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VOLUME ONE OF FOUR VOLUMES

STATE OF SOUTH CAROLINA

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In The Supreme Court

SC SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD BERNARD MOORE,

APPELLANT

RECORD ON APPEAL

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Volume One -- Status

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Richard Bernard Moore,) 00-GS-42-617;618;619
6 Defendant.) April 3, 2001
7 Spartanburg, South Carolina
8
9

10 B E F O R E:

11 HONORABLE GARY E. CLARY, JUDGE; and a jury
12
13

14 A P P E A R A N C E S:

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LINDA D. MOFFITT
Circuit Court Reporter

Volume One -- Status

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Status conference -- page 2.

No sworn testimony; no exhibits entered into evidence.

Status conference

1 (Proceedings April 3, 2001)

2 THE COURT: All right. Let the record reflect that we
3 are here on the case of the State vs. Richard B. Moore. And
4 I have been vested with exclusive jurisdiction to hear and
5 dispose of this case pursuant to an order signed by the
6 Honorable Jean Hoefer Toal on February the 22nd of 2001.

7 The purpose of this hearing today is for us to
8 ascertain where we are in the case, to set a potential trial
9 date and address any other matters that we need to at this
10 time.

11 Solicitor, anything you want to bring to my attention?

12 MR. GOWDY: No, sir, Your Honor. We are able to try
13 this case whenever Your Honor sets it.

14 THE COURT: Mr. Morin, I know that you have made a
15 motion to appoint Mr. Kelly, and I have an order on my desk.
16 He will be appointed to be second chair in this case.

17 Anything from you before we get into the planning?

18 MR. MORIN: Well, Your Honor, Mr. Moore and I have been
19 meeting since he has been arrested on this charge.

20 Mr. Kelly and I met with Mr. Moore shortly after you
21 set this hearing date. There hasn't been much time to do
22 that. There are obviously several things that we are going
23 to be requesting within the next ten days now that you have
24 been appointed. Obviously, prior to that there was no way
25 for us to get the experts that we are going to need to

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1 properly defend a case such as this. But now that you have
2 been appointed and we are having this hearing, we will be
3 able to move forward as quickly as we can.

4 You understand the situation. Hopefully, we will be
5 able to do that without too much delay, but we will need
6 some more time. And I am sure the state is prepared to go
7 forward, but we are going to need some time to get things in
8 order now that Mr. Kelly has been appointed and you have
9 been given exclusive jurisdiction.

10 THE COURT: It looks to me as if all of your discovery
11 has been filed by both the defense and the state,
12 reciprocal. Is that correct?

13 MR. GOWDY: Yes, sir, Your Honor.

14 THE COURT: And insofar as your experts and that type
15 of thing, whatever you need to bring to my attention, please
16 do so. Let's do it sooner rather than later, because the
17 options that we have in planning for the second six months
18 of this year, I know that I have a double term of general
19 sessions here in October that is beginning October the 15th,
20 the 15th and the 22nd. And I am sure that Court
21 Administration could change my schedule around to
22 accommodate whatever we need.

23 The only other time that I would want to entertain
24 trying it, so that you will have enough time, I mean, if we
25 are looking at October the 15th, that is about five or six

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1 months from now. And I wouldn't want to -- I don't think
2 that I would want to try to do it any faster than that,
3 given what you are up against.

4 The only other time would be maybe to switch my
5 schedule around to start it on November the 5th and run it
6 through the week of the 12th, or go into the first part of
7 2002.

8 So with those being your options, either October 15th
9 and 22nd, or November 5th and 12th, or after the first of
10 the year. You-all talk to me a little bit. If I don't hear
11 anything from you, then I am going to pick a date.

12 MR. MORIN: If I can just have a minute.

13 THE COURT: All right.

14 (Pause.)

15 THE COURT: Mr. Morin.

16 MR. MORIN: Your Honor, in conferring with our client,
17 we think that November the 5th through the 12th would be
18 optimal and give us plenty of time to do whatever we need to
19 do for the trial.

20 THE COURT: Solicitor.

21 MR. GOWDY: Your Honor, if it please the Court, we, of
22 course, will do it whenever the Court wants to do it. Our
23 preference is to do it in October when we are not even
24 getting close to the holidays and people's travel schedules.
25 And October presents a very neat two-week term for Your

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1 Honor. And I don't think there is that much difference in
2 terms of preparation time for the defense if we do it in
3 October.

4 We have an open file in this case. They are welcome to
5 look at anything starting this afternoon, so.

6 MR. MORIN: Your Honor, it is not so much we are
7 concerned about the state's open file policy as much as it
8 is we are talking about getting things together with people
9 that we haven't met with yet or gotten on board.

10 By doing it on November the 12th we would anticipate --
11 those extra two weeks, while it may not seem like much, is
12 going to be quite a bit for us. I understand it's the
13 holidays coming up, but it precedes any other holidays. I
14 don't see how that is going to cause any problems for
15 jurors. If they have holiday plans, they obviously are
16 going to start them up after the 12th.

17 THE COURT: One thing that I will have to do is I have
18 got a P. C. R. term November the 5th. That's the only thing
19 that in trying to shift that around, that could present a
20 potential problem for me from the standpoint of when they
21 set those terms. They normally try to do it for you to hear
22 cases that other judges have been involved in.

23 And while I know that those couple of weeks might be of
24 benefit to you, I am more inclined to do it in October
25 because that's kind of a neutral type month insofar as

Status conference

1 things going on and people going and coming. We always run
2 into problems with people having conflicts and that type of
3 thing.

4 And talking about holidays, that doesn't present a
5 problem in the early part of November. But insofar as me
6 trying to change that P. C. R. term around, I neglected to
7 see that it was a P. C. R. term. If it is a nonjury term,
8 it makes it a little bit easier.

9 But I am going to set this trial commencing on
10 October the 15th and running through the week of
11 October 22nd, if necessary.

12 Now, insofar as jury excuses are concerned, since we
13 are going to start it on the 15th, I don't know why we,
14 quite possibly -- and, madam clerk, you can help me with
15 this. Would we be able to do jury excuses about two weeks
16 before that? We can have our returns back and everything
17 produced so that the lawyers can see any problems that we
18 have with jurors. And I have got a nonjury term the week of
19 September the 24th, and I was thinking maybe on the 28th,
20 that Friday, we could just get together and do jury excuses
21 then.

22 Also, any motions that you're going to have, gentlemen,
23 I want there to be a cutoff on those of September the 14th.
24 When I say a cutoff, you should have the bulk of your
25 information that you need if you have got a problem with it

Status conference

1 by then.

2 And I am not cutting motions off, of course, but you
3 should have a real good idea of everything that you are
4 going to have that is presenting a problem that we would
5 need motions to be heard.

6 Anything that can be heard in advance of the trial
7 date, I will do that. But if we have Denno hearings or the
8 like, then once we get a jury, we will conduct those,
9 because I've already issued -- I don't know if you received
10 a copy of it, but I have issued an order admonishing
11 pretrial publicity. And basically what that says is that
12 you or anyone connected with the case is not to be
13 discussing it in the press or anywhere else, because I want
14 this case tried in the courtroom and not in the news media.

15 As a result of that, please understand that if anyone
16 calls you to talk about the case, just tell them that you
17 have no comment, because if I start reading about this case
18 in the paper, then I am going to be getting you-all back
19 together as to why.

20 And when I say anyone connected with the case, that
21 should be solicitor, victims, anyone else. I mean, you
22 know, for some reason the idea of the public wanting to know
23 about these cases is something that always troubles me
24 greatly.

25 I know in February I go to -- I went to Lexington to

Status conference

1 try a case. And when I get up on Monday morning, then I am
2 getting ready to strike a jury, I have got an eight-column
3 headline in the state paper about the case that I am getting
4 ready to try. And I can't stop that, but I can stop the
5 lawyers talking about it.

6 And I don't understand why the press wants to play
7 these things up, because where does the rights of the public
8 to know under the Constitution of the United States start
9 and stop in relation to a defendant's right to a fair trial,
10 as well as any victims that are involved?

11 You know, that's the thing that really frustrates me
12 about our system from a standpoint that you can write
13 anything or broadcast anything about a case, and you know
14 how difficult it is to get a jury in these cases.

15 So, please, keep that in mind, because I know the press
16 is always lurking, and just tell them that I have issued an
17 order prohibiting any pretrial publicity. And my clerk will
18 give you a copy of that, because it is here in the file. I
19 do that as a matter of course in any of these cases now.
20 That's the first thing that I do. And, so, please, keep
21 that in mind.

22 So, any motions, and if by the 14th of September, jury
23 excuses on the 28th, and we will just say we will do those
24 at eleven o'clock that Friday morning, the 28th. And that
25 way I can do whatever nonjury I need to before then.

Status conference

1 And then we will start the trial of the case on the
2 15th with jury selection and then move into the trial as
3 quickly as possible.

4 MR. MORIN: The only question that I have at this
5 point, is there going to be a time as far as questions that
6 we want? Are you going to send out your own or when will we
7 be able to see those questionnaires?

8 THE COURT: I will send you a copy of the questionnaire
9 that I intend to send out. If it doesn't include
10 everything, I will be glad to hear from you. As a matter of
11 fact, you will be getting that this week.

12 And, you know, our Supreme Court has issued a jury
13 questionnaire that has been used for quite some time. And a
14 lot of us have enlarged it and that type of thing.

15 Please keep in mind, gentlemen, that our case law is
16 very clear. We are not staking jurors out. We are merely
17 trying to get qualified jurors. So, any questions that you
18 want to send me, please keep that in mind.

19 I have seen most of them throughout the years. And I
20 think that my questionnaire is one that probably goes beyond
21 what the Supreme Court really envisioned. But there has
22 never been -- it has never been an issue. And I have used
23 it in Lexington and Richland and Barnwell, and here now.
24 So, and I think that it's used by a number of judges now.
25 So, keep that in mind when I send that along to you.

Status conference

1 Insofar as when we get to that point, rap sheets on
2 jurors, of course I expect the state to provide that
3 information to the defense once we get to that point.

4 Some people say, well, we don't have to do that. Well,
5 you do with me, because I think that given the posture of
6 these cases and the amount of time that we have in getting
7 ready for them that I want everybody to be on as much of an
8 equal footing as possible. And insofar as criminal records
9 are concerned, please have that ready to provide to the
10 defense.

11 And, once again, Mr. Morin and Mr. Kelly, please let me
12 hear from you in regards to any experts, that type of thing.
13 Also please keep in mind that while I anticipate certain
14 expenses, I look at them very carefully and scrutinize them
15 very carefully, because, unfortunately, a cottage industry
16 has been established with the people that work on these
17 cases. And, so, please, understand that I'm not going to
18 authorize just anything, and I am not going to give someone
19 a blank check.

20 I am not expecting them to retire on this case. I am
21 merely expecting them to provide a service in this case. As
22 long as they understand that, we won't have any problems.
23 But I do carefully scrutinize those bills and will not
24 hesitate to tell you to find another expert or look for
25 another expert. I don't need somebody coming half way

Status conference

1 across the country or half way down the Eastern seaboard.

2 A lot of times we have people right in our own back
3 yard that are capable of dealing with these issues, and I
4 look at that very closely, because, once again, I do know
5 that from the group out of Columbia, they have a list of
6 people that they try to fly all over the country. That is
7 not something I am interested in doing. Let them work in
8 their back yard and we will work in our back yard.

9 I am not trying to make a reputation for anyone. I am
10 merely trying to ensure that this man and the state receives
11 a fair trial. So, please, understand that.

12 Anything else from the state?

13 MR. GOWDY: No, sir, Your Honor. Thank you.

14 THE COURT: All right. Then I'll see you next -- if
15 you have anything to come up that we need to address, let me
16 know, because we can have a hearing very quickly. If not,
17 September the 28th.

18 MR. GOWDY: Thank you. Your Honor.

19 THE COURT: Thank you.

20 Any motions that are filed, how about sending a copy of
21 those along to me without -- and I am going to let my clerk
22 give you the state's questionnaire and the defense
23 questionnaire that you will need to be working on.

24 And, also, I will have the juror questionnaires sent
25 out to you. And you can go ahead and look at that and get

Status conference

1 me your comments back on that. And we will get that along
2 to the clerk and also get an order to the clerk drawing
3 probably 250 jurors, or 275, whatever we do, because that's
4 in excess of what we normally have then.

5 Do you know what additional terms of court we have
6 during that period of time? Do you have that?

7 I can tell you what we have got that week in addition
8 to what we have here. And starting that week, the 15th,
9 that will work out very nicely, because Judge Beatty is
10 going to be in Common Pleas in Cherokee and Judge Cole has
11 an administrative week. So that will fit in very nicely.
12 And then the second week, Judge Beatty has Common Pleas in
13 the circuit and Judge Cole will be doing General Sessions.

14 So we will be far enough along then that it won't be a
15 problem. That will be the only jury we will be bringing in
16 that Monday, and that will work out nicely. So, that seems
17 to fit pretty well, because if we went on to, as I had
18 originally suggested, the alternate date of November the
19 5th, we have got Common Pleas that is going to be going on
20 here the 5th, as well as my P. C. R. term that I would have
21 to change around. And Judge Beatty is going to be in
22 Gaffney that week doing General Sessions, but we would have
23 two juries or a mixed jury panel coming in. So I think this
24 will work out much better.

25 All right. Thank you very much. Let me see the

Status conference

1 lawyers up here, please, before you leave, please.

2 (Bench conference held off the record.)

3 THE COURT: Thank you very much.

4 END OF PROCEEDINGS APRIL 3, 2001

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Volume Two -- Motions

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Richard Bernard Moore,) 00-GS-42-617;618;619
6 Defendant.) June 8, 2001
7 Spartanburg, South Carolina

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10 HONORABLE GARY E. CLARY, JUDGE; and a jury
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Motion -- page 17.

No exhibits entered into evidence.

Motions

1 (Proceedings June 8, 2001)

2 THE COURT: All right. I believe we are here on the
3 state's motion.

4 MR. GOWDY: Yes, sir, Your Honor.

5 This is the State vs. Richard B. Moore, Indictments
6 Numbers 617, 618 and 619, GS-42.

7 Your Honor, if it please the Court, thank you, first of
8 all, for letting us have this hearing this quickly.

9 THE COURT: Yes, sir.

10 MR. GOWDY: Your Honor, under State vs. Locklair, I
11 think this Court has the discretion to order a competency
12 hearing or mental evaluation for this defendant. Whether or
13 not, frankly, a mental defense is raised, I think Your Honor
14 has the discretion to do that.

15 In looking through the file, this defendant -- evidence
16 of conduct right after the arrest that gave me some cause
17 for concern about his competency, which is why I wanted to
18 raise the issue with the Court.

19 I have Detective Steve Denton here who interviewed him.
20 There was some behavior and some comments made by this
21 defendant that are just best described as erotic, I mean,
22 erratic and odd. And that would be the basis for our asking
23 Your Honor to have him evaluated for purposes of competency
24 this early rather than waiting until we got later to the
25 trial.

Motions

1 THE COURT: All right. Mr. Morin.

2 MR. MORIN: Well, Your Honor, I am personally familiar
3 with the Locklair case, and it's my understanding that the
4 state has to have a good cause shown to invoke this type of
5 mental evaluation to be required.

6 And I would also like to say that they have served a
7 Rule Five reciprocal discovery. And I understand my
8 obligations under that at this time. I am not aware,
9 although we are working on it, of any mental health defenses
10 that may be issued, may become an issue.

11 We don't believe that the state has good cause at this
12 time to require this. I am aware of time constraints, very
13 aware of time constraints, as far as experts go.

14 I am presently in a case with Mr. Gowdy now where I've
15 learned that the hard way, but I think there is still time
16 in the event, and I expect to be able to let them know and
17 the Court know what mental health defenses may be raised by
18 the end of this month at the latest. And at that time it is
19 probably more appropriate if an order is necessary.

20 So, at this time we would oppose it, Your Honor.

21 THE COURT: Solicitor, I will be glad to hear from your
22 showing.

23 MR. GOWDY: Thank you, Your Honor.

24 May it please the Court, Your Honor, the state would
25 call Detective Steve Denton.

Steve Denton (In-camera)
Direct examination by Mr. Gowdy

1 STEVE DENTON, having been first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. GOWDY

4 THE COURT: Please be seated. State your name for the
5 record, and spell your last name.

6 THE WITNESS: My name is Steven Denton, D-E-N-T-O-N.

7 THE COURT: All right, Solicitor.

8 Q Detective Denton, were you involved in the
9 investigation into --

10 A I was.

11 Q -- an armed robbery and homicide at Nikki's Convenience
12 Store?

13 A I was.

14 Q Did you have occasion shortly after the commission of
15 the offense to be around the defendant, Richard B. Moore?

16 A I did.

17 Q And where was he when you were around him?

18 A He was in one of the emergency rooms at Spartanburg
19 Regional Medical Center's Emergency Department. I believe
20 it was room number 18, specifically.

21 Q And did you have occasion to speak with him or to
22 observe him or listen to him?

23 A I did.

24 Q And can you tell the Court some of your conversation
25 with him or some of your observation of him at the time?

Steve Denton (In-camera)
Direct examination by Mr. Gowdy

1 A I can.

2 I spoke with him briefly when I arrived at Spartanburg
3 Regional Medical Center. I knew that he was in one of the
4 rooms and was being watched by one of our uniform officers.

5 I simply read him his rights under Miranda. I wanted
6 to talk with him and try to find out exactly what happened
7 if I could do that. However, the first time that I talked
8 to him, he was -- basically, he had been shot in the arm and
9 was screaming out on several occasions probably for the five
10 minutes I was there talking about how he hurt.

11 So, I knew at that point I wasn't going to gain
12 anything, you know, anything about this case from him.
13 Probably -- I'm sorry.

14 Q Detective, how many times did he -- did he ever repeat
15 the same phrase over and over again in discussing his
16 injuries?

17 A He did. Probably if I had to estimate it, it was an
18 incredible amount, probably between 100 and 150 times the
19 five minutes I was there. That's all he said. It was
20 constant. "I hurt, I hurt. I have been shot."

21 Q After that -- you observed him for five minutes?

22 A I would approximate it to be about five minutes.

23 Q Did he receive any type of treatment for his injury?

24 A Sure.

25 Q Did you have occasion to be around him again or talk

Steve Denton (In-camera)
Direct examination by Mr. Gowdy

1 with him again after that?

2 A I did.

3 Q Tell the Court what you observed and what you heard
4 then.

5 A Evidently, Deputy Charity Brazeal who was watching the
6 defendant, she asked me to come back to the hospital, that
7 he wanted to talk to me. So, I went back up to the
8 Spartanburg Regional Medical Center to talk with him, and
9 was Mirandized again. And then I simply started asking him
10 what had happened. And he was acting very erratic.

11 Q Tell the Court what you mean by acting very erratic.

12 A I think I described it back then and still describe it
13 as an act, only something you would see in a movie, I mean.

14 Q Can you describe in as much as detail as you can for
15 His Honor what his mannerisms were? Were his words erratic?
16 Were his actions erratic?

17 A The entire time, Your Honor, he was obviously lying on
18 a hospital gurney bed. He was moving back and forth,
19 talking about he was shot, he had been shot. And he kept
20 asking me about the deceased. And I told him that the
21 deceased had been shot and was killed. And he wouldn't
22 accept that and kept swinging back and forth like, I mean,
23 looking, really not looking at anything. Just, "He shot me,
24 he shot me," just constantly.

25 There was no -- that was first opportunity I had been

Steve Denton (In-camera)
Direct examination by Mr. Gowdy

1 in an interview like that. I just -- I mean, this went on
2 for probably ten or 15 minutes.

3 Q How did he refer to -- how did he tell you that he had
4 been shot? Did he use any particular word with connection
5 with the victim? I understand it is a profane word, but I
6 think His Honor has heard it before.

7 A Right. He simply said the fucker shot me. He said
8 that over and over.

9 Q Referring to the deceased?

10 A That's right.

11 Q Was he ever able to come to grasp with the fact that
12 the victim was not in jail?

13 A He had asked me had I placed the person that shot him
14 in jail. I told him, I said, "Well, I can't do that. That
15 person is lying on the ground at his store that he works at.
16 And he is dead."

17 Q Did he accept that the first time you told him or did
18 that issue come up again?

19 A No, no. He acted like that that just couldn't have
20 happened, you know. And there were several occasions that
21 where we had gotten more detail about what had happened out
22 there when -- and I don't say that he quit acting, because
23 the whole time it was like an act. But, at the same time, I
24 questioned him about the fact, about where the gun placement
25 might have been on his part, where he might have put it. At

Steve Denton (In-camera)
Direct examination by Mr. Gowdy

1 one point he told me he might have thrown it down, and at
2 another point he told me he wasn't even there and he didn't
3 have a gun and didn't even know what I was talking about, so
4 it was kinda --

5 Q So, at one point he told you he shot the victim. And
6 then how soon thereafter did he deny even being present for
7 the crime?

8 A Just within the same conversation. I mean, I don't
9 know, seconds, 30 seconds. I don't --

10 Q Was he quiet and sedated or loud and boisterous?

11 A Loud and boisterous. Very much so.

12 The best way to describe Spartanburg Regional Medical
13 Center's emergency department is just the rooms are divided
14 by curtains. So, anything that goes on in that hospital, if
15 you're -- I will say the hallway is 40 yards long. There
16 are probably 25 rooms there. You can hear everything that
17 goes on. I mean, I have been in there literally 2,000 times
18 probably, and you can hear everything if you're just talking
19 like I'm talking right now.

20 Q Did he repeat any other phrases multiple times or from
21 your vantage point an unreasonable amount of time given the
22 fact that you were standing right in front of him?

23 A Again, what I remember and what I recall is just over
24 and over that fucker shot me. He kept on. And why isn't he
25 in jail. And, again, this went on repeatedly, I don't know,

Steve Denton (In-camera)
Direct examination by Mr. Gowdy

1 ten or 15 times.

2 Q And you advised him that the individual was, in fact,
3 dead?

4 A That's right.

5 Q And he continued to ask why was he not in jail?

6 A That's right.

7 Q Was he -- did he ever accept the fact that the victim
8 had died?

9 A I don't, I don't recall him, him saying, well, you
10 know, that's fine, or I don't recall him accepting it, no.

11 Q Going back to -- you used the word act. And you, for
12 purposes of the record, had your head up and were looking
13 around back and forth.

14 A Right.

15 Q How long did that kind of behavior last?

16 A Basically, the entire time I was there. It never
17 really stopped. I mean, it was almost like he was wanting
18 to be loud on purpose. And then he was acting this out. I
19 mean, it was to me -- I don't know that I could go back 15
20 years ago, maybe I wouldn't have caught that or understood
21 it. But, you know, just the -- my experience just tells me
22 that's what was happening. I mean, I just -- he was being
23 loud on purpose and almost acting out. I don't know, so
24 everybody possibly heard what he was saying.

25 Q During the entire course of the time that you talked

Steve Denton
Cross-examination by Mr. Morin

1 with him was his behavior fairly consistent with what you
2 have testified to so far?

3 A That's exactly how his behavior was the whole time.

4 Q And did he ever step out of character and have what you
5 would consider to be a normal conversation with you?

6 A I wouldn't, I wouldn't characterize it as being normal.
7 There may have been times where it wasn't as loud and
8 boisterous and other times where it was worse. But as far
9 as a normal conversation -- when I am interviewing somebody
10 on a homicide, what took place out there is not normal in my
11 opinion.

12 MR. GOWDY: Your Honor, those are all the questions I
13 have for Detective Denton.

14 THE COURT: Mr. Morin.

15 CROSS-EXAMINATION

16 BY MR. MORIN

17 Q Detective Denton, how long have you been investigating
18 homicides?

19 A About 11 years.

20 Q Okay. The first time you met with Mr. Moore at the
21 hospital, you say it lasted about five minutes, is that
22 correct?

23 A That's how I would characterize it, yes.

24 Q Okay. How long after the incident was that?

25 A Probably an hour.

Steve Denton
Cross-examination by Mr. Morin

- 1 Q Okay. And the second time you interviewed him was how
2 much farther -- you talked -- five minutes elapsed, and then
3 you came back. What was the time period?
- 4 A Probably 30 minutes to an hour.
- 5 Q Okay. And he was in the emergency room the whole
6 time --
- 7 A That's correct.
- 8 Q -- being treated for a gunshot wound.
- 9 A That's correct.
- 10 Q In fact, when he was arrested he passed out from his
11 injuries, is that correct?
- 12 A That's correct.
- 13 Q Okay. And who shot him?
- 14 A The deceased.
- 15 Q So when he was saying "He shot me, he shot me," that
16 was true.
- 17 A Oh, absolutely.
- 18 Q Okay. Now, what kind of medication was he on at the
19 time you saw him in the E. R?
- 20 A I have no idea.
- 21 Q Okay. And what kind of treatment had he received?
- 22 A The first time that I was in there, again, I have no
23 idea if he had received treatment at that point or not. I
24 would imagine that they would have triaged and done the
25 normal thing but --

Steve Denton
Cross-examination by Mr. Morin

1 Q In your 11 years how many times have you interviewed a
2 suspect who had been shot and was being treated for a
3 gunshot wound to himself?

4 A Fifty times.

5 Q Fifty times?

6 A Sure. That may be a small number.

7 Q Okay. And you say in your 11 years the way he was -- I
8 don't want to repeat it -- the way he was acting, you feel
9 like it was just an act in your experience, is that right?

10 A I think the loud and boisterous part, I would
11 characterize maybe as that. The acting part, you know, I'm
12 not sure.

13 Q Have you been shot yourself, Detective Denton?

14 A No.

15 Q Okay. But at the time he was being loud and boisterous
16 he had been shot and was somewhere in the process of being
17 treated and may or may not have been medicated at the time.

18 A That's true.

19 Q And after that you didn't speak to Mr. Moore any more
20 after that second time, did you?

21 A That's correct.

22 Q So in total you spent 15 to 20 minutes in his presence.

23 A Thirty minutes probably.

24 Q Somewhat speaking and sometimes him just talking about
25 various things, is that right?

Motions

1 A That's correct.

2 MR. MORIN: That's all I have, Your Honor.

3 THE COURT: Anything else, Solicitor?

4 MR. GOWDY: Nothing on redirect, Your Honor.

5 THE COURT: Thank you, sir. You can step down.

6 Anything else, Solicitor?

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

8 THE COURT: All right. Mr. Morin, do you have anything
9 you want to present?

10 MR. MORIN: No, sir.

11 THE COURT: Solicitor, I will be glad to hear from you.

12 MR. GOWDY: Your Honor, under Locklair Your Honor has
13 the discretion.

14 I am sure that Mr. Morin will let me know if he is
15 going to raise a mental defense, but, even more than that,
16 Your Honor has a duty beyond that to make sure this
17 defendant is competent.

18 Come October, the testimony of Detective Denton is that
19 his behavior was erratic and odd, that he was looking
20 around. He repeated the same phrase between a hundred and
21 150 times. That just gave me cause for concern to bring it
22 to Your Honor's attention so that Your Honor could exercise
23 his discretion in determining whether or not the issue of
24 competency was raised such that it would be good for this
25 defendant to be evaluated.

Motions

1 THE COURT: Mr. Morin.

2 MR. MORIN: Thank you, Your Honor.

3 Your Honor, to begin with, in Locklair the state had
4 made a good showing by the fact that the defense made the
5 Court aware and the defense aware that guilty but mentally
6 ill was going to be raised. That was good cause shown by
7 the state.

8 In this case we haven't made that determination yet.
9 From my spending time with Mr. Moore over the last 18
10 months, I don't believe that is going to be a defense.

11 The issues that have been brought to you today,
12 basically Mr. Gowdy terms is as he's acting erratically.
13 This is a person who has been shot who is saying he was shot
14 by a particular person -- they have no dispute with that --
15 who had passed out the from the injury he received. They
16 admit that. They don't know what medication or what
17 treatment he had received. He was in the hospital at that
18 time.

19 I submit that what they are calling erratic behavior is
20 simply a function of the fact that the defendant had been
21 shot and was somewhere -- we don't know where -- somewhere
22 in the midst of being treated.

23 I don't think that any of the things that they have
24 testified to or were presented to the Court today are any
25 way out of character with someone who has been shot and is

Motions

1 concerned about not only -- I mean, he is obviously in pain.
2 He may have been treated. He is identifying the person who
3 shot him. And the fact that -- and another fact, you know,
4 there seems to be some stressing about whether or not the
5 defendant accepted the other person was killed. I don't
6 think that that is a function of mental illness, or of any
7 type. That's just wanting to deny that someone's died.

8 Even Detective Denton says he doesn't believe --
9 believe that there was anything wrong with Mr. Moore in his
10 11 years of taking, doing, these things. He says he has met
11 more than 50 people that have done this.

12 Well, if he didn't believe him, then how can they ask
13 the Court to say that's a reason why we think we have good
14 cause to show that he should be evaluated?

15 I think it's premature at this time. I don't think
16 that we're in a situation where that this needs to be heard
17 because we're up against a time limit yet. If there is
18 going to be mental health, mental issue, whether it be not
19 guilty by reason of insanity or guilty but mentally ill, as
20 I've already told the state, I expect to be able to have a
21 good grasp of that by the end of this month.

22 If that happens, we certainly could have one scheduled.
23 I understand that Locklair gives you that power; however,
24 Locklair also states that the state has to make a good
25 showing of good cause as to why that's needed to be done.

Motions

1 And the state hasn't shown any good cause here today.

2 THE COURT: Anything else, Solicitor?

3 MR. GOWDY: Your Honor, only that my reading of
4 Locklair is a little bit different.

5 I don't know that Your Honor is bound by my ability or
6 inability to show good cause. Your Honor has a duty as it
7 relates to the competency of defendants that supersedes
8 anything that the state is or is not able to show.

9 Whether or not this defendant is competent is
10 ultimately something that the Court is primarily concerned
11 with, him being able to assist in his defense. His conduct
12 after his arrest was sufficiently erratic and odd that I
13 thought I should bring it to the Court's attention.

14 THE COURT: Well, Mr. Morin, while I agree with you as
15 to certain things that Locklair says, I believe that Section
16 44-23-410 gives me the inherent authority to order an
17 evaluation at any time.

18 So, while I understand Chief Justice Toal's opinion, I
19 believe that, you know, certainly that is within the scope
20 of my authority.

21 I think based upon what I have heard here today though,
22 I don't know that I am going to order one at this time,
23 Solicitor.

24 But, Mr. Morin, I will tell you this. If we get up
25 against a timeframe and then it becomes an issue, the public

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1 defender's office may be paying for any waste of time. So
2 understand that, because, you know, I'm not going to have
3 you come in here late in the summer and tell me that it's an
4 issue, it's going to be a defense, because then I'm going to
5 be coming down on you. Because, quite frankly, if it is
6 going to be any potential issue, you will let me know by the
7 end of June. And, if not, then I will assume that it's not
8 going to be an issue, because I know the direction in which
9 you're going.

10 And, you know, if there is anything that interferes
11 with this trial date, short of sickness of one of the
12 lawyers or something like that, I am not going to be
13 pleased.

14 MR. MORIN: No, sir. And I can say nobody on the
15 defense side wants that date interfered with either. And I
16 understand what --

17 THE COURT: Well, just rest assured it's not going to
18 be interfered with, regardless of what the defense wants.

19 MR. MORIN: Yes, sir.

20 THE COURT: Because you had ample time, more than ample
21 time, to get this case ready.

22 MR. MORIN: Yes, sir.

23 THE COURT: And, so, if I don't hear anything from you
24 by June the 30th, then I'm going to assume that that is not
25 going to be an issue, and it will not be raised. Because if

Motions

1 it is, then I will deal with that appropriately.

2 MR. MORIN: Yes, sir.

3 MR. GOWDY: Thank you, Your Honor.

4 THE COURT: Thank you.

5 END OF PROCEEDINGS JUNE 8, 2001

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Volume Three -- Jury excuses and motions

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Richard Bernard Moore,) 00-GS-42-617;618;619
6 Defendant.) September 28, 2001
7 Spartanburg, South Carolina
8
9

10 B E F O R E:

11 HONORABLE GARY E. CLARY, JUDGE; and a jury
12
13

14 A P P E A R A N C E S:

15 HAROLD W. GOWDY, III, ESQUIRE
16 BARRY J. BARNETTE, ESQUIRE
17 JAMES DONALD WILLINGHAM, II, ESQUIRE
18 Attorneys for the State

19 RALPH KEITH KELLY, ESQUIRE
20 MICHAEL DAVID MORIN, ESQUIRE
21 JENNIFER JOHNSON, ESQUIRE
22 Attorneys for the Defendant
23
24

LINDA D. MOFFITT
Circuit Court Reporter

Volume Three -- Jury excuses and motions

INDEX

Jury excuses and motions -- page 36.

No sworn testimony; no exhibits entered into evidence.

Jury excuses and motions

1 THE COURT: All right. Let the record reflect that we
2 are here in the case of the State vs. Richard Bernard Moore
3 for the purpose this day of entertaining jury issues.

4 The clerk of court has prepared a list of various
5 reasons why individuals seek to be excused from service on
6 the jury.

7 We are going to -- I think that she has given you a
8 copy of this list if I am not mistaken. And we are just
9 going to take it from the top at the noncitizen, Number 298.

10 Does the state have any comment concerning that?

11 MR. GOWDY: Your Honor, may it please the Court, we
12 have broken them down by number and divided them among the
13 three. So, when you see different ones popping up, that's
14 the reason.

15 THE COURT: No problem.

16 MR. WILLINGHAM: Your Honor, 298, I have got in front
17 of me, indicated on his jury summons that he is a non-U. S.
18 citizen. That would disqualify him from being a juror.

19 MR. KELLY: No objection, Your Honor.

20 THE COURT: All right. Number 298 will be excused as
21 he is a resident apparently of New Zealand.

22 All right. Number 15 seeking to be excused, having
23 children under the age of seven.

24 Solicitor, anything from you on that?

25 MR. GOWDY: Your Honor, she apparently has children

Jury excuses and motions

1 ages two and five. And she represents that she is a
2 stay-at-home mother, which I don't have any reason to doubt
3 that that is the case. And we would not oppose her request
4 to be excused or transferred.

5 MR. KELLY: No objection, Your Honor.

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

7 Number 15 is excused pursuant to Statute 14-7-860.

8 All right. Number 55 has one child under age seven.

9 What says the state?

10 MR. GOWDY: Your Honor, the same as the juror before.

11 I have nothing to indicate that she would not meet that
12 exemption.

13 THE COURT: What says the defense?

14 MR. KELLY: Judge, at this time the defense would
15 object to Number 55 being dismissed.

16 We have no reason to doubt that the lady has a
17 six-year-old child, but we would point out to the Court for
18 the Court's consideration that this lady is employed full
19 time. She has three children, but the other two children
20 are, I believe, 12 and 14 years of age.

21 Also, she indicates that she is married. She is 40
22 years of age. She obviously has daycare for her
23 six-year-old; or I might submit to the Court that in all
24 likelihood the 14-year-old may well be providing
25 after-school care school for a first grader for a few hours

Jury excuses and motions

1 in the event that both parents work at the same time. I
2 can't tell exactly what time she works full time.

3 But, nonetheless, we submit that statute is intended
4 for a stay-at-home mom who generally takes care of a child
5 less than seven years of age. And that is not the case
6 here.

7 For that reason, we would respectfully ask the Court to
8 require her to appear.

9 THE COURT: Well, Mr. Kelly, if this were a normal
10 case, I would question the juror as to whether or not they
11 were employed full time. However, this is not an unusual --
12 a usual case in that this jury would be sequestered.

13 And looking at the statute, it doesn't say anything
14 about a stay-at-home mom. I think that as judges we apply
15 that a lot of times because jurors or potential jurors will
16 use that in a regular term of court to try to be excused
17 when we operate under normal hours.

18 But given the fact that this individual, if she were
19 selected, would be sequestered, I am not going to go through
20 the process of trying to qualify someone, and then once they
21 get here the day that we get ready to strike that jury, they
22 have got a problem with their children.

23 So, as such, she qualifies under Statute 14-7-860, and
24 I will excuse her.

25 MR. KELLY: Thank you, Judge.

Jury excuses and motions

1 THE COURT: Number 190.

2 What says the state?

3 MR. WILLINGHAM: Your Honor, Mrs. Morrow has an
4 eight-month-old little girl. I believe that would qualify
5 her to not serve on this jury.

6 MR. KELLY: No objection.

7 THE COURT: All right. She is excused pursuant to
8 statute.

9 All right. We have two, four, six individuals who are
10 deceased; Number 24, 26, 97, 111, 134 and 159.

11 What says the state concerning those?

12 MR. GOWDY: Your Honor, we obviously would have no
13 objection to taking those names off the list.

14 THE COURT: The defense?

15 MR. KELLY: No objection.

16 THE COURT: They are excused pursuant to statute. Good
17 thing, because I don't believe we could get them here.

18 All right. Students. Number 58 who is a full-time
19 student at the University of South Carolina School of Law.
20 That probably should disqualify that individual, if nothing
21 else.

22 MR. KELLY: I would like to have him, Judge, but --

23 MR. GOWDY: Your Honor, the only thing I can say in his
24 support is he is also a Clemson University graduate.

25 THE COURT: Well, that's a gold star in his crown. And

Jury excuses and motions

1 I heard that, Mr. Kelly.

2 All right. No objection to him being excused?

3 MR. GOWDY: No objection, Your Honor.

4 MR. KELLY: No objection.

5 THE COURT: All right. Number 131.

6 MR. WILLINGHAM: Your Honor, he is a professor at
7 Converse College. According to his questionnaire, he would
8 have to cancel classes for two weeks. There is nobody to
9 substitute teach for him.

10 THE COURT: What says the defense?

11 MR. KELLY: Judge, we would like for him to be with us.
12 He is a college professor. There is no real indication
13 about how many classes he teaches, and he is not a full-time
14 student. He is, in fact, a professor of chemistry at
15 Converse College.

16 THE COURT: What does Section 14-7-845 say? Does it
17 limit college professors? Doesn't it say education, high
18 school or institution of higher learning?

19 MR. KELLY: Yes, sir.

20 THE COURT: I will excuse this person pursuant to
21 Section 14-7-845.

22 183.

23 MR. WILLINGHAM: Your Honor, she is a 20-year-old
24 student at Converse College. I believe she would also
25 qualify to be excused.

Jury excuses and motions

1 MR. KELLY: No objection.

2 THE COURT: All right. 183 is excused pursuant to
3 14-7-845.

4 285.

5 MR. BARNETTE: Your Honor, she is a student at Lander.
6 She is in her fall senior year there. We think that she
7 should be excused also.

8 MR. KELLY: No objection.

9 THE COURT: All right. Madam clerk, insofar as 58,
10 131, 183 and 285 are concerned, let's transfer them to a
11 term that does not conflict with their school
12 responsibilities.

13 MR. KELLY: Judge, if I could, in reviewing my notes
14 real quickly, I think Number 122 is also a full-time
15 student. That may have come in this morning or something,
16 but I believe --

17 THE COURT: Okay. Let me look and see.

18 Thank you, sir.

19 MR. KELLY: Presbyterian College. That is correct.

20 MR. GOWDY: Your Honor, on 122 looking at what he has
21 sent in from Presbyterian College, it appears that the last
22 time he was a full-time student was in May of 2001. He
23 lists full-time student as his occupation before his present
24 employment, and he lists his present employment at the Pool
25 and Spa Connection. So, there is a little bit of ambiguity

Jury excuses and motions

1 from our perspective on whether or not he is, in fact, still
2 a student. I know he represented that on one line, but on
3 another line he represented that he had a job and that his
4 prior occupation was full-time student.

5 THE COURT: Well, the only thing here, we've received
6 this from P. C. on the 17th of September. And it looks as
7 if he is enrolled in his junior year for 16 hours.

8 I may need to counsel him a little bit, because it says
9 that his major is undeclared. If he were my child, I
10 believe that he would be declaring some kind of major by his
11 junior year for sure, so.

12 MR. GOWDY: I did not see that. Your Honor is correct.
13 And he does look to be a full-time student.

14 THE COURT: All right. He is going to be transferred
15 to a later term of court.

16 All right. Number 31, a nonresident. Looks like he is
17 now a resident of Arlington, Texas.

18 MR. KELLY: No objection.

19 MR. GOWDY: Yes, sir.

20 THE COURT: All right. He is not qualified pursuant to
21 Section 14-7-130 of our code.

22 All right. Then we have a number who are seeking their
23 age exemption pursuant to Section 14-7-840. Number 8, 9,
24 27, 50, 68, 75, 86, 87, 107, 109, 132, 147, 154, 165, 181,
25 189, 195, 218, 222, 224, 238, 245, 249, 254, 268, 276; and

Jury excuses and motions

1 then 129 and 135.

2 Is there any objection from the state as to those
3 individuals, or any question about them being more than 65?

4 MR. WILLINGHAM: Your Honor, Juror Number 132, Edward
5 Huffman, has on his questionnaire that he is 30 years old or
6 lists on his jury information card that he is 30 years old.

7 THE COURT: All right. Well, it would be interesting
8 to note if we have the right Edward T. Huffman if that is
9 the case.

10 MR. BARNETTE: I know on the sheet that I was given by
11 the clerk's office it shows his birth date being 1971.

12 THE COURT: Madam clerk, can you give me some -- can
13 you enlighten me on that one?

14 THE CLERK: I think it was an error on our part.

15 THE COURT: It was an error on the clerk's part. We
16 will not excuse Number 132 then.

17 Any question from the defense about any of these,
18 Mr. Kelly?

19 MR. KELLY: None, Your Honor.

20 And I also had noted 132. And I would also submit to
21 the Court in the brief time I had this morning looking at
22 these, Number 96, I believe, is also requesting. I think
23 that came in this morning.

24 THE COURT: Is that correct, madam clerk?

25 72 does not wish to serve.

Jury excuses and motions

1 We will add 96 to the list then without objection.

2 MR. KELLY: Thank you, Your Honor.

3 THE COURT: All right. Let's move on to -- we are
4 going to skip the personals for the time being, because that
5 will take a little bit longer than the others.

6 Let's move to Number 34 who is a teacher. Let's see
7 what she has to say.

8 What says the state?

9 MR. GOWDY: Your Honor, I am sure she would make a
10 great juror, but she also wrote a very compelling letter as
11 to why that would be very difficult and work a hardship on
12 Woodruff Elementary School for her to be gone.

13 So, we would have no objection.

14 THE COURT: What says the defense?

15 MR. KELLY: Judge, I am familiar with Mr. Melvin
16 Brewton. I would like for his wife to serve on this jury.
17 She is an educated individual, highly educated,
18 well-respected in the community, and she is an educator. It
19 would not be such a hardship on the elementary-school level.
20 She's not teaching in a class that nobody else could --

21 THE COURT: Did you read her letter?

22 MR. KELLY: Well, yes, sir. She --

23 THE COURT: I think she said she's the only science
24 teacher for 245 students at her grade level.

25 MR. KELLY: Judge, I understand; but I also understand

Jury excuses and motions

1 that teachers on the elementary school level and science,
2 that while it is not as complicated as it might be in
3 chemistry at Converse College, it's complicated for those
4 youngsters in elementary school, which is in the third and
5 fourth and fifth grade level there.

6 But, nonetheless, substitute teachers do take over from
7 time to time when these teachers are out. We would submit
8 she would not miss more than probably five days or so. We
9 can arrange for her to come in and be qualified or
10 disqualified or whatever and go back until such time as we
11 need her.

12 THE COURT: Section 14-7-845 says if a school employee
13 selected for jury duty, jury service, during the school term
14 requests, his service must be postponed to a date that does
15 not conflict with the school term.

16 For the purposes of this subsection, a school employee
17 is a person employed as a teacher, certified personnel at
18 the building level, bus driver, etc.

19 I certainly think that she has presented information to
20 me pursuant to Section 14-7-845 that warrants me honoring
21 her postponement.

22 And, as such, I will direct that she be transferred to
23 a term of court, Madam Clerk, that does not conflict with
24 her school responsibilities.

25 141.

Jury excuses and motions

1 MR. GOWDY: Your Honor, if it please the Court, in
2 light of the statute that Your Honor just read, I would just
3 quickly point out that this teacher is a teacher also, I
4 believe, at Woodruff High School. She is a special
5 education teacher. He has got parent conferences set for
6 the Monday this trial is slated to begin.

7 We have a letter from her principal that those cannot
8 be, they can't be, rescheduled. I would submit to Your
9 Honor that she falls under the plain meaning of the statute
10 that you just read.

11 THE COURT: Mr. Kelly.

12 MR. KELLY: Again, I would like for her to be with us,
13 but I understand the Court's position.

14 THE COURT: Well, you know, if -- with her, given that
15 they were talking about the 15th, if I were not to qualify
16 the entire jury panel that day, I could work around her for
17 that day. But, as we all know, before we break down into
18 the individual panels it's probably going to be midday or
19 early in the afternoon before I get through with them.

20 So, I am going to transfer her pursuant to statute.

21 MR. KELLY: Thank you, Your Honor.

22 THE COURT: All right. 141.

23 MR. WILLINGHAM: That's the one we just did, Your
24 Honor.

25 THE COURT: I am sorry.

Jury excuses and motions

1 191.

2 MR. WILLINGHAM: Your Honor, 191, Mrs. Morrow, there is
3 facts in here. She is a teacher at Cleveland Elementary
4 School. This would also be a conflict for her.

5 Pursuant to that statute, I believe she would be
6 eligible to be transferred.

7 THE COURT: Mr. Kelly.

8 MR. KELLY: Judge, again, I understand the Court's
9 position, but I would submit to the Court that in her facts,
10 which are very brief, unlike Mrs. Brewton's, she did not
11 indicate that she is the only teacher teaching a specified
12 subject.

13 We would ask the Court to entertain asking her to come
14 and be with us.

15 THE COURT: I am going to have her come in, because she
16 didn't give me a specific reason why. Maybe I can convince
17 her to remain with us, given those facts and circumstances.

18 MR. KELLY: Thank you, Judge.

19 THE COURT: So, if she seeks to use her rights under
20 14-7-845, I will honor those though.

21 MR. KELLY: Thank you, Judge.

22 THE COURT: All right. 250.

23 MR. BARNETTE: Your Honor, the same or similar
24 situation. Mr. Smith works for the University School,
25 School District six; and also got a letter faxed in. I

Jury excuses and motions

1 believe that's under the statute also.

2 MR. KELLY: Judge, from the defense, that is a higher
3 education, and so I understand how the Court's previously
4 ruled on that.

5 We would have no objection.

6 THE COURT: He is taking graduate courses at Columbia
7 College, I think he says. I will honor his letter.

8 All right. Number 280.

9 MR. BARNETTE: Your Honor, this individual says they
10 home school a child. She has children two and four years
11 old at top the that I noticed on her questionnaire. And I
12 believe that she could use that exemption even though she
13 didn't assert that exemption. So we wouldn't have any
14 objection to her being excused.

15 THE COURT: What do you have to say about that, Mr.
16 Kelly?

17 MR. KELLY: I would not have any objection to her
18 claiming the children, two and four, Your Honor.

19 THE COURT: All right. We will excuse her pursuant to
20 statute, having children under the age of seven.

21 284.

22 MR. BARNETTE: Your Honor, the same thing on this
23 juror. He works for District Seven and has a letter from
24 McCracken Junior High School. I believe he would fall under
25 the statute also.

Jury excuses and motions

1 THE COURT: Well, I think without some particularity
2 that at this point in time I am going to let him come in and
3 be with us.

4 If he desires to exercise his rights under 14-7-845, he
5 may do so. But if I can talk him into remaining with us, I
6 will, since he didn't have a specific reason.

7 MR. KELLY: Thank you, Your Honor.

8 THE COURT: Insofar as criminal records are concerned,
9 we have listed 7, 46, 204, 292, 91, 102, 123 and 277.

10 Are there any questions about any of those?

11 MR. GOWDY: May it please the Court, 123 and 277, Your
12 Honor, we do not have -- we have run rap sheets, obviously,
13 on all of these jurors and provided a copy of it to the
14 Court and to the defense.

15 We do not have anything on 123 and 277, but they have a
16 self-disclosed conviction on their form. I just wanted to
17 be up front with the Court about that. The only way that we
18 know that they would be on that list is their own
19 disclosures.

20 We have a number of people who are not listed on madam
21 clerk's sheet that we also think would be disqualified by
22 virtue of their convictions. But as to the ones listed, we
23 have no objection.

24 MR. KELLY: That's correct, Your Honor.

25 THE COURT: All right. Those that are listed, then,

Jury excuses and motions

1 will be excused pursuant to, pursuant to statute, that being
2 14-7-810.

3 Now, any others that the state has revealed through
4 their investigation, the existence of a disqualifying
5 record, I will question those individuals when they report,
6 because if they have not been truthful with me, then I have
7 a place for them.

8 MR. KELLY: Thank you, Judge.

9 MR. GOWDY: Yes, sir.

10 THE COURT: All right. Then we have five summons
11 returned by mail that are jurors over 65.

12 Madam clerk, would you explain? Is that just people
13 that were not -- you were not able to locate that are over
14 65? Is that what you are telling me?

15 THE CLERK: Yes, sir.

16 THE COURT: All right. Now, I also understand that the
17 sheriff has been directed to personally attempt service on
18 those individuals whose summons were returned. Does this
19 fall under that category too? Are they seeking these?

20 THE CLERK: No, sir. They are still seeking those.

21 Some have been returned to me, but I didn't make a copy
22 of those.

23 THE COURT: Okay.

24 THE CLERK: If you flip through your book, it will say,
25 you know, show like Number 247. That's a summons returned,

Jury excuses and motions

1 because it's a copy of the letter that came back to me with
2 attempted, unknown.

3 THE COURT: And the sheriff is seeking those
4 individuals out?

5 THE CLERK: Yes.

6 THE COURT: All right. And do we have a report from
7 the sheriff on those yet?

8 THE CLERK: We gave him 28, and he was able to locate
9 two.

10 THE COURT: All right. And I assume that he is -- I
11 know I talked with a deputy yesterday, that they are going
12 to fill out affidavits on those that they could not find.

13 And those they have found, we will have the information
14 on them. They will be here.

15 MR. KELLY: Yes, sir.

16 THE COURT: All right. Let's go to the personal
17 issues.

18 MR. GOWDY: Would Your Honor let me inquire? The three
19 of us may have misinterpreted a section. And Your Honor, I
20 am sure, will be able to tell us if we have.

21 We thought under the section age that those were people
22 who were not only over the age of 65 but who also evidenced
23 their intention not to serve.

24 THE COURT: Correct.

25 MR. GOWDY: Is that correct? Because on some of them I

Jury excuses and motions

1 cannot find where they've evidenced their intention not to
2 serve. They were just merely over 65.

3 THE COURT: Madam clerk, let me ask you this. These
4 people who you have listed under age, have they requested to
5 be exempt?

6 THE CLERK: As a rule, they requested on the summons
7 itself. However, if you look at the questionnaire and read
8 through it in there where it says their health is poor, they
9 will put -- on some of them I found where it's saying on
10 that part.

11 This does not indicate it. The questionnaire itself
12 will say heart condition, not able to sit, and that's how I
13 put the two together that they are saying on this. They put
14 their age, and on that they are explaining under their
15 health reason that they are not able to sit or they are not
16 able to go without eating or whatever.

17 MR. GOWDY: So these under age would invoke over 65,
18 and at one of the two places said essentially I don't want
19 to serve.

20 THE CLERK: Uh-huh.

21 MR. GOWDY: Sorry for the confusion, Your Honor.

22 THE COURT: No problem.

23 Do you have any question about that, Mr. Kelly?

24 MR. KELLY: No, Your Honor. I agree with the clerk. I
25 went through them.

Jury excuses and motions

1 THE COURT: All right. Let's look at personal reasons.

2 All right. Let's look at Number 44. And that is -- I
3 think you see the reason that she seeks to be excused.

4 Can either of you shed any light on your position?

5 MR. GOWDY: Your Honor, if it please the Court, it
6 seems to me to be a hybrid of stress and beginning a new
7 job.

8 I would feel more comfortable if Your Honor were to
9 inquire from her whether or not she would, in fact, lose her
10 job or how new her job was as it relates to her stress. I
11 am sensitive to that, but if we begin to excuse all jurors
12 whose marriage had some stress in it, then we would have a
13 hard time seating a jury.

14 THE COURT: You might have a hard time finding lawyers
15 and a judge.

16 MR. GOWDY: I think two of the three of us would be
17 gone. I think Barry might still be here. I would just -- I
18 would feel more comfortable if she gave more reasons than
19 just marriage stress and a new job.

20 MR. KELLY: We would like for her to come, Your Honor.

21 THE COURT: She will report.

22 All right, Number 48. Number 48, I believe it is a
23 gentleman who seeks to be excused as he is totally
24 responsible for his son who is 13 years of age. His son
25 will be home, "Alone at all times if I serve."

Jury excuses and motions

1 Of course the statute says the excusal of a woman. And
2 some judges have expanded that to anyone, you know, who has
3 children, but I haven't done so. The legislature hasn't
4 seen fit to be politically correct, and I am going to follow
5 the legislature in this regard.

6 I'm going to bring this gentleman in and talk with him.
7 If it's going to present a hardship on him, then, of course,
8 I will take the necessary steps, as I would with any parent,
9 but we will bring him in just to see what we can do there.

10 MR. KELLY: Thank you, Judge.

11 THE COURT: All right. Number 51 has enclosed a
12 letter. I only wish that I could go with them.

13 MR. KELLY: Me too, Your Honor.

14 THE COURT: What I have done in the past, gentlemen, is
15 anyone who falls into a situation where they have some type
16 of vacation plans where they have property that is rented,
17 leased or whatever that they are responsible for, have time
18 that week, if they have airplane tickets, any type of travel
19 plans that they are unable to reschedule, then I feed
20 everyone out of the same spoon.

21 And what says the state about Mrs. Carey?

22 MR. GOWDY: Whatever spoon Your Honor traditionally
23 feeds them out of, I would not think I would be able to sway
24 you.

25 THE COURT: You are probably correct.

Jury excuses and motions

1 MR. GOWDY: I would -- whatever Your Honor's discretion
2 is, I would agree with.

3 THE COURT: Okay.

4 MR. KELLY: Your Honor, if it please the Court, and I'm
5 not arguing with the Court either. I understand the Court's
6 interpretation there.

7 But I would respectfully submit that this is not quite
8 the same as some others that I have also reviewed where they
9 have airline tickets bought to go to Las Vegas and hotel
10 accommodations were made. And, in fact, one lady even sent
11 in where it was shown that it was paid for back in June.

12 I have been in a timeshare with other families myself
13 on beach property. I submit it's not that difficult to
14 switch weeks with a fellow landowner.

15 These people are not going to be flying to Kiawah
16 Island. They are going to be driving down there.

17 I respectfully submit to the Court that they really
18 could probably switch that week with a landowner, joint
19 tenant.

20 THE COURT: I am going to hold this one in abeyance to
21 see what I have with these others.

22 MR. KELLY: All right, sir.

23 THE COURT: All right. Number 80.

24 What says the state regarding this lady?

25 MR. GOWDY: Your Honor, this lady has a doctor's

Jury excuses and motions

1 appointment on the 18th, which if she were to come on the
2 15th, it obviously would not knock her out of that doctor's
3 appointment.

4 She has had recent surgery and is unable to sit for
5 long periods of time, but I would think that Your Honor
6 would be perhaps better able on the 15th to determine
7 whether or not that is proper in this case.

8 THE COURT: Mr. Kelly.

9 MR. KELLY: Judge, actually in this case she indicates
10 she's had surgery in August of this year, and it is hard for
11 her to sit.

12 I know how the Court has dealt with that in the past.
13 I would not object to her being transferred to another week.

14 THE COURT: I am going to transfer her based upon the
15 reason that she has given me.

16 All right. Number 112.

17 MR. WILLINGHAM: Your Honor, 112 is Ms. Green. She is
18 unemployed because she is disabled. She indicates she only
19 has a sixth grade education.

20 She has mental and physical disabilities, and she
21 suffers from mental retardation. I believe that would maybe
22 disqualify her maybe not to serve.

23 THE COURT: Mr. Kelly.

24 MR. KELLY: I agree with the government, Judge.

25 THE COURT: All right. She is excused.

Jury excuses and motions

1 All right. Number 114, Mr. Hall, has a broken arm from
2 a motorcycle accident. That may tell us something right
3 there.

4 MR. WILLINGHAM: Your Honor, I think he had a
5 motorcycle wreck eight days ago, according to the
6 questionnaire, and has a broken arm and has broken facial
7 bones.

8 THE COURT: Yes, sir.

9 MR. WILLINGHAM: The broken arm I don't think would
10 probably disqualify him, but the facial bones may.

11 THE COURT: Mr. Kelly.

12 MR. KELLY: Judge, I don't know how seriously he really
13 is hurt. I understand what he says about a broken arm and
14 fractured bone in my face, but I don't know if that's a
15 broken jaw or whatever it is. And I would submit that it's
16 still about three weeks out.

17 I would ask the Court to bring him in and let's see if
18 he can be with us.

19 THE COURT: Madam clerk, you can contact Mr. Hall and
20 tell him that if he can provide me with something from his
21 physician giving me his status as to whether or not -- or as
22 to the extent of his injuries, then I will make a
23 determination from that.

24 If I can make one without bringing him in, I will do so
25 and notify y'all. If not, then we will bring him in on the

Jury excuses and motions

1 15th.

2 MR. KELLY: Thank you, Judge.

3 THE COURT: 142, pregnant and having morning sickness.

4 Madam clerk, I am going to direct you to get a little
5 more information on her. I need to know when she is due,
6 and then that might give me a little more advice in that
7 regard.

8 But I am not normally inclined to put expectant mothers
9 even on a jury that is going to go home every night, let
10 alone one that is sequestered. Do you have anything you
11 want to add to that, Mr. Kelly?

12 MR. KELLY: The only thing I would ask the Court to
13 also maybe inquire. She indicates that she does work. If
14 she is able to go to work every morning, we would
15 respectfully submit she could come with us and be at work
16 here.

17 THE COURT: Well, I understand that. But since I have
18 a daughter that is suffering from morning sickness at this
19 time, I don't want to be delivering saltine crackers and
20 that kind of thing, have SLED agents doing that. So, we
21 will check into a little more detail. So, I will just kinda
22 hold that one in abeyance.

23 155.

24 MR. WILLINGHAM: Your Honor, Mr. Lawson wants to be
25 excused due to mental illness. He says he can't think,

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1 forgets, does not like to be around people very much. He is
2 disabled due to mental illness.

3 THE COURT: He has a letter from Dr. Ratzlaff.

4 MR. WILLINGHAM: And I believe him too, Judge. If you
5 look on there, on the questionnaire, it asks how long have
6 you lived in Lexington County.

7 THE COURT: "Who said I lived there?"

8 Maybe we can let him be a bailiff up here, Mr. Nesbitt.
9 What do you think?

10 MR. KELLY: No objection, Your Honor.

11 THE COURT: All right. He is excused.

12 MR. KELLY: For the record, I don't believe we want him
13 up here at all.

14 THE COURT: I don't disagree with that.

15 All right. 157 is a bus driver. As a bus driver, I
16 normally transfer them once they list that if it's during
17 the school year, because I know how difficult it is for
18 replacements to be found.

19 MR. WILLINGHAM: And there is no objection.

20 THE COURT: She says if we have enough bus drivers and
21 I can serve.

22 So, what I am going to do is let her come in. And if
23 they have enough bus drivers that two weeks, we will see if
24 she can serve.

25 MR. KELLY: Thank you, Judge.

Jury excuses and motions

1 THE COURT: I have got 158 that health -- the only
2 thing I have is his juror questionnaire. I do note that he
3 says that when he is in -- around a lot of people is when he
4 gets anxious and his blood pressure runs up and he can't
5 breathe very well.

6 Madam clerk, if he has something that he can provide me
7 from his doctor, then I will consider that. If not, he is
8 going to report. And I will discuss it with him further at
9 that time.

10 But if he does have anxiety problems, putting him in
11 that little room back there for extended periods of time
12 does not bode well with 13 or 14 other people.

13 185.

14 MR. WILLINGHAM: Your Honor, Mrs. Mock, again, has a
15 vacation schedule, I believe, in her questionnaire. She
16 also furnished documentation of that as well.

17 THE COURT: All right. Mr. Kelly.

18 MR. KELLY: Judge, this is one of them that I was
19 referring to a little earlier.

20 I think in this particular instance, this lady had made
21 reservations, and I understand the Court's position on that.
22 I think it is a little different from your own property
23 where you might can trade

24 THE COURT: All right. She will be transferred to
25 another term, Madam Clerk.

Jury excuses and motions

1 Does anyone have any question about Number 217? Having
2 lived through that myself, Mr. Pittman just doesn't know
3 what he is in for.

4 MR. BARNETTE: No, sir. We have no problem with that.

5 MR. KELLY: No objection. Although he may want to come
6 and be with us, Your Honor.

7 THE COURT: I am sure that he probably would, but I
8 believe Mrs. Pittman might have something to say about that.

9 Okay. 256.

10 MR. BARNETTE: Your Honor, he shows he is disabled. I
11 saw on the form, says he takes a lot of medication that
12 causes him to sleep. He goes to the restroom regularly.

13 Your Honor, he did include any medical information,
14 including his social security claim forms showing how much
15 he makes on social security and things like that.

16 Your Honor, we would ask he be excused. Obviously, if
17 it causes him to sleep and things like that, I think he
18 would have a hard time paying attention to what he needs to
19 be paying attention in court.

20 THE COURT: Mr. Kelly.

21 MR. KELLY: Judge, I read that too. And I see that he
22 included that social security claim form, but I am not sure
23 that says he's actually getting that.

24 THE COURT: It says your new monthly amount is on
25 there, the amount they are deducting for Medicare.

Jury excuses and motions

1 MR. KELLY: Okay.

2 THE COURT: Any objection?

3 MR. KELLY: No, sir.

4 THE COURT: All right. Number 256 will be excused.

5 Number 271 says that she is disabled. And while I see
6 that she is, she doesn't tell me anything about her
7 particular disability.

8 Madam clerk, how about finding out a little bit more
9 about that one?

10 MR. BARNETTE: Your Honor, I just wanted to bring to
11 the Court's attention, I was reading through her
12 questionnaire. Says she has served five years probation for
13 above. She says accessory in McMillan/Brown case.

14 THE COURT: I think that was Lori.

15 MR. BARNETTE: I got you, Your Honor.

16 MR. KELLY: And also, Your Honor, we would note to the
17 Court that it doesn't say anywhere on the slip that she
18 wants to be excused.

19 THE COURT: Yeah. You know, if she is seeking any type
20 of an excusal, Madam Clerk, if she would, have her doctor
21 provide something to me.

22 All right. 278.

23 MR. BARNETTE: Your Honor, 278, Your Honor, he is
24 scheduled out of town on a conference with his wife. I will
25 leave that to the Court's discretion. Your Honor, based off

Jury excuses and motions

1 what you've looked at that in the past --

2 THE COURT: All right.

3 MR. BARNETTE: He does have the preregistration. It's
4 his wife's conference. I believe he is going as a person
5 with her. I will leave it to the Court's discretion.

6 THE COURT: Mr. Kelly.

7 MR. KELLY: Your Honor, again, I would have no
8 objection to that in light of what the Court has done in the
9 past.

10 THE COURT: I will allow him to be excused.

11 All right. Number 37 was one that was added for
12 personal -- Mr. Brown.

13 MR. GOWDY: Your Honor, whatever Your Honor's normal
14 course would be.

15 I am sensitive to the fact that if he doesn't work, he
16 doesn't get paid. Whether or not that is sufficient at this
17 hearing to let him go or whether it requires further inquiry
18 from the Court, I will leave it in the Court's discretion.

19 THE COURT: Mr. Kelly.

20 MR. KELLY: Your Honor, I am also sensitive to his
21 position.

22 I understand he is a consultant. If he doesn't work,
23 he doesn't get paid. But there are a lot of self-employed
24 people that will be serving on the jury. We would ask the
25 Court to require him to come in on the 15th.

