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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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Jury qualification -- Number 194

- 1 A You know, I think it was 1978. I can't -- it was way
2 back then.
- 3 Q Okay. Long ago.
- 4 A Long ago.
- 5 Q Okay. Was anybody prosecuted for that? Was anybody
6 caught?
- 7 A No. It happened when nobody was home.
- 8 Q Yes, ma'am.
- 9 A And we never found out who did it.
- 10 Q Okay. How did that make you feel at the time?
- 11 A Well, I was a little bit nervous.
- 12 Q Yes, ma'am.
- 13 A But then we got a really big dog, so then I was fine.
- 14 Q Okay. Still have that dog with you?
- 15 A No.
- 16 Q Okay. Since you have been here in South Carolina, and
17 I noticed, again, from your questionnaire that you have been
18 here about 11 years.
- 19 A Yes.
- 20 Q About as long as your youngest daughter has been alive.
21 Was she born here?
- 22 A No. She was about two months old when we moved here.
- 23 Q Two months old. So you have been here for about 11
24 years.
- 25 A Right.

1 Q Have you had any problems here with anybody breaking
2 into your house?

3 A No, no.

4 Q None whatsoever.

5 A No.

6 Q Okay. And you still don't have a dog?

7 A No. Much to my children's dismay, we don't have a dog.

8 Q Okay. You also -- and I don't mean to embarrass you.
9 You also answered on the questionnaire that your brother got
10 into some trouble in California, and you are really, really
11 sure. Do you just not know because you guys don't talk
12 or --

13 A You know, you hear it through the grapevine. And I
14 speak with his exwife maybe once every couple of years.

15 Q Right.

16 A And I ask her just for my own general peace of mind if
17 he is pretty much alive or dead, you know, because we don't
18 speak, he and I.

19 And she says, well, yeah he just got out of jail for,
20 you know, not paying his child support or he just got out of
21 jail for -- you know, he got caught with having some drugs.
22 I was like is he ever going to grow up. That's pretty much
23 the extent of it. I don't try to contact him at all.

24 Q And can you tell me about how old he is?

25 A He is 47.

1 Q And he is your older brother.

2 A Yes.

3 Q And not to embarrass you, but is there anybody else?
4 Because you revealed your brother, is there anybody else in
5 your family that's had a little run-in with law enforcement?

6 A No, no.

7 Q All of us have a, all of us have a view on the death
8 penalty that we get from some source, again, whether it be
9 from our church, a social organization, friends, life
10 experiences.

11 And you have answered Judge Clary indicating that you
12 could not only consider giving the death penalty but you
13 could, in fact, give the death penalty if, in fact, it
14 warranted that in this particular case. Is that right?

15 A Yes.

16 Q And your views on the death penalty, do you attribute
17 those to your religious background or to your social
18 background? To what do you attribute that?

19 A I guess just to what I believe is, you know, just right
20 and wrong, what is.

21 Q Yes, ma'am.

22 A You really have to just pay for your actions, the
23 consequences of your actions.

24 Q Okay. All right. Do you understand that, that, and I
25 am talking about the sentencing phase. Okay?

1 A Uh-huh.

2 Q Talking about the sentencing phase.

3 A verdict of guilty has been rendered by the jury. We
4 are past that. At that point in time, the state would then,
5 Mr. Gowdy and his assistants, would then offer, as the judge
6 told you, aggravating circumstances, something that our
7 legislature has passed that says if this is blue, if this is
8 green, if this is yellow, that sort of thing. And the judge
9 would tell you what those are at that point.

10 Do you understand that even though the state is able to
11 show you that it met one of those or more of those
12 aggravating circumstances that you are not required to
13 return a verdict of death?

14 A Yes.

15 Q Even though they have proved number four. You can say,
16 even so, I am still not going to do it. Do you understand
17 that?

18 A Yes.

19 Q Okay. And do you understand that we at that point in
20 the trial have a right to offer mitigating circumstances,
21 that it's not as bad as they say because of one of these
22 things that Judge Clary would then tell you that our
23 legislature says is appropriate? Do you understand that?

24 A Yes.

25 MR. KELLY: Your Honor, may we approach.

1 THE COURT: Yes, sir.

2 (Bench conference held off the record.)

3 Q Ms. Nave, in reading your questionnaire you left blank
4 the question about organizations. Do you belong to any
5 organizations, whether it be any type of organization,
6 Mothers Against Drunk Driving?

7 A No.

8 Q No organization whatsoever?

9 A No.

10 Q Thank you very much.

11 A Thank you.

12 THE COURT: Mr. Willingham.

13 EXAMINATION BY MR. WILLINGHAM

14 Q Ms. Nave, I just have a few questions.

15 When you were back in the jury room waiting to come out
16 here for us to ask you questions the clerk gave you a form
17 of three types of jurors.

18 One type was if presented with whatever evidence, you
19 had a choice between life and death, you would always vote
20 life. The other was given a choice between life and death
21 you would always vote death. The third option was given the
22 choice you would weigh the facts and circumstances you heard
23 in the courtroom and decide between life and between death.
24 Which category would you fit yourself into?

25 A I really think that I would be in the third.

1 Q Okay. And as a result of being in the third category
2 if the state proved to you aggravating circumstances and you
3 believe the death penalty is appropriate, you would be
4 required to sign a form along with the other jurors. That
5 verdict has to be unanimous.

6 A Right.

7 Q In order for the death penalty to be executed, issued,
8 in this case, you, the jury, is going to be making a
9 recommendation.

10 You would have to sign the verdict form, physically
11 sign your name to that verdict form. Would you have a
12 problem with doing that?

13 A No.

14 Q Would you have a problem coming into this courtroom and
15 announcing that in open court, that that is your verdict?

16 A No.

17 MR. WILLINGHAM: Thank you, Your Honor. No further
18 questions.

19 THE COURT: Anything else from the defense?

20 MR. KELLY: None, Your Honor.

21 THE COURT: From the state?

22 MR. WILLINGHAM: No, sir, Your Honor.

23 THE COURT: Ms. Nave, I want to thank you very much for
24 your participation here yesterday, as well as this day.

25 I find that you are qualified to serve as a potential

1 juror in this case. With that qualification, I am going to
2 give you some more instruction. As if you didn't get enough
3 yesterday, I will give you some more today. It's probably
4 going to be about the same thing that you have heard and
5 will continue to hear.

6 Let me remind you, Ms. Nave, that as you leave here
7 today that you are not to discuss this case with fellow
8 jurors, family, friends or anyone else that you might come
9 in contact with.

10 Also, if anyone should attempt to contact you, I want
11 you to gather as much information about that person or
12 persons as you possibly can and report that to me
13 immediately, because that's a very serious matter, and I
14 would deal with the person that attempted to contact you
15 accordingly.

16 Also, I'm going to strongly instruct you and remind you
17 that you're not to read, watch or listen to any news
18 accounts concerning this case. Very simply put, if you are
19 selected as a juror in this case all I would want you to
20 consider is what you see and hear in the courtroom, nothing
21 more and nothing less.

22 Now, when you reported yesterday, I think that the
23 clerk's office gave you some information that had a
24 telephone number thereon. That is a number that when you
25 call, there will be a recording there to give you

1 information.

2 Tomorrow night, Wednesday night, after six o'clock you
3 are to call that number. There will be a message there. It
4 may be one of two messages.

5 One message may say something like jurors in the case
6 of the State vs. Moore should call back at a particular time
7 on Thursday; or it may say all jurors in the case of the
8 State vs. Moore are to report to the Spartanburg County
9 Courthouse at a particular time with their bags packed.

10 When you come at that particular time when you do get
11 that message -- you will get it eventually. I want you to
12 leave your belongings in your vehicle.

13 If you are selected as a juror in this case, then the
14 jury custodians would take you and your belongings and your
15 vehicle to the location that you would be staying for the
16 course of the trial, and you would remain with us until that
17 trial's -- until the trial is completed.

18 If you are not selected, we are going to thank you very
19 much for having been here and participated in this process.
20 And then we will send you about your regular activities with
21 our thanks.

22 So what you need to do from this point on, number one,
23 is to call back tomorrow night after 6:00. Follow those
24 instructions.

25 And you need to go home and start packing, because when

1 you come back if you are selected, you are going to remain
2 with us throughout the course of the trial.

3 Thank you very much for being here, and you are
4 excused.

5 THE JUROR: Thank you.

6 (Whereupon, the juror was excused from the courtroom.)

7 THE COURT: Let the record reflect that Juror Number
8 194, Karen E. Nave, is qualified to serve as a potential
9 juror in this case pursuant to Section 16-3-20 of our code.

10 We will be back here at 4:05.

11 (Whereupon, a recess was taken.)

12 THE COURT: Solicitor.

13 MR. GOWDY: Your Honor, I don't really have a proposed
14 remedy in mind, but I just wanted to bring it to the Court's
15 attention.

16 It dawned on me during the last juror that Mr. Morin
17 and Mr. Kelly actually were not involved in the case when
18 all of us introduced ourselves to the jury venire. I have
19 no indication that any of these proposed jurors may know
20 Mr. Morin or Mr. Kelly, but the time to ask that question --

21 THE COURT: Well, I thought about that last night, but
22 I ask so many questions -- Mr. Morin and Mr. Kelly, if they
23 know any of these jurors, they will reveal it to me, because
24 they are officers of the court.

25 MR. GOWDY: Yes, sir.

1 THE COURT: I was not concerned about that --

2 MR. GOWDY: Yes, sir.

3 THE COURT: -- from that standpoint. I guess if they
4 had any bias or prejudice against them, that was a decision
5 that Mr. Moore made yesterday when he was proceeding pro se
6 when I couldn't introduce them.

7 MR. GOWDY: Yes, sir.

8 THE COURT: You know, that was just part of the whole
9 drill yesterday.

10 MR. GOWDY: Yes, sir.

11 THE COURT: Juror Number 53, Jennifer M. Caston.

12 JUROR NUMBER 53, JENNIFER

13 M. CASTON, having been first duly sworn, was voir
14 dired as follows:

15 EXAMINATION BY THE COURT

16 Q Good afternoon. You are Jennifer Caston, correct?

17 A Yes, sir.

18 Q If you want to, you can kind of spin around this way a
19 little bit, because you and I are going to be talking for
20 just a few minutes. And that way you won't have to crane
21 your neck around.

22 Do you understand that you are under oath for this
23 proceeding today, Ms. Caston? And you also remember
24 yesterday when I dismissed you and your colleagues on the
25 jury that I gave you some instructions that you were not to

1 discuss this case with anyone; that if anyone attempted to
2 contact you that you were to report that to me; and that you
3 were not to read, watch or listen to any news accounts
4 concerning this case.

5 Have there been any violations of my instructions?

6 A No, sir.

7 Q Now, over the next few minutes, Ms. Caston, I am going
8 to ask you some questions. After that one of the defense
9 lawyers will ask you some questions, and then one of the
10 state's lawyers.

11 Please keep in mind that we are not in any way
12 attempting to invade your privacy, but because of the case
13 that we are about over this week and next week it's
14 necessary that certain questions are asked and answered.

15 Please keep in mind that there are absolutely no right
16 or wrong answers to these questions. We just want you to
17 answer them openly and honestly and fully.

18 And also keep in mind that no one is challenging the
19 view that you might have. We simply need to know what your
20 view is in particular areas.

21 Also, I would ask you to pay very close attention to
22 the questions that are presented to you. If at any time you
23 do not understand them or you need them repeated, just let
24 me or the lawyers know.

25 And over these next few minutes the reason that it's

1 important for you to listen to and understand the questions
2 is because we are probably going to be asking you some
3 things that you have never considered before you came to
4 court here this week.

5 I would also tell you that the lawyers and I have
6 copies of your juror questionnaire, because that was very
7 important for us in preparing for today's session.

8 Now, among the things that we are going to be talking
9 about, Ms. Caston, is the fact -- and will be referring to
10 the word penalty. But the mere fact that I even mention
11 that word, refer to that word, does not in any way indicate
12 anything about the defendant, Mr. Moore. He is presumed in
13 the law to be innocent. Do you understand that?

14 A Yes, I do.

15 Q Let's assume for a few minutes that you were a juror in
16 a criminal case.

17 Could you listen to the law and accept and apply that
18 law as I would instruct you as the judge of this Court even
19 though you may not agree with that law or think that it
20 should be some other way?

21 A Yes, I would.

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 Yes, I would.

1 Q Now, in a criminal case, Ms. Caston, the state has the
2 burden of proving guilt. The burden of proof for the state
3 is proof beyond a reasonable doubt.

4 And a defendant has absolutely no burden, no
5 responsibility to prove himself innocent. Do you understand
6 that?

7 A I do.

8 Q Now, could you, depending on the facts and the 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 I could.

12 Q Now, as you know from being here yesterday when I
13 talked to the entire jury panel, this is a case in which the
14 State of South Carolina is seeking the death penalty.

15 And death penalty cases are what we call bifurcated
16 proceedings; simply means they are divided into two parts.
17 The first part is the guilt phase; and the second part is
18 the sentencing phase.

19 Now, if you were a juror in such a case and if the jury
20 found the defendant not guilty of murder, do you understand
21 that the case would end at that point in time?

22 A Uh-uh.

23 Q However, if you were a jury in such a case and if the
24 jury found the defendant guilty of murder, do you further
25 understand that you would then move into that second or

1 sentencing phase of the trial?

2 A Yes.

3 Q Now, during that phase of the trial, Ms. Caston,
4 evidence would be presented in the form of aggravating
5 circumstances, as well as mitigating circumstances.

6 Now, aggravating circumstances are facts, incidents,
7 details or occurrences which the general assembly of our
8 state, our state legislature, has declared by law would make
9 worse, that is to aggravate, the crime of murder.

10 In other words, the presence of an aggravating
11 circumstance, when it goes along with or accompanies the
12 crime of murder, it increases the enormity or adds to the
13 injury of the murder. It's a murder that's committed in the
14 commission of or in connection with another crime or
15 incident.

16 Do you understand what I am talking about when I
17 mention aggravating circumstances?

18 A Yes.

19 Q Now, mitigating circumstances, on the other hand, are
20 also incidents, details or occurrences which the general
21 assembly of our state has declared by law would reduce the
22 severity of the offense of murder and may be considered by
23 the jury as extenuating or as reducing the degree of moral
24 culpability or responsibility for the crime of murder.

25 Do you understand what I am speaking of when I talk

1 about a mitigating circumstance?

2 A Yes.

3 Q Now, let's assume that you were an juror in that
4 situation. I'm talking about the second phase of a death
5 penalty, the sentencing phase.

6 Could you, depending upon the particular facts and
7 circumstances of that case, including the consideration of
8 aggravating and mitigating circumstances and the law that I
9 would instruct you that applies to that case, return a
10 sentence of life in prison?

11 A Yes, I could.

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 all
15 aggravating and mitigating circumstances and the law that I
16 would instruct you that applied to that case, return a
17 sentence of death?

18 A Yes, I could.

19 Q Now, you understand that there are two sentencing
20 options that are always available to the jury in the
21 sentencing phase of the trial. And the jury must be capable
22 of imposing either of those sentences, that being life in
23 prison or death.

24 A Uh-huh.

25 Q Now, Ms. Caston, if you were chosen for service on this

1 jury you would be sequestered in a motel for the duration of
2 the trial. That would be at the expense of the county. And
3 you would be well cared for by the jury custodians, you and
4 the other members of the jury.

5 I don't know how long this case is going to last, but
6 once we get it cranked up, I would say no more than seven to
7 ten days. It may not last that long.

8 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 No.

12 Q Thank you for answering my questions.

13 Mr. Morin.

14 EXAMINATION BY MR. MORIN

15 Q Ms. Caston, my name is Michael Morin, and I represent
16 Mr. Moore, along with Keith Kelly and Jennifer Johnson.

17 I understand that you work for Dr. Cook. Is that
18 correct?

19 A Yes.

20 Q What kind of medical practice does Dr. Cook have?

21 A He is a dermatologist.

22 Q Okay. And also I have been told that you have some
23 contact with Dr. Wren.

24 A Yes.

25 Q Okay. Is that on the phone or by --

1 A No. Our office is located next door to Spartanburg
2 Regional Hospital. We do surgery that involves removing
3 skin cancers and so forth. He is a pathologist. So, we
4 take specimens to the hospital, and they just do our
5 specimens.

6 Q All right. Well, do you actually meet Dr. Wren?

7 A Yet, yes. I have met him several times.

8 Q Okay. And I also notice from your questionnaire -- and
9 I want to thank you for filling that out, and we have a copy
10 of it -- that you went to paralegal school. Is that right?

11 A Yes.

12 Q And where did you go to school?

13 A Converse College.

14 Q Converse. Okay. And did you get a degree from there?

15 A It's just a certificate program.

16 Q I see. And I think you have a flag sticker on your
17 car.

18 A Yes, I do.

19 Q Is that an American flag?

20 A Yeah.

21 Q When the judge asked you the questions about the death
22 penalty, you indicated that you could give the death
23 penalty. I assume that you have thought about the death
24 penalty before.

25 A I have.

1 Q Okay. Could you tell me about that?

2 A Well, deciding whether somebody deserves to lose their
3 life for someone else's, for the crime that they committed,
4 depending on the harshness of the crime, I guess their
5 actions before and after the crime. That's it, I guess.

6 Q Okay. And these -- you have developed this philosophy
7 over time. Is that --

8 A Yeah.

9 Q Okay. And would you say that you have been influenced
10 by your parents or groups, or is it just something you come
11 to? Have you read anything or --

12 A Well, I mean, on my own personal opinion.

13 Q Okay. You understand that if this gets to a penalty
14 phase and the state presents its aggravating circumstances
15 that you are not required to give a sentence of death.

16 A Yes, I do understand that.

17 Q Okay. That's all I have. Thank you, Ms. Caston.

18 THE COURT: Solicitor.

19 MR. GOWDY: May it please the Court, Your Honor.

20 EXAMINATION BY MR. GOWDY

21 Q Good afternoon, Ms. Caston. My name is Trey Gowdy.
22 I'm the solicitor here in Spartanburg. Seated with me is
23 Barry Barnette in the middle and Donnie Willingham to my
24 right. They're both my deputy solicitors.

25 When did you graduate the Converse paralegal program?

Jury qualification -- Number 53

- 1 A This year, August of 2001.
- 2 Q I used to teach in that program --
- 3 A Did you?
- 4 Q -- many moons ago. Did you take criminal procedure,
5 criminal law?
- 6 A Yes, I did.
- 7 Q And did Judge Pasley teach that class?
- 8 A Yes.
- 9 Q You worked for Dr. Cook for five and a half years?
- 10 A Uh-huh.
- 11 Q Have you ever worked as a paralegal or ever worked for
12 a law firm?
- 13 A No. I did an internship for a law firm, but that was
14 just for a week.
- 15 Q And which law firm?
- 16 A White and Harrison.
- 17 Q John White and Ben Harrison.
- 18 A Yes.
- 19 Q As you told Judge Clary, do you believe that you would
20 be able to listen to the facts and circumstances and if you
21 thought it was warranted based on the facts and
22 circumstances and the law as Judge Clary gives it to you,
23 that you would be able to vote for the death penalty in the
24 appropriate case?
- 25 A I could.

1 Q Would you also be able to sign your name to a piece of
2 paper, a verdict form, indicating that that was your
3 decision or your verdict?

4 A Yes.

5 Q Would you, if you were called on to do so, be able to
6 come back into this courtroom and, along with your other
7 jurors, announce publicly that that was your decision?

8 A I could if that was the decision I made. Then I would.

9 Q By the same token, if you decided the life in prison
10 was the appropriate punishment, you would be able to vote
11 that way as well.

12 A Yes.

13 Q Thank you very much for your answers.

14 THE COURT: Anything else, Mr. Morin?

15 MR. MORIN: No, sir.

16 THE COURT: Thing else, Solicitor?

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

18 THE COURT: Ms. Caston, thank you very much for your
19 participation here yesterday, as well as this afternoon.

20 This is going to conclude your responsibilities for
21 this day, but I would tell you at this time that you are
22 qualified to serve as a potential juror in this case.

23 With that qualification I am going to give you some
24 more instructions. As if you haven't received enough
25 instruction already, I am going to give you a little bit

1 more.

2 First of all, let me remind that you are not to discuss
3 this case with anyone, family, friends or anyone else that
4 you come into contact with.

5 Also, if anyone attempts to contact you concerning this
6 case, I want to gather as much information about that person
7 or persons as you possibly can, and report that to me
8 immediately, because that's a very serious matter, and I
9 would deal with the person that attempted to contact you
10 accordingly.

11 Also, I strongly instruct you and remind you that you
12 are not to read, watch or listen to any news accounts
13 concerning this case. Very simply put, if you are selected
14 as a juror in this case, all I would want you to consider in
15 this matter is what you see and hear in this courtroom,
16 nothing more and nothing less.

17 Now, when you reported yesterday the clerk of court's
18 office gave you some information. And contained therein was
19 a telephone number that you were to call to get information.

20 Tomorrow night, that's Wednesday night, after 6:00 p.m.
21 I want you to call that number. There will be a message
22 left on the recording, probably one of two messages.

23 The first message may sound something like this. All
24 jurors in the case of the State vs. Moore should call back
25 in the morning on Thursday at a particular time, or sometime

1 on Thursday at a particular time; or that message could say
2 all jurors in the case of the State vs. Moore should report
3 to the Spartanburg County Courthouse at a particular time
4 with your bags packed. And leave those bags in your
5 vehicle.

6 Now, if you are selected to serve as a juror in this
7 case, then you and your belongings and your vehicle would be
8 taken by the jury custodians to the location that would be
9 your home away from home during the course of the trial, and
10 you would remain with us until the trial is completed.

11 If you are not selected, then we are going to thank you
12 very much for your having been here and participated in this
13 process, and you would be sent about your regular
14 activities.

15 So the long and short of it is this. You need to go
16 home and start packing, because tomorrow night after six
17 o'clock you are going to call that number that has the
18 recording on it at the clerk's office. And you will either
19 be told to call back or to report at a particular time.
20 Whenever you are told to report back here later on this
21 week, please come back.

22 Leave your belongings in your vehicle. If you are
23 selected, we will see that you are taken care of. If not,
24 we will send you back home. Thank you very much.

25 THE JUROR: Thank you.

Jury qualification -- Number 53

1 (Whereupon, the juror was excused from the courtroom.)

2 THE COURT: Let the record reflect that Juror Number
3 53, Jennifer M. Caston, is qualified to serve as a potential
4 juror in this case.

5 Number 77.

6 Yes, sir.

7 MR. KELLY: Judge, I don't know Number 77, but I would
8 point out for the Court that Larry Flynn and I were
9 partners, and I notice that she is a receptionist for
10 Perrin, Perrin, Mann and Patterson. I don't know the lady
11 or know anything about her.

12 THE COURT: All right. I understand that. That was
13 his former law firm, correct?

14 MR. KELLY: Yes, sir.

15 THE COURT: Okay. All right. Number 77, Mary K.
16 Drutonis.

17 Thank you, Mr. Kelly.

18 MR. KELLY: Yes, sir, Your Honor.

19 JUROR NUMBER 77, MARY K.

20 DRUTONIS, having been first duly sworn, was voir
21 dired as follows:

22 EXAMINATION BY THE COURT

23 Q Good afternoon. You are Mary K. Drutonis.

24 A Yes.

25 Q Ms. Drutonis, you understand that you are under oath

1 here today.

2 A Yes.

3 Q And you also remember yesterday that I gave you some
4 instructions before you left the courthouse.

5 First of all, I told you that you were not to discuss
6 this case with anyone. If anyone attempted to contact you
7 concerning this case, that you were to report that to me
8 today; and that you were not to read, watch or listen to any
9 news accounts concerning this case.

10 Have there been any violations of my instructions?

11 A No. I told my employers that this was a murder trial
12 or case to let them know that I might be on the jury and
13 they would have to find someone to replace me.

14 But other than that, there was nothing.

15 Q Thank you, ma'am.

16 A And they didn't ask.

17 Q Good.

18 A They just laughed.

19 Q Well, considering who you work for, I can understand
20 that.

21 Ms. Drutonis, over the next few minutes I am going to
22 be asking you some questions. Then one of the defense
23 lawyers and one of the solicitors will ask you some
24 questions.

25 Please keep in mind that we are not in any way

1 attempting to invade your privacy, but because of the
2 proceeding that we are about this week, it's extremely
3 necessary that certain questions are asked and answered.

4 Please keep in mind that there are absolutely no right
5 or wrong answers to these questions. If you would, just
6 answer them openly and honestly and fully.

7 And also keep in mind that no one is challenging your
8 view. We simply need to know what your views are in
9 particular areas.

10 I would also ask that if you do not understand the
11 questions or need to have one repeated, please let me or the
12 lawyer asking that question know, and we will be glad to
13 accommodate you.

14 But pay close attention, because over the next few
15 minutes we are probably going to be asking you some
16 questions that you have never considered prior coming to
17 court here this week.

18 Now, the lawyers and I have copies of your juror
19 information sheet, because that was important to all of us
20 in preparing for today's session.

21 Now, among other things, we are going to be talking
22 about and referring to the word penalty. But the mere fact
23 that I even mention that word or refer to that word does not
24 in any way indicate anything about the defendant, Mr. Moore.
25 He is presumed in the law to be innocent. Do you understand

1 that?

2 A Yes.

3 Q Now, Ms. Drutonis, if you were a juror in a criminal
4 case could you listen to the law, accept and apply that law
5 as I would instruct as the judge of this Court even though
6 you may disagree with that law or think that it should be
7 some other way? Do you want me to repeat that?

8 A Yes.

9 Q If you were a juror in a criminal case could you listen
10 to the law, accept and apply that law as I would instruct
11 you as the judge of this Court even though you may disagree
12 with that law or think that it ought to be some other way?

13 A It's a little confusing to me, because I know that this
14 is a serious case and that the state -- it was noted
15 yesterday it was asking for the death penalty.

16 I do not believe in the death penalty, although I would
17 very much listen to all of the information given, and I
18 would make my own judgment as to that.

19 Now, when you make, when you make your judgment, it's
20 based on what the jury has said, I believe. So are you
21 asking me would I fulfill your --

22 Q I am asking you if your opinions and beliefs disagreed
23 with what I instruct you that the law of this state is would
24 you set aside your opinion and beliefs and follow the law as
25 I instruct you; or would you follow -- disregard the law and

1 follow your own opinions and beliefs?

2 A That's a loaded question. It really is. I believe in
3 following the law, because that's how we exist.

4 But I also have my own opinions. And if that law I
5 felt was wrong, I would not follow it. But I would follow
6 the law of the land to that extent. But as I said, if I
7 felt it was wrong, a particular law, I would not follow
8 that.

9 Q All right. We will come back to that in just a minute.

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

13 A Yes.

14 Q Now, in a criminal case, Ms. Drutonis, the state has
15 the burden of proving guilt. And the burden of proof that
16 the state must meet is proof beyond a reasonable doubt.

17 A defendant has absolutely no burden, no responsibility
18 to prove himself innocent. Do you understand that?

19 A Yes.

20 Q Now, could you, depending on the facts and the evidence
21 and the law as I would instruct you in a particular case,
22 find a defendant either guilty or not guilty? Could you
23 reach either of those verdicts?

24 A Yes.

25 Q Now, as you know from being here yesterday, and you

1 have already alluded to that fact, this is a case in which
2 the State of South Carolina is seeking the death penalty.

3 As such, death penalty cases are what we call
4 bifurcated proceedings, meaning that they are split into two
5 parts. The first part is referred to as the guilt phase;
6 and, if necessary, the second part is called a sentencing
7 phase.

8 Now, if you were a juror in such a case and if the jury
9 had found the defendant not guilty of murder in the guilt
10 phase, do you understand that the trial would end at that
11 point in time?

12 A Would it? I mean, are you asking me that?

13 Q I am asking you do you understand that it would end at
14 that point in time if the jury found the defendant not
15 guilty.

16 A Yes, yes.

17 Q Now, if you were a juror in such a case and if the jury
18 had found the defendant guilty of murder, do you understand
19 that you would then proceed into the second or sentencing
20 phase of the trial?

21 A Yes.

22 Q During that phase of the trial, Ms. Drutonis, evidence
23 would be presented in the form of aggravating circumstances
24 and mitigating circumstances.

25 Now, aggravating circumstances are facts, incidents,

1 details or occurrences which the general assembly of this
2 state has declared by law would make worse, that is to
3 aggravate, the offense of murder.

4 In other words when there is the presence of an
5 aggravating circumstance that accompanies a murder, it
6 increases the enormity or adds to the injury of that crime
7 of murder. It's a murder that's committed in the commission
8 of or in connection with another crime or incident. Do you
9 understand that?

10 A I am trying. I believe so.

11 Q An aggravating circumstance is something that makes
12 murder worse, that it rises to a different level, which
13 allows the state to ask for an increased penalty. Do you
14 understand that?

15 A Yes.

16 Q Now, mitigating circumstance, circumstances, are
17 incidents, details or occurrences which, once again, the
18 general assembly of this state has declared by law reduces
19 the severity of the crime of murder and may be considered by
20 the jury as extenuating or as reducing the degree of moral
21 culpability or responsibility for that crime of murder.

22 Do you understand what I am speaking of when I mention
23 a mitigating circumstance?

24 A Yes.

25 Q Now, let's assume that you were a juror in such a case,

1 the second phase of a death penalty case, the sentencing
2 phase.

3 Could you, depending upon the particular facts and
4 circumstances of that case, including the consideration of
5 aggravating and mitigating circumstances and the law that I
6 would instruct you that applied to that case, return a
7 sentence of life in prison?

8 A Yes.

9 Q If you were a juror in that situation could you,
10 depending upon the particular facts and circumstances of
11 that case, including the consideration of any aggravating
12 and mitigating circumstances and the law that I would
13 instruct you that applied to that case, return a sentence of
14 death?

15 A No.

16 Q You could not. You would be unable to impose the death
17 penalty.

18 A Yes.

19 Q Thank you, ma'am. Mr. Morin, Mr. Kelly.

20 MR. MORIN: Thank you, Your Honor.

21 EXAMINATION BY MR. MORIN

22 Q There is just a few things I want to go over with you,
23 ma'am, real quick. Okay. And basically it has to do with
24 the penalty phase to make sure you understand and make sure
25 I understand your answers.

1 By the way, my name is Michael Morin, and this is Keith
2 Kelly and Jennifer Johnson. We represent Mr. Moore.

3 Now, when we get to the penalty phase of the trial,
4 like we are having here or we are going to have, here, if we
5 get to the penalty case, what would happen is, is the state
6 would have to prevent -- present evidence of aggravating
7 circumstances. Okay.

8 A Yes.

9 Q And you as a juror would have to find beyond a
10 reasonable doubt that one or more of those existed before
11 you could even -- before you could say, well, this is a
12 death penalty case or we are going to give death. Okay?

13 A Uh-uh.

14 Q So, to make sure, if you are on a jury and the state
15 had in your mind proven beyond a reasonable doubt that
16 aggravating circumstances did exist, could you then give the
17 death penalty if they had proven the aggravating
18 circumstances?

19 A No, I could not.

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

21 THE COURT: Solicitor, anything from you?

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

23 THE COURT: Ms. Drutonis, I want to thank you very much
24 for your appearance here yesterday, as well as today.

25 This is going to conclude your responsibilities in this

1 matter. I want to thank you very much on behalf of the
2 State of South Carolina, but most particularly Spartanburg
3 County, for being here and participating in this process.

4 I know that you had written us that you had some
5 problems with a -- some grandchildren that you were caring
6 for, so this is going to clear up those problems for you.

7 Thank you very much for being here. And tell your
8 employers that I said hello.

9 THE JUROR: All right. I will.

10 THE COURT: Thank you, ma'am.

11 THE JUROR: Thank you.

12 (Whereupon, the juror was excused from the courtroom.)

13 THE COURT: Let the record reflect that Juror Number
14 77, Mary K. Drutonis, is not qualified to serve as a
15 potential juror in this case as she would be unable to
16 impose the death penalty pursuant to Section 16-3-20 of our
17 code.

18 Mildred C. Wade, 282.

19 JUROR NUMBER 282, MILDRED
20 C. WADE, having been first duly sworn, was voir
21 dired as follows:

22 EXAMINATION BY THE COURT

23 Q Good afternoon. Ms. Wade, how are you?

24 A Fine.

25 Q You are Mildred C. Wade, is that correct?

1 A Yes, I am.

2 Q Now, Ms. Wade, you understand that you have been placed
3 under oath for these proceedings.

4 A Yes.

5 Q And you remember yesterday when I dismissed you that I
6 gave you some instructions that you were not to discuss this
7 case with anyone; that if anyone attempted to contact you
8 that you were to report that to me today; and that you were
9 also to refrain from reading, watching or listening to any
10 news accounts concerning this case.

11 Have there been any violations of my instructions?

12 A No.

13 Q Now, over the next few minutes, Ms. Wade, I am going to
14 ask you some questions. Thereafter one of the defense
15 lawyers and one of the state's lawyers will ask you some
16 questions.

17 I want you to please keep in mind that in no way are we
18 attempting to invade your privacy, but due to the nature of
19 the proceeding that we are about this week it's extremely
20 necessary that certain questions are asked and answered.

21 Keep in mind that there are no right or wrong answers
22 to these questions. So, if you would, just answer them
23 openly and honestly and fully. And keep in mind that no one
24 is challenging your view. It's simply we need to know what
25 your views are in certain areas.

1 Now, if at any time you do not understand a question,
2 if you need to have one repeated, simply let me or the
3 lawyer asking the question know.

4 And listen very carefully to the questions, because
5 over the next few minutes we are probably going to ask you
6 some questions about some things that you have never thought
7 about before coming to court this week.

8 I would also tell you that the lawyers and I have
9 copies of your juror questionnaire, because that was
10 important to us in preparing for today.

11 Now, among the things that we are going to be talking
12 about during the next few minutes will include references to
13 the term penalty, but the mere fact that we even mention
14 that word penalty does not indicate anything about the
15 defendant, Mr. Moore. He is presumed in the law to be
16 innocent. Do you understand that?

17 A Yes, sir.

18 Q Now, let's assume for a few moments that you were a
19 juror in a criminal case.

20 Could you listen to the law, accept and apply that law
21 as I would instruct you as the judge of this Court even
22 though you may disagree with the law and think it ought to
23 be some other way?

24 A Yes.

25 Q Could you decide this case based solely on the

1 testimony and evidence presented here in this courtroom and
2 disregard anything that you may have heard, read or seen
3 about this case?

4 A Yes, sir.

5 Q Now, in a criminal case, Ms. Wade, the state has the
6 burden of proving guilt. The burden of proof for the state
7 is proof beyond a reasonable doubt.

8 And a defendant has absolutely no burden, no
9 responsibility to prove his innocence. Do you understand
10 that?

11 A Yes, sir.

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

15 A Yes.

16 Q Now, as you know from being here yesterday with the
17 entire jury panel, I told all of you at that time that this
18 is a case in which the State of South Carolina is seeking
19 the death penalty. And, as such, death penalty cases are
20 what we call bifurcated trials or proceedings.

21 It means that it's divided into two parts. The first
22 part is referred to as the guilt phase; the second part is
23 called the sentencing phase.

24 Now, if you were a juror in a death penalty case and if
25 the jury found the defendant not guilty of murder in the

1 guilt phase, do you understand that the trial would end at
2 that time?

3 A No, sir. I didn't know that.

4 Q Do you understand that now?

5 A I do now.

6 Q All right. If you were a juror in such a case and if
7 the jury had found the defendant guilty of murder in the
8 guilt phase, do you understand that you would then move into
9 the sentencing phase?

10 A Yes.

11 Q Now, in that phase of the trial, Ms. Wade, there would
12 be evidence presented in the form of aggravating
13 circumstances, as well as mitigating circumstances.

14 Now, you might ask what are aggravating and mitigating
15 circumstances. Well, aggravating circumstances are facts,
16 incidents, details or occurrences which our state
17 legislature that meets in Columbia has declared by law would
18 make worse, that is to aggravate, the crime of murder.

19 In other words, when there is an aggravating
20 circumstance that accompanies a murder, it increases the
21 severity or adds to the injury of the crime of murder. It's
22 a murder committed in the commission of, in connection with
23 another crime or incident.

24 Do you understand what I am talking about when I
25 mention an aggravating circumstance?

1 A Yeah.

2 Q Now, mitigating circumstances, on the other hand, are
3 incidents, details or occurrences which the general assembly
4 of our state has, once again, declared by law reduces the
5 severity of the crime of murder and the jury may consider as
6 extenuating or as reducing the degree of responsibility for
7 that crime of murder.

8 Do you understand what I am talking about when I speak
9 of a mitigating circumstance?

10 A No.

11 Q A mitigating circumstance is something the jury would
12 take into consideration that would lessen, maybe give a
13 reason for a murder. Do you understand that?

14 A Yeah.

15 Q If you were a juror in that situation, I am talking
16 about the second phase, the sentencing phase, of a death
17 penalty case, could you, depending upon the particular facts
18 and circumstances of that case, including the consideration
19 of aggravating and mitigating circumstances and the law that
20 I would instruct you that applied to that case, return a
21 sentence of life in prison?

22 A I guess I could. I don't know. I couldn't say.

23 Q If you were a juror in that situation could you,
24 depending upon the particular facts and circumstances of
25 that case, once again, including the consideration of

1 aggravating and mitigating circumstances and the law that I
2 would instruct you that applied to that case, return a
3 sentence of death?

4 A No.

5 Q You could not?

6 A I could not.

7 Q Not under any circumstances that would be presented?

8 A I don't believe in death.

9 Q Thank you, ma'am. Mr. Kelly.

10 MR. KELLY: No questions, Your Honor.

11 THE COURT: Solicitor.

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

13 THE COURT: Ms. Wade, thank you very much for your
14 participation here today. This is going to conclude your
15 responsibility with --

16 THE JUROR: I forgot to tell you something yesterday
17 when you said something about -- I lost it. My nephew was
18 in a wreck and killed a man, and he didn't get a day out of
19 it. And I know he should. And that's the reason I cannot
20 do that.

21 THE COURT: I want to thank you very much for being
22 here. This is going to conclude your responsibilities here
23 this week.

24 On behalf of the State of South Carolina, and most
25 particularly Spartanburg County, thank you for appearing

1 here. You are excused.

2 THE JUROR: Thank you.

3 (Whereupon, the juror was excused from the courtroom.)

4 THE COURT: Let the record reflect that Juror Number
5 282, Mildred C. Wade, is not qualified to serve as a
6 potential juror in this case as she would be unable to
7 impose the death penalty and does not believe in death.
8 And, as such, she is not qualified pursuant to Section
9 16-3-20 of our code.

10 Number 19, Walter M. Ballard, Jr.

11 JUROR NUMBER 19, WALTER M.
12 BALLARD, JR., having been first duly sworn, was voir
13 dired as follows:

14 EXAMINATION BY THE COURT

15 Q Good afternoon. You are Walter M. Ballard, Jr.,
16 correct?

17 A Yes, sir.

18 Q Now, Mr. Ballard, you understand that you are under
19 oath for these proceedings.

20 A Yes, sir.

21 Q And you also understand that when I excused you
22 yesterday that I gave you some instructions that you were
23 not to discuss this case with anyone; that if anyone
24 attempted to contact you, you were to report that to me; and
25 also that you were not to read, watch or listen to any news

1 accounts concerning this case. Have any of those
2 instructions been violated?

3 A No, sir.

4 Q Now, over the next few minutes, Mr. Ballard, I'm going
5 to ask you some questions. Thereafter one of the defense
6 lawyers, as well as one of the state's lawyers, may ask you
7 some questions.

8 If at any time during these questions you feel that we
9 are invading your privacy, please do not think that we are,
10 because we have to ask certain questions due to the
11 necessity of the proceedings that we are about this week.

12 Keep in mind that there are absolutely no right or
13 wrong answers to these questions. Answer them openly and
14 honestly and fully.

15 And also keep in mind that no one challenging the view
16 that you might have. We simply need to know what your views
17 are in particular areas.

18 Now, I would also tell you that if you do not
19 understand a question that I or one of the lawyers ask,
20 please ask us to restate it or clarify it.

21 And pay very close attention to what we are asking you,
22 because we are probably going to ask you some questions over
23 the next few minutes that you have never considered prior to
24 coming to court here this week.

25 I would also tell you that the lawyers and I have

1 copies of your juror information sheet which was very
2 important to us in preparing for today.

3 Now, among the things that we are going to be
4 discussing over the next few minutes will include references
5 to the term penalty. But the mere fact that I even mention
6 that word does not in any way indicate anything about the
7 defendant, Mr. Moore. He is presumed in the law to be
8 innocent. Do you understand that?

9 A Yes, sir.

10 Q Now, if you were a juror in a criminal case,
11 Mr. Ballard, could you listen to the law and accept and
12 apply that law as I would instruct you as the judge of this
13 Court even though you may disagree with the law or think
14 that it ought to be some other way?

15 A I believe so.

16 Q You could follow the law as I instructed you?

17 A Yes, sir.

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

21 A Yes, sir, I think so.

22 Q Now, in a criminal case, Mr. Ballard, the State of
23 South Carolina has the burden of proving guilt. And the
24 burden of proof for the state is proof beyond a reasonable
25 doubt.

1 And a defendant has absolutely no burden, no
2 responsibility to prove himself innocent. Do you understand
3 that principle?

4 A Yes, sir.

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

8 A Yes, sir.

9 Q Now, you understand from being here yesterday when I
10 talked to the entire jury panel that this is a case in which
11 the State of South Carolina is seeking the death penalty.

12 A death penalty case is what we call a bifurcated
13 proceeding, meaning that it's split into two parts. The
14 first part is called the guilt phase and the second part is
15 called the sentencing phase.

16 If you were a juror in a death penalty case and if the
17 jury found the defendant not guilty of murder in the guilt
18 phase, do you understand that the trial would end at that
19 point in time?

20 A I didn't know that, but I understand what you are
21 saying, yes, sir.

22 Q Now, if you were a juror in such a case and the jury
23 found the defendant guilty of murder, do you understand that
24 you would then move to that second or sentencing phase of
25 the trial?

1 A Yes, sir.

2 Q Now, in that part of the trial, the sentencing phase,
3 evidence would be presented in the form of aggravating
4 circumstances and mitigating circumstances.

5 Now, aggravating circumstances are facts, incidents,
6 details or occurrences which the General Assembly of the
7 State of South Carolina has declared by law would make
8 worse, that is to aggravate or add to, the crime of murder.

9 In other words, the presence of an aggravating
10 circumstance when it accompanies or goes along with a murder
11 increases the enormity or adds to the injury of the crime of
12 murder. It's a murder that's committed in the commission of
13 or in connection with another crime or incident.

14 Do you understand what I mean when I talk about an
15 aggravating circumstance?

16 A Yes, sir.

17 Q Now, mitigating circumstances are also incidents,
18 details or occurrences which our general assembly has, once
19 again, declared by law reduces the severity of the crime or
20 offense of murder and may be considered by the jury as
21 extenuating or as reducing the degree of moral culpability
22 or responsibility for that crime of murder.

23 Do you understand what I am talking about when I
24 mention mitigating circumstances?

25 A Yes, sir.

Jury qualification -- Number 19

1 Q Now, let's assume for just a few minutes, Mr. Ballard,
2 that you were a juror in that situation. I am talking about
3 the sentencing phase of a death penalty case. That's the
4 second phase.

5 Could you, depending upon the particular facts and
6 circumstances of that case, including the consideration of
7 aggravating as well as mitigating circumstances and the law
8 that I would instruct you that applied to that case, return
9 a sentence of life in prison?

10 A Yes, sir.

11 Q If you were a juror in that situation could you,
12 depending upon the particular facts and circumstances of
13 that case, once again, 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 death?

17 A Yes, sir.

18 Q Do you understand that there are two sentencing options
19 that are always available to the jury in the sentencing
20 phase of a death penalty trial?

21 A Yes, sir.

22 Q That being life in prison or death.

23 A Yes, sir.

24 Q Now, if you were chosen for service on this jury,
25 Mr. Ballard, you would be sequestered, housed in a motel for

1 the duration of the trial.

2 I have no idea of knowing how long this case will last.
3 I assume that it will be, once we get it started, somewhere
4 between seven and ten days at the outside. It could be much
5 less than that. I really don't know.

6 Except for the personal inconvenience that you would
7 suffer, would this pose a serious danger for the -- to the
8 health or well-being of yourself or of those dependent upon
9 you?

10 A No, sir.

11 Q Thank you for responding to my questions. Please
12 answer any of Mr. Kelly's questions.

13 MR. KELLY: Thank you, Your Honor. May it please the
14 Court.

15 THE COURT: Yes, sir.

16 EXAMINATION BY MR. KELLY

17 Q Mr. Ballard, I'm Keith Kelly, and along with Mr. Morin
18 and Ms. Jennifer Johnson, we represent Mr. Moore who is
19 seated to my right.

20 And I appreciate your fine comments on your
21 questionnaire. As the judge has told you, we have a copy of
22 that, as does Mr. Gowdy and his deputies -- deputy
23 solicitors.

24 On question 22 you answered that your wife was robbed,
25 no one arrested. And it appeared that you had attempted to

1 write about how long ago that was and maybe couldn't or
2 something and kind of scratched through it. Do you remember
3 how long ago that was?

4 A At least, after I thought about it, a little over ten
5 years ago.

6 Q Did that happen here in Spartanburg County?

7 A Yes, sir.

8 Q Okay. And you said that nobody was arrested, so I have
9 concluded from that that nobody was ever punished for that.

10 A No, sir.

11 Q Is that right? Was your wife injured in that robbery?

12 A No, sir.

13 Q And, again, was it with a firearm?

14 A No, sir. She had taken her wedding ring off her finger
15 and put it on her key ring because she couldn't work with
16 it. And kids saw it and knocked her over and grabbed her
17 key ring and ran.

18 Q I noticed you said kids. So it was a young person that
19 robbed her of that?

20 A A young person, yes, sir.

21 Q Okay. In response to Judge Clary's questions he told
22 you that in the penalty phase, assuming that the state
23 proved guilt to a juror's satisfaction, to your satisfaction
24 beyond a reasonable doubt, and we are in that penalty phase,
25 the Judge has told you that he is going to then tell you

1 about aggravating circumstances as outlined by our
2 legislature. Are you familiar with those?

3 A No, sir.

4 Q Okay. But you would be able to take them as Judge
5 Clary had told you what they are, and perhaps he would
6 provide a copy. I don't know which way we are going to do
7 it. But told you what those are. You could then take those
8 and apply them to this case, is that right?

9 A I believe so, sir.

10 Q You understand that Mr. Gowdy would be trying to show
11 to your satisfaction beyond a reasonable doubt at least one
12 of those applies in this case.

13 A Yes, sir.

14 Q Okay, sir. And by the same token, as Judge Clary has
15 told you, the mitigating circumstances are also outlined,
16 and there is a number of those. And those could be dealt
17 with by you, to be considered by you. Do you understand
18 that?

19 A Yes, sir.

20 Q As to show why, why in this particular case, it's a
21 less serious crime or less heinous crime than in another
22 case in some other place. Do you understand that?

23 A Yes, sir.

24 Q Do you also understand that even if the state proves
25 one of those aggravating circumstances, even if they prove

1 that, that you are not required to then recommend or impose
2 the death sentence?

3 A Yes, sir.

4 Q Okay. So even if they proved 12 of them, if there are
5 12, and I am not saying there are, but if they proved 12
6 that you are not required. Even though they prove 12 of
7 them, you could still come back and say life.

8 A Yes, sir.

9 Q All right, sir. And then you may or may not be
10 required after that to stand in the jury box over there
11 afterwards and say that this is your sentence, that this is
12 life, this is my, this is what I am saying. Do you
13 understand that?

14 A Yes, sir.

15 Q Okay. That wouldn't cause you any embarrassment or
16 pain, would it?

17 A No, sir.

18 Q You indicated that your religion is Baptist. Is that
19 Southern Baptist or Freewill Baptist?

20 A Southern.

21 Q Southern Baptist. Not to pry into your personal
22 business, but do you attend a particular Southern Baptist
23 Church in Spartanburg County?

24 A Yes, sir. I attend Mount Pleasant Baptist and also
25 Cannons Methodist. My wife is Methodist.

1 Q All right, sir. So you kinda go back and forth between
2 those two churches.

3 A Yes, sir.

4 Q And your views on the death penalty, do you attribute
5 those to a religious background or to people that you work
6 with or have grown up with or grandfather's advice or
7 something? To what do you attribute your views on the death
8 penalty?

9 A Religious and upbringing.

10 Q Religious being the Baptist or Methodist?

11 A Baptist.

12 Q Baptist. The Baptists have a convention once a year.
13 Have you ever gone to that as a delegate?

14 A No, sir.

15 Q Has your wife ever gone as a delegate?

16 A No, sir.

17 Q Thank you very much.

18 THE COURT: Solicitor.

19 MR. BARNETTE: May it please the Court, Your Honor.
20 Thank you.

21 EXAMINATION BY MR. BARNETTE

22 Q Mr. Ballard, just a few questions.

23 My name is Barry Barnette, and I am one of the deputy
24 solicitors. And Trey Gowdy is the solicitor and Donnie
25 Willingham is the other deputy solicitor.

1 When Mr. Kelly was talking to you, whatever, concerning
2 the sentencing phase or whatever, and you would hear the
3 evidence and if you had one aggravating circumstance and you
4 found, and you and the jury, on that jury, would find that.
5 Do you realize that you could either give a death sentence
6 or you could give a life sentence? Do you realize that?

7 A Yes, sir.

8 Q And do you realize at the end of it if you decide there
9 was a death sentence you would have to sign a sentencing
10 sheet? On that sentencing sheet you would have to sign, you
11 and the other members of the jury would have to sign. Could
12 you do that?

13 A Yes, sir.

14 Q Could you come in open court with the other 11 members
15 of the jury and announce your verdict to the Court and to
16 the parties involved in that case afterwards?

17 A Yes, sir.

18 MR. BARNETTE: Thank you, Your Honor. That's all the
19 questions I have to ask.

20 MR. KELLY: Nothing.

21 THE COURT: Anything else from you, Solicitor?

22 MR. BARNETTE: Nothing from the solicitor.

23 THE COURT: Mr. Ballard, I want to thank you very much
24 for your participation here yesterday, as well as this day.

25 This is going to conclude your responsibilities for

1 this day, but I do find that you are qualified to serve as a
2 potential juror in this case.

3 And with that qualification let me remind you, sir,
4 that you are not to discuss this case with anyone that you
5 might come into contact with, whether it be fellow jurors,
6 family, friends or anyone else.

7 Also, if anyone should attempt to contact you
8 concerning this case, I want you to gather as much
9 information as you possibly can about that person or persons
10 and report that to me immediately, because that's a very
11 serious matter, and I would deal with that person or persons
12 accordingly.

13 Let me also strongly instruct you and remind you that
14 you're not to read, watch or listen to any news accounts
15 concerning this case.

16 Simply put, if you're selected as a juror in this case
17 all I would want you to do is consider the facts and the
18 testimony and the evidence that you hear in this courtroom,
19 absolutely nothing more and nothing less in this case.

20 Now, when you reported yesterday the clerk of court
21 gave you some information that contained a telephone number.
22 And that telephone number is connected to a recording.

23 Now, tomorrow night after six o'clock, that's Wednesday
24 night after 6:00 p.m., you need to call that recording. And
25 there will be one of two messages that you will hear there.

Jury qualification -- Number 19

1 The first message would sound something like all jurors
2 in the case of the State vs. Moore should call this number
3 again on Thursday at a particular time; or it may say all
4 jurors in the case of the State vs. Moore should report to
5 the Spartanburg County Courthouse at a particular time on
6 Thursday with their bags packed.

7 Now, the reason for that is because when you come back
8 at the appointed time, whenever it is this week, because you
9 are going to go home and get packed and be ready to come
10 back sometime Thursday or later on in this week whenever we
11 get enough jurors to actually strike a jury -- when you come
12 back, leave those belongings in your vehicle.

13 If you are selected to serve as a juror, then the jury
14 custodians will take you and the other jurors and your
15 belongings to the location that you are going to be staying
16 in throughout the course of the trial.

17 If you are not selected, then you are going to get back
18 in your car that has your belongings in it and go home and
19 go on about your daily activities.

20 So what you need to do is go home and start packing.
21 Call tomorrow night after six o'clock and follow the
22 instructions on the recording.

23 And I look forward to seeing you here a little bit
24 later this week.

25 THE JUROR: Is that number in the pamphlet?

Jury qualification -- Number 19

1 THE COURT: It is, yes, sir. Okay.

2 THE JUROR: Thank you, sir.

3 THE COURT: Thank you very much.

4 (Whereupon, the juror was excused from the courtroom.)

5 THE COURT: All right. Let the record reflect that
6 Juror Number 19, Walter M. Ballard, is qualified to serve as
7 a potential juror in this case pursuant to Section 16-3-20
8 of our code.

9 Let me see the lawyers up here just one second.

10 (Bench conference held off the record.)

11 THE COURT: Juror Number Four, Lanie M. Allen.

12 JUROR NUMBER FOUR, LANIE M.

13 ALLEN, having been first duly sworn, was voir dired
14 as follows:

15 EXAMINATION BY THE COURT

16 Q You are Lanie McGee Allen.

17 A Yes.

18 Q Ms. Allen, do you understand that you are under oath
19 for these proceedings?

20 A Yes.

21 Q And do you also you understand that when I dismissed
22 you yesterday that I gave you some instructions that you
23 were not to discuss this case with anyone; that if anyone
24 attempted to contact you concerning this case that you were
25 to report that to me today; and that you were also to

Jury qualification -- Number Four

1 refrain from reading, watching or listening to any news
2 accounts concerning this case? Have there been any
3 violations of my instructions?

4 A No.

5 Q Now, I noticed on here that you have a little girl
6 that's 18 months old.

7 A Uh-huh.

8 Q As you know from being here yesterday, this is a case
9 wherein if you were selected as a juror that you would be
10 sequestered in a motel for the duration of the trial.

11 Since you have an 18-month-old, is that something that
12 would present a problem for you?

13 A Actually, I talked to my husband and he said he could
14 take care of her. He is capable.

15 Q All right. Okay. Well, let's keep on going then.

16 Now, Ms. Allen, during the next few minutes I am going
17 to ask you a few questions. Then one of the defense
18 lawyers, one of the state's lawyers will ask you some
19 questions.

20 Please keep in mind that we are not in any way
21 attempting to invade your privacy, but due to the nature of
22 the proceedings that we are about this week it's extremely
23 important for us to ask certain questions and get answers to
24 them.

25 Please keep in mind that there are absolutely no right

Jury qualification -- Number Four

1 or wrong answers to these questions. If you would, just
2 answer them openly and honestly and fully.

3 And also keep in mind that no one is challenging your
4 view. It's simply that we need to know what your views are
5 in certain areas.

6 Also, I would tell you that if you do not understand
7 the question, if you need to have one repeated, simply let
8 me or the lawyer asking the question know, and we will be
9 glad to attempt to clarify it for you.

10 Also, you need to pay very close attention to these
11 questions, because over the next few minutes we are probably
12 going to ask you some questions that you have never
13 considered prior to coming to court here this week.

14 I would also tell you that the lawyers and I have
15 copies of juror information sheet, because that was
16 important to us in preparing for today, today's session.

17 Now, among the things that we are going to be talking
18 about, will include references to the word penalty. But the
19 mere fact that I even use that word or mention that word
20 does not in any way indicate anything about the defendant,
21 Mr. Moore. He is presumed in the law to be innocent. Do
22 you understand that?

23 A Uh-huh.

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

Jury qualification -- Number Four

1 you as the judge of this Court even though you may disagree
2 with that law or think it ought to be some other way?

3 A Yes.

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

7 A Yes.

8 Q Now, in a criminal case, Ms. Allen, the state has the
9 burden of proving the defendant's guilt. And the burden of
10 proof that the state must meet is proof beyond a reasonable
11 doubt.

12 A defendant has absolutely no burden, no responsibility
13 to prove himself innocent. Do you understand that?

14 A Yes, sir.

15 Q And could you, depending on the facts and evidence and
16 the law as I would instruct you in a particular case, find a
17 defendant either guilty or not guilty?

18 A Yes, sir.

19 Q Now, as you know from being here yesterday and
20 conversations that we have had, this is a case in which the
21 State of South Carolina is seeking the death penalty. And,
22 as such, it is what we call a bifurcated proceeding, meaning
23 that it is divided into two parts. The first part is the
24 guilt phase; and, if necessary, there would be a sentencing
25 phase.

Jury qualification -- Number Four

1 Now, if you were a juror in such a case and if the jury
2 had found the defendant not guilty of murder in the guilt
3 phase, do you understand that the trial would end at that
4 point?

5 A Yes.

6 Q However, if you were a juror in such a case and if the
7 jury found the defendant guilty of murder, do you understand
8 that you would then proceed to the second or sentencing
9 phase of the trial?

10 A Yes, sir.

11 Q In that phase of the trial, Ms. Allen, evidence would
12 be presented in the form of aggravating circumstances, as
13 well as mitigating circumstances.

14 Now, aggravating circumstances are facts, incidents,
15 details or occurrences which the General Assembly of the
16 State of South Carolina has declared by law would make
17 worse, that is to aggravate, the crime of murder.

18 In other words, when an aggravating circumstance
19 accompanies the crime of murder, it increases the enormity
20 or adds to the injury of the crime of murder. It's a murder
21 committed in the commission of or in connection with another
22 crime or incident. Do you understand that?

23 A Yes.

24 Q Now, mitigating circumstances are also incidents,
25 details or occurrences which the General Assembly of South

Jury qualification -- Number Four

1 Carolina has, once again, declared by statute that reduces
2 the severity of the crime of murder and may be considered by
3 the jury as extenuating or as reducing the degree of moral
4 culpability or responsibility for that crime of murder. Do
5 you understand what I mean when I speak of a mitigating
6 circumstance?

7 A Yes.

8 Q Now, let's assume for a few moments that you were a
9 juror in that situation. I am talking the sentencing phase
10 of a death penalty case.

11 Could you, depending upon the particular facts and
12 circumstances of that case, including the consideration of
13 aggravating and mitigating circumstances and the law that I
14 would instruct you that applied to that case, return a
15 sentence of life in prison?

16 A Yes.

17 Q If you were a juror in that situation could you,
18 depending upon the particular facts and circumstances of
19 that case, once again, including the consideration of
20 aggravating as well as mitigating circumstances and the law
21 that I would instruct you that applied to that case, return
22 a sentence of death?

23 A Yes.

24 Q Now, you understand that there are two sentencing
25 options that are always available to the jury in the

Jury qualification -- Number Four

1 sentencing phase of a trial and that the jury must be
2 capable of imposing either of those sentences, that being
3 either life in prison or death.

4 A Yes.

5 Q Now, as you and I have previously discussed, do you
6 understand that if you were chosen for this jury that you
7 would be sequestered, housed, in a motel for the duration of
8 the trial?

9 Now, I don't know how long this is going to last. I
10 would say at the outside probably seven to ten days. It
11 could be less than that. I don't know.

12 Except for the personal inconvenience that you would
13 suffer, would this pose a serious danger to the health or
14 well-being of yourself, your daughter, your husband or
15 anyone dependent upon you?

16 A No.

17 Q Thank you, ma'am.

18 Mr. Morin.

19 EXAMINATION BY MR. MORIN

20 Q Ms. Allen, my name is Michael Morin. And I, along with
21 Keith Kelly and Jennifer Johnson, represent Mr. Moore.

22 I noticed from your questionnaire that you graduated
23 from Clemson.

24 A Uh-huh.

25 Q Could you tell me what year you graduated?

Jury qualification -- Number Four

1 A 1995.

2 Q I also noticed that in 1997 you served on a criminal
3 jury in Greenville County, is that right?

4 A I am not sure what kind of jury it was. It was a
5 traffic -- it was a D. U. I. case.

6 Q Okay. Was it -- you were on the jury?

7 A Uh-huh.

8 Q How many jurors were with you, do you recall?

9 A I think there were six of us.

10 Q Okay. That answers my question. Thank you.

11 I also understand that when you left yesterday you
12 checked with your husband about watching your child. And I
13 don't know if the judge mentioned yesterday whether or not
14 you might be sequestered. Did he mention that or did you
15 just know that from when he said it's a death penalty case?

16 A I did not know that we would or would not. I said if
17 it is a death penalty we might be.

18 Q Okay.

19 A So I did not know if we were or not.

20 Q Okay. And, of course, you've answered the judge's
21 question that you could give the death penalty in certain
22 cases. So I assume you have given the death penalty some
23 thought at some point. Could you tell me what your thoughts
24 are?

25 A Just on the death penalty in general?

Jury qualification -- Number Four

1 Q Uh-huh.

2 A I think that it is a pretty intense verdict. I think
3 it would have to have some extenuating circumstances to go
4 along with it. I don't think it should be looked at as a
5 very -- as a light verdict. I think it is just something
6 that would have to be proven, and there would have to be a
7 lot of evidence to support it.

8 Q Okay. Well, and if there is a penalty phase of this
9 trial, as the judge described it, the state would have to,
10 these gentlemen here would have to, present evidence. I
11 think it's called aggravating circumstances, which the judge
12 has told you about.

13 And you would have to be convinced beyond a reasonable
14 doubt that one of those or more existed in order to issue a
15 death sentence. Do you understand that?

16 A Uh-huh.

17 Q And you understand even if they they proven it, you
18 could still if you felt that they have proven it, you could
19 still give a life sentence; that you are not required at any
20 time to give a death sentence. Do you understand that?

21 A Uh-huh.

22 Q All right. Now, in your description of the death
23 penalty, which I certainly agree that it's intense, would
24 you say that your feelings about this come from your
25 upbringing or from your own reading or just life experience?

Jury qualification -- Number Four

1 A All.

2 Q All. Okay. Okay. Thank you, ma'am.

3 A Uh-huh.

4 MR. WILLINGHAM: May it please the Court, Your Honor.

5 THE COURT: Mr. Willingham.

6 EXAMINATION BY MR. WILLINGHAM

7 Q Ms. Allen, my name is Donnie Willingham, and this is
8 Barry Barnette and Solicitor Gowdy. We're the prosecutors.
9 I just want to ask you a few questions.

10 You indicated there you were on a jury in the
11 magistrate's court for a D. U. I. case. What was your
12 verdict?

13 A It was guilty.

14 Q Also, I notice that you have, according to your
15 questionnaire, your brother was convicted of D. U. I. Where
16 was that?

