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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

RECEIVED

MAR 17 2016

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 II

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**RECORD ON APPEAL
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Certificate of Counsel

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1 JUROR NUMBER 433: It's a clarification on one of
2 your previous questions.

3 THE COURT: Yes, sir.

4 JUROR NUMBER 433: In 2002, in Hall County,
5 Georgia, I was arrested and charged with possession of
6 methamphetamine.

7 THE COURT: Okay.

8 JUROR NUMBER 433: I got into the drug court
9 program there, and the charges were nolle prossed. And
10 I didn't know if that --

11 THE COURT: That's okay.

12 JUROR NUMBER 433: It's never been expunged.

13 THE COURT: That does not disqualify you. If it is
14 a nolle prossed, it actually means that it is and should
15 be gone, and you probably should go get your arrest
16 warrant, the arrest expunged from the record. That does
17 not disqualify you.

18 JUROR NUMBER 433: Okay.

19 THE COURT: You feel comfortable and good to sit
20 and listen to the case and everything else?

21 JUROR NUMBER 433: Yeah.

22 THE COURT: Mr. McKenna, I appreciate it.

23 JUROR NUMBER 433: Thank you.

24 THE COURT: Thank you so much. All right.

25 END BENCH CONFERENCE.

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1 BAILIFF: 548, Ms. Sampson, your Honor.

2 ON-THE-RECORD BENCH CONFERENCE,

3 OUT OF HEARING OF JURORS:

4 THE COURT: And she's back. You went around twice.

5 JUROR NUMBER 548: The gentleman in the black suit
6 told me to come up here to get an excused to go to work,
7 because like I said, we have two servers, and I have to
8 be their manager Monday through Thursday.

9 THE COURT: Okay. Give me just one moment. If you
10 will go back, just give me one moment. Okay?

11 JUROR NUMBER 548: Um-hmm.

12 THE COURT: And we'll have a conversation again.

13 END BENCH CONFERENCE.

14 ON-THE-RECORD BENCH CONFERENCE,

15 OUT OF HEARING OF ALL JURORS:

16 THE COURT: All right. If you all can't agree,
17 then, that's fine, I'll make a decision. I could've
18 sworn he was one that was dismissed.

19 MR. STONE: He's the one that came with prior
20 records for the indictment and the sentencing sheet,
21 Kawani, Kawani --

22 THE COURT: Bradshaw. The one with the PTI.

23 COURT REPORTER: I'm not hearing everybody. I'm
24 sorry.

25 THE COURT: I thought we dismissed that.

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1 MR. STONE: I don't think so.

2 THE COURT: I could have sworn he's the one we
3 dismissed.

4 MR. STONE: He's the one that came up with the rap
5 sheet. The one with the PTI.

6 THE COURT: I still thought we -- I could be wrong,
7 but I thought we had already gotten rid of him.

8 MR. STONE: Maybe I missed him.

9 THE COURT: No, no, no. I may have -- I missed it.

10 MADAM CLERK: What was his number? What was his
11 number?

12 THE COURT: What was his number? Do you know?

13 MR. STONE: Kawani Bradshaw, 70.

14 THE COURT: 70.

15 MADAM CLERK: The only thing I've got is a stay.

16 THE COURT: He's still there?

17 MADAM CLERK: I think you told him that you were
18 going to check into it.

19 THE COURT: Okay. Okay. All right. Well, you
20 guys want to see this? It's a disqualifier. Okay.
21 Where did she go? The blonde-haired girl go?

22 COURT REPORTER: The one that was just here, Judge?

23 THE COURT: Yeah. Yeah, the blonde haired girl.

24 COURT REPORTER: Right there.

25 THE COURT: Yes, ma'am, I'm going to go ahead and

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1 excuse you.

2 JUROR NUMBER 548: Thank you.

3 MADAM CLERK: 548?

4 THE COURT: Number 548. So, let me talk to you
5 about this. So, I mean, it is what it is.

6 MR. MCGUIRE: Yeah, it is what it is.

7 END BENCH CONFERENCE.

8 ON-THE-RECORD BENCH CONFERENCE,

9 OUT OF HEARING OF ALL JURORS.

10 THE COURT: Mr. Bradshaw? Mr. Bradshaw? Come on
11 up, sir. All right, Mr. Bradshaw. I need to go ahead
12 and excuse you. You do have a conviction on your record
13 for possession with intent to distribute marijuana that
14 you got a four-year sentence suspended to two years
15 probation, so that would disqualify you. So, you do
16 have a felony conviction on your record. You need to
17 know that. Okay?

18 JUROR NUMBER 69: Okay. ,

19 THE COURT: But I appreciate it. You're excused.
20 Thank you, Mr. Bradshaw.

21 END BENCH CONFERENCE.

22 THE COURT: Mr. Bradshaw is excused. All right.
23 You all come up here.

24 MADAM CLERK: Number 70.

25 OFF-THE-RECORD BENCH CONFERENCE,

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1 the first randomly selected five names are:

2 Juror Number 577, Pamela Slawson. Number 695,
3 Patricia Youmens. Number 210, Tamara Ellis. Number
4 469, Frank Nappi. And Number 46, Esther Bennett.

5 Thank you. Look forward to seeing you all back
6 tomorrow morning at 9:00 a.m. Al, where are we bringing
7 them to?

8 BAILIFF: Jury assembly room, your Honor.

9 THE COURT: Ladies and gentlemen, you will meet
10 over in the jury assembly room, which is directly across
11 from here, at 9:00 a.m., and we look forward to seeing
12 you all. Thank you.

13 Ladies and gentlemen, the next five list, these
14 people will come at 10:00 o'clock tomorrow morning.

15 If you think they need them, that's fine.

16 If anyone needs a little slip as a reminder,
17 they've got them up here for you, if you have any
18 questions or concerns. I guess we could have someone to
19 stand at the back and write them, if you need them to.

20 Ladies and gentlemen, the next five people will
21 report at 10:00 a.m. tomorrow morning. That is:

22 Number 105, Jessica Caruso. Number 1, David Adams.
23 Number 570, Gladys Simmons. Number 318, Dietra Holmes.
24 And Number 260, Kimberly Gilleland.

25 All right. I look forward to seeing you all at

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1 10:00 a.m. tomorrow morning, across from us. Okay?

2 Thank you.

3 The next five jurors, ladies and gentlemen, report
4 at 11:00 a.m. Those are:

5 Juror Number 669, Henry White. Number 298, James
6 Harrelson, Jr. Thank you, sir. Number 337, Hudson
7 Ingram. Thank you, sir. Number 209, Megan Elliott.
8 And lastly, Number 660, Sheila Watford.

9 BAILIFF: That's the last one, your Honor?

10 THE COURT: There you are, Ms. Watford. Thank you,
11 all the way in the corner. We look forward to seeing
12 you all at 11:00 a.m. tomorrow morning. Thank you.

13 Pardon? Thank you. My law clerk is reminding me that
14 we have to take a lunch break. I will.

15 Ladies and gentlemen, the next five people will
16 return at 12:00 o'clock. Those are:

17 Number 246, Carey Freeland. Number 32, Barbara
18 Banus. Number 339, Geoffrey Jackson. Number 463, Elmer
19 Mullins, Jr. Number 143, Krystin Cook.

20 I look forward to seeing you all at noon. The next
21 group of people will return at 2:00 o'clock tomorrow,
22 ladies and gentlemen. We're going to take an hour break
23 from 1:00 to 2:00, so I can get the attorneys fed.

24 Ladies and gentlemen, the 2:00 o'clock report
25 tomorrow, the first one is:

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1 Number 639, Jacqueline Underhill. Number 351,
2 James Jones. Thank you, sir. Number 117 Natalie
3 Chmielowski. Thank you. Number 352, Jeffrey Jones.
4 And Number 547, Bryan Sailors. Mr. Sailors, thank you,
5 sir.

6 The next people will report at 3:00 o'clock
7 tomorrow. That is:

8 Number 654, Stephen Wallace. Number 317, Veronica
9 Hollingsworth. Number 345, Ben Johnson III. Mr.
10 Johnson, thank you, sir. Number 526, Thomas Reilley.
11 Thank you, sir. And Number 62, Scott Bollinger. Thank
12 you. Thank you, Mr. Bollinger. I appreciate it.

13 Ladies and gentlemen, the next group will report at
14 4:00 o'clock. That is:

15 Number 142, James Cook. Number 419, Diane Matie.
16 Number 181, Lucas Delano. Number 507, India Pinckney.
17 And Number 321, Trevor Holmes. Thank you.

18 BAILIFF: Wait a minute, your Honor. There's just
19 four.

20 THE COURT: Did I miss one?

21 BAILIFF: I see four standing, your Honor.

22 UNIDENTIFIED PERSON: He walked out.

23 THE COURT: Mr. Holmes -- okay, one of them's
24 already left?

25 BAILIFF: How did he walk out?

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1 UNIDENTIFIED PERSON: He went around to the left.

2 THE COURT: Thank you. I appreciate it, gentlemen.
3 All right. For 5:00 o'clock:

4 James Nasuti. And I apologize, did I pronounce
5 it --

6 JUROR NUMBER 470: That was really close.

7 THE COURT: Okay. Number 567, Moraima Sherman.
8 Thank you. Number 610, Charles Surber. Thank you, Mr.
9 Surber. Number 133, Keith Cole. Mr. Cole?

10 BAILIFF: Don't see him, Judge.

11 THE COURT: We do not see Mr. Cole. All right. I
12 will check on him.

13 Number 233, David Fleming. Thank you, Mr. Fleming.
14 And Number 645, Raymond Villalpando. I'm sorry. Number
15 133 is off the list. Thank you.

16 All right. I look forward to seeing you all at
17 5:00.

18 Okay. Bear with me, ladies and gentlemen. May I
19 see the attorneys quickly, please. Not all; just one.
20 I don't need five of you, or whoever wants to come is
21 more than welcome to.

22 COURT REPORTER: Judge?

23 THE COURT: Yes.

24 COURT REPORTER: Do you need me?

25 THE COURT: I'm fine. It's just scheduling.

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1 OFF-THE-RECORD BENCH CONFERENCE,
2 OUT OF HEARING OF JURORS.
3 END BENCH CONFERENCE.

4 BAILIFF: May I approach, your Honor?

5 THE COURT: Yes, sir.

6 OFF-THE-RECORD BENCH CONFERENCE,
7 OUT OF HEARING OF JURORS. PRESENT:
8 THE COURT, BAILIFF.
9 END BENCH CONFERENCE.

10 THE COURT: All right. Ladies and gentlemen, what
11 I am going to do now is go ahead and schedule for just
12 the morning of Friday. The rest of you that are not
13 called or put on and told when to come back, I'm going
14 to ask that you call in tomorrow night after 6:00
15 o'clock to the juror line, and it will tell you when you
16 need to report. All right, ladies and gentlemen? I
17 don't know exactly how it's going to work. I'm hopeful
18 the line is simply going to say juror numbers, you know
19 one, two, three, whatever it is, and possibly your last
20 name. And I'm not so sure if that's the best way we can
21 do it, Diane.

22 MADAM CLERK: I think, --

23 THE COURT: How are we going to do it?

24 MADAM CLERK: Judge, I may have them just call a
25 certain extension, and I'll have someone to answer the)

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1 phone. They'll give them their juror number, and we'll
2 say this is what time you -- so they can talk to a real
3 person.

4 THE COURT: Okay.

5 MADAM CLERK: So there's not any real mixup.

6 THE COURT: How are we going to make sure that
7 someone is answering that, though?

8 MADAM CLERK: I'll make sure. I'll assign
9 somebody.

10 THE COURT: To answer the phone during a specific
11 time?

12 MADAM CLERK: Yes. I'll give them a specific
13 extension.

14 THE COURT: Okay.

15 MADAM CLERK: And tell them in the Clerk's Office
16 that this is the list of when these people need to come
17 back.

18 THE COURT: Okay.

19 MADAM CLERK: And they can verify their name and
20 their juror number.

21 THE COURT: And check it off as they call.

22 MADAM CLERK: Yes, exactly.

23 THE COURT: Okay. All right. Yes, Al?

24 OFF-THE-RECORD BENCH CONFERENCE,
25 OUT OF HEARING OF JURORS. PRESENT:

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1 THE COURT, BAILIFF:

2 END BENCH CONFERENCE.

3 THE COURT: All right. All right, ladies and
4 gentlemen, we'll continue for Friday morning, beginning
5 at 9:00 a.m.:

6 Juror Number 324, Karen Howard. Juror Number 549,
7 Verna Sanders. Juror 153, Brian Cox. Juror 568,
8 Christopher Short. I'm missing someone. Lastly, Juror
9 Number 698, William Young. Mr. Young. Thank you, you
10 all. I look forward to seeing you all at 9:00 a.m.
11 Friday morning. Thank you. Okay?

12 THE COURT: Ladies and gentlemen, for 10:00 a.m. on
13 Friday morning:

14 Juror Number 541, Adam Rosica. Juror Number 283,
15 Ruth Groh or Groh. Thank you, ma'am. I appreciate it.
16 I'm sorry. I hope I -- Number 4 -- or, excuse me, Juror
17 Number 86, Joe Bryan. Thank you, Mr. Bryan. Juror
18 Number 487, Susan Olmstead. And Juror Number 64,
19 Lindsay Bowerman.

20 That was 10:00 a.m. I look forward to seeing you
21 all Friday at 10:00 a.m. Thank you. Thank you, you
22 all.

23 11:00 a.m., Friday morning, again, ladies and
24 gentlemen:

25 Juror Number 417, Luke Mathews. Juror Number 37,

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1 Jacqueline Bauner. Thank you. Juror Number 157,
2 Wallace Cronin. Thank you. Juror Number 530, Rosaura
3 Robertson. Thank you. I apologize. Juror Number 652,
4 Stephen Walker.

5 All right. Ladies and gentlemen, for 12:00 o'clock
6 on Friday -- the rest of you all, you are excused, that
7 group. The next of you, 12:00 o'clock on Friday:

8 Number 408, Robert Maroudas. Thank you, sir.
9 Number 449, Cynthia Mills. Thank you. Number 195,
10 Betsie Doughtie. Thank you. Number 215, Jacob Evans.
11 Thank you, sir. Number 19, Eddie Mae Armstrong. Thank
12 you, ma'am.

13 We look forward to seeing you all at 12:00 o'clock
14 on Friday. All right? You are excused. Thank you.

15 Ladies and gentlemen, again, I apologize. We are
16 just trying to figure out some logistics. Those of you
17 that have not been put on a panel yet, what I'm going to
18 need you to do is call in to the juror line. It will
19 tell you when you need to come and report, whether it be
20 Friday, ladies and gentlemen, there is a possibility it
21 could be Saturday. I need to know if I have anyone here
22 that has a Saturday conflict. Okay. All right.

23 Before those persons leave that have a Saturday
24 conflict, I'm going to ask that you come and give me
25 your name and number, and if we need to, we will worry

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1 about you and take care of you on Monday. All right?

2 Ladies and gentlemen, the phone line that you're
3 going to call into, and I will tell you, I hope that we
4 have pieces of paper back there that we can write this
5 down on for them.

6 Jamie, do you have something? Jamie's got
7 something, very good. I appreciate it.

8 Ladies and gentlemen, the phone line, for any of
9 you that do have paper and pen as you're sitting there
10 and would like to know the number, or are not handed the
11 number, as you should be, it's the number up here at the
12 courthouse. It's our Clerk of Court's Office, and it's
13 a dedicated line that's going to tell you when you need
14 to report. Ladies and gentlemen, that number is 255-
15 5060. Ladies and gentlemen, I am going -- pardon?

16 BAILIFF: Nothing, your Honor.

17 THE COURT: Okay. Ladies and gentlemen, I am going
18 to ask that you call that line on Friday morning,
19 between 8:30 and 10:30. All right? I don't think I'm
20 going to have an answer for you before that is why I
21 can't tell you any sooner than that, ladies and
22 gentlemen. But again, I want you to call that line
23 between 8:30 and 10:30, and it will give you
24 instructions on when you need to report. I just want to
25 make sure everyone is aware of that.

1 Also, does everyone have something that has their
2 juror number on it, so you know what your juror number
3 is?

4 Ladies and gentlemen, that will be a dedicated
5 line, so I don't want you to worry about your names
6 being out there. But again, I want to make sure that
7 you have something with your juror number. We hope that
8 someone will be picking up. I plan on someone being
9 able to pick up that phone.

10 MADAM CLERK: Yes, ma'am.

11 THE COURT: If, for some reason, there is some kind
12 of conflict, let me just ask you, will it just roll over
13 to another line from the Clerk's Office, Jerri, if that
14 phone is busy? Does it roll over?

15 MADAM CLERK: It should go straight to the voice
16 mail, so we can answer it.

17 THE COURT: Perfect. Okay. Ladies and gentlemen,
18 if, some reason it goes to voice mail when you call that
19 line, leave your name and juror number, and the best
20 phone number for someone to call you back within the
21 hour, and someone will call you back. All right?

22 Ladies and gentlemen, again, I want to thank you so
23 much for being here. I want to remind you again, do not
24 discuss this case, and we look forward to seeing you all
25 back. Thank you."

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1 I am going to ask -- Diane..

2 MADAM CLERK: Yes, Judge.

3 THE COURT: Do you mind going, and I need someone
4 who can actually just take down each one of these
5 jurors' name and number, and these are the people who
6 cannot be here on Saturday.

7 MADAM CLERK: Okay.

8 THE COURT: Okay?

9 MADAM CLERK: Yes, Judge.

10 THE COURT: I appreciate that.

11 MADAM CLERK: Judge, what time are they supposed to
12 call?

13 THE COURT: I said between 8:30 and 10:30 Friday
14 morning.

15 MADAM CLERK: 8:30 and 10:30 Friday morning.

16 THE COURT: All right. Thank you, sir.

17 MADAM CLERK: Thank you.

18 THE COURT: I appreciate it.

19 All right. I think we have the courtroom clear.
20 First thing I wanted to ask you all, when we do begin
21 individual questioning, how we do that on Tuesday
22 morning. We have those five people come in, we kind of
23 brought them in there, stuck them behind the podium.
24 What do you want to do with them to make them feel more
25 comfortable? Do we want them to sit? Do we want them

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1 to stand? Do you all have -- and I know we've done it
2 where we've put them in the witness box before, you all.
3 You know, that's a little bit like putting people on the
4 hot seat, which I understand might be the purpose. But
5 again, you all tell me.

6 MR. STONE: It -- whatever you think is best. The
7 times I've done it before, they've been on the witness
8 stand, just because it can be picked up by the court
9 reporter better and that. But I don't mind one way or
10 the other. I can make it work.

11 THE COURT: And if you all are fine with that, --

12 MR. MCGUIRE: I mean, I'd -- I'd ask that we
13 actually have them take the oath and go into the witness
14 box.

15 THE COURT: You want me to give them oath again? I
16 was just going to remind them that they were put under
17 oath before. If that's fine with you all. Okay?

18 MR. MCGUIRE: Or remind them. Sure. that --
19 that's fine.

20 THE COURT: Okay. Are you sure that's fine?

21 MR. STONE: If that's what they want, we have no
22 objection to that.

23 THE COURT: We'll let them take the witness box,
24 and that's fine. All right. So, that took care of
25 that. What I proposed, ladies and gentlemen, and help

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1 me with this, there were ten people that said they could
2 not come back Saturday, if that was required. We had a
3 discussion, I believe it was yesterday or Monday about
4 if we weren't going to be able to finish this process by
5 Friday, if we could do it on Saturday, or if you prefer
6 to do it Monday. I know we were worried about the
7 scheduling for witnesses that you all were flying in, if
8 we get them pushed off, and I don't want to create any
9 more expense if I don't have to.

10 My thought is this. If we actually could work on
11 Saturday, we'll just take those ten people that cannot
12 be here on a Saturday and make sure we put them on
13 Friday afternoon's. That will take out the randomness
14 of the draw, I want to make sure you all understand and
15 appreciate that, but I think, that way, we will be able
16 to have spoken with them. I want to make sure you all
17 are comfortable with that.

18 MR. MCGUIRE: That's fine.

19 THE COURT: Okay.

20 MR. STONE: I don't -- I don't mind if we take them
21 out of order. I think we -- I think it's important that
22 we leave them in the random order they're in now. I
23 don't want to affect that.

24 THE COURT: Right. Put them back. We just take
25 them and put them back.

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1 MR. STONE: Yeah, right. I don't mind if we take
2 them out of order, as long as this --

3 THE COURT: They get back in order.

4 MR. STONE: Right. I -- I get concerned about
5 changing the randomness.

6 THE COURT: I understand.

7 MR. STONE: Other than that, I have no objection.

8 THE COURT: All right. So, that's what we'll do.
9 So, what I'm going to have Diane do is go ahead right
10 now, and, for those ten people, theoretically, block
11 them off, you know, five and five, for 1:00 and 2:00
12 o'clock on Thursday, and that way, I can cover all of
13 them. And then, we are going to wait until Friday
14 morning. Let's see how we do tomorrow. We'll see how
15 fast we go. By my count, and correct me if I'm wrong,
16 we need 39 jurors. That's what I'm seeing is what we
17 need, correct?

18 MR. STONE: It's 36. What kind of number do you
19 have?

20 MR. MCGUIRE: It's 12 in the box.

21 THE COURT: Twelve in the box.

22 MR. STONE: You going to have three alternates?

23 THE COURT: Three alternates.

24 MR. MCGUIRE: That would be another 12. That's 24.

25 MR. STONE: Two and one strikes per alternate.

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1 THE COURT: Per alternate.

2 MR. MCGUIRE: It's 39.

3 MR. STONE: Okay.

4 THE COURT: It's 39. That's the number, so that's
5 what we're looking for. All right. Anything else we
6 need to take up? Any concerns about any particular
7 verbiage, Mr. McGuire, maybe from you all, or from the
8 State? I know that we really didn't discuss this case
9 too much today with this jury panel. I just want to
10 make sure that there are no questions and no concerns
11 with how we were referring to anything.

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

13 MR. MCGUIRE: Nothing, Judge.

14 THE COURT: Again, I just want to be -- out of an
15 abundance of caution, I certainly don't want to say
16 anything that would, you know, be one way or the other.
17 Again, --

18 MR. MCGUIRE: I think it was very balanced.

19 THE COURT: I hope so. So, anyway, that's what
20 we're striving for. So, if there's anything during the
21 trial of the case that does come up with that, let me
22 know, please.

23 MR. MCGUIRE: Sure.

24 THE COURT: All right.

25 MR. STONE: Yes, ma'am.

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1 THE COURT: All right. For both sides.

2 MR. STONE: Yes, ma'am. Thank you.

3 THE COURT: All right. Anything else you all need
4 to take up before tomorrow morning? And Mr. McGuire, it
5 doesn't matter to me, but I need to know, are you all
6 going to be here tomorrow during these jury questioning?

7 MR. MCGUIRE: Yes.

8 THE COURT: Okay. All right. Anything else you
9 want to take up?

10 MR. MCGUIRE: Not at this time.

11 MR. STONE: No, ma'am.

12 THE COURT: All right.

13 MR. STONE: Thank you.

14 THE COURT: I look forward to seeing you all here
15 probably, roughly, I would like to be rolling -- I'm
16 going to guess, and excuse me, you know, I could be very
17 wrong, but if there's someone sitting out here at 8:45
18 tomorrow morning, or even 8:30, and you all are here,
19 we'll start.

20 MR. STONE: Sure. Yes, ma'am.

21 THE COURT: Okay. If you all are fine. I know you
22 all are going to be local; everyone's going to be here;
23 so let's all plan on being here by 8:30, and we'll get
24 going. Okay, thank you all.

25 MR. MCGUIRE: Thank you, your Honor.

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1 MR. STONE: Thank you, your Honor.

2 THE COURT: I appreciate it.

3 END DAY TWO, WEDNESDAY,

4 OCTOBER '9, 2012, 4:39 P.M.

5 BEGIN DAY THREE, THURSDAY,

6 OCTOBER 10, 2013, 8:54 A.M.

7 BY THE COURT:

8 THE COURT: Norman, who do we have back with the
9 jurors and letting us know when they're coming?

10 BAILIFF: I'm sorry. Ma'am?

11 THE COURT: Who do we have back there?

12 BAILIFF: Debbie's going to be with them.

13 THE COURT: Okay. And is she going to let me know
14 somehow who we have and as they're coming in?

15 BAILIFF: Yes, ma'am, but I'll make sure and see
16 who we got now.

17 THE COURT: Okay.

18 BAILIFF: Judge?

19 THE COURT: Yes, sir.

20 BAILIFF: Right now we have three, Slawson,
21 Bennett, and Nappi are the three people that are in
22 there right now.

23 THE COURT: Okay. All right. Thank you. All
24 right. Just for the record, good morning. Good
25 morning, everyone.

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1 RESPONSES OF GOOD MORNING.

2 THE COURT: I'm taking a look at the list.

3 Caroline?

4 LAW CLERK SCRANTOM: Yes.

5 THE COURT: Before you take them back there, --

6 LAW CLERK SCRANTOM: Yes.

7 THE COURT: -- are you saving us a list of all
8 this?

9 LAW CLERK SCRANTOM: I took that off the last one.

10 THE COURT: You took that off the last one. Thank
11 you.

12 Caroline has designated these lists for the jurors
13 back there as List A and List B. A is the State's list,
14 B is the Defense list. I see on here that the Defense
15 has 149 witnesses.

16 MR. MCGUIRE: The likelihood of us calling nearly
17 anything close to that is zero.

18 THE COURT: Okay.

19 MR. MCGUIRE: But we just had to. Since we shifted
20 gears on the issue of joinder, --

21 THE COURT: Okay.

22 MR. MCGUIRE: -- we just -- we just put almost
23 everybody on there.

24 THE COURT: Okay. I don't understand, though, how
25 adding trafficking in crack cocaine charge and a

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1 possession with intent to distribute marijuana charge
2 would make it that much more. And again, I never saw
3 any original list. My concern is this, and I am going
4 to go ahead and put on the record right now. I was very
5 generous in the questionnaire, and quite frankly, in
6 hindsight, I was too generous, because these people have
7 so much information, and there's so much opportunity.

8 With now, a hundred -- I'm sorry, with 200 people
9 on the witness list, Beaufort county is a relatively
10 small county. I am concerned about being able to pull a
11 jury in this case, and I'll go ahead and tell you that
12 right now, based on so many witnesses being on this
13 list, based on so many people already being eliminated.

14 Do I have a list that tells me if these people are
15 material witnesses or what type they are?

16 MADAM CLERK: Yes.

17 THE COURT: Okay. Thank you. Again, it doesn't
18 tell me whether or not they're material or fact
19 witnesses. I'm not trying to turn your hand. My
20 concern is, is that, again -- are some of these people
21 duplicated from one list to the other? Have you looked?

22 MR. MCGUIRE: I have not looked at that.

23 THE COURT: Okay.

24 MR. MCGUIRE: Oh, on the Defense list, there
25 shouldn't be any duplication.

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1 THE COURT: Okay.

2 MR. MCGUIRE: I'm sure there's a lot of duplication
3 with the Prosecutor's witness list. There's a lot of
4 law enforcement officers.

5 THE COURT: Okay. So, how would there not be
6 duplication? Are we understanding? So, I'm assuming
7 you've got some of the same people, obviously, on both
8 lists.

9 MR. MCGUIRE: Yes, ma'am. I'm sure. We must.

10 THE COURT: All right. Well, let's give them just
11 a minute. You've given them the lists. Is that
12 correct? Let's give them an opportunity to go through
13 them.

14 BAILIFF: Your Honor, we have the first five
15 jurors.

16 THE COURT: All right. Thank you, Bob. Have they
17 had an opportunity, or at least the first person, to
18 look at the list, the juror -- or the witness list?

19 BAILIFF: Beg your pardon?

20 THE COURT: Have they had an opportunity to look at
21 the witness list?

22 BAILIFF: Let me double check.

23 THE COURT: Okay.

24 BAILIFF: I don't know that, your Honor. Thank
25 you.

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1 Your Honor, three have completed glancing at the
2 list, and the others are currently looking at them.

3 THE COURT: Very good. Any chance that any of --
4 do you know the names of who has reviewed the list? Has
5 Ms. Slawson done it? She's first up.

6 BAILIFF: I'll double check, your Honor.

7 THE COURT: All right. Just let me know who has.
8 We'll get going. Yes, sir?

9 MR. MCGUIRE: Judge, just one issue. I tell you
10 what, we could probably just take it up on a side bar.

11 COURT REPORTER: Do you need me?

12 MR. MCGUIRE: No.

13 OFF-THE-RECORD BENCH CONFERENCE

14 OUT OF PRESENCE OF JURORS.

15 BACK ON THE RECORD.

16 BAILIFF: Your Honor, Ms. Slawson and Mr. Nappi
17 have both reviewed the list.

18 THE COURT: Thank you, sir. I appreciate it. Sit
19 tight, Bob.

20 CONTINUE OFF-THE-RECORD BENCH

21 CONFERENCE, OUT OF PRESENCE OF JURORS.

22 END BENCH CONFERENCE.

23 THE COURT: All right. Let's go ahead and bring
24 Ms. Slawson in. Are you all ready to go?

25 MR. MCGUIRE: Yes, ma'am.

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1 THE COURT: Defense ready? State ready?

2 MR. STONE: State's ready. Yes, ma'am..

3 THE COURT: All right. Let's go.

4 CONTINUE VOIR DIRE BY THE COURT:

5 JUROR NUMBER 577 ENTERS COURTROOM.

6 THE COURT: Come on in, Ms. Slawson. Come on
7 forward, please, if you would. Come on up. Good
8 morning. Ms. Slawson, I'm going to have you come take
9 the witness stand, if you would. Come on up. Good
10 morning.

11 Ms. Slawson, good morning again. I want to remind
12 you you're under oath, the oath that you took yesterday.
13 Is that agreeable with you?

14 JUROR NUMBER 577: Yes.

15 THE COURT: Very good. All right. I just wanted
16 to speak with you and ask you a few questions. The
17 attorneys are also going to have an opportunity to ask
18 you a few questions, as well, to determine whether or
19 not you should sit on the trial of this case.

20 To begin with, I wanted to ask you, have you had a
21 chance to review the witness list back there in the jury
22 room?

23 JUROR NUMBER 577: Yes.

24 THE COURT: Or in that jury assembly room, I should
25 say.

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1 JUROR NUMBER 577: Yes.

2 THE COURT: Do you know anyone on either one of
3 those lists?

4 JUROR NUMBER 577: No.

5 THE COURT: All right, ma'am. You've had an
6 opportunity to go all the way through them. Is that
7 correct?

8 JUROR NUMBER 577: Yes.

9 THE COURT: All right. And again, you don't know
10 any of the attorneys trying this case. You don't
11 recognize any of these people and don't know them
12 personally. Is that correct?

13 JUROR NUMBER 577: No. One of them's children go
14 to school with my children, but that's all.

15 THE COURT: Okay. Whose children go to school with
16 yours?

17 JUROR NUMBER 577: Mr. Stone's.

18 THE COURT: Okay. And your children go to?

19 JUROR NUMBER 577: Hilton Head Middle and Hilton
20 Head High.

21 THE COURT: Okay. Very good. Thank you. You
22 don't have any personal relationship with Mr. Stone?

23 JUROR NUMBER 577: No.

24 THE COURT: Or his wife. Is that correct?

25 JUROR NUMBER 577: No.

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1 THE COURT: All right. All right. I'm going to go
2 ahead and turn it over to the attorneys now. It's their
3 opportunity to speak with you. I just want to remind
4 you, Ms. Slawson, the only thing we can ask of you is
5 for you to be honest and candid. And that is simply,
6 there are no right or wrong answers here. Okay?

7 JUROR NUMBER 577: Okay.

8 THE COURT: Thank you.

9 MR. MCGUIRE: Thank you, your Honor. Ma'am, the
10 Judge just actually said exactly what I was going to
11 start with, which is, there's absolutely no right or
12 wrong answer. In fact, everything you saying is -- is
13 going to be the correct answer, because we're just going
14 to ask you about your thoughts, your feelings, kind of
15 your principles.

16 JUROR NUMBER 577: Okay.

17 MR. MCGUIRE: So, whatever they are, they are. And
18 I want to make sure that we are on the same page in
19 communicating clearly. Sometimes lawyers don't do a
20 very good job of that. I saw on your questionnaire that
21 you interned with a lawyer one time?

22 JUROR NUMBER 577: In college.

23 MR. MCGUIRE: Okay. But my guess is you don't know
24 the technical legal definition of murder in South
25 Carolina.

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1 JUROR NUMBER 577: Probably not.

2 MR. MCGUIRE: Okay. I don't want to put you on the
3 spot. I just -- we're going to start with the beginning
4 of that. So, the definition of murder in South Carolina
5 is the killing of another person with malice
6 aforethought. And that malice aforethought means that
7 the person, the killer, is acting with a black and
8 malignant heart, bent on evil. So, we're talking about
9 an intentional killing of an innocent person with evil
10 intent. Okay?

11 And because this is a capital case, the type of
12 murder that we're here for today is actually aggravated
13 murder. Something has to be, in addition to murder, to
14 make it a capital case. It could be killing a police
15 officer in the line of duty, or killing a child, or
16 something like that. So, I want to ask you about these
17 circumstances, an intentional killing two people, a
18 mother and child, child four years old. And it's not
19 self-defense, it's not an accident, it's not somebody
20 who's insane. Okay? Knew what they were doing, meant
21 to do it, and did it. In that situation, what are your
22 thoughts about the death penalty as the appropriate
23 punishment?

24 JUROR NUMBER 577: Um.

25 MR. STONE: Your Honor, may we approach briefly?

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1 THE COURT: You may.

2 MR. STONE: I apologize for interrupting the
3 process.

4 THE COURT: Come on around.

5 JUROR NUMBER 577: Do I stop?

6 THE COURT: I'm sorry. You are fine. You don't
7 say anything. And I want you to know this. The lawyers
8 are doing their jobs when they object. They're supposed
9 to do that. I'll have a brief discussion with them. I
10 don't want you worried about it.

11 JUROR NUMBER 577: Okay.

12 THE COURT: I don't want you concerned about it.
13 Don't hold it against them in any way. All right.

14 OFF-THE-RECORD BENCH CONFERENCE,

15 OUT OF HEARING OF JURORS.

16 END BENCH CONFERENCE.

17 THE COURT: Ms. Slawson, right now, I need to put
18 something on the record, and I have to do it outside
19 your presence. I'm going to apologize right now. I'm
20 going to ask Bob to take you right there. It is going
21 to take all of two minutes. And then, I'm going to
22 bring you back in; we're going to finish up. Okay?

23 JUROR NUMBER 577: Okay.

24 THE COURT: I appreciate it.

25 JUROR NUMBER 577 LEAVES COURTROOM.

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1 THE COURT: All right. Mr. Stone, we had a side
2 bar.

3 MR. STONE: Yes, ma'am.

4 THE COURT: I want you to put your objection on the
5 record.

6 MR. STONE: I have two objections, your Honor. I
7 think the question number 1 is attempting to stake out
8 the juror, in violation of the *State versus Stancko*. I
9 also think that it is a hypothetical, in violation of
10 *State versus Smart*. And I think the way that question
11 was presented, especially considering the questionnaire
12 that's already been presented to them outlying the three
13 types of jurors puts them in a position in which,
14 basically, it's very difficult, if not impossible, for
15 them to always respond with, well, that person should
16 die.

17 I think that is an attempt on the Defense to try to
18 audit to get every one of these -- to get these jurors
19 disqualified as they're coming in, and I would -- I
20 think it's a violation of state law.

21 THE COURT: Okay. Go ahead.

22 MR. MCGUIRE: Thank you. Your Honor, I disagree
23 completely. First of all, the whole purpose of voir
24 dire is to determine, based on elements, not facts, not
25 hypothetical. I didn't put a fact in anything. These

1 are elements of murder and the aggravators. It's not a
2 hypothetical. It's what we're here for. And I started
3 off with the definition of malice. That's in the
4 indictment that's going to be charged by the Court.

5 THE COURT: I don't have a problem with you saying
6 what the definition of malice is. The problem that I
7 have is, you went ahead, you gave them the aggravating
8 circumstances that they would probably -- and again, I
9 have to say probably find in this case; that it was the
10 killing of two persons at the same time, and one of them
11 was a child. And my problem is this. You're giving
12 them just the portion of it being the aggravating
13 circumstances and the definition of murder, but you're
14 not giving them an opportunity to understand that there
15 is going to be a potential number of witnesses giving
16 mitigation.

17 And again, what my concern -- and I'm going to tell
18 you this right now, in reading this questionnaire and
19 going through -- and I will tell you my law clerk and I
20 last night went through every last questionnaire, and I
21 can tell you that I went too far in allowing you to put
22 everything out on the table. There were some confusing
23 questions in here.

24 I mean, the question:

25 *In determining what punishment*

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1 *should be given to any defendant convicted*
2 *of murder, do you believe the background*
3 *and/or life experience of the guilty murderer*
4 *is relevant?*

5 And they answered no. Well then, that says they
6 can't handle or understand mitigating evidence. That's
7 a problem. Number one, it's a very bad question, and I
8 should have never allowed it to start with. But again,
9 in all fairness, we need to give this potential juror an
10 opportunity to understand what's being asked of them.

11 And again, I'm concerned, because, at the end of
12 the day, I am hopeful we can pull a jury. When I say
13 the end of the day, I mean the end of days that we can
14 hopefully pull a jury. But again, I'm not going to let
15 you stake out people. I'm not going to allow you to
16 back them into a corner. I certainly understand the
17 statute; I certainly understand that they are allowed,
18 the Defense is allowed, to ask voir dire; but I will go
19 ahead and tell you right now, we're making all of these
20 questionnaires a part of the record, and I have more
21 than let you go overboard in asking questions to be able
22 to get people to lean in whatever direction is necessary
23 for your side.

24 So, I think in all fairness, your questions are
25 going to have to include not only the definition of

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1 murder, not only the potential circumstances in this
2 case, but also mitigating evidence; that, if there is
3 mitigating evidence, you can consider it. It's not fair
4 to only give them the first part and not the second
5 part.

6 MR. MCGUIRE: And in fairness to me, I only asked
7 one question, really. So, I do have other questions
8 about mitigation and how that affects them. Do they
9 find it relevant; why they think it's relevant. And
10 I'm not ignoring that. I can't just do it in the first
11 question. So, I have to have a starting point, and
12 I'll --

13 THE COURT: I think the only response you are ever
14 going to get to that question you just asked, that very
15 first question, is, yeah, I think that person should get
16 the death penalty. And they haven't even heard the
17 case, and that is improper, clearly.

18 MR. MCGUIRE: Well, I mean, if the -- if the -- if
19 the questionnaire was in cases of -- well, first off,
20 let's just go back to the *Longworth* case and *Davis*.
21 Those are the cases in South Carolina, and -- and these
22 are the questions that the prosecution wanted to ask
23 jurors. And what -- what you do is, you look at a
24 significant fact in the case, and you ask them if that
25 significant fact is so important to them that it doesn't

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1 have a home-run weight of a verdict, where they skip
2 everything. Skip mitigation.

3 THE COURT: But you're asking them to pre-try it,
4 and that's the problem I have with it. You're just
5 giving them a very small snapshot.

6 MR. MCGUIRE: Well, okay. First of, I understand
7 that the Court thinks there's only one response to that
8 question. That question is far tamer than the evidence
9 that they see. These are just words. When we see
10 bodies on the floor, a description of these people, and
11 -- and a pathologist talking about bullet wounds and
12 bullet path through a little 28-month-old boy, I can
13 tell you, that is far more intense than these mere words
14 that I have here.

15 And I'm just asking them malice, the elements of
16 murder, malice, and the two acts. That's it. That is
17 so much tamer than the evidence. And if somebody says,
18 just based on my words, in that case, it's always going
19 to be the death penalty for me, then, they are impaired.
20 And I do have a series of questions that will ask them
21 about mitigation. It will ask them about the life
22 penalty. I mean, that's an objection to my very first
23 question. We haven't even gotten started yet. To say
24 that it's unfair because I'm not talking about
25 mitigation and everything else, which I am going to talk

1 about, is a frivolous objection.

2 The definition of staking out hasn't even been
3 uttered by the State. It's not staking out. Staking
4 out is me making a bargain with the juror; if I prove
5 this, can you tell me you'll give life? I'm not going
6 to do that. I just want to find out if these people are
7 substantially impaired, based on the elements of murder,
8 malice, and the aggravators. And I have to start
9 somewhere, and that's the starting point. It's a good
10 starting point, and I am going to follow up with
11 mitigation and the life penalty.

12 And again, my mere words are so much tamer than the
13 evidence. We have to at least get to the understanding
14 that this is, in fact, a murder case; what murder means;
15 what malice means; and what the aggravators are.

16 THE COURT: Well, what I can do is this. Let's go
17 ahead, and I'm going to allow you to, as far as the
18 first one is concerned, we'll just see how it goes. I
19 can tell you that, if there is a problem that I can lay
20 out at the beginning; and then, I will let you go on, as
21 long as you want. And if this takes us, you know, three
22 weeks, that's fine. But again, it needs to be fair, and
23 we need to have the best opportunity we can to pulling a
24 jury in this case.

25 So, we're going to go ahead, we're going to bring

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1 Ms. Slawson back out. But again, if I need to, and I
2 will, ahead of time, tell you exactly what I would say
3 if I need to lay it out to begin with, in all fairness,
4 I will, and you can follow up, like I said, hours if you
5 would like. But I just want to make sure that we are
6 fair.

7 MR. STONE: And if I may add, your Honor, briefly.

8 THE COURT: Yes.

9 MR. STONE: I don't want to slow us down, but I
10 think it's important. He did reference the definition
11 of staking out a juror, and I will quote. That's from
12 *State versus Stanko*:

13 *The Court should not allow case-*
14 *specific questions, because they veer*
15 *close to allowing the parties to stake*
16 *out a jury.*

17 And we've already put facts in the questionnaire as
18 it is. I think anymore case specific facts is exactly
19 what *Stanko* talked about when they talked about staking
20 out the jury. So, that would be my -- that's my
21 objection to case-specific questions.

22 THE COURT: Let's just see how Ms. Slawson goes.

23 MR. STONE: Yes, ma'am.

24 THE COURT: And we'll go from there. Okay? Let's
25 bring her back. Thank you.

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1 BAILIFF: Yes, ma'am.

2 THE COURT: Come on back, Ms. Slawson. And I
3 apologize for having to send you out again. I want you
4 to know we're not hiding anything from you. You are our
5 very first juror that we are doing this way. So, as
6 things go on, obviously, it'll get a little smoother,
7 but again, we just want you to know it's certainly not
8 you, certainly not the attorneys. We just need to make
9 sure the process is appropriate. All right? So, Mr.
10 McGuire, please continue, sir.

11 MR. MCGUIRE: Thank you, your Honor. We didn't get
12 very far, really.

13 JUROR NUMBER 577: Right.

14 MR. MCGUIRE: I asked you one question.

15 JUROR NUMBER 577: Right.

16 MR. MCGUIRE: And we have a lot more coming.

17 JUROR NUMBER 577: Okay.

18 MR. MCGUIRE: But we have to have a starting point,
19 and I just want to make sure that you still remember and
20 understand that we're talking about malice aforethought
21 murder; aggravators being two killed, shot and killed,
22 and one being a child. And just in that situation, just
23 tell me your general thoughts about the death penalty.

24 JUROR NUMBER 577: I'm not really sure. I -- --
25 I'm -- I -- my first instinct would be for -- against

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1 the death -- death penalty, because I don't really feel
2 like I would be -- would want to be the one that would
3 want to take someone's life. However, as a mother,
4 killing children, you know, that -- that could sway me,
5 possibly.

6 MR. MCGUIRE: Okay. Sure. Letting somebody live
7 in prison and -- and get the life penalty, life without
8 parole, the Judge would say -- tell you that life
9 without parole means life without parole in South
10 Carolina. The person can never get out of jail, ever.
11 Do you consider that to be a severe penalty?

12 JUROR NUMBER 577: Yes.

13 MR. MCGUIRE: And it sounds like, could it be
14 severe enough to punish that kind of killing that we
15 talked about with the aggravators of mother and child?

16 JUROR NUMBER 577: At this point, I would say -- I
17 would probably lean towards that.

18 MR. MCGUIRE: Okay.

19 JUROR NUMBER 577: Just because, again, I don't
20 really think I would want to be the person to sentence
21 someone to death.

22 MR. MCGUIRE: Sure. Sure.

23 JUROR NUMBER 577: Even if I might wish that they
24 were, I wouldn't want to be the person to actually do
25 it.

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1 MR. MCGUIRE: Okay. Well, and this is when we get
2 to talk a little bit about the system and the law,
3 because a lot of people have misconceptions about it.
4 Did you know that the death penalty is never automatic
5 in a case? Did you know that?

6 JUROR NUMBER 577: No.

7 MR. MCGUIRE: Okay. A lot of people show up, and
8 they think if the State proves certain things, they have
9 to vote for death. It sounds like you are one of those
10 people.

11 JUROR NUMBER 577: I guess, yes.

12 MR. MCGUIRE: Okay. And it's not true. The state
13 of South Carolina is always satisfied with a life
14 verdict in any case, this case, the worst case. Okay?
15 There's never a mandatory death penalty, and no juror
16 ever has to vote for the death penalty, and it sounds
17 like now you know that.

18 JUROR NUMBER 577: Right. Yes.

19 MR. MCGUIRE: Would -- would the background of the
20 person accused, the person accused of the killing, would
21 his background, his life experience, his walk in life,
22 would that be relevant to you in fixing punishment?

23 JUROR NUMBER 577: Again, my instinct is no, but I
24 -- I mean, I would never want to just say never. But I
25 mean, my instinct is, you know, all of us have stuff,

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1 and you have to deal with that, you know. So, I would
2 say that I don't have as much sympathy for what happened
3 to you when you were growing up or something like that
4 once you're grown up.

5 MR. MCGUIRE: So, it sounds like the facts of the
6 case, the facts of the homicide, would be important --

7 JUROR NUMBER 577: Right. Right.

8 MR. MCGUIRE: -- in fixing the punishment, and that
9 background factors wouldn't be that meaningful.

10 JUROR NUMBER 577: Right.

11 MR. MCGUIRE: Or relevant.

12 JUROR NUMBER 577: Right, yes.

13 MR. MCGUIRE: And again, going back to the way the
14 law works, you know, the Judge will charge that the
15 jury, that any juror, can vote for the life penalty for
16 any reason, no reason, or mercy alone. And I'm going to
17 ask you thoughts about mercy. Is something -- is mercy
18 something that people earn, or is it freely bestowed?

19 JUROR NUMBER 577: Well, I would have to say --
20 this is tough. I guess bestowed, you know, from my
21 church upbringing.

22 MR. MCGUIRE: There are no --

23 JUROR NUMBER 577: It is bestowed by Jesus.

24 MR. MCGUIRE: Sure. I -- yeah. I appreciate all
25 of your answers, and none of them are wrong.

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1 JUROR NUMBER 577: Right. It's just --

2 MR. MCGUIRE: This is just your thoughts.

3 JUROR NUMBER 577: Sometimes it's not black and
4 white, you know.

5 MR. MCGUIRE: I agree with you. I agree with you.
6 And you know, also, there are some -- we're going to
7 talk about some -- some common misconceptions. And one
8 of them was, you know, a lot of the people think the
9 death penalty is automatic in capital cases. The State
10 proves certain things, and the death penalty is -- it's
11 the verdict that has to be. And we've talked about
12 that, and now, we know that's not true.

13 Another misconception is that -- that the jury has
14 to be unanimous in penalty. The first phase of a case,
15 or a regular case, just a regular case, armed robbery,
16 whatever, the -- the judge always tells -- tells the
17 jury that, if they're going to have a verdict, it has to
18 be unanimous. Okay? And in those types of cases, all
19 the questions that come up are questions that science
20 can pretty much answer, you know. Was the car red or
21 green. Was the bullet a .40 caliber, .38, stuff like
22 that. And -- and everybody thinks the jury has to speak
23 with one voice, unanimous, or they're -- they're hung,
24 is essentially the term we all use.

25 The sentencing decision, and the Judge would tell

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1 you this, is an individual moral decision. It's not a
2 fact-based decision. You don't get there by adding
3 things up, or -- or science can't tell you what to do.
4 It's an individual moral judgment based on a person's
5 life experience and what they think is right or wrong.
6 Did you know that? That, that's sort of the principle
7 in the penalty?

8 JUROR NUMBER 577: No.

9 MR. MCGUIRE: Yeah, I wouldn't think so. And the
10 way it plays out is that, it's the only jury situation
11 in our state where the jurors are really individual
12 people, like almost their own jury. And you know, the
13 term I used a little while ago was mitigation evidence,
14 or like the background of a defendant, that sort of
15 thing, and an example of how the jury is so individual
16 in the -- what's called the penalty phase. For
17 instance, if you were on this jury over here, a juror to
18 your right could say, when it comes to voting, I saw
19 something in the defendant's background, his growing up,
20 that resonated with me, and I'm going to vote for that.
21 Something in his growing up. You know, maybe the way he
22 took care of his family or something. And then,
23 somebody on the other side of you could say, you know, I
24 -- I heard that he's a model inmate; that he's not going
25 to be any trouble in prison; and I'm not going to -- I

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1 think that's okay; I think that's good enough; it's --
2 it's good enough for me. And they can have completely
3 different reasons. And then, you could have your own
4 reasons. In fact, you know, the Judge would charge any
5 reason or even no reason. Somebody could have no reason
6 at all, not even be able to put it into words. So, do
7 you see how that's different from our normal --

8 JUROR NUMBER 577: Um-hmm.

9 MR. MCGUIRE: -- our view of the system?

10 JUROR NUMBER 577: Yes.

11 MR. MCGUIRE: And a jury being able to be
12 individual and agree on things, is that something that
13 you could do?

14 JUROR NUMBER 577: That I could do?

15 MR. MCGUIRE: Sure.

16 JUROR NUMBER 577: Yes.

17 MR. MCGUIRE: And you know, when it comes to a
18 sentencing decision, the only way that a defendant could
19 ever get the death penalty, all twelve people have to
20 agree. Now, all twelve people could also agree on the
21 life penalty. And there's also a third option, which is
22 just agree to disagree; and then, the Court would take
23 the case decide sentence. Because we don't expect
24 people to show up willing to agree so readily on such an
25 important matter. Is that -- is that a principal that

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1 makes sense to you?

2 JUROR NUMBER 577: Yes.

3 MR. MCGUIRE: Okay. Is that something that you can
4 agree with and follow?

5 JUROR NUMBER 577: Yes.

6 MR. MCGUIRE: Yeah. And you know, there are a lot
7 of rules in -- in court, and some of them are, you know,
8 for me; some of them for the State. Some of them are
9 for you, the juror. And while we expect civil discourse
10 in deliberations, there's a -- there's a famous case,
11 and it says that these proceedings should always be
12 conducted with dignity. And if things got unfair in the
13 jury room, and dignity left the proceedings, maybe
14 somebody who doesn't have a strong voice was being asked
15 to maybe compromise, could I count on you to maybe pass
16 a note out to the Court and say, things have gotten a
17 little unfair back here?

18 JUROR NUMBER 577: Yes.

19 MR. MCGUIRE: Okay. Because all of you -- all of
20 you have rights as jurors, and one of them is to be
21 respected, and to have everybody's vote, or their
22 individual judgment, respected. And that's a principle
23 I think you would agree with.

24 JUROR NUMBER 577: Yes.

25 MR. MCGUIRE: And I could count on you to enforce

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1 that.

2 JUROR NUMBER 577: Yes.

3 MR. MCGUIRE: And by maybe even just sending a note
4 out to the Judge. I mean, she's going to want
5 everything to be fair and conducted with dignity.

6 JUROR NUMBER 577: Yes.

7 MR. MCGUIRE: And I know I have just one or two
8 more questions for you. With regard to that individual
9 moral judgment, our law is, once a person reaches it,
10 for whatever reason and whatever their vote is, whatever
11 their decision is, once somebody decides I've come to my
12 individual moral judgment, they have a duty and
13 obligation to have that voice, that vote, heard in
14 court, even if it's different from everybody else's.
15 And sometimes, again, people are weaker and they can't
16 really put into words their arguments. But the reason
17 it's important is because it's a violation of the juror
18 oath to just say, I've gotten to my individual moral
19 judgment, but I want to change my mind to go with the
20 majority, or to end the case sooner, or something like
21 that. And can I count on you to watch out for people
22 and make sure they comply with their juror oath?

23 JUROR NUMBER 577: Yes.

24 MR. MCGUIRE: Okay. That's all I have. Thank you,
25 ma'am.

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1 MR. STONE: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. STONE: Hey, Ms. Slawson, just a couple of
4 questions. I read your questionnaire, so I'm not going
5 to go back through all those questions. On the
6 questionnaire, there was a setup of about three
7 questions. The question was:

8 *Are you somebody that would always*
9 *give the death penalty; somebody that would*
10 *never give the death penalty; or somebody*
11 *that would take into all the considerations*
12 *and all the facts of the case, and make a*
13 *decision one way or the other whether the*
14 *appropriate sentence was death or life?*

15 And you circled 3; that, that was that your answer.
16 Is that still -- is that still your answer today?

17 JUROR NUMBER 577: Yes.

18 MR. STONE: Okay. The question -- the only
19 question I have, then, is, if the facts of this case are
20 bad enough, and I -- and I picked up a little -- some of
21 your answers to the Defense were a little vague in this,
22 and I just wanted to make sure. But again, there's no
23 right or wrong. All we want to do is, we want to make
24 sure that we're -- we're understanding what it is that
25 you're saying. If a case is bad enough, could you give

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1 somebody the death penalty?

2 JUROR NUMBER 577: I don't know. I don't know. I
3 mean, I -- I don't know. I -- I would -- I would -- I
4 don't -- I don't know. I would say, again, my instinct
5 is no, but I don't want to then come back, and if I did,
6 say you said no, because I don't really know.

7 MR. STONE: No, no.

8 JUROR NUMBER 577: If it was that bad, I might get
9 swayed to.

10 MR. STONE: Okay. Well, and I want to make sure --
11 I'm not trying to force you into answering it one way or
12 the other. The -- you don't know the facts, I
13 understand that. You haven't heard the evidence.

14 JUROR NUMBER 577: Right.

15 MR. STONE: And that's proper at this time. I just
16 -- the question, though, and if you look back on that
17 questionnaire and think back on that questionnaire, the
18 question is: would you take everything into
19 consideration; and if you did that, which, as a juror,
20 I'm sure you would, the question then is: could you
21 come back and give somebody life in prison, or could you
22 give somebody the death penalty if the facts of the case
23 were bad enough? And what you're telling me is you
24 don't know.

25 JUROR NUMBER 577: I -- I don't know. I mean, --

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1 MR. STONE: Sure.

2 JUROR NUMBER 577: I guess I could. I mean, I
3 guess, if I got that upset, I could. And you know, I
4 guess killing a child would be pretty far up there, you
5 know, in stuff that would get you upset. But my first
6 instinct is no.

7 MR. STONE: Sure.

8 JUROR NUMBER 577: But I'm not going to say that I
9 never could.

10 MR. STONE: Okay. Thank you, Ms. Slawson. I
11 appreciate your honesty.

12 THE COURT: Okay. All right. Ms. Slawson, if you
13 don't mind, what I am going to do is ask you to step out
14 just back there for just a moment.

15 JUROR NUMBER 577: Okay.

16 THE COURT: And we'll be right with you, and we'll
17 let you know.

18 JUROR NUMBER 577: Okay.

19 THE COURT: You're not going to have a chance to
20 sit down, but we'll be right back with you. Okay?

21 JUROR LEAVES COURTROOM 9:29 A.M.

22 THE COURT: Okay. What says the State on her?

23 MR. STONE: I think she's qualified. I think --
24 she's certainly not as strong as I would like on the
25 death penalty; she wasn't clear about it; but I think at

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1 -- at this point, I don't think she was -- she came back
2 in at the end and said, I don't know; I haven't heard
3 the facts; but I can or I can't. I think she's
4 qualified.

5 MR. MCGUIRE: I'll just leave it to the Court.

6 THE COURT: Okay. I agree. I think she's
7 qualified, certainly. So, before you bring her back in,
8 what time am I having these people report? What time
9 are we going to do this striking? Guessing, just based
10 on our time, what do you all think? Having her come
11 back Monday morning?

12 MR. STONE: Yes, ma'am. That would have been my
13 suggestion.

14 THE COURT: Is that -- we're working Saturday,
15 right? Is that what our hope is? You all are two -- I
16 will tell you, you two are saying two different things.
17 He's saying no and you're saying yes. So, you tell me,
18 you all.

19 MR. MACDOUGALL: I just don't respond to this
20 Saturday work. I don't agree with it.

21 THE COURT: Okay.

22 MR. MCGUIRE: I -- yeah, I mean, I think we shoot
23 for that.

24 THE COURT: If we need to. Is that all right?

25 MR. MCGUIRE: It might be -- it might be more

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1 aspirational than actual, but yeah, sure, I think we
2 shoot for that.

3 THE COURT: Okay. Okay. Well, then, I suggest,
4 and we'll go ahead, and all these people we find
5 qualified, we'll ask them to be back Monday morning.
6 9:30, is that fine with everybody?

7 MR. STONE: Yes, ma'am.

8 THE COURT: I think I'd have them -- I think I.D.
9 have a telephone call-in saying that the plan for right
10 now is Monday morning; however, here's the telephone
11 number; it might be different information.

12 THE COURT: Okay. And if we need to, can we use,
13 LaSandra, the juror line? Who else do I have down
14 there? Can we just use the juror line for them to call
15 in if they've been qualified?

16 MADAM CLERK: Yes, ma'am. Yes, ma'am.

17 THE COURT: And I'll ask them to call Sunday night,
18 if that's fine with you all. Actually, probably better
19 have them call Saturday night, probably after 6:00
20 o'clock, so they'll know.

21 All right. Norman, let's go ahead and bring them
22 in.

23 JUROR NUMBER 577 ENTERS COURTROOM.

24 THE COURT: Thank you, Ms. Slawson. You have been
25 qualified as a potential juror in the trial of this

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1 case. That does not mean you have been chosen to serve
2 yet. It just means you are a qualified juror. What I
3 believe our schedule is going to be is, I am going to
4 ask that you to return on Monday morning at 9:30 in the
5 morning. However, I don't know how long this process is
6 going to take. So, we are going to give you a phone
7 number. I want you, after Saturday night at 6:00
8 o'clock, to call that number. And it is going to tell
9 you either to come back at 9:30 on Monday morning, or it
10 may tell you a little bit later. All right? I'm just
11 trying to limit the amount of time you all are sitting
12 around waiting. At that point, what we're going to do
13 is go ahead and actually poll our jury. And at that
14 point, you will know on Monday, or whenever you come
15 back, whether or not you've been chosen as a juror in
16 the trial of this case.

17 JUROR NUMBER 577: So, call at 6:00.

18 THE COURT: After Saturday night.

19 JUROR NUMBER 577: If you call after that, --

20 THE COURT: There's going to be a recorded message.
21 There won't be anything on it before that, so it's not
22 going to help you. Because right now, I'm anticipating
23 we're going to be working Saturday, doing exactly what
24 we've been doing with you. We just have a lot of people
25 to go through, and I don't think we're going to finish

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1 by tomorrow afternoon. So, that's why I'm telling you
2 6:00 o'clock Saturday night to call afterwards.

3 JUROR NUMBER 577: But that won't mean that you're
4 on the jury; just that they tell you to come back.

5 THE COURT: Exactly. It does not mean -- you've
6 been qualified a potential juror. It does not mean you
7 are on the jury. You will find out whether or not you
8 are on the jury on Monday.

9 JUROR NUMBER 577: Okay.

10 THE COURT: Or whenever you come back, whatever
11 time I tell you to come back. Okay?

12 JUROR NUMBER 577: Okay. All right.

13 THE COURT: Ms. Slawson, I appreciate it. Also, I
14 need to tell you that I can't have you talking with any
15 of the other potential jurors about what we discussed.
16 Okay?

17 JUROR NUMBER 577: Okay.

18 THE COURT: One other thing, Ms. Slawson, and I
19 apologize and I have to say it again. You are not to
20 discuss this case with anyone. You are not to do any
21 independent research. You aren't to read or anything,
22 do any kind of research at all. Okay?

23 JUROR NUMBER 577: Okay.

24 THE COURT: Thank you.

25 JUROR NUMBER 577 LEAVES COURTROOM.

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1 MR. STONE: May we approach just briefly, your
2 Honor?

3 THE COURT: Sure.

4 MR. STONE: Do we need to say to not watch anything
5 to these people?

6 THE COURT: Well, that's what -- I told her not to
7 read anything and watch.

8 MR. STONE: Is that -- okay.

9 THE COURT: I hope that was, I mean, what I just
10 said.

11 MR. MCGUIRE: I think that's -- I agree with you.
12 I think it's sufficient.

13 THE COURT: Yeah, I think it was okay.

14 MR. STONE: I'm sorry. I just wanted to be sure.

15 THE COURT: All right. Let's go ahead and bring
16 the next juror in. Who is it?

17 BAILIFF: Mr. Frank Nappi.

18 THE COURT: Perfect. That's fine.

19 Mr. McQuire, I am going to give a little bit more
20 introduction for this juror. I'm going to see if that
21 goes any smoother, any better. I'm going to tell you
22 that, quite frankly, where I got it from was, I have
23 your request for my admission charge, so you're going to
24 hear very. All right?

25 JUROR NUMBER 469 ENTERS COURTROOM.

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1 THE COURT: Come on in, Mr. Nappi.

2 JUROR NUMBER 469: Good morning.

3 THE COURT: Good morning. Good morning, Mr. Nappi.

4 JUROR NUMBER 469: Good morning.

5 THE COURT: Pleasure to see you, sir.

6 JUROR NUMBER 469: Thank you.

7 THE COURT: Mr. Nappi, I need to remind you, sir,
8 that you are still under oath that you took yesterday.
9 Is that agreeable?

10 JUROR NUMBER 469: Um-hmm. Yes.

11 THE COURT: Thank you, sir. Also, sir, I just
12 wanted to explain a couple of things to you before the
13 lawyers have an opportunity to talk to you. As I'm sure
14 you understand, this is a capital case. Mr. Daise has
15 been charged with two counts of murder.

16 JUROR NUMBER 469: Um-hmm.

17 THE COURT: And a charge of assault and battery
18 with intent to kill. And in this case, the State is
19 seeking the death penalty. But what I want to make sure
20 you understand is the trial here would be bifurcated.
21 The first portion of the trial, we would go ahead and
22 the jury would determine the guilt or innocence of the
23 offenses that are charged against Mr. Daise. And then,
24 if he was, in fact, found guilty, we would then go to a
25 second phase, which would be the sentencing phase, as

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1 you know.

2 JUROR NUMBER 469: Um-hmm.

3 THE COURT: At that point, the State has to prove
4 to the jury aggravating factors to be able to allow a
5 jury to even consider the death penalty.

6 JUROR NUMBER 469: Um-hmm.

7 THE COURT: What I want to make sure you understand
8 is that, the Defense is also likely to put up
9 mitigation, which will be the background and, you know,
10 the childhood and the history --

11 JUROR NUMBER 469: Um-hmm.

12 THE COURT: -- of a person who the State is seeking
13 to put to death. And I want to make sure you understand
14 that, even if the State proves aggravating factors, the
15 jury is not required ever to give the death penalty.
16 Your choice then would be either the death penalty or
17 life imprisonment without parole. So, I want to make
18 sure you understand that.

19 JUROR NUMBER 469: Yes.

20 THE COURT: Again, and to reiterate, I don't know
21 if you know exactly what the definition of murder is
22 here. In every state, it's a bit different. But here,
23 it is just the intentional killing of another person
24 with malice aforethought. So, but again, that doesn't
25 require giving a death sentence. And I want to make

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1 sure you understand that and appreciate.

2 JUROR NUMBER 469: Um-hmm.

3 THE COURT: Do you understand that?

4 JUROR NUMBER 469: Yes, I do.

5 THE COURT: All right, Mr. Nappi, well, I
6 appreciate that. And I just also, lastly, want to make
7 sure that, in fairness and mercy, you can consider
8 mitigation, you can consider all of the circumstances in
9 the case. Again, the history, not only the facts of the
10 events that occurred, but also, the background of the
11 accused.

12 JUROR NUMBER 469: Um-hmm.

13 THE COURT: Can you do that?

14 JUROR NUMBER 469: Yes, I can.

15 THE COURT: All right, sir. Additionally, I need
16 to ask you, sir, have you looked over the witness list
17 back in the --

18 JUROR NUMBER 469: Uh, yes, I did.

19 THE COURT: Do you know any of the witnesses on it?

20 JUROR NUMBER 469: The only name I recognize is
21 Sheriff Tanner, but I do not know him.

22 THE COURT: All right. Okay. And I do not think
23 he had anything specifically to do with this case, --

24 JUROR NUMBER 469: Yeah.

25 THE COURT: -- other than he is the sheriff.

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1 JUROR NUMBER 469: Right.

2 THE COURT: What is your relationship with Sheriff
3 Tanner? Or do you have any, other than you know who he
4 is?

5 JUROR NUMBER 469: I -- I just know the name.

6 THE COURT: Very good. Additionally, sir, have you
7 seen any publicity about this case?

8 JUROR NUMBER 469: I think when this first
9 occurred, there must have been something in -- in the
10 local newspaper.

11 THE COURT: Okay.

12 JUROR NUMBER 469: And I've seen that, but nothing
13 more than passing.

14 THE COURT: Okay. Mr. Nappi, what I want to make
15 sure is, is that, as you know, anything in the newspaper
16 is not factual or correct, typically.

17 JUROR NUMBER 469: Um-hmm.

18 THE COURT: And again, I want to make sure you can
19 put aside any you may have seen, read, or heard about
20 this case, --

21 JUROR NUMBER 469: Um-hmm.

22 THE COURT: -- and decide the case based on the
23 facts as they are presented in this courtroom.

24 JUROR NUMBER 469: Right.

25 THE COURT: Can you do that?

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1 JUROR NUMBER 469: Yes, I can.

2 THE COURT: Are you absolutely positive you can do
3 that?

4 JUROR NUMBER 469: I'm positive I can do that.

5 THE COURT: All right, sir. I am going to go ahead
6 and turn it over to the lawyers at this time.

7 JUROR NUMBER 469: Okay.

8 THE COURT: Mr. McQuire, or whomever, is going to
9 ask you some questions. And then, the State will ask
10 you some questions, sir.

11 JUROR NUMBER 469: Okay.

12 THE COURT: I want to remind you, there are no
13 right or wrong answers here. All I expect of you and
14 all any of us can expect of you is to be honest and
15 candid. All right?

16 JUROR NUMBER 469: Okay.

17 THE COURT: Thank you.

18 JUROR NUMBER 469: All right.

19 MR. MCGUIRE: Good morning, sir.

20 JUROR NUMBER 469: Good morning.

21 MR. MCGUIRE: My name's Bill. I'm Bill McGuire.
22 First thing I want to ask you about, just off the bat
23 is, in your questionnaire, your brother was a deputy
24 police chief?

25 JUROR NUMBER 469: He was.

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1 MR. MCGUIRE: Do you have any involvement in law
2 enforcement, other than your brother?

3 JUROR NUMBER 469: No.

4 MR. MCGUIRE: And the reason I ask you is, I grew
5 up in a law enforcement family, too. My dad was a
6 probation officer, and I've grown up in sheriffs'
7 offices and everything else.

8 JUROR NUMBER 469: Right.

9 MR. MCGUIRE: Do you have any experience with law
10 enforcement at all, beyond your brother?

11 JUROR NUMBER 469: No, I do not.

12 MR. MCGUIRE: Okay. And what I want to talk to you
13 a little bit about is the type of case that kind of
14 brings us together here today.

15 JUROR NUMBER 469: Um-hmm.

16 MR. MCGUIRE: And that is it's a capital case. And
17 what that means is, it's murder. You heard the
18 definition of murder from the Court.

19 JUROR NUMBER 469: Yes, I did.

20 MR. MCGUIRE: And it's plus something else. It's
21 plus aggravation. And as the Court described it, it's
22 malice aforethought murder. It's operating with a black
23 and malignant heart with evil intent. So, it's an
24 intentional killing of an innocent person, with evil
25 intent. And I'm going to ask you about a circumstance

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1 of aggravation, and there can be many. It could be
2 kidnaping or armed robbery or killing a police officer,
3 something like that.

4 JUROR NUMBER 469: Um-hmm.

5 MR. MCGUIRE: And the circumstance that I'm going
6 to ask you about is a double homicide, where two people
7 are shot and killed, and one's a child. In that
8 situation, can you tell me about your thoughts about the
9 death penalty as maybe being appropriate for that type
10 of case.

11 JUROR NUMBER 469: I think you have to take the
12 whole situation into consideration. The mitigating
13 circumstances, whatever might have caused this action.
14 Having been an old school principal, I can understand
15 feelings in terms of kids, but I -- it should enter into
16 the factor when you're trying to decide a case, whether
17 it's an adult, older person, younger person. It's --
18 should be based on the facts.

19 MR. MCGUIRE: Okay. And when you said the
20 mitigating circumstances, are you talking about facts of
21 the case, facts of the homicide?

22 JUROR NUMBER 469: Right.

23 MR. MCGUIRE: Okay. And what kind of brought those
24 people together in that moment of time?

25 JUROR NUMBER 469: Um-hmm.

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1 COURT REPORTER: Is that yes?

2 JUROR NUMBER 469: Yes.

3 THE COURT: Thank you, Mr. Nappi. I apologize.

4 JUROR NUMBER 469: No, it's my fault.

5 THE COURT: That is my fault.

6 MR. MCGUIRE: You're fine. Everybody does that.

7 JUROR NUMBER 469: Yeah.

8 MR. MCGUIRE: And let me ask you this. What about
9 -- let's assume you are on a jury, and I'm just going --
10 where you and eleven other people find the killer is
11 guilty beyond a reasonable doubt; you've got the right
12 person; it's not accident; it's not self-defense; the
13 person's not insane; they knew what they were doing;
14 they intended to kill two innocent people; and they did
15 it. In that situation, just in that category of case,
16 could the life penalty be severe enough to punish that
17 kind of case?

18 JUROR NUMBER 469: It could be.

19 MR. MCGUIRE: It could be. And I'm just going to
20 ask you. What kind of cases do you think the death
21 penalty is appropriate for?

22 THE COURT: Okay. We're very close to asking
23 hypotheticals, so I think it's a way of extrapolating to
24 that.

25 MR. MCGUIRE: Okay.

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1 THE COURT: So, why don't you just rephrase it, if
2 you don't mind.

