

ORIGINAL

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Horry County
Honorable Larry B. Hyman, Circuit Court Judge

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

LUZENSKI ALLEN COTTRELL,

APPELLANT

APPELLATE CASE NO 2015-000731

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

- COURT’S EXHIBIT NO. 9 (PHOTOS)**
- COURT’S EXHIBIT NO. 10 (PHOTOS)**
- COURT’S EXHIBIT NO. 11 (PHOTOS)**
- COURT’S EXHIBIT NO. 12 (CD)**
- STATE’S EXHIBIT NO. 10 (CD)**

1 I had family members that were in prison. Didn't know
2 exactly what they had done. I just know that they had
3 been in and out. And my brother was in jail for, I
4 think, two traffic violations or something like that.

5 Q Okay. Sorry to hear that. Did you visit these
6 people in prison?

7 A Several times, my brother, yes. Other family
8 members, no.

9 Q And is your view that a sentence -- sentencing
10 somebody to prison is a severe sentence?

11 A I think it depends on their crime. I think it's
12 fair if they have done wrong, then they deserve it.

13 Q What I want to do now to be sure we're on the same
14 page is to ask you about your -- I'm going to ask you
15 about your thoughts about the death penalty and the
16 charge of murder. And you heard the judge say that for
17 the government to seek the death penalty, there has to
18 be an aggravating circumstance accompanied with a
19 murder. So to make sure we're on the same page, I'm
20 going to define murder for you. Okay?

21 A Okay.

22 Q Because you probably never heard the definition of
23 murder in South Carolina.

24 A Okay.

25 Q Right?

1 A Sure.

2 Q Okay. And I'm going to help you and give it to
3 you so we can have a discussion about that.

4 The judge would tell you and charge the jury that
5 murder is defined in South Carolina as the unlawful
6 killing of another person with malice aforethought.
7 Now, malice is defined as a black, malignant heart
8 fatally bent on mischief or evil. So it's
9 intentionally killing a human being with an evil
10 intent. Are you with me?

11 A Yeah.

12 Q Okay. Now what are your thoughts about the death
13 penalty in that circumstance?

14 A Restate the question, sir. I'm sorry.

15 Q Okay. What I'm going to do is I want you to
16 remember the judge's definition of murder.

17 A Okay.

18 Q It's that intentional killing of another person
19 with malice aforethought. Intentionally, deliberately
20 taking an innocent life with evil intent, essentially.
21 What are your thoughts about the death penalty for that
22 kind of case?

23 A I think it depends on the facts of how they did it
24 or exactly I think. I think it definitely depends on
25 the facts of how they went about doing it.

1 Q Again, if it's defined as murder, it means it's
2 not an accident, not self-defense. The person knew
3 right from wrong and chose to kill. And you're saying
4 that it still depends on the facts?

5 A Yes.

6 Q The judge was talking to you about mitigating
7 circumstances. What do you think that means?

8 A I'm not sure.

9 Q Okay. Let me ask you this. If you were to find
10 somebody, you and 11 other jurors convicted somebody of
11 murder, that malice killing, would the background
12 characteristics of a defendant -- his walk in life, how
13 he grew up -- would those things be relevant in
14 determining punishment?

15 A Would they be relevant to my decision?

16 Q Yes.

17 A No, sir.

18 Q I'm sorry?

19 A No.

20 Q Okay. The judge would -- I want to talk to you
21 about some principles of law and just basically ask if
22 you can follow the law. That's what we're here for.

23 The first phase of the trial is like a regular
24 case, just like you see on TV: Is the person guilty?
25 Did they do it? And those questions are usually

1 determined by fact, you know. Did he use the gun? Is
2 that his fingerprint? Is the car red or green? Is a
3 bullet a certain caliber? Those are all factual
4 questions. And the jury is asked to try to vote guilty
5 or not guilty, did the person do it or not, based on
6 facts.

7 A Right.

8 Q You agree with me?

9 A Yes.

10 Q Okay. And that is the law. Now, the judge would
11 charge the jury that if you were to reach a penalty
12 phase or a sentencing phase, that the decision is
13 different. It's what's described as an individual
14 moral judgment. My guess is you've never heard that
15 phrase before?

16 A Correct.

17 Q Okay. But now that you understand that, do you
18 see how it's different from the first phase?

19 A Yes.

20 Q It's more of an emotional moral decision and it's
21 not based on fact.

22 A Yes.

23 Q And a lot of people think that if the State in a
24 case like this proves sort of A, B, C and they prove
25 murder and they prove an aggravator, that the

1 conclusive penalty, that the penalty is automatically
2 the death penalty. Do you feel like that or what's
3 your view on that?

4 A I think it depends on the fact of aggravation or
5 what they did depending on the penalty, but I don't
6 necessarily think that the death penalty is the first
7 thing to go towards.

8 Q Okay. But you're going to look at the facts of
9 the event, the facts of the incident, the killing, to
10 see how maybe how heinous it is or evil it is?

11 A Right.

12 Q And if that reaches a certain level, you could
13 consider the death penalty?

14 A Yes.

15 Q But you could also consider the life penalty?

16 A Yes.

17 Q Now, the judge would tell the jury in that penalty
18 phase -- I'm going to state this very clearly. I hope
19 you remember it -- that at the end of the first part of
20 the trial I'm going come to the jury and I'm going to
21 ask for a verdict of not guilty. Not because I asked
22 for it but because the evidence demands it. And I'm
23 kind of putting the cart before the horse to ask you
24 questions about penalty when I hope we never get there.

25 Can you promise me that you're not going to, just

1 because I'm asking about penalty, you think that I'm
2 conceding guilty in any kind of way? That's a little
3 wordy. Just because I'm asking you about penalty
4 issues, you understand I'm not conceding that Mr.
5 Cottrell is guilty of anything?

6 A Right.

7 Q My position is that he's innocent.

8 A Right.

9 Q And going back to that penalty phase, the judge
10 would charge the jury that any individual juror, in
11 reaching that individual moral judgment, can vote for
12 the life penalty for any reason, no reason or mercy
13 alone. Did you know that you had those options based
14 on those things?

15 A Yes.

16 Q Is that a principle of the law that you could
17 follow?

18 A Yes, sir.

19 Q If somebody said, "I'm going to vote for the life
20 penalty and I don't have a reason for it, but I heard
21 the judge and he said I could do it for no reason,"
22 could you respect their position?

23 A Yes, sir.

24 Q And you would want your position to be respected,
25 too?

1 A Yes.

2 Q Do you believe the death penalty is the last
3 resort, that if there's some other acceptable option,
4 that we should declare the death penalty as the last
5 resort?

6 A Yes, sir.

7 Q And with regard to that individual moral judgment
8 and the judge's charge that any individual juror could
9 vote for the life penalty for any reason, no reason or
10 mercy alone, do you believe that mercy is earned by
11 somebody or is it something that's freely bestowed?

12 A I don't think you can necessarily feel mercy by
13 quickly glancing at somebody, but I think if you could
14 hear the story, you can gain mercy, so I think it's
15 earned.

16 Q Okay. Earned?

17 A Yes.

18 MR. McGUIRE: If I could just have one second,
19 Judge.

20 (WHEREUPON, an off-the-record discussion was held
21 between Mr. McGuire and Ms. Norris.)

22 MR. McGUIRE: That's all I have. Thank you so
23 much, sir.

24 MR. HIXSON: Briefly, your Honor.

25 EXAMINATION BY MR. HIXSON:

1 Q Good afternoon, sir.

2 A How you doing?

3 Q Just briefly, I think you indicated you were a C
4 type juror?

5 A Yes.

6 Q You could take all the facts and put them into a
7 pot and come up with your own decision about how you
8 feel about it, consider everything?

9 A Yes.

10 Q And that's still your opinion relating to this
11 process?

12 A Yes, sir.

13 Q Okay. Just to clarify, I think, for -- it seemed
14 a little unclear maybe, but, you know, the first
15 process is the murder itself, on whether he committed
16 the crime. And then if, you as a member of the jury,
17 agree unanimously that he committed a murder, it's only
18 then in the second phase that you'll hear other
19 information that may make a murder worse, or the
20 defense perhaps may put up information to make it seem
21 not as bad. And you can consider both of that before
22 you decide what the sentence the defendant should
23 suffer would be, be it life imprisonment or death; is
24 that true?

25 A Yes.

1 Q Consider both of them?

2 A Yes.

3 Q And then, just briefly, I think Mr. McGuire
4 indicated that he would come before you and ask for the
5 defendant to be not guilty. And I think it's safe to
6 say if we get to the second phase, we may come back
7 before you and ask for a death penalty. And if, in
8 fact, the jury agrees with that, and the jury does say,
9 yes, we believe he deserves the death penalty, you will
10 have to put your name to the bottom of the verdict
11 form, your name, Mr. Decker, you do support the death
12 penalty, your verdict is a death penalty. You can sign
13 that document?

14 A Yes, sir.

15 MR. HIXSON: I have no further questions, your
16 Honor.

17 Thank you for your time.

18 THE COURT: Thank you. Let this juror step down
19 just a moment.

20 (WHEREUPON, Mr. Decker exited the courtroom
21 at 12:36 p.m.)

22 THE COURT: Mr. McGuire.

23 MR. MCGUIRE: Thank you, your Honor.

24 I move to strike for cause based on mitigation
25 impairment. When I asked him about the background

1 characteristics of the defendant, a person's walk in
2 life, he indicated that would not be relevant in
3 determining punishment in a capital case.

4 And also if I can put on the record that -- well,
5 I have something to put on the record after you address
6 this issue.

7 MR. HIXSON: Your Honor, I believe there continues
8 to be confusion in the process questions. I think a
9 witness seems to respond to that, would the background
10 information matter if you find the defendant guilty of
11 murder, and we would agree that his background is not
12 relevant to the guilt or innocence. And I think
13 consistently we see this problem perking up with the
14 confusion on the process questions.

15 That's why I addressed them on the voir dire to
16 separate the process to understand background
17 information, mitigation deficient is not an issue in
18 the guilt, it's an issue in the penalty. So that's why
19 I try to rehabilitate, and I believe in the totality of
20 the circumstances he understands the process and he's
21 qualified.

22 THE COURT: I think that it is clear that he
23 understands the process.

24 Mr. McGuire, you don't ask him if he could follow
25 my instruction to consider that if I were to instruct

1 him in that fashion. The issue here is whether or not
2 he can follow the law, whether he can -- whether
3 there's any bias that he might have that would prevent
4 him or substantially impair his ability to do his duty
5 as a juror. And I see none here.

6 I do not think that he is mitigation impaired. I
7 believe that if I instruct this witness as the other
8 witnesses, that those are factors to be considered,
9 that they will consider them. I do not see any
10 evidence that would suggest this witness has any
11 prejudice interest or bias. He's indifferent to this
12 case. He's one of the few witnesses we're going to
13 have that has never heard or knows nothing about the
14 case. He is a C type juror, and I believe that he is
15 capable of following the law, intends to follow the
16 law, and is ready, willing and able to follow the law.
17 So I'm going to find him to be qualified in this case.

18 Bring him in.

19 (WHEREUPON, Mr. Decker entered the courtroom
20 at 12:39 p.m.)

21 THE COURT: Mr. Decker, I have found you qualified
22 to serve on this jury. You are released. I'll remind
23 you that my order concerning pretrial publicity or
24 seeking out or exposing yourself to any information
25 about this trial would be highly improper and I'm

1 ordering you not to do it.

2 We'll be drawing or qualifying jurors for the
3 balance of this week, so what I want you to do is this.
4 The clerk is going to give you a piece of paper with
5 the phone number on it or the officer is. On Sunday
6 evening after 6 o'clock, please call that number and
7 there will be a message. It will tell you what day we
8 need you to appear. Remember you're going to be
9 sequestered, so bring a bag with you in case you are
10 placed on the jury, clothing and any medications and
11 things of that nature that you might need. Okay?

12 MR. DECKER: Okay.

13 THE COURT: Thank you, sir. We look forward to
14 seeing you then.

15 That was everyone on the first panel; is that
16 correct?

17 MR. RICHARDSON: Yes, sir.

18 THE COURT: All right. Let's take a very short
19 break. The other panel is only an hour and a half late
20 starting.

21 THE CLERK: I ordered food for the staff here, but
22 I also ordered some extra for the second panel just in
23 case you wanted me to feed them.

24 THE COURT: Is it here yet?

25 THE CLERK: It's supposed to be here by quarter

1 until 1:00, like in five minutes.

2 THE COURT: If it does, let's feed them.

3 Let's take a quick break.

4 THE CLERK: Okay.

5 (WHEREUPON, recess taken from 12:41 p.m.

6 to 12:42 p.m.)

7 THE COURT: Let me just do the exemptions for this
8 next panel. Can we get them in.

9 MR. McGUIRE: Ms. Norris is not here now.

10 THE COURT: All right. We'll wait on her.

11 (WHEREUPON, Prospective Jury Panel Number 2 came
12 into open court at approximately 12:44 p.m.)

13 THE COURT: All right. Ladies and gentlemen, I'm
14 sorry that we're late getting you in here. We're just
15 beginning this individual process and we're running a
16 little bit late, but I'm sure it will get faster as we
17 go along. But the clerk has ordered lunch for you. As
18 we go through it individually, you will have an
19 opportunity to have some lunch at the county's expense.

20 The reason that I bring you in here before we
21 bring you in individually is because I need to talk
22 with you for just a minute about your service as
23 jurors. There are certain exemptions. Of course, we
24 all have a civic duty to serve, but there are certain
25 exemptions which a juror may claim when he or she is

1 summoned for jury duty, and they're limited by statute.
2 The law determines what exemptions may be considered,
3 and I want to make sure that you understand that you do
4 not have to claim an exemption. If an exemption
5 applies to you, that is a personal right that you have
6 to be excused. You are not disqualified from service.
7 You can certainly stay and remain in the jury panel
8 even though an exemption would apply to you.

9 So in that regard, let me ask you this. Is there
10 any one of you who is 65 years of age or older?

11 And there is no response.

12 Is there any one of you who has served as a juror
13 in the court of common pleas or general sessions --
14 that would have meant you would have been summonsed to
15 this courthouse. You would have probably been taken
16 down to the jury assembly room, which I don't think you
17 have been to yet -- it's downstairs -- and you would
18 have been subject to be called as a juror in either a
19 criminal or civil case here in this courthouse.

20 If you have done that in the last three years, you
21 can claim that as an exemption. Also, if you have
22 served on the Grand Jury within the last five years,
23 you can claim that as an exemption. Now, the Grand
24 Jury is the jury which would consider the matters
25 involving people accused of crimes and will determine

1 whether an indictment should be issued.

2 If you were on the Grand Jury, I promise you, you
3 would know it. The Grand Jury meets once a month, and
4 you could be on the Grand Jury for one or either two
5 years. So people on the Grand Jury know that they were
6 there. But if you were on the Grand Jury within the
7 last five years, you can claim that as an exemption.

8 Also, if you have small children under the age of
9 seven, and those are your children or you have legal
10 custody of those children and it is your job -- you do
11 not work elsewhere -- it is your job to take care of
12 those children on a daily basis, you are a stay-at-home
13 mom or dad and that's what you do and you cannot find
14 anyone to take care of those children under the age of
15 seven, then you may claim that as an exemption or the
16 court will excuse you, I'll put it that way.

17 If you are a full-time student -- I think we have
18 already weeded students out -- or if you work at a
19 school or institution of higher education and your job
20 is necessary for the operation of the school, you may
21 claim that as an exemption.

22 Finally, if your job is such that you provide
23 services for a business, whether it be a commercial
24 business or an agricultural business, and if you are
25 not there it must close, the doors must be shut,

1 employees must be sent home, if that is your situation,
2 you may be excused.

3 Is there anyone to whom any of those things apply?

4 And there is no response.

5 All right. What we're going to do now is take you
6 back into your jury room, we'll bring you out one at a
7 time. Thank you.

8 (WHEREUPON, Prospective Jury Panel Number 2
9 exited the courtroom at approximately 9:24 a.m.)

10 THE COURT: Let's bring in Ms. Odom.

11 (WHEREUPON, Ms. Odom entered the courtroom
12 at 12:51 p.m.)

13 THE COURT: Good morning, Ms. Odom.

14 MS. ODOM: Good morning.

15 THE COURT: Ms. Odom, so good to see you.

16 Has she been placed under oath, Madam Clerk?

17 PAIGE ODOM,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: Please speak into the microphone and
20 state your name and spell your last for the record.

21 MS. ODOM: Paige Odom, P-a-i-g-e, O-d-o-m.

22 EXAMINATION BY THE COURT:

23 Q All right, Ms. Odom. Do you recall my
24 instructions yesterday concerning pretrial publicity
25 and exposing yourself to information about this case?

1 A Yes.

2 Q And have you followed those instructions?

3 A Yes.

4 Q And kept away from any type of information and no
5 contact with any person?

6 A Yes.

7 Q Thank you very much for doing that.

8 Ms. Odom, I have your two sheets that we asked you
9 to fill out this morning. And I note that on the first
10 sheet you indicate that you are an A type juror; is
11 that correct?

12 A Uh-huh.

13 Q Let me, first of all, tell you, Ms. Odom, that
14 every answer you give us in this inquiry that we're
15 about to proceed in is the correct answer. All that we
16 need to know is how you feel about certain issues.
17 We're not trying to pry into your private life. We're
18 not trying to invade your privacy. We simply want
19 truthful answers about your true feelings.

20 And as I said, there are no wrong answers. Every
21 answer you give is right. You certainly have your --
22 the right to have your feelings and beliefs, and we
23 respect that and appreciate your candor in sharing it
24 with us. But, as I look at the sheet here, you
25 indicate generally that you simply feel that once a

1 murder has been committed, the death penalty is the
2 only appropriate punishment no matter what the
3 circumstances of the case. Is that your feeling?

4 A Yes.

5 Q Okay. And do you understand, Ms. Odom, that in
6 South Carolina murder is defined as the unlawful
7 killing of another person or of a person with malice
8 aforethought? That's the definition of murder. And
9 malice aforethought means with evil intentions, with a
10 depraved heart, with ill will towards that person.
11 That's what malice is.

12 A Uh-huh.

13 Q It's quite different from homicides. There are
14 many different kinds of homicide. It only rises to the
15 point of being a murder if the State is able to prove
16 beyond a reasonable doubt that there was malice
17 aforethought involved in the murder.

18 And not all murder cases are death penalty cases.
19 It's very rare that we have a case where the State
20 seeks the death penalty because the State may only seek
21 the death penalty in cases which involve aggravating
22 circumstances or circumstances that make the murder
23 more heinous, more culpable. It makes it a worse
24 murder.

25 Now, I do not suggest to you at all that this

1 defendant is even guilty -- is guilty of anything. In
2 fact, the law presumes that he is innocent. He has a
3 presumption of innocence. Have you ever heard that
4 term used?

5 A Uh-huh, yeah.

6 Q It is in every criminal case. The person accused
7 begins the trial with that presumption that he's
8 innocent. And the State has to overcome that
9 presumption. And the way it does that is the State
10 must convince each and every juror of a person's guilt
11 of each and every element of the events beyond a
12 reasonable doubt. And that's how the State overcomes
13 that presumption.

14 But even if the State -- and I'm not suggesting
15 that it can in this case. That would be for the jury
16 to determine -- but even if the State were to reach
17 that point, the State were to prove that the person
18 committed this killing with malice aforethought, the
19 death penalty is not appropriate at that point. Only
20 if the State then moves to the second phase or what we
21 call the penalty phase and can again prove to the jury
22 beyond a reasonable doubt, each and every juror beyond
23 a reasonable doubt that one of the statutory
24 aggravating circumstances exist.

25 Now, a statutory aggravating circumstance is one

1 that our legislature set out in the law. It says if
2 the State can prove that one of these that we list here
3 is present and the jury finds unanimously and beyond a
4 reasonable doubt that one of these aggravating
5 circumstances apply can the death penalty even be
6 considered. Do you understand that?

7 A (Nodding.)

8 Q Okay. Now, even if the State reaches that point
9 the jury must -- must -- consider a list of statutory
10 mitigating circumstances. And mitigating circumstances
11 are circumstances that extenuate or make it less, or
12 more inculpable, lessens the severity of the murder.
13 The jury must consider all of those that are listed by
14 the legislature.

15 They must also consider any other evidence that
16 may be presented in the case that could be considered
17 or is considered by them to be a mitigating factor in a
18 case. They must consider these before they can even
19 impose the death penalty. And even if the State has
20 established that there is a statutory aggravating
21 circumstance, even if the State has proven that, and
22 even if the jury says, "We really can't find a
23 mitigating circumstance or any mitigating
24 circumstance," did you know that the jury could still
25 recommend life as an extension of mercy? Do you

1 understand that?

2 A Uh-huh.

3 Q Okay. Now, if you were on this jury and I
4 explained that, I gave you the full charge on the law
5 and I said, "This is what the law is in this state,"
6 could you follow that law, or would your feelings about
7 the death penalty override in some way your will, that
8 is, would it substantially affect your ability to
9 follow the law as I instruct you?

10 A Um --

11 Q Could you follow it as I gave it to you or would
12 your feeling about the death penalty, this thing that
13 you've told us that you have about the death penalty,
14 would that unfairly affect your ability to be fair and
15 impartial to the jury -- I mean to the defendant and
16 the State in applying the law as I give it to you?

17 A No.

18 Q No --

19 A In this case, I mean, I don't see how it can
20 change.

21 Q Your feelings about the death penalty --

22 A Yep.

23 Q -- you think that you would -- you have a
24 preconceived notion that that is the appropriate
25 penalty in this case and under no circumstances could

1 you overcome it?

2 A It would be very hard, yes.

3 Q Okay. All right. Well, that's a fair answer.

4 And that's what I want to hear. If you tell me you
5 don't think that you could overcome that, that's
6 important. And that's a fair answer, and no one will
7 criticize you for it. It's just that we need to know.

8 A Okay.

9 Q But you do not believe after what I have told you
10 here that you could set your feelings aside, that is
11 your preconceived notion of what the death penalty
12 should be, you don't believe you could set that aside?

13 A No.

14 THE COURT: Okay. I'm going to allow voir dire of
15 this juror on that issue at this time, if the State
16 wishes to and the defense wishes to.

17 MR. RICHARDSON: I believe we can agree she's not
18 a type C, probably won't be a type C, so we could agree
19 to excuse her if that's --

20 THE COURT: Is that correct, Mr. McGuire?

21 MR. MCGUIRE: Yes, sir.

22 THE COURT: Thank you.

23 You are excused from further appearance in this
24 matter.

25 MS. ODOM: Okay.

1 THE COURT: Thank you.

2 MS. ODOM: Thank you.

3 (WHEREUPON, Ms. Odom exited the courtroom
4 at 1:02 p.m.)

5 THE COURT: Do you have lunch? Let's do that real
6 quick.

7 (WHEREUPON, Lunch recess was taken from 1:02 p.m.
8 to 1:41 p.m.)

9 THE COURT: I see we have everyone here. Please
10 be seated.

11 Can we have Mr. Graham.

12 (WHEREUPON, Mr. Graham entered the courtroom
13 at 1:43 p.m.)

14 **WILLIAM GRAHAM,**

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE CLERK: Please speak into the microphone and
17 state your name and spell your last for the record.

18 MR. GRAHAM: My name is William Ansel Graham,
19 G-r-a-h-a-m.

20 EXAMINATION BY THE COURT:

21 Q Good afternoon -- good morning. I guess it's
22 afternoon, Mr. Graham. How are you doing?

23 A Pretty good, sir. How you doing?

24 Q I'm doing well, Mr. Graham.

25 Mr. Graham, do you remember yesterday when I asked

1 you yesterday not to expose yourself to any publicity
2 about this case or talk to anybody about it?

3 A Yes.

4 Q Have you followed that instruction?

5 A I have.

6 Q Thank you very much for doing that. And I remind
7 you that you are still under that admonition.

8 Mr. Graham, I have here the two sheets that you
9 were kind enough to prepare for you us. The first one
10 is where you indicate what category of juror you might
11 be, what best describes you. And you've indicated that
12 you are a C type juror; is that right?

13 A Yes, sir.

14 Q Okay. And just so that we understand each other,
15 it's my understanding that this is a juror that would
16 need to hear the facts and circumstances in aggravation
17 and in mitigation before he or she could make the
18 decision regarding punishment. Does that accurately
19 summarize your position?

20 A Yes, it does. Yes, sir.

21 Q Okay. And in that regard, do you understand that
22 punishment -- potential punishment -- and let me make
23 it clear to you, Mr. Graham. We're going to be talking
24 about punishment and all, but please understand no one,
25 especially me, is suggesting that the defendant has

1 been or will be found guilty of anything. Do you
2 understand that --

3 A I do, yes, sir.

4 Q -- and appreciate that? So when we talk about it,
5 don't assume we are thinking we're going to get to
6 that. That would be improper.

7 A Yes.

8 Q It's just that we need to approach these matters
9 before we seat you on a jury. So you understand,
10 right?

11 A I do.

12 Q Okay. So in that regard could you, if the
13 evidence comports with my instructions and the State
14 has met all its burdens -- and we're going to talk
15 about that in a minute -- generally speaking, could
16 you, under the proper circumstances, impose the
17 sentence of death?

18 A I could, sir.

19 Q And for a person who was convicted -- if that were
20 to occur -- of murder, if the circumstances were
21 appropriate, could you impose a sentence of life
22 imprisonment?

23 A Yes, sir.

24 Q You could do either one?

25 A Yes, sir.

1 Q All right, sir. Now, let me talk to you a minute
2 about how this case would proceed. We've already
3 talked about the fact the case would be a two-part
4 case. The first part would be what we refer to as the
5 guilt phase. I guess we could refer to it as the
6 innocence phase. But what it does is that part of the
7 trial where the only issue would be whether the
8 defendant is guilty of the offense of murder. Do you
9 understand that?

10 A Yes, sir.

11 Q Can you appreciate the fact that under the law in
12 this state and essentially in every state that I know
13 of a defendant is presumed -- although charged,
14 although indicted, is presumed to be innocent?

15 A Yes, sir.

16 Q And the State has to be -- only the State. The
17 defendant has no duty to defend himself. The State has
18 a duty to prove his guilt beyond a reasonable doubt.
19 That is, to convince each and every juror of his guilt
20 beyond a reasonable doubt. And that's how and the only
21 way the jury can overcome this presumption of
22 innocence. Can you appreciate that fact?

23 A I think so, yes.

24 Q And could you abide by those principles in your
25 deliberations if you were selected by a juror --

1 A I could, sir.

2 Q -- as a juror. You could look at the evidence and
3 apply the law as I gave it to you and apply those
4 principles?

5 A I -- I'm sure I could, sir.

6 Q Okay. So you have no problem with that?

7 A No, sir.

8 Q Okay. All right. Now, in a trial, Mr. Graham,
9 the jury is the sole and exclusive judge of the facts.
10 You know, we hear evidence in trial, and the evidence
11 is the way that the defense, if it chooses, and the
12 State must present information to the jury. And the
13 jury then considers all that evidence and from that
14 evidence formulate what they believe to be the facts in
15 the case.

16 And that's solely in the prerogative of the jury.
17 I can't have an opinion about it, should not have an
18 opinion about it, should not influence you in any way.
19 You as jurors must make the determination what the
20 facts are. Do you understand that?

21 A Yes, sir.

22 Q Okay. And you could follow my instructions in
23 that regard?

24 A Yes, sir.

25 Q You would consider only the evidence that you

1 heard in the case?

2 A Yes, sir.

3 Q Okay. Now, that evidence then must be applied to
4 the law of the case. And just like you or the jury
5 would be the sole judge of what the facts are, I am the
6 sole judge of what the law is. You know, think of the
7 deliberation process is like bringing two great big
8 gears together in a mill or something. One is the
9 facts and one is the law. I make the law. I create
10 the gear that's the law. The jury creates the gear
11 that's the facts. And the deliberation process sort of
12 is the bringing together of those, those two big gears.

13 And the way they fit is sort of -- can be
14 considered the way that the deliberation process works.
15 You determine how they fit, and that fit determines
16 whether or not the State has proven its case beyond a
17 reasonable doubt.

18 Now, can you kind of appreciate that analogy?

19 A I understand that analogy, yes, sir.

20 Q Now, would you be guided by the law as I give it
21 to you?

22 A Yes, sir.

23 Q All right. What if you didn't agree with the law
24 as I gave it to you?

25 A It wouldn't make no difference.

1 Q It would make no difference?

2 A No.

3 Q That's the way it should be. Now, if the State
4 can convict the defendant or convince the jury of the
5 defendant's guilt beyond a reasonable doubt that he
6 has -- convinced them that he has committed the offense
7 of murder -- and murder is the unlawful killing of a
8 person with malice aforethought. And malice is ill
9 will or a depraved heart, meanness, if you will,
10 towards the victim. If the State has proven that the
11 killing took place with malice, do you understand that
12 the death penalty would not be appropriate at that
13 point in time?

14 Let me put it this way. Do you understand that
15 the jury would -- I mean the State would have to do
16 more than show purely malice?

17 A Yes, sir.

18 Q Okay. And if I instructed you that that was the
19 case, could you follow that?

20 A Yes, sir.

21 Q Okay. Now, let me tell you that if there is a
22 conviction -- and this is a death penalty case, and it
23 is quite different from normal cases -- the State would
24 then -- we would begin another part of the trial. And
25 the State must prove beyond a reasonable doubt to each

1 and every juror that the killing with malice was
2 accompanied by what we call an aggravating
3 circumstance.

4 And when our legislature passed the law, death
5 penalty law, it specifically set forth the aggravating
6 circumstances. And before the jury could even consider
7 the death penalty, the State would have to first
8 convince every juror beyond a reasonable doubt that one
9 of those aggravating circumstances was present. Do you
10 understand that?

11 A Yes, sir.

12 Q Now, what if I gave you or explained to you what
13 aggravating circumstances were and you didn't agree
14 with one of those? Could you still follow the -- my
15 instructions even though you personally did not agree
16 with it? Could you follow my instructions?

17 A Yes, sir. It's the law.

18 Q That would be the law, okay. What if you felt
19 that there was some other thing that was aggravating in
20 the case and I told you that that was not an
21 aggravating circumstance?

22 A That's the law also.

23 Q You would ignore that?

24 A Yes, sir.

25 Q All right, sir. Now, if -- only if -- there was

1 a -- if you, the jury, determined that there was a
2 statutory aggravating circumstance, the law requires
3 you, before a jury could recommend a death penalty,
4 requires the jury to consider statutory -- that's set
5 by the legislature -- statutory mitigating
6 circumstances. Could consider mitigating circumstances
7 in this case?

8 A Yes, sir.

9 Q What if you personally did not think that one of
10 them should be a mitigating circumstance?

11 A I wouldn't let my personal feelings into it.

12 Q You would still follow my instructions?

13 A Yes, sir.

14 Q And can consider that?

15 A Yes, sir.

16 Q All right, sir. Now, it is also the law that you,
17 the jury, unlike aggravating circumstances, may look at
18 the facts of the case and determine what else you might
19 consider to be a mitigating circumstance. Do you
20 understand that?

21 A Yes, sir.

22 Q Would you, in fact, look for other mitigating
23 circumstances if I instruct you to do so?

24 A Yes, sir.

25 Q Okay. What if one of your jurors, your fellow

1 jurors, thought there was some other factor in the case
2 that should be a mitigating circumstance? Would you
3 consider what he said and listen to him or her and
4 listen to them and be receptive to what they had to
5 say?

6 A I would listen to them, yes.

7 Q All right. Now, would you consider adopting it as
8 your own? Would you consider that?

9 A This is outside of statute?

10 Q Yeah, outside the statute, if I told you you could
11 consider anything else.

12 A I would then, yes.

13 Q If a fellow juror suggested something else, would
14 you be receptive to that?

15 A Yes, sir.

16 Q All right, sir. Do you understand that, as a
17 jury, even if you find aggravating circumstances and
18 even if you do not find anything that you would
19 consider mitigating, that you could still grant mercy
20 and impose a life sentence?

21 A Would I be able to do that or --

22 Q What I'm telling you is this. Could you listen to
23 the evidence in the case, the circumstances, all the
24 factors that we've talked about, and even if you did
25 not find any mitigating circumstances, could you still,

1 if I instruct you to do so, at least consider it?

2 A Yes, sir.

3 Q You could do that?

4 A Yes, sir.

5 Q You would not say or you do not tell me, "I would
6 not do it if I could not find a mitigating
7 circumstance"?

8 A No, I would not do that.

9 Q All right, sir. I want to make sure that you
10 understand how the statute works.

11 All right, sir. Then there's other parts of the
12 case. There's the guilt phase as well. And I would be
13 instructing you as to the law there. Can you follow
14 the law?

15 A Yes, sir.

16 Q And would you follow the law in every instance
17 that I give you?

18 A Yes, sir, I would.

19 Q Do you know of anything -- anything -- any
20 opinions that you might hold, any information that you
21 have received, is there anything that you know about
22 this case, have heard about this case, is there
23 anything that might prevent you from looking at the
24 evidence in this case fairly as far as the State and
25 the defense is concerned?

1 A There's nothing that would prevent me. I don't
2 know anything about it.

3 Q All right, sir. How long have you been living
4 here?

5 A Just over two years.

6 Q All right, sir. Let me ask you once again. If
7 the circumstances of this case met the criteria that we
8 have been talking about, could you, in the appropriate
9 case, impose the death penalty?

10 A Yes, sir.

11 Q Could you, in an appropriate case, impose a life
12 sentence?

13 A Yes, sir.

14 Q Do you understand that in this case sequestration
15 is going to be required by me?

16 A (Nodding.)

17 Q And that you would be required to, if you're
18 selected as a juror, to live in a hotel at the county's
19 expense -- they would feed you and take care of you and
20 attend to your needs as far as that's concerned, but it
21 might be several days of trial. Do you understand
22 that?

23 A I do, sir.

24 Q Is there any problem with that?

25 A No, sir, not with me. With my wife, yes, but I

1 would be able to do it.

2 Q You would be able to do it.

3 A Yes.

4 Q Would you welcome it?

5 A No, sir, I would not, no.

6 Q All right. One other thing that I want to ask
7 you. I notice on your witness list that you have not
8 marked that you knew anyone.

9 A I -- I have some second and third cousins here
10 that I haven't spoken with in many, many years.

11 Q Let me add about four names to it: Nicole Pyle,
12 John Taylor, Christine Del Fonzo, William Nettles and
13 Michelle Light.

14 A No.

15 Q Those were left off. Do you recognize any of
16 those names?

17 A No.

18 Q Do you think that if you had any significant
19 relationship with any of these folks, whether it be
20 business, personal, family, whatever, that you would
21 probably recognize their names?

22 A I would, yes, sir.

23 Q I say that because I'm much better with faces than
24 names. But you don't, to the best of your knowledge,
25 know anyone?

1 A I don't know any person.

2 THE COURT: Okay. Mr. McGuire or Ms. Norris.

3 EXAMINATION BY MS. NORRIS:

4 Q Good afternoon, Mr. Graham. I'm going to come
5 over here and talk to you instead of being across the
6 room from you like yesterday. This will be our one
7 chance.

8 I noticed on your juror form -- and I don't mean
9 to be personal about this. We just need to know. And
10 of course there are no right or wrong answers -- that
11 you indicated that you or someone close to you has been
12 a victim of a crime. Could you tell me about that?

13 A My mother's house was broken into. That was --
14 she lived up in -- she passed away since, but she lived
15 up in Virginia Beach. And so she was -- it really
16 upset her because they pretty much gutted the house.

17 Q But your mother wasn't harmed?

18 A She was not harmed, no.

19 Q Would that impact that your mother was a victim of
20 a crime, would that have any influence on you?

21 A No, sir -- no, ma'am, no.

22 Q Okay. Let me talk with you a little bit about the
23 death penalty. And I understand we're getting our cart
24 before our horse here because first, as I'm sure you
25 understand and the judge explained, first we've got to

1 have a trial to decide guilt or innocence. And
2 Mr. Cottrell has pled not guilty. Do you understand
3 that?

4 A (Nodding.)

5 Q So by talking with you about the death penalty,
6 we're not trying to say that we think he is because
7 myself and Mr. McGuire, we don't think he is and we're
8 going to argue that.

9 A (Nodding.)

10 Q But just in general, when you say that you can
11 consider the death penalty and life without parole, I
12 just want to talk to you about those two things.

13 Tell me in general what are your thoughts about
14 the death penalty?

15 A I think that in some cases it's warranted and some
16 cases it isn't. I've -- I've -- where I lived prior to
17 moving here, which was in Arizona, in Phoenix, there's
18 a much larger population base, and there's rather
19 spectacular, nationwide known trials and that kind of
20 thing, so you just kind of follow along with them.

21 But I've never -- you know, the death penalty is
22 not something I've given a lot of thought to. But I
23 look at it. In some cases in my opinion it would be
24 necessary for closure for the people, the relatives and
25 the coworkers, family of the victims, but there is a

1 tradeoff because it's going to -- it's going to affect
2 the person who's been executed. It's going to affect
3 their family and coworkers, so there's no free lunch.
4 I know that.

5 Q And if we made you king for the day or made you
6 king of South Carolina for a day --

7 A I'd quit.

8 Q I appreciate that. But we're not going to let you
9 abdicate the throne. If we made you king for the day
10 and you were asked to make one decision that day on
11 what law in this place, do you have the death penalty
12 as a law or do you not?

13 A I would have it.

14 Q Okay. And is there something more to say about
15 that or are the answers you've already given --

16 A Just the answers I've given. I wouldn't -- I
17 wouldn't make such a law lightly. And I would get
18 advice from people who are more knowledgeable on that
19 kind of thing than me, but I think -- I think there are
20 cases where the death penalty should apply.

21 Q And when we're talking about the death penalty,
22 another one of those sensitive topics that I hate to
23 ask because my mama told me never to talk about race
24 with people, but Mr. Cottrell, obviously, is not a
25 white gentleman. The victim in this case, Officer

1 McGarry, the deceased, was a white male. Do you think
2 that the difference in race there or just
3 Mr. Cottrell's race or any black defendant's race would
4 have any impact in the criminal justice system or
5 should?

6 A I think there may be cases when it is a factor.
7 But I've worked with the public my entire life, for
8 almost 50 years. And I think it's less of a factor
9 than our society generally gives to it. That's just my
10 opinion. But, I mean, it might come into play
11 sometimes as far as any particular case. I wouldn't
12 know until I knew the facts.

13 Q So don't let me put words in your mouth. I'm just
14 trying to process what you just said. To your mind,
15 race is less of a factor than society places on it?

16 A I do believe that.

17 Q Okay. Meaning we talk about race more than it
18 actually matters?

19 A I think -- yeah, right, exactly.

20 Q And, again, with cart before the horse, we've got
21 to have a trial first. But assuming we have had that
22 trial -- and I'm not talking about Mr. Cottrell now.
23 I'm talking about a hypothetical case. As the judge
24 explained to you, in order to be convicted of murder,
25 it has to be an unlawful killing of another with malice

1 aforethought. You understand that?

2 A (Nodding.)

3 Q And malice is essentially a wicked, evil heart,
4 fatally bent on mischief. Did it. Meant to do it.
5 We're not talking about accident, self-defense. Do you
6 understand that?

7 A (Nodding.)

8 Q And if you were a juror on this hypothetical case
9 and you heard and considered all the evidence and found
10 the defendant guilty of murder, would you at that point
11 believe that the death penalty should be automatically
12 imposed?

13 A Not automatically, no. There might be other
14 circumstances. I mean, I -- it depends on the facts I
15 had. If it was time to make that decision, I would
16 make that decision based on what I knew to be, what we
17 knew to be true.

18 Q Okay. Well, that's fair enough. Because it's not
19 time to make that decision now. I think your Honor
20 explained that. In order for our hypothetical
21 defendant again -- not talking about Mr. Cottrell -- in
22 order for a person to be eligible for the death
23 penalty, it has to be murder plus something.

24 A (Nodding.)

25 Q It can be an additional crime. You know, murder

1 rape. It can be status of victim, a young child.
2 There are certain categories, and the judge, of course,
3 will instruct should we get there in this case. But
4 there will be murder plus, what I call plus. Murder
5 plus that at least one statutory aggravating
6 circumstance beyond a reasonable doubt, all 12 jurors
7 agree. We have got to be there before he's eligible
8 for the death penalty.

9 A (Nodding.)

10 Q At that point when you have sat on our
11 hypothetical case and you personally were convinced
12 beyond a reasonable doubt malicious murder -- meant to
13 do it, intended to do it, did it -- plus something, do
14 you think that the death penalty in your opinion is
15 your automatic vote at that point?

16 A No, I don't.

17 Q Okay. Now, in terms of -- in terms of where we go
18 after that, because you're exactly right, that's not
19 where the decision is made. After that the State has
20 the opportunity to present additional aggravating
21 evidence. And "aggravating" meaning whatever weighs in
22 favor of the death penalty. And the judge will, of
23 course, instruct again. But that's a general
24 definition. And "mitigating" is all that stuff that
25 weighs in favor of life. Would you, as a juror,

1 consider all of that?

2 A Yes, I would.

3 Q And when I say that, would it -- does that to you
4 mean, as a good, fair, honest citizen, you would sit
5 there and listen to everything we say, or does that
6 mean it could actually make a difference in your own
7 opinion?

8 A It could. After I heard, it could make a
9 difference, yeah, if I heard more.

10 Q And you understand now that under the law, our
11 hypothetical defendant in that situation is under no
12 obligation at all to present any evidence?

13 A (Nodding.)

14 Q But you can still find mitigation even if the
15 defendant's not arguing it because it's up to the
16 individual juror what you believe weighs in favor of
17 that?

18 A I understand that.

19 Q If you're in that situation where we've got a
20 murder conviction, we've got our plus, no mitigation to
21 go with that, do you think that would be an automatic
22 death penalty?

23 A I don't think an automatic death penalty, no. I
24 think if there's more to be listened to, if there is a
25 discussion to be done amongst me and my fellow jurors,

1 then we would arrive at it then. But I think there is
2 a possibility at least that something, a mitigating
3 factor, could come up during discussions that maybe
4 someone else hadn't thought about.

5 Q Yes, sir. And let me think of how to phrase this.
6 The judge asked you a lot of questions, and I certainly
7 am never going to disagree with the judge. But when
8 the judge asked if you could follow the law --

9 A Yeah.

10 Q -- do you understand that the law never requires
11 the death penalty?

12 A I do understand that.

13 Q Likewise, the law never requires a life sentence.
14 Do you understand that?

15 A I understand that.

16 Q So there's never going to be a situation where the
17 judge is going to say when we get to sentencing, if we
18 get there -- and, again, I'm talking about a
19 hypothetical case with my question -- but the judge is
20 never going to say, "If you find A, B and C, it has to
21 be this sentence"?

22 A I understand that.

23 Q And under the law, always in a capital case,
24 should you reach the decision in our jury of making
25 that life without parole determination or the death

1 penalty, do you understand that the law says that you
2 can consider giving a life sentence for any reason or
3 no reason at all?

4 A I understand that.

5 Q You can also give a life sentence for mercy. Do
6 you understand that?

7 A I understand that, too, yeah.

8 Q And I'd like to get your feelings a little bit
9 about mercy. Is that something that you believe is
10 earned by somebody or you just can hand that out freely
11 based on whatever reason?

12 A I don't know that I would call it being earned by
13 someone, but I think if I was discussing the facts and
14 as we knew it how everybody felt, I think the idea is
15 to come to a consensus. And I think probably if I had
16 to guess -- I've never actually sat on a jury -- but
17 you're going to have multiple opinions during that
18 delib -- while everybody is jamming it together, you
19 know. Because you might have a person who grants mercy
20 no matter what, and you might have a person who wants
21 the death penalty or no or whatever no matter what.
22 But it's a consensus that we come to.

23 Me, personally, there are situations -- I can't,
24 without knowing, I can't say whether I'd be merciful or
25 not. But it's always an option. I mean, it's always

1 in the back of my head.

2 Q Do you understand that for a juror on a capital
3 case the law says that each individual juror must make
4 a reasoned moral choice or decision. And although our
5 goal in the jury system is to communicate and discuss,
6 people sometimes disagree?

7 A That's right. I understand that.

8 Q And if you had gone through all that process,
9 hearing the evidence in trial, hearing the evidence in
10 aggravation and mitigation, and you had reached your
11 own choice -- again talking about a hypothetical this
12 case. You don't know anything about this one -- if you
13 had made your own individual choice of whether that was
14 life or death as the appropriate punishment -- and
15 again that's life without parole -- would you give up
16 that opinion just to go along with the others? Say if
17 11 people voted one way and you were over here all by
18 yourself, would you give that up just to join the
19 consensus?

20 A It would be -- it would depend. I mean, we
21 haven't made our decision yet, so it would depend on if
22 they could convince me to change. I wouldn't do it on
23 my own. If they could convince me to change my
24 opinion, then I would go along with it. And if I was
25 in the majority and one of them was holding out, if I

1 was able to convince them of the majority opinion, if I
2 felt that way, then I would try to do so to come to --
3 to come to consensus. But I also know that, you know,
4 the possibility that no consensus will be reached.

5 Q And do you understand that if that happens, that
6 is, in fact, a lawful verdict?

7 A Yes.

8 MS. NORRIS: Give me just one second.

9 (WHEREUPON, an off-the-record discussion was held
10 between Ms. Norris and Mr. McGuire.)

11 MS. NORRIS: Nothing further.

12 Thank you, sir.

13 EXAMINATION BY MR. RICHARDSON:

14 Q Mr. Graham, my name is Jimmy Richardson,
15 Solicitor, or in Arizona it would be the DA.

16 A DA, yeah.

17 Q And this is Scott Hixson. Together we're going to
18 present the case for the State. I'm not going to bore
19 you and go through a lot of other questions, but you
20 have already realized that this is a two-part trial?

21 A I do understand that.

22 Q Or could be a two-part trial, guilt or innocence,
23 simply did this man commit this murder unjustly, and
24 then part two would be the State's burden to show that
25 it's bad enough or there's an aggravating circumstance

1 where we would ask you to vote for the death penalty.

2 Okay?

3 A I understand that.

4 Q All right. Now, what the judge will do at that
5 point is he'll give you a verdict form, and it will
6 have 12 lines. That, too, is a little bit different.
7 Usually just the foreman signs. But Mr. Graham will
8 have to sign saying if I voted for the death penalty,
9 I'm signing basically this death warrant, this
10 indictment saying, "Yes, he's guilty; yes, we believe
11 he deserves the death penalty." Do you think you could
12 sign your name given the right facts and circumstances
13 by the State?

14 A I think I could, yes, sir.

15 Q All right. I have no further questions. Thank
16 you.

17 THE COURT: All right. Have this witness step
18 down. Mr. Graham, if you would accompany Mr. Ropp
19 right outside the door there and you stay with him just
20 a moment.

21 (WHEREUPON, Mr. Graham exited the courtroom
22 at 2:18 p.m.)

23 THE COURT: I'll hear from the defense.

24 MS. NORRIS: We believe he's qualified, your
25 Honor.

1 MR. RICHARDSON: Agree, your Honor.

2 THE COURT: Bring him in.

3 (WHEREUPON, Mr. Graham entered the courtroom
4 at 2:18 p.m.)

5 THE COURT: Mr. Graham, I find that you are
6 qualified to serve on this jury. We will be several
7 days now putting together a panel from which we will
8 ultimately draw a jury. We will not need you for
9 several days. Please remember the admonition that I
10 gave you concerning pretrial publicity, doing any
11 research. I'm sure you can appreciate the reason for
12 that and what I need for you to do. That order remains
13 in effect and controls you. Please do not seek out any
14 information or expose yourself to any information
15 concerning this case.

16 On Sunday evening, this coming Sunday evening, I
17 have instructed the clerk of court to place on her
18 answering machine an instruction tape that will tell
19 you exactly when and where to appear for jury service.
20 Remember that you may be sequestered, so please bring
21 with you when you come for jury selection -- we will
22 actually select the jury when you appear. At this
23 juncture you are not on the jury. You are a potential
24 qualified juror. But arrive prepared to stay with us
25 for several days. Have medications and things of that

1 nature that you will need. As I said, we'll put you up
2 in a hotel with the other jurors and we'll provide
3 anything that you need there. Okay?

4 MR. GRAHAM: Thank you, sir.

5 THE COURT: Mr. Hall -- or Ms. Hall.

6 (WHEREUPON, Ms. Hall entered the courtroom
7 at 2:21 p.m.)

8 THE COURT: Good afternoon, Ms. Hall.

9 **THERESA HALL,**

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: Please speak into the microphone and
12 state your name and spell your last for the record.

13 MS. HALL: Theresa Hall, H-a-l-l.

14 EXAMINATION BY THE COURT:

15 Q Ms. Hall, it's good to have you here with us. Did
16 you remember my instructions concerning pretrial
17 publicity and not placing yourself in a position where
18 you might be exposed to any publicity about this case?

19 A I do.

20 Q And have you complied with my order concerning
21 that?

22 A Yes, I have.

23 Q You have not let anyone approach you or discuss
24 this case with you and you have not discussed it with
25 anyone else?

1 A No.

2 Q Thank you, ma'am.

3 Ms. Hall, you're rather soft-spoken, but perhaps
4 if you got a little closer to that microphone. Our
5 court reporter here has to record your responses.

6 Ms. Hall, one of the things that we asked you to
7 do this morning was to provide us with your assessment
8 of your attitudes towards jury service in a murder
9 case. We asked you to categorize yourself. And you
10 have categorized yourself as a category A juror; is
11 that correct?

12 A That's correct.

13 Q All right. Now, just so that you and I will
14 make -- I want to make sure we understand what we are
15 talking about. A category A juror is one that simply
16 feels that once a murder has been committed, the death
17 penalty is the only appropriate punishment no matter
18 what the circumstances of the case. Is that your
19 opinion?

20 A That's correct.

21 Q Let me tell you, Ms. Hall, that the inquiries that
22 we're going to make of you today are certainly not
23 intended to invade your privacy or anything of that
24 nature. And I promise you no one here will be
25 critical. We all have attitudes or opinions. That's

1 one of the great things about us is we're allowed to
2 have that. And we all have attitudes and opinions
3 about a number of things. But we need to explore your
4 attitudes and opinions about the factors involved in
5 the case at hand.

6 So let me say that there is absolutely no wrong
7 answers that you can give. Every answer that you give
8 is going to be the right answer. All that we're
9 concerned about is it be a truthful answer. Because
10 what we have to determine here today is whether or not
11 there's anything -- any attitude, opinion, anything
12 that's happened to you -- that would prevent or
13 substantially impair your ability to carry out your
14 duties as a juror. Okay?

15 Now, do you remember on yesterday when I talked
16 with you about how a murder trial of this sort -- let
17 me call it a death penalty trial -- how it proceeds and
18 how it's conducted?

19 A Yes.

20 Q Now, first of all, let me say this. We're going
21 to necessarily have to talk about a penalty phase and
22 things of that nature. Let me say that we do that out
23 of necessity. It does not suggest, absolutely does not
24 suggest that Mr. Cottrell will be or has been convicted
25 of anything. Do you understand that?

1 A Yes.

2 Q We just need to move on and do it all at one time.
3 And we don't mean me to even suggest that he will even
4 be convicted in this matter. Do you understand that?

5 A Yes.

6 Q In the State of South Carolina and actually every
7 state that I'm aware of, every person who is
8 convicted -- or charged with a crime has what we call a
9 presumption of innocence. Have you heard that term
10 before, "presumption of innocence"?

11 A Yes, I have.

12 Q And what it means is everybody must assume that
13 the defendant, all jurors particularly, must assume at
14 the beginning of the trial that the defendant is
15 innocent. That is a legal right that we all have. It
16 is an important right. And the State has to overcome
17 that presumption.

18 And the way it overcomes that presumption is the
19 State has to convince each and every juror -- each and
20 every one -- of the defendant's guilt beyond a
21 reasonable doubt. That is a requirement. And unless
22 the State has convinced every juror of the defendant's
23 guilt beyond a reasonable doubt, there can be no
24 conviction. Is that your understanding of the law?

25 A Yes, it is.

1 Q Do you have any problem with that?

2 A No.

3 Q Okay. That seems fair, doesn't it?

4 A Uh-huh, yes.

5 Q I mean, that's the cornerstone of our process.

6 Well, in this case it's a rather unique case.

7 Death penalties are. We don't have many death penalty

8 cases. A person can be charged with murder and it not

9 be a death penalty case. Do you understand that?

10 A Yes.

11 Q Okay. Well, murder is simply this: It is the
12 unlawful killing of a person with malice aforethought.

13 Malice is ill will, an evil heart, meanness towards
14 that person generally. That's what malice means. And

15 if we were in trial I would give you a more detailed
16 description of what malice is when I charge the malice.

17 But the State would have to prove in this trial
18 that Mr. Cottrell was guilty of the unlawful killing of
19 another person with malice aforethought in order to get
20 a conviction for murder. That would be if the State
21 can -- evidence can rise to that level and each juror
22 is convinced beyond a reasonable doubt, of his guilt
23 beyond a reasonable doubt, the State would be entitled
24 to a verdict of guilty of murder.

25 But I want you to understand that at that point

1 the death penalty would not be appropriate. The death
2 penalty is not even a possible penalty for a case in
3 which the State only proves murder. Do you understand
4 that?

5 A Yes.

6 Q Okay. The State must go beyond that, and that's
7 what we call the second phase or the guilt phase of a
8 trial. The State must have murder plus something else.
9 And the same burden is on the State in that second
10 trial. It must prove that something else beyond a
11 reasonable doubt and it has to convince each and every
12 juror beyond a reasonable doubt. And what the State
13 has to prove is what we call an aggravating
14 circumstance. There are several that are described by
15 the law in South Carolina. The legislature says these
16 are the and the only aggravating circumstances. The
17 State must prove at least one of them before the death
18 penalty would even be a possibility. Do you understand
19 that?

20 A Yes.

21 Q Okay. If we had a trial and the defendant was
22 found guilty of murder and we went into the second
23 phase and the jury was unable to unanimously find the
24 existence of one of those statutory aggravating
25 circumstances, it would just have to stop right there

1 and a life sentence would be the only sentence
2 appropriate. Do you understand that?

3 A Yes.

4 Q Okay. Now, what if you were on this jury and I
5 were to instruct you that there are these specific
6 aggravating circumstances. What if you personally felt
7 like, "Well, I don't think one of them should be an
8 aggravating circumstance," could you still apply the
9 law as I gave it to you and consider all the statutory?

10 A Yes.

11 Q If I told you that you could not consider any
12 other aggravating circumstances and personally you felt
13 that some other factor was an aggravating circumstance,
14 but I told you that you could not consider anything but
15 these specific ones I give you, could you abide by
16 that?

17 A Yes.

18 Q Okay. Now, if you found an aggravating
19 circumstance, you still could not recommend the death
20 penalty until you have considered mitigating
21 circumstances. There are some statutory mitigating
22 circumstances just like there are statutory aggravating
23 circumstances. But if I told you these are the
24 statutory mitigating circumstances, would you consider
25 all of those or consider whether they were present?

1 A Yes.

2 Q Okay. If I told you -- and this is the law, by
3 the way -- if I told you you don't have to stop there
4 like you do with aggravating circumstances. You can
5 only consider the statutory aggravating circumstances,
6 the ones that are spelled out in the law. But on
7 mitigating circumstances, as a juror, as a selected
8 juror, you can look for others, other things about the
9 case that you think is a mitigating circumstance. And
10 a mitigating circumstance is something that lessens the
11 severity of the offense, attenuates it some way, makes
12 it less morally culpable.

13 If I told you you could consider other things as
14 well, would you be open to doing that and would you --
15 would you actually look to see if possibly there was
16 some things that could be a mitigating factor?

17 A Yes.

18 Q You could follow my instructions if I told you to
19 do that?

20 A Yes.

21 Q Okay. Finally, even though as a jury you found no
22 mitigating circumstances, did you know that the jury
23 can still recommend mercy and recommend a life
24 sentence? Were you aware of that?

25 A I think I am.

1 Q You know, most people don't understand that the
2 death penalty statute, there is no death penalty
3 statute that says if this, this, this happens, you have
4 to give a death penalty. The jury always has the
5 option not to give it even if it's for nothing more
6 than the extension of pure mercy. Do you understand
7 that?

8 A Yes.

9 Q And could you, if you were on the jury, follow
10 that principle?

11 A Yes.

12 Q You could. All right. Very well.

13 Now, I note that on -- well, let me back up a
14 minute. You have said that if a murder is committed,
15 that you think the death penalty is the only
16 appropriate punishment. We just talked about the
17 statutory scheme for murder or the death penalty.

18 Are you telling me that you could not follow that
19 statutory plan that we have in this state, that you
20 would want to issue a recommendation of death from the
21 moment the defendant and if the defendant was convicted
22 of murder?

23 A That's what I would want, yes.

24 Q So in spite of my instructions that you could only
25 do it if you found an aggravating circumstance and only

1 if you consider mitigating circumstances and only after
2 you considered the extension of mercy could you do it,
3 you could recommend the death penalty, you would still
4 think that you -- the death penalty was what was
5 appropriate?

6 A Yes.

7 Q Would you be inclined to or more inclined to
8 recommend the death penalty because of your opinion
9 about it?

10 A Yes. And my knowledge of the case, yes.

11 Q Okay. That brings me back to this. I note
12 that -- I might be wrong. We were trying to make notes
13 of who answered how what question I asked yesterday.
14 Again, there's no improper or right answer to this
15 question. But I believe you indicated that you had a
16 reason why or felt that you could not be fair in this
17 case; is that right?

18 A Right.

19 Q Could you share that with me?

20 A It's just the knowledge I have of the previous
21 case.

22 Q Can you tell me about that? What knowledge do you
23 have? What have you read or heard or seen?

24 A Well, Mr. Cottrell was found guilty of murdering
25 Sergeant McGarry. And he was sentenced to the death

1 penalty. And I do know he's also serving a life
2 sentence for killing another person.

3 Q And would that affect your ability to be fair and
4 impartial in this case?

5 A Yes, it would.

6 Q Could you not set that aside?

7 A No.

8 Q Ignore it?

9 A No.

10 Q Even if I instructed you to do that?

11 A No.

12 Q All right. The ultimate question, Ms. Hall, is --
13 and this is what I have to determine. I have to
14 determine whether or not anything exists which would
15 prevent or substantially impair your ability to be --
16 to fulfill your duties as a juror which would prevent
17 from you being a fair and impartial juror.

18 Would this knowledge that you have that you tell
19 me you cannot set aside, would it prevent you from
20 being fair and impartial in this case?

21 A Yes, it would. It would because, like I said, my
22 mind is made up, and --

23 THE COURT: Okay. Do you wish to examine?

24 MS. NORRIS: No, sir.

25 THE COURT: Do you wish to examine?

1 MR. HIXSON: No, sir.

2 THE COURT: Ms. Hall, I thank you for coming and
3 being with us today. You are excused from further
4 appearance in this case. Thank you.

5 (WHEREUPON, Ms. Hall exited the courtroom
6 at 2:40 p.m.)

7 (WHEREUPON, Mr. Jones entered the courtroom
8 at 2:40 p.m.)

9 ANTHONY JONES,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: Please speak into the microphone and
12 state your name and spell your last for the record.

13 MR. JONES: Anthony Sam Jones, J-o-n-e-s.

14 EXAMINATION BY THE COURT:

15 Q Good afternoon, Mr. Jones. How are you?

16 A I'm fine, sir. How are you?

17 Q I'm good. Mr. Jones, do you remember yesterday
18 when I ordered or charged you and the other jurors that
19 you should not expose yourself to any publicity or
20 information about this trial or read anything in the
21 paper about it or do any research, things of that
22 nature? Do you remember my charge on that?

23 A Yes, sir.

24 Q And have you complied with that?

25 A Yes, sir.

1 Q Have you refrained from any contact with any
2 person about this trial?

3 A Yes, sir.

4 Q All right. Thank you very much, Mr. Jones.

5 Mr. Jones, I appreciate the fact that you have
6 prepared our little questionnaires that we had -- gave
7 you this morning concerning the witnesses and the type
8 of juror that you might be. I see here that you have
9 marked that you are a C type juror; is that correct?

10 A Yes, sir.

11 Q Okay. And just to make sure that you and I are on
12 the same page, that is a juror who would need to hear
13 the facts and circumstances in aggravation and in
14 mitigation before he or she could make a decision
15 regarding punishment; is that correct?

16 A Yes, sir.

17 Q Okay. Now, Mr. Jones, in that regard do you
18 realize or understand that any question -- any response
19 you give me to any of my questions is perfectly all
20 right?

21 A Yes, sir.

22 Q All we want to do is find out some information
23 about you.

24 A Yes, sir.

25 Q Do you understand? And we all have different

1 opinions about different things, and that's a great
2 thing about America. We're allowed to have different
3 opinions. And no one is going to criticize you about
4 any opinion you might have about any subject. Our only
5 motive here is to find out what those are and we get
6 truthful answers from you. Can you appreciate that?

