

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY MAR 17 2016
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

SC Court of Appeals

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

The State, ... Respondent,

v.

Earnest Stewart Daise, ... Appellant.

RECORD ON APPEAL - VOLUME IV

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1 JUROR NUMBER 449: Um-hmm.

2 MR. YOUNG: And that's what he would be on trial
3 for. And the Judge talked to you a little bit about
4 what murder is, right?

5 JUROR NUMBER 449: Right.

6 MR. YOUNG: And did you understand her definition?

7 JUROR NUMBER 449: I do.

8 MR. YOUNG: And that it was intentional, meant to
9 do it, malice murder, right?

10 JUROR NUMBER 449: Right.

11 MR. YOUNG: Meaning it wasn't in self-defense; it
12 wasn't an accident; it wasn't in the heat of passion;
13 didn't get so mad, blacked out; didn't snap; knew the
14 difference between right and wrong; knew what they were
15 doing; chose to kill innocent people. Are you with me?

16 JUROR NUMBER 449: Right, with you.

17 MR. YOUNG: Some people say, based on that, I don't
18 need to know anything else; based on the fact that he
19 killed two people, one of which was a four-year-old
20 child; and we found him guilty guilty, a hundred
21 percent; we got the right guy; for me, I think that the
22 death penalty is the only appropriate punishment for
23 that guilty murderer. Okay? Do you understand that?

24 JUROR NUMBER 449: I understand what you're saying.

25 MR. YOUNG: Yes, ma'am. And some people are like

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1 that, right?

2 JUROR NUMBER 449: Right.

3 MR. YOUNG: Is that you?

4 JUROR NUMBER 449: No, it's not.

5 MR. YOUNG: Why not?

6 JUROR NUMBER 449: I don't know how to say this,
7 but I watch I.D. channel all the time, so I'm really
8 into court cases, and I realize that there is situations
9 where we can't just judge. You've got to go through
10 everything to understand. I may say, when I look at the
11 show, this person is guilty, and I was like, why didn't
12 they find him guilty? But then, when you hear the
13 jurors' interview afterward, you find out that there
14 were things that you didn't know just by watching T.V.
15 that they had to take in consideration.

16 So, you can't really decide on a verdict until
17 you've heard everything. You can't just go by the
18 newspaper, T.V., or whatever. So, I do know that part.

19 MR. YOUNG: Thank you, Ms. Mills. And I
20 understand what you're saying. And you were -- and the
21 shows that you were watching, they're talking about
22 determining a fact --

23 JUROR NUMBER 449: Right.

24 MR. YOUNG: -- that's correct or not. And you want
25 to be really careful, and you want to get it right.

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1 JUROR NUMBER 449: Right.

2 MR. YOUNG: And in the case I'm talking about,
3 we've decided the facts. You as a juror have decided
4 the facts. The facts are there. The person is guilty.
5 Okay? Are you with me?

6 JUROR NUMBER 449: I'm with you.

7 MR. YOUNG: All right. And so, we're going to talk
8 about punishment, okay, what punishment might be
9 appropriate. Okay?

10 JUROR NUMBER 449: Okay.

11 MR. YOUNG: And the jurors, if the State proves the
12 existence of an aggravating factor beyond a reasonable
13 doubt, and that's two murders, one of which was a child,
14 okay? Those are aggravating factors. Okay? Once
15 that's proven, the jury has the opportunity to consider
16 punishment. Are you with me?

17 JUROR NUMBER 449: Right.

18 MR. YOUNG: And there's no roadmap as to which
19 punishment is correct. There's no if a, b, and c
20 exists, then, this is the punishment the jury should
21 give; if d, e, and f, this is the punishment the jury
22 should give. Okay. Are you with me?

23 JUROR NUMBER 449: I'm with you.

24 MR. YOUNG: Each juror has to decide for themselves
25 what punishment is appropriate in any given case. Okay?

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1 Are you with me?

2 JUROR NUMBER 449: I'm with you.

3 MR. YOUNG: And my question for you is, when we
4 start this process, are you sort of predisposed towards
5 one penalty, either the death penalty or life without
6 the possibility of parole, over the other at the start?

7 JUROR NUMBER 449: I'm really not, no.

8 MR. YOUNG: You could go either way.

9 JUROR NUMBER 449: I can go either way.

10 MR. YOUNG: One of the things that we talk about,
11 and the Judge talked to you a little bit about, was
12 mitigation; a person's walk in life; what they've been
13 through; what's happened to them; what they've done to
14 others; what they've done for others; those types of
15 things. Do you understand what I'm talking about?

16 JUROR NUMBER 449: I understand.

17 MR. YOUNG: And it's not stuff that relates to the
18 crime. It doesn't relate to what happened. Okay? Are
19 you with me?

20 JUROR NUMBER 449: Right. With you.

21 MR. YOUNG: And you were asked that question on the
22 jury questionnaire, about whether or not you thought
23 that the background circumstances of the guilty murderer
24 should be relevant in making the punishment decision.
25 And I know it was a bad question.

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1 JUROR NUMBER 449: Yeah.

2 MR. YOUNG: Right. Have I made it a little bit
3 clearer for you?

4 JUROR NUMBER 449: Yeah.

5 MR. YOUNG: Okay. And when you saw the question on
6 the questionnaire, you said, no, that you didn't think
7 that those circumstances were important, right?

8 JUROR NUMBER 449: Right.

9 MR. YOUNG: And is that still your answer, or has
10 that changed?

11 JUROR NUMBER 449: I've thought a lot about it. I
12 don't think I've changed. Like I said earlier, it's
13 just so hard, because there's just so many facts that we
14 don't know yet. And just like one of the questions with
15 did I believe in capital punishment, I've only known one
16 person in my life that I knew personally that was
17 electrocuted, and I've never really thought about it. I
18 -- I really haven't, because I haven't been on a case
19 like this. I don't know the background. I don't know
20 the facts, so I've never really thought about it.

21 MR. YOUNG: Okay. And thank you very much.
22 Talking about punishment and which punishment is
23 appropriate; if you got to decide that the law was; you
24 were president, --

25 JUROR NUMBER 449: Um-hmm.

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1 MR. YOUNG: -- and you could have a death penalty
2 or not have a death penalty; what do you think? Do you
3 think you would have one?

4 JUROR NUMBER 449: I don't think I would.

5 MR. YOUNG: Okay. Thank you. At the end of the
6 day, each juror makes their own individual moral
7 judgment, like what I was talking about, about which
8 penalty is appropriate for them. Okay?

9 And like the Judge said, any reason, no reason, you
10 can give a life penalty. The state of South Carolina is
11 always satisfied with a life sentence in any case. In
12 the worse case that you can imagine, the State of South
13 Carolina is always satisfied with a life sentence.
14 Okay?

15 JUROR NUMBER 449: Yeah.

16 MR. YOUNG: The death penalty is never required.
17 Okay?

18 JUROR NUMBER 449: Okay.

19 MR. YOUNG: You can chose life for any reason.
20 Okay? That choice about what punishment is appropriate
21 for you is what I would refer to as individual moral
22 judgment. Okay? And that's what it's call in the law.

23 JUROR NUMBER 449: Right.

24 MR. YOUNG: And that's like choosing what faith is
25 right for you.

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1 JUROR NUMBER 449: Right.

2 MR. YOUNG: You have made your own decisions about
3 your personal faith, right?

4 JUROR NUMBER 449: Yes.

5 MR. YOUNG: That's your moral judgment.

6 JUROR NUMBER 449: Right.

7 MR. YOUNG: And if somebody else makes their own
8 decisions about their faith, their moral judgments, and
9 you expect them to respect your decisions about your
10 moral judgment. Is that true?

11 JUROR NUMBER 449: True.

12 MR. YOUNG: And you respect their decision.

13 JUROR NUMBER 449: Exactly.

14 MR. YOUNG: Even if it's different from yours,
15 right?

16 JUROR NUMBER 449: Right.

17 MR. YOUNG: And if you saw somebody who was being
18 bullied and told that their opinion was dumb, you would
19 stop that and say, their opinion -- they're entitled to
20 their opinion just as much as I'm entitled to mine.

21 JUROR NUMBER 449: Right.

22 MR. YOUNG: Just as much as you're entitled to
23 yours.

24 JUROR NUMBER 449: Right.

25 MR. YOUNG: Thank you, Ms. Mills. You've been very

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1 patient with me. I need to ask you where some jazz
2 clubs are after all this. Thank you.

3 JUROR NUMBER 448: Okay.

4 THE COURT: Solicitor.

5 MR. STONE: Ms. Mills, my name is Duffie Stone.
6 I've listened very carefully to your questions. I just
7 want to go over a couple things, and I may have -- may
8 have picked this up wrong, but I think -- was there a
9 question about earlier about if you could write the
10 laws, would there be a death penalty? Did I hear that
11 right?

12 JUROR NUMBER 449: Yeah, I said probably wouldn't
13 be one.

14 MR. STONE: Okay. Why is that?

15 JUROR NUMBER 449: I -- well, you know, my -- to be
16 honest with you, I just feel that I -- if I had to
17 choose, I think I would rather just stay in jail and
18 suffer. I think the life -- I think I would choose
19 life. I just think -- I, really, to be honest with you,
20 I think death may just be too easy.

21 MR. STONE: I understand. Okay.

22 JUROR NUMBER 449: And that's my honest opinion.

23 MR. STONE: And that's fine, because, in this
24 situation, if you're on this jury, there are two parts
25 of this jury. If, assuming for a moment that you find

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1 the defendant guilty, then, the choice would be yours
2 whether or not -- and those are your two choices.

3 JUROR NUMBER 449: Um-hmm.

4 MR. STONE: Should the defendant spend the rest of
5 their life in prison, or should they -- should they
6 receive the death penalty? And that would be a decision
7 that you would have to make.

8 JUROR NUMBER 449: And I think I would be able to
9 make that after we find out everything that happened.

10 MR. STONE: Excellent. That's my question. I want
11 to make sure that you understood, number one, that, if
12 you're on that jury, that sentence that you would hand
13 out would be the sentence that's carried out. In other
14 words, that's not just a suggestion to Judge Mullen.

15 JUROR NUMBER 449: Right.

16 MR. STONE: That is, if you find, as a jury, and
17 that's the only way that, that can happen, that you find
18 as a jury, all twelve of you, find that the defendant
19 should receive the death penalty, that's what would
20 happen.

21 JUROR NUMBER 449: Right.

22 MR. STONE: And you could do that.

23 JUROR NUMBER 449: I could do that after I hear all
24 the cir -- all the, you know.

25 MR. STONE: And the Judge would instruct you that

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1 you should listen to all of it, and certainly that's
2 part of it.

3 And the next part is, is that there is a form, a
4 verdict form, in which, if the sentence is death, you
5 sign your name to it, and that form is handed up as part
6 of the sentence. You could do that, as well.

7 JUROR NUMBER 449: I could do that after I heard
8 everything that happened.

9 MR. STONE: Excellent. That's all I can ask.

10 JUROR NUMBER 449: Okay.

11 MR. STONE: Thank you.

12 JUROR NUMBER 449: Okay.

13 THE COURT: Okay. All right. Ma'am, you have now
14 been qualified as a potential juror in the trial of this
15 case. That does not mean you have been chosen yet.

16 JUROR NUMBER 449: Okay. Okay.

17 THE COURT: You're just a potential juror, ma'am.

18 JUROR NUMBER 449: Okay.

19 THE COURT: We don't know how long this process is
20 going to take. I've got a number of other people I need
21 to do the exact same thing with. What I'm going to ask
22 that you do is call into the juror line. Norman's going
23 to give you the number.

24 JUROR NUMBER 449: Okay.

25 THE COURT: Tomorrow night, which is Saturday

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1 night, after 6:00 p.m. This is going to tell you when
2 to report.

3 JUROR NUMBER 449: Okay.

4 THE COURT: I hope it's going to be 9:30 Monday
5 morning.

6 JUROR NUMBER 449: Okay.

7 THE COURT: But I don't want you all sitting around
8 waiting on me, if I'm still doing something else. So,
9 whatever it says to do, please just be here.

10 JUROR NUMBER 449: Okay.

11 THE COURT: All right, ma'am?

12 JUROR NUMBER 449: All right. Thank you.

13 THE COURT: I appreciate it.

14 JUROR NUMBER 449: Thank you.

15 THE COURT: Thank you.

16 JUROR NUMBER 449: Excuse me.

17 THE COURT: Again, one of the last things -- I
18 apologize. You cannot discuss this case with anyone.
19 Don't do any independent research.

20 JUROR NUMBER 449: Okay.

21 THE COURT: Have a wonderful weekend. See you
22 Monday.

23 JUROR NUMBER 449: You, too.

24 THE COURT: Thank you.

25 JUROR NUMBER 449: Thank you.

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1 BAILIFF: All right. If I could have your badge,
2 ma'am. And that's the number.

3 JUROR NUMBER 449 LEAVES COURTROOM.

4 THE COURT: All right. You guys okay? Everyone
5 okay? Let's go ahead and bring the next person in.
6 Anyone want to take a -- I guess it's a seventh inning
7 stretch, I hope. I hope.

8 JUROR NUMBER 195 ENTERS COURTROOM.

9 BAILIFF: This way here, ma'am.

10 THE COURT: Come on in around. And forgive us. I
11 just --

12 BAILIFF: Ms. Betsy Doughtie. I'm sorry.

13 THE COURT: No, no, no, come on in. I just told
14 the attorneys they are welcome to take a seventh inning
15 stretch. We are on day number two, and we have been
16 here a long time. So, come on around.

17 BAILIFF: If you would, go up and take a seat in
18 the witness box.

19 THE COURT: Please, come on up here. Thank you,
20 and thank you for waiting on us. Please, go ahead and
21 take a seat. I must remind you of a couple things
22 before we begin. Number one, you are still under oath.
23 And thank you for adjusting the microphone. My court
24 reporter needs to hear what you have to say, and will
25 certainly prompt you if she can't.

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1 Additionally, there's a couple of things that I
2 need to talk with you about before we begin. The
3 attorneys are going to have an opportunity to ask you
4 questions in regards to the death penalty and, also, the
5 sentence of life without the possibility of parole and
6 your opinions. They're certainly permitted to do that.
7 That's what they're here for.

8 But the few things that I want to tell you before
9 we even start are, I want to make sure you understand
10 and appreciate that this is a capital case. It's
11 different than just a regular murder case. The
12 defendant in this case has been charged with two counts
13 of murder. And the State in this case is seeking the
14 death penalty. Again, not all cases that are murder
15 cases are death-penalty qualified or able cases.

16 How we try these cases is a little bit different
17 than a normal criminal case than you would expect. We
18 do it in two stages. It's the same jury. The first
19 stage is simply called the guilt or innocence stage. It
20 means that the jury will determine whether or not the
21 defendant is guilty of the crimes that he's accused of.
22 In this case, it's two murders.

23 And to define for you, because in every state there
24 are different, definitions of murder, and they call them
25 different things. In South Carolina, we have just

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1 straight murder. We don't have murder one or two, or
2 anything like that. And murder in South Carolina is
3 defined as the intentional killing of another with
4 malice aforethought. Malice aforethought, while it may
5 sound kind of strange, it's just someone with an evil
6 intent.

7 JUROR NUMBER 195: Um-hmm.

8 THE COURT: It's not accidentally; it's not in the
9 heat of passion; it's intentional; and it was meant to
10 be done. And again, I need you to understand that, that
11 first part of the trial will be a jury determining
12 whether or not that occurred in this case. That would
13 be the first determination.

14 If, and only if, a jury determines the defendant
15 guilty of these two charges of murder, we would go to
16 the second phase of the trial, which would be the
17 sentencing phase. During the sentencing phase, the
18 State would produce what's called aggravating
19 circumstances. Those are the things that would allow,
20 under our laws and statutes, the State to seek the death
21 penalty.

22 In this case, the two statutory aggravating
23 circumstances that are alleged are that this is a double
24 murder. Two people were killed during the same event,
25 and that one of those persons was a child.

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1 JUROR NUMBER 195: Um-hmm.

2 THE COURT: That's what brings it to the point
3 where we're at where the State can ask for that.

4 Also, during that sentencing phase, the Defense is
5 going to put in mitigation evidence. Mitigation
6 evidence is simply evidence about the character,
7 background, history of the defendant, kind of what
8 brought him to this point in his life. And it's to be
9 used in and weighed by the jury to determine what the
10 appropriate punishment is in the case.

11 And there are two -- only two punishments should
12 you find these aggravating circumstances. They are
13 either the death penalty; or life sentence, life
14 imprisonment without the possibility of parole.

15 And I want you to understand that the law permits
16 you to consider the mitigating evidence. And for a good
17 reason in your mind or no reason at all, or for simply
18 mercy, because that's your determination, and the law
19 allows you to make that determination, you can give a
20 person life imprisonment without the possibility of
21 parole. That is a juror's decision and a juror's own
22 experience that comes to that conclusion. And I just
23 want to make sure you understand that, because it's a
24 little different than what we normally do here.

25 I also want to ask you, you had an opportunity to

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1 go through and look at the witness list in this case.

2 Is there anyone on there that you have a professional,
3 personal, or social relationship with?

4 JUROR NUMBER 195: No. I've spoken with the
5 sheriff, and that's the only one.

6 THE COURT: Okay. But you don't have a personal,
7 ongoing relationship with him in any way.

8 JUROR NUMBER 195: No. No.

9 THE COURT: Okay. And then, secondly, there has
10 been some publicity on this case. Have you read
11 anything in the newspaper, seen anything in the news, or
12 done any independent research, or have any independent
13 knowledge whatsoever?

14 JUROR NUMBER 195: I have not. I -- I remember
15 reading about it when it happened years ago. I can't
16 even tell you what year it happened, so.

17 THE COURT: Okay.

18 JUROR NUMBER 195: It was no more than what was
19 written in all the paperwork sent to me by the Court,
20 so.

21 THE COURT: I appreciate that.

22 JUROR NUMBER 195: Just the basics.

23 THE COURT: Okay. Thank you. All right. I'm
24 going to go ahead and turn it over to lawyers. I do
25 want to tell you that there are no right or wrong

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1 answers here.

2 JUROR NUMBER 195: Good.

3 THE COURT: Be honest and truthful, and that is it.
4 Okay?

5 JUROR NUMBER 195: Okay.

6 MR. LEDDY: Thank you, your Honor. Ms. Doughtie?

7 JUROR NUMBER 195: Yes.

8 MR. LEDDY: Hi. I'm Micah Leddy. I'm one of the
9 attorneys on this case. So, as the Judge may have told
10 you a little bit here, we have to do something that's a
11 little bit strange. Okay? We have to talk about your
12 feelings on possible penalties before we even make any
13 determination whatsoever --

14 JUROR NUMBER 195: Um-hmm.

15 MR. LEDDY: -- as to whether there should be
16 anything. So, I don't want you to infer from that, that
17 we're not actually going to have a trial where the
18 outcome is going to be vigorously contested. Can you
19 agree with me on that?

20 JUROR NUMBER 195: Yes.

21 MR. LEDDY: Okay. I mean, you're going -- if
22 you're selected to be a juror on this case, then, you
23 will see a full trial as to whether or not Mr. Daise did
24 anything at all. Okay?

25 JUROR NUMBER 195: Yes.

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1 MR. LEDDY: So, let's talk about the actual
2 definition of murder. Okay? Killing of another person,
3 intentional, with malice aforethought. Right?

4 JUROR NUMBER 195: Yes.

5 MR. LEDDY: Malice being evil, wicked in your
6 heart, and in your mind at the time that you take
7 another human being's life.

8 And I think it's a little easier to understand if
9 you talk about what murder isn't. Okay? Murder is not
10 self-defense. Murder is not acting in the heat of
11 passion. Okay. The difference between somebody walking
12 in on their spouse with another person and going nuts
13 and killing people is that they're not acting with
14 malice, because they're acting under an uncontrollable
15 impulse. Does that make sense?

16 JUROR NUMBER 195: Yes.

17 MR. LEDDY: Okay. So, if you're on this jury, I
18 want you to take yourself to a place where you've
19 watched the entire trial; you've heard whatever defenses
20 are raised; and you and eleven other people come to a
21 decision that, beyond a reasonable doubt, the defendant
22 is guilty of murder. Okay?

23 JUROR NUMBER 195: Um-hmm.

24 MR. LEDDY: That the defendant is guilty of an
25 intentional killing of a human with malice. Okay? No

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1 excuse, no justification. Given that set of
2 circumstances, what is your opinion as to the death
3 penalty being the appropriate punishment?

4 JUROR NUMBER 195: I think it would be the
5 difference between being one hundred percent sure that
6 this man committed the crime, not just reasonable doubt
7 that he committed it, but absolutely a hundred percent.

8 I have -- I have no problem with the death penalty.
9 I do have questions about the systems that -- that
10 orchestrate the death penalty.

11 MR. LEDDY: Okay. And I notice on your
12 questionnaire that your dad was a judge?

13 JUROR NUMBER 195: Yes.

14 MR. LEDDY: And do your questions about the system
15 stem from your experiences or things that you may have
16 heard from him?

17 JUROR NUMBER 195: No, not really. He was
18 primarily a lawyer when I was growing up, and it was
19 after I was long gone that he became a judge. And he
20 actually was, I think, a family court judge.

21 MR. LEDDY: Oh.

22 JUROR NUMBER 195: A little judge.

23 MR. LEDDY: Well. Well, let me ask you this.
24 Other than what we would call residual doubt, you know,
25 that maybe you're not a hundred percent sure -- of

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1 course, the law doesn't require that, right? You
2 understand beyond a reasonable doubt.

3 JUROR NUMBER 195: Right. But I would.

4 MR. LEDDY: But you would.

5 JUROR NUMBER 195: Yeah.

6 MR. LEDDY: Okay. Is that the most important
7 factor in your mind?

8 JUROR NUMBER 195: I think another factor would be
9 the -- what happens when someone is -- does get the
10 death sentence and it takes 20 or 25 years to execute
11 the person, and you go through appeals and appeals and
12 appeals and appeals, and I don't like that aspect, as
13 well.

14 MR. LEDDY: Okay.

15 JUROR NUMBER 195: I would rather have someone put
16 away in prison with no chance for parole.

17 MR. LEDDY: Okay. So, now, let's talk about the
18 specific types of categories with aggravated murder.
19 Okay? In this case, in this state, there can be 21
20 different aggravating circumstances, which could be
21 killing a police officer; it could be killing while in
22 the commission of a robbery. Those would make one
23 eligible for the death penalty. Okay?

24 If the jury finds them beyond a reasonable doubt,
25 then, it brings the death penalty into play. And the

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1 categories that I want you to think about are the murder
2 of more than one person. So, two people being murdered,
3 and one of those people being a four-year-old child.

4 Okay?

5 Some people just say, look, if you're talking about
6 two people, one of them being a kid, for me, if that's
7 the case, and it's proven by the State, I'm voting for
8 the death penalty. I don't think that life is severe
9 enough. Do you think that, that would describe your
10 feelings?

11 JUROR NUMBER 195: We haven't been to court yet,
12 and it would just depend on what information was
13 provided during the trial and what the -- the
14 intricacies of the whole situation were.

15 MR. LEDDY: Okay. Well, again, let's -- and I
16 apologize that it is an unusual thing to ask you what
17 you would do in certain circumstances when those things
18 haven't yet happened.

19 JUROR NUMBER 195: That's right.

20 MR. LEDDY: But we can't have the trial, and then
21 figure out what your feelings are then, you know. We
22 have to do it this way, unfortunately. There's no other
23 way for us to do it. So, --

24 JUROR NUMBER 195: Well, but my feelings about
25 having the death penalty or life in prison would depend

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1 on the circumstances of the trial.

2 MR. LEDDY: Okay.

3 JUROR NUMBER 195: And what I -- the only thing I
4 can say now is that I'm not opposed to the death
5 penalty. It would just depend on the circumstances.

6 MR. LEDDY: Do you think on the flip side of the
7 coin that somebody who kills two people, one of whom was
8 a child, do you think that life in prison would be an
9 appropriate punishment for them?

10 JUROR NUMBER 195: If there was no chance of
11 parole.

12 MR. LEDDY: Well, and in South Carolina, there is
13 no chance of parole. You know, if the person is charged
14 with capital murder, they go to trial and are convicted,
15 then, they're either going to get a death sentence or
16 they're going to get life in prison without parole, and
17 that means that they don't leave jail alive.

18 JUROR NUMBER 195: And that would be fine. I think
19 the main concern would be to not have them harm anyone
20 else.

21 MR. LEDDY: Okay. Now, what are your feelings
22 about -- have you ever heard of the term *mitigation*?

23 JUROR NUMBER 195: Yes.

24 MR. LEDDY: Okay. And mitigation in the context of
25 a capital trial is anything that makes a juror decide to

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1 -- that the defendant is less culpable or that the
2 offense is, you know, less bad, for no -- no better way
3 for me to phrase it.

4 JUROR NUMBER 195: Yeah, yeah.

5 MR. LEDDY: In the context of a capital case where
6 you may hear testimony about the circumstances of
7 somebody's childhood, if they had an abusive situation
8 as a child, or if somebody in their family was, you
9 know, had a substance abuse problem, what are your
10 feelings about those things in terms of weighing what
11 you think would be the appropriate punishment? Could
12 any of that make any difference to you?

13 JUROR NUMBER 195: I doubt it. I doubt it.

14 MR. LEDDY: And tell me more about that.

15 JUROR NUMBER 195: We're all products of our
16 environment. Some people have it rougher than others.
17 Some people are so damaged through either bad genes,
18 through a mental illness, through how they were treated
19 growing up, that -- that I don't think they could
20 reverse their situation. They can't reverse their lack
21 of compassion, their violent behavior, and the rest of
22 society needs to be protected from them.

23 MR. LEDDY: So, if you heard about particularly
24 horrible circumstances in a person's childhood, would it
25 make you more inclined to actually impose the death

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1 sentence in order to protect society from that person?

2 JUROR NUMBER 195: I don't know. I think -- I
3 think society would be protected if he was put away
4 without a chance of parole, as well.

5 MR. LEDDY: Okay.

6 JUROR NUMBER 195: And it -- it would have to be
7 such extreme circumstances that I would hear about in
8 the trial that would lead me to say, yes, this man
9 should get the death penalty.

10 MR. LEDDY: It would have to be --

11 JUROR NUMBER 195: And I don't know what that is
12 yet.

13 MR. LEDDY: Okay. But did you say it would have to
14 be extreme?

15 JUROR NUMBER 195: Yes.

16 MR. LEDDY: I see. Okay. Well, -- well, let's
17 say, for instance, that you get to the end of the
18 penalty phase and the jury finds guilty beyond a
19 reasonable doubt. Okay? Then, we have basically a
20 whole other trial, and aggravation and mitigation are
21 raised by both sides.

22 You would then go back into the jury room again.
23 Okay? And you're probably familiar enough with the
24 system that you know that juries have to be unanimous.

25 JUROR NUMBER 195: Um-hmm.

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1 MR. LEDDY: So -- was that a yes?

2 JUROR NUMBER 195: Yes.

3 MR. LEDDY: Thank you. And so, you've heard of the
4 phrase a hung jury before.

5 JUROR NUMBER 195: Yes.

6 MR. LEDDY: Okay. Well, in the penalty phase of a
7 capital trial, it's actually somewhat different, because
8 each juror is asked to make their own independent moral
9 assessment and their own independent moral judgment.
10 Okay? Does that make sense?

11 JUROR NUMBER 195: Yes.

12 MR. LEDDY: Okay. And these judgments can be made
13 for any reason that the jury hears, that they find --
14 that a juror finds to be mitigating. And twelve of you
15 may have twelve different reasons, or --

16 JUROR NUMBER 195: Um-hmm.

17 MR. LEDDY: -- that totally different. And do you
18 believe that whatever judgment that you make should be
19 respected by the other eleven people in that room?

20 JUROR NUMBER 195: Of course, yes.

21 MR. LEDDY: And you would demand that they respect
22 it.

23 JUROR NUMBER 195: To respect it. They don't have
24 to agree, but they need to respect it, as I would their
25 views.

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1 MR. LEDDY: Okay. And if there were anybody in the
2 room who had a viewpoint that was very different from
3 everybody else, would you demand that those people
4 respect that viewpoint?

5 JUROR NUMBER 195: Yes.

6 MR. LEDDY: Okay. And you know, some people are a
7 little bit more capable of standing up for themselves
8 than others, right?

9 JUROR NUMBER 195: Well, I'd try to get them to
10 understand my viewpoint, but I would respect theirs.

11 MR. LEDDY: And if somebody wasn't very good at
12 standing up for themselves, though, would you be able to
13 come to their aid?

14 JUROR NUMBER 195: It depends on the circumstances.

15 MR. LEDDY: Okay. One second, your Honor.

16 All right. Nothing else. Thank you.

17 JUROR NUMBER 195: Okay.

18 THE COURT: Mr. Stone.

19 MR. STONE: Good evening, Ms. Doughtie, hey.

20 JUROR NUMBER 195: Hi.

21 MR. STONE: I've listened to all your questions. I
22 want to make sure that we're clear. If you were to make
23 it onto this jury; and there are two parts to the trial,
24 one is the guilt phase, and then the second would be the
25 sentencing phase; what I hear from you is that you would

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1 want to hear everything, whether it's the defendant's
2 background, whether it's aggravating circumstances, the
3 circumstances of the crime, anything like that to make a
4 determination about whether or not he would deserve
5 either life in prison or the death penalty. Is that
6 what I'm hearing?

7 JUROR NUMBER 195: Yes.

8 MR. STONE: And life in prison in this context
9 means life in prison. But you would still be able to
10 judge and determine whether or not it's appropriate to
11 give life in prison or the death penalty.

12 JUROR NUMBER 195: Yes.

13 MR. STONE: Is that what I'm hearing?

14 JUROR NUMBER 195: Yes.

15 MR. STONE: Okay. And so, in that context, the
16 only real question I have for you is, if, after judging
17 and after listening to this, if the case is bad enough,
18 could you give somebody the death penalty?

19 JUROR NUMBER 195: Right now, I'd say yes, I think
20 I could.

21 MR. STONE: And a part of that is a verdict form.
22 And in a verdict form in the sentencing, which is the
23 way that -- and by the way, that's not a recommendation;
24 that's the actual sentence. On that verdict form, it
25 has a spot for you to sign your name. So, if you find

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1 that the appropriate sentence in this would be the death
2 penalty, you would sign your name on that form. Could
3 you do that?

4 JUROR NUMBER 195: If I felt it was appropriate,
5 yes.

6 MR. STONE: Yes, ma'am. And that's all we can ask.

7 JUROR NUMBER 195: Okay.

8 MR. STONE: Thank you, ma'am. Thank you, your
9 Honor.

10 THE COURT: Ma'am, --

11 JUROR NUMBER 195: Um-hmm.

12 THE COURT: -- you are qualified to serve as a
13 potential juror in the trial of this case. That does
14 not mean you have been sat on the jury yet. It just
15 means you are a potential juror.

16 I don't know how long this process is going to
17 take. I still have a lot of other people to meet with.
18 I am going to ask that you call in after 6:00 p.m.
19 tomorrow night. It's going to tell you when you're
20 going to report. I hope it's 9:30 Monday morning.

21 JUROR NUMBER 195: Okay.

22 THE COURT: It might be a little later than that.
23 Simply follow the instructions. Just come when it tells
24 you to, and we look forward to seeing you.

25 JUROR NUMBER 195: But I'll definitely be here

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1 Monday?

2 THE COURT: You will definitely be here Monday.

3 JUROR NUMBER 195: Okay.

4 THE COURT: I just -- for you to plan that, yes,
5 ma'am.

6 JUROR NUMBER 195: Okay. Thank you.

7 THE COURT: Thank you. It may be later in the
8 afternoon. Again, I hope it's in the morning, but it
9 just depends on how far -- we expect to be working up
10 through tomorrow night.

11 JUROR NUMBER 195: All right.

12 THE COURT: So, thank you, ma'am. Again, don't
13 discuss this case. Don't do any independent research.
14 We'll see you Monday.

15 JUROR NUMBER 195: All right. Thank you.

16 THE COURT: Thank you.

17 BAILIFF: Okay. If I could have your badge, and
18 this is the number you need to call.

19 JUROR NUMBER 195 LEAVES COURTROOM.

20 BAILIFF: Jacob Evans.

21 JUROR NUMBER 215 ENTERS COURTROOM.

22 THE COURT: Come on up, sir.

23 BAILIFF: This way, please. If you would, please,
24 go up and take a seat in the witness stand.

25 THE COURT: Good morning, sir.

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1 BAILIFF: Speak directly into the microphone.

2 THE COURT: Good afternoon, Mr. Evans.

3 JUROR NUMBER 215: Good afternoon.

4 THE COURT: Thank you for waiting on us, sir.

5 There are couple of things before we begin. I remind
6 you that you're under oath, the one that you were on
7 Wednesday, sir.

8 JUROR NUMBER 215: Yes, ma'am.

9 THE COURT: Additionally, I need to explain to you
10 just very briefly a little about this process.

11 JUROR NUMBER 215: Okay.

12 THE COURT: This case is a little bit different
13 than other criminal cases, and the reason why that is,
14 is this is a capital murder case.

15 JUROR NUMBER 215: Yes.

16 THE COURT: In this case, the defendant, it's
17 alleged that he committed the murders, and the State is
18 seeking the death penalty in this case. And I just want
19 to explain to you that the trial will be in two parts,
20 which is what's a little bit unusual about this case, as
21 opposed to other cases. The first portion of the trial
22 will be the jury determining whether or not the
23 defendant is guilty or not guilty of those charges.

24 JUROR NUMBER 215: Okay.

25 THE COURT: You understand that.

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1 JUROR NUMBER 215: Yes.

2 THE COURT: And that must be a unanimous decision
3 by the jury, whether or not it's guilty or not guilty.

4 If, and only if, the jury finds the defendant
5 guilty, we go to the second portion of the case. And
6 it's the same --

7 JUROR NUMBER 215: Yeah.

8 THE COURT: -- jury that will determine the
9 sentence that they believe is appropriate for the trial
10 of this case --

11 JUROR NUMBER 215: Okay.

12 THE COURT: -- or for the facts and circumstances
13 surrounding this case. During that penalty phase, the
14 State is going to put up evidence that's called
15 aggravating evidence. In South Carolina, by statute,
16 you have 21 circumstances that allow the State to seek
17 the death penalty, if certain things occurred within
18 that murder.

19 JUROR NUMBER 215: Yeah.

20 THE COURT: Not all murder cases are subject to the
21 death penalty. In this case, it's alleged that, because
22 this is a double murder, --

23 JUROR NUMBER 215: Yeah.

24 THE COURT: -- two murders were committed at the
25 same time and during the same incident, and that one of

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1 those was the killing of a child.

2 JUROR NUMBER 215: Yeah.

3 THE COURT: That would allow the State to seek the
4 death penalty. During that same sentencing phase the
5 Defense is going to put forth mitigation evidence.
6 That's what their responsibility and job is.

7 JUROR NUMBER 215: Yes.

8 THE COURT: It's everything about the background
9 and history of the defendant, everything that kind of
10 brought him here to this point. And I'm going to tell
11 you that you have to consider and you should consider
12 mitigation evidence.

13 And at that point you are going to have two choices
14 and only two choices as far as sentences are concerned.

15 JUROR NUMBER 215: Yeah.

16 THE COURT: If we do get to that portion of the
17 trial, the sentence can only possibly be life
18 imprisonment without the possibility of parole or the
19 death sentence.

20 JUROR NUMBER 215: Okay.

21 THE COURT: Those are your two options. And I want
22 you to understand and appreciate that you can give a
23 life-without-the-possibility-of-parole sentence for what
24 you believe is a good reason, for no reason at all, or
25 simply extending mercy.

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1 These lawyers are going to ask you questions about
2 that.

3 JUROR NUMBER 215: Yeah.

4 THE COURT: What your feelings are on the death
5 penalty, and what your feelings are about life
6 imprisonment as a potential punishment in terms of this
7 case, and that's appropriate.

8 JUROR NUMBER 215: Yeah.

9 THE COURT: There are no right or wrong answers
10 here.

11 JUROR NUMBER 215: Yeah.

12 THE COURT: They're just your feelings, your
13 beliefs, and what you know. So, again, please be candid
14 and be honest.

15 While you were back in the jury assembly room, you
16 reviewed the witness list.

17 JUROR NUMBER 215: Yeah.

18 THE COURT: Was there anyone on that list that you
19 knew personally, professionally, socially, anything like
20 that?

21 JUROR NUMBER 215: No. The only person I knew was
22 the officer that was in here on Wednesday before lunch.
23 I don't remember his name, but I didn't see his name on
24 the --

25 THE COURT: On the list?

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1 JUROR NUMBER 215: Yeah. I don't think.

2 THE COURT: How do you know him?

3 JUROR NUMBER 215: He arrested me.

4 THE COURT: Okay. He was a deputy sheriff?

5 JUROR NUMBER 215: Yeah, I believe so.

6 THE COURT: Okay. Do you even know his name?

7 JUROR NUMBER 215: I forgot his name.

8 THE COURT: You just recognize him?

9 JUROR NUMBER 215: Yeah.

10 THE COURT: Okay. All right. And also, there was
11 some publicity on this case. It was in the news and it
12 was in the newspaper.

13 JUROR NUMBER 215: Yeah.

14 THE COURT: Did you read anything, see anything?

15 JUROR NUMBER 215: I have no idea. I thought it
16 was -- it was going to be the case about the tow truck
17 driver, but --

18 THE COURT: Okay. I understand that.

19 JUROR NUMBER 215: Yeah.

20 THE COURT: That has received some press coverage,
21 and I should say a lot of press coverage. But again,
22 obviously, you no that's not it.

23 JUROR NUMBER 215: Yeah.

24 THE COURT: But it's on the questionnaire. You
25 filled it out for us, and we appreciate that. So, the

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1 attorneys are going to ask you some questions about it.

2 So, thank you for your candor, and I'm going to go
3 ahead and turn you over to Mr. McGuire.

4 JUROR NUMBER 215: Okay.

5 MR. MCGUIRE: Thank you very much, your Honor. Mr.
6 Evans, how are you doing this evening?

7 JUROR NUMBER 215: Good. How are you?

8 MR. MCGUIRE: I'm good, I'm good. I hope you
9 haven't been waiting too long.

10 JUROR NUMBER 215: Not too long.

11 MR. MCGUIRE: Some people are not as lucky as
12 you've been.

13 JUROR NUMBER 215: Yeah.

14 MR. MCGUIRE: They waited a long time yesterday.

15 JUROR NUMBER 215: They suffered.

16 MR. MCGUIRE: What I want to do right now with you
17 is to talk in a little bit more detail, --

18 JUROR NUMBER 215: Um-hmm.

19 MR. MCGUIRE: -- take it from where the Judge left
20 off.

21 JUROR NUMBER 215: Okay.

22 MR. MCGUIRE: I noticed that you don't have any
23 legal or law training in your background.

24 JUROR NUMBER 215: No, sir.

25 MR. MCGUIRE: And as you sit there, you probably

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1 don't have the technical, legal definition of murder in
2 South Carolina.

3 JUROR NUMBER 215: Not really. I mean, I kind of
4 like -- whenever I got assigned this, I kind of looked
5 up like, the capital murder, like, what it was, all that
6 kind of stuff online, you know, just looked that up.
7 But yeah. Other than that, no.

8 MR. MCGUIRE: Okay. Well, you actually might have
9 a little bit more knowledge than most people, but I'm
10 going to help you. I'm going to start at the front, at
11 the very basics definition of murder. We'll build in
12 that and go from there. Okay.

13 JUROR NUMBER 215: Yeah.

14 MR. MCGUIRE: The definition of murder in South
15 Carolina is the intentional killing of another human
16 being with malice aforethought. And the malice
17 aforethought is described in our law as somebody
18 operating with a black and malignant heart, fatally bent
19 on mischief and wickedness and evil, devoid of social
20 duty.

21 JUROR NUMBER 215: Yeah.

22 MR. MCGUIRE: That's kind of -- that's kind of a
23 heavy definition.

24 JUROR NUMBER 215: Yeah.

25 MR. MCGUIRE: And to ask for the death penalty or

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1 to seek the death penalty, the State has to show
2 something more. It has to be aggravated or aggravating
3 circumstances. You may have seen that on your legal
4 research. But what -- I'm going to ask you about the
5 specific aggravation at issue here.

6 Double homicide; two people were killed; mother, a
7 child, four-year-old child shot dead. It's not an
8 accident; it's not a mistake; not self-defense; nothing
9 like that. Not somebody who doesn't know right from
10 wrong, because they're insane. Somebody who knew what
11 they were doing, chose to kill, and killed.

12 In that situation, what are your thoughts about the
13 death penalty as being the appropriate punishment?

14 JUROR NUMBER 215: Well, I believe that, you know,
15 people make mistakes, and that -- well, I mean, that's
16 not really a mistake, but I don't know. I really think
17 -- I haven't really put much thought into this. I don't
18 know. I'm sorry. I mean, I really don't --

19 MR. MCGUIRE: That's okay. Let me help you. I'll
20 walk you through.

21 JUROR NUMBER 215: Yeah.

22 MR. MCGUIRE: Let me walk you through the process,
23 and then, if you have some -- and I'll ask you your
24 opinions about each stage, --

25 JUROR NUMBER 215: Yeah.

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1 MR. MCGUIRE: -- and we'll check in with each
2 other. Okay? The opposite side of that coin is the
3 question could the life penalty, letting somebody live
4 their years out in prison, --

5 JUROR NUMBER 215: Um-hmm.

6 MR. MCGUIRE: -- is that penalty severe enough to
7 punish that intentional killing of a mother and child?

8 JUROR NUMBER 215: Yeah. He -- I mean, he --
9 there's nothing -- I really don't know how to explain
10 it, but he's -- life in prison's basically death, kind
11 of, I guess, because you're not really --

12 MR. MCGUIRE: Your real life is over.

13 JUROR NUMBER 215: Yeah.

14 MR. MCGUIRE: It sounds like you consider that to
15 be a very severe punishment..

16 JUROR NUMBER 215: Yes, sir.

17 MR. MCGUIRE: And it could be appropriate in a
18 case, even in an aggravated case with two victims, a
19 mother and child.

20 JUROR NUMBER 215: I mean, he -- I don't know, I
21 just -- first time, I guess. But --

22 MR. MCGUIRE: The reason I ask these questions is
23 that --

24 JUROR NUMBER 215: Yeah.

25 MR. MCGUIRE: -- on your questionnaire, there was a

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1 question about trying to describe types of people and
2 trying to put people in general categories --

3 JUROR NUMBER 215: Yeah.

4 MR. MCGUIRE: -- so we have kind of a starting
5 point to kind of talk to them. And I'm not picking on
6 you, --

7 JUROR NUMBER 215: Yeah.

8 MR. MCGUIRE: -- but you didn't circle one of the
9 answers.

10 JUROR NUMBER 215: Oh, I didn't?

11 MR. MCGUIRE: No, you may have just overlooked it.
12 But as you might imagine, there are people in this
13 country who have a view that they could never vote for
14 the death penalty. You know, they're just -- they don't
15 want to judge another human being. They don't want the
16 black mark of killing another human being on their soul
17 as they contemplate the rest of their life.

18 JUROR NUMBER 215: Yeah.

19 MR. MCGUIRE: There are some people who -- and we
20 respect each other's views, obviously, but some people
21 would say I'm an eye-for-an-eye type of guy; if you take
22 an innocent life, especially a double homicide, --

23 JUROR NUMBER 215: Yeah.

24 MR. MCGUIRE: -- a child involved; if you take
25 those lives, you forfeit theirs, so they're always going

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1 to vote for the death penalty. Either one of those
2 categories describe you?

3 JUROR NUMBER 215: I'd probably say I'm more of an
4 eye-for-an-eye kind of guy. I mean, you know, he killed
5 two people, or allegedly killed two people, and I guess
6 this guy probably shouldn't go to prison just because he
7 really would be taking space in a prisons that could be
8 used for other people that really -- I mean --

9 MR. MCGUIRE: What do you mean by that exactly?

10 JUROR NUMBER 215: Like, I believe if he is guilty,
11 he probably should get the death penalty, just because,
12 you know, he was a four-year-old kid, an innocent life.
13 And I guess I'm more of an eye-for-an-eye kind of guy.

14 MR. MCGUIRE: Okay. And if you and the jury --

15 JUROR NUMBER 215: Oh. I'm sorry.

16 MR. MCGUIRE: And again, I just want to be clear
17 with the process here. In your mind, I want to put you
18 in the situation of you and eleven other people on a
19 jury, --

20 JUROR NUMBER 215: Yeah.

21 MR. MCGUIRE: -- convicted the person beyond a
22 reasonable doubt; you got the right guy; there's no
23 mistake; it's an intentional killing of an innocent
24 woman and a four-year-old child. In that situation, I
25 hear you saying that the death penalty is appropriate.

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1 JUROR NUMBER 215: Yes, sir.

2 MR. MCGUIRE: And that's a reflection of your
3 values system and who you are.

4 JUROR NUMBER 215: Yes, sir.

5 MR. MCGUIRE: And the life penalty, I think you
6 used the phrase maybe taking space in prison, the life
7 penalty would not be appropriate for the kind of killing
8 involving the mother and child.

9 JUROR NUMBER 215: Yes, sir.

10 MR. MCGUIRE: Okay. And again, that's a reflection
11 of your moral code as a person.

12 JUROR NUMBER 215: Yeah.

13 MR. MCGUIRE: Your views on what's right and wrong.

14 JUROR NUMBER 215: Well, that is definitely wrong.

15 MR. MCGUIRE: Exactly.

16 JUROR NUMBER 215: Yeah.

17 MR. MCGUIRE: And I don't have the talent with just
18 words to change your views; do I?

19 JUROR NUMBER 215: No, sir.

20 MR. MCGUIRE: Okay. We obviously expect people --
21 for instance, if you were selected as a juror, and you
22 would sit through an entire trial and hear evidence,
23 hear the whole case; if it came -- if, after the end of
24 the case, it came down to, again, you and eleven other
25 people convicted the person beyond a reasonable doubt,

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1 got the right guy, a woman and child killed; when it got
2 time for a vote, you'd vote for the death penalty.

3 JUROR NUMBER 215: Yes, sir.

4 MR. MCGUIRE: Okay. And there's this thing called
5 -- well, if somebody was to try to -- actually, Judge,
6 I'm just going to go ahead and stand down now.

7 THE COURT: Okay.

8 MR. MCGUIRE: I might have some more questions for
9 you later, sir, but I very much appreciate your candor.

10 MR. STONE: Mr. Evans, thank you. I'm Duffie
11 Stone. Thank you for your answers tonight. Appreciate
12 that. Thank you, your Honor.

13 THE COURT: Sir, I'm going to go ahead and excuse
14 you from the trial of the case.

15 JUROR NUMBER 215: Okay.

16 THE COURT: You do not need to report on Monday,
17 but thanks for being here tonight.

18 JUROR NUMBER 215: Okay. All right.

19 THE COURT: Thank you.

20 JUROR NUMBER 215 LEAVES COURTROOM.

21 BAILIFF: You ready?

22 BAILIFF: Your Honor, Ms. Eddie Armstrong.

23 JUROR NUMBER 19 ENTERS COURTROOM.

24 THE COURT: Okay.

25 BAILIFF: This way, ma'am, please.

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1 THE COURT: Come on around, Ms. Armstrong.

2 BAILIFF: Right this way. If you would, please go
3 up and take a seat in the witness box.

4 THE COURT: How you are you? Good afternoon. Come
5 on around.

6 Go ahead and sit down, ma'am. Thank you for being
7 here. I want you remind you, ma'am, that you are still
8 under the oath that you took on Wednesday. All right?

9 JUROR NUMBER 19: Yes, ma'am.

10 THE COURT: Okay. These attorneys are going to ask
11 you a few questions. I'm going to begin by asking you,
12 were you able to review the witness list back in the
13 jury room? Thank you.

14 JUROR NUMBER 19: Yes, ma'am.

15 THE COURT: And do you know anyone on that witness
16 list personally, professionally, or socially?

17 JUROR NUMBER 19: Kind of some of the people
18 because I have a lot of family in Beaufort, Seabrook,
19 Sheldon, Saint Helena.

20 THE COURT: I see you've lived here for 46 years.

21 JUROR NUMBER 19: Yes, ma'am.

22 THE COURT: All right. Anyone that you have a
23 close relationship with that is on that witness list?

24 JUROR NUMBER 19: My husband does, because he's a
25 Simmons from Saint Helena.

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1 THE COURT: Okay. Who does your husband know? Who
2 does he have a close relationship with?

3 JUROR NUMBER 19: Jamelle Simmons.

4 THE COURT: Who?

5 JUROR NUMBER 19: Jamelle Simmons.

6 THE COURT: Okay.

7 JUROR NUMBER 19: And the Coleman and the Daise
8 family.

9 THE COURT: Okay. All right. And you say your
10 husband has -- that he has friendships with these
11 people. Is that correct?

12 JUROR NUMBER 19: Yes, ma'am.

13 THE COURT: Okay.

14 JUROR NUMBER 19: All on Saint Helena.

15 THE COURT: And do they come over to your home?

16 JUROR NUMBER 19: No, we don't -- we go visit them
17 during the holidays.

18 THE COURT: Okay. And you may see them there.

19 JUROR NUMBER 19: So, we go around visiting.

20 THE COURT: Are you related by blood to any of
21 these people?

22 JUROR NUMBER 19: I don't think -- I don't think
23 so. Jenkins, probably, because on my grandmother's side
24 is a lot of Jenkins in Beaufort, Burton, Dale, and
25 Seabrook.

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1 THE COURT: Okay. All right, ma'am. Also, there
2 has been some publicity on this case. There has been
3 some coverage in the news. Have you read anything, seen
4 anything, or have any independent knowledge about this
5 case?

6 JUROR NUMBER 19: I don't have cable. I've just
7 got Netflix.

8 THE COURT: Okay. And you haven't read the
9 newspaper or anything like that.

10 JUROR NUMBER 19: No. I just try to stay away from
11 the news, because it's too depressing.

12 THE COURT: Okay. All right. I want to explain to
13 you something just very -- and I'm going to explain it
14 quickly, and I'm going to try to explain it simply.
15 It's not that easy of a topic, so I'm going to tell you
16 right now just to bear with me.

17 This case is a little bit different than other
18 murder cases. It's called a capital murder case. And
19 in this case, the defendant is charged with two crimes
20 of murder. It's alleged that he murdered a mother and
21 her four-year-old child.

22 The State is seeking the death penalty in this
23 case. And that means that the trial will be what's
24 called bifurcated, which means there's two separate
25 trials. It's all the same jury, but it's two separate

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1 things that we must consider. The first trial, or the
2 first portion of it, we would determine -- and when I
3 say we, you, the jury, would determine whether or not
4 the defendant is guilty of those two murders. That
5 would be the only, sole question, whether or not the
6 State has proven beyond a reasonable doubt that the
7 defendant is the person that committed these murders.
8 All right?

9 If, and only if, the jury found that, in fact,
10 beyond a reasonable doubt that the defendant did, we
11 would go to a second phase or part of the trial, which
12 would be the sentencing phase. It would be what
13 punishment should this person receive. And in this
14 case, there would only two possible punishments. One
15 would be life imprisonment without the possibility of
16 parole or a death sentence. Do you understand that?

17 JUROR NUMBER 19: Yes, ma'am.

18 THE COURT: Okay. And what I'm going to tell you
19 is, during the case, or that portion of the case, the
20 Defense -- or I'm sorry -- the Defense, yes, is going to
21 present mitigating information or evidence in the case.

22 They're going to talk about the history and the
23 background of the defendant and everything that brings
24 him to this point at the trial for you to consider in
25 determining what is the appropriate penalty for the

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1 murders that the jury found the defendant guilty of.

2 I want you to understand and appreciate that you
3 can consider any of these mitigating factors and find
4 that they are good, not good, or also for no reason at
5 all, grant someone mercy and decide that the appropriate
6 penalty in this case is a life sentence without the
7 possibility of parole.

8 The death penalty is never required on any case in
9 South Carolina. It's up to the jury to choose what they
10 believe is the appropriate punishment. And I want to
11 make sure you understand and appreciate that.

12 JUROR NUMBER 19: Yes, ma'am.

13 THE COURT: Okay. And also, too, the only other I
14 would say the other difference in this case is, when you
15 are in that first phase of the trial, determining the
16 guilt or innocence of the defendant, whether or not he
17 did this, if he killed these two people; that decision
18 must be made unanimously by the jury. All twelve of you
19 must agree that either he is guilty or not guilty.

20 If you did, in fact, find that he is guilty, again,
21 then we would go to the sentencing phase. At that
22 point, you all would again deliberate, talk about it,
23 decide what you want to do, and what you think and what
24 your opinion is; but you aren't required to come to a
25 unanimous verdict. If, for some reason, the jury didn't

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1 come to a unanimous verdict; let's say it was split; and
2 it doesn't matter which way it was split; then, the case
3 would come to me and I would determine the sentence, and
4 the case would be over. I want to make sure you
5 understand that.

6 Again, and the reason why I say all this is,
7 because during that sentencing phase, the decision is a
8 little more personal. It is more of your firm belief of
9 what you think is appropriate, because again, people can
10 differ, as you well know. So, I want to make sure you
11 understand that before we go ahead and begin our
12 questioning. Do you understand that, ma'am?

13 JUROR NUMBER 19: Yes, ma'am.

14 THE COURT: All right. Well, I'm going to turn it
15 over to the lawyers, then, and let them talk to you. If
16 you would. Mr. MacDougall.

17 MR. MACDOUGALL: Thank you, your Honor. How are
18 you doing, Ms. Armstrong?

19 JUROR NUMBER 19: Pretty good.

20 MR. MACDOUGALL: Let me introduce myself. My
21 name's Mark MacDougall, and I'm one of the lawyers
22 representing Earnest Daise, the defendant in this case,
23 over here.

24 I'm going to touch on a couple of things that the
25 Judge just explained, because this is an unusual

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1 situation in that there's been no evidence heard, no
2 jury empaneled yet, but we're asking you to kind of
3 think forward if you were in the jury box in this case,
4 and talk about what your attitudes would be.

5 And the reason I say all that is that there's no
6 right or wrong answer here; it's all how you feel;
7 because we're all interested in what you think, and what
8 you think is what you think. So, can we go with that?

9 JUROR NUMBER 19: Yes, sir.

10 MR. MACDOUGALL: Judge Mullen explained to you this
11 is a murder case, a homicide case. And in South
12 Carolina, and the way this case is charged, murder has
13 an element of malice, and malice and the word malicious
14 are words that we use sometimes, but here, it has a
15 particular meaning. And I'm going to read you the
16 language of the definition that the law has of malice,
17 and that is:

18 *Acting with depravity, from a depraved*
19 *spirit, from a heart devoid of social duty*
20 *and fatally bent on creating mischief.*

21 It's a very heavy language. And what that's meant
22 to do is exclude all kinds of other things. So, when a
23 defendant is convicted of murder, malicious murder,
24 they're -- it's not self-defense; it's not insanity;
25 it's not heat of passion' it's not an accident. It's

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1 they meant to do the killing and they did it, and they
2 thought about it, and they intended to kill that person.

3 Now, Earnest Daise hasn't been convicted of
4 anything. He sits there presumed innocent. But my
5 first question to you is: if you were a member of a
6 jury and you were to find, as one of those twelve
7 jurors, that a defendant had committed that kind of
8 murder; malicious, focused intent; no other sort of
9 story; not insanity; not anything else; committed
10 malicious murder; in your view, is the appropriate
11 punishment life without parole; and so, when you give
12 somebody a life sentence in this state; they don't go
13 home; they die in prison; or death?

14 Do you have a sense of where you'd be on that? And
15 I know this is all hypothetical. I'm sorry for that.

16 JUROR NUMBER 19: I'd probably say life without
17 parole, because that's just the first phase of him
18 thinking about what he did, how he did it. But the
19 second part would be the Almighty God, because if you
20 take a life, only God can really take his life. But he
21 has time to sit back and have enough time to confront
22 the Lord and ask for a pardon from Him, because he's the
23 only one that's going to be able to pardon him, is the
24 Almighty Father.

25 MR. MACDOUGALL: Now, if the Judge instructed you

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1 as a member of that jury that you could and should
2 consider the death penalty, would you do that?

3 JUROR NUMBER 19: I feel that I shouldn't have to
4 be the one to take a person's life.

5 COURT REPORTER: I'm sorry. Can you speak up a
6 little bit.

7 JUROR NUMBER 19: Oh, I'm sorry. I feel that I
8 shouldn't have to be the one to take the person's life
9 because he took someone else's life. I feel that he has
10 enough time to sit in prison and to, you know, think
11 about what he did, or at least try to think about what
12 he did, you know, and he have that opportunity to make
13 amends with his Father.

14 MR. MACDOUGALL: Okay. Ms. Armstrong, when you
15 were called for jury service, you filled out a
16 questionnaire. Do you remember doing that?

17 JUROR NUMBER 19: Yes, sir.

18 MR. MACDOUGALL: And you were asked all kinds of
19 questions. I see you're a fan of CSI and Cold Case.

20 JUROR NUMBER 19: Yes, sir.

21 MR. MACDOUGALL: What do you like about that show?

22 JUROR NUMBER 19: Years ago, before my grandmother
23 took sick, I was supposed to -- I was supposed to go to
24 school for paralegal, but since she had a stroke, and
25 then she had a heart attack, I didn't pursue it. I just

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1 did other things closer to home.

2 MR. MACDOUGALL: But in filling this out, you were
3 asked to rate yourself, or just sort of identify
4 yourself as one of three kinds of people, and the one
5 that you circled says the following:

6 *In answer to the question, which*
7 *of the following best describes you.*

8 And you said that you would consider all the facts
9 of the case to decide if death were appropriate and
10 could give either sentence of life in prison or a
11 sentence of death, depending on the facts and
12 circumstances of the case. Is that how you feel?

13 JUROR NUMBER 19: Yes, sir.

14 MR. MACDOUGALL: So, under some circumstance,
15 depending on the facts and circumstances, you could vote
16 for a death sentence.

17 JUROR NUMBER 19: I could, but after praying about
18 it, it depends, because no crime in this world, no
19 matter how big or small it is, a person shouldn't have
20 to take another person's life.

21 MR. MACDOUGALL: Well, this is as serious as it
22 gets in the law.

23 JUROR NUMBER 19: I know.

24 MR. MACDOUGALL: So, your praying about it and
25 thinking hard on it is about -- that's about where we

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1 all are. So, you've got lots of company there.

2 Let me just add to a little bit to where your mind
3 would be.

4 JUROR NUMBER 19: Okay.

5 MR. MACDOUGALL: In South Carolina, in order to
6 charge a defendant for capital murder, there have to be
7 things called aggravators. And what those are, are facts
8 associated with the case that the law says makes the
9 killing worse.

10 So, the first thing you have is the malicious
11 murder, the murder with complete intent to do it. That
12 doesn't get you here. What gets you here is an
13 aggravator, and there are two of them in this case, as
14 the Judge mentioned. One is that there were two
15 homicides. There were two people killed in this case.
16 And the other is that one of those two was a four-year-
17 old child. So, you have a mother or a child killed in
18 this case. And those are the aggravators that, again,
19 assuming you were called as a juror, those are the
20 aggravators you would hear about.

21 Now, with regard to your ability to weigh all the
22 evidence back and forth, would that evidence allow you
23 to consider, after you heard everything, the possibility
24 of the death sentence?

25 JUROR NUMBER 19: I'm still standing on life

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1 without probation.

2 MR. MACDOUGALL: I'm sorry?

3 JUROR NUMBER 19: I'm still standing on life, you
4 know, without probation.

5 MR. MACDOUGALL: Okay. But the question is not
6 where you are; it's what you would be able to do? Would
7 you be able to consider, in the jury room with the other
8 jurors, the possibility of giving a death sentence.

9 JUROR NUMBER 19: Probably consider it.

10 MR. MACDOUGALL: You'd consider it?

11 JUROR NUMBER 19: Just consider it.

12 THE COURT: I'm sorry? I'm sorry.

13 JUROR NUMBER 19: I said probably consider it.

14 THE COURT: Mr. MacDougall, I apologize. I don't
15 mean to cut you off, but I really need to let Mr. Stone
16 go ahead. If you need to come back up, you certainly
17 are welcome to, but I apologize.

18 MR. MACDOUGALL: Okay. Thank you, your Honor.

19 THE COURT: I apologize. We're just going to try
20 to move it along, if that's all right.

21 MR. STONE: Hey, Ms. Armstrong. My name's Duffie
22 Stone, and I just wanted to try to clarify for my own
23 self what you're telling us. And it sounds like, when
24 you filled out your questionnaire you said that you
25 would take everything into consideration before handing

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1 down a sentence, but after praying about it, your
2 decision would be that you would always give life in
3 prison. Is that what I'm hearing? Is that what I'm
4 understanding?

5 JUROR NUMBER 19: I think so. I mean --

6 MR. STONE: That's okay. And there's no right or
7 wrong answer. What we're trying to do is find out how
8 you feel about something. And of course, you don't know
9 the facts of the case, but here's the situation. Were
10 you on this jury, you would go through what's called a
11 guilt phase to determine whether or not the defendant is
12 guilty or not. If you find that the defendant is
13 guilty, you, as a juror, would then sit back and this
14 box, and you would, after listening to anything put up
15 by me or anything put up by the Defense, it would be up
16 to you to determine whether or not you could give a
17 sentence of life in prison or a sentence of death, and
18 that would have to be your decision. Could you give a
19 sentence of death?

20 JUROR NUMBER 19: Probably. I'm not so sure.

21 MR. STONE: Okay. And I understand. If you were
22 on this jury, you would be asked to give out a sentence,
23 and the sentence is not a recommendation. The sentence
24 is actually the sentence.

25 In other words, if you, as a juror, said for this

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1 crime, Mr. Daise should die, that's the sentence.
2 That's what the sentence is. It's not a suggestion to
3 the Judge. That's the sentence.

4 And then, at the end of that, there's a form that
5 you would fill out, and you would have to sign your name
6 to that form. And that form would be handed up, and it
7 would say Mr. Daise, for this crime, should die.

8 Could you sign a piece of paper like that? Could
9 you hand out a sentence that way?

10 JUROR NUMBER 19: Probably so. I'd have to hear
11 all of the evidence that is being submitted.

12 MR. STONE: Okay. And when you say *probably*, I
13 guess what I'm trying to do is figure out how that
14 meshes with what you said earlier. And I certainly
15 understand. Again -- and I'm not trying to press you
16 one way or the other. I'm just trying to figure out
17 what the situation is.

18 It seemed like before you said that you prayed
19 about it, and you didn't feel like you could take
20 somebody's life. So, I guess my question is, if you
21 hear all the evidence one way or the other, can you ever
22 be in a situation of taking somebody's life, of saying
23 they should die?

24 JUROR NUMBER 19: It's going to be very difficult
25 because of my religion.

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1 MR. STONE: And that's fine. Your religion is your
2 religion, and that shouldn't be anything that I question
3 or anyone else. And so, I'm not trying to change your
4 religion. I just want to make sure that I understand.
5 If you can do it, fine. If you can't do it, that's
6 fine, too. We just need to know. Okay?

7 So, whether it's a belief of your religion or
8 whatever, the question is, because of your religion, --
9 obviously, you're a very religious person; you've prayed
10 about this, which is great; but the question is still
11 going to have to be could you do this? And if you
12 could, fine. And if you couldn't, it's fine, too. We
13 just need to know.

14 JUROR NUMBER 19: I probably wouldn't be able to.

15 MR. STONE: Okay. Thank you, ma'am. And there's
16 nothing -- I hope I didn't insult you by asking those
17 questions. I just wanted to -- I just wanted to
18 clarify.

19 JUROR NUMBER 19: Yes, sir.

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

21 THE COURT: Mr. MacDougall.

22 MR. MACDOUGALL: No further questions, your Honor.

23 THE COURT: All right. Ma'am, I'm going to go
24 ahead and excuse you from the trial of this case. I
25 appreciate you being here, and thank you. You do not

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1 need to return on Monday.

2 JUROR NUMBER 19: Thank you, ma'am.

3 MR. MACDOUGALL: Your Honor, could we defer on
4 this, please.

5 THE COURT: Sure. Actually, if you don't mind, if
6 you would, sit tight and just step out with Bob for just
7 a brief moment. Okay?

8 JUROR NUMBER 19: Okay.

9 THE COURT: Thank you.

10 JUROR NUMBER 19: May I take this?

11 THE COURT: Just leave it right there. You are
12 fine. You can take it with you, right. Just follow Bob
13 out there.

14 JUROR NUMBER 19 LEAVES COURTROOM.

15 BAILIFF: Door's closed, your Honor.

16 THE COURT: Yes, sir.

17 MR. MACDOUGALL: Your Honor, you've already
18 signaled your ruling, I understand, but I believe this
19 woman is qualified. She was asked several times by the
20 Solicitor could she do it. She said probably, and
21 probably is a positive response.

22 This is not someone who said I couldn't do it. She
23 said she probably could. She's going to pray about it,
24 and hopefully, everybody's going to pray about it; and
25 that she would think about it deeply; and that's exactly

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1 what we want in a juror. But this woman is not
2 substantially impaired, your Honor. And she said, in
3 response to repeated questions by the Solicitor, which
4 followed, you know, an interruption of my voir dire of
5 her, that she probably could, and that's a positive
6 response, your Honor. I don't think the fact that she's
7 troubled by it should be viewed as an impairment,
8 because it isn't.

9 THE COURT: That's certainly not the impairment. I
10 would hope that someone would pray about this and be
11 concerned about it. Anyone that's conflicted actually
12 is thinking about it and should be.

