverage dealing with
18 this case. Has that caused you any problems?

19 A. There has been a lot of media out there. I mean,
20 anytime you turn the TV on or read the paper, it's there.

21 Q. But have you -- has it caused you a problem?

22 A. (No verbal response)

23 Q. In other words, have you seen it?

24 A. Yeah.

25 Q. What have you seen?

1 A. Well, Rivera's first trial and his confession. You
2 know, the first woman and the child with this three-year-
3 old girl that he didn't kill in the first one and the
4 mother he did.

5 Q. All right. Could you put aside anything and all
6 things that you have heard heretofore and not consider it
7 in the trial -- in this trial?

8 A. I would find it very hard. I look at the families
9 involved and the people that have suffered, and I would
10 find it very hard to find him -- you know, something of
11 that nature, it would be hard to just ---

12 Q. Well, the reason I ask that -- and you're doing
13 exactly right. I need to know what your feelings are.
14 And there's no wrong answer or whatever. You're speaking
15 from your heart and you're speaking from your
16 convictions. And I need to know that. I tell you what,
17 I'm going to ask you to, if you would, step aside with
18 the bailiff.

19 THE COURT: Let's see. Do we have a bailiff?

20 THE CLERK: I'll check. I'll be glad to, Your
21 Honor.

22 THE COURT: I need to take some matters up with
23 the attorneys.

24 (WHEREUPON, Potential Juror 379 exited the
25 courtroom.)

1 THE COURT: All right. Anything from the
2 Defense?

3 MR. MCGUIRE: Judge, we'd move for cause based
4 on his exposure to publicity.

5 THE COURT: All right. Any objection?

6 MS. ADAMS: No, Judge. No, sir.

7 THE COURT: And I think so. And again, this is
8 one of those cases where a juror is being very candid and
9 open. And obviously that's what we need.

10 All right. If you would, ask the juror to join us,
11 please.

12 (WHEREUPON, Potential Juror 379 entered the
13 courtroom.)

14 THE COURT: All right. Considering the entire
15 voir dire, I find that Juror Number 379 should be excused
16 from serving on the trial of this case. I say that
17 because what the Court needs is what you gave, and that
18 is a very candid, open and honest assessment and opinion
19 as to how your feelings are going into the trial.

20 THE POTENTIAL JUROR: Yes.

21 THE COURT: And although you'd be an excellent
22 juror in any other case, in this particular case, I think
23 that there are too many things that you already know that
24 would probably make it somewhat -- it might compromise
25 some of your, you know, thoughts and your ability to do

1 what needs to be done, which is to be of course -- what
2 is it -- completely objective and open-minded. Not that
3 you in any way would not be if you could. I just -- you
4 remember when I asked you a few minutes ago could be fair
5 and impartial about witnesses. Well, that question is
6 not only because each of the parties, both the State and
7 the Defendant, are entitled to fair and impartial jurors,
8 but you didn't ask to be here. You were summoned. And I
9 don't want to put anybody on a jury that would feel
10 uncomfortable. You know, in other words if they might
11 have to secondguess something they might have thought
12 about before. I want them to be able to, you know, come
13 in without any difficulty and just realize that they just
14 accept what they hear in the particular case. All
15 criminal cases have to be tried in the courtroom, not on
16 the street corner ---

17 THE POTENTIAL JUROR: Right.

18 THE COURT: --- or in the newspapers or
19 anything like that. And this case apparently has gotten
20 too much publicity for your purposes. And I am just
21 going to just -- what is it -- excuse you for that.

22 I do want to thank you for your candor, your honesty
23 and straightforwardness and also answering these very
24 difficult questions on the questionnaire. But with that
25 that will complete your service. I want to thank you for

1 being here.

2 THE POTENTIAL JUROR: Thank you, sir.

3 THE COURT: And the best of luck, sir. Thank
4 you.

5 (WHEREUPON, Potential Juror 379 exited the
6 courtroom.)

7 THE COURT: All right.

8 MADAM CLERK: Your Honor?

9 THE COURT: Yes, ma'am.

10 MADAM CLERK: This next juror ---

11 THE COURT: Yes, ma'am.

12 MADAM CLERK: --- called it to my attention
13 when I took the phone list in there that his name is on
14 the witness list.

15 MS. ADAMS: His name is what?

16 THE COURT: (Laughter)

17 MADAM CLERK: Then he said, surely there's
18 another Brandon Williams.

19 MS. ADAMS: Who is he?

20 THE COURT: He's on the jury list?

21 MADAM CLERK: Witness list.

22 THE COURT: Witness list.

23 MADAM CLERK: Juror Number 383.

24 (Off record discussions)

25 MS. ADAMS: Your Honor, the Brandon Williams on

1 the witness list works for SLED. And my deputy just said
2 he's been subpoenaed or he was just on the witness list.

3 MADAM CLERK: He just was reading the witness
4 list and said, my name's on the witness list.

5 MS. ADAMS: It's okay.

6 MR. MCGUIRE: Different guy.

7 THE COURT: Well, I'm looking at -- attitudes
8 regarding the death penalty on page 16. That's the only
9 -- was the only answer that he puts down. Do you want to
10 go through it?

11 MS. ADAMS: Judge, we have no objection to
12 excusing him.

13 MR. MCGUIRE: I'd like to ask him some
14 questions.

15 THE COURT: All right.

16 (Laughter)

17 THE COURT: If you hadn't, I would have been
18 surprised. You're just doing your job, and you're doing
19 a very good job at that.

20 MR. MCGUIRE: Thank you, Judge.

21 THE COURT: You're quite welcome.

22 All right. Let's ask juror 383 to join us, please.

23 Now, this is panel what?

24 MR. MCGUIRE: Panel 15.

25 THE COURT: Huh?

1 MR. MCGUIRE: Panel 15.

2 THE COURT: 15.

3 MR. MCGUIRE: Panel 15.

4 (WHEREUPON, Potential Juror 383 entered the
5 courtroom.)

6 THE COURT: All right. Are you juror 37 -- oh,
7 excuse me.

8 THE POTENTIAL JUROR: 383.

9 THE COURT: 383?

10 THE POTENTIAL JUROR: Yes, sir.

11 THE COURT: All right. Thank you, sir.

12 **POTENTIAL JUROR 383,**

13 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

14 EXAMINATION

15 BY THE COURT:

16 Q. I understand there was some concern about your name
17 appearing on the jury [sic] list, but that's not you?

18 A. Yeah, yeah. No, that's not me.

19 Q. All right. Thank you. I just wanted to be sure.

20 You will recall on Monday of last week I put all the
21 jurors under oath. Now, do you understand that you are
22 still under oath and this oath continues throughout these
23 proceedings?

24 A. Yes, sir.

25 Q. You have been provided with a copy of a list of

1 potential witnesses. Other than your own name, have you
2 had an opportunity to review that list and do you
3 recognize any?

4 A. No, sir.

5 Q. You've looked at it?

6 A. I looked at the list, but I don't recognize anyone.

7 Q. All right. Very good. Thank you, sir.

8 Do you also recall my instructions from Monday to
9 avoid all forms of media coverage dealing with this case?

10 A. Yes, sir.

11 Q. Has that caused you any problem?

12 A. No, sir.

13 Q. The trial of this case could last longer than a
14 week, approximately ten days to two weeks even. Other
15 than the personal inconvenience this would cause you,
16 would this pose a serious danger to the health or well-
17 being of yourself or anyone who is dependent upon you?

18 A. No, sir.

19 Q. Among other things, today we we'll be talking about
20 penalty. But the mere fact that we talk about penalty
21 does not indicate anything about this Defendant or any
22 defendant. Defendants are presumed in law to be
23 innocent. Do you understand this?

24 A. Yes, sir.

25 Q. If you were a juror in a criminal case, could you

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

6 A. Yes, sir.

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

11 A. Yes, sir.

12 Q. In a criminal case, the State has the burden of
13 proving guilt. The burden of proof for the State is
14 beyond a reasonable doubt. A defendant has no burden to
15 prove anything at all. As I said earlier, the Defendant
16 is presumed to be innocent of all charges. Do you
17 understand that?

18 A. Yes, sir.

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 a defendant either guilty or not guilty?

22 A. Yes, sir.

23 Q. If you were a juror in a death penalty case and if
24 the jury had found the defendant guilty of murder, you
25 would then move to the sentence phase of the trial. Do

1 you understand this?

2 A. Yes, sir.

3 Q. When you hear us refer to a capital case or a death
4 penalty case, what we mean is that it is a criminal
5 murder trial where the prosecutor -- in other words, the
6 State -- is seeking the death penalty. Do you understand
7 that?

8 A. Yes, sir.

9 Q. A death penalty trial is divided into two parts.
10 Part one is the guilt phase where a jury determines
11 whether the defendant is guilty or not guilty of murder.
12 Part two is the sentencing phase where a jury determines
13 the appropriate punishment. Of course, if the defendant
14 is found not guilty, that ends the matter. Do you
15 understand that?

16 A. Yes, sir.

17 Q. Therefore, if you were a juror in a trial of a
18 capital case where the jury in phase one has found the
19 defendant guilty of murder, you would then move to phase
20 two of the trial which is called the sentencing phase of
21 the trial. Do you understand?

22 A. Yes, sir.

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

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

4 A. Yes, sir.

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

9 A. Yes, sir.

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

18 A. Yes, sir.

19 Q. Do you also understand the jury has two options to
20 consider regarding sentencing for murder? One option is
21 life imprisonment which under our law is until the death
22 of the defendant without possibility of parole. The
23 other option is death which in this state is by
24 electrocution or lethal injection. Do you understand?

25 A. Yes, sir.

1 Q. Could you, as a juror in the sentencing phase
2 depending upon the facts including the relevant
3 aggravating and mitigating circumstances and the law as
4 instructed to you, render a sentence of life
5 imprisonment?

6 A. Yes, sir.

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

11 A. Yes, sir.

12 Q. All right. Please answer any questions the
13 attorneys may have.

14 DIRECT EXAMINATION

15 BY MR. MCGUIRE:

16 Q. Good afternoon, Juror 383. I've got to refer to you
17 by number.

18 A. Yeah.

19 Q. That's a little awkward for me. I'm not being rude.
20 It's just the way we have to do things. If you'd forgive
21 me for that.

22 The Judge instructed you just a second ago would you
23 follow the law that he instructs you even if you disagree
24 with it. And that's something you can do?

25 A. Yes.

1 Q. And if you were on this case, he would instruct you
2 to be fair to both sides and look at all the evidence
3 that the State would present, all the evidence that the
4 Defense would present before making up your mind. Is
5 that something you could do?

6 A. Yes, sir.

7 Q. Okay. And the evidence that the State would present
8 in the penalty phase is generally called aggravation
9 evidence. Things that make the murder worse. Is that --
10 do you understand that?

11 A. Yes, sir.

12 Q. Okay. And mitigation evidence is anything that the
13 Defense might present that would be a reason to vote for
14 the life penalty.

15 A. Okay.

16 Q. And you could also fairly weigh that evidence?

17 A. Uh-huh (affirmative).

18 Q. Is that, you could do that?

19 A. Yes, sir.

20 Q. Before making up your mind regarding the death
21 penalty or the life penalty?

22 A. Yes.

23 Q. Okay. And the -- if the State brought forward the
24 quantity and quality of evidence sufficient to make this
25 a death penalty case for you where you and eleven other

1 jurors agreed that death was the appropriate sentence,
2 you could fill -- the Judge would instruct you that you'd
3 have to sign your name to the sentencing sheet for the
4 Court. You could do that?

5 A. Yes, sir.

6 Q. Okay. And the Judge would instruct the jury that
7 murder in South Carolina is called malice murder. And
8 what it means is that the killer killed somebody
9 unlawfully with malice aforethought. And malice
10 aforethought is described as the killer operating with a
11 black and malignant heart fatally bent on evil and he
12 deliberately and intentionally killed an innocent person.
13 Are you with me?

14 A. Yes, sir.

15 Q. Okay. And that's what we just call malice murder in
16 South Carolina. And as bad as that sounds, that's not
17 even eligible for the death penalty. The State would
18 have to bring what's called aggravating evidence to the
19 jury, and the jury would have to find that it's an
20 aggravated murder before they could consider the death
21 penalty. Okay? You with me?

22 A. Yes, sir.

23 Q. All right. And there are no murder cases in the
24 country and certainly not in South Carolina that are
25 automatic death penalty.

1 A. Uh-huh (affirmative).

2 Q. Each and every juror would always have the right to
3 vote for life in prison. And the judge would tell the
4 jury any jury member could vote for any reason, no
5 reason, mercy, grace or anything they see in the case.
6 Is that an aspect of the law that you could follow?

7 A. Yes, sir.

8 Q. Okay. And if the State brought forward enough
9 aggravation evidence -- and we have twenty-one types of
10 aggravated murders in South Carolina. They can include
11 killing a police officer, killing a child, rape murder,
12 killing more than one person. That sort of thing. If
13 they brought the evidence to you of aggravation that made
14 it an aggravated murder deserving of the death penalty,
15 you could vote for it?

16 A. Yes, sir.

17 Q. And if also you found a reason to vote for life or
18 even if you just felt life was the appropriate punishment
19 for any reason, you could vote for life too?

20 A. Okay.

21 Q. Could you?

22 A. Yes.

23 Q. Okay. And the way sentencing works in a capital
24 case is that -- the rules are different for both sides.
25 The deck is a little stacked against my friends, the

1 prosecutors, because they have to prove evidence beyond a
2 reasonable doubt, and they have to prove it to all twelve
3 jurors. And that's kind of in line with what we think
4 about when we talk about a jury. We always think juries
5 decide things together, they agree on the reason, and
6 they speak with one voice. And it's different in a
7 capital case. And I'm going to tell you about these
8 rules and the law and just ask you if you can respect and
9 follow the aspects of the law.

10 The judge would tell the jury that each individual
11 juror could vote for life for any reason, and they could
12 all be different reasons. For instance, somebody on the
13 front row might say, you know, I saw something in the
14 defendant's background, his childhood maybe, his growing
15 up, his lot in life. And for me, that's my reason for
16 voting life.

17 A. Okay.

18 Q. Somebody in the back could say, you know, I saw a
19 relationship between him and his child. And I found that
20 redeeming, so that's my reason to vote for life. Another
21 juror maybe sitting right next to you might say, you
22 know, the judge said we could vote for life for no
23 reason. And I just think that's the right thing, but I
24 can't even give a reason for it. Could you follow that
25 part of the law that allows everybody to have their own

1 reason for voting for life?

2 A. Yes, sir.

3 Q. Okay. The law describes a juror's decision in a
4 sentencing case as them coming to their individual moral
5 judgment based on their walk in life. And as you might
6 imagine, everybody kind of has their own individual walk
7 in life. And the law also says that if it would hurt
8 their conscience or do harm to their conscience to change
9 their individual moral judgment, that would be wrong. Is
10 that an aspect of the law that you could follow?

11 A. Yes, sir.

12 Q. And the State, the Defense and you as a juror are
13 entitled to fairness not just out here in the courtroom,
14 but also the jury room. And you know, while we expect
15 civil, polite deliberations, if it got unfair in the jury
16 room, belligerent or hostile, trying to change somebody's
17 individual moral judgment, could we count on you to send
18 a note out the Judge saying, you know, it's not fair in
19 here right now, we need to get back to being fair? Could
20 you do that?

21 A. Yes, sir.

22 Q. Okay. Let me ask you about the concept of mercy.
23 Is mercy freely given and bestowed, or is it earned?

24 A. It's earned.

25 Q. Okay. Now, how does somebody go about earning

1 mercy?

2 A. The way you carry yourself. I can't really put it
3 into words right now.

4 Q. Okay. That's fine. That's fine. You might not
5 have an opinion on it.

6 A. Yeah.

7 Q. You might develop one during this case.

8 A. Yeah.

9 Q. Okay. Fair enough. That's all I have for you, sir.
10 Thank you very much.

11 A. You're welcome.

12 CROSS-EXAMINATION

13 BY MS. ADAMS:

14 Q. Good afternoon, how are you?

15 A. I'm all right.

16 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
17 Circuit.

18 A. Okay.

19 Q. And what we want to do today -- our goal is to
20 really just see what your feelings about the death
21 penalty are, okay?

22 A. Okay.

23 Q. And I want you to know that there are no right or
24 wrong answers. Everything that you say in this courtroom
25 is right.

1 A. All right.

2 Q. We just need to know how you feel.

3 A. Okay.

4 Q. Because what -- if you are -- because if you are
5 chosen to be on this jury, you know -- I want you to put
6 yourself in that box where you will actually have to pass
7 judgment and decide if another human being should live or
8 die. Okay? And that is very serious. And a lot of
9 people think that the death penalty is appropriate, but
10 they can never render a death verdict themselves. And
11 that's okay. There's nothing wrong with that view.

12 Okay?

13 A. Okay.

14 Q. And I noticed on your questionnaire that you said
15 that you don't believe in the death penalty when you were
16 asked how you feel about the death penalty.

17 A. Yes.

18 Q. Can you tell me a little bit about that?

19 A. I just thought at one point everybody deserves a
20 second chance.

21 Q. Okay. So you think everybody deserves a second
22 chance?

23 A. Yes.

24 Q. Would that feeling make you always tend to vote for
25 life?

- 1 A. No. You cannot say that, no.
- 2 Q. Okay.
- 3 A. It depends on what you done too.
- 4 Q. It would depend on ---
- 5 A. Consequences.
- 6 Q. Okay. So it would depend on the circumstances of
- 7 the case?
- 8 A. Yes. Yes, ma'am.
- 9 Q. Okay. Because I noticed you didn't fill out the
- 10 other questions, and I feel like you put some thought
- 11 into it though.
- 12 A. Yeah.
- 13 Q. Because you probably don't get asked these questions
- 14 very often, do you?
- 15 A. No, ma'am.
- 16 Q. And we know it's uncomfortable to talk about it,
- 17 which is why we really just want to hear how you feel
- 18 about it. Because you know, like I said, if you put
- 19 yourself in that box, the State is going to have to prove
- 20 to you beyond a reasonable doubt, you know, an
- 21 aggravating circumstance. And you understand that's what
- 22 bumps it up to make this death penalty eligible?
- 23 A. Yes, ma'am.
- 24 Q. Okay. So not all murders are eligible for the death
- 25 penalty.

1 A. No, ma'am.

2 Q. Okay. If you were to sit in that jury, do you feel
3 that you can listen to all the evidence and actually
4 consider putting another human being to death?

5 A. It depends. It depends on the circumstances.

6 Q. Okay. And when you say circumstances, what kind of
7 circumstances do you mean?

8 A. On the case.

9 Q. Oh. In other words, what happened?

10 A. Right. Yeah.

11 Q. In other words, what that person did?

12 A. Yes.

13 Q. Okay. Now, considering the death penalty and
14 actually voting for it, imposing it, are two different
15 things. Okay?

16 A. Yes.

17 Q. The law requires that if a jury does find, based on
18 the facts and circumstances, that the death penalty is
19 appropriate, that you have to sign your name to a
20 sentence sheet. And that's a public document. So your
21 name would be on a public document, and that is what --
22 that document is what the State uses to carry out the
23 sentence of death. So your name would basically allow
24 the State to kill a fellow human being. Would you be
25 able to do that?

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

2 Q. Okay. That's quite all right. And I certainly
3 appreciate the fact that you've considered this because
4 it is important. And coming in here and answering these
5 questions and actually coming face-to-face with the
6 Defendant ---

7 A. Yes.

8 Q. --- you feel you could actually vote to impose the
9 death penalty to kill another human being?

10 A. If I had to, yes, ma'am.

11 Q. And you would base it on the circumstances?

12 A. The circumstances.

13 Q. So if the crime were aggravated enough to you, you
14 could do it?

15 A. Yes, ma'am.

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

17 A. Thank you.

18 THE COURT: All right. Any further questions
19 from the Defense?

20 MR. MCGUIRE: Nothing further, Your Honor.

21 THE COURT: All right. Anything from the
22 Defense?

23 MR. MCGUIRE: Nothing at all.

24 THE COURT: Anything from the State?

25 MS. ADAMS: No, sir.

1 THE COURT: Okay. Considering the entire voir
2 dire, I find that Juror Number 303 ---

3 THE POTENTIAL JUROR: 383.

4 THE COURT: Oh, my goodness. 383, all right.
5 Thank you, sir.

6 ... will be fair, unbiased, impartial and able to
7 carry out the law as explained to him. Furthermore, I
8 find that this juror's beliefs or attitudes toward the
9 death penalty would not prevent or substantially impair
10 the performance of his duties as a juror in accordance
11 with the law, the Court's instructions and the juror's
12 oath. So you will be qualified. Or you are qualified
13 for service on the jury.

14 Now, what we're doing is qualifying a pool of jurors
15 who -- from whom will be selected the jury that actually
16 sits on the trial of the case. Now, this process is
17 going to take us a little time. And you've given the
18 Clerk of Court your telephone number?

19 THE POTENTIAL JUROR: Yes, sir.

20 THE COURT: All right. So she will call you,
21 or somebody on her behalf will call you, when we are
22 ready, when we've got enough qualified for the pool, and
23 they'll ask you to come in. But until that time, you can
24 do anything you need to do or want to do. Just only
25 after you get the telephone call will you report to the

1 courthouse as requested.

2 THE POTENTIAL JUROR: All right.

3 THE COURT: All right. Very good. Thank you
4 so much for your patience with the Court and also your
5 straightforward honesty and candor. We do appreciate it.

6 (WHEREUPON, Potential Juror 383 exited the
7 courtroom.)

8 THE COURT: All right. We're at 386. 386,
9 anything from the Defendant?

10 MR. MCGUIRE: If I could have just one second.

11 THE COURT: All right.

12 (Off record discussion)

13 MR. MCGUIRE: Nothing on paper, Judge.

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

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

17 THE COURT: All right. Ask 386 to join us,
18 please.

19 (WHEREUPON, Potential Juror 386 entered the
20 courtroom.)

21 THE COURT: All right. Are you Juror Number
22 386?

23 THE POTENTIAL JUROR: That's correct.

24 THE COURT: Thank you, ma'am.

25 POTENTIAL JUROR 386,

1 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

2 EXAMINATION

3 BY THE COURT:

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

8 A. Yes, sir.

9 Q. Thank you, ma'am. You have been provided with a
10 copy of a list of potential witnesses. Have you had an
11 opportunity to review that witness list?

12 A. Yes, I have.

13 Q. Did you recognize any names on that list that you
14 recognized?

15 A. No, sir.

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

19 A. That's correct.

20 Q. Has this caused you any problems?

21 A. No, sir, it hasn't.

22 Q. Thank you, ma'am. The trial of this case will last
23 approximately a week or maybe even longer, ten days or
24 so. Other than personal inconvenience this would cause,
25 would this pose any serious danger to the health or well-

1 being of yourself or anyone who may be dependent upon
2 you?

3 A. No, sir.

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

9 A. Yes, sir.

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

17 A. Yes.

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

22 A. Yes.

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. In fact, as I
2 mentioned, the Defendant or all defendants are presumed
3 innocent, and they do not even have to testify or offer
4 evidence. The burden of proof remains on the State to
5 prove guilty beyond a reasonable doubt. Do you
6 understand that?

7 A. Yes, I do.

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

11 A. Yes.

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

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 where the prosecutor -- in other words, the State
20 -- is seeking the death penalty. Do you understand this?

21 A. Yes, I do.

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 Part two is the sentencing phase where a jury determines

1 the appropriate punishment. Of course, if the defendant
2 is found not guilty, that ends the matter. Do you
3 understand that?

4 A. Yes.

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

10 A. Yes.

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

17 A. Yes.

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, I do.

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.

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

14 A. Yes.

15 Q. Therefore, could you, as a juror in the sentencing
16 phase depending upon the facts including relevant
17 aggravating and mitigating circumstances and the law as
18 instructed to you, render a sentence of life
19 imprisonment?

20 A. Yes, I could.

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

25 A. Yes.

1 Q. Very good. Thank you for your answers, and please
2 answer now any questions that the lawyers may have.

3 DIRECT EXAMINATION

4 BY MR. MCGUIRE:

5 Q. Good afternoon, Juror Number 386. I have to refer
6 to you by number. It's a little awkward for me.

7 A. (Laughter)

8 Q. But if you would forgive me that.

9 A. Okay.

10 Q. What I'm going to do is go into a little bit more
11 detail. The Judge gave you some really good guidelines
12 and some framework for a capital case, and I'm going to
13 go into a little bit more detail with you, if that's okay
14 with you.

15 A. Okay.

16 Q. And all of your answers are right. Whatever you say
17 is right because the only thing we want to know is your
18 opinion. So just whatever they are, they are. There are
19 no wrong answers on your part. Okay?

20 A. Okay.

21 Q. The definition of murder in South Carolina --
22 because we've been talking about murder here just for a
23 second, but we haven't even really talked about what it
24 really is. The Judge would define murder to the jury as
25 the unlawful killing of another human being with malice

1 aforethought. And malice aforethought is described as
2 the killer having a black and malignant heart fatally
3 bent on evil and intentionally, deliberately killing an
4 innocent person. Are you with me?

5 A. Yes.

6 Q. What are your views about the death penalty in that
7 kind of case?

8 A. I strongly agree with the death penalty if
9 necessary, if it comes down to it, a person done
10 something that they shouldn't and it's severe, then I
11 agree with it.

12 Q. Okay. And in a capital case the State would come
13 forward with what's called aggravation evidence, and the
14 Defense might come forward with some evidence as well.

15 A. Uh-huh (affirmative).

16 Q. Generally, if the Defense presents evidence, it
17 would be background information regarding the defendant's
18 kind of growing up, his walk in life. That sort of
19 thing. Now, the State would bring aggravation evidence.
20 There's twenty-one, in South Carolina, aggravators. And
21 these are facts that make murder even worse, all the way
22 up into what we call aggravated murder. And what I'm
23 going to do is talk to you about an example of aggravated
24 murder.

25 A. Uh-huh (affirmative).

1 Q. And it could be from, you know, killing a police
2 officer in the line of duty, killing a child, a rape
3 murder, killing more than one person, killing when you
4 have a conviction for murder on your record already,
5 these sorts of things. Okay?

6 A. Okay.

7 Q. And I'm going to give you a case where, you know,
8 you have all that evidence in front of you. You have the
9 defendant presenting background information,
10 characteristics of the defendant. And the aggravation
11 evidence that the State brought forward, let's say for
12 example, would be somebody with a prior conviction of
13 murder. So when you're fixing punishment for your murder
14 case, hypothetically, the reason it's aggravated is
15 because the person had been convicted of murder before.

16 Now, knowing all of that, what's your view about the
17 death penalty as the appropriate punishment in that kind
18 of case?

19 MS. ADAMS: Objection, Judge. That's not the
20 standard. She doesn't know the facts.

21 THE COURT: I understand. It's not in the
22 context of the law that will be charged in this case, but
23 I'll permit him to ask the question.

24 A. I would agree with the death penalty the simple fact
25 because they done it before and, you know, following up

1 again. So yeah.

2 Q. Okay. So that would be the death penalty for you?

3 A. Yes.

4 Q. Okay. And the background of the defendant, his
5 childhood and stuff, would that be relevant in fixing
6 punishment for that kind of person who had been convicted
7 of murder before?

8 MS. ADAMS: Objection, Judge. That's not the
9 law.

10 THE COURT: Again, that's not -- I'm going to
11 -- go ahead. I'll take the question into context.

12 MR. MCGUIRE: Thank you, Judge.

13 A. I don't know. It depends on -- well, no, not
14 really.

15 Q. Okay. Okay. What I'm going to do is talk to you
16 briefly about how a capital case can be different from a
17 regular criminal case and just ask if you can follow
18 these aspects of the law, okay? Or if you can respect
19 these aspects of the law.

20 The Judge would charge the jury that any individual
21 juror could vote for life for any reason, no reason,
22 mercy, grace or anything they see in the case. And while
23 that might not be your position, could you respect that
24 fact that different jurors could vote for life for
25 whatever reason they wanted?

- 1 A. Yes.
- 2 Q. Okay. And the way it plays out is, for instance, if
3 you are on the jury, a juror in the front could say, you
4 know, I saw something about his relationship with his
5 child or his relationship with his grandmother. And I'm
6 going to vote for life because of that. Somebody else
7 might say, you know, the Judge said I could vote for life
8 for any reason or no reason, and I just feel that's
9 right. I don't really have a reason to give you. And
10 somebody else might say, you know, I just -- I saw
11 something in his mental health, and that did it for me.
12 And so I'm going to vote for life for that. Could you
13 respect the fact that other jurors could have these
14 different reasons for voting for life and they wouldn't
15 necessarily have to be the same reason?
- 16 A. Yes.
- 17 Q. You'd want your personal opinion respected?
- 18 A. Well, yeah. I thought you said the opinion about
19 what I think about it?
- 20 Q. Sure. Well, I understand these might not be your
21 opinions ---
- 22 A. Uh-huh (affirmative), yes.
- 23 Q. --- regarding the background and stuff like that of
24 the defendant.
- 25 A. Yeah.

1 Q. These might not be your views. But if other people
2 came to those views, you could respect their views?

3 A. Yeah, I'd respect theirs.

4 Q. Okay. And capital cases are different from other
5 cases because the jury does have the opportunity to fix
6 judgment on somebody. And the way the law describes it
7 is that it's each individual juror's individual moral
8 judgment. Like when they finally decide what they want
9 to do in the case, it's their individual moral judgment.
10 And the law says that if it would harm their conscience
11 or do violence to their conscience to change their
12 individual moral judgment, that would be wrong. Is that
13 an aspect of the law that you could agree with?

14 A. Yes.

15 Q. And what I'm getting at is everybody's entitled to
16 fairness in this case. You as a juror are entitled to
17 fairness, the State, the Defense, everybody. And if
18 things got hostile or belligerent or unfair in the jury
19 room because people were trying to get somebody to change
20 their individual moral judgment and it wasn't fair -- it
21 was kind of like they were ganging up on them -- could
22 you send a note out to the Judge saying, you know, it's
23 not fair in here, we need to get back to fairness?

24 A. Yes.

25 Q. And we could count on you to do that?

1 A. Yes.

2 Q. Okay. Regarding the concept of mercy, is mercy
3 freely given and bestowed upon somebody, or is it earned?

4 A. It's earned.

5 Q. Okay. And how does somebody go about earning mercy?

6 A. Well, I feel if they plead their case or according
7 to whatever it is, and that they can do it that way.

8 Q. Okay.

9 MR. MCGUIRE: And Judge, this is where I would
10 ask my questions one through six pursuant to my two
11 written voir dire motions.

12 THE COURT: Now do those questions also include
13 instructions to consider any relevant mitigating factors?

14 MR. MCGUIRE: They ---

15 THE COURT: And directions to consider whether
16 the mitigating factors are sufficient to preclude the
17 death penalty in position.

18 MR. MCGUIRE: Not specifically. It does ask
19 what their opinions are like would background factors --
20 and I give some examples -- would it be relevant in
21 fixing punishment in certain kind of cases? But the
22 answer to your ---

23 THE COURT: But it doesn't have all the
24 mitigating -- it doesn't even have the statutory
25 mitigating, does it?

1 MR. MCGUIRE: I ---

2 THE COURT: It's only background?

3 MR. MCGUIRE: Well, it's background. And I
4 use, I think -- I do think I use two that would be
5 statutory, which would be childhood and, I think, drug
6 addiction in my written motions.

7 THE COURT: I'm just curious. And if it
8 doesn't then, of course -- what is it -- that's the
9 reason I couldn't give only half a question.