7 A Yes, sir.

8 Q In the long run what I am attempting to do,
9 Mr. Jones, is to determine whether or not there's any
10 opinion you might hold or any information that you
11 might have received or anything that may have happened
12 in your life that might prevent or substantially impair
13 your ability to serve as a juror or do your duty as a
14 juror. Can you appreciate that fact?

15 A Yes, sir.

16 Q Okay. I want to talk to you a little bit about
17 the process that we will be undertaking if you are
18 selected on this jury. We talked a little bit about it
19 yesterday. It's essentially about criminal trials.

20 This is a very unique criminal trial. It's what
21 we call a death penalty trial. I'm sure you're aware
22 of that now.

23 A Yes, sir.

24 Q Often we have or much more often we have murder
25 trials, murder trials where the death penalty is not

1 sought. Do you understand the difference in the two?

2 A Yes, sir.

3 Q But when the State is seeking the death penalty,
4 that becomes a very special trial. And one that
5 requires many different things to be done that would
6 not normally be done in a straight murder trial. Can
7 you appreciate that?

8 A Yes, sir.

9 Q First of all, let me ask you. Have you ever heard
10 the term the "presumption of innocence"?

11 A Yes, sir.

12 Q Do you realize that in every case in these United
13 States where a person is charged with a criminal
14 offense, there is automatically this presumption of
15 innocence that that person has not committed the crime
16 that attaches to everyone. Do you understand that?

17 A Yes, sir.

18 Q And the only way that the State can remove that
19 presumption -- and the State has the absolute burden of
20 doing that. The defendant doesn't have to prove one
21 single thing in the trial -- but the State has the
22 burden of proving the person committed the offense
23 beyond a reasonable doubt. It has to convince every
24 single juror of that fact. Did you know that?

25 A Yes, sir.

1 Q Okay. And this is how the State removes this
2 presumption of innocence. Do you understand that
3 process?

4 A Yes, sir.

5 Q And do you have any personal opinions about that
6 process as to whether that's a bad process or a good
7 process?

8 A It's a good process.

9 Q Okay. So you think that is a good process. It's
10 sort of the foundation of our criminal justice system.
11 Now, the defendant in this case is charged first
12 with murder. Okay? And murder, as I told you
13 yesterday, is the unlawful taking of a person's life
14 with malice aforethought. And malice simply means that
15 you had ill will toward that person. You had meanness
16 in your heart. You were bent on -- you had a wicked
17 heart when you did it. That's what malice is. And in
18 the trial I would give you a much better description or
19 instruction as to what malice is. But that's what
20 malice is, and that's what the State would have to
21 prove. If this were just a straight murder case, they
22 would have to prove that beyond a reasonable doubt to
23 each and every juror.

24 And if the jury had been convinced of that beyond
25 a reasonable doubt, a verdict of guilty would be

1 appropriate. Now, let me say that we're talking about
2 the guilt phase and being convicted of guilt. You
3 understand that Mr. Cottrell has that presumption of
4 innocence as he sits here today, and as he goes all
5 through his trial he will have that presumption of
6 innocence. Do you understand that?

7 A Yes, sir.

8 Q Do you have any problem with that concept?

9 A No, sir.

10 Q Okay. So we're not suggesting that he will be
11 convicted or we'll ever even get to a sentencing phase.
12 We just need to talk about it. Do you understand?

13 A Yes, sir.

14 Q Okay. Now, if a person is convicted of murder,
15 did you know that the death penalty is not even to be
16 considered for just conviction of murder?

17 A Yes, sir.

18 Q Okay. The State must, in a death penalty case, go
19 beyond that. The State must prove first that there was
20 a murder, then the State has a second phase called the
21 sentencing phase where the State has to prove something
22 else. You have to have murder plus something else to
23 warrant the death penalty. Do you understand that?

24 A Yes, sir.

25 Q Okay. And if I instructed you in that fashion,

1 would have you any problem following that?

2 A No, sir.

3 Q If I told you that you may not impose the death
4 penalty for murder alone, could you follow that
5 instruction?

6 A Yes, sir.

7 Q And you would understand that?

8 A Yes, sir.

9 Q Okay. Now, the legislature, when it made our
10 death penalty statute, said you've got to have murder
11 plus at least one of these things, and it lists in the
12 statute or in the law the things that we call
13 aggravating circumstances. Those are conditions or
14 circumstances of the murder that make it more morally
15 culpable. It makes it worse. It aggravates the
16 murder. And the legislature has set them out very
17 clearly.

18 Now, I would instruct you that in order to
19 consider even -- even -- to consider the death penalty,
20 you would have to find beyond a reasonable doubt, you
21 would have to find beyond a reasonable doubt, each and
22 every juror would have to find unanimously the
23 existence of at least one of those statutory
24 mitigating -- I mean statutory aggravating factors. Do
25 you understand that?

1 A Yes, sir.

2 Q Now, what if I told you mitigating (sic) factors
3 and there was a factor in there that you didn't think
4 really ought to be a mitigating (sic) factor. Could
5 you still follow the law as I give it to you?

6 A Yes, sir.

7 Q You wouldn't exclude the one that you thought just
8 because you didn't think it was an aggravating
9 circumstance? Could you consider all of them?

10 A Yes, sir.

11 Q Now, the other side, then. What if you looked at
12 this case and said, "Well, I think there ought to be
13 another mitigating factor (sic)," I didn't instruct you
14 that that was a mitigating factor (sic), could you
15 ignore that other factor?

16 A Yes, sir.

17 Q Do you understand that you could not consider any
18 such other factor?

19 A Yes.

20 Q Would you personally have a problem with the fact
21 that I told you these are the only factors you may
22 consider?

23 A No, sir.

24 Q Okay. If there was a mitigating factor (sic)
25 found, you still would not be in a position to consider

1 the death penalty. You would have to first consider
2 whether there were mitigating circumstances.

3 Mitigating circumstances are circumstances that
4 lessen the culpability or make the crime less culpable
5 or not quite as bad. It can be anything from a
6 characteristic of the defendant to the circumstances of
7 the events, any number. There are statutory or in the
8 law mitigating circumstances that you must consider.

9 But I would also tell you that, based on the
10 circumstances of this case, not like with aggravating
11 circumstances -- you can only consider the ones that
12 are written up in the statute or in the law -- with
13 mitigating circumstances, you can consider other
14 circumstances as well, things that you as a jury,
15 outside of the ones written in the law, you might
16 consider to be mitigating in the case. Do you
17 understand that?

18 A Yes, sir.

19 Q And could you follow that if that instruction, if
20 I gave it to you?

21 A Yes, sir.

22 Q Personally do you have any problems with it?

23 A No, sir.

24 Q Okay. Now, finally -- well, let me ask you one
25 other question. Suppose you had a fellow juror who

1 came up with something. He says, you know, "I think we
2 ought to consider this thing over here or that thing
3 over there as mitigating in this case." Would you be
4 open to what that juror pointed out to you or what that
5 juror was suggesting as mitigation, would you be
6 willing to talk about that?

7 A I would be willing to discuss it, yes, sir.

8 Q Okay. And if it were appropriate, would you be
9 willing to adopt it as a mitigating circumstance?

10 A If in the end I found it appropriate, yes, sir.

11 Q All right, sir. And, finally, do you understand
12 that no law in South Carolina says that the death
13 penalty is automatic in any kind of case? Do you
14 understand that?

15 A Yes, sir.

16 Q In fact, in South Carolina I would tell you that
17 even if you found aggravating circumstances, and even
18 if you found no mitigating circumstances, that you
19 could still, as an act of mercy as a jury, give the --
20 a life sentence instead of the death penalty?

21 A Yes, sir.

22 Q Could you follow that instruction?

23 A Yes, sir.

24 Q Okay. Do you find the concept of granting of
25 mercy offensive to you personally?

1 A No, sir.

2 Q All right, sir. Now, Mr. Jones, you also told me
3 that or provided me with a witness list. And I'm
4 looking at your witness list. It doesn't appear that
5 you marked down that you knew anyone.

6 A No, sir.

7 Q Don't know a soul?

8 A No, sir.

9 Q How long have you lived in Horry County?

10 A 37 years.

11 Q Good for you. Mr. Jones, let me add about or four
12 names to that list: Nicole Pyle, John Taylor,
13 Christine Del Fonzo, William Nettles, and Michael (sic)
14 Light. Any of those ring a bell?

15 A No, sir.

16 Q Now, Mr. Jones, I'm not too good with names, but I
17 remember faces well. And it's hard to look at a list
18 like this and try to place all the names. Are you
19 fairly comfortable that you don't know anyone on this
20 list?

21 A Yes, sir.

22 Q Do you think that if you had any kind of
23 substantial relationship with someone, whether it be
24 family or business or just a friend, that you probably
25 would recognize them if you had anything substantial?

1 A Yes, sir.

2 Q But you don't think you know anybody?

3 A No, sir.

4 Q Now, Mr. Jones, could you, under appropriate
5 circumstances depending on what may or may not be
6 produced in this case -- and, again, we don't even know
7 if we're even going to get to a sentencing phase. I
8 don't want to suggest that. But if you viewed the
9 evidence, could you be fair to the State and to the
10 defense in your decision as to whether to give a death
11 sentence or a life imprisonment sentence?

12 A Yes, sir.

13 Q Could you give either one under appropriate proof?

14 A Yes, sir.

15 Q Okay. Now, at the end of the trial, if we get --
16 if we get to the sentencing, and if -- if -- only if
17 the State has proven beyond a reasonable doubt to the
18 jury unanimously that there are aggravating
19 circumstances and, thereafter, if and only if you, as a
20 jury, find no mitigating factors and choose not to
21 extend mercy and/or to decide that you are going to
22 recommend the death penalty, do you understand that you
23 as an individual juror -- normally we just have the
24 foreperson sign a verdict form, but each and every one
25 of you have got to sign your name and say, "I recommend

1 the death penalty." Could you do that?

2 A Yes, sir.

3 Q If you're chosen as a juror in this case, you're
4 going to be housed in a hotel at the county's expense,
5 of course, fed and taken care of for several days.

6 Would that be a particular problem in your case?

7 A No, sir.

8 Q Okay. You would be able to do that?

9 A Yes, sir.

10 Q All right. I want you to answer any questions
11 that defense counsel might have for you.

12 EXAMINATION BY MS. NORRIS:

13 Q Afternoon, Mr. Jones. I'm Teresa Norris. We got
14 a chance to look at each other across the room
15 yesterday, but today I will come over so you and I can
16 just talk and say hello and have a discussion, if
17 that's all right.

18 A Yes, ma'am.

19 Q Just to follow up on a couple things on your
20 questionnaire, I noted that you're an RN; is that
21 right?

22 A Yes, ma'am.

23 Q And what do you do on a day-to-day basis?

24 A I'm a surgical RN and I work in the operating
25 room.

1 Q Do you ever deal with gunshots and that type
2 thing?

3 A Yes, ma'am. Every once in a while we get a
4 gunshot wound, maybe a stabbing.

5 Q Is there anything about that that would impact you
6 in a murder case where there might be that type
7 evidence?

8 A No, ma'am.

9 Q And I note in your questionnaire that you served
10 as a civil juror before?

11 A Yes, ma'am.

12 Q What type case was that?

13 A Lady had been in an accident. She was suing for
14 reparations from the gentleman who caused the accident.

15 Q And you actually sat in the box throughout the
16 trial to make your decision?

17 A Yes, ma'am.

18 Q And in that do you recall that the burden of proof
19 that the lady suing had to meet was a preponderance of
20 the evidence?

21 A Yes, ma'am.

22 Q In other words, if you start at an equal balance,
23 it just had to tip a little bit?

24 A Yes, ma'am.

25 Q Do you understand that in a criminal case of this

1 nature, the burden is different, and the judge gave us
2 some of that yesterday. But just to make sure you
3 understand, that in this case, before there were a
4 conviction, there would have to be proof beyond a
5 reasonable doubt by the State?

6 A Yes, ma'am.

7 Q And the defendant would have no burden at all. Do
8 you understand that?

9 A Yes, ma'am.

10 Q Do you have any problem with that legally?

11 A No, ma'am.

12 Q Going to the death penalty now. And, again, there
13 are no right or wrong answers, and I want you to
14 understand that I realize we're putting the cart before
15 the horse because Mr. Cottrell has pled not guilty, and
16 we will argue that and we believe that, Mr. McGuire and
17 I.

18 But in order to determine whether you're qualified
19 for our jury, we just have to ask you these questions.
20 Tell me in general your thoughts about the death
21 penalty.

22 A In cases where it is considered and can be proven
23 to be necessary, I am for it. I've got no problem with
24 that. But it must be proven and shown where it's
25 needed to be used.

1 Q Let me ask you to clarify what you mean by "where
2 it's necessary."

3 A Where it's an appropriate punishment.

4 Q Well, let me -- all right. In a capital
5 sentencing -- and I'm not talking about Mr. Cottrell
6 here. I'm talking about a hypothetical case. Before
7 you reach that point, you've got to find murder. And
8 yesterday may have been the first time you heard the
9 technical definition of that. But murder is the
10 killing of another with malice aforethought. And
11 malice is a wicked, evil intent, a heart bent on fatal
12 mischief. It's not an accident, not self-defense. Do
13 you understand that?

14 A Yes, ma'am.

15 Q So we're talking about a wicked, evil killing.
16 The defendant did it, he meant to do it. All right?

17 A Yes, ma'am.

18 Q And at that point, if he is convicted, would you
19 think that that would be -- again, I'm not talking
20 about Mr. Cottrell. I'm talking about a hypothetical
21 case -- at that point would you -- would that fit
22 your what you have in your mind of if it's proved and
23 it's necessary, would that at that point in your
24 opinion be a situation where the death penalty should
25 be automatically applied?

1 A No, ma'am.

2 Q Okay. And before -- and, again, there are no
3 right or wrong answers here. We just need to know.
4 And if you're in our hypothetical jury and there was a
5 conviction of murder before the defendant would be
6 eligible for the death penalty, the State has to prove
7 something else. And the judge will instruct on this
8 should you be in the jury. But it's what I call murder
9 plus. It can be another offense where it's murder plus
10 rape. It can be based on the helpless status of the
11 victim such as a young child.

12 If you were in a situation where you, as a juror,
13 were convinced of that malicious, wicked murder and
14 then you've got the plus something, at that point would
15 it reach the level where you believe, using your
16 language, that it was -- it met the facts and it was
17 necessary to apply the death penalty?

18 A Yes, ma'am.

19 Q So at that point, once you've got murder plus, to
20 you that's automatic death?

21 A Well, not automatic. But because, as the judge
22 said, there was also other circumstances that can be
23 taken into account.

24 Q All right. Well, let's talk about that. In
25 addition to that murder plus, the State would then have

1 the opportunity to present additional aggravation
2 information. And by aggravation -- and the judge will
3 give a much better instruction of this should you be in
4 the jury -- but in general that means anything that
5 weighs in favor of a death penalty.

6 In addition to that you will hear or you can hear
7 mitigation. And that is generally those things that
8 weigh in favor of life. Do you understand that our
9 hypothetical defendant has no obligation whatsoever to
10 present mitigation?

11 A That's correct.

12 Q And if you have that situation where no mitigation
13 is presented, there's nothing more to hear. Is that an
14 automatic death penalty?

15 A Yes, ma'am.

16 Q In terms of mitigation, should our hypothetical
17 defendant present some mitigation -- and, again, that
18 would be for the judge to instruct after all the
19 evidence was presented. But in general that can be
20 anything related to mental illness, background, et
21 cetera. Would any of that type stuff make any
22 difference in your mind once you've reached that point
23 where you think this is where I'm death penalty?

24 A Yes, ma'am.

25 Q It could potentially make a difference?

1 A Yes, ma'am.

2 Q Okay. And do you understand that -- and the judge
3 asked you a lot of questions about following the law,
4 and I'm certainly not going to disagree with the judge.
5 I just want to make sure that you understand that when
6 it comes to a capital sentencing where the decision
7 literally the death penalty or life without parole --
8 those are the only two options for a sentence -- the
9 judge is never, ever going to give an instruction that
10 says, "If you find A, B and C, it has to be the death
11 penalty." Do you understand that?

12 A Yes, ma'am.

13 Q And on the other side, the judge is never going to
14 say, "You have to find A, B or C. If you do, it's
15 automatically life without parole"?

16 A Yes, ma'am.

17 Q And do you understand that the middle ground there
18 is left, and ultimately legally under the law each
19 individual juror has to make a reasoned moral decision
20 whether the death penalty will be applied to that
21 hypothetical defendant?

22 A Yes, ma'am.

23 Q Do you have any problems or concerns about that?

24 A No, ma'am.

25 Q Do you understand that the law also allows that

1 the jurors, each individual juror, can make a
2 determination that a person can be sentenced to life
3 without parole for any reason or no reason at all?

4 A Yes, ma'am.

5 Q Do you have any problem with that?

6 A No, ma'am.

7 Q An individual can make the decision to give a life
8 without parole sentence based on mercy. Do you
9 understand that?

10 A Yes, ma'am.

11 Q Any problem with that?

12 A No, ma'am.

13 Q In your mind is mercy something that is earned or
14 that an individual juror can just look at a situation
15 and say, "I can apply mercy to that"?

16 A Individual juror can apply mercy to.

17 Q And, ultimately, should you end up in a capital
18 jury, obviously, our system has -- we're set to have 12
19 jurors. And in order to apply the death penalty, it
20 has to be unanimous. They have to all agree. Do you
21 understand that?

22 A Yes, ma'am.

23 Q But sometimes, being human beings, and
24 particularly with such a difficult choice, sometimes
25 there are disagreements. If you should be in a

1 situation where 11 jurors are voting one way and you're
2 the only juror on the other side but you have reached
3 that individual moral choice, would you give up your
4 position just to go along with the 11 others?

5 A No, ma'am.

6 Q And, likewise, if you were one of those 11 going
7 one way and there was one lone juror out there, would
8 you try to change that person's opinion even if they
9 said, "Look, this is my individual reasoned, moral
10 choice, and it would violate my oath as a juror and my
11 conscience for me to change my vote," would you still
12 try to convince that person?

13 A No, ma'am.

14 Q You would respect that?

15 A Yes, ma'am.

16 Q And you understand that even if everybody doesn't
17 agree, that's a lawful sentence?

18 A Yes, ma'am.

19 MS. NORRIS: Give me just a second, your Honor.

20 (WHEREUPON, an off-the-record discussion was held
21 between Ms. Norris and Mr. McGuire.)

22 MS. NORRIS: Thank you, Mr. Jones. I don't have
23 anything further.

24 MR. HIXSON: Thank you, your Honor.

25 EXAMINATION BY MR. HIXSON:

1 Q My name is Scott Hixson. I'm a chief deputy.
2 That's Jimmy Richardson over there. We're representing
3 the State. We're going to be the ones prosecuting
4 Mr. Cottrell here. Just wanted to have a chance to say
5 hi.

6 Got a bunch of questions you have answered.
7 Thanks for your honesty in answering all those
8 questions. It's great.

9 Just a -- what kind of motorcycles do you like? I
10 saw it in your questionnaire. I didn't know if you
11 liked dirt bikes or road bikes or what they were all
12 about.

13 A Street bikes, Harleys.

14 Q Very good. Excellent. During the course of the
15 deliberation process, you know, I think you explained
16 that you could listen to the law as the judge
17 instructed you, and you could listen with respect to
18 other people's opinions.

19 Do you acknowledge that you understand that the
20 jury process is kind of a give-and-take and sharing
21 ideas to come up with a consensus?

22 A Yes.

23 Q So you expressed that you have opinions, and it's
24 okay to share those opinions and see if you can come up
25 with a consensus. You understand that?

1 A Yes.

2 Q And last question. The judge indicated that you
3 knew if the jury comes back in, and in their collective
4 opinion they believe the death sentence is appropriate,
5 I think you said that you could take a pen out and
6 write your name to that and indicate that your verdict
7 is death and sign your name to that; is that right?

8 A Yes, sir.

9 Q Thank you for your time.

10 MR. HIXSON: No further questions, your Honor.

11 THE COURT: Mr. Ropp.

12 Could you step down for just a moment?

13 (WHEREUPON, Mr. Jones exited the courtroom
14 at 3:11 p.m.)

15 MS. NORRIS: He's qualified, your Honor.

16 MR. HIXSON: He's qualified, your Honor.

17 THE COURT: All right. Bring him back in.

18 (WHEREUPON, Mr. Jones entered the courtroom
19 at 3:11 p.m.)

20 THE COURT: Mr. Jones, we have found you qualified
21 to sit on this jury. That doesn't mean that you're on
22 the jury. What it means is you will be in the final
23 pool for jury selection. My order to you concerning
24 pretrial publicity or gaining any type or exposing
25 yourself to any type of information concerning this

1 case or discussing it with anyone stands and continues.

2 On 6 o'clock this coming Sunday the clerk is
3 giving you a number. Call that number and there will
4 be a recording that tells you when you are to report.
5 Please remember that you will be sequestered, so bring
6 clothing with you, your medications if you are on any,
7 things that you will need of that nature. And if you
8 are selected, we'll take you directly from the
9 courthouse to the hotel where you will be staying.

10 Okay?

11 MR. JONES: 6 o'clock Sunday afternoon?

12 THE COURT: 6 o'clock Sunday evening, that's
13 correct. Thank you, Mr. Jones.

14 Jefferson.

15 (WHEREUPON, Mr. Jefferson entered the courtroom
16 at 3:14 p.m.)

17 ANTHONY JEFFERSON,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: Please speak into the microphone and
20 state your name and spell your last for the record.

21 MR. JEFFERSON: Anthony Jefferson,

22 J-e-f-f-e-r-s-o-n.

23 EXAMINATION BY THE COURT:

24 Q Mr. Jefferson, thank you for your time in coming
25 here today. Mr. Jefferson, do you remember yesterday I

1 issued an order for jurors not to expose themselves to
2 any pretrial publicity in this case or do any research
3 or anything of that nature or not discuss it with
4 anyone or let anyone make any comment to them. Do you
5 remember that?

6 A Yes, sir.

7 Q And have you complied with my instruction?

8 A Yes, sir.

9 Q Okay. I appreciate that. Thank you very much.

10 Now, Mr. Jefferson, I appreciate the fact that you
11 have taken an opportunity to look at our jury
12 questionnaire, our second questionnaires that we have
13 given you. And I note that on the question where we
14 asked what kind of juror best describes you, you have
15 indicated that you are a C juror; is that correct?

16 A Yes, sir.

17 Q And just so I can be sure that you and I are on
18 the same page, my understanding of a C juror is one
19 that would need to hear the facts and circumstances in
20 aggravation and in mitigation before he or she could
21 make a decision regarding punishment. Do you think
22 that best describes you?

23 A Yes, sir.

24 Q All right. Very well. Mr. Jefferson, I'm going
25 to be asking you some questions. Some of them you may

1 think are invasions into your privacy, but I hope that
2 you will forgive us for doing that. See, our job here
3 this morning is to determine whether or not there's
4 anything by way of opinion, bias or prejudice, anything
5 that may have happened in your life, any information
6 that you may have received in the past that would
7 substantially impair you to perform your duties as a
8 juror. As a juror, our duties can best be summed up as
9 being fair and impartial. That's what we want to know.

10 Let me assure you that everyone has a right to
11 have their own opinion. Isn't that a great thing about
12 America?

13 A Yes, sir.

14 Q You're going to be asked about all sorts of
15 things, and you have the absolute right to have an
16 opinion. All we want to know is what that opinion is.
17 So there is no wrong answer that you can give here
18 today as long as it is truthful. No one is going to
19 criticize you about any opinion that you may have.

20 What we want to do is just know what your opinions
21 are and hope that that information might help us
22 determine whether or not that thing would impact your
23 ability to be a fair and impartial juror. Are you
24 familiar with the phrase or term "presumption of
25 innocence"?

1 A Familiar, I don't know --

2 Q Have you heard that before?

3 A Yes, sir.

4 Q You ever heard that before? Do you understand
5 that that is an important legal theory that is the
6 basis of the American judicial system. It is one where
7 there is a presumption that every person who is charged
8 with a crime is innocent, and that presumption stays
9 with that person until it is stripped away by the
10 State.

11 Today Mr. Cottrell sits right over there with that
12 presumption of innocence. He has the same presumption
13 of innocence that I have sitting here today. Do you
14 understand that?

15 A Yes, sir.

16 Q The way the State strips that away or overcomes
17 that presumption of innocence when a person is charged
18 with a crime is by proving to the jury beyond a
19 reasonable doubt, proving to each and every juror
20 beyond a reasonable doubt that the defendant committed
21 the crime that he's charged with. That's the only way
22 that that presumption of innocence can be overcome. Do
23 you understand that?

24 A Yes, sir.

25 Q Do you have any problem with that?

1 A No, sir.

2 Q Do you find that concept offensive in any way,
3 form or fashion?

4 A No, sir.

5 Q And could you follow that if I so instructed you
6 in a jury trial?

7 A Yes, sir.

8 Q Okay. Now, the defendant here today,
9 Mr. Cottrell, is charged with the offense of murder.
10 And yesterday you remember we talked about murder. Let
11 me just tell you generally what murder, the definition
12 of murder is. Murder is the unlawful killing of a
13 person with malice aforethought.

14 It's pretty easy to understand the part about
15 unlawful killing. Malice aforethought, though,
16 sometimes might give jurors some difficulty.

17 But malice aforethought is to do something with an
18 evil heart, with a wicked design, to have ill will or
19 meanness towards the victim. That's essentially what
20 malice is.

21 And, you know, most cases that we have that are
22 murder cases are not like this case. They are not
23 death penalty cases. We have many murder cases, many
24 that are not death penalty cases. And if this were a
25 simple murder case, the State would put up evidence to

1 establish the defendant had taken the life --
2 unlawfully taken the life of another person with malice
3 aforethought, and that would be all that the jury would
4 be asked to decide. And then the Court would take upon
5 itself the matter of sentencing.

6 But in a death penalty -- and I'm sure you're
7 aware that's what we're doing here today. This is a
8 death penalty case -- there's much more to it. The law
9 in South Carolina does not automatically require the
10 death penalty for any offense. Did you know that?

11 A No, sir.

12 Q There is no offense for which the death penalty in
13 this state is automatic. There's no such thing as
14 automatic death penalty. And you should keep that in
15 your mind.

16 In order for the State to seek the death penalty,
17 there is a second trial or a second part of the trial
18 that we have to go through because in addition to
19 proving murder -- the State has to first prove murder
20 before they can even get to the second phase. And I'm
21 not suggesting we're going to ever get to the second
22 phase. That would be up to the jury to decide whether
23 we were -- we would.

24 But in the second phase, the first thing the State
25 has to do is prove that this was a murder accompanied

1 by something else. And we call that, those things,
2 aggravating circumstances.

3 The legislature, when it designed the death
4 penalty statute, said Okay. First, in order to seek
5 the death penalty, the State has got to prove that
6 there was a murder. Then they have got to prove that
7 it was accompanied by one of these aggravating
8 circumstances. And aggravating circumstances are
9 things that make it worse, that enhance the moral
10 culpability of the actor, that makes the crime more
11 heinous, if you will.

12 And the state legislature has set those things out
13 and it says you get murder, there's no automatic --
14 there's never an automatic death penalty. Keep that in
15 your mind. You cannot ask for the death penalty if you
16 have just proved murder. You have got to move on and
17 you have got to prove one of these aggravators, one of
18 these aggravating circumstances first.

19 The jury may not consider anything but those
20 aggravating circumstances. They can't reach out there
21 and find another one that they think is equally as bad.
22 They have got to keep to that list. And unless the
23 jury unanimously finds that one of those exists beyond
24 a reasonable doubt, the inquiry stops right there and
25 there is an automatic sentence, but it's an automatic

1 life sentence.

2 If the jury does find -- does find -- that there
3 is an aggravating circumstance, the death penalty is
4 still not automatic because the jury then has to
5 consider mitigating circumstances, extenuating
6 circumstances, circumstances that perhaps lessen the
7 culpability of the wrongdoing of the defendant. There
8 are statutory or set out in the law mitigating
9 circumstances. And I would instruct you that these are
10 the mitigating circumstances. But unlike aggravating
11 circumstances, I would also instruct you that you can
12 consider anything else in the case that you, the jury,
13 decides should be a mitigating circumstance. You can
14 go to the facts of the case and make up one yourself if
15 you believe that it was appropriate in the case.

16 Even if you look at the facts and you say, "We
17 can't come up with a mitigating circumstance. We just
18 can't find anything mitigating in this case," the death
19 penalty still wouldn't be automatic. There is no
20 automatic death penalty. At no point does the death
21 penalty become automatic. Because you can then extend
22 what we call mercy. The jury for any reason or no
23 reason can decide, "We're going to extend mercy,
24 deserved or otherwise, to this person and give him a
25 life sentence."

1 Now, that's a kind of complex procedure. But what
2 I want to make -- ask you about is some of the factors
3 in that procedure. You know, I told you that if you
4 were considering the aggravating circumstances that you
5 could consider only the ones that are listed in the
6 law, the ones that I will instruct you about that I
7 will tell you you could consider, that you could not
8 consider anything else that you might personally think
9 would be aggravating. Do you find that offensive?

10 A (Shaking head.)

11 Q Could you follow that if I told you that's what to
12 do?

13 A Yes, sir.

14 Q I mean you personally don't have a problem with
15 that; you could follow the law?

16 A Yes, sir.

17 Q Okay. Now, as to the mitigating circumstances, do
18 you find any problem or find offensive the fact that I
19 would tell you, unlike the aggravating circumstances,
20 you can look for other mitigating circumstances? Do
21 you have a problem with that?

22 A No.

23 Q Could you follow that for me?

24 A Yes, sir.

25 Q How about the issue of mercy and the fact that

1 there is no automatic death penalty ever in this state?

2 Are you offended by that?

3 A No, sir.

4 Q Could you live with my instruction that for any or
5 no reason you can extend mercy and give a life sentence
6 if it were appropriate?

7 A Yes, sir.

8 Q Could you, if your fellow juror were to say, "I
9 believe that this factor is a mitigating circumstance.
10 It's not statutory, but I think that this is
11 mitigation," could you listen and open your mind to
12 your fellow juror?

13 A Yes, sir.

14 Q Could you consider what that juror was proposing?

15 A Yes, sir.

16 Q You could do that?

17 A (Nodding.)

18 Q All right. Very well.

19 At the end of this case, could you follow all of
20 my instructions on the law and could you abide by them?

21 A Yes, sir.

22 Q Have you heard anything about how this case would
23 proceed or the law surrounding this case that you would
24 find personally offensive or difficult to follow?

25 A Explain that to me again.

1 Q During my discussion with you today in telling you
2 basically what the law is, is there any part of what I
3 told you that you find offensive --

4 A Oh, no.

5 Q -- or personally that you would have trouble
6 following or would not want to follow?

7 A No, sir.

8 Q Okay. Mr. Hall (sic), at the end of this trial,
9 if you followed the law and my instructions in both
10 phases, and if we got that far -- we're assuming we get
11 that far -- could you return a death penalty case -- I
12 mean a death sentence?

13 A I don't know about that, Judge.

14 Q Well, that's what I need to know. What is your
15 opinion as to the death penalty generally?

16 A As far as putting someone to death?

17 Q Well, what I'm asking you is this: Are you so
18 opposed -- or are you opposed to the death penalty?
19 First of all, let me ask you that.

20 A I'm not too keen on putting someone to death.

21 Q I understand that. But could you, under the
22 appropriate charge and appropriate circumstances, vote
23 for the death penalty?

24 A I don't think I could.

25 Q You do not believe you could?

1 A No.

2 Q You could not set that feeling aside?

3 A No, sir.

4 Q So you have -- you are telling me that if you are
5 a juror on this panel, that you could only vote for
6 life imprisonment?

7 A Yes, sir.

8 Q That's the only thing. You could not under any
9 circumstances set that aside?

10 A No, sir.

11 Q And you are absolutely certain?

12 A Positive.

13 THE COURT: All right.

14 MS. NORRIS: Your Honor, if I may.

15 EXAMINATION BY MS. NORRIS:

16 Q Mr. Jefferson, I'm Teresa Norris. We got a chance
17 to look at each other across the courtroom yesterday,
18 but I'm going to come over here and talk to you today.

19 A Yes, ma'am.

20 Q And, again, I understand that we're sort of
21 putting our cart before our horse, talking about the
22 death penalty, but I just want to make sure I
23 understand where you are.

24 Tell me in your own words your thoughts about the
25 death penalty in general.

1 A I just cannot live with myself putting someone to
2 death. I just -- I just can't do it.

3 Q Is that something you've thought about a lot --

4 A It's from growing up.

5 Q -- or just since you got the juror summons here?

6 A No, ma'am. Just something I've always believed.

7 Q Is that a religious belief?

8 A Just how I've been brought up. I mean, I just
9 can't live with myself putting someone to death.

10 Q And did I understand that on the form that you
11 completed you said that you would want to hear all the
12 evidence?

13 A Yes, ma'am.

14 Q So am I understanding you -- and I don't want to
15 put words in your mouth. You're an educated man, I
16 know that, so don't let me do that. If I'm
17 understanding what you're saying -- and you correct me
18 if I'm wrong -- you're saying that you believe there
19 are some circumstances where the death penalty is
20 appropriate, but you just don't want to live with the
21 fact of having to make that decision?

22 A Yes, ma'am.

23 Q Is that it?

24 A Yes, ma'am.

25 Q And when the judge talked yesterday about the

1 importance of serving on a jury and that it's actually
2 a juror's right, do you believe that?

3 A Yes, ma'am.

4 Q You agree with that?

5 A (Nodding.)

6 Q And is your feeling about you wouldn't want to do
7 it so strong that you feel like you're giving up your
8 right to be on a jury, that you can't do this; is that
9 what you're telling us?

10 A You're asking me to put someone to death. I'm
11 just not comfortable with that.

12 Q Well, I can promise you I'm not going to ask you
13 that. And, again, we've got our cart before our horse.

14 A Yes, ma'am.

15 Q I'm not talking about Mr. Cottrell here. He's
16 pled not guilty. We actually intend to argue that in a
17 trial. Mr. McGuire and I, we believe that.

18 A Okay.

19 Q We're only having a hypothetical discussion
20 because if there is a murder conviction in this case,
21 we've got to go on and talk about the death penalty.
22 So we're not talking about Mr. Cottrell here. Do you
23 understand that -- well, let me put it this way. I'm
24 not asking you to tell me the circumstances. In your
25 own mind, you are -- you have a situation where you

1 think the death penalty is appropriate; is that right?

2 A Yes, ma'am.

3 Q Do you understand if you were a juror in a capital
4 case, the judge is never going to give you an
5 instruction that says, "If you find A, B and C, that
6 you have to give the death penalty"? Do you understand
7 that?

8 A Yes, ma'am.

9 Q And do you understand if you were a juror in a
10 capital case, you will never get an instruction that
11 says -- from the judge that says, "If you find A, B and
12 C, you have to give life without parole"? Do you
13 understand that?

14 A Correct.

15 Q Do you understand that you can have a general
16 opposition to you personally doing it? But as long as
17 you can consider all the evidence and the judge's
18 instructions and follow those instructions, can you do
19 that?

20 A Yes. Yes, ma'am.

21 MS. NORRIS: I don't have anything further, your
22 Honor.

23 THE COURT: Mr. Richardson.

24 MR. RICHARDSON: Thank you, your Honor.

25 EXAMINATION BY MR. RICHARDSON:

1 Q Mr. Jefferson.

2 A Yes, sir.

3 Q Took a little longer than you thought it was going
4 to, didn't it?

5 A Yes, sir.

6 Q I'm Jimmy Richardson. I'm the Solicitor, and this
7 is Scott Hixson. He's the Deputy Solicitor. If I'm
8 understanding you right, you said three, four times, "I
9 could not vote for the death penalty." It's just not
10 in you to do that?

11 A Yes, sir.

12 MR. RICHARDSON: I have no further questions, your
13 Honor.

14 THE COURT: Let me just ask you one question. I
15 want to be real clear about this, Mr. Jefferson.

16 Believe me, I appreciate your candor and I respect
17 your opinion on this issue. But you are telling --
18 your final response is you do not believe that you
19 could ever sign your name to a death warrant or a
20 verdict recommending the death penalty.

21 MR. JEFFERSON: Yes, sir.

22 THE COURT: That's what you're telling me?

23 MR. JEFFERSON: Yes.

24 THE COURT: Okay. Thank you very much. You may
25 step down.

1 (WHEREUPON, Mr. Jefferson exited the courtroom
2 at 3:36 p.m.)

3 THE COURT: All right. Ms. Norris.

4 MS. NORRIS: Your Honor, I think this is where we
5 have a situation that we were talking about the other
6 day with a magic question. This juror, when nobody was
7 questioning him one way or the other, said he would
8 want to hear it all. He answered all the questions
9 right. He just has a hesitance about signing that
10 verdict, signing a death verdict, but --

11 THE COURT: He doesn't have a hesitancy. He just
12 tells me he can't do it. And this is sort of the
13 opposite of what we were talking about the other day.
14 It's not where he says, "I would have no bias. I
15 would -- I could listen to the law and all." This is
16 one that's going the other way in saying, "I'm sorry,
17 Judge, I just can't." Isn't he just doing just the
18 opposite of what we were talking about the other day?

19 MS. NORRIS: Well, your Honor, here's where we hit
20 that signing versus deciding question. Because this
21 juror clearly said that there are circumstances where
22 he can consider the death penalty, he can consider life
23 without parole, he'll listen to all the evidence,
24 everything we want him to do except he can't sign a
25 death verdict.

1 THE COURT: That's not what he said. He said he
2 could not recommend a death sentence, period. I mean,
3 nobody even talked about the signing until I did on the
4 last question to him. This gentleman just simply says,
5 "I cannot^c impose the death penalty. I'm not
6 necessarily opposed to it." I think there are a lot of
7 people in this category, probably more than we think,
8 people who say, "I'm not going to stay up at night when
9 I hear that the death penalty is going to be carried
10 out, but I'm not going to be the person involved in
11 it." And I think that's a pretty common attitude that
12 people have.

13 Let me hear from you, Mr. Richardson.

14 MR. RICHARDSON: Your Honor, I couldn't agree
15 more. I mean, we have given him six, seven
16 opportunities to say, "I could consider both sides and
17 I could consider the death penalty," and he said every
18 time, "Not me. I can't do it."

19 I don't necessarily -- you know, I don't think --
20 and I don't know if Ms. Teresa Norris asked him about
21 being governor, but I will assume he would have
22 probably said, Look -- I don't know what he would have
23 said, "Yes, I would do away with it; no, I'd keep it."
24 But equivocally he is saying, "I can't be the one to
25 sign the death notice. I can't be the one who decides

1 this man's fate and it being a death-type case."

2 So I don't think that he could be fair and
3 impartial to both the State and the defense growing up
4 with that sort of tough lean to always life
5 imprisonment.

6 THE COURT: Well, I think this witness very
7 clearly expressed his sentiments. He was a very nice
8 gentleman. I think he was being very honest with us.
9 He has told us that he's not necessarily offended by
10 the death penalty. He has told me that he would follow
11 the law as I instructed him. He would find, if
12 instructed to do so, he would consider aggravating
13 circumstances. He would consider mitigating
14 circumstances. He would do all that. But when I said,
15 "Once you have done that, could you possibly -- could
16 you -- if the circumstances justified it or if it was
17 appropriate, could you sentence the defendant to
18 death," and he just frankly told me, "I could not do
19 that. I just could not do it."

20 And I think that he, as I said, is one of that
21 sort of silent majority out there that says, you know,
22 "I don't oppose it, but I cannot bring myself to
23 participate in it." And I do not think he would. He's
24 made it clear if he's on the jury, there's only one
25 verdict that's going to be returned. And that

1 substantially interferes with his duties as a -- the
2 performance of his duties as a juror, so I'm going to
3 disqualify him.

4 All right. Bring in Mr. Jefferson.

5 (WHEREUPON, Mr. Jefferson entered the courtroom
6 at 3:41 p.m.)

7 THE COURT: Mr. Jefferson, thank you so much for
8 coming. We appreciate your comments. We appreciate
9 the time that you have given us, but I am going to
10 excuse you from further participation here. You need
11 not call back.

12 MR. JEFFERSON: Thank you, sir.

13 THE COURT: How about whenever we take a juror out
14 to discuss that juror's status that we get the next one
15 ready so we can move along more quicker.

16 Mr. Ropp, when I take a juror out for examination,
17 load up the next one and get them coming. Okay?

18 (WHEREUPON, Mr. Barney entered the courtroom
19 at 3:43 p.m.)

20 **JUSTIN BARNEY,**

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 THE CLERK: Please speak into the microphone and
23 state your name and spell your last for the record.

24 MR. BARNEY: Justin J. Barney, B-a-r-n-e-y.

25 EXAMINATION BY THE COURT:

1 Q Good afternoon, Mr. Barney. How are you?

2 A Fine.

3 Q Mr. Barney, do you recall on yesterday my
4 instructing all the jurors not to have any contact with
5 anyone concerning about this -- concerning this case
6 and to avoid any exposure to media coverage or any
7 exploration of the case on the Internet? Do you
8 remember that?

9 A Yes, sir.

10 Q And have you complied with my instruction?

11 A Yes, sir.

12 Q You have not been contacted by anyone or in any
13 way?

14 A No.

15 Q Thank you, sir.

16 Now, Mr. Barney, I appreciate you looking at the
17 witness list for us and filling out the forms which
18 describes you as a juror, and I see here that you have
19 indicated that you are a type C juror; is that right?

20 A I believe so, yes.

21 Q Okay. And just so that you and I are on the same
22 page, I believe that a type C juror is a juror who
23 would need to hear the facts and circumstances in
24 aggravation and mitigation before he or she could make
25 a decision regarding punishment?

1 A Yes, sir.

2 Q Does that adequately describe your position in
3 these matters or you as a juror?

4 A Yes, sir.

5 Q Is that the closest one to you?

6 A Yes.

7 Q Okay. All right. Mr. Barney, are you familiar --
8 well, let me say this first. Do you understand that
9 these questions and many of the questions that I put to
10 you yesterday or comments I made yesterday suggest that
11 we would have a sentencing phase of this trial?

12 A Yes.

13 Q And, of course, that would only be necessary if
14 the defendant were convicted of the murder charge. Do
15 you understand that?

16 A Yes.

17 Q Okay. And so it would appear that we might be
18 saying to you that he's going to be convicted of the
19 murder charge. And that is an impression that we do
20 not want to convey. Our purpose here today is to
21 determine if there's any opinion that you hold, any
22 bias that you might be subject to, any information that
23 you may have received, any life experience that you
24 might have that would substantially interfere with your
25 performance of your duties as a juror. And your duties

1 as a juror is simply to be fair and impartial. That's
2 what we want to find out.

3 And there are potentially two phases to this
4 trial, a guilt phase and a sentencing phase. So for
5 the purposes of our voir dire or examination of the
6 witnesses, we will talk in terms of there being a guilt
7 phase and a sentencing phase, but please do not let
8 that suggest to you that we have an opinion. No one is
9 entitled to that. We do not have an opinion as to
10 whether or not Mr. Cottrell is guilty. Only the jury
11 can decide that. Do you understand that?

12 A Yes.

13 Q Okay. All right. Now, Mr. Barney, are you
14 familiar with the term "presumption of innocence"?
15 Have you heard that term before?

16 A No.

17 Q Okay. Let me tell you what it is. It is a legal
18 term, a legal theory that is pervasive in the United
19 States. It is involved in our criminal justice process
20 throughout this country. And what it says is that
21 everyone -- everyone -- who is charged with any crime
22 has a cloak of innocence, a presumption of innocence
23 about him, and until the State removes or strips away
24 that presumption of innocence, that person cannot be
25 convicted of the offense.

1 Mr. Cottrell, as he sits there today, has the same
2 presumption of innocence that you and I have as we sit
3 here. We are presumed to be innocent of anything and
4 everything as we sit here. Now, as I said, that
5 presumption of innocence can only be removed if the
6 State proves a crime to the jury unanimously and beyond
7 a reasonable doubt. Can't be a majority of the jury.
8 Every juror has to be convinced beyond a reasonable
9 doubt of the crime. And you are probably familiar with
10 that concept just from watching it on TV?

11 A Yes, sir.

12 Q Do you have personally any objection to or are you
13 offended by that concept of our legal system?

14 A No.

15 Q Okay. And if you were on the jury and I
16 instructed you that that was the law or part of the law
17 that must be followed, would you have any problems with
18 that at all?

19 A No.

20 Q Okay. Now, in this case Mr. Cottrell is charged
21 with the offense of murder. It is not particularly
22 uncommon for us in this courthouse to have a murder
23 trial. Murder is simply the unlawful taking of another
24 person's life with malice aforethought. That is what
25 the State would have to prove in a typical murder case,

1 unlawful taking of a person's life with malice
2 aforethought. And malice, in other terms, is ill will
3 or hatred towards the victim, depravity in the
4 commission of the act, intentional infliction of harm.
5 Those are words that have been used to describe what
6 malice is.

7 But the State would have to convince the jury of
8 those elements, convince the jury unanimously beyond a
9 reasonable doubt that he was guilty of that, if that's
10 all we had here today. And if that were the case,
11 there would be no possibility whatsoever that the death
12 penalty could be imposed. It is not appropriate just
13 because someone is convicted of the offense of murder.

14 If the State wants to seek the death penalty,
15 there is a second trial, second part or a second phase
16 of the trial. Sometimes we will refer to that as the
17 sentencing phase of the trial. And in that trial the
18 State would again have to prove beyond a reasonable
19 doubt to every juror that there was something else,
20 something other than murder, something that went along
21 with the murder. Murder plus one, if you will.

22 And the legislature, in establishing the death
23 penalty statute, threw out a list and said these are
24 what we call aggravators or aggravating circumstances.
25 And the State must prove, in addition to murder --

1 unlawful killing of a person with malice
2 aforethought -- malice doesn't do it. In addition to
3 that, there has to be proof beyond a reasonable doubt
4 to the satisfaction of every juror that the defendant
5 did so under one of these circumstances. And it sets
6 out those circumstances.

7 And unless the jury finds unanimously that one of
8 those circumstances exists along with the murder, the
9 jury cannot even consider at that point imposing a
10 sentence of death. Do you understand that?

11 A Yes, sir.

12 Q You're not there yet. The jury is not there. In
13 fact, there's no form -- did you realize that there is
14 absolutely no offense in this state for which the death
15 penalty is automatic?

16 A Yes.

17 Q There is no such thing as an automatic death
18 penalty. But the jury would have to find one of those
19 aggravators before they could move to the next stage
20 because if they found one of those aggravators, they
21 must then consider mitigating circumstances. And
22 mitigators are things that make it less morally
23 culpable, that are extenuating circumstances
24 surrounding the killing.

25 There are statutory mitigators or mitigating

1 circumstances that are set out also in the statute.
2 And I would tell you, you can consider these
3 circumstances in mitigation. Okay? But unlike the
4 aggravating circumstances where the jury can only
5 consider those aggravating circumstances that have been
6 identified by the legislature, you can go outside of
7 the box when you consider mitigators. You can consider
8 all the mitigators that are described by the
9 legislature, then the jury collectively can look at it
10 and say, "Well, here's something over here about this
11 case or over there about this case that we think should
12 have been considered in mitigation." And those can
13 also be considered.

14 And the jury must consider mitigating
15 circumstances before it can even move forward with the
16 process of making the recommendation of life or death.
17 Do you understand that?

18 A Yes.

19 Q Okay. And, finally, even if the jury does not
20 find any, any mitigating circumstances, the jury is not
21 required to recommend the death penalty. The jury can
22 say, "We are going to give mercy in this case. And
23 we're going to recommend a life sentence for really no
24 reason other than the extension of mercy." Do you
25 understand that?

1 A Yes, sir.

2 Q Now, some jurors or people would have a problem
3 with the fact that if they look at the aggravating
4 circumstances, that they can't go out and look for some
5 other aggravating circumstances. Say, "Well, it's not
6 on this list that the legislature has, but there's
7 something else bad about this case. We ought to use
8 that as an aggravator." You can't do that, and I will
9 instruct you you can't. All you can do is use the ones
10 on the list. Do you find that personally offensive?

11 A No.

12 Q Could you follow that if I told you -- you were on
13 the jury and I said, "You can only consider the ones
14 that are set out by the legislature; you must disregard
15 anything else that you think might be an aggravator"?
16 Could you live with that?

17 A Yes.

18 Q Could you follow that?

19 A Yes.

20 Q Okay. Do you find any problem or have any problem
21 with the fact that I would tell you when you were
22 looking for mitigating circumstances that you could go
23 outside those that the legislature has described; you
24 can use anything that you think is appropriate for a
25 mitigator? Is that personally offensive to you? Do

1 you have any problem with that if I told you you could
2 do that? I didn't make myself clear.

3 A (Shaking head.)

4 Q Okay. Listen again. When it comes to considering
5 mitigating circumstances --

6 A Uh-huh.

7 Q -- I will, of course, give you a list of those
8 that the legislature has said these are mitigators.
9 But the law also says that you will not be limited to
10 those when you are looking for mitigation. You can
11 consider anything in the case that you think, as a
12 jury, should mitigate. You can go outside that list.
13 Do you understand what I'm saying?

14 A (Nodding.)

15 Q Are you offended by that? If that's the law,
16 could you live with that?

17 A Yes.

18 Q If I instructed you that that was the law, could
19 you follow that?

20 A Yes.

21 Q Or would you follow that?

22 A If you gave me permission to, yes.

23 Q Okay. And does the fact that you are permitted as
24 a juror to extend mercy, even if you don't find
25 mitigation, could you live with that?

1 A Yes.

2 Q Okay. Now, if we consider the things that I have
3 told you, do you understand now how the jury process
4 works?

5 A Of course.

6 Q Let me ask you about your ideas concerning the
7 death penalty generally. Could you, if the law was
8 complied with and the burdens of proof were met by the
9 State and the circumstances were appropriate, could you
10 recommend a sentence of death?

11 A Yes.

12 Q Okay. If you were to do that, there's an
13 additional duty that jurors are required to perform.
14 Normally when there is a sentence or a verdict in a
15 case, only the foreman signs it. But in a death
16 penalty case, if there is a recommendation of a death
17 sentence, every juror must sign. Could you do that if
18 there was a recommendation of a death sentence?

19 A Yes.

20 Q Are you equally as willing under the appropriate
21 circumstances to recommend a life sentence?

22 A Yes.

23 Q You could do ether one?

24 A Yes.

25 Q All right, sir. Now, I noticed from your

1 potential witness list that you have not marked or
2 indicated that you know anyone on that list?

3 A Correct.

4 Q Let me stop a minute. When I say that, there are
5 certain other people that might be added on: Nicole
6 Pyle, John Taylor, Christine Del Fonzo, William Nettles
7 and Michelle Light. Do those names ring a bell?

8 A No.

9 Q You know, sometimes it's hard to put names and
10 faces together when we look at names, but do you
11 believe that if you had any significant relationship
12 with any of these people -- family, friends, business
13 associates, anything of that nature -- if it was a
14 significant relationship, one that would cause you to
15 have some bias for or in favor of that witness if they
16 testified, you would recognize the witness?

17 A Yes.

18 Q And you're comfortable that you do not know any of
19 these witnesses?

20 A Correct.

21 Q All right, sir. Do you understand that if you are
22 selected as a juror, you would be sequestered for
23 several days?

24 A Yes.

25 Q And that would be at a hotel at the county's

1 expense, and, of course, you will be provided with
2 lodging and meals and things of that nature. Would
3 that create any specific problem for you?

4 A No.

5 Q All right. Would you please answer any questions
6 that the defense -- let me ask you one other question.
7 Can you think of anything that we may call your life
8 experience, can you think of any information that you
9 may have been exposed to or received, can you think of
10 any opinion that you might hold or any bias that you
11 might have that would in any way significantly impair
12 your ability to be fair and impartial in this case?

13 A No.

14 Q You cannot?

15 A Cannot.

16 Q All right. Thank you, sir.

17 Yes, ma'am.

18 MS. NORRIS: Thank you, your Honor.

19 EXAMINATION BY MS. NORRIS:

20 Q Mr. Barney, I'm Teresa Norris. We got a chance to
21 look at each other across the courtroom yesterday, but
22 I'm going to come over here today and talk to you. And
23 please understand that we understand that some of these
24 questions seem personal, but we've just got to ask.

25 On your questionnaire, I noted that you listed

1 that you're disabled. Can you tell me the nature of
2 that disability?

3 A I have physical -- combination mental and physical
4 disability. My physical disability is degenerative
5 disc disease, plantar fasciitis, asthma, chronic
6 bronchitis, vertigo, and I have a brain tumor located
7 in the sphenoid cavity of my brain.

8 Q And you listed as a mental disability, is that the
9 mental part you're talking about?

10 A My mental disability is obsessive compulsive
11 disorder and schizoaffective disorder, but there are
12 circumstances regarding that. Back in 1999, 2000, I
13 had requested my psychiatrist to take me off medication
14 that I was on that controlled that or pretty much took
15 the edge off. And he took me off gradually, and I went
16 through all the steps, procedures and whatnot for that.
17 And I was taken off, and I haven't really been back on
18 medication, and I currently do not take medication for
19 that at all.

20 Q But is there anything about all of those
21 circumstances, both the physical and the other mental
22 aspects, is there anything at all about that that
23 concerns you about sitting on a jury in a trial that
24 could take a couple of weeks?

25 A None whatsoever.

1 Q Okay. I noted that you worked or you listed on
2 your questionnaire that you had been involved in
3 community watch or I guess you had a SLED license. Was
4 that as a security guard at a particular location?

5 A I was a security officer for eight months at a
6 Waffle House in Carolina Forest.

7 Q Did you actually have a badge and a gun?

8 A I was armed and licensed to carry.

9 Q And did you have situations in that position where
10 you actually did attempt to arrest someone?

11 A No.

12 Q Is there anything about that position that you
13 feel like would make you hesitate or impact you in a
14 case, whereas the judge instructed you yesterday
15 Mr. Cottrell is presumed innocent, right? Right now,
16 today, until a jury of 12 people says he's guilty
17 unless and until -- may not happen. But he is charged
18 with and the State will argue that he is guilty of
19 murder in shooting Officer Joe McGarry while he was
20 acting on duty.

21 Is there anything about your personal experience
22 as a licensed armed person with arrest powers that
23 would make you feel like you could not give
24 Mr. Cottrell a fair trial?

25 A No.

1 Q And understanding, again, that we're putting the
2 cart before the horse in talking about the death
3 penalty when we haven't even had a trial yet, so I want
4 to ask you some questions about the death penalty. Not
5 talking about Mr. Cottrell, just talking in general.

6 Tell me your personal opinions about the death
7 penalty, please.

8 A I am both pro life and I am pro death. I know
9 that's a contradiction, but I believe if the
10 circumstances are required, that then, yes, the death
11 penalty is appropriate. But I also feel that life
12 imprisonment is also appropriate because, like I said,
13 it's my decision, it's what I have to live with.

14 I feel the thing is I don't have -- I don't have a
15 bias decision about it. It's like to rot away -- to be
16 in prison -- excuse me, pardon my language -- to be in
17 prison for life, if that's suitable due to the crime,
18 then I have no problem with that. If the death penalty
19 is required in specific circumstances, then I am for
20 that as well.

21 Q All right. Let me be sure I understand where we
22 are. Do you understand that the death penalty would
23 only be part of the consideration or discussion if
24 first there is a conviction of murder. And that's an
25 unlawful killing of another with malice aforethought.

1 And malice is a wicked, evil intent, a heart bent on
2 fatal mischief. It's not an accident. It's not
3 self-defense. Do you understand that?

4 A Yes.

5 Q Person maliciously intended to kill and did kill.

6 A The death penalty with intent of malice you're
7 saying?

8 Q No, sir. I'm not talking about the death penalty
9 right now. I'm making sure that we're understanding at
10 the point where there is a conviction of murder, that
11 would be the jury's finding in a hypothetical case.

12 A Yes, I understand.

13 Q All right. So we're not talking about the death
14 penalty yet.

15 A Okay.

16 Q I'm just trying to make sure that you understand
17 that the definition of murder is a malicious,
18 intentional killing. It's not self-defense; it's not
19 accident, all that.

20 A All right. Yes. Yes.

21 Q At that point if you, as a juror -- and I'm not
22 talking about Mr. Cottrell now. I'm talking about a
23 hypothetical case. At that point if you, as a juror,
24 had heard all the evidence and the instructions of the
25 Court and you made your decision, all 12 jurors agreed

1 this person is guilty of murder, is that a circumstance
2 in your mind where you're saying the death penalty is
3 appropriate?

4 A Yes.

5 Q Would you believe that automatically upon that
6 conviction of murder in your own mind? I'm not asking
7 you about the law. I'm saying if you were a juror in
8 this hypothetical case, after you've heard all the
9 evidence and you've made this determination this is
10 murder, do you believe at that point your opinion is
11 the death penalty should be applied in this case?

12 A I don't -- I'm sorry. I'm just having a little
13 problem here.

14 Q It's okay. There's no right or wrong answer. You
15 take all the time you need.

16 A I want to say yes because of the circumstances
17 legitimize, I don't think. If it was proven that the
18 person did kill somebody, the thing is whether it was
19 life imprisonment or the death penalty, either one I'm
20 comfortable with. Maybe I'm not understanding the
21 question.

22 Q I don't mean to frustrate you. Maybe I'm not
23 asking the question right.

24 A It's been a long day. Sorry.

25 Q I understand that you're comfortable with either

1 one. But I want to make sure that you're understanding
2 that if you're sitting on a jury, it's not whether
3 you're comfortable with it. You have to make the
4 decision. And I'm asking if you had decided this
5 person has been convicted of murder and you have to
6 make the decision, do you believe that's automatically
7 the death penalty at that point?

8 A Yes.

9 Q Okay. And in the sentencing phase, before a
10 person is eligible for the death penalty under the law,
11 there has to be murder and what I'll just call plus
12 something. But that plus something your Honor talked
13 about some, and should you be on the jury, you'll get
14 more information about that. But there is a list that
15 our legislature has set forth called statutory
16 aggravating circumstances. And some of those can be --
17 and, again, I'm talking historically. Not
18 Mr. Cottrell -- it can be murder plus a rape. It can
19 be murder of a helpless victim such as a small child.
20 So it's murder, and the jury has got to find at least
21 one of those additional statutory aggravating
22 circumstances beyond a reasonable doubt. Do you
23 understand that?

24 A Yes.

25 Q So let me go back to what I was asking you before.

1 You hesitated a little bit on if you found him
2 guilty -- found our hypothetical defendant guilty of
3 murder, whether that's automatic death. If we add that
4 murder plus something and now we're eligible for the
5 death penalty, in your mind at that point when it's
6 murder plus -- and that's just my language. The judge
7 would instruct -- but murder plus, does that take away
8 the doubt in your mind that at that point you're an
9 automatic death penalty vote?

10 A Yes, it's automatic death penalty vote.

11 Q And at that point, even if you heard additional
12 information, am I understanding that that's not going
13 to change your opinion?

14 A I don't understand.

15 Q I'm sorry.

16 A I thought you just -- no, it doesn't change my
17 opinion. I'm to understand then that if it's that and
18 the addition, that it's death penalty, that's what
19 you're saying, then yes.

20 Q Well, again, I'm not saying that the law would
21 require that. I'm saying in your mind, if you were the
22 juror -- the law never says. Maybe this is where we're
23 not understanding each other.

24 If you were seated as a juror, the judge is never,
25 ever going to say, "If you find A, B and C, you have to

1 impose a death penalty." Do you understand that?

2 A Right. I don't think so.

3 Q And on the flip side of that, vice versa, the
4 judge is never going to instruct, "If you find A, B and
5 C, it has to be a life without parole sentence." Do
6 you understand that?

7 A Okay.

8 Q So a juror in a capital case under the law has to
9 make a reasoned moral decision, an individual vote. So
10 nobody is ever going to say it's required. I'm just
11 trying to make sure you understand that if there is a
12 conviction of murder plus that something, in your mind
13 is that always you're going to apply the death penalty?

14 A Yes.

15 MS. NORRIS: I don't have anything further, your
16 Honor.

17 Thank you, Mr. Barney.

18 MR. HIXSON: I have no further questions for this
19 witness, your Honor.

20 THE COURT: You may step down. Would you please
21 step down and go with the --

22 (WHEREUPON, Mr. Barney exited the courtroom
23 at 4:16 p.m.)

24 THE COURT: All right.

25 MS. NORRIS: Your Honor, I believe he's not

1 qualified on the basis of the death penalty. I'm also
2 concerned that he was getting confused and I was trying
3 to be as nice as I could.

4 THE COURT: Mr. Richardson.

5 MR. RICHARDSON: Agreed, your Honor.

6 THE COURT: All right. Without objection, I will
7 disqualify this witness.

8 (WHEREUPON, Mr. Barney entered the courtroom
9 at 4:17 p.m.)

10 THE COURT: Mr. Barney, you are excused and your
11 attendance will no longer be required.

12 Did -- you had to get some transportation here
13 today, Mr. Barney? All right. Mr. Barney, you are
14 excused and you do not have to come back.