3 MR. MCGUIRE: Sure.

4 BY MR. MCGUIRE:

5 MR. MCGUIRE: What I hear you saying is that it's
6 the totality of the circumstances, and you can -- you
7 can take into account all the mitigation evidence and
8 all the aggravation evidence and fairly consider both
9 death and life.

10 JUROR NUMBER 469: Yes. Okay.

11 MR. MCGUIRE: Let me ask you this. If the
12 defendant, the person accused, say, he grew up poor, was
13 a drug addict, that sort of thing, would these
14 background characteristics be important in fixing the
15 punishment?

16 JUROR NUMBER 469: They -- they might be.

17 MR. MCGUIRE: Okay. And why is that?

18 JUROR NUMBER 469: Well, depends upon the
19 situation. Each situation would have to resolve itself.
20 There -- there are people who -- there are very few
21 people on death row that are rich. Most of the people
22 on death row come from a poor poverty background, for
23 the most part. But it doesn't mean they're going to be
24 executed. It means that they're placed there.

25 MR. MCGUIRE: You're actually right about that.

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1 JUROR NUMBER 469: Well, thank you.

2 MR. MCGUIRE: And how did you come to that -- how
3 did you come to that belief?

4 JUROR NUMBER 469: Well, when you're 75 years old,
5 you know, you learn a lot of these things. You feel
6 them. You've lived through them.

7 MR. MCGUIRE: Okay. I want to talk to you a little
8 bit about some of the principles of the system, because
9 we have a lot of misconceptions about how the jury
10 system works, especially in cases like this.

11 JUROR NUMBER 469: Um-hmm.

12 MR. MCGUIRE: A lot of people believe that, in a
13 capital case, the death penalty might have to be
14 automatic, where if the State proves A, B, and C, --

15 JUROR NUMBER 469: Um-hmm.

16 MR. MCGUIRE: -- it would have to be the death
17 penalty. But it sounds like you know that's not the
18 case.

19 JUROR NUMBER 469: Right.

20 MR. MCGUIRE: Okay. And we all have our -- our
21 sort of general ideas about how the jury system works,
22 and we all hear, you know, a jury has to be unanimous in
23 its decision.

24 JUROR NUMBER 469: Yes.

25 MR. MCGUIRE: And you've heard that --

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1 JUROR NUMBER 469: Yeah.

2 MR. MCGUIRE: -- T.V. news, right?

3 JUROR NUMBER 469: Right.

4 MR. MCGUIRE: With regard to assuming -- assuming
5 you're on a case where -- where somebody is convicted,
6 and you go into what's called penalty phase.

7 JUROR NUMBER 469: Um-hmm.

8 MR. MCGUIRE: There are the two options that the
9 judge gave you, which is life without parole and the
10 death penalty. But then, the jury becomes different.
11 It becomes what the judge will describe as an individual
12 moral judgment. It's almost like there are twelve
13 different juries together, because it's so individual.
14 And I'm going to give you an example of how that works.
15 With aggravation evidence, something -- a reason that
16 the State would ask somebody to vote for the death
17 penalty, the jury has to agree that it exists, and that
18 it exists beyond a reasonable doubt, and they do have to
19 be unanimous. And you can see how the burden is very
20 high for that.

21 JUROR NUMBER 469: Right.

22 MR. MCGUIRE: For mitigation evidence, there's no
23 requirement that it be proved with any certainty of
24 proof. If it's there, it's there, and any individual
25 juror can give it any weight they want to. Did you know

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1 that's how it worked?

2 JUROR NUMBER 469: I guess so, you know.

3 MR. MCGUIRE: Okay. And the way -- an example
4 would be if you were on the jury, somebody to your left
5 could say, I saw something in the defendant's childhood
6 or upbringing; --

7 JUROR NUMBER 469: Um-hmm.

8 MR. MCGUIRE: -- I'm going to vote for life for
9 that. Somebody could, behind you, say, I saw
10 abandonment and poverty; and you mentioned these
11 factors.

12 JUROR NUMBER 469: Um-hmm.

13 MR. MCGUIRE: And I'm going to vote for life for
14 that. And they can have different reasons, and nobody
15 has to agree. Did you know that's how the penalty phase
16 could work?

17 JUROR NUMBER 469: Yes.

18 MR. MCGUIRE: Okay. Good. And you know, part of
19 -- part of that individual process is the agreement to
20 disagree. You know, this is one of the gravest, most
21 personal, awesome decisions anybody could ever have to
22 be asked to make. And I use the word awesome not like a
23 teenager, but the true meaning of the word.

24 JUROR NUMBER 469: Right.

25 MR. MCGUIRE: And you know, the Judge would say,

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1 anybody -- anybody could vote for life for any reason,
2 no reason, mercy, or whatever. And I'm going to ask
3 about mercy. Is mercy something that someone has to
4 earn, or is it freely bestowed?

5 JUROR NUMBER 469: Would you rephrase that?

6 MR. MCGUIRE: In terms of mercy, --

7 JUROR NUMBER 469: Yeah.

8 MR. MCGUIRE: -- cause the Judge -- it's in the
9 Judge's instructions --

10 JUROR NUMBER 469: Right.

11 MR. MCGUIRE: -- to be required by law to ask you
12 that, that -- that any juror could vote for the life
13 penalty for mercy alone. And I'm just asking you your
14 personal belief. Is mercy that somebody -- is it
15 something that somebody can earn, or is it something
16 that's just freely given or bestowed by somebody else?

17 JUROR NUMBER 469: Is it something they can earn,
18 or is it freely given, based on a person's feelings?

19 MR. MCGUIRE: Sure.

20 JUROR NUMBER 469: Beliefs?

21 MR. MCGUIRE: Yeah.

22 JUROR NUMBER 469: That's a good question. It's a
23 tough question.

24 MR. MCGUIRE: It is.

25 JUROR NUMBER 469: Yeah. I don't -- I guess I'm

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1 not sure how I would answer that. I haven't given that
2 much thought.

3 MR. MCGUIRE: Fair enough.

4 JUROR NUMBER 469: Yeah.

5 MR. MCGUIRE: That's a fair enough answer.

6 THE COURT: Mr. Nappi, let me ask you this.

7 JUROR NUMBER 469: Sure.

8 THE COURT: If I ordered you that you could
9 certainly consider any sentence, and for absolutely no
10 reason whatever and just strictly based on mercy, --

11 JUROR NUMBER 469: Um-hmm.

12 THE COURT: -- giving someone life imprisonment
13 versus the death penalty, can you follow that
14 instruction?

15 JUROR NUMBER 469: I can.

16 THE COURT: If I tell you that you can and you have
17 the ability --

18 JUROR NUMBER 469: Um-hmm.

19 THE COURT: -- and should consider it.

20 JUROR NUMBER 469: Yes, I think I can.

21 THE COURT: Okay. I know it's -- it's an enormous
22 -- it's difficult, I understand that.

23 JUROR NUMBER 469: It is. Yeah.

24 MR. MCGUIRE: This is -- this is the only time we
25 do this in South Carolina, in our cases.

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1 JUROR NUMBER 469: Okay.

2 MR. MCGUIRE: So, we're all really bad at it.

3 JUROR NUMBER 469: Yeah, okay.

4 MR. MCGUIRE: And you're the only guy that has all
5 the right answers.

6 JUROR NUMBER 469: Oh, sure.

7 MR. MCGUIRE: Everything you say is right. I might
8 ask some really bad questions, but you're perfect.
9 Everything you say is perfect.

10 JUROR NUMBER 469: My wife's never said that.

11 MR. MCGUIRE: Well, I'm married, too, so. What I
12 want to talk to you now a little bit is going back to
13 the individual moral judgment that the Judge will tell
14 you but, if you were a juror, you would hear that phrase
15 from her, individual moral judgment.

16 JUROR NUMBER 469: Um-hmm.

17 MR. MCGUIRE: Because it's such an individual
18 decision in the penalty phase, and you would expect
19 people to disagree, and again, the Judge would say
20 anybody can vote for life for even no reason at all.
21 And it's actually -- it's actually wrong to change your
22 vote and compromise, because the juror oath that the
23 Judge would give, says that, once you reach your own
24 individual moral judgment, you have the duty and
25 obligation to have that vote, that voice, heard in

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1 court. And as you might expect, we very often expect
2 people to disagree and have different individual moral
3 judgments.

4 JUROR NUMBER 469: Right.

5 MR. MCGUIRE: And I was telling you about how
6 awesome the decision is and how personal and hard it
7 could be. It could be, you know, like the decision to
8 bring a child into the world or something like that.
9 It's so personal. A decision like that, you would
10 agree, absolutely has to be respected. And there are a
11 lot of rules in court. Some of them are for me. Some
12 of them are for the State. Some of them are for the
13 Judge, even. But a lot of them are for you. And the
14 proceedings -- there's a famous case, and it says that
15 these proceedings shall be conducted with dignity and
16 respect. And if you saw somebody in the jury room where
17 there was an effort to force somebody to compromise,
18 maybe change their individual moral judgment, which
19 would be wrong, and things got beyond civil discourse
20 and dignity left the room, could I count on you to maybe
21 pass a note out to the Judge and say dignity's left,
22 respect has left.

23 JUROR NUMBER 469: Oh, sure. Personally.

24 MR. MCQUIRE: Okay. It sounds like you would be
25 somebody who would want the rules to be followed.

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1 JUROR NUMBER 469: Exactly.

2 MR. MCGUIRE: And I could count on you to make sure
3 that somebody with a weaker voice, maybe somebody who
4 can't articulate something, that you could protect them.

5 JUROR NUMBER 469: I would think so. I would think
6 so.

7 MR. MCGUIRE: That's all I have for you, sir.

8 JUROR NUMBER 469: Oh, okay.

9 MR. MCGUIRE: Thank you so much.

10 JUROR NUMBER 469: Okay.

11 THE COURT: Mr. Stone.

12 MR. STONE: Yes, ma'am. Is it Nappi? Mr. Nappi?

13 JUROR NUMBER 469: Nappi, right.

14 MR. STONE: My name's Duffie Stone. I just have
15 one question, sir.

16 JUROR NUMBER 469: Yeah.

17 MR. STONE: If the facts of the case are bad
18 enough, could you, as a juror, give somebody the death
19 penalty?

20 JUROR NUMBER 469: If the facts of the case were
21 bad enough, I guess I could.

22 MR. STONE: Thank you, sir. Nothing else.

23 THE COURT: Mr. Nappi, I am going to ask, sir, if
24 you'd just step out the back door for just a minute.

25 JUROR NUMBER 469: Sure.

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1 THE COURT: And I'm going to bring you right back
2 in, sir.

3 JUROR NUMBER 469: Okay.

4 THE COURT: Thank you.

5 JUROR NUMBER 469 LEAVES COURTROOM.

6 THE COURT: All right. Does the State have a
7 position?

8 MR. STONE: He's qualified, your Honor.

9 MR. MCGUIRE: I'd say super qualified.

10 THE COURT: Absolutely. He's qualified. Clearly.
11 Let's bring Mr. Nappi back.

12 JUROR NUMBER 469 ENTERS COURTROOM.

13 THE COURT: Mr. Nappi.

14 JUROR NUMBER 469: Yes.

15 THE COURT: Sir, you've been qualified as a
16 potential juror in the trial of this case. That does
17 not mean you are a juror yet. I have to ask you, sir,
18 to come back on Monday morning, at 9:30, is what I
19 believe will be the time.

20 JUROR NUMBER 469: Okay.

21 THE COURT: But what I need you to do is this. We
22 are going to give you a phone number, and I want you to
23 call after 6:00 o'clock Saturday night. There is going
24 to be a recorded message. It is either going to tell
25 you to return Monday morning at 9:30, or if we are

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1 running behind, sir, it may tell you to return later.

2 JUROR NUMBER 469: Okay.

3 THE COURT: Simply follow the instructions. We
4 will be looking for you. But we appreciate it. And we
5 will see you next week. Okay, sir?

6 JUROR NUMBER 469: Okay. Thank you.

7 THE COURT: Thank you very much. You are free to
8 leave, sir. Mr. Nappi, I apologize. One other thing I
9 need to tell you, sir, you are not to discuss this case
10 with anyone, including anyone else out there, at home.
11 You are not to read any news reports, do any independent
12 research.

13 JUROR NUMBER 469: Can I watch a football game?

14 THE COURT: You may watch the football game,
15 absolutely, sir.

16 JUROR NUMBER 469: Okay.

17 THE COURT: Thank you.

18 JUROR NUMBER 469 LEAVES COURTROOM.

19 THE COURT: Al, let's go ahead and bring the next
20 one in.

21 BAILIFF: Right down the number?

22 THE COURT: Just bring the list is fine, or just
23 tell me who you bring.

24 BAILIFF: Yes, ma'am.

25 THE COURT: Norman, I'm not too terribly concerned

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1 about the order. I just need you to announce who it is,
2 so all the attorneys can go ahead and get their lists.

3 BAILIFF: Oh, okay. I'll make sure it's done.

4 THE COURT: Okay?

5 JUROR NUMBER 695 ENTERS COURTROOM.

6 BAILIFF: Your Honor, Ms. Patricia Youmans.

7 THE COURT: Thank you. Come on forward, Ms.

8 Youmans. If you'll please take a seat right in here,
9 ma'am, for me. Good morning.

10 JUROR NUMBER 695: Good morning.

11 THE COURT: Please, ma'am. I appreciate it. Mrs.
12 Youmans, I am going to remind you, ma'am, that you are
13 still under the oath you took yesterday. Is that
14 agreeable to you?

15 JUROR NUMBER 695: Yes, it is.

16 THE COURT: Very good. Ma'am, I also wanted to
17 explain to you just a few things before I turn it over
18 to the lawyers who are free to ask you questions about
19 this case. As you understand, the defendant in this
20 case, Mr. Daise, is charged with two counts of murder
21 and assault and battery with intent to kill. And the
22 State is seeking the death penalty in this case.

23 I want to make sure you understand that the trial
24 in this case is bifurcated. There are two parts to it.
25 The first part of the trial is simply to determine the

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1 guilt or innocence of the defendant as to these charges.
2 And then, if necessary, if he were found guilty
3 unanimously by a jury, we would then go into what is
4 called the sentencing phase, where the attorneys would
5 be able to put up information and any mitigating
6 circumstances regarding either Mr. Daise or anything,
7 truly, that would help a jury decide whether or not that
8 person should end up receiving a sentence of life
9 imprisonment without the possibility of parole or the
10 death penalty.

11 JUROR NUMBER 695: Um-hmm.

12 THE COURT: I want to make sure you understand that
13 the State would be required to prove what are called
14 aggravating circumstances to be able to consider the
15 death penalty. Even if they do prove aggravating
16 circumstances, I want to make sure you understand the
17 jury can determine for any reason or no reason at all
18 that a life sentence without the possibility of parole
19 would be appropriate. It could be based on anything you
20 hear. It could be based on mercy alone. It could be
21 based on your own personal feelings. I want to make
22 sure you understand and appreciate that. Do you?

23 JUROR NUMBER 695: Yeah.

24 THE COURT: Okay.

25 JUROR NUMBER 695: I guess so.

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1 THE COURT: All right. Mrs. Youmans, I appreciate
2 that. Couple of other questions I need to ask you
3 before I turn it over to the lawyers. You have looked
4 at the witness list back there in the assembly room. Is
5 that correct?

6 JUROR NUMBER 695: Yes.

7 THE COURT: Do you recognize anyone on that list?

8 JUROR NUMBER 695: There were two names?

9 THE COURT: Who did you recognize there?

10 JUROR NUMBER 695: Sheriff Tanner.

11 THE COURT: Okay.

12 JUROR NUMBER 695: And Jerri Roseneau.

13 THE COURT: Okay. And what is your relationship or
14 how do you know Sheriff Tanner? Or do you him
15 personally?

16 JUROR NUMBER 695: I don't. I -- I don't know that
17 he would recognize me at all, but I voted for him.

18 THE COURT: Okay. And you know he's our sheriff,
19 obviously, in Beaufort County.

20 JUROR NUMBER 695: Yes. Yes.

21 THE COURT: And Jerri Roseneau, do you have any
22 personal relationship with her?

23 JUROR NUMBER 695: I belong to an organization with
24 her, and I know her mother.

25 THE COURT: Okay. And you know her mother.

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1 JUROR NUMBER 695: Yes.

2 THE COURT: All right. And again, Ms. Roseneau is
3 our Clerk of Court. She really doesn't have any direct
4 involvement in this case, other than, as I told you all
5 yesterday, she is the mistress of the courtroom. She
6 takes care of everything there. I just want to make
7 sure that knowing them and any relationship you have,
8 that wouldn't affect your ability to be fair and
9 impartial in the trial of this case.

10 JUROR NUMBER 695: No, it would not.

11 THE COURT: Is that correct?

12 JUROR NUMBER 695: That's correct.

13 THE COURT: Very good. Additionally, ma'am, this
14 case has received some publicity, some news coverage.
15 Have you read, seen, heard, or spoke with anyone about
16 this case?

17 JUROR NUMBER 695: No, and the paper, *The Gazette*,
18 day before yesterday, my husband said, Oh. And I said,
19 *don't read it to me*. So, he didn't.

20 THE COURT: Very good.

21 JUROR NUMBER 695: And I -- I recognize the name
22 from the letter that you sent.

23 THE COURT: Well, I appreciate that. And --

24 JUROR NUMBER 695: And I don't know how I haven't
25 heard about it.

1 THE COURT: That's all right. I would tell you
2 that, if you are chosen a potential juror in this case,
3 I would continue to tell you that you are not to read or
4 do any independent research.

5 JUROR NUMBER 695: Okay.

6 THE COURT: As you know, it's not factual in any
7 way, not correct. And I just want to make sure that you
8 can follow that order. Is that correct?

9 JUROR NUMBER 695: Yes, I can. Yes.

10 THE COURT: And you seem like you were already
11 doing it before I even asked you to. So, I appreciate
12 that. Ma'am, at this time, I am going to go ahead and
13 turn you over to the lawyers in this case, where they
14 can ask you questions. I want you to know that there
15 are no right or wrong answers to these questions. The
16 simple fact is, I need you to be honest and candid. And
17 I will also tell you, some of them are a bit difficult
18 as far as being able to express what your feelings are.
19 But just do the very best you can to answer it or
20 explain it, if you can. And if you don't understand, or
21 if you need them to repeat it, you're free to.

22 The last thing I need to ask you to do is, my court
23 reporter's taking everything down. She can't take down
24 a head nod, and she can't take down an uh-huh or uh-uh.
25 And I have every confidence you wouldn't do that, but

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1 again, make sure you say yes or no. All right? And Mr.
2 McGuire?

3 MR. MCGUIRE: Thank you, your Honor. Good morning,
4 ma'am.

5 JUROR NUMBER 695: Good morning.

6 MR. MCGUIRE: My name's Bill. Bill McGuire. I'm
7 one of the lawyers in the case. I looked at your
8 questionnaire, and you circled the number 3 option,
9 which is -- describes you as a juror who could,
10 depending on all the evidence in the case, fairly
11 consider both the life penalty and the death penalty.

12 JUROR NUMBER 695: Yes.

13 MR. MCGUIRE: And in fact, I think you just told
14 the Judge, that's -- that pretty much describes you.

15 JUROR NUMBER 695: Yes.

16 MR. MCGUIRE: And I just want to talk to you a
17 little bit about the system and some principles of law
18 that people have some general misconceptions about. You
19 might not have them, but I want to make sure. I want to
20 make sure that we're communicating clearly. Okay?

21 In a case like this, the trial could have two
22 parts. The first part would be did the person do it,
23 are they guilty, are they guilty beyond a reasonable
24 doubt. That's -- that would be the first part. And if
25 the jury, all twelve people agreed, that the person did

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1 it, then, the Judge would let everybody take a break;
2 bring everybody back, all twelve jurors; and then, the
3 issue would be the penalty, what penalty should the
4 person get. Did you know that's how it worked?

5 JUROR NUMBER 695: Not entirely, but --

6 MR. MCGUIRE: Okay.

7 JUROR NUMBER 695: But I understand now, yes.

8 MR. MCGUIRE: Sure. I just want to get us on the
9 same page.

10 JUROR NUMBER 695: Okay. I didn't have a
11 preconceived understanding of that, the two parts.

12 MR. MCGUIRE: Sure. And the first phase, most of
13 the questions are questions that science can answer.
14 You know, was a bullet a certain caliber; was a car red
15 or green; that sort of thing. But the penalty phase is
16 actually described as an individual moral judgment. You
17 know, what kind of penalty a human being would receive,
18 the Judge would describe it as an individual moral
19 judgment. And in that phase of the case, everybody's an
20 individual juror. The jury doesn't have to speak with
21 one voice. They can agree to disagree, because
22 everybody has their own individual moral judgment. Is
23 that a principle that you can -- you can comply with?

24 JUROR NUMBER 695: Yes.

25 MR. MCGUIRE: Okay. And the death penalty would

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1 never be automatic. If the State, if the government
2 proved certain facts, you would never ever be
3 automatically required to sentence anybody to death.
4 And the Judge just told you that. Is that a principle
5 that you could comply with?

6 JUROR NUMBER 695: Yes.

7 MR. MCGUIRE: And part of what the Judge said is
8 that you would be charged, if you were a juror, that
9 anybody can vote for the life penalty for any reason, no
10 reason, mercy alone. The no reason part is actually for
11 the jurors, because, as they contemplate the rest of
12 their life, they might not want to go forward having
13 voted for the death penalty. That's actually for you.

14 If somebody on the jury wanted to vote, say, for
15 the life penalty, and they said, it's for no reason; the
16 Judge said I could do it for no reason at all, is that a
17 position you could respect?

18 JUROR NUMBER 695: I don't understand.

19 MR. MCGUIRE: That's a little wordy.

20 JUROR NUMBER 695: Yeah.

21 MR. MCGUIRE: My fault. If you were on the jury,
22 and somebody said, this is my decision, and I don't have
23 words for it, I can't articulate why, but the Judge told
24 me I could vote for life for no reason, and I just don't
25 want to do it, could you respect that; that they could

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1 vote for the life penalty for no reason?

2 JUROR NUMBER 695: If someone else did?

3 MR. MCGUIRE: Yes, ma'am.

4 JUROR NUMBER 695: Yes. We're all entitled to our
5 own opinions.

6 MR. MCGUIRE: Exactly. And again, the penalty part
7 of a jury system is made up of individual people, asked
8 to make their own individual moral judgment. And as you
9 said, everybody's entitled to their own opinion. In
10 fact, on -- in a case like this, where the decision
11 process is so grave, it's an awesome responsibility to
12 decide the penalty for another human being, we would all
13 agree that everybody's opinion should be entitled to
14 respect. Is that a principle you can agree with?

15 JUROR NUMBER 695: Yes, it is.

16 MR. MCGUIRE: And very often, from T.V. and news,
17 we think that the jury has to speak with one voice. But
18 in the penalty phase, the jury can just agree to
19 disagree, have differing opinions, like you said. Is
20 that a principle you can respect?

21 JUROR NUMBER 695: Yes.

22 MR. MCGUIRE: And in that case, the Judge would
23 take the case and sentence, and the case would end.
24 Would that be okay with you?

25 JUROR NUMBER 695: Yes, it would.

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1 MR. MCGUIRE: And you know, there's a lot of rules
2 in court. Some of them are for me. Some of the are for
3 the government. But some of them are for you, as a --
4 as a juror. And there's a famous case that says all
5 proceedings, especially proceedings like this, should be
6 conducted with dignity and respect. And if dignity left
7 the jury room and things got unfair, and they maybe
8 tried to change people's views or votes, could you --
9 you'd be opposed to that; wouldn't you?

10 JUROR NUMBER 695: Yes.

11 MR. MCGUIRE: And the Judge would tell you to
12 comply with the juror oath; that once somebody reaches
13 that individual moral judgment, that they have a duty
14 and obligation to have that voice heard in court; that
15 vote heard in court. And if somebody was trying to have
16 another juror violate that oath and compromise, change
17 their vote, and it became unfair, could you pass a note
18 out to the Judge and say, dignity and respect has left
19 this room, and we need to get back to that? Could you
20 report that to the Judge?

21 JUROR NUMBER 695: Yes, I could.

22 MR. MCGUIRE: Okay. And you would want to protect
23 somebody and make sure they were protected in the jury
24 room.

25 JUROR NUMBER 695: Yes.

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1 COURT REPORTER: Is that yes?

2 JUROR NUMBER 695: Yes.

3 THE COURT: Thank you.

4 MR. MCGUIRE: And just extremely briefly. One of
5 my fears in a case like this is that I have to talk
6 about penalty before we even have a trial. And my fear
7 is that people get the idea that the first part of the
8 trial is a foregone conclusion and we're going to get to
9 the penalty phase. And I have a real fear about that.
10 I can tell you that you'll see me, if you were a juror
11 on the case, you'll see me, and primarily, Mr. Mark
12 MacDougall over there in the red tie, present evidence
13 in the first phase of the case, and we would be asking
14 the jury for a verdict of not guilty. And my fear is
15 that, if we did that, and you disagreed with us, and we
16 got to the penalty phase, that you would hold that
17 against Mr. -- my client; that he -- that he tested the
18 State's case; that he put up evidence, maybe; and that
19 his lawyers asked for a not guilty verdict. Can you
20 promise me you would not hold that against him, if we
21 were to ever reach the penalty phase?

22 JUROR NUMBER 695: I think I understand what you're
23 saying.

24 MR. MCGUIRE: Again, you're perfect; everything you
25 say is right; I might ask a bad question. I'm going to

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1 try to break it down just a little bit simpler. One of
2 my great fears is that, if I aggressively defend Mr.
3 Daise, and at the end of the first part of the case, I
4 ask the jury, and potentially, you, of a verdict of not
5 guilty; that the charge was not proven beyond a
6 reasonable doubt; you could disagree with that, and
7 other jurors could disagree with that, and you could
8 convict of the charges, which would take us into the
9 penalty phase. I just want to make sure that, if that
10 was the situation, that you wouldn't hold the fact that
11 we aggressively defended Mr. Daise and ask for a not
12 guilty verdict, that you would not hold that against
13 him, if we were to ever reach the penalty phase.

14 JUROR NUMBER 695: No, it's up to you to convince
15 me.

16 MR. MCGUIRE: It's my job.

17 JUROR NUMBER 695: Yes, it is.

18 MR. MCGUIRE: All right. I'll see what I can do.
19 Thank you, ma'am.

20 BY MR. STONE:

21 MR. STONE: Ms. Youmans, hey, my name is Duffie
22 Stone. I've read your questionnaire, so I just have a
23 very few questions. In your questionnaire, it presented
24 -- it presented three scenarios. One is that you are
25 somebody that would always give the death penalty;

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1 you're somebody that would never give the death penalty;
2 or the third one, which is the one I think you circled,
3 that said you would consider all the facts and
4 circumstances and make a decision whether or not the
5 appropriate sentence is life or death.

6 JUROR NUMBER 695: That's correct, yes.

7 MR. STONE: And that -- that was your circle, then.

8 JUROR NUMBER 695: Yes.

9 MR. STONE: So, my only question is, if the case --
10 if the facts of the case are bad enough, could you give
11 somebody the death penalty?

12 JUROR NUMBER 695: I could.

13 MR. STONE: Thank you, ma'am. Nothing else, your
14 Honor.

15 THE COURT: All right. Mrs. Youmans, I am going to
16 ask you just to step right out back at the door for just
17 a moment, and let me discuss something with the
18 attorneys, and I'm going to bring you right back in and
19 tell you what we're going to do. All right?

20 JUROR NUMBER 695: Okay.

21 THE COURT: Thank you.

22 JUROR NUMBER 695 LEAVES COURTROOM.

23 THE COURT: Mr. Stone.

24 MR. STONE: She's qualified, your Honor.

25 MR. MCGUIRE: I'd agree.

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1 THE COURT: She's qualified. All right. Let's
2 bring her back in, Norman. Thank you.

3 BAILIFF: Yes, ma'am.

4 JUROR NUMBER 695 ENTERS COURTROOM.

5 THE COURT: Mrs. Youmans, you can stay right there,
6 ma'am. Thank you. Ma'am, you have been found qualified
7 to serve in the trial of this case. That does not mean
8 you are on the jury. That simply means that I need to
9 ask you to come back on Monday morning at 9:30, where we
10 are going to go ahead and choose a jury in the trial of
11 this case.

12 But one other thing I'm going to ask you to do,
13 ma'am. We're running a little bit behind already, and
14 you are only my third person. We have a lot of people
15 to go through. I am going to ask that you call into
16 this phone number Saturday night after 6:00 o'clock.
17 And it's going to have a recorded message. And it's
18 either going to tell you to come on Monday morning at
19 9:30, or it's going to tell you to come a little later.
20 Or possibly even Tuesday, if we go into that. I just
21 want to make sure you follow the instructions. I just
22 don't want you to have to come on Monday morning at 9:30
23 if we aren't ready.

24 JUROR NUMBER 695: After 6:30.

25 THE COURT: After 6:00 o'clock on Saturday night.

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1 JUROR NUMBER 695: 6:00 o'clock.

2 THE COURT: There won't be any message on it before
3 that, because I can tell you, I anticipate that we're
4 going to be doing this through Saturday. So, I'm
5 hopeful that we'll finish by then, and that we'll be
6 able to give you accurate information. I also need to
7 tell you Mrs. Youmans that you cannot discuss this case
8 with anyone.

9 JUROR NUMBER 695: Okay.

10 THE COURT: You know not to read anything, not to
11 do any independent research. I just look forward to
12 seeing you on Monday morning. Thank you, ma'am.

13 JUROR NUMBER 695 LEAVES COURTROOM.

14 JUROR NUMBER 210 ENTERS COURTROOM.

15 THE COURT: Al, go ahead and --

16 BAILIFF: Your Honor, Ms. Tamara Ellis.

17 THE COURT: Come on forward, ma'am. Right around
18 here. Come on up, Ms. Ellis. Right here, ma'am. Thank
19 you. Come on around. Good morning.

20 JUROR NUMBER 210: Good morning.

21 THE COURT: Thank you for waiting on us. Ms.
22 Ellis, I want to remind you that you are under oath, the
23 oath that you took yesterday. Is that acceptable to
24 you?

25 JUROR NUMBER 210: Yes, ma'am.

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1 THE COURT: All right. Additionally, I want to
2 tell you that I'm going to talk to you a little bit, and
3 then the lawyers are going to ask you some questions. I
4 simply ask that you say yes and no. Our court
5 reporter's taking everything down, and she can't take a
6 head bob or a head sway. All right?

7 JUROR NUMBER 210: Yes, ma'am.

8 THE COURT: Thank you. Ms. Ellis, what I want to
9 explain to you that this is a capital case. Mr. Daise
10 has been charged with two counts of murder, and assault
11 and battery with intent to kill, and that the State is
12 seeking the death penalty in this case. I want you to
13 understand that the way this trial is going to work is
14 that it's going to be bifurcated. There are going to be
15 two portions to the trial. The first is simply going to
16 be to determine the guilt or innocence of the defendant
17 in this case. And then, if necessary, we will then go
18 on to the sentencing phase.

19 What I want you to understand is, in the sentencing
20 phase, there is going to be mitigation evidence, other
21 evidence put into the case. And I want to make sure
22 that you can consider all that mitigating evidence and
23 anything else in this case that you think is appropriate
24 in determining whether or not, if we do get to that
25 portion of the case, a life-without-parole sentence for

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1 the defendant or the death penalty for the defendant. I
2 just want to make sure you understand and appreciate
3 that you can consider anything that's in the case to
4 help you make that determination, or nothing at all.
5 You have the right, as a juror, based on mercy alone,
6 whatever your personal feelings are, whether or not to
7 decide for a sentence of death or life, if it's
8 appropriate in your mind. And I want to make sure you
9 can follow that and understand that.

10 JUROR NUMBER 210: Okay.

11 THE COURT: Okay? All right? Also, you've seen
12 the witness list back there. Is that correct?

13 JUROR NUMBER 210: Yes.

14 THE COURT: Do you know any persons on that witness
15 list?

16 JUROR NUMBER 210: No.

17 THE COURT: All right. Additionally, have you seen
18 any publicity about this case, anything in the news or
19 the newspaper?

20 JUROR NUMBER 210: No. I didn't know anything
21 about it until I got the paperwork, and then I Googled
22 it and --

23 THE COURT: You what?

24 JUROR NUMBER 210: I Googled it.

25 THE COURT: You Googled it. Okay. When you

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1 Googled it, what did you find?

2 JUROR NUMBER 210: Just the story.

3 THE COURT: Okay. Did you find it on a web site as
4 far as like a newspaper website or?

5 JUROR NUMBER 210: Yes, ma'am.

6 THE COURT: Okay. And I want to make absolutely
7 sure that you understand, anything that's printed in the
8 newspaper or on the news is not factual; that you can
9 set that aside and decide the facts of this case based
10 on what you hear solely in this courtroom, uninfluenced
11 by anything you may have read. Do you understand that?

12 JUROR NUMBER 210: Yes.

13 THE COURT: All right. And you're confident you
14 can do that?

15 JUROR NUMBER 210: Yes.

16 THE COURT: All right, ma'am. I am going to go
17 ahead and turn it over to the lawyers, who are going to
18 ask you some questions. All right, Mr. McGuire.

19 MR. MCGUIRE: Thank you, your Honor. Morning,
20 ma'am.

21 JUROR NUMBER 210: Good morning.

22 MR. MCGUIRE: My name is Bill. Bill McQuire. I'm
23 one of the lawyers on the case. And I'm just going to
24 ask you some brief questions about your thoughts about
25 the death penalty.

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1 JUROR NUMBER 210: Okay.

2 MR. MCGUIRE: To make sure that we're communicating
3 clearly, I'm just going to start at the beginning. I
4 looked at your questionnaire, and I didn't see any
5 reason that you would know the legal, technical
6 definition of murder in South Carolina.

7 JUROR NUMBER 210: I do not.

8 MR. MCGUIRE: And I'm not putting you on the spot.
9 You're like 99 percent of the people in my family, only
10 the two or three of us that are lawyers know that. And
11 there's no reason for you to ever have heard that
12 before.

13 So, I want to start there. The definition of
14 murder in South Carolina is the killing of another
15 person with malice aforethought. And the malice
16 aforethought part means that the person is operating
17 with a black and malignant heart, bent on wickedness and
18 evil. It's kind of an archaic sounding definition, but
19 that's what it is.

20 JUROR NUMBER 210: Um-hmm.

21 MR. MCGUIRE: And then, just basically, minced
22 terms, it means the intentional, deliberate killing of
23 an innocent person with an evil intent. Are you with
24 me?

25 JUROR NUMBER 210: Yes.

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1 MR. MCGUIRE: And for the kind of case that takes
2 us here today, the State, the government, has to prove
3 malice murder, plus something additional, and
4 aggravating circumstance. And there are 21 of them in
5 South Carolina. There's murder in the course of killing
6 a police officer, kidnaping, that sort of thing. But
7 I'm just going to ask you about, really, two. And that
8 is you read some of the publicity, so you know it's a
9 double homicide, and that a mother and child were
10 killed.

11 JUROR NUMBER 210: Yes.

12 MR. MCGUIRE: In that circumstance, tell us your
13 thoughts about the death penalty as perhaps being the
14 appropriate penalty.

15 JUROR NUMBER 210: Tell you my thoughts like --

16 MR. MCGUIRE: Just generally. Sure.

17 JUROR NUMBER 210: I feel like it would be
18 acceptable if -- if, you know, if he's actually guilty
19 of that.

20 MR. MCGUIRE: Okay. And let me ask sort of the
21 opposite side of the coin. Would the life penalty --
22 and the Judge would tell you that, life means life
23 without parole.

24 JUROR NUMBER 210: Right.

25 MR. MCGUIRE: The person could never get out of

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1 prison. Would that be a severe enough penalty, in your
2 view, just personally, to punish that kind of killing?

3 JUROR NUMBER 210: No.

4 MR. MCGUIRE: Okay. And -- and that's because of
5 the facts of the killing.

6 JUROR NUMBER 210: Yes.

7 MR. MCGUIRE: The double homicide and the child.

8 JUROR NUMBER 210: Well, again, I don't know that
9 they're facts, but yes.

10 MR. MCGUIRE: Elements.

11 JUROR NUMBER 210: Right.

12 MR. MCGUIRE: Yeah, the Court is -- sometimes a
13 fact is what we call an element in the law.

14 JUROR NUMBER 210: Okay.

15 MR. MCGUIRE: And that's -- that's what these are.
16 These are just elements of what the government with have
17 to prove. And again, it would be malice murder, with
18 the child and mother. It sounds like, in that
19 situation, the death penalty is acceptable to you.

20 JUROR NUMBER 210: Yes.

21 MR. MCGUIRE: And that the life penalty would not
22 be acceptable.

23 JUROR NUMBER 210: No.

24 MR. MCGUIRE: Okay. And I want to talk to you a
25 little bit about the way the process is. If you were

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1 picked as a juror, the penalty phase is different from
2 the first phase. And these are very confusing terms. I
3 want to try to talk about it in kind of just plain
4 terms. You probably just know from news and T.V. that a
5 regular jury has to be unanimous.

6 JUROR NUMBER 210: Um-hmm.

7 MR. MCGUIRE: You know, to deliver a verdict.

8 JUROR NUMBER 210: Yes.

9 MR. MCGUIRE: And that's not the case in a capital
10 case. The first part would. It would have -- you know,
11 that's when the Judge says everybody has to be unanimous
12 to have a verdict. But in the penalty phase, it's
13 different. In the first phase, the guilty/not guilty,
14 did the person do it, most of these questions can be
15 answered by science, by was the -- was the bullet a .38
16 or a .40, or was it a car red or green, stuff like that.
17 But the Judge would tell you that the penalty phase is
18 an individual moral judgment. It's almost like there
19 are twelve individual juries. Like every juror is their
20 own jury, and they're all asked to reach their own
21 individual moral judgment about the penalty that's
22 appropriate in the case.

23 JUROR NUMBER 210: Right.

24 MR. MCGUIRE: And if somebody had a different
25 individual moral judgment, then, you could respect that.

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1 JUROR NUMBER 210: Yes.

2 MR. MCGUIRE: The Judge would also say that jurors
3 can sentence to life for any reason, no reason, or mercy
4 alone. If somebody said I want to vote for life for no
5 reason; I just don't want to get out of here having that
6 on my conscience; could you respect that position?

7 JUROR NUMBER 210: Yes.

8 MR. MCGUIRE: And you could agree to disagree.

9 JUROR NUMBER 210: Yes.

10 MR. MCGUIRE: Okay. And the way the law describes
11 it, once somebody reaches their individual moral
12 judgment, they have a duty and obligation to have that
13 voice, that vote, heard in court, even if it is for no
14 reason. And the juror oath requires that people, once
15 they reach that individual moral judgment, that they
16 stay there, and that they don't compromise.

17 JUROR NUMBER 210: Right.

18 MR. MCGUIRE: Could you respect that and -- and
19 respect people once they reach that individual moral
20 judgment that, that's where they are?

21 JUROR NUMBER 210: Yes.

22 MR. MCGUIRE: And there are a lot of rules in
23 court. Some of them are for me. Some for the
24 government. But there's a famous case, and it says
25 these proceedings, particularly capital proceedings,

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1 must be conducted with respect and dignity. Would you
2 agree that everybody's individual moral judgment should
3 be respected?

4 JUROR NUMBER 210: Yes.

5 MR. MCGUIRE: And if somebody was weaker or
6 couldn't articulate their position, and somebody was
7 asking them to compromise; maybe it got a little unfair
8 in the jury room, could you pass a note out to the Judge
9 and say we need to get back to that dignity and
10 fairness?

11 JUROR NUMBER 210: Yes.

12 MR. MCGUIRE: And you could protect somebody who
13 had a different position or was weaker than you?

14 JUROR NUMBER 210: Yes.

15 MR. MCGUIRE: And could you make sure they are
16 respected?

17 JUROR NUMBER 210: Yes.

18 MR. MCGUIRE: In terms of fixing punishment for an
19 intentional killing of two people, one being a child,
20 would -- would background characteristics of the
21 accused's be relevant?

22 JUROR NUMBER 210: Yes, to a certain degree.

23 MR. MCGUIRE: Okay. And when you say, *to a certain*
24 *degree*, what are you talking about? What do you mean?

25 JUROR NUMBER 210: I don't know. Don't even know

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1 why I said that. But yes, I do think that they're
2 background, their upbringing, might have something to do
3 with, you know, the outcome of what has happened.

4 MR. MCGUIRE: Okay. And that is something that you
5 would find to be relevant in the decision-making
6 process.

7 JUROR NUMBER 210: Yes.

8 MR. MCGUIRE: Okay. And if -- if, for instance, --
9 I'm going to go back to that individuality. If somebody
10 on one side said I heard evidence of the accused
11 upbringing, his childhood, and that resonated with me,
12 maybe abandoned by a parent, something like that, that
13 could be that juror's individual reason?

14 JUROR NUMBER 210: Yes.

15 MR. MCGUIRE: And another juror could have a
16 completely different reason. Maybe he did something
17 good, like take care of his family.

18 JUROR NUMBER 210: Yeah.

19 MR. MCGUIRE: And they could all have different
20 reasons. Could you respect everybody having a different
21 reason --

22 JUROR NUMBER 210: Yes.

23 MR. MCGUIRE: -- to vote for life? Yeah?

24 JUROR NUMBER 210: Yes.

25 MR. MCGUIRE: And that's just going back to some of

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1 that background stuff. And you would be okay with
2 everybody having a different background that's relevant
3 to them?

4 JUROR NUMBER 210: Yes.

5 MR. MCGUIRE: Okay. You know, one of the things
6 that I fear is that, if I zealously defend somebody
7 accused of this type of crime, and the jury disagrees
8 with me when I ask for a not guilty verdict; that, if we
9 get to the penalty phase, that they would hold that
10 against my client; that, if I -- you know, somebody
11 might say, well, he tried to get off; his lawyers tried
12 to get him off; and that they would punish him for
13 testing the State's case, making them prove everything
14 beyond a reasonable doubt; and that the jury might
15 punish him when we get up and say we're asking for a not
16 guilty verdict. Could you make sure that doesn't happen
17 in the jury room?

18 JUROR NUMBER 210: Yes.

19 MR. MCGUIRE: Is that -- would you agree that would
20 be wrong?

21 JUROR NUMBER 210: Yes.

22 MR. MCGUIRE: He has a right to exercise his right
23 to test the State's case, go to trial, require the State
24 prove every element beyond a reasonable doubt?

25 JUROR NUMBER 210: Yes.

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1 MR. MCGUIRE: And you would make sure that nobody
2 punished him for aggressively -- having his lawyers
3 aggressively put on evidence seeking a not guilty
4 verdict.

5 JUROR NUMBER 210: No.

6 MR. MCGUIRE: Okay. Thank you, ma'am.

7 THE COURT: All right. Mr. Stone.

8 MR. STONE: Hey, Ms. Ellis. My name's Duffie
9 Stone. I just have a few questions. I read your
10 questionnaire, and I listened closely to how you
11 answered Judge Mullen's questions earlier. And I think
12 I understand this. In your questionnaire, there were
13 three types of jurors, and the questionnaire asked you
14 to identify one of those types. The first one was
15 somebody that would always give the death penalty; the
16 second one was somebody that would never give the death
17 penalty; and the third is somebody that would take all
18 the facts and circumstances together, with aggravation,
19 as well as mitigation, and make a decision on what the
20 appropriate sentence is. And I think you circled the
21 third. Is that correct?

22 JUROR NUMBER 210: I think so.

23 MR. STONE: Well, and let me just ask you. What I
24 understand from Judge Mullen earlier, in her questions
25 to you, would you consider, would you consider all the

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1 facts in the case; would you consider the mitigation, as
2 well as aggravation, before you made that determination?

3 JUROR NUMBER 210: Yes.

4 MR. STONE: And the only real question I have,
5 then, from that, is, if the case was bad enough, could
6 you give somebody the death penalty?

7 JUROR NUMBER 210: Yes.

8 MR. STONE: I don't have anything else, your Honor.
9 Thank you.

10 THE COURT: Okay. Ms. Ellis, I am going to ask
11 that you just step right back out in the hall, and we'll
12 be right back with you. Okay? Thank you, ma'am.

13 JUROR NUMBER 210 LEAVES COURTROOM.

14 THE COURT: All right.

15 MR. STONE: She's qualified, your Honor.

16 MR. MCGUIRE: Judge, I would say that she's not
17 qualified; that when I spoke to her in detail in plain
18 language about malice murder and the elements against
19 said acts, she said that the death penalty was -- she
20 started off acceptable; then she said it was the
21 appropriate penalty. And then, she also said the life
22 penalty was not appropriate for that. That was just
23 based on the elements of murder and the said acts. I
24 would say she's not qualified. And to seat her, to put
25 her in the pool, would be a violation of Mr. Daise's

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1 rights to an impartial and indifferent juror, who is as
2 indifferent and unbiased as they are unsworn. It would
3 violate his *Sixth* and *Fourteenth Amendment*
4 constitutional rights to an indifferent jury.

5 THE COURT: Anything else?

6 MR. STONE: She said clearly, your Honor, on the
7 record and in response to both your questions, as well
8 as mine, that she would take everything into
9 consideration. She, in fact, even answered the Defense
10 question that she would take his background into
11 consideration before making that determination. She's
12 clearly qualified as to the law, and would say that she
13 would take that into consideration and is still in
14 accordance with her questionnaire, which answered that
15 she is the appropriate type juror.

16 THE COURT: All right. I'm going to go ahead and
17 find her qualified. I do think that, in the totality of
18 all the questions, she said she could consider it. She
19 did clearly answer it. I do find her qualified.

20 You want to bring her back in.

21 BAILIFF: Yes, your Honor.

22 JUROR NUMBER 210 ENTERS COURTROOM.

23 BAILIFF: If you will, just stand here for a
24 minute.

25 THE COURT: Thank you. Ms. Ellis, we have found

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1 you qualified as a juror in the trial of this case.
2 That does not mean you're on the jury. I simply have to
3 ask you to come back on Monday morning at 9:30, where
4 we're going to go ahead and pull the jury in this case.
5 Ma'am, what we are going to do is give you a phone
6 number to call Saturday night after 6:00 o'clock. There
7 will be a recorded message on that. It will, again,
8 confirm whether or not you need to come at 9:30 on
9 Monday morning. I don't know if we're going to be
10 running behind. If we are running behind, there's going
11 to be a message that says please show up at a different
12 time. It might say 11:00 o'clock. It might say 12:00
13 o'clock. It might say Tuesday morning, for all I know
14 at this point. Again, I don't know. I don't want you
15 sitting around waiting on us. Okay? So, just make sure
16 you call that number after 6:00 o'clock.

17 I also need to tell, you, ma'am, that you are not
18 to discuss this case with anyone. You are not to see
19 any news reports, read anything about this case, do any
20 independent research about this case, or do any type of
21 social media discussion or even stating that you're a
22 potential juror in the trial of this case. Can you do
23 that?

24 JUROR NUMBER 210: Yes, ma'am.

25 THE COURT: Mrs. Ellis, I appreciate it. We'll see

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1 you on Monday morning. Thank you.

2 MR. STONE: Your Honor, may I approach.

3 THE COURT: Yes, sir.

4 OFF-THE-RECORD BENCH CONFERENCE,

5 THE COURT AND BAILIFF.

6 END BENCH CONFERENCE.

7 JUROR NUMBER 46 ENTERS COURTROOM.

8 THE COURT: Sir? Come on in. Please, come on in,
9 Ms. Bennett, please.

10 BAILIFF: Ma'am.

11 THE COURT: Good morning.

12 JUROR NUMBER 46: Good morning.

13 THE COURT: Come on up right here and take a seat.
14 Thank you. Good morning.

15 JUROR NUMBER 46: Good morning.

16 THE COURT: Mrs. Bennett, I need to remind you that
17 you are still under the oath that you took yesterday.
18 Is that acceptable to you?

19 JUROR NUMBER 46: Yes.

20 THE COURT: Very good. Ma'am, I also want to
21 explain to you certain things about this case, and then,
22 I am going to turn it over to the lawyers so they can
23 ask you some questions. First off, I want to make sure
24 you understand and appreciate that this is a capital
25 case; that Mr. Daise has been charged with two counts of

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1 murder and assault and battery with intent to kill; and
2 that the State is seeking the death penalty in this
3 case. I want to make sure you also understand that the
4 trial of this case is bifurcated. It's in two parts.
5 The first is determining the guilt or innocence of the
6 charges that Mr. Daise is charged with. If he is found
7 guilty, then, we would go to the second phase, which
8 would be the sentencing phase. During that phase, you
9 can expect that the Defense will put on mitigation and
10 some different things about the background and history,
11 that type of thing, in regards to helping you decide
12 what penalty is appropriate to you or what punishment.

13 If we do get to that portion of the case, there's
14 only two options for a jury to consider. It's would be
15 life imprisonment without parole or the death penalty.
16 I want to make sure that you can follow my instructions,
17 and I will instruct you that you will have to first find
18 aggravating circumstances to determine whether or not
19 the death penalty is even appropriate. But even if the
20 State were able to prove those aggravating
21 circumstances, you still are not required to give the
22 death penalty. Again, that is a decision for you to
23 make. And you could give, obviously, life imprisonment
24 for any reason at all. It could be mercy. It could be
25 anything. It would be your individual choice. And

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1 again, I want to make sure you would be able to follow
2 my directions in explaining that. Do you think you can
3 do that?

4 JUROR NUMBER 46: Yes.

5 THE COURT: All right, ma'am. Additionally, I need
6 to ask you, you've reviewed the witness list. I know
7 you've been back there a while.

8 JUROR NUMBER 46: Yes.

9 THE COURT: And I apologize for us running a little
10 bit behind. You all are the first group, so we're just
11 kind of getting going.

12 JUROR NUMBER 46: Right. Okay.

13 THE COURT: Did you recognize anyone's name on that
14 list, or do you have any personal or business or social
15 relationship with anyone that's on that list?

16 JUROR NUMBER 46: Yes.

17 THE COURT: Who do you know?

18 JUROR NUMBER 46: Okay, well, um, I know, um,
19 Margaret Bostic, who is the Clerk of Court of Jasper
20 County.

21 THE COURT: Very good. How do you know Ms. Bostic?

22 JUROR NUMBER 46: I was the clerk treasurer for the
23 City of Hardeeville for 18 years, and so, I had some
24 dealings with her there.

25 THE COURT: Very good.

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1 JUROR NUMBER 46: I recognize the name of P.J.
2 Tanner, but he would not recognize me. But I recognize
3 his name.

4 THE COURT: Okay.

5 JUROR NUMBER 46: Also, John Wayne Foskey, I worked
6 with him with the City of Hardeeville. He was chief of
7 police there.

8 THE COURT: Okay.

9 JUROR NUMBER 46: Also, an officer Dan Martin was a
10 police officer when I was there.

11 THE COURT: Okay.

12 JUROR NUMBER 46: Danny Tinnel was with the EMS, as
13 well. He was with Jasper County when I was there.

14 THE COURT: Okay.

15 JUROR NUMBER 46: So, those names. I think that
16 was the names. And also, Darlene Smith, Magistrate
17 Darlene Smith.

18 THE COURT: Yes.

19 JUROR NUMBER 46: She -- her family is from
20 Hardeeville, and I knew her personally.

21 THE COURT: Okay. She's in Hawaii still.

22 JUROR NUMBER 46: Yes, she is.

23 THE COURT: Okay. All right. I want to make sure,
24 understanding that those people may be potential
25 witnesses, and many just simply, you know, --

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1 JUROR NUMBER 46: Yes.

2 THE COURT: -- ministerial witnesses, can you put
3 aside your relationship or -- it sounds like you know
4 these people mostly through work.

5 JUROR NUMBER 46: Right.

6 THE COURT: Through your work relationship. Can
7 you put that aside and decide the case fairly on the
8 facts and not give anymore weight to those specific
9 witnesses because it's them that are testifying?

10 JUROR NUMBER 46: Yes.

11 THE COURT: You're comfortable you can do that?

12 JUROR NUMBER 46: Yes.

13 THE COURT: And you understand they're doing that
14 within the course and scope of their employment.

15 JUROR NUMBER 46: Right.

16 THE COURT: Is that correct?

17 JUROR NUMBER 46: Right.

18 THE COURT: And you have no questions or concerns
19 about that whatsoever.

20 JUROR NUMBER 46: Right.

21 THE COURT: All right. Additionally, this case has
22 received some publicity. Have you read anything or seen
23 anything in the news or anything like that about this
24 case?

25 JUROR NUMBER 46: No, I have not.

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1 THE COURT: All right. Well, I appreciate that.
2 At this point, I'm going to go ahead and turn it over to
3 the attorneys. I need to tell you that they are going
4 to ask you a number of questions. The only thing I ask
5 of you is to be candid and honest. There are no right
6 or wrong answers here. They just want to get your
7 feelings. If there is something you don't understand,
8 because this is somewhat complicated, ask them to
9 rephrase it or repeat it or break it down a little bit,
10 and we might be able to better understand. If you don't
11 understand, simply say I don't understand.

12 JUROR NUMBER 46: Okay.

13 THE COURT: How's that?

14 JUROR NUMBER 46: Okay.

15 THE COURT: Okay?

16 JUROR NUMBER 46: Okay.

17 THE COURT: Mr. McGuire.

18 MR. MCGUIRE: Thank you, your Honor. Morning,
19 ma'am.

20 JUROR NUMBER 46: Good morning.

21 MR. MCGUIRE: My name's Bill. I'm Bill McGuire.
22 I'm one of the lawyers on the case.

23 JUROR NUMBER 46: Okay.

24 MR. MCGUIRE: So, I was going to ask you some
25 questions.

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1 JUROR NUMBER 46: Sure. You work for Manna, Inc.
2 in the Lowcountry?

3 JUROR NUMBER 46: Yes.

4 MR. MCGUIRE: Can you -- tell me what that is.

5 JUROR NUMBER 46: Um, he has nine Wendy's
6 restaurants franchises, and I do his book work.

7 MR. MCGUIRE: Oh, okay. Okay. And how long have
8 you been with him?

9 JUROR NUMBER 46: Since the year 2000. Thirteen
10 years.

11 MR. MCGUIRE: Okay. And is it your sister who does
12 missionary work?

13 JUROR NUMBER 46: Yes.

14 MR. MCGUIRE: And where is she?

15 JUROR NUMBER 46: Um, she -- her -- their permanent
16 home is in Flat Rock, North Carolina. And right now,
17 that's where she's at. And but she goes two times a
18 year to Africa. Um-hmm.

19 MR. MCGUIRE: Okay. Okay. What I want to do to
20 make sure that we're communicating clearly, --

21 JUROR NUMBER 46: Right.

22 MR. MCGUIRE: -- is to sort of start at the
23 beginning.

24 JUROR NUMBER 46: Okay.

25 MR. MCGUIRE: Looking through your questionnaire, I

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1 didn't see any reason why you would know the technical
2 definition of murder in South Carolina.

3 JUROR NUMBER 46: No.

4 MR. MCGUIRE: And I'm not putting you on the spot.

5 JUROR NUMBER 46: No.

6 MR. MCGUIRE: You're like most people in my family.

7 JUROR NUMBER 46: No, honey. I know what murder
8 is, but no, I've not dealt with murder.

9 MR. MCGUIRE: Sure. Well, I'm going to help you.

10 JUROR NUMBER 46: Okay.

11 MR. MCGUIRE: And -- and start there --

12 JUROR NUMBER 46: Okay.

13 MR. MCGUIRE: -- with just a plain definition.

14 JUROR NUMBER 46: Right.

15 MR. MCGUIRE: Okay? Murder in South Carolina, the
16 technical definition is that it's the unlawful killing
17 of another human being with malice aforethought. And
18 the malice aforethought part is that the killer is
19 acting with a black and malignant heart, bent on evil or
20 wickedness.

21 JUROR NUMBER 46: Yes.

22 MR. MCGUIRE: It's kind of an archaic sounding
23 definition.

24 JUROR NUMBER 46: Um-hmm.

25 MR. MCGUIRE: In layman's terms, what that means is

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1 the intentional, deliberate act to kill an innocence
2 person and you have an evil intent.

3 JUROR NUMBER 46: Um-hmm.

4 MR. MCGUIRE: Not self-defense, not accident, not
5 somebody so crazy that they don't know what they're
6 doing; somebody who knows what they're doing, chooses to
7 kill, and kills.

8 JUROR NUMBER 46: Right.

9 MR. MCGUIRE: Okay? That's murder. And to -- to
10 be here today for this kind of case, a case that would
11 be described as a capital case, it has to be something
12 more than that.

13 JUROR NUMBER 46: Um-hmm.

14 MR. MCGUIRE: It's has to be aggravated. There are
15 21 statutory aggravators in South Carolina. We're not
16 going to go through all of them. But they can be, say,
17 for killing a police officer, line of duty, or killing
18 somebody during a robbery. That thing. The aggravation
19 that I want to ask you about is just specific. I'm
20 going to ask you what your thoughts are about the death
21 penalty as the appropriate punishment for that
22 intentional killing of another person in the situation
23 where it's two people, double homicide, and that one is
24 a child, four-year-old child. In that situation, what
25 are your thoughts about the death penalty as being an

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1 appropriate punishment?

2 JUROR NUMBER 46: Um, if it -- I -- if -- if there
3 was -- if there was no reasonable doubt that he
4 committed this crime, and he did it just out of the
5 malice of his heart, I would not have a problem with the
6 death penalty.

7 MR. MCGUIRE: Okay. And let me ask you sort of the
8 other side of the coin. Would -- would letting that
9 accused person, that killer, letting him live out his
10 life in prison, the life penalty, and the Judge would
11 tell you it's life without parole.

12 JUROR NUMBER 46: Right.

13 MR. MCGUIRE: Wouldn't get out. Would the life
14 penalty be severe enough to punish that kind of case,
15 that kind of killing, the double homicide with the four-
16 year-old child?

17 JUROR NUMBER 46: Probably so, if there was no
18 chance of parole. I mean, you know, he would have to
19 live that with the rest of his life.

20 MR. MCGUIRE: Sure.

21 JUROR NUMBER 46: Right.

22 MR. MCGUIRE: And it sounds like you consider the
23 life penalty to be a severe penalty.

24 JUROR NUMBER 46: I do.

25 MR. MCGUIRE: Okay. In -- in fixing punishment for

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1 that kind of homicide, double homicide, with the child
2 victim, --

3 JUROR NUMBER 46: Um-hmm.

4 MR. MCGUIRE: -- would background characteristics
5 of the defendant, the accused, would that be relevant in
6 fixing punishment?

7 JUROR NUMBER 46: Um, no.

8 MR. MCGUIRE: No. And why is that?

9 JUROR NUMBER 46: Because I think he is accountable
10 for his actions at that time.

11 MR. MCGUIRE: Okay.

12 JUROR NUMBER 46: I would like to blame my father
13 for something, but I don't think that's the way it goes.

14 MR. MCGUIRE: Right.

15 JUROR NUMBER 46: Um-hmm.

16 MR. MCGUIRE: So, so someone's background, their
17 characteristics, when it comes to fixing punishment,
18 it's the facts of the case, --

19 JUROR NUMBER 46: Right.

20 MR. MCGUIRE: -- the homicide, that would control.

21 JUROR NUMBER 46: Right.

22 MR. MCGUIRE: And background characteristics would
23 not be relevant.

24 JUROR NUMBER 46: Right.

25 MR. MCGUIRE: Okay. And I want to talk to you a

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1 little bit about some common misconceptions. You know,
2 we all kind of get out understanding of the legal system
3 through news and T.V. and stuff.

4 JUROR NUMBER 46: Um-hmm.

5 MR. MCGUIRE: And I'm sure you've seen on T.V.
6 where everybody thinks the jury has to be unanimous.

7 JUROR NUMBER 46: Um-hmm.

8 MR. MCGUIRE: To reach a decision.

9 JUROR NUMBER 46: Right.

10 MR. MCGUIRE: And that is actually true in the
11 first phase. You actually have a decision in the first
12 part of a capital case. That's the who done it; did
13 somebody do it; did they mean it; do they have the right
14 guy. That part, to have a verdict of guilty or not
15 guilty, the jury does have to be unanimous. All twelve
16 have to agree beyond reasonable doubt of guilt to say
17 guilty.

18 If -- if -- if the jury moves -- if the jury
19 convicts in a capital case, and we go to the penalty
20 phase, the jury's actually different. Not different in
21 people, but in how they make their decision.

22 JUROR NUMBER 46: Um-hmm.

23 MR. MCGUIRE: The Judge would tell you that, that
24 part of the case, that the decision making is actually
25 an individual juror's own individual moral judgment.

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1 JUROR NUMBER 46: Okay.

2 MR. MCGUIRE: Okay? It's not a -- you don't make
3 that decision by adding this up or counting witnesses.
4 It's a very personal decision to everybody.. I think
5 you'd agree with that. Maybe the most difficult and
6 personal decision people could ever make.

7 JUROR NUMBER 46: Right.

8 MR. MCGUIRE: I mean, almost like a decision to
9 bring a child in the world, or what religion to raise
10 your child.

11 JUROR NUMBER 46: Um-hmm.

12 MR. MCGUIRE: And you would agree that a decision
13 like that should be respected, and that everybody would
14 be expected to have different individual moral
15 judgments. Is that a principle of law you could comply
16 with?

17 JUROR NUMBER 46: Yes.

18 MR. MCGUIRE: And respect?

19 JUROR NUMBER 46: Yes.

20 MR. MCGUIRE: And the way that works is, people --
21 in the penalty phase, the deck is actually kind of
22 stacked against the government. You know, to take
23 citizens off the street, put them in a -- in a courtroom
24 and ask them to take a human life, the deck is actually
25 kind of stacked against them. The only way that happens

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1 is if all twelve jurors agree that the death penalty is
2 the appropriate penalty beyond a reasonable doubt.
3 That's the only situation where they can have the death
4 penalty.

5 JUROR NUMBER 46: Okay.

6 MR. MCGUIRE: And now, the jury could decide that
7 life's appropriate, and everybody could agree on that,
8 too. And then, there's a third option, and that is
9 everybody can agree to disagree. Have their own
10 individual moral judgment. And the Judge would tell the
11 jury that you can vote for the life penalty for any
12 reason, no reason, and mercy. And somebody might just
13 say, you know, as I contemplate the rest of my life, I
14 don't want the black mark of having taken a human life,
15 and I'm just going to say no reason; I don't want to
16 vote for the death penalty for no reason.

17 JUROR NUMBER 46: Um-hmm.

18 MR. MCGUIRE: Could you respect somebody voting for
19 a life penalty for no reason?

20 JUROR NUMBER 46: Yes.

21 MR. MCGUIRE: Okay. And you know, there are a lot
22 of rules in Court. Some of them are for me. Some of
23 them are for the State. But they all -- and some of
24 them are for jurors. And -- and you have the rights of
25 the juror, and one of them is to be respected, and that

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1 all these proceedings are conducted with dignity. And
2 if -- the juror oath requires that, once somebody
3 reaches an individual moral judgment in a penalty phase,
4 that they have the duty and obligation to have that
5 vote, that voice, heard in court. And going back to
6 that person who might say I'm voting for life for no
7 reason, and they might not have a strong voice, if you
8 were in a situation in a jury room and dignity left the
9 room, and it became an unfair kind of effort to -- to
10 get someone to compromise, violate their oath, and
11 change their position, could you come to their aid and
12 maybe pass a note out to the Judge and say we need to
13 get back to fairness? If you saw things getting out of
14 hand and becoming unfair, could you pass a note out to
15 the Judge just saying things are getting unfair in here;
16 I just want to report that to you?

17 JUROR NUMBER 46: Um, yes, if it was be -- getting
18 unfair, and no one was doing anything about it, yeah.

19 MR. MCGUIRE: Sure. Right. Right. What I'm just
20 saying is that, it's just so different in the penalty
21 phase. It's such an individual decision-making process.

22 JUROR NUMBER 46: Right. Right.

23 MR. MCGUIRE: And you would expect people to
24 disagree and have their own different individual moral
25 judgment.

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1 JUROR NUMBER 46: Right.

2 MR. MCGUIRE: And some people are stronger than
3 others.

4 JUROR NUMBER 46: Right.

5 MR. MCGUIRE: And somebody -- and like the Judge
6 would tell you, if you could vote for life for no
7 reason, --

8 JUROR NUMBER 46: Right.

9 MR. MCGUIRE: -- somebody might not have a strong
10 voice or words. And if you saw people trying to get
11 them to compromise, so --

12 JUROR NUMBER 46: Right. I -- now --

13 MR. MCGUIRE: -- to violate their duty and
14 obligation to have that voice heard --

15 JUROR NUMBER 46: Right.

16 MR. MCGUIRE: -- in Court.

17 JUROR NUMBER 46: Right.

18 MR. MCGUIRE: You could come to their aid and
19 protect them.

20 JUROR NUMBER 46: Okay.

21 MR. MCGUIRE: And make sure that everybody
22 respected them.

23 JUROR NUMBER 46: Sure. Sure. Yes.

24 MR. MCGUIRE: And you can do that. One of the
25 rights you have is to pass out a note to the Judge.

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1 JUROR NUMBER 46: Okay.

2 MR. MCGUIRE: Normally, the foreman does it, but
3 you could just say, Mr. Foreman, pass a note out and
4 lets just tell the Judge we need to get back to
5 respecting everybody.

6 JUROR NUMBER 46: Right.

7 MR. MCGUIRE: Okay. That's all I have for you,
8 ma'am. Thank you.

9 JUROR NUMBER 46: Okay.

10 THE COURT: Thank you. Yes, sir.

11 MR. STONE: Ms. Bennett, hey. My name's Duffie
12 Stone. I just have a few questions. I read your
13 questionnaire, and I want to make sure I understand it.
14 There were -- in the questionnaire, one of the questions
15 was asking you to identify what type of juror you were.
16 and the first one was a juror that would always give the
17 death penalty. The second type would be somebody that
18 would never give the death penalty. And then, the third
19 type would be somebody that would take all the facts and
20 circumstances into consideration, aggravation, as well
21 as mitigation, in determining whether the appropriate
22 penalty should be life or death.

23 JUROR NUMBER 46: Right.

24 MR. STONE: And I believe you circled the 3. The
25 third type. Is that correct?

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1 JUROR NUMBER 46: I did. I did.

2 MR. STONE: And do you still believe that's your
3 situation?

4 JUROR NUMBER 46: Yes.

5 MR. STONE: Okay. And I understood some questions
6 earlier from the Defense as far as telling you what
7 about this situation, what about that situation. And I
8 understand as far as holding the defendant accountable,
9 but in the determination between life and death, you
10 would still take everything into consideration before
11 making that decision.

12 JUROR NUMBER 46: Yes.

13 MR. STONE: Thank you, ma'am. And again, I think
14 there's no right or wrong answers. I just wanted to
15 make sure I understood. One final question. If the
16 case was bad enough, could you give the death penalty?

17 JUROR NUMBER 46: To say that now, yeah, I -- I
18 think I could. I could.

19 MR. STONE: If the case was bad enough.

20 JUROR NUMBER 46: Yes.

21 MR. STONE: Yes, ma'am. Thank you, ma'am.

22 JUROR NUMBER 46: Thank you.

23 MR. STONE: Thank you.

24 THE COURT: All right, ma'am, I am going to ask you
25 just to step out for just a quick moment. We will bring

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1 you right back in.

2 JUROR NUMBER 46: Okay.

3 THE COURT: All right? I appreciate it.

4 JUROR NUMBER 46 LEAVES COURTROOM.

5 BAILIFF: Door's closed, your Honor.

6 THE COURT: All right. Mr. Stone. Thank you. You
7 can see the door. I can't.

8 MR. STONE: I can, and I apologize, but I wanted to
9 wait until it closed.

10 THE COURT: I keep thinking I need one of those
11 reflectors that you can actually see a blind eye.

12 MR. STONE: It was almost closed. She's qualified,
13 your Honor.

14 THE COURT: Thank you. Mr. McGuire.

15 MR. MCGUIRE: Your Honor, I'm actually going to
16 move that she be excused for cause, based on her answers
17 about mitigation. You know, when I was speaking to her
18 in plain terms about the background and characteristics
19 of the defendant, and just using plain English language,
20 she said that's just not relevant; you know, I might
21 want to blame my dad for something that I did, but I
22 don't think that's the way things should be. And in
23 essence, she said very clearly she would not consider
24 it, and she's just going to basically disregard all the
25 evidence in the penalty phase that we present.

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1 I think she's as close call, because she seems to
2 have some -- some reservations about the death penalty.
3 And the Court might think I would love this juror, but
4 the fact that she indicated that she would not consider
5 mitigation as relevant, to put her in the pool and to
6 ultimately seat her, if it came to that, it would be a
7 violation of Mr. Daise's *Sixth* and *Fourteen Amendment*
8 rights to an indifferent jury and a qualified jury in
9 this case.

10 COURT REPORTER: I'm sorry. *Fourth Amendment*
11 rights and what?

12 MR. MCGUIRE: *Fourteenth* and *Sixth Amendment*.

13 THE COURT: Yes.

14 MR. STONE: I don't believe that's what she said.
15 I think what she said was she would still hold him
16 accountable. She also answered in both my questions, as
17 well as yours, that she would take everything into
18 consideration. I'll also point out, your Honor, the
19 *State versus Cain*, in which a juror actually said that
20 the mitigation circumstances of age and background would
21 make no difference was still a properly qualified juror
22 taking everything into consideration whether or not they
23 were that Type 3 juror, which is exactly what she said,
24 not only on the record, but also in her questionnaire.

25 I think this is why going at those questions the

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1 way that the Defense is starting with basically setting
2 the juror up, is improper. I think what he's doing is,
3 he's tying these people's hands and giving them really
4 no option. Once she was explained, I understand, I'd
5 still hold him accountable, I think she even said life
6 in prison was a -- was a severe penalty. I think she's
7 qualified according to the law of our state.

8 THE COURT: All right. Well, I do think I asked
9 her as far as could she consider some mitigation in my
10 overall question, and she said she could consider it.
11 Again, I agree with you, Mr. McGuire, she would be a
12 very good juror for you. It's part of this just very --
13 it's a hard concept for these people to understand and
14 wrap their head around. I think you all are doing a
15 great job helping them understand it and bring it down
16 to terms that they can appreciate.

17 Again, I think this is something that a lot of
18 people aren't confronted with, and they really don't
19 know until they're actually there. So, I, respectfully,
20 I do think she is a qualified juror.

21 You all, let's go ahead and take a five-minute
22 break. I'm going to try to ask you to limit to it five,
23 so we can --

24 BAILIFF: You want to bring her back in for --

25 THE COURT: Sure. Mr. Young.

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1 MR. YOUNG: Can I ask one thing real quick.

2 THE COURT: Sure.

3 MR. YOUNG: They're called by -- or we're going to
4 be striking in the order that they're on this sheet, not
5 the order that we're talking to them in?

