

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

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SC Court of Appeals

Case No. 2009GS0702636, 2009GS0702637, 2009GS0702639,
2009GS0702594, 2009GS0702595
Appellate Case No. 2013-002394

The State, ... Respondent,

v.

Earnest Stewart Daise, ... Appellant.

RECORD ON APPEAL - VOLUME III

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1 JUROR NUMBER 352: No, sir.

2 MR. MCGUIRE: No, sir. And why is that?

3 JUROR NUMBER 352: I pride myself on looking at the
4 -- the whole facts of the case or facts of the incident
5 before I would say whether somebody would need to be
6 found guilty to the death penalty. Well, actually, I
7 don't know that it would be just to the death penalty.
8 There would not be enough information, from what you've
9 said, for me to make a conclusion of what would happen.

10 MR. MCGUIRE: And what more information would you
11 be looking for?

12 JUROR NUMBER 352: How to go back to the definition
13 of what murder is, and what would then give me the --
14 the ability to make a decision if the murder happened
15 the way the definition was defined; and then, whether
16 the punishment would then be in tune to the definition.

17 MR. MCGUIRE: Okay. So, it sounds like we're still
18 talking about sort of the definition of the homicide,
19 the act, right?

20 JUROR NUMBER 352: That's all I -- yes, that's all
21 I can go on.

22 MR. MCGUIRE: Sure. And I just want to make sure
23 that we're on the same page, so what I'm going to --
24 what I'm going to add to what I've told you so far is
25 that the malice element, the evil intent, necessarily

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1 means this is not an accident; it's not self-defense.

2 JUROR NUMBER 352: Right. That's the definition.

3 Yes, sir.

4 MR. MCGUIRE: Right. It's not two people getting
5 in mutual combat. It's not a husband who finds his wife
6 in bed with somebody. This is an intentional,
7 deliberate act, with no legal excuse, and it's two
8 people, a woman and child. Are we still on the same
9 page?

10 JUROR NUMBER 352: Are you asking me hypothetically
11 that it did have a evil intent?

12 MR. MCGUIRE: Yes.

13 JUROR NUMBER 352: And then, that they -- that
14 there is no question about whether it was evil and that
15 it was done with malice, and that it fit the definition.

16 MR. MCGUIRE: Exactly.

17 JUROR NUMBER 352: Could I then come to a -- from
18 that hypothetical situation, say that the death penalty
19 could be implied [sic]?

20 MR. MCGUIRE: Actually, let me --

21 JUROR NUMBER 352: Applied?

22 MR. MCGUIRE: Sure. Let me do it a little bit
23 different so that we're -- I'm going to put you at the
24 point of conviction.

25 JUROR NUMBER 352: Um-hmm.

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1 MR. MCGUIRE: To make this less abstract and more
2 concrete.

3 JUROR NUMBER 352: I understand.

4 MR. MCGUIRE: So, I'm going to put you, in your
5 mind, on a jury. You, eleven other people, found beyond
6 a reasonable doubt you got the right guy, guilty, no
7 doubt about it, convicted of intentionally murdering a
8 woman and a child, a four-year-old child, with the evil
9 intent. All that's done. You found that beyond a
10 reasonable doubt.

11 JUROR NUMBER 352: Okay.

12 MR. MCGUIRE: There's no question about it. Now,
13 at that point, that point in your decision-making
14 process, is the death penalty the appropriate penalty
15 for you?

16 JUROR NUMBER 352: I'm thinking.

17 MR. MCGUIRE: Okay. And take your time. This is
18 when you --

19 JUROR NUMBER 352: Obviously, being picked on the
20 jury of a capital case, I've given it some thought. And
21 I would say that I am somebody that could find for the
22 death penalty. So, I would lean to saying yes, that,
23 with it being a definite, no questions asked in my mind
24 that it was done with a evil intent for two people,
25 then, yes, I could find the death penalty.

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1 MR. MCGUIRE: Okay.

2 JUROR NUMBER 352: Would I? I don't know.

3 MR. MCGUIRE: Okay. And that's my next question.
4 Some people might say that the life penalty is not
5 severe enough to punish that kind of homicide, that kind
6 of act with evil intent, killing a mother and child.
7 Would you take the position that the life penalty is
8 appropriate?

9 JUROR NUMBER 352: It definitely could be
10 appropriate. It could be -- in my mind, it could be a
11 worse punishment.

12 MR. MCGUIRE: And why is that?

13 JUROR NUMBER 352: Just having to live the rest of
14 your life knowing that there is no freedom and that you
15 are under penalty for the rest of your natural life.

16 MR. MCGUIRE: Sure. And the Judge would tell you
17 that life in South Carolina is, in fact, life without
18 parole; don't leave prison until you leave in a coffin,
19 essentially. And it sounds like you view the life
20 penalty as a severe punishment.

21 JUROR NUMBER 352: Yes, sir.

22 MR. MCGUIRE: Okay. And when it -- when it comes
23 to making that decision, that life without parole/death
24 penalty decision, would you consider background factors
25 of the accused, his walk in life, his life experiences,

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1 things that have been done to him, things he's done to
2 other people? You know, like growing up in -- and I'm
3 not saying they exist in this case, but say like growing
4 up poor, drug addict, would these background
5 characteristics, and those are just examples of some,
6 and when I say *background characteristics*, just
7 basically his whole life history?

8 JUROR NUMBER 352: I don't know if you'll like this
9 answer, but I wouldn't put a lot of weight on the -- the
10 history of that person, if I'm trying to judge based off
11 of that particular act. Could I see that there would be
12 something in my mind that where I could bring it into
13 evidence or bring it into my mind of if I had to be the
14 judge of something or be on a jury, would I allow it?
15 Probably, but I don't -- I don't think I would give it a
16 lot of weight. I don't know if you like that answer.
17 It's not very black and white, but I'm trying to go --

18 MR. MCGUIRE: I am happy that you are giving me
19 answers that you think I might not like, because that
20 means you're being honest with me. So, I appreciate
21 your candor, sir. And everything you say is the right
22 answer here today.

23 It sounds like there might be some background
24 factors that you could consider as relevant, perhaps if
25 they had some sort of nexus to the homicide, that, if it

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1 was just removed, like all the way in somebody's
2 childhood, and it didn't have a connection to the
3 homicide, that maybe those factors would not be
4 relevant.

5 JUROR NUMBER 352: I would agree with your
6 statement that, if it did not have anything to do with
7 the homicide, that it would be very hard to bring it
8 into the weighing of my decision.

9 MR. MCGUIRE: Okay.

10 JUROR NUMBER 352: And that, if it did have a
11 connection, then, I would -- would find it to myself to
12 -- to bring it into the decision.

13 MR. MCGUIRE: Okay. Okay. For instance, if --
14 lawyers call that a nexus, like a connection. A
15 connection.

16 JUROR NUMBER 352: Yes, sir.

17 MR. MCGUIRE: And so, you're saying like, say, if
18 somebody was physically abused as a child, and because
19 of that, they had a reaction to somebody being
20 physically abusive to them in their adulthood, you could
21 judge them differently because that could have a nexus
22 to the crime.

23 JUROR NUMBER 352: If I felt like it had a nexus to
24 the crime, then, yes, I believe I could bring it into my
25 decision-making ability.

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1 MR. MCGUIRE: Okay. But if somebody just like,
2 just general terms like abject poverty or struggling
3 with drugs, maybe, that, if it doesn't have a connection
4 to the crime, those things would not be relevant.

5 JUROR NUMBER 352: I don't -- the examples that you
6 gave, I don't think I could bring into play to see if it
7 had the connection, just growing up in poverty. The
8 drug use is a -- is a different question in my mind,
9 versus growing up in poverty. Drug use is -- is a
10 different mentality, or it's -- it's -- it's taking over
11 something that's not that particular is natural
12 instinct, and it can, well --

13 MR. MCGUIRE: Affect someone's judgment?

14 JUROR NUMBER 352: It definitely can affect
15 someone's judgment.

16 MR. MCGUIRE: Okay. I thought that was where you
17 were going.

18 JUROR NUMBER 352: Well, thank you.

19 MR. MCGUIRE: Okay. What I want to talk to you a
20 little bit about is how a capital case is different from
21 a regular case. The Judge would tell you that, if you
22 were to be in a penalty phase, the life and death
23 decision, if you were, in fact, a juror in that phase of
24 the case, that the decision you would have to make is
25 called or described in the law as an individual moral

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1 judgment. Did you know that?

2 JUROR NUMBER 352: I did not.

3 MR. MCGUIRE: Okay. Do you know that the death
4 penalty can never be automatic in South Carolina?

5 JUROR NUMBER 352: I did not know that for sure.
6 It does not surprise me.

7 MR. MCGUIRE: Right. A lot of people show up and
8 they think if the State proves A, B, and C, there's only
9 one, you know, they've kind of checked the box; that,
10 yes, they proved that; and it will be the death penalty.
11 And that's never the law. The state of South Carolina
12 is always satisfied with a life verdict in this case,
13 the worst case, any case.

14 JUROR NUMBER 352: Um-hmm.

15 MR. MCGUIRE: And then, going back to that
16 individual moral judgment, the only way a person can get
17 the death penalty in South Carolina is if all twelve
18 jurors agree that there were aggravating circumstances
19 and that death is the appropriate punishment beyond a
20 reasonable doubt. All twelve would have to agree.

21 Now, all twelve could also agree that life penalty
22 is the appropriate punishment, and you'd have two
23 unanimous options there. But then, there's also
24 agreement to disagree. We expect jurors to exchange
25 ideas, views, have some civil discourse. But the fact

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1 of the matter is, that every juror would be given the
2 juror oath. And the juror oath requires a juror, once
3 they reach their individual moral judgment as to
4 penalty, whether it be the life or death penalty, it
5 doesn't matter, that they not give that up for the sake
6 of compromise.

7 JUROR NUMBER 352: Understood.

8 MR. MCGUIRE: Or ending the case. That they have a
9 duty and obligation to have that voice, that vote, heard
10 in court once they reach that individual moral judgment.
11 Is that a principle of the law that you could respect?

12 JUROR NUMBER 352: Absolutely.

13 MR. MCGUIRE: You'd want your views respected, your
14 vote. Whatever your decision, whatever --

15 JUROR NUMBER 352: Repeat the question.

16 MR. MCGUIRE: I'm sorry. Your decision, whatever
17 it might be, your opinion, your decision, your vote,
18 your individual moral judgment, you would want that
19 respected by all the other jurors.

20 JUROR NUMBER 352: Correct.

21 MR. MCGUIRE: And you would also respect everybody
22 else's.

23 JUROR NUMBER 352: Correct.

24 MR. MCGUIRE: And if the jury did end the day after
25 deliberations in trying to be unanimous on either

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1 penalty, at the end of the day just agreeing to
2 disagree, the Judge would take the case and sentence,
3 and it would end. The case would not have to be tried
4 again. Did you know that?

5 JUROR NUMBER 352: I did not know that.

6 MR. MCGUIRE: Okay. Now, you don't have to concern
7 yourself with what sentence the Judge might hand out.
8 That's the Judge's job. I just want you to know that
9 the case would end, and it would not have to be tried
10 again.

11 JUROR NUMBER 352: Understood.

12 MR. MCGUIRE: And that it would be -- there'd be --
13 we would -- everybody -- the Court would want you to
14 give it a shot at a unanimous decision one way or the
15 other, but because it's such a grave matter, you know, a
16 human being's fate, that we would absolutely respect a
17 jury that just said we've been unable to be unanimous.

18 JUROR NUMBER 352: Understood.

19 MR. MCGUIRE: And you could respect that.

20 JUROR NUMBER 352: Yes.

21 MR. MCGUIRE: Okay. I think that's all I have for
22 you, sir.

23 THE COURT: All right.

24 MR. MCGUIRE: Thank you. Thank you very much, sir.

25 THE COURT: Thank you. Mr. Stone.

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1 JUROR NUMBER 352: You're welcome.

2 MR. STONE: Just very brief. Mr. Jones, I
3 understand from your answers from the Defense, as well
4 as your questionnaire, that you're somebody that would
5 take everything into consideration before making a
6 decision about whether or not to give life in prison or
7 the death penalty. Is that correct?

8 JUROR NUMBER 352: Yes, sir.

9 MR. STONE: And if the case were bad enough, could
10 you give the death penalty?

11 JUROR NUMBER 352: I believe I can.

12 MR. STONE: Thank you, sir. No further questions.

13 THE COURT: Mr. Jones, if you would, I'm just going
14 to ask you to step on out the door for just a very brief
15 moment. We're going to bring you back in, and I'll tell
16 you where we're going from here. All right, sir?

17 JUROR NUMBER 352: Yes, ma'am.

18 THE COURT: Thank you.

19 JUROR NUMBER 352 LEAVES COURTROOM.

20 THE COURT: Find him qualified? Okay. Let's bring
21 him back, then. Come on back, Mr. Jones.

22 BAILIFF: Sir, you can come on back in now. You're
23 going to be the quickest one.

24 JUROR NUMBER 352 ENTERS COURTROOM.

25 THE COURT: You are the quickest one, sir.

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1 BAILIFF: Come right here and stand and face the
2 Judge please.

3 JUROR NUMBER 352: Yes, sir.

4 THE COURT: Okay. All right. Mr. Jones, you have
5 been qualified as a potential juror in the trial of this
6 case. That does not mean you have been put on the jury
7 yet.

8 JUROR NUMBER 352: Yes, ma'am..

9 THE COURT: Where we go from here, obviously, you
10 know how far behind we're running; I anticipate being
11 able to pull this jury on Monday morning at 9:30, but
12 out of an abundance of caution, Norman's going to give
13 you a piece of paper. I would like you to call that
14 juror line after 6:00 p.m. Saturday night. It will tell
15 you when I need you to report. All right? I hope it's
16 9:30 a.m. Monday morning, and maybe a little later. It
17 possibly could be as late as Tuesday. Simply just
18 follow it, and we look forward to seeing you back then.
19 All right, sir?

20 JUROR NUMBER 352: Thank you.

21 THE COURT: Thank you.

22 BAILIFF: Give me your badge, please.

23 JUROR NUMBER 352 LEAVES COURTROOM.

24 THE COURT: All right. Let's bring the next one
25 in. Thank you.

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1 JUROR NUMBER 547 ENTERS COURTROOM.

2 BAILIFF: Mr. Bryan Sailors, your Honor.

3 THE COURT: Come on in, Mr. Sailors.

4 BAILIFF: Go up and take a seat in the witness
5 stand, please, sir.

6 THE COURT: Mr. Sailors, good evening.

7 JUROR NUMBER 547: Hi.

8 THE COURT: Thank you for waiting on us, sir. And
9 I apologize. We have been working hard. This is just a
10 very important process, and we need to take our time,
11 and everyone here needs to do their jobs. To begin
12 with, sir, I want to remind you that you are still under
13 the oath that you took yesterday. Is that agreeable to
14 you?

15 JUROR NUMBER 547: Yes.

16 THE COURT: All right. Sir, additionally, there
17 are some questions the attorneys need to ask you, that I
18 need to ask you, as well. I'm going to be very brief,
19 and then turn it over to the lawyers to ask you about
20 your feelings and your opinions on the death penalty and
21 sentencing. Those are appropriate questions. There are
22 no right or wrong answers here. We just want to know
23 candidly and honestly what your feelings are.

24 JUROR NUMBER 547: Right.

25 THE COURT: First off, though, I must ask you, have

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1 you reviewed the witness list?

2 JUROR NUMBER 547: Yes.

3 THE COURT: Do you know any of the witnesses on
4 there?

5 JUROR NUMBER 547: I know some of the names, but
6 not per --

7 THE COURT: You don't know them personally?

8 JUROR NUMBER 547: Not personally.

9 THE COURT: Okay, sir. Additionally, there has
10 been some news coverage in this case. Have you read,
11 seen, heard anything about this case, have any
12 independent knowledge about this case whatsoever?

13 JUROR NUMBER 547: None.

14 THE COURT: Thank you, sir. All right. Well,
15 let's go ahead, and I will turn you over to Mr. Young.

16 MR. YOUNG: Good evening, Mr. Sailors.

17 JUROR NUMBER 547: Hello.

18 MR. YOUNG: On your juror questionnaire, you
19 indicated that you had formed an opinion. Is that
20 correct?

21 JUROR NUMBER 547: I believe so.

22 MR. YOUNG: Can you tell me what that opinion is.

23 JUROR NUMBER 547: I don't remember what the
24 opinion was about, to be honest with you.

25 MR. YOUNG: I think the question asked about both,

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1 and you answered yes.

2 JUROR NUMBER 547: I don't know.

3 MR. YOUNG: The question was based on what you have
4 heard about this case, now or from any source, have you
5 formed an opinion of the defendant, Earnest Daise, and
6 the punishment he should receive?

7 JUROR NUMBER 547: I don't remember what the
8 opinion was about, though.

9 MR. YOUNG: Okay. So, you don't remember why you
10 wrote yes?

11 JUROR NUMBER 547: No.

12 MR. YOUNG: Okay. Well, fair enough. Let's talk
13 about -- now is the opportunity that I have to ask you
14 about some of your views about the death penalty. Okay?

15 JUROR NUMBER 547: Right.

16 MR. YOUNG: So, to start with, the death penalty is
17 only available in South Carolina in murder cases. Okay?

18 JUROR NUMBER 547: Right.

19 MR. YOUNG: And murder is the intentional killing
20 of another person with malice aforethought. Okay?

21 JUROR NUMBER 547: Correct.

22 MR. YOUNG: That's the legal definition.

23 JUROR NUMBER 547: Right.

24 MR. YOUNG: And what that means is, that they meant
25 to do it; they did it with a malignant and evil heart,

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1 fatally bent on mischief. It wasn't an accident. It
2 wasn't a self-defense. It was somebody who knew the
3 difference between right and wrong; chose to kill an
4 innocent person; didn't do anything to them; didn't
5 cause it in any way. Okay?

6 JUROR NUMBER 547: Right.

7 MR. YOUNG: Are you with me?

8 JUROR NUMBER 547: Yes.

9 MR. YOUNG: All right. So, let's say that you were
10 on a jury, and you and eleven other people have all
11 found beyond a reasonable doubt that the defendant in
12 that case is guilty of murder, that malignant, evil-
13 hearted murder. Okay?

14 JUROR NUMBER 547: Right.

15 MR. YOUNG: In that circumstance, what are your
16 feelings about the appropriateness of the death penalty?

17 JUROR NUMBER 547: I really don't know, to be
18 honest with you.

19 MR. YOUNG: And that's a fair answer. Not a lot of
20 people have really thought about the death penalty.

21 JUROR NUMBER 547: Um-hmm. Right.

22 MR. YOUNG: Further, in order to give the penalty
23 decision to the jury, the State has to prove something
24 else, something that makes that malignant murder worse.
25 We call those aggravating circumstances. Okay? You.

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1 with me?

2 JUROR NUMBER 547: Right.

3 MR. YOUNG: And in this case, the State's alleged
4 that it's the killing of two people, one of which was a
5 four-year-old child. Okay? So, the jury has found that
6 exists beyond any and all reasonable doubt. Okay?

7 JUROR NUMBER 547: Right.

8 MR. YOUNG: Now, some people say in the -- in some
9 murder cases, I could be fair and I could decide between
10 life and death, depending on the circumstances. And
11 some people say in cases involving a child, that's it
12 for me; I can only consider the death penalty in those
13 cases. Okay?

14 JUROR NUMBER 547: Correct.

15 MR. YOUNG: You recognize that there are those
16 people?

17 JUROR NUMBER 547: Yes.

18 MR. YOUNG: Are you one of those people?

19 JUROR NUMBER 547: It would definitely depend on
20 the, I guess, the situation, really.

21 MR. YOUNG: Can you tell me what you mean by that.

22 JUROR NUMBER 547: I really don't know how to word
23 it. The -- in the situation of why or the reasoning.

24 MR. YOUNG: But you're clear with me that, you
25 know, it's not an accident; not self-defense; not an

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1 argument that spun out of control, right?

2 JUROR NUMBER 547: Right.

3 MR. YOUNG: All that has been rejected. Okay?

4 JUROR NUMBER 547: Okay.

5 MR. YOUNG: Got the right guy. There's no question
6 about guilt. Guilty, guilty. Murder, murder.

7 JUROR NUMBER 547: Right.

8 MR. YOUNG: Okay?

9 JUROR NUMBER 547: In my opinion, a child or an
10 adult, it should be handled the same way.

11 MR. YOUNG: Okay. If you were in charge, and you
12 got to decide what the laws were going to be, would you
13 have a death penalty?

14 JUROR NUMBER 547: Again, that's kind of a hard
15 question to answer.

16 MR. YOUNG: Okay. Do you believe that life in
17 prison is a substantial penalty?

18 JUROR NUMBER 547: Yes.

19 MR. YOUNG: Is it a substantial enough penalty for
20 somebody convicted of two murders?

21 JUROR NUMBER 547: Yes.

22 MR. YOUNG: Once the penalty decision is in the
23 jury's hands, okay, and they've decided that the
24 aggravators exist beyond a reasonable doubt, then they
25 get to consider what we call mitigation. Okay?

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1 JUROR NUMBER 547: Yeah.

2 MR. YOUNG: And those are the background and
3 circumstances of a person, their walk in life, how they
4 grew up. Okay?

5 JUROR NUMBER 547: Right.

6 MR. YOUNG: Whether or not they were abused. Okay?

7 JUROR NUMBER 547: Yeah.

8 MR. YOUNG: Whether or not they ever helped
9 anybody. Okay? You with me?

10 JUROR NUMBER 547: Right.

11 MR. YOUNG: Would those factors, those factors, are
12 those something that you could give meaningful
13 consideration to in deciding which punishment was
14 appropriate?

15 JUROR NUMBER 547: I think the way you're brought
16 up doesn't mean you can choose the wrong or right path,
17 if that's what you're saying.

18 MR. YOUNG: Sure. It's not an excuse for the
19 crime. Right?

20 JUROR NUMBER 547: Right. Correct.

21 MR. YOUNG: But does it matter to you in deciding
22 whether or not this person lives or dies? Is that
23 something that you want to know about?

24 JUROR NUMBER 547: I would rather not know about
25 it, no.

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1 MR. YOUNG: It's something that doesn't matter to
2 you.

3 JUROR NUMBER 547: Correct.

4 MR. YOUNG: And that's not part of -- just part of
5 your decision making on what penalty is appropriate.

6 JUROR NUMBER 547: Correct.

7 MR. YOUNG: You're concentrating on the facts.

8 JUROR NUMBER 547: Correct.

9 MR. YOUNG: What happened.

10 JUROR NUMBER 547: Right.

11 MR. YOUNG: Who, what, when, and where.

12 JUROR NUMBER 547: Right.

13 MR. YOUNG: Whether or not somebody grew up poor,
14 that's not -- that doesn't weigh into your decision.

15 JUROR NUMBER 547: Correct.

16 MR. YOUNG: Whether or not somebody is an alcoholic
17 or a drug user, --

18 JUROR NUMBER 547: Correct.

19 MR. YOUNG: -- that doesn't weigh into your
20 decision.

21 JUROR NUMBER 547: No, sir.

22 MR. YOUNG: Even if you don't find anything
23 mitigating, you're still, under the law, entitled to
24 consider something called mercy.

25 JUROR NUMBER 547: Okay.

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1 MR. YOUNG: Okay?

2 JUROR NUMBER 547: Right.

3 MR. YOUNG: Mercy, basically needs no reason; I
4 just think that life is the appropriate punishment.

5 JUROR NUMBER 547: Right.

6 MR. YOUNG: Do you understand that?

7 JUROR NUMBER 547: Yes.

8 MR. YOUNG: In your view, do you think that mercy
9 is something that someone earns, or is that something
10 that's freely given?

11 JUROR NUMBER 547: Freely given.

12 MR. YOUNG: When we talk about this decision, the
13 decision for the death penalty or life in prison without
14 the possibility of parole, we call that an individual
15 moral judgment.

16 JUROR NUMBER 547: Okay.

17 MR. YOUNG: Okay? You would agree with me that you
18 don't have -- nobody has the perfect common sense --

19 JUROR NUMBER 547: Right.

20 MR. YOUNG: -- on who ought to live and who ought
21 to die.

22 JUROR NUMBER 547: Correct.

23 MR. YOUNG: You may have made decisions like what
24 faith is right for you.

25 JUROR NUMBER 547: Correct.

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1 MR. YOUNG: And other people may have made
2 different decisions.

3 JUROR NUMBER 547: Right.

4 MR. YOUNG: And they chose a different faith.

5 JUROR NUMBER 547: Right.

6 MR. YOUNG: You expect them to respect your
7 individual moral judgment.

8 JUROR NUMBER 547: Correct.

9 MR. YOUNG: You would respect other people's moral
10 judgments, even if they were different than yours.

11 JUROR NUMBER 547: Yes.

12 MR. YOUNG: And if somebody was being forced to
13 give up what they had arrived at as their individual
14 moral judgment, you would stop that.

15 JUROR NUMBER 547: Correct.

16 MR. YOUNG: And you would ensure that it was a
17 respectful process.

18 JUROR NUMBER 547: Right.

19 MR. YOUNG: Because everybody -- their opinion is
20 just as valid as yours.

21 JUROR NUMBER 547: Correct.

22 MR. YOUNG: At the end of the day, when we're
23 making individual moral judgments, people can agree to
24 disagree.

25 JUROR NUMBER 547: Right.

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1 MR. YOUNG: And that's okay. It's not like the
2 decision in the first phase where you have a unanimous
3 decision, everybody has to agree about whether the light
4 was green or red.

5 JUROR NUMBER 547: Right.

6 MR. YOUNG: Individual moral decisions are not like
7 that type of factual decision.

8 JUROR NUMBER 547: Right.

9 MR. YOUNG: Okay? If all twelve jurors decide that
10 the death penalty is the appropriate punishment, you
11 understand that Mr. Daise will be put to death?

12 JUROR NUMBER 547: Correct.

13 MR. YOUNG: It's not a recommendation.

14 JUROR NUMBER 547: Right.

15 MR. YOUNG: If all twelve jurors decide that life
16 in prison is the appropriate punishment, he'll be in
17 prison until he died.

18 JUROR NUMBER 547: Correct.

19 MR. YOUNG: If we got that far and that was the
20 decision, that would be what happened.

21 JUROR NUMBER 547: Right.

22 MR. YOUNG: And if you couldn't agree on what the
23 appropriate punishment was, the Judge would take it over
24 and sentence.

25 JUROR NUMBER 547: Correct.

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1 MR. YOUNG: Okay?

2 JUROR NUMBER 547: Right.

3 MR. YOUNG: Are you okay with that?

4 JUROR NUMBER 547: Yes.

5 MR. YOUNG: And that's --

6 JUROR NUMBER 547: I'm okay --

7 MR. YOUNG: -- fine with you if that's --

8 JUROR NUMBER 547: Correct.

9 MR. YOUNG: -- how it happens? How do you feel

10 knowing that your vote, your individual moral judgment,

11 could be the difference between whether somebody lived

12 or died?

13 JUROR NUMBER 547: How would I feel about that?

14 MR. YOUNG: Yes, sir.

15 JUROR NUMBER 547: I would rather not know about

16 it. My feelings towards it would be just to be

17 justified.

18 MR. YOUNG: To be justified?

19 JUROR NUMBER 547: Right. Correct.

20 MR. YOUNG: And can you tell me what you mean by

21 that.

22 JUROR NUMBER 547: Whether it's death penalty or

23 life in prison.

24 MR. YOUNG: Just to own it?

25 JUROR NUMBER 547: Either way.

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1 MR. YOUNG: Thank you, Mr. Sailors.

2 JUROR NUMBER 547: You're welcome.

3 THE COURT: Mr. Stone.

4 MR. STONE: Thank you, your Honor. Mr. Sailors, my
5 name is Duffie Stone. What I'm understanding from your
6 answers to the Defense attorneys, as well as your
7 questionnaire, is that -- and I think the questionnaire
8 is probably clearer than this, but there are three types
9 of jurors: those that would always find for the death
10 penalty; those who would always would find for life in
11 prison; or those that would consider everything, whether
12 that's the circumstances of the crime, the aggravation,
13 anything offered by the Defense, they would take all
14 that into consideration before making a decision.

15 My understanding, and I believe I read this in your
16 questionnaire, is that you're the third type of juror.
17 Is that correct?

18 JUROR NUMBER 547: What was the third, again?

19 MR. STONE: The one that would take everything into
20 consideration.

21 JUROR NUMBER 547: Correct. Correct.

22 MR. STONE: So, you're not an automatic death
23 penalty.

24 JUROR NUMBER 547: No, sir.

25 MR. STONE: You're not an automatic life in prison.

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1 JUROR NUMBER 547: No, sir.

2 MR. STONE: Okay. In that context, then, my
3 question -- I recognize you know nothing about the case
4 at this point --

5 JUROR NUMBER 547: Correct.

6 MR. STONE: -- one way or the other, but my
7 question is simple. If the case were bad enough, could
8 you give the death penalty?

9 JUROR NUMBER 547: Like I said, I mean, I'm not for
10 the death penalty.

11 MR. STONE: Sure.

12 JUROR NUMBER 547: It'd be either way, either life
13 in prison or the death penalty.

14 MR. STONE: Okay. But do you feel like you can --

15 JUROR NUMBER 547: I'm neutral. I could be
16 neutral.

17 MR. STONE: Okay. Do you feel like you could do it
18 one way or the other?

19 JUROR NUMBER 547: No.

20 MR. STONE: Okay. And I'm sorry, what do you mean
21 by that?

22 JUROR NUMBER 547: I just -- I couldn't go for the
23 death penalty if, you know, if knowing you can go life
24 in prison, I would never go for the death penalty.

25 MR. STONE: Okay. All right, sir. Thank you for

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1 your honesty. I appreciate it.

2 THE COURT: Anymore questions, Mr. Young?

3 MR. YOUNG: So, Mr. Sailors, I just need to make
4 sure I understand what you're saying.

5 JUROR NUMBER 547: Okay.

6 MR. YOUNG: Now that you understand that life is
7 always an option, --

8 JUROR NUMBER 547: Correct.

9 MR. YOUNG: -- you're saying that you would never,
10 under any circumstances, vote for the death penalty
11 because you had the life option.

12 JUROR NUMBER 547: Correct.

13 MR. YOUNG: It's not something that you could give
14 meaningful consideration to.

15 JUROR NUMBER 547: Correct.

16 MR. YOUNG: Under any circumstances.

17 JUROR NUMBER 547: Under any circumstances.

18 MR. YOUNG: Is this a religious view of yours, or
19 is this just sort of your moral judgment?

20 JUROR NUMBER 547: No. I just feel that I would --
21 I don't have that right to make that decision.

22 MR. YOUNG: To take a life?

23 JUROR NUMBER 547: Correct.

24 MR. YOUNG: And you understand that people have
25 their personal views and jurors are made up of people

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1 from all walks of life.

2 JUROR NUMBER 547: Right.

3 MR. YOUNG: And it's important to try and serve,
4 and to try and put your views aside and follow the law
5 as you were given it.

6 JUROR NUMBER 547: Right.

7 MR. YOUNG: But what you're telling me is that's
8 something that you can't, or --

9 JUROR NUMBER 547: Correct.

10 MR. YOUNG: Okay. All right. Fair enough. Thank
11 you, Mr. Sailors.

12 THE COURT: Mr. Sailors, I'm going to ask you to
13 just step out the door right here with Bob for just a
14 brief moment, and bring you back in.

15 JUROR NUMBER 547: Okay.

16 THE COURT: All right, sir? And I will tell you
17 where we're going from here. All right?

18 JUROR NUMBER 547 LEAVES COURTROOM.

19 BAILIFF: Door is closed, your Honor.

20 THE COURT: Sorry. It's late.

21 MR. STONE: And it took me by surprise is why, your
22 Honor, but I do not believe he's qualified.

23 THE COURT: Oh, my goodness, yes.

24 MR. YOUNG: I can't say he is.

25 THE COURT: No position, right? I mean, my

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1 goodness. My goodness. Okay. Well, I find he's not
2 qualified. I don't know if he has any clue what he
3 knows, unfortunately. Let's just bring him back.

4 JUROR NUMBER 547 ENTERS COURTROOM.

5 BAILIFF: If you would, sir, please stand right
6 here and face the Judge.

7 THE COURT: Thank you. Mr. Sailors, I appreciate
8 your patience and waiting with us today. Sir, at this
9 time I'm going to go ahead and excuse you from the trial
10 of the case. Thank you again for being here. You do
11 not need to report on Monday, but thank you for your
12 willingness to serve.

13 JUROR NUMBER 547: Thank you.

14 THE COURT: We appreciate it, sir.

15 JUROR NUMBER 547: Thank you.

16 BAILIFF: Your badge?

17 THE COURT: Let's go, Al.

18 JUROR NUMBER 547 LEAVES COURTROOM.

19 JUROR NUMBER 654 ENTERS COURTROOM.

20 BAILIFF: Mr. Stephen Wallace. Just right here,
21 sir.

22 THE COURT: Come on around, sir.

23 BAILIFF: Come up here, please. Take a seat in the
24 witness box.

25 THE COURT: Mr. Wallace, thank you so much for your

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1 patience. I understand you have been waiting a long
2 time, and now is your opportunity and the lawyers'
3 opportunity to ask you some questions in regards to this
4 case. Let's begin with I want to remind you that you
5 are still under the oath you took yesterday. Is that
6 acceptable, sir?

7 JUROR NUMBER 654: Yes.

8 THE COURT: Also, Have you had an opportunity to go
9 through the witness lists? Yes?

10 JUROR NUMBER 654: Yes.

11 THE COURT: All right. Tell me, sir, if you can by
12 number or name, either one is fine by me, of who you
13 know on the witness list, sir.

14 JUROR NUMBER 654: I just recognized the names of
15 Sheriff P.J. Tanner and Frank Peeples.

16 THE COURT: Okay. And when you say you recognize
17 the names, obviously, Sheriff Tanner is the sheriff in
18 Beaufort County.

19 JUROR NUMBER 654: Correct.

20 THE COURT: Do you know him personally, and are --

21 JUROR NUMBER 654: No.

22 THE COURT: Okay. And Mr. Peeples, that was the
23 other person. Is that correct?

24 JUROR NUMBER 654: Correct.

25 THE COURT: What witness list was that on?

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1 JUROR NUMBER 654: It was on List B.

2 THE COURT: List B. All right, sir. And what's
3 your relationship with Mr. Peebles?

4 JUROR NUMBER 654: I just know the name.

5 THE COURT: Just know the name.. All right. So,
6 you don't have a personal relationship?

7 JUROR NUMBER 654: Correct.

8 THE COURT: Sir, also, this case has gotten some
9 publicity. Have you read anything, seen anything, heard
10 anything about this case, or have any independent
11 knowledge about this case whatsoever?

12 JUROR NUMBER 654: Only what was provided in the
13 juror documents.

14 THE COURT: Very good. Thank you, sir. I'm going
15 to turn it over to the lawyers to ask you some
16 questions, sir. I respectfully just ask you to be
17 candid and honest. There are no right or wrong answers
18 here. Their job is just to find out what your feelings
19 are on the death penalty, and to make sure that you are
20 qualified as a juror for the trial in this case. All
21 right, sir?

22 MR. MACDOUGALL: This is evening. Good evening.

23 JUROR NUMBER 654: Good evening.

24 MR. MACDOUGALL: Thank you for staying around. My
25 name is Mark MacDougall, and I'm one of the lawyers

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1 representing the defendant in this case, Earnest Daise.

2 As Judge Mullen said, there's no right or wrong
3 answer today, and we're mostly interested in how you
4 feel, what your attitudes are toward, particularly,
5 aspects of the death penalty and how they might apply in
6 this case. Now, let me tell you that nothing that I'm
7 going to say is intended to be inconsistent with
8 anything Judge Mullen said. So, if you hear that,
9 that's not my intent. But there are some things that
10 she made reference to in describing the case that I want
11 to elaborate on a little bit as we ask questions.

12 The first is, you, in filling out your
13 questionnaire, you were asked to sort of rank yourself
14 or place yourself in one of three categories, and you
15 placed yourself in Category 3. And I'll just read this
16 as one sentence:

17 *That you would consider all of the*
18 *facts of the case to decide if death were*
19 *appropriate, and could give either a*
20 *sentence of life in prison or a sentence*
21 *of death, depending on what facts and*
22 *circumstances you see in the case.*

23 JUROR NUMBER 654: Correct.

24 MR. MACDOUGALL: Does that fairly describe where
25 your thinking is?

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1 JUROR NUMBER 654: Fairly.

2 MR. MACDOUGALL: Okay. You are struggling with
3 fairly, so tell me what you're thinking.

4 JUROR NUMBER 654: Well, it's just Biblically, *thou*
5 *shalt not kill*, I still have an issue with that, but I
6 think I could render a decision of life or death.

7 MR. MACDOUGALL: And when you say, *thou shalt not*
8 *kill*, how would that affect your thinking, and in which
9 direction?

10 JUROR NUMBER 654: For a different type of
11 sentence.

12 MR. MACDOUGALL: But you would be able to weigh all
13 of the evidence?

14 JUROR NUMBER 654: I think so.

15 MR. MACDOUGALL: Let me tell you a little bit about
16 how South Carolina deals with the crime of murder, and
17 this is something that, you know, most people have not
18 really delved into. So, if I'm sort of going into
19 things you already know, you can stop me. But in order
20 to have a conviction for murder here, and remember Mr.
21 Daise sits here innocent, has not been charged -- I'm
22 sorry, has been charged, but has not been convicted of
23 anything, and we'll have to await the presentation of
24 evidence to see what that result is.

25 But in South Carolina, murder involves an element

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1 of malice, so it doesn't include things like insanity.
2 It doesn't include self-defense. It doesn't include
3 stand your ground. {What it does require for there to be
4 malice is, and I'm going to read this to you because
5 it's particularly powerful language that I think tells a
6 story.

7 *Malice imports wickedness and*
8 *excludes any just cause for your action.*
9 *It is something which springs from*
10 *wickedness from depravity, from a*
11 *depraved spirit, from a heart devoid*
12 *of social duty and fatally bent on*
13 *creating mischief.*

14 So, it's pretty clear what it is.

15 JUROR NUMBER 654: Um-hmm.

16 MR. MACDOUGALL: And to convict the defendant of
17 murder with malice, you have to find that, that's
18 present. That's pretty serious language.

19 My question to you is, if you were a member of a
20 jury that reached that conclusion with respect to a
21 defendant, sitting here today, could you give either a
22 death sentence or a life sentence, depending upon all
23 the evidence you heard?

24 JUROR NUMBER 654: I think so.

25 MR. MACDOUGALL: And the Judge, I think, mentioned

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1 aggravators; that the requirement that there be
2 aggravating facts associated with a crime in order for
3 the State to seek the death penalty. In this case,
4 there were two that the Judge touched on. One is if
5 there were two victims in the case, a mother and child,
6 and one of them was a child. It's a second, independent
7 aggravator, the death of a child.

8 Given the presence of those aggravators, is it
9 possible, again, depending on the evidence, that you
10 could give either a life sentence or a death sentence?

11 JUROR NUMBER 654: Yes.

12 MR. MACDOUGALL: Now, you understand that, in South
13 Carolina, life without parole means life. There's no
14 release date. There's no good behavior. You're there
15 'til you die. You understand that?

16 JUROR NUMBER 654: Yes.

17 MR. MACDOUGALL: Okay. And in reaching a decision
18 on a verdict, would you be able to consider life without
19 parole, just as you would consider death?

20 JUROR NUMBER 654: I believe so.

21 MR. MACDOUGALL: Okay. Tell me a little bit, if
22 you can, I noticed in your questionnaire that you -- I
23 think you said you follow crime stories on television or
24 the news?

25 JUROR NUMBER 654: Just basic news coverage, crime

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1 shows on T.V.

2 MR. MACDOUGALL: And to the extent you keep up with
3 the news, what's your view and your thinking with regard
4 to life in prison, life in state prison?

5 JUROR NUMBER 654: I think if the crime merits it,
6 that, that's a just sentence.

7 MR. MACDOUGALL: Okay. And how about severity?
8 Where does that come in? Do you consider that a severe
9 sentence, or -- I mean, some people look upon it as sort
10 of three meals and a bunk at the State's expense.

11 JUROR NUMBER 654: Yeah, I see what you mean. I
12 would say that is a severe sentence, though.

13 MR. MACDOUGALL: Another word that I think the
14 Judge introduced was mitigation, and it was also
15 included in your questionnaire. And again, by way of
16 explanation, the first part of the trial is the
17 innocence and guilty phase, and the jury makes a
18 decision. It must be unanimous of guilt. If it's
19 unanimous on innocence, the case is over and the
20 defendant is finished with the case.

21 But if there's a conviction, then, the same jury
22 hears evidence in the punishment phase, in the penalty
23 phase, and that's where the question of death or life
24 without parole comes in.

25 Now, we talked about aggravators a few minutes ago,

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1 if you remember the double homicide and the death of a
2 child. The Defense is also allowed to introduce
3 mitigators, mitigation, things about the defendant that
4 the jury is asked to consider in a light that perhaps
5 allows them to reach a life sentence, as opposed to a
6 death sentence. Are you familiar with that concept?

7 JUROR NUMBER 654: Yes.

8 MR. MACDOUGALL: Okay. Are you somebody who could
9 take into account mitigating facts --

10 JUROR NUMBER 654: Yes.

11 MR. MACDOUGALL: -- when considering a death
12 sentence?

13 JUROR NUMBER 654: Yes.

14 MR. MACDOUGALL: Okay. No matter how horrible the
15 crime.

16 JUROR NUMBER 654: I believe so.

17 THE COURT: Last couple questions. Juries -- and
18 I've never served on a jury. I've actually never been
19 called, and I've been registered to vote since I was 18
20 years old. I don't know if I'm on some list or
21 something, but I've never served a jury. But I've
22 studied them, and I've been involved with a few of them,
23 and it can be a very tense situation. In other words,
24 you may have groups of people who feel one way or
25 another, and feel very strongly about it.

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1 Are you someone who, when you're in a group, a
2 dynamic group of people, and maybe that some want to go
3 fishing and some want to go hunting or whatever, that
4 you hold your ground; that, if you feel really strongly
5 about something, you're not someone who just goes along
6 to get along?

7 JUROR NUMBER 654: I believe -- I believe I would
8 hold my ground.

9 MR. MACDOUGALL: Okay. And on the other side of
10 that coin, if you're part of a group that someone is
11 being really subjected to undue pressure, they're being
12 shouted at perhaps, they're being sort of indirectly
13 threatened that we're going to have to stay here forever
14 if you don't come around, are you someone who would,
15 depending upon where you stand, stand up for that
16 person's right to hold to their beliefs?

17 JUROR NUMBER 654: I believe so.

18 MR. MACDOUGALL: Okay. May I have a moment, your
19 Honor?

20 If I may, Mr. Wallace, let me just re-visit one
21 thing you said. You talked about a different kind of
22 sentence --

23 JUROR NUMBER 654: Um-hmm.

24 MR. MACDOUGALL: -- in opposition of death.

25 JUROR NUMBER 654: Um-hmm.

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1 MR. MACDOUGALL: Can you tell me where that comes
2 from in your thinking. Is that a religious conviction
3 or just a personal conviction? What do you have in
4 mind?

5 JUROR NUMBER 654: It could be both. I'm not
6 really sure.

7 MR. MACDOUGALL: Okay.

8 JUROR NUMBER 654: This is a serious matter. I've
9 never been a juror in a capital case before.

10 MR. MACDOUGALL: When you say a different kind of
11 sentence, we're only talking about two sentences here,
12 death and life without parole.

13 JUROR NUMBER 654: Um-hmm.

14 MR. MACDOUGALL: Were you thinking about a third
15 one, or were those the two you're talking about?

16 JUROR NUMBER 654: No, those were the two.

17 MR. MACDOUGALL: Okay. Nothing further, your
18 Honor. Thank you. Thank you very much.

19 THE COURT: Thank you, sir. Mr. Stone.

20 MR. STONE: Thank you, your Honor. Mr. Wallace, my
21 name is Duffie Stone. Let me just ask you a few
22 questions, and I think I'm pretty clear on your answers
23 earlier, and I've read your questionnaire. There are
24 three types of jurors: one that would always find the
25 death penalty; one that would never find the death

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1 penalty; and those that would take everything into
2 consideration and make that determination, and at the
3 end of the day, could sentence somebody to life, could
4 sentence somebody to death. And I believe your
5 questionnaire indicated you're that third type of juror.
6 Is that correct?

7 JUROR NUMBER 654: The third type being that I
8 could sentence either way?

9 MR. STONE: Yes, sir. That's what I'm asking.

10 JUROR NUMBER 654: Correct.

11 MR. STONE: So, if the case is bad enough, could
12 you give somebody the death penalty?

13 JUROR NUMBER 654: I believe so.

14 MR. STONE: Thank you, sir. That's all I have.
15 Thank you, your Honor.

16 THE COURT: Okay. That's all right. Thank you. I
17 appreciate it. Mr. Wallace, I want to thank you for
18 coming today. I want to thank you for being here, and I
19 especially want to thank you for waiting on us.

20 At this time, you have been qualified as a
21 potential juror in the trial of this case. Sir, that
22 does not mean you have been chosen as a juror. It
23 simply means that you will be in a pool that possibly
24 could be a juror.

25 We're running, obviously, behind time. I am

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1 hopeful that we're able to pull this jury at 9:30 on
2 Monday morning. I will tell you that I am not exactly
3 sure that is going to happen, so Norman's going to give
4 you a number. I want you to call that number after 6:00
5 p.m. on Saturday night, and it will tell you when and
6 how to report, sir, and at what time to. Just follow
7 whatever instructions it says. Again, I hope it's 9:30
8 Monday morning. It might be later. There's a
9 possibility it could be Tuesday, but again, just follow
10 whatever the instructions are and we look forward to
11 seeing you.

12 Also, sir, I need to instruct you not to discuss
13 this case with anyone, over the weekend or over -- until
14 we all meet again, and of course, not even then.

15 Additionally, sir, you are not to read anything, do
16 any independent research, anything along those lines,
17 anything on the news, T.V. It would be highly
18 inappropriate. You will have everything you need to
19 decide the case if you are chosen on this jury right
20 here in the courtroom, and you cannot be influenced by
21 outside sources. Do you understand that, sir?

22 JUROR NUMBER 654: Yes. It's all right to say I am
23 on jury duty for work purposes, correct?

24 THE COURT: Absolutely, you are still on jury duty.
25 You can tell them that I invited you to stay with us.

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1 All right? Thank you.

2 JUROR NUMBER 654: Thank you.

3 THE COURT: You're free to leave now.

4 JUROR NUMBER 654 LEAVES COURTROOM.

5 THE COURT: You ready to go, Mr. McGuire? You all
6 are welcome to stand up and take a stretch, whatever you
7 need to do, you all. We're fine, please. Bring him on
8 in, Al.

9 JUROR NUMBER 345 ENTERS COURTROOM.

10 BAILIFF: Mr. Ben Johnson.

11 BAILIFF: Come this way, please, sir.

12 THE COURT: You all, I would appreciate it, you,
13 all, noting that I'm not asking any questions anymore.

14 BAILIFF: Go ahead, sir, please, if you would, and
15 have a seat on the witness stand.

16 THE COURT: Come on around, sir. Mr. Johnson, it's
17 good to see you, sir.

18 THE COURT: Thank you so much for waiting on us. I
19 want you to know, everyone's been working real hard, and
20 I understand we've been keeping you, and we apologize
21 for that. But this is important business --

22 JUROR NUMBER 345: Yes.

23 THE COURT: -- and I want to make sure you
24 appreciate that.

25 JUROR NUMBER 345: Yes, ma'am.

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1 THE COURT: Sir, I also want to remind you that you
2 are still under the oath you took yesterday. Do you
3 understand that, sir?

4 JUROR NUMBER 345: Yes, your Honor.

5 THE COURT: All right, sir. Additionally, have you
6 had an opportunity to go over the witness list that was
7 provided?

8 JUROR NUMBER 345: Yes, your Honor.

9 THE COURT: Do you know anyone on that list, sir?

10 JUROR NUMBER 345: Yes, ma'am, I do.

11 THE COURT: Can you please tell me who you know,
12 sir, and on which list.

13 JUROR NUMBER 345: Beginning on List A.

14 THE COURT: Yes, sir.

15 JUROR NUMBER 345: I know Ms. Jerri Roseneau.

16 THE COURT: And how do you know Ms. Roseneau?

17 JUROR NUMBER 345: From being contacted for this
18 proceeding.

19 THE COURT: Thank you. That's our Clerk of Court.
20 All right. And who else do you know, sir?

21 JUROR NUMBER 345: I know Shaun Harley from List A.

22 THE COURT: All right. How do you know Mr. Harley?

23 JUROR NUMBER 345: Mr. Harley and I attended the
24 University of South Carolina in Columbia. And when he
25 was a officer with the Beaufort Police Department, my

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1 former job was located next to a police substation, so
2 we got to know each other.

3 THE COURT: Okay. When's the last time you spoke
4 with Shaun Harley?

5 JUROR NUMBER 345: Oh, it's been several years. I
6 imagine perhaps at least ten years.

7 THE COURT: Okay. All right, sir. And who else do
8 you know?

9 JUROR NUMBER 345: Vanessa Bryan, from List A.

10 THE COURT: Okay.

11 JUROR NUMBER 345: And your Honor, I know her.
12 Actually, I know of her. Her husband and I worship at
13 the same church.

14 THE COURT: Okay. All right. And who else?

15 JUROR NUMBER 345: From List B I know Sheriff
16 Tanner, being a resident of Beaufort County and
17 recognizing his name.

18 THE COURT: Okay.

19 JUROR NUMBER 345: And I --

20 THE COURT: Do you have a personal relationship
21 with him?

22 JUROR NUMBER 345: No, ma'am. No, your Honor.

23 THE COURT: Thank you.

24 JUROR NUMBER 345: And I know Sergeant Calandra
25 from List B.

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1 THE COURT: Okay. And again, how do you know
2 Sergeant Calandra?

3 JUROR NUMBER 345: I know Sergeant Calandra as my
4 -- in my job as a property manager, he assists with
5 evictions, so, and serving notices, so I just know him
6 from my job.

7 THE COURT: So, he serves civil notices out where
8 you're working?

9 JUROR NUMBER 345: Yes, your Honor.

10 THE COURT: Okay. All right, sir. The fact that
11 you do know some of these people involved in this case,
12 probably more particularly, Shaun Harley, who it sounds
13 like you know probably better than the other ones, I
14 want to make sure that, if they are witnesses in the
15 case, you can be fair and impartial.

16 JUROR NUMBER 345: Yes, your Honor.

17 THE COURT: Towards their testimony and anything
18 else. Are you comfortable you can do that?

19 JUROR NUMBER 345: Yes, your Honor.

20 THE COURT: All right, sir. And additionally, this
21 case has received some publicity. Have you read
22 anything about this case, seen anything about it, or
23 have any independent knowledge about this case
24 whatsoever, sir?

25 JUROR NUMBER 345: Nothing other than when

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1 everything first occurred, what showed up in the
2 newspaper.

3 THE COURT: Okay. All right. And since then, you
4 haven't heard anything more --

5 JUROR NUMBER 345: No, ma'am.

6 THE COURT: -- or have any independent knowledge.

7 JUROR NUMBER 345: No, ma'am.

8 THE COURT: Sir, I need to be confident that you
9 can take whatever you've read in the newspaper, heard
10 about it when it first occurred, put it out of your
11 mind, understand if you do get chosen to sit as a juror
12 in the trial of this case, that you can confine your
13 considerations and your decisions in this case based on
14 the evidence that's produced in the courtroom, not
15 anywhere else. Because, as you know, what's in the
16 newspaper and whatever the word is on the street,
17 whatever there is out there is not factual and not
18 correct. You understand that.

19 JUROR NUMBER 345: Yes, your Honor.

20 THE COURT: All right, sir. I appreciate that.
21 I'm going to go ahead and turn it over to the lawyers to
22 ask you some questions. Okay?

23 JUROR NUMBER 345: All right. Yes, your Honor.

24 THE COURT: All right.

25 MR. MCGUIRE: Good evening, Mr. Johnson. How are

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1 you doing tonight?

2 JUROR NUMBER 345: Fine, sir. How are you?

3 MR. MCGUIRE: I'm doing very good. Thank you for
4 asking. I'm sorry you had to wait so long.

5 JUROR NUMBER 345: Not a problem.

6 MR. MCGUIRE: We're trying hard to go as fast as we
7 can.

8 JUROR NUMBER 345: Yes, sir.

9 MR. MCGUIRE: And I'm just going to go straight
10 into it.

11 JUROR NUMBER 345: Sure.

12 MR. MCGUIRE: We're here for a murder case, and I
13 want to define murder for you to make sure we're on the
14 same page.

15 JUROR NUMBER 345: Sure.

16 MR. MCGUIRE: Murder in South Carolina is the
17 intentional, unlawful killing of another human being
18 with malice aforethought. Malice aforethought is
19 defined as operating with a black and malignant heart,
20 devoid of social duty, fatally bent on evil. That's
21 pretty heavy language. That's murder, and it's not
22 self, you know, it's not self-defense. It's not
23 accident. It's the intentional act of taking an
24 innocent life. And the State's asking -- or seeking the
25 death penalty in the case, which means they have to show

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1 something more, something we call an aggravation. The
2 law calls aggravation evidence.

3 In this case, it's the fact that two people were
4 shot and killed, a woman and a four-year-old child; and
5 it was an intentional, deliberate act to take those
6 lives. In that situation, what are your thoughts about
7 letting that accused person receive the life penalty and
8 live out his life in prison?

9 JUROR NUMBER 345: Well, my thought would be that,
10 if that were the sentence that were imposed upon that
11 individual, that, that individual would have the rest of
12 his life to consider his actions; and he also would have
13 an opportunity to perhaps effect some type of good from
14 his experience.

15 I don't believe that -- I don't believe in the
16 notion of locking up and throwing away the key. I
17 believe that all life is valuable and all life would
18 have a purpose. So, if that were the sentence that were
19 imposed upon that individual, I wouldn't have a problem
20 with it.

21 MR. MCGUIRE: Okay. And could you also -- would
22 you also consider the death penalty?

23 JUROR NUMBER 345: Yes, sir. If that was one of
24 the options available, I could consider that.

25 MR. MCGUIRE: Okay. And to borrow a phrase, or for

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1 lack of a better phrase, if the facts of a homicide, if
2 they were just really bad, that could move you to vote
3 for the death penalty.

4 JUROR NUMBER 345: Depending upon the circumstances
5 and the facts that were presented, yes, I could.

6 MR. MCGUIRE: Okay. And then, you could also vote
7 for the life penalty.

8 JUROR NUMBER 345: Yes, sir, I could.

9 MR. MCGUIRE: And some people would say they're an
10 eye-for-an-eye kind of guy; where, if you take a life,
11 you forfeit yours. It doesn't sound like you're that
12 kind of guy.

13 JUROR NUMBER 345: No, sir. I believe that,
14 ultimately, all of us have to answer to a higher power.
15 If the facts presented to me lead me to vote in one way,
16 I'd feel comfortable doing that.

17 MR. MCGUIRE: Okay. And in making this decision,
18 whether a human being was to receive a life penalty or a
19 death penalty, would background factors of the accused,
20 like if he grew up poor, or maybe struggled with drugs;
21 or on the other side, maybe he did some good, did some
22 good things, took care of his family in hard times,
23 something like that; basically, just a person's walk in
24 life and who they are as a person, who they came to be
25 in life, would those background factors be relevant to

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1 you?

2 JUROR NUMBER 345: No, sir, they wouldn't.

3 MR. MCGUIRE: And that's because people are
4 accountable for the decisions they make.

5 JUROR NUMBER 345: Yes.

6 MR. MCGUIRE: So, if someone chooses to
7 intentionally kill, their background experiences or
8 their background characteristics are not relevant?

9 JUROR NUMBER 345: I wouldn't say they're
10 absolutely not relevant. It would depend upon the
11 circumstances of the case that was before me.

12 MR. MCGUIRE: Okay. Sometimes lawyers call that
13 what's called a nexus or a connection. Are you saying
14 that maybe some background factors, if they were
15 connected to the homicides, might matter to you?

16 JUROR NUMBER 345: Yes.

17 MR. MCGUIRE: But if they were not connected, they
18 would not be relevant.

19 JUROR NUMBER 345: Again, it would depend on what
20 was before me, but I could answer that and say not all
21 the time. No, they wouldn't -- might not be relevant.

22 MR. MCGUIRE: Okay. I mean, like if somebody grew
23 up in poverty, would that matter?

24 JUROR NUMBER 345: Honestly, again, unless -- I
25 would have to look at all of the circumstances, the

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1 facts that were before me, to decide. I don't believe
2 that, that could be used as a blanket explanation.

3 MR. MCGUIRE: Or an excuse. Okay. Tell me what
4 you would think was important if you were -- if you had
5 to look into the background of a person accused of this
6 kind of act, tell me what comes to your mind as
7 something that might matter or be relevant to you.

8 JUROR NUMBER 345: What might be relevant is the --
9 the -- obviously, the circumstances, what type of
10 relationship the person had with whomever is affected.
11 Certainly, background would matter, but it wouldn't be
12 the overwhelming reason that I would decide one way or
13 the other. I would just take everything that was
14 presented to me at that time into account to be able to
15 form an opinion.

16 MR. MCGUIRE: Okay. Fair enough. The Judge
17 already told -- well, actually, --

18 THE COURT: I haven't told him anything.

19 MR. MCGUIRE: The Judge didn't tell you a darn
20 thing. She's told some other people this, so I'm going
21 to go ahead and repeat it. She had a really good way of
22 phrasing it. There's the first part of a case. It's
23 called the guilty phase; if somebody's guilty or not;
24 did the person do it. And then, you might get to -- if
25 you find somebody guilty, then you would get to what's

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1 called a penalty phase, and that would be that life-and-
2 death, decision-making process. And the Judge would
3 tell you that, that decision-making process is called
4 reaching an individual moral judgment about the
5 appropriate penalty. It's very individual. It's not --
6 it's not a majority.

7 JUROR NUMBER 345: Um-hmm.

8 MR. MCGUIRE: You know, it's not -- you don't have
9 to be unanimous.

10 JUROR NUMBER 345: Um-hmm.

11 MR. MCGUIRE: Now, the decision options could be
12 unanimous. The only way that somebody could get the
13 death penalty is if all twelve jurors agree beyond a
14 reasonable doubt that the death penalty was the
15 appropriate penalty. All twelve could agree on the life
16 penalty, as well.

17 JUROR NUMBER 345: Um-hmm.

18 MR. MCGUIRE: But then, the jury could end the day
19 just agreeing to disagree. Is that a principle you
20 could respect?

21 JUROR NUMBER 345: Absolutely.

22 MR. MCGUIRE: Okay. Because you would expect
23 people to have different individual moral judgments --

24 JUROR NUMBER 345: Sure.

25 MR. MCGUIRE: -- about the fate of a human being.

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1 JUROR NUMBER 345: Sure.

2 MR. MCGUIRE: And you would want your opinion
3 respected.

4 JUROR NUMBER 345: Absolutely.

5 MR. MCGUIRE: And you would want to respect
6 everybody else's.

7 JUROR NUMBER 345: Yes.

8 MR. MCGUIRE: Okay. And if the jury did end the
9 day agreeing to disagree, the Judge would take the --
10 would say, appreciate your service. As long as you
11 tried and you exchanged ideas and deliberated and talked
12 about it, as long as you all did that, but were unable
13 to reach a unanimous decision one way or the other, the
14 Judge would take the case and sentence, and the case
15 would end, and the case would not have to be tried
16 again.

17 You don't have to concern yourself with what the
18 sentence might be. That's the Judge's job. I just want
19 -- I tell you that because we want you to know that the
20 case would end and would not have to be tried again;
21 that it's okay to agree to disagree. And that sounds
22 like a principle you could be okay with.

23 JUROR NUMBER 345: Absolutely.

24 MR. MCGUIRE: That's all I have for you, sir.
25 Thank you.

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1 THE COURT: Mr. Stone.

2 MR. STONE: Thank you, your Honor. Mr. Johnson, my
3 name is Duffie Stone. Let me just ask you a few
4 questions. It sounds to me like that you're a type of
5 juror who would take everything into consideration,
6 weighing everything from both the State and the Defense
7 before you make a decision. Is that correct?

8 JUROR NUMBER 345: Yes, sir, that's correct.

9 MR. STONE: It also sounds, and I don't want to put
10 words in your mouth, let me just ask you plain up --
11 plainly. If a case was bad enough, could you give the
12 death penalty?

13 JUROR NUMBER 345: Yes, I could.

14 MR. STONE: And in that sentence, it's not a
15 recommendation. It is actually the sentence. And in
16 this case, the jury makes that determination. Do you
17 understand that?

18 JUROR NUMBER 345: Yes, sir.

19 MR. STONE: And if you were to think that is the
20 appropriate sentence, you would sign your name on a form
21 that would say we believe that the defendant deserves
22 the death penalty.

23 JUROR NUMBER 345: Yes, sir.

24 MR. STONE: And that would be carried out.

25 JUROR NUMBER 345: Yes, sir.

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1 MR. STONE: And if the facts were bad enough, you
2 could do that.

3 JUROR NUMBER 345: Yes, sir, I could.

4 MR. STONE: Thank you, sir. I have no further
5 questions. Thank you, your Honor.

6 THE COURT: All right. Sir, thank you so much for
7 waiting on us. Sir, you are qualified as a potential
8 juror in the trial of this case. That does not mean
9 you've been chosen as a juror yet. Sir, you know we're
10 running behind, clearly. I am hopeful that we can pull
11 a jury Monday morning at 9:30, which is when I'm going
12 to ask you to report.

13 But out of an abundance of caution Norman's going
14 to give you a piece of paper. I want you to call that
15 phone line at 6:00 p.m. on Saturday night. It's going
16 to tell you what time to report. Again, I'm hopeful
17 it's 9:30 Monday morning. I can't promise that. I
18 don't want you waiting around here on us again. So, it
19 will tell you when we'll be ready to go ahead and pull
20 this jury.

21 Again, thank you. You are not to discuss this case
22 with anyone. You are not to do any individual research.
23 You are not to post anything on any social sites or
24 blogs that you're a potential juror. It just invites
25 comment. Have a wonderful weekend. We look forward to

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1 seeing you Monday morning.

2 JUROR NUMBER 345: Thank you, your Honor.

3 THE COURT: Thank you, sir.

4 JUROR NUMBER 345 LEAVES COURTROOM.

5 THE COURT: Who do we have next, you all? Thank
6 you, sir. All right. Mr. Reilley?

7 BAILIFF: Ready, your Honor?

8 THE COURT: Please.

9 JUROR NUMBER 526 ENTERS COURTROOM.

10 BAILIFF: Mr. Thomas Reilley.

11 BAILIFF: Right this way, sir. Go up and take a
12 seat in the witness stand, be sworn.

13 THE COURT: Come on around, sir. Good evening.

14 JUROR NUMBER 526: Hello.

15 THE COURT: Thank you for waiting on us. I
16 apologize.

17 JUROR NUMBER 526: That's okay.

18 THE COURT: We are running behind, but I want you
19 to know that everyone's working very hard. This is very
20 important, and these questions that we're asking jurors
21 in talking to them is vital to this process, and again,
22 we want to thank you.

23 I need to remind you to begin with, also, that you
24 are still under the oath you took yesterday. There are
25 no right or wrong answers here.

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1 JUROR NUMBER 526: Okay.

2 THE COURT: I ask you to be honest, candid. That's
3 all anyone in this room can ask. All right, sir? And
4 I'm going to, at this time, go ahead and turn it over to
5 the attorneys for the trial of this case. But before I
6 do that, I apologize. I needed to ask you two further
7 questions. Number one, did you review the witness list?

8 JUROR NUMBER 526: Yes.

9 THE COURT: Do you know anyone on it?

10 JUROR NUMBER 526: Brandon Cooler.

11 THE COURT: Okay.

12 JUROR NUMBER 526: And P.J. Tanner.

13 COURT REPORTER: And who? Who?

14 JUROR NUMBER 526: P.J. Tanner.

15 THE COURT: All right. And how do you know -- P.J.
16 How do you know Sheriff Tanner?

17 JUROR NUMBER 526: Actually, through Brandon
18 Cooler. Brandon Cooler's father is Rick Cooler.
19 Brandon Cooler's stepmother is my godmother. So --

20 THE COURT: Okay. Sorry, I'm trying to do the
21 tree.

22 JUROR NUMBER 526: All righty.

23 THE COURT: We're really tired. It's late. I got
24 it. Okay. So.

25 JUROR NUMBER 526: Brandon Cooler's stepmother --

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1 THE COURT: Right.

2 JUROR NUMBER 526: -- is my godmother.

3 THE COURT: Stepmother.

4 JUROR NUMBER 526: So, I would spend weekends at
5 Brandon's house.

6 THE COURT: Got it.

7 JUROR NUMBER 526: With Major Cooler, when he was
8 with P.J. Tanner.

9 THE COURT: Thank you. I've got it now. Okay. I
10 appreciate it. It took me twice. Again, I apologize.
11 And you know, you said, also, P.J. Tanner.

12 JUROR NUMBER 526: Through the family.

13 THE COURT: Through the family?

14 JUROR NUMBER 526: Through the Cooler family.

15 THE COURT: Okay. Would that relationship that you
16 have with either Major Cooler or Sheriff Tanner, would
17 that affect your ability to be fair and impartial?

18 JUROR NUMBER 526: No, your Honor.

19 THE COURT: All right. Thank you. Additionally,
20 there's been some publicity about this case in the
21 newspaper. Have you read anything, heard anything, seen
22 anything, or have any independent knowledge about this
23 case whatsoever?

24 JUROR NUMBER 526: Only through what this court
25 sent me.

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1 THE COURT: Okay. Through the questionnaire that
2 was sent to you?

3 JUROR NUMBER 526: Yes.

4 THE COURT: All right, sir. I appreciate that.
5 I'm going to turn it over. Mr. Young is going to ask
6 you some questions. Okay, sir?

7 MR. YOUNG: Good evening, Mr. Reilley.

8 JUROR NUMBER 526: Good evening.

9 MR. YOUNG: I was hoping that we could move this to
10 the board room and --

11 JUROR NUMBER 526: That'd be more fun, yes.

12 MR. YOUNG: Yeah, I bet. Who's playing tonight?

13 JUROR NUMBER 526: The Storks.

14 MR. YOUNG: Mr. Reilley, on your questionnaire,
15 when you were asked about the case knowledge, and I know
16 the Judge just reviewed that with you, you said:

17 *My immediate reaction would be that*
18 *it is likely that he was involved.*

19 JUROR NUMBER 526: Yes.

20 MR. YOUNG: Can you tell me some more about that.

21 JUROR NUMBER 526: Not knowing the circumstance of
22 -- of what happened, I would say that, 90 percent of the
23 time, a prime suspect would be the significant other of
24 -- of the victim. I mean, just in my opinion.

25 MR. YOUNG: I mean, and is it sort of --

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1 JUROR NUMBER 526: It's just an initial reaction.

2 MR. YOUNG: Sort of like where somebody's been
3 arrested and indicted.

4 JUROR NUMBER 526: Right. And the way it was
5 worded is -- was that he was convicted of maliciously --
6 I mean, there was words in there like maliciously and
7 intentionally murdering his girlfriend, and I don't
8 know. It just -- it kind of led me to assume that he
9 would have been involved in some way.

10 MR. YOUNG: Okay. And as you sit here today, --

11 JUROR NUMBER 526: Um-hmm.

12 MR. YOUNG: -- can you presume Mr. Daise to be
13 innocent?

14 JUROR NUMBER 526: I would say I would need more
15 information. I don't know if -- I don't know what
16 happened during that day. I don't know who else was
17 there. I don't know -- I don't know very much about the
18 case at all.

19 MR. YOUNG: Okay. And I'm asking you as you're
20 sitting in here today, you don't know anything about the
21 case, can you presume him to be innocent?

22 JUROR NUMBER 526: Until proven guilty, I guess,
23 yes.

24 COURT REPORTER: I need you to repeat that.

25 JUROR NUMBER 526: Until proven guilty, I -- I

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1 assume, yes, he has the right to be assumed innocent.

2 MR. YOUNG: And can you do that?

3 JUROR NUMBER 526: Oh, yeah. I can -- yes.

4 MR. YOUNG: You're okay with that?

5 JUROR NUMBER 526: Yes.

6 MR. YOUNG: And you know, one of the problems that
7 we have here is, I have to talk to you right now about
8 penalty.

9 JUROR NUMBER 526: Yes.

10 MR. YOUNG: And like you said, we haven't had a
11 trial yet. Mr. Daise is still presumed innocent.

12 JUROR NUMBER 526: Yes.

13 MR. YOUNG: There's been no evidence offered to
14 alter any opinion about that. Okay?

15 JUROR NUMBER 526: Yes.

16 MR. YOUNG: Will you agree with me that, just
17 because we're going to talk about penalty now, you're
18 not going to then just assume Mr. Daise is guilty?

19 JUROR NUMBER 526: Yes.

20 MR. YOUNG: Okay. If selected as a juror, you
21 would give him a fair trial.

22 JUROR NUMBER 526: Absolutely.

23 MR. YOUNG: And you would presume him to be
24 innocent.

25 JUROR NUMBER 526: I would.

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1 MR. YOUNG: So, in talking about the penalty in
2 South Carolina, we have the death penalty for people who
3 have been convicted of murder.

4 JUROR NUMBER 526: Yes.

5 MR. YOUNG: Certain types of murder. And murder in
6 South Carolina is the killing of an innocent person with
7 malice aforethought. Okay?

8 JUROR NUMBER 526: Okay.

9 MR. YOUNG: Malice aforethought means that it was
10 done intentionally; it was done with an evil purpose,
11 the heart bent on -- fatally bent on mischief; a black-
12 hearted murder. Okay? It means it wasn't self-defense;
13 it wasn't an accident; it wasn't an argument that got
14 out of control. The person knew what they were doing,
15 knew the difference between right and wrong, and chose
16 to kill an innocent person. Okay?