17 A In Tennessee.

18 Q And would the fact that he was convicted of a crime
19 have any bearing at all on you being a fair and impartial
20 juror?

21 A No.

22 Q You indicated that your husband is in golf course
23 management.

24 A Uh-huh.

25 Q And where is that?

Jury qualification -- Number Four

1 A Milestone Golf Course in Greenville.

2 Q And let me say he is a better man that I am taking care
3 of the 18-month-old.

4 A I used to travel. He has got experience.

5 Q The clerk gave you a list of three types of jurors back
6 there. Would you say you best fall in category number
7 three?

8 A Yes.

9 MR. WILLINGHAM: Your Honor, I have no further
10 questions of the juror.

11 THE COURT: Anything else?

12 MR. MORIN: No, sir.

13 THE COURT: Anything else from you, Mr. Willingham?

14 MR. WILLINGHAM: No, sir, Your Honor.

15 THE COURT: Ms. Allen, 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, I am going
19 to give you some more instructions.

20 First of all, I remind you that you are not to discuss
21 this case with anyone that you come into contact with,
22 whether that be fellow jurors, family, friends or anyone
23 else.

24 Also, if anyone should attempt to contact you
25 concerning this case, I want you to gather as much

Jury qualification -- Number Four

1 information as you possibly can about that person or persons
2 and report that to me immediately upon your return to the
3 courthouse -- no. Immediately. Not upon your return to the
4 courthouse. I want you to get in touch with me, because
5 that's a very serious matter, and I would deal with that
6 person accordingly.

7 Also, you are not to read, watch or listen to any news
8 accounts concerning this case. Very simply put, if you are
9 selected as a juror in this case all I want you to consider
10 is what you see and hear in this courtroom, nothing more and
11 nothing less.

12 Now, when you reported here yesterday the clerk's
13 office gave you a folder or a brochure, and it has a number
14 on it that has a recording system. Tomorrow night, that's
15 Wednesday night, after 6:00 p.m. you need to call that.

16 There will be one of possibly two messages that will be
17 left on there. The first one would probably say something
18 like all jurors in the State vs. Moore should call back on
19 Thursday, October the 18th, at whatever time we directed you
20 to; or it may say all jurors should report to the
21 Spartanburg County Courthouse on October the 18th -- that
22 would be Thursday -- at a particular time with your bags
23 packed.

24 If you get that message or when you get that message,
25 sometime this week, you are coming back to the courthouse

Jury qualification -- Number 227

1 with your bags packed. Leave your belongings in your
2 vehicle. If you are selected as a juror in this case, then
3 you and your belongings and fellow jurors would be taken to
4 the location that you would be staying in throughout the
5 course of the trial. And you would remain with us
6 throughout the course of the trial.

7 If you are not selected, we are going to thank you very
8 much for your being here and participating and then send you
9 about your daily activities.

10 Now, the long and the short of it is this. You need to
11 go home and start packing and getting your husband prepared
12 to take care of that little girl for the period of time that
13 you would be with us.

14 And call back tomorrow night after six o'clock.

15 I will look forward to seeing you back here later on
16 this week.

17 Thank you very much. You are excused.

18 (Whereupon, the juror was excused from the courtroom.)

19 THE COURT: Let the record reflect that Juror Number
20 Four, Lanie McGee Allen, is qualified to serve as a
21 potential juror in this case pursuant to Section 16-3-20 of
22 our code.

23 Larry W. Ridings, Number 227.

24 JUROR NUMBER 227, LARRY W.

25 RIDINGS, having been first duly sworn, was voir

1 dired as follows:

2 EXAMINATION BY THE COURT

3 Q Good afternoon. You are Larry W. Ridings, correct?

4 A That's right.

5 Q And, Mr. Ridings, you understand that you are under
6 oath here today?

7 A Yes, sir.

8 Q And you also remember yesterday when I dismissed you
9 and your fellow jurors that I gave you some instructions
10 that you were not to discuss this case with anyone; that if
11 anyone attempted to contact you that you were to report that
12 to me today; and that you were not to read, watch or listen
13 to any news accounts concerning this case. Have there been
14 any violations of my instructions?

15 A No, sir.

16 Q Now, Mr. Ridings, over the next few minutes I am going
17 to ask you some questions. And then one of the defense
18 attorneys will ask you some, and thereafter one of the
19 solicitors will pose some questions to you.

20 Please understand that we are not in any way attempting
21 to invade your privacy, but due to the nature of the case
22 and the proceedings that we are about this week it's
23 extremely important that certain questions are asked and
24 answered.

25 Keep in mind that there are absolutely no right or

1 wrong answers to these questions. So, if you would, just
2 answer them openly and honestly and fully.

3 Keep in mind that no one is challenging your view.
4 It's very simply that we just need to know what your views
5 are in certain situations.

6 Also, I would tell you that if any of these
7 questions -- if you need to have them repeated, clarified,
8 restated, explained, just let me or the lawyer asking the
9 question know.

10 And also pay very close attention to the questions that
11 are presented to you, because during the next few minutes we
12 are probably going to ask you some questions that you have
13 never ever considered before coming to court here this week.

14 I would also tell you that the lawyers and I have
15 copies of your juror information questionnaire and that that
16 was important to us in preparing for this session.

17 I also notice on there that you and I watch the same
18 television show. I doubt that I am going to get to see it
19 tonight. Maybe my wife will tape it for me.

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 we even use that
23 word or mention the word penalty does not in any way
24 indicate anything about the defendant, Mr. Moore. He is
25 presumed in the law to be innocent. Do you understand that?

1 A Yes, sir.

2 Q Now, let's assume for a few minutes, Mr. Ridings, that
3 you are a juror in a criminal case. Could you listen to the
4 law, accept and apply that law as I would instruct you as
5 the judge of this Court even though you may disagree with
6 that law or think it ought to be some other way?

7 A Well, I don't know. I never have been in that
8 position.

9 Q The question that I am asking you is even though you
10 may disagree with the law that I gave you and think that it
11 ought to be some other way, would you follow the law as I
12 instruct you?

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 I don't know. Can I just say something?

18 Q You go ahead and just lay it on me.

19 A See, I was raised to take everybody at their word. And
20 I have got bit by that several times, because I believe what
21 everybody says. Five different people could convince me of
22 five different things.

23 Q You must be a good husband then.

24 A I been married 35 years and never had an argument.

25 Q She has convinced you then.

1 Well, let me ask you this. Have you read, seen or
2 heard thing about this case?

3 A No, sir.

4 Q And you understand that in a criminal case that the
5 state has the burden of proving a defendant's guilt and that
6 the burden of proof is proof beyond a reasonable doubt. And
7 a defendant has absolutely no burden or responsibility to
8 prove himself innocent. Do you understand that?

9 A Yes, sir.

10 Q And you understand that the way that a case is
11 presented is through the testimony of witnesses and evidence
12 that might be introduced.

13 A Yes, sir.

14 Q And from that, after you have listened to the testimony
15 and the evidence and considered the facts, the evidence and
16 the law that I would instruct you that applied to a
17 particular case, could you find a defendant either guilty or
18 not guilty from that?

19 A I believe so.

20 Q All right. Now, you understand that the case that we
21 are about here today that's going to be going on this week
22 and thereafter, if necessary, is one in which the state is
23 seeking the death penalty.

24 And a death penalty case is what we call a bifurcated
25 proceeding. That's kind of a fancy word that I guess

1 lawyers invented that means that it's divided into two
2 parts. The guilt phase and the sentencing phase are the two
3 parts of it.

4 Now, if you were a juror in such a case, Mr. Ridings,
5 do you understand that if the jury found the defendant not
6 guilty of murder that the case would end at that point, that
7 you wouldn't have to go on to that second phase?

8 A Yes, sir.

9 Q However, if you were a juror in such a case and if the
10 jury had found the defendant guilty of murder, do you fully
11 understand that you would then move to that second or
12 sentencing phase of the trial?

13 A Yes, sir.

14 Q Now, in that phase of the trial, Mr. Ridings, evidence
15 would be presented in the form of aggravating circumstances,
16 as well as mitigating circumstances.

17 Now, aggravating circumstances, for your information,
18 are facts, incidents, details or occurrences which our
19 General Assembly in South Carolina, the state legislature
20 down in Columbia, has declared by law would make worse, that
21 is to aggravate, the crime of murder.

22 In other words, when there is an aggravating
23 circumstance that accompanies or goes along with a murder,
24 that adds to or increases the enormity or the injury of that
25 crime of murder. It's a murder that's committed in the

1 commission of or in connection with another crime or
2 incident. Do you understand what I am talking about?

3 A Yes, sir.

4 Q Now, mitigating circumstances, on the other hand, are
5 also incidents, details or occurrences which, once again,
6 the legislature that meets in Columbia has declared by law
7 reduces the severity of the offense of murder.

8 And these mitigating circumstances may be considered as
9 extenuating or reducing the degree of responsibility for
10 that crime of murder.

11 Do you understand what I am talking about when I speak
12 of a mitigating circumstance?

13 A Yes, sir.

14 Q Now, let's assume, Mr. Ridings, that you were a juror
15 in that situation, the sentencing phase.

16 Could you, depending upon the particular facts and
17 circumstances of that case, including the consideration of
18 those aggravating as well as mitigating circumstances and
19 the law that I would instruct you that applied to that case,
20 return a sentence of life in prison?

21 A Yes.

22 Q Let's assume that you were a juror in that situation.

23 Could you, depending upon the particular facts and
24 circumstances of that case, once again, including the
25 consideration of aggravating, as well as mitigating,

1 circumstances and the law that I would instruct you that
2 applied to that case, return a sentence of death?

3 A I would hate to think I had to, but if it was in that
4 situation, I probably could.

5 Q Do you understand that there are two sentencing options
6 that are always available to the jury in the sentencing
7 phase and that each and every member of the jury must be
8 capable of imposing either life imprisonment or death? Do
9 you understand that?

10 A Yes, sir.

11 Q Now, Mr. Ridings, if you were chosen for service on
12 this jury you would be put up in a motel for the duration of
13 the trial. We call that sequestered.

14 Now, if you were sequestered during the course of this
15 trial -- I don't know how long that would be. Probably no
16 more than seven to ten days once we get the jury seated. It
17 could be less than that. I have no idea of knowing.

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 yourself or of those dependent upon you?

21 A Probably not.

22 Q Thank you sir. How about answering any of Mr. Morin's
23 questions?

24 EXAMINATION BY MR. MORIN

25 Q Good evening, Mr. Ridings.

1 A Good evening.

2 Q My name is Michael Morin. I represent Richard Moore,
3 along with Keith Kelly and Jennifer Johnson.

4 I just want to ask you a few questions to sort of
5 follow up on what the judge has asked you.

6 Do you understand that in a penalty phase of a trial of
7 this sort where the defendant has been found guilty, if you
8 go to the penalty phase where the state presents evidence,
9 aggravating circumstances that the judge told you about,
10 they present that. And they have to prove that at least one
11 or more of those circumstances exist before you get to a
12 death sentence or make that decision. Do you understand
13 that?

14 A Yes, sir.

15 Q Okay. And if you -- if the state convinced you beyond
16 a reasonable doubt that at least one of those aggravating
17 circumstances existed, is it your testimony that you would
18 be able to give the death sentence?

19 A Yes, sir.

20 Q Okay. Now, some of the other things that go along with
21 that sometimes is after you -- if that's the decision that
22 you have made, what you would be required to do is there
23 would be a sheet of paper with 12 lines, and you would have
24 to sign there saying that that's what you thought should be
25 done. Do you understand that?

1 A Yes, sir.

2 Q Do you think you would be able to sign your name on
3 that type of document saying you think that's the
4 appropriate sentence?

5 A Yes, sir.

6 Q Okay. And you might have to, when you are out here, if
7 you were in that jury box, you might have to voice your
8 opinion that that is your opinion in front of -- in open
9 court. Do you think you could do that if you decided that
10 death was with the appropriate sentence?

11 A Yes, sir.

12 Q Okay. Have you had the occasion prior to yesterday to
13 think about the death penalty? Is it something that you
14 have ever given any thought to?

15 A Not really.

16 Q Okay. So really from the time the judge said it
17 yesterday is really the first time it sort of came into your
18 mind.

19 A Yes, sir.

20 Q Okay. Thank you, Mr. Ridings.

21 THE COURT: Solicitor.

22 MR. WILLINGHAM: May it please the Court, Your Honor.

23 EXAMINATION BY MR. WILLINGHAM

24 Q Mr. Ridings, my name is Donnie Willingham. I'm a
25 deputy solicitor here in Spartanburg. Along with Deputy

1 Solicitor Barry Barnette and Solicitor Trey Gowdy, we are
2 responsible for prosecuting this case.

3 I want to start out by letting you know there is no
4 right or wrong answers. We are trying to find out about you
5 and your opinions and your beliefs.

6 When the judge asked you about whether or not you would
7 be able to impose the death penalty, you seemed to hesitate.
8 You had the same hesitation, I notice, when Mr. Morin asked
9 you basically that same questions. Can you tell us why you
10 hesitated with those?

11 A I never thought about having to make that decision
12 myself.

13 Q Right. And you understand that nobody can make you
14 make that decision.

15 A Yes, sir.

16 Q Do you understand that? It is a personal choice that
17 you have got to make based upon the facts and the evidence
18 you hear from the courtroom.

19 A Yes, sir.

20 Q Do you understand you have always got two choices? One
21 is life, and one is death if we get to the penalty phase.
22 Do you understand that?

23 A Yes, sir.

24 Q Judge and the clerk gave you a piece of paper when you
25 were back in the jury room waiting to come out here and

1 broke it down to three different types of jurors, the first
2 juror being, one of the jurors being, given the choice
3 between life and death -- some jurors, which is fine, may
4 always go with life.

5 Another type of juror when presented the choice of life
6 and death, again, fine, would always go with death.

7 Then there was a third type of juror that if presented
8 with life or death based upon the circumstances and
9 testimony in some cases would vote life and in some cases
10 would vote death.

11 Where would you put yourself in that classification?

12 A I guess that would depend on the evidence and what's
13 proved.

14 Q Okay. But you can see yourself imposing the death
15 sentence on someone.

16 A Reluctantly, yeah.

17 Q I understand.

18 Mr. Ridings, you indicated your wife's cousin is in law
19 enforcement. You indicated yesterday, and I think you
20 indicated on your form. You may have said yesterday and I
21 just maybe missed it. Who does she work for?

22 A Who does my wife work for?

23 Q Who does your wife's cousin work for?

24 A I think he is a sheriff's deputy.

25 Q Whereabouts, here in Spartanburg?

Jury qualification -- Number 227

1 A Yeah. He may be retired.

2 Q Do you know his name?

3 A Ricky Jones.

4 MR. WILLINGHAM: If I can have just a moment.

5 THE COURT: Yes, sir.

6 (Pause.)

7 Q Mr. Ridings, you indicated that you could reluctantly
8 impose the death penalty.

9 Do you have any personal views, or religious views for
10 that matter, that would make that decision harder for you
11 than if you didn't have that opinion?

12 A Well, no. I really never thought about it. I just
13 never have been in that situation before.

14 Q And, basically, what I am asking you is why you
15 believe -- why you have reluctance. What makes you
16 hesitate? What makes you reluctant?

17 A If you have never been in a situation, it is hard to
18 say how you would act, how, how you would go about looking
19 at things.

20 Q Okay. And if the verdict of you and the other 11
21 members of the jury were, was for death, you would be
22 required to come back into this jury (sic) room, and you
23 would be polled by the clerk and by the judge. And each
24 individual would be asked personally is that your verdict.

25 Would you be able to announce in open court that death

1 was your verdict if proven to you beyond a reasonable doubt?

2 A Yeah. If I put it on the paper, I would say so.

3 MR. WILLINGHAM: No other questions.

4 THE COURT: Anything else, Mr. Morin?

5 MR. MORIN: No, sir.

6 THE COURT: Anything else from you, Solicitor?

7 MR. WILLINGHAM: No, sir.

8 THE COURT: Mr. Ridings, I want to thank you very much
9 for your participation here yesterday, as well as this day.

10 I find that you are qualified to serve as a potential
11 juror in this case. With that qualification let me remind
12 you that you are, as you leave the courthouse today until
13 you return later this week you are, not to discuss this case
14 with anyone, whether it be family, friends or anyone else.

15 If anyone should attempt to contact you concerning this
16 case, I want you to gather as much information as you
17 possibly can about those individuals, and report that to me
18 immediately, because that's a very serious matter, and I
19 would deal with the persons that attempted to contact you
20 accordingly.

21 Once again, let me remind you that you are not to read,
22 watch or listen to any news accounts concerning this
23 particular case. All I want you to consider if you are
24 selected as a juror in this case is what you see and hear in
25 this courtroom, nothing more and nothing less.

1 Now, when you came here yesterday the clerk of court's
2 staff gave you a brochure that had a telephone number on it.
3 That telephone number connects to an answering machine in
4 the clerk's office.

5 Now, tomorrow night, that's Wednesday night, after six
6 o'clock I want you to call that number that's listed on that
7 brochure. And there is going to be a message left on there.
8 One of two messages will be on there.

9 The first message might be something like all jurors in
10 the case of the State vs. Moore should call back on Thursday
11 at a particular time.

12 The other message might say all jurors in the case of
13 the State vs. Moore shall report to the Spartanburg County
14 Courthouse at a particular time with your bags packed. And
15 leave those in your car.

16 If you -- when you are told to come back here, whether
17 it be tomorrow night or via the telephone message on
18 Thursday, follow those instructions. Come back here. Leave
19 your belongings in your car.

20 If you are selected as a juror in the case, then the
21 jury custodians will take you and the other members of the
22 jury to the motel that you will be staying at throughout the
23 course of the trial. And you will be well cared for while
24 you are away from home. And you will remain with us for the
25 duration of the case.

1 If you are not selected, we are going to thank you very
2 much for having been here yesterday and today and later on
3 this week and send you on about your regular daily
4 activities with our thanks.

5 So the long and short of it is this. You need to go
6 home and start packing. And be prepared when you call here
7 tomorrow night to hear a message that you are going to
8 report at a certain time on Thursday. Or you may have to
9 call back on Thursday and get that instruction. It just
10 depends on where we are tomorrow night when we put that
11 message on there.

12 But, in any event, I'm going to see you sometime
13 Thursday or a little bit later in the week. Have a nice
14 time packing, and I will see you later on this week. Thank
15 you, sir.

16 THE JUROR: That's the first number on this brochure.

17 THE COURT: Thank you very much, Mr. Ridings.

18 (Whereupon, the juror was excused from the courtroom.)

19 THE COURT: Let the record reflect that Juror Number
20 227, Larry W. Ridings, is qualified to serve as a potential
21 juror in this case pursuant to Section 16-3-20 of our code.

22 That takes us through Panel Number Four. And according
23 to my feeble math, that puts us at 15 qualified.

24 Thank you very much. You have earned yourself a
25 15-minute break.

1 (Whereupon, a recess was taken.)

2 THE COURT: Is the defendant ready to proceed?

3 MR. KELLY: Yes, sir, Your Honor.

4 THE COURT: The state?

5 MR. WILLINGHAM: Yes, sir, Your Honor.

6 THE COURT: Number 40, David L. Browning, please.

7 JUROR NUMBER 40, DAVID L.

8 BROWNING, having been first duly sworn, was voir
9 dired as follows:

10 EXAMINATION BY THE COURT

11 Q Slide a little bit closer to that microphone,
12 Mr. Browning.

13 You are David L. Browning, is that correct?

14 A Yes, sir.

15 Q Thank you, sir. Now, Mr. Browning, you remember
16 when -- that you are under oath.

17 A Yes.

18 Q And you also remember yesterday that when I dismissed
19 you and your colleagues that I have gave you some
20 instructions that you were not to discuss this case with
21 anyone; that if anyone attempted to contact you concerning
22 this matter that you were to report that to me today; and
23 that you were not to read, watch or listen to any news
24 accounts concerning this case. Have there been any
25 violations of my instructions?

Jury qualification -- Number 40

1 A No, sir.

2 Q Now, Mr. Browning, over the next few minutes I am going
3 to ask you some questions. Thereafter one of the defense
4 lawyers and one of the solicitors will also ask you some
5 questions.

6 Please keep in mind that in no way are we attempting to
7 invade your privacy, but due to the nature of the
8 proceedings that we are about this week it's necessary that
9 certain questions are asked and answered.

10 Keep in mind that there are absolutely no right or
11 wrong answers to these questions. Just answer them openly
12 and honestly and fully.

13 Also, keep in mind that no one is challenging your
14 view. We just need to know what your views are in certain
15 areas.

16 I would also tell you that if you do not understand a
17 question, you need to have it repeated, restated, simply let
18 me or the lawyer that asked the question know that. And we
19 will be glad to restate it or repeat it for you.

20 Also, pay very close attention to these questions,
21 because over the next few minutes we are probably going to
22 be asking you some things that you never considered before
23 coming to court here this week. Okay.

24 A Right.

25 Q I would also tell you that we have copies of your juror

1 information sheet. And that was important to us in
2 preparing for today's encounter.

3 Now, among the things that we are going to be talking
4 about or discussing this afternoon, or this evening now,
5 will be, will be referring to the word penalty. But the
6 mere fact that I even mention or refer to that word does not
7 in any way indicate anything about the defendant, Mr. Moore.
8 He is presumed in the law to be innocent. Do you understand
9 that?

10 A Yes, sir.

11 Q Now, if you were a juror in a criminal case,
12 Mr. Browning, could you listen to the law, accept and apply
13 that law as I would instruct you as the judge of this Court
14 even though you may disagree with that law or think that it
15 ought to be some other way?

16 A I could, I could follow what you said.

17 Q Thank you, sir.

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

21 A Yes, sir.

22 Q Now, Mr. Browning, in a criminal case the state has the
23 burden of proving guilt. And the burden of proof that the
24 state must meet is proof beyond a reasonable doubt.

25 A defendant has absolutely no burden, no responsibility

Jury qualification -- Number 40

1 to prove himself innocent. Do you understand that?

2 A Yes, sir.

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

6 A Yes, sir.

7 Q Now, as you know from being here yesterday when I
8 talked to the entire jury panel, this is a case in which the
9 State of South Carolina is seeking the death penalty.

10 And, as such, we are going to be involved in what's
11 called a bifurcated trial or proceeding. Now, that's kind
12 of a fancy word that simply means that it's a trial broken
13 into two parts. The first part is the guilt phase; the
14 second part is the sentencing phase.

15 Now, if you were a juror in such a case and if the jury
16 found the defendant not guilty of murder in the guilt phase,
17 do you understand that the trial would stop then?

18 A Yes, sir.

19 Q However, if you were a juror in such a case and if the
20 jury had found the defendant guilty of murder, do you
21 understand that you would then move to the second or
22 sentencing phase of that trial?

23 A Yes, sir.

24 Q Now, in that phase of the trial, Mr. Browning, evidence
25 would be presented to the jury in the form of aggravating

1 circumstances, as well as mitigating circumstances.

2 Now, aggravating circumstances are facts, incidents,
3 details or occurrences which our state legislature, the
4 General Assembly of South Carolina, has declared by law
5 would make worse, that is to aggravate, the crime or offense
6 of murder.

7 In other words, when there is an aggravating
8 circumstance that goes along with or accompanies a murder,
9 it increases the enormity or adds to the injury of the crime
10 of murder. In other words, it's a murder committed in the
11 commission of or in connection with another crime or
12 incident. Do you understand that?

13 A Yes, sir.

14 Q Now, mitigating circumstances are also incidents,
15 details or occurrences which our general assembly, once
16 again, has declared by law that reduces the severity of the
17 offense of murder, and the jury may consider them as
18 extenuating or as reducing the degree of responsibility for
19 the crime of murder.

20 Do you understand what I mean when I speak of a
21 mitigating circumstance?

22 A Yes, sir.

23 Q Mr. Browning, if you were a juror in such a situation,
24 I am talking about the second phase, the sentencing phase,
25 of a death penalty case, could you, depending upon the

1 particular facts and circumstances of that case, including
2 the consideration of aggravating and mitigating
3 circumstances and the law that I would instruct you that
4 applied to that case, return a sentence of life in prison?

5 A One more time, please.

6 Q If you were a juror in that situation, I'm talking
7 about the sentencing phase of a death penalty case, could
8 you, depending upon the particular facts and circumstances
9 of that case, including the consideration of aggravating, as
10 well as mitigating, circumstances and the law that I would
11 instruct you that applies to that case, return a sentence of
12 life in prison?

13 A Yes, sir.

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 all
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, sir.

21 Q Now, Mr. Browning, you understand that there are two
22 sentencing options that are always available to the jury in
23 the sentencing phase of a death penalty trial, that being
24 life imprisonment or death.

25 A Yes, sir.

1 Q And you understand that the jury, each and every member
2 of the jury, must be capable of imposing either sentence.

3 A Yes, sir.

4 Q Now, Mr. Browning, if you were chosen for service on
5 this jury you would be sequestered. That's kind of a
6 highfaluting word for housed in a motel for the duration of
7 the trial.

8 I don't know how long this case will last. I would
9 estimate once we get the jury seated that it could be
10 anywhere from seven to ten days, although it could be less
11 than that.

12 Except for the personal inconvenience that you would
13 suffer, would this pose a serious danger to the health or
14 well-being of yourself or of those dependent upon you?

15 A No, sir.

16 Q Thank you, sir. I appreciate you responding to my
17 questions. Please answer any of Mr. Kelly's questions.

18 MR. KELLY: May we approach, Your Honor?

19 THE COURT: Yes, sir.

20 (Bench conference held off the record.)

21 THE COURT: All right. Yes, sir.

22 MR. KELLY: May it please the Court, Your Honor.

23 EXAMINATION BY MR. KELLY

24 Q Mr. Browning, I am Keith Kelly, and along with Michael
25 Morin seated here and Ms. Jennifer Johnson, we represent

1 Richard Moore in the proceeding.

2 And as the Court has told you, we have the benefit of
3 having your questionnaire that you filled out. And I
4 appreciate you providing that for us.

5 I also am a Woodruff High School graduate. Could I ask
6 you what year you graduated from Woodruff High School?

7 A 1978.

8 Q '78. All right, sir.

9 Now, Mr. Browning the state in this case, as Judge
10 Clary has told you, is seeking to put to death the
11 defendant, Mr. Moore, in this particular case.

12 And as the Court has told you, there are things called
13 aggravating circumstances, and those would be specifically
14 spelled out. The Court would at some point tell you what
15 they are. And there is a list of those if proved.

16 In the event that one of those circumstances was proved
17 to you beyond a reasonable doubt, you would then have to
18 consider the evidence, consider all of the facts, consider
19 everything that has been presented to you in a proper
20 fashion and then decide what the penalty would be, life in
21 prison or death. Do you understand that?

22 A Yes, sir.

23 Q Do you understand that in the event that the state, Mr.
24 Gowdy and his assistants, prove at least one of those
25 factors or, in fact, prove all of them if there happened to

Jury qualification -- Number 40

1 be 29 and they proved all 29 of them, you are not required
2 to impose a sentence of death? Do you understand that?

3 A Yes, sir.

4 Q Okay. Even though one or more are proven, you could
5 then say I think that based on the facts that this man
6 deserves life. Do you understand that?

7 A Yes, sir.

8 Q Also, the judge has told you that there are things
9 called mitigating circumstances, which also is a separate
10 list to be considered; and that you could use those factors,
11 those instances, those mitigating pieces to justify not
12 imposing the death penalty. Do you understand that?

13 A Yes, sir.

14 Q And that Mr. Gowdy would be trying to convince you of
15 the aggravating circumstances, and we would be trying to
16 show you and convince you of the mitigating circumstances.

17 A Yes, sir.

18 Q I note that you are of the Baptist religion. And all
19 of us gather our views on the death penalty and, in fact,
20 our views on anything, in this instance the death penalty,
21 from some source, whether it be from our church or whether
22 it be from the coworkers or life experiences, something our
23 grandfather, grandmother may have taught us, what we learned
24 in school.

25 Your views on the death penalty are based on what,

Jury qualification -- Number 40

1 Mr. Browning?

2 A Church and my family.

3 Q Church and family. All right, sir. And have those
4 views changed in recent times or have they -- to some
5 degree, or are they just as strong or weak as they were two
6 years ago?

7 A To some degree.

8 Q They changed to some degree?

9 A Yeah, because of different situations.

10 Q Yes, sir. Would you tell me about that?

11 A Well, some situations doesn't really call for, from my
12 view, death. It could be life, and some could mean death.
13 It just depends on what the person done and how he did it.

14 Q Right. So what you are saying is that you would
15 consider all of the evidence that His Honor allowed to come
16 in before you, whether it be a photograph or a drawing or
17 whatever it might be, to weigh your decision as to whether
18 or not life or death.

19 A Yes, sir.

20 Q Mr. Browning, not to embarrass you, but I am looking at
21 a list that was provided to me by the solicitor's office.
22 And it appears that, that someone by the name of David L.
23 Browning, and I am going to ask you if it is you, in 1994
24 was convicted of a false unemployment claim. Could that be
25 you?

Jury qualification -- Number 40

1 A No.

2 Q That was not you?

3 A I have an uncle by the name of David Browning and a
4 nephew by the name of David Browning.

5 Q All right.

6 A And it was my uncle.

7 Q All right, sir. He has the same name as you?

8 A He has David Browning, but it is not David L. Browning.

9 Q All right, sir. I didn't mean to embarrass you. I
10 didn't know.

11 A It's no embarrassment.

12 Q I just wanted to ask right there, because some people
13 do have the same name.

14 I believe that's all we have, Mr. Browning. Thank you.

15 MR. GOWDY: May it please the Court, Your Honor.

16 THE COURT: Yes, sir.

17 EXAMINATION BY MR. GOWDY

18 Q Good afternoon, Mr. Browning.

19 A How are you doing, sir?

20 Q Doing fine. That's exactly why Mr. Kelly and myself
21 ask certain questions, because you can sometimes have faulty
22 information or preconceived notions. And the only way we
23 know to get the straight answer is to ask a potential juror
24 like yourself.

25 You mentioned that you had some personal views on

1 capital punishment or the death penalty. Could you tell me
2 just in general terms what those views are?

3 A Well, it depends, say, if someone murdered somebody
4 cold-hearted and, you know, they were -- the person that
5 they killed was helpless or they just did it without a sense
6 of respect or feeling, that to me would be a death penalty,
7 because you don't take into account the other person. You
8 just cold-heartedly did it without a care in the world.

9 Q I think everybody here respects your personal view,
10 just like I have personal views on things.

11 What if your personal views were different from what
12 the law was or what the Court gave you as the law? What if
13 they were in conflict? How would you resolve that conflict?

14 A I would lay my personal views to the side and do what
15 the law says.

16 Q Okay. If I remember correctly yesterday, you and
17 several other jurors may have either got their questionnaire
18 late in the mail or been a little bit late turning it in or
19 completing it. I may have you confused with someone else,
20 but I think I made a note that you may have brought your
21 questionnaire with you yesterday. Is that right?

22 A Yes, sir.

23 Q And is everything in your questionnaire to the best of
24 your recollection --

25 A Yes, sir.

Jury qualification -- Number 40

1 Q -- accurate? You had time to fill it out?

2 A Yes, sir.

3 Q Which hair style -- I know you work with Wal-Mart now.
4 Did you work for a hair styling place in Spartanburg?

5 A When I first started Haircraft was down at Pinewood
6 Shopping Center.

7 Q Okay. If the circumstances and facts of the case
8 warranted it based on the law that His Honor will give you,
9 would you be able to vote for the death penalty in an
10 appropriate case?

11 A Yes, sir.

12 Q Would you be able to sign your name to a piece of paper
13 or to a verdict form indicating that that was your verdict?

14 A Yes, sir.

15 Q Would you also, Mr. Browning, be able to come into a
16 courtroom if asked what your verdict was and announce it in
17 public that that was your verdict?

18 A Yes, sir.

19 Q And, by the same token, if you thought that life was
20 the appropriate penalty, you would be able to vote for life
21 as opposed to death.

22 A Yes, sir.

23 Q Thank you very much for your candor.

24 MR. GOWDY: Your Honor, if I could have just one
25 moment.

Jury qualification -- Number 40

1 THE COURT: Yes, sir.

2 (Pause.)

3 MR. GOWDY: Your Honor, after Your Honor gives
4 Mr. Kelly another chance, could we have one moment outside
5 the presence of Mr. Browning?

6 THE COURT: Yes, sir. Anything further, Mr. Kelly?

7 MR. KELLY: No, sir.

8 THE COURT: Mr. Browning, if I could get you to step
9 outside, please, sir, we will get you back in just a moment.
10 If you would, follow the gentleman over there in that
11 beautiful red jacket.

12 (Whereupon, the juror was excused from the courtroom.)

13 THE COURT: Yes, sir.

14 MR. GOWDY: Your Honor, if it please the Court, I found
15 him very, very convincing. Mr. Willingham is going to
16 check, because the birth date and the social security number
17 match up identical.

18 I know that there are mistakes that are made in N. C.
19 I. C., but his adamance -- if it is the wrong person, his
20 adamance and indignation is well preserved. If it is not,
21 then I think it casts this perhaps in a little different
22 light.

23 I don't want to take any of the Court's time, but given
24 the fact that everything matched up, it could be a mistake
25 or it could be a failure of recollection on his behalf.

Jury qualification -- Number 40

1 THE COURT: Well, we will see what Mr. Willingham comes
2 up with. You are exactly right. N. C. I. C. occasionally
3 does make a mistake. I don't know that they make a mistake.
4 It's the person that puts it in originally that makes the
5 mistake. Sometimes those things do get crossed up. We will
6 wait a moment and see.

7 MR. GOWDY: I will put both of my deputies on that
8 task.

9 (Pause.)

10 THE COURT: Do you have a rap sheet?

11 MR. GOWDY: I gave it to Deputy Willingham, but I can
12 go get it from him.

13 THE COURT: He will bring it back.

14 (Pause.)

15 THE COURT: All right. Let's bring Juror Number 40,
16 Mr. Browning, back in.

17 (Whereupon, the juror was returned to the courtroom.)

18 THE COURT: Mr. Browning, if you would, please resume
19 your seat, sir.

20 Mr. Browning, I want to thank you very much for your
21 participation yesterday, as well as today, here with us.

22 I find that you are qualified to serve as a potential
23 juror in this case. With that qualification I am going to
24 give you some more instructions. As if you didn't get
25 enough yesterday, I am going to give you the same thing all

Jury qualification -- Number 40

1 over again with a little extra dose.

2 First of all, I remind you that you are not to discuss
3 this case with your fellow jurors, family, friends or anyone
4 else that you might come into contact with.

5 Also, 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 can
8 and report that to me immediately, because that's a very
9 serious matter, and I would deal with the person or persons
10 that attempted to contact you accordingly.

11 Also, I am going to continue my very strong instruction
12 that you are not to read, watch or listen to any news
13 accounts concerning this case.

14 Simply put, Mr. Browning, if you were selected as a
15 juror in this case, all I would want to you to consider is
16 what you see and hear in this courtroom, nothing more and
17 nothing less.

18 Now, with all of that instruction, I'm going to remind
19 you that when you came here yesterday, I think the clerk of
20 court gave you a pamphlet that had some general information
21 about jurors there and your duties and responsibilities.
22 Contained on the front of that was a telephone number that
23 is a recording service.

24 And tomorrow night, that's Wednesday night, after six
25 o'clock I want you to call that number. And there will be a

Jury qualification -- Number 40

1 message left on there. It will be one of two messages
2 probably.

3 One message, if I decide to have the clerk leave it,
4 will say jurors in the case of the State vs. Moore should
5 call back on Thursday, October the 18th, at a particular
6 time that I would set; or, in the alternative, that message
7 might say jurors in the case of the State vs. Moore should
8 report to the Spartanburg County Courthouse at a particular
9 time on Thursday with your bags packed.

10 Now, when you get the message ultimately that you are
11 to report back here with your bags packed, because you need
12 to go home tonight and start packing up, because sometime on
13 Thursday or Friday you are going to be coming back here with
14 your bags.

15 When you come back at the appointed time that you are
16 told over the answering machine at that number that's on
17 that form, leave your luggage in the vehicle.

18 If you are selected to serve as a juror in this case,
19 then the jury custodians will take you and your belongings
20 and your colleagues on the jury to the motel that you're
21 going to be staying at for the time that this case will
22 last.

23 And if you are not selected, you don't even have to
24 bring your luggage in. You are going to get in your car and
25 go back home, and we will thank you very much for your

1 participation here this week.

2 So, once again, please call tomorrow night after six
3 o'clock. And just follow the instructions that the clerk
4 will leave there at my directions. And I look forward to
5 seeing you back here hopefully sometime on Thursday.

6 Thank you very much. Have a good day. Have a nice
7 time packing.

8 THE JUROR: All right.

9 (Whereupon, the juror was excused from the courtroom.)

10 THE COURT: Let the record reflect that Juror Number
11 40, David Browning, is qualified to serve as a potential
12 juror in this case pursuant to Section 16-3-20 of our code.

13 197, Gary New.

14 JUROR NUMBER 197, GARY L.

15 NEW, having been first duly sworn, was voir dired as
16 follows:

17 EXAMINATION BY THE COURT

18 Q Good evening. You are Gary L. New, is that correct?

19 A Yes, sir.

20 Q Mr. New, you understand that you are under oath here
21 tonight.

22 A Yes, sir.

23 Q And you also remember when you left here yesterday
24 afternoon that I gave you instructions that you were not to
25 discuss this case with anyone; that if anyone attempted to

1 contact you concerning this case that you were to report
2 that to me today; and also that that you were not to read,
3 watch or listen to any news accounts concerning this case.
4 Have there been any violations of those instructions?

5 A No, sir.

6 Q Mr. New, over the next few minutes I am going to be
7 asking you some questions. Then one of the defense lawyers
8 and one of the solicitors will ask you some questions.

9 Please understand that we are not in any way attempting
10 to invade your privacy, but due to the nature of the
11 proceedings that we are about here this week that it's
12 extremely important that certain questions are asked and
13 answered.

14 I want you to keep in mind that there are absolutely no
15 right or wrong answers to these questions, so don't worry
16 about that. Just answer them openly and honestly and fully.
17 No one is challenging the view that you might have. We just
18 need to know what your view is in a particular area.

19 Also, if I or any of the lawyers give you any questions
20 that you do not understand, or if you need to have them
21 repeated, all you have to do is let us know. And we will be
22 glad to do that.

23 Listen very carefully to these questions, because
24 during the next few minutes of our discussions we are
25 probably going to ask you some questions that you have never

1 considered before coming to court this week. So, that's the
2 reason that it's important that you listen carefully.

3 Also, I would tell you that the lawyers and I have
4 copies of your juror information sheet, because that was
5 important to us in getting prepared for tonight.

6 Now, Mr. New, among other things, we are going to be
7 talking about and referring to the word penalty. But the
8 mere fact that I even mention that word or we talk about
9 penalty does not in any way indicate anything about the
10 defendant, Mr. Moore. He is presumed in the law to be
11 innocent. Do you understand that?

12 A Yes, sir.

13 Q Now, Mr. New, let's assume that you were a juror in a
14 criminal case.

15 Could you listen to the law, accept and apply that law
16 as I would instruct you as the judge of this Court even
17 though you may disagree with that law or think that it
18 should be some other way?

19 A Yes, sir.

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

23 A Yes, sir.

24 Q Now, in a criminal case, Mr. New, the state has the
25 burden of proving guilt. And the burden of proof that the

1 state must meet is proof beyond a reasonable doubt.

2 A defendant has absolutely no burden to prove himself
3 innocent. Do you understand that?

4 A Yes, sir.

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

8 A Yes, sir.

9 Q Now, as you know from being here yesterday with the
10 entire jury panel, this is a case in which the State of
11 South Carolina is seeking the death penalty.

12 As a result, we are engaged in what's called a
13 bifurcated trial or proceeding, which simply means that it's
14 divided into two parts.

15 Now, if you were a juror in a death penalty case, the
16 first part is known as the guilt phase. And if the jury had
17 found the defendant not guilty of murder, do you understand
18 that the trial would end at that point in time?

19 A Yes, sir.

20 Q However, if you were a juror in such a case and the
21 jury had found the defendant guilty of murder, do you
22 understand that you would then move to the second or
23 sentencing phase of that trial?

24 A Yes, sir.

25 Q Now, in that phase of the trial, Mr. New, evidence

1 would be presented in the form of aggravating circumstances,
2 as well as mitigating circumstances.

3 Now, what are aggravating circumstances? They are
4 facts, incidents, details or occurrences which our state
5 legislature, the General Assembly of South Carolina, has
6 declared by law would make worse, that is to aggravate, the
7 crime of murder.

8 In other words, when there is an aggravating
9 circumstance that accompanies or goes along with a murder,
10 it increases the enormity or adds to the injury of that
11 crime of murder. In other words, it's a murder that's
12 committed in the commission of or in connection with another
13 crime or incident. Do you understand that?

14 A Yes, sir.

15 Q Now, mitigating circumstances are also incidents
16 details or occurrences which our state legislature, the
17 general assembly, has, once again, declared by law that
18 reduces the severity of the offense of murder and may be
19 considered as extenuating or as reducing the degree of
20 responsibility for the crime of murder. Do you understand
21 that?

22 A Yes, sir.

23 Q Now, let's assume for a few moments that you were a
24 juror in that situation, Mr. New, the sentencing phase of a
25 death penalty case.

1 Could you, depending upon the particular facts and
2 circumstances of that case, including the consideration of
3 those aggravating as well as mitigating circumstances and
4 the law that I would instruct you that applied to that case,
5 return a sentence of life in prison?

6 A Yes, sir.

7 Q If you were a juror in that situation could you,
8 depending upon the particular facts and circumstances of
9 that case, once again, including any aggravating and
10 mitigating circumstances that would be presented and the law
11 that I would instruct you that applied to that case, return
12 a sentence of death?

13 A Yes, sir.

14 Q Do you understand that there are two sentencing options
15 that are always available to the jury in the sentencing
16 phase of a death penalty case, that being life imprisonment
17 and death? Do you understand that?

18 A Yes, sir.

19 Q And do you understand that each and every member of the
20 jury must be capable of imposing either of those sentences?

21 A Yes, sir.

22 Q Now, Mr. New, if you were chosen for service on this
23 jury you would be sequestered, which simply means housed in
24 a motel for the duration of the trial. That would be at the
25 county's expense. Your well-being would be cared for.

1 Except for the personal inconvenience that this would
2 pose to you, and I don't know how long that the case would
3 last. I would say from the time that the jury is seated
4 until it ends, no more than seven to ten days. It could be
5 much less than this.

6 Except for the personal inconvenience that you would
7 suffer, would this pose a serious danger to the health or
8 well-being of yourself or of those dependent upon you?

9 A No, sir.

10 Q Thank you for answering my questions.

11 Mr. Kelly.

12 MR. KELLY: Thank you, Judge.

13 EXAMINATION BY MR. KELLY

14 Q Mr. New, in response to the judge's last question about
15 the inconvenience, of course, I note from your
16 questionnaire -- I appreciate you filling that out for us.
17 I note that you are single and have no child. Do you live
18 alone at that residence or do you live with your folks?

19 A I live with my mother and father.

20 Q Live with your mother and father. Okay. And they are
21 in good health or generally good health?

22 A Yes, sir.

23 Q All right. And are you paid on salary, or are you an
24 hourly employee at Davy Tree?

25 A I am hourly.

Jury qualification -- Number 197

1 Q Hourly employee?

2 A Yes, sir.

3 Q All right, sir. And in the event that you were called
4 on to serve, of service in this case for, as the judge said,
5 seven to ten days, would you be paid for those days that you
6 would be out?

7 A Yes, sir.

8 Q You would be. Even though you don't work, you would be
9 paid for them?

10 A Yes, sir.

11 Q I guess that's some policy or something they have done
12 for jury service.

13 A Uh-huh.

14 Q You also indicated C. F. Grading. Is by chance that
15 Cox and Floyd Grading?

16 A Yes, sir.

17 Q You work for George Floyd over there?

18 A Yes, sir. I worked there for about eight months.

19 Q And what do you do there?

20 A I run the bulldozer some and run the packer a little
21 bit.

22 Q Okay. And at one time, and I am not sure he still
23 does, George was a constable in the court system. Did you
24 ever go to court with George?

25 A No, sir.

Jury qualification -- Number 197

1 Q On your personal vehicle, you indicated you don't have
2 any bumper stickers. But do you have a flag, or are you
3 currently flying the U. S. flag or any other flag on your
4 vehicle?

5 A No, sir. I forgot that I had an ultramax sticker on my
6 back window.

7 Q Okay. That's fine. An ultramax?

8 A Yeah, because I race go-carts.

9 Q Oh, okay. All right. Any other sticker that you have
10 on your truck, whether it be a Three sticker or anything
11 like that?

12 A No, sir.

13 Q Okay. And in response to the question about the flag,
14 you don't have the South Carolina flag or the U. S. flag or
15 any other flag flying on your motor vehicle, is that
16 correct?

17 A That's right.

18 Q What about your home in Enoree? Do you guys fly a flag
19 on your front porch or the edge of your driveway?

20 A No kind of flag like that. We fly a doggie flag.

21 Q I'm sorry. What kind?

22 A A dog flag.

23 Q You must be animal lovers.

24 A Yeah. My mama is.

25 Q Okay. On organizations on your questionnaire, you left

Jury qualification -- Number 197

1 that blank. Do you belong to any hunting club or fishing
2 club or --

3 A Yes, sir.

4 Q You do? Could you tell me about those, please?

5 A I am member of Wildcat Hunt Club.

6 Q All right, sir.

7 A It's about two miles from the house.

8 Q All right. And you guys hunt deer, turkeys, and that
9 sort of thing?

10 A Yes, sir.

11 Q All right. And in relation to that do you have several
12 firearms?

13 A Yes, sir.

14 Q Okay. More than five or less than five?

15 A Yeah. I got about 12 or 13.

16 Q Twelve or 13. Are you a member of the National Rifle
17 Association by chance?

18 A No, sir.

19 Q Do you subscribe to any magazine that has to do with
20 hunting or fishing or like Field and Streams or something
21 like that?

22 A Yes, sir. I subscribe to Buckmasters and Fishing in
23 America.

24 Q All right. Those are the only two?

25 A Yes, sir.

Jury qualification -- Number 197

1 Q All right. Any other magazine that doesn't have to do
2 with hunting or fishing? Is there any other magazines that
3 you get -- U. S. News and World Report, Time, anything like
4 that?

5 A No, sir.

6 Q You indicated that you watch T. V., and no details were
7 put on there. What did you say your favorite television
8 show is?

9 A Friends.

10 Q All right. Do you ever watch Cops or Jag or something
11 like that?

12 A Nay.

13 Q Okay. You also indicated that you went to R. D.
14 Anderson Vocational School. And you finished there what
15 year, sir?

16 A '99 -- '98 or '99.

17 Q All right, sir. What course did you take there?

18 A Welding.

19 Q All right. Have you ever worked as a welder?

20 A No, sir.

21 Q And I am sure it's just some way the question was
22 asked, and I apologize for that, on the questionnaire.

23 But on the questionnaire we were asking for your
24 condition of your health. I think you responded no. Is
25 your health good?

Jury qualification -- Number 197

1 A Yes, sir.

2 Q Okay. You don't have any blood pressure problems or
3 anything that would prevent you from being of service?

4 A No, sir.

5 Q Do you take any medication whatsoever?

6 A Uh-uh.

7 Q And you also indicated that Baptist is your religion.
8 Could you tell me what church you attend, please?

9 A I don't attend church right now.

10 Q All right, sir. But Baptist being your religion, would
11 you say that's Southern Baptist or Freewill Baptist or just
12 Baptist?

13 A Baptist. I used to go to New Hope Baptist Church --

14 Q Yes, sir.

15 A -- right below the house.

16 Q Yes, sir.

17 A And I quit going about three or four years ago.

18 Q Okay. Is there any other church besides the Baptist
19 church that you attend, whether it be Methodist or Lutheran
20 or something like that?

21 A No, sir.

22 Q And your views on the death penalty, you indicated to
23 Judge Clary, that if the facts of a particular case dictated
24 it, if you thought it was necessary, you could, in fact, say
25 that a person ought to be put to death for their acts.

1 Those views we generally get from somewhere, whether it
2 be the church or whether it be from a club you belong to or
3 perhaps your family or something you have read. You base
4 your views on what?

5 A Probably just, you know, if he, if that's what they're
6 asking for and if he is guilty, you know, I could.

7 But if he wasn't guilty, I probably couldn't.

8 Q Okay. What if a -- what if a defendant were guilty?
9 Would you then always vote for the death penalty if the
10 state is seeking that?

11 A No, sir.

12 Q Even if he is guilty?

13 A Probably not.

14 Q So there would be some reason, some mitigating factors,
15 you would take into account to say maybe he is guilty of
16 murder but he shouldn't be put to death. Is that what you
17 are saying?

18 A Yes, sir.

19 Q You might be asked if it came down to it, you might be
20 asked to sign your name, to pick up a piece of paper here
21 and sign your name on the top line in voting for the death
22 penalty by your signature. Could you do that?

23 A Yes, sir.

24 Q Could you be the first person to pick up a blank sheet
25 of paper and put their name on it?

1 THE COURT: Well, now, it wouldn't be a blank sheet of
2 paper, now, if we are going to get technical about it. It
3 would be a piece of paper that had 12 lines on it with one
4 for the foreman.

5 MR. KELLY: All right, sir.

6 Q Could you be the first person to sign a piece of paper
7 that was provided by the Court?

8 A Probably not.

9 Q But at some point you would feel comfortable signing
10 it.

11 A Yes, sir.

12 Q Is that what you are saying?

13 A Yes, sir.

14 Q And if you signed at some point you might have to come
15 into this courtroom and stand over here. And the judge
16 might ask you or the clerk might ask you is this your
17 signature and is this your vote and publicly in open court
18 you might have to say that. Could you do that?

19 A Yes, sir.

20 Q And could you also stand and say life?

21 A Yes, sir.

22 Q That wouldn't embarrass you in any way to, say, give
23 the man life even though he is guilty?

24 A Yes, sir.

25 Q It would embarrass you?

1 A It wouldn't embarrass me.

2 Q Okay. Thank you very much.

3 MR. GOWDY: May it please the Court, Your Honor.

4 THE COURT: Solicitor.

5 EXAMINATION BY MR. GOWDY

6 Q Good evening, Mr. New. My name is Trey Gown. I am the
7 solicitor here in Spartanburg and Cherokee Counties. Seated
8 with me is Barry Barnette and Donnie Willingham. They are
9 my two deputy solicitors. I am not going to ask quite as
10 many questions as Mr. Kelly did. He showed his bias by
11 asking whether or not you had a Number Three sticker on your
12 car. I assume you don't have a Number 24 sticker either, do
13 you?

14 A No, sir.

15 Q How long did you work for George Floyd?

16 A About either from six to eight months.

17 Q And how long ago was that?

18 A I started in August of '99, and I believe I got laid
19 off March of 2000.

20 Q I was in and out of his business a good bit in '99, but
21 I don't believe you and I have ever met.

22 A Uh-uh.

23 Q Okay. What do you do? Well, what is a "B" trimmer?

24 A It's like you got a bossman that drives the bucket
25 truck out. And then you either chip brush or you get in the

1 bucket and trim beside the power lines. I am like the
2 second man.

3 Q Is that a private company? I noticed Duke Power was on
4 your questionnaire. You don't work for Duke Power, do you?

5 A No, sir. We contract for Duke Power.

6 Q As it relates to this case, I believe you told Judge
7 Clary that if the facts and circumstances in your estimation
8 and according to His Honor's law warranted it, you would be
9 able to vote for the death penalty in the appropriate case.

10 A Yes, sir.

11 Q And in the appropriate case you would vote for life in
12 prison.

13 A Yes, sir.

14 Q And you would also be able to come in, I believe you
15 said, and announce your verdict publicly.

16 A Yes, sir.

17 Q You said you had 12 guns, or thereabouts. Are most of
18 them long guns or any of them handguns?

19 A I got one handgun, a .22 my papa gave me when I was
20 about ten years old. The rest of them are long guns.

21 Q Thank you very much, Mr. New. I don't have any more
22 questions for you.

23 MR. KELLY: Nothing further, Your Honor.

24 THE COURT: Mr. New, I want to thank you very much for
25 your participation here yesterday, as well as this evening.

1 I find that you are qualified to serve as a potential
2 juror in this case. And with that qualification I am going
3 to tell you, once again, that you are not to discuss this
4 case with anyone, whether it be fellow jurors, family,
5 friends or anyone else that you might come in contact with.

6 Also, if anyone attempts to contact you concerning this
7 case, I want you to gather as much information about that
8 person or persons as you possibly can and report that to me
9 immediately, because that's a very serious matter, and I
10 would deal with the person that attempted to contact you
11 accordingly.

12 Also, I instruct you very strongly and remind you again
13 that you are not to read, watch or listen to any news
14 accounts concerning this case.

15 Simply put, Mr. New, if you were selected as a juror in
16 this case all I would want you to consider is what you see
17 and hear in this courtroom, nothing more and nothing less.

18 Now, when you came here yesterday morning the clerk of
19 court's office gave you a brochure that had some information
20 in there about being a juror. On the front of it, I think,
21 there was an 800 number that you can call and receive
22 information.

23 Now, tomorrow night after six o'clock, that's Wednesday
24 night after six o'clock, you need to call that number and
25 see what the message says that I will have the clerk to

1 leave for you.

2 It will probably say one of two things. Probably it
3 may say jurors in the case of the State vs. Moore should
4 call back tomorrow on Thursday for further instructions; or
5 it may say all jurors in the case of the State vs. Moore
6 should report to the Spartanburg County Courthouse on
7 Thursday at a particular time with your bags packed.

8 Irregardless, you are going to be coming back to this
9 courthouse with your bags packed sometime in the next few
10 days. I would say Thursday, at the latest Friday.

11 You will be told on that telephone recording whenever
12 you call it back at the appropriate time when you are to
13 report, or to call back and then report.

14 When you go home tonight, you need to start packing
15 your bags. And be ready tomorrow night when you call to
16 respond to whatever message is on there.

17 When you come back to the courthouse at the appropriate
18 time that you will be given, please leave your baggage in
19 your vehicle. Do not bring it into the courthouse.

20 If you are selected as a juror in this case, the jury
21 custodians would take you and the other jurors to the motel
22 where you would stay for the duration of the trial.

23 If you are not selected, then we will let you go out
24 and get in your vehicle and take your belongings back home
25 and go about your regular daily activities.

Jury qualification -- Number 197

1 Now, once again, please understand that you need to
2 call back tomorrow night, that's Wednesday night, after six
3 o'clock.

4 And just follow the instructions on the recording. If
5 it tells you to call back on Thursday, do that. If it tells
6 you to be here at a certain time on Thursday, do that.

7 Have a nice time packing. And I will see you here
8 later on this week.

9 (Whereupon, the juror was excused from the courtroom.)

10 THE COURT: Let the record reflect that Juror Number
11 197, Gary Lee New, is qualified to serve as a potential
12 juror in this case pursuant to Section 16-3-20 of our code.

13 | Number 65, Sarah Crocker.

14 JUROR NUMBER 65, SARAH N.

15 CROCKER, having been first duly sworn, was voir
16 dired as follows:

17 | EXAMINATION BY THE COURT

18 Q Good evening. You are Sarah N. Crocker, correct?

19 | A Yes, sir.

20 Q Now, Ms. Crocker, you understand that you are under
21 oath tonight.

22 | A Yes, sir.

23 Q And you also remember that yesterday before you left
24 the courthouse that I gave you certain instructions that you
25 were not to discuss this case with anyone; that if anyone

1 attempted to contact you that you were to report that to me;
2 and that you were not to read, watch or listen to any news
3 accounts concerning this case. Have there been any
4 violations of my instructions?

5 A No, sir.

6 Q Now, Ms. Crocker, over the next few minutes I am going
7 to ask you some questions. Then one of the defense lawyers
8 and one of the solicitors will ask you some questions.

9 Please understand that we are not in any way attempting
10 to invade your privacy, but due to the nature of the
11 proceedings that we are about here this week it's extremely
12 important that certain questions are asked and answered.

13 Please understand that there are no right or wrong
14 answers to these questions. If you would, just answer them
15 openly and honestly and fully.

16 And please keep in mind that no one is challenging your
17 view. We simply need to know what your view is.

18 Now, if there are at any time any questions that you do
19 not understand, if you need to have them clarified,
20 repeated, please let me or the lawyer asking the question
21 know.

22 Also, please listen very carefully to the questions,
23 because over the next few minutes we are probably going to
24 ask you some questions that you have never considered before
25 coming to court here this week.

1 I would also tell you that the lawyers and I have
2 copies of your juror information sheet which was extremely
3 important for us in getting prepared for this session.

4 Now, among the things that we are going to be talking
5 about will include reference to the word penalty. But the
6 mere fact that I even mention that word or talk about the
7 word penalty does not in any way indicate anything about the
8 defendant in this case. He is presumed in the law to be
9 innocent. Do you understand that?

10 A Yes, sir.

11 Q Now, if you were a juror in a criminal case,
12 Ms. Crocker, could you listen to the law, accept and apply
13 that law as I would instruct you as the judge of this Court
14 even though you may disagree with the law or think that it
15 should be some other way?

16 A Yes, sir. I could listen to it.

17 Q And you would accept the law as I gave it to you?

18 A Yes, sir.

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 heard, read or seen about the case?

22 A Could you repeat, sir?

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 read, heard or seen about this case?

Jury qualification -- Number 65

1 A Yes, sir.

2 Q Now, in a criminal case, Ms. Crocker, the state has the
3 burden of proving guilt. And the burden of proof for the
4 state is proof beyond a reasonable doubt.

5 A defendant has absolutely no burden, no responsibility
6 to prove his innocence. Do you understand that?

7 A Yes, sir.

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

11 A Yes, sir.

12 Q Now, as you understand from being here yesterday when I
13 talked to the entire jury panel, this is a case in which the
14 State of South Carolina is seeking the death penalty.

15 And, as a result, we are going to be engaged in what's
16 called a bifurcated trial or proceeding. That's kind of a
17 fancy word that simply means that it's divided into two
18 parts, bifurcated. There is a guilt phase and a sentencing
19 phase.

20 Now, if you were a juror in a death penalty case and if
21 the jury had found the defendant not guilty of murder, do
22 you understand that the trial would end at the guilt phase?

23 A Yes, sir.

24 Q However, if you were a juror in such a case and the
25 jury had found the defendant guilty of murder, do you then

Jury qualification -- Number 65

1 understand that you would move to the sentencing phase of
2 that trial?

3 A Yes, sir.

4 Q Now, in that phase of the trial, Ms. Crocker, evidence
5 would be presented in the form of aggravating circumstances,
6 as well as mitigating, circumstances.

7 Now, aggravating circumstances are facts, incidents,
8 details or occurrences which our state legislature that
9 meets in Columbia, the general assembly, has declared by law
10 would make worse, that is to aggravate, the offense of
11 murder.

12 In other words, when there is an aggravating
13 circumstance that is present or accompanies a murder, that
14 increases the enormity or adds to the injury of that crime
15 of murder.

16 In other words, it's a murder that's committed in the
17 commission of or in connection with another crime or
18 incident.

19 Do you understand what I mean when I speak of an
20 aggravating circumstance?

21 A Yes, sir.

22 Q Now, mitigating circumstances are also incidents,
23 details or occurrences which the general assembly of our
24 state, our state legislature, has declared by law that
25 reduces the severity of the crime of murder and may be

1 considered by a jury as extenuating or as reducing the
2 degree of responsibility for that crime of murder.

3 Do you understand when I mean when I speak of a
4 mitigating circumstance?

5 A Yes, sir.

6 Q Now, let's assume for just a few moments that you were
7 a juror in that situation, Ms. Crocker, the sentencing,
8 second phase of a death penalty trial.

9 Could you, depending upon the particular facts and
10 circumstances of that case, including the consideration of
11 aggravating, as well as mitigating, circumstances and the
12 law that I would instruct you that applied to that case,
13 return a sentence of life in prison?

14 A No, sir.

15 Q You would be unable to return a sentence of life in
16 prison?

17 A No, sir.

18 Q You couldn't do it?

19 A I couldn't, I couldn't.

20 Q You couldn't sentence someone to life in prison?

21 A No, sir.

22 Q Well, let me ask you this. If you were a jury in that
23 situation could you, depending upon the particular facts and
24 circumstances of that case, once again, including the
25 consideration of aggravating, as well as mitigating,

1 circumstances and the law that I would instruct you that
2 applied to that case, return a sentence of death?

3 A A death-penalty death?

4 Q Yes, ma'am.

5 A No, sir.

6 Q You couldn't reach a verdict of either death or life?

7 A Well, I could if I heard, you know, the circumstances.

8 Q Well, that's what I am asking.

9 A Yeah.

10 Q If you were in that situation --

11 A If I understood the circumstances.

12 Q Let me back up.

13 A I am sorry.

14 Q If you were a juror in that situation, I am talking
15 about the second phase, the sentencing phase of the trial --

16 A Yes, sir.

17 Q -- could you, depending upon the particular facts and
18 circumstances of that case, 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 life in prison?

22 A Yes.

23 Q If you were a juror in that situation, could you, once
24 again, depending upon the particular facts and circumstances
25 of that case, including the consideration of aggravating and

Jury qualification -- Number 65

1 mitigating circumstances and the law that I would instruct
2 you that applied to that case, return a sentence of death?

3 A No, sir.

4 Q You could not?

5 A I could not.

6 THE COURT: Mr. Morin.

7 EXAMINATION BY MR. MORIN

8 Q I just have a few questions.

9 A Okay.

10 Q First, I noticed that you on your questionnaire said
11 that you worked at Wal-Mart.

12 A I used to.

13 Q Used to.

14 A Uh-huh. I'm unemployed right now.

15 Q Here in Spartanburg?

16 A Yes.

17 Q Could you tell me which one?

18 A The one on East Main.

19 Q East Main.

20 Okay. And there is just a few questions that I would
21 like to ask you about your response to your ability
22 toward -- or not being able to give the death penalty.

23 As the judge has told you, this is a two-part trial.

24 And if he was found guilty and they got to that second part,
25 the state would present evidence that they felt was the

1 aggravating circumstances, as the judge has described to
2 you. And they would have to convince you beyond a
3 reasonable doubt that these aggravating circumstances
4 existed before you would decide whether or not the death
5 penalty was appropriate. Do you follow me on that?