Jury excuses and motions

1 THE COURT: Well, Section 14-7-860 says upon furnishing
2 an affidavit to the clerk of court requesting to be excused
3 from jury duty a person may either be excused or transferred
4 to another term of court by the presiding judge if the
5 person performs services for a business, commercial or
6 agriculture enterprise, and the person's services are so
7 essential to the operations of the business, commercial or
8 agriculture enterprise, that the enterprise must close or
9 cease to function if the person is required to perform jury
10 duty -- I understand what he says. But he is going to come
11 in. We will talk to him in further detail on the 15th.

12 MR. KELLY: Yes, sir. I don't think Milliken is going
13 to close if he is not there.

14 THE COURT: I understand that.

15 All right. Are there any other jury issues that we
16 need to deal with, gentlemen?

17 MR. GOWDY: Your Honor, Juror 105 has a back problem;
18 and sitting down for long periods of time, he represents,
19 would be uncomfortable. And he did ask to be excused.

20 THE COURT: Well, I am going to let him come in. And
21 we will see where he shakes out in all of this.

22 You know, I have had people that have been in similar
23 situations before, that, you know, if I can talk to them, I
24 get a little bit better idea. If it's something that I
25 don't feel he can do from my conversation with him, because

Jury excuses and motions

1 he didn't provide me any medical backup for it -- I am going
2 to bring him in.

3 MR. GOWDY: Yes, sir.

4 MR. KELLY: Thank you, Judge.

5 THE COURT: Any other jury matters, gentlemen?

6 Insofar as the list that you gave me concerning the
7 check that you made, I will, of course, tag those jurors
8 that have not responded to having a criminal record, and,
9 once again, they will be -- of course they have certified to
10 me that the -- in written form this information.

11 If I find that they have not been truthful with me, and
12 if I also find that after they have been put under oath,
13 which they will be as soon as they come in that Monday
14 morning, that they are not truthful with me, then, once
15 again, they won't be serving on a jury. They will be
16 serving somewhere else.

17 MR. KELLY: Yes, sir.

18 MR. GOWDY: The only other matter that I am aware of,
19 Your Honor, is a pending motion relevant to the entire jury
20 pool, which we are prepared whenever Your Honor would like
21 for that to be heard.

22 THE COURT: We are going to take about five minutes,
23 and then we are going to hear it.

24 We will stand at ease for about five minutes.

25 (Whereupon, a recess was taken.)

Jury excuses and motions

1 THE COURT: All right. Mr. Kelly.

2 MR. KELLY: Judge, the defense had previously filed on
3 September the 14th a notice of motion and motion to quash
4 the petit jury because, for the record, I could not find a
5 court order from the Supreme Court that had approved the
6 automated process by which the jurors were selected; nor
7 could I find even a copy of the Supreme Court's order dated
8 May the 21st of 1986; and also I could not find any other
9 document in the clerk's office with respect to the Supreme
10 Court's order. And, again, for the record, I spoke with the
11 clerk about that. And that's why I filed this motion.

12 However, in the recess that has taken place I have
13 spoken with Mr. Willingham and Mr. Gowdy and Mr. Barnette.
14 And it appears that each one of these matters has been met
15 and the documents have now been located.

16 So, I think it would be futile at this time to go
17 forward with that. The reason I filed the motion is it was
18 not available and had not seen it and it could not be
19 located. But that has now been done.

20 THE COURT: So you are satisfied that the matters that
21 have been raised to the Court have been met.

22 MR. KELLY: Yes, sir.

23 THE COURT: All right, sir. Anything else, gentlemen?

24 MR. GOWDY: Not from the state, Your Honor.

25 MR. KELLY: Not from the defense, Your Honor.

Jury excuses and motions

1 MR. GOWDY: Well, Your Honor, I know that Your Honor
2 may well be aware of this, and I think Mr. Morin and Mr.
3 Kelly are.

4 We are submitting an armed robbery indictment to the
5 grand jury. The grand jury, I think, meets October the 4th.
6 Is that right?

7 I think we have also provided a copy of the proposed
8 indictment to Your Honor and defense counsel. It doesn't
9 substantively change much of anything, but I wanted to let
10 the Court know that on the record.

11 THE COURT: All right.

12 MR. MORIN: Yes, sir. We have copies of that. We
13 briefly discussed arraignment, and we will take care of
14 that, it's my understanding, on the 15th to assure that has
15 been done.

16 THE COURT: All right. I am going -- of course this
17 coming week is an in-chambers week. And I am going to be in
18 and out of the office.

19 You know, a lot of times when I do guilty pleas with
20 people, and I say how long or where do you work, and they
21 will tell me. And I say, well, how long have you been
22 there, and they will say, well, off and on for a certain
23 period of time. I will say, well, how much off and how much
24 on.

25 I am going to be more off than on in the office this

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1 coming week. But if you need me, simply call my office in
2 Gaffney and speak with Tina or with Shannon. If you need
3 anything, we will be able to take care of it.

4 I am going to be on vacation the week before the trial,
5 but I will be around. So, if you need anything, just call
6 the office. And we can make arrangements for anything that
7 needs to be done to be done in advance of the 15th.

8 The way that we will proceed on the 15th, of course,
9 the jury will report to the West Courtroom. We will have it
10 completely open.

11 I think Judge Cole and I are the only two judges in
12 town that week. He has an administrative week. If he has
13 anything that needs to be done, Madam Clerk, if you would,
14 please tell the clerk of court that maybe he can use this
15 courtroom on that Monday.

16 And then after we get the jury fully or the entire
17 panel fully qualified, we will close the courtroom during
18 lunch and use only the courtroom that I will be using, which
19 will probably be West B, I think, for the duration of the
20 trial.

21 And hopefully on Monday afternoon once we get the jury
22 venire qualified, then we will break them into panels of six
23 individuals each, set aside two-hour time blocks to
24 individually voir dire them and try to stop no later than
25 8:00 p.m. on Monday evening.

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1 Then we will put in a full day on Tuesday and stop no
2 later than 8:00 p.m. on Tuesday.

3 And hopefully then on Wednesday we will be getting in a
4 posture where we will have enough jurors qualified to where
5 we can anticipate a time to strike.

6 I know that the appropriate steps have been taken for
7 sequestration of the jury. I have already met with the head
8 of the SLED detail that's going to be in charge of the jury
9 on that day.

10 If, once again, there is anything that comes up, please
11 feel free to contact me.

12 MR. MORIN: Just two things real quick, Your Honor. I
13 wanted to go ahead and let the Court know.

14 I mean, I didn't file a written motion, but it's my
15 intention to ask the Court to sequester the witnesses during
16 the course of this trial.

17 The other thing was, and I've discussed it with
18 Mr. Barnette on and off, about perhaps a day late next week
19 where we could go through and get some exhibits premarked.
20 And I think he's got -- there's a little over a hundred
21 photographs that were taken, most of which I don't think are
22 going to be objectionable. I don't know which ones they
23 intend. But perhaps if we could take care of that so that
24 once we do have the jury, we don't have to.

25 THE COURT: All right.

Jury excuses and motions

1 MR. MORIN: I was thinking Thursday or Friday of next
2 week if that is suitable with everyone.

3 MR. BARNETTE: I think we are in agreement with that,
4 Your Honor. Just set up a time we can premark exhibits.

5 THE COURT: Madam reporter, do you have anything that
6 you need to be doing next week at that time other than
7 typing? So, the court reporter will be available on
8 Thursday of next week.

9 I am really anticipating a lot that the general
10 assembly is going to give us enough money to have law clerks
11 for next year. I am going down to interview potential law
12 clerks for next year on Thursday of next week in Columbia.
13 It might just be wishful thinking. But I am going to go
14 ahead and do that and hope that we will have the money to
15 hire them.

16 But if you-all want to go ahead and get your exhibits
17 premarked and go ahead and work with Linda on that, and if
18 there are any issues that I need to address, then I can do
19 that after we get the jury qualified. At least we will know
20 that we have got those things premarked and are ready to go.

21 If there are any -- I don't know what type of -- if you
22 have any Jackson vs. Denno issues, anything like that, we
23 will do those, any of those things, once we get the jury
24 sequestered.

25 MR. GOWDY: Your Honor, I may be the only one involved

Jury excuses and motions

1 in the process who has not participated in one of these jury
2 selections before. Does Your Honor use a paper strike which
3 is more traditionally like a civil strike where you list it,
4 or is it the presentation method that I am more familiar
5 with?

6 THE COURT: What I normally do, and one thing that
7 you-all can think about -- the way that I have done it in
8 the past is to prepare a list of 35 to 40 names, depending
9 on how many we get qualified, and when we do. And they
10 would be listed in the order in which they are qualified.

11 And we would potentially even do a dry strike before
12 the jury comes in so that if we have got any Batson issues,
13 that we could address those without a lot of moving around
14 and moving the jury around.

15 If that is not possible, then what we will do is we
16 will take that strike list, and they will have ten. You
17 will have five. And we will get our panel of 12. And then
18 we will get two alternates.

19 So, that's the way in which we will proceed with that.

20 MR. GOWDY: Is it the government's strikes, the defense
21 strikes one for one, and when I'm out, I'm out; or the
22 process that was used or sometimes used in the federal court
23 is the state would strike once, the defense would strike
24 twice, so they finish up at the same time and the defense
25 doesn't have the benefit of the last five strikes.

Jury excuses and motions

1 THE COURT: No, no. What I have done in the past is
2 that we just go right down the list. If you don't want
3 number one, two, three, four and five, and, you know, you
4 strike them, then you are out of strikes. That's the way we
5 do it.

6 MR. GOWDY: Yes, sir. Thank you.

7 THE COURT: Understood, Mr. Kelly and Mr. Morin?

8 MR. KELLY: Yes, sir.

9 MR. MORIN: Yes, sir. That's the way I remember you
10 did it in Kelly, and also that's the way Judge Cole did it.

11 THE COURT: All right. Anything else, gentlemen?

12 MR. KELLY: Nothing from the defendant.

13 THE COURT: Thank you very much. I will see you-all on
14 the 15th, if not before. Excuse me.

15 (Bench conference held off the record with the deputy
16 clerk of court.)

17 THE COURT: Jurors that have not returned anything, I
18 want the sheriff to continue their efforts to locate them,
19 yes, ma'am.

20 MR. KELLY: Thank you, Judge.

21 THE COURT: Thank you very much.

22 END OF PROCEEDINGS SEPTEMBER 28, 2001
23
24
25

Volume Four -- Trial -- Jury qualification

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Richard Bernard Moore,) 00-GS-42-617;618;619
6 Defendant.) October 15 - 22, 2001
7 Spartanburg, South Carolina
8
9

10 B E F O R E:

11 HONORABLE GARY E. CLARY, JUDGE; and a jury
12
13

14 A P P E A R A N C E S:

15 HAROLD W. GOWDY, III, ESQUIRE
16 BARRY J. BARNETTE, ESQUIRE
17 JAMES DONALD WILLINGHAM, II, ESQUIRE
18 Attorneys for the State

19 RALPH KEITH KELLY, ESQUIRE
20 MICHAEL DAVID MORIN, ESQUIRE
21 Attorneys for the Defendant
22
23

24 LINDA D. MOFFITT
25 Circuit Court Reporter

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6	S-1.3	Swab from .44 pistol		
7	S-1.4	Swab from .44 pistol		
8	S-2	One Charter Arms .44 Special	1278	1279
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10	S-3.1	Swab from .45 pistol		1394
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12	S-4	One England .32 H & R Revolver	1279	1280
13	S-5	One fired .45 Auto Caliber Cartridge Case	1280	1281
14	S-6	One fired .45 Auto Caliber Cartridge Case	1281	1282
15	S-7	One fired .45 Auto Caliber Cartridge Case	1282	1283
16	S-8	One fired .45 Auto Caliber Cartridge Case	1283	1283
17	S-9	One fired .45 Auto Caliber Cartridge Case	1283	1284
18	S-10	One fired .45 Auto Caliber Cartridge Case	1284	1284
19	S-11	One four-way tire iron	1285	1286
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21	S-13	One fired lead bullet core	1287	1287
22	S-14	One fired copper alloy jacketed bullet	1287	1288
23	S-15	One fired copper alloy jacketed bullet	1288	1288
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6	S-21	One fired aluminum bullet jacket fragment	1289	1290
7	S-22	One fired aluminum bullet jacket fragment	1290	1291
8	S-23	Photograph	1250	1251
9	S-24	Photograph	1250	1250
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23	S-38	Five photographs	1350	1350
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4	S-42	Diagram	1399	1399
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16	S-77				
17	S-78				
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22	S-83	Meat cleaver with wooden handle		1293	1293
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6	S-88	White sleeveless t-shirt		1316
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13	S-94.1	Cutting from Levis jeans		1398
14	S-94.2	Cutting from Levis jeans		1398
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Exhibits

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1	<u>EXHIBITS</u>			
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17		voir dire; defense request to charge; notice of		
18		statutory aggravating circumstances and evidence		
19		in support of aggravating circumstances;		
20		supplemental notice of additional evidence in		
21		support of aggravating circumstances		
22				
23				
24				
25				

Motion

1 (Proceedings October 15, 2001)

2 (The following takes place in chambers with counsel and
3 the defendant.)

4 THE COURT: Good morning.

5 THE DEFENDANT: Good morning, how are you, Your Honor?

6 (Whereupon, the defendant was duly sworn.)

7 THE COURT: Now, as you see, we have the solicitor, his
8 deputies, your lawyers here.

9 And it is my understanding there is a matter that needs
10 to be raised with me. Is that correct, Mr. Morin?

11 MR. MORIN: Yes, Your Honor.

12 Your Honor, I have been informed this morning by Mr.
13 Moore that he wishes to relieve Mr. Kelly and I as his
14 attorneys.

15 He has also indicated -- at least I think I have seen a
16 form that he has filed with the South Carolina Bar informing
17 them of some grievance he may have against us. I believe he
18 can better explain that than I.

19 THE COURT: Okay. Mr. Moore.

20 THE DEFENDANT: Yes. On 9/16 I sent a letter to
21 President Elect Michael Kelly of the Bar Association.

22 Within that letter I stated clearly that I would like to
23 have Mr. Morin and Mr. Kelly removed from my case.

24 I also stated in that letter that I have no personal
25 grudges, it's just that I don't feel comfortable, nor do I

Motion

1 feel that ethically I will be able to get the representation
2 that this case needs. It's not anything personal.

3 Mr. Morin here has done quite a good job, and also
4 Mr. Kelly; but being in the Seventh Judicial Circuit here, I
5 am not comfortable at all with the counsel from the public
6 defender's office. And if counsel from the public
7 defender's office brings up conflict of interest, which I
8 have drawn up here also, and I have a copy of that letter,
9 then also I would like this letter, also addresses Mr. Keith
10 Kelly, because they are personal friends. And I feel if I
11 have --

12 THE COURT: Talking about who is personal friends?

13 THE DEFENDANT: Mr. Morin and Mr. Kelly.

14 And I feel that if I present conflict of interest with
15 Mr. Morin, I think it would still be there with Mr. Kelly.
16 So, I ask both of those attorneys, present attorneys, be
17 removed from my case.

18 THE COURT: You know, if you have known about this
19 since the 16th of September, you really should have raised
20 this issue, through them to raise with me, rather than
21 writing Mike Kelly who is not the President of the Bar any
22 more. He was the president last year. Elizabeth Van Doren
23 Gray is now the President of the Bar. They really don't
24 have anything to do with that.

25 What they would do is probably forward it along to the

Motion

1 commission on lawyer competence, that type of thing. So,
2 the issue is really one for me to determine, not Mike Kelly
3 or anybody that's the head of the South Carolina Bar.

4 Mr. Morin and Mr. Kelly, are you prepared to go forward
5 with this case?

6 MR. KELLY: Yes, sir.

7 MR. MORIN: Yes, sir.

8 THE DEFENDANT: Your Honor, may I continue?

9 THE COURT: Yes, sir.

10 THE DEFENDANT: I have a response also from the Bar
11 Association stating that my grievance complaint against
12 Michael Morin and Mr. Kelly has been forwarded to the
13 lawyer -- to the Commission on Lawyer Conduct.

14 With that, and the fact that I filed a motion, complete
15 motion, with the affidavit in support of that motion, and
16 also I have -- if I can get into this, I will be able to
17 explain a lot more clearer.

18 THE COURT: Do you want to help him with that,
19 Mr. Morin?

20 MR. MORIN: This one?

21 THE DEFENDANT: Yes.

22 MR. MORIN: Okay.

23 THE DEFENDANT: Your Honor, if I may, may I present to
24 you the letter, a copy of which was sent to the Bar?

25 THE COURT: Okay.

Motion

1 THE DEFENDANT: And we will proceed after you --

2 THE COURT: When was this sent? It doesn't have a date
3 on it.

4 THE DEFENDANT: That was mailed on the 16th of last
5 month.

6 (Pause.)

7 THE COURT: Okay.

8 THE DEFENDANT: Here is the response from the Bar which
9 I received.

10 THE COURT: Would you give that back to him? Thank
11 you.

12 All right, sir.

13 THE DEFENDANT: And I also -- there is a copy of the
14 said motion of which I had filed with the clerk of courts.

15 That motion also was told unto the woman that's in my
16 life who has power of attorney that that motion should be
17 picked up by her and that it would only set in my file and
18 would not be presented to the Honorable Court nor the
19 prosecution.

20 I informed my power of attorney to go to the Clerk of
21 Court's Office and ask for a copy of the motion and leave
22 the original there.

23 THE COURT: Who is Charlie Johnson?

24 THE DEFENDANT: Charlie Johnson is an attorney in the
25 Columbia area who showed interest in my case, and here is a

Motion

1 letter from Charlie Johnson's personal friend who had me
2 contact Mr. Johnson.

3 Mr. Johnson is aware of the motion which I filed. He
4 is aware of the process which is taking place at this
5 moment. In detail, no, he does not know. He does know the
6 issue that I was going to raise today in your Honorable
7 Court.

8 THE COURT: You know, this letter is dated March the
9 26th of 2000, Mr. Moore.

10 THE DEFENDANT: Yes, it is; yes, it is.

11 THE COURT: From Ocyrus Hinton.

12 THE DEFENDANT: Yes, it is, who wishes to participate
13 as second chair.

14 THE COURT: Well, then he ought to be here today.

15 THE DEFENDANT: Well, Your Honor, with all due respect,
16 these three names here were also given to me from the Bar
17 Association, which my case has been referred to them.

18 I asked the president elect also to present or pass my
19 case, the information which I have given him, on to
20 attorneys in the Columbia area who would show interest. And
21 at this point those three, along with Mr. Charlie Johnson,
22 have shown great interest in my case.

23 As I stated, it is nothing personal. I have no desire
24 whatsoever to proceed pro se, and my motion here clearly
25 states that, that I am truly in need of representation, but

Motion

1 the representation which I now have, I do not wish to have.

2 THE COURT: Well, Mr. Moore, a couple of things come to
3 mind.

4 It is certainly not uncommon for motions to be made in
5 any case such as this. Mr. Morin has been approved by the
6 State Supreme Court to be first to chair in a case such as
7 this. Mr. Kelly meets the qualifications to be the second
8 chair.

9 I understand the correspondence that I have read and
10 the issues that you have raised. And certainly I understand
11 what you have explained to me here orally, as well as
12 through the written word.

13 However, I am not going to grant your motion for
14 appointment of counsel. I am denying that motion. You have
15 two very fine lawyers here, and I have --

16 THE DEFENDANT: Excuse me, Your Honor.

17 Then I shall have those two attorneys file a motion for
18 appointment of new counsel. I don't want them representing
19 me.

20 THE COURT: I understand that --

21 THE DEFENDANT: Whether or not --

22 THE COURT: -- but they are going to represent you,
23 Mr. Moore.

24 THE DEFENDANT: Whether or not you demand that they
25 shall, then I know your name, as well as their names, and I

Motion

1 will write your name on a piece of paper also, Your Honor.

2 THE COURT: I understand that, Mr. Moore.

3 THE DEFENDANT: Also, also --

4 THE COURT: Would you please not interpret me? I'm
5 going to give you a chance --

6 THE DEFENDANT: Also, Your Honor --

7 THE COURT: Mr. Moore, excuse me just a minute. Now,
8 if I have to gag you, I will.

9 THE DEFENDANT: Then that's what you will have to do,
10 because I don't want them representing me.

11 THE COURT: Well, you know, you can either participate
12 in the trial, or not. You are not going to do anything to
13 disrupt it.

14 THE DEFENDANT: Indeed, I am.

15 THE COURT: No, sir. You won't.

16 THE DEFENDANT: Indeed, I am.

17 THE COURT: I will put you in a room and you can watch
18 it on T. V.

19 THE DEFENDANT: Do what you want.

20 THE COURT: Because I will certainly --

21 THE DEFENDANT: And I will see you in court also, in
22 the Supreme Court.

23 THE COURT: That will be fine, sir.

24 THE DEFENDANT: Yes, indeed.

25 THE COURT: I understand that.

Motion

1 THE DEFENDANT: Yes, indeed.

2 THE COURT: But to come in and make a motion at the
3 last minute and not have Charlie Johnson or --

4 THE DEFENDANT: The law states that I am able to fire
5 counsel at will, at any time I am pleased. I am pleased at
6 this moment to have Mr. Morin and Mr. Kelly remove
7 themselves from my --

8 THE COURT: No, sir. You can make a motion, but I will
9 make the determination as to whether or not they are to be
10 relieved of counsel.

11 I have made that determination. They are going to
12 continue as your counsel.

13 THE DEFENDANT: I don't care what they do. I don't
14 care what you do.

15 THE COURT: Well, once again, you can participate or
16 not.

17 THE DEFENDANT: I am not. And I will see you, along
18 with these attorneys and the prosecution, in court later.

19 THE COURT: Yes, sir. We are going to court in just a
20 few minutes.

21 THE DEFENDANT: What do you have to do? No. I mean
22 the Supreme Court.

23 THE COURT: Well, sir, whatever, Mr. Moore. But please
24 understand that, you know, you can do this from now on
25 trying to get a new lawyer.

Motion

1 THE DEFENDANT: I will.

2 THE COURT: The next time this case, if I had granted
3 your motion, you might want to fire Mr. Johnson and whomever
4 else.

5 THE DEFENDANT: No. I don't think I do that. I think
6 Mr. Morin and Mr. Kelly are the only ones I intend to get
7 off my case.

8 THE COURT: Your motion is denied.

9 THE DEFENDANT: That's no problem. I'll file another
10 one.

11 THE COURT: Thank you very much.

12 All right. You may remove the defendant.

13 THE DEFENDANT: I would like my paperwork.

14 THE COURT: Yes, sir. You're going to get it.

15 THE DEFENDANT: If you would like a copy of it, it is
16 in the clerk's office.

17 Make me use representation, I don't want that.

18 MR. MORIN: Do you need that inside?

19 THE DEFENDANT: You can just move me to whatever
20 building I may sit, and that's where I will be.

21 (End of proceedings in chambers.)

22 (The following takes place in the courtroom.)

23 THE COURT: All right. Mr. Morin, I think you had
24 another matter to bring in front of the court before we
25 start the jury selection.

Motion

1 MR. MORIN: Yes, sir.

2 Your Honor, I should say at my client's request I would
3 move to be relieved from his case.

4 He apparently not only is not satisfied with the
5 representation that I have given him, but also intends to do
6 what he can to sabotage his case, is the best I can think to
7 phrase it.

8 He feels that apparently because Mr. Kelly and I have
9 practiced law together and know each other that's created
10 some sort of conflict in his being appointed.

11 I have tried to explain to him the necessity of him to
12 cooperate. If he wants to raise these issues at an
13 appellate level, that's the appropriate forum, that any
14 further conduct on his part would only serve to hurt his
15 case.

16 He has informed me that he does not intend to
17 participate in this case. And he has additionally asked, or
18 asked me to ask, that not only that Keith and I be removed,
19 but he be allowed to represent himself.

20 THE COURT: All right, sir.

21 MR. MORIN: I don't know. I think Mr. Kelly also would
22 like to be on record as to these issues.

23 MR. KELLY: Yes, Your Honor.

24 My motion would be the exact same. My client has
25 instructed me to ask the Court to be dismissed. He

Motion

1 emphatically told me to leave, that I am fired. And I have
2 told him that I cannot leave without this Court's approval.
3 He has told me that whatever I need to do to relieve myself,
4 because I am fired.

5 THE COURT: Mr. Morin and Mr. Kelly, of course we had a
6 previous matter back in chambers when I dealt with
7 Mr. Moore's motion that he had filed on the 11th.

8 Insofar as your preparation of this case, I am not
9 trying to get you to reveal anything insofar as preparation
10 is concerned, but is it my understanding that you are
11 prepared to go forward?

12 MR. MORIN: Yes, sir.

13 For my part I have met with several experts to help me
14 prepare the evidentiary part of the case. I met with Mr.
15 Moore on numerous occasions and discussed all aspects of the
16 case and talked about some strategies and things to expect
17 and that kind of thing. I am prepared to go forward.

18 MR. KELLY: Likewise, Your Honor, I have met with
19 numerous experts in this case, and I am prepared to go
20 forward. In fact, I met with one who is seated with us
21 today as late as yesterday afternoon from about 3:30, I
22 think, in my office until maybe 5:00 or something like that
23 and then continued to work on until about 7:30. I am
24 prepared. But I understand that my client has instructed me
25 to relieve myself.

Motion

1 THE COURT: But this is your client's instruction and
2 not -- not your decision.

3 MR. KELLY: That's correct.

4 MR. MORIN: That's correct.

5 THE DEFENDANT: May I address the Court?

6 THE COURT: Yes, sir. If you would, stand up, please,
7 Mr. Moore.

8 THE DEFENDANT: Your Honor, the conflict is this.

9 Mr. Morin has motioned the Court for Mr. Kelly, even
10 before you yourself, Your Honor, was appointed to this case.

11 If Mr. Morin can motion for someone to, quote,
12 represent him, I don't want neither one of them representing
13 me. I felt that I have been wrong for the simple fact that
14 I have filed a complete motion for appointment of counsel.
15 With all due respect, I only ask that I receive what this
16 country has been built on, freedom of representation.

17 These two attorneys here, I have no confidence in them.
18 It's clear I don't want them representing me. And if, in
19 fact, I have to do what I have to do, if you are going to
20 force them to represent me, then I would more than be happy
21 to, quote, represent myself.

22 THE COURT: Now, let me make sure that I understand the
23 chronology. I know that both of you gentlemen were involved
24 in this case prior to me being appointed.

25 You made a motion for Mr. Kelly to be second chair.

Motion

1 Who heard that motion?

2 MR. KELLY: All right. If I may, Your Honor, I filed
3 that motion the day that I was noticed by the former
4 administration that they were going to seek the death
5 penalty on us.

6 My experience in dealing with these matters is that the
7 former administration had a policy of sometimes trying to
8 have their own say in who was appointed second chair.

9 I know in one case an attorney that doesn't do criminal
10 law was brought to another judge's courtroom and said, okay,
11 we are going to appoint you. And he had to go through a
12 long history of why he couldn't do it. And then they were
13 going to talk about going off the list.

14 In order to --

15 THE COURT: Well, now, please, understand. When you
16 talk about the previous administration, you know, the
17 appointment of lawyers is something that is handled by the
18 Supreme Court and Court Administration. I don't think that
19 the previous administration had anything to do with that,
20 did they?

21 MR. MORIN: No, sir; no, sir. But my point is once I
22 realized this is going to be a death penalty case, and I
23 felt it would be best for my client if I had an attorney who
24 I was familiar with and who was familiar with me and who I
25 had a working relationship with, so, to that end I made a

Motion

1 motion to have Mr. Kelly appointed.

2 At that time the administrative judge was Judge Cole.
3 He said that he felt it would be best in the best interest.
4 We waited until a judge was appointed on this case, and that
5 he didn't -- no one ruled on that.

6 And then on April 4th of this year, I believe, we had
7 our first hearing here. And you formally appointed Mr.
8 Kelly. I made the motion because I felt it was in my
9 client's best interest to have someone that I could work
10 with. And that's why that motion was made.

11 THE DEFENDANT: That motion was made without my
12 consent. That motion was made before you even thought of
13 conferring with me. Your decision was made prior to even
14 bringing this to my attention and prior to a judge being
15 appointed to this case.

16 THE COURT: So what you are telling me is that you made
17 the motion for Mr. Kelly to be appointed and Judge Cole
18 ruled upon that. Is that correct?

19 MR. KELLY: No. Judge Cole simply said he wasn't going
20 to rule on it. He said a judge will be appointed and that
21 judge should make all -- that way everything will stay
22 together.

23 THE COURT: All right.

24 MR. MORIN: So the motion just stayed there until you
25 were --

Motion

1 THE COURT: Until I came on.

2 MR. MORIN: Yes, sir.

3 THE COURT: Okay.

4 Now, Mr. Moore, insofar as the issues that you raised,
5 sir, earlier and the issues that have been raised by
6 Mr. Morin and Mr. Kelly, I know when we were together in
7 chambers 30 or 40 minutes ago that, you know, you said that
8 there wasn't anything that you didn't -- that you disliked
9 them or anything like that.

10 THE DEFENDANT: Personally.

11 THE COURT: And that they had worked hard on the case;
12 that you just felt that there was a conflict because they
13 were such close friends. Is that correct?

14 THE DEFENDANT: That is not the only conflict which I
15 am bringing to the Court, Your Honor.

16 THE COURT: All right.

17 THE DEFENDANT: The other conflict is that I have asked
18 Mr. Morin to file for a change of venue. His opinion of
19 that was it would be a waste of time.

20 And if he feels that he is my representation, then I
21 think that anything I suggest should be more than just a
22 mere thought to him as being a waste of time.

23 Him and Mr. Kelly, they have put forth effort in the
24 preparing for my defense; but in doing so I haven't been
25 overwhelmingly convinced that they have my best interest at

Motion

1 hand.

2 THE COURT: All right. Insofar as a change of venue is
3 concerned, Mr. Morin, if at any time you desire to make
4 that, you know, I will be glad to hear it.

5 Of course a change of venue motion is provided for very
6 clearly in our case law, and certain criteria has to be met.
7 Number one, the fact that you are unable to seat a fair and
8 impartial jury is the first criteria that I would be looking
9 at. Of course, you know, we haven't even gotten to that
10 point yet.

11 So if you have a motion at any time, I will be glad to
12 hear that.

13 THE DEFENDANT: My reasoning for asking that of
14 Mr. Morin and Mr. Kelly was the fact that the newspaper
15 articles which were coming within the Herald-Journal.

16 I am sure Mr. Morin has taken the liberty of clipping
17 those articles. And he is aware of that, those articles,
18 because I brought it to his attention and at that time asked
19 Mr. Morin for a motion for change of venue, and it never
20 happened.

21 THE COURT: Well, do you understand, Mr. Moore, that a
22 motion for change of venue would not be heard until we got
23 to this point? I mean, if he made one, I would say, well,
24 you know, we will see if we can get a jury. If we can't get
25 a jury, then I'll consider a change of venue if the jury

Motion

1 pool has been contaminated.

2 But, quite frankly, the publicity surrounding this
3 case, I looked at the papers over the weekend, Greenville
4 and Spartanburg, and saw nothing about this case in either
5 of those papers. And, of course, those are questions that I
6 ask the jury anyway.

7 THE DEFENDANT: Your Honor, that was, as you stated,
8 this weekend, with all due respect. You looked in the paper
9 this weekend.

10 THE COURT: Well, sir, I ask them questions about have
11 they ever read, seen or heard anything about it. That's a
12 normal question, and that would be a question today.

13 You say that you don't want them to represent you, that
14 you want to represent yourself?

15 THE DEFENDANT: Giddeon vs. Wainright states that I am
16 entitled to effective counsel.

17 THE COURT: Well, it also -- I have determined that you
18 have effective counsel, Mr. Moore. And I think that there
19 was an issue that you wanted to represent yourself. Is that
20 still an issue?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right, sir. How old are you, sir?

23 THE DEFENDANT: I am 36 years old, Your Honor.

24 THE COURT: And how far did you go in school?

25 THE DEFENDANT: Twelfth grade, graduated high school.

Motion

1 THE COURT: Here in Spartanburg?

2 THE DEFENDANT: No, sir. It was in the State of
3 Michigan.

4 THE COURT: And what kind of work have you done in the
5 past, Mr. Moore.

6 THE DEFENDANT: In the past I have done clearly machine
7 operating and general labor and some construction.

8 THE COURT: Well, when you talk about operation of
9 machines, what type of machines?

10 THE DEFENDANT: In the manufacturing department. By no
11 means do I have the skills nor do I feel I can develop the
12 skills to be effective as pro se. But if that's what I have
13 to do to remove these two, Your Honor, then I have no other
14 choice.

15 THE COURT: Well, sir, what I am going to try to do is
16 determine through a colloquy of questions with you whether
17 or not you understand what self-representation is and to
18 make a determination of that.

19 Your decision as to whether or not you represent
20 yourself is solely left up to you. If you want these, want
21 to have these gentlemen removed and represent yourself,
22 certainly I will rule upon that. But we are going to go
23 through a number of questions before we get to that point.

24 Have you ever been treated for abuse of alcohol or
25 drugs or for mental illness?

Motion

1 THE DEFENDANT: Alcohol and drugs, Your Honor.

2 THE COURT: Could you tell me when that was, Mr. Moore?

3 THE DEFENDANT: It has been years ago. Honestly, I am
4 not able.

5 THE COURT: And for how long were you treated, sir?

6 THE DEFENDANT: Maybe 60 days or so.

7 THE COURT: Was that a program that you participated
8 in?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And did you successfully complete that
11 program?

12 THE DEFENDANT: No, I didn't, Your Honor.

13 THE COURT: Have you taken any medication or drugs or
14 alcohol in the last 24 hours?

15 THE DEFENDANT: Yes, sir, Your Honor. I'm a receiver
16 of Elavil, which is the generic name for amitriptyline. It
17 is nerve and semi pain killer, which I take twice a day.

18 THE COURT: Okay. So you take that twice a day. Could
19 you tell me how much you take? Do you know that?

20 THE DEFENDANT: It's a total of a hundred milligrams.

21 THE COURT: Okay. And what times of the day do you
22 take that, Mr. Moore?

23 THE DEFENDANT: 8:00 at night and 8:00 in the morning.
24 And I took it this morning prior to leaving the jail.

25 THE COURT: And does that affect your ability to

Motion

1 understand what you are doing here today?

2 THE DEFENDANT: My ability this day, I believe, is
3 sufficient, Your Honor. I am not going to say whether or
4 not, yes, I am effected, nor am I going to say no.

5 THE COURT: Well, are you under the influence of any
6 medication, drugs or alcohol?

7 THE DEFENDANT: Yes, I am, Your Honor.

8 THE COURT: And it's the Elavil that you're taking?

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: Are you today aware of any physical,
11 emotional or nervous problems that might keep you from
12 understanding what you are doing?

13 THE DEFENDANT: Well, the Elavil is used, Your Honor,
14 clearly as a nerve pill. It is prescribed by the
15 Spartanburg Regional Hospital.

16 My left side of my body in which I impacted some injury
17 is numb. And as far as any physical or anything, that's all
18 I can state, Your Honor.

19 THE COURT: Okay.

20 THE DEFENDANT: Excuse me. I want a cup of water.

21 MR. MORIN: Yes, sir.

22 THE COURT: Have you ever been examined by a doctor to
23 determine your mental competency to stand trial, Mr. Moore?

24 THE DEFENDANT: Yes, I have, Your Honor.

25 THE COURT: All right, sir.

Motion

1 THE DEFENDANT: Mr. Morin may be able to brief you on
2 that better than I.

3 THE COURT: All right. Mr. Morin, I will be glad to
4 hear from you.

5 MR. MORIN: If you want to hear from me now, that's
6 fine, Your Honor.

7 THE COURT: Yes, sir. I will be glad to hear from you
8 on that.

9 MR. MORIN: Your Honor, one of the experts that we
10 hired in this case was Dr. James Evans. He evaluated Mr.
11 Moore and determined that in his opinion that there was no
12 mental issues in this case. That was the extent of our
13 explanation of his mental capacity.

14 THE COURT: All right. Now, Mr. Moore --

15 THE DEFENDANT: Excuse me. I have not been examined by
16 the prosecution as far as the Columbia area, no. This was
17 in the Spartanburg County Detention Center.

18 THE COURT: This was requested by your lawyer.

19 THE DEFENDANT: This was done by Mr. Morin and Mr.
20 Kelly.

21 THE COURT: Have you ever studied law, Mr. Moore?

22 THE DEFENDANT: No, sir, Your Honor.

23 THE COURT: Have you ever been in a magistrate's court
24 before?

25 THE DEFENDANT: Yes, sir, Your Honor.

Motion

1 THE COURT: Could you tell me what that was about
2 insofar as have you ever been in the criminal part of
3 magistrate's court before?

4 THE DEFENDANT: Well, I believe if I am going to answer
5 this correctly as far as in a magistrate's court, I think I
6 had a breach of trust which resulted in me being presented
7 before a magistrate judge.

8 THE COURT: Did you have a lawyer when you were in
9 magistrate's court?

10 THE DEFENDANT: No, sir, Your Honor.

11 THE COURT: And when was that?

12 THE DEFENDANT: It's all in my -- I can't even get to
13 it. It's in the paperwork here.

14 THE COURT: Just as much as you recall of it.

15 THE DEFENDANT: It may have been in the year of '95 or
16 '96.

17 THE COURT: And you realize the crimes that you are
18 charged with here today -- murder, armed robbery --

19 MR. GOWDY: Armed robbery, assault with intent to kill
20 and possession of a firearm, Your Honor.

21 THE COURT: Do you understand those charges that have
22 been alleged against you?

23 THE DEFENDANT: I understand the prosecution has filed
24 those charges against me.

25 THE COURT: All right. And do you realize that if you

Motion

1 are found guilty of the crime charged, those crimes charged,
2 that for that what the state is seeking here, that you would
3 receive a sentence of at least, for murder at least, 30
4 years or possibly life in prison or death by electrocution
5 or lethal injection?

6 THE DEFENDANT: I am fully aware of that, Your Honor.

7 THE COURT: And do you understand that on the armed
8 robbery that you would be looking at a sentence of at least
9 ten years?

10 THE DEFENDANT: I understand that, Your Honor.

11 THE COURT: And a maximum of 30 years.

12 THE DEFENDANT: I understand that.

13 THE COURT: And then the assault and battery with
14 intent to kill -- is that correct?

15 MR. GOWDY: Assault with intent to kill.

16 THE COURT: And the assault with intent to kill, that
17 you would also be looking at ten years on that.

18 THE DEFENDANT: I understand that, Your Honor.

19 THE COURT: And that the possession of a weapon during
20 the commission of a violent crime, that you would be looking
21 at five years on that.

22 THE DEFENDANT: I understand that, Your Honor. I also
23 understand that I would have to be found guilty of those
24 charges.

25 THE COURT: Yes, sir. I understand that. I think

Motion

1 that's the way I prefaced that question, that if you were
2 found guilty of that crime or those crimes.

3 And do you realize that if you are found guilty of more
4 than one of those crimes that the Court could order that the
5 sentences be served consecutively, that is one after the
6 other?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: And do you realize that if you represent
9 yourself, that you are on your own? I cannot tell you how
10 you should try your case or even advise you as to how to try
11 your case.

12 THE DEFENDANT: As far as that answer, Your Honor, I
13 cannot answer yeah or nay. I refuse to, because, number
14 one, I am seeking counsel other than Mr. Morin and Mr.
15 Kelly.

16 THE COURT: Yes, sir. Well --

17 THE DEFENDANT: And I am indigent. By me being
18 indigent, this Court should grant my motion for appointment
19 of counsel.

20 THE COURT: Well, sir, your motion for appointment of
21 counsel had been previously granted by the Court, and you've
22 told me that you want to represent yourself. So, that's why
23 I am asking you these questions --

24 THE DEFENDANT: I understand that.

25 THE COURT: -- to determine whether or not you are

Motion

1 going to be able to represent yourself.

2 And do you understand that I am not going to be able to
3 tell you how you should try your case or even advise you as
4 how you try your case?

5 THE DEFENDANT: I understand that clearly, Your Honor,
6 yes.

7 THE COURT: Are you familiar with the rules of evidence
8 in South Carolina?

9 THE DEFENDANT: Some. I do not have the actual South
10 Carolina Book of Codes, but/and I am truly unable to
11 purchase those.

12 THE COURT: Do you realize that the Rules of Evidence
13 govern evidence which may or may not be introduced in the
14 trial, and that in representing yourself that you would have
15 to abide by the Rules of Evidence in this state?

16 THE DEFENDANT: If this is the case, Your Honor, then
17 if I must, yes, I understand. I agree with that.

18 THE COURT: And one of the Rules of Evidence is the
19 rule against hearsay. Can you explain to me what hearsay
20 is?

21 THE DEFENDANT: Hearsay is hearing opinions from
22 someone other than the actual source. It's other than
23 someone who has direct effect to the situation at hand.

24 THE COURT: And do you -- are you aware of any
25 exceptions to the hearsay rule?

Motion

1 THE DEFENDANT: I believe that the hearsay rule is
2 inadmissible, if that's a question pertaining to the law.
3 That's as far as I can answer that.

4 THE COURT: And you certainly understand that there are
5 many other rules that not only you but the state and anyone
6 that comes into the Court has to comply with.

7 THE DEFENDANT: Yes, sir. And I also have a question.

8 THE COURT: All right, sir.

9 THE DEFENDANT: If, in fact, you rule that I am able --
10 that I must or shall proceed pro se --

11 THE COURT: Yes, sir.

12 THE DEFENDANT: Within any time after that will I be
13 allowed to have counsel come, and appointments, or motion
14 the Court to be my counsel?

15 THE COURT: For them to come in and represent you on
16 their own motion?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: As long as it did not delay the trial, yes,
19 sir.

20 THE DEFENDANT: Thank you for that, Your Honor.

21 THE COURT: Are you familiar with the South Carolina
22 Rules of Civil, excuse me, of Criminal Procedure, the South
23 Carolina Rules of Criminal Procedure?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you realize that those are rules which

Motion

1 govern the way in which a criminal action is tried here in
2 state court?

3 THE DEFENDANT: I understand that to be true, yes, sir.

4 THE COURT: And do you realize that under these rules
5 that certain motions can be made before, during and after
6 the trial?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Can you name one of the motions that can be
9 made?

10 THE DEFENDANT: Motion for appointment of new counsel.

11 THE COURT: You are aware of that, yes, sir.

12 Now, Mr. Moore, you understand that you certainly have
13 the right to testify in a trial, or not to testify. And
14 certainly that is your decision that you can talk about with
15 your family, friends or anyone else that you desire to --
16 Mr. Morin or Mr. Kelly or anyone else. But the ultimate
17 decision as to whether or not you testify is left entirely
18 up to you.

19 And if you have a prior record for any crime involving
20 dishonesty or false statement or for a crime punishable by
21 imprisonment for more than one year, then the solicitor
22 would be allowed to impeach you by using your record if you
23 elected to take the stand.

24 THE DEFENDANT: Yes, sir, Your Honor.

25 Also, Your Honor, you stated that there is, in fact,

Motion

1 ways for me to have motions set forth before the Court as
2 long as it doesn't interfere with the proceedings of this
3 trial. Could you explain that to me more clearly?

4 THE COURT: Yes, sir.

5 Well, I determined, number one, that you have competent
6 counsel in Mr. Morin and Mr. Kelly. They have made certain
7 motions, raised certain issues before this court today and
8 prior to this time.

9 As I understand it, there are probably some more
10 motions that I would be hearing before we actually started
11 the trial of the case after a jury was selected.

12 Certainly there are motions that come up throughout the
13 course of the trial that a lawyer would make and, if you
14 represent yourself, that you would be entitled to make.

15 Once again, I cannot tell you how to try your case or
16 how -- to advise you in that regard.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: That's the reason that I am going over
19 these situations with you.

20 THE DEFENDANT: I understand that, Your Honor.

21 Also, can you assure me? Can I be assured to the fact
22 that, that you find this Michael Morin and Mr. Kelly capable
23 of representing me? Can you assure that there will be no
24 conflict or retaliation over however the conflict may
25 present itself, that it's not going to happen?

Motion

1 THE COURT: I am not sure that I understand what you
2 are saying. Could you --

3 THE DEFENDANT: I think you stated that you feel that
4 Mr. Morin and Mr. Kelly are competent enough to represent
5 me.

6 THE COURT: Yes, sir.

7 THE DEFENDANT: Okay. But can you assure me that there
8 will be no conflict? Or how could I say this? There will
9 be no animosity as far as their alleged representation of
10 me.

11 THE COURT: Mr. Moore, all I can tell you, sir, is that
12 I have known Mr. Morin and Mr. Kelly myself for -- and have
13 dealt with them as a judge for almost ten years now.

14 I have found both of them to be very competent, capable
15 officers of the court; that they have been completely
16 trustworthy; that they have always been prepared; that they
17 have always done the kind of job that I would expect them to
18 do for you or any other person that they come into court
19 with.

20 They have always been conscientious in what they have
21 done. I think that I probably knew both of them, if not
22 both of them at least Mr. Kelly, prior to me going on the
23 bench. And I know absolutely nothing with either one of
24 these gentleman that would cause me any pause in them
25 representing anyone in any type of matter.

Motion

1 I think that both of them are certainly members in good
2 standing of the local Bar and the state Bar and that the
3 performances that I have seen them exhibit have always been
4 well above average.

5 They are very good lawyers, and they know what they are
6 doing. And that's the reason I would have absolutely no
7 problem in letting them defend you in this case.

8 THE DEFENDANT: With all due respect, Your Honor, you
9 clearly state that that's your opinion. I respect your
10 opinion truly, but I don't feel as competent as you feel of
11 these two attorneys.

12 THE COURT: And insofar as retaliation or anything like
13 that, what I know about these gentlemen, they do their job,
14 and they do a good job at it.

15 And while I cannot guarantee you anything, I can't
16 guarantee the state anything. I can't guarantee you
17 anything.

18 The only thing that I would guarantee you and the state
19 is that you would have a fair trial. That is my job, my
20 responsibility, and I will do that to the upmost of my
21 ability -- and when I took the oath of this office, I swore
22 that I would do that, and I will --

23 THE DEFENDANT: But I still stand firm with my
24 decision, Your Honor. I don't want them representing me.

25 THE COURT: Are you aware of any possible defenses to

Motion

1 the charges against you?

2 THE DEFENDANT: Self-defense, Your Honor.

3 THE COURT: All right. And you understand that a
4 lawyer can certainly be of assistance to you in those areas
5 in presenting that defense.

6 THE DEFENDANT: I understand that there has to be
7 competent attorneys that will be able to represent me other
8 than Mr. Morin and Mr. Kelly.

9 THE COURT: Now, Mr. Moore, I must advise you that in
10 my opinion, and I've kind of gathered what you think of my
11 opinion, you would be far better defended by a trained
12 lawyer than you could by yourself.

13 I think that it is certainly unwise of you to try to
14 represent yourself. Even though you have some experience
15 with our system, you are not familiar with the law. You are
16 not familiar with the court procedure. You are not familiar
17 with the Rules of Evidence. And I would strongly urge you
18 to not to try to represent yourself.

19 Now, in light of the penalty that you might suffer if
20 you are found guilty and in light of all of the difficulties
21 of representing yourself, is it still your desire to
22 represent yourself and give up your right to be represented
23 by these two lawyers?

24 THE DEFENDANT: It is my desire to give up my right to
25 have these two lawyers represent me.

Motion

1 It is not my opinion to have to go into a courtroom
2 without a trained counsel. I just don't want it to be these
3 two, Your Honor.

4 THE COURT: But you understand that the options that I
5 am giving you are these two lawyers, or you represent
6 yourself.

7 THE DEFENDANT: I stated earlier in chambers that if
8 that's the only options I have, then the prosecution --
9 first of all, Your Honor, you, Your Honor, the judge, and
10 the prosecution, along with the jury, will have a trial, and
11 I will watch. I will sit back and watch and listen.

12 THE COURT: If you represent yourself?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You are not going to participate in it?

15 THE DEFENDANT: None, whatsoever.

16 THE COURT: You are not going to ask any questions?

17 THE DEFENDANT: None whatsoever.

18 THE COURT: Well, do you understand that that would be
19 detrimental to you? Simply because you don't want to
20 participate does not mean that we are not going to have a
21 trial.

22 THE DEFENDANT: I understand that. And at the same
23 time, Your Honor, you stated that if I could obtain counsel
24 without interfering with this trial, you would be open to
25 hear.

Motion

1 THE COURT: Yes, sir.

2 THE DEFENDANT: Okay.

3 THE COURT: And, quite frankly, Mr. Moore, I have been
4 involved in this case since last spring, and this is the
5 first issue that I have heard concerning counsel. This is
6 the first time that we have had any type of hearing, jury
7 excuses or anything else that there has been a problem with
8 these two lawyers. And that's the reason or my reasoning in
9 making this decision.

10 If you had dissatisfaction with your counsel, if you
11 had brought this to my attention earlier, then there might
12 have been something to it. But now that -- what I have seen
13 develop through requests that they have made of me for
14 experts and other information that I have to approve, and I
15 have approved, I think, each and every one of those, these
16 gentlemen are telling me that they are prepared to go to
17 trial, that they are ready to go to trial. Insofar as that
18 is concerned, I expect them to go to trial.

19 If you do not wish for them to represent you, then your
20 only alternative is to represent yourself.

21 THE DEFENDANT: These gentlemen have also addressed,
22 Your Honor, their willingness to be moved from my case. You
23 also stated previously that you granted their every other
24 wish, every other motion.

25 I ask that you grant this one also and remove them from

Motion

1 my case.

2 THE COURT: Well, they said that the only reason they
3 were making the motion to be removed is because you had
4 directed them to. And I have denied their motion to be
5 removed in that regard that they have made.

6 Now, if you want to represent yourself, Mr. Moore, once
7 again, you may certainly do so. But I wanted you to
8 understand what you are looking at.

9 THE DEFENDANT: So when this process continues and I
10 contact counsel who more than have an interest but also have
11 the willingness to represent me and they motion the Court --

12 THE COURT: Well, sir, those gentlemen or ladies should
13 have been here long before now if they were going to come in
14 and represent you.

15 The idea of you being able to come in the day of trial
16 or three days before trial and file a motion for them to be
17 dismissed as counsel and be relieved of counsel and bring
18 someone else in is not something that I am going to
19 entertain.

20 THE DEFENDANT: Your Honor, this is my life. If it
21 takes me to come in the day of jury selection, then I feel
22 that this day is important enough for me to do that.

23 THE COURT: I understand that. But we have been in
24 court any number of times. That motion could have been
25 filed any number of times.

Motion

1 You have a letter from a gentleman down in Columbia
2 back in March of 2000 who expressed a desire to be involved
3 in the case, and then also recommended another.

4 I have heard absolutely nothing from you, them or
5 anyone else until today in that regard.

6 And if I were to grant your motion, everyone that is
7 coming into court would want to fire their lawyer and get a
8 new lawyer. That's not something that is good for the
9 system, and it is not something that is going to happen when
10 I have competent lawyers that are here prepared to go to
11 trial.

12 THE DEFENDANT: The reason you didn't hear anything of
13 this motion, Your Honor, because the clerk of court clearly
14 stated that it would set in my file and collect dust.
15 That's why you heard nothing of the motion.

16 THE COURT: Well, the motion wasn't filed until last
17 Friday, and I didn't come in until today -- or Thursday.

18 THE DEFENDANT: Your Honor, this is not my fault that
19 you haven't heard anything of this motion. This motion was
20 clocked in. The clerk of court refused to put it forth.

21 THE COURT: October the 11th. I was on vacation last
22 week. I wouldn't have heard about it.

23 THE DEFENDANT: Then it is not any fault that --

24 THE COURT: Well, sir, it might not be your fault. But
25 with everything that has been presented to me, Mr. Moore,

Motion

1 your decision is basically this. These two gentlemen can
2 represent you, or you can represent yourself.

3 THE DEFENDANT: And I will make my choice right now.

4 THE COURT: All right, sir.

5 THE DEFENDANT: I'll go by myself.

6 THE COURT: Do you want them to stand by to give you
7 any advice?

8 THE DEFENDANT: I don't even want them present.

9 THE COURT: All right, sir. I find that the defendant
10 has knowingly and voluntarily waived his right to counsel
11 and that he will proceed representing himself.

12 Now, insofar -- if you decide in the future that you
13 want to have a lawyer, that is something that you are going
14 to have to arrange for yourself.

15 I am not going to stop this trial. I am not going to
16 do anything along those lines, because there was ample
17 opportunity before now for you to try to do that.

18 THE DEFENDANT: There was ample opportunity, Your
19 Honor, at my demand.

20 I mean, I am not demanding this of the Court, but,
21 clearly, if I am not satisfied with counsel and I am truly
22 indigent, then the Court being a tool of this country ought
23 to grant such counsel other than counsel that has been
24 accused of conflict along with the client.

25 THE COURT: Well, the conflict that you have presented

Motion

1 to me, I don't see any type of a conflict, Mr. Moore.
2 That's where you and I have a disagreement of opinion.

3 You have the right if you are indigent to have a
4 competent lawyer appointed to represent you, and in this
5 case competent lawyers. You have competent lawyers.

6 THE DEFENDANT: Okay, Your Honor.

7 THE COURT: You are -- excuse me, Mr. Moore. You are
8 dissatisfied with that. And I have made a full
9 determination that if you don't want these two lawyers, then
10 you're going -- you only have the alternative of
11 representing yourself.

12 THE DEFENDANT: So when the Bar Association responds
13 and let's me know that they have these two attorneys under
14 investigation pertaining to my complaints, are you telling
15 me that that in itself means nothing and that they will
16 still be approved to represent me?

17 THE COURT: Insofar as I am concerned today, yes, sir,
18 because I don't know that -- what would come of that. That
19 is a matter that does not come before this Court.

20 And, once again, if that were an issue, then any number
21 of cases could be sidetracked in that way.

22 THE DEFENDANT: I think that would become an issue,
23 Your Honor.

24 THE COURT: Now, I want you to understand that you can
25 consider the appointment of stand-by counsel to assist you

Motion

1 if you should determine during the trial that you can no
2 longer be permitted, or that you can no longer represent
3 yourself. And that would be these two gentlemen.

4 And if you change your mind in the middle of the trial,
5 that you don't want to represent yourself or if you want
6 another lawyer, once again, that is not a decision that can
7 be made then. That's a decision that has to be made right
8 now.

9 So, if you want to have these two gentlemen to be
10 stand-by counsel --

11 THE DEFENDANT: So, are you telling me that if I don't
12 take these two gentlemen as a representation that I can no
13 way in the future have counsel?

14 THE COURT: Well, if you want to bring a lawyer in,
15 once again, I would entertain that motion. But if they make
16 a motion for a continuance after this trial is started, no,
17 sir, that is not going to happen. That should have been
18 done before this day.

19 We are here at 11:25. The jury has been here since
20 9:30. We have been dealing with these issues, and it's
21 important to deal with issues. But I also want you to
22 understand that those are the options that I have and that I
23 am giving you.

24 THE DEFENDANT: Your Honor, I stand firm with my
25 decision.

Motion

1 THE COURT: You wish to represent yourself without
2 stand-by counsel.

3 THE DEFENDANT: I wish to have Mr. Morin and Mr. Kelly
4 removed from my case.

5 THE COURT: And you do not want them to participate in
6 any way.

7 THE DEFENDANT: None, whatsoever.

8 THE COURT: All right, sir. I think that I have very
9 completely included in the record that this defendant has
10 been advised of his right to counsel, of the importance of
11 counsel. And I find that he has knowingly and voluntarily
12 waived his right to counsel and that the trial will proceed
13 with him representing himself.

14 All right. We will stand at ease until we start the
15 qualification.

16 MR. MORIN: May it please the Court, Your Honor.

17 THE COURT: Just a moment.

18 MR. MORIN: This being the case, it's my intention --
19 my entire file regarding Mr. Moore is presently in the
20 courtroom. And it's my intention to make that completely
21 available to him.

22 I wanted to point out that in each one of those files,
23 or in most of them for the most part, there are questions
24 and notes I have taken. And I am leaving that with him.

25 THE COURT: Well, I think a couple of things need to be

Motion

1 done.

2 Number one, you need to make sure that you have a
3 proper copy of those things for your file. So, I think that
4 needs to be taken care of also.

5 And, Mr. Bartosh, I see you back there, the deputy
6 public defender. If you would, kind of assist in the
7 copying of any materials that you need for -- Mr. Morin
8 needs for his files and Mr. Kelly needs for the files. And
9 provide then Mr. Moore with what he needs.

10 MR. MORIN: Okay. Thank you, Your Honor.

11 THE COURT: All right. And you gentlemen are relieved
12 as counsel.

13 MR. GOWDY: Your Honor, the arraignment will be on
14 2001-GS -- may it please the Court, Your Honor, the
15 arraignment will be on 2001-GS-42-2460, the State of South
16 Carolina vs. Richard Bernard Moore, and charges him with
17 armed robbery. And it is dated October the 8th of 2001, the
18 grand jury.

19 THE COURT: Once again, you are Richard Bernard Moore
20 correct, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Moore, indictment 2001-GS-42-2460
23 charges you with the offense of armed robbery in that you
24 did in Spartanburg County on or about September 16, 1999,
25 commit a robbery while armed with a pistol, dirk, slingshot,

Motion

1 metal knuckles, razor or other deadly weapon, or while
2 alleging either by action or words, you were armed while
3 using a representation of a deadly weapon or any object
4 which a person present during the commission of a robbery
5 reasonably believed to be a deadly weapon, and did
6 feloniously take from the person or presence of James
7 Mahoney, by means of force, violence and/or intimidation,
8 goods or monies of Nikki's Speedy Mart, with intent to
9 deprive the owner permanently of such property. That's a
10 charge of armed robbery, once again.

11 Do you understand the charge against you?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: And how do you plead?

14 THE DEFENDANT: Not guilty.

15 THE COURT: And how do you wish to be tried?

16 THE DEFENDANT: By God and my jury, the country.

17 THE COURT: Thank you. He is formally arraigned.

18 We will reconvene in the West Courtroom in a few
19 moments.

20 (Whereupon, a recess was taken.)

21 THE COURT: Thank you very much.

22 All right. Mr. Clerk, let's call the roll of the
23 jurors, please.

24 (Whereupon, the roll was called of jurors.)

25 THE COURT: A very pleasant good afternoon, to you,

Jury qualification

1 ladies and gentlemen of the jury.

2 My name is Gary Clary. I am a circuit court judge from
3 here in Spartanburg. I am delighted to be here with you for
4 this term of general sessions court.

5 Let me apologize to you for keeping you waiting this
6 morning. There were some matters that I had to deal with
7 that were beyond my control. And, as a result of that,
8 that's the reason that we had you here. We let you step out
9 for a little while and then sent you away for a lunch break.
10 But, once again, let me apologize for that and thank you
11 very much for your being here today.

12 First of all, I am going to try to make this as short
13 and painless as possible, but there are a number of
14 questions that I am going to be presenting to you.

15 If any of these questions apply to you, I want you to
16 please stand. Give me your juror number. If you do not
17 remember your juror number, give me your name and allow me
18 to properly identify you for our court reporter who is
19 seated up here beside me, Linda Moffitt, who is one of our
20 resident court reporters here in Spartanburg County. Then I
21 will continue with my questioning.

22 And since I do have certain questions to ask of you to
23 determine your qualifications as jurors here in general
24 sessions court, keep in mind that these questions determine
25 your general eligibility to serve as a juror in the state.

Jury qualification

1 Quite frankly, some of these questions are very
2 personal, and you may not want to stand and disclose this
3 information openly in the presence of your fellow jurors.
4 These questions are required by state law, that I ask each
5 and every one of them. So, please, understand that after
6 each question if you need to respond, I will ask you to
7 stand.

8 If you do not want to stand at that particular time,
9 that's okay. That's fine. At the end of the process I will
10 give you a chance to come forward and speak with me
11 privately about any question that you might think applies to
12 you.

13 We do not want any of you to suffer any embarrassment.
14 So, if you do not wish to stand when a particular question
15 is asked, simply make a mental note of that and remember to
16 come forward at the end of my questioning so that I can
17 properly discuss this matter with the court reporter. It is
18 absolutely essential that we have accurate information in
19 this process.

20 Now, if you have a cellular telephone or a beeper, turn
21 it off. And do not bring it back to the courthouse, because
22 you will have absolutely no need for it, no use for it while
23 you are here.

24 All right. Mr. Clerk, let's swear the jury, please.

25 (Whereupon, the jury venire was duly sworn.)

Jury qualification

1 THE COURT: Now, ladies and gentlemen of the jury, I
2 think that each and every one of you received a rather
3 lengthy jury questionnaire that was sent to you by the clerk
4 of court.

5 Is there any member of the jury panel who did not
6 receive this questionnaire?

7 All right, sir. If you would, stand, please.

8 And your name or number?

9 JUROR NUMBER 114: Number is 114.

10 THE COURT: And you are Mr. Hall?

11 JUROR NUMBER 114: Yes, sir.

12 THE COURT: Mr. Clerk, we are going to need Mr. Hall to
13 fill out a questionnaire for us.

14 Do you have one, madam clerk? You do have one?

15 JUROR NUMBER 114: I am left-handed.

16 THE COURT: Well, can someone fill it out for you?

17 JUROR NUMBER 114: Can someone?

18 THE COURT: Did someone fill it out for you?

19 JUROR NUMBER 114: I never seen it, sir.

20 THE COURT: How about coming forward then, Mr. Hall?

21 (The following takes place at the bench with Juror
22 Number 114.)

23 THE COURT: How are you doing today?

24 JUROR NUMBER 114: Good, sir, considering.

25 THE COURT: Considering. I understand. This is what

Jury qualification

1 we received. Is that information on there correct?

2 JUROR NUMBER 114: Yes, sir.

3 THE COURT: All right. Is that your signature?

4 JUROR NUMBER 114: Yeah.

5 THE COURT: Do you remember any more about it now?

6 JUROR NUMBER 114: I must have. I been on vacation and
7 my arm --

8 THE COURT: Do you want to look that over and make sure
9 everything is accurate in it?

10 JUROR NUMBER 114: It looks pretty accurate.

11 THE COURT: Does that writing look familiar to you,
12 whoever filled that out for you?

13 JUROR NUMBER 114: Yeah. And I signed it. I must have
14 forgot. I apologize.

15 THE COURT: No problem. Thank you, sir.

16 (End of proceedings at the bench.)

17 THE COURT: Mr. Hall has filled out a questionnaire for
18 us. It apparently was filled out by someone at his
19 direction, and his signature is affixed thereto.

20 Does any juror wish to add or modify any of the
21 information that's contained on the form that was presented
22 to this Court? If so, please stand.

23 JUROR NUMBER 162: Your Honor, I would like to turn
24 mine in. I never mailed it.

25 THE COURT: Great. Come on up and turn it in.

Jury qualification

1 (The following takes place at the bench with Jurors
2 Numbers 162, 40 and 296.)

3 THE COURT: Give me your name again, please.

4 JUROR NUMBER 162: Kenneth Littlejohn.

5 THE COURT: Mr. Littlejohn. And he is number 162.

6 Please give it to clerk there, Mr. Littlejohn. Thank
7 you very much.

8 Would you other two gentlemen please come forward --
9 three gentlemen, ever how many gentlemen I have standing.
10 How are you doing today?

11 JUROR NUMBER 40: All right.

12 THE COURT: Let me see what we have got here.

13 Mr. Browning.

14 JUROR NUMBER 40: Number 40.

15 THE COURT: Thank you, Mr. Browning.

16 Mr. Browning is Number 40.

17 JUROR NUMBER 296: My number is 296. My address is
18 different now. I am getting relocated in Nashville because
19 of recording purposes.

20 THE COURT: How long have you been living in Nashville?

21 JUROR NUMBER 296: I been back and forth the past year.
22 I actually have two addresses. I have my mail sent to my
23 parents for financial reasons because I travel on the road
24 so much.

25 THE COURT: Do you consider Spartanburg or Nashville

Jury qualification

1 your home?