10 MR. MCGUIRE: I understand the Court's
11 position.

12 THE COURT: Very good..

13 Yes, ma'am?

14 MS. ADAMS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. ADAMS:

17 Q. Good afternoon. How are you?

18 A. Doing good.

19 Q. Good. I'm Chrissy Adams. I'm the Solicitor for the
20 Tenth Circuit. And we certainly do appreciate your being
21 here and your honesty in filling out the questionnaire.
22 What we want to make sure today is that we know your
23 feelings about the death penalty because there are no
24 right answers, and there are no wrong answers. They're
25 just your answers. And we want to make sure we

1 understand that and that you can be fair not only to the
2 State, but to the Defense as well.

3 A. Yeah.

4 Q. Okay. And you understand that the Judge is the one
5 that's going to instruct you and the jury, the entire
6 jury if you're selected, on the law.

7 A. Yes.

8 Q. So if you hear something that I say or that the
9 Defense says, but the Judge instructs you, he's the man
10 to go by with the law. Okay? And I just want to make
11 sure you understand that.

12 A. Yes.

13 Q. Which is sometimes why we object to the other
14 people.

15 Is it fair to say that you would want to hear all
16 the evidence, not only the aggravation that the State has
17 to prove beyond a reasonable doubt, but all the
18 mitigation, before you decide another person's life or
19 death?

20 A. Yes.

21 Q. Okay. Do you understand exactly what mitigation is?

22 A. Yes.

23 Q. Okay. Something that would tend to make you want to
24 vote for life over death?

25 A. Yes.

1 Q. So it's a lot of different things besides just
2 background of an individual.

3 A. Yes.

4 Q. And you would listen to the Judge's instructions and
5 follow that and listen to all the mitigation and not just
6 the aggravation before you made a decision?

7 A. Yes.

8 Q. Okay. And once you did, if you felt that life was
9 appropriate, could you vote for life?

10 A. Yes.

11 Q. Okay. And if you felt that death was appropriate,
12 could you vote for death?

13 A. Yes.

14 Q. Now, you understand that the law also requires if
15 the jury determines that the death penalty is
16 appropriate, that each and every juror signs his or her
17 name to the sentence sheet which is a public document.

18 A. Yes.

19 Q. Okay. And that is the document that actually allows
20 the State to kill another human being. Could you sign
21 your name to that public document?

22 A. Yes.

23 Q. Okay. Thank you so much.

24 A. Thank you.

25 MS. ADAMS: Nothing further, Judge.

1 THE COURT: All right. Anything further from
2 the Defendant?

3 MR. MCGUIRE: Judge, we would just have a small
4 legal matter.

5 THE COURT: All right. Thank you. I need to
6 take something up with the attorneys.

7 THE POTENTIAL JUROR: Sir?

8 THE COURT: I say I need to take up -- let me
9 ask you this question. If a defendant is found guilty
10 for murder, would you automatically vote to impose the
11 death penalty no matter what the facts are?

12 THE POTENTIAL JUROR: No.

13 THE COURT: Thank you very much, ma'am. If you
14 would, go with the bailiff.

15 THE POTENTIAL JUROR: Thank you.

16 THE COURT: And I will ask you to come back in
17 just a few minutes.

18 THE POTENTIAL JUROR: Okay.

19 THE COURT: Thank you, ma'am.

20 (WHEREUPON, Potential Juror 386 exited the
21 courtroom.)

22 THE COURT: All right.

23 MR. MCGUIRE: Just for the record, Judge, I
24 move to challenge for cause based on her answers
25 regarding her predisposition to vote for death,

1 especially in a case where somebody had a prior
2 conviction for murder. She's specific automatic death
3 for this case. And she also indicated that she would not
4 consider background information and characteristics of
5 the Defendant in fixing punishment, so she would be
6 mitigation impaired. And my grounds would be -- and also
7 I would object to not being able to ask my six questions
8 I submitted in writing. And the grounds for our motion
9 are the Sixth and Fourteenth Amendment of the United
10 States Constitution, Section 14 and 15 Article I of the
11 South Carolina Constitution.

12 THE COURT: Very good. Anything from the
13 State?

14 MS. ADAMS: Your Honor, we feel she's
15 qualified.

16 THE COURT: Well, of course, I've got to do the
17 totality of the voir dire which includes the
18 questionnaire as well as the answers to the questions
19 here in the court today. The last question I asked is
20 directly the question that the court did not permit the
21 defendant to ask in *Morgan versus Illinois*. And
22 considering that, particularly in light of all of the
23 juror's responses, that I do find that she would be
24 qualified.

25 All right. Ask the juror to join us.

1 (WHEREUPON, Potential Juror 386 entered the
2 courtroom.)

3 THE COURT: All right. Considering the entire
4 voir dire, I find that Juror Number 386 will be fair,
5 unbiased, impartial and able to carry out the law as
6 explained to her. Furthermore, I find that this juror's
7 beliefs or attitudes toward the death penalty would not
8 prevent or substantially impair the performance of her
9 duties as a juror in accordance with the law, the Court's
10 instructions and the juror's oath.

11 Madam Juror, this says that you are qualified as a
12 juror in this case. Now, what we're doing is we're
13 trying to get a pool of jurors from whom the actual jury
14 will be drawn. And as you can see, it takes a while to
15 do that. So you have given your number to the Clerk of
16 Court?

17 THE POTENTIAL JUROR: Yes.

18 THE COURT: All right. When the time comes to
19 have a pool, we've got enough for the pool, we'll have
20 them to come back. You'll get a phone call. And then if
21 you would, please, come in, and then we'll select the
22 jury from that pool.

23 THE POTENTIAL JUROR: Okay.

24 THE COURT: Again, I want to thank you for your
25 patience with the Court, and I also want to thank you for

1 your candor and your straightforward answers here. They
2 were difficult questions, and I don't even know if anyone
3 knows all of the answers to them. And I thank you very
4 much ---

5 THE POTENTIAL JUROR: Okay.

6 THE COURT: --- for your truthfulness.

7 THE POTENTIAL JUROR: Thank you.

8 THE COURT: Or candor really. Thank you.

9 (WHEREUPON, Potential Juror 386 exited the
10 courtroom.)

11 THE COURT: All right. Juror Number 389.
12 Anything from the Defendant?

13 MR. MCGUIRE: Not on this paper, Judge.

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

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

17 THE COURT: All right. Ask Number 389 to join
18 us.

19 (WHEREUPON, Potential Juror 389 entered the
20 courtroom.)

21 THE COURT: All right. Are you Juror 389?

22 THE POTENTIAL JUROR: Yes, sir.

23 **POTENTIAL JUROR 389,**

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

25 **EXAMINATION**

1 BY THE COURT:

2 Q. All right. You'll recall on last Monday I put all
3 the jurors under oath. Now, do you understand that
4 you're still under oath and this oath continues
5 throughout these proceedings?

6 A. Yes, sir.

7 Q. You have been provided with a copy of a list of
8 potential jurors [sic]. Have you had an opportunity to
9 review this jury [sic] list -- witness list, excuse me?

10 A. Yes, sir, I have.

11 Q. All right. Did you recognize any names on that
12 list?

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?

18 A. No, sir.

19 Q. Now, the trial of this case may last a week or
20 longer. Other than the personal inconvenience, would
21 this pose a serious danger to the health or well-being of
22 yourself or anyone 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. Defendants are presumed in 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, accept and apply that law as I would
7 instruct you to be as the Judge even though you may not
8 agree with that law or think it ought to be something
9 else?

10 A. Yes, sir, I believe I could.

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

15 A. Yes, sir.

16 Q. In a criminal case, the State has the burden of
17 proving guilt. The burden of proof for the State is
18 beyond a reasonable doubt. A defendant has no burden to
19 prove innocence. Do you understand this?

20 A. Yes, sir.

21 Q. In other words, under our law in South Carolina and
22 the United States, a defendant is always presumed to be
23 innocent. Do you understand?

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 that?

8 A. Yes, sir.

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

14 A. Yes, sir.

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. Now, of course, if the
20 defendant is found not guilty, then that ends the matter
21 and there's no further consideration. Do you understand
22 that?

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 on to phase two of the trial which is called the
3 sentencing 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
9 the Judge, determines the sentence that a defendant will
10 receive for the crime of murder?

11 A. Yes, sir.

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, sir.

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, it may reduce the
23 degree of responsibility of the defendant for the crime.

24 Do you understand this?

25 A. Yes, sir.

1 Q. Do you also understand that the jury has two options
2 to consider regarding the sentencing for murder? One
3 option is life imprisonment which under our law is until
4 death of the defendant without the possibility of parole.
5 The other option is death which in this state is by
6 electrocution or lethal injection. Do you understand
7 these two options?

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 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 good. Answer any questions the attorneys may
20 have.

21 DIRECT EXAMINATION

22 BY MR. MCGUIRE:

23 Q. Good afternoon, Juror 389. How are you doing today?

24 A. I'm fine, sir. How are you?

25 Q. I'm good. Thank you very much. I have to refer to

1 you by number. It's a little awkward for me.

2 A. That's fine.

3 Q. That's the way we've got to do things. Just forgive
4 me that if you would.

5 A. Okay.

6 Q. The first thing I need to ask you about is
7 publicity. What do you know about the case? I think you
8 stood up and had some knowledge?

9 A. Right. Well, the only thing that I had seen was
10 where Ms. Keisha Foster from News 4 was talking the week
11 previous to coming down here that this trial was coming
12 up. And with me being called for jury, I kind of put ---

13 Q. Two and two together.

14 A. --- two and two together, kind of figured, you know,
15 that might be what we're going to be on. And that's
16 pretty much -- that's about it.

17 Q. Okay. Nothing about the facts of the case ---

18 A. No.

19 Q. --- allegations ---

20 A. No, no.

21 Q. --- who's involved?

22 A. I've tried to steer away from it from that point on.

23 Q. Okay. Just kind of a general, hey, this is coming
24 up. And that's about it?

25 A. Yes, sir.

1 Q. Okay. Fair enough. You indicate on your
2 questionnaire, I am for the death penalty because if
3 someone takes another life with cold malice and no
4 remorse, they need the same treatment instead of weighing
5 down the system by housing and feeding them until they
6 die of old age. Is that still your view?

7 A. I believe if someone makes that conscious decision
8 at that time, they realize what the penalty's going to
9 be. And they need to be ready to accept that if that's
10 what's going to happen.

11 Q. Okay. So in a case of a deliberate and intentional
12 murder, not accident, not self-defense ---

13 A. Right.

14 Q. --- the person knows what they're doing,
15 intentional, deliberate, malice -- because you actually
16 hit on our definition of murder in South Carolina.

17 A. Right.

18 Q. We have malice murder.

19 A. Uh-huh (affirmative).

20 Q. In that situation, the death penalty is appropriate?

21 A. Yes, sir.

22 Q. And the life in prison penalty would not be severe
23 enough to punish ---

24 MS. ADAMS: Objection. Objection, Judge. It's
25 not how he's going to be instructed. It's not the law.

1 THE COURT: Restate your question.

2 Q. And the life penalty wouldn't be appropriate to
3 punish that kind of deliberate, intentional murder?

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

5 Q. Okay. What I'm going to do is talk to you a little
6 bit about how a capital case is different from other
7 cases and tell you about the rules in the law and just
8 see if you can follow them or respect them. The State
9 has to prove their evidence that they're using for the
10 death penalty beyond a reasonable doubt.

11 A. Right.

12 Q. It's called aggravation evidence, and it can be a
13 lot of different stuff. But they have to bring it to the
14 jury and prove to every one that it exists beyond a
15 reasonable doubt. And the whole jury has to agree on
16 that fact. And that's kind of in line with how we think
17 juries, the whole jury agreeing ---

18 A. Right.

19 Q. --- speaking with one voice. But it's not so for
20 the Defense side or the mitigation side or the life in
21 prison side. The Judge would instruct every juror that
22 they could vote for the life penalty based on any reason,
23 no reason, mercy, grace or anything they see in the case.
24 And they can be different reasons. For instance, the
25 whole jury doesn't have to get together and say, we all

1 agree that he has a mental health issue, so we're all
2 going to vote for life. It doesn't have to be like that.
3 The Judge would let each individual juror find whatever
4 reason they want to, to vote for life.

5 A. Uh-huh (affirmative).

6 Q. Somebody on the front row could say, you know, I saw
7 a mental health issue. Someone on the back row could
8 say, he still has a relationship with his child or his
9 grandmother. I find that redeeming. I'm going to vote
10 for life for that. Somebody maybe sitting right next to
11 you could say, you know, I listened to the Judge, and he
12 said I could vote for life for no reason. And I just
13 think that's kind of, in my gut, what I'm going to do.
14 And I don't even have a reason for you. Could you
15 respect those people's individual views?

16 A. Yes, with no problem.

17 MR. MCGUIRE: And Judge, this is where I would
18 ask my questions one through six pursuant to my ---

19 THE COURT: For the reasons stated before, the
20 request is declined.

21 MR. MCGUIRE: Thank you, Judge.

22 Q. And the law describes a juror's decision in a
23 capital case as their individual moral judgment ---

24 A. Uh-huh (affirmative).

25 Q. --- based on their walk in life, their separate walk

1 in life. And the law also says that if it would harm
2 somebody's conscience or do violence to their conscience
3 to change their individual moral judgment, that that
4 would be wrong.

5 A. Uh-huh (affirmative).

6 Q. Is that an aspect of the law that you could respect?

7 A. Yes, sir.

8 Q. Okay. And the State and you, as a juror, and the
9 Defendant, everyone's entitled to fairness not just out
10 here in the courtroom, but also in the jury room.

11 A. Right.

12 Q. And if things got hostile or belligerent in the jury
13 room, kind of beyond good, civil, polite deliberations
14 and it was unfair and people were unfairly trying to get
15 somebody to change their individual moral judgment, could
16 we count on you to send a note out to the Judge saying,
17 you know, it's not fair in here anymore, we've got to get
18 back to fairness?

19 A. Yes, sir.

20 Q. Let me ask you this about the concept of mercy
21 because the Judge will instruct the jury that anybody
22 could give the life penalty just for mercy alone. Is
23 mercy something that's freely given and bestowed, or is
24 it earned?

25 A. That's a good question.

1 Q. Yeah. Somebody said earlier it was a pretty heavy
2 thought for four o'clock in the afternoon.

3 A. It is. You know, because it's kind of like respect.
4 Respect, you earn. You don't give that, you know. Mercy
5 is, I still say, it's within the individual, how he looks
6 at things or how this person looks at a different person
7 or something. But we all have it.

8 Q. Okay. All right. I think that's all I have.

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

11 THE COURT: Certainly.

12 (Off record discussion)

13 Q. That's all I have, sir. Thank you very much for
14 your patience with me.

15 THE COURT: Questions?

16 MS. ADAMS: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. ADAMS:

19 Q. Good afternoon. And how are you?

20 A. I'm fine.

21 Q. Good. I'm Chrissy Adams. I'm the Solicitor for the
22 Tenth Circuit, and I just have a few follow-up questions.

23 A. Okay.

24 Q. What we're trying to ensure today is that if you are
25 selected to serve on this jury, that you can be fair not

1 only to the State, but to the Defense as well.

2 A. Uh-huh (affirmative).

3 Q. Okay. Because I noticed on your questionnaire that
4 you also said when, you know, you were asked your opinion
5 about life without parole, that it would be appropriate
6 depending on the circumstances of the crime.

7 A. That's right.

8 Q. Is that still how you feel?

9 A. Yes, ma'am.

10 Q. Okay. And as you sit there right now, you don't
11 really know the facts or circumstances of this case?

12 A. No, I do not.

13 Q. So if you heard all the facts and circumstances and
14 thought that life was appropriate, could you vote for
15 life?

16 A. I could still vote for life, yes.

17 Q. Okay. And if you felt that death was appropriate,
18 could you vote for death?

19 A. Yes, I could.

20 Q. Okay. And do you understand that not every murder
21 in South Carolina is eligible for the death penalty?

22 A. Yes.

23 Q. Okay. And the State has to prove beyond a
24 reasonable doubt some sort of aggravation that bumps it
25 up?

- 1 A. Yes, ma'am.
- 2 Q. Okay. Now, the Judge is going to instruct you that
3 you have to consider and basically keep an open mind
4 throughout the entire penalty process ---
- 5 A. Uh-huh (affirmative).
- 6 Q. --- and not only listen to all the aggravation, but
7 listen to all the mitigation as well before you make up
8 your mind as to life or death.
- 9 A. Right.
- 10 Q. Would you do that?
- 11 A. Yes, ma'am.
- 12 Q. Okay. And mitigation evidence obviously is evidence
13 that would tend to make you think that life was more
14 appropriate.
- 15 A. Uh-huh (affirmative).
- 16 Q. And you understand that?
- 17 A. Yes, ma'am.
- 18 Q. Okay. So would it be fair to say that you want to
19 remain open-minded and hear everything before you make a
20 decision?
- 21 A. Yes, ma'am. That -- as a juror, that would be my
22 job, would it not?
- 23 Q. Absolutely. And in fact, that's what the Judge will
24 instruct you on.
- 25 A. Yes, ma'am.

1 Q. And you can follow his instructions?

2 A. Yes, ma'am.

3 Q. Okay. So as you sit here today, you would not
4 automatically vote for death because you haven't heard
5 the circumstances in the case?

6 A. No.

7 Q. Okay. So you would wait and see?

8 A. I would wait, yes, ma'am.

9 Q. Thank you so much.

10 A. Thank you

11 THE COURT: All right. Are there any other
12 questions from the Defendant?

13 MR. MCGUIRE: No, Your Honor. Just a -- we've
14 got a small legal matter.

15 THE COURT: In a death penalty case, would you
16 always or automatically vote for the death penalty even
17 though the law provides that you may impose a life
18 sentence without parole depending upon the circumstances
19 of a particular case and the characteristics of an
20 individual defendant? Would you always or automatically
21 vote for the death penalty?

22 THE POTENTIAL JUROR: No, no.

23 THE COURT: Thank you very much. All right.
24 If you would, please, step out for a moment. I need to
25 take up some matters with the attorneys.

1 (WHEREUPON, Potential Juror 389 exited the
2 courtroom.)

3 THE COURT: All right.

4 MR. MCGUIRE: Yes, sir. Judge, for the record,
5 move to strike this juror for cause based on the Sixth
6 and Fourteenth Amendment to the United States
7 Constitution, Section 14 and 15 of Article I of the South
8 Carolina Constitution based on his -- and our failure to
9 be able to ask the one through six questions, based on
10 his answers regarding the death penalty both on his
11 questionnaire where he indicated that if somebody killed,
12 they should not basically, and that when he learned the
13 definition of murder, he confirmed that was still his
14 view. He's basically automatic death and mitigation
15 impaired.

16 THE COURT: Well, we have advanced somewhat
17 from the 7th century B.C. Hammurabi which that statement
18 was pretty much. And that's why we try death cases
19 particularly under clear statements of law and not --
20 what is it -- just what an opinion might be.

21 All right. Anything from the State?

22 MS. ADAMS: No, sir.

23 THE COURT: All right. Considering all the
24 entire voir dire, I find the Juror Number 389 will be
25 fair and unbiased and qualified.

1 Ask the juror to come in.

2 (WHEREUPON, Potential Juror 389 entered the
3 courtroom.)

4 THE COURT: All right. Considering the entire
5 voir dire, I find that Juror 389 -- and this -- when I
6 say entire voir dire, I mean not only the questionnaire,
7 but the questions I asked ---

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

9 THE COURT: --- and the questions that each of
10 the attorneys asked -- I find that Juror 389 will be
11 fair, unbiased, impartial and able to carry out the law
12 as explained to him. Furthermore, I find that this
13 juror's beliefs or attitudes toward the death penalty
14 will not prevent or substantially impair the performance
15 of his duties as a juror in accordance with the law, the
16 Court's instructions and the juror's oath.

17 Therefore, you're qualified. Now, what that means
18 is we're preparing a pool of jurors who could -- from
19 whom will be selected the actual jury. Now, you gave the
20 Clerk of Court your telephone number?

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

22 THE COURT: All right. You can go about your
23 business, do whatever you need to do. But once you get
24 that phone call, it'll be probably come in the next day
25 or something of that nature. And if you would, please

1 report at that time.

2 THE POTENTIAL JUROR: Okay.

3 THE COURT: That's very good. And again, I
4 thank you for your patience with the Court and also your
5 candor with some of -- these were very difficult
6 questions.

7 THE COURT: I appreciate your straightforward
8 candor. Thank you very much, and we'll be in touch.

9 THE POTENTIAL JUROR: Thank you.

10 (WHEREUPON, Potential Juror 389 exited the
11 courtroom.)

12 THE COURT: All right. Anything about 396 from
13 the Defense?

14 MADAM COURT REPORTER: Your Honor, could we
15 take a short break?

16 THE COURT: Oh, you're ready for a break?

17 MADAM COURT REPORT: Can we take a short break?

18 THE COURT: Yeah. Let's do. Let's take a
19 break. I'm sorry.

20 (WHEREUPON, court stood at recess for a short
21 break.)

22 THE COURT: We have, what, forty-nine?

23 MADAM CLERK: Fifty.

24 THE COURT: We have fifty?

25 MADAM CLERK: Yes, Your Honor.

1 THE COURT: All right. The problem is, it's
2 after five and the Clerk's only got one person in the
3 office to call the potential jurors. First of all, I
4 don't mind going with fifty or fifty-one if we're lucky
5 to get them because the fifty-one figure is based on
6 having six alternates. And I tried a three-week trial --
7 well, two weeks plus -- with four alternates, and we
8 didn't have any problem. In fact, I had to bring the
9 jury from another part of the State in both cases. So if
10 -- we'll try to get as many as we can out of this. And I
11 don't know what to do other than -- what is it -- when
12 your staff gets here in the morning to call. But people
13 are not going to be available.

14 MADAM CLERK: I can call.

15 THE COURT: No, ma'am. No, ma'am. That's too
16 much. You're not but one person. There's fifty of
17 those. I was hoping we'd have about three or four to,
18 you know, help you.

19 Well, we might be able to catch our breath tomorrow
20 morning. What do y'all think about calling in on -- ask
21 them to come in at two?

22 MR. MCGUIRE: Sure.

23 MR. DELGADO: Surely.

24 THE COURT: And if we get the two at two, then
25 we can, you know, see. That's going -- it's going to

1 kind of require hard calling in the morning.

2 MADAM CLERK: Yes, sir.

3 THE COURT: In other words, you know, they're
4 not to be there; they're going to be at work. Can you
5 get a message to them ...

6 MADAM CLERK: Yes, sir.

7 THE COURT: ... and make it, understand,
8 critical.

9 MADAM CLERK: Yes, sir.

10 THE COURT: You might even have to ask for some
11 cell phone numbers so you can get them direct.

12 MADAM CLERK: I believe we've got several
13 numbers for most all.

14 THE COURT: I mean, I would -- maybe we can
15 start with the cell phone. And then you can start about
16 nine o'clock ...

17 MADAM CLERK: We can start before then.

18 THE COURT: Well, I mean, so we'd have a
19 reading by, say ---

20 MADAM CLERK: About ten?

21 THE COURT: --- about ten.

22 How about that? In other words the Clerk's office
23 will start sometime early in the morning when they first
24 can and then give us sort of a report by ten o'clock
25 whether or not we are going to have the jury in by two.

1 MADAM CLERK: Yes, Your Honor.

2 MR. MCGUIRE: Sure.

3 THE COURT: Is that all right? I mean, that's
4 the best thing we can do right now. But I do think I
5 will reduce the number of alternates because really I
6 haven't -- most of the ones we've had that have had
7 problems with the media and all that, we've excluded, I
8 think. And the others seem to be pretty much following
9 it, the instructions. So I don't think that's going to
10 be the problem.

11 All right. Let's just go ahead, whenever we're
12 ready, go ahead.

13 MADAM CLERK: I'm sorry. I should have had
14 someone to stay after five.

15 THE COURT: No, no, no.

16 MADAM CLERK: You know, I just didn't ---

17 THE COURT: I didn't know that we were that
18 close. All right. Is there anything -- let's go back on
19 the record. Is there anything from the Defendant before
20 we bring in number 396?

21 MR. MCGUIRE: Your Honor, she -- I think this
22 is the one ---

23 MS. ADAMS: No, the next one.

24 MR. MCGUIRE: No, no, no. I'm sorry. I got a
25 little confused there, Judge. I don't think I have

1 anything on this one on the paper. Let me see. I don't
2 think I have anything on paper, Judge.

3 THE COURT: Well, looking at just the two
4 questions, although I -- where she says, I believe the
5 death penalty is necessary in some cases due to the
6 nature of some crimes, and, I hold my freedom very dear.
7 I could not imagine life any other way. So I don't know.
8 I think that you can bring her out, you know, and see
9 what she has to say.

10 All right. Ask number 396 to join us, please.

11 (WHEREUPON, Potential Juror 396 entered the
12 courtroom.)

13 THE COURT: All right. Are you Juror Number
14 396?

15 THE POTENTIAL JUROR: Yes, sir, I am.

16 **POTENTIAL JUROR 396,**

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

18 **EXAMINATION**

19 **BY THE COURT:**

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

24 A. Yes, Your Honor.

25 Q. You have been provided with a copy of list of

1 potential witnesses. Have you had an opportunity to
2 review that witness list?

3 A. Yes, sir.

4 Q. Did you recognize any names?

5 A. No, sir.

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

8 A. Yes, sir.

9 Q. Has this caused any problem to you?

10 A. No, sir.

11 Q. Now, the trial of this case could last as much a
12 week, ten days or even longer. Other than personal
13 inconvenience, would this pose a serious danger to the
14 health or well-being of yourself or anyone who is
15 dependent upon you?

16 A. No, sir.

17 Q. Now, among other things, today we'll be talking
18 about penalty. But the mere fact that we talk about
19 penalty does not indicate anything about this Defendant
20 or any defendant. Defendants under our law are presumed
21 to be innocent of all charges. Do you understand?

22 A. Yes, sir.

23 Q. If you were on a jury or if you were a juror in a
24 criminal case, could you listen to the law, accept and
25 apply that law as I would charge you as the Judge even

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

3 A. Yes, sir.

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

8 A. Yes, sir.

9 Q. In a criminal case, the State has the burden of
10 proof. The burden of proof for the State is beyond a
11 reasonable doubt. As I mentioned earlier, a defendant
12 has no burden to prove innocence or anything else. In
13 fact, what is it -- he does -- a defendant does not even
14 have to testify or offer evidence. The burden of proof
15 stays upon the defendant [sic] to prove guilt beyond a
16 reasonable doubt. Do you understand that?

17 A. Yes, sir.

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

21 A. I'm sorry. Would you repeat that?

22 Q. Could you, depending upon the facts and evidence and
23 the law as I would instruct you in a particular case --
24 depending on the facts and law as I instruct you in a
25 particular case, find a defendant either guilty or not

1 guilty?

2 A. Yes, sir.

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

7 A. Yes, sir.

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

13 A. Yes, sir.

14 Q. A death penalty trial is divided into two parts.
15 Part one is the guilt phase where a jury determines
16 whether the defendant is guilty or not guilty of murder.
17 Part two is the sentencing phase where a jury determines
18 the appropriate punishment. Of course, if the defendant
19 is found not guilty, that ends the matter. Do you
20 understand?

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, aggravating circumstances are facts or details
16 that, when they are present in a case, make the crime of
17 murder more serious or worse. On the other hand,
18 mitigating circumstances are incidences, occurrences or
19 details of a case that would reduce the severity of the
20 crime of murder. In other words, may reduce the degree
21 of responsibility of the defendant for the crime.

22 A. (No verbal response)

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

1 individual defendant. Now, aggravating circumstances are
2 facts or details that, when they are present in a case,
3 make the crime of murder more serious or worse. Do you
4 understand that?

5 A. Yes, sir.

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

11 A. Yes, sir.

12 Q. Do you also understand that the jury has two options
13 to consider regarding the sentence for murder? One
14 option is life imprisonment. Under our law, that is
15 until death of the defendant. In other words, without
16 parole. Do you understand that?

17 A. Yes, sir.

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

21 A. Yes, sir.

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

1 A. Yes, sir.

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

6 A. Yes, sir.

7 Q. Very good. Answer any questions that the attorneys
8 may have.

9 THE COURT: Mr. McGuire.

10 DIRECT EXAMINATION

11 BY MR. MCGUIRE:

12 Q. Good afternoon, Juror 396?

13 A. That's correct.

14 Q. I've got to refer to you by number. It's a little
15 awkward for me. If you would just forgive me that. I'm
16 not being rude or not polite to you.

17 The -- I'm going to go into a little bit more
18 detail. The Judge gave you some very good general
19 guidelines and framework for a capital trial. I'm just
20 going to go into a little bit more detail and just ask
21 you about your views, if that's okay with you?

22 A. Yes, sir.

23 Q. And there are no wrong answers. Whatever your
24 feelings are, they are the right answers. Just be as
25 candid as you can be. Okay?

1 A. (No verbal response)

2 Q. The Judge would tell the jury that the definition of
3 murder in South Carolina is the unlawful killing of
4 another human being with malice aforethought. Have you
5 ever heard this definition before?

6 A. Yes, sir, I have.

7 Q. Okay. Where does your knowledge come from?

8 A. Just from the history of readings ---

9 Q. Okay.

10 A. --- reading different things ---

11 Q. Okay.

12 A. --- newspapers and what have you.

13 Q. Okay. Well, you've got more knowledge than most of
14 the folks that come. And the malice part is defined as
15 the killer operating with a black and malignant heart,
16 fatally bent on evil, intentionally, deliberately taking
17 an innocent life. Does that square with your definition
18 of murder?

19 A. Not exactly.

20 Q. Okay. That's new? That's new information?

21 A. (Nodding head up and down in the affirmative)

22 Q. Okay. But now that you know that that's the
23 definition of murder, can you accept that as the law?

24 A. Yes, I can.

25 Q. Okay. We're not talking about self-defense or

1 accident or anything like that.

2 A. Uh-huh (affirmative).

3 Q. What are your views about the death penalty just
4 based on that kind of killing, malice killing?

5 MS. ADAMS: Objection, Judge. That's not the
6 standard. That's not what we're trying to do.

7 THE COURT: I'm going to permit it.

8 Go ahead.

9 A. My views? Honestly, it's -- without -- I need more
10 information.

11 Q. Okay.

12 A. It's really hard to give an opinion on that.

13 Q. Sure. We're talking kind of ---

14 A. I need more details or history of the ---

15 Q. Right.

16 A. --- subject at hand.

17 Q. Right. We're talking kind of in the abstract here,
18 and it's a little difficult to ---

19 THE COURT: He's answered your question. Let's
20 move on.

21 MR. MCGUIRE: Sure. Thank you, Judge.

22 Q. What I'm going to do is give you a little bit more
23 fact-specific examples so we can talk in a little bit
24 less abstract. And in a capital case, the Defense would
25 have the opportunity to present information like the

1 defendant's background, his characteristics, that sort of
2 thing. And the State would prove what is called
3 aggravation evidence. And aggravation evidence can be
4 one of twenty-two factors that take a malice murder to
5 aggravated murder. And that's when it becomes death
6 penalty eligible. It could be killing police officer in
7 the line of duty, a rape murder, killing a child, killing
8 more than two people or killing when you've got a prior
9 conviction for murder, to name some.

10 What are your views -- now, knowing everything that
11 we talked about and the defendant's ability to show his
12 characteristics and background and the State having to
13 show aggravation, what would your opinion be about the
14 death penalty as the appropriate punishment in a case
15 where the aggravation is the person had been convicted of
16 murder before, and you'd be fixing punishment for
17 somebody with a prior murder conviction?

18 MS. ADAMS: Objection, Judge. It's not the
19 standard, and he doesn't know the facts of the case to
20 answer that. It's one-sided.

21 THE COURT: All right. I'm going to permit the
22 juror to answer the question if he knows an answer to a
23 question like that.

24 A. Essentially, I'm gathering that you're telling me
25 that a defendant in any given case, that there's been

1 more than one case of murder, and your definition, from
2 that individual?