17 JUROR NUMBER 526: Okay.

18 MR. YOUNG: Are you with me?

19 JUROR NUMBER 526: Yes.

20 MR. YOUNG: And in this case, obviously, there's
21 two innocent people, one of which was a child. Okay?

22 JUROR NUMBER 526: Okay.

23 MR. YOUNG: Some people say, in that circumstance
24 involving two people, one of which was a child, for me,
25 just based on those facts alone, I think that the only

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1 appropriate punishment is the death penalty. Do you
2 understand that?

3 JUROR NUMBER 526: I understand.

4 MR. YOUNG: Are you one of those people?

5 JUROR NUMBER 526: No.

6 MR. YOUNG: Why not?

7 JUROR NUMBER 526: Among -- among things, I -- I
8 don't always assume that the death penalty is the worst
9 punishment. That's -- that's one reason. Secondly, I
10 -- I mean, I don't know if that's sufficient, but I
11 would say that I was -- that, if my mother and
12 grandmother were here, they would say you were raised
13 Catholic and we don't believe in the death penalty, but
14 I can't say that, I don't think. I'm not -- if I have
15 lived by the Catholic law, I would have -- I'd already
16 been stricken by -- stricken down.

17 MR. YOUNG: Well, as a bar owner, I imagine there's
18 a difficult choice.

19 JUROR NUMBER 526: Right.

20 MR. YOUNG: Do you believe that life in prison is a
21 substantial punishment?

22 JUROR NUMBER 526: I think yes. Yes, it is. It's
23 a pretty harsh punishment.

24 MR. YOUNG: Life where you could never get out
25 again.

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1 JUROR NUMBER 526: Correct.

2 MR. YOUNG: If you got to choose what the laws were
3 going to be, whether we were going to have the death
4 penalty or not have the death penalty, would you have
5 the death penalty?

6 JUROR NUMBER 526: I think some people deserve the
7 death penalty. But if I had to choose whether -- yeah,
8 I think. I think it's appropriate in some -- in some
9 instances.

10 MR. YOUNG: And can you tell me a little bit more
11 about that, like what instances?

12 JUROR NUMBER 526: Like some -- some crimes are so
13 heinous that, yes, putting somebody in a room for the
14 rest of their life is -- is -- is -- seems enough, but
15 you know, Jeffrey Dahmer probably should have been
16 sentenced to death, yes. I mean, I agree with him being
17 sentenced to death.

18 MR. YOUNG: Okay.

19 JUROR NUMBER 526: I agree with that. I mean,
20 taxpayers shouldn't pay for somebody that crooked and
21 cruel to stay alive for the rest of their life.

22 MR. YOUNG: I'm going to come back to that in just
23 a second. When we talk about the decision that jurors
24 are asked to make about whether or not another person
25 lives or dies, like I talked about, first, there's the

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1 conviction of murder, guilty beyond any and all
2 reasonable doubt of malice murder.

3 JUROR NUMBER 526: Um-hmm.

4 MR. YOUNG: Okay? You with me?

5 JUROR NUMBER 526: Yes.

6 MR. YOUNG: And then, the State proves aggravating
7 factors beyond a reasonable doubt. Okay? Still with
8 me?

9 JUROR NUMBER 526: Yes.

10 MR. YOUNG: And then, the Defense has an
11 opportunity to present stuff called mitigation. Okay?
12 It's stuff about the life history and background of the
13 defendant.

14 JUROR NUMBER 526: Um-hmm.

15 MR. YOUNG: All right? Stuff like how they grew
16 up, whether they grew up poor, whether they were abused,
17 whether they helped people, those types of things; their
18 background, that doesn't relate directly to the crime.

19 JUROR NUMBER 526: Okay.

20 MR. YOUNG: Is that stuff that would be important
21 to you in deciding whether they lived or died?

22 JUROR NUMBER 526: I don't think anything good
23 they've done in their life should -- would help me
24 decide. If they were abused as a child and they were
25 proven to have a mental -- they were mentally affected

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1 by it, then, maybe. But, no, I wouldn't say good deeds
2 would get you off the death penalty.

3 MR. YOUNG: Okay. Is it something that you could
4 give consideration to in determining whether they lived
5 or died, not necessarily get you off of the death
6 penalty?

7 JUROR NUMBER 526: It would have to be more of a --
8 a lifestyle that was habitual instead of, oh, I did
9 community service for 30 hours one week, you know. If
10 he was -- I think you understand what I'm saying.

11 MR. YOUNG: I do. I do.

12 COURT REPORTER: I'm sorry?

13 JUROR NUMBER 526: I think you understand what I'm
14 saying.

15 MR. YOUNG: So, Mr. Reilley, do you understand that
16 there is no such thing as an automatic death penalty in
17 South Carolina?

18 JUROR NUMBER 526: Okay.

19 MR. YOUNG: Any case, this case, the worst case
20 that you could imagine, no case ever requires the death
21 penalty. Okay?

22 JUROR NUMBER 526: Okay.

23 MR. YOUNG: Do you agree with that?

24 JUROR NUMBER 526: If you tell me that.

25 MR. YOUNG: Well, do you agree that it should be

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1 that way; that there is no case that should
2 automatically get sentenced to the death penalty?

3 JUROR NUMBER 526: Yes, I agree with it. I don't
4 think the death penalty should be automatic, no.

5 MR. YOUNG: There is no checklist on how to arrive
6 at what is the appropriate punishment for you. Okay?
7 Aggravation is different than mitigation, because
8 mitigation doesn't have a burden of proof. Okay? Any
9 juror can find something mitigating and give it the
10 weight of life that they choose. Okay?

11 JUROR NUMBER 526: Okay.

12 MR. YOUNG: The other jurors don't even have to
13 agree that, that mitigating factor exists. Okay?

14 JUROR NUMBER 526: Okay.

15 MR. YOUNG: There's no unanimity requirement for
16 mitigation like there is for aggravation. Okay? And
17 even if you don't find anything mitigating, jurors are
18 still entitled to consider mercy, mercy alone. There's
19 no reason for it; I just feel like extending mercy; or I
20 think it's appropriate to extend mercy in certain
21 circumstances. Okay?

22 JUROR NUMBER 526: Okay.

23 MR. YOUNG: In your view, and probably with your
24 Catholic upbringing, can you tell me a little bit about
25 your concept of mercy.

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1 JUROR NUMBER 526: I -- I do believe that, from
2 what I know about this, I would say that, even if -- if
3 he was proven -- if you told me today that he was
4 guilty, I would say there is a possibility that he truly
5 is either sorry, rehabilitated, doesn't deserve death,
6 or at least deserves mercy, I do believe that.

7 MR. YOUNG: Okay. And the decision about penalty,
8 if all twelve jurors decide that the death penalty is
9 appropriate, you understand that, that's not a
10 recommendation, Mr. Daise would be executed.

11 JUROR NUMBER 526: Oh, yes.

12 MR. YOUNG: Right?

13 JUROR NUMBER 526: Um-hmm.

14 MR. YOUNG: And if all twelve jurors decided that
15 the life penalty was appropriate, Mr. Daise would spend
16 the rest of his life in prison until he died.

17 JUROR NUMBER 526: Yes.

18 MR. YOUNG: And if the jurors couldn't agree in
19 making this individual moral judgment, they could agree
20 to disagree. Okay?

21 JUROR NUMBER 526: Yes.

22 MR. YOUNG: And then the Judge would determine the
23 sentence.

24 JUROR NUMBER 526: Okay.

25 MR. YOUNG: What we ask you to do when we're asking

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1 people to consider taking the life of another person is
2 called an individual moral judgment. And when I say
3 individual moral judgment, I mean something like
4 choosing what faith is right for you or not right for
5 you, making those types of decisions. Are you
6 comfortable with that?

7 JUROR NUMBER 526: Yes.

8 MR. YOUNG: Are you comfortable with the fact that,
9 whatever individual moral judgment you may have made
10 yourself, somebody else may make a different one.

11 JUROR NUMBER 526: Yes.

12 MR. YOUNG: And you would expect them to respect
13 your individual moral judgment.

14 JUROR NUMBER 526: Absolutely.

15 MR. YOUNG: You would respect their right to have
16 an opinion different from yours.

17 JUROR NUMBER 526: Yes.

18 MR. YOUNG: About stuff like who lives and dies.

19 JUROR NUMBER 526: Um-hmm.

20 MR. YOUNG: And if somebody --

21 COURT REPORTER: Is that yes?

22 JUROR NUMBER 526: Yes.

23 MR. YOUNG: And if somebody was being bullied or
24 yelled at or told that their opinion was stupid, you
25 would insure that their opinion was respected.

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1 JUROR NUMBER 526: Yes.

2 MR. YOUNG: Even if it was different than yours.

3 JUROR NUMBER 526: Yes.

4 MR. YOUNG: I want to go back to one thing. You
5 mentioned taxpayers funding people in prison.

6 JUROR NUMBER 526: Right.

7 MR. YOUNG: And in these cases, nobody's going to
8 bring you any evidence about cost.

9 JUROR NUMBER 526: Right.

10 MR. YOUNG: Okay? It would be something that the
11 Judge would tell you, you can't consider.

12 JUROR NUMBER 526: Okay.

13 MR. YOUNG: Are you okay with that?

14 JUROR NUMBER 526: Yes.

15 MR. YOUNG: It's not something that's so firmly
16 part of your decision making that you just can't put it
17 aside.

18 JUROR NUMBER 526: No. I -- I -- I shouldn't even
19 said that. Jeffrey Dahmer's just a sick person and
20 probably deserved to not live.

21 MR. YOUNG: You wouldn't -- well, I mean we can
22 agree that eating --

23 JUROR NUMBER 526: Yeah.

24 MR. YOUNG: -- young boys is egregious.

25 JUROR NUMBER 526: Yeah, I don't think -- I

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1 wouldn't say we should send everybody who's on life in
2 prison to death, because we need to save tax dollars,
3 no.

4 MR. YOUNG: Okay. Thank you, Mr. Reilley. That's
5 all the questions I have.

6 THE COURT: Okay. Mr. Stone.

7 MR. STONE: Mr. Reilley, my name's Duffie Stone.
8 I'm just going to ask you a few questions based on --

9 JUROR NUMBER 526: Okay.

10 MR. STONE: -- based on your questionnaire. You
11 are the type of person, as I understand, that would take
12 everything into consideration and make a determination
13 in your mind whether or not somebody deserves life
14 imprisonment or the death penalty. Is that correct?

15 JUROR NUMBER 526: Yes, sir.

16 MR. STONE: If the case was bad enough, could you
17 give somebody the death penalty?

18 JUROR NUMBER 526: Yes, sir.

19 MR. STONE: You have to fill out a form; you have
20 to sign your name to it; and again, the sentence is the
21 sentence. It's not just a recommendation to the Judge.
22 Could you do that?

23 JUROR NUMBER 526: Yes, sir.

24 MR. STONE: I don't have any further questions.
25 Thank you.

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1 THE COURT: All right. Solicitor?

2 MR. STONE: Yes, ma'am.

3 THE COURT: All right. Mr. Reilley, thank you so
4 much for being here. Sir, sit down for a second, sorry.

5 JUROR NUMBER 526: Okay. It's all good?

6 THE COURT: We're good. Almost ready to leave.

7 JUROR NUMBER 526: Okay.

8 THE COURT: To begin with, you've been qualified as
9 a potential juror in the trial of this case. You are
10 not on the jury yet. You just are a potential juror.

11 We're obviously running behind, and I anticipate us
12 being ready to pull this jury Monday morning at 9:30.
13 However, out of an abundance of caution, Norman's going
14 to give you a phone number to call. It's going to have
15 a recorded message. I ask that you don't call it until
16 after 6:00 o'clock Saturday night. It will tell you
17 when you need to report.

18 JUROR NUMBER 526: Okay.

19 THE COURT: All right, sir? I appreciate it.
20 Again, you aren't to discuss this case with anyone. You
21 are not supposed to read anything, do any independent
22 research. I want you to go home and have a good
23 weekend. Obviously, you're going to be working, it
24 sounds like.

25 JUROR NUMBER 526: Correct.

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1 THE COURT: And we look forward to seeing you
2 Monday morning.

3 JUROR NUMBER 526: Thank you.

4 THE COURT: Thank you.

5 JUROR NUMBER 526 LEAVES COURTROOM.

6 THE COURT: Okay. All right. Who do we have next,
7 Al?

8 JUROR NUMBER 62 ENTERS COURTROOM.

9 BAILIFF: Mr. Scott Bollinger, your Honor.

10 THE COURT: Come on, Mr. Bollinger.

11 BAILIFF: If you would, go up and take a seat on
12 the witness stand, please.

13 JUROR NUMBER 62: Yes, sir. Hi.

14 THE COURT: Good evening, and thank you so much for
15 waiting for us, and thank you for your patience. Again,
16 everyone is working hard here. This is important
17 business. I want to make sure you understand that. We
18 need to ask these questions of you, but we appreciate
19 your patience, and so you understand.

20 JUROR NUMBER 62: You're welcome, your Honor.

21 THE COURT: Thank you. There's a couple of things
22 that I need to ask you before we start. I want to
23 remind you that you are under the oath that you took
24 yesterday. Is that agreeable with you?

25 JUROR NUMBER 62: Yes, your Honor.

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1 THE COURT: Thank you, sir. Have you had a chance
2 to look at the witness list?

3 JUROR NUMBER 62: Yes, I did.

4 THE COURT: Who do you know on that list, if
5 anybody?

6 JUROR NUMBER 62: I really don't know anybody
7 personally. I just recognized a couple of names.

8 THE COURT: Some names?

9 JUROR NUMBER 62: Yeah.

10 THE COURT: Okay. But you don't have any personal
11 relationships --

12 JUROR NUMBER 62: No.

13 THE COURT: -- or business relationships with
14 anyone on that list? Very well. Additionally, sir,
15 this case has gotten a little bit of press coverage.
16 Have you read anything, seen anything, heard anything,
17 or have any independent knowledge whatsoever about this
18 case?

19 JUROR NUMBER 62: All I heard some talk around the
20 work site about setting a record over here with so many
21 juror -- jurors here.

22 THE COURT: Okay. Setting a record. Okay.

23 JUROR NUMBER 62: It sounded like it.

24 THE COURT: I understand. Okay. There was a
25 newspaper article about how many people were here. So,

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1 I made everyone that works here park somewhere else.

2 JUROR NUMBER 62: Right.

3 THE COURT: Then, of course, no one was happy with
4 me, but I have to take care of my jurors. That's my
5 job.

6 JUROR NUMBER 62: Thank you.

7 THE COURT: So, I appreciate that. And I also do
8 remember you are the head electrical foreman on the Lone
9 Cove Clubhouse that needs to be done. Is that correct?

10 JUROR NUMBER 62: Yes, your Honor.

11 THE COURT: Just so I'm clear, I remember that from
12 speaking to you yesterday. At this time, I'm going to
13 go ahead and turn you over to the lawyers.

14 JUROR NUMBER 62: Okay.

15 THE COURT: And answer anything they ask you.
16 Please be candid and honest. There are no right or
17 wrong answers here. Their job is to find out your
18 feelings about the death penalty and, certainly,
19 punishment, and specifically about this case. That's
20 their job.

21 JUROR NUMBER 62: Okay.

22 THE COURT: And I'm going to go ahead and turn it
23 over to them so they can begin. Mr. MacDougall?

24 MR. MACDOUGALL: Thank you, your Honor. Good
25 evening, Mr. Bollinger, and thank you on behalf of

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1 everybody for staying around this late.

2 JUROR NUMBER 62: You're welcome.

3 MR. MACDOUGALL: My name is Mark MacDougall, and
4 I'm one of the lawyers representing the defendant in
5 this case, Earnest Daise. I'm going to tell you some
6 things in the course of asking your questions that are
7 consistent with what the Judge has told other people,
8 and I think we tell you, if asked. But if the Judge has
9 any questions about anything that I say regarding this
10 case, I'm sure I will know that quickly.

11 This is a murder case. And in a murder case in
12 South Carolina, there are two, potentially, two parts of
13 the case. The first is the guilt or innocence phase
14 when the jury -- all jurors decide unanimously or not
15 whether the defendant is guilty of the crime -- the
16 crime or crimes for which he is accused.

17 If the defendant in a capital murder case is
18 convicted, then, a short period of time passes, and the
19 same jury convenes to hear a penalty phase.

20 JUROR NUMBER 62: Um-hmm.

21 MR. MACDOUGALL: In the penalty phase, the decision
22 that the jurors are faced with is really only two-fold.
23 They can't change their verdict. He's already
24 convicted. And this is all hypothetical, because, you
25 know, you've heard no --

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1 JUROR NUMBER 62: Right.

2 MR. MACDOUGALL: -- evidence; the jury hasn't
3 convened; and Mr. Daise sits here innocent today. But
4 in that second phase, you only have two options. One is
5 death, and that requires no further explanation. And
6 the other is life without parole. And in South
7 Carolina, life without parole is life. You don't go
8 home on good behavior. You don't get parole. You die
9 in prison.

10 JUROR NUMBER 62: Um-hmm.

11 MR. MACDOUGALL: And that's completely clear, and
12 the Court would so instruct you, if the case were to
13 reach that level.

14 Now, with murder, with the first half of the case,
15 there's an element that the law -- the law uses the word
16 *malice*. I'm not sure that's the right word. But what
17 it means is a sort of depraved heart. The words that
18 the statute uses is:

19 *Devoid of social duty and fatally*
20 *bent on creating mischief.*

21 Now, that's a little archaic in its language, but
22 what it's meant to do is tell the reader that we're
23 excluding all the things that people think about. We're
24 excluding self-defense. We're excluding insanity.
25 We're excluding all the things that make something less

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1 than malice murder.

2 JUROR NUMBER 62: Um-hmm.

3 MR. MACDOUGALL: It means you mean it, you're bent
4 on the death you committed, and the person is dead.
5 Malice.

6 If you're confronted with evidence that persuades
7 you in this case that murder was committed with malice,
8 what's your view on the appropriate punishment? I'm not
9 going to go into facts.

10 JUROR NUMBER 62: Right.

11 MR. MACDOUGALL: I'll go into a couple of things in
12 a minute, but just on the general concept. If someone
13 is found guilty of murder with malice, as we've
14 described it, --

15 JUROR NUMBER 62: I support the death penalty on
16 that.

17 MR. MACDOUGALL: I'm sorry?

18 JUROR NUMBER 62: I support the death penalty for
19 that.

20 MR. MACDOUGALL: Always?

21 JUROR NUMBER 62: Yes.

22 MR. MACDOUGALL: Okay. No exceptions?

23 JUROR NUMBER 62: No exceptions.

24 MR. MACDOUGALL: Your Honor, with that I'll stand
25 down.

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1 THE COURT: Thank you.

2 MR. MACDOUGALL: Thank you, sir.

3 JUROR NUMBER 62: You're welcome.

4 MR. STONE: I just want to make sure I'm clear. If
5 the case was involving the death of a child, you would
6 not consider any mitigation; you're not considering
7 anything else; it's automatic for you for the death
8 penalty. Is that correct?

9 JUROR NUMBER 62: Yes, sir.

10 MR. STONE: Thank you, sir. I don't have any
11 further questions.

12 THE COURT: All right. Sir, thank you so much for
13 being here. Thank you for waiting on us. I really
14 appreciate it. At this time, I am going to go ahead and
15 excuse you from the trial of this case.

16 JUROR NUMBER 62: Thank you.

17 JUROR NUMBER 62 LEAVES COURTROOM.

18 JUROR NUMBER 233 ENTERS COURTROOM.

19 THE COURT: All right. We have one last person who
20 has asked to be able to stay, you all. So, let's bring
21 them on in. Correct me if I'm wrong, is Mr. Fleming out
22 there?

23 BAILIFF: All right.

24 BAILIFF: Last one, Judge.

25 THE COURT: Very good. Diane, is someone back

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1 there calling people pushing them back?

2 MADAM CLERK: Yes.

3 THE COURT: All right. Making sure. Thank you,
4 LaSandra.

5 BAILIFF: Mr. David Fleming.

6 THE COURT: Come on in, Mr. Fleming.

7 BAILIFF: Right this way, sir.

8 BAILIFF: If you'll go up and take a seat in the
9 witness box.

10 JUROR NUMBER 233: Good evening.

11 THE COURT: Good evening, Mr. Fleming. Thank you
12 for being patient with us.

13 JUROR NUMBER 233: Certainly.

14 THE COURT: I understand you did ask to stay. I
15 want to go ahead and apologize, but I want you to know
16 that these lawyers have been working very hard. They've
17 been doing their jobs. Again, this is important
18 business, and I want to make sure that we do our jobs in
19 asking you the questions that are necessary to determine
20 whether or not you are a qualified jury, or excuse me,
21 juror, in the trial of this case.

22 To begin with, I need to remind you that you are
23 still under the oath that you took yesterday. Is that
24 agreeable to you, sir?

25 JUROR NUMBER 233: Yes, ma'am.

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1 THE COURT: Additionally, have you had an
2 opportunity to go through the witness list?

3 JUROR NUMBER 233: Yes, ma'am.

4 THE COURT: Do you know anyone on that witness
5 list?

6 JUROR NUMBER 233: No, not personally, but I
7 recognize the sheriff.

8 THE COURT: Okay. But other than that, you don't
9 have any personal friends on there or any business
10 partners or anything like that?

11 JUROR NUMBER 233: No, ma'am.

12 THE COURT: All right, sir. And additionally,
13 there has been some publicity in the trial of this case.
14 Have you read anything, seen anything on T.V., or have
15 any independent knowledge about this case whatsoever?

16 JUROR NUMBER 233: Nothing.

17 THE COURT: Thank you, sir.

18 JUROR NUMBER 233: I know nothing.

19 THE COURT: I'm going to turn you over to the
20 lawyers now so they can ask questions of you, sir. The
21 only thing we can ask is that you be honest and candid
22 with us. There are no right or wrong answers to these
23 questions. These lawyers are going to ask you about
24 your feelings on the death penalty, on life imprisonment
25 without the possibility of parole. Just tell them

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1 whatever you feel. Okay, sir?

2 JUROR NUMBER 233: I understand.

3 THE COURT: Thank you. Mr. McGuire.

4 MR. MCGUIRE: Thank you, your Honor. Evening, Mr.
5 Fleming.

6 JUROR NUMBER 233: Good evening.

7 MR. MCGUIRE: I'm sorry it took so long to get to
8 you.

9 JUROR NUMBER 233: No worries.

10 MR. MCGUIRE: I'm just going to ask you very
11 directly some questions about your views about the death
12 penalty.

13 JUROR NUMBER 233: Okay.

14 MR. MCGUIRE: And I'm going to start with it can
15 only be given in a murder case. Did you know that?
16 It's restricted to only murder cases.

17 JUROR NUMBER 233: Sure.

18 MR. MCGUIRE: Okay.

19 JUROR NUMBER 233: Makes sense.

20 MR. MCGUIRE: Okay. And the definition of murder
21 in South Carolina, the type of case you'd be judging
22 would involve an intentional act, a deliberate act, to
23 take the life of an innocent person with malice
24 aforethought. And malice means that the person, the
25 accused, the killer, is operating with a black,

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1 malignant heart, fatally bent on evil and wickedness.

2 Pretty heavy language. Agree?

3 JUROR NUMBER 233: I agree.

4 MR. MCGUIRE: And then, for the State to seek the
5 death penalty, they have to come with more than that.
6 It has to be aggravating factors or aggravated murder.
7 And I'm going to tell you that the aggravation in this
8 case is that two people were shot and killed; not just
9 one person, but a double homicide. That makes it
10 aggravating. And it was a woman and child, a four-year-
11 old child. The age of the child, the child was of
12 tender years. That's an aggravating fact, too. Are you
13 with me?

14 JUROR NUMBER 233: Yes, sir.

15 MR. MCGUIRE: In that type of situation, what are
16 your thoughts about the death penalty as a penalty?

17 JUROR NUMBER 233: Honestly, I -- I guess I'd have
18 to know more. How -- let's see. If somebody planned
19 out to murder somebody, and set out to do this, such as
20 a, you know, for example, what happened to that boy a
21 couple days ago, those two fellows.

22 MR. MCGUIRE: I'm not -- I'm from Columbia.

23 JUROR NUMBER 233: Oh. Well, the -- you know, it
24 was planned out. It was something that was set in
25 motion, as opposed to maybe a murder in the heat of the

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1 moment, passion, temporary just crazy with whatever,
2 emotion. You know, I --

3 MR. MCGUIRE: Sure.

4 JUROR NUMBER 233: That's all I got for you. I
5 don't know if --

6 MR. MCGUIRE: No, no, you're doing fine. You're
7 doing fine. I just want to make sure we're on the same
8 page. So, the whole heat-of-passion thing, if it's hot-
9 blooded enough, it's called voluntary manslaughter.
10 It's actually not murder. This would be -- that's why
11 we -- that's why we talk about the element of malice,
12 that evil intent, because that means it's not hot-
13 blooded or in the heat of passion. It's an intentional,
14 deliberate act in taking an innocent life.

15 JUROR NUMBER 233: Okay. I understand.

16 MR. MCGUIRE: Sure.

17 JUROR NUMBER 233: Yeah.

18 MR. MCGUIRE: And the category we're talking about
19 is double homicide with a four-year-old child.

20 JUROR NUMBER 233: I understand, yeah.

21 MR. MCGUIRE: And in that situation, again, give me
22 your thoughts about the death penalty and the life
23 penalty.

24 JUROR NUMBER 233: I -- you know what, I see things
25 on the news, television, newspaper, and my first

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1 instinct is, you know, depending on the crime, you know,
2 that person doesn't deserve to live.

3 MR. MCGUIRE: Okay.

4 JUROR NUMBER 233: That person should be -- should
5 be exterminated, and so, that's how I feel. If I'm the
6 person -- if I'm one of -- if I'm sitting on a jury, and
7 I know I'm going to be -- that person's life is in my
8 hands, you know, it might not be as easy to say execute
9 him, or that person -- I, you know --

10 MR. MCGUIRE: Sure.

11 JUROR NUMBER 233: So I can't really --

12 MR. MCGUIRE: But some people might say that the
13 life penalty is not really severe enough to punish that
14 category of killing, a woman and child. Would you agree
15 with that statement?

16 JUROR NUMBER 233: I can't imagine anything worse.
17 I mean, I think that's -- to me, that's -- that's worse
18 than just having a -- being given a shot and -- and sent
19 away wherever. I think that's -- I think -- I can't
20 imagine anything worse.

21 MR. MCGUIRE: And when you say you can't imagine
22 anything worse, --

23 JUROR NUMBER 233: I would -- I would prefer death,
24 as opposed to spending my life --

25 MR. MCGUIRE: In prison.

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1 JUROR NUMBER 233: Certainly.

2 MR. MCGUIRE: Okay. That's what I was going to ask
3 you to clear it up.

4 JUROR NUMBER 233: Okay.

5 MR. MCGUIRE: I didn't know if you were talking
6 about the act of killing a woman and a child as the
7 worst thing you could imagine, or the penalty of life in
8 prison as the worst thing you can imagine. Not that
9 either one is not terrible.

10 JUROR NUMBER 233: Right.

11 MR. MCGUIRE: Okay. Let me ask you this, and if
12 you were in that decision-making process where you had
13 to decide the life penalty or the death penalty for
14 another human being, would background characteristics
15 of the accused -- to give you an example, they grew up
16 poor, maybe went through some really tough times, maybe
17 did some good things, maybe helped some people out; but
18 just sort of their personality, their character, their
19 characteristics, their background, would that be
20 relevant in that life and death decision-making process?

21 JUROR NUMBER 233: I don't know. Maybe. Maybe.
22 Maybe if he -- if that person had never been a -- had
23 never either assaulted anybody or didn't have a history
24 of being violent and with anybody. Or he was, you know,
25 came from a troubled background where his, you know, the

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1 parents or his family life, you know, kind of put him in
2 situations that he just didn't have the advantages of
3 some.

4 MR. MCGUIRE: Sure.

5 JUROR NUMBER 233: Maybe. But I don't know, you
6 know, for -- for -- for intentionally aggravating to
7 murder somebody, I -- I can't say that would be -- I
8 don't know. I don't know.

9 MR. MCGUIRE: Okay. I remember you stood in line
10 and told us about your work situation. If I told you
11 just honestly that I had a real concern that, for you to
12 be here for two weeks to judge a case, to judge this
13 case, that I had a real concern that your mind would be
14 on the fact that you were not working, would that be a
15 fair statement?

16 JUROR NUMBER 233: Yeah. I mean, it's probably
17 going to -- that's how I'm going to start my day, and
18 that's probably how I'm going to end my day. I can't --
19 I mean, I don't know if I'd be -- I'd try not to think
20 about it, if I was chosen.

21 MR. MCGUIRE: And you're a season -- you're a
22 seasonal --

23 JUROR NUMBER 233: I'm a -- I'm a seasonal
24 fisherman. I'm a sport fishing guide. And so, it's not
25 a -- I don't sell fish. I'm not a wholesale fishing

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1 guide. I --

2 MR. MCGUIRE: People pay you to ride on the boat.
3 You take them out fishing.

4 JUROR NUMBER 233: I take them out fishing, so it's
5 a tourism-based job I have. And my job really goes 'til
6 about the first week of November. And then, I'm -- and
7 then, I have a lot of time on my hands 'til -- 'til the
8 -- the end of February, first of March.

9 MR. MCGUIRE: So, you have just a limited number of
10 days left?

11 JUROR NUMBER 233: I've got about three weeks left
12 to, in essence, harvest my -- my winter.

13 MR. MCGUIRE: To make your money.

14 JUROR NUMBER 233: Yes.

15 MR. MCGUIRE: And that sounds like a significant
16 concern of yours.

17 JUROR NUMBER 233: I mean, --

18 MR. MCGUIRE: Sure.

19 JUROR NUMBER 233: -- it's a concern because no
20 one's going to -- you know, I don't have anything to
21 fall back on, and so, yeah, it's -- it's a concern. I'm
22 not -- not going to be derelict in my responsibility as
23 a -- as a citizen, and but it's -- I -- I certainly wish
24 this trial was --

25 MR. MCGUIRE: Some other time?

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1 JUROR NUMBER 233: Any other time.

2 MR. MCGUIRE: Fair enough. I'm very briefly going
3 to talk to you a little bit about the principles of law
4 involved in a capital case. There's the first part; is
5 the person guilty or not guilty, much like a regular
6 trial. And then, if there's a conviction, we'd move
7 into the penalty phase, and you would engage in this
8 decision making that we're talking about now. Okay?

9 The Judge would tell you, if you were a juror,
10 that, that decision making between the life penalty and
11 the death penalty is called reaching an individual moral
12 judgment, and the penalty phase jury doesn't have to be
13 unanimous like a guilt phase jury. Did you know that?

14 JUROR NUMBER 233: I'm not following you.

15 MR. MCGUIRE: That's a little wordy, isn't it? The
16 first phase, or a regular trial, if somebody's guilty or
17 not guilty, the jury is required to speak with one
18 voice. Everybody, all twelve agree guilt beyond a
19 reasonable doubt.

20 JUROR NUMBER 233: Okay.

21 MR. MCGUIRE: Okay.

22 JUROR NUMBER 233: Okay.

23 MR. MCGUIRE: The penalty phase is a little bit
24 different, because you have different decision-making
25 obligations. It's really like having like twelve

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1 individual juries. And jurors can have different
2 reasons for voting for the life penalty, if they so
3 choose. In fact, the Judge would instruct you that any
4 juror can vote for life for any reason, no reason, or
5 mercy alone. Did you know that?

6 JUROR NUMBER 233: I did not know that.

7 MR. MCGUIRE: Okay. So, and the death penalty is
8 never automatic. Did you know that?

9 JUROR NUMBER 233: I kind of gathered that, or on
10 that, yeah. Yes, sir.

11 MR. MCGUIRE: Okay. And the jury, the jurors,
12 could be unanimous for death, they could be unanimous
13 for life, but they could also end the day agreeing to
14 disagree. Did you know that?

15 JUROR NUMBER 233: I -- I assumed that, that had to
16 be, at some point, a unanimous, you know, cut-and-dry,
17 one way or the other.

18 MR. MCGUIRE: Right. And because most people think
19 that?

20 JUROR NUMBER 233: That's what I assumed, yeah.

21 MR. MCGUIRE: Sure. And most people do. You're in
22 with good company. Most people think exactly that. And
23 because, in a regular case, if the jury didn't agree,
24 then, they'd have to try the case again. It would be a
25 hung jury, and the case would have to be re-tried. But

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1 the penalty phase of a capital case is different. It
2 can be unanimous for the life penalty, unanimous for the
3 death penalty, or the jurors could not reach an
4 agreement. And that's okay, because the Judge would
5 take the case and sentence, and the case would, in fact,
6 end that day. It would not have to be re-tried again.
7 That's why I tell you that.

8 JUROR NUMBER 233: Okay.

9 MR. MCGUIRE: You don't have to concern yourself
10 with what sentence the Judge might give. That's really
11 not the concern of the jury. That's the -- they make
12 the big bucks. That's their job. And I just tell you
13 that so you know that the case would, in fact, end, and
14 not have to be re-tried again. And did you know that,
15 or is that --

16 JUROR NUMBER 233: I didn't know that, but I -- I
17 understand, you know.

18 MR. MCGUIRE: Okay. And could you just agree to
19 respect every other jurors' individual moral judgment,
20 even if it was different from yours?

21 JUROR NUMBER 233: Certainly.

22 MR. MCGUIRE: And if somebody said they wanted to
23 vote for the life penalty for no reason, like the Judge
24 said, you can vote for the life penalty for no reason,
25 and somebody wasn't even able to put it into words,

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1 could you still respect their decision?

2 JUROR NUMBER 233: Yeah, of course.

3 MR. MCGUIRE: Okay. That's all I have for you,
4 sir. Thank you.

5 THE COURT: Solicitor?

6 MR. STONE: Just one moment, your Honor. Mr.
7 Fleming, my name is Duffie Stone. I just have a few
8 questions. My understanding from your answers is that,
9 prior to making a decision to sentence somebody to life
10 or death, you would take everything into consideration
11 before doing that. Is that correct?

12 JUROR NUMBER 233: Yes. Yes, I would.

13 MR. STONE: Okay.

14 JUROR NUMBER 233: But I -- I mean, I'd probably
15 tend to lean toward, even though I think -- even though
16 I think that a life in prison would be -- would be as --
17 as for me personally, it'd be worse than death. I think
18 a humane, lethal injection or however, I would prefer
19 that before I'd have to spend the rest of my life in --
20 I mean, that's -- that's what I'd prefer. But you know,
21 at the same time, I might feel that way, but I, you
22 know, I don't -- don't -- I don't know how I'd feel
23 about sentencing somebody to death.

24 MR. STONE: Okay. Are you telling us, then, if the
25 case were bad enough, you could not sentence somebody to

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1 death?

2 JUROR NUMBER 233: May -- I -- maybe. Maybe I
3 could.

4 MR. STONE: Okay.

5 JUROR NUMBER 233: I wouldn't want to be -- really
6 make that decision, but if I had to, I would.

7 MR. STONE: What Defense attorney was just
8 describing to you is what's called a hung jury when he
9 was talking about the jury might end in a situation
10 where they couldn't all agree, and so, the Judge would
11 sentence. But as far as a unanimous decision, we still
12 ask the jury to go back and deliberate and make a
13 decision whether or not everybody thinks somebody should
14 deserve the life sentence or the death sentence. Do you
15 understand that?

16 JUROR NUMBER 233: Yes, sir.

17 MR. STONE: And if you, in fact, felt like someone
18 deserved death, you would have to sign your name on a
19 form that said the sentence should be death. And when I
20 say should, that's probably not the best term to use,
21 because it's not a recommendation. It is the sentence.
22 Do you understand that?

23 JUROR NUMBER 233: I do.

24 MR. STONE: Could you sign your name on a form that
25 sends somebody to death?

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1 JUROR NUMBER 233: I --

2 MR. STONE: Let me back up. There's no right or
3 wrong answer, and what we're trying to do is just get an
4 honest answer from you. There's no right or wrong
5 answer, but that is an important question, and I do need
6 an answer to it.

7 JUROR NUMBER 233: Sign my name certifying that I
8 think that person should be put to death.

9 MR. STONE: And in fact, that, that sentence will
10 be carried out.

11 JUROR NUMBER 233: And that would be carried out.
12 I mean, I -- I really wouldn't want to have to make that
13 -- that decision. I mean, be honest, I don't -- I mean,
14 I -- I --

15 MR. STONE: It's okay, Mr. Fleming. We're just
16 trying to get an honest --

17 JUROR NUMBER 233: I just --

18 MR. STONE: It's not fair to put you in the spot.
19 It's unfortunate about that.

20 JUROR NUMBER 233: Maybe -- I -- I mean, I -- I
21 don't know. I mean, I -- you know, people on the news,
22 people have done terrible things. I -- I've never had
23 anybody really close to me that was murdered or killed,
24 or anybody in my family, anybody who I had strong
25 emotions for. Now, had somebody done something, what --

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1 you know, what -- to one of my family members, somebody
2 who I -- I love, I could -- probably -- probably
3 wouldn't hesitate to, yes, if I sign my name, I -- yes.
4 Do whatever in my power to -- to put that person --

5 MR. STONE: Right.

6 JUROR NUMBER 233: -- to the -- to death. So, I
7 mean, it's -- it's possible, yes, I guess.

8 MR. STONE: But Mr. Fleming, you don't know anyone
9 in this case; do you?

10 JUROR NUMBER 233: No, sir.

11 MR. STONE: So, the victim is not a family member.

12 JUROR NUMBER 233: No, sir.

13 MR. STONE: All right.

14 JUROR NUMBER 233: I don't know anybody.

15 MR. STONE: So, the determination you'd have to be
16 making as a juror concerns somebody that you don't know.
17 And so, that would be my question. Could you sentence
18 somebody to death if you didn't have that personal --
19 that close, personal contact?

20 JUROR NUMBER 233: I could, I just wouldn't really
21 feel good about it, and I wouldn't, you know, not to
22 shirk my responsibility, could sentence that person --
23 put that person away for life, and wish evil things on
24 them. I just don't know about being party to putting
25 somebody to death, even -- even if they did something

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1 that's so -- so wrong on so many levels. I don't --

2 MR. STONE: Okay. If life is an option, and in
3 this case and every case in a death penalty, life is an
4 option, for whatever reason, would you always pick life
5 over death? And when I say *life*, we're talking about
6 life in prison without the possibility of being
7 released.

8 JUROR NUMBER 233: Probably. I mean, I --
9 probably. I'd just as soon not have to, you know, make
10 that -- you know, I can find somebody guilty. I think I
11 can make a fair assessment of that. But as far as life
12 and death, you know, I just find it hard to commit to --
13 to -- to killing anybody, even -- even just maybe the
14 worst form of person there is.

15 MR. STONE: Sure.

16 JUROR NUMBER 233: And it's not for a religious
17 reason. Certainly, it's not for any other reason, other
18 than I just -- my own conscience? I -- I, you know --

19 MR. STONE: Sure. And Mr. Fleming, you're entitled
20 to your conscience and you're entitled to your beliefs,
21 and I'm not trying to change those in any way. I just
22 want to make sure that I'm clear that, basically, what
23 I'm hearing you say that, as long as a person could
24 receive a life sentence, that's what I would always do,
25 given a choice between life imprisonment and death.

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1 JUROR NUMBER 233: More than -- more than likely, I
2 -- I mean, I -- I guess it just depends on how heinous
3 the circumstances, how malicious it was, how -- if it
4 was thought out and -- and just done in a -- and -- and
5 I know there's two -- two small children involved, and I
6 -- and I can't think of anything worse.

7 MR. STONE: Okay.

8 JUROR NUMBER 233: I can't imagine anything worse.
9 I just don't know what I --

10 MR. STONE: Okay. Thank you, Mr. Fleming.

11 JUROR NUMBER 233: Yes, sir.

12 THE COURT: Fair enough. Sure.

13 MR. MCGUIRE: Very briefly.

14 THE COURT: Okay. Very briefly.

15 MR. MCGUIRE: On the questionnaire, you didn't
16 circle one of the 1, 2, 3 responses. There's a
17 question, and it wasn't circled. So, we started kind of
18 shooting in the dark here. And I understand you might
19 have some reservations and some scruples, but the fact
20 of the matter is, you haven't heard any evidence yet,
21 right?

22 JUROR NUMBER 233: Correct, right.

23 MR. MCGUIRE: Haven't had a trial yet, right?

24 JUROR NUMBER 233: Right.

25 MR. MCGUIRE: You don't know how bad the crime is

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1 yet.

2 JUROR NUMBER 233: Right.

3 MR. MCGUIRE: It could be really heinous and really
4 bad.

5 JUROR NUMBER 233: Right.

6 MR. MCGUIRE: You could, in the proper situation,
7 consider the death penalty as a potential option when
8 you consider everything, the totality of the
9 circumstances.

10 JUROR NUMBER 233: I could consider the death
11 penalty. I -- I -- I could.

12 MR. MCGUIRE: And if the Judge told you that the
13 law would require you to consider everything, everything
14 in aggravation, everything in mitigation, to reach your
15 decision, you could do that.

16 JUROR NUMBER 233: Yes.

17 MR. MCGUIRE: And fairly consider both penalties.
18 You could consider --

19 JUROR NUMBER 233: Both penalties?

20 MR. MCGUIRE: Oh, I'm sorry. You could -- there
21 would only be two penalties on the table, the life
22 penalty, life in prison; or the death penalty. You
23 could consider both of them as options.

24 JUROR NUMBER 233: I could consider both of those
25 as options, yes, sir.

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1 MR. MCGUIRE: Okay. That's all I have. Thank you,
2 sir.

3 JUROR NUMBER 233: Yes, sir.

4 MR. STONE: I understand that you could consider on
5 the questions. Could you give the death penalty?

6 JUROR NUMBER 233: Did I -- I could. I mean, I'd
7 prefer not to. I'd -- I'd -- you know, I just don't
8 want to be -- I -- I could sentence somebody away for
9 the rest of his life and solitary confinement. Like I
10 -- like I said, I -- I would prefer to die before I
11 spent my whatever, remaining life in prison, you know.
12 But I -- I would probably be -- it would be a lot easier
13 for me to send somebody away and face that, than it
14 would be to be the -- one of the parties to end that
15 person's existence.

16 MR. STONE: Okay.

17 JUROR NUMBER 233: So, that's --

18 MR. STONE: Thank you, Mr. Fleming.

19 JUROR NUMBER 233: Yes, sir.

20 THE COURT: Okay. Mr. Fleming, I am going to ask
21 that you just step just right out that door for one
22 minute, and I'll bring you right back in here. I will
23 tell you what we're doing from here. All right, sir?

24 JUROR NUMBER 233: Yes, ma'am.

25 THE COURT: Thank you, sir.

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1 JUROR NUMBER 233 LEAVES COURTROOM.

2 BAILIFF: Door is closed.

3 THE COURT: Thank you. What says the State?

4 MR. STONE: I honestly don't know. I mean, I don't
5 know. He clearly, you know, --

6 THE COURT: Well, let's just ask. What says the
7 Defense?

8 MR. MCGUIRE: I think you can predict we're going
9 to say that he's qualified.

10 THE COURT: Right.

11 MR. MCGUIRE: He alleviated all of my concerns that
12 he can do his civic duty. He seems to be very concerned
13 about not shirking his civic duty --

14 THE COURT: Right.

15 MR. MCGUIRE: -- and following the law. I think he
16 can follow the Court's instructions. I think, when you
17 look at, again, at the answers in the totality, you can
18 say I could, I could, a number of times. He's got some
19 reservations, there's no doubt about it.

20 THE COURT: And he should.

21 MR. MCGUIRE: But I think all good human beings do.

22 THE COURT: I think he should. So, again.

23 MR. STONE: I think he -- I think he's qualified.

24 And it looks like, quite frankly, I don't believe in any
25 day of the week this man would ever give the death

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1 penalty, but I think he answered the questions enough to
2 be qualified under the law, so.

3 THE COURT: Right.

4 MR. STONE: I think he's qualified.

5 THE COURT: Okay. All right. He's qualified. All
6 right, you all. Tomorrow morning.

7 BAILIFF: Are we --

8 JUROR NUMBER 233 ENTERS COURTROOM.

9 THE COURT: I apologize. Come on, Mr. Fleming.

10 BAILIFF: Okay. Just come right here and face the
11 Judge, please.

12 THE COURT: Thank you. Mr. Fleming, we really
13 appreciate you being here. I will tell you that I found
14 you as qualified as a potential juror. You are not a
15 juror on this case yet. As you know, we are running way
16 behind. I am going to ask that you call into the juror
17 line after 6:00 o'clock on Saturday evening. It is
18 going to tell you when you need to report, where we are
19 going to go ahead and select the jury at the time.

20 Again, I remind you, you have not been chosen on
21 the jury. You are just found qualified to be a
22 potential juror. So, just call the number. Whenever it
23 tells you to report, please report, and we look forward
24 to seeing you then. All right, sir?

25 JUROR NUMBER 233: That's Saturday evening?

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1 THE COURT: Saturday after 6:00 o'clock, call that
2 line. There won't be anything on it before. I think
3 we're still going to be doing this, so.

4 JUROR NUMBER 233: Thank you, your Honor.

5 THE COURT: Thank you, Mr. Fleming, very much, sir.

6 JUROR NUMBER 233 LEAVES COURTROOM.

7 THE COURT: All right. 8:30 tomorrow morning.
8 They are calling all the people. We have got the ones
9 that we pushed off tonight, first thing tomorrow morning
10 at 8:30. We've back everyone up a couple of hours, at
11 least, is my understanding.

12 I mean, I, quite frankly, I think we're going
13 through quite well. As long as everyone is ready to
14 keep moving like this and keep going, I'm hopeful we
15 will reach the number of 39 tomorrow.

16 MR. YOUNG: We're on 23, which is moving fast.

17 MR. MACDOUGALL: Considering 23, that's right, your
18 Honor, we are flying. This is record time.

19 MR. MCGUIRE: Yeah.

20 THE COURT: Good. Okay.

21 MR. MCGUIRE: This is about day two speed here. We
22 should be here tomorrow afternoon.

23 THE COURT: Okay. Well, I think we're doing well.
24 So, I hope we're okay. Okay. Goodnight, you all.

25 MR. STONE: Goodnight, you all.

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1 MR. MCGUIRE: Goodnight, Judge.

2 THE COURT: Goodnight.

3 END DAY THREE, THURSDAY,
4 OCTOBER 10, 2013, 8:03 P.M.

5 BEGIN DAY FOUR, FRIDAY,
6 OCTOBER 11, 2013, 9:02 A.M.

7 BY THE COURT:

8 BAILIFF: All rise. Court is now in session, the
9 Honorable Carmen Mullen presiding.

10 THE COURT: Thank you. Please be seated. Good
11 morning. Good morning, Wanda.

12 COURT REPORTER: Hey, good morning.

13 THE COURT: All right. Anything we need to put on
14 the record before we bring the first person in this
15 morning?

16 MR. STONE: Nothing from the State, your Honor.

17 THE COURT: Good to go?

18 MR. MCGUIRE: Nothing from the Defense, your Honor.

19 THE COURT: Appreciate it, you all. All right.
20 Let's bring the first person in. Just when you come in,
21 just let me know who it is, Winston.

22 BAILIFF: Good morning, Judge.

23 THE COURT: Good morning.

24 JUROR NUMBER 419 ENTERS COURTROOM.

25 BAILIFF: Diane Matie.

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1 THE COURT: Good morning. Come on in.

2 BAILIFF: Come on up, ma'am, please.

3 THE COURT: Come on up.

4 BAILIFF: Take a seat in the witness box, please.

5 THE COURT: Good morning.

6 JUROR NUMBER 419: Good morning.

7 THE COURT: Good morning.

8 JUROR NUMBER 419: Good morning.

9 THE COURT: I need to remind you before we begin
10 that you are still under oath. Is that acceptable to
11 you?

12 JUROR NUMBER 419: Yes, ma'am.

13 THE COURT: Thank you. Additionally, there are a
14 few questions that I need to ask you, Ms. Matie, and
15 then attorneys are going to want to talk to you and ask
16 you a few questions.

17 I want you to understand that there are no right or
18 wrong answers here. The only thing we expect of you is
19 for you to be honest and candid, and that is absolutely
20 it. They are going to ask you questions on your
21 feelings on the death penalty and life imprisonment, and
22 they're going to ask you possibly about some facts in
23 this case. Again, just answer them truthfully,
24 honestly.

25 If there's anything you don't understand, sometimes

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1 it can be a heavy subject or complicated, as far as the
2 questions, please just ask them to slow down or back up,
3 and they'll rephrase it.

4 I do want to ask you, ma'am, did you have an
5 opportunity to look through the witness list back in the
6 jury assembly room?

7 JUROR NUMBER 419: Yes.

8 THE COURT: Do you know anyone on that list?

9 JUROR NUMBER 419: No.

10 THE COURT: All right. And additionally, ma'am,
11 there has been some publicity in this case. Have you
12 read anything, seen anything, heard anything, or have
13 any independent knowledge whatsoever about this case?

14 JUROR NUMBER 419: All I know is what I read on the
15 form.

16 THE COURT: On the questionnaire that was sent to
17 you. All right, ma'am. Well, I appreciate that, and I
18 am going to just turn it over to the lawyers.

19 MR. MCGUIRE: Good morning. Is it Matie?

20 JUROR NUMBER 419: Yes.

21 MR. MCGUIRE: I got that right?

22 JUROR NUMBER 419: Yes, you did.

23 MR. MCGUIRE: Thank you, ma'am. Good morning. My
24 name's Bill, Bill McGuire. I'm one of the lawyers here
25 on the case, and I'm just going to ask you some

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1 questions about your views about capital punishment and
2 the legal system, that sort of thing.

3 I don't want to embarrass you, but I saw that one
4 of your children was incarcerated. Can you tell me
5 about that? Or is it too personal and you'd rather not?

6 JUROR NUMBER 419: No, it's all right. I'm just
7 trying to think of the right words. It's a sexual
8 charge.

9 MR. MCGUIRE: Okay. Did you think he was treated
10 fairly by the legal system?

11 JUROR NUMBER 419: He had a lawyer that lied to
12 him.

13 MR. MCGUIRE: Okay.

14 JUROR NUMBER 419: That's --

15 MR. MCGUIRE: And what about the prosecution part?
16 Were they fair with him?

17 JUROR NUMBER 419: He -- he did a -- I'm sorry. He
18 did a plea bargain.

19 MR. MCGUIRE: Okay. Okay. But do you think the
20 prosecutors, the state government, did they treat him
21 fairly?

22 JUROR NUMBER 419: I actually wasn't there.

23 MR. MCGUIRE: Okay.

24 JUROR NUMBER 419: Because it was in Pennsylvania.

25 MR. MCGUIRE: Okay. And that's kind of a sensitive

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1 subject, but I just want to make sure that you wouldn't
2 have any bias against either side in a case. You can be
3 fair to both the State and the Defense?

4 JUROR NUMBER 419: Yes.

5 MR. MCGUIRE: Okay. The kind of case that brings
6 us here today, it's a capital case, which means the
7 State is asking for, seeking, the death penalty. And
8 obviously, the death penalty is only reserved for murder
9 cases. And so we're communicating clearly, I'm going to
10 start with the definition of murder in South Carolina.

11 My guess is you've never heard that definition or
12 know it.

13 JUROR NUMBER 419: No.

14 MR. MCGUIRE: Okay. And I'm going to help you
15 there. So, murder is defined in South Carolina as the
16 unlawful killing of another human being with malice
17 aforethought. And the malice part means that the killer
18 is operating with a black and malignant heart bent on
19 evil and wickedness. So, it's the intentional killing
20 of an innocent person with an evil intent. It's not an
21 accident, not self-defense. It's not somebody who's so
22 crazy they don't know what they're doing. Somebody
23 meant to kill, chose to kill, killed an innocent person.
24 Okay. Are you with me?

25 JUROR NUMBER 419: Yes.

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1 MR. MCGUIRE: Okay. And for the State to ask for
2 the death penalty, for someone to be eligible for the
3 death penalty, the State has to bring what's called
4 aggravation evidence. It has to be aggravated murder.
5 And specifically, the aggravation at issue in this case
6 would be that two people were shot and killed, a mother
7 and a four-year-old child.

8 Now, in that situation, some people might say that
9 the death penalty would be the appropriate penalty.
10 What do you think about that?

11 JUROR NUMBER 419: I don't know, because I don't
12 know why. I mean, all we -- all I have is the facts
13 that it was done.

14 MR. MCGUIRE: Exactly. And that's really -- you
15 know, we can't try the whole case in front of you just
16 for the sake of asking questions. We can only really
17 give you just some big chunks and some big pieces.

18 But in the category of a deliberate, intentional
19 killing of two people, one a child, is the life penalty
20 severe enough to punish that kind of act?

21 JUROR NUMBER 419: No. I believe in capital
22 punishment when it's needed.

23 MR. MCGUIRE: Okay. And if it's the intentional
24 killing of a mother and child, the life-in-prison
25 penalty, let somebody live their years in prison, that's

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1 not severe enough to punish that kind of intentional
2 killing.

3 JUROR NUMBER 419: No.

4 MR. MCGUIRE: Okay. And you look like you've given
5 some careful thought to your answers.

6 JUROR NUMBER 419: Yes.

7 MR. MCGUIRE: And they are a reflection of your
8 values.

9 JUROR NUMBER 419: Yes.

10 MR. MCGUIRE: Your moral code.

11 JUROR NUMBER 419: Yes.

12 MR. MCGUIRE: Who you are.

13 JUROR NUMBER 419: Yes.

14 MR. MCGUIRE: Emanates from a deep place.

15 JUROR NUMBER 419: Yes.

16 MR. MCGUIRE: I can't change your views.

17 JUROR NUMBER 419: No.

18 MR. MCGUIRE: Judge can't change your views.

19 JUROR NUMBER 419: No.

20 MR. MCGUIRE: State can't change your views.

21 JUROR NUMBER 419: No.

22 MR. MCGUIRE: Okay. With that, Judge, I'm going to
23 stand down.

24 THE COURT: Okay. Mr. Stone.

25 MR. STONE: Ms. Matie, hey. My name is Duffie

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1 Stone. You answered a questionnaire that was sent to
2 you for this.

3 JUROR NUMBER 419: Yes.

4 MR. STONE: Is that correct?

5 JUROR NUMBER 419: Yes.

6 MR. STONE: And there are a couple of questions in
7 there. The first question that I want to ask you about
8 is one that says what type of juror are you. And in a
9 murder case, it says you're somebody that would always
10 give the death penalty; somebody that would never give
11 the death penalty; and then somebody that would take
12 everything into consideration, including not only the
13 aggravation, but also anything the Defense might offer,
14 as far as mitigation. Your circle, and I believe your
15 answer, was the third type. Is that correct?

16 JUROR NUMBER 419: Yes.

17 MR. STONE: Is that still your position? I'm
18 getting a feeling that, that's not necessarily your
19 position anymore.

20 JUROR NUMBER 419: When -- when I filled it out, I
21 did the first one first. And then, I read the other
22 two.

23 MR. STONE: Okay.

24 JUROR NUMBER 419: And I thought, well, sometimes
25 there's extenuating circumstances.

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1 MR. STONE: Right.

2 JUROR NUMBER 419: That's why I did the third.

3 MR. STONE: Well, and then, I noticed that next
4 question right after that is that, whether or not a
5 defendant's background, somebody who was convicted of
6 murder, that their background would be relevant in your
7 decision. And I think you checked, yes, that it would
8 be.

9 JUROR NUMBER 419: I don't remember the question.

10 MR. STONE: Okay.

11 JUROR NUMBER 419: But tell me, and I'll answer it
12 again.

13 MR. STONE: Sure.

14 THE COURT: Here. Mr. Stone, I'm going to give her
15 a copy, if you don't mind.

16 MR. STONE: Yes, that would be great.

17 THE COURT: It's this question, ma'am, right there.
18 Right there.

19 JUROR NUMBER 419: Yes.

20 MR. STONE: All right. Is that the -- do you
21 recall that question now?

22 JUROR NUMBER 419: No.

23 MR. STONE: Okay.

24 JUROR NUMBER 419: I don't recall it, but --

25 MR. STONE: And that's fine. How would you answer

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1 that question?

2 JUROR NUMBER 419: What do you -- I'd answer yes.

3 MR. STONE: Okay. The reason I'm asking is, is I
4 want to make sure, and I didn't know if you understood
5 the Defense attorney's question; but his question
6 basically was, in a situation in which you had somebody
7 that committed murder and that they killed a woman and
8 her four-year-old child, that you could never consider
9 life in prison; that you wouldn't consider anything
10 other than the death penalty. Is that correct, or is
11 that -- that was my understanding. I just didn't know
12 if you understood his question or not.

13 JUROR NUMBER 419: I don't understand how that's
14 related to what you're asking.

15 MR. STONE: Well, that's a good question, because
16 that's not a very good question. So, let me just ask
17 you straight up. If we are, say, dealing with a case in
18 which somebody has been convicted of murder, and of
19 convicted murdering not only an adult, but also a four-
20 year-old child, would you take into consideration
21 circumstances about the Defendant's background, or would
22 you ignore that, and always give somebody the death
23 penalty?

24 JUROR NUMBER 419: If it was proven the person did
25 it, they'd be guilty. Definitely.

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1 MR. STONE: Okay. Once somebody is proven guilty,
2 there's two stages to this trial. And the second stage
3 is sentencing, and that's what we're talking about.
4 When it comes to sentencing, your choices are either
5 life imprisonment or the death penalty. And what we all
6 want to know today -- and there's no right or wrong
7 answer.

8 JUROR NUMBER 419: Okay.

9 MR. STONE: We just want to make sure that we
10 understand your feelings. If you have already convicted
11 somebody of murdering a child and murdering a woman, --

12 JUROR NUMBER 419: I would say --

13 MR. STONE: -- could you still bring everything
14 into consideration, or is it always going to be the
15 death penalty?

16 JUROR NUMBER 419: No, it'd be the death penalty.

17 MR. STONE: Thank you, ma'am.

18 JUROR NUMBER 419: I misunderstood that.

19 MR. STONE: That's fine. Thank you so much.

20 THE COURT: Ms. Matie, that's fine. Ma'am, I'm
21 going to go ahead and excuse you from the trial of this
22 case. I appreciate you coming in here. You do not need
23 to report on Monday.

24 JUROR NUMBER 419: Okay.

25 THE COURT: And again, thank you for your candor.

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1 JUROR NUMBER 419: All right.

2 BAILIFF: Thank you, ma'am.

3 JUROR NUMBER 419 LEAVES COURTROOM.

4 JUROR NUMBER 191 ENTERS COURTROOM.

5 BAILIFF: Your Honor, Lucas Delano.

6 THE COURT: Come on in, sir.

7 BAILIFF: This way, sir, please.

8 THE COURT: Come on around. Good morning.

9 JUROR NUMBER 181: Good morning.

10 BAILIFF: Go up and take a seat in the witness box,
11 please.

12 JUROR NUMBER 181: Thank you.

13 THE COURT: How is your wife doing?

14 JUROR NUMBER 181: Good morning. She's great,
15 thank you.

16 THE COURT: Very good. All right. All right. Mr.
17 Delano, there are a number of questions that these
18 attorneys need to ask you. They are going to ask you
19 for your opinions, your feelings on the death penalty,
20 punishment of life imprisonment without the possibility
21 of parole. Those are all proper questions. The only
22 thing anyone can ask in this room is that you be honest
23 and candid in your responses.

24 I will tell you, some of the questions can be hard,
25 and a lot of people don't think about them until they're

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1 actually put in this position. But I want you to
2 understand the importance here, which is why I
3 apologize. We had a delay yesterday, bringing you back
4 again. This is important business, and we really need
5 to know what your thoughts and feelings are.

6 Before we start, though, I need to ask you, did you
7 have an opportunity to look at the witness list, and do
8 you know anyone on that witness list, either one?

9 JUROR NUMBER 181: No. I mean, I'd seen the name
10 Sheriff Tanner.

11 THE COURT: Okay.

12 JUROR NUMBER 181: Only in the paper. And then,
13 there --

14 THE COURT: But you don't know anyone personally or
15 business?

16 JUROR NUMBER 181: There -- there's another name on
17 there, Scott Hunter. It was B-38. I can't imagine it's
18 the same person, but I know a -- the golf pro at Wexford
19 Plantation on Hilton Head.

20 THE COURT: Okay.

21 JUROR NUMBER 181: His name is Scott Hunter.

22 THE COURT: Okay.

23 JUROR NUMBER 181: Fairly common name.

24 THE COURT: I don't believe it is.

25 JUROR NUMBER 181: That was the only other person.

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1 THE COURT: Okay. I appreciate that. Also, sir,
2 there has been some publicity about this case.

3 JUROR NUMBER 181: Um-hmm.

4 THE COURT: Have you read anything, seen anything,
5 heard anything, or have any independent knowledge about
6 the case?

7 JUROR NUMBER 181: No, other than what was
8 presented in the packet.

9 THE COURT: Okay.

10 JUROR NUMBER 181: That I was mailed.

11 THE COURT: And I understand there may have been a
12 couple of articles in the *Packet*. Do you remember which
13 articles you read, or was it recent or back a few years
14 ago, or?

15 JUROR NUMBER 181: No, I meant the -- the juror
16 information packet that was sent to me.

17 THE COURT: The juror information packet.

18 JUROR NUMBER 181: Not -- not the *Island Packet*.

19 THE COURT: That *Packet*.

20 JUROR NUMBER 419: Right.

21 THE COURT: All right.

22 JUROR NUMBER 181: Yeah.

23 THE COURT: Well, I appreciate that. Again, thank
24 you for your candor. I am going to turn it over to the
25 attorneys. I'll go ahead and let them ask you some

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1 questions.

2 JUROR NUMBER 181: Okay.

3 THE COURT: All right, sir?

4 JUROR NUMBER 181: Thank you.

5 THE COURT: And I need to remind you, you are still
6 under the oath you took on Wednesday.

7 JUROR NUMBER 181: Yes, ma'am.

8 THE COURT: Thank you.

9 MR. YOUNG: Good morning, Mr. Delano. I understand
10 that you and I have something in common. My wife's
11 expecting in January.

12 JUROR NUMBER 181: Congratulations.

13 MR. YOUNG: Congratulations to you, too.
14 Everything still going okay?

15 JUROR NUMBER 181: Yeah, yeah, very good.

16 MR. YOUNG: You were just talking with Judge Mullen
17 a little bit about the case knowledge question, and that
18 you had just reviewed this packet, right?

19 JUROR NUMBER 181: Yes, sir.

20 MR. YOUNG: But you wrote:

21 *Read all the Island Packet articles*
22 *after receiving this summons.*

23 JUROR NUMBER 181: My wife Googled them, and I
24 didn't read them. She said she was looking at them.
25 And I really didn't have anymore info, other than what

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1 was given to me there; that there was -- the defendant
2 had allegedly murdered people. And then, she read about
3 it. And I didn't read those articles, because it had
4 said not to.

5 MR. YOUNG: Okay. All right. All right. And
6 then, the next question was:

7 *Based on what you've heard about*
8 *this case, now or from any source, have*
9 *you formed an opinion about the defendant*
10 *or the punishment that he should receive?*

11 JUROR NUMBER 181: I mean, no, no opinion. I mean,
12 I want to hear facts, and I want to -- no, I don't have
13 an opinion. Did I write that I had --

14 MR. YOUNG: And you wrote yes.

15 JUROR NUMBER 181: Well, I guess what I probably
16 meant was that -- with that, was that I feel pretty
17 strongly, I guess, that, if someone murdered people --
18 person, people, that they -- if that's a fact, that
19 their -- they probably deserve to be judged or however.
20 I -- I don't know the process, but --

21 MR. YOUNG: Sure.

22 JUROR NUMBER 181: -- I guess what I meant by that
23 was that, yeah, that, if the facts are that he killed
24 someone, he needs to be punished in that regard.

25 MR. YOUNG: Okay.

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1 JUROR NUMBER 181: I mean, whether there's some
2 sort of insanity or something else, I -- I don't know.
3 I think that's probably what I meant there.

4 MR. YOUNG: Okay. And well, that takes me to my
5 next question. Let's talk about this. And murder in
6 South Carolina is the killing of another with malice
7 aforethought.

8 JUROR NUMBER 181: Okay.

9 MR. YOUNG: Okay? And what malice aforethought
10 means is like, it was intentional, they meant to do it.
11 It was an evil intent.

12 JUROR NUMBER 181: Okay.

13 MR. YOUNG: We call it black-hearted murder in the
14 case law in South Carolina. It means that it wasn't in
15 self-defense; it wasn't an accident; it wasn't an
16 argument that got out of control. No heat of passion;
17 they weren't insane; they knew the difference between
18 right and wrong.

19 JUROR NUMBER 181: Um-hmm.

20 MR. YOUNG: They knew what they were doing; meant
21 to do it; and killed two innocent people, a mother and a
22 four-year-old child.

23 JUROR NUMBER 181: Right.

24 MR. YOUNG: Okay. So, that's the type of case that
25 we're talking about. In that situation, in that

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1 category of cases, some people say, for me, murder of
2 two people, a mother and a four-year-old child, to me,
3 the death penalty is the only appropriate punishment for
4 that guilty murderer.

5 JUROR NUMBER 181: Um-hmm.

6 MR. YOUNG: Is that you?

7 JUROR NUMBER 181: That's how I feel, yes.

8 MR. YOUNG: That just based on the fact that an
9 innocent four-year-old child was included in the two
10 murders, for you, the only appropriate punishment would
11 be the death penalty.

12 JUROR NUMBER 181: Only appropriate punishment. I
13 -- I certainly am not already set, and anything I hear
14 from this point forward, I can't change my mind, but
15 yes. Yeah, from what --

16 MR. YOUNG: You're just talking about from where
17 you start.

18 JUROR NUMBER 181: Right. Yeah, that's where I
19 start, yeah.

20 MR. YOUNG: And life in prison, --

21 JUROR NUMBER 181: Um-hmm.

22 MR. YOUNG: -- which you said costs a lot of money.

23 JUROR NUMBER 181: Um-hmm.

24 MR. YOUNG: And that's something that you wrote on
25 your questionnaire, as far as what your feelings about

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1 what life in prison were.

2 JUROR NUMBER 181: Yeah.

3 MR. YOUNG: Life in prison for that guilty murderer
4 of two innocent people, a mother and a four-year-old
5 child, --

6 JUROR NUMBER 181: Um-hmm.

7 MR. YOUNG: -- is not a severe enough penalty.

8 JUROR NUMBER 181: I don't think so. Correct.

9 MR. YOUNG: In fact, you went on to say that the
10 death penalty was used too seldom, and that you thought
11 we should use it more.

12 JUROR NUMBER 181: I wrote that for that same
13 reason. I think it probably costs the State or whoever
14 is paying for it, the taxpayers, a lot of money.

15 And you're right, it's something that you don't
16 think about until you have that question in front of
17 you, a lot. So, it's hard, and I kind of wanted to
18 write truthful. And yeah, that's kind of how I felt,
19 was that, certainly, I don't know all the cases, but I
20 bet if I went down each one of them one by one, I would
21 probably think that more so than not that it would be
22 justified, the death penalty. That's my personal
23 opinion.

24 MR. YOUNG: Sure, and that's all we're -- and
25 there's no right or wrong answer.

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1 JUROR NUMBER 181: Right. Sure. I understand.

2 MR. YOUNG: This is just how you feel.

3 JUROR NUMBER 181: Um-hmm.

4 MR. YOUNG: Right? There was a final question on
5 there about determining what punishment should be given
6 to any defendant convicted of murder:

7 *Do you believe the background and/or*
8 *life experiences of the guilty murderer is*
9 *relevant?*

10 And you checked no on that.

11 JUROR NUMBER 181: Um-hmm.

12 MR. YOUNG: Is that because stuff like how he grew
13 up or how he was raised, whether or not he was abused as
14 a child, that stuff that doesn't factor into your
15 decision making about whether or not somebody gets the
16 death penalty or life?

17 JUROR NUMBER 181: That -- yeah, that's how I -- I
18 meant that. I -- I understand that there could be
19 extenuating circumstances, but, if it happened once --
20 it's not their fault that they were abused or whatever
21 it was, but that it is their fault that they murdered
22 someone. And --

23 MR. YOUNG: And if they were abused years ago, --

24 JUROR NUMBER 181: Right.

25 MR. YOUNG: -- and it doesn't relate directly to

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1 the crime, --

2 JUROR NUMBER 181: Um-hmm.

3 MR. YOUNG: -- then, do you consider it when
4 deciding what punishment is appropriate for you?

5 JUROR NUMBER 181: I think I would consider it, but
6 I think my predisposition is that it doesn't have much
7 bearing -- or not that it doesn't have much bearing, but
8 the crime is a separate. Although, maybe there's some
9 correlation, or there's some -- I think that the crime
10 itself still warrants that extreme punishment,
11 regardless of -- of possible previous incident that
12 caused it.

13 MR. YOUNG: And prior to you and I talking about
14 what the definition of murder was, --

15 JUROR NUMBER 181: Um-hmm.

16 MR. YOUNG: -- and the fact that you were being
17 asked about the punishment on a case where two people, a
18 mother and a four-year-old child, were killed, you had
19 this question about sentencing considerations where
20 there were three types listed, right?

21 JUROR NUMBER 181: Um-hmm. Um-hmm.

22 MR. YOUNG: Do you recall that question? And one
23 was like, murder, always death. The second one was
24 murder, never death. And then, the third one was
25 murder, sometimes death.

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1 JUROR NUMBER 181: I'm sorry. I don't -- I don't
2 recall the question exactly.

3 MR. YOUNG: Sure. I'm just going to show you your
4 questionnaire.

5 JUROR NUMBER 181: Oh, yeah. That always vote the
6 death penalty, never. And I just found always and never
7 to be too strict.

8 MR. YOUNG: Okay.

9 JUROR NUMBER 181: So, yeah, of course I would
10 consider the facts. My leaning is that the death
11 penalty is appropriate for murder charges in general,
12 but of course I would consider the facts.

13 MR. YOUNG: Okay. And in this case, where you have
14 the mother and a four-year-old child, --

15 JUROR NUMBER 181: Um-hmm.

16 MR. YOUNG: -- you're wrote death penalty is the
17 appropriate punishment.

18 JUROR NUMBER 181: Yes, sir.

19 MR. YOUNG: Thank you.

20 MR. STONE: Mr. Delano, my name is Duffie Stone.
21 How are you today?

22 JUROR NUMBER 181: Good, thank you.

23 MR. STONE: It sounds like what you're telling us
24 is that you are not comfortable saying that you would
25 always give the death penalty; you are not comfortable

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1 saying you would never give the death penalty; because
2 both of those are -- and I don't want to put words in
3 your mouth -- but too strict. How did you put that?