2 JUROR NUMBER 296: Nashville now.

3 THE COURT: Do you maintain a residence in Nashville?

4 JUROR NUMBER 296: Yes, sir.

5 THE COURT: Do you have a Tennessee driver's license
6 and those kind of things?

7 JUROR NUMBER 296: Yes, sir. I wanted you to be aware.

8 THE COURT: You are no longer a resident of Spartanburg
9 County and those things? Have you registered to vote?

10 JUROR NUMBER 296: Not up there, not yet.

11 THE COURT: But you do have a driver's license up there
12 and receive your mail by there?

13 JUROR NUMBER 296: Yes, sir. Some of it.

14 THE COURT: And where do you live in Nashville?

15 JUROR NUMBER 296: Right off 431.

16 THE COURT: Nolensville, N-O-L-A-N-S-V-I-L-L-E.

17 JUROR NUMBER 296: Yes, sir. Nashville, Tennessee.

18 THE COURT: And what's your zip code up there?

19 JUROR NUMBER 296: 37135.

20 THE COURT: What kind of music do you do?

21 JUROR NUMBER 296: Rock music.

22 THE COURT: Is that a good place?

23 JUROR NUMBER 296: Yes, sir. It's a growing scene. It
24 paid me pretty good money.

25 THE COURT: Did you come down here for this?

Jury qualification

1 JUROR NUMBER 296: Yes, sir.

2 THE COURT: I am sorry for that.

3 (End of proceedings at the bench.)

4 THE COURT: Let the record reflect that I have examined
5 Juror Number 96, Mr. Neumann. He is now a resident of
6 Nashville, Tennessee. Excuse me. 296. No. I am about to
7 let the wrong person off here. I am in the wrong one. Let
8 me get over here to the right one. Number 296,
9 Mr. Woolbright. He is now a resident of Nashville,
10 Tennessee; has a driver's license there and is employed
11 there in the music industry.

12 Good luck to you.

13 He is excused pursuant to statute.

14 Now, ladies and gentlemen of the jury, I am going to be
15 asking you a number of general questions of qualification.

16 Once again, if any of these questions do apply to you,
17 I want you to please stand, give me your name or juror
18 number, and allow me to properly identify you for our court
19 reporter.

20 Once again, if a question that I am asking you which,
21 once again, is required by statute, those statutes have been
22 enacted by the General Assembly of the State of South
23 Carolina. If these questions are of an embarrassing nature
24 or you desire to come forward at a later time, please
25 remember to do that when I ask you at the end of my

Jury qualification

1 qualification process.

2 Is there any member of the jury panel who is not a
3 citizen -- is not a resident of Spartanburg County, South
4 Carolina? If you are not, I want you to please stand.

5 Yes, sir. Your name or number.

6 JUROR NUMBER 161: 161.

7 THE COURT: Come on up, please, sir.

8 (The following takes place at the bench with Juror
9 Number 161.)

10 THE COURT: You are Mr. Lindsey.

11 JUROR NUMBER 161: Yeah.

12 THE COURT: Where do you live, Mr. Lindsey?

13 JUROR NUMBER 161: Greenville.

14 THE COURT: How long have you been in Greenville?

15 JUROR NUMBER 161: Past, oh, four or five years.

16 THE COURT: You used to live up on Loop Road in
17 Campobello.

18 JUROR NUMBER 161: Yeah.

19 THE COURT: Where do you live in Greenville?

20 JUROR NUMBER 161: Blue Ridge. Do you need my address?

21 THE COURT: I do.

22 JUROR NUMBER 161: 2264 Fews Chapel Road.

23 THE COURT: All right.

24 JUROR NUMBER 161: Greer, South Carolina.

25 THE COURT: And that's in Greenville County.

Jury qualification

1 JUROR NUMBER 161: Yeah.

2 THE COURT: What's your zip code?

3 THE DEFENDANT: 29651.

4 THE COURT: All right. You need to -- if you haven't
5 had your address changed on your driver's license, those
6 kind of things, you need to have that done. That's the
7 reason you probably got called here.

8 JUROR NUMBER 161: On my I. D. I ain't got a driver's
9 license.

10 THE COURT: It might be we came off an old list. You
11 are excused. Thank you very much.

12 (End of proceedings at the bench.)

13 THE COURT: Juror Number 161, Mr. Lindsey, is excused
14 pursuant to Section 14-7-130 of the code as he is now a
15 resident of Greenville County, South Carolina.

16 Is there any member of the jury panel who is not at
17 least 18 years of age? If you are not, I want you to please
18 stand.

19 (No response.)

20 THE COURT: Any member of the jury panel who is not a
21 citizen of the United States of America? If you are not, I
22 want you to please stand.

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 has less than a sixth grade education or its equivalent, or

Jury qualification

1 who is unable to read, write, speak or understand the
2 English language? If that applies to you, you may stand now
3 or at a later time come forward.

4 (No response.)

5 THE COURT: Is there any member of the jury panel who
6 is a county officer or who is employed within the walls of
7 any courthouse? For example, that would be someone that
8 worked in the clerk of court's office, county auditor's
9 office or treasurer's office, sheriff, deputy sheriff or any
10 police officer, probate judge, county councilman or
11 commissioner, magistrate or any other county officer. If
12 that applies to you, I want you to please stand.

13 (No response.)

14 THE COURT: Now, is there any member of the jury panel
15 who has been convicted or pled guilty in a state or federal
16 court for a crime that is punishable by imprisonment for
17 more than one year and your civil rights have not been
18 restored by pardon or by amnesty?

19 It could be that you have been convicted of a crime or
20 pled guilty to a crime and received a probationary sentence
21 or a sentence of less than one year.

22 The key to my question is very simply this. If the
23 charge of which you were convicted or pled guilty to carried
24 potential jail time of more than one year, that's what I am
25 talking about, and that's what you need to reveal to me.

Jury qualification

1 If that applies to you or if you even think that it
2 applies to you, please stand at this time and come forward
3 or come forward at the end of my questioning.

4 (The following takes place at the bench with Juror
5 Number 66.)

6 THE COURT: How are you doing? Tell me your name.

7 JUROR NUMBER 66: Travis Crooke, 66.

8 THE COURT: Tell me what kind of charge.

9 JUROR NUMBER 66: Possession with intent.

10 THE COURT: That disqualifies you.

11 JUROR NUMBER 66: I got a year of probation.

12 THE COURT: That carries more than a year even though
13 you just got a year's probation. Possession with intent
14 carries important more than a year. I am going to excuse
15 you. The clerk will dismiss you.

16 (End of proceedings at the bench.)

17 THE COURT: Juror Number 66, Mr. Crooke, is not
18 qualified pursuant to 14-7-810.

19 Now, ladies and gentlemen of the jury, is there any
20 member of the jury panel who is not a qualified elector,
21 meaning that you are not registered to vote in Spartanburg
22 County; or is there any member of the jury panel who does
23 not have a driver's license issued by the highway
24 department; or is there any member of the jury panel --
25 before you stand up, let me explain it to you -- who does

Jury qualification

1 not have an identification card issued by the highway
2 department and you are eligible to register to vote?

3 The key to my question is very simply this. You do not
4 need all three of those documents to serve as a juror in
5 this state. You only need one of those three documents to
6 serve as a juror here in South Carolina.

7 That means you either need to be registered to vote, or
8 you need to have to have a driver's license issue by the
9 highway department of our state, or you need to have an
10 identification card issued by the highway department and be
11 eligible to register to vote. If you do not have at least
12 one of those three documents, please stand.

13 (No response.)

14 THE COURT: Now, is there any member of the jury panel
15 who is not able by reason of mental or physical infirmities
16 to render efficient jury service?

17 (The following takes place at the bench with Juror
18 Number 82.)

19 THE COURT: Jury Number 82, Mrs. Feeney.

20 Could you tell me a little bit more about your
21 condition?

22 JUROR NUMBER 82: Well, I had back surgery a few years
23 ago, and I hurt my back again. And on top of that I got a
24 colon problem.

25 THE COURT: All right. And you are being treated for

Jury qualification

1 all of that?

2 JUROR NUMBER 82: Uh-huh.

3 THE COURT: And Dr. Tesseneer is your physician.

4 JUROR NUMBER 82: Yes.

5 THE COURT: I will excuse you. Thank you for coming,
6 Ms. Feeney.

7 (The following takes place at the bench with Juror
8 Number 90.)

9 THE COURT: Tell me your name, sir.

10 JUROR NUMBER 90: Fred L. Fredell, Juror 90.

11 THE COURT: Ninety. Ray E. Fredell.

12 JUROR NUMBER 90: Right. And I am diabetic, and my
13 sugar might go down just any time and cause me to go into a
14 diabetic coma. And another thing, you said something about
15 being able to read and write. I know how, but my eyes is so
16 bad I can't see how.

17 THE COURT: Okay.

18 JUROR NUMBER 90: And I am weak all of the time.

19 THE COURT: When you have diabetes, do you take
20 injections for that?

21 JUROR NUMBER 90: I take injections and pills. And I
22 have high blood pressure.

23 THE COURT: Okay. I will excuse you. Thank you, sir.

24 JUROR NUMBER 90: Thank you.

25 (The following takes place at the bench with Juror

Jury qualification

1 Number 41.)

2 JUROR NUMBER 41: Good afternoon, Your Honor.

3 My wife is in real bad health. She is currently a
4 patient at Spartanburg Regional, Three Tower.

5 They are saying she might be able to come home later
6 this week or sometime. But when she is at home if she is
7 not in the hospital there is no one to care of her but me.

8 THE COURT: What type of work did you tell me you do?

9 JUROR NUMBER 41: I am a truck driver.

10 THE COURT: And how do you care for her when you are on
11 the road?

12 JUROR NUMBER 41: I am not on the road. I drive for M.
13 W. White and Company, and I am at home in the evening. We
14 are going to have home health with her, and the doctor is
15 working. And I will be caring for her at night and on the
16 weekends. She is in very bad health. We only have one
17 child. She is in Salt Lake City, Utah. She can't care for
18 her. She --

19 THE COURT: I am going to excuse you.

20 (The following takes place at the bench with Juror
21 Number 196.)

22 JUROR NUMBER 196: Tim Neumann. I am diabetic also. I
23 have a --

24 THE COURT: What is your --

25 JUROR NUMBER 196: -- possession of cocaine.

Jury qualification

1 THE COURT: That disqualifies you.

2 JUROR NUMBER 196: I know. I just didn't want to come
3 up at that time.

4 THE COURT: 196.

5 (The following takes place at the bench with Juror
6 Number 114.)

7 THE COURT: Mr. Hall.

8 JUROR NUMBER 114: Yes. I been in a wreck and have
9 broke an arm and cheekbone, and I am on medication, and I
10 can't write.

11 THE COURT: What kind of medication?

12 JUROR NUMBER 114: Lortab.

13 THE COURT: How often do you take them?

14 THE DEFENDANT:

15 JUROR NUMBER 114: One every four hours.

16 THE COURT: I will excuse you. Thank you, sir.

17 (The following takes place at the bench with Juror
18 Number 45.)

19 THE COURT: Mrs. Smith -- is that right?

20 JUROR NUMBER 45: Burnside.

21 THE COURT: 245?

22 JUROR NUMBER 45: Joann Burnside.

23 THE COURT: Joann Burnside.

24 Yes, ma'am.

25 JUROR NUMBER 45: I didn't vote, and I don't have a

Jury qualification

1 driver's license.

2 THE COURT: You don't have a driver's license. You are
3 not registered to vote. Do you have an identification card?

4 JUROR NUMBER 45: My I. D.

5 THE COURT: Let me see that. And you are old enough to
6 register to vote, just barely. You are qualified then.

7 (The following takes place at the bench Juror Number
8 151.)

9 THE COURT: You are Mr. Kuykendoll?

10 JUROR NUMBER 151: I have A. D. D. And I don't think I
11 am going to be able to, you know, comprehend.

12 THE COURT: How far did you go in school?

13 JUROR NUMBER 151: The ninth grade.

14 THE COURT: Can you read and write?

15 JUROR NUMBER 151: I can read and write. As far as
16 remembering and everything, I don't think I could
17 understand.

18 THE COURT: Do you have trouble sitting and
19 concentrating?

20 JUROR NUMBER 151: No. I just don't think I could
21 understand everything as far as all of the terms and what
22 they say.

23 THE COURT: What kind of work do you do?

24 JUROR NUMBER 151: Construction work.

25 THE COURT: How old are you?

Jury qualification

1 JUROR NUMBER 151: Twenty-two.

2 THE COURT: I will excuse you. Thank you, sir.

3 (End of proceedings at the bench.)

4 THE COURT: All right. Let the record reflect that
5 Juror Number 151, Mr. Kuykendoll, is excused pursuant to
6 Section 14-7-810; that Juror 196 is not qualified pursuant
7 to Section 14-7-810; and that Jurors 41, 82, 90 and 114 are
8 excused pursuant to Section 14-7-810 due to physical or
9 mental infirmities of themselves or a family member for whom
10 they have care.

11 Come on up, please, ma'am.

12 (The following takes place at the bench with Juror
13 Number 259.)

14 JUROR NUMBER 259: Because my father had a stroke, he
15 needs care, and my mother is blind and also crippled with
16 arthritis. My husband is also disabled with his back and
17 cannot care for them while I am away. Unfortunately, I do
18 not have any money or means to pay someone to be there.

19 THE COURT: You do not need to apologize.

20 JUROR NUMBER 259: I feel like --

21 THE COURT: You told me you had formerly worked in the
22 video department at Ingles and now you care for your elderly
23 parents.

24 JUROR NUMBER 259: I had to move in.

25 THE COURT: I will excuse you.

Jury qualification

1 JUROR NUMBER 259: Thank you.

2 Do they have a copy of that on record?

3 THE COURT: I will let you keep that.

4 (End of proceedings at the bench.)

5 THE COURT: Juror 259, Mrs. Stockman, is excused.

6 Ladies and gentlemen of the jury, the next few
7 questions represent exemptions where you as a juror may
8 choose or elect not to serve.

9 Is there any member of the jury panel who is more than
10 65 years of age and you do not desire to serve as a juror
11 here in general sessions court? If you are greater than 65,
12 I would encourage you to remain with us, because you can
13 lend a great deal of experience to this process. However,
14 if you are more than 65, I would allow you to exercise your
15 exemption. Anyone who is greater than 65 who desires to be
16 excused?

17 (No response.)

18 THE COURT: Is there any member of the jury panel who
19 has previously served as a juror here in circuit court --
20 not magistrate's court, not federal court, not city court,
21 only here in circuit court -- during the last three calendar
22 years? If that applies to you, please stand.

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 has previously served as a member of the grand jury for

Jury qualification

1 Spartanburg or any other county of this state or the
2 state-wide grand jury during the last five calendar years?
3 If so, please stand.

4 (No response.)

5 THE COURT: Now, when you received your summons to
6 report here, ladies and gentlemen, there was information
7 contained therein which stated that if you were a woman with
8 a child under the age of seven for whom you have legal
9 custody and duty of care and you do not work outside the
10 home that you were to provide that information to the clerk
11 of court.

12 Are there any women who have children under the age of
13 seven for whom you have legal custody and duty of care and
14 you have not provided that information to the clerk? Would
15 you ladies, please, come forward?

16 (The following takes place at the bench with Juror
17 Number 42.)

18 THE COURT: You are Anita Buchanan.

19 JUROR NUMBER 42: Yes, sir.

20 THE COURT: And you have children what age?

21 JUROR NUMBER 42: I have two -- three, and six and a
22 half.

23 THE COURT: Six and a half?

24 JUROR NUMBER 42: Yes, sir.

25 THE COURT: Okay. And you say you are a phlebotomist.

Jury qualification

1 JUROR NUMBER 42: Yes.

2 THE COURT: And what where do you work?

3 JUROR NUMBER 42: Spartanburg Regional.

4 THE COURT: What shift do you work?

5 JUROR NUMBER 42: During the day, 9:00 to 5:30.

6 THE COURT: And I assume you have care of your children
7 after that.

8 JUROR NUMBER 42: I do. They go to a daycare and
9 elementary school.

10 THE COURT: Where?

11 JUROR NUMBER 42: In Pacolet.

12 THE COURT: Both of them go?

13 JUROR NUMBER 42: Yes, sir.

14 THE COURT: I will excuse you. Thank you for coming.

15 JUROR NUMBER 42: Thank you.

16 (End of proceedings at the bench.)

17 THE COURT: Juror 42 is excused pursuant to Section
18 14-7-860.

19 (The following takes place at the bench with Juror
20 Number Five.)

21 THE COURT: Mr. Allen.

22 JUROR NUMBER FIVE: Yes, sir. I am a single parent,
23 and I get out of my job at six o'clock every day.

24 THE COURT: How old is your child?

25 JUROR NUMBER FIVE: She is seven.

Jury qualification

1 THE COURT: And is she in daycare?

2 JUROR NUMBER FIVE: She is in Christian Academy. She
3 is in the daycare at the same place.

4 THE COURT: And you have to get her by 6:00?

5 JUROR NUMBER FIVE: I have to get her by 6:00 every
6 day.

7 THE COURT: Juror Number Five, Stefanie Allen, is
8 excused pursuant to Section 14-7-860.

9 (End of proceedings at the bench.)

10 (The following takes place at the bench with Juror
11 Number 257.)

12 THE COURT: How are you?

13 JUROR NUMBER 257: I am fine. How are you?

14 THE COURT: Thank you, ma'am.

15 You are Ms. Stevenson.

16 JUROR NUMBER 257: I have a two-year-old daughter. And
17 also I wanted to ask back in June of last year I was charged
18 with possession of marijuana, but it was reduced. My
19 license was suspended, and I had to pay a fine.

20 THE COURT: That wouldn't disqualify you.

21 You say you have a child.

22 JUROR NUMBER 257: I have a three-year-old.

23 THE COURT: I am going to excuse you, Mrs. Stevenson.

24 (End of proceedings at the bench.)

25 THE COURT: Juror Number 257, Mrs. Stevenson, is

Jury qualification

1 excused pursuant to Section 14-7-860 as she has a
2 three-year-old.

3 (The following takes place at the bench with Juror
4 Number 246.)

5 THE COURT: You are Ms. Kay Smith.

6 JUROR NUMBER 246: Yes, sir. I have a six-year-old,
7 but I can stay. It doesn't matter.

8 THE COURT: And you --

9 JUROR NUMBER 246: He is in school.

10 THE COURT: Do you care for him after school?

11 JUROR NUMBER 246: Uh-huh.

12 THE COURT: Anyone else to care for him after school?

13 JUROR NUMBER 246: My daughters sometimes when they are
14 not working. Normally, it is kind of hard.

15 THE COURT: That's your responsibility. And I think
16 you told me you are employed.

17 JUROR NUMBER 246: Yes, sir.

18 THE COURT: I am going to excuse you. The case we have
19 will probably require you to be here after six o'clock at
20 night, and maybe at night. So I am going to excuse you.

21 JUROR NUMBER 246: Okay.

22 (End of proceedings at the bench.)

23 THE COURT: Number 246, Ms. Smith, is excused. She has
24 a child six years of age.

25 Now, are there any full-time students, teachers, bus

Jury qualification

1 drivers, anyone employed as a school employee, as a
2 certified personnel at the building level who, as a result
3 of your participation here, that it would interfere with
4 your school duties or responsibilities?

5 While I cannot excuse you, I could transfer you to
6 another term of court if this particular term of court
7 presents a particular problem to you in your official duties
8 as a teacher, bus driver or other certified personnel at the
9 building level.

10 Are these those who seek that at this time?

11 Come forward, please.

12 (The following takes place at the bench with Juror
13 Number 191.)

14 THE COURT: I think you are Ms. Morrow. Is that
15 correct?

16 JUROR NUMBER 191: Yes, sir.

17 THE COURT: Yes, ma'am.

18 JUROR NUMBER 191: I am a school teacher.

19 THE COURT: Where do you teach, Ms. Morrow?

20 JUROR NUMBER 191: I travel between two schools,
21 Cleveland Elementary and Madden Elementary.

22 THE COURT: And what do you teach?

23 JUROR NUMBER 191: Physical education.

24 THE COURT: And if you are not there do they -- is
25 there something going on that would interfere with your

Jury qualification

1 duties this week?

2 JUROR NUMBER 191: Well, I would have to get a
3 substitute, and they would have to travel.

4 THE COURT: I will transfer you to one of your vacation
5 times, whether it be spring vacation, Christmas vacation,
6 Thanksgiving vacation, summer vacation. I will let you pick
7 a time, or you can stay with us.

8 JUROR NUMBER 191: Vacation time?

9 THE COURT: That's not a very good deal, is it?

10 JUROR NUMBER 191: No, sir.

11 THE COURT: I will give you the option. You can
12 transfer to a time that will not conflict with your school
13 responsibility or stay with us.

14 JUROR NUMBER 191: I might get dismissed.

15 THE COURT: Quite possible. You never know.

16 JUROR NUMBER 191: Okay.

17 (End of proceedings at the bench.)

18 THE COURT: Ms. Morrow is going to remain with us --
19 Number 91. She didn't like me offering her some time in her
20 vacation time, and I don't blame her.

21 (The following takes place at the bench with Juror
22 Number 284.)

23 JUROR NUMBER 284: 284.

24 THE COURT: Okay. You told me that you teach. We
25 called it industrial arts when I was coming along, but you

Jury qualification

1 call it industrial technology.

2 JUROR NUMBER 284: That's correct. Same thing.

3 THE COURT: You are Mr. Walter.

4 JUROR NUMBER 284: Yes, sir.

5 THE COURT: You are seeking to be transferred to
6 another term. I can transfer you to another term either
7 during the school year, during your vacation period. I will
8 let you pick it out. If not, you can remain with us.

9 JUROR NUMBER 284: I would prefer to do it in the
10 summer.

11 THE COURT: I will let the clerk work out a time with
12 you. He will call you back. Thank you very much for
13 coming.

14 (End of proceedings at the bench.)

15 THE COURT: Juror number 284, Mr. Walter, is
16 transferring to a summer term.

17 Come on up, please, ma'am.

18 (The following takes place at the bench with Juror
19 Number 186.)

20 JUROR NUMBER 186: Hi. I am a school teacher at
21 Byrnes.

22 THE COURT: What's your name and number?

23 JUROR NUMBER 186: 186. But I would prefer to serve
24 because I have children I have to take care of in the
25 summer.

Jury qualification

1 THE COURT: How young are your children?

2 JUROR NUMBER 186: Three, seven and nine -- no. Four,
3 seven and nine.

4 THE COURT: You teach at Byrnes High School?

5 JUROR NUMBER 186: Yes, sir.

6 THE COURT: You have a full-time job day and night.
7 What do you teach?

8 JUROR NUMBER 186: Business.

9 THE COURT: And you have children. There are three.

10 JUROR NUMBER 186: No. Four.

11 THE COURT: Seven and nine?

12 JUROR NUMBER 186: She will be ten November the 1st.

13 THE COURT: This case is probably going to be long, so
14 I am going to -- you having that four-year-old -- excuse you
15 from this term.

16 JUROR NUMBER 186: But I would like to say --

17 THE COURT: You are going to find out in a few minutes
18 you might be spending nights.

19 JUROR NUMBER 186: My husband would not like that.

20 THE COURT: Most women would like to do that, but I
21 don't think that's such a good idea.

22 If you want to stay, I will let you do that. If you
23 want to go on, I will let you do that too.

24 JUROR NUMBER 186: Will I be called again in the
25 summer?

Jury qualification

1 THE COURT: No. Since you had the four-year-old, I am
2 going to excuse you. You will be called after that child
3 gets older.

4 (End of proceedings at the bench.)

5 THE COURT: Juror Number 186, Ms. Mondello, is excused
6 pursuant to Section 14-7-860 as she has a four-year-old.

7 All right. Solicitor, would you call the case that you
8 intend to present this week?

9 MR. GOWDY: May it please the Court, Your Honor,
10 2000-GS-42-617, the State of South Carolina vs. Richard
11 Bernard Moore. This is an indictment, Your Honor, charging
12 murder and possession of a firearm during the commission of
13 a violent crime.

14 2000-GS-42-1619, the State of South Carolina vs.
15 Richard Bernard Moore. This is an indictment for assault
16 with intent to kill.

17 2001-GS-42-2460, the State of South Carolina vs.
18 Richard Bernard Moore. This is an indictment, Your Honor,
19 for armed robbery.

20 THE COURT: Ladies and gentlemen of the jury, as you
21 have heard the solicitor tell you, this is a case in which
22 the state has filed three indictments against the defendant,
23 the first being 2000-GS-42-0617, wherein the state alleges
24 that the defendant, Richard Bernard Moore, did in
25 Spartanburg County on or about September 16, 1999,

Jury qualification

1 feloniously, wilfully and with malice aforethought kill one
2 James Joseph Mahoney by shooting the victim with a gun, and
3 that the said victim died as a proximate result thereof.
4 That is a charge of murder.

5 Count two of that indictment charges that the
6 defendant, Richard Bernard Moore, did in Spartanburg County
7 on or about September 16, 1999, possess a firearm during the
8 commission of a violent crime as defined in Code Section
9 16-1-60, to wit, murder, that being in violation of South
10 Carolina Code of Laws, 1976 as amended, Section 16-23-490.
11 That is a charge of possession of a firearm during the
12 commission of a violent crime.

13 And Indictment 2000-GS-42-0619 charges that the
14 defendant, Richard Bernard Moore, did in Spartanburg County
15 on or about September 16, 1999, with malice aforethought
16 attempt to commit a battery upon one Terry Dean Hadden by
17 shooting at the victim with a gun with the intent to kill
18 said victim. That is the charge of assault with intent to
19 kill.

20 And then Indictment 2001-GS-42-2460, the state charges
21 that the defendant, Richard Bernard Moore, did in
22 Spartanburg County on or about September 16, 1999, commit a
23 robbery while armed with a pistol, dirk, slingshot, metal
24 knuckles, razor or other deadly weapon, or while alleging
25 either by actions or words that he was armed while using a

Jury qualification

1 representation of a deadly weapon or any object which a
2 person present during the commission of robbery reasonably
3 believed to be a deadly weapon, and did feloniously take
4 from the person or presence of James Mahoney by means of
5 force, violence and/or intimidation goods or monies of
6 Nikki's Speedy Mart with the intent to deprive the owner
7 permanently of such property in violation of Section
8 16-11-338 of the code. That is a charge of armed robbery.

9 Now, ladies and gentlemen of the jury, the indictments
10 from which I have read are merely allegations. They are not
11 in any sense evidence in this case.

12 It's the burden of the state of South Carolina to prove
13 each and every element of the crime or crimes with which the
14 defendant is charged beyond a reasonable doubt. And a
15 defendant has absolutely no burden, no responsibility, no
16 obligation to prove himself innocent.

17 Now, ladies and gentlemen of the jury, we will attempt
18 to impanel a jury that is capable of listening to the
19 testimony and evidence to be presented, capable of deciding
20 what is the believable testimony and evidence, capable of
21 applying to that testimony the evidence and the law that I
22 will instruct you, and capable of returning a fair verdict
23 and a recommendation of sentence, if appropriate.

24 A qualified juror is one who will conscientiously apply
25 the law and find the facts; a qualified juror is one who is

Jury qualification

1 capable of returning a verdict and a recommendation of
2 sentence based on the evidence and the law; a qualified
3 juror is one capable of setting aside his or her opinions
4 and deciding a matter based upon the law and the evidence.

5 A juror is not qualified if the juror's view would
6 prevent or substantially impair the performance of his or
7 her duties as a juror in accordance with the oath of a juror
8 and the instruction of this Court.

9 Now, I am going to ask the defendant, Richard Bernard
10 Moore, to please stand.

11 And turn and face the jury, Mr. Moore.

12 (Whereupon, the defendant stood.)

13 THE COURT: Thank you very much, Mr. Moore. You may be
14 seated, sir.

15 Is there any member of the jury panel who is related by
16 blood or marriage, or do you have any close personal, social
17 or business relationship with the defendant, Richard Moore?
18 If so, please stand.

19 Yes, sir. Your name or number, please.

20 JUROR NUMBER 229: 229, Michael Roberson.

21 THE COURT: Come forward, please.

22 (The following takes place at the bench with Juror
23 Number 229.)

24 THE COURT: You are Michael Roberson.

25 JUROR NUMBER 229: Yes, sir.

Jury qualification

1 THE COURT: Correct? Tell me how you know this man.

2 JUROR NUMBER 229: Three years back, county detention
3 corporal.

4 THE COURT: Okay. And what are you doing now?

5 JUROR NUMBER 229: I am a dispatcher for a trucking
6 company. I moved in 2000.

7 THE COURT: Okay. You formerly were at the detention
8 center.

9 JUROR NUMBER 229: Yes, sir. I was a training
10 corporal.

11 THE COURT: I will excuse you from consideration in
12 this case.

13 JUROR NUMBER 229: Thank you, sir.

14 (End of proceedings at the bench.)

15 THE COURT: Juror number 229, Mr. Roberson, is excused
16 from the consideration of this case.

17 Now, is there any member of the jury panel who is
18 related by blood or marriage, or do you have -- did you have
19 any close personal, social or business relationship with the
20 victim, James Joseph Mahoney, the deceased, or the victim,
21 Terry Dean Hadden? If so, please stand.

22 (No response.)

23 THE COURT: Ladies and gentlemen of the jury, the
24 following individuals have been listed as potential
25 witnesses in this case. A number of them may be in the

Jury qualification

1 courtroom, but a number of them may not be in the courtroom,
2 so listen very carefully as I call their names.

3 If a potential witness is present in this courtroom, I
4 would like for them to please stand. Turn and face the
5 jury, and remain standing until I instruct you to be seated.
6 Once again, ladies and gentlemen, listen very carefully to
7 these names as they are called.

8 Investigator Steve Denton, Spartanburg County Sheriff's
9 Office.

10 (Whereupon, the witness stood.)

11 THE COURT: Thank you, sir. You may be seated.

12 Investigator Neal Urch, Spartanburg County Sheriff's
13 Office; Investigator Tony Brown, Spartanburg County
14 Sheriff's Office; Investigator Charity Brazeal, Spartanburg
15 County Sheriff's Office; Investigator Marc Finley,
16 Spartanburg County Sheriff's Office; Investigator Paul
17 Dorman, Spartanburg County Sheriff's Office; Deputy Bobby
18 Rollins, Spartanburg County Sheriff's Office; Deputy R. C.
19 Miller, Spartanburg County Sheriff's Office; Deputy M. D.
20 Gabriel, Spartanburg County Sheriff's Office; Deputy T.
21 Dudzenski, Spartanburg County Sheriff's Office; Deputy Shane
22 Dedmon, Spartanburg County Sheriff's Office; Deputy Hugh
23 Murphy, Spartanburg County Sheriff's Office; Deputy James
24 Bush, Spartanburg County Sheriff's Office; Deputy Jane
25 Millwood, Spartanburg County Sheriff's Office; Deputy Robert

Jury qualification

1 Rosenberg, Spartanburg County Sheriff's Office; Investigator
2 Ken Bishop, Spartanburg County Coroner's Office;
3 Investigator Rusty Clevenger, Spartanburg County Solicitor's
4 Office; Deputy Blair Lacy; Terry Dean Hadden; George Gibson;
5 Keith Fowler; Jeff Goodwin from Taylors, South Carolina;
6 Lynda Byrd; Dr. J. D. Wren, Spartanburg Regional Medical
7 Center; Kenneth Warren Harris; Senior Agent Manuel J. Ortuno
8 with the State Law Enforcement Division, also known as SLED;
9 Senior Agent Stephen J. Lambert, SLED; Senior Agent Ted M.
10 Shealy, SLED; Lieutenant Joseph D. Powell, SLED; Lisa G.
11 Kiser, a forensic technician with SLED; Lieutenant Emily B.
12 Reinhart, SLED; Senior Agent Kenneth H. Whitler, SLED;
13 Investigator Mike Kitts, Spartanburg County Sheriff's
14 Department; Jackie Chapman, Spartanburg, South Carolina;
15 Nikki Fowler, Spartanburg, South Carolina; Ann Yarborough,
16 Spartanburg; Jeannie Smith, a registered nurse at
17 Spartanburg Regional Medical Center; Christine Montgomery
18 with SLED; Tonya Barber with SLED; Dr. Damon Gatewood,
19 Spartanburg Regional Medical Center; Lori Turner, Boiling
20 Springs, South Carolina, Dr. Hugh Ashley, Spartanburg
21 Regional Medical Center.

22 Officer R. D. Burke, Spartanburg Department of Public
23 Safety; Officer M. W. Alexander, Department of Public
24 Safety; Sergeant Raymond Gist, Spartanburg County Sheriff's
25 Department; Trooper Michael C. Bolding, South Carolina

Jury qualification

1 Highway Patrol; Trooper K. R. Aycock, South Carolina Highway
2 Patrol; Officer J. Biehl, Mount Clemens Police Department in
3 Michigan; Lisa K. Coupe, Mount Clemens Police Department,
4 Michigan; Angela Mayes Caree, Clinton Township, Michigan;
5 Agent David H. Saad, Macomb County, Michigan; David Kivett,
6 Canton, Georgia; Valerie Elaine Wisniewski, Spartanburg;
7 Ricky Allen Forrester, Aynor, South Carolina; Michelle Anne
8 Crowder, Columbia; William Calvin Sterling, New Haven,
9 Michigan; Lieutenant C. Peace, Mount Clemens Police
10 Department, Michigan; Lieutenant Michael Convery, Mount
11 Clemens Police Department in Michigan; David Keller,
12 Spartanburg; Jack Mahoney, Texas; Kathy Pinson, Spartanburg;
13 Allison Pinson, Spartanburg; Virginia Mahoney; James J.
14 Mahoney; Richard Armisted.

15 I am sorry. I been skipping. Could you give me your
16 name, please?

17 THE WITNESS: James Mahoney.

18 THE COURT: Would you turn around, please?

19 And your name, ma'am.

20 THE WITNESS: Virginia Mahoney.

21 THE COURT: Ms. Mahoney, Virginia Mahoney.

22 Ma'am?

23 THE WITNESS: Kathy Pinson.

24 THE COURT: Kathy Pinson. If you would, please, turn
25 around.

Jury qualification

1 (Whereupon, the witnesses stood.)

2 THE COURT: Thank you very much. You may be seated.

3 Jeff Mahoney.

4 (Whereupon, the witness stood.)

5 THE COURT: Thank you, sir.

6 Michelle Moss, Spartanburg Regional Medical Center;
7 Kathy Dean, Macomb County Clerk of Court in Michigan; Mary
8 Smith, Spartanburg; Martha West, Spartanburg; Sonya Harrison
9 Greenway, Spartanburg; Gail Moffitt, Spartanburg County
10 Clerk of Court; Brian Rothemich, Spartanburg; Sid Duvaul,
11 Spartanburg.

12 James Byrd; R. C. Miller, Spartanburg County Sheriff's
13 Department; Keith Fowler; James Aiken; Drucy Glass; Donald
14 Gurndt; Pete Skidmore; Kellett Stephens; Paul Wilson; April
15 Wages; Angela Gasque; Travis Murray; Gary Watson; Frank
16 Williams.

17 Is there any member of the jury manual who is related
18 by blood or marriage, or do you have any close personal,
19 social or business relationship with any of the potential
20 witnesses whose names I have called?

21 Please stand. I will allow you to stand where you are,
22 ladies and gentlemen. If you would, please, let me start
23 with the gentleman over here in the orange shirt.

24 Tell me your number or name.

25 JUROR NUMBER 105: Juror 105.

Jury qualification

1 THE COURT: And you are Mr. Gilbert?

2 JUROR NUMBER 105: Yes, sir.

3 THE COURT: Could you tell me whom you have a
4 connection with, Mr. Gilbert?

5 JUROR NUMBER 105: Lori Turner, I believe, is my
6 brother's wife.

7 THE COURT: Lori Turner is your brother's wife?

8 JUROR NUMBER 105: They are married, okay, but they are
9 not living together. She goes by her maiden name. They
10 have never been divorced.

11 THE COURT: The fact that you have this connection with
12 her through marriage, would that in any way interfere with
13 your ability to render a fair and impartial verdict for
14 either the state or the defendant based solely upon the
15 testimony and evidence that you would hear produced in this
16 courtroom?

17 JUROR NUMBER 105: It may.

18 THE COURT: I will excuse you from this case. Just
19 resume your seat, please, sir.

20 Yes, ma'am, the lady on the back.

21 JUROR NUMBER 251: Juror 251.

22 THE COURT: Just one second, please, ma'am. You are
23 Ms. Smythe.

24 JUROR NUMBER 251: Right.

25 THE COURT: Yes, ma'am.

Jury qualification

1 JUROR NUMBER 251: Michael Bolding is a customer in the
2 store that I work in.

3 THE COURT: The fact that he is a customer in that
4 store, would that in any way interfere with your ability to
5 render a fair and impartial verdict for either the state or
6 the defendant in this case based solely upon the testimony
7 and evidence that you would hear produced in this courtroom?

8 JUROR NUMBER 251: I don't think so.

9 THE COURT: Are you in any way biased or prejudiced as
10 a result of your association with that individual?

11 JUROR NUMBER 251: I like him.

12 THE COURT: Well, the fact that --

13 JUROR NUMBER 251: I remember his name, so I --

14 THE COURT: The fact that you like him, would that in
15 any way interfere with your ability to render a fair and
16 impartial verdict in this case?

17 JUROR NUMBER 251: No.

18 THE COURT: Thank you, ma'am. You may be seated.

19 Yes, ma'am. The lady right here on the end.

20 JUROR NUMBER 248: Mary Smith, 248.

21 THE COURT: All right. Ms. Smith.

22 JUROR NUMBER 248: You called my name, but I don't know
23 anybody.

24 THE COURT: Was that a member of your list, gentlemen?

25 MR. WILLINGHAM: Your Honor, it is a different Mary

Jury qualification

1 Smith.

2 THE COURT: I believe it must be a different Mary
3 Smith. Thank you, ma'am.

4 Yes, ma'am.

5 JUROR NUMBER 220: 220, Sandy Hayes.

6 THE COURT: Yes, ma'am.

7 JUROR NUMBER 220: We do the cleaning business, and we
8 do some business for Officer Denton.

9 THE COURT: For Officer Denton? Is that through the --

10 JUROR NUMBER 220: My husband owns a janitorial
11 business.

12 THE COURT: All right. The fact that you have this
13 connection with Officer Denton, would that in any way
14 interfere with your ability to render a fair and impartial
15 verdict for either the state or the defendant based solely
16 upon your testimony -- your consideration of the testimony
17 and evidence that would be presented in this courtroom?

18 JUROR NUMBER 220: No, sir.

19 THE COURT: Are you in any way biased or prejudiced as
20 a result of that association?

21 JUROR NUMBER 220: No, sir.

22 THE COURT: Thank you, ma'am. You may be seated.

23 The lady here on the end. Yes, ma'am.

24 JUROR NUMBER 142: 142, Christine Johnson.

25 THE COURT: All right. Ms. Johnson, yes, ma'am.

Jury qualification

1 JUROR NUMBER 142: Dr. Gatewood is my doctor.

2 THE COURT: The fact that he is your physician, would
3 that in any way interfere with your ability to render a fair
4 and impartial verdict for either the state or the defendant
5 based solely upon the testimony and evidence that you would
6 hear produced in this courtroom? Are you in any way biased
7 or prejudiced as a result of your association with him?

8 JUROR NUMBER 142: No.

9 THE COURT: Thank you, ma'am.

10 Yes, sir.

11 JUROR NUMBER 275: Juror Number 275, Kevin Tracy. Four
12 of the names you mentioned, I know. Brian Rothemich is an
13 emergency room physician at Regional that I heard and
14 frequently saw from working; and Dr. Wren is a pathologist
15 at Regional. My son was his daughter's escort at her
16 debutante ball two years ago. Both of those are social.

17 Mike Bolding I know as a retired South Carolina Police
18 Officer from hockey games and other things.

19 And then I know all of the coroners imminently, because
20 my nurse was killed in a motor vehicle accident January the
21 4th, and I had to identify her. And I spent some time.

22 THE COURT: The fact that you have this connection with
23 these individuals, would that in any way interfere with your
24 ability to render a fair and impartial verdict for either
25 the state or the defendant based solely upon the testimony

Jury qualification

1 and evidence that you would hear produced in this courtroom?

2 JUROR NUMBER 275: No, sir.

3 THE COURT: Are you in any way biased or prejudiced as
4 a result of your association with these individuals?

5 JUROR NUMBER 142: No, sir.

6 THE COURT: Thank you, sir. You may be seated.

7 Yes, ma'am.

8 JUROR NUMBER 53: Fifty-three.

9 THE COURT: Fifty-three. And you are Ms. Caston.

10 Yes, ma'am.

11 JUROR NUMBER 53: I know Dr. Wren, Pathologist. We
12 have a business relationship, not a close business
13 relationship.

14 THE COURT: And tell me the type of work that you do.

15 JUROR NUMBER 53: I work for dermatologist, so.

16 THE COURT: So, Dr. Wren provides services for
17 Dr. Cook.

18 JUROR NUMBER 53: Yes.

19 THE COURT: All right. The fact that you have this
20 connection, would that in any way interfere with your
21 ability to render a fair and impartial verdict for either
22 the state or the defendant based solely upon the testimony
23 and evidence that you would hear produced in this courtroom?

24 JUROR NUMBER 53: No, sir.

25 THE COURT: Are you in any way biased or prejudiced as

Jury qualification

1 a result of that association?

2 JUROR NUMBER 53: No, sir.

3 THE COURT: Thank you ma'am.

4 Yes, sir.

5 JUROR NUMBER 120: Juror 120.

6 THE COURT: Mr. Heimerl.

7 JUROR NUMBER 120: Correct.

8 THE COURT: Yes, sir.

9 JUROR NUMBER 120: We have dealings with Sergeant Tony
10 Brown, the fire department, a lot, just arson cases and all
11 of the cases that we deal with in the Spartanburg County
12 Sheriff's Office.

13 THE COURT: All right. The fact that you have dealings
14 would that -- through that capacity of your employment,
15 would that in any way interfere with your ability to render
16 a fair and impartial verdict for either the state or the
17 defendant based solely upon the testimony and evidence that
18 you would hear produced in this courtroom?

19 JUROR NUMBER 120: No, Your Honor.

20 THE COURT: Are you in any way biased or prejudiced as
21 a result of that situation?

22 JUROR NUMBER 120: No, Your Honor.

23 THE COURT: Yes, sir.

24 JUROR NUMBER 290: 290, Malcolm White. Three of the
25 people mentioned are customers.

Jury qualification

1 THE COURT: And tell me once again what type of
2 business you are in.

3 JUROR NUMBER 290: Service work at Wakefield Buick.

4 THE COURT: And which three were those?

5 JUROR NUMBER 290: Deputy Murphy, Hugh Murphy; and
6 Michael Bolding; and I am not sure if the Ken Bishop I know
7 is --

8 THE COURT: The fact that you have this business
9 relationship, would that in any way interfere with your
10 ability to render a fair and impartial verdict for either
11 the state or the defendant based solely upon the testimony
12 and evidence that you would hear produced in this courtroom?

13 JUROR NUMBER 290: No, sir.

14 THE COURT: Are you in any way biased or prejudiced as
15 a result of your association with these individuals?

16 JUROR NUMBER 290: No, sir.

17 THE COURT: Thank you, sir.

18 Yes, sir.

19 JUROR NUMBER 150: Juror Number 150, Bud Knuston.

20 THE COURT: Just one moment, please, Mr. Knuston.

21 Ladies and gentlemen, I am going to try to do something
22 about the heat in here. Please bear with me.

23 Mr. Knuston is 150.

24 JUROR NUMBER 150: I believe you mentioned David
25 Keller. I used to work with David Keller.

Jury qualification

1 THE COURT: And in what capacity was that?

2 JUROR NUMBER 150: I don't know if it was the same one
3 or not but --

4 THE COURT: What did you do with him?

5 JUROR NUMBER 150: I worked with him at Tate Metal
6 Works, a welding shop, years ago.

7 THE COURT: And the fact that you worked with this
8 individual, would that in any way interfere with your
9 ability to render a fair and impartial verdict for either
10 the state or the defendant based solely upon the testimony
11 and evidence that you would hear produced in this courtroom?

12 JUROR NUMBER 150: No, sir.

13 THE COURT: Are you in any way biased or prejudiced as
14 a result of your association with him?

15 JUROR NUMBER 150: No, sir.

16 THE COURT: Thank you, sir.

17 Yes, sir.

18 JUROR NUMBER 192: Number 192.

19 THE COURT: You are Mr. David Mosley?

20 JUROR NUMBER 192: Yes, sir.

21 THE COURT: Yes, sir.

22 JUROR NUMBER 192: Ms. Moffitt is my mother's first
23 cousin.

24 THE COURT: You are talking about Gail Moffitt?

25 JUROR NUMBER 192: Yes, sir.

Jury qualification

1 THE COURT: Do you know this Ms. Moffitt here too?

2 JUROR NUMBER 192: Yes, sir.

3 THE COURT: She would also be related to you, wouldn't
4 she?

5 JUROR NUMBER 192: Yes, sir.

6 THE COURT: All right. The fact that you have this
7 relationship, would that in any way interfere with your
8 ability to render a fair and impartial verdict for either
9 the state or the defendant based solely upon the testimony
10 and evidence that you would hear produced in this courtroom?

11 JUROR NUMBER 192: No, sir.

12 THE COURT: Are you in any way biased or prejudiced as
13 a result of your association with these individuals?

14 JUROR NUMBER 192: No, sir.

15 THE COURT: Thank you, sir.

16 Now, ladies and gentlemen of the jury, the State of
17 South Carolina is represented in this matter by the Seventh
18 Judicial Circuit Solicitor's Office, in particular Solicitor
19 Trey Gowdy.

20 Solicitor.

21 (Whereupon, Mr. Gowdy stood.)

22 THE COURT: Thank you, sir.

23 Deputy Solicitor Barry Barnette.

24 (Whereupon, Mr. Barnette stood.)

25 THE COURT: Thank you, sir.

Jury qualification

1 And Deputy Solicitor Donnie Willingham.

2 (Whereupon, Mr. Willingham stood.)

3 THE COURT: Thank you, sir.

4 Is there any member of the jury panel who is related by
5 blood or marriage, or do you have any close personal, social
6 or business relationship with either Solicitor Gowdy,
7 Solicitor Willingham, Solicitor Barnette or any member of
8 the Seventh Judicial Circuit Solicitor's Staff, any office
9 members, investigators or otherwise? If so, please stand.

10 (No response.)

11 THE COURT: Does any member of the jury panel have any
12 close political connection with the Seventh Judicial Circuit
13 Solicitor's Office? If so, please stand.

14 (No response.)

15 THE COURT: Now, ladies and gentlemen of the jury, the
16 defendant, Mr. Moore, is proceeding in what we refer to as a
17 pro se capacity, meaning that he is representing himself.
18 And he is allowed to do so and is permitted to do so under
19 his rights under the constitution of this state and of the
20 United States. And there is to be absolutely no inference;
21 there is absolutely to be no prejudice in any way to be
22 attached to him because he is proceeding in a
23 self-representation mode. So, please, understand that.

24 Now, is there any member of the jury panel or any
25 member of your immediate family who is related by blood or

Jury qualification

1 marriage to any federal, state, county, city, any local
2 police officer, police department, police agency or any
3 military police organization? If so, please stand.

4 All right. I will start over here with this lady right
5 on the end. Your name again, please.

6 JUROR NUMBER 191: Joyce Morrow.

7 THE COURT: And your number? Do you remember that?

8 JUROR NUMBER 191: 191.

9 THE COURT: Yes, ma'am, Ms. Morrow.

10 JUROR NUMBER 191: Related to Judge Beatty.

11 THE COURT: To Judge Beatty. Thank you, ma'am.

12 Yes, ma'am.

13 JUROR NUMBER 231: Juror 231, Pam Robinson.

14 THE COURT: 231. Yes, ma'am, Ms. Robinson.

15 JUROR NUMBER 231: My father-in-law was a police
16 detective, Greenville County.

17 THE COURT: Thank you, ma'am.

18 Yes, ma'am.

19 JUROR NUMBER 220: 220, Tammy Hayes. My husband is a
20 Spartanburg City Reserve Officer.

21 THE COURT: Thank you, ma'am.

22 Yes, sir.

23 JUROR NUMBER 105: 105, William Gilbert.

24 THE COURT: 105?

25 JUROR NUMBER 105: Yes, sir. First cousin is a highway

Jury qualification

1 patrolman.

2 THE COURT: And who is that?

3 JUROR NUMBER 105: Dale Gilbert.

4 THE COURT: Thank you, sir.

5 Yes, ma'am.

6 JUROR NUMBER 136: 136. My brother is an Inman City
7 Police Officer.

8 THE COURT: And you are Ms. Ingram?

9 JUROR NUMBER 136: Yes, sir.

10 THE COURT: Thank you ma'am.

11 Yes, ma'am.

12 JUROR NUMBER 89: 89. My brother is a Spartanburg
13 County Sheriff's Department Deputy.

14 THE COURT: You are Ms. Fraley, correct?

15 JUROR NUMBER 89: Yes, sir.

16 THE COURT: Thank you, ma'am.

17 Yes, sir, right here.

18 JUROR NUMBER 287: 287. Ramsey Newman, brother-in-law.

19 THE COURT: Just one second. 287. You are Mr. John
20 West.

21 JUROR NUMBER 287: Right.

22 THE COURT: And who are you related to?

23 JUROR NUMBER 287: Ramsey Newman.

24 THE COURT: And where does he work?

25 JUROR NUMBER 287: City.

Jury qualification

1 THE COURT: Thank you. Sir.

2 JUROR NUMBER 198: 198. Jason Ogle.

3 THE COURT: Wait just one second, please. You are
4 Mr. Ogle, correct?

5 JUROR NUMBER 198: Yes, sir.

6 THE COURT: Yes, sir.

7 THE DEFENDANT: My son was a reservist for the Pacolet
8 Police Department.

9 THE COURT: Thank you, sir.

10 Yes, sir.

11 JUROR NUMBER 242: 242.

12 THE COURT: 242. And you are Mr. Simmons?

13 JUROR NUMBER 242: Yes, sir. My --

14 THE COURT: Could I get you to speak up just a little
15 bit?

16 JUROR NUMBER 242: My wife is a chemist at SLED in
17 Columbia, and akin to Policeman Green with the Public
18 Safety.

19 THE COURT: Thank you, sir.

20 Yes, sir.

21 JUROR NUMBER 145: 145.

22 THE COURT: You are Mr. Kent?

23 JUROR NUMBER 145: Yes, sir. Ty Oxley. He was working
24 here at the courthouse, but I believe he is with the county
25 now. He is my first cousin.

Jury qualification

1 THE COURT: Thank you sir.

2 Yes, sir.

3 JUROR NUMBER 182: 182.

4 THE COURT: Mr. Meadows?

5 JUROR NUMBER 182: Yes, sir. I am a military reserve
6 officer.

7 THE COURT: What branch of the military service?

8 JUROR NUMBER 182: It would be the 108th Division out
9 of Fort Jackson.

10 THE COURT: Thank you sir.

11 Yes, ma'am.

12 JUROR NUMBER 157: 157. I have in-laws that's a state
13 trooper, and Harold Long, and his brother is a Chesnee
14 Police, Brian Long; and Danny Swofford. He is a Blacksburg
15 city police.

16 THE COURT: Thank you, ma'am. You are Ms. Ledford,
17 correct?

18 JUROR NUMBER 157: Yes.

19 THE COURT: Yes, ma'am.

20 JUROR NUMBER 160: 160.

21 THE COURT: You're Ms. Lindsey?

22 JUROR NUMBER 160: Uh-huh.

23 THE COURT: Yes, ma'am.

24 JUROR NUMBER 160: My husband's first cousin's a county
25 cop.

Jury qualification

1 THE COURT: Thank you, ma'am.

2 Those of you who stood in response to that question, is
3 there any member of the jury panel who, as a result of your
4 relation to any member of law enforcement, that that would
5 in any way interfere with your ability to render a fair and
6 impartial verdict for either the state or the defendant in
7 this case? If it would, I want you to please stand.

8 (No response.)

9 THE COURT: Now, has any member of the jury panel
10 formed or expressed an opinion about any matter in this
11 case? If so, please stand.

12 (No response.)

13 THE COURT: Is there any member of the jury panel aware
14 of any bias or prejudice in this case either for or against
15 the state or the defendant? If so, please stand.

16 (No response.)

17 THE COURT: Has any member of the jury panel read, seen
18 or heard any news accounts concerning this case? If so,
19 please stand.

20 All right. If you gentlemen would, please come
21 forward.

22 The lawyers may approach. And Mr. Moore and his
23 associate may approach.

24 (The following takes place at the bench with Juror
25 Number 287.)

Jury qualification

1 THE COURT: Stand right there, please, sir.

2 And you are Johnny West?

3 JUROR NUMBER 287: Correct.

4 THE COURT: Okay. Mr. West, could you tell me what you
5 know about this case?

6 JUROR NUMBER 287: Just I visit that store frequently,
7 and I read in the paper when it happened and what happened.

8 THE COURT: And the fact that you have frequented that
9 store, have you had any discussions with anybody there about
10 the matter?

11 JUROR NUMBER 287: I talked to the guy that runs the
12 store now and asked him about it, you know.

13 THE COURT: And the knowledge that you have of this
14 case, what is that?

15 JUROR NUMBER 287: That the guy that, the defendant,
16 tried to rob; and the guy had a pistol, the one that was
17 operating the store. He worked the third shift.

18 THE COURT: The fact that you have prior knowledge of
19 this matter, would that in any way interfere with your
20 ability to render a fair and impartial verdict for either
21 the state or the defendant based solely upon the testimony
22 and evidence you would hear produced in this courtroom?

23 JUROR NUMBER 287: I wouldn't want to make a decision.

24 THE COURT: You feel that you would be unable to set
25 aside any prior knowledge that you would have?

Jury qualification

1 JUROR NUMBER 287: Yeah.

2 THE COURT: I will excuse you from consideration of
3 this case. Thank you, sir. You are excused.

4 (End of proceedings at the bench.

5 THE COURT: Number 287, John E. West, is excused.

6 (The following takes place at the bench with Juror
7 Number 121.)

8 THE COURT: Come around, please. You are 121.

9 JUROR NUMBER 121: 121.

10 THE COURT: And you are Mr. Heller, correct?

11 JUROR NUMBER 121: That's correct.

12 THE COURT: Could you tell me what you know about this
13 case, Mr. Heller?

14 JUROR NUMBER 121: Well, all I know about the case
15 comes from media, newspaper. I keep up with the news.
16 That's the information I have.

17 THE COURT: The fact that you have -- where did you get
18 your information? Was it through the newspaper or T. V?

19 JUROR NUMBER 121: Actually the T. V. and newspaper.

20 THE COURT: The fact that you have heard or read
21 anything about this case, would that in any way interfere
22 with your ability to render a fair and impartial verdict for
23 the state or the defendant based solely upon the testimony
24 and evidence you would hear produced in this courtroom?

25 JUROR NUMBER 121: No.

Jury qualification

1 THE COURT: Would you be able to set aside any prior
2 knowledge you had about this matter and decide it solely
3 upon the testimony and evidence you would hear in this
4 courtroom?

5 JUROR NUMBER 121: I believe.

6 THE COURT: And are you in any way biased or prejudiced
7 as a result of your prior knowledge in this case?

8 JUROR NUMBER 121: No.

9 THE COURT: Thank you, sir. You may resume your seat.

10 (The following takes place at the bench with Juror
11 Number 105.)

12 THE COURT: Come up, please, Mr. Gilbert. You are
13 William D. Gilbert, correct?

14 JUROR NUMBER 105: Yes, sir.

15 THE COURT: Tell he what you know about the case and
16 how you know about it.

17 JUROR NUMBER 105: I read about it in the paper.

18 THE COURT: When was that?

19 JUROR NUMBER 105: A couple of years back.

20 THE COURT: And the fact that you have read about it in
21 the paper, would that in any way interfere with your ability
22 to be render a fair and impartial verdict for either the
23 state or the defendant in this case based solely upon the
24 testimony and evidence you would hear produced in this
25 courtroom?

Jury qualification

1 JUROR NUMBER 105: I believe it would.

2 THE COURT: I will excuse you from consideration in
3 this case. You are excused.

4 (The following takes place at the bench with Juror
5 Number 240.)

6 THE COURT: 105 is excused, madam clerk.

7 You are Ms. Shepherd?

8 JUROR NUMBER 240: Yeah. To be truthful about it, when
9 I heard him say what he was accused of, I felt he was guilty
10 right then. I am sorry. I didn't mean to do that. I just
11 did that.

12 THE COURT: I will excuse you from service in this
13 case, Ms. Shepherd.

14 Number 240. Number 240, Ms. Shepherd is excused.

15 All right. Let's get them on up here, please,
16 Mr. Bailiff.

17 Anyone else?

18 THE BAILIFF: He made a late decision.

19 THE COURT: What's your name?

20 JUROR NUMBER 11: Charles Arnold.

21 THE COURT: Number 11. Okay.

22 JUROR NUMBER 11: I just feel that evidence that the
23 state has got against a man and him trying to defend
24 hisself, he is just wasting my time and the state's time.

25 THE COURT: How do you know what the evidence is?

Jury qualification

1 JUROR NUMBER 11: You mentioned one witness named Sonya
2 Greenway, just first, no background, know her.

3 THE COURT: Did you stand up whenever I called her name
4 out?

5 JUROR NUMBER 11: No, sir.

6 THE COURT: Why not?

7 JUROR NUMBER 11: Just acquaintance, just barely know
8 her. Ain't nothing to it. I mean, I just know her when I
9 see her.

10 THE COURT: You are excused, Mr. Arnold.

11 JUROR NUMBER 11: I appreciate it.

12 THE COURT: Juror number 11 is excused, Charles T.
13 Arnold.

14 (The following takes place at the bench with Juror
15 Number 137.)

16 THE COURT: Ms. Irby.

17 JUROR NUMBER 137: Yes. This is not about the case.
18 Two months ago on my job they were a ticket and training
19 course was made, and I don't know how long this case is
20 going to last, but supposed to be ten --

21 THE COURT: Somewhere next Tuesday.

22 JUROR NUMBER 137: Yes.

23 THE COURT: Where?

24 JUROR NUMBER 137: Chicago.

25 THE COURT: Who do you work for?

Jury qualification

1 JUROR NUMBER 137: Spartanburg Regional Medical Center.

2 THE COURT: What's that about, the training?

3 JUROR NUMBER 137: It's a Congaree search, associate
4 training class.

5 THE COURT: And how long will you be there?

6 JUROR NUMBER 137: Wednesday on until Sunday, the 28th.

7 THE COURT: And that's of next week, is that right?

8 JUROR NUMBER 137: Next week.

9 THE COURT: Thank you. Okay. Thank you.

10 Has any member of the jury panel or any member of your
11 immediate family ever been the victim of a crime of
12 violence? If so, please stand and come forward.

13 Come on up, please.

14 (The following takes place at the bench with Juror
15 Number 198.)

16 THE COURT: Lawyers may approach, and the defendant.

17 If you would, please, Mr. Bailiff, let's just run
18 everyone back around this way. Mr. Bailiff, let's just run
19 everybody back around this way.

20 Give my your name, number.

21 JUROR NUMBER 198: 198.

22 THE COURT: You are Mr. Ogle, correct?

23 JUROR NUMBER 198: Yes, sir.

24 THE COURT: Tell me about the situation you come up on,
25 Mr. Ogle.

Jury qualification

1 JUROR NUMBER 198: My father was murdered in 1975.

2 THE COURT: Was that in Spartanburg?

3 JUROR NUMBER 198: Yes, sir.

4 THE COURT: And was there a disposition of the case?
5 Was anybody tried for it?

6 JUROR NUMBER 198: No, sir. It didn't go to trial.
7 Plea bargain.

8 THE COURT: The fact that you had a family member
9 involved in such an incident, would that in any way
10 interfere in your ability to render a fair and impartial
11 verdict for either the state or the defendant based solely
12 upon the testimony and evidence you would hear produced in
13 this courtroom?

14 JUROR NUMBER 198: No, sir.

15 THE COURT: Are you in any way biased or prejudice as a
16 result of that prior situation?

17 JUROR NUMBER 198: No, sir.

18 THE COURT: Thank you. Have a seat.

19 (The following takes place at the bench with Juror
20 Number 174.)

21 THE COURT: You are Shirley M. McAbee?

22 JUROR NUMBER 174: Yes. Two years ago my daughter was
23 molested in Spartanburg.

24 THE COURT: That was here in Spartanburg.

25 JUROR NUMBER 174: Right.

Jury qualification

1 THE COURT: The fact -- was there ever any disposition
2 of this, case prosecuted?

3 JUROR NUMBER 174: I got a --

4 THE COURT: The fact that you had a family member
5 involved in such a situation, would that in any way
6 interfere with your ability to be fair and impartial for
7 either the state or the defendant based solely upon the
8 testimony and evidence you would hear produced in this
9 courtroom?

10 JUROR NUMBER 174: No, sir.

11 THE COURT: Are you in any way biased or prejudiced as
12 a result?

13 JUROR NUMBER 174: No, sir.

14 THE COURT: Thank you. You may resume your seat,
15 Ms. McAbee.

16 (The following takes place at the bench with Juror
17 Number 19.)

18 THE COURT: Mr. Ballard.

19 JUROR NUMBER 19: Yes, sir.

20 THE COURT: Yes, sir.

21 JUROR NUMBER 19: My wife was -- had a diamond ring
22 stolen from her one time.

23 THE COURT: Was that here in Spartanburg?

24 JUROR NUMBER 19: Yes, sir.

25 THE COURT: When was that?

Jury qualification

1 JUROR NUMBER 19: Seven or eight or ten years ago,
2 somewhere that range.

3 THE COURT: Was anyone prosecuted as a result?

4 JUROR NUMBER 19: No, sir.

5 THE COURT: The fact that your wife has been involved
6 in such a situation, would you be able to base your verdict
7 solely upon the testimony and evidence you would hear
8 produced in this courtroom?

9 JUROR NUMBER 19: Yes, sir.

10 THE COURT: Are you in any way biased or prejudiced as
11 a result of this situation?

12 JUROR NUMBER 19: No, sir.

13 THE COURT: Thank you, sir. You may resume your seat.

14 (The following takes place at the bench with Juror
15 Number 20.)

16 THE COURT: You are Ms. Barnette?

17 JUROR NUMBER 20: My daughter-in-law was raped at
18 gunpoint.

19 THE COURT: Was that here in Spartanburg?

20 JUROR NUMBER 20: Gaffney.

21 THE COURT: And how long ago was that?

22 JUROR NUMBER 20: I would say six years.

23 THE COURT: Was anyone prosecuted?

24 JUROR NUMBER 20: Uh-uh.

25 THE COURT: And was there any type of conviction or

Jury qualification

1 anything like that?

2 JUROR NUMBER 20: Well, they served time for it.

3 THE COURT: Well, the fact that you had a family
4 member, your daughter-in-law, involved in such a situation,
5 would that in any way interfere with your ability to render
6 a fair and impartial verdict for the state or the defendant
7 in this case with basing that solely upon the testimony and
8 evidence you would hear produced in this courtroom?

9 JUROR NUMBER 20: No, sir.

10 THE COURT: Are you in any way biased or prejudiced as
11 a result of that?

12 JUROR NUMBER 20: No, sir.

13 THE COURT: Thank you, ma'am. You may resume your
14 seat, Ms. Barnette.

15 (The following takes place at the bench with Juror
16 Number Two.)

17 THE COURT: You are Mr. Douglas Alexander?

18 JUROR NUMBER TWO: Yes, sir.

19 THE COURT: Yes, sir.

20 JUROR NUMBER TWO: My son is incarcerated. He's been
21 in jail now for about four years. His name is John
22 Alexander.

23 THE COURT: What's he incarcerated for?

24 JUROR NUMBER TWO: Murder.

25 THE COURT: Was that here in Spartanburg?

Jury qualification

1 JUROR NUMBER 20: Yes, Spartanburg.

2 THE COURT: And was he tried by the solicitor's office
3 in this circuit?

4 JUROR NUMBER TWO: Uh-huh.

5 THE COURT: Would the fact that you have a son involved
6 in such a situation, Mr. Alexander, would that fact in any
7 way interfere with your ability to render a fair and
8 impartial verdict for the state or the defendant in this
9 case?

10 JUROR NUMBER TWO: No, sir.

11 THE COURT: Are you in any way biased or prejudiced as
12 a result of that?

13 JUROR NUMBER TWO: No.

14 THE COURT: Thank you, sir. You can resume your seat.
15 I appreciate you coming forward.

16 (The following takes place at the bench with Juror
17 Number 45.)