6 A Uh-huh.

7 Q Okay. And if you were a juror in this case and the
8 state convinced you beyond a reasonable doubt that
9 aggravating circumstances existed, would you be able to give
10 a death sentence if they had proven to you that the
11 aggravating circumstances exist?

12 A I am sorry, but no.

13 Q That's okay. It's perfectly all right. You don't have
14 to be sorry. That's how you feel.

15 THE COURT: Anything from the state?

16 MR. BARNETTE: Nothing from the state, Your Honor.

17 THE COURT: Ms. Crocker, I want to thank you very much
18 for your participation here yesterday, as well as today.

19 This is going to conclude your responsibilities in this
20 matter. On behalf of the State of South Carolina, and most
21 particularly Spartanburg County, I thank you very much for
22 your having been here ready, willing and able to participate
23 in these proceedings. This is going to end your
24 responsibilities. Thank you very much. You are dismissed.

25 THE JUROR: Thank you.

Jury qualification -- Number 65

1 (Whereupon, the juror was excused from the courtroom.)

2 THE COURT: Let the record reflect that Juror Number
3 65, Sarah N. Crocker, is not qualified to serve as a
4 potential juror in this case as she would be unable to
5 consider or be unable to impose the death penalty pursuant
6 to Section 16-3-20.

7 Rhonda Parks, 205.

8 JUROR NUMBER 205, RHONDA B.

9 PARKS, having been first duly sworn, was voir dired
10 as follows:

11 EXAMINATION BY THE COURT

12 Q You are Rhonda B. Parks, is that correct?

13 A Yes, Your Honor.

14 Q Now, Ms. Parks, you understand that you are under oath
15 here tonight.

16 A Uh-huh.

17 Q And you also remember yesterday when I dismissed you
18 and your colleagues from the courthouse that I gave you
19 certain instructions that you were not to discuss this case
20 with anyone, whether that be family, friends or anyone else;
21 that if anyone attempted to contact you that you were to
22 report that to me; and also that you were not read, watch or
23 listen to any news accounts concerning this case. Have
24 there been any violations of my instructions?

25 A No, sir.

1 Q Now, Ms. Parks, during the next few minutes I am going
2 to be asking you some questions. Thereafter one of the
3 defense lawyers and thereafter one of the solicitors will
4 ask you some questions.

5 Please keep in mind that we are not in any way
6 attempting to invade your privacy, however, there are
7 certain questions that do need to be asked and answered as a
8 result of what we're about here this week.

9 And, also, keep in mind that there are no right or
10 wrong answers to these questions. Answer them openly and
11 honestly and as fully as possible.

12 Keep in mind that no one is challenging your viewpoint.
13 We simply need to know what your views are in certain areas.

14 Also, if you do not understand a question at any time,
15 simply ask me or the lawyer asking the question to repeat it
16 or to clarify it.

17 Also, pay very close attention to these questions,
18 because we are probably going to ask you some questions over
19 the next few minutes you have never considered prior to
20 coming to this courthouse 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 very important to us in our preparation for this segment
24 tonight.

25 Now, among other things that we are going to be talking

1 about during the next few minutes, will include references
2 to the term or word penalty. But the mere fact that I even
3 mention the word penalty does not in way indicate anything
4 about the defendant, Mr. Moore. He is presumed in the law
5 to be innocent. Do you understand that?

6 A Yes, sir.

7 Q Now, if you were a juror in a criminal case could you
8 listen to the law, accept and apply that law as I would
9 instruct you as the judge of this Court even though you may
10 disagree with the law or think that it should be some other
11 way?

12 A Yes, sir.

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

16 A Yes, sir.

17 Q Now, in a criminal case, Ms. Parks, the state has the
18 burden of proving guilt. The burden of proof for the state
19 is beyond a reasonable doubt.

20 And a defendant has absolutely no burden, no
21 responsibility to prove his innocence. Do you understand
22 that?

23 A Yes, sir.

24 Q Now, could you, depending on the facts and the 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 with the
4 entire jury panel, this is a case in which the State of
5 South Carolina is seeking the death penalty. As a result,
6 we are going to be engaged in what is known as a bifurcated
7 trial or proceeding. That simply means that it's divided
8 into two parts, guilt phase, sentencing phase.

9 If you were a juror in such a death penalty case and if
10 the jury found the defendant not guilty of murder, do you
11 understand that the trial would end then and there would be
12 no necessity to move on to that second phase?

13 A Yes, sir.

14 Q However, if you were a juror in such a case and if the
15 jury had found the defendant guilty of murder, do you
16 understand that you would then move to the second or
17 sentencing phase of the trial?

18 A Yes, sir.

19 Q In that phrase of the trial, Ms. Parks, evidence would
20 be presented to the jury in the form of aggravating
21 circumstances, as well as mitigating circumstances.

22 Now, aggravating circumstances are facts, incidents,
23 details or occurrences which the general assembly of our
24 state, our state legislature, has declared by law would make
25 worse, that is to aggravate the crime of murder.

1 In other words, when an aggravating circumstance is
2 present, when it accompanies a murder, that increases the
3 enormity or adds to the injury of the crime of murder. It's
4 a murder that's committed in the commission of or in
5 connection with another crime or incident. Do you
6 understand that?

7 A Yes, sir.

8 Q Now, mitigating circumstances are also incidents,
9 details or occurrences which our general assembly has, once
10 again, declared by law that reduces the severity of the
11 crime of murder and may be considered by the jury as
12 extenuating or as reducing the degree of moral culpability
13 or responsibility for the crime of murder. Do you
14 understand that?

15 A Yes, sir.

16 Q Now, let's assume that if you were a juror in such a
17 situation, the sentencing phase.

18 Could you, depending upon the particular facts and
19 circumstances of that case, including the consideration of
20 aggravating and mitigating circumstances and the law that I
21 would instruct you that applied to that case, return a
22 sentence of life in prison?

23 A Yes, sir.

24 Q If you were a juror in that situation could you,
25 depending upon the particular facts and circumstances of

1 that case, once again, including the consideration of
2 aggravating and mitigating circumstances and the law that I
3 would instruct you that applied to that case, return a
4 sentence of death?

5 A Yes, sir.

6 Q Now, Ms. Parks, you understand that there are always
7 two sentencing options that are available to the jury in the
8 sentencing phase of a death penalty trial, that being life
9 imprisonment or death.

10 A Yes, sir.

11 Q And you understand that each and every member of the
12 jury must be capable of imposing either of those sentences.

13 A Yes, sir.

14 Q Now, if you were chosen for service on this jury you
15 would be sequestered, that means housed, in a motel for the
16 duration of the trial.

17 I don't know how long that will be. It could be from
18 the time we get the jury seated until we finish, I would say
19 maybe seven to ten days. It could even be less than that.

20 Except for the personal inconvenience that you would
21 suffer, would this pose a serious danger to the health or
22 well-being of yourself or of those dependent on you?

23 A No, sir.

24 Q Now, I know that you have a seven-year-old. Is there
25 someone that could care for her?

1 A Yes, sir.

2 Q All right. Thank you very much for responding to my
3 questions.

4 Mr. Morin.

5 EXAMINATION BY MR. MORIN

6 Q Ms. Parks, my name is Michael Morin, and I, along with
7 Keith Kelly and Jennifer Johnson, are representing Mr. Moore
8 in this case. What I would like to do is just ask you a
9 couple of other questions, some about what was on your
10 questionnaire and some in response to what you have told the
11 judge.

12 A Okay.

13 Q To begin with, I noticed that you have two relatives,
14 two gentlemen, named Smith who were in law enforcement.

15 A Yes, sir. They are good friends of mine. They go to
16 church with me.

17 Q Okay. They are friends of yours? They are not
18 relatives?

19 A No, no relative.

20 Q And where do you go to church at?

21 A I go to Apalache Baptist church in Greer.

22 Q Okay. And when you were talking to the judge and you
23 told the judge that you could impose a death sentence, is
24 the death penalty something that you have thought about
25 prior to this situation?

1 A Not really, I mean, you know. It was like I was
2 telling him. I would go through the evidence and everything
3 and then make my decision.

4 Q Yes, ma'am. I understand that.

5 When you came into the -- before you came in here you
6 were given a little sheet that talked about the different
7 types of jurors.

8 A Yes, sir.

9 Q Okay. And of those three, which one would you say that
10 you --

11 A I was the third. I would be the third one.

12 Q Okay. And is the death penalty something that you have
13 thought about before this case, before you got involved with
14 this?

15 A I mean, I mean, do you mean that if I thought about it
16 just like on a daily basis or just every now and then?

17 Q Well, yeah, every now and then or --

18 A Yeah, I have.

19 Q Okay. Could you tell me what your thoughts about it
20 were?

21 A Well, I mean, I have always felt like that if someone
22 is convicted of murder and they are guilty, I feel like they
23 should have the death penalty.

24 Q Okay. Would you say that you feel like it is in all
25 cases of murder?

1 A Not all cases. I mean, like I said, I would go through
2 the evidence. I would take that all into consideration.

3 Q Okay. And would you say that your feelings about this
4 have been influenced by other people in your life, other
5 organizations, being as your church or anything? Have those
6 influenced your --

7 A No.

8 Q So these are just your own personal opinions?

9 A Own personal.

10 Q Okay. I also noticed that you listed that you are
11 working at Lowe's now.

12 A Yes, sir.

13 Q Out on the west side?

14 A In Greer. I work in Greer.

15 Q In Greer. Okay. Before that you listed that you
16 worked as a meter --

17 A As a meter reader. I worked for Duke Power.

18 Q Duke Power. Okay.

19 A Right.

20 Q And you were on a civil jury.

21 A Yes. I was in -- back in July I was -- well, I served
22 on the magistrate --

23 Q Okay. Could you tell me if you have any flags that you
24 have at your home that you may fly or anything like that?

25 A No, sir. I have no flags.

1 Q No flags. And the only other thing is I noticed that
2 R. D. Anderson --

3 A Uh-huh.

4 Q Is that some place that you went after Byrnes or would
5 that have been the --

6 A It was while I was a junior and senior in high school.

7 Q Okay. And what classes did you take there?

8 A It was graphic art. Photography and printing is what
9 that was.

10 Q Okay. That's all.

11 THE COURT: Solicitor.

12 MR. BARNETTE: We have no questions.

13 Thank you, ma'am.

14 THE COURT: Anything else from the defense?

15 MR. MORIN: No, sir.

16 THE COURT: Ms. Parks, I want to thank you very much
17 for your participation here this evening and yesterday.

18 I find that you are qualified to serve as a potential
19 juror in this case. With that qualification, I am going to
20 give you some more instructions, as if you didn't get enough
21 instruction yesterday.

22 Please understand that you are not to discuss this case
23 with your family, friends or anyone else that you might come
24 in contact with -- fellow jurors.

25 Also, if anyone should attempt to contact you

1 concerning this case, I want you to gather as much
2 information about that person or persons as you possibly can
3 and report that to me immediately, because that is a very
4 serious matter, and I would deal with the person or persons
5 that attempted to contact you accordingly.

6 Once again, I'm going to strongly instruct you and
7 remind you that you are not to read, watch or listen to any
8 news accounts concerning this case.

9 Simply put, if you are selected as a juror in this
10 case, all I would want to you to consider in this matter is
11 what you see and hear in this courtroom, nothing more and
12 nothing less.

13 Now, when you reported here yesterday you were given
14 some information from the clerk of court's office, a
15 brochure.

16 THE JUROR: Yes, sir.

17 THE COURT: And on the front of that brochure was an
18 800 number.

19 THE JUROR: Yes, sir.

20 THE COURT: That's a number that you are to call to
21 receive recorded information.

22 Tomorrow night, that's Wednesday night, after six
23 o'clock, I want you to call that number and listen to the
24 message that is left on there.

25 It will probably say one of two things. The first

1 message may say all jurors in the case of the State vs.
2 Moore should call back at a certain time on Thursday; or it
3 may say all jurors in the case of the State vs. Moore should
4 report to the Spartanburg County Courthouse at a particular
5 time with your bags packed.

6 THE JUROR: Okay.

7 THE COURT: When you come back with your bags packed,
8 whenever you are instructed to do that, please leave them in
9 your car. If you are selected as a juror in this case, then
10 the jury custodians would take you and your fellow jurors to
11 the motel where you are going to be staying for the duration
12 of the trial. And you would be well-cared for during that
13 time.

14 If you are not selected, then we would dismiss you and
15 thank you very much for your having been here. And you
16 would go back home with your belongings and go about your
17 daily activities.

18 Now, once again, the long and the short of it is simply
19 this. You need to call back tomorrow night after six
20 o'clock. Simply follow the instructions that are on the
21 recording. And I will see you back here more than likely
22 sometime on Thursday, or Friday at the latest.

23 THE JUROR: Yes, sir.

24 THE COURT: Have a nice time packing, and I will see
25 you soon.

Jury qualification -- Number 205

1 THE JUROR: Okay. Thank you.

2 THE COURT: Thank you.

3 (Whereupon, the juror was excused from the courtroom.)

4 THE COURT: Let the record reflect that Juror Number
5 205, Rhonda Parks, is qualified to serve as a potential
6 juror in this case pursuant to Section 16-3-20 of our code.
7 Number 288, Kelly S. West.

8 JUROR NUMBER 288, KELLY S.
9 WEST, having been first duly sworn, was voir dired
10 as follows:

11 EXAMINATION BY THE COURT

12 Q Good evening. You are Kelly S. West, correct?

13 A Yes, sir.

14 Q Ms. West, do you understand that you are under oath for
15 these proceedings tonight?

16 A Yes, sir.

17 Q And you also remember yesterday when I excused you and
18 the other jurors that I gave you instructions that you were
19 not to discuss this case with anyone; that if anyone
20 attempted to contact you that you were to report that to me
21 today; and also that you were to refrain from reading,
22 watching or listening to any news accounts concerning this
23 case. Have there been any violations of my instructions?

24 A No, sir.

25 Q Now, Ms. West, during the next few minutes I am going

1 to ask you some questions. Thereafter one of the defense
2 lawyers and then one of the solicitors will ask you some
3 questions.

4 Please keep in mind that we are not in any way
5 attempting to invade your privacy, but because of the
6 proceeding that we are about here this week it's extremely
7 necessary that certain questions are asked and answered.

8 Please keep in mind that there are absolutely no right
9 or wrong answers to these questions. So, if you would,
10 please answer them openly and honestly and fully.

11 Also, keep in mind that no one is challenging the view
12 that you might have. We simply need to know what your views
13 are in particular areas.

14 Also, if there are any questions that I ask you or one
15 of the lawyers ask that you do not understand or you need to
16 have repeated or clarified, simply let us know, and we will
17 be glad to do that.

18 Also, listen very carefully to these questions, because
19 we are probably going to ask you questions over the next few
20 minutes that you have never considered prior to coming to
21 court here this week.

22 Now, I would also tell you that the lawyers and I have
23 copies of your juror information sheet, because that was
24 important to all us of us in preparing for this session
25 tonight.

1 Ms. West, among other things that we are going to be
2 talking about during the next few minutes include references
3 to the term penalty. But the mere fact that I even mention
4 that word or we discuss the word penalty does not in any way
5 indicate anything about the defendant, Mr. Moore. He is
6 presumed in the law to be innocent. Do you understand that?

7 A Yes, sir.

8 Q Now, if you were a juror in a criminal case could you
9 listen to the law, accept and apply that law as I would
10 instruct you as the judge of this Court even though you may
11 disagree with that law or think it should be some other way?

12 A Yes, sir.

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

16 A Yes, sir.

17 Q Now, in a criminal case, Ms. West, the state has the
18 burden of proving guilt. The burden of proof that the state
19 must meet is proof beyond a reasonable doubt.

20 And a defendant has absolutely no burden, no
21 responsibility to prove himself innocent. Do you understand
22 that?

23 A Yes, sir.

24 Q Now, could you, depending on the facts and the 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 with the
4 entire jury panel, I told all of you that this is a case in
5 which the State of South Carolina is seeking the death
6 penalty. As a result, we are going to be engaged in what is
7 called a bifurcated trial or proceeding. That's really kind
8 of a fancy word or phrase that means a trial that's divided
9 into two parts, the guilt phase and the sentencing phase.

10 If you were a juror in a death penalty case and if the
11 jury found the defendant not guilty of murder in the guilt
12 phase, do you understand that the trial would stop then and
13 there would be no necessity to move on to the second phase?

14 A Yes.

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 understand that you would then move to that second phase or
18 sentencing phase of the trial?

19 A Yes, sir.

20 Q During that phase of the trial, Ms. West, 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 occurrences which our state legislature, the
25 general assembly of our state, has declared by law would

1 make worse, that is to aggravate, the crime of murder.

2 In other words, when there is the presence of an
3 aggravating circumstance, when it accompanies a murder, that
4 increases the enormity or adds to the injury of the crime of
5 murder. It's a murder that's committed in the commission of
6 or in connection with another crime or incident. Do you
7 understand what I am talking about?

8 A Yes, sir.

9 Q Now, mitigating circumstances are incidents, details or
10 occurrences which our general assembly has, once again,
11 declared by law reduces the severity of the crime of murder
12 and may be considered by the jury as extenuating or as
13 reducing the degree of moral culpability or responsibility
14 for that crime of murder. Do you understand that?

15 A Yes, sir.

16 Q Now, if you were a juror in such a situation, I am
17 talking about the sentencing phase, the second phase, of a
18 death penalty case, could you, depending upon the particular
19 facts and circumstances of that case, including the
20 consideration of aggravating, as well as mitigating,
21 circumstances and the law that I would instruct you that
22 applied to that case, return a sentence of life in prison?

23 A Yes, sir.

24 Q If you were a juror in that situation could you,
25 depending upon the particular facts and circumstances of

1 that case, once again, including the consideration of
2 aggravating, as well as mitigating, circumstances and the
3 law that I would instruct you that applied to that case,
4 return a sentence of death?

5 A Yes, sir.

6 Q Now, Ms. West, you understand that there are two
7 sentencing options that are always available to the jury in
8 the sentencing phase, that being life imprisonment or
9 death --

10 A Yes, sir.

11 Q -- and that each and every member of the jury must be
12 capable of imposing either of those sentences.

13 A Yes, sir.

14 Q Now, if you were chosen for service on this jury, you
15 would be sequestered. That simply means you would be housed
16 in a motel for the duration of the trial.

17 I do not know how long that would be. I would say that
18 from the time the jury is seated until the case ends, it
19 would be no more than seven to ten days. It could even be
20 less than that.

21 Except for the personal inconvenience that you would
22 suffer, would this pose a serious danger to the health or
23 well-being of yourself or of those dependent upon you?

24 A No, sir.

25 Q Now, I know that you are pregnant. Is that what you

1 are telling me?

2 A Yes, sir.

3 Q And how far along are you?

4 A Four and a half months.

5 Q All right. And you have experienced no difficulty so
6 far?

7 A No, sir. That's even better.

8 Q Thank you, ma'am. I appreciate you responding to my
9 questions. Please answer any of Mr. Kelly's questions.

10 MR. KELLY: Judge, can we approach the bench, please?

11 THE COURT: Yes, sir.

12 (Bench conference held off the record.)

13 MR. KELLY: Thank you, Your Honor.

14 THE COURT: Yes, sir. All right.

15 MR. KELLY: May it please the Court, Your Honor.

16 EXAMINATION BY MR. KELLY

17 Q Ms. West, I am Keith Kelly, and along with Michael
18 Morin and Jennifer Johnson, we represent Mr. Moore in this
19 case.

20 As you have learned yesterday, and more particularly
21 today, the state seeks to put to death Mr. Moore. Now, this
22 is a death penalty case.

23 I noted from your questionnaire, and I appreciate you
24 filling that out. As the judge has told you, we have copies
25 of that.

1 I noted from your questionnaire that approximately four
2 and a half years ago or five years ago you were manager of
3 convenience stores, is that right?

4 A Yes, sir.

5 Q Okay. And I concluded that because you have been with
6 Palmetto Finance for about four and a half years.

7 A Yes, sir.

8 Q So I take it you worked for them four and a half or
9 five years ago as a manager. Is that right?

10 A Yes, sir.

11 Q Would you tell us how long you worked in the
12 convenience-store industry?

13 A Off and on since 1990, off and on. I have had other
14 jobs in between, and other stuff.

15 Q Sure.

16 A But I was just the manager of the last one for about
17 four years.

18 Q Okay. Would you tell us the -- was it any particular
19 brand like Fast Fare or Speedy Mart or Fast Phil's or any
20 particular company that you worked for over the years?

21 A It was a B-Line, and a foreign fellow opened it. It
22 was independent. It was kind of like a mom-and-pop store.

23 Q Okay. It was independent.

24 A Yes.

25 Q Was it always the same facility that you worked in, the

1 same people?

2 A No. I was in different -- you know, different stores.
3 But they were all like just independent mom-and-pop stores.

4 Q Okay. All of them, whatever the name of it was, were
5 small mom-and-pop instead of a chain.

6 A Well, except for the last one that I went to. It was a
7 B-Line Food Store. And then, I mean, it was less than a
8 year it was an independently owned.

9 Q Yes, ma'am.

10 A They changed it.

11 Q And other than being the manager there, did you hold
12 other positions? Did they have an assistant manager there;
13 did they have district managers?

14 A No. I didn't hold any other positions there.

15 Q And you were always the manager?

16 A Yes, sir.

17 Q And during that time period that you were managers and
18 involved in the convenience-store industry did any of these
19 independent operators have a class that they sent you to
20 about safety or about crime or anything like that?

21 A No, sir.

22 Q Did any of them publish any kind of little news letter
23 or report or something?

24 A No, sir.

25 Q Did any of them have like a handbook, employees'

1 handbook that would have in there anything about what to do
2 in certain situations?

3 A No, sir.

4 Q And you've indicated that you were, but at any point
5 when you were in the convenience-store industry were you
6 ever the victim of a crime --

7 A No, sir.

8 Q -- that related to the store?

9 A Yes. Well, the only crimes that was committed against
10 the store were during the night when it was closed. The
11 kids would throw rocks and things like that. Nothing
12 personally to me though.

13 Q Right. They would break out a window or something like
14 that.

15 A Yeah. That was --

16 Q Okay. All right. Thank you, ma'am.

17 You indicated to the judge that you are expecting, of
18 course, and you have also told us that in your questionnaire
19 that you have no child. I noticed that your husband's name
20 is a senior. Does he have a child?

21 A Yes. He has three children.

22 Q Do they reside with you and your husband?

23 A We have one that lives with us.

24 Q And how old is that child?

25 A He is 16.

Jury qualification -- Number 288

1 Q So not a small child.

2 A No.

3 Q Under religion on your questionnaire, unless my eyes
4 have failed me, and they might have, I think it was left
5 blank. Do you attend any particular church?

6 A No, sir.

7 Q Do you associate with any particular religion, whether
8 or not you attended a church?

9 A The only church I ever attended was a Baptist church.
10 That was with my grandparents on several occasions.

11 Q Yes, ma'am. Would that have been a long time ago or --

12 A Yes. I would have been a child.

13 Q You would have been a child. Okay. And since then you
14 have not been affiliated with the Baptist church.

15 A No, sir.

16 Q And have you been affiliated with any other church, the
17 Methodist, Episcopalian, Lutheran?

18 A No, sir.

19 Q And all of us have our views on the death penalty, and
20 we gather those views on life experiences or religion or
21 with people we know, something we read, that sort of thing.
22 To what do you attribute your views on the death penalty?

23 A I guess the things that I have read and stuff. You
24 know, I have seen different people, you know, get different
25 sentences for different things. But my views are it would,

1 you know, depend on the facts and, you know, what the
2 circumstances surrounding the case, you know, I could give
3 the person the death penalty or not.

4 Q Okay. I appreciate it. In the event that we were in
5 the sentencing phase, as the judge has told you, we were at
6 that point where he had been found guilty, and we are now in
7 the sentencing phase, whether it be a choice of life or the
8 choice of death, the judge has told you that the state has
9 passed what's called aggravating circumstances. And they
10 would be specifically told to you at that point.

11 And in the -- at that point Mr. Gowdy and his
12 assistants would then be trying to prove to you through the
13 evidence that you've seen and heard that at least one of
14 those apply in this case. Do you understand that?

15 A No, sir.

16 Q Okay. As the judge has told you, there are things that
17 are called aggravating circumstances. I believe His Honor
18 said like, for instance, the commission of another crime or
19 something.

20 And if that was proved, if that were proven to you
21 beyond a reasonable doubt, that would constitute an
22 aggravating circumstance. Do you understand that?

23 A Yes, sir.

24 Q At that point in time you as one of 12 jurors could
25 then consider and then impose either life or death. Do you

1 understand that?

2 A Yes, sir.

3 Q In other words, even if Mr. Gowdy and his assistants
4 were able to establish that at least one of those things
5 existed beyond guilt, just one, you are still not required
6 to sentence Mr. Moore to death, but you are then able to
7 consider it. Do you understand that?

8 A Yes, sir.

9 Q Okay. And in doing so there would be a sheet of paper
10 that would have some writing on it, and I haven't seen it
11 yet. I don't know what it might say. But it would have
12 some writing on it and a place for all 12 jurors to sign it.

13 Would you then be able to put your name on that piece
14 of paper as your vote for the death penalty?

15 A Yes, sir.

16 Q Would you be able to put your name as the first name on
17 that piece of paper in voting for the death penalty?

18 A Yes, sir.

19 Q Do you -- you indicated that you have no bumper
20 stickers on your car, but in recent times some of us have
21 begun flying flags. Do you fly a flag of any kind on your
22 car?

23 A No, sir. There is not one on my car.

24 Q Whether it is a flag or a little metal, magnetic
25 sticker or anything, there is nothing like that on your car?

Jury qualification -- Number 288

1 A No, sir.

2 Q How about at home? Do you and your husband fly a flag
3 on your front porch or your driveway?

4 A The only flag that we have is the one that came in the
5 newspaper the week after the attacks, and I have got it in
6 my front window.

7 Q That's the only flag that you have?

8 A Yes, sir.

9 Q Under organizations you had listed N/A. Do you belong
10 to any type of organization, whether it be a lady's
11 organization or any kind of club?

12 A No, sir.

13 Q Okay. And also under law enforcement contacts, you
14 didn't indicate one way or the other whether or not you have
15 any family or friend in law enforcement. Do you have any
16 family or friends that are with the city police department
17 or sheriff's department or highway patrol or anything?

18 A No, sir.

19 Q When you were working in the convenience store, a lot
20 of times sheriff's deputies come into those places
21 frequently. Did they not?

22 A Mine always just rode through the parking lot and
23 acknowledged, you know. If I waved to them, they went on.
24 They didn't ever come into the store unless we had a
25 problem.

1 Q Oh, I see. So you didn't make any personal friendship
2 through that.

3 A No, sir.

4 Q Thank you very much.

5 THE COURT: Solicitor.

6 MR. WILLINGHAM: Thank you, Your Honor.

7 EXAMINATION BY MR. WILLINGHAM

8 Q Ms. West, my name is Donnie Willingham. I'm a
9 prosecutor here in Spartanburg. Along with Deputy Solicitor
10 Barry Barnette and Solicitor Trey Gowdy, we're responsible
11 for the prosecution of this case.

12 I am going to ask you a couple of more questions. When
13 you were back in the jury room you had a list of three types
14 of jurors.

15 A Yes, sir.

16 Q One, two, three. Would you, based upon your answers,
17 would you say that you are probably juror number three?

18 A Yes, sir.

19 MR. WILLINGHAM: Thank you, Your Honor. That's all I
20 have.

21 THE COURT: Anything else from the defense?

22 MR. KELLY: Nothing, Your Honor.

23 THE COURT: Ms. West, I want to thank you very much for
24 your participation here yesterday, as well as this day.

25 I find that you are qualified to serve as a potential

1 juror in this case. And, as such, with that qualification,
2 I'm going to give you some more instructions.

3 First of all, you are not to discuss this case with
4 anyone, whether it be fellow jurors, family, friends or
5 anyone else while you are away from the courthouse.

6 Also, if anyone attempts to contact you concerning this
7 case, I want you to gather as much information about that
8 person or persons as you possibly can and report that to me
9 immediately, because that's a very serious matter, and I
10 would deal with the person that attempted to contact you
11 accordingly.

12 Furthermore, I'm going to continue my instruction very
13 strongly that you're not to read, watch or listen to any
14 news accounts concerning this case. All I would want you to
15 consider in this matter if you are selected as a juror is
16 what you would see and hear in this courtroom, nothing more
17 and nothing less.

18 Now, when you came here yesterday morning you received
19 a juror pamphlet that the clerk of court gave you. On the
20 front of that pamphlet is an 800 number. That's a number
21 that you call to receive information.

22 And tomorrow night, Wednesday night, after six o'clock
23 I want you to call that number. And there will be a message
24 that will be left on there for jurors in the State vs. Moore
25 case.

Jury qualification -- Number 288

1 It will say either jurors in the case of the State vs.
2 Moore should call back on Thursday at a particular time for
3 further information; or it will say all jurors in the case
4 of the State vs. Moore are to report to the Spartanburg
5 County Courthouse at a particular time on Thursday with your
6 bags packed.

7 And leave them in your car. If you come back or when
8 you come back at the appointed time with your bags in your
9 car, once again, please leave them there. If you are
10 selected as a juror in this case the jury custodians would
11 take you and your belongings to the motel that you would be
12 staying in for the duration of the trial, and you would be
13 with us until the trial is over.

14 If you are not selected, we're going to let you get in
15 your vehicle with your belongings and go back home and go
16 about your daily activities.

17 Now, once again, the long and the short of it is this.
18 You need to go home and start packing, because tomorrow
19 night you are going to call here. And you are going to find
20 out what information is on the answering machine. Just
21 follow those instructions. And either Thursday, or Friday
22 at the latest, you are going to be coming back here with
23 your belongings and presenting yourself here at the
24 courthouse. And you will either stay with us or go back
25 home. It's as simple as that.

Jury qualification -- Number 288

1 Have a nice time packing. I look forward to seeing you
2 when you get back here in a few days at the appointed time.
3 You are dismissed at this time.

4 (Whereupon, the juror was excused from the courtroom.)

5 THE COURT: Let the record reflect that Juror Number
6 288, Kelly West, is qualified to serve as a potential juror
7 in this case pursuant to Section 16-3-20 of our code.

8 Mary F. Buckson.

9 JUROR NUMBER 43, MARY F.

10 BUCKSON, having been first duly sworn, was voir
11 dired as follows:

12 EXAMINATION BY THE COURT

13 Q Good evening. You are Mary F. Buckson, is that
14 correct?

15 A Yes, sir.

16 Q And, Ms. Buckson, you understand that you are under
17 oath here tonight.

18 A Yes, sir.

19 Q And you also -- if you could, speak up just a little
20 bit for me.

21 A Okay.

22 Q And you also remember that when I excused you yesterday
23 with the other jurors that I told you that you were not to
24 discuss this case with anyone, whether it be family, friends
25 or anyone else, and also if anyone attempted to contact you

1 that you were to report that to me when you came back to the
2 courthouse today.

3 And, also, you were not to read, watch or listen to any
4 news accounts concerning this case. Have there been any
5 violations of my instructions?

6 A No.

7 Q Now, Ms. Buckson, over the next few minutes I'm going
8 to ask you some questions. Then one of the defense lawyers
9 will ask you some questions, as well as one of the
10 solicitors.

11 Please understand that we are not in any way attempting
12 to invade your privacy, but because of the proceedings that
13 we are about here this week it's extremely necessary that
14 certain questions are asked and answered.

15 Keep in mind that there are no right or wrong answers to
16 these questions. If you would, just answer them openly and
17 honestly and as fully as possible.

18 Also, keep in mind that no one is challenging the view
19 that you might have. We just need to know what your views
20 are in certain areas.

21 Also, if I ask you or one of the lawyers ask you any
22 question that you do not understand, please let us know. If
23 we need to repeat the question or clarify it, we'll be glad
24 to attempt to do that.

25 Also, I want you to pay very close attention to these

Jury qualification -- Number 43

1 questions, because over the next few minutes we are probably
2 going to ask you some questions that you have never
3 considered prior to coming to court here this week.

4 Now, the lawyers and I have copies of your
5 questionnaire that you sent back in to the clerk of court,
6 because that was important to us for us to prepare for
7 tonight; and so you will understand that we refer to that,
8 that we do have a copy of it.

9 And I think you have a birthday coming up tomorrow,
10 don't you?

11 A Uh-huh.

12 Q Well, in advance, happy birthday to you.

13 A Thank you.

14 Q Now, Ms. Buckson, among the things that we're going to
15 be talking about over the next few minutes will be reference
16 to the term or the word penalty. But the mere fact that I
17 even mention that word or we talk about it tonight does not
18 in any way indicate anything about the defendant, Mr. Moore.
19 He is presumed in the law to be innocent. Do you understand
20 that?

21 A Yes, sir.

22 Q Now, let's assume that if you were a juror in a
23 criminal case.

24 Could you listen to the law, accept and apply that law
25 as I would instruct you as the judge of this Court even

1 though you may disagree with the law or think it should be
2 some other way?

3 A Yes.

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

7 A Yes.

8 Q Now, in a criminal case, Ms. Buckson, the state has the
9 burden of proving guilt. And the burden of proof that the
10 state must meet is proof beyond a reasonable doubt.

11 A defendant has absolutely no burden, absolutely no
12 responsibility to prove his innocence. Do you understand
13 that?

14 A Yes, sir.

15 Q Could you, depending on the facts and the evidence and
16 the law that I would instruct you in a particular case, find
17 a defendant either guilty or not guilty?

18 A Yes.

19 Q Now, as you know from being here yesterday with the
20 entire jury panel, I told all of you that this is a case in
21 which the State of South Carolina is seeking the death
22 penalty.

23 Death penalty cases are what we call bifurcated trials.
24 That's kind of a jazzed up word that simply means it's
25 divided into two parts, the guilt phase and the sentencing

1 phase.

2 Now, if you were a juror in a death penalty case and if
3 the jury found the defendant not guilty of murder in the
4 first phase, do you understand that the case would end then?

5 A Yes.

6 Q However, if you were a juror in such a case and the
7 jury found the defendant guilty of murder, do you understand
8 that you would then proceed to the second or sentencing
9 phase of that case?

10 A Yes.

11 Q Now, in that phase, the sentencing phase, of the trial,
12 Ms. Buckson, there would be evidence presented to the jury
13 in the form of aggravating circumstances, as well as
14 mitigating circumstances.

15 Now, aggravating circumstances are facts, incidents,
16 details or occurrences which the General Assembly of the
17 State of South Carolina, that's our legislature, has
18 declared by law would make worse, that is to aggravate, the
19 crime of murder.

20 In other words, where there is an aggravating
21 circumstance that goes along with or occurs at the same time
22 of a murder, then it increases the enormity or adds to the
23 injury of that murder. In other words, it's a murder that's
24 committed in the commission of another crime or in
25 connection with another crime or incident. Do you

1 understand that?

2 A Yes, sir.

3 Q Now, mitigating circumstances are also incidents,
4 details or occurrences which our state legislature, the
5 general assembly, has, once again, declared by law that
6 reduces the severity of the crime of murder and may be
7 considered by the jury as reducing the degree of
8 responsibility for the person committing that murder. Do
9 you understand that?

10 A Uh-huh.

11 Q Now, if you were a juror in that situation, I'm talking
12 about a death penalty case, the sentencing phase, could you,
13 depending upon the particular facts and circumstances of
14 that case, including the consideration of those aggravating,
15 as well as mitigating, circumstances and the law that I
16 would instruct you that applied to that particular case,
17 return a sentence of life in prison?

18 A Yes.

19 Q If you were a juror in that situation could you,
20 depending upon the particular facts and circumstances of
21 that case, once again, including the consideration of
22 aggravating, as well as mitigating, circumstances and the
23 law that I would instruct you that applied to that case,
24 return a sentence of death?

25 A Yes.

Jury qualification -- Number 43

1 Q Is that yes?

2 A Yes.

3 Q Now, you understand that there are two sentencing
4 options that are always available to the jury in the
5 sentencing phase of a death penalty trial, that being life
6 imprisonment or death. Do you understand that?

7 A Uh-huh.

8 Q And I need to get you to answer out loud.

9 A Yes.

10 Q And you understand that each and every member of the
11 jury must be able to impose that sentence, either life or
12 death. Do you understand that?

13 A Yes.

14 Q Now, Ms. Buckson, if you were chosen for service on
15 this jury, you would be sequestered, housed, in a motel
16 during the course of the trial. That would be at county
17 expense, and all of your needs would be taken care of.

18 I don't know how long this case would last, probably at
19 the longest seven to ten days from the time that you would
20 be seated. It could be much shorter than that.

21 Except for the personal inconvenience that you would
22 suffer, would this pose a serious danger to the health or
23 well-being of yourself or of those dependent upon you?

24 A Probably would.

25 Q It probably would?

Jury qualification -- Number 43

1 A Yes, sir.

2 Q I know you say that you have high blood pressure.

3 A Yes, sir.

4 Q Is that something that you take medication for?

5 A Uh-huh.

6 Q And is that something that bothers you on a regular
7 basis?

8 A Yes.

9 Q And do you feel that serving on a jury, this type of
10 jury, would interfere with your ability or with your medical
11 condition?

12 A I think so.

13 THE COURT: Mr. Kelly.

14 MR. KELLY: Just a second.

15 (Pause.)

16 MR. KELLY: May we approach?

17 (Pause.)

18 MR. KELLY: No questions, Judge.

19 THE COURT: Anything from the state?

20 MR. WILLINGHAM: No, sir, Your Honor.

21 THE COURT: Ms. Buckson, given the fact that you have
22 your medical condition, I am going to allow you to be
23 excused. I wouldn't want to do anything that is going to
24 compromise your health in any way.

25 I thank you very much for having been here yesterday,

1 as well as tonight.

2 And on behalf of the State of South Carolina, but most
3 particularly Spartanburg County, I thank you for being here.
4 And you are excused. Thank you, ma'am.

5 THE JUROR: Thank you.

6 THE COURT: Do you have any relatives over in Cherokee
7 County?

8 THE JUROR: Yes. That's where my father -- they were
9 all raised up there.

10 THE COURT: Well, I know that name Buckson is very
11 popular over there. What was your maiden name?

12 THE JUROR: Foster.

13 THE COURT: That's even more popular. Thank you,
14 ma'am.

15 (Whereupon, the juror was excused from the courtroom.)

16 THE COURT: All right. Let the record reflect that
17 Juror Number 43, Mary Buckson, is excused due to her high
18 blood pressure which she feels would interfere with her
19 ability to serve and may compromise her health.

20 I want to thank you-all very much for a very productive
21 day. According to my count, we have 19 now qualified. And
22 we are even getting out of here a little early, which is
23 highly commendable. And I thank you for that.

24 Anything from the state before we break for the
25 evening?

Jury qualification -- Number 43

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

2 THE COURT: The defense?

3 MR. MORIN: No, sir.

4 THE COURT: All right. We will get cranked up in the
5 morning at 9:00 with the same drill that we've gone through
6 today. And I think our last panel is coming in at 4:00
7 tomorrow.

8 Hopefully, we'll be in a pretty close posture to where
9 we'll know that we'll be able to get a jury sometime on
10 Thursday. At least that's what we'll shoot for.

11 Thank you. Have a good evening.

12 END OF PROCEEDINGS OCTOBER 16, 2001

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Volume Six -- 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
19 JENNIFER JOHNSON, ESQUIRE
Attorneys for the Defendant

20
21
22
23 LINDA D. MOFFITT
Circuit Court Reporter
24
25

Jury qualification -- Number 220

1 (Proceedings October 17, 2001)

2 THE COURT: All right. Is the state ready to proceed?

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

4 THE COURT: Is the defendant ready?

5 MR. MORIN: Yes, sir.

6 JUROR NUMBER 220,

7 TAMMY R. HAYES, having been first duly sworn, was

8 voir dired as follows:

9 EXAMINATION BY THE COURT

10 Q You are Tammy Hayes, is that correct?

11 A Yes, sir.

12 Q Now, Ms. Hayes, you understand that you have been
13 placed under oath for this proceeding today.

14 A Yes, sir.

15 Q And you also understand that when you left the
16 courthouse on Monday that I gave you some instructions that
17 you were not to discuss this case with anyone; that if
18 anyone attempted to contact you concerning this case that
19 you were to report that to me when you came back to the
20 courthouse; and that you were also not to read, watch or
21 listen to any news accounts concerning this case. Have
22 there been any violations of my instructions?

23 A No, sir.

24 Q Now, Ms. Hayes, I am going to be asking you several
25 questions. Then one of the defense lawyers and one of the

1 solicitors will ask you some questions.

2 I want you to please understand that we are not in any
3 way attempting to invade your privacy, but due to the nature
4 of the proceedings that we are about here this week, that
5 it's extremely necessary that certain questions are asked
6 and answered.

7 I want you to understand that there are absolutely no
8 right or wrong answers to these questions. So, if you
9 would, please, just answer them openly and honestly and
10 fully.

11 Also, keep in mind that no one is challenging your
12 view. We simply need to know what your view is in a
13 particular area.

14 If at any time you do not understand a question that I
15 ask or one of the lawyers asks, please, just tell us to
16 clarify it or repeat it so that we can put it in a proper
17 framework for you to understand.

18 Also, I would ask that you pay very close attention to
19 these questions, because we are probably going to ask you
20 some questions during the next few minutes that you maybe
21 have never even considered before coming to court here this
22 week.

23 I would also tell you that the lawyers and I have
24 copies of your juror information sheet, because that was
25 extremely important to us in preparing for this session this

1 morning.

2 Now, Ms. Hayes, among the things that we are going to
3 be talking about will include references to the word
4 penalty, but the mere fact that I even mention that word or
5 say that word does not indicate anything about the
6 defendant, Mr. Moore.

7 He is presumed in the law to be innocent. Do you
8 understand that?

9 A Yes, I do.

10 Q Now, let's suppose that you were a juror in a criminal
11 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 Yes.

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

20 A Yes, sir.

21 Q Now, in a criminal case, Ms. Hayes, the state has the
22 burden of proving a defendant's guilt. The burden of proof
23 that the state must meet is what we call proof beyond a
24 reasonable doubt.

25 And a defendant has absolutely no burden, no

1 responsibility to prove his innocence. Do you understand
2 that principle?

3 A Yes.

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

7 A Yes.

8 Q Now, as you know from being here on Monday, this is a
9 case in which the State of South Carolina is seeking the
10 death penalty against the defendant.

11 And, as such, we are engaged or going to be engaged in
12 what is called a bifurcated trial or proceeding. That very
13 simply means that it's a trial broken into two parts, the
14 guilt phase and the sentencing 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 in the guilt
17 phase, do you understand that the case would end then and
18 there would be no need for the second part of the trial?

19 A Yes.

20 Q However, if you were a juror in such a case and if the
21 jury had found the defendant guilty of murder, do you
22 understand that you would then move to that second or
23 sentencing phase of the trial?

24 A Yes, sir.

25 Q In that phase of the trial, Ms. Hayes, evidence would

1 be presented in the form of aggravating circumstances, as
2 well as mitigating circumstances.

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, when an aggravating circumstance
8 accompanies the crime of murder, it increases the enormity
9 or adds to the injury of that crime. It's a murder that's
10 committed in the commission of or in connection with another
11 crime or incident.

12 Do you understand what I mean when I speak of an
13 aggravating circumstance?

14 A Yes.

15 Q Now, mitigating circumstances are also incidents,
16 details or occurrences which the general assembly of this
17 state has declared by law reduces the severity of the crime
18 of murder and may be considered by the jury as extenuating
19 or as reducing the degree of culpability or responsibility
20 for the crime of murder.

21 Do you understand what I mean when I speak of a
22 mitigating circumstance?

23 A Yes.

24 Q Now, let's suppose, Ms. Hayes, that you were a juror in
25 that situation, I am talking about the sentencing phase, the

1 second phase of a death penalty case.

2 Could you, depending upon the particular facts and
3 circumstances of that case, including the consideration of
4 aggravating, as well as mitigating, circumstances and the
5 law that I would instruct you that applied to that case,
6 return a sentence of life in prison?

7 A Yes.

8 Q Now, consider if you were a juror in that situation.
9 Could you, depending upon the particular facts and
10 circumstances of that case, once again, 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 death?

14 A Yes.

15 Q Now, Ms. Hayes, you understand that there are always
16 two sentencing options that are available to the jury in the
17 sentencing phase of a death penalty trial, that being life
18 imprisonment or death, and that each and every juror must be
19 capable of imposing either of those two sentences.

20 A Yes.

21 Q Now, if you were chosen for service on this jury,
22 Ms. Hayes, you would be housed in a motel for the duration
23 of the trial. Of course that would be at county expense,
24 and all of your needs would be met.

25 I don't know how long this case will last from start to

1 finish, but I would say no more than seven to ten days at
2 the outside, and probably less than that, although I cannot
3 guarantee it.

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 for responding to my questions. Please
9 answer any of Mr. Morin's questions now.

10 EXAMINATION BY MR. MORIN

11 Q Good morning, Ms. Hayes.

12 A Good morning.

13 Q I notice from your questionnaire you work part time at
14 the Y.

15 A Uh-huh.

16 Q Do you know Ms. Roper, the trainer down there?

17 A I have heard of her, but I don't know her personally.

18 Q Okay. And you listed that your husband is
19 self-employed. Could you tell me what he does?

20 A We own a janitorial business.

21 Q And you live up in Boiling Springs, but he is a reserve
22 in Spartanburg City.

23 A Yes.

24 Q And could you tell me what he does as a reserve?

25 A He just -- he has to put in 20 hours a month. And he

1 does some security work like at the Beacon Drive-in, and he
2 works football games and things like that.

3 Q I see. Now, as you know, and, as I said, I think I
4 introduced myself. I am Michael Morin. And this is Keith
5 Kelly. And we represent Richard Moore. And the state is
6 seeking to put Mr. Moore to death in this case.

7 When you answered the judge's questions, you indicated
8 that you could give the death penalty. Is the death penalty
9 something that you had given thought to before the day
10 before yesterday when the judge said this was a death
11 penalty case?

12 A No.

13 Q Okay. Is it something that you thought about?
14 Obviously, you thought about it some since then.

15 A Yes.

16 Q And you've come to the conclusion that in some form you
17 are in favor of it, is that correct?

18 A Yes.

19 Q Could you tell me what thoughts you had about it over
20 the last day or two?

21 A I've just been thinking about if I could do it or not.
22 And I think that if it were fitting the crime, I could.

23 Q I see. Now, you understand that in this trial the
24 state, in the event that Mr. Moore is found guilty -- and,
25 as the judge has already told you, he is presumed innocent

1 at this point. We are talking a lot about a hypothetical.

2 A Yes.

3 Q But in the event we get there, the state would present
4 aggravating circumstances that the judge has described. And
5 they would have to prove to you beyond a reasonable doubt
6 that one, at least one, of those aggravating circumstances
7 existed before you could issue or recommend the death
8 sentence. Do you understand that?

9 A Uh-huh.

10 Q Do you also understand that you are not required to
11 give the death sentence even if they have proved it?

12 A Yes.

13 Q And when you say that it would depend on the
14 circumstances, is that what you envision, listening to that
15 type of evidence?

16 A Yes.

17 Q I also noticed that y'all are South Carolina law
18 enforcement -- you've got a sticker.

19 A Uh-huh.

20 Q Do you-all just contribute or --

21 A My husband is a member.

22 Q He is a member. Okay.

23 A Uh-huh.

24 Q And your job right now, you are working at Added
25 Dimensions, is that right?

1 A Uh-huh.

2 Q What does that job entail you doing?

3 A I am the assistant manager and a sales associate.

4 Q So you have contact with quite a few customers and that
5 kind of thing.

6 A Yes.

7 Q Okay. And where is Added Dimensions?

8 A It's on W. O. Ezell Boulevard in Spartanburg.

9 Q Okay. Up there toward the busy west side, the
10 intersection there?

11 A Uh-huh.

12 Q I noticed that on the questionnaire when asked about
13 religion you didn't put anything there.

14 A Uh-uh.

15 Q And have you ever belonged to --

16 A I have. I used to be a member of a church in Lyman.
17 It was a Pentecostal Holiness Church. Right now I am not
18 active in church.

19 Q Is that the only church that you --

20 A Since being a child, yes.

21 Q I see. And you and your husband have been married
22 three years.

23 A Uh-huh.

24 Q Could you tell me where y'all got married?

25 A We got married at St. Matthews Episcopalian Church.

1 It's my mother-in-law's church.

2 Q I see. Thank you.

3 THE COURT: Solicitor.

4 MR. GOWDY: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 EXAMINATION BY MR. GOWDY

7 Q Good morning, Ms. Hayes. My name is Trey Gowdy. I'm
8 the solicitor here in Spartanburg and Cherokee Counties.
9 Seated with me at the state's table is Barry Barnette and
10 Donnie Willingham. They're both deputy solicitors.

11 What is Added Dimensions? I know I have seen --

12 A It's a plus-size women's clothing store.

13 Q I knew I had seen it travelling up, out to the west
14 side of town, but I did not know whether it was clothing. I
15 would have guessed it was a hair place, but I would have
16 been wrong.

17 How long has your husband been a reserve officer?

18 A At least ten years.

19 Q Do you know who his supervisor is at the Public Safety
20 Department?

21 A No, sir, I don't.

22 Q Which Y. M. C. A. do you work at?

23 A Middle Tyger in Duncan.

24 MR. GOWDY: Thank you, Your Honor. We don't have any
25 further questions of Ms. Hayes.

1 THE COURT: Anything else from the defendant?

2 MR. MORIN: No, sir.

3 THE COURT: Ms. Hayes, I want to thank you very much
4 for your participation here on Monday, as well as this
5 morning.

6 I find you are qualified to serve as a potential juror
7 in this case, and with that qualification I am going to give
8 you some more instructions.

9 First of all, you are not to discuss this case with
10 anyone, whether it be family, friends or fellow jurors or
11 anyone else that you come into contact with.

12 Also, if anyone attempts to contact you concerning this
13 case, I want you to gather as much information about that
14 person or persons as you possibly can and report that to me
15 immediately, because that's a very serious matter, and I
16 would deal with the person that attempted to contact you
17 accordingly.

18 Also, I am going to very strongly instruct you and
19 remind you that you're not to read, watch or listen to any
20 news accounts concerning this case. Very simply put, all I
21 want you to consider in this matter if you're selected as a
22 juror is what you see and hear in this courtroom, nothing
23 more and nothing less.

24 Now, with that instruction, I am going to ask you to
25 refer to some information that you were given on Monday by

Jury qualification -- Number 220

1 the clerk of court's office. There was a pamphlet. And on
2 the front of that pamphlet I think there is an 800 number
3 which is a telephone call-in mechanism.

4 You need to call that tonight after six o'clock and
5 listen carefully to the message. It will probably say one
6 of two things, either it will say all jurors in the case of
7 the State vs. Moore will call back on Thursday at a
8 particular time; or it may say all jurors in the State vs.
9 Moore will report to the Spartanburg County Courthouse at a
10 particular time on Thursday with your bags packed and left
11 in your vehicle.

12 Now, the reason for that is once you are told to come
13 back -- and you will be told to come back at some point in
14 time this week -- you need to leave your belongings in your
15 vehicle. If you are selected as a juror, then the jury
16 custodians will take you and the other jurors to the motel
17 that will serve as your home away from home for the duration
18 of the trial.

19 If you are not selected, then we are going to thank you
20 very much for your having been here and send you about your
21 regular daily activities.

22 So, the long and the short of it is that you probably
23 need to go home and start packing for that period of time
24 that you would be gone. And then call back tonight for
25 further instructions.

Jury qualification -- Number 137

1 THE JUROR: Okay. Thank you.

2 THE COURT: Thank you, ma'am.

3 THE JUROR: Thank you.

4 (Whereupon, the juror was excused from the courtroom.)

5 THE COURT: Let the record reflect that Juror Number
6 220, Tammy Hayes, is qualified to serve as a potential juror
7 in this case pursuant to Section 16-3-20 of our code.

8 Insofar as our next individual is concerned, Ms. Irby,
9 there is information contained herein that she has a class
10 in Chicago October 24th through the 28th that has already
11 been paid for and purchased.

12 I am going to ask her about that initially. And if
13 that is still an issue, I am going to excuse her in
14 accordance with my other people involved.

15 Let's bring Ms. Irby in, please.

16 JUROR NUMBER 137,
17 MAMIE L. IRBY, having been first duly sworn, was
18 voir dired as follows:

19 EXAMINATION BY THE COURT

20 Q Good morning. You are Mamie Irby, correct?

21 A That's right. Good morning.

22 Q I am fine. Good morning to you.

23 Ms. Irby, you understand you are under oath for these
24 proceedings today.

25 A That's right.

1 Q And you also remember when I dismissed you from the
2 courthouse on Monday, I think it was, that I instructed you
3 that you were not to read, watch or listen to any news
4 accounts concerning this case; that you were also not to
5 have any discussions with anyone concerning this matter; and
6 that if anyone attempted to contact you that you were to
7 report that to me today when you returned to the courthouse.

8 Have there been any violations of that?

9 A No.

10 Q Now, I know you told me on Monday, and then I also see
11 with the information that you had submitted, that you have a
12 class in Chicago, I think, October the 24th through the
13 28th.

14 A That's right.

15 Q And I think you told me the other day that that's
16 connected with your employment at Spartanburg Regional.

17 A That's right.

18 Q And your ticket has already been purchased.

19 A That's right.

20 Q And you are already registered for that class.

21 A Yes.

22 Q Tell me a little bit about that class. What does it
23 involve?

24 A I do a clinical research. I am a clinical research
25 associate. I do a drug study concerning cancer. And what I

1 do is do follow-up on the patient and see whether they are
2 still alive or dead, see have their cancer, have recurred or
3 in remission. And, if so, I fill out forms and send to the
4 various research centers. And if they're deceased, I also
5 still fill out forms and send them to the various centers.

6 And we continue to do research every day. And
7 sometimes we may pull that deceased patient's file five
8 years from now. And it just continues, going on research
9 that we do.

10 Q On-going project you are involved in?

11 A Right.

12 Q And this class that you are going to is part of that?

13 A It is part of the training that I need.

14 Q All right. I am going to excuse you from further
15 consideration in this case, because, quite frankly, this
16 case will last probably into next week. And I know your
17 employer has gone to great expense in seeing that you were
18 properly registered and paid for at this class.

19 I appreciate the fact that you were here on Monday and
20 also here today, but I am going to excuse you. And with the
21 thanks of the State of South Carolina, and most particularly
22 Spartanburg County, I hope you have a pleasant trip. And
23 thank you for being here.

24 A I thank you.

25 Q Yes, ma'am.

Jury qualification -- Number 148

1 (Whereupon, the juror was excused from the courtroom.)

2 THE COURT: Number 137, Mamie Irby, is excused due to
3 the employment issues and the prepayment of the class and
4 trip to Chicago as part of her employment.

5 Number 148, John Kimball.

6 JUROR NUMBER 148, JOHN

7 A. KIMBALL, III, having been first duly sworn, was
8 voir dired as follows:

9 EXAMINATION BY THE COURT

10 Q You are John A. Kimball, III, is that correct?

11 A Yes, sir.

12 Q And, Mr. Kimball, you understand that you have been
13 placed under oath for this proceeding today.

14 A Yes, sir.

15 Q And you also remember that on Monday I instructed you
16 as you left the courthouse that you were not to speak with
17 anyone concerning this matter; that if anyone attempted to
18 contact you that you were to report that to me immediately
19 upon your return to the courthouse this day; and that you
20 were also to refrain from reading, watching or listening to
21 any news accounts concerning this case. Have there been any
22 violations of that order?

23 A No, sir.

24 Q Mr. Kimball, over the next few minutes I'm going to be
25 asking you some questions. Thereafter one of the defense

1 lawyers will ask you some questions, as well as one of the
2 solicitors.

3 Please understand that we are not in any way attempting
4 to invade your privacy, but due to the nature of the
5 proceedings that we are about this week it's extremely
6 important that certain questions are asked and answered.

7 Keep in mind that there are no right or wrong answers
8 to these questions. We just need to know your answers
9 openly and honestly and fully.

10 And also keep in mind that no one is challenging your
11 view. We just need to know what your views are in certain
12 areas.

13 Also, if at any time a question comes up that you do
14 not understand, if you need to have it repeated or
15 clarified, simply let me or the attorney asking the question
16 know, and we'll be glad to accommodate you in that regard.

17 Also, I would tell you that you should pay very close
18 attention to these questions, because over the next few
19 minutes we will probably ask you some questions that you
20 have never even considered prior to coming to court this
21 week.

22 I will also tell you the lawyers and I have copies of
23 your juror information sheet, because that was extremely
24 important to us in preparing for this morning.

25 Now, Mr. Kimball, among the things that we are going to

1 be talking about this morning, will include references to
2 the word penalty. But the mere fact that I even mention
3 that word or we talk about that word does not in any way
4 indicate anything about the defendant, Mr. Moore.

5 He is presumed in the law to be innocent. Do you
6 understand that principle?

7 A Yes, sir.

8 Q Now, if you were a juror in a criminal case could you
9 listen to the law, accept and apply that law as I would
10 instruct you as the judge of this court even though you may
11 disagree with that law or think that it should be some other
12 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 the case?

17 A Yes, sir.

18 Q Now, in a criminal case, Mr. Kimball, the state has the
19 burden of proving guilt. And the burden of proof that the
20 state must meet is proof beyond a reasonable doubt.

21 A defendant has absolutely no burden, no responsibility
22 to prove his innocence. Do you understand that?

23 A Yes, sir.

24 Q Now, could you, depending on the facts and the 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 on Monday, I told the
4 entire jury panel that this is a case in which the State of
5 South Carolina is seeking the death penalty. And, as a
6 result, we are going to be engaged in what is called a
7 bifurcated proceeding or trial. Now, bifurcated is just a
8 jazzed-up word which means split into two parts or divided
9 into two parts. Now, there is a guilt phase and, if
10 necessary, a sentencing phase.

11 If you were a juror in such a case, a death penalty
12 case, and if the jury had found the defendant not guilty of
13 murder in the guilt phase, do you understand that the trial
14 would end then and there would be no need for the second
15 phase?

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 fully
19 understand that you would then move to the sentencing phase
20 of the trial?

21 A Yes, sir.

22 Q During that phase of the trial, Mr. Kimball, evidence
23 would be 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, our state legislature, has declared
3 by law would make worse, that is to aggravate, the crime or
4 the offense of murder.

5 In other words, the presence of an aggravating
6 circumstance when it goes along with or accompanies the
7 crime of murder adds to the enormity or to the injury of the
8 crime of murder.

9 It's a murder that's committed in the commission of or
10 in connection with another crime or incident. Do you
11 understand what I am talking about?

12 A Yes, sir.

13 Q Now, mitigating circumstances are also incidents,
14 details or occurrences which the general assembly of our
15 state has, once again, declared by law reduces the severity
16 of the crime of murder and may be considered by the jury as
17 extenuating or as reducing the degree of responsibility for
18 the crime of murder.

19 Do you understand what I mean when I refer to a
20 mitigating circumstance?

21 A Yes, sir.

22 Q Now, let's assume that you were a juror in such a
23 situation, I am talking about a death penalty case, the
24 second phase, the sentencing phase of that trial.

25 Could you, depending upon the particular facts and

1 circumstances of that case, once again, including the
2 consideration of aggravating, as well as mitigating,
3 circumstances and the law that I would instruct you that
4 applied to that case, return a sentence of life in prison?

5 A No, sir.

6 Q You could not?

7 A No, sir. A life is a life.

8 Q If you were a juror in that situation could you,
9 depending upon the particular facts and circumstances of
10 that case, including the consideration of aggravating and
11 mitigating circumstances and the law that I would instruct
12 you that applies to that case, return a sentence of death?

13 A Yes, sir. I could.

14 Q Now, you read before you came in here from a list of
15 three types of jurors. Could you tell me which one of those
16 areas you fell into?

17 A The first type.

18 Q That you would always give death?

19 A I would always give death.

20 Q You would never even --

21 A If they were found guilty, I would always give death.

22 Q Thank you, sir.

23 THE COURT: Anything from the defense?

24 MR. KELLY: No questions, Judge.

25 THE COURT: From the state?

1 MR. BARNETTE: Yes, sir. I would like to ask a couple
2 of questions if I could, Your Honor.

3 EXAMINATION BY MR. BARNETTE

4 Q Ms. (sic) Kimball, I am Barry Barnette. I'm one of the
5 prosecutors, deputy solicitor. And also beside me, Trey
6 Gowdy, the solicitor, and Donnie Willingham, the deputy
7 solicitor.

8 You said that you would give death in every
9 circumstance.

10 A If it was a crime, yes, sir.

11 Q Would you listen to the judge and listen to his
12 instructions? Would you follow his instructions?

13 A Yes, sir.

14 Q Okay. Do you consider yourself a fair person?

15 A Yes.

16 Q Would you listen to the law and follow the law as the
17 judge instructed you?

18 A Yes, sir.

19 Q If -- for example, he would give you some aggravating
20 circumstances and mitigating circumstances. And you realize
21 that it is up to you-all as a juror if you was on the jury,
22 in the penalty phase we are talking about, that you would
23 follow the law. Even if you found an aggravating
24 circumstance, you could still find life and not death. Do
25 you understand that?

Jury qualification -- Number 148

1 A Can you say that again, please?

2 Q The judge will instruct you, but in order for the state
3 to get the death penalty --

4 A Yes, sir.

5 Q -- you would have to find an aggravating circumstance.

6 A Okay.

7 Q And even if you found that aggravating circumstance,
8 you and the jury would have to decide if it would be death
9 or life. Do you understand that?

10 A Yes, sir.

11 Q And if you didn't find an aggravating circumstance in
12 that case that you -- there would have to be a life
13 sentence. Do you understand that?

14 A Yes, sir.

15 Q Do you think you could fairly listen to the law and
16 based off that decision of the law as the judge gives to you
17 apply to the facts of the case?

18 A I don't see why not.

19 Q So if the judge instructed you that you would have to
20 consider all of these factors and everything, that you would
21 have to fairly consider a death sentence and a life
22 sentence, could you do that?

23 A It would be hard, but yes.

24 Q So, you would listen to the evidence and determine on
25 the case itself what the situation would be on the

1 sentencing.

2 A Yes.

3 Q So, you would at the end of the case or whatever, you
4 would give it a fair consideration, listen to the other
5 jurors, as well as yourself, and determine what the
6 appropriate sentence would be.

7 A The facts of the case would have a great deal of how I
8 would vote. If it was during a crime, that's their choice,
9 and they should be punished.