6 THE COURT: Right. We're keeping the order on the
7 sheet. Exactly.

8 MR. YOUNG: That's okay.

9 THE COURT: I'm just trying to move things along by
10 whoever's back there, yes.

11 MR. YOUNG: No, I -- I'm fine with doing that. I
12 just want to make sure that --

13 THE COURT: Yes. Let me ask you all, too -- yes,
14 Norman, we'll bring her back in. Sorry. Before we go
15 ahead and take a break. Sorry. We're all ready to go.
16 Yes. Five minutes. Bring her back in. Thank you.

17 JUROR NUMBER 46 ENTERS COURTROOM.

18 BAILIFF: You know what, ma'am, just stand right
19 here for a second.

20 THE COURT: Mrs. Bennett, I want to thank you for
21 being here this morning. We have deemed you to qualify
22 as the potential juror in the trial of this case. That
23 does not mean you are on the jury. It simply means that
24 I need to ask you to come back. And as our schedule is
25 working right now, I am not positive of the time for you

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1 all to come back. What I am going to tell you to do is
2 this. I am looking forward to you all returning at 9:30
3 on Monday morning. That is what I hope, and I hope to
4 be ready and able to go forward. However, Norman's
5 going to give you a phone number. I want you to call
6 that number after 6:00 o'clock Saturday night. It is
7 going to have a recorded message that's going to tell
8 you either to come back Monday morning at 9:30, or at a
9 different time; possibly, if we are really running
10 behind, on Tuesday. I just want you to simply follow
11 the directions. I will tell you that there will be
12 nothing on that machine before 6:00 o'clock Saturday
13 night, because I believe we're still going to be doing
14 exactly what we're doing here, in the process. All
15 right?

16 JUROR NUMBER 46: Okay.

17 THE COURT: But I appreciate it. I also need to
18 tell you, you are not to read anything, do any
19 independent research about this case. That would be
20 inappropriate. I also don't want you speaking about
21 this case in any way with anyone, and that includes
22 family or loved ones. All right? Thank you for being
23 here.

24 JUROR NUMBER 46: Thank you.

25 THE COURT: I'll see you on Monday morning. Thank

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1 you, ma'am.

2 JUROR NUMBER 46 LEAVES COURTROOM.

3 THE COURT: Jody, if you'll just tell them we are
4 taking a very quick five-minute break.

5 BAILIFF: I already told them.

6 THE COURT: Thank you, you all. I appreciate it.
7 And make sure, Jody, that they are in the jury assembly
8 room, and not standing in the hall. Okay? Because the
9 attorneys, I'm sure, are going to go that way. Okay?

10 MR. STONE: Thank you.

11 THE COURT: Thank you.

12 OFF THE RECORD 10:45 A.M.

13 BACK ON THE RECORD 10:50 A.M.

14 BY THE COURT:

15 THE COURT: Is the State ready to go?

16 MR. STONE: Yes, ma'am, State's ready.

17 THE COURT: Defense ready to go?

18 MR. MCGUIRE: Yes, ma'am.

19 JUROR NUMBER 105 ENTERS COURTROOM.

20 THE COURT: Who are we bring in first, you all? Is
21 this Ms. Caruso? Yes? Come on in, Ms. Caruso. Right
22 around here.

23 BAILIFF: Jessica Caruso.

24 THE COURT: Thank you. Come on around. How are
25 you?

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1 JUROR NUMBER 105: Very well. Thank you.

2 THE COURT: Good morning.

3 JUROR NUMBER 105: Good morning. Nice to see you.

4 THE COURT: Have a seat, please. Thank you. All
5 right. Ms. Caruso, welcome again. I need to remind you
6 that you are under the oath that you took yesterday. Is
7 that agreeable to you?

8 JUROR NUMBER 105: Yes, ma'am.

9 THE COURT: Very good. I want to explain a few
10 things before I turn it over to the attorneys, just to
11 make sure you understand what we're doing. They are
12 required and entitled, certainly, to ask questions, but
13 I want to make sure you understand what we're doing and
14 the process we're going through.

15 As you understand, this is a capital case, where
16 Mr. Daise is charged with two counts of murder and one
17 count of assault with intent to kill. And in this case,
18 the State is seeking the death penalty. I want to make
19 sure you understand that this trial is bifurcated. That
20 means there are two parts to the trial. Whatever jury
21 we choose will hear both parts, but the first part of
22 the trial is simply to determine whether or not the
23 defendant is guilty or not guilty of the charges.

24 That's the only thing we would take up at that point.

25 If, in fact, he is found guilty, then we would go

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1 to a second phase, which would be the sentencing phase
2 of the trial for the jury to consider. All right? And
3 I want you to understand that, if he is found guilty of
4 murder, and then we go to that sentencing phase, if the
5 State is able to prove aggravating factors, then, the
6 jury can consider whether or not the defendant should
7 receive either the death penalty or life imprisonment
8 without parole. Those would be the only two options, if
9 the State were able to prove those aggravating
10 circumstances.

11 What I want you to understand is that, even if the
12 jury found the defendant is guilty, and the State has
13 proven their aggravating circumstances, the jury is not
14 required ever to impose the death penalty. Again, that
15 is an individual choice. And for one reason or another,
16 or no reason whatsoever, or simply out of mercy, you
17 would be able to vote for a life-without-parole sentence
18 versus a death penalty sentence. And I want to make
19 sure you understand and appreciate that.

20 JUROR NUMBER 105: Okay.

21 THE COURT: Also, I will tell you that, in this
22 case, again, the definition of murder -- and not
23 everyone really knows what that is. We all talk about
24 it as a concept. But under our law, there are elements
25 to murder. And simply put, it's just the intentional

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1 killing of another person with malice aforethought. And
2 malice aforethought is kind of an evil intent or
3 purpose. And again, I just want to make sure that you
4 understand and appreciate that just, even if that is
5 proven, again, it will be up the a jury to decide
6 whether or not -- what the sentence that is appropriate.
7 Do you understand that?

8 JUROR NUMBER 105: Yes, ma'am, I do.

9 THE COURT: All right. I also want to ask if
10 you've had an opportunity to look at the witness list
11 back there in the assembly room. Is that correct?

12 JUROR NUMBER 105: I did.

13 THE COURT: And do you know some persons there?

14 JUROR NUMBER 105: Not personally, but I just know
15 -- I've lived in Bluffton for ten years, and you just
16 kind of get to know names. And in February, I got some
17 property stolen out of my vehicle, so I had to be in
18 contact with the local police, and talked to a few
19 people. So, in that regard, yes, I did jot some numbers
20 down. But personally, any contact with them on a
21 regular basis, no, ma'am.

22 THE COURT: Okay. Ms. Caruso, you pushed over a
23 what seems to be a note or something? Is that --

24 JUROR NUMBER 105: Oh. This is the list.

25 THE COURT: That is the list of the people you may

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1 know.

2 JUROR NUMBER 105: Yeah.

3 THE COURT: That's all right. Why don't you go
4 ahead and just tell me who that you're familiar with and
5 what is the relationship. I need to know if you have a
6 business, personal, social relationship; if it's someone
7 that you have over to dinner; or the relationship is.

8 JUROR NUMBER 105: Nothing like that. I mean, Mr.
9 P.J. Tanner, was a girl that I went to high school with,
10 that was her uncle. And Mr. Rivers, there's a girl, I
11 was in her wedding; that was her former husband's
12 brother. Like that sort of thing.

13 THE COURT: Okay.

14 JUROR NUMBER 105: But I -- I don't know.

15 THE COURT: No one that you converse with on a
16 daily basis?

17 JUROR NUMBER 105: No, I wouldn't know them if I
18 passed them in the parking lot.

19 THE COURT: Okay. Anyone else on that list that
20 you wrote down in regards to?

21 JUROR NUMBER 105: No, ma'am.

22 THE COURT: Okay.

23 JUROR NUMBER 105: I mean, there's another name
24 that I -- a number that I jotted down, but they just had
25 me jot the number, so I don't remember which name

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1 exactly.

2 THE COURT: And that's fine.

3 JUROR NUMBER 105: That's all.

4 THE COURT: You are fine. Again, I want to make
5 sure, if these people do end up being witnesses in the
6 case, they may or may not, I want to make sure that,
7 based on you knowing of them and through other friends,
8 that you aren't going to give their testimony any undue
9 weight just because --

10 JUROR NUMBER 105: No.

11 THE COURT: Okay. And I think you've said that you
12 didn't know who they were. Ms. Caruso, additionally,
13 there has been some publicity on this case. I need to
14 know whether or not you have seen anything on T.V., read
15 anything, done any independent research, or know or have
16 any independent knowledge about the facts of this case.

17 JUROR NUMBER 105: When I received the paperwork in
18 the mail, I was away on vacation at that time. And when
19 I came back, my -- I live with my parents, and my dad
20 saw that it was from the county, and thought that I was
21 in trouble. So, he opened it and brought it to my
22 attention, and I Googled the case.

23 THE COURT: Okay.

24 JUROR NUMBER 105: Forgive me.

25 THE COURT: And when you Googled it, what did you

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1 find?

2 JUROR NUMBER 105: Just basically the same synopsis
3 that was in the paperwork. And then, went down like
4 previous charges that were involved with the gentleman.
5 And to be honest, I just glanced it over. I didn't
6 really read into it at all. I was like, oh, okay,
7 great.

8 THE COURT: Just so you understand, and I want to
9 make sure we're clear, you understand that anything that
10 would be in the news or reports --

11 JUROR NUMBER 105: It's whatever. The Internet's
12 the Internet.

13 THE COURT: It isn't factual.

14 JUROR NUMBER 105: Right. And I didn't -- right.

15 THE COURT: And it wouldn't be for you to consider
16 it in any way, shape, or form.

17 JUROR NUMBER 105: Correct.

18 THE COURT: You will have everything you need, if
19 you're chosen as a juror, presented to you here in this
20 courtroom, and that would be the only proper things for
21 you to consider. Do you understand that?

22 JUROR NUMBER 105: Yes, ma'am, I do.

23 THE COURT: And are you comfortable that you can
24 place aside anything that you may have read when you
25 Googled, and decide the case based on what you hear in

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1 the courtroom?

2 JUROR NUMBER 105: Sure.

3 THE COURT: Okay. And you have no qualms about
4 that whatsoever?

5 JUROR NUMBER 105: Right. It was just a newspaper
6 article from the time of it happening.

7 THE COURT: Okay.

8 JUROR NUMBER 105: And I just skimmed over.

9 THE COURT: All right. Well, I appreciate that.
10 Now it's the opportunity for the lawyers to go ahead and
11 ask you some questions. Mr. McGuire.

12 MR. MCGUIRE: Thank you, your Honor.

13 THE COURT: Yes, sir.

14 MR. MCGUIRE: Good morning, Ms. Caruso.

15 JUROR NUMBER 105: How are you doing, sir?

16 MR. MCGUIRE: I'm good. Did I pronounce that
17 right?

18 JUROR NUMBER 105: Yes, sir, you did. Thank you.

19 MR. MCGUIRE: Thank you. I'm going to expound just
20 a little bit on what the Judge told you. The kind of
21 case that brings us here is what's called a capital
22 case. The State's asking for the death penalty. The
23 Judge defined the definition -- defined murder for you
24 as the intentionally killing with malice aforethought,
25 acting with an evil intent.

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1 And but, for the State to ask for the death
2 penalty, it has to be murder plus something, plus
3 something more than that. That's called aggravation.
4 It has to be an aggravated murder. And you've already
5 been exposed to some publicity, so you probably know
6 what that is, which is, it's a double homicide. Two
7 people were killed, shot and killed, and one of them, a
8 four-year-old child. We're not talking about an
9 accident or self-defense or voluntary manslaughter.
10 We're talking, in layman's terms, somebody who is sane,
11 knew what they were doing, and meant to kill two
12 innocent people, did it deliberately, did it with an
13 evil intent.

14 JUROR NUMBER 105: Maliciously, I think was the
15 word that was used.

16 MR. MCGUIRE: Maliciously, exactly. You have a
17 good memory. That's exactly the word that was in the
18 questionnaire. In that situation, what are your
19 thoughts about the death penalty as a penalty?

20 JUROR NUMBER 105: I have the utmost respect for
21 the legal system, and I understand it's critical for a
22 jury -- for justice to be brought forth. However, I
23 believe that God is the jury and the judge, and it
24 wouldn't suit well --

25 MR. MCGUIRE: Don't be nervous. Sure.

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1 JUROR NUMBER 105: -- or bring peace to my heart --

2 MR. MCGUIRE: Okay.

3 JUROR NUMBER 105: -- to be a deciding factor in
4 this particular situation involving capital punishment,
5 and that's the truth.

6 MR. MCGUIRE: Okay. I'm going to help you out here
7 a little bit. It sounds like these are some deeply held
8 beliefs that you have, and that you could never
9 contemplate voting for the death penalty and voting to
10 take a human life. Okay.

11 THE COURT: Is that a yes for the record, Ms.
12 Caruso? I know. And take a deep breath. You are
13 absolutely fine, and I don't want you worried. We've
14 said there are no right or wrong answers here, and I
15 want you to be perfectly candid. Okay? So, we're just
16 going to take a moment. You're fine.

17 You tell us when you're ready. Okay? Okay?

18 JUROR NUMBER 105: Excuse me.

19 MR. MCGUIRE: That's okay. What I'm going to do
20 ma'am, is just help you get out of here as quick as
21 possible. I don't think I can change your mind about
22 that; can I?

23 JUROR NUMBER 105: I'm just not fit for that,
24 and --

25 MR. MCGUIRE: Sure.

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1 JUROR NUMBER 105: -- I wish that I could help.

2 MR. MCGUIRE: Sure. What I'm going to do, ma'am,
3 is get you to the end of this really, really quick,
4 because we have to have just a record of why -- I can
5 tell you this. You're not going to be a juror on this
6 case. Okay?

7 JUROR NUMBER 105: Okay.

8 MR. MCGUIRE: What I want to do is, I'm just going
9 to help make a record as to why you're going to be
10 excused.

11 JUROR NUMBER 105: Go ahead.

12 MR. MCGUIRE: So, all your answers are right.
13 Okay?

14 JUROR NUMBER 105: Okay. I'm done crying.

15 MR. MCGUIRE: You're fine. So, you could never
16 vote for the death penalty, that's a deeply held
17 conviction.

18 THE COURT: That's a no for the -- I'm sorry.

19 JUROR NUMBER 105: No, I could not.

20 THE COURT: It's all right. It's okay.

21 MR. MCGUIRE: There's nothing I could tell you to
22 change your mind, and you would never vote for the death
23 penalty in any case. Okay.

24 THE COURT: That's a no for the record?

25 JUROR NUMBER 105: No, sir.

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1 THE COURT: Okay.

2 JUROR NUMBER 105: I could not.

3 MR. MCGUIRE: All right. I think that the
4 Judge can go ahead and make a decision that -- and those
5 are perfectly -- those are admired beliefs. Okay? And
6 I respect them a lot. I'd like you to be on the jury.
7 I'm not going to get you. But she's going to tell you
8 in a second that you're excused and you're free to go,
9 and I just want you to walk out of here knowing that we
10 all respect your views.

11 JUROR NUMBER 105: Okay. If it was a different
12 situation with different circumstances that didn't
13 involve capital punishment, call me back, I'd love to
14 contribute. But for this particular situation.

15 MR. MCGUIRE: The Judge might take you up on that.

16 THE COURT: I might take you up on that, Ms.
17 Caruso, by the way. So, I appreciate that.

18 MR. MCGUIRE: Thank you, ma'am.

19 THE COURT: Mr. Stone, you want to just talk to her
20 very briefly?

21 MR. STONE: Mr. Caruso, I'm Duffie Stone. Thank
22 you for your honesty, ma'am. Thank you.

23 JUROR NUMBER 105: Thank you.

24 MR. STONE: Nothing further, your Honor.

25 THE COURT: Ms. Caruso, thank you so much for being

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1 here.

2 JUROR NUMBER 105: Thank you.

3 THE COURT: You did, again, exactly what you were
4 supposed to do. We appreciate it, and I am going to
5 take you up on it. I am going to have you come back.

6 JUROR NUMBER 105: Okay.

7 THE COURT: Because I think you'd be a wonderful
8 juror, certainly, in a different type of case. We
9 understand how difficult this is. That is why this
10 process is so important. What you just said is exactly
11 why we're doing this and why we're taking the time.

12 JUROR NUMBER 105: Okay. Thank you.

13 THE COURT: And we appreciate it, and we respect
14 you, and I hope I run into you over in Bluffton or on
15 the Island.

16 JUROR NUMBER 105: Okay.

17 THE COURT: I think where you work, I probably
18 will, so.

19 JUROR NUMBER 105: Yeah, come in and get a round of
20 golf or a lunch on me.

21 THE COURT: Very good. All right. I'll go ahead
22 and excuse you, Ms. Caruso. Thank you, honey.

23 JUROR NUMBER 105: Thank you so much.

24 THE COURT: Thank you. Ms. Caruso, I also need to
25 ask that I can't have you talking to anyone that's out

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1 there.

2 JUROR NUMBER 105: Yes, ma'am, I understand.

3 THE COURT: Thank you.

4 BAILIFF: Need to get your badge, ma'am.

5 JUROR NUMBER 1 ENTERS COURTROOM.

6 THE COURT: Okay. Come on in, sir.

7 JUROR NUMBER 1: David Adams.

8 BAILIFF: This way, sir, please.

9 THE COURT: Mr. Adams, right around here, sir.

10 BAILIFF: If you'll just go right up and take the
11 stand, sir.

12 THE COURT: Come on around, Mr. Adams.

13 JUROR NUMBER 1: Good morning.

14 THE COURT: All right. Good afternoon -- or, it's
15 still good morning, believe it or not. I feel like I've
16 been here awhile. It's good to see you, Mr. Adams.

17 JUROR NUMBER 1: Good morning to you.

18 THE COURT: Sir, I want to remind you that you are
19 under the oath that you took yesterday. Is that
20 agreeable to you?

21 JUROR NUMBER 1: Yes.

22 THE COURT: I appreciate that, sir. And again, I
23 want to make sure you understand and appreciate that
24 this is a capital case; that the defendant in this case
25 has been accused of a double homicide, murdering two

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1 people; and also an assault and battery with intent to
2 kill.

3 And I want to make sure you understand and
4 appreciate the trial in this case would be bifurcated,
5 which means there would be two parts to the trial. The
6 first would be simply to determine the guilt or
7 innocence of the defendant, as to whether or not this
8 occurred, and if he was the person that committed it.
9 And then, if, in fact, the jury found that he was, in
10 fact, guilty, it would then go to what's called a
11 sentencing phase, where you would determine whether or
12 not the appropriate punishment would be life or death.

13 Again, and life, I want to make sure you understand
14 and appreciate, would be life imprisonment without the
15 possibility of parole. I need to jump -- looking at
16 your questionnaire very quickly if I may, do you know
17 anyone that's involved in this case, Mr. Adams?

18 JUROR NUMBER 1: Other than the people I outlined
19 yesterday, and I think you indicated that these are not
20 the same Daise's that I know.

21 THE COURT: Okay. I just wanted to make sure. And
22 we had spoken about that briefly, and I do have my notes
23 on that.

24 JUROR NUMBER 1: Okay.

25 THE COURT: But it isn't the same Daise family, and

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1 I want to make sure you understand and appreciate that.

2 JUROR NUMBER 1: Okay. And that's what you
3 indicated yesterday, so.

4 THE COURT: Very good. All right, sir. Again, I
5 also want to make sure, sir, that you realize that, if
6 we do go to the sentencing phase, the Defense, although
7 not required to, is likely to put up mitigating
8 evidence. Things like background in regards to the
9 defendant's life, his history, his experiences. And if
10 I ordered you and told you that you must consider any
11 mitigating circumstances in your decision of rendering a
12 verdict of life imprisonment without parole or death,
13 that you could consider that and that you could follow
14 that. Can you do that?

15 JUROR NUMBER 1: That would be after he's found --
16 if he's -- in the fact he's found guilty?

17 THE COURT: Yes, sir.

18 JUROR NUMBER 1: I would still be on the same jury?

19 THE COURT: Yes, sir.

20 JUROR NUMBER 1: And then asked to consider
21 mitigating circumstances after the fact?

22 THE COURT: Absolutely. In determining the
23 sentence, because, again, in this case, the jury
24 determines what the sentence is of a defendant. And if
25 I ordered you that you must consider it and look at it;

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1 and even then considering it, then, of course, it is
2 your personal decision as an individual juror what you
3 feel is appropriate in sentencing that. And again, you
4 could vote for, you know --

5 JUROR NUMBER 1: Sure.

6 THE COURT: -- you could vote for --

7 JUROR NUMBER 1: I think I could.

8 THE COURT: -- life imprisonment for absolutely no
9 reason at all, as well. It could simply be mercy.

10 JUROR NUMBER 1: Sure. I understand. I think it's
11 just a matter of consideration.

12 THE COURT: Absolutely.

13 JUROR NUMBER 1: Yes, I think I could consider
14 that.

15 THE COURT: You could do that.

16 JUROR NUMBER 1: I can consider that.

17 THE COURT: All right, sir. Well, I'm going to go
18 ahead and turn it over to the attorneys right now.
19 They're going to ask you some questions, sir. There are
20 no right or wrong answers. I simply ask that you be
21 candid and honest, and that is all we can ask of you.
22 Okay? All right. Mr. Adams, I'm going to turn it over
23 to Mr. McGuire. He's going to ask you a few questions.

24 MR. MCGUIRE: Good morning, Mr. Adams.

25 JUROR NUMBER 1: Good morning.

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1 MR. MCGUIRE: My name's Bill, Bill McGuire. I'm
2 one of the lawyers on the case. And I'm going to just
3 take it exactly kind of where the Judge left off. I'm
4 going to expound a little bit on what she said. So
5 we're communicating clearly -- and if we're not, it's
6 all my fault. I want to start at the beginning, which
7 is the definition of murder. The Judge said it was the
8 intentional unlawful killing of a another human being
9 with malice aforethought. The malice part means acting
10 with evil intent. The kind of case it brings us -- did
11 you have a comment about that?

12 JUROR NUMBER 1: Murder with --

13 MR. MCGUIRE: Obviously, the evil.

14 JUROR NUMBER 1: Right.

15 MR. MCGUIRE: It's a little redundant. And what it
16 means is, it takes it out of what's just a homicide
17 realm. There are homicides that are not murder. Self-
18 defense, voluntary manslaughter, that sort of thing.
19 So, the malice, the evil part, is what takes it from
20 homicide to murder. That's why we have to put the evil
21 part in there.

22 But the kind of case that brings us here today, a
23 capital case, is where the State has to ask for the
24 death penalty, they have to show something more. They
25 have to show what's called aggravation, and aggravated

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1 circumstance, and we have 21 of them in South Carolina.
2 Killing a police officer in the line of duty, a murder
3 in conjunction with rape or kidnaping, those are some.

4 But I'm going to ask you about just the specific
5 ones that the State has alleged today. And that is that
6 two people were killed. It's a double homicide, a
7 double murder, and one of the victims is a child. In
8 that situation, what are your thoughts about the death
9 penalty as a potential punishment?

10 JUROR NUMBER 1: Academically, it's appropriate.
11 Philosophically, I -- I don't know that -- I don't know
12 that I am equipped to make that decision.

13 MR. MCGUIRE: Okay. You've actually drawn a
14 distinction that comes up very often, which is you
15 have --

16 JUROR NUMBER 1: Uncertain.

17 MR. MCGUIRE: Right. You have -- because people
18 have their own sort of laws or rules that they follow,
19 and then you have the law of the land. What I'm asking
20 is, assuming you were picked and you were on the jury,
21 and the Judge said that the law would require you to
22 consider all the evidence in aggravation, mitigation,
23 and fairly consider both punishments, both the death
24 penalty and the life penalty, could you do that? Could
25 you follow that law?

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1 JUROR NUMBER 1: Yes, I can follow that law, as
2 everyone has, I'm certain. You've been a lawyer for
3 awhile, so you've had a chance to think about these
4 sorts of things, and how you -- how you came to the
5 conclusion, and how you make that. But as we weigh
6 those things, consideration is greatly influenced by
7 your belief.

8 MR. MCGUIRE: Absolutely.

9 JUROR NUMBER 1: So, what -- what do you believe,
10 and how would you then consider the things that you are
11 asked or directed to --

12 MR. MCGUIRE: Sure.

13 JUROR NUMBER 1: -- to consider, I mean, it's --
14 it's foregone, right?

15 MR. MCGUIRE: I think we -- I think what we're
16 agreeing on is that -- that as a potential juror, you
17 bring with you your entire walk in life, your
18 experiences, your values, everything that you hold
19 important. Your mores, your morals, principles, and you
20 can't just leave that at the front door. I agree with
21 you. And the law, as a lawyer and studying the law,
22 there are a lot of cases about the death penalty. And
23 the law actually says that it would be improper to have
24 a system where we empaneled juries, death penalty
25 juries, that are predisposed to the death penalty,

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1 because that would be a jury designed to convict and
2 kill, and that's wrong. That's actually unlawful in
3 this country. And we actually expect people like you to
4 have scruples and reservations about the death penalty.
5 You're actually one of the jurors who would actually
6 tilt things towards fairness in my view, and we're just
7 going to see if you can be fair and qualified. Okay?

8 Now, part of what I want you to understand, and a
9 lot of people have a lot of misconceptions, and you seem
10 far more sophisticated than a lot of people that I talk
11 to you in this context. A lot of people show up, and
12 they think the death penalty might be automatic; that
13 there might be a situation where the law would require
14 them or force them to vote for the death penalty. Do
15 you know that, that's actually not the case?

16 JUROR NUMBER 1: I guess I do not know.

17 MR. MCGUIRE: Okay. Well, a lot of people think
18 that, if it's a capital trial, and the State's asking
19 for the death penalty, and if they prove, you know, a,
20 b, and c, then, the only verdict on the sheet is the
21 death penalty. And that's actually not true, and you
22 would never ever be in that situation, and it sounds
23 like you know that now. Would it be fair to say yes?

24 THE COURT: Is that correct, Mr. Adams?

25 JUROR NUMBER 1: Yes. I'm sorry.

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1 THE COURT: I'm sorry, Mr. Adams. You have to say
2 yes for the record.

3 JUROR NUMBER 1: Okay. All right. Yes. Sorry.

4 MR. MCGUIRE: And so, I'm going to explain just
5 that a little bit, and see if you can bring your beliefs
6 to court and be a fair and qualified juror.

7 So, if you were to get through the first phase,
8 which is the guilty/not guilty, did the person do it,
9 that part, if the jury was to convict of the charges,
10 murder, then there would be a penalty phase. And the
11 penalty phase is very, very different from any other
12 case, and that's because the jurors become individuals.
13 They don't have to speak with one voice. They don't
14 have to be unanimous. It becomes an incredibly
15 individual process.

16 And the way it works is that the Judge would tell
17 every juror they can vote for life for any reason, no
18 reason, or mercy alone. Did you know that, that's how
19 it worked?

20 JUROR NUMBER 1: I don't know if I knew it as a
21 fact. I mean, but I think it's something I just
22 presumed.

23 MR. MCGUIRE: Kind of had a guess or feeling or
24 something like that?

25 JUROR NUMBER 1: Sure. Sure. Yes.

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1 THE COURT: Thank you.

2 MR. MCGUIRE: The Judge and I will remind you about
3 the yes part.

4 JUROR NUMBER 1: Thank you.

5 MR. MCGUIRE: And the state of South Carolina is
6 always satisfied with a life verdict in any capital
7 case, any case, this case, the worst case. It's never
8 automatic. And part of that individual process is that
9 the Judge would describe it to the jury as every juror
10 is asked to reach their own individual moral judgment.
11 And you would expect twelve people from twelve different
12 places with twelve different walks of life to have a
13 different individual moral judgment.

14 And in a capital case, the penalty phase, the jury
15 can just actually agree to disagree. That's the
16 sentencing option. It can be unanimous for one penalty;
17 unanimous for the other; and then the other, the third
18 option is agree to disagree. The Court would take the
19 case and sentence, and the case would end. Did you know
20 that?

21 JUROR NUMBER 1: I did not know that. However, I'm
22 going to let you --

23 MR. MCGUIRE: No, no. I want you to ask me a
24 question.

25 JUROR NUMBER 1: You know, that sounds so academic.

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1 If I -- if -- if -- if you -- if you steal a piece of
2 candy from my store, and you walk out with a piece of
3 candy, whether you were hungry or not, you're outside
4 the store and you have the candy. Can I say that you
5 are hungry and it's okay? That's -- you're hungry, yes,
6 I understand that. But you chose to take the candy.

7 MR. MCGUIRE: Okay.

8 JUROR NUMBER 1: And you're outside my store.

9 MR. MCGUIRE: So, --

10 JUROR NUMBER 1: So now, what do we -- what do I --
11 what are my options now that you have the candy outside
12 of the store? And your intent, your primary intent, was
13 to feed yourself, maybe, but your secondary intent is to
14 take that candy. So, you know, I don't -- it just seems
15 so -- so much I can exercise.

16 MR. MCGUIRE: And it's a difficult one. But let me
17 just ask you straight out. If the State was to prove a
18 case in aggravation, and --

19 THE COURT: Thank you, sir.

20 JUROR NUMBER 1: -- and if it was bad enough that
21 it resonated with you and eleven other people, perhaps,
22 where you actually felt sort of in your gut that, to
23 comply with the law, that the death penalty was the
24 appropriate punishment, could you vote for it?

25 JUROR NUMBER 1: With difficulty, yes. I would --

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1 I would vote for it.

2 MR. MCGUIRE: Okay. And but knowing you knew you
3 would never have to.

4 JUROR NUMBER 1: How would I know that?

5 MR. MCGUIRE: I'm telling you.

6 JUROR NUMBER 1: Okay.

7 MR. MCGUIRE: That's the law, and the Judge will
8 tell you. I'm telling you now, but she'll tell you
9 later. Anybody on the jury can vote for life penalty
10 for any reason, no reason, or just mercy. That's always
11 -- and the no reason part is always saved to the juries.
12 It's always for them, you know, because it would be
13 wrong to take citizens off the street, and make them
14 come -- make them come here, and then make them engage
15 in this terribly difficult process. They might just
16 want to contemplate the rest of their life not having
17 killed another human being, and they can just say I
18 don't want to it for not reason, and that's okay. Is
19 that a principle that you're okay with?

20 JUROR NUMBER 1: I understand the principle, yes.

21 MR. MCGUIRE: Okay. Okay. And what I want to talk
22 to you now about is that, again, the jury can just agree
23 at the end of the day to disagree.

24 JUROR NUMBER 1: To disagree, right.

25 MR. MCGUIRE: And the case would end. The Judge

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1 would take the case, and it would end, and it would
2 never have to be tried again.

3 JUROR NUMBER 1: And the case would end, and that
4 would be justified for all?

5 MR. MCGUIRE: I mean, that's, you know, to use kind
6 of a colloquialism, you know, the Judge is in a position
7 of awesome responsibility. The Judge would hear the
8 entire case. And if the -- if the Judge, to her
9 satisfaction, believed that the jury deliberated,
10 engaged in civil discourse, and they ultimately ended to
11 not be able to agree unanimously, either one, then she
12 would take the case and sentence. Okay?

13 And obviously, with regard to the sentencing
14 options and having these individual moral judgments and
15 every individual juror being able to reach that
16 individual decision, it's described in the law once a
17 jury reaches their individual moral judgment, they have
18 a duty and obligation to make sure that voice, that
19 vote, is heard in court.

20 Some people are stronger than others. Some people
21 are not very good at voicing their opinion or defending
22 them. I can tell you are. And what I'm -- what I'm
23 asking you now -- is this a bad question? It's very
24 wordy. I'm kind of rambling a little bit. But there
25 are a lot of rules in court, and some of them are for

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1 me, some of them are for the Judge, and but some are for
2 you as a juror.

3 You have rights as a juror. And one is that, that
4 entire proceeding be conducted with dignity and respect.
5 And we expect civil discourse. But if things got
6 unfair, and somebody tried to get somebody to abandon
7 their own individual moral judgment, could you pass a
8 note out to the Court saying someone is being bullied
9 back here?

10 JUROR NUMBER 1: Oh, sure.

11 MR. MCGUIRE: And I mean, you strike me as the kind
12 of person who could come to the aid of somebody who's
13 weaker and maybe not able to defend themselves, and you
14 could make sure they're entitled to respect.

15 JUROR NUMBER 1: I think I could do that. Will the
16 -- will the jury be -- will they not be monitored? Will
17 there be no one in the room to --

18 THE COURT: No one would be in the room. It is
19 strictly the jury. That is just part of our time-
20 honored system is that no one invades the province,
21 including me, of that jury room, ever.

22 MR. MCGUIRE: And because things can be very
23 emotional in these types of cases, that's why we talk
24 about it here, up front, is to make sure of that.
25 Because the Judge would require every juror to comply

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1 with their oath. And the law is, once they reach that
2 individual moral judgment, they have to stay there.
3 They can't compromise for the sake of ending the case
4 early or unanimity or going with the majority. Do you
5 understand that?

6 JUROR NUMBER 1: I understand that, but you know,
7 if -- I think I'm poisoned, because I think I've come to
8 a conclusion already about the guilt or innocence.

9 MR. MCGUIRE: And based on what you've heard, it
10 sounds like you -- let me ask you this. Based on
11 everything you've seen, heard, even just people talking
12 around your business or on the street or socially; those
13 are things outside the courtroom, and those people don't
14 have a front-row seat to the case; and they all might
15 have their opinions; they all might have feelings, but
16 none of it enters the door here; and the Judge would
17 tell you that the only thing the jury could use to
18 decide the case would be what comes from the witness
19 stand, physical evidence entered into evidence, and
20 testimony; and you would have an absolute front-row seat
21 to all of that; can you tell the Judge that, that's how
22 you would decide the case, based on the evidence?

23 JUROR NUMBER 1: Based on our conversation earlier,
24 I mean, I'm going to bring those feelings with me, so.

25 MR. MCGUIRE: Sure. But can you --

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1 JUROR NUMBER 1: And again, academically, yes. I
2 mean, you would think that, given the boundaries, I
3 mean, you know, that we'd be able to consider the
4 information we're given here, and at the sentencing
5 phase, and mitigating circumstances may be something you
6 can consider. But yes, academically, I can do that, I
7 think. But.

8 THE COURT: Mr. Adams, I think the distinguishing
9 factor maybe we need to make is that we expect you to
10 come with your own beliefs, morals, and values. We
11 expect that and we know you will come in with your
12 certain views on things like the death penalty. But
13 what we want to make absolutely sure is, is that you
14 have not pre-judged this case. Because as you know,
15 anything you may have heard from someone else, anything
16 you may have seen in the paper or anything along those
17 lines, is not factual. It is not appropriate. And I
18 would instruct any juror that they are to determine the
19 case based on the evidence and the testimony that they
20 hear in this courtroom. And that is important. And
21 that would be an order from the Court that you would
22 have to be required and able to follow. If you weren't
23 able to follow that, then, we would have a problem.

24 And again, this is not me imposing or anyone
25 imposing any morals or beliefs on you. I'm talking

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1 about factual evidence in this case to determine what
2 you believe is appropriate. And I need to make sure you
3 understand the distinction. Because again, we are not
4 pushing, or no one is trying to tell you what you
5 morally should or should not do. I'm talking about that
6 you can confine your consideration of this case to what
7 is presented in the courtroom, leaving behind anything
8 you may have heard about the case in the newspaper, or
9 someone talking, or anything along those lines. Again,
10 they don't know. You are going to have better
11 information than anyone.

12 And when Mr. McGuire talks about a front-row seat,
13 that's what he's talking about. You are going to have
14 the only good information. And again, that's why we put
15 it to twelve jurors to determine it, that have all the
16 information.

17 Do you understand? I'm thinking we're mixing up
18 the difference between factual evidence and morals and
19 beliefs and values. Do you understand?

20 JUROR NUMBER 1: I'm not confident that I wouldn't
21 be spending the entire trial convincing myself that what
22 I believe already is not true, and you can spend your
23 time trying to convince me that he's not guilty.

24 MR. MCGUIRE: Well, let me pick it up. I can tell
25 you --

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1 JUROR NUMBER 1: Is that -- I mean, in my mind,
2 that wouldn't be fair to you.

3 MR. MCGUIRE: Sure. And I'm just going to ask you
4 directly. You've heard -- I'm guessing, you tell me if
5 I'm wrong. What you're talking about that you've heard
6 elsewhere, you've heard people's opinions who know the
7 victim's family, and they've just told you what they
8 think. Is that right?

9 JUROR NUMBER 1: Yes.

10 MR. MCGUIRE: Okay. And you haven't -- you have no
11 idea about the evidence in the case, the actual
12 evidence.

13 JUROR NUMBER 1: No, because I haven't had that
14 opportunity, right?

15 MR. MCGUIRE: Exactly. And what I'm telling you
16 is, about that front-row seat, we are going to -- we are
17 going to put on a case and challenge the State's
18 evidence, where I'm confident that I'm going to be
19 standing in front of you telling you that a verdict of
20 not guilty is not just because I'm asking for it; it's
21 not for because I'm asking for it; but the evidence
22 supports it and demands it. I'm not actually concerned
23 that you've heard people's opinions about, well, they
24 think he's guilty. I'm actually not worried about that.
25 I'm confident in what we have. And if you saw it, if

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1 you saw evidence presented in court, physical evidence,
2 shoes, sweatshirts, ballistics evidence, that sort of
3 thing, forensic evidence. Can you tell the Judge that
4 is what you would base your decision on, the evidence
5 and testimony.

6 JUROR NUMBER 1: I'm confident that -- that would
7 influence my decision, yes.

8 MR. MCGUIRE: Okay. And that would be the basis of
9 your decision.

10 THE COURT: Thank you.

11 MR. MCGUIRE: Okay.

12 COURT REPORTER: Is that yes?

13 JUROR NUMBER 1: Yes. I'm confident that I can --
14 that evidence would help -- help me base my decision.

15 MR. MCGUIRE: I'm going to ask you now, do you have
16 any questions from me?

17 JUROR NUMBER 1: Is this the end of your session?

18 MR. MCGUIRE: It might not be.

19 JUROR NUMBER 1: Okay.

20 MR. MCGUIRE: We'll see.

21 JUROR NUMBER 1: No, I don't have any questions.

22 No, I mean, I don't have questions for you right now.

23 MR. MCGUIRE: Okay.

24 THE COURT: Okay.

25 MR. MCGUIRE: Let me take one second if I could.

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1 THE COURT: Okay.

2 JUROR NUMBER 1: I'm not trying to be difficult.

3 MR. MCGUIRE: Mr. Adams, that is the end of my
4 questions. I've enjoyed talking to you. Thank you.

5 JUROR NUMBER 1: Thank you.

6 MR. STONE: Mr. Adams, my name is Duffie Stone. I
7 just have a few questions. I went through your
8 questionnaire. There was only one question I found that
9 didn't have an answer to it, so I want to make sure --
10 and maybe my copy just didn't come through.

11 There is a series of questions identifying what
12 type of juror you are. There is Type 1 juror, who is a
13 juror who, for whatever, maybe religious or moral
14 reasons, always feels like the death penalty is
15 appropriate. There's a type of juror who, because of
16 moral and religious beliefs, never thinks the death
17 penalty is appropriate. And then, the type of juror
18 that would consider both aggravation and mitigation in
19 determining whether or not the sentence should be life
20 or death. My answer -- my questionnaire did not have
21 that answer.

22 JUROR NUMBER 1: I do -- I think I recall not
23 answering that.

24 MR. STONE: Okay.

25 JUROR NUMBER 1: It was just an oversight.

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1 MR. STONE: No, no.

2 JUROR NUMBER 1: I probably make myself -- I see
3 with a long -- a strong leaning toward A.

4 MR. STONE: Okay. Strongly leaning towards you
5 would always find -- always think the death penalty was
6 appropriate?

7 JUROR NUMBER 1: Right. Right.

8 MR. STONE: Okay. But could you -- and I think you
9 answered this one in front of the Judge, as well. But
10 would you take into consideration both aggravation, as
11 well as mitigation, in making a determination?

12 JUROR NUMBER 1: Well, yeah, and again,
13 academically, yes, I think I -- I can -- I can do that,
14 but I'm not -- again, I'm not confident that I won't be
15 taking that information to sway my predetermined thought
16 of this. The whole case is going to be whatever I find
17 to find my consideration incorrect.

18 MR. STONE: Right.

19 JUROR NUMBER 1: Like, right now, I think he's
20 guilty.

21 MR. STONE: I understand. Okay. And at the end of
22 the day, we just want to make sure that, as juror, that,
23 if the case was bad enough, you could give the death
24 penalty.

25 JUROR NUMBER 1: Yes.

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1 MR. STONE: And at the same time, you would take
2 everything into consideration.

3 JUROR NUMBER 1: Yes.

4 MR. STONE: Thank you, sir.

5 THE COURT: Okay.

6 MR. MCGUIRE: Judge, if I could just have a brief
7 followup.

8 THE COURT: Sure.

9 MR. MCGUIRE: The question that Mr. -- that
10 Duffie --

11 JUROR NUMBER 1: Stone.

12 MR. MCGUIRE: -- that Mr. Stone was asking you, it
13 was the 1, 2, 3.

14 JUROR NUMBER 1: Right.

15 MR. MCGUIRE: And I think you actually answered it
16 in terms of A and C.

17 JUROR NUMBER 1: C and A.

18 MR. MCGUIRE: C and A. Right. And you said you
19 were leaning in favor of one position, and you were
20 leaning towards?

21 JUROR NUMBER 1: I said -- let me -- let me re-
22 state it.

23 MR. MCGUIRE: Sure.

24 JUROR NUMBER 1: I said I would describe myself as
25 C, with a long leaning toward A.

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1 MR. MCGUIRE: And when you say A, that's the --

2 JUROR NUMBER 1: To give the death penalty, yes.

3 MR. MCGUIRE: Okay. And that's based on --

4 JUROR NUMBER 1: Because I don't think, you know,
5 that's so, you know, 1, 2, and 3, it's -- I know it's
6 kind of convenient to make, you know, the terms like
7 that, but, you know, that's -- that's where I fall, I
8 think. I think, academically, as a C person, I could --
9 I could weigh those things. But I'm predetermined in
10 that way. I'm -- I'm -- it's unfair, I think, unfair.
11 I'm not a perfect juror, I don't believe, for you.

12 MR. MCGUIRE: You seem to view yourself as
13 rather --

14 JUROR NUMBER 1: Conflicted?

15 MR. MCGUIRE: Well, I'm just thinking about the
16 best word. Contaminated. Or with things you just can't
17 put out of your mind.

18 JUROR NUMBER 1: I think that's fair, yeah. I
19 think I used poisoned earlier.

20 MR. MCGUIRE: Poisoned, right. Okay. So, to use
21 your words, you've been poisoned to the point where you
22 are kind of predisposed, as we stand here now.

23 JUROR NUMBER 1: Yeah, and I'm -- and I appreciate
24 the job that you guys, all of you, have to do in front
25 of you, you know, within the bounds of what we have,

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1 because it's got to be fair to -- to this young man that
2 you do, I respect those boundaries. But within those
3 bounds, what is the greater good that we're serving? I
4 mean, how did he get to the position where he is in
5 right now?

6 Whatever comes out of these proceedings isn't going
7 to influence the rest of what needs to happen. That's
8 -- this seems so incomplete for me. We're dealing with
9 something that's done, and we have to go forward with
10 it. You know, that's -- it's so bounded by the -- by
11 the laws that -- that -- that hold you, by the laws that
12 hold the Prosecution, by the laws that hold this whole
13 proceeding. That's -- I find frustration with that.
14 And I -- I don't want it -- I don't want --

15 MR. MCGUIRE: No, I think I agree with you. And
16 let me see -- let me re-state that and see if we're on
17 the same page. The incident that we're here for, double
18 homicide and a child killed, having a terrible impact on
19 the family, that, that is a tragic and emotional
20 situation that kind of calls out for some sort of
21 justice, correct?

22 JUROR NUMBER 1: That is -- that's a fair
23 statement.

24 MR. MCGUIRE: And it's hard -- it's hard to take
25 that and kind of shoehorn it into a place where we have

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1 rules and boundaries, and to pretend we can all respect
2 them.

3 JUROR NUMBER 1: It's not hard to take it. It's --
4 it's frustrating to leave it. I mean, we're going to
5 come to -- we're going to come to a conclusion on this.

6 MR. MCGUIRE: Right.

7 JUROR NUMBER 1: And then, this situation will be
8 -- will be handled in less than a month. But you keep
9 speaking about mitigating circumstances. These
10 proceedings won't speak to any of those mitigating
11 circumstances. My participation here won't lead to
12 anything that will prevent this from happening again or
13 correct anything. Nothing I do will make it better, and
14 that's what I find frustrating.

15 MR. MCGUIRE: That is frustrating. And really, the
16 only tools you have available to you are punishment.
17 And in that narrow, narrow position, there are only --
18 the only thing that you can do is voice an opinion as to
19 punishment. It sounds like, based on all of the
20 information you have now, and knowing people that know
21 the family, that the only thing that you could really do
22 to even get close to doing justice would be to vote for
23 the death penalty.

24 JUROR NUMBER 1: I don't -- did I say that?
25 That's --

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1 MR. MCGUIRE: I did. I'm not sure if you did.

2 JUROR NUMBER 1: Okay. Yeah. I don't think I said
3 that.

4 MR. MCGUIRE: Is that a fair statement? I mean, it
5 sounds like you're frustrated because you can't do
6 anything to better the situation or make the world
7 better, or make the family better; and that the only
8 tool that you would have in front of you would be to
9 choose between punishments. And it sounds -- given that
10 only option, given that, that's the only tool you have,
11 it sounds like you would be very much predisposed to
12 vote for the death penalty to try to do something in
13 terms of justice.

14 JUROR NUMBER 1: I don't think it's fair to say I'd
15 be very much predisposed, but yes, I mean, I don't think
16 I'd have a problem if it gets to the point where, you
17 know, do we give him life or do we give him death, I
18 don't think I -- I don't think I would -- I don't think
19 I would have problem voting for the death penalty. But
20 I -- I'm not confident that my predisposition will not
21 allow -- will not allow me to -- to fairly judge evenly.
22 You know, being a C or -- C, with a strong leaning
23 toward A, I think, you know, your job is going to be
24 trying to pull me back to zero.

25 MR. MCGUIRE: I sounds like I haven't talked you

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1 out of it. And you know, the law, the way it's
2 described in the law is that a juror, if they're chosen,
3 should be as indifferent as they are unsworn.

4 JUROR NUMBER 1: Yeah. That's --

5 MR. MCGUIRE: And you're not indifferent, are you?

6 JUROR NUMBER 1: It doesn't -- I don't -- I don't
7 think so.

8 MR. MCGUIRE: Yeah, that doesn't describe you. I
9 think we can agree on that, right?

10 JUROR NUMBER 1: Yes.

11 MR. MCGUIRE: And that, to say that you were
12 unbiased, that would also be a false statement?

13 JUROR NUMBER 1: I'd probably -- yes.

14 MR. MCGUIRE: Because you are biased, based on what
15 you know.

16 THE COURT: Is that a yes for the record, Mr.
17 Adams?

18 JUROR NUMBER 1: I'm sorry. Yes. Yes.

19 MR. MCGUIRE: And you do believe that you are
20 biased based on your prior knowledge?

21 JUROR NUMBER 1: I think so.

22 MR. MCGUIRE: And your feelings.

23 JUROR NUMBER 1: Yes.

24 MR. MCGUIRE: And you can't -- you can't -- even
25 though, academically, you could make an effort to do it,

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1 you can't leave that behind. That would always be with
2 you in terms of judging.

3 JUROR NUMBER 1: Yes.

4 MR. MCGUIRE: And there's nothing I can say or the
5 Court can say to make that just disappear or be
6 disregarded.

7 JUROR NUMBER 1: Well, I don't know that. You may
8 be able to say something that --

9 MR. MCGUIRE: I don't think I'm that talented,
10 based on this conversation. I mean, what I'm asking you
11 is, what you know, your knowledge and your feelings and
12 your belief that Mr. Daise is absolutely guilty, you
13 can't pretend that's not there. You can't --

14 JUROR NUMBER 1: I don't think you'd want me to
15 pretend it's not there.

16 MR. MCGUIRE: Right. And you can't disregard it.

17 JUROR NUMBER 1: Right.

18 MR. MCGUIRE: I mean, I think you used the term
19 *poison*. You can't get that poison out of you, right?

20 JUROR NUMBER 1: I think that's fair.

21 MR. MCGUIRE: Okay. I'm going to ask you very --
22 you brought up the term *mitigation*, and I'm going to
23 talk very briefly about that. Do you think it would be
24 relevant, if you were on the jury, and you were weighing
25 life and death, in determining that punishment, do you

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1 think the background circumstances, like somebody's walk
2 in life, if they grew up poor, or if they were a drug
3 addict, do you think those things would be relevant in
4 making that punishment decision?

5 JUROR NUMBER 1: I think those things are relevant
6 in the -- the commission of whatever that person is
7 accused of. But again, you've got the candy, and you're
8 outside the store, so.

9 MR. MCGUIRE: Right. Well, to take that analogy,
10 it sounds like what you're saying is, and tell me if I'm
11 wrong, that despite -- that people are accountable for
12 their actions.

13 JUROR NUMBER 1: Okay. Yes.

14 MR. MCGUIRE: That despite -- I mean, people could
15 have a hard upbringing, but once they make that choice,
16 the choice to take the candy, they should be held
17 accountable for that.

18 JUROR NUMBER 1: Yes.

19 MR. MCGUIRE: And like you said, you might take it
20 because you're hungry, but you took the candy. And
21 despite the motive or reasoning, they should be held
22 accountable for those actions.

23 JUROR NUMBER 1: Right. You took the candy, but
24 had you asked for help for the candy, then, the outcome
25 would be very different. You'd have been outside the

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1 store with my candy, with my blessings.

2 MR. MCGUIRE: Sure. Well, --

3 JUROR NUMBER 1: So, yes, you were hungry, and you
4 had to do something about it; but, you know, had you had
5 the benefit of someone saying to you it's okay to ask
6 for help --

7 MR. MCGUIRE: Sure.

8 JUROR NUMBER 1: You know, had that influenced your
9 action, then --

10 MR. MCGUIRE: Yeah. Yeah. I think I just have a
11 couple -- just maybe two or three more questions. Do
12 you feel comfortable judging this case? Do you feel
13 comfortable, if you were picked as a juror, comfortable
14 judging Mr. Daise? Do you feel comfortable doing that?

15 JUROR NUMBER 1: That's a good question. I don't
16 know. Yes.

17 MR. MCGUIRE: Okay. You would? If you were, using
18 your word again, *poisoned*, you know, we agree that
19 you're biased or poisoned to a certain extent, could you
20 pledge to the Court and promise to the Court that your
21 prior knowledge which you know, you would not share with
22 anybody?

23 JUROR NUMBER 1: My prior knowledge?

24 MR. MCGUIRE: If the Judge told you the case is
25 decided only on the evidence that you hear in court, and

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1 somebody said, well, did you hear about the case; do you
2 know anything about it?

3 JUROR NUMBER 1: Oh, yeah, can I? Sure, sure, yes.

4 MR. MCGUIRE: In the jury room, in deliberations,
5 you would keep all of that to yourself. Could you?

6 JUROR NUMBER 1: Oh, not discuss that?

7 MR. MCGUIRE: Yes.

8 JUROR NUMBER 1: My prior knowledge with --

9 MR. MCGUIRE: Right.

10 JUROR NUMBER 1: Oh, yeah, once -- once instructed
11 to.

12 MR. MCGUIRE: Sure.

13 JUROR NUMBER 1: But that -- that --

14 THE COURT: And would order you to. I would order
15 you to.

16 JUROR NUMBER 1: Okay. Well, that would never --
17 that never occurred to me before that, that would --

18 THE COURT: Okay.

19 MR. MCGUIRE: And I'm going to ask you just one
20 more question. We talked about the mitigation thing,
21 and then, a person's background. If the background just
22 had nothing to do with the crime itself; it was just --
23 if you just heard about somebody's walk in life, their
24 background, maybe they grew up in poverty, maybe
25 abandoned by their family, that sort of thing, would

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1 those things be relevant to you?

2 JUROR NUMBER 1: I feel comfortable that I could
3 take those things into consideration.

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

6 THE COURT: Thank you.

7 MR. STONE: Thank you, Mr. Adams. Thank you, your
8 Honor.

9 THE COURT: Mr. Adams, I'm going to ask if you'd
10 just step out back here for just a quick moment. I'm
11 going to speak with the attorneys, and we'll bring you
12 back in. All right, sir? Thank you.

13 JUROR NUMBER 1: And this list that I prepared for
14 you.

15 THE COURT: Sir?

16 JUROR NUMBER 1: The list that they had me prepare?

17 THE COURT: Oh, thank you. I appreciate you.
18 Thank you very much. All right. Before you leave, you
19 have given me a list of some of the people you know.
20 Let's go ahead and begin on the first list, and I'm
21 going to hand it to you. If you would, tell me the
22 people and how you know them and what your relation is
23 with them.

24 JUROR NUMBER 1: They instructed me to make a list
25 of the names that I recognized.

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1 THE COURT: Okay.

2 JUROR NUMBER 1: I don't know any of them.

3 THE COURT: Do you have any personal relationship
4 with any of these people?

5 JUROR NUMBER 1: Right. No.

6 THE COURT: Do you have any business or social
7 acquaintances with any of these people? Other than
8 maybe waving and saying hello.

9 JUROR NUMBER 1: No.

10 THE COURT: No?

11 JUROR NUMBER 1: None of them have been to my home
12 for dinner.

13 COURT REPORTER: I'm sorry. That door slammed.

14 JUROR NUMBER 1: She was asking if I had personal
15 relationships with any of these people, and I said none
16 of them to the point that they've been to my home for
17 dinner, nor have I been to their homes for dinner.

18 THE COURT: Thank you. Sir, do you mind, just for
19 the record, reading the names on that list of the people
20 that you know?

21 JUROR NUMBER 1: Alleen Carletta Porter, Brian
22 Chapman, Herbert Jenkins, Jerri Roseneau, Jody Hiers,
23 Michael Wilson, Scott Sampson. That's list A.

24 THE COURT: Okay.

25 JUROR NUMBER 1: On List B, Suzann Cromer, Alleen

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1 Carletta Porter. She's on the second list, also,
2 Sheriff Tanner. And they instructed me to start using
3 numbers, and this is Number 138, although, I'm not
4 certain who that is.

5 THE COURT: Thank you, sir. I appreciate that.
6 All right. Anything further in regards to that, you
7 all? I want to make sure that, just based on you
8 knowing of these people, maybe having a very, you know,
9 brief acquaintance with them, if they testify in the
10 case, that wouldn't affect your ability to be fair and
11 impartial, would it? And again, from the list that I
12 have heard, I didn't hear anything that was anyone that
13 is what I call a substantive witness. They might just
14 be ministerial or procedural.

15 JUROR NUMBER 1: Right. I've been here for over 20
16 years, so, a lot of these names are going to be
17 familiar.

18 THE COURT: I understand that, and I appreciate
19 that. And that's why we want a jury of the community
20 representing.

21 JUROR NUMBER 1: Sure.

22 THE COURT: So, I appreciate that. Mr. Adams, I'm
23 going to have you step out, if you would, just for a
24 quick moment, and we'll bring you right back in, sir.

25 JUROR NUMBER 1: Thank you..

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1 JUROR NUMBER 1 LEAVES COURTROOM.

2 BAILIFF: Door is closed.

3 THE COURT: Thanks. What says the State?

4 MR. STONE: I think he's qualified, your Honor.

5 THE COURT: What says the Defense?

6 MR. MCGUIRE: Judge, as my conversation with Mr.

7 Adams kind of went on, I became more and more convinced
8 that -- he used the word he was *poisoned*, based on prior
9 information. And I think that he -- and he said, I
10 believe Mr. Daise is guilty. I think that -- and maybe
11 even one more question from the Court, could you
12 honestly presume him innocent? I don't think he can say
13 yes. So, just based on that, we'd move that he be
14 disqualified for cause.

15 THE COURT: I think Mr. Adams did a lot of back and
16 forth, quite frankly. I think he was very honest in his
17 questions. I do think he ended up being confused in
18 some ways about what we were talking about, leaving
19 things at the door, and he was not distinguishing
20 between facts and his own moral values and beliefs. I
21 think he truly, you know, said that this is difficult
22 for him.

23 I can tell you, the totality of the entire voir
24 dire, I believe he's a qualified juror. I do. I think
25 he can consider -- I think he can consider either, and

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1 he really -- I -- and quite frankly, by the first time
2 you were ready to sit down, you were ready to take him,
3 and you were thrilled to have him; and then there was
4 concern after that, so.

5 MR. MCGUIRE: Well, this is definitely an art, not
6 a science, and you can be misguided.

7 THE COURT: Clearly.

8 MR. MCGUIRE: I think that, you know, his
9 questionnaire said he did form an opinion.

10 THE COURT: Okay.

11 MR. MCGUIRE: And the questionnaire will be made
12 part of the record, obviously. He formed an opinion,
13 and he said clearly I believe he's guilty and that I'm
14 poisoned.

15 THE COURT: Okay.

16 MR. MCGUIRE: And I think that, at this point, we
17 would just ask the Court to ask the one question. Based
18 on everything you've said, could you presume Mr. Daise
19 innocent?

20 THE COURT: Um-hmm.

21 MR. MCGUIRE: And if he says no, we let him go for
22 cause. If he says yes, we keep him.

23 THE COURT: Okay. I think that's fair enough.
24 That's the law, and he's got to be able to follow it.
25 So, okay. Bring him on in.

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1 BAILIFF: Yes, your Honor. Do you want him on the
2 stand?

3 THE COURT: I think, actually, we need to just
4 stand right there, when he just comes on in.

5 JUROR NUMBER 1 ENTERS COURTROOM.

6 BAILIFF: Okay. If you'd come right here, sir.
7 Stand right there.

8 THE COURT: Mr. Adams, I just have one last
9 question I need to ask you, sir. Every person is
10 presumed innocent when they walk into this courtroom.
11 It isn't until a jury determines whether or not that
12 person is guilty of a crime. Again, they're not
13 required to prove their innocence. The burden is on the
14 State to prove someone's guilt as to a charge beyond a
15 reasonable doubt.

16 I need to know, sir, if you can fairly come into
17 this courtroom and understand this presumption of
18 innocence and presume Mr. Daise innocent of the charges,
19 until and unless the State can prove to you beyond a
20 reasonable doubt that he is guilty of those charges.
21 Can you do that?

22 JUROR NUMBER 1: Your Honor, I -- I'd like -- thank
23 you for reminding me of that. I -- I do know that, and
24 that's, you know, and that's, you know, a tenet of being
25 an American. That's what we know. I have to be honest

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1 with you and let you know that's my leaning right now.

2 And -- and I --

3 THE COURT: So, you're telling me you can't?

4 JUROR NUMBER 1: I'm -- I'm saying that, you know,
5 academically, yes, I can. But I -- yes, I can.

6 THE COURT: Okay. And I want to make sure you
7 understand. We talk about -- we talk about this,
8 presumption of innocence is not a legal theory. It's
9 not verbiage we use, as you know. It is a substantial
10 right.

11 And again, when any person comes into this
12 courtroom, regardless of the seriousness of the charges,
13 they come with a robe of righteousness. They are
14 presumed innocent until the jury speaks and says they
15 are guilty or not guilty. And you understand that, that
16 is the determination. And to be a fair and honest
17 juror, you have to come in here understanding that tenet
18 to our *Constitution*, and that every man, woman, person,
19 that comes into this courtroom is presumed innocent.

20 I need to know, can you do that, if you do get
21 chosen to sit on this jury?

22 JUROR NUMBER 1: I understand that. Yes.

23 THE COURT: And can you do that, yes or no?

24 JUROR NUMBER 1: Yes. Yes, I can.

25 THE COURT: Thank you, sir. All right. Step out

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1 one more quick minute, if you don't mind, and I will
2 bring you right back in.

3 JUROR NUMBER 1 LEAVES COURTROOM.

4 BAILIFF: Door is closed, your Honor.

5 THE COURT: Okay.

6 MR. MCGUIRE: Your Honor, I would say that Mr.
7 Adams is a conflicted individual with this case, and
8 that, I think, when you look at all of his answers, he
9 is impaired, he's substantially impaired.

10 THE COURT: Mr. McGuire, you're going back on what
11 you just said, which was bring him in here --

12 MR. MCGUIRE: Oh.

13 THE COURT: -- see if he can understand the
14 presumption of innocence. You said, if he could, then
15 we would accept him as a qualified juror; and if he
16 couldn't, we would excuse him. That's what you told me.

17 So, again, and you're not happy with that. And
18 then, I understand that you can backtrack, but that was
19 what you said.

20 MR. MCGUIRE: That is what I said, and I -- and I
21 -- I just have to make a record for my client and make
22 sure --

23 THE COURT: I appreciate that.

24 MR. MCGUIRE: I didn't -- I don't want to fail my
25 client for not making a record, and I have to put it on

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1 the record.

2 THE COURT: I know.

3 MR. MCGUIRE: I don't want you to interpret that as
4 me going back. I have to just -- I would just put on
5 the record that the totality would be that he is
6 impaired on the first phase, the guilt issue. He's
7 formed an opinion, described himself as poisoned, and he
8 cannot be indifferent, as he should be. It would be a
9 violation of Mr. Daise's *Sixth* and *Fourteenth Amendment*
10 rights to have indifferent jurors in the case.

11 And I was just going to call a little bit of
12 attention to he really did struggle with the yes.

13 THE COURT: All right. I find him qualified. I
14 think he is. I think it was at length. I think we
15 really ferreted it out, and I think it -- I agree it was
16 hard. But you know what? That's the kind of juror we
17 want. We want someone that this is hard for them, you
18 know. It makes me realize that they actually really
19 think about it and care about it. And I certainly think
20 Mr. Daise -- I apologize -- Mr. Adams could go either
21 way, based on the case. And I think he is certainly
22 intelligent enough, candid enough, that he will do what
23 he needs to do as a juror.

24 All right. I know we're running behind, you all,
25 as we anticipated. We're going to hope that maybe we're

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1 going to move along a little quicker. If you all don't
2 mind, let's go ahead and take another quick five-minute
3 break. I apologize if I need to.

4 BAILIFF: Ma'am?

5 THE COURT: Yes, sir?

6 BAILIFF: Are you going to bring him back in?

7 THE COURT: I'm going to bring him back in before
8 we do that, though. You know, I don't know how many
9 times we're going to do that today, but that's all
10 right.

11 JUROR NUMBER 1 ENTERS COURTROOM.

12 BAILIFF: Just stand right here again, sir.

13 THE COURT: Thank you. Mr. Adams, thank you so
14 much for being here, and I want to thank you for your
15 candor. I will tell you that I have found you qualified
16 as a juror in the trial of this case. That does not
17 mean you are seated as a juror. It just means you are a
18 potential juror.

19 Sir, what I need to ask you to do is come back on
20 Monday morning at 9:30. We are also going to give you a
21 phone number to call in on Saturday night. We are
22 running behind, and I'll be the first to tell you that.
23 It may be that I need you to come in later than 9:30 on
24 Monday. I don't want you all waiting around on us. So,
25 if you call back to that line after 6:00 o'clock

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1 Saturday night, which is when I hope to be finished with
2 this process, there will be -- anyway, sir, if you call
3 after 6:00 o'clock, there will be a recorded message
4 that tells you whether or not you need to be here at
5 9:30 on Monday morning.

6 And again, just follow the message. We look
7 forward to seeing you back on Monday, regardless of what
8 time it is. And again, thank you for being here.

9 I also need to caution you, you aren't to discuss
10 this case with anyone. You are not to discuss it with
11 anyone out there what we have talked about here, anyone,
12 family and friends. You're not to do any independent
13 research. You're not to read anything. Again, not to
14 put anything on social media site that you are a
15 prospective juror in this case.

16 Again, we look forward to seeing you on Monday, and
17 until then, I want you to put this out of your mind.
18 All right, sir? Thank you.

19 BAILIFF: Your badge, please.

20 THE COURT: Thank you, sir. All right, you all.
21 Let's take five minutes.

22 MR. STONE: Thank you.

23 THE COURT: Okay? Thank you.

24 OFF THE RECORD 11:50 A.M.

25 BACK ON THE RECORD 11:57 A.M.

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1 JUROR NUMBER 570 ENTERS COURTROOM.

2 THE COURT: Okay. Just making sure. Come on
3 around.

4 JUROR NUMBER 570: I'm coming.

5 THE COURT: Good morning, just barely.

6 JUROR NUMBER 570: Good morning.

7 THE COURT: Just barely. Come on and sit down,
8 please..

9 JUROR NUMBER 570: Okay.

10 THE COURT: Thank you. Ms. Simmons, again, good
11 morning.

12 JUROR NUMBER 570: Good morning.

13 THE COURT: I want to remind you that you are still
14 under the oath that you took yesterday.

15 JUROR NUMBER 570: Yes, ma'am.

16 THE COURT: Is that acceptable to you?

17 JUROR NUMBER 570: Yeah, that is very acceptable to
18 me.

19 THE COURT: All right. Ma'am, there are a few
20 things that I need to speak with you about, and then the
21 attorneys are going to have an opportunity to speak with
22 you, as well.

23 JUROR NUMBER 570: Okay.

24 THE COURT: I want you to know and understand that
25 there are no right or wrong answers here.

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1 JUROR NUMBER 570: Okay.

2 THE COURT: The only thing anyone expects of you is
3 for you to be honest and candid.

4 JUROR NUMBER 570: Okay.

5 THE COURT: And is that fine with you?

6 JUROR NUMBER 570: That is okay with me.

7 THE COURT: Very good. All right. I want to make
8 sure you understand that, in this case, this is a
9 capital case --

10 JUROR NUMBER 570: Right.

11 THE COURT: -- where the State is seeking the death
12 penalty. And that, in this case, Mr. Daise is charged
13 with two charges of murder and assault and battery with
14 intent to kill. I also want to explain to you what
15 murder is. Murder, and it's different in different
16 places, and there's different types, but murder is the
17 intentional killing of another with malice aforethought.
18 And malice aforethought is with an evil intent --

19 JUROR NUMBER 570: Um-hmm.

20 THE COURT: -- or just bent on evil. And you
21 understand that. Is that correct?

22 JUROR NUMBER 570: Correct. I --

23 THE COURT: I want to make sure. I also want to
24 make sure you understand that, in a death penalty trial
25 like this one, there is going to be two phases, or two

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1 actual trials. The first trial is simply to determine
2 the guilt or innocence of Mr. Daise in the case.

3 JUROR NUMBER 570: Right.

4 THE COURT: Whether he's guilty or not guilty.

5 JUROR NUMBER 570: Right.

6 THE COURT: After that, the jury will then
7 determine what sentence is appropriate. If you do find,
8 and the State has proven that there is aggravating
9 factors, -- and it's required by our law that there must
10 be aggravating factors --

11 JUROR NUMBER 570: Right.

12 THE COURT: -- for someone to be sentenced to death
13 in our state, if you do find that, then, you can
14 consider the death penalty in this case. But you can
15 also consider life without the possibility of parole.
16 And that, for any reason whatsoever, you can vote for or
17 choose your personal decision for life without parole.
18 And I want to make sure you understand that.

19 JUROR NUMBER 570: Um-hmm.

20 THE COURT: Because some people think that, for
21 some reason, if the State proves the charges, proves
22 aggravating circumstances, that someone that
23 automatically gets the death penalty. And that is
24 simply not the case.

25 JUROR NUMBER 570: That's true.

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1 THE COURT: And I want to make sure you understand
2 that.

3 JUROR NUMBER 570: Oh, yeah.

4 THE COURT: That it's an individual decision of
5 each particular juror, and for no reason whatsoever you
6 can decide that --

7 JUROR NUMBER 570: Oh, yeah.

8 THE COURT: -- life imprisonment without parole --

9 JUROR NUMBER 570: Um-hmm.

10 THE COURT: -- is the appropriate sentence. You
11 can base it on either mitigating evidence, or nothing at
12 all, or just the mercy of what you believe. So, anyway,
13 I want to make sure you appreciate that --

14 JUROR NUMBER 570: Yes, I do.

15 THE COURT: -- before we go ahead and start this.

16 JUROR NUMBER 570: Yes, I do.

17 THE COURT: Well, I appreciate that, too. I also
18 want to ask you, you had an opportunity to look at the
19 witness list?

20 JUROR NUMBER 570: Yes.

21 THE COURT: Back in the jury room. Are you either
22 business or social or personal acquaintances with any of
23 those people on the list?

24 JUROR NUMBER 570: No.

25 THE COURT: All right. And additionally, there has

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1 been some publicity in this case. There have been some
2 things in the newspaper. Have you seen or read or heard
3 anything outside of the courtroom about this case?

4 JUROR NUMBER 570: I -- I have not. I have not.

5 THE COURT: Okay. Well, I appreciate that. I'm
6 going to go ahead and turn it over to the lawyers now.
7 They're going to ask you questions. And again, I'm
8 going to go ahead and tell you, some of them, I feel,
9 can be somewhat difficult. Just give honest opinions
10 and, you know, what you know and what you feel. Okay?

11 JUROR NUMBER 570: Okay. Thank you.

12 THE COURT: Thank you. Mr. McGuire.

13 MR. MCGUIRE: Thank you, ma'am. Good morning,
14 ma'am.

15 JUROR NUMBER 570: Good morning.

16 MR. MCGUIRE: Well, it's still morning, barely.

17 JUROR NUMBER 570: Yes.

18 MR. MCGUIRE: My name's Bill, Bill McGuire.

19 JUROR NUMBER 570: Um-hmm.

20 MR. MCGUIRE: I'm one of the lawyers on the case.
21 How are you doing?

22 JUROR NUMBER 570: I'm doing very good.

23 MR. MCGUIRE: Okay. I'm going to take up pretty
24 much where the Judge left off. And despite my great
25 respect for the Judge, she actually mis-spoke one second

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1 there. She said that we would get to a penalty phase,
2 like it was automatic.