4 JUROR NUMBER 181: Not strict. I don't want to say
5 narrow-minded either. I don't want -- although I have
6 some strong beliefs, --

7 MR. STONE: Sure. Right.

8 JUROR NUMBER 181: -- nothing strong enough that
9 nothing could sway me.

10 MR. STONE: Got you.

11 JUROR NUMBER 181: So, I don't want to say always
12 or never. Same reason I would never say -- never say
13 always and never.

14 MR. STONE: Sure.

15 JUROR NUMBER 181: Yeah. I just mean that I
16 consider myself a rational, reasoning person. So, I
17 don't -- even though I have a, as I told him --

18 MR. STONE: Okay.

19 JUROR NUMBER 181: -- predisposition or I know what
20 I probably think, I'm not going to go in with the notice
21 that, no matter what I hear, I'm still going to still
22 recommend the death penalty.

23 MR. STONE: Okay. So, you lean toward the death
24 penalty. If I were to ask you if the facts were bad
25 enough could you could give the death penalty, your

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1 answer would be?

2 JUROR NUMBER 181: Yes.

3 MR. STONE: On the other hand, if there were other
4 circumstances, whatever those might be, whether they are
5 something about the defendant, something about the
6 circumstances of the facts or the crime, could you also
7 consider life imprisonment, what would your answer be?

8 JUROR NUMBER 181: Yes.

9 MR. STONE: Now, life in prison in South Carolina
10 means life without parole.

11 JUROR NUMBER 181: Um-hmm.

12 MR. STONE: Which, there's nothing fancy about
13 that. You get life; you go to prison; you stay in
14 prison until you're dead.

15 JUROR NUMBER 181: Um-hmm.

16 MR. STONE: And I understand you were concerned a
17 little bit about as far as costs are concerned. The
18 Judge, however, would instruct you that's not your
19 concern.

20 JUROR NUMBER 181: Right.

21 MR. STONE: Your determination's going to have to
22 be made on the facts as you hear them, the evidence,
23 consideration of both aggravating circumstances, which
24 would include the death of a child, as well as any
25 mitigation circumstances, which would be anything the

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1 Defense would want to bring up, --

2 JUROR NUMBER 181: Okay.

3 MR. STONE: -- and that you were to listen to that.
4 Could you follow those instructions?

5 JUROR NUMBER 181: Yes.

6 MR. STONE: And so, you can consider all of the
7 circumstances before you make the sentencing
8 determination.

9 JUROR NUMBER 181: Yes.

10 MR. STONE: Okay. Thank you, sir. I appreciate
11 your answers.

12 JUROR NUMBER 181: Um-hmm.

13 THE COURT: Further?

14 MR. YOUNG: Mr. Delano, I understand that you want
15 to do your job as a juror and follow the Court's
16 instruction, correct?

17 JUROR NUMBER 181: Correct, yeah.

18 MR. YOUNG: And you're going to listen to the
19 Court's instruction.

20 JUROR NUMBER 181: Um-hmm.

21 MR. YOUNG: And follow them to the best of your
22 ability.

23 JUROR NUMBER 181: Um-hmm.

24 COURT REPORTER: Is that yes?

25 JUROR NUMBER 181: Yes.

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1 MR. YOUNG: In this particular case, in this
2 category of cases that we're talking about with the
3 mother and four-year-old child, --

4 JUROR NUMBER 181: Um-hmm.

5 MR. YOUNG: -- you just need to tell us, are you --
6 at death -- you start at death?

7 JUROR NUMBER 181: Yes, I start at death.

8 MR. YOUNG: Okay. You're saying that there might
9 be some evidence that could be presented by the Defense.

10 JUROR NUMBER 181: I say that I don't exclude that
11 possibility.

12 MR. YOUNG: Okay.

13 JUROR NUMBER 181: I can't think of anything off
14 the top of my head, but let's say I don't know, there
15 was another person there or something like that. Who
16 knows? I don't know at this point, but I start -- just
17 hearing that a person killed his wife and four-year-old
18 child, I start he should probably receive the death
19 penalty; and then, I will decide from there from the
20 facts that I've heard, which are few. Yes, I start at
21 death, but I would -- I would listen to everything
22 before making my final decision.

23 MR. YOUNG: And your example of something that
24 might talk you out of that, something that might be
25 presented by the Defense --

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1 JUROR NUMBER 181: Um-hmm.

2 MR. YOUNG: -- is that there was another
3 perpetrator involved?

4 JUROR NUMBER 181: I don't know. Maybe there's
5 some spectacular piece of evidence where he was in
6 Florida that day, or I -- I don't -- I don't know. It
7 -- it would probably have to be pretty -- it would have
8 to be something that I considered a true fact that was
9 that he didn't actually do this.

10 MR. YOUNG: Okay,

11 JUROR NUMBER 181: Or someone else did, or
12 physically pull the trigger, that kind of thing.

13 MR. YOUNG: But if we're talking --

14 COURT REPORTER: I'm sorry, what?

15 JUROR NUMBER 181: Physically pull the trigger.
16 Sorry.

17 MR. YOUNG: But if we're talking about somebody
18 guilty, guilty, you got the right guy, no question, no
19 -- you and eleven other people, beyond any and all
20 reasonable doubt, are convinced. Right guy, guilty,
21 guilty. In that situation, you're at death.

22 JUROR NUMBER 181: Yes, sir.

23 MR. YOUNG: And nothing is going to change that.
24 Why I said nothing, right?

25 JUROR NUMBER 181: Yeah.

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1 MR. YOUNG: There could be something very
2 explosive.

3 JUROR NUMBER 181: Well, for the situation you've
4 just -- just described where I'm a hundred percent sure
5 that he's the guy, then, yes, I'm at death, and I don't
6 see why I would change that at this point.

7 MR. YOUNG: All right. Thank you, Mr. Delano.

8 MR. STONE: Just very briefly. This process is a
9 little bit confusing to jurors, and it's not something
10 that happens every day. In a death penalty case, there
11 are two -- it's called bifurcation. There are two
12 different types of trials. The first trial you sit on,
13 you determine whether or not somebody's guilty or not.
14 The same jury, however, then listens, if they find the
15 defendant is guilty, they then listen to determine from
16 both the State, as well as the Defense, what the proper
17 sentence should be.

18 So, from the first standpoint, we assume that the
19 jury has said he's guilty. He's guilty of murder; he's
20 killed a woman; he's killed a four-year-old child.
21 Then, the facts are presented to you from both the State
22 and the Defense to whether or not he should receive
23 either one of two things, either life in prison or the
24 death penalty.

25 So, the question we have is, assuming that you have

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1 found him guilty at this end, you're sitting on the jury
2 now, will you listen to both sides and make a
3 determination about life or death? Or have you already
4 decided, after you found him guilty, that nothing's
5 going to sway your opinion; it's just going to be death?

6 JUROR NUMBER 181: There's -- there's not a -- it's
7 not nothing. I can't think of anything --

8 MR. STONE: Sure.

9 JUROR NUMBER 181: -- at this point that would
10 change my mind.

11 MR. STONE: Right.

12 JUROR NUMBER 181: But I have excluded that. I
13 certainly would -- yes, if he's guilty, death penalty.
14 But I can't think -- I can't -- I can't say right now
15 that I'm not going to listen to, I won't change my mind,
16 period. I just don't think that's responsible of me. I
17 feel like I have to listen to everything, and then my
18 opinion is probably still going to be death penalty is
19 warranted. But at this point, I can't sit up here and
20 say that, no, I'm not going to change my mind.

21 MR. STONE: Okay. And that's what we're after. We
22 really just want the honest answer.

23 JUROR NUMBER 181: Yeah.

24 MR. STONE: Because the Judge would instruct you,
25 were you to be on the jury, --

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1 JUROR NUMBER 181: Right.

2 MR. STONE: -- that you would have to listen to
3 both sides and make that determination. If you can't
4 follow that, we need to understand that. That's all
5 we're asking.

6 JUROR NUMBER 181: Okay.

7 MR. STONE: If you can follow it, we need to
8 understand that, too.

9 JUROR NUMBER 181: Yes, sir.

10 MR. STONE: So.

11 JUROR NUMBER 181: I can follow that.

12 MR. STONE: Okay. Thank you, sir.

13 JUROR NUMBER 181: Thank you.

14 THE COURT: Anything further?

15 MR. YOUNG: No.

16 THE COURT: Mr. Delano, I want to make sure that we
17 understand and we have gotten to the point, if we do get
18 to that second point in the trial, the jury will have
19 already, at that point, decided that Mr. Daise was
20 guilty of a double homicide, wherein he killed his
21 girlfriend and a four-year-old child.

22 JUROR NUMBER 181: Um-hmm.

23 THE COURT: All right? So, we're going to go ahead
24 and go with malice aforethought. This is not self-
25 defense; not an accident; not heat of passion. This is

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1 straightforward murder.

2 Once the jury has decided that, we would go into
3 the penalty phase.. The only two choices a jury would
4 have to choose from after that is life imprisonment
5 without parole or the death penalty.

6 What I want to know from you is, is, if you have,
7 sitting as juror, if you've decided that he is guilty
8 of, again, premeditated, malice murder, can you consider
9 mitigating evidence offered by the Defense to consider a
10 life sentence, as opposed to the death penalty?

11 Or, I'm going to instruct you that the law of the
12 state says that, for any reason, no reason at all, or
13 simple mercy, you can give someone, a jury can give
14 someone a life imprisonment sentence versus the death
15 penalty.

16 My question is, is can you keep an open mind, or
17 are you so predisposed, and that was your word, --

18 JUROR NUMBER 181: Right.

19 THE COURT: -- that you couldn't consider that, if
20 I ordered you to?

21 JUROR NUMBER 181: I -- I could consider it, yes.

22 THE COURT: And I just want to make sure, because
23 you kind of used the word *predisposed*, and that, in my
24 mind, had a concern.

25 JUROR NUMBER 181: Um-hmm.

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1 THE COURT: Again, I need to make sure that you can
2 follow my instructions, follow the law. And I see that
3 you're a mathematician, so I understand that, you know,
4 you're very rational in your reasoning, and it's clear.
5 But I want to make sure that you appreciate that you
6 have to keep an open mind, because that is what's
7 required of the law.

8 You would not be qualified to sit on a jury if you
9 sat here and told me that, once you believe someone was
10 guilty of, again, a --

11 JUROR NUMBER 181: Um-hmm.

12 THE COURT: -- murder, a double homicide, if you
13 aren't able to keep an open mind and continue to listen
14 to the mitigation, then, you wouldn't be an appropriate
15 person to sit. Do you understand that?

16 JUROR NUMBER 181: I understand. And I think I
17 understand that I've gained so much more knowledge about
18 the definitions here that we're talking about, that I've
19 never understood or thought of before. So, of course,
20 the more you say, of course, yes, I would be able to
21 rationally make that decision. I haven't decided
22 already. Then, I could consider, yeah, the alternative
23 to death, if I was ordered to do so, of course.

24 THE COURT: Okay. All right, sir. I am going to
25 ask that you just step out the door, if you would. We

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1 are going to be right back with you shortly. Okay.

2 Thank you.

3 JUROR NUMBER 181 LEAVES COURTROOM.

4 BAILIFF: Door is closed, your Honor.

5 THE COURT: Solicitor?

6 MR. STONE: I think he's qualified, your Honor. He
7 clearly leans towards death in the same way that Mr.
8 Fleming last night leaned toward life. I think that
9 they're both qualified, just as if I -- the same thing I
10 said last night.

11 MR. YOUNG: This is not a horse-trading position.
12 He moved -- he said that Mr. Fleming was qualified.

13 THE COURT: I understand.

14 MR. YOUNG: I'm not going to try and balance
15 jurors.

16 THE COURT: Right.

17 MR. YOUNG: The test is not absolute impairment;
18 the test is substantial impairment, and if your Honor is
19 convinced that he is substantially impaired.

20 You know, *Morgan* goes into great lengths about
21 asking jurors about their own impairment. If ordered,
22 will they follow the law, and they say yes. But a
23 juror's views or the juror's opinion of his own
24 impairment is not weight, and it shouldn't be given any
25 deference by your Honor in determining whether or not

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1 he's substantially impaired.

2 He starts at death. He puts a burden on the
3 defendant. He burdens the defendant to prove why he
4 should live. He doesn't care about mitigation. He
5 doesn't care about the fact.

6 He put *cost to taxpayers* on his form. He said --
7 and I understand that he explained it, but he wrote
8 down:

9 *Read all of the Island Packet*
10 *articles after receiving this summons.*

11 Now, today, that doesn't mean he wrote that because
12 his wife read the articles, is my understanding of his
13 testimony today. He wrote:

14 *Yes, I have formed an opinion,*
15 but doesn't recall right.

16 COURT REPORTER: But doesn't what?

17 MR. YOUNG: He wrote:

18 *Yes, I have formed an opinion,*
19 but didn't recall right. This is -- I mean, this
20 is the guy -- this is the substantially impaired juror,
21 who either side can get him to say, well, I'll consider
22 everything; I'll consider anything; I'm not ruling out
23 the possibility that aliens did it.

24 But aliens doing it is about the only thing that
25 he's going to -- move him from the death penalty to

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1 life. And he starts at death, and puts the burden on
2 the defendant to prove that he's not guilty in the
3 penalty phase in order to live.

4 THE COURT: Um-hmm.

5 MR. YOUNG: The one piece of evidence that he said
6 would change his mind was if the guy didn't pull the
7 trigger; if he had an alibi and was actually in Florida.

8 THE COURT: Well, if he had an alibi in Florida, he
9 wouldn't be guilty of murder.

10 MR. YOUNG: Well, -- well, you know, but he would
11 still get life from this juror. That's the point. It
12 doesn't matter if he was in Florida, this juror would
13 give him life. It's like the juror yesterday who said
14 that he would give him life if he acted in self-defense.
15 And I went through and said, well, you understand people
16 have the right to kill each other. We just had a public
17 trial in Florida where, you know, a guy killed another
18 guy and they said it was self-defense. A jury found him
19 not guilty. We went through that whole example.

20 THE COURT: Mr. Young, let me just tell you, and
21 I'll just put this on the record, and it's something
22 that I think we are all are struggling with, because it
23 is what the alleged facts are in this case, is, I think,
24 you know, when you talk about the mitigating
25 circumstances and -- aggravating circumstances is what I

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1 meant to say, you know, we've got 21 in this state.

2 But I think -- and while they're all bad, the idea
3 of it being a child, with a child, is, I think, hard for
4 people. And I think you all have done a very good job
5 of getting that out, like you said, at the front, in the
6 forefront.

7 And I think that's kind of hard where you have
8 people -- you're throwing that out there at them, and I
9 think a lot of people, particularly someone like him,
10 who is expecting his first child, maybe has a natural
11 inclination. That's a hard aggravating factor. Does
12 that make sense?

13 MR. YOUNG: Yes, ma'am.

14 THE COURT: And there are a lot of things that are
15 hard about aggravating factors. That's just a hard one
16 for a lot of jurors.

17 MR. YOUNG: Right.

18 THE COURT: I respect that, and I understand that.

19 MR. YOUNG: And that's why we have to ask about it,
20 and that's why it's in the category-specific voir dire,
21 and that's why it's appropriate to ask for, because that
22 one fact for a lot of people.

23 Now, we have a lot of people qualified, Judge.
24 There is no reason to risk this trial, this whole panel.
25 You know, we have 24 qualified jurors. We're looking

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1 for 15 more, and that's -- we have --

2 THE COURT: Right.

3 MR. YOUNG: -- we're looking for another four to be
4 our trial jury, and then --

5 MR. STONE: Horse trading.

6 MR. YOUNG: -- another three for a trial jury, and
7 twelve for the alternate.

8 THE COURT: Like horse trading. Right, Mr. Stone?

9 MR. STONE: Yes, ma'am. I believe so.

10 THE COURT: Okay. That's what I heard.

11 MR. YOUNG: So, I mean, we've got a lot of
12 qualified people, Judge. Nobody in this list is
13 anywhere close to where he is on his death penalty
14 views. He's substantially impaired, and we should just
15 -- we've got a lot of people. We're going to get it
16 done today. We should just excuse him, under, Judge,
17 *Sixth, Fourteenth Amendment* right to a fair jury.

18 THE COURT: Right.

19 MR. YOUNG: It's under *Morgan*. He's automatic
20 death penalty. Under *Lockheed* and *Eddings*, he can't
21 give meaningful consideration to mitigating factors. He
22 shifts the burden to the Defense, in violation of the
23 *United States Constitution* to prove why he should live.
24 Thank you.

25 THE COURT: I appreciate you're making a record.

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1 MR. MCGUIRE: I don't mean to double-team you, but
2 you made a comment that I just want to just briefly
3 address, if I could.

4 THE COURT: Yes.

5 MR. MCGUIRE: And that was the, you know, if it's a
6 bad aggravator.

7 THE COURT: Yes.

8 MR. MCGUIRE: And --

9 THE COURT: For some people.

10 MR. MCGUIRE: Sure.

11 THE COURT: For some people, I don't think it
12 meant, you know, it's just -- it's different. I think
13 different people look at, you know, as being a child. I
14 mean, a lot of people could care less if someone killed
15 a judge. But I think, again, and I know that's one of
16 the aggravators, but you know, someone --

17 MR. MCGUIRE: Yeah, and I --

18 THE COURT: Do you understand what I'm saying?

19 MR. MCGUIRE: I do understand. And when you read
20 the Illinois *Morgan* case, you know, Scalia in his
21 dissent, actually proposes the argument that, if
22 somebody is automatic death on a particular aggravator,
23 a category of case, that, that's -- in his view, that's
24 okay.

25 THE COURT: Um-hmm.

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1 MR. MCGUIRE: You know, he proposed and he tried to
2 get the Court to adopt the argument that it would be
3 okay if somebody said, you know what, in a rape/murder
4 situation, I would always vote death, because, you know,
5 he just believes that's okay; that -- but the majority
6 of the Court and the law of the land is, even with the
7 category of a bad aggravator, --

8 THE COURT: Um-hmm.

9 MR. MCGUIRE: -- the juror still has to say I can
10 still fairly consider both punishments. And I think
11 what we're -- and that's the *Longworth-Davis* cases, that
12 we have in South Carolina, which are, you know, they're
13 prosecutor cases, and they stand for the idea that, if
14 there is something so significantly based, a factor,
15 whether it's a factor in aggravation or mitigation, if
16 that factor has the home-run weight of taking somebody
17 straight to a particular verdict, or they're so
18 predisposed to one, then -- and Justice Toal stated, in,
19 I think it was the *Davis* case, that, of course, the
20 juror would not be qualified. These are all appropriate
21 questions, because they wouldn't be able to comply with
22 the juror oath to consider everything and consider both
23 penalties. So, --

24 THE COURT: The only problem, though, is, is that
25 we asked that of Mr. Delano, and he said he could listen

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1 to the evidence. You know, I look at him as being a
2 little bit different of a juror. And again, my job is
3 not to sit and judge the jurors. He's obviously a
4 bright man.

5 You know, I think we all worry about the people
6 that walk in here who maybe don't have -- I don't want
7 to say the intellectual capacity; they're probably of
8 normal intelligence; but they are just so dogmatic in
9 their views that they just can't consider, and again,
10 and can't weigh.

11 And you know, those are probably people -- those
12 people scare me, because they just -- they don't have
13 the sophistication; they don't have intellect to, you
14 know, to go one way or the other. They believe this;
15 they, you know. And again, it's not sophistication or
16 intellect. They could be a firmly held belief, but
17 there are some jurors that just don't even think it
18 through; haven't even done it on moral purpose; they're
19 just straightforward.

20 And this gentlemen, I know to me, you all, and it's
21 clear, and I'll state on the record, obviously, I'm
22 struggling with this one, and I'll be the first to tell
23 you that.

24 And let me do this. I'm going to step out for just
25 a quick minute, and we'll come back. We're just going

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1 to take a five-minute break, you all, if you want to
2 refresh yourselves. I'll be right back, and I'll let
3 you know, and we'll go ahead and move on. And I know
4 he's sitting back there. I remember this time.

5 BAILIFF: You want me to hold him back here, Judge?

6 THE COURT: I need you to hold him back there, if
7 that's okay, just for a few minutes.

8 BAILIFF: Yeah. Sure. No problem at all.

9 THE COURT: Do you mind? All right. Just give me
10 a minute. Okay. Thanks.

11 MR. YOUNG: Yes, ma'am. Thank you.

12 OFF THE RECORD 9:41 A.M.

13 BACK ON THE RECORD 9:47 A.M.

14 CONTINUE RE JUROR NUMBER 191,

15 BY THE COURT:

16 BAILIFF: All rise.

17 THE COURT: Please be seated. All right. For the
18 record, as to Mr. Delano, I think he is qualified. I
19 don't think he is substantially impaired.

20 You know, we talk about, you know, this is not
21 horse trading. And you know, again, I think that, in my
22 mind, you know, the whole, you know, tie goes to the
23 runner. Death is different, and it's serious, and I
24 think that's why I'm having a hard time with weighing
25 this to Mr. Fleming, who was the other way, quite

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1 frankly, and I'm just being completely candid for you
2 all.

3 But I do think this man is smart. I do think he
4 can listen to the evidence. I do think he can follow my
5 instructions. I do not think he is impaired in any way.
6 I do think he could consider exactly what I tell him to
7 do, and I'm going to allow it. So, let's go ahead and
8 get the next one out.

9 MR. YOUNG: I'd like to note my objection.

10 BAILIFF: I've got to go and bring him in.

11 THE COURT: Hold on a second. Do you mind if I
12 bring him in?

13 MR. YOUNG: No.

14 THE COURT: I'll let him go. He's just standing
15 out there.

16 MR. YOUNG: As long as you tell me that I'm
17 protected.

18 THE COURT: Absolutely. You are protected for the
19 record. Note your objection again.

20 JUROR NUMBER 181 ENTERS COURTROOM.

21 THE COURT: Thank you.

22 BAILIFF: Just stand right here and face the Judge.

23 THE COURT: Come on in, Mr. Delano. Thank you so
24 much for being here.

25 JUROR NUMBER 181: Sure.

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1 THE COURT: Sir, I have found you qualified as a
2 potential juror in the trial of this case. It does not
3 mean you are on the jury. It just means you are a
4 qualified juror.

5 Sir, I am asking that return Monday morning at
6 9:30. That's my hope of when we're going to be ready to
7 pull this jury. As you know, we're running behind.
8 What I am asking to do, Norman's going to give you a
9 piece of paper, and it is a juror line. I want you to
10 call that after 6:00 p.m. on Saturday night.

11 JUROR NUMBER 181: Okay.

12 THE COURT: I'm hoping by then we'll be done with
13 this process, and it will tell you when to report. I'm
14 trying my best to reduce the amount of time you all are
15 waiting on us. So again, if you would, just call that
16 line. Whatever time it tells you to report, please do.

17 I also need to tell you, you are not to read
18 anything, do any independent research, or discuss this
19 case with anyone, and that includes your wife or anyone
20 else. Do you understand that, sir?

21 JUROR NUMBER 181: I understand.

22 THE COURT: All right. You are excused. Thank
23 you.

24 JUROR NUMBER 181: Thank you.

25 BAILIFF: May I have your badge, please? Okay.

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1 You're free to go.

2 JUROR LEAVES 181 LEAVES COURTROOM.

3 THE COURT: Al, before you bring him in, just give
4 me a minute.

5 BAILIFF: Yes, ma'am..

6 THE COURT: Thank you. Mr. Young.

7 MR. YOUNG: Thank you, your Honor. I just want you
8 to note my objection. I think the record is okay where
9 it is.

10 And I also wanted to bring into account that we
11 had, you know, several hours of Dr. Foglia's testimony
12 from *The Capital Jury* project, and I want to make sure
13 that all of her testimony is incorporated in my argument
14 here, and that your Honor listened to that research.

15 THE COURT: Absolutely.

16 MR. YOUNG: And we have talked a lot about
17 questions from the Judge, and you know, I don't -- you
18 know, I think we have to be really careful, and your
19 Honor's done a great job about saying, listen, I'm not
20 going to say a whole lot; I'm going to let the lawyers
21 talk, because, as an authority figure, people defer to
22 you when you say if I order you to consider it, will you
23 do it; and it's, like, yeah, if you order me to do it,
24 I'm going to do what you order me to do.

25 But nothing, in my opinion, nothing would ever

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1 really change his mind. And I want to incorporate all
2 of her testimony into my argument by reference.

3 THE COURT: I understand that. I think when I do
4 ask some questions -- I did jump in on that one on the
5 end, again, you know, in all fairness, you, each side,
6 has a job to do, and you're trying to ask the questions
7 toward your side. And again, I just want to make sure
8 that, you know, all the information is in and that it's
9 fairly given.

10 And again, you know, I am a neutral here. I feel
11 like I have this need to want to tell these jurors that,
12 listen, I will make a determination of the facts; this
13 is your job; you are the one that decides this; the only
14 thing I do is, you know, tell you what the law is.

15 So again, but I can tell you, I mean, I have
16 thought it through. Again, respectfully, I believe he's
17 qualified. So, let's go ahead and bring the next person
18 in.

19 JUROR NUMBER 507 ENTERS COURTROOM.

20 BAILIFF: Your Honor, Ms. India Pinckney.

21 THE COURT: Come on in, Ms. Pinckney.

22 JUROR NUMBER 507: Good morning.

23 BAILIFF: If you would, ma'am, please go up and
24 take a seat on the witness stand.

25 THE COURT: Come on around. Good morning. Please,

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1 go ahead and take a seat, ma'am.

2 Ma'am, I need to remind you that you are still
3 under the oath that you took on Wednesday. Is that all
4 right?

5 JUROR NUMBER 507: Yes, ma'am.

6 THE COURT: I'm sorry, I can't see over this. I'm
7 going to remove it, if I could.

8 I have a couple of questions I need to ask you.
9 The lawyers are going to ask you some questions, as
10 well. I want you to know that there are no right or
11 wrong answers here. The only thing anyone expects you
12 to do is be honest and candid. All right?

13 Their job is to ask you about your feelings about
14 the death penalty, some feelings about this case.
15 Again, that's proper. And just do the best you can to
16 answer those questions.

17 Before we begin, I need to ask you if you've had an
18 opportunity to look at the witness list, and if you know
19 anyone on that witness list.

20 JUROR NUMBER 507: Yes, ma'am. Sheriff P.J.
21 Tanner.

22 THE COURT: How do you know Sheriff Tanner?

23 JUROR NUMBER 507: Back in 1998, I was -- I
24 witnessed a death crime with my sister, and in the same
25 courtroom here.

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1 THE COURT: Okay.

2 JUROR NUMBER 507: And he took place in that.

3 THE COURT: Were you a witness in that case?

4 JUROR NUMBER 507: Yes, ma'am.

5 THE COURT: Okay. And do you mind telling me what
6 the defendant's name was in that case?

7 JUROR NUMBER 507: Horace Collins.

8 THE COURT: Okay. And you were a testifying
9 witness for the State or the Defense?

10 JUROR NUMBER 507: For the State.

11 THE COURT: For the State. All right.

12 JUROR NUMBER 507: Yes, ma'am.

13 THE COURT: And ma'am, what was the result of that
14 trial?

15 JUROR NUMBER 507: They gave him only twelve years
16 in prison for involuntary manslaughter.

17 THE COURT: For involuntary manslaughter.

18 JUROR NUMBER 507: Yes, ma'am.

19 THE COURT: All right, ma'am. I appreciate that.
20 Additionally, there has been some publicity in the trial
21 of this case, in the newspaper and on the news a little
22 bit. Have you read anything, seen anything, or heard
23 anything about this case?

24 JUROR NUMBER 507: Yes.

25 THE COURT: Ma'am, can you tell me what source you

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1 got some information or read something?

2 JUROR NUMBER 507: From the newspaper, the news,
3 and that's about it.

4 THE COURT: Anything else? Have you done any
5 independent research on the Internet --

6 JUROR NUMBER 507: No.

7 THE COURT: -- or anything like that?

8 JUROR NUMBER 507: No.

9 THE COURT: All right, ma'am. I want to make
10 absolutely sure that you understand that anything that
11 comes from the newspaper or the news is not factual in
12 this case. It would be wholly inappropriate for you to
13 consider it, and I need to be sure that, if you are
14 chosen as a juror in the trial of this case, that you
15 could put that beside you and confine your consideration
16 in this case to what is presented here in the courtroom,
17 because here is where you get the front-row seat.

18 JUROR NUMBER 507: Um-hmm. I know.

19 THE COURT: You will have every bit of information
20 that anybody has, and you understand that. Is that
21 correct?

22 JUROR NUMBER 507: Yes, ma'am.

23 THE COURT: All right. I appreciate it. I'm going
24 to go ahead and turn you over to the lawyers. Mr.
25 MacDougall.

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1 MR. MACDOUGALL: Thank you, your Honor. Good
2 morning, Ms. Pinckney.

3 JUROR NUMBER 507: Good morning.

4 MR. MACDOUGALL: My name's Mark MacDougall, and I'm
5 one of the lawyers representing the defendant in this
6 case, Earnest Daise.

7 And as Judge Mullen told you, we are interested
8 today, really, in finding out what you believe, what you
9 think. And there's no right or wrong answer. The only
10 -- well, the only right answer is what you really
11 believe. So, please just sort of let us have, you know,
12 good, bad, and unvarnished. Nobody is going to -- going
13 to really judge what you say. It's really important to
14 us, though, that we know how you think.

15 Could I ask you a bit about the case that Judge
16 Mullen inquired about in which you were -- I think you
17 said twelve years ago?

18 JUROR NUMBER 507: It was fourteen.

19 MR. MACDOUGALL: Fourteen. And you were a witness.

20 JUROR NUMBER 507: Yes, sir.

21 MR. MACDOUGALL: Okay. And you were a witness
22 called by the State?

23 JUROR NUMBER 507: Yes.

24 MR. MACDOUGALL: Okay. Did you actually witness
25 the crime?

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1 JUROR NUMBER 507: I was there, yes.

2 MR. MACDOUGALL: Okay. And that was a homicide
3 case? Is that right?

4 JUROR NUMBER 507: Yes.

5 MR. MACDOUGALL: It involved the killing of another
6 person. And I think you said that the defendant in that
7 case was given a sentence of twelve years.

8 JUROR NUMBER 507: Um-hmm.

9 MR. MACDOUGALL: For involuntary manslaughter.

10 JUROR NUMBER 507: Um-hmm.

11 MR. MACDOUGALL: What was your view of that
12 sentence?

13 COURT REPORTER: Is that yes?

14 JUROR NUMBER 507: Yes. Sir?

15 MR. MACDOUGALL: What was your -- what did you
16 think about that sentence, once it was imposed?

17 JUROR NUMBER 507: I don't think it was fair.

18 MR. MACDOUGALL: Okay. What would you have thought
19 was a fair sentence?

20 JUROR NUMBER 507: Life in prison.

21 MR. MACDOUGALL: Life in prison. Okay. Was there
22 anything else about that trial and your participation in
23 it that left an impression on you that you can share
24 with us?

25 JUROR NUMBER 507: No.

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1 MR. MACDOUGALL: Okay. Well, this is a different
2 kind of case. This is a capital murder case, so the
3 State is seeking the death penalty, as you know.
4 But nobody's been convicted of anything yet. And the
5 questions we're going to ask you today are pretty unfair
6 in the sense that you haven't heard any evidence; there
7 hasn't been a trial; but we are trying to understand
8 where your attitudes toward the death penalty and life
9 sentences are. So, I'm going to ask you to assume some
10 things. They're all things that the Judge may have made
11 note of, or you may have seen on the questionnaire. So,
12 we're not going to get into evidence or details, but I
13 may ask you sort of think forward about how you would
14 react.

15 And the first is to murder in this state. And
16 murder in this state excludes a whole bunch of
17 possibilities. It doesn't include insanity. It doesn't
18 include self-defense. It doesn't include accident. It
19 doesn't include anything that would be, you know, the
20 kind of defense you might see on T.V. That's all gone.

21 What murder is in South Carolina is cold-hearted,
22 intentional. The words they used are:

23 *From a depraved spirit, from a heart*
24 *devoid of social duty, and fatally bent on*
25 *creating mischief.*

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1 So, you really meant it. And the word the lawyers
2 use and the law use for that is *malice*.

3 So, my first question for you is, if somebody's
4 found guilty of murder with malice; they really meant it
5 and all those other possibilities are off the table;
6 they meant it; they killed another human being; and
7 they've been convicted of that; what's your view of the
8 proper punishment? And the two choices I'll give you
9 are death, the death sentence, or life without parole.
10 And as you may know, in this state, life without parole
11 means you die in prison. You are imprisoned for the
12 rest of your life. You don't get out. You're not
13 released. That's it. As between those two, what's your
14 view when someone's convicted of murder with malice?

15 JUROR NUMBER 507: I would give them the death
16 penalty.

17 MR. MACDOUGALL: Always?

18 THE COURT: Is that a yes for the record?

19 JUROR NUMBER 507: Yes.

20 THE COURT: You shook your head. I apologize.

21 JUROR NUMBER 507: Sorry. I'm sorry. Yes.

22 THE COURT: That's all right, Ms. Pinckney. I just
23 need it for the record. You're fine.

24 JUROR NUMBER 507: Yes.

25 MR. MACDOUGALL: You would always do that.

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1 JUROR NUMBER 507: Yes.

2 MR. MACDOUGALL: Without exception.

3 JUROR NUMBER 507: Yes.

4 MR. MACDOUGALL: Nothing would change your mind.

5 JUROR NUMBER 507: No.

6 MR. MACDOUGALL: Okay. May I stand down, your
7 Honor?

8 THE COURT: You may. Solicitor?

9 MR. STONE: Yes, ma'am. Ms. Pinckney, my name's
10 Duffie Stone. In your questionnaire, I think you used
11 the term *open for discussion*. Are you saying that, in a
12 situation in which somebody was convicted of murder, you
13 would always give the death penalty; you would not
14 consider anything from the Defense or anyone else?

15 JUROR NUMBER 507: No, sir. No, sir.

16 MR. STONE: I'm sorry, you are saying that or
17 you're not saying that?

18 JUROR NUMBER 507: I am saying.

19 MR. STONE: That you would always give the death
20 penalty?

21 JUROR NUMBER 507: Yes, sir.

22 MR. STONE: Okay. Thank you, Ms. Pinckney. I
23 appreciate your honesty.

24 JUROR NUMBER 507: You're welcome.

25 THE COURT: Ms. Pinckney, thank you so much for

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1 being here. I'm going to go ahead and excuse you from
2 the trial of this case. You do not need to come back
3 Monday. You are free to go about your business.

4 JUROR NUMBER 507: Okay. Thank you.

5 THE COURT: Thank you, ma'am.

6 JUROR NUMBER 507 LEAVES COURTROOM.

7 THE COURT: Are you okay?

8 MR. MCGUIRE: Judge, can we approach just briefly?

9 THE COURT: Sure.

10 MR. MCGUIRE: It's actually not even about this
11 case.

12 THE COURT: Sure. It doesn't need to be on the
13 record; it's not about the case, right?

14 MR. MCGUIRE: It's not about this case.

15 THE COURT: You got it.

16 OFF-THE-RECORD-BENCH CONFERENCE,

17 OUT OF PRESENCE OF JURORS.

18 END BENCH CONFERENCE.

19 THE COURT: All right. Are we ready to go forward?

20 MR. STONE: Yes, ma'am.

21 THE COURT: Bring him on in.

22 BAILIFF: Your Honor, Mr. Trevor Holmes.

23 THE COURT: Come on in, Mr. Holmes.

24 JUROR NUMBER 321 ENTERS COURTROOM.

25 BAILIFF: Come right this way, please. If you

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1 would, go up and take a seat in the jury box -- witness
2 box.

3 THE COURT: Good morning, Mr. Holmes.

4 JUROR NUMBER 321: Good morning.

5 THE COURT: Thank you so much for being here. And
6 I apologize; you were someone that was here last night,
7 right, and had to come back?

8 JUROR NUMBER 321: Yes, ma'am.

9 THE COURT: I'm sorry, sir. We were running late,
10 and I didn't want to keep you here 'til midnight. So,
11 please understand. I want you to know that the lawyers
12 are working real hard, and we appreciate that. They're
13 doing their jobs, and it's important business we're
14 doing, so I want you to appreciate that, as well.

15 Sir, I'm going to need to remind you that you are
16 still under the oath you took on Wednesday. Is that all
17 right with you?

18 JUROR NUMBER 321: Um-hmm. Yes, ma'am.

19 THE COURT: Very good, sir. And also, I'm going to
20 have to ask, you're a little bit soft-spoken. My court
21 reporter has to take down everything you say. So, I
22 need you to say yes or no. We can't take down a head
23 shake or an uh-uh or an uh-huh. So, if you don't mind,
24 just say yes. Is that all right?

25 JUROR NUMBER 321: Yes, ma'am. Yes, ma'am.

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1 THE COURT: Thank you, sir. I appreciate that. I
2 also need to ask you, sir, you reviewed a witness list
3 back in the jury room.

4 JUROR NUMBER 321: Yes, ma'am.

5 THE COURT: Do you know anyone on that list?

6 JUROR NUMBER 321: No, ma'am.

7 THE COURT: Sir, also, there has been some
8 publicity in this case. There have been some things in
9 the newspaper or on the news. Have you read anything,
10 seen anything, or heard anything independently about
11 this case by word of mouth from anyone?

12 JUROR NUMBER 321: Yes, ma'am.

13 THE COURT: You have?

14 JUROR NUMBER 321: Yes, ma'am.

15 THE COURT: Okay. Tell me what you've either read,
16 seen, or heard.

17 JUROR NUMBER 321: It was like, some guy, you know,
18 killed -- shoot -- shot his girlfriend or something like
19 that, and shot the kid, something like that. But --

20 THE COURT: Where did you hear that?

21 JUROR NUMBER 321: Just around, like -- like --
22 like, my mom, like, I guess, she knowed him. She knowed
23 the people.

24 THE COURT: Your mother knew which people?

25 JUROR NUMBER 321: I guess the lady that got shot,

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1 I guess.

2 THE COURT: Okay. So, she knew Ms. Mullen. Is
3 that --

4 JUROR NUMBER 321: I think, yeah.

5 THE COURT: Okay. You think. Did your mom give
6 you any opinions about that or any thoughts about that?

7 JUROR NUMBER 321: No, no. She just was like, she
8 don't know why it happened, you know. She don't know
9 why, you know, why she got shot, you know. But she
10 ain't really, you know, talked to me about it.

11 THE COURT: How did your mother know Ms. Mullen?

12 JUROR NUMBER 321: I guess through friends, I
13 guess. You know, growing up or something like that.

14 THE COURT: You live on Church Street in Beaufort?

15 JUROR NUMBER 321: Yes, ma'am.

16 THE COURT: Where does your mom live? She live on
17 Church Street?

18 JUROR NUMBER 321: Yes, ma'am.

19 THE COURT: Okay.

20 COURT REPORTER: Did you say yes, ma'am?

21 JUROR NUMBER 321: Yes, ma'am.

22 THE COURT: Sir, other than what you say you kind
23 of heard around, just people talking to your mama,
24 anything else? Did you read anything about this case?

25 JUROR NUMBER 321: No, ma'am.

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1 THE COURT: Do any independent research?

2 JUROR NUMBER 321: No, ma'am.

3 THE COURT: All right. Sir, the attorneys are
4 going to ask you some questions about the trial of this
5 case. The only thing I can ask of you, sir, is that you
6 be honest and candid. There are no right or wrong
7 answers here.

8 They want to know your feelings about the death
9 penalty, what your thoughts are, what your morals and
10 values are, and that's permissible. They can ask you
11 those questions. Again, just, please, be honest. Okay?

12 JUROR NUMBER 321: Yes, ma'am.

13 THE COURT: Thank you.

14 MR. SECOR: Thank you, your Honor. Good morning,
15 Mr. Holmes.

16 JUROR NUMBER 321: Good morning.

17 MR. SECOR: How are you?

18 JUROR NUMBER 321: All right.

19 MR. SECOR: I'm hoping that we can just kind of
20 have a conversation. I know it's kind of an awkward way
21 to talk, but I don't want this to be a situation where I
22 just ask you questions and you say yes or no. I really
23 want to know what you personally feel and think. Okay?

24 JUROR NUMBER 321: All right.

25 MR. SECOR: So, please, if I ask you something that

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1 doesn't really make any sense, just tell me I don't
2 understand. And if I ask you a question, you can tell
3 me anything that you think or feel. There's no
4 possibility of you giving the wrong answer. Does that
5 make sense?

6 JUROR NUMBER 321: All right.

7 MR. SECOR: The main purpose of what we're doing
8 here today, you and I, is to have a discussion about the
9 concept of punishment. And it's sort of strange to talk
10 about punishment in a case that hasn't even been decided
11 yet.

12 JUROR NUMBER 321: Yeah.

13 MR. SECOR: But unfortunately, the way it -- the
14 way it works is, is this is the only opportunity that we
15 have to discuss with people how they feel about
16 punishment.

17 JUROR NUMBER 321: Um-hmm.

18 MR. SECOR: So, I need to talk to you about that,
19 but you need to understand that my asking you about
20 punishment shouldn't be taken as an indication about
21 anything to do with this case. Okay?

22 JUROR NUMBER 321: All right.

23 MR. SECOR: Mr. Daise is presumed innocent. You
24 understand that, right?

25 JUROR NUMBER 321: All right.

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1 MR. SECOR: All right. And as I just said, I need
2 to ask you your views about punishment, and I need to
3 ask you how you feel about punishment for the crime of
4 murder. And just so that you and I are on the same
5 page, I will tell you how South Carolina defines the
6 crime of murder.

7 JUROR NUMBER 321: All right.

8 MR. SECOR: And in South Carolina, in order for a
9 person to be guilty of murder, a jury would have to find
10 that they killed another person with something called
11 malice aforethought. All right?

12 JUROR NUMBER 321: All right.

13 MR. SECOR: And those are fancy words. I don't
14 know why people that write the law use such fancy words,
15 but they do.

16 But all malice aforethought means is that the
17 person did it intentionally; they did it in an evil way;
18 they did it because they wanted the person to be dead;
19 and they took an action that caused that person to die
20 with no justification, no excuse. Okay? Does that make
21 sense to you?

22 JUROR NUMBER 321: Yeah.

23 MR. SECOR: That's what a murder is in South
24 Carolina. And in order for a jury to think that
25 somebody is guilty of a murder, it means that it was

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1 definitely not self-defense. It was definitely not an
2 accident. The person who was guilty was not insane,
3 nothing like that. It was just a rational person like
4 you or I, who intentionally, maliciously killed another
5 person with evil in their heart when they did it. Okay?

6 JUROR NUMBER 321: Yeah.

7 MR. SECOR: And just so that we all know, for a
8 person like you, if you were on a jury and you found a
9 person guilty of that kind of a murder, how do you feel
10 about the death penalty as an appropriate punishment for
11 that person for committing an intentional murder?

12 JUROR NUMBER 321: I mean, I -- I -- I never like,
13 really had a -- a chancing of my opinion to be, you
14 know, to have somebody get the death penalty. But, I
15 mean, if that's what -- what it was agreed on, then, I
16 mean I'd go with it.

17 MR. SECOR: Okay. And I understand it's not
18 something you think about a lot, but let me ask the
19 question another way, and I just wanted to add another
20 aspect of it in terms of how you think about it.

21 I want you to think of yourself in a position where
22 you and your fellow jurors have found somebody guilty of
23 killing not just one person, but two people. Okay?
24 That means that you believe that the two people were
25 killed.

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1 JUROR NUMBER 321: Yeah.

2 MR. SECOR: Maliciously and intentionally. And one
3 of those people was a four-year-old child. Okay?

4 JUROR NUMBER 321: Yeah.

5 MR. SECOR: And I want just in terms of what's in
6 your heart and mind, that's all we're interested in.

7 JUROR NUMBER 321: Yeah.

8 MR. SECOR: In a case like that, how do you feel
9 about the death penalty as being an appropriate
10 punishment for a guilty murderer and under those
11 circumstances?

12 JUROR NUMBER 321: I mean, yeah. That should
13 happen, yeah.

14 MR. SECOR: You think that, that should happen?

15 JUROR NUMBER 321: Yeah.

16 MR. SECOR: Okay. And let me ask you this. Do you
17 believe that, under those circumstances that we're
18 talking, do you believe that the life history of the
19 guilty murderer, what their whole life was like, does
20 that -- should that have any influence on whether or not
21 they get the death penalty?

22 JUROR NUMBER 321: No.

23 MR. SECOR: It should not?

24 JUROR NUMBER 321: No.

25 MR. SECOR: Okay. And that's fine. That's --

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1 we're looking for your opinion, and I appreciate it.
2 There's no wrong answer, so don't feel like you have to
3 hesitate. You should be proud of your beliefs. Those
4 are your beliefs, right?

5 JUROR NUMBER 321: Yeah.

6 MR. SECOR: And they're based on who you are as a
7 person.

8 JUROR NUMBER 321: Yeah.

9 MR. SECOR: Right?

10 JUROR NUMBER 321: Yeah.

11 MR. SECOR: And they're based on your life
12 experience and the examples that have been set by you
13 for other people that are important to you, right?

14 JUROR NUMBER 321: Yeah.

15 MR. SECOR: Okay. May I have just a moment, your
16 Honor?

17 THE COURT: Yes, sir.

18 MR. SECOR: Mr. Holmes, you got this juror
19 questionnaire a while back and filled it out, and we all
20 appreciate you doing that. I know it was long, and
21 frankly, it's a little bit -- I found it a little bit
22 complicated myself. Did you find it a little bit
23 complicated?

24 JUROR NUMBER 321: Yeah, somewhat.

25 MR. SECOR: Yeah, I understand. We put them

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1 together as best we can, but lots of opinions go into,
2 you know, how it's worded, so sometimes it can be
3 confusing.

4 And I just want to ask you about one part of it,
5 and I want you -- I really want you to understand that
6 I'm not trying to contradict you at all. I'm just
7 trying to make sure that we're -- that we understand one
8 another. Okay?

9 JUROR NUMBER 321: Yeah.

10 MR. SECOR: There was a section on the
11 questionnaire where you're asked, just like everybody
12 else who got the questionnaire, was asked to circle one
13 type of juror. There was 1, 2, and 3. Okay?

14 JUROR NUMBER 321: Yeah.

15 MR. SECOR: And the first one was a person that
16 says that a juror who believes that, if a person is
17 convicted of an intentional malice murder, they should
18 always get the death penalty. Type 2 was that a person
19 who is convicted of a intentional malice murder should
20 never get the death penalty. And then, the third, which
21 is the one you circled, said, well, I basically want
22 more information.

23 JUROR NUMBER 321: Yeah.

24 MR. SECOR: Right? Is that your understanding of
25 it?

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1 JUROR NUMBER 321: Yeah.

2 MR. SECOR: Okay. And I think that's probably the
3 one that I would have circled, too, if I got that -- was
4 asked that question.

5 But given the information that you know now about
6 what we're talking about, okay, about we're talking
7 about you being in a position of having to make a
8 determination about a person who you and twelve -- you
9 and the rest of your jurors believe is guilty of
10 intentional malice murder of not only one person, but
11 two people, one of the people being a four-year-old
12 child; given that information, your opinion, as I
13 understand it, is that death is the appropriate
14 punishment for that person.

15 JUROR NUMBER 321: Yeah.

16 MR. SECOR: And also, as I understand what you
17 said, the life experience and personal history of the
18 guilty murderer does not matter to you in terms of what
19 their punishment should be. Is that correct?

20 JUROR NUMBER 321: Yeah.

21 MR. SECOR: Okay. I appreciate it, Mr. Holmes.
22 Thank you.

23 JUROR NUMBER 321: You're welcome.

24 MR. STONE: Mr. Holmes, my name is Duffie Stone.
25 Let me just ask you briefly, I want to make sure I

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1 understand. Are you telling us now that, if you had to
2 fill this paperwork out today, that you would do it
3 differently than you did before, or do you still think
4 that you would take everything into consideration before
5 deciding the sentence?

6 JUROR NUMBER 321: I think I'd do it the same way.

7 MR. STONE: You would do what? You'd fill it out
8 the same way?

9 JUROR NUMBER 321: Yeah.

10 MR. STONE: So, what I'm getting from you, then, is
11 -- and let me explain something very briefly on this.
12 If you're on a jury, the first part would be what's
13 called the guilt phase to determine whether or not the
14 defendant's guilty. If you found the defendant was
15 guilty, then, it would be up to you and your other
16 jurors to find the appropriate sentence. And at that
17 point, your choice would be life imprisonment or death.

18 Now, in your questionnaire, which you filled out, I
19 think you said you would not automatically give them
20 life in prison; you would not automatically give them
21 the death penalty; you would take everything into
22 consideration. Is that still how you feel?

23 JUROR NUMBER 321: Yeah.

24 MR. STONE: Okay. So, you would listen to both
25 sides, the State, as well as the Defense, before making

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1 your determination.

2 JUROR NUMBER 321: Yeah.

3 MR. STONE: But if the facts were bad enough, could
4 you give the death penalty?

5 JUROR NUMBER 321: Yeah.

6 MR. STONE: Okay. Thank you, sir.

7 JUROR NUMBER 321: All right.

8 MR. MCGUIRE: Judge, if we could we have just one
9 second, please.

10 THE COURT: Just a moment, sir. Okay?

11 MR. MCGUIRE: And Judge, if we could approach just
12 briefly?

13 THE COURT: Sure.

14 OFF-THE-RECORD BENCH CONFERENCE,

15 OUT OF HEARING OF JUROR.

16 END BENCH CONFERENCE.

17 MR. SECOR: I just want to ask you a few more
18 questions. Is that okay?

19 JUROR NUMBER 321: Yeah.

20 MR. SECOR: Okay. Mr. Stone was asking you about
21 whether or not you would listen to all the evidence and
22 whether you would take it all into consideration in
23 terms of the making of your decision.

24 JUROR NUMBER 321: Yeah.

25 MR. SECOR: And you said yes, correct?

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1 JUROR NUMBER 321: Yeah.

2 MR. SECOR: Can you tell us the kinds of things
3 that would make a difference to you in terms of making a
4 determination about punishment between -- or, let me
5 rephrase that. What types of things would you need to
6 know to move away from the death penalty as your
7 sentence for a person guilty of two malice, intentional,
8 evil murders, and one of them being that of a four-year-
9 old child? What type of information would you need to
10 not give that person the death penalty?

11 JUROR NUMBER 321: I don't think they's nothing. I
12 don't think they's nothing that, you know, that -- that
13 would push away from that. Not to kill a four-year-old.

14 COURT REPORTER: I'm sorry. I'm not hearing you
15 well.

16 JUROR NUMBER 321: I'm sorry.

17 COURT REPORTER: *I don't think there's --*

18 JUROR NUMBER 321: There's nothing that would
19 change -- that would move me away from that, from the
20 death penalty.

21 MR. SECOR: Okay. And that you believe, because
22 that is the appropriate punishment for a person who
23 committed those types of crimes?

24 JUROR NUMBER 321: Yeah.

25 MR. SECOR: Okay. And I know I've asked it before,

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1 and I don't want to repeat myself, but things that would
2 not be important to you would be something like the life
3 experience of the guilty murderer; that person's past;
4 that person's childhood; whether they were rich or poor;
5 whether they were -- had a drug problem; those types of
6 things wouldn't change the fact that you think they
7 should get the death penalty.

8 JUROR NUMBER 321: No, no.

9 MR. SECOR: Okay. All right. Another thing, Mr.
10 Holmes, that I just want to talk about that I think is
11 probably really frustrating for people who are in this
12 position in court who are being asked questions, okay?
13 Is that people can ask you the same question, and -- or
14 two different people can ask you the same question, and
15 you might end up giving different answers. Okay. And
16 that's because, for whatever reason, part of what we're
17 trained to do as lawyers is to try to get certain
18 answers from certain people. Okay?

19 JUROR NUMBER 321: Yeah.

20 MR. SECOR: And I know that you're being truthful,
21 and I know -- I don't think that anything that you've
22 said has changed. What you initially said to, me as I
23 understood what you said, that death is the appropriate
24 punishment for that person, and that's how you feel
25 inside yourself.

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1 JUROR NUMBER 321: Yeah.

2 MR. SECOR: And that there's nothing about a person
3 who committed those crimes, a person guilty of two
4 intentional, evil, malice murders; one of those murders
5 being of a four-year-old child, to you, nothing about
6 that person's life matters; they should get the death
7 penalty.

8 JUROR NUMBER 321: Yeah.

9 MR. SECOR: And that's how -- you feel firmly,
10 strongly, about that.

11 JUROR NUMBER 321: Yeah. But if you be pushing for
12 the death penalty, yeah. Put them in prison for
13 something else, you know. Like, me honestly, I ain't
14 ever really got, you know, to say, yeah, kill them, you
15 know. So, it wouldn't really be, you know, in my
16 interest to just say, yeah, go ahead and kill him, you
17 know.

18 MR. SECOR: Right.

19 JUROR NUMBER 321: But if that's what -- if that's
20 what you're pushing for, then, that's what should
21 happen.

22 MR. SECOR: Okay. And when you say that's what's
23 being pushed for, and you're talking about the
24 prosecutor, Mr. Stone, would be pushing for death,
25 right?

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1 JUROR NUMBER 321: Yeah, I guess. If that's what
2 -- that's what his job.

3 COURT REPORTER: I am so, so sorry.

4 JUROR NUMBER 321: I mean, I guess if that's what
5 their job is.

6 MR. SECOR: Okay. But, and I understand that, when
7 you come into a courtroom, it seems like the opinions of
8 other people matter, you know. It just seems like the
9 opinions of the lawyers or the judge matter. And the
10 truth is, particularly in this situation right now, the
11 only person in the room whose opinion matters at all is
12 yours, and I mean that truthfully. What your opinion on
13 this issue is the only thing that matters. And the only
14 thing that we need to know is what your true opinion is
15 in your heart and in your mind, based on those facts.

16 If you were asked to be in the position of being on
17 a jury, and you believed that the person one hundred
18 percent was guilty of two evil-hearted, intentional
19 murders, one of those murders being of a four-year-old
20 child, we just want to know, in your opinion, should
21 that person get the death penalty?

22 JUROR NUMBER 321: Yeah.

23 MR. SECOR: And is that the sentence that you would
24 give that person?

25 JUROR NUMBER 321: Yeah.

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1 MR. SECOR: And even though you heard about it, the
2 life history of the person who committed those
3 intentional, malicious, evil crimes, does not affect
4 your decision-making process about the fact that they
5 should get the death penalty.

6 JUROR NUMBER 321: No.

7 MR. SECOR: Okay. Thank you. I appreciate it, Mr.
8 Holmes.

9 JUROR NUMBER 321: You're welcome.

10 MR. STONE: Just briefly, your Honor.

11 THE COURT: Yes, sir.

12 MR. STONE: So, Mr. Holmes, if you're convinced
13 that somebody murdered a four-year-old child and a lady,
14 you would not consider anything else; you would
15 automatically give the death penalty; or you would
16 consider other things before making that decision?

17 JUROR NUMBER 321: Yeah, I would give the death
18 penalty.

19 MR. STONE: Okay. Thank you, sir.

20 THE COURT: Thank you. Sir, I'm going to go ahead
21 and excuse you from the trial of this case. I
22 appreciate you being here. You do not need to report
23 Monday. Thank you.

24 JUROR NUMBER 321: All right.

25 JUROR NUMBER 321 LEAVES COURTROOM.

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1 THE COURT: And Norman, I apologize. I just have
2 to take a quick two-minute break. You all, we're just
3 going to take another two-minute break. I'm sorry.
4 Sorry. Al, we have to just take a two-minute break.
5 Okay? Thank you. All right, you all.

6 MR. STONE: Thank you, your Honor.

7 THE COURT: Thank you.

8 OFF THE RECORD 10:30 A.M.

9 BACK ON THE RECORD 10:35 A.M.

10 BY THE COURT:

11 BAILIFF: All rise.

12 THE COURT: Thank you all. Please be seated. You
13 all ready to go?

14 MR. STONE: Yes, ma'am.

15 THE COURT: We're ready to go. Bring in the next
16 juror, Al. Thank you.

17 JUROR NUMBER 470 ENTERS COURTROOM.

18 BAILIFF: Your Honor, Mr. James Nasuti.

19 THE COURT: Come on in, sir. Good morning. Good
20 morning, Mr. Nasuti.

21 JUROR NUMBER 470: Good morning, ma'am.

22 BAILIFF: Just go right up there and have a seat in
23 the witness box.

24 THE COURT: Thank you, sir.

25 JUROR NUMBER 470: Thank you.

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1 THE COURT: Good morning again.

2 JUROR NUMBER 470: Good morning.

3 THE COURT: Thank you. Sir, I need to remind you
4 that you're still under the oath that you took on
5 Wednesday. Is that agreeable with you?

6 THE COURT: I understand that, ma'am.

7 THE COURT: Thank you, sir. Additionally, there
8 are some questions that the attorneys are going to ask
9 you. All you need to be is honest and candid. There
10 are no right or wrong answers. We just need to know
11 your feelings and thoughts.

12 They're going to ask you about the death penalty;
13 some facts, possibly, about this case. Again, they are
14 permitted to do that. Just be truthful. Additionally,
15 sir, you had an opportunity to review the witness list
16 back there?

17 JUROR NUMBER 470: I'm sorry, ma'am?

18 THE COURT: Did you have an opportunity to go --
19 I'm sorry. I should turn my microphone on.

20 JUROR NUMBER 470: Thank you.

21 THE COURT: Did you have an opportunity to go
22 through the witness list while you were back there?

23 JUROR NUMBER 470: Yes I did, ma'am.

24 THE COURT: Do you know anyone on that witness
25 list?

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1 JUROR NUMBER 470: Not personally. I recognized a
2 couple of names, which, of course, was Ms. Roseneau.

3 THE COURT: Ms. Roseneau, yes, our Clerk of Court.

4 JUROR NUMBER 470: I recognized her name.

5 THE COURT: Okay.

6 JUROR NUMBER 470: And also the sheriff's and
7 Captain Bromage's names.

8 THE COURT: Okay.

9 JUROR NUMBER 470: I just --

10 THE COURT: But you don't have personal
11 relationships with them.

12 JUROR NUMBER 470: No, ma'am.

13 THE COURT: Thank you. Additionally, there has
14 been some news coverage on this case. Have you read
15 anything, seen anything, heard anything, or have any
16 independent knowledge whatsoever about this case?

17 JUROR NUMBER 470: Not to anything in my
18 recollection right now. I may have before, but it's not
19 here anymore.

20 THE COURT: Okay.

21 JUROR NUMBER 470: I don't know how else to say
22 that, but that's --

23 THE COURT: Fair enough. Absolutely.

24 THE COURT: All right, sir. I'm going to go ahead
25 and turn it over to the lawyers. All right?

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1 JUROR NUMBER 470: Okay.

2 MR. MCGUIRE: Good morning, Mr. Nasuti. Did I say
3 that right?

4 JUROR NUMBER 470: Nasuti, yes. Um-hmm.

5 MR. MCGUIRE: My name's Bill, Bill McGuire. I'm
6 one of the lawyers on the case. To make sure that we're
7 communicating on the same page, I'm going to start with
8 the very basics.

9 This is a capital case, and that means the
10 government is asking for or seeking the death penalty.
11 And obviously, they can only do that in a murder case.

12 As you sit there, my guess is no one's ever told
13 you the definition of murder in South Carolina, and you
14 probably don't know it. Not to put you on the spot.

15 JUROR NUMBER 470: The legal definition, no, I'm
16 sure I don't know. I know what I think it is.

17 MR. MCGUIRE: Sure. But it's pretty technical, and
18 it's got some unusual language in it, and I'm going to
19 give it to you now.

20 JUROR NUMBER 470: Okay.

21 MR. MCGUIRE: Murder is defined in South Carolina
22 as the unlawful, intentional, deliberate killing of
23 another person with malice aforethought. And the malice
24 aforethought means that the person, the killer, is
25 acting with a black and malignant heart, devoid of

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1 social duty, fatally bent on evil and wickedness. I bet
2 you've never heard those words before.

3 JUROR NUMBER 470: No.

4 MR. MCGUIRE: It's pretty heavy language. It's
5 pretty serious. And to ask for the death penalty, the
6 State would have to show more than that; not that,
7 that's not very, very bad and tragic; but they would
8 have to come back with more evidence that's called
9 aggravation evidence.

10 And I'm going to ask you about a specific
11 aggravator, actually two. And the aggravators are that
12 two people, two human beings were killed, a mother and a
13 child, four-year-old child, were shot dead. And I want
14 to ask you -- and it's not an accident; it's not self-
15 defense; it's not voluntary manslaughter. The person
16 knew what they were doing; they're not so insane to not
17 appreciate right from wrong. They knew what they were
18 doing, chose to kill, and killed the mother and child.

19 In that situation, what are your thoughts about the
20 death penalty as an appropriate punishment?

21 JUROR NUMBER 470: I don't know how much I'm
22 supposed to say right now. I mean, --

23 MR. MCGUIRE: Let's hear it all.

24 JUROR NUMBER 470: Okay. I have misgivings;
25 although, I do believe I could sentence someone to

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1 death, but I have great misgivings about that.

2 MR. MCGUIRE: Okay.

3 JUROR NUMBER 470: Because there's things inside of
4 me that have always been taught to me that no matter
5 what, the killing of another individual is wrong. And
6 so, I don't know if I'm answering --

7 MR. MCGUIRE: It sounds like you're a little
8 conflicted.

9 JUROR NUMBER 470: I -- I would say I'm conflicted,
10 but I don't think I'm so conflicted that I would not, if
11 it was the correct verdict to do, that it would stop me.

12 MR. MCGUIRE: Okay.

13 JUROR NUMBER 470: Is that --

14 MR. MCGUIRE: If you were convinced, sort of in
15 your gut and in your heart, that the State came with the
16 quality and the quantity of information and evidence, if
17 the case was bad enough, you could sentence somebody to
18 death.

19 JUROR NUMBER 470: I believe I could, sir.

20 MR. MCGUIRE: Okay. And you could sign a form with
21 your name saying that's my verdict.

22 JUROR NUMBER 470: Yes, sir. Yes, sir.

23 MR. MCGUIRE: And it sounds like you could also
24 consider the life penalty.

25 JUROR NUMBER 470: Yes, sir.

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1 MR. MCGUIRE: I didn't put words in your mouth
2 there.

3 JUROR NUMBER 470: No, sir, you did not.

4 MR. MCGUIRE: Okay. And -- okay. With regard to
5 this decision-making process, would background
6 information of the accused, the killer, be relevant?
7 And I'm going to, so we talk in plain language, I'm just
8 going to give you some examples. Somebody might be born
9 into abject poverty and had a hardship with regard to
10 their upbringing. Somebody might do something good,
11 like coach a little league team in a poor neighborhood.
12 So, it could be things they do that are good, things
13 they -- just who they are, everything that's been done
14 to them, everything they've done to other people, kind
15 of their walk in life. Is that relevant when it comes
16 to fixing that life and death decision?

17 JUROR NUMBER 470: Well, I do believe that good
18 people can do bad things, and I believe bad people can
19 do good things. So, it doesn't make them not bad or not
20 good anymore just by doing that.

21 MR. MCGUIRE: Okay.

22 JUROR NUMBER 470: And I don't think that would
23 keep me from making the correct decision.

24 MR. MCGUIRE: Do you find their background to be
25 relevant?

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1 JUROR NUMBER 470: I do believe all of us have
2 traveled a road to get to where we're at in our life, so
3 I do believe that plays somewhat of a bearing on -- on
4 where I am today, sitting right here.

5 MR. MCGUIRE: Sure.

6 JUROR NUMBER 470: So, you know, I would have to
7 hear all the evidence to figure out whether it would or
8 wouldn't apply. If -- I don't know if I'm answering
9 right.

10 MR. MCGUIRE: You're doing great. You're doing
11 great.

12 JUROR NUMBER 470: A little nervous. Can I say
13 that? A lot of people looking at me here.

14 MR. MCGUIRE: Sure.

15 JUROR NUMBER 470: Okay.

16 MR. MCGUIRE: This is maybe the one day in your
17 life where everything you say is the right answer.

18 JUROR NUMBER 470: Okay.

19 MR. MCGUIRE: That's a pretty comfortable spot to
20 be in.

21 JUROR NUMBER 470: Yeah.

22 MR. MCGUIRE: Okay, So, I want to talk to you
23 about some of the legal principles that apply and see if
24 you can, you know, just say that you can follow the law,
25 basically.

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1 JUROR NUMBER 470: Okay.

2 MR. MCGUIRE: And some of the legal principles are
3 that the first phase of the case, in a capital case,
4 trials are broken down into two parts. The first part
5 is the traditional trial; the did somebody do a criminal
6 act; do they have the right guy; is he guilty beyond a
7 reasonable doubt. That's the guilty/not guilty part.
8 Okay?

9 JUROR NUMBER 470: Um-hmm.

10 MR. MCGUIRE: And then, the second part, if you
11 convicted somebody, -- and you know Mr. Daise is
12 presumed innocent. We haven't even had a trial yet. We
13 might not get to a second phase.

14 But if you convicted somebody of the crime of
15 murder, then, the Judge would bring the jury back for
16 the second phase, the penalty phase. That would be the
17 life penalty and the death penalty decision. Okay?

18 And the jury changes a little bit when you go into
19 that penalty phase. You go from being -- you know, we
20 always think that jurors have to speak with one voice
21 and be unanimous to have a case end; otherwise, a hung
22 jury, and it has to be tried again, right? You probably
23 knew that from just T.V.

24 JUROR NUMBER 470: T.V., yes, sir.

25 MR. MCGUIRE: Okay. Well, in the penalty phase,

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1 it's different. All twelve jurors could agree on say,
2 like, the life penalty. All twelve jurors could agree
3 on the death penalty. But then, at the end of the day,
4 in such an important matter, people might disagree, and
5 there might not be a unanimous decision. And if that's
6 the case, the Judge would take the case and sentence,
7 and the case would end, and it would not be tried again.
8 Did you know that?

9 JUROR NUMBER 470: No, sir. No, sir, I didn't.
10 Sorry, I shook my head. I know she can't take that, so.

11 MR. MCGUIRE: And you don't have to call me sir.

12 JUROR NUMBER 470: Okay.

13 MR. MCGUIRE: That's a little unique, because
14 usually, we think of a hung jury or a jury disagreement
15 as not being able to finish their duty and the case not
16 finishing.

17 JUROR NUMBER 470: Right.

18 MR. MCGUIRE: But in a capital case, the penalty
19 phase, if the jury, and it's a very important matter,
20 agrees to disagree, the case does end. You don't have
21 to concern yourself with the sentence the Judge might
22 give. I just want you to know that the case would end.
23 You would not have failed to do your duty. Is that fair
24 enough? Okay.

25 JUROR NUMBER 470: Yes.

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1 MR. MCGUIRE: Thank you.

2 JUROR NUMBER 470: Sorry.

3 MR. MCGUIRE: Thank you, ma'am. And the way that
4 works is, the Judge would describe the decision -- the
5 decision making is described as a request for an
6 individual person, an individual juror, to reach their
7 own moral judgment, their individual moral judgment.
8 And it's a very individual -- it's an individual
9 process.

10 And an example of that would be, if you were on a
11 jury, somebody on one side of the jury would say, you
12 know, I'm going to go ahead and vote for the life
13 penalty, because I saw something in the defendant's
14 upbringing that I thought was particularly harsh, and
15 I'm going to bestow mercy; I want to be merciful just
16 based on that and vote for life.

17 Somebody on the other side might say, I saw him do
18 something redeeming or do something good, like take care
19 of a sibling in hard times; so I'm going to vote for
20 life because of that. And somebody else might say, you
21 know, I heard the Judge say we can sentence to life for
22 any reason, no reason, or mercy alone; and I don't have
23 the words to describe my position, but I'm just going to
24 vote for life for no reason. And you can see how it's
25 all different. They're all individuals.

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1 JUROR NUMBER 470: I do.

2 MR. MCGUIRE: And they don't have to agree. Did
3 you know that's how worked?

4 JUROR NUMBER 470: No, I did not.

5 MR. MCGUIRE: But now you do?

6 JUROR NUMBER 470: Yes, sir. Yes.

7 MR. MCGUIRE: And you can respect --

8 JUROR NUMBER 470: That's going to come out. I'm
9 sorry.

10 MR. MCGUIRE: You're fine. And now that you know
11 that, that it's that individual, is that a principle of
12 law that you could respect?

13 JUROR NUMBER 470: Absolutely.

14 MR. MCGUIRE: And if people had different
15 individual moral judgments, you could respect them all?

16 JUROR NUMBER 470: I would hope so, yes

17 MR. MCGUIRE: Okay. And you know, there are a lot
18 of rules in court. Some of them are for me; some are
19 for the Judge even; but some are for you as a juror.
20 And the Court and our law requires that proceedings like
21 this be carried out with dignity and respect. And it
22 sounds like you're the kind of person who would respect
23 all the other jurors.

24 JUROR NUMBER 470: Yes.

25 MR. MCGUIRE: And their opinions.

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1 JUROR NUMBER 470: Yes.

2 MR. MCGUIRE: Even if they're different.

3 JUROR NUMBER 470: Absolutely.

4 MR. MCGUIRE: And there's one more thing I want to
5 talk to you about to -- the Judge is going to give
6 everybody a juror oath at some point. And if you're
7 picked as juror with eleven other people, you would all
8 get the oath. And the oath would require, once a juror
9 reaches their individual moral judgment, if it comes to
10 that decision, it would be wrong for them to give that
11 up or change their vote for the sake of, say,
12 compromise.

13 Their oath requires that, once they reach an
14 individual moral judgment, they have a duty and
15 obligation to have their vote, their voice, heard in
16 court. Did you know that?