15 Did he need some transportation?

16 THE BAILIFF: Yes, sir.

17 THE COURT: Can you make sure it's provided for
18 him, Bobby?

19 THE BAILIFF: Yes, sir.

20 THE COURT: Thank you.

21 Thank you, Mr. Barney.

22 (WHEREUPON, Mr. Barney exited the courtroom
23 at 4:17 p.m.)

24 THE COURT: We'll take a quick break.

25 (WHEREUPON, recess taken from 4:17 p.m.)

1 to 4:26 p.m.)

2 (WHEREUPON, Prospective Jury Panel Number 3 came
3 into open court at approximately 4:26 p.m.)

4 THE COURT: Good afternoon, ladies and gentlemen
5 of the potential jury panel. We appreciate you coming
6 back, and we appreciate your time.

7 Before we begin the individual voir dire or
8 individual examination of you, I wanted to tell you
9 that, although I had made a finding that you meet the
10 statutory requirements of jurors, there are available
11 to you certain statutory exemptions from jury service.

12 An exemption is something that would apply to you
13 personally that would give you an excuse to be excused
14 from jury service. These exemptions are not mandatory.
15 If you are qualified, you meet the statutory
16 qualifications of jurors, you certainly may serve even
17 if an exemption applies to you. An exemption is
18 something you can claim or not claim. It is your
19 choice. They are limited, and I wanted to go over
20 those with you before we get into individual voir dire.

21 First of all, is there any member of this part of
22 the panel who is 65 years of age or older? We welcome
23 you to stay if you are more than 65. Certainly you
24 have the right to serve. But if you are 65 years of
25 age or older, you may claim that as an exemption.

1 Is there any of you, and I don't believe there is,
2 but is there any of you who would be 65?

3 And there is no response.

4 Have any of you served as a juror either in the
5 court of common pleas or general sessions? That would
6 be the civil court or the criminal court in this
7 courthouse. You were brought here as a juror. You
8 don't have to have served, but were you called as a
9 juror within the last three years?

10 And there is no response.

11 Have any of you served on the Horry County Grand
12 Jury within the last five years? The Grand Jury is
13 that jury which determines whether or not an indictment
14 should be issued. It's not a trial jury. It's a jury
15 that specifically considers allegations of criminal
16 conduct and decides whether an indictment should be
17 issued which would bring the case before the Court. I
18 promise you if you were on the Grand Jury, you would
19 know it because they meet once a month, and you serve
20 either one year or two years in some cases.

21 Is there any member of this panel that has been on
22 the Grand Jury within the last five years?

23 And there's no response.

24 Do any of you have the custody and control of
25 either your children or children that you have legal

1 custody of that are under seven years of age, and you
2 do not work outside the home -- you are a stay-at-home
3 mom or dad and that's what you do on a regular basis,
4 you take care of the child under the age of seven?

5 And there is no response.

6 Is there any of you who is the primary caretaker,
7 that is what you do, you take care of either an elderly
8 person or a person who has a severe disability that
9 cannot be left alone on a daily basis, you take care of
10 that person? That person can't be left alone. That is
11 what you do on a daily basis and you cannot make
12 arrangements for someone else to take care of that
13 person?

14 And there is no response.

15 We've already asked about people who are full-time
16 students, but I ask if any of you are employees of a
17 school or an institution of higher learning, a public
18 school or private school, college, technical school and
19 your job is necessary to the operation of that school
20 or institution?

21 And there is no response.

22 Is there any one of you who provides services for
23 a commercial or agricultural business whose job is so
24 essential to that business that if you are away from
25 that business to serve as a juror, that business must

1 close, it ends, employees go home, it cannot operate if
2 you are not there? Anyone falls into that category?

3 And there is no response.

4 Okay. If you would, Mr. Ropp, have this jury back
5 in the jury room with the exception of Ms. Scott, who
6 will be the first juror that we will examine.

7 (WHEREUPON, Prospective Jury Panel Number 3, with
8 the exception of Ms. Scott, exited the courtroom
9 at approximately 4:32 p.m.)

10 THE COURT: Are you Ms. Scott?

11 MS. SCOTT: Yes, I am.

12 THE COURT: Thank you for being here, Ms. Scott.
13 Would you come up to the witness stand. You can go out
14 by the gentleman there and come around here and be
15 sworn in.

16 **VIVIAN SCOTT,**

17 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

18 THE CLERK: Please have a seat. Please speak into
19 the microphone and state your name and spell your last
20 for the record. Thank you.

21 MS. SCOTT: Vivian Scott, S-c-o-t-t.

22 **EXAMINATION BY THE COURT:**

23 Q Now, Ms. Scott, on yesterday I gave you some
24 instructions concerning your avoidance of any publicity
25 about this trial. I instructed you not to make any

1 inquiries about the trial, listen to any news reports
2 or read any news reports and certainly not to have any
3 contact with any person about the trial or discuss it
4 with anyone including your fellow jurors. Have you
5 complied with my instructions?

6 A Yes, I have.

7 Q Okay. I appreciate that. Thank you very much.

8 Ms. Scott, you have provided us with responses to
9 two questionnaires that we gave you this morning. The
10 first one was where we asked you to indicate what
11 category or type of juror best describes you, and you
12 have indicated that you are a class C juror; is that
13 correct?

14 A Yes, sir.

15 Q Okay. Now, just so that you and I will be on the
16 same page and to assure that we're talking about the
17 same thing, you have indicated that you're the type of
18 juror that you would not have made up your mind in
19 advance, and that you would need to hear facts and
20 circumstances in aggravation and in mitigation before
21 you could make up your mind concerning punishment in
22 this case; is that correct?

23 A Yes, sir.

24 Q And does that most correctly describe you as a
25 juror?

1 A Yes, sir.

2 Q Okay. As a preliminary matter, before I discuss
3 you -- discuss anything further about this case, are
4 you juror 554?

5 A Yes, sir, I am.

6 Q Now, when I was asking questions yesterday,
7 Ms. Scott, I have a note that says that you indicated
8 that there is some life experience, some interest,
9 prejudice or bias or opinion that you might have or you
10 may have obtained some information that substantially
11 impairs or would prevent you from being fair and
12 impartial in this case. Is that your feeling?

13 A Yes, sir.

14 Q Was I correct in noting that you were one of the
15 ones that answered that question like that?

16 A Yes, sir. Yes, sir.

17 Q All right. Now, Ms. Scott, I would like you to
18 tell me about that. And before you do, let me say that
19 our only motive here today or intent is to determine
20 whether or not there was or is anything, as I said
21 earlier, that would affect your ability, substantially
22 impair your ability to perform your duties as a juror.
23 And essentially those duties are to be a fair and
24 impartial juror. Do you understand?

25 A Yes.

1 Q Now, we all have a right to our own opinions.

2 A Uh-huh.

3 Q That's one of the wonderful things about America.
4 We all have the right to have opinions. And no one
5 here is going to criticize you for any opinion you
6 have.

7 A Uh-huh.

8 Q But we need to ask you some questions about your
9 opinions.

10 A Okay.

11 Q And there is absolutely no way you could give the
12 wrong answer. All answers are right.

13 A Yes, sir.

14 Q Nothing wrong with your opinions. The only thing
15 we ask you is that you be truthfully -- truthful and
16 candid about your responses to the questions that we
17 ask. Okay?

18 A Yes.

19 Q All right. Now, having said that, you do not
20 believe that you could be fair and impartial in this
21 case. Can you tell me why you have that opinion?

22 A One of the things I want to clarify is that I
23 believe I know one of the lawyers here. I wanted to
24 bring that out.

25 Q And that's certainly appropriate. Who would be

1 the lawyer that you know?

2 A I don't know his name. I'm thinking it's --

3 Q Just point him out.

4 A Right here. I'm not sure --

5 Q Mr. Hixson? The one who raised his hand,

6 Mr. Hixson?

7 A Yeah. Yes.

8 Q What do you know about him?

9 A There was a case here concerning one of my
10 nephews. I don't know. Maybe he could straighten me
11 out on it. I'm not sure.

12 Q Well, just tell me what you think.

13 A His name is -- can I give his name?

14 Q Yes, you certainly can.

15 A His name is Shelton Butler. I don't know if --

16 Q All right. Tell us what you think his involvement
17 was with Mr. Butler and how that would affect --

18 A He was one of the prosecutors, I believe, for
19 Shelton Butler. I'm asking. You look familiar.
20 That's why I'm asking that. I want to be sure.

21 Q Do you simply think that Mr. Hixson may have been
22 the prosecutor in a case involving your nephew?

23 A Yes, sir.

24 Q All right. Would that cause you to have any
25 prejudice or bias against the State?

1 A I wasn't prejudice. It would just cause a little
2 bit of --

3 Q Would it cause you -- affect your ability --

4 A Yes, sir.

5 Q -- to be fair and impartial in this case?

6 A It would.

7 Q Is there any other reason that you feel that you
8 could not be fair and impartial in this case?

9 A Yes, sir.

10 Q All right. Tell me about that.

11 A Yeah. I don't believe in the death penalty.

12 Q Okay. Let me explore that. All right?

13 A Okay.

14 Q In this particular case, the way it works is, of
15 course, this is a murder case, but it's a very special
16 kind of murder case. It's what we call a death penalty
17 case.

18 A Okay.

19 Q We frequently have cases in which someone is
20 accused of murder.

21 A Uh-huh.

22 Q And those cases are tried here in this courtroom.
23 But when the State seeks the death penalty, there are
24 many other factors that have to be included. And let
25 me tell you this. There is absolutely nothing that

1 someone does in South Carolina that automatically
2 requires a jury to recommend the death penalty. Most
3 people don't know that. Did you know that?

4 A No, I didn't.

5 Q There is nothing -- there is nothing that says
6 automatically a jury has to impose the death penalty.

7 A Okay.

8 Q Are you offended by that concept or does it give
9 you any problems that that is the law in South Carolina
10 that there's nothing that absolutely requires it? Does
11 that give you a problem?

12 A Not really.

13 Q I mean you're a person who doesn't believe in the
14 death penalty.

15 A Right. Right.

16 Q So I wouldn't suspect that it would. Okay?

17 A Right. Right.

18 Q Okay. Now, in a death penalty case -- and you
19 probably gathered this from some of the questions I
20 asked you yesterday -- it's a two-part case.

21 A Okay.

22 Q First of all, there is a trial to determine
23 whether or not the defendant is guilty of the offense
24 of murder. Only the offense of murder would give rise
25 to a case where there is a possibility of a death

1 penalty?

2 A All right.

3 Q Do you understand that?

4 A Yes.

5 Q Okay. But the State would, in that guilt phase,
6 have to convince a juror, every one of the jurors, that
7 the defendant is guilty of that offense beyond a
8 reasonable doubt.

9 A Okay.

10 Q Let me tell you what the State would have to do.
11 Have you ever heard the term "presumption of
12 innocence"?

13 A No, sir.

14 Q Let me tell you what that is. That is a legal
15 theory. It is a very important legal theory. It says
16 every person in these United States --

17 A Uh-huh.

18 Q -- who is accused of a crime is presumed to be
19 innocent. Mr. Cottrell has the same presumption of
20 innocence that you and I share at this time.

21 A Right.

22 Q He is assumed, presumed --

23 A Uh-huh.

24 Q -- to be innocent. And he maintains that
25 presumption of innocence --

1 A Okay.

2 Q -- until and only if the State, by presenting
3 evidence, can convince every single one of a jury,
4 every person on a jury, that he is guilty beyond a
5 reasonable doubt.

6 A Uh-huh.

7 Q Okay? So the State would have to do that. At
8 this time that has not been done. Mr. Cottrell has the
9 presumption of innocence at this time. Okay?

10 A Okay.

11 Q Now, if we had the first part of this trial and a
12 jury were to find that he is guilty of the offense of
13 murder -- let me tell you what murder is. That is the
14 unlawful killing of another person with malice
15 aforethought.

16 A Uh-huh.

17 Q Kind of simple. Unlawful killing of another
18 person with malice aforethought. Malice aforethought
19 means the person who did the killing had some
20 wickedness of heart, that he had ill will --

21 A Uh-huh.

22 Q -- towards the person who was killed. He intended
23 to do it and he had malicious thoughts about that
24 person when he did so. That's what malice aforethought
25 is.

1 A Okay.

2 Q So the State would have to prove that beyond a
3 reasonable doubt. Well, when the State had proved
4 that --

5 A Uh-huh.

6 Q -- there could be no imposition of a death
7 sentence at that point. Could not have.

8 A Okay.

9 Q In a death penalty trial, the State has got to go
10 beyond that. And that's why we call the second phase
11 the sentencing phase.

12 A Okay.

13 Q In the sentencing phase, I would instruct the jury
14 that the State has to prove that in addition to the
15 murder, there must have been aggravating circumstances,
16 circumstances that made it more morally culpable, it
17 made it a worse murder, it was accompanied by things
18 that made the crime more heinous. Okay?

19 A Uh-huh.

20 Q And our legislature, when it enacted the death
21 penalty statute, was very clear. It says, Okay. Here
22 is a list of aggravating circumstances. And I would
23 tell the jury, "You cannot even consider imposition of
24 the death penalty unless one of these aggravating
25 circumstances has been proved to you beyond a

1 reasonable doubt. Each and every one of you jurors are
2 convinced beyond a reasonable doubt that the State has
3 proven that in addition to murder, one of these
4 aggravating circumstances exists in this case." That
5 would be the first step for the jury.

6 And I would tell the jury, "You can't go outside
7 of this list. You can't decide, 'Well, there's
8 something else over here that we think is just as
9 bad.'"

10 A Right.

11 Q Doesn't work that way. It has to be one of those.
12 Okay? If the jury found that there was one, at least
13 one of those aggravators, the jury still could not
14 impose or recommend the death penalty. Could not do
15 it. The jury would then have to consider what we call
16 mitigating circumstances, extenuating circumstances,
17 circumstances that lessen the severity of the conduct
18 of the defendant.

19 And I'm not suggesting that you would ever get to
20 that point or any juror would ever get to that point.
21 I'm not suggesting even that they would convict
22 Mr. Cottrell of the murder. And please don't think
23 that I'm suggesting that. I'm just telling you what
24 the process would be.

25 A Right.

1 Q But once the jury and only if the jury had found
2 one of those aggravating circumstances, the jury would
3 then have to consider mitigating circumstances. And I
4 would tell them what mitigating circumstances are
5 because the legislature also sets those out.

6 But you know what's different about mitigating
7 circumstances? The jury would not be limited to the
8 ones that the legislature said, "These are mitigating
9 circumstances." The jury could look at the facts of
10 case and say, "Well, there's something else over here
11 that we think should be considered as a mitigating
12 circumstance." See, that's different from the
13 aggravating circumstances.

14 A Okay.

15 Q The jury can only consider those. Couldn't go
16 outside of that list and find something else.

17 A Right.

18 Q But for mitigation, they could consider the list,
19 and if they thought something else was appropriate to
20 consider, they could consider that. Then they would
21 have to consider whether they're mitigating
22 circumstances.

23 A Okay.

24 Q And if there were mitigating circumstances, the
25 jury could say, "The death penalty is not appropriate.

1 We're going to give a life sentence."

2 A Okay.

3 Q Now, even -- even if the jury were to decide there
4 are no mitigating circumstances, "We really can't find
5 any mitigating circumstances," they could still say for
6 absolutely no reason, give no reason for it, they could
7 say, "We're going to grant mercy in this case, deserved
8 or otherwise. We're going to grant mercy and we're
9 going to recommend a life sentence instead of the death
10 penalty."

11 A Uh-huh.

12 Q That's how our system works.

13 A Okay.

14 Q Now, in spite of that -- in spite of that, are you
15 so opposed to the death penalty that even if I told you
16 that that's what had to be done --

17 A Uh-huh.

18 Q -- and that you went through that process, you
19 could still not recommend the death penalty? Is that
20 what you're telling me?

21 A Yeah.

22 Q Okay. I want to stress upon you that's perfectly
23 all right if that's your opinion. We're not going to
24 try to change your opinion.

25 A Right.

1 Q But we need to know if that is truly your opinion.

2 A Right.

3 Q Okay? So you are telling me that under no
4 circumstances --

5 A Uh-huh.

6 Q -- could you recommend the death penalty?

7 A It would be hard for me to do it. That's what I'm
8 saying.

9 Q Would it -- would your views --

10 A It would just affect my conscience.

11 Q Let me ask you just the ultimate question. Would
12 your views on the death penalty substantially impair
13 your ability to follow the law as I gave it to you --

14 A Yes, sir.

15 Q -- and impose the death penalty?

16 A I would. I could follow the law.

17 Q You would follow the law?

18 A I would have to.

19 Q You would?

20 A But I don't -- I don't agree with the death
21 penalty.

22 Q All right. Well, I don't think you understood my
23 question.

24 A Okay.

25 Q I would instruct you as to the law, and I would

1 tell you essentially what we just went through here.

2 A Huh-uh.

3 Q You have told me that you do not believe in the
4 death penalty.

5 A Right.

6 Q Could you -- could you possibly impose the death
7 penalty?

8 A If you was instructing -- if you were to give
9 instructions, you said. I was trying to understand
10 what you were saying.

11 Q Wait a minute. I would never tell you that you
12 had to give the death penalty.

13 A Uh-huh.

14 Q I would not do that because that is not the law.

15 A Right.

16 Q It is not the law. But could you listen to my
17 charge, could you listen to the facts in this case --

18 A Okay.

19 Q -- and do you feel that you could, under
20 appropriate circumstances, give the death penalty?

21 A Yes, sir.

22 Q Okay.

23 A Under the appropriate circumstances.

24 Q You would be asked, if you did that --

25 A Right.

1 Q -- to sign. You know, normally when a verdict is
2 rendered, just the foreman signs it. But every juror
3 in a death penalty case is required to write his name
4 or her name on that sentence or that recommendation of
5 the sentence. Do you understand that?

6 A Yes, sir.

7 Q And could you, in fact, sentence Mr. Cottrell
8 under the appropriate circumstances to death? Could
9 you set aside your feelings about the death penalty and
10 do that?

11 A That would be hard for me. I'm just being
12 truthful.

13 Q Okay. And that's all I want you to do. That's
14 all I want you to be is just be truthful.

15 And so let me go right back to the main question
16 here. You tell me it's possible that you could --

17 A I could, but it would just be --

18 Q You tell me it's possible. But listen to my
19 question.

20 A Okay.

21 Q My question is this: Would your feelings about
22 the death penalty substantially impair your ability to
23 do that?

24 A Yeah, it would get in the way.

25 Q It would?

1 A Uh-huh. It would get in the way.

2 Q Okay.

3 THE COURT: Let's talk to this particular juror
4 about that issue. Okay? I want to reserve the right
5 to come back to her, but let's to her about that issue
6 alone. Okay?

7 MR. McGUIRE: Yes, sir. Thank you, Judge.

8 BY THE COURT:

9 Q Ms. Scott, I want you to understand you're not
10 giving us any bad answers. We are not trying to change
11 your mind.

12 A I understand.

13 Q We're just trying to find out what you're
14 thinking. Okay?

15 A Okay.

16 Q All right. I think you've been very honest with
17 us, but we want to be very clear on your position. All
18 right?

19 A Okay.

20 MR. McGUIRE: Thank you, Judge.

21 EXAMINATION BY MR. McGUIRE:

22 Q Good afternoon, Ms. Scott.

23 A Good afternoon.

24 Q My name is Bill, Bill McGuire. Along with Teresa
25 Norris, I represent Mr. Cottrell.

1 Where you're sitting right now, that chair, you're
2 a potential juror. That's all you are.

3 A Okay.

4 Q And you can have any opinion you want to, any
5 personal belief, and everything that you say is the
6 right answer. We just want the truth.

7 A Okay.

8 Q And that's where you can have personal opinions
9 that sometimes differ with the law a little bit or
10 differ from the rules. And you can have all those
11 right there, and that's your absolute right. And it
12 sounds like you understand that.

13 A Yes, I do.

14 Q And you're being honest with the judge?

15 A Yes.

16 Q And then the seats over here are a little bit
17 different, though. These are if you get picked to be
18 on the jury, that's where you have to follow the rules
19 of court, follow the law.

20 A Right.

21 Q So you can see the differences in the two seats.

22 A Right.

23 Q This is where you can have your personal opinions.
24 It's like a conversation in the hallway with me or on
25 your porch --

1 A Right.

2 Q -- and you have your opinions and you can stick to
3 them. But if you were to be selected and get on the
4 jury and you were over here in one of these seats,
5 that's where you have to say, "I have my personal
6 beliefs, but I can take those and I can follow the law.
7 I can follow the judge's instructions."

8 A Uh-huh.

9 Q And it sounds like you can do that.

10 A Yes.

11 Q You might be -- you might struggle with it --

12 A Yeah.

13 Q -- because, I mean, let's be honest, this is a
14 matter of great gravity.

15 A Right.

16 Q And you're not uncommon. We have a lot of people
17 who come here, take that seat, and they say, "You know
18 what, you know, talking about the death penalty and
19 whether somebody lives out -- lives in prison or death
20 penalty, that is a very weighty decision. And I might
21 not personally be in favor of some of that." That's
22 normal.

23 A Okay.

24 Q And you can see and I think you would agree with
25 me that it would be unfair for Mr. Cottrell if

1 everybody we put on the jury said, "I'm always in favor
2 of the death penalty. I got no problem with it, no
3 qualms about it. I want to vote for the death
4 penalty."

5 A Right.

6 Q That would be a bad jury, an unfair jury.

7 A Right.

8 Q And you can see where we need people like you who
9 take it very seriously and who want to participate in
10 our system of government, participate in our jury
11 system, follow the judge's instructions, but also take
12 great care in this matter?

13 A Right.

14 Q Sounds like you can do that.

15 A Uh-huh.

16 Q Okay. And, you know, when we participate in
17 government and we do certain things, we have to follow
18 some rules?

19 A Right.

20 Q I can't open a hamburger stand down the road and
21 say no black people.

22 A No.

23 Q Right?

24 A You can't.

25 Q That would be wrong.

1 A Yeah.

2 Q You can't open up a hot dog stand and say no white
3 people.

4 A Right.

5 Q We have rules and it makes things better.

6 A Yes.

7 Q And our legislature has found that the death
8 penalty serves some purpose, it's part of our
9 government, it's part of our jury system.

10 A Right.

11 Q And it sounds like if you were selected and put on
12 this jury, you could follow the judge's instructions
13 right down the line.

14 A Right.

15 Q And you could put aside your personal views, even
16 though they're significant?

17 A Right.

18 Q And you can say, "I can follow the judge's
19 instructions."

20 A Uh-huh.

21 Q "I can decide the case based on the evidence that
22 I hear in the courtroom."

23 A Right.

24 Q "Not based on the outside beliefs that I have."

25 A Uh-huh.

1 Q And that -- that if you and the 11 other jurors,
2 that if the State came to you -- and remember you're
3 over here, so you put that personal opinion aside.

4 A Right. Right.

5 Q And based on the evidence and the law that you
6 hear -- and the judge kind of describes it as two gears
7 coming together. That's how you make your decision,
8 the law and the evidence. And you heard that evidence
9 and it reached a point where, based on the law that you
10 heard and the 11 other jurors heard, everybody agreed
11 that the death penalty would be appropriate, you could
12 do that?

13 A Uh-huh.

14 Q You have to say "yes."

15 A Yes. I'm sorry.

16 Q You can't nod. I'll politely remind you if do you
17 that again if that's okay.

18 A Yes. Yes.

19 Q Okay. And that would also -- that would also
20 include filling out the paperwork. You would have to
21 sign your name to that sentence?

22 A Right.

23 Q And you could do that?

24 A Yes.

25 Q It would be on the indictment. That's the

1 charging document. You could put your name on that,
2 too?

3 A Yes.

4 Q Okay. And that would be with the 11 other jurors,
5 you could do that?

6 A Yes.

7 Q Okay. So what I hear you saying is you can take
8 your personal beliefs, you can say, "I have them, I
9 recognize them, I'm going to put them over here. If I
10 get in one of these chairs, I'm going to follow the
11 judge's instructions right down the line"?

12 A Yes, I would have to.

13 Q Okay. And that would be your duty and obligation?

14 A Yes.

15 Q And if you reached the death sentence, it would be
16 your duty and obligation to sign the paperwork?

17 A Yes.

18 Q And you can do that?

19 A Yes.

20 Q And the answer --

21 MR. McGUIRE: That's all I have. Thank you,
22 Judge.

23 THE COURT: Mr. Richardson, you want to examine
24 her on this issue?

25 MR. RICHARDSON: Yes, sir, your Honor.

1 EXAMINATION BY MR. RICHARDSON:

2 Q Ms. Vivian, just a couple of questions about that.

3 You know, I appreciate your honesty --

4 A Yeah.

5 Q -- and Bill is right. We need everybody -- the
6 main thing is that we be honest about that because it's
7 easy today to sit up here and say this grand
8 pie-in-the-sky thought, "What do I believe about the
9 death penalty?" It's quite another one if, after four
10 days or five days of testimony, you guys have sat there
11 and you have said, "Yeah, he is guilty of murder."

12 A Uh-huh.

13 Q "And, yes, the State has proven to me aggravating
14 circumstances." In other words, something that makes
15 it a lot worse.

16 A Right.

17 Q Because you know that most murders you don't get
18 the death penalty on, right?

19 A Right.

20 Q So it's something special.

21 A Yes.

22 Q It's murder plus.

23 A Yes.

24 Q So y'all have gone through that, and you've
25 figured, "I need now to determine what's the best

1 punishment."

2 A Uh-huh. Yes.

3 Q Right?

4 A Right.

5 Q And at that point, what's the two punishments?

6 It's one or the other. Do you know?

7 A It's life imprisonment.

8 Q Or the death penalty. All right. And you've
9 already told us that starting off, you would be very
10 much life imprisonment?

11 A Yes.

12 Q Regardless of what the facts as how they came out.
13 Your starting position would be very much pro life and
14 against the death penalty?

15 A Yes, sir.

16 Q And you've said that, if the judge instructed you
17 to, you could go with the death penalty?

18 A Yes, sir.

19 Q Now, Ms. Vivian, what I've got to make sure you
20 realize, and I just want honest answers. That's all
21 any of us want.

22 A Right.

23 Q Judge Hyman is never going to instruct you to go
24 with the death penalty. He's never going to say,
25 "Vivian, you've got to go with the death penalty." So,

1 without that instruction, could you sit back with those
2 other jurors and say, "Yeah, I can live with myself
3 giving him the death penalty"?

4 A Well, like I said, if I'm picked, I would have to
5 do it, but it would be hard for me. I'm just being
6 truthful. It would be hard for me to do it. I don't
7 know how I would have to live with myself. I know God
8 would help me live with myself, you know, in making
9 that kind of decision. It's a hard decision. It's a
10 tough decision, but if I was picked and I had to do it,
11 it would be something -- hearing the facts on this case
12 and, you know, what happened in the case. I don't know
13 anything about it.

14 Q Right.

15 A So I would have to, you know, at that time I would
16 have to make the appropriate judgment for it.

17 Q Ms. Vivian, would you say that that is -- and
18 maybe -- just tell me, I don't know -- but if it's what
19 you grew up with or if it's from being a preacher?

20 A Yeah, it's what I grew up with and being a
21 preacher because I am a pastor.

22 Q Yeah. I saw that in your thing.

23 A Uh-huh.

24 Q Not to say that you couldn't do it --

25 A Right.

1 Q -- but do you believe that it would substantially
2 impair your ability to do it? Do you know what it
3 means, to substantially -- more than a little bit
4 impair your ability to sign your name to that death
5 warrant?

6 A No, it wouldn't impair my ability to do it.

7 Q Okay.

8 A It's just I probably would have to wonder how
9 could I live with myself in doing that. But like I
10 said, if I had to -- if I was thinking I had to do it
11 and hearing the facts in this case, it all depends on
12 what position I'm put in at the time.

13 Q All right.

14 A You know.

15 Q What about if -- and, you know, none of us know.
16 We're going to ask you to find him guilty of murder.
17 And then we're going to -- hopefully, what we're
18 talking about now is projecting into part two, the
19 second phase. No doubt that you have already got
20 guilty. You've already -- at this stage in what I'm
21 formulating to you is the group of 12 of y'all have
22 already said he is, in fact, guilty of murder.

23 A Yes.

24 Q He killed the police officer.

25 A Okay.

1 Q All right. Now, the second part of that is the
2 State has presented me with something that makes it
3 worse.

4 A Right.

5 Q So what you're saying is I believe if that's bad
6 enough --

7 A Right.

8 Q -- then I can consider the death penalty?

9 A Yes.

10 Q And I could also consider life imprisonment?

11 A Yes.

12 Q All right. And you're saying there's nothing
13 about your growing up or being a pastor that would have
14 affected any of that?

15 A No.

16 Q All right. And you answered earlier that you were
17 a C juror, that you would see both sides of it and come
18 to a conclusion?

19 A Right.

20 Q If at that stage -- and, again, we're
21 projecting -- but say there was 11 people --

22 A Uh-huh.

23 Q -- that all said, you know, "We all agreed a
24 little bit earlier and we all said he did it, and now
25 we're at this stage as to what to do." And 11 people

1 were saying, "I believe he should get the death
2 penalty" --

3 A Right.

4 Q -- are you the -- would you go along with those 11
5 people or would you just stick to your guns? What type
6 person are you with regard to that?

7 A I would stick to my guns in hearing the facts and
8 seeing if the facts are there and evidence is there, I
9 would stick to my guns.

10 Q And you realize -- I mean, I just want to make --

11 A Yeah.

12 Q -- make it definitely clear because this is so
13 different than anything that we've done --

14 A I understand.

15 Q -- you know, that you've done --

16 A I understand.

17 Q -- and it very rarely goes on in Horry County.

18 A Right.

19 Q But what we're talking about is a two-part
20 trial -- first part, finding him guilty, second part.
21 And then after y'all determine that, you still don't
22 have to go with the death penalty, right?

23 A Right.

24 Q Now you're at the stage you're saying -- and the
25 reason I bring that up, Ms. Vivian, is that there's

1 never going to be a time that you get to delegate your
2 duties back to Judge Hyman.

3 A Right. I understand that.

4 Q Judge Hyman is never going to say, "Vivian, give
5 him the death penalty."

6 A Right.

7 Q So you're saying now that, "I can, on my own,
8 either with 11 other people or with nobody else --

9 A Right.

10 Q -- I can say I can give Luzenski Cottrell the
11 death penalty"?

12 A Right.

13 Q All right. "And I can sign my name to it, and if
14 at some point that's his ticket to ride, my name will
15 be on that ticket"?

16 A Right.

17 MR. RICHARDSON: I have no further questions.

18 Thank you, Ms. Vivian.

19 THE COURT: Let me ask you a couple more
20 questions, Ms. Scott.

21 EXAMINATION BY THE COURT (Resumed):

22 Q Let me ask you this. You've told us that your
23 hesitancy in recommending the death penalty is based
24 upon your opinion concerning the death penalty
25 generally and the fact that you're a pastor and things

1 of that nature. But you seem to be telling us that in
2 spite of that, you could still recommend the death
3 penalty in the appropriate case, if the appropriate
4 case -- showing was made, you could do that?

5 A Right.

6 Q All right. Now, was there any other reason other
7 than your opinions that caused you to say that it would
8 be difficult for you to be fair and impartial? Was
9 there any other reason?

10 A Yeah. I just have my own personal reasons why it
11 would affect me. I have two sons.

12 Q Okay.

13 A You know, I have two sons. That's somebody's son.
14 And I just believe, you know, God gives us second
15 chances. And I just believe the -- not death penalty,
16 but just maybe life imprisonment where that person can
17 get themselves --

18 Q Well, see, a moment ago we --

19 A I don't want to bring in my religious beliefs. I
20 didn't want to bring in all that.

21 Q Let me say that we probably talked about those.
22 But our questions a moment ago were primarily geared
23 towards your view on the death penalty.

24 A Right.

25 Q And you told us because of that, you didn't think

1 you could be fair and impartial. And through the
2 questioning, it would appear that while you might be
3 generally opposed to the death penalty, you believe
4 that you could still either give life or death --

5 A Right.

6 Q -- depending on the circumstances --

7 A Right.

8 Q -- and the evidence in the case that you would
9 follow the law --

10 A Right.

11 Q -- as I gave it to you?

12 A Right.

13 Q All right. In addition to that --

14 A Uh-huh.

15 Q -- are there other things --

16 A No.

17 Q -- that would -- other than your opinion
18 concerning the death penalty, are there other things
19 that would cause you some hesitancy when asked if you
20 could be fair and impartial?

21 A No, sir, no.

22 Q There's nothing else?

23 A No, sir.

24 Q All right. You were kind enough to sign the
25 witness sheet. And you indicated on there that there

1 are quite a few people that you know.

2 A And I wasn't sure the ones I think I know.

3 Q Okay. Well, let me ask you this or tell you this.

4 There have been about four names that were added, and

5 let me ask you about these people: Nicole Pyle, John

6 Taylor, Christine Del Fonzo, William Nettles and

7 Michelle Light. Do any of those names ring a bell?

8 A No.

9 Q Now, these people that you've indicated that you
10 might know, are any of those persons close friends?

11 A They're just friends, just people I know.

12 Q People that you know?

13 A Yeah.

14 Q Okay.

15 A They're not close friends.

16 Q Are any of them related to you by blood or
17 marriage?

18 A No, sir. No, sir.

19 Q Do you have any business relations with any of
20 them?

21 A No. No, sir.

22 Q Do you own property or anything like that with any
23 of them?

24 A No, sir, huh-uh.

25 Q They are just acquaintances?

1 A Yeah.

2 Q Would the fact that you think that you might be
3 acquainted with some of these people cause you to be
4 more inclined to believe these people than other
5 witnesses who testify in this trial?

6 A Huh-uh.

7 Q Would it affect -- would the fact that you know
8 these people affect your ability to be fair and
9 impartial?

10 A No, sir.

11 Q Could you give both the State and the defense a
12 fair trial in spite of the fact that you might know
13 these people?

14 A Yes, sir, I could.

15 Q You could be fair and impartial?

16 A Yes, sir. Yes, sir.

17 Q Okay. Do you understand that if you're selected
18 as a juror in this case, you would be sequestered.
19 That is, you would be required to stay in a hotel here,
20 of course, at the county's expense, and they would pay
21 for all your meals and all. But for several days
22 during the trial, that would be a requirement. Would
23 that cause you any particular problems?

24 A Well, one, yeah. I don't know if it's excusable,
25 but I have -- I don't know when the trial is, but I

1 have a service on next weekend. I have a guest coming
2 from out of town and I am supposed to be there.

3 Q Okay. That was like at the church?

4 A Yes, sir.

5 Q Do you have deacons or other people at the church?

6 A Yes, sir.

7 Q All right.

8 THE COURT: Any further questions, Mr. McGuire?

9 MR. MCGUIRE: Not on this particular issue, but
10 if --

11 THE COURT: On any issue.

12 Q Just let me ask you this. Could you follow the
13 law as I give it to you?

14 A Yes, sir. Yes, sir, I can.

15 Q Could you listen to the evidence in this case?

16 A Yes, sir, I can.

17 Q And base any decision on the evidence?

18 A Yes, sir, I can.

19 Q And would you agree not to consider anything not
20 in evidence in this case?

21 A What do you mean by that? I don't --

22 Q Ignore anything else that you may have heard --

23 A Yes. Yes, sir, I can.

24 Q -- or learned about this case. You could be fair?

25 A Yes, sir.

1 MR. McGUIRE: No further questions, Judge.

2 THE COURT: Mr. Richardson.

3 MR. RICHARDSON: No further questions, your Honor.

4 THE COURT: You may step down. If you would,
5 please step down for a moment.

6 (WHEREUPON, Ms. Scott exited the courtroom
7 at 5:12 p.m.)

8 THE COURT: Mr. McGuire.

9 MR. McGUIRE: She's qualified, Judge.

10 THE COURT: Mr. Richardson.

11 MR. RICHARDSON: Your Honor, and I'm looking at
12 *State vs. John Richard Wood*. We believe the record
13 would reflect that the juror, Ms. Scott, said
14 unequivocally five or six times, "I can't be fair and
15 impartial. It would substantially impair because of my
16 upbringing, because of" -- she didn't mention the
17 pastor part until much later. But she said over and
18 over again that, "I could not be fair."

19 Mr. McGuire was very successful in being able to
20 turn her back to being to where she could say she could
21 be fair. But part of his argument to her or his
22 questioning of her under *Wood*, it looks -- he went
23 through this analogy of you know that it would be wrong
24 to have white people running a hotdog stand and not
25 letting black people eat at it, and it would be the

1 same for black people to own a hotdog stand and not let
2 white people eat at. And under that analogy, the same
3 thing has happened under *Wood* where they were able to
4 turn a witness -- excuse me, a juror using that sort of
5 questioning.

6 And the case holds, your Honor, the cite -- where
7 is the cite on this? All I've got is the opinion
8 number. But it's 25-907, *State vs. John Richard Wood*,
9 and that that in itself is a tainted juror.

10 And I believe even the Court witnessed this. She
11 was directly one way until that line of questioning.
12 When that line of questioning came through, she was, "I
13 am not substantially impaired from making such a
14 decision. I could take the judge's instruction as
15 given and now I could vote for the death penalty."
16 And, again, she had said several times that she would
17 have a very hard time with that before she was brought
18 up with that situation.

19 I'll try to get a better cite for your Honor.

20 THE COURT: All right. I believe that she is
21 qualified. The case law and the statute requires that
22 a person who is opposed to the death penalty should
23 only be excluded when those attitudes would render him
24 or her unable to return a verdict according to the law.

25 I questioned her and I listened to both of you as

1 you questioned her, including you, Mr. Richardson, and
2 she tells us that she could follow the law and that she
3 is able to return a death penalty recommendation in
4 this case, and I would find her to be qualified. Okay?

5 Mr. Ropp, bring her back in.

6 (WHEREUPON, Ms. Scott entered the courtroom
7 at 5:16 p.m.)

8 THE COURT: All right. Ms. Scott, I find you are
9 qualified. You're not on the jury yet, but you are
10 qualified. I'm going to ask you to please call the
11 number that's being given to you by the clerk of court
12 next Sunday evening after 6 o'clock. Anytime after
13 6:00 we'll have a recording there, and that recording
14 will tell you when to return.

15 When you return, we will actually select the jury.
16 But in anticipation of that, you should bring with you
17 sufficient clothing, medications and things you might
18 need in case you are placed on that jury. All right?

19 I remind you again that you are not to put
20 yourself in a position where you would be exposed to
21 any publicity about this case, any news reporting. You
22 are not to make any inquiries on your own on the
23 Internet or otherwise, not to read anything about it or
24 have any conversations with any person including your
25 fellow jurors about this case. Do you understand?

1 MS. SCOTT: Yes, sir.

2 THE COURT: All right. Be sure to call back after
3 6:00 p.m. this coming Sunday. All right? Thank you.

4 (WHEREUPON, Ms. Scott exited the courtroom
5 at 5:18 p.m.)

6 (WHEREUPON, Mr. Bradshaw entered the courtroom
7 at 5:18 p.m.)

8 **WILLIAM BRADSHAW,**

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE CLERK: Please speak into the microphone and
11 state your name and spell your last for the record.

12 MR. BRADSHAW: William Bradshaw, B-r-a-d-s-h-a-w.

13 EXAMINATION BY THE COURT:

14 Q All right. Mr. Bradshaw, good to see you this
15 afternoon. I appreciate you being here this afternoon.
16 Do you remember on yesterday when I cautioned and
17 ordered that jurors not have any contact with the press
18 or persons concerning this trial, not to avail yourself
19 of any information about this trial. Do you remember
20 me doing that?

21 A Yes, sir.

22 Q And did you follow my instructions?

23 A Yes, sir.

24 Q Okay. And has anyone tried to contact you about
25 this case?

1 A No, sir.

2 Q Very well, sir. Mr. Bradshaw, you were kind
3 enough to complete the forms that we had for you this
4 morning. The first one asks you to describe what type
5 of juror you are. And you have indicated that you are
6 a type C juror; is that correct?

7 A Yes, sir.

8 Q Okay. And my -- so that we understand each other
9 and make sure we're on the same page, that would be a
10 juror who would need to hear the facts and
11 circumstances in aggravation and in mitigation before
12 he or she could make a decision regarding punishment.
13 Does that best describe you, sir?

14 A Yes, sir.

15 Q All right. Mr. Bradshaw, let me tell you that
16 we're going to be asking you some questions, and I'm
17 going to ask you quite a few. We are not trying to pry
18 into your private life or invade your privacy.

19 As you're aware, this is a death penalty case.
20 And in a death penalty case, individual voir dire of
21 jurors is necessary. Can you appreciate that fact?

22 A Yes, sir.

23 Q Okay. So let me tell you that in America, we all
24 have a right to have our own opinions. You agree with
25 that, don't you?

1 A Yes, sir.

2 Q Okay. So when we ask you about your opinions,
3 please understand that no one is trying to change your
4 opinion. No one is being critical of your opinion.
5 You have the right to have your own opinions. What we
6 need to know is what those opinions are and how those
7 opinions might affect you if you were selected as a
8 juror. Do you understand?

9 A Yes, sir.

10 Q Okay. Now, in this case we're sort of getting the
11 cart before the horse. We're going to be talking to
12 you a lot about the possible penalties in this case
13 when, in fact, Mr. Cottrell has not been convicted of
14 anything. Do you understand that?

15 A Yes, sir.

16 Q Okay. Are you familiar with the term -- have you
17 ever heard the term "presumption of innocence"? Have
18 you ever heard that term used?

19 A Yes, sir.

20 Q Do you understand that that is one of the basic
21 legal theories or terms that we use in the court system
22 in the United States? What it means is this, is that
23 every person -- every person -- is presumed innocent
24 throughout any trial. Mr. Cottrell sits there with the
25 same presumption of innocence that you and I would

1 have. And that presumption of innocence stays with
2 that person until it is removed, it is overcome by the
3 State.

4 If a person has been charged with a crime, the
5 only way that that presumption of innocence can be
6 overcome is if the State convinces a jury, each and
7 every person on that jury, beyond a reasonable doubt
8 that the defendant is guilty of the offense that he is
9 charged with. Do you agree with that?

10 A Yes, sir.

11 Q And do you have -- do you find that offensive in
12 any way?

13 A No, sir.

14 Q That's a good thing, isn't it?

15 A Yes, sir.

16 Q Okay. And the charge that Mr. Cottrell has is a
17 murder charge. That's what he's charged with. And
18 there are many times that we will have murder cases
19 come before the court here in this state; however, it's
20 very rare where we have a case where the State seeks
21 the death penalty. And that puts that murder trial
22 into an entirely different category. And you probably
23 sensed that during our questioning yesterday and your
24 summoning here as a juror, potential juror. Is that
25 true?

1 A Yes, sir.

2 Q Okay. Well, let me tell you what happens when a
3 person is charged with murder and the State seeks a
4 death penalty. And I want to know what your opinion
5 about that process is. Okay?

6 When a person is charged with a murder and the
7 State seeks the death penalty, first of all, there is a
8 trial to determine whether that person is guilty of
9 murder. And that trial proceeds just like any
10 non-death penalty trial, essentially. The State has to
11 convince each juror of the defendant's guilt beyond a
12 reasonable doubt. I don't know if the State will be
13 able to do this in this trial or not. And please don't
14 think I'm suggesting that that should happen. I don't
15 know. Only the jury can make that call.

16 But the purpose of our discussion here, let's
17 assume that they do that. Okay? If or when the State
18 puts up its evidence, it must convince that jury of
19 several things. It must convince the jury that
20 Mr. Cottrell killed another human being with malice
21 aforethought. Those are the elements of the offense of
22 murder, the basic offense of murder.

23 Malice aforethought is wickedness of heart, ill
24 will towards the victim or the person who was killed, a
25 malicious heart. It's more than just killing someone.

1 It's killing someone with that wickedness or ill
2 feeling or hatred towards that person. And that's what
3 the State would have to prove. They would have to
4 convince every juror of that beyond a reasonable doubt.

5 And I will tell you that at that point in time the
6 State is absolutely not entitled to a recommendation of
7 a death penalty by a jury. Did you know, sir, that
8 there is absolutely no offense for which there is an
9 automatic penalty of death in this state? There's no
10 such thing. Did you know that?

11 A No, sir.

12 Q Well, I tell you that that is the case. There is
13 no offense that you could commit in this state for
14 which you automatically get the death penalty. That is
15 just not part of our jurisprudence. I want you to keep
16 that in your mind in these proceedings. Do you find
17 that offensive?

18 A No, sir.

19 Q Okay. Now, if a person is convicted and the State
20 is seeking the death penalty, we move to the second
21 part of the trial. And that is because the State, if
22 it's seeking the death penalty, must not only prove the
23 commission of the murder but must prove an aggravating
24 circumstance, at least one.

25 And our legislature, when it set up the death

1 penalty statute, spelled out everything that can be
2 considered by a jury as an aggravating circumstance.
3 And the State must prove the existence of at least one
4 of those aggravating circumstances beyond a reasonable
5 doubt and unanimously to the jury.

6 A unique feature is that the jury cannot look for
7 any other aggravating circumstance. They may only
8 consider the aggravating circumstances that are defined
9 by the legislature. Aggravating circumstances are
10 circumstances which make the offense much worse, which
11 makes the crime more heinous, which makes the person
12 more morally culpable. It has to be in addition to the
13 murder. It has to be a circumstance under which the
14 murder is committed....

15 Now, if you were instructed by the Court that you
16 could consider those aggravating circumstances and
17 those aggravating circumstances alone, could you do
18 that?

19 A Yes, sir.

20 Q And would you be offended by the fact that the
21 Court says you can only consider these things as
22 aggravating circumstances?

23 A No, sir.

24 Q Okay. Could you follow the Court's instructions?

25 A Yes, sir.

1 Q Now, once an aggravating circumstance is
2 established, that is, the murder plus an aggravating
3 circumstance, only then -- only then -- is the
4 possibility of a death penalty on the table.

5 And I say the possibility of a death penalty. You
6 are not required to impose the death penalty at that
7 point. You are never required to do it. The jury
8 would then be required, though, to look at the case and
9 determine whether or not there were any mitigating
10 circumstances, extenuating circumstances, circumstances
11 that would lessen the magnitude of the crime. And the
12 legislature has set out some of those and said these
13 are statutory or legally mitigating circumstances.

14 But unlike the aggravating circumstances, a jury
15 can actually go outside the box, outside the listed
16 mitigating circumstances and look at the entire case
17 and can say, "We believe that this fact over here or
18 this fact over here, this circumstance or that
19 circumstance should also be a mitigating circumstance,"
20 and can make that a mitigating circumstance. Do you
21 understand that?

22 A Yes, sir.

23 Q Okay. And are you offended in any way for any
24 reason because you can go outside the box and determine
25 mitigating circumstances?

1 A No, sir.

2 Q Does that give you any problem at all?

3 A No, sir.

4 Q Okay. Even if you do not, the jury does not find
5 any murder -- any mitigating circumstances at all --
6 and I'm not suggesting that is the case. I'm not
7 suggesting we'll even get this far. But even if they
8 find nothing to mitigate against the death penalty, are
9 you aware of the fact that the jury can then say in
10 spite of that, we want to extend mercy and can still
11 recommend a life sentence? Were you aware of that?

12 A Yes, sir.

13 Q All right. Does that in any way offend you? Do
14 you have any problems with that at all?

15 A No, sir.

16 Q Okay. Now, Mr. Bradshaw, based on your beliefs
17 concerning the death penalty in general, could you
18 follow the law, and if it was appropriate, could you
19 impose the death sentence?

20 A Yes, sir.

21 Q Could you just as easily impose a life sentence?

22 A Yes, sir.

23 Q Could you impose a life sentence even where you
24 found no mitigating factors?

25 A Yes, sir.

1 Q All right. Do you understand that you are never
2 required to impose a life -- a death sentence?

3 A Yes, sir.

4 Q Does anything that I've described to you about
5 this system we have that we use in a death penalty case
6 offend you or give you any problem or would you have
7 any hesitancy following the law as I have described it
8 to you? And I'll give it to you in greater detail if
9 you are on the jury. But has anything I said caused
10 you any problem or you see anything that you would have
11 difficulty in following?

12 A No, sir.

13 Q Okay. Do you understand, sir --

14 A Yes, sir.

15 Q -- that in a case, the jury is the sole and
16 exclusive judge of the law. You know, evidence -- or
17 exclusive judges of the facts. I'm sorry, I didn't
18 mean to say the law.

19 You know, evidence is not always what the facts
20 are. Evidence is information that's provided to the
21 jury, and the jury has to weigh and judge and evaluate
22 that evidence. And from that evidence the jury
23 determines what the facts are. Okay?

24 And once the jury determines what the facts are in
25 the deliberation process, the jury then applies those

1 facts to the law. And that's the easy part because I
2 will tell you precisely what the law is. Would you
3 follow the law precisely as I give it to you?

4 A Yes, sir.

5 Q What if you didn't agree with that law? What if
6 you thought the law should be something else? Would
7 you still follow the law as I give it to you?

8 A Yes, sir.

9 Q All right. Very well. Now, in this particular
10 case, have you heard or seen or read anything that
11 would cause you to have any opinion about the facts in
12 this case?

13 A No, sir.

14 Q Do you understand that you, if you are chosen as a
15 juror, must decide this case solely from the evidence
16 that you hear from the witness stand?

17 A Yes, sir.

18 Q Do you understand that?

19 A Yes.

20 Q And could you, in fact, do that?

21 A Yes, sir.

22 Q Okay. Do you, sir, know any reason whatsoever why
23 you could not be a fair and impartial juror in this
24 case?

25 A No, sir.

1 Q Mr. Bradshaw, the ultimate question here is
2 whether you have any life experience or you have any
3 knowledge concerning this case or you harbor any
4 opinions about the death penalty or a life sentence or
5 you have any prejudice or bias towards or against any
6 person who may testify in this case or the State of
7 South Carolina and the defendant that would
8 substantially interfere with your ability to be a fair
9 and impartial juror. Can you think of anything?

10 A No, sir.

11 Q Now, Mr. Bradshaw, I am looking at the
12 potential -- the witness list. You understand these
13 are just people who might testify in this case. I've
14 asked them to list anybody that might. And then in
15 addition to the list that I have that I gave you, there
16 are a couple of other names like Nicole Pyle, John
17 Taylor, Christine Del Fonzo, William Nettles and
18 Michelle Light. Do those names ring a bell?

19 A No, sir.

20 Q You haven't indicated that you know anybody on
21 this list.

22 A No, sir.

23 Q Do you believe -- I know it's hard to look at a
24 list of names and remember all the names, but do you
25 believe that if you had a significant relationship with

1 anyone on this list, like if they were in business with
2 you, they were related to you, they were close personal
3 friends, do you think that you would recognize those
4 names if you had any significant relationship with any
5 of these witnesses?

6 A Yes, sir.

7 Q Okay. And you do not believe that you do?

8 A No, sir.

9 Q That's what you have indicated. If you are
10 selected as a juror on this case, Mr. Bradshaw, do you
11 understand that you would be housed in a hotel, of
12 course, at the expense of the county, and we'd provide
13 you with meals and things that are necessary during the
14 trial. Would there be any particular problem that you
15 have with that?

16 A No, sir.

17 Q All right. Very well. Answer any questions that
18 counsel would have.

19 Let me ask you one other question. Do you have an
20 opinion concerning the death penalty?

21 A No, sir.

22 Q You have no opinion one way or the other?

23 A (Shaking head.)

24 EXAMINATION BY MR. McGUIRE:

25 Q Good afternoon, Mr. Bradshaw.

1 A How you doing?

2 Q I'm tired. I know you've been waiting a long
3 time. I apologize for the wait. I'm going to follow
4 up where the judge left off. He asked you about an
5 opinion about the death penalty.

6 A Yes, sir.

7 Q If I worked on your job with you and you and I
8 were at the water cooler taking a break and some other
9 fellow was saying, you know, they're talking about a
10 bill to do away with the death penalty and that might
11 be on a referendum. I might be able to vote for that.
12 And he turned to you and said, "How would you vote on
13 that," what would you say?

14 A I probably would, too.

15 Q Okay. And -- but you haven't really thought about
16 the death penalty much, have you?

17 A No, sir.

18 Q I mean, to have no opinion, it doesn't sound like
19 you've really put a lot of thought or energy in this at
20 all.

21 A No, sir.

22 Q Okay. You probably didn't think about it until
23 you got the summons to come to court --

24 A Correct.

25 Q -- and we started talking to you.

1 Okay. And the main thing that we're here for is
2 to make certain that there's not anything that you
3 might -- that might prevent you from following the
4 rules of court, the law. Okay? I notice on your
5 questionnaire that your wife is a military policeman?

6 A Yes.

7 Q Okay. And the judge has already told everybody
8 that the allegation in this case is that Mr. Cottrell
9 shot a police officer.

10 A Yes.

11 Q Okay. Now, he's pled not guilty to it.

12 A Uh-huh.

13 Q And I'm going to come to you if you're in the jury
14 at the end of the case and ask for a not guilty
15 verdict. Not because I asked for it, but because the
16 evidence supports it.

17 Now, the fact that your wife is a military police
18 officer and the victim in this case is also a police
19 officer, would that interfere with your decision-making
20 or how you --

21 A No, sir. No, sir.

22 Q Okay. There are a lot of differences in a capital
23 case from a regular case. And that's why we have this
24 opportunity to talk to you, and that's why the judge
25 just gave you some information to explain how it's

1 different. And we're going to see -- and there are
2 different rules that apply to it, different laws that
3 apply to it. So what we're going to do is go through
4 the rules and laws and see if you can follow them.

5 A All right.

6 Q The first phase of a trial, of a trial like this,
7 the judge said, remember, it's two phases. The first
8 phase is sort of did the person do it. Did he commit a
9 crime. If you find the person guilty of murder, then
10 you go to the second phase, and that is what punishment
11 should he get. Okay? So you can see the two different
12 phases.

13 In the first phase, it's a factual based decision.
14 The person either did it or didn't do it. Or sometimes
15 you do something or, say, it's an accident or you
16 didn't mean to do it. That could be a defense, too.
17 So the first part is guilty/not guilty. And it's going
18 to be did the person do it, and did he have the
19 mindset. There's a thing called mens rea or your state
20 of mind.

21 A Uh-huh.

22 Q And in a murder case, the prosecutor has to prove
23 malice, that the state of mind of the person was evil,
24 malicious, operating with a black, malignant heart.
25 That's kind of how we describe it in the law. But if

1 the person didn't have that mindset, they can be not
2 guilty. You see, so it's guilty/not guilty. That's
3 the first phase.

4 Now, if you get to a penalty phase or a second
5 phase, it becomes what the law describe as an
6 individual moral judgment. And it's not based on fact.
7 Did you know that?

8 A Yes.

9 Q Okay. Does that make sense to you?

10 A Uh-huh.

11 Q Because the questions in the first phase are sort
12 of answered by science. You know, is the car red or
13 green? Is the caliber of a gun .32 or .38? These are
14 all fact based, science based type decisions.

15 But the second phase is that individual moral
16 judgment. And the jury, to be guilty or not guilty in
17 the first phase, all 12 have to agree one way or the
18 other. And they all have to sort of agree on the
19 elements.

20 There's room for disagreement in the sentencing
21 phase with the jury. And I'm going to explain that to
22 you now and see if you can follow this rule. Okay?

23 There is a thing called mitigation evidence. And
24 basically it's any reason to vote for the life penalty.
25 It could be something in a person's background, their

1 walk in life, things that have happened to them, things
2 they have done as well. Just kind of who they are as a
3 person and how they came up in the world. You can look
4 at that and you can vote for the life penalty for that
5 mitigation-type evidence that the judge explained to
6 you. And that's mitigation evidence. The background
7 of the person, that can be mitigation. Is that
8 something you could take into account in weighing the
9 punishment?

10 A Yes.

11 Q The background of the person, would that be
12 important to you?

13 A Yes.

14 Q And why is that?

15 A Because you can really tell a person, like what he
16 came from and how they turn out to be, from the
17 background and everything. So, yeah, that has a big
18 impact.

19 Q Okay. And the way the jury is very, very
20 different in the sentencing phase is that at times they
21 almost operate like 12 individual juries. Each person
22 can make certain decisions.

23 And the way that -- I'm just going to point at
24 some chairs here to bear that out by example. There's
25 no requirement that the jury be unanimous on mitigation

1 evidence. Okay? What that means is somebody sitting
2 over here can say, "I saw something in the man's
3 growing up when he was a boy and that resonated with
4 me, and I want to vote for life for that reason."
5 Somebody over here may say, "I don't see that. I don't
6 agree with that. I don't see it." But this person
7 still has the right to vote for life for that reason if
8 they want to. There doesn't have to be agreement. Is
9 that a principle of law you can follow? Can you let
10 people disagree and have their own different reasons to
11 vote?

12 A Yeah.

13 Q Now, we expect what might be described as civil
14 discourse or an exchange of ideas.

15 A Uh-huh.

16 Q But in the sentencing phase, somebody reaches
17 their own individual moral judgment about the penalty.
18 They have a duty and obligation to have that, their
19 voice heard. If it would harm their conscience to
20 change their view, that would be wrong. Is that a
21 principle of law you can follow?

22 A No, I wouldn't change my view or nothing.

23 Q If it would harm your conscience to change your
24 position, you wouldn't do that?

25 A Right.

1 Q Stick to your guns, so to speak?

2 A Right.

3 Q And there is a rule that it's wrong for jurors to
4 throw in with the majority just for the sake of having
5 a unanimous verdict.

6 A Right.

7 Q Because that would be abandoning the juror oath.
8 Because if you are selected, you take an oath that, "I
9 will try the case and consider all the evidence in
10 mitigation and all the evidence in aggravation, and I
11 will come up with my own individual judgment. I won't
12 let the majority just speak for me."

13 A Right.

14 Q And that's something you can do?

15 A Yeah.

16 Q Okay.

17 MR. McGUIRE: Let me have one second, Judge.

18 (WHEREUPON, an off-the-record discussion was held
19 between Mr. McGuire and Ms. Norris.)

20 BY MR. McGUIRE:

21 Q Just very briefly. I want to -- don't mean to be
22 too personal, but on your questionnaire, you indicated
23 that you knew somebody that was in prison; is that
24 right? I could be mistaken. I've looked at a hundred
25 questionnaires.

1 A Yeah. Huh-uh.

2 Q Okay. Fair enough. I got the wrong piece of
3 paper, then.

4 MR. McGUIRE: That's all I have, Judge. Thank
5 you.

6 THE COURT: Mr. Richardson -- Mr. Hixson.

7 EXAMINATION BY MR. HIXSON:

8 Q Good afternoon, sir. How are you?

9 A Doing all right.

10 Q I'll try to be kind of straight to the point. I
11 know you have answered a bunch of questions, and I
12 appreciate it. Thank you for your wife's service. I
13 know she has been in the military police. I thank you
14 for her through you.

15 I think you answered all the questions the judge
16 asked. I know specifically Mr. McGuire talked a lot
17 about you considering evidence in mitigation.

18 A Uh-huh.

19 Q And, of course, what we're here to decide is what
20 your opinions are concerning the death penalty, things
21 like that.

22 You indicated that you really didn't have much of
23 an opinion one way or the other, and I would just like
24 to have you expand on that a little bit on do you
25 believe that there are situations where the death

1 penalty is appropriate?

2 A Yes, sir.

3 Q That if, for instance, in this case, procedurally,
4 really quick, we proceeded to death, but if you go
5 through the first stage of trial, the defendant is
6 going to be convicted guilty of murder if the jury says
7 that. So you're going to know that's the case.

8 A Yes.

9 Q Kind of said that's going to be in your pocket, so
10 to speak. You know that. Now, going forward, there's
11 going to be that plus one aspect. Maybe more
12 information. You may come to learn some more
13 aggravation about it. And then, of course, you're
14 going to hear the mitigation stuff defense counsel, if
15 they care to put anything up, say then. Then it's up
16 to you to decide whether you want to sign your name on
17 the bottom line to be responsible for -- partially, one
18 of 12, being responsible for that death verdict. Can
19 you do that?

20 A Yes.

21 Q Can you sign that verdict form that says, "Yes,
22 that I am one of 12 and believe he should be put to
23 death"?

24 A Yes, sir.

25 Q Okay. Let me ask you just briefly, brief

1 questions. Unfortunately, we got all kinds of
2 information. I notice that you got a couple -- been
3 pulled over a couple times.

4 A Yeah.

5 Q You know, no big deal, which is fine. But just as
6 a result of that, I know that probably that means the
7 police must be pulling you over. Somebody is. So the
8 allegations in this case, of course, are that the
9 victim in the case is a law enforcement officer.

10 A Yes.

11 Q So I just want to talk to you, being pulled over a
12 couple times, regardless of what happened in the
13 offenses, does that come to the point that you're
14 getting a little tired of the police pulling you over
15 or what are your thoughts on that?