3 JUROR NUMBER 570: Um-hmm.

4 MR. MCGUIRE: There's the guilt phase that's still
5 a question, which is whether Mr. Daise is guilty or not,
6 and I'm sure that it was just an oversight on the
7 Judge's part. But --

8 THE COURT: I will go ahead and say this. I
9 apologize. I don't think I said that, but just to make
10 sure you are clear, --

11 JUROR NUMBER 570: Um-hmm.

12 THE COURT: -- what he's telling you is absolutely
13 correct. That is why we have two separate phases.

14 JUROR NUMBER 570: Okay.

15 THE COURT: Because we first must determine whether
16 or not someone is guilty or not guilty.

17 JUROR NUMBER 570: Correct.

18 THE COURT: And if the jury deems the defendant not
19 guilty, we don't even get into the second portion.

20 JUROR NUMBER 570: Right.

21 THE COURT: Okay? And I want to make sure you
22 understand.

23 JUROR NUMBER 570: Oh, yes. I understand that.

24 THE COURT: All right. Thank you.

25 MR. MCGUIRE: Thank you, your Honor. So, and I'm

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1 very uncomfortable now talking about punishment, because
2 we haven't even --

3 JUROR NUMBER 570: Got there yet.

4 MR. MCGUIRE: -- we don't know if he's guilty or
5 not, right?

6 JUROR NUMBER 570: Right.

7 MR. MCGUIRE: And can you appreciate that's a very
8 awkward position for me to be in?

9 JUROR NUMBER 570: Yes.

10 MR. MCGUIRE: And it's difficult for me to talk
11 about it. I hope you forgive me if I'm not very
12 articulate, because I'm talking about things that I hope
13 we never get to.

14 JUROR NUMBER 570: Okay.

15 MR. MCGUIRE: Okay? Because we intend to
16 aggressively defend Mr. Daise.

17 JUROR NUMBER 570: Um-hmm.

18 MR. MCGUIRE: And at the end of the first phase,
19 we're going to ask for a verdict of not guilty, not
20 because we ask for it, but the evidence demands it.

21 JUROR NUMBER 570: Okay.

22 MR. MCGUIRE: So, I don't want you to think there's
23 any guarantee that we would get to a penalty phase.

24 JUROR NUMBER 570: Um-hmm.

25 MR. MCGUIRE: But I do want to talk to you about

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1 penalty where the Judge left off on some of the
2 definition she gave you. She told you about murder.

3 JUROR NUMBER 570: Um-hmm.

4 MR. MCGUIRE: Murder in South Carolina is the
5 intentional killing of an innocent person --

6 JUROR NUMBER 570: Right.

7 MR. MCGUIRE: -- with malice aforethought.

8 JUROR NUMBER 570: Right.

9 MR. MCGUIRE: And the malice is the person's
10 acting, the killer, is acting with a black and malignant
11 heart. It's fatally bent on evil and wickedness. So,
12 it means intentionally killing an innocent person --

13 JUROR NUMBER 570: Um-hmm.

14 MR. MCGUIRE: -- with an evil intent.

15 JUROR NUMBER 570: Um-hmm.

16 MR. MCGUIRE: Not accident, not self-defense. Do
17 you understand?

18 JUROR NUMBER 570: Um-hmm.

19 MR. MCGUIRE: Okay. And for a case to be a capital
20 case, it has to be what's called aggravated. There has
21 to be aggravation of that. So, it has to be not just
22 murder, and not to say that there's no bad murder, but
23 it has to be murder even more aggravating.

24 JUROR NUMBER 570: Um-hmm.

25 MR. MCGUIRE: And I'm going to ask you about the

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1 circumstance, a specific circumstance, and that is the
2 aggravating factor of a double killing, a double
3 homicide, where a mother and child were intentionally
4 killed.

5 JUROR NUMBER 570: Um-hmm.

6 MR. MCGUIRE: And the child was four years old.

7 JUROR NUMBER 570: Um-hmm.

8 MR. MCGUIRE: In that situation, what are your
9 thoughts about the death penalty as the appropriate
10 punishment?

11 JUROR NUMBER 570: I believe that you need to look
12 at things, you know, what -- your evidence, and look at,
13 also, you know, what the person -- what the
14 circumstances were in that particular time, and you go
15 from there. You know, you can't say, okay, he's guilty
16 or he's not, but you have to look at both sides of the
17 fence, and you don't -- you can make your decision from
18 there.

19 MR. MCGUIRE: Okay. And what would you want to
20 hear about in making this decisions? If you could give
21 me a list and I could give it to you, what would it be?

22 JUROR NUMBER 570: Oh, what was going on
23 beforehand, what he was feeling at that point, you know,
24 what was the circumstances with what was going on with
25 her, you know. You have to look at things from both

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1 sides. You can't just make your split decisions and
2 say, okay, he was guilty, and make it from that point.

3 MR. MCGUIRE: Okay.

4 JUROR NUMBER 570: And just already decide. You
5 have to look at things, which is what I -- I like to do,
6 is look at both sides.

7 MR. MCGUIRE: Sure. And in talking about both
8 sides, for that double homicide, that double killing of
9 a mother and child, --

10 JUROR NUMBER 570: Yeah.

11 MR. MCGUIRE: -- could the life penalty, putting
12 somebody in prison for life, is that severe enough to
13 punish that kind of act, in your view?

14 JUROR NUMBER 570: I think so sometimes that's what
15 is called for. Sometimes you can say, okay, he should
16 fry or whatever. People will say that. But sometimes,
17 you know, they have to think about what they did, and
18 you know, sometimes that takes a long, long time. You
19 know, we're not there to -- to judge others, you know.
20 He can only judge, and you know. So, you know, I think
21 of it that way.

22 MR. MCGUIRE: Okay.

23 COURT REPORTER: I'm sorry. And so, I think?

24 MR. MCGUIRE: I think of it that way.

25 JUROR NUMBER 570: I think of it that way.

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1 MR. MCGUIRE: And in determining punishment --

2 JUROR NUMBER 570: Um-hmm.

3 MR. MCGUIRE: -- for an intentional killing of a
4 mother and child, would the background characteristics
5 of the defendant, if he grew up poor, drug addict, would
6 these kind of background characteristics be relevant?

7 JUROR NUMBER 570: Yeah. You have to -- you have
8 look at every -- you have to look at the total person.
9 You have to look at everything that's been going on in
10 his -- his life or her life, and what led up to that
11 happening.

12 MR. MCGUIRE: Okay. So, I want to talk to you just
13 about some principles. It sounds like you already know
14 a little bit more than most people, because I can tell
15 you, a lot of people don't know some very basic
16 principles. And one of them is that the first phase,
17 the guilty, did somebody do something, a criminal act or
18 not --

19 JUROR NUMBER 570: Um-hmm.

20 MR. MCGUIRE: -- that's, as you probably know, a
21 jury has to speak with one voice, unanimous, to say
22 guilty.

23 JUROR NUMBER 570: Yes.

24 MR. MCGUIRE: Did you know that the penalty phase
25 is different, and the jury does not have to be

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1 unanimous?

2 JUROR NUMBER 570: Yes.

3 MR. MCGUIRE: Okay. And the way that is described
4 by the Court, the Judge would tell you that the
5 decision-making process in the penalty phase is that
6 each individual juror would be asked to come to their
7 own individual moral judgment.

8 JUROR NUMBER 570: Absolutely.

9 MR. MCGUIRE: And the way you get to that is based
10 on some of the stuff we've already talked about, which
11 is background characteristics of the person, --

12 JUROR NUMBER 570: Um-hmm.

13 MR. MCGUIRE: -- their walk in life.

14 JUROR NUMBER 570: Sure.

15 MR. MCGUIRE: And it can be, the way the law is set
16 up, different jurors can have different reasons for --

17 JUROR NUMBER 570: Um-hmm.

18 MR. MCGUIRE: -- voting for the life penalty. And
19 it seems that you already know that.

20 JUROR NUMBER 570: Um-hmm.

21 MR. MCGUIRE: And one juror could say, well, I saw
22 something in his own upbringing that was particularly
23 harsh, and he survived it, and I feel mercy for that.
24 And somebody else could say, well, he did some good
25 things, and I see a spark of humanity there; I want to

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1 vote for life for that. And as the Judge said, somebody
2 could vote for life with no reason at all. They could
3 just say I just don't want to contemplate the rest of my
4 life having killed another person.

5 JUROR NUMBER 570: Right.

6 MR. MCGUIRE: And I want to vote for life for no
7 reason.

8 JUROR NUMBER 570: Um-hmm.

9 MR. MCGUIRE: Just that. Because that's kind of
10 for the jurors, that no reason part. And so, you all
11 can just say, if you want to, I just don't -- I'm not
12 comfortable with killing another human being; I don't
13 want that mark on me as I contemplate the rest of my
14 life.

15 JUROR NUMBER 570: Um-hmm.

16 MR. MCGUIRE: So, I'm just going to say the no
17 reason part. These are all principles and law that you
18 can agree with?

19 JUROR NUMBER 570: Um-hmm.

20 COURT REPORTER: Is that yes?

21 JUROR NUMBER 570: Yes.

22 THE COURT: Thank you.

23 JUROR NUMBER 570: I'm sorry.

24 THE COURT: That's all right.

25 MR. MCGUIRE: Thank you, ma'am. And there are, as

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1 you would expect in a case so important, you know, so
2 grave and personal, because I think you'd agree that the
3 decision a juror would have to make would be a very
4 intense personal decision.

5 JUROR NUMBER 570: Yes, I agree.

6 MR. MCGUIRE: And that, that decision would have to
7 be respected.

8 JUROR NUMBER 570: Correct.

9 MR. MCGUIRE: Even though it's different from
10 yours.

11 JUROR NUMBER 570: Um-hmm.

12 MR. MCGUIRE: And I believe you said um-hmm.

13 JUROR NUMBER 570: Correct. I'm sorry.

14 MR. MCGUIRE: The lady on my left is asking me to
15 tell you to say yes, if your answer is yes.

16 JUROR NUMBER 570: Yes. I will say yes.

17 MR. MCGUIRE: Okay. You know, there are a lot of
18 rules in court.

19 JUROR NUMBER 570: Yes.

20 MR. MCGUIRE: Some of them are for me, some of them
21 are for the government, and some are for you as a juror.

22 JUROR NUMBER 570: Yes.

23 MR. MCGUIRE: And there's an absolute mandate that
24 these types of proceedings be conducted with respect and
25 dignity.

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1 JUROR NUMBER 570: Yes.

2 MR. MCGUIRE: And while we expect some civil
3 discourse in the jury room in terms of deliberation,
4 it's actually unlawful, when somebody reaches their
5 individual moral judgment, it's actually unlawful for
6 them to change their vote and compromise. And sometimes
7 you'll see situations where people will try to force
8 them to do that or bully them to do that.

9 JUROR NUMBER 570: Um-hmm.

10 MR. MCGUIRE: If you saw that type of situation,
11 could you stop it, maybe pass a note out to the Judge
12 and say respect and dignity has left the jury room; we
13 need to get back to that? Could I count on you to do
14 that?

15 JUROR NUMBER 570: Yes.

16 MR. MCGUIRE: And you could actually perhaps even
17 protect somebody. You're very vocal in your thoughts
18 here, and a lot of people aren't. They have a weak
19 voice, and you know, when it comes to -- it would be
20 wrong to force somebody to vote to kill another human
21 being, force them to live with that the rest of their
22 life, just to get them to compromise their vote. You'd
23 you agree with that.

24 JUROR NUMBER 570: I can agree with that, yes.

25 MR. MCGUIRE: And you could maybe respect --

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1 protect somebody who was maybe weaker.

2 JUROR NUMBER 570: Yes.

3 MR. MCGUIRE: Okay. That's all I have for you,
4 ma'am. Thank you so much.

5 JUROR NUMBER 570: You're very welcome.

6 MR. STONE: Ms. Simmons, my name is Duffie Stone.

7 JUROR NUMBER 570: Nice to meet you.

8 MR. STONE: I have a few questions. I reviewed
9 your questionnaire, and I want to make sure that I
10 understood your answers. In the questionnaire, it talks
11 about the type of juror that you might or might not be.
12 The first type is somebody that would always vote for
13 the death penalty. The second type is someone who would
14 never vote for the death penalty. And then, the third
15 type of person is somebody who would consider all the
16 facts, all the circumstances, both aggravation, as well
17 as mitigation, and --

18 JUROR NUMBER 570: Yes, sir.

19 MR. STONE: -- they could vote either life or
20 death.

21 JUROR NUMBER 570: Yes, sir.

22 MR. STONE: And that would be your type of --
23 that's your type of juror?

24 JUROR NUMBER 570: Yes.

25 MR. STONE: So, if I were to ask you that, if a

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1 case were bad enough, could you vote for the death
2 penalty, could you do that?

3 JUROR NUMBER 570: Yes, I could. If it was bad
4 enough, yes.

5 MR. STONE: Okay. That's all I have. Thank you,
6 ma'am.

7 THE COURT: Thank you. All right. Ma'am, if you
8 don't mind just stepping out for just one moment, and
9 we'll be right back with you. Thank you.

10 JUROR NUMBER 570 LEAVES COURTROOM.

11 BAILIFF: The door is closed, your Honor.

12 THE COURT: All right. Thank you.

13 MR. STONE: She's qualified, your Honor.

14 MR. MCGUIRE: I think she's middle of the road.

15 THE COURT: Okay. Come on. Let's bring her in.
16 Thank you. I find her qualified.

17 MR. MCGUIRE: Judge, I didn't mean to take you to
18 task on the mis-speech part.

19 JUROR NUMBER 570 ENTERS COURTROOM.

20 BAILIFF: Ma'am, if you will, just stand right
21 there.

22 THE COURT: Ms. Simmons.

23 BAILIFF: Judge.

24 THE COURT: Yes, thank you so much for being here.
25 You have been qualified as a potential juror in this

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1 case. That does not mean you're on the jury yet.

2 JUROR NUMBER 570: Okay.

3 THE COURT: Just means you are a potential
4 qualified juror. I'm going to ask that you return on
5 Monday morning at 9:30.

6 JUROR NUMBER 570: Yes, ma'am.

7 THE COURT: Where we're going to go ahead and pull
8 the jury of this case. I believe that we're going to be
9 ready to go on Monday morning, but out of an abundance
10 of caution, I'm giving you a phone number. I want you
11 to call in Saturday night after 6:00 o'clock.

12 JUROR NUMBER 570: Okay.

13 THE COURT: There will be a recorded message. It
14 will either tell you to come in Monday morning at 9:30
15 just as we discussed, or it may tell you to come in a
16 little bit later, or possibly even Tuesday.

17 JUROR NUMBER 570: Okay.

18 THE COURT: If we run to that point. I just don't
19 want you all sitting around here waiting on us if we
20 don't have to. I hope to be concluding with this
21 process, but I don't know at that point. So, again, we
22 look forward to seeing you Monday morning at 9:30.

23 JUROR NUMBER 570: All right.

24 THE COURT: Just call in, and I appreciate it.
25 Thank you, ma'am.

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1 JUROR NUMBER 570: Okay. Thank you a lot.

2 THE COURT: Also, I apologize. One other thing I
3 need to tell you.

4 JUROR NUMBER 570: Yes, ma'am.

5 THE COURT: You are not to discuss this case with
6 anybody.

7 JUROR NUMBER 570: Oh, yes.

8 THE COURT: You understand that, right?

9 JUROR NUMBER 570: I understand that. Yes, I do.

10 THE COURT: You're not to do any independent
11 research. Don't read anything, --

12 JUROR NUMBER 570: No.

13 THE COURT: -- listen to anything, go on the
14 computer or anything like that. Again, just we look
15 forward to seeing you on Monday morning.

16 JUROR NUMBER 570: Okay. See you Monday morning.

17 THE COURT: Thank you.

18 BAILIFF: Let me have your badge, please, ma'am.

19 JUROR NUMBER 570: Oh, okay. You got it?

20 BAILIFF: You're free to go.

21 JUROR NUMBER 570: Thank you very much.

22 JUROR NUMBER 50 LEAVES COURTROOM.

23 THE COURT: All right. A very nice lady.

24 JUROR NUMBER 318 ENTERS COURTROOM.

25 BAILIFF: Your Honor, Ms. Dietra Holmes.

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1 THE COURT: Thank you. Come on in, Ms. Holmes,
2 right around here.

3 BAILIFF: If you would, ma'am, just please go up
4 and take a seat on the witness stand.

5 THE COURT: Come on around. Good morning. Oh,
6 it's the afternoon now. I still think it's morning.
7 Well, good morning. Ma'am, I want to remind you that
8 you are under the oath that you took yesterday, the
9 jurors' oath. Is that acceptable to you?

10 JUROR NUMBER 318: Yes.

11 THE COURT: All right, ma'am. There are a number
12 of questions that the lawyers are going to want to ask
13 you, and there's a few things that I need to tell you
14 before we go ahead and begin this morning. I just want
15 to make sure you understand what the case is that we're
16 looking at, and just a few things about the law in
17 regards to the case.

18 I want to make sure that you understand that this
19 is a capital case, which means that the State is seeking
20 the death penalty. The defendant has been charged with
21 two counts of murder, and assault and battery with
22 intent to kill, and they are asking the jury to consider
23 the death penalty in this case.

24 What I want you to understand is that the State has
25 the burden, number one, of first proving whether or not

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1 Mr. Daise is guilty of this crime.. And again, I want to
2 make sure you understand that this is going to be in two
3 separate phases, as far as the trial is concerned. At
4 the very beginning, we are just going to be concerned
5 with whether or not he is guilty or not guilty. If he
6 is found not guilty, we're all done, we get to go home,
7 the case is over.

8 If the jury did determine that he was guilty, we
9 would then go on to what's called the sentencing phase,
10 or the second phase of the trial, wherein the State
11 would attempt to prove aggravating circumstances, and
12 ask the jury potentially to sentence a defendant to
13 death. However, you are never required to do that, even
14 if the State is able to prove aggravating circumstances,
15 a jury can decide, and each individual juror decides
16 during the sentencing phase, whether or not they vote
17 for death or a life-without-parole sentence. Again,
18 that would be completely up to you, and you could do it
19 based on anything. It could be mitigating circumstances
20 or absolutely nothing at all, just because that's your
21 firmly held belief, or you know, you want to extend
22 mercy. You certainly could do that.

23 I just wanted to make sure you understand the
24 process and what is happening, what we're looking at, as
25 far as this case is concerned.

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1 Additionally, you, when you were back in the jury
2 room, had an opportunity to go through a witness list.
3 Did you know any of those witnesses?

4 JUROR NUMBER 318: Just three. Do you want me to
5 tell you the numbers or names?

6 THE COURT: If you would. And tell me which
7 witness lists they are on first, just so I know which --

8 JUROR NUMBER 318: It's List B.

9 THE COURT: On List B. Who do you have?

10 JUROR NUMBER 318: Sergeant Freeman, Lance Corporal
11 Johnson, and Officer Patricia Sneed.

12 THE COURT: Okay. How do you know those three
13 officers?

14 JUROR NUMBER 318: The first two, Sergeant Freeman
15 and Sneed -- Freeman actually worked with me at Lady's
16 Island Middle School..

17 THE COURT: Okay.

18 JUROR NUMBER 318: She was one of the monitors at
19 the school.

20 THE COURT: Okay.

21 JUROR NUMBER 318: Lance Corporal Johnson, we
22 actually played softball together.

23 THE COURT: Okay.

24 JUROR NUMBER 318: So, that's how I know her. And
25 Officer Sneed, her son and I both graduated from

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1 Beaufort High School together.

2 THE COURT: Okay. Very good. I want to make sure
3 -- it sounds like you do know these people, you've
4 worked with them, and have been with them in the past.
5 And they are potential witnesses in the trial of this
6 case. I want to make sure that you, based on that
7 relationship, won't give any undue credence to,
8 obviously, any testimony; that you can weigh it all
9 fairly and impartially. Can you do that?

10 JUROR NUMBER 318: Yes.

11 THE COURT: All right. Well, I appreciate that, as
12 well. Additionally, there has been some publicity in
13 this case. There have been a few things in the
14 newspaper. And have you seen or read anything about
15 this case?

16 JUROR NUMBER 318: There was something I think in
17 Monday's paper, but I hadn't had a chance to read the
18 paper. I heard about it, but I -- I never got a chance
19 to get to the paper.

20 THE COURT: When you say you heard about it, how
21 did you hear about it?

22 JUROR NUMBER 318: They said it there was a write-
23 up in the paper about the case. Double murder, or
24 something to that effect, and that was pretty much it.

25 THE COURT: That's the full amount of knowledge

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1 that you have? All right. And I want to make sure you
2 understand that, anything you may have heard or read or
3 seen about this case outside of the courtroom, you
4 understand it's not evidence in this case. It would
5 never be to be considered by you. I want to make sure
6 you understand that, you, if you are chosen as a juror,
7 must confine your consideration and deliberation of this
8 case to what you hear solely in this courtroom when the
9 trial starts. And do you think you can do that?

10 JUROR NUMBER 318: Yes, ma'am.

11 THE COURT: All right. I'm going to turn it over
12 to the lawyers and let them ask questions of you. All
13 right?

14 MR. MCGUIRE: Good afternoon, ma'am.

15 JUROR NUMBER 318: Good afternoon.

16 MR. MCGUIRE: Ms. Holmes, my name is Bill, Bill:
17 McGuire. I'm one of the lawyers on the case. I'm going
18 to pick it up pretty much where the Judge left off. And
19 to make sure we're communicating clearly, I'm going to
20 start kind of at the beginning. And that is, you don't
21 have any reason to know the definition of murder in
22 South Carolina.

23 JUROR NUMBER 318: Do I have a reason to know?

24 MR. MCGUIRE: Yeah, we had -- you haven't -- you're
25 not a lawyer. You're not in law enforcement. You

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1 haven't arrested people.

2 JUROR NUMBER 318: Correct.

3 MR. MCGUIRE: Right. And a lot, you know, a lot of
4 us get, my family, the ones that are not lawyers, they
5 kind of form their opinions from T.V. shows and the
6 crime shows and the news. But I'm going to give you the
7 technical definition of murder in South Carolina, the
8 technical, legal definition, which I'm guessing you've
9 never heard before.

10 JUROR NUMBER 318: Correct.

11 MR. MCGUIRE: Okay. And that is, it's the
12 intentional killing of another person with malice
13 aforethought.

14 JUROR NUMBER 318: Okay.

15 MR. MCGUIRE: The malice aforethought part is the
16 killer is operating with a black and malignant heart,
17 fatally bent on evil and wickedness. And in plain
18 terms, that's the intentional killing of an innocent
19 person with an evil intent. It's not self-defense.
20 It's not accident. It's not somebody who's so crazy
21 they don't know what they're doing. It's somebody who
22 intentionally, deliberately intends to kill innocent
23 person, and does it. Okay? That's what we're -- that's
24 the -- that's what we're talking about when we say
25 murder.

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1 And then, to get to a capital case where the State
2 is requesting that the jury consider the death penalty,
3 they have to show something more, and that's what's
4 called aggravation. It has to be an aggravated murder.
5 And I want to ask you about an aggravating circumstance,
6 and that would be a double homicide, two people are
7 killed, and one is a four-year-old child. A mother and
8 child are killed. In that situation, what are your
9 thoughts about the death penalty as a potential
10 punishment?

11 JUROR NUMBER 318: I wouldn't say I don't believe
12 in the death penalty, but I mean, you have to first look
13 at the circumstances, I guess, the facts.

14 MR. MCGUIRE: And if the facts were bad enough, to
15 borrow a phrase, if they were bad enough where you
16 believed that, along with other jurors, that the death
17 penalty was appropriate, you could consider that as a
18 potential punishment?

19 JUROR NUMBER 318: I could consider it.

20 MR. MCGUIRE: And I want to back up a little bit.
21 The Judge said to you that the death penalty is never
22 automatic. Okay?

23 JUROR NUMBER 318: Correct.

24 MR. MCGUIRE: A lot of people don't know that.
25 I'll tell you some people who have already been in here

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1 before you, they thought the death penalty could be
2 automatic, they'd be forced to vote for it, and that's
3 never the case in South Carolina. And it sounds like
4 you already knew that.

5 JUROR NUMBER 318: You just told me that, but go
6 ahead. I mean, I had that understanding because she
7 told me there's two phases.

8 MR. MCGUIRE: Sure. And yeah, the state of South
9 Carolina is always satisfied with a life verdict in this
10 case, any case, the worst case. Nobody's ever required
11 to vote for it, and the Judge would even tell you that
12 you could vote for the life penalty, the life-without-
13 parole penalty, for any reason, no reason, or mercy
14 alone. And is that a legal principle you can agree
15 with?

16 JUROR NUMBER 318: It could be considered.

17 MR. MCGUIRE: Okay. Okay.

18 JUROR NUMBER 318: I don't know if that answers
19 your question or not.

20 MR. MCGUIRE: I think it does. I think it does.
21 And I just want to make sure that you understand about
22 the individuality part of it, because the Judge talked
23 to you a little bit about the first phase. That's, is
24 somebody guilty or not, did they do it, and that's
25 different from the penalty phase.

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1 Now, I will tell you that I intent to defend Mr.
2 Daise, and at the end of the first phase, come to you
3 and ask for a verdict of not guilty. Not because I ask
4 for it, but because the evidence will demand it. I hope
5 that we never get to the penalty phase, and me talking
6 about it's a little awkward, because we're talking about
7 something that I hope we never even deal with. But in
8 the guilt phase, and you probably know this from T.V.
9 shows and the news, the jury has to speak with one voice
10 and be unanimous.

11 JUROR NUMBER 318: Um-hmm. Right.

12 MR. MCGUIRE: The penalty phase is different. It's
13 completely individual. The Judge would instruct every
14 individual juror that they were to come to their own
15 individual moral judgment, with regard to penalty, what
16 punishment should be vote on. And it's almost like
17 there are twelve different juries, because everybody's
18 their own individual person. And once somebody reaches
19 their individual moral judgment, to comply with the
20 juror oath, they have a duty and obligation to make sure
21 that, that vote, that voice, is heard in court, even if
22 they're all different. Or not all different. But if
23 the jury is not unanimous, if they're not all for life,
24 all for death, there could be a mix. It could be
25 six/six, seven/five, whatever. But the jury is allowed,

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1 in the penalty phase, to agree to disagree, and
2 everybody has their own individual judgment.

3 JUROR NUMBER 318: All right.

4 MR. MCGUIRE: Could you live with a jury that would
5 agree to disagree?

6 JUROR NUMBER 318: Yes.

7 MR. MCGUIRE: And you could respect everybody
8 else's individual moral judgment?

9 JUROR NUMBER 318: Yes.

10 MR. MCGUIRE: Okay. And you know, there are a lot
11 of rules in court. Some of them are for me, some of
12 them are for the government, and some are for you. And
13 what I want to assure you of is that the Judge in this
14 case will assure that these proceedings are conducted
15 with fairness and dignity for everybody, including
16 jurors. And you know, I just -- we talked about that,
17 once somebody reaches that individual moral judgment,
18 and they're going to vote whatever which way they want
19 to vote, sometimes people try to get them to compromise
20 or come over to their side. And if it would do violence
21 to someone's conscience, or if it would hurt their
22 conscience to do that, to change their vote, they would
23 actually not be complying with their oath, the juror
24 oath. It's wrong to abandon your position just to
25 compromise.

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1 JUROR NUMBER 318: True.

2 MR. MCGUIRE: And it sounds like that's a principle
3 you can get behind.

4 JUROR NUMBER 318: Agreed.

5 MR. MCGUIRE: And if somebody -- you know, some
6 people aren't very good at defending themselves or
7 voicing their opinion, because again, the Judge would
8 say some people can vote for life, the life penalty, for
9 no reason. They don't even have to give a reason. If
10 you saw somebody who was weaker, didn't have a strong
11 voice, couldn't really put it in words their decision,
12 and maybe people were trying to get them to compromise,
13 could you come to that person's aid and make sure that
14 they respected it?

15 MR. MCGUIRE: 318: As an individual, if someone
16 else was trying to persuade them to change their vote?

17 MR. MCGUIRE: Sure. Could you just step in and
18 say, the Judge said, once it's an individual moral
19 decision, that they have to -- they have to have that --
20 they have to --

21 JUROR NUMBER 318: Agreed. Yes.

22 MR. MCGUIRE: Okay. That's all I have for you
23 ma'am. Thanks so much.

24 JUROR NUMBER 318: Thank you.

25 THE COURT: Mr. Stone?

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1 MR. STONE: Ms. Holmes, I'm Duffie Stone. Let me
2 ask you a few questions. I reviewed your questionnaire.
3 I think I understand everything. In the questionnaire,
4 there are three types of jurors. Somebody that would
5 always give the death penalty; somebody that could never
6 give the death penalty; and then. somebody that could
7 listen to both sides that can take all of the
8 aggravation circumstances, as well as the mitigation;
9 and, if a case was bad enough, they could give somebody
10 the death penalty. Which three of those categories -- I
11 think your questionnaire indicated the third category.
12 Is that correct?

13 JUROR NUMBER 318: Correct.

14 MR. STONE: So, if a case were bad enough, you
15 could give the death penalty.

16 JUROR NUMBER 318: Yes, sir.

17 MR. STONE: Thank you, ma'am. No other questions.

18 THE COURT: All right. Ms. Holmes, if you don't
19 mind, I'm going to ask that you just step right outside
20 the door for a brief moment, and I'll bring you right
21 back in. Okay? Thank you, again.

22 JUROR NUMBER 318 LEAVES COURTROOM.

23 BAILIFF: Doors are closed, your Honor.

24 MR. STONE: She's qualified, your Honor.

25 MR. MCGUIRE: No objection, your Honor.

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1 THE COURT: All right. Bring her back in. I find
2 she's qualified.

3 BAILIFF: Come back in, ma'am. Ma'am, if you
4 would, just stand right here and face the Judge.

5 JUROR NUMBER 318 ENTERS COURTROOM.

6 JUROR NUMBER 318: Thank you.

7 THE COURT: Ms. Holmes, you have been qualified as
8 a potential juror in this case. That does not mean you
9 are on the jury. It just means you are a qualified
10 potential juror. I need to ask you to return on Monday
11 morning at 9:30, where we are going to, hopefully, go
12 ahead and pull a jury in the trial of this case. I say
13 hopefully, because I have a number of other people I
14 have to get through what you've just done, ma'am, before
15 Monday morning.

16 We're going to give you a phone number. I am going
17 to ask that you call that phone number after 6:00
18 o'clock on Saturday night, where I hope we'll be
19 finished, and I hope the message will say that we're
20 going to go ahead and begin at 9:30 a.m. Monday morning.
21 It might be a little later. It possibly could even be
22 Tuesday.

23 I just want to make sure that you call into that
24 line, just show up when you are required to come back,
25 and that we appreciate it.

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1 I also need to instruct you, ma'am, that you are
2 not to discuss this case with anyone. You are not to do
3 any independent research, read any news reports, or see
4 any news reports, or anything about this case. Again,
5 that would be inappropriate. We just look forward to
6 seeing you at 9:30 on Monday morning, or whatever time
7 that the recorded message tells you to. Okay?

8 JUROR NUMBER 318: Thank you.

9 THE COURT: Thank you, Ms. Holmes.

10 BAILIFF: May I have your badge, please, ma'am.

11 BAILIFF: Kimberly Gilleland, your Honor.

12 JUROR NUMBER 260 ENTERS COURTROOM.

13 THE COURT: Come on forward, ma'am.

14 BAILIFF: Would you go right up and take a seat in
15 the witness stand, please.

16 THE COURT: Afternoon.

17 JUROR NUMBER 260: Hey.

18 THE COURT: Thank you. Well, good afternoon,
19 again. Ma'am, there are a few things I need to tell
20 you, but before I do that, the attorneys will have an
21 opportunity to ask you some questions. I need to remind
22 you that you are still under the oath that you took
23 yesterday as a potential juror. Is that acceptable to
24 you?

25 JUROR NUMBER 260: Yes, ma'am.

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1 THE COURT: Thank you. And very briefly, I just
2 want to make sure you understand and appreciate what
3 we're doing here and what type of case is before the
4 Court that you're a potential juror on. This is a
5 capital case where it is alleged that the defendant
6 committed two murders. And the State is asking for the
7 death penalty in this case.

8 I want to make sure you understand, first off,
9 that, that trial would be bifurcated, and we wouldn't
10 necessarily even get to the second portion of that case.
11 The first portion of the case would simply be to decide
12 whether or not someone is guilty or not guilty of the
13 charge. If the jury finds that they are not guilty, the
14 case is over and we are done.

15 If the jury did find the defendant guilty, then, we
16 would go to what is called the sentencing phase. During
17 that sentencing phase, the State would have the burden
18 of proving aggravating circumstances that would allow a
19 jury to consider the death penalty.

20 You would never be required to, in any way, vote
21 for the death penalty. The option is always life
22 without the possibility of parole or the death penalty,
23 if the State has met their burden of proving the
24 aggravating circumstances.

25 And what I want to make sure you understand and

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1 appreciate is that the death penalty is not compulsory
2 if you find a defendant guilty of a double murder.
3 Again, you could, for any reason or no reason
4 whatsoever, find that life without the possibility of
5 parole is the appropriate sentence for this case, or for
6 any case.

7 At this time, ma'am, I need to ask you, you've gone
8 through the witness list back there. Is that correct?

9 JUROR NUMBER 260: Yes, ma'am.

10 THE COURT: Do you know any of the witnesses or the
11 potential witnesses in this case, either through
12 business or personally or socially?

13 JUROR NUMBER 260: I have two.

14 THE COURT: Okay. And who are they, ma'am?

15 JUROR NUMBER 260: Bob Bromage and P.J. Tanner.

16 THE COURT: Okay. And what's your relationship
17 with Bob Bromage and P.J. Tanner?

18 JUROR NUMBER 260: I know the Sheriff from golfing.

19 THE COURT: Okay.

20 JUROR NUMBER 260: He would golf at the courses
21 where I work.

22 THE COURT: And I believe I looked at this. You
23 work -- you're at Palmetto Dunes. Is that correct?

24 JUROR NUMBER 260: Yes, ma'am.

25 THE COURT: Okay. So, you know him through that.

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1 Is that correct?

2 JUROR NUMBER 260: Um-hmm.

3 THE COURT: And what about Bob Bromage?

4 JUROR NUMBER 260: Bob used to date my sister-in-
5 law.

6 THE COURT: Okay. Used to date your sister-in-law.
7 Okay. How long ago was that?

8 JUROR NUMBER 260: At least ten years ago.

9 THE COURT: Okay. You understand, I don't believe
10 either one of those persons are going to be witnesses in
11 this case, necessarily. I don't believe that they were
12 a part of the investigation. I just want to make sure
13 that, because of simply that relationship, and that they
14 both work for the Beaufort County Sheriff's Office, and
15 obviously, one is the Sheriff, I want to make sure you
16 can put any relationship you may have with them aside
17 and be able to decide this case based on the evidence
18 and what's here in this courtroom. Can you do that?

19 JUROR NUMBER 260: Yes, ma'am.

20 THE COURT: Additionally, there has been some
21 publicity in this case, some news coverage. Have you
22 seen, read, heard anything, or have any independent
23 knowledge about this case?

24 JUROR NUMBER 260: I had not, until recently.

25 THE COURT: Okay.

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1 JUROR NUMBER 260: But I overheard some people
2 talking about it before I realized I had jury duty.

3 THE COURT: Okay. And when you say *some people*,
4 who was talking about it?

5 JUROR NUMBER 260: My boss was. His wife was one
6 of them that was called yesterday.

7 THE COURT: Okay.

8 JUROR NUMBER 260: So, and she was released.

9 THE COURT: Okay.

10 JUROR NUMBER 260: But I hadn't opened my envelope
11 yet.

12 THE COURT: Okay. So, she did get called for jury
13 duty in this case, and the two of you discussed it.
14 Other than that, have you talked to anyone, or read any
15 news stories about it, or anything like that?

16 JUROR NUMBER 260: No.

17 THE COURT: And I want to make sure that, if you
18 did, or you did have this conversation with your boss's
19 wife, that you could put that --

20 JUROR NUMBER 260: It was with my boss.

21 THE COURT: I apologize. With your boss.

22 JUROR NUMBER 260: Yes.

23 THE COURT: -- that you could put that aside, and
24 of course, understand that, that person is not here.
25 They won't have the opportunity as a juror would to see

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1 the evidence and hear everything about the case and to
2 be able to consider the case in its total. You
3 understand that. Is that correct?

4 JUROR NUMBER 260: Yes, ma'am.

5 THE COURT: All right. I'm going to go ahead and
6 turn it over to the attorneys, and Mr. McGuire's going
7 to go ahead and ask you some questions to begin.

8 MR. MCGUIRE: Good afternoon, ma'am.

9 JUROR NUMBER 260: Hi.

10 MR. MCGUIRE: My name's Bill, Bill McGuire. I'm
11 one of the lawyers on the case. Is it Gilleland?

12 JUROR NUMBER 260: Um-hmm.

13 MR. MCGUIRE: Okay. I didn't know if I got that
14 right. What I want to do is pick it up where the Judge
15 left off. That's a mouthful and it's hard to take in.
16 I'm just going to go a little bit slower and just start
17 from the basics to make sure that I'm on the same page
18 with you.

19 Where I'm going to start is, is the definition of
20 murder in South Carolina. There's a legal, technical
21 definition, and my guess is you don't know the
22 technical, legal definition of murder in South Carolina.

23 JUROR NUMBER 260: I don't think I could recite
24 that, no.

25 MR. MCGUIRE: Okay. And you have no reason to.

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1 I'm not trying to put you on the spot. You're like most
2 people in my family; they would have no idea what it is.
3 What it is, is the intentional killing of another person
4 with malice aforethought. And the malice part is that
5 the killer is acting with a black and malignant heart,
6 fatally bent on wickedness and evil. And in sort of
7 layman's terms, it's the intentional killing of an
8 innocent person; and you meant to do it. It's not self-
9 defense; it's not accident; that sort of thing. The
10 person's not crazy. They knew what they were doing,
11 chose to kill, and killed.

12 And to be a capital case, the State has to show a
13 little bit more. They have to show aggravation. It's
14 an aggravated murder. And I'm going to talk to you
15 about the specific aggravation that's alleged in this
16 case, in that it's a double homicide; it's a double
17 killing; and it's a woman and a child, four years old.
18 In that situation, what are your thoughts about the
19 death penalty as a potential punishment?

20 JUROR NUMBER 260: I don't really have any thoughts
21 about one way or another. I mean, never really had to
22 think about it.

23 MR. MCGUIRE: Even though you have a microphone, if
24 you could be a little bit louder. I might be getting
25 old, not being able to hear as well as I used to.

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1 Well, let me ask the flip side of that coin. Could
2 letting a person charged with that, convicted of that,
3 where you and eleven other jurors were convinced that he
4 did that, killed two people, a mother and a child, a
5 four-year-old child, could the life penalty be severe
6 enough to punish that?

7 JUROR NUMBER 260: I believe if the circumstances
8 were presented, possibly.

9 MR. MCGUIRE: Okay. When you say *circumstances*,
10 what are you talking about?

11 JUROR NUMBER 260: What -- what the case would
12 present.

13 MR. MCGUIRE: The facts?

14 JUROR NUMBER 260: Yes.

15 MR. MCGUIRE: And if the facts were bad enough, you
16 could call out and demand the death penalty.

17 JUROR NUMBER 260: Yes.

18 MR. MCGUIRE: Okay. And let me ask you this. Just
19 knowing the elements alleged, intentionally killing, two
20 people, a woman and child, if you just heard that, no
21 other circumstances or facts, where would you start your
22 deliberation or decision making? Do you have a leaning
23 either way?

24 JUROR NUMBER 260: Not really.

25 MR. MCGUIRE: Okay. And --

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1 JUROR NUMBER 260: I mean, I've always thought -- I
2 don't know. I guess it just depends on what's
3 presented, and like you say, facts in the case. I don't
4 think that I have a feeling strongly one way or another.

5 MR. MCGUIRE: Okay. You know, sometimes we --
6 excuse me -- sometimes we hear phrases like eye for an
7 eye. If someone's guilty of murder, they automatically
8 forfeit their life. Is that a statement that resonates
9 with you?

10 JUROR NUMBER 260: Not really.

11 MR. MCGUIRE: Okay. In determining punishment and
12 facing punishment for a murder case, background
13 characteristics of the defendant, the accused, like, if
14 he grew up poor or was a drug addict, something like
15 that, would those -- would background characteristics be
16 relevant in your decision making with regard to
17 punishment?

18 JUROR NUMBER 260: Yes.

19 MR. MCGUIRE: Okay. And what I want to tell you a
20 little bit now, or ask you about, is the process, the
21 legal process. The first phase of the case, the jury
22 has to speak with one voice and be unanimous. In the
23 penalty phase, that's not so. The Judge would tell
24 every juror that they're required to reach their own
25 individual moral judgment. It's not a fact-based

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1 decision. It's kind of an emotional, personal decision.
2 with every juror. And that the jury can agree to
3 disagree. Everybody can have their own reason for
4 voting whichever way they want to, and I'm going to talk
5 to you specifically in regard to the life penalty.

6 The Judge would tell every juror they can vote for
7 the life penalty for any reason, no reason, mercy alone,
8 and different jurors can have different reasons.

9 Somebody can say I saw something in his background, in
10 his upbringing, that resonated with me; I'm going to
11 vote for life for that. Somebody down the road could
12 say, well, I saw him do some good and take care of his
13 family in some hard times; and I saw a spark of humanity
14 in that; and I'm going to vote for life for that. Then,
15 somebody else might say the Judge said no reason; that I
16 could vote for life for no reason; and as I contemplate
17 the rest of my life, I just don't want to have the black
18 mark on my record of having killed another human being;
19 and I'm going to vote life for no reason. Could you
20 respect everybody having a different decision, a
21 different reason?

22 JUROR NUMBER 260: I think everybody's entitled to
23 what they believe, but if it has to be unanimous, it has
24 to be, or it doesn't. I mean, it's the decision that
25 the Court makes.

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1 MR. MCGUIRE: Sure. That's what I want to clear
2 up, because a lot of people have some misconceptions,
3 and I'm probably not doing a very good job breaking this
4 down into just plain language. So, what I want you to
5 do, to put this in concrete terms, just imagine you're
6 on the jury. Not this jury, just some other jury, and
7 it's a murder case, and it's a capital murder case. And
8 you and the jury have convicted. And that means you
9 would come back for the penalty phase, the whole twelve
10 of you would come back. And the Judge would tell you in
11 that phase, it's an individual moral decision, and the
12 jury doesn't have to speak with one voice. It doesn't
13 have -- you could be unanimous for life. You could be
14 unanimous for the death penalty.

15 There's also a third sentencing option, which is
16 the jurors have come to different individual moral
17 judgments, maybe six and six, maybe seven and five, but
18 they're not in agreement. And what they can do is, they
19 can say, Mr. Foreman, we've deliberated, we've all
20 tried, but we've all reached our moral judgment, and
21 we're not in agreement, and you can deliver that
22 decision to the Court, the Judge. And the Judge would
23 take the case and sentence, and the case would end, and
24 it would be over.

25 So, you have actually three sentencing decisions,

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1 if you ever get to a penalty phase. And that would be
2 unanimous for life; unanimous for the death penalty; or
3 people who have reached different decisions and they're
4 not in agreement, and that's okay. Did you know that,
5 that it worked like that?

6 JUROR NUMBER 260: Um-hmm.

7 MR. MCGUIRE: Okay. Okay.

8 COURT REPORTER: Is that yes?

9 JUROR NUMBER 260: Yes, ma'am.

10 MR. MCGUIRE: Okay. And there are a lot of rules
11 in court. Some of them are for the government, some are
12 for me, but some are for jurors. And the Judge would
13 tell you that these proceedings will be conducted with
14 respect and dignity. And going back to that individual
15 process in the penalty phase where every individual
16 person gets to have their vote heard, can you respect
17 the fact that people have a different opinion than you,
18 maybe?

19 JUROR NUMBER 260: In court, I would have to.

20 MR. MCGUIRE: Does that sit well with you?

21 JUROR NUMBER 260: No.

22 MR. MCGUIRE: Okay. Fair enough. I'm the same
23 way.

24 JUROR NUMBER 260: I'm a decision maker at my job,
25 so I'm used to making decisions and telling everyone

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1 else how to do it.

2 MR. MCGUIRE: Okay. And I'm a lawyer, I'm the same
3 way. I think I'm always right. So, but the way the law
4 works, and the Judge would give a juror oath to
5 everybody, and the juror oath will require every juror
6 to swear that they'll consider all the evidence in
7 aggravation, all of the evidence in mitigation, and
8 reach their own individual moral judgment. And once the
9 juror reaches, comes to that point where they've reached
10 their individual moral judgment, it's actually -- they
11 have a duty and obligation to make that voice, that
12 vote, heard in court, and it's actually unlawful or
13 against the juror oath to have people change their vote
14 just to compromise.

15 And I understand that you might want to really try
16 to persuade somebody to come over to your side,
17 whichever way you were, but can you keep in mind that
18 the juror oath might require them to stay with their
19 positions?

20 JUROR NUMBER 260: Yes, I can.

21 MR. MCGUIRE: And you would respect that?

22 JUROR NUMBER 260: That would be the rules, yes.

23 MR. MCGUIRE: That would be the rules.

24 JUROR NUMBER 260: And if you saw somebody who's,
25 perhaps, weaker -- you seem to have a strong voice to

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1 me, and like you say, you make decisions, and I don't
2 think you would have any trouble defending your view or
3 opinion on anything. But if you saw somebody who might
4 be weaker, might not have a strong voice, and somebody
5 was trying to get them to compromise for the sake of
6 compromise, could you say we need to respect that
7 person's individual moral judgment and let them stay
8 there?

9 JUROR NUMBER 260: Yes, I could.

10 MR. MCGUIRE: Okay. And that's a principle that
11 the law would require, and you could respect that.

12 JUROR NUMBER 260: Yes.

13 MR. MCGUIRE: And if things got unfair, if it got
14 out of hand, I'm not saying you would be part of this at
15 all, but could you maybe send a note to the Court saying
16 you know, there's a lot of -- it's gotten beyond civil
17 discourse; it's gotten unfair; someone's asking someone
18 to violate their juror oath and compromise once they've
19 reached that individual moral decision; could you pass a
20 note up to the Court and just say fairness needs to come
21 back here?

22 JUROR NUMBER 260: Okay. I don't know about that.

23 MR. MCGUIRE: You don't know about that?

24 JUROR NUMBER 260: No.

25 MR. MCGUIRE: Could you ask the foreman to do it?

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1 JUROR NUMBER 260: I could.

2 MR. MCGUIRE: Just say, Mr. Foreman, could you just
3 let the Judge know that things are getting a little
4 unfair?

5 JUROR NUMBER 260: Correct. Yes.

6 MR. MCGUIRE: Okay. How about personally stepping
7 to somebody's aid and making sure they're not fully --
8 or forced to compromise? Could you do it personally?

9 JUROR NUMBER 260: Would I be required to?

10 MR. MCGUIRE: No. And you wouldn't want to?

11 JUROR NUMBER 260: Probably not.

12 MR. MCGUIRE: Okay. That's fair enough. That's
13 all I have for you, ma'am. Thank you.

14 MR. STONE: Ms. Gilleland, my name is Duffie Stone.
15 I've read your questionnaire that was sent to you and
16 you filled out. I just want to make sure I'm clear
17 about it. There are three types of jurors in that
18 questionnaire: somebody that would always give the
19 death penalty; somebody that would never give the death
20 penalty; and then, somebody that would consider both
21 aggravation and mitigation, and make a determination,
22 life or death, after they consider that. And I think
23 your questionnaire indicated that you were that third
24 type of juror. Is that correct?

25 JUROR NUMBER 260: Yes, sir.

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1 MR. STONE: So, if a case was bad enough, could you
2 give somebody the death penalty?

3 JUROR NUMBER 260: Yes, sir.

4 MR. STONE: I don't have anything else. Thank you,
5 ma'am.

6 THE COURT: Ms. Gilleland, I'm going to ask that
7 you just step out for a very brief moment. I'm going to
8 bring you right back in here and tell you where we're
9 going to go from here. Okay? Thank you.

10 BAILIFF: Thank you, your Honor.

11 JUROR NUMBER 260 LEAVES COURTROOM.

12 BAILIFF: Door is closed, your Honor.

13 MR. STONE: She's qualified, your Honor.

14 MR. MCGUIRE: No objection.

15 THE COURT: She is qualified. All right. Let's
16 bring her back in.

17 JUROR NUMBER 260 ENTERS COURTROOM.

18 BAILIFF: You can stand right here. Yeah, be fine.
19 And face the Judge.

20 THE COURT: Thank you for being here. I appreciate
21 it.

22 JUROR NUMBER 260: Yes, ma'am.

23 THE COURT: I will tell you that I apologize for
24 the lights. You know, we've been doing some
25 construction here in the courthouse, so I have no idea

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1 what's going on at this moment. But you have been
2 qualified as a potential juror in this case. You are
3 not on the jury as of yet. I simply need to ask you to
4 return on Monday morning at 9:30, where we are going to
5 go ahead and pull a jury. I am hopeful that we will be
6 finished with this process by Saturday evening. So, to
7 that end, I am going to ask you to call in to a juror
8 line. It is going to tell you what time to come in on
9 Monday morning. I anticipate and hope it still says
10 9:30. If, for some reason we are running behind, you
11 just come in whenever it tells you to.

12 There will be no message on there until after 6:00
13 o'clock Saturday night, so I want you to know that, but
14 just call in after that. Whatever it tells you to do,
15 just follow it, and we look forward to seeing you
16 probably Monday. There's an outside chance it could be
17 Tuesday morning, but we hope to see you on Monday. All
18 right? Thank you, ma'am.

19 JUROR NUMBER 260: Thank you.

20 THE COURT: I also need to tell you do not discuss
21 this case with anyone. Don't read anything, do any
22 independent research. That would be inappropriate, and
23 we'll see you on Monday. Thank you.

24 BAILIFF: Could I have your badge, please.

25 JUROR NUMBER 260 LEAVES COURTROOM.

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1 JUROR NUMBER 669 ENTERS COURTROOM.

2 BAILIFF: Your Honor, Mr. Henry White.

3 JUROR NUMBER 669:

4 THE COURT: Come on forward, sir.

5 BAILIFF: Come this way, sir.

6 BAILIFF: Come this way, sir. Just go up and take
7 a seat in the witness stand.

8 THE COURT: Right here, sir.

9 BAILIFF: You can take it with you.

10 THE COURT: You can take it with you, Mr. White.
11 Come on right around here, sir.

12 JUROR NUMBER 669: Good morning. Good morning,
13 ma'am.

14 THE COURT: Good morning, sir. Thank you, sir, for
15 coming back.

16 JUROR NUMBER 669: Have a seat?

17 BAILIFF: Have a seat, if you would, please.

18 THE COURT: I'll go ahead and apologize. We are
19 running a little behind, but thank you for being here
20 with us. Mr. White, I need to first remind you that you
21 are still under the oath you took yesterday as a
22 potential juror. Is that acceptable to you?

23 JUROR NUMBER 669: Yes, ma'am.

24 THE COURT: Very good, sir. Also, I want to
25 explain just a couple of things before the lawyers take

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1 over and ask you some questions, which they are
2 certainly permitted to do. I want to make sure that you
3 understand that this is a capital murder case that we
4 intend on trying here next week. And then, in the case,
5 the defendant has been charged with two counts of murder
6 and assault and battery with intent to kill, and I want
7 you to understand that the State is seeking the death
8 penalty in this case.

9 I also want to make sure you understand and
10 appreciate that this is what's called a bifurcated
11 trial. There are two portions potentially, to the case.
12 The first portion of that case is simply determining the
13 guilt or not guilty of the defendant of the charges, and
14 that would be what the jury was to consider. If the
15 defendant was found guilty, we then, and only then,
16 would go to a second phase of the trial that the jury
17 would hear again, which would be what's called the
18 sentencing phase where, if the State were to prove
19 aggravating factors, the jury could consider either the
20 death penalty or the option of life without the
21 possibility of parole.

22 In that portion of the case, you are going to be
23 presented, likely, mitigating factors about possibly the
24 background and the life of the defendant, and anything
25 else that would help you come to a decision on what the

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1 appropriate punishment would be for this case.

2 Sir, I just want to make sure that you understand
3 that, in these types of cases, you are never required in
4 any way, even if the State is able to prove aggravating
5 circumstances, to give a death sentence. You may always
6 choose life without the possibility of parole for any
7 reason, no reason, or simply for mercy. And I want to
8 make sure you understand and appreciate that; that, that
9 would be part of the process, if we got to that stage.
10 Do you understand all that, sir?

11 JUROR NUMBER 669: Yes, ma'am.

12 THE COURT: And I appreciate that, as well. Sir,
13 also, you have had an opportunity to look over the
14 witness list back in the jury assembly room. Do you
15 know anyone on that list?

16 JUROR NUMBER 669: Yes, ma'am.

17 THE COURT: All right, sir.

18 JUROR NUMBER 669: Not know, but just --

19 THE COURT: Not know, but you know of, or something
20 along those lines?

21 JUROR NUMBER 669: Yes, ma'am.

22 THE COURT: Tell me who you recognized, and what
23 your relationship is with them.

24 JUROR NUMBER 669: Number 68, Sheriff Tanner. No
25 relations, never met him.

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1 THE COURT: Is that list A or B?

2 JUROR NUMBER 669: That's List B.

3 THE COURT: That is List B. Okay. And Number
4 what, sir? I'm sorry?

5 JUROR NUMBER 669: 68.

6 THE COURT: Thank you. All right, sir. You don't
7 know him personally, you know of him. Is that correct?

8 JUROR NUMBER 669: Yes, ma'am.

9 THE COURT: Thank you. Who else do you know?

10 JUROR NUMBER 669: 81. I'm not sure if it's Mr. or
11 Mrs. Bush, the lady that comes and gets the dogs.

12 THE COURT: Okay. All right. And what is your --
13 what is your relationship with that person?

14 JUROR NUMBER 669: She got the dogs out of my yard.

15 THE COURT: I beg your pardon?

16 JUROR NUMBER 669: She came and got the animals out
17 of my yard.

18 THE COURT: Oh, came and got animals out of your
19 yard. Okay.

20 JUROR NUMBER 669: Yes.

21 THE COURT: So, an officer just came out to your
22 home in regards to some animals. Is that correct?

23 JUROR NUMBER 669: Yes, ma'am.

24 THE COURT: Okay. And other than that, anyone else
25 you know there?

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1 JUROR NUMBER 669: List A, Number 28, the young
2 lady, she called me about this case.

3 THE COURT: Number 28. Give me a minute.

4 JUROR NUMBER 669: Rosenberg [sic]?

5 THE COURT: It's the Clerk of Court, yes.

6 JUROR NUMBER 669: That's it.

7 THE COURT: Okay. And how do you know Ms.
8 Roseneau?

9 JUROR NUMBER 669: I spoke to her on the phone
10 numerous times.

11 THE COURT: Okay. Did you perhaps grow up with
12 her?

13 JUROR NUMBER 669: Never seen her before.

14 THE COURT: Never seen -- oh, but just in talking
15 to her in regards to your jury summons?

16 JUROR NUMBER 669: Yes, ma'am.

17 THE COURT: And service? All right, sir. Okay. I
18 appreciate that. Additionally, sir, there has been some
19 publicity on this case. Have you read, seen, heard
20 anything about this case, other than what you've heard
21 in this courtroom?

22 JUROR NUMBER 669: Yes, ma'am.

23 THE COURT: All right. And from what source have
24 you seen or heard or read about it?

25 JUROR NUMBER 669: The documentation that was sent

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1 to me.

2 THE COURT: Okay.

3 JUROR NUMBER 669: And a few days ago, the date of
4 this case in the newspaper.

5 THE COURT: Okay. When you say *the documentation*
6 *that was sent to you*, do you mean the jury
7 questionnaire?

8 JUROR NUMBER 669: Yes, ma'am.

9 THE COURT: Is that correct? All right, sir. And
10 as far as the article that was in the newspaper, did you
11 read that article on Monday?

12 JUROR NUMBER 669: Yes, ma'am.

13 THE COURT: All right. And sir, I just want to
14 make sure that, if you were chosen as a juror in the
15 trial of this case, that you can set aside anything you
16 may have read or heard or seen about this case, and
17 decide it based on the facts and circumstances that are
18 presented in the courtroom, because you understand that
19 what is printed in the newspaper is not factual in any
20 way. And I want to make sure you're comfortable and can
21 do that, as I would order you to if you were here
22 sitting on the jury.

23 JUROR NUMBER 669: Yes, ma'am.

24 THE COURT: All right. Mr. White, I appreciate it.
25 I'm going to go ahead and turn it over to the attorneys.

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1 MR. MCGUIRE: Hey, Mr. White. How you doing?

2 JUROR NUMBER 669: Morning, sir.

3 MR. MCGUIRE: My name is Bill, Bill McGuire. I'm
4 one of the lawyers on the case. I'm just going to ask
5 you some questions, and there are no right or wrong
6 answers. We only want your personal views and what you
7 -- what you think. And I remember yesterday, you came
8 up, and you wanted to share some of your personal views
9 with us that you felt very strongly about women and
10 guns. You hated guns, and you thought that women were
11 the most beautiful, lovely creatures on Earth, and
12 should be respected.

13 JUROR NUMBER 669: Yes, sir.

14 MR. MCGUIRE: Okay. And I appreciate that. That
15 told me that you were a guy that speaks his mind, and
16 he'll tell me his personal views, and you're not going
17 to say just what you think I want to hear or what
18 somebody else wants to hear.

19 JUROR NUMBER 669: Yes, sir.

20 MR. MCGUIRE: And I want to talk to you a little
21 bit about the case that brings you and I here talking
22 today, and that is a case brought by the state of South
23 Carolina, and it's a murder case, and it does involve a
24 woman and child, and it involves shooting a gun.

25 I'm going to start with the very basics, the

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1 definition of murder in South Carolina, and that is the
2 unlawful, intentional killing of an innocent person with
3 malice aforethought. The malice aforethought means the
4 person is acting with a black and malignant heart bent
5 on -- fatally bent on evil and wickedness. Did you know
6 that definition before?

7 JUROR NUMBER 669: I read it the def -- the --
8 the --

9 MR. MCGUIRE: The questionnaire?

10 JUROR NUMBER 669: The questionnaire.

11 MR. MCGUIRE: Where it used the term *malicious*?

12 JUROR NUMBER 669: Yes.

13 MR. MCGUIRE: Yes. And that's exactly why we're
14 here. That's what we're talking about.

15 JUROR NUMBER 669: I knew the definition, but you
16 know, not to be questioned about.

17 MR. MCGUIRE: Okay. Right. I don't mean to speak
18 over you. But that -- you're right. That's why I used
19 the term *malice*, because it was in the questionnaire,
20 and it was used maliciously.

21 JUROR NUMBER 669: Um-hmm.

22 MR. MCGUIRE: And that's exactly what we're talking
23 about. But to be a capital case, to be a case where the
24 State can come and ask for the death penalty, it has to
25 be more than murder. It has to be aggravated murder.

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1 And I'm going to ask you -- I'm going to ask you about
2 the specific aggravation alleged in this case, and that
3 is that it's a double homicide. Two people were killed,
4 and one was a child, four years old, and they were shot
5 to death.

6 In that circumstance -- and it's not an accident;
7 it's not self-defense; not somebody crazy; person meant
8 to do it and did it. In that circumstance, what are
9 your thoughts about the death penalty as an appropriate
10 punishment?

11 JUROR NUMBER 669: You want my opinion, I take it.

12 MR. MCGUIRE: Yes, your personal opinion, without
13 regard to anything else, just speak from the heart.

14 JUROR NUMBER 669: What, why, when? Was it more
15 before this? Was there something built up. As I said
16 before, what, why, when, why, and what more so?

17 MR. MCGUIRE: Okay. Well, let me ask you the flip
18 side of that -- the flip side of that coin, or the other
19 part of that question. Just knowing that it's an
20 intentional killing of innocent people, two of them
21 killed, one's a woman, one's a child, without knowing
22 anymore than that, could the life penalty, putting
23 somebody in prison for the rest of their life, could
24 that be severe enough to punish that kind of act?

25 JUROR NUMBER 669: Yes, and knowing -- yes, and if

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1 you -- if I would know why, what, I could go that way.

2 MR. MCGUIRE: Okay. When you say *why* and *what*,
3 what, exactly, are you talking about?

4 JUROR NUMBER 669: Reasoning. Something led you to
5 that point.

6 MR. MCGUIRE: Okay.

7 JUROR NUMBER 669: Something was built up. There
8 was more going on before that happened, as to what, why,
9 and when.

10 MR. MCGUIRE: Okay. I just want to make sure
11 you're not talking about maybe voluntary manslaughter,
12 which would be like a really heated argument. This
13 would be an intentional deliberate act, taking an
14 innocent person's life, and the innocent person,
15 innocent people didn't do anything to deserve it. In
16 that situation, would the life penalty still be severe
17 enough?

18 JUROR NUMBER 669: Yes, sir.

19 MR. MCGUIRE: Okay. And in determining, fixing
20 punishment in a case, a capital aggravated murder case,
21 would you want to hear -- well, let me rephrase that.
22 Would the background characteristics of the accused, his
23 walk in life, if he grew up poor, maybe he was a drug
24 addict, background characteristics like that, would that
25 be relevant in your decision making?

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1 JUROR NUMBER 669: Yes, sir. Should I continue?

2 MR. MCGUIRE: Absolutely.

3 JUROR NUMBER 669: Yes, sir. And I don't feel that
4 this -- far as I know in what you're saying to me, this
5 -- she didn't just die two years ago. I mean, this took
6 place years before, because it was something that didn't
7 go right in this person's life, meaning he should have
8 got a ticket earlier in life, and he probably wouldn't
9 have been speeding, or -- to put it in that term.

10 MR. MCGUIRE: Okay. When I talk to you about
11 background characteristics of a person, are you thinking
12 more in terms of their criminal record, their rap sheet,
13 that sort of thing?

14 JUROR NUMBER 669: Well, that, too. You know, I
15 mean, you're a kid; it's good to get your butt kicked if
16 you steal something. If you never got your butt kicked
17 when you steal something, you keep doing it.

18 MR. MCGUIRE: So, it sounds like you believe people
19 are accountable for the decisions they make.

20 JUROR NUMBER 669: Yes, sir.

21 MR. MCGUIRE: Okay. What about things in someone's
22 background that would have nothing to do with the crime?
23 Because we're talking about getting a ticket, don't
24 speed, don't get your butt kicked, don't steal, that
25 sort of thing. What about background characteristics

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1 that would have no connection to the crime at all? Just
2 like if somebody -- if somebody just struggled with
3 poverty, that had nothing to do with the crime, would
4 that be relevant to you or not?

5 JUROR NUMBER 669: No, sir.

6 MR. MCGUIRE: Okay. So, background
7 characteristics, somebody's, like, life experience, if
8 it doesn't have to do with the moment that brought
9 people together leading up to a murder, those factors
10 would not be relevant in the decision-making process?

11 JUROR NUMBER 669: There's so much more I don't
12 know.

13 MR. MCGUIRE: I know it's difficult.

14 JUROR NUMBER 669: So, it's just --

15 MR. MCGUIRE: It's hard to talk about this in
16 concrete terms.

17 JUROR NUMBER 669: You know, it's --

18 MR. MCGUIRE: But let me just -- I'm going to take
19 another run at it.

20 JUROR NUMBER 669: Okay.

21 MR. MCGUIRE: And if I'm doing a bad job --

22 JUROR NUMBER 669: No. No. I'm willing to listen.

23 MR. MCGUIRE: -- you let me know. Okay?

24 JUROR NUMBER 669: Go ahead.

25 MR. MCGUIRE: Because all your answers are right

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1 answers. And there are some folks who would say that
2 background characteristics of a person, like, if
3 somebody grew up in poverty or experienced some sort of
4 deprivation, parental abandonment; or maybe the
5 opposite, maybe he did some good things, like take care
6 of a sibling in hard times; but these things don't have
7 anything to do with the charges. Would you see -- would
8 you see these things as being relevant in determining
9 the life and death decision, or would something have to
10 be tied to the crime?

11 JUROR NUMBER 669: I would say something would have
12 to be tied to the crime. You know, we all came from a
13 kid.

14 MR. MCGUIRE: Right. And the word that lawyers
15 sometimes use is nexus, meaning connection. That, for
16 something to matter to a juror when they're doing the
17 life and death decision, if they find themselves in that
18 spot, is that, if it doesn't have a nexus or a
19 connection to the crime itself, then, it's just not
20 relevant in the decision-making process. Do you agree
21 with that? Just your own personal opinion.

22 JUROR NUMBER 669: To some point.

23 MR. MCGUIRE: Okay. And again, we're talking
24 about, like, if somebody -- like, what might be
25 mitigating, a mitigating circumstance, for, say, theft

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1 would be if somebody's hungry and they steal food. That
2 would have a connection to the crime, right?

3 JUROR NUMBER 669: Yes, sir. And if you're hungry,
4 --

5 MR. MCGUIRE: Right.

6 JUROR NUMBER 669: -- then, you try asking first.

7 MR. MCGUIRE: Sure. No, I agree with you. And
8 but, some things just don't have a connection to a
9 crime. Like, the person who stole food might have done
10 some good deeds before in some other aspect in their
11 life, but it wouldn't have anything to do with the
12 crime. And that's what I'm kind of trying to get to.

13 JUROR NUMBER 669: Common sense, or if you're a nut
14 job, or in that sense, common sense. You got mental
15 problems.

16 MR. MCGUIRE: Okay. That would be relevant to you?

17 JUROR NUMBER 669: Well, if -- if you didn't have a
18 problem as a youngster, you never showed sign of --
19 signs of sorts, and all of the sudden, you lose it, you
20 got problems.

21 MR. MCGUIRE: Sure.

22 JUROR NUMBER 669: I mean, head problems or
23 whatever.

24 MR. MCGUIRE: Sure. And just so we're on the same
25 page, though, in terms of talking about your views about

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1 the death penalty, we're only talking about a situation
2 where the defendant, the accused, the person who did the
3 killing, knew what they were doing. Not mental problems
4 where they didn't understand right from wrong, --

5 JUROR NUMBER 669: Um-hmm.

6 MR. MCGUIRE: -- but actually chose to kill and did
7 kill. I just want to make sure we're on that same page.
8 And in that situation, can you consider the life penalty
9 as severe enough to punish that kind of act? Killing
10 two people, one a woman and one a child?

11 JUROR NUMBER 669: Yes.

12 MR. MCGUIRE: Okay. And what I want to talk to you
13 a little bit about, is about just some basic principles
14 of the process of the law. And that is, the first phase
15 is the did the person do it or not. And I'm going to
16 tell you that you're going to see me and another lawyer,
17 maybe two more lawyers, aggressively defend Mr. Daise
18 and ask for a not guilty verdict; not because we ask for
19 it, but because the evidence supports it. If you get to
20 the penalty phase, if you disagree with us, and you get
21 to a penalty phase, can you promise us not to hold that
22 against Mr. Daise?

23 For instance, if somebody in the jury room said,
24 well, I'm mad at him because his lawyers tried to get
25 him off. Well, that would be wrong, because he has a

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1 right to defend himself. Wouldn't you agree?

2 JUROR NUMBER 669: I agree.

3 MR. MCGUIRE: Okay. And could you make sure that
4 nothing like that went on in the jury room, that nobody
5 would hold Mr. Daise -- would punish Mr. Daise for
6 exercising his constitutional rights to defend himself
7 of a charge?

8 JUROR NUMBER 669: Innocent until proven guilty.

9 MR. MCGUIRE: Exactly. Okay. Sure. And now that
10 -- I want to leave the guilt phase now and talk to you a
11 little bit about the penalty phase. And that is, if you
12 get there, the Judge will tell you that the process
13 changes. And we always think about juries speaking with
14 one voice, being unanimous, all twelve agree. And it
15 doesn't have to be like that in the penalty phase. And
16 that's -- did you know that?

17 JUROR NUMBER 669: She mentioned it.

18 MR. MCGUIRE: And you heard it.

19 JUROR NUMBER 669: Your Honor mentioned it.

20 MR. MCGUIRE: Right. And I think the Judge said
21 that you would have different options. And one would be
22 you could be unanimous for life; you could be unanimous
23 for the death penalty; and the jury could actually end
24 the day agreeing to disagree. And is that a principle
25 of law you can respect?

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1 JUROR NUMBER 669: Yes, sir.

2 MR. MCGUIRE: Okay. You'd be okay with the jury
3 ending the day in disagreement?

4 JUROR NUMBER 669: Well, we all have to talk about
5 it and --

6 MR. MCGUIRE: Absolutely.

7 JUROR NUMBER 669: -- come to some conclusions.

8 MR. MCGUIRE: Sure. And that's what we want to do.
9 We want to talk about it, but the Judge would say that
10 your decision making in the penalty phase, if you ever
11 get there, would be what's called an individual moral
12 judgment. It's completely different from the first
13 phase, you know, did somebody -- you know, was the car
14 red or green, or a fact-based decision, that it's, the
15 sentencing decision, what happens to another human
16 being, is described as an individual moral judgment.
17 And you would expect people to have individual moral
18 judgments about something so awesome and grave as
19 determining another human being's fate. Would you agree
20 with that?

21 JUROR NUMBER 669: Well, I don't know if I'd put it
22 the way you said it, but in my opinion, you -- for the
23 act of what we know, you -- can I be blunt?

24 MR. MCGUIRE: Sure.

25 COURT REPORTER: I'm sorry. You what?

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1 JUROR NUMBER 669: Can I be blunt? To speak
2 openly.

3 MR. MCGUIRE: Yes.

4 JUROR NUMBER 669: This individual have
5 transparency hole within itself right at this time, and
6 he always will. *Vengeance is mine*, said the Lord. So,
7 you have to look at yourself. No matter where you go,
8 how long you live, rest of your life or whatever, you
9 have to face these things within yourself. And if
10 you're not -- if you're not facing it right now, it's
11 going to come to you. So, there's a -- it's like it's
12 transparent. You can put your hands right through the
13 right at this time. So, you know, that's my opinion of
14 that.

15 MR. MCGUIRE: Are you talking about in terms of --

16 JUROR NUMBER 669: You -- you mentioned --

17 MR. MCGUIRE: Tell me what you mean by that.

18 JUROR NUMBER 669: You mentioned by the penalty
19 phase.

20 MR. MCGUIRE: Sure.

21 JUROR NUMBER 669: And that's what I was expressing
22 that as the penalty phase. You have to live with
23 yourself.

24 MR. MCGUIRE: Okay. And when you say *live with*
25 *yourself*, do you mean as a juror, like as your vote, or?

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1 JUROR NUMBER 669: Well, I'm only talking about I'm
2 only speaking of myself. You asked me how I felt about
3 this individual.

4 MR. MCGUIRE: Okay. Okay. Okay. So, in terms of
5 going back to the individual decision, --

6 JUROR NUMBER 669: Okay.

7 MR. MCGUIRE: -- and it's not -- it doesn't have to
8 be unanimous; the jury can agree to disagree; the Judge
9 will tell you that people can vote for the life penalty
10 for any reason, no reason, or just mercy. If somebody
11 said I'm going to vote for the life penalty for just no
12 reason at all, could you respect that?

13 JUROR NUMBER 669: I can't speak for someone else,
14 but if I hear all the facts, the what, why, and when,
15 that's when I would make a decision such as that, life
16 or whatever else.