17 JUROR NUMBER 470: No.

18 MR. MCGUIRE: Okay. Now you know. Is that a
19 principle of law you could respect?

20 JUROR NUMBER 470: Absolutely.

21 MR. MCGUIRE: If somebody, maybe the juror that
22 could vote for life for no reason; they don't have the
23 words to defend themselves or articulate their position;
24 and if you saw somebody getting bullied and people were
25 asking them to compromise, or do harm to their

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1 conscience and get them to change their position, could
2 you come to that person's aid and make sure they were
3 respected?

4 JUROR NUMBER 470: Speaking up has never been a
5 problem for me.

6 MR. MCGUIRE: It doesn't seem like it.

7 JUROR NUMBER 470: No, sir.

8 MR. MCGUIRE: All right. Thank you, sir. I
9 enjoyed talking to you.

10 THE COURT: Mr. Stone.

11 MR. STONE: Mr. Nasuti, my name's Duffie Stone.
12 How are you today?

13 JUROR NUMBER 470: All right, sir. I recognize
14 your name. It wasn't on the list, but.

15 MR. STONE: They don't ever put me on the list.
16 Let me ask you a few questions, and I want to explain
17 some stuff the Defense just asked you about, and I want
18 to make sure we're clear. And I understood that you had
19 some misgivings about making this determination, which
20 is, quite frankly, understandable. It's a tremendous
21 task that we ask you to do as a juror.

22 When we're dealing with this type of case, we start
23 out first in what's called the guilt phase of the case,
24 and that determination is whether or not the defendant
25 is guilty of murder.

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1 If the jury finds that the defendant is guilty,
2 then, it moves into the second phase of the trial, which
3 is called the sentencing phase. During the sentencing
4 phase it's up to you as a juror to make a determination
5 of whether or not the defendant should get the death
6 penalty or life in prison.

7 And I think you indicated on your form, that
8 questionnaire that we sent you, that you are the type of
9 juror who would take everything into consideration and
10 make that determination. Is that correct?

11 JUROR NUMBER 470: Yes, sir.

12 MR. STONE: Okay. Knowing that you already made
13 the conviction, we're now just dealing with the
14 sentence, and the choice is either life or death.

15 JUROR NUMBER 470: Correct.

16 MR. STONE: Okay. What the Defense just describe
17 to you when he said there may be a situation where the
18 case ends and you don't make a decision is what would be
19 called a hung jury. In other words, you can't decide,
20 as far as a jury's concerned. But I want to make sure
21 that you understand this.

22 The Judge is still going to ask you to go back and
23 do it and deliberate. And the deliberation part is you
24 viewing whatever, you know, voicing whatever opinion you
25 may have, as well as other people voicing theirs and

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1 trying to come up with a consensus. Does that make
2 sense?

3 JUROR NUMBER 470: Yes, sir.

4 MR. STONE: And I know this is a difficult decision
5 to make, but I want to make sure that you understand
6 that, we still ask you to make that decision, as
7 difficult as it may be, despite the fact that it would
8 be a lot easier just to say we can't decide, Judge; you
9 make the decision for us. You see what I'm asking?

10 JUROR NUMBER 470: Yes, sir, I understand my
11 obligation, and I will do it.

12 MR. STONE: Thank you, sir. Then, one other
13 question. If the case is bad enough, could you give
14 somebody the death penalty?

15 JUROR NUMBER 470: Yes, sir.

16 MR. STONE: There is a form that you have to fill
17 out, and the form itself has your name, a line for your
18 name, and you have to sign your name to that. By the
19 way, the sentence is not a recommendation. The sentence
20 will be carried out. Could you sign a form to send
21 somebody to a death sentence?

22 JUROR NUMBER 470: Yes, sir.

23 MR. STONE: Thank you, sir. I don't have any
24 further questions.

25 THE COURT: Okay. All right.

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1 MR. STONE: Thank you, your Honor.

2 THE COURT: All right. Sir, I do find you
3 qualified to serve as a potential juror in this case.
4 That does not mean you are on the jury. It simply means
5 you are a potential juror.

6 As you know, we are running behind as far as this
7 process is concerned. I hope I am able to pull a jury
8 Monday morning at 9:30, but, out of an abundance of
9 caution, Norman's going to give you a phone number. I
10 want you to call that line after 6:00 p.m. tomorrow
11 night, Saturday night.

12 JUROR NUMBER 470: Okay.

13 THE COURT: It will tell you when you need to
14 report. I'm just trying to reduce the amount of time
15 that you all are waiting on us. So, just call the line.
16 Whatever it tells you to do, whenever it tells you to
17 report, please just be here, and we look forward to
18 seeing you. Thank you, Mr. Nasuti.

19 JUROR NUMBER 470: Thank you, ma'am.

20 THE COURT: Sir, I also apologize. I forgot one
21 thing. You are not to discuss this case with anyone.
22 Additionally, you are not to read anything, do any
23 independent research, anything along those lines. Go,
24 have a nice weekend. We'll see you next week.

25 JUROR NUMBER 470: Thank you, ma'am.

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1 THE COURT: Thank you, sir.
2 JUROR NUMBER 470: Thank you, sir.
3 JUROR NUMBER 470 LEAVES COURTROOM.
4 JUROR NUMBER
5 BAILIFF: Your Honor, Ms. Moraima Sherman.
6 THE COURT: Thank you.
7 BAILIFF: Right this way, ma'am.
8 JUROR NUMBER 567 ENTERS COURTROOM.
9 THE COURT: Come on forward.
10 BAILIFF: If you will, please, go up and take a
11 seat in the witness box.
12 THE COURT: Thank you.
13 JUROR NUMBER 567: Thank you.
14 THE COURT: So good to see you. Good morning.
15 JUROR NUMBER 567: Nice to see you, too. Thank
16 you.
17 THE COURT: I'm sorry we are running behind. I do
18 apologize.
19 JUROR NUMBER 567: That's okay.
20 THE COURT: To begin with, I need to remind you
21 that you are still under the oath that you took on
22 Wednesday. Is that all right with you?
23 JUROR NUMBER 567: Yes, it is.
24 THE COURT: Additionally, you and I had a
25 conversation on Wednesday.

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1 JUROR NUMBER 567: Yes.

2 THE COURT: The lawyers were privy to it, as well.
3 English is your second language.

4 JUROR NUMBER 567: Yes, it is.

5 THE COURT: And I know you have a concern about
6 making sure you hear everything and understand
7 everything. This is a very good opportunity for us to
8 make sure you do hear and understand --

9 JUROR NUMBER 567: Okay.

10 THE COURT: -- everything we're talking about.
11 I need you to tell the lawyer or me, or whoever's asking
12 you the questions, if you don't understand something.
13 They can repeat it; they can rephrase it; but I need to
14 know from you whether or not you understand.

15 JUROR NUMBER 567: Okay. I will.

16 THE COURT: Is that fine?

17 JUROR NUMBER 567: Yes, it is.. Thank you.

18 THE COURT: All right. And to begin with, I need
19 to ask you, did you review the witness list back in the
20 jury room?

21 JUROR NUMBER 567: Yes. Yes.

22 THE COURT: Do you know any persons on that witness
23 list?

24 JUROR NUMBER 567: No. I mean, never talked to
25 him. I just recognize his face. I'm sorry.

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1 THE COURT: Oh, you would recognize Sheriff
2 Tanner's face.

3 JUROR NUMBER 567: That's it.

4 THE COURT: Okay.

5 JUROR NUMBER 567: That's it.

6 THE COURT: That's fine.

7 JUROR NUMBER 567: They told us to write it down if
8 we recognized it.

9 THE COURT: That's fine. You don't have any type
10 of personal relationship with him whatsoever?

11 JUROR NUMBER 567: No, no, none.

12 THE COURT: All right. Additionally, this case has
13 received some press coverage, some news coverage in the
14 newspaper. Have you read anything in the newspaper or
15 seen anything on T.V. or?

16 JUROR NUMBER 567: No. Just until this week that
17 they were talking about the jury selection that's going
18 to start.

19 THE COURT: Okay.

20 JUROR NUMBER 567: And I think it was Tuesday they
21 were talking about some changes. They have to look for
22 parking because of the number of, you know, potential --

23 THE COURT: It was in the newspaper, yes.

24 JUROR NUMBER 567: Exactly. It was in the
25 newspaper. That's right.

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1 THE COURT: I understand. All right.

2 JUROR NUMBER 567: Yes.

3 THE COURT: I want to make absolutely sure you
4 understand that anything that is written in the
5 newspaper that you hear outside of this courtroom would
6 be inappropriate for you to consider.

7 JUROR NUMBER 567: Okay.

8 THE COURT: Do you understand that?

9 JUROR NUMBER 567: Yes, I do.

10 THE COURT: Okay. Because it is not factual.

11 JUROR NUMBER 567: Okay.

12 THE COURT: You understand that.

13 JUROR NUMBER 567: I do.

14 THE COURT: All right, ma'am. I'm going to go
15 ahead and let the lawyers ask you some questions. I
16 only ask that you be honest and candid with the lawyers.

17 JUROR NUMBER 567: Okay.

18 THE COURT: They are going to ask you your opinion
19 about the death penalty. Some of these questions are
20 difficult.

21 JUROR NUMBER 567: Um-hmm.

22 THE COURT: We all appreciate that. There are no
23 right or wrong answers here.

24 JUROR NUMBER 567: Okay.

25 THE COURT: Everyone just wants to hear your

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1 feelings.

2 JUROR NUMBER 567: Okay.

3 THE COURT: Okay?

4 JUROR NUMBER 567: Okay.

5 THE COURT: Thank you.

6 JUROR NUMBER 567: You're welcome.

7 MR. SECOR: Thank you, your Honor. Good morning,
8 ma'am.

9 JUROR NUMBER 567: Good morning.

10 MR. SECOR: How are you?

11 JUROR NUMBER 567: How are you?

12 MR. SECOR: I'm all right, thanks. I've been told
13 many times that I mumble, so if I'm not making sense or
14 if you can't understand, just put your hand up and tell
15 me to stop.

16 JUROR NUMBER 567: Okay. I will. Thank you.

17 MR. SECOR: We're here today to talk about how you
18 feel personally about how a person who is found guilty
19 of murder should be punished. Okay?

20 JUROR NUMBER 567: Okay.

21 MR. SECOR: And we're not asking you to render an
22 opinion about this case, because this case has not been
23 resolved yet. Okay? But this is the only opportunity
24 that we have to talk about penalty.

25 JUROR NUMBER 567: Okay.

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1 MR. SECOR: So, that's why we have to do it now.

2 Okay?

3 JUROR NUMBER 567: Yes.

4 MR. SECOR: And I'm sure you know, in this country,
5 just because somebody is arrested for a crime, they are
6 presumed innocent.

7 JUROR NUMBER 567: Yeah, I know that. Yeah.

8 MR. SECOR: Okay. And another thing that I want to
9 tell you before I ask you a question, and this is just
10 to make sure that you and I are on the same page; in
11 South Carolina the definition of murder is as follows:
12 murder is the killing of another person with malice
13 aforethought. Okay?

14 JUROR NUMBER 567: Okay.

15 MR. SECOR: And I know it's very fancy language.
16 But what malice means is that the killing of the other
17 person was done with an evil intent. It was
18 intentional.

19 JUROR NUMBER 567: Okay.

20 MR. SECOR: Premeditated. If I'm guilty of
21 murdering somebody, I murdered an innocent person for no
22 reason, no justification, no excuse. I was not
23 defending myself, it was not an accident. I decided
24 with evil in my heart and in my mind that I wanted
25 somebody dead, and I went and I killed them for no

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1 reason, that's what a murder is in South Carolina.

2 Okay?

3 JUROR NUMBER 567: Okay.

4 MR. SECOR: And what we want to know, all of us in
5 this room, is to know your own personal true feelings in
6 your heart and in your mind about how a person who is
7 guilty of that kind of a crime should be punished. And
8 the way I'm going to ask you the question is this. How
9 do you feel about a person who is guilty of a crime like
10 that, one hundred percent guilty of a crime like that?
11 Should a person be sentenced to death?

12 JUROR NUMBER 567: Yes.

13 MR. SECOR: That's what you believe in your heart.

14 JUROR NUMBER 567: That's what I believe, yeah.

15 MR. SECOR: Okay. And I'm just going to add a
16 couple of other things. It's just going to be the same
17 question, but I just want you to take into account a
18 couple other things. Okay?

19 JUROR NUMBER 567: Okay.

20 MR. SECOR: I want you to envision yourself as
21 being on a jury where you believe one hundred percent
22 that a person has killed, not only one person. but two
23 people, two murders.

24 JUROR NUMBER 567: Yes.

25 MR. SECOR: And one of the people that was murdered

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1 was a four-year-old child, and you believe one hundred
2 percent that, that person who is on trial intentionally
3 murdered those two people with evil in their heart for
4 no reason, and there's no justification and no excuse.
5 Do you believe that, that person should be punished with
6 the death penalty?

7 JUROR NUMBER 567: Yes, I do.

8 MR. SECOR: Okay. Last thing I want to ask you for
9 now is this. Do you believe that the life experience of
10 that guilty murderer, that person who killed two people,
11 including one child, do you believe the life experience
12 of that guilty murderer matters in terms of whether or
13 not they should get the death penalty?

14 JUROR NUMBER 567: No, I don't think so.

15 MR. SECOR: Okay. Thank you, ma'am. I appreciate
16 it.

17 JUROR NUMBER 567: You're welcome.

18 MR. MCGUIRE: Just one second, Judge, if you don't
19 mind.

20 THE COURT: Yes.

21 MR. SECOR: I'm sorry. I forgot to ask you
22 something.

23 JUROR NUMBER 567: That's okay.

24 MR. SECOR: You remember you got this
25 questionnaire, right?

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1 JUROR NUMBER 567: Yes, I do.

2 MR. SECOR: And I know it -- they're complicated,
3 and we're sorry that they're complicated. We're trying
4 to get as much information as we can from people before
5 you have to come in, as we hope it's going to shorten
6 the amount of time you have to sit around, but
7 obviously, that doesn't work.

8 But on this form, and I think -- I believe -- I
9 believe -- I believe you said that you had somebody help
10 you out a little bit on the form. Is that right?

11 JUROR NUMBER 567: No. Nobody helped me.

12 MR. SECOR: Oh, you didn't?

13 JUROR NUMBER 567: No.

14 MR. SECOR: I'm sorry. That was somebody else.

15 JUROR NUMBER 567: That's okay.

16 MR. SECOR: On this form, there's a page that asks
17 you to circle one of three choices about the type of
18 juror that you are. Okay?

19 JUROR NUMBER 567: Right.

20 MR. SECOR: And I just want to make sure that you
21 and I understand one another. On that form, you said --
22 you circled Type 3 juror.

23 JUROR NUMBER 567: Yes, sir.

24 MR. SECOR: Now, a Type 1 juror is somebody that
25 would always give somebody the death penalty if they

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1 committed a malice murder like we described. Okay?

2 JUROR NUMBER 567: Okay.

3 MR. SECOR: Type 2 was a juror who would never give
4 somebody the death penalty, if they were guilty of a
5 malice murder.

6 And then, there was Type 3, which is what you
7 circled, which is what you said you would want to hear
8 all the information presented before you made your
9 decision. Okay.

10 JUROR NUMBER 567: Yes.

11 MR. SECOR: Now, and I understand, I think that's
12 the one I would circle, too. But based on the
13 information that I've given you now, and asking you to
14 envision yourself as being in the position of having
15 found somebody guilty of committing two intentional,
16 evil-hearted, malice murders, and one of the people who
17 was murdered was a four-year-old child; in that
18 situation, that person, for you, gets the death penalty.
19 Is that correct?

20 JUROR NUMBER 567: Yes, that is correct.

21 MR. SECOR: And that is a belief that comes from
22 your moral compass, right?

23 JUROR NUMBER 567: Yes.

24 MR. SECOR: Your heart.

25 JUROR NUMBER 567: Yes.

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1 MR. SECOR: And your soul.

2 JUROR NUMBER 567: Yes, sir.

3 MR. SECOR: And that's not something that's going
4 to change, right?

5 JUROR NUMBER 567: No. It's no change.

6 MR. SECOR: Okay. Thank you, ma'am.

7 JUROR NUMBER 567: Okay. You're welcome.

8 MR. STONE: Ms. Sherman, my name is Duffie Stone.
9 So, what I'm understanding from you now is that, in a
10 situation in which a child is murdered and another
11 person is murdered, that you would not take anything
12 else into consideration, as opposed to what you put on
13 your form, which is you would take everything into
14 consideration before making a sentence?

15 JUROR NUMBER 567: Let me see if I understand.

16 MR. STONE: Sure.

17 JUROR NUMBER 567: I will look at all the evidence.

18 MR. STONE: Yes, ma'am.

19 JUROR NUMBER 567: Yes, I am correct. But I have
20 to be a hundred percent sure that this is -- this is
21 what happened that way. You are trying to prove this
22 person guilty, and this person planned this, or this
23 person, you know, this dealing with evil, like you said.

24 MR. STONE: Yes, ma'am.

25 JUROR NUMBER 567: I would vote for the death

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1 penalty, yes.

2 MR. STONE: Okay. In a death penalty case, in this
3 type of case, it's actually split into two different
4 trials. The first trial is to determine whether or not
5 the person is guilty; and the second one is what the
6 questionnaire asked you about, and the second part of
7 the trial. That second trial is what we're talking
8 about when we're trying to determine the sentence. So,
9 in the first trial, assuming that you had already found
10 the defendant guilty, --

11 JUROR NUMBER 567: Okay.

12 MR. STONE: -- that he was, in fact, guilty of
13 murdering a child and murdering another person, it would
14 then be up to you to make the decision about whether or
15 not he should receive the death penalty or he should
16 spend the rest of his life in prison.

17 JUROR NUMBER 567: Yes.

18 MR. STONE: In your questionnaire, your answer was
19 that you would take everything into consideration in
20 making that determination.

21 JUROR NUMBER 567: Yes.

22 MR. STONE: Is that still the same, or do you now
23 feel like no matter what, he's going to have to get the
24 death penalty?

25 JUROR NUMBER 567: No, I would take everything in

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1 consideration, okay, to decide, yes.

2 MR. STONE: And so, not only what the State says,
3 if the case is bad enough, you could give the death
4 penalty; could you also give life in prison?

5 JUROR NUMBER 567: Yes, it depend. Yes.

6 MR. STONE: Okay.

7 JUROR NUMBER 567: Yes. I would have to see
8 everything a hundred percent, you know.

9 MR. STONE: Okay. And the Judge would tell you
10 that you can give life in prison for a good reason or no
11 reason at all. You could simply say mercy is the
12 appropriate sentence. Could you do that? Could you
13 consider that?

14 JUROR NUMBER 567: I could, yeah, I could. Because
15 I could, if that is, you know, they come -- let me put
16 it this way. If a person is considered guilty, but
17 maybe, just for example, he didn't plan it. Okay?

18 MR. STONE: Right.

19 JUROR NUMBER 567: It was the heat of the moment,
20 or I don't know exactly how you put it, but it's still
21 dealing with evil. No evil. It's no -- it's not trying
22 to save someone's life. It's just did it. Maybe it's
23 just going to be life in prison. I don't know if that
24 makes sense --

25 MR. STONE: Sure.

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1 JUROR NUMBER 567: -- what I'm trying to say.

2 MR. STONE: No, and let me -- and I don't know that
3 we're making sense, either, and that's what I'm
4 concerned about.

5 JUROR NUMBER 567: Okay.

6 MR. STONE: If you are on a jury, you're on this
7 jury, your first determination is whether or not he is
8 guilty.

9 JUROR NUMBER 567: Yes, sir.

10 MR. STONE: And if he is guilty -- he's not guilty,
11 if he did not act in self-defense.

12 JUROR NUMBER 567: Okay.

13 MR. STONE: He did not -- he was not -- he didn't
14 have any type of insanity, anything like that. He
15 committed a murder. He intentionally, maliciously
16 murdered somebody. You would make that determination
17 first. And then, the second determination would be, all
18 right, now, what's the appropriate sentence --

19 JUROR NUMBER 567: Okay.

20 MR. STONE: -- for somebody that does that. And
21 that's what we're trying to -- we're trying to sort
22 of start you from the premise that you've already
23 decided --

24 JUROR NUMBER 567: Okay.

25 MR. STONE: -- that he was -- that he meant to do

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1 it; that he did it willfully and evilly, with evil and
2 all of that. But now, the question is, would you
3 consider life in prison, or is it always going to be the
4 death penalty?

5 JUROR NUMBER 567: If like, you put it -- you put
6 it this way. If it's a hundred percent he's guilty and
7 he did in an evil way, I would vote for the death
8 penalty.

9 MR. STONE: Okay. Thank you, ma'am.

10 JUROR NUMBER 567: You're welcome.

11 MR. STONE: And you would not consider life in
12 prison?

13 JUROR NUMBER 567: Only if the Judge that asked to
14 consider that. I don't know exactly how the laws --

15 COURT REPORTER: I'm so sorry. Would you repeat
16 your answer.

17 JUROR NUMBER 567: Okay. I'm sorry. I trying to
18 say that, only if we have direction from the Judge or
19 from the Court that we -- I have to consider that. I
20 don't know exactly how that work. I don't know.

21 Is by law we have to consider that, or not? I
22 don't have no idea.

23 MR. STONE: Certainly, certainly. And you would
24 have no reason to know. The Judge would, in fact,
25 instruct you that you needed to listen to both the

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1 Defense, as well as the State, and take everything into
2 consideration --

3 JUROR NUMBER 567: Exactly.

4 MR. STONE: -- before you made that determination.

5 JUROR NUMBER 567: Exactly.

6 MR. STONE: And really, what we want to know today
7 is, can you really do that? And can you take into
8 consideration, even if you know somebody's guilty, even
9 if you know they committed murder, can you take into
10 consideration anything else to determine -- and come
11 back with a verdict, a sentence of life in prison, as
12 opposed to death?

13 JUROR NUMBER 567: Yeah, I suppose I have to see
14 the whole picture, everything. Need to consider --
15 consideration, yes.

16 MR. STONE: Okay. So, basically, going back to
17 your answer in your questionnaire, which is you would
18 take everything into consideration before you made a
19 sentence determination.

20 JUROR NUMBER 567: Yes.

21 MR. STONE: Okay. Thank you.

22 JUROR NUMBER 567: Okay. You're welcome.

23 THE COURT: Mr. Secor?

24 MR. SECOR: Thank you. Hi.

25 JUROR NUMBER 567: Hi, there.

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1 MR. SECOR: Let me first just say, I want you to
2 understand that nobody here is trying to give you a hard
3 time. Okay?

4 JUROR NUMBER 567: I do understand that, yes.

5 MR. SECOR: I want you to be comfortable. Okay?

6 JUROR NUMBER 567: Yes, thank you.

7 MR. SECOR: And what my concern is, is this. I
8 felt like, when I was up here talking to you before that
9 -- and please, obviously, tell me if I was wrong, but my
10 understanding from when we were talking before was that,
11 if you were on the jury and you had heard all the
12 evidence presented to you in the case, --

13 JUROR NUMBER 567: Okay.

14 MR. SECOR: -- and you believed with complete
15 certainty, you had no doubt that the person that was on
16 trial intentionally, maliciously murdered a woman and a
17 four-year-old child, and you had no question in your
18 mind that, that person was guilty and that they did it
19 with an evil heart, intentionally, premeditated, no
20 excuse, no justification; that you believe that, that
21 person should definitely get the death penalty.

22 JUROR NUMBER 567: I have not -- I have to repeat
23 what I say before. I don't know definitely, because,
24 also, I don't know the law. I would think, yes, that
25 person should be sentenced to death. But then, it's the

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1 law that also I would have to follow. Okay. So, I -- I
2 don't know what else to explain. I'm sorry.

3 MR. SECOR: No, no. Don't apologize, really.
4 There's nothing for you to be sorry about. And one
5 thing that I should have -- that I should have told you
6 that might help us sort of resolve this is that, the
7 decision about what that guilty murderer should be
8 sentenced is based on your individual morality. You, as
9 a person, get to decide.

10 JUROR NUMBER 567: Okay.

11 MR. SECOR: And nobody can tell you how or nobody
12 can tell you what decision to make. So, if there is no
13 law that tells you what decision you have to make, if
14 the law says the decision is your own moral
15 consideration, your verdict is death for a person who
16 intentionally, maliciously kills a woman and a four-
17 year-old with evil in their heart.

18 JUROR NUMBER 567: Yes.

19 MR. SECOR: Okay. And it doesn't matter to you the
20 life experience, life story, of the person who
21 intentionally and maliciously kills a woman and a four-
22 year-old child.

23 JUROR NUMBER 567: No, sir.

24 MR. SECOR: Okay. I appreciate it, ma'am. Thank
25 you.

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1 JUROR NUMBER 567: You're welcome.

2 MR. STONE: I don't have any further questions.
3 Thank you, ma'am.

4 JUROR NUMBER 567: Thank you.

5 THE COURT: You may step out for just a moment,
6 ma'am. We'll be right back with you. Okay?

7 JUROR NUMBER 567: So, you want me stay here?

8 THE COURT: I'm going to have you step out with Bob
9 for just a moment. I'm going to bring you right back
10 in. Okay?

11 JUROR NUMBER 567: Okay. Thank you.

12 THE COURT: Thank you.

13 JUROR NUMBER 567 LEAVES COURTROOM.

14 BAILIFF: Door's closed, your Honor.

15 THE COURT: I'm letting you all talk. Go ahead.
16 You're fine.

17 MR. STONE: Thank you, your Honor. I'm sorry.

18 THE COURT: Absolutely. Solicitor?

19 MR. STONE: I think, your Honor, and here's the
20 confusion. Jurors are coming in; they have no idea
21 about what these terms mean; what the crime means; and I
22 think for the Defense to stand up and give one side,
23 it's --

24 THE COURT: It's horrible, --

25 MR. STONE: It's horrible.

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1 THE COURT: -- heinous, every other word fifteen
2 times.

3 MR. STONE: And then, what do you think? Well, I'm
4 surprised we've gotten anybody to respond to that. So,
5 I can't --

6 THE COURT: I will tell you, Mr. Secor, you are
7 very emotional, and that I will tell you that you're
8 affect with the jury, and I certainly understand what
9 you're doing, but again, it is difficult for a juror not
10 to agree with you. I'm sorry. I didn't mean to cut you
11 off, Mr. Stone.

12 MR. STONE: No, ma'am. And that was my point.

13 THE COURT: Exactly.

14 MR. STONE: Because that's why I asked -- my
15 questions, you know, my question was:

16 *Would you take everything in*
17 *consideration; would you follow the law?*

18 She clearly said she would. She would listen to
19 your instructions, you know, and then we barrage her
20 with the most heinous of facts. I think, technically,
21 what she answered was that she would follow the law, and
22 that she would do what she's supposed to do. She said:

23 *I don't know what the law is. I*
24 *don't know what I'm supposed to do.*

25 And I think that's what we expect from every juror

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1 that comes here.

2 THE COURT: Okay. Well, I will say this,
3 Solicitor, you've been incredibly fair in your
4 questions.

5 MR. STONE: Thank you.

6 THE COURT: \ And I appreciate that very much.

7 MR.. STONE: Thank you, ma'am.

8 THE COURT: I can tell you in this one, I'm going
9 to find her not qualified. I will tell you all that you
10 need to be careful. Again, Mr. Secor, you are very
11 emotional. And again, to sit and go on and on and on
12 and on about the horribleness of it; and then you turn
13 around and you throw out things to consider. She said
14 she could consider mitigation. I mean, she did. She
15 said she'd listen to the whole thing, in all fairness.

16 So, again, like I said, let's just be careful. I
17 want to make sure, -- and again, my concern is this: we
18 better not disqualify people and qualify people who are
19 similarly situated and have similar beliefs. That's
20 just not what this process is about.

21 So, with that said, bring her back in. I will say
22 very quickly -- I'll do it once he brings her back.
23 Never mind. That's okay?

24 JUROR NUMBER 567 ENTERS COURTROOM.

25 BAILIFF: Stand right there and face the Judge,

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1 please.

2 THE COURT: Thank you. Thank you so much for being
3 with us. We appreciate you being here, and we
4 appreciate your honesty. At this time, I'm going to go
5 ahead and excuse you from the trial of this case.
6 Again, you do not need to report on Monday.

7 JUROR NUMBER 567: Thank you.

8 THE COURT: Please go about your business, and
9 again, thank you.

10 JUROR NUMBER 567: Thank you very much.

11 BAILIFF: Can I have your badge, ma'am?

12 THE COURT: Before you bring the next person in,
13 give me ten seconds.

14 BAILIFF: Yes, ma'am. Just shut the door, you all.
15 Thank you.

16 I just want to also put on the record that one of
17 the other considerations that I do have a slight worry
18 about with Ms. Sherman, Juror Number 567, is the
19 language barrier. That was another issue, as well. I
20 want to make absolutely sure she understood everything
21 that was going on.

22 I think, Mr. Secor, that's what made it that much
23 more meaningful that you were so emotional to her,
24 because it elicited a response. And I'm not convinced.
25 I think she had a good grasp of the English language;

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1 don't get me wrong, but I want to make absolutely sure
2 that she understands every word, every nuance. Again,
3 it's too important.

4 So, that's just for the record I want to put on
5 there that, that was my other concern, that English is
6 not her first language. She raised it the very first
7 day we were here. She raised it again.

8 And Mr. Secor, you're fine. Don't worry about it.
9 I'm not calling you down in any way. I'm just pointing
10 out, and I think it's your personality. I think it's
11 how you try cases. And I tell all lawyers that are
12 trial lawyers, you've got to bring who you are to court.
13 You can't be someone else, and I appreciate that. You
14 can't be authentic unless you are yourself, and I get
15 that.

16 But again, I just want to make sure you understood,
17 in that particular case, it did concern me, just
18 because, again, I'm not so sure she grasped everything.
19 But by the time you were done, there is no way that
20 woman was going to do anything but agree with you. So,
21 as far as, I guess, salesmanship it was good, and as a
22 lawyer. So, with that settled, let's go ahead and bring
23 the next person in.

24 BAILIFF: Mr. Charles Surber, your Honor.

25 JUROR NUMBER 610 ENTERS COURTROOM.

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1 THE COURT: Come on forward, Mr. Surber. It's
2 still good morning, Mr. Surber, thank goodness. Come on
3 up.

4 BAILIFF: Go up and have a seat in the witness box.

5 THE COURT: Come on in, sir.

6 JUROR NUMBER 610: Thank you.

7 THE COURT: Thank you for your patience, Mr.
8 Surber.

9 JUROR NUMBER 610: You're welcome.

10 THE COURT: I want to you to know everyone's
11 working hard in here. This is an important process.
12 This is information that we all need to have, and we
13 appreciate and you willing and willing to be here to
14 serve.

15 I need to remind you that you are still under the
16 oath you took on Wednesday when you came in. Is that
17 acceptable to you, sir?

18 JUROR NUMBER 610: Yes.

19 THE COURT: Additionally, have you had an
20 opportunity to look at the witness list back in the jury
21 room?

22 JUROR NUMBER 610: Yes.

23 THE COURT: Do you know anyone, either personally,
24 professionally, or do any business with them, or
25 socially?

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1 JUROR NUMBER 610: Nobody.

2 THE COURT: All right, sir. Additionally, there
3 has been some press coverage on this case. Have you
4 heard anything, read about it in the news, or have any
5 independent knowledge, anything about this case, other
6 than what you've got in the questionnaire and other than
7 what you've heard here in the courtroom?

8 JUROR NUMBER 610: Just from my wife when I got it.
9 She mentioned -- she remembered back when it happened
10 and told me something about that.

11 THE COURT: Did she read some newspaper coverage of
12 it, or do you know how she had her knowledge?

13 JUROR NUMBER 610: I think T.V.

14 THE COURT: Through the T.V. Okay. But you
15 haven't personally seen or read anything about it. Is
16 that correct?

17 JUROR NUMBER 610: No, ma'am.

18 THE COURT: And I want to make sure that you can
19 put aside anything that she may have told you about this
20 case, deciding, if you were a juror, on the facts here
21 in the courtroom.

22 JUROR NUMBER 610: Yes.

23 THE COURT: Thank you. Also, these attorneys are
24 going to ask you some questions about your views on
25 death penalty and punishment, and what you think about

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1 punishment for life imprisonment without the possibility
2 of parole.

3 They're going to maybe talk to you a little bit
4 about this case. That's permissible. The only thing
5 that I need you to do, sir, is be honest and candid.
6 There are no right or wrong answers here. Everyone just
7 wants to know what your feelings are. All right, sir?

8 JUROR NUMBER 610: Yes.

9 THE COURT: Thank you.

10 MR. MCGUIRE: Thank you, your Honor. Good morning,
11 sir.

12 JUROR NUMBER 610: Good morning.

13 MR. MCGUIRE: Is it Mr. Surber?

14 JUROR NUMBER 610: Surber, yes.

15 MR. MCGUIRE: Surber. I got that pretty close, or?

16 JUROR NUMBER 610: Yes, Surber.

17 MR. MCGUIRE: Okay. My name's Bill, Bill McGuire.
18 I'm one of the lawyers involved in this case, and this
19 is my opportunity to ask you questions.

20 JUROR NUMBER 610: Um-hmm.

21 MR. MCGUIRE: And it's a little awkward, because
22 we're talking about penalties, and we haven't even had a
23 trial yet.

24 JUROR NUMBER 610: Um-hmm.

25 MR. MCGUIRE: And it's a little difficult for me,

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1 and I hope you forgive me that. But so we're
2 communicating on the same page, I want to start at the
3 very beginning and the basics.

4 I looked at your questionnaire, and I didn't see
5 where you had any legal training or law enforcement
6 training. Is that right?

7 JUROR NUMBER 610: That's right.

8 MR. MCGUIRE: Okay. And even though we all kind of
9 have an idea of what the offense of murder might be,
10 some people say premeditated murder or murder first
11 degree and stuff like that. My guess is you've never
12 had the opportunity to have somebody tell you the exact,
13 technical, legal definition of murder in South Carolina.

14 JUROR NUMBER 610: That's right.

15 MR. MCGUIRE: Okay. And that's where we will
16 start. So, in South Carolina, murder is defined as the
17 unlawful killing, intentional killing, of another human
18 being with malice aforethought. And the malice part
19 means that the killer, the accused, is acting with a
20 black and malignant heart, devoid of social duty,
21 fatally bent on evil and mischief. And what that means
22 is, it's an intentional, deliberate act to take the life
23 of an innocent person with evil intent. Are you with
24 me?

25 JUROR NUMBER 610: Yes.

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1 MR. MCGUIRE: Okay. And for the State to ask for
2 the death penalty, for the government to seek the death
3 penalty, they have to provide even something more than
4 that, which is what's called aggravation, or aggravating
5 factors. And the two at issue here are the fact that
6 two people were killed, not just one person but two, and
7 it was a mother and child, the child being four years
8 old.

9 And in that situation, where, you know, it's not
10 self-defense, it's not accident, not voluntary
11 manslaughter or heat of passion; it's the intentional,
12 deliberate taking of those two innocent lives; in that
13 situation, what are your thoughts about the death
14 penalty as the appropriate punishment?

15 JUROR NUMBER 610: I have -- death penalty is
16 something I'm kind of leery. It's like, religious ways
17 that I have made a decision that this person can be
18 killed. But then, I take other issue of how much it
19 takes to incarcerate the person for life. So, I would
20 say I'm -- I'm on the fence with that. I'm not really
21 sure.

22 MR. MCGUIRE: Did you say you had a concern that,
23 if somebody was -- received the life penalty, life in
24 prison without parole, that one of the concerns you
25 would have is the cost of housing them for the rest of

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1 their life?

2 JUROR NUMBER 610: Yeah. I heard about how much it
3 was. I couldn't believe it.

4 MR. MCGUIRE: Do you know how much it is?

5 JUROR NUMBER 610: I forget off the top of my head,
6 but it's way more than I ever expected.

7 MR. MCGUIRE: If I told you that it was about
8 \$15,000.00, would that sound familiar?

9 JUROR NUMBER 610: I thought it was a lot more than
10 that.

11 MR. MCGUIRE: It's not.

12 JUROR NUMBER 610: No?

13 MR. MCGUIRE: No. And since we're talking about
14 this, did you know that every state that's recently
15 ended the death penalty, New Jersey --

16 MR. STONE: Could we approach, your Honor? I
17 apologize.

18 THE COURT: You may.

19 MR. STONE: Thank you.

20 THE COURT: Actually, before we have this
21 discussion, because it's so close -- no, you're fine.
22 Sir, I'm going to ask you, if you don't mind, just to
23 step out, just because we're all in such tight quarters
24 here, if that's all right with you, Bob. It's right
25 there. He's going to take you, sir.

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1 Thank you. Yes, thank you all. Sorry, Wanda. All
2 right.

3 JUROR NUMBER 610 LEAVES COURTROOM.

4 ON-THE-RECORD BENCH CONFERENCE, OUT
5 OF HEARING OF JUROR.

6 BAILIFF: The door is closed, your Honor.

7 THE COURT: Okay. Mr. Stone.

8 MR. STONE: Your Honor, first of all, I should have
9 apologized. I should have objected when the Defense
10 counsel was actually putting information into the juror
11 as far as cost of how much it costs for somebody to be
12 incarcerated.

13 THE COURT: Is that per year?

14 MR. MCGUIRE: Yes, ma'am.

15 THE COURT: Okay.

16 MR. MCGUIRE: And it's an accurate figure.

17 THE COURT: I don't think he understood that, is
18 part of it. So, number one.

19 MR. STONE: And I believe, also, that it's not
20 proper for him to consider that, anyway. And I think
21 we're getting into an area that really is not proper to
22 feed information, number one, to the jury.

23 The purpose is trying to get information on whether
24 or not they can make a determination, and not give them
25 information, especially information that's not relevant

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1 to their decision, and your Honor would have charged him
2 that to begin with.

3 THE COURT: Is there any case law on this? Because
4 I can tell you that I am concerned. Because sometimes,
5 you know, we can hear the flip side from people, is that
6 the cost in seeking the death penalty and with the
7 appeals. And then, we also, on top of all that, is this
8 whole misconception that people are put on death row are
9 never executed; that their thought is, even if they get
10 the death penalty, it isn't ever carried out. So, what
11 is the case law on this?

12 MR. MCGUIRE: I'll tell you about how it came up at
13 a prior trial and how Judge McCauley dealt with it. We
14 were up in Anderson County, which is a pretty
15 conservative, politically conservative, place with a lot
16 of fiscally responsible or conservative people. And on
17 about 25 percent of our questionnaires, even though we
18 didn't ask the question, people would sort of
19 voluntarily refer to the cost of life in prison.

20 THE COURT: Um-hmm.

21 MR. MCGUIRE: And I think Judge McCauley fairly
22 realized it was an issue with that a lot of people were
23 bringing to court with them. It was not an
24 insignificant number. We haven't had that many in this
25 case, but we had more there.

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1 And the argument that I made to Judge McCauley was
2 they're bringing this; it's an unlawful basis. The only
3 way you can sentence them to death is to take into
4 account their record of character, which includes the
5 facts of the crime and their whole life.

6 THE COURT: Right.

7 MR. MCGUIRE: Anything beyond that, anything
8 outside of that, is an unlawful basis to give somebody
9 the death penalty.

10 And the argument I made was, he's -- somebody who
11 could be bringing this factor in, and it would always be
12 kind of in the back of their mind. So, Judge McCauley
13 actually let me give a brief speech just saying that --
14 and at the time, it was New Jersey, New Mexico, New
15 York, that all three states had commissions to look at
16 the death penalty; and there was always a determination
17 that seeking the death penalty was always more expensive
18 than having a system with the life penalty. And he let
19 me just kind of give a speech and try to even the
20 playing field and try to get that unlawful basis out of
21 their mind, and that's what we did.

22 And I can just tell you, the case law is that it is
23 absolutely an unlawful basis to sentence them to death.

24 THE COURT: Clearly.

25 MR. MCGUIRE: Right. And I'm just trying to --

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1 THE COURT: My concern is dispelling the myths,
2 dispelling what, you know, is just wrong that's out
3 there. So, again.

4 MR. MCGUIRE: And it's a common misconception.

5 THE COURT: I don't like the idea of you saying
6 you're giving a speech, quite frankly. That makes me a
7 little bit nervous, and I don't know if maybe it's best
8 coming from the Court. You tell me.

9 MR. MCGUIRE: I'm not -- I'm not --

10 THE COURT: I'm not sure the best way for it to
11 come out.

12 MR. MCGUIRE: Sure. I'm not opposed to that.

13 THE COURT: Okay.

14 MR. MCGUIRE: And Judge McCauley even let me make
15 the comment that lawyers were far more expensive than
16 jail guards, and he was comfortable with that. And I
17 don't mean to say it was a speech, but it was just --
18 you know, he allowed me to give some information at
19 levels that got them back to zero, and kind of leveled
20 the field.

21 And I'm happy if it comes from the Court that there
22 are the expenses.

23 THE COURT: On both sides.

24 MR. MCGUIRE: On both sides.

25 THE COURT: And it's not proper for them to

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1 consider that, but again, I mean, I agree that the idea
2 is to even the playing field. But again, it is not for
3 their consideration in any way.

4 MR. MCGUIRE: And I was working up to eventually
5 saying the Court would tell you that would be an
6 unlawful basis of the death penalty. If that's
7 something you can't decide, you would not be -- you
8 would not be qualified. I just hadn't gotten to that
9 point yet.

10 MR. STONE: If I might, your Honor.

11 THE COURT: Yes, sir.

12 MR. STONE: And I think if the case law, and I
13 believe -- I did not research. I've seen this before,
14 but I don't have it in front of me.

15 THE COURT: Um-hmm.

16 MR. STONE: But it's my understanding is it's not a
17 proper consideration, and I think even the Defense would
18 agree that it's not a proper consideration. Then, I
19 think us getting into it and trying to throw numbers at
20 it and explain it makes the problem worse. I think,
21 from your Honor's standpoint, your comment to the jury
22 is: that's not a consideration you need to consider,
23 period, and I think that's it.

24 I don't like at all the idea of a speech. I also,
25 quite frankly, don't like an idea of throwing numbers up

1 at it, --

2 THE COURT: Um-hmm.

3 MR. STONE: -- especially since I can tell you that
4 as far as prison costs are concerned, if somebody gives
5 me one cost today, and that's going to be the same one I
6 hear tomorrow, I will be shocked. I have heard it --
7 the range is phenomenal, and I've heard it all across
8 the board.

9 I think that the bottom line is this: it's not
10 proper for them to consider. I think that's what your
11 Honor should tell them. I don't think there should be
12 any elaboration on it, any explanation on it. That's
13 just not a proper consideration. Cost, not a proper
14 consideration. And I think that's in keeping with the
15 law. Anything else we go into I think is really adding
16 problems to something that already is something they
17 shouldn't have.

18 THE COURT: I think it needs to be a little further
19 than that. I think it has to be not only it's not a
20 proper consideration, and it's actually not a correct
21 statement, that the cost of bringing a case, again, or
22 seeking the death penalty is very expensive. I don't
23 want to say very expensive. I don't know how I'm going
24 to craft this, but I feel like I need to say something
25 to dispel the myth. And again, because I want it to be

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1 appropriate. And I can tell them not to consider it,
2 but you're going to have people who are still going to
3 consider it.

4 So, I want to just make sure -- and again, somehow,
5 and I don't know, you can say it coming from the Defense
6 table, I don't know. Somehow, I think it may -- people
7 tend to agree, you know. And if I say it, you know,
8 it's not for you to consider, and it's not even
9 accurate. Although, you know, the one thing I don't
10 want them to feel like I'm calling them out saying
11 you're wrong. I don't want to be in that position,
12 either, for them to feel bad.

13 I will also tell you, too, on the back of this
14 man's questionnaire, the one thing he said why he
15 shouldn't serve was anxiety, and I feel bad that I
16 didn't try to dispel that from the get-go. So, now I
17 don't want to, on top of it all, say, you know, you were
18 wrong, and by the way, the man suffers -- you know, has
19 a hard time with this. So, anyway.

20 MR. MCGUIRE: I tell you --

21 THE COURT: What do you all propose I say?

22 MR. MCGUIRE: If you want to -- if you want to just
23 let me continue, what I'll say is, you know, that's an
24 issue that a lot of people think about.

25 THE COURT: Um-hmm.

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1 MR. MCGUIRE: There are a lot of costs on both
2 sides; cost is not an issue for you to decide. I could
3 say that -- just to say that it's, you know, the cost of
4 the legal system and the cost of everything, it's kind
5 of -- falls on both sides, in that, --

6 THE COURT: Okay.

7 MR. MCGUIRE: -- if you have any idea about that,
8 the Court's going to ask you to set it aside and not
9 consider it.

10 THE COURT: Okay.

11 MR. MCGUIRE: I can say something like that.

12 THE COURT: Okay. So, let's go on about a speech.
13 Let's not go along about some studies. Let's just kind
14 of get past it. I don't want to cause him anymore, you
15 know, angst. Let's go ahead and bring him back in. All
16 right.

17 BAILIFF: Yes, your Honor.

18 THE COURT: To the extent, Mr. McGuire, that you
19 can smooth it over. If you don't, and I jump in, --

20 MR. MCGUIRE: Sure.

21 THE COURT: -- I apologize. I just feel the need
22 to, if I have to.

23 MR. MCGUIRE: I'll smooth it over.

24 THE COURT: You got it.

25 JUROR NUMBER 610 ENTERS COURTROOM.

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1 BAILIFF: Sir, come on in and take the stand again.

2 THE COURT: Come on in again, Mr. Surber. You can
3 continue, Mr. McGuire.

4 MR. MCGUIRE: Thank you, ma'am. When we left off,
5 we were talking about one of your thoughts, and that was
6 sort of the cost of the legal system, the cost of
7 prison, that sort of thing. And the Court would tell
8 you, the Judge would tell you, that, when it comes to
9 the decision of what penalty a human being should
10 receive, that the cost, whether it be on one side or the
11 other, is just not relevant at all. Could you put your
12 feelings about cost aside if you were on the case?

13 JUROR NUMBER 610: I guess I can, but I break it
14 down as it all goes to the taxpayers, and we're all
15 taxed too much to begin with right now.

16 MR. MCGUIRE: Well, it sounds like this is kind of
17 a firm belief you might have. Is that true? And -- and
18 --

19 JUROR NUMBER 610: Well, you see people
20 incarcerated; they got running tracks, because I was --
21 Rorrie [sic] New Jersey, Rorrie Prison. They got
22 running tracks, weight rooms, every opportunity to live
23 life large, better than they would if they were on the
24 streets, and I don't agree with that.

25 MR. MCGUIRE: Okay. And how do you know that?

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1 JUROR NUMBER 610: I watch a lot of news. And I
2 mean, --

3 MR. MCGUIRE: Gotcha. Let's go back to the issue
4 that we're here for, which is a murder case. The State
5 can only ask for the death penalty in a murder case.
6 And again, that's the intentional killing of another
7 person with malice, the evil intent.

8 JUROR NUMBER 610: Um-hmm.

9 MR. MCGUIRE: And in this case, the aggravation
10 would be a mother and child, a four-year-old child, both
11 shot dead. Hearing your description of the
12 circumstances of the life penalty in prison, it sounds
13 like you might be the kind of person who would say that
14 life penalty, letting that person go to that kind of
15 facility to live out their years, that's really not
16 severe enough to punish that intentional killing of a
17 mother and child. Is that right?

18 JUROR NUMBER 610: I don't quite understand the
19 question.

20 MR. MCGUIRE: Yeah, it's a little wordy. In that,
21 if you were -- let's, in your mind, put you on a jury.

22 JUROR NUMBER 610: Um-hmm.

23 MR. MCGUIRE: Okay? You're on the jury. You're
24 with eleven other people. You found the person, the
25 accused, guilty beyond any reasonable doubt. You got

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1 the right guy; it's not an accident; it's not self-
2 defense. Guilty, guilty, murder, intentional killing
3 with an evil intent of mother and child shot dead.

4 In that situation, it sounds like the life penalty,
5 sentencing that person to a life penalty, would not be
6 appropriate, because the life sentence is not severe
7 enough to punish that intentional killing of the mother
8 and child.

9 JUROR NUMBER 610: Yeah, I agree with that.

10 MR. MCGUIRE: Okay. And that answer comes from
11 your value system, who you are as a person.

12 JUROR NUMBER 610: Yes.

13 MR. MCGUIRE: It's a reflection of your idea of
14 right and wrong.

15 JUROR NUMBER 610: Correct.

16 MR. MCGUIRE: And what's the right punishment for
17 an intentional killing of a mother and child?

18 JUROR NUMBER 610: Well, I would say death penalty,
19 rather than life imprisonment. But I told you, I have
20 issues with is it my decision when I -- just because I
21 voted guilty, that I have to be feeling when I die I'm
22 going to be judged that I put a person to death because
23 I agreed with calling the death penalty.

24 MR. MCGUIRE: So, you're saying your value -- your
25 own values of basically thou shalt not kill, --

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1 JUROR NUMBER 610: Um-hmm.

2 MR. MCGUIRE: -- would it cause you some hesitation
3 with saying the death penalty?

4 JUROR NUMBER 610: Yes.

5 MR. MCGUIRE: And you know, the Judge, if you were
6 on the jury, the Judge would charge everybody, all
7 jurors, that they could consider the life penalty for
8 any reason, no reason, or mercy alone. And you know,
9 the no reason part is actually for jurors.. It's so when
10 they are at that point making the most personal, maybe
11 difficult, decision of their whole life regarding a
12 human being's fate, --

13 JUROR NUMBER 610: Um-hmm.

14 MR. MCGUIRE: -- whether another human being should
15 live or die, that, as they contemplate the rest of their
16 life, maybe getting to Saint Peter's Gates, they don't
17 want the black mark on their record of having killed a
18 person. It sounds like maybe that's where you are.

19 JUROR NUMBER 610: Yes.

20 MR. MCGUIRE: Okay. So, you have some -- some real
21 reservations about the death penalty.

22 JUROR NUMBER 610: Yes, in that regard, yes.

23 MR. MCGUIRE: Okay. And it sounds like you have
24 some internally inconsistent principles that make up --
25 and I'm not criticizing you at all. You have these

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1 things, and you have different goals and values, and I
2 just want to make sure we're communicating and on the
3 same page. If the State came and presented a case with
4 the amount of evidence and the quality of evidence where
5 you thought the death penalty was appropriate, could you
6 vote for it?

7 JUROR NUMBER 610: I don't know. I'd have to cross
8 that bridge when I got to it, but right now, I'm on the
9 fence of how much it costs to put a person in prison,
10 how long taxpayers pay, and the other part.

11 MR. MCGUIRE: It sounds like you're a man of deep
12 conviction, and when you get a hold of something, get a
13 hold of an idea and it's your idea, you stick with it,
14 right?

15 JUROR NUMBER 610: Yes, sir.

16 MR. MCGUIRE: And it sounds like your belief about
17 the cost to the taxpayers is a firmly-held position that
18 you have.

19 JUROR NUMBER 610: Yes.

20 MR. MCGUIRE: And that the taxpayers should not put
21 up somebody for the rest of their life if they are, in
22 fact, convicted of murder.

23 JUROR NUMBER 610: Yes.

24 MR. MCGUIRE: And that, that would always be a
25 factor that you would want to factor into your decision

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1 making with regard to the death penalty or the life
2 penalty. Is that right?

3 JUROR NUMBER 610: Yes.

4 MR. MCGUIRE: All right. And when it comes to
5 deliberation, and deliberation is defined as like, to
6 ponder and give good thought to, that sort of thing.

7 JUROR NUMBER 610: Um-hmm.

8 MR. MCGUIRE: It also, in a case, in a court case,
9 it also means that we would expect people to exchange
10 their views and their ideas about the case. Okay?

11 And one of the views that -- or one of the -- one
12 of the views that you have, I think, is you would want
13 to share with the other jurors is the cost of putting
14 somebody in prison for the rest of their life.

15 JUROR NUMBER 610: Yes.

16 MR. MCGUIRE: Okay. And it would be very -- you
17 would want to do that, right?

18 JUROR NUMBER 610: Yes. Like I said, I -- if it
19 was other people besides me on a jury, and they decide
20 the death penalty, I didn't make the decision, so it
21 doesn't bother me that I sent them. But when I'm on it,
22 then I have reservations in that regard.

23 MR. MCGUIRE: Okay. If the majority wanted the
24 death penalty, would you go along with the majority?

25 JUROR NUMBER 610: I'd cross that bridge when I got

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1 to it. I can't say that straight out.

2 MR. MCGUIRE: Okay. Let me ask you this. I want
3 to put it this way. And everything you say, sir, is the
4 correct answer, because you know, whatever you believe,
5 whatever you think, --

6 JUROR NUMBER 610: Um-hmm.

7 MR. MCGUIRE: -- that's exactly what we need to
8 hear. So, there are no wrong answers. Okay?

9 And I want to kind of -- well, if I told you that,
10 if you -- if I told you that you're not allowed to think
11 about the cost of the death penalty; that, that would be
12 a basis for the death penalty that shouldn't go into the
13 jury room; it sounds like it would be hard for you to
14 resist that.

15 JUROR NUMBER 610: It would be hard, yes.

16 MR. MCGUIRE: And even if I told you, don't share
17 that view with everybody else, there's no way that you
18 wouldn't have that to yourself, even if I told you,
19 please don't share that information with other people;
20 just keep it to yourself; you would always be thinking
21 about that in that life-and-death decision.

22 JUROR NUMBER 610: You're telling me not to discuss
23 what my views are to the other jurors?

24 MR. MCGUIRE: Yeah. But you know, there are lots
25 of rules in court. Some are for me; some are for the

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1 State; some are for you; and some of them apply in the
2 jury room.

3 JUROR NUMBER 610: Um-hmm.

4 MR. MCGUIRE: And if we said there was a rule where
5 the cost of the death penalty couldn't be discussed, I
6 understand that you probably would comply with that, but
7 you'd want to tell them about it; wouldn't you?

8 JUROR NUMBER 610: I'd comply.

9 MR. MCGUIRE: Sure. But it's a view that you would
10 want to share, if you could.

11 JUROR NUMBER 610: Yes, if I could.

12 MR. MCGUIRE: Right. And if we told you, please
13 don't talk about it with other people, I still couldn't
14 pull it out of your mind; it would still be in your
15 heart; it would still be in your mind when you made your
16 decision, right?

17 JUROR NUMBER 610: Yes.

18 MR. MCGUIRE: Okay. And there's nothing I can do
19 to change that.

20 JUROR NUMBER 610: No.

21 MR. MCGUIRE: That's a firmly-held belief you have.

22 JUROR NUMBER 610: Yes.

23 MR. MCGUIRE: And it's always going to be there.

24 JUROR NUMBER 610: I would assume so, yes.

25 MR. MCGUIRE: Okay. You don't see anything in the

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1 near future changing that view of yours.

2 JUROR NUMBER 610: Can't really say anything down
3 the road what could change, but I don't see it
4 happening.

5 MR. MCGUIRE: Right. I don't have the talent by
6 using words to get you to put that out of your mind.

7 JUROR NUMBER 610: No.

8 MR. MCGUIRE: Nobody does.

9 JUROR NUMBER 610: No.

10 MR. MCGUIRE: If I could have just a second, sir.

11 JUROR NUMBER 610: All right.

12 MR. MCGUIRE: Your Honor, at this point, I'm going
13 to stand down.

14 THE COURT: Okay. Thank you. Solicitor, any
15 questions?

16 MR. MCGUIRE: Thank you, sir.

17 JUROR NUMBER 610: Okay.

18 THE COURT: Solicitor, anything?

19 MR. STONE: Mr. Surber?

20 JUROR NUMBER 610: Yes?

21 MR. STONE: Let me try to understand a couple of
22 questions, as well as the answers, quite frankly, but I
23 want to make sure that I understand.

24 First of all, whatever you answer if fine. All
25 we're trying to do it kind of understand what it is that

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1 you're saying. And unfortunately, sometimes we get a
2 little complicated. So, let me just kind of make it
3 simple.

4 At the end of the case, you will be called on to
5 make a decision about whether or not the defendant
6 receives a life sentence or the death penalty. You
7 understand that, obviously.

8 JUROR NUMBER 610: Yes.

9 MR. STONE: Okay. If you determine, as a jury,
10 that someone -- their sentence should be death, you will
11 be required to sign your name on a form that is a death
12 sentence. Do you understand that?

13 JUROR NUMBER 610: Yes.

14 MR. STONE: I know nobody's told you that, so I --
15 but do you understand that?

16 JUROR NUMBER 610: Yes.

17 MR. STONE: Could you sign your name on a form to
18 send somebody to the electric chair, or do they receive
19 the death sentence?

20 JUROR NUMBER 610: That's the thing that bothers
21 me. I don't know if I could do that. But the other
22 part, I just put up with, as far as how much it costs.
23 I just don't like how much it costs the taxpayer, but
24 the part of -- like I say, if it wasn't me, and somebody
25 gave the death penalty, I didn't do it.

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1 MR. STONE: Right.

2 JUROR NUMBER 610: But now, it's me, and it's on my
3 conscience that, you know, thou shalt not kill, and that
4 bothers me.

5 MR. STONE: I understand. And it is you. I mean,
6 that's the unfortunate thing, I guess, about being on a
7 jury; it would be you, along with eleven other people,
8 but it would be you, and you are the one that has to
9 sign your name on that form. And the only thing we're
10 trying to find out is, is can you do that, or is it just
11 that's something that you feel so strongly about that
12 you couldn't do?

13 JUROR NUMBER 610: I wouldn't -- no, I wouldn't
14 want to be in that situation to do it.

15 MR. STONE: Yes, sir. And I don't want to -- if
16 you're on the jury, you're in that situation,
17 unfortunately. And so, what we're trying to find out
18 now is whether or not you do that.

19 Let me back up a little bit. There was a
20 questionnaire that they sent you that said, you know,
21 you could take everything into consideration,
22 determining whether or not somebody should get life
23 imprisonment or the death penalty, or you'd always
24 determine somebody to be death, or somebody always gets
25 life in prison. Remember that part of the

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1 questionnaire?

2 JUROR NUMBER 610: Yes, sir.

3 MR. STONE: Well, if you -- if we get past the
4 guilt phase in the trial, and we go to the sentencing
5 phase of the trial, the jury makes the determination
6 about the sentence. It's not a recommendation; it is
7 the actual sentence. And you, as a juror, would have to
8 make the determination, after you found somebody guilty,
9 whether or not they get a life sentence or the death
10 penalty.

11 If you're in that situation, you, as an individual
12 juror, would be called on to make that decision. So, if
13 you get put on this jury, and if you're in the -- if you
14 get to a sentencing phase, it is your responsibility to
15 -- it's you. It's not just a majority vote; it's your
16 decision, to the point of actually having to put your
17 name on a line that says he should get the death
18 penalty. What I'm asking you is, do you feel
19 comfortable doing that? Could you do that?

20 JUROR NUMBER 610: No.

21 MR. STONE: Thank you, sir. And I appreciate your
22 honesty, and nobody's trying to talk you into anything.
23 We're just trying to get -- thank you. It's Surber,
24 right?

25 JUROR NUMBER 610: Surber, yes.

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1 MR. STONE: Thank you, Mr. Surber.

2 JUROR NUMBER 610: You're welcome.

3 MR. MCGUIRE: Nothing else from us, your Honor.

4 THE COURT: Thank you all. Mr. Surber, thank you
5 for being here. We appreciate it. Sir, I'm going to go
6 ahead and excuse you from jury service. You do not have
7 to come back Monday, but we send you away with our
8 thanks.

9 JUROR NUMBER 610: Thank you very much.

10 JUROR NUMBER 610 LEAVES COURTROOM.

11 THE COURT: Give me one second. Just one second.
12 You all okay, ready to go forward?

13 MR. STONE: Yes, ma'am.

14 THE COURT: All right, Al, go ahead and bring the
15 next one in, please.

16 BAILIFF: All right.

17 THE COURT: Thank you.

18 JUROR NUMBER

19 BAILIFF: Your Honor, Mr. Raymond Villalpando.

20 BAILIFF: This way, sir.

21 JUROR NUMBER 645 ENTERS COURTROOM.

22 THE COURT: Come in, sir.

23 BAILIFF: Go right up there in the witness box and
24 take a seat, please.

25 THE COURT: Good morning.

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1 JUROR NUMBER 645: Good morning.

2 THE COURT: Good to see you, sir. Thank you for
3 waiting on us.

4 JUROR NUMBER 645: Yes, ma'am.

5 THE COURT: I apologize that we are running behind.
6 This is important business. We just need to ask you
7 some questions, and again, we appreciate your patience
8 with us.

9 First off, I need to remind you that you are still
10 under the oath you took on Wednesday. Is that all
11 right?

12 JUROR NUMBER 645: Yes, ma'am.

13 THE COURT: Okay. Secondly, sir, did you have an
14 opportunity to look through the witness list back in the
15 jury room, and do you know anyone on it personally or
16 professionally or socially?

17 JUROR NUMBER 645: The only person that was
18 familiar was Jerri Roseneau, the --

19 THE COURT: From the Clerk of Court?

20 JUROR NUMBER 645: Yeah. Just the introduction
21 from Wednesday.

22 THE COURT: Very good. All right. Additionally,
23 there has been some press coverage of this case in the
24 news, in the newspaper. Have you read any of those, or
25 seen anything about that, or done any independent

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1 research, or have any outside knowledge about the case?

2 JUROR NUMBER 645: As I stated on my questionnaire,
3 I guess it was Tuesday, I was in line at the convenience
4 store and just saw the headline, but I did not read any
5 further just because, you know, I knew I had jury duty
6 on Wednesday, so.

7 THE COURT: And I appreciate that.

8 JUROR NUMBER 645: Yes, ma'am.

9 THE COURT: If you do sit as a juror in the trial
10 of this case, I'm going to order you not to read
11 anything.

12 JUROR NUMBER 645: Okay.

13 THE COURT: So, thank you very much for that. At
14 this time, I'm going to go ahead and turn you over to
15 the lawyers. Sir, I just want you to know that there
16 are no right or wrong answers here. They're going to
17 ask you your feelings and some things about the death
18 penalty and about life imprisonment for punishment.
19 Again, those are appropriate questions. Just be honest
20 and be candid for us. All right?

21 JUROR NUMBER 645: Yes, ma'am.

22 THE COURT: Thank you.

23 MR. MACDOUGALL: Good morning, Mr. Villalpando.

24 JUROR NUMBER 645: Good morning.

25 MR. MACDOUGALL: My name is Mark MacDougall, and

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1 I'm one of the lawyers representing Earnest Daise, who
2 is the defendant in this case.

3 As Judge Mullen told you, the questions that we're
4 going to ask you this morning have no -- the only right
5 answer they have is your answer.

6 JUROR NUMBER 645: Yes, sir.

7 MR. MACDOUGALL: So, there's no -- we're not --
8 there's not a document we're going to show you that's
9 going to change your mind or anything. We just want to
10 hear what your thoughts are, because it's really
11 important that people who are chosen for a jury in this
12 case, as in all capital cases, are of a mind to be
13 qualified under the law.

14 In your questionnaire, do you remember when you
15 filled that out?

16 JUROR NUMBER 645: Yes.

17 MR. MACDOUGALL: There was one question that asked
18 if you believed the death penalty in South Carolina is
19 used too often, too seldom, or about right? You said
20 you had no opinion.

21 JUROR NUMBER 645: Correct.

22 MR. MACDOUGALL: And then, you wrote:

23 *The use of the death penalty is the*
24 *result of certain crimes being committed.*
25 *No crimes equals no need to use.*

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1 JUROR NUMBER 645: Correct.

2 MR. MACDOUGALL: Can you tell me a little bit more
3 about what you're thinking there.

4 JUROR NUMBER 645: Yeah, just -- may I? I don't
5 think you can put a blanket statement on how often it
6 should be used. I mean, it should only be used in
7 certain instances, and I think it depends on if those
8 instances occur or not. So, that's kind of what I was
9 saying with that statement. If the crimes don't occur
10 to warrant that punishment, then, there's really no use.
11 So, to say that, you know, often or sometimes, or, you
12 know, I just don't think that's very accurate.

13 MR. MACDOUGALL: Okay. This, what we're doing now,
14 is kind of putting the cart before the horse, because we
15 have to ask you to assume certain things about this
16 case. Mr. Daise sits over there, as you know, presumed
17 innocent. There's been no trial. You've heard no
18 evidence. There's no jury. But because we have to try
19 to get inside the minds of prospective jurors, we have
20 to ask you to assume certain things, so I'm going to
21 take you through that.

22 JUROR NUMBER 645: Yes, sir.

23 MR. MACDOUGALL: The first is, this is a murder
24 case, double homicide, and in South Carolina, in order
25 for a defendant to be convicted of murder, the State has

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1 to show malice. So, it's not an accident; it's not
2 insanity; it's not self-defense. It's cold-blooded,
3 killing with intent. And the words that the State uses,
4 that the law uses in this state is, it's something which
5 springs from wickedness, from depravity, with a depraved
6 spirit, from a heart devoid of social duty, and fatally
7 bent on creating mischief, which is not the kind of
8 thing Mother would say to us. But that's -- you've got
9 to really -- I mean, it's very heavy language.

10 And so, the first question is, if the defendant is
11 convicted of that kind of killing, that kind of murder
12 as the law defines it, in your view, is the appropriate
13 punishment death, or is the appropriate punishment life
14 without parole?

15 Let me just add one thing before you answer. Life
16 without parole in South Carolina, you die in prison.
17 There's no footnote to that. You go to prison, you're
18 there 'til you die. It's a pine box life. So, my
19 question is, when you're convicted of that kind of
20 murder with malice, in your view, is there a right
21 punishment?

22 JUROR NUMBER 645: I would -- I would say if -- if
23 you fit the criteria that you've listed out before, in
24 terms of the -- the -- what you just said, the
25 wickedness and everything, then, yes, death is the

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1 appropriate punishment.

2 MR. MACDOUGALL: Is that the only punishment?

3 JUROR NUMBER 645: No.

4 MR. MACDOUGALL: Let me add something now, to that,
5 because, in order for this to be a capital case, the
6 State's required to show aggravation; that it's not just
7 a malice murder, but actually a murder that has some
8 special characteristics, and there are two of them here.
9 The defendant in this case is accused of a double
10 homicide, killing two people, and also that one of them
11 was a child, a four-year-old child. So, the evidence
12 you would hear, if you were in the jury, was that one of
13 the victims was four years old.

14 With those aggravators present, and again, assume
15 for me that you're on the jury that's already reached
16 that verdict, and now you're in the penalty phase, the
17 second part of the case, is it your view that, with
18 those aggravators present, it would be an appropriate
19 sentence of death or life without parole?

20 JUROR NUMBER 645: Between the two? You're asking
21 me to pick one of the two?

22 MR. MACDOUGALL: Yes. Correct.

23 JUROR NUMBER 645: Death penalty.

24 MR. MACDOUGALL: Okay. Would you consider a life
25 sentence?

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1 JUROR NUMBER 645: Yes.

2 MR. MACDOUGALL: Okay. A life sentence without
3 parole?

4 JUROR NUMBER 645: Yes.

5 MR. MACDOUGALL: Tell me a little bit about what
6 thoughts would sort of drive you in that situation.

7 JUROR NUMBER 645: It would -- the details of the
8 case, you know, the details of the individual that is
9 being accused of the crimes, just whatever facts were
10 presented during the trial to lead me to that
11 determination. I can't really say specifically without
12 having really, you know, been in that position.

13 MR. MACDOUGALL: Okay. So, you're saying that,
14 under some circumstances, even with malice murder and
15 those two aggravating circumstances, you could give a
16 life sentence without parole.

17 JUROR NUMBER 645: Yes.

18 MR. MACDOUGALL: Let me tell you two other things,
19 and the Judge will -- if you're on the jury, you'll hear
20 these from her in her instructions, but there are no
21 offenses in South Carolina that are automatic death
22 penalty.

23 JUROR NUMBER 645: Yes, sir.

24 MR. MACDOUGALL: It's always up to the jury, and a
25 life sentence is a proper sentence for any crime in this

1 state.

2 The other is that when a jury in a death penalty
3 case, a capital case, reaches a verdict with respect to
4 punishment of death, that's not a recommendation.
5 That's the sentence the Judge imposes. If the Judge
6 doesn't agree with it, except for some circumstances
7 that we won't have to worry about now, but even if the
8 Judge didn't like it, that's the sentence that she
9 imposes. I want to tell you those two other things.

10 You mentioned a minute ago that it would depend
11 upon the circumstances and the facts. And if the case
12 were to reach a penalty phase -- and that requires a
13 conviction. If the defendant's not convicted, there's
14 no penalty phase, obviously. But as you go into the
15 penalty phase, you would hear evidence of aggravation,
16 which would be presented by the State; and you'd hear
17 evidence of mitigation, which would be presented by the
18 Defense. And mitigation is intended to give you just
19 those kind of facts and circumstances you were talking
20 about, about the defendant and about his background.

21 So, here's the question: are you someone who could
22 consider mitigating factors? And I'll give you some
23 random examples. These may not apply to Mr. Daise, but
24 these are the kinds of things you would hear in
25 mitigation: severe poverty, poor education, drug

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1 addiction, abuse as a child. And that can be
2 psychological abuse, physical abuse, sexual abuse, those
3 kinds of things that go into a person's character and
4 personality. Would you consider those in making a
5 decision on what penalty to impose?

6 JUROR NUMBER 645: I would consider those.

7 MR. MACDOUGALL: Okay. Tell me why.

8 JUROR NUMBER 645: I just -- I think you have to
9 look at the entire situation, and it would be unjust not
10 to consider those things.

11 MR. MACDOUGALL: Did I interrupt you? I'm sorry.

12 JUROR NUMBER 645: No.

13 MR. MACDOUGALL: Okay. Just a couple other
14 questions. I've never been on a jury. I've been
15 registered to vote since I was 18, and they've just
16 never called me, and I don't know why that is, but I've
17 never been on a jury.

18 But I've studied juries, and I know that there can
19 be a great deal of tension in the room, particularly in
20 a case where, you know, the crime that's alleged is so
21 serious.

22 And it is very common for people to be called upon
23 to defend their position, particularly if they're in the
24 minority. And my question to you is: are you the kind
25 of person who, if you have a strongly held belief; and

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1 it can be anything about where to go to dinner or what
2 you want to do with the rest of your life; if you have a
3 strongly held belief and people are attacking you on it,
4 do you stand your ground, or are you someone who will
5 try to go along?