16 A Well, I was speeding. I deserved it, you know.

17 Q Fair enough. Well, you got a couple litterings on
18 there, too, maybe not pulled over, but I wanted to talk
19 to you about that. Do you kind of feel that there's
20 anything that might kind of go, "What's going on with
21 this," kind of bothers you a little bit about the
22 police part of things. Just want to ask you what are
23 your thoughts with that?

24 A About what?

25 Q Just police involvement, the police-citizen

1 interaction, that you've been pulled over a few times.

2 And "Gosh, why are they doing this to me again,"

3 anything like that?

4 A No. I don't have no -- I was speeding. I know I
5 was speeding. And it was the wrong time.

6 Q Fair enough.

7 MR. HIXSON: I have no further questions, your
8 Honor.

9 MR. MCGUIRE: Nothing further, your Honor.

10 THE COURT: You may step down.

11 And, Mr. Ropp, if you would hold him just outside
12 the door.

13 (WHEREUPON, Mr. Bradshaw exited the courtroom
14 at 5:49 p.m.)

15 MR. MCGUIRE: He's qualified.

16 MR. HIXSON: He's qualified, your Honor.

17 THE COURT: Mr. Ropp, bring him in.

18 (WHEREUPON, Mr. Bradshaw entered the courtroom
19 at 5:50 p.m.)

20 THE COURT: Mr. Bradshaw, we find that you're
21 qualified to serve as a juror. This doesn't mean that
22 you're on the jury, just merely that you have been
23 qualified as an appropriate person to be in the jury
24 pool.

25 As such, I'm going to ask you to please call the

1 number, which is on that document that has been given
2 to you, after 6:00 p.m., 6:00 in the afternoon this
3 coming Sunday. There should be a message there that
4 will tell you when to report with the other qualified
5 jurors.

6 Please understand that you may or may not be then
7 selected to serve on this jury. So, just in case you
8 are, please bring with you medications that you may
9 need, some clothing that you may need during the period
10 you're sequestered and anything else that you will need
11 in that regard. Do you understand?

12 MR. BRADSHAW: Yes.

13 THE COURT: My order concerning pretrial reporting
14 by the newspaper or pretrial publicity of any kind,
15 talking about the case with anyone, being contacted by
16 anyone about the case is still in effect. Okay? Can
17 you abide by that?

18 MR. BRADSHAW: Yes, sir.

19 THE COURT: Very well. Be sure to call back
20 Sunday evening.

21 MR. BRADSHAW: All right.

22 THE COURT: Thank you.

23 MR. BRADSHAW: Thank you.

24 (WHEREUPON, Mr. Bradshaw exited the courtroom
25 at 5:52 p.m.)

1 THE COURT: Rackley.

2 (WHEREUPON, Ms. Rackley entered the courtroom
3 at 5:52 p.m.)

4 BEATE RACKLEY,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 THE CLERK: Please speak into the microphone and
7 state your name and spell your last for the record.

8 MS. RACKLEY: Beate Rackley, R-a-c-k-l-e-y.

9 EXAMINATION BY THE COURT:

10 Q Good afternoon, Ms. Rackley. Thank you for
11 coming.

12 A Good afternoon.

13 Q Ms. Rackley, do you recall on yesterday when I
14 cautioned you and ordered all jurors not to have any
15 contact with any person or discuss this case with any
16 person and to not put themselves in a position where
17 they might be exposed to pretrial publicity or read
18 anything about the case?

19 A Yes, ma'am -- yes, sir.

20 Q And have you complied with that?

21 A Yes, sir.

22 Q And you have obeyed my order?

23 A Yes.

24 Q Thank you, ma'am.

25 Ms. Rackley, I want to say we appreciate your

1 preparing -- here's Ms. Scott's. You picked up the
2 wrong one, I believe -- for preparing the witness
3 questionnaire that you did for us --

4 A Uh-huh.

5 Q -- and the one concerning or the juror
6 questionnaire and the one concerning potential
7 witnesses. In that first questionnaire, you indicate
8 that you are a type B juror; is that correct?

9 A Yes, sir.

10 Q Okay. And just so that we understand each other,
11 I believe that you indicate there that you do not
12 believe the death penalty is ever appropriate and under
13 any circumstances, and that under no circumstances
14 could you ever give the death penalty?

15 A Yes, sir.

16 Q Is that the position you meant to put forth when
17 you circled B?

18 A Yes, sir.

19 Q Okay. Now, Ms. Rackley, before I go any further,
20 let me tell you that everyone has the right to their
21 own opinion. That's the wonderful thing about this
22 country. And let me assure you that no one here will
23 question or criticize you for any opinion that you have
24 concerning the matters that we're going to question you
25 about. But our job is to determine whether or not

1 there's anything that would substantially interfere
2 with your performance of your duties as a juror. And
3 that is simply to be a fair and impartial juror. Okay?

4 A Okay.

5 Q So there are no right or wrong answers to the
6 questions I'm asking you. Every answer is a right
7 answer. We just need truthful and candid responses.
8 Can you appreciate that?

9 A Yeah.

10 Q Okay. Now, let me begin by asking you about your
11 opinion of the death penalty.

12 A Okay.

13 Q Are you opposed to the death penalty?

14 A I am.

15 Q Okay. Now, is this an opinion that you have had
16 for some time?

17 A Yeah.

18 Q Okay. Now, do you have or could you share with me
19 the basis of that opinion, why you feel that way? And,
20 again, I'm not trying to change your mind. I just
21 wonder what your thoughts are. Could you share that?

22 A I have always felt one of the Ten Commandments is
23 you shall not kill. And if I would be involved in the
24 process and put somebody to death, I would feel that I
25 had partial responsibility for that, and I just -- I

1 just think you could punish people in other ways than
2 putting them to death. I just don't think we as humans
3 should be doing this.

4 Q Okay. So are you telling me, Ms. Rackley, that
5 under no circumstances, regardless of how I charge you
6 on the law in this matter, regardless of what the law
7 is, regardless of the circumstances of this case, no
8 matter how heinous they may be -- and I'm not
9 suggesting they are --

10 A I know.

11 Q I'm not suggesting that Mr. Cottrell is even
12 guilty in this matter, but in no case could you ever
13 impose the death penalty; is that what you're telling
14 me?

15 A I don't think my conscience would let me do that.

16 Q Would your conscience substantially interfere with
17 your performance of your duties as a juror, one of
18 which would be to follow the law as I instruct you?

19 A I would -- I would be able to, but like I said,
20 it's the death penalty that --

21 Q But you could not give the death penalty?

22 A No, I couldn't, no.

23 Q Could not even consider it?

24 A No.

25 THE COURT: Okay. Let's examine her on that issue

1 alone.

2 MR. MCGUIRE: No questions.

3 MR. RICHARDSON: No questions, your Honor.

4 THE COURT: Is there a position of the defense on
5 this witness? Would you like to be heard outside the
6 presence?

7 MR. MCGUIRE: No, sir. She can be excused.

8 MR. RICHARDSON: She can be excused, your Honor.

9 THE COURT: Ms. Rackley, you are excused from
10 further participation in this trial. Thank you so much
11 for coming. We appreciate you being here.

12 Mr. Ropp, she is excused.

13 (WHEREUPON, Ms. Rackley exited the courtroom
14 at 6:00 p.m.)

15 THE COURT: How about Mr. Jordan.

16 (WHEREUPON, Mr. Jordan entered the courtroom
17 at 6:00 p.m.)

18 **THOMAS JORDAN,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE CLERK: Please have a seat. Please speak into
21 the microphone and state your name and spell your last
22 for the record.

23 MR. JORDAN: Thomas B. Jordan, J-o-r-d-a-n.

24 EXAMINATION BY THE COURT:

25 Q Good afternoon, Mr. Jordan. How are you?

1 A I'm good.

2 Q Mr. Jordan, do you recall on yesterday that I
3 ordered jurors not to discuss the case with anyone, put
4 themselves in a position where they may be exposed to
5 pretrial publicity or to read anything or seek out any
6 information?

7 A Yes.

8 Q Did you comply with that?

9 A I did.

10 Q And you have not discussed it with anyone or
11 allowed anyone to discuss it with you?

12 A No.

13 Q All right. You need to speak up, Mr. Jordan.

14 See this lady right here. She has to record all
15 of your responses. Okay?

16 Now, Mr. Jordan, I appreciate you taking the time
17 to complete the questionnaire that we gave you when you
18 came in today. One of these questionnaires was an
19 inquiry as to what type of juror best describes you,
20 and you have indicated that you are a type B juror; is
21 that correct?

22 A Yes, sir.

23 Q So that I can make sure that you and I are on the
24 same wavelength or same page, we know what we're
25 talking about, you indicated that the death penalty is

1 never appropriate no matter what the circumstances.

2 Was that your opinion? Is that what you --

3 A Yes, sir.

4 Q Is that what you meant to convey when you put it
5 on there?

6 A Well, not that I'm completely against the death
7 penalty, but I don't know if I would be willing to be
8 one that would be -- willing to --

9 Q Let me tell you where we're going with this.
10 Mr. Jordan, we don't mean to be personal with you, but
11 what we have to do in this hearing here is determine
12 whether or not there's anything about your opinions,
13 your life experiences, knowledge that you may have
14 gained concerning this case, any interest, bias or
15 prejudice you have to anything that might substantially
16 affect your ability to perform your duties as a juror.
17 And, essentially, those duties are to be fair and
18 impartial both to the defendant and the State. Do you
19 understand that?

20 A Yes, sir.

21 Q So I would also tell you that here in America we
22 all are entitled to have an opinion. That's a great
23 thing about it. And our opinions are personal. And
24 let me tell you that no one here will criticize you for
25 any opinion that you have. You have the right to have

1 those opinions. No one is going to try to change your
2 mind.

3 We must ask you questions to ascertain what your
4 opinions are, whether or not they affect your ability
5 to perform as a juror in this particular case. Do you
6 understand?

7 A Yes, sir.

8 Q There are no right or wrong answers. Every answer
9 you give us is right. We only ask that you be truthful
10 and candid with us. All right, sir?

11 A Yes, your Honor.

12 Q All right. Thank you.

13 Now, Mr. Jordan, tell me about your opinion on the
14 death penalty. You seem to have some reservation, but
15 you tell me you're not opposed to the death penalty.
16 Could you give me -- could you expand on that and tell
17 me what your position is on the death penalty.

18 A Well, you know, I've not -- never been against the
19 death penalty. I mean, you hear about it. But as far
20 as coming up on me where I could decide the fate of
21 somebody, I don't know if I would be comfortable doing
22 that.

23 Q Could you do it?

24 A I don't know.

25 Q All right, sir. That's a fair answer. That's a

1 fair answer. And are your feelings based upon your
2 religious convictions, the moral convictions?

3 A Yes, sir.

4 Q Can you tell me about that?

5 A You know, I'm a Christian.

6 Q Yes, sir.

7 A You know, and I, basically, I don't know -- my
8 belief is -- well, I don't know exactly how to explain
9 it.

10 Q Well, let me ask you this. Do you believe it
11 would be morally wrong or against your faith to
12 recommend the death penalty?

13 A No, sir. No, sir.

14 Q Okay. You are just telling me that you don't --
15 are you telling me that you don't believe that you
16 could recommend the death penalty under any
17 circumstances?

18 A Yes, sir. Basically because, I mean, I just don't
19 know if I could myself put that sentence on someone.

20 Q You have real concerns about that?

21 A Yes, sir.

22 Q You do understand -- are you familiar with the
23 concept or are you familiar with the phrase
24 "presumption of innocence"?

25 A Yes, sir.

1 Q All right. Do you understand -- do you know that
2 that is a legal concept just pervasive in American
3 jurisprudence? It essentially means that any person
4 accused of a crime is presumed to be innocent, and that
5 is a presumption that follows that person through any
6 trial or any period that the person may be out on bond
7 or incarcerated before trial. There is a presumption
8 that he or she is innocent until the State overcomes
9 that presumption.

10 And the only way that the State may overcome that
11 presumption is by convincing a jury panel that -- that
12 is each and every member of the jury -- must be
13 unanimous -- that the person is guilty beyond a
14 reasonable doubt. Do you understand that?

15 A Yes, sir.

16 Q Do you have any problems with that? Do you agree
17 that that is appropriate --

18 A Yes, sir.

19 Q -- that we have that? Okay. We have murder cases
20 that are tried throughout this state. There are many
21 tried everywhere. But it's very rare that we have what
22 we call a death penalty case. Are you aware of the
23 fact that there is absolutely no offense that you can
24 commit in this state for which the judge will tell the
25 jury or require the jury to return a recommendation of

1 the death penalty? Did you know that? There's
2 absolutely no offense that automatically requires the
3 death penalty. Were you aware of that?

4 A Yes, sir.

5 Q Okay. Murder is one of those. It does not
6 require it. What makes a death penalty case different
7 from a regular murder case is that, first of all, the
8 State must prove beyond a reasonable doubt that the
9 defendant committed the offense of murder. And I can
10 tell you right now, I am not assuming that Mr. Cottrell,
11 is guilty. I do not know the jury will find him
12 guilty. He is cloaked in that presumption of innocence
13 right now.

14 Just for the sake of our discussion, let's assume
15 there was a conviction. Okay? The State has proved to
16 the jury that the defendant is guilty beyond a
17 reasonable doubt of the offense of murder. And the
18 offense of murder is not only the killing, the unlawful
19 killing of another human being, it is a killing with
20 malice aforethought. That means ill will, wicked
21 feelings towards, malicious feelings towards the
22 victim. It's more than just taking the life. It's
23 doing it intentionally and willfully and maliciously
24 that the State must prove. Do you understand that?

25 A Yes, sir.

1 Q Even if the State proves it, the death penalty is
2 not on the table, cannot be considered in a regular
3 murder case or in a death penalty case when that is all
4 the State has proven.

5 In a death penalty case, we move to a second
6 phase. We call that the sentencing phase. Because in
7 order to seek the death penalty, the State has to prove
8 murder plus something else. And that something else is
9 what we call an aggravating circumstance.

10 When the legislature established our death penalty
11 statute, it made a list of things that are to be
12 considered as aggravating or may be considered as
13 aggravating circumstances. They are things that make
14 the crime more heinous or worse, increases the moral
15 culpability of the person who committed the murder,
16 that aggravate the offense.

17 And unless the State can prove to the jury beyond
18 a reasonable doubt and unanimously that at least one of
19 those aggravating circumstances exist, the death
20 penalty is not even to be considered. Do you
21 understand that?

22 A Yes, sir.

23 Q And the judge will tell the jury, even though you
24 may see something else in this case that you think is
25 just as bad as some of those other aggravators, you

1 can't consider it. You can only consider the ones that
2 the legislature has established. Now, do you
3 understand that?

4 A Yes, sir.

5 Q And do you have any problems with that concept?
6 Do you think it's unfair to the State or to the defense
7 in any way if the legislature has established that? Do
8 you have any heartache over that part of the procedure?

9 A No, sir.

10 Q Okay. Well, if there is none found, automatically
11 life in prison. No death penalty. But if there is one
12 found, the jury may continue on.

13 And the jury, to continue on, that is to consider
14 the death penalty, they must first consider all
15 mitigating circumstances. And the legislature sets out
16 mitigating circumstances as well. But it's a little
17 different from the aggravating circumstances because
18 the jury can look at the facts of case, and unlike in
19 the case of an aggravating circumstance, can say, "You
20 know, this over here, I think that that is a mitigating
21 circumstance, something that I'm going to consider as a
22 mitigating circumstance." And the jury could consider
23 all evidence that might create a mitigating
24 circumstance. And even if a juror does not find any
25 mitigating circumstance -- none at all -- the jury can

1 still say, "In spite of that, we recommend a life
2 sentence because we are extending mercy. We don't want
3 to impose the death penalty." Do you understand that?

4 A Yes, sir.

5 Q Now, what do you think about that process? Do you
6 think it's fair to the State and the defense? Do you
7 think it's a reasonable process?

8 A I think it's fair.

9 Q Do you have any problems personally with the way
10 that process works?

11 A No, sir.

12 Q Okay. If you were in a trial and you were a juror
13 and if there was a conviction for murder and if we went
14 to the second phase and if you or the jury found that
15 there were aggravating circumstances, could you get
16 that far, could you consider the aggravating
17 circumstances in determining if there were aggravating
18 circumstances?

19 A Yes, sir.

20 Q You could do that? Okay. The hard part would
21 then be to determine the sentence, would it not?

22 A Right. Yes, sir.

23 Q Okay. And if I told you you can consider not only
24 what the legislature sets forth, but you could consider
25 anything else or you could consider mercy, if you were

1 given all those options, when it was all said and done,
2 under the right case, under the right circumstances,
3 could you impose the death penalty? Do you believe you
4 could do that?

5 A I just don't know.

6 Q You just can't tell me that you could?

7 A No, sir.

8 Q You would have no problem giving the life
9 sentence?

10 A No, sir.

11 Q And would you be inclined to give the life
12 sentence?

13 A Yes, sir.

14 Q Then I guess the question I'm asking you, would
15 your views substantially stand in the way of your
16 decision to give the death penalty?

17 A Yes, sir.

18 Q They would?

19 A (Nodding.)

20 THE COURT: All right. I'm going to allow you to
21 examine him as to that issue.

22 MR. McGUIRE: Thank you, Judge.

23 EXAMINATION BY MR. McGUIRE:

24 Q Good afternoon, Mr. Jordan. My name is Bill, Bill
25 McGuire. And I saw you when we were here in the big

1 group and now I want to talk to you a little bit if I
2 could.

3 In listening to your answers, it sounds like what
4 you said was, "You know, philosophically, I'm not
5 really against the death penalty or opposed to it, but
6 I have a -- I don't really want to be the fellow to be
7 involved in that"?

8 A Right.

9 Q Okay. That's kind of where you are?

10 A Yes, sir.

11 Q All right. What I want to do is talk to you a
12 little bit about the law and the rules of court, okay,
13 because what we're here to determine is if you can
14 follow the law and comply with the rules of the Court.
15 Okay?

16 A (Nodding.)

17 Q I'm going to have to get you to say "yes" and not
18 nod because she can't write down a nod.

19 A Yes, sir.

20 Q Okay? I'll politely remind you of that if you do
21 if I need to.

22 The chair that you're sitting in right now is the
23 chair where you're just a potential juror. You're just
24 a man off the street and you got invited here by that
25 very official piece of paper and you had to come. And

1 as you sit there, you're allowed to have whatever
2 personal view, personal opinion that you want to have.
3 And that's your right.

4 And everything you say is the right answer, by the
5 way. As long as it's honest, it's right. Because
6 that's all we're asking you for is your honest opinion.
7 Okay?

8 A Yes, sir.

9 Q Now, what I'm going to ask you to do is imagine
10 yourself getting selected for jury. Okay? Then you go
11 from that seat to one of these over here. And you
12 would be with 11 fellow citizens. And if you're in
13 that chair, that's where you have to be able to comply
14 with the law and the rules. Okay? I want to go
15 through some of those and just ask if you can do that.
16 All right?

17 A Yes, sir. Okay.

18 Q Now, one of them is that Mr. Cottrell is presumed
19 innocent. You can comply with that?

20 A Yes, sir.

21 Q State's got to prove him guilty beyond a
22 reasonable doubt.

23 A Yes, sir.

24 Q Can't convict Mr. Cottrell unless all 12 people
25 agree on that?

1 A Yes, sir.

2 Q Okay. Now -- and I can tell you at the end of
3 this, if you were selected as a juror, at the end of
4 the first phase of the case, because the case is broken
5 down into two parts as the judge told you.

6 A Yes, sir.

7 Q This would be did the person do it or not, and the
8 second would be what punishment should they get. I'm
9 going to tell you right now at the end of that first
10 phase, I'm coming to the jury and asking for a not
11 guilty verdict not because I'm asking for it, but
12 because the evidence supports it. Okay?

13 A Okay.

14 Q And you can listen to all the evidence that we
15 would have in determining as to whether there is a
16 reasonable doubt in determining Mr. Cottrell's guilt.
17 You could do that?

18 A Yes, sir.

19 Q And all these rules and all this law that I'm
20 telling you is exactly what the judge would tell you.
21 And you can follow his instructions right down the line
22 so far, can't you?

23 A Yes, sir.

24 Q Okay. No problem with that?

25 A No.

1 Q Okay. Now, if you were to get to a sentencing
2 phase, and it makes me uncomfortable having to talk
3 about it because we're kind of putting the cart before
4 the horse here a little bit because I'm asking for a
5 not guilty on that first phase. I hope we never get to
6 that second phase. But this is my only shot to talk to
7 you about it, so I have to talk to you now about it.
8 And you promise me that you won't hold that against
9 Mr. Cottrell, you won't think that I'm throwing in the
10 towel and thinking that he is guilty?

11 A Yes.

12 Q And you won't hold that against him that I'm going
13 to zealously defend him and ask for a not guilty, you
14 won't hold that against him?

15 A No.

16 Q Okay. Now, if we were to get to a sentencing
17 phase, the judge would tell you that no juror is ever
18 required to vote for the death penalty. You understand
19 that now?

20 A Yes, sir.

21 Q Okay. A lot of people come to this court, and
22 they think in this type of case if the State proves,
23 you know, A, B or C or some facts that there is only
24 one verdict on the form or one punishment and it's
25 automatic death penalty. People -- some people feel

1 uncomfortable that they're being forced or channeled
2 into that, but you understand that's not the case?

3 A Yes, sir.

4 Q That nobody would ever have to vote for the death
5 penalty. Do you understand that?

6 A Yes, sir.

7 Q Now, the decision-making process for a juror in
8 the penalty phase is described as a reasoned moral
9 judgment. It's more like an emotional or a moral
10 question. It's different from that first phase because
11 the first phase is sort of based on facts or science.
12 Somebody either did something or they didn't.

13 Fingerprint matches or it doesn't, or their state of
14 mind was, you know, criminal or not. Those are they
15 are or they aren't. You see that?

16 A Yes, sir.

17 Q But you can see how a moral sort of emotional
18 decision is completely different. It's not really
19 based on facts or science. Do you understand that?

20 A Yes, sir.

21 Q Okay. Now for the State to ask for the death
22 penalty, they have to prove a defendant guilty beyond a
23 reasonable doubt of murder. All 12 have to agree.
24 They have to prove an aggravator beyond a reasonable
25 doubt, and then they have to basically show that the

1 death penalty is, in fact, the appropriate penalty in
2 the case. You can see how the bar is pretty high
3 there. And it's their burden, and they have to hit
4 that bar. Now, you would follow all of those rules and
5 you would hold them to that burden?

6 A Yes, sir.

7 Q Now, if you're in a seat over here, and this seat
8 is the one that requires you to follow the judge's
9 instructions. If he says in making that rational,
10 reasoned moral decision you take evidence and the law,
11 put them together kind of like gears meshing, and he
12 said -- well, could you follow the judge's instruction,
13 apply that evidence to that law, hold the State to
14 their very high burden, but if for you they came
15 forward with the quantity and the quality of evidence,
16 when they hit that burden and under the judge's
17 instruction you applied that law to that evidence, you
18 could say the appropriate penalty is the death penalty?

19 A Yes, sir.

20 Q As sort of a matter of logic or rationale?

21 A Yes, sir.

22 Q You can say, "I can look at this evidence, I can
23 take the judge's instructions, I can take that law, put
24 them together, and the result that comes from that or
25 springs from that is that the death penalty is

1 appropriate, you can say the death penalty is
2 appropriate for that case?

3 A Yes, sir.

4 Q If it's bad enough.

5 A Yeah.

6 Q Okay. And, again, it's a very high burden. But
7 if they meet it, you can say based on the judge's
8 instructions, based on the law, based on the evidence,
9 what springs from that is sort of a recognition that
10 the death penalty could be appropriate for that
11 situation?

12 A Yes, sir.

13 Q Okay. And if you came to that conclusion with 11
14 other people and the State did meet that very, very
15 high bar, and what sprang from that evidence, that
16 combination of the evidence and the law was a statement
17 that the death penalty was appropriate not just from
18 you but from 11 other people, it would require that you
19 sign some paperwork, the indictment, saying, "We all
20 agree that based on that evidence, based on that law,
21 the death penalty is appropriate." You could sign that
22 in this case if the case was that bad?

23 A I think so. I don't -- I don't know about that.
24 I mean, I just as far as me personally, I just don't
25 know about it.

1 Q Sure. What I'm going to do is I'm going to remind
2 you that to go from that seat to this seat over here,
3 the jury seat, you have to recognize that you have a
4 personal issue, a personal feeling where you don't want
5 to be the fellow involved in it, right?

6 A Yeah.

7 Q But you did agree that there are certain cases
8 where if they're bad enough and the State proves it,
9 they deserve the death penalty?

10 A Right.

11 Q Okay. Now, would the Court and what the judge is
12 going to ask you is can you take that personal view,
13 that personal opinion, and can you say, "I recognize
14 it, I'm going to set it aside, and I'm just going to
15 decide to case based on evidence and law"? Can you do
16 that?

17 A That's what I don't know. I mean, I just don't
18 know that for sure.

19 Q That's just because you don't want this on your
20 conscience as you kind of live the rest of your life?

21 A Yeah. Right.

22 Q Okay. You heard the judge talk about jury service
23 is a duty and a right --

24 A Right.

25 Q -- for a citizen. And part of the duty involves

1 making hard choices. You would agree with that?

2 A Yeah.

3 Q Would you agree that this matter is very -- it has
4 a lot of gravity to it, it's very significant?

5 A Yes, sir.

6 Q And it would be a hard choice for anyone. You
7 would agree with that?

8 A Yes, sir.

9 Q And that we're going to have to have 12 citizens
10 sitting in this box to try this case. Do you
11 understand that?

12 A I know.

13 Q And based on the fact that you can be fair, you
14 can follow the judge's instructions, and you can take
15 law, put it with the evidence and you can actually
16 decide what an appropriate punishment would be,
17 including the death penalty, it doesn't sound like
18 there are any 12 that are more qualified than you. Do
19 you see what I'm saying? If you can follow the judge's
20 instructions and follow the law, is there any reason
21 why you can't fulfill your duty and obligation to be a
22 juror and do jury service?

23 A Well, I mean, I guess I mean I don't -- there are
24 feelings toward it, things in my opinions.

25 Q Sure. You would agree with me that --

1 MR. HIXSON: Your Honor, we just object that it's
2 asked and answered to the form of the question. I
3 think that's up to the fourth or fifth time he's been
4 responsive to that.

5 THE COURT: I think so, Mr. McGuire.

6 MR. McGUIRE: I've got another question, Judge.

7 THE COURT: Okay.

8 BY MR. McGUIRE:

9 Q It just left my head. Give me a second.

10 What I was going to ask you is you would agree
11 with me that it would be wrong to have 12 people
12 assembled as a jury who would readily vote for the
13 death penalty or would be overeager to vote for it and
14 we wouldn't have people that appreciated the gravity of
15 the matter and had qualms about it? You would agree
16 that would be unfair to Mr. Cottrell?

17 A Yes, sir.

18 Q And that it would seem to be a normal statement to
19 say it does cause people great pause and concern to
20 contemplate the life of another human being? That
21 would be a normal position to be in, don't you agree?

22 A Yes, sir.

23 Q And you're in that position?

24 A Yeah.

25 Q And if we didn't have people that respected, the

1 gravity of the situation and appreciated the
2 significance of taking the life of another human being,
3 if we had people that didn't have any regard for that,
4 that would be an unfair trial. You would agree with
5 that?

6 A Yes, sir.

7 Q Okay. And can you see that it's fair to have
8 people on the jury that, despite having a great
9 reluctance or personal concern about carrying the
10 weight of a death penalty maybe on their conscience for
11 the rest of their life, you can see where it would be
12 fair to have a person like that on the jury?

13 A Yes, sir.

14 Q And I'm looking at you to see if you can fulfill
15 that role. Can you take the judge's instructions, the
16 law, the evidence and be fair to Mr. Cottrell and the
17 State and fairly consider a death penalty verdict if
18 the State meets that very high bar?

19 A And, again, I'm saying I could probably -- I know
20 I could be fair up to that point, but I don't know
21 about that subject.

22 Q Okay.

23 MR. McGUIRE: I've got no further questions.

24 THE COURT: Thank you.

25 Anything further?

1 MR. HIXSON: I think just probably pure argument,
2 your Honor, would be appropriate.

3 Just one quick question.

4 EXAMINATION BY MR. HIXSON:

5 Q As I recall -- and thank you so much for your
6 honesty. I know this is a tough process for everybody.
7 I believe early on you indicated that you would have
8 difficulty, you're a type B juror, you've maintained
9 that throughout the qualification. You are still a
10 type B juror; is that correct?

11 A Yes, sir.

12 MR. HIXSON: I have no further questions.

13 THE COURT: Mr. Jordan, just let me -- I think I
14 understand you, but I want to give everybody the
15 benefit of the doubt, so I'm going to ask you a
16 question I asked you a moment ago.

17 Mr. Jordan, do you honestly believe that your
18 beliefs and feelings that you have described to us
19 would substantially stand in the way of your
20 recommendation of the death penalty?

21 MR. JORDAN: I do.

22 THE COURT: All right, sir.

23 Mr. Jordan, let's have Mr. Jordan step out.

24 (WHEREUPON, Mr. Jordan exited the courtroom
25 at 6:28 p.m.)

1 THE COURT: You know, I can continue to inquire of
2 Mr. Jordan if he has any other bias or if he's heard or
3 read anything or he's had any other opinions, but I am
4 concerned about this.

5 Let me hear from you, Mr. McGuire.

6 MR. MCGUIRE: Well, your Honor, he has a personal
7 concern about if he was to vote for the death penalty,
8 carrying that around as a burden the rest of his life.
9 He was very clear about that. But from a reasoned
10 moral judgment position or a rational decision, taking
11 the evidence and the law, he's very consistent that he
12 could follow the Court's instructions, he could follow
13 the law --

14 THE COURT: To a point. To a point. That's what
15 he kept saying, to a point.

16 MR. MCGUIRE: I mean, I don't disagree that he's a
17 bit on the fence. But from a rational point of view,
18 he said, "I can see cases that when you look at the
19 evidence, the law, the answer that springs from it is
20 the death penalty. There are cases where the death
21 penalty is appropriate." He just has this sort of
22 personal issue about taking responsibility for it.

23 But if he's put in that situation, I've got
24 complete faith and confidence in this man that he's
25 going to take the Court's instructions and follow them

1 right down the line, and he's going to listen to the
2 other jurors. He's going to try to do the right thing.

3 THE COURT: All right. Mr. Richardson.

4 MR. HIXSON: Yes, your Honor. On three occasions,
5 specifically, "Are you telling me that you don't
6 believe that you could recommend the death penalty
7 under any circumstances?"

8 "Yes, sir."

9 He said that. He said three times that he was --
10 would be substantially impaired by his view on the
11 death penalty. He started out as a B juror, never came
12 off B juror, and the Court reinforced it and
13 Mr. McGuire reinforced the fact that he's substantially
14 impaired. Textbook disqualification.

15 And just while no one is in here, I don't want to
16 object all the time. You could see a significant
17 rehabilitation in a process of almost ten minutes of
18 leading questions to get him to that point. I just, I
19 guess, need guidance from the Court. I know that you
20 probably can't guide me in that regard about it's not a
21 classic leading cross-examination, but Mr. McGuire
22 testified for a while to the point that he just gave up
23 and said okay but still maintained the fact that he was
24 substantially impaired.

25 So going forward I guess I'll try to object

1 relating to leading. I don't know if that's
2 appropriate, but I'll figure it out.

3 THE COURT: If you think it's objectionable, do
4 it.

5 Let me just say this. I think Mr. Jordan is very
6 sincere. He seems to be a very nice man. Mr. Jordan
7 came on as a B juror. I never heard him vacillate on
8 that. He was very consistent in saying that he had
9 real questions as to whether or not he could impose the
10 death sentence. And I asked him on two separate
11 occasions, "Would your beliefs, would your feelings
12 concerning the death penalty substantially hinder or
13 interfere with your ability to recommend the death
14 sentence?" And on at least two occasions he told me
15 that was the case. That was the last thing he said to
16 me was he still held that belief that it would
17 interfere with his ability to consider the death
18 penalty, so I'm going to find him disqualified.

19 (WHEREUPON, Mr. Jordan entered the courtroom
20 at 6:32 p.m.)

21 THE COURT: Mr. Jordan, thank you so much for
22 coming. We will not need you any further in this case.
23 You are excused. Thank you, sir.

24 (WHEREUPON, Mr. Jordan exited the courtroom
25 at 6:33 p.m.)

1 THE COURT: We're going to take five minutes.

2 Okay?

3 (WHEREUPON, recess taken from 6:33 p.m.

4 to 6:44 p.m.)

5 THE COURT: Everyone is here. I see the defendant
6 is here and his attorneys.

7 (WHEREUPON, Ms. Parsons entered the courtroom
8 at 6:44 p.m.)

9 LISA PARSONS,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: Please speak into the microphone and
12 state your name and spell your last for the record.

13 EXAMINATION BY THE COURT:

14 Q Good evening, Ms. Parsons. How are you?

15 A Good. Thanks.

16 Q Ms. Parsons, do you remember my admonitions
17 yesterday to the potential jurors not to put themselves
18 in a position where they might hear or see any kind of
19 publicity about this case?

20 A Yes, sir.

21 Q And not to talk about the case with anyone or
22 allow anyone to make any comment to them about the
23 case?

24 A Yes.

25 Q And not to do any independent research about the

1 case?

2 A Yes.

3 Q Have you followed my instructions?

4 A Yes.

5 Q Thank you very much.

6 Now, Ms. Parsons, you were kind enough to provide
7 for us the two forms that we provided on yesterday, one
8 of which was a request that you tell us what kind of
9 juror you would be, what category of juror you would
10 be. And just so I make sure that I understand you, you
11 have indicated that you are a type C juror; is that
12 right?

13 A Yes, sir.

14 Q And that would be a juror who would need to hear
15 the facts and circumstances in aggravation and in
16 mitigation before you could make any decision regarding
17 any type of punishment. Is that the type of juror that
18 you are?

19 A Yes.

20 Q You think that best describes you?

21 A Yes.

22 Q Very well. And thank you for that.

23 Ms. Parsons, let me tell you that we're going to
24 be asking you some questions about your opinions and
25 your feelings concerning this case and the process that

1 we will be employing in the trial of this case. We
2 don't mean to invade your privacy, but it's necessary
3 that we make those inquiries because our purpose here
4 today is to determine whether there's anything in the
5 way of life experiences or knowledge that you may have
6 about the case or any bias or prejudices that you might
7 have that would substantially interfere with your
8 ability to perform your duties as a juror. And that
9 duty is essentially to be a fair and impartial juror.
10 Can you appreciate that?

11 A Yes.

12 Q Okay. In this country, everyone is entitled to an
13 opinion. That's the great thing about America. And we
14 respect your opinions about what we want to ask you,
15 and we're going to be asking about those opinions.

16 So please understand no one here is going to try
17 to change your opinions. No one here is going to be
18 critical of your opinions. So there's no way you can
19 give us the wrong answers about your opinions. The
20 only thing we ask you to do is be candid and truthful
21 about how you may feel about some of the issues that we
22 address here. Can you do that for us?

23 A Yes.

24 Q Okay. Ms. Parsons, I want to ask you about the
25 process that we'll follow. Have you ever heard of the

1 term "presumption of innocence"?

2 A Yes.

3 Q Okay. And do you understand that what that means
4 is that every person who is charged with a crime in
5 this country is presumed to be innocent. That is a
6 very important legal concept that we honor in this
7 country. It means that no person can be convicted of
8 any crime unless the State has overcome that
9 presumption. And there's but one way that presumption
10 can be overcome, and that is for the State to convince
11 a jury, each and every person on a jury, that the
12 person charged has committed the crime that he is
13 charged with. Do you understand that?

14 A Yes.

15 Q And do you have any problems with that procedure?

16 A No.

17 Q Do you think that's a fair and accurate
18 description of the law?

19 A Yes.

20 Q Okay. During the trial of this case, I would
21 instruct you as to the law that you would follow.
22 Would you follow the law as I instruct you?

23 A Yes.

24 Q What if you didn't agree with it? What if you
25 thought it ought to be something else or you thought it

1 is something else, could you set that aside and follow
2 the law as I give it to you?

3 A Yes.

4 Q All right. You would have no problems with that
5 concept?

6 A No.

7 Q Okay. Let me tell you a little bit about this
8 case. It's -- you know, we have throughout this state
9 several murder cases that might be tried within a year,
10 but it's very unusual for us to have what we call a
11 death penalty case. I think you were aware of the fact
12 that this is a death penalty case, are you not?

13 A Yes.

14 Q All right. And when we have a death penalty
15 case -- that is a case where the State is seeking a
16 sentence of death -- special rules apply, special
17 procedures apply. And I want to go through those with
18 you to make sure that you can follow the law concerning
19 those. All right?

20 A Okay.

21 Q The defendant, Mr. Cottrell, is charged with the
22 offense of murder. He has not been convicted of
23 murder. He stands accused, but he is protected by that
24 presumption of innocence. And by asking these
25 questions we are not suggesting that he should be

1 convicted or suggesting that there will be a sentencing
2 proceeding in this case. Please don't think we are.
3 It's just that we have to address all those issues
4 today because we won't have an opportunity to do it
5 otherwise. Do you understand?

6 A Yes.

7 Q Well, in this case the State must first prove
8 beyond a reasonable doubt to the satisfaction of every
9 juror that Mr. Cottrell committed the offense of
10 murder. And murder is the unlawful killing of another
11 person with malice aforethought. And malice means
12 hatred or ill will or wicked heart towards the person
13 who is killed. It is more than just taking a person's
14 life. It involves a malicious, intentional act.

15 A Uh-huh.

16 Q Do you understand that?

17 A Yes.

18 Q But even if the State is successful in
19 accomplishing that, the State convinces the jury that
20 Mr. Cottrell has committed the offense of murder, that
21 in no way authorizes a -- a death penalty sentence.
22 Can you appreciate that?

23 A Yes.

24 Q In fact, did you realize that in this state there
25 is absolutely no offense that a person could commit

1 that would automatically require the imposition of the
2 death penalty?

3 A Okay.

4 Q Murder alone is not punishable by the death
5 penalty. Do you have any problems with that concept?

6 A No.

7 Q And you understand it?

8 A Yes.

9 Q And you could follow the law pertaining to that if
10 so instructed?

11 A Yes.

12 Q Do you understand a conviction of murder, if that
13 occurs, should raise no presumption that the death
14 penalty should apply?

15 A Yes.

16 Q Is that your feeling as well?

17 A I don't know that I feel one way.

18 Q Or the other?

19 A Or the other, yeah.

20 Q All right. But you would be willing to follow the
21 law?

22 A Of course.

23 Q Now, do you understand that if he is convicted, if
24 Mr. Cottrell is convicted, we would move to the
25 sentencing part of the trial. And even if we move to

1 the sentencing part of the trial, no death penalty
2 would be authorized. The consideration of a death
3 penalty would not be authorized unless the State first
4 convinces every juror beyond a reasonable doubt that in
5 conjunction with the murder there were circumstances
6 that we call aggravating circumstances, circumstances
7 that make the offense, the murder, more aggravating,
8 that make the crime more heinous, that worsen the
9 murder. Do you understand what I mean when I say those
10 things?

11 A Yeah.

12 Q All right. The legislature has, in passing the
13 death penalty statute, has set out a list of what we
14 call statutory aggravating circumstances. They're set
15 out in this statute. In this state for the death
16 penalty even to be considered by the jury, they must
17 prove beyond a reasonable doubt at least one of those
18 aggravating circumstances.

19 A Okay.

20 Q And I would tell the jury that, you know, as you
21 hear evidence about a case -- and I'm not suggesting
22 that that would happen in this case, but if you hear
23 evidence concerning a case, there might be something
24 else about the case that you personally might think is
25 just as aggravating or more aggravating than the ones

1 that the legislature has described. But you could not
2 consider those. You could not find that one of those
3 things happened. You must have found that on the list
4 in the box, one of those aggravators had been proven
5 beyond a reasonable doubt.

6 Now, do you understand that and could you follow
7 the law in that regard?

8 A Yes.

9 Q Okay. Now, if and only if you were to determine
10 that the jury was to determine unanimously that that
11 had been proven, only then -- only then -- that is
12 there is a murder proven beyond a reasonable doubt,
13 then an aggravating circumstance proven beyond a
14 reasonable doubt unanimously to the jury could the jury
15 even reach the point that it could consider the
16 imposition or recommendation -- let me put it that
17 way -- recommendation of a death penalty sentence.

18 Before any recommendation could be made, I would
19 instruct the jury that they must -- must -- consider
20 any mitigating circumstances. And there are certain
21 mitigating circumstances that are put in the box, so to
22 speak, by the legislature. The legislature said,
23 "These are mitigating circumstances and you must
24 consider every one of those to determine whether or not
25 they exist."

1 Now, the difference between mitigating
2 circumstances and aggravating circumstances is with
3 mitigating circumstances, you can go outside the box.
4 A juror could look at the circumstances and say, "Well,
5 I think this other thing, this other circumstance
6 involved in this case is a mitigating one," and could
7 use that as a mitigating circumstance to mitigate the
8 imposition of a death penalty. You will not hear me
9 say that you should under any circumstance impose the
10 death penalty. I will not tell you if you found any
11 aggravating circumstance or a number of aggravating
12 circumstances that you should impose the death penalty.
13 That is not how it works.

14 You must look to see if there are things that
15 mitigate against it. And even if the jury finds that
16 there are absolutely, absolutely no mitigating
17 circumstances -- and that would be a decision the jury
18 would have to make -- even if the jury could find that,
19 the jury could say, "We are extending mercy for any
20 reason or no reason. And we're going to impose the
21 life sentence." Do you understand and appreciate that?

22 A Yes.

23 Q Now, understanding that process, could you follow
24 the law and in an appropriate case, in fact, recommend
25 the death sentence?

1 A I guess, as I said in the questionnaire, I would
2 have to hear everything. It would be hard for me to
3 do.

4 Q After hearing everything and considering
5 everything and looking at the process that I will
6 instruct you that you must follow, in doing all that,
7 are there circumstances and cases -- and I'm not saying
8 anything about this case --

9 A Uh-huh.

10 Q -- we don't know about this case --

11 A Right.

12 Q -- are there circumstances where you feel that you
13 could recommend the death penalty?

14 A Yes. I guess.

15 Q All right. Could you, in spite of the fact that
16 you may have found aggravating circumstances, still
17 consider mitigating or no mitigators and under the
18 appropriate set of facts recommend a life sentence?

19 A Yes.

20 Q You could do that --

21 A Yes.

22 Q -- as well?

23 Now, tell me a little bit about your thoughts
24 concerning the death penalty generally.

25 A Oh, gosh. Um, I thought about this a lot over the

1 past 24 hours just because of what's going on.

2 Q And rightfully so and I can appreciate that.

3 A It wouldn't be my first choice. I mean, you know,
4 you start thinking about things like how does that make
5 me any better than the person who's being charged.
6 That's what has been the hardest for me is how does
7 that make me any different. I'm to impose this, but
8 yet I'm not against it. Again, it would be the
9 circumstances.

10 Q It would depend on the case; is that what you're
11 telling me?

12 A Absolutely. You know, how heinous was it or what
13 other circumstances. I would have to listen to both.

14 Q And that's what we would want you to do. And
15 that's what I'm going to tell you to do.

16 A Yeah. It wouldn't be my first choice, but, I
17 mean, it would be something like, you know, if that's
18 what needs to happen, then, you know, but it wouldn't
19 be my first choice.

20 Q You could do it?

21 A I could do it, it just wouldn't be my first
22 choice.

23 Q Do you understand if, in fact, the jury were to
24 decide -- your jury were to decide unanimously that the
25 recommendation should be for a sentence of death, if

1 that were to occur, the process is a little different
2 from the returning of a verdict in any other type of
3 case. I try cases here every week, it seems, and when
4 the jury returns a verdict, I simply ask the foreperson
5 to sign.

6 But, again, our death penalty scheme, every person
7 has -- if death is recommended -- has to sign that
8 recommendation. If that was the unanimous decision of
9 your jury and your decision as well, could you actually
10 sign that?

11 A Yes.

12 Q Okay. Very well. Now, do you see any unfairness,
13 any impropriety in that system that would hinder or
14 prevent you from complying with your duties as a juror?

15 A No.

16 Q Okay. Now, tell me this. Would you, if I
17 instructed you to faithfully follow the law as I gave
18 it to you?

19 A Yes.

20 Q Would you consider all the evidence, both pro and
21 con offered by both sides before you made the decision
22 in this matter?

23 A Absolutely.

24 Q And you could and would do that, no questions
25 asked?

1 A Absolutely.

2 Q Okay. Now, you also provided me with the witness
3 list, and I don't see where you have indicated that you
4 know anybody on that potential witness list.

5 A No, sir.

6 Q Is that right?

7 A (Nodding.)

8 Q I would add to that list: Nicole Pyle, John
9 Taylor, Christine Del Fonzo, William Nettles and
10 Michelle Light. Do you recognize those names?

11 A No, sir.

12 Q Certainly when you reach my age, you start having
13 difficulty with names. I still recognize faces, but
14 when I look at a list, especially a list this long, and
15 I start going through the names, I start wondering,
16 "Well, is that a familiar name or not?"

17 Let me ask you this. If you had any significant
18 relationship with a person on there, through business,
19 a friendship, a family relation or anything of that
20 nature, do you believe that you would have recognized
21 that name?

22 A Yes, if they were that close, yes.

23 Q So you are telling me that there is, as far as you
24 know, there's no one you recognize on that list?

25 A Correct. To the best of my knowledge, yes.

1 Q If it would appear during the trial that someone
2 did pop up that you, once you saw their face, that you
3 knew them, could you set that aside and give no greater
4 weight for or against that person's testimony just
5 because you recognize them?

6 A I guess it would depend on what their involvement
7 was.

8 Q Uh-huh.

9 A You know, whether I thought it was important or
10 not.

11 Q Could you be fair in your assessment of their
12 testimony --

13 A Yes.

14 Q -- to both the State and the defendant as far as
15 you know?

16 A Yes.

17 Q All right. Very well. Ms. Parsons, again, let me
18 ask you, could you judge this case solely on the
19 evidence that you hear from the witness stand and the
20 law that I give you?

21 A Yes.

22 Q Have you heard anything about the case? Have you
23 formed any opinions about the case? Is there anything
24 about this case, anything that might be the result of
25 your life experiences, anything that might be the

1 result of something you would have seen or heard, is
2 there anything that might have to do with your opinions
3 concerning the death penalty? Is there anything that
4 you know about this case that would substantially
5 impair your ability to be a fair and impartial juror in
6 this case? Do you have any concerns at all?

7 A I don't think so. The only thing that I know -- I
8 didn't know anything about it, of course, when we got
9 the questionnaire. So the only thing I really know is
10 when we got the questionnaire and there was a question
11 on there, something about do you know the name of the
12 victim or the name of the defendant, whatever. And so
13 I did look up to see if I knew those names. So the
14 only thing that came up was a very, very short article,
15 basically just what had happened.

16 Q Uh-huh.

17 A Which really wasn't more than what you had
18 mentioned in the indictment, what the indictment read
19 yesterday. And so once I learned that it was a murder
20 case, I was like -- I just shut it down because I knew
21 exactly what your instructions would further be.

22 Q Well, I appreciate that.

23 A So that's really all I know is just that very
24 short --

25 Q Could you set aside anything that you may have

1 read or heard or someone may have said in your presence
2 and remember that this case must be and can only be
3 determined by the evidence presented in this trial? Do
4 you understand that?

5 A Yes, sir.

6 Q And you could follow that instruction?

7 A Yes, sir, I believe I could.

8 Q Okay. Thank you very much for those comments.
9 I'm going to give attorneys an opportunity to ask you
10 some questions then.

11 A Okay.

12 EXAMINATION BY MR. McGUIRE:

13 Q Good evening, Ms. Parsons. My voice is a little
14 scratchy. I've been talking a lot today.

15 A So is mine.

16 Q You have been waiting a long time and I've been
17 talking a long time, and I apologize for the wait.

18 I heard you indicate to the judge that regarding
19 you're confused about the death penalty, that it might
20 not be your first choice.

21 A Uh-huh.

22 Q And I just want to make sure we're clear that you
23 understand that the death penalty would never be
24 required, you would never have to vote for it. Do you
25 understand that?

1 A Yes.

2 Q Okay. A lot of people show up and they think,
3 well, if the government proves sort of A, B, C, a
4 checklist, then there's only one choice and it's the
5 death penalty and they have to agree to it. You know
6 that's not the case?

7 A Yes.

8 Q Okay. In fact, the judge -- what I want to do is
9 ask you about some principles of law, some rules of
10 court and ask if you can follow them and respect them.

11 A Okay.

12 Q One rule, one law is that the judge would charge
13 the jury that any individual juror can vote for the
14 life penalty for any reason, no reason or mercy alone.
15 Is that a principle of law that you can agree with?

16 A Yes.

17 Q If -- there's also -- I'm convinced that you have
18 a good understanding about a normal trial, a
19 first-phase case, did a person do it or not, are they
20 guilty or not. I don't think we need to go into those
21 issues; so I'm just going to ask you questions about
22 the second phase or the penalty phase. Okay?

23 A Okay.

24 Q Just because I'm talking about a penalty phase, I
25 mean, we're kind of putting the cart before the horse,

1 and I don't want you to think I'm conceding that
2 Mr. Cottrell is guilty of anything. Do you understand
3 that?

4 A Yes.

5 Q If you're selected on this jury to be a juror,
6 I'll come to you and I'll ask for a verdict of not
7 guilty, not because I asked for it but because the
8 evidence supports it. But then if we did, despite
9 that, reach a penalty phase, you wouldn't hold it
10 against Mr. Cottrell that his lawyer tried to have him
11 acquitted?

12 A That's your job, right.

13 Q You would expect me to do that, right?

14 A Yes.

15 Q It would be wrong for me to throw in the towel.

16 A Uh-huh.

17 Q But I do have to talk to you about penalties.
18 It's my only chance to talk to you. We can't do a
19 trial and do it later, so if you would, just kind of
20 bear with me.

21 I want to go back to that phrase that any juror
22 can vote for the life penalty for any reason, no reason
23 or mercy alone. And from TV and the news and the
24 newspaper, we all kind of have an understanding of how
25 a jury works in a regular case. All 12 have to agree

1 guilty, not guilty, there can be a mistrial, they can
2 disagree, and the case would -- well, that's how first
3 phase works. And everybody kind of has to agree on
4 what happened. Did it happen that way or not. Did the
5 person mean to do a criminal act or not. And those are
6 sort of questions of fact or science.

7 In the penalty phase is different. The judge
8 would describe it as an individual moral judgment.
9 It's not based on facts or science, and facts or
10 science are not going to help you reach that decision.
11 Each individual juror can come to their decision based
12 on completely different evidence. Did you know that?
13 You did?

14 A I would assume. That would be my assumption.

15 Q Okay. Yeah. And an example of that might be that
16 a juror over here might say, "I saw something in the
17 man's upbringing," like how he was raised and some
18 maybe hardships in his life or traumatic events or
19 something like that. And this person might say, "That
20 resonated with me and I want to vote for life for that
21 reason."

22 And everybody else in the jury might say, "Well,
23 we didn't see that. We don't agree with it." But that
24 individual juror has the right to vote for life for
25 that reason even if everybody disagrees with them. Is

1 that a principle of the law that you can respect and
2 follow?

3 A Yes.

4 Q And the judge, again, said a juror could vote for
5 the life penalty for no reason. So somebody down here
6 might say, "I heard the judge's instruction. I can
7 vote for life for no reason. I don't have the words to
8 articulate my position, but as I contemplate the rest
9 of my life, I don't want this mark on me. I'm voting
10 life. It doesn't feel right for me, and I have no
11 reason." Can you still respect that?

12 A Yes.

13 Q Even though they wouldn't have a reason?

14 A Yes.

15 Q And there's also mercy. Any individual juror can
16 just say, "Well, mercy. I want to vote based on mercy
17 alone as the Court instructed that I could." And in
18 regarding mercy, I would ask you is mercy something
19 that's earned or freely bestowed upon somebody?

20 A That's a hard question.

21 Q That's a pretty deep question.

22 A I don't know that I can even answer that. I don't
23 know.

24 Q Okay.

25 A I'm sorry.

1 Q No. That's fine.

2 A I don't know. I would have to think about it for
3 a really long time.

4 Q That's fine. Like I said, it's a pretty deep
5 philosophical question.

6 There's another rule of law, and that is that it's
7 unlawful, it's contrary to the juror oath -- if you're
8 selected, you will take an oath. And it would be
9 contrary to the juror oath for somebody to throw in
10 with the majority just for the sake of a majority
11 position.

12 A Okay.

13 Q Because they would be abandoning their
14 responsibility to reach their own individual moral
15 judgment. If you saw 11 people having a different
16 opinion from you --

17 A Uh-huh.

18 Q -- would you throw in with the majority for the
19 sake of consensus or would you stick to your guns, so
20 to speak?

21 A I don't think I could go along with the majority,
22 no. I think I would have to stay true what I believed
23 in.

24 Q Okay. Because the way the law is, actually, once
25 a juror reaches their individual moral judgment, if it

1 would harm their conscience to change that position,
2 that would be wrong as well. That would be against the
3 juror oath. And they actually have a duty and
4 obligation to have their position, their vote, their
5 voice heard in court. It sounds like you're the kind
6 of person who could, in fact, deliver that.

7 A (Nodding.)

8 Q True?

9 A True.

10 Q She has to write down what we say.

11 A Oh, I'm sorry.

12 MR. McGUIRE: If I could have just one second,
13 Judge.

14 (WHEREUPON, an off-the-record discussion was held
15 between Mr. McGuire and Ms. Norris.)

16 BY MR. McGUIRE:

17 Q I just need to follow up with one thing.

18 A Okay.

19 Q My co-counsel reminded me that I forgot to address
20 something with you. You indicated on your
21 questionnaire that you had some friends that are police
22 officers.

23 A Yes.

24 Q And you do know enough about the case to know that
25 there's -- the victim in the case is a police officer?

1 A Yes.

2 Q Would that -- is that something that you would
3 bring with you over to the jury box if you were
4 selected as a juror where it could influence your
5 decision-making?

6 A I think it would be in the back of my head, but I
7 think that I would still have to listen to everything
8 to form an opinion because I have not formed an
9 opinion. So I don't think that that would sway me. I
10 mean, I might think about it. It will be there.
11 There's no getting around that, but --

12 Q Sometimes -- go ahead.

13 A No, I'm done. I could ramble.

14 Q There's generally in the law, when it comes to a
15 criminal case, if there's some doubt about an issue,
16 something is unclear, those doubts are resolved in the
17 favor of the defendant. Is that a principle that
18 sounds fair to you?

19 A Say that again.

20 Q Okay. If there's some -- if there's some -- if
21 you have some doubt --

22 A Uh-huh.

23 Q -- about a particular fact in the case, whatever
24 it is. It could be anything. But you have some doubt
25 about, if you're unsure about it, generally the law

1 says that all doubts are resolved in favor of the
2 defendant. Is that a principle that sounds fair to
3 you?

4 A I don't know about that one.

5 Q Why not?

6 A I don't know. I don't think there should be an
7 absolute.

8 THE COURT: If I instructed you about that, could
9 you obey my instruction?

10 MS. PARSONS: Yes.

11 THE COURT: There you go.

12 BY MR. McGUIRE:

13 Q And what the judge is getting at is, is there any
14 personal opinion that you would have where you couldn't
15 follow that principle of the law? For instance, if you
16 had testimony from, say, lay witnesses, civilians, and
17 a police officer, would you automatically --

18 MR. HIXSON: Your Honor, I object to that. It's
19 improper to ask a question on if you give more
20 credibility to an officer or other types of witnesses.
21 That's improper.

22 THE COURT: It certainly is.

23 BY MR. McGUIRE:

24 Q If there was different testimony from different
25 people and there's sort of one version that's this way

1 and one version that's a little bit different, are you
2 automatically -- and you're a little unclear about
3 it -- but are you going to resolve the doubt in favor
4 of a police officer --

5 THE COURT: No, sir, Mr. McGuire. That's not an
6 appropriate question.

7 BY MR. McGUIRE:

8 Q Do you think -- you said it would be sort of in
9 the back of your mind. Do you have any kind of real
10 concern that your association with police officers and
11 their good friendship with you, that it could prevent
12 you from following the principle of law that the judge
13 stated that doubts are resolved in favor of the
14 defendant?

15 A I don't think so. See, I don't know without
16 hearing everything.

17 Q And, again, if the judge, as he just said a second
18 ago, if he said, "I'm going to instruct you that is the
19 rule, can you follow that"?

20 A I will always follow the law, yes.

21 Q Thank you, ma'am, very much.

22 EXAMINATION BY MR. RICHARDSON:

23 Q Ms. Parsons, my name is Jimmy Richardson. I'm the
24 Solicitor for Horry and Georgetown County, and this is
25 Scott Hixson. He's the Deputy Solicitor.

1 I think we have pretty much got you classified as
2 a group C juror. I just want to be very clear with
3 you, and I think Judge Hyman has already talked with
4 you about this. There are dozens of murders tried in
5 this courthouse, in this courtroom, every year. And
6 across the State there's more than that.

7 A death penalty case is different. There are very
8 few death penalty cases.

9 MR. RICHARDSON: Do you have an idea as to how
10 many was tried last year, Judge?

11 THE COURT: I have no idea. Very few.

12 BY MR. RICHARDSON:

13 Q Very few, if any. We didn't try one here last
14 year. So what I'm saying is because we are trying this
15 case, just like Mr. McGuire told you he's going to come
16 back and ask for a not guilty verdict, we're going to
17 ask for a guilty verdict in phase one.

18 And then we're going to go along into phase two,
19 and we are going to seek to show you aggravating
20 circumstances. In other words, this is why this case
21 is different from all of those other cases. This is
22 particularly bad for whatever reasons.

23 And then we are going to come back and ask you, if
24 you're on this panel, to return a verdict of death. We
25 wouldn't be bringing a death penalty case if we didn't

1 want you to return a verdict of death. Okay?

2 My question to you is: If you and your other
3 jurors hear all the facts in part one and decide, Yeah,
4 they proved that he, Luzenski Cottrell -- well,
5 whoever, did commit the offense of murder and, yes,
6 they proved that there were aggravating circumstances
7 and, finally, those aggravating circumstances, I am not
8 made to -- the judge hasn't made me go with the death
9 penalty verdict, in other words, guilty plus doesn't
10 mean death penalty, but after hearing all of this, I
11 believe that this is bad enough to where the death
12 penalty would apply, are you going to be able to sign
13 that indictment?

14 A It would be hard, but I believe I could.

15 Q Well, I mean --

16 A I don't know.

17 Q -- this is a decision that no one can tell you
18 what to do.

19 A I know.

20 Q But you -- Lisa has got to know Lisa because I
21 don't.

22 A Yes.

23 Q So what I'm asking is do you believe that you
24 could not only follow those instructions, what you have
25 got to do to be a qualified juror, but above and beyond

1 that, to be fair to both parties, to the defense and to
2 the State, you have got to be able to consider even now
3 before you get on this jury, can I do that?

4 A Uh-huh.

5 Q Can I sign this death warrant? If the facts -- if
6 you have sufficient facts and circumstances and if it
7 is bad enough, can you do that?

8 A It would have to be really bad, but yes.

9 Q Okay. You think that upon the finding of guilty
10 and upon the showing of these additional circumstances
11 or aggravators that you could at least consider the
12 death penalty?

13 A Yes.

14 Q Okay. I have no further questions. Thank you.

15 THE COURT: All right. Very well. You may step
16 down.

17 Mr. Ropp, would you take her just outside the
18 room, please.

19 (WHEREUPON, Ms. Parsons exited the courtroom
20 at 7:21 p.m.)

21 THE COURT: What says the defense?

22 MR. McGUIRE: She's qualified, Judge.

23 MR. RICHARDSON: She's qualified.

24 THE COURT: Bring her back in.

25 (WHEREUPON, Ms. Parsons entered the courtroom

1 at 7:21 p.m.)

2 THE COURT: Ms. Parsons, I have determined that
3 you are qualified as a potential juror. This does not
4 mean you are on the jury. This means you will be in
5 the pool from which the jury will ultimately be drawn.
6 We will be at this process for several days.

7 MS. PARSONS: Right.

8 THE COURT: So what I'm going to ask you to do is
9 call back after 6 o'clock on Sunday, this coming
10 Sunday. The number is on the sheet that has just been
11 given you. There will be a recorded message that will
12 tell you what date to appear.

13 MS. PARSONS: Okay.

14 THE COURT: Please understand that you may be
15 selected. And if you are selected, you will be
16 sequestered, so pack some clothing, any medications
17 that you might need and personal effects. And if you
18 are selected -- so that if you are selected we will
19 have those with us. Okay?

20 MS. PARSONS: Okay.

21 THE COURT: Thank you.

22 MS. PARSONS: Thank you.

23 (WHEREUPON, Ms. Parsons exited the courtroom
24 at 7:23 p.m.)