13 I can tell you, in this case, this woman, and
14 again, Solicitor, I don't want to make your argument for
15 you, but in speaking to her and looking at her, again,
16 just because she prays about it just means she's a
17 conscience, religious woman. This woman couldn't give
18 the death penalty. I mean, I apologize. I do think
19 she's substantially impaired. I'm going to go ahead and
20 excuse her.

21 MR. MACDOUGALL: Thank you, your Honor.

22 THE COURT: So, bring the next one in. I
23 appreciate it.

24 BAILIFF: Well, we'll have to bring her back in
25 first, Judge.

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1 THE COURT: Thank you.

2 JUROR NUMBER 19 ENTERS COURTROOM.

3 BAILIFF: Stand right here, please, ma'am, and face
4 the Judge.

5 THE COURT: Thank you. Ma'am, again, thank you for
6 being here. I am going to go ahead and excuse, and I
7 appreciate it, and thank you again. We send you away
8 with our thanks. All right?

9 JUROR NUMBER 19: Thank you.

10 BAILIFF: Give me your badge, please. Okay.
11 You're free to go.

12 JUROR NUMBER 19 LEAVES COURTROOM.

13 BAILIFF: Richard Marshall.

14 JUROR NUMBER 411 ENTERS COURTROOM.

15 THE COURT: Come on forward, Mr. Marshall.

16 BAILIFF: If you will, sir, please go up and take a
17 seat in the witness stand.

18 THE COURT: Good evening, Mr. Marshall.

19 JUROR NUMBER 411: Hi.

20 THE COURT: Thank you for being here, sir, and
21 thank you for your patience.

22 Sir, we're going to just go through a few things,
23 just very quickly. I want you remind you, you are still
24 under the oath you took on Wednesday.

25 JUROR NUMBER 411: Yes, ma'am.

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1 THE COURT: The lawyers are going to ask you some
2 questions about your beliefs and thoughts about the
3 death penalty and about what you think of punishment,
4 the death penalty versus life imprisonment without the
5 possibility of parole.

6 As you understand, I'm sure, from the
7 questionnaire, this is a capital murder case.

8 JUROR NUMBER 411: Yes.

9 THE COURT: That makes it's a little bit different,
10 and I want to make sure you understand that this will be
11 tried in two phases. In a capital murder case, the
12 first phase will simply determine the guilt or innocence
13 of the defendant of these two murder charges.

14 And in this case, the allegation is the defendant
15 did kill a woman or a mother and her four-year-old
16 child. That will be a determination made by a jury
17 unanimously, either guilty or not guilty. And the State
18 has the burden of proving that to your satisfaction, the
19 entire jury's, beyond a reasonable doubt.

20 If, and only if, the jury does find the defendant
21 guilty of those charges will we then go into a second
22 phase, which is called the sentencing phase.

23 JUROR NUMBER 411: Yes.

24 THE COURT: During the sentencing phase, the State
25 is going to give you or suggest to you aggravating

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1 factors in this case that makes the case subject to the
2 death penalty. Not all murder cases are subject to the
3 death penalty. Our state laws provide for certain
4 circumstances where it is appropriate, if a jury feels
5 like it or wants to give the death penalty or that they
6 may consider it.

7 And in this case, those circumstances that are
8 alleged are that this was a double murder, two people
9 were killed during the same incident, and that one of
10 those persons was a child.

11 JUROR NUMBER 411: Um-hmm.

12 THE COURT: That would be the aggravating
13 circumstances that the State would be putting forward.

14 The Defense will also put forward mitigation
15 factors; things about the history; the background of the
16 defendant; what kind of brought him here; and other
17 factors that you are to consider in weighing whether or
18 not you think the appropriate punishment is a life
19 sentence without the possibility of parole or the death
20 sentence.

21 And I want to make sure you understand and
22 appreciate that, as a jury during that sentencing phase,
23 as well as the guilt phase, as far as determining a
24 sentence, a jury can give whatever weight it deems
25 appropriate, but we would ask that you consider

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1 mitigation. And again, for no reason at all, a simple
2 grant of mercy, a jury can return a verdict of not
3 guilty -- I'm sorry -- of a life sentence, as opposed to
4 a death sentence for someone; and you wouldn't have to
5 give any reason or justification for it; just, again,
6 that is your belief or for mercy.

7 So, these lawyers are going to ask you something
8 about that, and they're going to talk to you about it.
9 There's no right or wrong answers here.

10 JUROR NUMBER 411: Okay.

11 THE COURT: We just want to know what you think and
12 what you understand and know about the law. We'll go
13 ahead and start by saying this is not something we can
14 do every day, so it's not as if we expect you to know
15 the definitions. Again, a lot of this is new, and we
16 expect it to be. So, they're going to tell you about
17 it. Okay?

18 JUROR NUMBER 411: Yes, Judge.

19 THE COURT: Thank you.

20 MR. MCGUIRE: Thank you very much, your Honor.
21 Good evening, sir.

22 JUROR NUMBER 411: Hi.

23 MR. MCGUIRE: I'm going to start with just some of
24 the issues with the media coverage. I think you've been
25 exposed to some. And I read your questionnaire, and I

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1 believe you indicated:

2 *From what I've seen in the news, I*
3 *would say he's guilty and he should get*
4 *the death penalty, in my opinion.*

5 Is that still your view, sir?

6 JUROR NUMBER 411: Yes.

7 MR. MCGUIRE: Okay. And that's based on the nature
8 of the crime?

9 JUROR NUMBER 411: Nature of the crime and killing
10 a child.

11 MR. MCGUIRE: Okay.

12 JUROR NUMBER 411: And actually, harming another
13 child, right? Correct? Wasn't there another child
14 involved, too?

15 MR. MCGUIRE: The charges are that it's an
16 intentional taking of an innocent life, a woman, a four-
17 year-old child, and shooting a 28-month-old child. And
18 the charge on the 28-month-old charge [sic] is called in
19 the law assault and battery with intent to kill.

20 JUROR NUMBER 411: I just knew two people -- if I
21 can comment.

22 MR. MCGUIRE: Sure.

23 JUROR NUMBER 411: I knew two people that work for
24 me that live in the Hampton area, and it's a small
25 community. Obviously, this has been several years back.

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1 MR. MCGUIRE: Sure.

2 JUROR NUMBER 411: But I remember talking to them
3 with them, and because it was pretty much a heinous
4 crime that you don't hear of every day, obviously.

5 MR. MCGUIRE: Exactly. And there are some
6 categories of crime, some specific types of crimes,
7 where some people say, you know, that one kind calls out
8 and demands the death penalty.

9 And I see you shaking your head in yes. You're
10 already jumping to the answer of my question, which
11 would be, in this case, with the two children, the four-
12 year-old killed and the 28-month-old shot, that the
13 heinous nature of that calls out for the death penalty.

14 JUROR NUMBER 411: In my opinion, yes.

15 MR. MCGUIRE: Okay. I want to stand down for a
16 second, Judge.

17 THE COURT: Of course.

18 MR. STONE: Mr. Marshall, I'm sorry, I'm Duffie
19 Stone. Let me just clarify so that I understand you.

20 JUROR NUMBER 411: Yes, sir.

21 MR. STONE: You did not answer the -- there's a
22 question in the questionnaire about what type of juror
23 you would be. But assuming that what Mr. McGuire just
24 asked you about in a case in which a -- you, as a juror,
25 have found somebody is guilty of killing a child,

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1 harming another child, and killing the child's mother,
2 at that stage, you would always be the death penalty.
3 You would not consider anything else, other than that,
4 that would be the death sentence. Is that right?

5 JUROR NUMBER 411: That would be the ultimate price
6 you'd pay, yeah.

7 MR. STONE: That's fine. I understand, and thank
8 you very much for your honesty. Thank you, your Honor.

9 THE COURT: Thank you. Sir, we're going to go
10 ahead and excuse you from the trial of this case.

11 JUROR NUMBER 411: Okay.

12 THE COURT: But I appreciate your coming and your
13 patience. You do not need to report on Monday.

14 JUROR NUMBER 411: All right. Thank you.

15 THE COURT: Thank you.

16 BAILIFF: Come this way, sir. Just give me your
17 badge. You're free to go.

18 JUROR NUMBER 411 LEAVES COURTROOM.

19 THE COURT: Go ahead and bring the next one in.

20 BAILIFF: Zachary Takacs.

21 JUROR NUMBER 614 ENTERS COURTROOM.

22 THE COURT: Come on in, sir.

23 BAILIFF: Right this way, please, sir. If you
24 will, go up and take a seat in the witness stand.

25 THE COURT: Thank you. Good to see you, Mr.

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1 Takacs.

2 JUROR NUMBER 614: Good afternoon.

3 THE COURT: Thank you. And I appreciate your
4 patience with us. Sir, I need to remind you that you're
5 still under oath as we stated on Wednesday.

6 Additionally, were you able to review the witness
7 list and see if there are any persons that you are
8 friends, acquaintances with, or have professional
9 relationship with?

10 JUROR NUMBER 614: I did not recognize any names on
11 the list, ma'am.

12 THE COURT: Thank you. Additionally, there's been
13 some publicity about this case. Have you read anything,
14 seen anything, heard anything?

15 JUROR NUMBER 614: No, ma'am.

16 THE COURT: No? Have no independent knowledge
17 whatsoever.

18 JUROR NUMBER 614: No, ma'am.

19 THE COURT: Very good, sir. I want to make sure
20 you appreciate and understand that this is a capital
21 murder case. You do. Is that correct?

22 JUROR NUMBER 614: Yes, ma'am.

23 THE COURT: You understand the State is seeking the
24 death penalty in this case.

25 JUROR NUMBER 614: Yes, ma'am.

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1 THE COURT: Not every murder case, as you know, is
2 capital eligible in South Carolina. They have to
3 present certain aggravating factors. I want to make
4 sure you understand that the case would take place in
5 two stages, which makes it a little bit different than a
6 normal criminal case or a normal murder case. And I
7 hate to say normal, but anyway.

8 There's two separate phases. The first phase would
9 be to determine the guilt or innocence of the defendant
10 of the charges, whether or not he, in fact, did what the
11 State is alleging he did. And then, if, and only if,
12 the jury convicted him beyond a reasonable doubt of
13 those charges would then go to a sentencing phase.

14 At that point, the same jury would make a decision
15 in this case. The options for a jury to consider for
16 penalty would be either life imprisonment without the
17 possibility of parole or the death sentence.

18 JUROR NUMBER 614: Yes, ma'am.

19 THE COURT: Those are the two options. And during
20 that penalty phase, you would hear mitigation from the
21 Defense about background and walk of life regarding the
22 defendant, all in an effort to help you come to a
23 conclusion of what the appropriate punishment is in this
24 case.

25 So, to that end, I just wanted you to understand

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1 the process, how we go about it, and I'm going to turn
2 it over to the lawyers now to ask you some questions.
3 There are no right or wrong answers here. Just tell
4 truthfully and candidly, please. Okay?

5 JUROR NUMBER 614: Okay.

6 THE COURT: Thank you, sir.

7 MR. MCGUIRE: Good evening, Mr. Takacs. How are
8 you doing?

9 JUROR NUMBER 614: I'm well, thank you.

10 MR. MCGUIRE: I'm going to start with your
11 questionnaire. This is kind of our starting point. And
12 you indicated, based on what you've heard, have you
13 formed an opinion about the defendant and the punishment
14 he should receive? And you wrote yes. Tell me about
15 that.

16 JUROR NUMBER 614: I would like to change that, and
17 maybe after hearing all the information during the
18 trial, then give my opinion or form an opinion after
19 hearing all the facts being stated.

20 MR. MCGUIRE: Okay. Well, let me ask you what you
21 were thinking at the time.

22 JUROR NUMBER 614: Maybe that the crime was
23 punishable by death, yes.

24 MR. MCGUIRE: Okay. And that's fine, if that's
25 your view, if that's your personal view. There's

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1 another part on the questionnaire where it kind of -- it
2 describes possible types of people.

3 You know, there are some people who are very good
4 people that go to church and they believe eye for an
5 eye. If somebody takes an innocent life, you forfeit
6 theirs.

7 There are some people who are on the other side of
8 the coin. They just don't believe in the death penalty,
9 the government shouldn't kill people, and they could
10 never vote for it.

11 And then, there's some people if it's a certain
12 kind of case that kind of -- it's so heinous it calls
13 out for the death penalty, they might be always death
14 penalty for that specific type of crime. Maybe it's a
15 rape, murder, or a police officer in the line of duty,
16 or a child killed.

17 JUROR NUMBER 614: Um-hmm.

18 MR. MCGUIRE: Sometimes there's a special kind of
19 case that is just so -- it resonates just so deeply with
20 somebody that the penalty -- the death penalty would be
21 appropriate in all of those types of cases. Are you
22 following me?

23 JUROR NUMBER 614: Yes, sir.

24 MR. MCGUIRE: Okay. And if I -- sometimes I'm
25 wordy, and I'm not very good at communicating sometimes,

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1 and if I lapse into that, you let me know.

2 JUROR NUMBER 614: I will.

3 MR. MCGUIRE: Okay. And what I'm going to do is
4 sort of build up that specific crime, sort of block by
5 block, the type of aggravation, the aggravated murder
6 we're talking about, and then I'll ask you about your
7 thoughts about it then. Okay?

8 And if you were in that trial, and you were with
9 eleven other jurors; and you have heard all the evidence
10 regarding did he do it, did he not do it; what kind of
11 crime was it; and you and eleven other people found
12 beyond a reasonable doubt that a murder was committed,
13 which is the intentional, unlawful killing of another
14 human being with malice aforethought.

15 The malice aforethought means that the killer's
16 operating with a black and malignant heart, bent on a
17 fatally evil and wicked purpose. Basically, in layman's
18 terms, it means intentionally choosing to kill an
19 innocent person and doing it with an evil intent.

20 JUROR NUMBER 614: Yes, sir.

21 MR. MCGUIRE: Okay? It's not self-defense; it's
22 not an accident; it's not a mistake; it's not somebody
23 who doesn't know right from wrong. It's a deliberate
24 choice to take an innocent life. Okay? You with me?

25 JUROR NUMBER 614: Yes, sir.

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1 MR. MCGUIRE: And then, to seek the death penalty,
2 to ask for the death penalty, the government has to come
3 with even more. It has to be an aggravated murder, and
4 the aggravation at issue here is a mother and child were
5 killed, shot dead, and the child was four years old.

6 Now, in that specific case, knowing all of that
7 now, is your thought that the death penalty is the
8 appropriate punishment?

9 JUROR NUMBER 614: Yes, sir.

10 MR. MCGUIRE: Okay. And knowing these -- and
11 that's a -- your answers are a reflection of your values
12 system. You have to say yes.

13 JUROR NUMBER 614: Yes, sir.

14 MR. MCGUIRE: She'll remind you. The record
15 doesn't take down uh-huh's or nods.

16 JUROR NUMBER 614: Yes.

17 MR. MCGUIRE: I don't mean to put you on the spot
18 there.

19 JUROR NUMBER 614: I apologize.

20 MR. MCGUIRE: You're fine. And again, your view
21 that the death penalty would be appropriate, would
22 always be appropriate, in the mother and child killing
23 situation, that's a reflection of your moral compass.

24 JUROR NUMBER 614: Yes.

25 MR. MCGUIRE: Your moral code.

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1 JUROR NUMBER 614: Yes, sir.

2 MR. MCGUIRE: Emanates from a deep place.

3 JUROR NUMBER 614: Yes, sir.

4 MR. MCGUIRE: I can't change that.

5 JUROR NUMBER 614: No, sir.

6 MR. MCGUIRE: I don't have the talent; do I?

7 JUROR NUMBER 614: No, sir.

8 MR. MCGUIRE: Or the words.

9 JUROR NUMBER 614: No, sir.

10 MR. MCGUIRE: Okay. And everybody, you know, -- I
11 used to use this question. I didn't realize that I
12 wasn't really asking anything. I used to ask jurors
13 could they sit in the trial and listen to everything
14 before reaching a verdict. And I realized what I was
15 asking them to do was just basically keep their seat and
16 not walk out of the room.

17 If somebody asked you could you consider
18 everything, as long as it came back to it's an
19 intentional killing of that mother and the child, with
20 the four-year-old being the child, the death penalty is,
21 obviously, an appropriate punishment.

22 JUROR NUMBER 614: Yes, sir.

23 MR. MCGUIRE: Okay. That's all I have for you
24 right now, sir. Thank you.

25 JUROR NUMBER 614: Thank you.

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1 THE COURT: Mr. Stone.

2 MR. STONE: Mr. Takacs, let me ask you, and I
3 cannot recall, quite frankly, if we went through this
4 earlier, so let me just apologize if I'm duplicating.

5 In a death penalty case, what you would do is first
6 determine whether or not somebody was guilty of murder.

7 JUROR NUMBER 614: Yes, sir.

8 MR. STONE: And in that stage, your decision would
9 be whether or not the defendant was guilty of killing a
10 mother, killing a four-year-old child. If, and only if,
11 you found that they were guilty would you go to a
12 sentencing phase.

13 The sentencing phase, you would still be on the
14 same -- it would be on the same jury, but you would have
15 basically a second trial.

16 JUROR NUMBER 614: Yes, sir.

17 MR. STONE: That's what we're talking about when
18 we're asking whether -- asking your determination,
19 because, at that point is when you would have to
20 determine whether or not you, as a juror, could vote for
21 the death penalty or vote for life in prison, in which
22 in that case would mean no parole. They would actually
23 go to prison and stay there for life.

24 At that point, if you have already convicted
25 somebody of killing a mother and child, would you

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1 automatically vote for the death penalty, or would you
2 consider anything put up by the State, anything put up
3 by the Defense, before making that decision?

4 JUROR NUMBER 411: I would listen to the
5 consideration.

6 MR. STONE: Now, the Judge will instruct you, in
7 fact, that, if you are on the jury, that is what you are
8 to do; that you are to listen to both sides, both the
9 Defense, as well as the State, before you make that
10 determination. And you could do that. That's what
11 you're telling us you would do.

12 JUROR NUMBER 411: Yes, sir.

13 MR. STONE: So, and I guess what I'm trying to
14 clarify is, earlier, it sounded like if the person was
15 guilty of murdering a child and murdering a mother,
16 that, that would be it; you would not consider it;
17 automatically, it would be death.

18 JUROR NUMBER 411: I may be contradicting my
19 sentences, sir. I'm sorry, I'm -- I'm a little nervous.

20 MR. STONE: No, and I -- and I -- let me -- I
21 understand that. And I'm tired, so, between the two of
22 us, it might be kind of tough.

23 Your answer on the questionnaire concerning the
24 sentencing phase, and your answer on the questionnaire
25 was that you would take everything into consideration.

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1 JUROR NUMBER 411: Yes, sir.

2 MR. STONE: I'm not trying to change your mind on
3 that or what you said earlier. We just need to know.
4 And I think everybody in the courtroom needs to know.

5 Would you take everything into consideration?
6 Would you take mitigation into consideration, or would
7 you automatically say death, if you were convinced
8 beyond a reasonable doubt that the defendant had killed
9 a four-year-old child, as well as the four-year-old
10 child's mother?

11 JUROR NUMBER 411: I'd suppose death. I assume --
12 I'm count -- counter-stating my previous statement, and
13 again, the previous statement before that. But yes,
14 death.

15 MR. STONE: Okay. So, you would automatically give
16 death.

17 JUROR NUMBER 411: Yes, sir.

18 MR. STONE: That's fine, and thank you very much
19 for your honesty. I appreciate it.

20 JUROR NUMBER 614: Thank you, sir.

21 MR. STONE: Thank you, your Honor.

22 OFF-THE-RECORD BENCH CONFERENCE.

23 END BENCH CONFERENCE.

24 MR. STONE: That's correct, yes, ma'am.

25 THE COURT: Okay. Sir, I'm going to excuse you

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1 from the trial of the case. I appreciate it.

2 JUROR NUMBER 614: Thank you very much, ma'am.

3 THE COURT: Thank you very much. You all, we're
4 going to take a five-minute break. Okay. How many more
5 do we have left tonight, Caroline?

6 MADAM CLERK: Five.

7 THE COURT: How many?

8 THE COURT: Five.

9 THE COURT: Five left tonight? I think there was
10 one extra person we brought in. Who are the five, just
11 so everybody knows before we --

12 MADAM CLERK: Virginia Cassidy.

13 THE COURT: Okay.

14 MADAM CLERK: Davane Haynes.

15 MR. STONE: I'm sorry. I'm sorry.

16 THE COURT: Go ahead. I'm sorry. Go ahead.

17 LAW CLERK SCRANTON: We have Virginia Cassidy. And
18 then, we skipped Beverly O'Brien. I told her to be here
19 at 8:30 in the morning on Monday.

20 Davane Haynes, Leander Cannick, Gregg Davis. And
21 then, Bethany Reynders. That's it.

22 BAILIFF: There's four in there.

23 THE COURT: Four. Okay.

24 MR. STONE: Olga Washington is not with us.

25 THE COURT: She was excused.

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1 MR. STONE: She was excused? Okay.

2 THE COURT: She was excused.

3 MR. STONE: Sorry, I apologize.

4 THE COURT: Okay. Is that the one with the hearing
5 impairment?

6 MR. YOUNG: I'm sorry. When was she excused, your
7 Honor?

8 THE COURT: Pardon?

9 MR. MCGUIRE: When was she excused?

10 THE COURT: I don't know yet. I've got to figure
11 out when it was. I couldn't remember which one it was.
12 So, let me take a look at her and I'll find out.

13 MR. YOUNG: Okay. One more thing, your Honor. And
14 I don't know what your Honor's plan is with the rest of
15 the jurors or anything like that. I would just ask the
16 Court to consider either -- in no way enabling Juror
17 Number 590, Joseph Soldano, from being possibly put in a
18 room with other jurors until the Court's had an
19 opportunity to discuss with him whether or not he's
20 telling other jurors that Mr. Daise --

21 THE COURT: Anything on the case. Yeah, and he
22 hasn't even been noticed when to come back or anything
23 like that.

24 MR. YOUNG: And he's like number 100.

25 THE COURT: Right.

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1 MR. YOUNG: I don't think we're going to get to
2 him. I don't know if the Judge -- if you're planning on
3 bringing them all back. I don't want him anywhere other
4 jurors or have an opportunity to see other jurors.

5 THE COURT: And I appreciate that. Again, we will
6 make sure that, if we do call him, that we will single
7 him out and make sure he's not with the other jurors.
8 Okay? And make sure that Al knows that number. We're
9 very hopeful we don't get to him. Okay. All right.
10 So, we're going to take a quick five-minute break.

11 OFF THE RECORD 6:12 P.M.

12 BACK ON THE RECORD 6:20.

13 BY THE COURT:

14 MR. MCGUIRE: Judge, could I just talk to you about
15 scheduling.

16 THE COURT: Absolutely.

17 MR. MCGUIRE: There's not a prosecutor here, so
18 I'll just do it right here.

19 THE COURT: Okay.

20 MR. MCGUIRE: If we're not going to start with
21 opening statements Monday morning, looks like we
22 probably won't, I'm going to have to probably move back
23 flights and a fellow or two in.

24 THE COURT: Okay.

25 MR. MCGUIRE: If we had -- if the State was

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1 to finish -- because they were saying they could
2 finish maybe as early as before the end of the day
3 Wednesday, --

4 THE COURT: Um-hmm.

5 MR. MCGUIRE: -- if they started Monday morning.

6 THE COURT: Um-hmm. Have you ever tried a case
7 with Duffie?

8 MR. MCGUIRE: He was quick.

9 THE COURT: He's really, I mean, not just quick,
10 but really quick.

11 MR. MCGUIRE: But if we lose a half day on Monday

12 THE COURT: I understand.

13 MR. MCGUIRE: And he said the earliest he thought
14 he'd finish would be a half day Wednesday. Sounds like
15 I need to get my guy here Thursday.

16 THE COURT: I think we're going to go fast. We're
17 just talking about scheduling, you all. That's all
18 right. We're going to know better today, at the end of
19 tonight, how many more people we need. If we have to do
20 this all morning long on Monday morning, and then
21 actually pull the jury after lunch, and then do opening
22 statements. And my question, how long do you all
23 anticipate your opening statements being? I mean, are
24 you doing it for the Defense?

25 MR. MCGUIRE: I'll be doing it.

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1 THE COURT: And who's doing it for you all?

2 MR. THORNTON: It would be the Solicitor. I know
3 his openings well enough to know it's not going to be
4 more than ten minutes.

5 THE COURT: Okay.

6 MR. THORNTON: Ten to fifteen at the outside. And
7 I'll tell you, Judge, from my perspective, based on how
8 many we've already got qualified, even if we only get
9 another one or two tonight, we're not going to have to
10 do this all morning.

11 THE COURT: Okay.

12 MR. THORNTON: Because we're at a point now, you
13 know, you're talking about the last strikes of
14 alternates.

15 THE COURT: Okay.

16 MR. THORNTON: I mean, we've got thirty -- you
17 know. We hit the jury, with all their strikes, at 24.

18 THE COURT: Okay.

19 MR. THORNTON: Actually 22, I guess. But anyway --

20 THE COURT: Okay.

21 MR. THORNTON: You know, we're at like, second and
22 third alternate, if we use all of our strikes. There's
23 really -- and I'm going to say this with Mr. McGuire
24 sitting right here next to me, it would be silly for it
25 to take this long when we get to second and third

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1 alternates, which is where we are. So, there's no
2 reason we should take all morning on, you know, --

3 THE COURT: Okay.

4 MR. THORNTON: It won't take that long from our
5 perspective, I can assure you.

6 THE COURT: Okay.

7 MR. THORNTON: So, you know, I see no reason why we
8 shouldn't have the jurors here at 9:30. If we need to
9 bring the ones we haven't gotten back yet at 8:30, we
10 ought to be done by 9:30, 10:00 o'clock at the latest.
11 I think, if we can just get one or two more maybe out of
12 the last four, I think we'll be in good shape. That's
13 just my opinion, but.

14 THE COURT: Okay. I think it's a little ambitious,
15 but okay. Let's see what we end up with today.

16 MR. MCGUIRE: And just one more question.

17 THE COURT: Yes.

18 MR. MCGUIRE: When we bring those folks back and
19 strike, is it going to be traditional? We'll bring them
20 -- whoever's qualified, we'll bring them back
21 physically; they'll stand in front of the tables; what
22 say you for the State; What say you for the defense?

23 THE COURT: That'll give you a reason you don't
24 like the way they walk, apparently. I can tell you,
25 there's a thought over this lately. Because Judge

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1 Connor lets them stay right out there and just stand up
2 and sit down. I know as an attorney, I'd like an
3 excuse, and it gives you a little time to shuffle your
4 papers while you're looking, while they do the, you
5 know, long wedding walk. So, anyway.

6 MR. MCGUIRE: I won't strike anybody for their
7 walking.

8 THE COURT: Yeah, I'm going to make them come
9 around, because I do think it's that important. I do
10 think they should. I'm not going to make them stand in
11 place. I just -- I'll make them come around.

12 MR. MCGUIRE: So, they walk up?

13 THE COURT: Right.

14 MR. MCGUIRE: Thank you, Judge.

15 MR. YOUNG: And I'm going to tell you, another
16 thing that causes a problem when we do the strikes is,
17 if we're going to say that the first 27 is the jury,
18 and then the next four are who's the first alternate,
19 and next one. So, even if you don't use all your
20 strikes, --

21 THE COURT: Um-hmm.

22 MR. YOUNG: -- when it comes time to select the
23 first alternate, it would be -- the first juror
24 presented would be number 28 on the list. Do you
25 understand what I'm saying?

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1 THE COURT: I understand what you're saying.

2 MR. YOUNG: Because if you don't use all your
3 strikes and you get your jury halfway through the 27.

4 THE COURT: Right. Right.

5 MR. YOUNG: And I don't have a particular opinion
6 one way or another. If you want to just start the
7 alternate right there, that's fine. But we always end
8 up fighting about it, because --

9 THE COURT: Okay. Well, --

10 MR. YOUNG: -- whatever the number is.

11 THE COURT: What is your position?

12 MR. THORNTON: My position is you take them in the
13 order you get them, whether you use the strikes or not.
14 I mean, the order is the order. That's the whole
15 definition of a random order.

16 So, my opinion would be we go through, you know,
17 Juror 1, you strike them or not, because that's the way
18 they would have been called anyway. I mean, if you're
19 doing it the old-fashioned way, that's the way they
20 would have been called. You wouldn't break it apart,
21 so.

22 MR. YOUNG: I am fine doing that. It always ends
23 up breaking bad for one or the other people on the
24 alternate.

25 MR. THORNTON: I mean, as soon as the Solicitor

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1 gets here, obviously, it's his final say, but I can't
2 imagine he would have any -- I mean, our whole thing
3 about argument has been we should stick with what the
4 random draw is.

5 THE COURT: Um-hmm.

6 MR. THORNTON: And that is the random draw. So,
7 I'll speak to the Solicitor as soon as he gets here,
8 Judge.

9 THE COURT: Okay.

10 MR. THORNTON: And if we can agree, I mean, I don't
11 think --

12 MR. MCGUIRE: We don't have a position.

13 THE COURT: When you say it breaks bad, what do you
14 mean?

15 MR. MCGUIRE: What happens is --

16 THE COURT: How does it break bad?

17 MR. MCGUIRE: What happens is, you get to the
18 number that you qualified to have the jury; it's the
19 twelve, plus ten, plus five.

20 THE COURT: Got it.

21 MR. MCGUIRE: That's the 27.

22 THE COURT: Yeah.

23 MR. MCGUIRE: And then, if we don't address it now,
24 what happens is, somebody looks ahead, and they're --
25 and they think, oh.

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1 THE COURT: Thank you. I understand now. It's how
2 you anticipate exercising your strikes. I got it.
3 Okay. Thank you.

4 MR. MCGUIRE: And we have to use them all to
5 preserve any issues and --

6 THE COURT: I understand now. Thank you.

7 MR. MCGUIRE: Yeah.

8 THE COURT: All right. Sorry, Solicitor. It's
9 late. Thank you. Okay. Well, are we ready to go?

10 MR. THORNTON: Yes, ma'am. State's ready.

11 THE COURT: You ready tonight, you all?

12 MR. MCGUIRE: Yes, ma'am.

13 THE COURT: Let's go.

14 BAILIFF: Virginia Cassidy.

15 JUROR NUMBER 109 ENTERS COURTROOM.

16 THE COURT: Come on forward, ma'am, right around
17 here.

18 BAILIFF: This way, please, ma'am.

19 THE COURT: Come on. Come on, Al, you can direct
20 better.

21 BAILIFF: Sorry, your Honor. Right up there.

22 THE COURT: Everybody's tired.

23 BAILIFF: Take a seat in the witness chair, please.

24 THE COURT: Come on around. Thank you, ma'am, and
25 good evening.

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1 JUROR NUMBER 109: Hello.

2 THE COURT: Thank you for waiting on us. I
3 apologize. I just want you to know we've been working
4 hard. And again, this is important.

5 JUROR NUMBER 19: Okay.

6 THE COURT: So, we appreciate you being here and
7 your patience. Before we start, though, I need to
8 remind you that you are still under the oath that you
9 took on Wednesday.

10 Additionally, I want -- that's a yes for the
11 record?

12 JUROR NUMBER 109: Yes.

13 THE COURT: I need you also to make verbal
14 responses.

15 JUROR NUMBER 109: Okay. Yes.

16 THE COURT: All right. And again, we're all a
17 little tired, so forgive us.

18 The other thing I will tell you is that you're
19 going to be asked questions, what you feel about the
20 death penalty or about the penalty of life imprisonment
21 without the possibility of parole.

22 There are no right or wrong answers here. Just
23 tell your opinions, your beliefs, whatever it is you
24 feel. That's all we're here for, and I want to make
25 sure you understand that.

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1 So, other than that, I also want to make sure you
2 understand that the case that we're going to begin
3 trying on Monday is a capital murder case, and you
4 understand that not all murder cases are capital cases.

5 In this capital murder case, the State is seeking
6 the death penalty against the defendant, and that
7 changes the format a little bit of how we try this case
8 because, again, not all murder cases are capital cases.

9 To be a capital murder case, the State would have
10 to allege certain aggravating circumstances. And in
11 this case, they're alleging it was a double murder, two
12 people were killed during the same incident, and that
13 one of those persons was a child. So, that's what would
14 allow it to be considered, if the jury found that it
15 was, in fact, a guilty of those two murders.

16 Now, the other thing that I need to explain to you
17 is that there are going to be two parts to this trial.
18 All the same jury hears both parts, but it just is
19 separated into two different portions. The first
20 portion simply determines whether or not the defendant
21 is guilty of the charges.

22 JUROR NUMBER 109: Um-hmm.

23 THE COURT: Guilty or innocent, one or the other.
24 It must be a unanimous verdict by the jury one way or
25 the other. If, in fact, the jury does find that the

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1 defendant is guilty of the charges, you then go to the
2 second phase.

3 That's the sentencing phase where the jury would
4 determine whether or not the appropriate punishment is
5 life imprisonment without the possibility of parole or
6 death. I want you to know that, at that portion of the
7 trial, the Defense is going to enter mitigation
8 evidence. They're going to talk about the history and
9 the background of the defendant, everything that brings
10 him kind of here to the point where we're at for you to
11 consider, and I'm going to tell you that you must
12 consider it.

13 And I'm also going to tell you that, again, of
14 those two possible sentences, the sentence of life
15 without the possibility of parole can be given for
16 whatever reason you choose; whether or not you think a
17 mitigating factor is effective or for no reason at all;
18 or for simply mercy, if you don't believe that this
19 person who you've already found guilty of these crimes,
20 should be put to death; whatever it is that you think
21 after hearing all those circumstances.

22 JUROR NUMBER 109: Um-hmm.

23 THE COURT: So, I just want to make sure you
24 understand that, that's the process we're going to
25 follow because, again, it's a little different than what

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1 we typically do here. So, at this time, I'm going to go
2 ahead and turn it over to the lawyers and let them go
3 ahead and ask you some questions.

4 I do need to ask you if you knew anyone on either
5 one of the witness lists.

6 JUROR NUMBER 109: I did not.

7 THE COURT: Also, there's been some publicity in
8 this case. Have you read anything, seen anything, or
9 have any independent knowledge about this case?

10 JUROR NUMBER 109: I do not.

11 THE COURT: Very good. I'm going to turn you over
12 to the lawyers.

13 MR. LEDDY: Thank you, your Honor. Ms. Cassidy?

14 JUROR NUMBER 109: Yes.

15 MR. LEDDY: Hi. I'm Micah Leddy. I'm an attorney
16 on the case. I just want to ask you a few questions.

17 First of all, you heard the definition of murder is
18 a very specific thing in this state. Okay? Under the
19 law, it is the intentional killing of a human being with
20 malice aforethought. Okay?

21 JUROR NUMBER 109: Okay.

22 MR. LEDDY: All right. And what that means is that
23 it does not include anything that would be self-defense;
24 doesn't include anything that would be somebody acting
25 under duress or somebody with a mental illness, somebody

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1 who's intoxicated or was drugged; didn't know what they
2 were doing; couldn't appreciate right from wrong; none
3 of that. Okay?

4 It means that a person intentionally killed a human
5 being, an innocent human being. They did it while they
6 had evil in their heart and in their mind. That's what
7 it means. Okay?

8 JUROR NUMBER 109: Okay.

9 MR. LEDDY: So, I want you to imagine that you're
10 at the end of a trial with eleven other people; you've
11 watched all the evidence; and the eleven of you have
12 determined that this person who is accused is actually
13 guilty beyond a reasonable doubt.

14 JUROR NUMBER 109: Okay.

15 MR. LEDDY: Okay? Now, given everything that I've
16 said, what is your opinion on the death penalty being
17 the appropriate punishment for that guilty murderer?

18 JUROR NUMBER 109: It depends on the circumstances.
19 I mean, I --

20 MR. LEDDY: So, all right. Well, let's talk about
21 some different circumstances.

22 JUROR NUMBER 109: Okay.

23 MR. LEDDY: There are different categories of what
24 we call aggravating circumstances that can make a case a
25 capital murder case. Okay? There's essentially 21

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1 different parts of our state code that address this. It
2 could be robbing -- killing somebody while you're
3 robbing something, like robbing a bank and you kill
4 somebody. It could be killing a police officer. Okay?

5 The ones I want you to think about are killing
6 more than one person, and one of those people being a
7 child.

8 JUROR NUMBER 109: Um-hmm.

9 MR. LEDDY: A four-year-old child. Given those
10 circumstances, what are your thoughts about the death
11 penalty being the appropriate punishment?

12 JUROR NUMBER 109: It could be. You know, again, I
13 don't know all the circumstances, so I --

14 MR. LEDDY: What would be important for you to
15 know?

16 JUROR NUMBER 109: I guess how violent the crime
17 was. You know, what was going on that led to the
18 murder. You know, if the person has remorse or if
19 they're -- you know, if they're still dangerous.

20 MR. LEDDY: Okay.

21 JUROR NUMBER 109: Those sorts of things. Like,
22 you know, I can't list every possible thing, but those
23 would be the ones that would come to mind.

24 MR. LEDDY: Okay. Now, some people, you know, if
25 they hear of somebody who kills a mother and a child,

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1 they just say, look, for me, that is just a case where I
2 can't impose a life punishment; it's just not severe
3 enough. Would you identify with that?

4 JUROR NUMBER 109: No.

5 MR. LEDDY: So, you could find that a life-without-
6 parole sentence would be severe enough.

7 JUROR NUMBER 109: I think I could, yeah, depending
8 on the circumstances.

9 MR. LEDDY: And do you understand that life without
10 parole in South Carolina means that you don't leave jail
11 alive; that you're actually there until you die?

12 JUROR NUMBER 109: I didn't know that until you
13 just said so.

14 MR. LEDDY: Right. And I think it's kind of a
15 misconception that a life sentence is something that may
16 be five years, ten years, something like that.

17 JUROR NUMBER 109: Um-hmm.

18 MR. LEDDY: Isn't that right? Okay. So, one
19 second, your Honor.

20 THE COURT: Thank you.

21 MR. LEDDY: On your questionnaire, do you remember
22 a question that asked you if the background of the
23 defendant was relevant to you?

24 JUROR NUMBER 109: I don't remember the question,
25 no.

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1 MR. LEDDY: Well, that was a while ago.

2 JUROR NUMBER 109: Yeah.

3 MR. LEDDY: Well, you marked that it would be. And
4 I want to ask you about that a little bit.

5 JUROR NUMBER 109: Okay.

6 MR. LEDDY: If you found that somebody had been --
7 was guilty of murder, in determining the life or death,
8 because you said you could go either way.

9 JUROR NUMBER 109: Um-hmm.

10 MR. LEDDY: -- would it be relevant to you the
11 nature of their upbringing, like, if they had an abusive
12 family relationship, or?

13 JUROR NUMBER 109: Oh, I -- I don't know that it
14 would be. I guess maybe when I answered that
15 background, I was thinking more the background of the
16 circumstances. I don't know if the background of the
17 person --

18 MR. LEDDY: So, you're saying that --

19 JUROR NUMBER 109: -- necessarily.

20 MR. LEDDY: So, something that had a direct
21 relationship to the incident that led to murders would
22 be relevant.

23 JUROR NUMBER 109: Yes.

24 MR. LEDDY: But the fact that, say, for instance,
25 they had alcoholic parents, that wouldn't be relevant.

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1 JUROR NUMBER 109: No.

2 MR. LEDDY: Do you think that you could even
3 consider things like being put out of the house or being
4 -- having an alcoholic parent?

5 JUROR NUMBER 109: I think I could consider it. I
6 think I'd factor that in, perhaps with the other
7 circumstances.

8 MR. LEDDY: Okay. Now, you're probably familiar
9 enough with the jury system just from T.V. and
10 everything to know that juries are supposed to be
11 unanimous.

12 JUROR NUMBER Um-hmm.

13 MR. LEDDY: And that -- is that a yes, ma'am?

14 JUROR NUMBER 109: Yes.

15 MR. LEDDY: Sorry. And that, in order for them to
16 render a decision either guilty or not guilty, they
17 would have to have all twelve people on board.

18 JUROR NUMBER 109: Right, yes.

19 MR. LEDDY: Okay. In a capital case, if the jury
20 finds the defendant guilty, then you go through
21 basically a second trial. And in that trial, it's
22 totally different when you get into the jury room, in
23 that, only one person can change the outcome of the
24 case.

25 You have to have actually twelve people sign their

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1 name on a verdict form in order for a death sentence to
2 be imposed. Okay?

3 JUROR NUMBER 109: Okay.

4 MR. LEDDY: But you don't have to have twelve
5 people sign for life to be imposed. In fact, you could
6 have eleven people say death and one person say life,
7 and it's going to be a life sentence. The Court's going
8 to enter the sentence.

9 JUROR NUMBER 109: Okay.

10 MR. LEDDY: There wouldn't be any re-trial. You
11 may have seen, for instance, other states, they might do
12 a re-trial. They might do a re-sentencing, but we don't
13 do that here.

14 So, it's a different dynamic. And because it's a
15 life-and-death question, and it's an internal, moral, an
16 independent moral decision, --

17 JUROR NUMBER 109: Um-hmm.

18 MR. LEDDY: -- each one of those twelve viewpoints
19 is required in order to render that death sentence, if
20 that's what comes down. Okay?

21 JUROR NUMBER 109: Okay.

22 MR. LEDDY: And do you think, given that it's such
23 a difficult question, it's -- it's a dif -- would you
24 agree with that?

25 JUROR NUMBER 109: Oh, absolutely.

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1 MR. LEDDY: And it's difficult to articulate,
2 perhaps, why you would come down one side or the other.

3 JUROR NUMBER 109: That's right.

4 MR. LEDDY: And that could be just based on your
5 own walk in life.

6 JUROR NUMBER 109: Um-hmm.

7 MR. LEDDY: Would you expect the other people, even
8 if they thought your idea was crazy, to respect your
9 decision on it?

10 JUROR NUMBER 109: Absolutely.

11 MR. LEDDY: And likewise, you would expect them to
12 respect the decisions of other people on the jury, as
13 well.

14 JUROR NUMBER 109: Yes.

15 MR. LEDDY: Okay. And while you would expect them
16 to deliberate, once you've made that independent moral
17 judgment, would you agree with me that, that decision
18 should be respected then, and do you know that the law
19 actually wants to hear that independent moral judgment
20 to be said here in this courtroom?

21 JUROR NUMBER 109: Yes. I guess I know that now.

22 MR. LEDDY: Okay. And some -- now, you seem like a
23 very -- once something gets into your -- once you've
24 made a decision about something, it seems like you might
25 hold onto that pretty good. Would that be a fair

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1 assessment on our brief interaction here?

2 JUROR NUMBER 109: It depends. I think I can have
3 strong opinions, but if someone offers, you know, a good
4 argument to the contrary, I'm open to listening to them.

5 You know, I deal with that day-to-day basis with my
6 job, right? So having to, you know, work things out
7 with other people or, you know, give and take and, you
8 know, understanding their opinions.

9 MR. LEDDY: Right.

10 JUROR NUMBER 109: Or voicing my own opinion, you
11 know.

12 MR. LEDDY: I noticed that you actually are a
13 supervisor for like 85 people. Is that right?

14 JUROR NUMBER 109: That's right.

15 MR. LEDDY: And I guess they don't always all have
16 the same viewpoint.

17 JUROR NUMBER 109: No, they don't.

18 MR. LEDDY: All right. So, some of them are more
19 assertive than others.

20 JUROR NUMBER 109: That's right.

21 MR. LEDDY: And part of dignity and respect is that
22 the louder ones don't get to drown out the ones that
23 maybe aren't as confrontational.

24 JUROR NUMBER 109: That's right.

25 MR. LEDDY: And would you agree with me that, in

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1 maintaining the dignity of this process, it would be
2 important for that to be something that is looked out
3 for in the jury room?

4 JUROR NUMBER 109: Absolutely.

5 MR. LEDDY: Okay.

6 JUROR NUMBER 109: Yeah.

7 MR. LEDDY: Nothing further, your Honor.

8 THE COURT: Thank you. Mr. Thornton.

9 MR. THORNTON: Thank you, your Honor. Just a
10 couple of quick questions, ma'am. First of all, lawyers
11 like to get up and sometimes talk about the law. The
12 Judge is the final authority on the law, and she'll
13 instruct you, if you were to become a juror in this
14 case.

15 You are expected to deliberate, and Mr. Leddy
16 mentioned that in deliberation. So, there's this talk
17 about these individual moral judgments, which is true.
18 But any judgment you reach is an individual judgment,
19 because it should be your judgment. But that should be
20 reached after we've, again, said that you've listened to
21 everything in the case, including the other jurors'
22 opinions.

23 JUROR NUMBER 109: Right.

24 MR. THORNTON: Is that something you think you
25 could do?

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1 JUROR NUMBER 109: Sure.

2 MR. THORNTON: Okay. And I've read your
3 questionnaire, heard all the questions you answered to
4 the Defense attorney. Really, the only thing I want to
5 ask is, would you listen to everything in the case, both
6 the aggravating circumstances and mitigation, before
7 reaching your decision on death or life?

8 JUROR NUMBER 109: Yes.

9 MR. THORNTON: And if you listened to everything
10 and you felt the case was bad enough, are you capable of
11 rendering a decision of death?

12 JUROR NUMBER 109: Yes.

13 MR. THORNTON: Thank you. I have no further
14 questions. Thank you, Judge.

15 THE COURT: Okay. All right. Ma'am, you've been
16 found qualified as a potential juror in the trial of
17 this case. You are not on the jury yet, ma'am.

18 We are running behind and as you know, you've had
19 to wait for us. I expect to pull this jury some time
20 during the morning of Monday.

21 What I want you to do is, we're going to give you a
22 phone number to call in on the juror line. It is going
23 to tell you what time to report. I want to alleviate as
24 little waiting around time as I possibly can. So,
25 again, please just call after 6:00 o'clock on Saturday

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1 night, when we should finish this process, know how many
2 people we have coming back, and we'll go forward at that
3 point.

4 I need to caution you not to discuss this case with
5 anyone, not to read anything, listen, do any independent
6 research about this case, about the death penalty, or
7 about anything along those lines. It wouldn't be
8 appropriate to do so.

9 So, come back on Monday morning. We look forward
10 to seeing you.

11 JUROR NUMBER 109: Okay.

12 THE COURT: Thank you.

13 JUROR NUMBER 109: Thank you.

14 BAILIFF: Here's the phone number.

15 JUROR NUMBER 109 LEAVES COURTROOM.

16 THE COURT: Who do we have next, Winston?

17 BAILIFF: Mr. Davane Haynes.

18 JUROR NUMBER 303 ENTERS COURTROOM.

19 THE COURT: Thank you. Come on in, Mr. Haynes.

20 BAILIFF: Right this way, sir.

21 THE COURT: Come on forward, sir.

22 BAILIFF: If you would, please go up and take a
23 seat in the witness box.

24 THE COURT: Thank you for your patience, sir. We
25 appreciate having you here. There's a few things I need

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1 to explain to you before I turn you over to the lawyers.

2 First off, I want to remind you that you are still
3 under the oath that you took on Wednesday morning. Is
4 that acceptable to you? Is that a yes for the record?

5 JUROR NUMBER 303: Oh. Yes. Yes.

6 THE COURT: Next thing I've got to ask you to do is
7 speak into the microphone. Answer verbally so my court
8 reporter can take it down. Okay?

9 JUROR NUMBER 303: Okay.

10 THE COURT: All right. Sir, I want to make sure
11 you understand and appreciate that this is a capital
12 murder case. What that means is that, in this case, the
13 defendant is charged with two counts of murder, and that
14 the State is seeking the death penalty in this case.

15 It runs a little differently than a normal criminal
16 trial when the State is seeking the death penalty.
17 There are going to be two different parts to this trial.
18 There is going to be a bifurcated trial.

19 What the first portion of that trial means is that
20 you're going to simply, if you were a juror, determine
21 the guilt or innocence of the defendant in this case of
22 those two charges. Was he guilty, was he innocent. If,
23 in fact, and only if, the jury unanimously finds the
24 defendant guilty of the charges would we then go into
25 the sentencing phase.

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1 In this type of case, there are two alternatives
2 for sentencing that the jury must consider and
3 eventually render a judgment on. That is life
4 imprisonment without the possibility of parole or a
5 death sentence.

6 Sir, I want you to understand that, during that
7 second period during the trial of this case, the State
8 is going to enter what is called aggravating evidence.
9 It's what allows this case to be considered to be a
10 death penalty case.

11 In this case, the State is alleging that, because
12 it was a double murder, or two people were killed during
13 one incident and one of those persons was a child, those
14 are the aggravating circumstances the State intends on
15 putting in.

16 Also, during the sentencing phase, the Defense is
17 going to put mitigating evidence in, or mitigation
18 evidence in. That could be anything having to do with
19 the background, character, of the life of the defendant;
20 anything that brings us right here to this day on his
21 person. I'm going to tell you that, during that
22 sentencing phase, you must consider all evidence that's
23 been presented.

24 Additionally, I want you to know that a jury can
25 render a verdict for life without parole for a

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1 mitigating reason, no reason at all, or simply extending
2 mercy. And I want to make sure you appreciate and
3 understand that the death penalty is never mandatory in
4 any case. Do you understand that, sir?

5 JUROR NUMBER 303: Yes, ma'am.

6 THE COURT: I appreciate that. You also were
7 afforded an opportunity to look at the witness list back
8 in the jury assembly room. Was there anyone on there
9 that you socialize with, are professionally involved
10 with, or know personally?

11 JUROR NUMBER 303: I just know -- know names.

12 THE COURT: Okay.

13 JUROR NUMBER 303: I don't know them personally;
14 just know the names.

15 THE COURT: You know people, but not anything of a
16 close contact or personal relation.

17 JUROR NUMBER 303: Yes, ma'am. Yes, ma'am.

18 THE COURT: Sir, additionally, there was some news
19 coverage in this case. Did you see anything on T.V.,
20 read about it, or do any independent research yourself
21 in regards to this case?

22 JUROR NUMBER 303: I just heard about it. That's
23 it. I heard about the --

24 THE COURT: When you say you heard about it, where
25 did you hear about it from?

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1 JUROR NUMBER 303: The -- the news. That's it.

2 THE COURT: Through the news? Through the
3 television?

4 JUROR NUMBER 303: Yes, ma'am.

5 THE COURT: All right, sir. And I just want to
6 make sure that you can confine your considerations of
7 this case, if you were to sit as a juror, to what you
8 hear here in the courtroom. Because again, anything
9 you've got on the news or in the newspaper or out on the
10 street isn't factual evidence in this case. You
11 understand that, correct?

12 JUROR NUMBER 303: Yes, ma'am.

13 THE COURT: All right, sir. Well, I appreciate
14 that, and I am going to go ahead and turn you over to
15 the lawyers. Okay?

16 MR. SECOR: Good evening, Mr. Haynes.

17 JUROR NUMBER 303: Good evening.

18 MR. SECOR: How are you?

19 JUROR NUMBER 303: Fine. And you, sir?

20 MR. SECOR: I'm all right, thanks. My name's
21 Casey. I'm one of the attorneys that represents Mr.
22 Daise, and I'm just here to find out your views on
23 punishment and sentencing for the crime of murder.

24 And all I ask is that you just give me as much
25 information as you can about how you think and feel in

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1 your own heart and mind, because that's all that really
2 matters. That's all we really are looking to know.

3 Okay?

4 JUROR NUMBER 303: You want to know what -- how I
5 feel about?

6 MR. SECOR: Yeah, I'm going to ask you some
7 questions, and all I ask is you just tell me however you
8 think.

9 JUROR NUMBER 303: Okay.

10 MR. SECOR: You know, there's no answer that I'm
11 looking for. There's no answer that I want you to give.
12 I just want you to tell us how you really feel inside
13 your own heart and mind. Okay?

14 JUROR NUMBER 303: Okay.

15 MR. SECOR: And one thing that is sort of makes
16 this complicated is that we're talking about punishment
17 for crimes that have not gone to trial yet. Okay? And
18 as you know, anybody charged with a crime in this state
19 or this country is presumed innocent. And the fact that
20 we're talking about punishment for crimes does not mean
21 that anybody is trying to insinuate or say that Mr.
22 Daise is guilty of anything. He is presumed innocent.
23 I'm sure that's something that you've heard plenty of
24 times before.

25 JUROR NUMBER 303: Yes.

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1 MR. SECOR: Okay. And another thing, just before I
2 -- before we get into what your personal views are, I
3 just want to make sure that you and I have the same
4 understanding of what murder is. In South Carolina, or
5 rather, South Carolina law defines the offense of murder
6 as killing another person with malice aforethought. And
7 malice aforethought just means that it was intentional;
8 it was evil; it was wicked. If I'm guilty of murder,
9 it's because I went and I killed an innocent person for
10 no reason. I had hatred and evil in my heart and in my
11 mind. They didn't do anything to deserve getting
12 killed. I just killed them. I wasn't defending myself.
13 It wasn't that I was so intoxicated that I didn't know
14 what I was doing. It was a rational person like you or
15 I go and kill somebody with evil intent, no
16 justification, no excuse. That's what murder is in
17 South Carolina. Does that make sense?

18 JUROR NUMBER 303: Um-hmm.

19 MR. SECOR: Okay. And --

20 COURT REPORTER: Is that yes?

21 JUROR NUMBER 303: Oh. Yes.

22 THE COURT: Thank you.

23 MR. SECOR: And what I'd like to ask you to do is
24 imagine yourself having been on a jury with eleven other
25 people and you -- it was a murder case, and you heard

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1 all the evidence. And after deliberating with the other
2 jurors, you decide that the person was definitely a
3 hundred percent guilty of the crime of murder.

4 And what I'd just like to know at this point is,
5 what are your feelings about the death penalty as a
6 punishment for the crime of murder?

7 JUROR NUMBER 303: How would I feel about a death
8 penalty?

9 MR. SECOR: Yeah, for the crime of murder, just the
10 crime of murder, how do you feel about it?

11 JUROR NUMBER 303: I ain't -- tell you the truth, I
12 ain't really -- I really ain't, you know, ain't got no
13 thought or feelings on the death, because I ain't never
14 thought about the death penalty. I never had the reason
15 to be in that situation, you know. I don't -- I really
16 don't, you know, got no feelings on it.

17 MR. SECOR: Okay. And that's fine. I think most
18 people don't really spend their time thinking about, so
19 I understand. And let me just add a little bit more to
20 what we're talking about here. I'd like you to imagine
21 the same situation where you've been -- you've served on
22 a jury, and you have listened to the evidence in a case.
23 And rather than it being one murder, it's actually two
24 murders; the murder of a woman and the murder of a four-
25 year-old child. Okay? And in South Carolina, that

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1 would be what is referred to as capital murder or
2 aggravated murder, because there's two people that are
3 killed at the same time, and one of them is a child.

4 And so, does that influence how you feel about
5 whether or not a person who is guilty of those
6 intentional evil murders of a woman and a child should
7 get the death penalty or not?

8 JUROR NUMBER 303: Since you put it like that,
9 yeah. I mean, you know, I mean, yeah. They took, you
10 know, they took -- they took somebody else life for no
11 reason, and they did the crime. I mean, life in prison
12 ain't going to do nothing, ain't really -- ain't going
13 to do nothing to them.

14 I mean, the way I look at it, he had plenty of time
15 to think, you know, what he was going to do before he
16 done it. So, yeah, I mean I would give the death
17 penalty.

18 MR. SECOR: Okay. And that's totally fine, and I
19 appreciate you telling me how you feel. Are you saying
20 that you think that a punishment of life in prison would
21 not be a sufficient enough punishment?

22 JUROR NUMBER 303: No, not to me.

23 MR. SECOR: Okay. Your Honor, I'm going to stand
24 down just for now, if I may.

25 THE COURT: Okay.

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1 MR. SECOR: Thank you.

2 MR. THORNTON: No questions.

3 THE COURT: All right. Sir, you are excused from
4 the trial of this case. I appreciate you being here,
5 sir. Thank you.

6 JUROR NUMBER 303: Okay.

7 THE COURT: Is Mr. Cannick next?

8 BAILIFF: Come right this way, please.

9 JUROR NUMBER 303 LEAVES COURTROOM.

10 BAILIFF: Mr. Leander Cannick.

11 JUROR NUMBER 96 ENTERS COURTROOM.

12 THE COURT: Thank you. Mr. Cannick, please come
13 around, sir.

14 BAILIFF: If you would, sir, please go right up and
15 take a seat in the witness box, please.

16 THE COURT: Come on around, sir. Good evening, Mr.
17 Cannick.

18 JUROR NUMBER 96: Good evening.

19 THE COURT: Thank you for waiting on us. Please be
20 seated, sir. Sir, I need to remind you that you remain
21 under the oath you took on Wednesday. Is that agreeable
22 to you?

23 JUROR NUMBER 96: Yes.

24 THE COURT: Very good, sir. And if you need me to
25 speak up, I will. It's late in the day. We're all a

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1 little bit tired, but I'm happy to do so.

2 This is our first opportunity to speak with you.
3 The lawyers are going to ask you some questions in
4 regard to this case and the potential punishment of the
5 death penalty or life imprisonment without the
6 possibility of parole.

7 There are no right or wrong answers here. They
8 simply need you to be candid and straightforward in your
9 responses, and that's all anyone here can expect of you,
10 sir.

11 There are a few things I want to make sure you
12 understand before we begin this questioning of you.
13 First off, you understand that this is a capital murder
14 case; that the State in this case is seeking the death
15 penalty.

16 In this case, Mr. Daise, the defendant, is charged
17 with two counts of murder. Sir, murder, the definition
18 of murder is the intentional killing of another with
19 malice aforethought. It's not by accident; it's not
20 from self-defense. It's premeditated, planned murder.
21 And I want to make sure you understand that, sir, to
22 begin with.

23 Additionally, sir, I want to make sure you
24 understand that there are two phases to a death penalty
25 trial. In a death penalty trial, the first phase is

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1 what's called the guilt or innocence phase. It is when
2 the jury will determine whether or not the defendant is
3 guilty of the crimes charged, and that verdict must be
4 unanimous. It must be the verdict of all the jurors.

5 If, and only if, the jury determines the defendant is
6 guilty of the charges, we will go into a second phase,
7 which is the sentencing phase. In this type of murder
8 case, the only two possible sentences the jury can
9 return are life imprisonment without the possibility of
10 parole or a death sentence.

11 You are going to hear the State offer what are
12 called aggravating circumstances or factors that allow
13 this case to be considered by a jury for the death
14 penalty.

15 Additionally, you're going to hear mitigation
16 evidence from the Defense. They're not required to, but
17 they're going to present mitigation evidence in this
18 case for you to consider in determining what you believe
19 is the appropriate punishment in this case, in this
20 matter.

21 I'm going to tell you that you are to consider all
22 the evidence that you hear in the case in reaching your
23 determination. And I will also tell you that a jury can
24 return a verdict of life imprisonment for a good reason
25 in your opinion, or no reason at all, or simply

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1 extending mercy.

2 Again, that is for the jury to determine, and I
3 want you to appreciate that and understand that. And
4 that's just a very brief outline. The lawyers are going
5 to go into more detail with you about it.

6 But before we do that, I need to ask you, have you
7 had an opportunity to go through the witness lists, and
8 are there any persons there that you have a social,
9 personal, or professional relationship with?

10 JUROR NUMBER 96: No.

11 THE COURT: Additionally, sir, there has been some
12 press coverage in this case, some news coverage. Have
13 you seen anything, read anything, or have any
14 independent knowledge about this case whatsoever?

15 JUROR NUMBER 96: No.

16 THE COURT: Thank you, sir. I'm going to go ahead
17 and give you over to the lawyers. All right?

18 JUROR NUMBER 96: All right.

19 THE COURT: Thank you, sir.

20 MR. MCGUIRE: Good evening, Mr. Cannick?

21 JUROR NUMBER 96: Good evening.

22 MR. MCGUIRE: Good evening, sir.

23 JUROR NUMBER 96: Good evening.

24 MR. MCGUIRE: My name is Bill, Bill McGuire. I'm
25 one of the lawyers on the case. And I'm going to pick

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1 it up where the Judge left off.

2 JUROR NUMBER 96: Right.

3 MR. MCGUIRE: And that is your thoughts about
4 capital punishment and the death penalty in a murder
5 case. And again, murder is the intentional killing of
6 an innocent person with malice aforethought. Malice
7 being described in our laws as a black, malignant heart,
8 devoid of social duty, fatally bent on mischief,
9 wickedness, and evil. Pretty grave definition there.

10 And to seek the death penalty -- for the government
11 to seek the death penalty, they have to prove something
12 more than just an intention; not that it's just -- or
13 not tragic; but more than that malice murder. They have
14 to prove what's called aggravation or aggravating
15 circumstances. And the ones that I want to draw your
16 attention to are a double homicide, two people are
17 killed, a mother and her child, a four-year-old, shot
18 dead.

19 In that situation, where it's not an accident, it's
20 not a mistake, it's not self-defense or anything else;
21 it's the intentional taking of those two innocent lives;
22 what are your thoughts about the death penalty in that
23 situation?

24 JUROR NUMBER 96: In the past, I've read about the
25 life and death sentences. So, it's not a -- on those

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1 two.

2 MR. MCGUIRE: I think the court reporter's probably
3 going to ask you to lean forward a little bit.

4 COURT REPORTER: Yes.

5 THE COURT: Thank you.

6 THE COURT: Get as close as you can there. I'm so
7 sorry.

8 JUROR NUMBER 96: Yes.

9 THE COURT: Thank you, Mr. Cannick.

10 COURT REPORTER: Say that again, please.

11 JUROR NUMBER 96: Yeah, in the past, up to this
12 point in my life, I have heard about the death penalty
13 in -- in the cases -- cases you just mention it, I would
14 think about life or death, life in prison or death.

15 MR. MCGUIRE: You would think about both potential
16 sentences.

17 JUROR NUMBER 96: Yes, I would.

18 MR. MCGUIRE: Okay. Well, some people might take
19 the position that, when it comes to taking the life of a
20 mother and four-year-old child, that the death penalty
21 should always be the appropriate penalty. Does that
22 describe you?

23 JUROR NUMBER 96: Yes.

24 MR. MCGUIRE: Okay. And that the life penalty,
25 letting somebody -- letting a killer, that kind of

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1 killer, who took the life -- lives of a mother and a
2 four-year-old child, that the life penalty wouldn't
3 really be severe enough or harsh enough to punish that
4 intentional killing. Would you agree with that?

5 JUROR NUMBER 96: Well, yes, if all of the evidence
6 and all of the proof and everything else given on hand,
7 yes.

8 MR. MCGUIRE: Okay. If you sat through the entire
9 trial, and you heard everything from both sides, you
10 considered everything, and it all pointed to, and you
11 definitely had the right guy, guilty beyond a reasonable
12 doubt, all twelve jurors agreed guilty of double
13 homicide, mother and child; in that situation, the death
14 penalty is always appropriate.

15 JUROR NUMBER 96: Yes.

16 MR. MCGUIRE: Okay. And this is a reflection of
17 your moral code and your values. Can you say yes?

18 JUROR NUMBER 96: Yes.

19 MR. MCGUIRE: I don't want to tell you to say yes.
20 You were nodding your head. The court reporter has to
21 hear a verbal word. I didn't want the record to look
22 like I was telling you what to say.

23 But it sounds like your view that the death penalty
24 would always be appropriate in that mother and child
25 killing as a manifestation, a reflection of your values

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1 system, as a person.

2 JUROR NUMBER 96: Yes.

3 MR. MCGUIRE: And that emanates, or that comes from
4 a deep place, your moral code.

5 JUROR NUMBER 96: Yes.

6 MR. MCGUIRE: Okay. And I can't change your view
7 on that. I can't change your values.

8 JUROR NUMBER 96: No.

9 MR. MCGUIRE: And on these juror questionnaires,
10 this is kind of our starting point, and sometimes people
11 will say they can consider both things, like you did
12 earlier when we were talking, but when they hear more
13 information, and then you were nodding there, it sounds
14 like you were going to agree with me, that when you
15 heard the specific type of case we're talking about,
16 exactly what it was, it would demand the death penalty.

17 JUROR NUMBER 96: Yes.

18 MR. MCGUIRE: Okay. Thank you, sir. I'm going to
19 stand down right now. I might talk to you a little bit
20 more, but that's all I have right now, sir.

21 JUROR NUMBER 96: All right.

22 MR. MCGUIRE: Thank you.

23 JUROR NUMBER 96: You're welcome.

24 MR. THORNTON: Mr. Cannick, my name is Sean
25 Thornton. I'm one of the lawyers that will be

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1 representing the State in this matter. First of all,
2 let me tell you, nobody's trying to change your mind;
3 nobody's trying to trick you; neither Mr. McGuire nor
4 myself. But it's very important that we understand
5 exactly what you mean. And I want to make sure that you
6 understand what we're asking.

7 When Mr. McGuire first asked you -- and
8 unfortunately, you only got just a very small piece of
9 the puzzle. You know, what he said was what do you
10 think about death? And he didn't even ask you about
11 life, and you volunteered that, which is great.

12 So, when he first asked you about the intentional
13 killing, because if it's not intentional, if it doesn't
14 have malice in it, then it's just not murder. So, in
15 South Carolina, that's always been present in a murder.

16 JUROR NUMBER 96: Yes.

17 MR. THORNTON: All right? So, in the intentional
18 killing that we're talking about, what's important in
19 this case, the allegations are a mother and a four-year-
20 old child. Okay?

21 JUROR NUMBER 96: Yes.

22 MR. THORNTON: It's two separate proceedings. Same
23 case, the same jury. It's called bifurcated, which just
24 means it's split in half. Okay? The first question is,
25 is the defendant guilty?

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1 If he's guilty, then, we go to the second phase,
2 which is called the sentencing phase. And that's where
3 you, if you were selected on the jury, would determine
4 what the punishment was. There's only two possible
5 punishments -- life imprisonment or death.