10 Q I understand. But you would look at the facts of the
11 case to determine what kind of punishment that would be,
12 correct?

13 A Yes, sir.

14 Q So, if it came back guilty would you always give death
15 or would you always give life or would you look at both
16 sides and give a sentence you thought was fair?

17 A If it was during the commission of a crime, it would
18 always be death.

19 MR. BARNETTE: Thank you, Your Honor.

20 Q Thank you, sir.

21 MR. KELLY: Nothing, Your Honor.

22 THE COURT: Thank you very much, Mr. Kimball.

23 This is going to conclude your responsibilities here
24 this week. I want to thank you very much for your
25 participation on Monday, as well as this day.

1 On behalf of the State of South Carolina, and most
2 particularly Spartanburg County, thank you very much for
3 your being here. You are excused.

5 (Whereupon, the juror was excused from the courtroom.)

10 | 145, Charles L. Kent.

13 THE COURT: Yes, sir, come on up.

15 THE COURT: All right. Bring him on in.

19 | EXAMINATION BY THE COURT

22 A Yes, sir.

25 | A Yes, sir.

1 Q -- and that you were also under oath Monday when I
2 asked general questions of the jury?

3 A Yes, sir.

4 Q And you also remember that I told you on Monday when
5 you left the courthouse that you were not to discuss this
6 case with anyone; that if anyone attempted to contact you
7 that you were to report that to me today upon your return to
8 the courthouse; and that you were also not to read, watch or
9 listen to any news accounts concerning this case. Have
10 there been any violations of my instructions?

11 A No, sir.

12 Q And the juror questionnaire that you filled out, is
13 that accurate and complete as of this day?

14 A As far as I know, sir.

15 Q All right, sir. And you filled that out, I think, on
16 September the 17th of 2001, and affixed your signature to
17 it.

18 A Yes, sir.

19 Q Now, Mr. Kent, you are a -- when I say Charles L. Kent,
20 you are not a senior or junior or anything like that, are
21 you?

22 A No, sir.

23 Q I am going to ask you a few questions, and thereafter
24 one of the defense lawyers, as well as one of the
25 solicitors, will ask you some questions.

1 Please keep in mind that we are not in any way
2 attempting to invade your privacy, but due to the nature of
3 the proceeding that we are about this week it is extremely
4 important that certain questions are asked and answered.

5 Please understand that there are no right or wrong
6 answers to these questions. We just need the truth. So,
7 please, answer them honestly and openly 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 a
10 particular area.

11 Also, I want you to pay very close attention to the
12 questions that are presented to you. If you need to have a
13 question clarified or repeated at any time, please let me or
14 the lawyer asking the questions know that, because over the
15 course of the next few minutes we are probably going to ask
16 you some questions that you have never considered before
17 coming to court here this week. So, please, pay close
18 attention. And, once again, I inform you that the lawyers
19 and I do have copies of your juror information sheet,
20 because that was important to us in preparing for this day.

21 Now, among the things that we are going to be talking
22 about, will include reference to the word penalty. But the
23 mere fact that I even mention that word or talk about that
24 word does not in any way indicate anything about the
25 defendant, Mr. Moore.

1 He is presumed in the law to be innocent. Do you
2 understand that?

3 A Yes, sir.

4 Q If you were a juror in a criminal case could you listen
5 to the law, accept and apply that law as I would instruct
6 you as the judge of this Court even though you may disagree
7 with that law or think that it should be some other way?

8 A Yes, sir.

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

12 A Yes, sir.

13 Q Now, in a criminal case, Mr. Kent, the state has the
14 burden of proving a defendant guilty. The burden of proof
15 that the state must meet is proof beyond a reasonable doubt.

16 And a defendant has absolutely no burden, no
17 responsibility to prove his innocence. Do you understand
18 that principle?

19 A Yes, sir.

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

23 A Yes, sir.

24 Q Now, as you know from being here on Monday, this is a
25 case in which the State of South Carolina is seeking the

1 death penalty.

2 Now, death penalty cases are what we call bifurcated
3 trials, bifurcated proceeding, meaning that it's divided
4 into two parts, guilt phase, sentencing phase.

5 Now, let's assume that if you were a juror in such a
6 case and if the jury found the defendant not guilty of
7 murder in the first phase, the guilt phase of the trial. Do
8 you understand that the trial would end at that point and
9 there would be no necessity of having the second phase?

10 A Yes, sir.

11 Q However, if you were a juror in such a case and if the
12 jury had found the defendant guilty of murder, do you
13 understand that you would then move to the sentencing phase
14 of that trial?

15 A Yes, sir.

16 Q Now, in that phase of the trial evidence would be
17 presented to the jury in the form of aggravating
18 circumstances, as well as mitigating circumstances.

19 Now, aggravating circumstances are facts, incidents,
20 details or occurrences which the general assembly of our
21 state, our state legislature, has declared by law would make
22 worse, that is to aggravate, the crime of murder.

23 In other words, when the presence of an aggravating
24 circumstance goes along with or accompanies the crime of
25 murder, it increases the enormity or adds to the injury of

1 that crime of murder. It is a murder that's committed in
2 the commission or of or in connection with another crime or
3 incident. Do you understand that?

4 A Yes, sir.

5 Q Now, mitigating circumstances are also incidents,
6 details or occurrences which the general assembly of our
7 state has, once again, declared by law, they have passed a
8 statute, that reduces the severity of the crime of murder
9 and may be considered by the jury as extenuating or as
10 reducing the degree of responsibility for one committing the
11 crime of murder. Do you understand that?

12 A Yes, sir.

13 Q Now, Mr. Kent, if you were a juror in that situation,
14 the sentencing phase, could you, depending upon the
15 particular facts and circumstances of that case, including
16 the law that I would charge you that applied to that matter,
17 return a sentence of life in prison?

18 A Yes, sir.

19 Q If you were a juror in that situation could you,
20 depending upon the particular facts and circumstances of
21 that case, including the consideration of aggravating and
22 mitigating circumstances and the law that I would instruct
23 you, return a sentence of death?

24 A Yes, sir.

25 Q Do you understand that there are always two sentencing

1 options available, that being life imprisonment or death --

2 A Yes, sir.

3 Q -- and that each and every member of the jury must be
4 capable of imposing either of those sentences?

5 A Yes, sir.

6 Q Now, if you were chosen for service on this jury you
7 would be housed in a motel for the duration of the trial. I
8 have no way of knowing how long that would last, probably
9 somewhere at the outside seven to ten days. It could be
10 less than that.

11 Except for the personal inconvenience that you would
12 suffer, would this pose a serious danger to the health or
13 well-being of yourself or of those dependent upon you?

14 A No, sir.

15 Q All right, sir. Thank you for responding to my
16 questions. Mr. Kelly.

17 MR. KELLY: Thank you, Your Honor. May it please the
18 Court.

19 EXAMINATION BY MR. KELLY

20 Q Mr. Kent, I am Keith Kelly, and along with Jennifer
21 Johnson and Michael Morin, we represent Richard Moore who is
22 seated at my right elbow in this matter.

23 And as you have come to learn since Monday of this
24 week, this is a death penalty case. The State of South
25 Carolina seeks the death penalty against Mr. Moore.

1 In looking at your questionnaire, and as the Court told
2 you, you filled out a questionnaire, and that's been made
3 available to all of us here. And I appreciate you doing
4 that, because it tells us a lot about you. But just a few
5 more questions.

6 Your wife is deceased, is that right?

7 A Yes.

8 Q Okay. And has that been something that happened a long
9 time ago?

10 A Two and a half years ago.

11 Q All right, sir. Y'all were married quite a long time?

12 A We were together 15 years.

13 Q All right. So you don't have any care of any
14 grandchild. You also indicated you have two daughters, 32
15 and 36.

16 A I don't have any grandkids, no grandpa.

17 Q You don't have any. Okay. You will enjoy that one
18 day, I hope.

19 You also indicated that you are Baptist by religion.
20 Will you tell me what church you attend if you attend
21 church?

22 A I don't attend church in a building. I attend this
23 church. I stay in this church. I'm spiritual, more
24 spiritual, than I am religious. I kinda lean a little more
25 towards spiritually.

1 Q Okay. But you have given you are with the Baptist
2 church.

3 A Yes, sir. I'm a Baptist.

4 Q All right, sir. Is that Southern Baptist?

5 A Southern Baptist.

6 Q Not independent Baptist?

7 A No, sir.

8 Q But at this point in time or for some period of time
9 you have not attended in a building, so to speak.

10 A I don't on a regular basis, but I do attend
11 occasionally with friends. If I get invited, I will go.

12 Q Sure. Any other church that you might attend with
13 friends like a Methodist or Episcopal Church or Lutheran
14 Church or anything?

15 A No, sir.

16 Q All of us have our views regarding the death penalty
17 based on something, whether it be from our religion, from
18 grandmama, grandpapa when we were growing up, from momma,
19 from dad, from people that we associate with or perhaps we
20 work with at our place of employment for a number of years.

21 To what do you attribute your views on the death
22 penalty? Will it be a combination of that or more in
23 particular --

24 A No. It would be a combination. It would be more of a
25 one-on-one type situation with me. I've thought about it

1 for a long time, if it's right or wrong. And I've come to
2 the conclusion each one is different.

3 Q Okay. So.

4 A And so I would have to hear it.

5 Q Right. The state would have to prove it to you, not
6 only the guilt, but in the sentencing phase they would then
7 have to prove an aggravating circumstance as Judge Clary has
8 told you.

9 A Yes, sir.

10 Q Do you understand that even if Mr. Gowdy and his
11 assistants were to prove one of those aggravating
12 circumstances that Judge Clary would tell you about that you
13 could still return a sentence of life?

14 A Yeah.

15 Q Okay. In other words, you are not required even if
16 they prove --

17 A Yeah, yeah.

18 Q -- that aggravating circumstance beyond a reasonable
19 doubt, that it had occurred. You could still return -- it's
20 your choice. You could still return a vote of life.

21 A Yes, sir. That's possible, yes.

22 Q Okay. And if you did that, if you returned a vote of
23 life, then you might be called upon to come into this
24 courtroom and stand from one of those seats over there and
25 to say life is your vote. Could you do that?

1 A Yes, sir.

2 Q All right, sir. And that wouldn't embarrass you in any
3 way, would it?

4 A No, sir, not if I believed it. No, sir. That's what I
5 believed.

6 Q Yes, sir. Under organizations you had put not
7 applicable in your questionnaire. Do you belong to anything
8 like the N. R. A. or the Bass Master or anything like that?

9 A No, sir, I sure don't.

10 Q Do you subscribe to any magazines like Field and Stream
11 or U. S. News and World Report, anything like that?

12 A No, sir.

13 Q You don't get any magazine at all?

14 A No, sir. National Geographic is the only one I get at
15 home. My father-in-law gave me that one, is the reason I
16 have it.

17 Q As a gift?

18 A Yes, sir.

19 Q A gift at Christmas or something?

20 A Yes, sir.

21 Q Okay. And that's the only magazine or subscription
22 that you get at home?

23 A The only one.

24 Q Okay. You don't even get the newspaper at home?

25 A No, sir.

Jury qualification -- Number 145

1 Q And on bumper stickers you had put no. But in recent
2 times have you begun flying a flag or anything?

3 A No, sir. But I received two bumper stickers that I
4 have not put on my car. If you live in America, be an
5 American. But I have not put them on my car, but they are
6 in my possession. But I've not put them on the car. I've
7 had them about two weeks.

8 Q Okay. That's one of them. What's the other one?

9 A That's the only one. I've two vehicles, and somebody's
10 left me two bumper stickers there. I don't even know who
11 they were. They left me those bumper stickers there. I
12 liked them, so I kept them.

13 Q Okay. Do you have any others that you have not put on
14 the car?

15 A No, sir; no, sir.

16 Q Don't have.

17 A I don't know even where those came from to be honest
18 with you.

19 Q All right. Do you have any racing stickers or decals?
20 Do you have like a 3 or a 24?

21 A No, sir. I like them call. I do watch NASCAR, but I
22 don't -- the old guys have done left. That's the ones I
23 pulled for, the underdog.

24 Q Okay. At your home -- some people have a flag on their
25 door at home, whether it be from what came out in the

1 newspaper several weeks ago that's taped to the door. Do
2 you have one of those?

3 A I don't have one of those. I do have one that I put
4 out on the Fourth of July of -- my wife was cremated. I put
5 on her crematorial. She always flew the flag on the Fourth
6 of July. And I do spread that flag on her remains.

7 Q Yes, sir.

8 A And that's the only time that I put it out. I put it
9 out to her remains.

10 Q That's the American flag?

11 A The American flag, yes, sir.

12 Q Do you own any other flags like the South Carolina
13 flag?

14 A No, sir.

15 Q Mr. Kent, I'm going to ask you about something that's
16 been provided by Mr. Gowdy. And I am going to ask you if
17 this is you. I am not accusing you. I don't know.

18 But in 1984 there was a Charles Kent that had a
19 possession of cocaine case, and it was dismissed. Could
20 that be you?

21 A That is me.

22 Q Okay, sir.

23 A I didn't have any. It was -- they even when -- another
24 person was supposed to have been. I was there and was near.
25 And they didn't even have it. That's the reason they

Jury qualification -- Number 145

1 dismissed it. They didn't even have any. The charge was
2 brought without any cocaine even as evidence.

3 Q All right. Was that made here in Spartanburg County?

4 A Yes, sir.

5 Q By the city department, sheriff?

6 A The county.

7 Q The county department?

8 A Yes.

9 Q All right, sir. And that was in 1984. Is that why you
10 didn't list it on the interview sheet, because it was
11 dismissed?

12 A It really never happened other than on paper.

13 Q Okay.

14 A That's the reason they dismissed it. The officer
15 didn't even have any evidence in there. He just had it
16 on -- they had to call him in the next morning before they
17 could even release me. They didn't have it. They dropped
18 it right then, because they didn't even take a warrant out
19 for me, because it wasn't any.

20 Q Okay.

21 A It was just the process of putting me in jail and
22 taking me out that that came about.

23 Q Yes, sir. And that also had -- I guess it was cocaine
24 and marijuana.

25 A Yes, sir.

Jury qualification -- Number 145

1 Q And I am just reading from the note right here. But
2 both of those were just dismissed in '84 because there was
3 nothing there.

4 A Right.

5 Q Okay. And in 1987, again, I am not saying this is you,
6 but I am just asking you. There was a Charles Kent that had
7 a D. U. I.

8 A Yeah.

9 Q Was that you?

10 A What year was it?

11 Q '87.

12 A That's about right.

13 Q Okay. Was that a first offense?

14 A Yes, sir. The only offense.

15 Q That's the only offense.

16 A Yes, sir.

17 Q And did you consider that to be a traffic offense?

18 A Yes, sir.

19 Q All right. So when you were answering the questions
20 then on this questionnaire and it asked about other than a
21 traffic, you just considered that to be a traffic offense.

22 A Yes, sir.

23 Q All right. And in 1989 there was a distribution of
24 marijuana that was dismissed, and, again, it was against a
25 Charles Kent. Was that you?

Jury qualification -- Number 145

1 A That was me.

2 Q All right. And can you tell me what happened there?

3 A The truth, I had a buddy that was caught with 29 grams
4 of cocaine, and he was let off. And he give everybody's
5 name that may have smoked marijuana, and to get his
6 sentence, because it was a big sentence coming due to him
7 because he had over the equivalent. He just give -- and the
8 boy worked with me. He come to me later and apologized.
9 That's the reason that never came about either.

10 Q Okay. It was dismissed as well?

11 A Yes, sir. It never, never went to court, never
12 hearing, nothing. There was nothing. They just come and
13 got me and took me to jail and turned me loose. And that
14 was the last I heard of it.

15 Q Okay. And that was 1989?

16 A Somewhere around in there is about right.

17 Q Has there been anything since? That is the only thing
18 I've got here. Has there been anything since then?

19 A No, sir, not that I can remember anything.

20 Q All right. Is there a reason that you didn't list them
21 on the questionnaire?

22 A It was asking if I was convicted of anything. I really
23 and truly was really -- overnight charge was what it was
24 until the next morning. They turned me loose.

25 Q Yes, sir; yes, sir.

1 A As the judge said, she said, son, you was in the right
2 place at the wrong time.

3 Q I got you.

4 A So I said, yes, ma'am, I was, and she even dismissed
5 it. She even did. The other girl that was in involved in
6 all of that admitted it. So, she actually heard it. So,
7 so, that's the reason she dismissed me, just dropped the
8 charge against me. I didn't have any charges on me.

9 Q Well, you said the judge, and you said she.

10 A It was magistrate's court.

11 Q Okay. I was going to ask you. Is that Judge Anderson,
12 Georgia Anderson, by any chance?

13 A Yeah. I remember her name being Georgia, because my
14 daughter's named Georgia. That's the reason I could
15 remember her name.

16 Q Okay. I am sorry to ask about this.

17 A No, sir. That's perfectly all right.

18 Q It was on my list here, and sometimes they're people
19 with the name, as you know.

20 A Yeah.

21 Q Thank you.

22 THE COURT: Mr. Barnette.

23 MR. BARNETTE: May it please the Court, Your Honor.

24 THE COURT: Yes, sir.

25 EXAMINATION BY MR. BARNETTE

1 Q Mr. Kent, my name is Barry Barnette. I'm one of the
2 deputy solicitors, along with Mr. Trey Gowdy. He is the
3 solicitor, and Donnie Willingham is another deputy
4 solicitor.

5 I apologize. I need to ask you some questions too just
6 like Mr. Kelly did.

7 A Yes, sir.

8 Q Going back to the arrest and the conviction that he had
9 asked you about and everything, you received a copy. And I
10 think you turned in a copy of the questionnaire, which we
11 appreciate you filling out. Is that correct?

12 A Yes, sir.

13 Q And on the questionnaire, I believe it is question
14 number 23 that says have you or any family member ever been
15 arrested and charged with a crime other than a traffic
16 offense. Do you remember that question?

17 A Uh-huh.

18 Q And you answered no, is that right?

19 A Yeah.

20 Q And then they asked another question, have you or any
21 family member ever been convicted of a crime other than a
22 traffic offense. And you said no, is that right?

23 A Right.

24 Q And you understood those questions, is that right?

25 A I understand them as not being convicted or charged or

1 arrested or anything, punished, punished for any of that,
2 anything.

3 Q Now, on the D. U. I. in 1987, you were convicted of
4 that, is that correct?

5 A I pled guilty to that, sir. I was.

6 Q And I believe it was 30 days or a fine. And you paid
7 the fine, is that correct?

8 A Yes, sir.

9 Q And you was convicted of that crime.

10 A I pled guilty to it. I was guilty of it.

11 Q And do you remember, I believe it was on Monday, I
12 think Judge Clary had made reference to all of the
13 questionnaires that had been handed in and if they were true
14 and correct after they swore you in? Do you remember that?

15 A Yes, sir.

16 Q And, obviously, you answered that was true and correct
17 at that time, is that right?

18 A Yes, sir, I think so.

19 Q And you didn't list any of the arrests from 1984, the
20 possession of cocaine or possession of marijuana, is that
21 right?

22 A No, sir, I didn't list it because I didn't think I was
23 supposed to. The way I understood it, I didn't think I was
24 supposed to.

25 Q But you understand the questionnaire says ever been

1 arrested or charged.

2 A No, sir. I didn't understand it arrested or charged.

3 Q Okay.

4 A I would have thought I would have to be convicted of
5 something before that it made any difference. Excuse me.
6 That's the way I understood it.

7 Q Yes, sir. Let me show you here. Was this -- I believe
8 this is your questionnaire. And that's your signature. Is
9 that correct?

10 A Yes, sir.

11 Q And number 23, that was a question that you answered,
12 is that right?

13 A Yes, sir.

14 Q Okay. And it does say have you or any family member
15 been arrested or charged with a crime other than a traffic
16 offense.

17 A The way I -- excuse me. The way I understood this to
18 mean was I arrested on and put on trial and charged or
19 penalized or fined or whatever. I mean, I didn't know they
20 can just pick you up and say now you have got a record.

21 Q I understand. But you realize arrested or charged
22 means that you was picked up.

23 A I do now.

24 Q Yes, sir. And you did have a conviction in 1987 where
25 you pled guilty.

1 A D. U. I., driving.

2 Q Yes, sir.

3 A That was all I understood, is driving.

4 Q Mr. Kent, I saw on your questionnaire also that you
5 listed you was in poor health. Is there anything that would
6 affect you or anything? Or can you explain that a little
7 more?

8 A I have emphysema, not progressive. I mean, as long as
9 I am not running and picking up weights and doing, climbing
10 hills and stuff like that, climbing ladders and stuff like
11 that, I'm all right. Sitting still, I can't even tell there
12 is anything wrong with me. I am just short-winded when it
13 comes to doing anything.

14 Q I understand. Let me ask you a question concerning
15 your view on the death penalty. Can you tell us what your
16 views are on the death penalty?

17 A In just a very few circumstances. It would have to be
18 something really mitigating to sentence -- take a person's
19 life. But if they were those circumstances and the law of
20 South Carolina required me to do that and those
21 circumstances were there, I could do that; but it would be
22 based upon what the laws are.

23 See, just as I misunderstood that, if he, the judge,
24 explained to me certain things, that's the way I would have
25 to go one way or the other. I could do that.

1 Q You understand that in a case, at the end of the case,
2 all 12 jurors would have to agree on one sentence or the
3 other in the penalty phase. Or let me rephrase that.

4 In order to give a death sentence you would all 12 have
5 to agree, and then you would have to sign a sentence sheet,
6 just like the judge when he does a conviction or whatever in
7 a regular case. He does the signing on the sentence sheet.

8 Y'all are actually going to be determining the
9 sentence, not the judge in this case. And all 12 of you
10 would have to sign that sentencing sheet. Could you do
11 that?

12 A Yes, sir.

13 Q Could you come into open court and announce if you was
14 polled one by one and individually if your sentence was
15 death? Could you do that?

16 A Yes, sir.

17 Q You was mentioning that, going back to the death, your
18 belief or believe against the death penalty, one way or the
19 other.

20 I know Mr. Kelly asked you. You said it came from you
21 spiritually. Can you explain that to me?

22 A Boy, that's -- it would have to be a lot, a lot of
23 mitigating. Like I said, again, just to kill somebody in a
24 way would not necessarily just mean a death penalty. But if
25 it was a lot of things coming together there that this

1 person -- I say a person -- man, woman and child or
2 whatever -- was no way. It was a bad seed, no way to ever
3 have any remorse, no feelings for doing what he done, or he
4 done or she done or it done, and never have any remorse and
5 do it again just as cold-hearted again, then something would
6 have to be done. And death penalty in my opinion there
7 would be appropriate.

8 Q And you were talking about mitigating circumstances.
9 What's your opinion of mitigating? I just want to make sure
10 since you mentioned that.

11 A Very cruel things happening and, like I said, no
12 remorse and planned out. It would have to be more than just
13 a happening.

14 Q Do you understand? I know Judge Clary explained this
15 to you or whatever. That's really an aggravating
16 circumstance. If you aggravate something that's where you
17 would increase the penalty. Do you understand that?

18 A I understand that too. That's like two things going on
19 at one time.

20 Q Okay. And then mitigating would actually be reducing
21 something.

22 A Is that right?

23 Q Yeah. I just wanted to make sure.

24 A Well, okay. I turned the words around.

25 Q I understand. I just wanted to make sure when you were

1 talking about that what you --

2 A That's exactly. You understood me -- understood me. I
3 didn't understand you. Excuse me. Pardon me.

4 Q No problem. That's just us talking. Like I said I
5 know --

6 A I like to be straightened out. Thank you.

7 Q No problem. I just wanted to make sure that I am
8 understanding you and you're --

9 A You are.

10 MR. BARNETTE: One moment, Your Honor, please.

11 THE COURT: Yes, sir.

12 (Pause.)

13 Q Mr. Kent, do you understand that it would be y'all's
14 decision as a jury? In the sentencing phase, for example,
15 y'all would have the decision one way or the other.

16 The judge would just give you the law, but it would be
17 your choice to determine if it was a life sentence or a
18 death-penalty sentence. Do you understand that?

19 A We would have a chance amongst ourselves, the jury to
20 discuss this situation?

21 Q Yes, sir. The judge would give you the law, but the
22 judge doesn't determine the sentence. He just gives you the
23 law that you apply to the facts. Do you understand that?

24 A Yes, sir.

25 Q Do you understand that he doesn't factor in the

1 situation?

2 A Yes, sir.

3 Q Do you understand that?

4 A Yes, sir.

5 Q I just want to make sure. Was that your understanding
6 before?

7 A Yes, sir; yes, sir.

8 Q And I know you said something about not doing it again
9 or whatever. Do you realize possibly a life or death
10 sentence, either way, would affect the way that he would do
11 something? Do you understand that?

12 MR. MORIN: Objection.

13 THE COURT: I sustain the objection. That's not a
14 proper question. You are to disregard that and not to
15 answer it.

16 THE JUROR: Yes, sir.

17 MR. BARNETTE: That's all the questions I have, Your
18 Honor.

19 THE COURT: Anything else from the defendant?

20 MR. KELLY: Nothing, Your Honor.

21 THE COURT: Anything else from the state?

22 MR. BARNETTE: Yes, sir.

23 THE COURT: If you would, step out for just a moment,
24 please.

25 THE JUROR: Me?

1 THE COURT: Yes, sir, Mr. Kent. The bailiffs will
2 direct you out.

3 (The following takes place outside the presence of the
4 juror.)

5 MR. BARNETTE: Yes, sir. We would say that he was not
6 qualified, Your Honor, for a couple of reasons.

7 One reason was he filled out the questionnaire form. I
8 know Mr. Kelly talked to him and went through it with him;
9 but, Your Honor, even after asking the questions and asking
10 that the form is complete and everything, I believe you did
11 that on Monday. I think that he still had a conviction for
12 D. U. I. He still didn't understand that was an arrest for
13 something that he should report even --

14 THE COURT: Well, don't you think that he could -- that
15 D. U. I. is regarded as driving under the influence? I've
16 already made a note that I am going to make a change in my
17 questionnaire.

18 MR. BARNETTE: Yes, sir. I understand, Your Honor.

19 The other thing too was that even on Monday, I think it
20 was clearly mentioned. I think it is fairly clear in there.

21 It says arrested or charged. Obviously, he didn't
22 answer that. I know he explained it to a certain extent on
23 there. But the other problem I have got is I'm not certain
24 about him understanding the process.

25 Even after Your Honor explained to him about

1 mitigation, aggravation, he had that backwards. That's the
2 reason I asked him the question, because he kept talking
3 about mitigation -- mitigation; and explained that to him
4 before, Your Honor did, and he kind of had that confused
5 back and forth through there. That's another reason why I
6 don't think he is qualified, because, obviously, he is not
7 understanding the instruction of the Court.

8 Then, obviously, we have a problem with having him as a
9 juror in this situation. That's twice. I mean, he didn't
10 understand the questionnaire; and, obviously, I think you
11 further examined him concerning that, Your Honor, and
12 explained things to him, and he still had a problem
13 understanding.

14 MR. KELLY: May it please the Court, Your Honor.

15 THE COURT: Yes, sir.

16 MR. KELLY: Your Honor, I would point out to the Court
17 that I think he was as truthful as he could possibly be.
18 This man is a blue-collar worker. He retired from the
19 railroad. He has an eleventh-grade education, which
20 certainly qualifies him as being more than a sixth-grade
21 education.

22 But I think his understanding was, just like applying
23 for a job as a blue-collar worker. If I haven't been
24 convicted, I don't have to list that when I do my little
25 application.

1 As far as understanding the Court's instructions,
2 Judge, the man obviously mixed up aggravating and
3 mitigating, and I suspect those are two words that he hasn't
4 seen or heard much of in his lifetime in his life's
5 experiences. And I think he can fully follow this Court's
6 instructions.

7 THE COURT: Well, I think that what we have here is it
8 is a little bit different from my situation with
9 Mr. Rookard. Mr. Rookard became completely defensive,
10 evasive and was untruthful to the Court in many of his
11 responses.

12 Mr. Kent, on the contrary, has tried to be as above
13 board and open as possible. And, quite frankly, I thought
14 this is the first juror out of 34 that has even been
15 questioned about mitigating and aggravating circumstances by
16 any lawyer; because, quite frankly, it is hard to question
17 them about aggravating and mitigating circumstances in
18 particularity, because you can't get into specific
19 instances. That is not permitted under the case law.

20 I think that insofar -- and certainly I am going to
21 fine-tune my questionnaire now, because there won't be any
22 misunderstandings in the future about if you have merely
23 been arrested or merely charged. That will be added and
24 underlined probably a couple of times. There won't be any
25 blue-collar, white-collar, anything else. There won't be

1 any question in the future in my questionnaire.

2 But I think that he has given me adequate reasons to
3 not disqualify him. And, as such, I find that he is
4 qualified to serve as a potential juror in this case
5 pursuant to statute, 16-3-20 of our code.

6 Now, of course, the questioning that has been
7 developed, y'all can do with that, what you wish, in making
8 your decisions as who will or will not participate in this
9 case. But that's the purpose of us asking all of these
10 questions.

11 Let's bring him back in.

12 (The following takes place in the presence of the
13 juror.)

14 THE COURT: Mr. Kent, I want to thank you very much for
15 your being here and participating this day, as well as on
16 Monday.

17 I find that you are qualified to serve as a potential
18 juror in this case. And with that qualification I'm going
19 to instruct you that you are not to discuss this case with
20 anyone, whether it be fellow jurors, family, friends or
21 anyone else that you might come into contact with over the
22 next few days until further instruction by this Court.

23 Also, you are not to -- if anyone should attempt to
24 contact you concerning this case, I want you to gather as
25 much information about that person as you possibly can. And

1 report that to me immediately, because that's a very serious
2 matter, and I would deal with the person that attempted to
3 contact you accordingly.

4 Also, I am going to instruct that you are not to read,
5 watch or listen to any news accounts concerning this case.
6 All I would want you to consider if you were selected as a
7 juror in this case is what you would see and hear in this
8 courtroom, nothing more and nothing less.

9 Now, when you reported on Monday you were given a
10 pamphlet which had on the front of it an 800 number. I want
11 you to call that number tonight after six o'clock. There
12 will be a tape-recorded message that will left on the
13 machine by the clerk of court. And follow the instructions
14 that you hear there.

15 One instruction may say something like the jurors in
16 the case of the State vs. Moore are to report or -- or are
17 to call back tomorrow at a particular time. And that would
18 be Thursday. Or the alternative message may say jurors in
19 the case of the State vs. Moore are to report to the
20 Spartanburg County Courthouse at a particular time on
21 Thursday.

22 One way or the other, you are going to be coming back
23 to this courthouse. It is just a matter of when you are
24 informed that you are going to be coming back.

25 You need to go home and start packing, because if you

Jury qualification -- Number 145

1 are selected as a juror -- when you come back here at the
2 appropriate time, leave your belongings in your vehicle. Do
3 not bring them into the courthouse.

4 If you are selected as a juror, then you would be taken
5 from this place to the motel that would be your home away
6 from home for the duration of the trial. And you would
7 remain with us until the trial is completed.

8 If you are not selected, we are going to thank you very
9 much for your having been here and send you along your way.
10 And you would then resume your normal daily activities.

11 So, with all of that instruction, do not forget to call
12 tonight after 6:00. And follow the instructions on the
13 telephone message. And I look forward to seeing you back
14 here tomorrow or on Friday. Thank you, sir.

15 (Whereupon, the juror was excused from the courtroom.)

16 THE COURT: David Mosley. Excuse me.

17 MR. GOWDY: I was going to raise a very brief matter,
18 Your Honor. It is a general matter.

19 As the Court knows, we provided this list, which I
20 think is beyond what we were required to do. I think we
21 were required to provide N. C. I. C. But we provided the
22 list, because I think it is easier to follow for the Court
23 and for the defense. But I don't think it is necessary in
24 this questioning of potential jurors to say that we, the
25 solicitor's office --

1 THE COURT: Yes, sir.

2 If you are going to use it, you just use it. The fact
3 that you have it is a gift, Mr. Kelly, from me.

4 You can go ahead and take the responsibility if you
5 want to explore that. If not, then they can do it if they
6 want to explore it.

7 That's like introducing your children to where you go
8 to school or went to church or anything else. That's
9 superfluous. That's a waste of time. That is not part of
10 this process. So get to the issues. Both sides.

11 Let's bring the next man in.

12 MR. BARNETTE: Yes, sir. Can I make this just part to
13 protect the record?

14 THE COURT: Yes, sir. You can make anything you want
15 to as part of the record.

16 From now on when we do a case like this, I want those
17 things in advance. This is the first county that I have
18 been to that I haven't had them.

19 MR. BARNETTE: Yes, sir.

20 THE COURT: And the other side should have them too.

21 (Rap sheet of Juror Number 145 marked Court's Exhibit
22 Number Four.)

23 THE COURT: Because you said you would give them
24 everything. That's everything.

25 MR. BARNETTE: Yes, sir.

1 THE COURT: Bring him in.

2 JUROR NUMBER 192,

3 DAVID M. MOSLEY, having been first duly sworn, was
4 voir dired as follows:

5 EXAMINATION BY THE COURT

6 Q Good morning. You are David M. Mosley, is that
7 correct?

8 A Yes, sir.

9 Q And, Mr. Mosley, you understand that you are under oath
10 for these proceedings here today.

11 A Yes, sir.

12 Q And you also remember that when I dismissed you on
13 Monday that I gave you instructions that you were not to
14 discuss this case with anyone; that if anyone attempted to
15 contact you concerning this matter that you were to report
16 that to me; and also that you were not to read, watch or
17 listen to any news accounts concerning this matter.

18 A Yes, sir.

19 Q Have there been any violations of my instructions?

20 A No, sir.

21 Q Now, over the next few minutes, Mr. Mosley, I am going
22 to be asking you some questions. Thereafter one of the
23 defense lawyers will ask you some questions; and then one of
24 the solicitors will also ask you some questions.

25 Please keep in mind that we are not in any way

1 attempting to invade your privacy, but due to the nature of
2 the proceedings that we are about this week it's extremely
3 important that certain questions are asked and answered.

4 Please keep in mind that there are absolutely no right
5 or wrong answers to these questions. Please answer them
6 openly and honestly and fully.

7 Keep in mind that no one is challenging your view. We
8 simply need to know what your views are in particular areas.

9 Also, I would direct your attention to pay very close
10 attention to the questions that are presented to you. If a
11 question at any time is one that you do not understand, if
12 you need to have it repeated or clarified in any way, simply
13 let me or the lawyer asking the question know, and we will
14 attempt to do that.

15 Also, you need to pay very close attention, because
16 we're probably going to ask you some questions during the
17 next few minutes that you have never considered prior to
18 coming to court here this week.

19 I would also tell you that the lawyers and I have
20 copies of your juror information sheet, because that was
21 extremely important to us in preparing for this day.

22 Now, during the next few minutes we're going to be
23 talking about things, a number of things. And, among them,
24 we will be using the word penalty and referring to the word
25 penalty.

1 But the mere fact that that word is even mentioned does
2 not indicate anything about the defendant, Mr. Moore. He is
3 presumed in the law to be innocent. Do you understand that?

4 A Yes, sir.

5 Q If you were a juror in a criminal case, Mr. Mosley,
6 could you listen to the law, accept and apply that law as I
7 would instruct you as the judge of this Court even though
8 you may disagree with that law or think that it ought to be
9 some other way?

10 A Yes, sir.

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

14 A Yes, sir.

15 Q Now, in a criminal case, Mr. Mosley, the state has the
16 burden of proving guilt. And the burden of proof for the
17 state is proof beyond a reasonable doubt.

18 A defendant has absolutely no burden, no responsibility
19 to prove his innocence. Do you understand that?

20 A Yes, sir.

21 Q Now, could you, depending on the facts and evidence and
22 the law as I would instruct you in a particular case, find a
23 defendant either guilty or not guilty?

24 A Yes, sir.

25 Q Now, as you know from being here on Monday when I told

1 the entire jury panel, this is a case in which the State of
2 South Carolina is seeking the death penalty.

3 And, as such, we are going to be engaged in what is
4 called a bifurcated trial. That simply means it's divided
5 into two parts, the guilt phase, the sentencing phase.

6 Now, if you were a juror in such a case and if the jury
7 had found the defendant not guilty of murder in the initial
8 guilt phase, do you understand that the trial would end at
9 that point?

10 A Yes, sir.

11 Q However, if you were a juror in such a situation and
12 the jury had found the defendant guilty of murder, do you
13 understand that you would then move to the second or
14 sentencing phase of that trial?

15 A Yes, sir.

16 Q In that phase of the trial, Mr. Mosley, evidence would
17 be presented in the form of aggravating circumstances, as
18 well as mitigating circumstances.

19 Now, aggravating circumstances are facts, incidents,
20 details or occurrences which our state legislature, the
21 General Assembly of South Carolina, has declared by law
22 would make worse, that is to aggravate, the crime of murder.

23 In other words, the presence of an aggravating
24 circumstance when it goes along with or accompanies the
25 crime of murder increases the enormity or adds to the injury

1 of that murder.

2 In other words, it is a murder committed in the
3 commission of or in connection with another crime or
4 incident. Do you understand that?

5 A Yes, sir.

6 Q Now, mitigating circumstances, on the other hand, are
7 also incidents, details or occurrences which the general
8 assembly of this state has declared by law reduces the
9 severity of the offense of murder and may be considered by
10 the jury as extenuating or as reducing the degree of
11 responsibility for the crime of murder.

12 Do you understand what I mean when I refer to a
13 mitigating circumstance?

14 A Yes, sir.

15 Q Now, if you were a juror in that situation, Mr. Mosley,
16 I am talking about the sentencing phase, the second phase,
17 of a death penalty case, could you, depending upon the
18 particular facts and circumstances of that case, including
19 the consideration of aggravating and mitigating
20 circumstances and the law that I would instruct you that
21 applied to that case, return a sentence of life in prison?

22 A Yes, sir.

23 Q If you were a juror in that situation could you,
24 depending upon the particular facts and circumstances of
25 that case, once again, including the consideration of any

1 and all aggravating and mitigating circumstances and the law
2 that I would instruct you that applied to that case, return
3 a sentence of death?

4 A Yes, sir.

5 Q Now, you understand, Mr. Mosley, that there are always
6 two sentencing options that are available to the jury in the
7 sentencing phase of a death penalty case, that being life
8 imprisonment or death.

9 A Yes, sir.

10 Q And you understand that each and every juror must be
11 capable of imposing both of those sentences.

12 A Yes, sir.

13 Q Now, if you were chosen for service on this jury, Mr.
14 Mosley, you would be housed in a motel for the duration of
15 the trial. I have no idea how long this case would last.
16 But from start to finish it should be no more than seven to
17 ten days, could possibly be less than that.

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 yourself or of those dependent upon you?

21 A No, sir.

22 Q Thank you for responding to my questions. Please
23 answer any questions that Mr. Morin or Mr. Kelly might have.

24 EXAMINATION BY MR. MORIN

25 Q Good morning, Mr. Mosley. My name is Michael Morin.

Jury qualification -- Number 192

1 Along with Keith Kelly and Jennifer Johnson, we represent
2 Mr. Moore.

3 I want to thank you for your questionnaire. You filled
4 it out and put a lot of information in there. I can tell
5 that you looked over it very well, and I appreciate that.
6 There are just a few questions I would like to ask you about
7 that.

8 First of all, I see that you own your own business. Is
9 that right?

10 A Yes, sir.

11 Q Do you have any employees?

12 A I have my uncle; and my dad and I are partners. And we
13 have a few subcontractors.

14 Q I see. And, so, your business is going to be able to
15 continue if you are out.

16 A Yes, sir.

17 Q I notice that under the religion section of it you
18 wrote Hebrew, Old Testament only.

19 A Right.

20 Q Could you tell me about that?

21 A That's just my personal convictions. I do not believe
22 in the New Testament of the Bible.

23 Q Okay. And when you talked to the judge and said that
24 you could give a life -- or you said you could give a life
25 sentence, and you could also give a death sentence.

Jury qualification -- Number 192

1 A Yes, sir.

2 Q And a lot of people have developed their opinions about
3 the death penalty from a variety of sources over their life.
4 Is that a fair statement?

5 A Yes, sir.

6 Q Okay. Could you tell me about some of the sources that
7 you have gleaned your opinion about the death penalty --

8 A Just from looking at the news. Is that what you are
9 talking about?

10 Q Well, if that's where you have gotten your opinion.
11 But you are in favor of the death penalty to a certain
12 degree.

13 A Under certain circumstances, yes, sir.

14 Q Okay. And are you saying that the newspapers is
15 basically where you come to that conclusion? Because some
16 people use religion or their family. You know, they all
17 have influences. And I just want you, if you would, just
18 tell me, you know, what you think has influenced you to get
19 to a position that you have.

20 A Basically, just the news, you know, like if somebody
21 does something that deserves the death penalty, you know, if
22 that's -- see what I am saying?

23 Q Yeah. Please continue, if you will.

24 THE COURT: Well, I don't want specific instances.

25 MR. MORIN: No, no. I didn't want him to feel like I

1 cut him --

2 THE COURT: Yes, sir. I don't want him to feel like
3 anyone has cut him off, but he can give his views but not
4 specific instances.

5 MR. MORIN: No, sir. Thank you.

6 Q Okay. I also see that you are a member of the Sons of
7 Confederates.

8 A Yes, sir.

9 Q Do you have a relative somewhere?

10 A Yes, sir.

11 Q All right. Could you tell me about that?

12 A Just my ancestors fought in the Confederate Army.

13 Q Okay. And I see you have a Third National Flag of
14 Confederacy.

15 A I used to have.

16 Q Okay. I am not familiar with that flag.

17 A It's just the one that was flying over Richmond,
18 Virginia, when the confederacy was defeated.

19 Q I see. Have you ever participated in any of the
20 marches that have gone on down in Columbia?

21 A No, sir.

22 Q Okay. You understand that if this goes to a -- first
23 of all, as the judge stated, Mr. Moore is presumed innocent.
24 Do you understand that?

25 A Right.

1 Q And if he is found guilty do you understand that the
2 state would present evidence, aggravating circumstances?
3 The judge has explained to you. And they would have to
4 convince you beyond a reasonable doubt that those
5 aggravating circumstances existed before you could get to a
6 death penalty situation.

7 A Yes, sir.

8 Q Do you understand that?

9 A Yes, sir.

10 Q All right. And you understand that you would never
11 have to actually -- you would never be required to give a
12 death sentence. That would be yours and the other jurors'
13 decision to make.

14 A Yes, sir.

15 Q Okay. Now, if in the event you made that decision,
16 that, you know, you came to that conclusion that the death
17 sentence was appropriate, there would be a form with 12
18 lines where each one of you would have to sign saying that
19 was your sentence.

20 Okay. And if in the event that happens and the form is
21 passed around, okay, and it gets to you, and you are the
22 last one, and, now, if you sign, that's what's going to
23 finalize it, could you sign on there?

24 A Yes, sir.

25 Q Okay. And then you may be required to come out and

1 voice your sentence here in open court. You would be all
2 right with that too?

3 A Yes, sir.

4 Q Okay. Have you ever participated or voiced an opinion
5 about a death sentence being carried out?

6 A No, sir.

7 MR. MORIN: Just a moment, Your Honor.

8 (Pause.)

9 MR. MORIN: Could we approach just a moment, Your
10 Honor?

11 THE COURT: Yes, sir.

12 (Bench conference held off the record.)

13 MR. MORIN: That's all I have. Thank you.

14 Q Thank you very much for your answers.

15 THE COURT: Yes, sir.

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

17 EXAMINATION BY MR. WILLINGHAM

18 Q Mr. Mosley, my name is Donnie Willingham. I'm one of
19 the deputy solicitors here, along with Barry Barnette and
20 Solicitor Trey Gowdy. We're responsible for the prosecution
21 of this case. I just want to ask you a couple of things.

22 I notice in your report under -- you indicated your
23 home was broken into. Is that where you live now?

24 A No, sir.

25 Q Okay. How long ago was that?

Jury qualification -- Number 192

- 1 A About eight years ago -- six, seven or eight years ago.
- 2 Q Was that here in Spartanburg?
- 3 A Yes, sir.
- 4 Q And was stuff taken?
- 5 A A television and a gun and a guitar.
- 6 Q Okay. No one was ever arrested according to your
- 7 questionnaire.
- 8 A No, sir.
- 9 Q And I also notice you applied with the Spartanburg
- 10 Sheriff's Office.
- 11 A Yes, sir.
- 12 Q And when was that? Was that recently?
- 13 A No. It was about seven or eight years ago.
- 14 Q And, obviously, you have been doing drywall for about
- 15 eight years.
- 16 A Yes, sir.
- 17 Q So, they didn't employ you at the sheriff's office.
- 18 A No, sir.
- 19 Q And when you were in the jury room you had three
- 20 different type of jurors -- one, two and three. Would you
- 21 say you best fit as juror number three?
- 22 A Yes, sir.
- 23 MR. WILLINGHAM: Your Honor, I have no other questions.
- 24 THE COURT: Anything else from the defendant?
- 25 MR. MORIN: Yes, sir.

1 I don't have any other questions. We would have one --

2 THE COURT: If you would, step outside, please, sir.

3 (The following takes place outside the presence of the
4 juror.)

5 THE COURT: Yes, sir.

6 MR. MORIN: Yes, sir.

7 I just wanted to put on the record what, what I had
8 requested, and so that we would have that.

9 It was my preference, or I would have liked, to have
10 asked this gentleman a few questions about his relationships
11 or if he had any social or work contacts with
12 African-Americans, which was part of my request to you when
13 I first was representing Mr. Moore. And I don't want to
14 say, but that's what I would like to have asked this
15 gentleman.

16 THE COURT: Well, Mr. Morin, your -- go ahead.

17 MR. MORIN: And I was going to say it was particular to
18 this gentleman because of some of the answers on the
19 information sheet. That's all.

20 THE COURT: I understand that.

21 MR. MORIN: Yes, sir.

22 THE COURT: And, you know, I have discussed with your
23 client on Monday. We took up a great part of Monday in the
24 perils and pitfalls of self-representation.

25 He made a conscientious decision on Monday morning that

1 he was going to proceed pro se, and he did that until the
2 jury was formally qualified and split into panels on Monday
3 afternoon.

4 Then I, once again, advised him that it was my
5 opinion -- and he didn't think very much of my opinion all
6 day long -- that he should use you two gentlemen because you
7 know what you are doing. You were prepared. You were ready
8 to go.

9 And he took the -- or made the decision at that point
10 in time to bring you back into the case. And y'all embraced
11 and started anew.

12 Now, I looked at your requested voir dire, and I used
13 some of those questions. I did not use all of them because
14 I thought some of them were repetitious, superfluous and not
15 in keeping with the questions that are normally asked.

16 You know, there are really only five questions that we
17 are required to ask by statute in general qualification.
18 Most of us go beyond that.

19 I note what, what you had to say in your requested voir
20 dire. I asked questions about race and those types of
21 things; bias and prejudice. And, you know, once again, I
22 have done everything that I can.

23 When we get to this point in the trial -- you keep
24 citing State vs. Patterson. We also have cases that say
25 that you can't stake out a juror. You can't profile them.

1 And that's the basis for my ruling. You have got ample
2 information. That's the reason you have ten strikes and the
3 state has five strikes.

4 So, it is noted.

5 MR. MORIN: Thank you, sir.

6 THE COURT: Bring Mr. Mosley back.

7 MR. MORIN: And that's all I have.

8 (The following takes place in the presence of the
9 juror.).

10 THE COURT: Anything else from the defendant?

11 MR. MORIN: No, sir.

12 THE COURT: The state?

13 MR. WILLINGHAM: No, sir.

14 THE COURT: Mr. Mosley, I want to thank you very much
15 for your participation here today.

16 I find that you are qualified to serve as a potential
17 juror in this case. And with that qualification, I am going
18 to instruct you that you are not as you leave here today,
19 you are not to discuss this case with anyone, whether it be
20 fellow jurors, family, friends or anyone else you might come
21 in contact with.

22 Also, you are not to -- if anyone attempts to contact
23 you concerning this case, I want you to gather as much
24 information about that individual or individuals as you
25 possibly can, and report that to me immediately, because

1 that is a very serious matter, and I would deal with that
2 offending party accordingly.

3 Furthermore, I'm going to instruct you that you're not
4 to read, watch or listen to any news accounts concerning
5 this case. Simply put, if you are selected as a juror in
6 this case, all I would want to consider in this matter is
7 what you see and hear in this courtroom, nothing more and
8 nothing less.

9 Now, when you reported on Monday you were given a juror
10 information pamphlet. On the front of that pamphlet was an
11 800 number. That is a mechanism whereby we can leave
12 recorded messages through the clerk of court's office.

13 You need to call that tonight after six o'clock.
14 Follow the instructions on the recording. You will either
15 be told to call back tomorrow or to report at a particular
16 time tomorrow. Follow the instructions, and do that.

17 When you report back here, whether it be tomorrow or
18 Friday, you need to come with your bags packed prepared to
19 stay us with us for the duration of the trial.

20 Leave your bags in your vehicle, because if you are
21 selected to serve as a juror in this case, then you and your
22 colleagues are going to be taken by the jury custodians to
23 the location that you would be staying for the duration of
24 the trial.

25 If you are not selected, then you are going to be sent

Jury qualification -- Number 121

1 back home with your belongings, and you will resume your
2 daily activities.

3 Once again, call tonight after 6:00 and follow the
4 instructions. And I will look forward to seeing you back
5 here sometime tomorrow or on Friday early.

6 Thank you very much.

7 (Whereupon, the juror was excused from the courtroom.)

8 THE COURT: Let the record reflect that Juror Number
9 192, David Mosley, is qualified to serve as a potential
10 juror in this case pursuant to Section 16-3-20 of the code.
11 121, Frederick Heller.

12 JUROR NUMBER 121,
13 FREDERICK HELLER, having been first duly sworn, was
14 voir dired as follows:

15 EXAMINATION BY THE COURT

16 Q Good morning. You are Frederick N. Heller, is that
17 correct?

18 A That's correct.

19 Q And, Mr. Heller, do you understand that you are under
20 oath for these proceedings today?

21 A Yes, sir.

22 Q And you also understand that when I dismissed you on
23 Monday that I gave instructions that you were not to discuss
24 this case with anyone, that you were not to -- if anyone
25 attempted to contact you that you were to report that to me

1 today, and that you were not to read, watch or listen to any
2 news accounts concerning this case. Have there by any
3 violations of my order?

4 A No, sir.

5 Q Now, over the next few minutes, Mr. Heller, I am going
6 to be asking you some questions. And then one of the
7 defense lawyers, as well as one of the solicitors, will ask
8 you some questions.

9 Please keep in mind that we're not in any way
10 attempting to invade your privacy, but due to the
11 proceedings that we are about this week it's necessary that
12 certain questions are asked and answered.

13 Please keep in mind that there are no right or wrong
14 answers. If you would, just answer these questions openly
15 and honestly and fully. And keep in mind that no one is
16 challenging the view that you might have. We simply need to
17 know what your views are in particular areas.

18 Also, I would ask that if any question is not clear to
19 you, if you need to have it repeated or restated in any way,
20 simply let me or the lawyer asking the question know that.

21 Also, you need to pay very close attention to the
22 questions as they are presented to you, because more than
23 likely we are going to be discussing things here today that
24 you have not considered prior to coming to court this week.

25 I would also tell you that the lawyers and I have

1 copies of your juror information sheet, because that was
2 important to us in preparing for today.

3 Now, let me ask you this. I note that you are the
4 chaplain of the police department at Lyman.

5 A Right.

6 Q As such do you have any kind of commission, or is that
7 just --

8 A Well --

9 Q Are you a card-carrying --

10 A Chaplain, yeah, police chaplain, a law enforcement
11 chaplain. It's -- I guess it's just by association.

12 Q Do you have anything from either a judge, state law
13 enforcement or anyone else, any type of constable's
14 commission or anything like that?

15 A No. I have --

16 Q You have not been deputized or made an officer through
17 any type of an official document?

18 A No.

19 Q You are the chaplain of that police department?

20 A That's it.

21 Q I see.

22 Now, among the things that we are going to be talking
23 about over the next few minutes, Mr. Heller, will include
24 references to the term penalty, but the mere fact that we
25 even mention or talk about that word does not in any way

1 indicate anything about the defendant, Mr. Moore. He is
2 presumed in the law to be innocent. Do you understand that?

3 A I understand that.

4 Q Now, if you were a juror in a criminal case could you
5 listen to the law, accept and apply that law as I would
6 instruct you as the judge of this Court even though you may
7 disagree with that law or think that it ought to be some
8 other way?

9 A I could.

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

13 A I could.

14 Q Now, in a criminal case, Mr. Heller, the state has the
15 burden of proving a defendant's guilt, and the burden of
16 proof that the state must meet is proof beyond a reasonable
17 doubt.

18 A defendant has absolutely no burden, no responsibility
19 to prove his innocence. Do you understand that?

20 A I understand that.

21 Q And I think you told me the other day that you had read
22 or seen something about this case.

23 A Uh-huh.

24 Q Could you tell me what that was, sir?

25 A Oh, I just, charges, the alleged crime, the arrest,

1 just general information from the media, you know, newspaper
2 and television. And that was basically it.

3 And I didn't have any real focus on it. It was just
4 information that I was picking up because I was reading the
5 paper or watching T. V.

6 Q And that was when it occurred?

7 A Yes.

8 Q And the fact that you have been exposed to this
9 information, 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 A No.

14 Q Would you be able to disregard any prior knowledge that
15 you had of this case and determine it solely on what you
16 would see and hear in this courtroom?

17 A Yes.

18 Q Now, as you have told me, you understand the defendant
19 has absolutely no burden to prove his innocence, correct?

20 A Right.

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

24 A Yes, sir.

25 Q Now, as you know from being here on Monday, this is a

1 case in which the State of South Carolina is seeking the
2 death penalty.

3 And, as such, we are going to be engaged in what's
4 called a bifurcated proceeding or trial, which simply means
5 that it's divided into two parts, the guilt phase and the
6 sentencing phase.

7 If you were a juror in such a case, a death penalty
8 case, and if the jury had found the defendant not guilty of
9 murder in the guilt phase, do you understand the trial would
10 end at that point?

11 A Yes.

12 Q However, if you were a juror in such a case and if the
13 jury had found the defendant guilty of murder, do you
14 understand that you would then move to the second or
15 sentencing phase of the trial?

16 A Uh-huh.

17 Q You need to answer out loud.

18 A Yes.

19 Q During that phase of the trial evidence would be
20 presented in the form of aggravating, as well as mitigating,
21 circumstances.

22 Now, aggravating circumstances are facts, incidents,
23 details or occurrences which the general assembly of our
24 state has declared by law would make worse, that is to
25 aggravate, the offense of murder.

1 In other words, the presence of an aggravating
2 circumstance when it accompanies or goes along with the
3 crime of murder increases the enormity or adds to the injury
4 of murder.

5 A Right.

6 Q It's a murder committed in the commission of or in
7 connection with another crime or incident. Do you
8 understand that?

9 A I understand that.

10 Q Now, mitigating circumstances are likewise incidents,
11 details or occurrences which the general assembly of our
12 state has also declared by law that reduces the severity of
13 the crime of murder and may be considered as extenuating or
14 as reducing the degree of moral culpability or
15 responsibility for the crime of murder. Do you understand
16 that?

17 A I understand that.

18 Q Now, let's suppose that you were a juror in such a
19 situation, the second or sentencing phase of a death penalty
20 case.

21 Could you, depending upon the particular facts and
22 circumstances of that case, including the consideration of
23 aggravating and mitigating circumstances and the law that I
24 would instruct you that applied to that case, return a
25 sentence of life in prison?

Jury qualification -- Number 121

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 any
5 aggravating and mitigating circumstances and the law that I
6 would instruct you that applied to that case, return a
7 sentence of death?

8 A I could.

9 Q Do you understand, Mr. Heller, that there are always
10 two sentencing option that are available to the jury in such
11 a case, that being life imprisonment or death?

12 A Yes, I do.

13 Q And do you also understand that each and every juror
14 must be capable of imposing each of those sentences?

15 A Yes.

16 Q Now, if you were chosen for service on this jury you
17 would be housed in a motel for the duration of the trial.
18 That is sequestration.

19 If -- I don't know how long this case will last. It
20 could be anywhere at the outside, seven to ten days. It
21 could be less than that. I do not know.

22 Except for the personal inconvenience that you would
23 suffer, would this pose a serious danger to the health or
24 well-being of yourself or of those dependent on you?

25 A It could.

1 Q Tell me about that.

2 A Well, I have some serious ongoing health issues. I
3 have had three heart attacks, bypass surgery. I've had
4 three mini strokes. I've had some other things that I never
5 know when or if it is going to get aggravated.

6 Q Do you take medication for those things?

7 A I do take it.

8 Q Insofar as being in a stressful situation, is that
9 something that compromises your health?

10 A It can. The doctors tell me it does.

11 Q And insofar as participation in a case like this, is
12 that something that would cause you concern?

13 A I don't think so; I don't think so. I feel that this
14 in itself wouldn't do, but, but a combination of other
15 pressures that are on me plus this could possibly cause
16 something.

17 Q Well, I am trying to ask you, I guess, if, if your
18 health is such that it's going to cause you concern, it
19 causes me concern. And if it is causing both of us concern,
20 we might ought to just make a little covenant right here
21 that you wouldn't participate.

22 But if you feel like it's something that you can do and
23 you can handle, if you had any problems, we would see that
24 you were properly cared for, because the juror custodians
25 would be with you at all times. But if there is any

1 concern, you need to let me know that now.

2 A Right. I know that stress causes me to have migraines
3 and my blood pressure to go up. And the doctors have said
4 to keep your stress at a minimum. And, so, I think that I
5 have a lot of stress in my vocation that is ongoing.

6 Q Yes, sir.

7 A And, so, I don't know how much more stress this could
8 possibly cause or not cause. So, I don't think I can
9 honestly say that this will bother me, but, you know,
10 physically, but it could. There are times --

11 Q Insofar as your responsibilities at your church, what
12 kind of staff do you have there?

13 A I am the only full-time staff, so I have a lot on me
14 because of that.

15 (Bench conference held off the record with the
16 attorneys.)

17 THE COURT: Mr. Heller, I want to thank you very much
18 for your being here and participating in our process.

19 Quite frankly, having done -- this is my twelfth death
20 penalty case. I can assure you that they are stressful; and
21 if not from only a physical standpoint, emotionally and
22 every other way.

23 Given the calling that you have and the
24 responsibilities that I know you have, I have a great
25 respect for that. And I am not going to do anything that is

1 going to interfere with your duties at your church, nor am I
2 going to do anything that would interfere primarily with
3 your health.

4 On behalf of the State of South Carolina, particularly
5 Spartanburg County, I thank you for having been here on
6 Monday, as well as this day, and offering to provide your
7 services to our county. Thank you very much.

8 You are excused.

9 (Whereupon, the juror was excused from the courtroom.)

10 THE COURT: Let the rerecord reflect that Juror Number
11 121, Frederick Heller, is excused due to medical reasons.

12 All right. We will proceed to panel number seven at
13 eleven o'clock. You earned yourselves a 15-minute break.

14 We now have 22.

15 (Whereupon, a recess was taken.)

16 THE COURT: Let me see the lawyers up here just a
17 minute, please.

18 (Bench conference held off the record.)

19 THE COURT: All right. Juror number 95, Michael S.
20 Garner.

21 JUROR NUMBER 95,
22 MICHAEL S. GARNER, having been first duly sworn, was
23 voir dired as follows:

24 EXAMINATION BY THE COURT

25 Q Good morning to you, Mr. Garner.

Jury qualification -- Number 95

1 A Good morning, sir.

2 Q You are Michael S. Garner, that's correct?

3 A Yes, sir, that's correct.

4 Q And you remember that you are under oath here today.

5 A That's right, sir.

6 Q And you also recall that the other day when I sent you
7 away from the courthouse with the other jurors that I told
8 you that you were not to discuss this case with anyone, that
9 if anyone attempted to contact you that you were to report
10 that to me; and also that you were not to read, watch or
11 listen to any news accounts concerning this case.

12 Have there been any violations of those instructions?

13 A No, sir, none at all.

14 Q Now, Mr. Garner, over the next minutes I'm going to
15 pose some questions to you. Then one of the defense lawyers
16 and one of the solicitors will ask you some questions.

17 Please understand that we're not in any way attempting
18 to invade your privacy, but because of the proceedings that
19 we are about this week, it's extremely necessary that
20 certain questions are asked and answered. So, please, just
21 answer them openly and honestly and fully.

22 Keep in mind that there are no right or wrong answers
23 to these questions that we are presenting to you.

24 Also, no one is challenging your viewpoint. We simply
25 need to know what your view is in particular areas.

1 Also, if at any time I give you a question or one of
2 the lawyers presents a question to you, and you do not
3 understand it, need to have it clarified or repeated,
4 please, ask us to do that. And we will be more than happy
5 to.

6 Also, I'm going to ask that you pay very close
7 attention to the questions that are presented to you,
8 because over the next few minutes we are probably going to
9 ask you some things that you maybe have never considered
10 prior to coming to court here this week.

11 Now, the lawyers and I have copies of your juror
12 information questionnaire. That was important to us in
13 preparing for this morning's session.

14 Now, among the things that we are going to be talking
15 about over the next new minutes, will include references to
16 the word penalty. And the mere fact that we even talk about
17 or mention that word in no way indicates anything about the
18 defendant, Mr. Moore. He is presumed in the law to be
19 innocent. Do you understand that?

20 A Yes, sir.

21 Q Now, if you were a juror in a criminal case,
22 Mr. Garner, could you listen to the law, accept and apply
23 that law as I would instruct you as the judge of this Court
24 even though you may disagree with that law or think that it
25 should be some other way?

1 A Yes, sir, I could.

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

5 A Yes, sir, I could.

6 Q In a criminal case, Mr. Garner, the state has the
7 burden of proving guilt. And the burden of proof for the
8 state is proof beyond a reasonable doubt.

9 A defendant has absolutely no burden, no responsibility
10 to prove innocence. Do you understand that principle?

11 A Yes, sir, I do.

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

15 A Yes, sir, I could.

16 Q Now, as you know from being here on Monday, this is a
17 case in which the State of South Carolina is seeking the
18 death penalty against the defendant.

19 And, as such, we are going to be involved in a
20 bifurcated trial, which simply means that it's divided into
21 two parts, the guilt phase, the sentencing phase.