25 (WHEREUPON, Mr. Argenti entered the courtroom

1 at 7:23 p.m.)

2 THE COURT: Good evening, Mr. Argenti.

3 MR. ARGENTI: How are you, sir?

4 THE COURT: Would you swear this potential juror,
5 please.

6 WILLIAM ARGENTI,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 THE CLERK: Please be seated. Please speak into
9 the microphone and state your name and spell your last
10 for the record. Thank you.

11 MR. ARGENTI: William John Argenti, A-r-g-e-n-t-i.

12 EXAMINATION BY THE COURT:

13 Q Mr. Argenti, do you recall my admonitions
14 yesterday concerning exposure to publications or
15 publicity about this particular trial?

16 A Yes, sir.

17 Q And contact with persons who may discuss this with
18 you and things of that nature?

19 A Yes, sir.

20 Q And have you complied with my order?

21 A Yes, sir.

22 Q Okay. Do you understand that if you are qualified
23 as a potential juror in this case, my order would
24 continue throughout the trial? Do you understand that?

25 A Yes, sir.

1 Q And you agree that -- to comply with my order?

2 A Yes.

3 Q Now, Mr. Argenti, we appreciate the fact that you
4 have filled out the two forms that we gave you today
5 when you came in, one of which was a request that you
6 describe for us what type of juror you might be, what
7 type of juror best describes you. And I have your
8 sheet here, and it would appear to me that you have
9 indicated that you are a type C juror; is that right?

10 A Yes, sir.

11 Q And, basically, just so that we understand each
12 another, that juror is one who would need to hear the
13 facts and circumstances in aggravation and in
14 mitigation before he or she could make a decision
15 regarding punishment; is that correct?

16 A That's correct, sir.

17 Q Okay. And do you believe that that best describes
18 you?

19 A Yes, sir.

20 Q Okay. Now, Mr. Argenti, are you familiar with a
21 term that we often use in the law known as the
22 "presumption of innocence"?

23 A I'd like a description, if you would.

24 Q Have you ever heard it?

25 A I've heard it, yes.

1 Q Well, let me tell you what it is. It's a concept,
2 a theory in the law, and it's pervasive. It's used
3 throughout this country. And what it says is that any
4 person accused of a crime has a presumption of
5 innocence, is presumed to be innocent of the charge
6 against them, and that presumption remains with him
7 throughout any trial. It remains with him, and the
8 only way it can be overcome is if the State is able to
9 convince a jury unanimously -- that is every juror --
10 of his guilt beyond a reasonable doubt. And that's the
11 only way for the presumption to be overcome. Do you
12 understand that concept?

13 A Yes, sir.

14 Q Do you agree that that's a good concept?

15 A Yes, sir.

16 Q That's a good thing about our jurisprudence?

17 A Yes, sir.

18 Q All right. Now, let me tell you that we are going
19 to ask you some questions about your opinions and
20 feelings that may affect your ability to perform your
21 duties as a juror in this case. And in doing so we're
22 going to ask you about guilt and sentencing in this case.

23 Since this is the only time we're going to ask you
24 or talk to you, we have to ask you about sentencing.
25 Please do not construe that as any suggestion on

1 anybody's part, whether it's Mr. Cottrell's attorneys
2 or the State or me, that Mr. Cottrell is guilty of
3 anything. He has that presumption of innocence. We
4 are not suggesting that he be convicted or that we
5 would even reach a sentencing phase. Do you understand
6 this?

7 A Yes, sir.

8 Q Just that we have to do it all at one time. So
9 keep that in mind. And please understand that when we
10 ask you about your opinions or your feelings concerning
11 a matter here today, it's not that we are prying. It's
12 just that we have to determine whether there is
13 anything that would substantially impair your ability
14 to perform your duties as a juror. And one of the
15 wonderful things about America is we all have the right
16 to our own opinions.

17 A Sure.

18 Q And no one's opinion can be criticized or will be
19 criticized in this courtroom, and no one is going to
20 try to change any opinion that you may have. Any
21 response you make concerning your opinion is a right
22 response. There is no improper response concerning
23 your opinion. The only thing we ask you to do is be
24 candid and truthful about your feelings and opinions
25 when we ask you about those things. So please don't

1 hesitate to share those opinions and feelings with us.

2 Fair enough?

3 A Fair enough, sir.

4 Q All right, sir. Now, Mr. Cottrell is charged with
5 the offense of murder. This is not your typical murder
6 case. There are many murder cases that are tried
7 throughout the state on a fairly regular basis. Those
8 are murder cases in which the State is not seeking the
9 death penalty.

10 Whenever the State seeks the death penalty, new
11 rules apply. And there are special protections that
12 apply in those type of cases. They're rare but they're
13 very special cases. For instance, in a normal case, we
14 would not be able to have this individual voir dire.
15 It's reserved for a death penalty case.

16 But in a death penalty case, we would have to
17 begin with a trial called the guilt phase. And that
18 trial is for essentially a traditional murder charge.
19 The State would have to convince the jury, each and
20 every juror, that Mr. Cottrell killed a person, another
21 human being, unlawfully and that it was done with
22 malice aforethought. That's murder. Unlawful killing
23 of another person with malice aforethought.

24 And in the trial I would give you a detailed
25 description of what malice is, but generally speaking

1 it is ill will towards a person, malice or malicious
2 intent, intentional killing, a killing with a
3 wickedness of heart. That's what malice is. And the
4 State would have to prove that beyond a reasonable
5 doubt.

6 And if the State was successful in doing that, the
7 State could convince the jury of that -- and I'm not
8 suggesting that they can or will, but I'm simply saying
9 by doing that, the State is not authorized to even ask
10 for the death penalty at that point in time. The death
11 penalty is not even on the table. It cannot be
12 considered by the Court at that time.

13 If that occurred, what we do is we move into the
14 second phase of the trial, and that's called the
15 sentencing phase of the trial. And at the sentencing
16 phase, if we get to that point, the death penalty is
17 still not on the table. Not on the table at all. The
18 State must first prove beyond a reasonable doubt to
19 each and every juror that in conjunction with the
20 murder the defendant committed some other act that
21 aggravates, makes the crime worse, makes it more
22 heinous.

23 And those aggravating circumstances, when the
24 legislature established or passed the death penalty
25 statute, they specifically said this, this, this and

1 this are acts of aggravation. And only if the jury
2 finds unanimously and beyond a reasonable doubt that at
3 least one of those existed, the death penalty is not
4 even on the table. Do you understand that?

5 A Yes, sir.

6 Q And, you know, if I instructed you as to what
7 those were, those factors or aggravating factors are,
8 and you were on the jury and you were to look at the
9 circumstances of the case and you were to see something
10 else out here that happened in conjunction with the
11 case and you were to think in your mind, you know,
12 "This is more aggravating than some of those things.
13 Why, I believe that that's an aggravating
14 circumstance," you know you could not even consider
15 that? That would not be a statutory aggravator. Do
16 you understand that?

17 A Yes, sir.

18 Q And I would instruct you that. Could you follow
19 that instruction --

20 A Yes, sir.

21 Q -- in determining whether an aggravating
22 circumstance existed?

23 A Yes, sir.

24 Q You could do that, and you could not consider
25 anything else?

1 A No.

2 Q Okay. Only when an aggravating circumstance was
3 established, only if the State has proved murder beyond
4 a reasonable doubt and proved that it was committed in
5 conjunction with an aggravating circumstance beyond a
6 reasonable doubt and unanimously could the jury even
7 consider or think about recommending the death penalty
8 in this case.

9 Murder alone does not justify the death penalty.
10 Murder accompanied by aggravating circumstances alone
11 does not do it without first the jury considering
12 mitigating circumstances, extenuating circumstances,
13 circumstances that makes the perpetrator less culpable.
14 Do you understand what I'm saying?

15 A Yes, sir.

16 Q The legislature also set out some of those and
17 said, "These are what we call statutory mitigators or
18 mitigating circumstances." But, you know, unlike when
19 you consider aggravating circumstances, when the jury
20 looks at mitigating circumstances, it can also look at
21 the rest of the case and say, "You know, there's
22 something else over here that I think personally should
23 be a mitigating circumstance." And the juror could
24 consider that as well. Do you understand that?

25 A Yeah, sure.

1 Q Okay. Also, the jury could simply say for no
2 reason at all, "Yes, there are aggravating
3 circumstances here, but we are going to extend mercy in
4 this case," and on that alone could recommend a life
5 sentence in lieu of the death penalty. Do you
6 understand that?

7 A Yes, sir.

8 Q Now, tell me what you think about that, that
9 process. Could you follow that process if I instructed
10 you and told you that's what you had to do in this
11 case?

12 A If I had a clear understanding of, you know, what
13 the definition was absolutely --

14 Q I will do anything I can to make it clear. But if
15 you had a clear understanding and I explained it to
16 you -- and I would explain it in great detail, what we
17 have just been through.

18 A Sure.

19 Q But could you follow the law?

20 A Yes, sir.

21 Q Is there anything about that that you think is
22 inappropriate, improper that we should not do?

23 A No, sir.

24 Q Okay. Now, in a case where the State has asked
25 for the death penalty, could you, after looking at all

1 the evidence and considering everything offered by the
2 State and everything offered by the defense or nothing
3 offered by the defense, could you return a verdict that
4 recommended a life sentence?

5 A Yes, sir.

6 Q Could you recommend a death sentence if the facts
7 were appropriate in support of that?

8 A If it complied with the laws, yes, sir.

9 Q You could do either one?

10 A Yes, sir.

11 Q Would you feel any pressure upon you after having
12 made the determine -- if you made a determination that
13 there were aggravating circumstances, would you feel
14 any compulsion that you had to return a recommendation
15 of a death penalty?

16 A It's a very serious, you know, situation, so,
17 obviously, that would be a factor. But, I mean, I
18 could make the decision. It wouldn't be easy, but I
19 could.

20 Q You could consider all the mitigating
21 circumstances and the recommendation of mercy?

22 A Yes, sir.

23 Q Okay. Very -- very well. I can certainly
24 appreciate that.

25 Now, Mr. Argenti, could you set aside anything you

1 may have heard or read or seen about this case and
2 decide this case solely upon the evidence presented in
3 this trial?

4 A Yes, sir. I've heard basically nothing about this
5 situation, so --

6 Q Very well. Could you and would you be willing to
7 follow the instructions concerning the law that I give
8 you?

9 A Yes, sir.

10 Q Even if you disagree with something I told you,
11 even if you thought the law was something else, would
12 you follow the law as I gave it to you?

13 A Yes, sir.

14 Q All right, sir. Now, can you think of any reason,
15 sir, why you could not be a fair and impartial juror in
16 this case? Is there any life experience that you may
17 have had? Is there any bias or prejudice that you
18 might have? Is there any knowledge that you might have
19 that would cause you to be anything but a fair and
20 impartial juror?

21 A No, sir.

22 Q Now, I looked at the witness list that you have
23 signed, and I do not see where you have indicated that
24 you know any of the people on this witness list. Is
25 that correct?

1 A That's correct, sir.

2 Q I would add to that list several names: Nicole
3 Pyle, John Taylor, Christine Del Fonzo, William Nettles
4 and Michelle Light. Do you recognize any of those
5 names?

6 A No, sir.

7 Q You know, when I look at a list like that, it's
8 often difficult for me to recall if I actually know
9 that person or not. I'm much better if I see their
10 faces. But do you believe that if you had had any
11 substantial contact with any of these persons like they
12 were a family member or they were in business with you
13 or that they were a close friend that you would have
14 recognized their names?

15 A I do. I looked it over several times.

16 Q So are you fairly comfortable that you do not know
17 any of those persons?

18 A I'm fairly comfortable.

19 Q Okay. Are you comfortable that your relationship
20 with any of them would not be such that it would
21 influence you unduly if that person testified?

22 A Yeah, because I don't recognize any of their
23 names.

24 Q Very well. Do you understand that if you are
25 chosen as a juror in this case that you would be

1 sequestered, that is, housed in a hotel for several
2 days of course at the expense of the county and that
3 you would be provided with your meals and things of
4 that nature and your needs would be met. But would
5 that pose a particular problem?

6 A I am a general manager of a large retail store,
7 and I do have an annual inventory that is on the 30th,
8 which is a very big event for us. That would be the
9 only thing that --

10 Q And that would be 15 days away, and I would hope
11 that we would be done by then. But other than that, is
12 there any problem?

13 A No, sir.

14 Q Okay. All right. Would you answer any questions
15 that counsel might have.

16 EXAMINATION BY MR. McGUIRE:

17 Q Good afternoon, sir.

18 A Good afternoon, sir. How are you?

19 Q My voice is a little scratchy. I've been talking
20 all day.

21 A I understand.

22 Q And I'm sorry you were waiting so long. I
23 apologize for that. It's nobody's fault. Sometimes
24 things just don't move along.

25 What I want to do is I want to restate one thing

1 the judge said and I'm going to ask you some more broad
2 questions. Okay? And that is the judge indicated that
3 murder in South Carolina is defined as the unlawful
4 killing of another human being with malice
5 aforethought. And malice was defined -- is defined as
6 operating with a black malignant heart, fatally bent on
7 evil or mischief. It's an intentional killing of an
8 innocent person with evil intent sort of in plain
9 terms.

10 Now, I'm going to ask you just a general question.
11 What are your thoughts about the death penalty as the
12 appropriate punishment in general in that case?

13 A I think depending on the severity of it, I
14 think it -- I would agree with the death penalty in
15 certain situations. I wouldn't take that lightly.
16 It's -- you know, it's taking another human's life, so
17 it's very, you know, a sensitive topic. But I'm not
18 opposed to it, but it would have to be probably based
19 off of circumstances of what happened.

20 Q Okay. When you say "circumstances," what are you
21 talking about?

22 A After being informed on the situation at hand, I
23 would want to know specifically factual based
24 information that was proven. And based off of that, I
25 do agree with the death penalty.

1 Q Okay. Is the life penalty sufficient enough or
2 severe enough or harsh enough to punish that
3 intentional killing?

4 A I think it can be. I mean, I honestly have asked
5 myself this question considering the case, you know.

6 Q Yes, sir.

7 A We did get a little information yesterday on what
8 was going on, and I don't take that lightly.

9 Q Right.

10 A It's a very uncomfortable position probably to be
11 in. I would think it would be for most people, anyways
12 put. But like I said, I put myself in different
13 situations and, you know, depending on the
14 circumstances, I could be for it or against it. Just
15 depending on the severity, I guess, for me. You know,
16 I mean, I just try to put yourself in that position of
17 both parties, possibly a victim, if it's proven that
18 that's happened and, you know, how you would feel about
19 that. So I'm not saying I'm one hundred percent
20 committed to the death penalty in every situation when
21 somebody's life is taken, it just depends on the
22 circumstances.

23 Q Okay. And, again, circumstances are the facts of
24 the murder itself?

25 A Absolutely.

1 Q You heard the judge read the indictment to the
2 entire panel that was here. The allegation is that
3 Mr. Cottrell shot Officer McGarry in the face. And
4 Officer McGarry, of course, was a police officer in the
5 line of duty. Knowing those facts, those
6 circumstances, where is your starting point in the
7 case?

8 A I think the first question would be why that
9 happened.

10 Q Okay.

11 A That would be the first thing that would come to
12 mind for me, why did that happen.

13 Q What brought those two people together?

14 A That's correct.

15 Q Fair enough. When fixing punishment for this
16 intentional killing of an innocent person with the evil
17 intent, when determining the punishment, background
18 factors of the defendant like how he grew up, his walk
19 in life, that sort of thing, are those things relevant
20 in determining punishment?

21 A I don't think so.

22 Q That's because the facts of the incident control?

23 A Just, specifically why that act happened would be
24 my determining factor, I mean, for me personally.

25 Q The fact of the crime?

1 A That's correct.

2 Q And the facts of the crime would be controlling in
3 your decision?

4 A Yes, absolutely.

5 Q Basically how bad are we talking about, that's
6 sort of the analysis that you would go through?

7 A I mean, you know, obviously there is a lot of
8 information that I don't know about right now. You
9 know, once you find that information out, I think you
10 could answer that question a little bit better. I
11 could.

12 Q Sure.

13 A I don't think that background of a person has
14 anything to do with an act if they commit, unless it
15 was like immediately prior to the act it may influence
16 the decision that somebody makes, so.

17 Q Okay. Like if somebody insulted somebody or did
18 some act to them and they responded, there is a
19 connection, that would be relevant. But just like
20 somebody's walk in life, their background, that's not
21 relevant?

22 A No.

23 Q And that's because people are responsible for
24 their actions?

25 A They are responsible, yeah. And the other piece

1 for me is, you know, I understand the question you're
2 asking because, I mean, but I mean people can change,
3 circumstances change. You see it happen all the time.
4 So I don't think the past has anything to do with what
5 happened today, you know.

6 Q Okay. I think most people have a pretty good
7 understanding of what we refer to as the first phase of
8 a capital trial. And that's a traditional trial.
9 That's is the person guilty, did they do it. There is
10 a Latin phrase called mens rea. It means sort of the
11 state of mind of the person, did they have a criminal
12 mindset when they committed an act. Have you heard
13 that phrase before, "mens rea"?

14 A Not that, but I understand what you're referring
15 to, I mean the description.

16 Q Sure. For instance, if something is an accident
17 and somebody is harmed seriously or killed, the person
18 might not have criminal intent. Do you understand what
19 I'm saying?

20 A So if there's an accident -- can you repeat that?
21 I lost it.

22 Q Not only -- the judge would say not only do you
23 have to have proof of an act, you have to have proof of
24 a criminal intent. And without one you don't have a
25 crime.

1 A Okay.

2 Q So the person has to commit an act that's unlawful
3 and they have to do it with a criminal mind, criminal
4 intent. That's the evil intent I referred to earlier.

5 A Sure.

6 Q And that's the first phase of the case. Those are
7 questions that are decided sort of by facts and
8 science.

9 A Sure.

10 Q Something is or is not. And the penalty phase is
11 what I want to talk to you about now, the sentencing
12 phase. I feel like I'm putting the cart before the
13 horse. And I can tell you, if you're selected on this
14 jury, I'm going to come before you and ask for a not
15 guilty verdict not because I asked for it but because
16 the evidence supports it. And I don't want you to
17 think that I'm throwing in the towel or conceding guilt
18 in any way just because I have to talk about the
19 penalty issues.

20 A Okay.

21 Q Do you understand what I'm saying?

22 A Yes, sir.

23 Q You're not going to hold that against Mr. Cottrell
24 at all?

25 A Those are two completely separate situations, yes.

1 Q I mean, we have to talk about penalty right now.
2 This is our only opportunity.

3 A Sure.

4 Q The penalty phase is different. And people, we
5 don't have a common everyday understanding of it from
6 TV or the news because it's not a common occurrence.
7 Okay? So I'm going to talk to you about some
8 principles of law that apply to it and see if you can
9 respect and follow those principles. Okay?

10 First off, the law in the state of South Carolina
11 is always satisfied with a life verdict. There's never
12 a required death verdict. Did you know that?

13 A No.

14 Q Okay. A lot of people are in that same position,
15 and they believe that if the government proves A, B and
16 C, that it mandates a death verdict.

17 A I understand that.

18 Q Okay. And the judge is going to tell you that's
19 absolutely not the law.

20 A Right.

21 Q Death penalty is never required in any case -- not
22 this case, not the worst case.

23 A Okay.

24 Q The law is always satisfied with a life verdict.
25 And the State would have to prove and get a conviction

1 for murder. They would have to prove an aggravating
2 circumstance beyond a reasonable doubt. And then they
3 would have to convince all 12 jurors that the death
4 penalty is the appropriate punishment. Their burden is
5 extremely high.

6 A Sure.

7 Q Now, the judge will tell you that mitigation is
8 different, mitigation evidence. It could be any reason
9 to vote for the life penalty, anything that an
10 individual juror sees in the case and wants to vote for
11 life. Did you know that before you got here?

12 A No. I think I have a better understanding now.

13 Q The judge would actually use the words, "Any
14 individual juror can vote for life for any reason, no
15 reason or mercy alone."

16 A Sure.

17 Q Did you know that was the standard before you got
18 here?

19 A I did not know.

20 Q And one of the things that sometimes throws people
21 is the no reason part, that a juror, any individual
22 juror can vote for, like I said, the life penalty for
23 any reason, no reason or mercy. And somebody say, "I
24 heard the judge's instruction. Death penalty doesn't
25 sit right with me. I don't have the words to explain

1 it, but he said I could vote it for no reason. I'm
2 going to do that." Is that a principle that you could
3 respect and follow, let somebody do that?

4 A Yeah, but, I mean, my understanding is also by law
5 anything deemed as aggravating; is that correct?

6 Q I'm sorry. Could you rephrase that?

7 A Anything deemed as aggravated would be
8 consideration for the death penalty; is that correct?
9 I mean, I'm not sure.

10 Q Yeah. The juror oath, if you're selected --

11 A Yes, sir.

12 Q -- to be on the jury, the juror oath would require
13 you to swear or affirm that you would consider all of
14 the circumstances in mitigation and aggravation and
15 fairly consider both penalties.

16 A Okay.

17 Q So while you would be required under law to listen
18 to and consider the existence of an aggravating factor
19 if you find it and 11 other people find it with you,
20 what I'm telling you is the death penalty is not
21 required.

22 A I understand.

23 Q So all 12 people can say, "We find this
24 aggravating factor. We all agree it's there." And
25 then someone can say, "I agree with all y'all. I saw

1 the aggravating factor. I voted on it, but I heard the
2 judge. He said I could vote for life for any
3 reason" --

4 THE COURT: Are you going to ask him a question,
5 Mr. McGuire?

6 MR. McGUIRE: I'm a little wordy!

7 THE COURT: We've been 20 minutes of setting the
8 stage for it.

9 MR. McGUIRE: I understand.

10 MR. McGUIRE: So I agree. I apologize. I'll move
11 faster, Judge.

12 Q What I'm saying is a juror could say, "I found the
13 aggravator. I agree with everybody. I want to vote
14 for life for no reason." Is that a principle of law
15 you could respect and follow, let them have that view?

16 A I could respect it. That's an option for them,
17 yes.

18 Q The judge would say one of the principles of law
19 that we have is that a juror can vote for a mercy
20 verdict or just bestow mercy or vote for life on mercy
21 alone. Is mercy something that's earned or freely
22 bestowed and given?

23 A I think it's given, I mean, depending on the
24 circumstances, you know.

25 Q Okay. What I want to do is talk to you about one

1 more principle of the law that the judge would charge
2 the jury on, and that is there does not need to be
3 agreement or unanimity with regard to mitigation
4 evidence.

5 What that means is somebody here can say, "I'm
6 going to vote for life for this reason, reason A."
7 Somebody else can say, "I don't agree with that. I
8 didn't see that, but I'm going to vote for life for
9 reason C." And everybody can have their own separate
10 reason. There doesn't have to be consensus or
11 agreement or unanimity when it comes to a reason for
12 voting for life. Did you know that?

13 A I did not.

14 Q That's a principle of the law you could respect
15 and follow?

16 A Yes.

17 Q And you would want everybody to respect your
18 position no matter what it was?

19 A Sure. I'm entitled to my opinion.

20 Q Sure. And you would respect theirs?

21 A Absolutely.

22 Q And one more principle of law that exists is that
23 it's unlawful, it's a violation of the juror oath for
24 somebody to give up their position and go with a
25 majority for sake of joining the majority. Does that

1 make sense to you?

2 A Yeah.

3 Q Okay. And in a situation so significant and with
4 the kind of gravity that we have here, you would expect
5 people to disagree?

6 A Yes.

7 Q And you can respect that.

8 A Yes, absolutely.

9 Q That's all I have for you, sir. Thank you.

10 MR. HIXSON: Thank you, your Honor.

11 EXAMINATION BY MR. HIXSON:

12 Q Good afternoon -- evening, sir. How are you? I'm
13 Scott Hixson, Chief Deputy Solicitor of the State of
14 South Carolina. Jimmy Richardson, the Solicitor. Just
15 a couple quick questions. The Judge has asked you a
16 bunch, Mr. McGuire has asked you a bunch.

17 You understand the jury process. If you finally
18 get to the point you're trying to decide between guilt
19 or innocence, that's a give-and-take process, an effort
20 to try to reach consensus so you guys bring out a
21 unanimous verdict. You understand that concept?

22 A Yes.

23 Q And you believe can you give and take and share
24 your opinion with others and work to come to a
25 consensus opinion. Fair enough?

1 A Yes, sir.

2 Q Last point. If you do come back with a
3 recommendation of death, then you have to put your name
4 on the verdict form. You have to actually sign it, put
5 your name down there. I think you indicated to the
6 Court earlier that you could do that.

7 A Yes.

8 Q Is that still your answer?

9 A Yes.

10 Q Thank you for your time.

11 THE COURT: Please let the witness step down,
12 Mr. Ropp.

13 (WHEREUPON, Mr. Argenti exited the courtroom
14 at 7:55 p.m.)

15 MR. McGUIRE: He's qualified, Judge.

16 MR. HIXSON: He's qualified, your Honor.

17 THE COURT: Bring him back in.

18 (WHEREUPON, Mr. Argenti entered the courtroom
19 at 7:55 p.m.)

20 THE COURT: Mr. Argenti.

21 MR. ARGENTI: Yes, sir.

22 THE COURT: I find that you are qualified to sit
23 on the jury panel in this case. This does not mean
24 that you are on the jury. What this means is you are
25 now qualified to be considered in the jury selection.

1 We are going to be at this for several days, so we
2 will not need you. Please understand that my order
3 concerning pretrial publicity and contact with folks or
4 discussing this case still stands. However, I want you
5 to call back after 6 o'clock on Sunday evening. The
6 clerk has a number for you to call. There will be a
7 recorded message telling you when we need you here.

8 Please understand that if you are selected on this
9 jury, you will be sequestered, so we need you to bring
10 clothing, any medicines that you might have or need and
11 things of that nature. So be ready because if we
12 select you, we will immediately sequester you.

13 MR. ARGENTI: And that could possibly be Sunday?

14 THE COURT: Yes, sir. Call back after 6:00 on
15 Sunday. Thank you very much.

16 (WHEREUPON, Mr. Argenti exited the courtroom
17 at 7:57 p.m.)

18 THE COURT: All right. Do we have lunch or
19 dinner? We'll take a break and get a quick bite.

20 (WHEREUPON, recess taken from 7:57 p.m.
21 to 8:17 p.m.)

22 THE COURT: Let's come to order.

23 Mr. McGuire, let me make a comment.

24 Mr. McGuire, I'm going over exhaustively the
25 process that we follow in a death penalty case. You

1 need not reiterate that in preparation for any
2 questions to the jury. I'm being very lenient in
3 letting you ask these questions. There's no need to
4 spend ten minutes to ask a two-minute question. Please
5 try to be as succinct as possible.

6 We are going to finish these panels. We're only
7 halfway through. The way I estimate it, we'll be here
8 until 1 o'clock, but we must finish these panels. So
9 let's be as succinct as we possibly can in our
10 questions to the juries. Okay?

11 MR. McGUIRE: Yes, sir. Judge, if I could just
12 put, before we bring the juror out, something on the
13 record. I misspoke with regard to the last juror.
14 It's probably just the late hour and fatigue setting
15 in, but I meant to -- I should have said that he was
16 mitigation impaired because he indicated background
17 factors were not relevant in fixing punishment. And I
18 just made a mistake.

19 So I just need to object to his being qualified.
20 I would move to strike him for cause.

21 THE COURT: All right. That's on the record. I
22 think he was very clear that he could consider the
23 mitigating circumstances, all mitigating circumstances,
24 and he could follow the law. And, of course, I will
25 instruct him as to all mitigating circumstances and he

1 could consider anything.

2 I believe that that juror particularly would be
3 more than fair, and there is nothing to suggest that
4 there is anything to hinder substantially his ability
5 to perform his duties as a juror. And I will find on
6 the record that he is, in fact, qualified.

7 (WHEREUPON, Prospective Jury Panel Number 4 came
8 into open court at approximately 8:19 p.m.)

9 THE COURT: Okay. I see we have our six jurors
10 from the next panel.

11 Ladies and gentlemen, I apologize for the late
12 hour. I know we had this all scheduled. This is
13 taking much more time than I anticipated. We must
14 complete these panels. Before we begin your individual
15 voir dire, let me tell you that, although I have found
16 that you all meet the statutory qualifications of
17 jurors, there are certain exemptions that you may claim
18 if these exemptions apply to you. They're limited,
19 they're statutory, and I want to impress upon you the
20 fact that, although an exemption might apply to you,
21 you do not have to claim it. You can instead choose to
22 serve, and that is absolutely your right. It does not
23 affect your qualifications, so listen carefully as I
24 ask you these questions.

25 Is there anyone who is 65 years of age or over on

1 this panel? And I don't think there is.

2 And there is no response.

3 Has any one of you served as a juror in this
4 courthouse, in the court of common pleas or the court
5 of general sessions, in the past three years?

6 There is no response.

7 Has any juror served as a juror on the Grand Jury
8 of Horry County within the last five years? The Grand
9 Jury is the jury that does not try cases. What it does
10 is it determines whether or not an indictment should be
11 issued. If you were on the Grand Jury, I'm sure you
12 would know it because you would have to meet once a
13 month for at least a year and in many cases two years.
14 So you would know that.

15 Is there anyone who was on the Grand Jury in the
16 last five years?

17 And there is no response.

18 Does anyone have a child under the age of seven
19 who is your child or that you have legal custody of and
20 it is your job to stay at home, you do not work outside
21 the home, but you take care of that child on a daily
22 basis and you wish to be excused and you can not find
23 anyone else to take care of the child?

24 There is no response.

25 Is there anyone who is the primary caretaker

1 inside the home of a person over the age of 65 who
2 cannot care for him or herself or who is the caretaker
3 of a person who has a severe disability, cannot be left
4 alone, and that is your job, that's what you do on a
5 daily basis, you care for that person?

6 There is no response.

7 We have already addressed the issue of whether or
8 not you might be a full-time student, but is there
9 anyone on the jury panel who works at a school, whether
10 it be a public grammar school, high school, junior high
11 school, a technical school, college, anything of that
12 nature and your job is a necessary job to the continued
13 operation of the school? Is there anyone in that
14 category?

15 And there is no response.

16 Is there anyone who has a job in any business or
17 commercial or agricultural enterprise whose services
18 are so essential to the operation of that business that
19 if you are absent from that business to serve on this
20 jury that business must close, it must cease to
21 function if you are required to perform jury service?

22 Yes, sir. Tell me about that.

23 POTENTIAL JUROR: I'm a home inspector, and if I'm
24 not inspecting houses, my business is stopped.

25 THE COURT: I understand that. What is the name

1 of your business?

2 POTENTIAL JUROR: Cornerstone Building Systems.

3 THE COURT: Are you the only person who's employed
4 by that business?

5 POTENTIAL JUROR: Yes, sir.

6 THE COURT: And can anyone take your place?

7 POTENTIAL JUROR: No, sir.

8 THE COURT: Can you reschedule your appointments?

9 POTENTIAL JUROR: Sometimes.

10 THE COURT: Do you have appointments scheduled in
11 the next week or so -- well, let's say after Sunday of
12 next week?

13 POTENTIAL JUROR: They come quickly.

14 THE COURT: Do you have any appointments
15 scheduled?

16 POTENTIAL JUROR: Past Sunday?

17 THE COURT: Yes, for next week.

18 You do not?

19 POTENTIAL JUROR: No, sir.

20 THE COURT: All right. I would ask you not to
21 schedule any, please.

22 All right. Now, Mr. Ropp, if you would take this
23 jury out all except for Mr. Trunkett.

24 (WHEREUPON, Prospective Jury Panel Number 4, with
25 the exception of Mr. Trunkett, exited the

1 courtroom at approximately 8:25 p.m.)

2 DONALD TRUNKETT,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: Please be seated. Please speak into
5 the microphone and state your name and spell your last
6 for the record.

7 MR. TRUNKETT: Donald Trunkett, T-r-u-n-k-e-t-t.

8 EXAMINATION BY THE COURT:

9 Q Good afternoon, Mr. Trunkett.

10 Mr. Trunkett, do you recall my order yesterday
11 concerning pretrial publicity about this case, asking
12 you not to attempt to expose yourself to pretrial
13 publicity about the case, asking you not to seek out
14 information about the case and not to discuss the case
15 with anyone?

16 A Yes, sir.

17 Q Have you complied with that order?

18 A Yes, sir.

19 Q Okay. Do you understand that if you are qualified
20 to serve on this jury, you would be asked to come back
21 at a later time. But in the meantime my order will
22 remain in effect. Do you understand that?

23 A Yes, sir.

24 Q Very well.

25 Mr. Trunkett, you were kind enough to prepare for

1 us two documents after you came in this afternoon. One
2 was a document where we asked you to circle or indicate
3 what kind of juror best describes you. And you, I
4 believe, indicated that you were an A type juror; is
5 that correct?

6 A Yes, sir.

7 Q So that I can be sure that we understand each
8 other, my understanding of that A type juror is a juror
9 who simply feels that once a murder has been committed,
10 the death penalty is the only appropriate punishment no
11 matter what the circumstances of the case. Does that
12 best describe you?

13 A Yes, sir.

14 Q And is that your feeling in this matter?

15 A Yes.

16 Q Generally speaking?

17 A Yes.

18 Q You would be a person who would apply the death
19 penalty in every case?

20 A No.

21 Q You would not?

22 A No.

23 Q Okay. Then let me talk to you about that.

24 A Okay.

25 Q Mr. Trunkett, I'm going to be asking you

1 questions, and all of us may ask you questions about
2 your feelings and your opinions concerning, among other
3 things, the death penalty and the trial of this case.

4 The wonderful thing about America is that we are
5 all entitled to have our opinions about things. And I
6 promise you no one here is going to try to change your
7 opinions or criticize you for any opinion that you
8 have. That is perfectly your right to have an opinion.
9 So when we ask you about your opinion, please
10 understand that there is no wrong answer that you can
11 give. The only answer that we want from you is a
12 candid and truthful answer. And there is nothing wrong
13 with you having any opinion that you may harbor. Do
14 you understand that?

15 A Yes, sir.

16 Q It's simply that we have to ask you these
17 questions. Now, do you understand that Mr. Cottrell
18 sits here today in a presumption of innocence. Have
19 you ever heard that term?

20 A No, sir.

21 Q Let me explain it to you. It is one of the
22 foundation theories or tenets of the law in the United
23 States. And that is the concept that any person who is
24 charged with a crime is presumed to be innocent. And
25 that presumption stays with that -- that person until

1 it is overcome by the State. Do you understand that?

2 A Uh-huh.

3 Q Now, we're going to talk about the trial of this
4 case and we're going to talk about the sentencing phase
5 of this case. It's a two-part case. And I think I
6 made that clear to you yesterday. Do you understand
7 that?

8 A Uh-huh.

9 Q Now, please don't, because we are asking these
10 questions, assume that we have any opinion about
11 whether or not the State will be able to convict
12 Mr. Cottrell of the charges against him. Do not assume
13 that we think that we will reach a sentencing phase in
14 this matter. That is simply not true. We don't know.
15 It will be up to the jury to make that determination
16 and the jury alone. It is simply that we only have one
17 opportunity to discuss these matters with you, so we
18 need to discuss your opinions and feelings about both
19 phases of the trial. Is that fair enough?

20 A Yes, sir.

21 Q And you can appreciate that fact?

22 A (Nodding.)

23 Q And would you, again, not hold that in any way
24 against Mr. Cottrell?

25 A (Nodding.)

1 Q Mr. Cottrell has pled not guilty to these charges,
2 and that puts the burden on the State to prove his
3 guilt beyond a reasonable doubt. Do you understand
4 that?

5 A Yes, sir.

6 Q All right, sir. And can you be guided by that
7 concept as a juror if you are selected?

8 A Yes, sir.

9 Q Let me talk to you a little bit about the
10 procedure that we follow. A death penalty case is a
11 very unique type of murder trial. The death penalty is
12 only -- only -- even considered in a murder trial in
13 South Carolina. And I can tell you the vast majority
14 of the cases in which someone is tried for murder in
15 this state do not involve a situation where the State
16 is seeking the death penalty. It's very rare that it
17 happens.

18 But when it happens, there are special procedures
19 that we have to follow and rules govern that type of
20 case. For instance, in a normal case, the attorneys
21 would not have an opportunity to question you
22 individually. Some states they do, but not South
23 Carolina. That's one of the special rules. But let me
24 tell you how we would proceed.

25 As I told you, the defendant has a presumption of

1 innocence and he has pled not guilty to the charge of
2 murder. We began by essentially a traditional murder
3 trial. It's handled very much like a case where a
4 defendant had been charged with murder and the State
5 was not seeking the death penalty. Do you understand?

6 A (Nodding.)

7 Q In that part of the trial, the State would have to
8 overcome the presumption of innocence and can only do
9 so by convincing each and every juror that the
10 defendant is guilty beyond a reasonable doubt. Can you
11 appreciate that?

12 A Yes.

13 Q Do you understand that?

14 A Yes.

15 Q All right. Very well. In the event that should
16 occur -- first let me tell you what murder is, make
17 sure you understand. In that trial, the State would
18 have to prove that the defendant unlawfully killed
19 another person with malice aforethought.

20 Now, malice aforethought is what makes this or
21 what would make the charge a murder charge. There are
22 other homicides that don't rise to the level of a
23 murder. They would involve killing a person, but they
24 don't rise to the level of murder. Murder, as I said,
25 requires proof beyond a reasonable doubt that there was

1 malice at the time on the part of the defendant at the
2 time the killing took place.

3 And malice is essentially a situation where the
4 defendant harbored ill will, maliciousness, a depraved
5 heart. Intentional, malicious killing of the person.
6 It's more than just the killing. Do you understand
7 that?

8 A (Nodding.)

9 Q Now that may sound bad to you. That may sound
10 like, "Well, that's an extraordinary situation with
11 someone that is killed." But let me tell you that even
12 if the State were to prove that in a typical murder
13 case, there would be no possibility that a jury could
14 recommend or a judge would sentence the person to
15 death. In just a non-death penalty case, even though
16 malice may have been shown, there is no possibility of
17 a death penalty sentence.

18 A death penalty sentence is only to be considered
19 where there are aggravating circumstances involved or
20 concurrent with the murder. Now, that's why we have
21 what is called a second phase or a sentencing phase of
22 the trial if the State is seeking the death penalty.

23 The jury has no authority to even consider
24 recommending a death penalty upon a conviction for
25 murder if that should occur. The State must prove that

1 there were aggravating circumstances, at least one
2 aggravating circumstance, concurrent with the murder.

3 And the legislature, when they passed the death
4 penalty statute, set forth what each one of those
5 aggravating circumstances would be. And the State must
6 prove one of them. And if we got to that point and you
7 were on the jury, I would tell you what those
8 aggravating circumstances were for you to consider.
9 Okay?

10 And it is also the law that even though you as a
11 juror may be sitting there in thinking, "Well, I looked
12 at the circumstances of this particular case, and I
13 believe this other circumstance over here is just as
14 bad as some of those that are described by the State or
15 specifically set forth by the State." But, you know,
16 you couldn't even consider that. You could only make a
17 finding and only consider the ones that the legislature
18 has set out in the statute.

19 Only -- only -- if and only if the jury reached
20 the point -- and I'm not suggesting that they will --
21 not only was the defendant guilty of murder, that is
22 the unlawful killing of another person with malice
23 aforethought, but also he committed one of these
24 aggravating circumstances, circumstances that make it
25 worse, make it more heinous, unless he did one of

1 those, the jury could never even consider the death
2 penalty.

3 And I will tell you there is not a single offense
4 in this state, there's nothing that a person can do
5 where the penalty would automatically be a death
6 penalty. Did you know that?

7 A No, sir.

8 Q Okay. Well, that is the law in this state. I
9 promise you that I will not instruct you that if the
10 State proves A, B or C or 1, 2 or 3 you have to give
11 the death penalty because that is not the law in South
12 Carolina. Regardless of how heinous the crime may be,
13 never would I or any other judge tell a death penalty
14 jury that they must impose the death penalty because
15 that is simply not the case in South Carolina.

16 However, once the jury and if the jury should
17 determine that he is guilty of murder and there was --
18 beyond a reasonable doubt, the jury finds beyond a
19 reasonable doubt and unanimously that it was
20 accompanied by one of the statutory aggravating
21 circumstances, then the jury simply may consider the
22 possibility of recommending a death sentence. Do you
23 understand that?

24 A Yes, sir.

25 Q At no time is the jury instructed or required to

1 do that.

2 Now, before the jury can even consider giving or
3 recommending the death penalty, they must first
4 consider statutory mitigating circumstances. Just like
5 the legislature set out the aggravating circumstances,
6 it has set out certain things that are statutory
7 mitigating circumstances the jury must consider.

8 But unlike the aggravating circumstances, when the
9 jury comes to the point and if the jury comes to the
10 point where they have to consider mitigating
11 circumstances, circumstances that are extenuating, that
12 lessen the fact that the murder occurred under
13 circumstances that would aggravate, the jury's not
14 bound just by those statutory or enumerated mitigating
15 circumstances. Unlike when you consider the
16 aggravating, you can go and look at the whole record
17 and see if there's anything out there that you as an
18 individual juror would be in mitigation of the death
19 penalty. Do you understand that? You can look at
20 anything and decide.

21 Now, something that is often confusing to jurors
22 is this. Even if you find aggravating circumstances,
23 you may find a number of aggravating circumstances. I
24 don't know. It would be up to you as a jury to make
25 that decision. But it must be unanimous. Even if you

1 have found and even though you are required to look for
2 mitigating circumstances in the record, if you don't
3 find a single one, you are still not required to
4 recommend a death penalty.

5 You can, in the total absence of mitigating
6 circumstances, recommend mercy for purpose of mercy or
7 for no reason at all. You can say, "No, I vote that we
8 give a life sentence."

9 Now, do you sort of understand the procedure that
10 we follow in death penalty cases now?

11 A Uh-huh. Yes, sir.

12 Q Do you understand that at no time are you required
13 to give a death penalty?

14 A Right.

15 Q Do you understand that?

16 A Yes, sir.

17 Q And you understand that you can give a life
18 sentence for any reason, no reason or simply to show
19 mercy? Do you understand that?

20 A Yes, sir.

21 Q You do that.

22 Now, do you believe, sir, that if you were
23 selected as a juror, you can follow my instructions on
24 the law concerning your duties as a juror?

25 A Yes, sir.

1 Q What if you don't agree with what I tell you?
2 What if you think it ought to be something else? Can
3 you still follow my instructions and do what I tell you
4 that you have to do as a juror? Can you comply with
5 your oath as a juror?

6 A Yes, sir.

7 Q All right, sir. Now, it was important that I
8 understand that you are willing to follow my
9 instructions in this case, and that's why I took the
10 time to explain to you how that system is set up.

11 Now that we have gone over it, is there anything
12 about that system that causes you any problem or that
13 you believe is unfair or that you believe you would
14 have difficulty following?

15 A I don't have -- no, not in my mind right now.

16 Q Nothing in your mind now. Tell me what you think
17 generally about the death penalty. Under the proper
18 circumstances, could you recommend a sentence of death?

19 A Yeah. If it was there, I mean, I think I could do
20 it. I know I could do it.

21 Q You know you could do it?

22 A Yeah.

23 Q But could you -- could you, if I instructed you,
24 could you set aside all other opinions you have and
25 give a sentence of life in a murder case?

1 A I mean, I -- I think I could do it. I mean, it's
2 not that I can't do it, I just have to really read up
3 on it and make sure I understand everything first.

4 Q Well, you would have all the evidence available to
5 you, everything that you could consider --

6 A Right.

7 Q -- when you came to the deliberation process. And
8 I would instruct you as to the law. My concern is
9 this. You have said that in every case where there was
10 a murder that you would impose the death penalty.
11 That's what you told me a moment ago.

12 A Right.

13 Q Do you understand that murder, as that offense is
14 described under the law of this state, that just for
15 murder, the death penalty is not even a possibility?

16 A It's not the possibility or --

17 Q For just murder.

18 A For just murder.

19 Q For just murder. The unlawful killing of another
20 person with malice aforethought. I want to make sure
21 that you understand that.

22 A Yeah.

23 Q Okay. The point I'm trying to make is this. In
24 order for the death penalty to even be considered,
25 there must be murder plus --

1 A Yeah.

2 Q -- an aggravating circumstance?

3 A Right.

4 Q Can you appreciate that?

5 A Yes.

6 Q Now, do you understand that if only murder is
7 shown, I'm fearful if there is a conviction of murder,
8 you will automatically make up your mind, regardless of
9 what is shown or what passes through the sentencing
10 phase, that you would be inclined to give or recommend
11 the death penalty. Is that correct?

12 A Well, I mean, you put it that way, no.

13 Q That is not?

14 A No.

15 Q Okay. Would you consider the evidence and follow
16 my instructions concerning aggravating and mitigating
17 circumstances in this case?

18 A I would.

19 Q You would follow my instructions?

20 A Yes, sir.

21 Q Could you set aside any feelings or opinions you
22 may have about the death penalty or about murder and
23 return or recommend a sentence based upon the evidence
24 in the case and the law as I charge it to you for
25 either the death penalty or life imprisonment?

1 A Yes.

2 Q You could do either?

3 A I could do either.

4 Q You could do either?

5 A Yeah.

6 Q -So let me ask you after our discussions and my
7 explanation of the law to you, do you think that you
8 could hear the facts and circumstances in aggravation
9 and in mitigation before you would make a decision
10 regarding the sentence?

11 A Yes.

12 Q And you are open to either sentence? Do you
13 understand that?

14 A Yes.

15 Q Are you -- is that your position?

16 A Yes.

17 Q All right. Very well.

18 Now, Mr. Trunkett, I asked you a moment ago about
19 your general feelings of the death penalty. Would you
20 say that you were opposed to or for the death penalty?

21 A I would be for the death penalty.

22 Q You believe that the death penalty is an
23 appropriate punishment under certain circumstances?

24 A Under certain circumstances, yes.

25 Q And could you listen to my charge on the law and

1 follow the law concerning any sentence that you
2 recommended?

3 A Yes.

4 Q All right, sir. Do you understand, sir -- well,
5 let me ask you this. Is there anything,
6 Mr. Trunkett -- and I have a note here that says that
7 you did not feel that you could be fair and impartial
8 when you answered my questions yesterday. And I can
9 appreciate that. Was that your response? We were
10 trying to write everybody down, and we think that you
11 responded that you would have difficulty being fair and
12 impartial in this case. Was that your response?

13 A That was my response.

14 Q Okay. Could you tell me about that, why you feel
15 that you would have difficulty being fair and
16 impartial.

17 A Well, I mean, he took somebody else's life, and I
18 just -- I just have a hard time with somebody taking
19 somebody else's life.

20 Q The ultimate decision I have to make is whether or
21 not you have a life experience, you have certain
22 knowledge about the case, whether you have opinions
23 that would substantially impair your ability to perform
24 your duties as a juror, and those duties are to be fair
25 and impartial --

1 A Right.

2 Q -- in your judgment of this case. Now, do you
3 believe, sir, do you believe that your feelings about
4 the taking of another life would hamper or interfere
5 with your ability to be a fair juror? Again, there's
6 no right or wrong answer.

7 A No.

8 Q We just want you to answer candidly and tell us
9 truthfully how you feel.

10 A Yeah. I mean, you took a man's life. I just --
11 I -- I don't think I could deal with it.

12 Q You don't think you could set that aside?

13 A No. No.

14 Q Does that mean that you would be prone or inclined
15 to give the death penalty based solely on the fact that
16 he took a life?

17 A Pretty much so.

18 Q Very much so?

19 A Very much so.

20 Q All right, sir.

21 Mr. McGuire?

22 EXAMINATION BY MS. NORRIS:

23 Q Mr. Trunkett, I'm Teresa Norris. I know we got a
24 chance to see each other across a big room yesterday,
25 so I'm glad we get to talk now. And I apologize that

1 it's so late.

2 But before we even get to the death penalty
3 questions in general, and I understand that that's sort
4 of putting the cart before the horse. If I'm
5 correct -- and you tell me if I've got this wrong
6 because there were so many people getting up, it was
7 hard to keep track of who was up. But as I understand
8 it, you stood up on you've seen news about the case,
9 you've performed an opinion, and you can't be fair and
10 impartial. Is that accurate?

11 A Pretty much.

12 Q Could you tell me what you know about this case in
13 particular.

14 A That, I mean, the stuff that I read on the news
15 and --

16 Q What did you read?

17 A I'm not -- heard on the news and then read on the
18 Internet that he basically, you know, shot a police
19 officer point blank range in the face and with another
20 person. And I just -- the other -- and then the stuff
21 on the news, you know, that was back in 2002. I just
22 remember that stuff.

23 Q Okay. So you haven't seen anything recently?

24 A No.

25 Q Or nothing really since it's happened?

1 A Huh-uh.

2 Q So you don't know what's happened in the last
3 12 years after those initial news reports?

4 A No.

5 Q Okay. But on those initial news reports, you said
6 that you formed an opinion. In your own words, could
7 you tell us what that opinion is?

8 A That the man's a low life scum that took a man's
9 life. I mean, I really don't remember, but --

10 Q And is that the type of case where in your mind,
11 if we're just asking a discussion about the death
12 penalty, is that the type of case that in your mind
13 you're an automatic this guy deserves the death
14 penalty?

15 A I mean, my own opinion, yes.

16 Q You're entitled to your opinion.

17 A Yes.

18 Q There are no right or wrong answers as you sit
19 right there.

20 A Yes. I mean, yes, he deserves the death penalty.

21 Q And you also indicated on your questionnaire that
22 you have a brother-in-law at the Myrtle Beach Police
23 Department?

24 A Yes.

25 Q Have you talked with your brother-in-law about

1 this particular case? And there wouldn't have been
2 anything wrong with that prior to getting the judge's
3 instruction.

4 A I mean, prior to this, yes, I did.

5 Q And tell me what that discussion was.

6 A He just told me that the man he shot was a good
7 man and, you know, just basically that's about it.

8 Q And having that information -- well, let me take
9 that one step at a time because I'm tired and I don't
10 want to confuse myself or you.

11 The fact that you have a brother-in-law that was
12 at the Myrtle Beach Police Department and I assume
13 worked with Officer McGarry, would that influence you
14 in terms of, "I've got to come down hard. This as an
15 automatic death penalty"?

16 A No.

17 Q Having -- having the information from someone
18 close to you, your brother-in-law -- I assume you trust
19 and respect your brother-in-law. Having that
20 information from someone close to you that Officer
21 McGarry was a good person, et cetera, would that
22 influence you in any way in how you view a decision in
23 this case?

24 A No.

25 Q But regardless of that, in your view, if you shoot

1 somebody in the face, you're low life scum -- I think
2 is the phrase -- you're an automatic death?

3 A Pretty much. Eye for an eye.

4 Q And just to make sure beyond that -- and now I am
5 going to jump to the general death penalty questions.
6 And I will try to keep this brief. Understanding that
7 Mr. Cottrell right now is presumed innocent --

8 A Right.

9 Q -- and we're going to challenge any conviction in
10 court. So we're just talking about this because we
11 have to. But setting aside his facts, in every case
12 talking about a hypothetical defendant where if you
13 were on the jury and you decided that there was a
14 murder, and that is malice aforethought, an unlawful
15 killing of another with malice aforethought -- and
16 malice is wicked, evil intent, a heart bent on fatal
17 mischief is some of the language you hear with that.
18 But in essence it's not self-defense, it's not an
19 accident. He meant to do it and he did it. Once
20 you've got that and you add an aggravating
21 circumstance, and under the law and the judge would
22 instruct this -- I'm talking a hypothetical case
23 here -- once -- the statutory aggravating circumstance
24 is what I call the plus factor. In order for it to be
25 death eligible, it has to be something else. It can be

1 an additional crime such as rape. It can be a helpless
2 victim such as a small child. Those type things the
3 legislature has determined make you eligible for the
4 death penalty if it's found.

5 So if you've got murder and that plus, in your
6 mind, if I'm understanding what you've said before
7 there's no way you're going to give anything other than
8 the death penalty; is that fair?

9 A I really -- you've got to hear the story before
10 you can do that, though. No, I wouldn't give just the
11 death penalty, but it would be one of my top priorities
12 probably, giving the death penalty.

13 Q All right. Well, when you say you've got to hear
14 the rest of the story, that, of course, is what would
15 happen --

16 A Right.

17 Q -- in that hypothetical case. The State would get
18 to present additional evidence that we call aggravation
19 evidence. In my layman's terms, that's just anything
20 that weighs in favor of death -- low life scum, however
21 you view it. Anything bad that weighs that way.

22 And do you understand then that the defendant --
23 and this is our hypothetical case -- is never required
24 to present any mitigating evidence. Do you understand
25 that, under the law?

1 A Pretty much.

2 Q So if all you've heard -- and legally this could
3 be the case -- if all you've heard is that murder --
4 malicious, intentional -- plus something else --
5 another crime, small child. There are other categories
6 but I'm just using those as examples -- and then you
7 hear nothing else, but you hear the judge instruct that
8 you're to consider all the evidence before you,
9 anything you think mitigating, in your mind is there
10 any way at that point, having heard all the story, as
11 you put it --

12 A Right.

13 Q -- that it could be anything other than a death
14 sentence?

15 A Yes.

16 Q Tell me what that is.

17 A I mean...

18 MR. HIXSON: Your Honor, if it's a good enough
19 time to object relating to this. We've been letting
20 these hypotheticals go and go and go. The
21 hypotheticals are getting very extensive --

22 THE COURT: They are. They are.

23 MR. HIXSON: I'm going to start objecting to these
24 hypotheticals and the possible answers.

25 THE COURT: And, Ms. Norris, the hypothetical is

1 not an appropriate way to do it. You know, ask the
2 question directly. Let's try to move on with this.

3 MS. NORRIS: Yes, sir.

4 BY MS. NORRIS:

5 Q Is there any circumstance in your mind -- and you
6 hesitated and said you think there is a circumstance
7 where if you've got murder, you've got statutory
8 aggravation, you've got no mitigation, you said there's
9 still a circumstance where you could potentially impose
10 a life sentence. What circumstance are you thinking of
11 in your brain there?

12 MR. HIXSON: Once again, your Honor, that's the
13 same example I gave. She's in a vacuum --

14 THE COURT: Let's let him answer that and let's
15 move on.

16 Can you think of one, sir?

17 MR. TRUNKETT: No, I cannot.

18 THE COURT: He cannot think of one. All right.
19 He's answered the question.

20 MS. NORRIS: Just one second, your Honor.

21 (WHEREUPON, an off-the-record discussion was held
22 between Ms. Norris and Mr. McGuire.)

23 MS. NORRIS: I don't have anything further for
24 you, Mr. Trunkett. Thank you, sir.

25 THE COURT: For the State?

1 MR. RICHARDSON: Yes, sir. Just a couple of
2 questions.

3 EXAMINATION BY MR. RICHARDSON:

4 Q I'll get straight to the point. You started off
5 saying, before you heard much from the judge or the
6 law, that you thought that basically any murder, you
7 would go along with the death penalty. That's the form
8 that you circled to start with?

9 A Right.

10 Q When you heard a little explanation from the
11 judge, you said, "I think I can be fair to both sides.
12 I think I could consider both life or death"?

13 A Right.

14 Q I mean, do you agree with me that you, if you had
15 the form to fill out again, you would have circled C as
16 opposed to B?

17 A You mean A to C?

18 Q Yes; sir. I'm sorry.

19 A Yes.

20 Q And that's because you hadn't heard from the
21 judge?

22 A Well, because maybe I didn't understand what's in
23 the form.

24 Q I'm sorry.

25 A Maybe I didn't understand the form.

1 Q Exactly. And so, I mean, I'm not going to go in
2 depth, but I've mentioned this to several potential
3 jurors. Big misconception. Throughout the State,
4 there may be a hundred murders this year.

5 MS. NORRIS: Your Honor, I'm going to object to
6 this line of questioning.

7 THE COURT: Let's not get into that,
8 Mr. Solicitor, please.

9 BY MR. RICHARDSON:

10 Q All right. Let me tell you this. A death penalty
11 case is very rare.

12 MS. NORRIS: I'm going to object to that. Same
13 thing.

14 THE COURT: That's a fair comment. I think it's
15 well known that they're rare, and I have even told the
16 jurors it's rare. It's a special occasion, and it
17 deserves special attention.

18 BY MR. RICHARDSON:

19 Q And what I'm getting at I think will help
20 Ms. Teresa a little bit, too.

21 The rarity is because it's not just murder. It's
22 murder plus.

23 A Right.

24 Q All right. It's murder plus some aggravating
25 circumstance. It makes it more than murder. All

1 right? And what Judge Hyman was telling you is that
2 this regular, old murder, you couldn't even get the
3 death penalty for that.

4 A Right.

5 Q Do you understand that now?

6 A Yeah.

7 Q It would have to be this murder plus something
8 else. We won't even be able to tell you about the
9 something else until part two.

10 A Right.

11 Q Okay? What I need to know from you, and I need
12 you to be -- I need you to think about it and I'm not
13 going to hassle you over this. What I need to know
14 from you is if after -- if we can prove that he did, in
15 fact, murder someone, and then if we can prove that
16 there is a special circumstance or an aggravator, can
17 you sit over here and listen to not only that special
18 aggravating circumstance but also -- and they don't
19 have to, but if they choose to -- any mitigating
20 factors, can you hear anything that the defense
21 attorneys may give you to make the actions seem better
22 on his behalf? You see what I'm saying, to lessen his
23 culpability. Can you listen to all that?

24 A I can listen.

25 Q Okay. Listening is the easy part. Can you be

1 fair to the State and to the defense after hearing, not
2 only the aggravators but the mitigation, can you then
3 consider life or death?

4 A Yeah, I can.

5 Q Okay.

6 MR. RICHARDSON: I have no further questions, your
7 Honor.

8 THE COURT: Thank you very much.

9 Please take this juror out for a moment.

10 (WHEREUPON, Mr. Trunkett exited the courtroom
11 at 9:06 p.m.)

12 MS. NORRIS: Your Honor, I submit that he is not
13 qualified. He answered thoroughly and consistently --

14 THE COURT: Ms. Norris, I agree with you.

15 Mr. Richardson, what do you say about this? I
16 think that he very clearly responded to my questions
17 that he would be predisposed to give the death penalty
18 and that it would hinder his ability to be fair and
19 impartial. He indicated that on yesterday.

20 What's the State's position then? You want to
21 argue that?

22 MR. RICHARDSON: Your Honor, I thought that you
23 had switched him over, and then I thought that I had,
24 too, but if you don't feel comfortable --

25 THE COURT: I do not feel comfortable with him.

1 MR. RICHARDSON: I understand.

2 THE COURT: I find him not qualified.

3 Bring him back.

4 (WHEREUPON, Mr. Trunkett entered the courtroom
5 at 9:07 p.m.)

6 THE COURT: Mr. Trunkett, your attendance will no
7 longer be required. You are excused.

8 (WHEREUPON, Mr. Trunkett exited the courtroom
9 at 9:07 p.m.)

10 THE COURT: Ms. Goodrow.

11 MS. NORRIS: Your Honor, before we bring the next
12 one, could I just put something on the record?

13 THE COURT: Certainly.

14 MS. NORRIS: That last juror --

15 THE COURT: Wait a minute. Wait a minute.

16 There we go.

17 MS. NORRIS: I'm sorry, your Honor. I wasn't even
18 going to talk about him. I was just going to talk
19 about the process.

20 My concern is this. Although he was saying
21 throughout your questioning that he's automatic death
22 penalty, that there was one point when your Honor said,
23 "I'm fearful this is what you're saying." In other
24 words, in our view, conveying to this juror that you're
25 afraid he's disqualifying himself by what he's saying.

1 THE COURT: Well, if I said that, I certainly
2 didn't mean to. What juror are you talking about?

3 MS. NORRIS: This last gentleman.

4 THE COURT: Mr. Trunkett?

5 MS. NORRIS: Yes.

6 THE COURT: Okay. Well, I will refrain from that
7 and I will not say that. I didn't mean to say that.

8 Okay?

9 MS. NORRIS: Thank you, your Honor.

10 (WHEREUPON, Ms. Goodrow entered the courtroom
11 at 9:08 p.m.)

12 SHARON GOODROW,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: Please speak into the microphone and
15 state your name and spell your last for the record.

16 MS. GOODROW: Sharon Goodrow. Last name is
17 spelled G-o-o-d-r-o-w.

18 EXAMINATION BY THE COURT:

19 Q Good evening, Ms. Goodrow. How are you today?

20 A I'm fine. Thank you.

21 Q Ms. Goodrow, you were previously admonished not to
22 read or expose yourself to any pretrial publicity about
23 this case on yesterday. And I also cautioned you not
24 to have any conversations with anyone concerning the
25 case. Did you comply with my order?