3 Q. Yes, sir.

4 A. My opinion, from what you're -- I'm trying to
5 gather, you're asking my opinion on the death penalty?

6 Q. Yes, sir.

7 A. For that particular individual?

8 Q. Yes, sir.

9 A. Whether I believed they deserved that or not or ---

10 Q. Sure. Or your views in general?

11 A. Again, it almost depends on the case as to, you
12 know, aggravated murder, or what type of -- you know ...

13 Q. So none of those categories that I talked about ring
14 out with you as calling for basically an automatic death
15 penalty vote?

16 A. Well, and too, what are the facts in those murder
17 cases as well as the prior case as well? What are the
18 facts against him there as well?

19 Q. Okay.

20 A. Evidence, if you will.

21 Q. Sure. But just the fact that the person had a prior
22 conviction for murder ---

23 A. They were convicted.

24 Q. Right. I mean, it sounds like we're here ---

25 MS. ADAMS: Objection, Judge. It's asked and

1 answered.

2 THE COURT: I think so. But let's -- why don't
3 we move on.

4 MR. MCGUIRE: Sure.

5 Q. I was about to say it sounds like that would not
6 make you automatically vote for the death penalty just
7 because the person had a prior conviction for murder?

8 A. Honestly, it's just too hard to say ---

9 Q. Sure.

10 A. --- without the fact. I mean, I don't want to ---

11 Q. Okay. No, that's fair enough. Whatever you say is
12 the right answer. It's the one place you get to go in
13 your life where everything you say is absolutely right,
14 okay?

15 Would things about the Defendant's characteristics,
16 his makeup, his background, childhood maybe, would these
17 things be relevant in fixing punishment for somebody
18 convicted of murder?

19 A. No.

20 Q. Okay. It would be based on the facts of the murder?

21 A. That's correct.

22 MR. MCGUIRE: This is where I'd move to ask my
23 one through six questions pursuant to my two written
24 motions on voir dire, Judge.

25 THE COURT: My ruling is the same as prior,

1 same reasons.

2 MR. MCGUIRE: Thank you, Judge.

3 Q. Just a little legal matter there.

4 What I'm going to do now is just talk to you briefly
5 about how a capital case sentencing is different in a
6 capital case, and the rules are different and it's a
7 little bit sometimes unexpected for some people. And I'm
8 just going to tell you about the rules, the law and just
9 ask if you can basically respect it.

10 The State would have to prove its evidence beyond a
11 reasonable doubt to all twelve jurors, aggravation
12 evidence. All twelve would have to agree that it exists
13 beyond a reasonable doubt before the State could even ask
14 for the death penalty.

15 The rules are different for the defendant, the
16 mitigation side, the Defense side or the life side of the
17 equation. The Judge would instruct the jury that any
18 individual juror could vote for life for any reason, no
19 reason, mercy, grace or anything they see in the case.
20 And they don't even have to be the same reason.

21 For instance, if you were on the jury, a juror on
22 the front row could say, you know, I saw something about
23 his mental health. That resonated with me. I'm going to
24 vote for life. Somebody in the back could say, you know,
25 I saw -- he still has a relationship with his

1 grandmother, and I found that kind of redeeming, or I saw
2 some humanity in that. I'm going to vote for life
3 because of that. Somebody maybe sitting right next to
4 you could say, you know, I listened to the judge. He
5 said I could vote for life for no reason. And that's
6 what I think I'm going to do, but I can't even give you a
7 reason. Could you respect the fact that each individual
8 juror has the right to vote for life for any reason, any
9 different reason they want to?

10 A. Yes, I could.

11 Q. Okay. What I mean is they don't have to agree at
12 all. The only time the jury has to agree and all twelve
13 agree is to return a death sentence. It's okay for the
14 jury to come back into court and say, we couldn't all
15 agree on a death sentence. We couldn't all agree on a
16 life sentence. We've agreed to disagree.

17 And while the Judge might send you back and say, try
18 to get unanimous if you can, the law is that you don't
19 have to. You can end the day agreeing to disagree, then
20 the judge would take case. He'd sentence and end the
21 case right there. Is that an aspect of the law that you
22 can respect?

23 A. Yes, it is.

24 Q. Okay. You wouldn't insist on everybody being
25 unanimous to till end?

- 1 A. (No verbal response)
- 2 Q. Let me explain that and put a little bit of meat on
3 those words. The law describes a juror's decision, their
4 ultimate decision in a capital case, to be their own
5 individual moral judgment based on their walk in life.
6 And the law says that if it would harm their conscience
7 or do violence to their conscience to change their
8 individual moral judgment, that would be wrong. Is that
9 an aspect of the law you can respect?
- 10 A. Again, I'm not sure that if he ...
- 11 Q. Okay.
- 12 A. It's kind of -- it's an odd concept because we
13 always think of the jury getting together and being
14 unanimous and speaking in one voice, but it's not so in
15 capital cases. Everybody can have their own -- basically
16 you can have a jury of twelve people and have twelve
17 little individual verdicts. And that's okay if that's
18 how the day ends. Can you just respect the fact that
19 each individual could have their own moral judgment,
20 their own individual moral judgment, their own decision?
- 21 A. Yes, I can.
- 22 Q. Okay. And this is for you too because jurors and
23 the State and the Defense, we're all entitled to fairness
24 not just out here in the courtroom, but also in the jury
25 room. And that includes jurors like you. And if you

1 reached your own individual moral judgment and somebody
2 was trying to change it or people were ganging up on you
3 to change it, that would be wrong.

4 A. Yes, it would.

5 Q. Or if you saw that maybe people were doing that to
6 somebody else, that would be wrong. Could we count on
7 you to send a note out to the Judge saying, you know,
8 it's not fair in here? You know, some of these people
9 have reached their own individual moral judgment, and
10 people are kind of ganging up on them, trying to change
11 it, and things aren't fair anymore. Could we count on
12 you to write a note to the Judge and stop that?

13 A. Yes, you could.

14 Q. Okay. I gather in reading your questionnaire that
15 you've got some serious religious convictions. Would
16 they interfere with serving on a capital jury where
17 really your ultimate goal, your job, is to decide whether
18 or not to kill one of God's creatures?

19 A. No, it wouldn't.

20 Q. Okay. With regard to the concept of mercy, is mercy
21 something freely given and bestowed upon somebody, or is
22 it earned?

23 A. It's freely given.

24 Q. Okay. Thank you very much.

25 A. You're welcome.

1 THE POTENTIAL JUROR: Your Honor?

2 THE COURT: Yes, sir. Oh, you may proceed.

3 I'm sorry.

4 MS. ADAMS: I didn't want to start if you
5 weren't ready, Judge.

6 CROSS-EXAMINATION

7 BY MS. ADAMS:

8 Q. Good afternoon. How are you?

9 A. Great.

10 Q. I'm Chrissy Adams. I'm the Solicitor for the Tenth
11 Circuit. And I just have a few follow-up questions for
12 you. What our goal is today is to make sure that you can
13 be a fair juror not only to the State, but to the Defense
14 as well if you are selected to serve on this panel.

15 Okay? And it seems that you understand what murder is.
16 Do you understand that not every murder in South Carolina
17 is eligible for the death penalty?

18 A. Yes, I do.

19 Q. Okay. That the State has to prove some sort of
20 aggravation beyond a reasonable doubt, and all twelve
21 jurors have to agree that that aggravating factor exists.
22 And then you move on to determine whether life or death
23 is appropriate. Okay. Do you understand that?

24 A. Yes, ma'am.

25 Q. Okay. And it seems from your questionnaire that,

1 you know, when you talked about your feelings about the
2 death penalty, you said it was, you know, necessary in
3 some cases due to the nature of the crime. And basically
4 said the same thing about life parole -- life without
5 parole. Is that still your feelings today?

6 A. Yes, ma'am.

7 Q. So basically, what I'm trying to ask is do you feel
8 that you're the type of person and juror who would remain
9 open-minded throughout the entire process before you made
10 a decision as to life or death?

11 A. Yes, I would.

12 Q. Okay. The law will be instructed by the Judge. And
13 he will tell you that you have to take that from him, not
14 from the Defense and not from us, but from the Judge.
15 Will you be able to follow his instructions as he gives
16 them?

17 A. Yes.

18 Q. Okay. And he's going to tell you that you must
19 consider not only the evidence in aggravation, but also
20 the evidence in mitigation, if any, that comes from the
21 State -- I mean, comes from the Defense. Okay.

22 And mitigation is any evidence that would make you
23 think that life was more appropriate than death. Okay?
24 It could be background. It could be any sorts of things.
25 But the Judge is going to instruct you that you must

1 consider that before making your decision. Will you
2 follow his instructions and remain open-minded and
3 consider aggravation and mitigation before you determine?

4 A. Yes, I would.

5 Q. Okay. So once you heard the entire case, if you
6 felt that life without parole was appropriate, could you
7 vote for life?

8 A. (No verbal response)

9 Q. After hearing everything, the aggravation and
10 mitigation?

11 A. Yes, I could.

12 Q. So you could vote for life if you thought the facts
13 and circumstances warranted that?

14 A. Yes, ma'am.

15 Q. Okay. And on the other hand, if you thought death
16 was appropriate, could you vote for death?

17 A. Yes, I could.

18 Q. Now, obviously, as you sit right there, you don't
19 know the facts and circumstances of this case. Is that
20 fair?

21 A. Yes, ma'am.

22 Q. So you don't know whether you would vote right now
23 for life or death in this case?

24 A. No, ma'am, I do not.

25 Q. So is it fair to say that even after a conviction of

1 murder in the guilt phase, that you would not
2 automatically vote for the death penalty. You would wait
3 to hear all the evidence before you determined that?

4 A. Absolutely.

5 Q. Okay. And you understand the deliberation process
6 as well? I think the Defense said something about not
7 insisting on everyone be unanimous. For a death verdict,
8 it must be unanimous, okay? And jury deliberation is a
9 give-and-take process, okay? It is sharing of ideas as
10 well as respecting other people's opinions in hopes to
11 come to a decision together. Is that a fair statement
12 for you?

13 A. Yes, ma'am.

14 Q. Okay. So just if someone was getting -- or wasn't
15 respecting someone else's opinion, if someone wasn't
16 participating, would you also let the Judge know as well?

17 A. Yes, I would.

18 Q. Okay. The law also requires if the jury does feel
19 that the death penalty is appropriate and everyone votes
20 for the death penalty, that each and every juror has to
21 sign his or her name to a sentence sheet which is what
22 allows the State -- that document allows the State to
23 actually execute the defendant. Would you be able to
24 sign your name to that public document if your vote was
25 for death?

1 A. Yes, I would.

2 Q. Thank you very much.

3 THE COURT: All right. Any further questions
4 from the Defense?

5 MR. MCGUIRE: Judge, I don't have any
6 questions. I would just have a small matter for the
7 Court.

8 THE COURT: Very good. If you would, please,
9 go with the bailiff. I need to take some matters up with
10 the attorneys.

11 (WHEREUPON, Potential Juror 396 exited the
12 courtroom.)

13 MR. MCGUIRE: Thank you, Your Honor. Just for
14 the record, I move to strike this juror for cause based
15 on his answers regarding mitigation that after the Court,
16 in the introductory comments, explained what mitigation
17 evidence was and after he heard it from me again, he
18 indicated quite clearly that background and
19 characteristics of the accused would not be relevant in
20 fixing punishment in murder cases. So I'd move to strike
21 for cause and also on the grounds that -- not being
22 allowed to ask my six questions pursuant to my written
23 motion and the grounds for challenging this juror for
24 cause will be the Sixth and Fourteenth Amendment of the
25 United States Constitution, 14 and 15 Sections of Article

1 I of the South Carolina Constitution.

2 THE COURT: All right. Anything from the
3 State?

4 MS. ADAMS: No, sir, Your Honor. Just we feel
5 he's qualified.

6 THE COURT: Well, I heard your question which
7 -- about the background without any further description.
8 And I didn't use the word background in my instructions
9 and questions about mitigation, but the Solicitor did and
10 with the other elements that she was supposed to have any
11 juror to consider which is an entire charge, not just
12 portions of it dealing with the seriousness of the crime.
13 Also, she did ask about all the evidence to include
14 background.

15 So I do find that, from the totality of the voir
16 dire, that he would be qualified.

17 So ask Juror Number 396 to join us.

18 THE COURT: Madam Clerk?

19 Is she there?

20 Ask her to come on in.

21 I think that's fifty-one, so what I'm going -- I'm
22 going to ...

23 (WHEREUPON, Potential Juror 396 entered the
24 courtroom.)

25 THE COURT: All right. Considering the entire

1 voir dire, I find that Juror Number 396 will be fair,
2 unbiased, impartial and able to carry out the law as
3 explained to him. Furthermore, I find that this juror's
4 beliefs or attitudes toward the death penalty would not
5 prevent or substantially impair the performance of his
6 duties as a juror in accordance with the law, the Court's
7 instructions and the juror's oath.

8 That means that you are qualified. I'm going to
9 take a chance right now and ask you to return at two
10 o'clock tomorrow afternoon. That will be when we'll have
11 a pool from which we will select the actual jury from.
12 You -- with your qualification, we've gotten the pool.
13 So we'll be notifying the others to come in at two
14 o'clock, too. The only thing is you've given your number
15 to the Clerk?

16 THE POTENTIAL JUROR: Yes, sir.

17 THE COURT: If something for some reason we're
18 not going to use two o'clock, we're going to have to
19 delay it or something like that, she'll contact you not
20 to come in. But do plan to come in at two o'clock.

21 THE POTENTIAL JUROR: Yes, sir.

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

24 THE POTENTIAL JUROR: Thank you.

25 (WHEREUPON, Potential Juror 396 exited the

1 courtroom.)

2 THE COURT: All right. The next one is 27.

3 MS. ADAMS: Your Honor, just so you know, we
4 are to the ones and fives. I didn't know if you want to
5 stop at fifty-one since you had mentioned that. I just
6 -- I mean ---

7 THE COURT: Is this a one or a five?

8 MS. ADAMS: The next's a one even, and the next
9 one's even a one.

10 MR. MCGUIRE: I'm happy to stop right now,
11 Judge.

12 (Laughter)

13 THE COURT: It's a one? How about let's -- if
14 we can balance it out, I'll do that.

15 MS. ADAMS: We did. We did. I think the next
16 one ---

17 MR. MCGUIRE: I move we quit right now.

18 MS. ADAMS: Judge, that was too easy. Maybe we
19 shouldn't.

20 THE COURT: No. Let me see.

21 MS. ADAMS: It is a five.

22 THE COURT: It's a five?

23 MS. ADAMS: Yes, sir.

24 THE COURT: But the other one's a one?

25 MS. ADAMS: The first one's a one, and the

1 second one's a five.

2 THE COURT: Let's do that. I -- and again,
3 just so it's no misunderstanding that what I intend to do
4 is use as few as four. So that means we're down to
5 really we only need forty-five so we do have six-number
6 cushion. And -- but of course, now, if everybody doesn't
7 exercise all of their strikes, then, of course, that
8 might mean that we -- if we have -- we do sixteen and
9 we've got, you know, ten jurors, you know that are
10 qualified, then I might -- what is it -- do another. But
11 we'll look at it.

12 Right now let's plan on going with sixteen. That's
13 twelve jurors and four alternates. And that would be
14 twelve and fifteen is twenty-seven, four is thirty-one,
15 and twelve is forty-three. Right? Is that about right?

16 MS. ADAMS: Yes, sir.

17 THE COURT: So that means really with fifty-
18 one, we've got eight right now. And that's with all the
19 -- I'm using all of the strikes.

20 All right. Anything else from the State?

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

22 THE COURT: All right. Again, we are probably
23 not going to -- I'm going to be here at ten o'clock to
24 get a report from the Clerk to find out if we've got two
25 o'clock -- you know, if we're going to be able to do it

1 at two o'clock.

2 Mr. Delgado, do you understand?

3 MR. DELGADO: We'll swear the jury at two --
4 swear the jury -- strike the jury and swear them and then
5 begin with opening statements?

6 THE COURT: That's right.

7 MR. DELGADO: All right.

8 THE COURT: But not before two.

9 MR. DELGADO: Yes, sir.

10 THE COURT: So I mean, there's no reason to be
11 here unless you have some matters you need to take up.

12 MR. DELGADO: All right.

13 THE COURT: But I will be here at ten.

14 And Renee, if you could come in sometime about that
15 time -- a little bit later will be fine -- you know, just
16 to see if there's anything.

17 Very good. With that I'll see you in the morning.

18 MS. ADAMS: Judge?

19 THE COURT: Anything else from the State?

20 MS. ADAMS: Well, if I may, just planning
21 purposes. So you think we will begin openings and
22 witnesses, just so I can get -- make sure people are
23 here.

24 THE COURT: I don't know. Now, that's just it.
25 As far as the rest of the scheduling part with witnesses,

1 what sort of witnesses have you got? What are your first
2 witnesses. There are not any from out of town or
3 anything, are there?

4 MS. ADAMS: No, sir. Not for guilt. We're
5 good.

6 THE COURT: All right. Well, that's what I
7 mean. So if we could, it depends on how long the
8 openings take and all that. But let's -- you can start
9 planning on the next day, which will be Wednesday -- is
10 that right?

11 MS. ADAMS: Yes, sir.

12 MR. MCGUIRE: Yes, sir.

13 THE COURT: On Wednesday we'll be into the
14 trial.

15 MS. ADAMS: So witnesses start Wednesday?

16 THE COURT: No, ma'am.

17 MS. ADAMS: Well, I'll have them here.

18 THE COURT: Listen, I need a little
19 flexibility.

20 MS. ADAMS: Absolutely.

21 THE COURT: If we finish with striking the jury
22 and opening statements by three o'clock ---

23 MS. ADAMS: We're ready.

24 THE COURT: --- I'm not going to send them
25 home.

1 MS. ADAMS: Good. Excellent.

2 THE COURT: And so that's what I'm saying. If
3 you've got witnesses that are available that we could use
4 the afternoon, of course, we're going to do that.

5 MS. ADAMS: Absolutely.

6 THE COURT: I'm just telling you for your
7 planning purposes that the trial will continue into
8 Wednesday, and that'll be the first time that you need to
9 bring your out-of-state or make whatever arrangements
10 with witnesses that you might have to make.

11 MS. ADAMS: Great. Thank you, Judge.

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

14 MS. ADAMS: No, sir.

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

17 MR. MCGUIRE: No, sir.

18 THE COURT: Oh, yes. Let me go ahead -- bring
19 the two in.

20 And if y'all want to stay, I'm just going to excuse
21 them and thank them.

22 Now, is that all right with you?

23 MADAM COURT REPORTER: Yes, sir.

24 (WHEREUPON, potential jurors entered the courtroom.)

25 THE COURT: All right. Ladies, I think you

1 understand what we've been trying to do is to qualify a
2 pool of jurors from which we can draw the actual jury.
3 And with the last juror, we have made -- reached the
4 magic number. And so that means we will not have to --
5 what is it -- impose upon you any further.

6 I appreciate your patience with the Court, what,
7 last week and this week too. But you will not have to
8 serve. But it will count for your time. You know, I
9 told you, I think, on Monday of last week, if you've
10 served in the last three years, you don't have to serve
11 again until another three years. Well, you've got your
12 whole service.

13 But I do want to thank you for being here and being
14 willing to participate. I know you didn't ask to be here
15 and you'd rather have been somewhere else except in that
16 jury room where you've been. But the only thing is our
17 system of justice requires that we have citizen
18 participation, and I thank you so much for it.

19 So that concludes your service as jurors in the
20 Court of General Sessions in Anderson County. And I wish
21 you well. Have a good evening. And again, thank you.

22 THE POTENTIAL JURORS: Thank you.

23 THE COURT: Thank you, ma'am. Thank you. All
24 right, anything else?

25 MR. MCGUIRE: No, sir.

1 THE COURT: All right. See you tomorrow.

2 MR. DELGADO: Thank you, sir.

3 THE COURT: At least by two. Oh, if you do
4 have anything, either the State or the Defendant, if
5 you'll contact the other side ---

6 MR. DELGADO: Sure, sir.

7 THE COURT: --- and be ready.

8 MR. MCGUIRE: Yes, sir.

9 (WHEREUPON, court stood at recess for the day at
10 approximately 6:34 p.m.)

11 *** END OF VOLUME VI ***

County of Anderson

State of South Carolina,

Plaintiff,

February 1 through 18, 2010

-VS-

Raymondeze Rivera,

Transcript of Record

Defendant.

Volume VII of X

The Honorable Alexander Macaulay, Judge

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Renee H. Tollison
Circuit Court Reporter

1 FEBRUARY 9, 2010

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 1:54 p.m.)

5 THE COURT: All right. We're back on the case
6 of the State versus Rivera. Is there anything from the
7 State before we bring up the jury and strike the jury in
8 this case?

9 MS. ADAMS: Your Honor, we may need to wait for
10 Cathy. But we just have one issue she brought to our
11 attention -- and I just told the Defense -- that juror
12 number 133 was very rude to her when she called to try to
13 bring her back. And we would actually move to disqualify
14 her based on the conversation, but I think Cathy should
15 relate that to you directly.

16 THE COURT: What does the Defense say?

17 MR. MCGUIRE: She's a qualified juror. She's
18 got jury duty. I think she should come on in and do her
19 service.

20 THE COURT: Well, we'll wait until the Clerk
21 gets back then. All right. Let's stand at ease.

22 (WHEREUPON, court stood at ease.)

23 THE COURT: Well, let's go ahead and get the
24 jury list and get that underway. Let's hold the jury
25 just for a minute. Let's hold the jury for a minute.

1 (Off record discussion)

2 THE COURT: All right. We're back on the
3 record. It's my understanding that the Solicitor has
4 some matters she wants to bring to the Court's attention.

5 MS. ADAMS: Yes, sir, Your Honor. Juror Number
6 133, it's our understanding that when Ms. Phillips called
7 her she was extremely rude, acted like she did not really
8 want to be here. And we feel that she should be
9 disqualified for cause.

10 THE COURT: All right. What does the Defense
11 say?

12 MR. MCGUIRE: Judge, she's a qualified juror.
13 She didn't indicate any hardship to the Court. Jury
14 service is difficult. You informed each juror that this
15 trial could be ten to fourteen days. It's a huge
16 imposition on every juror's life. And to get the news
17 that you have to come in at two o'clock to start that
18 journey might not be the best news, and it might not have
19 hit her at the best time. To say that we excuse her
20 because she had a rough conversation knowing that she was
21 going to come up here and give about two weeks of her
22 life up for about five or ten dollars a day, is my guess,
23 that's not surprising to me. And I think she's
24 qualified. She needs to report and do her duty.

25 THE COURT: All right. Anything else from the

1 State?

2 MS. ADAMS: No, sir, Your Honor. She was the
3 only juror though that was rude to Ms. Phillips.

4 THE COURT: Well, I've already congratulated
5 our Clerk of Court. If you'll remember it was after five
6 o'clock last night when we did qualify a pool of
7 qualified jurors. And not only did she get this juror
8 here, but she got all fifty-one here at two o'clock. So
9 I want to congratulate the Clerk.

10 MADAM CLERK: Thank you, Your Honor.

11 THE COURT: I'm going to leave the juror on the
12 list of -- in the pool. We voir dired all the jurors
13 that were -- all of them, but particularly the ones that
14 have been qualified, and there was nothing at that time
15 that would suggest anything that would disqualify her.
16 So I'm going to overrule the motion to disqualify.

17 All right. Anything from the State before we do
18 bring the jury in and strike the jury?

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

20 THE COURT: From the Defense?

21 MR. MCGUIRE: No, sir, Your honor.

22 THE COURT: Very good.

23 If you would, please, ask the jury to join us.

24 (WHEREUPON, the potential jurors entered the
25 courtroom at approximately 2:13 p.m.)

1 MADAM CLERK: All jurors present?

2 THE BAILIFF: Yes, ma'am.

3 MADAM CLERK: Thank you.

4 THE COURT: Good afternoon, ladies and
5 gentlemen. As I told you on last Monday, this is a term
6 of General Sessions Court. Each of you has been
7 qualified to serve as a juror on this trial. Ladies and
8 gentlemen of the jury panel, we are about to begin the
9 trial of the case of the State of South Carolina against
10 Raymondeze Lamon Rivera.

11 Before we select the jury, I must ask you two
12 questions. Does anyone need to report any breach or
13 violation of this Court's order as to exposure to outside
14 information or media or have any other concern to bring
15 to the Court's attention at this time?

16 If so, please, stand.

17 Yes, ma'am. If you would, please, come forward. If
18 you'll just stand there.

19 (WHEREUPON, the following was held off the record
20 with Potential Juror 64.)

21 THE POTENTIAL JUROR: On that list there was a
22 witness that said Janice, but it said Janet Liepeld.

23 THE COURT: If she testified, would that affect
24 your ability to give both the State and the Defendant a
25 fair and impartial trial?

1 THE POTENTIAL JUROR: No, sir.

2 MS. ADAMS: What number?

3 THE COURT: 64. Very good.

4 (WHEREUPON, the following was held off the record
5 with Potential Juror 370.)

6 THE POTENTIAL JUROR: My wife took my little
7 girl to the doctor. We have to go get a mammogram for my
8 17-year-old.

9 THE COURT: I'm going to excuse you. Good luck
10 to you. You may be excused.

11 MS. ADAMS: What's his number?

12 THE COURT: Oh, I'm sorry. Your number?

13 THE POTENTIAL JUROR: 370.

14 THE COURT: 70?

15 THE POTENTIAL JUROR: 370.

16 THE COURT: Oh, 370. Very good. Thank you.

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

19 THE COURT: Anyone else?

20 (No response)

21 MADAM CLERK: Mr. Bailiff, before he leaves, I
22 have something to give him.

23 THE COURT: All right. Ladies and gentlemen of
24 the jury panel, the Clerk will now call individual jurors
25 by number. What we have in General Sessions Court, the

1 way we select a jury, is that as a juror's number is
2 called, if you could come forward, stand at the front of
3 the courtroom. Let's see. Do we have a bailiff or
4 somebody that's ...

5 MADAM CLERK: I'll do it, Your Honor.

6 THE COURT: All right. Just where the Clerk is
7 standing, and then face to the back of the courtroom.
8 And if you have anything with you, any belongings,
9 personal belongings or anything, bring those with you.
10 And at that time, with the State going first, the
11 Solicitor will either say, excuse the juror or present
12 the juror. And then the Defendant will go. And then the
13 Defendant will either say swear the juror or excuse the
14 juror. And that's how we will select the jury and
15 alternates that will be our jury in this particular case
16 and the alternates in this case.

17 Madam Solicitor, the State has five?

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

19 THE COURT: Mr. Defendant or Mr. McGuire, the
20 State has -- I mean, the Defendant has ten?

21 MR. MCGUIRE: That's correct, sir.

22 THE COURT: And then on the alternates, two and
23 one?

24 MS. ADAMS: Yes, sir.

25 MR. MCGUIRE: Yes, sir.

1 THE COURT: All right. Very good.

2 Madam Clerk, if you would, please, give us a jury.

3 MADAM CLERK: Thank you, Your Honor.

4 Juror number 190 would please come forward. Juror

5 Number 190. Yes, sir. Just come on up.

6 THE POTENTIAL JUROR: 190?

7 MADAM CLERK: 1-9-0, 190. Stand right there,
8 please. That's fine.

9 What say you for the State?

10 MS. ADAMS: Please present this juror.

11 MADAM CLERK: What say you for the Defendant?

12 MR. MCGUIRE: Please excuse this juror from
13 this case.

14 MADAM CLERK: Mr. Juror 190, you may return to
15 your seat. Thank you, sir.

16 Juror Number 1-0-4, 1-0-4.

17 What say you for the State?

18 MS. ADAMS: Please present this juror.

19 MADAM CLERK: What say you for the Defendant?

20 MR. DELGADO: Please swear the juror.

21 MADAM CLERK: If you'll please have a seat
22 right over here in the jury box.

23 Juror Number 222, 222.

24 What say you for the State?

25 MS. ADAMS: Please present this juror.

1 MADAM CLERK: What say you for the Defendant?

2 MR. MCGUIRE: Please seat the juror.

3 MADAM CLERK: Please have a seat in the jury
4 box.

5 Juror Number 3, Number 3.

6 What say you for the State?

7 MS. ADAMS: Please present this juror.

8 MADAM CLERK: What say you for the Defendant?

9 MR. DELGADO: May we excuse the juror in this
10 trial, please.

11 MADAM CLERK: You may return to your seat, Mr.
12 Juror.

13 Juror Number 340, 3-4-0.

14 What say you for the State?

15 MS. ADAMS: Please present this juror.

16 MADAM CLERK: What say you for the Defendant?

17 MR. MCGUIRE: Please excuse this juror from the
18 trial of this case.

19 MADAM CLERK: Thank you. You may return to
20 your seat.

21 Number 33, Juror Number 33.

22 What say you for the State?

23 MS. ADAMS: Please present this juror.

24 MADAM CLERK: What say you for the Defendant?

25 MR. DELGADO: Swear the juror, please.

1 MADAM CLERK: You may have a seat right over
2 here in the jury box.

3 Number 125, Number 125.

4 What say you for the State? What say you for the
5 State?

6 MS. ADAMS: Please present this juror.

7 MADAM CLERK: What say you for the Defendant?

8 MR. MCGUIRE: Please seat this juror.

9 MADAM CLERK Please have a seat right over here
10 in the jury box, ma'am.

11 That's fine.

12 Juror Number 15, Number 15.

13 What say you for the State?

14 MS. ADAMS: Please present this juror.

15 MADAM CLERK: What say you for the Defendant?

16 MR. DELGADO: May we excuse the juror from this
17 trial, please.

18 MADAM CLERK: You may return to your seat.

19 Juror Number 36, Number 36.

20 What say you for the State?

21 MS. ADAMS: Please present this juror.

22 MADAM CLERK: What say you for the Defendant?

23 MR. MCGUIRE: Please excuse this juror from the
24 trial of this case.

25 MADAM CLERK: Thank you, Juror Number 36.

1 Number 225, 2-2-5.

2 What say you for the State?

3 MS. ADAMS: Please present this juror.

4 MADAM CLERK: What say you for the Defendant?

5 MR. DELGADO: May we excuse the juror from this

6 case.

7 MADAM CLERK: You may return to your seat.

8 Thank you, Mr. 225.

9 Juror Number 135, Number 135.

10 What say you for the State?

11 MS. ADAMS: Please present this juror.

12 MADAM CLERK: What say you for the Defendant?

13 MR. MCGUIRE: Please seat this juror.

14 MADAM CLERK: Please have a seat in the jury

15 box.

16 Juror Number 30, Number 30.

17 What say you for the State?

18 MS. ADAMS: Please present this juror.

19 MADAM CLERK: What say you for the Defendant?

20 MR. DELGADO: May we excuse the juror from this

21 trial.

22 MADAM CLERK: Thank you, sir.

23 Juror Number 64, Number 64.

24 What say you for the State?

25 MS. ADAMS: Please excuse this juror.

1 MADAM CLERK: You may return to your seat.

2 Thank you, ma'am.

3 Number 141, Juror Number 141.

4 What say you for the State?

5 MS. ADAMS: Please present this juror.

6 MADAM CLERK: What say you for the Defendant?

7 MR. DELGADO: Swear the juror for this trial,
8 please.

9 MADAM CLERK: Swear?

10 MR. DELGADO: Yes, ma'am.

11 MADAM CLERK: If you'd have a seat in the jury
12 box, please.

13 Juror Number 352, Number 352.

14 What say you for the State?

15 MS. ADAMS: Please excuse this juror.

16 MADAM CLERK: You may return to your seat.
17 Thank you.

18 Juror Number 247, Number 247.

19 What say you for the State?

20 MS. ADAMS: Please present this juror.

21 MADAM CLERK: What say you for the Defendant?

22 MR. MCGUIRE: Please seat this juror.

23 MADAM CLERK: Have a seat, please, Mr. 247, in
24 the jury box.

25 Juror Number 248, Juror Number 248.

1 What say you for the State?

2 MS. ADAMS: Please present this juror.

3 MADAM CLERK: What say you for the Defendant?

4 MR. DELGADO: Please swear the juror.

5 MADAM CLERK: Please have a seat in the jury

6 box.