22 Now, if you were in such a case and if the jury found
23 the defendant not guilty of murder in the guilt phase, do
24 you understand that the trial would end at that point?

25 A Yes, sir.

1 Q However, if you were a juror in such a case and if the
2 jury found the defendant guilty of murder at that point in
3 time, do you understand that you would then move to the
4 second or sentencing phase of the trial?

5 A Yes, sir. That's clear.

6 Q Now, during that phase of the trial, the second or
7 sentencing phase, evidence would be presented in the form of
8 aggravating, as well as mitigating, circumstances.

9 Aggravating circumstances are facts, incidents, details
10 or occurrences which the General Assembly of the State of
11 South Carolina has declared by law would make worse, that is
12 to aggravate, the crime of murder.

13 In other words, the presence of an aggravating
14 circumstance when it accompanies the crime of murder
15 increases the enormity or adds to the injury of that crime
16 of murder. It's a murder that's committed in the commission
17 of or in connection with another crime or incident. Do you
18 understand that?

19 A Yes, sir.

20 Q Now, mitigating circumstances are also incidents,
21 details or occurrences which our general assembly in
22 Columbia has, once again, declared by law reduces the
23 severity of the offense of murder and may be considered as
24 extenuating or as reducing the degree of moral culpability
25 or responsibility for that crime of murder. Do you

1 understand that?

2 A Yes, sir. That's clear.

3 Q Mr. Garner, if you were a juror in that situation,
4 we're talking the second phase, the sentencing phase, of a
5 death penalty case, 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, sir, I could.

11 Q If you were a juror in that situation could you,
12 depending upon the particular facts and circumstances of
13 that case, once again, including the consideration of any
14 and all aggravating and mitigating circumstances, as well as
15 the law that I would instruct you that applied to that case,
16 return a sentence of death?

17 A Yes, sir, I could do that.

18 Q Mr. Garner, do you understand that in a death penalty
19 case that there are two sentencing options that are always
20 available to the jury, that being life imprisonment or
21 death?

22 A Yes, sir.

23 Q And do you understand that each and every juror must be
24 capable of imposing either of those two sentences?

25 A Yes, sir, I understand.

1 Q Now, Mr. Garner, if you were chosen for service on this
2 jury you would be sequestered, which simply means housed in
3 a motel, during the course of the trial.

4 I really have no way of knowing how long this case
5 would last, but I would say at the outside it would be no
6 more than seven to ten days. 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 No, sir, it would not. My wife is quite capable of
11 taking care of our children if that should occur.

12 Q Thank you for responding to my questions. Please
13 answer any questions Mr. Kelly might have at this time.

14 MR. KELLY: Thank you, Your Honor. May it please the
15 Court.

16 THE COURT: Yes, sir.

17 EXAMINATION BY MR. KELLY

18 Q Mr. Garner, I am Keith Kelly. Along with Michael Morin
19 and Jennifer Johnson, we represent Richard Moore in this
20 matter. As the judge has told you, we have been supplied a
21 copy of the questionnaire. I thank you for filling that out
22 for us.

23 On your questionnaire you indicated that you were a
24 witness in a criminal case and that you were a child at that
25 time. Were you a teenager; were you a small child?

1 A I was between eight and ten years old.

2 Q All right, sir.

3 A I am not exactly sure of the year.

4 Q Yes, sir. Could you tell us what kind of case it might
5 have been?

6 A Yes. My mother was attacked by a boyfriend of hers.
7 And she shot him with a shotgun. And he died on the way to
8 the hospital if I remember correctly.

9 And she was ruled -- it was ruled self-defense. She
10 was not convicted, but I was an ear-witness. I was upstairs
11 and heard everything, so they brought me into court as an
12 ear-witness. From that age, the details are quite vague.

13 Q Yes, sir.

14 A But it was in Chester County, South Carolina.

15 Q Yes, sir. That's fine. I don't mean to pry. I just
16 wanted to get the idea there. You were about ten or 12
17 years of age?

18 A Yes, sir, that's correct.

19 Q And from what you've said, I take it you mother
20 actually went to trial.

21 A That's right. A criminal trial was conducted.

22 Q Okay.

23 A And she was released in self-defense.

24 Q Thank you, sir.

25 And, also, you indicated, I believe, to question 23

1 that your cousin, a Richard Granger, may have had some
2 trouble with the law, is that right?

3 A Yes. He was convicted on a drug charge. I don't know
4 the details.

5 Q Yes, sir.

6 A And this was probably around ten to 12 years ago.

7 Q Yes, sir.

8 A He served time in Columbia, and he served time here in
9 Spartanburg at the facility up on Fairforest, I believe.

10 Q All right, sir.

11 A And he has since been released and returned home to
12 Great Falls, South Carolina.

13 Q Okay. And that particular incident, did it come out of
14 Great Falls or Chester County?

15 A Yes. That's correct.

16 Q Okay. It wasn't here in Spartanburg County?

17 A No, sir.

18 Q Do you -- on bumper stickers, I think it was just blank
19 there, or at least my copy there. Do you have any bumper
20 sticker on your truck, or whether it be a NASCAR sticker or
21 a --

22 A I have none whatsoever.

23 Q All right, sir.

24 A No bumper stickers at all.

25 Q Do you own any, even if you don't have them displayed?

1 A Yes, I do. My little girl brought one home from school
2 I was about to put on. It's called highways-are-die-ways.

3 Q All right, sir. And what about flags. Do you fly a
4 flag at your home?

5 A Yes, I do. I fly an American flag.

6 Q Have you done that for quite some time or just
7 recently?

8 A Yes. That flag was given to me by my mother ten years
9 ago after the Gulf War. And I brought it with me. And when
10 everything started happening, I dug it out of the closet and
11 started flying it again.

12 Q Okay.

13 A And that's the only flag I own.

14 Q You indicated you were an E-5. Were you in the Gulf
15 War?

16 A Yes, sir, from August of '90 until February of '91.

17 Q All right. Were you called up as a reservist or were
18 you already on active duty?

19 A I was on active duty in the U. S. Air Force at Langley
20 Air Force Base. And we were activated just a few days after
21 they invaded Kuwait.

22 Q Okay.

23 A And that was in August of '90.

24 Q What was your M. O. S. when you were in the military?

25 A I was a fuel specialist. I refueled aircrafts on the

1 flight line as they were coming back in from combat
2 operations.

3 Q Yes, sir. Are you in the reserves now by chance --

4 A No, sir.

5 Q -- or National Guard either?

6 A No, sir; no affiliation with the military now.

7 Q All right, sir. You indicated that you received Woods
8 Magazine. I take it that's a woodworkers type magazine.

9 A Yes. That's a periodical published quarterly. And it
10 contains woodworking designs. I have a small shop in my
11 garage.

12 Q Right. And you make things in your shop?

13 A Yes, furniture, children's furniture.

14 Q And do you have any other magazines that you subscribe
15 to?

16 A Yes. We have a subscription to Southern Living. And
17 that would be the only other one.

18 Q Okay. Do you belong to N. R. A or any such
19 organization?

20 A No, sir, sure don't.

21 Q Do you receive any magazine or any periodical from them
22 along that line?

23 A No, sir.

24 Q No hunting or fishing magazine?

25 A No, sir.

1 Q All of us have our views on the death penalty or draw
2 our views on the death penalty from some place, whether it
3 be our religion or life experiences or grandmama or
4 grandpapa, somebody.

5 You've indicated to Judge Clary's questioning that, in
6 fact, you could give the death penalty, is that correct?

7 A Yes, sir, that's correct.

8 Q So I conclude from that that you believe in it in some
9 circumstances. Is that fair?

10 A Yes.

11 Q And to what do you attribute your views on the death
12 penalty?

13 A I am not sure I understand the question.

14 Q I am sorry. All of us draw our basis on the death
15 penalty, our view, from some place. Some people read
16 independently; and some people follow their church's
17 guidance on it; and some people have heard grandmama or
18 grandpapa talking about it, or somebody at work.

19 Your views, are they based on a combination of those
20 things or any one particular thing?

21 A I would say my views are based on how the judge would
22 instruct me as to the severity of the crime, the aggravating
23 nature or how much malice was involved.

24 Q Yes, sir. And so you would take into consideration the
25 aggravating circumstances that the judge would tell you at

1 that point in time.

2 A Yes, sir, that's correct.

3 Q Do you understand that even though -- let's just assume
4 that Mr. Gowdy was able to prove at least one of those
5 aggravating circumstances. Do you also understand that you
6 also, even though he did that, could return a verdict of
7 life?

8 A Yes. I understand that.

9 Q You are not required to return a verdict of death.

10 A Yes. I understand that as well.

11 Q Thank you very much.

12 A Yes, sir.

13 THE COURT: Solicitor.

14 MR. GOWDY: May it please the Court, Your Honor.

15 THE COURT: Yes, sir.

16 EXAMINATION BY MR. GOWDY

17 Q Good morning, Mr. Garner.

18 A Good morning.

19 Q My name is Trey Gowdy. I'm the solicitor in
20 Spartanburg and Cherokee Counties. Seated with me is Barry
21 Barnette. He is one of my deputy solicitors.

22 You used the word malice and used the word ear-witness,
23 which are legal terms that would suggest that you may have
24 had a legal background. Have you taken classes in criminal
25 procedure or law?

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1 A No, I haven't. I never have.

2 Q Okay. I am not going to go back through the questions
3 His Honor asked you, but if the circumstances supported and
4 the law supported your voting for the death penalty, would
5 you be able to sign your name and indicate in written form
6 that that was your verdict?

7 A Yes, I could.

8 Q Would you also be able to come back into this courtroom
9 if that were your verdict and announce that publicly?

10 A Yes, sir, I could do that.

11 Q And the same if your verdict was life?

12 A Yes, sir.

13 Q Thank you very much, Mr. Garner.

14 A You're welcome.

15 THE COURT: Anything else, Mr. Kelly?

16 MR. KELLY: Yes, sir. Just one.

17 THE COURT: All right, sir.

18 EXAMINATION BY MR. KELLY

19 Q Have you ever taken a public position on the death
20 penalty?

21 A Public position, no, sir, I have not.

22 Q Thank you very much.

23 THE COURT: Anything else, Solicitor?

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

25 THE COURT: Mr. Garner, I want to thank you very much

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1 for your presence here on Monday, as well as this day.

2 I find that you are qualified to serve as a potential
3 juror in this case. And with that qualification comes some
4 more words of instruction, as if you haven't had enough
5 instruction already from me.

6 First of all, let me remind that you are not to discuss
7 this case with anyone, whether it be fellow jurors, family,
8 friends or anyone else that you might come in contact with.

9 Also, you are not to -- if anyone should attempt to
10 contact you concerning this case, gather as much information
11 about that person or persons as you possibly can and report
12 to that me immediately. That's a very serious matter, and I
13 would deal with the offending party accordingly.

14 Furthermore, I continue my very strong instruction that
15 you're not to read, watch or listen to any news accounts
16 concerning this case. Simply put, if you are selected to
17 serve 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, when you reported on Monday the clerk of court
21 provided you with a pamphlet. On the front of that pamphlet
22 was an 800 number, which is an answering device that you can
23 call and receive information.

24 I want you to call that number tonight after six
25 o'clock. Listen very carefully to the message. The message

1 will read or give you information in one of two ways.

2 It will either say all jurors in the case of the State
3 vs. Moore will call back on Thursday at a particular time;
4 or it might say all jurors in the case of the State vs.
5 Moore are to report to the Spartanburg County courthouse at
6 a particular time with your bags packed.

7 If that is the case, whenever you get that call,
8 because you are going to have that call at some point in
9 time that you're to come back here with your bags packed,
10 leave your luggage in your car, because if you are selected
11 as a juror in this case, then the jury custodians would take
12 you and your colleagues on the jury to the motel that would
13 serve as your home away from home for the duration of the
14 trial. And you would remain with us until the trial is
15 finished.

16 If you are not selected, we would send you back home to
17 go about your daily activities with our thanks for having
18 been here and participated in this process.

19 Once again, the long and the short of it is this. You
20 need to go home, I guess, and start packing in anticipation
21 of coming back here either tomorrow or no later than early
22 Friday. And call tonight after six o'clock for your
23 instructions.

24 THE JUROR: Thank you, sir.

25 THE COURT: Yes, sir.

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1 (Whereupon, the juror was excused from the courtroom.)

2 THE COURT: Let the record reflect that Juror Number
3 95, Michael S. Garner, is qualified to serve as a potential
4 juror in this case pursuant to Section 16-3-20 of our code.

5 Number 157, Debra M. Ledford.

6 MR. KELLY: Judge, can we approach before --

7 THE COURT: Yes, sir. Just one minute.

8 (Bench conference held off the record.)

9 THE COURT: Number 157, Debra Ledford.

10 JUROR NUMBER 157,
11 DEBRA M. LEDFORD, having been first duly sworn, was
12 voir dired as follows:

13 EXAMINATION BY THE COURT

14 Q Good morning. You are Debra M. Ledford, correct?

15 A Yes, sir.

16 Q Now, Ms. Ledford, you understand that you're under oath
17 here today.

18 A Yes, sir.

19 Q And you also remember that on Monday I instructed you
20 that you were not to discuss this case with anyone; that if
21 anyone attempted to contact you that you should report that
22 to me upon your return to the courthouse today; and also
23 that you were to refrain from reading, watching or listening
24 to any news accounts concerning this case. Have there been
25 any violations of my instructions?

1 A No, sir, there have not.

2 Q Now, during the next few minutes, Ms. Ledford, I am
3 going to be asking you some questions. Thereafter one of
4 the defense lawyers and one of the solicitors will ask you
5 some questions.

6 Please understand and keep in mind that in no way are
7 we attempting to invade your privacy, but due to the nature
8 of the proceedings that we are about it's extremely
9 important that certain questions are asked and answered.

10 So, please, if you would, remember that there are no
11 right or wrong answers to these questions. Just answer them
12 openly and honestly and fully. And keep in mind that no one
13 is challenging your view. We simply need to know what your
14 view is in a particular area.

15 A Yes, sir.

16 Q I would also tell you that if you do not understand any
17 question that I ask or one of the lawyers presents to you,
18 simply ask us to repeat it, that you don't understand it, to
19 restate it. Whatever you need for us to do, we will attempt
20 to accommodate you.

21 And, also, pay very close attention to these questions,
22 because over the next few minutes we're probably going to be
23 talking to you about and asking you questions about things
24 that you maybe have never considered prior to coming to
25 court here this week.

1 A Yes, sir.

2 Q Now, I know you that are a school bus driver.

3 A Yes, sir.

4 Q And that you had stated on your juror response form
5 that if you have enough bus drivers that you could serve.
6 If not, you would need to be postponed. Do I take it that
7 you have sufficient bus drivers?

8 A Yes, sir. We, we got several back.

9 Q Okay. Good. So that's not a problem.

10 A No, sir.

11 Q Good. Now, among the things that we are going to be
12 talking about -- and I would tell you that we, once again,
13 do have copies of this information sheet that you had filled
14 out, because that was important to us.

15 Among the things that we are going to be talking about,
16 will include reference to the word penalty. And the mere
17 fact that I even mention that word or talk about that word
18 does in any way indicate anything about the defendant, Mr.
19 Moore. He is presumed in the law to be innocent. Do you
20 understand that?

21 A Yes, sir.

22 Q Now, if you were a juror in a criminal case could you
23 listen to the law, accept and apply that law as I would
24 instruct you as the judge of this Court even though you may
25 disagree with that law or think that it should be some other

1 way?

2 A Yes, sir.

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

6 A Yes, sir.

7 Q Now, in a criminal case, Ms. Ledford, the state has the
8 burden of proving guilt. And the burden of proof for the
9 state is proof beyond a reasonable doubt. And a defendant
10 has absolutely no burden, no responsibility to prove his
11 innocence. Do you understand that principle?

12 A Yes, sir.

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

16 A Yes, sir.

17 Q Now, as you know from being here on Monday, this is a
18 case in which the State of South Carolina is seeking the
19 death penalty. And, as such, we are going to be involved in
20 what we refer to as a bifurcated trial or proceeding. That
21 simply means that it's a trial divided into two parts, the
22 guilt phase and the sentencing phase.

23 Now, if you were a juror in such a case and if the jury
24 found the defendant not guilty of murder in the initial
25 guilt phase, do you understand that the trial would end at

1 that point in time?

2 A Yes, sir.

3 Q However, if you were a juror in such a case and if the
4 jury found the defendant guilty of murder, do you understand
5 that you would then move to the sentencing phase or second
6 part of that trial?

7 A Yes, sir.

8 Q During that part of the trial, Ms. Ledford, evidence
9 would be presented to the jury in the form of aggravating
10 circumstances, as well as mitigating circumstances.

11 Now, aggravating circumstances are facts, incidents,
12 details or occurrences which our state legislature, the
13 General Assembly of South Carolina which meets in Columbia,
14 has declared by law would make worse, that is to aggravate,
15 the offense or crime of murder.

16 In other words, the presence of an aggravating
17 circumstance when it goes along with or accompanies the
18 crime of murder adds to the enormity or the injury of that
19 crime of murder. It's a murder that's committed in the
20 commission of or in connection with another crime or
21 incident. Do you understand that?

22 A Yes, sir.

23 Q Now, mitigating circumstances are likewise incidents,
24 details or occurrences which our general assembly has, once
25 again, declared by law reduces the severity of the crime of

1 murder and the jury may consider as extenuating or as
2 reducing the degree of responsibility for the crime of
3 murder. Do you understand what I mean when I speak of a
4 mitigating circumstance?

5 A Yes, sir.

6 Q If you were a juror in that situation, the sentencing
7 phase, could you, depending upon the particular facts and
8 circumstances of that case, including the consideration of
9 aggravating, as well as mitigating, circumstances and the
10 law that I would instruct you applied to that case, return a
11 sentence of life in prison?

12 A Yes, sir.

13 Q If you were a juror in that situation could you,
14 depending upon the particular facts and circumstances of
15 that case, once again, including the consideration of any
16 and all aggravating and mitigating circumstances and the law
17 that I would instruct you that applied to that case, return
18 a sentence of death?

19 A Yes, sir.

20 Q Now, Ms. Ledford, do you understand that there are
21 always two sentencing options that are available to the jury
22 in a sentencing phase of a death penalty case, that being
23 life imprisonment or death?

24 A Uh-huh.

25 Q And do you understand that each and every juror must be

1 capable of imposing either of those sentences?

2 A Yes.

3 Q Now, if you were chosen for service on this jury you
4 would be housed in a motel for the duration of the trial.
5 That's a sequestration. And I don't know how long this case
6 is going to last. It could be anywhere from seven to ten
7 days at the outside, maybe less than that.

8 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 It may. I take care of my mother-in-law, but she is
12 not totally disabled, but I am the one that does all of her
13 medications at the first of the month and stuff like that.
14 But that could be worked around.

15 Q Okay. So, that's something that could be taken care
16 of.

17 A Yeah.

18 Q If you have advance notice like a day, you could make
19 arrangements for that to be taken care of, a day or two.

20 A Yeah.

21 Q You think so.

22 A Yes.

23 Q Okay. Thank you for responding to my questions.
24 Please answer any questions Mr. Kelly might have.

25 MR. KELLY: May it please the Court, Your Honor.

1 THE COURT: Yes, sir.

2 EXAMINATION BY MR. KELLY

3 Q Ms. Ledford, I am Keith Kelly. Along with Michael
4 Morin and Jennifer Johnson, we represent Mr. Moore in this
5 case.

6 As the Court has told you, we have the benefit of your
7 jury questionnaire you that completed. And I thank you for
8 that.

9 I noticed you are a school bus driver. What schools do
10 you deliver to?

11 A Chesnee Elementary, Swofford Vocational Center, Chesnee
12 Middle School and Chesnee High School.

13 Q Okay. And your bus number is --

14 A 5071238. That's the state number. The Chesnee number
15 is CA-12, excuse me, C-12.

16 Q C-12?

17 A C-12.

18 Q Thank you, ma'am.

19 Also, on your questionnaire right in keeping with what
20 Judge Clary asked you about being sequestered there, you
21 indicated under health, you put fair. Are you taking some
22 medication yourself?

23 A Yeah, yes, sir.

24 Q That's fine. But even though you can characterize your
25 health as fair, you don't think that being sequestered would

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1 have any effect, negative effect, on your health.

2 A No, sir.

3 Q Whatever medication you take, you would have with you.

4 A Yes, sir.

5 Q Okay. So, it is not like you have to go to a doctor
6 every week or something like that.

7 A No, sir.

8 Q Okay.

9 A No, sir.

10 Q And you also indicated that you have some in-laws or
11 relatives that are law enforcement personnel -- question 20.
12 Would you tell me about that, please?

13 A It is my niece. She is married to a state trooper --
14 Harold Long. He works out of Greenville County.

15 We have a cousin. He works for the Blacksburg City
16 Police; and then Harold's brother, Brian, just recently was
17 accepted on the Chesnee City Police Department.

18 Q Do you have any relative either by blood or marriage
19 that works for the Spartanburg County Sheriff's Department?

20 A No, sir.

21 Q You indicated also that years ago you worked at the
22 courthouse as an inker.

23 A Uh-huh.

24 Q Was that in this courthouse?

25 A Yes, sir, downstairs.

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1 Q Downstairs?

2 A Yeah, but long years ago.

3 Q Long years ago?

4 A Yes, maybe '76.

5 Q Okay. I am not familiar with what an inker is. Would
6 you tell me, please?

7 A The appraisal maps that the appraisers goes out to the
8 county -- excuse me -- the county map. I inked the new
9 county maps.

10 Q Okay. Thank you, ma'am.

11 A But that was only for ten months duration, so that has
12 been so long.

13 Q All right. Thank you. You also told us that you fly
14 the American flag. Is that a sticker or is it one of those
15 little flags?

16 A A sticker.

17 Q That's a sticker. Has that been flown just in recent
18 time, or have you had that for a long time?

19 A Say about three months.

20 Q Along those lines at home, do you have a flag that
21 flies?

22 A Yes.

23 Q What?

24 A It's forever.

25 Q Sure.

Jury qualification -- Number 157

1 A You know, Flag Day and July the Fourth and stuff like
2 that.

3 Q The American flag?

4 A Yes.

5 Q Do you have any other flags?

6 A No, sir, just decorative flags, you know, seasonal.

7 Q Okay. Like you ladies that put out that might have the
8 Easter bunny on it or something like that?

9 A Yeah, something like that.

10 Q Okay. All right. And you are also a band booster club
11 member. Do you guys have a flag that you fly, the booster
12 club --

13 A No, sir.

14 Q -- or a banner or anything like that?

15 A No, sir.

16 Q And you also indicated you read the newspaper. Is that
17 the Spartanburg Herald-Journal and Chesnee Chronicle? Do
18 you receive any magazines in the mail?

19 A Occasionally, Food and Wine. That's about it.

20 Q Okay. Does your husband receive a magazine in the
21 mail, whether it be a hunting or fishing magazine?

22 A Entrepreneurs.

23 Q Entrepreneurs. You indicated that you have served or
24 you have been called for jury duty in the past but not
25 served. Is that right?

1 A No, sir. I have never.

2 Q Okay. I misunderstood. I saw it had no jury service,
3 but I thought maybe you had been called. So you don't --

4 A No, sir. This is the first time ever.

5 Q You have not been called.

6 All of us get our views on the death penalty or
7 opinions on the death penalty from some place, whether it be
8 from our church, our religious background, whether it be
9 from somebody we work with, our social club, or a
10 combination. Could you tell me how you arrived at your
11 views on the death penalty?

12 A I guess growing up; my family.

13 Q Yes, ma'am. Okay. And you understand. You have told
14 me. I understand that you could, in fact, impose the death
15 penalty.

16 A Yes, sir.

17 Q All right. You understand that Mr. Gowdy would be
18 attempting to prove or would prove, have to prove, an
19 aggravating circumstance as the judge would tell you about
20 at that sentencing phase.

21 A Yes, sir.

22 Q Do you also understand that at that, at that point,
23 even if that is proven, even if an aggravating circumstance
24 is proven, that you are not required to return a sentence of
25 death?

1 A Yes, sir.

2 Q It is entirely up to you.

3 A Yes, sir.

4 Q Life or death.

5 A Yes, sir.

6 Q And you could consider those things?

7 A Yes, sir.

8 Q And you could find that even though there is an
9 aggravating circumstance, that life would be proper.

10 A Yes, sir.

11 Q Thank you very much.

12 MR. GOWDY: May it please the Court, Your Honor.

13 THE COURT: Solicitor Gowdy.

14 EXAMINATION BY MR. GOWDY

15 Q Good morning, Ms. Ledford.

16 A Good morning.

17 Q My name is Trey Gowdy. I'm the solicitor here in
18 Spartanburg and Cherokee Counties. Barry Barnette is
19 sitting right beside of me; Donnie Willingham is beside him.
20 They're both my deputy solicitors.

21 Did you say you were some akin to Harold Long with the
22 highway patrol?

23 A My niece is married to him, yes.

24 Q Okay. And if I took my notes down right, Chief Gibson
25 in Blacksburg hired one of your relatives.

Jury qualification -- Number 157

1 A I didn't know the chief, just Danny Swofford.

2 Q Danny Swofford.

3 A Uh-huh. I don't know how long he has been with them.

4 Q And you also have a relative that's been recently hired
5 by the Chesnee Police Department.

6 A No, sir. Harold's brother, Brian.

7 Q Okay. And what department did -- before you drove a
8 school bus on your questionnaire, it looked like you worked
9 at Mary Black.

10 A Oh, yes. Medical records.

11 Q Medical records.

12 I am not going to go back through the questions that
13 His Honor asked you relative to the death penalty, but I do
14 want to ask you two things.

15 If in an appropriate case -- you are the finder of fact
16 and Judge Clary is the giver of the law. And based on the
17 facts of the case in the appropriate case, if you voted for
18 the death penalty would you be able to sign your name to a
19 verdict form and put in written form that that was also your
20 verdict?

21 A Yes, sir.

22 Q Would you be able to, if called upon to do so to, come
23 back into this courtroom and announce publicly that that
24 was, in fact, your verdict?

25 A Yes, sir.

1 Q And, by the same token, if your verdict was life in
2 prison as opposed to death, would you be able to announce
3 that as well?

4 A Yes, sir.

5 Q Thank you very much.

6 THE COURT: Anything else from the defendant?

7 MR. KELLY: Nothing, Your Honor.

8 THE COURT: From the state?

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

10 THE COURT: Ms. Ledford, I want to thank you very much
11 for your being here on Monday, as well as this day.

12 I find that you are qualified to serve as a potential
13 juror in this case. And with that qualification I am going
14 to continue my instruction that you are not to discuss this
15 case with anyone, whether it be fellow jurors, family,
16 friends or anyone else.

17 Also, if anyone should attempt to contact you
18 concerning this case, I want you to gather as much
19 information about that person or persons as you possibly can
20 and report that me immediately, because that is a very
21 serious matter, and I would deal with the person that
22 attempted to contact you accordingly.

23 Also, I'm going to strongly instruct you, and continue
24 my instruction, that you are not to read, watch or listen to
25 any news accounts concerning this case.

Jury qualification -- Number 157

1 If you are selected as a juror in this case, all I
2 would want you to consider in this matter is what you see
3 and hear in this courtroom, nothing more and nothing less.

4 Now, when you reported here on Monday you received a
5 brochure from the clerk of court.

6 THE JUROR: Yes, sir.

7 THE COURT: On the front of that brochure was an 800
8 number that can be used for you to call to receive
9 information from the Court.

10 Tonight after six o'clock, that's Wednesday night after
11 six o'clock, you need to call that number and listen very
12 carefully to the message on there.

13 The message may say something like you should call back
14 tomorrow as a juror in the case of the State vs. Moore; or
15 it may say all jurors in the case of the State vs. Moore
16 will report to the Spartanburg County Courthouse at a
17 particular time on Thursday with your bags packed. And
18 leave them in your car.

19 If you are -- or not if you -- when you are told to
20 come back to the courthouse, whether it be tomorrow or on
21 Friday, you need to come back with your bags packed. Leave
22 them in your vehicle.

23 If you are selected as a juror in this case, then you
24 would be taken immediately to the motel by the jury
25 custodians and would be taken care of throughout the course

1 of the trial. And you would remain with us until the trial
2 is over.

3 If you are not selected, we are going to thank you very
4 much for being here. We will send you on your way and thank
5 you for your participation in this process. And you will
6 resume your daily activities.

7 So, the long and the short of it is this. You need to
8 start packing, because you are going to get that call either
9 tonight or tomorrow, or you are going to make the call and
10 receive the word that you are going to report tomorrow or
11 the next day sometime. And just follow those instructions.
12 And pack your bags and leave them in your car. And be here
13 when you are supposed to be.

14 THE JUROR: And what about my car?

15 THE COURT: If you are selected, the jury custodians
16 would make arrangements for your car to be either picked up
17 or transported to where you are going to be staying. All
18 right?

19 THE JUROR: Yes, sir.

20 THE COURT: Thank you, ma'am.

21 (Whereupon, the juror was excused from the courtroom.)

22 THE COURT: Juror Number 157, Debra N. Ledford, is
23 qualified to serve as a potential juror in this case
24 pursuant to Section 16-3-20 of our code.

25 106, Harriet R. Goforth.

1 JUROR NUMBER 106,

2 HARRIETT R. GOFORTH, having been first duly sworn,
3 was voir dired as follows:

4 EXAMINATION BY THE COURT

5 Q Good morning. You are Harriet R. Goforth, is that
6 correct?

7 A That's right.

8 Q Ms. Goforth, you understand that you are under oath for
9 this proceeding here today.

10 A Yes, sir.

11 Q And you also remember that I gave you instructions on
12 Monday when you left the courthouse that you were not to
13 discuss this case with anyone; that if anyone attempted to
14 contact you concerning this case that you were to report
15 that to me; and also that you were to refrain from reading
16 or watching or listening to any news accounts concerning
17 this matter. Have any of those instructions been violated?

18 A No.

19 Q Now, during the next few minutes I am going to ask you
20 a number of questions. Then one of the defense lawyers, as
21 well as one of the solicitors, will ask you some questions.

22 Please keep in mind that we are not any way attempting
23 to invade your privacy, but due to the proceedings that we
24 are about this week it is extremely necessary that certain
25 questions are asked and answered.

1 Also, I want you to understand that there are no right
2 or wrong answers to these questions. Please answer them
3 openly and honestly and fully. And also keep in mind that
4 no one is challenging your view. We simply need to know
5 what your views are in certain areas.

6 Also, if I pose a question or if one of the lawyers
7 pose a question that you would like to have repeated,
8 clarified, or you just simply do not understand, tell us.
9 And we will do that for you.

10 Also, listen very carefully to the questions as they
11 are presented to you, because during the next few minutes we
12 are probably going to ask you some questions that you may
13 have never even considered before coming to court here this
14 week.

15 I would also tell you that the lawyers and I have
16 copies of your juror questionnaire, because that was
17 important to us in preparing for this session.

18 Now, among the things that we are going to be talking
19 about over the next few minutes, will include a reference or
20 references to the word penalty. But the mere fact that we
21 even mention the word penalty does not in any way indicate
22 anything about the defendant, Mr. Moore. He is presumed in
23 the law to be innocent. Do you understand that?

24 A Right.

25 Q Now, let's assume that you were a juror in a criminal

1 case.

2 Could you listen to the law, accept and apply that law
3 as I would instruct you as the judge of this Court even
4 though you may disagree with that law or think that it
5 should be some other way?

6 A Yes.

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

10 A Yes.

11 Q Now, in a criminal case, Ms. Goforth, the state has the
12 burden of proving guilt. And the burden of proof that the
13 state must meet is proof beyond a reasonable doubt.

14 A defendant has no burden to prove himself innocence.
15 Do you understand that?

16 A Yes, sir.

17 Q Could you, depending on the facts and evidence and the
18 law as I would instruct you in a particular case, find a
19 defendant either guilty or not guilty?

20 A Yes.

21 Q Now, as you know from being here on Monday, this is a
22 case in which the State of South Carolina seeks the death
23 penalty. And, as such, we are going to be engaged in what
24 we refer to in our system as a bifurcated trial, which
25 simply means it's divided into two parts, the guilt phase,

1 the sentencing phase.

2 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 of the trial, do you understand that the trial would end
5 then and there would be no need to have a second phase?

6 A Yes.

7 Q However, if you were a juror in such a situation and if
8 the jury had found the defendant guilty of murder in the
9 guilt phase, do you understand that you would then move into
10 that second phase of the trial?

11 A Yes.

12 Q Now, during that phase of the trial, the sentencing
13 phase, evidence would be presented to the jury in the form
14 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 law would make
19 worse, that is to aggravate, the crime of murder.

20 In other words, the presence of an aggravating
21 circumstance when it accompanies a murder increases the
22 enormity or adds to the injury of the crime of murder. It's
23 a murder committed in the commission of or in connection
24 with another crime or incident.

25 Do you understand what I am talking about when I speak

1 of an aggravating circumstance?

2 A Yes.

3 Q Now, mitigating circumstances are also incidents,
4 details or occurrences which the general assembly of this
5 state has also declared by law reduces the severity of the
6 offense of murder and may be considered by the jury as
7 extenuating or as reducing the degree of moral culpability
8 or responsibility for the crime of murder.

9 Do you understand what I mean when I refer to
10 mitigating circumstances?

11 A Yes.

12 Q If you were a juror in such a situation, Ms. Goforth,
13 and I am talking about the sentencing phase of a death
14 penalty case, could you, depending upon the particular facts
15 and circumstances of that case, including the consideration
16 of aggravating, as well as mitigating, circumstances and the
17 law that I would instruct you that applied to that case,
18 return a sentence of life in prison?

19 A Yes.

20 Q If you were a juror in that situation could you,
21 depending upon the particular facts and circumstances of
22 that case, once again, including the consideration of any
23 aggravating and mitigating circumstances and the law that I
24 would instruct you that applied to that case, return a
25 sentence of death?

1 A I don't think so.

2 Q You don't believe you could?

3 A I don't think so.

4 Q Do you understand that there are two sentencing options
5 that are always available to the jury in the sentencing
6 phase of a death penalty trial, that being life imprisonment
7 or death, and that each and every juror must be capable of
8 imposing both of those sentences? Do you understand that?

9 A Yes.

10 Q Are you telling me that you would be unable to impose a
11 death sentence?

12 A I don't think I could. I -- emotionally, I think that
13 some people deserve it, but I have wrestled with this. I
14 don't think I could.

15 Q You were given a sheet before you came in here and read
16 about the three types of jurors.

17 A Right.

18 Q The one that would always be inclined to give life, one
19 that would always be inclined to give death, or the one that
20 could consider life or death, and it would depend upon the
21 circumstances of the case. Where did you fall into that
22 category, those categories?

23 A I wanted to be number three, but I -- but the bottom
24 line is I just don't know if it came to that if I could say
25 do it.

1 Q I understand that. Thank you, ma'am.

2 Questions, Mr. Morin?

3 MR. MORIN: Thank you, Your Honor.

4 EXAMINATION BY MR. MORIN

5 Q This is obviously a very emotional thing, and I am
6 going to try to ask you a few questions and make sure you
7 understand a few things, and leave it.

8 In the event that you were on the -- in the event you
9 were on a trial, on a jury in a trial such as this --

10 A Right.

11 Q -- if the defendant is found guilty of murder, okay, at
12 that point you go into the second phase, which the judge has
13 told you about.

14 A Right.

15 Q And the state would present aggravating circumstances.

16 A Right.

17 Q Now, they would have to convince you beyond a
18 reasonable doubt that those aggravating circumstances
19 existed before you would decide if death was appropriate.

20 A I understand.

21 Q Okay. And is it my understanding that even if the
22 state proved beyond a reasonable doubt that the aggravating
23 circumstances existed --

24 A I am not real sure I could say put a man to death. I
25 am just not sure I could do that.

Jury qualification -- Number 106

1 Q Thank you, ma'am.

2 A All right.

3 THE COURT: Mr. Barnette.

4 MR. BARNETTE: No questions from the state, Your Honor.
5 Thank you.

6 THE COURT: Anything further from the defense?

7 MR. MORIN: No, sir.

8 THE COURT: Ms. Goforth, I want to thank you very much
9 for being here this week on Monday, as well as today.

10 This is going to conclude your responsibilities for
11 being here. On behalf of the State of South Carolina, but
12 most particularly Spartanburg County, I thank you for being
13 here and participating in this process.

14 You are excused with our best wishes.

15 THE JUROR: Thank you.

16 THE COURT: Yes, ma'am.

17 (Whereupon, the juror was excused from the courtroom.)

18 THE COURT: Let the record reflect that Juror Number
19 106, Harriet R. Goforth, is not qualified to serve as a
20 potential juror in this case pursuant to Section 16-3-20 as
21 she would be unable to impose the death penalty.

22 170, Benjie Martinez.

23 JUROR NUMBER 170,
24 BENJIE L. MARTINEZ, having been first duly sworn,
25 was voir dired as follows:

1 EXAMINATION BY THE COURT

2 Q Good morning. You are been Benjie L. Martinez, is that
3 correct?

4 A That's correct.

5 Q And, Mr. Martinez, you understand that you are under
6 oath here today.

7 A Yes, sir.

8 Q And you also remember that on Monday when I excused you
9 and your colleagues on the jury that I gave you instructions
10 that you were not to discuss this case among yourselves,
11 with anyone else; and if anyone attempted to contact you,
12 that you were to report that to me; and also that you were
13 to refrain from reading, watching or listening to any news
14 accounts concerning this case. Have there been any
15 violations of my instructions?

16 A No, sir.

17 Q Now, I am going to ask you some questions over the next
18 few minutes. Then one of the defense lawyers and one of the
19 solicitors will ask you some questions.

20 Please keep in mind, Mr. Martinez, that we are not in
21 any way attempting to invade your privacy, but due to the
22 proceedings that we are about this week it is extremely
23 important that certain questions are asked and answered.

24 Please keep in mind that there are no right or wrong
25 answers to these questions. So, please, just answer them

1 openly and honestly and fully. Keep in mind that no one is
2 challenging your views. We simply need to know what your
3 views are in certain areas.

4 Also, I am going to ask you that if you do not
5 understand a question, if I am asking it or one of the
6 lawyers is asking a question, simply let us know that you
7 need to have it repeated or clarified, and we will be glad
8 to do that.

9 Also, keep in mind that you should pay very close
10 attention to these questions, because over the next few
11 minutes we're probably going to ask you some questions that
12 you maybe have never, ever considered before coming to court
13 here this week.

14 I would also tell you that each one of us has a copy of
15 your juror information sheet, because that was important to
16 us in preparing for session this morning.

17 Now, among the things that we are going to be talking
18 about this morning, Mr. Martinez, will include references to
19 the word penalty. But the mere fact that we use that word
20 or even talk about that word in no way indicates anything
21 about the defendant, Mr. Moore. Do you understand that he
22 is presumed innocent under the law?

23 A I do.

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

1 instruct you as the judge of this Court even though you may
2 disagree with that law or think that it should be some other
3 way?

4 A I believe that 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 the case?

8 A I believe I could.

9 Q In a criminal case, Mr. Martinez, the state has the
10 burden of proving guilt. And the burden of proof for the
11 state to meet is proof beyond a reasonable doubt.

12 And a defendant has absolutely no burden, no obligation
13 to prove himself innocent. Do you understand that legal
14 principle?

15 A Yes, I do.

16 Q Now, could you, depending on the facts and evidence and
17 the law as I would instruct you in a particular case, find a
18 defendant either guilty or not guilty?

19 A Yes.

20 Q Now, as you know from being here on Monday with the
21 entire jury panel, this is a case in which the State of
22 South Carolina is seeking the death penalty. And, as such,
23 we are going to be engaged in what we refer to or call a
24 bifurcated trial, which simply means it's divided into two
25 parts. The first phase is called the guilt phase; the

1 second phase, the sentencing phase.

2 Now, if you were a juror in such a situation and if the
3 jury had found the defendant not guilty of murder in the
4 guilt phase, do you understand the trial would end at that
5 point in time?

6 A Yes, sir.

7 Q However, if you were a juror in such a case and if the
8 jury found the defendant guilty of murder, do you understand
9 that you would then proceed to the second or sentencing
10 phase of that trial?

11 A Yes, I understand that.

12 Q Now, in that phase of the trial, Mr. Martinez, evidence
13 would be presented to the jury in the form of aggravating
14 circumstances, as well as mitigating circumstances.

15 Now, aggravating circumstances are facts, incidents,
16 details or occurrences which the general assembly of our
17 state, our state legislature, has declared by law would make
18 worse, that is to aggravate, the crime of murder.

19 In other words, the presence of an aggravating
20 circumstance when it accompanies or goes along with a murder
21 increases the enormity or adds to the injury of that crime
22 of murder. It's a murder committed in the commission of or
23 in connection with another crime or incident. Do you
24 understand what I mean when I speak of an aggravating
25 circumstance?

1 A Yes.

2 Q Now, mitigating circumstances are also incidents,
3 details, occurrences which, once again, our state
4 legislature, the general assembly, has declared by law
5 reduces the severity of the crime of murder and may be
6 considered by the jury as extenuating or as reducing the
7 degree of responsibility for the crime of murder. Do you
8 understand what I mean when I refer to a mitigating
9 circumstance?

10 A Yes, I do.

11 Q Now, Mr. Martinez, if you were a juror in that
12 situation, the second phase, sentencing phase of a death
13 penalty case, could you, depending upon the particular facts
14 and circumstances of that case, once again, including the
15 consideration of aggravating, as well as mitigating,
16 circumstances and the law that I would instruct you that
17 applied to that case, return a sentence of life in prison?

18 A Yes, I could.

19 Q If you were a juror in that situation could you,
20 depending upon the particular facts and circumstances of
21 that case, once again, including any aggravating and
22 mitigating circumstances and the law that I would instruct
23 you that applied to that case, return a sentence of death?

24 A I believe I could.

25 Q Mr. Martinez, you understand that there are always two

1 sentencing options available to the jury in the sentencing
2 phase of a death penalty case, that being life imprisonment
3 or death.

4 And do you also understand that each and every member
5 of the jury must be able to impose either of those sentences
6 in order to serve?

7 A Yes.

8 Q Now, if you were a chosen for service on this jury, you
9 would be sequestered. That's kind of a high-dollar word for
10 housed in a motel for the duration of the trial. I don't
11 know how long this case will last. I would say at the very
12 outside seven to ten days, although it could be much less
13 than that.

14 Except for the personal inconvenience that you would
15 suffer, would this pose a serious danger to the health or
16 well-being of yourself or of those dependent on you?

17 A No.

18 Q Now, I did note in your information sheet that you say
19 that you have had several back injuries and you cannot sit
20 or stand for long periods of time.

21 Insofar as sitting, if you sit for an hour or an hour
22 and ten minutes or something like that, is that something
23 that you can do?

24 A Oh, yes.

25 Q Thank you sir. Please respond to any questions Mr.

1 Morin may have.

2 EXAMINATION BY MR. MORIN

3 Q Good afternoon now, Mr. Martinez. My name is Michael
4 Morin. I, along with Keith Kelly and Jennifer Johnson,
5 represent Richard Moore in this case. And I would like to
6 start out thanking for your filling on that jury
7 questionnaire. And there are just a few questions I would
8 like to ask you about some of the things that are in there
9 if I may.

10 First of all, I noticed that your business and your
11 home have been previously broken into, is that right? Could
12 you tell me about that?

13 A Yes, sir, I can tell you about that. It wasn't several
14 years ago, I was in business for myself in the auto repair
15 business, which you can tell that's what I have done --

16 Q Yes, sir.

17 A -- all of my life. And I was burglarized. And I had,
18 you know, a good bit of tools stolen.

19 And the other occurrence was my wife had just, she had
20 just come home in the car. And my garage door was up. She
21 went in the house with my child that was an infant then.
22 Luckily, locked the door behind her.

23 Someone came in the garage and stole the purse out of
24 the car. That was it.

25 Q Okay. So there was a second incident. Nobody was

- 1 hurt. Did you see this person do this?
- 2 A No.
- 3 Q And did those both happen here in Spartanburg County?
- 4 A Yes, sir.
- 5 Q And no one was caught for either one?
- 6 A No.
- 7 Q Okay. You are also a member of the World Carting
- 8 Association.
- 9 A Yeah.
- 10 Q Is that in relation to your job?
- 11 A Like many people in my vocation, and others, enjoyed
- 12 many different kinds of motor sports. And I also -- that's,
- 13 I race carts and participate in carting, which it is pretty
- 14 big if you know anything about it in this area.
- 15 Q Yes. Okay. And along those same lines, I know that
- 16 you didn't have -- you listed you didn't have any bumper
- 17 stickers. But a lot of people that are in motor sports have
- 18 3's or 24's.
- 19 A Oh, yeah, exactly. I don't have any of that on my car
- 20 though.
- 21 Q Okay. And how about flags? A lot of people have
- 22 recently in recent times --
- 23 A My wife has a flag on her vehicle, an American --
- 24 Q Is it a flag or a sticker?
- 25 A We have a sticker on the back glass, and a flag also.

Jury qualification -- Number 170

1 Q Okay. Do you have any -- flying the flag at home?

2 A I also have a flag at my home, yes, sir.

3 Q The United States of America?

4 A Yes, American flag.

5 Q Okay. And your father was in various forms of law
6 enforcement?

7 A Yes, sir. My father is 75 years old, and he is a World
8 War Two veteran.

9 Q Now, when you told the judge that you could give the
10 death penalty if you felt that aggravating circumstances
11 were shown, I take it to mean that you in some form support
12 the death penalty.

13 A Yes, sir.

14 Q Okay. And a lot of people come to a lot of different
15 ways to think about it. Is it something that you have given
16 a lot of thought to or some thought to prior to this?

17 A It's not something that I's dwelled on a great deal,
18 but I have given thought to, yes, sir.

19 Q Okay. And in doing so you have come to the conclusion
20 that is appropriate sometimes.

21 A Yes, sir, sometimes, yes.

22 Q Okay. Could you tell me what types of things you
23 relied on? Some people have done reading; some people base
24 it on their religion and different things. Could you tell
25 me what you feel -- what influences you think have brought

1 you to this conclusion?

2 A Well, I would just say that, you know, everything taken
3 into account, all of my life experiences, everything I've
4 read and what I believe. It's just not -- it's not any one
5 thing that I can nail it on.

6 Q Okay. Now, you understand that in the event that --
7 Mr. Moore is presumed innocent at this point. But assuming
8 that we got to a situation where there was a sentencing
9 phase of this trial and you were on the jury, do you
10 understand that the state would be required to prove beyond
11 a reasonable doubt that at least one of the aggravating
12 circumstances that the judge referred to existed before you
13 could give a death sentence? Do you understand that?

14 A I do. That's our system.

15 Q Okay.

16 A He is innocent.

17 Q That's right. Do you also understand that even if they
18 prove an aggravating circumstance, you are still not
19 required to give a death sentence? It would still be up to
20 you and your fellow jurors.

21 A I do understand that.

22 Q Okay. And you have your own business. But you are now
23 working for Sandlapper's Auto.

24 A Sandlapper's Auto Service, yes. That's correct.

25 Q And I noticed on your questionnaire you wrote down

1 you've got limited customer contact.

2 A Yeah. We --

3 Q Could you tell me like if I came there, I mean, how
4 this would work?

5 A Yeah, yeah. It's not -- ours is, it is run, I guess
6 you could say, pretty informally, you know.

7 Q Okay.

8 A If my immediate supervisor -- he also works on cars
9 also. So, if he is running around and you happen to walk in
10 and I was busy and I saw no one was helping you, I would go
11 and assist you.

12 Q I see. But normally someone else would --

13 A Yes, sir, normally.

14 Q -- take care of that part.

15 A Normally so, yes.

16 Q Okay. Thank you, Mr. Martinez.

17 THE COURT: Mr. Barnette.

18 MR. BARNETTE: Thank you, Your Honor. May it please
19 the Court.

20 EXAMINATION BY MR. BARNETTE

21 Q Mr. Martinez, my name is Barry Barnette. I am one of
22 the deputy solicitors, along with Trey Gowdy and the
23 solicitor and Donnie Willingham, the other deputy solicitor
24 in our office.

25 I would just like to ask you a couple of questions

1 following Mr. Morin's there.

2 You've been an auto mechanic about 20 years?

3 A Yes, sir.

4 Q Do you work on all kinds of cars or --

5 A No, sir. I specialize in Honda cars.

6 Q Honda. I notice you went to school for that too.

7 A Yes, sir.

8 Q And one question I want to ask, I believe when you
9 answered the judge's question you said I believe I can be
10 fair or give the death penalty or whatever. Is that a
11 generalized statement about that?

12 A No, sir. Like all of us in here, we have -- you know,
13 we collectively have all of our life's experiences and
14 everything, you know, we have prejudices and so forth. You
15 know, we have to take everything into account when we make a
16 decision, all of us.

17 But, you know, in America, you know, we have this
18 system that works like this. We all have to take our -- do
19 the best we can to put aside those, you know, those
20 prejudices and look at the facts that are only brought, you
21 know, in this room and make a choice from there.

22 Q And that's what you would do. You would look at all of
23 the facts in this case?

24 A I would try to it the best I can. Like all other
25 people, I make mistakes.

1 Q I know and I understand.

2 And do you realize at the end of the case if you
3 decided that death was the appropriate sentence in the
4 sentencing phase that you would have to sign your name to a
5 sheet of paper like a judge does in a sentencing sheet at
6 the end of a regular case? He wouldn't be sentencing, but
7 you-all would be doing the sentence in that case. Do you
8 understand that?

9 A Yeah. That carries a -- it does carry great weight,
10 but I do understand that.

11 Q And you would have to sign that sheet of paper with the
12 other 11 jurors. Do you understand that?

13 A Yes, sir.

14 Q And do you feel like you could do that?

15 A I believe I could.

16 Q And could you come into open court and announce your
17 verdict if you were polled -- jury and all of the parties
18 involved in the courtroom?

19 A Yes, sir.

20 Q Thank you for answering my questions, Mr. Martinez.

21 MR. BARNETTE: Thank you, Your Honor.

22 THE COURT: Anything else, Mr. Morin?

23 MR. MORIN: No, sir.

24 THE COURT: Mr. Barnette?

25 MR. BARNETTE: No, sir.

1 THE COURT: Mr. Martinez, I thank you very much for
2 your being here on Monday, as well as this day, and
3 participating in this process.

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 remind you that you are to continue to not to discuss
7 this case with anyone that you come in contact with, whether
8 it be fellow jurors, family, friends or anyone else.

9 Also, if anyone should attempt to contact you
10 concerning this case, I want you to gather as much
11 information about that person as you possibly can, and
12 report that to me immediately, because that's a very serious
13 matter, and I would deal with the person that attempted to
14 contact you accordingly.

15 Also, I'm going to continue my very strong instruction
16 that you are not to read, watch or listen to any news
17 accounts concerning this case. Simply put, Mr. Martinez, if
18 you are chosen to serve and sit on this jury, all I would
19 want you to consider is what you see and hear in this
20 courtroom, nothing more and nothing less.

21 Now, when you reported on Monday you were given a juror
22 information pamphlet by the clerk of court. On that
23 pamphlet is an 800 number that I think is stamped on the
24 front of it.

25 Tonight after six o'clock you need to call that number,

Jury qualification -- Number 170

1 and listen very carefully to the message that will be
2 contained therein.

3 First of all, you need to start packing and be ready to
4 come back up here when you are notified to do so.

5 That message would probably contain information tonight
6 in one of two fashions. It will maybe say all jurors in the
7 case of the State vs. Moore should call back on Thursday at
8 a particular time; or it may say all jurors in the case of
9 the State vs. Moore will report to the Spartanburg County
10 Courthouse at a particular time with your bags packed. And
11 please leave them in your car.

12 The reason for this is that if you are selected to
13 serve on this jury, then you and your belongings would be
14 taken to the jury location, the motel where you would be
15 staying for the course of the trial with the jury
16 custodians. And you would be well card for.

17 If you are not selected, then we would send you along
18 your way so that you could take your car and your belongings
19 back home and get about your regular daily activities.

20 So, the long and the short of it is this. You need to
21 start packing. You need to call back tonight after six
22 o'clock. And listen very carefully to the message, and
23 follow those instructions that you hear on that recorded
24 message.

25 Thank you very much. I look forward to seeing you

Jury qualification -- Number 295

1 later on this week, either tomorrow or Friday.

2 (Whereupon, the juror was excused from the courtroom.)

3 THE COURT: Let the record reflect that Juror Number
4 170, Benjie Martinez, is qualified to serve as a potential
5 juror in this case pursuant to Section 16-3-20.

6 Now, I notice that our next potential juror is Michael
7 J. Willingham. I assume that that is no relation to the
8 Ninety Six Willinghams, Mr. Willingham.

9 MR. WILLINGHAM: All depends on how he answers, Your
10 Honor. No, sir. He is no relation.

11 JUROR NUMBER 295,
12 MICHAEL J. WILLINGHAM, having been first duly sworn,
13 was voir dired as follows:

14 EXAMINATION BY THE COURT

15 Q Good afternoon, to you. You are Michael J. Willingham,
16 that is correct?

17 A Yes, sir.

18 Q And, Mr. Willingham, I know that you are aware that you
19 are under oath for these proceedings today.

20 And you also recall that when I dismissed you on Monday
21 that you were given instructions that you were not to
22 discuss this case with anyone; that if anyone attempted to
23 contact you, that you were to report that to me today; and
24 that you were also to refrain from reading, watching or
25 listening to any news accounts concerning this case. Have

1 there been any violations of my instructions?

2 A No, sir.

3 Q Now, Mr. Willingham over the next few minutes I'm going
4 to ask you some questions. Thereafter one of the defense
5 lawyers and then one of the solicitors will ask you some
6 questions.

7 Please keep in mind that we are not in any way
8 attempting to invade your privacy. However, due to the
9 nature of the proceedings that we are about this week it's
10 extremely important that we ask certain questions and
11 receive answers to them.

12 Please keep in mind there are no right or wrong answers
13 to these questions. If you would, just answer them openly
14 and honestly and fully.

15 And, also, remember that no one is challenging the view
16 that you might have. It is simply that we need to know what
17 your view is in a particular area.

18 Also, if at any time you do not understand me or one of
19 the lawyers, a question that we ask, if we need to repeat
20 it, clarify it, whatever, you just let us know, and we'll
21 attempt to do that.

22 Also, listen very carefully to the questions as they
23 are presented to you, because over the next few minutes we
24 are probably going to be asking you some questions about
25 things that you maybe have never considered before coming to

1 court here this week.

2 I would also tell you that the lawyers and I have
3 copies of your juror information sheet, because that was
4 important to us in preparing for this day's events.

5 Now, among the things that we are going to be talking
6 about during the next few minutes, Mr. Willingham, will be a
7 reference to the word penalty. And the mere fact that I
8 even mention that word or we refer to that word at any time
9 does not indicate in any way anything about the defendant,
10 Mr. Moore. He is presumed in the law to be innocent. Do
11 you understand that?

12 A Yes, sir.

13 Q Now, if you were a juror in a criminal case could you
14 listen to the law, accept and apply that law as I would
15 instruct you as the judge of this Court even though you may
16 disagree with that law or think it should be some other way?

17 A I don't understand.

18 Q Let me repeat it.

19 If you were a juror in a criminal case could you listen
20 to the law and accept and apply that law that I would give
21 you as the judge of this Court even though you may not agree
22 with the law that I would give you or think that it should
23 be some other way?

24 A I don't think I could if I didn't agree with it.

25 Q You would be unable to follow my instructions?

1 A I still don't understand.

2 Q Do you understand that I am the judge of the law in
3 this case?

4 A Yes, sir.

5 Q And if I give you the law as a member of the jury, then
6 your oath would require you to accept the law as I gave it
7 to you, even though you may disagree with that law or you
8 think the law should be some other way.

9 Your oath would require you to agree with my version of
10 the law. Would you be able to do that, or would you still
11 follow your own opinion?

12 A I believe I could.

13 Q You could follow the law as instructed you?

14 A Yes, sir.

15 Q Even though you may have a totally different opinion,
16 you would still follow the law of this state?

17 A Yes, sir.

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

21 A Yes, sir.

22 Q Now, in a criminal case, Mr. Willingham, the state has
23 the burden of proving guilt. The burden of proof that the
24 state must meet is proof beyond a reasonable doubt.

25 And a defendant has absolutely no burden, no

1 responsibility to prove his innocence. Do you understand
2 that legal principle?

3 A Yes, sir.

4 Q Now, could you, depending on the facts and evidence and
5 the law that I would instruct you in a particular case, find
6 a defendant either guilty or not guilty? Could you reach
7 either one of two verdicts, guilty or not guilty?

8 A Yes, sir.

9 Q Now, as you know from being here on Monday, this is a
10 case in which the State of South Carolina is seeking the
11 death penalty. And, as such, we are going to be involved in
12 what we call a bifurcated trial or proceeding. That simply
13 means that it's divided into two parts, guilt phase,
14 sentencing phase.

15 Now, if you were a juror in such a case, a death
16 penalty case, and if that jury found the defendant not
17 guilty of murder in the first phase, the guilt phase, do you
18 understand that the trial would end at that point in time?

19 A I do now.

20 Q However, if you were a juror in such a situation, a
21 death penalty case, and the jury found the defendant guilty
22 of murder, do you understand that you would then move to
23 that second or sentencing phase of the trial?

24 A Yes, sir.

25 Q Now, in that phase of the trial you would be presented

1 evidence in the form of aggravating circumstances, as well
2 as mitigating circumstances.

3 Now, aggravating circumstances are facts, incidents,
4 details or occurrences which the general assembly, the state
5 legislature of South Carolina, has declared by law would
6 aggravate, that is to make worse, the offense of murder.

7 In other words, when you have an aggravating
8 circumstance and it accompanies or goes along with the crime
9 of murder, it increases or adds to the enormity of the
10 offense of that crime of murder.

11 It's a murder that's committed in the commission of or
12 in connection with another crime or incident. Do you
13 understand what I am talking about?

14 A Yes, sir.

15 Q Now, mitigating circumstances, Mr. Willingham, are also
16 incidents, details or occurrences which, once again, our
17 state legislature, the general assembly, has declared by law
18 reduces the severity of the crime of murder.

19 And these mitigating circumstances may be considered by
20 the jury as extenuating or as reducing the responsibility
21 for the crime of murder. Do you understand that?

22 A Yes, sir.

23 Q Let's assume you were a juror in that situation. We
24 are talking about the sentencing phase of a death penalty
25 case.

1 Could you, depending upon the particular facts and
2 circumstances of that case, including the consideration of
3 aggravating and mitigating circumstances and the law that I
4 would instruct you that applied to that case, return a
5 sentence of life in prison?

6 A Yes, sir.

7 Q If you were a juror in that situation could you, once
8 again, depending upon the particular facts and circumstances
9 of that case, including the consideration of aggravating and
10 mitigating circumstances and the law that I would instruct
11 you that applied to that case, return a sentence of death?

12 A Yes, sir.

13 Q Now, you understand, Mr. Willingham, that there are
14 always two sentencing options that are available to the jury
15 during the sentencing phase of a death penalty case, that
16 being life imprisonment or death.

17 A Yes, sir.

18 Q And you understand that each and every member of the
19 jury must be capable of returning either one of those
20 verdicts.

21 A Yes, sir.

22 Q Now, if you were chosen for jury service in this case,
23 you would be sequestered, which is a kind of a highfaluting
24 word meaning you would be put up in a motel for the duration
25 of the trial. I have no idea how long this case would last.

1 I would say at the outside seven to ten days, although it
2 could be much less than that.

3 Except for the personal inconvenience that you would
4 suffer, would this pose a serious danger to the health or
5 well-being of yourself or of those dependent on you?

6 A No, sir.

7 Q Thank you for answering my questions. Please respond
8 to any of Mr. Kelly's questions.

9 MR. KELLY: May it please the Court, Your Honor.

10 THE COURT: Yes, sir.

11 MR. KELLY: Thank you.

12 EXAMINATION BY MR. KELLY

13 Q Mr. Willingham, I am Keith Kelly. Along with Michael
14 Morin and Jennifer Johnson, we represent Richard Moore in
15 these proceedings, and have been since Monday of this week,
16 and more particularly today. The State of South Carolina
17 seeks to put to death Mr. Moore in this case.

18 I appreciate your comments on your interview sheet. As
19 the Court has told you, we have a copy of that.

20 And I noted that you have a child eight years of age
21 and that you are divorced from your wife. Do you have
22 custody of that child?

23 A Joint custody.

24 Q Joint custody. But, nonetheless. Even if you were
25 sequestered and required to stay for seven to ten to 15

1 days, that would not interfere with that child, is that
2 right?

3 A No, sir. Me and my ex get along.

4 Q That's what I mean. The child would be able to get to
5 school and back --

6 A Right.

7 Q -- and that wouldn't be a problem for you, is that
8 right?

9 A Yes, sir.

10 Q Okay. On the media part of the questionnaire when
11 asked about television and so forth, you indicated that you
12 listen or watched the T. L. C. and the Discovery channel.
13 Do you watch any forensics shows on there?

14 A Yes, sir. They are my favorite.

15 Q Those are your favorites. All right, sir. Would you
16 name two or three for me, please?

17 A I watch Forensic Science and Discovery. I watch Cops
18 and anything like that.

19 Q Okay. All right, sir. And also you had checked other
20 own the media, but you didn't list exactly what that might
21 be. Do you watch other shows, other channels besides
22 Discovery or --

23 A I watch the movie channel. I like science fiction.

24 Q Okay. What about other than the Spartanburg
25 Herald-Journal, which you've indicated? Do you get another

1 newspaper or read another newspaper?

2 A No, sir.

3 Q What about magazines? Do you subscribe to any
4 magazine, whether it's a hunting or fishing --

5 A Handyman Magazine.

6 Q I'm sorry?

7 A Handyman Magazine.

8 Q All right, sir. And no other magazine like Field and
9 Stream, like that.

10 A No, sir.

11 Q Do you own a firearm?

12 A Yes, sir.

13 Q Are you a hunter? Are you an avid hunter?

14 A I don't hunt.

15 Q Okay. But you own some firearms?

16 A I like guns.

17 Q Okay. Do you have a collection of guns?

18 A Five long arms and three pistols.

19 Q All right, sir. And would you tell me the caliber of
20 the handguns, please?

21 A .380 and nine millimeter and a .38 Special.

22 Q Okay. In relation or in regards to firearms, do you
23 belong to the N. R. A. or any other gun magazine or gun
24 club?