6 JUROR NUMBER 645: I pretty much stand my ground.

7 MR.. MACDOUGALL: Okay. Just give me an example of
8 that, without going into too much detail.

9 JUROR NUMBER 645: I -- I can't give you a specific
10 example. I'm just a very adamant person about the
11 things that I believe, and you know, it takes a lot to
12 change my opinion.

13 MR. MACDOUGALL: Okay. Let me ask you the other
14 side of that coin.

15 JUROR NUMBER 645: Um-hmm.

16 MR. MACDOUGALL: If you're in a group, and there
17 are people who have a minority view, who have an opinion
18 that's not popular, but the people who have stronger
19 personalities in that group are beating on, you know; --

20 JUROR NUMBER 645: Um-hmm.

21 MR. MACDOUGALL: -- *We're never going to get it*
22 *done; we're going to be here forever; you're just not*
23 *listening; you're not smart enough; you don't*
24 *understand; are you the kind of person that comes to*
25 *their defense and says, wait a minute, they're entitled*

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1 to their opinion.

2 JUROR NUMBER 645: Yeah, absolutely.

3 MR. MACDOUGALL: Okay. The last thing I want to
4 talk to you about is the notion of mercy and how you
5 feel about that. And again, I'll try to give you a
6 couple of alternatives. If I don't name one of your
7 alternatives, please tell me what your view is. But is
8 mercy something that you earn in life, or is it given?

9 JUROR NUMBER 645: I think it's given.

10 MR. MACDOUGALL: Okay. And you understand, and the
11 Judge would instruct you, that, in a death penalty phase
12 of a capital murder case, the jury can give a life
13 sentence for any reason or for no reason.

14 JUROR NUMBER 645: Yes.

15 MR. MACDOUGALL: Okay. And what that means is that
16 you don't need to explain to anyone other than yourself
17 why you're reaching the decision you're reaching, and
18 it's one that you're allowed to make personally and in
19 your own heart. Do you understand that?

20 JUROR NUMBER 645: Yes, sir.

21 MR. MACDOUGALL: Can I have a moment, your Honor?

22 THE COURT: Go ahead.

23 MR. MACDOUGALL: Nothing further. Thank you very
24 much, sir.

25 THE COURT: Mr. Stone.

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1 MR. STONE: Mr. Villalpando, my name is Duffie
2 Stone. How are you, sir?

3 JUROR NUMBER 645: I'm doing well, sir. How are
4 you?

5 MR. STONE: I'm well, thank you. Just a couple of
6 follow-ups. I think you've understood all the
7 questions, and I think I've understood everything that
8 you've said. I just want to make sure that we're clear.

9 You are the type of the juror, and I think your
10 questionnaire had three types of jurors on there -- I
11 don't know if you recall that, but one that would always
12 give the death penalty, the one that never would, or the
13 one that would take everything into consideration. And
14 I think your questionnaire, and what I'm gleaning from
15 your conversation today is, you're that third type of
16 juror. Is that correct?

17 JUROR NUMBER 645: Type 3, yes, sir.

18 MR. STONE: If a case is bad enough, could you give
19 somebody the death penalty?

20 JUROR NUMBER 645: Yes.

21 MR. STONE: That's all I have. Thank you, sir.
22 Thank you, your Honor.

23 THE COURT: Thank you. Mr. Villalpando, thank you
24 so much for being here. You have been found qualified
25 as a potential juror in the trial of this case. That

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1 does not mean you are on the jury. It simply means that
2 we're going to bring you back when we pull the jury,
3 sir. As of right now we are running behind, as you
4 know.

5 JUROR NUMBER 645: Yes.

6 THE COURT: I'm hopeful we are able to pull this
7 jury Monday morning at 9:30.

8 JUROR NUMBER 645: Okay.

9 THE COURT: And I'm going to ask you to return
10 then. However, out of an abundance of caution, we're
11 going to give you a phone number. I need you to call
12 the juror line after 6:00 p.m. Saturday night, when I
13 hope I've finished this process. It will tell you what
14 time to report Monday and what time. Possibly could say
15 Tuesday. Again, I hope not, but it might say Tuesday.
16 Just please come when it tells you to. And I appreciate
17 you being here.

18 I also have to instruct you, you aren't to discuss
19 this case with anyone. Additionally, you are not to
20 read anything, do any independent research, put anything
21 on any social web sites or blogs, or anything along
22 those lines. Do you understand that, sir?

23 JUROR NUMBER 645: Yes. Yes, ma'am.

24 THE COURT: I appreciate it. You are excused.

25 JUROR NUMBER 645: Thank you.

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1 THE COURT: Thank you.

2 JUROR NUMBER 645 LEAVES COURTROOM.

3 THE COURT: Ready to keep going? Everyone okay?
4 Okay. Let's bring the next one in.

5 BAILIFF: She's in the restroom.

6 THE COURT: Okay. Do we have the next one there by
7 any chance, the next person?

8 BAILIFF: Yes, ma'am.

9 THE COURT: Let's go ahead and bring them in. I
10 appreciate it. I believe that's Verna Sanders.

11 BAILIFF: She's coming now.

12 THE COURT: Okay. Thank you.

13 BAILIFF: Ms. Karen Howard.

14 JUROR NUMBER 324 ENTERS COURTROOM.

15 THE COURT: Okay. Thank you. Come on in, Ms.
16 Howard.

17 BAILIFF: Come right this way, please, ma'am. If
18 you would, step up to the witness stand. Take a seat,
19 please.

20 JUROR NUMBER 324: Okay.

21 THE COURT: Come on around if you would. It is
22 still just barely good morning, so thank you. Thank you
23 for your patience with us. I just want you to know that
24 we have been working hard. I apologize we're running
25 behind. Everyone has just been doing their job, and

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1 we're actually getting caught up, believe it or not.

2 So, anyway, we appreciate you coming this morning.

3 Ma'am, I need to remind you that you are under the
4 oath that you took on Wednesday to be truthful and
5 honest. Is that acceptable to you?

6 JUROR NUMBER 324: Um-hmm.

7 THE COURT: Very good.

8 COURT REPORTER: Is that yes?

9 THE COURT: And I'm going to also have to ask you
10 that you need to say yes and no for my court reporter.

11 JUROR NUMBER 324: Yes.

12 THE COURT: And if you don't, she's going to come
13 over there and remind you. So, just to let you know to
14 start with.

15 Additionally, I want you to know that the attorneys
16 are going to ask you some questions. That is their job.
17 It is permissible. And they're going to ask what your
18 feelings are as to the death penalty and the sentence of
19 life imprisonment without the possibility of parole.
20 They're going to ask you things like that.

21 I want you to know that there are no right or wrong
22 answers here. You just tell us what you feel, what you
23 believe, and what you know. And again, whatever you
24 say, there is no wrong answer.

25 I also need to ask you that, if you have had an

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1 opportunity to look at the witness list out there, do
2 you know any of the jurors -- or, I'm sorry -- the
3 potential witnesses on that list?

4 JUROR NUMBER 324: I just know these -- do you want
5 my piece of paper?

6 THE COURT: Sure.

7 JUROR NUMBER 324: I just know these two.

8 THE COURT: Okay. And what --

9 JUROR NUMBER 324: Not personally.

10 THE COURT: Not personally?

11 JUROR NUMBER 324: No.

12 THE COURT: Okay. And you've indicated that, and
13 so, you know Bob Bromage and P.J. Tanner. Is that
14 correct?

15 JUROR NUMBER 324: Right.

16 THE COURT: All right. Very well. Additionally,
17 this case has received some press coverage, and also,
18 some television coverage. Have you read anything or
19 seen anything about this case?

20 JUROR NUMBER 324: After I was -- got the form in
21 the mail, I looked it up on the Internet, because I did
22 not know anything about it.

23 THE COURT: Okay.

24 JUROR NUMBER 324: But that's all.

25 THE COURT: And what did you find when you went on

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1 the Internet? What did you look at?

2 JUROR NUMBER 324: I put his name in, Googled it,
3 and it said pretty much what the case was about.

4 THE COURT: Okay. Was it by way of newspaper
5 articles that were pulled up, or do you know?

6 JUROR NUMBER 324: I just Googled his name, just
7 put his name in there.

8 THE COURT: Okay.

9 JUROR NUMBER 324: I'm a very nervous person, so,
10 if my voice is shaking.

11 THE COURT: Okay. And listen, I do not want you to
12 be nervous here.

13 JUROR NUMBER 324: Um-hmm.

14 THE COURT: This is just our opportunity to speak
15 with you. We're just looking to make sure that we have
16 people who are qualified to be able to serve as jurors.

17 JUROR NUMBER 324: Um-hmm.

18 THE COURT: It has nothing to do with your ability;
19 it has to do with beliefs as far as appropriate
20 sentences and what you can and cannot consider. And so,
21 I want you, to the point you can, to not be nervous.

22 JUROR NUMBER 324: Um-hmm.

23 THE COURT: Because, really, there's nothing to be
24 nervous about here. Everyone is very friendly, and
25 again, we're just very interested in what you have to

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1 say.

2 JUROR NUMBER 324: Um-hmm.

3 THE COURT: All right? And I remind you again
4 there are no right or wrong answers. Okay?

5 JUROR NUMBER 324: Um-hmm. Yes.

6 THE COURT: Lastly, I need to make sure, since you
7 told me that you did, in fact, when you got the
8 questionnaire, went and Googled Mr. Daise's name, I want
9 to make sure you understand that nothing that is on the
10 computer, on the Internet, in the news, is factual in
11 any way. And I just want to make sure that, if you were
12 to sit as a juror in the trial of this case that you
13 could put aside any of that information that you have
14 seen and decide the facts as you hear them in the
15 courtroom, because, again, anything outside would be
16 inappropriate.

17 You are going to have a front-row seat to more
18 information than anyone would ever have in determining
19 this case, and it would be inappropriate for you to be
20 influenced by anything you may have read or looked at or
21 heard outside this courtroom. Can you do that?

22 JUROR NUMBER 324: Not influenced by anything?
23 Yes.

24 THE COURT: Okay. Okay. You can do that? You're
25 comfortable?

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1 JUROR NUMBER 324: Um-hmm. Yes.

2 THE COURT: All right. Well, I appreciate that.
3 I'm going to go ahead and turn you over to the lawyers.
4 Okay?

5 MR. LEDDY: Thank you, ma'am.

6 THE COURT: Sure.

7 MR. LEDDY: Hey, ma'am.

8 JUROR NUMBER 324: Hi.

9 MR. LEDDY: I'm Micah Leddy. I'm one of the
10 lawyers on the case. Ms. Howard, first of all, I want
11 to tell you that we have to do something a little bit
12 unusual in this process. Okay?

13 JUROR NUMBER 324: Right.

14 MR. LEDDY: And what that is, is we have to talk
15 about your feelings on a penalty before we ever actually
16 get into the facts of the case.

17 JUROR NUMBER 324: Um-hmm.

18 MR. LEDDY: And so, this case hasn't been decided.
19 Okay? There's going to be a trial that's going to be in
20 two parts, like the Judge told you. And in the first
21 part, we're going to try to raise a defense and have Mr.
22 Daise found not guilty, and we may never get to any
23 penalty. Okay? And that, I don't want you to draw a
24 conclusion about how the trial is going to go, just
25 because we're talking about the penalty now. Okay?

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1 JUROR NUMBER 324: Okay.

2 MR. LEDDY: But can you agree with me that you can
3 do that?

4 JUROR NUMBER 324: Yes.

5 MR. LEDDY: Okay. So, I want you to consider that
6 you and eleven other people have been seated on a jury,
7 and you have heard the first phase of the trial. And
8 despite whatever you may have heard from both sides, you
9 have, all twelve of you, concluded beyond a reasonable
10 doubt that this person is guilty of murder.

11 JUROR NUMBER 324: Right.

12 MR. LEDDY: Okay?

13 JUROR NUMBER 324: Yes.

14 MR. LEDDY: Now, murder has a very specific
15 definition. It's not just any killing of any person.
16 Okay? There are cases of self-defense. Those aren't
17 murder, right?

18 JUROR NUMBER 324: Right.

19 MR. LEDDY: Okay. So, when I say murder, I mean
20 that the way that the law in South Carolina defines it.
21 Okay? And that is the intentional killing of another
22 person with malice aforethought. And malice
23 aforethought means, in their mind, at the time that they
24 killed this person, that they intended to do it, and
25 that they acted with evil in their heart.

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1 JUROR NUMBER 324: Right.

2 MR. LEDDY: Okay?

3 JUROR NUMBER 324: Right.

4 MR. LEDDY: So, we're not talking about an
5 accident. We're not talking about somebody acting under
6 duress. Okay? We're not talking about somebody having
7 to make a choice of the lesser of two evils. We're not
8 talking about somebody who was acting under some sort of
9 a mental incapacity where they couldn't determine right
10 and wrong. Okay?

11 JUROR NUMBER 324: Okay.

12 MR. LEDDY: So, you can eliminate all those
13 possibilities. It wasn't an accident. Okay? This
14 isn't a person who found their spouse in bed with
15 somebody else and acted in the heat of passion. That
16 would not be murder. That would be considered
17 manslaughter. Okay?

18 JUROR NUMBER 324: Okay.

19 MR. McLEOD: So, we're not talking about that case.
20 We're talking about the intentional, premeditated
21 killing of a human being with no just cause or excuse.

22 JUROR NUMBER 324: Right.

23 MR. LEDDY: Now, in that case, what are your
24 feelings about the death penalty being the appropriate
25 punishment for that guilty murderer?

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1 JUROR NUMBER 324: Ask me that again. I'm sorry.

2 MR. LEDDY: In the case of --

3 JUROR NUMBER 324: Right.

4 MR. LEDDY: -- somebody who twelve people have
5 heard the whole case and decided beyond a reasonable
6 doubt that they intentionally killed a human being and
7 they did it with malice in their heart, what are your
8 feelings, your personal feelings, about the death
9 penalty being the appropriate punishment for that guilty
10 murderer?

11 JUROR NUMBER 324: I guess I would have to hear
12 -- everything before I would have any feelings on it.

13 MR. LEDDY: I see. Okay. Well, what I want you to
14 do is consider that you've watched an entire trial.
15 Okay?

16 JUROR NUMBER 324: Right.

17 MR. LEDDY: And that these various defenses that
18 could be raised, like self-defense, you've heard those
19 and you have rejected them.

20 JUROR NUMBER 324: Um-hmm.

21 MR. LEDDY: So, let me add some categories of the
22 types of murder that can actually be qualified for the
23 death penalty in this state. Okay? Because in this
24 state, you actually have to prove what are called
25 aggravating circumstances, and those can be any number

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1 of 21 different things that are listed in our law.

2 JUROR NUMBER 324: Um-hmm.

3 MR. LEDDY: The ones I want you to think about are
4 killing more than one person and killing of a child.
5 So, consider that you and the eleven other people have
6 decided beyond a reasonable doubt that this person has
7 killed a mother and a four-year-old child. What is your
8 feeling in that case? What is your feeling about the
9 death penalty being the appropriate punishment for that
10 person?

11 JUROR NUMBER 324: That's a lot to answer. I'm
12 behind the death penalty, if you really killed somebody
13 and -- yeah. You'll have to -- I'm a very nervous
14 person.

15 THE COURT: I apologize if I'm making you nervous.

16 JUROR NUMBER 324: No. I'm just -- this whole
17 thing, I'm just, you know, I have anxiety.

18 MR. LEDDY: Well, let me tell you something. You
19 are actually the very first person who I've ever
20 interviewed like this.

21 JUROR NUMBER 324: Really?

22 MR. LEDDY: So, if I'm nervous, I may be making you
23 nervous. So, if that's the case, I apologize.

24 JUROR NUMBER 324: No, you're not. It just --

25 MR. LEDDY: And this is a very big question; isn't

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1 it?

2 JUROR NUMBER 324: It is.

3 MR. LEDDY: I mean, it's life and -- people say
4 well, don't get too upset; it's not life and death.
5 Well, this is life and death.

6 JUROR NUMBER 324: It is, yeah.

7 MR. LEDDY: And you know, for somebody who
8 intentionally kills a woman and a child, a lot of people
9 just say, look, for me, I'm voting for death on that
10 every time. I don't care where the guy grew up or how
11 he had it. I have my heart the notion that life in
12 prison is just not severe enough for that person, and
13 some people feel that way. Do you think that you're one
14 of those people?

15 JUROR NUMBER 324: Yes.

16 MR. LEDDY: And is that something that you feel
17 like is just inherent to your person; that, that's just
18 the way you feel; that, regardless of being instructed
19 to consider everything, that's just how you're going to
20 come down on it?

21 JUROR NUMBER 324: Say death penalty, is that what
22 you're asking me, if I'm behind the death penalty?

23 MR. LEDDY: I am. And ultimately, that's what I
24 hope to understand is exactly. I understand when you
25 say, *I'm behind it*. That could mean any number of

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1 things, so I just want to try and flush it out a little
2 bit. And in this case, my question is: would you
3 identify with the people? And I think a lot of people
4 who say, if you kill a woman and her kid intentionally,
5 with no just cause, then, I just think life is too
6 lenient.

7 JUROR NUMBER 324: Right.

8 MR. LEDDY: And that's the way you feel?

9 JUROR NUMBER 324: Yes, it is. Well, one of the
10 questions on the questionnaire was if I -- my -- oh,
11 gosh, what was I going to say? If I believed in the
12 death penalty or not. And now, I can't remember what I
13 even wrote. I'm sorry. I'm just having --

14 MR. LEDDY: That's okay. I think the State will
15 probably go over the questionnaire with you. There's
16 three choices, three types of jurors that sit.

17 JUROR NUMBER 324: Um-hmm.

18 MR. LEDDY: One that would always vote the death
19 penalty for murder; one would never vote the death
20 penalty for murder; and the type who would consider
21 everything and could give death and could give life.

22 JUROR NUMBER 324: That's me.

23 MR. LEDDY: And that's what you put on your
24 questionnaire.

25 JUROR NUMBER 324: Um-hmm.

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1 MR. LEDDY: And --

2 JUROR NUMBER 324: All right. No, how did the
3 question go? Do you think the death penalty deters
4 crime now?

5 MR. LEDDY: Oh, yes.

6 JUROR NUMBER 324: And I don't think it really
7 does, because there's so much crime now. And I don't
8 know if people -- I -- yeah, I'd have to hear the whole
9 case, you know. There's something I need to tell you.

10 THE COURT: Yes, ma'am.

11 JUROR NUMBER 324: I was married for years, and I
12 was abused by my ex. Does that --

13 THE COURT: Okay.

14 JUROR NUMBER 324: -- make any difference with
15 this?

16 THE COURT: Well, it's certainly information we
17 need to know, and we appreciate you telling us that.

18 JUROR NUMBER 324: I've been out of it for 20
19 years, though.

20 THE COURT: Okay.

21 JUROR NUMBER 324: But I, you know --

22 THE COURT: Okay. Let me tell you why that's
23 important to us, is, we want to make sure, you know, we
24 do expect jurors, when they come into the courtroom,
25 they bring their life experiences. That's part of

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1 having a jury. But we need to be comfortable that you
2 are able, that, when you come in here, to be able to put
3 aside maybe anything that had happened to you and
4 determine the case that is before you, not based on, you
5 know, anything that is a feeling from behind.

6 JUROR NUMBER 324: Right. I think I'm trying to
7 explain why I have a anxiety problem. My psychiatrist
8 said he could get me out of this, but I thought I would
9 try it.

10 THE COURT: Oh, I appreciate your candor.
11 Absolutely. Okay. Let me do this. Can I ask her just
12 to step outside for just a brief moment, you all?

13 MR. STONE: Yes, ma'am.

14 THE COURT: If you don't mind, I'm going to have
15 you step out, and to alleviate any further anxiety, I'm
16 going to tell you right now, I'm going to have a short
17 discussion with the attorneys. It is not personal in
18 any way, shape, or form, and I don't want you worried
19 about it.

20 Go back out there. Bob's going to, I'm sure, tell
21 you a joke or two. He's a very funny man, and we're
22 going to bring you right back in here, and we'll go
23 ahead and finish up. Okay?

24 JUROR NUMBER 324: Okay.

25 THE COURT: I appreciate it.

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1 JUROR NUMBER 324 LEAVES COURTROOM.

2 BAILIFF: Door is closed, your Honor.

3 THE COURT: Okay. I think some things are too
4 close to home, quite frankly. And I think in this case,
5 correct me if I'm wrong or if you object in any way, but
6 I just think, when you've got someone who (a) has this
7 kind of anxiety on top of was abused for years, I just
8 don't think they can be a fair and impartial juror.

9 MR. STONE: Certainly.

10 THE COURT: You're fine with that? You're fine
11 with that?

12 MR. LEDDY: Yes, your Honor.

13 THE COURT: Let's let her go home and let her stop
14 worrying about it.

15 MR. LEDDY: Thank you, your Honor.

16 THE COURT: Okay. Let's bring her back.

17 JUROR NUMBER 324 ENTERS COURTROOM.

18 BAILIFF: If you'll just stand right there, please,
19 ma'am, and face the Judge.

20 THE COURT: All right, ma'am. Thank you so much
21 for coming in.

22 JUROR NUMBER 324: Um-hmm.

23 THE COURT: And I appreciate your diligence to your
24 civil service. I love the comment that you said your
25 doctor could get you out of it, but you wanted to come

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1 and try and do what you were supposed to do, and I have
2 the utmost respect for you.

3 I am going to go ahead and excuse you from the
4 trial of this case. I think it's too close to home for
5 you. I think it's very difficult, and I do not want you
6 nervous, upset in any way. So, I'm going to release
7 you.

8 JUROR NUMBER 324: Okay.

9 THE COURT: Do not come back on Monday. Don't
10 worry about it. Just do me a favor, don't talk with
11 anyone back there.

12 And I want to make sure, also, in your waiting that
13 you had to do, you haven't talked to anyone about your
14 own personal experience; have you?

15 JUROR NUMBER 324: Huh-uh. No.

16 THE COURT: Thank you. All right. You're excused,
17 and thank you.

18 BAILIFF: May I have your badge, ma'am, please.

19 JUROR NUMBER 324 LEAVES COURTROOM.

20 BAILIFF: Ready?

21 THE COURT: Yes, sir.

22 BAILIFF: Ms. Verna Sanders, your Honor.

23 JUROR NUMBER 549 ENTERS COURTROOM.

24 BAILIFF: Right this way, ma'am.

25 THE COURT: Come on forward, Ms. Sanders.

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1 BAILIFF: Just come right up and take a seat in the
2 witness box, please.

3 THE COURT: Go ahead and take a seat, Mrs. Sanders.

4 JUROR NUMBER 549: Thank you.

5 THE COURT: Good afternoon, ma'am.

6 JUROR NUMBER 549: Hello.

7 THE COURT: I'm sorry it's the afternoon. I know
8 you've been waiting patiently for us, but we are going
9 forward and we're working on some important issues, so
10 we need to speak with you.

11 I need to remind you first, ma'am, that you are
12 still under the oath that you took on Wednesday. Is
13 that agreeable?

14 JUROR NUMBER 549: Yes.

15 THE COURT: Additionally, ma'am, have you had an
16 opportunity to go through those witness lists in this
17 case and see if there are any persons on that witness
18 list that you are either socially acquainted to,
19 professionally, personally, anything along those lines?

20 JUROR NUMBER 549: No.

21 THE COURT: Additionally, ma'am, this case has
22 received some publicity. Have you read anything or seen
23 anything or heard anything, or have any independent
24 knowledge about this case, other than what came to you
25 in the questionnaire and what you've heard in the

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1 courtroom?

2 JUROR NUMBER 549: No.

3 THE COURT: All right, ma'am. I appreciate that.

4 I'm going to turn you over to the lawyers. The only
5 thing that you need to do in answering these questions
6 for the lawyers is to be honest and candid. That is it.
7 There are no right or wrong answers here, and I want to
8 make sure you understand and appreciate that. There is
9 no reason to be nervous in any way. Everyone is just
10 interested in what you have to say. All right?

11 JUROR NUMBER 549: Yes.

12 THE COURT: Thank you. Go ahead.

13 MR. SECOR: Hello, Ms. Sanders.

14 JUROR NUMBER 549: Hello.

15 MR. SECOR: How are you?

16 JUROR NUMBER 549: Fine, thank you.

17 MR. SECOR: Good. As the Judge told you, I just
18 want to reiterate, the whole purpose of this is to find
19 out how you feel about a couple of different issues
20 relating to crime and punishment. Okay?

21 JUROR NUMBER 549: Okay.

22 MR. SECOR: And we really only want to know what
23 you really, truly feel. And as the Judge said, there's
24 no wrong answers. And all I ask is that you tell me as
25 much as you can about the questions that I ask you, and

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1 that's really all we want to know is how you feel in
2 your heart and your soul and in your mind. Okay?

3 JUROR NUMBER 549: Yes.

4 MR. SECOR: And it's sort of confusing, even to the
5 lawyers on the case, to be talking about punishment in a
6 case that hasn't even been resolved yet, right? Because
7 as you know, a person who is charged with a crime in
8 this country is presumed innocent, right?

9 JUROR NUMBER 549: Yes.

10 MR. SECOR: You understand that concept.

11 JUROR NUMBER 549: Yes.

12 MR. SECOR: Earnest Daise has been charged with
13 crimes, but he is presumed innocent by the law. That's
14 the way it is.

15 JUROR NUMBER 549: Yes.

16 MR. SECOR: But we have to talk about penalty,
17 because the State, in this case, has chosen to seek the
18 death penalty, and we have to talk about penalty before
19 the trial even starts. And so, it's a little bit
20 backwards, but we have to do it anyway.

21 So, what I want to do is find out about your
22 feelings about punishment, and specifically, your
23 feelings about how a person who is convicted of murder
24 should be punished. Okay? Does that make sense?

25 JUROR NUMBER 549: Yes.

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1 MR. SECOR: Okay. And just so that we're on the
2 same page, what I need to make sure that you understand
3 is that the definition of murder in the state of South
4 Carolina is this: it's the killing of another person
5 with malice aforethought. Okay.

6 So, in order for a person to be guilty of murder,
7 the crime of murder, it has to be shown that they killed
8 another person with malice, and malice means that they
9 did it intentionally. It was premeditated. They did it
10 with evil in their heart. They decided to kill an
11 innocent person with no justification, no excuse. And
12 they were not acting in self-defense when they killed
13 that person; they were not insane to the point that they
14 couldn't determine right from wrong. They intentionally
15 took a human life with evil and malice in their heart.
16 That's what murder is in South Carolina. Okay? Does
17 that --

18 JUROR NUMBER 549: Yes.

19 MR. SECOR: Do you feel like that makes sense to
20 you?

21 JUROR NUMBER 549: Um-hmm.

22 MR. SECOR: Okay. And so, what I would like to ask
23 you is, if you were on a jury, and a person was charged
24 with murder, and you believed one hundred percent that,
25 that person was guilty of that murder, okay, how do you

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1 feel about that person being sentenced to death for
2 murder?

3 JUROR NUMBER 549: I have to hear the whole case
4 before I would decide something like that.

5 MR. SECOR: Okay. And can you tell me the kinds of
6 things that would affect your decision, the type of
7 things you'd be wanting to hear?

8 JUROR NUMBER 549: Just seeing what led up to, you
9 know, the murder and stuff like that.

10 MR. SECOR: Okay. Let me ask you this. As I said,
11 the State, in this case, has chosen to seek the death
12 penalty, and the death penalty is only a possible
13 punishment for some types of murders. Okay? I know
14 this is becoming complicated, and if I'm confusing you,
15 please stop me.

16 But what I'd like to ask you to do is to imagine
17 yourself being on a jury. You and your other fellow
18 jurors have heard the whole case, the entirety of the
19 case, and you believe one hundred percent the person
20 that is on trial murdered two people. Okay? Just the
21 intentional, malicious, evil killing of two people, and
22 one of them was a four-year-old child. Okay?

23 In this situation -- in that situation, do you
24 believe that death is the appropriate punishment for
25 someone who commits those two murders?

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1 JUROR NUMBER 549: I'm not sure.

2 MR. SECOR: Okay. And that's fine. That's a
3 perfectly acceptable answer. As a matter of fact, I
4 would hope that, if I were asked that question, I would
5 say the same thing, say I'm not sure.

6 Would it help you to know anything about the life
7 experience, life history, of the person that you found
8 guilty of two intentional, evil murders? Would that
9 matter to you in terms of what their punishment was?

10 JUROR NUMBER 549: Maybe.

11 MR. SECOR: Maybe?

12 JUROR NUMBER 549: Um-hmm.

13 COURT REPORTER: Is that yes?

14 JUROR NUMBER 549: Yes, I'm sorry.

15 THE COURT: Thank you.

16 MR. SECOR: And just in terms of things that might
17 matter to you, would it -- could it affect your decision
18 on punishment if the person grew up in poverty? Would
19 that be something that could matter to you?

20 JUROR NUMBER 549: I'm not sure.

21 MR. SECOR: Not sure? Okay. What about if the
22 person had a problem with drug or alcohol addiction?
23 Could that affect your decision on the punishment that
24 they should get?

25 JUROR NUMBER 549: I'm not sure.

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1 MR. SECOR: Okay. Are you okay? Are you sure?

2 THE COURT: Do you need a break?

3 JUROR NUMBER 549: I'm fine.

4 THE COURT: Are you okay? All right. You sure?
5 You just tell me if you need a break. Okay?

6 JUROR NUMBER 549: Yes.

7 MR. SECOR: One thing that I saw on the
8 questionnaire that you filled out, and I appreciate you
9 taking time to fill it out, is that it mentioned that
10 either you or your spouse was on a trial on a jury in
11 the past. Is that right?

12 JUROR NUMBER 549: Yes.

13 MR. SECOR: Was that you or your --

14 JUROR NUMBER 549: Yes, me.

15 MR. SECOR: Okay. And that was a murder trial,
16 right?

17 JUROR NUMBER 549: Yes, it was.

18 MR. SECOR: Was that here in Beaufort?

19 JUROR NUMBER 549: North Carolina.

20 MR. SECOR: North Carolina.

21 JUROR NUMBER 549: Yes.

22 MR. SECOR: Do you believe that, that --

23 JUROR NUMBER 549: The case was dismissed.

24 MR. SECOR: The case was dismissed.

25 JUROR NUMBER 549: Um-hmm.

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1 MR. SECOR: Oh, really? Okay.

2 JUROR NUMBER 549: Yes.

3 MR. SECOR: So, there was no punishment given out,
4 then?

5 JUROR NUMBER 549: No, not dismissed, but the jury,
6 it was just canceled because the person had already, you
7 know --

8 MR. SECOR: Oh, the person pled guilty during the
9 trial.

10 JUROR NUMBER 549: Pled guilty to the crime, yes.

11 MR. SECOR: Oh, okay. I got you. So, did you hear
12 the whole case, though?

13 JUROR NUMBER 549: No.

14 MR. SECOR: Just part of it?

15 JUROR NUMBER 549: Yes.

16 MR. SECOR: Okay. Based on what you heard, did you
17 think that, that person should have gotten the death
18 penalty?

19 JUROR NUMBER 549: I'm trying to remember. I can't
20 remember how the case had went.

21 MR. SECOR: Okay.

22 JUROR NUMBER 549: It was so long ago.

23 MR. SECOR: That's fine. That's fine. May I have
24 just a moment, your Honor?

25 THE COURT: You may.

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1 JUROR NUMBER 549 TALKING TO
2 THE COURT.

3 THE COURT: Okay. All right. I appreciate it. I
4 don't know, but I appreciate you telling me. Sit tight.

5 MR. SECOR: Ms. Sanders, I just have a couple more
6 questions. And I'm sorry, I don't mean to be dragging
7 this out. Are you all right?

8 JUROR NUMBER 549: (Nodded head.)

9 MR. SECOR: Okay. There's a few things that I'd
10 just like you to understand about the way the death
11 penalty system in South Carolina works. Okay? And one
12 of the most important things for people to understand
13 involving the system is that there is no case that
14 requires a death sentence in South Carolina. Does that
15 make sense?

16 JUROR NUMBER 549: Say that again.

17 MR. SECOR: There's no case, no crime that requires
18 a death sentence, a death penalty, in South Carolina.
19 Okay? I mean, no matter how bad the facts of the case
20 could be, no juror is ever required to sentence another
21 person to death. Okay?

22 And that's because, when it comes to sentencing in
23 a death penalty case, the only thing that matters is the
24 individual moral beliefs of the people that are on the
25 jury. Does that make --

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1 JUROR NUMBER 549: I understand that, yes.

2 MR. SECOR: Okay. And it's important that people
3 adhere to what their real moral beliefs are in a jury
4 deliberation process, because the sentence of death
5 would be carried out, if it was delivered by a jury.
6 Does that make sense?

7 JUROR NUMBER 549: Yes.

8 MR. SECOR: Okay.

9 THE COURT: If I can interrupt you just very
10 quickly. I just wanted to let you all know that this
11 potential juror just indicated to me while she didn't
12 know anyone on the witness list, she did recognize her
13 cousin, who is a deputy sitting in the back of the
14 courtroom. It's Deputy Craig Washington, so I just
15 wanted to let you all know that. So, thank you.

16 MR. SECOR: Thank you, ma'am.

17 THE COURT: Thank you.

18 MR. STONE: Ms. Sanders, my name is Duffie Stone.
19 I just have a few questions, and I think we've -- I've
20 heard what your answers to the Judge and the Defense. I
21 just wanted to cover a couple bases.

22 On your questionnaire, they gave to you -- that you
23 filled out, and indicated there are three types of
24 jurors: the type of juror who would always give the
25 death penalty; the type of juror who would never give

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1 the death penalty; and the type of juror who would take
2 everything into consideration and make the determination
3 of whether or not somebody who's been convicted of
4 murder gets a life sentence or death. And I think you
5 indicated on your questionnaire that you were that third
6 type of juror. Is that correct?

7 JUROR NUMBER 549: That's correct.

8 MR. STONE: Okay. And hearing everything that
9 you've heard today, is that still your belief?

10 JUROR NUMBER 549: Yes.

11 MR. STONE: Now, in a death penalty case, the case
12 would actually go -- if you found him guilty, it would
13 be up to you as a member of the jury to make that
14 determination. If the facts are bad enough, if the case
15 is bad enough, could you give somebody the death
16 penalty?

17 JUROR NUMBER 549: Yes.

18 MR. STONE: If you're in the position, ma'am, and
19 you're on the jury, and you have to make that decision,
20 there's a form that you fill out that you sign your
21 name.

22 That sentence -- first of all, let me make sure.
23 The sentence itself is not a recommendation to the
24 Judge. That's actually the defendant's sentence. So,
25 from the standpoint of you serving on the jury, you

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1 would actually be making the determination that they
2 would receive the death penalty. You're shaking your
3 head.

4 JUROR NUMBER 549: I couldn't do that.

5 MR. STONE: And I'm very sorry. I'm not trying to
6 upset you. I just wanted to clarify. You could not
7 sign your name and give somebody --

8 JUROR NUMBER 549: I don't think so.

9 MR. STONE: Okay. Thank you, ma'am.

10 THE COURT: Ms. Sanders, I also noticed on your
11 questionnaire that, apparently, some of your family
12 members go to church with Mr. Daise's family members.

13 JUROR NUMBER 549: I think so. I'm not quite sure
14 of that.

15 THE COURT: You're not sure.

16 JUROR NUMBER 549: I know there's some Daise that
17 go to church on Saint Helena.

18 THE COURT: Okay. And what's the name of your
19 church, ma'am?

20 JUROR NUMBER 549: Orange Grove.

21 THE COURT: Okay. I appreciate that. Okay.
22 Anything further, you all?

23 MR. SECOR: No further questions.

24 THE COURT: All right. Ma'am, I'm going to go
25 ahead and excuse you from the trial of this case. I

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1 appreciate you being here. Thank you so much.

2 I'm just going to ask that you don't talk to
3 anybody that's back there waiting on us when you leave,
4 but thank you for being here.

5 JUROR NUMBER 549: Thank you.

6 BAILIFF: May I have your badge, please, ma'am.

7 JUROR NUMBER 549 LEAVES COURTROOM.

8 THE COURT: Let's go ahead and bring the next one
9 in.

10 BAILIFF: Yes, ma'am.

11 THE COURT: I'm sorry.

12 BAILIFF: Mr. Bryan Cox, your Honor.

13 JUROR NUMBER 153 ENTERS COURTROOM.

14 BAILIFF: Right this way, sir.

15 MR. YOUNG: If your Honor will --

16 THE COURT: I already did.

17 MR. YOUNG: We need to make a record.

18 THE COURT: Okay. But I looked at you all. Come
19 on in. We'll put it on the record in just a minute.

20 It's preserved to the record as to the last juror.

21 BAILIFF: If you'll go right up there and take a
22 seat in the witness box, please.

23 MR. YOUNG: Thank you.

24 THE COURT: Okay?

25 JUROR NUMBER 153: Thanks. Good morning, your

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1 Honor.

2 THE COURT: Good morning, sir. Thank you for being
3 here, and I apologize for running late. We're trying to
4 catch up, sir. We just have questions we need to ask
5 and business we need to take care of.

6 JUROR NUMBER 153: Okay.

7 THE COURT: Sir, again, I'm to remind you that
8 you're still under the oath that you took on Wednesday.
9 Is that agreeable?

10 JUROR NUMBER 153: Yes, your Honor.

11 THE COURT: You also had an opportunity to look at
12 the witness list back in the jury assembly room. Were
13 there any people you knew on that list, either
14 personally, socially, or professionally?

15 JUROR NUMBER 153: Yes, your Honor.

16 THE COURT: Who do you know, sir?

17 JUROR NUMBER 153: Just by name, Sheriff P.J.
18 Tanner.

19 THE COURT: Okay. You don't have a personal
20 relationship with him?

21 JUROR NUMBER 153: No, your Honor.

22 THE COURT: Okay.

23 JUROR NUMBER 153: Sergeant David W. Ott.

24 THE COURT: Okay. How do you know him?

25 JUROR NUMBER 153: He's my father-in-law.

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1 THE COURT: He's your father-in-law.

2 JUROR NUMBER 153: Yes, ma'am.

3 THE COURT: Okay.

4 JUROR NUMBER 153: And also, D.B. Malphrus.

5 THE COURT: Okay.

6 JUROR NUMBER 153: He's my neighbor.

7 THE COURT: All right, sir. And again, tell me
8 who your father-in-law is.

9 JUROR NUMBER 153: It would be Deputy Coroner David
10 Ott.

11 THE COURT: Thank you. Okay. Sir, it's my
12 understanding that he may give testimony in this case.
13 I want to make sure that you won't give that any undue
14 weight. Are you comfortable with that?

15 JUROR NUMBER 153: Probably, your Honor. Yes,
16 ma'am.

17 THE COURT: Probably? Okay. Have you heard
18 anything about this case, either through your father-in-
19 law or anyone else?

20 JUROR NUMBER 153: A little bit, your Honor, yeah.

21 THE COURT: You have.

22 JUROR NUMBER 153: Yes, ma'am.

23 THE COURT: Okay. All right. Tell me what you
24 know and tell me where you learned it.

25 JUROR NUMBER 153: Other than from what was in the

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1 paper, my father-in-law, he's mentioned a few things
2 about it, just from him working it.

3 THE COURT: Okay.

4 JUROR NUMBER 153: But nothing -- he didn't go
5 into great -- great detail. Just kind of what happened,
6 and I guess you could say who passed or -- and whatnot.

7 THE COURT: Okay.

8 JUROR NUMBER 153: But that's about all I knew.

9 THE COURT: Sir, I am going to speak with the
10 attorneys very briefly. I'm just going to ask that you
11 step back out in the hallway with Bob, and we're going
12 to bring you back in here and finish up. Okay?

13 JUROR NUMBER 153: Yes, ma'am.

14 THE COURT: But I appreciate it, sir. Thank you.

15 JUROR NUMBER 153: Not a problem.

16 JUROR NUMBER 153 LEAVES COURTROOM.

17 BAILIFF: Door is closed.

18 MR. MCGUIRE: I think his words were -- I think his
19 exact words from the questionnaire were *deputy -- the*
20 *coroner that worked the case.*

21 THE COURT: He is the deputy coroner of Beaufort
22 County and worked this case on scene. And that a
23 witness has actually talked to him about the case, about
24 the death, I mean.

25 MR. THORNTON: I'm not going to take a position,

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1 Judge.

2 THE COURT: Okay.

3 MR. THORNTON: I mean, it wasn't our witness. I
4 didn't put the deputy coroner on there. It's their
5 witness.

6 THE COURT: Okay.

7 MR. THORNTON: I would assume, because it's not on
8 my list, so I wasn't planning on calling him, and --

9 THE COURT: All right.

10 MR. MCGUIRE: He had some interaction at the
11 hospital, with the two EMT workers. That's why he's on
12 the list. We'd agree to let him go.

13 THE COURT: Okay. All right. I'm going to let him
14 go. I think anyone that's that close in talking with
15 anyone in the investigation, it's just not appropriate.
16 So, I'll go ahead and release him.

17 BAILIFF: Bring him back in, Judge?

18 THE COURT: Yes.

19 BAILIFF: Come back in. If you will, just come
20 right here, and stand and face the Judge.

21 JUROR NUMBER 153 ENTERS COURTROOM.

22 THE COURT: Thank you.

23 JUROR NUMBER 153: Yes, your Honor.

24 THE COURT: Mr. Cox, I'm going to go ahead and
25 excuse you from the trial of this case, just based on

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1 the nature of your relationship with a potential witness
2 in this case; that you did, in fact, discuss it.

3 JUROR NUMBER 153: Yes, your Honor.

4 THE COURT: Again, I just want to make sure that
5 everything is done fairly and appropriately, not that I
6 don't think you wouldn't. But again, out of an
7 abundance of caution, I'm going to excuse you.

8 JUROR NUMBER 153: Yes, ma'am.

9 THE COURT: Okay, sir.

10 JUROR NUMBER 153: Thank you.

11 THE COURT: Thank you for being here. You are
12 excused.

13 JUROR NUMBER 153: Thank you, your Honor.

14 BAILIFF: May I have your badge, please. You're
15 free to go.

16 JUROR NUMBER 153 LEAVES COURTROOM.

17 BAILIFF: Are you ready, your Honor?

18 THE COURT: Okay. Are you all ready?

19 MR. MCGUIRE: Judge, --

20 THE COURT: Yes. Hold on, Al. Wait one moment.
21 We need to put something on the record. I apologize.

22 MR. MCGUIRE: And this might be my fault.

23 THE COURT: Yes, that's okay.

24 MR. MCGUIRE: I think I may have misheard some of
25 the answers of the last woman, and I don't know if I

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1 made any kind of official comment that I was going to --

2 THE COURT: No. You said she was fine, to cut her
3 loose.

4 MR. MCGUIRE: Okay.

5 THE COURT: The ending comment with her was is that
6 she could not give the death penalty; she could not sign
7 her name to it. She was crying.

8 I took your signal, and I apologize for the record,
9 if that wasn't what your signal is. You can say
10 whatever you want and put it on the record. It's just
11 fine.

12 MR. MCGUIRE: I think it was -- sure. And what I
13 meant was, I don't think we're going to follow up with
14 anymore questions, because I think, under sort of the
15 totality we've been putting people in the pot when they
16 -- even though they say they are predisposed or very
17 much in favor of one position over the other, if they
18 say they can't consider everything, I think that's the
19 big question that everybody's getting qualified under;
20 and she did. And I felt very bad for her, kind of
21 emotionally. It was a very emotional thing for her. I
22 meant that we were not going to ask her anymore
23 questions. I didn't mean that we were --

24 THE COURT: Okay.

25 MR. MCGUIRE: -- that we were agreeing to excuse

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1 her.

2 THE COURT: I don't think she was predisposed. She
3 said she could not give the death penalty, and she could
4 not -- Solicitor Stone followed up with could you sign
5 your name to it, and she said no. And by that point,
6 she was crying. So, I do not think she can sit in
7 judgment. So, thank you. We've made the record.

8 MR. YOUNG: Your Honor, can we --

9 THE COURT: Yes.

10 MR. YOUNG: Can Mr. Secor be heard to make the
11 objection? Thank you.

12 MR. SECOR: Just --

13 COURT REPORTER: I'm sorry. I did not hear you,
14 Mr. Young. Could we what?

15 MR. YOUNG: I asked if Mr. Secor could be heard.

16 THE COURT: Mr. Young, can I ask you a question?

17 MR. YOUNG: Yes, ma'am.

18 THE COURT: I appreciate it and want you to get the
19 experience. I have no problem with that. But do you
20 actually believe he has to be the one to make it for
21 appellate purposes? That's what I'm asking.

22 MR. YOUNG: He did the juror, and I think --

23 THE COURT: That's what I'm asking, though.

24 MR. YOUNG: Oh, no. I -- no. No, for appellate
25 purposes, I don't believe so.

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1 THE COURT: Making sure. Okay. Just wanted to
2 make sure. Okay. And Mr. Secor, again, I appreciate
3 it. I -- one of the things that I think is great about
4 this is that you all are out here, everyone's doing it,
5 and everyone's getting experience, and I appreciate
6 that. So, absolutely you can make the objection. It
7 was your witness -- or your juror.

8 MR. SECOR: I understand. I probably am not the
9 best suited to make it, but I'll give it a shot.

10 My recollection of Ms. Sanders' testimony was that
11 she was very well qualified throughout almost the
12 entirety of it. And when Solicitor Stone asked her if
13 she could deliver a death sentence, my memory is that
14 she said yes. And then, he followed up with could you
15 put your name on the line; and that is when she said,
16 no, she doesn't think that she could.

17 And the reason why I believe that, that does not
18 qualify [sic] her is that the law does not require
19 anyone under any circumstances to ever give a sentence
20 of death to anyone. And so, I think to disqualify her
21 based on that would be a violation of Mr. Daise's *Sixth*
22 and *Fourteenth Amendment* rights, because I think that
23 every other answer she gave made it clear that she is
24 qualified, and she was disqualified on the basis that is
25 not required under the law, so that's the basis of my

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1 objection. Thank you.

2 THE COURT: Do you need to put anything on the
3 record?

4 MR. STONE: I don't believe so. What changed for
5 her was when the sentence was no longer a
6 recommendation. I think when I told her that the
7 sentence would be carried out, that's when the tears
8 started; that's when she said I couldn't do that. And
9 then, I followed up and with the question could you sign
10 your name, and she said no, I couldn't do that.

11 THE COURT: Okay. All right. Let's bring the next
12 one in.

13 BAILIFF: Mr. Christopher Short, your Honor.

14 BAILIFF: Right this way, sir.

15 JUROR NUMBER 658 ENTERS COURTROOM.

16 THE COURT: Come on in, Mr. Short.

17 BAILIFF: Sir, please go up and take a seat in the
18 witness box.

19 THE COURT: Good afternoon, Mr. Short.

20 JUROR NUMBER 568: Good afternoon.

21 THE COURT: Thank you for your patience, sir.

22 JUROR NUMBER 568: No problem.

23 THE COURT: I need to remind you, and I hope this
24 is acceptable to you that you are still under oath as
25 you were on Wednesday.

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1 JUROR NUMBER 568: Yes, your Honor.

2 THE COURT: Additionally, sir, you've had an
3 opportunity to look at the witness list back in the jury
4 room. Do you have any personal, social, or professional
5 relationships with any of those potential witnesses?

6 JUROR NUMBER 568: The only name I recognized was
7 that of Sheriff Tanner.

8 THE COURT: Do you know him personally?

9 JUROR NUMBER 568: I do not; just through my boss.

10 THE COURT: All right. And who is your boss?

11 JUROR NUMBER 568: Pat Worth, Habitat for Humanity
12 in Bluffton.

13 THE COURT: Okay. He deals with Sheriff Tanner,
14 and Sheriff Tanner.--

15 JUROR NUMBER 568: She has had dealings with him
16 and spoken about him at length.

17 THE COURT: Okay. All right. And I apologize. I
18 should have known that; that it was a she. Sir,
19 additionally, there has been some publicity about this
20 case in the newspaper or on the T.V. Do you have any
21 independent knowledge about this case, either from the
22 newspaper, T.V., or from anyone talking?

23 JUROR NUMBER 568: After I received the jury
24 notification, I did Google it, but the only thing that I
25 saw was that the case happened the year before I moved

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1 here. I guess it happened in 2009. I moved here March
2 2010.

3 THE COURT: Okay.

4 JUROR NUMBER 568: So, other than that, I don't
5 have any specifics. No, ma'am.

6 COURT REPORTER: Other than that, I --

7 JUROR NUMBER 568: Don't have any specifics about
8 the case, other --

9 THE COURT: Mr. Short, -- I apologize.

10 JUROR NUMBER 568: Other than what was in that
11 questionnaire.

12 THE COURT: Okay. Thank you. And again, I just
13 want to make sure that anything you may have read, seen,
14 or heard, you can leave outside the courtroom were you
15 to sit as a juror. You can understand you have
16 everything you need to decide the case here in the
17 courtroom.

18 JUROR NUMBER 568: Yes, your Honor.

19 THE COURT: Thank you, sir. I'm going to go ahead
20 and turn you over to the lawyers. They're going to ask
21 you some questions. There are no right or wrong answers
22 here.

23 They're going to ask you your feelings about the
24 death penalty and about life imprisonment without the
25 possibility of parole. Be honest and candid. That's

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1 the only thing anyone can ask of you here. Okay?

2 JUROR NUMBER 568: Yes, ma'am.

3 THE COURT: All right. Thank you, sir.

4 MS. CREELY: Hey, Mr. Short. My name is Catherine
5 Creely, and I'm one of the lawyers for the Defendant,
6 Mr. Daise. I need to talk with you a little bit this
7 morning about your feelings about the death penalty.
8 It's a little awkward for us to talk with us about that
9 right now, because the trial has not happened yet. Mr.
10 Daise is presumed innocent. No one has found him guilty
11 of anything. Do you understand that?

12 JUROR NUMBER 568: Yes, ma'am.

13 MS. CREELY: Okay. But this is the only chance I
14 get to talk to you about your feelings about the death
15 penalty, so I'm going to go ahead and do that now. Are
16 you with me?

17 JUROR NUMBER 568: Yes, ma'am.

18 MS. CREELY: Okay. As the Judge just said, there's
19 no right or wrong answer. All we're trying to find out
20 is what you really think and what you really believe.
21 Okay?

22 JUROR NUMBER 568: Yes, ma'am.

23 MS. CREELY: All right. I'm going to start by
24 talking to you a little bit about what murder is in
25 South Carolina. Murder in South Carolina is the killing

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1 of a person, intentionally, with malice aforethought.

2 Malice aforethought is just a fancy legal term that
3 means someone committed a murder with evil in their
4 heart. They meant to do it. It wasn't self-defense; it
5 wasn't an accident. It was nothing like that. Somebody
6 intended to kill another person, and they had evil in
7 their heart, and they carried that out and killed that
8 person. Do you understand that?

9 JUROR NUMBER 568: Yes, ma'am.

10 MS. CREELY: Okay. What I want to ask you is, if
11 you -- just imagine yourself on a jury with eleven other
12 people. You've heard an entire case. It's a murder
13 trial, and you have, with them, found, beyond any
14 reasonable doubt, that the person on trial is guilty of
15 malicious murder; that murder that I just described; not
16 an accident, not self-defense.

17 What is your view about the appropriate penalty for
18 that person who is guilty of murder if it's between life
19 without parole, which in South Carolina means life, you
20 don't get out; or the death penalty?

21 JUROR NUMBER 568: My opinion on the death penalty
22 used to be I was strongly pro-death penalty. Over the
23 last couple of years, that has changed somewhat.

24 After I got the questionnaire, one of the questions
25 was, you know, where I go to church, how often do I

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1 attend, my church's view on the death penalty. And I
2 had already begun to lean towards being opposed to the
3 death penalty. Spoke with my pastor, not about the case
4 in specifics, but just -- because one of the questions
5 was what does your church believe, and didn't know.

6 And I probably lean more towards no to the death
7 penalty at that point. When I sat here in the courtroom
8 the other day, thought about it, thought about the
9 cases, you know, I have four children. Two of them are
10 the approximate age of the victims in this case.

11 You know, I pretty much have come to the conclusion
12 that I could easily sentence someone who was found
13 guilty of those crimes to life without the possibility
14 of parole, no problem. But honestly can, with a hundred
15 and ninety-nine percent conviction, say that I can never
16 sentence someone to death.

17 MS. CREELY: Okay. Well, let me -- thank you for
18 that. I appreciate your honesty on that. Let me just
19 add a couple of things and see if it changes your view
20 at all.

21 So, we talked about malicious murder. I think,
22 just from just being around, you probably are aware from
23 the questionnaire, there are statutory aggravators in
24 this state that allow the State to seek the death
25 penalty. Two of those I want to talk to you about right

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1 now. One of them is there are two murders committed at
2 the same time, and one of them is a child.

3 So, if you're on a jury with eleven other people
4 and you, altogether, have decided beyond a reasonable
5 doubt that the person accused is guilty of two murders,
6 one of a small child, do you feel that you could impose
7 the death penalty in that case?

8 JUROR NUMBER 568: No, ma'am, I do not.

9 MS. CREELY: You could not. Okay.

10 MR. STONE: Mr. Short, thank you for your answers,
11 sir. Thank you, your Honor.

12 MS. CREELY: Thank you, sir.

13 THE COURT: All right. Sir, I'm going to go ahead
14 and excuse you from the trial of this case. Thank you
15 for being here with us. I know this is not an easy
16 subject, and it sounds like, obviously, just being
17 summoned has got you thinking about these issues and
18 certainly talking with your pastor. We appreciate that.

19 JUROR NUMBER 568: Thank you.

20 THE COURT: You're excused, sir.

21 JUROR NUMBER 568 LEAVES COURTROOM.

22 THE COURT: All right. You want to bring the next
23 one in?

24 BAILIFF: Your Honor, Mr. William Young.

25 JUROR 698 ENTERS COURTROOM.

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1 THE COURT: Thank you. Come on up, Mr. Young.

2 BAILIFF: If you would, sir, please go up and take
3 a seat in the witness box.

4 THE COURT: Good afternoon, sir. Mr. Young, thank
5 you for waiting on us patiently, sir. We appreciate it.

6 At this time, sir, the lawyers are going to ask you
7 a number of questions in regards to your feelings and
8 beliefs and values on the death penalty; about sentence
9 of life imprisonment without the possibility of parole.
10 Certainly, that's permissible.

11 I want you to know there are no right or wrong
12 answers here. I just need you to be honest and candid,
13 and that's all anyone can expect in this room.

14 Additionally, sir I need to remind you that you are
15 still under the oath that you took on Wednesday. Is
16 that acceptable?

17 JUROR NUMBER 698: Yes.

18 THE COURT: Additionally, sir, you've had an
19 opportunity to go over the witness list over in the jury
20 assembly room. Going through that list, is there any
21 persons on either one of those lists -- I apologize,
22 there's two -- that you know personally, professionally
23 or have a social acquaintance with?

24 JUROR NUMBER 698: No.

25 THE COURT: Additionally, sir, there has been some

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1 publicity in this case. Have you read anything in the
2 newspaper, seen anything, or have any independent
3 knowledge about this case, regardless of its source?

4 JUROR NUMBER 698: Yes.

5 THE COURT: What are those sources, sir?

6 JUROR NUMBER 698: *Island Packet*.

7 THE COURT: Okay. Did you read -- which article or
8 articles are you referring to?

9 JUROR NUMBER 698: When it was first published.

10 THE COURT: Okay. Have you read anything recently?

11 JUROR NUMBER 698: No.

12 THE COURT: All right, sir. I want to make sure
13 that you can put aside anything you may have read in any
14 article and confine, if you were to sit as a juror, your
15 deliberations to what you hear in this courtroom. Can
16 you do that?

17 JUROR NUMBER 698: I believe so.

18 THE COURT: Okay. And the reason why, of course,
19 is, nothing in the newspaper is factual. Again, I want
20 to make sure you realize that, if you were chosen as a
21 juror, you would have a front-row seat. You would have
22 better information than anybody, and I want to make sure
23 you confine your consideration in this case to that.
24 Can you do that?

25 JUROR NUMBER 698: Yes.

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1 THE COURT: All right. I'm going to turn you over
2 to the lawyers now. Mr. McGuire.

3 MR. MCGUIRE: Thank you, your Honor. Good
4 afternoon, sir.

5 JUROR NUMBER 698: Good afternoon.

6 MR. MCGUIRE: My name's Bill, Bill McGuire. I'm a
7 lawyer in the case. And what I want to do and what I
8 need to do is talk to you about your views about the
9 death penalty. Okay? And I'm going to start at the
10 very basics, make sure we're on the same page. Okay?

11 In South Carolina, the death penalty is only
12 available for murder, like the rest of the country, and
13 I'm going to start with the definition of murder. It's
14 an intentional, deliberate act to take an innocent life
15 with malice aforethought. Are you with me?

16 JUROR NUMBER 698: Yeah.

17 MR. MCGUIRE: Okay. The malice aforethought part
18 is where the accused, the killer, operates with a black
19 and malignant heart, devoid of social duty, fatally bent
20 on evil and wickedness. You probably haven't heard that
21 before, right?

22 JUROR NUMBER 698: Okay.

23 MR. MCGUIRE: I'm just going to tell you, you have
24 to say yes or no into that little microphone for the
25 record.

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1 JUROR NUMBER 698: Okay.

2 MR. MCGUIRE: My guess is you haven't heard that
3 before.

4 JUROR NUMBER 698: No.

5 MR. MCGUIRE: Okay. And for the State, the
6 government, to come forward and ask for the death
7 penalty, they have to show more than just an intentional
8 killing, more than murder. It has to be aggravated
9 murder. There has to be an aggravating circumstance.

10 I want to ask you about a specific aggravating
11 circumstance, and that is a double homicide where two
12 people are killed, and it's a mother and child, the
13 child's four years old. It's not accident; not self-
14 defense. It's an intentional, deliberate act to take
15 those two innocent lives where they're shot dead.

16 In that situation, what are your thoughts about the
17 death penalty as the appropriate punishment.

18 JUROR NUMBER 698: I think that would be
19 appropriate.

20 MR. MCGUIRE: It would be appropriate?

21 JUROR NUMBER 698: Yeah.

22 MR. MCGUIRE: And your decision, your interests,
23 here today are a reflection of your values, your moral
24 code.

25 JUROR NUMBER 698: Correct.

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1 MR. MCGUIRE: And your values and moral code would
2 say that, that kind of case calls out for the death
3 penalty.

4 JUROR NUMBER 698: Yes.

5 MR. MCGUIRE: And that a life sentence, letting
6 somebody live their lives out in prison after committing
7 that kind of intentional killing of two people, the life
8 penalty, it sounds like, in your view, would not be
9 severe enough to punish that kind of intentional act.

10 JUROR NUMBER 698: Correct.

11 MR. MCGUIRE: And that's, again, a reflection of
12 your moral code, who you are.

13 JUROR NUMBER 698: Correct.

14 MR. MCGUIRE: And you'd always be consistent in
15 that.

16 JUROR NUMBER 698: Yes.

17 MR. MCGUIRE: Your decision would never change.

18 JUROR NUMBER 698: No.

19 MR. MCGUIRE: Okay. And it would always be the
20 appropriate punishment. The death penalty would always
21 be the appropriate punishment when it was an intentional
22 act to take a mother and child, with a four-year-old
23 child.

24 JUROR NUMBER 698: Yes.

25 MR. MCGUIRE: Okay. Now, I used to ask this

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1 question, and I realized it was kind of foolish. I used
2 to ask people in your situation, your seat, if they
3 could listen to everything before making their decision,
4 and it occurred to me that I didn't really give you any
5 information to that question at all; did I?

6 JUROR NUMBER 698: Well, no, but I mean, I didn't
7 hear a case, but.

8 MR. MCGUIRE: Exactly. You know, when I use -- if
9 I use -- and sometimes lawyers do a terrible job of
10 communicating, and if I were to use the phrase to
11 somebody: could you listen to the whole case before you
12 rendered a decision; really, what I'm asking you to do
13 is just sit there and not walk out of the room. And it
14 occurred to me that I was a little foolish in asking
15 that question. But obviously, you could and would
16 listen to everything before making a judgment, right?

17 JUROR NUMBER 698: Correct.

18 MR. MCGUIRE: But based on what I've said, if it
19 comes back down to that specific instance of a double
20 homicide, it's a mother and child, with a young child,
21 based on your moral code, your value, the death penalty
22 is always going to be appropriate.

23 JUROR NUMBER 698: Correct.

24 MR. MCGUIRE: And I can't change your mind on that.

25 JUROR NUMBER 698: No.

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1 MR. MCGUIRE: I don't have the words to do it; do
2 I?

3 JUROR NUMBER 698: No.

4 MR. MCGUIRE: And the Judge can't change your mind,
5 right?

6 JUROR NUMBER 698: No.

7 MR. MCGUIRE: And these guys over here can't change
8 your mind, either.

9 JUROR NUMBER 698: No.

10 MR. MCGUIRE: And if they were to ask you -- and
11 want to talk to you a little bit about your
12 questionnaire. Is this questionnaire, this is our
13 starting point. This is our very beginning where we
14 start to figure out who might be a potential juror, and
15 this is where we start to ask questions and figure out
16 what to ask you.

17 And I'm just going to approach and show you a
18 questionnaire. There was a question on there where it
19 said there were some people who are always in favor of
20 death; never in favor of death; and sometimes, depending
21 on the case, could go kind of both ways. And that was
22 when we were using general words like murder, right?

23 JUROR NUMBER 698: Right.

24 MR. MCGUIRE: And now that you have the specific
25 information of a category, a specific category of

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1 homicide, the intentional killing of the woman and
2 child, the four-year-old child, now that you know that
3 specific category of case, your view is based on your
4 moral code and your values, and the death penalty is the
5 appropriate punishment.

6 JUROR NUMBER 698: Right.

7 MR. MCGUIRE: Consistently?

8 JUROR NUMBER 698: Correct.

9 MR. MCGUIRE: Always.

10 JUROR NUMBER 698: Yes.

11 MR. MCGUIRE: That's all I have, your Honor.

12 THE COURT: Okay.

13 MR. STONE: Mr. Young, my name is Duffie Stone.
14 So, what I'm understanding from you, then, is that, in a
15 situation in which if someone is convicted of murdering
16 a small child and murdering another person, two or more
17 people, you would not consider anything else; it's the
18 death penalty for you; no other sentence. Is that what
19 I'm understanding?

20 JUROR NUMBER 698: I think it was also said about
21 if there was no other circumstance that caused the
22 murder.

23 MR. STONE: Right.

24 JUROR NUMBER 698: It was self-defense, and it was
25 not caused by another outside act --

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1 MR. STONE: Yes, sir.

2 JUROR NUMBER 698: -- of aggression or something.

3 MR. STONE: In a death penalty case, what you're in
4 a position of doing is, first of all, you're hearing the
5 case to determine whether or not the person is guilty.
6 And so, that's kind of -- it's almost broken into --
7 it's broken into two trials, basically.

8 The first trial is your determination about whether
9 or not somebody is guilty of murder. And if they're
10 guilty of murder, it's not self-defense, there's no
11 insanity to it, it is fact that they were -- they
12 maliciously murdered somebody. And in that situation,
13 if you were to find them guilty, you would find them
14 guilty of murdering someone, as well as a four-year-old
15 child.

16 At that point you would then go into what's
17 referred to as a sentencing phase, and that
18 questionnaire that was sent to you was asked
19 specifically about the sentencing phase. In other
20 words, they've already been convicted of murder; you've
21 already been convinced that they're guilty of murder.
22 Now the question is, you have a choice. Your choice as
23 a juror sitting in this type of case, either the
24 defendant gets the death penalty or they get life in
25 prison.

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1 And the question in that questionnaire is: would
2 you automatically say death; would you automatically say
3 life; or would you take everything into consideration
4 before making that determination?

5 And I'm not trying to change your mind. I just
6 trying to make sure that I understood it. If you're in
7 that situation, and you've already convicted them, would
8 it always be death; would it always be life; or would
9 you take everything in consideration in making a
10 determination between life or death?

11 JUROR NUMBER 698: No. I think I -- I would make a
12 consideration, you know, all the circumstances and all
13 the evidence and so, forth.

14 MR. STONE: Despite the fact that you'd already
15 been convinced they were guilty of murder, malicious
16 murdering of an adult and a four-year-old child, you
17 would still consider other things before making the
18 determination whether or not they get life or death.

19 JUROR NUMBER 698: After hearing the trial, yeah.
20 I would --

21 MR. STONE: Yes.

22 JUROR NUMBER 698: -- I would -- I'm not, you know,
23 so firm or that I wouldn't, you know, if the evidence
24 and circumstances warranted, yeah, then.

25 MR. STONE: Okay. And that's -- that's --

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1 COURT REPORTER: I'm sorry. *If the circumstances*
2 *wanted?*

3 JUROR NUMBER 698: Are warranted.

4 MR. STONE: After you take everything into
5 consideration.

6 JUROR NUMBER 698: Yeah. When you take everything
7 into consideration.

8 MR. STONE: Okay. And thank you.

9 JUROR NUMBER 698: I mean, at this point, I know
10 personally nothing, so.

11 MR. STONE: Exactly. Yes, sir. And it's almost
12 unfair for us to ask you this. We're just trying to
13 make sure that -- if you're in that situation, the Judge
14 would instruct you that as a juror sitting on this
15 trial, you would have to listen to both the Defense, as
16 well as the State, aggravation factors, such as whatever
17 factors that we would bring out; any mitigation,
18 anything in the Defense, before you made the
19 determination between life and death.

20 And your questionnaire indicated that you would do
21 that, but I don't want to force that on you. I mean, if
22 that's not -- if that's not the situation, I certainly
23 don't want to argue with you about it.

24 So, again, if you're in that situation, are you
25 automatically going to say death; or are you

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1 automatically going to say life; or are you going to
2 take into consideration both the Defense, as well as the
3 State, before making that determination?

4 JUROR NUMBER 698: I would -- I would listen to
5 everything that's said and -- and make a determination
6 after listening to it.

7 MR. STONE: Okay. Thank you, Mr. Young. I
8 appreciate it.

9 MR. MCGUIRE: Thank you, sir. This is my only
10 opportunity to talk to you, so we just have to be clear.
11 That's why I'm back up here again.

12 And again, we started with that questionnaire as
13 sort of a beginning when we used a vague term sort of
14 like murder. And you didn't -- my understanding is you
15 didn't know the exact definition of murder until you got
16 here today, correct?

17 JUROR NUMBER 698: Correct.

18 MR. MCGUIRE: And you didn't know about
19 circumstances of aggravation before; did you?

20 JUROR NUMBER 698: No. I don't know the degrees of
21 murder.

22 MR. MCGUIRE: Sure. And there are some cases, you
23 know, based on the person's moral code and their value
24 system, that call out and demand a certain penalty. And
25 when we're talking, one of the categories that we talked

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1 about was if it was an intentional double homicide,
2 deliberate act to take the life of a mother and a four-
3 year-old child. In that category of case, that specific
4 category, your value code calls out to deliver the death
5 penalty as the appropriate punishment.

6 JUROR NUMBER 698: Yes.

7 MR. MCGUIRE: Always.

8 JUROR NUMBER 698: Yes.

9 MR. MCGUIRE: And I can't change your mind with
10 just my words.

11 JUROR NUMBER 698: No.

12 MR. MCGUIRE: This is a reflection of who you are
13 as a person, your value of right and wrong.

14 JUROR NUMBER 698: I mean, again, I don't know
15 anything about the case much.

16 MR. MCGUIRE: Sure.

17 JUROR NUMBER 698: Other than what the -- the
18 paper, you know, produced for copy for the news.

19 MR. MCGUIRE: Right.

20 JUROR NUMBER 698: And that's it.

21 MR. MCGUIRE: Okay.

22 JUROR NUMBER 698: And what the circumstances were
23 or what -- what caused this, I have no clue.

24 MR. MCGUIRE: Sure. And what I want take you --

25 JUROR NUMBER 698: And so, it, you know.

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1 MR. MCGUIRE: What I want to take you away from is
2 your worrying about this case. Okay? I'm just talking
3 about in any case where a man, a defendant,
4 intentionally takes the life of a woman and her four-
5 year-old child; does it deliberately with evil intent;
6 not accident; not self-defense; not mistake; but does it
7 deliberately; chose to kill; and killed.

8 In that category of case, I think we've -- you've
9 said that, that's the death penalty.

10 JUROR NUMBER 698: Yeah, that is.

11 MR. MCGUIRE: And that the life penalty is not
12 sufficient.

13 JUROR NUMBER 698: Correct.

14 MR. MCGUIRE: And that's a manifestation and a
15 reflection of your values system.

16 JUROR NUMBER 698: Correct.

17 MR. MCGUIRE: Your views on right or wrong. Right?

18 JUROR NUMBER 698: Yes.

19 MR. MCGUIRE: And moral accountability.

20 JUROR NUMBER 698: Correct.

21 MR. MCGUIRE: And this emanates from a deep place
22 of who you are, your moral code.

23 JUROR NUMBER 698: Correct.

24 MR. MCGUIRE: That's all I have for you, sir.

25 Thank you very much.

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1 JUROR NUMBER 698: Okay.

2 MR. STONE: Just briefly, Mr. Young. And in that
3 situation, you would not consider anything from the
4 Defense or anybody else? I think what Mr. McGuire was
5 asking you, he said is could his words change your mind.
6 And it's really not about his words; it's about the
7 evidence that you hear in the case and the facts and the
8 circumstances of the crime and of the defendant and
9 things like that.

10 So, I think the proper question for you, sir, is
11 would you take any of that into consideration; or in any
12 case in which someone has murdered a child and murdered
13 someone else, you would not consider anything else? And
14 that's really the question.

15 JUROR NUMBER 698: Again, I don't know the
16 circumstances of the case, whether, you know, the woman
17 who was murdered was sitting there with a machine gun.

18 MR. STONE: Sure.

19 JUROR NUMBER 698: You know, if there was a
20 standoff or what was going on. I -- if that were the
21 case, then, they were having a battle royal of some kind
22 and she got it and he didn't.