7 Juror Number 209, 209.

8 What say you for the State?

9 MS. ADAMS: Please present this juror.

10 MADAM CLERK: What say you for the Defendant?

11 MR. MCGUIRE: Please excuse this juror from the

12 trial of this case.

13 MADAM CLERK: You may return to your seat.

14 Thank you, sir.

15 Juror Number 266, 266.

16 What say you for the State?

17 MS. ADAMS: Please present this juror.

18 MADAM CLERK: What say you for the Defendant?

19 MR. DELGADO: Please swear the juror.

20 MADAM CLERK: Please have a seat in the jury

21 box.

22 Juror Number 278, Number 2-7-8.

23 What say you for the State?

24 MS. ADAMS: Please present the juror.

25 MADAM CLERK: What say you for the Defendant?

1 MR. DELGADO: Please swear the juror.

2 MADAM CLERK: Please have a seat in the jury
3 box.

4 Number 261, Juror Number 261. What say you for the
5 State?

6 MS. ADAMS: Please present the juror.

7 MADAM CLERK: What say you for the Defendant?

8 MR. MCGUIRE: Please excuse this juror from the
9 trial of this case.

10 MADAM CLERK: Thank you, sir.

11 Number 383, Juror 383.

12 What say you for the State?

13 MS. ADAMS: Please excuse this juror.

14 MADAM CLERK: You may return to your seat.

15 Thank you, sir.

16 Number 56, Juror Number 56.

17 What say you for the State?

18 MS. ADAMS: Please present this juror.

19 MADAM CLERK: What say you for the Defendant?

20 MR. DELGADO: Please swear the juror.

21 MADAM CLERK: Please have a seat in the jury
22 box.

23 Juror Number 307, Juror Number 307.

24 What say you for the State?

25 MS. ADAMS: Please excuse this juror.

1 MADAM CLERK: Thank you, ma'am.
2 Juror Number 158, Number 158.
3 What say you for the State?
4 MS. ADAMS: Please present this juror.
5 MADAM CLERK: What say you for the Defendant?
6 MR. DELGADO: Please excuse the juror.
7 MADAM CLERK: Thank you, sir.
8 Number 29, Juror Number 29.
9 What say you for the State?
10 MS. ADAMS: Please present this juror.
11 MADAM CLERK: What say you for the Defendant?
12 MR. DELGADO: I believe we have no challenges
13 for cause.
14 MR. MCGUIRE: Please seat the juror.
15 MADAM CLERK: Thank you. If you'll have a seat
16 in the jury box, please.
17 THE COURT: All right. I think that is twelve.
18 MADAM CLERK: That's correct.
19 THE COURT: All right. And so we'll draw the
20 alternates. Two and one.
21 Is that correct, Solicitor?
22 MS. ADAMS: Yes, sir.
23 THE COURT: All right. Two and one, Mr.
24 McGuire?
25 MR. DELGADO: Sir?

1 THE COURT: Two and one on the alternates?

2 MR. MCGUIRE: Oh, yes, sir.

3 THE COURT: All right. Very good.

4 MADAM CLERK: First alternate.

5 Juror Number 41, Number 41.

6 What say you for the State?

7 MS. ADAMS: Please present the juror.

8 MADAM CLERK: What say you for the Defendant?

9 MR. MCGUIRE: Please excuse this juror from
10 this case.

11 MADAM CLERK: You may return to your seat.

12 Thank you.

13 Number 292, Juror Number 292.

14 What say you for the State?

15 MS. ADAMS: Please present this juror.

16 MADAM CLERK: What say you for the Defendant?

17 MR. DELGADO: Ma'am, please excuse this juror.

18 MADAM CLERK: You may return to your seat,

19 ma'am.

20 Number 359, Juror Number 359.

21 What say you for the State?

22 MS. ADAMS: Please present this juror.

23 MADAM CLERK: What say you for the Defense?

24 MR. MCGUIRE: Please seat this juror.

25 MADAM CLERK: Please have a seat in the jury

1 box.

2 Number 344, Juror 344.

3 What say you for the State?

4 MS. ADAMS: Please present this juror.

5 MADAM CLERK: What say you for the Defendant?

6 MR. DELGADO: Please excuse this juror.

7 MADAM CLERK: You may return to your seat.

8 Thank you.

9 Number 187, Juror 1-8-7.

10 What say you for the State?

11 MS. ADAMS: Please present this juror.

12 MADAM CLERK: What say you for the Defendant?

13 MR. MCGUIRE: Please excuse this juror.

14 MADAM CLERK: You may return to your seat.

15 Number 205, 205.

16 What say you for the State?

17 MS. ADAMS: Please present this juror.

18 MADAM CLERK: What say you for the Defendant?

19 MR. DELGADO: We don't have any challenges.

20 Please swear the juror.

21 MADAM CLERK: Have a seat in the jury box.

22 Number 364, Juror 364.

23 What say you for the State?

24 MS. ADAMS: Please present the juror.

25 MADAM CLERK: What say you for the Defendant?

1 MR. MCGUIRE: Please excuse this juror from
2 this case.

3 MADAM CLERK: Number 386, 386.

4 What say you for the State?

5 MS. ADAMS: Please present this juror.

6 MADAM CLERK: What say you for the Defendant?

7 MR. DELGADO: Please excuse this juror.

8 MADAM CLERK: Juror Number 389, 389.

9 What say you for the State?

10 MS. ADAMS: Please present this juror.

11 MADAM CLERK: Does the Defense have a challenge
12 for cause?

13 MR. MCGUIRE: Please seat this juror.

14 MADAM CLERK: Thank you.

15 Juror Number 86, Number 86.

16 What say you for the State?

17 MS. ADAMS: Please excuse this juror.

18 MADAM CLERK: You may return to your seat.

19 Thank you.

20 Juror Number 34, Number 34.

21 What say you for the State?

22 MS. ADAMS: Please present this juror.

23 MR. DELGADO: Please swear ---

24 MADAM CLERK: What say ---

25 MR. DELGADO: Excuse me. Please swear the

1 juror.

2 MADAM CLERK: Please have a seat in the jury
3 box.

4 THE COURT: All right. Is there any reason
5 that this jury and alternate cannot be sworn for the
6 trial of this case? From the State?

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

8 THE COURT: From the Defense?

9 MR. MCGUIRE: Just a *Batson* issue, Your Honor.

10 THE COURT: All right. Let's see. Mr.
11 Padgett, I'm going to ask you to serve as foreperson on
12 this jury. So when we come back, if you would sit on the
13 front row, the first seat. Now, everybody on the jury --
14 that does not include the four alternates -- but
15 everybody else on the jury can sit anywhere in the box.
16 But the foreman will sit on the front, the first seat on
17 the front row. Now, the alternates can sit anywhere they
18 want to, but they have to sit in the four seats on the
19 end. The only reserved seats are for the foreperson and
20 for the alternates.

21 Now, I'm going to ask you to go with the bailiff,
22 and he'll show you the jury room you'll be using during
23 the trial of this case.

24 WHEREUPON, the jury exited the courtroom at
25 approximately 2:49 p.m.)

1 THE COURT: Now, ladies and gentlemen who were
2 not drawn on the trial of this case, I'm going to ask you
3 to, if you would, retire from the courtroom. I need to
4 take up some matters outside of your presence for a
5 moment. It will just take a while. I think -- have we
6 got enough room out there in the ---

7 MADAM CLERK: Yes, sir, I think we can ---

8 THE COURT: --- corridor? If not -- what is it
9 -- if you would, take -- let the jury go down to the
10 third floor.

11 But if we can -- and it shouldn't take too long.
12 But I do need to take up some matters with the attorneys.
13 So again, please do not undertake any discussion of the
14 case among yourselves or permit anybody to discuss it
15 with you. Very good. I'll call you back in just a few
16 minutes.

17 (WHEREUPON, the jury panel exited the courtroom at
18 approximately 2:49 p.m.)

19 THE COURT: All right. Are there any jurors in
20 the jury room -- I mean, in the courtroom?

21 MADAM CLERK: No.

22 THE COURT: All right. A *Batson* objection has
23 been made. I guess it includes jab two.

24 Madam Solicitor, the first strike for the State was
25 number, Juror Number 64.

1 MS. BYFORD: Yes, sir, Your Honor.

2 THE COURT: A white female.

3 MS. BYFORD: I'm sorry?

4 THE COURT: I think she's a white female?

5 MS. BYFORD: Yes, sir, she is.

6 THE COURT: Yes, ma'am.

7 MS. BYFORD: Your Honor, we struck her because
8 of her hesitation on some of her answers. And
9 additionally, the fact that she was Catholic concerned us
10 and her overall demeanor in answering questions.

11 THE COURT: All right.

12 MS. BYFORD: In addition, Your Honor, she also
13 -- she had the son who had been to P.T.I. on a
14 shoplifting. I don't know if you recall.

15 THE COURT: Is that the same one?

16 MS. BYFORD: Yes, sir.

17 THE COURT: All right. I find that it's
18 facially race and gender neutral. What does the
19 Defendant say?

20 MR. MCGUIRE: Your Honor, our position would be
21 first to go back a little bit and start from the
22 beginning. There were only three minority jurors called
23 in the general strike for the first twelve. Actually,
24 the juror that we're talking about here, Number 64,
25 actually describes herself as Hispanic on her

1 questionnaire. And I think the Court should consider her
2 to be a minority, a Hispanic female.

3 Further, the only other minority jurors called were
4 Juror 278, a black female, and 283, a black male. The
5 State used two of their strikes to strike two of the only
6 three minorities called, and that's the pattern that we
7 put forward as the basis for our *Batson* challenge.

8 Further, the fact that she's a Catholic. Other
9 jurors have been sat that are Catholic. Specifically,
10 Juror 104, the second juror called, is also Catholic.
11 And that reason would be, on it's face, not genuine
12 pretextual.

13 THE COURT: All right.

14 MS. BYFORD: Your Honor, I believe I included
15 in my reason attached to the Catholicism was her
16 hesitation in answering questions regarding it on voir
17 dire. I apologize if I did not make that clear in the
18 beginning. Additionally, I would point out to the Court
19 that we sat Juror Number 278 who is an African-American
20 female. And additionally, we did not strike Juror Number
21 386.

22 Just to -- the only -- just to make sure I
23 understand the Defense's objections, Juror Number 86 was
24 one of the ones we used our -- was an African-American
25 female that we used our strike for, and 383, I believe,

1 was the other -- only other minority that we used a
2 strike for. Juror Number 86 said, both on her
3 questionnaire and during the individual questioning in
4 the courtroom, that she did not want to sit in judgment
5 of another human being and that she was against the death
6 penalty.

7 Additionally, 383, we had concerns because he put on
8 his questionnaire -- in addition to refusing to answer
9 any of the questions about the death penalty, he wrote
10 across the top sheet, I do not believe in the death
11 penalty. He had a completely different attitude when he
12 came into Court and could not explain that sudden change
13 in his ---

14 THE COURT: All right. Now, you're talking
15 about ---

16 MS. BYFORD: --- belief system to ---

17 THE COURT: --- Number 383?

18 MS. BYFORD: Yes. ... to Ms. Adams when she
19 questioned him, and that was of great concern to us.

20 THE COURT: All right. Mr. McGuire?

21 MR. MCGUIRE: Well, Judge, I would also state
22 that another juror has been sat who hesitated with regard
23 to the voir dire questions regarding that. That would be
24 Juror Number 248. In fact, at one point, she said she'd
25 be leaning towards life. And I mean, I think she was

1 certainly qualified. But not only was she leaning
2 towards life, I mean, she also said she would almost,
3 almost always go that way. I mean -- and she's a white
4 female. I think her answers were actually more extreme
5 on the record in her hesitancy to vote for death and lean
6 towards life than the minority juror struck by the State,
7 that juror being Number 64.

8 THE COURT: All right. There apparently --
9 there are several white females who were sat along with
10 -- so your -- is your challenge to number two that it was
11 a female or ---

12 MR. MCGUIRE: My challenge ---

13 THE COURT: --- a minority as being ---

14 MR. MCGUIRE: No. My challenge is that she's a
15 minority juror, a Hispanic, and that there were only
16 three minority jurors called for the general strike in
17 the first twelve for the general jury. And the State
18 used two of their strikes to strike two of the three.
19 Basically seventy-five percent of the minorities called
20 were struck by the State. The first one being number 64,
21 Hispanic female, who they've given the reason of being
22 Catholic that was a concern. There was a white female
23 who was sat, Juror Number 104 who is a Catholic, and that
24 was discussed during her voir dire.

25 Further, Juror 248 certainly gave answers in her

1 voir dire that were very much indicated a great
2 reservation to vote for death. In fact, she almost said
3 she was always leaning towards life. And she's a white
4 female and yet she was allowed to remain and not be
5 struck by the State. So I think the hesitation of her
6 answer needs to be found as being pretextual as the
7 Catholic reason because they sat two jurors with those
8 issues.

9 THE COURT: All right.

10 What does the State say about that?

11 MS. BYFORD: Your Honor, the State's position
12 -- and against -- as regarding 248 -- and I don't want to
13 get real personal about this. But I had in my notes very
14 confused, Bill's questions, very misleading, is having a
15 hard time following his questions. So I mean, I had
16 specific notes that I think her answers -- and I know
17 that we went through ad nauseam during this very long
18 process that we felt -- her answers were not as
19 concerning to us because we felt like she was the one
20 that he -- one of the ones that he really boxed in with
21 his misleading questions about the law. And I made a
22 specific reference to that in my notes right here.

23 THE COURT: All right.

24 MR. MCGUIRE: And Judge, I'd also -- just for
25 the record, I'd also indicate that Mr. Stephen Brittain,

1 Juror Number -- I'm sorry. Juror Number 33 also gave
2 answers where he had some reservations about the death
3 penalty and only certain, extreme circumstances could he
4 vote for it. So again, I think that just saying that
5 people are -- that she had some hesitancies as being --
6 reveals a pretextual reason based on Mr. Brittain's
7 answers in voir dire as well.

8 MS. BYFORD: I have a response to that too,
9 Your Honor, if you'd like to hear it.

10 THE COURT: Certainly.

11 MS. BYFORD: Your Honor, in regards to -- I
12 believe he's number ...

13 Is he 33?

14 MR. MCGUIRE: 33.

15 MS. BYFORD: Yes. I believe he is the one that
16 said -- I think he said mostly that he had just never
17 thought about it. And so he was kind of having to think
18 about it as he was answering his questions. And for that
19 reason, we were not overly concerned about his answers.
20 He said very specifically, this is really the first time
21 that I've ever thought about this. And when the State
22 asked him the appropriate open-ended questions, he
23 responded that he could consider everything and consider
24 both life and death.

25 THE COURT: All right. Anything else?

1 MR. MCGUIRE: Judge, if I could have just one
2 second.

3 (Off record discussion)

4 MR. MCGUIRE: That's all I have on Juror Number
5 64, Judge. Although I think if we search the record, we
6 could find a couple more Catholics as well.

7 MS. BYFORD: And again, for the record, Your
8 Honor, it was her hesitation in responses to the
9 questions about being Catholic, not the fact that she was
10 Catholic by herself, for the record.

11 THE COURT: She's also the one that has the son
12 that's gone through P.T.I.?

13 MS. BYFORD: Yes, sir.

14 THE COURT: All right. I find that as far as
15 the strike of Number 64 that the reason given was
16 racially and gender neutral.

17 Now, as far as two -- now, what was the one on two?
18 What was the State's reason on two?

19 MS. BYFORD: I'm sorry. What was the ---

20 THE COURT: I'm sorry. The second strike,
21 Number 352.

22 MS. BYFORD: Yes, sir. If you'll recall, Your
23 Honor, she was the one when Ms. Adams asked her if she
24 could vote for the death penalty, she had a -- there was
25 a very, very, very long pause. And she said she would

1 really have to think about it and have a hard time doing
2 it. And at one point, I wrote in my notes in quotes, I
3 just am not sure I could do it. And that is our reason
4 for striking her.

5 THE COURT: All right. I find that also
6 racially and gender neutral. And as far as Number 383, I
7 do remember his being against -- at least that was his
8 questionnaire. But also, he's -- other blacks were
9 seated, including the one before, Number 278. So I find
10 that that's also racially neutral as being -- not being
11 able to -- with having some doubts, equivocating.

12 All right. Now, number 307. What's the -- white
13 female.

14 MS. BYFORD: Yes, sir. She was the one. She
15 is a member of the A.C.L.U. and also the Unitarian
16 Universalists Church and she -- we were a little
17 concerned because it appears that she's just recently
18 change her opinion on the death penalty. She did say
19 that she was -- had been opposed to it before and had
20 concerns because of the Innocence Project and some other
21 things that she had sort of actually kind of researched
22 it and had grave concerns about it. And that was our
23 reason for striking her.

24 THE COURT: All right. What does the Defendant
25 say about Number 307?

1 MR. MCGUIRE: Judge, I don't have a challenge
2 as to that juror.

3 THE COURT: All right. Very good. I do find
4 that all strikes were racially and gender neutral.
5 Obviously, they don't have to be persuasive, but I do
6 find them being plausible and not mere pretext.

7 MR. MCGUIRE: Judge, I would also have a
8 challenge as to one of the alternates, Juror Number 86.

9 THE COURT: Oh, I see that. I missed that one.
10 How about Number 86?

11 MS. BYFORD: Yes, sir. I believe she was an
12 African-American female. I would again point out that we
13 sat Juror 278, we did not strike Juror 386. And Juror
14 Number 86, if you remember, she was towards the
15 beginning, Your Honor. And she said she did not want to
16 sit in judgment of another human being. And she stated
17 that at least five times that she was opposed to the
18 death penalty and then would kind of add, but I think I
19 could follow the law. So obviously, we had some concerns
20 about that. And her questionnaire as well, sir, is very
21 anti death penalty.

22 THE COURT: All right. Anything further on
23 that from the ---

24 MR. MCGUIRE: Judge, I would just, again, for
25 the record, compare her with a white female juror, Number

1 248, who was sat who gave answers indicating that she was
2 much leaning towards life, and yet she was allowed to
3 remain on the jury as well and not struck by the State.
4 And with regard to alternates, only two minorities were
5 called, those being 396 and 86. And the State used a
6 strike to strike fifty percent of the minorities that
7 were called for the alternates.

8 MS. BYFORD: So did the Defense, Your Honor.

9 THE COURT: Pardon?

10 MS. BYFORD: So did the Defense, Your Honor.

11 THE COURT: I understand. Well, if it's just
12 race, obviously -- what is it -- you -- the first race or
13 gender, the first juror that would be of that nature
14 would be Number 278 which was sat by the -- or seated by
15 the State. So I also find that the strike on 86 was also
16 racially and gender neutral and not implausible or did
17 not constitute mere pretext.

18 All right. Batson motion denied.

19 MR. MCGUIRE: Thank you, Your Honor. And I
20 think just to be protected, just to make sure I'm
21 protected on the record, I think I would have to renew --
22 just very politely for the record, just renew all my
23 previous objections made to the jurors who I challenged
24 for cause who were qualified. If I could do that at this
25 time.

1 THE COURT: Certainly. Noted.

2 MR. MCGUIRE: For the grounds stated earlier in
3 court based on ---

4 THE COURT: Well, again, let's do understand
5 that generally it was those six questions and the other
6 hypothetical questions, and I found that the Court --
7 asking those questions that did not have a complete
8 statement, that they had a tendency to create a staking-
9 out of a particular view in the sense of the potential
10 juror.

11 For all of those reasons -- and particularly they
12 did not satisfy the requirement stated in *Morgan* about
13 what we want to be concerned about is the ability to take
14 the law as given and either absolutely or automatically
15 -- what is it -- not be able to follow the law and always
16 impose the death sentence or never consider mitigation.
17 Not specific mitigation, but general mitigation as
18 instructed because no one has been instructed at this
19 point. Very good.

20 All right. So I note your objections and my ruling.

21 MR. MCGUIRE: Yes, sir. Thank you.

22 THE COURT: All right. Yeah. That's -- all
23 right. I understand we need to take a three o'clock
24 break. But we'll do that, but I will let the jury come
25 back in the courtroom. All right. Well, I'll tell you.

1 No. Go ahead and do that before we do bring the jury
2 back in.

3 (WHEREUPON, court stood in recess for a short break
4 during which State's Exhibits Number 1, 2 and 11
5 through 30 were marked for identification only.)

6 THE COURT: All right. Let's go on the record,
7 if we could, please.

8 During the break I asked the State and the Defendant
9 to see if they could agree on any exhibits so that we
10 could move along without having to proffer and qualify
11 them or admit them at that time during the trial. And as
12 I understand now -- and correct me if I'm wrong -- there
13 were photographs. And it looks like some nineteen
14 photographs?

15 MR. CAMPBELL: The first witness will have
16 three, Your Honor.

17 THE COURT: Well, that's what I need to know.
18 Somebody tell me what we -- what you want done.

19 MR. CAMPBELL: Depending on how far we get, the
20 first witness is three photographs. The second witness
21 we are going to identify two DVDs, and the third witness
22 we'll play the DVDs.

23 THE COURT: All right. So you have 11 through
24 30 as being photographs.

25 Are there any objections to those from the

1 Defendant?

2 MR. DELGADO: No, Your Honor.

3 THE COURT: All right. And then 1 and 2 are
4 DVDs. Any objection to those?

5 MR. DELGADO: No, Your Honor.

6 THE COURT: All right. So State's Exhibits 1
7 and 2 are admitted without objection. State's Exhibits
8 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,
9 25, 26, 27, 28, 29, and 30 are admitted without
10 objection.

11 (WHEREUPON, State's Exhibits Number 1, 2 and 11
12 through 30 were admitted into evidence.)

13 THE COURT: Now, either side, either party, can
14 use those if they want to in their opening statements.
15 All right. Understood?

16 MS. ADAMS: Yes, sir. Thank you.

17 THE COURT: Is that correct as the Defense
18 understands?

19 MR. DELGADO: Yes, sir.

20 THE COURT: All right. What I'm going to do
21 now is bring in the jury -- the balance of the jury panel
22 and excuse them, and then we'll begin the trial of the
23 case.

24 Ask the jury to join us, please.

25 MR. MCGUIRE: Judge, I just have one other

1 thing.

2 THE COURT: Oh, I'm sorry.

3 MR. MCGUIRE: I can do it later. It was just
4 in response to -- the *Batson* issue with response to Juror
5 Number 64 having a son who went through P.T.I. for
6 shoplifting. Mr. Padgett, a white male who was seated
7 and eventually became the foreman, had a son who had
8 charges dropped for building a bomb or having implements
9 to build a bomb. I would just make my record by stating
10 that to the Court.

11 THE COURT: But that was in Greenwood County,
12 wasn't it?

13 MR. MCGUIRE: Oh, sure. And I guess my
14 position would be that sort of the default position with
15 the mother who had the son who went through P.T.I., you
16 would think that she would be grateful given that
17 opportunity by the State and she would actually be sort
18 of biased to the State.

19 THE COURT: I understand. I understand. But
20 it doesn't have to be persuasive. As long as it's
21 racially or gender neutral.

22 MR. MCGUIRE: I understand. Yes, sir.

23 THE COURT: All right. Very good.

24 Let's do ask the balance of the jury panel just to
25 come in, please.

1 (WHEREUPON, the remaining jury panel entered the
2 courtroom.)

3 THE COURT: Ladies and gentlemen of the jury
4 panel that were not drawn on the trial of this case, you
5 will be excused. In fact, this will complete your
6 service.

7 I want to thank you for your patience with the Court
8 and also your cooperation with the process. I hope that
9 it was not without some benefit in the sense that you did
10 understand and will hopefully appreciate what our system
11 of justice requires in order to see that justice under
12 the law is done and accomplished with all the safeguards
13 and everything else.

14 And as I might have mentioned to you some of you --
15 and I can say it without exception to all of you really
16 -- I was impressed with the jury panel this time. And
17 although not everybody was -- could be drawn on the jury,
18 and there might have been different reasons for excluding
19 or excusing -- not excluding, but excusing -- jurors, I
20 do -- I would say that I would be satisfied with any of
21 you. And I say this after going through -- what is it --
22 almost a week of questioning and listening to the
23 questions that you had to undergo as well as your candid
24 responses on the questionnaire, that I would be satisfied
25 that you would do the justice system great credit if you

1 should be called for jury service in the future.

2 I might note that without citizen participation, our
3 jury system or our system of justice would not be able to
4 function and would not be what it is in the world, which
5 is recognized as one of the finest systems that we have.

6 In fact -- what is it -- we're reminded that Winston
7 Churchill, the Prime Minister of Great Britain during
8 particularly the Second World War, once said that no
9 greater duty can a citizen perform in peacetime than that
10 of a juror because, again, the very system that provides
11 for us is based on citizen participation. And for that
12 reason, I want to thank you.

13 And so this concludes your service. And if there's
14 any benefit to you, if you'll remember when I qualified
15 you last Monday, one of the questions I asked, had any
16 member of the jury panel sat on a jury in the last three
17 years. Well, at least you won't be summoned for another
18 three years.

19 Again, I wish -- I hope that -- what is it -- it has
20 been something of a beneficial experience, and I do
21 appreciate your service and I thank you for your patience
22 with the Court.

23 Now, the Clerk has some statements for you that
24 she'll be able to give to you out in the lobby. So if
25 you would, go with the Clerk. Again, I want to thank you

1 and I hope you all have a good balance of the week. And
2 thank you very much.

3 Everyone else remain seated while the jury retires
4 from the courtroom.

5 (WHEREUPON, the remaining jury panel exited the
6 courtroom at approximately 3:35 p.m.)

7 THE COURT: Ms. Adams, you can bring them up.

8 MS. ADAMS: Judge, we're just waiting on the
9 family. They're coming in right now, I think. There was
10 a problem with the elevator with the jurors getting down.
11 I'm sorry. I just don't want them to be all coming in
12 when you're talking to the jury and if we start openings.

13 THE COURT: I can take care of that.

14 MS. ADAMS: They're on the way, Judge.

15 (Pause)

16 THE COURT: All right. Are we ready?

17 MADAM CLERK: I appreciate that, Your Honor.
18 Thank you for allowing us to do that.

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

20 Ask -- anything from the State before I bring the
21 jury back or in?

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

23 THE COURT: Anything from the Defense?

24 MR. DELGADO: Nothing, no.

25 THE COURT: All right. Ask the jury to come

1 in, please.

2 (WHEREUPON, the jury entered the courtroom at
3 approximately 3:41 p.m.)

4 THE COURT: Madam Clerk, please swear the jury.

5 MADAM CLERK: Thank you, Your Honor.

6 Mr. Foreman, ladies and gentlemen of the jury, if
7 you'll please stand and raise your right hand to take the
8 jury oath.

9 (WHEREUPON, the jury was duly sworn.)

10 THE COURT: Mr. Foreman, and ladies and
11 gentlemen of the jury, I am sure that each of you now
12 fully appreciates that this court, the Court of General
13 Sessions for Anderson County, exists for the purpose of
14 resolving questions of alleged criminal conduct arising
15 between the State of South Carolina and the Defendant.
16 It is a guaranteed right of every citizen that a charge
17 of criminal conduct be presented in open court according
18 to certain rules of procedure.

19 The State has not only an equal right, but the duty
20 to present a charge of criminal conduct in open court
21 according to the same rules of procedure. Each of the
22 parties, therefore, both the State and the Defendant,
23 then have an equal right to the opportunity of this
24 judicial proceeding and to have you as the jury selected
25 and now sworn for the trial of this case.

1 One of the most important aspects of your duty as
2 the jury lies essentially in the oath that you have now
3 taken, to well and truly try and determine the facts of
4 this case. That oath, in a very essential way, says that
5 you are the sole judges of the facts in this case.

6 Obviously, any case tried in court will involve a
7 question about what happened or how something came to
8 happen or whom, if anyone, did anything in a particular
9 occurrence or circumstance. From this point forward
10 then, no one concerned with this trial has a right to
11 decide any question of fact in this trial or the truth of
12 it except you.

13 Now, the facts then are for your resolution and your
14 decision and yours alone. And after you hear all of the
15 evidence in the case, then it will be your duty, by your
16 mutual and joint discussions, to determine the truth of
17 this case by deciding the weight and the believability of
18 each part of the evidence and by applying the law of the
19 case thereto.

20 Now, the trial judge is the judge of the law in this
21 case. It is also my responsibility, among other duties,
22 to preside over this trial, to rule on the admissibility
23 of evidence offered during the progress of the trial, and
24 to state to you, the jury, the law applicable to this
25 case.

1 The Constitution of South Carolina mandates that I,
2 as the trial judge, cannot directly or indirectly comment
3 about the facts of this case. The process of a verdict
4 means simply that you, the jury, first determine what is
5 the truth of the facts and then apply to that true state
6 of facts that principle of law applicable, and by that
7 process determine and report to this Court your final
8 verdict in the case, speaking the truth of the case as
9 you determine it.

10 The Court will more fully and more completely state
11 to you the principles of law applicable to the issues in
12 this case before the case is submitted to you, the jury,
13 for a decision. However, there are certain principles of
14 law applicable to the framework of every case in General
15 Sessions Court. And in a very basic fashion, I will
16 outline several of these basic principles to you for your
17 guidance.

18 Under the law of South Carolina where the State
19 seeks the death penalty, as it does here, the trial is
20 bifurcated. That is, it is a trial which is held in two
21 parts. First, a trial is held before a jury to determine
22 the guilt or innocence of the Defendant. That is the
23 phase of the trial we are presently holding.

24 At the conclusion of the first trial, should the
25 verdict of the jury be guilty -- and I'll make no

1 recommendation to you concerning that verdict or any
2 verdict -- if the Defendant is convicted of the crime of
3 murder, then a second proceeding will be held. This
4 second proceeding is a sentencing proceeding at which
5 extenuating aggravating and mitigating circumstances may
6 be introduced into evidence and may be considered by you,
7 the jury. Should such a proceeding be necessary, I will
8 instruct you further about this at that time if it's
9 necessary.

10 Please derive no inference from what I have just
11 told you as to what your verdict should be. The purpose
12 of my telling you this is to emphasize that you are not
13 to consider punishment or sentence in this phase of the
14 case. You're only to determine whether the Defendant is
15 guilty or not guilty based upon the evidence and the law
16 as I charge it to you.

17 Now, Mr. Foreman and ladies and gentlemen of the
18 jury, the case we're about try is the case of the State
19 of South Carolina versus Raymondeze Lamon Rivera,
20 Defendant. The Defendant is charged with the one
21 indictment filed in Anderson County with the crime of
22 murder, the elements of which will be explained to you
23 later.

24 The Defendant has entered a plea of not guilty to
25 the charges contained in the indictment. The indictment

1 in this case is not evidence. It is simply the written
2 instrument that contains a charge or charges against the
3 Defendant, and it serves as the formal document by which
4 this case is processed into the Court.

5 The plea of not guilty places upon the State the
6 burden of proof in this case. As for what is meant by
7 the term burden of proof, the Defendant is presumed in
8 law innocent of all charges contained in the indictment.
9 The burden of proof requires the State to prove guilt
10 beyond a reasonable doubt. And therefore, consistent
11 with that burden the Defendant or the accused party shall
12 be presumed innocent. And that presumption of innocence
13 is sufficient to compel a verdict of not guilty or a
14 verdict of acquittal unless the jury concludes that the
15 State has satisfied it's obligation to prove the
16 Defendant guilty beyond a reasonable doubt. Now, the
17 term reasonable doubt means the kind of doubt that would
18 cause a reasonable person to hesitate to act.