25 A Years ago I did, but not any more.

1 Q Years ago you belonged to N. R. A.

2 A Used to.

3 Q Okay. And even though you don't avidly hunt at this
4 point, have you ever belonged to a hunting club?

5 A No, sir.

6 Q Many of us get our views and our opinions about the
7 death penalty based on something. It has to be based on
8 some aspect, whether it be from our religious background or
9 whether it be from life experiences, something grandmama
10 told us growing up, something like that.

11 And you've indicated that you do believe in the death
12 penalty, because you could under certain circumstances
13 impose that, right?

14 A Yes, sir.

15 Q To what do you base your views on the death penalty?
16 Is it based on what the might --

17 A Meaning what?

18 Q I'm sorry.

19 A Meaning what?

20 Q Your views. You've indicated that you believe in the
21 death penalty under certain circumstances.

22 A Right.

23 Q Okay. And if that's true, then did you come to that
24 conclusion from like a lesson you learned at church or a
25 coworker, something your family members told you over the

1 years; or is it a combination of all of that?

2 A Well, a combination and my views.

3 Q Yes, sir.

4 A A person's life is the most precious thing you have
5 got, and no one has the right to take it.

6 Q Do you understand then that if the state then proved
7 one of those aggravating circumstances that Judge Clary told
8 you about that it would be then for your consideration as to
9 whether or not life in prison or death?

10 A Yes, sir.

11 Q All right, sir. And in the event that the state had
12 proved at least one of those things that Judge Clary told
13 you about, do you understand that even though they proved
14 one of them, or more, you could still choose life and not
15 death?

16 A Yes, sir.

17 Q You indicated your background is Baptist. Do you
18 actively attend a particular Baptist church?

19 A Not in the last three years.

20 Q All right. Is that Baptist Freewill?

21 A Independent.

22 Q I am sorry?

23 A Independent.

24 Q Thank you sir. Thank you very much.

25 MR. WILLINGHAM: May it please the Court, Your Honor.

1 THE COURT: Mr. Willingham. This is Mr. Willingham
2 also.

3 EXAMINATION BY MR. WILLINGHAM

4 Q My name is Donnie Willingham. I am a deputy solicitor
5 here in Spartanburg, along with Barry Barnette and Trey
6 Gowdy. I'm pretty sure that there's no relationship with
7 you. Are you aware of any relationship that we have?

8 A Not that I know of.

9 Q And you and I have never met.

10 A No, sir.

11 Q I have just got a few questions for you.

12 You indicated on your questionnaire that at one point
13 you had applied to work with the highway patrol.

14 A Yes, sir.

15 Q But you had withdrawn that application.

16 A Yes, sir.

17 Q Could you tell us about it?

18 A I was young and living at home with my mama. And they
19 were going to put me in Newberry. And I was instructed I
20 couldn't come home but one weekend out of five weeks. And I
21 knew nobody in Newberry, so I withdrew.

22 Q I understand. Now, also on your questionnaire -- and I
23 appreciate you filling this out and being complete with
24 it -- it asked on there if you had ever been arrested for
25 anything other than minor traffic offenses.

1 A Yes, sir.

2 Q I note on there you had put your brother had a D. U. I.
3 and grand larceny and was convicted of that, and you had
4 been arrested for C. D V., criminal domestic violence.

5 A Yes, sir.

6 Q Is that charge still pending or --

7 A No, sir. I was found not guilty.

8 Q You were found not guilty.

9 A lot of times, and all of the time in general sessions
10 court and sometimes in the magistrate's court, the Seventh
11 Circuit Solicitor's Office is responsible for prosecuting
12 the cases. Was an assistant solicitor involved in the
13 prosecution of your case?

14 A I didn't actually go to trial. I went to magistrate's
15 court, Judge Ashmore.

16 Q Okay. Was it a bench trial?

17 A Yes, sir. We just showed up.

18 Q No jury?

19 A No, no, sir.

20 Q Was the prosecutor even there?

21 A No, sir. The judge just listened to my side of the
22 story, and the police officer was there, and my girlfriend.

23 Q Okay.

24 A And he explained the law to me that I could have a jury
25 trial, him, or there was something else. I could do public

1 service --

2 Q All right.

3 A -- and not lose my gun permit. And I took it, no, sir,
4 I weren't guilty and I want you to hear it. And he found me
5 not guilty.

6 Q Okay. The judge did.

7 Mr. Willingham, you saw back in your jury room when the
8 clerk brought you a piece of paper there were three
9 different types of jurors. And I think I understand from
10 the questions the Court asked and the way you answered the
11 defense questions, you would probably fall into category
12 number three.

13 A Yes, sir.

14 Q Is that a fair statement?

15 A Yes, sir.

16 Q Mr. Willingham, I appreciate your answers.

17 MR. WILLINGHAM: No other questions, Your Honor.

18 MR. KELLY: Nothing, Your Honor.

19 THE COURT: Mr. Willingham, thank you very much for
20 your participation here this day, as well on Monday.

21 I find that you are qualified to serve as a potential
22 juror in this case. And with qualification I am going to
23 give you a little bit more instruction. I am going to
24 remind you that you are not to discuss this case with
25 anyone, whether it be fellow jurors, family, friends or

1 anyone else that you might come into contact with.

2 Also, if anyone should attempt to contact you
3 concerning this case, I want you to gather as much
4 information about that person as you possibly can and report
5 that to me immediately, because that is a very serious
6 matter, and I would deal with the person that attempted to
7 contact you accordingly.

8 Also, I'm going to instruct you that you are not to
9 read, watch or listen to any news accounts concerning this
10 case. Very simply put, if you're selected as a juror in
11 this case, all I want you to consider is what you see and
12 hear in this courtroom, nothing more and nothing less.

13 Now, when you reported here on Monday you were given a
14 pamphlet from the clerk of court. On the front of that
15 pamphlet was, I think, a red stamp that had an 800 number on
16 it. You need to call that number tonight after six o'clock.

17 THE JUROR: The 1-800 number?

18 THE COURT: Yes, sir.

19 Listen very carefully to the message that is contained
20 therein. That message will probably say one of two things.
21 It may say all jurors in the case of the State vs. Moore are
22 to call back on Thursday at a particular time; or it may say
23 all jurors in the case of the State vs. Moore will report to
24 the Spartanburg County Courthouse at a particular time with
25 your bags packed and left in your car.

1 Now, you are going to be coming back either tomorrow or
2 early on Friday with your bags packed, left in your car.
3 Simply listen very carefully to those instructions on the
4 tape recording so that you will know when you will need to
5 be here.

6 And once you come back if you are selected as a juror
7 in this case, then the jury custodians would take you and
8 your colleagues on the jury to the motel where you will be
9 staying for the course of this trial. And you would be with
10 us until this case is ended.

11 If you are not selected, then we're going to thank you
12 very much for having been here and allow you to go back home
13 and go about your daily activities.

14 So what you need to do is start packing and get ready
15 to make that call tonight, because you are coming back
16 sometime tomorrow or on Friday.

17 And, once again, leave your belongings in your car. If
18 you are not chosen, then you will not have brought them into
19 the courthouse. If you are chosen, then they will be
20 transported to the location that you will be staying for the
21 course of the trial.

22 I hope you have a nice day. I look forward to seeing
23 you tomorrow or Friday. Thank you, sir.

24 THE JUROR: Thank you, sir.

25 (Whereupon, the juror was excused from the courtroom.)

Jury qualification -- Number 85

1 THE COURT: Let the record reflect that Juror Number
2 295, Michael J. Willingham, is qualified to serve as a
3 potential juror in this case pursuant to Section 16-3-20 of
4 the code.

5 85, Jeff Fortner.

6 JUROR NUMBER 85, JEFF
7 L. FORTNER, having been first duly sworn, was voir
8 dired as follows:

9 EXAMINATION BY THE COURT

10 Q Good afternoon. You are Jeff L. Fortner, is that
11 correct?

12 A Yes, sir.

13 Q Now, Mr. Fortner, you understand that I instructed you
14 that you were not to discuss this case with anyone, that if
15 anyone attempted to contact you that you were to report that
16 to me today, and that you were to refrain from reading,
17 watching or listening to any news accounts concerning this
18 case.

19 A Yes, sir.

20 Q Have there been any violations of those instructions?

21 A No, sir.

22 Q And you understand you are under oath here today.

23 A Yes, sir.

24 Q Now, Mr. Fortner, over the next few minutes I am going
25 to ask you some questions. Then one of the defense lawyers

1 and one of the state's lawyers will ask you some questions.

2 Please keep in mind that we are in no way attempting to
3 invade your privacy, but due to the nature of the
4 proceedings that we are about here this week it's extremely
5 important that certain questions are asked and answered.

6 Please understand that there are no right or wrong
7 answers to these questions. Just answer them openly and
8 honestly and as fully as possible.

9 And also keep in mind that no one is challenging your
10 viewpoint. It's simply that we need to know what your views
11 are in certain areas.

12 Also, if I pose a question or one of the lawyers pose a
13 question that you do not understand, you need to have
14 repeated or clarified, simply let us know, and we will be
15 glad to accommodate you on that.

16 Also, I am going to ask that you pay very close
17 attention to all of these questions that are presented to
18 you, because during the next few minutes we are probably
19 going to ask you some questions that you have never ever
20 considered before 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 this day.

24 Now, among the things that we are going to be talking
25 about over the next few minutes, will include reference to

1 the word penalty. And the mere fact that I even mention
2 that word -- now, we're going to be talking about the word
3 penalty. But the mere fact that I even mention that word or
4 that we discuss that word or refer to it does not in any way
5 indicate anything about the defendant, Mr. Moore. He is
6 presumed in the law to be innocent. Do you understand that?

7 A Yes, sir, I do.

8 Q Now, let's assume, Mr. Fortner, that you were a juror
9 in a criminal case.

10 Could you listen to the law, accept and apply that law
11 as I would instruct you as the judge of this Court even
12 though you may disagree with that law or think that it ought
13 to be some other way?

14 A Could you repeat the question?

15 Q Yes, sir.

16 If you were a juror in a criminal case could you listen
17 to the law and accept and apply that law as I would instruct
18 you as the judge of this Court even though you may disagree
19 with that law or think that it should be some other way?

20 A Yes, sir, 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 heard, read or seen about the case?

24 A Yes, sir.

25 Q Now, in a criminal case, Mr. Fortner, the state has the

1 burden of proving guilt. And the burden of proof for the
2 state is proof beyond a reasonable doubt. A defendant has
3 absolutely no burden, no responsibility to prove his
4 innocence. Do you understand that?

5 A Yes, sir, I do.

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

9 A Yes, sir, I could.

10 Q Now, in a -- as you know from being here on Monday,
11 this is a case in which the State of South Carolina is
12 seeking the death penalty. And, as such, we are going to be
13 involved in what we call a bifurcated trial or proceeding.

14 Now, if you were a juror in such a case, and a
15 bifurcated trial simply means that it's divided into two
16 parts, the guilt phase and the sentencing phase.

17 If you were a juror in such a case and if the jury
18 found the defendant not guilty of murder in the first phase,
19 the guilt phase, do you understand that the trial would end
20 at that point?

21 A Yes, sir.

22 Q However, if you were a juror in such a case and the
23 jury found the defendant guilty of murder, do you understand
24 that you would then move to the second or sentencing phase
25 of that trial?

Jury qualification -- Number 85

1 A Yes.

2 Q Now, in that phase of the trial, Mr. Fortner, evidence
3 would be presented to the jury in the form of aggravating
4 circumstances, as well as mitigating circumstances.

5 Now, aggravating circumstances are facts, incidents,
6 details or occurrences which the General Assembly of the
7 State of South Carolina, the state legislature, has declared
8 by law would make worse, that is to aggravate, the offense
9 of murder.

10 In other words, the presence of an aggravating
11 circumstance when it accompanies or goes along with the
12 crime of murder increases the enormity or adds to the injury
13 of that crime of murder.

14 It's a murder that's committed in the commission of, in
15 connection with another crime or incident. Do you
16 understand that?

17 A Yes, sir.

18 Q Now, mitigating circumstances are also incidents,
19 details or occurrences which our general assembly has also
20 declared by law reduces the severity of the crime of murder
21 and may be considered by the jury as extenuating or as
22 reducing the degree of moral culpability or responsibility
23 for that crime of murder. Do you understand that?

24 A Yes, sir, I do.

25 Q Now, if you were a juror in that situation,

1 Mr. Fortner, the sentencing phase, could you, depending upon
2 the particular facts and circumstances of that case,
3 including the consideration of aggravating and mitigating
4 circumstances and the law that I would instruct you that
5 applied to that case, return a sentence of life in prison?

6 A Yes, sir, I could.

7 Q If you were a juror in that situation could you,
8 depending upon the particular facts and circumstances of
9 that case, once again, including the consideration of any
10 aggravating and mitigating circumstances and the law that I
11 would instruct you that applied to that case, return a
12 sentence of death?

13 A Yes, sir, I could.

14 Q Now, Mr. Fortner, do you understand that there are
15 always two sentencing options that are available to the jury
16 in the sentencing phase of a death penalty case, that being
17 life imprisonment or death?

18 A Yes, sir.

19 Q And do you understand that each and every member of the
20 jury must be able to impose either of those sentences?

21 A Yes, sir.

22 Q Now, if you were chosen for service on this jury you
23 would be sequestered in a motel for the duration of the
24 trial. I have no idea how long this case would last. I
25 would say at the most seven to ten days from the time we get

1 the trial started. It could be less than that.

2 Now, except for the personal inconvenience that you
3 would suffer, would this pose a serious danger to the health
4 or well-being of yourself or of those dependent on you?

5 A No, sir, it wouldn't.

6 Q Thank you for responding to my questions. Please
7 answer any questions Mr. Kelly may have.

8 MR. KELLY: May it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 EXAMINATION BY MR. KELLY

11 Q Mr. Fortner, I'm Keith Kelly. And along with Michael
12 Morin and Jennifer Johnson, we represent Mr. Moore in these
13 proceedings.

14 And, as you have come to learn since Monday of this
15 week, and more particularly today, the state seeks the death
16 penalty against Mr. Moore.

17 I note from your questionnaire -- and I appreciate you
18 completing that. I note from your questionnaire that you
19 are currently going through the hiring process with the
20 South Carolina Highway Patrol. Is that right?

21 A Yes, sir. I am.

22 Q Okay. Have you been accepted? Can you tell me what
23 stage of the process you are?

24 A Yes, sir. They're just doing my background
25 investigation, so technically I have not been hired. No,

1 sir. They're just -- I've passed the first three steps.

2 Q Okay. How many more are there to go?

3 A Two more after the background investigation.

4 Q Okay. At this time you don't hold a commission or
5 anything from anybody, from the state.

6 A No, sir.

7 Q And your grandfather is retired from the highway
8 patrol, is that correct?

9 A Yes, sir.

10 Q And is he still alive?

11 A Yes, sir, he is.

12 Q And his name, sir?

13 A Robert McCrary.

14 Q And you also indicated that your wife had been robbed
15 at gunpoint about two years ago. Would you tell me about
16 that? Was this here in Spartanburg County?

17 A Yes, sir. It happened at Wal-Mart on the east side of
18 town. They never pressed any charges.

19 Q Nobody was ever caught?

20 A No, sir, no.

21 Q Okay. Was she hurt or injured?

22 A No, sir.

23 Q Did she recover her property? Did they drop it or
24 something?

25 A No, sir, she did not. Just her pocketbook was stolen.

1 And nothing was ever recovered. No charges were ever
2 pressed.

3 Q Magazines. Do you subscribe to any magazine
4 whatsoever, whether it be Field and Stream or some law
5 enforcement magazine?

6 A No, sir, I do not. My wife does. But I personally
7 don't, no, sir.

8 Q And can you tell me what your wife subscribes to?

9 A Better Homes and Garden.

10 Q Okay. In recent time some of us have begun to fly the
11 American flag, either in a magnet that sticks to your car or
12 a flag itself. Do you have one of those?

13 A I have got a flag on my house, but that's it.

14 Q And is it the American flag?

15 A Yes, sir, it is.

16 Q Do you own any other flag besides the American flag?

17 A No, sir, I did not.

18 Q You don't own a state flag, for instance?

19 A No, sir, no. I'm sorry.

20 Q Do you -- do you deer hunt or turkey hunt?

21 A No, sir.

22 Q Do you belong to any organization like the National
23 Rifle Association?

24 A No, sir, I do not.

25 Q Thank you very much, sir.

1 A Thank you.

2 THE COURT: Mr. Willingham.

3 MR. WILLINGHAM: Your Honor, the state has no
4 questions. Thank you.

5 THE COURT: Anything else from Mr. Kelly?

6 MR. KELLY: None, Your Honor.

7 THE COURT: Mr. Fortner, I want to thank you very much
8 for your participation here on Monday, as well as today.

9 I find that you are qualified to serve as a potential
10 juror in this case. And with qualification, I am going to,
11 once again, tell you that you are not to discuss this case
12 with your family, friends or anyone else that you might come
13 in contact with.

14 Also, if anyone attempts to contact you concerning this
15 matter, I want you to gather as much information about that
16 person or persons as you possibly can and report that to me
17 immediately, because that is a very serious matter, and I
18 would deal with the person that attempted to contact you
19 accordingly.

20 Also, you are to refrain, continue to refrain, from
21 reading, watching or listening to any news accounts
22 concerning this case.

23 Simply put, if you are selected to serve as a fore --
24 as a member of this jury, all I would want to you to
25 consider in this matter is what you see and hear in this

1 courtroom, absolutely nothing more and nothing less.

2 Now, Mr. Fortner, when you reported here on Monday the
3 clerk of court gave you a pamphlet. And contained on the
4 front of that was, I think, maybe a red stamp that had an
5 800 number on it. Do you see what I am talking about?

6 THE JUROR: Yes, sir.

7 THE COURT: If you would call that number tonight after
8 six o'clock, Mr. Fortner, and listen to the tape-recorded
9 message that will be left on there and follow those
10 instructions, those instructions may say something like all
11 jurors in the case of the State vs. Moore should call back
12 tomorrow at a particular time. Simply follow those
13 instructions. Or it may say all jurors in the case of the
14 State vs. Moore will report to the Spartanburg County
15 Courthouse at a particular time on Thursday. And please
16 come with your bags packed, and leave them in your vehicle.

17 If that's the instruction then follow that. Whatever
18 you do, either Thursday or Friday, we are going to be coming
19 back to this courthouse with your belongings, which you will
20 need to leave in your car, because once we strike a jury, if
21 you're selected, then the jury custodians will take you and
22 your belongings to the motel where you will be staying for
23 the course of the trial.

24 And if you are not selected, we are going to send you
25 back home and let you go about your daily activities with

Jury qualification -- Number 85

1 our thanks for having been here participating in this
2 process.

3 So what you need to do now is you need to go home and
4 start getting ready, getting packed, because either tonight
5 or tomorrow you are going to be told over that recording
6 that you are to come back sometime tomorrow or Friday for us
7 to strike a jury in this case.

8 So, please, be prepared for that. I will look forward
9 to seeing you either tomorrow, or Friday at the latest. I
10 hope you have a very pleasant day. And I look forward to
11 seeing you later this week.

12 THE JUROR: Thank you.

13 THE COURT: Yes, sir.

14 (Whereupon, the juror was excused from the courtroom.)

15 THE COURT: Let the record reflect that Juror Number
16 85, Jeff Fortner, is qualified to serve as a potential juror
17 in this case pursuant to Section 16-3-20 of our code.

18 That completes panel number seven. Our next panel,
19 number eight, is coming in at 2:00 p.m. That puts us up to
20 27, but that could be in doubt, because I have one gentleman
21 that may not be a juror in this case that I have previously
22 qualified because of some information that we have here.
23 Either we have 26 or 27.

24 We are going to get up to about 35 to 37 just in case
25 we have some fall out for whatever reason. It looks to me

1 though at the pace that we are proceeding that we could
2 possibly seat a jury either late tomorrow or first thing on
3 Friday.

4 All right. I will see you at two o'clock.

5 (Whereupon, a recess was taken.)

6 THE COURT: Is the state ready?

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

8 THE COURT: Is the defense ready?

9 MR. MORIN: Yes, sir.

10 THE COURT: Bring in Juror Number 89, Wendy Fraley.

11 JUROR NUMBER 89, WENDY

12 Y. FRALEY, having been first duly sworn, was voir
13 dired as follows:

14 EXAMINATION BY THE COURT

15 Q Good afternoon. You are Wendy Y. Fraley, is that
16 correct?

17 A Uh-huh.

18 Q And, Ms. Fraley, you understand that you are under oath
19 here this afternoon. You need to answer out loud.

20 A Yes, sir.

21 Q And you also you understand that when I sent you away
22 from the courthouse on Monday that I instructed you that you
23 were not to discuss this case with anyone, that if anyone
24 attempted to contact you that you were to report that to me
25 immediately upon your return to the courthouse, and that you

1 were to refrain from reading, watching or listening to any
2 news accounts concerning this case. And have there been any
3 violations of my instructions?

4 A No, sir.

5 Q Now, Ms. Fraley, I am going ask you some questions.
6 And thereafter one of the defense lawyers and the solicitor
7 will ask you some questions. Please keep in mind that we
8 are not in any way attempting to invade your privacy, but
9 due to the nature of the proceedings that we are about this
10 week it's extremely important that certain questions are
11 asked and answer.

12 Also, keep in mind that there are no right or wrong
13 answers to these questions. So please just answer them
14 openly and honestly and fully.

15 Also, keep in mind that no one is challenging your
16 view. We simply need to know what your view is in a
17 particular area.

18 Also, I want to let you know that if you need to have a
19 question repeated, whether it's asked by me or one of the
20 lawyers, simply let us know. If you need to have it
21 clarified or whatever, you just let us know, and we'll
22 attempt to make it more understandable for you.

23 Also, I'm going to tell you that you need to pay very
24 close attention to these questions, because during the next
25 few minutes we're probably going to be talking about some

1 things that you maybe have never even considered thinking
2 about prior to coming to court here this week.

3 I would also tell that the lawyers and I have copies of
4 your juror information sheet, because that was extremely
5 important to us in preparing for today.

6 Now, among the things that we are going to be talking
7 about over the next few minutes, will include references to
8 the word penalty. But the mere fact that I even mention
9 that word or we talk about that word does not in any way
10 indicate anything about the defendant, Mr. Moore. He is
11 assumed, he is presumed, in the law to be innocent. Do you
12 understand that?

13 A Yes, sir.

14 Q Now, if you were a juror in a criminal case could you
15 listen to the law, accept and apply that law as I would
16 instruct you as the judge of this Court even though you may
17 disagree with that law or think that it should be some other
18 way?

19 A Yes, sir.

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

23 A Yes, sir.

24 Q Now, in a criminal case, Ms. Fraley, the state has the
25 burden of proving guilt. And the burden of proof for the

1 state is proof beyond a reasonable doubt.

2 A defendant has absolutely no burden, nor
3 responsibility to prove his innocence. Do you understand
4 that legal principle?

5 A Yes, sir.

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

9 A Yes, sir.

10 Q Now, as you know from being here on Monday when I
11 addressed the entire jury panel, this is a case in which the
12 State of South Carolina is seeking the death penalty. And,
13 as such, we are going to be engaged in what we call a
14 bifurcated trial. That simply means that it's been divided
15 into two parts, the guilt phase and the 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 that first
18 phase, do you understand that that case would stop then,
19 that it would be ended?

20 A Yes, sir.

21 Q However, if you were a juror in such a case and if the
22 jury had found the defendant guilty of murder, do you
23 understand that you would then move into that second or
24 sentencing phase of the trial?

25 A Yes, sir.

1 Q During that phase of the trial, Ms. Fraley, evidence
2 would be presented in the form of aggravating circumstances,
3 as well as mitigating circumstances.

4 Now, aggravating circumstances are facts, incidents,
5 details or occurrences which the general assembly, our state
6 legislature, has declared by law would make worse, that is
7 to aggravate, the offense of murder.

8 In other words, when there is the presence of an
9 aggravating circumstance when it accompanies a murder, it
10 increases the enormity or adds to the injury of that crime
11 of murder. It's a murder that's committed in the commission
12 of or in connection with another crime or incident. Do you
13 understand what I am speaking of when I talk about an
14 aggravating circumstance?

15 A I think so.

16 Q It's something that makes a matter worse. Do you
17 understand that?

18 A Yes, sir.

19 Q Now, mitigating circumstances are incidents, details or
20 occurrences which, once again, our state legislature in
21 Columbia has declared by law would reduce the severity of
22 the crime of murder. And it may be considered by the jury
23 as extenuating or reducing the degree of responsibility for
24 that person for the crime of murder. Do you understand
25 that?

Jury qualification -- Number 89

1 A Yes, sir.

2 Q Now, if you were a juror in such a situation, I am
3 talking about the second part, the sentencing phase of a
4 death penalty trial, could you, depending upon the
5 particular facts and circumstances of the case, including
6 the consideration of aggravating, as well as mitigating,
7 circumstances and the law that I would instruct you applied
8 to that case, return a sentence of life in prison?

9 A Yes, sir.

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 any aggravating and
13 mitigating circumstances and the law that I would instruct
14 you that applied to that case, return a sentence of death?

15 A I don't know. That would be a little difficult.

16 Q Do you understand that there are two sentencing options
17 that are always available to the jury in the sentencing
18 phase, that being life imprisonment or death?

19 A Uh-huh.

20 Q And do you understand that each and every juror has to
21 be able to impose either of those sentences in that case?

22 A Yes, sir.

23 Q And are you telling me that you would be unable to
24 impose that sentence or that it would be difficult to impose
25 it?

1 A It would be difficult.

2 Q And if you felt that the circumstances attending that
3 crime warranted the imposition of the death penalty that you
4 could do that?

5 A I don't know; I don't know.

6 Q Before you came into the courtroom you were given a
7 sheet of paper with three different types of jurors. Do you
8 remember that sheet?

9 A Uh-huh.

10 Q Could you tell me which one of those three categories
11 that you fell into?

12 A None of the above really. I think it's more a case of
13 like if you hear about a case or you hear about something
14 happening to somebody else, then I would probably say I was
15 against it. But if somebody killed my dad or my brother,
16 that it hit home, then I would probably be for it.

17 Q So, it would have to be someone that you actually knew
18 before you could impose the death penalty. Is that what you
19 are telling me?

20 A It would almost have to be that they did it to my
21 family or something like that, yeah.

22 THE COURT: Okay. Mr. Morin.

23 MR. MORIN: I have no questions.

24 THE COURT: Mr. Gowdy.

25 MR. GOWDY: I have no questions, Your Honor.

1 THE COURT: Ms. Fraley, I want to thank you very much
2 for your participation here this week on Monday and today.

3 This is going to conclude your responsibilities in this
4 matter. On behalf of the State of South Carolina, most
5 particularly Spartanburg County, I thank you for having been
6 here and participating in this process. You are excused.

7 (Whereupon, the juror was excused from the courtroom.)

8 THE COURT: Let the record reflect that Juror Number
9 89, Wendy Fraley, is not qualified to serve as a juror in
10 this case as she would be unable to impose the death penalty
11 in any situation.

12 Number 265, Sandra Taylor.

13 JUROR NUMBER 265,
14 SANDRA S. TAYLOR, having been first duly sworn, was
15 voir dired as follows:

16 EXAMINATION BY THE COURT

17 Q Good afternoon, Ms. Taylor. You are Sandra S. Taylor,
18 is that correct?

19 A Correct.

20 Q And, Ms. Taylor, you understand that you are under oath
21 here today.

22 A Correct.

23 Q And you also recall that on Monday before I dismissed
24 you that I give you instructions that you were not to
25 discuss this case with anyone, that if anyone attempted to

1 contact you concerning this case that you were to report
2 that to me upon your return to the courthouse, and also that
3 you were not to read, watch or listen to any news accounts
4 concerning this case.

5 A Correct.

6 Q Have there been any violations of my instructions?

7 A No, sir.

8 Q Now, Ms. Taylor, over the next minutes I'm going to ask
9 you a few questions. Thereafter one of the defendant's
10 lawyers will present some questions to you, as well as one
11 of the solicitors.

12 Please keep in mind that we are not in any way
13 attempting to invade your privacy, but due to the
14 proceedings that we are about here this week it's extremely
15 important that certain questions are asked and answered.

16 Please keep in mind that there are absolutely no right
17 or wrong answers to these questions. So, just answer them
18 openly and honestly and fully.

19 Also, keep in mind that no one is challenging the view
20 that you might have. We simply need to know what your views
21 are in particular areas.

22 Also, I would encourage you that if you do not
23 understand a question that I ask or one of the lawyers,
24 simply let us know. And we will attempt to rephrase it,
25 repeat it, whatever you need, so that you can properly

1 understand and respond to the question.

2 Also, I would ask that you listen very carefully to
3 these questions, because over the next few minutes we're
4 probably going to be considering and talking about some
5 things that you maybe have never thought about prior to
6 coming to court here this week.

7 I would also tell you that the lawyers and I have
8 copies of your juror information questionnaire, because that
9 was important to us in preparing for today.

10 Now, among the things that he are going to be talking
11 about during the next few minutes, will be references to the
12 word or the term penalty. But the mere fact that we even
13 mention that word does not in any way indicate anything
14 about the defendant, Mr. Moore. He is presumed in the law
15 to be innocent. Do you understand that?

16 A Yes, sir.

17 Q Now, if you were a juror in criminal case, Ms. Taylor,
18 could you listen to the law, accept and apply that law as I
19 would instruct you as the judge of this Court even though
20 you may disagree with that law or think it ought to be some
21 other way?

22 A Yes, sir, I think 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, sir.

2 Q Now, in a criminal case, Ms. Taylor, the state has the
3 burden of proving guilt. And the burden of proof for the
4 state is proof beyond a reasonable doubt.

5 A defendant has absolutely no burden, no responsibility
6 to prove his innocence. Do you understand that?

7 A Yes, sir.

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

11 A Yes, sir.

12 Q Now, as you know from being here on Monday, this is a
13 case in which the State of South Carolina is seeking the
14 death penalty. And, as such, we are going to be involved in
15 what we call a bifurcated trial. That simply means it's
16 divided into two parts. The first part is known as the
17 guilt phase; the second part the sentencing phase.

18 If you were a juror in such a case and if the jury
19 found the defendant not guilty of murder, do you understand
20 that that trial would end at that point and there would be
21 no necessity of moving to the second phase?

22 A Yes, sir.

23 Q However, if you were a juror in such a case and if the
24 jury had found the defendant guilty of murder, do you
25 understand that you would then move to that second or

1 sentencing phase of the trial?

2 A Yes, sir.

3 Q Now, during that phase of the trial, Ms. Taylor,
4 evidence would be presented to the jury in the form of
5 aggravating circumstances, as well as mitigating
6 circumstances.

7 Now, aggravating circumstances are facts, incidents,
8 details or occurrences which our general assembly, the
9 Legislature of the State of South Carolina, has declared by
10 law would make worse, that is to aggravate, the crime of
11 murder.

12 In other words, when the presence of an aggravating
13 circumstance accompanies a murder, it increases the enormity
14 or adds to the injury of that crime of murder. It's a
15 murder that's committed in the commission of or in
16 connection with another crime or incident. Do you
17 understand that?

18 A Yes, sir.

19 Q Now, mitigating circumstances are also incidents,
20 details or occurrences which our General assembly has
21 declared by law reduces the severity of the crime of murder.
22 And these mitigating circumstances may be considered as
23 extenuating or as reducing the degree of responsibility for
24 the crime of murder. Do you understand that?

25 A Yes, sir.

1 Q Now, if you were a juror in that situation, Ms. Taylor,
2 I am talking about the second phase, the sentencing phase of
3 a death penalty case, could you, depending upon the
4 particular facts and circumstances of that case, once again,
5 including the consideration of aggravating, as well as
6 mitigating, circumstances and the law that I would instruct
7 you that applied to that case, return a sentence of life in
8 prison?

9 A Yes, sir.

10 Q If you were a juror in that situation could you, once
11 again, depending upon the particular facts and circumstances
12 of that case, also including the consideration of any
13 aggravating and mitigating circumstances and the law that I
14 would instruct you that applied to that case, return a
15 sentence of death?

16 A Yes, sir.

17 Q Now, Ms. Taylor, do you understand that there are
18 always two sentencing options that are available to the jury
19 in the sentencing phase of such a trial, that being life
20 imprisonment or death?

21 A Yes, sir.

22 Q And do you understand that each and every juror has to
23 be capable of imposing either of those sentences?

24 A Yes, sir.

25 Q Now, Ms. Taylor, if you were chosen for service on this

1 jury, you would be sequestered. That's kind of a fancy word
2 meaning put up or housed in a motel for the duration of the
3 trial. I have no way of knowing how long it would last. At
4 the outside I would say probably seven to ten days from
5 start to finish, but it could be less than that.

6 Except for the personal inconvenience that you would
7 suffer, would this pose a serious danger to the health or
8 well-being of yourself or of those dependent upon you?

9 A It possibly could. I have an elderly mother that is
10 not in the best of health, so there is a possibility it
11 would.

12 Q Is there anyone else who could care for her in your
13 absence?

14 A I have children, and my husband possibly could.

15 Q Okay. Thank you, ma'am. I appreciate you responding
16 to my questions. Please answer any questions that the
17 defense or the state may have.

18 EXAMINATION BY MR. MORIN

19 Q Ms. Taylor, my name is Michael Morin. And I, along
20 with Keith Kelly and Jennifer Johnson, represent Richard
21 Moore in this case.

22 I would like to thank you for answering the
23 questionnaire that came in. I know this is difficult to be
24 put on the spot and asked these questions, but we try to
25 take care of them as quickly as possible.

1 I notice from looking at your questionnaire you work
2 for DHEC right now.

3 A Yes, sir.

4 Q Could you tell me a little bit about your job?

5 A I'm a registered nurse in the Department of Special
6 Needs, which is actually children's rehab services. I deal
7 with children that have very special needs.

8 Q Okay. So, but you have the direct contact with those
9 children.

10 A Yes.

11 Q Okay. And I also noted that you are a member of
12 Mothers Against Drunk Driving.

13 A Yes, sir.

14 Q Have you been a member of that organization for a long
15 time?

16 A Off and on for a good while, yes, sir.

17 Q Okay.

18 A I mainly just make donations.

19 Q I see. When you answered the judge's questions and
20 indicated that you could give both life and death, that
21 indicates that you have some view about the death penalty
22 and that you have some feelings about it. Could you share
23 those with us?

24 A I am not sure I can really explain that. I think
25 certain circumstances that that is needed, but I also, from

1 my religious bringing up, I have, I guess, reserved feeling
2 also. So, but I feel like I could, you know, do that if it
3 came to that.

4 Q All right. And you understand in the process of this
5 that the state will present what the judge has already told
6 you about aggravating circumstances. And they would have to
7 convince you beyond a reasonable doubt that at least one of
8 those things existed before you got to the death, the
9 question of death.

10 A Right.

11 Q And even then, you understand even if they had
12 convinced you, it would still be your decision as one of 12
13 jurors to decide whether or not you wanted to give the death
14 penalty.

15 A Yes, sir.

16 Q Okay. And you also, and you may not know, but if that
17 was your decision, there would be a sheet with 12 lines on
18 it, and each one of the jurors would have to sign on there
19 saying that death was their recommendation.

20 A Yes, sir.

21 Q And do you think you would be able to sign your name to
22 that type of form?

23 A If I was convinced, yes.

24 Q Okay.

25 MR. MORIN: If I may just have a moment.

1 THE COURT: Yes, sir.

2 (Pause.)

3 Q Thank you very much for your --

4 THE COURT: Solicitor Gowdy.

5 MR. GOWDY: May it please the Court, Your Honor.

6 EXAMINATION BY MR. GOWDY

7 Q Good afternoon, Ms. Taylor.

8 A Good afternoon.

9 Q My name is Trey Gowdy. I'm the solicitor here in
10 Spartanburg and Cherokee Counties.

11 A Yes.

12 Q Seated with me is Barry Barnette in the middle and
13 Donnie Willingham to his left. They are my deputy
14 solicitors. We're prosecutors. District attorney is the
15 term that's used on television sometimes.

16 I noticed on your questionnaire that you had served
17 previously as a grand juror.

18 A In federal court, yes.

19 Q In Greenville?

20 A In Greenville.

21 Q When would that have been?

22 A Probably at least 15 years ago.

23 Q Okay. What kind of work do you do with the special
24 needs children at DHEC as a registered nurse?

25 A Well, we have clinics where we have doctors that come

1 and treat the children. We also do a case management type
2 service. We do referrals to doctors and hospitals and
3 coordinate the care of that for the parent.

4 Q And you have been doing that for how long?

5 A About nine or ten years.

6 Q And I noticed on your questionnaire that you are of the
7 Baptist faith.

8 A Yes, sir.

9 Q I want to ask you personal questions. It is kind of
10 hard to get around it in a format like this. Do you mind if
11 I ask which church you attend, if you do attend a church
12 regularly?

13 A Roebuck Baptist.

14 Q Roebuck Baptist, which I think is a Southern Baptist
15 church.

16 A Correct.

17 Q Would your -- in reference in answering one of
18 Mr. Morin's questions, you commented that your religious
19 views might affect in some way, or does affect, your opinion
20 on the death penalty.

21 A Yes, sir.

22 Q Do you think that those views would prevent or
23 substantially impair you from being able to actually vote to
24 impose the death penalty if you thought it was appropriate
25 under the facts and circumstances?

1 A I don't think it would.

2 Q Do you think -- keeping in mind what the judge will
3 give you as the law -- that you would actually be able to
4 sign your name to a verdict form if, in fact, your verdict
5 and the verdict of your 11 other jurors was for death?

6 A I think so.

7 Q Would you be able to come into this courtroom and
8 announce that verdict publicly?

9 A I don't like to get up in front of the public too much,
10 but if I had to, I think so.

11 MR. GOWDY: Your Honor, if I could have just one
12 moment.

13 (Pause.)

14 Q Thank you very much, Ms. Taylor.

15 MR. GOWDY: No further questions, Your Honor.

16 THE COURT: Anything else, Mr. Morin?

17 MR. MORIN: No, sir.

18 THE COURT: Ms. Taylor, I want to thank you very much
19 for your participation here on Monday, as well as today.

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 remind you as you leave the courthouse today that you are
23 not to discuss this case with anyone, whether it be fellow
24 jurors, family, friends or anyone else that you might come
25 into contact with. If anyone attempts to contact you

1 concerning this case, I want you to gather as much
2 information about that person or persons as you can, and
3 report that to me immediately, because that's a very serious
4 matter, and I would deal with that person accordingly.

5 I would also instruct you that you are to continue my
6 previous instruction that you are not to read, watch or
7 listen to any news accounts concerning this case. Very
8 simply put, if you are selected as a juror in this case, all
9 I would want you to consider in this matter is what you see
10 and hear in this courtroom, nothing more and nothing less.

11 Now, when you reported on Monday, you were given a
12 pamphlet from the clerk of court that had to do with being a
13 juror, and information, that type of thing. On the front of
14 that pamphlet was an 800 number that had been stamped on
15 there. You need to call that number tonight after six
16 o'clock.

17 There is going to be a message on there that will
18 probably be one of two possible messages that I will have
19 the clerk to leave. The first one may say all jurors in the
20 State vs. Moore are to call back at this number tomorrow at
21 a certain time; or, in the alternative, it may say all
22 jurors in the case of the State vs. Moore are to report to
23 the Spartanburg County Courthouse at a particular time.

24 And please bring your luggage with you and leave it in
25 your car. The reason for that is when you leave here today,

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1 you need to go home and start packing, because if you are
2 selected to serve as a juror in this case when you come back
3 either tomorrow or Friday, whenever it might be, then if you
4 are selected the jury custodians would take you and your
5 colleagues and transport you and your belongings to the
6 motel that you would stay in throughout the course of our
7 trial.

8 If you are not selected, then we would send you back
9 home with our thanks for having been here and participated
10 in this process.

11 So, the long and the short of it is in about three and
12 a half hours, or a little bit more than that, you can call
13 this courthouse and find out what you are to do for the next
14 step. But you need to be packing and getting ready in the
15 event that you are selected to serve as a juror. Then you
16 would stay with us for the duration of the trial.

17 Thank you very much. And I look forward to seeing you
18 back here tomorrow hopefully. If not, Friday at the latest.

19 (Whereupon, the juror was excused from the courtroom.)

20 THE COURT: Let the record that Juror Number 265,
21 Sandra Taylor, is qualified to serve as a potential juror in
22 this case pursuant to Section 16-3-20 of our code.

23 132, Edward Huffman.

24 JUROR NUMBER 132,

25 EDWARD HUFFMAN, having been first duly sworn, was

1 voir dired as followed:

2 EXAMINATION BY THE COURT

3 Q Good afternoon. You are Edward T. Huffman, correct?

4 A Yes, Your Honor.

5 Q Mr. Huffman, you aware that you are under oath here
6 today.

7 A That's right.

8 Q And you also remember that when you were in court on
9 Monday when I dismissed you that I gave you some
10 instructions that you were not to discuss this case with
11 anyone, if anyone attempted to contact you concerning this
12 matter that you were to report that to me upon your return
13 to the courthouse today, and also that you were not to read,
14 watch or listen to any news accounts about this case. Have
15 there been any violations of those instructions?

16 A No, Your Honor.

17 Q Now, Mr. Huffman, I am going to ask you some questions.
18 Thereafter one of the defendant's lawyers and one of the
19 state's lawyers will ask you some questions.

20 Please keep in mind that we are not in any way
21 attempting to invade your privacy, but it is necessary
22 because of what we're about here this week that certain
23 questions are asked and answered.

24 Keep in mind that there are no right or wrong answers
25 to these questions. If you would, just answer them openly

1 and honestly and fully, and keep in mind that no one's
2 challenging the view that you might have. We simply need to
3 know what your views are in particular areas.

4 If at any time you do not understand me or one of the
5 lawyers and questions that we ask, please let us know, and
6 we will attempt to clarify it for you.

7 Also, I ask that you pay very close attention to the
8 questions you're being presented with, because during the
9 next few minutes we are probably going to be asking some
10 questions about things that you have never considered prior
11 to coming to court here this week.

12 I would also tell that the lawyers and I have copies of
13 your juror information sheet, because that was important to
14 us in getting ready for today.

15 Now, among the things that he are going to be talking
16 about, will be references to the word penalty, but the mere
17 fact that we even talk about or mention the word penalty
18 does not in any way indicate anything about the defendant,
19 Mr. Moore. He is presumed in the law to be innocent. Do
20 you understand that?

21 A Yes, sir.

22 Q Now, if you were chosen as a juror in a criminal case,
23 Mr. Huffman, could you listen to the law, accept and apply
24 that law that I would instruct you as the judge of this
25 Court even though you may disagree with that law or think

1 that it should be some other way?

2 A Yeah. I could agree with you.

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

6 A Can you repeat that again? I didn't understand it.

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

11 A Anything that was evidence in the courtroom, that's my
12 opinion.

13 Q Have you read, heard or seen anything about this case?

14 A Nothing at all.

15 Q Now, in a criminal case, Mr. Huffman, the state has the
16 burden of proving a defendant's guilt. And the burden of
17 proof that the state must meet is what we call proof beyond
18 a reasonable doubt.

19 And a defendant has absolutely no burden, no
20 responsibility to prove his innocence. Do you understand
21 that legal principle?

22 A Yes, sir.

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

1 A Yes, sir.

2 Q You need to answer out loud for me.

3 A Yes, sir.

4 Q Now, as you know from being here on Monday when I
5 talked to the entire jury panel, this is a case in which the
6 State of South Carolina is seeking the death penalty. And,
7 as such, we are involved in what we call a bifurcated trial.
8 That simply means that it's a trial divided into two parts.
9 The first part is called the guilt phase; and, if necessary,
10 the second part is called the sentencing phase.

11 If you were a juror in such a case and if the jury
12 found the defendant not guilty of murder in the guilt phase,
13 do you understand that the trial would stop at that point in
14 time?

15 A I don't understand it.

16 Q Well, do you understand that if the defendant was found
17 not guilty of murder that the trial would end then?

18 A No. I mean, if there is two parts to it --

19 Q No, sir. I am telling you that if he is found not
20 guilty there wouldn't be a second part.

21 A Yeah, yeah. I understand.

22 Q Do you understand that?

23 A Yeah. I understand that.

24 Q And, conversely, and on the other hand, if you were a
25 juror in such a situation and the jury found the defendant

1 guilty of murder, do you understand that you would then have
2 that second part of the trial?

3 A I understand that.

4 Q During that second part of the trial evidence would be
5 presented in the form of aggravating circumstances, as well
6 as mitigating circumstances.

7 Now, aggravating circumstances are facts, incidents,
8 details or occurrences which the general assembly of our
9 state, that's our state legislature that meets in Columbia,
10 has declared by law would make worse, that is to aggravate,
11 the crime of murder.

12 In other words, where you have an aggravating
13 circumstance that goes along with or accompanies the crime
14 of murder, it adds to the enormity or the injury of that
15 crime of murder. It is a murder that's committed in the
16 commission of or in connection with another crime or
17 incident. Do you understand what I am saying?

18 A Yes, sir.

19 Q Mitigating circumstances are also incidents, details or
20 occurrences which our general assembly, once again, has
21 declared by law reduces the severity of the crime of murder.
22 And the jury may consider these mitigating circumstances as
23 extenuating as reducing the degree of responsibility for the
24 crime of murder. Do you understand what I mean by that
25 mitigating circumstances?

1 A Not really, no.

2 Q That's something that the jury could take into
3 consideration or into effect that would lessen the crime or
4 the offense of murder.

5 A Yeah.

6 Q All right, sir.

7 A I understand.

8 Q Now, if you were a juror in that situation, talking
9 about the sentencing phase of a death penalty case, could
10 you, depending upon the particular facts and circumstances
11 of that case, including the consideration of those
12 aggravating and mitigating circumstances that would be
13 presented and the law that I would instruct you that applied
14 to the case, return a sentence of life in prison?

15 A Would it turn it?

16 Q Could you return a sentence of life in prison?

17 A Yes, sir.

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 those
21 aggravating, as well as mitigating, circumstances and the
22 law that I would instruct you that applied to that case,
23 return a sentence of death?

24 A Yes, sir.

25 Q Now, you understand, Mr. Huffman, that in a death

1 penalty case, the sentencing phase, that second phase, that
2 there are always two sentencing options that are available
3 to the jury, that being life imprisonment or death. Do you
4 understand that?

5 A Yes, sir; yes, sir. I am sorry.

6 Q And you understand that each and every juror must be
7 able to impose either of those sentences.

8 A Yes, sir.

9 Q Now, if you were chosen for service on this jury you
10 would be sequestered, which means you would be housed, in a
11 motel for the entire time of that trial. Now, I have no way
12 of knowing how long it is going to last, and I would say
13 from start to finish no more than seven to ten days. It
14 could be 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 on you?

18 A No.

19 Q Thank you for answering my questions. Please answer
20 any of Mr. Kelly's questions, please, sir.

21 MR. KELLY: May it please the Court, Your Honor.

22 THE COURT: Yes, sir.

23 EXAMINATION BY MR. KELLY

24 Q Mr. Huffman, I am Keith Kelly, and along with Michael
25 Morin and Jennifer Johnson, we represent Richard Moore on

1 these proceedings. As the Court has indicated, we are -- we
2 have a copy of your questionnaire. I thank you for taking
3 time to complete that for us.

4 I notice that you have small children, five and seven,
5 and not to embarrass you, of course. You were kind enough
6 to share that you were separated. But do you have the
7 custody of those children?

8 A No, sir, I don't.

9 Q And they are with their mother.

10 A Right now they are.

11 Q Okay. I was going to inquire about getting them to
12 daycare or school or something. But that would not be a
13 problem.

14 A No, sir.

15 Q And you also indicated in your questionnaire that your
16 brother-in-law, Tim Waldrop, was convicted of the crime of
17 murder.

18 A Yeah.

19 Q Was that your wife's brother?

20 A That's my wife's brother.

21 Q That happened here in Spartanburg County a few years
22 ago?

23 A Yeah, it did.

24 Q Okay. Under media, you told us that you watched news
25 and sports. On sports do you watch football, racing, all of

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1 the above?

2 A Football and basketball.

3 Q Football and basketball.

4 Do you have any sticker on your car, any particular
5 football or basketball team, maybe Clemson or Carolina or
6 Panthers or anything like that?

7 A No.

8 Q All right, sir. And magazines, do you subscribe to any
9 magazines at all?

10 A No, not at all.

11 Q A lot of people are flying the American flag at this
12 point on their automobile, whether it be a mini flag or a
13 magnet. Do you have any such thing on your automobile?

14 A Uh-uh.

15 Q Okay. Do you own any flags whatsoever?

16 A No.

17 Q Do you own firearms?

18 A Well, I hunt. I just got a rifle and stuff maybe.

19 Q Okay. Just got the one?

20 A I got a rifle and a shotgun.

21 Q All right, sir.

22 A That's all.

23 Q Both of them are long arms. No handgun?

24 A I don't have no pistols at all.

25 Q All right, sir. Do you belong to any hunt club?

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1 A I got two. I belong to two hunt clubs.

2 Q All right, sir. Could you tell me what they are?

3 A One is in Enoree, Muscadine Hunt Club, and then Camp
4 Croft in Spartanburg.

5 Q Okay. What's the one in Camp Croft? What do they call
6 themselves?

7 A We don't. We just call it Camp Croft. I mean, it is
8 not a name.

9 Q Okay. All of us have our views on the death penalty or
10 come to your views on the death penalty from some source,
11 whether it be from our church -- I noticed you put Freewill
12 Baptist church -- or whether it be from our family,
13 grandmama, something, grandfather or people that we work
14 with. And you've indicated to Judge Clary that you believe
15 in the death penalty in some instances, is that right?

16 A Some instances.

17 Q In some instances.

18 A Uh-huh.

19 Q And if the state is able to prove one of those
20 instances, high and aggravated, to your satisfaction beyond
21 a reasonable doubt, then you could consider the death
22 penalty at that point. Do you understand that?

23 A Uh-huh.

24 Q Do you understand that even if the state proved one of
25 those aggravating circumstances to you that you are not

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1 required to return a sentence of death?

2 A Uh-huh.

3 Q Do you understand that?

4 A Yeah, I understand that.

5 Q Even though they prove one, you could return a sentence
6 of life.

7 A Yeah.

8 Q To what do you attribute or where do you sort of base
9 your views on the death penalty?

10 A Well, my views about the death penalty is, you know, if
11 it is cold-blooded, I mean, you know, if somebody is out to
12 get somebody, and, you know, just, you know, commits the
13 murder or, you know, cold-blooded, I guess you could say,
14 that's the way I look at it, that way. And you have got
15 another incident, you know, for life imprisonment, you know,
16 if they went to do a crime or whatever, and/or, I mean, got
17 shot or whatever and they died, I mean, you know, I just
18 say --

19 MR. BARNETTE: Your Honor, I am going to object at this
20 time.

21 THE COURT: Yes, sir. We don't need specific
22 instances. We need your general opinion as to what it is.

23 THE JUROR: Okay.

24 A That's my opinion.

25 Q Thank you, sir. Thank you very much.

1 THE COURT: Solicitor.

2 MR. BARNETTE: May it please the Court, Your Honor.

3 Thank you.

4 EXAMINATION BY MR. BARNETTE

5 Q Good afternoon, Mr. Huffman.

6 A Good afternoon.

7 Q My name is Barry Barnette. I'm one of the deputy
8 solicitors. Sitting along with me is Trey Gowdy. He's the
9 solicitor in this circuit, along with one of the other
10 deputy solicitors, Donnie Willingham.

11 I'd just like to ask you a few follow-up questions to
12 Mr. Kelly's questions or whatever.

13 He had asked you about the case involving, I believe,
14 your brother-in-law.

15 A Yes.

16 Q And were you present at that hearing or that trial?

17 A I was; not the whole hearing, but I was there. I did
18 come.

19 Q Did you watch the end of it or the beginning of it or
20 just parts of it?

21 A It has been about ten years ago. I might have went for
22 the beginning of it. No. It was at the end of it, because
23 when they sentenced him.

24 Q Was you dating his sister at that time?

25 A I was married to her.

1 Q Married to her. How long was you married to her?

2 A About ten years.

3 Q And how did you feel about that, going and watching the
4 sentencing and so forth?

5 A I can't comment. I mean, he was playing a game, and I
6 just can't comment on it. I mean, he got what he got.
7 That's all I can say really.

8 Q Were you angry at the process? Or what was your
9 feelings about the process itself?

10 A I wasn't angry or nothing. I mean, I was hurting for
11 my wife because of the sentence he got but --

12 Q Was you upset with the sentence that he got?

13 A Well, I, I can't comment. I don't know, I mean.

14 THE COURT: No, sir. I need to know the answer.

15 THE JUROR: Was I upset?

16 THE COURT: Yes, sir.

17 A Well, I went by whatever the law gave him. You know, I
18 wasn't upset. I mean, that's what he got if that's what he
19 deserved. And then whatever the law was, you know, that was
20 the law. And what they gave him, you know, I was for it
21 because he did wrong. That's the way I look at it.

22 Q I understand. Do you think that instance, your
23 feelings about what happened that day, would affect your
24 ability to be a juror in this case?

25 A No, not at all.

1 Q You realize, like the judge has explained to you and
2 whatever, if it goes to a sentencing phase and if the state
3 proves one aggravating circumstance you possibly -- it would
4 be up to you and 11 other jurors to determine if he receives
5 death or life. Obviously, one of those circumstances needs
6 to be proven before you could give him the death penalty.
7 But, at the same time, you would still have the same option
8 of life.

9 Do you think you could come into this courtroom and if
10 you was asked to announce your verdict -- could you announce
11 the death verdict to the Court?

12 A Yeah, I could.

13 Q And do you think -- there is a sentencing sheet, and on
14 there will be some information about the sentence. And it
15 is like the judge in a regular case will go ahead and give
16 the sentence. Do you think that you could sign that verdict
17 form announcing the verdict?

18 A Yeah.

19 Q Do you think that you could be the last person to sign
20 that, knowing that you would be the last person, the final
21 person, on that form?

22 A I could.

23 Q And you realize that -- the incident occurred back,
24 involving your brother-in-law, that the solicitors in this
25 case wasn't involved in that case. Do you understand that?

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1 A I understand.

2 MR. BARNETTE: One moment, Your Honor, please.

3 (Pause.)

4 Q In your answers to Mr. Kelly's, or whatever, you gave
5 your personal beliefs about the death penalty and so forth.

6 Do you think that any personal differences you may have
7 in the law -- the judge will be giving you the law that you
8 will apply to the facts of this case. Do you think any of
9 your personal views would conflict with anything the judge
10 would instruct you on?

11 A No.

12 Q Could you follow exactly what the judge gives you from
13 the law and apply to the facts of this case?

14 A Yeah, yeah, that and the evidence or whatever.

15 Q Thank you, Mr. Huffman.

16 MR. BARNETTE: Thank you, Your Honor.

17 THE COURT: Anything else, Mr. Kelly?

18 MR. KELLY: Nothing, Your Honor.

19 THE COURT: Anything else from the state?

20 MR. BARNETTE: Nothing from the state, Your Honor.

21 THE COURT: Mr. Huffman, I want to thank you very much
22 for your participation here today, as well as on Monday.

23 I find that you are qualified to serve as a potential
24 juror in this case. And with that qualification comes some
25 more instruction.

1 First of all, you are not to discuss this case with
2 anyone that you might come in contact with -- fellow jurors,
3 family, friends or anyone else.

4 Also, if anyone should attempt to contact you
5 concerning this case, I want you to gather as much
6 information about that person as you possibly can and report
7 that to me immediately, because that's a very serious
8 matter, and I would deal with the person that attempted to
9 contact you accordingly.

10 Also, I instruct you that you are not to read, watch or
11 listen to any news accounts concerning this particular case.
12 Very simply put, if you are selected as a juror in this case
13 all I would want you to consider in this matter is what you
14 see and hear in this courtroom, nothing more and nothing
15 less.

16 Now, when you came in on Monday morning you were given
17 a juror information pamphlet. On the front of that was an
18 800 number that was stamped, I think, in maybe a red stamp
19 on it. You're to call that number tonight after six
20 o'clock.

21 Now, between now and then you need to go home and start
22 packing your bags, because either tonight when you call in
23 or tomorrow, if you are told to call back at that time,
24 sometime tomorrow or Friday you are going to be coming back
25 to this courthouse with your bags packed.

1 When you come back, if you are selected as a juror --
2 you need to leave your bags in your vehicle. Don't bring
3 them into the courthouse. If you are selected as a juror,
4 then you would be taken, along the other jurors, to the
5 motel where you would be staying. And you would stay with
6 us until the trial is completed.

7 If you are not selected, we are going to thank you very
8 much for having been here, and we will send you on your way.
9 And you'll go back to your daily activities.

10 Now, when you call tonight, listen very carefully to
11 the message that the clerk will leave. It may say something
12 like all jurors in the case of the State vs. Moore call back
13 tomorrow, Thursday, October the 18th, at a particular time;
14 or it may say all jurors in the case of the State vs. Moore
15 will report to the Spartanburg County Courthouse with their
16 belongings, with their luggage, which they will leave in
17 their car at a particular time tomorrow.

18 Whatever the instruction is, you follow that. If you
19 are told to call back, do that. If you are told to come in,
20 do that.

21 But you need to go home and start packing. And I will
22 look forward to seeing you here hopefully sometime tomorrow;
23 if not, Friday morning at the latest. Thank you, sir.

24 THE JUROR: Thank you.

25 (Whereupon, the juror was excused from the courtroom.)

1 Monday that you were not to discuss this case with anyone,
2 that if anyone attempted to contact you concerning this case
3 that you were to report that to me, that you were not to
4 read, watch or listen to any news accounts concerning this
5 case. Have there by any violations of those instructions?

6 A No, sir.

7 Q Now, over the next few minutes, Mr. White, I am going
8 to ask you a few questions. Thereafter one of the defense
9 lawyers will ask you some questions, and then one of the
10 solicitors will pose some questions to you.

11 Please understand that we are in no way attempting to
12 invade your privacy, but because of the nature of the
13 proceedings that we are about here this week it is extremely
14 important that we ask certain questions and have answers to
15 them.

16 Please understand that there are no right or wrong
17 answers to these questions. Answer them openly and honestly
18 and fully.

19 Also, keep in mind that no one is challenging the view
20 that you might have. We simply need to know what your view
21 is in particular areas.

22 Also, if you do not understand a question or need to
23 have it clarified, repeated, whatever, simply let me or the
24 lawyer asking the question know and we'll accommodate you in
25 that regard.

1 Also, I would ask that you pay very close attention to
2 the questions that are presented to you, because during the
3 next few minutes we're probably going to talk about some
4 things that you maybe have never even considered before
5 coming to court this week.

6 I would also tell you that the lawyers and I have
7 copies of your information sheet, because that was extremely
8 important to us in presenting or getting prepared for this
9 presentation this afternoon.

10 Now, among other things this afternoon that we're going
11 to talk about, will include reference to the word penalty.
12 The mere fact that I even mention that word or bring it up
13 does not in any way indicate anything about the defendant,
14 Mr. Moore. He is presumed in the law to be innocent. Do
15 you understand that?

16 A Yes, sir.

17 Q Now, if you were a juror in a criminal case could you
18 listen to the law, accept and apply that law as I would
19 instruct you as the judge of this Court even though you may
20 disagree with that law that I would give you or think that
21 it should be some other way?

22 A Yes, sir.

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, sir.

2 Q Now, in a criminal case, Mr. White, the state has the
3 burden of proving guilt. The burden of proof for the state
4 of South Carolina is proof beyond a reasonable doubt.

5 A defendant has absolutely no burden, no responsibility
6 to prove his innocence. Do you understand that?

7 A Yes, sir.

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

11 A Yes, sir.

12 Q Now, as you know from being in the courtroom on Monday,
13 this is a case in which the State of South Carolina is
14 seeking the death penalty. And, as a result of that, we are
15 going to be engaged in what we call a bifurcated trial.
16 That simply means it's divided into two parts, guilt phase,
17 sentencing phase.

18 If you were a juror in such a case, a death penalty
19 case, and if the jury found the defendant not guilty of
20 murder in that first phase, do you understand that there
21 would be no necessity to have that second or sentencing
22 phase of the trial?

23 A Yes, sir.

24 Q However, if you were a juror in such a situation and
25 the jury found the defendant guilty of murder, do you

1 understand that you would then proceed into that second
2 phase of the trial?

3 A Yes, sir.

4 Q Now, Mr. White, during that phase of the trial evidence
5 would be presented to the jury in the form of aggravating
6 circumstances, as well as mitigating circumstances.

7 Now, aggravating circumstances are facts, incidents,
8 details or occurrences which our state legislature, the
9 general assembly, has declared by law would make worse, that
10 is to aggravate, the crime 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. It's a murder
14 committed in the commission of or in connection with another
15 crime or incident. Do you understand that?

16 A Yes, sir.

17 Q Now, mitigating circumstances are also incidents,
18 details or occurrences which our state legislature has, once
19 again, declared by law reduces the severity of the crime of
20 murder and may be considered by the jury as extenuating or
21 as reducing the degree of responsibility for the crime of
22 murder. Do you understand what I mean when I speak of a
23 mitigating circumstance?

24 A Yes, Your Honor.

25 Q If you were a juror in such a situation, the sentencing

1 phase of a death penalty case, could you, depending upon the
2 particular facts and circumstances of that case, including
3 the consideration of aggravating and mitigating
4 circumstances and the law that I would instruct you that
5 applies to that case, return a sentence of life in prison?

6 A Yes, sir, depending on the facts.

7 Q If you were a juror in that situation could you,
8 depending upon the particular facts and circumstances of
9 that case, once again, including the consideration of any
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 death?

13 A Yes, sir.

14 Q Now, you understand, Mr. White, that there are always
15 two sentencing options that are available to the jury in a
16 death penalty case, sentencing phase. That's life
17 imprisonment or death.

18 A Yes, Your Honor.

19 Q And you understand that each and every juror has to be
20 able to impose both of those sentences.

21 A Yes, Your Honor.

22 Q Now, if you were chosen for service on this jury, you
23 would be sequestered, housed in a motel, for the duration of
24 the trial. I don't how long it's going to last. I would
25 say at the outside seven to ten days. It could be less than

1 that.

2 Except for the personal inconvenience that you would
3 suffer, would this pose a serious danger to the health or
4 well-being of yourself or of those dependent on you?