6 Now, when you were asked, when Mr. McGuire came up
7 and first asked you, and he said mother of a -- or
8 excuse me -- the murder of a mother and a child, what
9 would you think about the death penalty? You said you
10 would consider either death or life imprisonment. Is
11 that correct?

12 JUROR NUMBER 96: Yes. That's correct.

13 MR. THORNTON: All right. On the questionnaire
14 that we -- the Court sent to you, you circled that you
15 were Type 3, which is somebody who would consider
16 everything, and depending on the circumstances, could
17 give life or could give death. Is that correct?

18 JUROR NUMBER 96: Yes.

19 MR. THORNTON: All right. Now, we've given you as
20 much as we can about the case. In other words, you know
21 what the allegations are for the aggravating
22 circumstance, which is the murder of two people.

23 JUROR NUMBER 96: Yes.

24 MR. THORNTON: And the murder of a child being four
25 years old.

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1 JUROR NUMBER 96: Yes.

2 MR. THORNTON: Now, based on that, here's really
3 the important question. Are you always going to give
4 the death penalty; or depending on the circumstances,
5 are you sometimes going to give, are you able to give
6 the death penalty, and are you also able to give life,
7 depending on the circumstances? Or, based on the fact
8 that it's a child and a mother, would you always give
9 death? That's the question.

10 JUROR NUMBER 96: Depending on how much proof. If
11 you have all the proof and the facts.

12 MR. THORNTON: All right. And let me -- I'm glad
13 you brought that up. Proof, as far as whether he did it
14 or not, is done at that point. That's why you have that
15 split in the proceedings. Okay? You've already -- if
16 we get to that point, you, as a jury, have already made
17 the determination he's guilty.

18 Then, you have to decide what the punishment is.
19 The State has to come and prove the aggravating factors
20 to you. All right? The Defense doesn't have to prove
21 anything, but they probably will bring mitigating
22 factors. One of the questions talked about the history
23 or the characteristics of the defendant, those types of
24 things. They're allowed to bring in what they wish.

25 And then, we would ask the jury to consider all of

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1 those things, and then decide life or death. But what
2 we need to know is could you give either life or death,
3 even with the death of a mother and child; or are you
4 always going to give just the death penalty?

5 JUROR NUMBER 96: Not always.

6 MR. THORNTON: Would you be able to consider, even
7 with the death of a mother and child, depending on what
8 mitigation, if any, the Defense gave you, and the
9 aggravation that the State gave you, would you be able
10 to, under certain circumstances, impose a life sentence?

11 JUROR NUMBER 96: Yes, if there's something that
12 has changed and the facts has been turned around.

13 MR. THORNTON: You mean the facts of the crime or
14 the circumstances?

15 JUROR NUMBER 96: Crime.

16 MR. THORNTON: Of the crime. Okay. The
17 circumstances or the crime itself, meaning whether he
18 did it or not, those won't change. You should assume
19 that wouldn't change, because, if that changed, then he
20 wouldn't have been guilty in the first place.

21 JUROR NUMBER 96: Yes.

22 MR. THORNTON: All right. So, he's guilty. You're
23 done with that part. Are you always going to give him
24 death?

25 JUROR NUMBER 96: Can I change?

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1 MR. THORNTON: Yes, sir. We just want you to be
2 honest. Again, we're not trying to trick you or trying
3 to get you to change your opinion, but we need an honest
4 answer. And there's no answer you can give me that's
5 wrong. There's no answer you can give Mr. McGuire
6 that's wrong. We just need you to be as honest and
7 forthright as you can with us.

8 Are you always going to give him death, if he's
9 convicted of murdering a child; or would you also have
10 the ability to give him life, depending on the
11 circumstances and mitigation and aggravation?

12 JUROR NUMBER 96: Yes, I would -- I would give him
13 life.

14 MR. THORNTON: You can consider that.

15 JUROR NUMBER 96: I could consider that.

16 MR. THORNTON: And could you also give him death as
17 the -- in other words, I know you couldn't give him
18 both, obviously. Could you give him one or the other?

19 JUROR NUMBER 96: One. Yes.

20 MR. THORNTON: I don't have anything further.
21 Thank you very much.

22 JUROR NUMBER 96: You're welcome.

23 THE COURT: Mr. McGuire?

24 MR. MCGUIRE: Thank you, Judge. Mr. Cannick, I
25 just want to make sure we're on the same page. And you

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1 said if there may be some problems with the evidence,
2 and some of the evidence got turned around. But at the
3 end of the day when you've considered everything,
4 everything; and it all pointed back to all twelve jurors
5 agreeing beyond a reasonable doubt; no mistake; got the
6 right guy; double homicide; he meant to do it; the lady
7 and her four-year-old child shot dead; when you're
8 convinced beyond a reasonable doubt that, that is the
9 case; it sounds like, in that case, with all the
10 evidence, to your satisfaction, that it all points to
11 him doing that, being guilty, guilty of that act, that's
12 when the death penalty is appropriate.

13 JUROR NUMBER 96: Yes.

14 MR. MCGUIRE: Always, in that situation, with all
15 the evidence pointing to that.

16 JUROR NUMBER 96: Yes.

17 MR. MCGUIRE: Thank you, sir. That's all I have
18 for you.

19 JUROR NUMBER 96: You're welcome.

20 THE COURT: Mr. Thornton.

21 MR. THORNTON: Just one question. Would life also
22 be potentially appropriate?

23 JUROR NUMBER 96: No.

24 MR. THORNTON: Okay. I have no further questions.

25 THE COURT: Okay. Sir, you're excused from the

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1 trial of this case. I appreciate you being here, and I
2 appreciate your candor, sir. Thank you.

3 JUROR NUMBER 96: You're welcome.

4 JUROR NUMBER 96 LEAVES COURTROOM.

5 THE COURT: All right. We've got Mr. Davis out
6 there. Last, but not least. All right. Bring him on
7 in. Thank you.

8 BAILIFF: Mr. Gregg Davis.

9 JUROR NUMBER 177 ENTERS COURTROOM.

10 THE COURT: Come on in, Mr. Davis.

11 BAILIFF: Come right this way, please, sir. If you
12 will, take a seat in the witness box.

13 THE COURT: Come on around, Mr. Davis.

14 JUROR NUMBER 177: Ma'am.

15 THE COURT: Good to see you, sir. Mr. Davis,
16 before we begin, there's a few things I need to explain
17 to you, sir. First, you are still under the oath that
18 you took on Wednesday as a juror. Is that acceptable to
19 you?

20 JUROR NUMBER 177: Yes, ma'am.

21 THE COURT: Additionally, sir, the lawyers are
22 going to ask you some questions about this case, about
23 your opinions as far as the death penalty versus life
24 imprisonment without the possibility of parole. Those
25 are permissible questions. There are no right or wrong

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1 answers. They simply want to know your feelings, your
2 experiences, and where you are at as to those issues.

3 Sir, I want to make sure you understand and
4 appreciate -- and cut me off at any point if you know
5 exactly what I'm talking about -- this is a capital
6 case, which makes it different than other cases. The
7 State is seeking the death penalty in this case. That
8 changes the case a little bit. It means that we have a
9 bifurcated trial, two portions of it.

10 The first portion is going to be simply the
11 determination of whether or not the defendant is guilty
12 or not guilty of this double murder. And I will go
13 ahead and tell you right now, the definition of murder
14 in South Carolina is the intentional killing of another
15 person with malice aforethought. And malice
16 aforethought has a lot of different terms and meanings,
17 but it's basically with a wicked heart. It means you
18 intended to do it. It doesn't mean that it was
19 accidental or in self-defense; it means you did the
20 murder, committed it, and intended to do it.

21 Sir, at that point, again, you would determine
22 whether or not the person was guilty of that.

23 Secondly, if you do find beyond a reasonable doubt,
24 the entire jury unanimously decided that, in fact, the
25 defendant was guilty, then, and only then, would we go

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1 into the second phase of the trial, which would be the
2 sentencing phase.

3 During that sentencing phase, the State is going to
4 put up aggravating evidence, things that allow this case
5 by a statute in South Carolina to be considered as a
6 death penalty case, because not all murder cases are
7 eligible for the death penalty, as you know.

8 JUROR NUMBER 177: Right.

9 THE COURT: So, the aggravating circumstances that
10 they're going to put up in this case are that this was a
11 double murder, two people were killed during one
12 incident, and that one of those persons was a child.
13 and in this case, it was a child of the age of four.

14 Also, during that sentencing phase, the Defense is
15 going to offer mitigating evidence. They're going to
16 talk about the background and history of the defendant
17 and of everything that brings us all here to this is
18 where he is at this point of his life. And I'm going to
19 tell you that you are to consider that mitigation and
20 that evidence in your determination of a sentence in
21 this case.

22 Again, the sentence, when we do get to that point
23 in the trial, the only possible sentences are life
24 without the possibility of parole or a death sentence.

25 I want you to understand that, for any mitigating

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1 factor, or no reason at all, or for simply as a grant of
2 mercy a juror can decide to grant or give a sentence of
3 life, as opposed to a sentence of death. I just want to
4 explain that all to you, because it is a bit different
5 than what we do in a normal criminal case.

6 Sir, additionally, you had the opportunity to go
7 through the witness list back in the jury assembly room.
8 Is there anyone on that list that you know personally,
9 socially, or professionally?

10 JUROR NUMBER 177: No, ma'am.

11 THE COURT: Additionally, there has been some
12 publicity in this case through the newspaper and on
13 television. Have you seen or read anything, or have any
14 independent knowledge about this case whatsoever?

15 JUROR NUMBER 177: No, only what was in the
16 questionnaire and the paragraph.

17 THE COURT: Very good. I appreciate it. Sir, I'm
18 going to go ahead and turn you over to the lawyers.
19 Thank you.

20 JUROR NUMBER 177: Thank you, ma'am.

21 MR. MACDOUGALL: Good evening, Mr. Davis.

22 JUROR NUMBER 177: Yes, sir.

23 MR. MACDOUGALL: It's now officially evening. My
24 name is Mark MacDougall, and I'm one of the lawyers
25 representing the defendant in this case, Earnest Daise.

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1 You've taught at Roosevelt High School in
2 Greenville, home of the Raiders, for a long time.

3 JUROR NUMBER 177: Never taught.

4 MR. MACDOUGALL: You did not teach?

5 JUROR NUMBER 177: No, I graduated.

6 MR. MACDOUGALL: You graduated. I see. You're a
7 school teacher down here?

8 JUROR NUMBER 177: Negative. My wife is a school
9 teacher down here.

10 MR. MACDOUGALL: Did you teach in Maryland?

11 JUROR NUMBER 177: No, sir. I worked for Verizon
12 out of Maryland.

13 MR. MACDOUGALL: Okay. Let's get to it, then. You
14 understand this is a murder case? Judge has explained
15 it to you?

16 JUROR NUMBER 177: Yes, sir.

17 MR. MACDOUGALL: And I'm going to take you into a
18 -- sort of an unusual zone in the law where we're going
19 to ask you to sort of anticipate things that haven't
20 happened yet, that may not happen.

21 Mr. Daise sits here presumed innocent. There's
22 been no evidence offered, no trial, no jury empaneled,
23 nothing. But we're going to ask you for your views in
24 depth about the death penalty and how you might apply it
25 under various circumstances, none of which, sitting here

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1 today, apply to Mr. Daise, unless we give you that
2 information directly.

3 I'm going to repeat some of the things the Judge
4 said. None of them are intended to contradict anything
5 the Judge said. If you think I'm doing that, I'm not,
6 and that's all to sort of put this in context.

7 The first thing is that Judge Mullen described this
8 as a murder case, a capital murder case. And capital
9 murder in this state -- and I think the Judge touched on
10 this -- involves malice. It has to have the element of
11 malice. And malice requires that you have a dark and
12 direct intent to commit the killing.

13 It excludes all the things that people often think
14 about. It excludes insanity; it excludes heat of
15 passion; it excludes, you know, psychological
16 impairment, all those things. It's someone who intended
17 to kill and does it.

18 Now, the jury in this case will sit on the
19 innocence and guilt phase first. Then, depending on the
20 outcome of that, if the defendant's acquitted, the case
21 is over. If Mr. Daise is convicted, we then move into a
22 penalty phase with the same jury. So, a little short
23 break, and the penalty phase begins.

24 So, my first question is, if you are a part of the
25 jury that votes unanimously to convict a defendant, not

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1 this case, but a defendant on a charge of murder with
2 malice, malicious murder, with all the things we just
3 talked about, in your view -- and the only two possible
4 sentences, death or life without the possibility of
5 parole. And in this state, the life without parole
6 means you die in prison. There's no way out. There's
7 no technicality. You die in prison.

8 Given that you have found a defendant, you and your
9 eleven fellow jurors have found a defendant guilty of
10 malicious murder, what's the appropriate penalty?

11 JUROR NUMBER 177: You mean, pick between those
12 two?

13 MR. MACDOUGALL: Or tell me what you think.

14 JUROR NUMBER 177: Well, I would believe in those
15 two.

16 MR. MACDOUGALL: You believe in both of them?

17 JUROR NUMBER 177: Yes, sir.

18 MR. MACDOUGALL: Okay. And you could go for either
19 one of them?

20 JUROR NUMBER 177: Yes, sir.

21 MR. MACDOUGALL: Okay. I'm going to crank it up a
22 level, because, in this case, there are aggravators, and
23 the Judge touched upon those. Those aggravators are
24 created by statute, and what they mean is, as the name
25 suggests, is that there's something about this killing

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1 that makes it particularly bad.

2 Now, the two things charged here are a double
3 homicide, two victims, and the second is a killing of a
4 child. One of the victims was a four-year-old boy. So,
5 you have those aggravators in place. You found
6 malicious murder with malice and darkness of heart; and
7 you've also found that the aggravators are present of a
8 double homicide, multiple killings, and the death of a
9 child.

10 You're then presented with two -- with all of that
11 in front of you, you're presented with two options: the
12 death sentence; life without parole. What's your
13 thinking?

14 JUROR NUMBER 177: Those are -- I mean, you've got
15 to hear the facts, right? Based upon what you're
16 saying, you're putting me in a corner, right?

17 MR. MACDOUGALL: No, I'm not. I don't mean to at
18 all. No, I -- there's no -- if I didn't say it earlier,
19 there's no wrong answer here. This is how you feel. I
20 don't mean -- the last thing I mean to do is put you in
21 a corner.

22 JUROR NUMBER 177: So, I don't have a different
23 position right now between one or the other. Okay? But
24 if -- if it is truly aggravated or malice, and you know,
25 the death penalty is required, then, yes, I would

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1 support that.

2 MR. MACDOUGALL: The death penalty is never
3 required. I should have told you that, but please let
4 me be clear. The death penalty is not required. In
5 this state, a life sentence is an appropriate sentence
6 for any crime, so you would never be required to impose
7 a death sentence.

8 With that piece of information, would you always
9 give death? Would you consider life and death? Would
10 you only give life? That's what I'm trying to get. I'm
11 not trying to put you in a corner.

12 JUROR NUMBER 177: I don't have a position on
13 either at this time, if that makes sense.

14 MR. MACDOUGALL: Could you reach a death sentence?

15 JUROR NUMBER 177: Absolutely.

16 MR. MACDOUGALL: Could you reach a life without
17 parole sentence?

18 JUROR NUMBER 177: Absolutely.

19 MR. MACDOUGALL: With all the information I've
20 given you.

21 JUROR NUMBER 177: Yes, sir.

22 MR. MACDOUGALL: Okay. Let me just move on. I
23 mentioned aggravators. The opposite of aggravation is
24 mitigation.

25 JUROR NUMBER 177: Um-hmm.

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1 MR. MACDOUGALL: And if this case were to go to a
2 penalty phase, the State would offer evidence of the
3 aggravating circumstances. The Defense would offer
4 evidence of mitigation. And let me just give you some
5 random examples of mitigation.

6 Again, none of these are intended to suggest they
7 would apply in this case. And they could be things like
8 Fetal Alcohol Syndrome. They could be abused as a
9 child. It could be very poor education. It could be
10 extreme poverty, things in the life of our putative
11 defendant --

12 JUROR NUMBER 177: Right.

13 MR. MACDOUGALL: -- that might have influenced his
14 actions. Because, again, by the time you get there,
15 you've already found him guilty of malicious murder.

16 Would you be -- are you someone who could consider
17 mitigating factors in making that decision between death
18 and life without parole?

19 JUROR NUMBER 177: Possibly, yes.

20 MR. MACDOUGALL: Okay. Tell me what you mean by
21 possibly.

22 JUROR NUMBER 177: Well, again, I need to
23 understand the mitigation factors. But, if, truly, as
24 the Judge explained, you know, something bad happened,
25 right? This was two people, right? It wasn't, as you

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1 indicated, it was, you know, malice. It was -- wasn't
2 by any obstacles. So, now we're at the mitigation
3 points. I'd have to hear them all and understand them.

4 MR. MACDOUGALL: Okay. But again, I'm asking you,
5 could you take into account -- would you take into
6 account mitigation in reaching your conclusion about
7 what sentence to impose?

8 JUROR NUMBER 177: Yes.

9 MR. MACDOUGALL: Okay. One of the things the Judge
10 -- and I wasn't -- I can't say for sure whether Judge
11 Mullen said this, but when you're in a jury in a penalty
12 phase of a capital case, one of the instructions you
13 receive is that the jury may, and each individual juror,
14 may render a sentence of life, life without parole, for
15 any reason or for no reason, just because you feel like
16 it. You don't have to explain yourself to anybody.
17 You're not accountable to anyone but God and your soul.

18 In recognizing that, are you someone who could
19 independently reach a conclusion on your own in the
20 jury, without the requirement of unanimity, reach that
21 conclusion yourself with respect to a life sentence?

22 JUROR NUMBER 177: Yes.

23 MR. MACDOUGALL: And are you someone -- and again,
24 I'm asking what kind of person you are, so I apologize
25 for that in this public forum, but I got to do it. Are

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1 you the kind of person that, if faced with great
2 personal pressure, people were shouting, threats, we're
3 never going to get out of here, would nonetheless, no
4 matter what your position was, death or life, be able to
5 hold you ground and say, no, this is my deepest-felt
6 belief; I'm holding onto it.

7 JUROR NUMBER 177: If that's what -- yes, I would
8 stand my ground.

9 MR. MACDOUGALL: Okay. And has that been -- and
10 I'm not asking you to promise me anything. Is that sort
11 of the way you believe you live your life, and is
12 reflective of how you've been?

13 JUROR NUMBER 177: Black and white, right and
14 wrong. Yes, sir.

15 MR. MACDOUGALL: Okay. Mercy. Okay. The quality
16 of mercy, tell me what you think mercy is.

17 JUROR NUMBER 177: Forgiveness, right?

18 MR. MACDOUGALL: Okay. Is it earned, or do you
19 just get it? In life.

20 JUROR NUMBER 177: You -- you earn mercy.

21 MR. MACDOUGALL: You earn mercy. Okay. It's not
22 just given to you.

23 JUROR NUMBER 177: Right.

24 MR. MACDOUGALL: I'm sure you, like everyone, has
25 shown mercy in their life to children when they've done

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1 wrong, co-workers. Did they earn it or just give it as
2 a gift?

3 JUROR NUMBER 177: You give it to your children,
4 right?

5 MR. MACDOUGALL: I'm sorry?

6 JUROR NUMBER 177: You give it to your children.

7 MR. MACDOUGALL: You give it to your children.
8 Maybe the co-worker who came in really late.

9 JUROR NUMBER 177: Yeah.

10 MR. MACDOUGALL: They didn't have to earn it; did
11 they?

12 JUROR NUMBER 177: No.

13 MR. MACDOUGALL: Okay. Is that a quality and
14 approach that you could bring to your functioning
15 potentially as a juror in this case?

16 JUROR NUMBER 177: It could.

17 MR. MACDOUGALL: Nothing else, your Honor. Thank
18 you.

19 THE COURT: Thank you.

20 MR. STONE: Mr. Davis, my name is Duffie Stone.
21 I'll be very brief. I've listened to your answers, and
22 I've read your questionnaire. What I'm getting from you
23 is, you're the type of juror who would listen to all the
24 circumstances and make a decision after you've heard
25 everything. You could give life in prison; or, if a

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1 case were bad enough, you could give the death penalty.

2 JUROR NUMBER 177: That's correct, sir.

3 MR. STONE: Is that a fair assessment?

4 JUROR NUMBER 177: Yes, sir.

5 MR. STONE: Thank you, sir. I don't have any
6 further questions. Thank you, your Honor.

7 THE COURT: Mr. Davis, thank you so much for being
8 with us. Sir, you have been qualified as a juror in the
9 trial of this case. That does not mean you have been
10 chosen on the jury.

11 We still have a number of people that we need to
12 meet with. As of right now, I hope we will begin the
13 trial of this case on Monday morning.

14 Norman's going to give you a phone line to call in
15 on at 6:00 p.m., or after 6:00 p.m., tomorrow night,
16 Saturday. At that point, I will have been through all
17 the jurors. It will tell you when to report, sir. I
18 want you to come, expect to possibly serve. And at that
19 point, you will know how we're going forward from here.
20 All right?

21 JUROR NUMBER 177: Thank you, ma'am.

22 THE COURT: Thank you, Mr. Davis. You are excused.

23 JUROR NUMBER 177: Thank you.

24 JUROR NUMBER 177 LEAVES COURTROOM.

25 BY THE COURT:

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1 THE COURT: Um-hmm.

2 MR. MCGUIRE: But if they're here, you can always
3 tell them --

4 THE COURT: I don't intend on going through all ten
5 of these people, I can tell you. The ones I'm bringing
6 in -- because once I get two, we're going, because I'll
7 know that all my other ones will be back, and I'll still
8 have my other 37. And that was the only abundance of
9 caution and just in case I lost someone over the
10 weekend, so that's the hope.

11 So, we just need to get two more people. We've two
12 hours to do it. We should be able to do it in two
13 hours. Let's just bring the rest of the panel back.

14 Diane, do you understand? Bring the rest of the
15 people who have been qualified back at 11:00 a.m. We
16 will do the jury strikes. What probably will happen is,
17 we'll bring them up, we'll do the strikes, then probably
18 break for lunch at noon or early, have them come back,
19 and then start with opening statements. I'm trying to
20 help you all plan timing-wise.

21 MR. STONE: Yes, ma'am.

22 MR. MCGUIRE: Sure.

23 THE COURT: I apologize. I feel like I'm doing it
24 inartfully.

25 MR. STONE: Thank you. I think that's fine.

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1 THE COURT: Anyone have a better suggestion? Any
2 other better ideas? Am I missing anything? I'm always
3 open.

4 MR. STONE: I think that's fine. Should we just
5 count, then, on basically doing opening arguments right
6 after lunch on Monday? Is that -- I'm just trying to
7 coordinate --

8 THE COURT: Yes, and for some reason --

9 MR. STONE: -- plane trips and all that kind of
10 stuff.

11 THE COURT: And in case we're going faster than
12 that, just be prepared to do it before lunch, if we need
13 it.

14 MR. STONE: We will.

15 THE COURT: I just want to make sure you're not
16 planning over lunch period. Do we have an agreement on
17 the record about how we're using --

18 MR. THORNTON: Your Honor, I was going to put that
19 on the record if that's okay.

20 THE COURT: Thank you.

21 MR. THORNTON: I have talked to Mr. Stone. The
22 Defense, I haven't talked to them, because they said
23 they took no position; they just wanted to know ahead of
24 time. You know, our whole fight has been about the
25 randomness, and we want to stick with that.

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1 So, my opinion is, Judge, you treat it just like
2 you would anything else. We go in order. If we don't
3 all use all of our strikes, then we just continue in
4 order. We don't jump spaces or jump jurors. I think
5 you stick with the order that you had.

6 THE COURT: Agreed.

7 MR. MCGUIRE: Suits us.

8 THE COURT: Okay. That's great. So, you all know
9 when we come back.

10 MR. STONE: Yes, ma'am.

11 MR. MCGUIRE: Yes, ma'am.

12 THE COURT: I look forward to seeing you all
13 tomorrow -- or not tomorrow. I'll see you Monday
14 morning at 9:00 a.m., you all.

15 MR. MCGUIRE: Thank you, your Honor.

16 MR. STONE: Thank you, your Honor.

17 END DAY FOUR, THURSDAY,
18 OCTOBER 11, 2013, 7:25 P.M.
19 BEGIN DAY FIVE, MONDAY
20 OCTOBER 14, 2013, 9:23 A.M.

21 BY THE COURT:

22 BAILIFF: All rise.

23 THE COURT: Thank you all. Please be seated.

24 MR. MCGUIRE: Judge, if I could approach?

25 THE COURT: Please. Is this once we've finished

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1 this qualification? Is that what you want me to do, Mr.
2 McGuire?

3 MR. YOUNG: Yes, your Honor.

4 THE COURT: Have you give Mr. Thornton or Mr. Stone
5 a copy of this?

6 MR. THORNTON: I've gotten it, Judge. I don't have
7 any problem with the first two and maybe even the third
8 one. I think the fourth one is already covered. I
9 mean, I don't know how many times we have to encourage
10 them to come up with a reason that they don't want to
11 sit on this case.

12 THE COURT: Actually, I will tell you that this
13 catch-all question, which is typically in my voir dire,
14 I feel like we kind of covered it, quite frankly. So, I
15 can tell you that I will ask those questions to the
16 panel, which is why I also believe, Mr. Thornton, that
17 we need to have a few extras beyond the 39.

18 MR. THORNTON: Yes, ma'am.

19 THE COURT: Because I do go through and ask more
20 specific questions. And since our voir dire is what I
21 term kind of chopped up, I am going to, for sure, ask
22 that last question. I think it's important.

23 All right. I'm fine with the questions requested,
24 so.

25 MR. MCGUIRE: Thank you, your Honor.

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1 THE COURT: We ready to bring in our first panel
2 person this morning, Mrs. O'Brien?

3 MR. THORNTON: State's ready, your Honor.

4 THE COURT: All right. Defense ready?

5 MR. MCGUIRE: Yes, ma'am.

6 THE COURT: Let's go ahead and bring in Mrs.
7 O'Brien.

8 BAILIFF: Ms. Beverly O'Brien, please.

9 BAILIFF: Ms. O'Brien?

10 BAILIFF: Good morning?

11 THE COURT: Yes, sir? Oh, I'm sorry. Good
12 morning.

13 BAILIFF: Good morning, your Honor.

14 THE COURT: How are you?

15 BAILIFF: Great.

16 JUROR NUMBER 482 ENTERS COURTROOM.

17 BAILIFF: Ms. Beverly O'Brien, your Honor.

18 THE COURT: Come on in, Mrs. O'Brien.

19 BAILIFF: Good morning, ma'am. Please come this
20 way and go up and take a seat in the witness box.

21 THE COURT: Good morning, Mrs. O'Brien.

22 JUROR NUMBER 482: Good morning.

23 THE COURT: Good to see you.

24 JUROR NUMBER 482: To begin with, ma'am, I need to
25 remind you that you are under the oath that you took

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1 last Wednesday. Is that acceptable to you?

2 JUROR NUMBER 482: Yes.

3 THE COURT: Additionally, I understand we tried to
4 get you here on Friday evening and you had a conflict.
5 You were putting on something. Can you just tell the
6 attorneys and myself what it was you were doing on
7 Friday night.

8 JUROR NUMBER 482: It was a couple months of
9 planning for a country club gala that we had for The
10 Great Gatsby, our country club.

11 THE COURT: All right. And which country club are
12 you a member of?

13 JUROR NUMBER 482: Hilton Head Country Club.

14 THE COURT: Okay. All right.

15 JUROR NUMBER 482: And I had to be there at 5:00
16 o'clock, because I was one of the hostesses for it, and
17 finalize decorations.

18 THE COURT: Very good. Okay. All right, ma'am. I
19 want to explain a little about this case to you. There
20 are a number of questions that the attorneys are going
21 to want to ask you in regards to this case.

22 First, I want to make sure you understand and
23 appreciate that this is a capital case, and Mr. Daise
24 has been charged with two counts of murder in this case,
25 and that the State is seeking the death penalty. I want

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1 to make sure you appreciate that.

2 I also want to tell you that the trial of this case
3 will be bifurcated. We will first try what is called
4 the guilt or innocence phase.

5 JUROR NUMBER 482: Um-hmm.

6 THE COURT: In that portion of the trial, the jury
7 would simply decide whether or not the defendant was
8 guilty of the charges that have been brought. Only if
9 the jury, in fact, finds the defendant guilty, will we
10 go on to the second portion of the trial, which would be
11 the sentencing phase.

12 During that sentencing phase, there are only two
13 possible verdicts. The one first would be life
14 imprisonment without the possibility of parole, or the
15 death penalty. I want to make sure you understand and
16 appreciate that, during that portion of the trial, the
17 State is going to produce what they call aggravating
18 circumstances. That would allow the jury to potentially
19 consider the death penalty, because, of course, not all
20 murder cases have the potential for the death penalty.

21 JUROR NUMBER 482: Um-hmm.

22 THE COURT: The State would have to prove beyond a
23 reasonable doubt these aggravating circumstances.

24 Also, during that portion of the trial, the Defense
25 is going to put on mitigation evidence, background

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1 circumstances of the defendant's past, kind of
2 everything that brought him here today and where we're
3 at that point. And I will tell you, ma'am, that you
4 must consider that mitigation evidence in determining
5 whether to give a life or a death sentence.

6 And I also want you to know that you could give a
7 life sentence based on that mitigation evidence, nothing
8 at all, or simply by granting mercy, and I want to make
9 sure you understand and appreciate that before we go
10 ahead and allow you to start answering questions. Do
11 you understand that?

12 JUROR NUMBER 482: I do.

13 THE COURT: Thank you, Mrs. O'Brien. I appreciate
14 that. Two other questions I need to ask you. There has
15 been some publicity in this case --

16 JUROR NUMBER 482: Um-hmm.

17 THE COURT: -- in the newspaper and on the news.
18 Have you read anything, seen anything, or heard anything
19 about this case?

20 JUROR NUMBER 482: I have to admit, once I got the
21 summons to come for jury selection, I did look up the
22 case, and I read an Internet article concerning it.

23 THE COURT: Okay. Ma'am, I just want to make sure
24 that doesn't influence you in any way. If you were
25 chosen as a juror in the trial of this case, you would

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1 have everything you need to decide the case right here
2 in this courtroom. And as you know, what's written in
3 the newspaper is not factual or even near correct.

4 I just want to make sure you understand and
5 appreciate that, and if you were to sit as a juror, you
6 could confine your consideration to this case and only
7 what you hear in this courtroom. Would you be able to
8 do that?

9 JUROR NUMBER 482: Yes.

10 THE COURT: I appreciate that. Give me one more
11 moment, if you don't mind. Also, did you have an
12 opportunity when you were back in the jury assembly room
13 to review the list of witnesses in this case?

14 JUROR NUMBER 482: I did.

15 THE COURT: Did you know anyone on that list, have
16 any personal, social, or professional relationship with
17 any of those persons?

18 JUROR NUMBER 482: No, I did not.

19 THE COURT: Okay. All right, ma'am. I'm going to
20 go ahead and turn you over to the attorneys. They are
21 going to ask you about your feelings on the death
22 penalty and your opinions. It's an appropriate
23 question. There are no right or wrong answers here.
24 You just need to be forthright, truthful, and candid,
25 and that's all we can ask of you. Okay?

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1 JUROR NUMBER 482: Okay. Yes.

2 THE COURT: Thank you, ma'am.

3 MR. MCGUIRE: Thank you, your Honor. Good morning,
4 Ms. O'Brien.

5 JUROR NUMBER 482: Good morning.

6 MR. MCGUIRE: I looked at your questionnaire, and
7 you did indicate that you read some stories online, and
8 there was a followup question, which was:

9 *Based on anything that you heard, had*
10 *you formed an opinion.*

11 And you indicated yes. Can you tell me about that.

12 JUROR NUMBER 482: Initially, when you read an
13 article concerning a child, --

14 MR. MCGUIRE: Sure.

15 JUROR NUMBER 482: -- yeah, your immediate reaction
16 goes strongly to a decision.

17 MR. MCGUIRE: Of course. You're not alone in that
18 view. What I'm going to do is this. The only thing
19 that we're after are your personal views.

20 JUROR NUMBER 482: Um-hmm.

21 MR. MCGUIRE: And this is one that's -- this is
22 maybe the only day in your life where every answer you
23 give is the right answer, --

24 JUROR NUMBER 482: Um-hmm.

25 MR. MCGUIRE: -- as long as it's what you truly

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1 think and feel.

2 To make sure we're communicating and on the same
3 page, I want to start at the beginning. Going through
4 your questionnaire, I didn't see any legal training.
5 You haven't worked for a law firm or anything like that.

6 JUROR NUMBER 482: No.

7 MR. MCGUIRE: And you probably don't know the
8 legal, technical definition of murder as you sit there.

9 JUROR NUMBER 482: Okay.

10 MR. MCGUIRE: I'm mean, I'm guessing. You didn't
11 -- no one's ever told it to you before.

12 JUROR NUMBER 482: Okay. No.

13 MR. MCGUIRE: Okay. Murder in South Carolina is
14 defined as the intentional, unlawful killing of another
15 human being with malice aforethought.

16 JUROR NUMBER 482: Um-hmm.

17 MR. MCGUIRE: The malice aforethought is the killer
18 is operating with a black and malignant heart, devoid of
19 social duty, fatally bent on wickedness, evil, and
20 hatred. My guess is you've never heard that before.

21 JUROR NUMBER 482: No.

22 MR. MCGUIRE: Okay. It's a pretty heavy language,
23 pretty serious.

24 JUROR NUMBER 482: Um-hmm.

25 MR. MCGUIRE: And for the State to come and ask for

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1 the death penalty, it has to be something more than
2 that. So, we're talking about not only just an
3 intentional killing of innocent people with malice
4 aforethought, you know, not an accident, not self-
5 defense, an intentional choice to take an innocent life,
6 but the State has to show aggravation or aggravation
7 circumstances to seek the death penalty.

8 And the issue at hand is -- the aggravation at
9 hand, is two people were killed.

10 JUROR NUMBER 482: Um-hmm.

11 MR. MCGUIRE: A double homicide, a mother and a
12 child, the child being four years old, shot dead. In
13 that situation, in that context, what are your thoughts
14 about the death penalty as the appropriate punishment?

15 JUROR NUMBER 482: That I'd like to see somebody
16 else give that verdict, and I don't want to have the
17 nightmare of saying that, yes, I believe somebody like
18 that should receive the death penalty.

19 MR. MCGUIRE: Okay. Let's just assume -- assume
20 you were on the jury.

21 JUROR NUMBER 482: Um-hmm.

22 MR. MCGUIRE: You and eleven other people, and that
23 all the evidence came back to that; that it was an
24 intentional killing of a mother and child; if you were
25 on the jury -- let's just assume you're on the jury.

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1 All eleven other jurors and yourself all agree beyond a
2 reasonable doubt, got the right person, there's no room
3 for error, definitely did it; and then it came time to
4 make the decision; I understand you might have a
5 difficult time doing it; but it sounds like your vote
6 would be for the death penalty.

7 JUROR NUMBER 482: If everything in the testimony
8 pointed that, that was just, and, yes, I would.

9 MR. MCGUIRE: Okay. Some people might say when it
10 comes to a double homicide and taking the life of a
11 child especially, -- you had numerous comments in your
12 questionnaire about a child victim being particularly --

13 JUROR NUMBER 482: Heinous.

14 MR. MCGUIRE: Yes. And some people might say, in
15 that situation, in that heinous case where a child was
16 killed, that the life penalty, letting somebody spend
17 the rest of their years in prison after committing that
18 intentional act and taking that child's life, that the
19 life penalty is not severe enough. Would you agree with
20 that?

21 JUROR NUMBER 482: I would have to hear everything
22 surrounding. I -- I can't answer that unless I know
23 everything.

24 MR. MCGUIRE: Sure. And when you say *everything*,
25 you're talking about the facts of the homicide; are you?

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1 JUROR NUMBER 482: That, and the defendant's --
2 well, yeah. I probably would go for the death penalty.

3 MR. MCGUIRE: Okay. Well, when you say *probably* --

4 JUROR NUMBER 482: I have to hear everything in the
5 case before I could make that kind of life-changing or
6 ending decision.

7 MR. MCGUIRE: Sure. And let's talk about what you
8 might consider and might not consider. Some people,
9 when it comes to fixing punishment for this kind of
10 intentional killing, would say that the background of
11 the defendant, if he was born to abject poverty, had
12 some hardships in life, that sort of thing, that his
13 background and characteristics would not be relevant.
14 Do you agree with that?

15 JUROR NUMBER 482: In some cases, I do believe
16 that's relevant, yes.

17 MR. MCGUIRE: Okay. And why?

18 JUROR NUMBER 482: Because we're influenced by our
19 surroundings and our upbringing.

20 MR. MCGUIRE: Okay. Okay. Fair enough. This
21 process is very complicated.

22 JUROR NUMBER 482: Um-hmm.

23 MR. MCGUIRE: It's taken me years to be able to
24 navigate my way through it. And there are some
25 principles of law that I want to talk to you about to

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1 make sure we're on the same page and you understand how
2 the procedure works.

3 JUROR NUMBER 482: Um-hmm.

4 MR. MCGUIRE: The Judge told you a little bit about
5 it.;

6 JUROR NUMBER 482: Um-hmm.

7 MR. MCGUIRE: The first phase of a case, you know,
8 a capital case like the Judge -- Judge Mullen said, has
9 two phases.

10 JUROR NUMBER 482: Um-hmm.

11 MR. MCGUIRE: There's a guilt phase and a penalty
12 phase. The guilt phase is do you have the right person,
13 is the evidence there beyond a reasonable doubt, is he
14 guilty/not guilty.

15 If there was a conviction, then you would go to a
16 penalty phase, --

17 JUROR NUMBER 482: Um-hmm.

18 MR. MCGUIRE: -- and that becomes does he live or
19 does he die?

20 JUROR NUMBER 482: Um-hmm.

21 MR. MCGUIRE: In the first phase, to convict, all
22 jurors have to be unanimous.. And we always think about
23 jurors speaking with one voice and being unanimous,
24 right?

25 JUROR NUMBER 482: Yes.

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1 MR. MCGUIRE: The penalty phase is different. The
2 decision-making process in the penalty phase will be
3 described by Judge Mullen as a juror's individual moral
4 judgment. It's almost like there are twelve individual
5 juries.

6 JUROR NUMBER 482: Okay.

7 MR. MCGUIRE: And the decision making is a request
8 by the Court for every juror to reach their own
9 individual moral judgment based on their walk of life,
10 their values system. And the Judge would say you could
11 vote for the life penalty for any reason, for no reason,
12 or mercy alone. She's already told you that. And the
13 no reason is actually for people like you who really
14 don't want to contemplate having taken another human
15 being's life. As you contemplate the rest of your life,
16 you might not want that burden and mark on your soul as
17 you contemplate the rest of your life.

18 JUROR NUMBER 482: Um-hmm.

19 MR. MCGUIRE: And that's fine. You can do that.
20 And you can just say, I've been conscripted to come
21 here; I've been summoned by the government; I don't want
22 to be here; I don't want to be in the position of having
23 to take another human's life; and I want to take Judge
24 Mullen's comments directly to heart and sentence to life
25 for no reason at all. You could do that. Do you

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1 understand that?

2 JUROR NUMBER 482: I do.

3 MR. MCGUIRE: Did you know that before you came
4 here?

5 JUROR NUMBER 482: I did not.

6 MR. MCGUIRE: Okay. A lot of people think the
7 death penalty is sometimes automatic; that if the
8 government proves a, b, and c, then the only verdict
9 would be death. That's never the case. Did you know
10 that?

11 JUROR NUMBER 482: I did.

12 MR. MCGUIRE: Okay. The death penalty is never
13 required, not in any case, not in the worst case, not in
14 this case. Every juror can vote for life for any
15 reason, no reason, or mercy.

16 JUROR NUMBER 482: Okay.

17 MR. MCGUIRE: And it can be individual. And what I
18 want to tell you is that, you know, I talked to you
19 about the first phase and the jury speaking with one
20 voice and being unanimous.

21 JUROR NUMBER 482: Um-hmm.

22 MR. MCGUIRE: And that's not required in the
23 penalty phase. Now, all twelve jurors could agree that
24 the life penalty is appropriate, and you could have a
25 unanimous decision. All twelve people could agree on

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1 the death penalty. But then, when you think about
2 individuals and their own individual moral judgment
3 about something so grave as another human being living
4 or dying, you would expect maybe some disagreement.

5 And if the jury, after deliberation, which means
6 exchange of views, --

7 JUROR NUMBER 482: Um-hmm.

8 MR. MCGUIRE: -- some civil discourse, if they just
9 -- if you came to a point where you didn't have all
10 twelve one way or the other, you can actually end the
11 day agreeing to disagree, and the Judge would take the
12 case and sentence. And you don't have to be concerned
13 with what the sentence might be. I just tell you that
14 to know that the case would end that day. It would not
15 have to be tried again, and the jury would not have
16 failed in its obligations.

17 JUROR NUMBER 482: Okay.

18 MR. MCGUIRE: Do you understand that?

19 JUROR NUMBER 482: Yes, I do.

20 MR. MCGUIRE: Did you know that before?

21 JUROR NUMBER 482: I do now.

22 MR. MCGUIRE: Okay. If I could just have one
23 second. That's all I have for you, ma'am. I enjoyed
24 talking to you. Thank you.

25 JUROR NUMBER 482: Thank you.

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1 THE COURT: Thank you. Solicitor.

2 MR. STONE: Ms. O'Brien, my name is Duffie Stone.

3 From what I understand from your answers to the Defense
4 counsel and from your questionnaire, you're the type of
5 juror who would listen to all of the evidence before you
6 wanted to make a decision about whether or not to
7 sentence somebody to life or death. Is that fair?

8 JUROR NUMBER 482: Of course.

9 MR. STONE: If the situation arose in which, after
10 considering all that evidence, you thought life
11 imprisonment was the appropriate sentence, you could do
12 that.

13 JUROR NUMBER 482: I could.

14 MR. STONE: At the same time, if the case is bad
15 enough, you could also give the death penalty.

16 JUROR NUMBER 482: If I had to.

17 MR. STONE: Well, you don't ever have to.

18 JUROR NUMBER 482: With my conscience, --

19 MR. STONE: Yes, ma'am.

20 JUROR NUMBER 482: -- you have to or you don't have
21 to.

22 MR. STONE: I understand. Well, you know, and
23 that's great, because that's what -- that's great. When
24 Mr. McGuire was talking to you about them being in the
25 jury room and deciding to disagree basically, we still

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1 ask you as a juror to deliberate, to talk to your fellow
2 jurors, --

3 JUROR NUMBER 482: Um-hmm.

4 MR. STONE: -- and to try to come to a consensus.
5 And that is a very important process that we go through
6 in our court system every day, not just for the guilt
7 phase, but also for the penalty phase.

8 JUROR NUMBER 482: Um-hmm.

9 MR. STONE: You would do that?

10 JUROR NUMBER 482: Yes.

11 MR. STONE: Okay. Thank you, ma'am. I don't have
12 any further questions.

13 THE COURT: Ma'am, you have been qualified as a
14 juror, a potential juror, in the trial of this case.
15 Mrs. O'Brien, that does not mean you are a juror. That
16 just means you are subject to the pool. What time do we
17 have the jury panel coming back today?

18 MADAM CLERK: 11:00 o'clock, Judge.

19 THE COURT: You came from the Island, I know.

20 JUROR NUMBER 482: Um-hmm.

21 THE COURT: I will tell you that I make that drive
22 every single day. It is about roughly an hour each way.
23 Based on the time, it's about 20 to 10. I suggest you
24 stay with us. I have those who have been qualified
25 coming back at 11:00 o'clock, where we're going to go

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1 ahead and choose this jury. So, I'm going to suggest
2 that you go ahead and stay with us.

3 Just know that you are free to go about your
4 business here in Beaufort, and stick local until 11:00
5 o'clock.

6 Are they all reporting in the jury assembly room?

7 BAILIFF: Ma'am?

8 THE COURT: Are all the potential jurors reporting
9 to the jury assembly room?

10 BAILIFF: Yes, ma'am.

11 THE COURT: Is that where they are?

12 BAILIFF: Well, they're going to hold -- the
13 potential jurors are going to be held in Courtroom 2 for
14 right now, until we finish with this procedure.

15 THE COURT: Okay.

16 BAILIFF: Then, they'll be moved to the assembly
17 room.

18 BAILIFF: Or we could do it in 2, whichever you
19 prefer, your Honor.

20 THE COURT: Okay. And again, no one has given me
21 good information this morning about where we're putting
22 people, so. And I apologize. I'm not saying it to you
23 all. I just keep getting conflicting information.

24 BAILIFF: Yes, ma'am.

25 THE COURT: Do this for me, Mrs. O'Brien. I have

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1 no idea where they want you.

2 JUROR NUMBER 482: I'll find out.

3 THE COURT: And again, I don't worry about the
4 logistics of it, unfortunately. I simply need you back
5 here at 11:00 o'clock.

6 JUROR NUMBER 482: All right.

7 THE COURT: Come up into the courthouse will be
8 fine. Additionally, I need to tell you that, while,
9 again, I know you don't know anything about this case,
10 you are not to do any independent research. Don't speak
11 to anyone at all about this case, and we look forward to
12 seeing you back at 11:00 o'clock.

13 JUROR NUMBER 482: Yes, ma'am.

14 THE COURT: And thank you for being here.

15 JUROR NUMBER 482: Thank you.

16 JUROR NUMBER 482 LEAVES COURTROOM.

17 BAILIFF: Ready for the next juror, your Honor?

18 THE COURT: Yes, sir.

19 JUROR NUMBER 527 ENTERS COURTROOM.

20 BAILIFF: Your Honor, Ms. Bethany Reynders.

21 THE COURT: Come on forward, ma'am.

22 BAILIFF: Come right this way, please. If you
23 would, just please go up and take a seat in the witness
24 box.

25 THE COURT: Good morning.

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1 JUROR NUMBER 527: Good morning. How are you?

2 THE COURT: Please take a seat. Well, thank you.
3 I hope you are, too.

4 JUROR NUMBER 527: I am. Thank you.

5 THE COURT: Very good. Mr. Reynders, I need to
6 remind you that you are still under the oath that you
7 took on Wednesday. Is that acceptable to you?

8 JUROR NUMBER 527: Yes, ma'am.

9 THE COURT: Additionally, there are a couple of
10 questions that I have to ask you. Then, the attorneys
11 are going to ask you some questions, as well. There are
12 no right or wrong answers here. I need you to be
13 truthful and candid, and that's all we can ask of you.
14 All right?

15 JUROR NUMBER 527: Okay.

16 THE COURT: Additionally, I want to make sure you
17 understand and appreciate, and I'm quite sure you do
18 because of the questionnaire, that you understand that
19 this is a capital murder case. The defendant is charged
20 with two counts of murder, and that the State is seeking
21 the death penalty in this case.

22 What I want you to know is that, when we try a
23 death penalty case, it's a little bit different than a
24 regular criminal trial. In this case, the case or the
25 trial will be bifurcated. It'll just be in two parts.

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1 The first part is the simple guilt or innocence of
2 a defendant as to the charges alleged, whether or not
3 the defendant committed these murders. If, and only if,
4 the jury finds the defendants did, in fact, commit these
5 murders beyond a reasonable doubt would we then go into
6 what's called the sentencing phase.

7 During that sentencing phase, you're going to hear
8 evidence entered into by the State that shows or
9 attempts to show aggravating circumstances as to this
10 case, making it eligible for the death penalty.

11 As I'm sure you know, not all murder cases are
12 subject to the death penalty, and the State has to prove
13 particular aggravating circumstances for a jury to be
14 allowed to consider the death penalty.

15 Additionally, during that portion of the trial, the
16 Defense is going to put up mitigation evidence. It's
17 anything regarding the background and the history of the
18 defendant for you to consider in determining whether or
19 not to give a life or death sentence. I'm going to tell
20 you that you need to consider that information in making
21 a determination.

22 Most importantly, I want to make sure, though, you
23 understand that you can give -- and when I say you, you,
24 along with the other jurors, can give a life sentence
25 for what you consider to be a good reason in mitigation,

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1 no reason at all, or for the simple extension of mercy.
2 That is completely within your purview, and I want to
3 make sure you understand and appreciate that. And
4 that's even, of course, after you've found that a
5 defendant is guilty of committing these murders with
6 malice aforethought and being intentional. All right?

7 JUROR NUMBER 527: Okay.

8 THE COURT: So, I just want to explain that very
9 shortly to you. The attorneys are going to ask you some
10 further questions.

11 Also, when you were back in the jury assembly room,
12 did you have an opportunity to go through the witness
13 list?

14 JUROR NUMBER 527: Yes, I did.

15 THE COURT: Do you know anyone personally,
16 socially, professionally?

17 JUROR NUMBER 527: Not really.

18 THE COURT: Not really.

19 JUROR NUMBER 527: A couple of recog --

20 THE COURT: Who do you know a little bit?

21 JUROR NUMBER 527: Yeah, a couple of recognizable
22 names. One, of course, is Sheriff Tanner.

23 THE COURT: Yes.

24 JUROR NUMBER 527: Whom I've met.

25 THE COURT: Okay.

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1 JUROR NUMBER 527: But it was simply, you know, an
2 event. It wasn't a personal meeting.

3 THE COURT: A meet-and-greet type of thing?

4 JUROR NUMBER 527: Yes, exactly.

5 THE COURT: Okay.

6 JUROR NUMBER 527: And of course, Ms. Roseneau now,
7 I recognize that name.

8 THE COURT: Our Clerk of Court.

9 JUROR NUMBER 527: But beyond that, no.

10 THE COURT: Very good. I appreciate that.
11 Additionally, there has been some publicity in the trial
12 of this case. Have you read anything, seen anything,
13 heard anything, or have any independent knowledge about
14 this case whatsoever?

15 JUROR NUMBER 527: I have very little knowledge
16 about this.

17 THE COURT: Okay.

18 JUROR NUMBER 527: I've had people telling me about
19 the numbers of jurors that were here last week --

20 THE COURT: Okay.

21 JUROR NUMBER 527: -- and the parking situation.

22 THE COURT: All right. And when you say that, when
23 you say the people telling you about it, is that --
24 there was a newspaper article to that effect. Was it
25 through there, or was it other people speaking to you?

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1 JUROR NUMBER 527: It was from a newspaper article
2 that they read, but beyond that.

3 THE COURT: From what they read. You didn't even
4 read it.

5 JUROR NUMBER 527: I didn't read it.

6 THE COURT: They were just telling you.

7 JUROR NUMBER 527: Exactly.

8 THE COURT: All right. I want to make sure that,
9 if you get chosen to serve as a juror in the trial of
10 this case, that you can confine your consideration and
11 deliberations to what is presented in here in the
12 courtroom. You would, if you were a juror, have a
13 front-row seat. You will have better and more
14 information than anyone. And I just want to make sure
15 you understand that, whatever -- if someone else told
16 you about an article, that, in and of itself to begin
17 with, is not factual.

18 JUROR NUMBER 527: Right.

19 THE COURT: It wouldn't be appropriate. You
20 understand that?

21 JUROR NUMBER 527: I do.

22 THE COURT: All right. Thank you. I'm going to go
23 ahead and turn you over to the lawyers.

24 JUROR NUMBER 527: Okay.

25 THE COURT: Thank you.

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1 MR. YOUNG: Good morning, Ms. Reynders?

2 JUROR NUMBER 527: Reynders, yes.

3 MR. YOUNG: Thank you. I hope I didn't
4 mispronounce it too bad.

5 JUROR NUMBER 527: No, you did a lovely job with a
6 terrible name.

7 MR. YOUNG: Well, I see that you've served on a
8 criminal jury before.

9 JUROR NUMBER 527: No, I have not.

10 MR. YOUNG: Okay. I see that I got it wrong that
11 you've served on a criminal jury before. Did you know
12 somebody who has served on a criminal jury before?

13 JUROR NUMBER 527: No, I do not.

14 MR. YOUNG: Well, then, let's start from the
15 beginning.

16 JUROR NUMBER 527: Okay.

17 MR. YOUNG: Okay? As Judge Mullen explained to
18 you, we're here to try a murder case, along with some
19 other charges --

20 JUROR NUMBER 527: Um-hmm.

21 MR. YOUNG: -- that Mr. Daise is accused of. Okay?
22 And right now is my opportunity to discuss with you the
23 potential penalty, but we hadn't had a trial yet. Do
24 you agree with that?

25 JUROR NUMBER 527: Yes.

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1 MR. YOUNG: And will you assure me that, just
2 because we have to have this conversation about
3 penalties, that you'll in no way infer that Mr. Daise is
4 guilty?

5 JUROR NUMBER 527: Of course, I don't infer that.

6 MR. YOUNG: And you'll continue to presume him
7 innocent, even though we're going to have this
8 conversation.

9 JUROR NUMBER 527: I think that's obligatory.

10 COURT REPORTER: Okay. I'm sorry. *I think that's?*

11 JUROR NUMBER 527: Obligatory.

12 MR. YOUNG: Thank you. Like I said, the first
13 charges that I want to talk to you about are murder
14 charges. In the state of South Carolina, murder is the
15 killing of another person with malice aforethought.
16 Okay?

17 And what that means is that, when the person killed
18 another person, they had an evil intent. They meant to
19 do it; they knew what they were doing; they knew it was
20 wrong; and they chose to kill. Okay? It wasn't in
21 self-defense; wasn't an accident. It wasn't an argument
22 that got out of control. Do you understand what I'm
23 saying?

24 JUROR NUMBER 527: Yes.

25 MR. YOUNG: For that intentional, malicious, malice

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1 murder, some people say, for me, the only appropriate
2 penalty is the death penalty. Do you understand that?

3 JUROR NUMBER 527: Yes.

4 MR. YOUNG: And you know people like that.

5 JUROR NUMBER 527: Yes.

6 MR. YOUNG: And is that you? Is that how you feel?

7 JUROR NUMBER 527: I think you have to weigh all
8 the evidence fairly.

9 MR. YOUNG: Sure.

10 JUROR NUMBER 527: And take the charge very
11 seriously that you're given by the Court.

12 MR. YOUNG: Yes, ma'am.

13 JUROR NUMBER 527: Until you bring a verdict forth.

14 MR. YOUNG: Okay.

15 JUROR NUMBER 527: Does that answer your question?

16 MR. YOUNG: Well, I'm asking you if -- some people,
17 after conviction of malice murder --

18 JUROR NUMBER 527: Um-hmm.

19 MR. YOUNG: -- think, for me, -- and there's no
20 right or wrong answers; it's just your opinion --
21 there's only one appropriate punishment for malice
22 murder; and that, for me, life in prison without the
23 possibility of parole is not a substantial enough
24 punishment for somebody who's committed that type of
25 murder.

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1 JUROR NUMBER 527: Well, I think the Judge just
2 instructed that there are different kinds of decisions
3 that could be made.

4 MR. YOUNG: Sure. There are, and let me add
5 another piece. After a conviction of malice murder,
6 okay, you're with me?

7 JUROR NUMBER 527: Um-hmm.

8 MR. YOUNG: The State then has an additional
9 burden. Okay?

10 JUROR NUMBER 527: Um-hmm.

11 MR. YOUNG: And that is to prove the existence of
12 what we call aggravating factors. The Judge talked to
13 you about the aggravating factors.

14 THE COURT: Ms. Reynders, I apologize for the
15 interruption. I need you to say yes for the record.

16 JUROR NUMBER 527: Oh, I'm sorry.

17 THE COURT: Thank you.

18 MR. YOUNG: My bad. I should be better about
19 making sure that you say yes. Okay?

20 JUROR NUMBER 527: Okay.

21 MR. YOUNG: Thank you. After that conviction for
22 malice murder, the State has an additional obligation to
23 prove the existence of aggravating factors beyond a
24 reasonable doubt.

25 And what they've alleged in this case is that there

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1 are two murders, and that one of the murder victims was
2 a child of four years old. Okay?

3 JUROR NUMBER 527: Yes.

4 MR. YOUNG: So, that would have to be found by the
5 jury beyond a reasonable doubt. Okay?

6 JUROR NUMBER 527: Yes.

7 MR. YOUNG: Now, once you have found that the
8 defendant was guilty of malice murder, and additionally
9 that there were two malice murders, and one of them was
10 a child, okay; at that point in time, the jury is
11 entitled to consider life without possibility of parole
12 or the death penalty.

13 JUROR NUMBER 527: Yes.

14 MR. YOUNG: Okay? And there's no roadmap to which
15 one is right. It's just how you feel. Okay?

16 JUROR NUMBER 527: Okay.

17 MR. YOUNG: At that point, are you leaning towards
18 one penalty or the other?

19 JUROR NUMBER 527: I don't believe that I am.

20 MR. YOUNG: You don't believe that you are.

21 JUROR NUMBER 527: No.

22 MR. YOUNG: Why not?

23 JUROR NUMBER 527: Well, I don't think I've made
24 any predetermination about a case that I basically don't
25 know anything about yet at this point.

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1 MR. YOUNG: Okay. After a conviction of guilty for
2 murder, and an aggravating factor is found, okay?

3 JUROR NUMBER 527: Um-hmm.

4 MR. YOUNG: Then, there's the part where the
5 Defense can present what's called mitigation. Okay?

6 JUROR NUMBER 527: Okay.

7 MR. YOUNG: Now, mitigation is not stuff that has
8 to do with the crime. It's stuff that has to do with
9 the defendant's background, life history. Okay?

10 JUROR NUMBER 527: Okay.

11 MR. YOUNG: Stuff like where they grew up, what
12 their home life was like, whether or not they grew up in
13 poverty, whether or not they were abused as a child.
14 Would those types of things matter to you in determining
15 what the appropriate penalty was?

16 JUROR NUMBER 527: I believe they could matter.

17 MR. YOUNG: Well, they could matter. Would you
18 give them meaningful consideration?

19 JUROR NUMBER 527: Yes.

20 MR. YOUNG: The Judge also talked to you about even
21 if there were no mitigating factors for you, that you
22 didn't think anything was mitigating, you could still
23 consider this concept of mercy.

24 JUROR NUMBER 527: Yes.

25 MR. YOUNG: Do you understand that?

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1 JUROR NUMBER 527: Yes.

2 MR. YOUNG: That you could give a life penalty for
3 any reason or no reason.

4 JUROR NUMBER 527: Yes.

5 MR. YOUNG: And we talk about this concept of
6 mercy. For you, is mercy something that is earned or is
7 it something that's freely given?

8 JUROR NUMBER 527: I'd have to think about that
9 one.

10 MR. YOUNG: Okay.

11 JUROR NUMBER 527: Do I have to think about that
12 one right now?

13 MR. YOUNG: If you have any thoughts on it right
14 now, I'd like to hear them.

15 JUROR NUMBER 527: Again, I have the reaction that
16 you're asking me a question that is strict out of a
17 context.

18 MR. YOUNG: Um-hmm.

19 JUROR NUMBER 527: I think it would have to be
20 contextualized for me to make that determination.

21 MR. YOUNG: And are you open to the possibility of
22 yourself extending somebody mercy without any reason for
23 it?

24 JUROR NUMBER 527: I think there would have to be
25 something that would dictate a reason.

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1 MR. YOUNG: Okay. And that's just based on who you
2 are.

3 JUROR NUMBER 527: Yeah.

4 MR. YOUNG: Okay. And that's fine. That's all
5 we're looking for. There are -- like I said, there --
6 it's just how you feel about these difficult topics.

7 I talked to you a little bit about aggravation and
8 the State's burden of proof beyond a reasonable doubt,
9 of aggravation, and I talked to you a little bit about
10 the concept of mitigation.

11 Mitigation doesn't have a burden of proof like
12 aggravation does. Is that okay with you?

13 JUROR NUMBER 527: Could you tell me that again.

14 MR. YOUNG: Sure. Mitigation doesn't have a burden
15 of proof, for each juror gets to decide for himself or
16 herself whether or not a mitigating factor exists.

17 JUROR NUMBER 527: Okay.

18 MR. YOUNG: And they don't all have to agree. Each
19 person could decide a different factor was mitigating
20 for them.

21 JUROR NUMBER 527: Okay.

22 MR. YOUNG: And each juror is entitled to give any
23 mitigating factor the weight of life if they choose.
24 And when I say *weight of life*, I mean, for them, they
25 could use that one factor as enough to justify in their

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1 mind a life-without-the-possibility-of-parole penalty.

2 JUROR NUMBER 527: Okay.

3 MR. YOUNG: Okay? The death penalty is never
4 required. Okay?

5 JUROR NUMBER 527: Okay.

6 MR. YOUNG: And when we make this decision about
7 whether or not another person lives or dies, we call it
8 an individual moral judgment. Okay?

9 JUROR NUMBER 527: Okay.

10 MR. YOUNG: There's no right answer. It's just how
11 you feel at the end of the day. Okay?

12 JUROR NUMBER 527: Okay.

13 MR. YOUNG: Individual moral judgment, I like to
14 think of it in terms of what religion is right for you
15 or what faith is right for you. You've made your own
16 personal decisions about what faith is appropriate for
17 you. Is that true?

18 JUROR NUMBER 527: Yes.

19 MR. YOUNG: And you recognize that there are some
20 people who have made different decisions about what
21 faith is appropriate for them.

22 JUROR NUMBER 527: Yes.

23 MR. YOUNG: All right. And you expect people to
24 respect your own individual moral judgment.

25 JUROR NUMBER 527: Yes.

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1 MR. YOUNG: In making those types of decisions.

2 JUROR NUMBER 527: Yes.

3 MR. YOUNG: And you respect the individual moral
4 judgment of somebody else to make a different decision
5 than you.

6 JUROR NUMBER 527: Yes.

7 MR. YOUNG: And if somebody were being forced or
8 bullied into giving up what they had arrived at as their
9 own individual moral judgment, their opinion, would you
10 stick up for them and say, their opinion is just as
11 valid as mine.

12 JUROR NUMBER 527: Yes.

13 MR. YOUNG: And that their opinion is just as valid
14 as anybody else's.

15 JUROR NUMBER 527: Yes.

16 MR. YOUNG: You understand that, if twelve people
17 agree and decide that the death penalty was appropriate,
18 Mr. Daise would be put to death.

19 JUROR NUMBER 527: Yes.

20 MR. YOUNG: It's not a recommendation from the
21 jury.

22 JUROR NUMBER 527: Yes.

23 MR. YOUNG: Okay? Some states have a
24 recommendation; we don't. What the jury decides is what
25 it is.

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1 JUROR NUMBER 527: Yes.

2 MR. YOUNG: Unless -- well, I'm going to tell you
3 one exception. If all twelve jurors decided that life
4 penalty was appropriate, that he would be sentenced to
5 life in prison without the possibility of parole.

6 JUROR NUMBER 527: Yes.

7 MR. YOUNG: And in South Carolina, that means until
8 you die you're in prison. There's no chance of release.

9 JUROR NUMBER 527: Okay.

10 MR. YOUNG: All right?

11 JUROR NUMBER 527: Um-hmm.

12 MR. YOUNG: Now, if the jury can't agree, if each
13 individual makes an individual moral judgment and they
14 don't all agree after a discussion, they can say, we
15 agree to disagree. Okay?

16 JUROR NUMBER 527: Yes.

17 MR. YOUNG: And in that case, Judge Mullen would
18 enter the sentence.

19 JUROR NUMBER 527: Yes.

20 MR. YOUNG: Okay?

21 JUROR NUMBER 527: Okay.

22 MR. YOUNG: That's how it works. Do you have any
23 questions about how it works?

24 JUROR NUMBER 527: No. That's helpful.

25 MR. YOUNG: Okay. All right. Thank you, Ms.

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1 Reynders.

2 JUROR NUMBER 527: Thank you.

3 MR. YOUNG: That's all the questions I have right
4 now.

5 THE COURT: Thank you. Mr. Stone.

6 MR. STONE: Hi, Ms. Reynders. My name is Duffie
7 Stone. How are you?

8 JUROR NUMBER 527: I'm fine, thank you.

9 MR. STONE: I want to go over with you a few
10 minutes, first of all, let me start at your
11 questionnaire. In your questionnaire, at the very end
12 of that questionnaire, you said, I think:

13 *I must confess, if I had to choose*
14 *to end somebody's life, I could not do*
15 *that. I could not.*

16 What did you mean by that? I guess my direct
17 question is: could you give the death penalty; or is
18 that your feeling that you could never do that?

19 JUROR NUMBER 527: I think what was going through
20 my mind then is I've had it said to me before that if
21 you weren't able to do that, then you shouldn't be able
22 to bring a decision to do that. And I mean, this is a
23 huge responsibility.

24 However, I do think there -- a law exists and it is
25 written. And I think there is an obligation for

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1 citizens to help enact the justice that, you know, has
2 been described. And I think if there is compelling
3 evidence, I mean, I -- it would be something where I
4 would have to look for extremely compelling evidence,
5 but there is an outline here.

6 MR. STONE: Okay.

7 JUROR NUMBER 527: And I think I could follow that.

8 MR. STONE: All right. So, you are the type of
9 juror who would take everything into consideration, but
10 at the end of the day, you could vote for either life or
11 death.

12 JUROR NUMBER 527: I believe I could.

13 MR. STONE: Now, the sentence -- and I think the
14 Judge gave us a little idea early of how this is broken
15 down. You have two trials, basically. The first one is
16 to determine whether Earnest Daise is guilty.

17 If you, as a juror, determine that he is guilty,
18 then you have a second phase of the trial. And you're
19 -- still, it's the same jury; it's the same people that
20 heard the guilt phase. During that, you would hear
21 evidence from me, as the State. You would hear evidence
22 from the Defense. And after all that was over, you
23 would go back to deliberate. And when your deliberation
24 was done, if you came back, you would give a verdict of
25 either life imprisonment or death. That would be your.

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1 choices.