19 Now, in a moment, the case will be opened by the
20 Solicitor after which the same opportunity will be
21 afforded to the Defendant to make an opening statement.
22 I wish to tell you what the -- excuse me. Now, I wish to
23 tell you that what the attorneys will tell you at this
24 time is not evidence in this case. It's only their
25 contention as to what the issues are. The evidence in

1 this case will be presented to you by the testimony of
2 sworn witnesses from the witness stand or by such
3 exhibits which may be introduced into evidence.

4 When all of the evidence has been received by the
5 Court, counsel for the State and counsel for the
6 Defendant will state to the jury their respective
7 positions after which the Court will fully state the
8 applicable law in this case. Obviously, all parts of the
9 case are important. You do not know which witness in a
10 case will most impress you, whether it be the first
11 witness or the last witness.

12 In reaching your final conclusion, you will need the
13 guidance and the judgment of the other jurors. You will
14 need the guidance of the principles of law that will be
15 stated to you by the Court. For all of these reasons,
16 then if we have any recess periods when you retire to the
17 jury room or during overnight or a meal recess, the Court
18 instructs you that you must not undertake to discuss the
19 case among yourselves until the case is finally given to
20 you for your deliberation, nor are you to discuss this
21 case with anyone or permit anyone else to discuss this
22 case with you. If they should attempt to do so, you will
23 report them immediately so I might take the appropriate
24 action.

25 Now, the verdict in this case must be a unanimous

1 verdict of all twelve jurors.

2 I would like to make a few additional comments
3 before the case begins. First, as I mentioned earlier,
4 although I am the only person who can tell you what the
5 law is, you and you alone are the only ones who can
6 determine the facts. I do not have the right to indicate
7 how I may feel about the evidence presented, and
8 throughout this trial, my intention will be to act
9 impartially towards each party.

10 In determining what the true facts are in this case,
11 you, of necessity, must pass upon the credibility or the
12 believability of the witnesses who take the stand. It
13 will be your responsibility to rule as a matter of law,
14 as to whether certain testimony -- excuse me -- it will
15 be my responsibility as a matter of law to rule whether
16 certain testimony is admissible at all or not. But once
17 I have allowed the testimony to be admitted, whether or
18 not you believe it is your -- is solely for you to
19 determine.

20 Passing upon the credibility or believability of
21 witnesses, you have the right as a jury to take into
22 consideration the interest of any witness, the bias of
23 any witness, the prejudice of any witness, the
24 opportunity for the witness to have observed the matters
25 and things about which he or she may testify and the

1 demeanor of the witness upon the witness stand. Anything
2 that is said that is in the record that will aid you and
3 assist you in evaluating the testimony of the several
4 witnesses who will testify in this case, you have the
5 right to consider.

6 That means, Mr. Foreman and ladies and gentlemen of
7 the jury, that it is your duty under your sworn
8 obligations as jurors to pay close attention to these
9 witnesses, to observe the witnesses, to listen to the
10 witnesses and to pay close attention to the attorneys and
11 to the Court. Don't let your thoughts wander, but give
12 strict attention to the testimony in this case.

13 So at the conclusion of all the testimony, after the
14 arguments of counsel and the charge of the law by the
15 Court, you will then be in a position to determine what
16 the true facts and apply the law as I shall charge it to
17 you for those facts, and thus render a true and just
18 verdict.

19 Second, from time to time during the trial of this
20 case, you may hear one of the lawyers say something like,
21 Your Honor, I believe we have a question of law or a
22 matter of law to discuss with you, or, Your Honor, may we
23 approach the bench. Or sometimes, I, myself, might find
24 it necessary that you be excused from the courtroom for a
25 short while as the attorneys and I discuss a matter of

1 law.

2 As in sports and business or any other structured
3 activity, there are certain rules that both sides must
4 obey in presenting evidence. These rules have a definite
5 purpose. They ensure that the information you receive is
6 the most trustworthy and reliable evidence available.

7 An objection is a procedure we use for an attorney
8 to call a possible violation of the rules to the Court's
9 attention. And for this reason, you should not hold an
10 attorney's objection against his or her client nor should
11 you conclude from my ruling on the objection that I favor
12 one side or the other.

13 Finally, I would ask you to pay the closest
14 attention possible to the evidence presented you. I will
15 ask that you do not take notes, for if the note taker
16 makes an error, those notes can be more detrimental than
17 helpful during the deliberation. The time-tested system
18 is for each of you to listen carefully, and I am sure
19 that each of you will do that.

20 Now, having said that, the reason I'd suggest that
21 jurors do not take notes, it's my experience that if you
22 take notes, you have to concentrate on the notes you're
23 taking. First, you're being sure you write down what you
24 think you heard, but also just in spelling and being sure
25 that the note makes sense, you're concentrating on the

1 note. As I've said, you must make your decision based on
2 the testimony from the witnesses in this witness stand as
3 well as the other exhibits and evidence introduced in
4 this courtroom. So it's absolutely essential that you
5 pay attention to what's going on at the time rather than
6 a distraction.

7 Moreover, if you make an error in those notes -- and
8 I use the word not as an example. If you leave a word
9 out such as not, or put it in, but more than likely leave
10 it out because you didn't hear it or it passed over you,
11 that changes the note altogether. So I find it is better
12 for juries to listen carefully, and if there is a
13 question about a particular exhibit or testimony or
14 whatever, use the collective recollection of the jury, of
15 your fellow jurors, to determine what the true statement
16 was. And of course, we do have a record of the testimony
17 that we can play back for you if it becomes necessary.

18 Now, let me say this, having said that, I do take
19 notes. Now, that's not one of these things, do as I say
20 not as I do. It's the fact -- well, the fact is that you
21 and I have different purposes in this courtroom. You and
22 you alone are the only ones that can determine the weight
23 or the value of the testimony and other evidence. I am
24 not concerned about the weight or the value of the
25 testimony or evidence. I am only concerned about if

1 something occurs that is required under our procedure.
2 So I'm just jotting down what happens. I don't have
3 anything to do, and make no effort to determine the
4 significance of that. That is for you and you alone. So
5 therefore, I will be taking notes.

6 Now, I do not intend that you or anyone else should
7 construe these remarks that I have just made as a charge
8 on the law in this case because it is not that. I will
9 charge you the law applicable to this case at the
10 conclusion of the trial. This has been merely an effort
11 to explain the procedure that we will follow in the trial
12 of the case so that you may have a better understanding
13 as to what may be happening from time to time.

14 Nevertheless, in order to preserve everyone's
15 rights, I will give the parties an opportunity to object
16 to anything I have said if they have any such objections.

17 Any exceptions from the State?

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

19 THE COURT: Anything from the Defendant?

20 MR. DELGADO: None from the Defense.

21 THE COURT: I now recognize Solicitor Adams for
22 her opening statement.

23 MS. ADAMS: Your Honor, may we approach one
24 minute?

25 (WHEREUPON, a bench conference was held off the

1 record.)

2 THE COURT: All right. You may proceed.

3 MR. CAMPBELL: May it please the Court.

4 OPENING STATEMENT

5 BY MR. CAMPBELL:

6 Two year old Kamille J [REDACTED] was suddenly awakened
7 by the screaming and frantic yelling of her older
8 brother, Kameron [REDACTED]. Frightened and scared, the two-
9 year-old girl, not knowing what's going on, instinctively
10 did what most small children do. She raised her hands
11 up, wanting to be held and picked up. She needed the
12 warmth and comfort of a familiar friend. Kameron B [REDACTED]
13 reached down and picked up his little sister, picked her
14 up off the cold, lifeless body of their mother, Kwana
15 Burns.

16 As he held her in his arms, he raced out of that
17 house, closely followed by their cousin, Kiki Hatten, the
18 house at [REDACTED], here in Anderson. And they
19 went next door and they called 9-1-1. That Thursday
20 morning, December 14th, 2006, Kameron B [REDACTED] would not be
21 attending school that day. He would not be attending
22 school because the clock had begun to tick in the murder
23 investigation to find his mother's killer. A killer who
24 would turn out to be a stranger, a complete stranger to
25 Anderson.

1 The facts will show that this stranger happened to
2 be coming through Anderson County on the afternoon of
3 December 10th, 2006. He stopped off the interstate to
4 gas up his car, a 1990 red-and-white-top Buick Park
5 Avenue. And instead of continuing on his journey down
6 the interstate going towards Atlanta, he decided to make
7 a detour into Anderson. And he drove down Clemson
8 Boulevard and he made a stop at the Anderson Mall.

9 It was about three o'clock that afternoon. Kwana
10 Burns, who worked at the cosmetic counter at the Belk
11 Department Store in Anderson Mall, was winding up her
12 workday when she was approached by a man wearing a red
13 jacket. This man started talking to her, struck up a
14 conversation with her. This man was charming his way
15 into her life. As a result, she gave him a business card
16 with her cell phone number on it.

17 Shortly thereafter, she left. And the facts will
18 show that he left and went back to Atlanta. And over the
19 next couple of days he called several times back to
20 Kwana. Over in the late evening or afternoon of December
21 13, 2006, he left Atlanta and drove back to Anderson to
22 meet with Kwana Burns.

23 December 13th, 2006 was an exciting time for Ms.
24 Burns. Ms. Burns, a twenty-eight-year-old single mother
25 of two, a daughter, a friend of many, was starting over,

1 having a new beginning, if you want to call it that. She
2 was moving into a new house with her two young children,
3 a house located on Tribble Street where she'd be close to
4 family and friends. A house where she was going to meet
5 this charming stranger that night.

6 Ladies and gentlemen, what you will hear is going to
7 be difficult and disturbing. You're going to hear the
8 gruesome circumstances surrounding the death of Kwana
9 Burns and how that man, Raymondeze Rivera, the Defendant
10 in this case, choked the life out of her. Choked her
11 while she was screaming for her two-year-old child as
12 that child watched on, the child who saw her take her
13 very last breath.

14 Evidence is going to show that after that, he
15 methodically and meticulously cleaned up the crime scene.
16 And having accomplished what he set out to do, he left
17 Anderson. He left that Tribble Street house, the house
18 that was never to be a home. A house that Kwana Burns
19 never spent a night in.

20 Mr. Rivera has been charged with murder. As South
21 Carolina law states, it is the killing of another human
22 being with malice aforethought, malice being a wicked or
23 depraved heart, fatally bent on mischief. As the Judge
24 charged you, the State has to prove this to you beyond a
25 reasonable doubt. And we look forward to that, and we'll

1 do that. We will show you. You will hear -- to help you
2 come up with your decision, you will hear the testimony
3 from this witness stand. You will get to view and
4 observe the physical evidence. You will get to hear
5 Raymondeze Rivera's own words on how he brutally killed
6 Kwana Burns. You'll also get to see the scientific
7 evidence that places him in that house.

8 Ladies and gentlemen, y'all have been chosen as the
9 fact-finders in this case. Y'all will determine
10 innocence or guilt. The State will bring to you what you
11 need to make and base your decision upon. And at the end
12 of this guilt phase, you'll have an opportunity to come
13 back with a verdict, a verdict that speaks the truth and
14 justice demands.

15 And I thank you.

16 MR. DELGADO: May it please the Court.

17 THE COURT: Mr. Delgado?

18 OPENING STATEMENT

19 BY MR. DELGADO:

20 Good afternoon. This is a very difficult time, a
21 very difficult time. We've been thinking about you all
22 before you even knew you had to come to Anderson County
23 to this courthouse, knowing what this case would take
24 from you. And let me say this to you, this is a very,
25 very, difficult undertaking. Let me see if I can begin

1 our time together with a story, if I can. Because it is
2 a story that we believe outlines and defines for you this
3 case.

4 When God contemplated the creation of mankind, he
5 gathered beside him the angels of Truth, Justice, and
6 Mercy. And Truth said, Father, create him not for surely
7 he will spill his brother's blood within the first
8 generation. And Justice said, it is as has been said, he
9 will defile Thy name and desecrate Thy kingdom. But
10 Mercy knelt humbly by the throne of God and whispered,
11 create him still, Father. For by the error of his own
12 ways, I will follow in his footsteps and return him to
13 Thee.

14 Ladies and gentlemen, I want to be able to introduce
15 some members of the team that represents the Defendant in
16 this case. Seated beside me is Mr. Bill McGuire. I
17 think each of you have had a chance to see him and talk
18 with him. Beside him is Mr. Danny Day who is the court-
19 appointed guardian ad litem. He's an attorney in Seneca.
20 He is the guardian ad litem for the gentleman who's
21 seated beside him. His name is Raymondeze Rivera. That
22 is the Defendant. That is the individual for whom this
23 trial will establish his guilt or innocence. And may I
24 say to you, it is very likely that the State will be able
25 to prove beyond every reasonable doubt that any of you

1 might have, his guilt. Let me explain that to you just a
2 minute.

3 It is true that on August -- excuse me -- on
4 December the 14th, 2006, Mr. Rivera -- excuse me. The
5 body of Kwana Burns was found in her home on Tribble
6 Street here in Anderson.

7 Ladies and gentlemen, she was -- these individuals
8 who are to my left, to your right, those are members of
9 her family and her loved ones. Those who cared about
10 this wonderful shining star in their family
11 constellation. And she deserved only the best of God's
12 bounty in this life. What happened to her, this
13 innocent, innocent young mother, is so hard for any of us
14 to conceive. But that's what you will, I am sorry to
15 say, you will have to undergo during this trial.

16 We from the Defense side can't even begin to address
17 this poor family. But hopefully, through you, we can say
18 to them, we are so sorry for the acts that the State
19 attributes to Mr. Rivera.

20 You will hear their anguish. You will see their
21 loss. You will feel their pain, as we have. Because
22 what happened to Ms. Burns was not just horrific. She
23 was found in her bedroom, her hands tied behind her back
24 with a jump rope extended down to her feet where it too
25 was tied. She had been strangled. And, in truth, her

1 two year old child was there on her body. I have the
2 pictures here. I asked the Solicitor if I could have
3 them to show to you. I'll let them show them to you in
4 their first witness or so. But it is horrific. And I
5 wish to say to you that I'm sorry that this has to be
6 shown to you. And we mean -- all of us, on both sides of
7 the isle -- don't do this to offend this family in any
8 sense.

9 So the next question is why? They will show to you
10 what happened, and we basically will agree absolutely
11 with that. Why? In that chair right here in February of
12 2008, two years ago right now, Raymondeze Rivera got on
13 that stand and said that he was a contract killer with a
14 code name, Circle K. He got his instructions -- he got
15 his instructions from a post office box in Atlanta. And
16 he was here on an assignment to kill Kwana Burns.

17 Can I say that to you again? Does any rational
18 reasonable human being -- can we make any sense of that?
19 No, you can't. And you won't. And the reason for it is
20 that he is mentally ill. He suffers from bipolar
21 disorder. While you were here in your jury room at three
22 o'clock, he was taking medicine that the law enforcement
23 was giving to him. It's called Seraquel. He takes it
24 twice a day. He has a major mental illness, and he takes
25 an anti-psychotic medicine twice a day for that illness.

1 Please understand I'm not excusing anything. This
2 is not an abuse excuse. But you have the responsibility
3 to ask of us why. Why did it happen? He was a complete
4 stranger to Anderson County. He knew no one here. He
5 has no family, has no connections at all with Anderson or
6 even South Carolina. As the Solicitor said, he was
7 traveling down the highway and got off. And then the
8 events of December the 10th, where he met Ms. Kwana Burns
9 at the mall, unfolded and she died on the early morning
10 of the 14th of December, 2006.

11 As a result of the police investigation in this case
12 -- and this is what the evidence is going to show, that
13 in the middle of December 2006, the police arrested Mr.
14 Rivera in his home in Douglasville, Georgia. That's west
15 of Atlanta towards the Georgia line. And after Mr.
16 Rivera -- this gentleman is John Zamberlin.

17 John, stand up for a second.

18 This is Mr. John Zamberlin. He works with the
19 Anderson Police Department. He is the chief investigator
20 in this matter. He very probably -- because his
21 testimony is a little lengthy, he may testify sometime
22 tomorrow.

23 Mr. Zamberlin went to Douglasville, Georgia and
24 asked if Mr. Rivera would speak with him about the events
25 of Kwana Burns. And Mr. Rivera said, I will if you

1 promise me three things, that you will seek the death
2 penalty against me, that I have a single cell when I come
3 back to Anderson County, and three, I wish to speak to a
4 chaplain, a pastor, when I come to the Anderson County
5 Jail. Those three things. You're going to see evidence
6 of the written instruction from Ms. Adams back to Mr.
7 Rivera where she guarantees those three things. If the
8 law permits, she will seek the death penalty. And here
9 we are. And as a result of that, Mr. Rivera makes a very
10 detailed statement about what happened to Ms. Burns.

11 He admits putting the two-year-old child on her body
12 as -- after she had died. Can you imagine that?

13 He said other things to Mr. Zamberlin in the course
14 of the investigation. He has said that he has killed six
15 other women in other states, Georgia, Florida and Ohio.
16 There's no evidence, of course, to show that. But he
17 makes this statement to Mr. Zamberlin. Mr. Zamberlin
18 dutifully takes it all down. He investigates.

19 Mr. Rivera says and indicates that he has had an
20 extraordinary dysfunctional relationship with women. He
21 cannot maintain the normal relationships with a woman
22 because if a woman turns his or her back -- her back on
23 him, he takes that, because of his mental illness, his
24 bipolar disease, to such a level, he thinks that it is a
25 complete refutation of who he is. And he becomes another

1 person. And that's what we intend to show to you
2 happened on December 13th and the morning of the 14th in
3 December, 2006, here.

4 But the question of why goes further. You cannot
5 ask this. What would cause -- I don't know of your
6 faith. But it seems to me God don't make any ugly. At
7 the age of three and four, our evidence will show you he
8 was being physically and very possibly sexually abused by
9 his family. Kept downstairs in the basement, darkened
10 and bound up himself. Raymondeze Rivera. You see, those
11 that were there to love and protect and nurture him, they
12 broke his body and his mind. Those that were there to
13 guide him into adolescence, into teenage years, into
14 young adulthood were more concerned about their alcohol
15 and their sex tapes and their coke spoons. Raymondeze
16 Rivera. And he grew up as a twisted disfigurement of
17 what we consider normal and proper. No excuse, but we
18 have a responsibility to tell you and to show you.

19 All of that will come out through the State. All of
20 that he says to Mr. Zamberlin. There's one example where
21 he supposedly pulls a knife on some woman in Atlanta.
22 And when she does not wish to do what he wants to do, he
23 forces her and keeps the knife at her throat. Her name
24 is Phoebe Kenney. You'll most likely see her.

25 MR. CAMPBELL: Your Honor, I'm going to have to

1 object at this point. This is beyond the scope of guilt.

2 I've let it go on for ---

3 THE COURT: I understand. You make your
4 objection.

5 Mr. Delgado, let's bring it to a close.

6 MR. DELGADO: All right, sir.

7 THE COURT: You're not to argue your case in
8 opening statement.

9 MR. DELGADO: There's a reason why he grew up
10 as he did, and we will explain that to you. But you see,
11 this is not the first time that he had come to Anderson
12 and killed someone. He is now doing a life sentence in
13 the South Carolina Department of Corrections, Raymondeze
14 Rivera, for something that was unconnected, but very
15 related involving a whole another individual, another
16 innocent young woman whose name was Asha Wiley. That
17 occurred on the 10th, on Sunday the 10th of December.

18 MR. CAMPBELL: Your Honor, I'm going to object
19 again on this. This is still beyond the scope of guilt
20 phase.

21 MR. DELGADO: Your Honor, I have a right to
22 explain that. I didn't ---

23 THE COURT: I'm going to permit, as far as
24 opening statements, the issues that will be determined in
25 this particular type case. I'm going to permit you some

1 explanation.

2 MR. DELGADO: Thank you. Thank you, sir.

3 THE COURT: Well, let's -- again, let's don't
4 try this case in opening statement.

5 MR. DELGADO: Yes, sir. I understand.

6 And from that witness stand in February of 2008,
7 that's when Raymondeze Rivera talked about his assignment
8 to not only kill Kwana Burns, but Asha Wiley as well. He
9 didn't know them at all. That's what the facts will
10 show. That's what the facts will prove.

11 Now, ladies and gentlemen, there -- his mental
12 illness compels him to speak to you before you were even
13 drawn for this jury. There will be evidence that Mr.
14 Rivera some two months ago wrote three different letters
15 to the family of the victim. Horrifying, horrendous,
16 gut-wrenching -- let me read them to you.

17 MR. CAMPBELL: Your Honor, I'm going to object
18 at this point in time. This is way beyond the scope for
19 the guilt phase.

20 THE COURT: Overruled.

21 MR. DELGADO: Thank you, Your honor. This may
22 take a moment, folks, but you've got to understand this,
23 because that explains who this man is. Dated December
24 the 14th, 2009, less than two months ago. Dear Polly --
25 this is addressed to Ms. Polly Hatten who was Kwana Burns

1 aunt. Lived across the street on Tribble Street.

2 Dear Polly. May I ask you how you've
3 been? Have you been sleeping well? I wonder
4 do you ever think of me? I never did thank you
5 in person for that wonderful dinner you cooked
6 for me. Next time add some rice. I prefer
7 yellow rice so you will know the next time.

8 Oh, before I forget, do you know what
9 today is, Polly? I am celebrating the death of
10 Kwana. What a glorious day. Every time I
11 think about Kwana I get so excited. But one
12 thing is missing though, and that's Kiki. I
13 should have killed that fat, sloppy B. Maybe
14 that would have made you appreciate me more.
15 You know, it's never too late. But don't
16 worry, Polly. I won't waste my time on some
17 fat nasty B like Kiki.

18 Now, Kwana, that was something special. I
19 even made Kamille watch. Yeah, I wanted her to
20 see. Do you think she remembers? I really
21 hope so. Maybe she will learn not to be a
22 whore like her good-for-nothing mother. And
23 you all have the nerves to call that bitch
24 Kwana phenomenal woman. What was so phenomenal
25 about Kwana, huh? Because I couldn't tell. I

1 think you all are giving this whore way too
2 much credit. We're talking about the same damn
3 woman who spread her legs for every Tom, Dick
4 and Harry. I bet you were like that too, huh,
5 Polly? That's why no one wants you now. The
6 only thing you are good for is cooking.

7 December the 14th, the same day, a second letter.
8 But this time to Kwana's mother. Her name is Eleanor
9 Caldwell. And she is out here now. He had never met
10 this woman in his life.

11 Dear Beautiful Eleanor, do you miss me
12 like I miss you? Are you aware of what today
13 is? What it signify? It's our anniversary.
14 It's the day that I put Kwana away for good.
15 How do you like that, my Eleanor? I took
16 something precious of yours. That's one of my
17 highlights. I even made Kamille watch. I did
18 your ungrateful no-good daughter a huge favor.
19 The whore. Just like her damn mother.

20 Do you really want to know the truth how
21 Kwana died? Do you think you can handle it?
22 I've saved the best for last. You see, it's
23 not about Kwana. In fact, it never was about
24 Kwana. I'm so tired of hearing her F-ing name.
25 This is personal and always will be. I thought

1 you knew by now. And where is your family and
2 friends? I see they abandoned you. Did you
3 really think that they cared? They don't love
4 you. And to think that I once did.

5 Yes, you were once dear to me until Ken
6 came into your life. And yet you insult me by
7 bringing Ken to the courtroom with you. You
8 have the audacity to throw him in my face. Is
9 this just a game to you, Eleanor? And yet you
10 still owe me. Remember that Kamille is still
11 alive because of me. Not for anything you've
12 done. I was the one who spared Kamille's life.
13 Every day you should be kissing my feet. But
14 you're not good enough for that.

15 My beautiful Eleanor, why does it have to
16 be like this? You were once made perfect. How
17 wise and beautiful you were. A woman of
18 virtue. You have fallen from heaven. You were
19 determined to climb to the highest of stars.

20 Behold, I come to you like a thief in the
21 night. Destruction will fall on you. You and
22 your family. You say that you have all that
23 you need, but you are naked and blind. I
24 rebuke you, daughter of redemption. Oh, great
25 Babylon, the mother of all prostitutes in the

1 world.

2 Raymondeze Rivera. And the third letter on December
3 the 29th, 2009, again to Ms. Caldwell. A second letter to
4 the mother of Kwana Burns. It was exactly similar, but
5 in here, in this one, he -- you'll have it. These will
6 be introduced.

7 Why? Why would he write those letters? I think
8 that he was writing not necessarily to them, but to you.
9 He's always wanted the death penalty. Before he saw you
10 on the stand and before you were impaneled this
11 afternoon, he was writing these letters to you, knowing
12 that this day would come. Horrifying. Horrifying.

13 And so what do members of the community say to that?
14 Can any of us not understand retribution and revenge and
15 anger? Of course. Of course, we can. All of us can.
16 And yet I say this to you in conclusion. At the
17 conclusion of all of this case, it may well be that mercy
18 kneels humbly beside you and whispers the decision and
19 the choice that only you can give. Mercy.

20 Thank you.

21 THE COURT: May I see counsel?

22 (WHEREUPON, a bench conference was held off the
23 record.)

24 THE COURT: All right. Very good. Stand back.

25 Mr. Foreman, ladies and gentlemen of the jury, my

1 policy is usually that we begin in the morning about nine
2 or nine thirty or ten o'clock and then go to about five
3 o'clock. That means once that -- well, it's been my
4 experience you have two lives. One begins early in the
5 morning and goes to five o'clock, and then the other life
6 usually begins about five o'clock and goes on forever, it
7 seems.

8 But the point is I do not like to take witnesses at
9 a time that will take them beyond five o'clock. The
10 reason for that, of course, is that, as I say, I do want
11 to be sure that you're not kept here longer than it might
12 -- that would interfere with things that you might have
13 to do. But also, I like a witness' testimony to be
14 complete. In other words, have the direct testimony, the
15 cross-examination and then any redirect testimony.
16 That's how I -- the procedure that I mentioned earlier
17 that we'll be following will be. So I don't like to,
18 what we call, break testimony. In other words, have a
19 part today and then come back and have something tomorrow
20 because it sometimes lacks a little, like I say,
21 continuity. Not that it's intentional or anything like
22 that. But I'm just talking about needs -- how the trial
23 will proceed.

24 So I am going to suggest that -- and you've been
25 here all afternoon, but you've been here several days

1 with the qualification and all. And so I'm going to
2 suggest we break before we begin the testimony and do
3 that when we come in in the morning.

4 Now, I tell jurors that honestly this is the most
5 difficult part of the trial for you. I'm going to
6 instruct you more completely in just a few minutes. But
7 you're going home and you'll be asked, what are you
8 doing? And you're going to say you've been drawn on a
9 jury. And they'll ask what is it about? Well, you've
10 heard what the attorneys say it's about. And as I say,
11 that's not evidence. And again, you know what this case
12 will be involving in some fashion. And you're going to
13 have to tell them, I can't discuss it with you. I can't
14 tell you. And they're going to say, well, why not? And
15 you're going to tell them, because the Judge said so.
16 And they'll probably say, well, that's ridiculous

17 You know, the thing is, I think you know now this
18 is an important case to everybody that's involved, and it
19 needs to be resolved in a proper fashion. No one who is
20 not sitting where you are right now or be in that jury
21 room when you make your deliberations and reach your
22 verdict will be able to help you. They haven't heard the
23 first bit of testimony or argument or anything else. The
24 only thing they can do is interfere with the proper
25 resolution of this case. And I don't think any of us

1 want that.

2 So as I say, I'm going to give you some further
3 instructions in just a second when I finish this. But I
4 cannot insist, admonish, please do not discuss this case
5 or permit anyone to discuss it. And you see there's also
6 media attention that is given to this case. Don't read
7 anything, see anything or that -- if something comes up
8 when you're in the room, walk out. If somebody wants to
9 ask you about it or anything, just tell them that you
10 can't talk about it. But if they insist on it, then I'll
11 be here tomorrow and I'll be glad to explain to them.

12 But with that I am going to -- I'll let you -- Mr.
13 Foreman, I want you to consult with your jury now and
14 find out what time you'd like to start in the morning.
15 As I say, I would suggest anything from nine to nine-
16 thirty or ten o'clock. And this is not a unanimous
17 verdict or decision. This is a consensus. So just ask
18 which would be the most convenient, nine, nine-thirty or
19 ten.

20 MR. FOREMAN: Nine-thirty.

21 THE COURT: Nine-thirty. Very well. So we'll
22 start -- come back to the jury room wherever you were
23 today.

24 Now, Mr. Foreman, ladies and gentlemen of the jury,
25 it is the things that you hear and see in the courtroom

1 that matter in this trial. The law tells us that a juror
2 cannot consider -- can consider only the testimony and
3 other evidence that all the other jurors have also heard
4 and seen in the presence of the Judge and the lawyers.
5 Doing anything else is wrong, and it's against the law.
6 That means that you cannot do any homework or
7 investigation of your own. You cannot obtain on your own
8 any information about the case or about anyone involved
9 in the case from any source whatsoever, including the
10 Internet. And you cannot visit places that may be
11 mentioned in the trial.

12 The law also tells us that jurors cannot have
13 discussions of any sort with friends or family members
14 about this case or its subject. But do not let even the
15 closest family member make comments to you or ask
16 questions about the trial. As I mentioned earlier, if
17 they insist, tell them that I instructed you to do that,
18 and it would be a violation of my instructions if you
19 even did that. But I will be glad to explain it to them.

20 Similarly, it is important that you avoid reading
21 any newspaper accounts, watching or listening to
22 television or radio comments or reading articles or
23 postings on the Internet that have anything to do with
24 this trial, the parties involved or its subject.

25 During recesses or when you go home during the

1 trial, do you not talk to your family, friends or others
2 about the case. You may tell them you're a juror in a
3 case, and that is all that you should tell them. Do not
4 report your experiences as a juror while the trial and
5 deliberations are going on. Do not email, blog, tweet,
6 text, or post anything on your Facebook, Myspace or other
7 social networking sites about this trial. Do not visit
8 any chat room where the case may be discussed. Do not do
9 your own investigation whether by making in-person visits
10 to any of the places that may be discussed by the
11 witnesses during the trial or by any other means,
12 especially the Internet and search engines such as Google
13 or Yahoo.

14 You, as jurors, shall not discuss this case with
15 others until deliberation begins except as otherwise
16 authorized by the Court. Read or listen to any news --
17 you shall not read or listen to any news reports about
18 the case. You shall not use a computer, cellular phone,
19 or other electronic device with communication
20 capabilities while in attendance at trial or during
21 deliberation. You shall not use a computer, cellular
22 phone or other electronic device with communication
23 capabilities to obtain information about the case when
24 you're not in court. Information about the case
25 includes, but is not limited to, seeking information

1 about the personal history or criminal record of the
2 parties or the witnesses, reviewing news accounts of the
3 case, conducting research on any topics raised or
4 testimony offered by any witness. Researching any other
5 information that you might think would be helpful, such
6 as an aerial map of the scene or specific information
7 about any issue or anything entered into evidence. You
8 shall not -- or any juror who observes or has reason to
9 believe that another juror has used an electronic device
10 in violation of this rule shall immediately inform the
11 Court of this violation.

12 During the trial, while you're in the courthouse
13 after you leave for the day, do not provide any
14 information to anyone by any means about this case.
15 Thus, for example, do not talk face-to-face or use any
16 electronic device or media such as the telephone, a cell
17 or smart phone, a Blackberry, PDA, computer, Internet or
18 any Internet service, any text or instant messaging
19 service, any Internet chat room, blog or website such as
20 Facebook, Myspace, YouTube or Twitter, to communicate to
21 anyone any information about this case until I accept
22 your verdict at the conclusion of the trial.