5 A No, Your Honor.

6 Q Thank you for responding to my questions. Please
7 answer any of Mr. Kelly's questions at this time.

8 MR. KELLY: May it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 EXAMINATION BY MR. KELLY

11 Q Mr. White, I am Keith Kelly, and along with Michael
12 Morin and Jennifer Johnson seated here, we represent Richard
13 Moore in this case.

14 As you have learned since Monday of this week, and more
15 particularly today, the state is seeking the death penalty
16 against Mr. Moore in this particular case.

17 In reviewing your interview sheet or your questionnaire
18 sheet that, as the judge said, we have been made privy to, I
19 noticed that you receive certain magazines, American
20 Rifleman, is that right?

21 A That's correct.

22 Q All right, sir. Are there other magazines that are in
23 your home?

24 A Sports Illustrated. I am sorry. I should have written
25 that down, but, yeah. Some magazines that my wife gets,

1 Ladies Home Journal, Hobby Builders or Hobby Craft
2 magazines, something along those lines. I don't know the
3 title of that.

4 Q Yes, sir. And also, of course, those that you are a
5 member of N. R. A. Have you been a longstanding member of
6 N. R. A?

7 A Two years.

8 Q All right, sir. And do you own firearms?

9 A Yes, sir, I do.

10 Q Do you own more than five?

11 A Yes, sir, I do.

12 Q Okay. And do you own not only long guns but also
13 handguns?

14 A I recently inherited some long guns. So, yes, I do. I
15 did not actually purchase those for myself.

16 Q Okay. But you have both kinds?

17 A I do have both kinds, yes, sir.

18 Q And on your handguns, would you tell me the caliber of
19 those?

20 A I have handguns of .22 caliber, .38 Special, .45
21 caliber and .44 magnum.

22 Q All right, sir. In recent times a lot of people have
23 begun to fly the American flag either on their car or at
24 home. Do you have a flag on your car, whether it be a flag
25 or a magnet type?

Jury qualification -- Number 290

- 1 A Actually, I do not.
- 2 Q Do you have the flag at home?
- 3 A I do.
- 4 Q Do you fly it regularly?
- 5 A No, sir.
- 6 Q Other than the American flag, do you own any other
7 flag?
- 8 A A state -- South Carolina State Flag, Palmetto.
- 9 Q Yes, sir. The Palmetto?
- 10 A Right.
- 11 Q Okay. On the questionnaire you left blank law
12 enforcement contacts. Do you have any relative that is a
13 member of the sheriff's department?
- 14 A No. I am sorry. I didn't mean to leave that blank.
- 15 Q That's fine, that's fine.
- 16 A But I have no relatives in law enforcement.
- 17 Q Okay. That's not blood or marriage.
- 18 A Right.
- 19 Q Is that right? Okay. Now, not to embarrass you, and
20 sometimes records are wrong, but it appears that there was a
21 person, and I am going to ask if it is you, but there was a
22 person by the name of Malcolm White that had a P. W. I. D.
23 marijuana in 1978. Could that have been you?
- 24 A Yes.
- 25 Q All right, sir. And on your -- what was the

1 disposition of that?

2 A It was basically dropped at the preliminary-hearing
3 phase.

4 Q Yes, sir.

5 A I mean, as far as I know, it was dismissed at that
6 time.

7 Q Okay.

8 A My lawyer went in. He came out and said that's it, go
9 home. If they want you, they will send you a letter. And I
10 have heard nothing more.

11 Q All right, sir. I practiced here in Spartanburg for a
12 while, and, of course, some other lawyers. Would you tell
13 us who represented you in that?

14 A Jack Lawrence.

15 Q All right, sir.

16 A As I understand it, the arresting officers did not show
17 up for the preliminary hearing.

18 Q Okay. And that's --

19 A And the judge dismissed it.

20 Q Okay. It just went away.

21 A As far as I know.

22 Q Yes, sir. Since 1978.

23 A Let's assume that it's gone away, yes.

24 Q Okay, sir. On your questionnaire, on the
25 questionnaire, it asks if anyone has ever been arrested or

1 charged. Did you not answer that because it went away?

2 A Well, I'm sorry. I should have answered that it was an
3 arrest that was dismissed.

4 Q Yes, sir.

5 A You're right. I'm sorry.

6 Q No, no, no.

7 A My mistake.

8 Q I am not asking you to apologize. I just wanted to
9 clarify --

10 A Certainly.

11 Q -- that it may not have been you. There was a Malcolm
12 White. We just didn't know.

13 A Right.

14 Q Thank you very much for your answers.

15 A Certainly.

16 THE COURT: Solicitor.

17 MR. BARNETTE: Thank you, Your Honor. May it please
18 the Court.

19 EXAMINATION BY MR. BARNETTE

20 Q Good afternoon, Mr. White.

21 A How are you today?

22 Q Doing fine. How are you?

23 A Fine.

24 Q My name is Barry Barnette. I'm one of the deputy
25 solicitors. Sitting along with me is Trey Gowdy. He is the

1 solicitor in this circuit, and the other deputy solicitor,
2 Donnie Willingham.

3 I would just like to ask you a few follow-up questions.
4 I noticed you went to Clemson, is that correct?

5 A That's correct.

6 Q And your wife, she works at the vocational school, is
7 that correct?

8 A No. She works for Tex Mach, which is a dealer of used
9 textile machinery in Mayo. They buy and sell used textile
10 machinery. She does secretarial work. But it's not a
11 vocational school by any means.

12 Q I understand. Thank you for that explanation.

13 And you got a list of the type of jurors -- one, two
14 and three that you saw.

15 A Right.

16 Q Would you classify yourself as the third type of juror
17 in that case?

18 A I would.

19 Q Thank you for answering my question.

20 A Absolutely.

21 MR. KELLY: Nothing, Your Honor.

22 THE COURT: Anything else from the state?

23 MR. BARNETTE: Nothing from the state, Your Honor.

24 THE COURT: Mr. White, I want to thank you very much
25 for your participation here this day, and also on Monday.

1 I find that you are qualified to serve as a potential
2 juror in this case. With that qualification, I am going to
3 give you some instructions.

4 First of all, you are not to discuss this case with
5 anyone, whether it be family, friends, fellow jurors, anyone
6 else that you come in contact with between the time that you
7 leave this courthouse and until I tell you that you can talk
8 about it with someone.

9 Also, if anyone should attempt to contact you
10 concerning this case, I want you to gather as much
11 information about that person or persons as you possibly
12 can, and report that to me as soon as you possibly can,
13 because that is a very serious matter, and I would deal with
14 the person that attempted to contact you accordingly.

15 Furthermore, I'm instructing you that you're not to
16 read, watch or listen to any news accounts concerning this
17 particular case. Very simply put, if you are selected as a
18 juror in this case, all I would want you to consider is what
19 you see and hear in this courtroom, nothing more and nothing
20 less.

21 Now, when you came in Monday morning, I think you were
22 given a brochure that the clerk of court has produced that
23 tells you about being a juror and that kind of thing. And
24 stamped on the front of it in some red ink was an 800
25 number. That is a number that you call, and there will be a

1 recording that will give you instructions.

2 Tonight after six o'clock you need to call that number.
3 Listen very carefully to the instructions. Possibly one of
4 two messages will be on there.

5 The first one may say something like all jurors in the
6 State vs. Moore should call back tomorrow at a certain time;
7 or it may say all jurors in the case of the State vs. Moore
8 will report to the Spartanburg County Courthouse at a
9 particular time tomorrow with your bags packed. And,
10 please, leave those bags in your car.

11 If you are selected as a juror, then you would be
12 taken, along with your colleagues, to the motel. And you
13 would stay with us until the trial is ended.

14 If you are not selected, then we are going to let you
15 go back home. And you would go back to Wakefield and start
16 advising people on their vehicles again. But that
17 determination will be made later on this week, whether or
18 not you participate.

19 One thing for sure is that you are going to be coming
20 back here with your bags packed either tomorrow or early on
21 Friday.

22 So you need to go home and start packing and get
23 prepared for that. And don't forget to call tonight and
24 listen for your information. Thank you, sir.

25 THE JUROR: Thank you, Your Honor.

Jury qualification -- Number 263

1 THE COURT: And I will look forward to seeing you later
2 on this week.

3 (Whereupon, the juror was excused from the courtroom.)

4 THE COURT: Let the record reflect that Juror Number
5 290, Malcolm White, is qualified to serve as a potential
6 juror in this case pursuant to Section 16-3-20 of our code.
7 263, J. C. Sullivan.

8 MR. MORIN: Your Honor --

9 THE COURT: Just a minute, Mr. Hipp.

10 MR. MORIN: -- I think I can do this from here.

11 I noticed on his information sheet he listed
12 Simpsonville as his residence, and it's Greer on his juror
13 card. I just wanted to check on that county.

14 THE COURT: We will check on that. Thank you.
15 Bring him in.

16 It might be like a client that I had one time. I got
17 him on the stand, and I said where do you live. And he said
18 I live in two places.

19 JUROR NUMBER 263, J.
20 C. SULLIVAN, having been first duly sworn, was voir
21 dired as follows:

22 EXAMINATION BY THE COURT

23 Q Good afternoon. You are J. C. Sullivan.

24 A Yes, sir.

25 Q And, Mr. Sullivan, you understand that you have been

- 1 placed under oath here today.
- 2 A Yes, sir.
- 3 Q And you will also remember that on Monday when you were
4 here that I told you before you left the courthouse that you
5 were not to discuss this case with anyone, that if anyone
6 attempted to contact you that you were to report that to me
7 immediately upon your return to the courthouse today, and
8 that also you were not to discuss this case with -- or that
9 you were not to read, watch or listen to any news accounts
10 concerning this case. Do you remember all of that?
- 11 A Yes, sir.
- 12 Q And have there been any violations of my instructions?
- 13 A No.
- 14 Q Now, I have a copy, as well as the lawyers, of your
15 juror information sheet. And I notice here that -- where do
16 you live?
- 17 A In Greer.
- 18 Q In Greer at 125 Sunnyglen Drive?
- 19 A That's right.
- 20 Q And that's in Spartanburg County?
- 21 A Right.
- 22 Q How about Route Three, Simpsonville? Where was that?
- 23 A That's where I was born at.
- 24 Q That's where you were born?
- 25 A Yeah, in Greenville County.

1 Q Okay. Now, I am going to ask you some questions.
2 Thereafter one of the defense lawyers will ask you some
3 questions, and then one of the solicitors will ask you some
4 questions.

5 Please keep in mind that we are not in any way
6 attempting to invade your privacy, but because of the nature
7 of the case and the proceedings that we are about here this
8 week, it's very important that certain questions are asked
9 and answered.

10 Also, I want you to keep in mind that there are no
11 right or wrong answers to these questions. If you would,
12 just be open and honest, and fully answer those questions.

13 And keep in mind that no one is challenging the view
14 that you might have. We just simply need to know what your
15 views are in certain areas.

16 If at any time I ask you a question or one of the
17 lawyers ask you a question and you do not understand it,
18 need to have it repeated, need to have it clarified, just
19 let us know. And we will be glad to do that. Okay?

20 A All right.

21 Q And, also, I want you to listen very carefully to these
22 questions as they are asked, because during the next few
23 minutes we are probably going to be asking you some
24 questions that you maybe never thought about before you came
25 to court here this week. Okay?

1 A All right.

2 Q Now, among the things that we are going to be talking
3 about, we will be using the word penalty. But the fact that
4 I even mention that word or use that word does not in any
5 way indicate anything about the defendant, Mr. Moore. He is
6 presumed in the law to be innocent. Do you understand that?

7 A Yes, sir.

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

13 A Well, I would listen to it. I would listen carefully.

14 Q And you would follow the law as I gave it to you?

15 A As you give it to me, 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 this case?

19 A Could you repeat that, now?

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

23 A Well, this case, if I listen to it very carefully, I
24 can make my mind up on what I do.

25 Q Do you know anything about this case?

1 A Not nothing.

2 Q Now, in a criminal case, Mr. Sullivan, the state has
3 the burden of proving their case. They have the burden of
4 proving guilt. The burden of proof that the state must meet
5 is proof beyond a reasonable doubt.

6 And a defendant has absolute approximately no burden,
7 no responsibility to prove his innocence. Do you understand
8 that legal principle?

9 A Yes.

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

13 A I could do that, yes.

14 Q And, now, you understand from being here on Monday that
15 this is a case in which the State of South Carolina is
16 seeking the death penalty against the defendant. And that
17 means we are going to be in a trial that's divided into two
18 parts; that's a guilt phase and a sentencing phase.

19 Now, in the guilt phase if you were a juror in such a
20 case and if the jury that you were on found the defendant
21 not guilty of murder, do you understand that the trial would
22 end then?

23 A Oh, yes, sir.

24 Q But if you were a juror in such a case and that jury
25 found the defendant guilty of murder, do you understand that

1 you would go on to the second part of that trial, the
2 sentencing phase?

3 A Yes, sir.

4 Q Now, in that phase of the trial, Mr. Sullivan, evidence
5 would be presented to the jury in the form of aggravating
6 circumstances, as well as mitigating circumstances.

7 Now, aggravating circumstances are facts, incidents,
8 details, occurrences which the general assembly of our
9 state, that's the state legislature down in Columbia, has
10 declared by law would make worse, that is to aggravate, the
11 crime of murder.

12 In other words, when you have an aggravating
13 circumstance that occurs at the same time of a murder, then
14 that increases the injury or enormity of that crime of
15 murder. It's a murder that's committed in the commission of
16 or in connection with another crime. Do you understand
17 that?

18 A Yes, sir.

19 Q Now, mitigating circumstances are also incidents,
20 details, occurrences that our state legislature, that
21 general assembly that meets in Columbia, has, once again,
22 declared by law reduces the severity of the crime of murder
23 and the jury may consider as extenuating or reducing the
24 degree of responsibility of the person committing the
25 murder. Do you understand that?

1 A Right.

2 Q Now, if you were a juror in that situation, I am
3 talking about the second part of a death penalty case, the
4 sentencing phase, could you, depending on the particular
5 facts and circumstances of that case, including the
6 consideration of those aggravating and mitigating
7 circumstances and the law that I would instruct you that
8 applied to that case, return a sentence of life in prison?

9 A Yes, sir, life in prison, yes.

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 any
13 aggravating and mitigating circumstances and the law that I
14 would instruct you that applied to that case, return a
15 sentence of death?

16 A In my mind, I don't believe I could render a death
17 penalty.

18 Q You couldn't render a decision for the death penalty?

19 A No, because I just think it's -- we always have
20 believed I just couldn't. For life, maybe, yes; but for
21 death penalty, I just couldn't.

22 Q You were given a sheet of paper back there --

23 A Right.

24 Q -- that you read. And there were three different types
25 of jurors. There was one that would always lean toward

1 life, one that would always lean toward death; and there was
2 one that could consider life or death. Which one did you
3 feel that you were?

4 A I would just go with life.

5 Q Thank you, sir.

6 EXAMINATION BY MR. MORIN

7 Q Mr. Sullivan, just a few questions I would like to ask.

8 My name is Michael Morin, and I, along with Keith Kelly
9 and Jennifer Johnson, represent Richard Moore.

10 The judge explained to you about aggravating
11 circumstances that make a crime worse. If you were on a
12 jury in this case and Mr. Moore was found guilty, the state
13 would have to convince you beyond a reasonable doubt that at
14 least one of those aggravating circumstances existed. Do
15 you understand that?

16 A Yeah.

17 Q Okay. And if they convinced you beyond a reasonable
18 doubt of that one circumstance, or more, it could be more,
19 then you and the other jurors would, could then be given to
20 consider whether or not the death penalty was appropriate.
21 Do you understand that?

22 A Right.

23 Q And even if they had convinced you beyond a reasonable
24 doubt that there was one aggravating circumstance, it would
25 still be your decision. Do you understand that? But, now,

1 now, I just want to clarify this point. Is it my
2 understanding that even if they convinced you that those
3 aggravating circumstances existed, the ones that make it
4 worse that the judge told you about, you wouldn't be able to
5 vote for the death penalty?

6 A I still couldn't.

7 Q Thank you. That's all I have. Thank you very much.

8 A I am just being honest about it.

9 Q Yes, sir.

10 THE COURT: That's what we want you to be.

11 Mr. Solicitor.

12 MR. WILLINGHAM: No questions, Your Honor.

13 THE COURT: Mr. Sullivan, I want to thank you very much
14 for being here on Monday and today.

15 This is going to conclude your responsibilities here
16 this week. On behalf of the State of South Carolina, and
17 especially Spartanburg County, I thank you for your honesty
18 and your candor.

19 And you can go about your daily activities. You are
20 excused.

21 THE JUROR: Right. Thank you, sir.

22 THE COURT: Yes, sir.

23 (Whereupon, the juror was excused from the courtroom.)

24 THE COURT: Let the record reflect that Juror Number
25 263, J. C. Sullivan, is not qualified to serve as a

Jury qualification -- Number 94

1 potential juror in this case pursuant to Section 16-3-20 as
2 he would be unable to impose the death penalty.

3 Number 94, Stacy Gantt.

4 JUROR NUMBER 94, STACY

5 M. GANTT, having been first duly sworn, was voir
6 dired as follows:

7 EXAMINATION BY THE COURT

8 Q Good afternoon. You are Stacy M. Gantt.

9 A Yes, sir.

10 Q And, Ms. Grant, you understand that you are under oath
11 here today.

12 A Yes, sir.

13 Q And you also remember that on Monday that I gave you
14 some instructions that you were not to discuss this case
15 with anyone, that if anyone attempted to contact you that
16 you were to report that to me, and that you were also to
17 refrain from reading, watching or listening to any news
18 accounts concerning this case. Have there been any
19 violations of my instructions?

20 A No, sir.

21 Q And you also recall that on Monday that I asked you if
22 the information contained in your juror questionnaire, if
23 that was correct.

24 A Yes, sir.

25 Q Was that information correct then?

1 A Yes, sir.

2 Q Is it still correct now?

3 A Yes, sir.

4 Q Nothing you want to add to or take away from this form?

5 A No, sir.

6 Q And insofar as this form is concerned, the lawyers and
7 I have this, because it was important to us in preparing for
8 today. Okay?

9 A Okay.

10 Q Now, please understand, Ms. Gantt, that I am going to
11 be asking you some questions, and also the state and the
12 defense will ask you some questions.

13 Keep in mind that we are not in any way attempting to
14 invade your privacy, but it is important because of the case
15 that we are about this week that certain questions are asked
16 and answered.

17 Please keep in mind that there are no right or wrong
18 answers to most of these questions. And, so, please, just
19 answer them openly and honestly and fully.

20 And also keep in mind that no one is challenging your
21 view. It's simply that we need to know what your view is in
22 a particular area or areas.

23 And, also, if at any time you do not understand a
24 question that I ask or the defense or the solicitor, just
25 let us know. We will attempt to restate it, clarify it or

1 whatever, or repeat it.

2 Also, listen very carefully to the questions as they
3 are presented to you, because during the next few minutes we
4 are probably going to be talking about some things that you
5 maybe have never considered prior to coming to court here
6 this week. Okay?

7 A Okay.

8 Q Now, among the things that we are going to be talking
9 about, will include the word penalty. But the mere fact
10 that I even mention that word or we talk about that word
11 does not in any way indicate anything about the defendant,
12 Mr. Moore. He is presumed in the law to be innocent. Do
13 you understand that?

14 A Yes, sir.

15 Q Now, if you were a juror in a criminal case could you
16 listen to the law, accept and apply that law as I would
17 instruct you as the judge of this Court even though you may
18 not agree with that law that I instructed or think it ought
19 to 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, in a criminal case, Ms. Grant, 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.

3 A defendant has absolutely no burden to prove his
4 innocence. Do you understand that?

5 A Yes, sir.

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

9 A Yes, sir.

10 Q Now, as you know from being here on Monday, this is a
11 case in which the State of South Carolina is seeking the
12 death penalty.

13 And, as a result of that, we are going to be involved
14 in what we call a bifurcated trial, meaning that it's
15 divided into two parts, the guilt phase, sentencing phase,
16 if necessary.

17 If you were a juror in such a case and if the jury
18 found the defendant not guilty of murder in the first or
19 guilt phase, do you understand that that case would end
20 then?

21 A Yes, sir.

22 Q However, if you were a juror in such a case and the
23 jury found the defendant guilty of murder in that guilt
24 phase, do you understand that you would then move into the
25 second or sentencing phase of the trial?

1 A Yes, sir.

2 Q In that phase of the trial, Ms. Gantt, evidence would
3 be presented in the form of aggravating circumstances, as
4 well as mitigating circumstances.

5 Aggravating circumstances are facts, incidents, details
6 or occurrences which the general assembly of our state, the
7 state legislature in Columbia, has declared by law would
8 make worse, that is to aggravate, the crime of murder.

9 In other words, where there is an aggravating
10 circumstance that goes along or accompanies the crime of
11 murder, it increases the enormity or adds to the injury of
12 the offense of murder. It's a murder that's committed in
13 the commission of or in connection with another crime or
14 incident. Do you understand that?

15 A Yes, ma'am; yes, sir.

16 Q Now, mitigating circumstances are also incidents,
17 details or occurrences which the general assembly of our
18 state has declared by law reduces the severity of the crime
19 of murder. And they may be considered by the jury as
20 extenuating or as reducing the degree of responsibility for
21 the crime of murder. Do you understand what I mean when I
22 talk about a mitigating circumstance?

23 A No, sir.

24 Q That's something that the jury would consider that
25 would be presented in evidence that would lessen or maybe

1 give a reason for a murder. Do you understand that?

2 A Yes, sir.

3 Q If you were a juror in that situation, sentencing
4 phase, could you, depending on the particular facts and
5 circumstances of that case, including the consideration of
6 any aggravating or mitigating circumstances and the law that
7 I would instruct you that applied to that case, return a
8 sentence of life in prison?

9 A Yes, sir.

10 Q If you were a juror in that situation could you, once
11 again, depending upon the particular facts and circumstances
12 of that case, including the consideration of any aggravating
13 and mitigating circumstances and the law that I would
14 instruct you that applied to that case, return a sentence of
15 death?

16 A Yes, sir.

17 Q Now, Ms. Gantt, you understand that there are always
18 two sentencing options that are available to the jury in the
19 sentencing phase of a death penalty trial, that being life
20 imprisonment or death.

21 A Yes, sir.

22 Q And you understand that each and every juror must be
23 able to impose either of those sentences.

24 A Yes, sir.

25 Q Now, if you were chosen for service on this jury you

1 would be sequestered, which means you would be placed in a
2 motel for the entire time of the case. Now, I don't know
3 how long this case would last. It could be maybe seven to
4 ten days on the outside, maybe less than that.

5 Except for the personal inconvenience that you would
6 suffer, would this pose a serious danger to the health or
7 well-being of yourself or of those dependent upon you?

8 A No, sir.

9 Q Thank you, ma'am. I appreciate your responses. Please
10 answer any of Mr. Morin's questions.

11 EXAMINATION BY MR. MORIN

12 Q Good afternoon, Ms. Grant.

13 A Good afternoon.

14 Q I just have a few questions for you. I noticed from
15 looking at your questionnaire that you had at some time
16 worked at Ricky's Drive-in for a while.

17 A Yes, sir.

18 Q And that's over on Union Street, right?

19 A The one on Blackstock Road.

20 Q Blackstock Road. Okay. Did you work during the day or
21 after school or at night?

22 A I worked all hours of the day.

23 Q All hours of the day.

24 Okay. When you answered the judge's questions you
25 indicated that you thought that after you heard all of the

1 facts and circumstances you could give a death sentence, is
2 that right?

3 A Yes, sir.

4 Q Could you share with us your views about the death
5 penalty?

6 A Well, I don't know. I would just -- depends on how --
7 about the facts and stuff, how it went.

8 Q Okay. So you would have to hear all of the facts
9 before you could decide.

10 A Yes, sir.

11 Q All right. And you understand that the state in this
12 case would have to prove an aggravating circumstance that
13 the judge just explained to you before you would decide, or
14 you and your fellow jurors would have to decide whether or
15 not death was appropriate. Do you understand that?

16 A Yes, sir.

17 Q Okay. And if -- in the event that was the decision of
18 the jury and yourself, you would have to -- there would be a
19 sheet that would have 12 lines on it. And you would have to
20 sign on one of those lines indicating that death was your
21 verdict. Do you understand that?

22 A Yes, sir.

23 Q Do you think you would be able to do that?

24 A If the facts -- after hearing everything, yes, sir.

25 Q Okay. And I noticed on your questionnaire that you had

1 listed that your religion was Baptist. Do you presently
2 attend church?

3 A No, sir.

4 Q Okay. You did sometime in the past?

5 A Yes, sir.

6 Q What church was that?

7 A I went to my grandmother's church. It is Una. It is
8 in Una Baptist Church.

9 Q Okay. That's all I have.

10 THE COURT: Mr. Willingham.

11 MR. WILLINGHAM: Thank you Your Honor. May it please
12 the Court.

13 EXAMINATION BY MR. WILLINGHAM

14 Q Ms. Gantt, my name is Donnie Willingham. I am one of
15 the prosecutors here in Spartanburg; along with Deputy
16 Solicitor Barry Barnette and Solicitor Trey Gowdy. I want
17 to ask you a few things if I could.

18 You filled out your questionnaire and sent it back in.
19 And it is dated September the 17th of 2001. Is that about
20 right?

21 A Yes, sir.

22 Q Okay. Is there anything at all that caused you any
23 confusion on this questionnaire, that you didn't understand?

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

25 Q Okay. And you filled it out as completely as you

1 thought you could.

2 A Yes, sir.

3 Q And, of course, you gave truthful answers to it.

4 A Yes, sir.

5 Q One thing I wanted to ask you about was question number
6 23.

7 A Okay.

8 Q You indicated on there -- that asked whether or not --
9 have you or any family member ever been arrested or charged
10 with a crime other than a traffic offense. It is my
11 understanding you indicated no. Is that right?

12 A What family member is that, any person?

13 Q Any family member.

14 A Any of my family?

15 Q You or any family member.

16 A Oh, that's wrong.

17 Q Okay. Tell me why it's wrong.

18 A My uncle was convicted of shoplifting. And he was in
19 prison for like four years.

20 Q For four years. Where did that happen?

21 A In Spartanburg.

22 THE COURT: Could I get you to speak up just a little,
23 please?

24 A He was in prison in Perry or something.

25 Q Okay. How long ago was that?

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- 1 A He has been out for like three years.
- 2 Q Do you know how long he was in?
- 3 A In and out all of his life.
- 4 Q Okay. And that's mostly here in Spartanburg?
- 5 A Yes, sir.
- 6 Q And do you understand that your uncle probably was
- 7 prosecuted by the Seventh Circuit Solicitor's Office, not
- 8 necessarily by me but someone in our office?
- 9 A Yes, sir.
- 10 Q Would the fact that your uncle has been prosecuted by
- 11 someone in our office, would that have any effect on your
- 12 ability to be a fair and impartial juror?
- 13 A No, sir.
- 14 Q Okay. And anybody else? You or anybody else in your
- 15 family ever been arrested?
- 16 A No, sir.
- 17 Q Ms. Gantt, I have got a record here that a Stacy Marie
- 18 Gantt -- is that your middle name?
- 19 A Yes, sir.
- 20 Q Was arrested back in April of this year for receiving
- 21 stolen goods.
- 22 A Yeah. But I was found not guilty.
- 23 Q And that's fine. That's fine. I just asked you
- 24 whether or not you had been arrested for it.
- 25 A Oh, I've been arrested, yeah, for receiving stolen

1 goods.

2 Q Okay. I noticed, Ms. Grant, and also there is nothing
3 wrong with this. I just need to ask these questions. On
4 your arm you have a tattoo.

5 A Yeah.

6 Q And what does that tattoo say?

7 A Stacy, my name.

8 Q Okay. Do you have any other tattoos?

9 A I have six tattoos.

10 Q What do they say?

11 A I have a fairy on my back; I have a moon and stars
12 right here; and I have a mushroom on my ankle; and three
13 hearts on my other ankle; and then a butterfly on my
14 stomach.

15 Q And no other writing?

16 A No.

17 Q With your arrest for receiving stolen goods back in
18 April, did you deal with anybody in the Seventh Circuit
19 Solicitor's Office?

20 A I just had to go to court over there.

21 Q In magistrate court?

22 A Yeah, I think so.

23 Q Was a prosecutor involved at all in that?

24 A No, sir.

25 Q And you say -- tell me what happened to that charge

1 again. I thought you said you were not convicted of it.

2 A Not guilty, yeah.

3 Q Did you have a bench trial or a jury trial?

4 A Just the judge and the officer, arresting officer, or
5 whatever.

6 Q Okay. In dealing with your uncle have you had any
7 interaction at all with the Seventh Circuit Solicitor's
8 Office dealing with any of his charges?

9 A No, sir.

10 Q It looks like when you were arrested for receiving
11 stolen goods that Spartanburg County was the agency, the law
12 enforcement agency, that arrested you.

13 A Yes, sir.

14 Q Do you remember which officer it was?

15 A No, sir. I went down there. They had -- they issued a
16 warrant, and I went down there to take care of it. And it
17 was the warrant officer that took me in. It wasn't a --

18 Q And it wasn't nobody that came out to arrest you?

19 A I went down there to see what it was about. And then
20 they took me to jail. And then they let me out. And then I
21 signed my own bond out. And then I went to court, and I was
22 found not guilty.

23 Q Monday the judge read a witness list of a number of
24 witnesses. And this case was investigated by the
25 Spartanburg County Sheriff's Office. The fact that they

1 were involved in your arrest, would that in any way --
2 involved in your arrest and involved in the investigation of
3 this case, would that in any way cause any bias or prejudice
4 toward the sheriff's office because they were involved in
5 your case?

6 A No, sir.

7 Q Thank you.

8 MR. WILLINGHAM: Your Honor, I have no other questions.

9 THE COURT: Anything else from the defendant?

10 MR. MORIN: No, sir.

11 THE COURT: From the state?

12 MR. WILLINGHAM: Yes, sir.

13 THE COURT: Ma'am, if you will, I am going to get you
14 to step outside just a moment. The bailiffs will direct you
15 there.

16 (The following takes place outside the presence of the
17 juror.)

18 THE COURT: All right, Solicitor.

19 MR. WILLINGHAM: Your Honor, I, again, have the same
20 motion I made with some earlier jurors. Ms. Gantt when
21 questioned numerous times about whether her form was
22 complete, whether or not she or any member of her family had
23 been arrested, she began to explain that her uncle, in fact,
24 had been arrested but still did not indicate her arrest.

25 Only when I had to point out by referring to N. C. I.

1 C. criminal history that she, in fact, had been arrested,
2 and she admitted that.

3 I believe for that reason she would not be qualified
4 for failure to render truthful answers to the Court and to
5 the state.

6 THE COURT: Mr. Morin.

7 MR. MORIN: Your Honor, Mr. Willingham asked her some
8 very personal questions. And I think she was truthful on
9 everything. And I realize in dealing with my client, as
10 well as dealing with these jurors, if they are not convicted
11 they try to put that aside as something else.

12 And I don't think she in any way indicated that she is
13 trying to deceive anyone or not be truthful.

14 MR. WILLINGHAM: With that, Your Honor, if that's the
15 case, then there is absolutely no purpose for 23(a). 23
16 asks if you have been arrested; 23(a) asks if you've been
17 convicted.

18 THE COURT: Well, the purpose of 23(a), the whole
19 purpose of this, is to cut down on what we go through in
20 this, so you will get the information.

21 Quite frankly, everyone is not a law-school graduate;
22 quite frankly, everyone is not a lawyer; quite frankly,
23 everyone is not quite as sharp as everyone else; quite
24 frankly, everyone doesn't pay attention to things like
25 everyone else does; and, quite frankly, I'm going to change

1 my form and make it a little more detailed, because, quite
2 frankly, I believe when somebody gets a not-guilty verdict
3 they think there is nothing to it.

4 I know that what's going to happen is my form is going
5 to read in the future, "Have you ever merely been arrested
6 or merely charged for any crime, even if it resulted in a
7 not guilty verdict, a dismissal, a nolle pros, a pretrial
8 intervention, a whatever."

9 Then if somebody comes in here and they haven't put it
10 on there, then I know what I am going to do for it, because
11 I think, quite frankly, knowing what I do and what everybody
12 in this courtroom does about some of the cases that come in
13 front of us, it gives me a great deal of pause when people
14 are even arrested sometimes.

15 So, your motion is noted. That is marked. And she is
16 qualified. Bring her in.

17 (Rap sheet of Juror Number 94 marked Court's Exhibit
18 Number Five.)

19 (Whereupon, the juror was returned to the courtroom.)

20 THE COURT: Ms. Gantt, I want to thank you very much
21 for your participation here on Monday, as well as today.
22 And I find that you are qualified to serve as a potential
23 juror in this case. With that qualification, I am going to
24 give you some more instructions.

25 Number one, you are not to discuss this case with

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1 anyone -- fellow jurors, family, friends or anyone else that
2 you might come in contact with.

3 Also, if anyone attempts to contact you concerning this
4 case, I want you to gather as much information about that
5 person or persons as you possibly can and report that to me
6 immediately upon your return to the courthouse, because that
7 is a very serious matter, and I would deal with the person
8 that attempted to contact you accordingly.

9 Furthermore, I am going to instruct you that you're not
10 to read, watch or listen to any news accounts concerning
11 this case. Simply put, if you are selected as a juror in
12 this case, all I want you to consider in this matter is what
13 you would see and hear in this courtroom, nothing more and
14 nothing less.

15 Now, with that instruction, when you came in on Monday,
16 you were given a juror information pamphlet by the clerk of
17 court. Stamped on the front of that in some red ink was a
18 1-800 number that you call back to get information.

19 Now, tonight after six o'clock you need to call that
20 number, because there is going to be a message left on that
21 machine after six o'clock. And you simply follow the
22 instructions that you are given there.

23 It may say something like all jurors in the State vs.
24 Moore will call back tomorrow, Thursday, October the 18th,
25 at a particular time; or it may say all jurors in the case

Jury qualification -- Number 94

1 of the State vs. Moore are to report to the Spartanburg
2 County Courthouse at a particular time on Thursday. Bring
3 your belongings and leave them in your vehicle.

4 That simply means that you need to go home and start
5 packing, because if you are selected as a juror in this
6 case, then you would be taken, along with your belongings,
7 to where the jury custodians would be keeping you and the
8 jury throughout the course of this trial. And you would not
9 return home until the trial is over.

10 Now, if you are not selected, we are going to thank you
11 very much for being here and send you on about your
12 business. And then you would resume your daily activities
13 in a very normal fashion.

14 However, if you are selected, then you're going to stay
15 with us until the trial is over.

16 So, what you need to do is go home and start packing
17 your bags. And call tonight after six o'clock. And simply
18 follow the instructions that are left on the machine.

19 I will see you sometime tomorrow, or Friday at the
20 latest. And I will look forward to seeing you then. Okay.
21 You are excused.

22 (Whereupon, the juror was excused from the courtroom.)

23 THE COURT: Let the record reflect that Juror Number
24 94, Stacy Gantt, is qualified to serve as a juror in this
25 case pursuant to Section 16-3-20 of our code.

Jury qualification -- Number 226

1 Once again, all of your good, hard work has resulted in
2 a little bonus time for you.

3 Even though Mr. Willingham has lost every argument that
4 he's had today, we will continue to proceed.

5 MR. WILLINGHAM: Judge, can we approach?

6 THE COURT: Yes, sir. Come on up.

7 (Bench conference held off the record.)

8 (Whereupon, a recess was taken.)

9 THE COURT: All right. 226, Cathy D. Richardson.

10 JUROR NUMBER 226,

11 CATHY D. RICHARDSON, having been first duly sworn,
12 was voir dired as follows:

13 EXAMINATION BY THE COURT

14 Q Good afternoon. You are Cathy D. Richardson, correct?

15 A Uh-huh.

16 Q Now, Ms. Richardson, you understand that you are under
17 oath for these proceedings today.

18 A Yes, sir.

19 Q You also recall that on Monday when I sent you away
20 from the courthouse that I told you that you were not to
21 discuss this case with anyone; that if anyone attempted to
22 contact you concerning this case that you were to report
23 that to me; and also that you were to refrain from reading,
24 watching or listening to any news accounts concerning this
25 case. Have there been any violations of my instructions?

1 A No.

2 Q Now, over the next few moments, Ms. Richardson, I am
3 going to ask you some questions. Then one of the defense
4 lawyers and one of the solicitors will ask you some
5 questions.

6 Please keep in mind and understand that we're not in
7 any way attempting to invade your privacy, but due to the
8 nature of the proceedings that we are about this week it's
9 extremely necessary for certain questions to be asked and
10 answered.

11 I want you to keep in mind that there are no right or
12 wrong answers to these questions. So, please, just answer
13 them openly and honestly and fully. And also keep in mind
14 that no one is challenging the view that you might have. We
15 just need to know what your views are in certain areas.

16 Also, if I or one of the lawyers state a question to
17 you, and you don't understand it, you need to have it
18 repeated or clarified, simply let us know, and we'll be glad
19 to do that.

20 Also, I want you to pay very close attention to all of
21 the questions that are presented to you, because during the
22 next few minutes we're probably going to be asking you about
23 things that you maybe have never thought about prior to
24 coming to court here this week.

25 Now, the lawyers and I have copies of your juror

1 information sheet, because that was extremely important to
2 all of us in preparing for today.

3 Now, among the things that we're going to be talking
4 about over the next few minutes, will include a reference to
5 the word penalty. But the mere fact that I even mention
6 that word or that it's discussed during the next few minutes
7 does not in any way indicate thing about the defendant, Mr.
8 Moore. He is presumed in the law to be innocent. Do you
9 understand that?

10 A I do.

11 Q Now, let's suppose for a few moments that you were a
12 juror in a criminal case.

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 not agree with that law that I instruct you
16 or think it ought to be some other way?

17 A I guess if I am instructed to apply it a certain way, I
18 would, if that's the law.

19 Q You would set aside any beliefs that you might have and
20 follow the law as I instructed you?

21 A As the law.

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 Yes.

1 Q Now, in a criminal case, Ms. Richardson, the state has
2 the burden of proving guilt. And the burden of proof that
3 the state must meet is proof beyond a reasonable doubt.

4 A defendant has no burden, no responsibility to prove
5 his innocence. Do you understand that?

6 A Yes.

7 Q Could you, depending on the facts and the evidence and
8 the law that I would instruct you in a particular case, find
9 a defendant either guilty or not guilty?

10 A Yes.

11 Q Now, as you know from being here on Monday when I had
12 the entire jury panel in this room before it was put back
13 together, this is a case in which the State of South
14 Carolina is seeking the death penalty.

15 And, as such, we are going to be involved in what is
16 called a bifurcated trial, which simply means that it's
17 divided into two parts. The first part is referred to as
18 the guilt phase; and, if necessary, the second part is
19 called the sentencing phase.

20 If you were a juror in such a case and if the jury
21 found the defendant not guilty of murder in the first phase,
22 the guilt phase, do you understand that that case would end
23 at that point in time?

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
2 understand that you would then move to the second or
3 sentencing phase of that trial?

4 A Yes, sir.

5 Q During that phase of the trial, Ms. Richardson,
6 evidence would be presented to the jury in the form of
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 the
11 State of South Carolina has declared by law would make
12 worse, that is to aggravate, the crime of murder.

13 In other words, when there is a presence of an
14 aggravating circumstance that goes along with or accompanies
15 the crime of murder, it increases the enormity or adds to
16 the injury of that crime of murder. It's a murder that's
17 committed in the commission of or in connection with another
18 crime or incident. Do you understand what I am speaking of?

19 A Yes, sir.

20 Q Now, mitigating circumstances are also incidents,
21 details or occurrences which our general assembly has also
22 declared by law that reduces the severity of the crime of
23 murder and may be considered by a jury as extenuating or as
24 reducing the degree of moral culpability or responsibility
25 for that crime of murder. Do you understand what I am

1 speaking of when I talk of mitigating circumstances?

2 A Yes, sir.

3 Q Now, if you were a juror in that situation, Ms.
4 Richardson, talking about the sentencing phase of a death
5 penalty case, could you, depending upon the particular facts
6 and circumstances of that case, including the consideration
7 of aggravating, as well as mitigating, circumstances and the
8 law that I would instruct you that applied to that case,
9 return a sentence of life in prison?

10 A I am not sure about that.

11 Q If you were a juror in that situation could you,
12 depending upon the particular facts and circumstances of
13 that case, once again, including the consideration of any
14 aggravating and mitigating circumstances and the law that I
15 would instruct you that applies to that case, return a
16 sentence of death?

17 A I been struggling with that pretty much since I left
18 here, and I'm just really not sure. I really have, I guess,
19 some reservations about sending someone to prison, you know,
20 and them having the death penalty.

21 Q Do you understand that in the sentencing phase of a
22 death penalty case that there are two sentences that the
23 jury must be able to impose, and that's each and every
24 member of that jury, either life in prison or death? Do you
25 understand that?

1 A Uh-huh, I do.

2 Q And you do not know if you could impose either one of
3 them?

4 A Well, like I say, I have a hard time with that because
5 of my religious beliefs. I'm not sure, you know, that I'm
6 the one to judge a person and give them the death penalty;
7 life in prison, maybe, you know, but the death penalty is
8 something I would have a hard time with. And I would have
9 to live with that decision the rest of my life.

10 Q Yes, ma'am. But you understand that in order to serve
11 as a juror in this state you have to be able to impose
12 either sentence, life or death. And before you came in
13 here, I think you were given a sheet that had three types of
14 jurors on it.

15 A Uh-huh.

16 Q Do you remember which one of those that you felt
17 described you?

18 A The last one, because I would have to have evidence. I
19 don't make decisions before I, you know, draw conclusions
20 from the facts.

21 Q And I think that was the one that said that you could
22 impose life or death, depending on the circumstances.

23 A It said life or death. Like I say, I have reservations
24 about death, because that's a decision I have to live with
25 for the rest of my life. And I am being honest about it.

1 Q Yes, ma'am.

2 A Okay.

3 Q And that's what I expect you to be.

4 A Okay.

5 Q And that's the purpose of this. Thank you very much.
6 Mr. Kelly.

7 MR. KELLY: Thank you, Judge. May it please the Court.

8 EXAMINATION BY MR. KELLY

9 Q Ms. Richardson, I am Keith Kelly, and along with
10 Michael Morin and Jennifer Johnson, we represent Mr. Moore
11 in this case.

12 I am not about to try to change your view, but I want
13 to ask a few more questions about that if it's okay with
14 you.

15 As the judge has told you, the general assembly of our
16 state has passed a law. We lawyers call it a statute. But
17 they passed a law that said that under certain circumstances
18 the death penalty is an appropriate punishment, or it's
19 available as an appropriate punishment. Do you understand
20 that?

21 A Uh-huh.

22 Q And the general assembly has said in innumrating a
23 list of aggravating circumstances that if the state can
24 prove one or more of those aggravating circumstances to your
25 satisfaction beyond a reasonable doubt, one of those,

1 whether it's blue, yellow, green, whatever it might be; and
2 Judge Clary would tell you at the appropriate time what they
3 are. But if those were proven to you beyond a reasonable
4 doubt, then you could then consider the death penalty. Do
5 you understand that?

6 THE COURT: No, sir. It's not consider it. It is
7 impose it.

8 MR. KELLY: Yes, sir, I understand.

9 THE COURT: Not just consider it.

10 MR. KELLY: My follow-up question would be on that,
11 Judge, if it please the Court.

12 Q Do you understand that?

13 A I understand what you're saying that, you know, you
14 have to have certain facts or whatever that constitutes
15 death, the death penalty.

16 Q Yes, ma'am.

17 A And, you know, by law they have to enforce that if, you
18 know, that is the situation.

19 Q Okay. Well, that's right. There are certain factors,
20 as Judge Clary told you, that are available. And at that
21 time in the penalty phase Judge Clary would then tell you
22 what they are.

23 A All right.

24 Q And then Mr. Gowdy and his assistants would be then
25 trying to prove to you that at least one of those exists.

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1 Do you understand that?

2 A Uh-huh.

3 Q And then if it exists, if you as jurors find that it
4 exists beyond a reasonable doubt, then you would then
5 consider either life or death. Do you understand that?

6 A Uh-huh.

7 Q And then after considering that you could choose either
8 life or death. Do you understand that?

9 A I understand.

10 Q So, the Court or nobody is telling you that you have to
11 decide death. It's just that at that point it would be
12 available. Do you understand?

13 A I understand.

14 Q Okay. Now, at the same token, if we were able to show
15 to your satisfaction that there was a mitigating
16 circumstance, something, as Judge Clary told you, that
17 lessened the murder in some fashion, whether it's, again,
18 blue, yellow, green, whatever it might be, but if we could
19 prove that to you, then at that point in time you could use
20 that to return life. Do you understand?

21 A Uh-huh.

22 Q Now, having said that, if the state proved it, not that
23 they are required to, but if the state proved at least one
24 of those aggravating circumstances, could you then sign your
25 name saying that the death penalty would be an appropriate

1 punishment?

2 A Well, I would be in a position, because I'd have to,
3 you know, obey the law. I'd be in a position to do that.
4 What I am saying is I wouldn't like that position, but if I
5 would be in a position, I would have to follow the law. I
6 wouldn't like it. Okay. I don't like. I wouldn't like
7 being in that position.

8 Q I appreciate that so much. I really do. And I
9 appreciate you thinking about it soberly and reflecting on
10 it. But you understand at that point you could do that.

11 A I would have to, yeah, if the facts, you know, support
12 that.

13 Q If the facts support that, if the evidence that this
14 judge allowed into evidence, if that evidence came to you,
15 whether it be a picture or testimony or whatever that came
16 into evidence properly, if it supported it to your
17 satisfaction, then you could do that, is that right?

18 A I would have to, yes.

19 Q Okay. And, in doing so, there would be a sheet of
20 paper. And it might have some writing at the top, and it
21 might have some lines on it, and a place for 12 jurors to
22 sign. Could you then sign your name to that piece of paper
23 showing that that's your vote?

24 A I think that would be part of my, my responsibility as
25 a juror. So, I would have to, yes.

1 Q Again, though, understanding that you could consider
2 that aggravating circumstance if proven and still return a
3 life sentence -- do you understand that?

4 A Uh-huh. I understand what you are saying.

5 Q Thank you so much.

6 THE COURT: Mr. Gowdy.

7 MR. GOWDY: May it please the Court.

8 EXAMINATION BY MR. GOWDY

9 Q Good afternoon.

10 A Good afternoon.

11 Q My name is Trey Gowdy. I'm the solicitor here in
12 Spartanburg, and also in Cherokee, County. This is Barry
13 Barnette in the middle and Donnie Willingham to his left.
14 They're my deputy solicitors.

15 Do you understand? And I know it's complicated, and
16 this may be the first time you have had different folks
17 asking you about matters that are very personal. Do you
18 understand that the law never requires that you give the
19 death penalty?

20 A Yeah, I understand it doesn't require you to.

21 Q Well, the reason I ask you is your questions to
22 Mr. Kelly were you would follow the law. I wanted to make
23 sure that you understood that the law never requires that
24 someone give the death penalty.

25 A But you have to look at the facts; and the facts would

1 determine, you know, whether it's the death penalty or life
2 in prison.

3 Q And if the facts were such, and you had a choice
4 between life and death, could you, are you able to, do your
5 beliefs allow you to vote for death?

6 A Like I said, I wouldn't want to be in that position. I
7 have some reservations about that.

8 Q I know these are very tough questions. And, as the
9 judge told you, there is not a right answer. There is not a
10 wrong answer. There are merely your answers.

11 But I have got to be able to ask you. And I don't want
12 to pry, but I have got to be able to ask you whether or not
13 you would, in fact, be able to vote for the death penalty if
14 you had the option.

15 A If I'm selected as a juror and the evidence indicates
16 that I have to vote that way, I will. Okay.

17 Q When you say the evidence indicates you have to vote
18 that way, keep it in mind that no one will ever tell you
19 that you have to vote that way. It's not the law that you
20 have to vote for the death penalty.

21 A I guess I'm a little confused about what you're saying.

22 Q Well, what I am trying to ask, and I apologize for
23 confusing you. In any capital case you will have a choice
24 between life or death. Given that choice, you're never
25 required to vote for death. Given the choice between life

1 and death, would you be able in the appropriate case to vote
2 for death?

3 A Yes, in the appropriate case.

4 Q Okay. I notice that, like myself, you are Baptist in
5 faith.

6 A Yes.

7 Q Could I ask you about your general views or beliefs on
8 the death penalty and whether or not those views are formed
9 by your education or by your faith or what the basis of
10 those views is?

11 A I guess by my faith, because I feel like God is the
12 judge in, in making decisions about someone's life. I am
13 sorry to be put in that position of making a judgment. So,
14 I do have some concerns about being put in that position.

15 Q Would your religious views prevent or substantially
16 impair or substantially affect your ability to vote for
17 death in a certain case?

18 A It may.

19 Q It may? It may either?

20 A It's a decision I have to live with, is what I'm
21 saying.

22 Q Yes, sir. It's a very grave decision, but I think we
23 have discussed whether or not it would prevent you from
24 being able to vote for death. But I want to ask you whether
25 or not it would substantially impair or substantially affect

1 your ability to vote for death, these views that you have
2 based on your faith.

3 A I don't think it would affect my ability to do that,
4 because, like I said, as a juror I have to follow the law.
5 Okay. And the law says I have to make a decision based on
6 the evidence given to me, and, you know, it tells me what
7 the outcome is going to be after I hear the facts.

8 Okay. So, then I have to make that decision about --
9 based on the evidence that I received, you know, what would
10 be the best decision for this situation.

11 I would have to do that; and that, you know, my
12 religious beliefs, wouldn't have anything to do with me
13 making that decision. But I would still, like I said --
14 that's a load for me to make a decision like that. And I
15 just want everybody to know that it weighs heavy on me.

16 Q If you were one of the 12 jurors and the other 11 and
17 yourself voted for death, would you be able to sign your
18 name to a verdict form?

19 A Well, I would have to if I'm a juror. Like I said,
20 that would be part of my responsibility as serving as a
21 juror. I would have to do that, because that's the law.

22 Q Would you also be able to come into court and publicly
23 announce that that was, in fact, your verdict, along with
24 the other 11 jurors?

25 A I would have to.

1 Q Thank you. I appreciate your candor. Thank you.

2 THE COURT: Anything else, Mr. Kelly?

3 MR. KELLY: Nothing, Your Honor.

4 THE COURT: Anything else, Solicitor?

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

6 THE COURT: Ma'am, I am going to ask you, Mr.
7 Richardson, if you would step outside for just a moment.
8 We'll get you back in the courtroom in just one moment,
9 please.

10 (The following takes place outside the presence of the
11 juror.)

12 THE COURT: All right, Solicitor.

13 MR. GOWDY: Your Honor, if it please the Court,
14 obviously, these were very difficult questions for this
15 juror. And I am reluctant to use the word vacillate, which
16 is what the case law uses, Your Honor, but she was very
17 clear that this would be a very difficult decision for her.
18 And I know the difficulty of it alone doesn't disqualify
19 her, Your Honor, but I think the degree of difficulty that
20 she had even beginning with Your Honor's questions and then
21 going over into Mr. Kelly's questions and then my questions,
22 it would be -- I don't think she would be prevented, Your
23 Honor, but I think the other half of that is substantially
24 impaired. And I do think that her views would substantially
25 impair her ability to give the death penalty.

1 MR. KELLY: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. KELLY: I respectfully submit this is the kind of
4 juror that we need 12 of on every case we have. This lady
5 takes her job very, very seriously. And I submit she has
6 answered her questions here probably as truthful as any
7 person has ever answered a question in this courtroom. I
8 submit she's capable.

9 THE COURT: Well, I do not disagree with what you have
10 to say, Mr. Kelly. I see a lady here who is very educated
11 and seems to be very strong in her faith and her beliefs.
12 And while she recognizes that through her faith and her
13 study that God has certain issues that he presents us with
14 and we deal with, I think she also recognized the fact that
15 we have a system of government in place that we also need to
16 adhere to, and that's a struggle that she has.

17 But I think in looking at her answers as a whole that
18 they do not present to me that they are inconsistent or
19 vacillating. I think that where religious views would
20 interfere with a juror's duty, of course, that is a
21 disqualification. That was in the Riddle case, also a case
22 that I had here, State vs. Simpson, back in 1996.

23 And then another case that arose out of here, I think
24 Judge Cole did, well, maybe not, State vs. Tucker. I don't
25 know if that one was here or not. But, anyhow, that was a

1 1999 case.

2 I don't pick up from her in the answers and looking at
3 them as a whole, and I made notes, as I do on a lot of
4 jurors, about her, her religious views interfering with her
5 duty as a juror.

6 She said that, that while she had, has religious views,
7 that apparently she has conflict with, that she would follow
8 the law. She has reservations about being placed in that
9 position and having sat in the place of a jury as the judge
10 and the jury in a death penalty case.

11 Those are issues that you have to come to terms with in
12 deciding what to do with an individual's fate. And, quite
13 frankly, I agree that everyone should have those
14 reservations. Everyone should grapple with those issues.
15 Everyone should deal with those matters.

16 And I think that she has been extremely serious and
17 truthful in her answers. And I'm going to qualify her as a
18 potential juror in this case.

19 Bring her back in.

20 MR. KELLY: Thank you, Your Honor.

21 (Whereupon, the juror was returned to the courtroom.)

22 THE COURT: Ms. Richardson, insofar as the questions
23 that you have been presented with here today, if you were
24 chosen for jury service in this case do you understand that
25 you would be housed in a motel for the duration of the

1 trial? I don't know how long that would be. That could be
2 anywhere from seven to ten days at the outside; maybe less.
3 I always try to give a larger figure on the outside so that
4 if it goes that long, the jury won't be sitting over there
5 saying you told me I would be out of here in two days. You
6 know, I don't want to get in that position. So, let's say
7 seven to ten days from the time it starts, and it could be
8 less.

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 THE JUROR: Yes.

13 THE COURT: It would?

14 THE JUROR: My children.

15 THE COURT: Is there anyone else who could take care of
16 the children?

17 THE JUROR: I am sure someone could, but it would be an
18 inconvenience for them getting them to school and all. I
19 have teenage boys.

20 THE COURT: You are separated, I think.

21 THE JUROR: Uh-huh.

22 THE COURT: And the boys live with you.

23 THE JUROR: Yes.

24 THE COURT: And let's say if you were on this jury,
25 would that in any way interfere with -- you know, if you

1 were sequestered would that create a problem with you
2 insofar as your responsibilities as a juror in being
3 concerned about your children, or would you have someone
4 that you could, could leave them in the supervision of that
5 could take that off your mind?

6 THE JUROR: Well, someone could take care of them, but
7 I would still be concerned about it, because we never really
8 been separated from each other, not that length of time.

9 THE COURT: Questions from the defense?

10 MR. KELLY: Thank you, Your Honor. May it please the
11 Court.

12 EXAMINATION BY MR. KELLY

13 Q Ms. Richardson, I notice your boys are 16 and 13 and a
14 half. So, they are middle-school, high-school age, is that
15 right?

16 A Yes.

17 Q Okay. Not being nosey, but do you have a sister that
18 lives in town?

19 A I do.

20 Q And is she a responsible individual that your boys
21 could stay with for a couple of days?

22 A Well, she is, but she has a child of her own also. She
23 lives in a different district, and she has to transport
24 them --

25 Q Yes, ma'am.

1 A -- to another district all the way across town, plus
2 get herself to work.

3 Q Yes, ma'am.

4 Do you have another sister or a brother, a
5 sister-in-law or somebody like that these teenagers could
6 stay with for these three or four days?

7 A She would be the only one that I would let them stay
8 with.

9 Q Their father, is he in Spartanburg County?

10 A No, sir.

11 Q He is not. Is your mother in Spartanburg County?

12 A My mother is dead.

13 MR. KELLY: Thank you, Judge.

14 THE COURT: Solicitor.

15 MR. GOWDY: Your Honor, if it please the Court,
16 Mr. Kelly mentioned a couple of days. I think Your Honor,
17 His Honor, said earlier when we were first talking about
18 this that the trial could potentially go between seven and
19 ten days. It may not go that long. It could potentially go
20 from seven to ten days.

21 EXAMINATION BY MR. GOWDY

22 Q Would it be difficult for you as a mother of two
23 teenage boys to be sequestered for seven to ten days?

24 A It would be the same. Like I said, it would really be
25 an inconvenience. We just never been separated that long

1 from each other. And they are depending upon me, because
2 I'm, you know, their primary parent that takes care of them.

3 Q Thank you, ma'am.

4 THE COURT: Ms. Richardson, I am going to get you to
5 step out one more time, please, ma'am.

6 (The following takes place outside the presence of the
7 juror.)

8 THE COURT: Of course this puts a little bit different
9 wrinkle in it for me from the standpoint that, you know, I
10 try to accommodate almost every parent, not almost every
11 parent. I try to accommodate every parent that I can.
12 That's why I ask these.

13 We had one lady that had a 19-month-old that, you know,
14 in essence, I tried to talk her out of saying that she
15 wanted to serve, but she was pretty adamant about it.

16 In a situation like this, it makes it more difficult,
17 because we get into the trial, she's there. If something
18 happens, there is a problem that I have. If she has to be
19 excused, that creates another set of situations. If she had
20 someone that was right there, I wouldn't feel as tormented
21 as I am about it, because I think that this lady is
22 certainly qualified.

23 I'm going to bring her back in here and tell her what
24 her options are. And if she can't give me a decision on her
25 own, then I'm going to make one for her.

1 Bring her back.

2 MR. KELLY: Thank you, Judge.

3 (Whereupon, the juror was returned to the courtroom.)

4 THE COURT: Ms. Richardson, insofar as your boys are
5 concerned, and when I say boys, they are young men,
6 actually, 13 and a half and 16.

7 THE JUROR: Yes.

8 THE COURT: My concern is whether or not you would feel
9 comfortable if I say that you are qualified. And then if
10 these gentlemen decide that you're going to be on that jury
11 and you come here tomorrow or day after and you don't go
12 back home until a week from then or the first of the week
13 after next, you tell me about it.

14 THE JUROR: That would really bother me, because
15 sometimes they try to get away with things from other
16 people.

17 THE COURT: I understand how that works.

18 THE JUROR: And I'm a pretty firm, you know, mother.
19 So, they pretty much listen to me. And I think they
20 probably, you know, maybe take advantage of that with me not
21 being there.

22 THE COURT: You answered my question. Thank you very
23 much for being here. You are excused.

24 THE JUROR: Thank you.

25 THE COURT: Thank you for your honesty today too.

Jury qualification -- Number 92

1 (Whereupon, the juror was excused from the courtroom.)

2 THE COURT: Let the record reflect that Juror Number
3 226, Cathy Richardson, while I would have found her
4 qualified, due to her exigent situation with her 13 and a
5 half and 16 year old children, even though that does not
6 come within the statutory realm that we speak of, there is a
7 responsibility when a jury is sequestered to have jurors
8 that are focused about what they are to do.

9 As such, I have excused her.

10 Number 92, Patricia Gallman.

11 JUROR NUMBER 92,
12 PATRICIA GALLMAN, having been first duly sworn, was
13 voir dired as follows:

14 EXAMINATION BY THE COURT

15 Q Good afternoon. You are Patricia P. Gallman, is that
16 correct?

17 A That is correct.

18 Q And, Ms. Gallman, you understand that you have been
19 placed under oath for this proceeding this afternoon.

20 A I sure do.

21 Q And you also remember when I dismissed you on Monday
22 that I told you that you were not to discuss this case with
23 anyone, that if anyone attempted to contact you, that you
24 were to report that to me, and that you also were to refrain
25 from reading, watching or listening to any news accounts

Jury qualification -- Number 92

1 concerning this case. Do you understand that?

2 A I understand that.

3 Q And have there been any violations of my instructions?

4 A No, sir.

5 Q Now, Ms. Gallman, I'm going to ask you some questions.

6 After I get through, then one of the defense lawyers and one
7 of the solicitors will ask you some questions.

8 Please keep in mind that we are not in any way
9 attempting to invade your privacy, but because of the case
10 that we are about this week it's extremely important that we
11 ask certain questions and that they be answered.

12 Keep in mind there are no right or wrong answers to
13 these questions, so, please, just answer them openly and
14 honestly and fully.

15 And keep in mind that no one is challenging the view
16 that you might have. We simply need to know what your view
17 is.

18 If at any time you do not understand a question from me
19 or the lawyers, let us know, and we will restate it or try
20 to clear it up for you.

21 And also listen very carefully to the questions,
22 because over the next few minutes we're are probably going
23 to be talking about some things that you maybe have never
24 considered prior to coming to court this week.

25 Now, the lawyers and I have copies of your

1 questionnaire, so, please, understand that we will be
2 referring to that. And that was important to us in
3 preparing for today.

4 Now, among the things that we are going to be talking
5 about or discussing 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 does not in any way
8 indicate anything about the defendant, Mr. Moore. He is
9 presumed in the law to be innocent. Do you understand that?

10 A Yes, sir.

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

16 A Yes, sir, I could.

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

20 A Yes, sir.

21 Q Now, in a criminal case, Ms. Gallman, the state has the
22 burden of proving guilt. And the burden of proof that the
23 state must meet is proof beyond a reasonable doubt. A
24 defendant has absolutely no burden to prove his innocence.
25 Do you understand that?

Jury qualification -- Number 92

1 A Yes, sir, I do.

2 Q Now, could you, depending on the facts and the evidence
3 and the law as I would instruct you in a case, find a
4 defendant either guilty or not guilty?

5 A Yes, sir.

6 Q Now, as you know from being here on Monday, I told the
7 entire jury panel that this is a case in which the State of
8 South Carolina is seeking the death penalty. And, as such,
9 we're going to be involved in a trial that's called a
10 bifurcated trial, which simply means it's divided into two
11 parts. There's a guilt phase and, if necessary, there's a
12 sentencing phase.

13 If you were a juror in that situation and if the jury
14 had found the defendant not guilty of murder, do you
15 understand that there would be no necessity to move on to
16 that second part, that the trial would end then?

17 A Yes, sir.

18 Q However, if you were a juror in such a case and if the
19 jury had found the defendant guilty of murder, do you
20 understand that you would then proceed to the sentencing
21 phase of that trial?

22 A Yes, sir.

23 Q Now, in that phase of the trial there would be evidence
24 presented in the form of aggravating circumstances, as well
25 as mitigating circumstances.

Jury qualification -- Number 92

1 Now, aggravating circumstances are facts, incidents,
2 details or occurrences which the general assembly of our
3 state has declared by law would aggravate, that is to make
4 worse, the offense of murder.