1 A I did.

2 Q I appreciate that. Thank you very much.

3 You have provided us with a couple forms we gave
4 you this morning, one of which -- or this afternoon,
5 one of which was where we ask you to select which of
6 three juror types best describes you. And I note, if I
7 have the right form, it is certainly signed by you,
8 that you indicate that you are a type A juror; is that
9 right?

10 A Correct.

11 Q And so that I can make sure we're on the same
12 wavelength here, that we understand what we're talking
13 about, in indicating that, you tell me that you are a
14 juror that simply feels that if a murder has been
15 committed, the death penalty is the only appropriate
16 punishment no matter what the circumstances of the
17 case. And is that your opinion?

18 A Yes, sir. An eye for an eye.

19 Q All right. Let me ask you a little bit or talk to
20 you a little bit about what we're doing here. In this
21 examination today, what we're trying to determine is
22 whether there's anything in your life experience or
23 based on your opinions about certain things or perhaps
24 based upon information you may have received concerning
25 this case, or if there's any other reason, why that

1 would substantially hinder your ability to perform your
2 duties as a juror. And, I guess, basically your duties
3 as a juror could best be summed up as simply being fair
4 and impartial in your judgment of the case.

5 Now, you have indicated that you can't be fair. I
6 think you've told us that on yesterday.

7 A Um --

8 Q So we want to ask some questions about why you
9 feel that way. And let me assure you that we all
10 understand and appreciate the fact that here in
11 America, one of the great freedoms we have is to have
12 our own opinions about anything. And I can assure you
13 that no one here is going to change or try to change
14 your opinion, no one is going to criticize you for your
15 opinion. You have a right to have an opinion about the
16 things we'll be asking you about.

17 So when we ask you about your opinions, there's no
18 wrong answer or right answers. They're just your
19 position on it. All we ask is that you be truthful and
20 candid with us, and I'm sure that you will be.

21 Now, let me take a moment and tell you a little
22 bit about this case and how we proceed in these
23 matters. Have you ever heard the term "presumption of
24 innocence"?

25 A Yes, sir.

1 Q And do you understand what that means?

2 A I believe I do.

3 Q Okay. Let me just tell you what I think it means
4 or what I know it means. It's a legal theory or a
5 legal term that's just pervasive in the American legal
6 system. It describes a right that we all have, and
7 that is that we are all presumed innocent of any charge
8 made against us until the State is able to overcome
9 that presumption.

10 And that will be the case here. The State could
11 only overcome that presumption of innocence -- and I
12 tell you that Mr. Cottrell is cloaked and protected by
13 that presumption of innocence as he sits here today and
14 will be until such time as the State overcomes it.
15 There is no question about that. And the State can
16 only overcome it by convincing a jury, each and every
17 juror in the jury, of his guilt beyond a reasonable
18 doubt.

19 Now, I want to tell you something you may not have
20 understood about these types of cases and the offense
21 of murder which you understand he's being tried for?

22 A Yes, sir.

23 Q All right. You understand that from our
24 discussions yesterday. Whenever a person is charged
25 with murder, the State must overcome its burden or

1 overcome the presumption by convincing each juror
2 beyond a reasonable doubt that he committed the
3 elements of the offense. And for murder, the elements
4 that the State would have to prove would be that he
5 killed -- unlawfully killed another person with malice
6 aforethought. Those are the three things that must be
7 shown.

8 And malice sounds bad. And malice is, because
9 malice indicates that at the time of the killing he had
10 a depraved heart, he was guided by some wicked motive,
11 that he had malicious intent in doing so. It means a
12 blackened heart, a conscious wrongdoing. That's what
13 malice generally means.

14 So when a murder case is -- if, and if the State
15 can prove it in this case. I don't want to give you
16 the impression that any of us have reached the
17 conclusion or are suggesting that there will be a
18 conviction for the murder at all but we have to talk
19 about these things. So just for argument sake, we're
20 talking about it.

21 But if the State proves that, and if the State
22 shows extreme malice on the part of the person who
23 perpetrated the crime, do you understand and do you
24 realize that the death penalty is not even a
25 possibility in this case?

1 A I did not know that.

2 Q Did you know that there is no offense, no criminal
3 offense in the State of South Carolina, for which there
4 is a mandatory sentence of death? Were you aware of
5 that?

6 A No, sir.

7 Q It's not -- and we have murder cases that occur
8 with some frequency throughout the State. And they're
9 tried with some frequency. But where the State seeks
10 the death penalty, where the State seeks the death
11 penalty, the offense has to be more than murder.

12 If I told you that if the State only proves
13 murder, the death penalty is not even a possibility.
14 It is not in the range of possible sentences. And
15 sometimes people who are of the opinion that the death
16 penalty is the only appropriate punishment for a murder
17 are under the impression that that is the case when
18 it's not.

19 In order to seek the death penalty, the State must
20 prove something else. It must be murder plus something
21 else. And that something else is the commission of an
22 aggravating circumstance.

23 And we don't have to wonder what aggravating
24 circumstances are or speculate as to what an
25 aggravating circumstance is. Because when our

1 legislature created the death penalty statute, it very
2 clearly said, These are the aggravating circumstances,
3 and it listed each and every one specifically and said
4 if the murder was committed in conjunction with
5 these -- even one -- at least one of these aggravating
6 circumstances and the State convinces a jury
7 unanimously and beyond a reasonable doubt that one of
8 those existed at the time of the murder -- so you have
9 a conviction for murder and conviction of one of these
10 or proof beyond a reasonable doubt that one of these
11 aggravators -- and aggravators are what make it more
12 heinous, a worse murder than some others -- only if the
13 State reaches that point, try a traditional murder
14 case, if there is a conviction, then you reconvene the
15 jury and you try the issue of whether there's an
16 aggravator -- only if the State gets to that point,
17 only if the State gets to that point can a jury even
18 consider a recommendation of the death penalty. Were
19 you aware of that?

20 A Yes, sir.

21 Q Okay. Now, the death penalty is not mandatory.
22 You will never hear me or any other judge say, "If the
23 jury proves this and proves that and then proves this,
24 then you must recommend the death penalty." That is
25 not how it works. That's not the law in South

1 Carolina.

2 The law simply says that if you get to the point
3 of murder plus an aggravating circumstance, you may
4 consider it. It is wrong to think that on conviction
5 of murder that the death penalty is a possibility
6 because it is not. You have to show this other step.

7 And the statute also says to the jury, If you get
8 to the point where you can think about -- think about
9 recommending the death penalty, understanding you don't
10 have to do it, but during that thinking process you
11 must consider, and they set out statutory mitigating
12 circumstances or extenuating circumstances,
13 circumstances that would lessen the moral culpability
14 of the person who committed the offense.

15 In addition to that, unlike the aggravating
16 circumstances where the jury's told you can only
17 consider these. You know, you might look at it and
18 say, "Well, this over here is just as bad in my view.
19 Why don't we consider it as an aggravating
20 circumstance," and it's not listed, you can't even
21 consider it. But on mitigators, you will be instructed
22 you can consider anything else in the case that you
23 personally consider to be mitigating.

24 And then even if you don't find a single
25 mitigating circumstance, you are still not required to

1 recommend the death sentence. At that time you can,
2 without mitigation, mitigating circumstances, or no
3 reason, or simply to extend mercy you can recommend a
4 life sentence. Do you understand that?

5 A I do.

6 Q Now, that is the law. And that's how you would be
7 instructed. Now, the question before me is whether or
8 not your thoughts or your opinions concerning the
9 penalties -- the penalty that is appropriate for a
10 murder is such that it would prevent you from following
11 my instructions, from following the law and considering
12 not only a death penalty recommendation but a life
13 sentence as well.

14 Do you feel that your thoughts or opinions
15 concerning the death penalty are such that they would
16 hinder your ability to consider a life sentence in a
17 death penalty case?

18 A I think I would have to hear the -- all the
19 circumstances first.

20 Q Well, that's sort of what we've been talking
21 about. Would you consider the circumstances if I
22 instructed you that you are to consider all of these
23 circumstances and you are to look at all the
24 circumstances for mitigating matters, and even if you
25 didn't find any mitigating circumstances you could

1 still extend mercy? If I asked you to do all of those
2 things, can you consider, as well as a recommendation
3 of a death penalty, the recommendation of a life
4 sentence as well?

5 A Perhaps is probably not a very good answer, but
6 that's my answer.

7 Q You're not sure is what you're telling me; is that
8 correct?

9 A Yes, sir.

10 Q Would you be predisposed just because of your
11 opinions to -- concerning the penalties, the
12 appropriate penalties, to give the death penalty as
13 opposed to the life sentence or to vote for that?

14 A I probably would vote for the death.

15 Q You would probably vote for a death penalty?

16 A Yes, sir.

17 Q Okay. Now, is that why you told me when I asked
18 you yesterday that you did not think you could be fair
19 in this case?

20 A I feel like I've already formed an opinion.

21 Q Okay. All right. And that's what I wanted to
22 get. You told me you had issues with the penalty for
23 murder because you think that it should be death in
24 every case, or that's what you indicated on your form.
25 What I'm getting at is are there other things?

1 You have formed an opinion. Is that opinion that
2 the death penalty is appropriate or is it based on
3 something else that you have read or learned or know
4 about the case?

5 A Just based on what I've read.

6 Q Okay. Tell me about that. What have you read?
7 What do you know about this case? Let me tell you,
8 it's perfectly all right for you to know a lot about
9 this case.

10 A It's been tried before, correct?

11 Q It was -- it's been reported, and you had no idea
12 you were going to be on a jury. And I have just
13 recently, yesterday, told you not to read anything else
14 about it. You may -- some jurors do, some jurors
15 don't, but you may have had many newspaper articles or
16 news articles, reports available to you.

17 Can you just tell me what your understanding is
18 has taken place in this case or at the time of the
19 incident?

20 A My understanding was that it was tried before and
21 he was convicted.

22 Q All right. Would that affect your ability to be
23 fair and impartial in this case?

24 A To me, somebody else has already decided that. I
25 think it's a waste of taxpayer money to retry this.

1 Q And that's a fair opinion. If that's how you
2 feel, I can't criticize you for that. I'm just -- I
3 just want you to know we appreciate you being candid
4 with us. Okay?

5 A Yes, sir.

6 Q And as I told you, what I have to determine is
7 whether or not anything like that has occurred or has
8 come to your attention or you have any opinions that
9 would substantially impair your ability to be fair and
10 impartial. Are you telling me that that is the case?

11 A I feel like I have formed my opinion, yes, sir.

12 THE COURT: All right. Very well.

13 Do you need to examine this witness?

14 MS. NORRIS: Just briefly, your Honor.

15 EXAMINATION BY MS. NORRIS:

16 Q And I don't want to take long, but I also don't
17 want to talk to you across from the courtroom because
18 we only got to see each other that way yesterday.

19 MR. McGUIRE: Your, Honor if I could yank on my
20 co-counsel's arm.

21 (WHEREUPON, an off-the-record discussion was held
22 between Mr. McGuire and Ms. Norris.)

23 BY MS. NORRIS:

24 Q I just want to ask one thing. And you had
25 indicated on your questionnaire that your husband was a

1 state trooper?

2 A Correct.

3 Q Is that something that would also influence you
4 and form that opinion?

5 A I think very possibly it would. I have a number
6 of family members in law enforcement.

7 THE COURT: Okay. Thank you.

8 MS. NORRIS: Thank you, ma'am.

9 THE COURT: Did you want to examine her?

10 MR. HIXSON: No. Thank you, your Honor.

11 THE COURT: Mr. Ropp, take her out.

12 (WHEREUPON, Ms. Goodrow exited the courtroom
13 at 9:27 p.m.)

14 THE COURT: What says the State? Let me ask the
15 State first.

16 MR. HIXSON: We believe you have established a
17 substantial impairment, your Honor.

18 THE COURT: I'm sorry, I didn't hear you.

19 MR. HIXSON: We believe you have established a
20 substantial impairment, and as a result, she's not
21 qualified.

22 THE COURT: Okay. Ms. Norris.

23 MS. NORRIS: Absolutely agreed, your Honor. And I
24 appreciate the State's concession on that one.

25 THE COURT: All right. Bring her back in.

1 (WHEREUPON, Ms. Goodrow entered the courtroom
2 at 9:28 p.m.)

3 THE COURT: Thank you for coming, Ms. Goodrow.
4 Your attendance is no longer required and you are
5 released from your subpoena.

6 MS. GOODROW: Thank you very much.

7 (WHEREUPON, Ms. Goodrow exited the courtroom
8 at 9:29 p.m.)

9 **WILLIAM CADDELL,**

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: Please have a seat. Please speak into
12 the microphone and state your name and spell your last
13 for the record. Thank you.

14 MR. CADDELL: My name is William D. Caddell,
15 C-a-d-d-e-l-l.

16 EXAMINATION BY THE COURT:

17 Q Mr. Caddell, how are you this evening?

18 A Tired.

19 Q I am too, Mr. Caddell.

20 A Yes, sir.

21 Q Mr. Caddell, let me ask you a few questions. You
22 remember yesterday I asked you not to talk about this
23 case with anyone or seek out any information or put you
24 in a position where you would be exposed to any
25 information about the case?

1 A Yes, I do, your Honor.

2 Q And have you followed my instructions?

3 A Yes, I have, your Honor.

4 Q And do you understand that if you are qualified
5 today, you will be brought back some other time, but my
6 order would still be in effect. Do you understand
7 that?

8 A Yes, your Honor.

9 Q And you're willing to comply with that?

10 A Yes, your Honor.

11 Q You were kind enough to give us some information
12 this morning or this afternoon, and one of those things
13 was an indication or a form indicating what type of
14 juror you thought described you best. And you, I
15 believe, indicated that you are a C type juror; is that
16 correct?

17 A That is correct, your Honor.

18 Q All right, sir. Now, just so that you and I
19 understand each other and we're talking about the same
20 thing, I believe that that would be a juror what would
21 be described as one who would need to hear the facts
22 and circumstances in aggravation and in mitigation
23 before he or she could make a decision regarding
24 punishment for a case like this?

25 A That is correct, your Honor.

1 Q And that is your position?

2 A Yes, your Honor.

3 Q Now, I'm going to need to ask you some questions
4 about that and about your opinions concerning
5 punishment and the process that we will follow and
6 things of that nature. I don't mean to pry, but it's
7 necessary that we -- that you share your opinions with
8 us.

9 Now, let me say this. Wonderful thing about this
10 country is we're all entitled to have our opinions. We
11 can all have an opinion about anything. And let me
12 assure you that no one in this courtroom is going to
13 criticize any opinion you have. No one is going to try
14 to change your mind. Our questions are here only to
15 learn about your opinions because what we have to do is
16 we have to explore whether your opinions, your life
17 experiences, information that you may have received
18 about this case, whether any of those things would
19 affect your ability to perform your duties as a juror.
20 I think the standard is whether you would be
21 substantially impaired in your ability to perform your
22 duties as a juror.

23 And, essentially, if I had to describe your duties
24 as a juror, I would say, in just a few words, I would
25 say your duty is to be a fair and impartial juror. And

1 that's what we're looking for. Do you understand that?

2 A Yes, your Honor.

3 Q Okay. So it's important that you answer these
4 questions very truthfully and candidly when they're put
5 to you because that's all we need to know is how you
6 candidly feel about these matters.

7 Now, had you ever heard the term "presumption of
8 innocence"?

9 A Yes, your Honor. If you had seen my background on
10 my questionnaire, yes, your Honor.

11 Q You've been here before.

12 A No, your Honor. I was an MP in the Army for
13 years. Military policeman.

14 Q Oh, an MP. I'm sorry. So you have some law
15 enforcement background?

16 A Yes, your Honor.

17 Q Okay. So then you are familiar with the term and
18 you understand that it simply means that everyone
19 accused of a crime in America is presumed to be
20 innocent?

21 A Yes, your Honor.

22 Q And that presumption stays with them until such
23 time as the State, or prosecuting authority in the case
24 of the military, is able to overcome that presumption?

25 A Exactly.

1 Q Exactly. All right, sir. And in this particular
2 case, do you understand what Mr. Cottrell is charged
3 with?

4 A Yes, I do, your Honor.

5 Q All right. And he's charged with murder. Do you
6 understand that?

7 A Yes, your Honor.

8 Q And yesterday we talked a little bit about murder,
9 didn't we?

10 A Yes, we did.

11 Q In this case or in a murder case, if the State
12 wanted to overcome that presumption of innocence, it
13 would have to convince a jury unanimously of his guilt
14 beyond a reasonable doubt. Can you appreciate that?

15 A Yes, your Honor.

16 Q Okay. And do you believe that that's a fair
17 system, that's the way it should work?

18 A Yes, your Honor, for all cases.

19 Q All right. Now, whenever the State seeks the
20 death penalty, it sort of moves a murder case into a
21 new category. It is a special type of murder case, and
22 you probably understand that. Do you?

23 A Yes, your Honor.

24 Q Okay. Now, in a murder case, the State would have
25 to prove, in order to overcome the presumption of

1 innocence, that Mr. Cottrell -- and I am not suggesting
2 that they can do this. Mr. Cottrell is not convicted
3 of anything, but we need to talk about the whole range
4 of possibilities in this case. And for that we may
5 have to assume that he has been convicted, but that is
6 not any suggestion on my part or anybody here that he
7 is guilty. He has pled not guilty to these charges,
8 and his attorneys will zealously defend him in this
9 matter. And you can appreciate that, I'm sure.

10 A Yes, your Honor.

11 Q Okay. Now, the State would have to prove beyond a
12 reasonable doubt that he unlawfully took another
13 person's life with malice aforethought. And malice
14 aforethought is a hatefulness, a maliciousness towards
15 the person who was killed. It indicates a darkness of
16 heart, an intentional act against another person, not
17 an accident. And that sounds pretty bad.

18 But were you aware of the fact that in this state,
19 even if this were a normal murder case, that even if
20 the State overcame that and there was a conviction for
21 the offense of murder, that the death penalty would not
22 even be on the table, it would not even -- could not
23 even be considered by the trial judge as a penalty?

24 A Yes, your Honor. It has to be under aggravated
25 circumstances.

1 Q All right. Now, that brings us to my next
2 question. You are aware that there must be a showing
3 of aggravating circumstances. You've told me that.

4 A Yes, your Honor.

5 Q And I appreciate the fact that you know that. The
6 State, in order to seek the death penalty, must prove
7 more than a murder. It must prove a murder accompanied
8 by an aggravating circumstance. And an aggravating
9 circumstance is one of those specific circumstances
10 that are described in the death penalty statute and
11 only those circumstances.

12 A Yes, your Honor, I understand.

13 Q You understand that?

14 A Yes, sir.

15 Q And you realize that the matter of the death
16 penalty even being a recommended sentence is not even
17 on the table until such time as the State has proved
18 beyond a reasonable doubt a murder and has proved
19 beyond a reasonable doubt that at least one aggravating
20 circumstance exists?

21 A Yes, your Honor.

22 Q You understand that?

23 A Yes, I do.

24 Q And you understand if you were on the jury and I
25 read you a list of aggravating circumstances and you

1 looked at the facts of this case and said, "Well, here
2 is something over here that he didn't tell us about,
3 but I think that is just as bad," you couldn't use that
4 as an aggravator. You can only use the aggravators
5 that I describe.

6 A Exactly, your Honor.

7 Q You understand. And only then could you even
8 think about recommending the death penalty?

9 A Exactly, your Honor.

10 Q Okay. And do you understand that before you could
11 recommend the death penalty, you are required to look
12 at statutory mitigating circumstances and consider
13 those? Do you understand that?

14 A Yes, your Honor.

15 Q And unlike the aggravating circumstances, you can
16 go beyond the statutory mitigating circumstances and
17 look at the evidence for other things that you
18 personally might consider to be mitigating and you
19 could consider those. Do you understand that?

20 A Yes, your Honor.

21 Q And even if you could not find a single thing in
22 mitigation, you could still recommend a life sentence
23 based upon no reason or simply because you want to
24 extend mercy to the defendant. Do you understand that?

25 A Yes, I do, your Honor.

1 Q There is no circumstance, none at all, where you
2 are required -- required -- to give a death sentence or
3 recommend a death penalty. Do you understand that?

4 A Yes, I do, your Honor.

5 Q There's no situation where I will tell you, "If
6 you find this, this and this, you have to recommend the
7 death penalty." You always have available to you the
8 possibility of recommending a life sentence. Just as
9 much as the death sentence. Do you understand that?

10 A Yes, I do, your Honor.

11 Q Do you have any issue at all with that process?

12 A No, I do not, your Honor. I've had to use it my
13 whole military career, not necessarily in legal
14 matters, just in disciplining soldiers. You have to
15 take all facts into consideration.

16 Q Do you understand the processes as I have
17 explained it to you? And I'm just asking you, do you
18 find anything unfair or troubling at all about that
19 process?

20 A No, I do not, your Honor.

21 Q Could you follow the law concerning that process
22 if I instructed you as to the law and you were selected
23 as a juror here?

24 A Yes, I would, your Honor.

25 Q What if you disagreed with something I told you

1 was the law or you thought it ought to be something
2 else? Could you set that aside and still follow the
3 law as I give it to you?

4 A Yes, I could, your Honor.

5 Q And would you do that?

6 A Yes, I would, your Honor.

7 Q You would do that. All right, sir.

8 Now, the ultimate question is this: If you were
9 seated as a juror, could you, under the appropriate
10 circumstances, recommend a sentence of death?

11 A Yes, your Honor, I could.

12 Q Could you, under the appropriate circumstances,
13 make a recommendation of life imprisonment without
14 parole?

15 A Yes, I could, your Honor.

16 Q You could do either one?

17 A Yes, your Honor.

18 Q All right. Now, has anything occurred concerning
19 this case, and I'm talking about have you been exposed
20 to any media reports or have you gained any information
21 or talked with anybody in the past about this case?
22 Has anything occurred or can you think of any opinion
23 or bias that you might have that would in any way
24 hamper or prevent your service as a juror in this case?

25 A No, I cannot think of any circumstance that I --

1 Q Do you know of any reason at all why you could not
2 be fair and impartial?

3 A No, sir, your Honor.

4 Q Is there anything that would substantially
5 interfere with your carrying out your duties in this
6 case?

7 A No, your Honor.

8 Q Now, I have here a list of potential witnesses and
9 you signed that. And I, quite frankly, don't see where
10 you have indicated that you know anyone on that witness
11 list.

12 A May I address that, your Honor? My wife and I
13 moved here from Charleston about four years ago. We
14 don't watch local news. We don't get papers. And I
15 don't get out of the house much. I'm retired. So I
16 really did not know nothing about this, anybody in this
17 case, until I saw the thing on the paper, the alleged
18 victim's name on the wall out there where I have been
19 before, the law memorial wall. That's the only thing I
20 knew about the people involved in this case.

21 Q Okay. I want to add about four names to that list
22 just out of an abundance of caution: Nicole Pyle, John
23 Taylor, Christine Del Fonzo, William Nettles, and
24 Michelle Light. Are those names familiar?

25 A No, they're not, your Honor.

1 Q After looking at the list, do you feel comfortable
2 if there was anyone on there that had any significant
3 contact with you like a friend, family member, someone
4 you associated with in business, that you would have
5 recalled those persons?

6 A Yes, your Honor, or that's perjury.

7 Q Okay. Well, it's not perjury if you give it your
8 best shot and you do the best you can --

9 A Yes, your Honor.

10 Q -- with the question, and you believe --

11 A Yes, your Honor. If I had a hint, I would have
12 circled them on there, your Honor.

13 Q But you don't think there's anyone on there?

14 A No, your honor.

15 Q My question is: Are you fairly comfortable in
16 your response you don't know anybody on here?

17 A Yes, your Honor.

18 Q All right. Thank you very much.

19 Do you understand if you were selected as a juror
20 on this case that you would be sequestered for several
21 days, living in --

22 A Yes, your Honor.

23 Q -- a hotel at the county's expense and your meals
24 and all would be provided? Would that be a problem for
25 you?

1 A As long as I had my medication, your Honor.

2 Q All right. We'll certainly make sure that you
3 have that.

4 THE COURT: All right. Do you want to ask any
5 questions?

6 MS. NORRIS: Yes, your Honor.

7 EXAMINATION BY MS. NORRIS:

8 Q Is it "Caddell"?

9 A It's "Caddell," ma'am.

10 Q Okay. I know yesterday we got to look at each
11 other sort of across the front here. You're one of the
12 few people that I noticed where they were sitting just
13 because you weren't sort of stuck in the crowd back
14 there, but I'm glad we get a chance to talk now.

15 Yesterday at one of our long recesses -- or it
16 wasn't a long recess. It just took so long to get
17 people out of the courtroom -- I observed you over here
18 behind the Solicitor's table talking to the gentleman
19 seated back here behind the bar. Did you have a
20 conversation?

21 A Yes, ma'am. Me being retired Army, I thanked him
22 for his sacrifices and services to this country as well
23 as I did to the Marine chaser back there who identified
24 himself as a service member. That was the extent of
25 the conversation, ma'am.

1 Q I guess I'm a little confused. If you didn't know
2 anything about this case before, or how do you know
3 this gentleman served in the military?

4 A Because he happened to be wearing on his lapel, if
5 you're as observant as you say you are, ma'am, he was
6 wearing on his lapel a retired U.S. Army pin, which I
7 have myself.

8 Q Okay. That's fair enough. And was that the
9 extent of the conversation --

10 A Yes, ma'am, that was the extent of the
11 conversation. I do that with all veterans if they have
12 signs showing they're veterans.

13 Q I understand. Do you even know that gentleman's
14 name?

15 A No, I do not, ma'am.

16 Q Okay. Fair enough. Let me ask you -- and I
17 understand with your law enforcement background, we
18 don't need to cover a lot of the law, but the law
19 aside, you and I are just having a conversation, tell
20 me in your own words your opinion about the death
21 penalty. If we're just having a conversation like that
22 and I say, "Mr. Caddell, what do you think about the
23 death penalty?"

24 A If the death penalty is appropriate for the case
25 and the circumstances warrant the death penalty, then

1 it should then and only then should it be implicated --
2 implemented or however you want to say it. Bear in
3 mind I've been sitting in a room for six hours.

4 Q And I apologize for that.

5 A That's just procedure.

6 Q Yes, sir. And we've all been working out here.

7 A Yes, ma'am.

8 Q We haven't just been leaving you sitting there.

9 But if we made Mr. Caddell king for a day or king
10 of South Carolina and you were making a decision about
11 the death penalty as something we need -- that's your
12 decision for the day. We need this death penalty on
13 the books or we can take it off the books. What are
14 you going to do with that question?

15 A I'm going to research the facts and justification
16 of how they want to put it on the book and what they
17 want to use it for, what's its intended purpose. I
18 don't go off half-cocked and give you an answer. I
19 can't do that. But I would find out what the purpose
20 is, how they plan on using it, what -- I cannot base an
21 opinion until I have all that information.

22 Q And understanding now that we're putting the cart
23 before the horse, and with your law enforcement
24 background, I'm sure you understand Mr. Cottrell is
25 presumed innocent.

1 A Yes, ma'am.

2 Q So we're just talking about the death penalty just
3 because in the event we were to get there. But talking
4 now about a hypothetical case, and you understand what
5 a murder is. You have that background. It's
6 malicious, intentional killing. He meant to do it, he
7 did it. And if you added the aggravating
8 circumstances, and the judge would instruct what our
9 legislature says those are, that you've got murder plus
10 something. And that can be murder, additional rape,
11 kidnapping, it can be status of the victim, small
12 child.

13 In your mind, once you've got the murder and
14 you've got that additional thing, are you automatically
15 going to impose the death penalty at that point?

16 A No, ma'am.

17 Q And the State presents additional aggravation, the
18 defense can present -- of course not required to --
19 additional mitigation. At the end of all of that
20 process, is it -- let me make sure I'm understanding --
21 you would just have to hear all that before you decide
22 life --

23 A Counselor, don't mean to come to break up your
24 address, but I'm having a hard time with comprehension,
25 which way you're going because you're hitting here and

1 you're hitting here and you're skipping here.

2 My answer on the death penalty is, my bottom line
3 answer is before you can automatically assume, even if
4 all the aggravating circumstances are in place, you
5 would have to look at any mitigating circumstances in
6 place before you consider taking somebody's life or
7 giving them life in prison. You have to have all the
8 facts before you to base your decision. As a military
9 person who didn't have them in combat, you would be
10 dead.

11 Q Well, let me ask you that. Have you been in
12 combat?

13 A No, ma'am, I have not been in combat, but I have
14 been in the rear detachments. I have not been in the
15 actual battle zone.

16 Q But you have been close to it?

17 A Close, yes, ma'am.

18 Q And I assume over your career you also performed
19 the traditional MP duties of your law enforcement --

20 A Oh, yes, ma'am.

21 Q In that situation, have you had occasion where you
22 were attempting to make an arrest where you were
23 assaulted?

24 A Yes, ma'am.

25 Q You're smiling. Tell me about that. Is that one

1 time, numerous times?

2 A That's happened on several occasions. I had an
3 Army major punch me in the face when I was taking him
4 out of German custody into the U.S. military custody to
5 transport him back to the post marshal's office. And I
6 didn't have to do nothing. In Germany, there's no such
7 thing as police brutality. The officers took offense
8 to a fellow officer being punched in the face and they
9 took him down, cuffed him.

10 Q Is that the only circumstance where that ever
11 occurred?

12 A No, that's not the only circumstance.

13 Q Tell me over your -- am I remembering correct you
14 had 23 years in law enforcement?

15 A I have 23 years of Army. 20 of them are law
16 enforcement, three of them I was a combat engineer.
17 When I retired from the military, I was a police
18 officer for the Department of Veterans Affairs.

19 Q For how long?

20 A Five years.

21 Q So 25 years in law enforcement?

22 A Yes, ma'am.

23 Q Over that time period, how many times would you
24 say that you personally were assaulted attempting to
25 make an arrest?

1 A Probably about four times. Four to five times.

2 Q Four to five times.

3 A Yes, ma'am.

4 Q Is there anything about that experience,
5 understanding that you don't know anything about the
6 case before, but the judge read the indictments so you
7 know that the deceased here is Officer Joe McGarry. Is
8 there anything about your background that would impact
9 you in terms of the deceased is a police officer?

10 A No, ma'am. Because my whole career, I had to base
11 everything I done on all the facts surrounding the
12 event. You can't assume anything. You have to base
13 your decision on the information you have.

14 Q All right, sir. I don't have anything further.
15 Thank you, Mr. Caddell.

16 THE COURT: Mr. Richardson.

17 MR. RICHARDSON: Thank you, your Honor.

18 EXAMINATION BY MR. RICHARDSON:

19 Q Mr. Caddell, my name is Jimmy Richardson. I'm the
20 Solicitor for Horry and Georgetown counties. This is
21 Scott Hixson. We'll be handling this case starting at
22 some point once we get a jury. I'd love to have you.

23 I think that you've been fairly succinct with your
24 answers. You are the type juror that can hear not only
25 the -- well, the guilt or innocence --

1 A Yes, sir.

2 Q -- but if you decide -- if your decision and 11
3 others is that he is guilty, then you understand it
4 will go on part two which we would have to prove an
5 aggravating circumstance, something more than just
6 traditional murder.

7 A Yes, sir.

8 Q And you're telling this Court and you're telling
9 the defense and the State that you can be fair to both
10 sides?

11 A Yes, I am, sir.

12 Q You can listen to all of the evidence, the
13 mitigation, the aggravation and all of that. And once
14 you take all of that in, you can consider life
15 imprisonment or you could consider the death penalty?

16 A Yes, sir.

17 Q And just like they had talked with you about, we
18 wouldn't be bringing the case if we didn't expect at
19 some point to present this last document to you. But
20 on that last document, assuming that we get past the
21 guilt phase and the aggravation phase, there will be a
22 document which basically is the death warrant for
23 Luzenski Cottrell. And it will have 12 spots on it.
24 One of those spots could be yours. Would you have any
25 problem if you and your jurors found him to be guilty

1 and worthy of the death penalty, would you have any
2 problem in signing your name to that document?

3 A If all the facts warranted that, no problem, sir.

4 Q Yes, sir. And that's all we could ask from you.

5 A Yes, sir.

6 Q Thank you so much for your service.

7 A Yes, sir. Thank you.

8 THE COURT: All right.

9 Mr. Ropp.

10 MR. CADDELL: Thank you, your Honor.

11 THE COURT: Thank you. And we'll be back with you
12 in just a minute.

13 Mr. Ropp, if you would just have the juror step
14 out a moment.

15 (WHEREUPON, Mr. Caddell exited the courtroom
16 at 9:55 p.m.)

17 THE COURT: All right.

18 MS. NORRIS: Based on his answers, I think he's
19 qualified, your Honor.

20 MR. RICHARDSON: Agreed, your Honor.

21 THE COURT: Bring him back.

22 (WHEREUPON, Mr. Caddell entered the courtroom
23 at 9:55 p.m.)

24 THE COURT: Mr. Caddell, you have been qualified
25 as a potential juror in this case. That does not mean

1 that you are on the jury. It simply means that you
2 will be a part of the panel from which the jury is
3 selected.

4 We will not need you for several days, but I ask
5 you to call the number that's on the sheet that's being
6 provided to you by the clerk of court after 6 o'clock
7 on Sunday evening and there will be instructions as to
8 when you should come back to court.

9 When you come back, please understand that you may
10 be placed on the jury, and if that occurs, you will be
11 sequestered immediately so bring clothing with you, any
12 medicines that you might take, pharmaceuticals,
13 anything that you might need. As I said, the county
14 will be putting you up and providing meals if you are
15 selected. Again, remember that my order continues in
16 effect. Thank you very much. You're excused.

17 (WHEREUPON, Mr. Caddell exited the courtroom
18 at 9:56 p.m.)

19 THE COURT: Do we have Ms. Forte?

20 (WHEREUPON, Ms. Forte entered the courtroom
21 at 9:56 p.m.)

22 THE COURT: Good evening, Ms. Forte.

23 **KIMMARIE FORTE,**

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE CLERK: Please be seated. Please speak into

1 the microphone and state your name and spell your last
2 for the record.

3 MS. FORTE: Kimmarie Forte, F-o-r-t-e.

4 EXAMINATION BY THE COURT:

5 Q Ms. Forte, it's good to see you this evening. I'm
6 sorry that we're running so late, but that's just not
7 something that we've been able to avoid.

8 Ms. Forte, do you remember my order yesterday
9 concerning avoiding any pretrial publicity concerning
10 this case and not speaking to anyone --

11 A I do.

12 Q -- or allowing anybody to speak to you about that?
13 And have you complied with that order?

14 A I have.

15 Q Ms. Forte, we're going to be asking you some
16 questions about opinions that you may have concerning
17 matters that are pertinent to this particular case. I
18 think by now you probably know this is what we call a
19 death penalty case. Do you understand that?

20 A Yes, I do.

21 Q Okay. In that everyone is entitled to his own or
22 her own opinion about these matters, let me assure you
23 that no one is going to be critical of any opinion
24 about anything that we ask you about. Likewise, no one
25 is going to be trying to change your opinion. We

1 respect any opinion that you may have.

2 However, it's important that we learn about those
3 opinions because they may in some way affect your
4 ability to be a fair and effective juror. Do you
5 understand that?

6 A I do.

7 Q And I hope you will bear with us.

8 Ms. Forte, are you familiar with the phrase
9 "presumption of innocence"?

10 A No.

11 Q That's a legal phrase. And it is the way we
12 communicate a legal theory that is pervasive here in
13 the United States. It essentially says that any person
14 charged with a crime is presumed to be innocent, and
15 that presumption of innocence follows them throughout
16 the time that they are charged and the trial of the
17 case.

18 Like in this case, Mr. Cottrell has a presumption
19 of innocence. He is presumed to be as innocent as you
20 and I sitting here. And that presumption can only be
21 overcome if the State can convince a jury of his guilt
22 beyond a reasonable doubt, every one of the jurors.

23 It's important the jurors appreciate that
24 presumption of innocence because they have to keep it
25 in mind all during the trial of the case as well. This

1 is a very special type of murder case. Many murder
2 cases are tried in South Carolina through the course of
3 the year, but occasionally there is a special case.
4 And that's what we call a death penalty case.

5 And the reason it is special is because the State
6 has to prove more than just the elements of murder. If
7 this were a typical murder case, the State could
8 overcome that burden or presumption of innocence by
9 proving beyond a reasonable doubt to every juror that
10 Mr. Cottrell committed the offense of murder, and that
11 simply is they would have to show that he took another
12 person's -- unlawfully took another person's life with
13 malice aforethought.

14 The only tricky thing there is malice
15 aforethought. Sounds terrible, doesn't it, when you
16 look at it? Malice aforethought, if a judge were to
17 instruct you, would be something -- he would use words
18 like a blackened heart, a malicious intent, ill will
19 towards the victim. And it sounds pretty bad, doesn't
20 it? But the State would have to prove that beyond a
21 reasonable doubt.

22 However, as bad as that may sound, if this were
23 just a typical murder case, do you realize that the
24 death penalty would not even be on the table, it would
25 not even be considered by the judge in a case like

1 that. It does not carry. Murder with nothing more
2 does not carry the death penalty in this state. Were
3 you aware of that?

4 A No.

5 Q Okay. Well, let me tell you there is absolutely
6 no offense in South Carolina for which the death
7 penalty is mandatory. There's no offense, if it is
8 committed, the death penalty would be given. Were you
9 aware of that?

10 A No.

11 Q Well, that is the law in this state. Only in very
12 special circumstances can the death penalty be
13 considered. And I want you to understand what that
14 would be and to appreciate how it would work because I
15 want your opinion on how that process is.

16 Now, if the State is seeking the death penalty,
17 it's what we call a death penalty case. It's divided
18 into two parts. And we talked about that yesterday,
19 didn't we?

20 A Yes, we did.

21 Q Well, the first part is tried just like a
22 traditional murder case. The State simply has to prove
23 beyond a reasonable doubt that the Defendant took the
24 life of another person unlawfully with malice
25 aforethought. And that's all that has to be proven,

1 but it must be proven beyond a reasonable doubt to each
2 and every juror.

3 And if a jury returns a verdict of guilty, which
4 means the State has met the burden of proof in that
5 regard -- and let me tell you, I'm not suggesting that
6 would happen here. Only the jury can say whether the
7 State can prove that Mr. Cottrell is guilty beyond a
8 reasonable doubt. But we have to talk about the
9 sentencing part of this case as well as the guilt phase
10 of the case today. So we have to just assume that we
11 have reached the sentence part of the trial. Again,
12 it's no suggestion we will ever make it there, but we
13 only have one opportunity to talk about your feelings
14 so we have to address it today.

15 A Okay.

16 Q Now, if the State has proven the murder, we move
17 to the second part. And even if we get to the second
18 part, the jury cannot even consider a recommendation of
19 the death penalty once we reach that point. The State
20 must prove beyond a reasonable doubt to each and every
21 juror that, in addition to the murder, the defendant
22 committed another act that we call an aggravating act
23 or aggravating circumstance. "Aggravating" means it
24 makes it worse, it makes it more heinous, the crime.

25 And those aggravating circumstances are described

1 by the legislature in the death penalty statute. The
2 legislature says, These are what the aggravating
3 circumstances are. And the State must prove at least
4 one of them beyond a reasonable doubt to each and every
5 juror. Must convince them of that. If it fails to do
6 so, that ends it and it is automatically a life
7 sentence. Can you appreciate that?

8 A Yes, sir.

9 Q You understand that? However, if the State does
10 meet that burden of proof, the death penalty is not
11 automatic. And I want you to understand that. That
12 does not mean that the jury should or has to or must
13 impose or recommend the death penalty. It simply means
14 if you reach this point, it's now on the table for the
15 jury to consider a recommendation of the death penalty.

16 During that process of considering, the law says
17 the jury must consider all mitigating circumstances.
18 And mitigating circumstances are again described in the
19 statute. But unlike aggravating circumstances, you
20 can't go outside the aggravating circumstances that are
21 set in the statute.

22 You know, if you and I were looking at a
23 circumstance or a situation, we may see some other
24 circumstance and say, "Well, that's just as bad as some
25 of the things the legislature used. Why can't we use

1 that and say it's an aggravating circumstance?" Well,
2 we may want to, but that would be a violation of our
3 oath as jurors. We could not do that. It would be
4 improper. We can only use the statutory ones.

5 But when we look at mitigating circumstances, the
6 judge -- or I will tell you you can go outside the box
7 where they are explained or set forth by the
8 legislature. You can consider everything that
9 happened. And if you find something else that you
10 personally believe should be in mitigation or lessen
11 the culpability or make it less bad, you can consider
12 that. And if you find any mitigating circumstances,
13 you can use them to impose a life sentence instead of
14 the death penalty.

15 Let me tell you this. And I want to make this
16 perfectly clear. You don't have to find any mitigating
17 circumstances to recommend a life sentence. You can,
18 as a juror, recommend or vote for a recommendation of a
19 life sentence for no reason. You can sit there and
20 tell your jurors, fellow jurors, you don't have any
21 reason to do it. It's just what you feel in your
22 heart. Or you can recommend a life sentence as an
23 extension of mercy deserved or otherwise. You have
24 that right to do that. That's how the process works.

25 And the reason I explain it to you is I want you

1 to understand fully and completely that at no time will
2 you be told that you have to return a death penalty on
3 the finding of anything. It's entirely up to the jury.

4 Now, you have said that you could look at the
5 facts and circumstances, the aggravation and the
6 mitigation, before imposing a sentence. And that's
7 precisely what I would want you to do. Is that still
8 your opinion, considering the process that we follow,
9 that you would be willing to follow the instructions on
10 the law that I give you and do just that, consider the
11 aggravation, aggravating circumstances, and the
12 mitigating circumstances? Could you do that?

13 A Yes, I can.

14 Q And would you -- would you do that?

15 A Yes, I would.

16 Q Is there anything about this process that gives
17 you pause that you feel is troubling? Is there
18 anything that you want to tell me about the process?
19 Do you have any opinion about the rights or wrongs of
20 the process that I've described to you?

21 A No.

22 Q Would you have any hesitation to follow the law?

23 A No.

24 Q The circumstances, the aggravating or mitigating
25 circumstances, or even if you didn't see any mitigating

1 circumstances, could you make a recommendation of a
2 life sentence?

3 A Yes.

4 Q Is there anything in your background or your life
5 experiences or do you have any opinions concerning the
6 death penalty or anything like that that would make you
7 hesitant to give a life sentence in favor of the death
8 sentence?

9 A No.

10 Q Could you -- I ask you the same question about the
11 death sentence. Could you fairly and impartially make
12 a decision under the right circumstances that would
13 involve a recommendation of the death sentence?

14 A Yes.

15 Q Could you look at all the circumstances?

16 A Yes.

17 Q Now, I want to know if you can think of anything
18 that you may have heard about this case, any prejudices
19 or bias that you may have? Is there anything that you
20 can think of with special emphasis being on your
21 ability to be a fair and impartial juror, is there
22 anything at all that suggests to you even in the
23 slightest way that you should not serve on this jury?

24 A I don't believe so.

25 Q All right. Is there anything that you believe

1 would substantially or materially affect your ability
2 to perform your duty as a juror?

3 A No.

4 Q All right. Tell me about your feelings concerning
5 the death penalty.

6 A I don't oppose the death penalty.

7 Q All right. You don't -- you do not oppose it?

8 A Huh-uh.

9 Q Do you have any opinion as to any preconceived
10 notions as to cases in which the death penalty should
11 absolutely be recommended or be the penalty?

12 A No.

13 Q All right. Does the fact that we have a death
14 penalty statute increase your proclivity to recommend a
15 death sentence?

16 A No.

17 Q All right. Do you understand that if you are
18 selected as a juror on this case, you might be or you
19 would be sequestered for several days in a hotel here
20 in the county at the expense of the county, and you
21 would be provided meals and things of that nature.
22 Would that be a problem?

23 A No.

24 Q Very well. You indicated on the witness list that
25 you don't know -- I don't think you have marked a

1 single person; is that correct?

2 A That's correct.

3 Q And if I looked at that list of names, I probably
4 would have to wonder, "You know what, that sounds a
5 little familiar. Do I know that person, whatever?" Do
6 you believe that if there was anyone on that list that
7 you had any significant relationship or contact with,
8 whether family, friends, business associates, a
9 considerable acquaintance, that you would remember that
10 person?

11 A By sight, yes.

12 Q Okay. Well, let me ask you this. Are you
13 confident that there's no person that you have a
14 significant relationship with on that list?

15 A I'm pretty confident.

16 Q Okay. You've done the very best you could?

17 A (Nodding.)

18 Q Miss, let me add to that list two or three names,
19 four: Nicole Pyle, John Taylor, Christine Del Fonzo,
20 William Nettles and Michelle Light. Do you know any of
21 those people?

22 A I don't believe so.

23 Q Do they sound familiar to you? All right. Thank
24 you very much.

25 THE COURT: You might examine.

1 MS. NORRIS: Thank you, your Honor.

2 EXAMINATION BY MS. NORRIS:

3 Q Ms. Forte, I know we got a chance to stand up
4 yesterday and at least look at one another briefly, but
5 I'm Teresa Norris. I, along with Mr. McGuire,
6 represent Mr. Cottrell. And I apologize for the
7 lateness of the hour. I'm tired. I know you are.
8 Everybody here is. But we've been working, and I'm
9 sure you can understand in a situation where we're
10 potentially talking about the death penalty, that it's
11 a serious situation, that we need to work hard to
12 address what we need to.

13 And before I talk to you about the death penalty,
14 I just want to ask a couple of background things I
15 noted on information we had before. One of those, and
16 I apologize if I'm wrong because there were so many
17 people standing up, it was hard to keep track, but were
18 you one of those people that stood up on you had seen
19 or heard something about the case?

20 A I don't know so much the case, but I remember
21 hearing about a fundraiser for a fallen police officer
22 and not so much the case.

23 Q Did you hear anything more than that there was a
24 fundraiser?

25 A No. I mean, besides him being killed in the line

1 of fire, in the line of duty, I mean, but.

2 Q That was it?

3 A Yeah. That.

4 Q Now, I noted on your questionnaire that your
5 brother is a police officer?

6 A He's Port Authority in New York.

7 Q Law enforcement.

8 A That's law enforcement, correct.

9 Q I understand the difference. What I'm really
10 asking is law enforcement.

11 A Yes.

12 Q Is there anything about that that you feel would
13 impact you in a case where you understand that the
14 deceased is law enforcement?

15 A I don't believe so.

16 Q I just had to ask that question. My brother is a
17 police officer, too.

18 A Yes.

19 Q My answer would be the same. And, of course,
20 we're, in a sense, putting the cart before the horse
21 here in that we're talking about the death penalty when
22 we haven't had a trial.

23 So I want to make sure that you're clear that
24 Mr. Cottrell, as he sits there right now, is presumed
25 innocent, and he cannot be convicted unless the State

1 proves that beyond a reasonable doubt. And I, as his
2 counsel, will defend him. And we've got to get to the
3 point where if you're in the jury, you've made a
4 decision. And if the decision is not guilty, it's
5 over. Do you understand that?

6 A Yes.

7 Q So just because we're talking about the death
8 penalty, we can't assume anything about it. But
9 hypothetically -- well, before I even get to
10 hypothetical, regardless of the law on the death
11 penalty, if you and I are just having a general
12 conversation and my question is, "Ms. Forte, tell me
13 your general thoughts about the death penalty," how do
14 you answer that?

15 A I'm not for or against it.

16 Q Have you ever thought about it before this case in
17 getting the summons?

18 A Not really.

19 Q Never had to, did you?

20 A No.

21 Q All right. And if -- if I understand correctly --
22 and you're an educated woman. Don't let me put words
23 in your mouth -- you're saying that if he's -- if a
24 hypothetical defendant -- not talking about
25 Mr. Cottrell -- if a person is convicted of murder,

1 understanding that's with malice aforethought -- a
2 wicked, evil intention, a heart bent on fatal mischief.
3 Wasn't self-defense, wasn't an accident -- in order to
4 convict, it has to be murder.

5 At that point you don't have a judgment either way
6 about whether it would be the death penalty or life
7 without parole; is that what you're saying?

8 A Would I have a judgment of either one?

9 Q Yes.

10 A I mean, I couldn't say whether I would have a
11 judgment of -- if I would go to life in prison without
12 the possibility of parole not knowing the case.

13 Q And if -- in order to be eligible for the death
14 penalty, under our law it has to be murder plus
15 something. And there is a whole lot of legal language
16 that goes behind what I'll just call "plus something"
17 that the judge would instruct.

18 But in any situation where a jury considers the
19 death penalty, the State has to prove at least one
20 statutory aggravating circumstance.

21 THE COURT: Ms. Norris, didn't I explain all that
22 very clearly to this witness -- or this juror? Can't
23 we just move on to the question?

24 Did you understand all that, Ms. Forte, when I
25 went through it with you?

1 MS. FORTE: Yes.

2 THE COURT: All right. Go ahead.

3 BY MS. NORRIS:

4 Q If you found that it's murder plus that something,
5 that statutory aggravating circumstance, and you're
6 there, murder and an additional bad thing, do you have
7 a judgment either way at that point?

8 MR. HIXSON: Your Honor, just object again about
9 the hypotheticals and staking these witnesses out.
10 Suppose she follows the law, she can't answer the
11 question on what may happen because she's in a vacuum
12 and doesn't understand what happened --

13 MS. NORRIS: Your Honor --

14 THE COURT: I understand.

15 Ms. Norris, just ask your question.

16 BY MS. NORRIS:

17 Q Are you, at that point, are you just on the fence;
18 you're not leaning either way?

19 A Not leaning either way. So would I automatically
20 say the death penalty if they have proven a reasonable
21 doubt and not life sentence, I wouldn't say that I'm
22 strictly for the death penalty just because they
23 proved.

24 Q So you would listen to all the evidence, all the
25 information, and once that is in and you get the

1 judge's instruction before you walk in the jury room,
2 are you leaning either way or you're just waiting?

3 A Still waiting. I mean --

4 Q Waiting to talk about it and think about it?

5 A Yes, to absorb it.

6 Q And you understand that when you're in a capital
7 sentencing situation, each individual juror under the
8 law makes what we call a reasoned moral decision. Do
9 you understand that?

10 A Yes.

11 Q So that under the law there would never be a
12 situation where the judge tells you, "If you find A, B
13 and C, you have to impose the death penalty."

14 A (Nodding.)

15 Q I'm sorry. This young lady down here is taking it
16 down. I need you to say "yes" instead of just nod, if
17 you're agreeing with that.

18 A If it's A, B, or C, do I have to pick the death
19 penalty?

20 Q I'm asking if you understand that there won't be a
21 situation ever where the judge tells you, "If you find
22 these circumstances, you have to impose the death
23 penalty."

24 A Yes, I understand.

25 Q Okay. And the reverse is also true. The judge

1 won't say, "If you find A, B and C, you have to impose
2 a life sentence."

3 A Yes, I understand.

4 Q And each individual juror has to make that
5 reasoned moral choice.

6 A Yes, I understand.

7 Q And while you're in the jury room, and if you were
8 sitting in one of these chairs over here when you went
9 out after all the evidence and the instructions -- and,
10 of course, we're just talking generally. The judge
11 would give you all of that. Once you went in, if you
12 in your mind had one sentence, either one, and ten
13 other jurors agreed with you but there was one person
14 on the other side and that person said, "I've heard all
15 the evidence, same instructions you have, but I have a
16 different individual reasoned moral decision," would
17 you ask that person to join you just to be part of the
18 majority?

19 A No.

20 Q And if you were that one person, would you give up
21 your opinion just to join the majority?

22 A No.

23 Q I don't have anything further. Thank you, ma'am.

24 THE COURT: Mr. Hixson.

25 MR. HIXSON: Thank you, your Honor.

1 EXAMINATION BY MR. HIXSON:

2 Q Ma'am, I'm Scott Hixson. I'm the Chief Deputy
3 Solicitor here, 15th Circuit.

4 A Hi.

5 Q And that's Jimmy Richardson over there. He's the
6 Solicitor. You got a bunch of questions. I'm going
7 quickly, so I'll try to speed it up.

8 I think you indicated you could take all the
9 information and form your opinion; fair enough?

10 A Yes.

11 Q And then if we do get to the penalty phase and
12 you're back there deliberating, do you understand the
13 essence of deliberation is a give-and-take of ideas and
14 opinions to come to a concept or a verdict or a
15 sentence on what you want to convey to the Court, what
16 the opinion of the jury is?

17 A Yes.

18 Q It's a give-and-take process to come up with a
19 consensus; fair enough?

20 A Yes.

21 Q And if you do come up with a consensus in the
22 penalty phase, you're going to have to put your name on
23 a verdict form. It's going to have 12 lines on there,
24 and instead of saying, "This is our verdict," you're
25 actually going to have to put pen to paper and write

1 your name and say this is your verdict, "We recommend
2 death." Do you understand that?

3 A Yes.

4 Q Do you think you can do that?

5 A Yes.

6 MR. HIXSON: I have no further questions, your
7 Honor.

8 Thank you for your patience.

9 THE COURT: Mr. Ropp, let her stand down for just
10 a moment.

11 Ms. Forte, go with Mr. Ropp.

12 (WHEREUPON, Ms. Forte exited the courtroom
13 at 10:25 p.m.)

14 THE COURT: What says the defense?

15 MS. NORRIS: Qualified, your Honor.

16 MR. HIXSON: Qualified, your Honor.

17 THE COURT: All right. Bring her back.

18 (WHEREUPON, Ms. Forte entered the courtroom
19 at 10:25 p.m.)

20 THE COURT: Ms. Forte, I find that you are
21 qualified. That doesn't mean you're on the jury. It
22 simply means you will be in the pool from which the
23 jury is selected.

24 We will not need you for several days. However,
25 I'm going to ask you on Sunday afternoon after

1 6 o'clock, anytime after 6:00, to call the number you
2 were just given there, and there will be some
3 instructions concerning when you are to report.

4 Please remember that the jury will be sequestered,
5 so bring with you clothing, any medicines that you take
6 and things of that nature that you will need for
7 several days. As I say, you will be put up by the
8 county and the county will bear all the expenses. We
9 look forward to seeing you, but call back at 6:00.

10 My order concerning avoiding any publicity about
11 this case or doing any research is in effect and it
12 continues. Thank you, ma'am.

13 MS. FORTE: Thank you.

14 (WHEREUPON, Ms. Forte exited the courtroom
15 at 10:27 p.m.)

16 (WHEREUPON, Mr. Livingston entered the courtroom
17 at 10:27 p.m.)

18 **DAVID LIVINGSTON,**

19 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

20 THE CLERK: Please be seated. Please speak into
21 the microphone and state your name and spell your last
22 for the record.

23 MR. LIVINGSTON: David Livingston,
24 L-i-v-i-n-g-s-t-o-n.

25 EXAMINATION BY THE COURT:

1 Q Good afternoon, Mr. Livingston. How are you?

2 A Well, sir.

3 Q All right. Mr. Livingston, do you recall on
4 yesterday that I gave you some instructions about
5 avoiding any publicity about this case and not looking
6 up anything about it and I asked you not to discuss it
7 with anyone, allow anyone to make any comments about it
8 in your presence. Do you remember that?

9 A Yes, sir.

10 Q And have you followed my instructions?

11 A Yes, sir.

12 Q Do you understand that if you are qualified in
13 this case, my instruction would continue until such
14 time as you are released from the service?

15 A Yes.

16 Q Do you understand that?

17 A Yes.

18 Q I appreciate you doing that.

19 Mr. Livingston, we're going to need to ask you
20 some questions today, and those questions will concern
21 opinions you may have about matters that are relevant
22 to this case, particularly things like the death
23 penalty and the sentencing procedures of this court.

24 Please understand that we all appreciate the fact
25 that here in America we are free to have any opinions

1 we would like and we respect your opinions. So I tell
2 you that because I want you to understand no one here
3 is going to try to change your opinion about anything,
4 and certainly no one is going to criticize you for any
5 opinion that you have. But it's necessary that we
6 learn about those opinions or feelings that you have
7 because it's possible that those feelings might affect
8 your ability to serve as a juror, that is, to be fair
9 and impartial and to follow the law as you are
10 instructed during your period of jury service. I'm
11 sure that you can appreciate that, can you not?

12 A Yes, sir.

13 Q All right. So we're going to be asking you some
14 questions. Remember there is no wrong answer. All we
15 want you to do is be candid with us and truthful and
16 tell us how you feel. As I said, we certainly respect
17 anything -- any opinions that you may have. That is
18 your right to have that opinion, and we'll not try to
19 change it.

20 Now, as a preliminary matter, let me ask you,
21 Mr. Livingston, would you have ever heard the term
22 "presumption of innocence"?

23 A Yes, sir.

24 Q And let me tell you what my understanding of that
25 is. My understanding is it identifies a legal theory

1 that is pervasive in the United States. And that says
2 that any person who is charged -- who has been charged
3 with a criminal offense is presumed to be innocent.
4 And that presumption of innocence continues with that
5 person until such time as the State overcomes it.

6 In this case Mr. Cottrell, who is seated out here,
7 has not been convicted of anything, and he is protected
8 and cloaked in that presumption of innocence. He is as
9 innocent as he sits here today under the law as you and
10 I are. And we must not think of him in any other
11 context.

12 That's an important concept because jurors must
13 keep that in mind through the trial because the State
14 cannot overcome this presumption of innocence until the
15 State and if the State has convinced a jury, every
16 person on the jury, of his guilt beyond a reasonable
17 doubt. That's the only way the State can overcome that
18 presumption of innocence.

19 Now, in this case Mr. Cottrell is charged. And as
20 we talk about these things, we're going to talk about
21 the sentencing phase of a death penalty case and things
22 of that nature. Please understand Mr. Cottrell has
23 pled not guilty to this charge. He has the presumption
24 of innocence. I do not know if there will ever be a
25 conviction of Mr. Cottrell. That would be entirely up

1 to the jury. I don't want to suggest to you that there
2 should be one. It's just that this is the only
3 opportunity we will have to talk to you about such
4 things as the sentencing phase, so we have to in some
5 sense assume that he was convicted and that we have
6 moved on to the sentencing phase so we can talk about
7 that.

8 Please understand we are not suggesting that he
9 will be convicted or that we will ever need or have to
10 have the sentencing phase. Can you understand that?

11 A Yes, sir.

12 Q Okay. Thank you very much.

13 In South Carolina we try in the course of a year
14 several murder cases throughout the State. Those are
15 typically simple murder cases in which the State is
16 required to prove that the defendant committed the
17 offense of murder and that is simply this: He
18 unlawfully killed another person with malice
19 aforethought. That's all that is proven.

20 Whenever the State, on the other hand, decides the
21 case warrants the State seeking the death penalty, new
22 rules come into play. This is a rather rare situation
23 for that to happen, that is, for the State to seek the
24 death penalty.

25 Whenever there is the typical murder case, even if

1 the State does make its proof, it not only proves that
2 the defendant took the life of another person, but it
3 also proves that they did it with malice aforethought.
4 And "malice" means they were mean-hearted or evil or
5 had malicious intent in doing it.

6 And as bad as that may sound, as bad as that may
7 sound, did you realize that in this state the death
8 penalty would not in that case even be an option for
9 sentencing? It is not a sentencing possibility upon a
10 conviction of just murder. Did you know that?

11 A No, sir.

12 Q Okay. Well, I tell you that that is the case. If
13 the State seeks the death penalty and they only seek
14 the death penalty, as I stated, in a case for murder,
15 the State must prove more than murder. And that is why
16 we have a two-part process.

17 The first part is tried very much like a
18 traditional murder case. Once -- I mean if the State
19 prevails in that case, it would move to a second phase.
20 And the State has to there prove something else. You
21 have to have a murder plus something else. And that
22 something else is an aggravating circumstance.

23 The legislature, when it passed the death penalty
24 statute, said, "These enumerated things shall be
25 considered aggravating circumstances." And the State

1 must prove the existence of at least one of those
2 aggravating circumstances during the commission of this
3 offense or in conjunction with the murder.

4 You know, as a juror, you might be sitting there
5 and you're contemplating with your other jurors whether
6 or not the State has met its burden, that is, prove the
7 existence of this other thing, this aggravating
8 circumstance, beyond a reasonable doubt.

9 You may look at the facts of the case and say,
10 "Well, we have got something else over here that in my
11 view is just as bad as some of those things that the
12 legislature has indicated are aggravating
13 circumstances." If that were the case, you couldn't
14 consider that other thing even though you might
15 personally think it's worse. You have to remain in
16 that box of aggravators that the State, the legislature
17 has described. And only -- only -- if the State
18 convinces every juror that one of those aggravators is
19 present beyond a reasonable doubt may the jury even
20 consider the death penalty. That is, the death penalty
21 is not even on the table until that occurs. And it's
22 the burden of proving the murder and the burden of
23 proving at least one of the aggravators. Well, when it
24 gets on the table, you will not hear me or any other
25 judge tell you if this happens or that happens, you

1 have to impose or recommend the death penalty. Because
2 that is not the law. There is absolutely nothing you
3 can do in South Carolina, no offense you can commit
4 where the death penalty is the automatic penalty or a
5 mandatory penalty. Just doesn't exist in South
6 Carolina.