23 MR. MCGUIRE: Sure.

24 JUROR NUMBER 698: You know, I don't know, but.

25 MR. MCGUIRE: Right.

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1 JUROR NUMBER 698: But if it's a case of coming in
2 and blowing people away, I think that --

3 MR. MCGUIRE: All right, sir.

4 JUROR NUMBER 698: -- is pretty much the
5 description of, you know --

6 MR. STONE: All right, sir.

7 JUROR NUMBER 698: -- premeditated and delivering
8 murder on somebody, then.

9 MR. MCGUIRE: Mr. Young, thank you, sir. I
10 appreciate it.

11 THE COURT: Mr. Young, I'm going to ask, if you
12 don't mind, just to step outside the door just very
13 briefly, sir.

14 JUROR NUMBER 698: Okay.

15 THE COURT: I'm going to speak with the attorneys
16 and we'll bring you right back out and tell you where
17 we're going from here. All right?

18 JUROR NUMBER 698 LEAVES COURTROOM.

19 BAILIFF: Door is closed, your Honor.

20 THE COURT: All right. Mr. Stone?

21 MR. STONE: I don't think he's qualified in this
22 context. I think that the -- I don't think he's
23 qualified, and certainly, they're not going to fight me
24 on that.

25 THE COURT: No, of course not. Okay.

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1 MR. MCGUIRE: Correct. I agree with you.

2 BAILIFF: Bring him in?

3 THE COURT: Please.

4 JUROR NUMBER 698 ENTERS COURTROOM.

5 BAILIFF: Okay. Come right here. Stand right here
6 and face the judge.

7 THE COURT: Sir, thank you so much for being here.
8 We appreciate it. At this time, I'm going to go ahead
9 and excuse you from the trial of this case.

10 JUROR NUMBER 698: Okay.

11 THE COURT: You do not need to return on Monday,
12 but we thank you for your willingness to serve.

13 JUROR NUMBER 698: Okay.

14 THE COURT: Thank you, sir.

15 BAILIFF: May I have your badge?

16 JUROR NUMBER 698 LEAVES COURTROOM.

17 THE COURT: Hold on, Al.

18 BAILIFF: I'm just checking to see what's going on.

19 THE COURT: Thank you. We have five more, correct?
20 All right. We have five more between now and 2:00
21 o'clock. My suggestion is let's get through those.
22 With any luck -- I'm going to go ahead and put it out
23 there, maybe if you all want to go ahead and again,
24 order -- how many people do we have we've found
25 qualified so far; can you tell me?

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1 MR. THORNTON: Twenty-seven.

2 MADAM CLERK: Twenty-seven.

3 THE COURT: Twenty-seven. Okay. I think you need
4 to probably plan on someone ordering some lunch, and
5 we'll take a brief break, obviously, much like we did
6 yesterday, but I think we're getting through. I think
7 we're doing all right.

8 MR. STONE: We've already covered that. We're --
9 we're good.

10 THE COURT: Okay. I want to make sure you all are
11 covered, too, and are taking care of it. Again, --
12 pardon? Also, too, please ask Caroline. She can give
13 you menus, anything that's close by, whatever you all
14 need. Yes, sir?

15 MR. THORNTON: Quick question, Judge.

16 THE COURT: Yes, sir?

17 MR. THORNTON: Caroline was speaking with us this
18 morning about, you know, how many more -- I was just
19 curious about how many more we have lined up. Do we
20 need to go ahead and have some -- because I know we
21 hadn't scheduled this afternoon. So, I don't know where
22 we are.

23 THE COURT: Diane, how many more do we have? We
24 have through what number?

25 MADAM CLERK: Through Number 63. And we're going

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1 to have another 64 here, as well.

2 THE COURT: Okay. So, right now we have scheduled
3 through 63, right now on our list. So, we need to call
4 some more people in?

5 MR. THORNTON: And Judge, and I'm going to --
6 obviously, my boss will correct me if I say something
7 wrong for our position. I'd rather continue working
8 tonight than have to come in tomorrow.

9 I mean, obviously, we'll be prepared to come in
10 tomorrow if we need to, but you know, we -- and
11 fortunately, we did real well yesterday, and we seem to
12 have kind of run off the tracks a little bit with being
13 able to get some qualified.

14 THE COURT: Right.

15 MR. THORNTON: Moving them fast is great, but it
16 doesn't really help us if we're not qualifying anybody.

17 THE COURT: Okay.

18 MR. THORNTON: So, hopefully, you know, if we
19 continue to push on through this evening, we can go
20 ahead and get done, rather than, you know, rather than
21 stop, and then bring people in on Saturday; and then,
22 that becomes problematic for some of those people who
23 have conflicts with Saturday. So, I'd rather push late
24 again and try to get it done.

25 MR. MACDOUGALL: The Defense joins in that motion.

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1 MR. MCGUIRE: Yeah, we'd like to do that.

2 THE COURT: Thank you. Okay. Let's go look at the
3 numbers. If you guys will give us five minutes, if you
4 all don't mind. Again, I'm sorry, I don't mean to say
5 you guys, but for all purposes, women understand and
6 appreciate this. We get this.

7 Anyway, I'm going to see how I can push the numbers
8 where I have people are not waiting so much. Let me see
9 what I can do. Okay?

10 MR. STONE: Your Honor, if I could, just while I'm
11 here, Number 86, I noticed this last night. Number 86
12 actually filled out their questionnaire that they are
13 against the death penalty. They are a Number 2 juror.
14 Feel free to look at it if you want, but I'd like to go
15 ahead, and if we could move that off the list with our
16 previous agreement.

17 THE COURT: Okay.

18 LAW CLERK SCRANTOM: Also, I would like to note
19 that Number 66, Olga Washington, was excused yesterday,
20 but she made it on this list. So, she is to be struck.

21 MR. THORNTON: 86?

22 MADAM CLERK: 659. It's Juror Number 66 on the
23 strike sheet.

24 THE COURT: That's been the agreement. That's been
25 the agreement.

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1 MR. YOUNG: The agreement has always been if they
2 selected a Type 1 or Type 2, we excused them.

3 THE COURT: Right.

4 MR. YOUNG: And he didn't select a type. There's
5 no type selected.

6 THE COURT: Okay. Well, we'll bring him in and
7 I'll ask him the question. Okay. All right.

8 OFF THE RECORD 1:05 P.M.

9 BACK ON THE RECORD 1:11 P.M.

10 BY THE COURT:

11 THE COURT: Okay. Let's bring the next one in, Al.
12 Thanks.

13 BAILIFF: Mr. Adam Rosica, your Honor.

14 JUROR NUMBER 541 ENTERS COURTROOM.

15 THE COURT: Right this way, sir. Come on in, sir.

16 BAILIFF: If you will, go right up there and take a
17 seat in the witness box.

18 JUROR NUMBER 541: Yes, sir.

19 THE COURT: Good afternoon. Thank you for waiting
20 on us. We appreciate it. We appreciate your patience.

21 I need to remind you that you are still under the
22 oath that you took on Wednesday. Thank you, sir.

23 And additionally, you've had an opportunity to
24 review the witness list. Was there anyone on there that
25 you knew on there personally, socially, or

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1 professionally?

2 JUROR NUMBER 541: No, ma'am. Besides Sheriff
3 Tanner.

4 THE COURT: Okay.

5 JUROR NUMBER 541: Yes, ma'am.

6 THE COURT: Do you have a personal relationship
7 with him, or do you just know of him?

8 JUROR NUMBER 541: I do not. I just --

9 THE COURT: Okay.

10 JUROR NUMBER 541: -- as the sheriff.

11 THE COURT: Thank you, sir. Also, there has been
12 some publicity in this case. Have you read anything,
13 seen anything, or have any independent knowledge about
14 this case?

15 JUROR NUMBER 541: I have previous knowledge. I
16 want to say 2010, 2009, also.

17 THE COURT: You read something on it?

18 JUROR NUMBER 541: Yes, ma'am.

19 THE COURT: Or saw something on T.V.?

20 JUROR NUMBER 541: Yes, ma'am.

21 THE COURT: Which one was it?

22 JUROR NUMBER 541: 2009, and I think I saw it again
23 in 2010.

24 THE COURT: In 2010?

25 JUROR NUMBER 541: I believe so.

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1 THE COURT: Okay. And that was the newspaper?

2 JUROR NUMBER 541: Yes. I remember -- I remember
3 it because it was my birthday, December 10th, and it was
4 Thanksgiving break in 2009. So, I remember talking to
5 my mom and my friends about it.

6 THE COURT: Okay.

7 JUROR NUMBER 541: Yes, ma'am.

8 THE COURT: All right. Sir, I just want to make
9 sure that you can put aside anything you may have read
10 in the newspaper about this case. Again, it would not
11 be appropriate for you to consider it in any way.

12 JUROR NUMBER 541: Yes, ma'am.

13 THE COURT: Okay. All right. I'm going to turn
14 you over to the lawyers. I just need to tell you that
15 there are no right or wrong answers here. They're going
16 to ask you your opinions and some ideas about, you know,
17 the death penalty or punishment of life imprisonment
18 without the possibility of parole. Just give them
19 truthful answers. That's all anyone can expect. All
20 right, sir?

21 JUROR NUMBER 541: Yes, ma'am.

22 THE COURT: Thank you.

23 MR. MCGUIRE: Thank you very much, your Honor.
24 Good afternoon, sir.

25 JUROR NUMBER 541: Good afternoon.

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1 MR. MCGUIRE: My name is Bill, Bill McGuire. I'm
2 one of the lawyers on the case, and the Judge is right.
3 This is where we're going to ask you some questions
4 about penalty. It's a little awkward for me because we
5 haven't even had a trial now, and we have to start
6 talking about the penalty. It's a little awkward for
7 me. I hope you kind of forgive that of me.

8 JUROR NUMBER 541: I understand.

9 MR. MCGUIRE: What I want to do is start at the
10 very basics and the very beginning. The death penalty
11 is only available in murder cases. And my guess is, by
12 looking at your questionnaire, no one's ever told you
13 the technical, legal definition of murder in South
14 Carolina.

15 JUROR NUMBER 541: No.

16 MR. MCGUIRE: Okay. And I'm not putting you on the
17 spot. You have no reason to be --

18 JUROR NUMBER 541: No, no, I'm, you know, I'm not
19 embarrassed.

20 MR. MCGUIRE: And you have no reason to know that,
21 and that's where I'm going to start to make sure we're
22 on the same page. Okay?

23 And murder in South Carolina is identified as the
24 intentional, deliberate taking of an innocent life with
25 malice aforethought. And the malice aforethought means

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1 that the accused, the killer, is acting with a black and
2 malignant heart, fatally bent on wickedness and evil,
3 devoid of social responsibility and duty. Pretty
4 serious and grave language. Agreed?

5 JUROR NUMBER 541: I understand, yes.

6 MR. MCGUIRE: And the State, the government, to ask
7 for the death penalty, receive the death penalty, would
8 have to bring even more to the table than that, and that
9 would be circumstances of aggravation. And I'm going to
10 ask you about some specific aggravating factors, and
11 then, ask you about your thoughts about punishment.

12 And the aggravators I'm going to ask you about is
13 it's the killing of a woman and a child, woman and a
14 four-year-old child, her child, shot dead. Not
15 accident, not self-defense, not a mistake, but an
16 intentional, deliberate choice to kill and take their
17 lives. In that situation, what are your thoughts about
18 the death penalty as the appropriate punishment?

19 JUROR NUMBER 541: I think it'd probably be worse
20 for him to serve a life sentence in jail than to be
21 executed.

22 MR. MCGUIRE: And why do you say that?

23 JUROR NUMBER 541: I think that you'd have to live
24 with that for the rest of your life.

25 MR. MCGUIRE: And you view the life penalty as a

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1 severe punishment.

2 JUROR NUMBER 541: Life imprisonment? Absolutely.

3 MR. MCGUIRE: Okay. If the State brought enough
4 evidence and the quality of the evidence that convinced
5 you that the death penalty would be appropriate, if you
6 got to that point, could you, in fact, vote for it?

7 JUROR NUMBER 541: Yes, but it's a necessary evil?
8 I guess.

9 MR. MCGUIRE: When you say *necessary evil*, I think
10 that you're saying that, because we have a government
11 and a system of justice, there are some laws that are
12 there for the benefit of all the people.

13 JUROR NUMBER 541: Um-hmm.

14 MR. MCGUIRE: And that the death penalty can be
15 used as a deterrent, right?

16 JUROR NUMBER 541: Yes.

17 MR. MCGUIRE: And because we're a system of laws
18 and everybody has their civic duty, you could come to
19 court and follow the Court's instruction with regard to
20 death penalty law.

21 JUROR NUMBER 541: Um-hmm.

22 MR. MCGUIRE: Is that true?

23 JUROR NUMBER 541: Um-hmm.

24 COURT REPORTER: Is that yes?

25 JUROR NUMBER 541: Yes.

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1 THE COURT: Thank you.

2 MR. MCGUIRE: But you did have, apparently, some --
3 you were a little hesitant in your answer. So, it
4 sounds like, just from looking at you, you have some
5 reservation about that.

6 JUROR NUMBER 541: It's -- it's -- you go to sleep
7 at night knowing that you sent someone to death.

8 MR. MCGUIRE: Right. And that should be dealt with
9 as a very awesome and grave decision to make. I think
10 you're treating it very appropriately, and I respect
11 that.

12 I want to tell you a couple of things, though, that
13 some people have misconceptions about, and that is that
14 the death penalty can never be automatic. There can
15 never be a case where the State proves a, b, and c, and
16 then the only choice for the jury is the death penalty.
17 Did you know that?

18 JUROR NUMBER 541: No, I didn't.

19 MR. MCGUIRE: Okay. A lot of people show up to
20 court and they think if it's a capital case and the
21 State's seeking death, that, if the State proves what
22 they need to prove --

23 JUROR NUMBER 541: Um-hmm.

24 MR. MCGUIRE: -- then you just have to say did they
25 prove it or not, and it's the death penalty. A lot of

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1 people believe that, but it's actually not true. And
2 now you know that's not true, right?

3 JUROR NUMBER 541: I do.

4 MR. MCGUIRE: Okay. And no juror, no individual
5 juror, is ever required to vote for the death penalty.
6 Do you know that now?

7 JUROR NUMBER 541: No, I didn't know that.

8 MR. MCGUIRE: But you know it now.

9 JUROR NUMBER 541: Would you repeat that?

10 MR. MCGUIRE: No juror is ever required to vote for
11 the death penalty.

12 JUROR NUMBER 541: Okay. I understand.

13 MR. MCGUIRE: Okay. There might -- there are some
14 other states, and they have law where you have to weigh
15 things, and it can be a little mathematical.

16 JUROR NUMBER 541: Um-hmm.

17 MR. MCGUIRE: And there are some that it says if
18 you find a, b, and c, this is how you should vote. But
19 our state's not like that.

20 JUROR NUMBER 541: Okay.

21 MR. MCGUIRE: Okay. Our state always respects the
22 individual juror's ability to always vote for life.
23 Okay?

24 And the way the Judge would, Judge Mullen, would
25 charge it to you is that, any juror can vote for the

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1 life penalty or any reason, no reason, or mercy alone.

2 Okay?

3 JUROR NUMBER 541: Um-hmm.

4 MR. MCGUIRE: So, you never have to feel that
5 burden that you would ever have to be required to vote
6 for the death penalty. Do you understand that?

7 JUROR NUMBER 541: I understand that.

8 MR. MCGUIRE: Okay. And the way that works is, we
9 think of juries as speaking with one voice, unanimous,
10 you know, the jury unanimously finds blank. And that's
11 true for the first phase; a regular trial where it's the
12 who done it; did somebody do a criminal act; is it
13 reasonable doubt; --

14 JUROR NUMBER 541: Um-hmm.

15 MR. MCGUIRE: -- do they have the right guy; that
16 sort of thing. That's how the first phase of a capital
17 trial would work.

18 And you could vote not guilty, and then, we would
19 never even reach the penalty phase. But in the event
20 that the jury was to vote guilty on the charges, then,
21 we would move into what's called the penalty phase. And
22 the two options are the life penalty. And when I say
23 the life penalty, I mean the life without parole; never
24 get out of prison; it's 'til death.

25 In 1996, we changed the law, because people used to

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1 be able to get parole, but not after 1996. Okay? Did
2 you know that?

3 JUROR NUMBER 541: I did not.

4 MR. MCGUIRE: Okay. But you know it now.

5 JUROR NUMBER 541: Yes, sir.

6 MR. MCGUIRE: And in considering that, those two
7 penalties, the life penalty and the death penalty, it's
8 an individual process. It's almost like the jury
9 transforms into twelve individual juries, with everybody
10 having their own individual vote.

11 And the way the Judge would describe that to the
12 jury is that every juror would be asked to come to their
13 own moral judgment, with regard to the appropriate
14 penalty. And as you might imagine, that would be a very
15 personal, individual decision.

16 JUROR NUMBER 541: Agreed.

17 MR. MCGUIRE: And maybe the most important and
18 personal --

19 COURT REPORTER: Did you say agreed?

20 JUROR NUMBER 541: Agreed.

21 MR. MCGUIRE: Agreed. You're fine. You know, it's
22 so personal, kind of like the decision to bring a child
23 into the world or what faith to raise your children,
24 maybe. It's that kind of personal decision. You would
25 agree with me it's that personal.

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1 JUROR NUMBER 541: Yes. I was raised Catholic, so,
2 you know, you have your own set of beliefs.

3 MR. MCGUIRE: I was raised Catholic, too. I went
4 to Saint Joseph High School, pretty far away from here.
5 You probably haven't heard of it.

6 JUROR NUMBER 541: No.

7 MR. MCGUIRE: But with regard to that individual
8 part of the process, the penalty phase, the deck is kind
9 of stacked against the State. The only way anybody
10 could ever get the death penalty is if all twelve jurors
11 agreed beyond a reasonable doubt that it was the
12 appropriate penalty, complete agreement.

13 Now, the jury could also agree on the life penalty.
14 All twelve could agree for life.

15 And then, there's also a third possibility. And
16 that is that the jury, in an important matter like this,
17 could agree to disagree. And if that was the case, and
18 that would be after deliberation where we would expect
19 civil discourse and sharing of ideas and views, and
20 talking to everybody else and sharing their opinion.

21 But, if after that discourse and that deliberation,
22 if the jury was undecided as to the life penalty or the
23 death penalty, then, they could say we are going to
24 agree to disagree, respect everybody's opinions. And
25 what would happen, in that case, the Judge would take

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1 the case and sentence, and the case would end. Did you
2 know that?

3 JUROR NUMBER 541: I didn't, but I do now.

4 MR. MCGUIRE: But you know now.

5 JUROR NUMBER 541: Yes, sir.

6 MR. MCGUIRE: And in that situation, you need not
7 be concerned with whatever sentence the Judge might
8 sentence them. That's just -- she would just take it
9 out of your hands. Judge Mullen would take it out of
10 your hands. And I tell you that only to let you know
11 that the case would end. It would not have to be tried
12 again, and the jury would not have to look at their
13 inability to be unanimous as a failure. Do you
14 understand that?

15 JUROR NUMBER 541: Okay. I understand.

16 MR. MCGUIRE: And sometime people feel like they
17 should try to reach a unanimous decision, and failure to
18 do so is bad. I just want to let you know that the case
19 would end in that situation.

20 JUROR NUMBER 541: Okay.

21 MR. MCGUIRE: Okay. And with regard to, you know,
22 some of the rules of court, there are rules for me, and
23 rules for the government, rules for the Judge, even.
24 But there are some rules that are for jurors. And one
25 of the rules is that these type of proceedings must be

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1 carried out with dignity and respect. And I tell you
2 that because, if you were selected as a juror, you would
3 be given a juror oath, along with eleven other people.

4 And the oath would require, once you reached you
5 individual moral judgment, after talking to the other
6 jurors, but once somebody gets there, it's actually
7 unlawful and wrong for them to change their vote to
8 compromise. It would be a violation of the juror oath.

9 And if you saw somebody where they've reached their
10 individual moral decision, where they've reached their
11 position, and it would clearly harm their conscience to
12 change it, but people are trying to get them to change
13 it, --

14 JUROR NUMBER 541: Um-hmm.

15 MR. MCGUIRE: -- could I count on you to come to
16 that person's aid and say, well, we all agreed to
17 respect everybody's individual moral judgment?

18 JUROR NUMBER 541: I personally respect people's
19 decisions.

20 MR. MCGUIRE: Okay. And in a case like this, the
21 Judge would instruct all the jurors that, to be a fair
22 and qualified juror, you would have to be able to hear
23 all of the evidence in the case and decide if there was
24 enough evidence, if the case was bad enough, to borrow a
25 phrase, if it was bad enough, could you vote for the

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1 death penalty? Yes or no.

2 JUROR NUMBER 541: Yes.

3 MR. MCGUIRE: And if the facts of the case, whether
4 it be in regard to evidence regarding the crime or maybe
5 a -- maybe a person's walk in life, and let me ask you
6 that. Would that be relevant to you, the accused's walk
7 in life, his upbringing, his -- everything that's been
8 done to him, things he's done to other people?

9 JUROR NUMBER 541: Priors?

10 MR. MCGUIRE: A prior rap sheet, you mean?

11 JUROR NUMBER 541: Yes.

12 MR. MCGUIRE: Criminal record?

13 JUROR NUMBER 541: Um-hmm.

14 MR. MCGUIRE: That would be important to you, it
15 sounds.

16 JUROR NUMBER 541: Yes.

17 MR. MCGUIRE: Okay. Well, what about just being
18 born into abject poverty, or maybe doing something good
19 and coaching a little league team?

20 JUROR NUMBER 541: I -- I believe we're all
21 creatures of habit.

22 MR. MCGUIRE: Okay.

23 JUROR NUMBER 541: I believe, you know, it's the
24 hand that you're dealt, and it's not necessarily a good
25 thing. You know, there's some people have it worse than

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1 others. But, you know, it is what it is.

2 MR. MCGUIRE: And tell me a little bit more about
3 that. I want to make sure I'm clear on that.

4 JUROR NUMBER 541: A crime is committed, a crime is
5 committed. A law is broken, a law is broken. And, you
6 know, we can't -- you can't go back and change that.
7 So, if you, you know, you -- we all make our own
8 decisions, regardless of our situations, and we all can
9 make a choice. And you make the wrong choice, you have
10 to deal with the consequences.

11 MR. MCGUIRE: I want to ask you to hold on one
12 second.

13 That's all I have for you. Thank you so much.

14 JUROR NUMBER 541: Yes, sir. Thank you.

15 MR. STONE: Mr. Rosica, my name is Duffie Stone.
16 Very briefly, I understand that you are the type of
17 person that would listen to everything before making a
18 decision about whether or not to sentence somebody to
19 life or death. Is that correct?

20 JUROR NUMBER 541: Yes, sir.

21 MR. STONE: But if the facts were bad enough, if
22 the case was bad enough, you could sentence somebody to
23 death.

24 JUROR NUMBER 541: Yes, sir.

25 MR. STONE: And in that sentencing concept, it's

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1 not a recommendation to the Judge; it is actually what's
2 done; and that's what's actually carried out. Do you
3 understand that?

4 JUROR NUMBER 541: I do.

5 MR. STONE: Thank you, sir. That's all I have.

6 JUROR NUMBER 541: Yes, sir.

7 MR. STONE: Thank you, your Honor.

8 JUROR NUMBER 541: You're welcome.

9 THE COURT: All right. Sir, if you don't mind, if
10 you'd just step out for just a quick minute.

11 JUROR NUMBER 541: Yes, ma'am.

12 THE COURT: And we'll be right back with you and
13 tell you where we're going.

14 JUROR NUMBER 541: Yes, ma'am.

15 JUROR NUMBER 541 LEAVES COURTROOM.

16 MR. MCGUIRE: No objection from me.

17 BAILIFF: Door is closed.

18 MR. STONE: Yes, ma'am, I think he's qualified.

19 THE COURT: Qualified. Okay. Let's bring him back
20 in. I will remind you all, too, just very quickly, he's
21 the one that works at Backyard Barbeque, and he's a
22 server, and he has a child. He was concerned --

23 BAILIFF: If you would, sir, stand right there and
24 face the Judge.

25 THE COURT: Okay. Good to see you again. Sir,

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1 thank you so much for being here. You have been found
2 qualified as a potential juror. That does not mean you
3 are on the jury. It just means you have been qualified.

4 I simply hope to have you back on Monday morning at
5 9:30, where we're going to go ahead and pull the jury in
6 this case.

7 JUROR NUMBER 541: Um-hmm.

8 THE COURT: We are running behind, as you know. I
9 am going to have the bailiffs give you a number. I want
10 you to call that number Saturday night after 6:00 p.m.
11 I hope to be done with this process by then.

12 JUROR NUMBER 541: Yes, ma'am.

13 THE COURT: And it will tell you when to report. I
14 want to reduce the amount of time that we've got to keep
15 you going around.

16 Additionally, sir, don't forget to remind me that,
17 if for any reason you need me to call your boss and talk
18 with your boss I'm happy to do it. And again,
19 particularly, if you get sat on the jury, either now or
20 then, I'm more than willing to do that.

21 JUROR NUMBER 541: Yes, ma'am.

22 THE COURT: So, I don't want you concerned about
23 your job. All right, sir?

24 JUROR NUMBER 541: Okay. I appreciate it.

25 THE COURT: Very much. Thank you.

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1 BAILIFF: Give me your badge, please sir.

2 JUROR NUMBER 541 LEAVES COURTROOM.

3 THE COURT: You ready to go, you all?

4 MR. STONE: Yes, ma'am.

5 THE COURT: You okay? You okay? All right.

6 BAILIFF: Ms. Ruth Groh, your Honor.

7 JUROR NUMBER 283 ENTERS COURTROOM.

8 BAILIFF: Come right this way, please, ma'am. If
9 you would, please go up and take a seat in the witness
10 box.

11 THE COURT: Come on around. Good afternoon.

12 JUROR NUMBER 283: Good afternoon.

13 THE COURT: Ms. Groh, thank you so much for waiting
14 on us. We are running behind, as you know. Everyone is
15 working hard here. I will get right to the point,
16 because I know it's late and you're probably hungry.

17 To begin with, ma'am, I need to remind you that you
18 are still under the oath that you took on Wednesday. Is
19 that agreeable?

20 JUROR NUMBER 283: Yes.

21 THE COURT: Additionally, ma'am, you have had an
22 opportunity to review the witness list back in the jury
23 room. Is there anyone on that list that you are either
24 a personal friend with, an acquaintance, social,
25 anything along those lines, or have a professional

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1 relationship with?

2 JUROR NUMBER 283: No, just a name I recognize.

3 THE COURT: Whose name do you recognize?

4 JUROR NUMBER 283: Sheriff Tanner.

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

6 Additionally, there has been some publicity on this
7 case. Have you read anything, seen anything, or heard
8 anything, or have any independent knowledge about this
9 case, other than what you've heard in the courtroom and
10 on the questionnaire?

11 JUROR NUMBER 283: None whatsoever.

12 THE COURT: Thank you, ma'am. I'm going to turn
13 you over to the lawyers. I need to tell you that the
14 questions they're going to ask are appropriate.

15 They're going to ask you about your feelings about
16 the death penalty versus life imprisonment. Again,
17 there are no right or wrong answers.

18 JUROR NUMBER 283: Um-hmm.

19 THE COURT: Give us your opinion; tell us
20 truthfully, candidly what you need to tell us; and we
21 appreciate that.

22 JUROR NUMBER 283: Okay.

23 THE COURT: Thank you, ma'am.

24 MS. FITTS: Good morning, Ms. Groh. How are you?

25 JUROR NUMBER 283: Good morning. Fine, thank you.

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1 MS. FITTS: Afternoon. Sorry. My name is Jessica
2 Fitts. I'm one of the attorneys for the defendant, Mr.
3 Daise. I just want to ask you a couple of questions to
4 get an idea of your ideas and beliefs about crime and
5 punishment, life without possibility of parole versus
6 the death penalty.

7 And before I start, I just want to point out that
8 it's a little awkward that we're already talking about
9 punishment here. I just want to reiterate, obviously,
10 we haven't had a trial yet.

11 JUROR NUMBER 283: Um-hmm.

12 MS. FITTS: And Mr. Daise is innocent until proven
13 guilty. He's presumed innocent. And this case is
14 broken down into two parts, potentially. We'll first
15 have a guilt or innocence phase where the jury will
16 determine whether the defendant is guilty or innocent.

17 JUROR NUMBER 283: Um-hmm.

18 MS. FITTS: And then, only if the jury finds that
19 the defendant is guilty will there be a penalty phase,
20 which is where the jury will decide between the
21 penalties of life without the possibility of parole,
22 which in South Carolina does mean no parole, you die in
23 prison; and the death penalty. Do you understand that?

24 JUROR NUMBER 283: Yes.

25 MS. FITTS: Okay. I want to start by giving an

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1 idea of what the legal definition of murder is. I feel
2 like everybody sort of has an idea of what we're talking
3 about here, but you've probably never had the legal
4 definition of murder given to you before. So, I'll go
5 ahead and give that to you.

6 In the state of South Carolina, to be guilty of
7 murder, that means that the defendant killed an innocent
8 person with what's called malice aforethought. --

9 JUROR NUMBER 283: Um-hmm.

10 MS. FITTS: -- which is just a long-winded way of
11 saying that they did it intentionally, with what's
12 called a malignant or abandoned heart or a black heart.
13 And there was no justification for doing it, meaning
14 that it wasn't self-defense. There isn't an insanity or
15 a competency issue. It wasn't done in the heat of
16 passion. They did it, and they meant to do it. Do you
17 understand that?

18 JUROR NUMBER 283: Yes.

19 MS. FITTS: Okay. And then, on top of that, in
20 order to be eligible for the death penalty, the State
21 also has to prove what's called statutory aggravators,
22 and in this case, the State is alleging two.

23 One, that there is more than one victim; there were
24 two here; and second one of the victims was a child,
25 young child, four years old. Do you understand that?

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1 JUROR NUMBER 283: Yes.

2 MS. FITTS: Okay. And in a case like this one
3 where I want you to imagine that you're a member of the
4 jury, and even though we haven't had the trial yet, I
5 want you to imagine that the trial is over, and you and
6 a lot of other jurors have determined that the defendant
7 is guilty of intentional murder. I'll call it malice
8 murder.

9 And you knew he meant to do it, and did it, and it
10 was intentional, and that there were two victims, and
11 that one of those was a child.

12 JUROR NUMBER 283: Um-hmm.

13 MS. FITTS: A small child. What are your thoughts
14 about the appropriateness of the death penalty in a
15 situation like that?

16 JUROR NUMBER 283: I think it may or may not be
17 appropriate. I think there are sometimes reasons people
18 do things that they may not have known what they were
19 doing or realized the extent of what they were doing. I
20 think it just depends on the actual facts of a case
21 whether it's appropriate.

22 MS. FITTS: And you said that there are some
23 factors you need to take into account about, it sounds
24 like, the situation of the crime and the --

25 JUROR NUMBER 283: Yeah, I think so.

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1 MS. FITTS: -- and the state of mind of the
2 defendant. Can you give me a couple examples of what
3 you mean by that.

4 JUROR NUMBER 283: Well, I can say from experience,
5 I know somebody who actually committed a murder, and it
6 was a long time ago, but she didn't realize what she was
7 doing. She wasn't found insane or incompetent, but she
8 snapped, and she killed the child, two children. Should
9 she have gotten the death penalty? In my mind, no,
10 because it was proven in court, I thought, that she
11 didn't realize what she was doing at the time.

12 MS. FITTS: Okay. And thank you for that. Thank
13 you for the elaboration that -- I understand what you're
14 saying.

15 And I want to ask you, what if you had found that
16 this was -- I mean, if this was a malice murder, that
17 means it was done intentionally. So, if the murder was
18 done intent -- if you had found that the murder was done
19 intentionally, the defendant knew what he was doing,
20 would that change your answer?

21 JUROR NUMBER 283: I guess so, but I still think
22 that's too vague. I'd -- I mean, I'd want more
23 information.

24 MS. FITTS: What other type of information would
25 you be interested in?

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1 JUROR NUMBER 283: Someone's background, their
2 relationship to the person or people, what actually
3 happened during the confrontation. That would be my --
4 I would want to know more.

5 MS. FITTS: And when you say someone's background,
6 does that include going back to their childhood, like --

7 JUROR NUMBER 283: It could.

8 MS. FITTS: Okay. Would things like the fact --
9 would things like the defendant having grown up in
10 poverty or having been abused as a child, would things
11 like that make a difference to you?

12 JUROR NUMBER 283: Poverty is very different than
13 abuse. So, poverty, to me, no. That's not a mitigating
14 factor in my mind.

15 MS. FITTS: So, poverty is not --

16 JUROR NUMBER 283: Abuse could be.

17 MS. FITTS: Abuse could be.

18 JUROR NUMBER 283: Yeah.

19 MS. FITTS: And what do you mean by it could be?

20 JUROR NUMBER 283: It would depend on the extent
21 and what actually happened to that person in their
22 childhood. But it would have to be something
23 significant, not a one-time thing, but a -- maybe a
24 prolonged abuse type of situation that could color
25 someone's thinking or ability to reason with another

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1 person, instead of committing a terrible act.

2 MS. FITTS: Okay. So, it sounds like to me like
3 what you're saying is that, in your deliberation of
4 whether to impose the death penalty or to impose the
5 penalty of life without the possibility of parole, you
6 would want to take into account all sorts of
7 circumstances and look at the situation holistically.
8 Is that correct?

9 JUROR NUMBER 283: I'm not sure I know what you
10 mean by holistically.

11 MS. FITTS: I'm sorry. Just looking as a --

12 JUROR NUMBER 283: But in total, yes.

13 MS. FITTS: In total, yes. And that some aspects
14 of the defendant's background might be important to you
15 in making that decision.

16 JUROR NUMBER 283: Could be.

17 MS. FITTS: Okay. I just have one more thing to
18 talk to you about. I just want to stress to you that,
19 you know, I talked about the two different phases of the
20 trial.

21 JUROR NUMBER 283: Um-hmm.

22 MS. FITTS: First, there will be the penalty phase.
23 And if the defendant is found guilty, then we'll -- I'm
24 sorry. First will be the guilt or innocent phase. If
25 the defendant is found guilty, then we would go on to

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1 the penalty phase.

2 And did you know that, in the penalty phase,
3 unanimity in the jury is not required?

4 JUROR NUMBER 283: No, I didn't know that.

5 MS. FITTS: Okay. So, I think -- and that makes
6 sense, right? So, we can all watch all the crime shows
7 and --

8 JUROR NUMBER 283: Right.

9 MS. FITTS: -- we all know that the guilt part, the
10 jury needs to decide as a whole, you know, twelve votes
11 for a guilty or twelve votes for not guilty. And in the
12 penalty phase, that's not the case.

13 Under South Carolina law, the State wants each
14 individual juror to make what's called a moral decision,
15 individual moral decision, for him or herself.

16 JUROR NUMBER 283: Um-hmm.

17 MS. FITTS: You'll still go back, you'd still all,
18 you know, discuss your thoughts, what's called having a
19 civilized discourse. However, the State expects each
20 one of the jurors to come to their own specific
21 conclusion as to whether to impose life without parole
22 or the death penalty.

23 JUROR NUMBER 283: Um-hmm.

24 MS. FITTS: And the jurors who need not even agree
25 on the reasons for why they choose one or the other.

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1 One person might choose to impose life because they
2 heard about something that happened in the defendant's
3 childhood, and that resonated with them, and they say,
4 I'm going to impose life.

5 Another one might just say, I want to impose life
6 because -- for no reason at all; just because I want --
7 I'm going to grant mercy in this situation. Do you
8 understand that?

9 JUROR NUMBER 283: Yes.

10 MS. FITTS: I'm just going to -- one second. All
11 right. No more questions. Thank you so much, Ms. Groh.

12 THE COURT: Mr. Stone.

13 MR. STONE: Ms. Groh, my name is Duffie Stone. I
14 just have a few questions. I take it from your answers
15 today and from your questionnaire that you're the type
16 of person who would take everything into consideration
17 before making a determination about whether or not
18 somebody deserves the death penalty or life in prison.
19 Is that right?

20 JUROR NUMBER 283: Yes.

21 MR. STONE: But if the facts of the case, if the
22 circumstances were bad enough, you could give the death
23 penalty.

24 JUROR NUMBER 283: Yes.

25 MR. STONE: Now, in this state, and the way that is

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1 set up, you're actually sitting on a jury that hands out
2 a verdict, and the verdict part of that verdict would be
3 the sentence itself. So, it's not a recommendation to
4 the Judge. It is actually carrying out that sentence.
5 You understand that?

6 JUROR NUMBER 283: Yes.

7 MR. STONE: But if the case is bad enough, you
8 could do that.

9 JUROR NUMBER 283: Yes.

10 MR. STONE: Thank you, ma'am. I don't have any
11 further questions.

12 MS. FITTS: No more questions.

13 THE COURT: Okay. Everybody good?

14 MR. MCGUIRE: Yes.

15 THE COURT: All right. Ma'am, thank you so much
16 for being here. You have been qualified as a potential
17 juror in the trial of this case. That does not mean you
18 are on the jury. It simply means you are a potential
19 juror.

20 As you know, we are running behind. I hope that we
21 are able to pull a jury Monday morning at 9:30, and I am
22 going to tell you to report then. But additionally,
23 we're going to give you a piece of paper that has a
24 phone number on it. That is a juror line.

25 JUROR NUMBER 283: Okay.

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1 THE COURT: I want you to call that line after 6:00
2 p.m. Saturday night, tomorrow night.

3 JUROR NUMBER 283: Okay.

4 THE COURT: It will tell you what time to come.
5 I'm trying to reduce the amount of time you all are
6 sitting around.

7 JUROR NUMBER 283: I know.

8 THE COURT: And I apologize, again.

9 JUROR NUMBER 283: I know.

10 THE COURT: But we don't always know how long it's
11 going to take. So, just whatever it says to do, you be
12 here, and we look forward to seeing you.

13 I just also must ask you not to discuss this case.

14 JUROR NUMBER 283: Um-hmm.

15 THE COURT: It wouldn't be appropriate to do so
16 with anyone. Additionally, do not do any independent
17 research. Don't read anything, watch anything. Just we
18 look forward to seeing you back on Monday. All right?

19 JUROR NUMBER 283: Okay.

20 THE COURT: Thank you, ma'am.

21 JUROR NUMBER 283 LEAVES COURTROOM.

22 BAILIFF: Your Honor, Mr. Joe Bryan.

23 JUROR NUMBER 86 ENTERS COURTROOM.

24 THE COURT: Come on in, Mr. Bryan.

25 BAILIFF: Right this way, please, sir.

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1 THE COURT: Come on in, Mr. Bryan.

2 BAILIFF: If you will, go up there and take a seat
3 in the witness box.

4 THE COURT: Okay. Thank you. Good afternoon, Mr.
5 Bryan.

6 JUROR NUMBER 86: Yes, ma'am, good afternoon.

7 THE COURT: Thank you. All right, sir. And I'm
8 going to have to remind you, because my court reporter
9 just reminded you that you are a soft talker.

10 JUROR NUMBER 86: Yes.

11 THE COURT: If you don't mind, that chair is a
12 little difficult. Move up closer to that microphone, if
13 you don't mind. Everyone needs to hear what you have to
14 say, and the most important woman in this room is this
15 woman right here. She's taking it all down. Okay, sir?

16 JUROR NUMBER 86: Yes. Yes, ma'am.

17 THE COURT: I appreciate that, Mr. Bryan. To begin
18 with, sir, I need to tell you that you are still under
19 the oath that you took on Wednesday. Is that acceptable
20 to you, sir?

21 JUROR NUMBER 86: Yes, ma'am.

22 THE COURT: Additionally, sir, I need to also tell
23 you that these attorneys are going to ask you some
24 questions. They're going to ask you your views about
25 the death penalty, about your views on life imprisonment

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1 without possibility of parole as a punishment.

2 JUROR NUMBER 86: Um-hmm.

3 THE COURT: They're going to ask you a number of
4 questions that may relate to this case. Sir, there are
5 no right or wrong answers here. I just ask that you be
6 honest and you be candid. All right, sir?

7 JUROR NUMBER 86: Okay.

8 THE COURT: Also, while you were back in the jury
9 assembly room, you had an opportunity to review the
10 witness list. Sir, do you have anyone on that witness
11 list that you are either personal friends with,
12 professional friends with, or some type of social
13 acquaintance with?

14 JUROR NUMBER 86: No, just acquaintance, but --

15 THE COURT: Acquaintance? Who are you acquainted
16 with, sir.

17 JUROR NUMBER 86: Frank Mullen.

18 THE COURT: Frank Mullen. You are acquainted with
19 Mr. Mullen. How do you know him?

20 JUROR NUMBER 86: I worked with him many years ago.

21 THE COURT: Many years ago you worked with Mr.
22 Mullen. Okay.

23 JUROR NUMBER 86: Yes, ma'am.

24 THE COURT: And again, remind me where you worked
25 at.

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1 JUROR NUMBER 86: Hilton Head.

2 THE COURT: Okay. And what and where on Hilton
3 Head?

4 JUROR NUMBER 86: It's been about 1972, '73.

5 THE COURT: And where did you both work at that
6 time, sir?

7 JUROR NUMBER 86: We work at the Palmetto Dune at
8 that time.

9 THE COURT: Palmetto Dunes at that time?

10 JUROR NUMBER 86: Yes, ma'am.

11 THE COURT: Okay. What were you all doing? What
12 did you do for them?

13 JUROR NUMBER 86: I was doing carpenter, and he was
14 the stucco man.

15 THE COURT: And he was the stucco man. All right.

16 JUROR NUMBER 86: Yes, ma'am.

17 THE COURT: Sir, as you understand, it was Mr.
18 Mullen's daughter who was one of the victims in this
19 case, and a grandchild.

20 JUROR NUMBER 86: Right.

21 THE COURT: Can you sit comfortably on this case,
22 knowing that you worked with Mr. Mullen in the past?

23 JUROR NUMBER 86: Well, this would be hard. I
24 wouldn't want to, but, you know.

25 THE COURT: But could you if you had to, and could

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1 you be fair to both sides?

2 JUROR NUMBER 86: Well, that's -- I wouldn't want
3 to. But if I have to, I have to. I mean, yes.

4 THE COURT: All right. Sir, because of your
5 relationship with Mr. Mullen, --

6 JUROR NUMBER 86: Um-hmm.

7 THE COURT: -- and I expect him to be here in the
8 courtroom during the trial of this case, I know it would
9 be very difficult for you.

10 JUROR NUMBER 86: Yes, ma'am.

11 THE COURT: And again, I think that's something
12 that would be hard to ask of you, sir, based on your
13 relationship, and obviously, his feelings.

14 JUROR NUMBER 86: Yes.

15 THE COURT: I'm going to go ahead and excuse you
16 from the trial of this case, but I appreciate you being
17 here. You do not need to return on Monday, but again,
18 thank you, sir.

19 JUROR NUMBER 86: Thank you, ma'am.

20 BAILIFF: Let me have your badge, sir, please.
21 Right this way. Okay. You're free to go, sir.

22 JUROR NUMBER 86 LEAVES COURTROOM.

23 THE COURT: Go ahead and bring the next one in.
24 You all okay?

25 MR. STONE: Yes, ma'am.

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1 THE COURT: All right. Go ahead and bring the next
2 one in.

3 BAILIFF: On the way, Judge.

4 THE COURT: Okay. How many do we have left? Come
5 on in, please.

6 BAILIFF: Susan Olmstead.

7 JUROR NUMBER 487 ENTERS COURTROOM.

8 THE COURT: Come on in, please. Right around here,
9 ma'am.

10 BAILIFF: If you would, please go ahead and take a
11 seat in the witness box.

12 THE COURT: Come on around, Mrs. Olmstead.

13 JUROR NUMBER 487: Okay. Thank you.

14 THE COURT: Good afternoon.

15 JUROR NUMBER 487: Good afternoon, your Honor.

16 THE COURT: Thank you for coming back. I
17 appreciate your patience waiting for us.

18 Ms. Olmstead, I need to remind you, first, that you
19 are still under the oath that you took on Wednesday. Do
20 you understand that?

21 JUROR NUMBER 487: Yes, ma'am.

22 THE COURT: Thank you. And I also need to make
23 sure you speak into the microphone so my court reporter
24 can hear you.

25 Also, ma'am, you've an opportunity to look at the

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1 witness list back in the jury assembly room?

2 JUROR NUMBER 487: Yes, I had a couple on the A
3 list and a couple on the B list.

4 THE COURT: Okay. Can you tell me who on the A
5 list and who on the B list that you either have a
6 personal, social, or professional relationship with?

7 JUROR NUMBER 487: They are professional. They
8 would be the Clerk of Court, Jerri Roseneau; and Kristi
9 Taylor from, you know, just because I work at the law
10 office, so we have paperwork and correspondence.

11 THE COURT: Okay.

12 JUROR NUMBER 487: And then, on the B list, 64,
13 Angela Viens. Angela is a friend of one of my other
14 friends, and --

15 THE COURT: Okay.

16 JUROR NUMBER 487: -- the daughters know -- it's
17 not that close of a friendship. It's just an
18 acknowledgment.

19 And then, of course Sheriff Tanner, mainly because
20 again, professional conduct, you know, contact and stuff
21 like that.

22 THE COURT: Okay. All right. And it's my
23 understanding, and just correct me if I'm wrong, you now
24 work for Robert Goings. But before that, you worked for
25 Smoots and Pitts for a number of years. Is that

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1 correct?

2 JUROR NUMBER 487: Yes, almost -- just under 30
3 years.

4 THE COURT: That's what I thought. Okay, ma'am. I
5 want to make sure that the relationship, the
6 professional relationship you have with some of these
7 people, that wouldn't affect your ability to be fair and
8 impartial in this case; would it?

9 JUROR NUMBER 487: No. No.

10 THE COURT: Okay. All right, ma'am. The attorneys
11 are going to ask you some questions. There are no right
12 or wrong answers here.

13 They want to you know your feelings and your
14 opinions on the death penalty, and also about the
15 penalty of life imprisonment without the possibility of
16 parole. Again, ma'am, just give us your honest answers.
17 All right?

18 JUROR NUMBER 487: Sure. Um-hmm.

19 THE COURT: I'm going ahead and turning it over to
20 the lawyers.

21 MR. MCGUIRE: Thank you, ma'am. Good afternoon,
22 ma'am. My name's Bill, Bill McGuire. I'm one of the
23 lawyers on the case.

24 I appreciate you being here, and this is my
25 opportunity to ask you some questions about your

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1 personal thoughts, your personal feelings. This is one
2 of those days where absolutely everything you say is the
3 right answer, as long as it's what you think and what
4 you believe and what you feel, it's correct, because
5 that's what we're asking for. Okay?

6 JUROR NUMBER 487: Yeah. Um-hmm.

7 MR. MCGUIRE: Are you comfortable with that?

8 JUROR NUMBER 487: Sure.

9 MR. MCGUIRE: Okay. What I want to do is just
10 start at the beginning. This is a -- we're selecting a
11 jury for a case where the charges are murder. The State
12 is seeking the death penalty, and what that means is
13 that they have to show, first, murder; and then,
14 something called aggravation, an aggravating factor.

15 And to make sure that we're on the same page, even
16 though you have years and years and years with a law
17 firm, I don't know if you've ever done criminal law
18 before, so I'm going to start at the beginning and treat
19 you like everybody else. Okay?

20 JUROR NUMBER 487: Please.

21 MR. MCGUIRE: Okay. So, murder is defined in South
22 Carolina as the intentional, deliberate act to take a
23 life with malice aforethought. And the malice
24 aforethought part is that the killer was operating with
25 a black and malignant heart, fatally bent on evil and

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1 wickedness, devoid of all social duty and
2 responsibility. That's a mouthful, and those are some
3 pretty heavy words. You probably haven't heard that
4 before.

5 JUROR NUMBER 487: No.

6 MR. MCGUIRE: And that's why I'm helping you out
7 with that definition. And basically, what it means in
8 layman's terms is, it's an intentional deliberate act to
9 take an innocent life with an evil, deliberate intent.
10 It's not an accident; it's not a mistake; it's not self-
11 defense; nothing like that. It's a choice to take a
12 life and to do it. Are you with me?

13 JUROR NUMBER 487: Yes.

14 MR. MCGUIRE: And to ask for the death penalty, for
15 the government to seek the death penalty, they have to
16 show something more. They have to show what's called an
17 aggravating factor or circumstance. And I'm going to
18 ask you about the aggravation at issue in this case.
19 And that is, a double homicide, where two people are
20 killed; and it's a mother and a child, and the child was
21 four years old; shot dead.

22 In that situation, what are your thoughts, your
23 personal thoughts, your personal views, about the death
24 penalty as an appropriate punishment?

25 JUROR NUMBER 487: It should be on the table.

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1 MR. MCGUIRE: Okay. And why do you say that?

2 JUROR NUMBER 487: Because you've got -- it's awful
3 hard to justify the killing of a -- an individual to
4 begin with; but then, an individual and a child, that's
5 even harder.

6 MR. MCGUIRE: Sure. And some people would say that
7 there are some categories of crime, some types of
8 crimes, that call out for the death penalty; and that
9 the life penalty, letting someone spend their years,
10 their remaining years, the accused, the defendant's
11 years, in prison, that, that kind of life penalty is not
12 sufficient to punish the intentional taking of a mother
13 and her child. Would you agree with that?

14 JUROR NUMBER 487: I'm not opposed to life without
15 parole.

16 MR. MCGUIRE: And I -- that's my fault. I should
17 have added that. In South Carolina, since 1996, when
18 the Court -- when Judge Mullen defines life for you, she
19 will tell you it is life without parole, and the accused
20 would die in prison, never get out.

21 We changed the law in 1996, so you might see on
22 T.V. somebody that got sentenced a long, long, long time
23 ago might come up for parole, that's not the law
24 anymore. Life in South Carolina, and Judge Mullen will
25 tell you, it's life until you die in prison.

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1 JUROR NUMBER 487: Um-hmm.

2 MR. MCGUIRE: And as long as it's without parole,
3 it sounds like that's a viable option for you, perhaps.

4 JUROR NUMBER 487: Yes.

5 MR. MCGUIRE: Even in the case of a double
6 homicide, murder of a child.

7 JUROR NUMBER 487: Yes.

8 MR. MCGUIRE: Okay. And in making this decision,
9 this life decision, this death decision, would the
10 background characteristics of the accused, the
11 defendant, the person who committed the homicides, if
12 they grew up poor, maybe they were drug addicts, maybe
13 they did some good things, maybe coached a little league
14 baseball team, maybe were in the Army or something.

15 I'm not saying these facts apply to this case, but
16 it could be both things that are hardships for people
17 and maybe some good things they've done. Would those
18 types of things be relevant in fixing punishment?

19 JUROR NUMBER 487: No.

20 MR. MCGUIRE: No. Okay. And why is that?

21 JUROR NUMBER 86: I believe a person is responsible
22 and takes consequences for their actions.

23 MR. MCGUIRE: Okay. So, if somebody --

24 JUROR NUMBER 86: Regardless of their adversity or
25 how hard their life is.

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1 MR. MCGUIRE: Sure.

2 JUROR NUMBER 487: The good and the bad.

3 MR. MCGUIRE: Sure. We've all had some rough spots
4 in our life, and we've all overcome, right? Is that a
5 yes?

6 JUROR NUMBER 487: Yes. That's yes. I'm sorry.

7 THE COURT: Thank you.

8 MR. MCGUIRE: And that's because once you -- as
9 long as you're not insane or have a mental illness, as
10 long as you can distinguish right from wrong, and you
11 choose to commit a deliberate act of killing innocent
12 people, as long as a person knows right from wrong,
13 they're accountable for their actions, correct?

14 JUROR NUMBER 487: Yes.

15 MR. MCGUIRE: And their background, if they went
16 through hardships or maybe did some good things, even
17 these things are not relevant in that death or life
18 decision.

19 JUROR NUMBER 487: Yes.

20 MR. MCGUIRE: Okay. And your answers are a
21 reflection of who you are as a person, correct? And
22 your --

23 JUROR NUMBER 487: Yes.

24 MR. MCGUIRE: -- your values system.

25 JUROR NUMBER 487: Yes.

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1 MR. MCGUIRE: A reflection or your moral code.

2 JUROR NUMBER 487: Yes.

3 MR. MCGUIRE: Your moral compass.

4 JUROR NUMBER 487: Yes.

5 MR. MCGUIRE: Emanate from a deep place.

6 JUROR NUMBER 487: Yes.

7 MR. MCGUIRE: I can't change those views; can I?

8 JUROR NUMBER 487: No.

9 MR. MCGUIRE: Okay. And if I tried to get you to
10 say that you could consider those background
11 characteristics of the accused by saying, well, couldn't
12 -- wouldn't you want to hear everything in the case, I
13 couldn't change your mind; could I?

14 JUROR NUMBER 487: No.

15 MR. MCGUIRE: If I used the phrase: *you'd want to*
16 *hear all of the evidence from both sides*; if I used a
17 vague phrase like that to try to change your mind, you
18 would still tell me the background characteristics of
19 the accused, they're still not relevant, correct?

20 JUROR NUMBER 487: Yes.

21 MR. MCGUIRE: At this point, ma'am, I'm going to
22 stand down. That's all I have for you right now. Thank
23 you so much.

24 THE COURT: Okay. Solicitor.

25 MR. STONE: Ms. Holmstead, my name's Duffie Stone.

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1 Thank you for your answers today. I've understood
2 everything you've said, and I don't have anything for
3 you. Thank you, ma'am.

4 JUROR NUMBER 487: Okay.

5 THE COURT: All right. Just so I'm clear, I want
6 to see the attorneys here. I apologize.

7 OFF-THE-RECORD BENCH CONFERENCE.

8 END BENCH CONFERENCE.

9 THE COURT: Ms. Olmstead, I'm going to go ahead and
10 excuse you from the trial of the case. I appreciate you
11 being here, and I appreciate your candor, and it's been
12 a pleasure meeting you. At this time, I will go ahead
13 and release you. All right?

14 JUROR NUMBER 487: Thank you.

15 THE COURT: Absolutely.

16 JUROR NUMBER 487: Thank you.

17 BAILIFF: Watch the steps, please.

18 JUROR NUMBER 487: Yes, thank you.

19 THE COURT: Let's go ahead and bring the last one
20 in. Let's go ahead and bring in the very last one. Is
21 this Lindsay Bowerman?

22 BAILIFF: Yes, ma'am.

23 THE COURT: We have left? Okay. Before 2:00
24 o'clock?

25 BAILIFF: Yes, ma'am.

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1 THE COURT: You all, we're going to take a brief
2 lunch break after this, and again, brief. I saw that
3 you all brought in food. Thank you. I know you all
4 have, as well. So.

5 MR. MACDOUGALL: Can we approach on Ms. Bowerman,
6 your Honor?

7 THE COURT: Pardon?

8 MR. MACDOUGALL: Can we approach on Ms. Bowerman?

9 THE COURT: Of course. Sit tight, please, if you
10 don't mind. I apologize. I will take you up very
11 quickly.

12 If you will shut the door, Winston, then, I can go
13 ahead and take it up.

14 ON-THE-RECORD BENCH CONFERENCE, OUT
15 OF PRESENCE OF JURORS.

16 THE COURT: Is this the one who has the wedding?
17 Yeah.

18 MR. MACDOUGALL: Your Honor, according to our notes
19 at the side bar when you were doing initial selection,
20 Ms. Bowerman said that she was, among other things,
21 managing her sister's wedding in a few days and the
22 Court showed great sympathy toward that, which I
23 sympathize with. But we want to be solicitous of the
24 Court's time. If your inclination is to excuse her, I
25 don't want to go through the process of questioning her

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1 and take up this much time.

2 THE COURT: Okay. Solicitor, do you have a
3 position on it? She said she had taken off next
4 Thursday and Friday. She said she was the maid of
5 honor.

6 MR. STONE: Right.

7 THE COURT: I don't want to be aegis, but at her
8 age, this is important to her.

9 MR. STONE: Yes, ma'am.

10 THE COURT: I think we can all look at it in
11 hindsight, but again, it's probably all new and special
12 to her. So.

13 MR. THORNTON: I would defer to her on this, your
14 Honor.

15 THE COURT: You all okay? I'm going to go ahead
16 and excuse her, just -- I know it will be a relief.
17 Let's bring her on in. Bring her on in.

18 BAILIFF: Lindsay Bowerman.

19 JUROR NUMBER 64 ENTERS COURTROOM.

20 THE COURT: Ms. Bowerman, if you'd come right up
21 over here. Thank you. You can just -- she can stay
22 right there, Norman.

23 Ms. Bowerman, we all understand -- good afternoon,
24 ma'am. We all understand that your sister is getting
25 married next week. That's correct, and that you are her

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1 maid of honor, and I understand you are going to be very
2 involved in it.

3 The attorneys have all graciously agreed to go
4 ahead and release you, so you can go be about your
5 duties as the maid of honor. We wish your sister and
6 her husband-to-be the best of luck.

7 JUROR NUMBER 64: Great. Thank you very much.
8 Thank you.

9 THE COURT: Absolutely. Okay.

10 JUROR NUMBER 64 LEAVES COURTROOM.

11 BAILIFF: You want the next one?

12 THE COURT: No. Is it a 2:00 o'clock person? I
13 believe Ms. Bowerman was the last one for -- no, you're
14 good. Goodbye. Okay.

15 Right now, you all, the next people were scheduled
16 for 2:00 o'clock. They haven't had to wait yet, so I'm
17 okay with giving them a little time to sit back there.
18 It's not even quite 2:00 yet, if you all are fine with
19 that. We don't have anyone that's been here all
20 morning; do we, Al?

21 BAILIFF: No, ma'am, except me.

22 THE COURT: Perfect. You all, have some lunch,
23 please, and we'll come back in about a half an hour or
24 so, if that works for everybody.

25 MR. STONE: Can we approach just briefly? This

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1 doesn't need to be on the record.

2 THE COURT: Sure.

3 OFF-THE-RECORD BENCH CONFERENCE

4 OFF THE RECORD 1:59 P.M.

5 BACK ON THE RECORD 2:37 P.M.

6 BY THE COURT:

7 BAILIFF: All rise.

8 THE COURT: Thank you all. Please be seated.

9 MR. LEDDY: Let me locate Mr. McQuire real quick.

10 MR. THORNTON: The State's ready, Judge.

11 THE COURT: Okay. We're not waiting for Duffie?

12 MR. THORNTON: No, ma'am.

13 THE COURT: I need Mr. McGuire. Okay.

14 Okay. All right, you all. I will tell you that I
15 spoke with, over the lunch hour, Mark Roseneau, who is
16 our facilities and building guy for the county, and he
17 is in charge of the construction of the courthouse. He
18 has informed me that, tomorrow morning, there are some
19 steel workers coming in to do some steel work, and
20 they're coming from Florida, it's my understanding. And
21 I need to let him know now whether or not he needs to
22 cancel that.

23 They are working around us. I don't know if you
24 all recognized yesterday. The second week, and that's
25 around, and that's my deal with them.

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1 So, I can tell you that I intend, again, on running
2 hard and late tonight, if that is amenable to everybody,
3 as long as there's no objection. And if we still have
4 maybe a few to go over, maybe we'll just handle it on
5 Monday morning.

6 Just, we're all going to be here anyway. And you
7 know, again, we know we're going to be here the next two
8 weeks, if that's fine with you all. I'd like to just
9 give him some kind of -- and he has crews and men
10 driving up, and I want to let them know.

11 MR. MCGUIRE: Sure.

12 THE COURT: Is that okay?

13 MR. STONE: That's fine. By my count, we need ten
14 more. Is that -- but I think --

15 THE COURT: Okay. And let me tell you, I know we
16 talked the number of 39. I have this feeling of just a
17 need to maybe have a couple more, because it's over the
18 weekend, and you just never know.

19 And some of these people have said that they have
20 problems or hardships. And then, once they know they
21 actually have to come back, so far they've understood.
22 I just -- I worry, you know, so I think, you know, a
23 couple in the pocket isn't a bad idea. So, we'll just
24 see how we go, but I just, out of an abundance of
25 caution, I don't want to make a misstep. Let's just see

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1 where we go and how we're doing. Okay?

2 I will tell you, we do have one woman who's
3 supposed to be coming back who is at the point how that
4 she's avoiding phone calls from the Court Clerk's
5 Office. Diane, who is it again?

6 MADAM CLERK: Beverly O'Brien.

7 THE COURT: Yeah. Ms. O'Brien said that she has a
8 conflict later tonight. We told her to come now. She
9 says she's putting on a gala on Hilton Head. And now
10 she's -- we tried to call her back and tell her, well,
11 just come, you know, this was earlier, just come now and
12 we'll take you, you know, no worries. And she,
13 apparently, is running. If I can find out her gala --
14 if I can find out her gala, I can find her.

15 So, it'll take me a few minutes to do some calling
16 around. You all kind of tell me what your thoughts are
17 on that. Are you ready to go, you all?

18 MR. MCGUIRE: I believe so, your Honor.

19 THE COURT: And we're fine with that? Mr. Stone.

20 MR. STONE: Yes, ma'am, State's ready.

21 THE COURT: Got it. Let's go. Go, go, go.

22 BAILIFF: Mr. Luke Mathews.

23 JUROR NUMBER 417 ENTERS COURTROOM.

24 THE COURT: Come on in, sir.

25 BAILIFF: This way, sir. If you will, go ahead and

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1 take a seat in the witness box.

2 JUROR NUMBER 417: All right.

3 THE COURT: Good afternoon, sir.

4 JUROR NUMBER 417: Good afternoon.

5 THE COURT: Mr. Mathews, I need to remind you, sir,
6 that you are still under the oath that you took on
7 Wednesday. All right?

8 JUROR NUMBER 417: Yes, ma'am.

9 THE COURT: Additionally, sir, I want to tell you,
10 the lawyers are going to ask you some questions. There
11 are no right or wrong answers.

12 JUROR NUMBER 417: Okay.

13 THE COURT: Just give them your opinion, your
14 beliefs. They're going to ask you about your thoughts
15 on the death penalty and the punishment of life
16 imprisonment without the possibility of parole. They
17 may talk to you about this case some. Again, there are
18 no wrong or right answers.

19 While you were waiting back in the jury assembly
20 room, you had an opportunity to look at the witness
21 list. Was there anyone you know either socially or
22 professionally?

23 JUROR NUMBER 417: All I recognized is P. -- P.J.
24 Tanner on that list.

25 THE COURT: Do you have a personal relationship

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1 with him?

2 JUROR NUMBER 417: He -- I just know of his name,
3 kind of from being on the *Island* online and all, and I
4 think he knows my brother a little. So.

5 THE COURT: Okay.

6 JUROR NUMBER 417: Yeah.

7 THE COURT: Okay. Okay. Additionally, there has
8 been a little bit of publicity in this case.

9 JUROR NUMBER 417: Um-hmm.

10 THE COURT: Have you seen anything, read anything,
11 or have any independent knowledge about this case
12 whatsoever?

13 JUROR NUMBER 417: Well, I was on the Internet the
14 other day, kind of checking up on it, and saw the
15 charges he had before this charge or whatever, and kind
16 of made me have an opinion about him, other than what
17 he's being charged with right now.

18 THE COURT: Okay. Okay. And what other charges
19 were those that you maybe saw?

20 JUROR NUMBER 417: It was three possession of crack
21 charges and another underage firearm, I guess.

22 THE COURT: Okay.

23 JUROR NUMBER 417: And -- or I guess he was charged
24 with attempting to murder or something before. Someone
25 told me about that one. I'm not really sure.

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1 THE COURT: Someone told you about that?

2 JUROR NUMBER 417: Yeah.

3 THE COURT: Okay.

4 JUROR NUMBER 417: Actually, another kid that was
5 in the jury duty, so.

6 THE COURT: Okay. Another person that was on jury
7 duty. Okay. Let's go ahead and -- well, let's go ahead
8 and begin and ask these questions, and we'll go from
9 there.

10 MR. MCGUIRE: Okay. Can we ask who on the panel?

11 THE COURT: Do you know the other person on the
12 panel that talked to you about that?

13 JUROR NUMBER 417: Yes, ma'am. Joe, I forgot his
14 last name. It's Slodano, or something like that.
15 Something like that. I forgot his last name.

16 MS. HENDERSON: the person on the jury maybe for
17 conviction not

18 THE COURT: All right. Is this someone you --

19 JUROR NUMBER 417: No, it was from Wednesday.

20 THE COURT: Her, Wednesday.

21 JUROR NUMBER 417: Yeah.

22 THE COURT: On Wednesday. Someone you met this
23 Wednesday sitting here in the courtroom.

24 JUROR NUMBER 417: Well, I -- I actually knew like
25 eight different people in the courtroom that day. So.

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1 THE COURT: Okay. This Joe, how old, about?

2 JUROR NUMBER 417: Twenty-five.

3 THE COURT: Okay. And white or black?

4 JUROR NUMBER 417: White.

5 THE COURT: Okay. And do you know what he does?

6 JUROR NUMBER 417: He worked for pest control, I
7 think.

8 THE COURT: Okay.

9 MR. MCGUIRE: Number 590, your Honor.

10 THE COURT: Thank you. I appreciate it. And he is
11 the one that told you he thought there was other charges
12 -- or were other charges?

13 JUROR NUMBER 417: Yeah, he just -- because he got
14 -- he got a ride from Beaufort -- from the cop that
15 morning to bring him here. So, I kind of met up with
16 him here. And I had to drive him home, and we were kind
17 of minorly talking about it.

18 THE COURT: Okay. All right. Number 590. All
19 right. Let's go ahead with this jury, you all.

20 MR. SECOR: Thank you.

21 THE COURT: Yes, sir.

22 MR. SECOR: Hi, Mr. Mathews.

23 JUROR NUMBER 417: How's it going, sir?

24 MR. SECOR: My name's Casey. I'm one of the
25 attorneys on this case. And what we're going to do here

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1 is literally just to find out your feelings about
2 punishment for somebody convicted of a murder. Okay?
3 There's no way for you to be right or wrong in your
4 answers.

5 JUROR NUMBER 417: Okay.

6 MR. SECOR: The only thing that we're interested in
7 this hearing how you really feel in your heart, your
8 mind, and your soul about these issues.

9 JUROR NUMBER 417: Um-hmm.

10 MR. SECOR: So, feel free to say whatever you
11 really feel. Okay?

12 JUROR NUMBER 417: Yes, sir.

13 MR. SECOR: Now, as I'm sure you know, in this
14 country, a person that is charged with a crime is
15 presumed innocent, and that's the way everybody in this
16 room understands this case. Mr. Daise has been charged
17 with crimes, but not convicted of anything.

18 JUROR NUMBER 417: Um-hmm.

19 MR. SECOR: Okay? He's presumed innocent. So, the
20 fact that I'm going to ask about punishment, I just need
21 you to be able to reassure me that, that's not going to
22 affect how you feel about this case. Everybody presumes
23 him innocent, just like everybody else charged with a
24 crime.

25 JUROR NUMBER 417: Yeah.

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1 MR. SECOR: But because the State is seeking death
2 in this case, we have to ask you about your feelings
3 about punishment beforehand. All right?

4 JUROR NUMBER 417: Yes, sir.

5 MR. SECOR: And in order to make sure that we're on
6 the same page, I just want to tell you what the
7 definition of murder is in South Carolina, because it's
8 a specific definition. And what it is in South Carolina
9 is the intentional killing, or just the killing of
10 another person with malice aforethought.

11 JUROR NUMBER 417: Um-hmm.

12 MR. SECOR: The key part of it being malice
13 aforethought.

14 JUROR NUMBER 417: Um-hmm.

15 MR. SECOR: And you might know what that means, but
16 I'm going to tell you anyway, just to make sure we have
17 a similar understanding. Malice means that you -- that
18 the killing was committed with an evil heart;
19 intentional, premeditated, evil intent. Okay?

20 JUROR NUMBER 417: Um-hmm.

21 MR. SECOR: And what murder is not, it means you
22 are not defending yourself. You were not defending
23 somebody else. It wasn't like you got into an argument
24 that got heated, things got out of control, and somebody
25 got killed.

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1 JUROR NUMBER 417: Yeah.

2 MR. SECOR: That's not murder. It's not the kind
3 of thing where somebody was so crazy that they didn't
4 know the difference between right and wrong. It means
5 a rational person like you or I decided to kill
6 somebody, and we go and we intentionally kill them for
7 no reason, --

8 JUROR NUMBER 417: Um-hmm.

9 MR. SECOR: -- no excuse, no justification, other
10 than the fact that we want them dead. Okay? That's
11 what murder is in South Carolina.

12 JUROR NUMBER 417: Yes, sir.

13 MR. SECOR: And what we -- what we'd like to know
14 from you is, what are your feelings about the death
15 penalty as a punishment for somebody who commits a
16 murder like that?

17 JUROR NUMBER 417: Well, I'm -- I'm always open to
18 everything. I -- there -- and I haven't really thought
19 about it much, because like, I've always thought he was
20 guilty. That's how everyone made it sound, and that's
21 how the Internet made it look and all that.

22 MR. SECOR: Right.

23 JUROR NUMBER 417: But I think if he was
24 responsible to take the -- or, you know, do the murder
25 and take it out on other people, he should be faced with

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1 what he did. I just think it's right -- you know, even
2 punishment.

3 MR. SECOR: Okay.

4 JUROR NUMBER 417: But that's if, of course, if
5 he's found guilty or --

6 MR. SECOR: Oh, of course, yeah.

7 JUROR NUMBER 417: -- like you were saying.

8 MR. SECOR: Yeah.

9 JUROR NUMBER 417: But it's always open, I guess.
10 But honestly, I would feel bad being, you know,
11 responsible for someone else's life; that, even though I
12 don't have anything to do with it, I don't feel like
13 saying, no, this guy is dying for what he did, you know.

14 MR. SECOR: I understand.

15 JUROR NUMBER 417: So, it's kind of a more open
16 opinion kind of.

17 MR. SECOR: I understand. And I know it's a
18 difficult thing to think about, and probably not the
19 kind of thing that you ever thought about before.

20 JUROR NUMBER 417: Yeah.

21 MR. SECOR: And I understand your apprehension.
22 And I think -- and I think that I would probably answer
23 the same way, if I were in your shoes.

24 JUROR NUMBER 417: Um-hmm.

25 MR. SECOR: So, let me add one more aspect to what

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1 I'm asking you. I want you to consider or think about
2 yourself as being on a jury, okay, sitting on a jury;
3 and you and the rest of the jurors have decided that the
4 person on trial is absolutely guilty of not just one
5 murder, but two murders.