2 In doing so, if you voted for the death penalty,
3 there is a form that you as a juror have to sign, and
4 you sign your name on it that says Earnest Daise will be
5 put to death. Could you do that?

6 JUROR NUMBER 527: I didn't realize that..

7 MR. STONE: I know.

8 JUROR NUMBER 527: I believe I could.

9 MR. STONE: Okay. So, you could, if the facts were
10 bad enough, you could give someone the death penalty.

11 JUROR NUMBER 527: Yeah. I think -- if it's
12 compelling.

13 MR. STONE: Yes, ma'am. That's all I need. Thank
14 you, ma'am.

15 JUROR NUMBER 527: Thank you.

16 MR. STONE: Thank you, your Honor.

17 THE COURT: Okay. Ms. Reynders, you've been found
18 as a potential juror. You are qualified as a potential
19 juror in the trial of this case.

20 I will go ahead and tell you right now that I've
21 asked everyone in the panel to come back at 11:00
22 o'clock. We're not going to have time to go home and
23 back, and I told this of the last juror, as well. I
24 live on the Island, and it takes an hour each way. So,
25 I'm just going to ask that you sit tight.

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1 You are free to go about your business, if you want
2 to run around Beaufort for an hour or so, that's fine,
3 too. Just come back at 11:00 o'clock, where we're going
4 to go ahead and actually pull the jury.

5 Now, again, you are not a juror yet.

6 JUROR NUMBER 527: Okay.

7 THE COURT: You're a potential, qualified juror.

8 JUROR NUMBER 527: Okay.

9 THE COURT: We're going to pull the jury at 11:00
10 o'clock. And at that point, after that process you will
11 know whether or not you have been chosen as a juror.

12 JUROR NUMBER 527: Okay.

13 THE COURT: So, I need to caution you not to
14 discuss this case with anyone. Don't do any independent
15 research. We'll just look forward to seeing you back at
16 11:00 o'clock.

17 JUROR NUMBER 527: Okay. Back here in this room?

18 THE COURT: Back here in the court -- actually, in
19 the courthouse. When you come in the courthouse,
20 they're going to tell you where to go.

21 JUROR NUMBER 527: Okay.

22 THE COURT: Okay?

23 JUROR NUMBER 527: All right.

24 THE COURT: Thank you, ma'am.

25 JUROR NUMBER 527: Thank you.

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1 JUROR NUMBER 527 LEAVES COURTROOM.

2 THE COURT: Al, before we bring the next one, can
3 we just hold up?

4 BAILIFF: Yes, ma'am.

5 THE COURT: Thank you. We have hit that number of
6 39, obviously. I would feel more comfortable, and I
7 want to make sure everyone's in agreement, let's go
8 ahead and at least get a couple more. We have the time.
9 It's not that I don't want you all to have a break or
10 down time; I just think, out of an abundance of caution,
11 based on what came out this weekend, as far as this
12 football player's child, and again, because we do have a
13 few other very, what I would call general questions to
14 ask this jury panel, and we could potentially lose
15 someone.

16 And I also think that -- and again, you all can
17 correct me if I may be wrong. I think after someone has
18 been individually voir dired, I think we get them
19 thinking even more about the potential of what they're
20 being asked to do, and I'm afraid that there are some
21 people that may, over the weekend, have gone, thought
22 about and thought about it, and simply said I cannot do
23 it.

24 So, as long as you all are fine with that. Mr.
25 Young, is that all right with you?

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1 MR. YOUNG: Yes, your Honor.

2 THE COURT: Same thing?

3 MR. STONE: Yes, ma'am.

4 THE COURT: I appreciate it. Let's go ahead and
5 bring the next one in, Al.

6 JUROR NUMBER 683 ENTERS COURTROOM.

7 BAILIFF: Your Honor, Ms. Gwendolyn Winston.

8 THE COURT: Thank you.

9 BAILIFF: This way, ma'am. If you would, please go
10 up and take a seat in the witness box.

11 THE COURT: Good morning.

12 JUROR NUMBER 683: Good morning.

13 THE COURT: Ma'am, I need to remind you that you
14 are still under the oath you took last Wednesday. Is
15 that acceptable?

16 JUROR NUMBER 683: Yes.

17 THE COURT: Thank you. And that's the other next
18 question I need to tell you. My court reporter is
19 taking everything down. I simply need you to say yes
20 and no.

21 Additionally, I want to explain a little bit about
22 the process of this case, just so you can better
23 understand what's happening. Then, the attorneys are
24 going to have an opportunity to ask you questions about
25 your feelings about life imprisonment and the death

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1 penalty.

2 Again, there are no right or wrong answers here.
3 We just want your opinions and beliefs, and the only
4 thing we can ask you is to be honest and candid. All
5 right?

6 JUROR NUMBER 683: Thank you.

7 THE COURT: Okay. Ma'am, I want to explain to you,
8 of course, in this case, it is a capital murder case.
9 And what the State is asking for is the death penalty.
10 They want the jury to consider that. That makes this
11 case or this trial a little bit different than other
12 trials.

13 The trial will be bifurcated. It will be done in
14 two different sections by the same jury. But what
15 happens in the first portion of the trial is that the
16 jury would simply determine the guilt or innocence of
17 the defendant of the crimes charged, whether or not the
18 defendant actually committed these murders.

19 And I tell you that in different states, there are
20 different definitions. But in South Carolina, the
21 definition of murder is the intentional killing of
22 another person with what's called malice aforethought.
23 And malice aforethought, while it has a lot of different
24 meanings, basically means with an evil intent or with an
25 evil heart. It's an intentional killing. It's not

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1 accidental; it's not in self-defense. It is an
2 intentional killing.

3 Once the jury were to determine whether or not the
4 defendant is guilty of those charges of murder, if they
5 did find the defendant guilty of those charges, we would
6 then, and only then, move a second part of the trial,
7 which is called the sentencing phase. During the
8 sentencing phase of the trial, the State will put
9 forward evidence in regards to mitigating -- excuse me
10 -- in regards to aggravating evidence.

11 Not all murder cases are subject to the death
12 penalty. State law provides for certain circumstances
13 or factors that if a jury finds that they occurred, a
14 jury can consider the death penalty. So, the State
15 would put forth those definitions or those bits of
16 evidence.

17 Then, the Defense would have an opportunity to put
18 forth what's called mitigating evidence. Mitigating
19 evidence doesn't have anything to do with the actual
20 crimes charged. It has to do with the background and
21 the history of the defendant, kind of everything about
22 them that brought them here to this point in their
23 lives. I would tell you that you need to listen and
24 consider both the aggravating circumstances put forward
25 by the State, and also, the mitigating circumstances put

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1 forward by the defendant.

2 At that time, you would be then asked to render a
3 sentence of either life imprisonment without the
4 possibility of parole or the sentence of death. And I
5 will tell you that you could base a sentence of life
6 imprisonment versus the death penalty for any reason, no
7 reason at all, or just based on granting mercy. I just
8 want to make sure you understand the two-part process in
9 the trial, just so you understand how we proceed.

10 Additionally, ma'am, have you had an opportunity to
11 go through the witness list that was back in the jury
12 room, and do you know anyone personally, socially, or
13 professionally?

14 JUROR NUMBER 683: No.

15 THE COURT: Additionally, there has been some
16 publicity in this case. Have you read anything, heard
17 anything, or seen anything about this case?

18 JUROR NUMBER 683: No.

19 THE COURT: Very good. Okay. Ma'am, what I'm
20 going to do now is, I'm going to turn you over to the
21 attorneys. They're going to ask you a number of
22 questions. All right? Thank you for being here.

23 MR. MACDOUGALL: Good morning, Ms. Winston.

24 JUROR NUMBER 683: Good morning.

25 MR. MACDOUGALL: My name is Mark MacDougall, and

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1 I'm one of the lawyers representing the defendant in
2 this case, Earnest Daise, who is sitting right over
3 there.

4 As Judge Mullen told you, the questions we're going
5 to ask you, and the Solicitor is going to ask you, are
6 all about how you feel. There's no right or wrong
7 answer. We're not going to show any documents to try to
8 change your mind. That's very important, so we're
9 really interested in what you really think, and take
10 your time to think about any questions.

11 This case hasn't begun yet. We haven't picked a
12 jury. Mr. Daise sits there presumed innocent, as every
13 citizen does. And so, part of what we're going to be
14 doing is asking you to project ahead and imagine certain
15 things happening in order to understand how you feel
16 about the death penalty and the possible, you know, jury
17 service in this case. If you don't understand anything
18 I say, please stop me along the way.

19 Judge Mullen described murder and capital murder as
20 requiring malice, and in this state, malice is described
21 with some pretty heavy language. It requires
22 wickedness, excluding any just cause or legal excuse,
23 depravity, a depraved spirit, a heart devoid of social
24 duty. So, it's -- you really meant to kill who you
25 killed, if you're charged with murder with malice,

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1 malicious murder.

2 And it excludes things like self-defense and
3 insanity, accident, all the other things that may lead
4 to death. It's you really -- if you're convicted of
5 that crime, you really meant to do it.

6 So, our first question is, if you were on a jury
7 and you had found someone, anyone, guilty of malicious
8 murder, just as I described it, would you be able to
9 impose the death penalty for that crime as a member of
10 that jury?

11 JUROR NUMBER 683: Go over it one more time,
12 please.

13 MR. MACDOUGALL: Sure.

14 JUROR NUMBER 683: And simplify your words a
15 little.

16 MR. MACDOUGALL: Okay. I understand. In this
17 case, because it's a capital case, there are two parts
18 to the trial.

19 JUROR NUMBER 683: Okay. Not that part. You said
20 the death penalty. That's not -- I mean, that we in
21 South Carolina don't -- don't look at the mental health
22 or whatever. That part.

23 MR. MACDOUGALL: Well, I'm going to get to that,
24 but that comes up in a couple of minutes, mental health
25 and that kind of thing. But just for purposes of my

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1 first question, --

2 JUROR NUMBER 683: Okay.

3 MR. MACDOUGALL: -- if you find someone guilty of
4 the kind of murder I described, cold-blooded, depraved,
5 meant to kill the victim.

6 JUROR NUMBER 683: Um-hmm.

7 MR. MACDOUGALL: All right. Not an accident. Not
8 you know, insanity, none of those things. Not coming
9 home and finding a spouse doing something they
10 shouldn't. Cold-blooded, intentional murder. If you,
11 as a member of a jury, unanimously found a defendant
12 guilty of that kind of murder, could you -- and
13 remember, this is all about how you feel -- give the
14 death penalty?

15 JUROR NUMBER 683: I think I need to know the
16 circumstances. I don't know, again, if it's cold-
17 blooded murder, I think -- I think --

18 MR. MACDOUGALL: Cold-blooded killing, absolutely.

19 JUROR NUMBER 683: Can you go back to that
20 question?

21 MR. MACDOUGALL: Sure. You find somebody guilty of
22 cold-blooded murder, --

23 JUROR NUMBER 683: Um-hmm.

24 MR. MACDOUGALL: -- could you give the death
25 penalty?

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1 JUROR NUMBER 683: Okay. That's something I never
2 thought about, but I don't know.

3 MR. MACDOUGALL: Okay. Well, could you give
4 someone that you found guilty of that kind of murder the
5 sentence of life in prison without parole? And let me
6 tell you, life without parole means you die in prison.
7 There's no release. Could you give that sentence?

8 JUROR NUMBER 683: Yes, I could.

9 MR. MACDOUGALL: All right. You could give that
10 sentence.

11 JUROR NUMBER 683: Yes. I've never even -- I don't
12 know anyone -- I don't even know of using the death
13 penalty, so I'm not familiar with it.

14 MR. MACDOUGALL: Okay.

15 JUROR NUMBER 683: And I don't know the
16 circumstances of, you know, what you have to do to get
17 it.

18 MR. MACDOUGALL: All right. Well, let me explore
19 that with you a bit. In South Carolina, to have a case
20 be a capital case like this one is, the State has to
21 allege aggravating circumstances that make things
22 particularly bad. Remember, we already started with
23 malicious murder.

24 JUROR NUMBER 683: Okay.

25 MR. MACDOUGALL: Now, as Judge Mullen, I think,

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1 told you, the two factors here that make this a
2 particularly aggravated, bad case are that there were
3 two victims, a mother and child, and the second was one
4 of the victims was a child, a four-year-old boy. With
5 that in mind, if you were a member of a jury that found
6 a defendant guilty of malicious murder or cold-blooded
7 murder, --

8 JUROR NUMBER 683: Yes.

9 MR. MACDOUGALL: And there were two victims, --

10 JUROR NUMBER 683: Yes.

11 MR. MACDOUGALL: -- one of whom was a child, could
12 you then give the death penalty?

13 JUROR NUMBER 683: Yes, I think so.

14 MR. MACDOUGALL: Okay.

15 COURT REPORTER: Yes, I think so, is that what you
16 said?

17 THE COURT: That's a yes for the record, ma'am?

18 JUROR NUMBER 683: Yes.

19 MR. MACDOUGALL: Okay. Now, you under --

20 JUROR NUMBER 683: You said malicious, and it's got
21 to be intent, that he meant to do it, yeah.

22 MR. MACDOUGALL: Absolutely. And we have the two
23 factors I described: two victims, and one of them is a
24 child. So, your answer is yes, you could give the death
25 penalty.

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1 JUROR NUMBER 683: I still need to hear more about
2 it. I don't know if I could say yes to something I
3 don't know about.

4 MR. MACDOUGALL: Okay. Well, that's about all I
5 can tell you.

6 JUROR NUMBER 683: Okay.

7 MR. MACDOUGALL: I mean, it's just concept -- you
8 know, it's sitting here imagining yourself in the jury
9 box, malicious murder, two victims, one of them is a
10 child, do you think that's a crime where you could give
11 the death penalty; deserves the death penalty?

12 JUROR NUMBER 683: Yes.

13 MR. MACDOUGALL: Okay. Now, let me tell you a
14 couple other things. In South Carolina, there's no
15 automatic death penalty. In other words, in this state,
16 a life sentence is an appropriate sentence for any
17 crime. So, you would not be in a situation -- no
18 juror's ever in a situation where death is automatic.
19 Do you understand that?

20 JUROR NUMBER 683: Oh. Yes.

21 MR. MACDOUGALL: Okay. If --

22 JUROR NUMBER 683: Let me ask you one question in
23 reference to that.

24 MR. MACDOUGALL: Yes, ma'am.

25 JUROR NUMBER 683: When you say right away, you

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1 mean that they'll spend life -- a life sentence in
2 prison, then they'll be put to death. Is that what
3 you're saying?

4 MR. MACDOUGALL: No, no. No, ma'am. No. There
5 are two sentences. One is the death penalty.

6 JUROR NUMBER 683: Um-hmm.

7 MR. MACDOUGALL: And you know what that involves.

8 JUROR NUMBER 683: That's separate.

9 MR. MACDOUGALL: That's one choice.

10 JUROR NUMBER 683: And you said it's not automatic.
11 What do you mean by not automatic?

12 MR. MACDOUGALL: Okay. If you and the jury were to
13 find a defendant guilty of malicious murder with
14 aggravating circumstances, you don't have to find the
15 death penalty. It's not --

16 JUROR NUMBER 683: Okay. Okay.

17 MR. MACDOUGALL: It doesn't happen -- it's up to
18 the jury. Everything that I'm describing is up to the
19 jury.

20 JUROR NUMBER 683: Okay.

21 MR. MACDOUGALL: So, it's not an automatic.

22 JUROR NUMBER 683: That, I understand.

23 MR. MACDOUGALL: Okay. So, now, again, assume that
24 you're in that jury. You have found the defendant
25 guilty of malicious murder, and there are aggravating

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1 circumstances. And then, you're going to hear from the
2 Defense and from the State about the crime, about the
3 victims, and about the defendant.

4 Now, the Defense will tell you, we will give you
5 facts that describe characteristics about the victim --
6 characteristics about the defendant, that are intended
7 to encourage you toward mercy. The State will give you
8 facts that will talk about, likely talk about, the
9 severity of the crime and the victims and so forth.

10 Can you take into account, in deciding your
11 sentence, all those factors? The Defense puts up facts
12 that are in mitigation, which means consider it, you
13 know, less toward the death penalty; and the State will
14 put up aggravating factors. Can you consider all of
15 those in making your decision about whether to render a
16 sentence of death or life in prison without parole?

17 JUROR NUMBER 683: Yes.

18 MR. MACDOUGALL: Okay. Now, you also understand
19 that, as a juror in a case like this, -- and remember,
20 if the defendant is not found guilty in the first phase,
21 there is no second phase. The case is over.

22 JUROR NUMBER 683: Okay.

23 MR. MACDOUGALL: Okay. So, it's only if you found
24 malicious murder, you found aggravating circumstances,
25 then you're in the penalty phase, the second part of the

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1 trial. You're the same jury, just the second part of
2 the trial.

3 JUROR NUMBER 683: Okay.

4 MR. MACDOUGALL: And you understand, as the Judge
5 told you in making her introductory remarks, you can
6 grant life for any reason at all or for no reason. You
7 don't have to find a reason. And you're allowed, in
8 that phase, to make your own moral judgment. Whereas,
9 in the phase where the crime is being deliberated by the
10 jury, you have to reach a unanimous verdict one way or
11 the other, or the case has to be re-tried.

12 With respect to the penalty phase, you can reach
13 your own moral judgment, and you can grant life for any
14 reason or for no reason at all. Do you understand that?

15 JUROR NUMBER 683: Yes.

16 MR. MACDOUGALL: Okay. And you think you could
17 apply that rule in making your decision.

18 JUROR NUMBER 683: Yes.

19 MR. MACDOUGALL: Okay. One last couple of
20 questions, ma'am. You've been in groups, I'm sure,
21 family situations, where you may have had an opinion
22 that is in the minority, that is different from
23 everybody else's.

24 JUROR NUMBER 683: Yes.

25 MR. MACDOUGALL: It can be, do we want to go out to

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1 the movies or do we want to go out for burgers. It can
2 be anything like that. When you're in the minority, are
3 you the kind of person who holds onto your opinion, who
4 will be, you know, stand up for your rights, so to
5 speak, without regard to how much pressure you're under?

6 JUROR NUMBER 683: Yes.

7 MR. MACDOUGALL: And when you're in such a group
8 and there are people who have a view that's in the
9 minority and are being pressured; maybe people are
10 raising their voices to them or pushing them or, you
11 know, putting them under pressure; are you someone who
12 comes to the defense of people who have that minority
13 view?

14 JUROR NUMBER 683: Yes.

15 MR. MACDOUGALL: In other words, you think
16 everybody's entitled to form their own moral opinion
17 about important matters.

18 JUROR NUMBER 683: Yes.

19 MR. MACDOUGALL: Okay. Thank you, your Honor.
20 Thank you, ma'am. No further questions.

21 JUROR NUMBER 683: Thank you.

22 THE COURT: Solicitor.

23 MR. STONE: Ms. Winston, my name's Duffie Stone. I
24 just have a few questions, kind of following up on what
25 the Defense attorney just asked you. In this type of

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1 case, which, as the Judge told you earlier, is a little
2 bit different. You would first determine whether or not
3 Earnest Daise was guilty. If you did that as a juror,
4 then you would go off into a second phase, and you would
5 hear evidence from me as the State. You would hear
6 evidence from the Defense.

7 And then, after you listened to everything, it
8 would be up to you as a juror to determine whether or
9 not Earnest Daise gets the life in prison or he dies.
10 You would be on the jury to make that decision. Could
11 you make that decision?

12 JUROR NUMBER 683: Yes.

13 MR. STONE: If you do make the decision that
14 Earnest Daise dies, there is a form that you have to
15 fill out that you have to sign your name to that is --
16 and I don't know if we were clear about this before --
17 this is not a recommendation. This is the actual
18 sentence.

19 In this state, you are the jury making the
20 determination. You're actually sentencing. It's not a
21 recommendation. It will be carried out. Could you sign
22 a form that finds somebody deserves the death penalty?

23 JUROR NUMBER 683: Yes.

24 MR. STONE: Okay. So, if the case is bad enough,
25 you could give the death penalty.

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1 JUROR NUMBER 683: Yes.

2 MR. STONE: Thank you, Ms. Winston. I appreciate
3 it.

4 JUROR NUMBER 683: You're welcome.

5 MR. STONE: Thank you, your Honor.

6 THE COURT: Ma'am, we have got you qualified to
7 serve as a potential juror on the trial of this case.
8 That does not mean you're on the jury. It means you're
9 a potential juror.

10 I have the rest of the panel coming back at 11:00
11 o'clock, and that's in about 45 minutes or so. I'm
12 going to ask you to stay around and come back at 11:00
13 o'clock.

14 If you want go to step out and go get a breath or
15 fresh air, you're welcome to, but I just need to make
16 sure you come back into the courthouse, up to the second
17 floor, at 11:00 a.m., where we're going to go ahead and
18 pull the jury for the trial of this case.

19 I also need to instruct you that you are not to
20 discuss this case with anyone. Also, you're not
21 supposed to do any independent research, or do anything
22 about the case in the next 45 minutes or so. Again, it
23 would be inappropriate for you to do so.

24 JUROR NUMBER 683: Thank you.

25 THE COURT: Thank you for being here. We

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1 appreciate it.

2 JUROR NUMBER 683 LEAVES COURTROOM.

3 JUROR NUMBER 256 EXCUSED:

4 THE COURT: Give me one moment.

5 The next person on the list is Number 256, Diana
6 Garnier. I excused her last Friday. Her sister went
7 into Hospice in Florida, and she got a car and rode down
8 there, so. And she called up here and certainly
9 diligent, so I went ahead and excused her. And the next
10 one after that would be Mackenzie Ball. Is that
11 correct?

12 BAILIFF: Ball. Ball.

13 THE COURT: Yes, sir. Mackenzie Ball.

14 BAILIFF: Mackenzie Ball, your Honor.

15 JUROR NUMBER 30 ENTERS COURTROOM.

16 THE COURT: Come on forward, sir, around here.

17 BAILIFF: If you will, go up and take a seat in the
18 witness box, please, sir.

19 THE COURT: Good morning, Mr. Ball.

20 JUROR NUMBER 30: Good morning.

21 THE COURT: I need to remind you, sir, that you are
22 still under the oath you took last Wednesday. Is that
23 acceptable?

24 JUROR NUMBER 30: Yes, ma'am.

25 THE COURT: Sir, I also need to explain to you a

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1 couple things during the trial of this case. In this
2 case, the defendant has been charged with two counts of
3 murder. Now, the defendant has pled not guilty to those
4 charges. Therefore, the burden is on the State to prove
5 his guilt as to these two charges beyond a reasonable
6 doubt.

7 Now, I also want you to understand that this is a
8 capital murder case, which means the State is seeking
9 the death penalty in this case. And I want you to know
10 that not all murder cases are subject to the death
11 penalty. The State must prove certain aggravating
12 circumstances for a jury to be able to consider that in
13 whether or not the jury thinks it's appropriate to give
14 a death sentence.

15 I also want to explain to you how a death penalty
16 trial works. It's done in two parts. The first part is
17 simply the guilt or innocence phase. It's where the
18 jury would determine unanimously either the defendant
19 was guilty or not guilty of the charges for the crimes
20 that have been brought forward. Do you understand that,
21 sir?

22 JUROR NUMBER 30: Yes, ma'am.

23 THE COURT: If, and only if, the jury unanimously
24 agreed that the defendant was guilty of the charges that
25 are brought would we then go to what's called a

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1 sentencing phase.

2 During the sentencing phase, the State would put
3 forward evidence as to these aggravating circumstances
4 that would allow a jury to contemplate or consider the
5 death penalty; and that the Defense would also put forth
6 what's called mitigation evidence. That's evidence
7 about the history and background of the defendant,
8 anything that kind of should be considered by a jury in
9 coming up with a decision to give either a life or a
10 death sentence.

11 I want to make sure you understand that a jury can
12 give a life sentence without the possibility of parole
13 for a reason that you consider to be a good reason, no
14 reason at all, or simply out of a grant of mercy. I
15 want to make sure you understand and appreciate that.

16 JUROR NUMBER 30: Yes, ma'am. I understand.

17 THE COURT: And I know it's a little strange,
18 because we have to talk about a penalty phase when,
19 again, the defendant hasn't even been convicted of
20 anything. But because of the process, and because it's
21 the same jury that considers both, we have to ask these
22 questions in regards to penalty.

23 So, I want you to know that the attorneys are going
24 to ask you questions, how you feel about the death
25 penalty, how you feel about life imprisonment. They're

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1 permissible, and that's fine for them to do that.

2 The only thing we can ask of you is that you be
3 candid and forthcoming in regards to your views. There
4 are no right or wrong answers here, Mr. Ball. You just
5 tell us what your feelings are. Okay, sir?

6 JUROR NUMBER 30: Yes, ma'am.

7 THE COURT: Also, you had an opportunity to review
8 the witness list back in the jury room. Do you know
9 anyone on that list?

10 JUROR NUMBER 30: No, ma'am..

11 THE COURT: Okay, sir. And additionally, there has
12 been a little bit of publicity about this case. Have
13 you read anything, heard anything, or seen anything
14 about this case?

15 JUROR NUMBER 30: I seen a thing on WTOC.

16 THE COURT: Okay. You saw a news report about it.

17 JUROR NUMBER 30: Um-hmm.

18 THE COURT: Is that a yes for the record?

19 JUROR NUMBER 30: Yes, ma'am.

20 THE COURT: Thank you. My court reporter's taking
21 everything down. I want to make sure that you
22 understand and appreciate that anything that was placed
23 on the news or in the newspaper is not factual; it is
24 not evidence in this case; and you cannot consider it.
25 Were to be sat as a juror, you would have the best

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1 information here --

2 JUROR NUMBER 30: Um-hmm.

3 THE COURT: -- as to the case. And again, you
4 would be able to and have to, I would instruct you, you
5 would have to put aside anything you may have seen on
6 the news or maybe heard out on the street, again, that
7 it wouldn't be correct. Do you understand that?

8 JUROR NUMBER 30: Yes, ma'am.

9 THE COURT: All right, sir. I'm going to turn you
10 over to the attorneys. Okay?

11 MR. YOUNG: Good morning, Mr. Ball.

12 JUROR NUMBER 30: Good morning.

13 MR. YOUNG: I want to follow up with you about what
14 you had seen on the T.V. I think you wrote that you had
15 -- you thought that the article had indicated -- or the
16 news story indicated that he had pled guilty?

17 JUROR NUMBER 30: Yes, sir.

18 MR. YOUNG: Is that what you had heard?

19 JUROR NUMBER 30: Yeah, that's what I heard.

20 MR. YOUNG: And you said some friends were talking
21 about it.

22 JUROR NUMBER 30: Well, not really. I was at a
23 friend's house whenever I seen it, but I wasn't really
24 paying attention, because I don't really pay attention
25 to stuff like that.

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1 MR. YOUNG: Okay. And you know, there are no right
2 or wrong answers. Only you can tell us. I mean, can
3 you sit here and presume that he's innocent?

4 JUROR NUMBER 30: I -- I don't think so.

5 MR. YOUNG: You don't think so.

6 JUROR NUMBER 30: Huh-uh.

7 MR. YOUNG: Just based on what you've heard and
8 sort of who you are and how you feel about things.

9 JUROR NUMBER 30: Um-hmm.

10 MR. YOUNG: That's just something --

11 COURT REPORTER: I'm sorry. We need to say yes or
12 no.

13 JUROR NUMBER 30: Yes, sir.

14 MR. YOUNG: Yes, ma'am. From what I understand,
15 you have -- would have a hard time presuming Mr. Daise
16 to be not guilty, presuming him innocent.

17 JUROR NUMBER 30: Yes, sir.

18 MR. YOUNG: Okay. Thank you, Mr. Ball. That's all
19 the questions I have for right now.

20 MR. STONE: Thank you, Mr. Ball. Thank you for
21 your answers today.

22 THE COURT: Mr. Ball, we're going to go ahead and
23 excuse you from the trial of this case. I just need to
24 instruct you not to speak to anyone in the courthouse
25 when you're leaving, and thank you for being here.

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1 JUROR NUMBER 30: Yes, ma'am. Thank you.

2 BAILIFF: Come right this way, sir, please. May I
3 have your badge. You're free to go.

4 JUROR NUMBER 30 LEAVES COURTROOM.

5 THE COURT: Norman, let's bring the next person in.

6 BAILIFF: Are you ready, Judge?

7 THE COURT: Yes, sir. Thank you.

8 BAILIFF: Your Honor, Mr. Larry Brantley.

9 JUROR NUMBER 72 ENTERS COURTROOM.

10 THE COURT: Come on forward, Mr. Brantley.

11 BAILIFF: If you would, sir, please go up and take
12 a seat in the witness box.

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

14 Sir, I need to remind you that you are still under
15 the oath that you took on Wednesday. Is that acceptable
16 to you?

17 JUROR NUMBER 72: Yes.

18 THE COURT: Sir, also, myself and the attorneys are
19 going to ask you a few questions. They're going to ask
20 you questions and your feelings and thoughts about the
21 death penalty, about life imprisonment with the
22 possibility -- or without the possibility of parole,
23 sir.

24 The only thing anyone here can ask is that you be
25 candid and honest. Is that all right with you?

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1 JUROR NUMBER 72: Yes.

2 THE COURT: There are no right or wrong answers
3 here. They simply need to know what your thoughts are
4 and your beliefs.

5 Additionally, sir, I want to very quickly explain
6 to you how a death penalty trial works. It's not like a
7 normal criminal trial. In a death penalty case such as
8 this one where the State is seeking a life in -- or
9 excuse me -- they're seeking a death sentence, sir, the
10 case is tried in two parts.

11 The first part of the trial is what's called the
12 guilt or innocence phase. It's where the jury decides
13 whether or not the defendant is guilty of the crimes
14 charged. If, and only if, the jury actually unanimously
15 finds the defendant guilty of the crimes charged, do we
16 then go to the sentencing portion of the trial.

17 It's the same jury that was that's doing it again.
18 During that sentencing portion, the State is going to
19 introduce evidence about what's called aggravating
20 factors. They are factors which the law allows the
21 State to seek a possible death sentence in a case, and
22 you can expect that to come in from the State.

23 Additionally, during that sentencing phase, the
24 Defense is going to offer mitigating evidence. That's
25 evidence about the history and the background of the

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1 defendant, kind of everything in the past that brings
2 him to where he is today.

3 And I am going to explain to you and instruct the
4 jury that you are to consider the aggravating and the
5 mitigating evidence in deciding whether or not to give
6 the defendant either a life imprisonment sentence
7 without the possibility of parole or a death sentence.

8 What I want to make sure you understand and
9 appreciate is that you can find, when I say you as a
10 juror, the jury in whole, can find that a mitigation
11 circumstance supports a life sentence versus a death
12 sentence; you can find that, for no reason at all, a
13 person should get a life sentence, or simply on a grant
14 of mercy, you as a juror can determine if the defendant
15 would be entitled to a life sentence. So, I want to
16 make sure you just understand the possibilities and what
17 we're looking at here.

18 At this time, the lawyers are now going to ask you
19 questions. But again, before we do that, have you seen
20 anything, read anything, heard anything about this case?

21 JUROR NUMBER 72: I've heard about it. I haven't
22 read anything.

23 THE COURT: Okay. And when you say you heard it,
24 was it people talking, or how did you hear about it?

25 JUROR NUMBER 72: Just people talking about it.

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1 THE COURT: Okay. And were they friends,
2 neighbors, or co-workers, or while you were here in the
3 courtroom?

4 JUROR NUMBER 72: No, friends. You know, co-
5 workers kind of thing.

6 THE COURT: Okay. I'm going to make sure that you
7 can put aside anything that you may have heard outside
8 the courtroom. Again, it wouldn't be factual, and it
9 wouldn't be correct. Can you do that, and confine any
10 consideration and deliberation to what you hear in the
11 courtroom?

12 JUROR NUMBER 72: I can try.

13 THE COURT: Okay. You can try. Okay.

14 JUROR NUMBER 72: You know. Sometimes opinions are
15 formed even, you know --

16 THE COURT: And that's what we want to know here.

17 JUROR NUMBER 72: So, --

18 THE COURT: We want to know if you have already
19 formed an opinion in the trial of this case.

20 JUROR NUMBER 72: I have, yes.

21 THE COURT: You have. And what is that opinion?

22 JUROR NUMBER 72: I think he's guilty. I mean,
23 it's -- from what I've heard and about it and all,
24 that's the opinion that I have for him.

25 THE COURT: And the basis of your opinion is what?

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1 From what you've heard?

2 JUROR NUMBER 72: Yes.

3 THE COURT: Okay. All right. Sir, I'm going to go
4 ahead and excuse you from the trial of this case.

5 JUROR NUMBER 72: Okay.

6 THE COURT: We appreciate you being here.

7 JUROR NUMBER 72: All right.

8 THE COURT: Thank you.

9 JUROR NUMBER 72: Thank you.

10 BAILIFF: Let me have your badge, please, sir.
11 You're free to go.

12 JUROR NUMBER 72 LEAVES COURTROOM.

13 THE COURT: Let's go ahead and bring the next
14 person.

15 BAILIFF: Yes, ma'am.

16 THE COURT: Thank you.

17 BAILIFF: Are you ready, Judge?

18 THE COURT: Just a minute.

19 MR. THORNTON: I'll take care of it, your Honor.

20 THE COURT: Thank you. Just a moment, Al.

21 BAILIFF: Yes, ma'am.

22 THE COURT: Let's go ahead and bring in the next
23 witness.

24 JUROR NUMBER 637 ENTERS COURTROOM.

25 BAILIFF: Your Honor, Ms. Chrystie Taylor -- I

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1 mean, Turner. Excuse me.

2 THE COURT: Very good. Thank you.

3 BAILIFF: This way, Ms. Turner.

4 THE COURT: Come on forward, Ms. Turner. Good
5 morning.

6 JUROR NUMBER 637: Good morning.

7 BAILIFF: If would, please go up and take a seat in
8 the witness box.

9 THE COURT: Ms. Turner, I want to remind you that
10 you are still under the oath you took on Wednesday. Is
11 that acceptable?

12 JUROR NUMBER 637: Yes, ma'am.

13 THE COURT: Thank you. Additionally, I want you to
14 know, the attorneys are going to ask you some questions,
15 your feelings on the feelings on the death penalty or
16 the sentence of life imprisonment without the
17 possibility of parole.

18 I want you to know that there are no right or wrong
19 answers here. This is simply your feelings and beliefs.
20 Again, if there's anything you don't understand, ask
21 them to repeat it, rephrase it. They will do so.

22 Additionally, there's a couple things I need to
23 tell you, and then a few questions I need to ask you
24 before I turn you over to the attorneys during this
25 case. First off, you understand that this is a capital

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1 case.

2 JUROR NUMBER 637: Yes, ma'am.

3 THE COURT: The defendant has been charged with two
4 counts of felony murder or capital murder, and the State
5 is seeking the death penalty in this case. Because the
6 State is seeking the death penalty, this case is a
7 little bit different than normal criminal cases. It
8 will be tried in two parts, all of which the same jury
9 will hear.

10 But the first part of the trial is simply the guilt
11 or innocence phase. It's whether or not the defendant
12 actually committed these murders. And I tell you that
13 the definition of murder in South Carolina is the
14 intentional taking of another person's life with malice
15 aforethought.

16 JUROR NUMBER 637: Okay.

17 THE COURT: Malice aforethought is with an evil or
18 wicked heart. It's an intentional killing or an
19 intentional taking of life. There's no self-defense;
20 there's no heat of passion. It's the intentional
21 taking. The jury would first have to determine
22 unanimously whether or not the defendant actually
23 committed these murders.

24 After that, if the jury, and only if, the jury
25 found that the defendant was guilty unanimously would we

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1 then go to what's called the sentencing phase. During
2 the sentencing phase, the State would put up aggravating
3 evidence or information, which allows the jury to
4 consider whether or not this case -- the death penalty
5 is appropriate.

6 Also, the Defense is going to put up what's called
7 mitigating evidence or mitigation evidence. That is
8 evidence about the background and history of the
9 defendant, everything that kind of goes into his
10 background and past that gets him here today.

11 JUROR NUMBER 637: Okay.

12 THE COURT: I will tell you that you need to
13 consider both the aggravating evidence and the
14 mitigating evidence the Defense puts up. And from
15 there, you would decide on the appropriate sentence in
16 this case. And again, there are only two options during
17 the sentencing phase. That would be life imprisonment
18 without the possibility of parole, or a sentence of
19 death.

20 JUROR NUMBER 637: Okay.

21 THE COURT: I also want you to know that you can
22 give a life sentence for what you consider to be a good
23 reason, no reason at all, or a simple grant of mercy.
24 And I want to make sure you understand that a life
25 sentence is appropriate in this case; that there is no

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1 mandatory death sentence in South Carolina. Again, it's
2 for the jury to determine.

3 JUROR NUMBER 637: Okay.

4 THE COURT: And I want to make sure you understand
5 and appreciate that. Okay?

6 JUROR NUMBER 637: Yes, ma'am.

7 THE COURT: I'm going to turn you over to the
8 lawyers at this time, and they're going to ask you some
9 questions. Thank you.

10 JUROR NUMBER 637: Okay.

11 MR. MCGUIRE: Thank you, your Honor. Excuse me.
12 Good morning, Ms. Turner.

13 JUROR NUMBER 637: Good morning.

14 MR. MCGUIRE: I see you work for the United Way.

15 JUROR NUMBER 637: I do.

16 MR. MCGUIRE: My dad runs a non-profit, and United
17 Way is kind of his best friend.

18 JUROR NUMBER 637: All right. A partner agency?

19 MR. MCGUIRE: Yes, ma'am. And he relies on you
20 guys greatly.

21 What I want to do is ask you a little bit more
22 about on your -- something on your questionnaire. You
23 sat on a criminal case before, a boating case?

24 JUROR NUMBER 637: My husband did, not me.

25 MR. MCGUIRE: Oh, okay.

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1 JUROR NUMBER 637: He did a -- it was boating while
2 intoxicated.

3 MR. MCGUIRE: Okay. Did he talk to you about it?

4 JUROR NUMBER 637: Not during the day. It was only
5 -- it was -- he went in that morning, and by the
6 afternoon, he was done with it, so.

7 MR. MCGUIRE: Okay. What I want to do is, to make
8 sure we're on the same page, I want to talk to you a
9 little bit more about your views on capital punishment,
10 the death penalty. I want to start at the beginning.

11 Murder in South Carolina is an intentional,
12 unlawful killing of another person with malice
13 aforethought, and the malice aforethought is that the
14 killer is operating with a black and malignant heart,
15 devoid of social duty, fatally bent on evil and
16 wickedness.

17 JUROR NUMBER 637: Okay.

18 MR. MCGUIRE: Pretty heavy language. And for the
19 State to seek -- so, that means it's an intentional
20 choice to take another life. It's not self-defense,
21 accident, mistake. The person knows right from wrong
22 and chooses to kill. Okay?

23 JUROR NUMBER 637: Okay.

24 MR. MCGUIRE: For the State to ask for the death
25 penalty, seek the death penalty, they have to present

1 aggravating circumstances. And in this case, the
2 aggravating circumstance at issue is that two people
3 were killed, a double homicide, a mother and child, and
4 the child was four years old, and the age of the child
5 is the other aggravating factor.

6 In that situation, what are your thoughts about the
7 death penalty as the appropriate punishment?

8 JUROR NUMBER 637: Well, I guess I would have to
9 wait to see what the facts of the case were, because the
10 Judge said that I could take into account circumstantial
11 -- or not circumstantial -- but mitigating. So, I Would
12 -- I guess would have to hear all of the facts of the
13 case before I could make that decision.

14 MR. MCGUIRE: Okay. And when you hear the phrase
15 *mitigating evidence*, what do you think that means?

16 JUROR NUMBER 637: I think that, that probably
17 refers to issues that happen in the individual's life
18 that might have created the situation, or that might
19 have given a justification for the actions, or something
20 that a, I guess, a reasonable person would think that
21 person -- that, that fact should enter into the
22 decision-making phase of the -- of the punishment.

23 MR. MCGUIRE: Okay. Some people might say double
24 homicide where a child is killed, that the life penalty
25 can never be severe enough to punish that. Obviously,

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1 there are some people like that out there. And I'm
2 going to ask you, are you one of them, maybe?

3 JUROR NUMBER 637: Can you repeat that? I don't
4 understand what you're asking.

5 MR. MCGUIRE: Sure. Some people might say there
6 are certain categories of crime that just kind of
7 resonate with them, and they're so bad that the life
8 penalty, in their view, would not be severe enough to
9 punish that.

10 It might be -- somebody might feel particularly
11 strong about a rape/murderer, or a child murder, or a
12 police officer killed in the line of duty, you know,
13 different categories of cases.

14 The category that I'm asking you about is a double
15 homicide where a four-year-old child is shot dead. And
16 is that a category of case where you might say the life
17 penalty is really not severe enough to punish them?

18 JUROR NUMBER 637: No. I would have to, once
19 again, hear the facts of the case, because there might
20 be something in there that would --

21 MR. MCGUIRE: Now, when you say *facts of the case*,
22 do mean like the facts of the homicides?

23 JUROR NUMBER 637: I guess the -- the whole thing.
24 I mean, I -- I wouldn't be able to make a decision just
25 on that little bit that you've given me. I -- I don't

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1 think that -- I don't -- actually, I'm kind of on the
2 fence for both ways. I mean, I don't think that a
3 double homicide would automatically make me vote for
4 life in prison or -- or the death penalty either way;
5 that I would have to hear kind of all of the situation
6 before I can be able to determine which you would
7 choose, I think.

8 MR. MCGUIRE: Okay. And the Judge told you that
9 some of the stuff you can consider, some of the things
10 you can consider, would be background of the defendant.
11 What would -- in that category, what would you think
12 would be relevant?

13 JUROR NUMBER 637: I guess how they were brought
14 up, their values, and how the socioeconomic class that
15 they were in, and -- because they have different values
16 and morals. And I guess I would have to kind of hear
17 his background, because I would think that certain
18 things would create certain behaviors in an individual
19 from their upbringing.

20 MR. MCGUIRE: Okay.

21 JUROR NUMBER 637: Sort of the nature versus
22 nurture thing.

23 MR. MCGUIRE: Okay. Now I want to move into a
24 different topic with you, and that's some legal
25 principles, and I'm going to see if you can comply with

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1 them. Okay?

2 JUROR NUMBER 637: Okay.

3 MR. MCGUIRE: And one is that we think about juries
4 speaking with one voice and being unanimous, and that's
5 true in the guilty phase. To find somebody guilty, it
6 has to be all twelve agreeing.

7 In the penalty phase, you actually have sort of
8 three options. All twelve people could agree on the
9 life penalty. All twelve could agree on the death
10 penalty, but because this is a grave issue, and it's
11 deeply personal to people, in fact, the Judge -- Judge
12 Mullen would describe it as an individual moral
13 judgment, the penalty somebody should get.

14 Because it's so deeply personal and important, you
15 would expect some disagreement among jurors. And in a
16 penalty phase, if the jury agrees to disagree, the Judge
17 would take the case and sentence, and you don't have to
18 worry about what that sentence might be. I just tell
19 you that so you know the case would end, and it would
20 not have to be re-tried.

21 JUROR NUMBER 637: Okay.

22 MR. MCGUIRE: And the jury would not have failed in
23 its duty.

24 JUROR NUMBER 637: Okay.

25 MR. MCGUIRE: But that's okay.

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1 JUROR NUMBER 637: Um-hmm.

2 MR. MCGUIRE: We allow for that in the system. And
3 but I don't want you to think that we wouldn't want you
4 to deliberate and exchange views and ideas and have
5 civil discourse. We expect that.

6 But what would be wrong is, if you were on the
7 jury, the Judge would give you a juror oath, and it says
8 that you have to give all of the evidence and
9 mitigation, aggravation, and come up with your own
10 individual moral judgment. And to give up that position
11 once you reach it, you have a duty and obligation to
12 have that voice heard in court, and it would be a
13 violation of the juror oath to compromise just for the
14 sake of compromise. Did you know that?

15 JUROR NUMBER 637: I did not know that.

16 MR. MCGUIRE: Okay. And could you respect other
17 people's individual opinions?

18 JUROR NUMBER 637: I could.

19 MR. MCGUIRE: Okay. And there's a thing in the law
20 in a capital case where the Judge would actually charge
21 the jury any individual juror could vote for life for
22 any reason, no reason, or mercy alone. And the no
23 reason is really for jurors. You being conscripted,
24 come here with a very fancy invitation called a summons,
25 you couldn't exactly refuse. And so, we have it built

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1 into the law that, at the end of the case, just as you
2 contemplate your life, you could say, I'm just going to
3 vote for the life penalty for no reason; I don't want to
4 contemplate the rest of my days having killed another
5 human being; I don't want that burden, that mark, on my
6 record or soul.

7 And that's why it's so deeply personal. And again,
8 if somebody said that, they said, I can't even come up
9 with the words; I just want to vote for life for no
10 reason; could you respect that?

11 JUROR NUMBER 637: I could.

12 MR. MCGUIRE: Okay. And if you saw somebody where
13 it got -- it sort of got beyond civil discourse, and
14 there was an effort to have somebody compromise for the
15 sake of compromise, and they weren't strong with their
16 voice or their opinion, could you come to their aid and
17 make sure they were respected?

18 JUROR NUMBER 637: I would, absolutely. That's one
19 of the things that I do in the course of my normal day.

20 MR. MCGUIRE: Thank you so much, ma'am. I enjoyed
21 talking to you.

22 JUROR NUMBER 637: Thank you.

23 THE COURT: Solicitor.

24 MR. STONE: Thank you. Ms. Turner, my name is
25 Duffie Stone. I listened very carefully to your

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1 answers, and I think I understand. You are the type of
2 juror who would, when put in a position like this, you
3 would want to hear evidence from both the State and the
4 Defense to make a determination whether or not the
5 defendant deserves life in prison or the death penalty.
6 Is that correct?

7 JUROR NUMBER 637: Correct.

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

10 JUROR NUMBER 637: Yes, I could.

11 MR. STONE: Thank you. Nothing else. Thank you,
12 your Honor.

13 THE COURT: Ma'am.

14 JUROR NUMBER 637: Yes.

15 THE COURT: You have been qualified as a potential
16 juror in the trial of this case. That does not mean you
17 have been chosen as a juror.

18 By the clock up there, I have asked all those who
19 are potential jurors to come back at 11:00 o'clock.

20 JUROR NUMBER 637: Um-hmm.

21 THE COURT: That's about twenty minutes or so. I'm
22 going to go ahead and excuse you to go back out, if you
23 want to go get a breath of fresh air. I just need you
24 in the courthouse up on the second floor at 11:00
25 o'clock, and the bailiffs are going to direct you where

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1 you need to go.

2 I also need to instruct you, don't discuss this
3 case with anyone. That includes anyone who may be also
4 a potential juror. Don't do any independent research.
5 You don't have a whole lot of time, but I want to make
6 sure that you understand that you are not to do that.

7 We're going to bring you in shortly, and then we'll
8 go ahead and pull a jury.

9 JUROR NUMBER 637: Okay. Thank you.

10 THE COURT: Thank you so much.

11 JUROR NUMBER 637 LEAVES COURTROOM.

12 END INDIVIDUAL VOIR DIRE.

13 JUROR QUESTIONNAIRES MARKED

14 COURT'S EXHIBIT NUMBERS 4 THROUGH 75.

15 BY THE COURT:

16 THE COURT: All right, you all. My understanding
17 is we have 41 qualified jurors. You think we're okay?
18 I'd love to give you all a little break before we start
19 the next portion of it. Are we comfortable with that?

20 MR. STONE: I do, your Honor. I do.

21 THE COURT: Are you comfortable with that from the
22 Defense side?

23 MR. YOUNG: Yes, your Honor.

24 THE COURT: Okay. Just so I'm clear, when we bring
25 everyone back, we're going to bring them all hopefully,

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1 back into this room, correct?

2 BAILIFF: We're going to assemble them in Courtroom
3 2. And when I have them all, I'll let you know, and you
4 can tell me when to bring them in here.

5 THE COURT: Okay. I just want to make sure. Other
6 than the questions the Defense has requested I ask in
7 regards to discussion among, you know, other panel
8 members about the case, other than that question, and
9 the one about Mr. Peterson's son, and also whether or
10 not they can be fair and impartial, is there any other
11 further questions that I need to ask this group before
12 we just start bringing them up?

13 MR. STONE: No, ma'am. I don't believe so.

14 THE COURT: Okay?

15 MR. YOUNG: No, your Honor.

16 THE COURT: All right. And as far as exercising
17 the strikes, Mr. Stone, are you going to do it for the
18 State?

19 MR. STONE: Yes, ma'am.

20 THE COURT: And who's going to do it for the
21 Defense?

22 MR. YOUNG: I will, your Honor.

23 THE COURT: Thank you. Okay. And what we're going
24 to do, Al, just to make sure everybody knows is, we are
25 going to bring them all the way around to stand here and

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1 turn around and face the panel. That's with everyone's
2 agreement, and we talked about that. Are you all
3 comfortable with that?

4 MR. YOUNG: I mean, you can do it if you want to.
5 I don't need them to come up here or not. However you
6 all want to do it.

7 THE COURT: It's up to you all. If you have no
8 preference, I mean, quite frankly, I know since you all
9 know what order they're coming in, you know who you're
10 going to strike. And I expect this process to be real
11 fast, for that simple fact. So, it's up to you all. I
12 mean, are you fine with just leaving them in their place
13 and just having them stand?

14 MR. STONE: That'll be fine.

15 MR. YOUNG: Yes, ma'am.

16 MR. MCGUIRE: And that kind of segues into one of
17 our earlier requests that we not identify the
18 alternates, because if they all sit back there, they're
19 all know who's on the twelve and who's an alternate.

20 THE COURT: Okay.

21 MR. MCGUIRE: And if we could ask the Court not
22 to I.D. the alternates. We want everybody to pay
23 attention --

24 THE COURT: Okay.

25 MR. MCGUIRE: -- and treat it as if they are all on

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1 the case.

2 THE COURT: Jerri, I don't see Diane in here. Is
3 she going to actually do the sitting, or who's going to
4 do it?

5 MADAM CLERK: Yes, ma'am.

6 THE COURT: Diane will?

7 MADAM CLERK: Yes, ma'am.

8 THE COURT: Okay. Then, I need to get her out here
9 and I need to have that discussion with her, if she just
10 goes through as far as we're going to be pulling 15
11 jurors. I'll instruct her, Mr. McGuire. And if, for
12 some reason, she starts saying, I'll probably yell over
13 top of her, unfortunately, if I have to.

14 MR. MCGUIRE: Thank you, your Honor.

15 THE COURT: Okay? All right.

16 MR. STONE: Your Honor, the only thing I'd offer
17 is, if you're not going to tell the alternate, who the
18 alternates -- if you would actually be the one
19 appointing the foreman. I would hate for an alternate
20 to get appointed as the foreman.

21 MR. MCGUIRE: That's fine.

22 THE COURT: Okay.

23 MR. STONE: And I have no objection to the other.

24 THE COURT: Okay. Okay. All right. Well, I
25 appreciate that. And again, that's understanding, too,

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1 that they're going to come and be all over. So, again,
2 I'm comfortable with that. So, okay. Al, what do you
3 need?

4 BAILIFF: I'm just waiting, your Honor, to release
5 other people.

6 BAILIFF: To release these other people.

7 THE COURT: Okay.

8 BAILIFF: So I can get this room cleared out.

9 THE COURT: I think we can go ahead and release the
10 other people that are in the back. Since we only have
11 about 15 minutes or so and we're going to take a break,
12 we're just going to have to bring Mr. Daise right back
13 out. I don't know, Mr. Daise, if you need a break, sir.
14 I don't want to necessarily hold him back too long, but
15 bring him right back out here. So, just do whatever you
16 have to do to accommodate him, and then we'll go
17 forward. Okay? All right.

18 OFF THE RECORD 10:49 A.M.

19 BACK ON THE RECORD 11:28 A.M.

20 BY THE COURT:

21 BAILIFF: All rise.

22 THE COURT: Thank you all. Please be seated.
23 Sorry, I wasn't loud enough. All right. It's my
24 understanding that we are missing two of the qualified
25 jurors. The first one is Natalia Chmielowski, Juror

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1 Number 117. She is Number 19 in our order. We have
2 called every phone number and phone line we have for her
3 and cannot get her.

4 The second one is Number 20 in line, Jeffrey Jones,
5 who was Juror Number 352. He thought he was found not
6 qualified and was sitting at his work on Hilton Head,
7 which is an hour away. We've told him to get in his car
8 and come. What do you want to do with those two jurors?
9 And we can certainly go forward. What's your all's
10 position?

11 And I may want to give you a moment to see if --
12 Ms. Chmielowski, I don't know if she's going to show up
13 or not. We can't find her. But Jeffrey Jones, it'll
14 take him from now about 45 minutes to get here.

15 MR. MCGUIRE: Judge, we're okay with that, just
16 cutting them loose.

17 THE COURT: You're okay with cutting them loose.
18 Is that correct? Solicitor?

19 MR. STONE: How long? 45 minutes?

20 THE COURT: 45 minutes. And that's just for one of
21 them. The other one we have not gotten a hold of.

22 MR. STONE: Right.

23 THE COURT: I guess this somewhat reinforced his
24 question about hardship that he is a commission-based
25 employee, and apparently, he felt it was more important

1 to be sitting at work this morning than to be here.

2 And actually, while the Solicitor's Office is
3 looking at those two jurors, I also want to let you all
4 know that we are having an issue with the HVAC system
5 here in the courthouse. There's no problem in the
6 courtrooms, as you all can feel, but the rest of the
7 outlying areas don't have any air conditioning, or heat,
8 for that matter.

9 What Mark has done, and it's Mark Roseneau who's
10 the head of the building and court facilities
11 maintenance, he has gone ahead and put in a portable air
12 conditioning unit back in the jury room. And I've
13 already been back there and felt it. It's nice. It's
14 perfectly fine. I think we're not going to have a
15 problem as of right now. Again, we'll monitor that.

16 My thought, though, is, when I told our clerk of
17 court back there, while we did plan on sending them out
18 for lunch today, we will continue to do that. And as
19 long as we have this air conditioning issue, we will be
20 sending them out to lunch so they don't have to be in
21 the courthouse any longer than necessary.

22 Again, I'm not worried about it, because the jury
23 room feels fine. The courtroom feels fine. It's just
24 the outer lying areas, the lobbies, and back in the
25 offices. Okay? I just wanted to let you all know.

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1 Solicitor?

2 MR. STONE: Judge, I'll be honest with you, I don't
3 mind. I know we have not gotten in touch with, I think
4 it's Chmielowski.

5 THE COURT: Um-hmm.

6 MR. STONE: Is it? And I certainly understand
7 that. I'm concerned. I don't know, we've got a new
8 question going to the whole panel. I don't know if
9 that's going to disqualify anybody or not. Obviously,
10 if we cannot get in touch with Ms. Chmielowski, then I
11 think we move on. I don't have any problem.

12 The other one you have gotten in touch with and
13 he's on his way. I think we, quite frankly, I think we
14 ought to wait. I'm just -- I'm concerned about the
15 randomness of this and making sure it stays in the right
16 order. And again, obviously, if we can't get in touch
17 with Ms. Chmielowski, there's nothing we can do, and
18 there's no reason to stop the whole process. But for
19 those that we have gotten in touch with that are on
20 their way, but I will leave that to your discretion. I
21 just -- I would be concerned about that.

22 THE COURT: Mr. Young.

23 MR. YOUNG: Your Honor, as you know, I think -- I
24 know that we say that we're not engaging in horse
25 trading, we both know what each one of those jurors'

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1 responses are. If we're going to wait on Mr. Jones,
2 then I would ask that a deputy be sent out to try and
3 find Ms. Chmielowski, and we wait on her, too. I mean,
4 we both know which one we like, which one we don't like.
5 We're both losing somebody if we excuse them both.

6 THE COURT: Okay. All right. We're going to go
7 ahead and move forward. I think we need to, just based
8 on time. So, I'm going to go ahead and excuse them
9 both, although we're going to let him come in. And I am
10 going to have someone go and pick up Ms. Chmielowski
11 just to deal with them. Certainly, we'll do it as is
12 necessary. You all don't need to concern yourselves
13 with that.

14 Yes?

15 MR. MCGUIRE: Just so I'm clear. So, the Court is
16 sending the sheriff to look for Ms. Chmielowski?

17 THE COURT: I'm going to -- not this moment.
18 Obviously, they've defied a court order. I need them
19 back in the courtroom just to speak with them, to have
20 them understand the importance of it. Mr., I believe is
21 it --

22 MADAM CLERK: Jeffrey Jones.

23 THE COURT: Mr. Jones is on his way, but I do think
24 we need to go forward. I'm hopeful we can pull a jury.
25 And obviously, we still have 39, and hopefully, I won't

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1 lose anymore. Again, --

2 MR. MCGUIRE: My understanding with Ms. --

3 THE COURT: Chmielowski.

4 MR. MCGUIRE: Thank you. Is that she was in a car
5 wreck, and I mean, I don't know if -- she might be
6 trying to get here, as far as we know. I know she was
7 in the car wreck, and she came in anyway. She --

8 THE COURT: Right.

9 MR. MCGUIRE: Despite being in the car wreck.

10 THE COURT: Again, I just don't know how to get a
11 hold of her. We have called her cell number. We've
12 called her home number. Diane you've called her, as
13 well.

14 MADAM CLERK: We had a home, a cell, and an
15 emergency number. We called all three, and there was no
16 voice mail set up for all three of those numbers.

17 THE COURT: Okay. Well, I mean, what do you all
18 want to do? Mr. Turner's on his way, and I can send the
19 deputy out. Where does she live?

20 MADAM CLERK: Hilton Head. He lives in Bluffton,
21 but he was working in Hilton Head. She lives in Hilton
22 Head.

23 MR. MCGUIRE: There should be a patrol car
24 somewhere close in Bluffton, is my guess.

25 THE COURT: All right. Yes, ma'am?

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1 DEPUTY SHERIFF: Do you want me to have someone go
2 find her?

3 THE COURT: Yes, I need you to see if they can find
4 her.

5 DEPUTY SHERIFF: Okay?

6 THE COURT: Okay? Again, they aren't to discuss
7 anything with her. Just simply state that she was
8 required to be here at 11:00 a.m., and she wasn't, and
9 they are happy to give her an escort here to the
10 courthouse. And I need the deputies to call up to you
11 or whomever to confirm that they have her and they are
12 on their way.

13 BAILIFF: Judge, I'll hold Mr. Jones when he gets
14 here 'til you have an opportunity to speak to him, also.

15 THE COURT: All right. I guess we'll be at ease
16 until Mr. Jones gets here, and we'll see if we can put
17 our hands on Ms. Chmielowski.

18 I hope there was no mis-communication. Did anyone
19 talk to her about getting transportation? No?

20 MADAM CLERK: No.

21 BAILIFF: Excuse me, your Honor.

22 THE COURT: Yes?

23 BAILIFF: She was -- I expressed my concern about
24 her accident, and I indicated that we could provide
25 transportation.

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1 THE COURT: Thank you. I appreciate that, Bob.
2 Okay. Just simply needed to ask. Okay. All right.
3 Well, I guess we'll be at ease, then, so we can wait for
4 Mr. Jones to get here, and so, let me know. Okay?

5 MR. MCGUIRE: Thank you, your Honor.

6 THE COURT: Thank you.

7 MR. MCGUIRE: Judge.

8 THE COURT: Yes, sir?

9 MR. MCGUIRE: Just in case I was not clear, just so
10 the Court knows our position, we're happy to strike this
11 moment, right now, without the two.

12 THE COURT: Okay.

13 MR. STONE: Whatever you want to do, your Honor.

14 THE COURT: Okay. All right. Well, I would like
15 to know where they are. I'm actually concerned now
16 about Ms. Chmielowski. I didn't know if she was married
17 or not, but we can check on her.

18 Let's just go forward, if you all are comfortable.
19 Obviously, we're going to strike both of them. Let's
20 just go forward.

21 Okay. You all ready for me to have the jury panel
22 brought in?

23 MR. MCGUIRE: Yes, ma'am.

24 THE COURT: All right. Let's bring them on in.
25 And we need them to actually stand; don't we? Or do we

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1 -- because you have a list that's different. I mean, we
2 could always strike like a civil jury. Do you actually
3 need them to stand?

4 MR. STONE: No, ma'am, I don't.

5 THE COURT: Okay. Okay.

6 MR. STONE: We don't do any -- it's a strike from
7 the left number.

8 THE COURT: Yes.

9 MR. STONE: In other words, Juror Number 1, Juror
10 Number --

11 THE COURT: Exactly. We strike from numbers from
12 the left.

13 MR. YOUNG: No, they won't know who they are.

14 THE COURT: Exactly. Thank you.

15 BAILIFF: Jury pool entering, your Honor.

16 JURORS ENTER COURTROOM 11:39 A.M.

17 THE COURT: Thank you.

18 BAILIFF: Jury pool is present, your Honor.

19 VOIR DIRE OF QUALIFIED POTENTIAL

20 JURORS BY THE COURT:

21 THE COURT: Thank you. Good morning, ladies and
22 gentlemen.

23 RESPONSES OF GOOD MORNING.

24 THE COURT: Thank you all for being back here. We
25 appreciate it.

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1 You okay?

2 MS. FITTS: Yes.

3 THE COURT: All right. Thank you. Ladies and
4 gentlemen, there just a couple more questions I need to
5 ask you. Of course, as you all know, you have been
6 qualified as potential jurors in the trial of this case.
7 So, again, that does not yet mean you are on the jury.
8 However, at this point, we are going to go ahead and
9 choose the jury.

10 Ladies and gentlemen, a couple other questions that
11 I need to ask you. It was reported that one of the
12 potential jurors last week possibly discussed the case
13 with some persons in the panel. My question to you is,
14 ladies and gentlemen, was anyone who is here, were you
15 approached or heard of someone else being approached by
16 another juror in an attempt to discuss this case? If
17 so, please stand.

18 THE COURT: Thank you. Additionally, ladies and
19 gentlemen, there was a lot of media attention this
20 weekend about a tragic murder of Adrian Peterson's son.
21 Mr. Peterson is a professional football player for the
22 Minnesota Vikings. I understand it was on ESPN News and
23 that type of news channels.

24 Ladies and gentlemen, does anyone feel that this
25 coverage may have changed or affected some of your

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1 answers that you gave on your voir dire, which is when
2 you were up here speaking with us, or feel that, for
3 some reason, in regards to hearing those types of
4 allegations and hearing it on the news this weekend,
5 that you now cannot be fair and impartial in the trial
6 of this case? If so, please stand.

7 Sir, your name and juror number.

8 JUROR NUMBER 541: Adam Rosica, 541.

9 THE COURT: Mr. Rosica, if you would, come over
10 here and approach, please.

11 ON-THE-RECORD BENCH CONFERENCE

12 RE JUROR NUMBER 541, OUT OF HEARING

13 OF JURORS.

14 JUROR NUMBER 541: How are you?

15 THE COURT: What was your name? Sir, I'm going to
16 need you to keep your voice lowered.

17 JUROR NUMBER 541: Yes, ma'am.

18 JUROR NUMBER 541: I was friends with the 27-year
19 old guy that was killed in Charleston.

20 THE COURT: Okay.

21 JUROR NUMBER 541: That's what --

22 THE COURT: Okay. Did you know him or had a
23 personal relationship?

24 JUROR NUMBER 541: I buddied with him.

25 THE COURT: You and your buddy?

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1 JUROR NUMBER 541: I did, and my buddy knew him.

2 THE COURT: And you think that would affect your
3 ability to be fair and impartial in the trial of this
4 case?

5 JUROR NUMBER 541: No, but you asked about it.
6 What you said earlier on the stand and the death and the
7 sentence. They seem like a senseless murder.

8 THE COURT: Okay.

9 JUROR NUMBER 541: That I would -- and I was asked
10 earlier about the death penalty. I won't be asked it
11 now.

12 THE COURT: Just based on that?

13 JUROR NUMBER 541: Yeah.

14 THE COURT: Having heard that case --

15 JUROR NUMBER 541: Yeah.

16 THE COURT: You don't think you can consider in
17 this case both the potential life sentence and the death
18 sentence?

19 JUROR NUMBER 541: To me, that sentence is murder.
20 I believe they should be -- they don't deserve to live.

21 THE COURT: Okay. And is there anything I can do
22 to change that opinion, or is there anything the lawyers
23 can do? And not that I want to necessarily change it,
24 but you're telling me that you cannot sit?

25 JUROR NUMBER 541: Not after this weekend.

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1 THE COURT: Okay. All right... I'm going to go
2 ahead and excuse you from the trial of this case. I
3 don't want you to discuss it with anyone. Okay?

4 JUROR NUMBER 541: Yeah. Yes, ma'am.

5 THE COURT: Thank you.

6 THE COURT: Mr. Stone, come on back.

7 MR. STONE: Yes, ma'am. I'm sorry.

8 THE COURT: So, now we're run short.

9 MR. YOUNG: I think we'll be all right. We've got
10 two alternates.

11 MR. MCGUIRE: I think he was an alternate.

12 MR. YOUNG: He was.

13 THE COURT: So, we'll be okay, then? Okay. All
14 right. Let's just go see if we can get back on
15 schedule. Thank you.

16 END BENCH CONFERENCE.

17 THE COURT: Ladies and gentlemen, I also want to
18 make sure that no one in the courtroom has heard
19 anything additional about this case or discussed it in
20 any way since you were last here with us. Is there
21 anyone who has? If so, please stand.

22 Ladies and gentlemen, does any potential juror know
23 of any reason whatsoever that they cannot be a fair and
24 impartial juror in the trial of this case? If so,
25 please stand.

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1 All right. I find this panel qualified.

2 Ladies and gentlemen, at this time -- are we just
3 going to have them simply stand in place when called
4 upon? Is that agreeable from the State and the Defense?