7 What happens is if the State has made its proof of
8 the murder and the aggravating circumstance, the jury
9 may consider the possibility of recommending the death
10 penalty, but I would instruct you that before you can
11 do anything like that, first you have to consider the
12 box of mitigating circumstances or circumstances that
13 seem to extenuate or lessen the moral culpability of
14 the defendant. And there is a laundry list of those
15 that you must consider.

16 But unlike the aggravating circumstances, any
17 juror, any individual juror, can look at the other
18 circumstances of the case outside of that box of
19 mitigators and say, "I think this over here is a
20 mitigating circumstance," and can call that his or her
21 mitigating circumstance and consider it as a mitigating
22 circumstance.

23 Upon the finding of any mitigating circumstance or
24 upon the total absence of any mitigating circumstance
25 the jury can say, "We're not going to impose the death

1 penalty. We're going to impose life imprisonment
2 without the possibility of parole."

3 As I said, they can do it with absolutely no
4 finding at all of mitigators. They can do that and
5 give no reason for doing so. Any particular juror can
6 simply sit back and say, "I'm not going to give the
7 death penalty in this case, and I really can't give you
8 a reason for it." Or the jury can simply say, "We're
9 going to extend mercy and we're going to give the life
10 sentence instead of a death sentence."

11 That's how our death sentence jury works. That's
12 the process that we follow.

13 Do you think you have a grasp or an understanding
14 of the process after my explanation of it to you?

15 A Yes, sir, I think so.

16 Q Okay. Do you see anything about that process that
17 you would feel would be unfair in that it would be too
18 lenient or too severe or anything of that nature? Is
19 there any objection you would have to following the law
20 concerning the death penalty phases if I were to
21 instruct you along the lines that I have just described
22 to you?

23 A No, sir.

24 Q Could you follow the law as I have described it to
25 you?

1 A I think so.

2 Q And in a proper case, would you have any
3 difficulty whatsoever recommending a life sentence?

4 A No, sir.

5 Q Would you have any difficulty whatsoever under the
6 proper circumstances recommending the death penalty?

7 A I would probably have difficulty with that.

8 Q Okay. Well, tell me. Is there a reason why you
9 feel that you would have difficulty considering the
10 death penalty?

11 A I've heard it said better that we let the guilty
12 go free than to convict the innocent.

13 Q Okay.

14 A I know that's not quite what I mean to say --

15 Q I think that's --

16 A Well, thank you. There's that. And it's, of
17 course, a very serious thing.

18 Q I understand that. And it should be certainly
19 approached with serious-mindedness. But my question to
20 you is: Can you and would you, under the appropriate
21 circumstances, circumstances satisfactory to you,
22 recommend the death penalty or would you be unable to
23 do that?

24 A I would not call myself unable to. Is that too
25 slippery an answer?

1 Q Would your ability to consider the death penalty
2 be substantially hindered or impaired as a result of
3 your feelings in this regard?

4 A Oh, I don't think so.

5 Q You do not think so?

6 A No.

7 Q All right, sir. Now, is there anything that you
8 can think of, thinking about the life experience you
9 have, things that have happened to you or things that
10 have happened to your family members, is there any
11 opinion concerning things like the death penalty, is
12 there any prejudice or bias that you may have against
13 any person or profession that might affect your ability
14 to be a fair and impartial juror?

15 A I don't think so.

16 Q You know of none?

17 A I know of none.

18 Q Have you formed any opinions about this case?

19 A No, sir.

20 Q Have you seen anything in the way of publicity
21 about this case, news reports in this case?

22 A I remember only the vaguest part.

23 Q Was there anything that might affect your ability
24 to be fair and impartial, anything that you cannot set
25 aside?

1 A I don't think so.

2 Q Okay. I looked at the witness or potential
3 witness list, and I don't see where you have marked
4 anyone on that list.

5 A I don't -- nobody's name rings a bell.

6 Q Okay. And I would add to that list a couple or a
7 few other names: Nicole Pyle, John Taylor, Christine
8 Del Fonzo, William Nettles, Michael (sic) Light. Any
9 of those names familiar to you?

10 A No, sir.

11 Q Do you believe that if there was anyone on that
12 potential witness list that you had any significant
13 contact with, like a family member or a business
14 associate or something of that nature, would you
15 recognize that name if you really had any significant
16 contact with them?

17 A Yes, sir.

18 Q And I realize that there are a hundred and some
19 people on here. And even doing the best you could -- I
20 think about 180 -- even doing the best you could, it
21 would be very difficult to make sure from memory that
22 you don't know anyone on there. But I want to know if
23 you have given your best effort.

24 A Yes, sir, I have, yes.

25 Q And do you feel fairly comfortable with your

1 response that you don't know anyone on that list?

2 A I know that none of those names seemed familiar
3 enough.

4 Q All right, sir. Do you realize if you are seated
5 as a juror in this case that you might or you would be
6 sequestered for several days?

7 A Yes, sir.

8 Q Would that pose any particular problem?

9 A Well, as we stated earlier, I do run a home
10 inspection business, and it would be a burden not to be
11 able to work for those days.

12 Q Okay. Other than that, it wouldn't affect your
13 health or well-being --

14 A I don't think so.

15 Q -- or that of your family? Okay.

16 All right.

17 EXAMINATION BY MS. NORRIS:

18 Q Mr. Livingston, I'm Teresa Norris. I know we got
19 a chance to look at other each sort of across the room
20 the other day, but this is the one time that we get to
21 talk to each other. And I apologize for the lateness
22 of the hour, but we've been working hard. But given
23 your responses, it's clear to me at least that you
24 understand the gravity of the situation, and the
25 decisions that may ultimately have to be made in a

1 death penalty case literally are life and death.

2 But -- and I apologize. You may have answered it,
3 but I sure missed it. The form that was in your jury
4 room where you were asked, Are you A, B or C, which one
5 did you circle on that?

6 A I believe it was C.

7 THE COURT: It was C.

8 BY MS. NORRIS:

9 Q You can consider either one?

10 A Yes.

11 Q All right. I noticed on your juror
12 questionnaire -- not on your questionnaire -- yesterday
13 when a number of people were standing up and we had to
14 count the numbers, and I may have been wrong because I
15 promise you I missed some and got some wrong, but were
16 you one of those people who stood up that you had seen
17 or heard something about that case?

18 A Yes.

19 Q Tell me what you know about it.

20 A I know precious little. I remember just the
21 details of the victim's last name, as it was the same
22 as the character on the West Wing. And that there was
23 a gunshot to the face, and that -- then this is a vague
24 recollection -- that there was a donut shop involved
25 somewhere. But that's the sum total of what I

1 remember.

2 Q And is there anything about that that you feel
3 like would impact you --

4 A No.

5 Q -- in coming into the case with an open mind?

6 A No. I mean, that's pretty trivial stuff.

7 Q And understanding, of course, we're talking, sort
8 of putting our cart before our horse in the sense that
9 we're talking about the death penalty, but it's -- is
10 it your understanding that Mr. Cottrell right now is
11 presumed innocent?

12 A Yes, ma'am.

13 Q And so not talking about his case in general but
14 before a jury -- if you were seated on a jury and
15 sitting over in one of these chairs, before there was
16 even talk or thinking about consideration under the law
17 of the death penalty, there would have to be a murder
18 conviction. And then there would have to be, in order
19 to be eligible for the death penalty, a statutory
20 aggravating circumstance. Something more. Not just
21 routine murder, another crime. You know, special
22 circumstances that our legislature has found that the
23 judge would instruct. You've got that point?

24 A Yes, ma'am.

25 Q And then before we reach that ultimate decision,

1 the State would have the opportunity to present any
2 additional evidence. The defense could present
3 additional evidence. They don't have to. Do you
4 understand that?

5 A Yes, ma'am.

6 Q Do you have any problem with that part of our law?

7 A No, ma'am.

8 Q And if there is a murder conviction, there is a
9 statutory aggravating circumstance, eligibility for the
10 death penalty, additional evidence as presented or
11 isn't, at that point the judge would instruct you, but
12 in your own mind -- you're an educated man. Don't let
13 me put words in your mouth. I'm just trying to move
14 along.

15 A Right.

16 Q In your own mind are you leaning one way or the
17 other at that point towards death or life, or is your
18 answer you just to have hear it all and make your
19 decision?

20 A I would -- if I have a bias, I would be biased
21 against the death penalty, you know, in a situation
22 like this.

23 Q That's perfectly fair. And that's where the judge
24 asks the question and I'm going to ask it just to make
25 sure I understand. And there's no right or wrong

1 answer.

2 But even though you would start with that bias
3 against the death penalty -- and there's nothing wrong
4 with that. There's nothing in the law that will ever
5 say you have to impose the death penalty. The question
6 is whether your views, your opinions, would impair your
7 ability to follow the judge's instructions, listen to
8 the evidence and then make an individual reasoned moral
9 decision about whether you as a juror believe life
10 without parole is the appropriate punishment or the
11 death penalty. Could you do that?

12 A Let me see if I understand the question. You
13 mean --

14 Q I apologize.

15 A It was a little long.

16 Q I apologize.

17 A Are you asking that, given a certain bias, would I
18 be able to put that bias aside and make a fair, moral
19 and reasonable judgment about death penalty or no death
20 penalty; is that correct?

21 Q Yes, sir.

22 A I would be able to.

23 Q Thank you, sir. I don't have anything further.

24 THE COURT: Mr. Richardson.

25 EXAMINATION BY MR. RICHARDSON:

1 Q Mr. Livingston, my name is Jimmy Richardson. I'm
2 the Solicitor. And this is Scott Hixson. We will be
3 presenting the case from the State's standpoint.

4 First, the guilt phase, we talked a bit about
5 that. And then second, if you and 11 others decide
6 that he is, in fact, guilty, then we will go to a stage
7 where we will introduce to you some aggravators or at
8 least one aggravator. And you and your jury panel will
9 have to determine whether or not that has, in fact,
10 been proven against Mr. Cottrell. Okay?

11 So we've got guilt plus. And at that point -- and
12 I ask you all these questions because at some point
13 David is going to have to make the decision life or
14 death if we're at that point. Okay? And, of course,
15 like they said, you can always say life for any reason
16 or no reason. The question that I'm focusing on is the
17 death penalty. Okay?

18 A Uh-huh.

19 Q And I know you've already said that you've got a
20 bias against it. And, again, that's fine. Certainly
21 that in itself doesn't disqualify you. What would
22 disqualify you is if you were to say, "Because of some
23 sort of background, my -- the way I was raised, the
24 books or the quotes that I've read or adhere to or
25 religion or any number of things, I would be

1 substantially impaired. I would start off at such a
2 deficit that I couldn't get up and give fair thought to
3 both life and death." Do you understand where I'm
4 coming from?

5 A I think so.

6 Q All right. So an easy question is this. If you
7 are, Mr. Livingston, governor for a day and you've got
8 this question in front of you: Mr. Livingston, with a
9 stroke of a pen, South Carolina can have the death
10 penalty or no longer have the death penalty, what do
11 you think?

12 A I would tend to think we shouldn't have one.

13 Q Okay. Now, I know you've said that you've got a
14 bias against it, and I promise you I understand it and
15 I'm not trying to lean you away from the bias. I'm
16 just trying to figure out, you know --

17 A How biased.

18 Q Together how biased, that's right. So would you
19 mind, just three or four things. And you've already
20 told me about it's better the guilty go free than one
21 innocent man go to prison or get the death penalty, but
22 just a few things that you can think of sort of in that
23 same vein.

24 A Well, raised as a Christian. The notion that
25 forgiveness is our responsibility and that judgment is

1 God's alone. There's that. And there's the practical
2 concern of lately in the news lots of cases being
3 proved or overturned with new technology, new evidence,
4 DNA, a lot of mistakes being made in our system and a
5 lot of people being put in jeopardy, their freedom and
6 their lives on trials the results of which were just
7 wrong. And it's a mistake we could make that we could
8 never undo if we put a person to death. Even though he
9 or she were found to be guilty beyond a reasonable
10 doubt and sentenced to life in prison, should something
11 occur, some new evidence or something down the road
12 come up, you know, we'd be able to do justice. Justice
13 could be undone, as it were, whereas if we put them to
14 death, there's no chance to make it right.

15 Q Nothing more final than the death penalty.

16 A Right.

17 Q Yeah. And I certainly understand and I've heard
18 that logic before. And a lot of those cases have been
19 in Illinois, but certainly a lot of other places, too,
20 you know.

21 A Right. Right.

22 Q So -- and I understand that, and I understand the
23 religious aspect of it, too. And I promise you there's
24 not a right or wrong answer, but I want to make sure
25 we're not starting off in such a deficit that we can

1 never catch up from the State's perspective.

2 A Uh-huh.

3 Q With your religion, your Christianity, with the
4 finality of the death penalty and the realization that
5 there have been mistakes in the past and continue to be
6 mistakes, I'm wondering does that put -- when you bring
7 that in there, does that put the State at a
8 disadvantage? Does that substantially impact your
9 decision-making in this process?

10 A I would approach the imposition of the death
11 penalty very sceptically.

12 Q And, David, the thing is I would love to take that
13 and sit down. There's certain magic words. And that
14 is -- that's why I asked you does it substantially
15 impair your ability to be fair.

16 A I see. Let me think.

17 Q I don't usually talk like that.

18 A I got you. I got you. So does it substantially
19 impair. I'm trying to communicate to you the
20 subtleties of what's going on in my mind.

21 Q Yes, sir.

22 A And, of course, we have to conform to some
23 standards. Once again, the phrasing.

24 Q Substantially impairs. Does your religious
25 background, does your Christianity, does the knowledge

1 that this is final --

2 A Uh-huh.

3 Q -- and that --

4 A I object to the term it substantially impairs.
5 Substantially impacts, certainly. It has a negative
6 impact and it is substantially. So I'd say yeah, it
7 does substantially impair. Now how substantially, I
8 couldn't say.

9 Q And I got you. I got one, one other question for
10 you.

11 A Okay.

12 Q And it's late, and we have been here since 8:30
13 doing this, but it's really, really important because,
14 you know, I don't want to put you in a situation where
15 the next thing is this. And I promise you this will --
16 it could happen. I shouldn't say that because I'm
17 presuming a lot of stuff.

18 But if he's convicted of the guilt phase and if
19 you guys were to determine, yes, I see the aggravating
20 circumstance, and the other 11 guys in there and David
21 all say, Yes. If there's ever been a case for the
22 death penalty, this is it. Okay? Judge Hyman is going
23 to give you a sheet of paper which in effect is the
24 death warrant. There's going to be 12 spots on there.
25 And I've just got to know before you get in that

1 situation and I get in that situation, can David sign
2 that death warrant?

3 A I do not know. I cannot know.

4 Q All right. And maybe that's an unfair question,
5 you know, because you've got to hear everything.

6 A Yes.

7 Q Can you envision a situation where you could --

8 A Yes.

9 Q -- sign the death warrant?

10 A Yes.

11 Q Okay. So if the right facts were put out there
12 and the right circumstances, you do believe that there
13 are those cases where you could say the death penalty
14 is appropriate?

15 A I can imagine that, yes.

16 Q Okay. I think that's all the questions that I
17 have for you. If you will give me one second. Okay?

18 (WHEREUPON, an off-the-record discussion was held
19 between Mr. Richardson and Mr. Hixson.)

20 MR. RICHARDSON: That's all I have.

21 THE COURT: Will you accompany Mr. Ropp to the
22 side over there.

23 (WHEREUPON, Mr. Livingston exited the courtroom
24 at 11:00 p.m.)

25 THE COURT: What says the defense?

1 MS. NORRIS: We believe he's qualified, your
2 Honor.

3 THE COURT: What says the State?

4 MR. RICHARDSON: Your Honor, he did -- he wouldn't
5 say he was substantially impaired. He said he was
6 substantially impacted. I think out of an abundance of
7 caution he should be excused, disqualified.

8 THE COURT: I find him to be qualified. I think
9 that he has some concerns, but thanks to your
10 questioning, Mr. Richardson, I have no doubt that he
11 could sign the warrant and he could make a finding of
12 death in spite of Ms. Norris' questioning.

13 Bring him back in.

14 (WHEREUPON, Mr. Livingston entered the courtroom
15 at 11:01 p.m.)

16 THE COURT: Mr. Livingston, I find you qualified
17 to be on this jury panel. This doesn't mean that
18 you're on the jury. It means that you're simply
19 qualified to be a member of the panel from which the
20 jury is drawn.

21 We will not need you for several days. However, I
22 would like for you to call the number that the clerk is
23 giving you after 6:00 p.m. on Sunday, this coming
24 Sunday, and there will be a message telling you when
25 you are to appear.

1 Remember, if you're selected you will be
2 subpoenaed -- I mean sequestered so please bring with
3 you any medications that you take, toiletries, clothing
4 and things of that nature for several days. We look
5 forward to seeing you at the appointed time, whenever
6 that may be. We'll have better information about that
7 when you call.

8 Remember my order concerning publicity is still in
9 effect as well as contact with anyone concerning this
10 case. You are excused for the day.

11 (WHEREUPON, Mr. Livingston exited the courtroom
12 at 11:03 p.m.)

13 (WHEREUPON, Ms. Torrone entered the courtroom
14 at 11:03 p.m.)

15 **MARGARET TORRONE,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 THE CLERK: Please have a seat. Please speak into
18 the microphone and state your name and spell your last
19 for the record. Thank you.

20 MS. TORRONE: Margaret Torrone, T, as in Tom,
21 o-r-r-o-n-e.

22 EXAMINATION BY THE COURT:

23 Q Good evening, Ms. Torrone. How are you? Are you
24 as tired as we are?

25 A Yes, I am.

1 Q I certainly can tell you we are. We have been at
2 it all day long, and I'm sorry for the lateness of the
3 hour. We're getting there.

4 Do you remember on yesterday when I talked to you
5 about not reading anything or doing any research about
6 this case or speaking with anyone about it?

7 A Yes.

8 Q And you followed my instructions?

9 A Yes.

10 Q You refrained from doing any of that?

11 A Yes.

12 Q Do you understand that if you were qualified, that
13 is, if I asked you to come back, I would expect my
14 order to continue to be honored --

15 A Yes.

16 Q -- and obeyed in that regard until such time as
17 you are released?

18 Ms. Torrone, I see here that you have indicated to
19 us and on your category of juror sheet that you
20 describe yourself or you indicate the best description
21 of yourself would be category B?

22 A Yes.

23 Q Okay. And just so that I'm sure that I understand
24 what you're saying, let me ask you, is this the
25 category where you state the juror believes that the

1 death penalty is never appropriate no matter the
2 circumstances of the case?

3 A Yes.

4 Q And is that your feeling?

5 A My feeling is maybe it would be okay, but I don't
6 think I could personally impose it.

7 Q Let me tell you what we're going to do. We're
8 going to ask you some questions about your opinions and
9 feelings on matters that are relevant to a death
10 penalty case. Let me tell you that in this country, we
11 appreciate and respect the fact that everyone is
12 entitled to an opinion and that opinion is very
13 personal. And no one in this courtroom is going to
14 even attempt to change your mind or criticize any
15 opinion that you may have.

16 The only reason we ask these questions is so that
17 we will know what they are and be able to make an
18 assessment as to whether those opinions might affect
19 your ability to serve as a juror in this case, to be
20 fair and impartial. We're not trying to invade your
21 privacy. It's just that we need to know these things.

22 These questions, if you listen to them, you might
23 think that they might suggest that we have formed an
24 opinion about whether or not Mr. Cottrell is guilty of
25 this offense. Please, we are not suggesting that at

1 all. It's just that we only have one opportunity to
2 discuss these matters with you, and some of them
3 pertain to the initial trial and some of them pertain
4 to a sentencing phase of the trial if, in fact, there
5 is a finding of guilt on the first phase. We've kind
6 of talked about that. I think you understand what it
7 is.

8 We do that because we need to talk about it, but
9 we're not suggesting that Mr. Cottrell will be found
10 guilty. I certainly don't want to convey that
11 impression to you or anyone else. He has pled
12 guilty -- I mean not guilty to these charges, and he
13 sits there with what we call the presumption of
14 innocence. He is presumed, until such time as the
15 State is able to strip away that presumption to
16 overcome it, and they only do that by convincing a jury
17 of his guilt beyond a reasonable doubt.

18 Before we get into that, let me explore your
19 feelings about the imposition of the death penalty.
20 You said that, I believe, if I understood you, that you
21 thought that under some circumstances it might be
22 appropriate but that you, for whatever reason, could
23 not do that?

24 A Correct.

25 Q Are you firm in that belief?

1 A Yes.

2 Q Can you give me the basis for your belief or your
3 feelings there?

4 A I think because I was raised Catholic and --

5 Q You're a good Catholic girl?

6 A Yes.

7 Q And so for religious reasons, is that the basis of
8 your feeling --

9 A Yes.

10 Q -- that you could not give it?

11 A Correct.

12 Q Now, suppose I told you that there were many
13 safeguards built into the system, but that if you made
14 a finding that there were statutory aggravating
15 circumstances after the jury had found the defendant
16 and if they found the defendant guilty of murder, and
17 there were these aggravating circumstances and these
18 were very bad aggravating circumstances. Do you not
19 think there are some situations in which you would be
20 able to impose the death penalty?

21 A No. I couldn't have it on my conscience.

22 Q You just absolutely do not think you could do
23 that?

24 A I wouldn't object to it getting done. But I
25 couldn't do it.

1 Q You could not do it?

2 A Uh-huh.

3 Q Okay. Well, what I'm going to do is I'm going to
4 let the attorneys at this time examine you on that
5 issue. Okay?

6 Do you want to examine?

7 MS. NORRIS: No, sir.

8 THE COURT: Do you want to, Mr. Richardson?

9 MR. RICHARDSON: No, sir, your Honor.

10 THE COURT: You may step down.

11 What's your standing, Mr. Richardson?

12 MR. RICHARDSON: As far as the State, she can be
13 excused.

14 THE COURT: No objection?

15 MS. NORRIS: No objection to her being excused.

16 THE COURT: Tell what you. We will not need you
17 anymore. You are excused from service on this case.

18 MS. TORRONE: Thank you very much. Good luck.

19 THE COURT: Good luck to you.

20 (WHEREUPON, Ms. Torrone exited the courtroom
21 at 11:10 p.m.)

22 THE COURT: All right. We've got the last panel
23 coming in. Take five minutes.

24 (WHEREUPON, recess taken from 11:09 p.m.
25 to 11:20 p.m.)

1 (WHEREUPON, Prospective Jury Panel Number 5 came
2 into open court at approximately 11:10 p.m.)

3 THE COURT: Ladies and gentlemen, again, I
4 apologize for the lateness of the hour. We have these
5 things scheduled. We must complete today because we
6 have panels coming in at 8:30 in the morning, and I've
7 been here since 7:30 this morning working on this, and
8 you are our last panel. And perhaps we can move you
9 along and get you out of here as soon as possible.

10 Before I examine you individually, let me say that
11 before we start, I want to explain to you that,
12 although I have found that you all meet the statutory
13 requirements for service as jurors in this case, there
14 are certain exemptions that would apply.

15 An exemption is an excuse that you can use if it
16 applies to you. And they're statutory. There are just
17 a few. But if they apply to you, you have the right to
18 say, "I decline service. I would like to be excused,"
19 and you will be excused. But understand, you do not
20 have to claim an exemption. If an exemption applies to
21 you and you are qualified to serve, you can say, "No, I
22 choose not to claim my exemption and I would like to
23 stay and go through the process." So let me address
24 those exemptions before we begin the individual voir
25 dire.

1 First of all, is there any member of the panel who
2 has attained age of 65 and would like to be excused?

3 POTENTIAL JUROR: I would like to be excused, your
4 Honor.

5 THE COURT: Your name, sir?

6 POTENTIAL JUROR: Joseph Glavan.

7 THE COURT: Well, Mr. Glavan, you look so much
8 younger than I do and I'm just 65.

9 POTENTIAL JUROR: I'm 82 years old, your Honor.

10 THE COURT: Bless your heart. Congratulations in
11 making that.

12 POTENTIAL JUROR: Thank you.

13 THE COURT: You certainly have that right.
14 Mr. Glavan is excused.

15 Mr. Ropp, would you make sure that he gets his
16 personal property and is released. He need not appear
17 again.

18 POTENTIAL JUROR: Thank you, your Honor.

19 (WHEREUPON, Mr. Glavan exited the courtroom
20 at 11:22 p.m.)

21 THE COURT: Have any of you served in the last
22 three years as a juror in either civil or criminal
23 court here in the circuit court, not in the
24 magistrate's court or anything like that but here. You
25 would have been brought to this courthouse in the last

1 three years. Anyone that fits in that category?

2 There's no response.

3 Have you been on the Grand Jury here in the last
4 five years?

5 Now, you might not know what the Grand Jury is,
6 but if you were on the Grand Jury, you know you were on
7 the Grand Jury. Grand Jury meets every month, and
8 you're on it for a minimum of one year, up to two
9 years. So if you were on it, you certainly know that
10 you were on it.

11 Have you been on it in the last five years?

12 And there is no response.

13 Do any of you have small children that are either
14 your children or you have custody of those children and
15 you do not work outside the home but you take care of
16 those children or child? That is a child under the age
17 of seven and that's your job. That's what you do. You
18 take care of your babies on a regular basis and you
19 have not and do not have anyone who can take care of
20 that for you.

21 I see one lady has raised your hand. Do you have
22 small children?

23 POTENTIAL JUROR: I'm sorry?

24 THE COURT: Do you have small children?

25 POTENTIAL JUROR: I have two children. One is ten

1 and one is six. I am the only parent right now that
2 takes care of them.

3 THE COURT: And you take care of them on a regular
4 basis?

5 POTENTIAL JUROR: I do work during the time that
6 they are in school.

7 THE COURT: But would you have anyone who can take
8 care of them in the evening?

9 POTENTIAL JUROR: I have my parents, but they are
10 both disabled, and I'm very nervous leaving them
11 especially at night.

12 THE COURT: You need to take care of your
13 children?

14 POTENTIAL JUROR: Yes.

15 THE COURT: I'm going to excuse you. You may
16 claim that exemption.

17 Yes, ma'am.

18 POTENTIAL JUROR: My daughter is 13, but my
19 fiancée's a firefighter paramedic. He's not home all
20 the time.

21 THE COURT: He doesn't have that responsibility,
22 does he?

23 POTENTIAL JUROR: Correct.

24 THE COURT: Could I get that last juror's name,
25 please.

1 POTENTIAL JUROR: Mimoza Hasko, 282.

2 THE COURT: Thank you, ma'am. You are excused.

3 MS. HASKO: Thanks.

4 (WHEREUPON, Ms. Hasko exited the courtroom.
5 at 11:24 p.m.)

6 THE COURT: All right. And I'm going to talk
7 about that in just a minute, but let me go through
8 these other ones.

9 Is there anyone who is the primary caretaker for a
10 person who is over 65 or severely disabled who cannot
11 be left alone and that is your job, that is what you
12 do, you take care of that person on a regular basis --
13 they're in your charge, so to speak, and that person
14 should not be left alone? Anyone who fits into that
15 category?

16 We have already talked about full-time students
17 and I'm assuming there are no full-time students here.

18 You are a student?

19 POTENTIAL JUROR: Yeah.

20 THE COURT: Where are you a student?

21 POTENTIAL JUROR: ITT Tech.

22 THE COURT: Where is that?

23 POTENTIAL JUROR: I'm going in North Myrtle Beach.

24 THE COURT: In North Myrtle Beach. What are you
25 taking there?

1 POTENTIAL JUROR: I'm taking network system
2 administration.

3 THE COURT: Are you a full-time student engaged in
4 class now?

5 POTENTIAL JUROR: Yes. I have a schedule.

6 THE COURT: Okay. She has her schedule.

7 Mr. Ropp, would you bring that forward.

8 THE COURT: Excellent. What year are you?

9 POTENTIAL JUROR: This will be my fourth quarter
10 there.

11 THE COURT: Your fourth quarter. Yes, ma'am. I
12 see that you are, in fact, a student and this would
13 impact your attendance at your class.

14 POTENTIAL JUROR: Yes.

15 THE COURT: You are excused.

16 Could you give us your name and your number,
17 please.

18 POTENTIAL JUROR: Shannon Bizyah, number 43.

19 THE COURT: Number 43. You are excused.

20 (WHEREUPON, Ms. Bizyah exited the courtroom
21 at 11:26 p.m.)

22 THE COURT: Is there anyone remaining who performs
23 service for a business or commercial or agricultural
24 enterprise that is so significant or important to that
25 business that if you are absent from work the business

1 must close the doors, must close down and there is no
2 one to take your place? And I'm talking about the
3 other employees going home, the business just cannot
4 operate unless you're there.

5 And there is no response.

6 I want to go back to the lady who has a
7 12-year-old child. Now, normally that is not an
8 exemption; however, I may excuse you in the case of an
9 extreme hardship. I can't excuse you -- I can't excuse
10 your service, but what I can do is carry you over to
11 another term. I understand and I'm sure you understand
12 that for this case if you are selected that you would
13 be sequestered.

14 POTENTIAL JUROR: Yes, sir.

15 THE COURT: Now, you tell me. This is your child
16 and you are responsible for that child and you have no
17 one that can care for that child. You're saying you
18 pick the child up after school.

19 POTENTIAL JUROR: Correct.

20 THE COURT: And you have to take care of the
21 child, and I'm most concerned about in the evening.

22 POTENTIAL JUROR: Right. I don't have family
23 here.

24 THE COURT: You don't have family?

25 POTENTIAL JUROR: No, sir.

1 THE COURT: And you have a fiancée but he has --
2 he's a firefighter. Does he work a swing shift or
3 different shifts and he's out sometimes?

4 POTENTIAL JUROR: Correct. He's not home at night
5 sometimes.

6 THE COURT: He's not home at night. And this
7 would mean this child would be left alone.

8 MR. McGUIRE: No objection, Judge.

9 MR. RICHARDSON: None from the State.

10 THE COURT: Without objection you are excused.
11 And your name and number, please.

12 POTENTIAL JUROR: Tara Duffy, 171.

13 THE COURT: Ms. Duffy. Thank you, Ms. Duffy.

14 POTENTIAL JUROR: Thank you, sir.

15 THE COURT: Ms. Duffy, you will be sent another
16 subpoena and required to appear at a later date. All
17 right? Thank you, ma'am.

18 I normally would not have excused you since the
19 child is 13, but we are looking at a sequester
20 situation and I think that's appropriate.

21 POTENTIAL JUROR: Thank you.

22 (WHEREUPON, Ms. Duffy exited the courtroom
23 at 11:29 p.m.)

24 THE COURT: Okay. Now, that leaves Ms. Gilbert
25 and Mr. Crawford.

1 Okay. Mr. Crawford, would you go with Mr. Ropp
2 and, Ms. Gilbert, would you please take the witness
3 stand.

4 (WHEREUPON, Mr. Crawford exited the courtroom
5 at 11:29 p.m.)

6 **VERONICA GILBERT,**
7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 THE CLERK: Please be seated. Please speak into
9 the microphone and state your name and spell your last
10 for the record. Thank you.

11 MS. GILBERT: My name is Veronica Gilbert. Last
12 name G-i-l-b-e-r-t.

13 EXAMINATION BY THE COURT:

14 Q Ms. Gilbert, again I want to apologize for the
15 lateness of the hour. But I want to ask you, have you
16 or do you remember on yesterday when I admonished all
17 the jurors not to have any contact with anyone about
18 this case, not discuss it with them, not to expose
19 yourselves to any publicity or news reports about this
20 case and not to do any research or investigation?

21 A Yes, sir.

22 Q Did you comply with my order?

23 A Yes, sir.

24 Q And have you refrained from those activities?

25 A Yes, sir.

1 Q Thank you very much, Ms. Gilbert.

2 Now, Ms. Gilbert, we are going to necessarily have
3 to ask you some questions. And these questions may be
4 personal in nature, but they will involve your opinions
5 or feelings about matters that we believe are relevant
6 to your ability to provide service as a juror in this
7 case.

8 We want to make sure that there is nothing that
9 would substantially interfere with your ability to
10 perform those duties, and those duties are essentially
11 to be a fair and impartial juror.

12 Now, in doing so, we're going to be talking about
13 not only the guilt phase. And yesterday I think I
14 explained to you that this is a death penalty case
15 which would be divided into two parts. One will only
16 take place in the event that there was a conviction for
17 murder.

18 The second one would involve mitigating and
19 aggravating circumstances. Because we ask you about
20 the second phase, I'm fearful that you might take that
21 as some indication that we are suggesting that this
22 case will ever get to that point. And I don't want to
23 do that because we are only asking those questions
24 because this is the only opportunity we will have to
25 ask questions of you.

1 We are not -- not -- suggesting that there will be
2 a conviction, that we will ever get to the second part.
3 That would be something that would be determined by the
4 jury in this case and the jury alone.

5 Mr. Cottrell sits here with what we call the
6 presumption of innocence. He is considered innocent at
7 this point, and the jury must maintain that thought
8 throughout the trial of the case. So I don't want you
9 to think that because we are talking about this second
10 phase that we are suggesting that's what you should do
11 is, if you're on the jury, is get a conviction in the
12 first part. Do you understand that?

13 A I believe so.

14 Q Okay. Just want to make should sure that you did.

15 Before we get into anything about this case,
16 Ms. Gilbert, I want to question you about a response
17 that you made yesterday to one of my questions.

18 A Yes, sir.

19 Q That question was whether or not you have formed
20 an opinion in this case based on what you may have read
21 or heard about case. And my notes seem to say that you
22 answered that you had. Is that correct? Are my notes
23 correct?

24 A Yes, sir, it is correct.

25 Q Can you tell me what opinion you have formed in

1 this case and why you have formed that opinion?

2 A I've had conversations with some Myrtle Beach
3 police officers that are personal friends of mine
4 and --

5 Q Let me ask you, do you know if those officers may
6 have been friends with Officer McGarry?

7 A That I cannot say.

8 Q Did they know things about this case or seem to
9 know things about this case?

10 A Personally, I can't say. I just --

11 Q Did they convey to you their thoughts or any
12 knowledge about this case?

13 A Oh, yeah. I mean, we talked generally about it.

14 Q And when was that?

15 A Oh, gosh. I couldn't tell you. That was years
16 ago. Probably not too -- right after.

17 Q Based upon those conversations -- now, these would
18 be conversations that you had with police officers who
19 are friends of yours and who are employed at the Myrtle
20 Beach Police Department?

21 A Yes, sir.

22 Q Do you understand or are you aware of the fact
23 that Officer McGarry was employed by the Myrtle Beach
24 Police Department?

25 A Yes, I do.

1 Q Okay. Based upon those conversations, what
2 opinions have you formed?

3 A I have to say he's guilty.

4 Q Now, again, an opinion is something that every one
5 is entitled to have.

6 A Yes, sir.

7 Q And no one is going to criticize you for any
8 opinion you have. We all have the right to form
9 opinions in this country, and we all respect your
10 opinions, and no one is going to try to change your
11 opinion. But you tell me that you are of the opinion
12 at this time that the defendant, Mr. Cottrell, is
13 guilty of what?

14 A Murder.

15 Q Of murder. And that's based on information that
16 was provided to you by officers at the Myrtle Beach
17 Police Department?

18 A Well, that and, you know, media.

19 Q What have you heard in the media or seen in the
20 media that would strengthen or add to that opinion?

21 A Just probably more detail about the case, and I
22 just honestly, I can't dismiss -- I just can't.

23 Q Okay. Well, let me tell you, as I said earlier,
24 the fact that you have an opinion is not necessarily
25 controlling. It does not ultimately answer the

1 question as to whether you would be a qualified juror.

2 A Right.

3 Q The question I have is this: Is your opinion such
4 that it would substantially impair your ability to
5 perform your duties as a juror, in other words, to be
6 fair and impartial in your assessment of this case?

7 A I don't believe I can be impartial. I can't
8 dismiss what I know.

9 Q Are you telling me that you just cannot set it
10 aside?

11 A I can't.

12 MR. McGUIRE: No questions, Judge.

13 MR. RICHARDSON: Not from the State, your Honor.

14 THE COURT: All right.

15 Any objections?

16 MR. McGUIRE: No, sir.

17 MR. RICHARDSON: No, sir.

18 THE COURT: You are, Ms. Gilbert, excused from
19 further service in this matter. You are released from
20 the subpoena. You need not call back.

21 Again, I thank you for your candor in this matter.

22 Thank you, ma'am.

23 MS. GILBERT: Thank you.

24 (WHEREUPON, Ms. Gilbert exited the courtroom
25 at 11:38 p.m.)

1 (WHEREUPON, Mr. Crawford entered the courtroom
2 at 11:38 p.m.)

3 THE COURT: Come around, Mr. Crawford, right up
4 here.

5 KYLE CRAWFORD,
6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 THE CLERK: Please be seated. Please speak into
8 the microphone and state your name and spell your last
9 for the record.

10 MR. CRAWFORD: Kyle Crawford, C-r-a-w-f-o-r-d.

11 EXAMINATION BY THE COURT:

12 Q Mr. Crawford, how are you today, other than tired?

13 A All right. A little cold. All right.

14 Q All right, sir. It's been a very long day, but
15 we're nearing the end of the day.

16 Mr. Crawford, do you remember on yesterday that I
17 gave all the jurors the instruction not to talk about
18 this case with anyone or let them contact them about
19 the case?

20 A Yeah.

21 Q All right. I instructed them not to do any
22 independent research or seek out any information or put
23 themselves in a position where they may see or hear or
24 read any news or media reports about the case?

25 A Right.

1 Q And have you complied with my order in that
2 respect?

3 A Yes.

4 Q And you have not been contacted or seen anything
5 about the case?

6 A No.

7 Q Thank you very much.

8 Now, Mr. Crawford, we are going to be asking you
9 some questions today. And those questions will be
10 primarily about opinions and feelings you may have
11 about matters that would be relevant to this case.

12 A Okay.

13 Q We are not trying to invade your privacy. It's
14 just that it's necessary that we obtain information
15 about any feelings or opinions that you might have
16 because we have to determine whether or not those
17 feelings or opinions or knowledge that you might have
18 might substantially impair your ability to carry out
19 your duty as a juror if you are selected, and that duty
20 can be summarized as the duty to be fair and be
21 impartial and that's where we're going.

22 Please understand that everyone has the right to
23 have an opinion or feelings about any issue in this
24 case. And everybody here appreciates that fact and
25 respects your opinions. No one is going to try to

1 change your opinion. So when you answer the questions,
2 don't be concerned about whether there's a right
3 opinion or a wrong opinion or response about these
4 questions. Every answer is the correct answer so long
5 as it is truthful and candid answers that we get.
6 That's the only thing that is important. So don't be
7 concerned about what your opinions may be. Is that
8 fair enough?

9 A Yes.

10 Q All right. Now, Mr. Gilbert -- Mr. Crawford. I'm
11 sorry.

12 A That's right.

13 Q Ms. Gilbert was just in here a moment ago.

14 A A long day.

15 Q Mr. Crawford, are you familiar with the term
16 "presumption of innocence"? Have you ever heard that
17 used before or said before presumption of innocence?

18 A Yes.

19 Q And I want to share with you my understanding of
20 that meaning. What that does mean is the presumption
21 of innocence is a legal theory that we use in the law.
22 It's pervasive. It's used all over the country, and
23 what it stands for is the proposition that any person
24 who's accused of any crime in this country is presumed
25 to be innocent of that crime. And that presumption

1 remains with that person not until the trial starts, it
2 continues throughout the trial, and jurors should keep
3 that in their mind. It continues throughout the trial
4 until the State has overcome that presumption of
5 innocence.

6 In this case Mr. Cottrell has pled not guilty, and
7 he has the protection of that presumption of innocence.
8 And we all must consider him as innocent as you and I
9 sitting here in this particular situation.

10 Now, the way that the State overcomes that
11 presumption of innocence is they must convince the jury
12 beyond a reasonable doubt and it must convince every
13 juror of that. Jurors must unanimously find that he is
14 guilty of the offense for which he is charged. Do you
15 understand that principle?

16 A Yes.

17 Q Okay. And do you have any problems with that
18 principle?

19 A No.

20 Q Do you think that's a fair principle?

21 A (Nodding.)

22 Q All right, sir. You need to always speak up
23 because they're recording your answers.

24 A Yes. Yeah.

25 Q Now, on yesterday, we talked about the fact that

1 this is a murder case. You understand that now, I'm
2 sure?

3 A Yes.

4 Q But it is a rather unique type of murder case. It
5 is a death penalty case. Did I make that clear to you
6 yesterday?

7 A Yes.

8 Q During the course of year, there may be several or
9 many murder cases tried in the state of South Carolina
10 in the various courts, but it's very rare that we have
11 a case where the State is seeking the death penalty or
12 what we call a death penalty case.

13 But when that happens, very special rules come
14 into play, and there are special procedures that we
15 have to follow. For instance, if this were a normal or
16 regular murder case, no one would be able to examine
17 the witnesses individually like we do here. That's
18 just one of the rule changes or things that apply in a
19 death penalty case.

20 But when the State chooses to seek the death
21 penalty, there are other things that have to happen,
22 and the way the case is tried is different from -- I
23 call it an ordinary or typical murder case.

24 In a typical murder case, the State would simply
25 have to prove to the jury beyond a reasonable doubt

1 that the defendant did kill another human being
2 unlawfully and with malice aforethought. Those are the
3 things the State would have to prove. And that would
4 be all that the State would have to prove.

5 In that case, fairly simple, killing of another
6 human being unlawfully, they would also have to prove
7 malice aforethought. Malice aforethought has been
8 described by the courts using words like a darkened
9 heart or a black heart or a malicious intent,
10 intentional with ill will or hatred towards the person
11 who was the victim of the murder.

12 And as bad as that may sound, in a typical murder
13 case or the one that we normally see or usually see,
14 did you know that the death penalty is not even a
15 possible penalty? Were you aware of that --

16 A No.

17 Q -- in a murder case? Well, let me tell you that
18 it is not. A death penalty can only be a possible
19 penalty in the case of an aggravated murder case.

20 In a death penalty case, the State would have to
21 go through that first part, and they would have to
22 convince the jury beyond a reasonable doubt that the
23 defendant committed the act of murder. Okay?

24 If and only if the State reached that point we
25 would move to the second part of the trial. If the

1 State only proved murder, we would not reach the point
2 anybody would even consider the possibility of a death
3 penalty being the appropriate penalty.

4 As we move to the second part, the State would
5 have, in essence, another trial. And in that trial the
6 State would have to again prove, using the same
7 standard of proof -- it would have to convince each and
8 every juror beyond a reasonable doubt that there was
9 another act or circumstance accompanying the murder
10 which would be an aggravating circumstance.

11 Now, we know exactly what the aggravating
12 circumstances are because the legislature, when it
13 established the death penalty statutes, said, "You may
14 seek the death penalty if you can prove beyond a
15 reasonable doubt to each juror that one of these
16 following aggravating circumstances is present." And
17 the State must -- must -- prove at least one of them.

18 And, you know, you might be a juror on the case
19 and you look at the list and you say, "I don't see one
20 of those, but over here is a fact or a circumstance
21 that I see or I believe occurred, and I think it's just
22 as bad as one of those. I'm going to use that as an
23 aggravating circumstance." You could not do that. You
24 can only use the ones that the legislature have put in
25 the box and say these are aggravating circumstances.

1 Only them.

2 And if the State proved that to every juror beyond
3 a reasonable doubt and only if that occurred in
4 addition to the conviction for the murder could the
5 idea of the death penalty being an appropriate
6 punishment even be considered. It only comes on the
7 table upon that showing.

8 And the judge would tell the jury you may only
9 consider it -- you know, in this state there is no, no
10 crime that you can commit where the death penalty is
11 automatic, where it's a mandatory penalty. Were you
12 aware of that?

13 A No.

14 Q Well, I tell you that and that is a fact in the
15 case that you will never hear me or any other judge in
16 a capital case say, "If you find this, this or this,
17 you must give the death penalty," because that is not
18 the law. And can you understand and appreciate that
19 fact?

20 A Yes.

21 Q Okay. Now, if it was proven that there was a
22 murder with an aggravating circumstance, I say it comes
23 on the table. It is possible. It may be considered by
24 the jury. But I would also tell you that before you
25 could do that, you had to look at all the evidence in

1 the case and determine whether or not there were
2 mitigating circumstances or circumstances that lessened
3 the severity of the offense.

4 And the legislature has set out those. It tells
5 you what are statutory mitigators. But they're treated
6 different than the aggravating circumstances. Remember
7 I told you a moment ago you couldn't go outside the box
8 and use another aggravator? But you can use any of the
9 mitigators that the legislature has established or you
10 personally as a juror can look at all the circumstances
11 surrounding a case and say, "I think this is a
12 mitigating circumstance and I'm going to use that," and
13 that would be perfectly all right.

14 Now, based upon your finding of mitigating
15 circumstances or the fact that you did not find
16 mitigating circumstances, you did not find a single
17 mitigating circumstance, for no reason at all you can
18 say, "I'm just not going to give the death penalty in
19 this case. I don't think it's appropriate. I'm going
20 to recommend a life sentence, and that's what I'm going
21 to do." You wouldn't even have to give your fellow
22 jurors a reason. You could just say that's what you
23 were going to do.

24 Or at the end of the day you can find all sorts of
25 mitigators or lack of mitigators and you could look at

1 it and say, "You know, this probably is a death penalty
2 case, but I am going to vote to extend mercy in this
3 matter. Deserved or otherwise, I'm going to give mercy
4 and I'm going to recommend a life sentence."

5 Do you understand how that process works? And I
6 want to impress upon you the fact that you don't have
7 to give the death penalty. You don't have to give a
8 life sentence. It's up to you as a jury based upon the
9 circumstances of the case to make that call.

10 A I understand.

11 Q You understand that?

12 A Yes.

13 Q Well, let me ask you this. I have looked at the
14 form that you filled out, and I see here that you have
15 indicated that you are a C type of juror; is that
16 correct?

17 A Yes.

18 Q Now, just so that you and I understand what we're
19 talking about, my understanding is you are saying that
20 you're the type of juror that would need to hear the
21 facts and circumstances in aggravation and mitigation
22 before you could make a decision regarding punishment.

23 A Yes.

24 Q Does that best describe you?

25 A Yeah.

1 Q Okay. And with that in mind, could you look at
2 this case and could you follow the law as I have
3 described it to you as to what process you had to
4 follow in reaching a recommended sentence, and in doing
5 that, could you return a verdict that recommends life
6 imprisonment?

7 A It honestly would be hard for me to because I know
8 about some parts of the case.

9 Q I'm going to talk about that in a minute. But
10 let's not look at this particular case.

11 A Okay.

12 Q Let's not think about the facts in this case.

13 But generally speaking, can you look at the facts
14 and mitigators in a death penalty case and return a
15 life sentence?

16 A Yes.

17 Q Or recommend. And could you also look at the
18 facts and mitigators in the case or the aggravation and
19 mitigators and return a verdict that recommended the
20 death penalty?

21 A Yes.

22 Q Based on what was there?

23 A Yes.

24 Q You could do either one?

25 A Yep.

1 Q Okay. That's what I needed to know.

2 I see down here that when I asked the question
3 yesterday of the jury if there was any reason why any
4 particular juror felt that they could not be fair in
5 this case, my notes indicate that you were one of those
6 people that spoke up?

7 A Uh-huh.

8 Q Is that correct?

9 A Yes.

10 Q Were you one of those people that spoke up?

11 A Yep.

12 Q Okay. And can you tell me why you feel that you
13 could not be fair in this case?

14 A Because it's not like it's the first time I'm
15 looking at it. I was told about the case prior to
16 this, so it's -- I already have a preconceived notion
17 of what happened. It's not like --

18 Q Did you discuss it with friends or family or did
19 you read newspaper reports? What's the source of your
20 information?

21 A The source of the info was from, actually, an
22 ex-cop, and he was the defendant's parole officer at
23 the time, Travis Preston, and he told me about what
24 happened. And that's just from hearing that --

25 Q You're telling me you have information from the

1 defendant's parole officer relevant to this case?

2 A I -- yeah.

3 Q Okay. Could you forget about that, could you set
4 that aside and not consider it in your deliberations?

5 A Kind of hard to when someone --

6 Q And I can appreciate that. But considering the
7 source of this information, would you be able to set it
8 aside and pretend that you never heard it?

9 A Probably not.

10 Q Would that information substantially impact the
11 decisions that you make in this case?

12 A Yep.

13 Q Okay. I tell you what I want to do. I'm probably
14 going to have more questions for you, but would you
15 mind stepping out for just a minute and let me speak to
16 these attorneys for just a moment.

17 A Sure.

18 (WHEREUPON, Mr. Crawford exited the courtroom
19 at 11:56 p.m.)

20 THE COURT: Ladies and gentlemen, I am very
21 concerned about the source of his information. I think
22 that goes way beyond anything that you might read in
23 the *Sun News* or anything of that nature.

24 What do you have to say about this?

25 MR. MCGUIRE: I agree, your Honor. In fact, he

1 reported it on his questionnaire. He's been consistent
2 about it. And he indicates that he heard about this
3 straight from a personal friend, Travis Preston, who's
4 Mr. Cottrell's parole officer.

5 MR. HIXSON: That's substantial impairment, your
6 Honor. We would agree.

7 THE COURT: All right. Bring him in, please.
8 (WHEREUPON, Mr. Crawford entered the courtroom
9 at 11:57 p.m.)

10 THE COURT: Mr. Crawford.

11 MR. CRAWFORD: Yep.

12 THE COURT: I am going to release you. I want to
13 thank you for your extreme candor in responding to my
14 questions. You did exactly what you were supposed to
15 do, and we all appreciate your having done that.

16 You will no longer be needed in this trial. You
17 need not come back for any reason. You are excused.
18 Thank you, sir.

19 (WHEREUPON, Mr. Crawford exited the courtroom
20 at 11:58 p.m.)

21 THE COURT: Okay. Let's be back at 8:30 in the
22 morning. Thank you.

23 THE CLERK: Judge, before we leave, can I put on
24 the record, just to make sure we're all on the same
25 page, my records show we qualified 12 jurors today.

1 THE COURT: And we interviewed?

2 THE CLERK: 30.

3 THE COURT: 30, okay.

4 THE CLERK: Everybody agrees with 12?

5 MR. RICHARDSON: Yes, ma'am.

6 THE COURT: All right. Thank you.

7 Thank you, ladies and gentlemen. We will see you
8 in the morning.

9 (WHEREUPON, the hearing adjourned at 12:00 a.m.)

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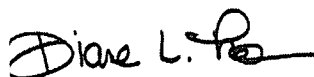
Certificate of Reporter

I, Diane L. Thommes, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Horry County, South Carolina, on the 16th day of September 2014.

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 15, 2015



Diane L. Thommes, RPR, CRR
Circuit Court Reporter

1 State of South Carolina
 2 County of Horry In the Court of General Sessions

3
 4 STATE OF SOUTH CAROLINA,)
 5) 2003-GS-26-20
 6 -vs-) September 17, 2014
 7 LUZENSKI ALLEN COTTRELL,)
 8 Defendant.) Volume III of X
) Pages 782 - 1285
) Transcript of Record
 9 -----)

10
11 B E F O R E :

12 The Honorable Larry B. Hyman, Jr., Judge

13
14 A P P E A R A N C E S :

15 Attorneys for the State:
 16 Jimmy A. Richardson, II, Solicitor
 17 Scott R. Hixson, Assistant Solicitor
 Fifteenth Circuit Solicitor's Office

18 Attorneys for the Defendant:
 19 Bill McGuire, Chief Attorney, Capital Trial Division
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20 Teresa L. Norris, Attorney at Law
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21 Diana Holt, Attorney at Law

22
23
24
25

Diane L. Thommes, RPR, CRR
Circuit Court Reporter

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7 E x h i b i t s

8 For the State:

9	<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
10		None offered.		

11 For the Defendant:

12	<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
13		None offered.		

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 8:59 a.m.)

4 THE COURT: All right. Good morning, Mr. McGuire,
5 Ms. Norris; Mr. Richardson, Mr. Hixson. Good to see
6 you all.

7 Are we ready to proceed?

8 MR. RICHARDSON: State's ready, your Honor.

9 MS. NORRIS: Yes.

10 THE COURT: Very well. Thank you very much.
11 Okay.

12 Mr. Ropp, do you have a panel for me?

13 (WHEREUPON, Prospective Jury Panel Number 6 came
14 into open court at approximately 9:00 a.m.)

15 MR. MCGUIRE: Your Honor, if we could approach.

16 THE COURT: Yes.

17 (Whereupon, counsel approached the bench.)

18 THE COURT: Mr. Ropp, I know it's inconvenient to
19 the jury but, there is a couple things that have just
20 come up rather important that I need to address and
21 place on the record.

22 I hope you will forgive me, but could you step
23 back out for -- I won't be but just a moment, please.

24 (WHEREUPON, Prospective Jury Panel Number 6
25 exited the courtroom at approximately 9:02 a.m.)

1 THE COURT: All right. Gentlemen, ladies, I have
2 just been informed by the clerk that Ms. Martha Demeo
3 is scheduled for one of our panels on Friday. She
4 appeared this morning, and apparently her son passed
5 away last night or this morning about 3 o'clock. And,
6 of course, we could not expect her not to attend to
7 those matters.

8 Is there any objection to my excusing this juror?

9 MR. RICHARDSON: None from the State, your Honor.

10 MR. McGUIRE: No objection, Judge.

11 THE COURT: Okay. Very well. Thank you very
12 much.

13 THE CLERK: She's is panel 20 scheduled for 5:30
14 on Friday.

15 THE COURT: Madam Clerk, would you inform her that
16 she is excused from further service.

17 MS. NORRIS: What's her juror number, ma'am,
18 please?

19 THE COURT: 154.

20 MS. NORRIS: Thank you, sir.

21 THE COURT: Martha Demeo.

22 Would you please inform her that her services are
23 no longer required and give her our condolences, if you
24 would, please.

25 THE CLERK: Yes, sir.

1 THE COURT: I have been in discussion this morning
2 with the attorneys, and it has been my practice to go
3 through a rather detailed explanation with each juror
4 of the general process that we follow. And that does
5 take some time, but I think it's essential that these
6 jurors understand the process and that they assure me
7 that they are able to follow the law in that regard in
8 their deliberations.

9 Those are very important rights, particularly
10 involving the assessment of or a finding of an
11 aggravator and the consideration of any matters which
12 may be in mitigation is important rights to, of course,
13 Mr. Cottrell and the State. And so I want to continue
14 that.

15 But it's been suggested as I bring the panel in to
16 consider any exemptions, that I go ahead and have the
17 clerk swear that panel and while I have them in a
18 group, to go through it with them, at least that part
19 of my questioning, so that we don't have to repeat it
20 each time a juror comes back out. And I think that's
21 probably a good idea.

22 Mr. McGuire, it's my understanding that you have
23 discussed this with your client and with co-counsel and
24 you think that that would be appropriate; is that
25 correct?

1 MR. McGUIRE: I actually did not discuss it with
2 Mr. Cottrell. I could do that now.

3 THE COURT: Mr. Cottrell, do you understand what
4 I'm saying?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you've been present. You've heard
7 me explain things to the jury.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And all that they're suggesting is
10 that I do it, at least that part where I explain the
11 process to the jury, while they're all together so we
12 don't have to do it but one time.

13 Do you believe that's appropriate?

14 (WHEREUPON, an off-the-record discussion was held
15 between Mr. McGuire and the defendant.)

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I don't have any problem with it. I
18 think it is, but I just want to make you aware of what
19 your attorney is asking me to do and make sure you
20 understand what he's doing.

21 THE DEFENDANT: Thank you.

22 THE COURT: Mr. Richardson, Mr. Hixson.

23 MR. RICHARDSON: Yes, sir, your Honor.

24 THE COURT: You think that would be appropriate
25 and you consent to that?

1 MR. RICHARDSON: Yes.

2 THE COURT: All right.

3 MR. RICHARDSON: And, your Honor, just I'm
4 guessing yesterday you asked a few questions. Would
5 you just ask them to raise their hand or stand up if
6 they wanted to comment more than "yes," or would they
7 just say "yes"?

8 THE COURT: And I'm going to do that. I'm going
9 to make sure that the record reflects each juror's
10 response. Okay?

11 MR. RICHARDSON: Yes, sir. Thank you.

12 THE COURT: Okay.

13 Mr. Ropp, could you bring in that panel.

14 (WHEREUPON, Prospective Jury Panel Number 6 came
15 into open court at approximately 9:06 a.m.)

16 THE CLERK: I'd like to put you under oath,
17 please. Will you raise your right hand.

18 (WHEREUPON, the panel was sworn.)

19 THE COURT: All right. Ladies and gentlemen of
20 the jury, and I appreciate your being here. We worked
21 rather late last night, but we are working hard to stay
22 on our schedule so we can determine who would be
23 qualified to serve on this jury.

24 Now, you were just placed under oath. And please
25 remember that you will remain under the oath throughout

1 the day. What I'm going to do is make some general
2 comments to you and ask you some questions as a group
3 to begin with. I think that will be quite a timesaver
4 as the day progresses. After that, you will be brought
5 in individually and you will be asked some individual
6 questions.

7 Let me say this at the outset. We live in a great
8 country where we have many freedoms, and one of those
9 freedoms is our freedom to have an opinion. And let me
10 assure you that we're going to be asking you questions
11 that would -- about your opinions and feelings on
12 certain matters that we think are relevant to the trial
13 of this case and your service as jurors.

14 And they may be somewhat personal, but I want to
15 make you realize or make you comfortable with the fact
16 that nobody here is going to try to change your opinion
17 or feelings about an issue. No one is going to be
18 critical. You have the right to have your own opinion.

19 All we need from you is a candid and truthful
20 answer so that we can assess how you may feel about a
21 particular issue and how that may affect your ability
22 to serve as a juror. So if you would bear with us in
23 that regard.

24 Now, before we begin, let me tell you that
25 although I have found that all of you meet the legal

1 qualifications of jurors, you are all legally qualified
2 to be a juror generally, there are certain exemptions
3 that the law provides for potential jurors.

4 An exemption is something that you can claim or
5 you can decide not to claim. It gives you the right to
6 say, "This exemption applies to me and I simply choose
7 not to serve." And you will be released if that
8 exemption applies to you, and I want you to be aware of
9 that.

10 But, again, you do not have to claim an exemption
11 unless you want to. You have the right to serve on
12 this jury. You just have an exemption available to you
13 if you wish to use it.

14 Now, let me go through these exemptions.

15 Is there any one of you who is 65 years of age or
16 older? Of course we love to have our senior citizens
17 on the jury, but if you are 65 or older, you may claim
18 that as an exemption.

19 Is there anyone that that would apply to?

20 And there is no response.

21 Has anyone on this jury panel served as a juror in
22 the court of common pleas or general sessions? That
23 would be the civil or criminal side of the court here
24 in Conway. You would have been brought to this
25 courtroom. It would not be magistrate's court or

1 municipal court or even federal court. You were
2 brought here.

3 If you have served in the last three years, you
4 can claim that as an exemption. Would that apply to
5 anyone?

6 And there is no response.

7 If you have served on the Grand Jury within the
8 last five years, you may claim that as an exemption.

9 Now, some of you may not be clear as to what the
10 Grand Jury is. The Grand Jury is not the jury that
11 actually tries cases. It's the jury that would
12 consider and issue indictments in criminal matters. If
13 you are on the Grand Jury, I'm comfortable that you
14 would really know that because that's a very
15 specialized job. The Grand Jury meets every month and
16 you serve for either a year or two years on that Grand
17 Jury, so you would know if you are on the Grand Jury.

18 Does that apply to anyone here?

19 And there's no response.

20 Is anyone on this jury panel the primary caretaker
21 of a child? And that child must be your child or child
22 that you have legal custody of. Are you the caretaker
23 for a child under the age of seven?

24 Now, this does not apply if you have someone else
25 who can take care of the child or you work outside the

1 home and arrangements are made on a daily basis for the
2 child. The exemption is designed for a stay-at-home
3 mom or dad who actually has the care of that child.

4 Would that apply to any of you?

5 And there is no response.

6 Also, if you are the primary caretaker for a
7 severely disabled person or a person who is elderly and
8 that person's condition is such that that person cannot
9 be left at home. And, again, that's your job. That's
10 what you do. It's not a situation where the person
11 just might be a member of your household or a friend or
12 something of that nature, someone you visit regularly.
13 It's for those of you who may take care of such persons
14 on a regular and permanent basis.

15 Is there any one of you to whom that exemption
16 might apply?

17 Yes, ma'am. Could you tell me about it.

18 POTENTIAL JUROR: I'm a caregiver.

19 THE COURT: For who?

20 POTENTIAL JUROR: I work as a caregiver.

21 THE COURT: That's a job you have?

22 POTENTIAL JUROR: Yes.

23 THE COURT: And is this person related to you or
24 in your home or anything like that?

25 POTENTIAL JUROR: Oh, no. No, sir.

1 THE COURT: Well, how often do you do this?

2 POTENTIAL JUROR: Every day.

3 THE COURT: Okay. You do it on a daily basis?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: And is the person related to you in
6 any form or fashion?