18 THE COURT: Ms. Joyce Smith.

19 JUROR NUMBER 45: Joann Burnside.

20 THE COURT: This is Number 45, gentlemen.

21 All right.

22 JUROR NUMBER 45: I have a first cousin that is doing
23 time now on a murder charge.

24 THE COURT: And that murder charge, what's that
25 person's name?

Jury qualification

1 JUROR NUMBER 45: Johnny B. Burnside.

2 THE COURT: Johnny B. Burnside. And was that here in
3 Spartanburg County?

4 JUROR NUMBER 45: Uh-huh.

5 THE COURT: When was it?

6 JUROR NUMBER 45: I think it was '99.

7 THE COURT: The fact that you had a family member
8 involved in such a situation, would that in any way
9 interfere with your ability to render a fair and impartial
10 verdict for either the state or the defendant in this case
11 basing it solely upon the testimony and evidence you would
12 hear produced in this courtroom? Are you in any way biased
13 or prejudiced as a result of this?

14 JUROR NUMBER 45: No, sir.

15 THE COURT: Thank you, Ms. Burnside.

16 (The following takes place at the bench with Juror
17 Number 271.)

18 THE COURT: Ms. Thompson.

19 JUROR NUMBER 271: Thompson.

20 THE COURT: Yes, ma'am.

21 JUROR NUMBER 271: My daughter was involved in a murder
22 trial.

23 THE COURT: Was that here in Spartanburg?

24 JUROR NUMBER 271: Here in Spartanburg.

25 THE COURT: And when was that?

Jury qualification

1 JUROR NUMBER 271: I can't tell you the year. It was
2 Betty McMillin -- Brown. I don't remember the year, but I
3 would like to ask you something while I am here. My mother
4 suffers from Alzheimer's and I am the caregiver.

5 THE COURT: You are her caregiver?

6 JUROR NUMBER 271: And I don't have brothers and
7 sisters, and it's really hard for me.

8 THE COURT: I will excuse you then, Ms. Thompson.
9 Thank you very much for coming forward.

10 Number 271 Ms. Thompson is excused.

11 (The following takes place at the bench with Juror
12 Number 36.)

13 THE COURT: Ms. Brothers?

14 JUROR NUMBER 36: Yes, sir.

15 THE COURT: Yes, ma'am.

16 JUROR NUMBER 36: My cousin was stabbed to death in
17 1996 in Biloxi, Mississippi.

18 THE COURT: And was anyone prosecuted in that case?

19 JUROR NUMBER 36: Yes.

20 THE COURT: And the fact that you had a family member
21 involved in such a situation, would that in any way
22 interfere with your ability to render a fair and impartial
23 verdict for either the state or the defendant basing that
24 solely upon the testimony and evidence you would hear
25 produced in this courtroom?

Jury qualification

1 JUROR NUMBER 36: No, sir.

2 THE COURT: Are you in any way biased or prejudiced as
3 a result of that situation?

4 JUROR NUMBER 36: I don't believe so.

5 THE COURT: Thank you ma'am. You may resume your seat.
6 That was number 36, Ms. Brothers.

7 (The following takes place at the bench with Juror
8 Number 162.)

9 THE COURT: Mr. Kenneth Littlejohn.

10 JUROR NUMBER 162: Yes, sir.

11 THE COURT: Yes, sir.

12 JUROR NUMBER 162: I had a first cousin, Lisa Foster,
13 was shot and almost died.

14 THE COURT: Was that here in Spartanburg?

15 JUROR NUMBER 162: Yes, sir.

16 THE COURT: And who was the --

17 JUROR NUMBER 162: I can't -- forget his name. I
18 really didn't know him. He had a distance relationship.

19 THE COURT: And the fact -- when was this?

20 JUROR NUMBER 162: It must have been around October, I
21 think, or maybe November of last year.

22 THE COURT: The fact that you have had a cousin
23 involved in such a situation, would that in any way
24 interfere with your ability to render a fair and impartial
25 verdict for either the state or the defendant basing that

Jury qualification

1 solely upon the testimony and evidence you would hear
2 produced in this courtroom?

3 JUROR NUMBER 162: I believe it would in this
4 particular case.

5 THE COURT: Would you tell me why?

6 JUROR NUMBER 162: Well, I just felt bad, because I
7 felt like this case was kinda close. Someone got shot.
8 Someone is kinda shooting in without self-defense. She
9 almost died. We stayed up at the hospital for over two
10 months. I was very upset. It is different when someone
11 gets shot in a fight, you have a gun; but right out shoot
12 here like that, I have hard feelings.

13 THE COURT: So what you are telling me is you would be
14 unable to listen to the testimony and evidence in this case
15 and render a fair and impartial verdict.

16 JUROR NUMBER 162: I could be fair. I mean, I would
17 try to be. Just my feelings are gunshot victims --

18 THE COURT: Do you think anybody in that type of
19 situation is guilty without listening to the evidence?

20 JUROR NUMBER 162: Well, I mean, I would have to listen
21 to the evidence. I mean, one had a gun and one didn't. To
22 me it is kind of cut and dried.

23 THE COURT: I mean, not knowing what the situation is,
24 what the evidence will reveal, I can't tell you what the
25 evidence will reveal.

Jury qualification

1 JUROR NUMBER 162: I could make a fair decision.

2 THE COURT: Would you be able to set aside any outside
3 influence you might have through your cousin's situation and
4 decide this case solely upon the testimony and evidence you
5 would hear produced in this courtroom, whatever the state
6 presents, whatever is brought out in the courtroom?

7 JUROR NUMBER 162: In all honesty, I think it would be
8 in the back of my mind.

9 THE COURT: I will excuse you from this case,
10 Mr. Littlejohn.

11 162, Mr. Littlejohn is excused.

12 (The following takes place at the bench with Juror
13 Number 92.)

14 THE COURT: Ms. Gallman, correct?

15 JUROR NUMBER 92: I am Patricia Gallman. My daughter
16 was raped when she was 15 years old, and I have an uncle
17 that was beat to death 21 years ago.

18 THE COURT: Your uncle?

19 JUROR NUMBER 92: Yes.

20 THE COURT: Both of those here in Spartanburg?

21 JUROR NUMBER 92: Yes.

22 THE COURT: Was there a prosecution in those cases?

23 JUROR NUMBER 92: No, sir.

24 THE COURT: The fact that you have had family members
25 involved in these situations, Ms. Gallman, would that in any

Jury qualification

1 way interfere in your ability to be a fair and impartial
2 juror in this case?

3 JUROR NUMBER 92: No, sir.

4 THE COURT: Are you in any way biased or prejudiced as
5 a result of that situation?

6 JUROR NUMBER 92: No, sir.

7 THE COURT: Thank you, ma'am. Resume your seat.

8 (The following takes place at the bench with Juror
9 Number 121.)

10 THE COURT: Mr. Heller.

11 JUROR NUMBER 121: Yes, sir.

12 THE COURT: Yes, sir.

13 JUROR NUMBER 121: Yes. Several years ago my father
14 was attacked and beaten as he was investigating a prowler on
15 the back of his property. It was in the late evening and he
16 was hurt quite badly.

17 THE COURT: Is that here in Spartanburg?

18 JUROR NUMBER 121: No. That was in Florida.

19 THE COURT: Was there a prosecution?

20 JUROR NUMBER 121: No. They never caught the guy.

21 THE COURT: The fact that your father was involved in
22 such a situation, would that in any way interfere with your
23 ability to render a fair and impartial verdict for the state
24 or the defendant based solely upon the testimony and
25 evidence you would hear produced in this courtroom?

Jury qualification

1 JUROR NUMBER 121: I don't think so.

2 THE COURT: Are you in any way biased or prejudiced as
3 a result of that situation?

4 JUROR NUMBER 121: No.

5 THE COURT: Thank you, sir. You may resume your seat.

6 (The following takes place at the bench with Juror
7 Number 71.)

8 THE COURT: And you are Ms. Darden.

9 JUROR NUMBER 71: Yes, sir.

10 THE COURT: Yes, ma'am.

11 JUROR NUMBER 71: I have an uncle who was beaten.

12 THE COURT: Is that here in Spartanburg?

13 JUROR NUMBER 71: Horry County.

14 THE COURT: When was that?

15 JUROR NUMBER 71: Three or four years ago. Well, it
16 was longer than that.

17 THE COURT: Was there a prosecution as a result of
18 that?

19 JUROR NUMBER 71: I have a cousin that was murdered six
20 months ago in Indiana. They were arrested. Well, one
21 person was arrested in New Orleans. They took his car.
22 They robbed him. And I think --

23 THE COURT: The fact that you have had family members
24 involved in these situations, Ms. Darden, would that in any
25 way interfere with your ability to render a fair and

Jury qualification

1 impartial verdict for the state or the defendant in this
2 case?

3 JUROR NUMBER 71: Right now I am having a real hard
4 time with it. I don't want to look at him. Just the
5 thought of it.

6 THE COURT: Would you be unable to set aside these
7 situations involving your cousin and your uncle and render a
8 fair and impartial verdict for either the state or the
9 defendant based solely upon the testimony and evidence you
10 would hear in this courtroom?

11 JUROR NUMBER 71: I don't know.

12 THE COURT: I will excuse you from service in this
13 case, Ms. Darden. Thank you, ma'am. You are excused,
14 ma'am.

15 (End of proceedings at the bench.)

16 THE COURT: Number 71, Ms. Darden is excused.

17 (The following takes place at the bench with Juror
18 Number 29.)

19 THE COURT: You are Mr. Blancard.

20 JUROR NUMBER 29: Yes, sir.

21 THE COURT: Yes, sir.

22 JUROR NUMBER 29: I am not sure if this is the type of
23 thing you are asking about, but I was the innocent victim of
24 an armed robbery.

25 THE COURT: When was that?

Jury qualification

1 JUROR NUMBER 29: It was somewhere in the mid 70's.

2 THE COURT: Was that in Spartanburg?

3 JUROR NUMBER 29: In Hammond, Indiana.

4 THE COURT: And was it involving your work?

5 JUROR NUMBER 29: Yes, sir.

6 THE COURT: What type of work were you doing?

7 JUROR NUMBER 29: I was working nights in a grocery
8 store while I was going to college.

9 THE COURT: And the fact that you have been involved in
10 such a situation, would that in any way interfere with your
11 ability to render a fair and impartial verdict for the state
12 or the defendant based solely on the testimony and evidence
13 you would hear produced in this courtroom?

14 JUROR NUMBER 29: I don't believe so.

15 THE COURT: Are you in any way biased or prejudiced as
16 a result of that?

17 JUROR NUMBER 29: No, sir.

18 THE COURT: Was there a prosecution involved in that
19 case?

20 JUROR NUMBER 29: Insufficient evidence.

21 THE COURT: Okay. Thank you, sir. You can resume your
22 seat.

23 (The following takes place at the bench with Juror
24 Number 132.)

25 THE COURT: You are Mr. Huffman.

Jury qualification

1 JUROR NUMBER 132: My brother-in-law. He was the one
2 that dropped the barbell off the bridge about, what, eight
3 years ago and killed that truck driver.

4 THE COURT: The fact that you had a brother-in-law
5 involved in such a situation, would that in any way
6 interfere with your ability to render a fair and impartial
7 verdict for either the state or the defendant in this case
8 based solely upon the testimony and evidence you would hear
9 produced in this courtroom? You need to answer out loud.

10 JUROR NUMBER 132: No.

11 THE COURT: Are you in any way biased or prejudiced as
12 a result of that?

13 JUROR NUMBER 132: No.

14 THE COURT: Thank you sir. You can resume your seat.

15 (The following takes place at the bench with Juror
16 Number 83.)

17 THE COURT: Ms. Fernandez.

18 JUROR NUMBER 83: Uh-huh.

19 THE COURT: Yes, ma'am.

20 JUROR NUMBER 83: My sister-in-law was killed this
21 year.

22 THE COURT: What was her name?

23 JUROR NUMBER 83: Jeannie Kilgore.

24 THE COURT: Kilgore. Is that here in Spartanburg?

25 JUROR NUMBER 83: No, sir. Greenville.

Jury qualification

1 THE COURT: Greenville?

2 JUROR NUMBER 83: Uh-huh. And Larry Kilgore was killed
3 a year and a half ago.

4 THE COURT: And he was your --

5 JUROR NUMBER 83: First cousin.

6 THE COURT: Was that here in Spartanburg?

7 JUROR NUMBER 83: Greenville.

8 THE COURT: Greenville. Have there been any
9 prosecutions in either of those cases?

10 JUROR NUMBER 83: Not yet.

11 THE COURT: The fact that you have had a family member
12 involved in such a situation, would that in any way
13 interfere with your ability to render a fair and impartial
14 verdict for either the state or the defendant in this case
15 basing your decision solely upon the testimony and evidence
16 you would hear produced in this courtroom?

17 JUROR NUMBER 83: No.

18 THE COURT: Are you in any way biased or prejudiced as
19 a result of that situation?

20 JUROR NUMBER 83: No, sir.

21 THE COURT: Thank you. You can have your seat. I
22 appreciate you coming forward.

23 (The following takes place at the bench with Juror
24 Number 191.)

25 THE COURT: Ms. Morrow. Yes, ma'am.

Jury qualification

1 JUROR NUMBER 191: My stepson was killed by a handgun.

2 THE COURT: When was that?

3 JUROR NUMBER 191: It was in '85.

4 THE COURT: And was that here in Spartanburg?

5 JUROR NUMBER 191: No. It was in Ohio.

6 THE COURT: And was there a prosecution in that case?

7 Anyone prosecuted?

8 JUROR NUMBER 191: No.

9 THE COURT: Was it an accident or was any charges --
10 were any charges brought?

11 JUROR NUMBER 191: Nobody was charged.

12 THE COURT: The fact that you had your stepson involved
13 in such a situation, would that in any way interfere with
14 your ability to render a fair and impartial verdict for the
15 state or the defendant in this case basing it solely upon
16 the testimony and evidence you would hear in this courtroom?

17 JUROR NUMBER 191: No. It was -- me and my husband
18 wasn't married then, and it was when he was killed.

19 THE COURT: Are you in any way biased or prejudiced as
20 a result of that situation?

21 JUROR NUMBER 191: No, sir.

22 THE COURT: Thank you. I appreciate you coming
23 forward.

24 (The following takes place at the bench with Juror
25 Number 267.)

Jury qualification

1 THE COURT: Ms. Temple.

2 JUROR NUMBER 267: Yes, sir. My sister was Patricia
3 Carol Foster. She worked for the clerk of court.

4 THE COURT: And what was she charged with?

5 JUROR NUMBER 267: Murder.

6 THE COURT: And the fact that your sister was involved
7 in such a situation, would that in any way interfere with
8 your ability to render a fair and impartial verdict for the
9 state or the defendant based solely upon the testimony and
10 evidence you would hear in this courtroom?

11 JUROR NUMBER 267: No, sir.

12 THE COURT: Are you in any way biased or prejudiced as
13 a result of that?

14 JUROR NUMBER 267: No, sir.

15 THE COURT: Thank you.

16 (The following takes place at the bench with Juror
17 Number 213.)

18 THE COURT: And you are Ms. Perkins.

19 JUROR NUMBER 213: Yes, sir. I was assaulted and
20 robbed at a comedy club at Holiday Inn about six years ago
21 in Spartanburg.

22 THE COURT: Were there any prosecutions?

23 JUROR NUMBER 213: No, sir.

24 THE COURT: The fact that you have been involved in
25 such a situation, Ms. Perkins, would that in any way

Jury qualification

1 interfere with your ability to render a fair and impartial
2 verdict for the state or the defendant based solely upon the
3 testimony and evidence you would hear produced in this
4 courtroom?

5 JUROR NUMBER 213: No, sir.

6 THE COURT: Are you in any way biased or prejudiced as
7 a result of that?

8 JUROR NUMBER 213: No, sir.

9 THE COURT: Thank you, ma'am. You may resume your
10 seat.

11 Mr. Bailiffs, are our jurors in the courtroom at this
12 time?

13 THE BAILIFF: I think so. Let me check.

14 THE COURT: I would rather know than think.

15 We are getting near the end, ladies and gentlemen.
16 Please bear with me a minute.

17 (Pause.)

18 THE BAILIFF: Yes, sir.

19 THE COURT: Ladies and gentlemen of the jury, I would
20 pose this question to you. The defendant in this case is a
21 black male, and the deceased, as I understand it, is white.

22 The fact that the defendant is of another race and the
23 victim of another race, would that in any way prevent you
24 from giving him a fair trial? If so, please stand.

25 (No response.)

Jury qualification

1 THE COURT: Is there any member of the jury panel who
2 is aware or conscious of any bias or prejudice being based
3 upon race? If so, please stand.

4 (No response.)

5 THE COURT: And would that fact in any way interfere
6 with any verdict that you might render in this case? If so,
7 please stand.

8 (No response.)

9 THE COURT: Now, the defendant has pled not guilty to
10 the charges against him. And that plea, once again,
11 requires that the state prove that he is guilty.

12 A defendant is never required to prove his innocence.
13 The law considers that he is innocent, and the state must
14 prove his guilt beyond a reasonable doubt.

15 And I would charge you during the course of the trial
16 that a reasonable doubt is the kind of doubt that would
17 cause a reasonable person to hesitate to act.

18 If, after hearing and considering the testimony and
19 evidence in this case, you have a reasonable doubt of the
20 defendant's guilt, then you must resolve that doubt in his
21 favor. You must acquit him.

22 If, after hearing and considering the testimony and
23 evidence in this case, you do not have a reasonable doubt of
24 his guilt, then you may find him guilty.

25 Now, ladies and gentlemen of the jury, in this case the

Jury qualification

1 State of South Carolina is seeking the death penalty against
2 the defendant. And these are trials which we call
3 bifurcated proceedings, meaning that they are divided into
4 two parts.

5 The first part is what we refer to as the guilt phase.
6 And during that phase of the trial the jury will decide
7 whether the defendant is guilty of the crime or crimes
8 charged.

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

15 Now, the mere fact that I mention the word penalty
16 indicates absolutely nothing about this defendant. He is
17 presumed to be innocent. I simply discuss the term penalty
18 at this time as a convenient means of explaining this
19 process to you.

20 Now, ladies and gentlemen of the jury, we are going to
21 take a break in just a moment. I know that some of you have
22 been in and out of the courtroom, but some of you have not.
23 The lawyers have not; the clerk's staff has not; and our
24 very fine court reporter has not. She has been working
25 harder than anyone in here taking down each and every thing

Jury qualification

1 that is said during the course of this trial.

2 Ladies and gentlemen, I am going to tell you that when
3 we come back the clerk of court is going to be dividing you
4 into panels, panels of six individuals.

5 We are going to take those panels, and you will -- you
6 will be given a time to report back to the courthouse for
7 further discussion and examination of your ability to serve
8 in this case.

9 We will talk with each of you until we receive a panel
10 of 35 to 40 qualified jurors. And from that panel, then we
11 would strike a jury to serve in this case.

12 I ask for your patience in this matter. I want to
13 remind you as you step out of the courtroom during the next
14 few minutes that you are not to discuss this case among
15 yourselves in any manner or fashion whatsoever.

16 You are not to discuss this case with your family,
17 friends or anyone else that you might call or come into
18 contact with; and you are not to listen to, watch or read
19 any news accounts concerning this case.

20 Once again, if you are selected to serve in this case I
21 would certainly want to have a jury that has been
22 uninfluenced by any outside sources, whether that be through
23 discussions with anyone, reading or watching or listening to
24 any news accounts or any other type of matter in that
25 regard. You are also not to look at the internet concerning

Jury qualification

1 any matter or issue concerning this case.

2 Now, ladies and gentlemen, I am going to ask that you
3 be back here in the courtroom at 3:50. That's about 20
4 minutes from now, 25 minutes from now.

5 The clerk's staff will be in the process of preparing
6 the -- wait just one minute, please, before I dismiss you --
7 will be in the process of preparing these lists. And at
8 that time we will then divide you into your various panels,
9 and you will be told what time to report back.

10 Everyone else remain seated while the jury exits the
11 courtroom. Please be back at 3:30. Thank you very much.

12 (The following takes place at the bench.)

13 JUROR NUMBER 62: How late at night would I have to
14 stay?

15 THE COURT: That's something we will get into during
16 individual questioning. If you were selected, you will
17 remain with us.

18 JUROR NUMBER 62: The reason I ask that, I am going to
19 need to go ahead of time so I can fix my husband's
20 medication.

21 THE COURT: You will know ahead of time. I will give
22 you exact instruction.

23 Tell me your name, please ma'am.

24 JUROR NUMBER 62: Patricia Gallman, Number 62.

25 (The following takes place at the bench with Juror

Jury qualification

1 Number 46.)

2 JUROR NUMBER 46: I am Number 46.

3 THE COURT: Okay. Forty-six. And you are
4 Ms. Burroughs.

5 JUROR NUMBER 46: I can't do this. I have a criminal
6 record.

7 THE COURT: And could you tell me what that was?

8 JUROR NUMBER 46: Breach of trust.

9 THE COURT: That does disqualify you. Thank you. You
10 are excused. Thank you.

11 Number 46 is excused. Number 46 is excused pursuant to
12 statute. She is not qualified.

13 (The following takes place at the bench with Juror
14 Number 48.)

15 THE COURT: Yes, sir.

16 JUROR NUMBER 48: I am J. C. Caldwell, II. I am a
17 single parent and I have a 13-year-old at home at all times
18 and I wouldn't want to leave him there at night.

19 THE COURT: I understand that. Is there anyone else
20 that can care for him?

21 JUROR NUMBER 48: No, sir. I don't have any relatives
22 at all in Spartanburg.

23 THE COURT: Okay. Solicitor, if I could have you and
24 also the defendant and his representative with him, this is
25 Juror Number 48, Mr. J. C. Caldwell, who has explained to me

Jury qualification

1 he is a single parent and has a 13-and-a-half-year-old son,
2 I think you said, and you have no family members here in
3 Spartanburg County to take care of him, and you are his sole
4 caretaker.

5 JUROR NUMBER 48: Exactly.

6 THE COURT: Where does he go to school?

7 JUROR NUMBER 48: He goes to Carver Junior High.

8 THE COURT: And what grade is he in?

9 JUROR NUMBER 48: In the eighth grade.

10 THE COURT: I will excuse you to be with him. Thank
11 you, sir.

12 (The following takes place at the bench with Juror
13 Number 101.)

14 THE COURT: Okay. Mr. Gerber.

15 JUROR NUMBER 101: Yes, sir. I am just not sure. My
16 boss and Trey are best buddies.

17 THE COURT: The fact that your boss and the solicitor
18 are best buddies, what impact does that have on you?

19 JUROR NUMBER 101: Well, I just don't know. I am not
20 sure when I come down to it.

21 THE COURT: Who is your boss?

22 JUROR NUMBER 101: John Grambling.

23 THE COURT: Does he make decisions for you?

24 JUROR NUMBER 101: No.

25 THE COURT: Well, the fact --

Jury qualification

1 JUROR NUMBER 101: If it's okay with him, it's okay
2 with me.

3 THE COURT: With who?

4 JUROR NUMBER 101: I don't want to prejudice anything.

5 THE COURT: How about letting me ask the questions?

6 JUROR NUMBER 101: Okay. I am sorry.

7 THE COURT: Mr. Gerber, you say you work for John
8 Grambling. What do you do for him?

9 JUROR NUMBER 101: I work at River Falls.

10 THE COURT: And the fact that you work for
11 Mr. Grambling and he is a friend of Solicitor Gowdy's, would
12 that in any way interfere in your ability to render a fair
13 and impartial verdict in this case based solely upon the
14 testimony and evidence you would hear produced in this
15 courtroom?

16 JUROR NUMBER 101: No.

17 THE COURT: Are you in any way biased or prejudiced as
18 a result of your association with Mr. Grambling and his
19 association with Mr. Gowdy?

20 JUROR NUMBER 101: No.

21 THE COURT: Thank you, sir.

22 (End of proceedings at the bench.)

23 THE COURT: Okay. We will stand at ease for just a
24 minute.

25 (Whereupon, a recess was taken.)

Jury qualification

1 THE COURT: Could I please see Juror Number 73,
2 Mr. Dawkins, Charles Dawkins; Juror Number 83,
3 Ms. Fernandez; and Juror Number 242, Mr. Simmons? One at a
4 time, please.

5 (The following takes place at the bench with Juror
6 Number 73.)

7 THE COURT: You are Mr. Dawkins, Charles E. Dawkins.

8 JUROR NUMBER 73: Yes, sir.

9 THE COURT: You live at 1095 Howard Street.

10 JUROR NUMBER 73: Yes, sir.

11 THE COURT: Do you have any kind of criminal
12 convictions?

13 JUROR NUMBER 73: Like?

14 THE COURT: D. U. I.

15 JUROR NUMBER 73: Yes, sir.

16 THE COURT: You had a third offense D. U. I.

17 JUROR NUMBER 73: Yes, sir.

18 THE COURT: That carries more than one year. Do you
19 remember when I -- you are not qualified to serve as a
20 juror.

21 JUROR NUMBER 73: That carries --

22 THE COURT: That carries three years, D. U. I. third
23 offense.

24 JUROR NUMBER 73: I didn't make any time.

25 THE COURT: That doesn't matter. You could have made

Jury qualification

1 that time.

2 JUROR NUMBER 73: I could have, yes, sir.

3 THE COURT: You are not qualified to serve. I am going
4 to excuse you. Thank you for coming.

5 (End of proceedings at the bench.)

6 THE COURT: Juror 73, Mr. Dawkins is not qualified.

7 (The following takes place at the bench with Juror
8 Number 83.)

9 THE COURT: Ms. Fernandez, you live at 1390 Shiloh
10 Church Road in Pauline, correct?

11 JUROR NUMBER 83: Uh-huh.

12 THE COURT: Have you ever been in any other name?

13 JUROR NUMBER 83: Uh-huh.

14 THE COURT: You haven't ever been known as a Doris
15 Kilgore?

16 JUROR NUMBER 83: That's my middle name.

17 THE COURT: Have you ever had any type of conviction?

18 JUROR NUMBER 83: No more than seeing-eye dog coming
19 through a restaurant at Taco Bell. That was taken off my
20 record.

21 THE COURT: Is that interfering with disabled person?

22 JUROR NUMBER 83: Uh-huh.

23 THE COURT: Was that taken off your record?

24 JUROR NUMBER 83: They said it was going to be.

25 THE COURT: I have here you were given ten years

Jury qualification

1 suspended to five years probation.

2 JUROR NUMBER 83: I didn't serve.

3 THE COURT: The key is the sentence you were given.

4 When I asked the question if you had ever been convicted or
5 pled guilty to a crime punishable by imprisonment more than
6 one year, it didn't matter what your sentence was if you
7 could have served more than one year. That carried up to
8 ten years.

9 JUROR NUMBER 83: I got five years probation, and it
10 was suspended within a month.

11 THE COURT: Where was that?

12 JUROR NUMBER 83: In Greenville.

13 THE COURT: Was that in federal court?

14 JUROR NUMBER 83: I reckon.

15 THE COURT: General Sessions Court?

16 JUROR NUMBER 83: Uh-huh.

17 THE COURT: So that was in Greenville. I want to check
18 on that. That is still on your record. You won't be able
19 to serve. We will have to check on that. Just have a seat.

20 (The following takes place at the bench with Juror
21 Number 242.)

22 THE COURT: You are Timmy G. Simmons.

23 JUROR NUMBER 242: Yes, sir.

24 THE COURT: You live in Enoree.

25 JUROR NUMBER 242: Yes, sir.

Jury qualification

1 THE COURT: Did you have a Y. O. A. sentence at one
2 time?

3 JUROR NUMBER 242: A what?

4 THE COURT: A youthful offender sentence.

5 JUROR NUMBER 242: Yes, sir, when I was 18.

6 THE COURT: That disqualified you from jury service.

7 JUROR NUMBER 242: That's what I was going to ask you
8 earlier, and I didn't know if that was.

9 THE COURT: That disqualifies you. You are excused.

10 JUROR NUMBER 242: Thank you, sir.

11 (End of proceedings at the bench.)

12 THE COURT: Juror Number 242 is not qualified.

13 Number 182, Mr. Meadows, would you come forward,
14 please?

15 (The following takes place at the bench with Juror
16 Number 182.)

17 THE COURT: Mr. Meadows, do you at any time have any
18 prior criminal record?

19 JUROR NUMBER 182: Not that I know of.

20 THE COURT: Possession of cocaine?

21 JUROR NUMBER 182: That has been five years.

22 THE COURT: It doesn't matter. That carries more than
23 one year imprisonment, potentially more than one year. And
24 that renders you ineligible for jury service. That carries
25 two years and \$5,000. That was in '96, correct? Was that

Jury qualification

1 here in Spartanburg County?

2 JUROR NUMBER 182: Yes, sir.

3 THE COURT: You are not qualified. I am going to have
4 to excuse you. I appreciate you coming.

5 (End of proceedings at the bench.)

6 THE COURT: Juror Number 182, Mr. Meadows, is also not
7 qualified.

8 Let me see the solicitor and also the defendant and his
9 representative up here, please.

10 (The following takes place at the bench.)

11 THE COURT: Juror number 73, Mr. Dawkins, was not
12 qualified. He had several disqualifying offenses. One was
13 a D. I. I. third for which he could have received three
14 years or more, or three years, and he also had a U. S.
15 magistrate conviction for making false statements that
16 carried more than a year.

17 And Juror Number 242, Mr. Simmons was not qualified.
18 He had a burglary second, receiving stolen goods conviction
19 and received a Y. O. A., one to six years. That
20 disqualified him.

21 I am getting some more information on Number 83,
22 Fernandez, because of a little discrepancy. She is not sure
23 on her record.

24 Do you have a rap sheet? Let me see that. Then Number
25 182, Mr. Meadows, had a conviction from '96 for possession

Jury qualification

1 of cocaine which carries up to two years. That disqualified
2 him.

3 And Ms. Fernandez is also known as Doris Rosemond
4 Kilgore and had a 1990, convicted of unlawfully interfering
5 with a disabled person and given ten years suspended to five
6 years probation. So she will not be qualified.

7 Ms. Fernandez, it is still showing on your record. So
8 you are not qualified. Thank you, ma'am. You are excused.
9 Thank you.

10 (End of proceedings at the bench.)

11 THE COURT: Juror number 83, Ms. Fernandez, is not
12 qualified.

13 All right. Any further questions from the state?

14 MR. GOWDY: No, sir, Your Honor.

15 THE COURT: From the defendant?

16 THE DEFENDANT: No, sir, Your Honor.

17 THE COURT: Thank you, sir.

18 All right. We will wait for the clerks while they
19 prepare those lists.

20 Ladies and gentlemen of the jury, if there has been any
21 change in any of your telephone number numbers on the
22 questionnaire that you presented, before you leave the
23 courthouse today, please see the clerk of court and make any
24 changes. If not, we will treat that information as correct.

25 (Pause.)

Jury qualification

1 THE COURT: Ladies and gentlemen, bear with me just a
2 moment while the clerk makes copies of our lists, and then
3 we will proceed.

4 (Pause.)

5 THE COURT: All right. Let's seat Panel Number One at
6 this time.

7 (Whereupon, Panel Number One was seated. Panel Number
8 One contains Jurors Numbers 251; 166; 231; 29; 191; 37.)

9 THE COURT: To the members of Panel Number One, you are
10 to report back here to the jury assembly room in the
11 morning, that's October the 16th, Tuesday morning, at
12 9:00 a.m.

13 Now, it's extremely important that you be prompt in
14 reporting. We will take you in the order that you have
15 been -- your names were called out, so please be here in
16 advance of the nine o'clock hour so that we can start
17 promptly at nine o'clock.

18 As I send you away from the courthouse, let me remind
19 you, first of all, that you are not to discuss this case
20 among yourselves as you exit the courthouse or when you
21 reconvene in the jury assembly room in the morning.

22 Also, you are not to discuss this case with your
23 family, friends or anyone else that you might come into
24 contact with this evening; and if anyone should attempt to
25 contact you concerning this case I want you to gather as

Jury qualification

1 much information about that person or persons as you
2 possibly can and report that to me immediately upon your
3 return to the courthouse in the morning, because that is a
4 very serious matter. And I would deal with the person that
5 attempted to contact you accordingly.

6 Also, I strongly instruct you that you are not to read,
7 watch or listen to any news accounts. You are not to view
8 the internet in any fashion whatsoever concerning this case
9 or any issue about this case.

10 If you are selected as a juror in this case, all I want
11 you to consider is what you see and hear in this courtroom,
12 nothing more and nothing less.

13 So with that instruction, ladies and gentlemen of the
14 Panel Number One, I look forward to seeing you here in the
15 morning at 9:00 a.m. You are excused until that time.

16 Please report directly to the jury assembly room in the
17 morning.

18 (Whereupon, Panel Number One was excused from the
19 courtroom.)

20 THE COURT: Panel two.

21 (Whereupon, Panel Number Two was seated. Panel Number
22 Two contains Jurors Numbers 116; 2; 17; 177; 230; 28.)

23 THE COURT: Panel Number Two, you are to report here in
24 the morning at 11:00 a.m. That's Tuesday, October the 16th,
25 at 11:00 a.m., directly to the jury assembly room.

Jury qualification

1 Once again, I will instruct you and everyone else
2 that's sitting out there -- they're going to get a heavy
3 dose of it -- that you are not to discuss this case as you
4 exit the courthouse.

5 If you happen to see each other during the course of
6 this evening or speak with each other, or when you reconvene
7 at the courthouse in the morning.

8 Also, you are not to discuss this case with your
9 family, friends or anyone else. If anyone should attempt to
10 contact you concerning this case, once again, gather as much
11 information about the person or persons as you possibly can
12 and report that to me immediately upon your return to the
13 courthouse in the morning.

14 Once again, I strongly instruct you that you are not to
15 read, watch or listen to any news accounts concerning this
16 case, whether they be on the radio, T. V., newspaper or
17 internet.

18 All I want you to consider in this matter is what you
19 would see and hear in this courtroom, nothing more and
20 nothing less.

21 So with that, please be prompt in reporting in the
22 morning at 11:00 a.m. That's the 16th of October at 11:00
23 a.m. I look forward to seeing you then. You are excused.

24 (Whereupon, Panel Number Two was excused from the
25 courtroom.)

Jury qualification

1 (Whereupon, Panel Number Three was seated. Panel
2 Number Three contains Jurors Numbers 163; 178; 213; 176;
3 235; 194.)

4 THE COURT: Ladies and gentlemen, you are Panel Number
5 Three. I am going to ask that you report back to the
6 courthouse tomorrow, that's the 16th of October, Tuesday, at
7 2:00 p.m. You are to report directly to the jury assembly
8 room. Be there promptly at 2:00 p.m.

9 As I send you away from the courthouse, let me remind
10 you that you are not to discuss this case among yourselves
11 as you exit the courthouse, if you happen to see or speak
12 with each other during the course of this evening or when
13 you reconvene tomorrow at the courthouse at 2:00 p.m.

14 Also, you are not to discuss this case with your
15 family, friends or anyone else. If anyone should attempt to
16 contact you concerning this case, once again, please gather
17 as much information about that person or persons as you
18 possibly can and report that to me immediately upon your
19 return to the courthouse tomorrow.

20 Also, ladies and gentlemen, I would instruct you very
21 strongly that you are not to read, watch or listen to any
22 news accounts concerning this case, whether it be on the
23 radio, T. V., newspapers or the internet.

24 All I want you to consider in this matter if you are
25 selected as jurors is what you see and hear in this

Jury qualification

1 courtroom, nothing more and nothing less.

2 So until 2:00 p.m. tomorrow, that's the 16th of
3 October, I will see you then. You are excused.

4 (Whereupon, Panel Number Three was excused from the
5 courtroom.)

6 (Whereupon, Panel Number Four was seated. Panel Number
7 four contains Jurors Numbers 53, 77, 282, 19, 4, 227.)

8 THE COURT: Panel Number Four, ladies and gentlemen,
9 you are to report back here tomorrow afternoon, that's
10 October the 16th, Tuesday, at 4:00 p.m. Report directly to
11 the jury room assembly room at that time.

12 Once again, as you exit the courthouse, if you happen
13 to see or speak with each other during the course of this
14 evening or when you reconvene in the jury assembly room
15 tomorrow at 4:00 p.m., you are not to discuss this case
16 under any circumstances or in any manner or fashion
17 whatsoever.

18 Also, you are not to discuss this case with your
19 family, friends or anyone else. And if anyone should
20 attempt to contact you concerning this case, once again, you
21 heard the instructions that I have given that you are to
22 gather as much information about that person or persons as
23 you possibly can and report that to me immediately upon your
24 return to the courthouse tomorrow.

25 Also, I strongly instruct you that you are not to read,

Jury qualification

1 watch or listen to any news accounts concerning this case,
2 whether it be in the newspaper, on the radio, the television
3 or the internet.

4 All I want you to consider in this matter if you are
5 selected as a juror is what you see and hear in this
6 courtroom, nothing more and nothing less.

7 So with that instruction, I am going to ask that you be
8 here ready to go tomorrow at 4:00 p.m. in the jury assembly
9 room. I look forward to seeing you at that time.

10 You are excused. I will see you tomorrow at
11 4:00 o'clock.

12 (Whereupon, Panel Number Four was excused from the
13 courtroom.)

14 (Whereupon, Panel Number Five was seated. Panel Number
15 Five contains Jurors Numbers 40; 197; 65; 205; 288; 43.)

16 THE COURT: You, ladies and gentlemen, comprise Panel
17 Number Five, and you are to report back here to the
18 courthouse tomorrow evening at 6:00 p.m. That's the 16th of
19 October, Tuesday, at 6:00 p.m. Please report directly to
20 the jury assembly room at that time, and be prompt.

21 And as I send you away from the courthouse, let me
22 remind you that you are not to discuss this case among
23 yourselves as you leave the courthouse if you happen to see
24 or speak with each other during the course of this evening
25 or when you reconvene tomorrow at the appropriate hour of

Jury qualification

1 6:00 p.m.

2 Also, you are not to discuss this case with your
3 family, friends or anyone else you might come in contact
4 with. And should anyone attempt to contact you concerning
5 this case, once again, I want you to gather as much
6 information about that person or persons as you possibly can
7 and report that to me immediately upon your return to
8 courthouse.

9 Once again, I strongly instruct you that you are not to
10 read, watch or listen to any news accounts concerning this
11 case, whether it be in the newspaper, on the radio,
12 television or the internet.

13 If you are selected as jurors in this case all I want
14 you to consider is what you see and hear in this courtroom,
15 nothing more and nothing less.

16 So until tomorrow evening at 6:00 p.m., I will look
17 forward to seeing you back here at that time. And you
18 should report directly to the jury assembly room tomorrow at
19 6:00 p.m. That's October the 16th.

20 Thank you. And I will see you tomorrow.

21 (Whereupon, Panel Number Five was excused from the
22 courtroom.)

23 (Whereupon, Panel Number Six was seated. Panel Number
24 Six consists of Jurors Numbers 220; 137; 148; 145; 192;
25 121.)

Jury qualification

1 THE COURT: Ladies and gentlemen, you comprise Panel
2 Number Six. And you are to report back to the jury assembly
3 room here in the courthouse Wednesday morning, October the
4 17th, at 9:00 a.m. Please report directly to the jury
5 assembly room Wednesday morning at 9:00 a.m.

6 As you leave the courthouse today, let me instruct you
7 that you are not to discuss this case among yourselves as
8 you exit or come back to the courthouse tomorrow or if you
9 happen to see or speak with each other during the course of
10 this evening.

11 You are also not to discuss this case with your family,
12 friends or anyone else that you might come in contact with.
13 And if anyone should attempt to contact you concerning this
14 case, once again, you are to gather as much information
15 about that person or persons as you possibly can and report
16 that to me immediately upon your return to the courthouse
17 Wednesday morning at 9:00 a.m.

18 Once again, I strongly instruct you that you are not to
19 read, watch or listen to any news accounts concerning this
20 case, whether they be in the newspaper, the radio, the
21 television or on the internet.

22 All I would want you to consider in this matter if you
23 were selected as a juror is simply what you see and hear in
24 this courtroom, nothing more and nothing less.

25 So with all of that instruction, once again, please be

Jury qualification

1 back here Wednesday morning, October the 17th, at 9:00 a.m.

2 I look forward to seeing you back here at that time.

3 You are excused.

4 (Whereupon, Panel Number Six was excused from the
5 courtroom.)

6 (Whereupon, Panel Number Seven was seated. Panel
7 Number Seven consists of Jurors Numbers 95; 157; 106; 170;
8 295; 85.)

9 THE COURT: And you, ladies and gentlemen, comprise
10 Panel Seven. And you are to report back to the courthouse
11 directly to the jury assembly room Wednesday morning,
12 October 17, at 11:00 a.m. That's 11:00 a.m. on Wednesday
13 morning. Please report directly to the jury assembly room.

14 At that time, ladies and gentlemen, or at this time as
15 I dismiss you, let me instruct you that you are not to
16 discuss this case as you exit the courthouse, if you happen
17 to see or speak with each other during the course of this
18 evening or when you reconvene on Wednesday morning in the
19 jury assembly room at the appropriate hour of 11:00 a.m.

20 Also, you are not to discuss this case with your
21 family, friends or anyone else that you might come into
22 contact with. Furthermore, if anyone should attempt to
23 contact you concerning this case, let me remind you that you
24 are to gather as much information about that person or
25 persons as you possibly can and report that to me

Jury qualification

1 immediately upon your return to the courthouse on Wednesday
2 morning at 11:00 a.m.

3 Once again, ladies and gentlemen of the jury, I
4 strongly instruct you that you are not to read, watch or
5 listen to any news accounts concerning this case, whether it
6 be in the newspaper, on the radio, the television or the
7 internet.

8 All I would want you to consider in this matter if you
9 are selected as jurors is what you see and hear in this
10 courtroom, nothing more and nothing less.

11 So with all of that instruction, I will see you on
12 Wednesday morning, October 17 at 11:00 a.m. Please report
13 directly to the jury assembly room at that time.

14 You are excused. See you Wednesday morning.

15 (Whereupon, Panel Number Seven was excused from the
16 courtroom.)

17 (Whereupon, Panel Number Eight was seated. Panel
18 Number Eight consists of Jurors Numbers 89; 265; 132; 290;
19 263; 94.)

20 THE COURT: To you, ladies and gentlemen, you comprise
21 Panel Number Eight. And you are to report back to the
22 courthouse directly to the jury assembly room on October the
23 17th, that's Wednesday, at 2:00 p.m., two o'clock in the
24 afternoon, Wednesday, October 17th. Please be prompt in
25 your attendance.

Jury qualification

1 Ladies and gentlemen, as you exit the courthouse if you
2 happen to see or speak with each other during the course of
3 this evening or when you reconvene on Wednesday afternoon at
4 two o'clock, you are not to have any discussions in any
5 manner whatsoever about this case.

6 Also, you are not to discuss this case with your
7 family, friends or anyone else that you might come in
8 contact with.

9 Also, if anyone should attempt to contact you
10 concerning this case, once again, I want you to gather as
11 much information about that person or persons as you
12 possibly can, and report that to me immediately upon your
13 return to the courthouse Wednesday at 2:00 p.m.

14 Also, ladies and gentlemen, I strongly instruct you
15 that you are not to read, watch or listen to any news
16 accounts concerning this case, whether they be in the
17 newspaper or on the radio, the television or the internet.

18 All I would want you to consider in this matter if you
19 were selected as jurors in this case is what you see and
20 hear in this courtroom, nothing more and nothing less.

21 With that instruction, ladies and gentlemen, I look
22 forward to seeing you back here Wednesday afternoon at
23 2:00 p.m. Once again, please report directly to the jury
24 assembly room at that time.

25 You are excused.

Jury qualification

1 (Whereupon, Panel Number Eight was excused from the
2 courtroom.)

3 (Whereupon, Panel Number Nine was seated. Panel Number
4 Nine consists of Jurors Numbers 226; 92; 152; 44; 160; 266.)

5 THE COURT: Ladies and gentlemen, you comprise Panel
6 Number Nine, and I am going to instruct you that on
7 Wednesday, October 17, you are to report to the jury
8 assembly room at 4:00 p.m. That's Wednesday, October the
9 17th at 4:00 p.m. You are to report back to this courthouse
10 to the jury assembly room.

11 As I send you away this afternoon, let me remind you as
12 you exit the courthouse, if you happen to see or speak with
13 each other during the time that you are away from the
14 courthouse or when you reconvene in the jury room Wednesday
15 afternoon that you are not to discuss this case among
16 yourselves in any manner or fashion whatsoever.

17 Also, you are not to discuss this case with your
18 family, friends or anyone else that you might come in
19 contact with.

20 And if anyone should attempt to contact you concerning
21 this case, ladies and gentlemen, once again, I want you to
22 gather as much information as you possibly can about that
23 person or persons and report that directly to me upon your
24 return to the courthouse on Wednesday at 4:00 p.m.

25 Once again, I strongly instruct you that you are not to

Jury qualification

1 read, watch or listen to any news accounts concerning this
2 case, whether they be on the radio, in the newspaper, on the
3 television or the internet.

4 If you are selected as jurors in this case, all I would
5 want you to consider in this matter is what you see and hear
6 in this courtroom, nothing more and nothing less.

7 So with that instruction, I look forward to seeing you
8 Wednesday afternoon around 4:00 p.m. Please be prompt in
9 your attendance, and report directly to the jury assembly
10 room at that time.

11 You are excused.

12 (Whereupon, Panel Number Nine was excused from the
13 courtroom.)

14 (Whereupon, Panel Number Ten was seated. Panel Number
15 Ten consists of Jurors Numbers 130; 286; 232; 269; 36; 136.)

16 THE COURT: Ladies, you comprise Panel Number Ten. And
17 you are to report back to this courthouse directly to the
18 jury assembly room on Thursday morning at 9:00 a.m. That's
19 October the 18th, Thursday morning, at 9:00 a.m. And you
20 are Panel Number Ten.

21 As you leave this courthouse today let me instruct you
22 that you are not to discuss this case among yourselves, or
23 if you happen to come in contact or speak with each other
24 during the intervening time that you are away from the
25 courthouse or when you reconvene in the jury assembly room

Jury qualification

1 on Thursday morning at 9:00 a.m.

2 Also, ladies and gentlemen, you are not to -- ladies.
3 Excuse me. You are not to discuss this case with your
4 family, friends or anyone else that you might come in
5 contact with. And if anyone should attempt to contact you
6 concerning this case, once again, please gather as much
7 information about that person or persons as you possibly
8 can. And report that to me immediately upon your return to
9 the courthouse on Thursday morning at 9:00 a.m.

10 Once again, I strongly instruct you that you are not to
11 read, watch or listen to any news accounts concerning this
12 case, whether they be on the radio, in the newspaper, on the
13 television or the internet.

14 All I would want you to consider if you were selected
15 as jurors in this matter is what you see and hear in this
16 courtroom, nothing more and nothing less.

17 So with that instruction, ladies, I am going to look
18 forward to seeing you back here Thursday morning at
19 9:00 a.m. Please report directly to the jury assembly room,
20 and be prompt in your attendance.

21 Thank you very much.

22 (Whereupon, Panel Number Ten was excused from the
23 courtroom.)

24 (Whereupon, Panel Number 11 was seated. Panel Number
25 11 consists of Jurors Numbers 125; 248; 210; 140; 118; 57.)

Jury qualification

1 THE COURT: Ladies and gentlemen, you comprise Panel
2 Number 11. And you are to report back to this courthouse
3 directly to the jury assembly room on Thursday,
4 October 18th, at 11:00 a.m. That's Thursday morning at
5 11:00 a.m., October the 18th. You are to report directly to
6 the jury assembly room.

7 As I send you away from the courthouse this day, let me
8 remind you, once again, that you are not to discuss this
9 case among yourselves, whether as you go out tonight, if you
10 happen to see or speak with each other over the next several
11 days or when you reconvene in the jury assembly room on
12 Thursday morning.

13 Also, you are not to discuss this case with your
14 family, friends or anyone else. And if anyone should
15 attempt to contact you concerning this case, I want you to
16 gather as much information about that person or persons as
17 you possibly can, and report that directly to me when you
18 return to the courthouse Thursday morning at 11:00 a.m.,
19 because that is a very serious matter, and I would deal with
20 the person that attempted to contact you accordingly.

21 I would also very strongly instruct you that you are
22 not to read, watch or listen to any news accounts concerning
23 this case, whether they be on the television, the radio, in
24 the newspaper or on the internet.

25 Once again, ladies and gentlemen, all that I would ask

Jury qualification

1 you to consider if you were selected as jurors in this case
2 is simply what you see and hear in this courtroom, nothing
3 more and nothing less.

4 So please report promptly and directly to the jury
5 assembly room Thursday morning, the 18th, at 11:00 a.m. I
6 look forward to seeing you then.

7 The jury is excused.

8 (Whereupon, Jury Panel Number 11 was excused from the
9 courtroom.)

10 (Whereupon, Jury Panel Number 12 was seated. Panel
11 Number 12 consists of Jurors Numbers 234, 287, 289, 262,
12 202, 260.)

13 THE COURT: How about recalling that group?

14 (Whereupon, the first two names were called by the
15 clerk.)

16 THE COURT: I believe he was excused, wasn't he? Let's
17 take Mr. West off this list then.

18 Ladies and gentlemen of Panel Number 12, are you are to
19 report back to the courthouse on Thursday, October the 18th,
20 at 2:00 p.m. directly to the jury assembly room.

21 Now, as I send you away from the courthouse this day,
22 let me remind you that you are not to discuss this case
23 among yourselves as you exit the courthouse, if you happen
24 to see or speak with each other during the intervening time
25 that you are away. Also, you are not to discuss this case

Jury qualification

1 when you reconvene in the jury assembly room on Thursday at
2 2:00 p.m., or thereabouts.

3 Furthermore, you are not to discuss this case with your
4 family, friends or anyone else that you might come in
5 contact with. And if anyone should attempt to contact you
6 concerning this case, I want you to gather as much
7 information about that person or persons as you possibly
8 can, and report that to me immediately upon your return to
9 the courthouse Thursday at 2:00 p.m.

10 Also, I strongly instruct you that you are not to read,
11 watch or listen to any news accounts concerning this case,
12 whether they be in the newspaper, on the radio, the
13 television or the internet.

14 Once again, if you are selected to serve as jurors in
15 this particular case, all I would want you to consider is
16 what you see and hear in this courtroom, nothing more and
17 nothing less.

18 With that instruction, I'm going to look forward to
19 seeing you back here Thursday at 2:00 p.m. Have a pleasant
20 time away from the courthouse. I look forward to seeing you
21 back at that time.

22 (Whereupon, Panel Number 12 was excused from the
23 courtroom.)

24 (Whereupon, Panel Number 13 was seated. Panel Number
25 13 consists of Jurors Numbers 39; 84; 174; 203; 120; 142.)

Jury qualification

1 THE COURT: To the ladies and gentlemen of Panel 13,
2 you are to report back to this courthouse directly to the
3 jury assembly room on October the 18th, that is Thursday, at
4 4:00 p.m. Thursday at 4:00 p.m. to the jury assembly room,
5 you are to report.

6 As I send you away for this day, let me remind you that
7 you are not to discuss this case as you exit the courthouse,
8 if you happen to see or speak with each other between now
9 and Thursday or when you reconvene in the jury assembly room
10 on Thursday afternoon.

11 Also, you are not to discuss this case with your
12 family, friends or anyone else that you might come in
13 contact with. And if anyone should attempt to contact you
14 concerning this particular case, I want you to gather as
15 much information as you possibly can about that person or
16 persons and report that to me immediately upon your return
17 to the courthouse on Thursday.

18 Once again, I strongly instruct you that you are not to
19 read, watch or listen to any news accounts concerning this
20 case, whether they be in the newspaper, on the radio, on the
21 television or the internet.

22 All I would want you to consider if you were selected
23 as jurors in the case is what you see and hear in this
24 courtroom, nothing more and nothing less.

25 So with all of that instruction, I will see you here at

Jury qualification

1 4:00 p.m. on Thursday. Please be prompt in your reporting
2 to the jury assembly room at that time.

3 This panel is excused until Thursday at 4:00 p.m.

4 (Whereupon, Panel Number 13 was excused from the
5 courtroom.)

6 (Whereupon, Panel Number 14 was seated. Panel Number
7 14 consists of Jurors Numbers 209; 20; 33; 211; 22; 267.)

8 THE COURT: You, ladies and gentlemen, comprise Panel
9 14. And you are to report back to this courthouse Thursday,
10 October the 18th, at 6:00 p.m. Please report directly to
11 the jury assembly room Thursday at 6:00 p.m.

12 As you exit the courthouse this afternoon and while you
13 are away between now and Thursday, and when you return to
14 the courthouse on Thursday, you are not to discuss this case
15 among yourselves in any manner or fashion whatsoever.

16 Also, ladies and gentlemen, you are not to discuss this
17 case with your family, friends or anyone else that you might
18 come in contact with. And if anyone should attempt to
19 contact you concerning this case, I want you to gather as
20 much information about that person or persons as you
21 possibly can, and report that to me immediately upon your
22 return to the courthouse Thursday at 6:00 p.m.

23 Now, I, once again, strongly instruct you that you are
24 not to read, watch or listen to any news accounts concerning
25 this case. That means that you are not to read any

Jury qualification

1 newspaper articles, watch any television broadcasts or
2 listen to any radio broadcasts or any internet accounts
3 concerning this case.

4 All I would want you to consider if you were selected
5 as jurors in this case is what you see and hear in this
6 courtroom, nothing more and nothing less.

7 So with all of that instruction, please be prompt in
8 reporting back here Thursday afternoon or Thursday evening,
9 I guess I should say, at 6:00 p.m. I look forward to seeing
10 you then. Please report directly to the jury assembly room
11 at that time.

12 You are excused.

13 (Whereupon, Panel Number 14 was excused from the
14 courtroom.)

15 (Whereupon, Panel Number 15 was seated. Panel Number
16 15 consists of Jurors Numbers 252; 133; 275; 283; 150; 225.)

17 THE COURT: I guess to Panel 15 I should say the rose
18 among all of those thorns over there, lady and gentleman of
19 this panel.

20 You are to report back here on Friday, October the
21 19th, at 9:00 a.m. That's directly to the jury assembly
22 room Friday morning at 9:00 a.m., October the 19th.

23 Ladies and gentlemen, as you leave the courthouse
24 today, during the time that you are away from this
25 courthouse or when you reconvene in the jury room, you are

Jury qualification

1 not to discuss this case among yourselves in any manner or
2 fashion whatsoever.

3 You are also not to discuss this case with your family,
4 friends or anyone else that you might come in contact with.
5 And, furthermore, ladies and gentlemen, if anyone attempts
6 to contact you concerning this case, I know that you know by
7 now after listening to 14 other panels that you are to
8 gather as much information about that person or persons as
9 possibly can and report that to me immediately upon your
10 return to the courthouse.

11 Once again, I strongly instruct you that you are not to
12 read, watch or listen to any news accounts concerning this
13 case, whether it be in the newspaper, on the radio, the
14 television or the internet.

15 And, ladies and gentlemen of the jury, if you are
16 selected to serve in this particular case all I would want
17 you to consider is what you see and hear in this courtroom,
18 nothing more and nothing less.

19 So until Friday morning at 9:00 a.m. when you report to
20 the jury assembly room, have a pleasant time. And I will
21 see you back here then.

22 (Whereupon, Panel Number 15 was excused from the
23 courtroom.)

24 (Whereupon, Panel Number 16 seated. Panel Number 16
25 consists of Jurors Numbers 45; 198; 64; 126; 193; 101.)

Jury qualification

1 THE COURT: Sir, what is your name?

2 JUROR NUMBER 35: Ronald Brice, B-R-I-C-E.

3 THE COURT: Thirty-five. Add him to this list.

4 To you, ladies and gentlemen, you are referred to as
5 Panel 16, the final panel. And you are to report back to
6 this courthouse to the jury assembly room on Friday morning
7 at 11:00 a.m.

8 Now, between now and the time that you come back to the
9 courthouse Friday morning, as you exit the courthouse during
10 the intervening time or when you reconvene in the jury
11 assembly room Friday morning, you are not to discuss this
12 case among yourselves in any manner whatsoever. You are
13 also not to discuss this case with your family, friends or
14 anyone else that you might come into contact with.

15 Also, if anyone should attempt to contact you
16 concerning this case, I want you to gather as much
17 information as you possibly can about that person or persons
18 and report that to me immediately upon your return here on
19 Friday morning at 11:00 a.m.

20 Also, I would strongly instruct you that you are not to
21 read, watch or listen to any news accounts concerning this
22 case, whether they be on the internet, in the newspaper, the
23 radio, the television or any other means of communication.

24 All I would want you to consider in this matter, ladies
25 and gentlemen, is what you see and hear in this courtroom,

Jury qualification

1 nothing more and nothing less.

2 And so until Friday morning, October the 19th at 11:00
3 a.m., I bid you adieu. And I will see you then. Have a
4 pleasant time.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: All right. Insofar as this day is
8 concerned, it has been -- I think this is the twelfth death
9 penalty case that I have presided over that gets to jury
10 selection. I presided over 11 to completion, I guess, is
11 what I am saying. And I can never remember not at this
12 particular point in time during the day going through that
13 litany of questions that I ask for about the second time
14 with the second panel. But being as it has been a day such
15 as it has, I decided to delay any consideration of any voir
16 dire of the individual jurors until tomorrow.

17 Now, insofar as this case is concerned, Mr. Moore, as
18 you have probably noticed, Mr. Morin and Mr. Kelly and
19 Ms. Johnson have been here in the courtroom, and they have
20 been here at my instruction. And they are going to remain
21 here at my instruction because if, during the course of this
22 trial, you have any change of heart about their
23 representation of you during the guilt phase, certainly I
24 would allow you to interact with them, to discuss with them,
25 to counsel with them, to do anything else that you might

Jury qualification

1 wish to gain any knowledge or input from them, because I can
2 say this. Once we get into the -- if we get to a sentencing
3 phase beyond a guilt phase and you have proceeded pro se
4 throughout that, that guilt phase, they will not be
5 assisting you in any official capacity during the sentencing
6 phase. I would allow them to remain in here, but you would
7 proceed pro se throughout the entire course of the trial.
8 Our case law is clear on that.

9 So if you desire to have them represent you, if you
10 have any change of heart during the evening, you may
11 certainly feel free to call upon them.

12 I am instructing them that it is at my behest that they
13 remain here. They were appointed by this Court, and they
14 will continue in that capacity throughout the course of this
15 trial until I dismiss them, even though you have expressed
16 your desire earlier today.

17 But if you, once again if you, have any change at any
18 time, you may feel free to speak with them or call upon them
19 for any resource that they might have.

20 I think they have provided to you the information that
21 they had at their disposal, and I know that you have a jury
22 expert with you.

23 And we will begin this process in the morning. The
24 manner in which we will do that, of course, I will question
25 the jurors initially.

Jury qualification

1 Then if you have any questions that you would like to
2 ask according to the case law of our state and in accordance
3 with statute, you may do so. And then the solicitor will be
4 able to ask his questions. And then I will make a
5 determination as to whether or not that particular juror
6 will be a potential juror in this case.

7 Once we get 35 to 40 qualified, then we will be in a
8 position to strike the jury.

9 And, Mr. Clerk and Madam Clerks, if we get to that
10 point, we will probably need to get on the telephone and
11 start contacting these other panels so that they will not
12 have to come back in. And then we will be in a position to
13 actually seat a jury in this case.

14 Anything else from the state for this day?

15 MR. GOWDY: Not from the state, Your Honor.

16 THE COURT: Mr. Moore, anything from the defense?

17 THE DEFENDANT: Yes, sir.

18 After careful consideration, I ask that Mr. Morin and
19 Mr. Kelly be reappointed to my case. I have taken your
20 advice, and I have given it considerable consideration.

21 I ask that they be appointed to each and every role in
22 which they had prior.

23 I also would like to say that in light of my opinions
24 being expressed this morning, I still feel the same way, but
25 the overwhelming responsibility of a trial, I see I have no

Jury qualification

1 way whatsoever, can come close to obtaining the skill.

2 THE COURT: Well, Mr. Moore, I certainly think that you
3 have made a wise choice. You and I have had several
4 discussions throughout the course of this day. I think that
5 you've expressed yourself very well.

6 But, you know, once again, I think that these are three
7 highly trained individuals. I am talking about Mr. Morin
8 and Mr. Kelly and also Ms. Johnson.

9 And, once again, I am delighted that you have chosen to
10 allow them to participate. I will look forward to working
11 with all of you tomorrow and the next day and the next day
12 and ever how long we go on.

13 And if there is nothing else to come before the Court
14 at this time, then we are going to stand in recess until in
15 the morning at 9:00 a.m.

16 Now, I will say this to the detention center. Make
17 sure that the lawyers have the necessary access to
18 Mr. Moore. Let's have him here at whatever time they want
19 him here.

20 Let's make sure that we get started at the appropriate
21 times. We have got these individuals coming in in the
22 segments that we do, and we should be able to move through
23 them without any real problems and stay on track.

24 But let's make sure that we are all available. I'll be
25 here no later than 8:30 in the morning, probably before

Jury qualification

1 then.

2 If anyone needs me, you know where my office is --
3 Mr. Morin and Mr. Kelly and Ms. Johnson, the solicitor, the
4 clerk, the court reporter. And I look forward to seeing
5 you-all tomorrow. Thank you very much.

6 END OF PROCEEDINGS OCTOBER 15, 2001

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Volume Five -- Trial -- Jury qualification

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Richard Bernard Moore,) 00-GS-42-617;618;619
6 Defendant.) October 15 - 22, 2001
7 Spartanburg, South Carolina

8
9 B E F O R E:

10 HONORABLE GARY E. CLARY, JUDGE; and a jury
11
12

13 A P P E A R A N C E S:

14 HAROLD W. GOWDY, III, ESQUIRE
15 BARRY J. BARNETTE, ESQUIRE
16 JAMES DONALD WILLINGHAM, II, ESQUIRE
Attorneys for the State

17 RALPH KEITH KELLY, ESQUIRE
18 MICHAEL DAVID MORIN, ESQUIRE
Attorneys for the Defendant

19
20
21
22
23 LINDA D. MOFFITT
24 Circuit Court Reporter
25

Jury qualification

1 (Proceedings October 16, 2001)

2 THE COURT: Anything from the state before we start?

3 MR. GOWDY: No, sir, Your Honor.

4 THE COURT: Anything from the defense?

5 MR. MORIN: Yes, Your Honor, from the defense real
6 quick.

7 When we came in there were two questionnaires on our
8 table. One was from Mr. Browning or Brown, I believe, who
9 is number one on Panel Five. And the other one is Kenneth
10 Lee Littlejohn.

11 Mr. Kelly and I weren't representing Mr. Moore when
12 this was going on. But is Mr. Littlejohn still here? There
13 was a Littlejohn who was excused.

14 MR. GOWDY: He was excused.

15 MR. MORIN: He was excused. So, that questionnaire --
16 Your Honor, the other thing is I was in the courtroom,
17 obviously, when you were doing your general voir dire.

18 When I was originally representing Mr. Moore I had
19 submitted 11 questions regarding race. I heard you ask two
20 of them during general voir dire. First, I would ask are
21 you intending to ask any of those other questions on
22 individual that was --

23 THE COURT: No, sir.

24 MR. MORIN: All right.

25 THE COURT: I think I told you that I would ask some of

1 those questions when you were back there, but no. I have
2 questions that I am going to ask here.

3 There were no responses to any bias in any way in any
4 of the questions that I did ask. Anyone who expressed any
5 bias was dismissed from the panel previously. And, you
6 know, if that's something that you want to explore, you may
7 do so; but also understand that the other questions that you
8 are going to need to ask and the time constraints that we
9 are operating under.

10 All right. Let's bring in the first juror, Joyce B.
11 Smythe, Number 251.

12 JUROR NUMBER 251, JOYCE B.

13 SMYTHE, having been first duly sworn, was voir dired
14 as follows:

15 EXAMINATION BY THE COURT

16 Q Good morning. You are Joyce B. Smythe, is that
17 correct?

18 A That's correct.

19 Q Now, Ms. Smythe, you understand that you have been
20 placed under oath for these proceedings.

21 A I do.

22 Q And before I dismissed you yesterday I instructed you
23 that you were not to discuss this case with your fellow
24 jurors, your family, friends or anyone else; that you were
25 not to read, watch or listen to any news accounts concerning

1 this case.