17 MR. MCGUIRE: Sure.

18 JUROR NUMBER 669: But until I know total facts,
19 it's hard to say. But whatever somebody else says is
20 not going to change my opinion, once I get the facts.

21 MR. MCGUIRE: And that's because your opinion
22 should be respected.

23 JUROR NUMBER 669: Just as theirs should.

24 MR. MCGUIRE: Exactly. And you know, there are a
25 lot of rules in court. Some are for me, some are for

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1 the government, some are for you. And the Judge is
2 going to make sure that these proceedings are conducted
3 with respect and dignity. And it's actually wrong to
4 bully somebody or put pressure on somebody to abandon
5 their own individual moral decision in the penalty
6 phase. If you saw anything like that, could you pass a
7 note out to the Judge saying that things are a little
8 unfair in here, and we need to get fairness back to the
9 room?

10 JUROR NUMBER 669: Well, shouldn't that be up to
11 the lead juror?

12 MR. MCGUIRE: The foreman. You could ask the
13 foreman to do it, yes, sir.

14 JUROR NUMBER 669: If we have a problem, we should
15 take it to the foreman? I'm asking you. Or should we
16 bring it to your Honor?

17 MR. MCGUIRE: You could just ask the foreman to
18 say, you know, my understanding of the Judge's
19 instruction is that, to live up to the juror oath, that
20 once somebody reaches their individual moral judgment
21 with respect to penalty, they have a duty and obligation
22 to have that position heard in court. It would be
23 unlawful for them to abandon that position just for the
24 sake of compromise. And you could -- could you say, Mr.
25 Foreman, we want to make sure that doesn't happen, and I

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1 want you to tell the Judge that I'm concerned about
2 that. Could you do that?

3 JUROR NUMBER 669: Yes, I can do that. I can do
4 that. And if it is the foreman, then I'll go to the
5 Judge.

6 MR. MCGUIRE: Go right over his head?

7 JUROR NUMBER 669: Well, if it's him the person
8 that's creating the havoc.

9 MR. MCGUIRE: Absolutely. If you could just give
10 me one second.

11 THE COURT: Let's go.

12 MR. MCGUIRE: That's all I have. Thank you so
13 much.

14 THE COURT: Mr. Stone.

15 MR. MCGUIRE: Thank you, sir.

16 MR. STONE: And Mr. White, just want to make sure
17 you understand; I think you do. But once you're in the
18 jury room, it's acceptable and, in fact, expected that
19 you would discuss it amongst yourselves with the jury to
20 try to come up with a decision in these cases. You
21 understand that.

22 JUROR NUMBER 669: Yes, sir.

23 MR. STONE: All right. Now, I read through your
24 questionnaire, and I want to make sure that I'm on the
25 same page. And I think I understand your answers from

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1 what the Defense asked you, but I want to make sure.
2 What I think you're saying is that you would take
3 everything into consideration to determine whether or
4 not somebody should deserve a life sentence or the death
5 penalty. Is that correct?

6 JUROR NUMBER 669: Yes, sir.

7 MR. STONE: And so, my question to you is, if a
8 case is bad enough, could you give somebody the death
9 penalty?

10 JUROR NUMBER 669: That's something I'm going to
11 have to think about after --

12 MR. STONE: Pardon me?

13 JUROR NUMBER 669: It would be something I have to
14 think hard about after the what, why, when.

15 MR. STONE: Certainly. Certainly. And I -- and I
16 -- and I don't want to even suggest to you facts of the
17 case or anything like that. My only question would be,
18 if the case was bad enough in your mind, could you give
19 somebody the death penalty?

20 JUROR NUMBER 669: It'll take a lot of thinking
21 over.

22 MR. STONE: Okay. Okay. The questionnaire that
23 was sent to you, do you recall the question -- I think
24 we've actually referred to it earlier.

25 JUROR NUMBER 669: Yes, we did.

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1 MR. STONE: And there are, in that questionnaire,
2 there were three types of jurors. There was the Type 1
3 juror, who would always give the death penalty. Type 2,
4 that would never give the death penalty. And then, Type
5 3, that would consider both aggravation and mitigation,
6 and determine, after listening to everything, whether or
7 not it's appropriate to give life or death. And I think
8 on your questionnaire you indicated that you were that
9 third type of juror. Is that correct?

10 JUROR NUMBER 669: Yes, sir.

11 MR. STONE: Okay. So, if you took everything into
12 consideration, and you felt the case was bad enough, you
13 could give the death penalty.

14 JUROR NUMBER 669: That's not something that I can
15 answer, not something I would answer.

16 MR. STONE: Sure.

17 JUROR NUMBER 669: In that point, you would want to
18 have more to work with before you make a judgment as
19 such.

20 MR. STONE: Sure.

21 JUROR NUMBER 669: For myself.

22 MR. STONE: Okay. But you're not automatically --
23 well, you would not, obviously, automatically give
24 somebody the death penalty; nor would you automatically
25 ignore the death penalty as a potential punishment.

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1 JUROR NUMBER 669: I would -- I would -- I would
2 not ignore it.

3 MR. STONE: Okay.

4 JUROR NUMBER 669: None of it.

5 MR. STONE: Right.

6 JUROR NUMBER 669: Until -- but just, no. People
7 have morals and --

8 MR. STONE: Certainly.

9 JUROR NUMBER 669: -- know God or whatever, or --

10 COURT REPORTER: *People have morals* and?

11 JUROR NUMBER 669: People have -- well, I have
12 morals, and I know God. So, I would need to know all of
13 what's going on or what have went on before I would even
14 go in that direction.

15 MR. STONE: Okay. I understand that, I think. But
16 you don't have any moral -- you don't have anything that
17 says I could never give somebody the death penalty.

18 JUROR NUMBER 669: No, never say never.

19 MR. STONE: Okay. And in the same light, you don't
20 have anything in your morals or religious background
21 that says you'd always have to give the death penalty..

22 JUROR NUMBER 669: No.

23 MR. STONE: This is just a decision you'd have to
24 make after you hear everything?

25 JUROR NUMBER 669: Yes, sir.

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1 MR. STONE: Thank you, sir. Appreciate it.

2 THE COURT: All right. Mr. White, I am going to
3 ask that you just step out here with Bob for just a
4 brief moment. We're going to bring you right back in
5 and tell you where we're going to go from here. All
6 right, sir?

7 JUROR NUMBER 669: Yes, ma'am.

8 THE COURT: Thank you.

9 JUROR NUMBER 669 LEAVES COURTROOM.

10 THE COURT: All right.

11 BAILIFF: Door is closed, your Honor.

12 THE COURT: Mr. Stone.

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

14 THE COURT: Defense.

15 MR. MCGUIRE: No objection.

16 THE COURT: All right. He is qualified. All
17 right. Obviously, we're running behind. We're going to
18 keep going. We do have a lot of jurors. Pardon? Thank
19 you. We'll bring him back out again. I apologize.
20 Moving on.

21 JUROR NUMBER 669 ENTERS COURTROOM.

22 BAILIFF: If you'll just stand right there for a
23 minute, sir.

24 THE COURT: Mr. White.

25 JUROR NUMBER 669: Yes, ma'am?

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1 THE COURT: Thank you for being here today. You
2 have been qualified as a potential juror in the trial of
3 this case. That does not mean you have been chosen a
4 juror yet. You are just a potential juror.

5 Sir, I am going to ask that you return on Monday
6 morning at 9:30, where we are, hopefully, going to pick
7 a jury in the trial of this case.

8 We are going to give you a phone number. I
9 anticipate that this process of what I've done with you,
10 and what I'm doing with all the jurors that are here
11 with us, will conclude, hopefully, by about Saturday. I
12 want you to call that line after 6:00 o'clock. There
13 will be a recorded message. It will tell you whether or
14 not I need you to return Monday morning at 9:30. It may
15 say something like I want you to return at 11:30 or
16 12:00 or in the afternoon, or even possibly Tuesday
17 morning. Whatever that phone line says and tells you to
18 do, just follow it, and we look forward to seeing you
19 then.

20 Additionally, sir, you are not to speak about this
21 case with anyone, certainly not tell anyone about any of
22 the questioning we've had here. And also, you are not
23 to look at any news reports, do any independent research
24 or anything like that in regards to this case. Is that
25 okay with you?

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1 JUROR NUMBER 669: Yes, ma'am.

2 THE COURT: Mr. White, thank you. And you are
3 excused, sir.

4 JUROR NUMBER 669: Thank you, ma'am.

5 BAILIFF: Can I have your badge, please.

6 JUROR NUMBER 669 LEAVES COURTROOM.

7 BY THE COURT:

8 BAILIFF: Your Honor, Mr. Harrelson.

9 THE COURT: Please wait for a second, please.

10 BAILIFF: Sorry, your Honor.

11 THE COURT: Please -- please wait, Al.

12 BAILIFF: Yes, ma'am.

13 THE COURT: Thank you.

14 THE COURT: Okay. All right. Very quickly, I need
15 to speak with Ms. Bostic and -- who is this? Another
16 one? Okay. All right.

17 Mr. McGuire, I have given you a lot of leeway here.
18 And I believe that some of the questioning you were
19 going into is not necessary. Particularly, you talk
20 about, you know, my job is to defend him in the guilt
21 phase and don't hold that against me. You seem to be
22 just conditioning the jury, as opposed to really asking
23 them a question. I know at the end you're asking them
24 whether or not you'd hold against them. I understand
25 credibility is very important for you in what you're

1 trying to do, but again, let's narrow this to what it
2 is, whether or not these people can be an adequate
3 juror, weighing the facts and circumstances.

4 You know, we talk about -- you know, you also go
5 into the rules of court, and can you send a note out. I
6 can tell you that, that question is confusing the jury,
7 because I think some of them don't know if they're
8 allowed to do that. I don't think it's whether or not
9 they're strong enough to do it, which is what you think
10 you're trying to get to, but they're just not sure about
11 what their interaction is. And it's for the same
12 reason, and most of this questioning is done by you as
13 opposed to me, because, in the role of authority as a
14 judge, they are fearful of talking directly to me.

15 So, you may want to, over the next five minutes,
16 re-think that question, narrow it. I don't think it
17 necessarily gets to the true point and purpose of
18 whether or not these people can listen to the facts and
19 circumstances of this case and decide whether or not
20 death or life is appropriate.

21 I think we need to get back to what this is really
22 about and what the consideration is. So, again, it's
23 not necessarily to educate them. I am going to do all
24 of that in my charge, certainly, at the beginning, and
25 at the end. I understand your intents and what you're

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1 trying to do, but again, at the rate we're going, we're
2 never going to finish this.

3 I think we are moving along. I think we have found
4 qualified people. I think we're doing so well to this
5 point because we have done so much at the get-go by you
6 both agreeing to eliminate people that circled Type 1
7 and Type 2 juror as jurors on their questionnaire, and I
8 think we are able to get jurors this way, but let's
9 narrow it, and let's move it along. Okay?

10 MR. MCGUIRE: Okay.

11 THE COURT: And -- okay?

12 MR. THORNTON: Yes, your Honor. I do have one
13 other matter. I can do it now, or I can do it after
14 your five minutes.

15 THE COURT: Certainly. What do you need?

16 MR. THORNTON: Your Honor, I believe that Mr.
17 McGuire is basically diminishing the role of the jury.
18 He keeps repeatedly telling the jury, *you have one of*
19 *three verdicts*. No, you don't. You have one of two
20 verdicts. It's either unanimous for life, unanimous for
21 death, or you have failed to reach a verdict. I would
22 point the Court to *United* -- and I'm sorry, Judge.

23 THE COURT: It's okay.

24 MR. STONE: I didn't know this was going to come
25 up, or I would have had some type of brief for you.

1 *Jones versus United States, 527 U.S. 373. It's a*
2 *Supreme Court case. It's interpreting their statutory*
3 *scheme, which is similar to ours. And here's what they*
4 *say. That:*

5 *The truth of the matter is, that*
6 *the proposed instruction, --*
7 *which is basically what he's saying is, you don't*
8 *have to reach a decision; it's perfectly fine if you*
9 *guys can't agree,*

10 *-- has no bearing on the jury's role in*
11 *the sentencing process; rather, it speaks*
12 *to what happens in the event the jury is*
13 *unable to fulfil its role when deliberations*
14 *break down and the jury is unable to*
15 *produce a unanimous sentence recommendation.*

16 *We have long been of the view that the*
17 *very object of the jury system is secure*
18 *unanimity by a comparison of views and by*
19 *arguments among the jurors themselves.*

20 *We are of the view that a charge to the*
21 *jury of the sort proposed by petitioner*
22 *might well have the effect of undermining*
23 *this strong governmental interest.*

24 *And basically, what he's doing is saying, you*
25 *really don't need to do anything unanimous; you all come*

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1 up to your own; and if you all happen to agree, great;
2 but if you don't, you don't even need to talk about it,
3 because that's your own moral judgment; and then you're
4 done; you just come out and tell the judge.

5 You know, that undermines the entirety of some of
6 the Allen charges that are done. And the entire
7 process, Judge, is for them to get a unanimous verdict.

8 Now, if they don't, and they come out, fine. But I
9 don't think we should be encouraging that process from
10 the get-go, and that would be the State's position.

11 THE COURT: Okay. Mr. McGuire?

12 MR. MCGUIRE: Well, I can't disagree more, Judge.
13 Everything I've told them has been completely accurate.
14 It's the law. They are required to reach an individual
15 moral judgment. The sentencing is completely
16 individual. They --

17 THE COURT: But that's after discussion. I mean,
18 the way you --

19 MR. MCGUIRE: Well, sure.

20 THE COURT: The way you're making it sound is, if
21 they don't even discuss it, it's just they all sit and
22 individually hear it, don't discuss it, and they all
23 decide.

24 MR. MCGUIRE: Oh, --

25 THE COURT: So, I think there needs to be something

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1 in there about we expect you to exchange ideas and talk
2 to each other. We, obviously, just don't want anyone to
3 do violence to their conscience by someone trying to
4 pull them one way or the other.

5 MR. MCGUIRE: Sure. And the phrase I've used is
6 civil discourse.

7 THE COURT: Right.

8 MR. MCGUIRE: We would expect civil discourse.

9 THE COURT: Right.

10 MR. MCGUIRE: And that's what we do expect, a
11 polite exchange of ideas and views. That's what we
12 should have. That's the term that I've used. I'm in
13 favor of that. I am trying to make sure that they
14 understand their obligation to the juror oath. And once
15 they do reach an individual moral decision, they do have
16 a duty and obligation to stay there if it would do --
17 the exact phrase I used was *do violence to their*
18 *conscience*, which is the law of the land. And I said:

19 *If it would harm someone's conscience*
20 *to give up their position for the sake of*
21 *compromise.*

22 That's unlawful; that's in violation of the juror
23 oath. And I just want to make sure everyone understands
24 that.

25 THE COURT: Okay.

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1 MR. MCGUIRE: What the State is hoping for is that
2 we can smoke out a unanimous death verdict under a
3 misconception that they have to be unanimous one way or
4 the other, if they're not informed that they can be
5 allowed to be in disagreement. That's what they want.
6 They want the advantage of deliberation under
7 misconception, which is outlawed in the *State of South*
8 *Carolina versus Simmons* opinion, where the definition of
9 life was not properly defined by the Court; that they
10 said that not defining life as life without parole,
11 person dying in prison, and just saying life, and
12 leaving them to speculate what life means is not being
13 truthful and accurate with the jury. And they could
14 make a decision based on misinformation.

15 THE COURT: Well, I think we can all agree on that.
16 No question. That's not the fight. Okay. So, I just
17 want to make sure that we're all truthful, accurate;
18 they understand that, while the second phase is, again,
19 a bit more individual in that they each have to come up
20 with their own decision, but there is expected
21 discourse.

22 Mr. Stone, I think, in the last person, picked that
23 up and started asking, as well, you understand you are
24 expected to exchange views. That's why there's twelve
25 of you, instead of us going back there and handing each

1 of you a sheet after the penalty phase and saying each
2 one of you fill it out and here we go.

3 So, again, I appreciate that. I understand what
4 your objection is, and I am somewhat -- I am somewhat
5 sustaining it, quite frankly. I think we need to move
6 on here. And again, I think we need to get away from
7 conditioning this jury as to what your side is and what
8 you are trying to accomplish; and let's get to the fact
9 of what, in fact, they have to decide and whether or not
10 they are qualified. And that means they've got to be a
11 person who will listen to everything; and to consider,
12 based on the circumstances and any mitigation, either
13 death or life, and neither one is automatic.

14 Okay. We're going to take a quick five minutes. I
15 need to talk to Ms. Bostic.

16 MR. MACDOUGALL: Thank you, your Honor. Thank you.

17 OFF THE RECORD 1:25 P.M.

18 BACK ON THE RECORD 1:32 P.M.

19 BY THE COURT:

20 THE COURT: All right. It's my understanding that
21 we have four people left that were supposed to be here
22 at 11:00 o'clock. So, what I'm going to try to do is
23 get those people out of here. Then, we'll take a break.
24 I think Norman talked to you all about maybe trying to
25 get someone to order something and bring it in for you.

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1 Same thing for the State. So, again, keep moving for a
2 little bit, and we'll take a small break.

3 All right, Al.

4 BAILIFF: Ready, your Honor?

5 THE COURT: We're ready to go, sir.

6 JUROR NUMBER 298 ENTERS COURTROOM.

7 BAILIFF: Mr. James Harrelson, your Honor.

8 THE COURT: Come on forward, Mr. Harrelson.

9 BAILIFF: If you will, just go up and take the
10 witness stand.

11 THE COURT: Good morning, sir.

12 JUROR NUMBER 298: Good morning.

13 THE COURT: Afternoon. I apologize.

14 JUROR NUMBER 298: That's all right. I apologize
15 for my shorts. I came from work.

16 THE COURT: That's all right, sir. Mr. Harrelson,
17 I need to remind you, sir, that you are still under the
18 juror's oath that you took yesterday. Is that
19 acceptable to you, sir?

20 JUROR NUMBER 298: Yes, ma'am.

21 THE COURT: Additionally, sir, I want to make sure
22 you understand and appreciate that the case that we are
23 pulling a jury in is a capital case. The defendant has
24 been charged with two counts of murder, and the State is
25 seeking the death penalty in this case.

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1 I want you also to understand that, in a case that
2 is a potential death penalty case, the trial is
3 bifurcated. The first part of the trial is to determine
4 whether or not a person is guilty or not guilty of the
5 crimes charged. The jury would make that first
6 determination. And if they were found not guilty, of
7 course, it would be over with and done, and we would go
8 home.

9 If the jury did, in fact, find that a defendant was
10 guilty, we would then go into the second part or phase
11 of the trial which is the sentencing phase. At that
12 time, you would hear mitigating evidence from the
13 Defense. You would also hear specific aggravating
14 circumstances, possibly, from the State. And you would
15 have the option or the opportunity at that time to
16 either vote for either a sentence of life without the
17 possibility of parole or a death sentence.

18 Sir, I just want to make sure that you understand
19 and can appreciate and consider all the evidence in the
20 case, including aggravation and mitigation.

21 And the point here is to make sure that you
22 understand that you can vote for a life-without-parole
23 sentence for any reason, no reason, or simply as a grant
24 of mercy, in your opinion, sir. And again, you would
25 never have to explain that decision. I want to make

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1 sure you appreciate that, and understand that this is
2 not just an automatic process. We will go through two
3 phases, first the guilt phase, and then a sentencing
4 phase. And do you understand that, Mr. Harrérlson?

5 JUROR NUMBER 298: Yes, ma'am.

6 THE COURT: All right, sir.

7 THE COURT: Additionally, you had an opportunity to
8 go through a witness list back in the jury room. Is
9 that correct?

10 JUROR NUMBER 298: Yes, ma'am.

11 THE COURT: Is there anyone on there that you are
12 either business, personal, or a social acquaintance
13 with?

14 JUROR NUMBER 298: There's a good many of them. I
15 knew just about everybody on the Sheriff's Department.

16 THE COURT: On the Sheriff's Department. Okay.
17 Sir, what is your connection to the Sheriff's
18 Department, if you know most of those officers?

19 JUROR NUMBER 298: I have some that are good
20 friends, and most of them I know because they eat at a
21 restaurant.

22 THE COURT: Because they eat at a restaurant.

23 JUROR NUMBER 298: Um-hmm.

24 THE COURT: All right, sir. And remind me again, I
25 apologize, the name of your restaurant.

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1 JUROR NUMBER 298: Duke's Barbecue.

2 THE COURT: Duke's Barbeque. Are you the one here
3 in Beaufort?

4 JUROR NUMBER 298: Yes, ma'am.

5 THE COURT: Do you own the other Duke's, as well,
6 or?

7 JUROR NUMBER 298: No, ma'am.

8 THE COURT: Just this one. All right, sir.

9 JUROR NUMBER 298: One's enough.

10 THE COURT: Okay. So, you know most of the
11 officers, then?

12 JUROR NUMBER 298: Yes, ma'am.

13 THE COURT: Is that correct? All right, sir. The
14 fact that you know a number of these deputies who may be
15 testifying in the trial of this case, I need to know
16 that you can put that relationship aside and be fair and
17 impartial based on the evidence. Can you do that?

18 JUROR NUMBER 298: I feel sure I could, yeah.

19 THE COURT: You do feel sure you could?

20 JUROR NUMBER 298: Um-hmm.

21 THE COURT: Is that a yes for the record, sir?

22 JUROR NUMBER 298: Yes, ma'am.

23 THE COURT: Thank you. And I apologize. We just
24 have to get a yes or no. I can't do an uh-huh or an uh-
25 uh. And I say that to my own family all the time.

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1 Sir, additionally, there has been some publicity in
2 this case. Have you heard about this case, either
3 through the news or any other source, or any other
4 independent source?

5 JUROR NUMBER 298: I read about it in the paper at
6 the time it happened, but I don't remember much about
7 it.

8 THE COURT: All right, sir. And I want to also
9 make sure that anything you've read in the papers you
10 know is not factual, would not be considered by you.
11 Again, if you were chosen as a juror in the trial of
12 this case, you would have to confine your consideration
13 and deliberation to what is presented strictly here in
14 the courtroom and nothing else. Do you understand that?

15 JUROR NUMBER 298: Yes, ma'am.

16 THE COURT: All right, sir. I'm going to go ahead
17 and turn you over to Mr. McGuire. He is going to ask
18 you a number of questions. Sir, I will tell you that
19 there are no right or wrong answers to any of these
20 questions. The only thing we ask is that you be honest
21 and candid with us.

22 JUROR NUMBER 298: Okay.

23 THE COURT: All right, sir?

24 JUROR NUMBER 298: Yes, ma'am.

25 THE COURT: Thank you. And it's Mr. Young. I

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1 apologize.

2 MR. YOUNG: That's all right. Good morning, Mr.
3 Harrelson.

4 JUROR NUMBER 298: Good morning.

5 MR. YOUNG: I am Boyd Young. A couple of quick
6 questions from your questionnaire. You indicated that
7 you had been robbed about five times. Is that right?

8 JUROR NUMBER 298: Yes, sir.

9 MR. YOUNG: Were all those armed robberies, or what
10 were the circumstances of those?

11 JUROR NUMBER 298: They were breaking and entering.
12 I was not present at the time.

13 MR. YOUNG: Okay. So, were these entries -- you
14 said at the farm. Is that your home, or is that just a
15 piece of property where stuff was stolen from?

16 JUROR NUMBER 298: It was my family estate.

17 MR. YOUNG: Okay. Nobody was home, and nobody was
18 at the restaurant during any of the robberies?

19 JUROR NUMBER 298: No, sir.

20 MR. YOUNG: Okay. We've talked a lot about the
21 death penalty, and I want to ask you some questions
22 about your views about the death penalty. But before I
23 do that, I need you to assure me that, just because
24 we're talking about penalty doesn't mean that you're
25 going to presume that Mr. Daise is guilty.

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1 JUROR NUMBER 298: No, sir.

2 MR. YOUNG: Is that okay?

3 JUROR NUMBER 298: Yes, sir.

4 MR. YOUNG: You agree with that.

5 JUROR NUMBER 298: Yes, sir.

6 MR. YOUNG: This is my only opportunity to talk to
7 you, so I have to do it now.

8 JUROR NUMBER 298: Yes, sir.

9 MR. YOUNG: Okay? The Judge told you a little bit
10 about we're here on a murder case.

11 JUROR NUMBER 298: Yes, sir.

12 MR. YOUNG: All right. And murder in South
13 Carolina is the killing of an innocent person with
14 malice aforethought.

15 JUROR NUMBER 298: Yes, 'sir'.

16 MR. YOUNG: And that means that the person meant to
17 do it, and that they had evil intent.

18 JUROR NUMBER 298: Um-hmm.

19 MR. YOUNG: Okay. That they killed an innocent
20 person.

21 JUROR NUMBER 298: Um-hmm.

22 MR. YOUNG: It wasn't self-defense; wasn't
23 accident; knew the difference between right and wrong;
24 knew what they were doing; meant to do it; and did it.

25 JUROR NUMBER 298: Yes, sir.

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1 MR. YOUNG: Okay. And we're talking about the
2 person who killed two people, the mother and a child of
3 four years old.

4 JUROR NUMBER 298: Yes, sir.

5 MR. YOUNG: In that situation, what are your
6 feelings about the appropriateness of the death penalty?

7 JUROR NUMBER 298: Well, I feel if you did it with
8 malice, I feel like you should suffer the death penalty.

9 MR. YOUNG: That's just sort of if it was done
10 maliciously?

11 JUROR NUMBER 298: Yes.

12 MR. YOUNG: The death penalty is the appropriate
13 punishment?

14 JUROR NUMBER 298: Yes, sir.

15 MR. YOUNG: And in that situation, the life
16 penalty, where somebody just goes to prison, that's not
17 a severe enough punishment for you.

18 JUROR NUMBER 298: No, sir.

19 MR. YOUNG: Your Honor, I'm going to hold up here,
20 and I'll ask more questions if necessary.

21 THE COURT: Okay. Mr. Stone.

22 MR. STONE: Mr. Harrelson, my name's Duffie Stone.
23 I'm just going to ask you a few questions. You filled
24 out a questionnaire in this case. Do you recall doing
25 that?

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1 JUROR NUMBER 298: Yes, sir.

2 MR. STONE: And there is -- in the questionnaire,
3 there are three types of jurors that are lined out in
4 that questionnaire. One is somebody that, in a murder
5 case, would always give the death penalty. There's the
6 type of juror who would never give the death penalty.
7 And then, there's the third that would consider all of
8 the facts, all of the circumstances, whether aggravation
9 or mitigation, and weigh those in determining whether or
10 not the appropriate sentence was life or death. I think
11 you circled that one. Is that correct?

12 JUROR NUMBER 298: Yes, sir.

13 MR. STONE: Is that still your belief?

14 JUROR NUMBER 298: Yes, sir.

15 MR. STONE: So, when the Defense asked you this
16 question, they didn't give you the full picture, just
17 part of it. But in determining whether or not a
18 sentence of death or a sentence of life is appropriate,
19 would you consider everything before you made that
20 decision?

21 JUROR NUMBER 298: Yes, sir.

22 MR. STONE: Okay. And if the case was bad enough,
23 you could give the death penalty.

24 JUROR NUMBER 298: Yes, sir.

25 MR. STONE: Okay. But you would also consider life

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1 in prison, as well.

2 JUROR NUMBER 298: Yes, sir.

3 MR. STONE: Okay. Thank you, Mr. Harrelson. I
4 appreciate it. Nothing else.

5 MR. YOUNG: Mr. Harrelson, I'm just going to follow
6 up with you a little bit. Okay?

7 JUROR NUMBER 298: Um-hmm.

8 MR. YOUNG: You had indicated to me that life was
9 not an appropriate punishment for somebody who you had
10 found guilty of malice murder.

11 JUROR NUMBER 298: Yes, sir.

12 MR. YOUNG: Is that still your view?

13 JUROR NUMBER 298: Yes, sir. Okay. And I'm not
14 trying to confuse you or anything like that. Can you
15 just tell me what your thoughts are. Why is life in
16 prison not an appropriate punishment for somebody who's
17 been convicted of malice murder?

18 JUROR NUMBER 298: Well, they -- they've taken a
19 life, an innocent life, and they've ruined several lives
20 because of that. And I don't think that somebody should
21 live, and if they did it viciously, that they should
22 live.

23 MR. YOUNG: And that's just who you are and how you
24 do things.

25 JUROR NUMBER 298: Yes, sir.

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1 MR. YOUNG: Stuff about a defendant, like how he
2 grew up, whether or not he had means as a child, would
3 that stuff matter to you for a malicious murder?

4 JUROR NUMBER 298: I don't think it would pertain
5 to what he did. I mean, it might affect him mentally,
6 yes, but I don't think that should pertain to why he did
7 it or if he did it.

8 MR. YOUNG: Right. That's a different decision for
9 you.

10 JUROR NUMBER 298: Yes, sir.

11 MR. YOUNG: I guess -- may we approach?

12 THE COURT: Sure.

13 MR. LEDDY: Your Honor, can I approach, too.

14 THE COURT: You may.

15 OFF-THE-RECORD-BENCH CONFERENCE.

16 PRESENT: THE COURT, MR. THORNTON,

17 MR. YOUNG, MR. LEDDY.

18 END BENCH CONFERENCE.

19 THE COURT: All right, Mr. Boyd [sic], I apologize.

20 MR. YOUNG: That's okay. And I'm sorry, Mr.
21 Harrelson. Just a couple more things. So, the way that
22 this works is, first, we have a trial about the murder,
23 right?

24 JUROR NUMBER 298: Yes, sir.

25 MR. YOUNG: And you understood that.

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1 JUROR NUMBER 298: Yes, sir.

2 MR. YOUNG: And if, and only if, the defendant's
3 found guilty, then, we may have a second trial about
4 penalty.

5 JUROR NUMBER 298: Yes, sir:

6 MR. YOUNG: And it would be the same jury.

7 JUROR NUMBER 298: Yes, sir..

8 MR. YOUNG: And in that second trial, the State has
9 the burden of proof on what's called aggravating
10 factors, stuff that makes the murder worse.

11 JUROR NUMBER 298: Yes, sir.

12 MR. YOUNG: And if they prove that aggravating
13 factors beyond a reasonable doubt to the jury, then, the
14 jury is entitled to consider punishment.

15 JUROR NUMBER 298: Yes, sir.

16 MR. YOUNG: Is that how you understood it to work?

17 JUROR NUMBER 298: Yes, sir.

18 MR. YOUNG: And at that point in time, the Defense
19 could bring you things about a defendant, his life, his
20 background. Okay?

21 JUROR NUMBER 298: Um-hmm.

22 MR. YOUNG: And that's what we call mitigation.

23 JUROR NUMBER 298: Yes, sir.

24 MR. YOUNG: Okay. Mitigation is stuff like what if
25 somebody grew up poor. Okay?

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1 JUROR NUMBER 298: Yes, sir.

2 MR. YOUNG: Whether or not somebody was abused.

3 JUROR NUMBER 298: Yes, sir.

4 MR. YOUNG: Stuff that doesn't tie directly to the
5 crime.

6 JUROR NUMBER 298: Yes, sir.

7 MR. YOUNG: Does that stuff matter to you in
8 deciding what punishment is appropriate?

9 JUROR NUMBER 298: As I see it now, no, sir.

10 MR. YOUNG: No, sir. And even in the event
11 mitigation doesn't have a burden of proof on it like
12 aggravation does, where the State has to prove it beyond
13 a reasonable doubt, mitigation a juror can find it for
14 themselves whatever they feel is right. Does that make
15 sense to you?

16 JUROR NUMBER 298: I'm sorry. Tell me that again.

17 MR. YOUNG: Sure. Mitigation doesn't have a burden
18 of proof like aggravation does.

19 JUROR NUMBER 298: Right.

20 MR. YOUNG: Aggravation has to be proven by the
21 State beyond a reasonable doubt. Okay?

22 JUROR NUMBER 298: Yes, sir.

23 MR. YOUNG: Mitigation is something that each juror
24 gets to decide for themselves what's mitigating for
25 them.

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1 JUROR NUMBER 298: Yes, sir.

2 MR. YOUNG: Okay? It doesn't have to be unanimous.
3 Not everybody has to agree that he was abused. Okay?

4 JUROR NUMBER 298: Right.

5 MR. YOUNG: Not everybody has to agree that abuse
6 has been proven to everybody in the panel. Okay?

7 JUROR NUMBER 298: Right.

8 MR. YOUNG: One person could say I think it's
9 there, and I'm going to give it the weight that I think
10 is appropriate.

11 JUROR NUMBER 298: Yes, sir.

12 MR. YOUNG: Does that make sense to you?

13 JUROR NUMBER 298: Yes, sir.

14 MR. YOUNG: Okay. And even if there's no
15 mitigating circumstances, a juror can decide to give a
16 life penalty based on who they are and their sense of
17 mercy alone. Does that make sense to you?

18 JUROR NUMBER 298: Yes, sir.

19 MR. YOUNG: So, even if there's no evidence, you
20 still have a life penalty option.

21 JUROR NUMBER 298: Yes, sir.

22 MR. YOUNG: And what we call this penalty decision
23 is an individual moral judgment. Okay?

24 JUROR NUMBER 298: Yes, sir.

25 MR. YOUNG: An individual moral judgment is like

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1 choosing what religion is right for you.

2 JUROR NUMBER 298: Right.

3 MR. YOUNG: You would understand that some people
4 have chosen one religion, other people have chosen
5 another.

6 JUROR NUMBER 298: Right.

7 MR. YOUNG: And what's right for you might not be
8 right for somebody else.

9 JUROR NUMBER 298: Yes.

10 MR. YOUNG: But that's their individual moral
11 judgment.

12 JUROR NUMBER 298: Yes, sir.

13 MR. YOUNG: You respect their individual moral
14 judgment.

15 JUROR NUMBER 298: Yes, sir.

16 MR. YOUNG: You expect them to respect your
17 individual moral judgment.

18 JUROR NUMBER 298: Yes, sir.

19 MR. YOUNG: And at the end of the day, if two
20 people don't agree, will you insure that each person's
21 individual moral judgment is respected?

22 JUROR NUMBER 298: Yes, sir.

23 MR. YOUNG: Like, if somebody is being forced to
24 say, not -- I'm not talking about talking about -- I'm
25 talking about yelling at somebody, telling them they're

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1 wrong, telling them that their individual moral judgment
2 is wrong, they're being forced to change their opinion,
3 would you stop that?

4 JUROR NUMBER 298: Yes, sir.

5 MR. YOUNG: Because things have to be done in a
6 respectful way.

7 JUROR NUMBER 298: Yes, sir.

8 MR. YOUNG: Thank you.

9 MR. STONE: Very briefly, your Honor. Mr.
10 Harrelson, I just want to go back through this
11 questionnaire, because I was looking back through it,
12 and I want to make sure that I understood. On your
13 questionnaire, the sentencing considerations, and the
14 Part 1, there's really either two types, and we're sort
15 of going back and forth, and I just want to make sure:

16 Type 1 on this questionnaire, and I want to make
17 sure I get it right, so I'm going to read it the way
18 it's written:

19 *For any reason, whether it's a matter*
20 *of moral, religious, or philosophical*
21 *beliefs, or as a matter of conscience*
22 *or personal belief, or for any other*
23 *reason, can you say that you would always*
24 *vote to impose the death penalty when*
25 *the defendant has been convicted of*

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1 murder?

2 And that's the Type 1 juror.

3 Then, the Type 3 juror is the one that says that
4 you would consider all the facts of the case and
5 determine if death were appropriate, and could give
6 either a sentence of life in prison or a sentence of
7 death, depending on the facts and circumstances of the
8 case. Your circle on this question would be the third.
9 Is that still your position, or would you change that to
10 Number 1?

11 JUROR NUMBER 298: I'd say Number 3.

12 MR. STONE: Number 3?

13 JUROR NUMBER 298: Um-hmm.

14 MR. STONE: And that's after you have -- and I know
15 that the Judge has talked to you about consideration of
16 everything, as well as the Defense has tried to outline
17 what murder is. But you would still consider all of the
18 circumstances before making a decision one way or the
19 other about whether or not the defendant should get life
20 or death. Is that correct?

21 JUROR NUMBER 298: Yes, sir.

22 MR. STONE: All right, sir. Thank you, Mr.
23 Harrelson.

24 JUROR NUMBER 298: Um-hmm.

25 THE COURT: Anything else? Anything, you all?

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1 MR. YOUNG: Mr. Harrelson, can you tell me what the
2 difference is between your answers to my questions and
3 your answers to Mr. Stone's questions? Could you tell
4 -- I'm hearing you saying that you believe that a life
5 penalty is not appropriate for somebody who you found
6 guilty of murder.

7 JUROR NUMBER 298: I'm saying that, if -- if -- if
8 the facts, if you can prove it's aggravated, malicious,
9 I would vote for the death penalty, yes, sir.

10 MR. YOUNG: Okay.

11 JUROR NUMBER 298: But if it wasn't proven that it
12 was malicious or aggravated or something like that,
13 then, it would be hard to vote for the death penalty
14 with something like that.

15 MR. YOUNG: Okay. But once you found that it was
16 malicious, that malice was proven, --

17 JUROR NUMBER 298: Yes, sir.

18 MR. YOUNG: Okay. In order to find somebody guilty
19 of murder, there has to be malice.

20 JUROR NUMBER 298: Yes, sir.

21 MR. YOUNG: Okay. It's not heat of passion, self-
22 defense, accident, somebody may be really mad and may
23 have blacked out and lost -- it's just intentional,
24 meant to do it, malice murder.

25 JUROR NUMBER 298: Yes, sir.

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1 MR. YOUNG: In that circumstance, your vote is that
2 they should get the death penalty.

3 JUROR NUMBER 298: Yes, sir.

4 MR. YOUNG: And that's always your vote?

5 JUROR NUMBER 298: Yes, sir.

6 MR. YOUNG: Thank you.

7 MR. STONE: Nothing else, your Honor.

8 THE COURT: Mr. Harrelson, you may step outside for
9 just a moment. We'll be right back with you, sir. Oh,
10 Mr. Harrelson, follow Mr. -- thank you.

11 JUROR NUMBER 298 LEAVES COURTROOM.

12 BAILIFF: Door is closed.

13 THE COURT: Thank you. All right. Solicitor, do
14 you think he's qualified?

15 MR. STONE: Pardon me?

16 THE COURT: I said, Solicitor, do you think he's
17 qualified?

18 MR. STONE: Yes, ma'am.

19 THE COURT: All right. Mr. Young.

20 MR. YOUNG: Your Honor, that's why the test is
21 substantial impairment. We have a lot of people here.
22 Most of them have been qualified. He's clearly
23 impaired. He says once he finds malice, his vote is
24 automatically the death penalty.

25 I understand that he answers his question on a type

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1 question where there's murder in it and some other
2 background circumstances, but as he explained, he's
3 thinking about voluntary manslaughter or some other
4 circumstances, not malice murder. And he was very clear
5 that, once it was malice murder, he was automatic death
6 penalty.

7 In addition, your Honor, he said that he would not
8 consider mitigation. He checked on the back that the
9 defendant's background was not relevant on the
10 questionnaire. And when asked about specific
11 mitigation, he said it would not matter to him in
12 deciding this punishment.

13 THE COURT: All right. And I'll go ahead and say
14 it: that was a horrible question on that questionnaire
15 that I should never allowed. That was my fault.
16 Because many of them said no. I just don't think they
17 understood it, quite frankly.

18 But anyway, in this, I am going to find him not
19 qualified. I do feel like he made a pre-determined
20 decision.

21 I will tell you, though, on the questionnaire, we
22 started asking them if you give the facts of the case.
23 And you're asking them -- we're talking about a double
24 homicide, you know, and the, and you know, malicious,
25 evil shooting of a mother and a four-year-old child.

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1 Instead of you asking them what they think about the
2 death penalty, you need to ask what do you think
3 possibly could be an appropriate punishment, or what do
4 you think of life versus the death penalty? Because I
5 think you're baiting it when you just say the death
6 penalty. And again, I think that's where we're having a
7 problem. I mean, you're inviting the answer of, yeah, I
8 think they should get the death penalty. I think that's
9 the question that seems to be -- it does seem to be
10 inviting it.

11 MR. MCGUIRE: Well, your Honor, I mean, it's -- I
12 mean, it's life qualification. I mean, that's where we
13 start, is how they feel about the death penalty. I
14 mean, that's what *Morgan* tells us to do. You have to
15 ask them about the death penalty.

16 THE COURT: And again, what you're doing is, you're
17 asking about the specific circumstances of the case.
18 You're asking them to pre-judge this case just strictly
19 based -- you're not even telling them about the
20 mitigation portion of it. You're just offering and
21 stating that, listen, if you have someone who is, again,
22 evil intent, intentional killing, not accident, not
23 self-defense, you're only giving those options. And
24 based on those options, I think you are more inclined to
25 get someone that's going to say the death penalty. And

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1 when you think about it, I mean, it may be appropriate.

2 I mean, of course, the answer should be, for a
3 death-penalty-qualified juror, it may be appropriate,
4 but it also may not. I just, again, I want to be
5 careful that we're not baiting it.

6 MR. YOUNG: No, and I want to explain. And I think
7 it just relates back to what Dr. Foglia was talking
8 about, is that, jurors come in. And there are different
9 stages that I went through with Mr. Harrelson. There is
10 a conviction for malice murder, right? We don't call it
11 malice murder; we just call it murder.

12 THE COURT: Um-hmm.

13 MR. YOUNG: But it's a murder that was maliciously
14 committed in South Carolina.

15 THE COURT: Right. Right.

16 MR. YOUNG: If they are -- some people say I'm
17 undecided on the penalty based on just murder. Okay?
18 And some people say, based on murder alone, I'm an
19 automatic death penalty juror.

20 THE COURT: Um-hmm.

21 MR. YOUNG: Okay? Then, there's the next step, is
22 the aggravation. Now, the aggravation we're dealing
23 with in this case is category specific. It's not case
24 specific. We're talking specifically about a double
25 homicide and a child. Those are categories of crimes

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1 which a number of jurors say, based on that category of
2 crimes, I am automatic death penalty; you can't tell me
3 anything to change my mind; I'm always going to vote for
4 the death penalty; because, either it was more than one
5 person or it's a child, and in those cases, I'm
6 automatic death penalty. Those jurors are not
7 qualified.

8 We don't get to ask about mitigation until we find
9 out that they're qualified on the murder, qualified on
10 the aggravated murder; then we can talk about how to
11 arrive at the penalty decision using aggravation and
12 mitigation. And that's the process that we're trying to
13 take these jurors through. We check in with them here
14 to see if they're qualified, check in with them here to
15 see if they're qualified, and then go to the third
16 stage.

17 THE COURT: Okay.

18 MR. STONE: Your Honor, if I might. And I don't
19 want to slow the process down, but this is my initial
20 objection was based on *State versus Stanko*. And *Stanko*
21 talks about case-specific questions. We've got a
22 questionnaire that went to every one of these jurors
23 that had, quite frankly, very case-specific information
24 to them to begin with. And they had that as a
25 questionnaire. That was what -- that was the question

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1 that outlines everything; a mother, a child, a four-
2 year-old, all of that is already in that questionnaire.

3 And then, to bring them in here and ask case-
4 specific questions, that's exactly what *Stanko's* talking
5 about in staking out the jury. And I think that's
6 unfair. I think what's happening with the questions
7 that the Defense is asking is they're going, well, let
8 me tell you this horrible situation; do you think the
9 death penalty is appropriate. Well, it's very
10 difficult, I would find, -- I've been surprised how many
11 people haven't automatically said, of course, because I
12 think that's what -- I think that's what they're
13 shooting for.

14 To me, it's case-specific questions. And as a
15 result of that, they're trying to stake the jury out.
16 And that's exactly what *State versus Stanko* said they
17 shouldn't be doing, in the same way that the case law
18 says you shouldn't ask specific mitigation, as well.

19 I think the questionnaire has covered all of that,
20 and I think the question, really, to these jurors, needs
21 to be: are you a Type 1, Type 2, or Type 3 juror?

22 THE COURT: All right. Well, let's go ahead and
23 bring the next juror in, and let's just --

24 MR. MCGUIRE: I think Mr. Harrelson is still out.

25 THE COURT: Come on, Mr. Harrelson.

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1 JUROR NUMBER 298 ENTERS COURTROOM.

2 BAILIFF: If you will, just stand right here and
3 face the Judge.

4 THE COURT: Thank you. Mr. Harrelson, I want to
5 thank you for coming in today. Sir, I'm going to go
6 ahead and excuse you at this time as a potential juror.
7 Again, I can excuse you from the trial of this case, but
8 I appreciate you being here. I appreciate the candor of
9 your answers, sir, and we send you away with our thanks.
10 And I look forward to possibly seeing you at Duke's
11 Barbeque, because we are aficionados at my house, so I
12 look forward to seeing you over there.

13 JUROR NUMBER 298: All right.

14 THE COURT: Thank you.

15 JUROR NUMBER 298: Thank you, ma'am.

16 BAILIFF: Thank you, your Honor. And your badge,
17 please, sir.

18 JUROR NUMBER 298 LEAVES COURTROOM.

19 THE COURT: Let's go ahead and bring the next juror
20 in.

21 MR. MCGUIRE: Actually, Judge, can I be heard just
22 a minute, please.

23 THE COURT: Sure. Sure.

24 MR. MCGUIRE: I just want to --

25 THE COURT: Tell them to hold up. Hold up.

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1 BAILIFF: Hold up.

2 THE COURT: Hold up, Jody.

3 ON-THE-RECORD BENCH CONFERENCE,

4 OUT OF HEARING OF JURORS.

5 MR. MCGUIRE: I just want to talk in kind of just
6 pragmatic terms. You know, when I had a juror on the
7 stand who is clearly tearful about contemplating the
8 death penalty, I went straight to getting her out of
9 here. I didn't mess with her. I'm not going to waste
10 the Court's time with that.

11 When we have a man that gets on the stand and says,
12 if it's malice, I'm voting the death penalty; he says it
13 consistently; and then the State tries to get him
14 qualified; you know, we -- the reason that we have to
15 spend so much time with a juror, and it takes a while,
16 is because, if we could just, you know, Mr. Young
17 stopped. He got him -- you know, if it's malice, I'll
18 vote for the death penalty; it's always the death
19 penalty; that's not severe enough.

20 THE COURT: Um-hmm.

21 MR. MCGUIRE: And Mr. Young stopped. And we're all
22 about saving time and being efficient, but we're going
23 to have this disingenuous attack by the State to say
24 this man is qualified. Then, we're going to have --
25 we're going to -- you're going to see -- that's lend

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1 weight on the scales of justice. I respect your Honor,
2 and I think your decision to excuse him for cause is
3 absolutely right, and that could have been a reversible
4 error to put him in the pool.

5 But if there's going to be attempts to try to
6 qualify people who are that impaired, we have -- then,
7 we're going to have to -- we're going to have to counter
8 that.

9 COURT REPORTER: And we'll have to what?

10 THE COURT: Counter that.

11 MR. MCGUIRE: Counter that. I'm sorry. And we're
12 not staking out. Staking out is me trying to reach a
13 bargain with a juror about, if I can prove this, can you
14 vote right. If I prove he was abandoned as a child, can
15 you give me your word that, that's a life verdict for
16 you. That's staking out; that's prejudgment; that's
17 forbidden. And you haven't seen anybody up here do
18 that. We have not done that.

19 I think Mr. Harrelson's a perfect example of when a
20 person off the street with no legal training hears the
21 word *murder*, what they really hear is *homicide*. And as
22 soon as you break it down into the accurate truthful
23 legal definition; it's an intentional act with malice
24 aforethought, evil intent; then you see him keyed in and
25 give out his answers.

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1 To go through the three questions and say can you
2 consider everything and be fair to both sides, and use
3 words like murder that they don't know the definition
4 of, you are going to get misleading, wrong answers.
5 We're trying to speak in plain, pragmatic terms. We're
6 trying to be honest. We're trying to save time.
7 Everything we say is truthful.

8 And I mean, I just think that, when you use cliché-
9 type objections like staking out, pre-judgment, they're
10 frivolous, they're meritless. We're trying to get
11 straight to the truth of their real personal views,
12 without regard to the law. We don't want to educate on
13 what the law is; we want to get real views; and then see
14 if they conform to the requirements of the law. We
15 don't want to tell them what the law is, and then say
16 can you do that. Everybody wants to say yes. So, we
17 just want their personal views.

18 And I think that we have to start someplace, and
19 our words are not nearly severe enough as could be this
20 case. Just saying it's malice, murder, intentional,
21 killing an innocent person with malice aforethought, and
22 that aggravation that we have to talk about today is a
23 woman and a child, we have to say that. We have to. If
24 we don't, we're going to fail Mr. Daise; we're not going
25 to have a fair jury; and we're just trying to be as

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1 accurate and honest as we possibly can be.

2 THE COURT: Okay. Let's bring the next person in.

3 BAILIFF: Mr. Hudson Ingram.

4 JUROR NUMBER 337 ENTERS COURTROOM.

5 THE COURT: Come on in, Mr. Ingram. Right around
6 here, sir.

7 BAILIFF: Go ahead and take a seat on the witness
8 stand.

9 JUROR NUMBER 337: Thank you.

10 THE COURT: Thank you, sir. Good afternoon. Thank
11 you for your patience, sir.

12 JUROR NUMBER 337: Good afternoon.

13 THE COURT: Please take a seat, if you would. Mr.
14 Ingram, I need to remind you that you are still under
15 the oath you took as a juror yesterday. Is that
16 acceptable to you?

17 JUROR NUMBER 337: I understand.

18 THE COURT: All right, sir. I also want to explain
19 to you and make sure you understand that the case we
20 intend on beginning the trial here on Monday is a
21 capital case. Mr. Daise has been charged with two
22 counts of murder, and also assault and battery with
23 intent to kill. And that the State is seeking the death
24 penalty in this case.

25 I also want to make sure you understand that the

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1 trial of this case would be bifurcated. First, the jury
2 would determine, in a separate phase, the guilt or
3 innocence of the defendant in this case as to the
4 charges. Then, if the jury did, in fact, find him
5 guilty, then, and only then, we would go to the next
6 stage of the trial, which would be the sentencing phase.

7 And if found guilty of murder, which is the
8 definition of an intentional killing of another with
9 malice aforethought, or what we call an evil intent, if
10 we were to get to that stage, there would be only two
11 possible sentences that we'd be able to look at, as far
12 as a jury would look at. And that would be the option
13 of life without the possibility of parole. So, life
14 imprisonment or the death penalty. And the jury could
15 only consider the death penalty if it was proven by the
16 State, beyond a reasonable doubt, certain aggravating
17 circumstances in the case.

18 Sir, what I want to make sure you understand is
19 that the death penalty is never automatic. Even if the
20 State is able to prove the aggravating circumstances, it
21 is still up to the jury to determine the appropriate
22 sentence in the trial of this case. And the Defense
23 would likely put up mitigating circumstances, possibly
24 the background and history of the defendant. And again,
25 I would tell you that you must consider that in

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1 determining what sentence is appropriate in this case.

2 And again, you wouldn't even have to use one of
3 those mitigating circumstances. For any reason, no
4 reason at all, or simply using mercy, or your own
5 beliefs, you could give a sentence of life without the
6 possibility -- life imprisonment without the possibility
7 of parole.

8 I just want to make sure you understand and
9 appreciate that before we begin the questioning. Do you
10 understand that, sir?

11 JUROR NUMBER 337: I understand it fully, yes.

12 THE COURT: And I appreciate it. Sir,
13 additionally, you've gone over the witness list back in
14 the jury assembly room.

15 JUROR NUMBER 337: I have.

16 THE COURT: Sir, do you have any social or business
17 or personal relationships with any the persons on those
18 witness lists?

19 JUROR NUMBER 337: I do not.

20 THE COURT: Sir, additionally, there has been some
21 publicity in this case. And have you read anything,
22 seen anything, heard anything, or have any independent
23 knowledge about this case?

24 JUROR NUMBER 337: I read it in the paper when it
25 occurred some years back. And then, yesterday morning,

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1 when I opened the newspaper and saw parking was going to
2 be a problem because of all the jury pool, I attempted
3 to go online and read -- read what was in the *Island*
4 *Packet*.

5 THE COURT: Okay. In regards to the parking
6 issues.

7 JUROR NUMBER 337: In regards to this, yes.

8 THE COURT: All right. Sir, I just want to make
9 absolutely sure that you understand that, whatever is
10 put in those newspaper articles is not factual in this
11 case; and that you understand that the determination of
12 every single piece of evidence in this case has to be
13 what's presented here in the courtroom. And you
14 understand that, that has no bearing on what happens
15 here; and that you, here, are going to have a front row
16 seat to what has happened.

17 So, no one else, besides the twelve jurors, is
18 going to have better knowledge, other than the
19 attorneys, of what occurred. So, I want to make sure
20 you can put aside whatever you have read in the *Packet*,
21 either a few years back or yesterday, and decide this
22 case based on what you hear in the courtroom.

23 JUROR NUMBER 337: Correct. I understand.

24 THE COURT: All right. And sir, are you confident
25 that you can follow my orders as a judge in charging you

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1 on the law that's applicable to this case; that you are
2 to consider everything and anything or, and also,
3 rightly consider either a sentence of life imprisonment
4 without the possibility of parole or the death penalty?

5 JUROR NUMBER 337: I understand.

6 THE COURT: All right. I appreciate that, sir.
7 I'm going to turn you over to the lawyers and --

8 JUROR NUMBER 337: Okay.

9 THE COURT: -- we'll go from there.

10 MR. MACDOUGALL: Good afternoon, Mr. Ingram.

11 JUROR NUMBER 337: Afternoon.

12 MR. MACDOUGALL: My name is Mark MacDougall, and
13 I'm one of the lawyers representing the defendant in
14 this case, Earnest Daise. You've just heard Judge
15 Mullen give you some background information about the
16 trial and what you're being asked to do, and nothing I
17 say is intended to contradict any of that. But we, both
18 Mr. Daise's lawyers and the State, need to understand
19 more about your views of the death penalty and how it
20 works in this case before the Court can make a decision
21 on whether you would go forward or not.

22 The first couple questions I'm going to have, have
23 to do with the concept of murder. We all hear that all
24 the time, but it has a very special meaning. In the
25 state of South Carolina it has a meaning that uses the

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1 word *malice*. And again, that's a word that you may hear
2 sometime on T.V., but I want to tell you what that
3 means, because I'm going to have a --

4 JUROR NUMBER 337: Okay.

5 MR. MACDOUGALL: -- direct question about that. In
6 this state, malice involves wickedness, and excludes any
7 just cause or excuse for the action of the defendant.
8 It springs from wickedness, depravity, from a depraved
9 spirit, from a heart devoid of social duty, and fatally
10 bent on creating mischief. That's very heavy language.
11 That's malice in this state.

12 The first question is, in a murder case where
13 there's malice, where the Court has -- where you have
14 found and the jury's found malice, what's your view of
15 the appropriate punishment for murder with malice? Is
16 it -- and let me just paraphrase. Is it the death
17 penalty, or is it life? And as Judge Mullen said, life
18 is life without parole for a conviction of murder in
19 this state.

20 JUROR NUMBER 337: It could be either. It depends
21 on how horrible the crime was to me.

22 MR. MACDOUGALL: Tell me a little bit more about
23 that. What would your analysis be of a horrible crime
24 that would warrant the death penalty, versus life
25 without parole?

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1 JUROR NUMBER 337: Premeditation and beating and,
2 you know, just a cruel, cruel death.

3 MR. MACDOUGALL: Judge mentioned a couple of the
4 factors in this case, and before we talk about those, I
5 think you understand that there's been no trial yet.

6 JUROR NUMBER 337: Right.

7 MR. MACDOUGALL: That Mr. Daise is presumed
8 innocent, and you've heard no evidence.

9 JUROR NUMBER 337: Um-hmm.

10 MR. MACDOUGALL: So, we're kind of -- we are
11 talking hypothetically. We're kind of projecting into
12 the future and saying what if, because, before the trial
13 can begin, we need to understand what your views are.
14 And you talked about the circumstances a moment ago. In
15 this case, as you heard Judge Mullen describe, there are
16 two homicides, a mother and a child. Those are factors
17 that are called aggravators, aggravating circumstances.
18 And aggravation just means making it worse. And you
19 will, if you're on the jury, hear evidence of that.

20 With those aggravating factors present, and knowing
21 what the Judge told you about them, again, the question
22 is your view. Is the appropriate punishment life
23 without parole or death?

24 JUROR NUMBER 337: Well, it could be either one.

25 I --

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1 MR. MACDOUGALL: And do you understand that there's
2 no automatic death penalty in this case?

3 JUROR NUMBER 337: It's -- yeah. Yeah, I
4 understand that, sure.

5 MR. MACDOUGALL: Okay. Let me talk to you a moment
6 about aggravation. The opposite of aggravation is
7 mitigation.

8 JUROR NUMBER 337: Okay.

9 MR. MACDOUGALL: On your questionnaire, you were
10 asked the question, and I'll just read it to remind you
11 of it:

12 *In determining what punishment*
13 *should be given to any defendant convicted*
14 *of murder, do you believe that background*
15 *and/or life experience of a guilty*
16 *murderer is relevant?*

17 And you checked no.

18 JUROR NUMBER 337: Um-hmm.

19 MR. MACDOUGALL: The question is what it is, but
20 within that are subsumed things like the defendant grew
21 up under poor circumstances, had little education. And
22 I'm not saying these are the facts in this case.

23 JUROR NUMBER 337: Yes.

24 MR. MACDOUGALL: I'm just telling you the kinds of
25 things that might come up. Drug addiction, abuse as a

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1 child, psychological abuse, all those things that, when
2 we think about what makes someone accused of a crime,
3 who they are, the things that come to mind. Is it your
4 opinion, as reflected in your answer to the
5 questionnaire, that none of that matters in reaching a
6 verdict in a murder case?

7 JUROR NUMBER 337: As a human being, as an adult,
8 they should take responsibility for their life, their
9 actions. If you grew up poor or had an addiction or no
10 parents, some of that's out of your control, but there
11 are steps that you can take in life, and there's help
12 for you along the way that you can take necessary steps
13 to straighten yourself out.

14 MR. MACDOUGALL: And if I understand your answer
15 correctly, and if you haven't done that, those things
16 shouldn't be considered in deciding whether you would
17 get the penalty of death or life once you've been
18 convicted of murder with malice.

19 JUROR NUMBER 337: Not in my opinion.

20 MR. MACDOUGALL: And that would be your view in
21 assessing this case.

22 JUROR NUMBER 337: Yes.

23 MR. MACDOUGALL: And I kind of looked back at your
24 questionnaire. I don't think you've been a juror
25 before. Is that right?

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1 JUROR NUMBER 337: I have not.

2 MR. MACDOUGALL: You understand that, in a jury,
3 particularly in a case like this, there will be
4 conflicting opinions. People will have different points
5 of view.

6 JUROR NUMBER 337: Absolutely, yes.

7 MR. MACDOUGALL: And is it your view that, in
8 assessing whether guilt or innocence, and later, if it
9 comes to that, death or life without parole, that the
10 views of others are to be respected?

11 JUROR NUMBER 337: Sure. Absolutely.

12 MR. MACDOUGALL: And you understand that, if,
13 although, in the guilt or innocence phase of the trial,
14 a unanimous verdict must be reached, once you're into
15 the penalty phase, mitigation, as we just discussed a
16 moment ago, is something that's personal to every juror.

17 JUROR NUMBER 337: Um-hmm. I understand.

18 MR. MACDOUGALL: In other words, the way you feel
19 isn't necessarily the way your fellow jurors feel.

20 JUROR NUMBER 337: Correct. I understand.

21 MR. MACDOUGALL: And do you believe that,
22 notwithstanding the fact that other people will have a
23 different view of mitigation, that they ought to all
24 reach a single view? Or are you the kind of person who
25 would respect their different opinions?

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1 JUROR NUMBER 337: I would respect that there are
2 different opinions.

3 MR. MACDOUGALL: And you said you would respect
4 that there are different opinions. In respecting those
5 different opinions, would you essentially take the view
6 live and let live? And by that, I mean specifically,
7 other jurors' points of view.

8 JUROR NUMBER 337: I would respect their decision,
9 yes.

10 MR. MACDOUGALL: If I could reserve your Honor,
11 those are all the questions I have. Thank you.

12 THE COURT: Thank you.

13 MR. STONE: Mr. Ingram, my name's Duffie Stone.
14 Let me just ask you very, very briefly, I read your -- I
15 read your questionnaire. The questionnaire asks you
16 specifically what type of juror you would be, whether
17 you would always give the death penalty, never give the
18 death penalty, or you would take in all of the facts and
19 circumstances, weighing both aggravation, as well as
20 mitigation in order to make that determination. I think
21 your questionnaire answered C, or excuse me, Number 3.
22 Is that correct?

23 JUROR NUMBER 337: I don't remember. I -- what is
24 -- what is the answer on C?

25 MR. STONE: Well, let me -- I'll just -- the answer

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1 would be, and I'll make sure I get it right, that you
2 would consider all the facts of the case to determine if
3 death were appropriate; that you could either give a
4 sentence of life in prison or a sentence of death,
5 depending on the facts of the case.

6 THE COURT: All right. And I'm just, for the
7 record, handing him a copy of a blank questionnaire.

8 MR. STONE: Certainly.

9 THE COURT: Just so he can read it along.

10 JUROR NUMBER 337: I answered Type 3. Correct?
11 Yeah.

12 MR. STONE: Yes, sir..

13 JUROR NUMBER 337: And that's exactly right.

14 MR. STONE: Very good. And so, if the case was bad
15 enough, you could give the death penalty.

16 JUROR NUMBER 337: Yes.

17 MR. STONE: And at the same time, you would also
18 listen to everything, including the mitigation for the
19 Defense, in order to determine whether life imprisonment
20 without the possibility is appropriate, or the death
21 penalty.

22 JUROR NUMBER 337: Yes.

23 MR. STONE: Thank you, sir. I have no further
24 questions.

25 THE COURT: Okay. Sir, if you will do this, if

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1 you'd just step right out that door with Bob for a quick
2 moment, we'll be right back with you, sir. If you don't
3 mind leaving the questionnaire right where it is. Thank
4 you.

5 JUROR NUMBER 337 LEAVES COURTROOM.

6 THE COURT: Mr. Stone.

7 MR. STONE: Yes.. I'm sorry.

8 THE COURT: That's all right. I'm thinking the
9 door is now shut. Thank you. Do you find him
10 qualified?

11 MR. STONE: Yes. Yes, ma'am.

12 THE COURT: Mr. MacDougall?

13 MR. MACDOUGALL: Your Honor, we would move that --
14 that this jurymen be excused for cause. He said quite
15 clearly that mitigation would not figure into his
16 deliberations, and we've seen this more than once as
17 we've gone through this process this morning. If you
18 ask somebody will you be reasonable, everybody's going
19 to say yes.

20 THE COURT: Um-hmm.

21 MR. MACDOUGALL: When I asked a direct question,
22 of all these possible mitigating factors, anything you
23 would consider, this man said no. And I believe that
24 disqualifies him and would -- that he's admittedly
25 denying Mr. Daise his right to an impartial jury under

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1 the *Sixth* and *Fourteenth Amendments*.

2 THE COURT: Mr. MacDougall, the problem I have is
3 that many people on this questionnaire indicated that
4 they believed they wouldn't consider the background and
5 the life experience. I think part of the problem we
6 have here is that they don't clearly understand what
7 mitigation is. This juror was unequivocal that he would
8 listen to everything, and he could still consider death
9 or a life sentence. I think he's qualified. I think he
10 was very fair. I think he was very honest and
11 straightforward. Jody, what is that?

12 BAILIFF: That was just his paperwork. There's a
13 couple other.

14 THE COURT: Thank you. I appreciate that.

15 BAILIFF: Yeah.

16 THE COURT: I think he's a qualified juror. I
17 think he says that he can listen to the facts of this
18 case and weigh it.

19 MR. MACDOUGALL: Your Honor, if I may be heard for
20 a moment longer.

21 THE COURT: Certainly. Certainly.

22 MR. MACDOUGALL: If I could just ask the Court to
23 reflect back on the answer to -- I didn't just ask him
24 what is mitigation and what would you consider
25 mitigation.

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1 THE COURT: Um-hmm.

2 MR. MACDOUGALL: I went through half a dozen
3 examples; poverty, drug addiction, psychological abuse,
4 physical abuse. No, no, no, no. And I think he
5 elaborated on that a couple times by saying people have
6 to sort of account for their own actions. So, of
7 course, we respect the Court's decision, but I think
8 there is an inventory there that's pretty exhaustive of
9 things that qualify as mitigation. This guy said none
10 were going to matter to him. Thank you, your Honor.

11 THE COURT: Thank you. Okay. Who do we have next?

12 JUROR NUMBER 337 ENTERS COURTROOM.

13 BAILIFF: Just stand right here if you would, sir.

14 THE COURT: Thank you. Mr. Ingram, you have been
15 qualified as a potential juror in the trial of this
16 case, sir. That does not mean you have been chosen on
17 the jury; it just means you are a potential juror.

18 I am going to ask that you return on Monday morning
19 at 9:30, where we're going to actually go ahead and
20 actually draw the jury in this case. I say Monday
21 morning at 9:30. I am hopeful that we will be finished
22 with this process by then and ready to go forward. I am
23 giving you a phone number for you to call in --

24 JUROR NUMBER 337: Yes, ma'am.

25 THE COURT: -- after 6:00 o'clock on Saturday

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1 night. There will be a recorded message. It will tell
2 you whether or not you need to be here at 9:30 on
3 Monday, or it may tell you a later time. Simply follow
4 whatever the direction is on the recorded message, and
5 we look forward to seeing you then.

6 JUROR NUMBER 337: Thank you.

7 THE COURT: All right, sir? Again, I need to tell
8 you not to discuss this case with anyone. Don't do any
9 independent research. Again, it wouldn't be
10 appropriate. And we'll see you Monday morning.

11 JUROR NUMBER 337: I understand. Thank you.

12 THE COURT: Thank you. One moment. Do you need to
13 take something up, Mr. Thornton?

14 BAILIFF: Hold on a minute.

15 MR. THORNTON: I just need to approach.

16 THE COURT: Okay. Sure. Come on.

17 JUROR NUMBER 337 LEAVES COURTROOM.

18 OFF-THE-RECORD BENCH CONFERENCE.

19 END BENCH CONFERENCE.

20 THE COURT: Let's go ahead and bring the next juror
21 in.

22 BAILIFF: Ms. Megan Elliott.

23 JUROR NUMBER 209 ENTERS COURTROOM.

24 BAILIFF: Come forward, please, ma'am.

25 THE COURT: Come on forward, Ms. Elliott. Right

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1 around here, ma'am. I'm going to have you come and sit
2 up right here. Thank you! Ms. Elliott, I have to
3 apologize. As you know, we are running behind.

4 JUROR NUMBER 209: Yes, ma'am.

5 THE COURT: I hope you understand. We are working
6 hard, and I want you to know that. And certainly, don't
7 hold it against the lawyers. If it's anyone's fault,
8 it's mine. But ma'am, I just want to remind you, there
9 are some questions the lawyers need to ask; that I need
10 to ask you. And again, I need to remind you that you
11 are still under the oath that you took yesterday. Is
12 that acceptable to you?

13 JUROR NUMBER 209: Yes, ma'am.

14 THE COURT: Very well. And again, I want to make
15 sure that you appreciate that this is a capital murder
16 case that we are attempting to find a jury in, and that
17 the defendant in this case is charged with two counts of
18 murder, one of a woman and a child.

19 JUROR NUMBER 209: Um-hmm.

20 THE COURT: And I want you to understand and
21 appreciate that -- excuse me -- that the State is
22 seeking the death penalty in this case.

23 JUROR NUMBER 209: Um-hmm.

24 THE COURT: And I also want to make sure you
25 understand that a trial like this is bifurcated. There

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1 are two portions.

2 JUROR NUMBER 209: Um-hmm.

3 THE COURT: The first portion of the trial for the
4 jury is to determine simply whether or not a person is
5 guilty or not guilty of the charges.

6 JUROR NUMBER 209: Um-hmm.

7 THE COURT: And that would be the first
8 determination. If, and only if, the jury determined
9 that the defendant was guilty would we then go to a
10 second phase, which would be the sentencing phase.

11 JUROR NUMBER 209: Right.

12 THE COURT: In the sentencing phase, the State
13 would prove or attempt to prove what are called
14 aggravating circumstances. In South Carolina, by
15 statute, we have 21 aggravating circumstances that make
16 a case that is a murder case more aggravated --

17 JUROR NUMBER 209: Um-hmm.

18 THE COURT: -- and subject to potential death
19 penalty. And the State would do that. Additionally,
20 during that sentencing phase, the Defense would also put
21 up mitigation. And mitigation would be background and
22 factors, and things for the jury to consider in regards
23 to the defendant. His life, his walk of life, how he
24 kind of got here and where he is today.

25 I want to make sure, ma'am, that you understand.

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1 that, in a death penalty case, or one that's open to the
2 death penalty, the death penalty is never required; it
3 is never automatic; it is a jury determination of
4 whether or not it's appropriate.

5 JUROR NUMBER 209: Um-hmm.

6 THE COURT: And I want to make sure you understand
7 and appreciate that. And a jury can determine for maybe
8 a mitigating reason, or no reason at all, or simply
9 granting mercy, that life imprisonment without the
10 possibility of parole should be the appropriate
11 punishment, --

12 JUROR NUMBER 209: Um-hmm.

13 THE COURT: -- and that would be the appropriate
14 punishment in the jury's opinion. I want to make sure
15 you understand that; that you appreciate that.

16 JUROR NUMBER 209: Right.

17 THE COURT: Do you understand that?

18 JUROR NUMBER 209: Yes, I do.

19 THE COURT: All right. Well, thank you. Also,
20 you've had a chance to look over the witness list.

21 JUROR NUMBER 209: Right.

22 THE COURT: Do you know anyone on that witness
23 list?

24 JUROR NUMBER 209: Yes.

25 THE COURT: Who do you know, and what is your

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1 relationship with them, whether it's business social,
2 somebody that comes over to your house and has dinner?

3 JUROR NUMBER 209: Right. Number 14 --

4 THE COURT: On the first --

5 JUROR NUMBER 209: List B. No, nobody on List A.

6 THE COURT: Number 14 on List -- okay.

7 JUROR NUMBER 209: Which is --

8 THE COURT: So, you know Bob Bromage?

9 JUROR NUMBER 209: Captain Bob Bromage, yes. He
10 was -- served as our board of -- one of our board of
11 directors for the agency that I work for.