5 MR. STONE: Yes, ma'am. That's acceptable.

6 MR. YOUNG: Yes, ma'am.

7 THE COURT: All right. Diane?

8 Ladies and gentlemen, what we're going to do is
9 this.

10 MR. YOUNG: Wait a minute.

11 THE COURT: Yeah, come here and approach for a
12 minute. Diane, come here. Come on up for a minute.

13 OFF-THE-RECORD BENCH CONFERENCE,

14 OUT OF HEARING OF JURORS:

15 END BENCH CONFERENCE.

16 THE COURT: Ladies and gentlemen, what we're going
17 to do now is, the Solicitor is going to officially call
18 the case.

19 I will tell you that your names have all been re-
20 assigned new numbers. You're going to hear the
21 attorneys either accept someone as a juror or strike
22 someone as a juror. You won't know if it's you or not
23 because, again, you have been assign a new number.

24 You are going to simply sit tight until that
25 process is complete, ladies and gentlemen. And then,

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1 after that, Diane is going to go ahead and call those
2 people who have been chosen as jurors in this case. All
3 right?

4 So, as it stands right now, you don't have to do
5 anything. Just keep your seat, sit. All right?

6 Solicitor.

7 CALLING OF CASE BY MR. STONE:

8 MR. STONE: May it please the Court, your Honor?
9 In Indictment 2009-GS-07-2636, the State charges Earnest
10 Stewart Daise with murder; and that on November the
11 15th, 2009, with malice aforethought, Earnest Stewart
12 Daise did kill and murder Jeanine Mullen by means of
13 shooting her; and that Jeanine Mullen did die in
14 Beaufort County as an approximate result thereof.

15 Indictment 2009-GS-07-2639, charging that, in
16 Beaufort County, on or about November the 15th, 2009,
17 with malice aforethought, Earnest Stewart Daise did kill
18 and murder **John Doe 1** by the means of
19 shooting him; and that **John Doe 1** did die in
20 Beaufort County as approximate result thereof.

21 That Indictment 2009-GS-07-2637, again charging
22 Earnest Stewart Daise with the offense of assault and
23 battery with intent to kill; that in Beaufort County, on
24 or about November the 15th, 2009, the defendant, with
25 malice aforethought, did commit an unlawful act of

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1 violent nature upon the victim, **John Doe 2**

2 2009-GS-07-2595, charging Earnest Stewart Daise
3 with the offense of possession with intent to distribute
4 marijuana; that in Beaufort County, on November the
5 16th, 2009, the defendant did unlawfully possess, with
6 the intent to distribute, dispense, or deliver a
7 quantity of marijuana more than 28 grams -- 29 grams as
8 controlled substance under the provisions of South
9 Carolina law.

10 And Indictment 2009-GS-07-2594, charging Earnest
11 Stewart Daise with the offense of trafficking crack
12 cocaine; that in Beaufort County, on or about November
13 the 16th, the defendant, Earnest Stewart Daise knowingly
14 did sell, manufacture, deliver, purchase, bring into the
15 state, or possess a controlled substance in violation of
16 *South Carolina Code Section 44-53-375.*

17 MR. STONE HANDS DOCUMENTS TO MADAM

18 CLERK.

19 THE COURT: Thank you. All right. Ladies and
20 gentlemen, to these indictments, the defendant has pled
21 not guilty. At this time, we're going to go ahead and
22 pull the jury for the trial of this case.

23 Ms. Cade.

24 JUROR SELECTION:

25 MADAM CLERK: Yes, Judge. Juror Number 1. What

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1 says the State?

2 MR. STONE: Excuse the juror, please.

3 MADAM CLERK: Juror Number 2. What says the State?

4 MR. STONE: Seat the juror.

5 MADAM CLERK: What says the Defense?

6 MR. YOUNG: Swear the juror..

7 MADAM CLERK: Juror Number 3. What says the State?

8 MR. STONE: Seat the juror.

9 MADAM CLERK: What says the Defense?

10 MR. YOUNG: Excuse the juror.

11 MADAM CLERK: Juror Number 4. What says the State?

12 MR. STONE: Present the juror.

13 MADAM CLERK: What says the Defense?

14 MR. YOUNG: Swear the juror.

15 MADAM CLERK: Juror Number 5. What says the State?

16 MR. STONE: Present the juror.

17 MADAM CLERK: What says the Defense?

18 MR. YOUNG: Excuse the juror.

19 MADAM CLERK: Juror Number 6. What says the State?

20 MR. STONE: Present the juror.

21 MADAM CLERK: What says the Defense?

22 MR. YOUNG: Excuse the juror.

23 MADAM CLERK: Juror Number 7. What says the State?

24 MR. STONE: Present the juror.

25 MADAM CLERK: What says the Defense?

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1 MR. YOUNG: Swear the juror.
2 MADAM CLERK: Juror Number 8. What says the State?
3 MR. STONE: Present the juror.
4 MADAM CLERK: What says the Defense?
5 MR. YOUNG: Swear the juror.
6 MADAM CLERK: Juror Number 9. What says the State?
7 MR. STONE: Present the juror.
8 MADAM CLERK: What says the Defense?
9 MR. YOUNG: Excuse the juror.
10 MADAM CLERK: Juror Number 10. What says the
11 State?
12 MR. STONE: Present the juror.
13 MADAM CLERK: What says the Defense?
14 MR. YOUNG: Swear the juror.
15 MADAM CLERK: Juror Number 11. What says the
16 State?
17 MR. STONE: Present the juror.
18 MADAM CLERK: What says the Defense?
19 MR. YOUNG: Excuse the juror.
20 MADAM CLERK: Juror Number 12. What says the
21 State?
22 MR. STONE: Present the juror.
23 MADAM CLERK: What says the Defense?
24 MR. YOUNG: Excuse the juror.
25 MADAM CLERK: Juror Number 13. What says the

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1 State?

2 MR. STONE: Present the juror.

3 MADAM CLERK: What says the Defense?

4 MR. YOUNG: Excuse the juror.

5 MADAM CLERK: Juror Number 14. What says the
6 State?

7 MR. STONE: Excuse the juror.

8 MADAM CLERK: Juror Number 15. What says the
9 State?

10 MR. STONE: Present the juror.

11 MADAM CLERK: What says the Defense?

12 MR. YOUNG: Swear the juror.

13 MADAM CLERK: Juror Number 16. What says the
14 State?

15 MR. STONE: Present the juror.

16 MADAM CLERK: What says the Defense?

17 MR. YOUNG: Excuse the juror.

18 MADAM CLERK: Juror Number 17. What says the
19 State?

20 MR. STONE: Excuse the juror.

21 MADAM CLERK: Juror Number 18. What says the
22 State?

23 MR. STONE: Present the juror.

24 MADAM CLERK: What says the Defense?

25 MR. YOUNG: Swear the juror.

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1 MADAM CLERK: Juror Number 21. What says the
2 State?

3 MR. STONE: Present the juror.

4 MADAM CLERK: What says the Defense?

5 MR. YOUNG: Swear the juror.

6 MADAM CLERK: Juror Number 22. What says the
7 State?

8 MR. STONE: Present the juror.

9 MADAM CLERK: What says the Defense?

10 MR. YOUNG: Swear the juror.

11 MADAM CLERK: Juror Number 23. What says the
12 State?

13 MR. STONE: Present the juror.

14 MADAM CLERK: What says the Defense?

15 MR. YOUNG: Swear the juror.

16 MADAM CLERK: Juror Number 24. What says the
17 State?

18 MR. STONE: Present the juror.

19 MADAM CLERK: What says the Defense?

20 MR. YOUNG: Excuse the juror.

21 MADAM CLERK: Juror Number 25. What says the
22 State?

23 MR. STONE: Present the juror.

24 MADAM CLERK: What says the Defense?

25 MR. YOUNG: Swear the juror.

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1 MADAM CLERK: Juror Number 26. What says the
2 State?

3 MR. STONE: Excuse the juror.

4 MADAM CLERK: Juror Number 27. What says the
5 State?

6 MR. STONE: Present the juror.

7 MADAM CLERK: What says the Defense?

8 MR. YOUNG: Excuse the juror.

9 MADAM CLERK: Juror Number 29. What says the
10 State?

11 MR. STONE: Present the juror.

12 MADAM CLERK: What says the Defense?

13 MR. YOUNG: Swear the juror.

14 MADAM CLERK: Juror Number 30. What says the
15 State?

16 MR. STONE: Present the juror.

17 MADAM CLERK: What says the Defense?

18 MR. YOUNG: Excuse the juror.

19 MADAM CLERK: Juror Number 31. What says the
20 State?

21 MR. STONE: Present the juror.

22 MADAM CLERK: What says the Defense?

23 MR. YOUNG: Excuse the juror.

24 MADAM CLERK: Juror Number 32. What says the
25 State?

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1 MR. STONE: Present the juror.

2 MADAM CLERK: What says the Defense?

3 MR. YOUNG: Swear the juror.

4 MADAM CLERK: Juror Number 33. What says the
5 State?

6 MR. STONE: Present the juror.

7 MADAM CLERK: What says the Defense?

8 MR. YOUNG: Swear the juror.

9 MADAM CLERK: Juror Number 34. What says the
10 State?

11 MR. STONE: Excuse the juror.

12 MADAM CLERK: Juror Number 35. What says the
13 State?

14 MR. STONE: Present the juror.

15 MADAM CLERK: What says the Defense?

16 MR. YOUNG: Excuse the juror.

17 MADAM CLERK: Juror Number 36. What says the
18 State?

19 MR. STONE: Present the juror.

20 MADAM CLERK: What says the Defense?

21 MR. YOUNG: Begging the Court's indulgence for a
22 second.

23 THE COURT: Yes, sir.

24 MR. YOUNG: Excuse the juror.

25 MADAM CLERK: Juror Number 37. What says the

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1 State?

2 MR. STONE: Present the juror.

3 MADAM CLERK: What says the Defense?

4 MR. YOUNG: Swear the juror.

5 MADAM CLERK: I believe that concludes it.

6 REVIEW OF JUROR STRIKES:

7 THE COURT: Okay. Will you go ahead and review the
8 strikes.

9 MADAM CLERK: Yes, Judge.

10 THE COURT: Thank you.

11 MADAM CLERK: The strikes for the State would be
12 Juror 1, 14, 17, 26, and 34. Is that correct?

13 MR. STONE: Yes, ma'am.

14 MADAM CLERK: And for the Defense, the strikes
15 would be 3, 5, 6, 9, 11, 12, 13, 16, 24, 30, 31, 35, and
16 36. Is that correct?

17 MR. YOUNG: And 27.

18 MADAM CLERK: And 27, additionally.

19 MR. YOUNG: Oh, 27.

20 THE COURT: Thank you. Is that correct?

21 MR. YOUNG: Yes, ma'am.

22 THE COURT: All right. Ladies and gentlemen, when
23 your name is called, would you please bring all your
24 belongings and come and take a seat up in the jury box.

25 Thank you, Diane.

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1 MADAM CLERK: Juror Number 695, Patricia Youmens.

2 THE COURT: Come on around, Ms. Youmens.

3 MADAM CLERK: Juror Number 469, Frank Nappi. Juror
4 Number 570, Gladys Simmons. Juror Number 318, Dietra
5 Holmes. Juror Number 669, Henry White. Juror Number
6 339, Geoffrey Jackson.

7 Juror Number 639, Jacqueline Underhill. Juror
8 Number 654, Stephen Wallace. Juror Number 345, Ben
9 Johnson. Juror Number 526, Thomas Reilley. Juror
10 Number 470, James Nasuti.

11 And Juror Number 283, Ruth Groh. And Juror Number
12 408, Robert Maroudas. Juror Number 449, Cynthia Mills.
13 And Juror Number 482, Beverly O'Brien.

14 THE COURT: Are there any matters of law we need to
15 take up regarding jury selection process from the State?

16 MR. STONE: None from the State, your Honor.

17 MR. YOUNG: None from the Defense, your Honor.

18 THE COURT: Thank you. Ladies and gentlemen, those
19 of you that are sitting back out in the panel, I get to
20 relieve you now of your jury service and send you away
21 with my thanks. We appreciate you being a part of this
22 process. At this time, I'm going to go ahead and excuse
23 you. Thank you. May I see the attorneys?

24 COURT REPORTER: Do you need me, Judge?

25 THE COURT: Pardon?

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1 COURT REPORTER: Do you need me?

2 THE COURT: No.

3 OFF-THE-RECORD BENCH CONFERENCE,

4 OUT OF HEARING OF JURORS.

5 JURORS NOT SELECTED LEAVE COURTROOM.

6 BAILIFF: The jury pool is clear, your Honor.

7 THE COURT: Thank you, Al. Well, welcome, ladies
8 and gentlemen. As I'm sure you understand, you are the
9 jury for the trial of this case.

10 Ladies and gentlemen, very briefly we're going to
11 break for lunch. I do that, ladies and gentlemen,
12 because I anticipate some of you are going to have to
13 call home or work and let them you know that you've been
14 chosen as jurors here, and I understand and appreciate
15 that.

16 Ladies and gentlemen, I will have to caution you on
17 a number of things, and I'm going to do it each time we
18 part; anytime you go to lunch; to, you know, home for
19 dinner; come back in the morning; those types of things.
20 You may get tired of hearing me say it, but I want you
21 to understand how vitally important it is. I'm required
22 by law to say it. And additionally, you are required by
23 law to follow it.

24 First off, when you have to go call someone over
25 lunch or whatever arrangements you are making, the only

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1 thing you are permitted to say is that you've been
2 chosen as a juror in the trial of a criminal case. You
3 can't say the parties involved, the attorneys, or
4 anything about the case.

5 And the reason is this. Inevitably, someone is
6 going to want to tell you something about something,
7 when they know absolutely nothing about this case. I
8 know I told some of you during the voir dire, when we
9 were talking to you, that you fifteen will have a front-
10 row seat to this. No one will have better or more
11 information about this case than you.

12 It would be highly improper for anyone to influence
13 you in any way in your decision making as jurors during
14 the trial of this case. So, out of an abundance of
15 caution, I instruct you not to speak about it with
16 anyone.

17 And ladies and gentlemen, that includes your
18 spouses, your loved ones, friends, family members,
19 neighbors, absolutely anyone. All right? And I'm going
20 to ask you each morning, ladies and gentlemen, whether
21 or not you have spoken about it.

22 Additionally, ladies and gentlemen, the lawyers,
23 the parties, and the witnesses have been instructed they
24 are not to speak to you in coming and going from the
25 courthouse in the next couple weeks. And the reason

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1 why, ladies and gentlemen, is, even if an innocent
2 conversation in the parking lot, isn't it a beautiful
3 day out, or doesn't it look like it's going to be rain,
4 is going to be misinterpreted, and it will be reported,
5 ladies and gentlemen. And out of an abundance of
6 caution, I tell them not to speak to you in any way,
7 shape, or form.

8 So, if you pass them in the courthouse while
9 they're coming and going during the trial of this case
10 and they don't even smile or say hello, please don't be
11 offended. They are following my orders. All right?

12 Additionally, ladies and gentlemen, I have
13 instructed you over the weekend, and now it becomes that
14 much more important that you do not read, view, listen
15 to, do any independent research about this case
16 whatsoever. Again, that would be highly inappropriate,
17 ladies and gentlemen.

18 I remind you, you're going to need [sic] everything
19 you have to determine this case presented here in this
20 courtroom, and it will be accurate, ladies and
21 gentlemen. So, therefore, that is the only thing that
22 you may consider in your deliberations during the trial
23 of this case. So, again, out of an abundance of
24 caution, I tell you that.

25 Also, ladies and gentlemen, I know that, when you

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1 came into the courthouse over the last few days, you've
2 been instructed that you aren't to have a cell phone or
3 any computers. Again, I have to tell you that, as you
4 sit as a juror in the trial of this case, you can't have
5 access to your cell phone and computers. And the simple
6 reason is, there's just too much chance or opportunity
7 for you to get information on those cell phones or
8 computers.

9 When I send you back to your jury room, Bob is
10 going to give you some instructions. The first off is
11 going to be a direct phone line that I want to give your
12 family and friends and loved ones. If someone needs to
13 reach you emergently, they call that line, and all they
14 have to say is that you're a juror during the trial of a
15 case, and I will assure you, you will be found
16 immediately.

17 Additionally, ladies and gentlemen, if, while on
18 jury service, you need access to a phone, simply ask the
19 bailiffs to be able to use the phone. They will give
20 you access to a phone and assist you. All right?

21 Ladies and gentlemen, I have to tell you, I really
22 appreciate your willingness to serve. I understand that
23 this is an inconvenience and a hardship. I understand
24 you have businesses and lives and other things you want
25 to go about doing. But please know, again, we cannot do

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1 our jobs without you willing to be here and serve.

2 And again, you are the most important person in
3 this courthouse. If you need anything while you are
4 here on jury service, simply ask the bailiffs, and they
5 will bring it to my attention.

6 Additionally, ladies and gentlemen, if you have a
7 particular engagement, maybe a business closing or some
8 specific thing you have to be at, at a certain time, as
9 you all understand, we expect this trial to last a
10 couple of weeks, I certainly can break, if I need to,
11 for someone that has something that they are very
12 concerned about that simply requires their presence.

13 I'm not talking about a general hardship; I'm
14 talking about something that you specifically have to be
15 at. I'm going to ask that you tell Bob and write down
16 the day and time you need to be somewhere, and I'm going
17 to do my very best to accommodate you.

18 Again, I appreciate that you have things going on,
19 and I will do what I need to do to make sure that you
20 are able to meet your obligations. All right?

21 Ladies and gentlemen, at this time, we're going to
22 go ahead and break for lunch. It is noon. We are going
23 to come back at 1:15 where I anticipate we are going to
24 go ahead and swear you in as a jury in the trial of this
25 case.

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1 I am going to give you a few brief instructions,
2 and then these attorneys are going to give their opening
3 statements where they're going to tell you what they
4 believe are the issues in this case. And then, ladies
5 and gentlemen, we are going to begin trying the case.

6 We are doing everything we can to do this process
7 as quickly and expediently as possible. Ladies and
8 gentlemen, please understanding the importance of it, we
9 all want to make sure that what we do is correct.

10 So, to that end, ladies and gentlemen, if there's
11 anything further that the State or the Defense would
12 like me to instruct the jury?

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

14 THE COURT: From the Defense?

15 MR. MCGUIRE: No, ma'am.

16 THE COURT: Again, ladies and gentlemen, thank you
17 for your willingness to serve. Bob is going to take you
18 back in your jury room so you know where to report.

19 I'm going to go ahead and tell you right now,
20 ladies and gentlemen, that we have had some issues with
21 the HVAC system here this week. When you go into your
22 jury room, you're going to see what looks like a big
23 gadget, which truthfully, I've never seen one before.
24 But basically, it's an individual commercial HVAC
25 system.

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1 The courtrooms are not affected. We feel fine in
2 here, and there's no issue. It's the outer areas of the
3 courthouse that are having a problem, so I've had
4 brought in an HVAC system into your jury room so you
5 will all be comfortable.

6 If there are any issues, just please let me know,
7 but I just wanted to explain that to you as you walk in,
8 you're going to walk in and see on the left that there's
9 an odd-looking thing. It's simply a commercial HVAC
10 system.

11 So, to that end, ladies and gentlemen, have a
12 wonderful lunch. Do not discuss this case. We look
13 forward to seeing you back in your jury room at 1:15.
14 And Bob and the other bailiffs, Debbie, are going to
15 give you directions on where you are going to report
16 back to. You don't come directly to the courtroom.
17 You're going to come around another way. All right?
18 Thank you again, ladies and gentlemen. We'll see you at
19 1:15.

20 BAILIFF: Thank you, your Honor. Be careful of the
21 steps, please, folks.

22 JURORS LEAVE COURTROOM 12:07 P.M.

23 BAILIFF: Jury is clear and the door is closed,
24 your Honor.

25 REVIEW OF JURORS NOT SELECTED

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1 THAT DEFENSE OBJECTED TO; AND
2 JURORS SELECTED THAT DEFENSE DID
3 NOT OBJECT TO, BY THE COURT:

4 THE COURT: All right. Any exceptions? Anything
5 from the State?

6 MR. STONE: Not from the State, your Honor.

7 THE COURT: From the Defense?

8 MR. MCGUIRE: No, ma'am.

9 THE COURT: I just want to go ahead and quickly put
10 on the record, just in regards to the juror
11 qualification process in an attempt, if necessary, for
12 appellate review. My law clerk has gone through and
13 pulled through the information. On that, there were
14 eight people that I found qualified that the Defense
15 objected to, and of those eight people, seven of them
16 had answered no to the mitigation question on Page 6,
17 that Defense had asked me to ask.

18 I will, also, go ahead and put on the record --
19 and I apologize, those were Jurors Number 210, Ellis;
20 Number 46, Bennett; Number 1, Adams; Number 337, Ingram;
21 Number 660, Wafford; Number 246, Freeland, with an F;
22 and Number 181, Delano. I will go ahead -- and also
23 Jacqueline Underhill, Number 639, while she didn't
24 indicate no. All of those people, obviously, the
25 Defense struck as potential jurors in this case. They

1 are not sitting on this panel.

2 I will also tell you that there were another nine
3 persons who also answered no to the mitigation question
4 on Number 6 who the Defense did not object to. And of
5 those people --

6 Have you looked to see how many of those are
7 actually sitting as jurors?

8 And I apologize, we didn't go that far on the list.
9 And six of those persons are, in fact, sitting, and they
10 were people that the Defense didn't object to.

11 Okay. And Jacqueline Underhill -- thank you -- was
12 also seated. I just do that for record purposes, so for
13 the Court of Appeals and for the appellate lawyers,
14 quite frankly, so they don't have to go through and
15 deduce that, the sheets, and to help save them time if
16 it becomes necessary. So, again, I appreciate it, you
17 all.

18 It's been a good process, I think, as far as the
19 jury selection is concerned. You know, other than
20 making a comment on that, I know we were kind of flying
21 in the dark a little bit, but I appreciate both sides
22 being very, very professional in helping ace this
23 process, and I just want to thank you all very much.

24 MR. MCGUIRE: Thank you, your Honor. And the only
25 thing I would add for the record for appellate purposes,

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1 we didn't file a *Batson* motion. We didn't raise a
2 *Batson* challenge, and I don't believe that we have to
3 renew our objections to the jurors that come up. We did
4 use all our strikes. I think we'll probably reserve for
5 the record regarding any voir dire issues or mitigation
6 or impairment or --

7 COURT REPORTER: I'm sorry, any voir dire issues
8 and?

9 MR. MCGUIRE: Regarding mitigation -- regarding
10 mitigation, impairment, and anything along that vein.

11 THE COURT: Okay. Thank you all. I appreciate
12 that. Let's go ahead. We have a nice lunch. My
13 understanding, Mr. Stone and Mr. McGuire are doing the
14 openings on their respective parts?

15 MR. MCGUIRE: Yes, ma'am.

16 THE COURT: All right. We look forward to starting
17 back at 1:15, you all.

18 MR. MCGUIRE: Are we ready to move into --

19 BAILIFF: Yes.

20 MR. MCGUIRE: Thank you.

21 THE COURT: My only concern, do they have HVAC?

22 BAILIFF: No, sir. No, ma'am.

23 THE COURT: This is the problem, of course.
24 There's no HVAC. If you all would like Courtroom 2, you
25 can go to Courtroom 2, which has HVAC. What I'm

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1 thinking, though, Mr. Young, is I'll tell you this.
2 Hopefully, we'll get up and going. We do have court
3 scheduled for next week, so I may have to move you over
4 the weekend. So, it's up to you. I don't want you
5 sweating out back there. You just tell us which place
6 you prefer to have.

7 MR. YOUNG: We're going to set up in the jury
8 assembly room.

9 THE COURT: I want to make sure you're comfortable,
10 though.

11 MR. YOUNG: We're going to be all right.

12 THE COURT: They're drop-shipping, my understanding
13 is, they're drop-shipping one of these new, big HVAC
14 systems. They believe the existing crane out there will
15 be able to take it. The drop-ship comes tomorrow.
16 We've got our fingers crossed. Of course, we never
17 anticipated this happening.

18 So, if you are wanting to go ahead and start out
19 there and see if it's okay, Mr. Young, you are free to.
20 If it becomes unbearable, just let us know. We can
21 stick you in Courtroom 2.

22 MR. YOUNG: Thank you.

23 THE COURT: Whichever. Okay? I appreciate it, you
24 all. Thank you.

25 I'm sorry, one other thing on the record. I

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1 apologize. Which motion is this? Do you know? Was
2 there any objection from the State to the introductory
3 charge that the Defense has requested? And I apologize,
4 I can't remember which motion it was attached to. Have
5 you looked at it, Mr. Stone?

6 MR. STONE: I have not.

7 THE COURT: Why don't you, over the lunch hour,
8 take a look at it. Do you all know which motion it was?
9 I apologize. I just have where it's -- I've got the
10 exhibit, but still.

11 MR. THORNTON: Your Honor, I know that there were
12 two things that we objected to. One was the language in
13 there about the electrocution and lethal injection.

14 THE COURT: Okay.

15 MR. THORNTON: I know I objected to the reference
16 to that.

17 THE COURT: Okay.

18 MR. THORNTON: And I apologize, Judge, there was
19 one other thing, but I will find it over the lunch
20 break. But there were only two phrases in there that I
21 objected to. That was one of them. I don't remember
22 what the other one was, but I will be able to tell you
23 before -- when we come back from lunch.

24 THE COURT: Okay. The other thing I also, I will
25 tell you that I just put in there, too. When it broke

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1 down to two different stages, after the first stage
2 where we say, where I instruct them on they have to
3 return a verdict of guilty or not guilty, I do, at that
4 point, say:

5 *And that verdict must be a unanimous*
6 *verdict as to the guilt or innocence.*

7 So, that's something that I just added in. I just
8 thought it made better sense. So, when we come back,
9 Mr. Thornton, if you could just tell me specifically
10 what you object to, and I'll go ahead.

11 MR. THORNTON: Yes, ma'am.

12 THE COURT: Okay. I apologize. It is Number 60,
13 to help you. Six-zero.

14 MR. THORNTON: Yes, ma'am.

15 THE COURT: Okay. Thank you, you all.

16 MR. MCGUIRE: We return at 1:15?

17 THE COURT: Pardon?

18 MR. MCGUIRE: 1:15?

19 THE COURT: 1:15, yes, sir. Thank you.

20 OFF THE RECORD 12:13 P.M.

21 BACK ON THE RECORD 1:20 P.M.

22 DEFENSE MOTION NUMBER 49:

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

25 THE COURT: All right. I think we're ready just to

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1 put a few things on the record before the jury comes
2 out. We were talking about Defendant's Number 60
3 motion.

4 MR. THORNTON: It's actually not Number 60, your
5 Honor. It's Number 49.

6 THE COURT: Thank you.

7 MR. THORNTON: There were actually three or four
8 different motions related to the instructions. This was
9 in relation to Motion 49.

10 THE COURT: Okay.

11 MR. THORNTON: Your Honor, I know for a fact one of
12 the issues I had was, it says -- there's two places, one
13 on what was referenced as Page 7. It's not the 7th
14 page; it's actually the 2nd page at the bottom.

15 THE COURT: I've got that. I've taken out where it
16 says electrocution or lethal injection --

17 MR. THORNTON: Electrocution or lethal injection?

18 THE COURT: I've taken it out.

19 MR. THORNTON: And there's also, on the next page,
20 as well, your Honor, at the very bottom, they mentioned
21 it again there, which bleeds over onto Page 9.

22 THE COURT: Okay.

23 MR. THORNTON: The other issue I had, your Honor,
24 was, it says:

25 *If a jury returns a verdict of not*

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1 *guilty or cannot agree on a verdict, then*
2 *the trial is over.*

3 You know, we went through -- the Defense took a
4 great painstaking view to keep telling the jury how it
5 was different, and in the penalty phase, you know, it
6 didn't mean that the case would have to be re-tried or
7 anything like that. I'm okay with language that says if
8 it's not guilty, then, you know, you would not go to a
9 second phase, or then the trial would be over, and we
10 wouldn't go to a second phase, because they do, at the
11 very next paragraph, say, *if it's guilty*, then what you
12 do.

13 My issue is with -- and if you guys can't make the
14 call, I feel like we keep minimizing it.

15 THE COURT: I can help you with this.

16 MR. THORNTON: Yes, ma'am.

17 THE COURT: And I plan on just taking out that
18 sentence. And then, below it I just say:

19 *If the jury returns a unanimous*
20 *verdict of guilty, then, the trial will*
21 *go into the second stage.*

22 MR. THORNTON: That's fine with the State, your
23 Honor. Thank you.

24 THE COURT: Okay? That takes care of it. Okay?
25 Also, we haven't discussed this. What about the jury

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1 taking notes? Does the State or the Defense have a
2 position?

3 MR. MCGUIRE: We don't have an objection.

4 MR. STONE: Doesn't matter, your Honor.

5 THE COURT: Okay. At this time, I'm going to
6 instruct them not to take notes. If I think that things
7 are starting to get where they would benefit from note-
8 taking, I will, at that point, give them pens and
9 papers, as you know. At this time, I'll just tell them
10 to sit back and listen to the testimony.

11 Anything else, you all, before we bring the jury
12 in?

13 MR. MCGUIRE: Just one issue, and I talked to Sean
14 about it just one second ago. The only outstanding
15 objection we have is to some of their photographs, or
16 the ones depicting a little smear of blood on our
17 client's door to his own bedroom.

18 THE COURT: Okay.

19 MR. MCGUIRE: And this is in Jay's trailer, not the
20 crime scene.

21 THE COURT: Right.

22 MR. MCGUIRE: So, it's his own blood in his own
23 house where he stays with a friend; and the DNA comes
24 back; it's a hundred percent his blood.

25 THE COURT: Okay.

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1 MR. MCGUIRE: So, it just looks like he's got his
2 own blood in his own place, and we're objecting.

3 THE COURT: And again, I haven't heard that. I
4 know when we talked with Mr. Stone, he said there was
5 reasoning behind it, and I don't think now is the time
6 to hear that motion, so I'm just going to assume, since
7 there has been no ruling, Mr. Stone, that it is not on
8 any photographs that you intend to show to the jury. Is
9 that correct?

10 MR. STONE: I don't plan on showing any photographs
11 to the jury, Judge, during my opening anyway, but
12 that's --

13 THE COURT: Thank you. I appreciate that. And
14 also, too, I had not ruled on the three photographs of
15 the bruising of the neck. As to that case, as well, so
16 that doesn't come in. Obviously, like during opening
17 statements, and we have an opportunity to take that up,
18 we will. Okay?

19 THE COURT: Yes, sir.

20 MR. MACDOUGALL: Your Honor, as you know, it's the
21 first time either of us have tried a case in your court.
22 How do you like to handle objections during witness
23 testimony in the presence of the jury?

24 THE COURT: I am happy to make the objection. Give
25 me the purpose behind it. And the only thing I ask is

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1 not for running objections. You can cite, you know, the
2 rule would be fine. Again, I have no problem with you
3 making me make the ruling. Again, I may need to talk to
4 you, but it's absolutely fine. You obviously have to
5 make your record. It doesn't offend me. Just go ahead
6 and make the objection, the basis for it, and if I need
7 to speak with you all, chances are, particularly if it's
8 in an opening, I will ask you all to come forward. But
9 other than that, during the rest of the trial of the
10 case, make them like you always would.

11 MR. MACDOUGALL: Thank you, your Honor.

12 THE COURT: Okay? Sure. Anything else?

13 MR. STONE: One other thing, your Honor. And I
14 want to make sure. I think I understood the ruling, as
15 far as the prior domestic violence, but I want to make
16 sure. There were a number of things on the table.

17 THE COURT: Um-hmm.

18 MR. STONE: The 911 call I know is out. I've got
19 that. My understanding is that domestic violence, or at
20 least the general instances of domestic violences, and
21 my intention was to discuss that in my opening. My
22 intention also was to discuss the threat made to Jeanine
23 Mullen by Earnest Daise.

24 I was not going to touch the photographs, or even
25 put any detail into the choking, which is the result of

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1 those three photographs; nor was I going to refer to the
2 second domestic violence case, which is the photographs
3 of the bedpost. I don't know if you recall that or
4 anything.

5 THE COURT: Right.

6 MR. STONE: And then, there was one other thing I
7 was not going to do, just to make sure that I'm in
8 compliance. Oh, reference anything from **Jas. M.** ,
9 who I believe you wanted to hear from.

10 THE COURT: I want to hear a proffer of, obviously,
11 that incident.

12 MR. STONE: Right.

13 THE COURT: Because number one, you have to prove
14 by clear and convincing evidence. There was no
15 conviction as a result of it, so I think there would
16 have to be a proffer before I even let any of that
17 testimony in.

18 MR. STONE: Yes, ma'am. I just wanted to make sure
19 that I was clear on what we could talk about and what we
20 couldn't, as far as that.

21 THE COURT: You can talk about the general animus
22 and the problems between them, obviously.

23 MR. STONE: Sure.

24 THE COURT: That there has been issues. But I
25 don't want any detail whatsoever going into the opening

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1 statement.

2 MR. STONE: Sure.

3 THE COURT: I mean, that's just -- it's not fair.
4 So, again. Yes, Mr. McGuire.

5 MR. MCGUIRE: And Judge, I would concede that the
6 case law would be that the State could use phrases like:
7 you might hear that they were arguing and fighting at
8 this time, or, like, they were arguing and bickering
9 with each other, stuff like that. But if it's a
10 specific physical act or physical threat, anything like
11 that, we would absolutely object on a 404(b) analysis
12 that they would have to prove it before they could talk
13 about it. And that would go to anything that would be a
14 verbal threat, as well.

15 THE COURT: I would agree with that.

16 MR. MCGUIRE: That's a prior bad act.

17 THE COURT: Again. --

18 MR. MCGUIRE: Arguing with your spouse --

19 THE COURT: Right.

20 MR. MCGUIRE: -- is not a bad act. But we'd all be
21 in trouble, then, I guess. But you know, just arguing
22 and having some discord in a relationship, that's not a
23 prior bad act; that's fine; and we will concede, and we
24 agree that, that can come in. But specifics, threats,
25 anything of violence, anything with a descriptor of

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1 abusive or anything like that, we'd object to.

2 THE COURT: And again, there has to be a proffer of
3 it, Mr. Stone. Obviously, I need to be able to weigh
4 it. And you know, of course, you know, it's got to be
5 by clear and convincing evidence, and I need to hear it.
6 Because there might be, and there probably will, be some
7 limitation of it. I think you can say that there was,
8 you know, obviously, discord in this marriage, and you
9 know, they had been back and forth and -- but I want you
10 to be very careful in your opening statement.

11 MR. STONE: Yes, ma'am.

12 THE COURT: Okay. All right.

13 BAILIFF: May I approach, your Honor?

14 OFF-THE-RECORD DISCUSSION, THE
15 COURT, BAILIFF.

16 THE COURT: Yes, sir.

17 MR. MCGUIRE: Judge, while there is a moment of
18 silence, I'm going to ask the court reporter to mark six
19 things.

20 THE COURT: Please.

21 MR. MCGUIRE: I've already got stickers for you.
22 Just 1 through 6, in evidence without objection.

23 ITEMS IDENTIFIED AS PHOTOGRAPHS
24 MARKED DEFENDANT'S EXHIBIT NUMBERS
25 1 THROUGH 6, ADMITTED AS EVIDENCE.

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1 MR. STONE: May we approach, your Honor?

2 THE COURT: Yes, sir.

3 OFF-THE-RECORD BENCH CONFERENCE,

4 OUT OF PRESENCE OF JURORS.

5 END BENCH CONFERENCE.

6 BY THE COURT:

7 THE COURT: And just lastly, before we bring this
8 jury in, for those of you that are here in the
9 courtroom, good afternoon. My name is Carmen Mullen. I
10 am, obviously, the Judge that's going to be presiding
11 over this case. I'm also the chief administrative judge
12 for Beaufort and Jasper Counties. We appreciate you
13 being here, and certainly respect that this is a public
14 forum.

15 I do need to caution you, ladies and gentlemen,
16 though, that I understand that this case can invoke a
17 lot of passion for some people, and it may be difficult
18 for you to sit and hear, whether or not you are a friend
19 or family member of the victim or the defendant in this
20 case. Ladies and gentlemen, I just need to caution you
21 at the outset that, if for some reason, you cannot
22 contain yourself and your emotions during the trial of
23 this case, whether it be during opening statements or
24 any presentation of evidence, I'm going to have to ask
25 you to please remove yourself.

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1 Again, I would hate to have to take someone into
2 custody, but if necessary, if there is any outbursts or
3 emotion, such as crying or anything that would draw
4 attention to you by a juror, or the entire jury for that
5 matter, "I will have to have you removed. All right?

6 So, again, if you feel that you've come to that
7 point, you need to leave.

8 Additionally, ladies and gentlemen, that goes for
9 head bobbing in agreement when you hear sometimes like a
10 Solicitor or a defense attorney is asking something that
11 you agree with.. I think a lot of people's natural
12 tendency is to bob their head and say yes and agree.
13 Again, that would be inappropriate. We want these
14 jurors focusing on these lawyers and the witnesses here,
15 not those of you that are back in the gallery.

16 So, again, if you would, just keep that to a
17 minimum.

18 Also, ladies and gentlemen, while, of course, the
19 courtroom doors are open, and you certainly can come and
20 go, please keep it at a minimum. It is distracting.
21 Every time someone stands up in the gallery and walks
22 out the door, I guarantee you all 15 eyes go that way
23 and follow you; they're not listening to the lawyers and
24 the evidence in the case. Again, I appreciate it, but
25 just try to keep that to a minimum.

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1 If you do need to leave the courtroom, if you could
2 try to wait until a break in a witness, maybe between
3 direct and cross, or when that witness is finished, we
4 would greatly appreciate it. All right?

5 So, with that said, let's go ahead and bring this
6 jury in.

7 BAILIFF: Yes, your Honor.

8 THE COURT: Yes.

9 BAILIFF: Your Honor, the jury is entering.

10 THE COURT: Thank you.

11 JURORS ENTER COURTROOM 1:34 P.M.

12 BAILIFF: Your Honor, the jury is seated.

13 THE COURT: Thank you. Welcome back, ladies and
14 gentlemen of the jury. I trust you all had a good
15 lunch. At this time, we are going to go ahead and begin
16 the trial of this case.

17 Ladies and gentlemen, if, at any time, I say
18 something or the lawyers or anyone in the courtroom
19 cannot -- or say something and you cannot hear us,
20 please simply wave. We want to make sure you hear
21 everything here in the courtroom.

22 Ladies and gentlemen, I also want to instruct you,
23 before I have you sworn in as the jury in the trial of
24 this case, as you can note from the back, there are
25 cameras in the courtroom. I want to tell you, ladies

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1 and gentlemen, to begin with, these reporters are very
2 professional. They are in this courthouse all the time.
3 I will assure you that neither your names, nor any
4 photographs of a juror will ever be either in the
5 newspaper or on the news. Again, that would be
6 inappropriate, and I have no concerns whatsoever they
7 will follow, certainly, that order and understand that.
8 So, I want you to just completely forget that they are
9 here. All right?

10 Ladies and gentlemen, again, at this time, we're
11 going to go ahead and begin the trial of this case. I'm
12 going to have LaSandra go ahead and swear you in as
13 jurors. If you would all please stand and raise your
14 right hand to accept the oath.

15 JURORS SWORN, BY MADAM CLERK:

16 MADAM CLERK: Do you solemnly swear or affirm that
17 you shall well and truly try and true deliverance make
18 between the State of South Carolina and the accused at
19 the Bar, and a true verdict give, according to the
20 evidence, so help you God?

21 Please answer by saying I do.

22 RESPONSES FROM JURORS.

23 MADAM CLERK: You may be seated. Thank you.

24 INTRODUCTION TO TRIAL BY THE COURT:

25 THE COURT: Thank you, ladies and gentlemen. The

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1 remarks which I am about to make are intended as an
2 introduction to the trial of this case, so that you can
3 become generally familiar with some of the legal
4 principles that will control your deliberations in this
5 matter.

6 These remarks are not intended to be a substitute
7 for the detailed instructions of law, which I will give
8 you at the conclusion of the trial, just before you
9 retire to consider your verdict.

10 Ladies and gentlemen, you have been empaneled to
11 try the case of the State of South Carolina versus
12 Earnest Daise. Mr. Daise is charged with the accounts
13 or offenses of two counts of murder; one count of
14 assault and battery with intent to kill; one count of
15 trafficking crack cocaine, more than ten but less than
16 28 grams; and possession with intent to distribute
17 marijuana.

18 Ladies and gentlemen, the defendant has pled not
19 guilty to these indictments. Therefore, the burden is
20 on the State to prove guilt beyond a reasonable doubt.

21 Ladies and gentlemen, this burden never shifts to a
22 person charged with a crime. The law does not require a
23 defendant to prove his innocence or to produce any
24 evidence. The law presumes Mr. Daise to be innocent of
25 the charges against him. I, therefore, instruct you

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1 that Mr. Daise is to be presumed by you to be innocent
2 throughout the trial and throughout your deliberations,
3 and such 'til time that you, if ever, are satisfied that
4 the State has proven him guilty beyond a reasonable
5 doubt.

6 Now, ladies and gentlemen, my role in this
7 proceeding is to see that the parties receive a fair
8 trial. My responsibility is to conduct the trial of the
9 case in an orderly, fair, and efficient manner; to rule
10 on questions which arise during the course of the trial;
11 and to instruct you, the jury, on the law which applies
12 to this case.

13 It's your duty as jurors to judge the case as
14 stated to you in my instructions. It is your duty to
15 determine the facts. Ladies and gentlemen, you the
16 jury, are the sole and exclusive judges of the facts of
17 this case, and you alone determine the weight, the
18 effect, and the value of evidence, as well as the
19 credibility of witnesses. You should carefully observe
20 and listen to each witness, so that you can fairly and
21 impartially determine the weight to be given their
22 testimony.

23 It is the duty of the attorneys on each side to
24 object when the other side offers testimony or evidence
25 which the attorney believes is not properly admissible.

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1 The attorneys have the right and duty to ask the Court
2 to make rulings of law and to request conferences at the
3 Bench out of the hearing of the jury. You should not
4 hold it against any attorney for either side when he or
5 she objects to the admissibility of evidence. That is
6 the duty of the attorney.

7 Ladies and gentlemen, this kind of case, a capital
8 case, could potentially proceed in two stages. In the
9 first stage, the jury hears evidence and is asked to
10 decide whether the person accused is guilty or not
11 guilty of the charges brought.

12 The definition of the crime and other points of law
13 will be given to you by me after you have heard the
14 evidence. After the jury is instructed on the law, it
15 is set to deliberate and return a verdict of guilty or
16 not guilty. That is the only question that the jury is
17 asked to decide at the first stage of the trial.

18 Ladies and gentlemen, I also instruct you that you
19 are not to discuss this case with anyone, including your
20 fellow jurors, until it has been sent to you for your
21 deliberations.

22 Now, ladies and gentlemen, if the jury returns a
23 unanimous verdict of guilty during this first stage of
24 the trial, then the trial will go into the second stage,
25 which is called the sentencing stage. At the conclusion

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1 of the sentencing stage, the jury is asked to decide
2 among only two punishments for the offense of murder,
3 either life in imprisonment without the possibility of
4 parole, or death.

5 Ladies and gentlemen, the sentencing decision is
6 made solely by the jurors. You cannot impose the death
7 penalty simply because the accused has been found guilty
8 of the offense of murder. The death penalty is
9 authorized only in particular cases, as defined by the
10 South Carolina law, and it may be imposed only after the
11 jurors have considered factors regarding the crime and
12 the person on trial.

13 In order for the death penalty to be authorized as
14 a possible punishment, the State must first prove to the
15 satisfaction of a unanimous jury beyond a reasonable
16 doubt the existence of one or more aggravating
17 circumstances. The jury would receive instructions
18 defining any such aggravating circumstances before
19 deliberating. But for now, you need only to understand
20 that aggravating circumstances amount to more than the
21 mere intentional, unlawful taking of a life.

22 The jury will be authorized to consider the death
23 penalty only if it found first that Mr. Daise was guilty
24 of the offense of murder; and second, that the State had
25 proven to each and every juror and beyond a reasonable

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1 doubt that one or more aggravating circumstances existed
2 together with the murder.

3 If the jury listed aside that there were no
4 aggravating circumstances proven beyond a reasonable
5 doubt in this case, then the death penalty cannot be
6 imposed. Even if the jury should find the accused
7 guilty of murder and, in addition, find one or more
8 aggravating circumstances to exist, the jurors would
9 still not be required to impose the death penalty.

10 A sentence of death is never required. Any one or
11 all jurors can vote for a life-in-prison-without-parole
12 sentence, even if the State had proved one or more
13 aggravating circumstances beyond a reasonable doubt, and
14 the defendant chose to put up no evidence at all.

15 Ladies and gentlemen, mitigating circumstances are
16 anything about the life and background of the person or
17 facts in the case, which, in fairness and mercy, may be
18 taken into consideration in deciding between the
19 punishments of life imprisonment without parole or
20 death. If any one juror accepted any evidence of
21 mitigation presented by Mr. Daise, then, that one juror
22 can vote to impose a sentence of life imprisonment,
23 based on such evidence.

24 Ladies and gentlemen, there is no requirement that
25 the jury agree to the existence of mitigation evidence.

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1 Any juror may give whatever weight he or she wishes to
2 give to the mitigation evidence. Any juror may vote for
3 a life sentence for any reason at all.

4 Now, ladies and gentlemen, even if jurors were to
5 find aggravating circumstances, and no mitigating
6 circumstances, they would still have the right to vote
7 to impose a sentence of imprisonment for life without
8 parole.

9 And I remind you, ladies and gentlemen, the
10 imposition of the death penalty is never mandatory. You
11 may fix the penalty of life imprisonment without parole
12 for any reason, for no reason, for mercy alone, and you
13 don't have to explain your reasons.

14 Ladies and gentlemen, I have cautioned you not to
15 make any assumption or decision as to Mr. Daise's guilt
16 or innocence merely because I have described this
17 process, including the penalty process to you.

18 Ladies, at this time, and gentlemen, we're going to
19 go ahead and start the beginning of this trial.

20 Are there any exceptions or additions to this
21 charge from the State?

22 MR. STONE: No, ma'am, not from the State.

23 THE COURT: From the Defense?

24 MR. MCGUIRE: No, ma'am.

25 THE COURT: Ladies and gentlemen, if you would,

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1 give your attention to the Solicitor, we're going to go
2 ahead and begin the trial of this case.

3 MR. STONE: May it please the Court?

4 THE COURT: Yes, sir.

5 OPENING STATEMENT, EVIDENCE

6 PHASE, ON BEHALF OF THE STATE,

7 BY MR. STONE:

8 MR. STONE: Earnest Daise and Jeanine Mullen had a
9 little over a three-year relationship; a three-year
10 relationship that ended on November the 15th, 2009, when
11 Earnest Daise took a handgun and put it up to Jeanine
12 Mullen's forehead and pulled the trigger. A
13 relationship that he ended when he took the same gun and
14 aimed it no more than 18 inches from her four-year-old
15 child, **John Doe 1**, and pulled the trigger,
16 shooting and killing him, as well. A relationship that
17 he ended when he pulled that same trigger from that same
18 gun, shooting two-and-a-half-year-old **John Doe 2** in the
19 head.

20 You're going to hear a lot of evidence in this
21 case, and I'm going to ask you to pay very close
22 attention to the evidence that you hear. You're going
23 to hear that Jeanine Mullen lived in rural Beaufort
24 County, down a long road, and down another long road
25 that you really have to know how to get to if you're

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1 going to go there. She lived almost in isolation, with
2 very few neighbors and her children.

3 You'll hear that, when the police arrived and when
4 her father arrived to find her dead, that there was
5 nothing stolen from the house; there was no sign of
6 burglary; there was nothing broken in. The person going
7 into that house had the intent to do one thing and one
8 thing only; not to burglarize, not to steal, but to
9 kill. And he got in that house without breaking in.

10 You will hear from science. You will hear that,
11 when Earnest Daise was arrested that night, on his
12 pants, he had Jeanine Mullen's blood mixed with his own
13 blood from a fresh cut on his hand, mixed with gunshot
14 residue.

15 And you'll hear something else. **John Doe 2**, at two-
16 and-a-half years old, was shot. He was shot in the head
17 just like his four-year-old brother and just like his
18 mother. But by the grace of God, **John Doe 2** lived. The
19 bullet went into his ear, hit the back of his spinal
20 column, tumbled through his chest, deflated his lung,
21 broke his rib, and the bullet left his body and landed
22 in his dead mother's leg. But he lived.

23 **John Doe 2** was taken by ambulance to Beaufort
24 Memorial Hospital where he would eventually be flown
25 from there to MUSC, where pediatric surgeons would

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1 literally save his life. But when **John Doe 2** was in
2 that ambulance, and he was asked who hurt him, he told
3 those ambulance attendants, both of them, the one word
4 that only he could use -- *Daddy*.

5 When the ambulance people, trying to save his life,
6 trying to stop him from bleeding, and trying to get him
7 to the hospital as quickly as they could, asked him, *who*
8 *hurt you*, he identified not just Jeanine Mullen's two-
9 and-a-half-year-old child, but also that man over there,
10 Earnest Daise's two-and-a-half-year-old child. And he
11 did it by the only word that he could use -- *Daddy*.

12 Now, I'm going to ask that you pay very close
13 attention to the facts that you hear, the evidence that
14 you get from this witness stand. And I will be the
15 first to tell you, my job is to prove this case beyond a
16 reasonable doubt. If I don't do that through the
17 science, through the circumstances, through the
18 testimony, it's your job to come back here and find him
19 not guilty.

20 At the end of this trial, I'm going to come back
21 here, and I'm going to ask you one thing and one thing
22 only. I'm going to ask you to give us a verdict that
23 does what a verdict is supposed to -- speak the truth.
24 I'm going to ask you, at the end of your deliberations,
25 after listening to the science, after listening to the

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1 testimony, to come back here and give us a verdict that
2 speaks the truth. Thank you.

3 THE COURT: Mr. McGuire.

4 MR. MCGUIRE: Thank you, your Honor.

5 OPENING STATEMENT, EVIDENCE

6 PHASE, ON BEHALF OF THE DEFENSE,

7 BY MR. MCGUIRE:.

8 MR. MCGUIRE: Good afternoon. I hate this moment
9 right here, because, when you hear a story like that,
10 I'm always worried that somebody thinks I'm getting up
11 and I'm standing against that or standing against the
12 memories of Jeanine or **John Doe 1** or **John Doe 2**, and I
13 don't do that. I would never do that.

14 I stand up here to represent Earnest Daise. And
15 you are going to hear from science. We talked a lot in
16 voir dire in the questioning that everybody here can
17 presume him innocent, and that's exactly where you are
18 right now. You have to presume him innocent.

19 You know, we talked a lot about penalty in voir
20 dire questionings. We had a talk about that; which is
21 very difficult for us defending Earnest, because we hope
22 we never get there, and we've talked a little bit about
23 that. I'd rather sit down and not even question anybody
24 if they thought we were throwing in the towel and not
25 defending Earnest.

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1 But, because we talked about penalty, I'll talk
2 about it just a little bit more right now, and that is
3 the state of South Carolina is always satisfied with a
4 life sentence. Death is never required. Any individual
5 juror can vote for life for any reason, no reason, or
6 mercy alone.

7 It could be the no reasons for you, so you don't
8 have -- you were invited here by summons. You weren't
9 invited where you could decline. You had to come. You
10 have to be here. And you can vote for the life penalty
11 for no reason at all, just thinking the rest of your
12 years, your life, not wanting that mark of having killed
13 another human being on your soul, thinking about that
14 for the rest of your life. That's for you, the no
15 reason part.

16 What I'm going to tell you is this, you are going
17 to hear from science. And science is going to prove to
18 you -- and I don't have any burden -- but science is
19 going to show that Earnest Daise didn't do this.

20 You heard that he's charged with drugs,
21 trafficking, the most serious drug charge in South
22 Carolina. You're going to hear that the officers went
23 to where he lives, where he stays with his friend Jay in
24 a trailer. He has a bedroom there, and he had his bed
25 there. And on the floor next to his bed were some keys.

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1 One of the keys fits Jeanine's van. He had his own set
2 of keys.

3 There was a sweatshirt on the floor, right by the
4 bed, as if somebody would take off their clothes and get
5 in the bed. And underneath the sweatshirt was crack
6 cocaine, the most serious drug charge we have in South
7 Carolina.

8 Now, Earnest stands in the shadow of the
9 penitentiary regarding those charges, regarding the
10 crack cocaine that was found right next to his bed. And
11 you're not going to hear me put up affirmative evidence
12 to fight that.

13 Now, the State has the burden beyond a reasonable
14 doubt on all charges always. The burden never leaves
15 them of having the burden. They do have to prove it.
16 But is it realistic that you could turn Earnest loose or
17 set him free? The answer is no. Those drug charges
18 will probably just take care of that.

19 So, with regard to the shootings, science will tell
20 you he's not guilty of those charges.

21 The officers respond to the scene, and there's
22 blood. **John Doe 2** is taken to the hospital. He doing --
23 he lives in D.C. now. I think he's doing okay. But
24 there's a lot of blood, and you'll see pictures of that.
25 You're going to see some things are out of the ordinary.

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1 A van, Jeanine's van, with all the doors open. You'll
2 hear all of the officers, when they get there, they look
3 at the crime scene, and they huddle together, they get
4 together. They have limited resources. They have to
5 have a plan of action. They have to focus their
6 investigation. And it was actually at that moment when
7 something happened that focused the entire investigation
8 on Earnest. It would never leave Earnest again. The
9 investigation was going to proceed from that point as
10 if, basically, he's the only suspect, and there could
11 not be another suspect. And it wasn't treated like an
12 investigation and really searching for the truth and
13 being thorough.

14 And that, what happened was a phone call came from
15 Officer Foskey. Officer Foskey went to the hospital
16 where **John Doe 2** was, and he talked to EMTs. He talked to
17 Danny Tinnel, who is a paramedic. And Danny Tinnel's
18 going to come here, and he's going to tell you there was
19 a lot going on in that ambulance. He didn't spend a
20 long time; he doesn't remember the exact words.

21 Shayna Orson's another paramedic. She's going to
22 say that she remembers something -- him mumbling
23 something like *Daddy*.

24 But the phone call comes from Foskey, Officer
25 Foskey, to Officer Purdy, who's at the scene. And the

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1 phone call is, the child says his daddy did it. And
2 that's not what **John Doe 2** said.

3 The Prosecutor's right.. There's only the one word
4 -- *Daddy*. A 28-month-old child, who was unresponsive to
5 any stimuli at all when the paramedics first got him,
6 unresponsive to any stimuli. Eventually, he became
7 responsive to pain, and that means that he could react
8 to physical pain, but he's not verbally responsive. You
9 can't talk to him. You can't get his attention by
10 speaking to him. The physical pain that he reacted to
11 was when they put an I.V. in him, and he cried out and
12 screamed. He cried out like a child would when a needle
13 goes into the arm. That was when he finally became
14 responsive to something, and it was -- it was pain.
15 That was the only thing he was responsive to.

16 And eventually, he sort of comes out of it a little
17 bit, and he becomes verbal. And Danny will tell you,
18 there was a lot going on in that ambulance, and I'm
19 asking, you know, who hurt you; who did this. In that
20 confusion, in that environment, Shayna Orson will tell
21 you he mumbled something like *Daddy*.

22 And you're going to have to decide what weight to
23 give those words, and what the words of a 28-month-old
24 child who was initially completely unresponsive,
25 responsive to pain eventually, and the report also says,

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1 *in an altered mental state.* That's the point where this
2 investigation turns on Earnest and focuses on him
3 solely, and I'm going to give you an example of that.

4 You're going to hear from a number of people who
5 were on the scene very quickly.

6 For the record, your Honor, it's Defense Number 3.
7 This is what it looked like when everybody arrived, when
8 they first got there, that's what they see.

9 Can you see back there, ma'am?

10 JUROR: Um-hmm..

11 MR. MCGUIRE: In the back row, am I doing okay?

12 You'll have these in evidence. You don't have to
13 memorize them right now. Defense Number 4, same van,
14 every door open except the passenger -- the front
15 passenger door. Everything popped, including the
16 hatchback in the back. That's how, when Frank Mullen,
17 Jeanine Mullen's dad, showed up, that's what he saw;
18 that van with those doors all popped open like that.

19 And for the record, your Honor, it's Defense Number
20 5.

21 Another picture. I'll go a little faster, because
22 we all get the idea now. This is pretty out of the
23 ordinary. And this is the -- this was in the back of
24 the hatchback. It's a little hard to see. That's a
25 transmission for an automobile. I'll come over here

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1 first. Big old transmission, and the hatchback's popped
2 open.

3 When the crime scene technicians were there, and in
4 deciding how we're going to focus our energy; what are
5 we going to spend our time on; that's when the phone
6 call came in from Officer Foskey saying the child says
7 his daddy did it.

8 Ask yourselves, should they have printed the van?
9 If a perpetrator goes into a trailer and does that
10 heinous act and puts a pistol up to people, and
11 apparently, rifles through the van or pops open every
12 door, we would all say the van should have been printed,
13 to get a print off a door handle, a door, a window.

14 There's a thing called AFIS. You'll hear about it.
15 Jeff Crooks might testify today. He's one of the crime
16 scene techs who came from Columbia from SLED. He says,
17 look, when we get to the scene, we are an arm of the
18 investigation unit here; we do what they tell us to do;
19 they didn't tell us to print the van, not at all. But
20 he could have done it. All they had to do was ask, but
21 they didn't. And we're all thinking why. Because they
22 already decided they had their guy; they had Earnest
23 Daise. They put all their eggs into one basket, and
24 they didn't look for anything else.

25 Sometimes I hear prosecutors make close arguments.

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1 Well, isn't it weird that all the evidence points to
2 this fellow? Well, you don't find evidence inconsistent
3 with that, if you don't look for it. And what print was
4 on those door handles, we will never know.

5 They should have printed the van. That was a
6 critical missed opportunity. And Jeff Crooks will tell
7 you about this thing called AFIS, A/F/I/S, Automatic
8 Fingerprint Identification Service. You get the print;
9 you put it in the computer; automatically it searches
10 arrest records. And if there was a person in the
11 neighborhood burglarizing houses, home invasions,
12 shooting people, and they had a rap sheet, they'd have
13 gotten their suspect immediately. And that was a road
14 that they never, ever went down. Never went down.

15 This is Earnest's -- you'll hear testimony. This
16 is Earnest's bedroom at Jay's house. It's a little
17 futon, some shoes beside it. You'll see a dark
18 sweatshirt, a dark gray sweatshirt. It's green carpet,
19 little futon, some stuff on the floor by it, some shoes,
20 gray sweatshirt.

21 The officers' theory was that Earnest was wearing
22 that gray sweatshirt, this gray sweatshirt, in this
23 picture, at the time. I'll show you that. I'm just
24 going to go ahead and state what's in here. That's a
25 set of car keys that belongs to the van. He had his own

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1 set of keys to the van. And that's crack cocaine right
2 there. Just like somebody would empty the pockets, take
3 off their sweatshirt, and hop in bed.

4 The government's theory at the time was Earnest was
5 wearing this sweatshirt and committed this terrible act.
6 That's sweatshirt was sent up to Columbia, to SLED, the
7 South Carolina Law Enforcement Division. And if
8 somebody fires a revolver multiple times, you would
9 expect what's called gunshot residue to be on what
10 you're wearing. A gun makes a big old cloud of gunshot
11 residue, which is a combination of barium, lead, and
12 antimony fused together; also, little bity parts of lead
13 and stuff like that.

14 This went up to SLED and was analyzed by their
15 experts, and there's not a single molecule of gunshot
16 residue on the sweatshirt. It's essentially physically
17 impossible to be wearing this and shoot a gun multiple
18 times and not have gunshot residue on it. Science will
19 tell you Earnest Daise is not guilty of these charges.

20 This was analyzed not just for gunshot residue, but
21 also what's called high-velocity blood spatter. From
22 T.V., you guys know if you fire a bullet into a human
23 being, that a blood spatter occurs. And there's what's
24 called a back spatter. And you heard how close these
25 shots were from the Prosecutor. And if back spatter

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1 would have come back on the shooter, and the shooter was
2 wearing this sweatshirt, we'd have -- it would have
3 blood spatter on it. There's not even a drop, nothing.
4 Not even something under a microscope. It's completely
5 clean.

6 You saw the shoes by the bed. You'll see pictures
7 of the crime scene with blood and blood footprints up
8 and down the hallway, a number of footprints, smudges.
9 They took all of Earnest's shoes, every piece of --
10 every shoe he had in his room; dusted them all for
11 blood. Nothing. Nothing.

12 There is some blood on Earnest's jeans. They take
13 his jeans, and there's some blood on his jeans. And
14 this is where you're going to have to get critical.
15 This is where you're going to have to get critical.
16 There's a stain right here, below the left-hand pocket.
17 There's a stain right here. Just a little bit right
18 down here. And right here, that's Earnest's blood. And
19 right here, that's Earnest's blood, too. There's a
20 little bit of blood that belongs to Jeanine on his
21 pants.

22 And in the interrogation of Earnest Daise, the
23 officer specifically asked him, what about that on your
24 pants, or is that blood; have you cut yourself recently.
25 He says, *no, I haven't; I haven't.*

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1 There's this tiniest, tiniest, little abrasion on
2 Earnest's knuckle. How it got there, I can't tell you,
3 but you'll see it, and you will say there is no way the
4 blood on the pants came from that tiny of little thing.
5 And you will all ask yourselves this question: if the
6 police officers believed that there was a cut or a wound
7 on Earnest that could account for the blood, they would
8 have documented it. It would be in their police report.
9 They'd have made note of it.

10 I'm going to tell you what happened. What happened
11 is this: they just saw blood, and they jumped to the
12 conclusion, well, that's from the crime scene; let's go
13 ahead and take that and send it off to SLED for DNA;
14 when that comes back belonging to **John Doe 2**, Walt, and
15 Jeanine, we'll have our case. Done.

16 Well, it doesn't come back that way. That's not a
17 test you can do overnight. It comes back, and they're
18 informed most of it's his. And I think you might see a
19 little backtracking and saying, you know, our report
20 should have been more detailed; we had that little tiny
21 thing on his hand that looked like just like a little
22 abrasion and, you know, we should have documented that;
23 we should have noted it in our report. Well, they
24 didn't, because they knew what you were going to know,
25 and that is that tiny little abrasion on his hand could

1 not account for the blood stains on his pants.

2 And once we get there, you have to ask your -- ask
3 this question: if he's not -- if he's not cut bad
4 enough to make these big blood stains on his pants, then
5 what does that mean about his blood. It's old. It's
6 not from that day.

7 When Jeanine's DNA got on the jeans, the woman he's
8 been with for three-and-a-half years and lives with,
9 when her DNA get on the jeans, I do not know. The DNA
10 expert does not know. When did Earnest bleed enough to
11 make these stains on his pants? I do not know. The DNA
12 expert does not know.

13 The pants are soiled; they're unlaundered. You'll
14 see them, and you'll see. You'll see. The little bit
15 on his knuckle, no way it could have made the blood
16 stains on the pants. And when you see that, then you'll
17 know it's old. And if it's old, it's not from that day.
18 If it's not from that day, it doesn't have anything to
19 do with this crime scene.

20 Now, there is a little GSR on his pants, gunshot
21 residue. We talked about that a second ago. You know,
22 a gun makes this huge cloud when it fires. And you're
23 going to hear there's one piece of gunshot residue right
24 here, and there's one piece right here, with about four
25 pieces of lead on one side and five pieces of lead on

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1 the other. Stuff so small you can't even see it with a
2 microscope.

3 It's an electron microscope that has to find it.
4 It sends basically electricity through particles, and
5 based on vibration, tells you what it is. You can't
6 even see it. You can't even see it.

7 And you're going to hear that -- you're going to
8 hear experts say that the gunshot residue on Earnest's
9 pants, when they frisked him, -- because they went to
10 his house. They went to his house, and they said, we
11 want you to come with us; we want to interrogate you; we
12 want to ask you some questions. He said okay. And they
13 said, for your safety and officers' safety, we're going
14 to pat you down and frisk you, like that. You guys have
15 seen it on T.V. And for your safety, we're going to
16 handcuff you. Put handcuffs on him. Put handcuffs on
17 him. And then put him in a squad car, a marked police
18 car with a cage, which is how they transport people.

19 And they took him to an interrogation room where
20 they interrogate people who are accused of crimes,
21 crimes involving guns, shootings, and everything else.
22 And experts will tell you, if he could have picked up
23 the gunshot residue, especially since we're talking
24 about just a tiny, tiny, one particle here, one particle
25 here, just a little bit of lead, he could have gotten

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1 that from the frisk, from the pat-down, from being
2 placed in a squad car, from the handcuffs, and from the
3 interrogation room, because police officers are around
4 guns, and gunshot residue is easily transferable. It
5 just goes all over the place, especially when you're
6 talking he was pat down by officers that were at a crime
7 scene where a gun was just fired multiple times.
8 Likelihood of them having gunshot residue on them,
9 extremely high. And the likelihood of transference, I
10 would also say is pretty reasonable.

11 And also, you're going to hear -- you're going to
12 hear that Earnest had a gun. You're going to hear
13 information that the police got a tip saying, on this
14 night, Earnest did something behind what's called
15 Eddie's Disco, which is a place where people hang out
16 and drink beer. And I'm going to tell you the truth,
17 they sell drugs there.

18 And Earnest had drugs. He had crack cocaine,
19 trafficking. And you're going to hear that he had some
20 money hidden. He had \$3,000.00 hidden. He also had a
21 gun. And you're going to hear that, if he just put his
22 gun in his lap in the car one day, you can get GSR,
23 gunshot residue on your hands from that. That's it.