2 Have there been any violations of those precautionary
3 instructions?

4 A No, there hasn't.

5 Q Now, over the next few minutes, Ms. Smythe, I am going
6 to be asking you some questions. Then one of the
7 defendant's lawyers will ask you some questions; and then
8 the solicitor or one of his deputies will ask you some
9 questions.

10 I want you to please keep in mind that we are not in
11 any way attempting to invade your privacy, but because of
12 the proceedings that we are about this week, it's necessary
13 that certain questions are asked and answered.

14 I want you to also keep in mind that there were no
15 right or wrong answers to these questions that you are going
16 to be posed. So, please, just answer them openly and
17 honestly and fully.

18 And, also, keep in mind that no one is challenging the
19 view that you might have. We just need to know what your
20 view is in particular areas.

21 Also, I want you to listen very carefully to the
22 questions as they are presented to you, because over the
23 next few minutes we are all probably going to be asking you
24 some questions that you have never ever considered before
25 today.

1 I would also tell you that the lawyers have copies of
2 your questionnaire, as well as the Court has a copy of that,
3 because those were extremely important in developing
4 questions for today.

5 Now, Ms. Smythe, among other things, we are going to be
6 talking about and using the word penalty, but the mere fact
7 that we talk about penalty or even use that word does not
8 indicate anything about the defendant, Mr. Moore. Do you
9 understand that?

10 A Yes, I do.

11 Q He is presumed in the law to be innocent. Do you
12 understand that?

13 A Uh-huh.

14 Q Now, let's assume that you were a juror in a criminal
15 case.

16 Could you listen to the law, accept and apply that law
17 as I would instruct you as the judge of this court even
18 though you may disagree with that law or think it should be
19 some other way?

20 A Yes, I could.

21 Q Could you decide this case based solely on the evidence
22 presented here in this courtroom and disregard anything that
23 you may have read, heard or seen about this case?

24 A Yes, I could.

25 Q Now, in a criminal case, Ms. Smythe, the state has the

1 burden of proving a defendant's guilt. The burden of proof
2 that the state must meet is proof beyond a reasonable doubt.
3 And a defendant has absolutely no burden, no responsibility
4 to prove himself innocent. Do you understand that?

5 A Yes, I do.

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

9 A Yes, I could.

10 Q Now, as you know, we are involved this day in trying to
11 select a jury wherein the State of South Carolina seeks the
12 death penalty.

13 Now, a death penalty case is what we call a bifurcated
14 proceeding, meaning that it is divided into two parts.
15 There is a guilt phase and a sentencing phase.

16 Now, if you were a juror in such a case and if the jury
17 had found the defendant not guilty of murder in the guilt
18 phase, the first face of that trial, do you understand that
19 the trial would end at that point in time?

20 A Yes.

21 Q There would be no necessity to move on to that second
22 or sentencing phase. Do you understand that?

23 A Uh-huh.

24 Q However, if you were a juror in such a case and if the
25 jury had found the defendant guilty of murder, do you

1 understand that you would then move to that second or
2 sentencing phase of the trial?

3 A Right.

4 Q Now, during that portion of the trial evidence would be
5 presented in the form of aggravating circumstances and
6 mitigating circumstances.

7 Now, aggravating circumstances are facts, incidents,
8 details or occurrence which the General Assembly of the
9 State of South Carolina has declared by statute would make
10 worse, that is to aggravate the offense of murder.

11 In other words, the presence of an aggravating
12 circumstance when it accompanies a murder increases the
13 enormity or adds to the injury of that crime of murder. It
14 is a murder committed in the commission of, in connection
15 with another crime or incident.

16 Do you understand what I mean when I speak of an
17 aggravating circumstance?

18 A Right.

19 Q Now, mitigating circumstances are also incidents,
20 details or occurrence which the general assembly of our
21 state has declared by law reduces the severity of the
22 offense of murder and may be considered as extenuating or as
23 reducing the degree of moral culpability or responsibility
24 of that crime of murder.

25 Do you understand what I mean when I speak of a

1 mitigating circumstance?

2 A Yes.

3 Q Now, if you were a juror in that situation, I am
4 talking about a death penalty case, the second phase, the
5 sentencing phase, could you, depending upon the particular
6 facts and circumstances of that case, including the
7 consideration of aggravating as well as mitigating
8 circumstances and the law that I would instruct you that
9 applied to that case, return a sentence of life in prison?

10 A Yes.

11 Q If you were a juror in that case, in that situation,
12 could you, depending upon the particular facts and
13 circumstances of that case, once again, including the
14 consideration of aggravating and mitigating circumstances
15 and the law that I would instruct you that applied to that
16 case, return a sentence of death?

17 A Yes, I could.

18 Q Now, Ms. Smythe, you understand that there are two
19 sentencing options that are always available to the jury in
20 the sentencing phase, that sentencing phase of the trial,
21 that being life imprisonment or death.

22 A Uh-huh.

23 Q Now, if you were chosen as a juror in this case you
24 would be sequestered. That's kind of a high-dollar word
25 meaning housed in a motel for the duration of the trial.

1 I have no way of knowing how long this case will last,
2 but once we get it started, I would say somewhere from
3 probably seven to ten days.

4 Except for the personal inconvenience that you would
5 suffer, would this pose a serious danger to the health or
6 well-being of yourself or of those dependent upon you?

7 A No.

8 Q Thank you ma'am. I appreciate the answers that you
9 have given. I will now allow one of the defense lawyers to
10 ask you some questions.

11 MR. MORIN: Thank you.

12 EXAMINATION BY MR. MORIN

13 Q Mr. Smythe, my name is Michael Morin. And this
14 gentleman here is Keith Kelly. And we represent Mr. Moore
15 seated there on the end.

16 I note that you have lived in Spartanburg County for
17 only a short period of time.

18 A Right.

19 Q Could you tell me where you lived before that?

20 A I lived in Westfield, New Jersey.

21 Q Okay. Now --

22 A Excuse me. I did live in Greenville a little bit
23 before I lived in Spartanburg.

24 Q Okay. So, how long have you been in South Carolina?

25 A I've been here about seven years.

1 Q Okay. Now, I've been here about 25 years, and I still
2 get, after about two words, you are not from around here. I
3 get that. Now, where are you from? Do you get that?

4 A Yes.

5 Q Okay. When, when you came in, I believe there was
6 something for you to look at about how you feel about the
7 death penalty. And there was three basic summaries.

8 A Yes, there was.

9 Q Could you tell me as far as with yourself where you
10 feel on those three that you fit?

11 A It would be number three, but I would hate to give the
12 death penalty.

13 Q Uh-huh.

14 A But if it's the law, I would do it.

15 Q Okay. I take it that you've thought about the death
16 penalty. Most people have thought about it from one time to
17 another.

18 Could you tell me in your own words how you come to
19 form your opinion about the death penalty?

20 A Well, I think you have to abide by the laws that are
21 written in the state or the constitution. And if we don't
22 live by those laws, then we don't have -- well, it's hard to
23 put in words, but, you know, it wouldn't work.

24 Q Right.

25 A So you have to live by the law.

1 Q Right. I understand that. But in a case where we are
2 talking about a death-penalty situation where something is
3 going to have to be decided, and there have been various
4 cases, some more publicized than others. And usually
5 somebody comes around to thinking about how they feel about
6 the death penalty based off of what they -- I mean, their
7 experiences. And that's really what I was asking. I
8 understand --

9 THE COURT: Now, you can't ask her for particular
10 things, Mr. Morin.

11 MR. MORIN: No, sir. I understand.

12 THE COURT: So, let's make sure you are clear on that.

13 MR. MORIN: No, sir. I am simply asking her what about
14 how -- what things she's thought about in forming her
15 opinions. I understand that she wants to follow the law,
16 and we certainly want her to do that. My question simply
17 was with respect to the death penalty, not with respect to
18 the law.

19 THE COURT: Well, ask the question, please.

20 MR. MORIN: Yes, sir.

21 Q Did that make my question a little clearer or do you --

22 THE COURT: I mean, she's answered it one time.

23 MR. MORIN: Well.

24 THE COURT: If you want to enlarge on that, you may do
25 so, but just get to the question.

1 MR. MORIN: Yes, sir.

2 Q My question is with the death penalty in whole. Okay.
3 Everybody has thought about the death penalty, about what
4 they think about it.

5 Okay. And I am just asking. And I understand you want
6 to follow the law, and we certainly want you to follow the
7 law, and everybody does. And I was just asking in your
8 experience is there anything that you would say has formed
9 your opinion in general about the death penalty.

10 A In general, I do not like it.

11 Q Okay. That's all I have.

12 THE COURT: Solicitor.

13 MR. GOWDY: May it please the Court, Your Honor.

14 EXAMINATION BY MR. GOWDY

15 Q Good morning, Ms. Smythe.

16 A Good morning.

17 Q My name is Trey Gowdy. I am the solicitor here in
18 Spartanburg and Cherokee Counties. Seated with me is Barry
19 Barnette and Donnie Willingham. They are both my deputy
20 solicitors.

21 You mentioned that you don't like the death penalty.
22 And I want to make sure that I got this down right, that you
23 would hate to give the death penalty.

24 A Yes, sir.

25 Q Do you understand that the law never requires a juror

1 to give the death penalty? It's a decision that the jury
2 makes, but it's never required. Do you understand that?

3 A Right. All right.

4 Q Understanding that it's never required, would you still
5 be able in the appropriate case, based on His Honor's law
6 and the facts, would you be able to vote for the death
7 penalty?

8 A If it's the law of the state, of the county, I would
9 say yes; but I wouldn't want to do it.

10 Q When you say you wouldn't want to do it, why would you
11 not want to do it?

12 A Because I wouldn't want to take anybody's life.

13 Q Would you be able to do it if the facts and the law in
14 your estimation warranted it?

15 A Yes, I could.

16 Q Understanding that you would never be required to vote
17 for it --

18 A Right.

19 Q -- would you be able, Ms. Smythe, to sign your name to
20 a verdict form for the death penalty?

21 A Yes.

22 Q There are few things in life that are as personal as
23 our spiritual or religious views. I noticed that you were a
24 member of the Catholic Church. I think the Catholic Church
25 has a position on the death penalty.

1 Would you be able to follow His Honor's law as he gives
2 it to you and put out any other views or beliefs that you
3 may have had over the course of your life?

4 A Yes, I would.

5 Q Okay. Thank you very much.

6 THE COURT: Anything else from you, Mr. Morin?

7 MR. MORIN: No, sir.

8 THE COURT: From the state?

9 MR. GOWDY: No, sir, Your Honor.

10 THE COURT: Ms. Smythe, I want to thank you very much
11 for your participation here, and a long day yesterday. I
12 apologize for that, but very briefly here this morning.

13 I find that you are qualified to serve as a potential
14 juror in this case, and with that qualification comes some
15 more instructions.

16 Number one, you are to continue my previous
17 instructions that you are not to discuss this case with
18 anyone, whether it be fellow jurors, family, friends or
19 anyone else that you might come into contact with.

20 Also, if anyone attempts to contact you concerning this
21 case, I want you to report that to me immediately, because
22 that is a very serious matter, and I would deal with that
23 individual that attempted to contact you accordingly.

24 Also, I am going to very strongly instruct you and
25 remind you that you are not to read, watch or listen to any

1 news accounts concerning this case.

2 Simply put, if you are selected as a juror in this
3 case, all I would want you to consider in this matter is
4 what you would see and hear in this courtroom, nothing more
5 and nothing less.

6 Now, with that qualification, Ms. Smythe, a couple of
7 things are going to happen. You are the first juror that we
8 have talked to. So, I am going to have to be a little more
9 vague with you than I will with some people that come on
10 later in the week.

11 You need to go home and start packing to come and stay
12 with us for anywhere from seven to ten days when we do get a
13 jury impanelled.

14 Now, when you pack and when you report back to the
15 courthouse, I want you to leave your belongings in the
16 vehicle that you come with. Do not bring them into the
17 courthouse.

18 If you are selected as a juror, then the jury
19 custodians will take you and your colleagues to your home
20 away from home for the duration of the trial, and you would
21 be taken care of very properly in that way.

22 If you are not selected to serve, then we are going to
23 send you back home with your clothes and your vehicle and
24 thank you very much for your participation here.

25 Now, I want you to call back tomorrow night, that's

Jury qualification -- Number 251

1 Wednesday night, after 6:00 p.m. I think that when you
2 reported here yesterday that you were given a sheet with a
3 number on it.

4 THE JUROR: Yes, I was.

5 THE COURT: If you will call back, what that message
6 will say is that jurors in the case of the State vs. Moore
7 should call back on Thursday at a certain time or report to
8 the courthouse on Thursday at a certain time with your bags
9 packed and left in your vehicle.

10 If you get the message that you are to report to the
11 courthouse, of course, you bring your belongings and leave
12 them in the car.

13 You will come to the courthouse. If you are selected
14 we will take you to the place that you will be staying for
15 the course of the trial. If you are not, then, once again,
16 we will send you home.

17 But be prepared as early as tomorrow night to get that
18 call, but, more than likely, it will be sometimes on
19 Thursday before we actually seat a jury. But listen very
20 carefully to that message tomorrow night after six o'clock
21 and just follow those instructions.

22 THE JUROR: Okay.

23 THE COURT: Thank you, ma'am.

24 THE JUROR: Thank you.

25 THE COURT: I look forward to seeing you later on this

Jury qualification -- Number 166

1 week.

2 (Whereupon, the juror was excused from the courtroom.)

3 THE COURT: Let the record reflect Juror Number 251,
4 Joyce B. Smythe, is qualified to serve as a potential juror
5 in this case pursuant to Section 16-3-20 of our code.

6 Jason B. Lyda, 166.

7 JUROR NUMBER 166, JASON B.

8 LYDA, having been first duly sworn, was voir dired
9 as follows:

10 EXAMINATION BY THE COURT

11 Q Good morning. You are Jason Brian Lyda, is that
12 correct?

13 A Yes.

14 Q Mr. Lyda, first of all, you remember that you have been
15 placed under oath for these proceedings. And you need to
16 answer out loud so I can hear you and the court reporter can
17 hear you.

18 A Yes, sir.

19 Q And you also understand that yesterday before you left
20 the courthouse that I gave you certain precautionary
21 instructions that you were not to discuss this case with
22 anyone; that if anyone attempted to contact you that you
23 were to report that to me; and you were not to read or watch
24 or listen to any news accounts concerning this case.

25 Have there been any violations of those instructions?

Jury qualification -- Number 166

1 A No, sir.

2 Q Mr. Lyda, over the next few minutes I am going to ask
3 you some questions. And then one of the defense lawyers is
4 going to ask you some questions, as well as the solicitor or
5 one of his deputies.

6 I want you to please keep in mind we are not in any way
7 attempting to invade your privacy, but due to the nature of
8 the proceedings we are about this week it is extremely
9 important that certain questions are asked and answered.

10 I want you to keep in mind there are absolutely no
11 right or wrong answers to these questions. Please answer
12 them openly and honestly and fully.

13 Please, also, keep in mind that no one is challenging
14 the view that you might have. We just need to know what
15 your views are in certain areas.

16 Also, I want you to pay very close attention to all of
17 the questions that are presented to you, because over the
18 next few minutes you are probably going to be asked some
19 questions that you maybe have never even thought about or
20 considered before.

21 I would also tell you that the lawyers and I have
22 copies of juror questionnaire that you filled out and sent
23 in to the Court, because they were extremely important in
24 preparing for today.

25 Now, among other things that we are going to be talking

1 about, Mr. Lyda, will be a reference to the word penalty.
2 But the mere fact that we even use that word or talk about
3 the word penalty does not indicate anything about the
4 defendant, Mr. Moore. He is presumed in the law to be
5 innocent. Do you understand that?

6 A Yes, sir.

7 Q Now, let's assume for a few moments that you were a
8 juror in a criminal case.

9 Could you listen to the law, accept and apply that law
10 as I would instruct you as the judge of this Court even
11 though you may not agree with that law or think it should be
12 some other way?

13 A Yes, sir.

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

17 A Yes, sir.

18 Q Now, in a criminal case, Mr. Lyda, the state has the
19 burden of proving guilt. The burden of proof that the state
20 must meet is proof beyond a reasonable doubt. And a
21 defendant has absolutely no burden, no responsibility to
22 prove his innocence. Do you understand that?

23 A Yes, sir.

24 Q Now, could you, depending upon the facts and evidence
25 and the law as I would instruct you in a particular case,

1 find a defendant either guilty or not guilty?

2 A Yes, sir.

3 Q Now, as you know from being here yesterday, this is a
4 case in which the State of South Carolina is seeking the
5 death penalty.

6 And a death penalty trial is one which we call a
7 bifurcated proceeding. That's kind of a fancy word meaning
8 it is divided into two parts, the guilt phase and the
9 sentencing phase.

10 If you were a juror in such a case and the jury had
11 found the defendant not guilty of murder in the guilt phase,
12 do you understand there would be no reason to have that
13 second sentencing phase of the trial?

14 A Yes, sir.

15 Q However, if you were a juror in a death penalty case
16 and if the jury had found the defendant guilty of murder, do
17 you understand you would then move to that second or
18 sentencing phase of the trial?

19 A Yes, sir.

20 Q Now, during that phase of the trial, Mr. Lyda, evidence
21 would be presented in the form of aggravating circumstances,
22 as well as mitigating circumstances.

23 Now, aggravating circumstances are facts, incidents,
24 details or occurrence which the general assembly of our
25 state has declared by law would make worse, that is to

1 aggravate, the crime or the offense of murder.

2 In other words, the presence of an aggravating
3 circumstances when it goes along with or accompanies a
4 murder increases the enormity or adds to the injury of that
5 crime of murder. It's a murder that's committed in the
6 commission of, in connection with another crime or incident.

7 Do you understand what I mean when I speak of an
8 aggravating circumstance?

9 A Yes, sir.

10 Q Now, mitigating circumstances are incidents or details
11 or occurrences which, once again, the general assembly of
12 our state has declared by law reduces the severity of the
13 offense of murder and may be considered as extenuating or
14 decreasing the degree of moral culpability or responsibility
15 of the crime of murder.

16 Do you understand what I mean when I speak of a
17 mitigating circumstance?

18 A No, sir.

19 Q Do you understand when something mitigates, it lessens,
20 it lessens the severity of it? And that's something the
21 jury would consider insofar as what we would call reducing
22 the degree of responsibility for the crime of murder.

23 Do you understand it now?

24 A Yes, sir.

25 Q Now, if you were a juror in the situation, talking

1 about the second face of a death penalty case, the
2 sentencing phase, could you, depending upon the particular
3 facts and circumstances of that case, including the
4 consideration of aggravating as well as mitigating
5 circumstances and the law that I would instruct you that
6 applied to the -- at the conclusion of that case return a
7 sentence of life in prison?

8 A Yes, sir.

9 Q If you were a juror in that situation could you,
10 depending upon the particular facts and circumstances of
11 that case, once again, including the consideration of
12 aggravating and mitigating circumstances and the law that I
13 would instruct you that applied at the conclusion of that
14 case, return a sentence of death?

15 A Yes, sir.

16 Q Now, do you understand that there are always two
17 sentencing options that are available to the jury during the
18 sentencing phase of a death penalty trial, that being life
19 imprisonment or death?

20 A Yes, sir.

21 Q Now, Mr. Lyda, if you were chosen for service on this
22 jury you would be sequestered -- that's just a fancy word
23 that means housed -- in a motel for the duration of the
24 trial. I have no way of knowing exactly how long this case
25 will last. But once we get it started, it will probably be

1 somewhere between seven and ten days.

2 Except for the personal inconvenience that you would
3 suffer, would this pose a serious danger to your health or
4 the well-being or the health or well-being of those
5 dependent upon you?

6 A Yeah.

7 Q Tell me about that, please.

8 A Well, my wife and daughter at home, and she can't
9 drive.

10 Q Your wife can't drive? Would she have anyone that
11 could assist her if you were housed while you were
12 sequestered?

13 A I couldn't really tell you.

14 Q Is that something if you had a day or two to work on
15 that you could work that out?

16 A Yes, sir.

17 Q All right. Thank you very much, sir. Please respond
18 to any of Mr. Morin or Mr. Kelly's questions.

19 EXAMINATION BY MR. MORIN

20 Q Good morning, Mr. Lyda.

21 Mr. Lyda, my name is Michael Morin, and this gentleman
22 over here with the glasses is Keith Kelly. And we represent
23 Mr. Moore.

24 I noticed from your questionnaire your daughter is 13
25 months old. Have you got her to sleep through the night

1 yet?

2 A Yes, sir.

3 Q I have a 13-month-old, and she gets up every night.

4 I noticed you are a member of the rifle association.

5 How long have you been a member of that association?

6 A A couple of months.

7 Q A couple of months. Do you do much hunting?

8 A Not a whole lot.

9 Q Not a whole lot. Do you understand if you are on this
10 jury and you find Mr. Moore guilty there would be a second
11 phase?

12 A Yes, sir.

13 Q And you understand that you are never going to be
14 required to give somebody the death penalty. Do you
15 understand that?

16 A Yes, sir.

17 Q When you came in here you got a sheet of paper talking
18 about three different types of people, how they think about
19 the death penalty, right?

20 A Sure.

21 Q Could you tell me where you think you fall in those
22 three?

23 A Probably the third one.

24 Q Probably the third one. Okay. And you have thought
25 about the death penalty before?

1 A No, sir.

2 Q Is this the first time? Okay. Well, after you read
3 that have you thought about it? Why would you say it would
4 probably be the third?

5 A Well, it would be -- I don't know. It would be up to,
6 well, up to the judge, I mean.

7 Q Well, no, see, because, and I understand. But what
8 would happen is if it gets to that phase, you and the other
9 jurors would have to decide.

10 A Yeah.

11 Q It would be up to you all, not up to the judge. Okay.
12 And what I am asking is, is when you say probably the third,
13 I am just asking why you would say that, just in your own
14 words. There is no right answer or wrong answer.

15 A Well.

16 Q Is it just a gut feeling?

17 A Yeah, really.

18 Q Okay. That's all I would have.

19 MR. GOWDY: May it please the Court, Your Honor.

20 THE COURT: Yes, sir, Solicitor.

21 EXAMINATION BY MR. GOWDY

22 Q Good morning. My name Trey Gowdy. I am the solicitor
23 here in Spartanburg County and Cherokee County. Seated with
24 me at the table is Barry Barnette in the middle, and Donnie
25 Willingham. They are my two deputies. We're prosecutors or

1 district attorneys. If you watch television, that's what
2 they call us.

3 Are you aware of any belief, personal belief, or
4 opinion that you have that would prevent you from being able
5 to vote for the death penalty if you thought the facts
6 warranted it and the law allowed it? Are you aware of any
7 opinion that you have that would prevent you from being able
8 to vote for the death penalty?

9 A No, sir.

10 Q Are you aware of any opinion that you have that would
11 prevent you from being able to vote for a life sentence as
12 opposed to the death penalty if you thought that was the
13 right thing to do?

14 A No, sir.

15 Q Would you be able if you voted -- he is presumed
16 innocent. But if you voted for the death penalty would you
17 be able to sign your name to a document that said that was
18 your vote?

19 A Yes, sir.

20 Q And would you be able if asked to come out in court and
21 say that that was your verdict?

22 A Yes, sir.

23 Q Thank you.

24 MR. GOWDY: I don't have any other questions, Your
25 Honor.

1 THE COURT: Anything else from the defense?

2 MR. MORIN: No, sir.

3 THE COURT: From the state?

4 MR. GOWDY: No, sir, Your Honor.

5 THE COURT: Mr. Lyda, I only have one thing that I want
6 to ask you. I want to explore this situation with your wife
7 and child.

8 Do you have family members that live in this area?

9 THE JUROR: Yes, sir.

10 THE COURT: And do you understand that what you are
11 called upon to do in serving on a jury is a very important
12 and valuable service to your community? And I am going to
13 encourage you to when I dismiss you, to see if you can't
14 make arrangements for your wife and child to have
15 transportation if you were selected as a juror in this case,
16 because I find you are qualified to serve as a potential
17 juror in this matter.

18 And with that qualification, of course, if you were
19 selected, you would be staying with us for the duration of
20 the trial, and everything would be taken care of for you.
21 We will have you in a nice place to stay and see that you
22 are well fed and cared for.

23 As I send you away, let me remind you, number one, that
24 you're not to discuss this case with anyone, whether it be
25 your family, friends or anyone else you come in contact

1 with.

2 Also, if anyone should attempt to contact you
3 concerning this case, I want you to please report that to me
4 immediately, because that is a very serious matter, and I
5 would deal with that person accordingly.

6 Also, I'm going to, once again, strongly instruct you,
7 as I have previously done, that you are not to read, watch
8 or listen to any news accounts concerning this case. Very
9 simply put, if you are selected as a juror in this case all
10 I want you to consider is what you see and hear in this
11 courtroom, nothing more or nothing less.

12 Now, you need to go home and start -- see what you can
13 do about your wife and child.

14 Also, you need to start packing, because if you are
15 selected as a juror in this case, then you are going to
16 remain with us when you come back to the courthouse.

17 And you need to pack for about seven to ten days. I
18 don't know that it will last that long, but we will just be
19 on the safe side.

20 It's a little unusual for me. A lot of times when I do
21 these cases, I am out of town, so I have to pack for a
22 couple or three weeks, so I know exactly what you're going
23 through.

24 Please understand that yesterday when you reported that
25 you were given information, and it had a number that you

1 could call. I want you to call that number tomorrow night,
2 that's Wednesday night, after six o'clock.

3 There will be a message that the clerk of court will
4 leave on that recording that will say jurors in the State
5 vs. Moore case are to call back on Thursday at a particular
6 time, or it might say that those jurors are to report to the
7 courthouse with their bags packed at a certain time.

8 When you are told to report back to the courthouse,
9 whether it be tomorrow night when you call back or sometime
10 on Thursday that you would be instructed to call, leave your
11 belongings in your vehicle.

12 If you are selected as a juror, then the jury
13 custodians will see that you and your belongings are taken
14 to the location that you will be staying for the duration of
15 the trial. And you will be well taken care of.

16 If you are not selected, we are going to send you home
17 with our thanks for your being here. That way you wouldn't
18 have to lug your belongings around. You will just leave
19 them in your car. You would be taken care of.

20 So, remember to call back tomorrow night after six
21 o'clock and follow the instructions on the recording. I
22 will see you back later in the week.

23 Thank you very much.

24 (Whereupon, the juror was excused from the courtroom.)

25 MR. GOWDY: Your Honor, I have not had a chance to look

1 at the next questionnaire. So, I don't know what Mr. Morin
2 has in common with that particular juror, but I would ask
3 the Court to perhaps consider limiting the pandering
4 questions that go to these jurors about being from out of
5 town and having a 13-month-old. I just fail to see the
6 relevance of that for a hearing like this.

7 THE COURT: Well, I think that in an effort to put
8 people at ease that, you know, I am not going to limit that.
9 I think that as long as we don't get bogged down in it,
10 because, you know, you have the information on the sheet.

11 The fact that you have a 13-year-old or 13-month-old
12 and they have a 13-month-old is, while it's nice, it's not
13 what we are about right now. So, please keep that in mind.

14 For the record, let the record reflect that I find that
15 the juror, Jason B. Lyda, Number 166, is qualified to serve
16 as a potential juror pursuant to Section 16-3-20 of our
17 code.

18 Pamela W. Robinson.

19 JUROR NUMBER 231, PAMELA W.
20 ROBINSON, having been first duly sworn, was voir
21 dired as follows:

22 EXAMINATION BY THE COURT

23 Q You are Pamela W. Robinson, correct?

24 A Yes, sir.

25 Q And, Ms. Robinson, you understand that you have been

1 placed under oath for this proceeding.

2 A Yes, sir.

3 Q Now, Ms. Robinson, when you left the courthouse
4 yesterday I gave you and all of your fellow jurors certain
5 instructions that you were not to discuss this case with
6 anyone; that if anyone attempted to contact you that you
7 were to report that to me; and also that you were not to
8 read, watch or listen to any news accounts concerning this
9 case.

10 Have there been any violations of those instructions?

11 A No, sir.

12 Q Over the next few minutes, Ms. Robinson, I am going to
13 be asking you some questions, and then one of the defense
14 lawyers and one of the solicitors will have a chance to ask
15 you some questions.

16 I want you to please keep in mind that we are not in
17 any way attempting to invade your privacy, but due to the
18 nature of the proceedings that we are about this week it's
19 extremely important that certain questions are asked and
20 answered.

21 I want you to keep in mind that there are absolutely no
22 right or wrong answers to these questions. That's the good
23 thing. So, please just answer them openly and honestly and
24 fully.

25 Also, keep in mind that no one is challenging your

1 view. It's simply that we need to know what your view or
2 views are in certain areas.

3 And, also, I am going to ask you to pay very close
4 attention to the questions that are presented to you,
5 because over the next few minutes it's quite likely that you
6 will be asked questions that you maybe have never even
7 thought of before today.

8 I would also tell you that the lawyers and I have
9 copies of your juror questionnaire, because that was
10 extremely important to us in preparing for today.

11 Now, among the things that we are going to be speaking
12 about or talking about over the next few minutes,
13 Ms. Robinson, will include references to the word penalty.
14 But the mere fact that I even mention that word or use that
15 word does not indicate anything about the defendant, Mr.
16 Moore. He is presumed in the law to be innocent. Do you
17 understand that?

18 A Yes, sir.

19 Q Now, let's suppose for a few moments that you were a
20 juror in a criminal case.

21 Could you listen to the law, accept and apply that law
22 as I would instruct you as the judge of this Court even
23 though you may not agree with that law or think that it
24 should be some other way?

25 A I could listen to it.

1 Q Okay. Thank you, ma'am.

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

5 A Yes, sir.

6 Q Now, in a criminal case, Ms. Robinson, the State of
7 South Carolina has the burden of proving guilt. And the
8 burden of proof that the state must meet is proof beyond a
9 reasonable doubt.

10 A defendant has absolutely no burden, no responsibility
11 to prove himself innocent. Do you understand that?

12 A Yes, sir.

13 Q Now, could you, depending upon the facts and the
14 evidence and the law as I would instruct you in a particular
15 case, find a defendant either guilty or not guilty?

16 A Yes, sir.

17 Q Now, as you know from being here yesterday and the
18 instructions that I gave the entire jury panel, this is a
19 case in which the State of South Carolina seeks the death
20 penalty.

21 And, as a result, we are engaged in what's called a
22 bifurcated proceeding. That's kind of a fancy word that
23 simply means it's divided into two parts. There is a guilt
24 phase of the trial and the sentencing phase of a death
25 penalty trial.

1 Now, if you were a juror in a death penalty case and if
2 the jury had found the defendant not guilty of murder, do
3 you understand that the trial would end then and there would
4 be no necessity to have that second or sentencing phase of
5 the trial?

6 A Yes, sir.

7 Q However, if you were a juror in such a case and the
8 jury had found the defendant guilty of murder, do you then
9 understand that you would move to that second or sentencing
10 phase of the trial?

11 A Yes, sir.

12 Q Now, in that phase of the trial, the second or
13 sentencing phase, evidence would be presented to the jury in
14 the form of aggravating circumstances, as well as mitigating
15 circumstances.

16 Now, aggravating circumstances are facts, incidents,
17 details or occurrences which the General Assembly of the
18 State of South Carolina has declared by statute, that means
19 by law, would make worse, that is to aggravate the offense
20 of murder.

21 In other words, the aggravating circumstance when it
22 accompanies or goes along with a murder increases the
23 enormity or adds to the injury of that crime of murder.
24 It's a murder committed in the commission of or in
25 connection with another crime or incident.

1 Do you understand what I am speaking of when I talk
2 about an aggravating circumstance?

3 A Yes, sir.

4 Q Now, mitigating circumstances are also incidents,
5 details or occurrences which the general assembly of our
6 state has declared by law reduces the severity of the crime
7 or the offense of murder and may be considered as
8 extenuating or as reducing the degree or moral culpability
9 or responsibility for the crime of murder.

10 Do you understand what I mean when I speak of a
11 mitigating circumstance?

12 A Yes, sir.

13 Q Now, Ms. Robinson, let's assume that you were a juror
14 in that situation. We are talking about the second phase,
15 the sentencing phase, of a death penalty trial.

16 Could you, depending upon the particular facts and
17 circumstances of that case, once again, including the
18 consideration of aggravating, as well as mitigating
19 circumstances and the law that I would instruct you that
20 applied to that case return a sentence of life in prison?

21 A Yes, sir.

22 Q If you were a juror in that situation could you,
23 depending upon the particular facts and circumstances of
24 that case, once again, including the consideration of
25 aggravating, as well as mitigating, circumstances and the

1 law that I would instruct you that applied to that case,
2 return a sentence of death?

3 A Yes, sir.

4 Q Now, do you understand, Ms. Robinson, that there are
5 always two sentencing options that are available to the jury
6 in the sentencing phase of the trial, that being life
7 imprisonment or death?

8 A Uh-huh.

9 Q Now, Ms. Robinson, if you were chosen to serve on this
10 jury you would be sequestered. That's another fancy word
11 meaning you would be housed in a motel for the duration of
12 the trial.

13 Now, I have no way of knowing how long this case is
14 going to last. I would say somewhere between seven and ten
15 days. It could be less than that, but I don't think it
16 would be any more than that. Of course all of your personal
17 needs would be met. Food, lodging and well-being would be
18 taken care.

19 Except for the personal inconvenience you would suffer,
20 would this pose a serious danger to the health or well-being
21 of yourself or of those dependent upon you?

22 A No, sir.

23 Q Thank you, ma'am. I appreciate your answers. Please
24 answer any questions that the defense might have.

25 Mr. Kelly.

1 MR. KELLY: Thank you, Judge.

2 EXAMINATION BY MR. KELLY

3 Q Ms. Robinson, I am Keith Kelly, and along with Michael
4 Morin and Jennifer Johnson, we present Richard in this
5 matter.

6 I noticed on your questionnaire -- and, by the way, the
7 back page of mine was missing -- but you had indicated your
8 car had been broken into. Was someone ever caught for
9 breaking into your car?

10 A No, sir.

11 Q Okay. Was something taken from your car?

12 A It was a C. B. radio that was taken out of it.

13 Q All right. Has that been a long time ago?

14 A Yes, sir. It's been probably 25 years ago.

15 Q Okay. You also indicated that your husband's truck had
16 been vandalized. I think you put no arrest on that.

17 A Correct.

18 Q Is that right? What happened to his truck?

19 A It had been in a wreck and it was at the body shop, and
20 someone had broken into the body shop and vandalized several
21 vehicles that were there, and his was one of them.

22 Q So it wasn't as if you guys were at a football game and
23 somebody scratched the truck --

24 A No.

25 Q -- or something like that. Was anybody ever arrested

- 1 or anybody charged with that?
- 2 A Not that I know of.
- 3 Q How did that make you feel as the victim of a crime?
- 4 A Well, with the truck, it just was upsetting, because
- 5 the insurance, then that was more than they wanted to fix.
- 6 So, then we had to get another vehicle. But, I mean, other
- 7 than that, it was one of those things that happen, wrong
- 8 place at the wrong time.
- 9 Q Right. Has that been recently, your husband's truck?
- 10 A No, sir. That's been, just guessing, probably ten
- 11 years ago, at least. Something like that. It's been a
- 12 while.
- 13 Q Was that during the time period when your father-in-law
- 14 was a city police officer?
- 15 A Yes, sir.
- 16 Q Is he retired from Greenville City?
- 17 A He passed away almost six years ago. He had just
- 18 retired right before he died.
- 19 Q Worked all of his life and then died?
- 20 A He was retired military and then went with the police
- 21 force and retired from that too, so.
- 22 Q And in your home, you have been married to your husband
- 23 for 21 years, which is quite a long time. In your home
- 24 throughout those 21 years would there be discussions about
- 25 the death penalty?

1 A Not really.

2 Q I am asking because your father-in-law was a police
3 officer. I didn't know if maybe sometime something comes up
4 about a trial that he might be involved in.

5 A No.

6 Q That never really happened?

7 A No, sir.

8 Q Your views on the death penalty, you have indicated to
9 the Court that you could give the death penalty and you
10 could give life.

11 Do you understand that you would not be required to
12 give the death penalty?

13 A Yes, sir.

14 Q Do you understand that no matter what, you could
15 give -- you could return a sentence or a recommendation of
16 life in prison?

17 A Yes, sir.

18 Q In your views on the death penalty, we all, we all have
19 our views on some basis, whether it be church or whether it
20 be a social club or something that we are involved in or
21 just growing up. But your views on the death penalty, is
22 that based on something you read or something or
23 something -- your religion or social club or --

24 A I guess more religion. I said just as far as the death
25 penalty, it just depends on the circumstances as to what it

1 calls for.

2 Q Sure. Well, I noticed you are Southern Baptist, and I
3 myself am Southern Baptist. And are you then basing your
4 views on the death penalty based on the teachings of the
5 Southern Baptist Church?

6 A That and some stuff that I have read.

7 Q Okay. What would it be that you have read,
8 Ms. Robinson?

9 A Just on a few cases here or there, nothing -- mostly
10 what I have read is when it has already gone to the process
11 where they are going for the death phase, either lethal
12 injection or the electric chair.

13 Q I got it. It's like a media account.

14 A Right.

15 Q A newspaper article or something that somebody is going
16 to be executed for something that happened awhile ago.

17 A Correct.

18 Q Is that right? Have you actually read or studied the
19 Christian doctrine on death penalty? Have you actually
20 purchased a book of some sort and read that?

21 A No, sir.

22 Q You have not. And tell me about -- well, have your
23 views on the death penalty changed since September the 11th
24 of this year?

25 MR. BARNETTE: Your Honor, we object to that.

1 THE COURT: Sustain the objection. I don't think
2 that's a proper question, Mr. Kelly.

3 MR. KELLY: Judge, I just wanted to ask.

4 THE COURT: I sustained the objection. If you want to
5 try to rephrase, you may do so, but I have ruled.

6 MR. KELLY: Yes, sir. I am not arguing with the Court,
7 but would the Court allow me to ask a general question as to
8 whether or not they have changed before or after or have
9 been in any way modified by events?

10 THE COURT: How about y'all approaching the bench,
11 please?

12 (Bench conference held off the record in the presence
13 of the juror but out of the hearing of the juror.)

14 THE COURT: Mr. Kelly.

15 MR. KELLY: Thank you, Your Honor.

16 Q Ms. Robinson, have your views changed recently about
17 the death penalty?

18 A No, sir.

19 Q You indicated, you indicated to the Court's -- in
20 answer to the Court's question about someone being presumed
21 innocent.

22 Do you understand that you indicated to the Court that
23 the defendant is presumed innocent?

24 A Correct.

25 Q And is that a longstanding belief as well, that someone

1 charged with doing something is presumed innocent?

2 A Yes, sir.

3 Q Okay. You indicated to the Court's questions that you
4 had not read anything or seen anything in the last 24 hours
5 or thereabouts about this particular case. But have you
6 ever read anything to your knowledge about this particular
7 case?

8 A No, sir.

9 Q Seen no media account of that?

10 A No, sir.

11 Q Would it be fair to say you know nothing about any of
12 the facts of this case?

13 A Correct.

14 MR. KELLY: That's all we have, Judge.

15 THE COURT: Solicitor.

16 MR. BARNETTE: May it please the Court, Your Honor.

17 Thank you.

18 EXAMINATION BY MR. BARNETTE

19 Q Good morning, Ms. Robinson.

20 A Hi.

21 Q My name is Barry Barnette. I am one of the deputy
22 solicitors here. I will be working the case, along with
23 Trey Gowdy which is the solicitor here in the Seventh
24 Circuit, and along with Deputy Solicitor Donnie Willingham
25 too. And sitting behind us is Mr. and Mrs. Mahoney, the

1 parents of the victim, and also Steve Denton, one of the
2 case officers on the case sitting with us.

3 I would just like to ask you a few questions. Like the
4 judge was saying, you realize at the end of this case if you
5 get to the sentencing phase, which is deciding between death
6 and life, if you decide for the death penalty in that case
7 that you would have to sign a form like the judge would sign
8 a sentencing phase or whatever, sentencing sheet, that all
9 12 jurors would have to sign that sheet. Is that something
10 you think you could do in that situation?

11 A Yes, sir.

12 Q And could you come in open court and announce, as one
13 of the 12 jurors announce, that verdict in that case?

14 A Yes, sir.

15 Q But at the same time could you give the same
16 consideration to a life sentence if the evidence pointed to
17 that also?

18 A Yes, sir.

19 Q Do you feel like you could do that?

20 A Yes, sir.

21 MR. BARNETTE: Your Honor, we don't have any further
22 questions.

23 Q Thank you.

24 THE COURT: Anything else from the defense?

25 MR. KELLY: Nothing, Your Honor.

1 THE COURT: From the state?

2 MR. BARNETTE: No, sir.

3 THE COURT: Ms. Robinson, I want to thank you very much
4 for your participation here yesterday, as well as this
5 morning.

6 I find that you are qualified to serve as a potential
7 juror in this case. With that qualification, I am going to
8 remind you, once again, as I send you away from the
9 courthouse with those instructions that I have given you
10 previously that you are not to discuss this case with anyone
11 that you might come into contact with, whether that be
12 family or fellow jurors or anyone else.

13 Also, if anyone attempts to contact you concerning this
14 case, I want you to report that to me immediately, because
15 that is a very serious matter, and I would deal with the
16 person that attempted to contact you accordingly.

17 Once again, I very strongly instruct you that you are
18 not to read, watch or listen to any news accounts concerning
19 this case.

20 Very simply put, if you are selected as a juror in this
21 case, all I would want you to consider is what you see and
22 hear in this courtroom, nothing more and nothing less.

23 Now, with that qualification as a potential juror in
24 this case, I am going to send you home with the instructions
25 that you need to start packing for a stay with us, because

Jury qualification -- Number 231

1 if you are selected to serve as a juror when you report back
2 to the courthouse, then you would be taken, along with your
3 fellow jurors, to a motel for the duration of the trial
4 where all of your needs would be met, and you would remain
5 with us until that trial is over.

6 Now, you need to call back tomorrow night after six
7 o'clock. That's Wednesday night after six o'clock, at that
8 time. And I think that you were given some information, a
9 number that you can call back, where there will be a tape
10 recording that the clerk of court will leave.

11 And you will be given maybe one of two instructions.
12 The first instruction may be the jurors in the State vs.
13 Moore case are to call back on Thursday for further
14 instructions, or the message may read jurors in the case of
15 the State vs. Moore are to report with their bags packed to
16 the courthouse at a certain time either on Wednesday or
17 Thursday.

18 Please understand that when you come back to the
19 courthouse, leave your belongings in your vehicle. If you
20 are selected to serve as a juror, then you and your
21 colleagues would be taken by the jury custodians, and your
22 vehicles would all be taken care of, and you wouldn't have
23 to worry about that.

24 If you are not selected, we are going to thank you very
25 much for participating in this process. And you would then

1 be sent along your way to resume your regular activities.

2 Once again, please call back tomorrow night after six
3 o'clock, and follow the instructions on the recording.

4 Thank you very much.

5 THE JUROR: Thank you.

6 (Whereupon, the juror was excused from the courtroom.)

7 THE COURT: Let the record reflect that Juror Number
8 231, Pamela W. Robinson, is qualified to serve as a
9 potential juror in this case pursuant to Section 16-3-20 of
10 the code.

11 Mr. Kelly, the reason that I did not feel that that was
12 an appropriate question, I think to peg something to a
13 particular date, in essence, starts invading staking out a
14 juror.

15 If you want to ask them if their belief has changed
16 recently or something like that, if there has been a change
17 in that, you may do so.

18 MR. KELLY: All right, sir.

19 THE COURT: But to try to peg it to a particular case
20 or a particular series of events or something like that
21 under our case law and my opinion is totally improper.
22 That's the reason that I sustained the objection.

23 MR. KELLY: Thank you, Judge.

24 MR. MORIN: Your Honor, on the next juror, Number 29,
25 is there a questionnaire for him?

Jury qualification -- Number 231

1 MR. KELLY: We don't have one.

2 THE COURT: Yes, sir.

3 How about looking and seeing what you don't have,
4 because it's extremely --

5 MR. MORIN: I think that's the only one.

6 THE COURT: Well, but I want you -- we are going to
7 have some time for a break.

8 Madam clerk, I want you to get them one quickly,
9 because this is not going to happen. Either you have got it
10 or you don't. We need to know before now.

11 You know, I have got it, and I assume that you have it
12 and the state has it. And so please don't tell me before
13 somebody is coming in.

14 MR. MORIN: Yes, sir.

15 THE COURT: I understand you-all were taken out of the
16 loop yesterday, but, by the same token, let's make sure that
17 we move along.

18 All right. Madam clerk, let's get that. Now that I
19 have that assurance, we will move along clearly.

20 (Pause.)

21 MR. KELLY: Judge, if I could get a clarification on a
22 question I want to ask a couple of jurors, not all of them,
23 under the Matthews -- the question I want to ask is what
24 does life mean to you. And the Matthews case said that that
25 was not a proper voir dire question, which Matthews has been

1 overruled on other grounds.

2 But since then the Shaffer case -- I am talking about
3 the Shaffer two, 2001 case, has been issued. And in that
4 case, of course, it takes out any talk about that 30 years
5 and that sort of thing.

6 So would the Court allow me to ask that question to
7 some of the jurors?

8 THE COURT: Well, you talk about the Shaffer case. I
9 think the Shaffer case has been sent back. I know what it
10 says. I have read it. And I know they have a case of mine
11 setting up there at the U. S. Supreme Court now that deals
12 with those issues.

13 I think that insofar as the Matthews case is concerned
14 you are absolutely right. That is an improper question, and
15 that question has not been changed.

16 MR. KELLY: Thank you, Judge.

17 THE COURT: All right. Have you got their copies for
18 them?

19 THE DEPUTY CLERK: Yes, sir.

20 THE COURT: All right. Jeffrey A. Blanchard, Number
21 29.

22 JUROR NUMBER 29, JEFFREY A.
23 BLANCHARD, having been first duly sworn, was voir
24 dired as follows:

25 EXAMINATION BY THE COURT

Jury qualification -- Number 29

1 Q Good morning. You are Jeffrey A. Blanchard, correct?

2 A Yes, sir.

3 Q And, Mr. Blanchard, you understand that you have been
4 placed under oath for these proceedings.

5 A Yes, I do.

6 Q And you also recall that yesterday before I dismissed
7 you that I gave you certain precautionary instructions that
8 you were not to discuss this case with anyone, that you were
9 also -- if anyone attempted to contact you that you were to
10 report that to me; and that you were also not to read, watch
11 or listen to any news accounts concerning this case.

12 Have there been any violations of those instructions?

13 A No.

14 Q Now, during the next few moments I'm going to be asking
15 you some questions, as well as one of the defense lawyers
16 and one of the solicitors.

17 Please keep in mind that we are not in any way
18 attempting to invade your privacy, but due to the nature of
19 the proceedings that we are about this week, that it's
20 extremely necessary that certain questions are asked and
21 answered.

22 I want you to keep in mind that there are absolutely no
23 right or wrong answers to these questions. So please just
24 answer them openly and honestly and fully. And also keep in
25 mind that no one is challenging your view. It's simply that

1 we need to know what your views are in certain areas.

2 I would also tell you that you need to pay very close
3 attention to these questions, because during the next few
4 minutes we are probably going to be asking you some
5 questions that you may have never even considered before.

6 I would also tell that the lawyers and I have copies of
7 your juror information sheet, because that's extremely
8 important to all of us in getting ready for today.

9 Now, among the things we are going to be talking about
10 during the next few minutes, Mr. Blanchard, will include the
11 word penalty. But the mere fact that I even mention that
12 word or we discuss that word does not in any way indicate
13 anything about the defendant, Mr. Moore. He is presumed in
14 the law to be innocent. Do you understand that?

15 A Yes, sir.

16 Q Now, let's assume that you were a juror in a criminal
17 case.

18 Could you listen to the law, accept and apply that law
19 as I would instruct you as the judge of this Court even
20 though you may disagree with that law or think that it
21 should be some other way?

22 A I believe so.

23 Q Could you decide this case based solely on the evidence
24 presented here in this courtroom and disregard anything that
25 you may have heard, read or seen about the case?

1 A Yes.

2 Q And in a criminal case, Mr. Blanchard, the state has
3 the burden of proving a defendant's guilt. And the burden
4 of proof that the state must meet is proof beyond a
5 reasonable doubt.

6 A defendant has absolutely no burden, no responsibility
7 to prove himself innocent. Do you understand that?

8 A Yes, I do.

9 Q Now, could you, depending upon the facts and the
10 circumstances and the law as I would instruct you in a
11 particular case, find a defendant either guilty or not
12 guilty?

13 A Yes.

14 Q Now, as you know from being here yesterday from the
15 general remarks and comments and instructions that I gave to
16 the jury, that this is a death penalty case where the state
17 seeks that penalty.

18 And, as a result, we will be engaged in what's called a
19 bifurcated proceeding. It simply means it's broken into two
20 parts. There is a guilt phase of the trial, and then a
21 sentencing phase.

22 If you were a juror in such a case and if the jury had
23 found the defendant not guilty of murder in the guilt phase,
24 do you understand that the trial would end then and there
25 would be no necessity to have that second or sentencing

1 phase of the trial?

2 A Yes, I do.

3 Q However, if you were a juror in such a case and if the
4 jury had found the defendant guilty of murder, do you
5 understand that you would then move to that second or
6 sentencing phase of the trial?

7 A Yes.

8 Q Now, in that phase of the trial, Mr. Blanchard,
9 evidence would be presented in the form of aggravating
10 circumstances, as well as mitigating circumstances.

11 Now, aggravating circumstances are facts, incidents,
12 details or occurrences which the General Assembly of the
13 State of South Carolina has declared by law would make
14 worse, that is to aggravate, the offense of murder.

15 In other words, the presence of an aggravating
16 circumstance when it accompanies a murder increases the
17 enormity or adds to the injury of the crime of murder. It's
18 a murder that's committed in the commission of or in
19 connection with another crime or incident.

20 Do you understand what I mean when I speak of an
21 aggravating circumstance?

22 A I believe I do.

23 Q Now, mitigating circumstances are also incidents,
24 details or occurrences which the General Assembly of South
25 Carolina has, once again, declared by law reduces the

Jury qualification -- Number 29

1 severity of the offense of murder and may be considered as
2 extenuating or as reducing the degree of moral culpability
3 or responsibility for the crime of murder.

4 Do you understand what I mean when I speak of a
5 mitigating circumstance?

6 A Yes, I do.

7 Q Now, if you were a juror in that situation, we are
8 talking about the second phase, the sentencing phase of a
9 death penalty case, could you, depending upon the particular
10 facts and circumstances of that case, including the
11 consideration of aggravating as well as mitigating
12 circumstances and the law that I would instruct you that
13 applied to that case, return a sentence of life in prison?

14 A Yes, I could.

15 Q If you were a juror in that situation could you,
16 depending upon the particular facts and circumstances of
17 that case, once again, including the consideration of
18 aggravating and mitigating circumstances and the law that I
19 would instruct you that applied to that case, return a
20 sentence of death?

21 A Yes, I believe I could.

22 Q Now, Mr. Blanchard, do you understand that there are
23 always two sentencing options that are available to the jury
24 in the sentencing phase of a death penalty trial, that being
25 life imprisonment or death?

1 A Yes.

2 Q Now, Mr. Blanchard, if you were chosen for service on
3 this jury you would be housed or sequestered in a motel for
4 the duration of the trial. I really don't know how long the
5 case would last. I would say no more than seven to ten
6 days. It could be less than that. Of course the county
7 would be responsible for your well-being, your motel stay
8 and meals and all of those other things that go along with
9 that.

10 Except for the personal inconvenience that you would
11 suffer, would this pose a serious danger to the health or
12 well-being of yourself or of those dependent upon you?

13 A I guess not.

14 Q Thank you very much for replying to my questions.
15 Please answer any of the questions from Mr. Kelly.

16 MR. KELLY: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 EXAMINATION BY MR. KELLY

19 Q Mr. Blanchard, I noticed you live in Woodruff. I do
20 too. How long have you been down there?

21 A I been there just a little over a year.

22 Q Okay. I was listening carefully to your responses to
23 the Court, and you indicated on three different occasions in
24 response to Judge Clary that you believed you could, or I
25 believe so. Does that mean that you could do something or

Jury qualification -- Number 29

1 could not do something? For instance, he said to you, he
2 asked the question about listening to the law and could you
3 apply that. You said I believe so.

4 Do you have any doubt in your mind, or is there
5 something that you would like for us to know?

6 A I don't think I have any particular doubts. It just
7 all occurs to me that it's a responsibility that I am not
8 called upon to exercise every day and, you know, I think I
9 could do it, but it's -- I take it as a great
10 responsibility.

11 Q Yes, sir; yes, sir. So, again, you believe that you
12 could listen to the law as charged even if you agree with it
13 or disagree with it and then apply that, or could not apply
14 that?

15 A I believe I could do that. As I understand it, that's
16 everybody in law enforcement's job, to apply the law the way
17 it's written, not the way they think it ought to be.

18 Q All right, sir. And do you understand that in this
19 particular instance the Court would be asking you to apply
20 the law? Could you then apply the law?

21 A I think I could.

22 Q And there is no right or wrong answer. I am just
23 trying to get to the basics. But is there any doubt in your
24 mind?

25 A I don't have any reason to doubt that I could.

Jury qualification -- Number 29

1 Q Okay. For instance, the law as Judge Clary has told
2 you presumes Richard to be not guilty. Do you accept that
3 proposition?

4 A Yes, I do.

5 Q Okay. And you accept the proposition that Mr. Gowdy
6 and his assistants would then have to prove Richard guilty
7 beyond a reasonable doubt.

8 A Yes, I do.

9 Q You indicated to the Court, again, about any question
10 to aggravating circumstance, and you said that I believe I
11 understand.

12 Do you understand that the state would be required to
13 prove an aggravating circumstance to get to the second part
14 of this trial?

15 A Yes, I do.

16 Q Okay. Mr. Blanchard, you indicated on your juror
17 questionnaire, which I have a copy of it, and I appreciate
18 you filling this out for us, that you were robbed at
19 gunpoint in 1973. And I am told, although I wasn't present,
20 that you also discussed that with Judge Clary yesterday at
21 some point.

22 Can you tell me what happened in that instance?

23 A I was working as a clerk in a grocery store nights
24 while I was going to college in Hammond, Indiana, and
25 somebody came in and robbed me at the cash register.

Jury qualification -- Number 29

- 1 Q Did they have a firearm or --
- 2 A Yes, yes.
- 3 Q But I hope you weren't seriously -- you weren't
- 4 injured, were you?
- 5 A No. There was no injuries.
- 6 Q And what happened, if you know, in that particular
- 7 incident?
- 8 A I was called to the police station to look at mug shots
- 9 and picked out an individual from those shots. He was
- 10 arrested, and I picked him out of a lineup. But they were
- 11 never able to find the weapon or the money, so they told me
- 12 there was insufficient evidence. And it never went to
- 13 trial. Nothing else ever came of it.
- 14 Q All right, sir. How did that make you feel?
- 15 A Well, it kind of scared me for a while, but I guess
- 16 after a while I just didn't think about it any more.
- 17 Q Right, right. And did it make you mad?
- 18 A Not really, I don't think. It scared me a little more
- 19 than making me mad.
- 20 Q Okay. Was, was, was anyone in that particular store
- 21 armed other than the person that came in?
- 22 A No.
- 23 Q Okay. In this particular case, as the Court has told
- 24 you, the state is seeking the death penalty. And all of us
- 25 get our views on the death penalty, either pro or con, from

1 some source, whether it be our religion or a social club we
2 belong to or mom and dad or something like that, or just
3 life experiences. Your view on the death penalty, has it
4 been long held?

5 A I realized yesterday when I heard that this case may
6 involve the death penalty that I had never been called to
7 really come to a conclusion about the death penalty. And I
8 been thinking about it a little bit, and I believe that I
9 don't have any firm, strong convictions one way or the
10 other, that I really think it would have to be determined by
11 the case.

12 Q All right, sir.

13 A In other words, I am not totally against it, and I am
14 not one hundred percent for it in all cases.

15 Q I appreciate your thinking about that. And when you
16 were thinking about that in the last 12 to 15, 14 hours or
17 thereabouts, 24 hours, did you read any article or refer to
18 any text whatsoever in thinking about that?

19 A No. I thought about calling my pastor, but I didn't.

20 Q All right, sir. Did you -- and you are Lutheran, I
21 believe I read somewhere, is that right?

22 A Yes.

23 Q But you didn't call anyone. And didn't read anything,
24 book that you might have had on a shelf, or something like
25 that.

1 THE COURT: If I could get you to answer out loud --

2 A No, I didn't.

3 Q I am sorry. This lady is recording over here. If you
4 would answer up, she will be able to get it down for us.

5 And your views -- and I know you haven't really thought
6 about it in this context, but have your views changed
7 recently?

8 A No. I don't believe my views have changed. It's like
9 I said, only yesterday I realized how big of a
10 responsibility it is, and it made me think about it more and
11 just made me more aware that I am not -- my mind is not a
12 hundred percent made up one way or the other. You know, it
13 is like I said. I am not a hundred percent for it or a
14 hundred percent against it.

15 Q Okay. But you have resolved, at least in your mind
16 since yesterday as I understand what you are saying, that if
17 called upon in a case, well, this case, if called upon you
18 could, in fact, sign your name saying that you are voting
19 for the death penalty.

20 A Yes.

21 Q Okay. And you understand that, no matter what, you are
22 not required, no matter what is the crime, no matter what
23 the facts are, in this case or any case, that you are not
24 required to do that.

25 A Yes.

1 Q Thank you. Please answer any questions of Mr. Gowdy.

2 THE COURT: Solicitor.

3 MR. BARNETTE: Thank you, Your Honor. May it please
4 the Court.

5 EXAMINATION BY MR. BARNETTE

6 Q Good morning, Mr. Blanchard.

7 A Good morning.

8 Q My name is Barry Barnette. I am one of the deputy
9 solicitors here in the Seventh Circuit. Sitting with me is
10 Trey Gowdy. He's the solicitor in the Seventh Circuit.
11 Along with Donnie Willingham -- he's the other deputy
12 solicitor here. And sitting behind me are Mr. James and
13 Virginia Mahoney. They are the parents of the victim in
14 this case, as well as Steve Denton, the case officer in this
15 case.

16 I would just like to ask you a few follow-up questions
17 to what was just asked you and what Judge Clary asked you.

18 I noticed one thing, you said that you thought about
19 calling your pastor in this case. Does your church have a
20 general view on the death penalty that you know of?

21 A I guess. I am not sure.

22 Q So you haven't discussed that with anyone in your
23 church or anyone like that?

24 A No, sir.

25 Q Is there any social events or anyone you discussed it

1 with that you can think about?

2 A No.

3 Q But you feel like it's a great responsibility, what you
4 are facing, if you are involved in this case, is that
5 correct?

6 A Yes, I do.

7 Q And do you think it's a responsibility? Do you think
8 it's too great of a responsibility or do you think it is a
9 responsibility that you could handle in this situation?

10 A I think it's a great responsibility, but I guess I
11 think I could handle it.

12 Q It's something that you never faced before?

13 A Exactly.

14 Q And you realize that if it gets to the penalty phase,
15 in that penalty phase you would hear from both sides in that
16 case. And you would hear about aggravating circumstances
17 and mitigating circumstances. Do you understand that?

18 A Yes, sir.

19 Q And if you found aggravating circumstances, that you
20 are not required, but you could find for the death penalty.
21 Do you understand that?

22 A Yes.

23 Q And also, you're also aware of the mitigating factors
24 and also you could find for life in that situation. Do you
25 understand that?

Jury qualification -- Number 29

1 A Yes.

2 Q And if the 12 jurors, 11 along with yourself if you
3 were on that jury, determined that the death sentence was
4 appropriate could you sign your name with the other 11
5 members of the jury that would basically -- like I said, the
6 judge doesn't sentence in the penalty phase. It would be
7 the jury that would determine sentence. And like the judge
8 signs a sentencing sheet in a general case that would say
9 what the sentence would be, but y'all would have to do that.
10 Do you understand that?

11 A Yes.

12 Q And do you feel like you could do that if it warranted
13 that situation?

14 A Yes.

15 Q Okay. And if -- when you came back into the courtroom,
16 do you feel like you could say in open court what your
17 verdict was?

18 A Yes.

19 Q And you would feel comfortable with that?

20 A Once again, I have to emphasize that I realize it's an
21 awful responsibility and one that I haven't been called upon
22 to do before, but I can only say that, yes, I think I can.

23 Q I understand. I know it is a tough situation. But,
24 like I say, you have never been through it before. A lot of
25 people haven't.

Jury qualification -- Number 29

1 MR. BARNETTE: One moment, Your Honor, please.

2 (Pause.)

3 Q Thank you, Mr. Blanchard, for your time.

4 THE COURT: Just one moment, please, sir.

5 Anything else?

6 MR. KELLY: Just briefly, Judge.

7 EXAMINATION BY MR. KELLY

8 Q Mr. Barnette asked you if you along with the other 11
9 could sign your name. Could you be the first one to sign
10 your name?

11 A Yes, I could if I think it was so warranted.

12 THE COURT: Anything else, Solicitor?

13 MR. BARNETTE: Nothing further.

14 THE COURT: Mr. Blanchard, I want to thank you very
15 much for your participation here yesterday, as well as this
16 day.

17 I find that you are qualified to serve as a potential
18 juror in this case. And with that qualification, let me
19 remind you of the cautionary instructions that I gave you
20 yesterday.

21 First of all, you are not to discuss this case with
22 anyone, whether it be fellow jurors, family, friends,
23 pastor, church members, anyone like that that you might come
24 in contact with.

25 Also, if anyone should attempt to contact you

Jury qualification -- Number 29

1 concerning this case, please understand that you are to
2 report that to me immediately, because that's a very serious
3 matter, and I would deal with that person accordingly.

4 Also, I, once again, strongly instruct you and remind
5 you that you are not to read, watch or listen to any news
6 accounts concerning this case. If you are selected as a
7 juror in this case all I want you to consider is what you
8 see and hear in this courtroom, nothing more and nothing
9 less.

10 Now, with that qualification that I have given you, I
11 am going to instruct you that you need to go home over the
12 next day or so and start packing your bags, because if you
13 are selected as a juror in this case, then you will be
14 coming to stay with us for the duration of the trial for
15 ever how long that is.

16 When you come back to the courthouse, I want you to
17 bring your packed bags with you. Leave them in your
18 vehicle.

19 If you are selected to serve as a juror, then the jury
20 custodians that would be in charge of your care and keeping
21 would take you and your belongings and your vehicle, if
22 that's what you desire, to your location that you're going
23 to be staying. And, once again, you would remain with us
24 until the trial is completed.

25 If you are not selected, of course your clothes would

Jury qualification -- Number 29

1 be in your vehicle, and we would send you along to your
2 regular activities with our thanks for having been here to
3 participate in this case.

4 Now, when you reported yesterday, you were given some
5 information. One of the things you were given was a phone
6 number that has the ability to leave you a tape-recording.

7 Now, tomorrow night after six o'clock, that's Wednesday
8 night after six o'clock, I want you to call that number.
9 There will be one of two messages on there.

10 The first message may say the jurors in the case of the
11 State vs. Moore should call back on Thursday at a particular
12 time, or it may say jurors in the case of the State vs.
13 Moore should report to the courthouse at a particular time
14 with their bags packed. Just follow the instructions on the
15 tape-recording.

16 And I look forward to seeing you back here a little bit
17 later on this week. Have a nice time packing.

18 THE JUROR: You are excused.

19 (Whereupon, the juror was excused from the courtroom.)

20 THE COURT: Let the record reflect that Juror Number
21 29, Jeffrey A. Blanchard, is qualified to serve as a
22 potential juror in this case pursuant to Section 16-3-20 of
23 our code.

24 Yes, sir.

25 MR. KELLY: Judge, we would ask that the state be

Jury qualification -- Number 191

1 refrained from referring to the decedent as the victim.