12 THE COURT: For Access Network. Is that correct?

13 JUROR NUMBER 209: Yes, ma'am.

14 THE COURT: Is he a current board member at this
15 time?

16 JUROR NUMBER 209: No, he's not. But he does call
17 in occasionally to see how we're doing.

18 THE COURT: Okay.

19 JUROR NUMBER 209: Probably heard from him about
20 two months ago.

21 THE COURT: Okay. All right. So, when you say you
22 heard, so you speak with him in regards to your duties
23 working for Access Network?

24 JUROR NUMBER 209: Right. He may just call in.

25 THE COURT: Okay.

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1 JUROR NUMBER 209: And just, you know, see how the
2 agency's doing, so.

3 THE COURT: Okay. Anyone else you know on those
4 lists?

5 JUROR NUMBER 209: Sheriff P. Tanner, but only
6 through the news, and then when I served --

7 COURT REPORTER: Only through what?

8 JUROR NUMBER 209: The news. Newspapers, Internet
9 news. And when I served on a former jury, he was in the
10 room at that time, so.

11 THE COURT: Okay. But you don't have any personal
12 ties?

13 JUROR NUMBER 209: No, no personal ties, no.

14 THE COURT: Okay. All right. And ma'am, I want to
15 make sure that, based on --

16 JUROR NUMBER 209: Um-hmm.

17 THE COURT: -- the relationship that you have in
18 having formerly worked with Bob Bromage, who is not
19 linked to this case in any way.

20 JUROR NUMBER 209: Right, right.

21 THE COURT: He just simply is the captain, and my
22 understanding --

23 JUROR NUMBER 209: Right.

24 THE COURT: -- high up in Beaufort County Sheriff's
25 Office.

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1 JUROR NUMBER 209: Um-hmm.

2 THE COURT: I want to make sure that, that wouldn't
3 have any impediment to your deciding this case fairly.

4 JUROR NUMBER 209: No.

5 THE COURT: Are you sure of that?

6 JUROR NUMBER 209: Um-hmm. Yes.

7 THE COURT: All right. That's a yes for the
8 record?

9 JUROR NUMBER 209: Yes for the record.

10 THE COURT: Okay. Additionally, there has been
11 some publicity in this case.

12 JUROR NUMBER 209: Um-hmm.

13 THE COURT: Have you read, seen, heard anything
14 about this case, or have any independent knowledge about
15 this case?

16 JUROR NUMBER 209: No, other than co-workers
17 talking about it.

18 THE COURT: Okay.

19 JUROR NUMBER 209: You know, I have not met the
20 individual, you know. Since we are in front of lawyers,
21 I can at least say I won't be breaking policy at the
22 office that he did seek some services with our agency.

23 THE COURT: Okay.

24 JUROR NUMBER 209: But other than that, I've never
25 met him, no.

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1 THE COURT: Okay.

2 JUROR NUMBER 209: We've got -- we serve four
3 different counties, but he did not seek services through
4 us. And I'm not sure where exactly in the process that
5 he was seen, whether he was seen in our Hampton office
6 or in the public realm.

7 THE COURT: Okay.

8 JUROR NUMBER 209: Because we do several different
9 things.

10 THE COURT: And when you say he, are you talking
11 about Mr. Daise?

12 JUROR NUMBER 209: Yes.

13 THE COURT: Okay.

14 JUROR NUMBER 209: Um-hmm. Yeah.

15 THE COURT: But you have never had any personal,
16 direct contact.

17 JUROR NUMBER 209: I've not had personal, no
18 contact with him, no.

19 THE COURT: How long have you been with the Access
20 Network?

21 JUROR NUMBER 209: Fifteen years.

22 THE COURT: Okay. All right. Ma'am, I'm going to
23 go ahead and turn it over to the attorneys to ask you
24 some questions in this case.

25 JUROR NUMBER 209: Um-hmm. Okay.

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1 THE COURT: This is Mr. McGuire.

2 JUROR NUMBER 209: Hi.

3 THE COURT: And then, the Solicitor will be able to
4 ask you some questions following.

5 MR. MCGUIRE: Thank you, your Honor.

6 THE COURT: Yes.

7 JUROR NUMBER 209: Thank you.

8 MR. MCGUIRE: Good afternoon, Ms. Elliott.

9 JUROR NUMBER 209: Hi. How are you?

10 MR. MCGUIRE: I'm sorry you had to wait so long.

11 JUROR NUMBER 209: It is what it is.

12 MR. MCGUIRE: Sometimes the Court's not the most
13 efficient. We try really hard. We work. No one here
14 has taken a break.

15 JUROR NUMBER 209: I should have brought work with
16 me, so, sitting in there.

17 MR. MCGUIRE: Tell me a little bit about the Access
18 Network. What does it do?

19 JUROR NUMBER 209: We're a human service
20 organization. We deal with -- originally started to
21 service individuals who were HIV positive or those
22 affected by HIV. Then, we've branched out to deal with
23 the homeless population. We also do things in regards
24 to teen pregnancy. So, there's prevention education.
25 We do counseling and testing. We do medical case

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1 management, housing case management. So, most of our
2 funding comes from federal, state, and local
3 organizations.

4 MR. MCGUIRE: Okay. And tell me how -- how did you
5 come to be employed there?

6 JUROR NUMBER 209: I was temporarily unemployed,
7 and my father was the founding individual of Access
8 Network.

9 MR. MCGUIRE: I saw where your father was a CEO of
10 a non-profit. I didn't know if it was the same one.

11 JUROR NUMBER 209: Yes. Yes. Um-hmm.

12 MR. MCGUIRE: And I think you also said he writes
13 grants.

14 JUROR NUMBER 209: Yes, he does. Um-hmm. Um-hmm.

15 MR. MCGUIRE: Which is obviously very necessary for
16 a non-profit.

17 JUROR NUMBER 209: Yes. I actually started as a
18 volunteer, and done -- having children, it kind of
19 worked into the work schedule, or you know, the family
20 schedule, to work there.

21 MR. MCGUIRE: Okay.

22 JUROR NUMBER 209: And it allowed me some part-time
23 work, so.

24 MR. MCGUIRE: Okay.

25 JUROR NUMBER 209: Be at home with the boys.

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1 COURT REPORTER: Would you scoot up just a little.

2 JUROR NUMBER 209: Sorry.

3 THE COURT: Thank you.

4 MR. MCGUIRE: So, what I'm going to do now is --
5 this is a murder case --

6 JUROR NUMBER 209: Um-hmm.

7 MR. MCGUIRE: -- we're here for, and I have to ask
8 you your thoughts about the death penalty. This is my
9 only time to do it.

10 JUROR NUMBER 209: Right.

11 MR. MCGUIRE: And you know, there's a first phase,
12 guilty or not guilty.

13 JUROR NUMBER 209: Um-hmm.

14 MR. MCGUIRE: And we haven't even had that yet.

15 JUROR NUMBER 209: Right.

16 MR. MCGUIRE: But I have to ask you about your
17 thoughts about penalty, because this is my only time to
18 do it.

19 JUROR NUMBER 209: Right. I guess you have to look
20 at it case by case. Yes, I -- I, you know, definitely
21 death penalty, depending on the severity of -- of the
22 crime.

23 MR. MCGUIRE: Okay.

24 JUROR NUMBER 209: Especially for those involving
25 children.

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1 MR. MCGUIRE: Sure. And our state law actually
2 carves out a specific --

3 JUROR NUMBER 209: Um-hmm.

4 MR. MCGUIRE: -- what's called an aggravating
5 factor for a victim being a child.

6 JUROR NUMBER 209: Um-hmm.

7 MR. MCGUIRE: And what I'm going to talk to you
8 about now is a murder case in South Carolina is not
9 punishable by death. It has to be aggravated murder.

10 JUROR NUMBER 209: Right.

11 MR. MCGUIRE: So, I'm going to start at the
12 beginning to make sure we're on the same page.

13 JUROR NUMBER 209: Okay.

14 MR. MCGUIRE: Murder is the intentional killing of
15 another person with evil intent.

16 JUROR NUMBER 209: Um-hmm.

17 MR. MCGUIRE: The evil intent is called malice.

18 JUROR NUMBER 209: Um-hmm.

19 MR. MCGUIRE: And malice is defined as operating
20 with a black, malignant heart, --

21 JUROR NUMBER 209: Um-hmm.

22 MR. MCGUIRE: -- devoid of social duty, with an
23 intent to be wicked and evil.

24 JUROR NUMBER 209: Right.

25 MR. MCGUIRE: So, it's not accident. It's not

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1 self-defense.

2 JUROR NUMBER 209: Um-hmm.

3 MR. MCGUIRE: Not voluntary manslaughter.

4 JUROR NUMBER 209: Right.

5 MR. MCGUIRE: Not someone who's crazy and doesn't
6 know what they're doing. Somebody meant to kill --

7 JUROR NUMBER 209: Right. Um-hmm.

8 MR. MCGUIRE: -- an innocent person, and did it
9 deliberately, with evil intent.

10 JUROR NUMBER 209: Okay.

11 MR. MCGUIRE: And then, for the State to seek the
12 death penalty, it has to be more than that.

13 JUROR NUMBER 209: Um-hmm.

14 MR. MCGUIRE: It has to be an aggravating factor.
15 And in this case, the specific aggravation that I need
16 to ask you about is, it's a double homicide, killing two
17 people.

18 JUROR NUMBER 209: Um-hmm.

19 MR. MCGUIRE: That's an aggravator. And then, the
20 child being -- it's a mother and child, the child being
21 four years old.

22 JUROR NUMBER 209: Right.

23 MR. MCGUIRE: And in that situation, what are your
24 thoughts about letting the accused live his life in
25 prison as a potential penalty?

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1 JUROR NUMBER 209: You're still talking about a
2 child being involved in it.

3 MR. MCGUIRE: Yes, ma'am.

4 JUROR NUMBER 209: So, no. I don't think so.

5 MR. MCGUIRE: Okay. So, the life penalty, when a
6 child is deliberately shot and killed, --

7 JUROR NUMBER 209: Um-hmm. Right.

8 MR. MCGUIRE: -- the life penalty's not severe or
9 appropriate to punish that kind of act.

10 JUROR NUMBER 209: If you're involving a child, and
11 the death penalty's on the -- yeah, he -- definitely, we
12 should be thinking about that. I don't think that they
13 should get life.

14 MR. MCGUIRE: Okay.

15 JUROR NUMBER 209: No.

16 MR. MCGUIRE: And that's because of the victim
17 being the child of four years old?

18 JUROR NUMBER 209: Um-hmm. Right, right. I mean,
19 I don't know what happened in between, you know, the
20 husband and wife, you know. That sort of thing, I can
21 see, you know, spending your life with no parole,
22 because, then, you get to sit and think about it.

23 COURT REPORTER: I'm not hearing you.

24 MR. MCGUIRE: She said --

25 JUROR NUMBER 209: Oh, I'm sorry.

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1 MR. MCGUIRE: I'll paraphrase it, and you tell me
2 if I'm wrong.

3 JUROR NUMBER 209: Okay.

4 MR. MCGUIRE: *About the husband and wife, I don't*
5 *know what happened. That I can see life without parole,*
6 *but for a child, no.*

7 JUROR NUMBER 209: Right. Correct.

8 MR. MCGUIRE: Okay.

9 COURT REPORTER: Could you scoot up just a little?
10 Thank you.

11 JUROR NUMBER 209: Still got to get up. Sorry.

12 THE COURT: That's all right. It's difficult.

13 MR. MCGUIRE: You're doing great.

14 JUROR NUMBER 209: Thank you.

15 MR. MCGUIRE: The only person nervous here is me.
16 You don't have to be nervous.

17 JUROR NUMBER 209: Okay. Yeah, as you can see, I
18 get this way.

19 MR. MCGUIRE: You're fine.

20 JUROR NUMBER 209: Most people know me. When I
21 speak in front of groups, this is what I -- color I look
22 like, so.

23 MR. MCGUIRE: So, so you could consider life
24 without parole in other situations.

25 JUROR NUMBER 209: Correct.

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1 MR. MCGUIRE: Adult people.

2 JUROR NUMBER 209: Right.

3 MR. MCGUIRE: But when it's a deliberate, malicious
4 killing of a child, --

5 JUROR NUMBER 209: Yes.

6 MR. MCGUIRE: -- the death penalty should be the
7 penalty.

8 JUROR NUMBER 209: Yes.

9 MR. MCGUIRE: And not the life penalty.

10 JUROR NUMBER 209: Correct.

11 MR. MCGUIRE: Because it's not severe enough.

12 JUROR NUMBER 209: Correct.

13 MR. MCGUIRE: And in reading your questionnaire and
14 in talking to you, it seems like you've given some
15 thought to these answers.

16 JUROR NUMBER 209: Um-hmm.

17 MR. MCGUIRE: And that the --

18 COURT REPORTER: Yes?

19 JUROR NUMBER 209: Yes. Sorry. Okay.

20 MR. MCGUIRE: And that they are a reflection of
21 your value system.

22 JUROR NUMBER 209: Yes.

23 MR. MCGUIRE: What you hold dear and important.

24 JUROR NUMBER 209: Yes.

25 MR. MCGUIRE: With regard to what's right and

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1 what's wrong.

2 JUROR NUMBER 209: Correct.

3 MR. MCGUIRE: And I can't change those values.

4 JUROR NUMBER 209: No.

5 MR. MCGUIRE: Or your position.

6 JUROR NUMBER 209: No.

7 MR. MCGUIRE: It will always be the same.

8 JUROR NUMBER 209: Yes.

9 MR. MCGUIRE: And this is a -- these emanate from a
10 deep place?

11 JUROR NUMBER 209: Yes.

12 MR. MCGUIRE: And what your answers are, are a
13 reflection of your moral code.

14 JUROR NUMBER 209: Correct.

15 MR. MCGUIRE: Okay. And again, I can't change
16 that.

17 JUROR NUMBER 209: Correct.

18 MR. MCGUIRE: Judge, if we can just approach, just
19 briefly?

20 THE COURT: I think we can probably just move on,
21 if you don't mind, to Mr. Stone. Is that -- are you
22 okay with that?

23 MR. MCGUIRE: If I could just briefly, just one or
24 two questions, unless --

25 MR. STONE: Excuse me a second.

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1 JUROR NUMBER 209: Um-hmm..

2 MR. STONE: Excuse me. Yeah, just -- Ms. Elliott?

3 JUROR NUMBER 209: Yes, yes.

4 MR. MCGUIRE: Your Honor, I'd like to keep going,
5 if it's going to mean a time to rehabilitate.

6 MR. STONE: It's not. I just want to clarify, if I
7 could.

8 THE COURT: It's not -- we're going to go ahead,
9 Mr. McGuire. You can go ahead.

10 MR. MCGUIRE: All right. Thank you, ma'am.

11 JUROR NUMBER 209: Okay.

12 MR. STONE: Thank you. I just want to make sure,
13 when it comes to the death of a child, if a child is
14 involved as the death, you could not consider life in
15 prison. Is that correct?

16 JUROR NUMBER 209: Correct.

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

18 JUROR NUMBER 209: They're an innocent in this, so.

19 MR. STONE: And you know what, your answers are
20 your answers.

21 JUROR NUMBER 209: Yes, sir.

22 MR. STONE: And we shouldn't try to convince you
23 one way or the other.

24 JUROR NUMBER 209: I know.

25 MR. STONE: Thank you.

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1 JUROR NUMBER 209: Thank you.

2 THE COURT: All right. Ms. Elliott, I appreciate
3 you being here.

4 JUROR NUMBER 209: Thank you.

5 THE COURT: At this time, I can go ahead and excuse
6 you from the trial of this case.

7 JUROR NUMBER 209: Okay.

8 THE COURT: We appreciate your candor.

9 JUROR NUMBER 209: Thank you.

10 THE COURT: That is exactly what we have asked of
11 you, and you have done exactly that, and thank you for
12 being here.

13 JUROR NUMBER 209: Thank you. All right. Thank
14 you.

15 THE COURT: And we appreciate it. And I'm going
16 to go ahead and excuse you.

17 JUROR NUMBER 209: All right. Thank you ma'am.

18 THE COURT: Thank you, ma'am.

19 JUROR NUMBER 209 LEAVES COURTROOM.

20 THE COURT: And Ms. Watford, is that the last one
21 we have or --

22 BAILIFF: I think we have one more.

23 THE COURT: Ms. Watford. Okay. Very good. Thank
24 you.

25 JUROR NUMBER 660 ENTERS COURTROOM.

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1 THE COURT: Come on in, Ms. Watford. Right around
2 here, please.

3 BAILIFF: Come this way. If you will, take a seat
4 in the witness box.

5 JUROR NUMBER 660: Yes, sir.

6 THE COURT: Thank you. Ms. Watford, thank you. I
7 appreciate you've been waiting, and I'm sure you're
8 hungry. We actually -- no one's broken for lunch. We
9 wanted to get through you all before we did so. So,
10 again, everyone's as hungry as you are, and I'm going to
11 get you out of here as quickly as possible.

12 I need to first remind you that you continue to be
13 under the oath you took yesterday. Is that acceptable
14 to you?

15 JUROR NUMBER 660: Yes, ma'am.

16 THE COURT: I also want to make sure that you
17 understand the case and what we're looking at here. As
18 you understand, I think, from, certainly, the
19 questionnaire that was sent to you in the pre-jury
20 qualifications, that this is a capital murder case.

21 The defendant in this case has been charged with
22 two counts of murder, which is defined in South Carolina
23 as the intentional taking or killing of another person
24 with malice aforethought. And malice aforethought
25 simply means with evil intent. It's intentional. And

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1 in this case, the facts are that the two persons that
2 were allegedly killed were a woman and a child.

3 I want you to understand that, in a death penalty
4 case, the trial is bifurcated, which means there are two
5 parts to the trial. The first part is where the jury
6 determines the guilt or the innocence of the crimes
7 charged, and that would be a determination of whether or
8 not these murders occurred and who they were murdered --
9 who it was by, and that would have to be proven, again,
10 beyond a reasonable doubt.

11 Then, and only if the defendant was found guilty of
12 those charges, would we go to what is called the
13 sentencing phase. And the sentencing phase is the
14 opportunity for the State to put in what they consider
15 to be aggravating circumstances, specifically in this
16 case it would be the killing of a child. And then, and
17 only then, in South Carolina, are we permitted to
18 consider the death penalty, if there are these
19 aggravating circumstances that are found beyond a
20 reasonable doubt by the jury during the sentencing
21 phase.

22 Also, during the sentencing phase, the Defense will
23 put on what's called mitigation, or mitigating evidence,
24 anything that explains possibly the background of a
25 defendant or their circumstances or walk in life, their

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1 experiences, whatever it is that brought them to this
2 point in their life. And again, the law requires that
3 you be able to consider everything in this case,
4 mitigation, as well as aggravation. And then, again, as
5 a juror, you would make the decision of whether or not
6 you thought the appropriate punishment was life without
7 the possibility of parole or death.

8 And I want to make sure you understand that, even
9 listening to everything, you don't have to have any
10 specific reason for preferring or wanting a life without
11 the possibility of parole or without the possibility --
12 or, you know, simply no reason at all. It wouldn't have
13 to be landed on anything. If it was simply you, by in
14 your mercy, saying I think they should receive life
15 imprisonment and not the death penalty, that is
16 certainly your prerogative, and it's what we expect you
17 to do and exercise, if that is what your choice is.

18 I just want to make sure that you can follow the
19 law of the state and understand the law, and the lawyers
20 are going to talk to you a little more about it. But
21 again, I just want to make sure you can consider
22 everything in the case.

23 And to that end, in the juror questionnaire, there
24 were some questions about the different types of jurors,
25 Type 1, Type 2, and Type 3. The lawyers are going to

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1 ask you a little bit about that and certain things about
2 the death penalty.

3 I just kind of say all that to kind of give you a
4 preview of the questions they're going to ask. I want
5 you to know this, there are no right or wrong answers
6 here. The only thing anyone expects of you is for you
7 to be honest and to be candid. If you don't understand
8 a question or are not sure, tell them, and certainly ask
9 them to explain it. Again, some of these concepts can
10 be difficult. We understand that. Sometimes people
11 haven't even considered the death penalty until they're
12 put in this position, and I certainly appreciate that,
13 as well. So again, if you'll just listen to the
14 attorneys and respond as best you can.

15 I also need to ask you, ma'am, whether or not you
16 went through the witness list, and if you had any
17 business, personal, or social relationships with any of
18 the potential witnesses in this case.

19 JUROR NUMBER 660: There was three on my list, in
20 List B.

21 THE COURT: Okay. And who were those?

22 JUROR NUMBER 660: Number 7, Sergeant Heany. It
23 says K. Heany, if it's Kevin Heany, -- I don't know, but
24 Kevin Heany I do.

25 THE COURT: Okay.

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1 JUROR NUMBER 660: I -- affiliated with. Number
2 14, Captain Bromage.

3 THE COURT: Okay.

4 JUROR NUMBER 660: And Number 68, Sheriff Tanner.

5 THE COURT: Okay. And what is the nature of your
6 relationship with Sergeant Heany?

7 JUROR NUMBER 660: Both Heany and Captain Bromage
8 were on the health club on Hilton Head, 35 pounds ago,
9 and a few years back, and they were -- we had the
10 Sheriff's Department's contract.

11 THE COURT: Okay.

12 JUROR NUMBER 660: So, they were -- a lot of them
13 were members there.

14 THE COURT: Okay.

15 JUROR NUMBER 660: And I don't know -- I didn't
16 even know Heany was still on the -- the force. It's
17 been five, six, seven years ago.

18 THE COURT: Okay.

19 JUROR NUMBER 660: And then Tanner, just because
20 he's the Sheriff.

21 THE COURT: Okay. All right. I appreciate that.
22 The fact that you did know these people through your
23 business, and they did come frequently, I'm assuming,
24 into the gym, I don't know that any of those people are
25 necessarily going to testify to anything material in

1 this case. Obviously, one's the Sheriff. You know,
2 Bromage, who is the next in command, again, I want to
3 make sure, though, that you don't give any testimony
4 they may have any undue weight. Again, it isn't to
5 anything material in this case.

6 JUROR NUMBER 660: They were just members of, you
7 know, like, I don't even their -- I barely, you know,
8 just spoke to them.

9 THE COURT: Okay. All right. I appreciate that.
10 Also, there has been some publicity on this case. I
11 want to know if you have any independent recollection or
12 if anyone has spoken to you about this case, or if you
13 have read anything or seen any news reports about this
14 case.

15 JUROR NUMBER 660: No, ma'am, I have not.

16 THE COURT: All right, ma'am. Thank you. I'm
17 going to go ahead and turn you over to the lawyers, sir
18 -- or, ma'am. I apologize. Mr. MacDougall.

19 MR. MACDOUGALL: Hi, Ms. Watford.

20 JUROR NUMBER 660: Hello.

21 MR. MACDOUGALL: My name is Mark MacDougall, and
22 I'm one of the lawyers representing Earnest Daise, the
23 defendant, in this case. Thanks for coming. Nothing
24 that I'm going to say in asking you questions is
25 intended to contradict anything that Judge Mullen said.

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1 We agree with everything she said, but it's important
2 that we talk to you about your beliefs. And I say that
3 because that's the only right answer here. There's no
4 -- the only answer that really matters is what you
5 really feel. This is about as serious as it gets in the
6 law or anywhere else, and how you really feel in your
7 soul is what matters to us in the next few minutes.

8 You know that this is a murder case. And in South
9 Carolina, murder has within it what we call a component
10 of malice. That's probably a word you've used before to
11 talk about how somebody behaved or what your thoughts
12 were. But it has a specific meaning here, and I want to
13 tell you what that is, and you will hear it again, if
14 you were a juror in this case.

15 Malice imports wickedness, and excludes any just
16 cause or excuse for your action. It's something which
17 springs from wickedness, from depravity, from a depraved
18 spirit, from a heart devoid of social duty and fatally
19 bent on creating mischief. And that's very heavy
20 language.

21 In order to be convicted of murder, malice murder
22 in this case -- in this state, you have to have that
23 state of mind. You have to commit the crime with
24 malice. And so, the first question I have is, if
25 someone is convicted of that kind of murder, and that

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1 excludes accident; it excludes insanity; it excludes
2 self-defense, all that's gone. It's that dark, you
3 know, moment of the soul that was just described there.

4 In that case, when someone's found guilty by a jury
5 of twelve, unanimously, of that crime, in your view,
6 what's the appropriate punishment? Is it death, or is
7 it life without parole? And I think as the Judge noted,
8 but I'll remind you of it, life without parole in this
9 state is life without parole. It's pine box life; you
10 don't go home. You die in prison. The question is,
11 with that kind of crime, what's the punishment that's
12 appropriate?

13 JUROR NUMBER 660: If they were convicted of being
14 malicious, is what you're asking me?

15 MR. MACDOUGALL: Yes, ma'am.

16 JUROR NUMBER 660: What -- would it be the
17 death penalty? I would say yes.

18 MR. MACDOUGALL: So, there would be no
19 circumstances with that level of malice in which your
20 verdict would be life. Is that right?

21 JUROR NUMBER 660: I think it would be a -- I would
22 have to hear the evidence to be able to decide that.
23 But you know, just giving me a definition of being
24 malicious, that you've already found them guilty of
25 being malicious, then, I would go with the death penalty

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1 on your statement.

2 MR. MACDOUGALL: Judge Mullen mentioned a couple of
3 things about this case, and let me just make clear, I
4 think you already know this, but there's been no trial
5 yet. Mr. Daise has not been convicted of anything. He
6 sits here innocent, as every citizen does. And we've
7 heard no evidence; you've heard no evidence. So, we're
8 sort of talking in, I guess, in generality, as Mother
9 used to say.

10 JUROR NUMBER 660: Right.

11 MR. MACDOUGALL: But Judge Mullen did mention that
12 the accusations, the charges in this case, involve
13 aggravating circumstances. And by that, I mean that the
14 death of two people, including a child, the death of a
15 child. So, in addition to the malice that we've talked
16 about, you've got other facts that the law treats as
17 making the thing worse, an aggravator, and that includes
18 the alleged killing of a child and killing of two
19 people.

20 In those circumstances, what's your view of the
21 appropriate punishment, life without parole or death?

22 JUROR NUMBER 660: Again, it's a very -- as you
23 stated, it's very hard to answer without hearing the
24 whole case. By just saying, you know, line in the sand,
25 which way am I going to go, it's hard to call. I mean,

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1 I would have to hear the case before me, you know, to
2 see the circumstances, everything that came into play,
3 before I can sit here and honestly tell you line in the
4 sand, I'm going death penalty or I'm going parole. It
5 -- I would have to hear the case, because you're asking
6 me a question based on just one scenario without any
7 other facts in the matter.

8 MR. MACDOUGALL: All right.

9 JUROR NUMBER 660: And --

10 MR. MACDOUGALL: I'm sorry. Go ahead, please.

11 JUROR NUMBER 660: And I don't know if that answers
12 your question or helps you or doesn't help you, but I --
13 I understand both of them. But it's -- it, you know, to
14 be true to myself, it's very hard for me to say death
15 penalty when it's somebody else's life when I don't know
16 the circumstances.

17 MR. MACDOUGALL: And even considering those
18 circumstances we talked about, the killing of two people
19 and one of them's a child, that doesn't change your
20 view? Your answer.

21 JUROR NUMBER 660: No, sir.

22 MR. MACDOUGALL: Okay. I want to just clarify one
23 thing. I think you said the death or parole. When you
24 say --

25 JUROR NUMBER 660: Well, I'm sorry, yes.

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1 MR. MACDOUGALL: Yeah, it's a life sentence.

2 JUROR NUMBER 660: Life sentence, yes, I
3 understand. I'm sorry. I misquoted.

4 MR. MACDOUGALL: Okay. Those are two -- and you
5 know, that's important because, you understand that
6 there's no automatic death penalty.

7 JUROR NUMBER 660: Right.

8 MR. MACDOUGALL: And that life in this state is
9 appropriate for any crime. You checked a box -- do you
10 remember the questionnaire that you answered? And I --

11 JUROR NUMBER 660: Briefly.

12 MR. MACDOUGALL: And I'm not here to tell you that
13 any of this was, you know, the best way of asking a
14 question, but we all do the best we can. You were asked
15 specifically:

16 *In determining what punishment*
17 *should be given to a defendant convicted*
18 *of murder, do you believe the background*
19 *and/or life experience of a guilty*
20 *murderer is relevant?*

21 And you checked no. Can you tell me about that and
22 why you --

23 JUROR NUMBER 660: Well, I think it's leading up to
24 the if, you know, if somebody will, you know, was abused
25 or whatever as a child, and they've done -- their life

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1 such and led whatever for 20 years, and then, they go
2 off on this, I think being whatever as a child does not
3 affect what they've done. And I think their whole life,
4 would have, you know, may -- may play a part. But I
5 think a lot of people, unfortunately, use childhood
6 experiences to get off on things and not be held
7 accountable for their actions.

8 MR. MACDOUGALL: Okay. And we're talking about
9 your opinion, not what -- not an apology or an excuse
10 that someone would make for their own actions. We're
11 talking about your view of others. So, I just -- the
12 question is not do you yourself excuse anything in your
13 life because of something happening as a child, but
14 rather, how would you view the facts of a terrible crime
15 in the defendant? So just, in that context, I just want
16 to make sure I understand. Your belief is that no
17 matter what has happened in the way of mitigation -- we
18 talked about aggravation a moment ago -- mitigation, no
19 matter what has happened in a person's life before the
20 crime is committed and they're convicted of it, no
21 matter what's happened, that doesn't matter.

22 JUROR NUMBER 660: I do not think it's an excuse to
23 be able to do something, no, sir.

24 MR. MACDOUGALL: Okay. And you have an education.

25 JUROR NUMBER 660: I do, yes, sir.

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1 MR. MACDOUGALL: Were you a teacher for a time?

2 JUROR NUMBER 660: Unfortunately, not.

3 MR. MACDOUGALL: Okay. So, so, just to sort of
4 make sure we understand the scope of your answer, and
5 I'm not saying any of these are facts in this case,
6 because there are no facts in this case yet, but if a
7 person were subjected to sexual abuse as a child, that
8 wouldn't have any effect on your view?

9 JUROR NUMBER 660: It depends on what phase of your
10 life you're in, because, at some point, you have to quit
11 calling it an excuse. Sometimes you have to step up for
12 your own actions and everything. And I know somebody
13 who has been child abused, and is alcoholic. But you
14 can only -- you're held accountable. At some point, you
15 have to grow up and answer for yourself. And there's
16 plenty of help out there to be able to help you with
17 these issues.

18 MR. MACDOUGALL: Okay. And that would be true of
19 physical abuse?

20 JUROR NUMBER 660: Yes, sir.

21 MR. MACDOUGALL: Would that be true of poverty?

22 JUROR NUMBER 660: Yes, sir.

23 MR. MACDOUGALL: Could it be true of poor
24 education?

25 JUROR NUMBER 660: The -- their -- well, I --

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1 educate -- poor education, I think, you know, sometimes
2 you are limited to your circumstances. Some people are
3 more apt to have other chances that some people aren't.
4 But there are things available to you, but some
5 circumstances as far as poverty or whatever are
6 different, I do believe.

7 MR. MACDOUGALL: Okay. Let me ask you about
8 another word that's probably a little more commonly
9 used, mercy. What do you understand mercy to be?

10 JUROR NUMBER 660: That would take me to a
11 religious side where God had mercy on all of us.

12 MR. MACDOUGALL: You can go wherever you want.

13 JUROR NUMBER 660: When Jesus died on the Cross for
14 us, that's mercy, to me. So, you know, mercy, I think,
15 is a forgiveness. You show people mercy, you know,
16 every day when somebody cuts you off in traffic for road
17 rage, you know, that you don't go and do whatever people
18 do in road rage, that you show mercy in certain
19 situations that affect you. But I mean, I think mercy
20 is given every day.

21 MR. MACDOUGALL: You say it's given. Do you have
22 to earn it? Do you have to earn mercy?

23 JUROR NUMBER 660: I do not think you have to earn
24 mercy.

25 MR. MACDOUGALL: If you don't have to earn it, if

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1 you don't have to earn mercy, how do you get it? How
2 does someone --

3 JUROR NUMBER 660: Well, it's like forgiveness.
4 You choose as a person, as a individual, your morals,
5 your belief, your faith, to whether you want to show
6 that person mercy. I think it's your choice under the
7 circumstances that are happening, you choose whether you
8 show them mercy, and you give them forgiveness or
9 whatever.

10 MR. MACDOUGALL: I don't know if Judge Mullen
11 mentioned this in her introductory discussion with you,
12 but one of the things that a jury would be told in a
13 case like this is that you can find a life-without-
14 parole sentence for any reason or for no reason. And
15 that means that, just somewhere in your soul, in your
16 heart, that's what the juror wants to do.

17 If that's your case, if you are that juror, if you
18 find mercy, are you the kind of person who can resist
19 others who might want to change your mind? If you have
20 a conviction that you really believe in your soul, and
21 others want you to sort of change that position, how to
22 you react?

23 JUROR NUMBER 660: If you're asking if I can be an
24 individual, yes, I can stay with my decisions.

25 MR. MACDOUGALL: Okay. Even when they're

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1 unpopular.

2 JUROR NUMBER 660: I do it every day.

3 MR. MACDOUGALL: Okay. Good. Now, how about when
4 people are -- there may be people in the jury, there may
5 be people in a social setting who don't have your
6 resolution, who don't have your strength of character,
7 and others are trying to get them to change their mind.
8 Are you the kind of person who would step in and say,
9 wait a minute; just like I'm entitled to my opinion and
10 my heartfelt beliefs, they're entitled to theirs.

11 JUROR NUMBER 660: Yeah, I could say that, easily.

12 MR. MACDOUGALL: Okay. Would you be the kind of
13 person who would step in and protect someone else's
14 views?

15 JUROR NUMBER 660: Yes, sir.

16 MR. MACDOUGALL: Do you understand that you're
17 entitled, when you're in the jury, to reach whatever
18 verdict you personally believe? You understand that
19 without regard to what kind of pressure could come your
20 way.

21 JUROR NUMBER 660: Yes, sir.

22 MR. MACDOUGALL: Thank you, your Honor. No further
23 questions. Thank you, ma'am.

24 JUROR NUMBER 660: Thanks. Have a great day.

25 THE COURT: Mr. Stone.

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1 MR. STONE: Ms. Watford, I'm Duffie Stone. I'll
2 just ask you a few questions. From what I understood
3 from your answers to the Defense, you would take
4 everything into consideration before making a decision
5 whether or not somebody should get life in prison or the
6 death penalty. Is that correct?

7 JUROR NUMBER 660: Yes, sir.

8 MR. STONE: Okay. And so, if the case is bad
9 enough, you could give the death penalty?

10 JUROR NUMBER 660: Yes, sir.

11 MR. STONE: Nothing further. Thank you, ma'am.

12 JUROR NUMBER 660: Thanks.

13 MR. STONE: Thank you, your Honor.

14 THE COURT: Ma'am, I'm going to ask you for just
15 very momentarily walk out this back door with Al, and
16 we're going to bring you right back in, in just a moment
17 and excuse you. Okay?

18 JUROR NUMBER 660: Um-hmm.

19 THE COURT: Thank you.

20 JUROR NUMBER 660: You're welcome.

21 JUROR NUMBER 660 LEAVES COURTROOM.

22 BAILIFF: Door is closed, your Honor.

23 THE COURT: Thank you.

24 MR. STONE: I think she's qualified, your Honor. I
25 wish I could remember exactly how she answered the

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1 question. I think she summed up a good bit of our
2 concerns earlier about how you answer that early
3 question. But I think she's absolutely qualified.

4 THE COURT: Mr. MacDougall?

5 MR. MACDOUGALL: Your Honor, we would move that she
6 be excused, again, as with, I think, to her answers a
7 minute ago, she was very clear that she would not
8 consider mitigation. She was adamant about it. She was
9 asked numerous times, numerous ways, are there any
10 factors that she would take into consideration in
11 mitigation, and she said no. I think that disqualifies
12 her as a juror.

13 THE COURT: Well, respectfully, Mr. MacDougall, you
14 asked her three times. The first time, she said she
15 wouldn't take into mitigation. The second two times,
16 she said, I don't think it's an excuse, was her exact
17 words of how she answered it. And I think she
18 certainly, in the totality of it all, is definitely
19 qualified. She clearly takes this very seriously and
20 appreciates it, and I find her qualified.

21 MR. MACDOUGALL: Thank you, your Honor.

22 THE COURT: All right, you all. I know we have the
23 12:00 o'clock people still out there.

24 BAILIFF: Judge?

25 THE COURT: Yes, sir? Oh, bring her back in.

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1 Thank you.

2 BAILIFF: That's why I'm here.

3 THE COURT: I appreciate it.

4 JUROR NUMBER 660 ENTERS COURTROOM.

5 BAILIFF: If you will, just stand right there,
6 please, ma'am.

7 THE COURT: Thank you, Ms. Watford. I appreciate
8 you being here. I will tell you that we have found you
9 qualified as a potential juror in the trial of this
10 case. That does not mean you are on the jury; it just
11 means you are a potential juror.

12 I am going to ask that you return 9:30 a.m. Monday
13 morning, where we are, hopefully, going to pull a jury.
14 I will tell you that we're kind of at the beginning of
15 this process. You are the first groups of people. I am
16 hopeful that we'll be ready by 9:30 on Monday morning,
17 but we're going to give you a piece of paper with a
18 phone number. After 6:00 o'clock Saturday night, I want
19 you to call that juror line. There will be a message
20 that tells you whether or not you need to report on
21 Monday morning and at what time. There's an outside
22 chance it could be Tuesday morning. Whatever it says to
23 do, just be here, and we look forward to seeing you
24 then.

25 JUROR NUMBER 660: Yes, ma'am. You all enjoy your

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1 lunch.

2 THE COURT: Thank you. Again, I need to tell you
3 lastly, Ms. Watford, don't discuss this case with
4 anyone, and don't do any independent research. Don't
5 read anything about it. We'll see you on Monday.

6 JUROR NUMBER 660: Yes, ma'am.

7 THE COURT: Thank you.

8 JUROR NUMBER 660 LEAVES COURTROOM.

9 THE COURT: All right, you all. We do have a group
10 back there that we're -- needed to be here at noon. I
11 will tell you again, I want you all to go ahead and eat
12 something. Do we have food here for everyone? Did you
13 get food?

14 MR. MCGUIRE: No, but --

15 THE COURT: There's a lot of people at this table,
16 you all. Someone should have been able to call in. I
17 understand you all have arranged -- the State has
18 arranged to get some food here. I will tell you all,
19 I'm looking, none of you all are from Beaufort. You
20 want to talk to Caroline and find out what's fast around
21 here? There's Jimmi John will deliver. I think that
22 might be a good idea to know.

23 Again, I want to take a short break. Would like to
24 have taken it right now, if you all had food here so you
25 could eat. The problem is this. I mean, I can give you

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1 MR. MCGUIRE: Thank you, Judge.

2 OFF THE RECORD 2:55 P.M.

3 BACK ON THE RECORD 3:35 P.M.

4 BY THE COURT:

5 THE COURT: You all, are we all fine with everyone
6 that's in the courtroom?

7 MR. MCGUIRE: Yes. These are my grandparents who
8 are in Beaufort.

9 THE COURT: Oh, welcome.

10 MR. MCGUIRE: Made it to the court for -- wanted to
11 hang out.

12 THE COURT: Very good. Very good. Well, it's a
13 pleasure to have you. Thank you very much. All right.
14 Who are we bringing in first, Norman?

15 BAILIFF: Carey Freeland will be the first one in.

16 JUROR NUMBER 246 ENTERS COURTROOM.

17 THE COURT: Thank you. Come on in. Think we're
18 ready to go, you all?

19 MR. STONE: Yes, ma'am.

20 THE COURT: Okay. You okay, Wanda? Did you get
21 something to eat?

22 COURT REPORTER: I did. Thank you.

23 THE COURT: Come on in.

24 BAILIFF: Just go ahead and take a seat in the
25 witness box, please, ma'am.

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1 THE COURT: Good afternoon. First off, Ms.
2 Freeland, I have to apologize for how late we're running
3 behind.

4 JUROR NUMBER 246: That's okay.

5 THE COURT: I'm sorry. We are going to endeavor to
6 be on time from here on out. I also have to remind you
7 that, under the oath you took yesterday, you are still
8 sworn in. And is that acceptable to you?

9 JUROR NUMBER 246: Yes.

10 THE COURT: All right, ma'am. And just very
11 briefly, myself, as well as the lawyers, are going to
12 ask you some questions about this case. And again,
13 there are no right or wrong answers. There are simply
14 candid, honest answers is all we can expect from you,
15 and I appreciate that. Also, you were able to look at
16 the witness list in this case.

17 JUROR NUMBER 246: Um-hmm.

18 THE COURT: Were there any people on that witness
19 list that you know, either through business or social or
20 by other acquaintance?

21 JUROR NUMBER 246: No.

22 THE COURT: All right, ma'am. And also, there's
23 been some publicity in this case. Have you seen any of
24 the publicity coverage or news coverage on this case, or
25 have you heard about it from any outside source?

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1 JUROR NUMBER 246: The only -- I think I put on my
2 thing, my questionnaire, that I think I remember my
3 sister-in-law telling me about it whenever it happened.

4 THE COURT: Okay.

5 JUROR NUMBER 246: But I don't read the newspaper.

6 THE COURT: And does your sister-in-law have any
7 connection with this case, or that you know of --

8 JUROR NUMBER 246: No.

9 THE COURT: -- as far as -- no? Okay. I
10 appreciate that. And again, I just want to remind you,
11 as you know, when we talked originally, and as you can
12 see by the questionnaire, this is a capital case. Mr.
13 Daise is charged with two counts of murder, and assault
14 and battery with intent to kill. The State is seeking
15 the death penalty in this case.

16 I want to make sure you understand and appreciate
17 that, in any capital case, there is a two-step process.
18 The first trial is the guilt phase, or guilt or innocent
19 phase. If the jury finds the defendant not guilty,
20 then, the case is over with; we are done. If the jury
21 were to find the defendant guilty, we would then go on
22 to what's called the penalty or sentencing phase, where
23 the jury would have the ability to consider either a
24 life imprisonment sentence without the possibility of
25 parole, or a death sentence.

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1 I want to make sure you understand and appreciate
2 that, during a second sentencing phase, the Defense will
3 be able to introduce mitigating factors, anything in
4 regards to walk of life, habits, history, anything along
5 those lines, for your consideration as a juror in
6 deciding the penalty of the case.

7 And again, I just want to make sure you understand
8 and appreciate that you are never required to enter a
9 death sentence. In this state, obviously, it is up to
10 the jury. And again, I want to make sure you understand
11 that, for a reason, or no reason at all, or simply
12 through your mercy, that you can impose life without the
13 possibility of parole, and I want to make sure you
14 understand that, and that the jury has that
15 responsibility. Do you understand that?

16 JUROR NUMBER 246: Yes.

17 THE COURT: All right. I am going to turn you over
18 to the attorneys now, and they're going to ask you a
19 number of questions. Okay?

20 MR. YOUNG: Good afternoon, Ms. Freeman.

21 JUROR NUMBER 246: Good afternoon.

22 MR. YOUNG: My name is Boyd Young. I'm one of Mr.
23 Daise's lawyers. I want to ask you a question about one
24 of your responses on your questionnaire, and I'm just
25 going to get right to it. You wrote down:

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1 Based on what you've heard about this
2 case, now or from any source, have you formed
3 an opinion about the Defendant, Earnest Daise,
4 and the punishment he should receive?

5 And you wrote:

6 Not really. If he did it, would
7 deserve the death penalty.

8 JUROR NUMBER 246: I guess because the other
9 questions ahead of that was asking about death penalty.
10 I don't know. I -- the only thing I can remember, like
11 I said, was my sister-in-law reads the newspaper while
12 we're getting ready for work. And if somebody -- I
13 honestly don't really remember anything about it, except
14 if somebody might have killed somebody, like a baby, I
15 thought there was a baby involved, I don't know, that
16 was the only thing I had put that for.

17 MR. YOUNG: Okay. So, if somebody was guilty of
18 killing a child, --

19 JUROR NUMBER 246: Yeah.

20 MR. YOUNG: -- you think that the death penalty --

21 JUROR NUMBER 246: They might deserve that. Yes.

22 MR. YOUNG: They deserve the death penalty?

23 JUROR NUMBER 246: They might deserve that. I
24 mean, if they were guilty, sure.

25 MR. YOUNG: Okay. Is that what your view of what

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1 the appropriate punishment is, if they were convicted of
2 that?

3 JUROR NUMBER 246: I mean, I guess my thing is, if,
4 you know, a child is -- is, you know, I guess my honest,
5 thing would be that a child would be, you know, never
6 deserving of that.

7 MR. YOUNG: Right. And some people say when a
8 child is maliciously murdered, I can only consider one
9 punishment option; for me, that's going to be the death
10 penalty.

11 JUROR NUMBER 246: Well, that -- I -- I mean,
12 that's not what I would really say, but you know, I do
13 think that -- that, that would definitely weigh into it.
14 If I thought somebody was more -- I mean, if somebody
15 did something to my children, then, I'd certainly would
16 be -- I guess I was thinking about it like that, maybe.
17 I don't know.

18 MR. YOUNG: Okay. Well, what about the life
19 penalty for somebody who is convicted of maliciously
20 murdering a child?

21 JUROR NUMBER 246: I mean, certainly, life -- life
22 penalty is a option. I would -- I would -- I'm a person
23 that weighs everything, so, I would have to weigh it
24 out, and I would have to hear everything, because I
25 don't ever make a decision without weighing anything

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1 out.

2 MR. YOUNG: Okay. So, let's start back to the
3 beginning.

4 JUROR NUMBER 246: Um-hmm.

5 MR. YOUNG: Let's talk about murder. Okay?

6 JUROR NUMBER 246: Okay.

7 MR. YOUNG: We're here on a murder case. And
8 murder in South Carolina is the intentional killing of
9 person with malice aforethought. And malice
10 aforethought means that they meant to do it; it was an
11 evil, wicked intent; they meant to take an innocent
12 person. Wasn't self-defense; wasn't an accident. They
13 knew what they were doing. They knew the difference
14 between right and wrong at the time that they did it;
15 they chose to take an innocent life. Okay?

16 JUROR NUMBER 246: Um-hmm.

17 MR. YOUNG: That's the first trial, is whether
18 they're guilty or not guilty of murder. Okay? And
19 after that, the State would have an additional burden of
20 proving the existence of an aggravating circumstance
21 beyond a reasonable doubt to all of the jurors. Okay?
22 You with me?

23 JUROR NUMBER 246: Yes.

24 MR. YOUNG: All right. And those would be
25 something like two murders, or the murder of a child.

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1 Okay? You with me?

2 JUROR NUMBER 246: Um-hmm.

3 MR. YOUNG: Under those circumstances --

4 JUROR NUMBER 246: Yes.

5 MR. YOUNG: Under those circumstances, where you
6 have the malicious murder, and it's aggravated, because
7 there's two murders, and the murder of the child, what
8 are your feelings about the appropriateness of the death
9 penalty?

10 JUROR NUMBER 246: I -- I mean, I -- I'm not
11 opposed to the death penalty. I don't know that I would
12 be pushing for the death penalty one way or the other.
13 I -- I -- you know, I'm -- personally, I would never
14 probably be the one pushing for it, but I, you know, I
15 -- I -- if everybody was thinking the death penalty was,
16 you know, something that was appropriate, I probably,
17 you know, if they -- if I felt the person was really
18 guilty, and everybody wanted the death penalty, I
19 probably would go with it, I guess.

20 MR. YOUNG: Okay. So, I'm sorry, I want to follow
21 up with you. Can you tell me a little bit more about
22 your thoughts about the death penalty. Like, if you got
23 to decide the laws, whether we're going to have a death
24 penalty or not have a death penalty, --

25 JUROR NUMBER 246: Okay.

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1 MR. YOUNG: -- would you have it, or would you not
2 have it?

3 JUROR NUMBER 246: If I was the decision maker
4 about whether or not we'd have the death penalty?

5 MR. YOUNG: Yes, ma'am, if you were to decide.

6 JUROR NUMBER 246: I think the death penalty
7 probably has its place. I think there are some very
8 evil things that have been -- that have happened out
9 there, and there are people that are mass murderers and
10 such, and there -- there's no chance of rehabilitation,
11 in which case, I think that -- I'm not sure why we would
12 put somebody who was a mass murderer behind bars, you
13 know, for two life sentences, you know, that there's no
14 chance of rehabilitation. So, I -- I would say in that
15 particular case, yes, I think the death penalty has its
16 place.

17 MR. YOUNG: And how about life without parole? Do
18 you think life without parole is a severe enough
19 punishment for somebody who has been convicted of
20 murder?

21 JUROR NUMBER 246: Yeah, I think there's probably
22 people that -- that, that's a -- a fine sentence for
23 them, too. It's -- it was circumstantial things and,
24 you know, I think that life without parole is probably
25 acceptable, as well.

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1 MR. YOUNG: Okay.

2 JUROR NUMBER 246: I guess it would be on how
3 heinous the crime was.

4 MR. YOUNG: All right. And then, I believe the
5 Judge talked to you a little bit about mitigation, and
6 that there might be mitigating evidence. Okay. And
7 mitigation is stuff about a defendant that doesn't
8 relate to the crime, but it's about who he is, and it's
9 about what his life experiences have been. Okay?

10 JUROR NUMBER 246: Um-hmm.

11 MR. YOUNG: Are you with me?

12 JUROR NUMBER 246: Yes.

13 MR. YOUNG: Stuff like whether or not somebody grew
14 up poor. Stuff like whether or not somebody was abused.
15 Is that stuff that you could give meaningful
16 consideration in determining what the appropriate
17 punishment was for that individual?

18 JUROR NUMBER 246: Yes. I would have to look at
19 all that. As far as that whole weighing thing I say
20 that I do and everything, I do, I weigh things. So, I
21 mean, if somebody had this horrible upbringing, you
22 know, where they were, you know, this is what their
23 learned behavior was, then, you'd have to weigh that in
24 there. And that might be the person that needs the life
25 imprisonment instead of the death penalty, I guess.

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1 MR. YOUNG: Now, did you understand Judge Mullen
2 tell you there's no such thing as an automatic death
3 penalty in South Carolina?

4 JUROR NUMBER 246: Um-hmm. Um-hmm.

5 MR. YOUNG: Life --

6 COURT REPORTER: Is that yes?

7 JUROR NUMBER 246: Yes.

8 MR. YOUNG: I'm sorry. I'll try and do better
9 making sure that your responses are verbalized for the
10 court reporter. The state of South Carolina is always
11 satisfied with a life penalty in this case, any case,
12 the worst case that you can imagine. Okay? Are you
13 with me on that?

14 JUROR NUMBER 246: Okay.

15 MR. YOUNG: You understand that; that, that's the
16 law.

17 JUROR NUMBER 246: That's the law.

18 MR. YOUNG: Okay. And we talk about mitigation in
19 the context of -- well, I talk about it juxtaposed to
20 aggravation, because aggravation has to be proven beyond
21 a reasonable doubt to the satisfaction of all jurors
22 unanimously. Okay?

23 JUROR NUMBER 246: Yes.

24 MR. YOUNG: Mitigation doesn't have a burden of
25 proof. Each juror gets to decide for themselves,

1 himself or herself, what is mitigating to them. Okay?

2 JUROR NUMBER 246: Okay.

3 MR. YOUNG: It might be one thing for one juror and
4 a different thing for another juror. Each juror can
5 make up their own mind about it. Okay?

6 JUROR NUMBER 246: Okay.

7 MR. YOUNG: It doesn't have a burden of proof, and
8 it doesn't have to be unanimous. Okay?

9 JUROR NUMBER 246: Okay.

10 MR. YOUNG: Even if there's no mitigation
11 presented, or nothing that's presented in the case is
12 something that you find mitigating, you're still
13 entitled to consider mercy alone. Okay?

14 JUROR NUMBER 246: Okay.

15 MR. YOUNG: And when I talk about the concept of
16 mercy, I want to ask you, for you, is mercy something
17 that is earned, or is it something that's freely given?

18 JUROR NUMBER 246: Well, if it's mercy, it's
19 probably not really earned.

20 MR. YOUNG: For you, your concept of mercy is it's
21 something that's generally bestowed upon you.

22 JUROR NUMBER 246: It's bestowed upon you.

23 MR. YOUNG: At the end of the day, when we're
24 talking about the decision about whether or not to take
25 another person's life, that decision is what we call an

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1 individual moral judgment. And when I say individual
2 moral judgment, what I mean is like, it's like what --
3 choosing what religion is right for you. Right?

4 JUROR NUMBER 246: Yes.

5 MR. YOUNG: like, you may have chosen a particular
6 faith, and somebody else may choose a different faith,
7 and you respect their right to choose a faith different
8 than yours.

9 JUROR NUMBER 246: Yes.

10 MR. YOUNG: You expect them to respect your right
11 to your own individual moral judgment?

12 JUROR NUMBER 246: (Nodded head.)

13 COURT REPORTER: Yes?

14 JUROR NUMBER 246: Yes.

15 MR. YOUNG: And if you saw somebody being bullied
16 or harassed, or tried to give up or forced to give up
17 what they have arrived at as their individual moral
18 judgment, would you stop it?

19 JUROR NUMBER 246: If I saw someone being bullied?

20 MR. YOUNG: Yes, ma'am.

21 JUROR NUMBER 246: And it was about their --

22 MR. YOUNG: If somebody said I've arrived at my
23 individual moral judgment; I have arrived at what my
24 opinion of what the appropriate punishment is; and
25 somebody said, your opinion is stupid; you can't have

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1 that opinion; your opinion is wrong; would you say,
2 well, we're all entitled to our own --

3 JUROR NUMBER 246: Right.

4 MR. YOUNG: -- individual moral judgment --

5 JUROR NUMBER 246: Yes.

6 MR. YOUNG: -- and theirs is just as valid as
7 yours.

8 JUROR NUMBER 246: Yes.

9 MR. YOUNG: At the end of the day, you can agree to
10 disagree.

11 JUROR NUMBER 246: Yes.

12 MR. YOUNG: Particularly about things like
13 individual moral judgments.

14 JUROR NUMBER 246: Yes.

15 MR. YOUNG: Ms. Freeland, how do you feel about
16 knowing that your vote about punishment could make the
17 difference between whether or not somebody lives or
18 dies?

19 JUROR NUMBER 246: That does not seem like a very
20 fond thing to me. I mean --

21 MR. YOUNG: Well, --

22 JUROR NUMBER 246: Not something I really -- I
23 don't know that I would choose to be the decision maker,
24 no.

25 MR. YOUNG: But you will.

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1 JUROR NUMBER 246: I mean, if I have to, sure.

2 MR. YOUNG: Give me one second, your Honor. Ms.
3 Freeland, let me just follow up with you on one thing.
4 You had said before that, if everybody wanted the death
5 penalty, then, I'd have to go with it. Do you recall
6 saying that?

7 JUROR NUMBER 246: Well, I think that -- I mean, I
8 -- I've not served on a jury, but I would assume that,
9 you know, you sit there, and you would listen to it all,
10 and if -- if, I mean, I don't -- I don't know what --
11 how much deliberation people do, but I would assume that
12 -- that you're -- get to talk about why it is that
13 you're forming this opinion. And you know, if it was
14 such a -- I mean, I -- I wouldn't be someone that would
15 just -- obviously, it's not against my moral belief.
16 So, I wouldn't be going, no, no, we can't do that, you
17 know. I mean, I would want to weigh it all out and hear
18 everybody's opinions, I guess.

19 MR. YOUNG: Sure.

20 JUROR NUMBER 246: I mean, I assume that's what
21 happens. I have not served on a jury.

22 MR. YOUNG: Yes, ma'am. And in making a decision
23 in the first phase of the trial, the guilty/not guilty
24 portion of the trial, was the light red/was the light
25 green, those are factual decisions that each jury has to

1 arrive at a unanimous conclusion.

2 JUROR NUMBER 246: Um-hmm.

3 MR. YOUNG: Right? And that's --

4 COURT REPORTER: Yes? Is that --

5 JUROR NUMBER 246: Yes.

6 MR. YOUNG: But in the penalty phase, we're talking
7 about individual moral judgment. Okay? And I guess my
8 question to you is, do you understand the difference of
9 arriving at a factual, unanimous decision, versus an
10 individual moral judgment?

11 JUROR NUMBER 246: I guess. I mean, I haven't
12 really, you know, I haven't -- like I said, I haven't
13 been explained this, except maybe by you. I haven't
14 really talked this out, thought this out, you know. So,
15 this is a new thought process to, -- you know, you're
16 saying that each juror is going to make their own
17 decision what they think after the penalty -- I mean,
18 after you've made a decision about the guilt of the
19 person, then, when it comes to the sentencing, each
20 person has to come upon their own independent decision
21 about what they think the sentence should be?

22 MR. YOUNG: Each juror has to arrive at their own
23 individual judgment, yes, ma'am.

24 JUROR NUMBER 246: And they come in, and then they
25 all say that to each other?

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1 MR. YOUNG: Well, how they determine it in the jury
2 room is up to them. But at the end of the day, if
3 twelve people say that the death penalty is an
4 appropriate punishment, then, Mr. Daise would be put to
5 death. If twelve people say that the life punishment is
6 appropriate, then, he would receive a life sentence.
7 And if twelve people couldn't agree --

8 JUROR NUMBER 246: Right.

9 MR. YOUNG: -- on what their individual moral
10 judgment was, then, the Judge would sentence.

11 JUROR NUMBER 246: Okay.

12 MR. YOUNG: Okay?

13 JUROR NUMBER 246: I mean, I would think that, if
14 we couldn't agree, then, the Judge should make the
15 sentence.

16 MR. YOUNG: Okay. And what I want to just make
17 sure that I'm understanding you correctly, that you
18 would not give up your individual moral judgment just to
19 go along with the majority.

20 JUROR NUMBER 246: No. No.

21 MR. YOUNG: Thank you Ms. Freeland.

22 THE COURT: Mr. Stone.

23 MR. STONE: Hey, Ms. Freeland. My name is Duffie
24 Stone. Just very briefly, from what I hear you saying
25 is that you're somebody that you could weigh all the

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1 information, aggravation, as well as mitigation,
2 everything, before making a decision about whether or
3 not somebody receives life in prison or the death
4 penalty. Is that correct?

5 JUROR NUMBER 246: I think, yes..

6 MR. STONE: If a case was bad enough, could you
7 give somebody the death penalty?

8 JUROR NUMBER 246: I think so.

9 MR. STONE: Okay. Thank you, ma'am. That's all I
10 have.

11 THE COURT: Ms. Freeland, I want to make sure you
12 understand, just because I understand there might be a
13 little bit of confusion about with the two types of
14 trials or the two portions of the trial.

15 And the first one, determining guilt or innocence,
16 actually of the crimes charged. And the question would
17 be: did the defendant, in your mind, commit murder
18 beyond a reasonable doubt. That would be the first
19 question.

20 JUROR NUMBER 246: Right.

21 THE COURT: If, and only if, you all found
22 unanimously that the defendant was guilty, would we then
23 go to the sentencing phase. During the sentencing
24 phase, I think what they're getting at is that, again,
25 you are expected, just like in the first phase, for all

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1 of you to share your opinions, to tell why you feel the
2 way you do. But what we want to make absolutely sure
3 is, if you did sit as a juror in the trial of this case,
4 if you held a firmly -- a firm belief, firm conviction
5 in your heart or in your soul, that someone should
6 receive a sentence, a specific sentence, and everyone
7 else thought the opposite, that you wouldn't go along
8 with them just to go along with them.

9 JUROR NUMBER 246: No.

10 THE COURT: That you would hold your own belief and
11 your own conviction, and make your own decision in your
12 own mind. Do you understand that?

13 JUROR NUMBER 246: Yes.

14 THE COURT: Because, at the end of the case, you're
15 going to have to sign your name to a line, if you all
16 were to convict someone, and then, on top of that,
17 sentence them to death.

18 JUROR NUMBER 246: Right.

19 THE COURT: And I just want to make sure you
20 understand that, while this is a decision of a jury, it
21 is an individual decision. And of course, I would never
22 want you to do any violence to your own conscience or
23 your own beliefs or your own moral values and give up a
24 firmly held belief that you have just to go along with
25 the other eleven people on the jury.

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1 JUROR NUMBER 246: Right.

2 THE COURT: Are you comfortable that you can do
3 that?

4 JUROR NUMBER 246: That I wouldn't go along with
5 the other people?

6 THE COURT: Yeah.

7 JUROR NUMBER 246: Absolutely.

8 THE COURT: Okay. That's what I want to make sure.
9 And again, you know, this is -- we laugh about it, this
10 is, you know, certainly not a science. We all ask
11 difficult questions, and they aren't always articulated
12 perfectly, but we're all trying to get to the same idea,
13 so. And I think you've certainly answered it for me, so
14 I appreciate that.

15 Ms. Freeland, what I'm going to ask that you do, if
16 you'd just stand right outside the door for a brief
17 moment, I'm going to speak with the lawyers. I'm going
18 to bring you right back in. All right?

19 JUROR NUMBER 246: Okay.

20 THE COURT: Thank you.

21 JUROR NUMBER 246 LEAVES COURTROOM.

22 BAILIFF: Door is closed.

23 THE COURT: Mr. Stone.

24 MR. STONE: She's qualified, your Honor.

25 MR. YOUNG: Your Honor, we'd move to have Ms.

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1 Freeland excused. Her jury questionnaire, she says, if
2 he did it, he would deserve the death penalty. And I
3 understand that she talked around it, and that --
4 changed it, but in the privacy of her home, filling out
5 her questionnaire, she said that, if she found him
6 guilty, that he would deserve the death penalty. On
7 that basis, we would move to disqualify her.

8 THE COURT: I find, based on the totality of what
9 she has stated, and certainly, in her questioning, which
10 I think we're all very adept on, I do find she's
11 qualified to sit as a juror in the trial of this case.
12 Bring in Barbara Banus.

13 BAILIFF: No, ma'am. We've got to bring her back
14 in first.

15 JUROR NUMBER 246 ENTERS COURTROOM.

16 BAILIFF: Just stand right here if you would,
17 please, ma'am.

18 THE COURT: Ms. Freeland, thank you for being here
19 today. We have found you qualified to serve as a
20 potential juror in this case. That does not mean you
21 are on the jury. It simply means you are qualified as a
22 potential juror. I am going to ask that you return
23 Monday morning at 9:30, where we're going to go ahead
24 and choose the jury.

25 I will tell you that the process, we're clearly

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1 running behind. I am hopeful we'll be ready by 9:30
2 Monday, but Norman's going to give you a number to call
3 in. After 6:00 o'clock Saturday night, I want you to
4 call that number. After 6:00 o'clock Saturday night
5 call that number, and there's going to be a recorded
6 message. It's going to tell you whether or not we're
7 ready for you at 9:30 Monday morning. I don't want you
8 all coming here if we are not ready for you. It will
9 tell you when to report, and I simply ask that you
10 report when it tells you to. All right?

11 JUROR NUMBER 246: Okay.

12 THE COURT: I appreciate it. I also need to tell
13 you do not discuss this case with anyone. It wouldn't
14 be appropriate to do so. Don't do any independent
15 research. Don't read any news reports or watch anything
16 about this. Again, that would be inappropriate. All
17 right?

18 JUROR NUMBER 246: Okay.

19 THE COURT: Thank you.

20 BAILIFF: Could I get your badge, please, ma'am?

21 JUROR NUMBER 246 LEAVES COURTROOM.

22 JUROR NUMBER 322 ENTERS COURTROOM.

23 BAILIFF: Ms. Barbara Banus.

24 BAILIFF: This way, ma'am. If you will, please,
25 just step right up there and take a seat in the witness

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1 chair.

2 THE COURT: Good afternoon. Good afternoon. Take
3 a seat. Ms. Banus, I first I must apologize and beg
4 your indulgence. We are running behind. I want you to
5 know that these attorneys have been working very hard,
6 and I appreciate that. At this time, I'm going to go
7 ahead and ask you some questions. The attorneys are
8 going to ask you some questions about this case and
9 about your feelings about the death penalty.

10 I want to remind you that, under the oath you took
11 yesterday, you need to be truthful and honest in your
12 answers. Is that agreeable to you?

13 JUROR NUMBER 32: Oh, yeah.

14 THE COURT: All right. And I know you received the
15 questionnaire, and we all have copies of that, and it's
16 all filled out. And I certainly think, in reading
17 yours, that you understand what we're doing here; that
18 this is a capital murder case.

19 JUROR NUMBER 32: Um-hmm.

20 THE COURT: That it is alleged the defendant has,
21 with malice aforethought, intentionally committed
22 murder, which is the definition of murder here in South
23 Carolina; and that the alleged persons that were killed
24 in this case were a woman and a child.

25 I want to make sure you understand and appreciate

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1 that, in South Carolina, we will try this case in two
2 stages, if it's appropriate. The first stage is the
3 guilt or innocence portion of the case. It's to decide
4 whether or not the defendant was guilty or not guilty of
5 the charges that have been brought.

6 If the defendant's found not guilty, the case is
7 over, we all go home.

8 If the defendant is found guilty, then, we will go
9 to a second phase of the trial, which is the sentencing
10 phase. During the sentencing phase, the State will go
11 ahead and give evidence or attempt to get evidence of
12 aggravating factors, which are required to be able to
13 even allow a jury to consider the death penalty in South
14 Carolina. Additionally, the Defense will give
15 mitigating factors, as well, although they're not
16 required to do so.

17 What I want to make sure you understand and
18 appreciate is that you can give a life-without-parole
19 sentence, were you to get to the sentencing phase, or a
20 death sentence. But again, you would have to come up to
21 that decision and reach that decision after counsel and
22 talking with the other fellow jurors.

23 JUROR NUMBER 32: Um-hmm.

24 THE COURT: But it's an individual decision, in
25 that, you don't have to give any reason whatsoever for

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1 either giving a life-without-the-possibility-of-parole
2 sentence. You can do it for a reason, no reason at all,
3 or simply because that's what you feel in your heart or,
4 you know, in mercy, do that. I just want to make sure
5 that you understand and appreciate that this is not an
6 automatic death penalty; that, again, it is for the
7 consideration of the jury, and the jury makes that
8 decision. Do you understand that?

9 JUROR NUMBER 32: Yes, I do.

10 THE COURT: All right. Thank you. Have you had an
11 opportunity to go through the witness list?

12 JUROR NUMBER 32: Yes, I have.

13 THE COURT: Do you know any witnesses?

14 JUROR NUMBER 32: I only know Sheriff Tanner by
15 pictures in the paper.

16 THE COURT: All right. And you don't --

17 JUROR NUMBER 32: Nobody else.

18 THE COURT: You don't have a personal relationship
19 with him?

20 JUROR NUMBER 32: No.

21 THE COURT: All right. Additionally, there has
22 been some publicity in this case. Have you read or seen
23 anything, or have any independent knowledge about this
24 case?

25 JUROR NUMBER 32: The only thing I know is what I

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1 read in the paper on Sun -- on Monday.

2 THE COURT: Okay.

3 JUROR NUMBER 32: I think it was Monday's paper.

4 THE COURT: All right.

5 JUROR NUMBER 32: I don't usually pay attention to
6 those, and I didn't recognize the case at all.

7 THE COURT: Okay. And I just want to make sure
8 that, having read that article, you understand that
9 what's in the paper is not factual, and that you --

10 JUROR NUMBER 32: Oh, yeah.

11 THE COURT: -- are not to consider it in any way;
12 that you're going to have, if you are chosen as a juror,
13 everything you need to decide this case here in this
14 courtroom. And it would be highly inappropriate for you
15 to be influenced by any outside source or anything else
16 you may have read about this.

17 JUROR NUMBER 32: Yeah. I -- I definitely feel
18 that way, because it didn't tell me anything, and I
19 don't know, and I don't know if there are any mitigating
20 circumstances or anything. So, there's no way I could
21 possibly make a decision now.

22 THE COURT: Thank you. I appreciate that. I'm
23 going to go ahead and turn it over to the attorneys.
24 All right? Mr. MacDougall.

25 MR. MACDOUGALL: Thank you, your Honor. Good

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1 afternoon, Ms. Banus. Am I pronouncing your name
2 correctly?

3 JUROR NUMBER 32: No, it's Banus.

4 MR. MACDOUGALL: Banus. I apologize.

5 JUROR NUMBER 32: Rhymes with caboose.

6 MR. MACDOUGALL: I will get that right from now on.
7 Ms. Banus, first of all, nothing that I'm going to say
8 in the questioning I ask you is intended to be anything
9 at all inconsistent with what the Judge just told you.

10 JUROR NUMBER 32: Um-hmm.

11 MR. MACDOUGALL: So, if you think you hear me
12 telling you something that's different from her
13 explanation of the case, I'm not.

14 Do you recall a questionnaire that you filled out
15 before you --

16 JUROR NUMBER 32: Yes.

17 MR. MACDOUGALL: Rather than hand it up, I'm just
18 going to read to you a question on there, and just make
19 sure that I understand that, that's your answer. You
20 were asked to pick one of three sentencing
21 considerations, which one best describes you. And the
22 one that you circled, Type 3, reads that you would
23 consider all of the facts of the case to decide if death
24 were appropriate and could give either a sentence of
25 life in prison or a sentence of death, depending on the

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1 facts and circumstance of that case. That's the way you
2 describe yourself.

3 JUROR NUMBER 32: Yes.

4 MR. MACDOUGALL: And I take it that's how you feel.
5 Is that right?

6 JUROR NUMBER 32: That's correct.

7 MR. MACDOUGALL: You could go one way or you could
8 go the other.

9 JUROR NUMBER 32: Correct.

10 MR. MACDOUGALL: And you could vote for a life
11 sentence, or you could vote for death sentence.

12 JUROR NUMBER 32: Um-hmm. Correct.

13 MR. MACDOUGALL: Depending upon all the facts and
14 circumstances. And if I understood what I think is
15 implicit in your answer, you would weigh all the
16 evidence and all the factors, the aggravation and
17 mitigation, in reaching whichever of those two
18 conclusions you reached.

19 JUROR NUMBER 32: Correct.

20 MR. MACDOUGALL: In South Carolina, murder -- this
21 is a murder case -- there is a component of murder
22 called malice. And malice is defined by law in this
23 state in some pretty -- pretty heavy language. It talks
24 about something which springs from wickedness, from
25 depravity, from a depraved spirit, from a heart devoid

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1 of social duty, and fatally bent on creating mischief.

2 And in order to find an individual defendant guilty
3 in any murder case, in any malice murder case in South
4 Carolina, you have to find that, that's present. And I
5 take it from your answer, if you found that was present
6 and the circumstances pointed you, after due
7 consideration, to a death sentence, that you could vote
8 for that.

9 JUROR NUMBER 32: I don't know. Because I know
10 nothing whatsoever about it, and I'm very reluctant to
11 even consider that.