24 There's a little bit more. I've hit the
25 highlights. There's a little bit more under some -- I

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1 can't try the whole case in front of you now, but the
2 parts that I wanted to talk to you about are the parts
3 that I really want you to pay attention to, and that is
4 the science. The science.

5 The science is going to tell you that it's
6 essentially impossible for Earnest to have done this.
7 He'd have blood on the bottom of his shoes. He'd have
8 gunshot residue all over his sweatshirt. It doesn't
9 make sense. And when you're being fair with a human
10 being, -- I mean, these are the most serious charges we
11 have in South Carolina for murder. It doesn't get any
12 higher than that. And when you're talking about
13 stripping a man of his liberty and his life, ask
14 yourself, is it fair to even consider that when they
15 didn't fingerprint that van. They decided we're going
16 to put all our eggs in this one basket. That's what
17 they did.

18 Here's the other thing. They didn't arrest Earnest
19 for murder that night. They arrested him for the drugs
20 they found on his floor. If they had all that evidence,
21 they would have arrested him for murder, because they
22 thought they had enough. Well, they didn't. All they
23 have to do to get a probable cause to get an arrest
24 warrant, and they didn't do it that night. But they
25 arrested him for the drugs, and you know what they

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1 waited on? The DNA to come back from SLED from
2 Columbia. And that was the tipping point. That was the
3 piece. They already had **John Doe 2** statement. They
4 didn't arrest him for murder on **John Doe 2** statement.
5 Shows you what they think about that.

6 They waited for the DNA, and when they got a phone
7 call that says someone had blood on his pants; it's from
8 Jeanine, that was the tipping point.

9 And I want to tell you, when you're looking at this
10 case from beyond a reasonable doubt standard, even they
11 considered everything they had, up until the blood, was
12 not enough for an arrest warrant. Not even an arrest
13 warrant that's based merely on probable cause.

14 And I've now told you -- and you'll see for
15 yourself. Don't take it from me. You look at the
16 pictures; you look at the abrasion on the hand; and
17 you'll say, yeah, there's no way that made the blood on
18 the pants. And then, you'll come to the conclusion that
19 it's old. And when it's old, it's not from that day;
20 it's not from that crime scene.

21 So, the piece of evidence that tipped the scale
22 isn't even relevant.

23 Again, please pay -- I know you're going to do it,
24 but please pay careful attention to the science and the
25 physical evidence that's going to tell you he is not

1 guilty. Thank you.

2 THE COURT: Solicitor.

3 MR. STONE: The State calls Owen Lamb.

4 THE COURT: Come on forward, sir, to be sworn right
5 here. I'm going to swear you in. If you'll place your
6 left hand on the Bible and raise your right hand.

7 MADAM CLERK: Do you solemnly swear to truthfully
8 answer all questions asked of you by this court, so help
9 you God?

10 CORPORAL OWEN LAMB: I do.

11 MADAM CLERK: Please be seated. State your name
12 and spell it for the court reporter.

13 CORPORAL LAMB: Corporal Owen Lamb, O/w/e/n,
14 L/a/m/b.

15 CORPORAL OWEN LAMB

16 DIRECT EXAMINATION BY MR. STONE:

17 Q Okay. Corporal Lamb, what do you do, sir?

18 A I'm currently employed with the Beaufort County
19 Sheriff's Office.

20 Q What do you do with the Sheriff's Department?

21 A I'm a -- part of the road patrol. I'm actually
22 part of the Specialized Enforcement Unit now.

23 Q Okay. And back in November of 2009, you were also
24 -- you were you also with the Sheriff's Office at that
25 point?

1 A I was.

2 Q All right. Pull that microphone a little closer to
3 you so that I can hear you. And what was your job with
4 the Sheriff's Office at that point?

5 A I was a road patrol officer at that point.

6 Q All right. And as a road patrol officer, what were
7 your duties, other than, I'm assuming, to enforce
8 traffic, but did you also respond to crime scenes?

9 A I respond to crime scenes and conduct proactive
10 patrols.

11 Q Pardon me?

12 A Proactive patrols, patrolling residences,
13 communities.

14 Q Okay. And how long have you worked in Beaufort
15 County?

16 A I've been here just over six years.

17 Q Okay. And so, up to that point, I guess it had
18 been three years that you'd been with the Sheriff's
19 Office. Did you work that region? What area did you
20 work?

21 A I worked the northern part of Beaufort County.

22 Q And northern part being?

23 A The Broad River Bridge is the dividing line.

24 Q All right. November the 15th, were you called to a
25 scene near 20 Player Road?

1 A I was.

2 Q And I guess the question is, were you one of the
3 first people at the scene that night?

4 A I was one of the first few, yes.

5 Q Okay.

6 ITEM IDENTIFIED AS MAP MARKED
7 STATE'S EXHIBIT NUMBER 14, FOR
8 IDENTIFICATION.

9 ITEM IDENTIFIED AS MAP MARKED
10 STATE'S EXHIBIT NUMBER 15, FOR
11 IDENTIFICATION.

12 MR. STONE: Let me first ask you, if I can, -- I'm
13 going to show you State's Exhibit 14, which I'll use as
14 an exhibit; also, State's Number 15, two maps of the
15 area. Would that aid in the testimony, and does that
16 appear to be fair and accurate as the scene looked in
17 2009?

18 A Yes, it does.

19 Q Okay.

20 MR. STONE: And I would ask if, your Honor, please,
21 if you could come off the stand.

22 THE COURT: You may step down, Corporal.

23 BY MR. STONE:

24 Q Now, she is going to need to get everything you
25 say, so I would ask you to speak up, if you could,

1 please.

2 A Yes.

3 Q First of all, let me show you what's been marked as
4 State's Exhibit -- come around here, if you can -- 14.

5 Ask if you could just give us a general idea about that
6 area.

7 A Yes. This area right here, this area by the river,
8 which would be the Whale Branch Bridge, once you cross
9 over the bridge on Trask Parkway, Highway 21, that
10 becomes what we call Area 2, which is mainly the Dale
11 and Shell community.

12 Q Okay. So, everything on the top right part of this
13 is the -- is that area. Dale?

14 A This would be the Dale community on the right,
15 yeah.

16 Q And on the left, is that --

17 A It would still be considered Dale or Lobeco.

18 Q Okay. All right. And down here at the bottom in
19 the center, what is that?

20 A We usually refer to that as Grays Hill.

21 Q Okay.

22 A Or Seabrook area.

23 Q All right. Is this the what appears to be an air
24 strip. Is that the Marine Corps Air Station there?

25 A Yes, that would be the Air Station.

1 Q All right. Make sure that these people can see
2 back here, too.

3 All right, sir. This road right here that is in
4 red that goes up straight through that, what road is
5 that?

6 A That is Trask Parkway, U.S. 21.

7 Q Okay. And this area down here to the left, what is
8 this area?

9 A This area here?

10 Q Yes.

11 A That's the Poppy Hill area.

12 Q All right. Now, there's also a mark here for
13 Dobb's B.P. Is that -- that appears to be on Trask
14 Parkway. Is that correct?

15 A Yes, it is.

16 Q Okay. Now, tell me about up here to the right, the
17 Dale area.

18 A Yes, the Dale area consists of Keans Neck Road,
19 which runs all the way out to Lightsey Plantation, which
20 is just a plantation, and you have the whole Dale
21 community area with inside that.

22 Q Okay. And then, is 20 Player Road, is that also on
23 that map?

24 A Yes, it is.

25 Q Okay. And that is indicated down here on the

1 bottom right -- or the top right?

2 A Yes, it is.

3 Q All right. Let me show you what's been marked as
4 State's Exhibit 15. Could you identify that for me,
5 please.

6 A Yes. That's the same area. The Keans Neck Road
7 runs straight through here, and Player Road would be off
8 this fan, which is down here.

9 Q Now, you worked that area; did you not?

10 A I did, yes.

11 Q And for how many years? Do you still work that
12 area?

13 A I have, yes. I'm still familiar with the area. I
14 worked it quite a bit when I was on the road.

15 Q Okay. How far out is this from downtown Beaufort
16 and that area?

17 A It's a good ways. I would say ten to twelve miles,
18 maybe.

19 Q As you're going down, what is the Keans --

20 A That's Wimbee Landing.

21 Q Wimbee Landing here, and then Keans Neck Road here.
22 What is this area to the left and right?

23 A Very rural. It's -- there's a few houses, but it's
24 mainly just a rural area.

25 Q Okay. How do you get to 20 Player Road?

1 A To get to 20 Player Road, you go down to Keans
2 Neck, almost to the end where it dead ends into Lightsey
3 Road, which is the plantation. From there, you turn
4 onto Spann Circle. There's two entrances to Spann
5 Circle. It's the last entrance before you get to
6 Lightsey. You go down Oak -- you go down Spann Circle,
7 and there's a road called Oakhorst -- Oakhurst Road.
8 Once you get down to Oakhurst, it makes a Y, where you
9 take a left going at it. That would turn into Player
10 Road.

11 Q How many houses are around this area?

12 A Which area?

13 Q The 20 Player Road area.

14 A Say less than five, maybe.

15 Q All right. Let me go ahead and ask you to step
16 back up, please.

17 Q When you responded to 20 Player Road, -- first of
18 all, I'm assuming all of that is in Beaufort County; is
19 it not?

20 A Yes, it is.

21 Q When you responded to 20 Player Road, what did you
22 find?

23 A When I responded to 20 Player Road, my initial
24 observations was a white van parked in the driveway with
25 the doors open. I then seen the door to the residence

1 was open, as well. Due to another deputy being there, I
2 went in, made contact with her at the time. I observed
3 that the living room was -- was empty at that time. I
4 did observe the couch was to my left right when I walked
5 in the front door. There was a birthday cake on top of
6 the couch. As I went into the kitchen area. --

7 MR. MCGUIRE: Your Honor, just to -- I'm sorry
8 there, Officer. Just to preserve ourselves for the
9 record, I renew our previous objection regarding that
10 testimony.

11 THE COURT: Thank you. It's noted for the record.

12 BY MR. STONE:

13 Q Go ahead, sir.

14 A And as I entered the kitchen area, that's when I
15 observed the -- I'm guessing the four-year-old at the
16 time, was laying there. Appeared to have been shot. He
17 was -- there was a pool of blood underneath him.

18 At that point, I backed back into the living room,
19 not to make any further entry. At that time, the EMS
20 had arrived, and we secured the scene for EMS.

21 Q Okay. Let me first show you State's Exhibit 4, ask
22 if you can identify that photograph, please, sir.

23 A Yes, that would be the house.

24 Q Is that a fair and accurate depiction of how the
25 house looked like when you got there that night?

1 A It is.

2 MR. STONE: Okay. Your Honor, at this time, we
3 would move State's Exhibit 4 into evidence.

4 THE COURT: Without objection?

5 MR. MCGUIRE: No objection.

6 THE COURT: Exhibit is in without objection.

7 MR. STONE: Permission to publish, your Honor.

8 THE COURT: You may.

9 PHOTOGRAPH IDENTIFIED AS HOUSE

10 MARKED STATE'S EXHIBIT NUMBER 4,

11 ADMITTED AS EVIDENCE.

12 BY MR. STONE:

13 Q While that's coming on, let me show you State's
14 Exhibit 5. Ask you if you can identify that, please.

15 A Yes, that's the front door to the residence.

16 Q Okay. And in what direction is that looking?

17 A That's looking at the front door from the inside.

18 Q Is that a fair and accurate depiction of how that
19 room looked like at that time?

20 A It is.

21 Q Show you State's Exhibit 6. Ask if you can
22 identify that, please.

23 A That is also another picture of the front living
24 room of the residence.

25 Q Is that a fair and accurate depiction of how the

1 living room looked when you got in there?

2 A It is.

3 Q And I will show you State's Exhibit Number 7. Ask
4 if you can identify that, please.

5 A That is also another view of the front room going
6 into the kitchen.

7 Q And that's a fair and accurate depiction of how it
8 looked when you arrived.

9 A It is.

10 MR. STONE: Your Honor, at this time, we'd move
11 State's Exhibit 5, 6, and 7 into evidence.

12 MR. MCGUIRE: Judge, if we could just come around a
13 second.

14 THE COURT: Sure.

15 COURT REPORTER: Do you need me?

16 MR. MCGUIRE: And your Honor, for the record, I'm
17 not objecting to the photographs. I just want to make
18 sure I'm protected on the record about this.

19 OFF-THE-RECORD BENCH CONFERENCE,

20 OUT OF HEARING OF JURORS.

21 END BENCH CONFERENCE.

22 THE COURT: Okay. Noted for the record the
23 objection preserved as to Exhibit Number 5.

24 You can read off those, for the record. Okay.

25 Noted for the record.

1 Numbers 4, 5, 6, and 7 come into evidence, subject
2 to previous objections.

3 MR. MCGUIRE: Thank you, your Honor.

4 THE COURT: Thank you.

5 REPORTER'S NOTE: STATE'S EXHIBIT

6 NUMBER 4, ADMITTED AS EVIDENCE ABOVE.

7 ITEM IDENTIFIED AS PHOTOGRAPH

8 OF FRONT DOOR TO RESIDENCE MARKED

9 STATE'S EXHIBIT NUMBER 5, ADMITTED

10 AS EVIDENCE.

11 ITEM IDENTIFIED AS PHOTOGRAPH

12 OF FRONT LIVING ROOM OF RESIDENCE

13 MARKED STATE'S EXHIBIT NUMBER 6,

14 ADMITTED AS EVIDENCE.

15 ITEM IDENTIFIED AS PHOTOGRAPH

16 OF VIEW OF FRONT ROOM GOING INTO KITCHEN

17 MARKED STATE'S EXHIBIT NUMBER 7,

18 ADMITTED AS EVIDENCE.

19 BY MR. STONE:

20 Q All right. Let me ask if you can -- let me make
21 sure we can see that here. First of all, let me show
22 what's been admitted into evidence as State's Exhibit 4
23 on the monitor. Could you tell us what -- can you see
24 from there what that is?

25 A I can.

1 Q Okay. And what is that?

2 A That's the front -- front to the residence.

3 Q And this is the residence at 20 Player Road?

4 A It is.

5 Q Is this how that scene looked when you got there?

6 A It was.

7 Q Okay. Going now to State's Exhibit 5. Is that a
8 fair and accurate depiction of how the scene looked when
9 you got there?

10 A It is.

11 Q And what is that, exactly?

12 A That's the front door to the residence from the
13 inside.

14 Q Looking from the inside out?

15 A Yes.

16 Q Okay. Going now to State's Exhibit 7 [sic].

17 Describe what that is, please, sir.

18 A That's the front room of the residence.

19 Q And State's Exhibit 7, what is that, sir?

20 A That's another view of the front living room, going
21 to the kitchen from the inside.

22 Q And this was the condition of this room when you
23 got there.

24 A It was.

25 Q Let me show you what's been marked as State's

1 Exhibit 10, 9, and 8. Ask if you can identify those,
2 please.

3 A These are pictures of the van parked at -- parked
4 at the front of the residence with all doors being
5 opened.

6 Q And there is another van there, as well.. Is that
7 correct?

8 A Yes.

9 Q All right. Is that a fair and accurate depiction
10 of the front of the house when you got there?

11 A It is.

12 Q Okay.

13 MR. STONE: At this time, we move in, your Honor,
14 State's Exhibit 8, 9 and 10.

15 MR. MCGUIRE: Without objection, your Honor.

16 THE COURT: Without objection, they're in evidence.

17 ITEM IDENTIFIED AS PHOTOGRAPH OF
18 FRONT OF RESIDENCE MARKED STATE'S
19 EXHIBIT NUMBER 8, ADMITTED AS EVIDENCE.

20 ITEM IDENTIFIED AS PHOTOGRAPH
21 OF FRONT OF RESIDENCE MARKED
22 STATE'S EXHIBIT NUMBER 9,
23 ADMITTED AS EVIDENCE.

24 ITEM IDENTIFIED AS PHOTOGRAPH
25 OF FRONT OF RESIDENCE MARKED

1 STATE'S EXHIBIT NUMBER 10,
2 ADMITTED AS EVIDENCE.

3 BY MR. STONE:

4 Q I ask if you will publish, please, State's Exhibit
5 8.

6 THE COURT: Go ahead.

7 Q Tell us what's in this photograph, sir.

8 A That's the front of the residence with the two
9 white vans parked out front.

10 Q Okay. And this white van here in the front, was
11 that in that condition when you got there?

12 A It was.

13 Q And there's another van to the left. That was
14 there before you got there?

15 A Correct.

16 Q Okay. State's Exhibit 9, another angle on the van.
17 Is that how it looked when you got there?

18 A Yes.

19 Q And State's Exhibit 10. And what is that?

20 A That's the side view of the van.

21 Q Okay. Now, at some point after you see this and
22 you go in, were you able to go through the entire -- the
23 entire house -- or the trailer?

24 A I went through most of the trailer, yes.

25 Q Okay. Let me show you what -- could I get this

1 marked, please, ma'am. Oh, we've got one over here?
2 All right. This is a copy of 17. Just make it 17-B.
3 Thank you.

4 ITEMS IDENTIFIED AS DIAGRAM OF
5 CRIME SCENE MARKED STATE'S EXHIBIT
6 NUMBER 17 AND 17-B (DUPLICATES, 17
7 BEING 8.5 X 11; 17-B BEING A POSTER),
8 FOR IDENTIFICATION

9 Q Let me show you what's been marked as State's
10 Exhibit 17-B, as an exhibit. Would this assist you in
11 your testimony explaining what you found in the trailer
12 that day?

13 A Yes, it will.

14 Q Okay.

15 MR. STONE: Permission to publish this to the jury
16 at this time, your Honor.

17 THE COURT: You may.

18 BY MR. STONE:

19 Q I'd ask you to come down off the stand if you
20 would, please.

21 Okay. And if you would, walk us through -- first
22 of all, were you able to see the entire -- did you ever
23 go through and see the entire trailer? And what I mean
24 by that is, over here to the right, what's over here?

25 A I didn't go in that area.

1 Q Okay. You just came into the living room area,
2 which was, I believe, -- go back to State's Exhibit 5?
3 What's depicted on State's Exhibit 5 is the front door.
4 Where would that be in relation to this, to Exhibit 17
5 here?

6 A The front door is here, somewhere in this vicinity.

7 COURT REPORTER: I'm sorry.

8 Q All right. Keep your voice up so she can hear you.
9 But that's going to be over to the far right of the
10 exhibit?

11 A Somewhere in this vicinity,

12 Q Okay. And that -- this area.

13 A Be this corner, yes.

14 Q Great. Okay. Tell me, then, what do you see as
15 you go through?

16 A As I entered the living room, I can see the T.V. is
17 on this wall, which is adjacent to the kitchen.

18 Q Okay. And that would be what's been shown as
19 State's Exhibit 7. Is that correct?

20 A Correct.

21 Q And this, what is showing on State's Exhibit 7, is
22 against what wall?

23 A It would be this -- the wall to the left when you
24 walk in.

25 Q Okay. To the left here?

1 A Yes.

2 Q Okay. All right. Go ahead.

3 A And as I made entry, I walked into the kitchen,
4 which is in this area, and that's where I observed the
5 -- the small child and the -- on the kitchen floor.

6 Q And that is the drawing of the small child here,
7 next to this table. Is that correct?

8 A Yes.

9 Q Did you also go back into the back bedroom at some
10 point?

11 A I did.

12 Q And what could you tell us you found there?

13 A As I went to the back bedroom, by the bed and
14 table, I observed the -- a female laying on the floor,
15 had been shot.

16 Q Could you tell, is this -- and as this is oriented
17 here, her head is next to this table. Is that correct?

18 A Yes.

19 Q And that's how you saw the scene that day when you
20 got there.

21 A I did.

22 Q All right. Thank you, sir.

23 Could you tell us, please, the condition of the
24 woman and the condition of the child when you got there,
25 or when you saw that scene.

1 A They appeared deceased.

2 Q Pardon me?

3 A They were -- they were deceased at that time.

4 MR. STONE: Thank you. I don't have any further
5 questions of this witness, your Honor.

6 THE COURT: Mr. McGuire?

7 MR. MCGUIRE: Thank you, your Honor.

8 CORPORAL OWEN LAMB

9 CROSS-EXAMINATION BY MR. MCGUIRE:

10 Q Officer Lamb?

11 A Yes.

12 Q You saw Mr. Frank Mullen's van when you arrived.

13 A Yes.

14 Q And Jeanine Mullen's van.

15 A Correct.

16 Q And Jeanine's -- Jeanine Mullen's van was the one
17 with all the doors popped open.

18 A Correct.

19 Q Did you do anything with that van? Take a look at
20 it, look inside it or anything?

21 A I did not.

22 Q You were there with Rivers, Officer Rivers?

23 A Yes. Yes.

24 Q Okay. I think she cleared the van for possible
25 suspect; not you; right?

1 A I -- I didn't. I don't know if she did or not.

2 Q Okay. You may not have been involved in that.
3 When you went into the scene, was Scott Sampson already
4 there? Do you know who that is?

5 A I'm not familiar with that name, no.

6 Q He's with the fire department. He's an EMS
7 paramedic. Did you see him?

8 A I may have. I seen a few EMS personnel there.

9 Q Okay. What about Wesley Nation? Did you see him,
10 a civilian?

11 A I don't remember, no.

12 Q Okay. Did you all take a log of whom went in this
13 place?

14 A I believe someone did, yes.

15 Q Okay. Was it Rivers?

16 A I'm not sure.

17 Q Okay. Were there a lot of footprints in there when
18 you were there?

19 A Not to my knowledge, no.

20 Q Okay. You didn't see them?

21 A No.

22 Q Okay. Were you involved in any of the discussion
23 about whether to fingerprint the van?

24 A No.

25 Q Did you overhear any discussion about a decision

1 whether or not to fingerprint the van?

2 A I didn't hear anything about that.

3 Q Okay. Well, why did you not fingerprint the van?

4 A I didn't hear anything about it.

5 Q Okay. Were you there when Officer Purdy received a
6 phone call from Officer Foskey?

7 A That wasn't privy to me at that time, no.

8 Q Okay. Okay. You may not have been there at that
9 time or you may not have heard it. All right. Hold on
10 just one second, your Honor.

11 That's all I have. Thank you, sir.

12 THE COURT: Anything further, Mr. Stone?

13 MR. STONE: No. No, ma'am.

14 THE COURT: You may step down. Any objection to
15 this officer being excused?

16 MR. STONE: None from the State.

17 MR. MCGUIRE: No, ma'am.

18 THE COURT: Thank you. You are excused, sir.

19 MR. STONE: State calls Investigator Jody Heirs.

20 THE COURT: Ladies and gentlemen of the jury, is
21 everyone okay? Does anyone need a break? Very well.
22 Thank you.

23 MADAM CLERK: Would you place your left hand on the
24 Bible and raise your right hand for me, please. Do you
25 solemnly swear to truthfully answer all questions asked

1 of you by this court, so help you God?

2 OFFICER JODY HEIRS: I do.

3 MADAM CLERK: Please be seated. State your name
4 and spell it for the Court.

5 INVESTIGATOR JODY HIERS: Jody Hiers, J/o/d/y,
6 H/i/e/r/s.

7 INVESTIGATOR JODY HIERS

8 DIRECT EXAMINATION BY MR. STONE:

9 Q Mr. Hiers, you're an investigator with the
10 Sheriff's Office?

11 A Currently I'm not, no. I was at the time of this
12 incident.

13 Q What do you do now?

14 A I supervise a community resource officer program at
15 the Sheriff's Office.

16 Q How long have you been with the Beaufort County
17 Sheriff's Office?

18 A A little over 19 years.

19 Q And what have you done with them in that 19 --
20 those 19 years?

21 A I've been a criminal investigator; SWAT team
22 supervisor; Day/Night Team supervisor; school resource
23 officer; a road officer, both north and south of the
24 Broad; a criminal investigator two times for about six
25 years 'til -- and my current assignment. And also

1 supervise the Animal Control Unit with the Sheriff's
2 Office at one time.

3 Q In November 2009, what was your job at that point?

4 A I was a criminal investigator assigned to Northern
5 Investigations.

6 Q Did you investigate or were you the lead
7 investigator in the homicide at 20 Player Road?

8 A Yes, sir, I was.

9 Q Tell me how that came about.

10 A I actually was the duty investigator. And as a
11 duty investigator, we're on call after hours and on
12 weekends. So, I got notified by our -- our dispatch in
13 reference to this incident.

14 Q And you responded to 20 Player Road. Where is
15 that, sir?

16 A That's in Beaufort County, South Carolina.

17 Q And where, specifically?

18 A It's off of Keans Neck Road. Dale area, what they
19 call it.

20 Q When you arrived, what was your primary function?

21 A When I arrived on the scene, I -- I assessed the --
22 the situation, what we had. I spoke with the initial
23 staff sergeant that was on scene that was supervising
24 the road units that night, and he apprised me of what --
25 what he had.

1 Q Okay. Did you also study the scene, walk through
2 it, various things like that?

3 A Yes, sir, I did.

4 Q Let me show you what's been marked as -- first of
5 all, let me just show you what's been marked as State's
6 Exhibit 18. Well, let me start over here first. And
7 first, I'm going to show you what's been marked as
8 State's Exhibit 8 that has already been placed into
9 evidence. Could you tell me what that is, sir.

10 A That is a photo of two vans, actually. One white
11 minivan with the hatches up. That was identified as
12 Jeanine Mullen's van, the deceased adult. And the other
13 van beside it was identified as Frank Mullen's van.

14 Q Okay. And who is Frank Mullen?

15 A Frank Mullen -- Frank Mullen is the father of
16 Jeanine Mullen.

17 Q Okay. Let me show you what's been put into
18 evidence as State's Exhibit 4. See if you can tell us
19 what that is, please.

20 A That's the -- that's the front door of 20 Player
21 Road.

22 Q Let me put that up on the monitor, so that
23 everybody can see what you're talking about.

24 A That's the front door of 20 Player Road.

25 Q Let me also show you what's been marked as State's

1 Exhibit 5.

2 A That's the inside --

3 Q Let me show you -- let me show you this. Okay.

4 A That's the inside photo of the front door.

5 Q Okay. And that's how the scene looked when you got
6 there?

7 A Yes, sir.

8 Q Okay. And finally, let me show you what's been
9 marked as State's Exhibit 6. Ask if you can tell us
10 what that is, please.

11 A That's the actual living room area of 20 Player
12 Road.

13 Q That is the front area as you go into 20 Player
14 Road. Is that correct?

15 A That is correct.

16 Q Was there anything in this scene that we are not
17 able to see? This is the front room. Was there
18 anything in this scene that we cannot see? If we take
19 all of these together -- and I show you State's Exhibit
20 5; what's you're holding is State's Exhibit 6; and then,
21 State's Exhibit 7. Show us, if you will, State's
22 Exhibit 7. All three of those pictures taken together,
23 is that a fair and accurate depiction of that front
24 room?

25 A Yes, sir, it is.

1 Q Were there any signs in that front room that
2 anything had been broken, moved, stolen, anything like
3 that?

4 A No, sir, there was not.

5 Q And what are these components that we have over
6 here in the front of this? This area right in here,
7 what is that?

8 A The T.V.?

9 Q Yes.

10 A The T.V. with a stereo system on top, speaker.
11 They have photos on the walls. Photos right below the
12 T.V. itself. Flowers.

13 Q And that is the condition it was in when you got
14 there.

15 A Yes, sir, it is.

16 Q Let me show you what's been marked as State's
17 Exhibit 20, 21, and 22. Ask if you can identify those
18 three photographs.

19 A That's going to be the back door of 20 Player Road.

20 Q And that would be State's Exhibit 22. And what
21 about the other two?

22 A The other photo is the back door of 20 Player Road.

23 Q Okay. And State's Exhibit whatever this is, 20?

24 A It looks like the -- the rear of the residence.

25 Q Okay. All right. Are those fair and accurate

1 depictions of how the scene looked that night?

2 A Yes.

3 Q Okay.

4 MR. MCGUIRE: Without objection.

5 MR. STONE: We move in, your Honor, State's Exhibit
6 20, 21, and 22.

7 THE COURT: State's 20, 21, and 22 are in evidence,
8 without objection.

9 ITEM IDENTIFIED AS PHOTOGRAPH
10 OF REAR OF RESIDENCE MARKED STATE'S
11 EXHIBIT NUMBER 20, ADMITTED AS EVIDENCE.

12 ITEM IDENTIFIED AS PHOTOGRAPH
13 OF BACK DOOR OF 20 PLAYER ROAD
14 MARKED STATE'S EXHIBIT NUMBER 21,
15 ADMITTED AS EVIDENCE.

16 ITEM IDENTIFIED AS PHOTOGRAPH
17 OF BACK DOOR OF 20 PLAYER ROAD
18 MARKED STATE'S EXHIBIT NUMBER 22,
19 ADMITTED AS EVIDENCE.

20 BY MR. STONE:

21 Q First, let me show you -- show the jury State's
22 Exhibit Number 20. This is the side of the mobile home.
23 Is that correct? Can you see it from there?

24 A It looks like the -- the back.

25 Q The back?

1 A Yes, sir.

2 Q Okay. Any of those windows broken? Any signs of
3 any type of forced entry along that area?

4 A No. No, sir.

5 Q Did you check? Did you go out and look through
6 this area?

7 A I walked the exterior of the residence, and didn't
8 see any type of forced entry to the residence.

9 Q State's Exhibit 22, tell us what that is.

10 A That's the -- the -- the back door of the
11 residence. Yes, that's the -- the back door.

12 Q Okay. Let me also show you what's been marked as
13 State's Exhibit 19 and State's Exhibit 18. Ask if you
14 could identify these.

15 A The -- that is the front door of the residence.

16 Q Okay.

17 A And that's the door jamb.

18 Q All right. And these are -- is that fair and
19 accurate depictions of how they looked when you saw them
20 that night?

21 A Yes, sir.

22 Q And these are the front. Is that correct?

23 A Correct.

24 MR. STONE: Your Honor, we move State's Exhibit 19
25 and State's Exhibit 18 into evidence.

1 MR. MCGUIRE: Without objection, your Honor.

2 THE COURT: They're in evidence, without objection.

3 That's 18 and 19.

4 ITEM IDENTIFIED AS PHOTOGRAPH

5 OF FRONT DOOR OF RESIDENCE DOOR

6 JAMB MARKED STATE'S EXHIBIT NUMBER 18,

7 ADMITTED AS EVIDENCE.

8 ITEM IDENTIFIED AS PHOTOGRAPH

9 OF FRONT DOOR OF RESIDENCE MARKED

10 STATE'S EXHIBIT NUMBER 19, ADMITTED

11 AS EVIDENCE.

12 BY MR. STONE:

13 Q First, let me show you State's Exhibit 19. Tell
14 the jury what that is, please, sir.

15 A That looks like the front door. I can't really
16 see.

17 Q Let me get you to come down. You're having a hard
18 time seeing. I'm sorry about that. Stand here.

19 A That's going to be the front door of the residence.

20 Q Okay. And tell me what the condition of that front
21 door is.

22 A It appears to be in good shape. Doesn't appear to
23 have any type of problem or any type of damage to
24 indicate any type of forced entry.

25 Q Let me show you while you're standing there,

1 State's Exhibit 18. And what is that?

2 A That's the door jamb.

3 Q And are there any signs of any type of forced
4 entry, anything like that, on those door jambs?

5 A No, sir. None whatsoever.

6 Q All right, sir. Thank you. Go ahead and take your
7 seat.

8 Tell me, if you would, what you found once you went
9 through the house.

10 A Upon entry into the house, the first thing I
11 observed was a set of bloody children's clothing laying
12 on the living room floor. The next thing I observed was
13 the body of a child. He was laying on his back inside
14 the kitchen. The child was later identified as

15 **John Doe 1**

16 And then, just past the kitchen, to the furthest
17 bed -- bedroom on the left, I observed an adult female.
18 She was laying on her back. She appeared to have a
19 gunshot wound to the forehead, and obviously, both of
20 them appeared to be deceased.

21 Q Now, these two people, once you saw them, had EMS
22 already come through by the time you got there?

23 A Yes, sir, they did.

24 Q So, they had already attempted some type of
25 treatment before you got there.

1 A Yes, sir, that's correct.

2 Q So, they're not going to be in the same position
3 they were in initially. They were turned over and
4 various leads and things like that placed on them?

5 A Yes, sir.

6 Q Okay, sir. Throughout the house, did you find any
7 signs of any type of forced burglary, forced entry,
8 anything like that?

9 A No, sir, I did not. I mean, everything appeared to
10 be, you know, in place. Nothing appeared to be rummaged
11 through as if a burglary had occurred. It appeared to
12 be normal.

13 Q And did you and your team search the house? Were
14 you able to find a gun, anything like that?

15 A I did not search the house.

16 Q Okay. All right. You were just basically doing
17 the observation during that period?

18 A I was there. I did an assessment of the inside of
19 the incident location to determine whether or not the
20 Sheriff's Office would process the scene, or the South
21 Carolina Law Enforcement Division would process it, and
22 SLED ended up processing the crime scene.

23 Q Okay. Who did you turn the crime scene over to?

24 A That was SLED Agents Hardee and Crooks.

25 Q Okay. And did you check the back door to see if

1 the back door was locked?

2 A I did not check it to see if it was locked, no,
3 sir.

4 Q Okay. That was something SLED would have done?

5 A Yes, sir.

6 MR. STONE: Okay. We don't have anything else at
7 this time for this witness, your Honor.

8 THE COURT: Okay.

9 MR. MCGUIRE: Thank you, your Honor.

10 INVESTIGATOR JODY HIERS

11 CROSS-EXAMINATION BY MR. MCGUIRE:

12 Q Officer Hiers, you were the duty investigator on
13 call.

14 A Yes, sir, that's correct.

15 Q And you would be the one making some decisions with
16 regard to the investigation.

17 A I would. Obviously, I talked to my direct
18 supervisor, Master Sergeant Jeff Purdy, in reference to
19 the case, also.

20 Q Sure. Okay. And there was the crime scene,
21 officers from South Carolina Law Enforcement Division,
22 that was Jeff Crooks and Hardee?

23 A Yes, sir.

24 Q And you guys have your own crime scene people.

25 A It's normally the investigators, we would process

1 the scene, so.

2 Q Okay. And you guys do double duty as sort of the
3 crime tech and the investigator?

4 A Yes, sir. If it's a major incident, obviously, you
5 know, a lot of times we'll have SLED process the scene,
6 if it's something that's, you know, what we classify as
7 major, we would actually take care of it.

8 Q Sure. And that's what happened in this case. You
9 guys called Columbia.

10 A Correct.

11 Q They sent a team down.

12 A Yes, sir.

13 Q And they printed the trailer. Did you know that?

14 A I'm not -- I don't know exactly what they did, so.

15 Q Okay.

16 A I wasn't there when they -- when they processed the
17 crime scene.

18 Q Okay. Did you directly order Crooks or Hardee to
19 do anything or not do anything?

20 A I didn't order them to do anything. I wasn't there
21 to do it.

22 Q Okay. In your report, you noticed that the van
23 with all its doors open, well, you noted that in your
24 report, right?

25 A Yes, sir, I did.

1 Q Because that's a little unusual, right?

2 A It is.

3 Q And tell me what you guys did with regard to
4 looking at the van for trace evidence, fingerprint
5 evidence, that sort of thing.

6 A I didn't do anything. That would have been SLED.

7 Q Well, now, is it SLED's -- if they -- is it SLED's
8 decision, or Beaufort County Sheriff's Office decision?

9 A I'm assuming they would have -- would have done it.
10 Like I say, I wasn't there, so I couldn't --

11 Q You left the scene eventually.

12 A Well, I was -- eventually, I did, yes, sir.

13 Q Okay.

14 A But I wasn't present when they were processing the
15 scene.

16 Q Okay. Do you know why the inside of the trailer
17 was dusted for prints and not the van?

18 A I have no clue.

19 Q Okay. You would have no input on that?

20 A No, sir.

21 Q What officer would have made that decision?

22 A I assume the SLED agents would have -- would have
23 taken it upon themselves to do it. It's -- it's part of
24 processing the crime scene.. I don't know.

25 Q Okay. So, you all would just deferred to them?

1 A Yes, sir.

2 Q But it looks like every officer that responds notes
3 in their report the unusual nature of all these doors
4 open on the van, and you're one of them.

5 A Sure.

6 Q Do you know if any officer gave them a direct order
7 not to print the van?

8 A No, sir, I don't know that.

9 Q Okay. Were you there talking to Officer Purdy and
10 other officers about formulating a plan of action for
11 the investigation when the call from Foskey came in?

12 A I know we had formulated a plan on where we needed
13 to go. I don't think I was present when the call from
14 Foskey to Master Sergeant Purdy occurred. However, he
15 did let me know that he received a call from him.

16 Q Were you on the crime scene at the time?

17 A Honestly, I don't know.

18 Q It's been a long time.

19 A I don't know if I was at the scene or -- or next
20 door. I don't know.

21 Q Okay. Were you responsible for making sure there
22 was a log of all the people that went in the trailer?

23 A I'm sorry?

24 Q Were you responsible for keeping a log of who went
25 inside this place?

1 A No, sir.

2 Q Who would have been responsible for that?

3 A I believe that was Lance Corporal Rivers, if I'm
4 not mistaken. She was -- yeah, I believe it was Lance
5 Corporal Rivers kept the log.

6 Q Do you remember speaking to Scott Sampson at all?

7 A EMS?

8 Q Yes. Fire department.

9 A I believe I got the statements from him. I don't
10 think I spoke to him, no, sir.

11 Q Okay. You're aware that he went inside the
12 trailer?

13 A I'd have to look at the log and see.

14 Q All right. Wesley Nation, a civilian?

15 A I know he went in, yes.

16 Q He went in.

17 A Yes.

18 Q Frank Mullen went in.

19 A Frank Mullen.

20 Q Jai. M. went in. Jas. M. went in?

21 A Yes, sir.

22 Q Lamb went in?

23 A Yes, sir.

24 Q Orsen went in?

25 A Who?

1 Q Orsen, Shayna Orsen, EMT?
2 A Give me one second; I'll pull her.
3 Q Okay.
4 A I can tell you if she did or not.
5 Q And while you're looking for it, you obviously went
6 in, correct?
7 A Yes, sir, I went in.
8 Q And Officer Purdy?
9 A Correct. You said Orsen?
10 Q Yes, Shayna Orsen.
11 A Yes, sir.
12 Q Okay. You've heard the term AFIS. AFIS, you know
13 what that means?
14 A Yes, sir.
15 Q It's Automated -- Automatic Fingerprint
16 Identification Service?
17 A Yes, sir.
18 Q Have you used it before?
19 A Directly?
20 Q Yes.
21 A I haven't, no. I've given it to another
22 investigator, actually, who does that for us.
23 Q Okay. And just to make sure we know how it works,
24 if you take a clean print, it has to be a pretty good
25 print, high quality. But if you get a good print, you

1 can turn it over to a technician that puts it in AFIS,
2 and it compares that fingerprint to all the fingerprints
3 that are on the database, which means anyone that's been
4 arrested. Is that a fair description?

5 A I think generally, yes, that's the description of
6 it, yes, sir.

7 Q Okay. And there were no fingerprints lifted from
8 the van to run through AFIS; were there?

9 A I don't know. From the attached slip.

10 Q Okay. There was a purse on the front seat of the
11 van. Do you remember seeing that?

12 A Yes, sir.

13 Q Was there any -- was there any investigation into
14 the contents of the purse to see if there was any trace
15 evidence, blood evidence, or anything like that?

16 A Again, that would be deferred to SLED. They
17 processed the scene.

18 Q Okay. I got more questions for you, but because I
19 know you were involved with this investigation pretty
20 much from front to end, but I understand you'll be
21 coming back up. I'll save some more questions for you
22 later.

23 A All right, sir.

24 MR. MCGUIRE: Thank you, sir.

25 INVESTIGATOR JODY HIERS

1 RE-DIRECT EXAMINATION BY MR. STONE:

2 Q Investigator, let me show you what's been marked as
3 State's Exhibit 23, and ask if you can identify that
4 photograph.

5 A That's going to be the photo of the person -- the
6 set of keys, that were on the passenger seat of the
7 minivan that was identified as Jeanine -- Jeanine
8 Mullen's.

9 Q And that's a fair and accurate depiction of how
10 that looked that night?

11 A Yes, sir.

12 MR. STONE: Okay. At this time, your Honor, we
13 move that into evidence, State's Exhibit 23.

14 THE COURT: Any objection?

15 MR. MCGUIRE: Without objection, your Honor.

16 ITEM IDENTIFIED AS PHOTOGRAPH
17 OF SET OF KEYS ON PASSENGER SEAT OF
18 MINIVAN MARKED STATE'S EXHIBIT
19 NUMBER 23, ADMITTED AS EVIDENCE.

20 MR. STONE: Permission to publish that, your Honor.

21 THE COURT: You may.

22 BY MR. STONE:

23 Q Can you see the monitor from there?

24 A I can see it, yes, sir.

25 Q Would you tell the jury what that is, please.

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1 A That's going to be the purse and keys on the
2 passenger seat of the white minivan identified as
3 Jeanine Mullen's.

4 Q And that van door was open at the time?

5 A The side door?

6 Q Yes.

7 A The side doors, the back hatch were all open at the
8 time.

9 MR. STONE: Okay. Thank you, sir. Nothing else at
10 this time.

11 THE COURT: Anything further?

12 MR. MCGUIRE: Nothing further.

13 BY THE COURT:

14 THE COURT: All right. You may step down, sir.
15 Thank you.

16 A Thank you.

17 MR. STONE: The State calls --

18 THE COURT: Solicitor, we're going to go ahead and
19 take a quick break.

20 Ladies and gentlemen of the jury -- and I'm sorry.
21 Investigator, go ahead and take a step down. Thank you.

22 All right. Before we go ahead and break, just a
23 moment, I'm sorry, Bob. Ladies and gentlemen, before we
24 break, I need to tell you, as I told you I'm going to
25 say every time you walk out of this courtroom, you are

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1 not to discuss this case, and that includes not with
2 each other, because you haven't heard all the evidence;
3 you haven't heard the arguments from the lawyers; and it
4 would be inappropriate for you to discuss it.

5 Additionally, I have had two notes from the jury
6 already at this point. The first question asked me if
7 we will dismiss by 6:00 p.m. today. The answer is yes.

8 Secondly, what are the reporting times for jurors,
9 and does that include Saturdays and Sundays? Ladies and
10 gentlemen, as of right now, I have no idea as far as how
11 we're going to proceed and whether or not we will need
12 to work. I can tell you that rarely do we ever work on
13 Sunday, and certainly not in the morning. But we will
14 take that up on a need-be basis.

15 Ladies and gentlemen, what I will also tell you is
16 that I also leave that to you, the jury, to decide what
17 you would like to do.

18 ITEM IDENTIFIED AS NOTE FROM
19 JURORS MARKED COURT'S EXHIBIT
20 NUMBER 76.

21 ITEM IDENTIFIED AS NOTE FROM
22 JURORS MARKED COURT'S EXHIBIT
23 NUMBER 77.

24 THE COURT: I also have told you before, as well,
25 that, if you have somewhere specific you need to be

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1 THE COURT: Thank you. Wait a minute. Do we have
2 the pens or pencils and notepads for them yet?

3 BAILIFF: I believe we -- I don't know. I'll check
4 with Bob.

5 THE COURT: Thank you. Let's just make sure they
6 have them before they come back in.

7 BAILIFF: Okay.

8 THE COURT: Are they looking for notepads?

9 BAILIFF: Pardon me?

10 THE COURT: Have they found notepads?

11 BAILIFF: Your Honor, the jury is entering.

12 JURORS ENTER COURTROOM 3:19 P.M.

13 THE COURT: Thank you.

14 BAILIFF: The jury is seated, your Honor.

15 THE COURT: Thank you. Welcome back, ladies and
16 gentlemen. As you see, I received your note, and we've
17 gone ahead and allowed you to take notes.

18 Ladies and gentlemen, I do need to tell you,
19 though, that those notes are for your viewing only.
20 When you come and go from the courthouse, you're going
21 to leave them in your seats. You will be able to have
22 them back when you deliberate in the case. But until
23 then, it wouldn't be appropriate for you to have them
24 back in the jury room. But the idea is, you are not to
25 share them with each other necessarily.

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1 Again, ladies and gentlemen, some people are better
2 note takers than others, and I certainly don't want
3 someone else to defer to another juror simply because
4 they took notes. Again, you need to rely on your own
5 recollection of the testimony, but please feel free. I
6 will also tell you that no one will see your notes.
7 Those are your and your personal notes only.

8 So, to that end, ladies and gentlemen, we're going
9 to continue. I will also tell you that I have heard
10 that you all are not able to work on Saturday. That is
11 absolutely fine. That is not an issue, and we will
12 start at 9:30 tomorrow morning. And hopefully, that's
13 agreeable with everybody. So, now that we've taken care
14 of our housekeeping matters, we're going to go ahead and
15 go forward.

16 Solicitor, if you'll call your next witness.

17 MR. STONE: State calls Jeff Crooks to the stand.

18 THE COURT: Come on forward, sir.

19 MADAM CLERK: Would you place your left hand on the
20 Bible and raise your right hand for me, sir. Do you
21 solemnly swear to truthfully answer all questions asked
22 of you by this court, so help you God?

23 LIEUTENANT JEFFREY CROOKS: Yes, ma'am.

24 MADAM CLERK: Please be seated. State your name
25 and spell it for the Court.

1 LIEUTENANT JEFFREY CROOKS: My name is Jeff Crooks.

2 LIEUTENANT JEFFREY CROOKS

3 DIRECT EXAMINATION BY MR. STONE:

4 Q And what do you do, sir?

5 A I'm a lieutenant with the South Carolina State Law
6 Enforcement Division, commonly referred to as SLED.

7 Q And as a lieutenant, what does your job entail?

8 A I am the supervisor of the latent crime scene
9 department.

10 Q And how long have you been in that position as a
11 lieutenant?

12 A Since July of 2011.

13 Q Okay. Prior to that, what did you do?

14 A Prior to that, I was a senior agent in the Latent
15 Print Crime Scene Department.

16 Q And in November of 2009, what was your position
17 with SLED then?

18 A I was a senior agent in the Latent Print Crime
19 Scene Department.

20 Q Okay. Now, in that position, what does your job
21 entail?

22 A At that time, my responsibility, as was the
23 department's responsibility, we responded to local --
24 responded to all 46 counties when requested to assist
25 any city, county, state, or federal agency that

1 requested crime scene investigation assistance. I also
2 was responsible for processing evidence submitted to the
3 laboratory for fingerprints. I was also a fingerprint
4 examiner, as well as a tire tread and shoe -- footwear
5 examiner. And also, we conducted blood stain pattern
6 analysis when requested.

7 Q And as part of this, you would respond to crime
8 scenes wherever they were anywhere in the state?

9 A Yes, sir, that's correct.

10 Q And did you have any particular areas or regions,
11 or you responded anywhere?

12 A The whole state.

13 Q Okay. And when you were assisting with these
14 agencies, would you basically do the crime scene
15 processing, or how would you work with the other
16 agencies?

17 A Yes, sir. We would assist with the crime scene
18 investigation, basically documenting the crime scene and
19 collecting any evidence in the crime scene that needed
20 to be collected. We have other departments that assist
21 with investigations, so we -- we didn't get involved
22 with interviews or anything like that. We just focus on
23 the crime scene.

24 Q Okay. On November the 15th, 2009, were you
25 involved in the crime scene at 20 Player Road?

1 A Yes, sir, I was.

2 Q And what was your job?

3 A We were requested by the Beaufort County Sheriff's
4 Office to assist them with the -- with the crime scene
5 investigation.

6 Q Okay. And about what time did you arrive on the
7 scene?

8 A I arrived at 11:50 p.m.

9 Q Okay. Tell me what you did once you arrived.

10 A We met with the local investigators. They gave us
11 a background of -- of what had taken place. I had
12 already spoken to them previously on the phone when we
13 were initially contacted, so I knew what type of scene
14 it was. We got additional -- when we got there, we got
15 additional information. We executed a search warrant to
16 investigate the crime scene that the Sheriff's Office
17 had provided. And we -- at that point, we did what we
18 call our initial walkthrough. During our --

19 Q What is an initial walkthrough?

20 A It's when we -- once we've talked to the local
21 agency, we'll go in and -- and do a walkthrough of the
22 scene, try to figure out exactly what the scene entails,
23 so we can try to formulate a game plan as to how we're
24 going to proceed with the investigation.

25 Q Okay. And what is that -- specifically, in this

1 case, what did you do?

2 A We went inside the residence. We -- we were shown
3 two vehicles outside the residence. We were advised
4 that one of the vehicles belonged to one of the -- or
5 was used by one of the victims, and the other vehicle
6 was a vehicle that was driven there by what we were told
7 were the people who initially discovered the victims in
8 the house and contacted police.

9 Q Okay. Let me ask you to come down from the stand,
10 if you could, please. People have had a hard time
11 seeing it.

12 THE COURT: You may step down, lieutenant. Thank
13 you, sir.

14 Q And let me show you and put on the monitor what's
15 been already entered into evidence as State's Exhibit 8.
16 Is that the scene that you were describing earlier?

17 A Yes, sir, it is. It's the front yard.

18 Q Okay. And tell me about those vans.

19 A We were advised that this was the van that was
20 driven by the individuals who discovered the victims and
21 contacted 911.

22 Q And you said *this*, and I know, but you're talking
23 about this van over to the, I guess, far left of this
24 monitor?

25 A Yes, sir. The white custom van to the left of this

1 cargo van.

2 Q Okay. Okay.

3 A Minivan.

4 Q And how about the minivan?

5 A We were advised that this minivan was the adult
6 female victim's van who lived at this residence.

7 Q Okay. And that's the -- that's the scene as you
8 found it when you -- when you arrived?

9 A Yes, sir, it is.

10 Q Okay. Let me just ask you to stay there, if I
11 could. Let me show you, on the monitor, what's been put
12 into evidence as State's Exhibit 22.

13 A That would be --

14 Q That's fine. That's State's Exhibit 20, but tell
15 me, what -- what is that?

16 A That is the rear of the residence.

17 Q Okay. And then, State's Exhibit 22. And what is
18 that?

19 A That's the back door of the residence.

20 Q All right. Now, when you arrived, was the back
21 door open or closed?

22 A It was closed.

23 Q And was it locked or unlocked?

24 A It was locked.

25 Q Okay. Did you open the door?

1 A Yes, sir, I did.

2 Q Okay. How did you do that?

3 A There were a set of keys located in the minivan on
4 the right, front seat. They -- we took those keys and
5 tried them on the locks, and they -- we were able to
6 unlock the door. The keys had a house key on them.

7 Q Let me show you State's Exhibit 23. Is that the
8 set of keys you're talking about?

9 A Yes, sir, it is.

10 Q All right. And so, you took those keys and did
11 what?

12 A I used them to open the back door.

13 Q Prior to that, it was locked.

14 A Yes, sir, it was.

15 Q Okay. Let me show you what's been marked as
16 State's Exhibit 25 and State's Exhibit 24. And without
17 going into great detail, can you tell me, are those fair
18 and accurate depictions of how the back door looked?

19 A Yes, sir, they are.

20 Q And that's how the -- that's how the scene looked
21 when you got there?

22 A Once we opened the door, yes.

23 Q Once you unlocked --

24 A Yes.

25 Q Once you unlocked the door. Okay.

1 MR. STONE: At this time, your Honor, we move
2 State's Exhibit 24 and 25 into evidence.

3 MR. MACDOUGALL: Without objection, your Honor.

4 THE COURT: It's in evidence without objection, 24
5 and 25.

6 ITEM IDENTIFIED AS PHOTOGRAPH
7 OF BACK DOOR MARKED STATE'S EXHIBIT
8 NUMBER 24, ADMITTED AS EVIDENCE.

9 ITEM IDENTIFIED AS PHOTOGRAPH
10 OF BACK DOOR MARKED STATE'S EXHIBIT
11 NUMBER 25, ADMITTED AS EVIDENCE.

12 BY MR. STONE:

13 Q Let me first show you State's Exhibit 25. Tell me
14 what that is.

15 A That's the back door, door jamb, or the area where
16 the locks are.

17 Q All right. And did you --

18 COURT REPORTER: I'm sorry. That's the back door
19 of the what?

20 Q Speak up so she can hear you.

21 A It's the back door, the lock showing -- depicting
22 the locks on the side of the door.

23 Q Now, did you photograph that?

24 A Yes, sir, I did.

25 Q Why did you do that?

1 A Because I wanted to document the fact that there
2 was no obvious indications of any type of forced entry.

3 Q Okay. Let me show you what's been marked as
4 State's Exhibit, and placed in evidence, as State's
5 Exhibit 24. And what does that say?

6 A That's the door jamb of the back door that depicts
7 where the locks would seat when the door is closed.

8 Q Any sign of forced entry on those, as well?

9 A No, sir. I didn't see any fresh, obvious signs of
10 forced entry at all.

11 Q And did you review the entire trailer? Did you go
12 around the entire trailer?

13 A Yes, sir, I did.

14 Q And did you see any signs of forced entry anywhere?

15 A I did not. None of the windows. There was no
16 indication on the inside that anything was disturbed to
17 indicate any type of forced entry anywhere that I could
18 find.

19 MR. STONE: Okay. Thank you. Go ahead and have a
20 seat. And I'll be calling you later on, but that's all
21 I have for you for this moment. Thank you, sir.

22 LIEUTENANT JEFFREY CROOKS

23 CROSS-EXAMINATION BY MR. MACDOUGALL:

24 Q Good afternoon, Lieutenant Crooks.

25 A Good afternoon.

1 Q You and I have met before. My name is Mark
2 MacDougall. I'm representing the defendant in this
3 case, Earnest Daise. I'm going to ask you to have a
4 look at Exhibits 3, 4, and 5 which are in evidence, and
5 these are photographs of the cargo van. Just take a
6 look at these for a moment.

7 Now, you've testified, and if you haven't, just
8 confirm for us that you took those photographs, and
9 those photographs depict the way the van was -- appeared
10 when you arrived.

11 A Yes, sir.

12 Q Okay. So, the rear cargo door is open?

13 A As I recall, yes, sir, it was.

14 Q Okay. And the rear hatch is open.

15 A Yes, sir.

16 Q Okay. And we've already seen on the monitor on the
17 front seat, there was a bag, a handbag, and a set of
18 keys.

19 A Yes, sir.

20 Q And this is the scene you come upon when you began
21 your processing of the crime scene?

22 A Yes, sir.

23 Q Okay. Now, there are many tools available to
24 forensic scientists like yourself. You can --

25 A Yes, sir.

1 Q That you have a dozen different ways of searching
2 for fingerprints. Is that right?

3 A Yes, sir.

4 Q On porous or non-porous surfaces, in blood, in oil,
5 on cloth. It's a very advanced science. It's been
6 around for more than a hundred years. You would agree
7 with that?

8 A Yes, sir.

9 Q Okay. And there is the technology for gunshot
10 residue for detecting particles of the metals that are
11 found in a cloud of gas that comes out of a firearm when
12 it's used.

13 A Yes, sir.

14 Q Okay. This fiber evidence, the ability to use
15 microscopes and other tools to identify whether two
16 fibers match together.

17 A Yes, sir.

18 Q Okay. And there's also a tool that I think you
19 used in this crime scene, phenylphaline, to detect
20 blood. Is that right?

21 A Yes, sir.

22 Q And you didn't do any of those tools at all in this
23 van that was sitting there with the doors open, the keys
24 and the handbag in the seat.

25 A No, sir.

1 Q You used none of those tools.

2 A No, sir.

3 Q I'm going to ask you to have a look, if you would,
4 please, at Exhibit 17-B, which is also in evidence, and
5 if I could ask you to step out for a moment, please.

6 THE COURT: You may, sir.

7 MR. MACDOUGALL: Thank you, your Honor.

8 BY MR. MACDOUGALL:

9 Q This is a diagram of the 20 Player Road residence
10 when you arrived. Is that right?

11 A Yes, sir.

12 Q Okay. And is it actually a diagram you yourself
13 prepared?

14 A Yes, sir, it is.

15 Q And I take it that, that's prepared using a
16 electronic tool or a database that allows you to sort of
17 create that kind of presentation? Is that right?

18 A We have software that allows us to do that, yes,
19 sir.

20 Q Okay. When you began processing the crime scene,
21 you identified a number of footprints. Is that right?

22 A Yes, sir.

23 Q Okay. And tell us what mechanism you used to
24 identify the footprints.

25 A When -- when we were documenting the scene, I

1 noticed there was some partial footwear impressions in
2 what appeared to be blood. Later, during the crime
3 scene investigation, I used a chemical that enhances the
4 presence of any blood on a scene. I was able to locate
5 additional footwear impressions in the scene that were
6 -- appeared to be in blood.

7 MR. MACDOUGALL: I'm going to ask the court
8 reporter to mark the next exhibit for identification.

9 COURT REPORTER: Defendant's Exhibit 7.

10 ITEM IDENTIFIED AS

11 INITIAL SKETCH BY

12 LIEUTENANT JEFFREY CROOKS

13 MARKED DEFENDANT'S

14 EXHIBIT NUMBER 7,

15 FOR IDENTIFICATION.

16 BY MR. MACDOUGALL:

17 Q Lieutenant, I'm going to ask you to have a look at
18 Defendant's Exhibit 7 for identification. Can you tell
19 me what that is.

20 A This is a copy of my initial sketch.

21 Q Did you prepare that using the same system you used
22 to prepare the exhibit that's on the easel?

23 A Well, this is copied from -- from this. I didn't
24 actually prepare the enlargement, but yes, sir, it came
25 from the same source.

1 Q Okay. And is it correct that you have identified
2 on Exhibit 7 for identification locations where you
3 identified the bloody footprints that you testified
4 about a few minutes ago?

5 A I didn't identify any from the sample. And by
6 identify, if you mean located, yes, sir, I did locate.

7 Q Locate.

8 A Yes, sir.

9 Q Pardon me, locate.

10 A With the exception of, I notice on here I have A
11 through T are footwear impressions. The letter L
12 actually is not, but all the rest of the letters are.

13 Q Okay.

14 Q So, A through K and M through T on that exhibit.

15 A Yes, sir.

16 Q And is that a fair depiction of the location,
17 approximate location, of each the footprints?

18 A Yes, sir, it is.

19 MR. MACDOUGALL: Your Honor, with that foundation,
20 I'd move the admission of Defendant's Exhibit 7.

21 MR. STONE: No objection.

22 THE COURT: Without objection.

23 ITEM IDENTIFIED AS INITIAL SKETCH

24 BY LIEUTENANT JEFFREY CROOKS MARKED

25 DEFENDANT'S EXHIBIT NUMBER 7,

1 ADMITTED AS EVIDENCE.

2 Q Using Exhibit 7, if you would, Lieutenant Crooks,
3 would you show us, please, where these footprints were
4 found in the residence as you did your crime processing.

5 A Most of them were found in this general area.
6 There were a few found -- this was like a little hallway
7 that led from the kitchen to the bedroom. There were a
8 couple of them found right up in this area, as well.

9 Q And you used a chemical to actually raise those
10 footprints and make them clear. Is that right?

11 A Yes, sir. It essentially stains blood, makes it
12 easier to see.

13 Q Okay. And they come out purple and pretty graphic.
14 Is that right?

15 A Yes, sir.

16 Q All right. Footprint analysis, and I think you
17 testified on direct that you are -- you have a great
18 deal of experience in that area. Is that right?

19 A Yes, sir.

20 Q And the basic job of a footprint analyst is to
21 identify knowns to unknowns, much like a fingerprint
22 analyst would take a latent and a patent fingerprint.
23 Is that right?

24 A Yes, sir.

25 Q All right. And there's two kinds of information.

1 from footprints. There's first class, which is the size
2 and the tread and the manufacturer; just kind of look on
3 the bottom, and you either have a chart you recognize as
4 a Nike or Adidas or whatever it is.

5 A That's right.

6 Q And there's second class evidence which is more
7 specific, and that's the wear on the sole, and any cuts,
8 any flaws, or damage that's been done to the sole, that
9 would tell you that, that specific imprint was matched
10 to a specific shoe. Is that a fair statement of what
11 second class information is?

12 A Yes, sir.

13 Q Okay. Now, at this crime scene, you had 19
14 unknowns.

15 MR. MACDOUGALL: May I approach, your Honor?

16 THE COURT: You may.

17 BY MR. MACDOUGALL:

18 Q And Exhibit 7, those unknowns were scattered kind
19 of in this general area. Is that right?

20 A Yes, sir.

21 Q And in undertaking to match those unknowns to
22 knowns, you collected some shoes.

23 A I was -- the -- yes, sir. The investigators
24 brought me shoes of members of the people who initially
25 found the victims. Yes, sir.

1 Q Okay. And that would be Mr. Mullen?

2 A Yes, sir.

3 Q And the two younger boys.

4 A Yes, sir.

5 Q Okay. So, you had three sets of shoes.

6 A Yes, sir, as I recall.

7 Q Okay. And when you began comparing those shoes to
8 the footprints, what did you conclude?

9 A The outsole design for the shoe impressions that
10 were in blood that I observed were consistent with their
11 shoe outsole designs.

12 Q Did you find any that are inconsistent?

13 A No, sir, I did not.

14 Q Okay. Did you later obtain shoes that, through
15 chain of custody, you were informed had belonged to the
16 defendant in this case, Earnest Daise?

17 A Well, later that night, yes, sir, I did. I did
18 observe the shoes he had on, yes, sir.

19 Q And did you make a comparison of those shoes and
20 the 19 footprints that you found?

21 A Yes, sir. I looked at his out sole, his outsole
22 design on his shoes, yes, sir, I did.

23 Q And you concluded that none of those prints matched
24 Mr. Daise's shoes.

25 A That is correct.

1 Q Okay. I'm going to ask you if you would, please,
2 just for purposes of the record, to -- I'll ask the
3 court reporter to mark these next three in sequence.
4 Thank you.

5 ITEM IDENTIFIED AS PHOTOGRAPH
6 MARKED DEFENDANT'S EXHIBIT
7 NUMBER 8, FOR IDENTIFICATION.

8 ITEM IDENTIFIED AS PHOTOGRAPH
9 MARKED DEFENDANT'S EXHIBIT
10 NUMBER 9, FOR IDENTIFICATION.

11 ITEM IDENTIFIED AS PHOTOGRAPH
12 MARKED DEFENDANT'S EXHIBIT
13 NUMBER 10, FOR IDENTIFICATION.

14 COURT REPORTER: Defendant's 8, 9, and 10.

15 BY MR. MACDOUGALL:

16 Q Lieutenant Crooks, I'm going to show you
17 photographs that have been marked Defendant's 8, 9, and
18 10 for identification.

19 MR. STONE: No objection, your Honor.

20 THE COURT: Without objection.

21 MR. MCGUIRE: Could we please have a look at those.

22 BY MR. MACDOUGALL:

23 Q And please, take a seat. Thanks.

24 Lieutenant, would you please have a look at
25 Defendant's Exhibits 8, 9, and 10 for identification?

1 And I'll have a couple questions for you on those.

2 Did you take those photographs at the crime scene
3 on the night of November 15th or 16th, of 2009?

4 A Yes, sir, I did.

5 Q And are those -- recognizing those are not all of
6 the footprints, do those depict the prints in the form
7 you were able to raise them using chemical analyses from
8 the floor of the residence?

9 A Yes, sir, that's correct.

10 MR. MACDOUGALL: Your Honor, I think these have
11 been admitted without objection.

12 ITEM IDENTIFIED AS PHOTOGRAPH

13 MARKED DEFENDANT'S EXHIBIT

14 NUMBER 8, ADMITTED AS EVIDENCE.

15 ITEM IDENTIFIED AS PHOTOGRAPH

16 MARKED DEFENDANT'S EXHIBIT

17 NUMBER 9, ADMITTED AS EVIDENCE.

18 ITEM IDENTIFIED AS PHOTOGRAPH

19 MARKED DEFENDANT'S EXHIBIT

20 NUMBER 10, ADMITTED AS EVIDENCE.

21 BY MR. MACDOUGALL:

22 Q Lieutenant, if I may ask, if you would, please,
23 using Exhibit 10 in particular, which I think is the
24 broadest photograph, if you could show the jury
25 generally where those prints were found, and how they

1 were raised, what system was used to raise them.

2 A The dark areas on the floor, kind of a dark purple
3 color, these are the impressions that I observed after I
4 used blood-detecting chemicals. This photograph depicts
5 the impressions I observed prior to processing it with
6 any chemicals. The markers that are depicted in the
7 images are the same as far as --

8 COURT REPORTER: I'm sorry. Are the same as far
9 as --

10 A The markers in each picture are in the same
11 location in each picture, as far as the letters.

12 Q Thanks, Lieutenant. Please have a seat. We're
13 done with the chart.

14 So, this is a thorough and effective set of tools
15 you use to identify footprints.

16 A It allows us to -- I could find blood, yes, sir.

17 Q All right. Okay. And in the -- as depicted in
18 these photographs, the number of footprints you found
19 approached 20, and none of them are Earnest Daise's. Is
20 that right?

21 A That is correct.

22 Q Okay. I'd like to switch to fingerprints for a
23 moment. When you were processing the crime scene, you
24 were accompanied by another agent named Hardee. Is that
25 right?

1 A Yes, sir.

2 Q Okay. And do I understand correctly that Agent
3 Hardee did a fingerprint processing of the scene?

4 A He dusted the scene at my request with fingerprint
5 powder, yes, sir.

6 Q Okay. You have a great deal of experience with
7 fingerprints, latent fingerprints, I take it?

8 A Yes, sir, I do.

9 Q Okay. And the truth is that we leave fingerprints
10 everywhere we go, depending upon the surface.

11 A That is correct.

12 Q Would you agree with me that one of the principle
13 sources of fingerprints are the secretions that come off
14 the ridged surfaces of our fingers? And you can do
15 feet, as well, but mostly it's fingers. So that, if I
16 touch this surface, I'm very likely leaving a
17 fingerprint that you could detect.