7 POTENTIAL JUROR: Oh no, sir. No, sir.

8 THE COURT: Who's taking care of that person
9 today?

10 POTENTIAL JUROR: The father.

11 THE COURT: Is someone available to take care of
12 that person when you're not there?

13 POTENTIAL JUROR: The father. But he's an older
14 man.

15 THE COURT: But is he capable?

16 POTENTIAL JUROR: No, he can't take care of him.

17 THE COURT: Is it his wife?

18 POTENTIAL JUROR: No, he don't have a wife.

19 THE COURT: Is it his child?

20 POTENTIAL JUROR: Yes, it's his child.

21 THE COURT: How old is the child?

22 POTENTIAL JUROR: He's 53.

23 THE COURT: He's 53. What sort of disability does
24 he have?

25 POTENTIAL JUROR: He's on a feeding tube. He was

1 in a car accident.

2 THE COURT: And you care for him on a daily basis?

3 POTENTIAL JUROR: Uh-huh. Yes, sir.

4 THE COURT: And you're the person he's accustomed
5 to and the person that provides his daily care?

6 POTENTIAL JUROR: Yes, sir.

7 MS. NORRIS: No objection, your Honor.

8 MR. RICHARDSON: No objection, your Honor.

9 THE COURT: I'm going to excuse you. You may
10 leave. Your name and number?

11 POTENTIAL JUROR: My name is Verlon Vaught, 647.

12 THE COURT: All right, Ms. Vaught. Thank you very
13 much.

14 (WHEREUPON, Ms. Vaught exited the courtroom
15 at 9:15 a.m.)

16 THE COURT: I think we have taken care of the next
17 exemption. That is the full-time students. Is there
18 anyone who is a full-time student or an employee of a
19 school? And that could be anything from grammar
20 school, high school, the college, the technical school.
21 If you are an employee there and you have a necessary
22 job in the operation of that -- that school, you may
23 claim that as an exemption if there's no one to fill in
24 for you.

25 Is there anyone that that would apply to?

1 And there is no response.

2 If you provide services for a business or
3 commercial enterprise -- can be agricultural as well --
4 and your services are so essential to the operation of
5 that business -- not that they would miss you. We
6 would hope that they would miss any of us. But your
7 services are so essential that that business closes
8 down, it closes the doors, it ends, cannot continue to
9 operate if you're not there, send your employees home,
10 that type of situation.

11 Anyone in that?

12 And there is no response.

13 Those are the exemptions that would apply to you.

14 Now, let me begin by telling you about this case
15 and what we'll be doing. As I said, I'm going to give
16 you some general information, then we'll bring you back
17 and give you specific information.

18 Is anyone having any trouble hearing me?

19 No one is having any problems. All right.

20 There's no response to that. Okay.

21 How many of you or have any of you ever heard
22 someone use the term "presumption of innocence"? Have
23 any of you ever heard that term or familiar with that
24 term?

25 I see there are a couple of you. But I'm going to

1 tell you what it means. It's a legal term. It
2 describes a legal theory and it's pervasive. I mean,
3 it is applicable all over the United States. What it
4 means is this, that a person who is charged with a
5 crime is presumed to be innocent. He is or she is
6 presumed to be innocent until such time as the State
7 overcomes that presumption of innocence.

8 Mr. Cottrell, as you know, is charged with the or
9 accused of committing the offense of murder. Today he
10 sits here protected by that presumption of innocence.
11 He is presumed to be as innocent as you or I are at
12 this time. And the only way that that presumption of
13 innocence can be overcome by the State is for the State
14 to convince a jury of 12 people, each and every juror
15 unanimously, that he is guilty of that offense beyond a
16 reasonable doubt. That's what we call the burden of
17 proof in a criminal case. That's what the State must
18 prove.

19 In order to prove the offense of murder, the State
20 would have to convince that jury beyond a reasonable
21 doubt that Mr. Cottrell killed -- unlawfully killed
22 another person with malice aforethought. The State
23 would only have to prove the killing and that it was
24 unlawful, but they would have to prove malice.

25 Malice has been described in many ways by the

1 courts. It's considered a black-hearted act, something
2 done maliciously with ill will and hatred towards the
3 victim. It sounds -- it sounds terrible. And the
4 State would have to meet that burden and prove all of
5 that to overcome this presumption of innocence.

6 Now, when we have a murder case -- and there are
7 several murder cases. I don't know how many, but there
8 are several that are tried in South Carolina throughout
9 the year and in the different counties. And in here,
10 too. Most of those cases are what we call ordinary or
11 typical murders.

12 In a typical murder, the case would begin. The
13 State would have to make the proof that I just
14 described to you, and the jury would be asked to return
15 a verdict. And that verdict would simply be a verdict
16 that says guilty or not guilty, meaning proven or not
17 proven. And that would be the case.

18 However, when the State chooses or elects to
19 proceed seeking the death penalty, new rules apply.
20 That is a special occasion. They're rarely done. But
21 when they are done, special rules apply. And they're
22 different from the rules we would have in the usual
23 case.

24 For instance, you have experienced one of those
25 rule changes already. In a death penalty case, the

1 attorneys get to examine the witnesses (sic) concerning
2 their opinions, beliefs and feelings individually.
3 That doesn't happen in any other kind of criminal case
4 in South Carolina. That's just one of the differences.

5 The reason I want to talk to you about the
6 differences in the case is this is the reason we have
7 these changes. In a typical murder case, the
8 penalty -- or the death penalty is not even an option.
9 Did you know that that is not a penalty in South
10 Carolina for the offense of murder? Did any of you
11 know that? Most people don't. I see that none of you
12 are telling me that you knew that.

13 Only -- only -- if the State elects to seek the
14 death penalty and we move to the new set of rules, the
15 new requirements, may the death penalty even be a
16 potential penalty in the case. And this is what has to
17 happen.

18 First of all, the death penalty case, as I said,
19 begins just like any other murder case. The State must
20 first prove that the defendant is guilty beyond a
21 reasonable doubt of murder. And I've told you what
22 that means.

23 If and only if the jury decides that the State has
24 proven that may we move forward. At that point in time
25 the death penalty is not even on the table, not even

1 something that we talk about; nothing that the jury
2 should even consider.

3 But we move to the second phase. And you've heard
4 us talk about the second phase of the trial through our
5 qualifications on Monday. The second phase of the
6 trial is required in a death penalty case. In that
7 case the State has to prove something else. A death
8 penalty case requires proof of murder plus something
9 else. And what the State has to prove beyond a
10 reasonable doubt and to the satisfaction of every juror
11 on the jury, they have to prove that the murder was
12 concurrent with or connected to an aggravating
13 circumstance.

14 Now, we know what aggravating circumstances are
15 because when the legislature established the death
16 penalty, the legislature said, We're going to list
17 every aggravating circumstance. And there's several
18 that are there. Some may be applicable to this case;
19 none may be applicable to this case. But the State has
20 to prove beyond a reasonable doubt at least one of
21 those aggravating circumstances.

22 Now, if you're sitting on the jury, you may look
23 at the facts of the case -- and I'm not suggesting you
24 will. In fact, please don't think by anything that
25 I've said that I'm even suggesting that there will be a

1 conviction of Mr. Cottrell for the murder.
2 Mr. Cottrell has pled not guilty and his attorneys will
3 zealously defend him, and they will tell you he is not
4 guilty of that offense. And you may, as a jury,
5 determine that he is not and we may not even get to
6 this second phase.

7 But because we only get to talk to you once, we
8 have to assume that might happen and discuss it now.
9 But don't think that I'm suggesting that would happen.
10 But if you look at the circumstances of the case as a
11 juror, you might say, "Well, you know, this thing over
12 here also happened. The State has established that.
13 And in my opinion, that's as bad as anything that the
14 legislature has listed. Well, I think I'll use that as
15 an aggravating circumstance." I will tell you that you
16 cannot do that. You can only consider those
17 aggravators that the State has listed or the
18 legislature has listed for your consideration.

19 Now, if you don't find at least one of those
20 aggravators, I will tell you that ends the inquiry and
21 the only possible sentence would be life imprisonment.
22 You could not even consider recommending the death
23 penalty. It would not even be on the table.

24 But if you do find that the State has done that,
25 and I will instruct you, you still can't consider

1 recommending the death penalty until you've done
2 several things.

3 I will instruct you that one of the things you
4 have to do is look at all the circumstances of the case
5 and listen to what the State may present and what the
6 defense may or may not present and look for what we
7 call mitigating or extenuating circumstances, things
8 that lessen the moral culpability of the defendant in
9 those cases.

10 And the legislature again lists some. They say,
11 These things are mitigating circumstances. But, you
12 know, mitigating circumstances are treated differently
13 than aggravating circumstances. You know I told you
14 you could not go outside the box looking for
15 aggravating circumstances. You're not bound that way
16 when you look for mitigating circumstances.

17 When it comes time for you to consider mitigating
18 circumstances, you can look at all the facts and you
19 can say, "I personally adopt this thing over here or
20 this item over here as a mitigating circumstance. I
21 think it's a mitigating circumstance." And you can
22 treat it as a mitigating circumstance.

23 And finally, I will instruct you that even if you
24 could not find one single thing in mitigation, that you
25 could still, if you felt it is right, recommend life

1 imprisonment as opposed to the death penalty for no
2 reason. Or you could even -- and I will instruct
3 you -- decide, "I'm going to extend mercy. Deserved or
4 otherwise, I'm going to extend mercy and I'm going to
5 recommend a life sentence as opposed to a death
6 sentence."

7 Now, that is generally how the process works. The
8 reason I explain this all to you is that it's important
9 that I assure myself that you as a jury could follow my
10 instructions and follow those steps and fairly and
11 impartially judge this case.

12 At the end of the trial I will give you a much
13 more detailed explanation of how the process works, but
14 I'm comfortable that I have explained to you generally
15 how it works. And what I need to know from each of
16 you: Do any of you find any portion of that process
17 fundamentally unfair or oppressive to the extent that
18 you could not follow my instructions concerning the
19 process that you would have to follow?

20 Could you follow the law as I instruct you and
21 return a verdict and could you consider both the death
22 penalty and a recommendation of life imprisonment?
23 Could you do both?

24 Is there anyone here, as I have asked you, who
25 sees this, this process, as so fundamentally unfair or

1 oppressive that you don't think that you could follow
2 my instructions and follow the law in application and
3 apply this law in your deliberations? Is there anyone
4 who feels that way?

5 And there was no response.

6 Is there any one of you who would not be willing
7 to consider both the sentence of death under the proper
8 circumstances or the sentence of life imprisonment
9 under the proper circumstances?

10 Is there any one of you who could not consider
11 both of those potential sentences in this matter?

12 And there is no response.

13 I thank you for your time in hearing me on this.
14 Now we're going to send you back in, all except for
15 Mr. Green.

16 Who's Mr. Green?

17 All right. Mr. Green, you're going to be first up
18 to bat this morning.

19 And we're going to let the rest of them step out.

20 And, Mr. Green, if you would just stay with us for
21 a minute.

22 (WHEREUPON, Prospective Jury Panel Number 6, with
23 the exception of Mr. Green, exited the courtroom
24 at approximately 9:30 a.m.)

25 **FRED GREEN,**

1 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE COURT: All right, sir. Now, just so we have
3 the record -- please have a seat. Please have a seat.

4 So the record is complete, would you give us your
5 full name and spell your last name.

6 MR. GREEN: Fred Green, G-r-e-e-n.

7 EXAMINATION BY THE COURT:

8 Q All right, Mr. Green. And, Mr. Green, you do
9 understand you are still under oath?

10 A Yes, sir.

11 Q Now, Mr. Green, when you came in this morning, we
12 asked everyone if they could look at a sheet of paper
13 we have here where we asked them to circle the letter
14 or category of juror which best describes them. And
15 you did sign it, but you didn't circle anything.

16 A Oh, I didn't?

17 Q Did you -- was that merely an oversight on your
18 part?

19 A Yeah, it was an oversight.

20 Q Let me hand you your form back. And do you need a
21 pen here?

22 A Yeah.

23 Q And let you circle which one -- just take your
24 time -- which one that you think best describes you.

25 Mr. Green, I don't mean to interrupt you. We were

1 just checking your mic.

2 A (Document handed to the Court.)

3 Q Have you got it? Thank you very much.

4 Mr. Green, before we get into this, let me ask you
5 a couple of questions. Did you listen a moment ago to
6 my remarks?

7 A Yes, sir.

8 Q Do you think you understand how the process works?

9 A Yes, sir.

10 Q And what would be required of you if you were on
11 this jury, especially in the context of considering
12 what a sentence should be?

13 A Yes, sir.

14 Q Would you need to be reminded of that through your
15 questioning today?

16 A No, sir.

17 Q Do you understand that Mr. Cottrell is protected
18 by a presumption of innocence and that he has pled not
19 guilty? Would you need to be reminded of that during
20 your questioning?

21 A No, sir.

22 Q Okay. You understand that fully?

23 A Yes, sir.

24 Q All right. Now, do you understand that

25 Mr. Cottrell has pled not guilty and his attorneys take

1 the position he's not guilty and that there's been no
2 conviction and that our questions are simply --
3 concerning the sentencing phase are put to you simply
4 because we won't have another opportunity to talk with
5 you?

6 A Yes, sir.

7 Q We are not suggesting that he will be convicted of
8 anything. Do you understand that?

9 A Yes, sir.

10 Q And would you need to be reminded of that during
11 your questioning?

12 A No, sir.

13 Q Thank you very much.

14 Now, Mr. Green, I see here that you have indicated
15 to us that you are what we call a type C juror; is that
16 right?

17 A Yes, sir.

18 Q And if I understand you, and let's make sure you
19 and I are talking about the same thing. The type C
20 juror was the one who would need to hear the facts and
21 circumstances in aggravation and in mitigation before
22 he or she could make a decision regarding punishment.
23 Does that best describe you?

24 A Yes, sir.

25 Q And do you think that is truly how you feel about

1 this matter?

2 A Yes, sir.

3 Q Okay. Now, in making that or selecting that type,
4 I want to make sure that you understand that the State
5 would have to go a long way in this case before there
6 would ever -- a situation where you could consider the
7 imposition of the death penalty. Do you understand
8 that?

9 A Yes, sir.

10 Q Okay. But are you very clear in your responses to
11 me that under appropriate circumstances you could
12 entertain the possibility of issuing or recommending a
13 death sentence or life imprisonment? You could do
14 that?

15 A Yes, sir.

16 Q Do you have any religious or moral beliefs
17 concerning the death penalty in general?

18 A What's --

19 Q Are you for it, are you against it, are you
20 indifferent as to it?

21 A Probably indifferent.

22 Q You're indifferent as to it?

23 A Yeah.

24 Q All right, sir. Now, Mr. Green, you also looked
25 over the witness list here, the potential witness list.

1 And I tell you there's been a couple names added to it.
2 Those would be: Nicole Pyle, John Taylor, Christine
3 Del Fonzo, William Nettles, and Michelle Light. Do
4 those people sound familiar to you?

5 A No, sir.

6 Q Do you know any of those?

7 You haven't indicated or I didn't see where you
8 indicated that you knew anyone on this potential
9 witness list.

10 A No, sir.

11 Q Okay. It's hard to look at a list of names and
12 really know whether you know that person. Would you
13 agree with me on that?

14 A Yes, sir.

15 Q But do you feel comfortable as you went over the
16 list that if there was someone that you had a
17 significant relation with, like a person you knew in
18 business or a reasonably good friend or a family
19 member, that you would recognize those names?

20 A Yes, sir.

21 Q Okay. So to the best of your knowledge, you don't
22 know anybody, but you certainly don't think there's
23 anybody that you would have any significant
24 relationship with; is that a fair statement?

25 A Yes, sir.

1 Q Thank you very much for your thoughts there.

2 Now, Mr. Green, it's extremely important to us and
3 relevant to this inquiry that we understand or know if
4 you have had any experience in your life, anything
5 that's happened to you or been a part of anything or
6 your immediate family members have been a part of any
7 situation or perhaps you have heard something about
8 this case, or you have any special knowledge about the
9 case or you have any bias or prejudice against the
10 State or Mr. Cottrell. Is there any opinion you might
11 harbor in this matter that would in any way whatsoever
12 affect your ability to be a fair and impartial juror?
13 Can you think of anything?

14 That's what we were looking for, fair and
15 impartial jurors. And can you think of any reason why
16 you could not be a fair and impartial juror in this
17 case?

18 A No, sir.

19 Q Okay. If you were selected as a juror in this
20 case, could you follow my instructions to you to fairly
21 and impartially look at the evidence, consider all the
22 evidence in this case before you made or reached any
23 conclusions about the evidence or determined any
24 factual matters in the case? Could you do that?

25 A Yes, sir.

1 Q And would you do that?

2 A Yes, sir.

3 Q And, likewise, would you follow the law as I give
4 it to you even though I might tell you something about
5 the law and you might have it in your mind, "Well, that
6 is ridiculous. That should not be the way the law is."
7 Or you might say, "Well, I thought the law was
8 something else." Do you understand that you would have
9 to put that out of your mind because, right or wrong, I
10 am the source of the law that you will use in your
11 deliberations, and you have to follow it as I give it
12 to you? Could you do that?

13 A Yes, sir.

14 Q And would you do that if you were selected as a
15 juror on this case?

16 A Yes, sir.

17 Q Would you be fair to Mr. Cottrell?

18 A Yes, sir.

19 Q Would you be fair to the State of South Carolina?

20 A Yes, sir.

21 Q Very well.

22 THE COURT: You may examine.

23 MS. NORRIS: Thank you, your Honor.

24 EXAMINATION BY MS. NORRIS:

25 Q Mr. Green, I'm Teresa Norris. I know we had the

1 chance the other day to stand up and look at one
2 another briefly, but this is our one opportunity to
3 talk to you. And I hope I can just be brief.

4 One thing I noted on your questionnaire, you
5 indicated that you have a family member in prison; is
6 that right?

7 A Yes, sir -- yes, ma'am.

8 Q Is there anything about that that would cause you
9 a bias towards the State or the defense?

10 A No, ma'am.

11 Q No impact at all?

12 A No, ma'am.

13 Q Just in talking about the death penalty question,
14 and, of course, we're not talking about Mr. Cottrell.
15 We're talking about in general. Prior to getting your
16 jury summons in this case, is that something you have
17 ever even thought about?

18 A Not really.

19 Q Okay. Well, tell me in your own words how you
20 feel about the death penalty.

21 A Probably under extreme circumstances you probably
22 could consider it, you know, but who knows what extreme
23 is unless, you know, you're actually there and you
24 actually hear it.

25 Q Well, under the law as your Honor explained it to

1 you, first there has to be a murder conviction.

2 A Uh-huh.

3 Q And I'm talking about in order to be eligible for
4 the death penalty. There has to be a murder
5 conviction. That's the unlawful killing of another
6 with malice aforethought, a heart fatally bent on
7 mischief, wicked evil. That's malice. You have to
8 have that as step one.

9 And then step two is the statutory aggravating
10 circumstance, the murder plus. And that can be murder
11 combined with a rape, a kidnapping, something like
12 that, another offense, or it can be based on status of
13 the victim such as a small child. There are particular
14 categories our legislature has set forth.

15 So in order to even be eligible for the death
16 penalty it has to be murder plus. And at that point
17 the State would have the opportunity to present
18 additional aggravating circumstances. The defense --
19 and aggravating is anything that goes to bad character,
20 record, that weighs in favor of a death sentence.

21 The defense would have the opportunity to present
22 the mitigation. And that is anything that weighs in
23 favor of life. Are you with me so far?

24 A Yes, ma'am.

25 Q All right. It's only after all of that that if

1 you were placed in the jury that you would be asked to
2 make a determination. So if I asked the question in
3 the context of we've got murder plus, could you
4 consider a sentence either of the death penalty or life
5 without parole -- those are the only two options -- or
6 would you have your mind made up one way or the other
7 at that point?

8 A I could consider one or the other.

9 Q All right. And if you were on a capital
10 sentencing jury, do you understand that under the law
11 it is an individual reasoned moral decision that you
12 would have to make whether it would be death or life
13 without parole?

14 A Yes, ma'am.

15 Q And each of our 12 jurors would have to make that
16 individual decision. And although y'all will discuss
17 it and share your views with one another and talk about
18 it, if you as an individual juror reached your, "This
19 is my choice. I've heard all the evidence. I've heard
20 all the law. This is my individual choice from my
21 heart and from my soul and under my juror's oath, this
22 is my best judgment," if you make your decision and the
23 11 other people made a different decision, would you
24 give up your vote and change your vote just to go along
25 with the 11 other people?

1 A No, ma'am.

2 Q And if I switch you and put you in the 11 people
3 agreeing but there's one other person over here that's
4 disagreeing, would you have any problem respecting that
5 person's decision so that they wouldn't violate their
6 conscience and change their vote just to go along?

7 A No, ma'am.

8 Q All right, sir. I don't have any further
9 questions.

10 THE COURT: Mr. Richardson.

11 MR. RICHARDSON: Thank you, your Honor.

12 EXAMINATION BY MR. RICHARDSON:

13 Q Mr. Green, you drive for the Postal Service?

14 A Yes, sir.

15 Q Where is your route?

16 A Actually Downtown here.

17 Q Downtown Conway. You got a job, don't you.

18 This process, of course, you see that there are
19 several steps and it's pretty rare. First of all, the
20 State would have to prove to you and your jury that
21 Luzenski Cottrell did, in fact, commit murder, the
22 killing of another with malice aforethought. Right?

23 A Yes, sir.

24 Q And then we would present -- we can't really talk
25 about what they are, but we would present one or more

1 aggravating circumstances. In other words, this is
2 what makes this murder much worse than any of the other
3 murders. Got that?

4 A Yes, sir.

5 Q And you told Judge Hyman, "I already realize that
6 there is a lot of murders, but very few of them are
7 death penalty cases." So you would expect something
8 more, right?

9 A Yes, sir.

10 Q So part one is like any other trial. Murder.
11 Guilty or not guilty. Part two is the aggravating
12 circumstance which we're going to tell you what it is,
13 and then you're going to hear from the witnesses
14 whether or not you believe that happened.

15 So if you open door one, your key opens door one,
16 and then your key opens door two, now you're in this
17 room where the State is going to come to you. You've
18 already found him guilty of murder. You have already
19 found the aggravating circumstance. We're going to
20 hand you a piece of paper, Judge Hyman will. It's
21 basically the death warrant. All right?

22 So, Mr. Green along with 11 other people are going
23 to have to go through if you decide to do the death
24 penalty, and you're going to have to sign your name to
25 that warrant. Do you know of anything in your

1 background that would keep you from being able to do
2 that?

3 A No.

4 Q If the facts justify it, you would be okay with
5 giving the death penalty, or if the facts justified
6 life in prison, or if you decided, "I just want life in
7 prison," you would be good with either of those two
8 options, and you don't come with any preconceived
9 notion now as to what it is?

10 A Yes, sir.

11 Q So if the State brings you the evidence and brings
12 you the aggravation, you will be able to at least
13 consider signing that form for us? Because we're going
14 to ask you to do that.

15 A Yes, sir.

16 Q All right. Thank you, Mr. Green.

17 A Okay.

18 MR. RICHARDSON: Your Honor, I believe he's
19 qualified.

20 MS. NORRIS: I agree, your Honor.

21 THE COURT: Mr. Green, you have -- and I find that
22 he is certainly qualified.

23 Mr. Green, we're glad to have you as a qualified
24 juror. Now, that doesn't mean that you're on the jury
25 yet. What it means is you're going to be in a group of

1 people that we all agree should or could be fair and
2 impartial jurors in this case, and we're not going to
3 need you for several days.

4 But what I'm going to ask you to do is this fine
5 gentleman here has a piece of paper with the number on
6 it. We don't know what date we're going to need you
7 back, but we're all comfortable that we won't need you
8 before -- at the earliest -- next Monday.

9 So we're going to ask you to call Sunday to that
10 number after 6 o'clock Sunday afternoon. You can call
11 that number, and there will be a recording there that
12 tells all qualified jurors when to be back. Do you
13 understand me?

14 MR. GREEN: Yes, sir.

15 THE COURT: Now, as I told you earlier, there is a
16 possibility -- or as I told you earlier, there will be
17 sequestration of this jury. That means for several
18 days you would be put up in a hotel with the other
19 jurors by the county. The county will pay for that and
20 all your meals and everything. There will be no
21 expense to you. But you will be sequestered.

22 So when you come in, whatever time the recording
23 tells you, bring your -- some clothing and bring your
24 medications if you take any medications.

25 MR. GREEN: No.

1 THE COURT: And your toiletries and toothbrush and
2 all. Be prepared to stay a few days. Because if we
3 put you on the jury, we're going to immediately
4 sequester you.

5 Do you understand?

6 MR. GREEN: Yes, sir.

7 THE COURT: Thank you, sir. We look forward to
8 seeing you back. You may leave.

9 (WHEREUPON, Mr. Green exited the courtroom
10 at 9:50 a.m.)

11 THE COURT: Let's take a real quick break.

12 (WHEREUPON, recess taken from 9:50 a.m.
13 to 9:54 a.m.)

14 THE COURT: It's all right to go ahead?

15 MS. NORRIS: Yes.

16 THE COURT: We've got Mr. Hixson and
17 Mr. Richardson.

18 Bring Ms. Strickland in.

19 (WHEREUPON, Ms. Strickland entered the courtroom
20 at 9:54 a.m.)

21 **JENNIFER STRICKLAND,**

22 **BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:**

23 **EXAMINATION BY THE COURT:**

24 Q Please be seated. Ms. Strickland, let me remind
25 you that you are still under oath. And just so the

1 record is clear, could you state your name and spell
2 your last name.

3 A Jennifer Strickland, S-t-r-i-c-k-l-a-n-d.

4 THE COURT: Can everyone hear Ms. Strickland?

5 This room has terrible acoustics. Might help if you
6 move up a little bit.

7 Q Are you having any trouble hearing me?

8 A No, sir.

9 Q You can hear me? Good.

10 Ms. Strickland, we spoke a minute ago, and I want
11 to make sure that you are absolutely clear on sort of a
12 basic premise that we're going to have to follow in
13 these questions.

14 Are you -- are you clear that Mr. Cottrell is
15 protected by the presumption of innocence now, he's
16 presumed to be innocent, he has pled not guilty, his
17 attorneys are going to take that position during this
18 trial and until and if the State can overcome that
19 presumption of innocence, he is innocent?

20 A Yes, sir.

21 Q Can you appreciate that?

22 A Yes, sir.

23 Q Do you need to be reminded of that at all during
24 your questioning?

25 A No, sir.

1 Q That's firmly in your mind?

2 A (Nodding.)

3 Q All right. And do you understand that we are not
4 suggesting by talking about the sentencing phase of a
5 death penalty trial, we are not suggesting that we
6 think we will ever get there. I have no opinion about
7 that. Only the jury could decide whether he would be
8 guilty of murder. The jury may well find him not
9 guilty of murder. I just can't speak to the jury
10 that's ultimately seated.

11 But I want to make sure that you understand that
12 just because we talked about the sentencing phase, no
13 one is suggesting that you should draw a conclusion
14 that he has been or will be convicted. The State takes
15 the position he will be; the defense takes the position
16 he won't. But no one knows at this time. Do you need
17 to be reminded of that?

18 A No, sir.

19 Q You have that clearly in your mind?

20 A Yes, sir.

21 Q Thank you very much.

22 Now, Ms. Strickland, I asked you, if you would, to
23 look at a little form that I had prepared. And it
24 asked you to describe as best you can what type of
25 category juror you would fall into. And you have

1 indicated that you would be a C type juror; is that
2 correct?

3 A Yes, sir.

4 Q Okay. And just so that you and I are clear as to
5 what we're talking about, a C type juror is one who
6 would need to hear the facts and circumstances in
7 aggravation and mitigation before he or she could make
8 any decision regarding punishment. Is that the best
9 description of you as a juror?

10 A Yes, sir.

11 Q So you would have no problem if and when I
12 instruct you to do so considering both aggravating and
13 mitigating factors?

14 A Yes, sir.

15 Q And you told me earlier but I want to be really
16 clear. Would you have any trouble following my
17 instructions which I have generally outlined for you in
18 our earlier discussions concerning a capital murder
19 case, would you have -- is there anything about the
20 things that I have told you already that you would find
21 to be so fundamentally unfair or oppressive to one side
22 or the other that you couldn't follow it?

23 A No, sir.

24 Q Could you follow that statutory scheme, how we
25 proceed?

1 A Yes, sir.

2 Q And, again, could you consider both the death
3 penalty and the life imprisonment?

4 A Yes, sir.

5 Q All right. Now -- and would you do that?

6 A Yes.

7 Q Tell me or could you describe generally your
8 feelings about the death penalty. Do you oppose it,
9 are you in favor of it, or are you somewhat indifferent
10 to it?

11 A Somewhat indifferent because I'm not very clear on
12 it. I don't keep up --

13 Q Okay. That's a fair answer. And I can certainly
14 appreciate your feelings there. But you have no
15 particular bias against the death penalty?

16 A No, sir.

17 Q Or any bias in favor of the death penalty?

18 A No, sir.

19 Q All right. Now, I wanted to ask you about any or
20 about your willingness to be a fair and impartial
21 juror. That's what we want. Merely the focus of this
22 inquiry is to determine whether or not there's anything
23 that would -- the law says substantially impair your
24 ability to perform your duties as a jury -- a juror.
25 And your duties are, as a juror, generally can be

1 described as being fair and impartial.

2 And it would be natural to make that evaluation,
3 we would have to know something about your life
4 experiences, your opinions about things like the death
5 penalty generally, any prejudices or bias you might
6 have against a defendant like Mr. Cottrell, or against
7 the State of South Carolina.

8 And in that regard I would like for you to think
9 about this for a moment and tell me if there's anything
10 concerning your opinions and feelings or your life
11 experiences that would give you any concerns or any
12 pause if I were to ask you if there was anything that
13 would in any way, of course, affect your ability to be
14 a fair and impartial juror again with special emphasis
15 on giving both the State and the defendant a fair
16 trial.

17 A Not that I'm aware of.

18 Q Nothing that you're aware of. Now, you also
19 looked at the potential witness list for us. And I'm
20 flipping through here, and I saw that you, unlike most
21 jurors, did recognize a couple of names on that witness
22 list. Looks like Selena Mann.

23 A Uh-huh.

24 Q Who is Selena Mann?

25 A She's actually Selena Small now.

1 Q Selena Small. How do you know her?

2 A I went to school with her.

3 Q All right. And have you maintained friendship?

4 A We're on Facebook together.

5 Q You're on Facebook. Do you see her often?

6 A No, sir.

7 Q Have you discussed this case with her at all?

8 A No, sir.

9 Q Is your relationship such that if she were to
10 testify, you could not set aside the fact that you knew
11 her and you would be more likely to believe her just
12 because you knew her than, say, some other witness?
13 And I have no idea what Ms. Mann is going to testify to
14 or even if she is going to testify.

15 But could you set aside the fact that you knew
16 this particular witness and still, regardless of who
17 she testifies for or against, I don't know, but could
18 you still be fair and impartial in this case?

19 A I feel like I could, but I have a lot of respect
20 for Selena.

21 Q All right. And that's quite natural. That's
22 quite natural. But you could still fairly look at all
23 the evidence before drawing any conclusions?

24 A Yes, sir.

25 Q Okay. You could do that?

1 A Yes, sir.

2 Q And Thomas Rutherford. Who is that?

3 A If it is the one that I'm thinking, he is -- his
4 son goes to school with my daughter.

5 Q And is that the extent of your relationship with
6 him?

7 A Yes.

8 Q And I ask you the same questions of him. If he
9 were to testify -- and I have no idea whether it would
10 be for the State or the defense. I just don't know or
11 what he would testify to. But if he did testify, could
12 you set aside that fact that you do know who he is?

13 A Yes, sir.

14 Q Although it's somewhat of a tenuous relationship
15 you tell me, could you set that aside and fairly and
16 impartially look at his testimony and the testimony of
17 others that may oppose him?

18 A Yes.

19 Q You could do that? Thank you very much.

20 There were several other witnesses who were added
21 to the list: Nicole Pyle, John Taylor, Christine Del
22 Fonzo, William Nettles and Michael (sic) Light. I add
23 those.

24 Do you feel fairly comfortable that those would be
25 the only persons that you know on this list?

1 A Yes, sir.

2 Q Or at least if there's anyone that you had a
3 significant relationship with, whether it be family,
4 friend, business, you think you would have recognized
5 their name?

6 A Yes, sir.

7 Q You must be pretty good with names.

8 A Yes, sir.

9 Q Good. Good. All right. One final question. You
10 know, I was with a group of people one time, and we
11 were thinking about making some kind of investment and
12 we all voted we needed to do something. But when it
13 came time to sign the note at the bank, everybody was
14 gone.

15 It's kind of like that with the sentencing
16 recommendation of the jury in a capital case. Normally
17 when there is a verdict rendered, the foreperson signs
18 it and hands it up to me and I read it and that's it.
19 It's different in a capital case. You would be
20 required to actually sign your name to it if you were
21 to decide that the death penalty was appropriate.
22 Every juror. It would have to be unanimous, of course.

23 But not only would you have to vote for it, you
24 would have to sign it. Do you think that you could do
25 that? And I'm not suggesting that you will ever get to

1 that point, but if you did and the circumstances were
2 right and that was the feeling, unanimous feeling of
3 the jury, could you affix your name to it?

4 A Yes, sir.

5 Q You could. Very well.

6 A Am I allowed to ask you a question?

7 Q Yes, ma'am. You certainly can.

8 A I'm not -- immediate family. What is your
9 definition of immediate family?

10 Q When I say immediate family, I'm generally
11 speaking of your mother, your father, your brothers and
12 sisters, husband and children. That's my definition.

13 A Okay. Thank you.

14 Q Or a member of your household.

15 A Okay.

16 Q You've always got that elderly aunt that might be
17 living in the house with you.

18 A Thank you.

19 THE COURT: All right.

20 EXAMINATION BY MS. NORRIS:

21 Q Good morning, Ms. Strickland. I'm Teresa Norris.
22 I know we had a chance to stand up the other day, but
23 this is our one time to talk.

24 Let me just ask you about some -- about one thing.
25 And I confess there were a lot of people standing up

1 the other day, and I sort of lost track. But I thought
2 you stood up on the question of having seen or heard
3 something about this case. Is that right?

4 A Yes, ma'am.

5 Q Tell me what you heard and what you know.

6 A Just from living here. I remember when it was in
7 the news. I remember when it happened. I never really
8 dug into it, but I do remember when it happened and a
9 few things about it just from the news.

10 Q And the few things, does that include any court
11 proceedings?

12 A Not -- I'm thinking he was found guilty, but I
13 don't -- I wouldn't think so being he's still here, but
14 I don't remember hearing.

15 Q You're guessing that from the length of time?

16 A Yes, ma'am.

17 Q And you understood Judge Hyman's instruction the
18 other day that you can't speculate about that?

19 A Yes. Yes, ma'am. I'm sorry.

20 Q Will you promise me that you wouldn't hold length
21 of time against anybody here?

22 A Yes, ma'am.

23 Q All right. You had also indicated on your
24 questionnaire that you know someone in prison. Is that
25 someone close to you?

1 A I know somebody that has been in prison. Not in
2 there at the moment.

3 Q And is that person close to you?

4 A My brother-in-law went to jail for a short time
5 and a cousin.

6 Q Would either of those have caused you to have
7 either bias for or against the State or the defendant?

8 A No.

9 Q Doesn't impact you?

10 A (Shaking head.)

11 Q Okay. Moving -- moving to the death penalty now,
12 and I understood -- let me just ask you. Prior to
13 getting your jury summons and realizing that you were
14 on a potential death penalty case, have you ever given
15 any real thought to the death penalty?

16 A No, ma'am.

17 Q And if I had met you two weeks ago and just said,
18 "Ms. Strickland, tell me your thoughts about the death
19 penalty," if we made you queen for the day of South
20 Carolina and your one big decision for the day is we're
21 going to have the death penalty as a law where it can
22 be applied or we're not going to have it, what would
23 your answer have been?

24 A I honestly don't know because I don't know -- I
25 hear of what death penalty is, but as far as I know,

1 nobody has ever -- I don't hear people, other than
2 sitting in jail for that length, I'm not clear on it.

3 Q All right. Well, ultimately the decision -- and
4 I'm going to try to go through this quick. I know your
5 Honor has covered it.

6 A I'm sorry.

7 Q Before a person is eligible for the death penalty
8 under the law of South Carolina, first there has to be
9 a conviction of murder. That would be following a
10 trial, after the 12 jurors had heard all the evidence
11 and the law, they would have to decide whether it's
12 murder or not. And murder is the unlawful killing of
13 another with malice aforethought. And malice is a
14 wicked, evil, intentional, a fatal heart bent on
15 mischief. He did it. He meant to do it. It's not
16 self-defense. It's not accident. That's step one
17 before it can be eligible for the death penalty.

18 Step two is what your Honor described as the
19 statutory aggravating circumstance. That list the
20 legislature sets forth. I call it in layman's terms
21 the plus. Murder plus. That plus can be additional
22 felonies such as it's a murder rape, murder kidnapping,
23 or it can be status, a helpless victim, a small child.
24 It's got to be murder plus that.

25 Then you would hear -- let me just stop there. If

1 that's all you heard, would have an opinion one way or
2 the other about the death penalty?

3 A No, ma'am.

4 Q Could you vote for either one?

5 A Yes, ma'am.

6 Q All right. After -- after that point where the
7 plus is found, that's what would make a person eligible
8 for the death penalty under the law. At that point you
9 would hear additional aggravating evidence from the
10 State, essentially anything that weighs in favor of a
11 death penalty. You would hear mitigation, anything
12 that weighs in favor of a sentence of life without
13 parole rather than the death penalty. And that could
14 be anything about background, mental illness, that type
15 thing. Is that the type of information that you would
16 think is important in determining whether somebody gets
17 the death penalty?

18 A Yes, ma'am.

19 Q Okay. All right. Only after you've got all that
20 evidence and your Honor gives the full instructions, if
21 you are on the jury, you would be asked to make a
22 choice. If we -- if we put you in that box, could you
23 make a decision to vote for the death penalty depending
24 on the circumstances or life without parole depending
25 on all the facts and circumstances?

1 A Yes, ma'am.

2 Q Any problems either way, or you just have to hear
3 it?

4 A I would have to hear it.

5 Q Okay. And if you were in that position, under the
6 law in a death penalty case, each individual juror has
7 to make what we call a reasoned moral choice or a
8 reasoned moral judgment. And his Honor will never give
9 an instruction that says, "If you find A, B and C, it
10 has to be the death penalty." Understand that?

11 A Uh-huh.

12 Q It's never required. And it's true on the other
13 side. The judge will never say, "If you find A, B and
14 C, you have got to find this." After you've got all
15 that evidence and all that law provided to you, you
16 would be in a position of, "I've got to make a choice.
17 Does this defendant in general deserve the death
18 penalty or life without parole?" Could you make that
19 choice?

20 A Yes, ma'am.

21 Q And if you made that choice -- and there would be
22 11 other jurors with you -- if you made your choice and
23 you were in the position of this is your answer, but
24 based on all the evidence and the law, the 11 other
25 jurors viewed it a different way, they thought a

1 different sentence was appropriate, would you change
2 your position, just to go along with the majority, or
3 would you hold to what your individual conscience
4 dictated as the appropriate result?

5 A I would question them as to why and if they could
6 convince me.

7 Q You would have that discussion?

8 A Yes, ma'am.

9 Q And that's certainly appropriate. It's
10 encouraged. That's why we put 12 of you together. But
11 my question is this: After you have had all the
12 discussions -- and, of course, we all know as human
13 beings that it's going to happen sometimes. You just
14 have to agree to disagree. You can't get there.

15 A Uh-huh.

16 Q If you're in that position, you're one against
17 all -- not against, but your decision is different than
18 everyone else. Would you give up your opinion just to
19 go along, or would you say, "Under my juror's oath, my
20 conscience, this is my judgment and I'm sticking with
21 it"?

22 A I would probably change because I would think that
23 I missed something. Yeah, I probably would change my
24 mind.

25 Q And if you were on the other side of that

1 situation where you were one of the 11 people and there
2 was one other person, would you feel like sort of vice
3 versa of what you just said, they're clearly missing
4 something because everybody else can agree to it?

5 A Yes, ma'am.

6 Q If you were to reach a judgment in your own mind
7 and conscience that the death penalty was the
8 appropriate verdict, and everybody else agreed with
9 you, under the law you would have to --

10 MR. HIXSON: I'm going to object relating to
11 hypotheticals. Again, we're kind of staking out a
12 juror on a hung jury situation again.

13 THE COURT: I haven't heard the question. Let me
14 hear it again.

15 BY MS. NORRIS:

16 Q I was just going to say if everybody agreed and
17 that was your verdict, could you sign a judgment form?

18 MR. HIXSON: Okay. Apologize.

19 MS. STRICKLAND: Yes, ma'am.

20 BY MS. NORRIS:

21 Q You would be comfortable with it?

22 A Yes, ma'am.

23 Q Give me just a second, Ms. Strickland.

24 (WHEREUPON, an off-the-record discussion was
25 held between Ms. Norris and Mr. McGuire.)

1 MS. NORRIS: I have no further questions,
2 Ms. Strickland.

3 Thank you, your Honor.

4 MR. HIXSON: Thank you, your Honor.

5 EXAMINATION BY MR. HIXSON:

6 Q Good morning, ma'am. I'm Scott Hixson. I'm the
7 Chief Deputy Solicitor here in the 15th Circuit. We
8 met yesterday, I think. And this is Solicitor
9 Richardson. We're both prosecuting this case on behalf
10 of the State of South Carolina.

11 I Thanks for your patience. You have answered a
12 bunch of questions, as there is a lot of stuff to think
13 about all at once. Let's just kind of pick up where
14 Ms. Norris left off at the end.

15 I think you indicated that you were a C juror and
16 you would take information in and try to figure out
17 what the right thing to do is throughout this
18 deliberative process. When you think about what the
19 jury process is, deliberating on making a decision,
20 just by way of example, do you believe that that's a
21 give-and-take of information back and forth between
22 jurors to come up with a good decision?

23 A Yes, sir.

24 Q And I think what you specifically indicated, I
25 believe, is when you were asked during this process you

1 would want to hear what other people had to say about
2 it and whether you would change your mind based on the
3 information they gave you; is that safe to say?

4 A Yes.

5 Q And so prior to reaching this -- is it safe to say
6 prior to reaching this moral decision, before returning
7 a verdict, would you be open to listening to the things
8 that maybe one juror heard that you didn't hear? Would
9 you be open to hearing that?

10 A Yes, sir.

11 Q And maybe somebody in there really believes that
12 the death sentence is appropriate. Maybe somebody in
13 the jury really believes that a life sentence is
14 appropriate. Could you take those two viewpoints and
15 your thought process in determining what you personally
16 believe is the right sentence?

17 A I think I would have my own judgment, but then --
18 yes.

19 Q Okay. All I'm trying to say is just to make sure
20 that you understand the deliberative process, that's
21 what it's for. Have you ever made an important
22 purchase in your life, a car or a house or something
23 like that? That's a fairly important decision but it
24 really doesn't compare to life and death; isn't that
25 true?

1 A Yes.

2 Q And in that do you take the information, interest
3 rates, location, all these other factors in, do you do
4 that for your thought process in your common sense of
5 your daily experience?

6 A Yes, sir.

7 Q And can you imagine doing that through this
8 thought process as well? And so would you just change
9 your mind entirely without any other just to go along
10 versus the process of taking in that information and
11 coming to a proper decision? Do you understand my
12 question? I gave you a complex question.

13 A Yeah.

14 Q Let me back up again. It's not proper to change
15 your mind just to go along.

16 A Correct.

17 Q But it is proper to change your mind if someone
18 changes your mind based on a principled position. Does
19 that make sense?

20 A Yes.

21 Q So could you follow the judge's instruction and
22 come to a decision based on reasoned debate and only
23 reasoned debate?

24 A Yes, sir.

25 MR. HIXSON: I have no further questions, your

1 Honor.

2 EXAMINATION BY THE COURT (Resumed):

3 Q Ms. Strickland, let me be very clear on -- and
4 you're doing fine. You're doing great. I think you're
5 answering our questions honestly, but there is just one
6 thing that I want to be clear on.

7 You know, Ms. Norris was asking you about whether
8 if you had one opinion and the other jurors had another
9 opinion, if you would just leave your opinion and go to
10 theirs just for the sake of creating a unanimous jury.

11 And that question, you have to really understand
12 the question before you can answer it. And let me tell
13 you where we're coming from. It would be improper and
14 a violation of your oath as a juror if you just said,
15 "Oh, I'm over here by myself. I have my opinion of
16 what I should do, but since 11 are over there and I'm
17 over here by myself, I'm just going over there," and
18 abandoning this just for the sole reason of being in
19 the majority. That would be improper. It would be a
20 violation of the oath.

21 But it would be in keeping with your oath if, even
22 as one or two, you're over here, to listen to the
23 reasoning of the majority and be open to their
24 reasoning just like they should be open to yours. And
25 based upon a consideration or your consideration of

1 their opinion and their reasoning and be open to it, if
2 you were to change, that is perfectly all right if you
3 felt that your position had to change. But it would
4 just be improper just to say, "I'm going to go with
5 them just because they're over there and I'm over here
6 by myself. I don't want to be the only one. I'm going
7 to give up my position."

8 Now, with that in mind, let me ask you again.
9 Would you be inclined if you found yourself with one
10 position and even 11 other jurors over here with
11 another position, would you be inclined just to say,
12 "I'm going to abandon my position from what I believe
13 is right and I'm going to go over there with them just
14 so I won't be in the minority. I want to be with that
15 group"? Would you do that?

16 A I don't think so, no. But I would want to know
17 why they felt that way because I'm the only one.

18 Q That's precisely what I wanted to know. You would
19 be open to them and you would talk with them about it?

20 A Yes, sir.

21 Q Okay. So you understand that it would be improper
22 for you just to abandon for no other reason than, "I
23 don't want to be by myself"?

24 A Yes, sir.

25 Q You would not do that?

1 A No, sir.

2 Q Okay. All right. I wanted to be clear. I didn't
3 think you would because of the way you've answered the
4 other questions, but I wanted to clarify that. Okay?
5 All right. Thank you very much.

6 You may step down.

7 (WHEREUPON, Ms. Strickland exited the courtroom
8 at 10:23 a.m.)

9 THE COURT: Mr. McGuire.

10 MS. NORRIS: She's qualified, your Honor.

11 MR. HIXSON: I believe she's qualified, your
12 Honor.

13 THE COURT: All right. Bring her back in.

14 (WHEREUPON, Ms. Strickland entered the courtroom
15 at 10:23 a.m.)

16 THE COURT: Ms. Strickland, I find that you are
17 qualified to be a potential juror in the case. That
18 doesn't mean you're on the jury. What that means is
19 you will be in that final group from which the jury
20 will be selected. And we don't know how long this
21 process is going to take because we have many panels to
22 go through.

23 So what we've done is used our best judgment, and
24 we have arranged for there to be a message on the
25 number that the officer has there and he's providing to

1 you. And if you would call that number after
2 6:00 p.m., 6:00 in the afternoon on Sunday, this coming
3 Sunday, we will have instructions there as to where you
4 are supposed to report. Okay? And we will then select
5 a jury.

6 Now, as we select a jury, we will be sequestering
7 the potential jurors. So please be prepared for that.
8 So bring with you some clothing that you might need.
9 If you're taking any medications, make sure you have
10 your medicine with you and, of course, your toiletries
11 and things of that nature. Be prepared to spend
12 several days. You will be housed in a hotel at the
13 expense of the county. And, of course, your meals and
14 needs will be met, expenses will be provided for you.
15 You won't have to worry about any of that. All right?

16 MS. STRICKLAND: This is definitely? I have to do
17 all that definitely?

18 THE COURT: Not definitely.

19 MS. STRICKLAND: Sunday.

20 THE COURT: It will tell you when you have to
21 report. Okay?

22 Thank you.

23 (WHEREUPON, Ms. Strickland exited the courtroom
24 at 10:25 a.m.)

25 MR. HIXSON: Briefly, prior to the next juror

1 coming in, I just ask -- your Honor, briefly, just in
2 an effort to perhaps expedite the process, we just
3 request that you charge when the individual charge,
4 what you charged at the end of that process, because
5 that's the question that's coming up to every juror
6 every time relating to the role of deliberation that
7 you had mentioned. We just ask that you address that
8 during your individual voir dire prior to the counsel
9 talking about it because it seems to come up with every
10 juror.

11 THE COURT: What specifically are we talking
12 about?

13 MR. HIXSON: Relating to the role of deliberation
14 and changing your opinion just to join the majority.
15 Charge the law on it's improper to change just to do it
16 but you can do it as a result of reasoned debate.

17 THE COURT: Okay.

18 MS. NORRIS: Your Honor, I would actually ask that
19 you not do that. That's the first person essentially
20 that said, "I would change my vote." And at least when
21 it gets to whether we exercise a peremptory challenge
22 or not, we know she gave us an honest answer that she
23 is more likely to do that.

24 THE COURT: All right. I'll let you ask the
25 question. All right.

1 MS. NORRIS: Thank you.

2 THE COURT: All right.

3 (WHEREUPON, Mr. Heindlmeyer entered the courtroom
4 at 10:26 a.m.)

5 JOSEPH HEINDLMEYER,

6 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

7 EXAMINATION BY THE COURT:

8 Q Is it Mr. "Heindlmeyer"?

9 A "Heindlmeyer."

10 Q That's a good 'ol Horry County name, isn't it?

11 A Yes, it is.

12 Q Mr. Heindlmeyer, thank you for coming today.

13 Mr. Heindlmeyer, you will remember that earlier
14 you were placed under oath and you still remain under
15 oath.

16 A Yes.

17 Q And we appreciate you being here.

18 Mr. Heindlmeyer, I made some earlier comments to you,
19 and I want to make sure that some things that I
20 remarked on are clear in your mind.

21 Is it clear in your mind that Mr. Cottrell is
22 protected by the presumption of innocence, he has pled
23 not guilty, and he is to be considered not guilty
24 throughout this trial until such time as the State
25 meets its burden of overcoming that presumption? Is

1 there any question in your mind that is the case here?

2 A No. I understand that.

3 Q And do you understand that he has pled not guilty
4 and that his attorneys take the position that he is not
5 guilty, and they will put up a defense or defend him
6 along those lines? Is there any question in your mind
7 that that is the case?

8 A No.

9 Q Okay. Is there any need for you to be reminded of
10 that during your questioning?

11 A Not at all.

12 Q Okay. Do you also understand that we're going to
13 be talking about both phases of a capital case, that
14 would be guilt and sentencing. And a person could
15 construe that as meaning that we are of the opinion
16 that there will be a second phase, which means there
17 would have been or will be a conviction on the first
18 phase.

19 We don't want to convey that impression at all.
20 It's just this is the only time we have to speak to
21 you, so we need to talk about both phases in case we do
22 reach both phases. Do you understand?

23 A Yes, I do.

24 Q And would you need to be reminded of that during
25 your questioning?

1 A I do not.

2 Q That's in your mind?

3 A Yes.

4 Q All right. Now, you have been kind enough to
5 provide for me a little questionnaire where we ask you
6 to describe or select the category of juror that best
7 describes you. I have yours here, and it looks like
8 you're a C type juror. Do you think that best
9 describes you?

10 A I think so.

11 Q Just so you and I are thinking together, my
12 understanding is that a C type juror is one who would
13 need to hear the facts and circumstances in aggravation
14 and mitigation before he or she could make any decision
15 regarding punishment. Is that, in fact, the type of
16 juror that you believe you are?

17 A Yes.

18 Q Okay. And in that regard, do you remember a
19 moment ago I sort of went through the process that is
20 followed in a capital case, and I asked you if you
21 understood how that process would flow?

22 A Uh-huh.

23 Q And do you think you have an understanding -- a
24 general understanding of how it would go?

25 A Yes, I do.

1 Q Okay. Now, at the end of the trial I will
2 reinstruct you, I will give you a much more detailed
3 instruction of how things work and what you are to do
4 if you are selected as a juror. Do you anticipate
5 having any difficulty following my instructions?

6 A No.

7 Q Okay. Are you willing to accept my instructions
8 as the absolute authority on the law?

9 A Yes, I am.

10 Q You know, at some time I may give you an
11 instruction that you say, "Well, personally I don't
12 think that this should be the law," or, "Personally, I
13 think I've heard something else is the law." If that
14 were the case, could you set those thoughts aside and
15 apply the law just as I give it to you?

16 A I believe so.

17 Q That's what you're required to do. You know, the
18 question that we have here, the question that we're
19 required to address -- it involves many things that
20 we've been talking about -- is whether or not there's
21 anything, whether it be based on your life
22 experiences -- you know, we're all molded to some
23 extent by our past life experiences, things that may
24 have happened to us or we may have been with, or things
25 that our family members or friends or loved ones may

1 have been involved with. We're shaped and we have --
2 and our decisions are often made based on opinions that
3 we may have on particular subjects.

4 And in spite of how hard we may try, I don't think
5 there's anyone who doesn't have some type of bias or
6 prejudice on or interest on at least some subject.
7 That's a pretty fair statement, isn't it? You have an
8 opinion about things.

9 And in a case like this, some jurors may have some
10 bias or prejudice against the State for some reason,
11 something that's happened to them, or they may have a
12 bias or prejudice against a person who is accused of a
13 crime. Our job is to look at each juror and try to
14 determine if there's any life experience, opinion,
15 belief, feeling, bias or prejudice that that juror
16 might have that would -- and this is the magic
17 language -- substantially impair the juror's ability to
18 perform his duty as a juror. Kind of the magic
19 language.

20 The duty as a juror is simply described as being
21 fair and impartial. And that's what we're looking for.
22 And that's why we ask these questions. No one would
23 know that better than you.

24 Now, have you had anything occur in your past,
25 have you formed any opinion, do you have any interest,

1 prejudice or bias that might be relevant to this case
2 that you're aware of that would in any way affect your
3 ability to be a fair and impartial juror?

4 A I don't think so.

5 Q All right. Now, when you were answering questions
6 on Monday, my note indicates that you stated or
7 responded to my question about whether you read or
8 heard anything about the case. And my note indicates
9 that you were one of the people that said, "Yes, I have
10 read and heard about the case." How long have you
11 lived here in Horry County?

12 A Three years.

13 Q Okay. And during that time -- or before, although
14 I realize it was probably during that time -- what have
15 you heard or read or learned about this case?

16 A It was actually a coincidence. I -- I'd never
17 heard of the case until Sunday. I was just going
18 through the Sunday paper, and there was just a blurb in
19 there about Officer McGarry. But I really didn't read
20 the whole article. I read the first paragraph or two
21 and moved on to something else. And -- but I thought
22 it was only fair for me to stand during that question.

23 Q Okay. And it was. And we all appreciate your
24 candor in telling us because that is something we need
25 to know. I want to ask you if you can set aside

1 anything you may have read or heard about this case
2 because I'm going to instruct you that you can only
3 judge this case from what you hear from the witness
4 stand or from what you glean from exhibits that have
5 been properly introduced during the trial of the case.
6 That is the only thing that you may consider in your
7 deliberations. And I will instruct you as to that. Do
8 you believe that you can set aside anything that you
9 may have seen or heard and that you can follow my
10 instruction concerning what you may consider in your
11 deliberations?

12 A I believe so.

13 Q Okay. Very well. That's what we wanted to hear.
14 And I'm glad that is your opinion. Do you understand
15 that if you are selected or qualified as a juror and
16 brought back and selected as a juror, that you would be
17 sequestered?

18 A Yes.

19 Q And would that pose any significant problem for
20 you?

21 A Well, I actually started a new job yesterday. I
22 was supposed to be in orientation today and tomorrow.

23 Q Well, today and tomorrow we're not going to need
24 you.

25 A But I don't anticipate -- I think that my new

1 employer would work with me if they had to.

2 Q Good. I'm glad they will.

3 THE COURT: Ms. Norris or Mr. McGuire, either one.

4 EXAMINATION BY MS. NORRIS:

5 Q Good morning, sir. I'm Teresa Norris. I know we
6 only had a chance to stand up and sort of look at each
7 other in the big room the other day. This is our one
8 chance to talk with you.

9 I note on your questionnaire you indicated your
10 son is a court officer?

11 A Correct.

12 Q Is that somebody like our sheriff's deputies here
13 or a bailiff; is that what you're talking about?

14 A He does -- he goes to people's houses that
15 apparently owe the court something and has to collect
16 from them or do something and then come back to the
17 court. And that's up in Michigan.

18 Q Does he carry a badge and a gun?

19 A He is authorized to do that, yes.

20 Q So you consider him law enforcement?

21 A He does not wear a uniform when he works, but he
22 is authorized to carry a weapon. And he does have
23 credentials from the court.

24 Q Let me phrase it this way. Is that what we would
25 put under the label of law enforcement?

1 A Yeah, I think so. I think in a broad sense, yes.

2 Q Is there anything about that that would cause you
3 to have any personal feelings or concern given the
4 information from the charge in that the deceased in
5 this case was a police officer?

6 A No, I don't think it's related at all.

7 Q In that article on Sunday, do you recall what the
8 information was in that first paragraph or two you
9 read?

10 A Actually, I don't. I saw the officer's name. I
11 didn't even see the name of the -- in this case the
12 defendant. I didn't get that far in the article. And
13 I was basically just scanning the paper.

14 Q All right, sir. I appreciate that. And we can
15 clear that one out of the way.

16 Let me ask you about the death penalty in general.
17 Just tell me your views if you and I were just sitting
18 down having a friendly conversation, what are your
19 thoughts on the death penalty?

20 A I think that the death penalty is an effective
21 deterrent. Let's see, I don't have any reservations
22 around it providing that all the information would
23 support that decision. It's not something I would take
24 lightly. I mean, as a Christian, I'm not someone that
25 says, "Yeah, let's just send him to the gas chamber."

1 I think there really has to be some overwhelming
2 evidence to support that.

3 Q Well, let me just go down a little timeline here.
4 But before you would even get to the death penalty
5 question, of course, there would have to be a trial.
6 Your Honor covered that.

7 Mr. Cottrell, we're not talking about him here.
8 We're just talking general. There would have to be a
9 trial where you as one of 12 jurors would agree if it
10 was your judgment that there was a conviction of
11 murder. And that's the unlawful killing with malice
12 aforethought -- wicked, evil intent, heart bent on
13 fatal mischief. Meant to do it, did it. Not
14 self-defense, not accident.

15 There has to be that finding in order for death
16 penalty eligibility, and there has to be that statutory
17 aggravating circumstance, what I just call the plus.
18 And that can be an additional crime so that it's murder
19 rape, murder kidnapping. Or it can be status of
20 victim. There is a whole list. But one of those is
21 like child under seven that our legislature says you
22 have to find one or more of these before this person is
23 eligible for the death penalty.

24 A Uh-huh.

25 Q At that point when you say it has to be something,

1 that is the law of South Carolina, is that the
2 something you have in your mind?

3 A Sure. I don't see why it wouldn't be.

4 Q And at that point if you as an individual and a
5 jury had convicted a person of murder and found that
6 additional factor, would you at that point
7 automatically impose a death sentence?

8 A I don't think so. I mean, my thinking would be --
9 and I thought the judge made it very clear and I
10 thought it made perfect sense that, you know, the role
11 of the jury is to find the person guilty or not guilty.
12 And that second phase is something that really doesn't
13 come into play during the first phase. And to me that
14 makes good sense.

15 I think if the person was found guilty, then I
16 think that if there was compelling evidence to show
17 that we met the letter of the law, then I think the
18 death penalty is something that should be considered,
19 yes.

20 Q And you said that perfectly. I couldn't agree
21 with you more. All right. And under the law, if we
22 were to reach a sentencing phase, you would first have
23 to find that statutory aggravating circumstance. After
24 that, you could consider any evidence that the State
25 presented in aggravation, things that weigh in favor of

1 a death sentence. You could consider mitigation.
2 That's anything that weighs in favor of a life
3 sentence. And as part of that you might hear
4 information such as background, mental illness,
5 anything that weighs in favor of life. Is that the
6 type of information that you believe would be
7 appropriate to be considered?

8 A Yes. And I thought the judge was very clear
9 around that, that aggravation has some very specific
10 language and mitigation is broader.

11 Q And let me make sure -- you mentioned the letter
12 of the law. Do you understand that under the law there
13 would never be a point where the judge says, "If you
14 find A, B and C, it has to be a death penalty"?

15 A I think what the judge said was that if it met the
16 legislature's definition of aggravated and that the
17 prosecutor was able to prove that, then that would be
18 something that would have to be -- you would have to
19 meet that for the death penalty to apply is the way I
20 understood it.

21 Q In order for the defendant to be death eligible?

22 A Correct.

23 Q That doesn't mean that you have to apply it. So
24 my question again and perhaps --

25 A Rephrase it, if you will.