12 MR. MACDOUGALL: And would it depend on the
13 evidence that you heard?

14 JUROR NUMBER 32: Yeah. Yeah.

15 MR. MACDOUGALL: Okay. There were factors that --
16 and let me just explain something else to you that the
17 Judge mentioned, but I'll touch on it again. There's
18 really two parts to a capital murder case. Mr. Daise,
19 who we represent, sits there today not guilty of
20 anything.

21 JUROR NUMBER 32: Um-hmm. Correct.

22 MR. MACDOUGALL: You understand that --

23 JUROR NUMBER 32: Until proven guilty.

24 MR. MACDOUGALL: Absolutely. And that, that will
25 depend upon what the jury finds in the trial in the

1 innocence or guilty phase of these proceedings.

2 After that, there's a short waiting period in the
3 same jury, and if you were a member of that jury, you
4 would hear that case. That same jury then hears the
5 question of punishment. And punishment can be either
6 life without parole -- and I take you understand that
7 life without parole in South Carolina means you die in
8 prison.

9 JUROR NUMBER 32: Correct.

10 MR. MACDOUGALL: There's no parole; there's no way
11 out. And the death penalty is the death penalty.

12 During that period of the case, you're given
13 aggravating factors which, as the Judge pointed out, in
14 this case, involves the death of a child and the death
15 of the child's mother, and two alleged killings.

16 You'll also be hearing mitigation. And the
17 question that I've got, and you answered yes in your
18 questionnaire, I just want to explore that for a minute,
19 you said yes to the following question:

20 *In determining what punishment*
21 *should be given to any defendant convicted*
22 *of murder, do you believe the background*
23 *and/or life experience of a guilty*
24 *murderer is relevant?*

25 And you said yes to that.

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1 JUROR NUMBER 32: Um-hmm.

2 MR. MACDOUGALL: Can you tell me a little bit more
3 about how you sort of reached that conclusion and what
4 you think about that.

5 JUROR NUMBER 32: Yeah. It's kind of hard to look
6 at that now, but -- well, in the sense that I don't even
7 have an idea about anything about this individual. But
8 I've worked with kids for 50 years, and with people, and
9 my master's degree was in special education with
10 socially maladjusted and disturbed children. So,
11 whenever I work with kids, I have to look at what are
12 the preceding factors, the precedence for his behavior
13 or her behavior. And again, not knowing anything about
14 Mr. Daise, there's nothing I can -- I can't make any
15 judgment or anything about that factor at this point in
16 time.

17 COURT REPORTER: About that factor?

18 THE COURT: At this time.

19 JUROR NUMBER 32: At this time.

20 MR. MACDOUGALL: And I appreciate that.

21 JUROR NUMBER 32: But I -- I can't -- I can't deny
22 that there could be those kinds of factors there.

23 MR. MACDOUGALL: And depending upon what evidence
24 you see or hear, you could go either way on that. Is
25 that right?

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1 JUROR NUMBER 32: Well, you know, I also have
2 another firm belief. I don't believe in heaven and
3 hell. I'm basically an agnostic. And my feeling is,
4 hell is on Earth; that do die in some form or be put to
5 death can be a release, since I don't believe in the
6 afterlife. And that the hell on Earth, from what I've
7 heard of prisons and read about prisons, hell on Earth
8 is that experience.

9 MR. MACDOUGALL: And I appreciate that. I've just
10 got a couple other questions. You have not served on a
11 jury before. Is that right?

12 JUROR NUMBER 32: Civil.

13 MR. MACDOUGALL: Okay. But you understand, and I'm
14 sure you do, that, in a criminal case, in this case, in
15 the guilt or innocence phase, the jury, in order to
16 convict of a crime, any crime, must reach a unanimous
17 verdict.

18 JUROR NUMBER 32: Okay.

19 MR. MACDOUGALL: And all twelve have to vote guilty
20 or not guilty. In the penalty phase, in the event of a
21 unanimous verdict of death, the Court will sentence the
22 defendant to death. You understand that.

23 JUROR NUMBER 32: Say that -- say that again.

24 MR. MACDOUGALL: In order for the Court to sentence
25 a defendant to death in a death penalty case, all twelve

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1 jurors must agree on the death penalty.

2 JUROR NUMBER 32: Okay.

3 MR. MACDOUGALL: Okay? Are you the kind of person
4 who, when presented with a fact or a circumstance that
5 is very important to you, a decision or a point of view
6 or a, you know, a place you're going to go, that you
7 stick to that, even in the face of people who disagree
8 with you.

9 JUROR NUMBER 32: Generally, yes. I can't say --

10 MR. MACDOUGALL: Sure.

11 JUROR NUMBER 32: -- absolutely. But generally,
12 yes.

13 MR. MACDOUGALL: And do you respect the fact that,
14 in a jury room, there may be one opinion in one
15 direction or another, and there may be twelve different
16 opinions.

17 JUROR NUMBER 32: Right.

18 MR. MACDOUGALL: And you understand that the Court
19 and the law respects all of those opinions.

20 JUROR NUMBER 32: Um-hmm. And I underst -- well, I
21 understand it's very important to say what I really
22 think, rather than just sitting back and letting others
23 make decisions. Very definitely.

24 MR. MACDOUGALL: All right. I appreciate that.
25 And let me just ask you about the other side of that

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1 coin. If you're in a group, a jury or some other group,
2 and there are people who have heartfelt decisions that
3 are unpopular, that are in the minority, and others who
4 may have a stronger personality or stronger feelings are
5 putting pressure on those individuals to change their
6 mind, are you the kind of person who will sort of step
7 in and say, no, that these people who are in the
8 minority or have a different point of view have the
9 right to keep their opinions and not have to change
10 them?

11 JUROR NUMBER 32: Oh, yeah.

12 MR. MACDOUGALL: Can I have a moment, your Honor?
13 Nothing else, your Honor. Thank you, ma'am, very much.

14 THE COURT: Mr. Stone. Sit tight. Mr. Stone has
15 an opportunity to ask you some questions, as well.

16 MR. STONE: Ms. --

17 JUROR NUMBER 32: Banus.

18 MR. STONE: Banus. How'd I do?

19 JUROR NUMBER 32: Fine.

20 MR. STONE: Okay, after you helped me. Thanks.
21 Appreciate it. I'm Duffie Stone. I just have a few
22 questions I want -- I read through your questionnaire,
23 and I had some questions. In your comment earlier about
24 the heaven and hell on Earth, and it seemed like in your
25 questionnaire you said something about a church that you

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1 were affiliated with having a position on the death
2 penalty. Is that correct?

3 JUROR NUMBER 32: Yes. The --

4 MR. STONE: Am I remembering that right?

5 JUROR NUMBER 32: Yes, you are. The Unitarian
6 Universeless. Yes, they do, and the church is against
7 the death penalty. However, we are also -- believe
8 strongly in our making up our own decisions --

9 MR. STONE: Okay.

10 JUROR NUMBER 32: -- and thinking, and not just --
11 we don't have to accept every single thing down to --
12 you know, it's basically we don't believe an eye for
13 eye, a tooth for a tooth.

14 MR. STONE: And it's up to you to make the final
15 decision?

16 JUROR NUMBER 32: I have to make the final
17 decision. Nobody's going to tell me how to think. But
18 that is the essence. Yes, we would. If it's important.

19 MR. STONE: Okay. And that's all.

20 MR. STONE: Thank you for clearing that up. I was
21 just unsure about it, and I wanted to make sure. So,
22 you are the type of juror that, at the end of the day,
23 after hearing everything, mitigation, whether that's
24 childhood, things concerning the defendant or other
25 things, and aggravation concerning the circumstances of

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1 the crime, that kind of thing, that you would then be
2 able to make your own decision whether or not the
3 appropriate sentence was life or death?

4 JUROR NUMBER 32: Um-hmm.

5 THE COURT: Is that a yes for the record?

6 JUROR NUMBER 32: Yes. Yes.

7 THE COURT: I apologize, Ms. Banus. Thank you.

8 JUROR NUMBER 32: I -- no -- yes is my answer.

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

11 JUROR NUMBER 32: I would have to think about that
12 at the time.

13 MR. STONE: Yes, ma'am.

14 JUROR NUMBER 32: I have thought in the past that
15 some of the individuals who are -- have been serial
16 killers or mass murderers, as we've had several over the
17 past few years, --

18 MR. STONE: Yes, ma'am.

19 JUROR NUMBER 32: -- that, yeah, they deserve the
20 death penalty. I had not given it as much thought for
21 individuals as I have for a larger complex of people
22 being murdered.

23 MR. STONE: Sure. And certainly we're not -- you
24 know, the unfortunate thing of this situation, you don't
25 know anything about the case.

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1 JUROR NUMBER 32: No.

2 MR. STONE: And it's almost unfair for us to ask
3 these questions. And so, I just wanted to make sure
4 that I understood your position on it, and I think I do.
5 That, if you think the appropriate sentence is life, you
6 can give that. If you think the appropriate sentence is
7 death, you can give that.

8 JUROR NUMBER 32: Yes.

9 MR. STONE: And so, again, just to make sure, if a
10 case is bad enough, you could give the death penalty?

11 JUROR NUMBER 32: Um-hmm.

12 THE COURT: That's a yes for the record?

13 JUROR NUMBER 32: To me. Yes.

14 THE COURT: Thank you, Ms. Banus.

15 MR. STONE: Thank you. Thank you for your answers.

16 JUROR NUMBER 32: Sure.

17 THE COURT: Okay. All right. Ms. Banus, I'm going
18 to ask that you step out the door. It is going to take
19 about 20 seconds; and then, I'm going to bring you back
20 in and tell you where we're going to go from here. All
21 right?

22 JUROR NUMBER 32: Okay.

23 THE COURT: Thank you, ma'am.

24 BAILIFF: Door is closed.

25 JUROR NUMBER 32 LEAVES COURTROOM.

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1 THE COURT: Thank you. All right.

2 MR. STONE: I think she's qualified, your Honor.

3 MR. MACDOUGALL: I think she's qualified, your
4 Honor.

5 THE COURT: Very good. She is qualified. Let's
6 bring her back in.

7 BAILIFF: Okay. You can come back in.

8 JUROR NUMBER 32 ENTERS COURTROOM.

9 BAILIFF: Ma'am, if you want to just stand right
10 there. That's all you need to do.

11 THE COURT: Ms. Banus, I think it was the first
12 time today I was even quicker than I promised. I think
13 it was less than 20 seconds that you were out there.

14 Ma'am, you have been qualified as a potential juror
15 in the trial of this case. That does not mean you have
16 been chosen as a juror.

17 JUROR NUMBER 32: Right.

18 THE COURT: It simply means you are qualified. I
19 am going to ask -- right now we believe we are going to
20 pull this jury Monday morning at 9:30, and I am going to
21 ask that you call into a juror line after 6:00 o'clock
22 Saturday night. That line is going to tell you when to
23 report. I hope it's 9:30 Monday morning, but if it
24 isn't, I don't want you all sitting around waiting on
25 us.

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1 JUROR NUMBER 32: Okay.

2 THE COURT: So, just whatever it says, just follow
3 its instructions. If it says be here at 9:30 Monday, be
4 here at 9:30 Monday. And if it says be here, again,
5 later, then, show up.

6 JUROR NUMBER 32: Right. Is that number, that
7 little card that we were given?

8 THE COURT: Norman's going to give it to you right
9 there.

10 JUROR NUMBER 32: Okay.

11 THE COURT: It is a special, separate line just for
12 those people that have been qualified as jurors.

13 JUROR NUMBER 32: Okay.

14 THE COURT: Okay?

15 JUROR NUMBER 32: Thank you.

16 THE COURT: Ms. Banus, thank you.

17 BAILIFF: I need your badge, please.

18 THE COURT: I need to instruct you, Ms. Banus,
19 again, not to discuss this case with anyone and not to
20 read anything or do any independent research.

21 JUROR NUMBER 32: I won't. No.

22 THE COURT: Thank you.

23 JUROR NUMBER 32 LEAVES COURTROOM.

24 THE COURT: All right. Go ahead.

25 LAW CLERK SCRANTON: Your Honor, we had a juror who

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1 was scheduled to come at 4:00 o'clock today. It's Mr.
2 James Cook. He's Number 31 on the random list. And
3 Juror Number 142. He filled out a questionnaire
4 yesterday, and he indicated on that questionnaire that
5 he is a Type 1 juror. I have a copy here for you all to
6 look at if you do not have that. He's back there
7 waiting. If you all could stipulate to his dismissal,
8 like we have all the other Type 1's and Type 2's, we can
9 let them go.

10 MR. STONE: We'll agree.

11 MR. MCGUIRE: Yes. Yes, ma'am.

12 LAW CLERK SCRANTOM: Thank you.

13 BAILIFF: What is his name?

14 THE COURT: Thank you.

15 LAW CLERK SCRANTOM: James Cook.

16 THE COURT: Thank you. All right. You all ready
17 go forward on Geoffrey Jackson?

18 MR. STONE: Yes.

19 THE COURT: The next one is Geoffrey Jackson.

20 MR. MCGUIRE: Oh. Yes, ma'am.

21 THE COURT: Okay. Let's bring him in.

22 JUROR NUMBER 339 ENTERS COURTROOM.

23 BAILIFF: Mr. Geoffrey Jackson.

24 THE COURT: Thank you. Come on up, Mr. Jackson.

25 Right over here, sir.

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1 BAILIFF: This way, sir. Please go up and take a
2 seat in the witness box.

3 THE COURT: Mr. Jackson, thank you for your
4 patience and waiting on us today. As you understand,
5 we're running a little behind.

6 JUROR NUMBER 339: Oh, it's no problem, Miss.

7 THE COURT: Thank you. I appreciate that. Sir, I
8 need to remind you that you are still under the oath
9 that you took yesterday.

10 JUROR NUMBER 339: Of course.

11 THE COURT: Is that all right with you, sir?
12 Additionally, sir, I need to tell you just a few things
13 about this case. Then, the attorneys are going to have
14 an opportunity to speak with you and ask you some
15 questions. I want you to understand that there are no
16 right or wrong answers here. The only thing I expect
17 you to do is be honest and be candid. Is that fine with
18 you?

19 JUROR NUMBER 339: It is.

20 THE COURT: All right, sir. And just to let you
21 know -- and I know you have an idea about this case,
22 because you were sent a questionnaire which you filled
23 out, and we thank you for that.

24 JUROR NUMBER 339: Oh, it's no problem,

25 THE COURT: Sir, this is a capital case. In this

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1 case, Mr. Daise, the defendant, has been charged with
2 two counts of murder, that being of a woman and also of
3 a child. And the State in this case is seeking the
4 death penalty. That is why we're asking you specific
5 questions in regards to the death penalty and your
6 feelings and opinions.

7 I want you to understand that any death penalty
8 case is tried a bit differently from other trials.
9 There are two separate trials in this case. If we get
10 to the second one, it is still decided by the same jury;
11 it's just two portions of the trial. The first one is
12 the guilt or innocence phase, which means you just
13 decide whether or not the defendant is guilty of the
14 crimes charged. Then, and only if, the jury would find
15 that person guilty beyond a reasonable doubt as to those
16 charges, would we then go to what is called the penalty
17 phase or the sentencing phase.

18 In that phase, sir, if the State proves aggravating
19 factors, and in this case, the aggravating factors that
20 would be considered or could be considered by you are
21 that it was a double murder, and then that of a child,
22 you could consider. And when I say you, I mean you and
23 the entire jury could consider the death penalty. Of
24 course, you're never required to give it. There is no
25 mandatory requirement as far as the death penalty is

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1 concerned.

2 And during that sentencing phase, Defense counsel
3 would give and offer evidence in mitigation. And again,
4 it could be background and like history and experience
5 of the defendant, and any other host of things for you
6 to consider in making that decision.

7 What I want to make sure you understand and
8 appreciate is that, the mitigation does not have a
9 burden of proof. You could find a mitigating factor
10 that you think would support a sentence of life
11 imprisonment without parole; or not find one; or simply
12 grant mercy, and for no reason at all say, I believe the
13 appropriate sentence is life without the possibility of
14 parole.

15 I just want to make sure you understand and
16 appreciate what you have as far as the two options are
17 concerned. Do you understand that, sir?

18 JUROR NUMBER 339: I understand this, Miss.

19 THE COURT: Thank you. Additionally, sir, you were
20 afforded a witness list to go through back in the jury
21 assembly room. Can you tell me if there is anyone on
22 that list that you know.

23 JUROR NUMBER 339: No. I looked through it twice,
24 and there's no one.

25 THE COURT: Thank you. Also, sir, there has been

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1 some publicity in this case. There has been some news
2 reports. Have you seen, read, or heard anything, or
3 have any independent knowledge about this case
4 whatsoever?

5 JUROR NUMBER 339: No. I actually hardly read
6 newspapers. I mostly just watch movies.

7 THE COURT: All right, sir. I appreciate that.
8 I'm going to ahead now and turn it over to the
9 attorneys. Again, I just remind you to be candid with
10 them. And Mr. McGuire.

11 MR. MCGUIRE: Thank you, your Honor.

12 THE COURT: Yes, sir.

13 MR. MCGUIRE: Good afternoon, Mr. Jackson.

14 JUROR NUMBER 339: Good afternoon.

15 MR. MCGUIRE: Thank you for being here. I've been
16 talking a lot today. My voice is starting to get
17 scratchy. I hope you forgive me.

18 JUROR NUMBER 339: Oh, of course.

19 MR. MCGUIRE: I looked over your questionnaire, and
20 it seems like you have an understanding, a basic
21 understanding, of kind of what we're here for. And the
22 Judge gave you a very succinct sort of summary of
23 everything. And I'm just going to start off by asking
24 you, do you have any questions of me, based on anything
25 you've heard, any concerns?

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1 JUROR NUMBER 339: Not at this point.

2 MR. MCGUIRE: Okay. There's no issue that you're
3 confused about or want more information on?

4 JUROR NUMBER 339: No.

5 MR. MCGUIRE: Yeah, it looked like you pretty much
6 got it, to me. On your questionnaire, there were three
7 options, somebody who would always vote death penalty;
8 always vote life; and then, the third option would be
9 somebody who wants to hear everything, take everything
10 into consideration, and can go either way, life or
11 death. And you were the third one.

12 JUROR NUMBER 339: Correct.

13 MR. MCGUIRE: Okay. And that would include
14 background of the defendant, his walk in life, his life
15 experiences. That would be important to you?

16 JUROR NUMBER 339: Yes, it would.

17 MR. MCGUIRE: And why would it matter to you?

18 JUROR NUMBER 339: Well, you can't just really
19 decide whether or not you want to say life or death.
20 It's better to always judge the matter from a
21 perspective of balancing out what the person really is
22 and what you see around it.

23 MR. MCGUIRE: Okay.

24 JUROR NUMBER 339: In order to make the right
25 statement.

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1 MR. MCGUIRE: Sure. And when I say background
2 characteristics, that sort of thing, I'm talking about a
3 human being's walk in life.

4 JUROR NUMBER 339: Um-hmm.

5 MR. MCGUIRE: Pretty much everything that's been
6 done to them, everything they've done to other people,
7 you'd want to know all that stuff.

8 JUROR NUMBER 339: Right.

9 MR. MCGUIRE: Okay. And that would be relevant and
10 important.

11 JUROR NUMBER 339: To me, yes.

12 MR. MCGUIRE: Okay. And I'm going to talk just a
13 little bit more in detail about the procedural process.
14 Okay. The Judge told you the first phase would be a
15 guilt/not guilty, guilty or not guilty phase. We may
16 not even get to a penalty phase. But this is my
17 opportunity to talk to you about the penalty phase.
18 It's my only chance. So, that's why I have to do it
19 now.

20 JUROR NUMBER 339: Of course.

21 MR. MCGUIRE: And it's awkward for me. I hope you
22 forgive, if I'm awkward about it, I hope you forgive me
23 that.

24 The penalty phase, if we got there, the Judge would
25 tell the jury that, basically, they change; they become

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1 individual jurors; and the decision they're supposed to
2 make is an individual moral judgment. It's not a
3 question that science can answer.

4 JUROR NUMBER 339: Um-hmm.

5 MR. MCGUIRE: And you can't put reasons up on a
6 chalkboard and just start counting stuff or counting
7 witnesses. It's a personal -- it's personal to each
8 individual juror. Did you know that? That, that's how
9 it works?

10 JUROR NUMBER 339: Yeah.

11 MR. MCGUIRE: Kind of had a gut feeling that's the
12 way it worked?

13 JUROR NUMBER 339: Yeah.

14 MR. MCGUIRE: And the way we get there is the thing
15 called mitigation, which is that whole background, the
16 whole background of a person's life, --

17 JUROR NUMBER 339: Right.

18 MR. MCGUIRE: -- the defendant's life, that
19 individual jurors can see different reasons --

20 JUROR NUMBER 339: Um-hmm.

21 MR. MCGUIRE: -- for voting for life. One person
22 could say, I saw he was mistreated as a child; and he
23 went through some very hard times; and I'm going to show
24 mercy for that. Somebody might say he did something
25 good; he took care of family members at a hard time, and

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1 that resonated with me. And those two people can have
2 different reasons, and nobody has to agree on their
3 reasons for voting for the life penalty. Is that a
4 principle you could respect?

5 JUROR NUMBER 339: Yes, of course.

6 MR. MCGUIRE: Okay. And with regard to the
7 individuality of a decision, the Judge would say, once
8 somebody reaches their individual moral judgment, that,
9 if it would do violence to their conscience or hurt
10 their conscience to change their position for the sake
11 of compromise, that would be wrong. Could you respect
12 that principle where the jury could basically agree to
13 disagree?

14 JUROR NUMBER 339: Yes.

15 MR. MCGUIRE: Okay. The jury could be unanimous
16 for the death penalty.

17 JUROR NUMBER 339: Um-hmm.

18 MR. MCGUIRE: They could be unanimous for the life
19 penalty. And then, really, a third position would be if
20 the jury was unable to agree, which is possible.

21 JUROR NUMBER 339: Yeah, but I believe that
22 pressure's going to be pretty possible in this thing,
23 maybe.

24 MR. MCGUIRE: Sure. I mean, we wouldn't want -- we
25 wouldn't expect people to really agree about something

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1 so important as this. So, there's the possibility to
2 disagreement. And could you be comfortable with the
3 jury ending the day in disagreement?

4 JUROR NUMBER 339: Yes.

5 MR. MCGUIRE: Okay. And the Judge would take the
6 case and sentence, if that was the case. If that was
7 the -- if that's what happened, the Judge would take the
8 case and sentence. Then, you don't have to concern
9 yourself with what the sentence might be, but I will
10 tell you the case would end and would not have to be
11 tried again. Do you understand that?

12 JUROR NUMBER 339: Yes.

13 MR. MCGUIRE: Okay. And you know, there are a lot
14 of rules in court; some for me; some for the Judge; and
15 some for you. And everybody's entitled to respect and
16 dignity in these proceedings. In fact, there's a case
17 that says capital proceedings will be conducted with
18 dignity. And while we expect civil discourse, exchange
19 of ideas and people talking about their views, each
20 person, when they reach that individual moral judgment,
21 they're entitled to respect. Would you agree with that
22 statement?

23 JUROR NUMBER 339: Yes.

24 MR. MCGUIRE: And the Judge would say somebody
25 could sentence for the life penalty for any reason, no

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1 reason, or mercy. If somebody just didn't have a voice
2 -- you're pretty vocal, but if somebody had a weak voice
3 and couldn't really articulate why they wanted to vote
4 life, and they just said, the Judge said I can do it for
5 no reason; and they were requested to give up and
6 compromise and give up their individual moral judgment,
7 could you step in and protect that person?

8 JUROR NUMBER 339: If --

9 MR. MCGUIRE: It might be hard to do..

10 JUROR NUMBER 339: Yeah. I'll give it -- give it
11 my best shot, if I have to.

12 MR. MCGUIRE: But that's a principle you would want
13 to stand by; that people with a lesser voice or a weaker
14 voice should be protected and respected. Do you agree?

15 JUROR NUMBER 339: Yes.

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

18 JUROR NUMBER 339: Thank you.

19 THE COURT: Mr. Stone.

20 MR. STONE: Mr. Jackson, my name is Duffie Stone.
21 How are you today?

22 JUROR NUMBER 339: Pretty well. Thank you.

23 MR. STONE: I just have a few questions. I've
24 looked through your questionnaire, and I listened to
25 your answers to the Defense. If a case were bad enough,

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1 could you vote for the death penalty?

2 JUROR NUMBER 339: Yes.

3 MR. STONE: Do you understand that, if you, in
4 fact, vote for the death penalty, and the jury gives
5 that instruction, that, that will actually be the
6 sentence; that's not a recommendation to the Court; that
7 is actually the sentence?

8 JUROR NUMBER 339: Yes.

9 MR. STONE: Okay. But you could do that, if the
10 case was bad enough.

11 JUROR NUMBER 339: Yes. If it's deserved, then, it
12 has to be. If we all reach the agreement, then, that
13 has to be.

14 MR. STONE: Thank you, sir.

15 JUROR NUMBER 339: You're welcome.

16 THE COURT: Okay. Mr. Jackson, I am going to ask
17 for you to momentarily step back out the door, and we're
18 going to invite you right back in. And then, I'll go
19 ahead and let you know where we go from here. All
20 right, sir?

21 JUROR NUMBER 339: Okay. Thank you, Miss.

22 THE COURT: Thank you.

23 THE COURT: Mr. Jackson, right here. Thank you.

24 JUROR NUMBER 339: Sorry.

25 JUROR NUMBER 339 LEAVES COURTROOM.

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1 BAILIFF: Door is closed, your Honor.

2 MR. STONE: State believes he is qualified, your
3 Honor.

4 MR. MCGUIRE: No objection here, your Honor.

5 THE COURT: All right. I found him qualified.

6 BAILIFF: Bring him in?

7 THE COURT: I appreciate the *Miss*. The *Miss*, other
8 than being called ma'am.

9 MR. STONE: Oh. Oh.

10 JUROR NUMBER 339 ENTERS COURTROOM.

11 BAILIFF: If you would, sir, just stand right
12 there.

13 THE COURT: Mr. Jackson, thank you so much for
14 being here today. Sir, we've found you qualified to sit
15 as a potential juror in the trial of this case. That
16 does not mean you have been chosen as a juror. It
17 simply means that you are qualified.

18 Sir, as we are going along right now, we are
19 running a bit behind. I anticipate being able to pull
20 this jury on Monday morning at 9:30, but out of an
21 abundance of caution, I am going to ask that you call in
22 to the juror line.

23 Norman's going to give you a number to call after
24 6:00 p.m. Saturday night, and it will tell you what time
25 you need to report. I anticipate and hope it's going to

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1 be 9:30 Monday morning, just for your planning purposes,
2 but again, whatever it tells you to do, please come, and
3 we look forward to seeing you then.

4 JUROR NUMBER 339: Just remind me again, what day
5 do I have to call?

6 THE COURT: Saturday.

7 JUROR NUMBER 339: Saturday.

8 THE COURT: Saturday.

9 JUROR NUMBER 339: This Saturday?

10 BAILIFF: It's on that card there.

11 THE COURT: Yes. That's day after tomorrow. All
12 right? Thank you, Mr. Jackson.

13 BAILIFF: Let me have your badge.

14 JUROR NUMBER 339: Oh, of course. There you go.

15 BAILIFF: It's on the card I gave you what time and
16 what date.

17 JUROR NUMBER 339: Thank you for having me.

18 THE COURT: Thank you. I appreciate it, Mr.
19 Jackson.

20 JUROR NUMBER 339: No problem.

21 JUROR NUMBER 339 LEAVES COURTROOM.

22 JUROR NUMBER 463 ENTERS COURTROOM.

23 THE COURT: Come on in, Mr. Mullins.

24 BAILIFF: Ben Mullins.

25 THE COURT: Come on in, sir.

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1 BAILIFF: Come this way, please, sir.

2 THE COURT: Come on up, Mr. Mullins, right around
3 here.

4 BAILIFF: If you will, go right up there and take a
5 seat on the witness stand.

6 THE COURT: Good afternoon, Mr. Mullins.

7 JUROR NUMBER 463: Good afternoon.

8 THE COURT: Thank you for your patience waiting on
9 us. We are running a bit behind. I need to remind you
10 before we begin that you are still under the oath that
11 you took yesterday. Is that agreeable with you?

12 JUROR NUMBER 463: Yes, ma'am.

13 THE COURT: Thank you. Also, I want to tell you
14 very quickly and very generally about this case. Then,
15 the attorneys are going to have an opportunity to ask
16 you questions. I want you to understand that there are
17 no right or wrong answers here. I expect -- all we can
18 expect of you is for you to be honest and candid.

19 JUROR NUMBER 463: Sure.

20 THE COURT: Is that agreeable with you, as well?

21 JUROR NUMBER 463: Yes, ma'am.

22 THE COURT: Sir, thank you. As I'm sure you know
23 from the questionnaire and from the jury original
24 qualifications yesterday, this is a capital death
25 penalty case that the defendant, Mr. Daise, is charged

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1 with two charges of murder in this case, one of a woman
2 and the other of a child. And that, I want to make sure
3 you understand and appreciate, because we don't try
4 death penalty cases every day, and this is done a little
5 bit differently than a normal trial. We have what's
6 called a bifurcated trial. There are two portions to
7 the case. The first portion simply determines the guilt
8 or innocence of the defendant of the charges in this
9 case. So again, it would be the jury determining
10 whether or not the defendant was guilty or innocent of
11 the charges of murder. If, and only if, the jury finds
12 that, yes, in fact, he is guilty of the charges of
13 murder, we go into a second phase. And again, that same
14 jury would come back and determine the sentence or the
15 appropriate penalty for that case.

16 JUROR NUMBER 463: Um-hmm.

17 THE COURT: I will tell you, also, that the State
18 has the burden at that point of proving what are called
19 aggravating factors that would allow this to -- or a
20 jury to consider the death penalty. Just because it's a
21 murder case doesn't mean that anyone is subject to the
22 death penalty. The State would have to prove beyond a
23 reasonable doubt that there were aggravating factors.
24 But then, again, that is only for you to consider as a
25 possible punishment.

1 The other possible punishment for the jury to
2 consider in that case would also be life without the
3 possibility of parole, which means life imprisonment,
4 they will never get out. I want to make sure you
5 understand that and appreciate that.

6 During that second sentencing phase of the trial,
7 the Defense is going to present mitigating evidence,
8 evidence in regards to walk of life, habits and
9 characteristics, kind of everything that brings the
10 defendant here today at this point, and the Court is
11 going to tell you that you are to consider the
12 mitigating evidence.

13 And what I want to make sure you understand and
14 appreciate that, again, even if you do find aggravating
15 circumstances, and even if you were to find no
16 mitigation evidence or some mitigation evidence, you are
17 never required to return a death verdict. Again, that
18 is solely for the jury to determine. And you could
19 always, and for no reason whatsoever, and even in just a
20 grant of mercy, determine that the appropriate sentence
21 is life without the possibility of parole.

22 And I just want to make sure you appreciate and
23 understand that, because, oftentimes, there are myths.
24 And in every state's different, but that is the law of
25 this state. And I want to make sure you understand and

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1 appreciate that.

2 JUROR NUMBER 463: Yes, ma'am, I understand.

3 THE COURT: Thank you. All right.

4 JUROR NUMBER 463: I'm sorry.

5 THE COURT: Just making sure I'm doing my job.

6 JUROR NUMBER 463: Sure.

7 THE COURT: So, thank you.

8 JUROR NUMBER 463: Correct.

9 THE COURT: At this time, I'm going to go ahead and
10 turn it over to the lawyers, other than you've had an
11 opportunity to look at the witness list. Is that
12 correct?

13 JUROR NUMBER 463: Yes, ma'am.

14 THE COURT: Do you know anyone on that witness
15 list?

16 THE COURT: Ms. Jerri, I put her down.

17 THE COURT: Ms. Roseneau?

18 JUROR NUMBER 463: Yes. She and I have become pen
19 pals the last couple of weeks or months.

20 THE COURT: As a result of your jury service.

21 JUROR NUMBER 463: That's correct.

22 THE COURT: Very good. And who else?

23 JUROR NUMBER 463: And I have Sheriff Tanner.

24 THE COURT: And you know Sheriff Tanner? What's
25 your relationship with Sheriff Tanner?

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1 JUROR NUMBER 463: Just the office that he holds.
2 I live in Westbury Park. He once lived there around the
3 corner from me. This was years ago. That's the extent
4 of it.

5 THE COURT: Okay.

6 JUROR NUMBER 463: I don't even know if he would
7 know me or not.

8 THE COURT: Okay. I appreciate that. So, you
9 don't have any personal relationship with him.

10 JUROR NUMBER 463: Oh. No, ma'am.

11 THE COURT: And again, just that you used to live
12 next to him, that wouldn't affect your ability to be
13 fair and impartial?

14 JUROR NUMBER 463: Not at all.

15 THE COURT: All right. I appreciate that, as well.
16 Also, there has been some publicity in this case, some
17 things in the news or, you know, in the newspaper. Have
18 you read, seen, heard anything, or have any independent
19 knowledge about this case whatsoever?

20 JUROR NUMBER 463: I have not. No, ma'am.

21 THE COURT: Thank you. All right. I'm going to
22 turn it over to Mr. Young.

23 MR. YOUNG: Good afternoon, Mr. Mullins.

24 JUROR NUMBER 463: Good afternoon.

25 MR. YOUNG: Hopefully, as the spouse of a former

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1 court reporter, you know how it goes sometimes.

2 JUROR NUMBER 463: Yes, sir.

3 MR. YOUNG: Judge Mullen talked to you a little bit
4 about the process, and I want to back up a little bit
5 and just talk about murder. Okay?

6 JUROR NUMBER 463: Sure. Yes, sir.

7 MR. YOUNG: And murder in South Carolina is the
8 intentional killing of another with malice aforethought.

9 JUROR NUMBER 463: Correct.

10 MR. YOUNG: Okay? And have you heard that term
11 before, malice aforethought?

12 JUROR NUMBER 463: I've heard it, yes, sir.

13 MR. YOUNG: And malice means sort of an evil
14 intent.

15 JUROR NUMBER 463: Um-hmm.

16 MR. YOUNG: Meant to do it.

17 JUROR NUMBER 463: Correct.

18 MR. YOUNG: It wasn't self-defense. Wasn't an
19 accident. It wasn't in heat of passion. They knew what
20 they were doing. They knew the difference between right
21 and wrong. They chose to act. They chose to take the
22 life of an innocent person.

23 JUROR NUMBER 463: Sure.

24 MR. YOUNG: Okay? So, that's what we're talking
25 about when we're talk about somebody who's been

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1 convicted of murder.

2 JUROR NUMBER 463: Right.

3 MR. YOUNG: Okay? And in addition to a conviction
4 of murder, the jury also has to find that it was an
5 aggravated murder, before they could consider
6 punishment. Okay?

7 JUROR NUMBER 463: Correct.

8 MR. YOUNG: And aggravating punish -- aggravators
9 like the Judge talked about are something that makes the
10 crime worse. Okay?

11 JUROR NUMBER 463: Yes.

12 MR. YOUNG: Such as, there were two murders at the
13 same time, or that the victim was child of tender years.
14 Okay?

15 JUROR NUMBER 463: Yes, sir.

16 MR. YOUNG: In that situation, where you have an
17 aggravated murder, what are your feelings about the
18 death penalty as the appropriate punishment?

19 JUROR NUMBER 463: I'm not opposed to it. Again,
20 it -- it depends on the evidence that's proven, you
21 know, beyond a reasonable doubt, just like the Judge
22 said. You know, again, I'm -- it could go either way.
23 It just depends on where the evidence leads, personally.

24 MR. YOUNG: Okay. And when you say -- when you're
25 talking about evidence, just to make sure that we're

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1 talking about the same thing, are you talking about what
2 happened, how it happened, how the crime happened, or
3 are you talking about more stuff than that?

4 JUROR NUMBER 463: Well, like you said, if it's
5 aggravated, if it's pre-determined, you know, if I --
6 you know, if he plotted this out, you know, whatever the
7 case may be, then, that would maybe alter my decision,
8 versus heat of rage or whatever the case may be.

9 MR. YOUNG: Okay.

10 JUROR NUMBER 463: You know, depending on how --
11 what led him, he or she, to that decision.

12 MR. YOUNG: Right. And I want to make sure that
13 we're talking about the same thing. And this is the
14 case where any evidence that you've heard about heat of
15 passion or somebody getting really angry, you've
16 rejected that, and you've found that they committed and
17 intentional, deliberate murder of an innocent person.

18 JUROR NUMBER 463: Correct.

19 MR. YOUNG: Okay?

20 JUROR NUMBER 463: Yes.

21 MR. YOUNG: So, we're not talking about like the
22 heat of passion or a rage-type situation.

23 JUROR NUMBER 463: Right.

24 MR. YOUNG: Okay?

25 JUROR NUMBER 463: Right.

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1 MR. YOUNG: When we're talking about penalty.

2 JUROR NUMBER 463: If it's --

3 MR. YOUNG: Does that alter your response about
4 whether or not death would be the only appropriate
5 punishment?

6 JUROR NUMBER 463: Death wouldn't be the only, you
7 know, option for me. Again, I think we would have to
8 see where the evidence leads. You know, if it was
9 aggravated, if it was plotted, you know, that's
10 possible. And I -- I can't honestly say how I would
11 vote one way or another at this time without having more
12 evidence to base my opinion on.

13 MR. YOUNG: Okay. Do you believe that life in
14 prison without the possibility of parole is a severe
15 enough penalty for somebody who's been convicted of
16 murder?

17 JUROR NUMBER 463: In some circumstances, yes.

18 MR. YOUNG: Can you tell me what you mean by *in*
19 *some circumstances*?

20 JUROR NUMBER 463: Again, if it was heat of rage,
21 just spontaneous, I don't know if -- maybe you're trying
22 to defend yourself, whatever the case may be, I think
23 life in prison would be sufficient. But I think if it's
24 something was plotted out, you know, weeks out, whatever
25 the case may be, all the details worked out,

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1 premeditated, he knew what he was going to do, then, the
2 death penalty is sufficient, as well.

3 MR. YOUNG: And when you talk about the life
4 punishment, you talked about -- one example you gave was
5 like, if somebody was acting in self-defense.

6 JUROR NUMBER 463: Correct.

7 MR. YOUNG: And if somebody was acting in self-
8 defense, you wouldn't find them guilty of murder. Okay.

9 JUROR NUMBER 463: Okay. I'm following you. Go
10 ahead.

11 MR. YOUNG: Well, I mean, you've heard the stand-
12 your-ground cases, right?

13 JUROR NUMBER 463: Right. Yes.

14 MR. YOUNG: You understand that we have a right to
15 take somebody's life in self-defense.

16 JUROR NUMBER 463: Correct.

17 MR. YOUNG: And that's not a crime.

18 JUROR NUMBER 463: Correct.

19 MR. YOUNG: Right?

20 JUROR NUMBER 463: Correct.

21 MR. YOUNG: So, and then, you went back to, well,
22 if they deliberately did it, if they meant to do it, you
23 were sort of leaning towards the death penalty.

24 JUROR NUMBER 463: Correct.

25 MR. YOUNG: Is that right?

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1 JUROR NUMBER 463: Yes, sir.

2 MR. YOUNG: And whenever you've convicted somebody
3 of malice aforethought murder, that they intended to do
4 it, they intended to take life of an innocent person.

5 JUROR NUMBER 463: Right.

6 MR. YOUNG: Okay?

7 JUROR NUMBER 463: Yes, sir.

8 MR. YOUNG: So, in that circumstance, -- and I
9 don't mean to ask it over and over again, but --

10 JUROR NUMBER 463: Right.

11 MR. YOUNG: -- does that change your answer with
12 regard to the death penalty?

13 JUROR NUMBER 463: That's tough. I mean, I really
14 don't -- without something to really base it off of, you
15 know, I don't -- I don't know what the motive was,
16 things like that. You know, there are some things that
17 you'll take into consideration.

18 MR. YOUNG: Sure. Okay.

19 JUROR NUMBER 463: You know, I don't know much
20 about the case. You know, I'm going in open-minded
21 about it, you know, and whatever evidence is there,
22 that's how I would base my opinion; and then, the
23 severity of the penalty, as well.

24 MR. YOUNG: Mr. Mullins, if you got to decide what
25 the law was; --

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1 JUROR NUMBER 463: Um-hmm.

2 MR. YOUNG: -- you are the decider; you get to
3 decide whether we're going to have the death penalty or
4 not have the death penalty; what would you -- would you
5 have a death penalty?

6 JUROR NUMBER 463: Yes. I'm not opposed to it.

7 MR. YOUNG: And why?

8 JUROR NUMBER 463: Eye for an eye. I think it's --
9 you know, I serve as a deacon in our church, and I know
10 it's not right to kill, but at the same time, I think
11 the punishment is fair.

12 MR. YOUNG: You used the phrase *an eye for an eye*.
13 Is that something that you subscribe to?

14 JUROR NUMBER 463: Again, it's all based on the
15 evidence. You know, there are certain circumstances
16 where I don't think the death penalty would be, you
17 know, adequate. You know, I don't think it would, you
18 know, I guess -- I don't know -- I don't know how to
19 explain what I'm trying to say. And again, I know I'm
20 repeating myself, as well, and I'm just going whatever
21 the facts may -- whatever's, you know, shown to me, and
22 that's how I'm basing my --

23 MR. YOUNG: Sure. And there are no right or wrong
24 answers here. I'm just asking your feelings, and these
25 are difficult subjects --

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1 JUROR NUMBER 463: Sure.

2 MR. YOUNG: -- that people haven't spent a lot of
3 time thinking about.

4 JUROR NUMBER 463: Correct.

5 MR. YOUNG: So, let's go back to where we were
6 talking about making a decision on the jury.

7 JUROR NUMBER 463: Sure.

8 MR. YOUNG: If the State has proven to you, to the
9 jury's satisfaction, everybody, all twelve of them, that
10 there exists an aggravating factor beyond a reasonable
11 doubt, that's something that has to be unanimously found
12 by the jury before they can consider punishment.

13 JUROR NUMBER 463: Correct.

14 MR. YOUNG: Either the death penalty or life
15 without parole.

16 JUROR NUMBER 463: Correct.

17 MR. YOUNG: You understood that from the Judge's
18 instructions.

19 JUROR NUMBER 463: Yes, sir.

20 MR. YOUNG: So, mitigation, Judge Mullen talked
21 about mitigation as being stuff about the defendant,
22 about his walk in life, how he grew up, how he was
23 raised.

24 JUROR NUMBER 463: Right.

25 MR. YOUNG: Okay? That would be stuff that the

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1 Defense could present to you in determining what
2 punishment was appropriate for you.

3 JUROR NUMBER 463: Yes, sir.

4 MR. YOUNG: Now, stuff about a person, how they
5 grew up, whether they were abused or not, whether they
6 grew up poor, are those factors something that you could
7 give meaningful consideration to in deciding which
8 punishment was appropriate for you?

9 JUROR NUMBER 463: Yes, I would take that under
10 consideration.

11 MR. YOUNG: Mitigating factors are different than
12 aggravating factors, because mitigation doesn't have a
13 burden of proof. Okay?

14 JUROR NUMBER 463: Right.

15 MR. YOUNG: Each juror gets to decide for
16 themselves whether or not a mitigating fact exists.
17 Okay?

18 JUROR NUMBER 463: Right.

19 MR. YOUNG: And it doesn't have to be unanimous.
20 The jurors can disagree about what's mitigating to them.
21 But if it's mitigating for you, you're entitled to give
22 that mitigation effect. Okay? Does that make sense to
23 you?

24 JUROR NUMBER 463: Yes, sir.

25 MR. YOUNG: That not everybody has to agree.

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1 JUROR NUMBER 463: Correct. Yes, sir.

2 MR. YOUNG: And even if there's no mitigation, even
3 if you say nothing that I've heard about the defendant's
4 background is mitigation to me; I don't think any of
5 that applies, and none of that is a reason for me to
6 give a life penalty, you're still entitled to consider
7 mercy.

8 JUROR NUMBER 463: Correct. Yes, sir.

9 MR. YOUNG: You understood that from Judge Mullen's
10 instructions.

11 JUROR NUMBER 463: Yes, sir.

12 MR. YOUNG: For you, your concept of mercy, is
13 mercy something that is freely given, or is it something
14 that is earned?

15 JUROR NUMBER 463: I want to say freely given, but
16 under the circumstances, it could be earned, depending
17 on their background, what led to the incident. You
18 know, I just try to treat people fair, you know, I mean.
19 And that doesn't mean you treat them all the same.

20 MR. YOUNG: Right.

21 JUROR NUMBER 463: You know.

22 MR. YOUNG: Sure. And I understand what you're
23 saying. When we talk about the punishment decision and
24 the decision that we ask jurors to make about whether or
25 not another person lives or dies, --

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1 JUROR NUMBER 463: Um-hmm.

2 MR. YOUNG: -- right?

3 JUROR NUMBER 463: Right.

4 MR. YOUNG: We call that an individual moral
5 judgment. Okay?

6 JUROR NUMBER 463: Correct.

7 MR. YOUNG: And, what I mean when I say individual
8 moral judgment, it's like choosing what religion is
9 right for you. The faith that you have, somebody else
10 might have a different faith.

11 JUROR NUMBER 463: Right.

12 MR. YOUNG: You expect people to respect your
13 individual choice, your faith, your individual moral
14 judgments.

15 JUROR NUMBER 463: Yes, sir.

16 MR. YOUNG: And you respect other people who may
17 have different -- made different choices from you?

18 JUROR NUMBER 463: That's correct.

19 MR. YOUNG: Would you insure that each person's
20 individual moral judgment, if they've arrived at it, was
21 respected? That, if they come at their opinion, and
22 they've arrived at what they say is their individual
23 moral judgment, --

24 JUROR NUMBER 463: Um-hmm.

25 MR. YOUNG: -- can you say that opinion is just as

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1 valid as mine, and they're entitled to have it.

2 JUROR NUMBER 463: It's kind of going out of the
3 box in a way. I don't know. Depending on if it's
4 breaking the law or not.

5 MR. YOUNG: Okay.

6 JUROR NUMBER 463: And I mean, it's -- some
7 religions think it's okay to kill people, you know, and
8 I don't know. So, that would -- that's breaking the
9 law, personally. And so, I would be opposed to their
10 opinion.

11 MR. YOUNG: Sure. And I'm talking about somebody's
12 opinion about whether or not another person lives or
13 dies.

14 JUROR NUMBER 463: So, how do I answer that? I
15 mean, what are you asking there?

16 MR. YOUNG: I'm talking about if somebody arrives
17 as an opinion different than you on what the appropriate
18 punishment is, --

19 JUROR NUMBER 463: Right.

20 MR. YOUNG: -- would you respect their opinion?

21 JUROR NUMBER 463: Sure. Yes.

22 MR. YOUNG: Would you expect them to respect your
23 opinion?

24 JUROR NUMBER 463: Yes.

25 MR. YOUNG: And would you ensure that everybody

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1 else respected each other's opinion?

2 JUROR NUMBER 463: Yes. Are you talking about --
3 I'm assuming you're talking about a team of juries.

4 MR. YOUNG: Yes, sir.

5 JUROR NUMBER 463: And we all want to respect --
6 yes, I can do that.

7 MR. YOUNG: Because you understand that, if twelve
8 people all agree and they're unanimous, and they
9 recommend the death penalty, Mr. Daise will be put to
10 death.

11 JUROR NUMBER 463: Correct, yes. I understand.

12 MR. YOUNG: That's not a recommendation to the
13 Judge. It's a --

14 JUROR NUMBER 463: Right.

15 MR. YOUNG: The jury's decision is the jury's
16 decision.

17 JUROR NUMBER 463: Correct.

18 MR. YOUNG: And if they decide, all twelve,
19 unanimously say the life penalty is appropriate, then,
20 Mr. Daise would be in prison for the rest of his life.

21 JUROR NUMBER 463: Yes, sir.

22 MR. YOUNG: And if the jury couldn't agree, the
23 decision would be made by the Judge.

24 JUROR NUMBER 463: Yes, sir.

25 MR. YOUNG: Okay?

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1 JUROR NUMBER 463: Yes, sir.

2 MR. YOUNG: So, at the end of the day, it's okay to
3 agree to disagree.

4 JUROR NUMBER 463: Correct. Yes, sir.

5 MR. YOUNG: Especially in making individual moral
6 judgments.

7 JUROR NUMBER 463: Yes, sir.

8 MR. YOUNG: Thank you, Mr. Mullins.

9 JUROR NUMBER 463: Yes, sir.

10 THE COURT: Mr. Stone.

11 MR. STONE: Mr. Mullins, my name's Duffie Stone. I
12 just have a few questions. From my understanding of
13 listening to your answers to the Defense and your
14 questionnaire that you filled out, you're a juror that
15 would take everything into consideration and decide at
16 the end whether or not you thought the appropriate
17 sentence was life or death, depending upon what you
18 heard in the courtroom.

19 JUROR NUMBER 463: That is correct. Yes, sir.

20 MR. STONE: If a case was bad enough, could you
21 give the death penalty?

22 JUROR NUMBER 463: Yes, sir, I could.

23 MR. STONE: I don't have anything else. Thank you,
24 sir.

25 JUROR NUMBER 463: Yes, sir.

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1 THE COURT: All right. Mr. Mullins, I'm going to
2 have to ask you to step out this back door for about ten
3 seconds, and I'm going to bring you right back in and
4 tell you where we go from here. Okay, sir?

5 JUROR NUMBER 463: Yes, ma'am. Thank you.

6 THE COURT: Thank you very much.

7 JUROR NUMBER 463 LEAVES COURTROOM.

8 BAILIFF: Door is closed, your Honor.

9 THE COURT: Any objection to Mr. Mullins being
10 qualified from the State?

11 MR. STONE: No, ma'am.

12 THE COURT: From the Defense?

13 MR. YOUNG: No, your Honor.

14 THE COURT: He's qualified, and bring him right
15 back in.

16 BAILIFF: Yes, ma'am.

17 THE COURT: Thank you.

18 JUROR NUMBER 463 ENTERS COURTROOM.

19 BAILIFF: If you would, just stand right there,
20 please.

21 THE COURT: Thank you. Mr. Mullins, you have been
22 qualified as a potential juror in the trial of this
23 case. That does not mean you've been chosen as a juror,
24 it just means you are a potential juror.

25 Sir, we anticipate, hopefully, getting through this

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1 process by Monday morning at 9:30, which is when I'm
2 going to ask you to report. However, out of an
3 abundance of caution, Norman's going to give you a piece
4 of paper that's got a call-in number.

5 JUROR NUMBER 463: All right.

6 THE COURT: After 6:00 o'clock Saturday night, I
7 want you to call into that line, and whenever it tells
8 you to report, just report. All right, sir?

9 JUROR NUMBER 463: Sure. Yes, ma'am.

10 THE COURT: We don't want you waiting around on
11 Monday if we are still doing this with more jurors. And
12 we plan on working through Saturday, just to let you
13 know. We're going to keep going. But again, just make
14 sure you call after 6:00 o'clock on Saturday. Before
15 then, there won't be any message on it, because I won't
16 know where we are until then. All right?

17 JUROR NUMBER 463: Yes, ma'am. All right.

18 THE COURT: Sir, additionally, don't speak with
19 anyone about this case. It wouldn't be appropriate to
20 do so. Don't do any independent research, read
21 anything, see anything.

22 JUROR NUMBER 463: Yes, ma'am.

23 THE COURT: Go home. Have a wonderful weekend.

24 JUROR NUMBER 463: Thank you.

25 THE COURT: Thank you, sir.

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1 JUROR NUMBER 463: Good to see you.

2 THE COURT: Thank you, sir.

3 JUROR NUMBER 463 LEAVES COURTROOM.

4 BAILIFF: Ready, your Honor.

5 THE COURT: Okay.

6 JUROR NUMBER 142 ENTERS COURTROOM.

7 BAILIFF: Kyrstin Cook.

8 THE COURT: Come on in.

9 BAILIFF: Come this way, please.

10 THE COURT: Come on around, ma'am.

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

13 THE COURT: Come on around. Thank you. Good
14 afternoon. Thank you for waiting on us.

15 JUROR NUMBER 142: Good afternoon. Oh, thank you.

16 THE COURT: I appreciate it. Ma'am, I just need to
17 remind you that you are still under the oath you took
18 yesterday. Is that agreeable?

19 JUROR NUMBER 142: Absolutely.

20 THE COURT: Also, I want to give you just a little
21 bit of background --

22 JUROR NUMBER 142: Okay.

23 THE COURT: -- just to make sure you understand
24 what we're doing in the case that we expect to try next
25 week. It is what's called a capital case. In that

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1 case, the defendant is charged with two counts of
2 murder, that of a woman and of a child, and the State is
3 seeking the death penalty in this case.

4 What I want you to know is that, in any death
5 penalty case, it runs a little bit differently than a
6 normal trial. It's going to be bifurcated. There are
7 going to be two parts to the case, potentially. The
8 first case simply decides the guilt or innocence of a
9 defendant on the charges, on the murder charges. If,
10 and only if, the jury finds the defendant guilty of
11 those charges, we would then go into what's called a
12 sentencing phase.

13 During the sentencing phase, the State would
14 present what they call aggravating factors to allow this
15 case -- to allow a jury for the potential to consider
16 the death penalty. Not all murder cases are eligible
17 for the death penalty. The State would have to prove
18 beyond a reasonable doubt aggravating circumstances.
19 And in this case, they would present to you the
20 aggravating circumstances of a double murder or homicide
21 and, also, the killing of a child.

22 At that point, also, the defendant would present to
23 you, or the Defense would present to you, mitigating
24 circumstances, and mitigating circumstances don't have a
25 standard or burden of proof. They are simply -- give

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1 you a background picture in understanding of the history
2 of the defendant and the circumstances which brings him
3 here today, and that is for you to consider in any way
4 you see appropriate. But I will tell you that the Court
5 is going to tell you that you must consider those
6 mitigating factors.

7 I also need to tell you that there are two possible
8 verdicts were we to get to that stage, and if the State
9 were able to prove their aggravating factors. That
10 would be either life imprisonment without the
11 possibility of parole or a death sentence.

12 What I want you to understand is that, a jury can
13 vote for life without possibility of parole for any
14 reason, a mitigating reason, or no reason at all, or
15 simply granting mercy. But that is an individual
16 choice, and you wouldn't need to justify it in any way
17 or tell why. I just want to make sure you understand
18 that, that is the process that we're going through. I
19 know it's a bit different, and I just wanted to make
20 sure you knew that.

21 I can tell you, the lawyers are going to follow up,
22 and they're going to tell you in a little more detail,
23 but I just wanted to give you a background of how this
24 case will work.

25 Also, you had an opportunity back in the jury

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1 assembly room to review the witness lists.

2 JUROR NUMBER 142: Yes.

3 THE COURT: Do you know anyone on those witness
4 lists?

5 JUROR NUMBER 142: No.

6 THE COURT: All right. And also, this case has
7 received some publicity. Have you read anything, seen
8 anything, or have any independent knowledge whatsoever
9 about this case?

10 JUROR NUMBER 142: Not at all. We don't have cable
11 or anything, so I kind of am ignorant to the news, I
12 guess you could say.

13 THE COURT: Okay. Well, that, I appreciate, and it
14 certainly helps us in the trial of this case. So, at
15 this time, I'm going to go ahead and turn it over to the
16 lawyers --

17 JUROR NUMBER 142: Okay.

18 THE COURT: -- to ask you questions. I just want
19 to remind you, there are no right or wrong answers here.
20 I want you to be honest and candid. And again, if you
21 don't understand something, tell them to change the
22 question, repeat it, rephrase it. They're happy to do
23 it. The only thing I have to ask you to do is, when you
24 respond, make sure you say yes or no. My court reporter
25 can't take down a head bob or an uh-huh or an uh-uh.

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1 And so, if you do that, she'll be prompting you, as will
2 I.

3 JUROR NUMBER 142: Okay.

4 THE COURT: So, I just want to let you know that.

5 JUROR NUMBER 142: Okay.

6 THE COURT: Okay? Thank you, ma'am.

7 JUROR NUMBER 142: Thank you.

8 THE COURT: All right. Mr. MacDougall.

9 MR. MACDOUGALL: Thank you, your Honor.

10 THE COURT: Yes, sir.

11 MR. MACDOUGALL: Good afternoon, Ms. Cook.

12 JUROR NUMBER 142: Good afternoon.

13 MR. MACDOUGALL: My name is Mark MacDougall, and
14 I'm a lawyer for the defendant here, Earnest Daise.
15 You're from Pittsburgh?

16 JUROR NUMBER 142: Yes.

17 MR. MACDOUGALL: Great city.

18 JUROR NUMBER 142: It's all right.

19 MR. MACDOUGALL: I'm sorry?

20 JUROR NUMBER 142: It's all right.

21 MR. MACDOUGALL: Okay. Nothing I'm going to say is
22 intended to be inconsistent with anything the Judge has
23 said. I may repeat some of the things she said just for
24 emphasis or to remind you of them, because, as I think
25 you said yourself, this is all new to you.

1 JUROR NUMBER 142: Yeah.

2 MR. MACDOUGALL: The most important thing that I
3 would want you to know, though, is that what we're
4 interested in hearing is how you really feel. No right
5 or wrong answer. There's no, you know, no preference,
6 because what's really important is what's in your mind
7 and in your heart. And you're going to be asked
8 questions, most in which you've probably never heard
9 before. So, the first answer is usually the best one,
10 and usually the most, you know, the most accurate, and
11 the one that really reflects where you are and your own
12 thinking.

13 The first is that you filled out a questionnaire.
14 You may recall that. And one of the questions that you
15 answered was whether you would categorize yourself under
16 1, 2, or 3. And you had circled -- this was in the
17 question of sentencing considerations, what you circled
18 was the following sentence, that:

19 *You would consider all the facts*
20 *of the case to decide if death were*
21 *appropriate, and could give either a*
22 *sentence of life in prison or a*
23 *sentence of death, depending on the*
24 *facts and circumstance of the case.*

25 And I take it that fairly describes where you are

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1 on these things.

2 JUROR NUMBER 142: Yes.

3 MR. MACDOUGALL: This is a murder case, as the
4 Judge mentioned, and as you heard before when you came
5 in. And if you haven't thought much about the legal
6 definition of murder, and there would be no reason you
7 would so far in your life, let me tell you a little bit
8 about it, and that will lead into the questions that
9 we've got.

10 In South Carolina, murder requires malice. And
11 malice means something very specific in the law. And
12 in this state, what it means is that you are acting with
13 wickedness, you're excluding any just cause or excuse
14 for what you're doing, depravity, from a depraved
15 spirit, from a heart devoid of social duty, and fatally
16 bent on creating mischief. And that's heavy language I
17 appreciate.

18 JUROR NUMBER 142: Yeah.

19 MR. MACDOUGALL: But what it's meant to exclude is
20 all the other sort of possibilities before you get to
21 that very serious definition of malice. So, it's not an
22 accident; it's not self-defense; it's not insanity; it's
23 not hit and run. All those things are gone, and it's
24 having a very depraved, focused, intentional heart to
25 commit the homicide, commit the murder.

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1 With that in mind, when you think about how you
2 would fashion a punishment, -- and you're going to have
3 two choices if you're on this jury. One is death. And
4 if you vote for the death penalty and the jury is
5 unanimous, that'll be the Judge's sentence. It's not a
6 recommendation. The Judge can't change that.

7 And the other is life in prison without parole.
8 And that's a very important -- that second part of that
9 phrase is very important, because without parole in
10 South Carolina means without parole. The defendant is
11 sentenced to life in prison without parole, and he'll
12 die in prison. They call it pine box life in some parts
13 of the country.

14 With that in mind, with those two alternatives in
15 front of you, and thinking about the definition malice,
16 cold-hearted killing, what's your sense of what the
17 right punishment is?

18 JUROR NUMBER 142: It feels like, you know, you
19 want to say -- because like you said, that's their
20 intention, that's, you know, that's the goal, I guess
21 you could say. But I don't feel like I personally could
22 say that, that person has to die. I don't think that --
23 it's not me, I guess. I could go for the life in prison
24 without parole, but to actually say that, that person
25 should die, also, would be hard for me.

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1 MR. MACDOUGALL: Okay. Now, you haven't heard any
2 evidence in this case so far.

3 JUROR NUMBER 142: No.

4 MR. MACDOUGALL: And when you filled out the
5 questionnaire that we talked about a couple minutes ago,
6 I think it's fair to say you would evaluate all the
7 evidence and could go either way. Recognizing that you
8 haven't heard any of the evidence, and it could make
9 quite an impression on you, are there circumstances that
10 you could foresee -- and let me just add a couple things
11 and highlight some of the things that Judge Mullen said.
12 This is a double homicide. That's called an aggravating
13 factor in this state. And it's also a child who was
14 killed. So, that's a second aggravating factor.

15 With that in mind, recognizing that you would have
16 to hear all the evidence and make up your own mind,
17 could you see yourself going for a death sentence and
18 agreeing with the jury for a death sentence in that
19 instance?

20 JUROR NUMBER 142: I think it could be possible. I
21 have two little sisters, so that definitely tugs at, you
22 know, me a little bit when it comes to that. So, I
23 would say that there's a possibility. I just -- I guess
24 without me knowing, it's hard to say that I would do
25 that, because it doesn't seem like, you know, I would

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1 just be like, oh, yeah, you know, that person deserves
2 to it, when I don't know anything.

3 MR. MACDOUGALL: When you do know something and you
4 do hear the evidence, it's certainly a possibility?

5 JUROR NUMBER 142: It could be, yeah.

6 MR. MACDOUGALL: And just the same, you could also
7 reach a conclusion that life without parole is the
8 correct sentence.

9 JUROR NUMBER 142: Yes.

10 MR. MACDOUGALL: So, depending upon the evidence,
11 you could go either way?

12 JUROR NUMBER 142: Yeah.

13 MR. MACDOUGALL: All right. Okay. One thing I
14 think I should tell you, in South Carolina, there's no
15 automatic death sentence. So, a finding of guilt
16 doesn't require it, and it's not something that comes
17 with any certainty. In other words, the State, this
18 state, will always accept a life sentence in punishment
19 for even the worst homicides.

20 This trial, and Judge Mullen touched on this, will
21 be broken down into two parts, perhaps. The first part
22 is the innocence or guilt phase. And if the defendant
23 is found not guilty, there is no second phase. If the
24 defendant is found guilty, if Mr. Daise is found guilty,
25 then there's a short period where the actions stops, and

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1 then the same jury picks up through a second phase,
2 where punishment is determined.

3 In that phase, you will hear evidence of
4 aggravation. And we talked about the aggravating
5 factors here, the fact that there were two people
6 killed, and one was a child. But there's also
7 mitigation. And mitigation, as you answered a question
8 on your questionnaire related to mitigation, mitigation
9 are things that the Defense puts on that ask you to
10 consider the defendant's life in whole.

11 And I'm going to give you some general examples.
12 These are not necessarily specific to Mr. Daise, but can
13 be. If someone grew up in poverty; if someone, you
14 know, had a drug addiction; if someone had a poor
15 education; all those things are mitigating. And you
16 don't have to consider any of them, or you can consider
17 all of them.

18 And my question, in that context, is, if you were
19 confronted with mitigating factors, assuming there is a
20 conviction of murder, if you're given mitigating
21 factors, would you consider those in deciding which
22 punishment was appropriate?

23 JUROR NUMBER 142: I think I even read it. I think
24 if that's a psychological issue, it's always been there,
25 so. But it still happened, I feel. So, the punishment

1 should still fit the crime.

2 MR. MACDOUGALL: But it would be something you
3 would consider. And psychological factors are one
4 possible source of mitigation, not the only one.

5 JUROR NUMBER 142: I guess I could, yeah.

6 MR. MACDOUGALL: Last couple questions, and then
7 I'll stand down. You have probably been in groups in
8 your life, in school and elsewhere, where there was
9 going to have to be a group decision. You know, are we
10 going to go to the movies, or are we going to, you know,
11 go to the ball game? And that's sort of a light analogy
12 for what a jury has to do. Because in the innocence or
13 guilty phase, the jury has to reach a unanimous verdict
14 or not.

15 In the penalty phase, if there is one, the jurors
16 are instructed by the Judge to sort of consider their
17 own decision. And then, the jury votes. And depending
18 on how the jury votes, the sentence is determined.

19 But my question, when you're in that group dynamic,
20 when you're in that group situation, are you someone
21 who, if you have a different point of view, will hold
22 onto that, will not yield to pressure, undue pressure,
23 or pressure from people who want to change your mind,
24 particularly when it's something you feel very deeply
25 about?

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1 JUROR NUMBER 142: If it's something I feel very
2 deeply about, I will stick to it until something, you
3 know, would sway me in a different direction to where I
4 would see that side. But I think, for the most part,
5 I'm a little bit hard-headed, and I'm a woman, so, you
6 know, what I think is usually what I think until
7 something else.

8 MR. MACDOUGALL: So, so, people raising their
9 voice, staring at you, whispering about you, that's not
10 going to change your mind if it's something that is
11 really important.

12 JUROR NUMBER 142: If it's really important to me,
13 yes.

14 MR. MACDOUGALL: Okay. And at the same time, if
15 there is someone else in the group who is not as strong
16 as you are, who is perhaps being subjected to that same
17 kind of pressure, you know, it could be people -- that
18 happens in juries, people raise their voice or people
19 try to bring undue pressures; they want to get out of
20 here; you know, join us. Are you the kind of person who
21 would stand up and say, no, wait a minute; they're
22 entitled to their own belief; they're entitled to their
23 own opinion, just like you are, and leave them alone?

24 JUROR NUMBER 142: Absolutely. I mean, it's
25 someone's life in their hands. Everyone deserves to say

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1 what they feel. It's not, you know, what we're going to
2 have for dinner; it's somebody's life. So, it's
3 definitely important for them to say what they feel and
4 stick to it, as long as they feel that they need to.

5 MR. MACDOUGALL: Okay, Ms. Cook. Thank you very
6 much. No further questions.

7 JUROR NUMBER 142: Thank you.

8 THE COURT: Mr. Stone.

9 MR. STONE: Thank you. Mrs. Cook, my name is
10 Duffie Stone. I read your questionnaire. I do have one
11 question. On your questionnaire, you've got something
12 about a bumper sticker for some type of human rights
13 campaign.

14 JUROR NUMBER 142: Um-hmm.

15 MR. STONE: What is that exactly?

16 JUROR NUMBER 142: For gay rights.

17 MR. STONE: Okay.

18 JUROR NUMBER 142: Yeah.

19 MR. STONE: When the Defense attorney was just
20 going over various things, and I want to make sure I
21 understood this, there are three types of jurors. One
22 that would always vote for the death penalty. One that
23 would never vote for the death penalty. And then, some
24 that, depending upon what they heard as far as the facts
25 and circumstances of the case, the defendant, various

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1 things like that, could come back with a verdict of
2 either life or death, and you're one of those people.
3 Is that correct?

4 JUROR NUMBER 142: I think I said I feel like it
5 would be hard for me to, you know, say that someone
6 should die over something. But you know, I haven't seen
7 the evidence, so, you know, and children were involved.
8 So, I feel like there's definitely -- I could -- I'm
9 trying to think of a way to put it. I feel like I would
10 be able to make the appropriate decision. It would be
11 hard to, obviously, make it, but you know, right and
12 wrong has to be chosen.

13 MR. STONE: Okay. If you're on the jury and you
14 make a decision that the appropriate penalty is death,
15 that is the sentence.

16 JUROR NUMBER 142: Yeah.

17 MR. STONE: That's not just a recommendation to the
18 Court. That is the sentence. You understand that?

19 JUROR NUMBER 142: Yeah.

20 MR. STONE: And you would need to sign what's
21 called the form, with your name, that says the sentence
22 in this case is death. Do you understand that?

23 JUROR NUMBER 142: Yeah. That's -- that's why I --
24 like, I just think that would be the hardest part, to --

25 MR. STONE: Certainly.

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1 JUROR NUMBER 142: Yeah.

2 MR. STONE: Certainly. But if a case were bad
3 enough, could you do that?

4 JUROR NUMBER 142: I would think so.

5 MR. STONE: Okay. Thank you, ma'am. Thank you,
6 your Honor.

7 THE COURT: All right. Ma'am, I'm going to ask you
8 for just a quick minute --

9 JUROR NUMBER 142: Yes.

10 THE COURT: -- to step back out here with Bob.

11 JUROR NUMBER 142: Yes. Absolutely.

12 THE COURT: We're going to have a brief discussion.

13 JUROR NUMBER 142: Um-hmm.

14 THE COURT: I'm going to bring you right back in.

15 JUROR NUMBER 142: All right.

16 THE COURT: I'll tell you where we're going from
17 here. Okay? Thank you, ma'am.

18 JUROR NUMBER 142: Thank you.

19 JUROR NUMBER 142 LEAVES COURTROOM.

20 BAILIFF: Door is closed, your Honor.

21 MR. STONE: She's qualified, your Honor.

22 MR. YOUNG: Ms. Cook is qualified.

23 THE COURT: All right.

24 BAILIFF: Bring her in?

25 THE COURT: Bring her in.

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1 JUROR NUMBER 142 ENTERS COURTROOM.

2 BAILIFF: If you will, just stand right there,
3 please, and face the Judge.

4 THE COURT: Thank you. Ms. Cook, thank you for
5 being here. Thank you for waiting on us. You have been
6 qualified as a potential juror in the trial of this
7 case.

8 JUROR NUMBER 142: Oh, okay.

9 THE COURT: That does not mean you're on the jury
10 yet.

11 JUROR NUMBER 142: Okay.

12 THE COURT: It just means you are a potential,
13 qualified juror. Right now, at the rate we're going, we
14 are hoping we are going to be able to pull this jury
15 Monday morning at 9:30. I will tell you, I hope we're
16 going as quickly, and when I say *quickly*, we're doing
17 well, but I want to make sure that I don't keep you all
18 waiting here Monday morning.

19 Norman's going to give you a piece of paper. It's
20 going to have a juror line on it. I want you to call
21 that line Saturday night, this Saturday night, after
22 6:00 o'clock.

23 JUROR NUMBER 142: Okay.

24 THE COURT: It's going to tell you what time to
25 report on Monday.

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1 JUROR NUMBER 142: Okay.

2 THE COURT: It may be a little later. It may still
3 be 9:30. Possibly, it could be Tuesday. I hope not, I
4 don't think so. Whatever it says, just come. Be
5 prepared to come work if you're chosen.

6 JUROR NUMBER 142: Okay.

7 THE COURT: And we appreciate it.

8 JUROR NUMBER 142: Thank you..

9 THE COURT: So, additionally, I need to tell you,
10 you are not to discuss this case with anyone. Also,
11 you're not to do any research, read anything about it,
12 watch anything about it. Just go have a wonderful
13 weekend.