23 Do not do any research on the Internet in libraries
24 or in newspapers or in any other way or make any
25 investigation about this case on your own. Do not visit

1 or view any place discussed in this case and do not use
2 Internet maps or Google Earth or any other program or
3 device to search for or view any place discussed in the
4 testimony.

5 Also, do not research any information about this
6 case, the law or the people involved, including the
7 parties, the witnesses, the lawyers or the Judge. Do not
8 read any news stories or articles in print or on the
9 Internet or in any blog about this case or about anyone
10 involved with it or listen to any radio or television
11 reports about it or about anyone involved with it or let
12 anyone tell you about any such news reports.

13 Now, if anyone has any questions about my
14 instructions and my ruling at this point, please indicate
15 and I'll try to explain it to you.

16 (No response)

17 THE COURT: Very well. Again, I want to thank
18 you for your patience with the Court thus far, and I also
19 want to thank you for your service on this jury. And I
20 will see you tomorrow morning at nine-thirty.

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

23 (WHEREUPON, the jury exited the courtroom at
24 approximately 4:37 p.m.)

25 THE COURT: All right. I understand the State

1 has something to take up with the Court?

2 MS. BYFORD: Yes, sir, Your Honor, just very
3 briefly. We're a little concerned given Mr. Delgado's
4 opening remarks. I guess I would sort of move at this
5 time, Your Honor, to have the Defense sort of declare
6 their intentions regarding guilty but mentally ill. We
7 have clearly put crazy before the jury in a phase of the
8 trial in which it is not at all relevant. You know,
9 statutory mitigating circumstances are one thing, Your
10 Honor, and that would certainly be appropriate in the
11 penalty phase. And, you know, the State would concede
12 that falls short of everything we're entitled to under
13 the guilty but mentally ill statute. But, Your Honor,
14 this is guilt. If they're going with guilty but mentally
15 ill, we're entitled to notice of that, and we're also
16 entitled to have the Defendant evaluated ourselves. So
17 if that's where we're going, we'd like to know.

18 THE COURT: Okay. Who's going to do it? Mr.
19 McGuire?

20 MR. MCGUIRE: Judge, I ---

21 THE COURT: Sit down, please.

22 MR. MCGUIRE: Thank you, Your Honor. Clearly
23 the voluntariness of the statement is still a jury issue.
24 Mr. Rivera has been diagnosed as mentally ill by the
25 State Department of Corrections. We have two mental

1 health professionals under subpoena. We may call them;
2 we may not. It's a game-time decision. We've got
3 numerous confirmations of his mental illness. And when
4 he made that statement saying he wanted the death
5 penalty, it's very consistent with him being in a severe
6 depressive state consistent with bipolar, and that is
7 exactly what we're allowed to put in front of the jury.
8 We are aware of our obligations to notify the State if we
9 are proceeding under a guilty but mentally ill theory or
10 if we'll ask for that verdict. And we'll comply with our
11 legal obligations.

12 THE COURT: All right. Now, if -- proceed.

13 MS. BYFORD: Your Honor, my response to that
14 would be that we re-heard the *Jackson v. Denno* issue in
15 front of you and we started afresh, that was not put
16 before this Court. So if that is truly a voluntariness
17 of the statement issue, that should have been placed
18 before you. Because as you well know under the law, you
19 get to rule on that first.

20 THE COURT: Well, I'm not exactly sure which
21 law you're talking about. If you're talking about
22 *Jackson v. Denno*, which requires that the statement be
23 created voluntarily, knowingly and intelligently made
24 without any compulsion or threat or fear or promise of
25 gain, I'm familiar with that law. But I'm also familiar

1 with the rules of evidence. And I think it's 801(D)(2)
2 (b)(c)(d) that makes any statement by this -- by a party
3 or anyone authorized to speak on behalf of that party
4 admissible. So I would almost think it's in the waiver
5 area, the same as you can waive your right to remain
6 silent.

7 As far as what the significance would be as to the
8 criminal culpability of any particular person, I think
9 that is something that is going to have to be decided as
10 the evidence is presented. In other words, you're
11 telling me -- or in essence you're telling me there is no
12 notice of insanity?

13 MS. BYFORD: No, sir. We've not been given any
14 notice.

15 THE COURT: All right. Again, as I say, I'll
16 have to -- I'll listen to the evidence as it develops.
17 But it seems that -- what is it -- the party or the
18 Defendant, through his agents, have waived any right to
19 object to the statements that have been read. I think
20 two of the three statements have been read. Maybe not in
21 totality. But also references have been made to other
22 things that obviously would not be admissible except if
23 the Defendant does it.

24 Of course, you've put the Court in a rather
25 interesting position because now I have to determine

1 whether the prejudices are outweighed by the -- outweighs
2 the probative value of whatever is introduced. And if
3 the time comes and I have to do that, it will be done.
4 Now, we seem to have -- what is it -- pretty much
5 established our, if nothing else, positions. I'll ask
6 the attorneys to give me any help they can. Otherwise,
7 they'll have to rely on my ...

8 MR. MCGUIRE: And Judge, if I could add -- just
9 add briefly for the record, I know Your Honor is
10 relatively new to the case and Judge Nicholson was on it
11 for some time. And the issues of our client's mental
12 illness have been center stage, so to speak, throughout
13 these proceedings. This cannot be a surprise to the
14 State. Our client has been diagnosed as mentally ill by
15 Donna Schwartz-Watts from the medical University of South
16 Carolina. She's come here to court to testify that he is
17 mentally ill.

18 THE COURT: Well, again, Mr. McGuire, I'm going
19 to listen to the evidence.

20 MR. MCGUIRE: I understand.

21 THE COURT: And I thank you. When the evidence
22 is presented to me in the proper time and course of the
23 proceeding, then of course I'll have to do that.

24 MR. MCGUIRE: Sure. And I just want to let the
25 Court know that not only ---

1 THE COURT: And I thank you for it.

2 MR. MCGUIRE: Thank you. I just want to add
3 just one little bit to the record, Judge.

4 THE COURT: Well, now we get to what we're
5 doing other than trying the case.

6 MR. MCGUIRE: I'm sorry. Judge, just that --
7 she testified that his mental illness was so significant
8 that he not be able to represent himself. So I just
9 wanted to let the Court know that his mental illness has
10 always been front and center. It can't be a surprise,
11 and we have complied with all our obligations.

12 THE COURT: I understand. Again, if you would,
13 please, I would only be concerned about that if -- what
14 is it -- I felt there was a reason. Let's do limit our
15 comments and observations in argument, if you would, to
16 matters that are before the Court.

17 MR. MCGUIRE: Yes, sir. Thank you, Judge.

18 THE COURT: All right. Anything else?

19 MS. BYFORD: Not at this time, Your Honor.

20 THE COURT: Very good. Anything from the
21 Defense?

22 MR. DELGADO: Nothing, Your Honor.

23 THE COURT: All right. Nine-thirty in the
24 morning. Let's be here a little bit before nine. And if
25 there's anything to be brought up before nine-thirty, I'm

1 not going to -- I don't want the jury sitting back there.
2 I'll ask you to be in touch with each other, be sure each
3 other knows about it. And I'll consider whatever it is,
4 and I'll probably take it under advisement.

5 MR. DELGADO: Yes, sir.

6 THE COURT: Be so advised. All right.

7 MR. DELGADO: Thank you, sir.

8 THE COURT: See you in the morning at nine-thirty.

9 (WHEREUPON, court stood at recess for the day at
10 approximately 4:45 p.m.)

11 **FEBRUARY 11, 2010**

12 (WHEREUPON, court convened with all parties present
13 and the following proceedings were had commencing at
14 approximately 10:15 a.m.)

15 (WHEREUPON, Court's Exhibit Number 3 and State's
16 Exhibit Number 31 were marked for identification
17 only.)

18 THE COURT: All right. Is the State ready to
19 proceed? Is the State ready to proceed?

20 MS. ADAMS: I think we're still working on the
21 ---

22 THE COURT: Oh, you still have -- okay, as soon
23 as you're ready let me know.

24 MS. ADAMS: --- technical difficulties in our
25 volume.

1 THE COURT: Are we ready to proceed?

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

3 THE COURT: Is the Defense ready to proceed?

4 MR. DELGADO: Yes, Your Honor.

5 THE COURT: All right. The Court's received a
6 question from the jury that I've given to the attorneys
7 or at least read it to them. Please clarify if Defendant
8 said he committed crime and asked for death sentence why
9 we are having the trial. Is there anything from the
10 State on that?

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

12 THE COURT: From the Defense?

13 MR. DELGADO: No, Your Honor.

14 THE COURT: All right. I intend to instruct
15 them that, of course, our system of justice is such that
16 everyone is entitled to a trial. Not only -- well, I'll
17 just say everyone is entitled to a trial and that's why
18 we have trials.

19 All right. Is there anything else from the State
20 before we bring in the jury?

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

22 THE COURT: From the Defense?

23 MR. DELGADO: No, Your Honor.

24 THE COURT: Very good. Ask the jury to join
25 us, please.

1 (WHEREUPON, the jury entered the courtroom at
2 approximately 10:20 a.m.)

3 THE COURT: All right. Let the record reflect
4 the jury and alternates are in the jury box.

5 Ladies and gentlemen of the jury, does anyone need
6 to report any breach or violation of this Court's order
7 as to exposure to outside information or media coverage
8 or have any other concern to bring to the Court's
9 attention at this time? If so raise your right hand.

10 (No response)

11 THE COURT: Very good. Thank you.

12 Mr. Foreman, ladies and gentlemen of the jury, I've
13 been provided a question from the jury. Please clarify.
14 If defendant said he committed crime and asked for death
15 sentence, why are we having a trial? Mr. Foreman, ladies
16 and gentlemen of the jury, under our system of justice,
17 all parties are entitled to a trial according to the same
18 rules of procedure and the law that governs such trials.
19 So that is why we are having the trial.

20 Very good. Thank you very much. And now we will
21 proceed.

22 I'll recognize the Solicitor for our first witness.

23 MS. ADAMS: Thank you, Your Honor. May it
24 please The Court. We call Kiki Hatten to the stand.

25 NIKELLA HATTEN,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MS. ADAMS:

4 Q. Kiki, you do go by Kiki, right?

5 A. Yes, ma'am.

6 Q. I'm over here. I'm going to stand here just to make
7 sure that the jury can hear you because if I can I know
8 they can, okay?

9 A. Yes, ma'am.

10 Q. Please tell me, how old are you, Kiki?

11 A. I'm twenty.

12 Q. Okay. And are you married?

13 A. No, ma'am.

14 Q. Do you have any children?

15 A. No, ma'am.

16 Q. What are you doing right now? Are you working?

17 A. Yes, ma'am.

18 Q. Where do you work?

19 A. Picture Me Portrait Studios.

20 Q. And how long have you been there?

21 A. For a year and a half.

22 Q. Now, back in 2006, Kiki, you were how old?

23 A. Seventeen.

24 Q. All right. Were you in school then?

25 A. Yes, ma'am.

- 1 Q. Where were you in high school?
- 2 A. Westside High School.
- 3 Q. And did you graduate from Westside?
- 4 A. Yes, ma'am.
- 5 Q. What year did you graduate?
- 6 A. 2008.
- 7 Q. Now, were you working back in December of 2006?
- 8 A. Yes, ma'am.
- 9 Q. And where did you work then?
- 10 A. Jack in the Box.
- 11 Q. Kiki, tell the jury where you were living in
- 12 December of 2006.
- 13 A. 1500 Tribble Street.
- 14 Q. Who did you live with?
- 15 A. My mother.
- 16 Q. And what is your mom's name?
- 17 A. Polly Hatten.
- 18 Q. And does your mom Polly still live at that same
- 19 house today at 1500 Tribble Street?
- 20 A. Yes, ma'am.
- 21 Q. Kiki, tell the jury how you know Kwana Burns.
- 22 A. She's my first cousin.
- 23 Q. So explain how ---
- 24 A. My mother and her mother -- my mother and her mother
- 25 are sisters.

- 1 Q. And what is Kwana's mother's name?
- 2 A. Jeano Caldwell.
- 3 Q. And now, is her real name Eleanor?
- 4 A. Yes, ma'am.
- 5 Q. Okay, but she goes by Jeano?
- 6 A. Uh-huh (affirmative).
- 7 Q. All right. And Jeano and Polly are sisters?
- 8 A. Yes, ma'am.
- 9 Q. Does Kwana have any children?
- 10 A. Yes, ma'am.
- 11 Q. What are their names and ages?
- 12 A. Kamille's five and Kameron's twelve.
- 13 Q. So and that's -- they're five and twelve now?
- 14 A. Yes, ma'am.
- 15 Q. So how old were they back in 2006?
- 16 A. Kamille was two and Kameron was nine.
- 17 Q. Was Kameron in school in 2006?
- 18 A. Yes, ma'am.
- 19 Q. Where was he in school?
- 20 A. Whitehall Elementary.
- 21 Q. And he's still in school today, isn't he?
- 22 A. Yes, ma'am.
- 23 Q. Kiki, let's talk a little bit about the area on
- 24 Tribble Street and where you lived?
- 25 A. My mother stays on Tribble Street, and across the

1 street my grandmother stays.

2 Q. And what's your grandmother's name?

3 A. Her name is Evelyn Gordon.

4 Q. Okay. Do you know her address by any chance?

5 A. Yes, ma'am. It's 1503 Tribble Street.

6 Q. And so Evelyn would be Polly and Jeano's mother?

7 A. Yes, ma'am.

8 Q. Now, where did Kwana live back in December of 2006?

9 A. She was living at Anderson Crossing Apartments, but
10 then she moved to 1506 Tribble Street.

11 Q. And Anderson Crossing Apartments is -- do you know
12 the address by any chance? Is it 320 East Beltline
13 Boulevard?

14 A. Yes, ma'am.

15 Q. And that's actually behind Grady's.

16 MR. DELGADO: Your Honor, excuse me for just
17 one second. I believe some members of our jury might
18 have trouble hearing this witness. Could we ask maybe if
19 she'd pull the chair up or the microphone down a little
20 bit. Yes, I think that might help, Your Honor.

21 THE COURT: Very good, thank you. If anybody
22 can't hear, if you would raise your hands, then I'll see
23 if we can't address that problem. I'm talking about the
24 jury.

25 (Laughter)

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

2 You may proceed.

3 MS. ADAMS: Thank you, Your Honor.

4 Q. So Kiki, Kwana was living at 320 East Beltline
5 Boulevard?

6 A. Yes, ma'am.

7 Q. And when did she move to 1506 Tribble Street?

8 A. I believe it was December the 13th.

9 Q. Okay. All right. So December 13th, 2006 was the
10 first night that she spent in her house?

11 A. Yes, ma'am.

12 Q. So everyone is pretty much in walking distance;
13 would that be right?

14 A. Yes, ma'am.

15 Q. Kind of like on the corners and across the street
16 from each other?

17 A. Yes, ma'am.

18 Q. So it'd be you and your mom, your grandmother and
19 then Kwana.

20 A. Yes, ma'am.

21 Q. Now, were you familiar with the house that Kwana had
22 just moved into?

23 A. Yes, ma'am.

24 Q. Okay. Now, how did you know?

25 A. My mother and I used to live there.

1 Q. And how long did you and your mom stay there?

2 A. I stayed about eleven years.

3 Q. Tell the jury a little bit about the layout of that
4 house, like how many bedrooms, when you walk in the front
5 door where everything is.

6 A. You have two bedrooms, a den, a living room and a
7 kitchen. And when you first walk in, it's walking into
8 the den.

9 Q. You walked into the den. So where would the kitchen
10 be?

11 A. The kitchen is next to the living room.

12 Q. Okay. And then was there a hallway where the
13 bedrooms and bathroom were?

14 A. Yes, ma'am.

15 Q. Where was Kwana working in December of 2006?

16 A. At Belks.

17 Q. Belks here at Anderson Mall?

18 A. Yes, ma'am.

19 Q. What did she do at Belk?

20 A. She was a makeup artist.

21 Q. So she worked at the cosmetic counter?

22 A. Yes, ma'am.

23 Q. Kiki, let's talk about specifically what happened on
24 December 13, 2006. Okay? You said that was the first
25 night that Kwana was planning on staying in her house; is

- 1 that right?
- 2 A. Yes, ma'am.
- 3 Q. Did you go to work that day?
- 4 A. Yes, ma'am.
- 5 Q. And where, again, were you working?
- 6 A. At Jack in the Box.
- 7 Q. What time did you go?
- 8 A. My shift usually started at four o'clock.
- 9 Q. And how did you get there that day on the 13th?
- 10 A. Kwana.
- 11 Q. What time did you get off work that night?
- 12 A. At ten.
- 13 Q. And who picked you up?
- 14 A. Kwana.
- 15 Q. Okay. Was anyone with Kwana when she picked you up?
- 16 A. Uh-huh (affirmative). It was Kamille.
- 17 Q. Okay. And what kind of mood was Kwana in?
- 18 A. She was excited.
- 19 Q. Now, where was Kameron at that time?
- 20 A. He was asleep at my mother's house.
- 21 Q. Because he had school the next morning?
- 22 A. Yes, ma'am.
- 23 Q. What did you and Kwana and Kamille do after she
- 24 picked you up from work?
- 25 A. We went to my mother's house, and my mother had

1 cooked that night. And when we got there, she fixed some
2 food to eat. And after that we left and went back to her
3 house.

4 Q. And you said Kameron was asleep, right?

5 A. Yes, ma'am.

6 Q. So Kwana didn't even see Kameron?

7 A. Uh-uh (negative).

8 Q. So what'd you do at your mom's house?

9 A. We -- after she fixed her food or whatever, we sat
10 and talked for about five or ten minutes, and that was
11 about it.

12 Q. Do you recall what your mom had cooked?

13 A. Yes, ma'am. She cooked mashed potatoes, beans, and
14 pork chops.

15 Q. And how many plates did Kwana make when y'all left?

16 A. Two.

17 Q. And did you know why she was making two plates?

18 A. She said she had company.

19 Q. All right. What kind of plates did Kwana use to put
20 the food on to take back to her house?

21 A. It was a red plastic plate.

22 Q. About how long did y'all stay at your mom's house?

23 A. I stayed till about 10:45.

24 Q. So it was about thirty minutes or so?

25 A. Yes, ma'am.

1 Q. Where did you go when you left your mom's house?

2 A. We walked to her house.

3 Q. Okay. When you say we, who is we?

4 A. It was me, her, and Kamille.

5 Q. So this is about 10:45 at night, right?

6 A. Yes, ma'am.

7 Q. And you walked from you and your mom's house to
8 Kwana's house?

9 A. Yes, ma'am.

10 Q. Were the lights on in the house?

11 A. Uh-huh (affirmative). The kitchen light, the porch
12 light and the living room light.

13 Q. How about street lights? Were there street lights
14 out there?

15 A. Yes, ma'am.

16 Q. Were there any cars in the driveway besides Kwana's?

17 A. Yes, ma'am.

18 Q. Kiki, I'm going to show you ---

19 MS. ADAMS: Your Honor, this is State's Exhibit
20 11. It's already been moved into evidence. No
21 objection?

22 THE COURT: Yes, ma'am.

23 MR. DELGADO: No objection.

24 Q. Kiki, I don't know if you can see this. You may
25 have to step down.

1 MS. ADAMS: Judge, is that okay?

2 THE COURT: Certainly.

3 Q. Well, here you go, Kiki, how's this?

4 A. Yes, ma'am.

5 THE COURT: I tell you -- well, either that --
6 no, that'll be good.

7 Q. Is that good? You can sit back down. How's that?

8 A. Okay.

9 Q. Make it easier for you. Kiki, do you recognize that
10 car?

11 A. Yes, ma'am.

12 Q. Okay. Where -- when was the first time you saw that
13 car?

14 A. The night that me and Kwana and Kamille walked to
15 her house.

16 Q. Okay. So that was the car that was in the driveway?

17 A. Yes, ma'am.

18 Q. Tell the jury what happened when you walked in the
19 house?

20 A. As I walked in I seen that she had company. I
21 spoke, but he didn't respond back. After that I went
22 back to Kamille's bedroom, and we played for a little
23 bit.

24 Q. Okay. So just you and Kamille went back there and
25 played?

- 1 A. Uh-huh (affirmative).
- 2 Q. Okay. What was Kwana doing?
- 3 A. Her and her company was in the living room talking.
- 4 Q. Okay. Describe the man that you saw in the house
- 5 when you first walked in, Kiki.
- 6 A. He was short, medium built, light skin, short hair
- 7 cut.
- 8 Q. Do you remember what he was wearing?
- 9 A. No, ma'am.
- 10 Q. How would you describe him?
- 11 A. At the time he was good looking.
- 12 Q. You thought he was handsome?
- 13 A. Uh-huh (affirmative).
- 14 Q. Okay. But he didn't really speak to you. You
- 15 didn't have a conversation with him?
- 16 A. No, ma'am.
- 17 Q. Kiki, is that man in this courtroom right now?
- 18 A. Yes, ma'am.
- 19 Q. And is he sitting at the Defense table with a white
- 20 shirt?
- 21 A. Yes, ma'am.
- 22 Q. So you walked in and you and Kamille went back into
- 23 the bedroom and you started playing?
- 24 A. Yes, ma'am.
- 25 Q. Could you hear what was going on in the other room

- 1 with Kwana and the Defendant?
- 2 A. No, ma'am.
- 3 Q. Did you know if he ate his dinner?
- 4 A. Yes, ma'am.
- 5 Q. Did you see him eat it?
- 6 A. As I was leaving, yes, ma'am.
- 7 Q. Where was he sitting?
- 8 A. He was sitting on the couch.
- 9 Q. Where was the couch when you first walked into the
- 10 house?
- 11 A. When you first walk in, it's on the left-hand side.
- 12 Q. Had you ever seen him before?
- 13 A. No, ma'am.
- 14 Q. Had Kwana ever told you about him before?
- 15 A. No, ma'am. Until we -- well, while we was walking
- 16 to her house, she just mentioned that she had a friend
- 17 over, and his name was Raymond, I believe.
- 18 Q. So that was the first time you even heard his name?
- 19 A. Yes, ma'am.
- 20 Q. Kiki, about how long did you stay in the house that
- 21 night?
- 22 A. I stayed about fifteen minutes.
- 23 Q. Okay. And you just played with Kamille pretty much
- 24 the whole time?
- 25 A. Yes, ma'am.

1 Q. All right. Did anyone else come over while you were
2 at the house?

3 A. As I got ready to leave, Ricky did.

4 Q. Okay. And what's Ricky's last name?

5 A. Chamblee.

6 Q. Okay. And why did he come out?

7 A. He was coming over to clean her stove.

8 Q. Who is he? Is he just a friend of y'all's?

9 A. Yes, ma'am.

10 Q. And Kwana was getting him to clean the stove?

11 A. Yes, ma'am.

12 Q. Did he actually clean the stove that night? Do you
13 know?

14 A. No, ma'am, because I went back home. I'm not sure.

15 Q. Did you go back home by yourself?

16 A. Yes, ma'am.

17 Q. So in other words, where was Kamille?

18 A. She was home with Kwana.

19 Q. So she stayed at the house. She didn't want to go
20 with you?

21 A. No, ma'am.

22 Q. She wanted to stay with her mom?

23 A. Yes, ma'am.

24 Q. Okay. Did you say anything to the Defendant before
25 you left, or did he say anything to you?

- 1 A. No, ma'am.
- 2 Q. Do you remember what Kwana was wearing that night
- 3 when you left?
- 4 A. She had on blue jeans and a shirt.
- 5 Q. When you went back to your house, Kiki, was Kameron
- 6 still asleep?
- 7 A. Yes, ma'am.
- 8 Q. So what did you do?
- 9 A. I stayed home. Well, I went back home, and I got on
- 10 the computer, and I just stayed there all night.
- 11 Q. Where was he actually sleeping?
- 12 A. He was asleep in my bed.
- 13 Q. So you stayed up for a little bit on the computer?
- 14 A. Yes, ma'am.
- 15 Q. Do you remember about what time you went to bed?
- 16 A. It was about three o'clock in the morning.
- 17 Q. What did you do the next morning, Kiki? What time
- 18 did you get up? It's okay. Take your time. Do you want
- 19 some water or anything?
- 20 A. No, ma'am. That morning I got up around seven
- 21 o'clock, and I woke Kam up to get ready for school.
- 22 Q. It's okay. So you and Kam got dressed and got ready
- 23 for school?
- 24 A. Yes, ma'am. And after -- before I left the house,
- 25 after I got him dressed, I called Kwana to make sure she

1 was awoke so the door would be open.

2 Q. Okay. So was Kwana going to take Kameron to school?

3 A. Yes, ma'am.

4 Q. All right. Did anybody answer?

5 A. No, ma'am.

6 Q. All right. So what did you do?

7 A. After she didn't answer, I just told Kam to come on
8 and get his stuff, and we walked to her house to get
9 ready for school.

10 Q. When you went -- when you got to the house, were the
11 lights on?

12 A. Yes, ma'am. The porch light was still on, and the
13 living room light was on.

14 Q. And how did you get into the house?

15 A. The door was unlocked.

16 Q. So it was closed but it was unlocked?

17 A. Yes, ma'am.

18 Q. All right. Was that red Buick that you identified
19 earlier -- was that still in the driveway, Kiki?

20 A. No, ma'am.

21 Q. So it was just Kwana's van?

22 A. Yes, ma'am.

23 Q. All right. Now, Kiki, when you went into the house,
24 what did you and Kameron do?

25 A. When I first walked in the house, I called her name,

1 and I still got no response. So I just told Kam to go
2 and see could he find a rag and his toothbrush. And as I
3 walked in, I seen her cell phone laying on her table. So
4 I just went back there, and I walked towards the
5 bathroom.

6 Q. Okay. And now, so this is down the hall, right?

7 A. Yes, ma'am.

8 Q. With the bedrooms on the left side, and where was
9 the bathroom?

10 A. It was right straight ahead.

11 Q. Okay. So it's past the bedroom?

12 A. Uh-huh (affirmative).

13 Q. Okay.

14 A. And so after I walked in the bathroom to try to help
15 him look for his stuff, I still couldn't find it. And as
16 I walked out ---

17 Q. What? You couldn't find what?

18 A. His toothbrush and his rag. And as I walked out, I
19 seen her in her room dead.

20 Q. Kiki, take your time, okay? When Kameron first
21 walked by the bedroom, where did he go? Did he go
22 straight to the bathroom?

23 A. Yes, ma'am.

24 Q. Was the water even running yet at Kwana's house?

25 A. No, ma'am.

1 Q. Had you seen Kamille yet?

2 A. As I was walking out the bathroom, I seen her laying
3 on top of her mom.

4 Q. So was she sleeping? Could you tell?

5 A. Yes, ma'am.

6 Q. Had you realized yet that anything was wrong when
7 you first walked by the bedroom?

8 A. Not at first. I just thought that she was asleep on
9 the floor. I didn't realize it until I had walked up on
10 her.

11 Q. Okay. How was she laying?

12 A. She was on her back.

13 Q. Kwana was?

14 A. Yes, ma'am.

15 Q. I'm going to show you a picture. Are you okay?

16 A. Yes, ma'am.

17 MS. ADAMS: Your Honor, this is State's Exhibit
18 12 that's been admitted without objection.

19 THE COURT: Very well.

20 Q. Okay. All right, Kiki. You think you can step down
21 for me?

22 A. Yes, ma'am.

23 Q. You don't have to. You can stay there.

24 (WHEREUPON, the witness stepped down from the
25 witness stand.)

1 Q. Now, all these boxes, these are from -- why are all
2 these boxes here?

3 A. Because she never did get done unpacking her stuff.

4 Q. So I'm going to point -- come here, sweetie. I'm
5 going to point -- like is this the hallway, so the jury
6 can see? Let me get -- this is -- what's this right
7 here, honey? Is that the door?

8 A. Yes, ma'am.

9 Q. Okay. And so that's the hallway where you walked
10 through?

11 A. Yes, ma'am.

12 Q. And so you just -- what did you see? Could you see
13 her whole body when you walked by?

14 A. Yes, ma'am.

15 Q. Okay. She just looked like she was sleeping?

16 A. Yes, ma'am.

17 Q. Okay. Now, where was Kamille?

18 A. She was laying ---

19 Q. I want you to show the jury where she was, where her
20 head was?

21 A. She was -- her head was right here.

22 Q. Okay. So where was the rest of her body?

23 A. It was laying off to the side.

24 (WHEREUPON, the witness resumed the witness stand.)

25 Q. Had Kamille woken up yet, Kiki?

- 1 A. Not until she heard her brother scream.
- 2 Q. All right. So did you walk in the bedroom first?
- 3 A. Yes, ma'am.
- 4 Q. Where was Kameron? How long did it take for him to
- 5 get in the room?
- 6 A. He was -- he walked in right with me, beside me.
- 7 Q. Okay. What was his reaction?
- 8 A. He was in shock.
- 9 Q. What did he do?
- 10 A. He screamed.
- 11 Q. And then what happened?
- 12 A. He picked his sister up and he left.
- 13 Q. He -- when did Kamille wake up?
- 14 A. When she heard him scream.
- 15 Q. And tell the jury exactly what she did when she
- 16 heard him scream?
- 17 A. She reached for him.
- 18 Q. And y'all are all standing right there?
- 19 A. Yes, ma'am.
- 20 Q. By her body?
- 21 A. Yes, ma'am.
- 22 Q. What else did you notice, Kiki, about her body,
- 23 anything?
- 24 A. That her -- after that, I realized that her hands
- 25 and her legs was tied together.

- 1 Q. So Kamille reached for Kameron?
- 2 A. Yes, ma'am.
- 3 Q. He picked her up?
- 4 A. Yes, ma'am.
- 5 Q. What did y'all do?
- 6 A. He left and he went to my grandmother's house, and I
- 7 ran back to my mother's house.
- 8 Q. Okay. What did you do when you got back to your
- 9 mom's house?
- 10 A. I immediately -- when I went in the house, I told my
- 11 momma, but she didn't know how to react. She didn't
- 12 believe me, and she pushed me out the way -- and after
- 13 she pushed me, she ran out the house, and I dialed 911.
- 14 Q. And she ran out of the house and went to Kwana's?
- 15 A. Yes, ma'am.
- 16 Q. Did you go back in there?
- 17 A. No, ma'am.
- 18 Q. So you called 911?
- 19 A. Yes, ma'am.
- 20 Q. And did the police come?
- 21 A. Yes, ma'am.
- 22 Q. Did you talk to the police and tell them what you
- 23 told this jury today?
- 24 A. Yes, ma'am.
- 25 Q. How about Kameron? Did he talk to the police too?