18 A That is correct.

19 Q Okay. And the same would be true if I was holding
20 a water glass, or if I -- if I had my hand on a floor or
21 any other flat surface, that's a pretty easy, non-porous
22 surface to detect fingerprints in. Is that right?

23 A You can get them. You don't always get them, but
24 yes, sir, you can get them.

25 Q Okay. And if you came to my house where I live

1 with my family, you'd find all of our fingerprints, if
2 you had enough time and used enough tools.

3 A Well, it would depend on the condition of the
4 surface, but I would expect that, if I did find your
5 fingerprints, that would -- that -- that would be what
6 I'd expect to find if fingerprints were developed, yes,
7 sir.

8 Q Now, did Agent Hardee use gray powder or black
9 powder? Do you recall?

10 A Black powder.

11 Q Black powder. Is that the only tool he used?

12 A Yes, sir.

13 Q Okay. Now, there are at least a dozen other tools,
14 some more sophisticated than powder, that can be used to
15 detect fingerprints, depending upon the surface and the
16 condition of the material. Is that right?

17 A Well, that's the most common, would be fingerprint
18 powder. There are other types of powder, yes, sir.

19 Q All right. You can use alternative white sources,
20 for example.

21 A Yes, sir.

22 Q You can use an anhydrant.

23 A You can use an anhydrant on porous surfaces, not
24 non-porous surfaces.

25 Q All right. And when you have a scene with black,

1 -- or, I'm sorry -- a scene with blood like we had here,
2 you can use amino black, right?

3 A Yes, sir.

4 Q Okay. And in fact, there are a number of tools you
5 can use that will perhaps identify prints that are not
6 obvious from the use of black powder or gray powder. Is
7 that right?

8 A I'm sorry. Could you repeat that?

9 Q Sure. There's quite a number of sophisticated
10 tools that can be used to lift latent prints where black
11 powder and gray powder are not effective.

12 A There are tools, yes, sir.

13 Q Okay. And none of those tools were used at this
14 crime scene by Agent Hardee.

15 A No, sir.

16 Q Now, you've testified earlier, Lieutenant, that the
17 van, the cargo van, that the photographs are in evidence
18 as Exhibits 9 -- 8, 9, and 10, was not processed at all.

19 A No, sir.

20 Q Okay.

21 A It was photographed.

22 Q All right. But there was another vehicle processed
23 by you shortly thereafter. Is that correct? In this
24 case?

25 A Yes, sir, there was.

1 Q I'm going to ask the court reporter to mark these
2 next two as defendant's exhibits for identification.

3 COURT REPORTER: Defendant's 11 and 12.

4 ITEM IDENTIFIED AS PHOTOGRAPH MARKED
5 DEFENDANT'S EXHIBIT NUMBER 11, FOR
6 IDENTIFICATION.

7 ITEM IDENTIFIED AS PHOTOGRAPH MARKED
8 DEFENDANT'S EXHIBIT NUMBER 12, FOR
9 IDENTIFICATION.

10 MR. MACDOUGALL: Thank you. May I approach, your
11 Honor?

12 THE COURT: You may.

13 BY MR. MACDOUGALL:

14 Q Lieutenant, I'd like you to have a look at
15 Defendant's Exhibits 11 and 12 for identification.

16 MR. STONE: No objection.

17 ITEM IDENTIFIED AS PHOTOGRAPH
18 OF FRONT INTERIOR OF VEHICLE MARKED
19 DEFENDANT'S EXHIBIT NUMBER 11,
20 ADMITTED AS EVIDENCE.

21 ITEM IDENTIFIED AS PHOTOGRAPH
22 OF FRONT INTERIOR OF VEHICLE MARKED
23 DEFENDANT'S EXHIBIT NUMBER 12,
24 ADMITTED AS EVIDENCE.

25 BY MR. MACDOUGALL:

1 Q Lieutenant, if you'd have a look at Defense 11 and
2 12, and tell us what they are, please.

3 A These are photographs of the interior, the front
4 interior of the vehicle we were asked to process.

5 Q Okay. And --

6 MR. MACDOUGALL: May I approach, your Honor?

7 THE COURT: You may.

8 BY MR. MACDOUGALL:

9 Q In fact, this photograph, Defense 12, shows the
10 interior of the Range Rover. And I think that's you in
11 the window. Is that correct?

12 A Yes, sir.

13 Q And Defense 11 shows a seat that has been cut in a
14 fairly aggressive manner. Was that part of your
15 processing?

16 A Yes, sir, I cut it, yes, sir.

17 Q All right. You didn't find the vehicle that way.
18 That was part of your --

19 A Right. We collected that portion of the vehicle,
20 yes, sir.

21 Q And would you agree with me that you gave that a
22 very thorough processing?

23 A Yes, sir, I believe we did.

24 Q And no prints of the defendant, Earnest Daise, were
25 found in that car, either.

1 A No, sir, I didn't identify any of his prints in
2 that vehicle.

3 Q Okay. The jury's heard discussion of blood stains,
4 and blood stains are detected.

5 A Yes, sir.

6 Q And in the case of the blood stain that was
7 detected on Mr. Daise's pants, do you have an opinion
8 with regard to whether that was put there by
9 transference or splatter?

10 A It looked to me like it was transfer stains. Yes,
11 sir.

12 Q All right. And splatter would be, and I'm going to
13 use layman's terms, but splatter would be blood that is
14 transferred to a surface in an explosive manner,
15 airborne in some way.

16 A Yes, sir. It's projected blood.

17 Q Okay. And transference would be surface-to-
18 surface.

19 A Yes, sir.

20 Q Body part to clothing, or something that had the
21 blood on it.

22 A Yes, sir.

23 Q And your view is it was transference.

24 A That's what it appeared to be to me, yes, sir.

25 Q Now, in the course of the same investigation, the

1 Sheriff's Office informed you that a DNA analyst in the
2 Sheriff's Office had found color specks on the
3 sweatshirt that looked like blood spatter. Do you
4 recall that?

5 A Yes, sir, I do.

6 Q Okay. And you tested that garment with LCV; didn't
7 you?

8 A Yes, sir, I did.

9 Q And it's correct that, when that garment was
10 delivered to you, it was described as having been taken
11 from the defendant, Earnest Daise.

12 A Yes. I don't recall if I was told where -- who it
13 came from. I know it was submitted, and they requested
14 that I check it for -- for evidence of blood stain, yes,
15 sir.

16 Q And in fact, you found no blood spatter there; did
17 you?

18 A No, sir, I didn't find any blood on it.

19 Q What you found were red thread fibers in the --
20 that were embedded in the fabric.

21 A Yes, sir. They were very small red spots on the
22 shirt, and when I looked at it under a magnifying glass,
23 I was able to determine that it was actually red thread
24 woven into the design of the shirt.

25 Q Okay.

1 A Or the sweatshirt.

2 Q And despite what the Sheriff's Office had suggested
3 when they examined it, in your detailed examination, you
4 found no evidence of blood anywhere on that shirt?

5 A I did not see anything. At first glance, I did see
6 where there was something there to make -- that would --
7 when I -- when I first looked at it, I understood why it
8 was submitted. However, I was not able to find any
9 blood, no, sir.

10 Q Okay.

11 MR. MACDOUGALL: A moment, your Honor?

12 Nothing further. Thank you, Lieutenant.

13 LIEUTENANT JEFFREY CROOKS

14 RE-DIRECT EXAMINATION BY MR. STONE:

15 Q Let me show you, let me get back to what Defense
16 refers to as Defense Exhibit 10, the Defense Exhibit 9,
17 and the Defense Exhibit 8. These are the footprints
18 that you found in the house when you were going through
19 and running the tests. Is that correct?

20 A I'm sorry. What was the question, again?

21 Q These are the footprints you found inside the
22 house?

23 A Yes, sir, that is correct.

24 Q Is that correct?

25 A Yes, sir.

1 Q And I think you testified they're somewhere in this
2 vicinity here. Is that correct?

3 A Yes, sir. The majority were in the kitchen. There
4 were some in the hallway.

5 Q All right. And this is, I believe, Defense Exhibit
6 10, this one, it's blue. Why is that blue? It looks
7 blue to me. Is that blue?

8 A It's like a dark purple, like a violet, yes, sir.

9 Q Okay.

10 A That's -- that's what the impressions look like
11 after I sprayed them with the LCV chemical.

12 Q So, you spray that, and that kind of brings the
13 blood out so you can see it?

14 A It helps define it, yes, sir.

15 Q Okay. And these, I think you testified earlier,
16 these footprints were actually matched to Frank Mullen,

17 Jai. M. , and Jas. M. . Is that right?

18 A Well, they -- they -- the outsole design was
19 consistent. I didn't identify them to any shoes, but
20 the -- the outsole design, the tread pattern on the
21 shoe, was consistent with the shoes that I was advised
22 they were wearing when they discovered the victims.

23 Q Okay. And who is Frank Mullen, Jai. M. , and

24 Jas. M. ?

25 A I was advised that they were family members, I

1 believe. I think they're all family members.

2 Q Had they been there before or after you got there?

3 A That had all occurred before I got there. There
4 was nobody inside the scene when I got there.

5 Q Now, at some point, you responded to the Beaufort
6 County Sheriff's Office; did you not?

7 A I believe it was a substation.

8 Q Or you were called -- you were called to the
9 Beaufort County Sheriff's Office.

10 A Yes, sir. I believe it was a substation.

11 Q Okay. And did, at some point during that, did you
12 come in contact with Earnest Daise?

13 A Yes, sir, I did.

14 Q All right. Now, when you arrived, what did you do?
15 Is this later on, by the way? Is this later on that
16 night?

17 A Yes, sir. I was contacted by investigators who
18 advised that they wanted me to take a look at the
19 clothing he was wearing; that they were in the process
20 -- or they had him at a substation, and they wanted me
21 to look at his -- his clothing. And I requested they
22 get a search warrant, which they did. And when we
23 finished the scene, the initial scene at the residence,
24 I went to the substation, met with investigators, and
25 looked at, in particular, his pants.

1 Q Okay. I'm going to go with these individually so
2 that you can take a look at them before we move them in.
3 State's Exhibit 11, is that a fair and accurate
4 depiction of Earnest Daise's pants that night when you
5 went over there, when you went to the Sheriff's Office?

6 A Yes, sir, it is.

7 Q State's Exhibit 12, is that a fair and accurate
8 depiction of Earnest Daise's pants?

9 A Yes, sir, it is.

10 Q And let me go back to State's Exhibit 11. Is he
11 actually wearing the pants at the time?

12 A Yes, sir, he was.

13 Q Okay. So, when you got there, he was wearing these
14 jeans?

15 A Yes, sir.

16 Q State's Exhibit 13, is that a fair and accurate
17 depiction of the pants?

18 A Yes, sir.

19 Q And State's Exhibit 26.

20 A Yes, sir.

21 Q And these were all fair and accurate depictions of
22 Earnest Daise in his jeans when you were called to the
23 Beaufort County Sheriff's Office.

24 A They are.

25 MR. STONE: Okay. At this time, your Honor, we

1 move in State's Exhibit 11, 12, 13, and 26.

2 MR. MACDOUGALL: May we approach, your Honor?

3 THE COURT: You may.

4 ON-THE-RECORD BENCH CONFERENCE, OUT
5 OF HEARING OF JURORS.

6 MR. MACDOUGALL: We're renewing our *Fourth*
7 *Amendment* objection to the admission or publication to
8 the jury of evidence relating to blood on Mr. Daise's
9 jeans and how it was obtained.

10 END BENCH CONFERENCE.

11 BY MR. STONE:

12 MR. STONE: Okay. Your Honor, at this time, we
13 move State's Exhibit 11, 12, 13, and 26 into evidence.

14 MR. MACDOUGALL: Renew our objection, your Honor.

15 THE COURT: Thank you. For the record, it's noted.
16 You can go ahead, sir.

17 MR. STONE: Thank you.

18 ITEM IDENTIFIED AS PHOTOGRAPH
19 OF EARNEST DAISE'S PANTS MARKED
20 STATE'S EXHIBIT NUMBER 11,
21 ADMITTED AS EVIDENCE.

22 ITEM IDENTIFIED AS PHOTOGRAPH
23 OF EARNEST DAISE'S PANTS MARKED
24 STATE'S EXHIBIT NUMBER 12,
25 ADMITTED AS EVIDENCE.

1 ITEM IDENTIFIED AS PHOTOGRAPH
2 OF EARNEST DAISE'S PANTS MARKED
3 STATE'S EXHIBIT NUMBER 13,
4 ADMITTED AS EVIDENCE.

5 ITEM IDENTIFIED AS PHOTOGRAPH
6 OF EARNEST DAISE'S PANTS MARKED
7 STATE'S EXHIBIT NUMBER 26,
8 ADMITTED AS EVIDENCE.

9 BY MR. STONE:

10 Q Lieutenant Crooks, let me get you to come down from
11 the stand, please, sir.

12 All right. I'm going to first show you State's
13 Exhibit 11. Tell me what this is, please.

14 A This is a photograph I took at the Sheriff's
15 substation when I met with them to look at Mr. Daise's
16 pants.

17 Q Okay. State's Exhibit 12. What is that?

18 A That is a more close-up photograph of the area
19 below the left pants pocket.

20 Q Okay. State's Exhibit 13.

21 A That is a more close-up photograph of the right leg
22 area of the pants.

23 Q Okay. And is this in the area that you saw some
24 type of substance on?

25 A Yes, sir. The area that I actually looked at was,

1 specifically, was the area below the previous picture
2 there below the left-hand pocket.

3 Q Okay. Let me go to State's Exhibit --

4 COURT REPORTER: *The lower left-hand?*

5 A The pant pocket on the left side, right below the
6 pant pocket.

7 Q And let me go to State's Exhibit 26.

8 All right, now, when you see -- when you see these
9 pants, what did you -- what did you do? We lost the
10 power.. It's off. That's all right. Just go ahead and
11 have a seat.

12 What do you do when you take a look at these pants?
13 You're called to the Sheriff's Office. What is your
14 job?

15 A Well, the specific question that was asked and the
16 reason they wanted me to look at it is determine if some
17 stains that they saw might have possibly been blood. I
18 did a -- I used a test using a chemical called
19 phenylphaline. It's actually a two-step process. You
20 take -- you swab the -- the area in question; you apply
21 phenylphaline, which is a chemical solution to the swab;
22 then you follow that up with hydrogen peroxide. And if
23 blood is present, it will turn like a hot pink color, a
24 real vivid pink, which indicates, potentially, the
25 presence of blood. And at that point -- which is what I

1 did with these pants, and it did react positively for
2 the presence of blood.

3 Q And that is while he's wearing them?

4 A Yes, sir.

5 Q Okay. And at that point, did you take them and
6 then send them off for further testing?

7 A I had him remove the pants in my presence, I
8 collected them in a paper bag, and then I transported
9 them to the SLED laboratory for further examination.

10 Q Now, earlier, I think you've been questioned as far
11 as fingerprinting and having fingerprint -- you actually
12 had one of your officers do some fingerprinting around
13 the area, as well. Is that correct?

14 A Yes, sir. We dusted areas of the residence looking
15 for fingerprints.

16 Q Okay. And were you able to develop any useful
17 prints?

18 A No, sir, we were not.

19 MR. STONE: Nothing else at this time, your Honor.

20 MR. MACDOUGALL: Questions on re-cross, your Honor?

21 THE COURT: Yes, sir.

22 MR. MACDOUGALL: If could ask, if I could impose on
23 the State, please, just to put up one of the exhibits
24 for purposes of demonstrating something to the jury for
25 re-cross. That would be State Exhibit 11, please.

1 THE COURT: Excuse me, sir. I don't mean to be
2 walking behind you.

3 MR. MACDOUGALL: Your Honor, it's just a technical
4 problem. It can use a photograph.

5 THE COURT: I appreciate it. Thank you.

6 MR. MACDOUGALL: Thank you.

7 THE COURT: Okay.

8 MR. MACDOUGALL: May I approach the witness, your
9 Honor?

10 THE COURT: You may, sir.

11 LIEUTENANT JEFFREY CROOKS

12 RE-CROSS-EXAMINATION BY MR. MACDOUGALL:

13 Q Lieutenant, I'm going to show you a photograph that
14 was shown to you just a few minutes ago by the
15 Prosecutor. It's State's Exhibit 11 in evidence, and
16 I'm going to hold it up so the jury can see, as well.
17 That's the photograph I think you identified as the
18 jeans, the pants in question, being worn by Mr. Daise.
19 Do you agree with that?

20 A Yes, sir, it is.

21 Q Look down at the bottom there. Do you see how the
22 pants are worn?

23 A Yes, sir.

24 Q What do you see?

25 A Looks like the pant legs are rolled up.

1 Q Now, you've testified that you found 19 bloody
2 footprints through here.

3 A Um-hmm.

4 Q Right? All through --

5 THE COURT: Is that a yes for the record, sir?

6 A I'm sorry. Yes, ma'am.

7 Q I'm sorry.

8 A Yes, sir, I did.

9 Q I'm sorry, Exhibit 17-B. And you used chemical
10 processes to develop them?

11 A Yes, sir.

12 Q You didn't find any blood on the cuffs; did you?

13 A I did not observe any, no, sir.

14 Q No.

15 A With a visual examination.

16 Q Or any other examination.

17 A That's all -- that's the only examination I did on
18 the pants, yes, sir.

19 Q And just to return to something that Mr. Stone just
20 brought up, none of the footprints that you found in the
21 house were Earnest Daise's?

22 A They were -- that's correct. They were -- I did
23 not -- the outsole was not consistent with the shoes he
24 was wearing. That's correct.

25 MR. MACDOUGALL: Nothing further, your Honor.

1 Thank you very much. Thank you, Lieutenant.

2 LIEUTENANT JEFFREY CROOKS

3 RE-RE-DIRECT EXAMINATION BY MR STONE:

4 Q One other thing I forgot to ask you. What was the
5 condition of the ground outside when you were out there?

6 A It was a real foggy night. In -- in fact, I had
7 -- when I initially got there, I had to let my camera
8 de-fog because of the -- the condition outside. The
9 ground was -- the ground was wet. It was very wet.

10 MR. STONE: I don't have anything else, your Honor.

11 THE COURT: Anything further, Mr. MacDougall?

12 MR. MACDOUGALL: I don't have anything else, your
13 Honor.

14 ITEMS IDENTIFIED AS DIAGRAM MARKED

15 STATE'S EXHIBIT NUMBERS 17 AND 17-B,

16 ADMITTED AS EVIDENCE.

17 THE COURT: Thank you. All right. You may step
18 down, sir. State will call the next witness.

19 MR. STONE: Scott Sampson.

20 THE COURT: And while that witness is coming up,
21 could I see the attorneys?

22 MR. STONE: Sure.

23 COURT REPORTER: You need me?

24 THE COURT: No.

25 OFF-THE-RECORD BENCH CONFERENCE.

1 END BENCH CONFERENCE.

2 MR. STONE: Scott Sampson.

3 THE COURT: Come on forward, sir, right around
4 here.

5 MADAM CLERK: Would you place your left hand on the
6 Bible and raise your right hand for me, sir.

7 SCOTT CHRISTOPHER SAMPSON: Which hand?

8 MADAM CLERK: Place your left hand on the Bible and
9 raise your right hand for me. Do you solemnly swear to
10 truthfully answer all questions asked of you by this
11 court, so help you God?

12 SCOTT CHRISTOPHER SAMPSON: Yes.

13 MADAM CLERK: Please be seated. State your name
14 and spell it for the Court, please.

15 SCOTT CHRISTOPHER SAMPSON: Sure. My name is Scott
16 Christopher Sampson, S/c/o/t/t, Christopher Sampson,
17 S/a/m/p/s/o/n.

18 THE COURT: Thank you, sir.

19 SCOTT CHRISTOPHER SAMPSON

20 DIRECT EXAMINATION BY MR. STONE:

21 Q And Mr. Sampson, obviously, you are a paramedic.
22 Is that correct?

23 A Yes, sir.

24 Q And what does that mean, to be a paramedic? What
25 is that -- what is that job?

1 A I'm an -- an EMT Paramedic Emergency Responder. I
2 work for Beaufort County EMS. And we are just trained
3 to go on-scene, assess scenes, and treat patients as we
4 come across. Depending on what we find is what we
5 treat.

6 Q And are there levels of paramedic or are there
7 levels of EMTs?

8 A There's basically three levels right now. There's
9 a basic EMT, and intermediate EMT, and then there's a
10 paramedic. Right now, that's what we have for Beaufort
11 County EMS.

12 Q Okay. And what's significant about those three
13 layers?

14 A A basic EMT can do airway functions, can assess
15 patients. An intermediate can start an I.V., can
16 administer some medications. And then, a paramedic is
17 allowed to do advanced life support, as well as all, you
18 know, advanced cardiac life support drugs we have
19 available to us.

20 Q And which one -- I'm sorry, I didn't mean to
21 interrupt you.

22 A That's all right, sir.

23 Q Which one are you?

24 A I'm a paramedic, yes, sir.

25 Q You're the third level?

1 A Yes, sir.

2 Q Did you respond to 20 Player Road on November the
3 15th, 2009?

4 A Yes.

5 Q And tell me what you found once you got there?

6 A Well, I was dispatched and we waited until the
7 scene was secure. Once the scene was called secure,
8 then I entered into the residence, and I was asked to be
9 very careful entering into the residence. I came across
10 a patient laying in the kitchen who appeared to be
11 deceased. I checked his breathing. He had no
12 breathing. I was also told there was two more patients
13 in the back bedroom. I went into the back bedroom and
14 found a female patient on the floor, who also appeared
15 to be deceased. And I also found a patient on the bed
16 who was a young child who was breathing and whimpering
17 and crying.

18 Q Okay. The lady, and I believe you filled out
19 forms, do you not, after you go through this?

20 A Yes.

21 Q All right. The lady in the back, do you know her
22 name? Do you know who that was?

23 A At the time, no. After I did my reports, of
24 course, I was -- I always have to put names on all of my
25 reports, and I was able to fill out her name with

1 finding some information from the officers who were at
2 the scene.

3 Q Okay. And her name was?

4 A I believe her name was Jeanine. I don't know her
5 last name.

6 Q Okay. And she is the lady in the back. Is that
7 correct?

8 A Yes, sir.

9 Q And her condition once you arrived was?

10 A She appeared to be deceased, yes. She did have a
11 gunshot wound. It appeared to be to her face, with an
12 exit wound, what I call an exit wound, out of the back
13 of her head.

14 Q Okay. The small child in the kitchen area, and I'm
15 referring to -- I don't know if you can see this
16 specifically.

17 A Not very well.

18 Q 17-B, the small child over here.

19 A Yes.

20 Q This is the four-year-old child. Do you recall his
21 name?

22 A Is that the child in the kitchen?

23 Q Yes.

24 A I believe his name was **John Doe 1**, and I'm not sure
25 of his last name.

1 Q Okay. And what was his condition?

2 A He appeared to be deceased. He was laying in a
3 pool of blood.

4 Q And did you check his breathing?

5 A Yes, sir, I did check his breathing.

6 Q Could you tell how he died?

7 A At the time, no, sir.

8 Q Now, there was a third patient, and what was the
9 condition of the third patient?

10 A That was the patient that was found on the bed in
11 the back bedroom, and that patient was breathing and
12 whimpering. I did establish a responsiveness, and all
13 he did was cry in pain when I touched him. And at that
14 time, I notified the incoming unit that we have one
15 viable patient; you need to meet me at the front door;
16 I'm going to get the patient moved and start stripping
17 off the clothes to find out where the injuries are.

18 Q And did you do that?

19 A I did move the patient, supporting the head and the
20 neck into the --into the living room area by the front
21 door, and started to strip him down. We say strip, we
22 don't mean -- that's the term we use, which is to take
23 the clothes off of a patient to determine where injuries
24 are. And then, EMS arrived to the scene, and Ms. Shayna
25 met me at the door. We continued to take the clothes

1 off the patient, and they took the patient to the
2 ambulance.

3 Q Okay, now, Ms. Shayna, who's Ms. Shayna?

4 A She's another paramedic who was working on EMS,
5 too, that day, I believe, and they were a transporting
6 unit. I was on what we call a QRV, which is a quick
7 response vehicle. I'm only one paramedic on that truck.
8 We're an assessment truck. We also have the
9 transporting trucks, and they were on the transporting
10 truck.

11 Q And the child was alive but crying when you were
12 holding him?

13 A Yes, sir.

14 Q And you turned him over, then to -- is it Shayna
15 Orsen? Is that who you turned him over to?

16 A Yes. Yes, sir.

17 Q She is also an EMT. Is that correct?

18 A She's a paramedic.

19 Q Paramedic.

20 A Yes.

21 Q Okay. And where did that transfer take place?

22 A Near the front door of the residence, just inside
23 the front door. I did not want to take the child out
24 into the open. We wanted to do everything and kind of
25 have some dignity for our patients, and started to take

1 care of treating my patient right then to find out where
2 the injuries were. I did not have a chance to get
3 everything accomplished, because she arrived at the
4 scene. And then, they took -- Shayna took the patient
5 to the truck.

6 MR. STONE: Okay. Thank you. I don't have any
7 further questions. Thank you, sir.

8 A Yes, sir. Thank you.

9 MR. MCGUIRE: No questions. Scott, thanks for
10 being here.

11 THE COURT: Okay. Thank you, sir. You may step
12 down. Any objection to this witness being excused?

13 MR. STONE: No, no, ma'am.

14 MR. MCGUIRE: No, ma'am.

15 THE COURT: You are excused, sir. Thank you.

16 MR. STONE: Thank you.

17 THE COURT: State will call their next witness.

18 MR. STONE: The State calls Shayna Orsen.

19 THE COURT: Come on forward to be sworn, please.

20 MADAM CLERK: Would you put your left hand on the
21 Bible and raise your right hand for me, please. Do you
22 solemnly swear to truthfully answer all questions asked
23 of you by this court, so help you God?

24 MS. SHAYNA MARIE ORSEN: I do.

25 MADAM CLERK: Please be seated. State your name

1 and spell it for the court reporter.

2 MS. SHAYNA MARIE ORSEN: My name is Shayna Marie
3 Orsen.

4 SHAYNA MARIE ORSEN

5 DIRECT EXAMINATION BY MR. STONE:

6 Q Okay. I'm going to need you to speak up a little
7 bit, and pull that microphone closer to you, if you
8 don't mind, please.

9 A Okay.

10 Q What is your name, ma'am?

11 A Full name, Shayna Marie Orsen.

12 Q And Ms. Orsen, what do you do, ma'am?

13 A I'm a paramedic for the County of Beaufort.

14 Q How long have you been a paramedic?

15 A I've been a paramedic a little over six years.

16 Q And we just had the levels of EMT explained to us.
17 You are the paramedic; you're the top level of EMT. Is
18 that correct?

19 A Yes, sir.

20 Q Am I saying that right, EMT?

21 A Sure.

22 Q Okay. And at that level, what are you able to do?
23 What job skills do you have?

24 A Paramedics, being the highest level, we have the
25 ability of advanced and interventional life support,

1 including intravenous access, intubation, medication
2 administration, things along those lines.

3 Q All right. Intravenous access, I'm assuming that's
4 creating -- putting in I.V.s, things like that?

5 A Yes, sir.

6 Q Okay. Were you involved in the 20 Player Road
7 incident on November the 15th, 2009?

8 A Yes, sir.

9 Q And what was your job? What -- first of all, who
10 were you with?

11 A I was staffed on the ambulance with Crew Chief
12 Tinnel, and responded to the scene with him in the
13 ambulance.

14 Q All right. And Crew Chief Tinnel, what is his
15 first name?

16 A Danny.

17 Q Danny Tinnel?

18 A Yes, sir.

19 Q Okay. And you were both in the ambulance. Is that
20 correct?

21 A Yes, sir.

22 Q Now, was someone else driving, or one of you
23 driving?

24 A A supervisor met us on scene to drive us to the
25 hospital, but the truck itself was manned by just Crew

1 Chief Tinnel and myself.

2 Q Okay. Now, my understanding, and correct me if I'm
3 wrong, the ambulance is basically you have the ambulance
4 section, and then you have the cab of the truck, which
5 is separate and apart. Is that correct?

6 A Yes, sir.

7 Q So, you were in the ambulance with Danny Tinnel,
8 and then your driver is kind of separated from you. Is
9 that correct?

10 A Yes, sir.

11 Q Okay. Tell me what you do once you get to 20
12 Player Road.

13 A When we pulled up in front of the residence, I went
14 inside to meet Paramedic Sampson, who was on the QRV,
15 who responded prior to us, to see what the situation
16 was. We had been given a heads-up that there was one
17 patient. It was a minor child with trauma. So, I went
18 inside the house, to meet with him and meet the patient.
19 And Crew Chief Tinnel got the truck ready for the
20 patient.

21 Q Did Crew Chief Tinnel, did he leave the ambulance,
22 or did he stay in the ambulance?

23 A He stayed in the ambulance.

24 Q Okay. And you actually went in. You met Mr.
25 Sampson inside the residence. Is that correct?

1 A Yes, sir.

2 Q Okay. What condition was the child -- by the way,
3 do you know the child's name?

4 A **John Doe 2** ?

5 Q Okay. And what condition was **John Doe 2** in when you
6 got into the house?

7 A He was unresponsive.

8 Q All right. What does that mean?

9 A It means that, no matter what stimuli that you do
10 to the patient, whether it be speaking to the patient,
11 or shaking the patient, or creating pain, they're not
12 responsive at all to that.

13 Q Okay. Does that mean he is unconscious?

14 A Yes.

15 Q Okay. So, he's unconscious, actually, when you get
16 into the living room area. Is that correct?

17 A Yes, sir.

18 Q All right. What did you do after that?

19 A Paramedic Sampson finished disrobing the child; and
20 then I picked him up and took him outside and stepped
21 into the side of the ambulance into the patient
22 compartment with him; sat him down on the stretcher; and
23 Paramedic Tinnel, Crew Chief Tinnel, and I began doing
24 our assessment of the patient.

25 Q Okay. And what was your assessment? What was your

1 assessment?

2 A My assessment was, I was generally running over,
3 looking for signs of trauma. We found the wound to the
4 right mid-axillary line in the rib space.

5 Q Okay.

6 A And through further exam, we later found the wound
7 behind the ear. But my job was -- primarily was the
8 identification of the trauma and the treatment of that,
9 if needed.

10 Q What kind of treatment did you do?

11 A For the chest wound, I did an inclusive dressing,
12 which is basically a -- a piece of like a plastic
13 dressing that's taped on three sides that helps prevent
14 air from getting into the chest cavity or interfering
15 with respirations.

16 Q And what else? Did you give him any type of drugs,
17 anything like that?

18 A The only thing that we did -- we did, we were able
19 to establish an I.V. Crew Chief Tinnel did that. We
20 gave him a normal saline fluid drip, just a maintenance
21 drip.

22 Q Just saline.

23 A Yes.

24 Q No narcotics, nothing like that?

25 A No, sir.

1 Q All right. And at this point, is the child still
2 unresponsive?

3 A He was -- he was starting to come around. With
4 everything that we were doing to him, he became more and
5 more responsive. He was able to answer some questions,
6 you know, responded to pain from when we tried to
7 establish I.V.s, things like that.

8 Q And when did he come around? Was that inside the
9 ambulance, or before you got in there?

10 A It was inside the ambulance. We were already on
11 the way to the hospital.

12 Q Oh, I see. All right. And so, in this ambulance
13 is you, **John Doe 2**, and Crew Chief Tinnel. Is that
14 correct?

15 A Yes, sir.

16 Q Okay. At any point in time, did you or Crew Chief
17 Tinnel ask his name?

18 A Yes.

19 Q And do you recall what he said?

20 A It sounded like he said *Doug*.

21 Q Okay. And when -- at that point afterwards, and
22 you said it sounded like what?

23 A Like the word -- by the name *Doug*, D/o/u/g, that's
24 what we wrote in report.

25 Q Did you or Crew Chief Tinnel ask him any other

1 questions?

2 A Yes. Crew Chief Tinnel asked him several
3 questions. I wasn't paying a whole lot of attention to
4 it. I was focusing on the treatment. But another
5 question he did ask was, you know, you know, what was
6 his name, or he asked him who did this to him, who hurt
7 him.

8 Q All right. When you're saying *him*, who are you
9 talking about? Are you talking about the patient?

10 A Um-hmm.

11 Q Okay.

12 THE COURT: Is that yes, for the record?

13 A Crew Chief Tinnel was asking the patient who hurt
14 him.

15 Q Okay.

16 MR. MCGUIRE: Your Honor, I hate to interrupt, but
17 for the record, we need to renew our *Crawford* objection.

18 THE COURT: Thank you. It's noted for the record,
19 sir.

20 BY MR. STONE:

21 Q So, I'm sorry. Crew Chief Tinnel -- start that
22 over. I'm sorry.

23 A Crew Chief Tinnel was asking him questions,
24 basically just to keep him awake and talking, and one of
25 the questions he did ask him was who had hurt him.

1 Q And did he answer?

2 A It sounded like he said *Daddy*.

3 Q Okay. Did you pass that information on?

4 A Yes, we did.

5 Q Okay. And did you put that and make that as a part
6 of your report?

7 A Yes, we did.

8 Q When he said something that sounded like *Daddy*, how
9 close were you to him?

10 A The patient was -- was lying on the stretcher, and
11 I was seated as his feet, straddling the stretcher so
12 that I would have easy access to him. So, I was -- I
13 was at his feet when he was laying down saying that.

14 Q Where was Crew Chief Tinnel?

15 A He was sitting on the bench seat, right next to the
16 patient's head.

17 Q Okay. And he's the one actually talking to him.

18 A Yes.

19 MR. STONE: Okay. No further questions at this
20 time.

21 SHAYNA MARIE ORSEN

22 CROSS-EXAMINATION BY MR. MCGUIRE:

23 Q Good afternoon, Ms. Orsen. How are you doing?

24 A All right. How are you?

25 Q You and I have talked a couple times before. In

1 your statement -- I'm going to have the court reporter
2 mark this Defense Exhibit.

3 THE COURT: Ms. Orsen, I need to remind you, you
4 need to say yes or no, as opposed to just a head bob.

5 A Sorry. Yes, ma'am.

6 THE COURT: Thank you. That's all right. And
7 speak up, if you would. Make sure the jury can hear
8 you.

9 A Okay.

10 COURT REPORTER: Defendant's 13.

11 ITEM IDENTIFIED AS HANDWRITTEN
12 STATEMENT OF SHAYNA MARIE ORSEN
13 MARKED DEFENDANT'S EXHIBIT NUMBER 13,
14 FOR IDENTIFICATION.

15 BY MR. MCGUIRE:

16 Q Thank you, ma'am. Ms. Orsen, I want to go ahead
17 and hand you something, and you just go ahead and tell
18 me if you recognize that.

19 A I do.

20 Q And that's your handwritten statement that you
21 gave?

22 A Yes, sir.

23 Q And I just want to make sure you're on the same
24 page here. You're -- you get to the scene and you scoop
25 up **John Doe 2** , correct?

1 A Yes, sir.

2 Q Scott Sampson's there taking clothes off.

3 A Um-hmm. Yes, sir.

4 Q The child is unresponsive to any stimuli.

5 A Yes, sir.

6 Q Which means he's unconscious.

7 A Yes, sir.

8 Q And then, eventually, he becomes responsive to
9 pain.

10 A Yes, sir.

11 Q When you put an I.V. in.

12 A Yes, sir.

13 Q And the child's still not responsive to verbal
14 commands, or -- right?

15 A He became responsive, yes.

16 Q In the ambulance ride.

17 A Yes.

18 Q After a bolus of fluids and saline, he started to
19 come around a little bit.

20 A I'm not sure on the time line, as far as the
21 difference between when Crew Chief Tinnel had been able
22 to establish his I.V. and whatnot. I don't have the --
23 if you have the run report, I would be able to see the
24 time line.

25 Q Okay. But at some point he becomes responsive to

1 the English language.

2 A Yes.

3 Q Because before, it was you had to touch him or tap
4 him or do something painful for him to even react.

5 A Yes.

6 Q Okay. Because he was unresponsive initially.

7 A Yes.

8 Q And your report indicates that he was in an altered
9 mental state.

10 A Yes. We consider when you're not normally,
11 typically, verbally responsive, we consider that altered
12 mental status.

13 Q Right. And that was the status he was in.

14 A Yes.

15 Q And you and I -- you testified in a pretrial
16 hearing, and with regard to Danny Tinnel asking the who-
17 hurt-you question, do you remember your response? Do
18 you remember saying: *he mumbled something that sounded*
19 *like Daddy?*

20 A Yes.

21 Q Okay. That's your testimony today?

22 A Yes.

23 Q That he mumbled something --

24 A That sounded like *Daddy*.

25 Q Okay. But it was not a clear word; it was sort of

1 a mumbling, what you heard.

2 A That's what I heard, yes.

3 Q Okay. And then, beyond this, beyond these just
4 these couple of words here, I believe, and if you look
5 at your statement there towards the end, then **John Doe 2**
6 is unable to answer anymore questions.

7 A Yeah, well -- yes, I wasn't paying attention after
8 that. I was focusing on the treatment. Danny continued
9 to ask questions. I don't know if the child continued
10 to respond or not.

11 Q Okay. But in your statement that you gave -- let
12 me take a look at that. In your statement, do you
13 indicate that, *after that*, which is the conversation
14 about the who hurt him, did you put in here:

15 *After that, the child would not*
16 *respond to anymore questions?*

17 A That's -- yes, that's in the statement here.

18 Q Okay. So, after the part about the one or two
19 words that Danny was able to get, then the child was
20 unable to respond to anymore questions.

21 A I assume -- yes.

22 Q That's what your statement says.

23 A Yes, that's what my statement says.

24 Q That you wrote in 2009.

25 A In 2009.

1 MR. MCGUIRE: Thank you, ma'am. That's all I have
2 for you.

3 A Okay.

4 ITEM IDENTIFIED AS HANDWRITTEN
5 STATEMENT OF SHAYNA MARIE ORSEN
6 MARKED DEFENDANT'S EXHIBIT NUMBER 13,
7 ADMITTED AS EVIDENCE.

8 SHAYNA MARIE ORSEN

9 RE-DIRECT EXAMINATION BY MR. STONE:

10 Q When did you write this statement in 2009?

11 A The date written on the statement is 11/15 of 2009.

12 Q So, pretty much right after the event. Is that
13 correct?

14 A Yes, sir. We were asked to write them at the
15 hospital.

16 Q Okay. Great. There is a -- there's another
17 question, I believe, that Tinnel asked, and that would
18 be, I believe, down here. Could you tell us what that
19 other question was?

20 A Let's see here. It says:

21 *Crew Chief Tinnel asked the child*
22 *his name, to which he responded was*
23 *something that sounded like Doug. Tinnel*
24 *asked Doug if he knew who did this to him,*
25 *and he answered yes. And Danny then asked*

1 *him who it was, and the child said 'Daddy.'*

2 Q Okay. And this is the statement that you wrote
3 right after the event. Is that correct?

4 A Yes..

5 Q I believe you took those depositions and questions
6 -- when was that?

7 A Just a few months ago.

8 Q A few months ago? One other question, as far as
9 altered mental status, what exactly is altered mental
10 status? What does that mean?

11 A Altered mental status is a basis of knowing if the
12 person is cognitive of their surroundings and able to
13 make just decisions. In other words, we usually ask if
14 a person knows their name, where they're currently at,
15 what their birth date is, or what the date is, or
16 another, you know, standard question that any person
17 would be able to answer of that age range.

18 With children, it's a little different, because
19 they -- they're not able to tell that. But this child
20 wasn't responsive to stimuli at all, so we would
21 consider that an altered mental status.

22 Q And when was that, that he was not responsive to
23 stimuli?

24 A When I initially approached the patient inside the
25 house, he was unresponsive.

1 Q Okay.

2 A Completely unresponsive.

3 Q So, the altered mental status applied to him when
4 he was unconscious.

5 A Yes, when he was not responsive.

6 Q Okay. But after he got the I.V.s, was he then
7 responsive?

8 A He was, yes. That's when he was able to ask the
9 questions and answer questions.

10 Q And at that point, would he be altered mental
11 status?

12 A I wouldn't consider him altered, if he was my
13 patient today.

14 Q Okay. After he was given the I.V.s?

15 A Because he was answering questions at a level that
16 a child of that age would be able to.

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

18 MR. MCGUIRE: Nothing further, ma'am. Thank you.

19 THE COURT: Any objection to Ms. Orsen being
20 excused from the State?

21 MR. STONE: None from the State.

22 THE COURT: From the Defense?

23 MR. MCGUIRE: No, ma'am.

24 THE COURT: You are excused, ma'am. Thank you.

25 MR. STONE: State calls Danny Tinnel.

1 MADAM CLERK: Will you place your left hand on the
2 *Bible* and raise your right hand for me, sir. Do you
3 solemnly swear to truthfully answer all questions asked
4 of you by this court, so help you God?

5 DANNY TINNEL: Yes, I do.

6 MADAM CLERK: Please be seated. State your name
7 and spell it for the court reporter.

8 DANNY TINNEL: Hello. My name's Danny Tinnel,
9 paramedic with Beaufort County EMS.

10 DANNY TINNEL

11 DIRECT EXAMINATION BY MR. STONE:

12 Q How do you spell your last name, sir?

13 A T/i/n/n/e/l.

14 Q Okay. Could you bring that microphone just a
15 little bit closer to you, please.

16 A Alrighty.

17 Q You are Crew Chief Tinnel. Is that correct?

18 A That's right, Senior Crew Chief.

19 Q Okay. And what is your job, sir?

20 A As of today, I supervise about 11 personnel and
21 about four ambulances, half of Beaufort County.

22 Q Okay. Let me go back to November the 15th, 2009;
23 what was your job then?

24 A At that time I was working at -- as a paramedic on
25 an ambulance with another crew member.

1 Q And who was the other crew member?

2 A Shayna Orsen.

3 Q Okay. And did you respond to 20 Player Road, on
4 November the 15th?

5 A That's correct.

6 Q Okay. Tell me about that. What happened when you
7 got there? First of all, you were in the ambulance with
8 Shayna Orsen. Is that correct?

9 A That's correct.

10 Q All right. And who's driving?

11 A I believe I was driving to the call.

12 Q Okay.

13 A I can't remember specifically, but I think I was.

14 Q When you were in -- when you got into the ambulance
15 itself, who was driving after that?

16 A Away from the scene?

17 Q Yes.

18 A Joe Schafer was driving away from the scene.

19 Q All right. And the ambulance is kind of a
20 separated body from the cab of the truck, I'm assuming?

21 A That's correct.

22 Q Okay. Tell me what's going on at -- when you
23 arrive at 20 Player Road, what do you do?

24 A When I arrive at 20 Player Road, on the way to the
25 call, me and Shayna had discussed some of our options, I

1 guess, when you -- when you know you're going to a bad
2 incident, which that sounded like over the radio. I
3 told Shayna to go ahead and go inside the residence, and
4 we knew we had a small, pediatric patient, and bring the
5 patient out to the ambulance. And I just got out of the
6 ambulance, went around to the back of the patient
7 compartment and started setting that up for treating
8 that patient.

9 Q Okay. And when you say *setting up*, what are you
10 setting up?

11 A We'll get I.V. fluids ready to go. I'll go ahead
12 and spike -- spike a bag of I.V. fluids. I might get an
13 I.V. tray set up, the cardiac monitor, everything, so
14 when the patient comes in, I'm ready to start working on
15 them.

16 Q Did you even leave -- do you leave the ambulance?

17 A No, I did not.

18 Q Okay.

19 A Other than to get out the driver's door to get in
20 the back, no.

21 Q Right. I understand. So, Shayna Orsen then brings
22 the child to you. Is that correct?

23 A That's correct.

24 Q All right. Tell us what happens after that.

25 A The child gets into the back of the ambulance with

1 Shayna, and we start doing an assessment on this child.

2 Q All right. What is an assessment? What do you
3 mean by that?

4 A What we'll initially do is make a quick primary
5 survey, a head-to-toe survey, to find out what kind of
6 injuries the child has. And what we'll do is, we'll
7 look and make sure that his airways is fine, he's
8 breathing, he has a pulse rate. And so, we check out
9 the ABCs, so to say, airway, breathing, and circulation.

10 We remove any and all clothing that might be on to
11 expose to make sure we don't have any hidden injuries.
12 And then, we just start treating what injuries we do
13 find.

14 Q Now, at some point, when he's in the ambulance, is
15 he conscious, unconscious? What's his status?

16 A Initially, he was somewhat unresponsive. I say
17 that because, if you use the what I call a painful
18 stimuli, or you were to pinch his skin or rub on him, he
19 would -- he would come around.

20 Q Okay. And so, initially, he was non-responsive to
21 the pain?

22 A That's correct. He was responsive to pain only.

23 Q Okay. All right. And at some point in time, did
24 he become conscious?

25 A Yes, he did.

1 Q Did you talk to him?

2 A Yes, I did.

3 Q Now, where are you located, as to his body?

4 A He would be on the -- on the ambulance cot or
5 stretcher in front of me, and I would be to his left
6 side.

7 Q And you're basically over his face?

8 A That's right. He's going to be laying directly in
9 front of me, and I would be in front of his left hand,
10 more or less. Sitting on a bench seat right next to
11 this, parallel to the stretcher.

12 Q So, how far away are you? Put me in your spot to
13 the child.

14 A I would be --

15 Q Come on down here. Come on down here.

16 A Sorry. If you're a patient on a stretcher, there's
17 only about eight inches between us, so I would be right
18 here.

19 Q Okay. And then, Ms. Orsen, I believe, is down at
20 that end?

21 A That's right. She's over here.

22 Q Okay. And you are having a conversation with the
23 child at this point?

24 A That's correct.

25 Q This close, which is, for the record, about a foot,

1 maybe.

2 A Um-hmm. Yes, sir.

3 Q Okay. All right. Go ahead and have a seat. What
4 do you ask the child?

5 A When we try to determine his level of
6 responsiveness, we ask him what his name is and if he
7 remembers what happened.

8 Q Okay. Did he tell you his name?

9 A Yeah, I -- I have to look on the paperwork, but I'm
10 pretty sure he said his name was Doug.

11 Q Okay. Did you -- let me see if I've got your
12 paperwork, if you need to refresh your memory.

13 MR. MCGUIRE: And Judge, just for the record, we
14 would renew our *Crawford* objection.

15 THE COURT: Thank you, sir. For the record, it's
16 noted.

17 BY MR. STONE:

18 Q Let me show you this. I believe this is your run
19 report and your statement.

20 A Okay.

21 Q Is that correct?

22 A Yes, sir. This is 26's. Mine's a different one.

23 Q Okay.

24 A There -- there -- the statement's correct. The run
25 report's different.

1 Q Got you. Okay. And the statement is your
2 statement?

3 A Yes, sir, it is.

4 Q After reviewing the statement, I go back and ask
5 you, did he, at some point, give you his name?

6 A Yeah, he said his name was Doug while we were en
7 route to the hospital. That's correct.

8 Q Okay. And did you ask him any further questions
9 after that?

10 A Yes, I did. I was asking him who hurt him, and
11 when I asked him who hurt him, he responded *Daddy*.

12 Q And when you are -- when he responds to you, *Daddy*,
13 again, this is him being about a foot from you?

14 A Yes, sir.

15 Q Okay. Did you understand that clearly?

16 A Yes, I understood that, yes.

17 Q Okay. And his name, did you understand his name
18 clearly?

19 A Doug. I -- I heard *Doug*, what it sounded like
20 *Doug*, yes.

21 Q Okay. It was something that sounded like *Doug*.

22 A Exactly.

23 MR. STONE: Got you. Okay. All right. Thank you.
24 I don't have any further questions.

25 DANNY TINNEL

1 CROSS-EXAMINATION BY MR. MCGUIRE:

2 Q Good afternoon, Danny.

3 A How are you doing?

4 Q You and I have spoken a couple of times.

5 A Yes, sir.

6 Q Good to see you again. Just so we're on the same
7 page, you were getting the ambulance ready, and Shayna
8 goes up to the house, right?

9 A That's correct.

10 Q **John Doe 2** is scooped up by her and taken to the
11 ambulance.

12 A Is that --

13 Q That's a question. She's the one that went and got
14 him.

15 A Yes, sir, that's correct.

16 Q Okay. He's pretty much non-responsive initially.

17 A That's -- that's correct.

18 Q Okay.

19 A He's non-responsive to pain, yes, sir.

20 Q Sure. And then, that means he's not responsive to
21 verbal language or questions or just talking.

22 A Initially, that's affirmative. That's correct.

23 Q Okay. The only way you could get him to engage or
24 look at you would be to pinch his skin or something like
25 that.

1 A That's correct.

2 Q And putting in the I.V. was also something that
3 made him kind of come out of it a little bit.

4 A Putting in the I.V., which is an extreme, painful
5 stimuli, probably stimulated him a lot more to his
6 alertness.

7 Q Okay. And then, you and Shayna give him a bolus of
8 fluids.

9 A That's correct.

10 Q And sometimes that can have the effect of getting
11 someone's blood pressure up a little bit.

12 A It could. That's correct.

13 Q Okay. At some point -- now, **John Doe 2** is, of
14 course, described as having a altered mental state.

15 A That's right. Initially was, you know, responsive
16 only to pain.

17 Q Right. And I want to -- I want to talk to you a
18 little bit about, now, there's a lot going on in the
19 ambulance, right?

20 A Yes, sir..

21 Q I mean, this is a hectic, emergent situation. It's
22 critical.

23 A That's correct.

24 Q Okay. And your main concern is not having a
25 conversation; it's making sure your patient can make --

1 can be with you.

2 A Right.

3 Q And is responsive.

4 A Yeah. My main concern is trying to determine the
5 injuries and how this patient's able to function.

6 Q Right. And that's your main concern.

7 A That's correct.

8 Q And you've got Shayna helping you.

9 A That is correct.

10 Q Okay. And I talked to you before in a pretrial
11 hearing, and I asked you did you ask **John Doe 2** who his
12 daddy was? Do you remember that?

13 A Right.

14 Q And then, **John Doe 2** was unable to answer that
15 question.

16 A Yeah. I asked him what his name was, and he wasn't
17 able to answer that.

18 Q Right. And then, I asked -- and then you said,
19 *well, he just said -- he said Daddy.* So then, I asked
20 you, *well, did he say it twice?* And do you remember
21 what your response was to that?

22 A As far as I know, he just told me *Daddy* one time.
23 I don't know. I can't remember it being any repetitive
24 questioning.

25 Q Sure. I'm just going to hand you up your

1 transcript, top of Page 32.

2 A Okay.

3 Q Just read that, and see if that refreshes your
4 memory about what you said.

5 A So, that's -- I think that's what I'm reiterating
6 to you.

7 Q Yeah. I mean, we're pretty close. I asked you
8 about, you know, could the child answer another
9 question; and you indicated -- you indicated that you
10 didn't -- and tell me if I'm wrong, but this is your --
11 basically, your answer:

12 *I don't have that specific -- I wasn't*
13 *-- like I said, there was a lot going on*
14 *in the back of that ambulance. I don't know*
15 *specifically how the exact verbiage went*
16 *syllable by syllable.*

17 A Correct. And -- and I still would say the same
18 thing today. I know that, when -- when we asked him the
19 question of -- of who hurt him, he replied *Daddy*. And I
20 asked him what his daddy's name was, and he wasn't able
21 to tell us that, which, you know, when you're dealing
22 with pediatrics of that age, a lot of times they don't
23 know who else Daddy is, other than Daddy, so.

24 Q Well, a lot of times when you're dealing with a 28-
25 month-old, their speech isn't -- is not in response to

1 your question.

2 A That -- I -- okay.

3 Q I mean, you'd agree with that; wouldn't you?

4 A I don't know. I haven't had any issues with that
5 before.

6 Q Okay. When we speak in terms of your patient being
7 **John Doe 2**, that's a new name to you. Or it was new -- it
8 was new after your ambulance ride.

9 A That's correct. I didn't even know the -- his name
10 until I read about it, more or less. I didn't know who
11 he was the whole time.

12 Q Right. And when asked who he was, or what his name
13 was, the best you got was *Doug*.

14 A Yes, sir. That's the best recollection I could
15 understand from what he was saying was *Doug*.

16 Q Okay.

17 A That's what it sounded like to me.

18 Q Sure. Have you had any conversations with anybody
19 about his father's nickname?

20 A No. I didn't -- I didn't know his nickname or his
21 father or anything.

22 MR. MCGUIRE: Okay. That's all I have. Thanks,
23 Danny.

24 A Yes, sir.

25 MR. STONE: Nothing else, your Honor.

1 THE COURT: Any objection to Mr. Tinnel being
2 excused from anyone?

3 MR. STONE: None from the State.

4 MR. MCGUIRE: No, ma'am.

5 THE COURT: You are excused, sir. Thank you.

6 A Thank you.

7 MR. STONE: State calls Roberta Mullen to the
8 stand.

9 THE COURT: Ladies and gentlemen, is everyone okay,
10 or do you all need a break? Are you sure? Okay.

11 THE COURT: Come forward, ma'am.

12 MADAM CLERK: Would you place your left hand on the
13 Bible and raise your right hand for me, please, ma'am.
14 Do you solemnly swear to truthfully answer all questions
15 asked of you by this court, so help you God?

16 ROBERTA MULLEN: Yes, I do.

17 MADAM CLERK: Please be seated. State your name
18 and spell it for the court reporter, please, ma'am.

19 COURT REPORTER: Spell your name.

20 A Okay. My name is Roberta Mullen, M/u/l/l/e/n.

21 ROBERTA MULLEN

22 DIRECT EXAMINATION BY MR. STONE:

23 Q Ms. Mullen, where do you live, ma'am?

24 A I live at 328 Morgan Road, in Seabrook, South
25 Carolina, but they call it the Dale area.

1 Q How long have you lived in the Dale area?

2 A About 32 years.

3 Q Who is Jeanine Mullen to you?

4 A She's my daughter.

5 Q And tell me, if you would, she had children; did
6 she not?

7 A Yes, she did.

8 Q And who are her children?

9 A She had **Jas. M.** , **Jai. M.** , **John Doe 1**
10 **John Doe 1** n, and **John Doe 2** .

11 Q And these four children, how old are they? How old
12 are they now?

13 A Well, **Jas. M.** is 16. **Jai. M.** is 15. He just turned
14 15 today. It's his birthday and mine. And --

15 Q Happy birthday.

16 A Yes, thank you. And **John Doe 2h** is now six years old.
17 **John Doe 1** , he is deceased at this time.

18 Q I understand. **John Doe 2** , does he go by any
19 other name other than **John Doe 2** ?

20 A We just call him **John Doe 2** , but they had a nickname
21 at his mom's house for him, which I did not like.

22 Q And that was back in 2009?

23 A Yes.

24 Q And what was his nickname?

25 A Well, they would call him Dub, Little Dub, because

1 the dad's name was E-Dub, or whatever like that. And I
2 didn't like that name, and I told them not to call that,
3 because his name is **John Doe 2**, call him **John Doe 2**. I
4 didn't like nicknames.

5 Q And did you say Dub?

6 A Dub.

7 Q How do you spell that? Is it like it sounds?

8 A D/u/b.

9 Q And where did that nickname Dub come from?

10 A It came from the dad. I don't know. I guess,
11 because they would call the dad E-Dub, so I don't know.
12 And they would call him, you know, Little Dub or
13 whatever like that. And that's why I told her I don't
14 like nicknames, to call him **John Doe 2**.

15 Q What is E-Dub's real name?

16 A Earnest Daise.

17 Q Do you see him in the courtroom today?

18 A Yes.

19 Q Could you point him out, please.

20 A He's at the table over there, look like he's got
21 glasses now. He wasn't wearing glasses when I first saw
22 him, so I don't --

23 Q Okay.

24 A Yeah.

25 Q This is the gentleman in the white shirt?

1 A Oh, that's white?

2 Q Yellow, I guess?

3 A Look kind of yellowish looking or whatever like
4 that.

5 Q Okay.

6 A Okay, yes.

7 Q And Earnest Daise, what is he in relation to

8 **John Doe 2** ?

9 A He is his dad.

10 MR. STONE: Excuse me just a moment, your Honor.

11 A Um-hmm.

12 Q And you said Jeanine Mullen was your daughter. Is
13 that correct?

14 A Yes.

15 Q Did she have any tattoos?

16 A Yeah, she had tattoos all over her. And another
17 thing about her, she had *E-Dub* tattooed on her toe. And
18 I said:

19 *Why are you doing that; why do you*
20 *like to disfigure your body and stuff like*
21 *that?*

22 I said:

23 *One day, you might want to be a model*
24 *or something; and you got all these things*
25 *all over you.*

1 And then I said:

2 *You all like to put these guys' names*
3 *on your body, and then you break up, and*
4 *you stuck with it.*

5 Q And she put his nickname on her toe?

6 A E-Dub is tattooed on her toe, yes.

7 MR. STONE: I don't have any further questions
8 right now, Ms. Mullen.

9 A Okay.

10 MR. MCGUIRE: I don't have any questions for you at
11 all, ma'am. I'm sorry you had to be here.

12 A That's okay.

13 THE COURT: Any objection to her being excused from
14 the State?

15 MR. STONE: Not right now, ma'am.

16 THE COURT: From the Defense?

17 MR. MCGUIRE: No, ma'am.

18 THE COURT: You are excused, ma'am. Thank you.

19 A Okay. Thank you.

20 MR. STONE: May we approach, your Honor?

21 THE COURT: You may.

22 OFF-THE-RECORD BENCH CONFERENCE.

23 END BENCH CONFERENCE.

24 BY THE COURT:

25 THE COURT: Ladies and gentlemen of the jury, there

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1 are a number of matters that I need to take up with the
2 attorneys. And rather than have you wait back in the
3 jury room, I think you all have been working very hard
4 today, and I appreciate that; I am going to go ahead and
5 excuse you.

6 Ladies and gentlemen, before I do send you out,
7 though, I need to again tell you and impress upon you
8 how important it is, ladies and gentlemen, particularly
9 because we have started the trial of this case, you are
10 not to discuss this case with anyone. And again, that
11 includes family members, friends, spouses, loved ones,
12 or each other.

13 Also, ladies and gentlemen, you are not to watch,
14 read, or do any independent research, or do any type of
15 site visit having to do with this case. Again, that
16 would be wholly inappropriate, ladies and gentlemen.
17 Additionally, you are not to comment on any social media
18 web site that you are a juror.

19 Now, I'm also ordering you, ladies and gentlemen,
20 that if anyone tries to solicit you or speak to you in
21 regard to this case, that you immediately tell me in the
22 morning.

23 Lastly, ladies and gentlemen, I cannot start until
24 all 15 of you are here tomorrow. If you run into car
25 trouble or have any problems whatsoever, please call

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1 into the Clerk's Office. We will be looking for you.
2 All right? I look forward to seeing you all back in the
3 jury room at 9:30.

4 As you know, tomorrow, the bailiffs have arranged
5 for you to be fed during lunch hour, so we can move the
6 case along. I can tell you that you can expect tomorrow
7 to -- and again, I say expect, I never know from day to
8 day exactly how late we're going to run. It really
9 depends on how the witnesses break down. If it's going
10 to be a lengthy witness, short witness, if I can fit
11 another one in, and that type of thing. I think you all
12 can plan to be here until probably 5:30ish, even
13 possibly 6:00, unless someone has plans.

14 If you have plans, tell your foreperson, tell me
15 you've got to be out of here, and I can certainly make
16 arrangements for that to happen. Okay? Thank you
17 again, ladies and gentlemen. I look forward to seeing
18 you all tomorrow morning at 9:30 in the jury room.

19 BAILIFF: Thank you, your Honor. If you'll leave
20 your pads in your chairs, please.

21 JURORS LEAVE COURTROOM 4:47 P.M.

22 BAILIFF: Jury is clear, your Honor.

23 THE COURT: Thank you. All right, you all. We're
24 going to go ahead and take about a ten-minute break
25 prior to going ahead and doing the proffers. It's my

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1 understanding you want to proffer all five witnesses
2 today? Is that correct?

3 MR. STONE: I'll do it any way you'd like to, your
4 Honor.

5 THE COURT: Okay.

6 MR. STONE: But yes, we have them all here, so I
7 thought we might go ahead and get them done today.

8 THE COURT: Very good. All right. We'll go ahead
9 and take a ten-minute break and be back. Thank you.

10 MR. STONE: Thank you, your Honor.

11 OFF THE RECORD 4:48 P.M.

12 BACK ON THE RECORD 5:03 P.M.

13 BY THE COURT:

14 BAILIFF: All rise. Come to order. Court is now
15 back in session.

16 THE COURT: Please be seated, you all. I'm sorry.
17 Please.

18 MR. MCGUIRE: Your Honor, before we hear this
19 testimony, --

20 THE COURT: Um-hmm.

21 MR. MCGUIRE: I'm sorry. Are we going to -- we
22 are? Okay.

23 THE COURT: Yes, sir.

24 MR. MCGUIRE: I think I would just renew our basic
25 position that details of prior altercations between a

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1 couple like this. In a case like this, the case law is
2 just clear details don't come in. And they want to say
3 it was a rocky relationship; did they argue; yeah, sure;
4 that all -- we don't have a problem with that.

5 THE COURT: Um-hmm.

6 MR. MCGUIRE: But, you know, if this was -- if this
7 was a criminal domestic violence case or assault and
8 battery case, and the allegation that Mr. Daise
9 assaulted Jeanine Mullen, none of that would come in.
10 We wouldn't even pause; none of it would come in. And
11 to let it come into a capital case, I mean, I just think
12 it's a reversible error, with all due respect.

13 THE COURT: I understand. Okay.

14 MR. STONE: State calls Frank Mullen, your Honor.

15 THE COURT: Can I also ask just one question? Mr.
16 McNabb?

17 MR. MCNABB: Yes?

18 THE COURT: If you would, stand please. I just
19 have a couple of quick questions to ask you.

20 MR. MCNABB: Yes, ma'am.

21 THE COURT: Sir, I realize that you are Twittering
22 this case.

23 MR. MCNABB: Yes..

24 THE COURT: And do you have an electronic device?

25 MR. MCNABB: No, it's in my car.

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1 THE COURT: Do you have a photographic memory? How
2 is it that you have exact quotes that are coming out
3 every few minutes?

4 MR. MCNABB: Notepad.

5 THE COURT: With your notepad. My question is how
6 are you transcribing those from your notepad to the
7 press?

8 MR. MCNABB: I write them in here, run outside
9 during the break, and Tweet it out. I mean, I -- I've
10 been good at it. I've been doing it for awhile.

11 THE COURT: Okay. I just want to make sure those
12 are, in fact, your notes and your quotes.

13 MR. MCNABB: Yes, they are. Absolutely mine.

14 THE COURT: They're not from anyone else?

15 MR. MCNABB: No.

16 THE COURT: Okay.

17 MR. MCGUIRE: Well, and Judge, we would move that
18 this be a closed courtroom. The risk is too high. We
19 started the trial with a front-page article, with a jail
20 photo and the prior charges and stuff that's clearly
21 inadmissible. I know the jury is going to be very
22 mindful of your instruction, but it's a risk.

23 And I know that, in South Carolina, there's state
24 law that grants the press more access than in a federal
25 court, and I understand that. But it's still a

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1 balancing, and the press is always, you know, it's --
2 it's access and he's got plenty of it, and doesn't need
3 to hear information that can be Tweeted out at a
4 moment's notice that may never come into the trial.

5 THE COURT: What I'm more concerned about is that,
6 if we have a proffer and certain testimony is put up and
7 I don't allow it to go to the jury, that, if it gets put
8 out in the press and the jury hears it, that could cause
9 potentially a mistrial in the case.

10 MR. MCGUIRE: Yes, ma'am. That's our -- that's our
11 concern.

12 THE COURT: Mr. McNabb, is that a concern for you?

13 MR. MCNABB: I don't think so. I mean, if you want
14 me to leave now, it's not a problem.

15 THE COURT: Again, Mr. McNabb, you are just
16 literally writing down quotes verbatim? Because, I
17 mean, they're good. I mean, I'm following you on
18 Tweeter [sic], and they are excellent. I mean, quite
19 frankly, I think you're doing a great job as far as
20 getting it down in detail. The quotes are excellent.
21 And you're telling me that you're running out to your
22 car and downloading them?

23 MR. MCNABB: Yeah, just during -- during the break,
24 I can run out and --

25 THE COURT: You just run out to your car and you do

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1 it what, on an Ipad or a computer?

2 MR. MCNABB: My cell phone.

3 THE COURT: On your cell phone?

4 MR. MCNABB: Yeah.

5 MR. MCGUIRE: He's good.

6 THE COURT: You are really good. So, you do it --
7 do you do it as an email, or do you do it as a, like --

8 MR. MCNABB: No, I just Tweet it out, and then,
9 they have people in the office who pull the Tweets and
10 pull them together, and create a story out of it.

11 THE COURT: But the Tweet, like the -- the actual
12 lines is what I'm reading. I just keep seeing a block,
13 a block, a block. And like I said, they're very good.
14 I mean, they're --

15 MR. MCNABB: Yeah. It's 140-character blocks of
16 text. That's just --

17 THE COURT: Okay.

18 MR. MCNABB: That's how they teach us to do it.

19 THE COURT: All right. And forgive me, Mr. McNabb,
20 I'm old school, and haven't learned, and don't use any
21 type of social media. Quite frankly, I've never seen
22 what Twitter is until I looked at yours, so I appreciate
23 the lesson.