6 JUROR NUMBER 417: Um-hmm.

7 MR. SECOR: Okay? And both of the murders were,
8 obviously, because they were murdered, they, therefore
9 were done maliciously, which means evilly --

10 JUROR NUMBER 417: Um-hmm.

11 MR. SECOR: -- and with intent. Okay?

12 JUROR NUMBER 417: Um-hmm.

13 MR. SECOR: And one of the murders is of a young
14 child, four-year-old child. Okay? Does that affect how
15 you believe the person should be sentenced, in terms of
16 if the choice is between life or death, is there one
17 that you think should definitively occur as a
18 consequence of those crimes?

19 JUROR NUMBER 417: Well, I think just the murder of
20 a child anyway should be life, you know. The child has
21 no way of defending or anything like you're talking
22 about a murder, malicious.

23 MR. SECOR: Yes.

24 JUROR NUMBER 417: The child has no option to do
25 anything on that one.

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1 MR. SECOR: I understand.

2 JUROR NUMBER 417: So, he should -- I hate to say
3 it, but get that sentence.

4 MR. SECOR: I understand. Okay. And just the last
5 part of what I want to ask you, if you and the rest of
6 the people on the jury believe this person was
7 definitely guilty of those two murders, --

8 JUROR NUMBER 417: Um-hmm.

9 MR. SECOR: -- okay, do you think, or for your
10 purposes of deciding between life or death, do you think
11 that the life experience of that guilty murderer should
12 matter in terms of the sentence that you give him?

13 JUROR NUMBER 417: Never really thought about it.
14 I know serving life in jail must suck by itself.

15 MR. SECOR: Yes, sir.

16 JUROR NUMBER 417: But I think to save money for
17 the town and the government and all that, they should
18 off them, I guess, you know, so you save money for the
19 town.

20 MR. SECOR: Okay.

21 JUROR NUMBER 417: Tax money, you know.

22 MR. SECOR: Um-hmm.

23 JUROR NUMBER 417: If you decide to do it, might as
24 well put him through it, too.

25 MR. SECOR: Okay.

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1 COURT REPORTER: I'm sorry, if you decide to do it?

2 JUROR NUMBER 417: You should put him through it,
3 too.

4 MR. SECOR: And that would be something that you
5 would take into consideration, the financial aspect of
6 it.

7 JUROR NUMBER 417: Yes, sir.

8 MR. SECOR: In fact, you think the quicker he's put
9 to death, the better, right?

10 JUROR NUMBER 417: I wouldn't say that. Well, I --
11 I heard from somebody I knew who actually was in jail
12 with him. And actually, I heard stories about this
13 before I was picked for the jury duty. And he's told me
14 he's met the dude in jail; he seemed like a real nice
15 guy; but you would be surprised what he did, you know.
16 And that's what I heard before I ever got picked for any
17 of this.

18 MR. SECOR: Okay.

19 JUROR NUMBER 417: That's why, when I heard about
20 it, I was like, wow, that sucks I got to come here.

21 MR. SECOR: And so, how did that change your
22 opinion when you heard that a friend of yours say that
23 -- you're talking about your friend was in jail with
24 Earnest Daise?

25 JUROR NUMBER 417: Um-hmm.

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1 MR. SECOR: Is that what you're saying?

2 JUROR NUMBER 417: Um-hmm. Yes, sir.

3 MR. SECOR: And your friend told you that his
4 impression was that Earnest Daise was a good guy?

5 JUROR NUMBER 417: Well, I can't really trust my
6 friend, anyway. He's a schiz-ball. He was in jail
7 himself, you know.

8 MR. SECOR: Okay. All right. I appreciate your
9 honesty. I really do.

10 JUROR NUMBER 417: Yes, sir.

11 MR. SECOR: This is what we really need for people
12 to tell us. And don't let me put any words in your
13 mouth. Okay? I'm just trying to make sure I understand
14 what you're saying.

15 JUROR NUMBER 417: Yes, sir.

16 MR. SECOR: From what you're saying, I believe that
17 you think that a person who commits malicious,
18 intentional, evil murder --

19 JUROR NUMBER 417: Um-hmm.

20 MR. SECOR: -- of a woman and a four-year-old child
21 should get the death penalty.

22 JUROR NUMBER 417: Yes, sir.

23 MR. SECOR: Okay.

24 JUROR NUMBER 417: I even looked at on the Internet
25 yesterday what states have what certain death penalties

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1 and all.

2 MR. SECOR: Um-hmm.

3 JUROR NUMBER 417: Like, it was kind of crazy just
4 to read them all.

5 MR. SECOR: Yeah.

6 JUROR NUMBER 417: Like, there's one state still
7 that has the death penalty by gun.

8 MR. SECOR: Yeah.

9 JUROR NUMBER 417: I think it's like, Utah.

10 MR. SECOR: I think it's Ohio, or something like
11 that.

12 JUROR NUMBER 417: I think it's Utah.

13 MR. SECOR: Utah?

14 JUROR NUMBER 417: Yeah.

15 MR. SECOR: Okay. Yeah. And well, before I ask
16 you anything else, can I have just one moment?

17 THE COURT: You want to talk, you all? Come on up.

18 MR. MCGUIRE: Judge, if we could approach for a
19 second.

20 THE COURT: Sure.

21 COURT REPORTER: Do you need me?

22 THE COURT: No, thank you.

23 OFF-THE-RECORD BENCH CONFERENCE.

24 END BENCH CONFERENCE.

25 THE COURT: Mr. Mathews, I am going to go ahead and

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1 excuse you from the trial of this case. Sir, I want you
2 to understand the seriousness of this. I also --

3 JUROR NUMBER 417: I know it's seriousness.

4 THE COURT: I also am disappointed that, quite
5 frankly, you did not follow my orders on Wednesday. I
6 told you not to do any independent research.

7 JUROR NUMBER 417: I -- I --

8 THE COURT: I told you not to look up anything.
9 And you've just told us here on the witness stand under
10 oath -- hold on -- that you were looking up the death
11 penalty in different states. Again, it's not
12 appropriate.

13 And you can put your hands up in the air after not
14 being asked to sit on a jury, it's just wrong.

15 JUROR NUMBER 417: Okay.

16 THE COURT: I mean, I want to make sure you
17 understand the seriousness of this case. We have a
18 man's life in the balance. We have people dead. Please
19 understand that there is a bigger picture here.

20 JUROR NUMBER 417: All right. I'm sorry.

21 THE COURT: Thank you. You're excused.

22 JUROR NUMBER 417: I'm sorry.

23 BAILIFF: You're free to go, sir.

24 JUROR NUMBER 417 LEAVES COURTROOM.

25 BAILIFF: Ready, Judge?

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1 THE COURT: I am.

2 JUROR NUMBER 37 ENTERS COURTROOM.

3 BAILIFF: Ms. Jacqueline Bauner.

4 JUROR ENTERS COURTROOM

5 THE COURT: Thank you. Come on in, ma'am.

6 BAILIFF: If you will, please, ma'am, take a seat
7 in the witness box.

8 JUROR NUMBER 37: Okay.

9 THE COURT: Good afternoon.

10 JUROR NUMBER 37: Good afternoon.

11 THE COURT: Thank you for waiting on us and for
12 your patience. I appreciate it.

13 To begin with, I need to remind you that you are
14 under oath as you took it on Wednesday, if that's
15 agreeable to you.

16 JUROR NUMBER 37: Um-hmm. Um-hmm.

17 THE COURT: And I appreciate that. And for the
18 record, I need you to verbally say yes or no and respond
19 for my court reporter.

20 JUROR NUMBER 37: Oh. Yes.

21 THE COURT: She'll come up and prompt you if you
22 don't.

23 JUROR NUMBER 37: Okay.

24 THE COURT: So, I will go ahead and tell you that
25 right now.

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1 JUROR NUMBER 37: Okay.

2 THE COURT: Additionally, there has been some press
3 coverage about this case and some publicity.

4 JUROR NUMBER 37: Um-hmm.

5 THE COURT: I need to know if you have read
6 anything, heard anything, seen anything, or have any
7 outside knowledge about this case.

8 JUROR NUMBER 37: In the *Island Packet*, I read the
9 article.

10 THE COURT: Okay. Which article did you read? And
11 roughly when was it, if you know?

12 JUROR NUMBER 37: Well, there was one about the
13 jury recently that I read the day I came. And there was
14 -- right after the incident happened, so.

15 THE COURT: You think so? Okay.

16 JUROR NUMBER 37: Um-hmm.

17 THE COURT: I just want to make absolutely sure
18 that you can put out of your mind anything you may have
19 read in the newspaper, because again, it is not factual;
20 it is not correct.

21 If you were to be chosen as a juror --

22 JUROR NUMBER 37: Um-hmm.

23 THE COURT: -- for the trial of this case, you will
24 have everything you need to decide the case here in this
25 courtroom. It would be highly inappropriate for you to

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1 consider anything as an outside source.

2 JUROR NUMBER 37: Um-hmm.

3 THE COURT: You're going to have, if you are a
4 juror, a front-row seat. You will have the best
5 information. You understand that.

6 JUROR NUMBER 37: Yes, yes.

7 THE COURT: And you're confident you can put that
8 behind you?

9 JUROR NUMBER 37: Yes.

10 THE COURT: Okay. I appreciate that, as well.
11 Also, you've reviewed two witness lists back in the jury
12 room. Do you know anyone personally, socially, or
13 professionally on that list or those lists?

14 JUROR NUMBER 37: No, I don't.

15 THE COURT: Thank you, ma'am. I appreciate it.
16 I'm going to turn you over to the lawyers now.

17 JUROR NUMBER 37: Okay.

18 THE COURT: They're going to ask you a number of
19 questions, and I'm going to tell you, some of them may
20 be a little bit difficult.

21 JUROR NUMBER 37: Um-hmm.

22 THE COURT: There are no right or wrong answers
23 here. These are simply your beliefs and your thoughts.
24 They are going to ask you about the death penalty.

25 JUROR NUMBER 37: Um-hmm.

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1 THE COURT: They are going to ask you about what
2 you think about life imprisonment without the
3 possibility of parole.

4 JUROR NUMBER 37: Um-hmm.

5 THE COURT: Again, just be candid.

6 JUROR NUMBER 37: Okay.

7 THE COURT: Thank you.

8 MR. MCGUIRE: Thank you, ma'am.

9 THE COURT: Yes, sir.

10 MR. MCGUIRE: Good afternoon, ma'am.

11 JUROR NUMBER 37: Good afternoon.

12 MR. MCGUIRE: It's been a long day for us.

13 JUROR NUMBER 37: Yes.

14 MR. MCGUIRE: This is my opportunity to talk to you
15 about the penalty aspect of a murder case, a capital
16 case.

17 JUROR NUMBER 37: Um-hmm.

18 MR. MCGUIRE: We haven't had a trial yet, and it's
19 a little awkward for me to be talking about penalty.
20 We're not even there yet. We may never get there,
21 either.

22 JUROR NUMBER 37: Um-hmm.

23 MR. MCGUIRE: But this is my only chance to talk to
24 you, so here we are.

25 JUROR NUMBER 37: Okay.

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1 MR. MCGUIRE: What I'm going to do is just start at
2 the very beginning with the basics and make sure we're
3 on the same page. And obviously, the death penalty is
4 only available in murder cases.

5 JUROR NUMBER 37: Um-hmm.

6 MR. MCGUIRE: And murder in South Carolina is
7 defined as the unlawful killing of another human being
8 with malice aforethought.

9 JUROR NUMBER 37: Um-hmm.

10 MR. MCGUIRE: The malice aforethought part is a
11 description of the accused, the killer's mental state,
12 describes him as operating with a black and malignant
13 heart, fatally bent on evil or wickedness, and devoid of
14 social duty and responsibility. That's kind of a
15 mouthful, and that's -- it's a pretty somber
16 description.

17 And to ask for the death penalty, the State would
18 have to bring more, and that is a circumstance in
19 aggravation, or multiple circumstances in aggravation.

20 JUROR NUMBER 37: Um-hmm.

21 MR. MCGUIRE: And I'm going to ask you now a little
22 bit about -- well, I'm going to tell you a little bit
23 about that circumstance or aggravation. Then, I'm going
24 to ask you about your thoughts about penalty.

25 The aggravation at issue that we're here for is

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1 that it is an intentional killing of innocent people,
2 with malice aforethought, and the victims are a mother
3 and a four-year-old child, shot dead. It's not an
4 accident; it's not a mistake; it's not a self-defense.

5 JUROR NUMBER 37: Um-hmm.

6 MR. MCGUIRE: In that situation, what are your
7 personal views about the death penalty as the
8 appropriate punishment?

9 JUROR NUMBER 37: Well, I feel as I've aged, I've
10 kind of -- my opinions kind of changed a little bit.
11 And as a teacher of children, I -- I really think that
12 anyone that intentionally murders a child deserves the
13 death penalty.

14 MR. MCGUIRE: Yeah. I saw that your professional
15 career is teaching children, special ed children.

16 JUROR NUMBER 37: Um-hmm. Um-hmm.

17 MR. MCGUIRE: And what I'm hearing is that, based
18 on your experience, your walk in life, the innocence and
19 the value of a child's life --

20 JUROR NUMBER 37: Um-hmm.

21 MR. MCGUIRE: -- is such that anybody that would
22 intentionally take a child's life should get the death
23 penalty.

24 JUROR NUMBER 37: Yes.

25 MR. MCGUIRE: And that's a reflection and

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1 manifestation of your values system.

2 JUROR NUMBER 37: Um-hmm.

3 MR. MCGUIRE: Your moral compass.

4 JUROR NUMBER 37: Yes.

5 MR. MCGUIRE: Your moral code.

6 JUROR NUMBER 37: Yes.

7 MR. MCGUIRE: It emanates from a deep place.

8 JUROR NUMBER 37: Yes.

9 MR. MCGUIRE: I can't change your views on it.

10 JUROR NUMBER 37: No.

11 MR. MCGUIRE: I don't have the talent or the words
12 to do it; do I?

13 JUROR NUMBER 37: No. In my 20's, I didn't believe
14 in it, but now I do.

15 MR. MCGUIRE: Okay. And your questionnaire that we
16 looked at, that's sort of like the starting point where
17 we talk.

18 JUROR NUMBER 37: Um-hmm.

19 MR. MCGUIRE: We decide who to talk to and what
20 questions to ask them. And again, it's just a starting
21 point. And the questionnaire asks you to put yourself
22 in a category, and we used some kind of vague terms like
23 just the word murder.

24 JUROR NUMBER 37: Um-hmm.

25 MR. MCGUIRE: And we didn't tell you what that was.

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1 And you indicated that you were the kind of person who
2 could listen to the case and decide life or death.

3 JUROR NUMBER 37: Yes. Um-hmm.

4 MR. MCGUIRE: But now, knowing the technical, legal
5 definition of murder; plus, the aggravating circumstance
6 of an innocent child being killed, what I hear you say
7 for that category of case, the death penalty is always
8 appropriate.

9 JUROR NUMBER 37: Most of the time.

10 MR. MCGUIRE: Okay.

11 JUROR NUMBER 37: An exception would be if the
12 murderer had a mental problem.

13 MR. MCGUIRE: Okay. Sure. And -- okay. Let me
14 walk you backwards from that, then.

15 JUROR NUMBER 37: Um-hmm.

16 MR. MCGUIRE: If the person, the killer, knew right
17 from wrong.

18 JUROR NUMBER 37: Um-hmm.

19 MR. MCGUIRE: No mental imbalance that prevented
20 him from appreciating the wrongness of the act.

21 JUROR NUMBER 37: Yes.

22 MR. MCGUIRE: In that situation, the death penalty
23 would be appropriate.

24 JUROR NUMBER 37: Yes.

25 MR. MCGUIRE: Okay. And again, that's emanating

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1 from a deep place, based on your walk in life.

2 JUROR NUMBER 37: Yes.

3 MR. MCGUIRE: Your experience with children.

4 JUROR NUMBER 37: Yes.

5 MR. MCGUIRE: And how you value children.

6 JUROR NUMBER 37: Yes.

7 MR. MCGUIRE: And if I tried to get you to say
8 that, well, wouldn't you want to hear everything before
9 deciding the case, you'd come back to -- when I say
10 everything, just sit in a chair and listen to all the
11 witnesses testify, --

12 JUROR NUMBER 37: Um-hmm.

13 MR. MCGUIRE: -- you'd always come back with it's
14 an innocent child that was taken; the death penalty is
15 appropriate.

16 JUROR NUMBER 37: If that was intentional, yes.

17 MR. MCGUIRE: Yes. An intentional, deliberate,
18 malicious --

19 JUROR NUMBER 37: Yes.

20 MR. MCGUIRE: -- taking of a four-year-old's life.

21 JUROR NUMBER 37: Yes.

22 MR. MCGUIRE: I think that's -- I'm going to stand
23 down right now, Judge. That's probably all the
24 questions I have for you, ma'am.

25 JUROR NUMBER 37: Um-hmm.

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1 MR. MCGUIRE: Thank you so much.

2 JUROR NUMBER 37: Um-hmm.

3 MR. STONE: Hey, Ms. Bauner.

4 JUROR NUMBER 37: Hi.

5 MR. STONE: May name is Duffie Stone.

6 JUROR NUMBER 37: Um-hmm.

7 MR. STONE: And I want to make that sure I
8 understand you. And no one here is trying to change
9 your opinion, but when you answered the questionnaire,
10 your indication at that time was that you would take
11 various things into consideration, whether it's the
12 aggravation and mitigation before you made the decision.

13 But let me back up just a minute and kind of set
14 the stage a little bit better. In a death penalty case,
15 it's actually two stages of the trial. You have the
16 guilt phase, --

17 JUROR NUMBER 37: Um-hmm.

18 MR. STONE: -- which is the determination by the
19 jury of whether or not somebody's guilty or not. Once
20 they make the determination that they're guilty, the
21 second phase is the sentencing phase.

22 JUROR NUMBER 37: Um-hmm.

23 MR. STONE: And that's -- when we're asking you to
24 make a decision between life and death, that's the phase
25 we're talking about.

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1 JUROR NUMBER 37: Um-hmm.

2 MR. STONE: And I know you're nodding to me yes or
3 no, but this nice lady to my left is --

4 JUROR NUMBER 37: Yes. Yes. I'm sorry.

5 MR. STONE: No, that's fine.

6 THE COURT: Thank you, Ms. Bauner. I appreciate
7 it.

8 MR. STONE: And so, the question that we really
9 have here is, once you've convicted somebody of murder
10 and of killing two people, one being a four-year-old
11 child, could you still take things into consideration to
12 determine whether or not the person deserves the death
13 penalty or life in prison?

14 JUROR NUMBER 37: Yes. Um-hmm.

15 MR. STONE: And I heard you earlier say, and your
16 for instance was a mental issue or something like that.
17 I get the impression that you're basically making,
18 weighing decisions, and you're trying to determine
19 whether or not life or death is appropriate. Is that
20 correct?

21 JUROR NUMBER 37: Yes.

22 MR. STONE: Okay. So, when -- and what I want to
23 make sure is, is that we're all on the same -- and we
24 all understand. When we're talking about the sentencing
25 options, you have two options: --

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1 JUROR NUMBER 37: Um-hmm.

2 MR. STONE: -- life or death, and the jury makes
3 that determination.

4 JUROR NUMBER 37: Um-hmm. Yes.

5 MR. STONE: The question that we all have is
6 whether or not you would, having already found this
7 person willfully murdered a four-year-old child and
8 somebody else, and the mother, whether or not you
9 would automatically say they get the death penalty; or
10 you would say I would never give the death penalty;
11 or I want to listen to any mitigation, whether it's
12 psychological or anything else; I want to listen to
13 other aggravation; I want to hear the whole story,
14 and then make that determination. Of those three
15 categories --

16 JUROR NUMBER 37: Um-hmm.

17 MR. STONE: -- what category would you put yourself
18 in?

19 JUROR NUMBER 37: I would -- I would want to hear
20 everything, all the -- all the evidence, everything,
21 yes. I wouldn't just say absolutely, it's the death
22 penalty or it's not.

23 MR. STONE: Right. And that's even after you've
24 already decided this person's guilty of murdering a
25 child and two people?

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1 JUROR NUMBER 37: Yes. From what I understand,
2 it's two separate decisions, and --

3 MR. STONE: You're on the same jury, but, yes,
4 ma'am, that's exactly correct. Okay. Thank you, ma'am.

5 JUROR NUMBER 37: Um-hmm.

6 MR. STONE: I appreciate your answers.

7 JUROR NUMBER 37: Yes.

8 THE COURT: Can I see the attorneys a minute. I
9 apologize.

10 MR. STONE: No. Yes, ma'am.

11 OFF-THE-RECORD BENCH CONFERENCE.

12 END BENCH CONFERENCE.

13 MR. MCGUIRE: Hello again, Ms. Bauner.

14 JUROR NUMBER 37: Hello.

15 MR. MCGUIRE: This is a really confusing process.
16 Everything you're doing is absolutely right.

17 JUROR NUMBER 37: Okay.

18 MR. MCGUIRE: This is the one day where everything
19 you say is the right answer, because we're just asking
20 what you think, what you feel, what your opinions are.

21 JUROR NUMBER 37: Um-hmm.

22 MR. MCGUIRE: So, literally, everything that comes
23 from you today is right.

24 JUROR NUMBER 37: Um-hmm.

25 MR. MCGUIRE: It's difficult for us, because we're

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1 dealing with these very difficult, abstract terms in
2 punishment --

3 JUROR NUMBER 37: Um-hmm.

4 MR. MCGUIRE: -- and different kinds of evidence
5 and that sort of thing. And what I want to be clear
6 about is that I understand your starting point was that
7 you could consider maybe a life penalty and a death
8 penalty, but in our conversation earlier, you indicated,
9 based on your walk in life, --

10 JUROR NUMBER 37: Um-hmm.

11 MR. MCGUIRE: -- how you value innocent children,
12 that, if it was an intentional -- now, if the proof was
13 there where it was an intentional, deliberate act to
14 take the life of that innocent four-year-old child, shot
15 dead, in that situation, the death penalty would always
16 be the appropriate punishment.

17 JUROR NUMBER 37: Yes, in that situation,
18 deliberate, intentional, yes.

19 MR. MCGUIRE: Right. Exactly. Okay. And so, when
20 we talk about could you consider everything, you want to
21 hear everything, if everything led to that decision that
22 the jury had the right guy, it's not a mistake, it's
23 guilty beyond a reasonable doubt, an innocent four-year-
24 old child was taken, the death penalty.

25 JUROR NUMBER 37: Yes.

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1 MR. MCGUIRE: Okay. And again, I don't have the
2 talent to change your view on that.

3 JUROR NUMBER 37: No, I don't think so.

4 MR. MCGUIRE: With all the -- when we talk about
5 all -- the whole case and --

6 JUROR NUMBER 37: Um-hmm.

7 MR. MCGUIRE: -- taking everything into
8 consideration, if everything just led to that fact of
9 that innocent child being taken, the death penalty.

10 JUROR NUMBER 37: That's the law. Um-hmm.

11 MR. MCGUIRE: Is that your view, your opinion?

12 JUROR NUMBER 37: It is my view. It's my opinion.

13 MR. MCGUIRE: Okay.

14 JUROR NUMBER 37: I come from Indiana. The death
15 penalty is there, as well, so I do feel that way.

16 MR. MCGUIRE: Okay. Okay. And you'd be consistent
17 in that.

18 JUROR NUMBER 37: Yes.

19 MR. MCGUIRE: Okay.

20 THE COURT: Ms. Bauner, I'm going to ask you to
21 step outside for just a quick moment, if you don't mind.

22 JUROR NUMBER 37: Okay.

23 THE COURT: Bob is going to take you right out
24 there. We're going to bring you right back and tell you
25 where we're going from here.

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1 JUROR NUMBER 37 LEAVES COURTROOM.

2 BAILIFF: Door is closed, your Honor.

3 THE COURT: I'm wondering, next time, if we were to
4 ever do this, when we talked about aggravating
5 circumstances and, you know, mitigating circumstances,
6 if we shouldn't just list them, so they understood the
7 difference. Because that's part of the problem we're
8 having repeatedly, is they don't understand.

9 They're looking for mitigation in deciding whether
10 or not someone, you know, committed murder, which, of
11 course is, you know, after the fact. I mean, it just
12 doesn't make sense. I really am wondering, in the
13 totality of it all, because it's going to be in my
14 charge anyway, at the end, obviously. That seems to me
15 to be the greatest confusion that we have here, which is
16 why we're having the same problem on the questionnaire,
17 as well.

18 You know, this woman clearly does not know what the
19 law is, on top of it. She's highly educated but, again,
20 she doesn't understand it. And I'm concerned someone
21 with a master's degree, who has been teaching, she can't
22 understand it, it worries me that other people don't.

23 So, and I say all that just as a -- for the next
24 time, if there is a next time. I understand what your
25 position will be on this.

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1 MR. STONE: Well, and I think a lot of it has to do
2 with understanding the whole proceeding to begin with,
3 as well, because I think she said, when I explained to
4 her the two stages, you know, it looked like at that
5 point it clicked for her, and she said, okay, I
6 understand what you're asking is. And then, her last
7 response, in fact, to Mr. McGuire's question was, oh,
8 yeah, if I took everything into consideration, and that
9 was the appropriate thing, I'd give the death penalty.

10 So, I don't know. I mean, I think a lot of this is
11 legal terminology. I think you might very well be
12 right, on the other hand. I don't know if that's what
13 the law allows us to do, so, quite frankly, but anyway.

14 THE COURT: Okay.

15 MR. MCGUIRE: I'm not sure I have to argue much on
16 this one. It's pretty clear.

17 THE COURT: I can tell you, she's not qualified. I
18 think, number one, she doesn't know what the law is.
19 She can't follow the law. I think, again, it's a
20 concern. I have thought about this over and over, and
21 maybe after this case, we will do kind of what we
22 consider to me a model questionnaire. You know,
23 hindsight is 20/20, and it's a learning experience,
24 certainly, for all of us.

25 So, anyway, let's bring her on back out.

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1 JUROR NUMBER 37 ENTERS COURTROOM.

2 BAILIFF: Just come right up here and stand and
3 face the Judge.

4 JUROR NUMBER 37: Okay.

5 THE COURT: Ms. Bauner, thank you.

6 JUROR NUMBER 37: Thank you.

7 THE COURT: It was a pleasure to have you here and
8 to meet you. At this time, I'm going to go ahead and
9 excuse you from the trial of this case.

10 JUROR NUMBER 37: Okay.

11 THE COURT: You do not need to report on Monday
12 morning, but thank you so much for being here and
13 sharing your views with us.

14 JUROR NUMBER 37: Okay. Thank you.

15 THE COURT: Thank you.

16 BAILIFF: Can I get your badge, please, ma'am.

17 JUROR NUMBER 37 LEAVES COURTROOM.

18 MR. MCGUIRE: Your Honor, the questionnaire from
19 James Eric Cook ended up in my possession. I think I
20 may have just taken it up -- from up here. I just want
21 to make sure you all got it back.

22 THE COURT: Okay.

23 MR. MCGUIRE: It's the original.

24 THE COURT: Thank you. All right. The next one is
25 Wallace Cronin? Is this Wallace Cronin?

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1 JUROR NUMBER 157 ENTERS COURTROOM.

2 BAILIFF: Ms. Wallace Cronin.

3 THE COURT: Please come in.

4 BAILIFF: Please, ma'am, go up and take a seat in
5 the witness box.

6 THE COURT: Good afternoon, Ms. Cronin.

7 JUROR NUMBER 157: How are you?

8 THE COURT: Very well. Thank you. Thank you so
9 much for waiting on us and being patient.

10 There are some questions our lawyers are going to
11 ask you. I just need to remind you that you are still
12 under the oath you took on Wednesday to be truthful.

13 Additionally, I will tell you, some of the
14 questions that they're going to ask can be a bit
15 personal. And certainly, I don't want you to suffer any
16 embarrassment. That's not the point here. They just
17 need to kind of get at the heart of this matter and what
18 you believe about the death penalty, and about the
19 punishment of life imprisonment without the possibility
20 of parole. All we can ask and expect is that you be
21 candid.

22 JUROR NUMBER 157: Okay.

23 THE COURT: And that there are no right or wrong
24 answers here. Additionally, you had the opportunity to
25 review the witness list while you were waiting, our

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1 witness list, ma'am. Is there anyone you know either
2 personally, professionally, socially, on those lists?

3 JUROR NUMBER 157: No. No.

4 THE COURT: There has been some publicity in this
5 case, as well. Have you read anything, seen anything,
6 heard anything about this case, or received any
7 information about it from any outside source, other than
8 the questionnaire that you received and what you've
9 heard here in the courtroom?

10 JUROR NUMBER 157: Not at all. Huh-uh.

11 THE COURT: I appreciate that. I'm going to go
12 ahead and turn you over to the lawyers. Okay?

13 JUROR NUMBER 157: Thank you.

14 THE COURT: Thank you.

15 MR. LEDDY: Thank you, your Honor.

16 THE COURT: Thank you.

17 MR. LEDDY: Hello, Ms. Cronin.

18 JUROR NUMBER 157: Hi.

19 MR. LEDDY: I'm Micah Leddy. I'm one of the
20 attorneys on the case.

21 JUROR NUMBER 157: Um-hmm.

22 MR. LEDDY: And I just have a few questions for you
23 today. First of all, we're going to do things sort of
24 out of order.

25 JUROR NUMBER 157: Okay.

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1 MR. LEDDY: This is part of the weird process of
2 capital cases. We have to talk today about your
3 feelings about capital punishment and when it's
4 appropriate. And we haven't even talked about what
5 happened and whether or not Mr. Daise is guilty. And I
6 don't want you to infer from that, that we're not going
7 to have a trial about that, and that we, you know, it's
8 some sort of a foregone conclusion because it isn't. We
9 may never, ever talk about this again. Okay?

10 JUROR NUMBER 157: Right.

11 MR. LEDDY: So, can we agree that we can discuss
12 this without coming to that conclusion?

13 JUROR NUMBER 157: Absolutely.

14 MR. LEDDY: Very good. Thank you, ma'am. Now, I
15 want to start by talking about what murder is. Okay?
16 And it has a specific definition under the law. It's
17 not just any killing of any human being. All right?
18 You have cases of self-defense, right?

19 JUROR NUMBER 157: Um-hmm.

20 MR. LEDDY: And you have cases of --

21 COURT REPORTER: Yes?

22 JUROR NUMBER 157: Yes.

23 MR. LEDDY: All right. And you can have a case of
24 an accident.

25 JUROR NUMBER 157: Yes.

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1 MR. LEDDY: And somebody can die. And that's not a
2 murder. Okay? And the reason for that is because
3 murder is defined as the intentional killing of a human
4 being with malice aforethought, meaning that, before the
5 person killed an innocent victim, they had malice in
6 their mind, which is evil or wickedness. Okay?

7 JUROR NUMBER 157: Um-hmm.

8 MR. LEDDY: So --

9 JUROR NUMBER 157: Yes.

10 MR. LEDDY: So, any killing that doesn't have
11 malice is not going to be murder. For instance, if
12 somebody walks in -- the classic example -- if somebody
13 walks in on their spouse with another person and loses
14 their mind and kills them. Okay? We consider that to
15 be manslaughter, because you're acting under an
16 uncontrollable impulse. That wouldn't be the case when
17 you're talking about a murder. All right?

18 JUROR NUMBER 157: Okay.

19 MR. LEDDY: So, when you talk about a murder,
20 you're talking about somebody who, without any just
21 cause, without any excuse, not acting under duress, not
22 acting under mental incapacity, any kind of mental
23 illness, they intentionally kill a human being, and they
24 have malice in their heart. What are your feelings in
25 that situation about the death penalty being the

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1 appropriate punishment?

2 JUROR NUMBER 157: Well, I certainly think that the
3 death penalty could be appropriate in some cases. I
4 think I understand your definition that you've given me,
5 in that I understand those things. I still kind of feel
6 like I would need to weigh out the situation, because I
7 don't know that every murder, as you've defined it,
8 would qualify for that type of penalty.

9 Certainly, if I think that someone's had the
10 forethought and -- and you know, is -- that could very
11 well be something that -- that would be appropriate, but
12 it's -- that's a hard question.

13 You know, the easy question is, do you think that
14 the death penalty is appropriate in some cases? Yes.
15 The hard question is, I still think that I would have to
16 hear what the circumstances are to determine if -- if
17 that is a -- what I would think an appropriate
18 punishment or sentence or whatever.

19 MR. LEDDY: Okay.

20 JUROR NUMBER 157: Does that make sense?

21 MR. LEDDY: It makes perfect sense, and it's a very
22 fair answer. And I want to explore it a little more
23 with you, if I can.

24 JUROR NUMBER 157: Okay.

25 MR. LEDDY: This is a difficult question, and well

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1 it should be. It is literally life and death; isn't it?

2 JUROR NUMBER 157: Um-hmm. Yes, it is.

3 MR. LEDDY: So, it's a good thing that this is not
4 an easy question, and we have to talk about it in terms
5 of hard questions. Okay?

6 Let's talk about what the difference between
7 capital murder and just the bare-bones definition of
8 murder that I gave you a moment ago. The capital murder
9 would be intentional killing of a human being, malice
10 aforethought. Okay? And an aggravating circumstance.
11 An aggravating circumstance is defined in our law as one
12 of 21 different things. It could be killing a police
13 officer. It could be killing somebody in the course of
14 committing a robbery. Okay?

15 The categories that I want to talk to you about and
16 get your feelings on are killing not one person, but two
17 people, and one of those two people is a four-year-old
18 child. Those two people killed, malice in the person's
19 heart when they did it, what is your feeling about the
20 death penalty being the appropriate punishment then?

21 JUROR NUMBER 157: I believe that it could be. Um-
22 hmm. Yes.

23 MR. LEDDY: And you know, I think that that's --

24 JUROR NUMBER 157: Generally. I mean, you know,
25 with what you've given me.

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1 MR. LEDDY: Yes, ma'am. And you know, there are
2 certain -- there's a lot of people who just say, look,
3 for me, you give me those circumstances, and I just
4 don't think a life punishment, life sentence, is
5 punishment at all; it's just not severe enough; and that
6 person, if they got a life sentence, they would be
7 getting too lenient of a punishment; and therefore, I'm
8 not going to vote life, and I couldn't bring myself to
9 do it. Do you feel like you identify with those people?
10 Would you say you are one of those people?

11 JUROR NUMBER 157: No.

12 MR. LEDDY: So, it would be possible for you, given
13 the intentional killing with malice of two people, one
14 of whom is a child, you could give a life sentence.

15 JUROR NUMBER 157: I could.

16 MR. LEDDY: Tell me what would be important to you
17 in making that determination. And let me ask you this.
18 Maybe I can ask you some things, and you can tell me if
19 they would be important.

20 JUROR NUMBER 157: Okay.

21 MR. LEDDY: If you were to hear testimony about the
22 defendant being raised in horrible circumstances, would
23 that matter to you?

24 JUROR NUMBER 157: It could. And I say that, you
25 know, I don't believe that, that is, in itself, an

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1 excuse to do wrong or to live your life a certain way.
2 I think that, you know, certainly, circumstances can be
3 overcome, and I think that we all have those things to
4 overcome in our lives.

5 So, just in a blanket, you know, again, it would
6 depend on how horrible and the definitive circumstances
7 there. But just as a blanket, as an excuse, or as a --
8 as a part of why that person might have done something,
9 no, I don't -- I don't think that it is always valid.

10 MR. LEDDY: You know, I think a lot of people feel
11 like somebody who is an adult should be responsible for
12 their actions. Do you think that's true?

13 JUROR NUMBER 157: I think if a person, you know,
14 has -- what's the word I'm looking for? The person is
15 -- is smart or, you know, if they have the where with
16 all, I mean, I think that an adult should be able to
17 control themselves and to be able to rise above certain
18 circumstances to, you know, not do things that, you
19 know, are criminal or evil.

20 So, yes, I mean, I -- I think if a person is, you
21 know, educated and smart enough to survive and do well
22 on their own, that they shouldn't use a bad upbringing
23 as -- as an excuse to do something wrong.

24 MR. LEDDY: You know, I think a lot of people also
25 feel like somebody does something wrong as an adult and

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1 they want to just blame things that had nothing to do
2 with what they did.

3 JUROR NUMBER 157: Um-hmm.

4 MR. LEDDY: And they just, you know, they want to
5 blame their parents, or they want to blame the fact that
6 they were poor, you know, things that a lot of people,
7 you know, overcome. They just want to -- they just want
8 to use that as, like you said, as an excuse.

9 JUROR NUMBER 157: Um-hmm. Yes.

10 MR. LEDDY: Do you feel like that?

11 JUROR NUMBER 157: No, I don't think that's right.

12 MR. LEDDY: Right. You don't think it's right, but
13 do you feel like that's often made -- an often-made
14 argument?

15 JUROR NUMBER 157: I think that it sometimes is. I
16 mean, I've certainly seen it with different things, you
17 know.

18 MR. LEDDY: And do you find it -- when you hear
19 that, does it sway your opinion of what they did being
20 less bad at all?

21 JUROR NUMBER 157: Not less bad. You know, I -- I
22 probably wouldn't think -- I mean, I would probably
23 would be just a little bit frustrated with that person,
24 because I just -- I just don't think that, that's being
25 a responsible member of society and taking

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1 responsibility for your own actions.

2 MR. LEDDY: And how about if you were to hear
3 testimony that, you know, the person who you had already
4 at this point decided was guilty, okay, what if you
5 heard that they were a good, model prisoner, and that
6 they would probably be a good, model prisoner? Would
7 that be important to you?

8 JUROR NUMBER 157: It could be, yes.

9 MR. LEDDY: And why would that be?

10 JUROR NUMBER 157: Well, when you're talking about,
11 you know, the difference in sentencing between maybe
12 life in prison, as opposed to the death penalty, I mean,
13 it goes back to circumstances. And, you know, I think
14 that, in some circumstances, if a person can maybe
15 overcome or go on and change and do better, maybe --
16 maybe that is the right road to take.

17 I don't think that the death penalty is just an
18 automatic response to, you know, to a circumstance.

19 MR. LEDDY: Okay. Okay. Very fair. Okay. Just a
20 couple more things --

21 JUROR NUMBER 157: Um-hmm.

22 MR. LEDDY: -- and I'll leave you alone. I
23 mentioned before that there -- that, if you ever have to
24 make the decision about punishment, that, that would
25 mean we're going to have basically two different trials.

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1 Okay?

2 JUROR NUMBER 157: Right..

3 MR. LEDDY: We're going to have what we call the
4 guilt and innocence phase.

5 JUROR NUMBER 157: Um-hmm.

6 MR. LEDDY: And if you find Mr. Daise guilty, then,
7 we would go forward into the penalty phase. And in the
8 penalty phase, you probably are -- know enough about the
9 jury system that you know that it has to be a unanimous
10 decision.

11 JUROR NUMBER 157: Yes.

12 MR. LEDDY: Okay. And in the penalty phase, in
13 order for a death sentence to be imposed, it has to be
14 unanimous.

15 JUROR NUMBER 157: Yes.

16 MR. LEDDY: And if it were a unanimous life
17 decision, then, obviously, a life sentence would be
18 imposed. If there's eleven people that want death and
19 one person that wants life, then, the jury would not
20 impose a punishment. The Court would then take
21 sentencing and would impose a life punishment.

22 And because of that, it's a different dynamic, in
23 that, each person's independent moral judgment has the
24 opportunity of being heard in court. Does that make
25 sense?

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1 JUROR NUMBER 157: Yes.

2 MR. LEDDY: And the law actually wants every
3 person's individual moral judgment to be heard in this
4 courtroom. And you seem like a person who has strong
5 opinions about things. Is that correct?

6 JUROR NUMBER 157: I would say yes. I tend to not
7 impose those opinions 'til I feel like I have --

8 MR. LEDDY: Yes, ma'am.

9 JUROR NUMBER 157: -- the story.

10 MR. LEDDY: Well, just looking through your
11 questionnaire, --

12 JUROR NUMBER 157: Um-hmm.

13 MR. LEDDY: -- and knowing what you do for a
14 living; you're an admissions nurse. Is that right?

15 JUROR NUMBER 157: Yes, I'm a registered nurse.

16 MR. LEDDY: Yes, ma'am.

17 JUROR NUMBER 157: As admission coordinator. Um-
18 hmm.

19 MR. LEDDY: Well, so, looking through your
20 questionnaire, I hope you won't mind if I say that I
21 found it to be very thorough.

22 JUROR NUMBER 157: Medicare and some of the other
23 insurance companies do require that I do a thorough job,
24 yes.

25 MR. LEDDY: Yeah. I would have to guess that you

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1 do a very good job at it. So, some people are not quite
2 as strong about articulating why they feel a certain
3 way.

4 JUROR NUMBER 157: Um-hmm.

5 MR. LEDDY: Would you agree with that?

6 JUROR NUMBER 157: Yes.

7 MR. LEDDY: And do you feel like every person's
8 independent moral judgment would be deserving of
9 respect?

10 JUROR NUMBER 157: Absolutely.

11 MR. LEDDY: And would you expect other people to
12 respect your opinion?

13 JUROR NUMBER 157: Absolutely.

14 MR. LEDDY: Even if they thought that your
15 reasoning was absurd?

16 JUROR NUMBER 157: Even if they thought that.

17 MR. McLEOD: And are you the kind of person who
18 would, if you saw anybody in the jury room being bullied
19 or their opinion being berated, are you the kind of
20 person --

21 JUROR NUMBER 157: I wouldn't have any problem
22 standing up for that person.

23 MR. LEDDY: Okay. Okay.

24 THE COURT: Anything further, Mr. Leddy?

25 MR. LEDDY: Nothing further, your Honor. Thank

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1 you, ma'am.

2 JUROR NUMBER 157: Thank you.

3 THE COURT: Solicitor?

4 MR. STONE: Ms. Cronin, my name is Duffie Stone. I
5 have listened very carefully to your answers, and you're
6 the type of juror who would want to hear everything, and
7 at the end, make a determination about whether or not
8 somebody should receive the life sentence or the death
9 penalty. Is that correct?

10 JUROR NUMBER 157: That's correct.

11 MR. STONE: And if the case was bad enough, you
12 could give the death penalty.

13 JUROR NUMBER 157: I could.

14 MR. STONE: Okay. Thank you, ma'am. I don't have
15 any further questions. Thank you, your Honor.

16 THE COURT: Okay. All right. Anything?

17 MR. LEDDY: No, nothing further, your Honor. Thank
18 you.

19 THE COURT: Thank you. I appreciate it. Ma'am,
20 you are qualified to serve as a potential juror in the
21 trial of this case.

22 I'm hopeful that I get to pull this jury Monday
23 morning. This does not mean you have been chosen as a
24 juror yet, as you know. It just means you are put in a
25 pool. Again, I'm not sure how fast we're moving at this

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1 point, but I believe we'll still be doing this tomorrow.

2 What I need you to do is call in after 6:00 p.m. on
3 the juror line, which Norm's going to give you the
4 number when you leave here.

5 JUROR NUMBER 157: Okay.

6 THE COURT: After 6:00 p.m. tomorrow night, it will
7 tell you when and what time to report. Again, I
8 anticipate it being Monday at 9:30, but whatever time it
9 says, whatever day it says, come. We look forward to
10 seeing you.

11 I also need to tell you, you are not to discuss this
12 case with anyone, and you are to do absolutely no
13 independent research on anything, including the death
14 penalty or anything about this case. Again, it wouldn't
15 be appropriate to do so.

16 JUROR NUMBER 157: I understand.

17 THE COURT: Thank you.

18 JUROR NUMBER 157: Thank you.

19 THE COURT: We'll see you on Monday.

20 JUROR NUMBER 157: Okay.

21 BAILIFF: Could I have your badge, please.

22 THE COURT: Bring the next one in.

23 BAILIFF: Okay. You're free to go.

24 JUROR NUMBER 157 LEAVES COURTROOM.

25 BAILIFF: Rosaura Robertson.

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1 JUROR NUMBER 530 ENTERS COURTROOM.

2 THE COURT: Come on over here, ma'am.

3 BAILIFF: If you would, please go up there and take
4 a seat in the witness box.

5 THE COURT: Good to see you. Thank you for being
6 here, and thank you for waiting on us.

7 JUROR NUMBER 530: Yes, ma'am.

8 THE COURT: I appreciate it. I want to remind you
9 that you continue to be under the oath that you took on
10 Wednesday here to be truthful, ma'am.

11 I also want to explain to you just a few things
12 about this case. To begin with, this is a capital
13 murder case, and what that means is that the defendant
14 is charged with two charges in this case of murder, of
15 intentionally killing with what we call malice
16 aforethought, that's the definition of murder here, a
17 mother and a four-year-old child.

18 Now, in this case, the State is seeking the death
19 penalty. Now, I want to explain to you how this works,
20 because, unlike other criminal trials, this trial will
21 be tried in two different portions. The first part of
22 the trial simply determines the guilt or innocence of
23 the defendant of the two charges. Okay? And I want to
24 make sure you understand that. The jury decides whether
25 or not the defendant is guilty of murdering this mother

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1 and child. All right?

2 And then, at the second point, once you have -- if
3 the jury, in fact, does determine that, then, and only
4 then, do we go on to that second portion of the trial,
5 which is called the penalty phase.

6 At that point in the trial, you would hear
7 information from the State, which would be what they
8 would consider to be aggravating circumstances in this
9 case, which would allow this case to be a death penalty
10 case, potentially, because not all murders are
11 potentially death penalty cases.

12 The State is required to prove certain aggravating
13 factors. And in this case, the aggravating factors
14 would be a double murder, two people were killed, and
15 that one of them was a child. Okay? So, I want to make
16 sure you understand that.

17 Then, as well, during that sentencing phase, the
18 Defense will put up what they call mitigating evidence.
19 They'll talk about the history and background, and kind
20 of what brought the defendant here today, things that
21 should matter to a jury about what to consider when
22 considering a punishment.

23 So, I want to make sure that you understand and
24 appreciate that there are two different phases to this
25 trial; and that in the second phase you are going to be

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1 asked by the judge, and again, you're doing it, it's the
2 same group of people, are going to be asked to either
3 find either a verdict of life without the possibility of
4 parole, which means that person will stay in prison for
5 the rest of their natural life; or the death penalty.

6 And I want you to understand that a juror and a
7 jury in total, if they all agree, can choose to give
8 someone life without the possibility of parole for what
9 they consider to be a good reason, no reason at all, or
10 simple mercy. The jury has that power, and I want to
11 make sure you understand that; and that each individual
12 juror, during the sentencing phase, kind of has more of
13 what I would call an individual voice than they normally
14 would during a trial.

15 I would expect you all to talk about it. I would
16 expect you all to share your ideas and beliefs. But at
17 the very end of the day, you would have to decide what
18 you believe and what you think is the appropriate
19 punishment in this case, after listening to all the
20 evidence. Do you understand that?

21 JUROR NUMBER 530: Yes, ma'am.

22 THE COURT: All right. Now, at this point, I am
23 going to turn it over to the attorneys. Again, they're
24 going to ask you some questions about this case, about
25 your thoughts on the death penalty or life imprisonment

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1 without the possibility of parole. Again, just answer
2 candidly.

3 Also, you had an opportunity to go through the
4 witness list in this case. Do you have any personal,
5 professional, or social relationships with any of those
6 potential witnesses?

7 JUROR NUMBER 530: Yes, ma'am. I had one years
8 back, --

9 THE COURT: Okay.

10 JUROR NUMBER 530: -- and I'm not really sure if it
11 matters. Ms. Jerri Roseneau.

12 THE COURT: Okay. How do you know Ms. Roseneau?

13 JUROR NUMBER 530: Our daughters went to school
14 together.

15 THE COURT: Okay. Your daughters went to high
16 school together and grade school, maybe?

17 JUROR NUMBER 530: Middle school.

18 THE COURT: Middle school.

19 JUROR NUMBER 530: Yes, ma'am.

20 THE COURT: All right. And I know Ms. Roseneau's
21 daughter, Lauren, is now almost what, 24?

22 JUROR NUMBER 530: Yes, ma'am.

23 THE COURT: Okay. All right, ma'am. The fact that
24 you knew Ms. Roseneau -- she is the Clerk of Court here.
25 She really has nothing to do with the trial of this

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1 case, other than we're doing it in her courthouse.

2 JUROR NUMBER 530: Um-hmm.

3 THE COURT: She is in charge of this courthouse as
4 the Clerk of Court.

5 Additionally, ma'am, there has been some publicity
6 in this case. There's been a few things in the
7 newspaper on it and on the news. Have you read anything
8 or seen anything in regards to this case?

9 JUROR NUMBER 530: No, ma'am.

10 THE COURT: Thank you. All right. I am now
11 finally going to turn you over to the attorneys. Okay?
12 Mr. Young.

13 MR. YOUNG: Good afternoon, Ms. Robertson.

14 JUROR NUMBER 530: Good afternoon.

15 MR. YOUNG: I see that both you and your husband
16 served in the Marines?

17 JUROR NUMBER 530: Yes, sir.

18 MR. YOUNG: Thank you very much for your service.

19 JUROR NUMBER 530: Thank you.

20 MR. YOUNG: I'm going to follow up a little bit
21 with what Judge Mullen was talking to you about and how
22 this process works, how this trial will be conducted.
23 Okay? She talked to you a little bit about first we
24 would have a trial about guilt or not guilt. Okay?

25 JUROR NUMBER 530: Yes, sir.

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1 MR. YOUNG: And I want you to know that, just
2 because you and I are -- I'm going to ask you questions
3 about your views about the death penalty, I don't want
4 to, in any way, imply that I think we'll get to a
5 penalty phase.

6 JUROR NUMBER 157: Okay.

7 MR. YOUNG: Okay? So, will you agree with me that,
8 just because we're going to talk about your views about
9 the death penalty, that, that in no way implies that Mr.
10 Daise is guilty, or that you're going to hold him to be
11 guilty just because we talked about this?

12 JUROR NUMBER 530: Correct.

13 MR. YOUNG: Is that fair to say?

14 JUROR NUMBER 530: Yes.

15 MR. YOUNG: Well, we start with that first trial,
16 what the jury would be asked to determine is whether or
17 not somebody was guilty or not guilty of murder. Okay?

18 JUROR NUMBER 530: Yes, sir.

19 MR. YOUNG: And murder in South Carolina is the
20 killing of another person with malice aforethought.
21 Okay?

22 JUROR NUMBER 530: Yes.

23 MR. YOUNG: And malice aforethought, that means
24 that they had an evil intent. They meant to do it. It
25 wasn't an accident. It wasn't in self-defense. It

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1 wasn't an argument that got out of control. It was an
2 intentional, meant-to-do-it murder, and you would have
3 found that, that defendant was guilty of the
4 intentional, meant-to-do-it murder beyond any and all
5 reasonable doubt. Are you with me?

6 JUROR NUMBER 530: Yes, sir.

7 MR. YOUNG: We're still good?

8 JUROR NUMBER 530: Yes, sir.

9 MR. YOUNG: Okay. For you, just based on murder
10 alone, what are your feelings about the death penalty as
11 an appropriate punishment for somebody who's been
12 convicted of murder?

13 JUROR NUMBER 530: I agree with it.

14 MR. YOUNG: You agree with --

15 JUROR NUMBER 530: If the person was convicted and
16 find guilty, yes.

17 MR. YOUNG: Can you tell me some more about that.

18 JUROR NUMBER 530: Well, I just feel that, if there
19 is -- the person had that malice to kill somebody --

20 MR. YOUNG: Yes, ma'am?

21 JUROR NUMBER 530: -- intentionally and, in fact,
22 was proven and found guilty, why keep a person in
23 society, draining our system, when we know for sure
24 that, that person is guilty and there is no other way of
25 bringing them back to society?

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1 MR. YOUNG: Yes, ma'am.

2 JUROR NUMBER 530: Productive citizen.

3 MR. YOUNG: Right. And I think I understand what
4 you mean. If we started that second trial that we were
5 talking about, right, the penalty phase, the burden
6 would be on the State to prove what's called an
7 aggravating factor. Okay?

8 JUROR NUMBER 530: Yes.

9 MR. YOUNG: And they had to prove it unanimously to
10 all twelve jurors, all right?

11 JUROR NUMBER 530: Yes, sir.

12 MR. YOUNG: And the ones we're talking about in
13 this case are a double murder, murder of two people, one
14 of which is a four-year-old child. Okay?

15 JUROR NUMBER 530: Yes, sir.

16 MR. YOUNG: So, all the jurors would agree that,
17 that fact has been proven; guilty, guilty, malice,
18 meant-to-do-it murder of two people, one of which is a
19 four-year-old child.

20 JUROR NUMBER 530: Yes, sir.

21 MR. YOUNG: Okay? Now, once you find the existence
22 of an aggravating factor; that the State has proven that
23 to you, --

24 JUROR NUMBER 530: Yes.

25 MR. YOUNG: -- okay; are you even more firm that

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1 the death penalty is the only appropriate punishment?

2 JUROR NUMBER 530: Not necessarily. You have to
3 weigh out the -- what would be to the best way of
4 punishing that particular crime, what the options are,
5 and weigh them out. And if death penalty was the
6 ultimate result, then, I would be okay with -- with
7 that.

8 MR. YOUNG: Okay.

9 JUROR NUMBER 530: Does that make sense?

10 MR. YOUNG: Sure. And if I understand you
11 correctly, you would be okay if the sentence came out to
12 be death.

13 JUROR NUMBER 530: Yes.

14 MR. YOUNG: Okay. Would you be okay if the
15 sentence came out to be life?

16 JUROR NUMBER 530: Yes.

17 MR. YOUNG: That would be something that you could
18 do.

19 JUROR NUMBER 530: Right, if --

20 MR. YOUNG: You could find.

21 JUROR NUMBER 530: Yes, sir.

22 MR. YOUNG: And that's what you're telling me.

23 JUROR NUMBER 530: Correct. The appropriate punish
24 -- punishment for the appropriate crime, I guess that's
25 what I would -- the jury would decide as a group, that

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1 would be okay with.

2 MR. YOUNG: Okay.

3 JUROR NUMBER 530: Make sense?

4 MR. YOUNG: Sure. It does. And there's no -- like
5 I said, there's no right or wrong answers here. This is
6 just how you feel about these topics, which a lot of
7 people haven't thought very much about. Okay?

8 JUROR NUMBER 530: Okay.

9 MR. YOUNG: There's no if (a) exists and (b)
10 exists, there's no equal sign as to what the jury should
11 find as the appropriate verdict. Am I making sense?

12 JUROR NUMBER 530: Right. Yes.

13 MR. YOUNG: There's no connect the dots. If you
14 have this, and then this, then it equals this as the
15 appropriate punishment. If you have this and this, it
16 equals a different punishment. Okay?

17 It's up to each juror individually to determine
18 what punishment is appropriate for them. It's called an
19 individual moral judgment.

20 JUROR NUMBER 530: Okay.

21 MR. YOUNG: Okay?

22 JUROR NUMBER 530: Yes.

23 MR. YOUNG: And some people say, for me, in a case
24 where there's two people murdered, one of which is a
25 four-year-old child, for me, the only appropriate

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1 punishment would be the death penalty. You understand
2 that there are people like that, right?

3 JUROR NUMBER 530: Right.

4 MR. YOUNG: And my question to you is, are you one
5 of those people?

6 JUROR NUMBER 530: No.

7 MR. YOUNG: Okay. At the penalty phase of the
8 trial that we were talking about, that I have been
9 talking about for a minute, okay?

10 JUROR NUMBER 530: Yes, sir.

11 MR. YOUNG: You still with me?

12 JUROR NUMBER 530: Yes, sir.

13 MR. YOUNG: Okay. And I'm sorry. If I'm confusing
14 you, please just let me know. Okay? All right?

15 JUROR NUMBER 530: No problem, yeah.

16 MR. YOUNG: Thank you. So, the Defense would have
17 the opportunity to present to you mitigation. And the
18 Judge used that word, *mitigation*, in the penalty phase
19 of the trial. The State produces aggravation, and the
20 Defense has the opportunity to present mitigation.
21 Okay?

22 JUROR NUMBER 530: Yes, sir.

23 MR. YOUNG: Now, mitigation is things about a
24 defendant, things about his life, his background, and
25 his history. Okay?

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1 JUROR NUMBER 530: Yes, sir.

2 MR. YOUNG: They're not things about the crime.
3 Does that make sense to you?

4 JUROR NUMBER 530: Yes, sir.

5 MR. YOUNG: It's not trying to excuse the crime.
6 It has nothing to do with not trying to say it's self-
7 defense. All that stuff has been decided. Okay?

8 JUROR NUMBER 530: Yes.

9 MR. YOUNG: And you were asked a question on your
10 questionnaire about whether or not you thought that the
11 background and the circumstances of a guilty murderer
12 should be relevant to determining what penalty was
13 appropriate. Do you recall that question?

14 JUROR NUMBER 530: Yes, sir. I think so, yes.

15 MR. YOUNG: And you said, no, right?

16 JUROR NUMBER 530: Correct.

17 MR. YOUNG: Okay. Can you tell me about why you
18 said no to that?

19 JUROR NUMBER 530: Well, I guess because I'm
20 thinking if just because the person was a person that
21 stayed constantly in trouble, let's say.

22 MR. YOUNG: Yes, ma'am.

23 JUROR NUMBER 530: For whatever reasons, whether
24 the kid liked to bully the kids, the other children, or
25 because the child never finished the homework on time

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1 and didn't get good grades and self-esteem, was
2 belittled, that has nothing to do with what caused --
3 caused the case that we're at now. So, that would not
4 influence me making the decision that would be made for
5 punishment.

6 MR. YOUNG: Okay. And like I said, each juror gets
7 to decide what's important to them. Okay? Something
8 might be important to one juror that's not important to
9 another juror. Okay?

10 JUROR NUMBER 530: Right.

11 MR. YOUNG: So, you get to make up your own mind
12 about what is important to you. Okay?

13 JUROR NUMBER 530: Yes.

14 MR. YOUNG: What we need to know is whether or not
15 you can give it meaningful consideration in determining
16 which penalty is appropriate. That stuff about how they
17 grew up, whether or not they were always in trouble,
18 whether or not they helped somebody, is that stuff that
19 you could give consideration to in deciding what penalty
20 was appropriate?

21 JUROR NUMBER 530: I think I -- right, yes. I
22 think -- well, it depends on what the stuff would be, I
23 guess.

24 MR. YOUNG: Okay. Some stuff, maybe; other stuff,
25 not so much.

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1 JUROR NUMBER 530: Right.

2 MR. YOUNG: If somebody grew up poor, would that be
3 in the sort of maybe the important one, or not so
4 important one?

5 JUROR NUMBER 530: I don't think it would be so
6 important if a person grew up poor.

7 MR. YOUNG: Okay. If they had a substance abuse
8 problem with drugs and alcohol?

9 JUROR NUMBER 530: I would consider that important.

10 MR. YOUNG: That would be important.

11 JUROR NUMBER 530: Yes.

12 MR. YOUNG: And then, the Judge explained to you --
13 I'm sorry, I didn't mean to switch gears on you so fast.
14 One more thing about mitigation. Do you understand what
15 I mean when I say it doesn't have a burden on proof;
16 each juror gets to decide for himself or herself?

17 JUROR NUMBER 530: Yes, sir.

18 MR. YOUNG: The jurors could disagree about what is
19 mitigating. Okay?

20 JUROR NUMBER 530: Right, right.

21 MR. YOUNG: And each juror can decide that any one
22 mitigating factor for them is enough for them to vote
23 for a life penalty, if they want to.

24 JUROR NUMBER 530: Right.

25 MR. YOUNG: You understood that was what Judge

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1 Mullen was telling you?

2 JUROR NUMBER 530: Yes.

3 MR. YOUNG: And then, she had this other concept of
4 no reason, right? This thing or concept of mercy.

5 JUROR NUMBER 530: Right, yes.

6 MR. YOUNG: And can you tell me a little bit about
7 your concept of mercy. Do you think that mercy is
8 something that somebody earns, or is it something that's
9 freely bestowed?

10 JUROR NUMBER 530: I think the person could earn
11 it.

12 MR. YOUNG: How can somebody earn mercy?

13 JUROR NUMBER 530: The -- your sit -- your sit --
14 your situation at the moment of what caused you to do
15 what you've done, and maybe possibly your lifestyle.
16 Not -- I say lifestyle; it's not the right word. What
17 kind of citizen you are.

18 MR. YOUNG: Okay.

19 JUROR NUMBER 530: What have you done up to now
20 that would make you not a bad individual that I would
21 have mercy on you.

22 MR. YOUNG: Okay. Could you consider being
23 merciful, consider mercy for somebody that you never
24 heard from directly?

25 JUROR NUMBER 530: Yes, because I have -- I don't

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1 know them.

2 MR. YOUNG: Okay. I know that I used the phrase
3 here -- up here talking about an individual moral
4 judgment, right? And the Judge talked to you a little
5 bit about each juror makes up their own individual
6 penalty in the second trial. Okay?

7 JUROR NUMBER 530: Yes, sir.

8 MR. YOUNG: It's kind of like choosing what faith
9 is right for you. Okay? Are you with me?

10 JUROR NUMBER 530: Yes, sir.

11 MR. YOUNG: You recognize you that make personal
12 choices about what your faith is.

13 JUROR NUMBER 530: Yes, sir.

14 MR. YOUNG: And you recognize that other people may
15 make different choices about what faith is appropriate
16 for them.

17 JUROR NUMBER 530: Correct.

18 MR. YOUNG: And you certainly expect them to
19 respect their individual moral judgment.

20 JUROR NUMBER 530: Right.

21 MR. YOUNG: And you respect theirs.

22 JUROR NUMBER 530: Right.

23 MR. YOUNG: Even though they may not be the same.

24 JUROR NUMBER 530: Correct.

25 MR. YOUNG: And if you saw somebody who said, I

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1 have arrived at my individual moral judgment; I've made
2 a decision; this is my opinion; and they were being
3 bullied or yelled at, or told that their opinion was
4 wrong, would you stand up for them?

5 JUROR NUMBER 530: Yes.

6 MR. YOUNG: And say that their opinion is just as
7 valid as yours?

8 JUROR NUMBER 530: Correct. That's their beliefs.

9 MR. YOUNG: And at the end of the day, it's okay to
10 agree to disagree.

11 JUROR NUMBER 530: Correct.

12 MR. YOUNG: Okay?

13 JUROR NUMBER 530: Yes, sir.

14 MR. YOUNG: Especially when making individual moral
15 judgments.

16 JUROR NUMBER 530: Right, yes.

17 MR. YOUNG: You understand if twelve people agree
18 and they all decide at their own individual moral
19 judgment that the death penalty is appropriate; it's not
20 a recommendation; Mr. Daise would be executed.

21 JUROR NUMBER 530: Okay.

22 MR. YOUNG: Do you understand that?

23 JUROR NUMBER 530: Yes.

24 MR. YOUNG: And if twelve people agree that the
25 life penalty, in their individual moral judgment, that

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1 the life penalty is appropriate, then Mr. Daise would go
2 to prison until he died. There's no parole in South
3 Carolina.

4 JUROR NUMBER 530: Yes.

5 MR. YOUNG: Okay? Is that your understanding?

6 JUROR NUMBER 530: Yes.

7 MR. YOUNG: And if you don't agree, if twelve
8 people don't agree on what the appropriate punishment
9 is, their own individual moral judgment, Judge Mullen
10 will issue the sentence.

11 JUROR NUMBER 530: Yes, sir.

12 MR. YOUNG: Okay? It's not a hung jury. It
13 doesn't have to be done again.

14 JUROR NUMBER 530: Okay.

15 MR. YOUNG: Okay?

16 JUROR NUMBER 530: Yes, sir.

17 MR. YOUNG: Do you have any questions about
18 anything that I've been asking you about?

19 JUROR NUMBER 530: No.

20 MR. YOUNG: All right. Thank you, Ms. Robertson.
21 You've been very attentive.

22 THE COURT: Mr. Stone?

23 MR. STONE: Ms. Robertson, my name is Duffie Stone.
24 I've been listening very carefully to your answers, and
25 I understand everything. You're the type of person that

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1 would listen to everything and make a decision, whether
2 or not somebody should get life in prison or the death
3 penalty. Is that fair?

4 JUROR NUMBER 530: Yes, sir.

5 MR. STONE: And if the case was bad enough, you
6 could give the death penalty.

7 JUROR NUMBER 530: Yes, sir.

8 MR. STONE: I don't have any further questions.
9 Thank you, ma'am. Thank you, your Honor.

10 THE COURT: Thank you. Ma'am, I find that you are
11 qualified to serve as a juror in the trial of this case.
12 That does not mean you have been chosen as one. It just
13 simply means that I need to ask you to come back on
14 Monday.

15 As of right now, I'm hopeful that 9:30 in the
16 morning is when we'll be able to meet again, but
17 Norman's going to give you a phone number. I need you
18 call that phone number after 6:00 p.m. tomorrow night,
19 which is Saturday night.

20 At that point I hope I will have wrapped up meeting
21 with everybody, and that will tell you when to show up
22 and appear on Monday. Simply follow whatever the
23 instructions say and look forward to seeing you on
24 Monday.

25 JUROR NUMBER 530: Okay.

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1 THE COURT: Thank you, ma'am.

2 JUROR NUMBER 530 LEAVES COURTROOM.

3 THE COURT: Norman, I need you to bring -- I'm
4 sorry. What number is he?

5 MADAM CLERK: 277.

6 THE COURT: Can you bring in Mr. Gary Grindrod? He
7 is Number 65 on our list. He's Juror Number 277. He
8 had plans this evening, so we asked him to come in
9 early, so he had something else he had to do. We'll
10 keep him in his place, but we'll take him right now.
11 Okay?

12 MR. MCGUIRE: Is that 277?

13 THE COURT: Number -- Juror 277, yes.

14 COURT REPORTER: What was his name again?

15 THE COURT: Mr. Grindrod. It's G/r/i/n/d/r/o/d.

16 JUROR NUMBER 277 ENTERS COURTROOM.

17 BAILIFF: Your Honor, Mr. Grindrod.

18 THE COURT: Sir, come on around this way if you
19 don't mind.

20 BAILIFF: Right this way here, sir.

21 THE COURT: That's all right. Come on around.

22 BAILIFF: If you would, go up and take a seat in
23 the witness box, please.

24 JUROR NUMBER 277: Okay.

25 THE COURT: Good afternoon.

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1 JUROR NUMBER 277: Hi.

2 THE COURT: Sir, thank you for coming in today. I
3 want to remind you first that you are still under oath
4 as you were on Wednesday.

5 JUROR NUMBER 277: Okay.

6 THE COURT: Is that's agreeable with you?

7 JUROR NUMBER 277: Um-hmm.

8 THE COURT: Sir, I want to explain just a few
9 things to you about the trial of this case to help you
10 better understand what's happening. Then, I'm going to
11 turn it over to the lawyers, and they're going to be
12 permitted to ask you certain questions, your feeling
13 about the death penalty versus life imprisonment as a
14 punishment.

15 JUROR NUMBER 277: Okay.

16 THE COURT: Just to let you know, there are no
17 right or wrong answers here. It's just simply whatever
18 your feelings are, beliefs, and your opinion.

19 JUROR NUMBER 277: Okay.

20 THE COURT: I just want to explain to you very
21 quickly, and I'm sure you understand this and have
22 gathered from the questionnaire that this is a capital
23 case. The defendant in this case has been charged with
24 two counts of murder. Murder is defined in South
25 Carolina as the intentional killing of another person

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1 with malice aforethought.

2 Malice aforethought is known as kind of evil and
3 with an evil bent or an evil heart. This is done
4 intentionally. It wasn't accidental. It wasn't in
5 self-defense. It was an intentional killing.

6 JUROR NUMBER 277: Um-hmm.

7 THE COURT: In this case, the State is seeking the
8 death penalty. In doing that, our trial process is a
9 little bit different than typically even in a regular
10 murder case, because not all murder cases are possible
11 death penalty cases.

12 In a death penalty case, the trial is bifurcated.
13 We do it in two portions. It's the same jury, but we do
14 it in two sections. The first section is what's just
15 called the guilt or innocence phase. In that section,
16 the jury must determine whether or not the defendant is
17 guilty of the charges brought. If he is guilty of the
18 unlawful killing --

19 JUROR NUMBER 277: Um-hmm.

20 THE COURT: -- of another person with malice
21 aforethought, and in this case, it would be two people.
22 If, and only if, the jury found the defendant guilty, at
23 that stage would we then go on to the sentencing stage
24 or the penalty stage.

25 JUROR NUMBER 277: Um-hmm.

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1 THE COURT: And again, the jury would reconvene,
2 and at that point, the State would put forward what are
3 called aggravating factors, which would permit a jury to
4 look at and see, possibly, or think about the death
5 penalty.

6 In this case, the allegation of the aggravating
7 factors are that it is a double murder, two people were
8 killed, and that one of those people was a child.

9 JUROR NUMBER 277: Um-hmm.

10 THE COURT: And so, that was what they would be
11 putting in front of you, and they have to prove that by
12 beyond a reasonable doubt.

13 JUROR NUMBER 277: Okay.

14 THE COURT: At that point, then the Defense would
15 have the opportunity to provide for you mitigating
16 circumstances. That could be anything.

17 JUROR NUMBER 277: Um-hmm.

18 THE COURT: It could be the walk of life of the
19 defendant, what brought them there, any hardships they
20 may have had growing up, any abuse they have suffered,
21 and these are not comments on this specific defendant.

22 JUROR NUMBER 277: Right. I understand.

23 THE COURT: These are types of things. And as you
24 go along, that a jury is to consider in making a
25 decision.

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1 What I want you to understand and appreciate is
2 that South Carolina never requires the death penalty.
3 That is the decision for the jury to make. And again,
4 you can give a person convicted of murder either a life
5 imprisonment sentence or a death sentence. Of course,
6 it's heightened if it has a death sentence. But I want
7 to make sure you understand that you can consider and
8 should consider mitigating circumstances in making that
9 decision, and you can give someone a life without the
10 possibility of parole sentence for any reason, no
11 reason, or mercy alone.

12 JUROR NUMBER 277: Um-hmm.

13 THE COURT: And I just want to make sure you
14 understand and appreciate that as we go into this
15 questioning and this process.