14 JUROR NUMBER 142: That works for me.

15 THE COURT: I will see you on Monday.

16 JUROR NUMBER 142: Thank you.

17 THE COURT: Thank you.

18 BAILIFF: May I have your badge, please.

19 JUROR NUMBER 142 LEAVES COURTROOM.

20 THE COURT: You all okay? Everyone good to keep
21 going?

22 MR. MCGUIRE: Yes, ma'am.

23 THE COURT: Okay. Let's keep going. Sure, Al.
24 Thank you.

25 JUROR NUMBER 639 ENTERS COURTROOM.

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1 BAILIFF: Ms. Jacqueline Underhill, your Honor.

2 THE COURT: Come on up, Ms. Underhill.

3 BAILIFF: If you will, ma'am, please go up and
4 take a seat on the witness stand.

5 THE COURT: Good afternoon, Ms. Underhill.

6 JUROR NUMBER 639: Good evening.

7 THE COURT: Good evening. You are correct. Five
8 minutes after, and I apologize for that. We are running
9 a little bit slowly, but I want you to understand how
10 important this is.

11 JUROR NUMBER 639: Not a problem.

12 THE COURT: They've all and we've all have been
13 working very hard --

14 JUROR NUMBER 639: Um-hmm.

15 THE COURT: -- to, hopefully, qualify a jury in
16 this case. There are a number of questions we need to
17 ask you, both myself, the attorneys. I want to remind
18 you that you are still under the oath you took
19 yesterday.

20 JUROR NUMBER 639: Okay.

21 THE COURT: Do you understand that?

22 JUROR NUMBER 639: Yes, ma'am.

23 THE COURT: All right. Thank you. I also want to
24 explain to you a little bit about this case. The
25 attorneys are going to go into more depth, but again, I

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1 just want to make sure you understand, if you are chosen
2 on this jury, you are going to be listening to and
3 charged with, and so you have little better
4 understanding of what would occur.

5 In this case, it is what's called a capital case.
6 Mr. Daise has been charged with two counts of murder.
7 And in this case, the State is seeking the death
8 penalty. What I want to make sure you understand,
9 unlike other cases, this will be what's called a
10 bifurcated trial, potentially. What that means is, in
11 the first portion of the trial, the jury is going to
12 consider either the guilt or innocence of the defendant
13 on these charges. Once, and only if, the jury comes
14 back with a guilty verdict on these charges, would the
15 jury then come back and go through a second phase, which
16 would be the sentencing phase or the penalty phase.

17 The penalty phase is a little bit different.
18 During that phase, the Solicitor's Office would have the
19 opportunity and be required to prove beyond a reasonable
20 doubt aggravating circumstances that would allow this
21 case to be a potential death penalty case. Not all
22 murder cases are subject to the death penalty in South
23 Carolina. The State must prove certain aggravating
24 factors.

25 In this case, what the State is going to allege is

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1 that this was a double murder, a double homicide, and
2 that one of the persons murdered in this case was a
3 child. And they're going to have to prove that to you
4 beyond a reasonable doubt.

5 The Defense, during the sentencing phase, is going
6 to bring mitigation and mitigating evidence to you. And
7 I'm going to tell you that the Court is going to tell
8 you that you must consider this mitigation evidence in
9 your sentencing.

10 What I want you to understand is the two possible
11 sentences at the point that you do find that there were
12 aggravating factors. Number one, that you first found
13 that, in fact, the defendant was guilty of murder; then,
14 in fact, you would have to find beyond a reasonable
15 doubt that there were these aggravating factors.

16 JUROR NUMBER 639: Um-hmm.

17 THE COURT: And then, you would consider any
18 mitigation that has been presented by the Defense. And
19 mitigation evidence is evidence like the background and
20 history and characteristics of the defendant; anything
21 in his background or life that brought him here to this
22 point. And I would tell you that you need to consider
23 it.

24 And then, again, from there, the jury would make a
25 determination of whether or not the appropriate

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1 punishment in this case was life in prison without the
2 possibility of parole or a death sentence.

3 And I want to make sure that you understand that
4 there is no automatic death penalty in this state or in
5 any way. Again, it is solely for the jurors and the
6 jury's consideration to decide what sentence to give.

7 I want you to understand that you could give a
8 life-without-parole sentence, and you have to give no
9 reasons for it. You can grant it based on mercy and
10 mercy alone, and that's all you have to do or say. It
11 doesn't even have to give a reason. Again, you are not
12 required to give a reason for it. I just want to make
13 sure you understand that.

14 JUROR NUMBER 639: Um-hmm.

15 THE COURT: And you understand that's part of the
16 consideration of what you're going to be asked to do if
17 you sat as a juror.

18 Additionally, when you were back in the jury
19 assembly room, you reviewed a witness list. Was there
20 anyone on there that you knew?

21 JUROR NUMBER 639: Well, I recognized two names.
22 Sheriff Tanner, obviously. And Captain Bob Bromage.

23 THE COURT: Okay.

24 JUROR NUMBER 639: Years ago, his -- his daughter
25 Alexandra, attends -- attended the day school that I

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1 worked for.

2 THE COURT: Okay.

3 JUROR NUMBER 639: So, on occasion, he would pick
4 up his daughter.

5 THE COURT: Okay. And you knew him from that
6 experience.

7 JUROR NUMBER 639: From that experience only.

8 THE COURT: Okay. And you don't have a personal
9 relationship with them --

10 JUROR NUMBER 639: No.

11 THE COURT: -- where you have dinner together or
12 anything along those lines.

13 JUROR NUMBER 639: No.

14 THE COURT: And you know P.J. Tanner just by virtue
15 of him being the sheriff and --

16 JUROR NUMBER 639: That he's on the ballot.

17 THE COURT: Okay. I appreciate that. Also, there
18 has been a little bit of publicity on this case. It's
19 been in the newspaper. Have you seen anything in the
20 newspaper?

21 JUROR NUMBER 639: No.

22 THE COURT: Very good. And do you have any
23 independent knowledge about this case whatsoever, --

24 JUROR NUMBER 639: No.

25 THE COURT: -- other than what you've seen?

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1 Nothing?

2 JUROR NUMBER 639: Nothing.

3 THE COURT: Very good. I'm going to go ahead and
4 turn you over to the attorneys now. Mr. McGuire.

5 MR. MCGUIRE: Thank you, your Honor. Good
6 afternoon, ma'am.

7 JUROR NUMBER 639: Good afternoon.

8 MR. MCGUIRE: My name is Bill, Bill McGuire. I'm
9 one of the lawyers on the case. And you are Ms.
10 Underhill?

11 JUROR NUMBER 639: Yes.

12 MR. MCGUIRE: Okay. I just wanted to make sure I
13 had the right juror. I'm getting a little tired. I'm
14 making some mistakes here.

15 JUROR NUMBER 639: I don't blame you. It's been a
16 long day.

17 MR. MCGUIRE: Okay. And I would hate to call you
18 the wrong name. It has been a long day, and I know
19 you've been waiting, and I apologize for that.

20 JUROR NUMBER 639: That's fine.

21 MR. MCGUIRE: It's not my fault; it's not the
22 Judge's fault; it's not the Solicitor's fault.

23 JUROR NUMBER 639: No. It's absolutely fine.

24 MR. MCGUIRE: Okay. And I am going to go into a
25 little bit more detail on some of these principles, like

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1 the Judge said. She gave you kind of a mouthful there.
2 Even a first-year law school student could have trouble
3 with some of this stuff. But to make sure we're
4 communicating clearly or I'm communicating clearly, I
5 want to make sure we're on the same page, I'm just going
6 to start with kind of the basics. Excuse me.

7 Based on your questionnaire, you don't have any
8 legal experience or training of the law or anything like
9 that?

10 JUROR NUMBER 639: No, sir.

11 MR. MCGUIRE: And you've probably never -- no one's
12 ever told you the definition of murder in South
13 Carolina.

14 JUROR NUMBER 639: No, sir.

15 MR. MCGUIRE: And you wouldn't know what it is
16 right now.

17 JUROR NUMBER 639: No, sir.

18 MR. MCGUIRE: Okay. And I don't mean to put you on
19 the spot, I just want to make sure we're on the same
20 page.

21 JUROR NUMBER 639: Um-hmm.

22 MR. MCGUIRE: So, as the Judge said, murder in
23 South Carolina is the intentional killing of a person
24 with malice aforethought. And the malice is acting with
25 a black and malignant heart, fatally bent on mischief,

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1 wickedness, and evil. In layman's terms, it just means
2 an intentional, deliberate act to take an innocent life
3 with an evil intent. Okay?

4 And because the State is asking for the death
5 penalty, they have to show something more than that.
6 Like the Judge said, not every murder is eligible for
7 the death penalty. The State has to come forward and
8 prove what's called aggravating factors or aggravation.

9 Sorry, I've been talking a lot today. You're not
10 the first person I've talked to. My voice is leaving me
11 a little bit.

12 But the State would have to come forward with
13 circumstances of aggravation. And specifically, in this
14 case, it would be that two people were killed, double
15 homicide. It's basically a mother and child, a four-
16 year-old child shot to death.

17 JUROR NUMBER 639: Um-hmm.

18 MR. MCGUIRE: Intentionally; with an evil intent;
19 not an accident; not self-defense; not voluntary
20 manslaughter; not somebody so crazy they don't know what
21 they're doing; but a person who knew what they were
22 doing; chose to kill; and killed. In that situation,
23 what are your thoughts about the penalty of life without
24 parole, letting somebody live their life out in prison?
25 For the killer, for the accused?

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1 JUROR NUMBER 639: Well, I would have to think
2 about that, wouldn't I?

3 MR. MCGUIRE: Well, I'm asking you to.

4 JUROR NUMBER 639: Wow. I suppose I could. I -- I
5 don't -- hmmm.

6 MR. MCGUIRE: What about the death penalty as the
7 appropriate punishment for that type of aggravated
8 murder, where a woman and child were killed? Does that
9 sound more appropriate?

10 JUROR NUMBER 639: You know, they both sound
11 appropriate. I would just have to listen to everything.
12 Making up my mind spur of the moment on something like
13 this, I don't think I can do that. I would need to
14 listen to everything.

15 MR. MCGUIRE: Sure. And you're actually sort of
16 the person we're trying to find here. It would be wrong
17 to have people who would say, based on the elements of
18 murder or that aggravation, I would always vote for the
19 death penalty. They certainly couldn't sit. They'd be
20 impaired.

21 JUROR NUMBER 639: Um-hmm.

22 MR. MCGUIRE: That's what we call them. And people
23 who would always vote for life, they also couldn't
24 serve, because they couldn't fairly consider both
25 punishments. It sounds like you're in the middle of the

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1 road.

2 JUROR NUMBER 639: Yeah.

3 MR. MCGUIRE: Okay. And in terms of what you can
4 consider or what you would want to consider, and again,
5 I'm after just your personal views.

6 JUROR NUMBER 639: Right.

7 MR. MCGUIRE: I don't want you to just say what you
8 think I want to hear --

9 JUROR NUMBER 639: No.

10 MR. MCGUIRE: -- or anybody else. You look like
11 somebody that's pretty forthright.

12 JUROR NUMBER 639: Right. I mean, I realize
13 there's a punishment.

14 MR. MCGUIRE: Sure. When it comes to the decision
15 determination of a life penalty or a death penalty,
16 would background characteristics of the accused, like if
17 he grew up poor, maybe struggled with drugs, maybe did
18 some good deeds in his life, would these things be
19 relevant?

20 JUROR NUMBER 639: No.

21 MR. MCGUIRE: Okay. And a lot of people would take
22 that position, because they would say it's the facts of
23 the homicide and that's what I'm going to look at; and
24 if it's bad enough, then, it would be death penalty.

25 JUROR NUMBER 639: Yes.

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1 MR. MCGUIRE: And there might be something in there
2 that could justify a life sentence.

3 JUROR NUMBER 639: Yes.

4 MR. MCGUIRE: Okay. But when it comes to making
5 that decision, again, someone's background, sort of
6 their walk in life, if it's not connected to the crime,
7 the homicide, that would not be relevant in your
8 decision making with the life and death decision.

9 JUROR NUMBER 639: Correct.

10 MR. MCGUIRE: Okay. And --

11 COURT REPORTER: Your answer was?

12 JUROR NUMBER 639: Correct.

13 MR. MCGUIRE: And your answers seem to be a
14 reflection of your belief system.

15 JUROR NUMBER 639: Yes.

16 MR. MCGUIRE: Of what's right and wrong.

17 JUROR NUMBER 639: Yes.

18 MR. MCGUIRE: Your moral code.

19 JUROR NUMBER 639: Yes.

20 MR. MCGUIRE: Emanates from a deep place.

21 JUROR NUMBER 639: Yes.

22 MR. MCGUIRE: I can't change it.

23 JUROR NUMBER 639: No.

24 MR. MCGUIRE: The Judge can't change it.

25 JUROR NUMBER 639: No.

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1 MR. MCGUIRE: The State can't change it.

2 JUROR NUMBER 639: Uh-uh.

3 MR. MCGUIRE: This belief that, when it comes to
4 fixing the punishment, life or death, and that the facts
5 of the homicides would control, that is going to be your
6 decision-making process.

7 JUROR NUMBER 639: Yes.

8 MR. MCGUIRE: Okay. And all your answers that
9 you've given me are truthful?

10 JUROR NUMBER 639: Yes.

11 MR. MCGUIRE: Accurate?

12 JUROR NUMBER 639: Yes.

13 MR. MCGUIRE: And will not change.

14 JUROR NUMBER 639: Yes.

15 MR. MCGUIRE: Just a few more questions.

16 JUROR NUMBER 639: Okay.

17 MR. MCGUIRE: I appreciate your candor.

18 JUROR NUMBER 639: Not a problem.

19 MR. MCGUIRE: And I hate to keep you here any
20 longer than necessary, or to keep myself here any longer
21 than necessary. But with regard to -- and the Judge
22 told you, there's a guilt phase.

23 JUROR NUMBER 639: Um-hmm.

24 MR. MCGUIRE: Did somebody do it or not.

25 JUROR NUMBER 639: Right.

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1 MR. MCGUIRE: Guilty/not guilty. And that's when
2 the jury has to speak pretty much with a unanimous
3 voice. To convict somebody, all twelve have to.

4 JUROR NUMBER 639: Correct.

5 MR. MCGUIRE: And if you move to a penalty phase,
6 the jury could be unanimous for, say, life. They could
7 be unanimous for the death penalty. And then, they
8 could also not be in agreement. And if that happens,
9 the Judge would take the case and sentence. You don't
10 have to concern yourself with what the sentence might
11 be. I just want -- we tell you that so you know the
12 case would end; that it wouldn't have to be re-tried
13 again.

14 JUROR NUMBER 639: Okay.

15 MR. MCGUIRE: More citizens wouldn't have to be
16 called.

17 JUROR NUMBER 639: Okay.

18 MR. MCGUIRE: Okay? For jury duty. And the way
19 people make the decision in the penalty phase, the Judge
20 would describe it as an individual moral judgment, a
21 very personal -- very personal decision. And it's not
22 based on facts or science or anything; it's just what's
23 morally appropriate for somebody. Is that a -- did you
24 know that?

25 JUROR NUMBER 639: No, I didn't, but now I do.

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1 MR. MCGUIRE: Okay. And I want to tell you that
2 there can never be an automatic death penalty, ever.
3 Some people think that, if the State proves A, B, and C,
4 that there's only one verdict in front of them and it's
5 the death penalty. That's never the case. Did you know
6 that?

7 JUROR NUMBER 639: Not until it was explained to
8 me.

9 MR. MCGUIRE: Okay. A lot of people --

10 COURT REPORTER: I'm sorry. I didn't hear.

11 JUROR NUMBER 639: Not until it was just explained
12 to me.

13 MR. MCGUIRE: Yeah, but the Judge did me the favor
14 of giving you some of the preview information, and
15 you're right. A lot of people come here and they think
16 that, if it's a capital case that, if the State -- that,
17 if the State does prove a certain elements or things,
18 that the death penalty would be automatic. And I just
19 want to assure you that's absolutely not the case.

20 JUROR NUMBER 639: Okay.

21 MR. MCGUIRE: In fact, it's sort of the opposite.
22 The deck gets kind of stacked against the State. The
23 death penalty can only be invoked if all twelve jurors
24 agree that there are aggravating circumstances, and that
25 death is the appropriate punishment beyond a reasonable

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1 doubt. So, that's a very high mark for the State.

2 And going back to the individual moral judgment
3 issue, different jurors can -- well, let me rephrase
4 that differently. It's the opposite for reasons to vote
5 for life. The Judge would say a juror can vote for life
6 for any reason, no reason, or mercy. The no reason is
7 sometimes for the jury. And you're very quick with your
8 beliefs and very forthright. Somebody could say I'm
9 going to vote for life for just no reason. Is that a
10 principle that you could respect?

11 JUROR NUMBER 639: Well, I'm sure they have a
12 reason. They've just chosen to say for life.

13 MR. MCGUIRE: Okay. And you can respect that.

14 JUROR NUMBER 639: Yes.

15 MR. MCGUIRE: And could you, if the jury did not
16 agree with the recommendation, -- when I say
17 *recommendation*, if the jury recommends death, it will be
18 death. If they recommend life, it will be life. And
19 again, if the jury disagrees, the Judge would sentence.
20 Would you be okay with the jury ending the day agreeing
21 to disagree?

22 JUROR NUMBER 639: Yes.

23 MR. MCGUIRE: And just respecting everybody's
24 individual moral judgment?

25 JUROR NUMBER 639: Yes.

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1 MR. MCGUIRE: Okay. And you know, the Judge would
2 guarantee and would want that these proceedings be
3 conducted with respect and dignity, and you would want
4 your opinion respected.

5 JUROR NUMBER 639: Yes.

6 MR. MCGUIRE: And you would respect everybody
7 else's.

8 JUROR NUMBER 639: Yes.

9 MR. MCGUIRE: If somebody had a weaker voice, and
10 they couldn't really defend themselves, their judgment,
11 their individual moral judgment, their vote, their
12 decision, could you protect them, make sure their voice
13 was heard?

14 JUROR NUMBER 639: Yes.

15 MR. MCGUIRE: Okay. And the reason I -- the only
16 reason I ask you that is because the Judge is going to
17 give everybody an oath, a juror oath. And basically,
18 the way it works is, once somebody reaches that
19 individual moral judgment, after the exchange of ideas
20 and views and some civil discourse about the case, once
21 somebody comes to their individual moral judgment, they
22 have a duty and obligation to have that voice heard in
23 court, that vote heard in court. Because, if it would
24 do harm to their conscience to change their position,
25 they wouldn't be living up to their juror oath. And I'm

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1 just asking if you could help people comply with their
2 oath.

3 JUROR NUMBER 639: Of course.

4 MR. MCGUIRE: And protect them.

5 JUROR NUMBER 639: Yes.

6 MR. MCGUIRE: That's all I have for you, ma'am.

7 Thank you so much.

8 JUROR NUMBER 639: Okay. Thank you.

9 THE COURT: Mr. Stone.

10 MR. STONE: Yes, ma'am. Ms. Underhill, my name is
11 Duffie Stone. I've got just a few questions, based on
12 your questionnaire and your answers to the questions the
13 Defense attorney just had.

14 In the questionnaire, there were three types of
15 jurors listed. There was the juror that would always
16 find the death penalty in a murder case. There's the
17 type of juror who would never find the death penalty, or
18 never say that was the appropriate sentence. And then,
19 there's the type of juror who would consider both the
20 aggravation that maybe perhaps the State had presented,
21 as well as the mitigation that the Defense presented;
22 and then, taking all that together, would decide if the
23 appropriate sentence was life or death.

24 Now, your answer in your questionnaire, I believe,
25 was Number 3. Is that correct?

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1 JUROR NUMBER 639: Yes, it was.

2 MR. STONE: And is that still your position?

3 JUROR NUMBER 639: Yes.

4 MR. STONE: Now, also, in your questionnaire, I
5 think the question right after that:

6 *Would you take in --*

7 And I have to read it just to make sure I get it
8 right, but it says:

9 *In determining what punishment*
10 *should be given to any defendant*
11 *convicted of murder, do you believe*
12 *his background -- the background or*
13 *life experience of a guilty murderer*
14 *is relevant?*

15 And your answer on that was, yes, that it is
16 relevant.

17 JUROR NUMBER 639: It is to an extent. Not if he
18 had a library card that -- that was late or something
19 along that line.

20 MR. STONE: Right.

21 JUROR NUMBER 639: No.

22 MR. STONE: So, basically, you're talking about
23 weighing things one way or the other to determine
24 whether or not something you think really is something
25 that matters or not, basically.

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1 JUROR NUMBER 639: Correct.

2 MR. STONE: Okay. And in that situation, your
3 determination of whether or not somebody gets life or
4 death depends upon what value you give to whatever
5 evidence is presented to you.

6 JUROR NUMBER 639: Correct.

7 MR. STONE: Okay. One last question. If a case
8 was bad enough, could you give the death penalty?

9 JUROR NUMBER 639: Yes, sir.

10 MR. STONE: Okay. I don't have anything else.
11 Thank you, ma'am.

12 THE COURT: Ma'am, I'm going to go ahead and just
13 leave her right here. Without any objection. Is that
14 correct?

15 MR. STONE: Yes, ma'am.

16 THE COURT: All right. Do you want to tender
17 anything after this?

18 MR. MCGUIRE: Yes, ma'am.

19 THE COURT: Okay. Ma'am, I am going to ask that
20 you step out for just a very quick moment, if you don't
21 mind, and we'll be right back with you.

22 JUROR NUMBER 639: Okay.

23 THE COURT: All right? And then we'll let you know
24 where we're going to go from here.

25 JUROR NUMBER 639 LEAVES COURTROOM.

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1 BAILIFF: Door is closed, your Honor.

2 THE COURT: All right. State finds her qualified?

3 MR. STONE: Yes, ma'am.

4 THE COURT: Mr. McGuire?

5 MR. MCGUIRE: I'm anticipating your ruling on this
6 one, Judge.

7 THE COURT: Sorry.

8 MR. MCGUIRE: That's okay. But I know I just want
9 to put on the record that, when I was talking to her in
10 plain terms about the background of the defendant, that
11 I talked about maybe growing up poor, maybe being a drug
12 addict. And I said, on the other side of the coin, if
13 he did some good things in their life, these background
14 characteristics, would they be relevant in your decision
15 making with a life and death decision? And she
16 indicated, no, they would not be relevant. And that was
17 when I asked her if that was a reflection of her moral
18 code, her belief system, that emanated from a deep
19 place; I couldn't change her values. And she was very
20 consistent in that. So, and while she's -- I agree
21 she's middle of the road on death or life. However,
22 with regard to mitigation evidence, I think she's
23 impaired. So, we move to strike her for cause. And to
24 have her in the pool or to have her seated as a juror
25 would violate Mr. Daise's *Sixth* and *Fourteenth Amendment*

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1 rights to an independent jury.

2 THE COURT: All right. Help me with the
3 recollection on her, because I apologize, that, that's
4 exactly what it was. I missed that at the end. We
5 talked about the circumstances. We talked about the
6 mitigation.

7 MR. MCGUIRE: Yes, ma'am.

8 THE COURT: You asked her. I know I asked her. I
9 understand you asked her, as well. I heard the library
10 card comment that I thought was interesting.

11 MR. STONE: Well, I think what she's doing is, and
12 I think we're getting into this with a number of jurors,
13 I think they're weighing -- in other words, let me
14 present to you this mitigation that comes from the
15 Defense, and they weigh that. Well, I don't know if
16 that really moves me one way or the other. I don't
17 believe -- I don't like that. They're weighing
18 mitigation. I understand that. But they haven't
19 presented their mitigation, which is why we shouldn't be
20 going into specific mitigation questions, anyway.

21 And I think what her answer was in the
22 questionnaire, her answer to me at the very end, and I
23 think her answer to you at the beginning was that she
24 would consider everything, weigh it, and make a decision
25 one way or the other. And I think that's -- I think if

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1 you take all of that in the totality of the
2 circumstance, I think she simply is making a weighing
3 decision. Thank you.

4 THE COURT: Also, again, we've talked about it. I
5 think that question in the questionnaire was a bad
6 question. It is actually also mis-written, on top of it
7 being a bad question, as far as an editing error. And I
8 also think part of the problem we have here is, is that
9 you've got jurors who are starting out with not
10 understanding the definition of murder, you know.
11 Obviously, malice is a very difficult concept for people
12 to grasp, let alone the death penalty. Then, we go to
13 what are called aggravating circumstances, which I am
14 sure none of them had a clue that we have 21 statutorily
15 dictated in South Carolina.

16 And on top of that, then we talk about mitigation,
17 which they probably have no clue. I mean, I know we're
18 getting out ideas when we talked about -- I think we've
19 heard a number of times poverty and drug use and
20 potential abuse and that type of thing. But I do think,
21 again, these are difficult concepts. I think Ms.
22 Underhill was very candid. I think she definitely has
23 an open mind. She stated she could do either one, based
24 on the circumstances, either give life or death based on
25 what she hears and sees. And I think probably the best

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1 thing that I heard was, you know, she's just -- she's
2 one of those that cannot pre-judge, and I certainly
3 appreciate that, and that's exactly what we expect from
4 a juror sitting in a death penalty case. So, I find
5 that she is qualified. Let's bring her back in.

6 BAILIFF: Yes, ma'am.

7 JUROR NUMBER 639 ENTERS COURTROOM.

8 BAILIFF: Come right here, ma'am. Stand right
9 there, please, and face the Judge.

10 THE COURT: Mr. Underhill, we have found that you
11 are qualified as a potential juror in the trial of this
12 case. At this point, we're not exactly sure when we're
13 going to go ahead and pull this jury. That does not
14 mean you are chosen as a juror in the trial; it just
15 means you are a qualified juror.

16 What I am going to ask that you do, I expect that
17 we will be ready to pull the jury Monday morning at
18 9:30. However, I don't know that for a fact, because I
19 haven't gotten through Friday, and if necessary, through
20 Saturday. What I am going to ask you to do is, Norman's
21 going to give you a phone number. After 6:00 p.m.
22 Saturday night, I want you to call that juror line, and
23 what it's going to say is what time you need to report
24 and what day. I anticipate it's going to be 9:30 a.m.
25 Monday. I tell that so you have some kind of idea on

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1 your planning and your schedule. If it says to come
2 later, follow whatever it says. We look forward to
3 seeing you.

4 Additionally, I need to tell you, you are not to
5 discuss this case with anyone. You are not to read
6 anything and do any independent research, post anything
7 on these social sites about being a potential juror.
8 You are just to put this out of your mind, go home, and
9 we look forward to seeing you Monday morning. All
10 right?

11 JUROR NUMBER 639: I will tell my boss.

12 THE COURT: Thank you, Ms. Underhill. I appreciate
13 it.

14 BAILIFF: Your badge, please. Your badge.

15 JUROR NUMBER 639 LEAVES COURTROOM.

16 THE COURT: All right. Is this James Jones?

17 BAILIFF: You ready?

18 THE COURT: Yes, sir.

19 JUROR NUMBER 351 ENTERS COURTROOM.

20 BAILIFF: Mr. James Jones, your Honor.

21 BAILIFF: This way, please, sir.

22 THE COURT: Come on in, sir.

23 BAILIFF: Just go up and take the witness stand,
24 please.

25 THE COURT: Right up here, Mr. Jones.

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1 THE COURT: Good evening, Mr. Jones.

2 JUROR NUMBER 351: Hi.

3 THE COURT: Thank you for waiting on us. I
4 apologize that we're running late. I want you to know
5 that we've all been working hard. And rather than send
6 you home and make you come back again, we just decided
7 to keep you, and plow through. So, I appreciate you
8 being here, sir.

9 I want to remind you that you are still under the
10 oath you took yesterday. Is that acceptable to you,
11 sir?

12 JUROR NUMBER 351: Yes, Miss.

13 THE COURT: Thank you, sir. Additionally, I want
14 to give you a very brief kind of snapshot of this case
15 and what to expect. After that, the attorneys are going
16 to ask you a number of questions in regards to this
17 case. But I do this just in fairness so you know what
18 we're talking about. The lawyers are going to expound
19 upon it further. All right?

20 JUROR NUMBER 351: All right.

21 THE COURT: Sir, this is a capital case. In this
22 case, the defendant is charged with two counts of
23 murder, and the alleged victims are a mother and a
24 child. The State in this case is seeking the death
25 penalty. And what I want you to know and understand is

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1 that, in a death penalty trial, it runs a little
2 different than other trials. There are two parts of the
3 trial in a case. The first part is the guilt or
4 innocence portion. It's to decide whether or not the
5 defendant actually committed the crimes charged. If,
6 and only if, the jury finds unanimously beyond a
7 reasonable doubt what the defendant did what is alleged,
8 then, we will go into what is called the sentencing
9 phase. The jury will come back, same jury, and the jury
10 would decide what the appropriate sentence is in the
11 case. And the appropriate sentences for you to consider
12 would be the sentence of life imprisonment without the
13 possibility of parole or a death sentence.

14 I want you to understand that, at that portion of
15 the trial, the State would present aggravating factors
16 that would allow this case to be a death penalty or a
17 potential death penalty case. Not every case is a death
18 penalty case. Statutorily, there are dictated certain
19 circumstances where the State can, if they choose to,
20 seek the death penalty. In this case, those statutory
21 circumstances that they are alleging are that this was a
22 double murder or homicide, and that a child was one of
23 the victims in the case.

24 At that point, also, the Defense then would present
25 mitigating information and evidence in the case for the

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1 jury to consider. And I would tell you that you need
2 to, and it would be appropriate for you to consider any
3 mitigation that's presented.

4 At that point, sir, then, the jury would decide
5 whether or not they believed what the appropriate
6 punishment was. I want to make sure you understand it
7 is never required that any jury, regardless of
8 aggravation circumstances being found, impose the death
9 penalty. It is solely for the jury to determine. And a
10 jury can determine for a mitigating purpose or no
11 purpose at all, or simply extending mercy, that someone
12 should serve life imprisonment without the possibility
13 of parole for these offenses.

14 So, I want to make sure you understand and
15 appreciate that. You understand those are the options
16 for you, if you were to sit as a juror in the trial of
17 this case. Before -- and you've been waiting, you've
18 gone through the list of witnesses, I'm sure, that may
19 be called in this case; not all of them, but maybe. Do
20 you know any of them?

21 JUROR NUMBER 351: Just a couple. One from List A
22 was Jerri Roseneau, just from the introductions
23 yesterday in court.

24 THE COURT: Okay.

25 JUROR NUMBER 351: And the other was the defendant,

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1 just from the information I got in the mail, and from
2 online, *Beaufort Gazette*. My wife and I have only been
3 in the area for about thirteen months. We didn't know
4 very -- few people. Those are the only ones that we
5 knew.

6 THE COURT: Thank you. All right, sir. And
7 additionally, you mentioned the newspaper and online, I
8 think. You said the *Beaufort Gazette*. I know there has
9 been some press coverage on this case. I want to make
10 sure, sir, that you can set aside anything you would
11 have necessarily read in the paper, understand and
12 decide this case based on the facts that are presented
13 here in this courtroom.

14 Again, nothing is factual that ever comes from the
15 newspaper. Again, your determination of the case, both
16 at the guilt and innocence phase, and then, if we do go
17 onto any sentencing phase, is to be determined strictly
18 from the evidence provided here in the courtroom. Do
19 you understand that, sir?

20 JUROR NUMBER 351: Yes, ma'am.

21 THE COURT: All right. I'm going to go ahead and
22 turn it over to the lawyers at this time, and then, I
23 may have a couple of questions at the end. All right,
24 sir?

25 JUROR NUMBER 351: All right.

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1 MR. YOUNG: Good evening, Mr. Jones.

2 JUROR NUMBER 351: Hello.

3 MR. YOUNG: First off, thank you for your service.
4 And is your wife still in the Navy?

5 JUROR NUMBER 351: Yes, sir. She's been a Navy
6 nurse for 23 years.

7 MR. YOUNG: Well, thank you both. I heard the
8 Judge talk to you a little bit about the case and how
9 capital cases work. I'm going to back up a little bit
10 and talk about murder. Murder in South Carolina is the
11 intentional killing of another person with malice
12 aforethought. Okay?

13 JUROR NUMBER 351: All right.

14 MR. YOUNG: And I know that we've heard this term
15 before, malice aforethought. Do you know what that
16 means?

17 JUROR NUMBER 351: I guess I probably just need a
18 little refresher on that, so.

19 MR. YOUNG: In South Carolina, malice aforethought
20 means with evil intent, a heart fatally bent on
21 mischief, a total disregard of others. Okay?

22 JUROR NUMBER 351: All right.

23 MR. YOUNG: So, what that means is, it wasn't in
24 self-defense; it wasn't something that was done in the
25 heat of passion; it wasn't an accident; it wasn't

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1 somebody who didn't know the difference between right
2 and wrong. You with me?

3 JUROR NUMBER 351: Yes, sir.

4 MR. YOUNG: And then, the Judge told you a little
5 bit more; that the State also has to prove the existence
6 of an aggravating factor; something that makes the
7 malice aforethought murder worse; such as the killing of
8 two people, or the killing of a child. Okay?

9 JUROR NUMBER 351: All right.

10 MR. YOUNG: And if the jury is satisfied of all of
11 those things beyond a reasonable doubt, unanimously,
12 they're then entitled to consider punishment. Okay?

13 JUROR NUMBER 351: All right.

14 MR. YOUNG: Are you with me?

15 JUROR NUMBER 351: Yes, sir.

16 MR. YOUNG: So, in that situation where you have
17 this malice murder with an aggravating circumstance,
18 some people say, based on those facts, based on those
19 facts alone, based on the fact that it involves two
20 homicides and the death of a child, based on those
21 facts, I am going to say that I would automatically give
22 the death penalty. Do you understand some people might
23 say that?

24 JUROR NUMBER 351: Yes, sir.

25 MR. YOUNG: And that some people feel that strongly

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1 about the death of a child.

2 JUROR NUMBER 351: Yes, sir.

3 MR. YOUNG: Do you feel that way?

4 JUROR NUMBER 351: I would have to -- I would have
5 to agree with that, sir.

6 MR. YOUNG: That's based on who you are and your
7 life experiences.

8 JUROR NUMBER 351: Yes, sir.

9 MR. YOUNG: And I think that, that's kind of what
10 you meant when you wrote down that you would have an
11 opinion, depending on the facts and circumstances
12 presented.

13 JUROR NUMBER 351: Yes, sir.

14 MR. YOUNG: Right. And if the facts and
15 circumstances showed that it was the malice murder of a
16 child, your opinion would be that the death penalty was
17 the appropriate punishment.

18 JUROR NUMBER 351: Yes, sir.

19 MR. YOUNG: And in that situation, the life penalty
20 is just not an appropriate punishment for the malice
21 murder of a child?

22 JUROR NUMBER 351: That's right, sir.

23 THE COURT: We'll go ahead and let Mr. Stone ask a
24 few questions, and if you need to follow up, you're more
25 than welcome.

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1 MR. STONE: I just want to make sure, because we --
2 I was reading -- I'm sorry, I'm Duffie Stone, and I want
3 to go over your questionnaire just briefly. On your
4 questionnaire, you put in three different sections --
5 excuse me -- there's a question with three different
6 sections: are you the type of person who would always
7 find the murder of somebody that would always get the
8 death penalty; or they would never get the death penalty
9 is Type 2; and then, Type 3 is somebody that would
10 consider everything before making that determination.
11 And I know you answered that as Number 3. Is that
12 correct?

13 JUROR NUMBER 351: That's right, sir.

14 MR. STONE: All right. My understanding from what
15 you just said, though, is, if it involved the death of a
16 child, you would not consider anything else; it's
17 automatically death. Is that correct, or am I
18 misunderstanding you?

19 JUROR NUMBER 351: I'd have to agree with that,
20 sir. Yes, sir, I would.

21 MR. STONE: Thank you, sir. I appreciate it.

22 JUROR NUMBER 351: All right.

23 THE COURT: Okay. Sir, I'm going to go ahead, and
24 at this time, I can excuse you from the trial of this
25 case. I appreciate you being here. I appreciate your

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1 candor. You've done exactly what we have asked of you,
2 and we want to thank you for that. And I'll go ahead
3 and thank you for your service and your wife's service
4 to us, as well. I can go ahead and excuse you, and you
5 do not need to worry about reporting for the remainder
6 of the two weeks.

7 JUROR NUMBER 351: Thank you.

8 JUROR NUMBER 351 LEAVES COURTROOM.

9 THE COURT: Thank you, sir. Before our next juror
10 comes in, let me just -- before we bring in the next
11 juror, it is Number 117, Natalia Chmielowski, I will
12 tell you that she was in an automobile accident trying
13 to come here earlier today. She called in because she
14 was afraid she was going to be late. My understanding
15 is she is fine. I'm not sure how her car is. My
16 instruction to the bailiffs, if she was fine and she
17 could get a ride or we could come get her, tomorrow
18 would be fine; and that I would call her and let her
19 know when to come; that she didn't need to worry about
20 getting here. She was very diligent and, apparently,
21 came up here and is here. So, I just wanted to let you
22 all know that.

23 Also, correct me if I'm wrong, is this the person
24 whose sister has a wedding next week? Am I on the right
25 person or not? I'm going to double check. It is, not.

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1 Okay. I just wanted to make sure. Okay. All right.

2 Well, I just wanted you all to have the information
3 that I have. Again, I have asked them and told her she
4 did not have to come. I didn't speak to her directly,
5 but she called the Clerk's Office. So, apparently, she
6 is following her duty and order, so let's go ahead and
7 bring her in so we can get her out of here.

8 BAILIFF: Ms. Natalia Chmielowski.

9 JUROR NUMBER 117 ENTERS COURTROOM.

10 BAILIFF: Come with me, ma'am. If you'll go to the
11 witness box and sit down, please.

12 THE COURT: Ms. Chmielowski, how are you?

13 JUROR NUMBER 117: I'm well, thanks.

14 THE COURT: Okay. I know you've had some time
15 getting here today and some issues. Are you all right?

16 JUROR NUMBER 117: I'm fine, thanks.

17 THE COURT: You were involved in an automobile
18 accident, it's my understanding?

19 JUROR NUMBER 117: Yes, ma'am.

20 THE COURT: You're not injured or hurt? Are you
21 okay?

22 JUROR NUMBER 117: I'm fine, thanks.

23 THE COURT: All right. Very well. And I don't
24 know, were you able to drive your own car up here, or
25 did someone pick you up and carry you, or?

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1 JUROR NUMBER 117: I had an officer -- actually,
2 two officers come. I asked them to drive me here.

3 THE COURT: Very good. Okay. And you're feeling
4 okay, and you're fine to go forward today?

5 JUROR NUMBER 117: Yes, ma'am.

6 THE COURT: I appreciate that, because I know I
7 asked my bailiffs to tell you not to worry about it; you
8 can come tomorrow if necessary; but I appreciate you
9 coming up. Did anyone relay that to you?

10 JUROR NUMBER 117: I was not told that. I was told
11 to come here.

12 THE COURT: I'm sorry. Well, apparently, there was
13 a delay. I apologize, because, again, I told them to
14 tell you that we could do it tomorrow; it's not a
15 problem. But are you feeling okay?

16 JUROR NUMBER 117: Um-hmm.

17 THE COURT: You all right to answer some questions?
18 Is that correct?

19 JUROR NUMBER 117: Yes, ma'am.

20 THE COURT: Okay. Well, I need to remind you about
21 the oath that you took yesterday, and remind you that
22 you are still under oath. If there's anything that I
23 say or the attorneys say that you don't understand,
24 please ask us to repeat it or rephrase it. We're happy
25 to do so. I just want to explain to you a little bit

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1 about the case, but the attorneys are going to go a
2 little bit more in depth about what is expected to
3 happen next week in the trial of this case.

4 In this case, it's what we call a capital murder
5 case where the defendant is being charged with a double
6 homicide or a double murder. And in this case, the
7 allegations are that it is a murder of a mother and a
8 child.

9 What I want you to understand is that, in a death
10 penalty case, and that's what this is, the State is
11 seeking the death penalty in this case, there is what's
12 called a bifurcated trial, which just means that we try
13 the case in two different sections, if necessary, if we
14 even get to the second section.

15 The first is just the guilt or innocence stage of
16 whether or not the defendant did what he's accused of
17 doing, whether or not he's guilty or innocent. If, and
18 only if, the jury unanimously finds him guilty, we go to
19 then what's called the sentencing phase.

20 During the sentencing phase, the State is going to
21 produce or give you what they consider to be aggravating
22 circumstances.

23 And in the state of South Carolina, just because a
24 case is a murder case, just because it is an intentional
25 killing of another with malice aforethought and with an

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1 evil intent doesn't mean that it's automatically or
2 subject to a potential death penalty. The State is
3 required to prove certain aggravating circumstances.
4 And again, in this case, the aggravating circumstances
5 that are being alleged is that it was a double murder
6 and that one was a child, one of the victims was a
7 child. What I want you to understand is, in the
8 sentencing portion of the case, in addition to the State
9 producing aggravating evidence, the Defense is going to
10 introduce mitigating evidence in regards to the
11 defendant, his walk of life, his experience, his
12 background, and sort of everything that brought him here
13 to this point today, if we reach that point of the
14 trial.

15 And if we do reach that point of the trial, there
16 are going to be two possible sentences in the case. One
17 is going to be life imprisonment without the possibility
18 of parole, or the death penalty. I want to make sure
19 you understand that I am going to charge you that you
20 must weigh all the evidence in the case. You must
21 listen to all the mitigation and the evidence; and then,
22 each juror will make a decision as to whether or not
23 what they believe is the appropriate sentence in this
24 case.

25 And I want you to know that a jury can vote for

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1 life without the possibility of parole for a mitigating
2 reason, no reason at all, or simply mercy. But I want
3 to make sure you understand that nothing is ever
4 automatic as far as the death penalty is concerned, you
5 know, based on what the charges are. I want to make
6 sure you understand that, that is a decision that a jury
7 has to make. And it's an individual decision that you
8 all are going to have to decide. And I want to make
9 sure you appreciate and understand that, that is the
10 process here.

11 JUROR NUMBER 117: Yes, ma'am.

12 THE COURT: All right. Also, have you had an
13 opportunity to go through the witness list?

14 JUROR NUMBER 117: Yes, ma'am.

15 THE COURT: Do you know anyone on that witness
16 list?

17 JUROR NUMBER 117: I did not recognize any names.

18 THE COURT: Also, there has been some pretrial
19 publicity in this case. Have you read anything, heard
20 anything, seen anything about this case?

21 JUROR NUMBER 117: I have not.

22 THE COURT: All right. At this time, I'm going to
23 go ahead and turn you over to the lawyers. There are no
24 right or wrong answers, as I stated. Just be candid, be
25 honest under the oath you took yesterday, and we'll take

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1 care of the questioning. Mr. MacDougall.

2 MR. MACDOUGALL: Good afternoon, Ms. Chmielowski.

3 JUROR NUMBER 117: Good afternoon.

4 MR. MACDOUGALL: My name's Mark MacDougall, and I'm
5 one of the lawyers representing the defendant in this
6 case, Earnest Daise. I'm going to ask you some
7 questions that are intended to really find out how you
8 feel. And as Judge Mullen said, there's no right or
9 wrong answer here. So, it's really -- everyone's
10 interested in your point of view, and that's really all
11 this is about.

12 If I say anything in asking those questions that is
13 inconsistent with anything the Judge said, that's not my
14 intent. I may go back to some of the things she said
15 just to sort of remind you of them, because I know this
16 is all new to you. And in doing so, I'm not trying to
17 vary anything she said. So, if you hear me saying that,
18 that's not what I'm aiming for.

19 Judge Mullen talked about murder, and I think she
20 used the word *malice*. If she didn't, let me introduce
21 that word to you. In South Carolina, to be found guilty
22 of murder, you have to be shown to have acted with
23 malice or a malicious heart. And there's some very
24 colorful language that is used in the courts here to
25 describe malice, and it goes something like this:

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1 *Malice is something that imports*
2 *wickedness, excludes any just cause or*
3 *excuse for your action. It's something*
4 *from which springs from wickedness, from*
5 *depravity, from a depraved spirit, from*
6 *a heart devoid of social duty, and fatally*
7 *bent on creating mischief.*

8 And I would agree with you; that's very heavy
9 language. But what it's intended to do is to say it's
10 not about mistake; it's not about self-defense; it's not
11 about insanity; it's not about accident. It's when you
12 really mean it, and you've got terror in your soul, and
13 you commit the murder.

14 So, given that, given that construct, and that will
15 be what you would be presented with, if you were on the
16 jury here, what's your sense of what the proper
17 punishment is? And you would have two choices. One is
18 death, and if you vote the death penalty, then, that's
19 what the -- that's the sentence the Judge will impose.
20 That's not a recommendation; it's a sentence. And it's
21 a very serious responsibility.

22 And the other is life without parole. And it
23 really is without parole. There's no footnote to that.
24 There's no, yeah, but. It's life without parole. So,
25 the defendant goes to prison and stays there 'til he

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1 dies. What your stance, where would you come out on
2 that? In your questionnaire, you said you could go
3 either way, but sitting here today, where are you?

4 JUROR NUMBER 117: I suppose it would be -- if they
5 thought he would be a threat to the people that he was
6 imprisoned with.

7 MR. MACDOUGALL: Okay. So, you could vote for a
8 death sentence?

9 JUROR NUMBER 117: Yes, sir.

10 MR. MACDOUGALL: Could you also vote, depending on
11 the circumstances, for life in prison?

12 JUROR NUMBER 117: Yes, sir.

13 MR. MACDOUGALL: Recognizing that it's life in
14 prison without parole.

15 JUROR NUMBER 117: Um-hmm.

16 MR. MACDOUGALL: Now, what I'm going to do, we
17 talked about malice and all the words and all the
18 language that the State sort of assigns to the word
19 malice, and we're going to just sort of take it up a
20 level. Because in this case, because it's a capital
21 murder case, it's a murder case, it's a death penalty
22 case, there are aggravating circumstances. And the two
23 aggravating circumstances the Judge mentioned are that
24 there were two fatalities; that two people were killed;
25 and one was a child. And that creates what the law that

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1 governs death penalty cases calls an aggravator.

2 Actually, two aggravators.

3 Given those extra considerations, that you would be
4 sitting in a jury in a case in which a child was killed,
5 in fact, a mother and a child, two people were killed,
6 with respect to your statement a few minutes ago that
7 you could sort of find for life or find for death, does
8 that change your thinking?

9 JUROR NUMBER 117: No, sir.

10 MR. MACDOUGALL: Okay. So, even with those
11 aggravators, with a case involving two fatalities,
12 including a child, you could vote for life without
13 parole, and you could also vote for death.

14 JUROR NUMBER 117: Yes, sir.

15 MR. MACDOUGALL: Okay. And if you could tell me,
16 just -- and I know I'm putting you on the spot, but I --
17 there's really nothing else we can do but put you on the
18 spot. What considerations would go into your thinking
19 and making that decision? And I recognize you've seen
20 no evidence, you nothing about it, but just, you know,
21 conceptually, what would your thoughts be? You want me
22 to ask the question a different way?

23 JUROR NUMBER 117: Yes, sir.

24 MR. MACDOUGALL: Okay. If you're in a jury room,
25 and you're facing a situation in which these aggravators

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1 are present, this crime as described, two fatalities,
2 loss of a child, as you look at a possible sentence for
3 that case, and I recognize you have eleven other people
4 in the jury room, what kinds of things will you weigh?
5 What will be important to you in making that decision?

6 JUROR NUMBER 117: I guess the -- the reason that
7 he committed the murders.

8 MR. MACDOUGALL: Okay. In South Carolina, there's
9 no automatic death penalty, you understand that, that
10 it's entirely in the hands -- in the hands of the jury.

11 JUROR NUMBER 117: Yes, sir.

12 MR. MACDOUGALL: And you're comfortable that, with
13 that very heavy responsibility in your hand, you could
14 vote for a death penalty that the Judge would then
15 impose?

16 JUROR NUMBER 117: Yes, sir.

17 MR. MACDOUGALL: And you're equally comfortable
18 that you could vote for a life sentence. You could
19 approve a life sentence without parole?

20 JUROR NUMBER 117: Yes, sir.

21 MR. MACDOUGALL: There's two parts to a capital
22 trial, and the Judge, I think, made note of this.
23 There's the first part, which is the innocence or guilt
24 phase, which is like any other criminal case, very
25 serious, obviously. But it's just to determine whether

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1 the defendant is guilty or not. If the defendant's
2 found not guilty, there is no second phase; the case is
3 over.

4 If the defendant is found guilty, then, we go into
5 the penalty phase, which is what we've been talking
6 about since you took the stand a few minutes ago. In
7 the penalty phase, you will hear evidence of the
8 aggravators that we talked about. You'll also hear
9 evidence of mitigators, and those are things that, as
10 the name suggests, indicate that, perhaps, depending
11 upon how the jury votes, there are factors in the
12 defendant's life that ought to affect your sentence,
13 that ought to affect in a positive way. Let me give you
14 examples of those mitigators. And again, these are not
15 specific to this case. These are just to give you an
16 idea of what we're talking about.

17 Someone was brought up in extreme poverty; if they
18 had a drug addiction; if they had been abused as a
19 child, psychologically or sexual; very poor education;
20 all those kinds of things. And again, these are not
21 specific to Mr. Daise in particular. This is just the
22 kind of thing we're talking about. Would those affect
23 how you viewed your verdict with respect to death or
24 life without parole?

25 JUROR NUMBER 117: I think it would.

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1 MR. MACDOUGALL: Okay. Let me -- I know that we've
2 been at sort of in an area that you're probably not
3 think much about or don't think much about. Let me get
4 into one you perhaps do, depending upon how you spend
5 Sundays. The idea of mercy, and the application of
6 mercy, because as, I think the Judge mentioned when she
7 spoke to you at the beginning, you can find -- the jury
8 can find a death sentence of a life sentence -- I'm
9 sorry, the jury can find a life sentence without parole
10 for any reason or for no reason. So that, even though
11 you have been presented with a body of evidence that you
12 feel is compelling, out of any emotion, including mercy,
13 you can decide to impose a life sentence.

14 Can you tell me a little bit about where you think
15 that the idea of mercy comes from in your view of the
16 world. You want me to ask it a different way?

17 JUROR NUMBER 117: Sorry. Yes, please.

18 MR. MACDOUGALL: Do you think mercy is earned or is
19 it just bestowed? Is it just a gift?

20 JUROR NUMBER 117: I believe it would come from the
21 person giving it.

22 MR. MACDOUGALL: And you don't have to pay -- well,
23 if I understand you, it's not something you pay a price
24 for. It's just given to you because someone --

25 JUROR NUMBER 117: Yes, sir.

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1 MR. MACDOUGALL: And do you consider yourself
2 someone who has that in your system? Are you able to be
3 merciful when you have to be?

4 JUROR NUMBER 117: I believe so.

5 MR. MACDOUGALL: Okay. The jury has a very
6 important role, really, the critical role, throughout
7 this case. In the first part, if the jury reaches a
8 unanimous verdict to a conviction, then, the defendant,
9 Mr. Daise, would be convicted.

10 In the penalty phase, it's a little different. You
11 are allowed to take into account all the considerations
12 that you've heard, and with regard to not only the crime
13 and the aggravators that the State's pointed out, but
14 also mitigation, the mitigators we discussed, and
15 anything else that comes into play.

16 Are you someone -- and I'll give you two choices --
17 someone who will go along with the group to be
18 agreeable? And I'm just talking generally. Or, are you
19 someone who, if you have something that you feel very
20 deeply about, will hold fast to that and resist efforts
21 to influence you?

22 JUROR NUMBER 117: I don't consider myself easily
23 influenced.

24 MR. MACDOUGALL: Okay. Tell me about that aspect
25 of your life; just some examples or just some things

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1 that sort of reflect your steadfastness in your
2 opinions.

3 JUROR NUMBER 117: Well, I've always been mostly
4 very introverted, and I've never had to deal with peer
5 pressure.

6 MR. MACDOUGALL: And when you see someone in a
7 group that is being subjected to peer pressure; I'm not
8 talking about bullying necessarily, but just you've got
9 a group of people and someone will do one thing and
10 someone would do another; do you ever find yourself
11 standing up for the people that are in the minority;
12 that, if someone is being pressured to do something they
13 don't want to do, are you the kind of person who
14 intervenes and says, wait a minute, leave them alone,
15 they're entitled to their own decisions?

16 JUROR NUMBER 117: Yes, sir.

17 MR. MACDOUGALL: Now, take that and bring it into
18 our made-up, our hypothetical jury room. You could be
19 facing a very serious decision. One that, you know, you
20 would, like any juror, carry with you the rest of your
21 life. Do you feel like you're someone who, if you had a
22 very heartfelt conviction one way or another, you would
23 stick with it without necessarily yielding to the peer
24 pressure or pressure from other jurors?

25 JUROR NUMBER 117: Yes, sir.

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1 MR. MACDOUGALL: Okay. Even if it got out of hand,
2 and people got very unhappy and very pushy, you could
3 stand fast in your convictions?

4 JUROR NUMBER 117: Yes, sir.

5 MR. MACDOUGALL: Thank you, your Honor. Thank you
6 very much.

7 THE COURT: Mr. Stone.

8 MR. STONE: Ms. Chmielowski, did I pronounce that
9 right?

10 JUROR NUMBER 117: Close enough.

11 MR. STONE: No. How do you pronounce it?

12 JUROR NUMBER 117: Chmielowski.

13 MR. STONE: Pardon?

14 JUROR NUMBER 117: Chmielowski.

15 MR. STONE: Chmielowski? Okay. I probably didn't
16 do it any better the second time than I did the first.
17 I'm sorry. I'm Duffie Stone. Let me just ask you a few
18 questions, and the Defense covered a number of things.
19 I want to make sure that I'm clear about this. You are
20 the type of juror who would listen to both the
21 aggravation, as well as mitigation, and make a
22 determination about whether or not somebody deserves a
23 life sentence or a death sentence. Is that correct?

24 JUROR NUMBER 117: Yes, sir.

25 MR. STONE: And if a case is bad enough, could you

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1 give the death penalty?

2 JUROR NUMBER 117: Yes, sir.

3 MR. STONE: If you give the death penalty, it is
4 not a recommendation. It is the actual sentence. Do
5 you understand that?

6 JUROR NUMBER 117: Yes, sir.

7 MR. STONE: Okay. And there is a form that goes
8 along with that in which you would be required that you
9 put your name on it. Could you do that?

10 JUROR NUMBER 117: Yes, sir.

11 MR. STONE: Thank you, ma'am. I don't have any
12 further questions.

13 THE COURT: Ma'am, I am going to ask you for a very
14 brief moment to step out this back door. We're going to
15 bring you right back in. We're going to tell you where
16 we're going to go from here. Okay?

17 JUROR NUMBER 117: Yes, ma'am.

18 THE COURT: Thank you. You can step out right now.
19 Thank you.

20 JUROR NUMBER 117 LEAVES COURTROOM.

21 BAILIFF: Door is closed, your Honor.

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

23 MR. STONE: Qualified, your Honor.

24 THE COURT: What says the Defense?

25 MR. MACDOUGALL: She's qualified, your Honor.

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1 THE COURT: Thank you. We'll go ahead and find her
2 qualified. Ladies and gentlemen, do you mind, we have a
3 number of people still back there, I would like to
4 continue, but I want to make the offer to anyone that is
5 over there, that, if they would prefer to return in the
6 morning, that they can do that. I know it's going to
7 push us back a little bit. I'm not sure exactly what
8 time I'm thinking that they're going to return. But
9 again, some of them I'm concerned may have children to
10 go pick up, dinner to cook, or you know, be expected at
11 somewhere, you know, whether it's coaching, whatever it
12 is. Do you mind if I make that offer? It won't change
13 their placement anywhere. It'll simply mean that,
14 that's where we are. Is that fine with everyone?

15 MR. STONE: Yes, ma'am, from the State.

16 THE COURT: All right. Now my question is where
17 are we going to put them?

18 BAILIFF: You put them in the front of the line?

19 THE COURT: Pardon?

20 BAILIFF: Put them at the front of the line, I
21 guess?

22 THE COURT: And I can suggest that, too. I just
23 think, in all fairness, I don't know if the rest of them
24 will be appreciative of that, so I think the better way
25 to do it is just to tell them in the morning. Is that

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1 what you're talking about the front of the line?

2 BAILIFF: Well, before the people, because the way
3 I look at it is, the ones that come in the morning, they
4 may as well suffer with the ones that have suffered
5 today as far as having to wait.

6 THE COURT: Okay.

7 BAILIFF: But that's up to you, Judge.

8 THE COURT: Yeah. I think what I'll do is just
9 want to make the offer that, if they would prefer to
10 come back in the morning, they are fine to do that.

11 BAILIFF: Sure. I'll ask them.

12 THE COURT: Okay. And I'm thinking having them
13 come back a little bit earlier even than we stated.
14 Maybe 8:30, if that's okay?

15 MR. STONE: That's fine.

16 THE COURT: Let's see how many there are first.

17 BAILIFF: Okay.

18 THE COURT: And I'm thinking that's what we should
19 ask them.

20 BAILIFF: I'll do that, your Honor.

21 THE COURT: So, let's go ahead. You all, I know
22 we've been running a little bit. You want a quick five-
23 minute break, you got it.

24 BAILIFF: You've got a lady out here.

25 THE COURT: And we're going to bring her back in.

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1 Thank you.

2 JUROR NUMBER 117 ENTERS COURTROOM.

3 BAILIFF: If you will, please stand right here,
4 ma'am, face the Judge.

5 THE COURT: Thank you. Ma'am, thank you for being
6 here. We do find you qualified for the trial of this
7 case. That does not mean you are put on the jury; it
8 just means you've been qualified as a potential juror.

9 We anticipate that we are going to finish this
10 process, hopefully, with all the jurors by Monday
11 morning at 9:30. I don't know necessarily yet that,
12 that's going to happen, but that's what I anticipate.

13 We are going to give you a number. Norman's going
14 to give it to you. I want you to call that number after
15 6:00 o'clock on Saturday night, and it's going to tell
16 you when you need to report. All right? Do whatever it
17 says. It may say sometime later on Monday. It possibly
18 even could say Tuesday morning. I hope not, but it
19 might. So again, just understand, and we do look
20 forward to seeing you back then. All right? And I hope
21 -- you've got the deputies are taking you back home,
22 correct?

23 JUROR NUMBER 117: Yes, ma'am.

24 THE COURT: And who do I have driving, you all? I
25 want to make sure we're okay.

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1 BAILIFF: I believe one's a lady deputy.

2 THE COURT: Will you make sure, and I just need to
3 know the names of the deputies. All right? Thank you.
4 And thank you.

5 JUROR NUMBER 117: Thank you.

6 THE COURT: I hope you feel well.

7 BAILIFF: Okay, ma'am. May I have your badge?

8 JUROR NUMBER 117 LEAVES COURTROOM.

9 THE COURT: Okay. And I'll tell you, we'll go
10 ahead and take a quick five-minute break. I will tell
11 you, for all of you all, during the trial of this case,
12 I understand we've got a lot of people. If you need a
13 break, just as Mr. Young did, you can flash me five, you
14 can do this for a break. I may look at you and go
15 (indicating), and that means do you need it or not. You
16 give me a yes or a no, I know it's awkward for lawyers
17 to have to say please give us a break; I don't want to
18 be the person doing it. So, just give me some kind of
19 signal and I'll break. Okay?

20 MR. MCGUIRE: Thank you. We appreciate that.

21 THE COURT: Let's go ahead and take five. during
22 Thank you.

23 THE COURT: Thank you.

24 OFF THE RECORD.

25 ON THE RECORD.

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1 BY THE COURT:

2 THE COURT: Ready to go?

3 MR. MCGUIRE: Your Honor, have you been informed as
4 to how many people took you up on your offer to go home?

5 THE COURT: Yes. Right now, I've been told two.

6 MR. MCGUIRE: Yeah.

7 THE COURT: And when we figure, also, that as time
8 goes on, there may be more. That's our thought, but we
9 don't --

10 MR. MCGUIRE: That's my hope.

11 THE COURT: I know. Are you all okay? Is everyone
12 okay?

13 MR. MCGUIRE: Do you want to talk about how long --
14 we have 15 people back there.

15 THE COURT: Certainly. And I'm happy to do that.
16 Again, they are indicating that they want to come. And
17 my next question to you all is, do we want to go ahead
18 and push some of the people that we have got coming in
19 the afternoon tomorrow and beyond. I certainly don't
20 want to be running this far behind with other people.

21 I love Norman's idea of making them all suffer, but
22 I don't. So, I figure the fewer, the better. So.

23 MR. MCGUIRE: I can tell you that all the lawyers
24 on this side that are -- have done this before, we're
25 all of the opinion that we're actually going pretty fast

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1 in qualifying, your Honor.

2 THE COURT: I think we are. Well, I can tell you,
3 I think we're actually -- I will tell you, and you all
4 can correct me if I'm wrong. Certainly, all the
5 transcripts that I've reviewed and looked at, we
6 certainly are doing more voir dire than I've ever seen
7 done in South Carolina. But on the flip side, too, I
8 think you've done a great job on the front end with the
9 questionnaires, being able to really get to what we need
10 to. So, you know, again, I think it's both ways, but
11 you're right. I mean, we've gone through, and we've
12 gotten what we need as half the potential jurors.

13 MR. MCGUIRE: Exactly.

14 THE COURT: So, and, you know, I think that's very
15 good. So.

16 MR. MCGUIRE: You know, my two cents --

17 THE COURT: Yeah.

18 MR. MCGUIRE: I could probably take a vote or a
19 poll over here, but to go a little bit longer, --

20 THE COURT: Yeah.

21 MR. MCGUIRE: -- and then, start letting people go.

22 THE COURT: Okay.

23 MR. MCGUIRE: And certainly, I wouldn't suggest
24 about more than one more hour.

25 THE COURT: Right. Let's do this, and if you all

1 are amenable to this. Why don't I just go ahead; we'll
2 extend the offer that Norman originally stated; that
3 was, listen, everyone is really tired; we've gone a long
4 time; we hate to have to bring you back. As it goes
5 right now, I mean, there's still a potential that, if we
6 push hard, we will finish tomorrow and won't have to
7 come back Saturday.

8 So, I don't want to automatically tell these people
9 if they're available to come back Saturday. So, we also
10 have to take them in the order they are, because we
11 talked about that's our randomness, as far as making
12 sure, you know, if I put them on the very tail end,
13 then, in all fairness, that doesn't work.

14 So, what do you all want to do? What do you all
15 want to do?

16 MR. MCGUIRE: I leave it at the Court's discretion.
17 But I think --

18 THE COURT: Okay. I think what we need to do --
19 where's Diane? Diane?

20 MADAM CLERK: Yes, Judge?

21 THE COURT: How difficult is it for you to call
22 these jurors and back everybody up tomorrow? If I bring
23 the last set -- Al is --

24 BAILIFF: I'm just trying to figure out how long it
25 would take, your Honor.

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1 THE COURT: Everybody's a critic around here.

2 BAILIFF: No, ma'am. I was figuring how long it
3 would take.

4 THE COURT: All right. Diane, what are we talking
5 about as far as if we get on different phones? I want
6 to know, if I have to back everybody up tomorrow, let's
7 say two or three hours? What does it look like? So,
8 you can do it?

9 MADAM CLERK: Um-hmm.

10 THE COURT: I mean, is that possible? Good. Okay.
11 Any other suggestions? Looking for good ones.

12 MR. STONE: I think you're doing fine.

13 THE COURT: I know.

14 MR. STONE: I think you're doing exactly what I
15 would do. I mean, we've got some people who wanted to
16 stay. I think we work for another hour --

17 THE COURT: Okay.

18 MR. STONE: -- and do what we can do, and then back
19 the rest of them up. You know, that's fine with me.
20 We'll do whatever you want to do, Judge. I'm just --

21 THE COURT: Again --

22 MR. STONE: -- I think we're on par to do exactly
23 what we need to do.

24 THE COURT: And I appreciate that. And I
25 appreciate that they all -- some of them have come from

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1 a distance to be here, but again, they haven't been
2 sitting here all day and doing this all day like we
3 have; they've been waiting.

4 So, again, my thought is this. Should we take the
5 6:00 o'clock crew; send them home?

6 OFF-THE-RECORD DISCUSSION, THE
7 COURT, LAW CLERK SCRANTON.

8 THE COURT: Okay. So, this is what I say we do.
9 Let's, for sure, go tell the 5:00 o'clock people that
10 they need to go home; they need to come back tomorrow
11 morning at 8:30. Let's start with that group. How many
12 does that leave us after that? How many do we have left
13 after we take care of that? And hopefully, those two
14 that chose to come back tomorrow were not in that group.

15 COURT REPORTER: That leaves us ten, I think.

16 THE COURT: That leaves us ten?

17 MADAM CLERK: Twelve. Two people are --

18 THE COURT: Might be pushing us back --

19 MR. MCGUIRE: My only two cents is, I'd only choose
20 three or four people right now.

21 THE COURT: Okay. All right. All right. Norman?
22 Norman?

23 BAILIFF: Your Honor?

24 THE COURT: Okay. Norman, this is what we're going
25 to do. We're going to keep five people. Okay? So, we

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1 need to go tell them that, that's what we're going to
2 do. And again, I would --

3 BAILIFF: We'll do the next five; everybody else go
4 home and come back at 8:30 in the morning.

5 THE COURT: Unless someone has an absolute
6 conflict, and then, I'll take it up. Okay?

7 BAILIFF: Yes, ma'am.

8 THE COURT: All right. We're going to do five.
9 We're going to do five.

10 JUROR NUMBER 317 EXCUSED:

11 MR. MCGUIRE: Actually, your Honor, at least one
12 indicated on the questionnaire knows the victims'
13 family; can't be fair.

14 THE COURT: Okay.

15 MR. MCGUIRE: Or, I'm sorry. Knows Mr. Daise and
16 cannot be fair, so.

17 THE COURT: Okay. Well then, why don't we just cut
18 that person loose? Unless you want -- you'd want to
19 make for sure.

20 MR. MCGUIRE: It's 317.

21 MR. STONE: Three what?

22 THE COURT: I mean, if you both can agree that we
23 just go ahead and let that person leave, that takes care
24 of one.

25 MR. MCGUIRE: We're not opposed to that.

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1 THE COURT: Okay. That's Number 317?

2 MR. STONE: I think that's correct, your Honor. I
3 haven't --

4 THE COURT: Ms. Henderson, can you confirm?

5 MADAM CLERK: I'm looking, your Honor.

6 OFF THE RECORD DISCUSSION.

7 THE COURT: Norman, you took care of him?

8 BAILIFF: Yes, ma'am, I did. I think Al's gone to
9 get him.

10 THE COURT: All right. Let's bring him, and let's
11 go. Let's go ahead. Gentlemen and ladies, have we come
12 to a decision on 317? Are we fine with letting that
13 person go? Ms. Henderson?

14 MS. HENDERSON: Your Honor, that's what we're
15 discussing right now. There's -- she knew -- or he
16 knows both of them. Like, there's a connection to
17 either side.

18 THE COURT: I think, so you can agree that both of
19 you all need to agree just to cut him loose.

20 MR. MCGUIRE: We agree.

21 THE COURT: Mr. Stone, can you make an agreement?

22 MR. STONE: I think that's fine, your Honor.

23 THE COURT: All right. We'll release Number 317.
24 Number 317 does not need to come back out. Yes, ma'am.
25 Thank you. Thank you, you all.

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1 BAILIFF: Are we ready for the next person, your
2 Honor?

3 THE COURT: Yes, sir.

4 JUROR NUMBER 352 ENTERS COURTROOM.

5 BAILIFF: Mr. Jeffrey Jones.

6 THE COURT: Come on forward, Mr. Jones.

7 BAILIFF: You can go up and take a seat on the
8 witness stand.

9 THE COURT: Come on around, sir. Thank you so much
10 for being here, and thank you for your patience waiting
11 on us, sir.

12 Sir, I want to first remind you that you are under
13 the oath you took yesterday. Is that agreeable to you?

14 JUROR NUMBER 352: Yes, ma'am.

15 THE COURT: All right. And I have been giving a
16 short rendition for some of the jurors. We're trying to
17 move things along a little bit. Of course, this is very
18 important. What I'm going to do is just turn around and
19 turn it over to the lawyers and let them ask you some
20 questions.

21 JUROR NUMBER 352: Yes, ma'am.

22 THE COURT: I just want you to know, the only thing
23 we ask of you is that you are honest and candid in your
24 answers. There are no right or wrong answers here. You
25 just tell us what your feelings are, your beliefs are.

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1 That's appropriate. That's what we're here to do. All
2 right, sir?

3 JUROR NUMBER 352: Yes, ma'am.

4 THE COURT: Thank you again. All right. Mr.
5 McGuire.

6 MR. MCGUIRE: Thank you, your Honor. I'm so sorry
7 you had to wait so long.

8 JUROR NUMBER 352: Yes, sir.

9 MR. MCGUIRE: Sometimes we're not the most
10 efficient --

11 JUROR NUMBER 352: I understand.

12 MR. MCGUIRE: -- entity. It's not the Judge's
13 fault, or mine. Not ready anybody's.

14 I want to go straight to the core of the matter and
15 save as much time as possible.

16 JUROR NUMBER 352: Yes, sir.

17 MR. MCGUIRE: Given the late hour, and trying to
18 get you home. This is a capital case, which means,
19 necessarily, it's a murder case. The State is
20 requesting or seeking the death penalty. And what that
21 means is, it has to be a murder case. And I'm going to
22 define murder for you in a second. And it has to be
23 even more than that, aggravated, an aggravated murder,
24 and I'll define that for you. And then, I'm going to
25 ask you your views about the death penalty regarding

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1 that situation. Okay?

2 JUROR NUMBER 352: Okay.

3 MR. MCGUIRE: So, to start at the very beginning,
4 the basics, murder in South Carolina is defined as the
5 unlawful, intentional killing of another human being
6 with malice aforethought. Malice aforethought is
7 operating with a black, malignant heart, fatally bent on
8 wickedness and evil. So, it's an evil, intentional
9 killing of innocent people.

10 JUROR NUMBER 352: Understood.

11 MR. MCGUIRE: And the aggravation part that I need
12 to tell you about is that it's a double homicide; two
13 people intentionally shot and killed; essentially, a
14 mother and child; a woman and a four-year-old child.
15 Are you with me?

16 JUROR NUMBER 352: Yes, sir.

17 MR. MCGUIRE: Okay. Now, in that situation, there
18 might be some people who would say that case kind of
19 calls out for the death penalty, and for me, I would
20 always vote for the death penalty in that situation. Do
21 you agree there could be people like that out there?

22 JUROR NUMBER 352: I agree there could be people
23 that would automatically jump to that.

24 MR. MCGUIRE: Okay. And my question to you is, are
25 you one of them? And that's --