1 A. Yes, ma'am.

2 Q. One more picture, Kiki. You can stay right there.

3 Do you recognize this?

4 A. That's Kwana's cell phone.

5 Q. Okay. And how do you know that that's her cell
6 phone?

7 A. I always played with it.

8 Q. Were you and Kwana pretty close?

9 A. Yes, ma'am.

10 Q. Okay.

11 MS. ADAMS: And Your Honor, this is State's
12 Exhibit Number 13. It's been admitted without objection.

13 Q. Kiki, was Kwana's cell phone number 276-9875?

14 A. Yes, ma'am.

15 Q. Kiki, honey, thank you so much. Answer anything the
16 Defense may ask.

17 CROSS-EXAMINATION

18 BY MR. DELGADO:

19 Q. Hi.

20 A. Hey.

21 Q. Ms. Hatten, I'm probably just going to ask you one
22 or two little questions, okay?

23 A. Uh-huh (affirmative).

24 Q. Ms. Caldwell, Ms. Eleanor Caldwell, she's known to
25 you and members of the family my a nickname Jeano; is

- 1 that right?
- 2 A. Yes, sir.
- 3 Q. And how do you spell that, J-E-N-O?
- 4 A. J-E-A-N-O.
- 5 Q. J-E-A-N-O?
- 6 A. Yes, ma'am.
- 7 Q. Okay. That's a nickname that's followed her for a
- 8 long time?
- 9 A. Uh-huh (affirmative).
- 10 Q. Folks that know her well would call her by that,
- 11 right?
- 12 A. Uh-huh (affirmative).
- 13 Q. Okay. Not just family members, but people that know
- 14 her, that's her name, right?
- 15 A. Uh-huh (affirmative).
- 16 Q. Somebody didn't know her they may call her Eleanor
- 17 or Ms. Caldwell, right?
- 18 A. Excuse me?
- 19 Q. If they didn't know her well, they may call her
- 20 Eleanor or Ms. Eleanor or Ms. Caldwell ---
- 21 A. Most people would call her Jeano.
- 22 Q. --- who knew her, right?
- 23 A. Uh-huh (affirmative).
- 24 Q. But you'd have to know her to be able to call her
- 25 that, right?

1 A. No, not really.

2 Q. Okay. The man that you saw that night, you had
3 never seen him before, had you, dear?

4 A. No, sir.

5 MR. MCGUIRE: Your Honor, you've got some
6 jurors holding up their hands.

7 THE COURT: You need to speak up a little bit,
8 if you would, please.

9 MR. DELGADO: I apologize.

10 MADAM CLERK: That mike is off.

11 THE COURT: It's not on?

12 MADAM CLERK: No, sir.

13 THE COURT: Let's cut it on.

14 MADAM CLERK: I believe it's come on, Your
15 Honor.

16 Q. Ms. Hatten, let me -- let me start -- and I'll back
17 up a little bit so we can make certain all our jurors
18 heard some of my questions and some of your answers,
19 okay?

20 A. Okay.

21 Q. That's better. Ms. Eleanor was known to members of
22 her family and those who knew her by her nickname Jeano,
23 right?

24 A. Yes, sir.

25 Q. J-E-A-N-O?

1 A. Yes, sir.

2 Q. The man that you saw in the house there on Tribble
3 Street that night, you had never seen him before, had
4 you, dear?

5 A. No, sir.

6 Q. That was the only time?

7 A. Yes, sir.

8 Q. Thank you very much, ma'am. That's all the
9 questions we have. Thank you.

10 A. Okay.

11 THE COURT: Redirect?

12 MS. ADAMS: Nothing, Your Honor.

13 THE COURT: All right, very well.

14 You may step down. Thank you, ma'am.

15 MR. DELGADO: Excuse me, Your Honor. If I
16 might indulge the Court for five minutes.

17 THE COURT: Very well. Mr. Foreman, ladies and
18 gentlemen of the jury, the Court needs to take up some
19 matters with the attorneys. I'm going to ask you to
20 retire to the jury room just for a few minutes. I think
21 it'll take maybe five minutes or so.

22 Again, do not undertake discussion of the case among
23 yourselves in any way.

24 Everyone else remain seated while the jury retires
25 from the courtroom.

1 (WHEREUPON, the jury exited the courtroom at
2 approximately 10:46 a.m.)

3 THE COURT: All right. Anything from the State
4 before we take a break?

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

6 THE COURT: From the Defense?

7 MR. DELGADO: Oh, no, Your Honor.

8 THE COURT: Very good. All right. We'll stay
9 in recess for a few minutes.

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

12 THE COURT: Is the Defense ready?

13 MR. DELGADO: Yes, Your Honor.

14 THE COURT: All right. Ask the jury to join
15 us, please.

16 (WHEREUPON, the jury entered the courtroom at
17 approximately 10:55 a.m.)

18 THE COURT: All right. Let the record reflect
19 that the jury and alternates are in the jury box.

20 Madam Solicitor, you may call your next witness.

21 MR. CAMPBELL: Your Honor, the State calls
22 David Rodgers.

23 **DAVID RODGERS,**

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. CAMPBELL:

2 Q. Mr. Rodgers, you're the owner of a Shell gas station
3 here located in Anderson on Whitehall Road?

4 A. Yes, sir.

5 Q. And what exactly is your station's address?

6 A. 704 Whitehall Road.

7 Q. And just for clarification for the benefit of the
8 ladies and gentlemen of the jury, where would you
9 describe your station's location?

10 A. The corner of Whitehall Road and Martin Luther King
11 Boulevard.

12 Q. And Martin Luther King Boulevard, that's also know
13 as Mall Road?

14 A. Correct.

15 Q. Or formerly was known as Mall Road?

16 A. Correct.

17 Q. As part of your security measures, does your store
18 have security cameras?

19 A. Yes, sir.

20 Q. On the inside and the outside of the store?

21 A. Yes, sir.

22 Q. Now, these cameras, do they record the images that
23 is shown or takes place in and around your store?

24 A. Yes, sir, they do.

25 Q. And will it record human traffic as well as vehicle

1 traffic?

2 A. Yes, sir.

3 Q. And how are they operated? Do they record
4 automatically, or are they motion activated?

5 A. Yes, sir. They're motion activated.

6 Q. And do these cameras continuously record or they --
7 how are the images stored?

8 A. They're stored digitally on the computer, and they
9 continuously record according to the motion.

10 Q. And approximately how long do you keep the images
11 in, I guess, the hard drive database?

12 A. The hard drive generally holds approximately six
13 weeks worth of imagery, of course, depending upon the
14 amount of motion that's detected.

15 Q. Now, back in December of 2006, were your cameras
16 operational?

17 A. Yes, sir.

18 Q. And you had no technical difficulties during the
19 time frame of December 13th, December 14th, 2006?

20 A. No, sir.

21 Q. I want to show you what's been marked as State's
22 Exhibit Number 1 and 2.

23 MR. CAMPBELL: Your Honor, these have already
24 been shown to Mr. Delgado, and it's my understanding no
25 objections to moving these in.

1 THE COURT: I think they were admitted the
2 other day.

3 MR. DELGADO: That is correct, Your Honor.

4 THE COURT: Very good.

5 Q. Mr. Rodgers, can you please identify what these are,
6 sir?

7 A. These are the videos I viewed in your office that
8 we'd given you back at the time in December of '06.

9 Q. In fact, your initials are on these DVDs indicating
10 that you viewed these DVDs, correct?

11 A. I have viewed them, yes, sir.

12 Q. Now, you had an opportunity to review these. Do
13 these videos fairly and accurately represent or show the
14 human traffic and vehicle traffic in or about your store
15 on the day of December 13th, 2006?

16 A. Yes, sir, they do.

17 Q. Have they been altered, edited, or changed in any
18 shape, way or form?

19 A. No, sir.

20 MR. CAMPBELL: Your Honor, I have no further
21 questions for this witness.

22 THE COURT: Any cross-exam?

23 MR. DELGADO: None at all. Thank you very
24 much, Mr. Rodgers.

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

1 Thank you, sir.

2 Is the witness under subpoena?

3 MS. ADAMS: Yes, sir, Your Honor. May he be
4 excused?

5 THE COURT: Any objection to the witness being
6 excused?

7 MR. DELGADO: None at all.

8 THE COURT: Very good. You are excused. Thank
9 you, sir.

10 All right. You may call your next witness.

11 MR. CAMPBELL: Your Honor, the State calls Mike
12 Walters to the stand.

13 MIKE WALTERS,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. CAMPBELL:

17 Q. Mr. Walters, you're currently employed with the
18 Anderson Police Department?

19 A. Yes.

20 Q. And what position or capacity are you employed in?

21 A. I'm captain over the criminal investigation
22 division.

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

24 A. Nineteen years.

25 Q. And were you employed with the Anderson Police

1 Department back in December 2006?

2 A. Yes.

3 Q. Now, back on December 14th, 2006, did you have an
4 opportunity to respond to a crime scene located at 1506
5 Tribble Street?

6 A. Yes.

7 Q. Is that here in Anderson County?

8 A. It is. It's in the city limits of Anderson.

9 Q. And what type of crime scene, to your knowledge at
10 that time, were you responding to?

11 A. I heard over the police radio in my car that we had
12 a possible ten seven subject which is someone who is
13 dead.

14 Q. Were you the first investigator on the scene?

15 A. I was the first investigator on the scene.

16 Q. And when you arrived, could you just briefly
17 describe what you observed on the outside at the physical
18 location of 1506 Tribble Street?

19 A. As I pulled up, one of the duties that I -- as being
20 the first investigator on the scene was to make sure the
21 crime scene had been taped off which it had been. I also
22 had someone making a crime scene log logging in anyone
23 who came in and out of the crime scene area.

24 Q. Did you have an opportunity to go into the house?

25 A. I did.

1 Q. And can you just briefly describe what you observed
2 when you walked into the house?

3 A. Walked in and the house was kind of in a disarray
4 and a -- but I realized that the victim that lived there
5 was just actually moving in. There was still a lot of
6 stuff packed up in boxes and sitting around throughout
7 the house.

8 Q. Did you have an opportunity to observe the victim in
9 this case?

10 A. I did.

11 Q. And briefly describe what you saw.

12 A. She was lying in the floor in the back bedroom with
13 her hands tied behind her back with her feet tied up and
14 kind of pulled up similar to like a hog tie.

15 Q. And as a result of that, did you start your
16 investigation and try to first determine who this victim
17 was?

18 A. I did. I stepped back outside and began
19 interviewing family members to try to decide or find out
20 who was the last person to see her alive, what times, and
21 things of that sort.

22 Q. So you were clearly treating this as a homicide?

23 A. Absolutely.

24 Q. Now, what name did you learn the victim -- who the
25 victim was?

1 A. What I found out at that time was that possibly the
2 last person to see her alive at that time would have been
3 a young, black male, light skinned with short, wavy hair
4 and went by the name of Raymond. And that's about as
5 much as we knew at that moment.

6 Q. And who was the victim in this case?

7 A. The victim was Kwana Burns.

8 Q. Now, you said you talked to family members and
9 friends that were outside the house.

10 A. Right.

11 Q. Did you also happen to talk to Kameron [REDACTED], her
12 son?

13 A. I did. During my time of talking to different
14 family members, one of them came up to me and advised me
15 at that time that Kameron, who is the victim's son,
16 remember meeting this -- with his mother, going and
17 meeting this individual at the Shell station at the
18 corner of Martin Luther King Boulevard and Whitehall.

19 Q. How was he holding up emotionally at this point in
20 time?

21 A. He was -- you could tell he was upset and crying,
22 but he was actually -- by this time he was kind of
23 settled down a little bit, but you could tell he was
24 still and had been upset.

25 Q. Now, at this point, did you make an attempt or did

1 you go to the Shell station?

2 A. I did. I got Kameron along with another family
3 member and got them in my patrol car and proceeded to
4 that station. I picked up the phone at that time and
5 called Lieutenant Zamberlin, advised him we possibly have
6 a video at this station where they went and met him the
7 evening before. And Kameron showed me exactly where they
8 pulled in and parked and where this man that he had met
9 for the first time the night before walked up. And then
10 I took Kameron back to the residence, went back to the
11 store at that time. Lieutenant Zamberlin and I began to
12 observe the video that was at the store.

13 Q. And on this video did you identify a possible or
14 potential suspect in this case?

15 A. We did. We did.

16 Q. And Detective Zamberlin, he was also, he observed
17 these videos; is that right?

18 A. That's exactly right.

19 Q. Now, did you request a copy of the videos?

20 A. We did, but the clerk at that time could not pull
21 the video. We could only watch it. We had to wait till
22 the owner of the store got back which he was out of town
23 that day.

24 Q. And the owner was David Rodgers who just testified
25 before you?

1 A. That's right. That's right.

2 Q. And in fact, you did get a copy of the videos that
3 you observed on the night of December 13th or on the day
4 of December 14th, 2006?

5 A. We did.

6 Q. And I'll show you what's been marked as State's
7 Exhibits 1 and 2. Are these copies of the videos that
8 you received from the Shell station store?

9 A. Yes, they are.

10 Q. Now, Detective Walters, you had an opportunity to
11 review these; is that correct?

12 A. I have reviewed them, yes.

13 Q. Now, I want to ---

14 MR. CAMPBELL: Your Honor, at this time, we're
15 going to publish the videos..

16 THE COURT: Very well. Any objection?

17 MR. DELGADO: None, Your Honor.

18 THE COURT: Very well. You may proceed.

19 MR. CAMPBELL: Now, Your Honor, may I have the
20 witness step off the stand?

21 THE COURT: Certainly.

22 Q. Mr. Walters, if you'll just step off.

23 (WHEREUPON, the witness stepped down from the
24 witness stand.)

25 Q. I'll give you a pointer. If you will just please,

1 as these happen, kind of explain what you see and observe
2 for the benefit of the ladies and gentlemen of the jury.
3 What is in -- the gas pump at the top?

4 A. This vehicle here?

5 Q. Yes, sir.

6 A. I think that's going to be our victim's vehicle.
7 I'll have to wait and see.

8 THE COURT: Now, this is State's Exhibit 1?

9 MR. CAMPBELL: 1 and 2, Your Honor.

10 THE COURT: Which one are we looking at?

11 MR. CAMPBELL: Right now we are looking at
12 State's Exhibit Number 2. It will be sixteen views,
13 camera views.

14 THE COURT: Very good. It's Number 2.

15 A. This vehicle here is going to be our suspect's
16 vehicle, the red vehicle with the white top. You can go
17 ahead and click the next one. That's our victim's
18 vehicle pulling in, and this is our suspect here walking
19 across to put something in the trash can. That's our
20 suspect's vehicle there. He makes a phone call from
21 those phone booths.

22 Q. Now, this road we see the traffic coming from, what
23 road is that?

24 A. That's going to be Martin Luther King Boulevard. It
25 was called Mall Road at that time, but it's been changed

1 to Martin Luther King Boulevard.

2 Q. And the time you see here, 20:36. What is that
3 indicating, the numbers 20:36?

4 A. 20:36 is the time. That would be like 6:37 p.m.

5 Q. And that's in military time, twenty-four-hour time?

6 A. Right, and that's the seconds ticking there on the
7 side.

8 Q. And is this view -- to your knowledge and based on
9 your investigation, was this before he met Ms. Burns?

10 A. I think that's when he made the call and told her
11 that he was not able to locate where she lived based on
12 the directions that he had, and he was calling her to
13 come meet her -- meet him there at the station or get
14 directions.

15 Q. I guess -- and traffic coming down from the mall
16 would be on the left side, far side?

17 A. Right, coming from the mall.

18 Q. Coming from the mall would be in this direction
19 right here?

20 A. Uh-huh (affirmative). And then they would come to
21 the red light there at Whitehall.

22 Q. And Whitehall Elementary then would be on this
23 corner?

24 A. On the opposite side of the road here.

25 Q. What do you see at the top?

1 A. After they leave the station and she pulled out, he
2 pulled in behind her and then they followed her down the
3 ...

4 Q. And is this possibly your suspect right here?

5 A. Top, left-hand corner. I can't make it out in that
6 video. Is that his vehicle coming back in right here, or
7 is that just reflection on that gas pump? I can't tell.

8 Q. And this time down here that says 20:40, that's 8:40
9 in the evening, correct?

10 A. That's 8:40 in the evening, so it's actually only
11 three minutes later than a while ago. It's just in slow
12 motion. And this is our suspect's vehicle here coming
13 back from where the phone booths are.

14 Q. So the phone books -- booth is back around to the
15 left?

16 A. Behind to the left of the building, yeah. And he
17 backs in there. You'll see the victim's vehicle come in,
18 pull in, in just a moment.

19 Q. And what is this showing right here?

20 A. This is our victim leaving and our suspect following
21 behind.

22 Q. And which direction are these vehicles heading?

23 A. They're going out to Martin Luther Boulevard and
24 turning right and crossing Whitehall Road.

25 Q. Is this just another camera angle showing his car?

1 A. A different camera angle showing his car coming in
2 and circling around.

3 Q. And this will show where the previous one -- where
4 he backed in coming around that side?

5 A. That's correct.

6 Q. And this top left will be Martin Luther King
7 Boulevard?

8 A. That's right. And this is him walking where he
9 tosses trash in the trash can. And we knew that from the
10 description of clothing that we had gotten from the
11 family members.

12 Q. And is this the victim's vehicle right here?

13 A. The victim's vehicle there. She will go around,
14 circle around.

15 Q. Is that it at the top?

16 A. That's her right there.

17 Q. And at the top corner, that would have been
18 Whitehall?

19 A. That would have been Whitehall. That's correct.

20 MS. ADAMS: That's it, Rame.

21 MR. CAMPBELL: That's it?

22 Q. Mr. Walters, could you please take the stand?

23 (WHEREUPON, the witness resumed the witness stand.)

24 Q. Captain Walters, is the person you viewed in those
25 video tapes, is he in the courtroom today?

1 A. Yes, he is.

2 Q. Can you please identify him?

3 A. He's sitting at the Defense table there on the end
4 with the white shirt.

5 Q. Next to Mr. Day?

6 A. Yes.

7 Q. Now, were you eventually able to put a name with
8 this individual?

9 A. We were.

10 Q. And you were able to identify this person in the
11 DVDs?

12 A. We were.

13 Q. And how did you do that?

14 A. From the description, number one, of the clothing
15 that Kiki had given me when I had talked to her and also
16 another witness that was there named Ricky Chamblee who
17 had seen there, the description of a yellow shirt with a
18 stripe on the sleeve and light skin, short, wavy hair,
19 and the phone of Raymond, we were able to get that. And
20 when we started the investigation we came up with his
21 full name as Raymondeze Rivera.

22 MR. CAMPBELL: Your Honor, I have no further
23 questions for this witness.

24 Q. Mr. Walters, please answer any questions he may
25 have.

1 THE COURT: Very well. Cross examine?

2 CROSS-EXAMINATION

3 BY MR. MCGUIRE:

4 Q. Is it Detective Walters, Officer, Detective?

5 A. Detective.

6 (WHEREUPON, Defendant's Exhibits Number 1, 2 and 3
7 were marked for identification only.)

8 MR. CAMPBELL: Your Honor, may we approach?

9 THE COURT: Certainly.

10 (WHEREUPON, a bench conference was held off the
11 record.)

12 THE COURT: Mr. Foreman, ladies and gentlemen
13 of the jury, I'm going to ask you to retire to the jury
14 room for a few minutes. I need to take up a legal matter
15 with the attorneys. Again, do not undertake a discussion
16 of the case among yourselves in any way.

17 (WHEREUPON, the jury exited the courtroom at
18 approximately 11:20 a.m.)

19 THE COURT: Yes, ma'am?

20 MS. ADAMS: Your Honor ---

21 THE COURT: Well, first of all, let's see what
22 the Defense is proffering right now.

23 MR. MCGUIRE: Yes, sir, Your Honor. I've shown
24 copies of the letters to the Prosecution. They've been
25 marked for identification purposes only at this point.

1 THE COURT: Well, have they been marked prior?

2 MR. MCGUIRE: No, sir.

3 THE COURT: They're not -- in other words you
4 just approached the court reporter with the exhibits to
5 have her mark them?

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: Okay.

8 MR. MCGUIRE: Yes, sir. They've not been
9 marked prior ---

10 THE COURT: And the State hasn't seen them or
11 at least -- I guess the State has seen them because
12 they're the letters referred to in the -- and actually
13 read to the jury in the opening statement; is that
14 correct?

15 MR. MCGUIRE: Yes, sir.

16 MS. ADAMS: I'm assuming, Judge. I haven't
17 seen his actual copies, but I'm assuming that's exactly
18 what they are. Your Honor, the problem is we have not
19 admitted these letters into evidence yet. We are trying
20 to get through the guilt phase, and the Defense seems to
21 be jumping into the penalty phase. These letters have
22 nothing to do with guilt, and we're not trying to admit
23 them. I mean, this officer hasn't even seen them. They
24 weren't sent to him. There's no basis to even ask him.
25 He didn't even collect these letters. I mean, I don't

1 understand why we keep going back to these letters now
2 when we are not offering them into evidence in the guilt
3 phase ---

4 THE COURT: Well ---

5 MS. ADAMS: And you haven't even ruled on ---

6 THE COURT: Excuse me, excuse me. Madam
7 Solicitor, both parties are permitted to introduce
8 evidence during the trial. It's not limited to just one
9 side.

10 MS. ADAMS: Yes, sir.

11 THE COURT: The only thing is, again, if this
12 witness can't identify or authenticate the letters, then
13 of course -- what is it -- they wouldn't be admitted
14 through this witness, but that's not to say they couldn't
15 be authenticated.

16 MS. ADAMS: He did not collect these letters,
17 Your Honor.

18 THE COURT: All right. Go ahead and proffer
19 your evidence.

20 MR. MCGUIRE: Judge ---

21 THE COURT: Give the exhibits back.

22 MR. MCGUIRE: Sure. And Judge, if he can't
23 authenticate them, that's fine. But I don't know if
24 they're part of the main file. I don't know if he has
25 had conversations where he knows that these letters are

1 in fact what they are.

2 THE COURT: That's what I said. Proffer the
3 evidence.

4 MR. MCGUIRE: Sure.

5 IN-CAMERA EXAMINATION

6 BY MR. MCGUIRE:

7 Q. Detective, I'm going to hand you what's been marked
8 for Defense, just for identification purposes only at
9 this point, Exhibits 1, 2, and 3. Do you recognize them?

10 A. I knew the letters existed. I did not collect the
11 letters, and I had just briefly read, I think, the first
12 letter. But the other two, I knew they existed, but I
13 did not read them.

14 Q. Okay. And what is your involvement with these
15 letters? You said you did not collect them, but are they
16 part of the main file in the case?

17 A. They are part of Lieutenant Zamberlin's main case
18 file, yes.

19 Q. Okay. And what do you know them to be?

20 A. I know them to be letters that were sent from the
21 Defendant to the victim's family, family members.

22 Q. Okay. They were collected because of that?

23 A. That's correct.

24 Q. And they're evidence in this case?

25 A. I would think so, yes.

1 MR. MCGUIRE: Okay. Well, then I'll just ask
2 him, basically, just those questions in front of the jury
3 ---

4 THE COURT: Well, let's see, don't we permit
5 the State to also ask questions on a proffer?

6 All right. Madam Solicitor?

7 MS. ADAMS: Your Honor, we don't even know
8 though who wrote the letters at this point. They haven't
9 proven who wrote the letters.

10 THE COURT: That's not a question. So you
11 don't have any questions for this witness?

12 MS. ADAMS: Oh, no, sir. No, sir. He didn't
13 collect them. And we don't even know who wrote them.

14 MR. MCGUIRE: Well, Judge, those are the
15 questions that I'd ask in front of the jury and then I
16 would move them into evidence.

17 THE COURT: Right. At this time, they are
18 marked for identification because they were submitted to
19 the court reporter, but I don't think you're going to get
20 them admitted through this witness.

21 All right. Return them to the court reporter, if
22 you would, please. Anything else as far as the exhibits
23 are concerned?

24 MR. MCGUIRE: No, sir.

25 THE COURT: All right. Ask the jury to join

1 us.

2 (WHEREUPON, the jury entered the courtroom at
3 approximately 11:25 a.m.)

4 THE COURT: All right. Let the record reflect
5 the jury and alternates are in the jury box.

6 All right. You may continue.

7 MR. MCGUIRE: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 CONTINUED BY MR. MCGUIRE:

10 Q. Detective, I'm not going to ask you to read those
11 letters, and I'm not going to move them into evidence at
12 this point. But my understanding is you're aware of
13 those letters that I showed you previously.

14 A. That is correct.

15 Q. And your understanding is that those are letters
16 written from the Defendant to family members of Ms.
17 Burns.

18 A. That is correct.

19 Q. And that's part of your file, of course?

20 A. That is correct.

21 Q. And were you involved in the beginning of the case
22 where Detective Zamberlin was speaking to the defendant
23 in Georgia?

24 A. I went with -- myself and Lieutenant Zamberlin and a
25 crime scene technician, George Creamer, went to Atlanta

1 and spoke to him the very first time in person, yes.

2 Q. Okay. And were you involved in the conversations
3 where Mr. Rivera wanted to see a chaplain and he was
4 requesting his own death by requesting the death penalty?

5 A. No, I wasn't. That was the second trip they went to
6 Atlanta, and I did not go then.

7 Q. Okay. So regarding the negotiation between
8 Detective Zamberlin and the Defendant regarding seeking
9 the death penalty ---

10 MR. CAMPBELL: Objection, Your Honor. There
11 was no negotiation.

12 THE COURT: Restate your question.

13 Q. Regarding the conversations between Detective
14 Zamberlin and Mr. Rivera where he was seeking his own
15 death, you were not part of those conversations?

16 A. No, I wasn't.

17 Q. Okay. And did you have any conversations with
18 Detective Zamberlin with regard to the issue of Mr.
19 Rivera's mental health in the beginning of this
20 investigation?

21 A. No.

22 Q. Okay. But you and Detective Zamberlin have been on
23 the case. In fact, you're sort of still on it right now.
24 I mean, if you were to receive more evidence you'd still
25 be on it.

1 A. As captain over the division, yes ---

2 Q. Sure..

3 A. --- I'd be informed of what's going on.

4 Q. Okay. And you're aware of his subsequent diagnosis
5 for mental health problems?

6 MR. CAMPBELL: Objection, Your Honor. That's
7 beyond the scope of this witness.

8 THE COURT: I'm afraid that would be hearsay.

9 MR. MCGUIRE: Okay.

10 THE COURT: Okay. Thank you.

11 Mr. Foreman, ladies and gentlemen of the jury, as I
12 explained in my preliminary instructions, we have certain
13 rules of evidence that both sides must obey or follow.
14 And those rules of evidence are to be sure to assure that
15 the information you receive is the most accurate and
16 reliable information you can. So therefore, we prohibit
17 or at least limit something that we call hearsay.

18 Hearsay is just what the term implies. It's what we
19 think we hear somebody say or somebody -- or something
20 else, it might even be a document that somebody else
21 prepared. If we don't know if that was prepared by that
22 individual and we are going to have to just rely on
23 somebody telling us that was prepared by the individual
24 or something of that nature or if something has occurred
25 that we only know because we heard somebody say that it

1 has, then that's not admissible because we don't have the
2 person who prepared it or the person who collected it or
3 anything to know about the, as I say, authenticity or the
4 accuracy of it.

5 Normally, when we receive information through
6 testimony or even an exhibit, we have somebody to examine
7 it to say, well, what was the context of that statement.
8 Is it -- did you -- was it heard accurately? In other
9 words, do we -- the person who wants to testify to what
10 somebody said, did the person actually say it. So you
11 have to ask that person.

12 Now, there are exceptions to it, but I find that
13 this would be hearsay as to anything else that might have
14 been done that this officer was not familiar with. So I
15 have declined to permit that line of questioning with
16 this witness.

17 All right. You may proceed.

18 MR. MCGUIRE: And Judge, I think I'm just going
19 to have one final question.

20 THE COURT: Yes, sir.

21 Q. Despite the fact that Mr. Rivera was seeking his own
22 death through the death penalty, you're not aware of any
23 steps that law enforcement took to have him examined by a
24 mental health professional?

25 MR. CAMPBELL: Objection, Your Honor. That's

1 outside the ---

2 THE COURT: All right. That's a completely
3 improper question, and you know it, sir. No, I'm going
4 -- disregard that question because this is not the place
5 to even suggest something this witness has not had any
6 experience with.

7 All right. Very good. Thank you.

8 Approach.

9 (WHEREUPON, a bench conference was held off the
10 record.).

11 THE COURT: All right. As I understand, there
12 was a certain conversation that took place on the second
13 trip to wherever it was; is that correct?

14 THE WITNESS: It was.

15 THE COURT: And you weren't present for that?

16 THE WITNESS: No, I was not -- I did not go
17 down on the second trip.

18 THE COURT: Very good. All right. Anything
19 else?

20 MR. MCGUIRE: In light of your ruling, Judge,
21 that's all we'd have.

22 THE COURT: All right. Very good.

23 MR. CAMPBELL: Nothing further from the State
24 of this witness, Your Honor.

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

1 All right. Call your next witness.

2 MR. CAMPBELL: Your Honor, the State calls
3 George Creamer.

4 THE COURT: Whoa, no, sir. Those are things
5 that you've had -- marked identified?

6 MR. MCGUIRE: Sure. Yeah, I'm just going to
7 read them real quick and give them back to the court
8 reporter.

9 THE COURT: Oh, all right. Very good. Thank
10 you.

11 Mr. Foreman, ladies and gentlemen of the jury, maybe
12 I should explain something to you also. Once an exhibit
13 is offered to the court reporter to be marked, first of
14 all, it's for identification, marked for identification.
15 That means it hasn't been admitted, but it does become a
16 part of the record. And this is what I sort of addressed
17 with Mr. McGuire.

18 Once it becomes a part of the record, then nobody
19 removes it from the courtroom or takes it away from the
20 court reporter. Of course, they can use it and at the
21 table and all. In fact, it goes so far when I'm trying a
22 case, I require that no lawyer leave the courthouse until
23 the court reporter has all of the exhibits. And so that
24 was just what we're trying to do to be sure that they
25 don't get lost or stuck in somebody's file or something

1 like that. And that -- of course, all of these rules --
2 I've been talking about hearsay and everything else --
3 apply to both the State and the defense.

4 All right. You may proceed.

5 MR. CAMPBELL: Thank you, Your Honor.

6 GEORGE CREAMER,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. CAMPBELL:

10 Q. Please state your name for the record.

11 A. George Creamer. The last name spelling C-R-E-A-M-E-
12 R.

13 Q. And Mr. Creamer, you're employed by Anderson Police
14 Department?

15 A. Yes, sir, I am.

16 Q. And what position are you employed as?

17 A. Currently, I'm a crime scene technician with the
18 Anderson Police Department.

19 Q. And how long have you been involved in law
20 enforcement?

21 A. Including my six years with the United States Air
22 Force Security Police, approximately twenty-eight years.

23 Q. And formerly, you worked in the forensics unit at
24 the Sheriff's office, Anderson County Sheriff's Office;
25 is that correct?

1 A. That's correct. I worked at the Sheriff's office
2 approximately sixteen years, approximately fourteen of
3 that in the crime scene unit.

4 Q. In fact, you formerly headed that unit; is that
5 correct?

6 A. That's correct.

7 Q. Now, I want to talk to you about the events that
8 took place December 14th, 2006, here in Anderson. You
9 were working for the Anderson Police Department; is that
10 right?

11 A. That is correct.

12 Q. On that morning, did you have an opportunity or were
13 you called to a crime scene located at 1506 Tribble
14 Street?

15 A. Yes, I was.

16 Q. And that's here in Anderson?

17 A. Yes, it is.

18 Q. And when you arrived, what exactly were your duties?
19 What did you do when you got there?

20 A. I was called and requested to assist Sergeant
21 Partain in processing the crime scene at that residence.
22 Upon arrival, Detective Wilson and Partian were already
23 in the scene, already making photographs of the scene.
24 So what I did was I waited till approximately nine
25 o'clock till they had room or requested additional

1 assistance. I went on in and assisted them determining
2 what may or may not be evidence or collecting what could
3 or could not be construed as evidence.

4 Q. And so you first -- you had the crime scene techs
5 photograph everything; is that what you said?

6 A. That's correct.

7 Q. Now, do you typically, when you process a crime
8 scene, do you typically work alone or do you work
9 together with a group of other techs?

10 A. Best case scenario you'll have several technicians.
11 One will usually keep notes, one will do photography, and
12 the other one will do collection. In this particular
13 situation, two of us assisted in doing collection. I
14 think Detective Wilson did most of the hands-on, and I
15 would hand him the envelopes and swabs, things like that,
16 that he needed to do the collection.