24 My biggest concern, Mr. McNabb, I don't want to
25 have to ban you from the courtroom, but for instance,

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1 this is a proffer that we're going to do right now.
2 This isn't testimony that's been admitted yet. Were you
3 to go ahead and put this testimony in, and I ruled it
4 not relevant in front of the jury, if any one of these
5 jurors read it, then, we could have to declare a
6 mistrial in this case. And I just want to make sure you
7 understand and appreciate that we've spent hundreds of
8 thousands of dollars to try this case and prepare this
9 case, and I just want to make sure that you understand
10 the seriousness of it.

11 MR. MCNABB: I understand, absolutely, yes.

12 THE COURT: And again, you know, we can all have
13 all kinds of philosophical arguments, and I have had
14 them with the *Island Packet* as regards to the *First*
15 *Amendment*, and also a person's right to a fair trial.
16 And while we're not supposed to sit here and rank the
17 *Bill of Rights*, I will tell you, at the end of the day,
18 for me, a person's life and their freedom trumps the
19 *First Amendment*. You can cringe all you want. It's
20 just, at the end of the day, that's more important to
21 me; that my job is to make sure that we're protected.

22 No one's trying to hide anything from anyone here.
23 We certainly want people to know what's going on, but I
24 want to feel comfortable that we aren't wasting our time
25 and resources here, and that, somehow, I'm going to get

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1 a tainted pool.

2 You know, the unfortunate part is this: at the
3 point where we start getting into where we have to be so
4 concerned about a jury panel reading articles and being
5 tainted by newspaper, we're going to have to go back to
6 sequestering them again, which no one wants to do. It's
7 obviously a great inconvenience for people, as you --
8 you weren't here, but as we did jury selection, certain
9 people, of course, wanted to get off the trial,
10 possibly. And it's not only because it takes time up
11 here, but if we were to take them away from their
12 families, it's very difficult. I'm just trying to weigh
13 it all. I'm trying to balance it. Again, I think
14 you're doing a great job with your quotes so far. I
15 don't see anything wrong with anything you've Tweeted,
16 which means that you're obviously very accurate, and I
17 appreciate that. I just want to make sure nothing gets
18 in that's not supposed to get in. Okay?

19 MR. MCNABB: Yeah, absolutely.

20 THE COURT: All right. What we can do is this.
21 Let's go ahead and you can take a seat. You're welcome
22 to stay with us.

23 Mr. McGuire, do you want to do some research over
24 the evening, and based on what we see further tonight,
25 you may want to make a motion again or renew your

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1 motion. I am certainly all ears.

2 Again, same thing, Solicitor, for your side, as
3 well. I think we've been down this road before. I did
4 put a gag order on the Solicitor's Office, as well as
5 the Defense counsel and anyone that works for you all.
6 I just remind you of that, and let's go ahead and go
7 forward with the proffer. Let's bring Mr. Frank Mullen
8 in.

9 Come on forward, Mr. Mullen. Right around here on
10 this side, sir.

11 BAILIFF: Your Honor, he went out.

12 THE COURT: Thank you.

13 BAILIFF: Yes, ma'am.

14 THE COURT: You come on forward, Mr. Mullen. Right
15 around here, sir. On this side, sir.

16 THE COURT: Mr. Mullen.

17 MADAM CLERK: Right here, Mr. Mullen. Would you
18 place your left hand on the Bible and raise your right
19 hand, please.

20 MR. FRANK MULLEN: I'm sorry.

21 MADAM CLERK: Do you solemnly swear to truthfully
22 answer all questions asked of you by this court, so help
23 you God?

24 MR. FRANK MULLEN: Yes, ma'am.

25 MADAM CLERK: Please be seated. State your name

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1 and spell it for the Court, please.

2 THE COURT: Mr. Mullen, if you would, just give us
3 your name for the record, sir.

4 MR. FRANK MULLEN: My name is Frank Mullen.

5 THE COURT: All right. Mr. Mullen, I just want to
6 tell you what this is, is what's called a proffer. As
7 you can see, there are no jurors here.

8 MR. FRANK MULLEN: Right.

9 THE COURT: It's for me to hear your testimony and
10 decide whether or not portions of it, all of it,
11 whatever, is admissible. All right? I just want to
12 make sure you understand and appreciate that; that, if I
13 do go on and let you testify, you understand that no one
14 in the jury box has heard this so far.

15 MR. FRANK MULLEN: Okay.

16 THE COURT: Okay, sir?

17 MR. FRANK MULLEN: Right.

18 THE COURT: I'm going to turn this over to the
19 Solicitor. Thank you.

20 MR. FRANK MULLEN: Okay.

21 MR. MCGUIRE: And Judge, before we start, --

22 THE COURT: Yes?

23 MR. MCGUIRE: -- do you want us to make a
24 contemporaneous objection on, say, hearsay; or do you
25 want to just reserve objections and argue at the end?

1 THE COURT: I would guess I would want you to
2 reserve until the end, but you're going to need to write
3 down certain points at certain parts that are hearsay.
4 Does that make sense? So, again, unless you -- I don't
5 want it to be choppy. I want to get it out.

6 MR. MCGUIRE: Sure.

7 THE COURT: But I also need to know at what point
8 and what basis you're objecting to certain portions,
9 whether or not it's a 404(b), what it is. Do you
10 understand?

11 MR. MCGUIRE: Yes, ma'am. I think we can just
12 reserve.

13 THE COURT: Okay.

14 MR. STONE: Thank you. Thank you, your Honor.

15 FRANK MULLEN, PROFFER

16 DIRECT EXAMINATION BY MR. STONE:

17 Q Mr. Mullen, what I want to talk to you today --
18 tonight about is just your daughter's relationship with
19 Earnest Daise. Okay?

20 A Right.

21 Q I know we go into a good bit of crime scene stuff,
22 but I'm not going to talk to you about that tonight,
23 okay? I just want to talk to you about the
24 relationship.

25 A Okay.

1 Q First of all, you know who Earnest Daise is.

2 A Yes, I do.

3 Q And who is he to you?

4 A He was the gentleman that my daughter was going
5 with at the time.

6 Q Do you know how long they had a relationship?

7 A I would say over a period of, I don't know, maybe
8 five years or more.

9 Q Okay. How would you characterize that
10 relationship?

11 A Very rocky, very abusive.

12 Q And what do you mean by that? What do you mean by
13 abusive?

14 A Well, they -- they -- they seemed to -- he seemed
15 to use my daughter as a -- as a slave, so to speak, or
16 someone to beat on or take advantage of when he felt
17 like it or when he was either drinking, high, or
18 whatever.

19 Q Is this something that took place throughout the
20 relationship?

21 A Oh, yes.

22 Q And did you ever witness any of it?

23 A Oh, yes.

24 Q How often?

25 A The -- the -- the most recent one before her death

1 that I witnessed was the night that he was abusing her
2 and beating her and choking her. And my grandsons
3 called me from in the closet, and I had to go down there
4 and try to bring some peace in the home.

5 At the time, I had told my grandson, when he called
6 me hollering and screaming, I told him to call the
7 Sheriff's Department. So, I went down there to try to
8 talk to him and make him -- keep him there 'til the
9 Sheriff got there, and that worked. Because when, you
10 know, -- and at the time I was there, he was -- he was
11 very abusive toward me.

12 Q And you said --

13 A Not physically, but verbally.

14 Q And don't let me interrupt you, but when you say
15 he, who are you talking about?

16 A Earnest Daise.

17 Q Okay. And first of all, your grandson, I know you
18 have more than one grandson, right?

19 A Right.

20 Q Which grandson is it that you're talking about?

21 A **Jas. M.** , the oldest one. He was the one that called
22 us, and he was screaming and hollering. He said Earnest
23 was beating and choking his mom.

24 Q And this was -- he was calling you basically as it
25 was happening?

1 A Right.

2 Q And you went over -- did you go over to the house?

3 A Yes, I did.

4 Q Now, is this the Player Road house?

5 A Yes, I did -- yes, it was.

6 Q All right. Now, when you got there, did you see --
7 was your daughter still there?

8 A Yes, she was.

9 ITEM IDENTIFIED AS PHOTOGRAPH

10 OF JEANINE MULLEN MARKED

11 COURT'S EXHIBIT NUMBER 79.

12 ITEM IDENTIFIED AS PHOTOGRAPH

13 OF JEANINE MULLEN MARKED

14 COURT'S EXHIBIT NUMBER 80.

15 ITEM IDENTIFIED AS PHOTOGRAPH

16 OF JEANINE MULLEN MARKED

17 COURT'S EXHIBIT NUMBER 81.

18 Q Okay. Let me show you what's been marked for the
19 Court, this is Court's Exhibit 80 -- excuse me -- 79,
20 80, and 81. Ask if you could identify those
21 photographs, sir.

22 A Yes. These are the -- the photos, these are the
23 marks that was on my daughter that night --

24 Q All right.

25 A -- we called the Sheriff on him.

1 Q Are those fair and accurate depictions --

2 A Oh, yes.

3 Q -- of how she looked that night?

4 A Oh, yes. Oh, yeah. Very, very accurate.

5 Q Okay. Could you hand those up to your Honor.

6 A I'm sorry.

7 Q Thank you.

8 THE COURT: Thank you, sir.

9 A Okay.

10 BY MR. STONE:

11 Q And did you confront Earnest Daise at the house
12 that night?

13 A Yes, I did.

14 Q And what was his reaction to you?

15 A He was very arrogant. I tried to talk to him and
16 calm him down. He didn't want to hear that. It seems
17 as though he was under some kind of influence of
18 something. I don't know what it was. And he kept
19 banging on the table and calling me all kind of abusive
20 names, and telling me that I wasn't this and I wasn't
21 that. And by that time, the deputies -- the Sheriff's
22 Department came up. And when he came in the house, he
23 informed me that, you know, he would handle it. And I
24 told him before I left I would like to tell Earnest not
25 to set his foot back on my property. And he says:

1 *Okay, Mr. Mullen, you let me handle it.*

2 He took Earnest outside on the back step and sat
3 down there and talked with him. And -- and he took care
4 of it from that point.

5 Q Okay. All right. How did your daughter -- how did
6 your daughter feel about Earnest Daise?

7 A She was afraid of him. She told me in several
8 instances -- instances, I told her, I said:

9 *Jeanine, this is a bad relationship,*
10 *and this guy's not good for you and the*
11 *boys.*

12 She said:

13 *Well, Daddy, I'm -- I'm trying to get*
14 *rid of him now.*

15 She says:

16 *I told him I'm trying to -- I want to*
17 *break it off.*

18 Because she had finally guess -- I guess, got to
19 the point where she had had enough. The family had had
20 enough, because that wasn't the only time that Earnest
21 did things to my daughter, and she hid it from me,
22 because she know I didn't appreciate it. There was some
23 things she hid from me, but I found out later that he
24 was the one that did it.

25 Q Do you know if -- was she planning on leaving him

1 any time? You say she was, but how long after -- how
2 long before the murder did this take place?

3 A If I'm not mistaken, Kiki was in the process of
4 getting rid of him. She kept telling me:

5 *Daddy, let me handle it, I'll get*
6 *rid of him.*

7 Because I told her, I said:

8 *Why don't you let me help you? We*
9 *can go through the Court, we can go through*
10 *the law and get --*

11 because I told him -- I told her, I says:

12 *If he's causing you that much problem,*
13 *you know, you -- you -- maybe you might*
14 *want to just --*

15 Because he was -- sound like he was trying to use
16 **John Doe 2**, which is his son, to keep them -- keep his
17 power over her. Seem like he was trying to possess
18 power over the whole family. And he was just abusive
19 guy, you know.

20 Q At the time of her death, was she trying to leave
21 him at that time?

22 A Yes, she was. She --

23 Q Did the -- and you said *Kiki* earlier.

24 Q I know what you mean.

25 A I'm sorry.

1 Q But could you tell the Judge what you mean.

2 A I mean Jeanine, my daughter.

3 THE COURT: Yes.

4 BY MR. STONE:

5 Q Okay. All right.

6 THE COURT: You referred to her or called her Kiki.

7 A Yes.

8 MR. STONE: Excuse me just a moment, your Honor.

9 BY MR. STONE:

10 Q And when you -- and the night you went over there,
11 in those photographs, I think that's 79, 80, and 81, the
12 Court's exhibit, the night that you went over there, you
13 confronted Earnest Daise about this?

14 A Yes, I did.

15 Q Did he deny it? Did he say he didn't do it,
16 anything like that?

17 A He act like he couldn't talk to me, like he was on
18 some -- some drug or something. He act like he was
19 really spaced out, and he kept -- and I kept trying to
20 tell him:

21 *Earnest, that's not the way you*
22 *treat the girl that you say you love.*

23 And he kept beating on the table and kicking things
24 around, you know. And I'm saying, you know, I kept
25 saying to myself:

1 *You know, if this keeps up, look*
2 *like him and I are going to get into it.*
3 But that's when the deputy came and took care of
4 the situation.

5 MR. STONE: Got you. I don't have any further
6 questions. Thank you, Mr. Mullen.

7 A. Okay.

8 THE COURT: Okay. Mr. McGuire?

9 FRANK MULLEN, PROFFER

10 CROSS-EXAMINATION BY MR. MCGUIRE:

11 Q Mr. Mullen, have you actually -- have you ever seen
12 Earnest Daise strike Jeanine?

13 A No, I haven't.

14 Q Never in your presence?

15 A No.

16 Q And the way you know about these things is from
17 talking to people?

18 A No. I talked to my daughter, and I actually saw
19 the evidence, the physical evidence the night that this
20 happened.

21 Q Okay.

22 A Because I was there.

23 Q So, based on what Jeanine told you. --

24 A Right.

25 Q -- and then seeing.

1 A Right.

2 Q And when was this?

3 A This was -- this was the last incident before she
4 got killed.

5 Q Is it about a year before?

6 A No, I don't think it's that long.

7 Q Well, you're going to have to help us a little bit
8 on time.

9 A Well, I'm doing the best I can with it. I mean, I
10 don't know exactly. I don't know whether it was a year
11 or six months or eight months. I mean, like, I see this
12 happen; and then it was a little -- it was a little
13 while, but I can't say exactly the time frame.

14 Q Sure. The only records we have would indicate it's
15 about a year.

16 A Well, that --

17 Q Does that sound about right?

18 A If that's the records that you have.

19 Q Okay. And again, you never saw Earnest Daise hit
20 Jeanine.

21 A No, not physically.

22 Q Okay. And the only way you know about what
23 happened is from talking to Jeanine to find out exactly
24 what happened to her.

25 A And actually experiencing the fight that night. I

1 actually came there after the fight, and he was still
2 there. And actually, they had just got through
3 fighting, okay, because he was still in the home.

4 Q Sure. But when he's in the home, and he's in front
5 of you, and your eyes are on him, he doesn't hit you.

6 A He almost.

7 Q But he didn't.

8 A No, he didn't.

9 Q He didn't hit Jeanine.

10 A No, not while I was there.

11 Q Or anybody else you saw.

12 A Not while I was there.

13 Q Have you ever been shown text messages from Jeanine
14 to Earnest that happened about two days before the
15 incident?

16 A Text messages, no.

17 Q The government hasn't shown you that?

18 A I haven't seen any text messages.

19 Q Would it surprise you to know that she sent him a
20 text saying:

21 *I know sometimes you're harsh, but*
22 *you look out for me and my kids.*

23 A She might have. I don't know. But it just doesn't
24 seem -- not after her and I talked. I mean, it just
25 doesn't seem like she would do that.

1 Q Okay.

2 A Because she didn't -- she didn't really -- she
3 didn't need him to look out for her when she had, you
4 know, my wife and myself and everybody else trying to
5 help her get on the right track. That just doesn't seem
6 like she would do that, but I mean, you know, I don't
7 know.

8 Q But if you saw the text message and it came from
9 her phone.

10 A Well, I'm going to be honest with you, I wouldn't
11 know what a text message would look like, because I'm
12 totally illiterate when it comes to that stuff, because
13 I'm from the old school. I don't get into text
14 messages.

15 Q Yeah, I'm barely into that myself.

16 A I'm just -- I'm just speaking honest with you.

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

19 BY MR. MCGUIRE:

20 Q One last thing. You never heard **John Doe 2** called
21 Dub; did you?

22 A Dub.

23 Q Do you remember talking to a police officer and
24 they asked you:

25 *You ever -- have you ever heard*

1 **John Doe 2** go by the nickname Dub?

2 And you said, no, you'd never heard that.

3 A Not that I can really recall. I mean, it may have
4 -- I mean, they may have called him that, but you know.

5 Q But you can't, as you sit there, you can't -- you
6 can't ever --

7 A Not at this time. I mean, I'm not --

8 Q You can't ever recall anybody calling him Dub?

9 A Dub, no, not at this time.

10 MR. MCGUIRE: That's all I have. Thank you.

11 MR. STONE: That's all we have, your Honor.

12 THE COURT: Okay. You may step down, Mr. Mullen.
13 Thank you, sir.

14 A Thank you very much.

15 ARGUMENT RE FRANK MULLEN PROFFER:

16 THE COURT: Before you go to the next one, you may
17 go ahead, and I just want to hear argument on this.

18 MR. MCGUIRE: Sure.

19 THE COURT: I'll go ahead and state for the record
20 my concern. He didn't witness any of it directly. I
21 think **Jas. M.** the one we need to hear from, because
22 **Jas. M.** witnessed this, correct?

23 MR. STONE: Yes, ma'am. And we have **Jas. M.** ready
24 to go. We can put him up next if you like. That was
25 actually the plan.

1 THE COURT: Okay. And just so I'm clear, again, we
2 can't have Mr. Mullen bolstering **Jas. M.** testimony and
3 statement. I mean, he can only testify as to what he
4 has seen.

5 MR. MCGUIRE: That's right.

6 THE COURT: So, I just want to make sure. I did
7 hear him say that Jeanine said that she was trying to
8 break it off with him, and I think that does go to
9 motive in this case about what occurred. I mean,
10 that's, I assume, your -- I don't know, but that -- I've
11 heard you say that might be one of your theories in the
12 case. Is that right?

13 MR. STONE: And also, and also, again, I would
14 agree with that, as well as she was afraid of him. You
15 will also hear other witnesses that say the same thing.
16 And the -- and basically, his testimony as to he did not
17 see the scene, other than catching -- other than hearing
18 **Jas. M.** call him during the event, which is going to be a
19 presence in suppression as you can hear him describe it.
20 He was screaming, he was in the closet when he was
21 calling, but **Jas. M.** will testify to that, as well. That
22 helps, I think, also go over, past the clear and
23 convincing standard that we need to show, as well.

24 THE COURT: As to **Jas. M.** testimony.

25 MR. STONE: Yes, ma'am. As well -- yes. And the

1 photographs back both of those up. And that's -- he saw
2 that. That was a fair and accurate depiction of how she
3 looked when he got there, and he confronted Earnest
4 Daise about it, who basically just became belligerent
5 with him. I think all of that's relevant, as well.

6 THE COURT: All right. Well, my concern is this.
7 I think he can testify that they had a rocky
8 relationship. I think he can testify that she said she
9 was afraid of him, and that she told him she was
10 attempting to break it off when this occurred. I think
11 those things are fair game, as of right now. I think
12 other than that, you know, as of right now, he hasn't
13 witnessed anything.

14 MR. MCGUIRE: And I'll do the research to be more
15 specific tonight, but there are cases in South Carolina
16 that talk about a victim before their death making a
17 statement about being in apprehension or afraid. And my
18 recollection is that their current mental state, where
19 they express, you know, afraid was okay, but pointing to
20 the who and why was not.

21 THE COURT: Well, I mean, he's going to testify
22 that she was just afraid of him. It didn't say --
23 again, I don't know at what point it would be for her to
24 say she's afraid of someone and not to have a who. It
25 doesn't go to anything in the case, anyway, so I don't

1 know why that would be -- go find the case law. I mean,
2 I'm understanding what you're talking about, but again,
3 I need to see specifics. Okay. That's as to Mr.
4 Mullen.

5 Okay. Who's your next witness, Solicitor?

6 MS. HENDERSON: Do you want to go ahead and do

7 **Jas. M.** ?

8 THE COURT: Certainly.

9 MS. HENDERSON: State calls **Jas. M.** .

10 THE COURT: Come on forward, sir, right here.
11 You're going to place your left hand on the *Bible* and
12 raise your right hand.

13 MADAM CLERK: Do you solemnly swear to truthfully
14 answer the questions asked of you by this Court, so help
15 you God?

16 **Jas. M.** : Yes.

17 THE COURT: Come on around sir.

18 MADAM CLERK: Please be seated and state your name
19 for the Court, please.

20 THE COURT: And sir, will you spell your first name
21 for the record, sir, as well?

22 **Jas. M.** : J/a/s/e/r/i.

23 THE COURT: Thank you, sir.

24 MS. HENDERSON: Thank you, your Honor.

25 **Jas. M.** , PROFFER

1 DIRECT EXAMINATION BY MS. HENDERSON:

2 Q **Jas. M.** , I know that there's some other stuff that
3 we're going to talk about maybe tomorrow. But for right
4 now, the Judge just needs to hear about some of the
5 stuff you know about your mom. What do you call Earnest
6 Daise?

7 A E.

8 Q Or what did you call him?

9 A E.

10 Q Okay. Some stuff that you knew about your mom and
11 E's relationship, okay? So, that's just what we're
12 going to talk about right now. Do you remember an event
13 that happened New Year's Eve of 2009?

14 A Yes, ma'am.

15 Q Can you please tell me what you saw?

16 A My mom and E at -- at the door. Just peeking
17 around the corner, and I could see it through the
18 mirror. And he just was trying to get her to come
19 outside, choking her, and she was laying down.

20 Q Okay. When you say *choking her*, I saw you do
21 something with your hands. What do you -- what do you
22 mean? He was -- he had his hands up here?

23 A Yes.

24 Q Okay. And you actually saw that?

25 A Um-hmm. Yes, ma'am.

1 Q Okay. I know you don't like the sound of your
2 voice, but we need you to be able to -- we need the
3 court reporter to be able to hear. **Jas. M.**, I'm going to
4 hand you what's been marked as Court's Exhibits.

5 MS. HENDERSON: Your Honor, can you hand those
6 exhibits back.

7 THE COURT: There they are.

8 MS. HENDERSON: Thank you. Yes, ma'am.

9 THE COURT: Right there, Jerri. Thank you.

10 BY MS. HENDERSON:

11 Q **Jas. M.**, when you -- after you saw what you saw,
12 Earnest strangling your mom, what did you do?

13 A Called my grandma. I went in the closet and called
14 my grandma.

15 Q Okay.

16 A And then I called the police.

17 Q And then you called the police?

18 A Um-hmm.

19 Q Okay. And did you stay in the closet until they
20 got there?

21 A Yes.

22 Q Okay. I'm handing you Court's Exhibits Number 80
23 and 81. Is that a fair picture of what your mom looked
24 like that night?

25 A Yes.

1 Q Did you see the marks on her neck?

2 A Yes.

3 Q Okay. And sorry. You can hand those back to me.
4 Were there any other instances that you were at the
5 house for when your mom and E fought?

6 A Just -- I didn't see anything, I just saw the
7 broken bed.

8 Q Okay. So, what you're talking about is an incident
9 -- was that before or after this one?

10 A That was before, I think.

11 Q That was before? Sorry, I'm going to need you to
12 talk a little bit louder, okay? Court reporter can't
13 hear, can't hear you. That was before?

14 A Yes.

15 Q Okay. And do you remember what happened that time?

16 A No, I just remember the bed.

17 Q Okay. Well, I'm going to hand you what's been
18 marked as State's -- Court's Exhibits, I apologize,
19 Court's Exhibits 82, 83, 84, and 85. Can you look at
20 those for me. Do you recognize those?

21 A Yes.

22 ITEM IDENTIFIED AS PHOTOGRAPH

23 OF ROOM MARKED

24 COURT'S EXHIBIT NUMBER 82.

25 ITEM IDENTIFIED AS PHOTOGRAPH

1 OF ROOM MARKED
2 COURT'S EXHIBIT NUMBER 83.
3 ITEM IDENTIFIED AS PHOTOGRAPH
4 OF ROOM MARKED
5 COURT'S EXHIBIT NUMBER 84.
6 ITEM IDENTIFIED AS PHOTOGRAPH
7 OF ROOM MARKED
8 COURT'S EXHIBIT NUMBER 85.

9 Q And is that a fair depiction of what the room
10 looked like?

11 A Yes.

12 THE COURT: Sir, do you mind handing those to me so
13 I can take a look at them, as well? Thank you.

14 A You're welcome.

15 Q And who --

16 MS. HENDERSON: Sorry, your Honor.

17 BY MS. HENDERSON:

18 Q Who caused those -- who caused the damage to the
19 room?

20 A E.

21 Q And how do you know it was E?

22 A Because they were arguing.

23 Q So, you could hear it; you just didn't see it?

24 A Um-hmm.

25 Q Okay.

1 THE COURT: Is that a yes for the record?

2 A Yes, ma'am.

3 THE COURT: Thank you.

4 BY MS. HENDERSON:

5 Q Okay. And do you know how your mom felt about E
6 the weekend that she was murdered?

7 A She told us she didn't want to be with him anymore.

8 Q I'm sorry, she told you what?

9 A She told us she didn't want to be with him anymore.

10 Q She didn't want to be with him anymore. Okay.

11 MS. HENDERSON: Beg the Court's indulgence for one
12 second, your Honor.

13 BY MS. HENDERSON:

14 Q **Jas. M.** , do you remember how your mom -- the night
15 that E was strangling your mom, do you remember if she
16 was crying or upset or talking, or do you remember what
17 she -- what her mental state was like?

18 A Not really. The only thing I heard her say was
19 *don't hurt my kids*.

20 Q Okay. She just said *don't hurt my kids*? Okay.

21 THE COURT: That's a -- you nodded your head yes.
22 I'm sorry, is that a yes for the record?

23 A Yes.

24 THE COURT: Okay. Thank you.

25 BY MS. HENDERSON:

1 Q And how would you describe your mom and E's
2 relationship, just in general, over the years that they
3 dated?

4 A A love/hate relationship.

5 Q Okay. And can you elaborate on that a little bit
6 when you say love/hate?

7 A When they were on good terms, they were on good
8 terms. When they were on bad terms, they were on bad
9 terms.

10 Q Okay. But I guess what I'm asking you is what do
11 you mean by *bad terms*?

12 A I don't really know how to explain it.

13 Q Okay. Was the incident that happened New Year's
14 Eve and the other incident, was that uncommon or common
15 in their relationship?

16 A I wouldn't say common, but then, I wouldn't say
17 uncommon, either.

18 MS. HENDERSON: Okay. Beg the Court's indulgence.
19 Did you give those exhibits to the Judge?

20 THE COURT: I have them.

21 MS. HENDERSON: Your Honor, would you like these
22 back, the ones you have?

23 THE COURT: That's okay. I've already seen those.
24 Thank you.

25 MS. HENDERSON: Nothing further right now, your

1 Honor.

2 MR. MACDOUGALL: May it please the Court, your
3 Honor?

4 THE COURT: Certainly.

5 MR. MACDOUGALL: Thank you, your Honor. Your
6 Honor, if I could ask to see the Court's Exhibits that
7 were just shown to the witness.

8 THE COURT: Certainly. Right here they are.

9 MR. MACDOUGALL: Thank you.

10 **Jas. M.** , PROFFER

11 CROSS-EXAMINATION BY MR. MACDOUGALL:

12 Q Hi, Mr. Mullen.

13 A Hello.

14 Q My name's Mark MacDougall, and I'm one of the
15 lawyers for the Defense here. I just want to ask you a
16 couple of questions. The State's lawyer, a few minutes
17 ago, asked you about the photographs that had been
18 marked -- the photographs that I don't have. This was
19 80 -- the first two.

20 COURT REPORTER: These?

21 MR. MACDOUGALL: Yes, ma'am.

22 COURT REPORTER: 80, 79.

23 MR. MACDOUGALL: Yeah. That's it. Thank you.

24 BY MR. MACDOUGALL:

25 Q And I'll just ask you to look at these very, very

1 briefly, Mr. Mullen. These are Exhibits 79, 80, and 81.
2 You saw these a couple of minutes ago. I just want to
3 remind you of them.

4 A Okay.

5 Q Okay. And I think you said that the only thing you
6 remember your mother saying was *don't hurt my kids*.

7 A Yeah. Yes, sir.

8 Q During that time. You were then shown a series of
9 pictures by the State's lawyer that had been marked
10 Court's Exhibit 82, 83, 84, and 85.

11 MR. MACDOUGALL: May I approach, your Honor?

12 THE COURT: You may.

13 BY MR. MACDOUGALL:

14 Q Let's just take a quick look at those to remember
15 which ones we're talking about. And I think you said
16 that you heard something, but you didn't see any damage
17 being done by Earnest Daise. Is that right?

18 A Yes, sir.

19 Q Okay. Do you remember being interviewed after you
20 lost your mom and your brother by Sergeant Hiers of the
21 Sheriff's Office?

22 A I don't remember names. I remember faces.

23 Q Okay. I don't think he's here today, but I'm going
24 to ask you about something that Sergeant Hiers recorded
25 in the interview. This would have been the night before

1 the murders, November 14th, and he talked about that you
2 all returning to your home, and that Earnest began
3 sweet-talking your mother in an attempt to get her to
4 come into the bedroom. Do you remember that?

5 A No, sir.

6 Q You don't remember telling Sergeant Hiers that?

7 A No, sir.

8 Q And that your mother eventually did go into the
9 bedroom with Earnest, and they closed the door? You
10 don't recall that on the night of the 14th of November,
11 2009?

12 A I remember them going in the room.

13 Q Okay.

14 COURT REPORTER: I'm sorry. I didn't understand.

15 A I remember them going in the room.

16 COURT REPORTER: Thank you.

17 Q Do you remember the sweet talking?

18 A No, sir.

19 Q Okay. Do you remember Earnest asking your mother,
20 to go into the room?

21 A No, sir.

22 Q Okay. And you mentioned, and I think I
23 characterized correctly, because I wrote it down, that
24 you thought that had a love/hate relationship.

25 A Yes, sir.

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1 Q That means that they loved each other sometimes.

2 A Yes, sir.

3 Q Okay. And that the event on New Year's Eve, I
4 think the State's lawyer asked you would you call it
5 common. You said you wouldn't say it was common or
6 uncommon. It was not a regular feature of life.

7 A No, sir.

8 MR. MACDOUGALL: Okay. Thank you, Mr. Mullen.
9 Thank you for coming in.

10 THE COURT: Anything further, Ms. Henderson?

11 MS. HENDERSON: Nothing further, your Honor.

12 THE COURT: You may step down, Mr. Mullen. Thank
13 you, sir.

14 A You're welcome.

15 ARGUMENT RE **Jas. M.**, PROFFER:

16 THE COURT: Mr. MacDougall?

17 MR. MACDOUGALL: Your Honor, Mr. Mullen, I think,
18 testified truthfully. The question we're asking comes
19 from Sergeant Hiers' memorandum of December 16, 2009, an
20 interview he had, and I'll just read it. It's probably
21 going to be part of the record.

22 **Jas. M.** *stated they arrived home*
23 *where the incident location, and everyone*
24 *exited the van. **Jas. M.** *stated Earnest*
25 *slammed the van door, went into the house,**

1 and straight to his mother's bedroom.

2 **Jas. M.** stated that a short time later,
3 Earnest exited the bedroom, came into
4 the living room and began, quote, 'sweet
5 talking,' end quote, his mother, in an
6 attempt to get her to come into the bedroom.

7 **Jas. M.** stated that his mother eventually
8 did go into her bedroom with Earnest, and they
9 closed the door.

10 I think Mr. Mullen described a volatile personal
11 relationship that was good sometimes and not good
12 others. He witnessed one incident that was 11 months
13 before the case that we're trying here, and he describes
14 his mother and Earnest in an apparently highly
15 conciliatory situation the evening before -- before the
16 homicide.

17 So, with respect to the threshold of clear and
18 convincing, I don't think this is anywhere near that.

19 And the second event that he described after New
20 Year's Eve, he said he didn't see anything. He just
21 came in and there was damage done. And in volatile
22 relationships, that can be done by either party or both.

23 THE COURT: I'm sorry. I think I have them
24 flipped. I thought the New Year's Eve incident was
25 where, allegedly, he was choking.

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1 MR. MACDOUGALL: Yes, that's right. The second is
2 the one that doesn't have a specific date, where the
3 photographs that were 83 through 85, the damage.

4 THE COURT: Right. Okay. That was -- correct me
5 if I'm wrong. The testimony I heard was that was the
6 one where **Jas. M.** didn't see any particular --

7 MR. MACDOUGALL: That's right.

8 THE COURT: -- incident. He just knew they went
9 back to the bedroom at some point, and then came back
10 out, correct?

11 MR. MACDOUGALL: Yes, your Honor.

12 THE COURT: Okay. Just -- sorry. I don't know why
13 I'm confused. I don't think it's you, Mr. MacDougall.
14 I think it's me, but I just want to make sure we're
15 talking about the same incident, so okay.

16 MR. STONE: He did not see them. He heard them
17 fighting. He did not see them fighting. And they went
18 into the room, and he heard it, and that's what he --
19 that was aftermath after he came.

20 THE COURT: And that's what you were --

21 MR. STONE: Right.

22 THE COURT: And then those were the four
23 photographs that showed the bed broken.

24 MR. STONE: Yes, ma'am. That's correct.

25 THE COURT: and I think the one -- the bedpost

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1 sideways, also the --

2 MR. STONE: And that is a separate -- I'm sorry, I
3 didn't mean to interrupt. That is a separate incident
4 from the other incident.

5 THE COURT: Okay. Can we take these separately, if
6 you don't mind. I just want to make sure, because I
7 would agree, Mr. MacDougall, that **Jas. M.** didn't witness
8 what had occurred. I think he can testify that they had
9 an altercation, and that he heard noise coming from the
10 bedroom, but I don't think he can say specifically that
11 one or the other did it, and I would not be inclined to
12 let those four exhibits in, just because we don't know
13 what happened. And the room could have been in that
14 state, quite frankly, before this.

15 And you know, unless he tells me that he hears
16 cracking wood or -- and I don't know anyone would know
17 that, I'm not comfortable with those four photos coming
18 in. Again, I don't think it's established by clear and
19 convincing evidence as to that incident.

20 So, again, I think it's appropriate for him to
21 testify that there was an altercation; they went in;
22 they came out; and just like you said, they kind of had
23 a, you know, love/hate relationship. But I think that
24 was a pretty fair assessment.

25 MR. MACDOUGALL: The one thing I'd ask, your Honor,

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1 and for the Court's consideration, is Sergeant Hiers'
2 statement. He's, apparently, here. We can call him to
3 authenticate it, if need be.

4 THE COURT: Okay. Okay. I don't know what we're
5 authenticating, other than --

6 MR. MACDOUGALL: This would be the statements that
7 I cross-examined **Jas. M.** .

8 THE COURT: He didn't see anything.

9 MR. MACDOUGALL: No, your Honor. This is the --
10 the interlude the night before the killing where they're
11 coming back, and according to **Jas. M.** , Mr. Daise is
12 sweet-talking his mother, and they go back in the
13 bedroom. Only for the purpose of showing that this was
14 a volatile love/hate relationship, and that
15 reconciliation the night before the murder was going on.

16 THE COURT: Okay. Can I look at that? I don't
17 know if it's just laid out wrong. I'm missing something
18 here. I don't understand what --

19 MR. STONE: It's three different instances.

20 THE COURT: Thank you.

21 MR. STONE: He's now talking of a third instance.
22 The third instance, the one he's talking about right now
23 with Sergeant Hiers, is the interview that took place
24 right after the murder. That's --

25 THE COURT: But my question is, was there an

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1 incident the night before the murder?

2 MR. MACDOUGALL: No, your Honor.

3 THE COURT: Well, then, now, that's why I was
4 confused. You all made it sound -- so, my problem is
5 this. I think you can fair game ask Mr. Mullen, **Jas. M.**
6 Mullen, about that. But there was no incident the night
7 before. Is that what I'm hearing you say?

8 MR. MACDOUGALL: Right, your Honor. And I
9 apologize for taking the Court down that road.

10 THE COURT: All right.

11 MR. MACDOUGALL: I asked Mr. Mullen did he remember
12 saying this.

13 THE COURT: Okay.

14 MR. MACDOUGALL: And he said no.

15 THE COURT: Okay.

16 MR. MACDOUGALL: And I asked him if he had ever
17 been interviewed by Sergeant Hiers, and he said:

18 *I remember faces, not names.*

19 My sole purpose, and it may be unnecessary --

20 THE COURT: Okay.

21 MR. MACDOUGALL: -- would be to authenticate what I
22 was cross-examining him about.

23 THE COURT: Thank you. It has absolutely nothing
24 to do with any testimony he is going to give
25 specifically about a incident where he -- Mr. Daise was

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1 hurting his mother, correct?

2 MR. MACDOUGALL: It is not.

3 THE COURT: Sorry.

4 MR. MACDOUGALL: It is not relevant to the two
5 specific incidents. It's relevant to his state of mind.

6 THE COURT: That, I appreciate. Okay. And I
7 understand that. Okay. That, I understand that, that's
8 a statement; it was authenticated; yes, I understand
9 that. Now, so there was no incident the night before,
10 just so we're all clear.

11 MR. MACDOUGALL: Thank you, your Honor.

12 THE COURT: Sorry. Okay. So, now we're back to,
13 as we stated before, the incident that we're talking
14 about was the one where -- the bedroom scene,
15 apparently, where **Jas. M.** saw nothing. He knew that they
16 went back to the bedroom, came out. Again, I've ruled
17 those four photos don't come in. I don't think they're
18 relevant of anything, quite frankly, and haven't been
19 proven by clear and convincing evidence.

20 So, he can say that they walked back to the
21 bedroom, he heard some noises, there appeared to be some
22 kind of problem, and that was it. That's all he knows.

23 Let's go back now to the incident where, allegedly,
24 where Ms. Mullen was choked. Let's go back to that.
25 So, Mr. MacDougall talk to me about that.

1 MR. MACDOUGALL: Well, your Honor, he said, if I
2 understood him correctly, -- I suppose we could go back
3 to the transcript -- that he saw her around the corner
4 with a mirror. And I'm not sure what that meant, other
5 than maybe he was looking in a mirror and saw a
6 reflection. So, he's at least one step removed from the
7 actually witnessing it.

8 THE COURT: I think he testified that he saw him
9 choke her. I think that's what I heard. And then he
10 called his grandfather as a result of that, correct?

11 MR. MACDOUGALL: There was a reference to the
12 mirror.

13 THE COURT: And the police came as a result of
14 that. And he said the photographs were an accurate
15 reflection of what he saw. Okay. So, talk to me about
16 (a) the photographs; and also, we need to, obviously,
17 talk about as the 404(b) analysis; relevance; and of
18 course, you know, probative versus prejudicial. So.

19 MR. MACDOUGALL: Well, your Honor, he didn't take
20 the photographs.

21 THE COURT: Okay.

22 MR. MACDOUGALL: And this is now several years
23 past. And he's been through a traumatic experience.
24 And I don't know that we're in a position today to test
25 his real memory about that. And those are highly, I

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1 think graphic would be a fair word, photographs, that
2 are of questionable prominence, at least insofar as this
3 witness is concerned.

4 It was one incident, one incident in a very long
5 period of time; and one for which Mr. Daise, to the
6 extent he was responsible, was forgiven, because they
7 reconciled and she went back to him.

8 The prejudicial value is very, very high. The
9 probative value is very low, and the Court just invited
10 the 404 analysis, 404(b) analysis. Evidence of this
11 kind is admissible to show motive, identity, the
12 existence of a common scheme or plan, the absence of
13 mistake or accident or intent. And your Honor, none of
14 those are applicable here.

15 This was an unrelated event in a long relationship
16 that had ups and downs. And what it is marked by, and
17 what makes it different is very graphic photographs.
18 And those photographs, I think, are well outside of the
19 scope of what 404(b) is intended to permit. And for
20 that reason, we would move that they be suppressed from
21 the trial.

22 THE COURT: Thank you. Solicitor?

23 MR. STONE: It is evidence of intent and identity,
24 so you're at least under two of the provisions of
25 404(b). And here's the other thing that I think Defense

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1 is maybe misunderstanding or is -- this is the -- this
2 is the pure definition of domestic violence, the
3 love/hate relationship, this is exactly what happens.
4 The fact that they make up, they have fights, they make
5 up, that kind of stuff, that's exactly what we see in
6 domestic violence on a regular basis. And the fact that
7 they were reconciled really is -- that's fine. It's
8 admissible, but it's exactly what it is when you see
9 domestic violence cases. They do that all the time.

10 It's an accurate photograph that the Court --
11 whether he took the photograph or not is irrelevant.
12 It's whether or not it was a fair and accurate depiction
13 of how his mother looked exactly that night as it
14 happened.

15 He witnessed it from a closet in which he was
16 calling his grandparents and 911. As far as the whole
17 purpose behind showing this, your Honor, I think it goes
18 to everything that 404(b) is there for. I mean, it's
19 got -- at some point in time, that has to be there for
20 some reason. It seems to me that this proves identity,
21 it proves intent, it proves motive, it proves all of it.

22 And that's exactly the situation that we have. It
23 is a domestic violence situation in which you have a
24 love/hate relationship that she has -- she was basically
25 abused.

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1 THE COURT: Go ahead, Mr. MacDougall.

2 MR. MACDOUGALL: Judge, I just remind the Court and
3 everyone, this is attenuated by 11 months. We all know
4 the identity of Mr. Daise, but Ms. Mullen had several,
5 multiple relationships, and we haven't probed into
6 those.

7 With respect to intent, your Honor, the Court knows
8 as well as anybody, this is a brutal killing by a gun,
9 and it's far, far removed from the kind of physical
10 assault that's depicted in those pictures. And above
11 all, I think its prejudicial value is enormous, and its
12 probative weight is very small.

13 COURT REPORTER: I'm sorry. *And its probative*
14 *weight is?*

15 MR. MACDOUGALL: Very small.

16 MR. STONE: Your Honor, I would remind you of this.
17 I know we argued this months ago, but as far as the
18 South Carolina case law on that, that has been very
19 clear. In a homicide case, this type of evidence is
20 admissible. The time frame is -- I think we even had
21 one case that was about a year earlier. There was some
22 threat and fight prior to the murder. All of the South
23 Carolina cases have let this in, in homicide cases,
24 because this type of action is repeated, it's
25 escalating, and this is what we're seeing throughout

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1 this. And I recognize --

2 THE COURT: Solicitor, I'll go ahead and tell you
3 that I agree that it's admissible to the extent to show
4 identity and intent.

5 MR. STONE: Yes, ma'am.

6 THE COURT: That they had this exchange and this
7 problem. My concern, and I do think it's relevant, my
8 concern is, then, we go over, and on top of it, we're
9 showing these photographs of, again, we've got **Jas. M.**
10 testifying that someone is choking his mother, and he
11 sees Earnest Daise. And I think he can testify to that.
12 But then you have pictures where it looks like there's
13 gouge marks off the side of her face. Again, that is
14 where I worry about walking over the line of there being
15 -- the prejudice outweighing the probative value.

16 Additionally, I will tell you, I'm going to -- I
17 have gone through these cases from beginning to end on
18 404(b) evidence. I have read every last one of them.
19 The one thing that keeps popping into my mind that I
20 see, and I would agree with you, I think, naturally, the
21 case law starting from 1908 on, it says that this type
22 of evidence either comes in or they call it, you know,
23 it's not, you know, it's harmless error if it shouldn't
24 have come in.

25 The one thing that I do notice in a lot of these

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1 cases, one of the questions they have is whether or not
2 it's self-defense, or if there's some other defense
3 going on. In this case that we have, there is no self-
4 defense. There is just going in and the cold-blooded
5 shooting. So, we're not arguing with who was the
6 aggressor, who was causing the problems. Our real to
7 the point is actually who committed the crime. I think
8 that's where the difference lies, and that's where I
9 distinguish some of these cases.

10 I mean, I -- like I said, I went through the Brooks
11 case; I've gone through all of them, and that's what
12 seems to be to me the issue in those cases, is you have,
13 you know, someone claiming this was a killing in self-
14 defense. That's where I'm seeing the difference. I
15 just, like I said, I just don't want the prejudicial
16 value to be so great.

17 I am comfortable, Solicitor, and I will tell you, I
18 am comfortable allowing, obviously, **Jas. M.** to testify
19 that he saw him choking his mother; that they had an
20 altercation; certainly there was a love/hate
21 relationship; that they had these issues; but going to
22 the point where we're showing photographs of a non-
23 conviction, again, from something where he testified
24 that, you know, he saw him choking her; we don't have
25 that he was gouging at her; again, I just think it takes

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1 that one step further, that I think it just makes it so
2 prejudicial.

3 Again, the biggest concern we always have, and the
4 reason why we have 404(b) is that we don't want to show
5 that, because he committed this heinous CDV against her
6 back a year earlier, that he killed her.

7 MR. STONE: Right.

8 THE COURT: Now, we just -- we cannot let the jury
9 take that leap.

10 MR. STONE: And if I may offer that, I think I
11 actually see your point as far as the gouging. I had
12 not thought of it in that context. I think there are
13 three photographs, two of them that show gouging, and
14 the third is just a mark on the neck. For my argument,
15 it seems to me that would be establishing more the clear
16 and convincing evidence, that one photograph, and maybe
17 the gouging. I didn't even think of it in that context,
18 as far as the gouging is concerned. I don't know if
19 that's how that happened or not, but I'm assuming,
20 you're correct, that is how it happened. But anyway,
21 that would be certainly with --

22 THE COURT: I think the incident has shown -- I
23 will tell you this. I think the incident has been
24 proven by clear and convincing evidence. I agree with
25 you there, no question, Solicitor. My concern then,

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1 again, is we go to these photographs and the prejudice
2 outweighing any probative value. Again, I'm going to
3 tell you, like I said, the two showing the gouging --

4 MR. STONE: Right.

5 THE COURT: -- definitely don't come in. I will,
6 overnight, consider the actual choking showing. Again,
7 -- part of this is so difficult for me to, you know, I'm
8 trying to make a pre-ruling based on what I'm going to
9 see, and again, it might be that I tie your hands, and
10 in the end, it should have come in. And again, that's
11 usually my problem. So, Mr. MacDougall.

12 MR. MACDOUGALL: Your Honor, I just ask the Court,
13 as you consider that the third the photograph, there's
14 no way to identify that photograph as being Carmen
15 Mullen -- I'm sorry -- Jeanine Mullen.

16 THE COURT: Thank goodness it's not me. That's all
17 right. And I will tell you, too, I didn't find it
18 necessary -- you don't think I need to tell this jury
19 that I am in no way related. You know, I don't want to
20 assume anything, and I want to make sure that no one
21 would make that leap, but I --

22 MR. MACDOUGALL: I'm just embarrassed you had to
23 tell me, your Honor.

24 THE COURT: That's all right. That's all right.
25 So, anyway, let me just think on --

1 MR. STONE: Yes, ma'am.

2 THE COURT: -- just that one photograph, which is
3 again, the alleged marks.

4 MR. STONE: And we have two further witnesses, your
5 Honor, and I'll be glad to call those in.

6 THE COURT: Let's go ahead and proffer them.

7 MR. STONE: Rosemary Dukes, please.

8 COURT REPORTER: I'm sorry, who did you say?

9 MR. STONE: Rosemary Dukes. No photographs for the
10 next two, your Honor.

11 THE COURT: Come on forward, Ms. Dukes.

12 MADAM CLERK: Ma'am, would you place your left hand
13 on the Bible and raise your right hand for me, please.
14 Do you solemnly swear to truthfully answer all questions
15 asked of you by this court, so help you God?

16 MS. ROSEMARY DUKES: Yes, ma'am.

17 MADAM CLERK: Please be seated. State your name
18 for the Court, please, ma'am.

19 MS. ROSEMARY DUKES: Rosemary Dukes, D/u/k/e/s.

20 THE COURT: Thank you, ma'am.

21 ROSEMARY DUKES, PROFFER

22 DIRECT EXAMINATION BY MR. STONE:

23 Q Ms. Dukes, I'm going to ask you a few questions
24 about Jeanine Mullen. You knew Jeanine Mullen.

25 A Yes.

1 Q And how did you know her?

2 A I work at Shanklin Elementary, and she was a
3 teacher assistant.

4 Q And how long have you worked at Shanklin
5 Elementary?

6 A I worked there for 14 years.

7 Q And how long did Jeanine work there?

8 A About three years.

9 Q All right. So, during the three years she worked
10 there, she was a teaching assistant. Is that correct?

11 A Yes, she was.

12 Q What kind of relationship did you have with Ms.
13 Mullen?

14 A Very close. She would come in my office every day,
15 and we'd sit and talk right after school.

16 Q Okay. And this was pretty much the time -- her
17 entire time, those three years, was she there at
18 Shanklin Elementary? And I'm trying to place that as
19 far as the time line of her death. Was she still
20 working there when she died?

21 A Yes, she was.

22 Q Okay. All right. So, basically, three years back
23 from the time that she -- that she died, she was at
24 Shanklin Elementary with you.

25 A Yes.

1 Q Okay. Did you know -- did you know anything about
2 her relationship with Earnest Daise?

3 A I know she was abused by him. She shared with me
4 that he had broken her wrist. And the reason that
5 being, I have to take care of the payroll and the leave
6 forms, and she would have to go -- be off to go to the
7 doctor with it.

8 Q Did you talk to her about this abuse?

9 A Well, she shared that. At first, she denied it,
10 and then she came to me and, you know, she talked about
11 it.

12 Q Do you know how long her relationship was? In that
13 three-year window that she was with you, do you know how
14 long -- was she with Earnest Daise that whole time?

15 A I'm not sure.

16 Q Okay. The relationship, when you first found out
17 about it in that time, what was the relationship like
18 when you were -- when she was telling you, talking to
19 you about it?

20 A She was afraid of him, because he would come to
21 pick her up after school, and she would be in my office.
22 And I remember one time, -- I have an office with a
23 window, and he was going around and around the parking
24 lot, blowing the horn, and you know, she was scared to
25 go out there.

1 Q Okay. And you saw this? You witnessed this?

2 A Yes, I witnessed it.

3 Q Okay. When he would come and pick her up, what was
4 he driving?

5 A Her van.

6 Q This is the --

7 A The white van.

8 Q The white van?

9 A Yes.

10 Q I think this has been -- Defense Exhibit 5, I
11 believe. Is that the white van?

12 A Yes, sir.

13 Q Okay. And what did she do when -- did he pick her
14 up every day?

15 A I didn't see him every day.

16 Q Okay. Did you know, did he pick her up often?

17 A Pretty much.

18 Q Okay. What was her reaction when it was time for
19 him to come pick her up?

20 A She would have to hurry outside, because she was
21 afraid, you know, what would happen, you know. I don't
22 know if she would get yelled at or what, but she would
23 hurry out there.

24 Q Okay. When he came up?

25 A Right. Um-hmm.

1 MR. STONE: Thank you, your Honor. I don't have
2 anything else.

3 THE COURT: Okay.

4 ROSEMARY DUKES, PROFFER

5 CROSS-EXAMINATION BY MR. MCGUIRE:

6 Q Is it Ms. Dukes?

7 A Yes.

8 Q Hey. Good afternoon. How are you doing? Tell me
9 about the broken wrist. When did that happen?

10 A I'm not sure what year it happened, but it happened
11 during the time that she was working at our school.

12 Q And what's that time frame?

13 A About six, seven years.

14 Q Okay. Now, you're going to have to do -- help us a
15 little bit more than it was within the last six or seven
16 years. Was it a year before she was killed? Two years
17 before, three years before?

18 A Oh, no. It was like maybe six months.

19 Q Okay. Six months. And how do you know it was her
20 wrist that was injured?

21 A Because she had a cast on it.

22 Q Okay. And did she use the word *wrist*?

23 A Yes.

24 Q Okay. And how did she say she got that?

25 A Well, at first, she told me she fell. And then,

1 she came back to my office like a week or two later and
2 told me what really happened.

3 Q And tell me about that.

4 A Just that he broke it.

5 Q How?

6 A I don't know.

7 Q Over what?

8 A I don't know. She just, said *he broke my wrist*.

9 A Um-hmm.

10 Q That's it?

11 A That's it.

12 Q What time of year was it? Was it fall, winter,
13 summer?

14 A I don't remember, sir.

15 Q What doctor did she go to?

16 A She went to one in Beaufort, but I don't know who.
17 And then, she had to go to a specialist in Charleston.

18 Q And you said she was getting off work? You said --
19 you mentioned something about she had to get off work
20 all the time.

21 A She had to go to the doctor.

22 Q So, how many times was that?

23 A I don't recall.

24 Q I mean, more than one?

25 A Oh, yes.

1 Q So, how many?

2 A I don't recall how many times.

3 Q Well, when -- the incident we're here for happened
4 November of 2009. So, it would be pretty much the
5 winter of 2009. When was the last doctor visit before
6 that?

7 A I don't know. I -- I -- I'm sorry, I --

8 Q A month? Six month? Well, school starts in
9 August. Was it in the school year of the same year?

10 A It was during the school time. It was during the
11 school year.

12 Q Of 2009 or 2008?

13 A I don't --

14 Q Could it be 2008?

15 A It could be.

16 Q Could it be August of 2008?

17 A I'm not sure, sir. I don't know what the month
18 was.

19 Q But it could be fall 2008, as far as you know?

20 A I'm not sure what month it was.

21 Q Could it be earlier than the fall of 2008? Could
22 it be fall of 2007?

23 A I'm not sure what the date was, sir.

24 Q Okay. Can I take that as a yes, it could have been
25 earlier than fall of 2008?

1 A I don't know what the date was.

2 Q Okay. So, this is going to be within six or seven
3 years gone by. It could be six years ago.

4 A No.

5 Q Okay. So, it's not six years ago. Five years ago?

6 A Oh, are you talking about when her wrist was
7 broken?

8 Q Yes.

9 A All I know is her wrist was broken, but I don't
10 know the month that it was broken. I don't know the
11 time frame.

12 Q Okay. And it could be several years before
13 November 2009?

14 A No, it wasn't several years before.

15 Q Could it be two?

16 A No. It was like, within six months.

17 Q Okay. You never saw Mr. Daise strike Jeanine.

18 A No.

19 Q Did you ever meet him face to face?

20 A I saw him parked outside in the van.

21 Q But you never talked --

22 A But I never met him personally.

23 Q Okay. Never talked to him?

24 A Huh-uh.

25 Q Okay.

1 COURT REPORTER: Is that no?

2 A That's no.

3 Q Would you describe her relationship with Earnest as
4 a love/hate relationship, where there were times where
5 she was very excited about the relationship?

6 A She never appeared to be excited about it.

7 MR. MCGUIRE: If I could have just one second,
8 Judge.

9 THE COURT: You may.

10 BY MR. MCGUIRE:

11 Q Now, one of Jeanine's duties at school was to stand
12 outside with the kids when they were getting picked up,
13 right?

14 A Right.

15 Q And so, plenty of times at the end of the day,
16 she'd already be outside with the kids when Earnest came
17 to pick her up, right?

18 A No, she would come in and sit in my office until
19 her ride got there.

20 Q So, how did she stand with the kids if she's
21 sitting with you?

22 A She goes out, and then she had a period of time
23 that she would come back inside. Kids would be picked
24 up, and then she would come back inside the building.

25 Q So, you're saying all the kids would be picked up,

1 then she'd come back in.

2 A Right.

3 Q Okay.

4 A Her class.

5 Q But there would be plenty of times where she would
6 already be outside with the kids when Earnest would pick
7 her up? Or you don't know?

8 A I don't --

9 THE COURT: You're shaking your head. You have to
10 answer.

11 A Okay. I -- I don't know.

12 Q And the only -- the only reason you know, or you
13 say you know that Mr. Daise broke Jeanine's wrist is
14 because she told you?

15 A She told me, yes.

16 MR. MCGUIRE: Okay. That's all I have.

17 MR. STONE: Nothing else, your Honor.

18 THE COURT: May I ask you ma'am, typically, the
19 children left at what time during the afternoon from
20 Shanklin?

21 A Well, now it's like 3:30. It was --

22 THE COURT: What was -- I mean, just for --

23 A Between 3:20 and 3:30.

24 THE COURT: And then, are the teachers and
25 administrative assistants or whoever, the assistant

1 teachers required to stay until 4:00 or a specific time,
2 or can they leave?

3 A Like 3:45, yes, ma'am.

4 THE COURT: Okay. Okay.

5 MR. MCGUIRE: And Judge, I neglected to ask her
6 just one or two questions.

7 THE COURT: Certainly.

8 BY MR. MCGUIRE:

9 Q Ms. Dukes, have you ever given a statement to a
10 police officer?

11 A No, sir.

12 Q Did you ever call the police about any of this
13 stuff?

14 A No, sir.

15 Q Have you been interviewed by people from the
16 Prosecutor's Office about this case?

17 A Yes.

18 Q How many times?

19 A Twice.

20 Q Did anybody take notes when you were being
21 interviewed?

22 A Yes.

23 Q Did you give a written statement or sign anything?

24 A No.

25 Q Did you review the notes or the documents they

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1 made?

2 A No.

3 MR. MCGUIRE: Okay. That's all I have. Thank you.

4 THE COURT: Anything further, Solicitor?

5 MR. STONE: No, thank you.

6 THE COURT: You are excused, ma'am. Thank you.

7 A Thank you.

8 ARGUMENT RE ROSEMARY DUKES, PROFFER:

9 THE COURT: Before we call the last one, we need to
10 go ahead and discuss this.

11 MR. STONE: Yes, ma'am.

12 THE COURT: Okay. Solicitor?

13 MR. STONE: If I can brief this a little bit, I do
14 not intend to ask her about the broken wrist, if that
15 alleviates some concerns. I don't plan on getting it
16 in. I don't think that's admissible.

17 THE COURT: Um-hmm.

18 MR. STONE: I do, however, think it is admissible
19 that she was afraid of him. I think that the fact that
20 she would hurry out to the car when he showed up and the
21 fact that he'd go through and beep the horn a lot and
22 she'd run out, I think that's admissible. But as far as
23 the broken wrist, I do not believe that's admissible,
24 and we're not going to ask her about that.

25 MR. MCGUIRE: I don't think it requires much

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1 argument. It's all rank hearsay. She's not witness
2 to anything. All of her knowledge comes from Jeanine.
3 And --

4 THE COURT: What about her saying that he comes,
5 and when he comes to pick her up, he drives around the
6 parking lot and honks? I mean, it's not quite exactly
7 an evidence of a crime. I don't know what it's evidence
8 of.

9 MR. MCGUIRE: Somebody who's impatient about
10 picking up their spouse. I'm not sure it goes to
11 anything. I mean, it's just, you know, it's -- I mean,
12 we're reaching at straws here, you know. All this --
13 all this stuff is nothing but propensity evidence. Did
14 he act in a way that was disrespectful or violent or
15 abusive or physically abusive to Ms. Mullen to prove
16 that he acted like that on this day? The Prosecutor's
17 whole case is argument about the then and violence that
18 caused her death. And all this is argument plus
19 violence, argument plus violence. That's all this is.
20 It's one hundred percent pure propensity evidence. I've
21 never seen it allowed in court, ever. I mean, this is
22 exactly why you have a rule. I mean, I -- I don't think
23 it takes much argument to -- I think it's kind of
24 obvious.

25 THE COURT: Well, the Solicitor's already conceded

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1 that he isn't going to put in that her wrist was broken
2 as a result of Mr. Daise. My question is, what about
3 all this cumulative testimony about that she was afraid
4 of him? Because that's really what you're going to.
5 And someone needs to pull me some CDV law. Number one,
6 I think it would show -- and again, we thought we did
7 it. We thought we had it as strong as we could, but
8 showing what could be testified to. But again, it's --
9 now we've got, you know, three people saying that, you
10 know, she was afraid of him.

11 MR. STONE: And I think it goes in a different
12 direction than the Defense is suggesting. What you're
13 actually seeing is the pattern. You're not -- you don't
14 -- you're not offering one witness to come up and say
15 she was afraid of him, because I think that is, in
16 itself, isolated event that might not show anything.

17 These are witnesses that are all from different
18 walks of life, different dealings with her. I believe
19 that she can -- Rosemary Dukes said, and I think anybody
20 can testify how somebody feels, and she said she was
21 afraid of him. I think fear of the defendant is clearly
22 admissible. And I think what you're seeing is, you're
23 not seeing just one person coming in and saying, oh,
24 that was an abusive relationship; it's every walk of
25 life that she's had, which goes strictly to how credible

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1 this -- how credible this evidence is.

2 THE COURT: Okay. Well then, let's get the case
3 law that says and shows repeatedly that the fear of
4 defendant --

5 MR. STONE: Certainly.

6 THE COURT: -- the fear of the person that's
7 accused is admissible. Again, let's start there.

8 MR. STONE: Certainly.

9 THE COURT: Okay? And I mean, I'll reserve
10 judgment as to Ms. Dukes, because again, I think that's
11 really all she can testify is, from what I hear, was
12 that she was afraid of him. And again, I think I need
13 some CDV case law.

14 I will tell you, Solicitor, part of my problem is
15 what I keep going back to, is I keep going back to the
16 *Williams* case and the *Clinkscales* case where, you know,
17 we talk about you have the escort and one woman that
18 said she had been robbed to show identity and intent,
19 but the specifics weren't allowed. I think one of them
20 -- there was actually included a rape, and they said
21 that doesn't go to it. I think it was the -- I don't
22 know if it was the *Clinkscales* or the *Williams* case
23 where they talked about the wife had previously been
24 shot in the back.

25 MR. MCGUIRE: It's *Clinkscales*.

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1 THE COURT: And again, that wasn't allowed. I'm
2 } worried that this comes very close to that. We can talk
3 , and show the animus, we can talk and show the problems
4 that they had, but I think we're getting a little too
5 close, and that's what my concern is.

6 MR. STONE: Those cases, as I recall, and
7 *Clinkscales*, quite honestly, was so confusing that, as I
8 recall, it ended up a Supreme Court justice actually
9 quoted it saying that it was admissible. But regardless
10 of that, you have one case that talked about a direct
11 threat made to the victim from the defendant.

12 THE COURT: Um-hmm.

13 MR. STONE: You have one in which it really wasn't
14 even a robbery; it was an argument over something at the
15 cash register; it wasn't a robbery. And it was
16 something that the husband observed that the wife had
17 some type of argument at the cash register. That type
18 of information came in. You had the case in which you
19 had a -- you had a marital discourse over money. And
20 the fact that they were in financial straits, all of
21 that led to the State's theory. These are a lot of
22 details that are in --

23 THE COURT: That's very different, though, when
24 you're talking about getting life insurance policies and
25 all that stuff, --

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1 MR. STONE: Right.

2 THE COURT: -- I think that does clearly go to
3 intent.

4 MR. STONE: Sure.

5 THE COURT: I think those could be used to
6 establish, but again, I'm looking back at *Clinkscates*,
7 and I agree with you, the way they decided it. We're of
8 the opinion that the evidence was properly admitted
9 showing the previous difficulties, but the details were
10 not admissible. I mean, that's what it says, and my
11 concern is we're getting too close to the details.

12 MR. STONE: Right.

13 THE COURT: Again, they do not want them to
14 bootstrap, because he allegedly did acts if he was the
15 one that killed her.

16 MR. STONE: Right.

17 THE COURT: Again, I just -- I want to be very
18 careful on that line. And again, I do think other
19 criminal domestic violence law would be instructive.
20 Again, I know I think we tried to pull what we can, but.

21 You know, the other thing that would be kind of
22 along the lines would be child abuse. Same thing, where
23 they could show previous abuse.

24 MR. STONE: Yes, ma'am.

25 THE COURT: And that's the other, you know,

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1 obviously, along the same lines.

2 MR. MCGUIRE: And Judge, since you mentioned
3 that, --

4 THE COURT: Yes?

5 MR. MCGUIRE: -- there actually is a capital case
6 that addresses that. It's the *Northcutt* case where the
7 prosecutor tried to introduce medical records involving
8 his child, where he said the child fell off a swing, and
9 the child suffered with a broken arm, broken leg. And
10 they said it was not -- I mean, that was in the penalty
11 phase, I mean, when the rules are a little bit relaxed.

12 THE COURT: Right.

13 MR. MCGUIRE: And the case, the justice of the
14 Supreme Court said that was not admissible.

15 COURT REPORTER: They said what?

16 MR. MCGUIRE: Not admissible. That was not
17 admissible.

18 THE COURT: Let's go ahead. Let's do the last
19 proffer, Solicitor.

20 MR. STONE: Sure.

21 THE COURT: And then, I'm going to invite you all,
22 over the evening, and my law clerk will, as well, let's
23 see what we can find as far as case law as to criminal
24 domestic violence, admissibility of prior incidents
25 between those two. Again, I think something where

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1 there's prior abuse from someone else or a different
2 person; also, maybe same thing along the lines of the
3 child abuse cases. I don't know how different that's
4 going to be, because, oftentimes, in child abuse cases,
5 you have children, and if they don't talk, necessarily.
6 Although, I don't know, I think it's probably pretty
7 close to analogous of criminal domestic violence cases
8 where you have a back-and-forth relationship. But let's
9 go ahead and do the last -- is it one more proffer or
10 two? I forgot.

11 MR. STONE: Just one.

12 THE COURT: Okay. Okay.

13 MR. STONE: Alleen Porter.

14 THE COURT: Come on forward, ma'am, please.

15 MADAM CLERK: Would you place your left hand on the
16 Bible and raise your right hand for me, please. Do you
17 solemnly swear to truthfully answer all questions asked
18 of you by this court, so help you God?

19 MS. ALLEEN CARLETTA PORTER: I do.

20 MADAM CLERK: Please be seated. State your name
21 for the Court, please.

22 MS. ALLEEN CARLETTA PORTER: Alleen Carletta
23 Porter.

24 THE COURT: Thank you. Solicitor?

25 MR. STONE: Thank you, your Honor.