16 Also, sir, I want to make sure, you have had an
17 opportunity to go through the witness list. Is that
18 correct? Back in the jury room?

19 JUROR NUMBER 277: Yes. Yes, ma'am.

20 THE COURT: And do you know anyone on that list,
21 either socially, personally, or professionally?

22 JUROR NUMBER 277: No, ma'am.

23 THE COURT: And additionally, there's been a little
24 bit of news coverage on this case. Have you read
25 anything, seen anything, heard anything? And I expect

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1 you, if you read the newspaper or watch the news, that
2 you possibly have, and --

3 JUROR NUMBER 277: Well, I don't watch the local
4 news, and it wasn't in the Wall Street Journal. So, no,
5 I have no --

6 THE COURT: You haven't seen anything. Very good.
7 All right. Well, you're a man after my own heart, then.
8 Sir, what I'm going to ask you simply to do now --

9 JUROR NUMBER 277: Okay.

10 THE COURT: -- is listen to the attorneys and
11 answer whatever questions they have. All right, sir?

12 JUROR NUMBER 277: Sure.

13 THE COURT: Thank you, sir.

14 MR. MCGUIRE: Good afternoon, Mr. Grindrod.

15 JUROR NUMBER 277: Hi.

16 MR. MCGUIRE: My understanding is we're taking you
17 a little bit earlier to get you off someplace.

18 JUROR NUMBER 277: I appreciate that. Thank you.

19 MR. MCGUIRE: It's our pleasure. I'm glad you
20 didn't have to wait around like some other folks.

21 So, what I'm want to do is jump right into it with
22 you. You're here as a potential juror.

23 JUROR NUMBER 277: Um-hmm.

24 MR. MCGUIRE: The case is a murder case, and the
25 State is seeking the death penalty.

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1 JUROR NUMBER 277: Um-hmm.

2 MR. MCGUIRE: Obviously, you can only seek the
3 death penalty in a murder case. And I know that you've
4 got some lawyers in your family, and a son who's 26
5 years old?

6 JUROR NUMBER 277: Yes.

7 MR. MCGUIRE: And have you talked to any of your
8 lawyer friends or relatives about your jury service and
9 being on a capital case?

10 JUROR NUMBER 277: No, I -- I guess I felt like
11 that would be inappropriate. So.

12 MR. MCGUIRE: In just general terms, what the law
13 is and stuff like that would be fine.

14 JUROR NUMBER 277: No, I thought any -- any
15 conversation with him would be --

16 MR. MCGUIRE: I see. Just better safe than sorry.

17 JUROR NUMBER 277: Just -- yeah, better safe than
18 sorry.

19 MR. MCGUIRE: Well, it wouldn't have been wrong.

20 JUROR NUMBER 277: Okay. Well.

21 MR. MCGUIRE: But just to make sure you get
22 accurate information from the horse's mouth, we'll just
23 do it right here.

24 JUROR NUMBER 277: Right.

25 MR. MCGUIRE: Okay?

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1 JUROR NUMBER 277: Okay.

2 MR. MCGUIRE: The definition of murder in South
3 Carolina, let's start there. It's the intentional,
4 unlawful killing of another human being with malice
5 aforethought, and the malice part describes the killer's
6 mental state. It describes somebody who acts with a
7 black and malignant heart, fatally bent on evil,
8 wickedness, and mischief, devoid of social duty. It's a
9 pretty heavy definition.

10 JUROR NUMBER 277: Um-hmm.

11 MR. MCGUIRE: And in layman's terms. it means an
12 intentional, deliberate act to take an innocent life,
13 with an evil intent.

14 JUROR NUMBER 277: Um-hmm.

15 MR. MCGUIRE: It's not an accident, not self-
16 defense, not a mutual fight that gets out of hand. It's
17 not somebody who's so crazy they don't appreciate right
18 from wrong.

19 JUROR NUMBER 277: Um-hmm.

20 MR. MCGUIRE: It's a deliberate choice to kill, and
21 the act is executed.

22 JUROR NUMBER 277: Um-hmm.

23 MR. MCGUIRE: And to seek the death penalty, or to
24 ask for the death penalty, the State has to come with
25 even more evidence, aggravating circumstances, or

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1 circumstances in aggravation. And the ones at issue
2 here is a double homicide. Two people are killed, a
3 woman. A mother and her four-year-old child, and shot
4 dead. And the aggravators are that two people are
5 killed, and one of the victims is a four-year-old child.

6 In that situation, what are your thoughts about the
7 death penalty as the appropriate punishment?

8 JUROR NUMBER 277: Well, I guess I -- it certainly
9 should -- I would think would be considered, but I --
10 but I guess I'd want to hear the whole story before I
11 would conclude that, that's appropriate.

12 I think as I said in my questionnaire, my bias is
13 pro-life, not only in the common sense of the word, but
14 in the -- in this sense of the word, too. But I think
15 there are circumstance -- that's why I didn't say never
16 on capital punishment.

17 MR. MCGUIRE: Sure. Sure.

18 JUROR NUMBER 277: Because I would suspect there
19 would be situations where that would be appropriate.
20 But I -- I guess, based on the information that you've
21 given me, I -- I -- I couldn't say it absolutely is or
22 it absolutely isn't. Certainly, I wouldn't say it
23 absolutely isn't appropriate, but I wouldn't say it
24 absolutely that it is, either. I mean, that's just my
25 honest reaction to it.

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1 MR. MCGUIRE: And that's exactly what we're after,
2 is your honest opinion.

3 JUROR NUMBER 277: Well, yeah. And that's what it
4 is.

5 MR. MCGUIRE: This is the one day in your life
6 where everything you say is absolutely correct. As long
7 as it's truth, as long as it's what you think, it's
8 correct.

9 JUROR NUMBER 277: Okay. All right.

10 MR. MCGUIRE: And what I hear is that the case I
11 described would put the death penalty in play and into
12 consideration.

13 JUROR NUMBER 277: Yes. I would think so.

14 MR. MCGUIRE: And you would want to hear the rest
15 of the story, so to speak.

16 JUROR NUMBER 277: Right.

17 MR. MCGUIRE: And that would be other evidence.

18 JUROR NUMBER 277: I presume. Yeah, sure.

19 MR. MCGUIRE: And evidence on both sides.

20 JUROR NUMBER 277: Right.

21 MR. MCGUIRE: The State and the Defense.

22 JUROR NUMBER 277: Right.

23 MR. MCGUIRE: And did you know -- and you can
24 certainly consider a life penalty for somebody convicted
25 a murder.

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1 JUROR NUMBER 277: Um-hmm.

2 MR. MCGUIRE: An aggravated murder.

3 JUROR NUMBER 277: Right.

4 MR. MCGUIRE: And it sounds like you're the kind of
5 fellow that, if the case is bad enough, if it's bad
6 enough for -- really, that's a bad phrase.

7 JUROR NUMBER 277: Right.

8 MR. MCGUIRE: I'm not doing --

9 JUROR NUMBER 277: I mean, you know when you see
10 it, kind of thing?

11 MR. MCGUIRE: Sure. But if it is bad enough, --

12 JUROR NUMBER 277: Right.

13 MR. MCGUIRE: -- and it moves you to that point,
14 you could vote for the death penalty.

15 JUROR NUMBER 277: Yes.

16 MR. MCGUIRE: And in the same -- well, on the other
17 side of the coin, you could consider the life penalty.

18 JUROR NUMBER 277: Yeah, I guess. Yeah, depending
19 upon what -- what's presented on both sides, yeah.

20 MR. MCGUIRE: Sure. And the way this works is, the
21 Judge told -- maybe the Judge told you or not, I can't
22 remember. It's been a long day. But capital cases are
23 broken down into two parts.

24 JUROR NUMBER 277: Right.

25 MR. MCGUIRE: A guilt phase and a penalty phase.

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1 JUROR NUMBER 277: Um-hmm. Right.

2 MR. MCGUIRE: You only get to the penalty phase if
3 you do, in fact, convict in the guilt phase.

4 JUROR NUMBER 277: Right.

5 MR. MCGUIRE: And once a jury goes into the penalty
6 phase, they change. The jury doesn't have to speak with
7 one voice anymore, and the process becomes very
8 individual. Did you know that?

9 JUROR NUMBER 277: I guess I didn't, no.

10 MR. MCGUIRE: I'm being a little vague, but we
11 always think that juries have to speak with one voice
12 and be unanimous.

13 JUROR NUMBER 277: That was my impression all the
14 way through, so I'm uninformed on that.

15 MR. MCGUIRE: No, no, no. You're like a lot of
16 people. A lot of folks come here and they think that
17 the jury absolutely has to be unanimous in penalty, life
18 penalty or death penalty, --

19 JUROR NUMBER 277: Um-hmm. Um-hmm.

20 MR. MCGUIRE: -- and if they don't reach a decision
21 one way or the other, somehow they've failed.

22 JUROR NUMBER 277: Um-hmm.

23 MR. MCGUIRE: And that's not true.

24 JUROR NUMBER 277: Okay.

25 MR. MCGUIRE: I'll tell you now that, if the jury

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1 -- and you would expect people to disagree in a matter
2 so grave and important as this.

3 JUROR NUMBER 277: Um-hmm.

4 MR. MCGUIRE: If the jury calls it a day to agree
5 to disagree, the Judge would take the case and sentence,
6 and then the case would end.

7 JUROR NUMBER 277: Okay.

8 MR. MCGUIRE: You don't have to concern yourself
9 with what the sentence might be. That's the Judge's
10 discretion. I just tell you that so you know that the
11 case would end, and it would not have to be tried again.

12 JUROR NUMBER 277: Um-hmm.

13 MR. MCGUIRE: The jury would not have failed.
14 Okay?

15 JUROR NUMBER 277: Okay.

16 MR. MCGUIRE: And we would only expect, of course,
17 you to call it a day agreeing to disagree after
18 deliberation.

19 JUROR NUMBER 277: Um-hmm.

20 MR. MCGUIRE: An exchange of ideas, an exchange of
21 viewpoints, people's feelings and opinions, we would
22 expect that.

23 JUROR NUMBER 277: Right.

24 MR. MCGUIRE: But obviously, such a deeply personal
25 and a grave responsibility is deciding a human being's

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1 fate, you could expect people to have a very strong
2 position and disagree.

3 JUROR NUMBER 277: Right. I would think so.

4 MR. MCGUIRE: Sure. And I want to go into a little
5 bit more detail about how this individual process works.
6 Okay? There's a thing called aggravation evidence.
7 That's what the State would bring to say here's a reason
8 for the death penalty. And every juror has to agree
9 it's there; you have to find it beyond a reasonable
10 doubt; and you have to decide if you were to vote for
11 the death penalty that, that's the appropriate penalty
12 beyond a reasonable doubt, all twelve people. That's the
13 only way somebody could get the death penalty.

14 If one person disagreed and didn't want to vote for
15 death, --

16 JUROR NUMBER 277: Um-hmm.

17 MR. MCGUIRE: -- the Judge would take the case.

18 JUROR NUMBER 277: Um-hmm.

19 MR. MCGUIRE: Again, with that situation.

20 JUROR NUMBER 277: Um-hmm.

21 MR. MCGUIRE: And the way that works is, mitigation
22 evidence, something that would be any reason for the
23 life penalty, any reason at all, and it could be
24 something about the facts of the crime. But it can also
25 be something about a person's walk in life, who they

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1 came to be, everything that's been done to them,
2 everything they've done to other people.

3 JUROR NUMBER 277: Um-hmm.

4 MR. MCGUIRE: Kind of their human experience. You
5 could just look into them as a human being and just say,
6 I find something, a spark of humanity, --

7 JUROR NUMBER 277: Um-hmm.

8 MR. MCGUIRE: -- something redeeming, and I'm going
9 to vote for life for that.

10 JUROR NUMBER 277: Um-hmm.

11 MR. MCGUIRE: And different jurors, if you were
12 over here on a jury, different jurors could have
13 different reasons.

14 JUROR NUMBER 277: Right.

15 MR. MCGUIRE: Somebody could say, I saw some real
16 severe hardship, and I'm going to be merciful for that.
17 Somebody could say, I saw him -- I saw the person take
18 care of a sibling or a family member in hard times. I
19 saw a spark of humanity there, something like that. And
20 somebody else could just say, I don't have the words to
21 articulate; I can't explain why for me; --

22 JUROR NUMBER 277: Um-hmm.

23 MR. MCGUIRE: -- it just doesn't sit right; I'm
24 going to vote for life and I have no reason. And you
25 can see how they can all have different reasons.

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1 JUROR NUMBER 277: Um-hmm.

2 MR. MCGUIRE: And there's no amount of proof
3 required; it's just if it just doesn't sit right, that's
4 where you are.

5 JUROR NUMBER 277: Um-hmm.

6 MR. MCGUIRE: Did you know that; how it worked like
7 that?

8 JUROR NUMBER 277: No, not really.

9 MR. MCGUIRE: But now you do.

10 JUROR NUMBER 277: Yes.

11 MR. MCGUIRE: And that's a principle you could
12 follow.

13 JUROR NUMBER 277: Um-hmm. I would think so, sure.

14 MR. MCGUIRE: And you could respect everybody's
15 different opinions.

16 JUROR NUMBER 277: I could respect, yeah, I
17 suppose. In the lucid sense of the word, yeah. I might
18 not agree with it, but I could --

19 MR. MCGUIRE: Oh, no, right.

20 JUROR NUMBER 277: -- understand they're entitled
21 to it.

22 MR. MCGUIRE: Absolutely. In fact, the Judge would
23 -- if you were selected as a juror, the Judge would give
24 everybody a juror oath.

25 JUROR NUMBER 277: Um-hmm.

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1 MR. MCGUIRE: And the juror oath would require a
2 juror to weigh all the evidence in aggravation and
3 mitigation, and come to what's described as an
4 individual moral judgment.

5 JUROR NUMBER 277: Um-hmm.

6 MR. MCGUIRE: And once somebody gets there and
7 reaches their own individual moral judgment, and it
8 would harm their conscience to change that position,
9 that would be wrong and a violation of the juror oath.
10 And so, that's why I tell you that it's important --

11 JUROR NUMBER 277: Um-hmm.

12 MR. MCGUIRE: -- for people to, once they reach
13 that individual moral judgment, to stay there.

14 JUROR NUMBER 277: Um-hmm.

15 MR. MCGUIRE: And that's why I ask you if you could
16 respect everybody's individual moral judgment.

17 JUROR NUMBER 277: Right.

18 MR. MCGUIRE: One last thing. The Judge would
19 charge, if you were a juror, and you would hear it,
20 would charge the jury that a person can vote for the
21 life penalty for any reason, any reason at all, all
22 those reasons I talked about, anybody, anything in
23 someone's background, that sort of thing; no reason; or
24 mercy. Somebody could just say mercy.

25 And somebody could actually say just -- just no

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1 reason.

2 JUROR NUMBER 277: Um-hmm.

3 MR. MCGUIRE: I don't have the words. And somebody
4 might not have the -- and you're obviously, I presume, a
5 very sophisticated person, and you have -- you're very
6 articulate in expressing yourself, but other people
7 might not be.

8 JUROR NUMBER 277: Um-hmm.

9 MR. MCGUIRE: If you saw somebody who couldn't
10 really defend their individual moral judgment or put a
11 reason to it, --

12 JUROR NUMBER 277: Um-hmm.

13 MR. MCGUIRE: -- and they were being asked to
14 compromise, --

15 JUROR NUMBER 277: Um-hmm.

16 MR. MCGUIRE: -- and you could see where it maybe
17 would harm their conscience to do so, --

18 JUROR NUMBER 277: Um-hmm.

19 MR. MCGUIRE: -- to throw in with the majority,
20 could you say, hey, you need to respect that person, and
21 protect them?

22 JUROR NUMBER 277: Yeah, I think so. Yeah, I think
23 so.

24 MR. MCGUIRE: Okay. Because there's a rule in
25 court. There are a lot of rules in court. Some of them

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1 will apply to me and to the government.

2 JUROR NUMBER 277: Um-hmm.

3 MR. MCGUIRE: But some of the rules apply to you as
4 a juror.

5 JUROR NUMBER 277: Would I be expected to do that,
6 or is that just a personal --

7 MR. MCGUIRE: That would be a personal issue.

8 JUROR NUMBER 277: Personal issue.

9 MR. MCGUIRE: But I can tell you that the law is
10 that capital proceedings, these proceedings, --

11 JUROR NUMBER 277: Um-hmm.

12 MR. MCGUIRE: -- are required to be conducted with
13 respect and dignity.

14 JUROR NUMBER 277: Um-hmm.

15 MR. MCGUIRE: So, if fairness and respect did leave
16 the jury room, --

17 JUROR NUMBER 277: Um-hmm.

18 MR. MCGUIRE: -- then, I would ask you if you could
19 step in and do something about that.

20 JUROR NUMBER 277: Um-hmm.

21 MR. MCGUIRE: Could you?

22 JUROR NUMBER 277: Yeah, if I -- if I thought it
23 wasn't being fair, sure.

24 MR. MCGUIRE: Okay. That's all I have for you,
25 sir. Thank you very much.

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1 JUROR NUMBER 277: Okay. You're welcome.

2 THE COURT: Solicitor?

3 MR. STONE: Yes, ma'am. Is it Grindrod or
4 Grindrod?

5 JUROR NUMBER 277: Grindrod. The d is silent.

6 MR. STONE: Mr. Grindrod, my name's Duffie Stone.
7 Thank you for your answers today. I think I followed
8 everything, so I just have a few follow-ups.

9 JUROR NUMBER 277: Sure.

10 MR. STONE: You would consider everything in making
11 your determination whether or not the defendant would
12 deserve a death sentence or life in prison. Is that
13 correct?

14 JUROR NUMBER 277: That's correct.

15 MR. STONE: And if the case is bad enough, you
16 could give somebody the death penalty.

17 JUROR NUMBER 277: Yes.

18 MR. STONE: Okay. Thank you, sir. That's all I
19 have.

20 JUROR NUMBER 277: Okay. Thank you.

21 MR. STONE: Thank you, your Honor.

22 THE COURT: All right. Thank you. Sir, you've
23 been qualified as a potential juror in the trial of this
24 case. That does not mean you're on the jury. It simply
25 means you've been qualified. Sir, this process --

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1 obviously, we're running a little bit behind.

2 JUROR NUMBER 277: Right.

3 THE COURT: I'm hopeful that I've finished everyone
4 by tomorrow afternoon or evening.

5 JUROR NUMBER 277: Okay.

6 THE COURT: I'm going to ask you to call after 6:00
7 p.m. tomorrow. There's going to be a juror line.

8 JUROR NUMBER 277: Um-hmm.

9 THE COURT: It's going to tell you when you should
10 report. I'm hoping it's Monday at 9:30. Whatever time
11 it says, just be here, and we're looking forward to
12 seeing you.

13 JUROR NUMBER 277: Okay.

14 THE COURT: Also, I need you to continue not to
15 discuss this case with anyone.

16 JUROR NUMBER 277: Okay.

17 THE COURT: And I'm going to order you right now,
18 don't talk to any relatives or brothers about the death
19 penalty or anything along those lines.

20 JUROR NUMBER 277: Okay.

21 THE COURT: Don't do any independent research.

22 JUROR NUMBER 277: No, I won't.

23 THE COURT: Again, do not look at this case. Go
24 home.

25 JUROR NUMBER 277: Okay.

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1 THE COURT: We looking forward to seeing you back
2 on Monday.

3 JUROR NUMBER 277: Okay. Okay.

4 THE COURT: All right, sir? Thank you.

5 JUROR NUMBER 277: Thank you for sliding me in.

6 THE COURT: Absolutely. Have a good weekend.

7 JUROR NUMBER 277: Thanks.

8 BAILIFF: Get your badge from you please, sir.

9 BAILIFF: You're free to go, sir.

10 JUROR NUMBER 277 LEAVES COURTROOM.

11 MR. MCGUIRE: I think we have Stephen Walker.

12 THE COURT: We do? Come on in, sir.

13 JUROR NUMBER 652 ENTERS COURTROOM.

14 BAILIFF: If you would, Mr. Walker, go up there and
15 take a seat in the witness box, please.

16 THE COURT: Good to see you, Mr. Walker. Good
17 afternoon. It's not quite evening yet.

18 JUROR NUMBER 652: Getting there.

19 THE COURT: We're getting there, yes, sir. Again,
20 good afternoon. Thank you so much for coming back, sir.

21 There are a number of questions that the attorneys
22 need to ask you, which is appropriate, sir. The only
23 thing that we can ask is that you be candid and honest
24 and truthful in your responses. They're going to ask
25 you your opinions on the death penalty, on the penalty

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1 of life imprisonment without the possibility of parole.

2 Additionally, I'm going to ask you a few questions,
3 and I need to remind you, sir, that you are still under
4 the oath you took on Wednesday.

5 JUROR NUMBER 652: Okay.

6 THE COURT: Is that fine with you?

7 JUROR NUMBER 652: Yes, ma'am.

8 THE COURT: Sir, I just want to explain just real
9 briefly about a capital trial or a capital case, because
10 not everyone understands what they are. So, I've kind
11 of been telling everyone in general, because it's not
12 like a normal criminal murder case.

13 In this case, it was a capital case, as I said, and
14 Mr. Daise is charged with two counts of murder. And in
15 this case, it is alleged that he did shoot and kill --
16 and again, this is an allegation, because he is presumed
17 innocent, of course, until proven guilty. The
18 allegation is that, in fact, that was murdered was a
19 child and a mother, just so you understand, sir.

20 And I want you to also understand that the State is
21 seeking the death penalty in this case, which is what
22 makes it a bit different. Certainly, just because it's
23 a murder case, doesn't mean it's eligible for the death
24 penalty. The State has the requirement of proving
25 beyond a reasonable doubt certain circumstances, what we

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1 call aggravating circumstances, and they must prove that
2 to a jury.

3 But of course, we don't even get to that portion
4 until the jury actually sits and listens and determines
5 whether or not the defendant is guilty of murder.

6 JUROR NUMBER 652: Okay.

7 THE COURT: And I will go ahead and tell you, just
8 the definition of murder in the state of South Carolina
9 is the intentional killing of another with what we call
10 malice aforethought. And malice aforethought is an evil
11 intent, an evil heart. It's not accidental; it's not in
12 self-defense; it's an intentional killing.

13 JUROR NUMBER 652: Okay.

14 THE COURT: And I want to make sure you understand
15 that, and that is what the burden is to prove guilt or
16 innocence on the State before we even get to what is the
17 second phase of the trial.

18 Again, the first phase is the guilt or innocence
19 phase, and did this person commit these crimes, and
20 then, after that, the jury has to consider the penalty,
21 And in this case, the two penalties, were you get to
22 that point, would either be life imprisonment without
23 parole or the death penalty.

24 JUROR NUMBER 652: Um-hmm.

25 THE COURT: And as I told you before, the State, to

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1 be able to ask for the death penalty, must prove these
2 aggravating circumstances, or some aggravating
3 circumstances. Specifically, in this case, it's that
4 it's a double homicide. Two people were killed, and
5 that one was a child.

6 I also want you to understand that a jury can
7 consider and give a person a sentence of life
8 imprisonment without the possibility of parole for
9 reasons whatever they choose to. It can be mitigating;
10 it can be no reasons at all; or it can be simply mercy.
11 Again, you're never required to give the death penalty.
12 I just want to make sure you understand and appreciate
13 that.

14 And you can expect that the Defense, in the penalty
15 phase, will give the jury and give you information in
16 regards to mitigating circumstances; things about the
17 character and background of the accused; that type of
18 thing; about their walk in life; their experiences
19 they've had; all to show kind of how they got there. It
20 gives a complete picture.

21 And we're here to ask you if you can do that, and
22 can consider both options of the death penalty, and also
23 the possibility of life imprisonment without the chance
24 of parole. So, to that end, sir, I know it's a lot to
25 take in at once, I know these attorneys are going to ask

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1 you some more specific questions, but I wanted to give
2 you a real brief outline of it.

3 JUROR NUMBER 652: Okay.

4 THE COURT: Also, I need to ask you, you reviewed
5 the witness list. Is there anyone on there that you are
6 personal friends with, have a professional relationship,
7 or some kind of social relationship with?

8 JUROR NUMBER 652: No, ma'am.

9 THE COURT: And there has been some publicity in
10 this case. Have you read anything, seen anything, have
11 any independent knowledge whatsoever?

12 JUROR NUMBER 652: I did read the newspaper reports
13 years ago when it -- when it happened, yes, ma'am.

14 THE COURT: Okay. And many people have, sir.

15 JUROR NUMBER 653: Right.

16 THE COURT: I want to make sure that you can, if
17 you were to sit on this jury, confine your consideration
18 in the case to what you hear in the courtroom. You
19 would have, of course, a front-row view.

20 JUROR NUMBER 652: Okay.

21 THE COURT: You would have more knowledge than
22 anyone. And you, as you well know, the newspaper's not
23 accurate, and you couldn't consider anything that maybe
24 you have read in a story or heard outside the courtroom.
25 Do you think you can do that?

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1 JUROR NUMBER 652: Yes, ma'am.

2 THE COURT: All right. I appreciate it. I'm going
3 to finally now turn you over to the lawyers.

4 JUROR NUMBER 652: Okay.

5 MR. MACDOUGALL: Good afternoon, Mr. Walker.

6 JUROR NUMBER 652: Good afternoon.

7 MR. MACDOUGALL: My name's Mark MacDougall, and I'm
8 one of the lawyers representing the defendant in this
9 case, Earnest Daise. I join in Judge Mullen's thanks to
10 you for coming in and for waiting.

11 This is unusual in the legal process in that we're
12 going to ask you questions, both the Solicitor and I,
13 and there's no right answer. And we're not going to
14 cross-examine you with a piece of paper, or we're not
15 going to ask you questions that are intended to do
16 anything other than probe how you feel about punishment
17 for capital crimes, in particular, the death penalty.

18 JUROR NUMBER 652: Yes, sir.

19 MR. MACDOUGALL: So, whatever you feel in your
20 heart and in your soul, that's your answer, and we're
21 all going to go home satisfied with that today.

22 JUROR NUMBER 652: Okay.

23 MR. MACDOUGALL: And let me add one other thing.
24 Judge Mullen gave you some sort of basic background on
25 the case, and this is a little bit of the cart before

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1 the horse, because there has been no trial. Mr. Daise,
2 as you know, sits over there presumed innocent, and
3 there may not be a penalty phase of this case, if he's
4 acquitted.

5 Nothing I'm going to say is intended to be
6 inconsistent with what Judge Mullen told you, but
7 because of the unusual nature of this, we have to
8 essentially pretend that something has happened, and
9 then try to understand what your view of it would be.
10 You okay with that?

11 JUROR NUMBER 652: Yes, sir.

12 MR. MACDOUGALL: Okay. As Judge Mullen said, in
13 this State, in South Carolina, murder is malicious. In
14 other words, anything that doesn't have within it, any
15 killing that doesn't have within it, the element of
16 malice is not murder.

17 JUROR NUMBER 652: Um-hmm.

18 MR. MACDOUGALL: So, insanity, self-defense, heat
19 of passion, all those things that, you know, we read
20 about and think about and hear about, those aren't
21 capital murder. Those are not murder with malice.

22 Malice in this state -- and I'm just going to read
23 you a little bit of the language, not because I want to
24 drop a lot of legalese on you, because it's so important
25 to understand it. Malice is something which springs

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1 from wickedness, from a depravity, from a depraved
2 spirit, from a heart devoid of social duty and fatally
3 bent on creating mischief. So, it is a severe intent to
4 kill that person, and one that is done with sort of
5 complete focus of the will.

6 JUROR NUMBER 652: Um-hmm.

7 MR. MACDOUGALL: Now, having told you all that,
8 here's my question. If you are confronted with a case
9 where you have found, and your fellow jurors have found
10 malicious murder, murder with malice, and you then have
11 to consider penalty and you've got two choices, those
12 two choice -- one choice is death and the other is life
13 without parole. And before I ask for your answer, let
14 me tell you that, in this state, life without parole
15 means you die in prison, pine box life. You're there
16 forever.

17 So, you're confronted with this, murder with
18 malice, malicious murder, the defendant is guilty -- not
19 this defendant, but a hypothetical defendant we're
20 talking about -- and you're asked to impose a sentence.
21 What's your thinking on that?

22 JUROR NUMBER 652: I would have to weigh all the
23 options and, you know, just have to get the whole case
24 presented before me, you know, to form an opinion.

25 MR. MACDOUGALL: So, you could impose a death

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1 sentence, I take it?

2 JUROR NUMBER 652: I -- yes, I don't -- if I
3 thought that's what the act entailed, yes, sir.

4 MR. MACDOUGALL: And you could impose a life
5 sentence.

6 JUROR NUMBER 652: Yes, sir.

7 MR. MACDOUGALL: No problem with that.

8 JUROR NUMBER 652: No.

9 MR. MACDOUGALL: Now, let me just take it up one
10 level, --

11 JUROR NUMBER 652: Um-hmm.

12 MR. MACDOUGALL: -- because it's important to
13 understand this is a capital case, and in South Carolina
14 capital cases require what the law calls aggravators,
15 and there's a large group of them in the statute books.
16 But the two that are here, that are alleged here, are
17 multiple murders, and in this case, the allegation is,
18 the charge is, that two people were killed. And the
19 second aggravating circumstance, the second aggravating
20 factor is that one of them was a four-year-old child.

21 JUROR NUMBER 652: Okay.

22 MR. MACDOUGALL: So, you've got murder with malice,
23 malicious murder; and then add to that you've got two
24 people dead, two victims, one of them's a four-year-old
25 child.

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1 JUROR NUMBER 652: Um-hmm.

2 MR. MACDOUGALL: What's you thinking on punishment
3 now?

4 JUROR NUMBER 652: Like I said, I would have to
5 hear the whole case, but, you know, I -- if I felt that
6 the defendant or somebody had done something like that,
7 that they should be punished to the full extent of the
8 law.

9 MR. MACDOUGALL: Okay. Let me just clarify it. By
10 the time you get to this point you've already decided
11 they've done that. You have decided as a matter of your
12 verdict -- and let me just take a step back. There's
13 two parts of the trial.

14 JUROR NUMBER 652: Um-hmm.

15 MR. MACDOUGALL: There's a guilt or innocence
16 phase, which is a criminal trial like most criminal
17 trials, where the jury, twelve, decide unanimously or
18 not whether the defendant is guilty of the crime. And
19 there's a little waiting period. And then, the second
20 trial, second part of the trial begins with the same
21 jury.

22 JUROR NUMBER 652: Um-hmm.

23 MR. MACDOUGALL: And then, that same jury that's
24 already found the defendant guilty has to decide the
25 capital punishment, yes or no. So, by the time you get

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1 to my question, you've already concluded, along with
2 eleven other jurors, that this case is a case of
3 malicious murder and has involved the killing of two
4 people, one of whom is a child.

5 Now, you're being confronted with the question,
6 what's the punishment? What's your thinking on that?

7 JUROR NUMBER 652: After -- you said after we've
8 already decided that the defendant is guilty.

9 MR. MACDOUGALL: Yes, sir.

10 JUROR NUMBER 652: If -- if he was really guilty of
11 killing a child and the mother like that, I would think
12 it would have to be the death penalty, in my opinion.

13 MR. MACDOUGALL: And just because he is -- you
14 have, at this point, decided he is guilty. The
15 defendant is guilty of killing a child and killing the
16 mother. And so, your sentence would be death.

17 JUROR NUMBER 652: Yes, sir.

18 MR. MACDOUGALL: And you're sure of that sitting
19 here today?

20 JUROR NUMBER 652: If it was presented to me, and I
21 believed that he did it, and we all agreed as a juror
22 that -- as a jury that he did it, yes, sir.

23 MR. MACDOUGALL: And is there anything that would
24 change your mind? Once you've made that decision,
25 you've all twelve agreed, guilty of malicious murder,

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1 two victims, mother and child, four-year-old child, is
2 there anything that would change your mind?

3 JUROR NUMBER 652: I would weigh all the options,
4 but probably not.

5 MR. MACDOUGALL: Okay. When you say probably not,
6 there are two options.

7 JUROR NUMBER 652: Um-hmm.

8 MR. MACDOUGALL: There's death and there's life
9 without parole. You don't have other options, so.

10 JUROR NUMBER 652: Right.

11 MR. MACDOUGALL: And again, and I apologize. This
12 is a very odd way to do business, but it's the way we
13 have to.

14 JUROR NUMBER 652: Um-hmm.

15 MR. MACDOUGALL: So, you have those two options,
16 death, life without parole, two victims, one a four-
17 year-old child, malicious murder. What's your thinking?

18 JUROR NUMBER 652: I would probably -- not
19 probably, I would say death, yes.

20 MR. MACDOUGALL: And you're sure of that.

21 JUROR NUMBER 652: Yes, sir.

22 MR. MACDOUGALL: Okay. Is there anything I could
23 tell you that would change your mind?

24 JUROR NUMBER 652: Not if we had already concluded
25 that he was guilty.

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1 MR. MACDOUGALL: You've already concluded he's
2 guilty.
3 JUROR NUMBER 652: Right.
4 MR. MACDOUGALL: And having concluded that, you're
5 certain, I take it, that your sentence would be death.
6 JUROR NUMBER 652: Yes, sir.
7 MR. MACDOUGALL: May I stand down, your Honor?
8 THE COURT: You may.
9 MR. MACDOUGALL: Thank you, sir.
10 JUROR NUMBER 652: Um-hmm.
11 MR. STONE: Mr. Walker, I'm Duffie Stone.
12 JUROR NUMBER 652: Yes, sir.
13 MR. STONE: Thank you for your honesty today, and I
14 appreciate the answers to your questions. I don't have
15 any further questions. Thank you, sir.
16 THE COURT: Sir, thank you. You are excused from
17 the trial of this case. We appreciate you being here.
18 JUROR NUMBER 652: Thank you.
19 THE COURT: Thank you, sir. Bring the next one in,
20 you all.
21 JUROR NUMBER 652 LEAVES COURTROOM.
22 JUROR NUMBER
23 BAILIFF: Robert Maroudas.
24 JUROR ENTERS 408 ENTERS COURTROOM.
25 THE COURT: Come on in, sir.

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1 BAILIFF: If you will, please, go up and take a
2 seat in the witness box.

3 THE COURT: Good afternoon, sir.

4 JUROR NUMBER 408: Good afternoon.

5 THE COURT: Good to see you, and thank you for
6 coming down. Thank you for waiting for us. There's a
7 few things I need to discuss with you, but also, and the
8 attorneys, as well, I do want to check in on you. We've
9 had a couple of conversations about your schedule over
10 the next couple of weeks. I understand that you are
11 managing owner of Red Fish Restaurant on Hilton Head,
12 and also that you are attempting to close on another
13 business or trying to get something done in Bluffton, I
14 think you told me.

15 JUROR NUMBER 408: Yes, ma'am.

16 THE COURT: Am I correct?

17 JUROR NUMBER 408: Yes, ma'am.

18 THE COURT: All that still going on?

19 JUROR NUMBER 408: Yes, ma'am.

20 THE COURT: And all that includes or necessitates
21 your involvement, correct?

22 JUROR NUMBER 408: Yes, ma'am.

23 THE COURT: Okay. I just want to make sure that,
24 that is something that still is out there. At this
25 time, we're going to go ahead and ask you a number of

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1 questions in regards to your feelings and opinions on
2 the death penalty. The only thing that we can all ask
3 is that you answer truthfully and as candidly as you
4 possibly can.

5 I remind you that you are under the oath that you
6 took on Wednesday, if that's agreeable with you.

7 JUROR NUMBER 408: Yes, ma'am.

8 THE COURT: All right, sir. And a couple of things
9 I just want to go through and make sure you clearly
10 understand for the trial of a capital case, which is
11 what this is. In this case, the defendant is charged
12 with two counts of murder, and the State is seeking the
13 death penalty in this case. Not all murder cases are
14 subject or have the possibility of a sentence of a death
15 penalty or a death sentence. It's only certain cases
16 that have -- the jury determines beyond a reasonable
17 doubt have met certain aggravating factors.

18 In this case, the case will be tried in two
19 portions. The first portion of the trial will simply be
20 whether or not the defendant was guilty of two counts of
21 murder, and I want to tell you that murder in South
22 Carolina is the intentional killing of another person
23 with malice aforethought.

24 And malice aforethought means you have evil intent.
25 You intended on doing what you did. It's not by

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1 accident; it's not in the heat of passion; it's not in
2 self-defense. It's the intentional murder of another
3 human being with what, again, malice, they call a wicked
4 heart or with a wicked spirit. It's the intent to do
5 the deed that's done.

6 Just so you understand, after that portion, and
7 only after a jury would find a defendant guilty of that
8 portion of trial would we then go into the sentencing
9 phase. The same jury comes in, in the sentencing phase,
10 and would determine the appropriate penalty for this
11 type of murder case. The appropriate penalties are
12 either life imprisonment without the possibility of
13 parole or a death sentence, sir.

14 And what I want to make sure you understand is
15 that, once the State has proven their aggravating
16 circumstances, that, in this case, the allegation is
17 that it was a double homicide, two people were killed,
18 and that one was a child; once they prove to a jury
19 beyond a reasonable doubt those aggravating
20 circumstances, the jury could consider the death penalty
21 but is never required to do that.

22 A jury can then listen to the mitigating evidence
23 and should listen to the mitigating evidence presented
24 by the defendant. And mitigation or mitigation evidence
25 is the background, the life history, the experience of

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1 the defendant, whatever it is that brought him to that
2 point in his life when he is here today.

3 And I would expect you to listen to that
4 information, sir, and at that point you can decide for a
5 good reason; for no reason at all; or for simple mercy
6 to give someone life without the possibility of parole,
7 as opposed to the death penalty, and that would be up to
8 the jury to decide. And I just want to make sure you
9 understand that, and you understand the two-part process
10 to this.

11 Also, sir, you were able to look at the witness
12 list out there while you were in the jury assembly room.
13 And I need to know if there's anyone on that list that
14 you have a personal, social, or professional
15 relationship with.

16 JUROR NUMBER 408: Well, I explained to the people
17 out there, I'm terrible with names, so there could be a
18 face I'd recognize at a later time, but I do know Bob
19 Bromage. I've dealt with him on a couple of different
20 things, you know.

21 THE COURT: Okay.

22 JUROR NUMBER 408: And I think I might have met the
23 Sheriff before, P.J. Tanner.

24 THE COURT: Okay.

25 JUROR NUMBER 408: So, that's the only two, two

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1 names that I did recognize.

2 THE COURT: All right. Well, I appreciate that.
3 But you don't have a personal, ongoing relationship with
4 Bob Bromage or?

5 JUROR NUMBER 408: No, ma'am.

6 THE COURT: Okay, sir. Additionally, there has
7 been some publicity coverage in this case. There's been
8 some things on the news or in the newspaper. Have you
9 read anything, seen anything about this, or have any
10 independent knowledge about this, other than what you've
11 heard in the questionnaire and what you've heard here in
12 the courtroom?

13 JUROR NUMBER 408: No, ma'am.

14 THE COURT: All right, sir. I appreciate it. I'm
15 going to turn you over to the lawyers. Okay?

16 JUROR NUMBER 408: Thank you.

17 THE COURT: Thank you.

18 MR. SECOR: How are you doing, sir?

19 JUROR NUMBER 408: Good. How are you doing?

20 MR. SECOR: I'm sorry, will you pronounce your name
21 -- you last name for me.

22 JUROR NUMBER 408: Maroudas.

23 MR. SECOR: Maroudas. Okay. Thank you, sir. I
24 appreciate it. Forgive me if I repeat a couple of
25 things Judge Mullen has already told you, but I just

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1 want to make sure that you and I have an understanding.
2 Okay?

3 JUROR NUMBER 408: Okay.

4 MR. SECOR: We're sort of put in a strange position
5 in talking to jurors for capital cases, because we're
6 talking about punishment when we haven't even had a
7 trial yet. And I'm not sure what your -- the extent of
8 your legal knowledge is, but I'm sure you know that a
9 person charged with a crime is presumed innocent.

10 JUROR NUMBER 408: Yes, sir.

11 MR. SECOR: And that's something you believe in,
12 right?

13 JUROR NUMBER 408: Yes, sir.

14 MR. SECOR: Okay. But because the State has made
15 the decision to seek the death penalty in this case, we
16 have to ask these questions before the trial even
17 starts. So, I just -- I'd just ask you to just
18 understand that the fact that we're having this
19 conversation is not a commentary on what may or may not
20 have happened in this case.

21 JUROR NUMBER 408: I understand, sir.

22 MR. SECOR: Okay. I appreciate that. And another
23 thing that I just want to make sure you understand so
24 that you and I are on the same page is that, the
25 definition of murder in South Carolina is the killing of

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1 another person with malice aforethought. Okay?

2 And the terminology of malice aforethought regards
3 the mental state of a person required for there to be a
4 murder. Okay? So, if I kill somebody, it's not
5 necessarily a murder, unless it's proven beyond a
6 reasonable doubt that when I killed them, I had malice
7 in my mind or in my heart. Okay?

8 And malice means intentional, premeditated evil
9 killing. I meant to do it. I wanted somebody dead, an
10 innocent person, I wanted them dead, and I killed them
11 with malice in my heart. It was not self-defense. It
12 was not that I was so intoxicated that I couldn't
13 understand what I was doing. It was not that I had a
14 mental condition that made it so that I didn't know the
15 difference between right or wrong. It wasn't like I
16 came home and found my wife in bed with another man and
17 killed him.

18 We're talking about an unjustified, inexcusable
19 killing with malice. That's the definition of murder in
20 South Carolina. Okay? Does that all make sense to you?

21 JUROR NUMBER 408: Definitely.

22 MR. SECOR: And I'm sorry it was so wordy, but I
23 just want to make sure.

24 JUROR NUMBER 408: That's okay.

25 MR. SECOR: And so, what I'd like to ask you to do

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1 is imagine yourself having been on a jury with a group
2 of other jurors and heard the facts of a case where a
3 person was charged with murder; and you and your fellow
4 jurors deliberate on all the evidence that you've seen
5 and heard; and you decide that the person unequivocally
6 is guilty of murder as I've described it to you;
7 intentional, malicious, evil killing of an innocent
8 person; what are your feelings about the death penalty
9 as being an appropriate punishment for a guilty murderer
10 like that?

11 JUROR NUMBER 408: I think it would completely
12 depend on the case individually.

13 MR. SECOR: Okay. Can you give me just any kind of
14 idea of what types of things would matter to you?

15 JUROR NUMBER 408: You know, I think that's a very,
16 you know, complex question to, you know -- as far as
17 what would matter to me would be, you know, I guess the
18 -- the complete circumstance that the murder happened
19 in.

20 MR. SECOR: Okay.

21 JUROR NUMBER 408: You know, was it, you know, what
22 was the motivating factors behind the murder?

23 MR. SECOR: I understand. Okay. Well, let me ask
24 you this, too, because what I've just described to you,
25 or the situation I just asked yourself to imagine being

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1 a part of, that was a regular murder in South Carolina.
2 Okay? And what I'd like to ask you to do now is --

3 JUROR NUMBER 408: What exactly is a regular
4 murder?

5 MR. SECOR: Well, that's a good question. In South
6 Carolina there's no degrees of murder. There's just
7 murder.

8 JUROR NUMBER 408: Um-hmm.

9 MR. SECOR: And then, there's -- the example that I
10 gave, coming home and finding your wife in bed with
11 another man, if you killed that man in that
12 circumstance, you might be found guilty of voluntary
13 manslaughter.

14 JUROR NUMBER 408: Okay.

15 MR. SECOR: Because it's like a heat-of-passion-
16 type-of-a thing.

17 JUROR NUMBER 408: Okay.

18 MR. SECOR: Does that make sense?

19 JUROR NUMBER 408: Yeah. Can I ask questions?

20 MR. SECOR: Yes, sir.

21 THE COURT: Absolutely.

22 JUROR NUMBER 408: Okay. I was just making sure
23 I'm not Okay.

24 MR. SECOR: Please.

25 JUROR NUMBER 408: Okay.

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1 MR. SECOR: Yeah. The more questions you ask, the
2 better, because I think I'm making sense, but I think
3 about this stuff all the time, you know.

4 JUROR NUMBER 408: Gotcha. Gotcha.

5 MR. SECOR: So, that would be just a regular
6 murder, and I didn't mean to belittle the concept of
7 murder by saying regular.

8 JUROR NUMBER 408: I know.

9 MR. SECOR: I just -- in South Carolina, there's no
10 first or second degree murder. But there is in South
11 Carolina capital murder. Okay? And in order for a
12 person to be guilty of capital murder in South Carolina,
13 there has to be the elements of murder as we've already
14 discussed, killing another human being with malice
15 aforethought; plus, at least one aggravating
16 circumstance. That's what the -- that's what they're
17 called, and there are a bunch of them.

18 An example of one is, if I commit murder, and the
19 person I murder is a police officer during the
20 commission of his duties as a police officer, that's
21 capital murder.

22 JUROR NUMBER 408: Um-hmm.

23 MR. SECOR: And I'm death-penalty eligible for
24 that. Okay?

25 JUROR NUMBER 408: What, in this case, makes him

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1 death-penalty eligible?

2 MR. SECOR: That's what I was just getting to, and
3 thank you for -- I should've just sped up. I'm sorry.

4 JUROR NUMBER 408: That's okay.

5 MR. SECOR: What I want you to do is envision
6 yourself on a jury who has found a person guilty of
7 murder, two murders. That is an -- that's an
8 aggravating factor, if two people are killed during the
9 course of one incident, okay? And the second
10 aggravating factor is that one of the victims is a
11 child. Okay?

12 So, I want you to imagine that you are -- you're on
13 a jury with -- you and the other jurors have found a
14 person guilty of killing two people, and one of the
15 people was a four-year-old child, and the other person
16 was the four-year-old child's mother.

17 In that circumstance, what are your feelings about
18 the death penalty as an appropriate punishment for that
19 guilty murderer?

20 JUROR NUMBER 408: It would -- it would definitely
21 be on the table.

22 MR. SECOR: It would definitely be on the table.

23 JUROR NUMBER 408: Yes, sir.

24 MR. SECOR: Okay. Do you feel like a punishment of
25 life imprisonment without parole, which is what a life

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1 punishment in South Carolina is; it means, literally,
2 life without parole. It's not like it used to be or
3 maybe it is in some other states where you can say a
4 person gets life and they really get out in ten years.

5 In South Carolina, life without parole means you go
6 in, and the only time you come out is after you're dead.
7 Do you think that life without parole is a sufficient
8 punishment for an intentional, malicious murder of a
9 woman and a four-year-old child?

10 JUROR NUMBER 408: You know, I do, but it would
11 completely depend on all the mitigating circumstances
12 that you're talking about. Without me knowing the
13 facts, it's really hard for me, you know --

14 MR. SECOR: Okay.

15 JUROR NUMBER 408: -- to -- to comment on that.

16 MR. SECOR: I understand that, and that's what I
17 would hope I would say if I was in your position and
18 asked that same question. Can I -- and I'm just going
19 to ask you about some mitigating circumstances to see
20 what resonates with you. Okay?

21 JUROR NUMBER 408: Sure.

22 MR. SECOR: Is the idea that somebody grew up in a
23 difficult environment, would that be something that you
24 would take into consideration, in terms of forming a
25 punishment for a guilty murderer of two people?

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1 JUROR NUMBER 408: And you know, I hate to, you
2 know, keep being so elusive with my answers, but you
3 know, a difficult environment, there's a lot of
4 different levels to a difficult environment, and --

5 MR. SECOR: Yes, sir.

6 JUROR NUMBER 408: -- you know, somebody having,
7 you know, not having a father in the house, you know,
8 might be difficult, you know, seem difficult to one
9 person and not to another, you know. Not being
10 financially stable might be difficult to another. You
11 know, having an abusive background in a -- in a family,
12 you know, might be another one.

13 You know, it would depend on the circumstance. I'd
14 have to really, you know, when you're talking, you know,
15 deciding somebody's life, I'd really want to know all
16 the facts that -- that -- that you know, were involved
17 in the case.

18 MR. SECOR: Yeah. Well, that's very insightful and
19 very well articulated. You said it better than I could
20 have, and I appreciate that. And it's encouraging to
21 me, because I feel like that you actually understand
22 what I'm saying. Sometimes I don't think I do a very
23 good job of explaining it.

24 JUROR NUMBER 408: I think you're doing a fine job.

25 MR. SECOR: Well, thank you. I appreciate that. A

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1 couple of other things I just want to make sure that you
2 understand about the capital punishment system in South
3 Carolina. There's no such thing as an automatic death
4 penalty offense in this state. Does that make sense?

5 JUROR NUMBER 408: Yes, sir.

6 MR. SECOR: Doesn't matter how bad the facts are,
7 the worst facts you can possibly imagine, a death
8 sentence is never required in this state whatsoever.
9 Okay?

10 JUROR NUMBER 408: Yes, sir.

11 MR. SECOR: And as the Judge told you, there is, in
12 a capital case, if there's a conviction in the first
13 phase, there's a second phase, right? Where it's
14 basically a whole second trial with regards just to the
15 punishment.

16 JUROR NUMBER 408: Um-hmm.

17 MR. SECOR: And in the first phase, the proof for
18 guilt has to be beyond a reasonable doubt to all twelve
19 jurors unanimously, right?

20 JUROR NUMBER 408: Um-hmm.

21 MR. SECOR: At the second phase, the decision on
22 punishment is an individual moral assessment by each
23 individual juror. Okay? And so, after hearing all the
24 facts and punishment that you might hear, you would go
25 back and deliberate in terms of discussing it with the

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1 fellow jurors. But ultimately, the decision about
2 whether a person lives or dies would come down
3 individually to you, and based on your own moral
4 assessment, without there being anything other than your
5 own moral judgment to guide that decision. Does that
6 make sense?

7 JUROR NUMBER 408: So, if there's twelve jurors and
8 they go six and six, is -- you know, what happens then,
9 I guess, is my question?

10 MR. SECOR: And that's a great question. If it
11 went six and six on punishment, the Judge would take the
12 case and sentence the defendant, and it would not be re-
13 tried. It would not be a hung jury; it wouldn't be a
14 mistrial. The Judge would take the case and sentence
15 the person, because as you -- I think you pointed out
16 that, in a situation of this magnitude, the weight of
17 this decision, you certainly would expect that twelve
18 people can disagree on their own moral assessment of
19 what was the right sentence, right?

20 JUROR NUMBER 408: Yes, sir. So, you don't --
21 like, it's not -- the guilty phase, you know, everything
22 has to be unanimous. In the sentencing phase, it's --
23 it could be -- if it's nine/three for or against, it
24 would go towards the majority.

25 MR. SECOR: No. No, it's not a majority. If it

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1 was -- if it was eleven for one sentence --

2 JUROR NUMBER 408: Um-hmm.

3 MR. SECOR: -- and one for another sentence --

4 JUROR NUMBER 408: It goes to her?

5 MR. SECOR: It goes to the Judge.

6 THE COURT: It would come to me.

7 JUROR NUMBER 408: Yes, ma'am.

8 THE COURT: Exactly.

9 JUROR NUMBER 408: Okay.

10 MR. SECOR: And it doesn't matter which way it, you
11 know, which way it's -- how many go one way or the
12 other.

13 JUROR NUMBER 408: Okay.

14 MR. SECOR: It doesn't matter.

15 JUROR NUMBER 408: I'm sorry, I didn't understand
16 that.

17 MR. SECOR: No, no, no. That's a lot -- it's very
18 confusing. I had to go to school for three years just
19 to learn about it, you know, and I'm still not, you
20 know, all that great. So, you're way ahead of most
21 people.

22 Another thing that I want you to understand is
23 that, in terms of mitigating circumstances, mitigating
24 circumstances are basically things that you would
25 consider to give a person a sentence of less than death,

1 or in order to give them a life sentence. And they
2 might be identified by a lawyer in a case or in the
3 evidence that came up, but the law says that jurors in
4 South Carolina are permitted to find mitigation in
5 anything that they want about the case.

6 It doesn't have to be something that's specifically
7 identified by somebody, which means that, if a juror's
8 sitting on the case just feels something about the case,
9 can't even put it into words but thinks there's
10 something about this case that makes me lean towards
11 life; and I'm going to give that one mitigating aspect
12 of this case the weight of life; and my moral assessment
13 on punishment is based on this one thing; and I'm going
14 to give somebody the life sentence for that. That's
15 what the law in this state says. And that's a lot of
16 power, I think you would agree; isn't it?

17 JUROR NUMBER 408: Yes, sir.

18 MR. SECOR: You strike me as a pretty strong-willed
19 individual. Would you agree with me on that?

20 JUROR NUMBER 408: My wife would definitely agree.

21 MR. SECOR: And I think that, if you came to your
22 own moral assessment on a decision of this magnitude,
23 you would certainly stick with it and not allow anybody
24 else to change your decision, correct?

25 JUROR NUMBER 408: Yes, sir.

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1 MR. SECOR: And I think that, if you saw somebody
2 else who had come to their own moral assessment --

3 JUROR NUMBER 408: That's their -- that's their
4 God-given right to have that opinion.

5 MR. SECOR: That's right. And if somebody was
6 trying to get them to change their own moral assessment,
7 would you step in and say, no, no, no; even though
8 mine's different than theirs, they're entitled to it,
9 and I'm going to protect them.

10 JUROR NUMBER 408: I don't know procedurally how
11 that works in a jury.

12 MR. SECOR: Okay.

13 JUROR NUMBER 408: I mean --

14 MR. SECOR: Well, like, I can tell you that the law
15 requires that these -- that the people be allowed to
16 come to their own moral assessment on punishment. Okay?
17 And that nobody -- I mean, you could discuss it, but you
18 have to come to it on your own. You have to do it by
19 yourself.

20 JUROR NUMBER 408: Okay. When you say *discuss it*,
21 so people are in a, you know, jury room where they're
22 discussing a case. Somebody has a very, you know,
23 strong opinion about one way or the other, they're not
24 allowed to reflect that opinion on somebody else.
25 They're just -- you know, I mean, that the whole

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1 deliberation process is kind of -- it's built on
2 everybody having an opinion in the room, correct?

3 MR. SECOR: Yeah, it is. It definitely is. And
4 those are things that you should certainly listen to,
5 but when it comes down to -- and I'm going to give you
6 an example of --

7 THE COURT: Mr. Maroudas, I'm sorry. I apologize.
8 I'm going to jump in for just a minute just to kind of
9 help things along, because I know it's late.

10 We expect you to, in the jury room, speak about
11 your feelings, your beliefs. And certain people are
12 going to have, you know, very strong feelings and
13 beliefs. But what we want to make sure of that's it a
14 civil exchange. We can't have people back there yelling
15 at people or trying to push them --

16 JUROR NUMBER 408: Okay.

17 THE COURT: -- to give up their heartfelt beliefs.
18 That's what he's talking about. He just wants to make
19 sure that you understand that you can't push your
20 beliefs on somebody else. If someone steadfastly
21 believes in something, everyone's entitled and must
22 listen to each other. That's the whole part of a jury.
23 You share your ideas. You bring your common experience.
24 You discuss it.

25 But what we're kind of getting at is, at the end of

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1 the day, your decision is your decision. And again, you
2 can vote for life, you can vote for death. We just want
3 to make sure the process is respected, and that's the
4 most important part, particularly when we're talking
5 about a case that is as serious as this. That's just
6 what the law requires, and that's really what he's
7 getting to. So, just to kind of cut to the chase to let
8 you know now, --

9 JUROR NUMBER 408: I understand now.

10 THE COURT: -- hopefully, that explains it better
11 to you.

12 JUROR NUMBER 408: Yes, ma'am.

13 MR. SECOR: And Judge, if I may, your Honor, just a
14 couple more things. In a capital case, at the first
15 phase, on a verdict form, there's one signature line for
16 the foreman of the jury to announce the jury's verdict.

17 At the second phase, if you get to a second phase,
18 the verdict form has twelve lines on it, and that's
19 because each individual juror has to put their name on
20 it. Okay? And that's because each line reflects each
21 individual juror's own moral assessment. And nobody can
22 put your name on that line other than you, because it's
23 your own moral assessment. And you wouldn't allow --
24 you wouldn't let somebody else sign your name to what's
25 your own moral assessment; would you?

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1 JUROR NUMBER 408: No, sir.

2 MR. SECOR: And you wouldn't allow somebody else to
3 have their name signed by somebody else --

4 JUROR NUMBER 408: No, sir.

5 MR. SECOR: -- when it wasn't a reflection of what
6 they actually believed.

7 JUROR NUMBER 408: No, sir.

8 MR. SECOR: Last thing I want to ask about is on
9 your juror questionnaire, and I appreciate you being
10 forthcoming about your feelings, but I have to tell you
11 that I'm a little bit concerned about the reference to
12 your impression of Mr. Daise as being a cruel man, --

13 JUROR NUMBER 408: Yes, sir.

14 MR. SECOR: -- based on what you read in here. And
15 I'm not faulting you for that; I'm just saying that,
16 when it comes to the presumption of innocence, that, if
17 you were seated on this jury, that the law requires and
18 our society relies on people to be able to put aside
19 those sorts of first impressions and embrace the concept
20 of the presumption of innocence.

21 JUROR NUMBER 408: Yes, sir.

22 MR. SECOR: And is that something you feel like you
23 could do? Yes?

24 JUROR NUMBER 408: Yes.

25 MR. SECOR: Thank you, sir.

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1 THE COURT: Solicitor. Sit tight.

2 MR. STONE: Mr. Maroudas, my name is Duffie Stone.
3 I've listened very carefully. My understanding, from
4 what you're telling us, is that you would hear all the
5 facts and circumstances, and make a determination based
6 on what you thought was right.

7 If you thought the sentence was appropriate to be a
8 life sentence, you would do that. And on the other
9 hand, if you felt the facts or if the case was bad
10 enough, you could give the death penalty. Is that
11 correct?

12 JUROR NUMBER 408: Yes, sir.

13 MR. STONE: I don't have any further questions.
14 Thank you, sir.

15 JUROR NUMBER 408: Thank you.

16 THE COURT: Mr. Maroudas, you've been qualified as
17 a juror in the trial of this case. It doesn't mean
18 you're on the jury, sir.

19 JUROR NUMBER 408: Okay.

20 THE COURT: We're going to continue this process
21 over the next day or two. I expect that I'm going to
22 call you all back at 9:30 Monday morning where we're
23 going to go ahead and pull the jury.

24 Out of an abundance of caution, we're going to give
25 you a phone number. I need you to call into that phone

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1 number after 6:00 p.m. tomorrow night. It's going to
2 tell you when you should report and when we're actually
3 going to do the jury draw. All right, sir?

4 JUROR NUMBER 408: Yes, ma'am.

5 THE COURT: You simply follow the instructions and
6 come. I appreciate your candor.

7 I also need to tell you that you are not to discuss
8 this case with anyone, other than to go to work and say,
9 potentially, if I have to serve, I may be gone during
10 the day, but you cannot say, obviously, what it's about.
11 You cannot do any independent research.

12 JUROR NUMBER 408: What if I've already, you know,
13 told somebody that I'm, you know, on -- have a potential
14 to be on a -- a jury that --

15 THE COURT: And that's fine.

16 JUROR NUMBER 408: Okay.

17 THE COURT: That's fine if you have the potential
18 to be on. What I don't want is anyone to give you
19 anymore information about this case. It would improper
20 for you to read about it, to look up and think about and
21 research the death penalty and those types of things.
22 You're going to have everything you need to decide the
23 case in the courtroom. I don't want you to be
24 influenced by any outside source, so I order you not to
25 do that.

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1 JUROR NUMBER 408: Yes, ma'am.

2 THE COURT: But having told somebody you've been
3 here is fine and certainly permissible. And again, if
4 you end up getting sat on this jury, I expect you to
5 need to make arrangements with your businesses to get
6 things, you know, and keep things moving, so.

7 You are like every other person who's walked in
8 here. You have a life, and we appreciate that and know
9 that you've got a business to run and a family to take
10 care of. So, we look forward to seeing you hopefully on
11 Monday.

12 JUROR NUMBER 408: Yes, ma'am.

13 THE COURT: All right, sir? Thank you.

14 THE COURT: Mr. Maroudas, thank you.

15 JUROR NUMBER 408 LEAVES COURTROOM.

16 BAILIFF: Ms. Cynthia Mills.

17 JUROR NUMBER 449 ENTERS COURTROOM.

18 BAILIFF: Right this way, ma'am.

19 THE COURT: Come on in, Ms. Mills.

20 BAILIFF: Right this way, ma'am.

21 THE COURT: Come on forward, ma'am.

22 BAILIFF: If you will please, come up and take a
23 seat in this witness box.

24 THE COURT: Good afternoon.

25 THE COURT: Good afternoon.

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1 JUROR NUMBER 449: Good afternoon.

2 THE COURT: Good to see you.

3 JUROR NUMBER 449: Who do I give this to?

4 THE COURT: Oh, yes, ma'am, you may give it to me.
5 Perfect. I appreciate it. Ma'am, there are a few
6 things I need to go over with you --

7 JUROR NUMBER 449: Okay.

8 THE COURT: -- in regards to this case. And to
9 begin with, I need to remind you that you are under the
10 oath that you took on Wednesday --

11 JUROR NUMBER 449: Okay.

12 THE COURT: -- to respond honestly and truthfully.
13 I'm going to tell you some things. I'm going to ask you
14 some questions. So are the lawyers. That's their job.

15 They're going to ask you about your opinions about
16 the death penalty, about what you think about the
17 penalty of life imprisonment without the possibility of
18 parole, those types of things. I just want you to know
19 and understand that.

20 And I also want to go through and just kind of
21 explain to you about this type of case, which is what we
22 call a capital murder case. It's different than most
23 criminal trials, and it's even different than what we
24 just call a regular murder case.

25 In this case, it's alleged the Defendant has

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1 committed two counts of murder. And in South Carolina,
2 murder is the intentional killing of another human being
3 with malice aforethought. And malice aforethought means
4 a lot of different things, people will say, but it means
5 with an evil heart. It means intentional and intended.
6 It didn't happen accidentally; it didn't happen in self-
7 defense. It was an intentional killing.

8 And the jury would be asked, in the very first
9 portion of this trial, to answer that question, whether
10 or not the defendant is guilty of murder of these two
11 counts. All right? So, that would be the first portion
12 of what you'd have to do.

13 And this trial will be bifurcated. The same jury
14 will hear both portions of it. The first one would
15 simply be did he or did he not do this crime.

16 If the jury found beyond a reasonable doubt that,
17 in fact, the defendant did commit this crime, then, we
18 would go to the second phase of the trial, which is
19 called the sentencing or the penalty phase. During the
20 penalty phase, the State is going to produce or attempt
21 to produce evidence of what are called aggravating
22 circumstances.

23 In South Carolina, there are 21 aggravating
24 circumstances that we have put out in the law, our
25 legislature has put out in the laws, that basically say,

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1 if this murder case has any of these potential factors
2 in it, a jury can consider the death penalty.

3 And the two specific factors in this case that you
4 would consider are that this was a double murder, which
5 means two people were killed in the same incident. And
6 also, additionally, the second incident would be is that
7 one of those people was a child. That is what allows
8 this case, if the jury were to find that, that, in fact,
9 occurred, to be able to consider the death penalty.

10 But what I also want to make sure you understand
11 and appreciate is that the Defense is also going to put
12 on what's called mitigation evidence during that penalty
13 phase. They're going to talk about the history and the
14 background, and again, this is only if we get to that
15 point, and it is only after a jury is convinced beyond a
16 reasonable doubt the defendant did, in fact, commit
17 these charges. The Defense is going to then put up
18 mitigating evidence, such as the background and
19 character and walk of life, and kind of everything that
20 brings the defendant here today, and that explain his
21 history and background and circumstances.

22 They do this in an effort to bring to you a full
23 picture, and you are to consider the full picture in
24 determining what you think is the appropriate sentence
25 in this case. And a sentence here can be either the

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1 death penalty or life imprisonment without the
2 possibility of parole.

3 And a jury, the law says a jury can find mitigating
4 evidence to give someone life imprisonment. They don't
5 have to find anything, or simply out of mercy say, we
6 believe the appropriate sentence is life imprisonment,
7 and that is proper, and that is appropriate and just
8 under our laws.

9 I want to make sure you understand and appreciate
10 that, because it's a little different in this case,
11 because the jury does make the sentencing determination.
12 And I want to tell you it is not a recommendation. It
13 is the sentence. So, it's serious business, and I want
14 to make sure you appreciate that.

15 I will also, additionally, ask you, there has been
16 some publicity in this case. There's been a little bit
17 in the newspaper and on the news. Have you read
18 anything or seen anything, or heard about this case, or
19 have any independent knowledge about this case
20 whatsoever?

21 JUROR NUMBER 449: I read about it.

22 THE COURT: In the newspaper?

23 JUROR NUMBER 449: And -- and saw it on T.V., yes.

24 THE COURT: And you saw it on T.V.

25 JUROR NUMBER 449: Um-hmm.

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1 THE COURT: All right. When you say you read about
2 it, did you read about it back when it occurred, or
3 recently, or?

4 JUROR NUMBER 449: When it occurred.

5 THE COURT: Okay.

6 JUROR NUMBER 449: Um-hmm.

7 THE COURT: Have you read anything recently about
8 it?

9 JUROR NUMBER 449: Let me see. Yesterday.

10 THE COURT: Yesterday. I think they were talking
11 about the parking situation.

12 JUROR NUMBER 449: Right.

13 THE COURT: Right. Okay. I want to make sure that
14 anything you may have read or heard about this case or
15 saw on T.V., you're able to put that aside, because
16 again, that's not factual in this case.

17 JUROR NUMBER 449: Um-hmm.

18 THE COURT: That's simply reporting. That isn't a
19 part of this case. You're going to have everything you
20 need, if you're chosen as a juror, right here in the
21 courtroom, and you would be required by me to listen to
22 the evidence as it's presented here.

23 You would have the best information. You would
24 have the best seat to know and understand all the things
25 that are important to this case, and I want to make sure

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1 you understand that.

2 JUROR NUMBER 449: I do.

3 THE COURT: All right. And you have provided for
4 me, and I appreciate it greatly, the people that you
5 recognized on this list, and many people, as well.

6 I need to know for each of these persons what your
7 relationship with them is, if it's personal, if it's
8 professional, if it's social.

9 JUROR NUMBER 449: Um-hmm.

10 THE COURT: If you have dinner with them; that type
11 of thing. The first one I've got on the list in Bob
12 Bromage.

13 JUROR NUMBER 449: I used to manage a bank in
14 Hilton Head, and he was one of my customers. And I've
15 been through a couple of bank robberies, and he was, you
16 know, the officer on duty.

17 THE COURT: Okay. That came and responded?

18 JUROR NUMBER 449: Right.

19 THE COURT: So, you know him in that capacity,

20 JUROR NUMBER 449: Right, right.

21 THE COURT: Also, it appears that you know Sergeant
22 Blackmon. Is that correct?

23 JUROR NUMBER 449: Yeah, I think I got a warning
24 ticket from him.

25 THE COURT: Okay. For like a traffic violation or

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1 something?

2 JUROR NUMBER 449: Yeah. Yeah.

3 THE COURT: All right. Clifford Jenkins.

4 JUROR NUMBER 449: I know him through school and
5 baseball and stuff like that.

6 THE COURT: Okay.

7 JUROR NUMBER 449: Um-hmm.

8 THE COURT: And you say you've known him through
9 school. Is he someone that you have over to dinner, or?

10 JUROR NUMBER 449: No, no.

11 THE COURT: Nothing like that.

12 JUROR NUMBER 449: No.

13 THE COURT: Just someone you've known through the
14 years.

15 JUROR NUMBER 449: Yes.

16 THE COURT: All right, ma'am. And what about
17 Patricia Sneed?

18 JUROR NUMBER 449: One of my best friends is her
19 uncle. So, I know them through --

20 THE COURT: Okay.

21 JUROR NUMBER 449: He's her uncle.

22 THE COURT: Okay.

23 JUROR NUMBER 449: So, I know her.

24 THE COURT: But again, is this someone that comes
25 to dinner at your house, or?

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1 JUROR NUMBER 449: No.

2 THE COURT: Okay. And I appreciate that. And
3 then, on the other list, I'm seeing that you know the
4 sheriff, P.J. Tanner.

5 JUROR NUMBER 449: Yeah.

6 THE COURT: How do you know the sheriff?

7 JUROR NUMBER 449: Just from work and, you know,
8 knowing he's the sheriff.

9 THE COURT: Okay. And you also know Margaret
10 Bostic, the Clerk of Court out of Jasper County.

11 JUROR NUMBER 449: Yes.

12 THE COURT: How do you know Margaret?

13 JUROR NUMBER 449: I manage a bank in Ridgeland,
14 and I stole her Clerk of Court account from another
15 bank.

16 THE COURT: Be careful saying that, I must tell
17 you. Okay. Well, I appreciate that. So, you have a
18 professional relationship with Ms. Bostic?

19 JUROR NUMBER 449: Yes, yes. Um-hmm.

20 THE COURT: All right. I appreciate that. I'm
21 going to turn you over to the attorneys now. They're
22 going to ask you some questions. Okay?

23 JUROR NUMBER 449: Okay.

24 THE COURT: Thank you.

25 MR. YOUNG: Good afternoon, Ms. Mills.

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1 JUROR NUMBER 449: Good afternoon.

2 MR. YOUNG: My name is Boyd Young. I'm one of the
3 attorneys in the case. Before I ask you some questions
4 about your views about penalties or potential penalties
5 in this case, I first need to talk to you about how --
6 I'm a little bit uncomfortable talking about penalty
7 when we haven't had a trial yet. Okay?

8 JUROR NUMBER 449: Right.

9 MR. YOUNG: And can you assure me that, just
10 because we're going to talk about these penalties or
11 potential penalties right now, that you in no way
12 presume that Mr. Daise is guilty?

13 JUROR NUMBER 449: I have not.

14 MR. YOUNG: And you will continue to presume he's
15 innocent.

16 JUROR NUMBER 449: I will.

17 MR. YOUNG: Even though we're going to talk about
18 potential penalties.

19 JUROR NUMBER 449: Exactly.

20 MR. YOUNG: Okay. And the Judge talked to you
21 about the first trial, right? The first phase of the
22 trial, guilty/not guilty of murder.

23 JUROR NUMBER 449: Right.

24 MR. YOUNG: Of two murders, one of which is a four-
25 year-old child. Okay?