2 THE COURT: Yes, sir. There is no sense in introducing
3 everyone involved in this case. Either they know you or
4 they are going to know you.

5 We are here to determine whether or not these folks are
6 qualified as jurors. We are not here to educate them as to
7 any of the facts of the case.

8 They were given the name of the victim yesterday.
9 Everything else in that regard is superfluous at this point
10 in time. So let's just -- if you want to introduce your
11 cohorts, fine. But what we are here about is to determine
12 their qualifications.

13 MR. BARNETTE: Okay, Your Honor. Thank you.

14 THE COURT: Joyce Morrow, Number 191.

15 JUROR NUMBER 191, JOYCE

16 MORROW, having been first duly sworn, was voir dired
17 as follows:

18 EXAMINATION BY THE COURT

19 Q Good morning. You are Joyce Morrow, correct?

20 A Yes, sir.

21 Q Ms. Morrow, do you understand that you have been placed
22 under oath for these proceedings?

23 A Yes, sir.

24 Q And you also recall that when I excused you and your
25 colleagues yesterday that I gave you some instructions that

1 you were not to discuss this case among yourselves or with
2 anyone else that you come in contact with; and that if
3 anyone attempted to contact you that you were to report that
4 to me upon your return to the courthouse; and that also you
5 were not to read, watch or listen to any news accounts
6 concerning this case.

7 Have there been any violations of my instructions?

8 A No, sir.

9 Q Now, over the next few minutes, Ms. Morrow, I am going
10 to be asking you some questions. Then one of the defense
11 lawyers and one of the state's lawyers will ask you some
12 questions.

13 Please keep in mind that we are not in any way
14 attempting to invade your privacy, but due to the nature of
15 the proceedings that we are about this week, it is extremely
16 important that certain questions are asked and answered.

17 Now, I know that you are a teacher, and so please keep
18 in mind that there are absolutely no right or wrong answers
19 to these question. As opposed to where you come from where
20 you have got right and wrong answers, we don't necessarily
21 have right and wrong answers here.

22 So keep in mind that no one is challenging your view.
23 We just need to know what your views are. And answer these
24 questions openly and honestly and fully.

25 Also, I want you to pay very close attention to the

1 questions as they are presented to you, because over the
2 next few minutes we're probably going to ask you some
3 questions that you maybe have never even considered before
4 today.

5 Also, I would tell you that the lawyers and I have
6 copies of your juror questionnaire, because that was
7 extremely important to us in preparing for today.

8 Now, among the things that we are going to be talking
9 about during the next few moments will be a reference or
10 references to the word penalty, but the mere fact that I
11 even mention that word or use that word does not in any way
12 indicate anything about the defendant, Mr. Moore. He is
13 presumed in the law to be innocent. Do you understand that?

14 A Yes, sir.

15 Q Now, let's assume for a few moments that you were a
16 juror in a criminal case. Could you listen to the law,
17 accept and apply that law as I would instruct you as the
18 judge of this court even though you may disagree with that
19 law or think that it should be some other way?

20 A Yes, sir.

21 Q Could you decide this case based solely on the evidence
22 presented here in this courtroom and disregard anything that
23 you may have heard, read or seen about the case?

24 A Yes, sir.

25 Q Now, Ms. Morrow, in a criminal case the state has the

1 burden of proving guilt. And the burden of proof that the
2 state must meet is proof beyond a reasonable doubt. And a
3 defendant has absolutely no burden, absolutely no
4 responsibility to prove himself innocent. Do you understand
5 that?

6 A Yes, sir.

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

10 A Yes, sir.

11 Q Now, as you know from being here yesterday and hearing
12 me address the entire jury panel, this is a case in which
13 the State of South Carolina is seeking the death penalty.
14 And death penalty cases are what we call bifurcated trials
15 or proceedings.

16 As you know, that's kind of a ten-dollar word that
17 means that it's split into two parts, guilt phase and
18 sentencing phase.

19 Now, if you were a juror in such a case, a death
20 penalty case, and if the jury had found the defendant not
21 guilty of murder in the guilt phase, do you understand that
22 the case would end then and there would be no necessity to
23 have that second or sentencing phase of the trial?

24 A Yes, sir.

25 Q However, if you were a juror in such a case and the

1 jury had found the defendant guilty of murder, do you then
2 understand that you would move to the second or sentencing
3 phase of the trial?

4 A Yes, sir.

5 Q Now, in that phase of the trial, Mr. Morrow, evidence
6 would be presented to the jury in the form of what we call
7 aggravating circumstances, as well as mitigating
8 circumstances.

9 Now, aggravating circumstances are facts, incidents,
10 details or occurrences which the general assembly of our
11 state has declared by law, by statute, would make worse,
12 that is to aggravate, the crime or the offense of murder.

13 In other words, when an aggravating circumstance
14 accompanies a murder, it increases the enormity or adds to
15 the injury of that crime of murder. It's a murder that's
16 committed in the commission of or in connection with another
17 crime or incident.

18 Do you understand what I am talking about when I refer
19 to an aggravating circumstance?

20 A Yes, sir.

21 Q Now, mitigating circumstances are also incidents,
22 details or occurrences which the general assembly of our
23 state has, once again, declared by law reduces the severity
24 of the offense of murder and may be considered as
25 extenuating or as reducing the degree of moral culpability

1 or responsibility for the crime of murder.

2 Do you understand what I mean when I speak of a
3 mitigating circumstance?

4 A Yes, sir.

5 Q Now, Ms. Morrow, let's assume that you were a juror in
6 the situation of the sentencing phase of a death penalty
7 case, that's the second phase.

8 Could you, depending upon the particular facts and
9 circumstances of that case, once again, including the
10 consideration of any aggravating and mitigating
11 circumstances and the law that I would instruct you that
12 applies to that case, return a verdict or a sentence of life
13 in prison? Do you need for me to repeat that?

14 A Yes, sir.

15 Q If you were a juror in the sentencing phase of a death
16 penalty case could you, depending upon the particular facts
17 and circumstances of that case, including the consideration
18 of aggravating, as well as mitigating, circumstances and the
19 law that I would instruct you that applied to that case,
20 return a sentence of life in prison?

21 A Yes, sir.

22 Q If you were a juror in that situation could you,
23 depending upon the particular facts and circumstances of
24 that case, once again, including the consideration of
25 aggravating and mitigating circumstances and the law that I

1 would instruct you that applied to that case, return a
2 sentence of death?

3 A Yes, sir.

4 Q Now, Ms. Marrow, you understand that there are two
5 sentencing options that are always available to the jury
6 during the sentencing phase of a death penalty trial, that
7 being life imprisonment or death.

8 A Yes, sir.

9 Q Now, Ms. Morrow, if you were chosen for service on this
10 jury, during the course of the trial you would be
11 sequestered, which, once again, is kind of a fancy word
12 meaning you would be housed in a motel for the duration of
13 the trial.

14 Now, I have no way of knowing how long this case would
15 last. I would say somewhere, seven to ten days. It may be
16 less than that. I don't think it would be any more than
17 that once we got it started.

18 Except for the personal inconvenience that you would
19 suffer, would this pose a serious danger to the health or
20 well-being of those dependent upon you or yourself?

21 A No, sir.

22 Q Thank you for responding to my questions. Would you
23 please answer any questions that Mr. Morin might have at
24 this time?

25 EXAMINATION BY MR. MORIN

1 Q Ms. Morrow, my name is Michael Morin, and seated over
2 here is Keith Kelly and Jennifer Johnson. We represent Mr.
3 Moore in this case.

4 I noticed from the questionnaire that you list your
5 religion as Baptist. Is that correct?

6 A Yes, sir.

7 Q Do you know if your church or pastor has a position
8 regarding the death penalty?

9 A No, sir.

10 Q Okay. Have you in the past had occasion to think about
11 whether you were for or against the death penalty?

12 A Yes, sir.

13 Q Could you tell me about that?

14 A Do you mean like a particular --

15 Q No, ma'am. Just you have in the past thought about the
16 death penalty. And I am just asking you in general what
17 your thoughts were. We just want to sort of understand how
18 you think about it if you could.

19 A Well, it has a lot to do with the circumstance --

20 Q Okay.

21 A -- of the situation as to my feelings.

22 Q Okay. So it would be each case, you would have to hear
23 the evidence to make your decision.

24 A Yes, sir.

25 Q Okay. Have you had a view on the death penalty for a

1 long time?

2 A Had a view on it?

3 Q Yeah. Have you felt like that would depend on the
4 circumstances? That's what your answer is.

5 A Yes, sir.

6 Q That's something you have held for a long time?

7 A Yes, sir.

8 Q Okay. That's all I have. Thank you.

9 MR. WILLINGHAM: May it please the Court, Your Honor.

10 EXAMINATION BY MR. WILLINGHAM

11 Q Ms. Morrow, my name is Donnie Willingham. This is
12 Barry Barnette and this is Solicitor Trey Gowdy.

13 I just want to ask you a few questions about your
14 background and about your opinion on the death penalty. The
15 judge, I believe, gave you or the Court gave you a list of
16 three different types of jurors back in the jury room for
17 you to decide what type you were.

18 A Yes, sir.

19 Q One type was given the choice in the penalty phase,
20 given the choice of death or life, they would always vote
21 for life given they had the choice.

22 The second type of juror or another type of juror was
23 given the same choice, they would always vote for death.

24 Then the third juror would be depending on the facts
25 and circumstances, they may vote for life, they may vote for

1 death.

2 How would you classify yourself in this category, which
3 one?

4 A As juror three.

5 Q And you understand that you always have a choice in
6 sentencing. It is not required of you to do. It is not
7 mandatory to vote for the death penalty. Do you understand
8 that?

9 A Yes, sir.

10 Q It is not mandatory to impose a life sentence, do you
11 understand that?

12 A Yes, sir.

13 Q If in the penalty phase after hearing all of the facts
14 and circumstances you decide in your mind that the death
15 penalty is the appropriate punishment in this case, you
16 would be required to sign a verdict form. You and all of
17 the other jurors would have to sign their name and say, yes,
18 I believe that the death penalty is the proper punishment.

19 Do you believe that you could actually write your name
20 on a line saying that death is the appropriate punishment?

21 A If that was the verdict or the situation.

22 Q If that's your verdict, you would be required to sign
23 your name to a verdict form. Do you believe you could
24 actually physically sign your name to that?

25 A Yes, sir.

1 Q Do you believe you could come back into the courtroom
2 if that's your verdict, depending on the circumstances and
3 evidence -- you've not heard any evidence. Once you do, if
4 you believe that's the proper verdict, could you come back
5 in this courtroom and announce out loud that you are voting
6 for the death penalty?

7 A Yes, sir.

8 Q Ms. Morrow, I don't mean to pry too much, but I do need
9 to know a few more things about your past.

10 I noticed on your juror information card there was a
11 question have you ever been convicted of a crime other than
12 a minor traffic violation. And you indicated that you had.
13 And then you followed up on your questionnaire that it was
14 --

15 THE COURT: Solicitor, I think that's you or any family
16 member, now.

17 MR. WILLINGHAM: Yes, sir.

18 THE COURT: I think you left the family-member part
19 out. I want you to make sure.

20 MR. WILLINGHAM: I apologize, Your Honor.

21 Q And then on the questionnaire it does say have you or
22 any other family member been arrested, charged with a crime
23 other than minor traffic offenses, and you indicated yes.
24 And in parenthesis you put gambling or drugs. Who was that
25 convicted of those?

Jury qualification -- Number 191

- 1 A Can I put what?
- 2 Q Let me show you what I believe is your questionnaire.
3 Question number 23, "Have you or any family member been
4 arrested or charged with a crime other than a minor traffic
5 offense?" You put yes. "If so, please explain." Who was
6 charged with what crime, gambling and drugs? Is that your
7 questionnaire?
- 8 A Yes, sir.
- 9 Q Okay. I am just trying to find out who was charged.
- 10 A Oh, my brother.
- 11 Q Your brother. Okay. So you have never been charged
12 with anything.
- 13 A Yes, sir.
- 14 Q What have you been charged with?
- 15 A With gambling.
- 16 Q Okay. When was that?
- 17 A It was in '85.
- 18 Q And --
- 19 A It was expunged.
- 20 Q Expunged?
- 21 A Yeah.
- 22 Q Okay. No other prior convictions that you are aware
23 of?
- 24 A No, sir.
- 25 Q What happened? I know you said it's already been

1 expunged. But before it was expunged, what happened to the
2 trial? Was it a trial or did you plead guilty?

3 A No, sir.

4 Q What happened?

5 A It was tickets, ball tickets.

6 Q Okay. Forfeited, is that what happened?

7 A Yes.

8 Q Do you think because you have had this prior dealing
9 with the criminal justice system that would in any way
10 effect your ability to be fair and impartial to the state or
11 to the defense?

12 A No, sir.

13 Q Ms. Morrow, is your maiden name or prior name Atchison?

14 A Yes, sir.

15 Q Okay. And, again, I don't mean to pry more than I have
16 to, but in 1982 did you have an arrest for simple possession
17 of marijuana?

18 A In 82? Yes, sir.

19 Q And what happened to that charge?

20 A It was expunged.

21 Q But before -- you say it was expunged. What happened?

22 A It was a fine.

23 Q And you didn't have a jury trial or anything?

24 A No, sir.

25 Q You just again forfeited the bail bond?

1 A Yes.

2 Q And then at the same time you had the ball tickets did
3 you have another possession of marijuana charge?

4 A No, sir.

5 Q You didn't have that?

6 A I did not.

7 Q Okay. Again, would that have any bearing at all on
8 your ability to be a juror?

9 A No, sir.

10 Q Those were back in 1983.

11 A Yes, sir.

12 Q Almost ten, well, almost 20 years ago. Indicated too
13 during your qualification yesterday when we asked about
14 anyone related to anybody, law, at the courthouse, you were
15 related to Judge Beatty.

16 A Yes, sir.

17 Q What's your relationship to Judge Beatty?

18 A His grandmother and my grandmother were sisters.

19 Q So y'all are second cousins or something like that?

20 A Yes, sir.

21 Q And I understand before Judge Beatty went on the bench
22 he was a defense lawyer.

23 A Yes, sir.

24 Q Would the fact that he was a defense lawyer before he
25 took the bench, would that have any bearing upon your

1 ability to be a fair and impartial juror?

2 A No, sir.

3 Q One last set of questions, Ms. Morrow. Yesterday
4 during qualification it was my understanding that you had a
5 stepson who was killed by a fire.

6 A Killed by a fire? He was killed.

7 Q Tell me about that if you would. We didn't have any
8 knowledge of that.

9 A He was in the State of Ohio.

10 Q And what happened in that particular case? How was he
11 killed?

12 A He was with a group of guys, and someone shot in the
13 group, and he was killed.

14 Q Was it an accidental type of shooting or was it
15 criminal? Was any charges brought?

16 A There was no charges brought.

17 Q Was there a criminal investigation? Did the police
18 come out and investigate?

19 A Yes, sir.

20 Q How did that make you feel, the fact that you had a
21 stepson being killed?

22 A Well, I mean, guns, you know, used inappropriately
23 can -- wrong things can happen. And that's my feeling that,
24 you know, everyone shouldn't be allowed to carry a gun.

25 Q Okay. That's fair enough. Thank you, ma'am. I have

1 no other questions.

2 THE COURT: Anything further from the defense?

3 MR. MORIN: Nothing.

4 THE COURT: The state?

5 MR. WILLINGHAM: No other questions, Your Honor.

6 THE COURT: Ms. Morrow, I want to thank you very much
7 for your participation here yesterday, as well as this day.

8 I find that you are qualified to serve as a potential
9 juror in this case. With that qualification comes some more
10 instruction, as if you haven't had enough already.

11 I am going to remind you, number one, that you are not
12 to discuss this case with your family, friends or anyone
13 else that you might come into contact with, with fellow
14 jurors or anyone else.

15 Also, you are not -- if anyone should attempt to
16 contact you concerning this case, I want to report that to
17 me immediately, because that is a very serious matter, and I
18 would deal with the person that attempted to contact you
19 accordingly.

20 I will, once again, strongly instruct you and remind
21 you that you are not to read, watch or listen to any news
22 accounts concerning this case. Very simply put, if you were
23 selected as a juror in this case all I would want you to
24 consider in this matter is what you see and hear in this
25 courtroom, nothing more and nothing less.

Jury qualification -- Number 191

1 Now, with my qualification of you as a potential juror
2 in this case, I'm going to tell you that you need to refer
3 to the information that you were given here yesterday
4 morning. There was a telephone number that you were given
5 yesterday that has the ability to leave a recording for
6 jurors to call and receive further instructions.

7 I want you to call back tomorrow night, that's
8 Wednesday night, after six o'clock in the afternoon, that's
9 after 6:00 p.m. There will be one of two messages left on
10 the machine at that time. It will say jurors in the case of
11 the State vs. Moore are to call back tomorrow, which would
12 be Thursday at that time, for further instructions at a
13 particular time; or jurors in the case of the State vs.
14 Moore are to report to the courthouse at a particular time
15 with your bags packed.

16 Now, when you are instructed to report back here with
17 your bags packed, I want you to leave your belongings in
18 your vehicle. Do not bring them to the courthouse.

19 If you are not selected, we are going to send you about
20 your daily activities and thank you very much for being
21 here.

22 If you are selected as a juror, then you would remain
23 with us for the duration of the trial, and the jury
24 custodians would take care of you and your vehicle.

25 Now, you need to go home and start packing for that

1 period of time, because when you receive the call or when
2 you make the call and you're told to be back here, you need
3 to be back here at that time.

4 I look forward to seeing you later on this week.
5 Please remember to call back tomorrow after six o'clock.
6 Thank you very much.

7 THE JUROR: So call back tomorrow after 6:00 and then
8 the instructions will be --

9 THE COURT: Follow those instructions on the recording.
10 Thank you, Ms. Morrow.

11 (Whereupon, the juror was excused from the courtroom.)

12 MR. WILLINGHAM: If it please the Court, Your Honor, I
13 understand the Court has instructed the witness to report
14 back, however, the state would ask --

15 THE COURT: I asked you if you have anything further.
16 If you have something further, you ask her to step out.

17 MR. WILLINGHAM: Yes, sir. And I understand that, and
18 I indicated I had no further questions. But I did have the
19 point of law about her -- the answers she gave to my
20 questions.

21 THE COURT: Well, you can do it. But, once again,
22 Mr. Willingham, you know as well as anybody how I conduct
23 these things. If I ask you if you have anything else, if
24 you have a matter to raise about her qualifications, you ask
25 for her to be sent out.

1 MR. WILLINGHAM: Yes, sir. And I apologize.

2 THE COURT: What's your position?

3 MR. WILLINGHAM: That she did not answer my questions
4 truthfully, Your Honor.

5 She has prior convictions, 1982, simple possession of
6 marijuana, which initially she did not acknowledge.
7 Whenever I asked about her maiden name, she did acknowledge,
8 but indicated it had been expunged, which it has not. She
9 also -- I followed up --

10 THE COURT: Well, sir, if you would present those
11 things to me, then I could consider it. I have qualified
12 her.

13 MR. WILLINGHAM: Yes, sir.

14 THE COURT: So noted. But, please, if you have got
15 something back there, I've got this list that you-all gave
16 me, but I can't make heads or tails from half of this stuff,
17 and I am not getting a full deck. So understand that.

18 If you have got something, let me have it. And let
19 them have it if they don't have it. I have got nothing.
20 And then you are wanting to come in here after the barn has
21 been locked up and the horse is gone. Mark it.

22 (Rap sheet of Juror Number 191 marked Court's Exhibit
23 Number One.)

24 THE COURT: Ms. Morrow, Number 191, is qualified
25 pursuant to Section 16-3-20 of the code.

Jury qualification -- Number 37

1 Number 37, Harold Brown. We will take a break if we
2 have time. If not, we are going to keep ongoing. They are
3 in control of their time.

4 JUROR NUMBER 37, HAROLD M.
5 BROWN, having been first duly sworn, was voir dired
6 as follows:

7 EXAMINATION BY THE COURT

8 Q Good morning. You are Harold M. Brown, correct?

9 A Yes, sir, correct.

10 Q Now, Mr. Brown, do you understand that you are under
11 oath for these proceedings today?

12 A Yes, sir.

13 Q And you also understand that when I dismissed you
14 yesterday, Mr. Brown, that I gave you certain instructions
15 that you were not to discuss this case with anyone; that if
16 anyone attempted to contact you concerning this case that
17 you were to report that to me; and that also that you were
18 not to read, watch or listen to any news accounts concerning
19 this case.

20 Have there been any violations of those instructions?

21 A No, sir.

22 Q Now, Mr. Brown, over the next few minutes we are going
23 to be asking you some questions. I will ask some questions;
24 one of the defense lawyers will ask some questions; and then
25 one of the state's lawyers will ask some questions.

1 Please keep in mind that we are not in any way
2 attempting to invade your privacy, but due to the
3 proceedings that we are about this week it's extremely
4 important that certain questions are asked and answered.

5 Please keep in mind that there are no right or wrong
6 answers to these questions, so, please, just answer them
7 openly and honestly and fully.

8 Also, keep in mind that no one is challenging your
9 view. We simply need to know what your views are in certain
10 areas.

11 I am going to also ask that you pay very close
12 attention to these questions, because during the next few
13 minutes we are probably going to ask you some questions that
14 you have never ever considered before today.

15 Also, I would ask that you answer the questions out
16 loud. Do not just nod your head, because the court reporter
17 has to get an accurate record of it. Also, the lawyers and
18 I have copies of your questionnaire, which was extremely
19 important in us preparing for today.

20 Now, among the things that we are going to be talking
21 about over the next few minutes, will include references to
22 the word penalty, but the mere fact that I even use or
23 mention that word does not in any way indicate anything
24 about the defendant, Mr. Moore. He is presumed in the law
25 to be innocent. Do you understand that?

1 A Yes, sir. May I ask -- make a statement? I didn't
2 realize yesterday was the time for me to do that, and the
3 bailiff said I should do that this morning.

4 Due to my work I do, I am a consultant in textiles and
5 work for Milliken, but I work for them as a contractor, like
6 a contractor vender on a daily basis. If I do not work for
7 them on a daily basis, I do not receive any pay. And they
8 are not -- they do not compensate me for any time lost
9 during the time.

10 So if I am sequestered for any length of time, then I
11 would be out without pay to pay bills and cover by finances
12 for my family.

13 THE COURT: All right. Well, let me ask you this
14 question.

15 If you were chosen as a juror in this case, without
16 getting into any further detail, the fact that you would be
17 housed or sequestered in a motel for a period of somewhere
18 maybe seven to ten days, would that pose a serious danger to
19 the health or well-being of yourself or of those dependent
20 upon you?

21 A I would say no to my standpoint there as far as --
22 other than the fact that, you know, I would not have income
23 to pay for the bills and stuff during that time period.

24 Q All right, sir. Then in that regard, let's assume that
25 if you were a juror in a criminal case. Could you listen to

1 the law, accept and apply that law as I would instruct you
2 as the judge of this Court even though you may disagree with
3 the law or think that it should be some other way?

4 A Yes, I could do that, yeah.

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

8 A Yes, sir.

9 Q Now, in a criminal case, Mr. Brown, the state has the
10 burden of proving a defendant's guilt. The burden of proof
11 that the state must meet is proof beyond a reasonable doubt.

12 A defendant has absolutely no burden, no responsibility
13 to prove his innocence. Do you understand that?

14 A Yes, sir.

15 Q Now, could you, depending on the facts and the evidence
16 and the law as I would instruct you in a particular case,
17 find a defendant either guilty or not guilty?

18 A Yes, sir.

19 Q Now, as you know from being here yesterday and my
20 general comments to the jury, this is a case in which the
21 State of South Carolina is seeking the death penalty. And,
22 as such, we are engaged in what will be called a bifurcated
23 proceeding, which means that it's simply split into two
24 parts, the guilt phase and the sentencing phase.

25 If you were a juror in such a case and if the jury had

1 found the defendant not guilty of murder in the guilt phase,
2 do you understand that the trial would end then and there
3 would be no necessity to move on to the second phase?

4 A Yes, sir.

5 Q However, if you were a juror in such a case and if the
6 jury had found the defendant guilty of murder, do you
7 understand that you would then proceed to the second or
8 sentencing phase of the trial?

9 A Yes, sir.

10 Q Now, in that phase of the trial, Mr. Brown, evidence
11 would be presented in the form of aggravating circumstances,
12 as well as mitigating circumstances.

13 Aggravating circumstances are facts, incidents, details
14 or occurrences which the General Assembly of the State of
15 South Carolina has declared by law would make worse, that is
16 to aggravate, the offense of murder.

17 In other words, the aggravating circumstance, when it
18 accompanies a murder, increases the enormity or adds to the
19 injury of the crime of murder. It is a murder that's
20 committed in the commission of or in connection with another
21 crime or incident. Do you understand that?

22 A Yes, sir.

23 Q Now, mitigating circumstances are also incidents,
24 details or occurrences which the general assembly has
25 declared, once again, by law that reduces the severity of

1 the crime of murder and may be considered as extenuating or
2 as reducing the degree of moral culpability or
3 responsibility for the offense of murder.

4 Do you understand what I am speaking of when I refer to
5 mitigating circumstances?

6 A Yes, sir.

7 Q Now, Mr. Brown, if you were a juror in that situation,
8 I am talk about the sentencing phase, could you, depending
9 upon the particular facts and circumstances of that case,
10 including the consideration of aggravating and mitigating
11 circumstances and the law that I would instruct you that
12 applies at the conclusion of the case, return a sentence of
13 life in prison?

14 A Yes, sir. I could think so.

15 Q If you were a juror in that situation could you,
16 depending upon the particular facts and circumstances of
17 that case, once again, including the consideration of
18 aggravating as well as mitigating circumstances and the law
19 that I would instruct you that applies to that case at the
20 conclusion of the trial, return a sentence of death?

21 A Yes, sir.

22 Q Now, Mr. Brown, do you understand that there are always
23 two sentencing options that are available to the jury in a
24 death penalty case, sentencing phase, that being life
25 imprisonment or death?

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1 A Yes, sir.

2 Q Now, once again, I would repeat the situation to you
3 that if you were chosen for this jury you would be housed in
4 a motel from the time the trial starts until it is
5 completed.

6 Now, that could be anywhere from seven to ten days. I
7 don't know how long it would be. It might be less than
8 that. Except for the personal inconvenience that you would
9 suffer, would this pose a serious danger to the health or
10 well-being of yourself or of those dependent upon you?

11 A Not to my knowledge.

12 Q All right. Questions from the defendant?

13 EXAMINATION BY MR. MORIN

14 Q Good morning, Mr. Brown.

15 A Good morning.

16 Q My name is Michael Morin, and along with Keith Kelly
17 and Jennifer Johnson, we represent Mr. Moore. I'm just
18 going to ask you some questions about the death penalty if I
19 may.

20 I notice on your questionnaire you stated that you
21 didn't have any children. Is that right?

22 A Correct.

23 Q Okay. Before you came in here I believe you were given
24 something to read regarding the death penalty, and I was
25 wondering. Did you read that?

1 A Yes, sir.

2 Q Okay. And where would you say -- which one of those
3 probably best describes your position?

4 A Probably the last one.

5 Q The last one. All right. Is the death penalty
6 something you have thought about before yesterday when you
7 heard about it or --

8 A Oh, yes, sir.

9 Q It has?

10 A Oh, yeah.

11 Q Could you tell me in your own words what you thought
12 about it?

13 A Basically, that to me that the death penalty is a
14 deterrent to crime. If the crime itself warrants the death
15 penalty, then I think it should be given to the defendant
16 from that standpoint because of the fact that without that,
17 there is no deterrent.

18 Q Okay. Is that a feeling that you have had for a long
19 time or has your opinion --

20 A It's a long time, yes, sir.

21 Q A long time. Okay. And I understand you are a
22 Baptist.

23 A Yes, sir.

24 Q What church do you go to?

25 A Lyman First Baptist.

1 Q Okay. Does Lyman First Baptist or the pastor out there
2 have a position as far as the death penalty that you know
3 of?

4 A Not to my knowledge. He hasn't stated, said that.

5 Q Okay. Has there been anything that you have seen or
6 read that has affected or brought you to this belief about
7 deterrents?

8 A No. Well, it's just more of a personal belief.

9 Q Okay. Now, you understand that in a situation like
10 this you are never required to give the death penalty. You
11 are never required to. It's an option based on what you
12 feel about the facts and circumstances and evidence. Do you
13 understand that?

14 A Right. I understand.

15 Q All right. And you understand that you would listen to
16 all of the evidence and then make your decision on that, is
17 that correct?

18 A Correct.

19 MR. MORIN: If I could just have a moment.

20 (Pause.)

21 Q Now, understanding your position insofar as the death
22 penalty, can you see yourself in a situation where, in a
23 murder situation where, life would be the appropriate
24 sentence?

25 THE COURT: Mr. Morin, I think you need to rephrase

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1 that question, because you can't ask him about particular
2 circumstances, now, so.

3 MR. MORIN: Well, I understand. But I -- if I may just
4 have a moment to chat.

5 THE COURT: Yes, sir.

6 (Pause.)

7 Q In any case, could you -- I believe your statement was
8 you believe that the death penalty acts as a deterrent.

9 A Yes, sir.

10 Q But what I am asking is -- I am trying to get it right.
11 Is there a situation --

12 THE COURT: I think that's going back to my question, I
13 mean, my response to your question.

14 Q All right. You said that when you read the three
15 things that they had given you that you said you felt like
16 you were in number three.

17 A Correct.

18 Q All right. And number three is you could see sometimes
19 you would give the death penalty and sometimes you wouldn't.

20 A Right.

21 Q And that's what your position is.

22 A Correct.

23 Q Because even though you feel it may be a deterrent,
24 there may be times when it's not necessary.

25 A Correct.

1 Q Thank you.

2 THE COURT: Mr. Willingham.

3 EXAMINATION BY MR. WILLINGHAM

4 Q Mr. Brown, this is Barry Barnette and Solicitor Trey
5 Gowdy, and I'm Donnie Willingham.

6 I understand your concern about work. If you don't
7 work, basically, you don't get paid.

8 A Correct, sir.

9 Q And if you don't get paid, bills don't get paid.

10 A Correct.

11 Q Is that going to cause such an undue hardship on you
12 that you are going to be worried more about that than what's
13 going on in this courtroom?

14 A Yes, sir.

15 Q So do you think that -- you don't believe you would be
16 an effective juror because you are going to be worried about
17 paying the bills rather than what's going on in here?

18 A Yes, sir.

19 Q That's a fair answer and an honest answer.

20 I also wanted to ask you about the death penalty and
21 your beliefs on that.

22 If the evidence is presented and you believe in your
23 mind the death penalty is appropriate, you would be required
24 to sign a form saying that's what you believe. You would
25 actually have to physically put your signature on a piece of

1 paper saying, yeah, I voted. You would hear the case. And
2 based on the facts and circumstances you heard in the
3 courtroom if the death penalty is appropriate, do you
4 believe you could do that?

5 A Yes, sir.

6 Q Do you believe you could come back in this courtroom in
7 open court and say that's my vote?

8 A Yes, sir.

9 MR. WILLINGHAM: Your Honor, I have no other questions
10 at this time.

11 THE COURT: Anything else from the defendant?

12 MR. MORIN: Yes, sir.

13 EXAMINATION BY MR. MORIN

14 Q Mr. Brown, I want to make sure I understand this now.

15 You, in response to Mr. Willingham's questions, stated
16 that your concerns about your work may affect your ability
17 to concentrate on what's going on in here.

18 A Yes, sir.

19 Q Is that something you believe would happen?

20 A Yes, sir. I know it would.

21 Q And did you understand -- and you had said previously
22 that you would have to hear the evidence before you could
23 make a decision.

24 A Yes, sir.

25 Q So your position, as I understand it, is you are not

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1 going to be able to do what is required of you.

2 A Not as easy as I would have if it was a different
3 situation. If I was --

4 Q Right.

5 A If I knew --

6 Q If you had a different job.

7 A I knew I didn't have to worry, yes, it would make a
8 difference.

9 Q Well, with your job, you're saying that you don't think
10 you're going to be able to do what you need to if selected
11 as a juror.

12 A My mind is not going to be where it should be, yes,
13 sir.

14 MR. MORIN: That's all I have, Your Honor.

15 THE COURT: Pursuant to Section 14-7-860 of the code, I
16 find that Mr. Brown's services are essential to the
17 operation of his business and that it would close or cease
18 to function if he were not performing them as a result of
19 jury service, and I am going to excuse him.

20 Thank you very much, sir.

21 (Whereupon, the juror was excused from the courtroom.)

22 THE COURT: All right. We are running a little bit
23 behind. We are going to take about three to five minutes.

24 (Whereupon, a recess was taken.)

25 (Rap sheet of Juror Number 83 marked Court's Exhibit

Jury qualification -- Number 116

1 Number Two.)

2 THE COURT: Number 116, Susan C. Hardison.

3 JUROR NUMBER 116, SUSAN C.

4 HARDISON, having been first duly sworn, was voir
5 dired as follows:

6 EXAMINATION BY THE COURT

7 A Good morning.

8 Q Good morning. You are Susan C. Hardison.

9 A Correct.

10 Q Ms. Hardison, you recall yesterday that I gave you
11 certain cautionary instructions before you left the
12 courthouse that you were not to discuss this case with
13 anyone; that you were to report any contact that anyone
14 attempted to make with you; and that you were not to read,
15 watch or listen to any news accounts of this case.

16 Have there any been violations of those instructions?

17 A No, sir.

18 Q And you understand that you are under oath here today.

19 A I do.

20 Q Now, during the next few minutes I am going to be
21 asking you some questions, as well as one of the defendant's
22 lawyers, and then one of the state's lawyers.

23 Please keep in mind that we are not in any way
24 attempting to invade your privacy, but it is necessary
25 because of the proceedings that we are about this week that

1 certain questions are asked and answered.

2 Keep in mind that there are no right or wrong answers
3 to these questions, so, please, just answer them openly and
4 honestly and fully.

5 And also keep in mind that no one is challenging the
6 view that you might have. It's simply that we just need to
7 know what your views are in certain areas.

8 Also, I encourage you to listen very carefully to the
9 questions that you are presented to you, because over the
10 next few minutes we are probably going to ask you some
11 questions that you have never even considered before today.

12 I would also tell you that the lawyers and I have
13 copies of your juror information sheets, because those were
14 important to us in preparing for today.

15 Now, among other things that we are going to be talking
16 about this morning, we are going to be making reference to
17 the word or the term penalty. But the mere fact that I even
18 mention that word or that we talk about that word does not
19 in any way indicate anything about the defendant, Mr. Moore.

20 Do you understand that he is presumed in the law to be
21 innocent?

22 You need to answer out loud for us.

23 A Oh, I understand, yes, sir.

24 Q Now, if you were a juror in a criminal case, Ms.
25 Hardison, could you listen to the law, accept and apply that

1 law as I would instruct you as the judge of this Court even
2 though you may disagree with that law or think it ought to
3 be some other way?

4 A Yes, sir, I could.

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

8 A Yes, I could.

9 Q Now, in a criminal case, Mr. Hardison, the state has
10 the burden of proving guilt. The burden of proof that the
11 state must meet is proof beyond a reasonable doubt.

12 And a defendant has absolutely no burden, no
13 responsibility to prove his innocence. Do you understand
14 that?

15 A I do.

16 Q Now, could you, depending upon the facts and evidence
17 and the law as I would instruct you in a particular case,
18 find a defendant either guilty or not guilty?

19 A I could do that.

20 Q Now, as you know from being here yesterday, this is a
21 case in which the State of South Carolina is seeking the
22 death penalty.

23 And death penalty trials are what we refer to as
24 bifurcated proceedings, simply means that they are divided
25 into two parts, the guilt phase and the sentencing phase.

1 Now, if you were a juror in such a case, a death
2 penalty case, and if the jury had found the defendant not
3 guilty of murder in the guilt phase, do you understand that
4 the trial would end at that point?

5 A Yes, sir.

6 Q However, if you were a juror in such a case and the
7 jury had found the defendant guilty of murder, do you
8 understand that you would then move to the second or
9 sentencing phase of the trial?

10 A I understand that.

11 Q Now, during that phase of the trial evidence would be
12 presented to the jury in the form of aggravating
13 circumstances, as well as mitigating circumstances.

14 Now, aggravating circumstances are facts, incidents,
15 details or occurrences which the general assembly has
16 declared by law would make worse, that is to aggravate, the
17 offense of murder.

18 In other words, the presence of an aggravating
19 circumstance when it goes along with or accompanies a murder
20 increases the enormity or adds to the injury of the crime of
21 murder. It's a murder committed in the commission of, in
22 connection with, another crime or incident.

23 Do you understand what I mean when I speak of an
24 aggravating circumstance?

25 A I do.

1 Q Now, mitigating circumstances are also incidents,
2 details or occurrences which the general assembly has, once
3 again, declared by law reduces the severity of the crime of
4 murder and may be considered as extenuating or as reducing
5 the degree of moral culpability or responsibility of the
6 crime of murder.

7 Do you understand what I mean when I refer to
8 mitigating circumstances?

9 A I do.

10 Q Now, let's assume that you were a juror in that
11 situation, the sentencing phase.

12 Could you, depending upon the particular facts and
13 circumstances of that case, including the consideration of
14 aggravating and mitigating circumstances and the law that I
15 would instruct you that applied to that case, return a
16 sentence of life in prison?

17 A I could.

18 Q If you were a juror in that situation could you,
19 depending upon the particular facts and circumstances of
20 that case, once again, including the consideration of
21 aggravating and mitigating circumstances and the law that I
22 would instruct you that applied to that case, return a
23 sentence of death?

24 A I could.

25 Q Now, Ms. Hardison, do you understand that there are

1 always two sentencing options that are available to the jury
2 in the sentencing phase, that being life imprisonment or
3 death?

4 A I do. I understand.

5 Q Now, if you were chosen for service on this jury you
6 would be housed in a motel, sequestered, for the duration of
7 the trial. I have absolutely no way of knowing exactly how
8 long the case would last. It could be anywhere from seven
9 to ten days. It could be less than that.

10 Except for the personal inconvenience that this would
11 pose, or the personal inconvenience that this would pose,
12 would there be any serious danger to the health or
13 well-being of yourself or those dependent upon you?

14 A No, sir.

15 Q Thank you for your answers. Please respond to any
16 questions from Mr. Kelly.

17 A Thank you.

18 MR. KELLY: Thank you, Your Honor.

19 EXAMINATION BY MR. KELLY

20 Q Ms. Hardison, I am Keith Kelly, and along with Jennifer
21 Johnson and Michael Morin we represent Richard in this
22 matter. I noted on your questionnaire -- and I appreciate
23 you sharing your answers with us on the questionnaire. I
24 notice that you are in the university now at Winthrop. Is
25 that right?

1 A I graduated from Winthrop College.

2 Q You graduated from Winthrop.

3 A In 1970.

4 Q Okay. I misunderstood. I thought it said now. What
5 was your degree in?

6 A I have a B. A. in French.

7 Q Okay.

8 THE COURT: I think she is telling you that it's now
9 Winthrop University, and she is proud of it.

10 A It was Winthrop College then. It's Winthrop University
11 now.

12 THE COURT: It used to be Clemson College, and now it's
13 Clemson University. They do change those things.

14 MR. KELLY: Yes, sir.

15 Q But you are not now a student.

16 A No, no.

17 Q You graduated from college, from Winthrop.

18 Okay. Also, in your questionnaire you had indicated
19 that some jewelry was taken from your house and power tools
20 from a garage area. And you may have responded to Judge
21 Clary yesterday when he asked about things like this. You
22 may have been one of those people that went up there, but I
23 wasn't present.

24 Could you tell me how long ago that was?

25 A It was in the 80's. I am not even sure of the year any

1 more. There was never any follow-up to it. It was reported
2 and --

3 Q More than ten years ago?

4 A Oh, certainly.

5 Q Okay. And it was reported. I guess you guys just
6 found it when you came home from work or church or
7 something.

8 A Correct. An officer came.

9 Q Made a report?

10 A But that was as far as it went.

11 Q Right. Nobody was ever arrested or punished for that.

12 A Correct.

13 Q Okay. How did that make you feel?

14 A I was upset by it.

15 Q Angry?

16 A Not at first angry; shocked at first, really.

17 Q Yes, ma'am. But became angry later.

18 A Yes.

19 Q Okay. And this date are you a little miffed or angry
20 about nobody being punished for that?

21 A No.

22 Q In response to the Court's question about whether or
23 not you would presume someone to be innocent, you understand
24 that anyone charged with anything under our law is presumed
25 to be innocent.

1 A I understand that.

2 Q And, in fact, just because someone is charged doesn't
3 mean that they did or did not do anything wrong, is that
4 correct?

5 A Correct.

6 Q And in this particular case, as in all cases in
7 criminal court, the state would then have -- Mr. Gowdy,
8 those people, would have to prove beyond a reasonable doubt
9 that someone did something wrong.

10 A That's correct.

11 Q And you have indicated if called upon to be that tryer
12 of the fact -- you would be the person they have to convince
13 in this particular case.

14 A Yes, sir.

15 Q In this case, as the Court has told you, the state is
16 seeking the death penalty against Richard. You have
17 indicated that you could do that.

18 A I could.

19 Q In this particular case if you as a juror went to the
20 second phase, went to that next penalty phase, you would be
21 asked to sign your name on a piece of paper voting for life
22 or voting for death. Could you do that?

23 A I could.

24 Q Could you be the first person to sign that piece of
25 paper?

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1 A Explain that a little further.

2 Q All right. There would be 12 jurors, and all 12 of you
3 would be deliberating in a jury room somewhere here in the
4 courthouse. And you would be by yourselves around a table
5 or what-have-you.

6 And you guys would consider the evidence, consider
7 aggravating circumstances as Judge Clary has told you,
8 meaning whether or not a crime has been committed and, if
9 so, what that is.

10 And the Court would give you some very specific
11 guidelines about that. And the Court would also give you
12 some what's called mitigating circumstances, and it would be
13 very clear about that. If someone is this, then that's a
14 mitigating circumstance. And the Court is going to give you
15 a list of factors.

16 And at some point, ever how jurors do it -- I have
17 never served -- but at some point the jury would have to
18 then decide what the penalty is. Do you understand that?

19 A Yes.

20 Q And then if you guys decided or if you were on this
21 pool, the 12, if they then decided that death is the
22 appropriate punishment, you would be asked then to sign a
23 piece of paper, just a paper and say we the jury -- I don't
24 know what it will say. I have not been shown that yet.

25 But at some point you will then be asked to take a pen

1 and to sign your name. And I am asking could you be the
2 first person in there to do that.

3 A I could.

4 Q All of us have our views on the death penalty or come
5 to our views on the death penalty through some fashion. I
6 don't know if any of us are born with a view on the death
7 penalty. And by that I mean it's something that each of us
8 has formed from either our social contacts or our religious
9 upbringing or belief or friends, family, some event in our
10 life. Would you agree with that?

11 A Yes.

12 Q Okay. And your view on the death penalty, you have
13 indicated to Judge Clary that you could sign your name and
14 that you could under the appropriate circumstance give the
15 death penalty, correct?

16 A That's correct.

17 Q Your views on the death penalty are based on what,
18 please, ma'am? On religion, social, family, friends?

19 A If it's one option, it's not always, it's not always --
20 I'm open to whatever the evidence is.

21 Q Okay.

22 A And I think it should be case by case.

23 Q All right.

24 A I don't think that it is just a blanket in every case,
25 that that's the warranted punishment. I did take a

1 criminology case -- course when I was in college. That
2 enlightened me some. But I think that it's each case has to
3 be considered individually as to whether or not that's the
4 correct punishment.

5 Q Okay. So part of your view and belief on the death
6 penalty is based on a college course that you took.

7 A I did take a criminology course in college.

8 Q And in that course it had a chapter or section or
9 something on the death penalty.

10 A As best as I can recall.

11 Q And other, other than that course, your church, for
12 instance, you have indicated you are Protestant. Is that
13 Southern Baptist or Freewill?

14 A Yes, sir.

15 Q Southern Baptist?

16 A Southern.

17 Q And does your church, the Southern Baptist Church, as a
18 whole, the Southern Baptist Convention, do they have a
19 position on the death penalty?

20 A I was raised in the Southern Baptist Church. I don't
21 necessarily agree with all of their tenets.

22 Q Yes, ma'am.

23 A And I don't attend regularly.

24 Q Okay.

25 A So I am not that influenced by the church.

1 Q Okay. By your particular faith.

2 A Correct.

3 Q Okay. Do you attend? You have indicated that you were
4 raised Southern Baptist and don't attend there frequently.
5 Do you attend another denomination?

6 A No.

7 Q Your, your course that you talked about a minute ago
8 that enlightened you in college, could you tell me what
9 about that course enlightened you? Was there any particular
10 part of that course?

11 A Well, taking into consideration it has been more than
12 30 years ago --

13 Q Yes, ma'am.

14 A -- I remember discussion of the penial system.

15 Q Yes, ma'am.

16 A I do remember discussion of the criminal mind.

17 Q Yes, ma'am.

18 A I don't remember a lot of the details of it.

19 Q Yes, ma'am. And you --

20 A It was an elective course that I chose to take.

21 Q Yes, ma'am. Your, your views on the death penalty,
22 yesterday you learned from Judge Clary that the state was
23 seeking the death penalty in this particular case, is that
24 correct?

25 A Yes.

1 Q And before yesterday you did not know anything about
2 this case, or did you?

3 A No, sir, I did not.

4 Q And do you know anything about it now, whatsoever?

5 A No, sir, I do not.

6 Q And would it be fair to say about the only thing you
7 know about it is Richard Moore's name at this point?

8 A Well, to be honest, I didn't even remember that.

9 Q Okay.

10 A But I don't know anything about it.

11 Q All right. And your views on the death penalty --
12 since yesterday you have now had some time to reflect on
13 that, about 24 hours or thereabouts -- have they changed any
14 since yesterday? Have you thought about it more? Have you
15 changed your views?

16 A I tried not to think about it.

17 Q You did? And have your views changed much at all in
18 recent times about the death penalty, one way or the other?

19 A No, sir.

20 Q Thank you, Ms. Hardison.

21 A Thank you, sir.

22 THE COURT: Solicitor.

23 MR. GOWDY: May it please the Court, Your Honor.

24 EXAMINATION BY MR. GOWDY

25 Q Good morning, Ms. Hardison.

1 A Good morning.

2 Q You remember a lot more about college than I do if you
3 remember taking the class.

4 My name is Trey Gowdy. I'm the solicitor here in
5 Spartanburg and Cherokee Counties. Sitting with me is Barry
6 Barnette and Donnie Willingham. They are my two deputy
7 solicitors.

8 I want to thank you personally for filling out the
9 questionnaire, because it is very intrusive, very personal.
10 Obviously, it helps the Court and it helps the defense and
11 the prosecution also. And there are questions in that
12 questionnaire that, frankly, in another setting nobody would
13 have the bad manners to ask somebody. But I wanted to ask
14 you about, about just one of them. And I apologize for the
15 personal nature in it, but I feel like I need to ask it.

16 You said on your questionnaire that a family member of
17 yours had in the past, and there is no need to go into
18 detail, but had in the past had a, a conviction or been
19 charged.

20 A That's correct.

21 Q Was this person convicted of what they were charged
22 with?

23 A They pleaded guilty.

24 Q Did any -- how long ago was that?

25 A Nine or ten years. I am not even sure of the exact

1 date of the guilty plea.

2 Q Did anything happen during the investigation of that
3 case or the prosecution of that case that would -- that
4 concerned you? And what I am getting at is if you live in
5 Spartanburg and there is a crime committed, then obviously
6 the Seventh Circuit Solicitor's office prosecutes that
7 crime.

8 I was wondering whether or not anything happened that
9 would have caused you to have an unfavorable opinion during
10 the course of that investigation and prosecution of the
11 Seventh Circuit Solicitor's Office.

12 A Not at all.

13 Q Okay. And you told Judge Clary that in the appropriate
14 circumstances following his law and following the facts that
15 you could give death if you thought that was warranted.

16 A That's correct.

17 Q And that you could give life if you thought that was
18 warranted.

19 A That's also correct.

20 Q Thank you very much for your candor this morning.

21 A Thank you, sir.

22 THE COURT: Anything else from the defendant?

23 MR. KELLY: No, sir.

24 THE COURT: From the date, Solicitor?

25 MR. GOWDY: No, sir, Your Honor.

1 THE COURT: Ms. Hardison, I want to thank you very much
2 for being here all day yesterday, as well as this morning
3 briefly.

4 I find that you are qualified to serve as a potential
5 juror in this case. And with that qualification I am going
6 to, once again, repeat my cautionary instructions that you
7 are not to discuss this case with anyone -- fellow jurors,
8 family members, anyone else that you come into contact with.

9 Also, if anyone attempts to contact you concerning this
10 case, I want you to gather as much information about that
11 person or persons as you possibly can and report that to me
12 immediately, because that's a very serious matter, and I
13 would deal with that accordingly.

14 Also, I'm going to very strongly instruct you, once
15 again, that you're not to read, watch or listen to any news
16 accounts concerning this case. Simply put, if you are
17 selected as a juror in this case all I would want you to
18 consider is what you see and hear in this courtroom, nothing
19 more and nothing less.

20 Now, with the instructions that I have given you, I
21 think yesterday when you reported you were given a telephone
22 number, which is the number to a recording in the clerk of
23 court's office.

24 THE JUROR: Correct.

25 THE COURT: Tomorrow after 6:00 p.m., that is Wednesday

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1 after 6:00 p.m., I want you to call that number. Call that
2 number and listen to the message that will be on there.
3 There will be one of two messages.

4 The first one will probably say jurors in the case of
5 the State vs. Moore should call back on Thursday at a
6 particular time. The second one will probably say jurors in
7 the case of the State vs. Moore are to report to the
8 courthouse at a particular time with your bags packed.
9 Follow the instructions on the recording.

10 When you leave here today you need to go home and start
11 packing for that period of time that you would be with us,
12 because if you are selected as a juror in this case, the
13 jury custodians would take you and your belongings and your
14 vehicle to the location where you would be housed for the
15 duration of the trial.

16 If you are not selected, of course you would have your
17 belongings left in your car, depending whether or not you
18 are selected or not. And if you are not selected, we would
19 send you back about your regular daily activities with our
20 thanks for having been here.

21 So, please, call back tomorrow night after six o'clock
22 and follow the instructions. And I will look forward to
23 seeing you here sometime later on this week.

24 THE JUROR: All right, sir.

25 THE COURT: Thank you, ma'am.

Jury qualification -- Number 116

1 (Whereupon, the juror was excused from the courtroom.)

2 THE COURT: While she is leaving let me see the lawyers
3 up here just a moment, please.

4 (Bench conference held off the record.)

5 THE COURT: All right. Let the record reflect that
6 Juror Number 116, Susan C. Hardison, is qualified to serve
7 as a potential juror in this case pursuant to Section
8 16-3-20 of our code.

9 Juror Number Two, Douglas Alexander.

10 JUROR NUMBER TWO, DOUGLAS

11 ALEXANDER, having been first duly sworn, was voir
12 dired as follows:

13 EXAMINATION BY THE COURT

14 Q Good morning. You are Douglas Alexander, correct?

15 A Yes, sir.

16 Q And, Mr. Alexander, you understand that you are under
17 oath for this proceeding this morning.

18 A Yes, sir.

19 Q And you understand also yesterday when I dismissed you
20 and the other jurors that I gave you certain instructions
21 that you were not to discuss this case with anyone; that if
22 anyone attempted to contact you that you were to report that
23 to me; and also that you were not to read, watch or listen
24 to any news accounts concerning this case.

25 A Yes, sir.

Jury qualification -- Number Two

1 Q Have any of those instructions been violated?

2 A No.

3 Q Now, Mr. Alexander, over the next few minutes I am
4 going to ask you some questions; then one of the defense
5 lawyers will ask you some questions; and one of the state's
6 lawyers will ask you some questions.

7 Please keep in mind that we are not in any way
8 attempting to invade your privacy, but because of the
9 proceedings that we are about this week it's extremely
10 important that certain questions are asked and answered.

11 Keep in mind that there are no right or wrong answers
12 to these questions. So please just answer them openly and
13 honestly and as fully as you can.

14 Also, keep in mind that no one is challenging the view
15 that you might have. We simply need to know what your views
16 are in certain areas.

17 Also, I want you to pay very close attention to the
18 questions that are asked of you. If you don't understand
19 one, just simply let us know, and we will try to restate it,
20 because we're probably going to be asking you some questions
21 over the next few minutes that you maybe have not even or
22 never even thought about before today.

23 Also, I will tell you that the lawyers and I have
24 copies of juror questionnaire, because that was important to
25 us in preparing for today.

Jury qualification -- Number Two

1 Okay. You need to answer out loud when you answer a
2 question.

3 Now, among the things that we are going to be talking
4 about this morning will include references to the word
5 penalty.

6 But the mere fact that I even use that word or that we
7 discuss the word penalty does not indicate anything about
8 the defendant, Mr. Moore. He is presumed in the law to be
9 innocent. Do you understand that?

10 A Yes, sir, I do.

11 Q Let's assume that you were a juror in a criminal case,
12 Mr. Alexander.

13 Could you listen to the law, accept and apply that law
14 as I would instruct you as the judge of this Court even
15 though you may disagree with that law or think that it
16 should be some other way?

17 A Do you mean whether I agree or disagree with it?

18 Q Would you be able to follow the law even though you
19 disagreed with it?

20 A Oh, yeah.

21 Q You would follow my instructions?

22 A Yes, I would.

23 Q Could you decide this case based solely on the evidence
24 presented here in this courtroom and disregard anything that
25 you may have heard, read or seen about this case?

Jury qualification -- Number Two

1 A Yes, sir.

2 Q Now, Mr. Alexander, in a criminal case the State of
3 South Carolina has the burden of proving a defendant's
4 guilt, and the burden of proof that the state must meet is
5 what we call proof beyond a reasonable doubt.

6 And a defendant has absolutely no burden to prove
7 himself innocent. Do you understand that?

8 A Yes, sir.

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

12 A I could.

13 Q Now, as you know from being here yesterday, Mr.
14 Alexander, this is a case in which the State of South
15 Carolina is seeking the death penalty against the defendant.

16 Death penalty cases are what we call bifurcated
17 proceedings. That's kind of a big word that simply means
18 that it's divided into two parts, the trial is; the guilt
19 phase and the sentencing phase.

20 If you were a juror in a death penalty case and if the
21 jury had found the defendant not guilty of murder, do you
22 understand that the trial would end then?

23 A Yes, I do.

24 Q However, if you were a juror in that situation and the
25 jury found the defendant guilty of murder, do you understand

Jury qualification -- Number Two

1 that you would then move into the second phase, the
2 sentencing phase, of the case?

3 A I do.

4 Q Did you answer out loud? I didn't hear you?

5 A I said, yes, I do.

6 Q Okay. Thank you.

7 Now, during that phase of the case, Mr. Alexander,
8 evidence would be presented to the jury in the form of
9 aggravating circumstances, as well as what we call
10 mitigating circumstances.

11 Now, aggravating circumstances are facts, incidents,
12 details or occurrences which our state legislature, which we
13 call our general assembly, has declared by law would make
14 worse, that is to aggravate, the crime of murder.

15 In other words, if there is an aggravating circumstance
16 that goes along with or accompanies a murder, then that
17 increases the enormity or adds to the injury of that crime
18 of murder. It's a murder that's committed in the commission
19 of, in connection with another crime or incident.

20 Do you understand what I mean when I speak of an
21 aggravating circumstance?

22 A Yes, I do.

23 Q Now, mitigating circumstances are also incidents,
24 details or occurrences which our state legislature has, once
25 again, declared by law reduces the severity of the crime of

Jury qualification -- Number Two

1 murder. It may be considered as reducing the degree of
2 responsibility for the crime of murder.

3 Do you understand what I mean when I speak of a
4 mitigating circumstance?

5 A I understand what you are saying, yeah.

6 Q Okay. That's something that you would take into
7 consideration as a juror that lessens the crime of murder.
8 Do you understand that?

9 A Yes, I do.

10 Q Now, if you were a juror in that situation, and I am
11 talking about the second phase, the sentencing phase of a
12 death penalty case, could you, depending upon the particular
13 facts and circumstances of that case, including the
14 consideration of aggravating and mitigating circumstances
15 and the law that I would instruct you that applied to that
16 case, return a sentence of life in prison?

17 Do you want me to repeat that?

18 A No. I could.

19 Q You could return a verdict of life in prison?

20 A Yes, yes, I could.

21 Q If you were a juror in that situation could you,
22 depending upon the particular facts and circumstances of
23 that case, once again, including the consideration of
24 aggravating, as well as mitigating, circumstances and the
25 law that I would instruct you that applied to that case,

Jury qualification -- Number Two

1 return a sentence of death?

2 A I could.

3 Q Now, Mr. Alexander, you understand that there are
4 always two sentencing options that are available to the jury
5 during the sentencing phase of a death penalty trial, that
6 being life in prison or death.

7 A Yes, I do.

8 Q Now, Mr. Alexander, if you were chosen to serve on this
9 jury you would be sequestered. That's another big word that
10 just simply means you would be housed in a motel for the
11 course of the trial once it started.

12 I don't know how long this trial would last. It would
13 be probably somewhere from seven to ten days. It could be
14 less than that. Now, of course the county would pay for the
15 motel and all of the expenses surrounding that.

16 Except for the personal inconvenience that you would
17 suffer, would this pose a serious danger to the health or
18 well-being of yourself or of those dependent upon you?

19 A No.

20 Q Thank you for answering my questions. Please answer
21 any of Mr. Kelly's questions.

22 EXAMINATION BY MR. KELLY

23 Q Mr. Alexander, I am Keith Kelly, and along with
24 Jennifer Johnson and Michael Morin, we represent Richard.
25 And this is Richard seated here with me.

Jury qualification -- Number Two

1 I appreciate your questionnaire. As the Court has
2 indicated, we have copies of that. And I want to ask you a
3 couple of questions.

4 In your questionnaire you indicate that you have been a
5 member of law enforcement support groups. Are you a member
6 of MADD or a member of the state trooper's association?

7 A No, no.

8 Q What organizations have you contributed money to or
9 belonged to?

10 A Well, I contributed money to the city police
11 department.

12 Q Okay.

13 A And, also, I don't know if that's the same thing, but
14 it's the alarm system that's supposed to go toward the
15 Spartanburg City Police Department.

16 Q Yes, sir.

17 A I don't know whether it does or not.

18 Q You mean like A. D. T. or one of those type systems?

19 A Yeah, yeah.

20 Q So you have one of those installed in your home?

21 A Oh, yeah.

22 Q All right, sir. And is that because -- have you a
23 problem with somebody?

24 A Well, one year I had a break-in while we was on
25 vacation.

Jury qualification -- Number Two

- 1 Q All right, sir.
- 2 A And I just had it put in.
- 3 Q Yes, sir. I don't blame you. Was that a long time ago
- 4 or a short time ago?
- 5 A About four years ago.
- 6 Q And when someone broke into your house about four years
- 7 ago, Mr. Alexander, did they actually take something, or did
- 8 they just break in?
- 9 A They took some items -- V. C. R., a T. V. --
- 10 Q Right.
- 11 A -- radio; other things, you know, that you don't know
- 12 is gone until you look for it.
- 13 Q Yes, sir; yes, sir. That's the way it goes. But just
- 14 took stuff that you would ordinary expect to be taken like a
- 15 T. V. or a V. C. R. or something they could sell, I guess.
- 16 A Yeah, stuff of value. I don't think -- I got a coin
- 17 collection of value.
- 18 Q Okay.
- 19 A I guess they didn't think it was worth anything.
- 20 Q I got you. And the things that they took, did anybody
- 21 ever get caught for that?
- 22 A No.
- 23 Q So nobody was ever caught and nobody prosecuted.
- 24 A No.
- 25 Q How did that make you feel, Mr. Alexander?

Jury qualification -- Number Two

- 1 A Like getting an alarm system put in.
- 2 Q Yes, sir. I understand. Did it make you mad?
- 3 A Oh, yeah, yeah. I am mad.
- 4 Q Are you still mad about that?
- 5 A Not really. I have overcome it. Things like that
- 6 happen.
- 7 Q Yes, sir.
- 8 A It wasn't nothing I couldn't get back.
- 9 Q Right. Right. But nobody was hurt in the process.
- 10 A No.
- 11 Q Your firearms. You indicated you have a collection
- 12 there. You have ten, 12, 15 firearms?
- 13 A I don't know the value. It was something handed down
- 14 to generations.
- 15 Q Oh, I understand. So these are firearms not that you
- 16 purchased necessarily but firearms that your father or
- 17 grandfather or somebody maybe had, is that right?
- 18 A Yeah.
- 19 Q And there is quite a few of them.
- 20 A Yeah.
- 21 Q Do you hunt?
- 22 A No.
- 23 Q Do you go out and shoot? Do you shoot them at all?
- 24 A No. Maybe New Year's. Well, not this -- maybe the
- 25 last, two years ago, they have been fired on New Year's.

Jury qualification -- Number Two

1 Q Been a long time since you fired any gun.

2 A Yes.

3 Q Do you belong to anything like the N. R. A. or a gun
4 club of any kind?

5 A No.

6 Q Okay. The state, as you know, is seeking the death
7 penalty. You heard that yesterday, and Judge Clary reminded
8 you of it today.

9 In that particular regard at some point in the jury
10 room you might be asked to sign your name to a piece of
11 paper voting for the death penalty. Could you do that?

12 A It would be hard. It would be hard, but I think I
13 could do it.

14 Q Yes, sir. I understand it would be hard. It's a big
15 decision, but you think you could do that.

16 A I think I could.

17 Q Under the appropriate circumstances if it met with all
18 of the criteria that the Court has established and you have
19 established for yourself, is that right?

20 A Yeah.

21 Q And in regards to that, your own views on the death
22 penalty, a lot of us get our views on the death penalty from
23 either somebody we are associated with like mom, dad,
24 grandparents, something like that, or from the church. And
25 your views I think have been long held.

Jury qualification -- Number Two

1 A Excuse me?

2 Q Your views, your opinion on that, I mean, this is not
3 something you just thought about yesterday. This is
4 something that you thought about for a long time.

5 A No. I hadn't, you know. I hadn't really thought about
6 that.

7 Q Right.

8 A Because I never thought I had to participate in
9 anything like that.

10 Q Right, right, right. You have never been put in this
11 position.

12 A No.

13 Q Thank you, Mr. Alexander.

14 THE COURT: Solicitor.

15 MR. GOWDY: May it please the Court, Your Honor.

16 EXAMINATION BY MR. GOWDY

17 Q Good morning.

18 A Good morning.

19 Q You work for Ms. Smith's, used to be Flowers.

20 A Yes, sir. Right.

21 Q And looks like you have been there for 31 years.

22 A That's true.

23 Q And you have three daughters --

24 A Yes, sir.

25 Q -- and a son.

Jury qualification -- Number Two

1 A Yes, sir.

2 Q I have a son too, but I -- and I appreciate you filling
3 out this questionnaire. I know it asks a lot of personal
4 questions.

5 And one of the questions it asks, you responded that
6 your son had been charged with murder. Has that case come
7 up for trial or has it been resolved yet?

8 A It has been resolved.

9 Q Do you recall how it was? Did it go with trial? Did
10 he plead guilty?

11 A Yeah. He pleaded guilty.

12 Q He pled guilty. How long ago was that?

13 A It's been about five years ago.

14 Q Did it happen here in Spartanburg County?

15 A Yes, it did.

16 Q Do you remember which law enforcement agency
17 investigated that case?

18 A No.

19 Q Do you recall who prosecuted the case?

20 A No.

21 Q Did anything happen during the investigation or
22 prosecution that caused you to maybe lose confidence in the
23 solicitor's office or in law enforcement?

24 A No. I mean, he said he did it, so I felt like he had
25 to pay the price.

Jury qualification -- Number Two

1 Q Yes, sir.

2 A I mean, got laws that you have to abide by.

3 Q Yes, sir. Mr. Alexander, speaking of your
4 questionnaire, I cannot see on your questionnaire where you
5 say that you have a collection of firearms. Do you have a
6 collection of firearms?