5 In other words, when an aggravating circumstance goes
6 along with or accompanies the crime of murder, it increases
7 the enormity or adds to that crime of murder. It's a murder
8 that's committed in the commission of or in connection with
9 another crime or incident. Do you understand that?

10 A Yes, sir.

11 Q Now, mitigating circumstances are also incidents,
12 details or occurrences which our general assembly has, once
13 again, declared by law that reduces the severity of the
14 crime of murder and may be considered by the jury as
15 extenuating or as reducing the degree of responsibility for
16 the crime of murder. Do you understand that?

17 A Yes, sir.

18 Q If you were a juror in that situation, Ms. Gallman, the
19 sentencing or second phase, could you, depending upon the
20 particular facts and circumstances of that case, including
21 the consideration of aggravating, as well as mitigating,
22 circumstances and the law that I would instruct you that
23 applied to that case, return a sentence of life in prison?

24 A Yes, sir.

25 Q If you were a juror in that situation could you,

1 depending upon the particular facts and circumstances of
2 that case, once again, including the consideration of any
3 aggravating and mitigating circumstances and the law that I
4 would instruct you that applied to that case, return a
5 sentence of death?

6 A Yes, sir.

7 Q Ms. Gallman, do you understand that there are always
8 two sentencing options that are available to the jury in the
9 sentencing of a trial, that being life imprisonment or
10 death?

11 A Yes, sir.

12 Q And do you understand that each and every juror must be
13 able to impose either of those sentences?

14 A Yes, sir.

15 Q Now, if you were chosen for service on this jury, you
16 would be housed or sequestered in a motel for the duration
17 of the trial. I don't know how long it will last, but I
18 would estimate at the most seven to ten days from the time
19 that we get started. It could be less than that.

20 Except for the personal inconvenience that you would
21 suffer, would this pose a serious danger to the health or
22 well-being of yourself or of those dependent upon you?

23 A No, sir.

24 Q Thank you ma'am. Please answer any questions Mr. Kelly
25 might have.

1 MR. KELLY: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. KELLY: Thank you, Judge.

4 EXAMINATION BY MR. KELLY

5 Q Ms. Gallman, I am Keith Kelly, and along with Michael
6 Morin and Jennifer Johnson, we represent Mr. Moore seated
7 here at my right elbow. As the Court has told you, we've
8 had a good bit -- asking some questions that you have
9 provided, and we appreciate that.

10 Not to embarrass you, but on question 23 you told us,
11 quite candidly, and I thank you for that, your daughter had
12 been convicted of the crime of selling drugs.

13 A Yes, sir.

14 Q Is that the daughter that is about 28 years of age?

15 A Yes, sir.

16 Q Okay. And can you tell me when that was?

17 A That was sometime last year. She got out in March.

18 Q Okay. So she had a small amount of time?

19 A She is on probation at this time.

20 Q Yes, ma'am. All right. And was that here in
21 Spartanburg County?

22 A Yes, sir.

23 Q Was she prosecuted by the Seventh Circuit Solicitor's
24 Office?

25 A To be absolutely truthful, I do not know.

Jury qualification -- Number 92

1 Q But it was here. It was here. When was it, last year?

2 A It was the first of the last year, because she served a
3 year in jail. She pleaded guilty.

4 Q I was going to ask you did she have a trial or did she
5 plead.

6 A She pleaded guilty.

7 Q Okay. So, you don't recall any lawyer for the state
8 that might have been involved in that whether -- by name.

9 A No. I did not go to the trial or nothing.

10 Q Okay. Did she have a lawyer?

11 A I think the solicitor, the -- just the judge had
12 appointed her one. But she said that she would just take
13 and do it herself, that she was guilty.

14 Q Okay. So, she may have used the public defender's
15 office as far as you know.

16 A Yes, yes, sir.

17 Q And if you know, was there any particular lawyer
18 involved in that case? Was there any particular person that
19 represented her?

20 A I do not know.

21 Q Thank you, ma'am.

22 I take it in response to some, some questions that you
23 and the judge had on maybe Monday of this week, and I was
24 not present, in addition to what you told us on your
25 questionnaire, you told Judge Clary about an uncle, I

Jury qualification -- Number 92

1 believe, that was beaten to death or something.

2 A Yes, sir.

3 Q Is that correct?

4 A Yes, sir.

5 Q And that was about 21 years ago?

6 A Yes, sir.

7 Q And, again, was that here in Spartanburg County?

8 A Yes, sir.

9 Q And the person that did that, or persons, were they
10 caught?

11 A It was not pressed charges, because it was a lot of his
12 fault, along with theirs.

13 Q Okay. So nothing ever came of that then?

14 A No, sir.

15 Q And also you indicated that your daughter was raped, I
16 believe.

17 A Yes, sir.

18 Q Was someone prosecuted for that?

19 A No, sir.

20 Q Did that happen here in Spartanburg County as well?

21 A Well, at first I thought it did, but we were living in
22 Cherokee County when it happened.

23 Q Yes, ma'am.

24 A I did make a mistake on that. The gentleman that did
25 it took her into Rutherford County, and in Rutherford County

Jury qualification -- Number 92

1 15 years old is legal.

2 Q Okay. And was he also a 15 or 17-year-old?

3 A No. He was 18.

4 Q He was 18 and she was 15?

5 A Yes, sir.

6 Q Under religion you list Baptist. Would that be
7 Southern Baptist, Independent Baptist?

8 A Southern.

9 Q Southern Baptist. And, if you don't mind, would there
10 be a particular church that you attend regular?

11 A Love Springs Baptist.

12 Q Okay. And you attend there frequently or regularly?

13 A Yes, sir.

14 Q Okay. And how long have you been a member there?

15 A Since I was a baby.

16 Q Okay. All of us get our views on the death penalty
17 from some source, whether it be from our church, Baptist
18 church, Methodist church or Lutheran church, or with people
19 that we work with, or from reading news accounts or so
20 forth. And you obviously have a view on the death penalty.
21 You've informed Judge Clary that, in fact, under some
22 circumstances you could, in fact, impose a sentence of
23 death, right?

24 A Yes, sir.

25 Q And to what do you attribute or to what do you credit

Jury qualification -- Number 92

1 your views on the death penalty?

2 A If someone deliberately kills someone, then if it can
3 be proven, yes, sir, if the other person has not caused it.
4 But if the other person is involved then, no, sir.

5 Q Okay. And, again, do you attribute that to just what
6 your thoughts are growing up?

7 A Yes, sir.

8 Q Grandmama, grandpapa or something like that?

9 A My grandmother raised me.

10 Q Your grandmother raised you?

11 A Yes.

12 Q I understand you don't have any bumper stickers on your
13 cars, but in recent times many of us have begun to fly the
14 American flag, whether it be a magnet type that fits on the
15 car or whether it be a flag that fits in the middle of the
16 window. Have you got one of those?

17 A No, I don't. I wear my flag on me.

18 Q Okay. All right. But you don't have it on your car.

19 A No, I don't.

20 Q Okay. And have you worn that just in the last month or
21 two? Is that part of --

22 A I sure have. This belonged to my grandfather.

23 Q Oh, I see. Do you have any other flags -- do you have
24 any flags at home?

25 A I have a flag flying on my -- outside on our front

Jury qualification -- Number 92

1 porch.

2 Q Okay. Have you flown that for a long time?

3 A It has been there ever since this happened.

4 Q Ever since this happened. Okay. And I take it, of
5 course, and it isn't on here, that's the American flag
6 you're flying.

7 A Yes, sir.

8 Q Do you own any other flags like the state flag with the
9 Palmetto tree on it?

10 A No, sir.

11 Q No other flags?

12 A No, sir, no other flags.

13 Q You indicated, of course, that you watch T. V. for your
14 news and so forth. Do you read a newspaper at all?

15 A I hardly ever have time. I am involved with P. T. O.
16 and the improvement committee. And to be absolutely honest,
17 I am not home a very lot.

18 Q I understand. You are quite busy, I am sure.

19 A Yes, sir.

20 Q Yes, ma'am. Do you subscribe to any magazines, whether
21 it be Ladies Home Journal or --

22 A I get them because my son is in the Academic Atlas, and
23 he needs them for those programs. So, I get them so he can
24 take them to school.

25 Q Sure. Which ones do you get?

1 A We have the Woman's Day and Hunters -- Hunters
2 magazine.

3 Q I believe that might be for your son.

4 A Both of them are. He has to have one of each.

5 Q Okay. All right. Does your husband subscribe to any
6 magazine?

7 A No, sir.

8 Q And, again, you have got two sons, 26 and ten. Does
9 your son receive, the ten-year-old, does he receive any
10 magazine other than what you just told us about and the --

11 A Children's Highlighters.

12 Q Children's Highlighters. Controlled book club?

13 A Yes.

14 Q Okay. Do you belong to any organization whatsoever
15 other than the P. T. O. or things that have to do with your
16 children?

17 A No, sir.

18 Q Thank you very much for your answers.

19 A Thank you.

20 THE COURT: Solicitor.

21 MR. GOWDY: Your Honor, if it please the Court, would
22 Your Honor allow Mr. Kelly and I to approach for one moment?

23 THE COURT: Yes, sir.

24 (Bench conference held off the record.)

25 EXAMINATION BY MR. GOWDY

Jury qualification -- Number 92

1 Q Good afternoon, ma'am.

2 A Hi. How are you?

3 Q My name is Trey Gowdy. I'm the solicitor here in
4 Spartanburg and Cherokee County. I think you went to high
5 school in Cherokee County.

6 A I sure did.

7 Q Barry Barnette is in the middle. He's one of my deputy
8 solicitors, and Donnie Willingham is on the left. He's my
9 other deputy solicitor. We're like district attorneys if
10 you watch television. We're called solicitors in South
11 Carolina.

12 A I'm afraid I don't watch that much T. V.

13 Q I don't blame you. I don't watch much either.

14 I want to thank you, along with Mr. Kelly, for filling
15 out this questionnaire. I know it asks a lot of personal
16 questions.

17 A That's fine.

18 Q And there's a question that I want to ask you that I
19 wouldn't ordinarily ask you if we met in public, but given
20 the nature of this case --

21 A I have no problem.

22 Q Your daughter's situation with the law, do you recall
23 which law enforcement agency investigated or arrested your
24 daughter?

25 A Spartanburg County. It was the detectives, if I am not

1 mistaken. No. I am telling a story. I called. In fact, I
2 turned her in myself because I knew she was guilty, and I am
3 not going to lie. And I called Spartanburg County, the
4 regular number, and spoke to an officer and told them where
5 she was at, the room number and told them to go get her that
6 night because she would run.

7 Then I called her and begged her to let me bring her
8 in; had the lady on the phone with us. She would not. I
9 got off. I said, please, go now, because I did not want to
10 see her die.

11 Q I know that has to be very difficult. Did your
12 daughter have a substance abuse problem?

13 A Yes, sir.

14 Q Okay. And has she received treatment for that?

15 A They said they helped her, but I'm not sure. I haven't
16 seen her in a month. I don't know whether she is back on it
17 or whether she is not. I am not going to lie about that.
18 But if I see her and she is, I will turn her back in.

19 Q Thank you for answering that question.

20 A You're more than welcome.

21 Q Very briefly, His Honor asked you in an appropriate
22 circumstance if the facts warranted it, and the law as His
23 Honor gives it to you, I believe your answer was you would
24 be able to vote for the death penalty in the appropriate
25 case.

Jury qualification -- Number 92

1 A Yes, sir.

2 Q Would you also, ma'am, be able, if called upon to do
3 so, to sign your name to a verdict form along with your
4 other jurors?

5 A Yes, sir. I have no problems.

6 Q And, finally, would you be able to come into court if
7 asked to do so and announce your verdict?

8 A I sure would.

9 Q And would the same be true if you decided that life
10 imprisonment was the most appropriate?

11 A Yes, sir, I sure would.

12 Q Thank you very much for your candor.

13 A You're more than welcome.

14 MR. GOWDY: Thank you, Your Honor.

15 THE COURT: Anything else, Mr. Kelly?

16 MR. KELLY: Nothing, Your Honor.

17 THE COURT: Ms. Gallman, I want to thank you very much
18 for your participation here this afternoon, and also on
19 Monday.

20 I find that you are qualified to serve as a potential
21 juror. And with that qualification, I want to remind you
22 that you're not to discuss this case with anyone in any
23 manner or fashion whatsoever.

24 You are also, if anyone should attempt to contact you
25 concerning this case, report that to me immediately, along

1 with as much information about that person as you possibly
2 can. Also, you are to refrain from reading, watching or
3 listening to any news accounts concerning this case.

4 Now, when you go home today you need to start packing
5 your bags, because after six o'clock I'm going to get you to
6 call back up here. And there will be a recording on the
7 answering machine that you will reach. I think that you
8 were given a pamphlet when you reported on Monday --

9 THE JUROR: The 800 number.

10 THE COURT: -- that has the 800 number. You call that
11 tonight.

12 It will tell you one of a couple of things. It may say
13 call back tomorrow at a certain time or after a certain time
14 for further instructions, or it may say please call back or
15 please come back to the courthouse, report to the courthouse
16 tomorrow at a particular time with your belongings.

17 Leave them in your car. The reason we are going to do
18 that, if you are selected as a juror, then the jury
19 custodians would take you and the other jurors to the motel
20 that you would be staying in for the duration of the trial.
21 And you would stay with us until the trial ends.

22 If you are not selected, then we would thank you for
23 being here. You would go back home and go about your daily
24 activities.

25 Once again, call back tonight after six o'clock. And I

Jury qualification -- Number 152

1 will look forward to seeing you here maybe sometime
2 tomorrow. If not, Friday morning at the latest.

3 THE JUROR: Thank you so much.

4 THE COURT: Thank you, ma'am.

5 (Whereupon, the juror was excused from the courtroom.)

6 THE COURT: Let the record reflect that Juror Number
7 92, Patricia Gallman, is qualified to serve as a potential
8 juror in this case pursuant to Section 16-3-20 of our code.

9 Next will be Wayne D. Laboone.

10 JUROR NUMBER 152,
11 WAYNE D. LABOONE, having been first duly sworn, was
12 voir dired as follows:

13 EXAMINATION BY THE COURT

14 Q You are Wayne D. Laboone.

15 A Yes, sir.

16 Q Mr. Laboone, you understand you are under oath here
17 today.

18 A Yes, sir.

19 Q And you also remember that I gave you some instructions
20 on Monday that you were not to discuss this case with
21 anyone, that if anyone attempted to contact you, you were to
22 report that to me, and you were also not to read, watch or
23 listen to any news accounts concerning this case.

24 Have there been any violations of my cautionary
25 instructions?

1 A No, sir.

2 Q Now, I'm going to ask you some questions. Thereafter
3 one of the defendant's lawyers and then one of the
4 solicitors will ask you some questions.

5 Keep in mind that we are not in any way attempting to
6 invade your privacy, but there are certain questions that we
7 need to have answered. And, so, please just answer them
8 honestly and openly and fully. Keep in mind that there are
9 no right or wrong answers to most of these questions. No
10 one is challenging your view. We just need to know what
11 your view is in particular areas.

12 Also, if any question is not clear to you, if you need
13 to have it repeated, please, let us know, and we'll attempt
14 to do that.

15 Also, pay very close attention to these questions,
16 because we're probably going to be asking you some questions
17 over the next few minutes that you maybe have never
18 considered prior to coming to court here this week.

19 I will also tell you that lawyers and I have copies of
20 your juror information sheet, because that was important to
21 us in preparing for today.

22 Now, among the things that we are going to be talking
23 about over the next few minutes, Mr. Laboone, will be
24 reference to the word penalty. And the mere fact that I
25 even mention that word or that we talk about that word does

1 not indicate anything about the defendant, Mr. Moore. He is
2 presumed in the law to be innocent. Do you understand that?

3 A Yes, sir.

4 Q Now, if you were a juror in a criminal case could you
5 listen to the law, accept and apply that law as I would
6 instruct you as the judge of this Court even though you may
7 disagree with the law that I instructed or think it should
8 be some other way?

9 A Yes, sir, I believe so.

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

13 A Yes, sir.

14 Q Now, in a criminal case, the state has the burden of
15 proving guilt. And the burden of proof that the state must
16 meet is proof beyond a reasonable doubt. And a defendant
17 has absolutely no burden to prove his innocence. Do you
18 understand that principle?

19 A Yes, sir.

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

23 A If the evidence was to my thinking, the word without a
24 shadow of a doubt, yes, sir.

25 Q Well, do you understand that we are not talking about

1 without a shadow of a doubt?

2 A Right.

3 Q The burden of proof is beyond a reasonable doubt. Are
4 you telling me that you would establish another standard of
5 proof?

6 A Well, if it went to the point of being a, a difference
7 between life and death, I would have to have in my mind a
8 proven fact that he done it or she done it, whoever was at
9 that point, where I felt in my mind that that person was
10 guilty.

11 Q My question to you is could you reach either the
12 verdict of guilty or not guilty.

13 A Yes, sir.

14 Q And, once again, you understand that the burden of
15 proof is not beyond the shadow of a doubt but beyond a
16 reasonable doubt.

17 A Okay.

18 Q Do you understand that it would be impossible to prove
19 anything beyond any doubt and that the standard is beyond a
20 reasonable doubt?

21 Now, in this case the state is seeking the death
22 penalty. And that -- and as a result of that we're going to
23 be engaged in what we call a bifurcated trial or proceeding.

24 Now, that's a trial that's divided into two parts. If
25 you were a juror in such a trial and if the jury had found

1 the defendant not guilty of murder in the guilt phase, the
2 first part of that trial, do you understand that the trial
3 would end then?

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 move to the second or
8 sentencing phase of that trial?

9 A Yes, sir.

10 Q Now, in that part of the trial, Mr. Laboone, evidence
11 would be presented in the form of aggravating circumstances,
12 as well as mitigating circumstances.

13 Now, aggravating circumstances are facts, incidents,
14 details or occurrences which the General Assembly of the
15 State of South Carolina has declared by law would make
16 worse, that is to aggravate, the crime of murder.

17 In other words, when there is an aggravating
18 circumstance that goes along with or accompanies the crime
19 of murder, it increases the enormity or adds to the injury
20 of that crime. It's a murder that's committed in the
21 commission of or in connection with another crime or
22 incident. Do you understand that?

23 A Yes, sir.

24 Q Now, mitigating circumstances are also incidents,
25 details or occurrences which our general assembly, once

1 again, has declared by law that reduces the severity of the
2 crime of murder and may be considered by the jury as
3 extenuating or as reducing the responsibility of the crime
4 of murder. Do you understand that?

5 A Yes, sir.

6 Q Now, if you were a juror in that situation, sir, the
7 sentencing phase, could you, depending upon the particular
8 facts and circumstances of that case, including the
9 consideration of aggravating and mitigating circumstances
10 and the law that I would instruct you that applied to that
11 case, return a sentence of life in prison?

12 A Yes, sir.

13 Q If you were a juror in that situation could you,
14 depending upon the particular facts and circumstances of
15 that case, once again, including the consideration of all
16 aggravating and mitigating circumstances and the law that I
17 would instruct you that applied to that case, return a
18 sentence of death?

19 A Yes, sir.

20 Q Do you understand, Mr. Laboone, that there are always
21 two sentencing options that are available to the jury in a
22 death penalty sentencing phase, that being life imprisonment
23 or death?

24 A Yes, sir. I understand.

25 Q And do you understand that each and every juror must be

1 capable of imposing either of those sentences?

2 A Yes, sir.

3 Q Now, do you understand that if you were selected for
4 jury duty, for service on this jury, for jury duty, you
5 would be sequestered, housed in a motel, for the duration of
6 the trial?

7 Now, I do not know how long the case would last, but I
8 have an idea that it would be no more than seven to ten days
9 from the time we started. It could be less than that.

10 Except for the personal inconvenience that you would
11 suffer, would this pose a series danger to the health or
12 well-being of yourself or of those dependent upon you?

13 A Yes, sir, because I work -- I work in sales. And if I
14 don't work, I don't eat.

15 Q I understand that.

16 A And, also, well, could I say something else?

17 Q Sure, yeah.

18 A At this point, you know, my son is a senior in the
19 Boiling Springs High School Band. I'm very involved in the
20 band.

21 Q Yes, sir.

22 A We have band competitions this weekend and band state
23 competition next weekend. This will be the last time I will
24 get to be with him in competition. I cook with the band and
25 everything else. And I would really hate to go for my whole

Jury qualification -- Number 152

1 life of 12 years with him in school and then miss him in his
2 final competition in high in the band.

3 Q I understand that.

4 A That would be very -- it would be hard on me, plus it
5 would be hard on him, because he has always had me there.

6 Q All right. And, once again, your position in sales
7 with Hometown News is dependent upon you being there
8 working?

9 A Yes, sir. I call on clients every day. I have clients
10 I have to go see. And if I am not there and I don't sell
11 them advertising, I don't get paid.

12 MR. MORIN: No questions.

13 MR. BARNETTE: No questions.

14 THE COURT: Thank you very much, Mr. Laboone.

15 I am going to excuse you. Thank you very much for
16 being here. Good luck in your work, as well as your
17 competition.

18 (Whereupon, the juror was excused from the courtroom.)

19 THE COURT: Let the record reflect that Juror Number
20 152, Wayne Laboone, is excused.

21 Forty-four, Linda Burnett.

22 JUROR NUMBER 44, LINDA

23 D. BURNETT, having been first duly sworn, was voir
24 dired as follows:

25 EXAMINATION BY THE COURT

Jury qualification -- Number 44

1 Q You are Linda Diane Burnett.

2 A Burnett, yes, sir.

3 Q Burnett. Okay. Thank you, ma'am. Ms. Burnett, do you
4 understand that you are under oath here today?

5 A Yes, sir.

6 Q And that when you left courthouse the other day that I
7 gave you some instructions that you were not to discuss this
8 case with anyone, that if anyone tried to contact you that
9 you were to report that to me, and also that you were to
10 refrain from reading, watching or listening to any news
11 accounts concerning this case. Have there been any
12 violations of my instructions?

13 A No, sir.

14 Q Now, I'm going to be asking you some questions.
15 Thereafter one of the defense lawyers and one of the
16 solicitors will ask you some questions.

17 Please keep in mind that we are not in any way
18 attempting to invade your privacy, but because of the nature
19 of the proceedings that we are about this week certain
20 questions have to be asked and answered.

21 Now, I noticed on your response form that you desire to
22 be excused from jury service. Do you still have those same
23 issues that you're dealing with?

24 A Yes, sir.

25 Q Let me see the lawyers up here just a minute, please.

Jury qualification -- Number 160

1 (Bench conference held off the record.)

2 Q Given what you have presented to me, the fact that if
3 you were selected on this jury you would be sequestered for
4 maybe a week to ten days, I'm going to excuse you and allow
5 you to go on about your activities. Okay.

6 A Thank you.

7 Q Thank you very much for being here, Ms. Burnett. And
8 on behalf of the State of South Carolina, and particularly
9 Spartanburg County, you are excused.

10 A Thank you.

11 (Whereupon, the juror was excused from the courtroom.)

12 THE COURT: Let the record reflect that Juror Number
13 44, Linda D. Burnett, is excused.

14 Number 160, Deborah J. Lindsay.

15 JUROR NUMBER 160,
16 DEBORAH J. LINDSAY, having been first duly sworn,
17 was voir dired as follows:

18 EXAMINATION BY THE COURT

19 Q Good afternoon. You are Debra J. Lindsay.

20 A Right.

21 Q Ms. Lindsay, you understand that you are under oath
22 here this afternoon.

23 A Yes.

24 Q And you also will recall that when I dismissed you and
25 your colleagues the other afternoon that I gave you some

1 instructions that you were not to discuss this case with
2 anyone, that if anyone attempted to contact you that you
3 were to report that to me upon your return to the
4 courthouse, and that you were also to refrain from reading,
5 watching or listening to any news accounts concerning this
6 case. Have there been any violations of those instructions?

7 A No, sir.

8 Q Now, Ms. Lindsay, over the next few minutes I'm going
9 to be asking you some questions. And then one of the
10 defense lawyers, and as well as one of the solicitors, will
11 probably ask you some questions. Keep in mind that we are
12 not in any way attempting to invade your privacy, but due to
13 the nature of the proceedings that we are about this week it
14 is extremely important that we ask certain questions and
15 have them answered.

16 Also, keep in mind that there are absolutely no right
17 or wrong answers to these questions. If you would, just
18 answer them openly and honestly and fully. Keep in mind
19 that no one is challenging your view. We simply need to
20 know what your view is in a particular area or areas.

21 Also, if at any time you do not understand a question,
22 if you need to have it repeated, clarified, simply let me or
23 the lawyer asking the question know, and we will be glad to
24 accommodate you.

25 Also, I would direct you to pay close attention to

1 these questions, because I think you will find at the end of
2 this session that we will have probably talked about some
3 things that you have never considered prior to coming to
4 court this week.

5 I also tell you that the lawyers and I have copies of
6 your juror information sheet, because that was important to
7 us in preparing for this afternoon.

8 Now, among the things that we're going to be talking
9 about, Ms. Lindsay, will include references to the word
10 penalty. And the mere fact that I even mention that word or
11 we talk about penalty does not indicate anything about the
12 defendant, Mr. Moore. He is presumed in the law to be
13 innocent. Do you understand that?

14 A Yes, sir.

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

20 A If I didn't agree with it?

21 Q Yes, ma'am.

22 Could you follow the law as I give it to you even if
23 you did not agree with it?

24 A Not if I didn't agree with it.

25 Q You would not follow the law as I instructed?

1 A Not if I didn't agree with it, no.

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

6 A Yes, sir.

7 Q Now, in a criminal case the state has the burden of
8 proving guilt, and the burden of proof for the state is
9 beyond a reasonable doubt. A defendant has absolutely no
10 burden to prove his innocence. Do you understand that
11 principle?

12 A Yes, I do.

13 Q Could you, depending on the facts and evidence that
14 would be presented in a case and the law as I would instruct
15 you in a particular case, find a defendant either guilty or
16 not guilty?

17 A Yes.

18 Q Now, as you know in the case that we are about here
19 this week, it is one in which the State of South Carolina is
20 seeking the death penalty. And death penalty cases are what
21 we call bifurcated trials, meaning that they are split or
22 divided into two parts, a guilt phase and a sentencing
23 phase.

24 Do you understand that if you were a juror in that
25 situation and if the jury had found the defendant not guilty

1 of murder in that first phase, the guilt phase, that the
2 trial would end then?

3 A Yes, sir.

4 Q However, if you were a juror in such a case and the
5 jury found the defendant guilty of murder, you would then
6 move to that second or sentencing phase of the case.

7 A Yes, sir.

8 Q Do you understand that?

9 A Yes, I do.

10 Q Now, in that phase of the trial, Ms. Lindsay, evidence
11 would be presented in the form of aggravating circumstances,
12 as well as mitigating circumstances.

13 Now, aggravating circumstances are facts, incidents,
14 details or occurrences which the general assembly of our
15 state has established or declared by law would make worse,
16 that is to aggravate, the crime or offense of murder.

17 In other words, when an aggravating circumstance
18 accompanies or goes along with the crime of murder, it
19 increases the enormity or adds to the injury of that murder.
20 It's a murder that's committed in the commission of or in
21 connection with another crime. Do you understand that?

22 A Yes, I understand.

23 Q Now, mitigating circumstances are also incidents,
24 details or occurrences which the general assembly has
25 declared by law reduces the severity of the crime of murder

1 and may be considered by the jury as what we would call
2 extenuating or as reducing the degree of responsibility for
3 that crime of murder. Do you understand that?

4 A I understand that.

5 Q If you were a juror in that situation, talking about
6 the sentencing phase of the trial, could you, depending upon
7 the particular facts and circumstances of that case,
8 including the consideration of any aggravating and
9 mitigating circumstances, as well as the law that I would
10 instruct you that applied to that case, return a sentence of
11 life in prison?

12 A Yes, sir.

13 Q If you were a jury in that situation could you,
14 depending upon the particular facts and circumstances of
15 that case, once again, including the consideration of any
16 aggravating and mitigating circumstances and the law that I
17 would instruct you that applied to that case, return a
18 sentence of death?

19 A Yes, sir.

20 Q And do you understand that there are two sentencing
21 options that are always available to the jury during the
22 sentencing phase of a trial, that being life imprisonment or
23 death?

24 A I understand.

25 Q And you also understand that each and every juror must

1 be capable of imposing that sentence to serve as a juror in
2 the case.

3 A I understand.

4 Q And you understand that each and every juror must be
5 able to follow the law as I would instruct them.

6 A I understand.

7 Q Would you be able to set aside any personal beliefs
8 that you might have as to what the law should be or ought to
9 be and follow the law as I would instruct you, or would you
10 follow your own opinion and beliefs?

11 A Can you clarify that a little bit? I mean, you are
12 like -- you're talking about procedures, not necessarily --

13 Q I'm talking about whatever the law of this state is in
14 this case. When I give it to you, that would be the law
15 that you would follow if you take the oath as a juror.

16 If you would not be able to accept that oath, if you
17 would not be able to set aside your own opinions or beliefs
18 as to what the law should be --

19 A Okay.

20 Q -- then, in essence, you are telling me that you would
21 not be able to follow the law. Would you be able to set
22 aside your opinion, your beliefs and follow the law as I
23 instruct you as it is in the State of South Carolina?

24 A Yeah.

25 Q Now, if you were chosen for jury service in this case,

1 Ms. Lindsay, you would be housed or sequestered in a motel
2 for the duration of the trial. I have no way of knowing how
3 long the case would last. I've got an idea that it would be
4 no longer than seven to ten days from the time we start it.
5 It may not last that long.

6 Except for the personal inconvenience that you would
7 suffer, would this pose a serious danger to the health or
8 well-being of yourself or of those dependent on you?

9 A No, sir.

10 Q Thank you, ma'am.

11 Mr. Kelly.

12 MR. KELLY: Thank you, Your Honor. May it please the
13 Court.

14 THE COURT: Yes, sir.

15 EXAMINATION BY MR. KELLY

16 Q Ms. Lindsay, I'm Keith Kelly, and along with Michael
17 Morin and Jennifer Johnson seated here, we represent
18 Mr. Moore seated at my immediate right.

19 Just to ask a few questions here, when the Court was
20 asking you about setting aside your personal beliefs, I take
21 it that -- and you said no. I take it you have strong
22 convictions one way or the other, your personal beliefs. Is
23 that right?

24 A Which beliefs are you talking? I mean, clarify that.

25 Q If the Court told you that the law says that something

1 is one way in this particular case, and if you disagree with
2 that law for whatever reason, you just didn't think it was
3 right, you thought that it ought to be changed, whatever, at
4 first you indicated to Judge Clary that you would follow
5 your belief, because I take it you didn't believe the law.
6 Is that right?

7 A No. It's not that I don't believe the law. I just --
8 if I feel, say, something come up that I didn't feel was
9 right or I believe that law was not necessarily the right
10 law or needed to be changed, that's what I meant. I
11 wouldn't necessarily go with what he is saying. Do you see
12 what I am saying?

13 Q Yes, ma'am. So, if you thought that it needed to be
14 changed, even though it had not been changed as of today --

15 A Yeah.

16 Q -- then you would, you would not follow that, what
17 Judge Clary told you, because it's not right. Is that
18 right?

19 A It would depend on what it was. See, that's hard for
20 me to answer that if I don't know what law we're talking
21 about, you know. You see what -- any law. I know what you
22 are saying.

23 Q Any law. I have no way of knowing at any particular
24 time what His Honor might charge you on any particular
25 issues.

1 THE COURT: Do you understand, Ms. Lindsay, we are
2 talking in the --

3 THE JUROR: In general terms.

4 THE COURT: -- in general, in the abstract, because
5 we're not being specific, because we're trying to get an
6 overall perspective rather than trying to give you some
7 specific examples. We cannot do that.

8 THE JUROR: I understand.

9 Q I am sorry. I am just again asking in general.

10 Any law that Judge Clary charged you when he said to
11 you as a juror, sitting over here, ma'am, this is what the
12 law in south Carolina is and I am going to read it to you,
13 and he did so. And if you heard him tell you that and
14 understood him, what he said, comprehended that, at first
15 you indicated that if you disagree with that, if you think
16 that that law needs to be changed, modified in some fashion
17 that you would believe what's here and not follow that. Is
18 that what you are telling us?

19 A Well, not in this circumstance. I mean, I'm a
20 law-abiding citizen. I obey and follow the laws. I meant
21 like if I don't -- if we have a law I don't believe in, then
22 I'm going to do something to change it. I mean, but I will
23 follow the laws that are in South Carolina at this time, I
24 mean, you know.

25 Q Oh, okay. So, if you don't agree -- what you're

1 telling us then, and I am sorry for not understanding. If
2 you didn't agree that the law ought to be that way, write a
3 particular legislator.

4 A True, yeah. That, that's what I meant.

5 Q You would write a letter.

6 A Yeah. It doesn't necessarily mean I agree with it, but
7 if I'm told to abide by what they say at that time, I have
8 to. I'm a law-abiding citizen.

9 Q Yes, ma'am. Thank you.

10 I understand from your questionnaire, that Judge Clary
11 told you we have been provided, that your daughter's house
12 was broken into and no one was arrested. Would you tell us
13 when that was? You don't need to tell us a month and a day.
14 Was that a year ago, five years ago?

15 A Oh, no, no, no. It's been probably ten years ago.

16 Q Ten years ago. And I take it since no arrest, no one
17 was ever caught --

18 A No.

19 Q -- or punished for that.

20 A No.

21 Q Is that right? No one was hurt.

22 A No. There was no one home.

23 Q No one home. Okay.

24 And also your sister's house was broke into, and that
25 person was caught. As you indicated, they were serving some

1 jail time for that, is that right?

2 A Right, yeah.

3 Q Did you have to testify in that case or anything?

4 A No.

5 Q I understand your husband's cousin is a county police
6 officer. Is that with the Spartanburg County Sheriff's
7 Department.

8 A Yes, sir.

9 Q Would you tell us his name, his or her name, his name,
10 please?

11 A It's Randy Bogan.

12 Q Randy Bogan?

13 A Uh-huh.

14 Q And your sister worked for Spartanburg Dispatch. What
15 is your sister's name?

16 A Donna Johnson.

17 Q And which auxiliary did your brother work for?

18 A It was probably in the Lyman area. He lived in Lyman.

19 Q Okay. So it might have been, it might have been a --

20 A It wasn't Spartanburg County. I believe it was
21 Lyman-Duncan-Wellford area.

22 Q Okay. All right. And does he still do that?

23 A No, he doesn't.

24 Q On organizations, you left that blank. And do you
25 belong to any organizations like any organization,

1 whatsoever, a P. T. A., a --

2 A Not any more. My kids are grown.

3 Q Yes, ma'am. Booster club if high school, anything like
4 that?

5 A Not any more.

6 Q Not any more. Just did that when the children were in
7 school?

8 A True, yeah.

9 Q And I understand that you get your news from regular
10 news and so forth, and the Herald. Do you read any other
11 newspaper besides the Spartanburg Herald like the Greenville
12 News, the state newspaper, Wall Street Journal?

13 A Hardly ever.

14 Q Okay. And the magazines, we didn't specifically ask
15 for that. But do you subscribe to any magazines, whether it
16 be Southern Living, Ladies Home Journal?

17 A National Geographic.

18 Q National Geographic. What about your husband? Does he
19 subscribe to any magazine?

20 A Yes, sir, National Geographic, Runners World, that sort
21 of thing.

22 Q Okay. Does he subscribe to any gun magazine?

23 A No.

24 Q And do you have any firearms in your house?

25 A No, we do not.

1 Q Thank you very much.

2 MR. WILLINGHAM: May it please the Court.

3 THE COURT: Solicitor.

4 EXAMINATION BY MR. WILLINGHAM

5 Q Ms. Lindsay, my name is Donnie Willingham. I am one of
6 the prosecutors here in Spartanburg. And Solicitor Trey
7 Gowdy is the solicitor here in Spartanburg and Cherokee
8 Counties. Deputy Solicitor Barry Barnette -- we are
9 responsible for the prosecution in this case.

10 I just want to ask you a little bit more about
11 questions that the judge asked you. And the defense asked
12 you about whether or not you would be able to follow the
13 law.

14 Do you understand that in any court in South Carolina
15 there are basically two judges? One judge sits up on the
16 bench; the other set of judges sits over here in this jury
17 box.

18 This judge is the judge of the law. He knows what the
19 law is, and he will instruct you what the law is in South
20 Carolina. And he will tell you what the law is.

21 These sets of judges are the judges of the facts as
22 they hear them in this courtroom. And you will determine
23 credibility, believability of witnesses; and you will
24 determine based on the testimony what happened. You will
25 tell the judge what the facts are. You will tell the judge

1 what your verdict is. The judge will not be able to tell
2 you what he believes the facts to be.

3 By the same token, you don't get to tell him what you
4 believe the law should be. Do you understand that?

5 A I understand.

6 Q Okay. And if the judge tells you the law is a certain
7 way and says a certain thing, as a law-abiding citizen you
8 could follow his instructions.

9 A I could.

10 Q And you could put aside any other personal opinions
11 that you may have and go by what the law says in this case
12 or in any other case.

13 A Yeah, that's true.

14 Q Ms. Lindsay, it is my understanding from your questions
15 that when presented with that sheet of paper back in the
16 jury room, with jurors one, two and three, different types
17 of jurors, and based on your answers to the questions you
18 are pretty much a type of three juror.

19 A I am.

20 Q Ms. Lindsay, thank you.

21 MR. WILLINGHAM: Thank you, Your Honor.

22 MR. KELLY: Nothing.

23 THE COURT: Ms. Lindsay, I want to thank you very much
24 for your participation here on Monday, as well this day.

25 I find that you are qualified to serve as a potential

Jury qualification -- Number 160

1 juror in this case, and with that qualification I'm going to
2 instruct you of two things.

3 Number one, you are not to discuss this case with
4 anyone, whether it be fellow jurors, family, friends or
5 anyone else until I instruct you otherwise.

6 You are also, if anyone should attempt to contact you
7 concerning this case, you are to report that to me
8 immediately, because that's a very serious matter, and I
9 would deal with the person that attempted to contact you
10 accordingly.

11 Also, I instruct you very strongly that you're not to
12 read, watch or listen to any news accounts concerning this
13 case. Simply put, if you're selected as a juror in this
14 case, all I would want you to consider is what you would see
15 and hear in this courtroom, nothing more and nothing less.

16 Now, you need to go home tonight and start packing your
17 bags, because you need to report back here tomorrow
18 afternoon at 3:30, that's 3:30 tomorrow afternoon, to the
19 jury assembly room.

20 Now, when you come back, I want you to make sure that
21 you leave your belongings in your vehicle. If you're
22 selected as a juror in this case, then you and your fellow
23 jurors will be transported by the jury custodians to the
24 location that you would be staying throughout the course of
25 this trial, and you would be well cared for.

Jury qualification -- Number 160

1 If you're not selected, we are going to let you go
2 home, take your belongings with you that are still in your
3 car. And we will thank you very much for having been here
4 and participated in this process.

5 So, tomorrow afternoon at 3:30 you will report directly
6 to the jury assembly room that you were in a little bit
7 earlier today. So, report directly there tomorrow afternoon
8 at 3:30. I will look forward to seeing you then.

9 THE JUROR: Okay. Thank you.

10 (Whereupon, the juror was excused from the courtroom.)

11 THE COURT: Let the record reflect that Juror Number
12 160, Deborah J. Lindsay, is qualified to serve as a
13 potential juror in this case pursuant to Section 16-320 of
14 our code.

15 As you have gleaned from my discussions with
16 Ms. Lindsay, I'm going to have all of the qualified jurors
17 report back here at 3:30 tomorrow. And we should be in a
18 posture hopefully by four o'clock or so to strike a jury in
19 this case.

20 What we'll do with the group that's coming in at 4:00
21 tomorrow, and also at 6:00, is we will probably call the six
22 o'clock group and tell them not to report, madam clerk,
23 until further notice. And that four o'clock group, we can
24 probably just hold them in the East Courtroom or something
25 and dismiss them from there. But that's the procedure that

Jury qualification -- Number 266

1 we will use.

2 John A. Taylor, 266.

3 JUROR NUMBER 266, JOHN

4 A. TAYLOR, JR., having been first duly sworn, was
5 voir dired as follows:

6 EXAMINATION BY THE COURT

7 Q You are John A. Taylor, Jr., is that correct?

8 A Yes, sir, Your Honor.

9 Q Mr. Taylor, do you understand you are under oath here
10 today?

11 A Yes, sir.

12 Q And you also recall that Monday when I dismissed you
13 that I gave you instructions that you were not to discuss
14 this case with anyone, that if anyone attempted to contact
15 you, that you were to report that to me, and also that you
16 were to refrain from reading, watching or listening to any
17 news accounts concerning this case. Have there been any
18 violations of my instructions?

19 A No, sir.

20 Q Now, Mr. Taylor, over the next few minutes I'm going to
21 ask you some questions, and then one of the defense lawyers
22 will be able to pose some questions to you, as well as the
23 solicitor.

24 Keep in mind that we are not in any way attempting to
25 invade your privacy, but due to the nature of the

1 proceedings that we are about here this week it's extremely
2 important that certain questions are asked and answered.

3 Keep in mind that there are no right or wrong answers
4 to these questions, and please just answer them openly and
5 honestly and fully. And keep in mind that no one is
6 challenging your view. We simply need to know what your
7 view is in a particular area.

8 Also, if you have any question at any time that you do
9 not understand, you need to have repeated or clarified,
10 simply let me or the lawyer asking the question know, and we
11 will do that.

12 Also, I want you to pay very close attention to these
13 questions, because during the next few minutes we will
14 probably ask you some questions that you have never
15 considered prior to coming to court here this week.

16 I would also tell you that the lawyers and I have
17 copies of your juror information sheet, because that was
18 important to me insofar -- or important to us insofar as
19 preparing for this afternoon.

20 Now, among the things that we are going to be
21 discussing over the next few minutes, Mr. Taylor, will
22 include references to the word penalty. And the mere fact
23 that I even mention that word or use that word does not in
24 any way indicate anything about the defendant, Mr. Moore.
25 He is presumed in the law to be innocent. Do you understand

1 that?

2 A Yes, sir.

3 Q Now, if you were a juror in a criminal case could you
4 listen to the law, accept and apply that law as I would
5 instruct you as the judge of this Court even though you may
6 not agree with that law or think that it should be some
7 other way?

8 A I suppose I might as well start out with stating that
9 I have opposition to the death penalty. Other than that,
10 which is a big other, I understand, I would certainly want
11 to apply the law.

12 Q Okay. Are you telling me that you would be unable to
13 impose the death penalty?

14 A I can't imagine any circumstances that I would be able
15 to do so.

16 Q All right, sir. And you understand that in this state
17 that a juror, prospective juror, must be able to impose
18 either life or death. And you would be unable to impose
19 death under any circumstances.

20 A I do not feel I could do that, no, sir.

21 Q You were given a sheet back there that you read that
22 listed three classifications of jurors. Which one did you
23 feel you fell into?

24 A I would be closest to number two.

25 Q Number two, that would be that you would always give

1 life?

2 A Not -- that I, that I would give -- that I could not
3 give the death penalty.

4 Q Okay. All right. So you could give life, but you
5 would be unable to give death.

6 A Exactly.

7 THE COURT: All right. Anything from the defense?

8 MR. KELLY: No questions, Your Honor.

9 THE COURT: From the state?

10 MR. WILLINGHAM: No, Your Honor.

11 THE COURT: Thank you very much, Mr. Taylor, for being
12 here this week and participating in our process.

13 This is going to conclude your responsibilities. You
14 can go about your daily activities now without interruption
15 from us.

16 On behalf of the State of South Carolina, and most
17 particularly Spartanburg County, I thank you for
18 participating in this process.

19 THE JUROR: Thank you, Your Honor.

20 THE COURT: Thank you, sir. You are excused.

21 (Whereupon, the juror was excused from the courtroom.)

22 THE COURT: Let the record reflect that Juror Number
23 266, John Taylor, is not qualified to serve as a potential
24 juror in this case pursuant to Section 16-320 of the code as
25 he would be unable to impose a death sentence.

Jury qualification

1 All right. According to my calculations through nine
2 panels, we now have in reality 32 people qualified, because
3 I'm going to have to deal with one of these gentlemen that
4 will make it 33.

5 We're starting in the morning at 9:00 a.m. And between
6 9:00, 11:00 and 2:00, that will give us 18 people to deal
7 with. I would be a little shocked if we didn't get at least
8 five or six out of that entire group, and maybe more. And
9 we should be in a posture to strike by 3:30 to 4:00 tomorrow
10 afternoon. We'll discuss that a little bit more as we go
11 along.

12 Thank you-all for another good day of work.

13 Anything from the state before we break for the day?

14 MR. GOWDY: No, sir, Your Honor, other than -- and Your
15 Honor may have said this and, I mean, I may have missed
16 it -- what Your Honor's plans were in terms of bringing back
17 Mr. Browning to sort out that.

18 THE COURT: I'm probably going to get the clerk to have
19 him here tomorrow at the end of the eleven o'clock panel.

20 Madam clerk, if you would, have Mr. David L. Browning.
21 Get in touch with him and have him report here tomorrow at,
22 let's say, 12:30 to the clerk's office. And then he can be
23 brought around by the bailiffs to an adjacent room, and we
24 will deal with him as soon as we finish that eleven o'clock
25 panel, because we do have some issues to raise with him.

Jury qualification

1 And what we will do, I think, is probably just keep on
2 going with our qualification of the nine, eleven and two
3 o'clock panels tomorrow, regardless of how many we get out
4 of that, because if we have any people that have problems
5 that we have take off or drop off, we just strike them for
6 whatever reason and slide everyone up and then work from
7 there.

8 If we get to the point to where we could even do a dry
9 strike, we might consider that, and that might save us some
10 time on down the line. We will talk about that tomorrow.

11 MR. GOWDY: Yes, sir.

12 THE COURT: Anything from the defense?

13 MR. MORIN: No, sir.

14 THE COURT: Thank y'all very much. I look forward to
15 seeing you in the morning at nine o'clock.

16 END OF PROCEEDINGS OCTOBER 17, 2002
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Volume Seven -- Trial --
Jury qualification and Testimony

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 JENNIFER JOHNSON, ESQUIRE
22 Attorneys for the Defendant

23
24 LINDA D. MOFFITT
25 Circuit Court Reporter

Jury qualification -- Number 130

1 (Proceedings October 18, 2001)

2 THE COURT: Let me see the lawyers up here just one
3 minute, please.

4 (Bench conference held off the record.)

5 THE COURT: I think we have a juror, Mr. Blanchard, who
6 is nearby here that was qualified on Monday. Let's get him
7 in.

8 THE OFFICER: Do you have the information on him?

9 THE COURT: Juror 29, Mr. Blanchard.

10 (Pause.)

11 THE COURT: I tell you what let's do. We are going to
12 go ahead and start with our first one. Tell them to hold
13 Mr. Blanchard nearby, and we will get him in our first
14 opportunity.

15 All right. Let's bring in Number 130, Diane Howard.

16 JUROR NUMBER 130, DIANE P. HOWARD,
17 having been first duly sworn, was voir dired as follows:

18 EXAMINATION BY THE COURT

19 Q Good morning. You are Diane Howard, correct?

20 A That's correct.

21 Q And, Ms. Howard, you understand that you are under oath
22 here today for these proceedings.

23 A Yes, sir.

24 Q And you also remember that on Monday when I dismissed
25 you and your colleagues that I gave you instructions that

1 you were not to discuss this case with anyone, that if
2 anyone attempted to contact you concerning this case that
3 you were to report that to me, and that you were to refrain
4 from reading, watching or listening to any news accounts
5 concerning this case. Have there by any violations of my
6 instructions?

7 A No.

8 Q Now, Ms. Howard, over the next few minutes I'm going to
9 be asking you some questions, and then one of the defense
10 lawyers and one of the solicitors will also ask you some
11 questions.

12 Please understand and keep in mind that we are not in
13 any way attempting to invade your privacy, but due to the
14 nature of the proceedings that we are about here this week
15 it's extremely important that certain questions are asked
16 and answered.

17 Keep in mind that there are not right or wrong answers
18 to these questions. It's very simply that you need to
19 answer them openly and honestly and as fully as possible.

20 Also keep in mind that no one is challenging your view.
21 We simply need to know what your view is in particular
22 areas.

23 Also, if I or one of the lawyers ask you a question
24 that you do not understand, if you need to have it repeated,
25 clarified, simply let me know, or the lawyer know, and we'll

1 be glad to accommodate you.

2 Also, I'm going to ask that you pay very close
3 attention to all of these questions, because over the next
4 few minutes we're probably going to be asking you some
5 things that you maybe have never even thought about or
6 considered prior to coming to court here this week.

7 I would also tell you that the lawyers and I have
8 copies of your juror information sheet, because that was
9 important to us in preparing for this morning.

10 Now, among other things, over the next few minutes
11 we're going to be talking about or referring to the word
12 penalty, but the mere fact that we even mention that word or
13 use that word in these discussions does not indicate
14 anything about the defendant, Mr. Moore. He is presumed in
15 the law to be innocent. Do you understand that?

16 A Yes.

17 Q Now, Ms. Howard, let's assume that you were a juror in
18 a criminal case. Could you listen to the law, accept and
19 apply that law as I would instruct you as the judge of this
20 Court even though you may not agree with that law that I
21 instructed or think it ought to be some other way?

22 A Could I do that?

23 Q Yes, ma'am.

24 A Yes, I could.

25 Q Could you decide this case based solely on the evidence

1 presented here in this courtroom and disregard anything that
2 you may have heard, read or seen about the case?

3 A Yes.

4 Q Now, in a criminal case, Ms. Howard, the state has the
5 burden of proving guilt, and the burden of proof for the
6 state is proof beyond a reasonable doubt.

7 A defendant has absolutely no burden, no responsibility
8 to prove himself innocent. Do you understand that legal
9 principle?

10 A Now I do, yes.

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

14 A Yes.

15 Q Now, as you know from being here on Monday with the
16 entire jury panel, this is a case in which the State of
17 South Carolina is seeking the death penalty. And, as such,
18 we're going to be engaged in what we call a bifurcated trial
19 or proceeding. That simply means that it's divided into two
20 parts. The first part is known as the guilt phase; the
21 second part the sentencing phase.

22 If you were a juror in such situation, a death penalty
23 case, and if the jury had found the defendant not guilty of
24 murder in the guilt phase, do you understand that the trial
25 would end at that point in time?

Jury qualification -- Number 130

1 A That's correct.

2 Q However, if you are a juror in such a situation and if
3 the jury had found the defendant guilty of murder in that
4 first or guilt phase, do you understand that you would then
5 move to the second or sentencing phase of the trial?

6 A Yes.

7 Q In that phase of the trial, the sentencing phase,
8 evidence would be presented to the jury in the form of
9 aggravating circumstances, as well as mitigating
10 circumstances.

11 Now, aggravating circumstances are facts, incidents,
12 details or occurrences which our state legislature, the
13 general assembly, has declared by law would make worse, that
14 is to aggravate, the crime of murder.

15 In other words an aggravating circumstance when it
16 accompanies or goes along with a murder increases the
17 enormity or adds to the injury of that crime of murder.
18 It's a murder that's committed in the commission of or in
19 connection with another crime or incident.

20 Do you understand what I am speaking of when I talk
21 about an aggravating circumstance?

22 A Yes.

23 Q Now, mitigating circumstances are also incidents,
24 details or occurrences which the general assembly of our
25 state has declared by law reduces the severity of the

1 offense of murder and may be considered by the jury as
2 extenuating or reducing the degree of moral culpability or
3 responsibility of the crime of murder.

4 Do you understand what I mean when I talk about
5 mitigating circumstances?

6 A I do.

7 Q Now, let's assume that you were a juror in that
8 situation, the sentencing phase.

9 Could you, depending upon the particular facts and
10 circumstances of that case, including the consideration of
11 aggravating, as well as mitigating, circumstances and the
12 law that I would instruct you that applied to that case,
13 return a sentence of life in prison?

14 A Yes.

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 any
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.

22 Q Now, Ms. Howard, do you understand that in a death
23 penalty case that there are two sentencing options that are
24 always available to the jury in the sentencing phase, that
25 being life imprisonment or death?

Jury qualification -- Number 130

1 A Uh-huh.

2 Q And do you understand that each and every juror must be
3 able to impose either of those sentences?

4 A Right.

5 Q Now, if you were chosen for service on this jury you
6 would be sequestered or housed in a motel for the duration
7 of the trial once the jury is seated. I have no idea of
8 knowing how long the case would last, but at the outside I
9 would say seven to ten days. 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 those who are dependent upon you?

13 A No.

14 Q Thank you for responding to my questions. Please
15 answer any of Mr. Morin's questions at this time.

16 EXAMINATION BY MR. MORIN

17 Q Good morning, Ms. Howard.

18 A Good morning.

19 Q As the judge told you, we have a copy of your
20 questionnaire. And I want to thank you for filling that out
21 for us, and there is just a few questions that I would like
22 to go over with and have -- talk to you a little bit about
23 your answers you gave the judge if I may.

24 A All right.

25 Q To begin with, I notice that on question number 23 you

1 indicated that somebody in your family had been charged with
2 a crime, but you didn't, and you indicated you didn't know
3 when they were charged with it or what happened to it.

4 Could you tell us about that?

5 A Yes. It was my sister.

6 Q Okay.

7 A She was -- do I need to tell you? I mean, I really
8 don't know what the charge is.

9 Q Okay. Well --

10 A But my sister was -- she had a party. There was a
11 ruckus. Somebody's bicycle, moped or whatever, I don't
12 know, was damaged. They brought, filed charges. And
13 probably three years later it was brought to court, and she
14 pled guilty. She said she wasn't guilty, but she still pled
15 guilty. And she is on probation.

16 Q Okay. That's all. Thank you very much.

17 A Okay.

18 Q I also noticed that you have listed Baptist as your
19 religion. Is that right?

20 A That's correct.

21 Q Do you attend a church regularly?

22 A Yes, I do.

23 Q And which church is that?

24 A The Rock Hill Baptist Church.

25 Q Now, you've been working as a realtor for some time.

Jury qualification -- Number 130

1 A Fifteen and a half years.

2 Q Okay. Do you primarily work up there in the area you
3 are from?

4 A No. I work the whole county.

5 Q The whole county?

6 A Uh-huh.

7 Q Okay. Now, when you answered the judge's questions you
8 stated that you could in a given circumstance impose a death
9 sentence.

10 A Yes. I feel like I could.

11 Q Okay. And from that I take it that you have thought
12 about that issue before.

13 A Yes, yes.

14 Q Okay. Could you share your views with us about, your
15 views about the death penalty?

16 A Well, I thought a lot about this since Monday.
17 Economically, probably a life imprisonment would be better,
18 economically.

19 However, I feel like if the crime is severe enough and
20 there is proof without a shadow of a doubt, that I think the
21 death penalty is, I want to say okay, but, you know, I feel
22 like that it would be just.

23 Q Okay.

24 THE COURT: Do you understand that the burden of proof
25 is not beyond a shadow of a doubt? It's beyond a reasonable

1 doubt.

2 THE JUROR: A reasonable doubt, right.

3 Q Okay. And everybody who has thought about this, and
4 they have gotten their views from somewhere, either
5 something they have read or part of their upbringing or
6 religion. Could you tell me where you feel like you have
7 gotten these views from?

8 A My father.

9 Q Your father. Okay. And, of course, you understand
10 that, and the judge told you that, Mr. Moore is presumed
11 innocent.

12 A That's correct.

13 Q And in the event that the jury, and if you are part of
14 it, finds him guilty of murder, then the state would present
15 their aggravating circumstances to you, and they would have
16 to prove at least one. They may prove more. But they would
17 have to prove at least one aggravating circumstance before
18 you get to that death-life decision.

19 A Right.

20 Q Do you also understand that even if they prove that
21 beyond a reasonable doubt it would still be your decision,
22 because it's not a requirement that you find the death
23 penalty?

24 A Right.

25 Q Okay. Thank you very much.

Jury qualification -- Number 130

1 A Thank you.

2 MR. GOWDY: May it please the Court, Your Honor.

3 THE COURT: Solicitor Gowdy.

4 EXAMINATION BY MR. GOWDY

5 Q Good morning, Ms. Howard.

6 A Good morning.

7 Q My name is Trey Gowdy. I'm the solicitor here in
8 Spartanburg.

9 A Right.

10 Q Seated with me is Barry Barnette in the middle, and
11 Donnie Willingham is to his left. They are both my deputy
12 solicitors.

13 I'm going to talk very briefly. I have got three
14 sisters, and I don't want to be responsible for what they
15 have done either.

16 A Me either.

17 Q But your sister's situation involving probation, do you
18 know whether or not that would have been in Spartanburg
19 County or Cherokee County?

20 A It was in Spartanburg County.

21 Q Did anything during the course of that -- do you know
22 who investigated that case?

23 A I do not -- I try to stay just as far away from it as I
24 can, because it's not a thing that I am really proud of.

25 Q Yes, ma'am.

Jury qualification -- Number 130

1 A So I try not to get involved.

2 Q I just wanted to try to make sure that nothing happened
3 during the course of that prosecution that would cast the
4 Seventh Circuit Solicitor's Office in a bad light.

5 A Absolutely not, no. I feel like you do your job.

6 Q Thank you.

7 Speaking of jobs, His Honor Judge Clary is the judge of
8 law. And I know a lot of these phrases sometimes are
9 foreign to the folks that don't do it for a living.

10 You mentioned the phrase beyond a shadow of a doubt,
11 and Judge Clary, of course, said beyond a reasonable doubt.
12 Would you be able to apply the reasonable-doubt standard --

13 A Sure.

14 Q -- in this case?

15 A Yes, I would.

16 Q And you also told Judge Clary that in the appropriate
17 case if you felt like the facts and circumstances warranted
18 it that you would be able to vote for the death penalty.

19 A Yes.

20 Q Would you be able to sign your name to a verdict form
21 and put in writing that that was your decision?

22 A Yes.

23 Q Would you be able to, if called upon to do so, to come
24 into this courtroom at the conclusion of your jury
25 deliberations and announce publicly to His Honor that was

1 your vote?

2 A Yes.

3 Q By the same token, if your decision was life in prison
4 as opposed to death, you would be able to do that?

5 A Yes, I would.

6 Q Thank you very much for your time.

7 A Thank you.

8 THE COURT: Anything else, Mr. Morin?

9 MR. MORIN: No, sir.

10 THE COURT: Anything else, Solicitor?

11 MR. GOWDY: No, sir, your Honor.

12 THE COURT: Ms. Howard, I want thank you very much for
13 your participation here today, as well as Monday.

14 I find that you are qualified to serve as a potential
15 juror in this case. With that qualification, I'm going to
16 remind you that you are to continue my instructions that you
17 are not to discuss this case with anyone that you come into
18 contact with, whether it be fellow jurors, family, friends
19 or anyone else.

20 Also, if anyone should attempt to contact you
21 concerning this case, I want to gather as much information
22 about that person or persons as you possibly can and report
23 that to me immediately, because that's a very serious
24 matter, and I would deal with that person accordingly.

25 Also, you are to continue to refrain from reading,

Jury qualification -- Number 130

1 watching or listening to any news accounts concerning this
2 case. Very simply put, all I would want you to consider in
3 this matter if you were selected as a juror is what you see
4 and hear in this courtroom, nothing more and nothing less.

5 Now, with that instruction, you are going to have to go
6 home and start moving rather quickly. I am bringing the
7 entire group of qualified jurors back here this afternoon at
8 3:30. You need to go home and start packing your bags. And
9 be prepared if you are selected at 3:30 or thereabouts to
10 stay with us for the duration of the trial.

11 If you are selected, you would be taken with the other
12 members of the jury by the jury custodians who would be
13 responsible for your care and keeping during the period of
14 the trial to a location that you would be staying for the
15 entire duration of this trial.

16 If you are not selected, we are going to send you back
17 home with our thanks for having been here and participated
18 in this process.

19 When you come back this afternoon, please leave your
20 belongings in your vehicle. Do not bring them into the
21 courthouse. If you are selected, we will make sure that
22 everything is properly transported to that location. If
23 not, then you would just get in your vehicle and head back
24 home.

25 You need to be here promptly at 3:30. Do not be late.

Jury qualification -- Number 130

1 Be here at 3:30. And we will get this jury seated as
2 quickly as we can this afternoon.

3 You are excused. I'll see you at 3:30.

4 THE JUROR: Could I ask a question?

5 THE COURT: Yes, ma'am.

6 THE JUROR: Will this go on -- I guess the Court will
7 be in session during the weekend.

8 THE COURT: Yes, ma'am.

9 THE JUROR: That will count.

10 THE COURT: Yes, ma'am.

11 THE JUROR: Thank you.

12 (Whereupon, the juror was excused from the courtroom.)

13 THE COURT: I think Mr. Blanchard is available now, is
14 that correct? Let's bring him in, please.

15 What I am going to do is let him come up here, and
16 y'all can approach whenever he comes up.

17 (Whereupon, Juror Number 29, Jeffrey A. Blanchard, was
18 returned to the courtroom.)

19 THE COURT: Come on up, please, Mr. Blanchard. I am
20 going to ask you to come right up here and stand, please.
21 You need to come on up here. The lawyers may approach.

22 (The following takes place at the bench.)

23 THE COURT: Mr. Blanchard, I have received your letter,
24 and I appreciate the fact that you have provided that to me.

25 If you were able to receive and make telephone calls if

Jury qualification -- Number 130

1 you were selected, is that something that would ease your
2 mind in this?

3 THE JUROR: Yes, sir. I believe that my original
4 understanding of how the system would work, that it would
5 allow that. I thought maybe they might be monitored or
6 something.

7 THE COURT: They would, they would. You can receive
8 telephone calls. You know, I mean, everyone has situations
9 that comes up in their lives that, even when you are on a
10 sequestered jury that, you need to have communication with
11 someone. Everything would be monitored, of course, by the
12 jury custodians, but you could receive telephone calls, make
13 them.

14 If necessary, I mean, if we got a call during the day,
15 during the trial, if you were selected, we would make sure
16 we took a break for you to handle whatever needed to be
17 handled.

18 THE JUROR: Okay. That was my main concern.

19 THE COURT: Does that put you more at ease then?

20 THE JUROR: Yes, sir.

21 THE COURT: Okay. Anything else you need to tell me?

22 THE JUROR: No, sir.

23 THE COURT: Thank you very much.

24 THE JUROR: Thank you.

25 THE COURT: We will see you this afternoon at 3:30.