17 Q. So everything that was collected was done in your
18 presence?

19 A. Yes.

20 Q. And Melissa Partain worked with the Anderson Police
21 Department, she was collecting as you ---

22 A. Everything was turned over to her, and she was
23 keeping the notes as far as the evidence.

24 Q. Now, can you briefly describe the condition of the
25 house?

1 A. It's an older house. The living room was, in my
2 opinion, one of the neater rooms in the house. There
3 were some children's items in that particular location.
4 The rest of the house had the appearance of someone
5 moving in, multiple boxes, bags of clothing, cleaning
6 supplies, clothes baskets full of clothing. Just boxes
7 and things like that in all the different rooms like
8 someone was moving in.

9 Q. Was the water turned on?

10 A. No, it was not.

11 Q. And did you have an opportunity to observe the body?
12 Was the body still there when you arrived?

13 A. Yes, I did, and yes, she was.

14 Q. And the body was tied up like you heard -- or was
15 the body tied up?

16 A. Yes, the body was tied. Hands tied behind her back
17 and her ankles were pulled up behind her legs, and there
18 was a jump rope used to tie that all together.

19 Q. Obviously, it was apparent that this was a homicide
20 or a murder?

21 A. That's the way we were treating the scene, yes.

22 Q. Now, when you -- as a technician, when you go there,
23 can you just tell the ladies and gentlemen of the jury
24 your efforts in documenting the crime scene and how you
25 went about collecting the evidence in this case.

1 A. We try to photograph everything. We try to document
2 or try to make notes of the locations of the items, try
3 to pick them up, put them in envelopes, mark down who did
4 the collection, the date, and where the collection was
5 done at. And then it's turned over to an evidence
6 technician.

7 Q. And do you know exactly what type of items you are
8 collecting when you go to a crime scene?

9 A. No. And this particular scene was a little bit more
10 difficult than most because there were so many boxes
11 where the body was located. It was a little bit
12 confusing trying to narrow down what we should collect or
13 not collect or process or dust or swab for DNA.

14 Q. So it's fair to say it's an educated guess what
15 items you're going to collect?

16 A. Yes, sir.

17 Q. In this case, y'all did collect a number of items
18 and you did do a forensic exam on the body; is that
19 right?

20 A. Yes.

21 Q. I want to show you what's been marked State's
22 Exhibit ...

23 MR. CAMPBELL: Your Honor, Mr. Delgado and Bob
24 already reviewed these photographs.

25 THE COURT: Well, I understand there were

1 certain photographs entered the other day, and I think
2 they were 3 through 31. Is that one of those?

3 MR., CAMPBELL: This is that group, Your Honor.

4 THE COURT: All right. Those -- I've already
5 admitted those into evidence, so you don't need to do
6 that. Just identify the exhibit.

7 Q. Lieutenant Creamer, I'm going to show you these
8 photographs that's been marked as State's Exhibits. Are
9 these photographs that were taken on December 14th, 2006?

10 A. Yes, sir, they are.

11 Q. And do these photographs fairly and accurately
12 represent what you observed and saw inside and outside
13 the house on December 14th, 2006 at Tribble Street?

14 A. Yes, sir, they are.

15 THE COURT: All right. Now, are those exhibits
16 State's Exhibits 3 through 31 or some portion of -- in
17 other words, the records need to reflect what the witness
18 was identifying.

19 MR., CAMPBELL: Your Honor, I'm going to read
20 them into evidence the numbers so this witness will have
21 to ---

22 THE COURT: At some point, yes, you are.

23 MR., CAMPBELL: I mean, that's what I'm going to
24 do right now. Your Honor, for the Court's -- for the
25 identification of the record, this will be State's

1 Exhibit 19, 26, 25, 27, 14, 16, 17, 21, 22, 24, 20, 15,
2 and 18.

3 THE COURT: Very good. Thank you.

4 MR. CAMPBELL: Your Honor, at this time I'd
5 like to request to allow the witness to come off the
6 stand so I can show them to the jury.

7 THE COURT: Certainly. Again, though, as he
8 identifies each or as he addresses each photograph, if
9 you would, identify which one that is.

10 MR. CAMPBELL: I'll identify them, Your Honor.

11 (WHEREUPON, the witness stepped down from the
12 witness stand.)

13 Q. Detective, I -- I'm going to show you what's been
14 marked as State's Exhibit 18. If you'll just -- what is
15 this a photograph of?

16 A. It's the victim's vehicle. It's a van.

17 Q. And this is Number 15.

18 A. It's a wider angle photograph. This is the
19 residence in question where the victim was found inside
20 the residence she was moving into, and her van was on the
21 left over there.

22 Q. And what is this yellow ribbon here?

23 A. It's crime scene tape.

24 Q. And that's to keep other people out of the crime
25 scene?

1 A. Yes, sir.

2 Q. State's Exhibit Number 20, what is this photograph
3 depicting?

4 A. This is the living room area. It's the coffee
5 table. There's a bag of trash there on the table. This
6 area here goes into an open area that splits off to the
7 bedrooms, the bathroom and the kitchen. This is the
8 living room area.

9 Q. And what is exactly on this table?

10 A. This black bag of trash here contains a red plate.

11 Q. And as far as State's Exhibit 22?

12 A. This is the living room. This is the area I was
13 just describing a moment ago, a table and a bag of trash.
14 This is the coffee table, couch, and love seat ---

15 Q. Is that it in the corner?

16 A. Yes, this is the bag of trash again.

17 Q. And on the table?

18 A. If you'll look in the back corner over here also,
19 there's a cell phone that belongs to the victim.

20 Q. I'm going to show you what's been marked State's
21 Exhibit 13. Is this the cell phone that was collected at
22 the house?

23 A. Yes, sir, it is.

24 Q. State's Exhibit Number 24, what is that depicting?

25 A. This is the bathroom. And over to the left outside

1 of the scope of the picture is the room the victim was
2 found at. This table is located just between the two.
3 And this notebook, this yellow notebook legal pad, that's
4 the item that the photograph is depicting.

5 Q. And that was collected into evidence, this yellow
6 legal pad?

7 A. Yes, sir, it was.

8 Q. State's Exhibit Number 21, is this another view of
9 the inside living room?

10 A. Yes, sir, it is. This is the couch I was just
11 describing, this is the cell phone, this is the love
12 seat. This is an area where the TV set was located. And
13 this particular DVD was beside the picture.

14 Q. State's Exhibit 19, what is this photograph
15 depicting?

16 A. This is the toilet with the used wipes in the
17 toilet. And at the time we were assuming that this was
18 possibly blood.

19 Q. Now, State's Exhibit 16, is this how you discovered
20 or found the body?

21 A. Yes, sir.

22 Q. Is this Kwana Burns?

23 A. Yes, sir.

24 THE COURT: Just a moment, please. We will not
25 have any demonstrations in the courtroom. If someone is

1 unable to control their emotions, I would respectfully
2 ask them to retire from the courtroom until they could.

3 Very good. You may proceed.

4 MR. CAMPBELL: Thank you, Your Honor.

5 Q. In 16, this blue cord, what did that turn out to be?

6 A. It's a jump rope.

7 Q. I'll show you what's been marked as Number 27,

8 State's Exhibit Number 27. What is this photograph

9 depicting. And what, if any, type of evidence did you

10 collect in this photograph?

11 A. This is the jump rope around the victim's legs, and

12 there were swabbings taken from this calf. It's the

13 right inner calf.

14 Q. And were the socks also ---

15 A. Yes, the socks were ---

16 Q. --- collected in this case?

17 A. --- collected and the jump rope was also collected.

18 Q. Number 14, is that just a close up view?

19 A. Yes, sir, it is.

20 Q. I'm showing State's Exhibit 17. What is that
21 depicting?

22 A. This is the rope binding the victim's hands.

23 Q. I'm going to show you Number 26. What is this
24 indicating?

25 A. A couple of things. Right here it shows the

1 victim's hands bound, the middle finger of her left hand,
2 where the fingernail is chipped off of and it shows the
3 blue shorts damp, wet.

4 Q. And did you -- appear to be urine to you at that
5 point in time?

6 A. We assumed it was, yeah.

7 Q. I show you what's been marked as State's Exhibit 25.
8 What is this picture depicting?

9 A. This box was located -- if you are looking at the
10 body, laying on ---

11 Q. State's Exhibit 12, this might help you.

12 A. There's the victim -- this is the box, the
13 photograph you just had up depicts this box. this is a
14 Clorox wipe container. We looked at the wipes on it, and
15 there were some similarities between the wipes that were
16 in the toilet. So we figured it may have been important
17 so we collected it.

18 Q. So that's what this is depicting, a close-up of the
19 box?

20 A. The top of the box, and that's the Clorox container.

21 Q. If you'll please take the stand.

22 (WHEREUPON, the witness resumed the witness stand.)

23 Q. Now, you also processed the body for any type of
24 forensic evidence you could collect? You mentioned that
25 going through the photographs.

1 A. Yes, sir.

2 Q. How did y'all process -- what kind of steps did you
3 take?

4 A. We were looking at the victim, trying to determine
5 just from gross observation, just looking at her, what
6 may have been the cause of death. We noticed on her neck
7 area some injuries. They may have been fingernail marks,
8 they may have been bite marks. We weren't sure what they
9 were. So we decided to go ahead and swab that area for
10 DNA and then process it for fingerprints. So we used a
11 method, magnetic black powder method, in trying
12 developing prints on the skin. We weren't successful
13 with the development of the prints at that time.

14 We also tried photographing her up and down. We
15 noticed on her inner right calf some sort of dried fluid.
16 Again, it was swabbed to check with phenylthalline.
17 Phenylthalline -- excuse me -- it's a presumptive blood
18 test. And you use it and if it tests positive, we
19 usually go ahead and make a collection behind that. It's
20 not an exact test, just to give us some idea of if it may
21 or may not be blood. And it was swabbed and collected as
22 well as the socks. And at that time, we only took the
23 lower half of the rope off to help load the body up after
24 we processed and photographed.

25 Q. And all this evidence was collected in your

1 presence, and it was given to Melissa Partain, and she
2 was the one that was collecting as you handed ---

3 A. That's correct. She took it back to the office.

4 Q. And you and Chris Wilson were the two techs that
5 were collecting the evidence together?

6 A. That's correct.

7 Q. And all evidence was given to her and was kept in
8 the Anderson Police Department's care, custody, and
9 control?

10 A. Yes, sir..

11 Q. And at some point, did you all have an opportunity
12 to try to process this evidence collected for further
13 identification or try to identify a possible suspect off
14 of it?

15 A. Later on that afternoon, a couple of the items that
16 we collected at the scene, we brought back in and we used
17 a super glue or cyanoacrylate process to develop
18 fingerprints. One was a Pepsi bottle gathered from the
19 living room on the floor, and one was the red plate in
20 the garbage and the Clorox container you saw earlier on
21 the table. I mean the TV.

22 Q. And afterwards, did you have any more involvement
23 with any type of evidence collected at the crime scene at
24 1506 Tribble Street?

25 A. No, sir, I did not.

1 Q. In fact, shortly thereafter, did you also accompany
2 officers from the Anderson Police Department to Georgia?

3 A. Yes, sir, I did.

4 Q. And what was your purpose or why did you go with
5 them to Georgia?

6 A. To assist in collecting evidence, anything that
7 could be found at that location in Georgia.

8 Q. And where exactly did you go to?

9 A. Douglas County Sheriff's Office.

10 Q. And at that point in time, did you talk or meet with
11 the Douglas County Sheriff's Office representatives and
12 collect some items from them?

13 A. Yes, I did.

14 Q. And what type of items did you collect?

15 A. Deputy U.S. Marshall Joey Garwin handed me the
16 victim's driver's license ---

17 Q. You mean the victim or the Defendant?

18 A. Excuse me. The Defendant's driver's license,
19 registration for the vehicle, and -- excuse me -- and his
20 cell phone.

21 Q. Did you also get his wallet also?

22 A. I did get the wallet the following day from the
23 detention center.

24 Q. Now, I want to show you what's been marked State's
25 Exhibit 28, 29, and 30. If you'll please identify what

1 these are.

2 MR. CAMPBELL: Your Honor, these have already
3 been admitted into evidence.

4 A. These are photographs of the Defendant's cell phone.

5 Q. I'm showing you number 28. This is -- this is a
6 photograph of the phone that you collected from the
7 Douglasville County Sheriff's Office?

8 A. Yes, sir.

9 Q. It's a Samsung Metro P.C.S. phone?

10 A. Yes, sir.

11 Q. Number 30, State's Exhibit 30, it's just a open view
12 of the other side of it?

13 A. That's correct.

14 Q. And I believe 29 is just a inside view showing the
15 identification.

16 A. Yes, sir.

17 Q. Furthermore, you also -- did you have an opportunity
18 to go through the contents of the wallet?

19 A. I did look through the contents of the wallet, and I
20 did notice a card with the victim's name on it. That
21 information was passed on. The wallet itself was turned
22 in to evidence.

23 Q. In fact, all these, the phone also was collected and
24 was turned in to evidence at the Anderson Police
25 Department?

1 A. Everything collected was turned in to evidence at
2 the police department in Anderson.

3 Q. And I'll show you what's been marked for State's
4 Exhibit Number 23. Can you please identify what exactly
5 this photo depicts?

6 A. These are the cards or contents of the Defendant's
7 wallet. And the card in particular has Kwana Burns' name
8 on it, Lancome Beauty Advisor, the phone number.

9 Q. State's Exhibit 23, does that photograph show --
10 identify a card that was collected out of the suspect --
11 Defendant's wallet in this case; is that right?

12 A. That's correct.

13 MR. CAMPBELL: All that was moved into
14 evidence. The Court's indulgence, please.

15 (Off record discussion)

16 MR. CAMPBELL: Your Honor, I have no further
17 questions for this witness.

18 THE COURT: All right.

19 MR. CAMPBELL: Mr. Creamer, please answer any
20 questions ...

21 THE COURT: Cross-examine?

22 MR. MCGUIRE: Your Honor, we have nothing for
23 Mr. Creamer. Thank you, sir.

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

25 All right. Could Counsel approach, please?

1 (WHEREUPON, a bench conference was held off the
2 record.)

3 THE COURT: All right. You may call your next
4 witness.

5 MR. CAMPBELL: Thank you, Your Honor. Chris
6 Wilson.

7 JAMES CHRISTOPHER WILSON,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. CAMPBELL:

11 Q. Mr. Wilson, where are you employed?

12 A. Currently at the Anderson County Sheriff's
13 Department.

14 Q. And back in December 2006, you were employed with
15 the Anderson Police Department?

16 A. I was.

17 Q. Did you have an opportunity to help process a crime
18 scene located at 1506 Tribble Street?

19 A. Yes, sir.

20 Q. And you, along with George Creamer and Melissa
21 Partain, were forensic techs that collected evidence out
22 of that crime scene?

23 A. We were.

24 Q. As part of your duties, did you collect a red plate,
25 plastic plate?

1 A. Yes, sir.

2 Q. Now, I'm going to mark this as an exhibit as we are
3 going through it. You collected a red plate from the
4 house?

5 A. Yes, sir.

6 Q. And do you recall approximately where you collected
7 the plate from?

8 A. From the living room off the end table.

9 (WHEREUPON, State's Exhibits Number 32A and 32B were
10 marked for identification only.)

11 Q. I'd like to show you what's been marked State's
12 Exhibit 20. Is this the bag you were collecting it from?

13 A. That is the bag that it was in.

14 Q. Now, after you collected this, did you attempt to
15 retrieve from it or pull off of it any type of
16 identifying features that could possible link it to
17 someone?

18 A. Yes. When we got back to the lab, we tried to fume
19 it. It's cyanoacrylate which is super glue for
20 fingerprints.

21 Q. I'm going to show you what's been marked for
22 identification, State's Exhibit 32 -- 32A and B.

23 MR. CAMPBELL: Your Honor, we're going to move
24 this into evidence, State's Exhibit 32A and B.

25 MR. DELGADO: Without objection.

1 THE COURT: Any objection?

2 MR. DELGADO: Without objection.

3 THE COURT: Without objection. State's Exhibit
4 32A and B?

5 MR. CAMPBELL: Yes, sir.

6 THE COURT: Admitted into evidence.

7 (WHEREUPON, State's Exhibits Number 32A and 32B were
8 admitted into evidence.)

9 Q. Now, I'm going to show you -- is this the red
10 plastic plate that you collected ---

11 A. It is, yeah.

12 Q. --- on December 14th, 2006? And what does the
13 cutout indicate?

14 A. That is the area where the latent print was located.
15 We cut it out so we could put it on the AFIS.

16 Q. In fact, the color on the background, what is
17 indicating the gray on the back of this?

18 A. Showing that was super glue.

19 Q. And what is the purpose of using super glue?

20 A. Well, it will adhere to the moisture on the plate
21 bringing out what is there, prints, anything, the foreign
22 objects on it.

23 Q. And were you able to collect a print in this case
24 off of it?

25 A. Yes, sir.

1 Q. And I'm going to show you what's been marked as
2 State's Exhibit Number 32B. Is this the cutout from the
3 red plate?

4 A. It is.

5 Q. And is this what you were able to get a fingerprint
6 off of?

7 A. Yes, sir.

8 Q. And were you able to identify the fingerprint at
9 that time to a suspect?

10 A. I was not, no, sir.

11 Q. In fact, this was taken over to Anderson Sheriff's
12 Office and had it looked at by Lieutenant Chris Scott; is
13 that right?

14 A. Yes, sir, that's right.

15 Q. Detective Wilson, you were the one who actually took
16 the swabs off the body of Ms. Burns; is that right?

17 A. I took one. I believe Charlie Bozeman -- I was
18 present when he took one off the neck.

19 Q. And you took the swabs off her lower legs?

20 A. Yes, sir.

21 Q. And these were turned over to Melissa Partain for --
22 eventually for DNA analysis?

23 A. Yes, sir, they were.

24 MR. CAMPBELL: Your Honor, at this time, I have
25 no further questions.

1 MR. DELGADO: The Defense has nothing for
2 Detective Wilson. Thank you, sir.

3 THE COURT: All right, you may step down.

4 Ladies and gentlemen, it's a little bit early. But
5 I'm going to suggest this is a good time to take a break
6 for lunch. Now, again, Mr. Foreman, I'm going to leave
7 it up to you and the jury as to how long you might need
8 for lunch. Y'all know more about where places are and
9 things in Anderson. I would suggest at least an hour
10 which would be one o'clock or one fifteen or one thirty.
11 Just check with the jury, if you would, how much time
12 they need for lunch.

13 MR. FOREMAN: One fifteen, Your Honor.

14 THE COURT: Very good, sir. All right.

15 Again, Mr. Foreman, ladies and gentlemen of the jury,
16 my instructions throughout the trial of this case is that
17 you are not to undertake the discussion of the case among
18 yourselves or permit anyone to discuss it with you. The
19 reason for that, of course, is that you don't know what part
20 of the case is going to impress you the most and so you want
21 to keep an open mind throughout the trial of the case. So
22 therefore, please do not even undertake personalities or
23 anything else as far as a discussion until the case is
24 finally given to you after all of the evidence, all of the
25 arguments and the charge on the law at the very end.

1 With that, I'll excuse you for lunch. And then when
2 you come -- just come back to the jury room, and we'll
3 reconvene at that time.

4 Everyone else remain seated while the jury retires from
5 the courtroom.

6 (WHEREUPON, the jury exited the courtroom at
7 approximately 12:05 p.m.)

8 THE COURT: All right. Anything from the State
9 before we break for lunch?

10 MR. CAMPBELL: No, Your Honor.

11 THE COURT: Anything from the Defense?

12 MR. MCGUIRE: Nothing, Your Honor.

13 THE COURT: Very good. Let's be back about one
14 o'clock, in other words a little before one fifteen.

15 MR. DELGADO: Thank you, sir.

16 (WHEREUPON, court stood at recess for a lunch break
17 during which State's Exhibit Number 33 was marked for
18 identification only.)

19 THE COURT: Could I see Counsel, please? All
20 right.

21 (WHEREUPON, a bench conference was held off the
22 record during which time Court's Exhibits Number 4
23 and 5 were marked for identification only.)

24 THE COURT: We'll stand at ease for a few
25 minutes. Madam Clerk, if you would, please.

1 (WHEREUPON, court stood at ease.)

2 THE COURT: All right. Anything further from
3 the State before I bring the jury back?

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

5 THE COURT: From the Defense?

6 MR. DELGADO: No, Your Honor.

7 THE COURT: Now, I will answer their question
8 about the course of the trial. That's Court's Exhibit 4.
9 All right. If not, ask the jury to join us, please.

10 (WHEREUPON, the jury entered the courtroom at
11 approximately 1:35 p.m.)

12 THE COURT: All right. Let the record reflect
13 that the jury and alternates are in the jury box.

14 Mr. Foreman, ladies and gentlemen of the jury, I
15 have also been given a note that reads -- and this is
16 Court's Exhibit 4 -- in the Defense's opening statement,
17 everything he said seemed to me to say that the Defendant
18 was guilty, yet he is pleading not guilty. Are they
19 reading -- are they heading -- excuse me -- towards an
20 insanity type of plea, or are they trying to prove that
21 the Defendant did not kill or murder the victim at all.

22 Now, if you remember, Mr. Foreman and ladies and
23 gentlemen of the jury, as I mentioned earlier in response
24 to your earlier question, that everyone is entitled to a
25 trial. And the plea of not guilty puts the burden of

1 proof upon the State to prove all of the elements and all
2 of the facts necessary to prove guilt beyond a reasonable
3 doubt. In other words, the Defendant never has to plead,
4 never has to do anything.

5 And the trial of a case follows certain rules. I
6 think you've heard me rule on evidence and admissibility
7 and things of that nature. So it's -- you -- the case
8 that you get for your deliberation will be based on the
9 facts and the evidence that is admitted into evidence.
10 When I say admitted, I'm talking about it's offered to be
11 considered by you. And that is what you will decide the
12 case on.

13 Again, the Defendant has no duty to speak or to even
14 offer anything. So therefore, the State has the full
15 burden of proof to prove guilt beyond a reasonable doubt.
16 It's up to the State to prove it. But remember
17 everything that the Court does is to be sure that what
18 you get is what you need to have to make a decision, and
19 certain things might be not necessarily relevant to what
20 your decision ultimately would have to be based on.

21 So therefore, we will continue with the trial of the
22 case.

23 All right, Madam Solicitor?

24 Mr. Solicitor?

25 MR. CAMPBELL: Your Honor, the State calls

1 Lieutenant Chris Scott to the stand.

2 CHRISTOPHER WARREN SCOTT,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. CAMPBELL:

6 Q. Mr. Scott, you are currently a lieutenant at the
7 Anderson County Sheriff's Office?

8 A. Yes, sir, I am.

9 Q. You are head of the forensics unit out there?

10 A. I am.

11 Q. And have you ever been qualified as an expert in the
12 -- as a latent fingerprint examiner?

13 A. Yes, sir, I have.

14 Q. In state and federal court?

15 A. Yes, sir, I have.

16 Q. Do you know approximately how many times?

17 A. A lot. I don't know how many that is, but many
18 times.

19 MR. CAMPBELL: Your Honor, at this time I'd
20 like to have him qualified as an expert.

21 MR. DELGADO: Under the rule, Your Honor,
22 Lieutenant Scott is eminently qualified. Thank you.

23 THE COURT: All right. Very good. The witness
24 will be qualified as an expert in the area of latent
25 fingerprints.

1 Mr. Foreman, ladies and gentlemen of the jury, as
2 you have found on certain occasions, that normally
3 witness are limited to what only they know. In other
4 words, they can't give an opinion or anything else that
5 they think something or something of that nature. They
6 can only testify as to what they know by reason of
7 exercising their senses, hearing, seeing, touching and
8 the like.

9 However, if the witness is qualified as an expert in
10 a particular area by reason of background, training, or
11 even experience then, of course, that witness or -- if he
12 is so qualified and she is so qualified, then they are
13 qualified as what we call an expert witness. They can
14 give their testimony to include opinions in that area of
15 their expertise.

16 However, do remember that all witnesses, expert and
17 lay witnesses's testimony is for your evaluation.

18 All right. You may proceed.

19 MR. CAMPBELL: Thank you, Your Honor.

20 Q. Lieutenant Scott, were you asked by Chris Wilson
21 with the Anderson Police Department to examine a
22 fingerprint that was on a red plate?

23 A. I was.

24 Q. And did you have an opportunity to do this?

25 A. I did.

1 Q. And I'll show you what's been marked as State's
2 Exhibit 32A and 32B. Can you please identify what these
3 are? Do you want some gloves?

4 A. Yes.

5 Q. Can you just look at it and tell me if that's the
6 items that were brought to you?

7 A. Yes, sir. That's the plate and the portion of the
8 plate that we removed from the plate itself.

9 Q. And was it already cut -- was the little small piece
10 already cut out of the plate, or did you do that?

11 A. I did that.

12 Q. Had it already been fumed for fingerprints?

13 A. Yes, it had.

14 Q. And was there a legible fingerprint on it?

15 A. Yes.

16 Q. And did you attempt to make a comparison of this
17 fingerprint?

18 A. Yes, sir, I did.

19 Q. I'm going to show you what's been marked for
20 identification State's Exhibit Number 33. Can you please
21 tell me what this is?

22 A. It's an ink fingerprint card from Raymondeze Rivera.

23 Q. And is that what you call a ten-print ink card?

24 A. Yes, ten-print card.

25 Q. And did you use this fingerprint card to make a

1 comparison with the fingerprint that was found on the red
2 plate?

3 A. Yes, sir, I did.

4 Q. And after you cut this little piece out, what if
5 anything did you do? How did you go about doing your
6 analysis?

7 A. Well, the reason we cut the portion of the plate out
8 is because of where the fingerprint was. It was right on
9 the edge of the plate where it curves to make kind of the
10 bowl of the plate. So it was very difficult to see it
11 because of where it was, so we cut it out to manipulate
12 it a little bit and move it around and get some light on
13 it. So after -- so I made an enlargement of it so I
14 could see it better and just did the standard comparison
15 on it.

16 Q. I'm going to show you what's been marked for
17 identification State's Exhibit 31. Could you please
18 identify what these are, sir, these fifteen photographs?

19 A. These are just enlargements of the fingerprint from
20 that section of the plate.

21 Q. And you yourself took these; is that correct?

22 A. I did.

23 MR. CAMPBELL: Your Honor, I'm going to move
24 State's Exhibit 31 and 33 into evidence.

25 MR. DELGADO: Without objection, Your Honor.

1 THE COURT: All right. State's Exhibit 31 and
2 33 are admitted into evidence without objection.

3 (WHEREUPON, State's Exhibit Numbers 31 and 33 were
4 admitted into evidence.)

5 Q. Lieutenant Scott, after you took the photographs,
6 were you able to make a comparison with those on the ten-
7 print fingerprint card?

8 A. Yes, I did.

9 Q. And what, if anything, were you able to learn or
10 determine?

11 A. That the fingerprint that we discovered on this
12 portion that we cut out belonged to Mr. Rivera's number
13 two finger which is his right index finger.

14 Q. Now, briefly, how did you go about making this
15 comparison after you cut it off, cut the little small
16 piece out and took the photograph of it?

17 A. You know, fingerprints are made up of ridges. And
18 we can spend a long time talking about that. But there
19 -- fingerprints are individual to a person. They're
20 individual -- each one of your fingers are different from
21 each other also and everybody else's including the palm
22 of your hand, soles of your feet. What we're looking for
23 is ridge detail which is called Galton detail. It's
24 called minutiae. It's called a lot of different things.
25 It's called points on TV a lot of times. You'll see them

1 counting points and things like that. But what we're
2 looking for is a group of minutiae, a group of
3 characteristics, that are in the same location, the ten
4 print, the ink print, and the latent print. And they're
5 all relative to each other. They're the same amount of
6 ridges apart, the same distance apart, plus there's a lot
7 of other subtle types of things that you look for, pore
8 detail, edge detail, cuts, scars, paper cuts, there's all
9 sorts of things that I can see that would lead me to make
10 a conclusion of whether a fingerprint matches.

11 Q. And as a result, did you take this ten-print card
12 and kind of impose it upon, enlarge it for comparison?

13 A. Yes.

14 Q. And I'll show you -- can you see that, sir?

15 A. Yes.

16 Q. This is part of this fifteen-page packet on Exhibit
17 Number 31. This ---

18 THE COURT: All right. So Exhibit Number 31 is
19 fifteen pages?

20 MR. CAMPBELL: Fifteen pages, yes, sir.

21 THE COURT: Very good. Thank you.

22 Q. Are these transposed or enlarged photographs of the
23 ten-print card?

24 A. Yes, yes.

25 Q. And you used these after you enlarged it to make a

1 comparison with the red -- the small red cutout?

2 A. Right. It just makes it easier for me to see.

3 Q. And just as identification, these are photographs of
4 that small cutout with the fingerprint on it?

5 A. Right. Right. That's what that is.

6 Q. And as you explained, you just compared the ten
7 print card enlargement compared to the enlargement of the
8 cutout?

9 A. Right.

10 Q. And based upon your examination, were you able to
11 make a comparison to the ten-print card?

12 A. Yes, I did.

13 Q. And what was your conclusion?

14 Q. The portion of the plate that we cut out, the
15 fingerprint that we developed on that portion of the
16 plate belonged to Mr. Rivera, his number two finger.

17 MR. CAMPBELL: I have no further questions.

18 Q. Please answer any questions from Mr. Delgado.

19 MR. DELGADO: We have no questions for
20 Lieutenant Scott. Thank you.

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

22 (WHEREUPON, Court's Exhibits Number 6 and 7 and
23 State's Exhibits Number 34 through 40 were marked
24 for identification only.)

25 MR. CAMPBELL: Your Honor, the State calls Jim

1 Bolt to the stand.

2 JIM BOLT,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. CAMPBELL:

6 Q. Mr. Bolt, where are you employed?

7 A. I'm employed with the Anderson Police Department.

8 Q. And what capacity are you employed in?

9 A. I am the computer forensics investigator examiner.

10 Q. And how long have you been employed in that

11 capacity?

12 A. I have been employed there for two years.

13 Q. And you've had previous experience in analyzing

14 computers?

15 A. Yes, sir. I started in computer repair in 1997 to

16 2002 and became a Microsoft Certified Systems Engineer.

17 Also certified as a Dell Premier Certified Technician in

18 2002. And with the military, I was the network and

19 software engineer for the U.S. Army National Guard. And

20 for the South Carolina Highway Patrol, I was their info

21 systems guy there.

22 Q. And your whole experience has been in computer

23 forensics; is that correct?

24 A. Yes, computer forensics and repair.

25 MR. CAMPBELL: Your Honor, at this time I'm

1 moving in Mr. Bolt as a expert in computer forensic
2 examination.

3 MR. DELGADO: We have no objection to Mr. Bolt
4 in his qualified field, Your Honor.

5 THE COURT: Well, thank you. Then I so find
6 that the witness is an expert in the area of computer
7 forensic examination.

8 Again, this witness will be qualified in that
9 particular area. He will therefore be able to give or
10 will be permitted to give his opinion as to matters in
11 that area. Also, always remember that every witness'
12 testimony is for your evaluation.

13 You may proceed.

14 MR. CAMPBELL: Thank you, Your Honor.

15 Q. Officer Bolt, were you asked to examine two phones
16 involved in the case of this homicide located at 1506
17 Tribble Street?

18 A. Yes, I was. Yes, sir, I was.

19 Q. And were you first given a phone that was
20 identified, I believe, as a Pantech phone? I will show
21 you what's been marked as State's Exhibit 13.

22 A. Yes, sir, I was. That was a Pantech PM215.

23 Q. And when you do a computer or a forensic analysis of
24 a phone, can you just briefly describe what process and
25 procedures you go through to pull the type of information