7 A Yes, I do.

8 Q Has anyone contacted you about this case to ask you
9 that question?

10 A No.

11 Q You suggested to Judge Clary that if the facts were
12 appropriate or if they were the right facts based on his
13 law, the law that he will give you, that you would be able
14 to give someone the death, or sentence someone, vote for the
15 death penalty, if you thought that was the right thing to
16 do.

17 A I would have to consider it. I would think about it.
18 I would have to give it a serious thought. I mean, because,
19 you know, I got to convince myself that this is the right
20 thing to do.

21 Q Yes, sir. If you convinced yourself of that you could,
22 you could vote for the death penalty.

23 A Yes, I could.

24 Q Could you sign your name to the verdict form, along
25 with the other 11 jurors, if that was you-all's verdict,

Jury qualification -- Number Two

1 sign your name that you thought that that was the right
2 thing to do?

3 A Yes, I could.

4 Q If you were called upon to do so, sir, could you come
5 into court and announce that you thought that was the right
6 verdict?

7 A Yes, I could.

8 Q And, by the same token, if you thought that life was
9 the appropriate sentence, you would be able to sentence him
10 to life.

11 A Yes I could.

12 Q Thank you for your candor, Mr. Alexander.

13 THE COURT: Anything else from the defendant?

14 MR. KELLY: Nothing from the defendant, Your Honor.

15 THE COURT: From the state, Solicitor?

16 MR. GOWDY: No, sir, Your Honor.

17 THE COURT: Mr. Alexander, I want to thank you very
18 much for participating here all day yesterday, as well as
19 this morning.

20 I find that you are qualified to serve as a potential
21 juror in this case. And with that qualification, I am going
22 to remind you, sir, that you are not to discuss this case
23 with anyone that you might come into contact with, whether
24 it be fellow jurors, family, friends or anyone else.

25 If anyone attempts to contact you concerning this case,

Jury qualification -- Number Two

1 I want you to get as much information about that person or
2 persons as you possibly can and report that to me
3 immediately, because that's a very serious matter, and I
4 would deal with the person that attempted to contact you
5 accordingly.

6 Once again, I am going to remind you and very strongly
7 instruct you that you are not to read, watch or listen to
8 any news accounts concerning this case.

9 Very simply put, Mr. Alexander, if you are selected to
10 serve as a juror in this case, all I want you to consider is
11 what you see and hear in this courtroom, nothing more and
12 nothing less.

13 Now, when you came here yesterday, I think the clerk
14 maybe gave you some information that had a telephone number
15 on it, that when you call it there will be a tape-recorded
16 message on that.

17 Now, tomorrow night, that's Wednesday evening, after
18 six o'clock you call that number. And there will be one of
19 two possible messages on there, and listen very carefully to
20 it. And if you need to call back and listen to it more than
21 one time, you can do that too.

22 The message will say something like the jurors in the
23 State vs. Moore case should call this number again on
24 Thursday at a particular time for further information; or it
25 may say the jurors in the case of the State vs. Moore should

Jury qualification -- Number Two

1 report to the Spartanburg County Courthouse at a particular
2 time on Thursday with your bags packed.

3 Now, I am going to be sending you home with the
4 instructions that you need to start packing your bags,
5 because after you call tomorrow night, I would say there is
6 a good chance that on Thursday sometime you are going to be
7 coming back to the courthouse.

8 When you come back, leave your luggage in your car or
9 the vehicle that you come in. If you are selected as a
10 juror in this case, the jury custodians will take you and
11 your belongings to the motel that you will be staying in
12 throughout the course of the trial.

13 If you are not selected, we are going to thank you very
14 much for your being here and send you along your daily
15 activities. We will get you back out to Ms. Smith's baking
16 those great pies and cakes that you do out there.

17 But you need to call back tomorrow night after six
18 o'clock for those instructions. Okay.

19 THE JUROR: Okay.

20 THE COURT: Thank you, sir. I appreciate you coming.

21 (Whereupon, the juror was excused from the courtroom.)

22 THE COURT: Let the record reflect that Juror Number
23 Two, Douglas Alexander, is qualified to serve as a potential
24 juror in this case pursuant to Section 16-3-20 of our code.

25 Juror Number 17, Horace J. Bailey.

1 JUROR NUMBER 17, HORACE J.

2 BAILEY, having been first duly sworn, was voir dired
3 as follows:

4 EXAMINATION BY THE COURT

5 Q You are Horace J. Bailey, correct?

6 A Horace Bailey, Jr.

7 Q Horace Bailey, Jr.

8 A Yes, sir.

9 Q All right. And, Mr. Bailey, you understand that you
10 are under oath here today.

11 A Yes, sir.

12 Q And you also remember yesterday when I sent you away
13 from the courthouse that I explained to you that you are not
14 to discuss this case with anyone, whether it be fellow
15 jurors, family, friends. If anyone attempted to contact
16 you, you were to report that to me; and also that you were
17 not to read, watch or listen to any news accounts concerning
18 this case.

19 Have there any been violations of my instructions?

20 A No, sir.

21 Q Now, Mr. Bailey, during the next few minutes I'm going
22 to ask you some questions; then one of the defense lawyers
23 will ask you some questions, as well as one of the state's
24 lawyers.

25 Please keep in mind that we are not in any way

1 attempting to invade your privacy. It's very simply that
2 because of the nature of the proceedings that we are about
3 this week that certain questions must be asked and answered.

4 Keep in mind that there are no right or wrong answers
5 to these questions, so please just answer them openly and
6 honestly and fully.

7 And also keep in mind that no one is challenging your
8 view. It's simply that we just need to know what your views
9 are in certain areas.

10 A Okay.

11 Q Now, I want you to pay very close attention to these
12 questions, because we are probably going to ask you some
13 questions that you may have never even considered before
14 coming here today.

15 I would also tell you that the lawyers have copies of
16 your juror information sheet, because that was extremely
17 important to us in preparing for today.

18 Now, among the things that we're going to be talking
19 about over the next few minutes, Mr. Bailey, will include a
20 reference to the word penalty. But the mere fact that we
21 talk about penalty or even mention that word does not in any
22 way indicate anything about the defendant, Mr. Moore. He is
23 presumed in the law to be innocent. Do you understand that?

24 A Yes, sir.

25 Q Now, let's assume that you were a juror in a criminal

1 case. Could you listen to the law, accept and apply that
2 law as I would instruct you as the judge of this Court even
3 though you may not agree with that law or think that it
4 should be some other way?

5 A Yes, sir, I could.

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

9 A Yes, sir.

10 Q Now, Mr. Bailey, in a criminal case the state has the
11 burden of proving guilt. And the burden of proof that the
12 state must meet is what we call or refer to as proof beyond
13 a reasonable doubt.

14 And a defendant has absolutely no burden, no
15 responsibility to prove his innocence. Do you understand
16 that?

17 A Yes, sir.

18 Q Now, could you, depending on the facts and the evidence
19 and the law as I would instruct you in a particular case,
20 find a defendant either guilty or not guilty?

21 A Yes, sir.

22 Q Now, as you know from being here yesterday, Mr. Bailey,
23 this is a case in which the State of South Carolina is
24 seeking the death penalty.

25 And those trials are what we call bifurcated

1 proceedings. That very simply means that it's divided into
2 two parts, guilt phase and second part, sentencing phase.

3 If you were a juror in such a death penalty case and if
4 the jury had found the defendant not guilty of murder, do
5 you understand that the trial would end at that point and
6 there would be no need to have a second phase?

7 A Yes, sir.

8 Q However, if you were a juror in such a case and if the
9 jury had found the defendant guilty of murder, do you
10 understand that you would then move to the sentencing phase
11 of the trial?

12 A Yes, sir.

13 Q Now, in that phase of the trial, Mr. Bailey, evidence
14 would be presented in the form of aggravating circumstances,
15 as well as mitigating circumstances.

16 Now, aggravating circumstances are facts, incidents,
17 details or occurrences which the general assembly of our
18 state has declared by law would make worse, that is to
19 aggravate, the offense of murder.

20 In other words, the aggravating circumstance, when it
21 accompanies or goes along with the crime of murder,
22 increases the enormity or adds to the injury of the offense
23 of murder. It's a murder that's committed in the commission
24 of, in connection with another crime or incident.

25 Do you understand what I mean when I refer to an

1 aggravating circumstance?

2 A You're just going to have to go back over that again.

3 Q All right. Now, once again, aggravating circumstances
4 are facts, incidents, details or occurrences which our state
5 legislature, which we call our general assembly also, has
6 declared by law. They've passed a statute or a law that
7 makes worse, that is to aggravate, the offense of murder.

8 In other words, when you have an aggravating
9 circumstance that accompanies or goes along with a crime of
10 murder, the legislature says that makes it worse. It adds
11 to the injury or the enormity of the crime of murder. It's
12 a murder that's committed in the commission of or in
13 connection with another crime or incident. Do you
14 understand that?

15 A Yes, sir.

16 Q Now, mitigating circumstances are also incidents,
17 details or occurrences which our state legislature has also
18 declared or established by law that reduces, lessens, the
19 severity of the crime of murder. And it may be considered
20 as reducing the degree of responsibility for the crime of
21 murder.

22 Do you understand what I mean when I speak of a
23 mitigating circumstance?

24 A Yes, sir.

25 Q Now, Mr. Bailey, if you were an juror in that

1 situation, I'm talking about the second phase, the
2 sentencing phase, of a death penalty case could you,
3 depending upon the particular facts and circumstances of
4 that case, including the consideration of aggravating, as
5 well as mitigating, circumstances and the law that I would
6 instruct you that applied to that case, return a sentence of
7 life in prison?

8 A Yes, sir.

9 Q If you were a juror in that situation could you,
10 depending upon the particular facts and circumstances of
11 that case, once again, including the consideration of
12 aggravating, as well as mitigating, circumstances and the
13 law that I would instruct you that applied to that case,
14 return a sentence of death?

15 A Yes, sir.

16 Q Now, Mr. Bailey, do you understand that there are
17 always two sentencing options that are available to a jury
18 during the death penalty sentencing phase, that being life
19 imprisonment or death?

20 A Yes, sir.

21 Q Now, if you were chosen for service on this jury you
22 would be housed in a motel during the course of the trial.
23 I don't know how long it would be. It could be anywhere
24 from maybe seven to ten days. It could be less than that,
25 no more than that.

Jury qualification -- Number 17

1 Now, except for the personal inconvenience you would
2 suffer, would this pose a serious danger to the health or
3 well-being of yourself or those dependent upon you?

4 A Well, it wouldn't present a danger, but it being that
5 long, it would effect me, because I am self-employed. I'm
6 the only employee.

7 Q I know that you're -- you say that you're
8 self-employed. You're in -- and I think you said you're in
9 the lawn-care business --

10 A Yes, sir.

11 Q -- and that you have employees.

12 A I don't have employees.

13 Q Have no employees. So when you are not there, there is
14 no smoke coming out of the chimney.

15 A That's exactly right.

16 Q And what you are telling me is that your business would
17 stop.

18 A Well, it has already stopped.

19 Q All right. Anything from the defense?

20 MR. MORIN: Nothing.

21 THE COURT: From the state?

22 MR. GOWDY: No, sir, Your Honor.

23 THE COURT: Mr. Bailey, I want to thank you very much
24 for your having been here. I apologize for imposing on your
25 time.

Jury qualification -- Number 17

1 But pursuant to Section 14-7-860 I find that he is a
2 sole proprietor of his business. I bet he has got some
3 yards to fertilize and get leaves up. Get back to your
4 business.

5 THE JUROR: Yes, sir.

6 THE COURT: Aerate, fertilize and get leaves up. So
7 get back about your business.

8 THE JUROR: Thank you, sir. I appreciate it.

9 THE COURT: Thank you.

10 (Whereupon, the juror was excused from the courtroom.)

11 THE COURT: Let me see the lawyers at the bench,
12 please.

13 (Bench conference held off the record.).

14 THE COURT: Let's bring Ms. McCrary out.

15 Let the record reflect Mr. Bailey, Number 171, is
16 excused pursuant to Section 14-7-860.

17 (The following takes place at the bench with Juror
18 Number 177.)

19 THE COURT: Come on right up here, please, ma'am, right
20 in front of me, right up here, please ma'am.

21 JUROR NUMBER 177: Good morning.

22 THE COURT: Come on up here right in this corner so the
23 court reporter can hear you. You are Linda McCrary, is that
24 correct?

25 JUROR NUMBER 177: Yes, sir.

Jury qualification -- Number 17

1 THE COURT: And I understand that you had some trouble
2 reading.

3 JUROR NUMBER 177: Yes, sir.

4 THE COURT: You have trouble reading?

5 JUROR NUMBER 177: Yes, sir.

6 THE COURT: And I think that you had maybe been
7 learning disabled in Greer?

8 JUROR NUMBER 177: Yes, sir.

9 THE COURT: And you have trouble understanding the
10 situations and things.

11 JUROR NUMBER 177: Uh-huh.

12 THE COURT: You can't read.

13 JUROR NUMBER 177: No, sir, I can't read at all.

14 THE COURT: Anything from the defendant?

15 MR. BARNETTE: No, sir.

16 THE COURT: I am going to excuse you. Thank you so
17 much for coming.

18 JUROR NUMBER 177: I don't have to come any more?

19 THE COURT: No, ma'am. Not unless you want to come
20 back to visit us sometime.

21 JUROR NUMBER 177: Thank you. I hope not.

22 (Whereupon, the juror was excused from the courtroom.)

23 THE COURT: Let's the record reflect that the Court has
24 excused Linda A. McCrary as not qualified.

25 Has Ms. Robertson received the form? Let's give her

1 just a minute to read that.

2 (Pause.)

3 THE COURT: Is she ready?

4 THE BAILIFF: Yes, sir.

5 THE COURT: All right. Bring her in.

6 JUROR NUMBER 230, DORIS M.

7 ROBERTSON, having been first duly sworn, was voir
8 dired as follows:

9 EXAMINATION BY THE COURT

10 Q Good afternoon. You are Doris M. Roberson, correct?

11 A Right.

12 Q Ms. Roberson, do you understand that you have been
13 placed under oath here today?

14 A Yes, sir.

15 Q And you also remember that I gave you some instructions
16 yesterday before you left the courthouse that you were not
17 to discuss this case with anyone; that if anyone attempted
18 to contact you, you were to report that to me; and also that
19 you were not to read, watch or listen to any news accounts
20 concerning this case. Have there any been violations of
21 those instructions?

22 A No, sir.

23 Q Now, during the next few minutes I am going to ask you
24 some questions; then one of the defense lawyers, as well as
25 one of the solicitors, will ask you some questions. Please

1 keep in mind and understand that we are not in any way
2 attempting to invade your privacy, but due to the nature of
3 the case and the proceedings that we are about this week,
4 it's extremely important that certain questions are asked
5 and answered.

6 Also, I want you to know that there are absolutely no
7 right or wrong answers to these questions, so, please, sit
8 back and relax and just answer them openly and honestly and
9 fully.

10 Also, keep in mind that no one is challenging your
11 view. We simply need to know what your views are in certain
12 areas.

13 Now, I would also tell you that while you sit back and
14 relax, you should listen very carefully to the questions
15 that are presented to you, because over the next few minutes
16 you may be presented with some questions that you have never
17 even thought about before today.

18 I would also tell you that the lawyers and I have
19 copies of your juror questionnaire, because that was
20 important to us in preparing for this day.

21 Now, Ms. Roberson, among the things that we are going
22 to be talking about over the next few minutes will include a
23 reference or references to the word penalty. But the mere
24 fact that I even mention that word or refer to or talk about
25 penalty does not in any way indicate anything about the

1 defendant, Mr. Moore. He is presumed in the law to be
2 innocent. Do you understand that?

3 A Yes, sir.

4 Q Now, let's assume that you were a juror in a criminal
5 case. Could you listen to the law, accept and apply that
6 law as I would instruct you as the judge of this Court even
7 may disagree with that law or think that it should be some
8 other way?

9 A I feel like I could.

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

14 A I think I could.

15 Q Now, in a criminal case, Ms. Roberson, the state has
16 the burden of proving guilt. The burden of proof that the
17 state must meet is proof beyond a reasonable doubt.

18 And a defendant has absolutely no burden to prove his
19 innocence. Do you understand that?

20 A Yes, sir.

21 Q Could you, depending on the facts and the evidence and
22 the law that I would instruct you in a particular case, find
23 a defendant either guilty or not guilty?

24 A Yes, sir.

25 Q Now, as you know from being here yesterday and the

1 remarks that I made to the entire jury panel, this is a case
2 in which the State of South Carolina is seeking the death
3 penalty. And death penalty cases are unusual, and we call
4 those bifurcated trials or proceedings, which simply means
5 that they are divided into two parts.

6 The first phase, the first part, is the guilt phase;
7 the second phase is the sentencing phase.

8 Now, let's assume that you were a juror in such a case.
9 And if the jury had found the defendant not guilty of murder
10 in the first or guilt phase, do you understand that the
11 trial would end at that point?

12 A No, sir. Because like I say, this is my first
13 experience, so I, you know --

14 Q If I tell you that do you understand that?

15 A If you told me.

16 Q -- if the jury found the defendant not guilty of murder
17 in the guilt phase that the trial would end and there would
18 be no need for the sentencing phase?

19 A That's right.

20 Q However, if you were a juror in such a situation and
21 the jury had found the defendant guilty of murder in the
22 guilt phase, do you understand that you would then move to
23 the second phase or sentencing phase of the trial?

24 A Yes, sir.

25 Q Now, during that phase of the trial, Ms. Roberson,

1 evidence would be presented to the jury in the form of what
2 we call aggravating circumstances and mitigating
3 circumstances.

4 Now, you probably say what are aggravating
5 circumstances and what are mitigating circumstances.
6 Aggravating circumstances are facts, incidents, details or
7 occurrences which our state legislature has declared by
8 law -- they pass what we call statutes that make worse, that
9 is to aggravate, the crime or the offense of murder.

10 In other words, when an aggravating circumstance
11 accompanies the crime of murder it increases the injury or
12 adds to the enormity of that crime of murder. It's a murder
13 that's committed in the commission of, in the connection
14 with, another crime or incident.

15 Do you understand what I am speaking of when I refer to
16 an aggravating circumstance?

17 A Yes, sir.

18 Q Now, mitigating circumstances are also incidents,
19 details or occurrences which the general assembly, our state
20 legislature, has declared by law -- they have, once again,
21 passed a statute to that effect -- that reduces the severity
22 of the offense of murder. It lessens the offense of murder,
23 and may be considered as extenuating or as reducing the
24 degree of responsibility for the crime of murder.

25 Do you understand what I mean when I talk about a

1 mitigating circumstance?

2 A Yes, sir.

3 Q Now, let's assume for a few moments that you were a
4 juror in that situation, and we are talking about the
5 sentencing phase of a death penalty case.

6 Could you, depending upon the particular facts or
7 circumstances of that case, including the consideration of
8 aggravating and mitigating circumstances and the law that I
9 would instruct you that applied to that case, return a
10 sentence of life in prison?

11 A Yes, sir.

12 Q If you were a juror in that situation, could you,
13 depending upon the particular facts and circumstances of
14 that case, once again, including the consideration of
15 aggravating, as well as mitigating, circumstances and the
16 law that I would instruct you that applied to that case,
17 return a sentence of death?

18 A Yes, sir.

19 Q Now, Ms. Roberson, you understand that there are always
20 two sentencing options that are available to the jury in the
21 sentencing phase of a death penalty trial, that being life
22 imprisonment or death.

23 A Yes, sir.

24 Q Now, Ms. Roberson, if you were chosen for service on
25 this jury you would be sequestered. That's kind of a big

1 word that means put you in a motel with your fellow jurors
2 for the duration of the trial. You would be under the
3 control and custody of the jury custodians. The county
4 would bear the expense of whatever is incurred for your care
5 and keeping.

6 I don't know how long this trial will last. It will
7 probably be somewhere between seven and ten days from the
8 time we get it started to completed. It could be less than
9 that.

10 Except for the personal inconvenience that you would
11 suffer, would this pose a serious danger to the health or
12 well-being of yourself or of those dependent upon you?

13 A No, sir.

14 Q Thank you for answering my questions. Please answer
15 any of Mr. Morin's questions.

16 EXAMINATION BY MR. MORIN

17 Q Ms. Roberson, my name is Michael Morin. I, along with
18 Keith Kelly and Jennifer Johnson, represent Mr. Moore.

19 As the judge told you, we have a copy of your
20 questionnaire, and there are a few questions I would like to
21 ask you about it.

22 A Okay.

23 Q You indicated on there that your son's business has
24 been broken into twice.

25 A Right.

- 1 Q What's your son's business?
- 2 A He -- renovation or steel supply.
- 3 Q Okay. And you wrote down that there was no arrest.
- 4 A That's right.
- 5 Q Does that mean for both of them?
- 6 A Both of them, neither one.
- 7 Q Okay. How do you feel about that?
- 8 A Well, I know that in some circumstances you are not
- 9 going to catch the burglar.
- 10 Q Okay.
- 11 A And it has been investigated, but they just haven't
- 12 apprehended anybody yet.
- 13 Q Do you know who investigated it?
- 14 A No, sir, I don't.
- 15 Q I don't mean the person, but the agency.
- 16 A Some detectives. I don't know who, whom, you know.
- 17 Q Okay. I also see that you work part time as a pharmacy
- 18 consultant.
- 19 A Right.
- 20 Q Could you tell me who your supervisor is out there?
- 21 A Cindy Plumley.
- 22 Q Okay. You listed Full Gospel as your religion.
- 23 A Right.
- 24 Q Could you tell me what church you attend?
- 25 A I attend Poplar Springs Full Gospel Church.

1 Q Okay. Do you know if the pastor out there at Poplar
2 Springs takes a position regarding the death penalty,
3 whether for or against it?

4 A No, sir, not really.

5 Q Now, in response to Judge Clary's questions you
6 indicated that you could give the death penalty.

7 A Right. I think I could.

8 Q All right. And before you came in here you were asked
9 to read a little sheet asking you which -- there is
10 basically three types of jurors in these situations.

11 A Right.

12 Q And what category would you put yourself in?

13 A If I remember correctly, it was the third one.

14 Q Okay. And could you tell me why you feel like you are
15 in the third?

16 A Well, I think if I have got them separated right, the
17 third one is the circumstances if it was proven to me
18 that --

19 MR. MORIN: If I may?

20 THE COURT: Yes, sir.

21 Q Let me let you look at it.

22 A I read it kinda fast.

23 Q Yes, ma'am.

24 A I wouldn't have my mind made up in advance.

25 Q Okay.

Jury qualification -- Number 230

1 A Well, I, well, in some of it --

2 Q Well, there is no right or wrong answer. If you can't
3 put yourself in one or if there is parts that both apply to
4 you --

5 A Well, seems like both of these, a couple of both of
6 them, you know. If the defendant is proven guilty, I feel
7 like I could give the sentence that goes with that.

8 Q Okay. So you are saying between two and three.

9 A I guess.

10 Q Okay. Well, let me ask you a few questions about that.
11 Do you understand that if he is found guilty of murder there
12 is still going to be two choices?

13 A Right.

14 Q And that's still going to be up to you if you are
15 selected to be a juror in this case.

16 A Right.

17 Q And there is not any requirement that you find death
18 regardless of what evidence, aggravating or mitigating,
19 there is. Do you understand that?

20 A Yeah, no. Not fully but --

21 Q Okay. All right.

22 A But I am trying to comprehend all of this.

23 Q Okay. All right. Sometimes I go a little fast. I
24 will try to slow down, because I realize that I was kind of
25 rapid-firing those. But do you understand that if you are

1 on the jury and he is found guilty --

2 A Right.

3 Q -- you are in another situation where the state
4 presents evidence on why they think this case is aggravated?

5 A Right.

6 Q And the defense presents evidence to say why we think
7 it is not aggravating. And then it would be up to your
8 decision. It would be your decision. I mean, there is not
9 any requirement that you give him the death penalty. That
10 would be your decision.

11 A Uh-huh.

12 Q And you would listen to all of that evidence.

13 A Yes, sir.

14 Q All right. Now, let me ask you this. When Judge Clary
15 told you yesterday or first told you, you as a group, that
16 this was a death penalty case, did you have an opinion
17 regarding the death penalty prior to that, or is this
18 something you have been sort of thinking about since he's
19 told you that that's what you were looking at?

20 A Well, I kinda asked myself could I do it, you know,
21 because I have never been in this position before.

22 Q Well, I understand that.

23 A And, so, if the evidence proved to me that he was
24 guilty, I feel like I -- you know, if that was the sentence
25 that needed to be, I feel like I could do that, if that

1 means any sense.

2 Q I think I understand what you are saying. But in
3 regards to the death penalty, have you thought about it
4 previous to yesterday, or did you have any opinion about it?

5 A Not a whole lot. I guess from my rearing back when,
6 you know, the death penalty was, you know, if you are guilty
7 you get the death penalty in a murder. But in extenuating
8 circumstances, I would have to hear the evidence.

9 Q Yeah. I understand it, and I appreciate your honesty
10 about it. I mean, it is sort of a odd situation for you to
11 come in here and have us ask these kind of questions, and I
12 appreciate that.

13 So, basically, you are telling me that your upbringing,
14 your family -- I understand that -- if you felt after
15 hearing everything, if you felt like a life sentence was
16 more appropriate, could you do that as well?

17 A Yes, sir.

18 Q Okay. That's all I have. Thank you very much.

19 THE COURT: Mr. Willingham.

20 MR. WILLINGHAM: May it please the Court, Your Honor.

21 EXAMINATION BY MR. WILLINGHAM

22 Q Ms. Roberson, I think I understand what the defense
23 questions were. I want to make sure I clarify.

24 After hearing the evidence and testimony presented if
25 you believe the death penalty is appropriate, you can return

1 that verdict.

2 A I believe I could.

3 Q But it wouldn't be automatic for you.

4 A Uh-uh.

5 Q The same thing for a life sentence.

6 A Right.

7 Q It wouldn't be automatic, would it?

8 A No, sir.

9 Q And would you be able to come back in this courtroom
10 and announce out loud with the public and everybody else
11 sitting in here at the time at the end if the death penalty,
12 you believe, is the appropriate punishment? Would you be
13 able to come back in here and say that out loud if you
14 believe the death penalty is the right sentence in the case?

15 A I believe I could.

16 Q Okay. Let me take it one step further.

17 The jury is going to be the one if we get to the
18 penalty phase based on the facts and circumstances, the jury
19 will be the one to recommend whatever sentence, life or
20 death.

21 A Right.

22 Q You will be -- if death is your decision and the
23 decision of the 11 other people over there, you will be
24 required to sign a form and actually physically put your
25 name on a form saying, yes, that's my verdict. My verdict

1 is for him to receive the death penalty.

2 A Yes, sir.

3 Q Can you do that?

4 A I believe I can.

5 THE COURT: Anything further from the defense?

6 MR. MORIN: Just one thing.

7 EXAMINATION BY MR. MORIN

8 Q By the same token if the jury found that life was the
9 appropriate thing, you could come in here and give that as
10 your answer as well, is that right?

11 A I believe I could. Like I say, I have never served on
12 a jury before, but I would try to do what's right, you know.
13 So whatever, you know, the circumstances, and been proven to
14 me.

15 Q Yes, ma'am. Thank you.

16 THE COURT: Anything else, Solicitor?

17 MR. WILLINGHAM: No, sir, Your Honor.

18 THE COURT: Ms. Roberson, I want to thank you very much
19 for your being here yesterday, as well as this day.

20 I find that you are qualified to serve as a potential
21 juror in this case. With that qualification, I am going to
22 give you some more instructions. Number one, I remind you
23 that you are not to discuss this case with fellow jurors,
24 family, friends or anyone else that you come into contact
25 with.

1 If anyone attempts to contact you concerning this case,
2 I want you to gather as much information about that person
3 as you possibly can and report that to me immediately,
4 because that's a very serious matter, and I would deal with
5 the person that attempted to contact accordingly.

6 Also, I am going to strongly instruct you and remind
7 you that you are not to read, watch or listen to any news
8 accounts concerning this case. If you were selected as a
9 juror in this case, all I would want you to consider is what
10 you see and hear in this courtroom, nothing more and nothing
11 less or nothing else.

12 When you reported yesterday you were given some
13 information from the clerk of court that had a telephone
14 number on it.

15 THE JUROR: Right.

16 THE COURT: And that is a line that will leave a
17 recorded message by the clerk of court's office. You need
18 to call that number tomorrow night, that's Wednesday night,
19 after six o'clock.

20 There will be one of probably two messages on there.
21 The message would probably say, number one, jurors in the
22 case of the State vs. Moore should call this number again on
23 Thursday at a particular time for further instructions; or
24 you could have a message jurors in the case of the State vs.
25 Moore are to report back to the courthouse with their bags

Jury qualification -- Number 230

1 packed at a particular time. Simply follow the instructions
2 on the recording as to whether or not you call back or as to
3 what time you are to be here.

4 You need to go home and start packing your bags,
5 because once you call tomorrow night, no later, I think,
6 than Thursday we should be getting you back to the
7 courthouse to strike a jury in this case.

8 Now, when you come back to the courthouse leave your
9 belongings in your vehicle. Do not bring them into the
10 courthouse. If you are selected as a juror in this case,
11 the jury custodians will take you to the motel where you
12 would be staying for the duration of the trial and see that
13 you are properly cared for.

14 If you are not selected, we are going to thank you very
15 much for having been here and participated in this process
16 and then send you about your regular activities.

17 So, remember to call back tomorrow night, Wednesday
18 night, after six o'clock. And follow those instructions.

19 Have a nice time packing, and I will see you later on
20 this week.

21 (Whereupon, the juror was excused from the courtroom.)

22 THE COURT: Let the record reflect that Juror Number
23 230, Doris M. Roberson, is qualified to serve as a potential
24 juror in this case pursuant to Section 16-3-20 of our code.

25 All right. The final one in this panel, Number 28, Don

1 S. Blair.

2

3

JUROR NUMBER 28, DON S.

4

BLAIR, having been first duly sworn, was voir dired

5

as follows:

6

EXAMINATION BY THE COURT

7

Q Good afternoon. You are Don S. Blair, is that correct?

8

A Right.

9

Q And, Mr. Blair, you understand that you are under oath

10

here today.

11

A Right.

12

Q And you also remember that before you left the

13

courthouse yesterday that I gave you some instructions that

14

you were not to discuss this case with anyone; that you

15

were -- if anyone attempted to contact that you were to

16

report that to me; and that you are also not to read, watch

17

or listen to any news accounts concerning this case.

18

Have any of my instructions been violated?

19

A No, they haven't.

20

Q Now, Mr. Blair, during the next few minutes I am going

21

ask you some questions; and then one of the defense lawyers

22

and one of the solicitors will ask you some questions.

23

Please keep in mind and understand that we're not in

24

any way attempting to invade your privacy, but due to the

25

nature of the proceedings that we are about this week, it's

Jury qualification -- Number 28

1 extremely important that certain questions are asked and
2 answered.

3 Keep in mind that there are no right or wrong answers
4 to these questions. That's the good thing about it. So,
5 please, just answer them openly and honestly and fully.

6 And also keep in mind no one is challenging your view.
7 We simply need to know what your views are in particular
8 areas.

9 Now, I'm going to ask that you pay very close attention
10 to these questions, because over the next few minutes you're
11 probably going to be asked some questions that you maybe
12 have never even considered before coming here today.

13 I would also tell you the lawyers and I have copies of
14 your juror information sheet, because that was important to
15 us in preparing for today.

16 Now, among the things that we are going to be talking
17 about over the next few minutes will include reference or
18 references to the word penalty, but the mere fact that I
19 even mention that word or that we talk about that word in no
20 way indicates anything about the defendant, Mr. Moore. He
21 is presumed in the law to be innocent. Do you understand
22 that?

23 A Yes, sir.

24 Q Now, let's assume for a few minutes that you were a
25 juror in a criminal case, Mr. Blair. Could you listen to

1 the law, accept and apply that law as I would instruct you
2 as the judge of this Court even though you may disagree with
3 that law or think it ought to be some other way?

4 A I think I could, yeah.

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

9 A I could.

10 Q Now, in a criminal case, Mr. Blair, the State of South
11 Carolina has the burden of proving guilt. The burden of
12 proof that the state must meet is proof beyond a reasonable
13 doubt.

14 A defendant has absolutely no burden or responsibility
15 to prove his innocence. Do you understand that?

16 A Uh-huh.

17 Q Now, could you, depending on the facts and evidence and
18 the law as I would instruct you in a particular case, find a
19 defendant either guilty or not guilty?

20 A Yeah.

21 Q Now, as you know from being here yesterday and
22 listening to my statements to the entire jury panel, this is
23 a case in which the State of South Carolina is seeking the
24 death penalty. And in a death penalty case, it's what we
25 call a bifurcated proceeding. That simply means it's

1 divided into two parts, guilt phase and sentencing phase.

2 Now, if you were a juror in such a case and if the jury
3 found the defendant not guilty of murder in the first phase,
4 do you understand that the trial would end then?

5 A Yeah.

6 Q However, if the jury -- if you were a juror in such a
7 case and if the jury had found the defendant guilty of
8 murder, do you understand that you would then move to the
9 second or sentencing phase of that trial?

10 A Yes, sir.

11 Q Now, during that phase of the trial, Mr. Blair,
12 evidence would be presented to the jury in the form of
13 aggravating circumstances, as well as mitigating
14 circumstances.

15 Now, aggravating circumstances are facts, incidents,
16 details or occurrences which the General Assembly of the
17 State of South Carolina has declared by statute, by law,
18 would make worse, that is to aggravate, the crime of murder.

19 In other words, an aggravating circumstance when it
20 accompanies a murder increases the enormity or adds to the
21 injury of the crime of murder. It's a murder that's
22 committed in the commission of, in connection with another
23 crime or incident. Do you understand that?

24 A Yeah.

25 Q Now, mitigating circumstances are also incidents,

1 details or occurrences which our general assembly has, once
2 again, declared by law reduces the severity of the crime of
3 murder and may be considered by the jury as extenuating or
4 as reducing the degree of responsibility for the crime of
5 murder. Do you understand that?

6 A Right.

7 Q Now, let's assume for a few moments that you were a
8 juror in that situation, Mr. Blair, the second phase, the
9 sentencing phase, of a death penalty case.

10 Could you, depending upon the particular facts and
11 circumstances of that case, including the consideration of
12 aggravating and mitigating circumstances and the law that I
13 would instruct you that applied to that case, return a
14 sentence of life in prison?

15 A Yeah.

16 Q If you were a juror in that situation could you,
17 depending upon the particular facts and circumstances of
18 that case, once again, including the consideration of
19 aggravating and mitigating circumstances and the law that I
20 would instruct you that applied to that case, return a
21 sentence of death?

22 A Right.

23 Q Now, Mr. Blair, you understand that there are always
24 two sentencing options available to the jury in the
25 sentencing phase of a death penalty case, that being life in

1 prison or death.

2 A Yeah, I understand that.

3 Q Now, Mr. Blair, if you were chosen for service on this
4 jury you would be sequestered, which simply means placed in
5 a motel with all of the other jurors for the duration of the
6 trial. I have no idea how long that would be, estimate that
7 at the outside it would be seven to ten days. It could be
8 less than that.

9 Except for the personal inconvenience that you would
10 suffer, would this pose a serious danger to the health or
11 well-being of yourself or of those dependent upon you?

12 A No.

13 Q Thank you for answering my questions. Mr. Kelly.

14 MR. KELLY: Thank you.

15 EXAMINATION BY MR. KELLY

16 Q Mr. Blair, I'm Keith Kelly. I represent Richard Moore,
17 along with Jennifer Johnson and Michael Morin seated here.

18 And as Judge Clary has told you yesterday and today, of
19 course, the state seeks in this case to put Richard to
20 death. You understand what kind of case we have here.

21 A Yeah.

22 Q And I understand that from your questionnaire, which I
23 appreciate you filling out, you had served on a jury, a
24 civil jury, in the 70's. Have you ever served on a criminal
25 jury at any time --

Jury qualification -- Number 28

1 A No.

2 Q -- whether magistrate's court or general sessions or
3 anything?

4 A No.

5 Q And, again, referring to what Judge Clary was asking
6 you a few minutes ago, you understand that anyone who is
7 accused such as Richard is deemed to be innocent until
8 proven guilty beyond a reasonable doubt.

9 A I do.

10 Q Okay. And at some point in time, and I couldn't tell
11 from the questionnaire, but you had a chainsaw stolen, which
12 is what you indicated on your questionnaire.

13 A Yeah.

14 Q Was that recently?

15 A No. That was 25 years ago.

16 Q Okay. Other than that particular incident has there
17 been a problem with someone stealing something of yours or
18 taking something and not being caught or whatever?

19 A Not that sticks in my mind, no.

20 Q All right, sir. Do you know -- you had indicated no
21 arrest. Nobody was ever convicted of that?

22 A Of the chainsaw?

23 Q Yes, sir.

24 A No.

25 Q Okay. How did that make you feel? Did it make you

Jury qualification -- Number 28

- 1 feel mad or hurt or what?
- 2 A Well, it upset me, yeah.
- 3 Q Yes, sir.
- 4 A But, you know, I just had to go get another one.
- 5 Q Yes, sir. Are you still mad about that, that somebody
- 6 took your property?
- 7 A No. I wouldn't have thought anything about it if you
- 8 hadn't asked that question there.
- 9 Q All right, sir. It has been a long time ago.
- 10 A Yeah.
- 11 Q Okay. Also, I had noted that you are a United
- 12 Methodist. Do you attend regularly the Methodist Church?
- 13 A Yeah, yeah.
- 14 Q I am also Methodist. Which church do you attend?
- 15 A New Beginnings.
- 16 Q All right. And in recent times, whatever time period,
- 17 has the minister there at the Methodist Church brought a
- 18 sermon on the death penalty?
- 19 A No.
- 20 Q Have you ever been elected to be lay leader to the
- 21 United Methodist Church Charge Conference?
- 22 A No. I am the treasurer now.
- 23 Q You are treasurer at the church.
- 24 A Yeah.
- 25 Q But you have not served as a lay leader --

- 1 A No.
- 2 Q -- and been to conference at Wofford or Claflin.
- 3 A No.
- 4 Q And let me ask you this. While you are married has
- 5 your wife acted as a lay person to go?
- 6 A Yes. She is the present lay leader.
- 7 Q She is the present lay leader?
- 8 A Yeah.
- 9 Q All of us have a view about the death penalty based on
- 10 something, whether it be from our view from our parent or
- 11 grandparent, perhaps something you read in the paper, a book
- 12 you read, going to church.
- 13 Could you tell me your view of the death penalty, what
- 14 your view of the death penalty is based upon?
- 15 A I don't know. I don't really know quite what you're
- 16 asking. I know that the death penalty, you know --
- 17 Q All right. Let me back up just a little bit here. You
- 18 indicated to Judge Clary that you believe in the death
- 19 penalty.
- 20 A In certain cases, yeah.
- 21 Q In certain cases. In certain cases you believe in the
- 22 death penalty, because you could, in fact, say, you could,
- 23 in fact, vote if that's what you would do in certain
- 24 cases --
- 25 A Yeah.

1 Q -- which leads me to conclude then that you believe in
2 the death penalty and are not always opposed to the death
3 penalty, is that correct?

4 A That's correct, that's right.

5 MR. GOWDY: I would object to the form. The issue is
6 whether or not he can administer the death penalty.

7 THE COURT: Yes, sir. The question, Mr. Kelly, is
8 whether he can impose either sentence.

9 MR. KELLY: Okay, sir.

10 Q Let me rephrase that then.

11 Your ability to impose either life or death -- you
12 know, I am talking about death at this point -- is based
13 upon your beliefs, right? I mean, you have to have some
14 basis to believe that you could impose that, correct?

15 A Yeah.

16 Q Okay. Do you draw that, that basis of feeling, that
17 opinion, from the Methodist Church or from the Baptist
18 Church or from a book that you have read or maybe
19 conversations that you had over the last 20 years with
20 friends or neighbors?

21 A No. It's nothing I got out of church, you know. It's
22 just something that I have always known of, you know, and
23 thought in certain cases it was supposed to be.

24 Q All right, sir. If the state proves -- as Judge Clary
25 was telling you, there is a list of factors that could be

1 considered by a juror as aggravating circumstances.

2 And in the event that you were sitting on this jury
3 along with 11 others and one of those factors is found, you
4 then are asked to come to a decision as to what the penalty
5 shall be, whether it be life in prison or death.

6 Do you understand that? And do you understand that at
7 that point in time if you said death is appropriate because
8 of -- and then you fill in the blank, okay, of course with
9 the Court's instruction; that at that point you would be
10 asked to sign your name on a sheet of paper that the Court
11 would provide that said I, Mr. Blair, agree with this.
12 Could you do that?

13 A Yeah.

14 Q Could you be the first person to sign at the very top
15 of that paper?

16 A Well, I guess if I was supposed to be first, I would;
17 and if I was supposed to be last, I would.

18 Q All right, sir. Well.

19 A I don't know as it would make any difference.

20 Q Well, that's what I am asking. Yes, sir. That's what
21 I want to know.

22 If the sheet of paper is laying on the table right in
23 the center of the table and all 12 of you are in the room
24 and everybody has equal access to that, could you be the
25 person to reach out and pick it up and be the first person

Jury qualification -- Number 28

1 to write your name?

2 A Well, if I happened to be the first person, yeah.

3 Q Okay. If there was no particular order --

4 A If there was no particular order, you know, I can be
5 the last one. I don't think that I would run up there and
6 grab it and want to be the first or want to be last.

7 Q Right.

8 A It wouldn't make any difference.

9 Q Right. Thank you, sir.

10 THE COURT: Solicitor.

11 MR. WILLINGHAM: Your Honor, I have no questions for
12 Mr. Blair. Thank you.

13 THE COURT: Anything else from the defendant?

14 MR. KELLY: Nothing, Your Honor.

15 THE COURT: Mr. Blair, I want to thank you very much
16 for your participation here yesterday, as well as this day.

17 I find that you are qualified to serve as a potential
18 juror in this case. And with that qualification comes some
19 more instructions. As if you haven't had enough already, I
20 am going to give you some more. A lot of it is going to be
21 repetitive, but please bear with me.

22 I am going to remind you that you are not to discuss
23 this case with anyone, whether it be family, friends or
24 anyone else that you come in contact with. If anyone
25 attempts to contact you concerning this case, I want you to

Jury qualification -- Number 28

1 gather as much information about that person or persons as
2 you possibly can and report that to me immediately, because
3 that's a very serious matter, and I would deal with that
4 person accordingly.

5 Also, Mr. Blair, I continue my very strong instruction
6 that you're not to read, watch or listen to any news
7 accounts concerning this case. If you are a juror in this
8 case all I would want to you to consider is what you see and
9 hear in this courtroom, absolutely nothing more and nothing
10 less.

11 Now, yesterday when you reported you were given some
12 information by the clerk of court, and contained therein was
13 a telephone number that when you call it there's a recording
14 on it that would be placed on there by the clerk of court.

15 You need to call that number tomorrow night after six
16 o'clock. There will be one of probably two messages,
17 either/or messages on there.

18 The first message would probably be jurors in the case
19 of the State vs. Moore should call this number again on
20 Thursday at a particular time; or the message might say
21 jurors in the case of the State vs. Moore should report with
22 their bags packed to the Spartanburg County Courthouse at a
23 particular time on Thursday. With all of that, you need to
24 listen carefully to that message tomorrow night and follow
25 the instructions.

Jury qualification -- Number 28

1 But between now and then you need to go home and start
2 packing your bags, because if you are selected to serve as a
3 juror, then you are going to remain with us throughout the
4 course of the trial. You will be well cared for by the jury
5 custodians.

6 When you come back to the courthouse, leave your
7 belongings in your vehicle. If you're selected, the juror
8 custodians will take you and your belongings to the location
9 where you are going to be staying for the course of the
10 trial, and you would be, once again, well cared for.

11 If you are not selected, we will thank you very much
12 for your having been here and participated in this process
13 and send you along about your daily activities.

14 So the long and the short of it is you call back here
15 tomorrow night after six o'clock to the number provided by
16 the clerk of court. Follow those instructions. And I will
17 look forward to seeing you back here probably sometime on
18 Thursday or later on in the week.

19 Have a nice time packing, and I will see you soon.

20 (Whereupon, the juror was excused from the courtroom.)

21 THE COURT: All right. Let the record reflect, Juror
22 Number Six, Don S. Blair, is qualified to serve as a
23 potential juror in this case pursuant to Section 16-3-20 of
24 our code.

25 That gets us through Panel Two. And Panel Three is

Jury qualification -- Number 163

1 coming back at 2:00 p.m. You earned a little bit of an
2 extra time for your lunch break. I'll see you back here
3 shortly before two o'clock.

4 Is there anything else from the state?

5 MR. GOWDY: No, sir, Your Honor.

6 THE COURT: From the defendant?

7 MR. KELLY: No, Your Honor.

8 THE COURT: All right. If the deputies will make sure
9 the defendant is properly cared for and fed during the
10 break, that qualifies nine so far, I think, gentlemen and
11 ladies.

12 We will proceed at two o'clock. I will see you then.

13 (Whereupon, a recess was taken.)

14 THE COURT: All right. Is the state ready?

15 MR. GOWDY: Yes, sir, Your Honor.

16 THE COURT: Is the defense ready?

17 MR. MORIN: Yes, sir.

18 MR. KELLY: Yes, sir.

19 THE COURT: Roosevelt Long, Number 163.

20 JUROR NUMBER 163, ROOSEVELT

21 LONG, having been first duly sworn, was voir dired
22 as follows:

23 EXAMINATION BY THE COURT

24 Q Good afternoon. You are Roosevelt Long, is that
25 correct?

1 A Right.

2 Q Now, Mr. Long, you understand that you have been placed
3 under oath for these proceedings.

4 A Right.

5 Q And you also remember when I dismissed you yesterday
6 that I instructed you that you were not to discuss this case
7 with anyone; that if anyone attempted to contact that you
8 were to report that to me; and that you were not to read,
9 watch or listen to any news accounts concerning this case.

10 Have there been any violations of my instructions?

11 A No.

12 Q Now, Mr. Long, during the next few minutes I am going
13 to be asking you some questions. Thereafter one of the
14 defense lawyers and then one of the state's lawyers will ask
15 you some questions.

16 Please keep in mind and understand that we are not in
17 any way attempting to invade your privacy, but due to the
18 nature of the proceedings that we are about this week it's
19 extremely important that certain questions are asked and
20 answered.

21 Keep in mind that there are absolutely no right or
22 wrong answers to these questions, so just answer them openly
23 and honestly and fully; and also keep in mind that no one is
24 challenging your view. We simply need to know what your
25 view is in a particular area.

1 Also, I would encourage you to pay very close attention
2 to the questions that you are presented to you, because you
3 are probably going to be asked some questions that you maybe
4 have never even thought about or considered before coming
5 here today.

6 I will also tell you that the lawyers and I have copies
7 of your juror information sheet, because that was important
8 to us in preparing for today.

9 Now, among the things that we are going to be talking
10 about this afternoon will include references to the word
11 penalty. And the mere fact that I even use that word or
12 mention that word here this afternoon does not indicate
13 anything about the defendant, Mr. Moore. He is presumed in
14 the law to be innocent. Do you understand that?

15 A Right.

16 Q Now, if you were a juror in a criminal case could you
17 listen to the law, accept and apply that law as I would
18 instruct you as the judge of this Court even though you may
19 disagree with that law or think that it ought to be some
20 other way?

21 A Yes, sir.

22 Q Could you decide this case based solely on the evidence
23 presented here in this courtroom and disregard anything that
24 you may have heard, read or seen about the case?

25 A Right.

1 Q Now, Mr. Long, in a criminal case the State of South
2 Carolina has the burden of proving guilt. And the burden of
3 proof that the state must meet is proof beyond a reasonable
4 doubt.

5 A defendant has absolutely no burden, no responsibility
6 to prove his innocence. Do you understand that?

7 A Right.

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

11 A Yes. I could find him not --

12 Q Now, as you know from being here yesterday when I
13 talked to all of the jurors, this is a case in which the
14 State of South Carolina is seeking the death penalty.

15 And death penalty trials are what we call bifurcated
16 proceedings. That's kind of a big word that simply means
17 that it's divided into two parts. There's a guilt phase and
18 a sentencing phase to a death penalty trial.

19 If you were a juror in a death penalty case and if the
20 jury had found the defendant not guilty of murder in the
21 first phase, the guilt phase, do you understand that the
22 trial would end at that point in time?

23 A Yes.

24 Q However, if you were a juror in a death penalty case
25 and if the jury had found the defendant guilty of murder, do

1 you understand that you would then move to the second phase
2 or the sentencing phase of that trial?

3 A Yes, sir.

4 Q Now, during that phase of the trial, the sentencing
5 phase, evidence would be presented in the form of
6 aggravating circumstances, as well as mitigating
7 circumstances.

8 Now, aggravating circumstances are facts, incidents,
9 details or occurrences which our state legislature that
10 meets in Columbia, the general assembly, has declared by law
11 would make worse, that is to aggravate, the crime of murder.

12 In other words, when there is the presence of an
13 aggravating circumstance that goes along with or accompanies
14 the crime of murder it increases the enormity or the injury
15 of the crime of murder. It's a murder that's committed in
16 the commission of or in connection with another crime or
17 incident.

18 Do you understand what I mean when I speak of an
19 aggravating circumstance?

20 A I think so.

21 Q All right, sir. Do you need for me to explain anything
22 in further detail?

23 A Yes.

24 Q Aggravating circumstances are something that makes the
25 situation worse. For example, if the murder is committed

1 along with some aggravating circumstance, it raises it to a
2 different level or increases the injury. Do you understand
3 that?

4 A Right.

5 Q Now, mitigating circumstances, on the other hand, are
6 also incidents, details or occurrences which, once again,
7 our state legislature, the general assembly, has declared by
8 law that reduces the severity of the crime of murder and may
9 be considered by the jury as extenuating or as reducing the
10 degree of responsibility for committing the crime of murder.

11 Do you understand what I mean when I speak of a
12 mitigating circumstance?

13 A No.

14 Q A mitigating circumstance is something that the jury
15 would consider that would in their mind lessen or excuse the
16 crime of murder to a degree. Do you understand that?

17 A Yes, sir.

18 Q Now, if you were a juror in that situation, talking
19 about the second phase of the death penalty trial, the
20 sentencing phase, could you, depending upon the particular
21 facts and circumstances of that case, including the
22 consideration of those aggravating and mitigating
23 circumstances that I have discussed with you and the law
24 that I would instruct you that applied to that case, return
25 a sentence of life in prison?

1 A Yes.

2 Q If you were a juror in that situation could you,
3 depending upon the particular facts and circumstances of
4 that case, once again, including the consideration of
5 aggravating and mitigating circumstances and the law that I
6 would instruct you that applies to that case, return a
7 sentence of death?

8 A I am not sure of that.

9 Q Not sure that could under any situation or
10 circumstances?

11 A Right.

12 Q Are you opposed to the death penalty completely?

13 A Well, I am really not sure.

14 Q Okay. So if the facts and circumstances of the case
15 and the law as I charged or instructed it to you warranted
16 the imposition of the death penalty, would you be able to do
17 so?

18 A I still am not sure, I mean, because I haven't heard
19 the case yet.

20 Q Yell, I understand that, but we are having to deal
21 in --

22 A Right --

23 Q -- kind of a gray area, but the key to my question is
24 whether or not you would be able to impose that sentence,
25 life or death.

Jury qualification -- Number 163

1 A Well, I think I could do the life, but I don't know
2 about the death.

3 Q So you are telling me that you don't know if you could
4 impose a death sentence.

5 A I really don't at this time.

6 Q And you understand that there are two sentencing
7 options that are always available to the jury and that you
8 must be able to impose either of those. Do you understand
9 that?

10 A Yeah, I understand what you are saying.

11 Q Now, if you were chosen for service on this jury,
12 Mr. Long, you would be housed in a motel for the duration of
13 the trial. That would be anywhere from seven to ten days at
14 the most, maybe a little bit less than that.

15 Except for the personal inconvenience that you would
16 suffer, would this pose a serious danger to the health or
17 well-being of yourself or of those dependent upon you?

18 A Well, I don't know that, but it could.

19 Q Tell me what the situation would be that would cause
20 you a problem if you were put up in this jury for seven to
21 ten days.

22 A Well, that I don't know.

23 Q Well, that's the reason I am asking you, because I need
24 to know that.

25 Is there something that you need to tell me about for

1 me to consider in this matter? Anything concerning your
2 health, a member of your family, their well-being that would
3 be interfered with or compromised by you being on this jury
4 and not being present at home?

5 A Well, if I had to do it, I had to do it.

6 Q Thank you, sir.

7 Mr. Kelly.

8 EXAMINATION BY MR. KELLY

9 Q Mr. Long, I am Keith Kelly. Michael Morin and Jennifer
10 Johnson and I represent Richard Moore who is seated here
11 with us. And, of course, we appreciate your fine answers to
12 the Court's question and also your interview sheet that you
13 sent in, your questionnaire. We have a copy of that. I
14 appreciate you telling us those things about you.

15 As the Court has talked with you about, our general
16 assembly has said in this state that the death penalty is
17 appropriate in certain circumstances, certainly not all
18 circumstances, but in some certain circumstances.

19 In the event that the facts of this case or any other
20 case met with that criteria, which the judge indicated to
21 you is called aggravating circumstances -- and there is a
22 list of those things, okay. If the judge charged you at the
23 end, let's say that the jury, just assuming you, the jury,
24 found the defendant guilty.

25 At the very end the judge charged you the law and told

1 you that these five, seven, 12 things if they are there and
2 if you find them to be there, then you can consider the
3 death penalty, you could consider the death penalty based on
4 that, could you not?

5 THE COURT: No, sir. It is not a consideration of it.
6 It's not a consideration as to whether or not he can impose
7 it. There is a difference.

8 Q And you could impose the death sentence based on that,
9 could you not?

10 A Of the -- you saying of the facts, that's what you
11 have?

12 Q Yes, sir.

13 A Well, I don't think so. I mean, it would just -- you
14 know, that's just a feel.

15 Q All right, sir. If -- okay. So what you are saying
16 then is that these aggravating circumstances, that the list
17 that Judge Clary gives you or tells you about as a juror who
18 is sitting over there, if you go back in the jury room and
19 you say, yes, number four applies, at that point you and the
20 other 11 would have to make a decision.

21 And you understand that you are not required to return
22 a death, right?

23 A Right, that's right.

24 Q No matter what the circumstances are, you could say no.
25 I want the other sentence, which is life.

1 A Right.

2 Q You understand that.

3 A I understand.

4 Q Judge Clary told you that. Okay. But if the
5 circumstances warranted, if the circumstances dictated, you
6 could say death, couldn't you?

7 A I don't think so.

8 MR. KELLY: Thank you, Judge.

9 THE COURT: Anything from the state?

10 MR. GOWDY: Nothing.

11 Thank you very much for your candor in answering these
12 questions.

13 Your Honor, we wouldn't have any questions for Mr.
14 Long.

15 THE COURT: Mr. Long, I want to thank you very much for
16 your participation here yesterday, as well as today.

17 This is going to conclude your responsibilities here.
18 It's not going to be necessary for you to return to the
19 courthouse any further.

20 But on behalf of the State of South Carolina, most
21 particularly Spartanburg County, I thank you very much for
22 your having been here and participated in our process. You
23 are excused, sir.

24 (Whereupon, the juror was excused from the courtroom.)

25 THE COURT: Let the record reflect that Juror Number

Jury qualification -- Number 178

1 163, Roosevelt Long, is not qualified to serve as a
2 potential juror in this case as he would be unable to impose
3 the death penalty.

4 Number 178, Karen McCurry.

5 JUROR NUMBER 178, KAREN L.

6 MCCURRY, having been first duly sworn, was voir
7 dired as follows:

8 EXAMINATION BY THE COURT

9 Q Good afternoon. You are Karen L. McCurry, correct?

10 A Yes.

11 Q And, Ms. McCurry, you understand that you have been
12 placed under oath for these proceedings.

13 A Yes, sir.

14 Q And you also understand that when I dismissed you and
15 your fellow jurors yesterday that I gave you some
16 instructions that you were not to discuss this case with
17 anyone; that if anyone attempted to contact you that you
18 were to report that to me; and also that you were not to
19 read, watch or listen to any news accounts concerning this
20 case.

21 Have there been any violations of those instructions?

22 A No.

23 Q Now, over the next few minutes I am going to be asking
24 you some questions, and thereafter one of the defense
25 lawyers and one of the solicitors will ask you some

1 questions. Please understand that we are not in any way
2 attempting to invade your privacy, but due to the nature of
3 the proceedings that we are about this week it's extremely
4 important that certain questions are asked and answered.

5 Keep in mind that there are absolutely no right or
6 wrong answers to these questions. We just need for you to
7 answer these questions openly and honestly and fully.

8 And also keep in mind that no one is challenging the
9 view that you might have. We simply need to know what your
10 views are in certain areas.

11 Also, I am going to ask that you pay very careful
12 attention to the questions that are presented to you. If
13 you do not understand them, ask us to repeat them, because
14 over the next few minutes we are probably going to ask you
15 some questions that you maybe have never even thought about
16 before coming here to the courthouse.

17 I would also tell you that the lawyers and I have
18 copies of your juror information sheet, because that was
19 extremely important to us in preparing for today.

20 Now, over the next few minutes, among other things, we
21 are going to be talking about and using and referring to the
22 word penalty. But the mere fact that I even mention that
23 word or say that word penalty does not indicate anything
24 about the defendant, Mr. Moore. He is presumed in the law
25 to be innocent. Do you understand that?

1 A Yes, sir.

2 Q Let's assume for a few moments that you were a juror in
3 a criminal case.

4 Could you listen to the law, accept and apply that law
5 as I would instruct you as the judge of this Court even
6 though you may disagree with that law or think that it
7 should be some other way?

8 A Could you repeat it?

9 Q Yes, ma'am.

10 Let's assume that you were a juror in a criminal case.
11 Could you listen to the law, accept and apply that law as I
12 would instruct you as the judge of this Court even though
13 you may disagree with that law or think that it ought to be
14 some other way?

15 A Yes.

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

19 A Yes.

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

23 A Yes.

24 Q Now, as you know from being here yesterday,
25 Ms. McCurry, this is a case in which the State of South

1 Carolina is seeking the death penalty. And as such we are
2 going to be engaged in a death penalty trial, which is
3 called a bifurcated proceeding, which is kind of a big
4 phrase or word which simply means that it's divided into two
5 parts.

6 The first part is called the guilt phase; the second
7 part is called the sentencing phase.

8 Now, if you were a juror in such a case and if the jury
9 found the defendant not guilty of murder, do you understand
10 that the trial would end at that point in time?

11 A Yes.

12 Q However, if you were a juror in such a case and the
13 jury had found the defendant guilty of murder in the guilt
14 phase, do you understand that you would then move to the
15 second or sentencing phase of that trial?

16 A Yes.

17 Q Now, in that phase of the trial, Ms. McCurry, evidence
18 would be presented to the jury in the form of aggravating
19 circumstances, as well as mitigating circumstances.

20 Now, you might ask what are aggravating and mitigating
21 circumstances. Aggravating circumstances are facts,
22 incidents, details or occurrences which our General Assembly
23 of South Carolina, the state legislature, has declared by
24 law would make worse, that is to aggravate, the crime of
25 murder.

1 In other words, when an aggravating circumstance goes
2 along with or accompanies murder, it increases the enormity
3 or adds to the injury of that crime of murder. It's a
4 murder that's committed in the commission of or in
5 connection with another crime or incident.

6 Do you understand what I am speaking about when I refer
7 to an aggravating circumstance?

8 A Yes.

9 Q Now, mitigating circumstances are also incidents,
10 details or occurrences, which, once again, our state
11 legislature has declared by law reduces the severity of the
12 crime of murder and may be considered by the jury as
13 extenuating or as reducing the degree of responsibility for
14 the crime of murder.

15 Do you understand what I am speaking of when I talk
16 about a mitigating circumstance?

17 A Yes.

18 Q Now, if you were a juror in that situation, I am
19 talking about the second phase, the sentencing phase, of a
20 death penalty trial could you, depending upon the particular
21 facts and circumstances of that case, including the
22 consideration of all aggravating and mitigating
23 circumstances and the law that I would instruct you that
24 applied to that case, return a sentence of life in prison?

25 A Yes.

Jury qualification -- Number 178

1 Q I'm sorry?

2 A Yes.

3 Q Thank you, ma'am.

4 If you were a juror in that situation could you,
5 depending upon the particular facts and circumstances of
6 that case, once again, including the consideration of all
7 aggravating and mitigating circumstances and the law that I
8 would instruct you that applied to that case, return a
9 sentence of death?

10 A No.

11 Q You could not? Not under any circumstances?

12 A No.

13 THE COURT: Anything from the defendant?

14 MR. KELLY: Nothing.

15 THE COURT: From the state?

16 MR. GOWDY: No, sir, Your Honor.

17 THE COURT: Ms. McCurry, I want to thank you very much
18 for your participation here yesterday, as well as today.

19 This is going to conclude your duties. On behalf of
20 the State of South Carolina, and most particularly
21 Spartanburg County, I thank you for being here and giving up
22 your time and participating with us in this process.

23 You are excused. Thank you very much.

24 (Whereupon, the juror was excused from the courtroom.)

25 THE COURT: Let the record reflect that Juror Number

Jury qualification -- Number 178

1 178, Karen L. McCurry, is not qualified to serve as a
2 potential juror in this case as she would be unable to
3 impose the death penalty.

4 213, Debra Pope Perkins.

5 JUROR NUMBER 213, having
6 been first duly sworn, was voir dired as follows:

7 EXAMINATION BY THE COURT

8 Q Good afternoon. You are Debra Pope Perkins, is that
9 correct?

10 A Yes, sir.

11 Q Now, Ms. Perkins, you understand that you have been
12 placed under oath here today.

13 A Yes, sir.

14 Q And you also remember that when I dismissed you
15 yesterday that I gave you some instructions that you were
16 not to discuss this case with anyone; that if anyone
17 attempted to contact you that you were to report that to me;
18 and also that you were to refrain from reading, watching or
19 listening to any news accounts concerning this case.

20 Have there been any violations of those instructions?

21 A No, sir.

22 Q Now, Ms. Perkins, during the next few moments I am
23 going to be asking you some questions. Then one of the
24 lawyers for the defendant, as well as one of the solicitors,
25 will ask you some questions.

1 I want you to know in advance that we are not in any
2 way attempting to invade your privacy, but due to the nature
3 of the proceeding that we are about during this term of
4 court it's extremely important that certain questions are
5 asked and answered.

6 Now, I want you to keep in mind that there are no right
7 or wrong answers to these questions. So, please, just
8 answer them openly and honestly and fully.

9 Also, keep in mind that no one is challenging your
10 view. It's simply that we need to know what your views are
11 in certain areas.

12 Also, I would encourage you to pay very close attention
13 to these questions. If you do not understand one, simply
14 ask us to repeat it or just say I don't understand, because
15 over the next few minutes we are probably going to be asking
16 you some questions that you may have never even considered
17 before coming to court this week.

18 I would also tell you that the lawyers have copies of
19 your juror information sheet, as well as I, because that was
20 important to us in preparing for today.

21 Now, among the things that we are going to be talking
22 about over the next few minutes, Ms. Perkins, will include
23 references to the word penalty. And the mere fact that I
24 even mention that word or we talk about that word in no way
25 indicates anything about the defendant, Mr. Moore. He is

1 presumed in the law to be innocent. Do you understand that?

2 A Yes, sir.

3 Q Let's suppose for a few moments you were a juror in a
4 criminal case.

5 Could you listen to the law, accept and apply that law
6 as I would instruct you as the judge of this Court even
7 though you may disagree with that law or think that it
8 should be some other way?

9 A I believe so. I've never been put in this position to
10 give an absolute answer.

11 Q Well, let me phrase it to you this way.

12 If I instruct you that the law of this state was a
13 certain way would you follow the law as I instructed you
14 even if you disagreed with that law?

15 A Yes, sir.

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

19 A Yes, sir.

20 Q Now, Ms. Perkins, in a criminal case the state has the
21 burden of proving guilt. And the burden of proof for the
22 state is proof beyond a reasonable doubt.

23 A defendant has absolutely no burden, no responsibility
24 to prove himself innocent. Do you understand that?

25 A Yes, sir.

1 Q Could you, depending on the facts and the evidence and
2 the law as I would instruct you in a particular case, find a
3 defendant either guilty or not guilty?

4 A Yes, sir.

5 Q Now, as you know from being here yesterday with the
6 entire jury panel, this is a case in which the State of
7 South Carolina is seeking the death penalty.

8 Now, death penalty cases are what we call bifurcated
9 proceedings, meaning that they are simply split into two
10 parts. The first part is referred to as the guilt phase;
11 the second part the sentencing phase.

12 If you were a juror in such a case and if the jury had
13 found the defendant not guilty of murder in the guilt phase,
14 do you understand that the trial would end at that point in
15 time?

16 A Yes, sir.

17 Q However, if you were a juror in such a case and if the
18 jury had found the defendant guilty of murder, do you
19 understand that you would then move into the sentencing
20 phase or the second phase of that trial?

21 A Yes, sir.

22 Q During that phase of the trial there would be evidence
23 presented to the jury in the form of aggravating
24 circumstances, as well as mitigating circumstances.

25 Now, aggravating circumstances are facts, incidents,

1 details or occurrences which the General Assembly of the
2 State of South Carolina has declared by law would make
3 worse, that is to aggravate, the offense of murder.

4 In other words, when an aggravating circumstance
5 accompanies murder, it increases the enormity or adds to the
6 injury of the crime of murder. It's a murder that's
7 committed in the commission of or in connection with another
8 crime or incident.

9 Do you understand what I am speaking of when I refer to
10 an aggravating circumstance?

11 A Yes, sir.

12 Q Now, mitigating circumstances, on the other hand, are
13 also incidents, details or occurrences our general assembly
14 has, once again, declared by law reduces the severity of the
15 offense of murder and may be considered by the jury as
16 extenuating or as reducing the degree of moral culpability
17 or responsibility for the crime of murder.

18 Do you understand what I am speaking of when I talk
19 about mitigating circumstances?

20 A Yes, sir.

21 Q Now, Ms. Perkins, let's assume for a few moments that
22 you were a juror in that situation, and I am talking about
23 the second phase, the sentencing phase, of a death penalty
24 trial. Could you, depending upon the particular facts and
25 circumstances of that case, including the consideration of

1 all aggravating and mitigating circumstances and the law
2 that I would instruct you that applied to that case, return
3 a sentence of life in prison?

4 A Yes, sir.

5 Q If you were a juror in that situation could you,
6 depending upon the particular facts and circumstances of
7 that case, once again, including the consideration of all
8 aggravating and mitigating circumstances, as well as the law
9 that I would instruct you that applied to that case, return
10 a sentence of death?

11 A I don't know; I don't know.

12 Q Do you understand that a jury in a death penalty case
13 has two sentencing options that are always available and the
14 jury must be capable of imposing either of them, that being
15 death, which in this state is by electrocution or lethal
16 injection, or life imprisonment? Do you understand that?

17 A Yes, sir.

18 Q Are you telling me that there are some instances that
19 you would be unable to impose the death penalty or --

20 A I don't know, I don't know, I just, I don't know. I
21 never thought about it; ever in my life have I thought about
22 it.

23 Of course you read the news. You know, whether you
24 believe in it or not believe in it, imposing it on someone,
25 gosh, I mean, you know, having never been put to that kind

1 of test to know what emotionally you would feel --

2 Q That's what I am putting you to now.

3 A I know. Yes, sir. I could.

4 Q Now, if you were chosen for service on this jury you
5 would be housed in a motel for the duration of the trial. I
6 don't know exactly how long that would be. I've got an idea
7 that it would be no longer than seven to ten days. It could
8 be less than that.

9 Except for the personal inconvenience that you would
10 suffer, would this pose a serious danger to the health or
11 well-being of yourself or of those dependent on you?

12 A No, sir.

13 Q Thank you, ma'am. I am going to let you answer any
14 questions Mr. Morin might have at this time.

15 EXAMINATION BY MR. MORIN

16 Q Ms. Perkins, I need to ask you some questions. I will
17 try not to make it any more uncomfortable than you already
18 are.

19 You understand, and I may be going over some of the
20 things the judge said. You understand what would happen is
21 if in this case we got to a penalty phase where the jury was
22 deciding whether or not -- what, to recommend life or death,
23 that what would happen is the state would present
24 aggravating circumstances, the reasons that they feel that
25 this case warrants the death penalty. Do you understand

1 that?

2 A I'm not sure. Are you saying that would happen during
3 the sentencing phase?

4 Q Yes.

5 A Yes, sir.

6 Q It would be separate from the first phase, that's
7 right. And they would present that evidence. Okay.

8 A Yes, sir.

9 Q And they would have to convince you that some of these
10 aggravating circumstances the judge told you about existed.

11 Okay. And I just want to make sure. If you were
12 convinced that those aggravating circumstances existed could
13 you give the death penalty?

14 I mean, because that's how it would flow. See, they
15 would have to convince you of it before you get to the --
16 they would have to prove beyond a reasonable doubt before
17 you would get to deciding whether or not it was life or
18 death. And if they convinced you beyond a reasonable doubt
19 that those facts existed, is there a situation where you
20 could give the death penalty?

21 A Yes, sir.

22 Q Okay. Now, you understand that you wouldn't be
23 required to. There is no requirement that you find it. If
24 they convinced you beyond a reasonable doubt, you wouldn't
25 have to. That would still be up to you. Do you understand

1 that?

2 A I don't think I do. I thought that I would make the
3 decision based on the law on whether they proved this.

4 Q Right. They would have to prove the aggravating
5 circumstances existed before you would -- I mean, if they
6 didn't prove it, it wouldn't be a death penalty case. Okay.

7 A Okay.

8 Q If they did prove it, you still wouldn't be required by
9 law to give the death penalty. Then it would become your
10 choice.

11 A Okay.

12 Q Okay. All right. On the questionnaire you have listed
13 that you were a victim of a burglary at some time.

14 A Yes, sir.

15 Q Could you tell me about that?

16 A Well, once my house was broken into, and all of your
17 stuff is gone. Once I was assaulted and robbed. Another
18 time the outside of my house was robbed, and they took the
19 stuff out of the garage, so.

20 Q Okay. With regard to the time you say your house was
21 robbed and your stuff was taken, about how long ago was
22 that?

23 A 1996, I believe.

24 Q Okay. Do you know if anybody was ever charged with
25 committing that crime?

Jury qualification -- Number 213

1 A Yes, sir.

2 Q Okay. And do you know what happened as a result?

3 A Do I know what his sentence was?

4 Q Well, do you know if he came to court?

5 A Yes, sir.

6 Q Okay. You don't -- well, that was going to be my first
7 question, and then if you know the sentence. Did you ever
8 find out what happened or do you just know he came to court
9 and something happened?

10 A I don't. I think at one time I knew what the sentence
11 was, but I do not know now. I knew this person.

12 Q So it was someone that you knew?

13 A My son knew, yes.

14 Q Okay. And the robbery -- the robbery and assault that
15 you mentioned, when was that?

16 A 1997, I believe.

17 Q Okay. Was anybody arrested for that?

18 A No.

19 Q Okay. How did these crimes, how did these crimes make
20 you feel?

21 A Violated.

22 Q Do you think these would have an effect upon -- excuse
23 me. I don't want to ask that question.

24 Does the fact that these crimes affected you, does it
25 affect how you feel today about having to come in here and

1 answer these difficult questions?

2 A No, sir.

3 Q Okay. One other thing. Before you came in here there
4 was a little sheet that they had you read or was given to
5 you to have you read about three different types of jurors.
6 And if you recall -- if you don't I can show you, but do you
7 know --

8 A I recall.

9 Q Okay. Do you recall which number you fell into or you
10 feel like you fall into?

11 A Yes.

12 Q Okay. Could you tell me?

13 A I believe number three.

14 Q Okay. That's all the questions I have.

15 THE COURT: Mr. Barnette.

16 MR. BARNETTE: Thank you, Your Honor. May it please
17 the Court.

18 EXAMINATION BY MR. BARNETTE

19 Q Ms. Perkins, my name is Barry Barnette. As the judge
20 introduced us yesterday, this is Solicitor Trey Gowdy and
21 Deputy Solicitor Donnie Willingham sitting at the table with
22 us.

23 I need to ask you some questions. Like I said, they
24 might be tough questions. It's nothing personal. It is
25 just questions I need to ask you to find out exactly how you

1 feel about something.

2 Do you realize that you have discretion when it comes
3 to the sentencing phase? What I mean by that is it will be
4 your decision, you and your fellow jurors to decide if the
5 sentence will be death or life in that situation. Do you
6 understand that?

7 A Yes.

8 Q And I noticed when you were answering Judge Clary's
9 questions that it was hard for you. I mean, obviously, you
10 put a lot of motion into it and thinking about it concerning
11 the question about the death penalty and if you could give
12 that sentence.

13 Could you tell us, and I know it's a tough decision,
14 why it would be a tough decision or why you feel that way or
15 the emotion that you have shown at the time of answering
16 that question?

17 A Well, I mean, you're asking me could I participate in
18 the death of another human being.

19 Q How do you feel about that personally?

20 A I mean, I feel like that would be one of the strongest
21 decisions you will ever make in your life.

22 Q Do you feel like it is a decision that you could make?

23 A Yes.

24 Q Do you realize that as a juror that yourself and the
25 other 11 members of the jury will weigh both aggravating and

1 mitigating circumstances in the sentencing phase? And if
2 you decide there is aggravating circumstances and you decide
3 that a death sentence is warranted that you would have to
4 sign your name to a sentencing sheet like the judge does in
5 a regular case. He usually gives the sentence, and he signs
6 his name to it. That all 12 of you would be doing basically
7 what the judge does during the case, that you will be the
8 sentencing mechanism or whatever when you sign that. Could
9 you sign that form?

10 A If I made that decision, yes, sir.

11 Q Could you be the first person to sign that form?

12 A Gosh.

13 Q I am sorry I asked that question.

14 A Could you be first, if I believed that that was the
15 right, you know, being first or last would make no
16 difference to me if that is the question.

17 Q And could you come into open court and tell the Court
18 and tell the folks in the courtroom what your decision was,
19 what your verdict was? If it was death, could you do that?

20 A Yes.

21 Q I noticed on your questionnaire that you -- that you
22 didn't list any religious affiliation or anything like that.
23 Do you have a religious affiliation or --

24 A I was brought up Baptist.

25 Q When you were being brought up or anything did you have

1 any beliefs about the death penalty? Or was there anything
2 talked to you about the death penalty or anything like that?

3 A No, sir.

4 Q Is this the first time you ever really gave any thought
5 to the death penalty, this situation, being involved in
6 this?

7 A Well, I mean to this degree, yes, sir.

8 Q Did -- have you had any influence before coming here to
9 court this week about the death penalty or any other -- I
10 know you said it is the first time to this degree.

11 A I am sorry? Ask the question again, now.

12 Q You said to this degree, but have you had discussions
13 or been involved in anything involving the death penalty
14 before this week?

15 A In college for sure. We were on the debate team, death
16 penalty or no, for one. Of course in trials in that
17 throughout your life you hear someone is on trial and could
18 receive the death penalty, and, yeah, you talk about that,
19 yes; do you believe that they should or they shouldn't, yes,
20 sir.

21 Q So you was on the debate team. That is obviously one
22 of the topics y'all discussed on the debate team, is that
23 correct?

24 A It wasn't really a debate team. It was just a class,
25 and that was just a real -- a real sensitive subject that

1 the professor wanted to open up discussions, and that did
2 it.

3 Q I understand. And did that have any affect on your
4 personal beliefs on the death penalty?

5 A No, sir.

6 Q Do you have a personal view on the death penalty?

7 A Do I have one?

8 Q Yes, ma'am.

9 A Yes, sir.

10 Q And what is it?

11 A That there are certain crimes committed that someone
12 should receive the death penalty; otherwise, they should
13 not.

14 MR. BARNETTE: One moment, Your Honor, please.

15 THE COURT: Yes, sir.

16 (Pause.)

17 Q One more question, Ms. Perkins.

18 You are saying in certain crimes or certain situations
19 you feel like the death penalty was warranted. Could you
20 take what the judge gives you as an instruction and follow
21 the instructions to the situation to the facts that was
22 presented and apply that law to the, I mean, the facts and
23 apply the law to the facts as given to you by Your Honor?

24 A If I understand your question, the judge is going to
25 tell me what the law is in the State of South Carolina. And

1 could I follow his instructions on giving that sentence,
2 yes, sir.

3 Q Thank you. Thank you very much, ma'am.

4 THE COURT: Anything else, Mr. Morin?

5 MR. MORIN: No, sir, no further questions.

6 THE COURT: Anything else from the state?

7 MR. BARNETTE: Nothing further from the state, Your
8 Honor.

9 THE COURT: Ms. Perkins, I want to thank you very much
10 for your participation here yesterday, as well as this day.

11 As you have very aptly stated, these are not things
12 that individuals consider on a daily basis and may be often
13 the only time during their lives that they do so. And I
14 thank you for your candor in your responses.

15 I find that you are qualified to serve as a potential
16 juror in this case. And with that qualification comes some
17 more instructions. As if you haven't had enough already,
18 I'm going to give you some more of what you've already had.

19 As a matter of fact, it's going to be everything about
20 what you've already had.

21 As I send you away from the courthouse, I remind you
22 that you are not to discuss this case with your fellow
23 jurors, family, friends or anyone else that you might come
24 in contact with.

25 Also, you are not to read, watch or listen to any news

1 accounts concerning this case.

2 And if anyone should attempt to contact you, I want you
3 to gather as much information as you possibly can about that
4 person or persons and report that to me immediately, because
5 that is a very serious matter, and I would deal with the
6 person or persons that attempted to contact you accordingly.

7 Now, when you reported yesterday, I think the clerk of
8 court or the clerk's staff probably gave you some
9 information. And in that information there was a telephone
10 number for a line that has a recording that's connected to
11 the clerk's office.

12 The clerk is going to leave a message on that recording
13 tomorrow night, that's Wednesday night, that will call after
14 six o'clock.

15 When you get that recording there will be one of
16 possibly two messages on that answering machine. The first
17 one will probably say something along the lines of jurors in
18 the case of the State vs. Moore are to call back on Thursday
19 at a particular time; or the alternative message, the second
20 message, may be all jurors in the case of the State vs.
21 Moore are to report to the Spartanburg County Courthouse at
22 a particular time on Thursday with their bags packed. And
23 you should leave those bags in your car.

24 When you are instructed to report back to the
25 courthouse, I want you to leave your belongings in the car.

1 Report as directed.

2 If you are selected as a juror in the case, then the
3 jury custodians will take you and your colleagues on the
4 jury and all of your belongings to the location that you
5 would make your home away from home during the course of the
6 trial.

7 If you are not selected, we would thank you very much
8 for your having been here, participating in this process and
9 send you about your regular daily activities after that.

10 Once again, please remember to call back tomorrow night
11 after six o'clock to receive the instructions that will be
12 left for you on the recording.

13 In the meantime, you need to be packing up, because if
14 you are selected to remain with us, you are going to remain
15 with us throughout the duration of the trial. We will make
16 it move along as quickly as possible. But you will be with
17 us, and you will be well cared for.

18 I look forward to seeing you sometime later this week,
19 hopefully on Thursday.

20 THE JUROR: Maybe not, right?

21 THE COURT: No. You are going to be coming back for
22 sure. So you need to pack up and be back here. I will see
23 you sometime later on this week. Whether or not you remain
24 with us will be determined as to whether or not you are
25 placed on that jury.

Jury qualification -- Number 213

1 But have a nice time packing, and I will see you in a
2 couple of days.

3 THE JUROR: Thank you, sir.

4 (Whereupon, the juror was excused from the courtroom.)

5 THE COURT: Let the record reflect that Juror 213,
6 Debra Pope Perkins, is qualified to serve as a potential
7 juror in this case pursuant to Section 16-3-20 of the code.

8 Randy S. McClure, Number 176.

9 JUROR NUMBER 176, RANDY S.
10 MCCLURE, having been first duly sworn, was voir
11 dired as follows:

12 EXAMINATION BY THE COURT

13 Q Good afternoon. You are Randy S. McClure, is that
14 correct?

15 A Yes, sir.

16 Q And Mr. McClure, you understand that you have been
17 placed under oath for these proceedings.

18 A Yes, sir.

19 Q And you recall yesterday when I dismissed you and your
20 colleagues that I gave you certain cautionary instructions
21 that you were not to discuss this case with anyone; that if
22 anyone attempted to contact you that you were to report that
23 to me; and also that you were not to read, watch or listen
24 to any news accounts concerning this case.

25 Have there been any violations of my instructions?

1 A No, sir.

2 Q Now, Mr. McClure, over the next few minutes I am going
3 to be asking you some questions; and then one of the defense
4 lawyers, and after that one of the solicitors will also ask
5 you some questions.

6 Please understand that we are not in any way attempting
7 to invade your privacy, but due to the proceedings that we
8 are about this week it is extremely necessary that certain
9 questions are asked and answered.

10 Please understand that there are no right or wrong
11 answers to these questions. So, if you would, just answer
12 them openly and honestly and fully. Also, keep in mind that
13 no one is challenging your view. We simply need to know
14 what your views are in certain areas.

15 Also, I would tell you to listen very carefully to
16 these questions. If you need to have one repeated or
17 clarified, if you don't understand it, simply let me or one
18 of the lawyers know, because over the next few minutes we
19 are probably going to ask you some questions that you have
20 never even considered prior to coming to court this week.

21 I would also tell you that the lawyers and I have
22 copies of your juror information sheet, because that was
23 extremely important to us in preparing for today's session.

24 Now, over the next few minutes, Mr. McClure, we are
25 going to be talking about a number of things, and we are

1 going to use and refer to the word penalty. But the mere
2 fact that we even mention that word does not in any way
3 indicate anything about the defendant, Mr. Moore. He is
4 presumed in the law to be innocent. Do you understand that?

5 A Yes, sir.

6 Q Now, if you were a juror in a criminal case could you
7 listen to the law, accept and apply that law as I would
8 instruct you as the judge of this Court even though you may
9 disagree with that law or think that it ought to be some
10 other way?

11 A Yes, sir.

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

15 A Yes, sir.

16 Q Now, in a criminal case, Mr. McClure, the state has the
17 burden of proving guilt. The burden of proof that the state
18 must meet is proof beyond a reasonable doubt.

19 A defendant has absolutely no burden, no responsibility
20 to prove his innocence. Do you understand that?

21 A Yes, sir.

22 Q Could you, depending upon the facts and evidence and
23 the law as I would instruct you during a particular case,
24 find a defendant either guilty or not guilty?

25 A Yes, sir.

1 Q Now, as you know from being here yesterday with all of
2 your colleagues, this is a case in which the State of South
3 Carolina is seeking the death penalty. And, as such, we are
4 going to be engaged in what we refer to as a bifurcated
5 proceeding.

6 Now, that's kind of a ten-dollar word that simply means
7 it's divided into two parts. The first part of the trial in
8 a death penalty case is referred to as the guilt phase; the
9 second part is the sentencing phase.

10 Now, if you were a juror in such a case and if the jury
11 found the defendant not guilty of murder in the first phase,
12 the guilt phase, do you understand that the trial would end
13 at that point in time?

14 A Yes, sir.

15 Q However, if you were a juror in such a case and if the
16 jury had found the defendant guilty of murder, do you
17 further understand that you would then move into the second
18 or sentencing phase of the trial?

19 A Yes, sir.

20 Q Mr. McClure, in that phase of the trial evidence would
21 be presented in the form of aggravating and mitigating
22 circumstances.

23 Now, aggravating circumstances are facts, incidents,
24 details or occurrences which our state legislature, the
25 General Assembly of South Carolina, has declared by law

1 would make worse, that is to aggravate, the crime of murder.

2 In other words, the aggravating circumstance when it's
3 present and accompanies a murder increases the enormity or
4 adds to the injury of the crime of murder. It's a murder
5 that's committed in the commission of or in connection with
6 another crime or incident.

7 Do you understand what I am speaking of when I talk
8 about an aggravating circumstance?

9 A Yes, sir.

10 Q Now, mitigating circumstances, on the other hand, are
11 also incidents, details or occurrences which our general
12 assembly has, once again, declared by law reduces the
13 severity of the crime of murder and may be considered by the
14 jury as what we would call extenuating or reducing the
15 degree of responsibility for the crime of murder.

16 Do you understand what I am speaking of when I mention
17 a mitigating circumstance?

18 A Yes, sir.

19 Q If you were a juror in that situation, the sentencing
20 phase of a death penalty case, could you, depending upon the
21 particular facts and circumstances of that case, including
22 the consideration of any and all aggravating and mitigating
23 circumstances and the law that I would instruct you that
24 applied to that case, return a sentence of life in prison?

25 A Yes, sir.

1 Q If you were a juror in that situation could you,
2 depending upon the particular facts and circumstances of
3 that case, once again, including the consideration of all
4 aggravating and mitigating circumstances and the law that I
5 would instruct you that applied to that case, return a
6 sentence of death?

7 A No, sir.

8 Q You could not under any circumstances?

9 A I would just have to say no. I'm sorry.

10 Q All right, sir. Mr. Morin and Mr. Kelly, any
11 questions?

12 EXAMINATION BY MR. MORIN

13 Q I want to ask you a few questions, Mr. McClure, and
14 make sure I understand and that we are all straight.

15 You understand that because this is a death penalty
16 case that if Mr. Moore was found guilty, then there would be
17 a death penalty phase, right?

18 A Right.

19 Q Okay. And you understand that during that second phase
20 the state would present evidence, the aggravating
21 circumstances the judge told you about. They would put that
22 up there, and you would have to find beyond a reasonable
23 doubt that they had shown these aggravating circumstances
24 before you would decide whether or not it was a death
25 sentence. Do you understand that?

Jury qualification -- Number 176

1 A Yes.

2 Q Okay. Now, if the state proves -- if you were on this
3 jury and the state proved to you in your mind beyond a
4 reasonable doubt that aggravating circumstances did exist,
5 as the judge stated, that make this case worse than
6 something else, okay, and if they had proved to you beyond a
7 reasonable doubt that they existed, would you then be able
8 to give a death sentence?

9 A Like I say, possibility.

10 Q Okay. Well, would you tell me about that?

11 A Maybe what kind of murder it was --

12 Q Uh-uh.

13 A -- and the circumstances of that murder.

14 Q Okay. So are you saying that you would have to hear
15 all of the facts and circumstances before you could decide?

16 A Yes.

17 Q Are you telling me that there are facts and
18 circumstances that if it were shown to you, aggravating
19 circumstances, that you could give a death sentence if it
20 was proved to you?

21 A Depending on how the victim was killed.

22 Q Well, I understand, and that may be an aggravating
23 circumstance. But you would say that you would have to look
24 at it and then you would make a decision.

25 A Yes.

1 Q And if you were convinced, as you say, that the victim
2 was killed or some other aggravating circumstance existed,
3 you would then be able to give a death sentence?

4 A Maybe.

5 THE COURT: I'm sorry. I couldn't hear you.

6 A Maybe.

7 Q Okay. Well, it is sort of a hard thing to all of a
8 sudden be talking about. Have you ever thought about the
9 death penalty before?

10 A Not in reality, no.

11 Q And it got to be real when the judge said it yesterday.
12 And have you thought about it since then?

13 A Some.

14 Q Well, I don't want to go back too far, and I don't want
15 to -- I am not really trying to put you on the spot, but
16 there is a question that we really need to know the answer
17 of.

18 That is so far you said you would have to hear the
19 circumstances, and it would depend on what kind of case it
20 was, and you would listen to the evidence, and then you
21 might.

22 But the question that we really need to know is do you
23 think you can do it or, I mean, if the evidence were shown
24 to you.

25 A If the evidence was shown, I believe I could probably.

1 MR. MORIN: Okay. That's all the questions I have.

2 THE COURT: Mr. Barnette.

3 MR. BARNETTE: Thank you.

4 EXAMINATION BY MR. BARNETTE

5 Q Mr. McClure, your first response said you could not
6 give the death penalty if I understood it.

7 A Yeah.

8 Q Why did you say that?

9 A It was just --

10 Q There is no right or wrong answer, and I apologize for
11 asking you these type of questions, but it is something that
12 we need to know.

13 A Just first thought, you know, taking another person's
14 life. But once you see the circumstances or how the victim
15 was killed, you just have to think about it.

16 Q What's your personal views on the death penalty?

17 A If it's cold-blooded, I believe in it; only
18 cold-blooded.

19 Q If you realize that in listening to the evidence in the
20 sentencing phase and everything that the end of the penalty
21 phase if you decide to give death in that situation, that
22 all 12 jurors including yourself would have to sign a
23 sentencing sheet stating this person was sentenced to death,
24 it would be up to you-all. You-all obviously are not
25 required by law to give death. You are not required to give

1 life. You would have to make that decision if you are on
2 the jury.

3 Could you sign that sheet of paper sentencing somebody
4 to death?

5 A I don't know.

6 Q So you are not sure that you could do it?

7 A I am not sure.

8 Q Is that the personal feeling or a gut feeling of your
9 own?

10 A My gut and personal feeling.

11 Q Are you against it? Is that your mind-set?

12 A I am not totally against the death penalty. I hate to
13 see somebody that is just killed harmlessly in cold blood.

14 Q But you feel like that you don't know if you could sign
15 that sentencing sheet.

16 A True.

17 Q At the end --

18 THE COURT: Excuse me. I need to hear your answer. I
19 can't hear you.

20 MR. BARNETTE: I am sorry, Your Honor.

21 Q And at the end of the -- if you came out and decided a
22 death verdict, could you come out in open court and tell the
23 Court, as well as the parties involved, that your sentence
24 was death in that case?

25 A I don't think so.

1 MR. BARNETTE: Excuse me one second, Your Honor.

2 (Pause.)

3 Q Thank you, sir, for answering my questions.

4 MR. BARNETTE: Thank you, Your Honor.

5 THE COURT: Anything else from the defense?

6 MR. MORIN: Yes, sir.

7 EXAMINATION BY MR. MORIN

8 Q Mr. McClure, as I stated before, I don't mean to put
9 you on the spot, but, on the one hand, you said that you
10 think if it was cold-blooded, that if the circumstances
11 there that made you feel like it was warranted, you could do
12 it.

13 A Yes.

14 Q You have also said that you are not against the death
15 penalty. You think it is warranted in some circumstances.

16 A Uh-huh.

17 Q And that if the evidence was shown to you that it was
18 warranted, you could vote for it.

19 A Uh-huh.

20 Q Okay. Now, up to that point I thought I understood.
21 But then when you say you could vote for it, what do you
22 mean? And the reason I ask is because by voting for it, as
23 the solicitor pointed out, you would have to write your name
24 on the form saying that you think the death penalty should
25 go. And may be required to come out here and say this is my

1 verdict, this is what I think should happen in this case,
2 being death. Okay.

3 A Uh-huh.

4 Q So, my question is are you saying you could vote for
5 it, or you couldn't, I mean, because --

6 A I am kind of 50/50.

7 Q Well, I understand. And, well, you know, when you are
8 talking about life and death matters, I am glad that
9 obviously you have given this a lot of thought, you're
10 concerned about it. I'm glad that that's the case. But I
11 think --

12 MR. BARNETTE: Your Honor, I am going to object to
13 this. This has become so convoluted it's basically a
14 situation --

15 THE COURT: Well, how about just waiting a minute? I'm
16 the one that's going to figure out how convoluted it is.

17 Would you ask the question and not give us all of the
18 explanation? Just ask the question, please, sir.

19 MR. MORIN: I am just trying.

20 Q Can you tell us if you could or you couldn't give the
21 death penalty?

22 A No, I couldn't tell you.

23 Q You couldn't tell me?

24 A I couldn't tell you.

25 Q Thank you.

1 THE COURT: Anything else from the state?

2 MR. BARNETTE: Yes, sir. We would like to be heard,
3 Your Honor.

4 THE COURT: Do you have any more questions though?

5 MR. BARNETTE: No, sir, I do not.

6 THE COURT: All right, sir. You may step outside right
7 there, and we will get you back in just a moment.

8 (The following takes place outside the presence of the
9 juror.)

10 THE COURT: All right, Solicitor.

11 MR. BARNETTE: Thank you, Your Honor.

12 Based off the questions and everything, the way they
13 were answered, Your Honor, especially the last question
14 where he didn't think that he could sign the sentencing
15 sheet and he definitely didn't feel like or said he couldn't
16 tell in open court, and based off his views and answers, we
17 feel he is not qualified in this case.

18 THE COURT: Do you want to be heard, Mr. Morin?

19 MR. MORIN: Yes, sir.

20 I was trying to do my best, Judge, but I don't know
21 what his answer is. Sometimes he says he can give it and
22 sometimes he says he can't give it.

23 THE COURT: You know what that says under the case of
24 this state and just about every other state and the United
25 States Supreme Court, is that when you give inconsistent

1 answers, you give vacillating answers, then you're not
2 qualified.

3 And I think that what Mr. McClure has done here is he
4 has demonstrated that. Of course inconsistent answers are
5 in accord with the State vs. Tyner, 273 South Carolina, 646,
6 258, South Carolina, 2d., 559, a 1979 case.

7 And then when you talk about the inability to sign a
8 verdict form, that's the State vs. Skipper, 285 South
9 Carolina 42, 328, S. E. 2d., 58; and then are two other
10 cases, State vs. Holmes, 320, South Carolina, 259, 464,
11 Southeastern 2d., 334, a 1995 case, and State vs. George,
12 323, South Carolina, 496, 476, Southeastern 2d., 903, a 1996
13 case.

14 I think that the answers that have been given here
15 today are such that it will not allow me to qualify him
16 under Section 16-3-20 as he is unable to state that he could
17 impose either sentence, that being life or death.

18 I don't think there is any question about life, but the
19 death is. And that's required under our statute and our
20 case law.

21 Let's bring him back in, please.

22 (Whereupon, the juror was returned to the courtroom.)

23 THE COURT: Mr. McClure, I want to thank you very much,
24 sir, for being here yesterday, as well as this day.

25 This is going to conclude your responsibilities in this

1 case. Your services will be no longer needed here at the
2 courthouse.

3 But on behalf of the State of South Carolina, and most
4 particularly Spartanburg County, I thank you very much for
5 your having been here and participated in this process.

6 You are excused.

7 THE JUROR: You are welcome.

8 (Whereupon, the juror was excused from the courtroom.)

9 THE COURT: Stanley E. Rookard, Number 235.

10 JUROR NUMBER 235, STANLEY
11 E. ROOKARD, having been first duly sworn, was voir
12 dired as follows:

13 EXAMINATION BY THE COURT

14 Q Good afternoon. You are Stanley E. Rookard, is that
15 correct?

16 A That's correct.

17 Q Mr. Rookard, do you understand that you have been
18 placed under oath for these proceedings here today?

19 A Yes, I do.

20 Q And you also remember that when I dismissed you
21 yesterday afternoon with your fellow jurors that I gave you
22 instructions that you were not to discuss this case with
23 anyone; that if anyone attempted to contact you concerning
24 this case that you were to report that to me; and also that
25 you were not to read, watch or listen to any news accounts

1 about this case.

2 Have any of my instructions been violated by you?

3 A No, sir.

4 Q Now, Mr. Rookard, over the next few minutes I'm going
5 to be asking you some questions, and thereafter one of the
6 defense lawyers and one of the solicitors will ask you some
7 questions.

8 Please understand that we are not in any way attempting
9 to invade your privacy, but because of the proceedings that
10 we are about here this week, it's extremely important that
11 certain questions are asked and answered.

12 Keep in mind that there are absolutely no right or
13 wrong answers to these questions. So, if you would, just
14 answer them openly and honestly and fully.

15 Keep in mind that no one is challenging your view. We
16 simply need to know what your views are in particular areas.

17 Also, I am going to ask that you pay very close
18 attention to the questions that are presented to you. If
19 you do not understand a question, if you need to have one
20 repeated, simply let me or the lawyers know, because over
21 the next few minutes we are probably going to be asking you
22 some questions that you maybe have never even thought about
23 before.

24 I would also tell that you the lawyers have copies of
25 your juror information sheet, as well as I have a copy of

1 that, because that was important to us in preparing for
2 today's session.

3 Now, among the things that we are going to be talking
4 about will include references to the word penalty, but the
5 mere fact that we even mention that word or talk about the
6 word penalty does not indicate anything about the defendant,
7 Mr. Moore. He is presumed in the law to be innocent. Do
8 you understand that?

9 A I understand that.

10 Q Now, let's assume for a few moments, Mr. Rookard, that
11 you were a juror in a criminal case.

12 Could you listen to the law, accept and apply that law
13 as I would instruct you as the judge of this Court even
14 though you may disagree with that law or think that it
15 should be some other way?

16 A I could listen to your opinion.

17 Q You could follow the law as I instruct you?

18 A Yes, I can.

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

22 A Repeat that one more time, Judge.

23 Q Could you decide this case based solely on the evidence
24 presented here in this courtroom and disregard anything that
25 you may have heard, read or seen about the case?

1 A I wouldn't agree on anything that was said in the
2 courtroom, nor what I have read.

3 Q How about explaining that to me a little bit more?

4 A You are saying that I would have to agree on the case
5 that was brought to you in this courtroom.

6 Q Yes, sir, the testimony and evidence that you would
7 hear in here.

8 A Right. Okay. I wouldn't believe that no more than I
9 would believe what I seen nor heard.

10 Q So you are telling me that if witnesses came in here
11 and testified you wouldn't believe them?

12 A No.

13 Q So you wouldn't able to listen to the testimony and
14 evidence and render a verdict based upon that?

15 A I just, I just couldn't believe. If I knew deep down
16 inside of my heart, Judge, that this man was guilty or
17 innocent, I wouldn't believe it, because only the Lord
18 knows.

19 Q Well, I understand that. And I follow the Lord myself,
20 but we have also been given a system of government here.
21 But you are telling me that you would not be able to
22 participate in the process?

23 A Yes, sir, I would be able to participate, Judge. But
24 believing something, I believe half the things I hear and
25 some of the things I see, Judge.

1 Q Well, you are telling me that you would not be able to
2 listen to the testimony and evidence?

3 A Yes, I would be able to listen.

4 Q All right. And from that testimony and evidence would
5 you be able to apply that to the law as I would instruct
6 you?

7 A Yes, I would be able to apply that to the law.

8 Q And when you listen to the evidence would if you have
9 read -- have you read, seen or heard anything about this
10 case outside of this courtroom?

11 A No, sir, I haven't.

12 Q So you know nothing about it?

13 A No, not one thing about it.

14 Q And if you were a juror in this case do you understand
15 that witnesses would come and sit in that very chair that
16 you are in and testify in front of the jury that would be
17 seated over there?

18 A Yes, sir.

19 Q And would you be able to listen to those witnesses?

20 A Yes, sir, I would.

21 Q And would you consider their testimony?

22 A Some of it, some of their testimony.

23 Q But how would you determine whether or not you're going
24 to believe or disbelieve their testimony?

25 A My own heart and feelings.

1 Q Do you understand that that's the process that we have
2 and that when I instruct the jury that I tell them that they
3 can believe all of a witness' testimony, some of a witness'
4 testimony or none of a witness' testimony?

5 A Yes, sir.

6 Q Do you understand that that's the process we are
7 talking about?

8 A Yes, sir, I understand that.

9 Q So you are telling me that you would be able to listen
10 to the testimony and the evidence presented --

11 A Yes, sir, I am telling you that.

12 Q -- apply the law as I would instruct you --

13 A Yes, sir.

14 Q -- and render a verdict based upon that --

15 A Yes, sir.

16 Q -- that would be fair and impartial to the state and
17 the defendant.

18 A Yes, sir.

19 Q Now, in a criminal case, do you understand that the
20 state has the burden of proof? That means that they must
21 prove the guilt of the defendant. And the burden of proof
22 that they must meet is proof beyond a reasonable doubt.

23 A defendant has no burden, no responsibility to prove
24 his innocence. Do you understand that?

25 A I understand that.

1 Q Now, could you, depending on the facts and evidence and
2 the law as I would instruct you in a particular case, find a
3 defendant either guilty or not guilty?

4 A Yes, sir, I could do that.

5 Q Now, do you understand from being here yesterday,
6 Mr. Rookard, that the case that we are going to try over
7 this next week or so is one in which the state is seeking
8 the death penalty?

9 And death penalty cases are what we call bifurcated
10 trials or bifurcated proceedings. That's kind of a fancy
11 word that simply means that it's divided into two parts.

12 The first part of the trial is called the guilt phase;
13 the second part, if necessary, is called the sentencing
14 phase.

15 Now, if you were a juror in such a case and if the jury
16 had found the defendant not guilty of murder, do you
17 understand that the trial would end then?

18 A Yes, sir, I understand that.

19 Q Now, if you were a juror in that case and if the jury
20 had found the defendant guilty of murder, do you understand
21 that you would then move to that second or sentencing phase?

22 A I understand that too.

23 Q Now, Mr. Rookard, during that phase of the trial do you
24 understand that evidence would be presented to the jury in
25 the form of aggravating circumstances and mitigating

1 circumstances -- the sentencing phase or the second phase of
2 the trial?

3 Now, aggravating circumstances are facts, incidents,
4 details or occurrences which our state legislature, the
5 General Assembly of South Carolina, has declared by law
6 would make worse, that is to aggravate, the crime of murder.

7 In other words, the presence of an aggravating
8 circumstance when it goes along with or accompanies the
9 crime of murder makes it worse. It increases the enormity
10 or adds to the injury of that crime of murder. It's a
11 murder that's committed in the commission of or in
12 connection with another crime or incident.

13 Do you understand what I am talking about when I speak
14 of an aggravating circumstance?

15 A Yes, sir.

16 Q Now, mitigating circumstances, on the other hand, are
17 also incidents, details or occurrences which our state
18 legislature, our general assembly, has once again, declared
19 by law reduces the severity of the crime of murder. And the
20 jury may consider mitigating circumstances as extenuating or
21 as reducing the degree of responsibility for the crime of
22 murder.

23 Do you understand what I mean when I talk about a
24 mitigating circumstance?

25 A Yes, sir.

1 Q And, Mr. Rookard, let's assume for a few moments that
2 you were a juror in that situation, the sentencing phase of
3 a death penalty case.

4 Could you, depending upon the particular facts and
5 circumstances of that case, including the consideration of
6 aggravating and mitigating circumstances and the law that I
7 would instruct you that applied to that case, return a
8 sentence of life in prison?

9 A Yes, sir, I could do that.

10 Q If you were a juror in that situation could you,
11 depending upon the particular facts and circumstances of
12 that case, once again, including the consideration of
13 aggravating and mitigating circumstances and the law that I
14 would instruct you that applied to this case, return a
15 sentence of death?

16 A Yes, I could do that.

17 Q Now, Mr. Rookard, do you understand that in a death
18 penalty that there are always two sentencing options that
19 are available to the jury that must be capable of being
20 imposed, that being death or life imprisonment? Do you
21 understand that?

22 A I understand that.

23 Q Now, Mr. Rookard, if you were chosen for service on
24 this jury, you would be sequestered, another one of those
25 fancy words which simply means put up or housed in a motel

1 without being able to go and come when you want to, for the
2 entire duration of the trial. You would be under the
3 custody and control and supervision of jury custodians.

4 I don't know how long this case is going to last. It
5 could be, once we get it started, anywhere from seven to ten
6 days, but it could be less than that.

7 Except for the personal inconvenience that you would
8 suffer, would this pose a serious danger to the health or
9 well-being of yourself or of those dependent upon you?

10 A Yes, it would.

11 Q Could you tell me about that?

12 A Because I am the only one working in my house.

13 Q Okay. And if you don't work, you don't eat.

14 A If you don't work, you don't make no money, Judge.

15 THE COURT: Mr. Kelly, anything from you?

16 MR. KELLY: Yes, sir. May it please the Court.

17 EXAMINATION BY MR. KELLY

18 Q Mr. Rookard, you've worked for Charter Communications,
19 and you have for, I think, 13 years according to your
20 interview sheets. Is that right?

21 A Right.

22 Q Okay. Are you an hourly employee there?

23 A Yes, I am.

24 Q You are not a salaried employee.

25 A No, sir.

1 Q Okay. But you have vacation days built up, do you not?

2 A Yes, I do.

3 Q Okay. How many vacation days do you have?

4 A Probably about 15, three weeks.

5 Q I am sorry, sir?

6 A About three weeks.

7 Q Okay. And so if you were called upon in this case to
8 serve as a juror, you could sign out on vacation, could you
9 not?

10 A I could, but I wouldn't.

11 Q Well, you wouldn't want to use your vacation that way.
12 I understand that.

13 THE COURT: Mr. Kelly, I think that -- I don't think
14 the statute says anything about that, sir. If you want to
15 point it out to me, I will be glad to take notice of it.

16 MR. KELLY: Could we have a discussion outside the
17 presence of the juror?

18 THE COURT: Yes, sir. Step outside, please.

19 (Whereupon, the juror was excused from the courtroom.)

20 THE COURT: All right. Cite the statute to me then.

21 MR. KELLY: Judge, I don't have a statute.

22 What I want to ask the Court or what I want to show the
23 Court was it would certainly be a personal inconvenience for
24 him. I understand that.

25 THE COURT: Have you read 14-7-860 lately?

1 MR. KELLY: Yes, sir. But I wanted to show the Court
2 there was a difference between the two gentlemen that are
3 self-employed where they don't have vacation, have nothing
4 else, and an individual who --

5 THE COURT: Who is going to pay him for his vacation?
6 Are you and Mr. Morin and Ms. Johnson and the jury
7 consultant?

8 MR. KELLY: No, Judge. I just, I wanted to try to show
9 a distinction, that there is a distinction.

10 THE COURT: All right. Well, I want to bring him back
11 in here, and let's get that distinction on the record,
12 because I want to see it myself.

13 Bring him back in.

14 MR. KELLY: Is the Court going to allow me --

15 THE COURT: Yes, sir, I am going to allow you and see
16 where you go with it.

17 (Whereupon, the juror was returned to the courtroom.)

18 THE COURT: All right. You can continue.

19 Thank you.

20 MR. KELLY: Thank you, Judge.

21 Q What I was getting to, Mr. Rookard, is you do have some
22 vacation time built up, is that correct?

23 A That's correct.

24 Q All right, sir. And if you were called upon to serve,
25 and I know you wouldn't want to, but if you claimed that

1 vacation time you would then get a check next week or the
2 week after or whatever, is that right?

3 A Yes, I would.

4 Q Okay. Now, all of us get our views on the death
5 penalty from some source, whether it be from our church,
6 whether it be from a social club, people that we know or
7 something like that.

8 And you have indicated that you are Methodist, is that
9 right?

10 A Yes. I am.

11 Q Have you ever attended the Methodist Charge Conference
12 as a delegate?

13 A No, I haven't.

14 Q Has your wife? You have indicated you have been
15 married for quite a while.

16 A Yes.

17 Q Eight and a half years.

18 A Yes.

19 Q Has she attended?

20 A Yes.

21 Q Okay. As a lay representative to that conference?

22 A Yes.

23 Q In the event that -- well, in the event that you were
24 serving on this jury, your views on the death penalty, are
25 they from your church or from past job experience, past life

1 experience? Can you tell me about that?

2 A Views on death penalty is from my heart.

3 Q From your heart?

4 A Yes.

5 Q All right, sir. You indicated to a question on your
6 questionnaire that you recently, as a matter of fact,
7 witnessed someone being shot. Is that right?

8 A I witnessed a man that was killed.

9 Q Oh, he was killed?

10 A Yeah, he was killed.

11 Q And that was just a few days before you filled out this
12 questionnaire, is that right?

13 A No. This happened about five years ago. I saw him get
14 killed. Actually, he got shot. And he drove to a nearby
15 restaurant, and then he died.

16 Q Okay. Do you know, I mean, why he was shot?

17 A I know a drug deal went bad.

18 Q It was a drug. Okay. All right. It wasn't where he
19 was at home and somebody broke in or anything.

20 A No. He was just at the wrong place at the wrong time.

21 Q Okay. You indicated about some family in law
22 enforcement, I believe, is that right?

23 A I didn't understand your question.

24 Q I am sorry. Do you have family members that are in law
25 enforcement?

- 1 A Yes, I do.
- 2 Q Okay.
- 3 A They are retired now.
- 4 Q Okay. They are?
- 5 A Yes.
- 6 Q Are they retired from Spartanburg?
- 7 A Retired from Spartanburg County.
- 8 Q The sheriff's department?
- 9 A Right.
- 10 Q Okay. And who is that individual?
- 11 A His name is Dan Wynn.
- 12 Q Has he been retired for a long time?
- 13 A I think about ten years.
- 14 Q Do you have any other family in law enforcement?
- 15 A No.
- 16 Q You have never served in law enforcement?
- 17 A No.
- 18 Q Thank you, Mr. Rookard.
- 19 MR. WILLINGHAM: Your Honor, may we approach?
- 20 THE COURT: Yes, sir.
- 21 (Bench conference held off the record.)
- 22 THE COURT: All right, Solicitor.
- 23 MR. WILLINGHAM: Thank you, Your Honor.
- 24 EXAMINATION BY MR. WILLINGHAM
- 25 Q Mr. Rookard, my name is Donnie Willingham. I am a

1 prosecutor here, along with Solicitor Trey Gowdy and Deputy
2 Solicitor Barry Barnette.

3 I appreciate you taking your time to fill out a
4 questionnaire for the Court, because that information is
5 important for us to figure out a little bit about you and
6 about the jury that we will have seated in this case.

7 The judge asked you yesterday, and I will ask you again
8 today. Is there anything you would like to add to this
9 questionnaire or change about it.

10 A No.

11 Q Everything in there is the truth?

12 A Yes.

13 Q You didn't leave anything out and don't need to add
14 anything?

15 A I don't need to add anything.

16 Q Okay. That's fine.

17 You indicated before that you witnessed someone getting
18 shot.

19 A Right.

20 Q And you were present and saw it happen.

21 A Right.

22 Q But you said it was a drug deal gone bad.

23 A Yes.

24 Q Tell me how you were present for that.

25 A Well, I was coming in from work, and I parked my truck.

1 I heard. You know, a group was gathered together.

2 One guy went to his truck. And the group fired shots
3 at that one guy. So the guy got in his truck and drove to a
4 nearby restaurant and died.

5 When I was called back to go to work, I saw the same
6 truck that I had saw earlier. And the truck that I saw was
7 the guy that I saw.

8 So I put myself in the position to tell the law
9 enforcement what had happened, right. After I had involved
10 myself with the law enforcement, I was harassed the whole
11 time, just completely harassed by the law enforcement and
12 the guys that did the killing, but I will never do that
13 again.

14 Q You will never do what again?

15 A I will never, ever involve myself again, because you
16 don't know how it feels to be harassed by law enforcement or
17 either by the people that did the killing.

18 So I had to tell the truth, right. Now that I told the
19 truth, but I was harassed the whole time.

20 Q Who investigated that case? Was that Spartanburg
21 County?

22 A That there was Spartanburg County.

23 Q And the fact that Spartanburg County is involved in
24 this case and the fact that they harassed you before, would
25 that make a difference to you?

1 A I guess it is left up to the person that is handling
2 the case. You have some of them that will harass you, and
3 some of them you can just talk to straight up. You don't
4 have to sugar coat or anything, just straight up.

5 Q And who harassed you?

6 A Spartanburg County and the people that did kill him.

7 Q Do you know the individual from Spartanburg County?

8 A No. I think one of the guys is retired now.

9 Q Now, you indicated when you were first talking to the
10 judge that you only believed --

11 A Half the things I hear and some of the things I see.

12 Q Thank you. I knew I couldn't get it right.

13 Now, do you understand that unless you are in a unique
14 situation just like you were to see someone getting shot
15 that the only way that we can prove anything to you is by
16 bringing witnesses in here?

17 A That's true if you are going to bring a truthful
18 witness.

19 Q Okay. And you understand that the judge will tell you
20 that the law requires the state -- holds us to a burden of
21 proof of beyond a reasonable doubt. Do you understand that?

22 A I understand that.

23 Q Not beyond any doubt. It is beyond a reasonable doubt.
24 Do you understand that?

25 A I understand.

1 Q Can you follow that law and hold us to that standard?

2 A If the judge says so.

3 Q Okay. You wouldn't require us to live by a higher
4 standard, beyond any doubt.

5 A If the judge said so.

6 THE COURT: Well, do you understand that a reasonable
7 doubt is the kind of doubt that would cause a reasonable
8 person to hesitate to act?

9 THE JUROR: I understand that.

10 THE COURT: All right. That's the standard.

11 Q Mr. Rookard, you indicated on your questionnaire that
12 you were arrested back in September.

13 A Right.

14 Q What for?

15 A Domestic. Well, it was assault and battery, but they
16 dropped the charge to public disorderly conduct.

17 Q And did you plead guilty to that charge?

18 A Yes, I did.

19 Q Also, on the questionnaire it says have you or any
20 family member ever been convicted of a crime other than
21 traffic offenses. Do you remember that question being on
22 there?

23 A Yes, sir.

24 Q And you indicated no.

25 A Right.

1 Q Mr. Rookard, all I have got is Stanley E. Rookard, but
2 isn't your middle name Earl?

3 A Yes.

4 Q Isn't it true, Mr. Rookard, that you were arrested in
5 1986 for assault and battery?

6 A That charge was dropped.

7 Q You didn't receive a 30-day confinement for that?

8 A No, I did not.

9 Q And in 1986 at a separate warrant were you not arrested
10 for assault and battery?

11 A That charge was dropped.

12 Q But my question was, Mr. Rookard, were you arrested for
13 it.

14 A I was arrested for it. That charge was dropped.

15 Q And you didn't pay a hundred-dollar fine on that?

16 A I did not.

17 Q And 1990, Mr. Rookard, did you have a fraudulent check
18 conviction here in Spartanburg?

19 A Yes, sir.

20 Q You did?

21 A Yes, sir.

22 Q In fact, you had one, two, five in 1990, isn't that
23 right?

24 A If you say so.

25 Q I am asking you, Mr. Rookard.

1 A I said if you say so, sir.

2 THE COURT: No, sir. He is asking you the question.

3 THE JUROR: Judge, I don't remember that. Okay.

4 That's what he's got.

5 Q 1991, Mr. Rookard, didn't you have six convictions for
6 fraudulent checks?

7 A I wasn't arrested.

8 Q You weren't arrested for it?

9 A No, sir. 1991? I don't remember.

10 Q Okay. In 1992, Mr. Rookard, did you have another four
11 convictions for fraudulent checks?

12 A I don't remember.

13 Q Mr. Rookard, isn't it true you had other arrests that
14 have not led to convictions?

15 A What other arrests are you talking about, sir?

16 Q 1994, assault and battery of a high and aggravated
17 nature.

18 A That charge was dropped.

19 Q Were you ever arrested for that?

20 A I was arrested, but that charge was dropped.

21 Q 1996, malicious injury to personal property and
22 pointing a firearm.

23 A That charge was dropped. I didn't point a firearm.

24 Q But were you arrested for it?

25 A I was arrested for it.

1 Q And April of 2000, criminal domestic violence. Were
2 you arrested for that?

3 A I was arrested for that. That charge was dropped.

4 Q Mr. Rookard, you indicated before, and I am getting
5 back to whether or not you believe the witnesses that
6 testify from that witness stand.

7 A Answer that, say that again.

8 Q I am getting to my point of whether or not you would
9 believe someone who testifies from that witness stand. You
10 said you would know it in your heart.

11 A I would.

12 Q And what do you use to make that determination?

13 A Whatever comes from my heart. See, the problem is
14 just -- just I can talk to you about that later, Judge.

15 THE COURT: No, sir. You are going to talk to me about
16 it right now.

17 THE JUROR: Okay.

18 THE COURT: That's the reason we are here.

19 THE JUROR: Okay.

20 A See, the problem is just what you are doing right,
21 right now, that's what I call just -- it's wrong what you
22 are doing, but you just did, you pulled my whole records,
23 right, and I didn't know that you was going to do that, so
24 that really, I really didn't like that.

25 But if the judge says to answer your question, if the

1 judge says that, yes, I will go along with that.

2 Q Okay. Mr. Rookard, can you tell me why you didn't like
3 me asking those questions of you?

4 A I just, I just didn't like it.

5 Q You are telling me that if you knew I had your criminal
6 history up here you might have answered those questions
7 differently?

8 A No. If I knew that you had my criminal record up there
9 I never would have come in this courthouse.

10 Q Why not?

11 A Because you got my criminal record. If I had your
12 criminal record and you were sitting here, would you like
13 that?

14 THE COURT: No, sir. You are the one answering the
15 questions. He is the one asking, him and me.

16 THE JUROR: All right, sir.

17 MR. WILLINGHAM: Your Honor, I have no other questions.
18 I do have a matter at the appropriate time.

19 THE COURT: I have got a question for you, Mr. Rookard.

20 THE JUROR: Yes, sir.

21 THE COURT: Question number 23 on your survey says,
22 your questionnaire, your signature, Stanley Rookard.

23 THE JUROR: Yes, sir.

24 THE COURT: "Have you or any family member ever been
25 arrested or charged with a crime other than a traffic

1 offense?" You checked yes.

2 Says, "If yes, please explain who was charged and with
3 what crime."

4 You said, "I was involved in a little scuffle on
5 Saturday night and was charged with simple assault."

6 THE JUROR: Right. That was dropped.

7 THE COURT: What happened to all of these other things?

8 THE JUROR: I didn't know you wanted all of that,
9 Judge.

10 THE COURT: It said, "Ever been arrested."

11 THE JUROR: Okay.

12 THE COURT: "Ever been arrested."

13 THE JUROR: But not charged.

14 THE COURT: Or charged. Arrested or charged. That's
15 what I want to know about. Why did you not answer that
16 truthfully?

17 THE JUROR: I did. I didn't know that you wanted my
18 whole entire rap sheet.

19 THE COURT: Well, do you not think that's important to
20 me?

21 THE JUROR: Yes, I do think that's important to you
22 but --

23 THE COURT: That makes me upset when somebody comes in
24 here and places their hand on the Bible and raises their
25 right hand and lies to me and lies to me in a document that

1 has been filed in court; and when I placed that person under
2 oath yesterday and asked them if what they had told me was
3 true.

4 You can step outside there, sir.

5 (Whereupon, the juror was excused from the courtroom.)

6 MR. WILLINGHAM: Your Honor, may it please the Court, I
7 would like to hand up the criminal history.

8 THE COURT: You can give it to the court reporter and
9 she can mark it as a court's exhibit.

10 I will be glad to hear anything from anyone in this
11 regard before I make my ruling.

12 (Rap sheet of Juror Number 235 marked Court's Exhibit
13 Number Three.)

14 MR. WILLINGHAM: Your Honor, clearly based upon his
15 lack of candor and given the opportunity to add to the
16 questionnaire and asked numerous times whether or not
17 everything was truthful and complete about that
18 questionnaire, he gave untruthful answers.

19 I believe as a result of that he is not qualified to
20 serve on the jury.

21 THE COURT: Mr. Kelly, do you want to be heard?

22 MR. KELLY: Nothing, Your Honor.

23 THE COURT: Well, quite frankly, I am going to deal
24 with Mr. Rookard after this case is over. He might be
25 spending his vacation and a few other days somewhere else

1 since he's lied to me, and this under oath.

2 So let's bring him back in here.

3 (Whereupon, the juror was returned to the courtroom.)

4 THE COURT: You can resume your seat there,
5 Mr. Rookard.

6 Mr. Rookard, I find that you are not qualified to serve
7 as a potential juror in this case for several reasons; first
8 of all, the dishonesty that you have exhibited on this form,
9 as well as in your testimony.

10 And, as such, I am going to put you on notice that I am
11 going to hold a contempt hearing after this trial is ended
12 and determine whether or not you will be held in contempt of
13 court for these reasons.

14 If you want to talk to a lawyer, you may certainly do
15 so.

16 You will be notified by the sheriff's department or the
17 clerk of court when this contempt hearing will be held. And
18 I will have you back in here.

19 If you do not appear when I instruct you to appear,
20 then I'll have you picked up. Do you understand that?

21 THE JUROR: No, sir. I don't understand what you are
22 saying.

23 THE COURT: I am telling you that because you did not
24 reveal your criminal record on this form, because the
25 answers you gave here today were incomplete and deceitful,

Jury qualification -- Number 235

1 that in my opinion that there is an action of contempt of
2 court. For contempt of court I could sentence you up to six
3 months in prison without a hearing.

4 I am going to give you a hearing, but it is going to be
5 after this trial is over, because I have got a lot more
6 things to think about than this today.

7 You will be notified when we have that hearing. It
8 will probably be sometime next week.

9 How about giving the clerk your address and telephone
10 number? Let's make sure we have your address and telephone
11 number just right. Where do you live?

12 THE JUROR: 160 Chelsea Street.

13 THE COURT: 160 where?

14 THE JUROR: Cheslea Street.

15 THE COURT: How do you spell that?

16 THE WITNESS: It's C-H-E-L-S-E-A.

17 THE COURT: And that's here in Spartanburg?

18 THE JUROR: That's in Moore, South Carolina.

19 THE COURT: In Moore. And your phone number is
20 574-7883.

21 THE JUROR: Yes, sir.

22 THE COURT: And your work number is 558-0354.

23 THE JUROR: Five. 585-0354.

24 THE COURT: 585.

25 THE JUROR: 0354.

1 THE COURT: And you work for Charter Communications.

2 THE JUROR: Yes, sir.

3 THE COURT: All right. We will be in touch with you.

4 (Whereupon, the juror was excused from the courtroom.)

5 THE COURT: Mr. Rookard is not qualified to serve in
6 this case due to his deceitful answers and the incomplete
7 information and erroneous information that he gave. And a
8 contempt hearing will be held after this case is ended.

9 Karen E. Nave.

10 JUROR NUMBER 194, KAREN E.

11 NAVE, having been first duly sworn, was voir dired
12 as follows:

13 EXAMINATION BY THE COURT

14 Q Good afternoon. You are Karen E. Nave, is that
15 correct?

16 A Yes, sir.

17 Q Now, Ms. Nave, do you understand that you are under
18 oath here today?

19 A Yes, sir.

20 Q And you also understand that yesterday when I dismissed
21 you and your fellow jurors that I gave you certain
22 instructions that you were not to discuss this case with
23 anyone; that if anyone attempted to contact that you should
24 report that to me when you came back today; and also that
25 you are not to read, watch or listen to any news accounts

1 concerning this case.

2 A Yes, sir.

3 Q Have there been any violations of my instructions?

4 A No, sir.

5 Q And over the next few minutes I am going to ask you
6 some questions. Then either Mr. Morin or Mr. Kelly will ask
7 you some questions; and then the solicitor or one of his
8 deputies will ask you some questions.

9 Please keep in mind that we are not in any way
10 attempting to invade your privacy, but it's necessary due to
11 the proceedings that we are about this week that certain
12 questions are asked and answered.

13 Please keep in mind that there are no right or wrong
14 answers to these questions. It's simply that we need to get
15 these questions answered openly and honestly and fully.

16 Also, I want you to remember and keep in mind that no
17 one is challenging the view that you might have. It's
18 simply that we need to know what your views are in certain
19 areas.

20 I would encourage you to pay very close attention to
21 the questions that are presented to you, because over the
22 next few minutes we are probably going to ask you some
23 questions that you maybe have never even considered before
24 coming to court this week.

25 I will also tell you that the lawyers and I have copies

1 of your juror questionnaire, because that was extremely
2 important to us in trying to get prepared for our session
3 today.

4 Now, among the things, Ms. Nave, that we are going to
5 be talking about over the next few minutes, will include
6 references to the word or the term penalty. But the mere
7 fact that I even mention that word or refer to that word
8 does not in any way indicate anything about the defendant,
9 Mr. Rookard. He is presumed in the law to be innocent. Do
10 you understand that?

11 A Yes, sir.

12 Q Now, let's assume for a few moments that you were a
13 juror in a criminal case.

14 Could you listen to the law, accept and apply that law
15 as I would instruct you as the judge of this Court even
16 though you may disagree with the law or think that it should
17 be some other way?

18 A Could I listen to the law? Yes.

19 Q You could follow the law as I instruct you --

20 A Yes.

21 Q -- even if you disagreed with what I told you?

22 A Yes. That would be my duty.

23 Q Yes, ma'am.

24 Could you decide this case based solely on the evidence
25 presented here in this courtroom and disregard anything that

1 you may have heard, read or seen about the case?

2 A Yes.

3 Q Now, in a criminal case, Ms. Nave, the state has the
4 burden of proving guilt. And the burden of proof that the
5 state must meet is proof beyond a reasonable doubt.

6 A defendant has absolutely no burden, no responsibility
7 to prove himself innocent. Do you understand that
8 principle?

9 A Yes.

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

13 A Yes.

14 Q Now, as you know from being here yesterday with the
15 entire jury panel, this is a case in which the State of
16 South Carolina is seeking the death penalty.

17 And death penalty cases are what we call bifurcated
18 proceedings, which simply means that they are divided into
19 two parts. The first part is the guilt phase; the second
20 part, if necessary, is the sentencing phase.

21 Now, if you were a member of such a jury and if the
22 jury found the defendant not guilty of murder in the guilt
23 phase, do you understand that the case would end at that
24 point in time?

25 A Yes.

1 Q However, if you were a juror in such a case and if the
2 jury had found the defendant guilty of murder, do you
3 understand that you would then go to that second or
4 sentencing phase of the trial?

5 A Yes.

6 Q In that phase of the trial, Ms. Nave, evidence would be
7 presented in the form of aggravating and mitigating
8 circumstances.

9 Now, aggravating circumstances are facts, incidents,
10 details or occurrences which the General Assembly of the
11 State of South Carolina has declared law. They have enacted
12 a statute which makes worse, that is to aggravate, the crime
13 of murder.

14 In other words, the presence of an aggravating
15 circumstance when it accompanies or goes along with the
16 crime of murder increases the enormity or adds to the injury
17 of the offense of murder. It's a murder committed in the
18 commission of or in connection with another crime or
19 incident. Do you understand that?

20 A Yes.

21 Q Now, mitigating circumstances are also incidents,
22 details or occurrences which our general assembly has, once
23 again, declared by law reduces the severity of the offense
24 of murder and may be considered by the jury as extenuating
25 or as reducing the degree of moral culpability or

1 responsibility for the crime of murder.

2 Do you understand what I mean when I refer to
3 mitigating circumstances?

4 A Yes.

5 Q Now, let's assume that you were a juror in that
6 situation, the second phase, sentencing phase, of a death
7 penalty case.

8 Could you, depending upon the particular facts and
9 circumstances of that case, including the consideration of
10 aggravating, as well as mitigating, circumstances and the
11 law that I would instruct you that applied to that case,
12 return a sentence of life in prison?

13 A Yes.

14 Q If you were a juror in that situation could you,
15 depending upon the particular facts and circumstances of
16 that case, once again, including the consideration of any
17 aggravating and mitigating circumstances and the law that I
18 would instruct you that applied to that case, return a
19 sentence of death?

20 A Yes.

21 Q Now, you understand, Ms. Nave, that in the sentencing
22 phase that there are always two sentencing options that are
23 available to the jury. And the jury must be capable of
24 imposing either of those, that being either life in prison
25 or death.

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1 A Yes.

2 Q Now, if you were chosen for service on this jury you
3 would be sequestered, which is kind of a fancy word meaning
4 you would be housed or held, in a motel for the duration of
5 the trial. That would be at the county expense, and all of
6 your needs would be met.

7 I don't know how long this case is going to last. I
8 mean, I have no way of knowing. It would be at the outside
9 seven to ten days, but it could be less than that.

10 Except for the personal inconvenience that you would
11 suffer, would this pose a serious danger to the health or
12 well-being of yourself or of those dependent upon you?

13 A No.

14 Q Thank you for responding to my questions. Please
15 answer Mr. Kelly's questions.

16 MR. KELLY: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 EXAMINATION BY MR. KELLY

19 Q Ms. Nave, I am Keith Kelly. And Michael Morin and
20 Jennifer Johnson and I represent Mr. Moore. You indicated
21 to the questionnaire -- I have a copy of that. I appreciate
22 you filling it out.

23 A Okay.

24 Q You indicated that your house was broken into in 1978,
25 is that right, in Massachusetts?